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Presidential Documents

Title 3—

The President

Executive Order 13528 of January 11, 2010

Establishment of the Council of Governors

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 1822 of the National Defense Authorization Act of 2008 (Public Law 110–181), and in order to strengthen further the partnership between the Federal Government and State governments to protect our Nation and its people and property, it is hereby ordered as follows:

Section 1. *Council of Governors.*

(a) There is established a Council of Governors (Council). The Council shall consist of 10 State Governors appointed by the President (Members), of whom no more than five shall be of the same political party. The term of service for each Member appointed to serve on the Council shall be 2 years, but a Member may be reappointed for additional terms.

(b) The President shall designate two Members, who shall not be members of the same political party, to serve as Co-Chairs of the Council.

Sec. 2. *Functions.* The Council shall meet at the call of the Secretary of Defense or the Co-Chairs of the Council to exchange views, information, or advice with the Secretary of Defense; the Secretary of Homeland Security; the Assistant to the President for Homeland Security and Counterterrorism; the Assistant to the President for Intergovernmental Affairs and Public Engagement; the Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs; the Commander, United States Northern Command; the Chief, National Guard Bureau; the Commandant of the Coast Guard; and other appropriate officials of the Department of Homeland Security and the Department of Defense, and appropriate officials of other executive departments or agencies as may be designated by the Secretary of Defense or the Secretary of Homeland Security. Such views, information, or advice shall concern:

(a) matters involving the National Guard of the various States;

(b) homeland defense;

(c) civil support;

(d) synchronization and integration of State and Federal military activities in the United States; and

(e) other matters of mutual interest pertaining to National Guard, homeland defense, and civil support activities.

Sec. 3. *Administration.*

(a) The Secretary of Defense shall designate an Executive Director to coordinate the work of the Council.

(b) Members shall serve without compensation for their work on the Council. However, Members shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law.

(c) Upon the joint request of the Co-Chairs of the Council, the Secretary of Defense shall, to the extent permitted by law and subject to the availability of appropriations, provide the Council with administrative support, assignment or detail of personnel, and information as may be necessary for the performance of the Council's functions.

(d) The Council may establish subcommittees of the Council. These subcommittees shall consist exclusively of Members of the Council and any

designated employees of a Member with authority to act on the Member's behalf, as appropriate to aid the Council in carrying out its functions under this order.

(e) The Council may establish a charter that is consistent with the terms of this order to refine further its purpose, scope, and objectives and to allocate duties, as appropriate, among members.

Sec. 4. *Definitions.* As used in this order:

(a) the term "State" has the meaning provided in paragraph (15) of section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101(15)); and

(b) the term "Governor" has the meaning provided in paragraph (5) of section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(5)).

Sec. 5. *General Provisions.*

(a) Nothing in this order shall be construed to impair or otherwise affect:

(1) the authority granted by law to a department, agency, or the head thereof; or

(2) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
January 11, 2010.

[FR Doc. 2010–705
Filed 1–13–10; 8:45 am]
Billing code 3195–W0–P

Rules and Regulations

Federal Register

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0763; Directorate Identifier 2007–NM–301–AD; Amendment 39–16170; AD 2010–01–11]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Model F.28 Mark 0070 and 0100 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Excessive wear and tear of the backlash remover mechanism has been found several times on Goodrich Part Number (P/N) 23400–3B and P/N 23400–7 elevator booster control units (BCU), while corrosion has been found on some components in other BCU. The wear and tear may result in a (partly) blocked operation of the elevator system in the normal (hydraulic) mode, while any corrosion may result in deteriorated elevator control when the BCU is in MANUAL mode.

* * * * *

The unsafe condition is wear and tear, and corrosion of the backlash remover mechanism, which can cause a (partly) blocked operation of the elevator system in the normal (hydraulic) mode and deteriorated elevator control when the BCU is in MANUAL mode, which could result in loss of control of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective February 18, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 18, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 1, 2009 (74 FR 45139). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Excessive wear and tear of the backlash remover mechanism has been found several times on Goodrich Part Number (P/N) 23400–3B and P/N 23400–7 elevator booster control units (BCU), while corrosion has been found on some components in other BCU. The wear and tear may result in a (partly) blocked operation of the elevator system in the normal (hydraulic) mode, while any corrosion may result in deteriorated elevator control when the BCU is in MANUAL mode.

Fokker Services and Goodrich determined that modification of the affected elevator BCU in accordance with Goodrich Component Service Bulletin (CSB) 23400–27–27 would correct this situation. * * *

[I]t has been decided to require the inspection of aircraft fitted with BCU P/N 23400–3 and P/N 23400–5 (serial numbers MC–001 through MC–288) and the modification of these units in accordance with Goodrich CSB 23400–27–15 (P/N change from 23400–3 to 23400–3B, or from 23400–5 to 23400–7, as applicable).

Previously, CAA–Netherlands AD (BLA) 93–051/3 dated 29 April 1994 [which corresponds to FAA AD 97–03–09] was issued, which requires a periodic inspection of P/N 23400–3 and P/N 23400–5 elevator BCU that could be affected by corrosion, and allows modification of the BCU in accordance with Fokker Service Bulletin SBF100–27–061 (application of Goodrich CSB 23400–27–15) as (optional) terminating action for these inspections.

* * * In addition, this AD requires the eventual replacement of all affected elevator BCU with modified units.

This new AD does not cancel the repetitive inspection requirements of CAA–NL AD (BLA) 93–051/3 for BCU P/N 23400–3 and P/N 23400–5 as long as these remain installed on any in-service aircraft.

The unsafe condition is wear and tear, and corrosion of the backlash remover mechanism, which can cause a (partly) blocked operation of the elevator system in the normal (hydraulic) mode and deteriorated elevator control when the BCU is in MANUAL mode, which could result in loss of control of the airplane. The required actions include inspecting the backlash remover of the elevator booster control unit to determine the displacement of the pivot bolt; and if necessary, replacing the elevator booster control unit. Depending on the measurement of the displacement, the compliance time for replacement ranges from before further flight to 3,000 flight cycles.

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

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Explanation of Changes Made to This AD

We have revised this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Conclusion

We reviewed the available data, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a Note within the AD.

Costs of Compliance

We estimate that this AD will affect 2 products of U.S. registry. We also estimate that it will take about 13 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $189 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $2,458, or $1,229 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); 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.

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of 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 AD:

2010–01–11 Fokker Services B.V.: Amendment 39–16170. Docket No. FAA–2009–0763; Directorate Identifier 2007–NM–301–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 18, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Services B.V. Model F.28 Mark 0070 and Mark 0100 airplanes, all serial numbers, certificated in any category.

Subject

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

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Excessive wear and tear of the backlash remover mechanism has been found several times on Goodrich Part Number (P/N) 23400–3B and P/N 23400–7 elevator booster control units (BCU), while corrosion has been found on some components in other BCU. The wear and tear may result in a (partly) blocked operation of the elevator system in the normal (hydraulic) mode, while any corrosion may result in deteriorated elevator control when the BCU is in MANUAL mode.

Fokker Services and Goodrich determined that modification of the affected elevator BCU in accordance with Goodrich Component Service Bulletin (CSB) 23400–27–27 would correct this situation. * * *

[I]t has been decided to require the inspection of aircraft fitted with BCU P/N 23400–3 and P/N 23400–5 (serial numbers MC–001 through MC–288) and the modification of these units in accordance with Goodrich CSB 23400–27–15 (P/N change from 23400–3 to 23400–3B, or from 23400–5 to 23400–7, as applicable).

Previously, CAA–Netherlands AD (BLA) 93–051/3 dated 29 April 1994 [which corresponds to FAA AD 97–03–09] was issued, which requires a periodic inspection of P/N 23400–3 and P/N 23400–5 elevator BCU that could be affected by corrosion, and allows modification of the BCU in accordance with Fokker Service Bulletin SBF100–27–061 (application of Goodrich CSB 23400–27–15) as (optional) terminating action for these inspections.

* * * In addition, this AD requires the eventual replacement of all affected elevator BCU with modified units.

This new AD does not cancel the repetitive inspection requirements of CAA–NL AD (BLA) 93–051/3 for BCU P/N 23400–3 and P/N 23400–5 as long as these remain installed on any in-service aircraft.

The unsafe condition is wear and tear, and corrosion of the backlash remover mechanism, which can cause a (partly) blocked operation of the elevator system in the normal (hydraulic) mode and deteriorated elevator control when the BCU is in MANUAL mode, which could result in loss of control of the airplane. The required actions include inspecting the backlash remover of the elevator booster control unit to determine the displacement of the pivot bolt; and if necessary, replacing the elevator booster control unit. Depending on the measurement of the displacement, the compliance time for replacement ranges from before further flight to 3,000 flight cycles.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) For airplanes equipped with booster control unit P/N 23400–3B, 23400–7, 23400–3, or 23400–5, within 12 months after the effective date of this AD, perform a one-time inspection of the elevator booster control unit in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–088, dated June 4, 2007.

(2) At the time specified in Table 1 of this AD, and depending on the result of the inspection required by paragraph (f)(1) of this AD, replace the elevator booster control unit with a modified unit having P/N 23400–3B or P/N 23400–7, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–088, dated June 4, 2007. The replacement part must be modified in accordance with Goodrich Service Bulletin 23400–27–27, Revision 1, dated September 14, 2007.

TABLE 1—REPLACEMENT PARAMETERS

Dimension A	Replace within
A < 0.12 millimeters (mm).	Not applicable.
0.12 mm ≤ A < 0.5 mm.	3,000 flight cycles.
0.5 mm ≤ A < 1.0 mm	2,000 flight cycles.
1.0 mm ≤ A < 1.5 mm	1,000 flight cycles.
1.5 mm ≤ A < 2.0 mm	500 flight cycles.
2.0 mm ≤ A < 2.5 mm	125 flight cycles.
A ≥ 2.5 mm	Before further flight.

(3) Within 60 months after the effective date of this AD, replace all remaining unmodified elevator booster control units having P/N 23400–3B or P/N 23400–7 with modified units, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–088, dated June 4, 2007. The replacement part must be modified in accordance with Goodrich Service Bulletin 23400–27–27, Revision 1, dated September 14, 2007.

(4) Within 60 months after the effective date of this AD, replace all remaining elevator booster control units having P/N 23400–3 or P/N 23400–5 with modified units having P/N 23400–3B or P/N 23400–7, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–088, dated June 4, 2007. The replacement part must be modified in accordance with Goodrich Service Bulletin 23400–27–27, Revision 1, dated September 14, 2007.

(5) As of 12 months after the effective date of this AD, no person may install a Goodrich P/N 23400–3B, P/N 23400–7, P/N 23400–3 or P/N 23400–5 elevator booster control unit on any airplane, unless the conditions of paragraph (f)(5)(i) or (f)(5)(ii), as applicable, are met.

(i) The unit has been inspected in accordance with paragraph (f)(1) of this AD, and the applicable action(s) required by paragraph (f)(2) is accomplished at the time specified in that paragraph.

(ii) The unit having P/N 23400–3B or P/N 23400–7 has been modified in accordance with Goodrich Service Bulletin 23400–27–27, Revision 1, dated September 14, 2007.

(6) As of 60 months after the effective date of this AD, no person may install a Goodrich P/N 23400–3 or P/N 23400–5 elevator booster control unit on any airplane.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0032, dated February 17, 2009; Fokker Service Bulletin SBF100–27–088, dated June 4, 2007; and Goodrich Service Bulletin 23400–27–27, Revision 1, dated September 14, 2007; for related information.

Material Incorporated by Reference

(i) You must use Fokker Service Bulletin SBF100–27–088, dated June 4, 2007; and Goodrich Service Bulletin 23400–27–27, Revision 1, dated September 14, 2007; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For Fokker service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252 627 211; e-mail *technicalservices.fokkerservices@stork.com;* Internet *http://www.myfokkerfleet.com.*

(3) For Goodrich service information identified in this AD, contact Goodrich Corporation, Landing Gear, 1400 South Service Road, West Oakville L6L 5Y7, Ontario, Canada; telephone 905–825–1568; e-mail *jean.breed@goodrich.com;* Internet *http://www.goodrich.com/TechPubs.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(5) You may also review copies of the 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, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 28, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–102 Filed 1–13–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1251; Directorate Identifier 2009–NM–133–AD; Amendment 39–16174; AD 2010–02–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A340–200 and A340–300 Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

* * * * *

Engineering analysis using the new calculated loads has shown that the structural integrity of the forward engine mount cannot be guaranteed after either thrust link has accumulated 15500 Flight Cycles (FC).

* * * * *

A loss of structural integrity of the forward engine mounts could lead to the loss of the load path for the forward engine mount and damage to other engine mount structures, which could result in failure of the forward engine mount, possible separation of the engine from the airplane, damage to the wing, or loss of control of the airplane. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective January 29, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 29, 2010.

We must receive comments on this AD by March 1, 2010.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0115, dated May 29, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> A recent review of the A340–200/300 fleet has shown that the current utilization rate of the aeroplanes is different from the assumptions used at the time of A340 initial certification. New calculations have been performed taking into account an updated mission profile to determine the impact to the loads on the forward engine mount.
>
> Engineering analysis using the new calculated loads has shown that the structural integrity of the forward engine mount cannot be guaranteed after either thrust link has accumulated 15500 Flight Cycles (FC).
>
> Consequently, this AD introduces a Limit Of Validity (LOV) of 15500 FC for CFM 56–5C forward engine mount thrust links Part Number (P/N) 340–7005–3 and P/N 340–7005–4.
>
> In addition, this AD requires establishing the deadline for replacement of forward engine mount thrust link assemblies, to trace the life of these assemblies and to replace them no later than the calculated deadline.

A loss of structural integrity of the forward engine mounts could lead to the loss of the load path for the forward engine mount and damage to other engine mount structures, which could result in failure of the forward engine mount, possible separation of the engine from the airplane, damage to the wing, or loss of control of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A340–71–4006, Revision 01, dated May 14, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

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

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–1251; Directorate Identifier 2009–NM–133–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations

for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this 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. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); 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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of 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 AD:

2010–02–03 Airbus: Amendment 39–16174. Docket No. FAA–2009–1251; Directorate Identifier 2009–NM–133–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 29, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes, all manufacturer serial numbers; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 71: Powerplant.

Reason

(e) The mandatory continued airworthiness information (MCAI) states:

A recent review of the A340–200/300 fleet has shown that the current utilization rate of the aeroplanes is different from the assumptions used at the time of A340 initial certification. New calculations have been performed taking into account an updated mission profile to determine the impact to the loads on the forward engine mount.

Engineering analysis using the new calculated loads has shown that the structural integrity of the forward engine mount cannot be guaranteed after either thrust link has accumulated 15500 Flight Cycles (FC).

Consequently, this AD introduces a Limit of Validity (LOV) of 15 500 FC for CFM 56–5C forward engine mount thrust links Part Number (P/N) 340–7005–3 and P/N 340–7005–4.

In addition, this AD requires establishing the deadline for replacement of forward engine mount thrust link assemblies, to trace the life of these assemblies and to replace them no later than the calculated deadline.

A loss of structural integrity of the forward engine mounts could lead to the loss of the load path for the forward engine mount and damage to other engine mount structures, which could result in failure of the forward engine mount, possible separation of the engine from the airplane, damage to the wing, or loss of control of the airplane.

Compliance

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

Actions

(g) Unless already done, do the following actions.

(1) At the applicable time in paragraph (g)(1)(i) or (g)(1)(ii) of this AD: Calculate the flight cycles, as applicable, and replace all CFM 56–5C forward engine mount thrust links P/N 340–7005–3 or P/N 340–7005–4, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–71–4006, Revision 01, dated May 14, 2009.

Note 1: P/N 340–7005–3 and P/N 340–7005–4 are the part numbers for only the link. P/N 340–7005–503 and P/N 340–7005–504 are the part numbers for the assembly (comprising the bearing and the link).

(i) For airplanes with thrust links for which the history of the part is available: Replace in accordance with Airbus Mandatory Service Bulletin A340–71–4006, Revision 01, dated May 14, 2009, prior to the accumulation of 15,500 total flight cycles on the part, or within 90 days from the effective date of the AD, whichever occurs later.

(ii) For airplanes with thrust links for which the part history is partial or unknown: Within 30 days after the effective date of this AD, calculate the replacement date in accordance with the calculation method provided in Airbus Mandatory Service Bulletin A340–71–4006, Revision 01, dated May 14, 2009, and replace the part no later than the calculated replacement date.

(2) Repeat the replacement required by paragraph (g)(1) of this AD at intervals not to exceed 15,500 flight cycles on the part in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–71–4006, Revision 01, dated May 14, 2009.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(i) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2009–0115, dated May 29, 2009; and Airbus Mandatory Service Bulletin A340–71–4006, Revision 01, dated May 14, 2009; for related information.

Material Incorporated by Reference

(j) You must use Airbus Mandatory Service Bulletin A340–71–4006, Revision 01, dated May 14, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of

this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the 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, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 30, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–211 Filed 1–13–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0610; Directorate Identifier 2009–NM–021–AD; Amendment 39–16171; AD 2010–01–12]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

The result of re-assessment of rotor burst analysis has shown the possibility of loss of electrical power supply to the following aircraft systems: Air Data System (ADS), Ailerons, Multifunctional spoilers and rudder, which result in loss of the aircraft pitch and yaw control.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective February 18, 2010.The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 18, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenny Kaulia, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2848; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 15, 2009 (74 FR 34276). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

The result of re-assessment of rotor burst analysis has shown the possibility of loss of electrical power supply to the following aircraft systems: Air Data System (ADS), Ailerons, Multifunctional spoilers and rudder, which result in loss of the aircraft pitch and yaw control.

* * * * *

Required actions include modifying the electrical wiring in the overhead panel of the cockpit, modifying the air data smart probe 3B power supply bus, and modifying the Aeronautical Radio Incorporated (ARINC) 429 data bus, as applicable. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Withdraw NPRM

Embraer requests that we withdraw the NPRM. Embraer states that based on service experience, the probability of a rotor burst combined with the probability of a disk trajectory that hits the specific wiring bundle is extremely rare. Embraer disagrees that the modifications addressed by the service bulletins should be mandatory. Embraer also states that issuance of a Special Airworthiness Information Bulletin would be an alternative measure to be taken in this case, since it would address the concerns in the NPRM and still be in conformity with the 14 CFR part 39 requirements.

We disagree with the request to withdraw the NPRM. We have consulted with the Agência Nacional de Aviação Civil (ANAC) regarding the manufacturer's comment and determined that, regardless of the very low probability that a catastrophic event could occur due to a rotor burst, the requirements of 14 CFR part 25 do not permit the use of probability as a risk reduction parameter. Furthermore, the design must minimize the effects of rotor burst by any means practicable. This AD is necessary to address the identified unsafe condition. Therefore, the AD is not changed in this regard.

Explanation of Changes Made to This AD

We have revised this AD to identify the correct legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 77 products of U.S. registry. We also estimate that it will take about 62 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour.

Required parts will cost about $668 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $433,356, or $5,628 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); 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.

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of 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 AD:

2010–01–12 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–16171. Docket No. FAA–2009–0610; Directorate Identifier 2009–NM–021–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 18, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes; certificated in any category; as identified in Embraer Service Bulletins 170–24–0019, dated December 6, 2006; 170–24–0020, dated November 30, 2006; and 170–31–0020, Revision 01, dated May 21, 2008.

Subject

(d) Air Transport Association (ATA) of America Codes 24 and 31: Electrical power and Instruments, respectively.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

The result of re-assessment of rotor burst analysis has shown the possibility of loss of electrical power supply to the following aircraft systems: Air Data System (ADS), Ailerons, Multifunctional spoilers and rudder, which result in loss of the aircraft pitch and yaw control.

* * * * *

Required actions include modifying the electrical wiring in the overhead panel of the cockpit, modifying the air data smart probe 3B power supply bus, and modifying the Aeronautical Radio Incorporated (ARINC) 429 data bus, as applicable.

Actions and Compliance

(f) Unless already done, do the following actions as applicable.

(1) For airplanes identified in Embraer Service Bulletin 170–24–0019, dated December 6, 2006: Within 6,000 flight hours after the effective date of this AD, modify the electrical wiring in the overhead panel of the cockpit in accordance with Embraer Service Bulletin 170–24–0019, dated December 6, 2006.

(2) For airplanes identified in Embraer Service Bulletin 170–24–0020, dated November 30, 2006: Within 6,000 flight hours after the effective date of this AD, change the Air Data Smart Probe 3 channel B power supply bus from ESS2 to ESS3 in accordance with Embraer Service Bulletin 170–24–0020, dated November 30, 2006.

(3) For airplanes identified in Embraer Service Bulletin 170–31–0020, Revision 01, dated May 21, 2008: Within 6,000 flight hours after the effective date of this AD, duplicate the Aeronautical Radio Incorporated (ARINC) 429 airspeed signal for an extension longer than the rotor burst impact area; change the primary power source for the modular avionics unit (MAU) 2 from DC BUS 2 to DC ESS BUS 2 to include an additional ground and to provide dual electrical power to MAU 2; and change the wiring of the slat/flap actuators control electronics (SF–ACE) 1 and 2 to primary actuator control electronics (P–ACE) 1, 2, and 3; in accordance with Embraer Service Bulletin 170–31–0020, Revision 01, dated May 21, 2008.

(4) Actions accomplished before the effective date of this AD according to Embraer Service Bulletin 170–31–0020, dated July 20, 2007, are considered acceptable for compliance with the corresponding actions specified in this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Kenny Kaulia, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2848; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from

a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Agência Nacional de Aviação Civil (ANAC) Airworthiness Directive 2008–09–01, dated September 30, 2008, and the service information identified in Table 1 of this AD, for related information.

TABLE 1—SERVICE INFORMATION

Embraer Service Bulletin—	Revision—	Dated—
170–24–0019	Original	December 6, 2006.
170–24–0020	Original	November 30, 2006.
170–31–0020	01	May 21, 2008.

Material Incorporated by Reference

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

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

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone: +55 12 3927–5852 or +55 12 3309–0732; fax: +55 12 3927–7546; e-mail: *distrib@embraer.com.br;* Internet: *http://www.flyembraer.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the 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, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 2—MATERIAL INCORPORATED BY REFERENCE

Embraer Service Bulletin—	Revision—	Dated—
170–24–0019	Original	December 6, 2006.
170–24–0020	Original	November 30, 2006.
170–31–0020	01	May 21, 2008.

Issued in Renton, Washington, on December 28, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–212 Filed 1–13–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0657; Directorate Identifier 2009–NM–048–AD; Amendment 39–16175; AD 2010–02–04]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This AD requires replacing the engine fuel shutoff valves for the left and right main tanks. This AD results from a report of a failed engine start, which was caused by an internally fractured engine fuel shutoff valve. We are issuing this AD to prevent the failure of the valve in the closed position, open position, or partially open position, which could result in engine fuel flow problems and possible uncontrolled fuel leak or fire.

DATES: This AD is effective February 18, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 18, 2010.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, 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: Samuel Spitzer, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6510; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. That NPRM was published in the **Federal Register** on July 29, 2009

(74 FR 37657). That NPRM proposed to require replacing the engine fuel shutoff valves for the left and right main tanks.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the commenters.

Support for the NPRM

Boeing concurs with the contents of the NPRM. Continental Airlines has no technical objections to the NPRM.

Request To Clarify Use of Valve Bodies

Continental Airlines states that the NPRM affects the engine fuel shutoff valves, and paragraph (i) of the NPRM prohibits installing any valve with ITT Aerospace Controls part number 125334D–1 (Boeing part number S343T003–40) that has been removed from the spar location on any airplane in any location unless it has been modified in accordance with Boeing Service Bulletin 737–28–1272, dated October 31, 2008, to the new ITT 125334D–2 part number (Boeing part number S343T003–67).

We infer that Continental Airlines asks that we clarify whether the removed valve can be reused on airplanes in any location. We agree to provide clarification. These valves may not be used in any location on the airplane unless they have been modified in accordance with Boeing Service Bulletin 737–28–1272, dated October 31, 2008, to the new ITT 125334D–2 part number (Boeing part number S343T003–67). We have not changed the AD in this regard.

Request To Increase the Cost of Compliance

Air Transport Association (ATA), on behalf of its member American Airlines, requests that we increase the costs of compliance to reflect 34 work-hours instead of 26 work-hours. ATA states that the ITT Aerospace Controls service bulletin includes 4 hours for each engine fuel spar valve body. Each Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplane has 2 valve bodies in the engine fuel shutoff valve position.

We disagree with the request to increase the cost of compliance. Boeing Service Bulletin 737–28–1272, dated October 31, 2008, provides the option to return the valve to the supplier for modification, and therefore, the actions identified by the commenter are not mandatory. Because the additional costs cited by the ATA are optional to operators, we do not consider those costs in our determination of the cost of compliance. We have not changed the AD in this regard.

Request To Extend the Compliance Time

ATA, on behalf of its member American Airlines, requests that we extend the compliance time from 60 months to 72 months after the effective date of the AD. The commenter states that maintenance schedules may not allow for accomplishment of the required actions on all affected aircraft within the compliance time, depending on the effective date of the AD.

We disagree with the request to extend the compliance time. The 60-month compliance time was established to maintain an acceptable level of safety across the 737 fleet in consideration of the valve failure rate, consequence of the failure, and practicality of incorporating the corrective actions. The commenter has not offered rationale for extending the compliance time. In developing an appropriate compliance time for this action, we considered the urgency associated with the subject unsafe condition, the availability of required parts, and the practical aspect of accomplishing the required modification within a period of time that corresponds to the normal scheduled maintenance for most affected operators. According to the manufacturer, an ample number of required parts will be available to modify the U.S. fleet within the proposed compliance time. However, according to the provisions of paragraph (j) of the final rule, we may approve requests to adjust the compliance time if the request includes data that prove the new compliance time would provide an acceptable level of safety. We have not changed the AD in this regard.

Explanation of Changes Made to This AD

We have revised this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Conclusion

We have carefully reviewed the available data, including the comments that have been received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 883 airplanes of U.S. registry. We also estimate that it takes 26 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Required parts cost up to $8,496 per product. Based on these figures, we estimate the cost of this AD to the U.S. operators to be up to $9,338,608, or $10,576 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of 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 AD:

2010–02–04 The Boeing Company: Amendment 39–16175. Docket No. FAA–2009–0657; Directorate Identifier 2009–NM–048–AD.

Effective Date

(a) This airworthiness directive (AD) is effective February 18, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category; as identified in Boeing Service Bulletin 737–28–1272, dated October 31, 2008.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD requires replacing engine fuel shutoff valves for the left and right main tanks. This AD results from a report of a failed engine start, which was caused by an internally fractured engine fuel shutoff valve. We are issuing this AD to prevent the failure of the valve in the closed position, open position, or partially open position, which could result in engine fuel flow problems and possible uncontrolled fuel leak or fire.

Compliance

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

Replacement of the Engine Fuel Spar Valve Body of the Left and Right Wing Main Tanks

(g) Within 60 months after the effective date of this AD: Replace the engine fuel spar valve bodies of the left and right wing main tanks in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–28–1272, dated October 31, 2008.

Note 1: Boeing Service Bulletin 737–28–1272, dated October 31, 2008, refers to ITT Aerospace Controls Service Bulletin 125334D–28–02, dated August 27, 2008, as an additional source of guidance for modifying the valve body assembly.

Parts Installation

(h) As of the effective date of this AD, no person may install any engine fuel shutoff valve with ITT Aerospace Controls part number 125334D–1 (Boeing part number S343T003–40) on any airplane at the spar valve location. A valve that has been modified in accordance with Boeing Service Bulletin 737–28–1272, dated October 31, 2008, to the new ITT 125334D–2 part number (Boeing part number S343T003–67) may be installed at the spar valve location.

(i) As of the effective date of this AD, no valve with ITT Aerospace Controls part number 125334D–1 (Boeing part number S343T003–40) that has been removed from the spar location may be reinstalled on any airplane in any location unless it has been modified in accordance with Boeing Service Bulletin 737–28–1272, dated October 31, 2008, to the new ITT 125334D–2 part number (Boeing part number S343T003–67).

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Samuel Spitzer, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6510; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Material Incorporated by Reference

(k) You must use Boeing Service Bulletin 737–28–1272, dated October 31, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the 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, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 30, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–398 Filed 1–13–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0236; Directorate Identifier 2009–NE–06–AD; Amendment 39–16162; AD 2010–01–05]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. CFM56–7B Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for CFM International, S.A. CFM56–7B series turbofan engines. This AD requires initial and repetitive eddy current inspections (ECIs) of certain part number (P/N) low-pressure (LP) turbine rear frames. This AD results from a refined life analysis by the engine manufacturer that shows the need to identify an initial and repetitive inspection threshold for inspecting certain LP turbine rear frames. We are issuing this AD to prevent failure of the LP turbine rear frame from low-cycle-fatigue cracks. Failure of the LP turbine rear frame could result in engine separation from the airplane, possibly leading to loss of control of the airplane.

DATES: This AD becomes effective February 18, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of February 18, 2010.

ADDRESSES: You can get the service information identified in this AD from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2800; fax (513) 552–2816.

The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *antonio.cancelliere@faa.gov;* telephone (781) 238–7751; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to CFM International, S.A. CFM56–7B series turbofan engines. We published the proposed AD in the **Federal Register** on May 11, 2009 (74 FR 21772). That action proposed to require initial and repetitive ECIs of certain P/N LP turbine rear frames.

Examining the AD Docket

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

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Supersede or Revise Existing AD 2008–03–09

One commenter, the Air Transport Association (ATA), requests that we should supersede or revise existing AD 2008–03–09 to incorporate the requirements and P/Ns affected by the proposed AD.

We do not agree. Superseding or revising that AD to incorporate these requirements would make the requirements of existing AD 2008–03–09 and this AD confusing. AD 2008–03–09 requires a change to the Airworthiness Limitations Section (ALS) for the introduction of the new LP turbine rear frame life limits, with inspections, while this AD introduces limits for LP turbine rear frame P/Ns that were introduced to the field before the ALS changes occurred. We did not change the AD.

Request To Reference the Latest Service Bulletins (SBs)

ATA and CFM International, S.A. request that we reference the latest version of CFM International, S.A. SB No. CFM56–7B S/B 72–0579, which is Revision 5, dated March 30, 2009. CFM International also requests that we reference the latest version of CFM International, S.A. SB No. CFM56–7B S/B 72–0558, which is Revision 3, dated March 30, 2009.

We agree and changed the SB references in the AD.

Request To Include LP Turbine Rear Frame P/Ns

ATA requests that we include turbine rear frame P/Ns 340–166–251–0; 340–166–252–0; and 340–166–253–0. These P/Ns are included in the effectivity section of CFM International, S.A. SB No. CFM56–7B S/B 72–0579, and Engine Manual 05–21–03. ATA also requests that we include LP turbine rear frame P/Ns 340–027–110–0 and 370–027–120–0. These P/Ns are included in the effectivity section of CFM International, S.A. SB No. CFM56–7B S/B 72–0568.

We do not agree. This AD addresses LP turbine rear frame P/Ns introduced in the field by CFM International, S.A. through SB No. CFM56–7B S/B 72–0527, before the ALS could be modified to include the LP turbine rear frame P/Ns affected by this AD. The LP turbine rear frame P/Ns listed by ATA are already listed in the ALS. We did not change the AD.

Question Regarding Inclusion of LP Turbine Rear Frame P/Ns

Japan Airlines (JAL) questions whether the LP turbine rear frame P/Ns 340–166–251–0; 340–166–252–0; and 340–166–253–0 should be listed in this AD.

The LP turbine rear frame P/Ns referred to by JAL are already listed in the ALS. We did not change the AD.

Request To Remove Engine Models

ATA requests that we remove engine models CFM56–7B26/B2; CFM56–7B26/3B2; and CFM56–7B26/3B2F from the proposed AD, as they are not affected.

We agree and removed those models from the AD. We also advised CFM International, S.A., to remove those models from the effectivity list of SB No. CFM56–7B S/B 72–0579.

Request To Remove Repeated P/Ns

ATA requests that we remove the repeated listings of LP turbine rear frame P/N 340–166–254–0 from the AD.

We agree and removed the repeated P/N listings from the AD.

Request To Review and Correct an Engine Model

ATA and CFM International, S.A. request that we review the engine model –7B27/3 in the proposed AD, as it appears to be incorrect. ATA states also that engine model –7B27/B3 is missing from the proposed AD.

We agree. We corrected the –7B27/3 engine model in paragraph (g) to read "–7B27/B3". We also corrected the typographical error in paragraph (c)(1) so that engine model –7B27/3 is not duplicated. We changed the duplicate model to read "–7B27/B3".

Request To Remove an Engine Model

ATA requests that we remove engine model –7B27A from paragraph (f) of the proposed AD, as it is not affected by the AD action.

We agree and removed that engine model from the AD.

Previous Credit Paragraphs Added

Since we issued the proposed AD, we became aware that we need to allow previous credit for initial inspections done before the effective date of the AD, using earlier versions of the applicable SBs. We added two previous credit paragraphs to the compliance section of the AD.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 1,228 CFM56–7B series turbofan engines installed on airplanes of U.S. registry. We estimate that it will take about 3 work-hours to perform an eddy current inspection of an LP turbine rear frame. The average labor rate is $80 per work-hour. A new replacement LP turbine rear frame costs about $275,000. We estimate that all but the first of the recurrent inspections would occur during normally scheduled maintenance. Therefore, the cost of only the first inspection is included as directly attributable to this AD and we included that cost in the first year. Also, while we estimate that all 1,228 LP turbine rear frames will need replacement at some point in their 30-year useful life, only the unused cost of the part is attributable to this AD. Therefore, based on the service history of the LP turbine rear frame, we estimate the total cost of the AD to U.S. operators to be less than $11,266,490 annually based on a 30-year fleet life expectation.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); 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.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration 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:

2010–01–05 CFM International, S.A: Amendment 39–16162. Docket No. FAA–2009–0236; Directorate Identifier 2009–NE–06–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 18, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to:

(1) CFM International, S.A. CFM56–7B20; –7B22; –7B24; –7B26; –7B27; –7B22/B1; –7B24/B1; –7B27/B1; –7B26/B1; –7B20/3; –7B22/3; –7B24/3; –7B26/3; –7B27/3; –7B22/3B1; –7B24/3B1; –7B27/3B1; –7B26/3B1; –7B26/3F; –7B27/B3; –7B27/3F; –7B27/3B1F; and –7B27/3B3 turbofan engines assembled with a low-pressure (LP) turbine rear frame, part number (P/N) 340–166–254–0; 340–166–255–0; 340–166–256–0; 340–166–257–0; 340–166–258–0; or 340–166–259–0; and

(2) CFM International, S.A. CFM56–7B20/2; –7B22/2; –7B24/2; –7B26/2; and –7B27/2 turbofan engines assembled with a dual annular combustor and an LP turbine rear frame, P/N 340–177–551–0; 340–177–552–0; 340–177–553–0; 340–177–554–0; 340–177–555–0; or 340–177–556–0.

(3) These engines are installed on, but not limited to, Boeing 737–600, 737–700, 737–800, and 737–900 series airplanes.

Unsafe Condition

(d) This AD results from a refined life analysis by the engine manufacturer that shows the need to identify an initial and repetitive inspection threshold for inspecting certain LP turbine rear frames. We are issuing this AD to prevent failure of the LP turbine rear frame from low-cycle-fatigue cracks. Failure of the LP turbine rear frame could result in engine separation from the airplane, possibly leading to loss of control of the airplane.

Compliance

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

Inspections of LP Turbine Rear Frames

(f) For CFM International, S.A. CFM56–7B20; –7B22; –7B24; –7B26; –7B27; –7B22/B1; –7B24/B1; –7B27/B1; –7B20/3; –7B22/3; –7B24/3; –7B26/3; –7B27/3; –7B22/3B1; –7B24/3B1; –7B27/3B1; –7B26/3F; –7B27/3F; and –7B27/3B1F turbofan engines with an LP turbine rear frame, P/N 340–166–254–0; 340–166–255–0; 340–166–256–0; 340–166–257–0; 340–166–258–0; or 340–166–259–0, do the following:

(1) Perform an initial eddy current inspection (ECI) of the LP turbine rear frame within 25,000 cycles-since-new (CSN) on the LP turbine rear frame.

(2) For engines with unknown LP turbine rear frame CSN, perform an initial ECI within 300 cycles from the effective date of this AD.

(3) Perform repetitive ECIs of the LP turbine rear frame, using the inspection intervals in paragraph 3.A. (8) of the Accomplishment Instructions of CFM International, S.A. SB No. CFM56–7B S/B 72–0579, Revision 5, dated March 30, 2009.

(4) Use paragraphs 3.A. through 3.A. (7)(d) of the Accomplishment Instructions of CFM International, S.A. Service Bulletin (SB) No. CFM56–7B S/B 72–0579, Revision 5, dated March 30, 2009, to do the ECIs.

(5) Remove LP turbine rear frames from service that have a total cumulated crack length at any location, of 0.79 inch (20 mm) or longer.

(g) For CFM International, S.A. CFM56–7B26/B1; –7B27/B3; –7B26/3B1; and –7B27/3B3 turbofan engines with an LP turbine rear frame, P/N 340–166–254–0; 340–166–255–0; 340–166–256–0; 340–166–257–0; 340–166–258–0; or 340–166–259–0, do the following:

(1) Perform an initial ECI of the LP turbine rear frame within 19,000 CSN on the LP turbine rear frame.

(2) For engines with unknown LP turbine rear frame CSN, perform an initial ECI within 300 cycles from the effective date of this AD.

(3) Perform repetitive ECIs of the LP turbine rear frame, using the inspection intervals in paragraph 3.A. (9) of the Accomplishment Instructions of CFM International, S.A. SB No. CFM56–7B S/B 72–0579, Revision 5, dated March 30, 2009.

(4) Use paragraphs 3.A. through 3.A. (7)(d) of the Accomplishment Instructions of CFM International, S.A. Service Bulletin (SB) No. CFM56–7B S/B 72–0579, Revision 5, dated March 30, 2009, to do the ECIs.

(5) Remove LP turbine rear frames from service that have a total cumulated crack length at any location, of 0.79 inch (20 mm) or longer.

(h) For CFM International, S.A. CFM56–7B20/2; –7B22/2; –7B24/2; –7B26/2; and –7B27/2 turbofan engines assembled with a dual annular combustor and an LP turbine rear frame, P/N 340–177–551–0; 340–177–552–0; 340–177–553–0; 340–177–554–0; 340–177–555–0; or 340–177–556–0, do the following:

(1) Perform an initial ECI of the LP turbine rear frame within 16,350 CSN on the LP turbine rear frame.

(2) For engines with unknown LP turbine rear frame CSN, perform an initial ECI within 300 cycles from the effective date of this AD.

(3) Perform repetitive ECIs of the LP turbine rear frame, using the inspection intervals in paragraph 3.A. (8) of the Accomplishment Instructions of CFM International, S.A. SB No. CFM56–7B S/B 72–0558, Revision 3, dated March 30, 2009.

(4) Use paragraphs 3.A. through 3.A. (7)(d) of the Accomplishment Instructions of CFM International, S.A. SB No. CFM56–7B S/B 72–0558, Revision 3, dated March 30, 2009, to do the ECIs.

(5) Remove LP turbine rear frames from service that have a total cumulated crack length at any location, of 0.43 inch (11 mm) or longer.

Previous Credit

(i) Initial inspection of LP turbine rear frames before the effective date of this AD performed using the Accomplishment Instructions of CFM International, S.A. SB No. CFM56–7B S/B 72–0579, original issue, Revision 1, Revision 2, Revision 3, or Revision 4, satisfy the requirements of paragraphs (f)(1), (f)(2), (g)(1), and (g)(2) of this AD.

(j) Initial inspection of LP turbine rear frames before the effective date of this AD performed using the Accomplishment Instructions of CFM International, S.A. SB No. CFM56–7B S/B 72–0558, original issue, Revision 1, or Revision 2, satisfy the requirements of paragraphs (h)(1) and (h)(2) of this AD.

Alternative Methods of Compliance

(k) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(l) European Aviation Safety Agency AD 2009–0009 (corrected), dated January 27, 2009, also addresses the subject of this AD.

(m) Contact Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *antonio.cancelliere@faa.gov;* telephone (781) 238–7751; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(n) You must use the service information specified in the following Table 1 to perform the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in the following Table 1 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2800; fax (513) 552–2816, for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 1—INCORPORATION BY REFERENCE

Service Bulletin No.	Page	Revision	Date
CFM56–7B S/B 72–0558 Total Pages: 22	All	3	March 30, 2009.
CFM56–7B S/B 72–0579 Total Pages: 23	All	5	March 30, 2009

Issued in Burlington, Massachusetts, on December 23, 2009.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–31043 Filed 1–13–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0503; Directorate Identifier 2009–NE–12–AD; Amendment 39–16172; AD 2010–02–01]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Model Arriel 1B, 1D, and 1D1 Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

The rupture of the Reduction Gear Box Intermediate Pinion may result in an overspeed of the Power Turbine and, subsequently, an uncommanded engine in-flight shutdown. This could lead to an emergency autorotation landing on a single-engine helicopter.

We are issuing this AD to prevent the rupture of the reduction gear box intermediate pinion, which could result in an overspeed of the power turbine, an uncommanded in-flight shutdown of the engine, and an emergency autorotation landing.

DATES: This AD becomes effective February 18, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 18, 2010.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov;* telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 12, 2009 (74 FR 27946). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Several events of rupture of the Arriel 1 Reduction Gear Box Intermediate Pinion have been reported in service. The ruptures have been determined to be originated at the pinion teeth root due to increased vibratory stresses. This increase in vibratory stresses is mainly caused by increased teeth wear over engine life time.

The rupture of the Reduction Gear Box Intermediate Pinion may result in an overspeed of the Power Turbine and, subsequently, an uncommanded engine in-flight shutdown. This could lead to an emergency autorotation landing on a single-engine helicopter.

To reduce the level of vibratory stresses and improve tooth resistance, Turboméca modification incorporates the addition of a damping ring below the teeth and a shot peening of the teeth roots. These modifications reduce the risk of incipient fatigue cracks.

This AD requires the replacement of all Reduction Gear Box Intermediate Pinions with Pinions incorporating Turboméca modification TU 232.

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

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or

on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

Based on the service information, we estimate that this AD would affect about 13 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Required parts would cost about $1,272 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $22,776.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); 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.

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of 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 AD:

2010–02–01 Turbomeca S.A.: Amendment 39–16172: Docket No. FAA–2009–0503; Directorate Identifier 2009–NE–12–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 18, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca Arriel 1B, 1D, and 1D1 turboshaft engines. These engines are installed on, but not limited to, Eurocopter France AS350B, AS350BA, AS350B1, and AS350B2 helicopters.

Reason

(d) This AD results from several events of rupture of the Arriel 1 reduction gear box intermediate pinions. We are issuing this AD to prevent the rupture of the reduction gear box intermediate pinion, which could result in an overspeed of the power turbine, an uncommanded in-flight shutdown of the engine, and an emergency autorotation landing.

Actions and Compliance

(e) Unless already done, do the following actions.

(f) No later than 28 February 2011, replace the Reduction Gear Box Intermediate Pinions (P/N 0 292 70 779 0) with Pinions incorporating Turboméca modification TU 232 in accordance with Turboméca Mandatory Service Bulletin 292 72 0276 Version B dated 06 November 2008.

FAA AD Differences

(g) None.

(h) *Alternative Methods of Compliance (AMOCs):* The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) Refer to MCAI EASA Airworthiness Directive 2009–0002, dated January 7, 2009, for related information.

(j) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov;* telephone (781) 238–7176; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(k) You must use Turbomeca Mandatory Service Bulletin No. 292 72 0276, Version B, dated November 6, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Turbomeca, 40220 Tarnos, France; telephone: 33 05 59 74 40 00; fax: 33 05 59 74 45 15, or go to: *http://www.turbomeca-support.com.*

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on December 31, 2009.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–337 Filed 1–13–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2510

RIN 1210–AB02

Definition of "Plan Assets"—Participant Contributions

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final regulation that establishes a safe harbor period during which amounts that an employer has received from employees or withheld from wages for contribution to certain employee benefit plans will not constitute "plan assets" for purposes of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the related prohibited transaction provisions of the Internal Revenue Code. This regulation will enhance the clarity and certainty for many employers as to when participant contributions will be treated as contributed in a timely manner to employee benefit plans. This final regulation will affect the sponsors and fiduciaries of contributory group welfare and pension plans covered by ERISA, including 401(k) plans, as well as the participants and beneficiaries covered by such plans and recordkeepers, and other service providers to such plans.

DATES: This final rule is effective on January 14, 2010.

FOR FURTHER INFORMATION CONTACT: Janet A. Walters, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210, (202) 693–8510. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

A. Background

In 1988, the Department of Labor (the Department) published a final rule (29 CFR 2510.3–102) in the **Federal Register** (53 FR 17628, May 17, 1988), defining when certain monies that a participant pays to, or has withheld by, an employer for contribution to an employee benefit plan are "plan assets" for purposes of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and the related prohibited transaction provisions of the Internal Revenue Code (the Code).[1] The 1988 regulation provided that the assets of a plan included amounts (other than union dues) that a participant or beneficiary pays to an employer, or amounts that a participant has withheld from his or her wages by an employer, for contribution to a plan, as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets, but in no event to exceed 90 days from the date on which such amounts are received or withheld by the employer. In 1996, the Department published in the **Federal Register** (61 FR 41220, August 7, 1996), amendments to the 1988 regulation modifying the outside limit beyond which participant contributions to a pension plan become plan assets. Under the 1996 amendments, the outer limit for participant contributions to a pension plan was changed to the 15th business day of the month following the month in which participant contributions are received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the 15th business day of the month following the month in which such amounts would otherwise have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages). The general rule—providing that amounts paid to or withheld by an employer become plan assets on the earliest date on which they can reasonably be segregated from the employer's general assets—did not change. The maximum time period applicable to welfare plans also did not change as a result of the 1996 amendments.

In the course of investigations of 401(k) and other contributory pension plans and in discussions with representatives of employers, plan administrators, consultants and others, it is commonly represented to the Department that, while efforts have been made to clarify the application of the general rule (*i.e.,* participant contributions become plan assets on the earliest date on which they can reasonably be segregated from the employer's general assets),[2] many employers, as well as their advisers, continue to be uncertain as to how soon they must forward these contributions to the plan in order to avoid the requirements associated with holding plan assets. At the same time, the Department devotes significant enforcement resources to cases involving delinquent employee contributions and the vast majority of applications under the Department's Voluntary Fiduciary Correction Program involve delinquent employee contribution violations.[3]

For these reasons, the Department decided that it was in the interest of plan sponsors and plan participants and beneficiaries to amend the participant contribution regulation to establish a safe harbor that would provide a higher degree of compliance certainty with respect to when an employer has made timely deposits of participant contributions to employee benefit plans with fewer than 100 participants. The Department published a proposed safe harbor in the **Federal Register** (73 FR 11072) on February 29, 2008. Under the proposal, employers with plans with fewer than 100 participants would be considered to have made a timely deposit to their plan under the regulation if participant contributions are deposited within 7 business days. In response to the Department's invitation for comments, the Department received 28 comments from a variety of parties, including plan sponsors and fiduciaries, plan service providers, financial institutions, and employee benefit plan industry representatives. These comment letters are available for review under Public Comments on the Laws & Regulations page of the Department's Employee Benefits Security Administration Web site at *http://www.dol.gov/ebsa.* Set forth below is an overview of the final regulation, along with a discussion of the public comments received on the proposal.

B. Overview of Final Rule and Comments

For the reasons explained below, the Department has decided to adopt a final regulation that, with the exception of a few minor clarifying changes, is the same as the proposal. The following is a paragraph by paragraph review of the regulation and a summary of the comments received with respect to each.

Paragraph (a)(2) of § 2510.3–102, like the proposal, sets forth a safe harbor under which participant contributions to a pension or welfare benefit plan with fewer than 100 participants at the beginning of the plan year will be treated as having been made to the plan in accordance with the general rule (*i.e.,* on the earliest date on which such contributions can reasonably be segregated from the employer's general assets) when contributions are deposited with the plan no later than the 7th business day following the day on which such amount is received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the 7th business day following the day on which such amount would otherwise have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages). As under the 1996 amendments, participant contributions will be

[1] While the rule effects the application of ERISA and Code provisions, it has no implications for and may not be relied upon to bar criminal prosecutions under 18 U.S.C. 664. *See* paragraph (a) of 29 CFR 2510.3–102.

[2] *See* preamble to Final Rule, 61 FR 41220, 41223 (August 7, 1996). See also Field Assistance Bulletin 2003–2 (May 7, 2003).

[3] Since the inception of the Voluntary Fiduciary Correction Program in 2000, close to 90% of the applications have involved delinquent participant contribution violations.

considered deposited when placed in an account of the plan, without regard to whether the contributed amounts have been allocated to specific participants or investments of such participants.

Paragraphs (b)(1), (b)(2) and (c) of § 2510.3–102 are being revised to incorporate the appropriate cross references to "paragraph (a)(1)" instead of "paragraph (a)".

Scope of Safe Harbor

The final safe harbor, like the proposal, is available for both participant contributions to pension benefit plans and participant contributions to welfare benefit plans. Several commenters requested that the Department clarify whether the regulation applies to SIMPLE IRAs and salary reduction SEPs. The Department's view is that elective contributions to an employee benefit plan, whether made pursuant to a salary reduction agreement or otherwise, constitute amounts paid to or withheld by an employer (*i.e.,* participant contributions) within the scope of § 2510.3–102, without regard to the treatment of such contributions under the Internal Revenue Code. *See* 61 FR 41220 (Aug. 7, 1996). Both the general rule and the optional safe harbor provisions in paragraphs (a)(1) and (a)(2) of § 2510.3–102, respectively, are applicable to participant contributions to any plan, including SIMPLE IRAs and salary reduction SEPs. However, the Department notes that, pursuant to § 2510.3–102(b)(2), the maximum period during which salary reduction elective contributions under a SIMPLE plan that involves SIMPLE IRAs may be treated as other than plan assets is 30 calendar days, the same number of days as the period within which the employer is required to deposit withheld contributions under a SIMPLE plan that involves SIMPLE IRAs under section 408(p) of the Internal Revenue Code. *See* 62 FR 62934 (Nov. 25, 1997).

One commenter suggested that, under the safe harbor and the general rule, employers be permitted to pre-fund contributions. The commenter indicated that an employer may wish to deposit the participant contributions to the plan in advance of withholding those contributions, and expressed concern that the general rule and the safe harbor require that contributions be made within a certain number of days *after* the amount is withheld from pay. In general, § 2510.3–102 is intended to ensure that an employer deposits participant contributions, withheld by or paid to the employer, to the plan as soon as practicable. As to whether in any given instance "pre-funding" of participant contributions, such as that described by the commenter, will necessarily result in compliance with the regulation or safe harbor will, in the view of the Department, depend on the particular facts and circumstances.[4]

One commenter requested that the Department clarify the application of the safe harbor rule to contributory welfare plans in light of the Department's guidance provided in Technical Release 92–01. 57 FR 23272 (June 2, 1992), 58 FR 45359 (Aug. 27, 1993). ERISA section 403(b) contains a number of exceptions to the trust requirement for certain types of assets, including assets which consist of insurance contracts, and for certain types of plans. In addition, the Department has issued Technical Release 92–01, which provides that, with respect to certain welfare plans (*e.g.,* associated with cafeteria plans), the Department will not assert a violation of the trust or certain other reporting requirements in any enforcement proceeding, or assess a civil penalty for certain reporting violations involving such plans solely because of a failure to hold participant contributions in trust. The Department confirms that Technical Release 92–01 is not affected by the final regulation contained in this document, and remains in effect until further notice.

Length of Safe Harbor Period

A number of commenters requested that the Department increase the length of the safe harbor period. Several commenters requested that the safe harbor period be 10 business days. Several others requested that it be 14 days. One commenter requested that the safe harbor period be 12 business days. One commenter requested that small employers have until the 5th day of the month following the month in which amounts are withheld from pay as a safe harbor period. One commenter requested that small employers have until the 15th business day of the month following the month in which amounts are received or withheld by the employer as a safe harbor period. These commenters represented a variety of reasons that would cause small employers difficulty in meeting a 7-business day safe harbor period. Some commenters represented that small employers will be unable to meet the 7-business day safe harbor period in circumstances of the business owner's or staff person's illness or vacation. Other commenters describe problems that arise for small employers, particularly those using outside payroll firms to process payroll and make contributions, such as Internet problems, loss of power and incorrect reporting by a payroll company to the plan's financial institution. These commenters requested that these types of special circumstances be addressed by providing a longer safe harbor period. Several commenters recommended that the 7-business day safe harbor period be retained, noting that such period is an appropriate safe harbor period for small plans. In attempting to define the appropriate period for a safe harbor, the Department reviewed data collected in the course of its investigations of possible failures to deposit participant contributions in a timely fashion. On the basis of these data, the Department concluded that adoption of a 7-business day safe harbor rule would allow most employers with small plans to take advantage of the safe harbor and, thereby, benefit from the certainty of compliance afforded by the proposed regulation. After careful consideration of all the comments concerning the length of the safe harbor period, the Department has decided to retain the 7-business day safe harbor period for small plans. The Department believes that the special circumstances and problems particular to small employers noted by commenters as described above, will generally be accommodated under the current facts and circumstances general rule. Several commenters requested a longer safe harbor period for small plans due to the current systems of small plans involving manual payroll systems, limited clerical staff, the amount of time needed to reconcile the plan contributions, and the increased cost and workload for more frequent remittances. The general rule—providing that amounts paid to or withheld by an employer become plan assets on the earliest date on which they can reasonably be segregated from the employer's general assets—will also accommodate these other timing issues raised by commenters.

Deposit-by-Deposit Basis

One commenter asked whether a failure to meet the safe harbor during one payroll period will result in application of the general rule for determining when participant contributions are plan assets for an entire plan year. The safe harbor is available on a deposit-by-deposit basis, such that a failure to satisfy the safe harbor for any deposit of participant contribution amounts to a plan will not

[4] To the extent any instance of pre-funding might be an extension of credit to the plan, PTE 80–26 would apply if its terms and conditions are satisfied.

result in the unavailability of the safe harbor for any other deposit to the plan.

Optional Safe Harbor

One commenter requested that the safe harbor nature of the proposal be confirmed. Several commenters misunderstood the optional safe harbor nature of the proposal and objected to a mandatory requirement of 7 business days for the deposit of participant contributions into small plans. In response to these concerns, the Department has added new paragraph 2510.3–102(a)(2)(ii), clarifying that the final safe harbor regulation is not the exclusive means by which employers can discharge their obligation to deposit participant contributions or loan repayments on the earliest date on which such contributions and payments can reasonably be segregated from the employer's general assets. The Department notes that, when an employer fails to deposit participant contributions or loan repayments in accordance with the general rule (*i.e.,* as soon as such contributions or payments can reasonably be segregated from the employer's general assets), losses and interest on such late contributions must be calculated from the actual date on which such contributions and/or payments could reasonably have been segregated from the employer's general assets, not the end of the safe harbor period.

Large Plans

The Department specifically invited comment on whether the proposed safe harbor should extend to contributions to plans with 100 or more participants. In this regard, the Department requested that commenters provide information and data sufficient to evaluate the current contribution practices of such employers and to conclude that it is a net benefit to such employers and participants to have a safe harbor. The Department also requested comments on the need for a safe harbor, and the corresponding size of the plans for which there appears to be a need for such a safe harbor. Several commenters requested that the safe harbor rule be made available to larger plans, explaining that larger plans have issues of reconciliation and multiple geographic sites with different payroll periods. Some of these commenters argued that large employers would not slow down remittances as a result of a safe harbor provision. After careful consideration of the comments, the Department does not believe that it has a sufficient record on which to evaluate current practices and assess the costs, benefits, risks to participants associated with extending the safe harbor or any variation thereof to large plans at this time. As a result, the Department has determined not to change the safe harbor provision to cover participant contributions to a pension or welfare benefit plan with 100 or more participants.

Multiemployer and Multiple Employer Plans

Several commenters argued that, in the case of multiemployer and multiple employer plans, the regulation should base the safe harbor's availability on the size of the employer, instead of the size of the plan. These commenters argued that small employers maintaining multiemployer and multiple employer plans should have the same certainty as an employer sponsoring its own plan. These commenters explained that small employers that participate in large multiemployer and multiple employer plans face the same challenges as small employers sponsoring single employer plans, representing that these small employers also have payrolls that are independent, less sophisticated and many are manual. Several commenters also argued that the safe harbor should be expanded to cover all participating employers in multiemployer and multiple employer plans. These commenters argued that having a safe harbor only for small employers participating in large multiemployer and multiple employer plans would create undue administrative burden and cost. As described by these commenters, employers remit participant contributions to multiemployer plans in accordance with the collective bargaining agreements and other plan documents. With regard to the foregoing, the Department notes that it addressed the application of participant contribution requirements to multiemployer defined contribution plans in Field Assistance Bulletin (FAB) 2003–2 (May 7, 2003). As described in the FAB, the provisions of the participant contribution regulation apply in the same way to multiemployer plans that the provisions apply to single employer plans and that, as is the case with single employer plans, if a multiemployer plan maintains a reasonable process for the expeditious and cost-effective receipt of contributions, this process may be taken into account in determining when participant contributions can reasonably be segregated from the employer's general assets. To the extent that a collective bargaining describes such a process, the collective bargaining agreement should be considered in determining when participant contributions become plan assets. To be reasonable, a plan's process for receiving participant contributions should take into account how quickly the participating employers can reasonably segregate and forward contributions. The plan fiduciaries should also consider how costly to the plan a more expeditious process would be. These costs should be balanced against any additional income and security the plan and plan participants would realize from a faster system. Thus, the FAB describes the Department's view that, in determining when participant contributions can reasonably be segregated from the general assets of any given contributing employer to a multiemployer defined contribution plan, the time frames established in collective bargaining, employer participation and similar agreements must be taken into account to the extent such agreements represent the considered judgment of the plan's trustees that such time frames reflect the appropriate balancing of the costs of transmitting, receiving and processing such contributions relative to the protections provided to participants, provided that any such time frames do not extend beyond the maximum period prescribed in § 2510.3–102(b). The Department believes that the guidance in this FAB provides clarity and flexibility for contributing employers to multiemployer plans regarding the application of the participant contribution requirements. For this reason, the Department has decided to retain the safe harbor rule for small plans without modification from the proposal for contributing employers to multiemployer or multiple employer plans.

Examples

One commenter requested that the Department include an example in the regulation regarding a situation involving participant contributions made to a plan outside the safe harbor period. Under the final safe harbor rule, like the proposal, the general rule—providing that amounts paid to or withheld by an employer become plan assets on the earliest date on which they can reasonably be segregated from the employer's general assets—did not change. Given the facts and circumstances general rule, the Department has determined not to add an example concerning circumstances that require an employer to deposit participant contributions beyond the safe harbor period. Another commenter requested that the Department retain an example from the 1996 amendments in which an employer deposits

contributions into a pension plan after the 15th business day maximum period limit. The Department believes that the examples in the proposal effectively illustrate the general rule and the application of the safe harbor. As a result, the Department has decided to retain the examples in the proposal without modification.

Participant Loan Repayments

The Department proposed to amend paragraph (a)(1) of § 2510.3–102 to extend the application of the regulation to amounts paid by a participant or beneficiary or withheld by an employer from a participant's wages for purposes of repaying a participant's loan (regardless of plan size). *See* Advisory Opinion 2002–02A (May 17, 2002) [5]. The proposal also served to extend the availability of the 7-business day safe harbor to loan repayments to plans with fewer than 100 participants. The Department received no comments on these provisions and is adopting the provisions without change.

Effective Date

Under the proposal, the Department contemplated making the safe harbor and the proposed amendments to paragraph (a)(1) and (f)(1) of § 2510.3–102 effective on the date of publication of the final regulation in the **Federal Register.** Two commenters suggested that the effective date of the regulation should be delayed for at least 6 months following its publication to provide sufficient time for plan sponsors to evaluate additional responsibilities and options. Since the regulation provides an optional safe harbor rule as discussed above, the Department has determined not to change the effective date of the safe harbor provision. The safe harbor will provide a means for certain employers to assure themselves that they are not holding plan assets, without having to determine that participant contributions were forwarded to the plan at the earliest reasonable date. By providing such assurance, the safe harbor will grant or recognize an exemption or relieve a restriction within the meaning of 5 U.S.C. 553(d)(1). Moreover, the safe harbor will encourage certain employers to take immediate steps to review their systems and, if necessary, shorten the period within which participant contributions are forwarded to the plan in order to take advantage of the safe harbor and, thereby, extend the benefit of earlier contributions to participants and beneficiaries earlier than might otherwise occur with a deferred effective date. Thus, the Department retained the effective date of the final regulation.

C. Regulatory Impact Analysis

Summary

The safe harbor will provide employers with increased certainty that their remittance practices, to the extent that they meet the safe harbor time limits, will be deemed to comply with the regulatory requirement that participant contributions be forwarded to the plan on the earliest date on which they can reasonably be segregated from the employer's general assets. This increased certainty will produce benefits to employers, participants, and beneficiaries by reducing disputes over compliance and allowing easier oversight of remittance practices. In addition, the tendency to conform to the safe harbor time limit may serve to reduce the existing variations in remittance times, providing increased certainty for employers and other plan sponsors and participants. In the case of employers that expedite their remittance practices to take advantage of the safe harbor, plan participants may derive an additional benefit in the form of increased investment earnings. The Department estimates that accelerated remittances could result in $43.7 million in additional income to be credited annually to participant accounts under the plans if no employers choose to delay remittances in response to the safe harbor and $19 million annually even if all eligible employers were to delay remittances to the full duration of the safe harbor.

Costs attendant to the safe harbor arise principally from one-time start-up costs to alter remittance practices to conform to the safe harbor and from any additional on-going administrative costs attendant to quicker, and possibly more frequent, transmissions of participant contributions from employers to plans. The Department believes that the costs likely to arise from either source will be small and that the benefits of this regulation will justify its costs.[6]

The data, methodology, and assumptions used in developing these estimates are more fully described below in connection with the Department's analyses under Executive Order 12866 and the Regulatory Flexibility Act (RFA).

Executive Order 12866 Statement

Under Executive Order, the Department must determine whether a regulatory action is "significant" ' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Exec. Order No. 12866, 58 FR 51735 (Oct. 4, 1993). Under section 3(f) of the Executive Order, a "significant regulatory action" ' is an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this action is significant under section 3(f)(4) because it raises novel legal or policy issues arising from the President's priorities. Accordingly, the Department has undertaken an analysis of the costs and benefits of the final regulation. OMB has reviewed this regulatory action.

This final rule will establish a safe harbor rule for employers' timely remittance of participant contributions to employee benefit plans. The safe harbor is available only to employer remittances of participant contributions to plans with fewer than 100 participants. Under the final rule, employers that remit participant contributions within 7 business days after the date on which received or withheld would be deemed to have complied with the requirement of 29 CFR 2510.3–102 to treat participant contributions as plan assets "as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets."

This rule is likely to encourage some eligible employers whose current remittance practices involve holding participant contributions for longer than 7 business days to change their remittance practices to conform to the 7-business day time limit. Because the rule is not mandatory and changes in remittance practices are likely to entail

[5] This advisory opinion may be accessed at *http://www.dol.gov/ebsa/regs/aos/ao2002-02a.html* (May 17, 2002).

[6] A key factor limiting the cost of this regulation is that it requires no action of the part of any employer, plan, or participant; it creates an incentive for employers to remit participant contributions on more regular schedules.

some cost to employers, only those employers that believe they will benefit from the protection of the safe harbor will elect to take advantage of the safe harbor.

In order to analyze the potential economic impact of this rule, the Department examined data on the remittance of participant contributions to a representative sample of contributory single employer defined contribution pension plans collected from EBSA's Employee Contributions Project 2004 Baseline Project ("ECP").[7] Based on data from this project and from Form 5500 filings for the 2004 plan year, which is the year of this one-time project, the Department estimates that the safe harbor will be available to an estimated 311,000 single employer defined contribution plans with fewer than 100 participants.[8] These plans receive approximately 18% of participant contributions made to all contributory single employer defined contribution plans.[9]

Using these data, the Department analyzed the current remittance practices of the employers sponsoring these plans, extrapolated the results to characterize the remittance practices of plans in general, and projected the potential impact of this safe harbor rule. The Department considered both the extent to which data on remittance records of these plans reveal a preference or standard practice regarding timing, and the extent to which changes in the length of time between withholding and receipt by the plan might result in an increase (or decrease) in investment income to participants' accounts.

The sample data indicate that employers' remittance patterns for participant contributions to plans vary substantially, both across payroll periods of an individual employer and across employers. Based on analysis of these data, the Department has concluded that most employers sponsoring plans with fewer than 100 participants will not find it difficult to take advantage of the safe harbor.[10] Twenty-one percent of all plans with fewer than 100 participants for which data was obtained had remittance times within 7 business days for all pay periods; an additional 69% remitted participant contributions for at least some of the employer's payroll periods within 7 business days. Based on these data, the Department has concluded that a large majority of contributory plans could comply with a 7-business day safe harbor. Moreover, a substantial portion of contributory plans would reduce the time taken to make at least some deposits. The Department recognizes that to take advantage of the safe harbor for all remittances, many of the firms that currently remit employee contributions within 7 business days for some, but not all, pay periods would have to change their remittance schedule from monthly remittances to remittances following each weekly or biweekly pay period.

The Department anticipates that a substantial number of employers that currently take longer than 7 business days to remit participant contributions will speed up their remittances in order to take advantage of the safe harbor. At the same time, it is possible that some employers that currently remit participant contributions more quickly than the safe harbor rule will slow their remittances due to the safe harbor. Such behavior might benefit the remitting employers by reducing their administrative costs and by increasing the time they are holding the remittances. However, the Department believes that only a small fraction of that group, if any, would elect to incur the expense and risk of negative participant reaction that might arise from slowing down their remittances to take full advantage of the safe harbor time period, especially because the amount of the potential income transfer on a per-plan basis is very small.[11] The potential consequences of reliance on the safe harbor for earnings on participant contributions are further described in the Benefits section below.

Costs

On the basis of information from EBSA's ECP,[12] the Department believes that an estimated 21% of eligible single employer defined contribution plans (approximately 64,000 plans) currently receive all participant contributions within 7 or fewer business days. The employers that sponsor such plans would not have to modify their current systems and, as a result, would incur no additional costs to obtain the compliance certainty available under the safe harbor provisions. On the other hand, 10% of the eligible plans (approximately 32,000 plans) consistently receive participant contributions later than 7 business days from the date of the employer's receipt or withholding. The remaining 69% of the eligible plans in the ECP Universe defined in footnote 6 above (approximately 215,000 plans) are estimated to receive participant contributions within 7 business days for some, but not all, of their payroll dates, and the Department assumes that these employers would have to make only minor modifications in order to take advantage of the safe harbor for all participant contributions.

In deciding whether to rely on the safe harbor, employers will weigh the benefits of compliance certainty against the cost of changes needed to make quicker and possibly more frequent deposits. Because the cost of modifying remittance practices or systems will depend, to some extent, on the length of time currently taken to make remittances, the Department believes it is reasonable to assume that those employers currently transmitting some of the participant contributions within

[7] This project was undertaken by the Department in order to develop a better understanding of current employer practices regarding contributory individual account pension plans. The project was based on a representative sample of 487 contributory, single employer defined contribution plans. Plans having these characteristics will be referred to as the "ECP Universe." In 2004, the Department collected detailed data on the remittance practices of the employers sponsoring the sample plans. The collected data covered the 12-month period preceding the date in 2004 on which EBSA interviewed the employer-sponsor and included, for example, the exact dates on which wages were withheld from employees and the exact dates on which participant contributions were deposited in the plan's accounts. For purposes of this analysis, the sample data has been weighted to the 2004 Form 5500 universe of contributory, single employer defined contribution plans.

[8] While the safe harbor is available to contributory defined benefit plans, contributory multiemployer defined contribution plans, and contributory welfare benefit plans, the Department expects that a small number of such plans will take advantage of the safe harbor. SIMPLE IRAs and SARSEPs ("SIMPLE/SARSEPs") are the major type of plans eligible for the safe harbor that are not included in the ECP Universe, because they are exempt from the Form 5500 filing requirement. Although complete and reliable data on the number of SIMPLE/SARSEPs and the amount of participant contributions to them is not available, based on data from sources including the IRS (*http://www.irs.gov/pub/irs-soi/04inretirebul.pdf*) and the Investment Company Institute (Table A14 from *http://www.ici.org/stats/res/retmrkt_update.pdf*), the Department estimates that plans included in the ECP Universe may comprise about half of all plans eligible for the safe harbor and hold about 79% of all participant contributions to eligible plans. The Department, therefore, believes that the ECP provides highly meaningful data for estimating potential impacts.

[9] This percentage is based on an EBSA tabulation of its 2004 Form 5500 research file.

[10] These data indicate that 90% of plans with fewer than 100 participants currently receive at least some participant contributions within 7 business days after withholding.

[11] The employers having the most to gain from delaying remittances to the full extent allowed under the safe harbor would be those who currently remit employee contributions most promptly. For example, an employer that currently remits contributions on the day they are received or withheld and responds to the safe harbor by delaying remittances to the 7-business day safe harbor limit would gain use of the funds for 7 business days. At an annual rate of 8%, the value of the float gain would be less than one-quarter of one percent of employee contributions.

[12] *See* fn.6, supra.

an 8- to 14-day period may find it less expensive to modify their practices to take advantage of the safe harbor than employers currently operating under remittance practices or systems with longer delays. The cost to the former group of employers to shorten the remittance period to conform to the safe harbor may be modest or negligible. However, the Department has no current, reliable data concerning the cost of required changes relating to shortening the remittance period for participant contributions and therefore did not attempt to estimate that cost.[13] Because conformance to the safe harbor is voluntary, the Department believes that the transition cost for employers electing to conform will be offset by the elimination of the current cost attributable to existing uncertainty about how to meet the "earliest date" standard of 29 CFR 2510.3–102. Those employers that already conform will not incur any costs, but will benefit from the safe harbor.

Benefits

The rule will produce benefits for both participants and employers in the form of increased certainty regarding timely remittance of participant contributions to plans. This increased certainty will decrease costs for both employers and participants by reducing the need to determine, on an individualized basis in light of particular circumstances, whether timely remittances have been made. Employers that conform to the safe harbor will also benefit by obviating the need to determine and monitor how quickly participant contributions can be segregated from their general assets. They also will face a reduced risk of challenges to their particular remittance practices from participants and the Department.

In the case of plan sponsors that elect to expedite the deposit of participant contributions to take advantage of the safe harbor, contributions will be credited to the investment accounts earlier than previously and will be able to accrue investment earnings sooner. The Department has calculated these potential investment gains, but lack of knowledge about how employers will react to a regulatory safe harbor renders these estimates uncertain. If, for illustration, the safe harbor results in a 7-business day remittance of all remittances that are currently taking more than 7 business days, then the regulatory safe harbor would result in an estimated additional $34.5 million in investment earnings [14] for participants in the ECP Universe each year and $43.7 million for participants in all eligible plans.[15] These potential gains would be reduced by any losses that would occur due to any slow-down in response to the safe harbor by employers with currently quicker remittance times.[16] The Department, however, believes it unlikely that a significant fraction of employers would slow down remittances for the sole purpose of taking advantage of the minor income transfer resulting from retaining contributions for the full safe harbor period.[17]

Alternatives Considered

The Department's consideration of alternatives primarily focused on striking the right balance between a time frame that is not so short as to foreclose any meaningful number of plans from taking advantage of the safe harbor and a time frame that is not so long as to create financial incentives for employers to hold participant contributions longer than necessary, taking into account current practices. Among others, the Department considered the following two alternative time periods: (1) A 5-business day safe harbor, and (2) a 10-business day safe harbor. After reviewing the available data, however, the Department rejected these alternatives in favor of the 7-business day safe harbor for the reasons discussed below.

The 7-business day safe harbor is likely to encourage eligible employers whose remittance practices involve holding participant contributions for longer than 7 business days to change their remittance practices to conform to the 7-business day safe harbor time limit. Currently, only 12 percent of the eligible single employer defined contribution plans consistently receive remittances within 5 business days, compared to the 21 percent that consistently receive remittances within 7 business days. Although a 5-business day safe harbor could provide higher potential gains (an estimated $40.5 million for plans in the ECP Universe) and lower potential losses (an estimated $12.2 million for plans in the ECP Universe) to participants if employers choose to conform to the safe harbor, the shorter remittance period would likely make it unattractive to many employers, because the shorter safe harbor would increase the disparity from current practices. Any employer anticipating large costs of compliance with the safe harbor might not be convinced that its

[13] While several commenters questioned the Department's assumption that employers currently meeting the safe harbor in some, but not all, pay periods would have to make only minor modifications in order to come fully within the safe harbor time limit, no commenter provided any information or data with which to estimate such costs in response to the Department's request for information and comments on this issue in the proposed rule. For this reason, and because no employer is under any obligation to change its remittance practices as a result of the final rule, the Department did not modify its assumption.

[14] The Department has assumed an average annual return of 8.3% for pension plan assets. This rate is an estimate of the long-term rate of return on defined contribution plan assets implicit in the flow of funds account of the Federal Reserve. One commenter expressed concern that the Department's use of a long-term rate of return on defined contribution plan assets was inappropriate, because it overestimates the short-term rates at which firms would actually invest participant contributions before their remittance to the plan. The Department chose a long-term rate to the value the gains or losses that participants would experience, because an acceleration or delay of plan remittances affects participants' and beneficiaries' long-term investments, and, therefore, has not modified its assumption.

[15] The estimate of $43.7 million is derived by dividing $34.5 million by 79%, the percentage of total contributions to eligible plans estimated to be made to plans in the ECP Universe. In this absence of data on remittance practices for plans not in the ECP Universe, the calculation assumes that their practices are similar to those for eligible plans in the ECP Universe.

[16] As described above in footnote 7, SIMPLE/SARSEPs were not included in the ECP Universe because such plans are exempt from the Form 5500 filing requirement. In the absence of data on the remittance practices of sponsors of such plans, the Department examined what is known about these plans to make assumptions regarding their remittance practices. SIMPLE/SARSEPs average 4–5 participants compared to 30 participants for plans in the ECP Universe. The data collected through the ECP showed a strong tendency for smaller plans to receive employee contributions more slowly than larger plans. Although factors other than plan size clearly influence remittance behavior, based solely on this factor, the Department expects that SIMPLE/SARSEPs would receive employee contributions, on average, more slowly than plans included in the ECP Universe. Therefore, a higher percentage of these plans would have an incentive to accelerate remittances to qualify for the safe harbor and lower percentages of these plans would have an incentive to delay remittances to capture float gains than plans in the ECP Universe. As a result, the Department believes that the risk that participants in SIMPLE/SARSEPs would suffer net investment losses as a direct result of changes in remittance practices made in response to this regulation is even less than for plans in the ECP Universe. Moreover, if the expected difference in remittance behavior does exist, then sponsors of SIMPLE/SARSEPs would have to implement greater changes to qualify for the safe harbor, on average, than plans in the ECP Universe. The Department, therefore, expects that smaller percentages of these employers would opt to change their remittance practices in order to qualify for the safe harbor due to prohibitive costs.

[17] If all employers that currently remit contributions in fewer than 7 days were to slow down their remittance times to 7 days, participants in plans in the ECP Universe might experience transfer losses of as much as $19.5 million annually, but would nonetheless likely experience an aggregate net gain of $14 million. Assuming that remittance patterns for eligible plans not in the ECP Universe resemble patterns for those in the ECP Universe, the Department estimates potential transfer losses for participants in all eligible plans of $24.7 million and aggregate net gains of $19 million.

benefits would be sufficient to justify changing its remittance practices. If, as a result, too few employers adopt the safe harbor, the regulation might fail to produce the intended benefit that would flow from the certainty of uniform remittance practices on which employers and participants can rely.

The 10-business day safe harbor, in contrast, was considered to represent little compliance burden, since currently 29 percent of eligible single employer defined contribution plans receive remittances consistently within 10 business days and 94 percent receive remittances that quickly for at least some pay periods. However, because a large proportion of eligible plans currently receive some or all participant contributions more quickly, a safe harbor of 10 business days would entail some risk of producing a net aggregate loss of investment income to participant accounts as compared with current practice.[18]

As part of the ECP, EBSA investigators also made judgments as to reasonable periods for each remittance. These data show that while remittance within 5 business days was consistently reasonable for 48% of eligible plans, that percentage increased to 61% by extending the reasonable period to 7 business days. Thus, the two-day longer reasonable period also has the advantage of being consistently reasonable for a clear majority of eligible plans. A further extension of the safe harbor to 10 business days would further increase (to 81%) the percentage of plans for which the safe harbor is consistently reasonable, but was not chosen because it would risk producing net investment losses for participants if employers were to delay remittances to the full extent permitted under the safe harbor.[19]

Taking into account the potential costs and benefits presented by the various alternative safe harbors, the Department believes that the 7-business day safe harbor would best balance the current practices of employers and the potential costs to them of change, as well as the value to participants of encouraging quicker transmission of contributions. As explained earlier, the available data indicate that employers sponsoring plans with fewer than 100 participants are generally able to transmit participant contributions within 7 business days of withholding or receipt. Furthermore, the impact of a 7-business day safe harbor is anticipated to be generally favorable to participants and to result in aggregate net gains to their accounts, even in the unlikely event that all employers that currently remit contributions more quickly than 7 business days were to slow down their remittances to the maximum duration of the safe harbor.

Paperwork Reduction Act

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that the public can clearly understand the Department's collection instructions and provide the requested information in the desired format and that the Department minimizes the public's reporting burden (in both time and financial resources) and can properly assess the impact of its collection requirements.

On August 7, 1996 (61 FR 41220), the Department published in the **Federal Register** an amendment to the Regulation Relating to a Definition of "Plan Assets"—Participant Contributions (29 CFR 2510.3–102). This amendment created a procedure through which an employer could extend the maximum period for depositing participant contributions by an additional 10 business days with respect to participant contributions for a single month. OMB approved the paperwork requirements arising from the amendment under OMB control number 1210–0100. The current amendment of 29 CFR 2510.3–102 contained in this final rule does not change the extension procedure or add any additional information collection requirements, and, accordingly, the Department does not intend to submit this final rule to OMB for review under the PRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a final rule is not likely to have a significant economic impact on a substantial number of small entities, 5 U.S.C. 604 requires that the agency present a regulatory flexibility analysis at the time of the publication of the notice of final rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of analysis under the RFA, the Employee Benefits Security Administration (EBSA) continues to consider a small entity to be an employee benefit plan with fewer than 100 participants.[20] The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46 and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants and satisfying certain other requirements.

Further, while some large employers may have small plans, in general small employers maintain most small plans. Thus, EBSA believes that assessing the impact of this rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition

[18] If all currently faster remittances were delayed until the tenth business day, annual investment earnings credited to participant accounts could be reduced by as much as $32.3 million. Accelerating all currently slower remittances to the tenth business day would increase such earnings by $27.4 million resulting in an aggregate annual loss of $4.9 million.

[19] EBSA estimates that if the safe harbor were set at 10 business days, then potential losses to participants of $32 million would exceed potential gains of $27 million. Some commenters expressed the opinion that employers will not delay remittances in response to the safe harbor, and that the Department could therefore safely establish a safe harbor period with a duration of longer than seven days without risking net investment losses for participants. The Department has acknowledged uncertainty regarding the extent to which employers will accelerate or delay remittances in response to the safe harbor, and assumes neither that remittances will be maximally delayed as assumed in the loss calculation, nor maximally accelerated as assumed in the gain calculation, but recognizes that selection of a safe harbor period for which potential gains exceed potential losses at least provides assurance that participants will not experience net losses as long as the extent to which employers delay remittances in response to the safe harbor does not exceed the extent to which they accelerate remittances.

[20] The Department consulted with the Small Business Administration in making this determination as required by 5 U.S.C. 601(3) and 13 CFR 121.903(c).

of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). EBSA requested comments on the appropriateness of the size standard used in evaluating the impact of the proposed rule on small entities in the proposal, but no comments were received.

EBSA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. As explained above, the provision being added to the regulation is a safe harbor, compliance with which is wholly voluntary on the part of the employer. Because the rule creates a safe harbor, rather than a mandatory rule, it is unlikely that any employer will elect to take advantage of the safe harbor if the employer concludes that the benefits of complying with the safe harbor time limit do not exceed the costs of such compliance. Therefore, the Department believes that most of these small plans will elect to take advantage of the safe harbor, provided that doing so does not significantly increase their costs or that any cost increase is offset by reductions in other administrative costs attendant to compliance uncertainty.

Unfunded Mandates Reform Act

Pursuant to provisions of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), this rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or the private sector, which may impose an annual burden of $100 million or more.

Congressional Review Act

This notice of final rulemaking is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and therefore has been transmitted to the Congress and the Comptroller General for review.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule would not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in this final rule do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2510

Employee benefit plans, Employee Retirement Income Security Act, Pensions, Plan assets.

■ For the reasons set forth in the preamble, the Department amends Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

PART 2510—DEFINITION OF TERMS USED IN SUBCHAPTERS C, D, E, F, AND G OF THIS CHAPTER

■ 1. The authority citation for part 2510 continues to read as follows:

Authority: 29 U.S.C. 1002(2), 1002(21), 1002(37), 1002(38), 1002(40), 1031, and 1135; Secretary of Labor's Order 1–2003, 68 FR 5374; Sec. 2510.3–101 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp., p. 332 and E.O. 12108, 44 FR 1065, 3 CFR, 1978 Comp., p. 275, and 29 U.S.C. 1135 note. Sec. 2510.3–102 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp., p. 332 and E.O. 12108, 44 FR 1065, 3 CFR, 1978 Comp., p. 275. Sec. 2510.3–38 is also issued under sec. 1, Pub. L. 105–72, 111 Stat. 1457.

■ 2. In § 2510.3–102, revise paragraphs (a), (b), (c) and (f) to read as follows:

§ 2510.3–102 Definition of "plan assets"—participant contributions.

(a)(1) *General rule.* For purposes of subtitle A and parts 1 and 4 of subtitle B of title I of ERISA and section 4975 of the Internal Revenue Code only (but without any implication for and may not be relied upon to bar criminal prosecutions under 18 U.S.C. 664), the assets of the plan include amounts (other than union dues) that a participant or beneficiary pays to an employer, or amounts that a participant has withheld from his wages by an employer, for contribution or repayment of a participant loan to the plan, as of the earliest date on which such contributions or repayments can reasonably be segregated from the employer's general assets.

(2) *Safe harbor.* (i) For purposes of paragraph (a)(1) of this section, in the case of a plan with fewer than 100 participants at the beginning of the plan year, any amount deposited with such plan not later than the 7th business day following the day on which such amount is received by the employer (in the case of amounts that a participant or beneficiary pays to an employer), or the 7th business day following the day on which such amount would otherwise have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages), shall be deemed to be contributed or repaid to such plan on the earliest date on which such contributions or participant loan repayments can reasonably be segregated from the employer's general assets.

(ii) This paragraph (a)(2) sets forth an optional alternative method of compliance with the rule set forth in paragraph (a)(1) of this section. This paragraph (a)(2) does not establish the exclusive means by which participant contribution or participant loan repayment amounts shall be considered to be contributed or repaid to a plan by the earliest date on which such contributions or repayments can reasonably be segregated from the employer's general assets.

(b) *Maximum time period for pension benefit plans.* (1) Except as provided in paragraph (b)(2) of this section, with respect to an employee pension benefit plan as defined in section 3(2) of ERISA, in no event shall the date determined pursuant to paragraph (a)(1) of this section occur later than the 15th business day of the month following the month in which the participant contribution or participant loan repayment amounts are received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the 15th business day of the month following the month in which such amounts would otherwise have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).

(2) With respect to a SIMPLE plan that involves SIMPLE IRAs (*i.e.,* Simple Retirement Accounts, as described in section 408(p) of the Internal Revenue Code), in no event shall the date determined pursuant to paragraph (a)(1) of this section occur later than the 30th calendar day following the month in which the participant contribution

amounts would otherwise have been payable to the participant in cash.

(c) *Maximum time period for welfare benefit plans.* With respect to an employee welfare benefit plan as defined in section 3(1) of ERISA, in no event shall the date determined pursuant to paragraph (a)(1) of this section occur later than 90 days from the date on which the participant contribution amounts are received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the date on which such amounts would otherwise have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).

* * * * *

(f) *Examples.* The requirements of this section are illustrated by the following examples:

(1) Employer A sponsors a 401(k) plan. There are 30 participants in the 401(k) plan. A has one payroll period for its employees and uses an outside payroll processing service to pay employee wages and process deductions. A has established a system under which the payroll processing service provides payroll deduction information to A within 1 business day after the issuance of paychecks. A checks this information for accuracy within 5 business days and then forwards the withheld employee contributions to the plan. The amount of the total withheld employee contributions is deposited with the trust that is maintained under the plan on the 7th business day following the date on which the employees are paid. Under the safe harbor in paragraph (a)(2) of this section, when the participant contributions are deposited with the plan on the 7th business day following a pay date, the participant contributions are deemed to be contributed to the plan on the earliest date on which such contributions can reasonably be segregated from A's general assets.

(2) Employer B is a large national corporation which sponsors a 401(k) plan with 600 participants. B has several payroll centers and uses an outside payroll processing service to pay employee wages and process deductions. Each payroll center has a different pay period. Each center maintains separate accounts on its books for purposes of accounting for that center's payroll deductions and provides the outside payroll processor the data necessary to prepare employee paychecks and process deductions. The payroll processing service issues the employees' paychecks and deducts all payroll taxes and elective employee deductions. The payroll processing service forwards the employee payroll deduction data to B on the date of issuance of paychecks. B checks this data for accuracy and transmits this data along with the employee 401(k) deferral funds to the plan's investment firm within 3 business days. The plan's investment firm deposits the employee 401(k) deferral funds into the plan on the day received from B. The assets of B's 401(k) plan would include the participant contributions no later than 3 business days after the issuance of paychecks.

(3) Employer C sponsors a self-insured contributory group health plan with 90 participants. Several former employees have elected, pursuant to the provisions of ERISA section 602, 29 U.S.C. 1162, to pay C for continuation of their coverage under the plan. These checks arrive at various times during the month and are deposited in the employer's general account at bank Z. Under paragraphs (a) and (c) of this section, the assets of the plan include the former employees' payments as soon after the checks have cleared the bank as C could reasonably be expected to segregate the payments from its general assets, but in no event later than 90 days after the date on which the former employees' participant contributions are received by C. If, however, C deposits the former employees' payments with the plan no later than the 7th business day following the day on which they are received by C, the former employees' participant contributions will be deemed to be contributed to the plan on the earliest date on which such contributions can reasonably be segregated from C's general assets.

* * * * *

Signed at Washington, DC, this 7th day of January 2010.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2010–430 Filed 1–13–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–1073]

RIN 1625–AA00

Safety Zone; Todd Pacific Shipyards Vessel Launch, West Duwamish Waterway, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the West Duwamish Waterway, Seattle, Washington. Entry into, transit through, mooring or anchoring within this zone is prohibited unless authorized by the Captain of the Port Puget Sound or her Designated Representative. This safety zone is necessary to ensure the safety of recreational and commercial traffic in the area during a vessel launch operation at Todd Pacific Shipyards, located at the entrance to the West Duwamish Waterway.

DATES: This rule is effective from 1 a.m. to 10:30 a.m. on January 16, 2010 unless cancelled sooner by the Captain of the Port.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–1073 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–1073 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail ENS Rebecca E. McCann, Waterways Management Division, Sector Seattle, Coast Guard; telephone 206–217–6088, e-mail *Rebecca.E.McCann@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final 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 publishing a NPRM would be contrary to the public interest since immediate action is necessary to ensure the safety of commercial and recreational vessels in the vicinity of the launch on the date and times this rule will be in effect.

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 would be contrary to public interest because hazards associated with a vessel launching operation in a restricted waterway, such as excessive vessel congestion, could lead to injury, fatalities, and/or destruction of public property. Therefore, immediate action is needed to ensure the public's safety from the hazards noted above.

Background and Purpose

The Coast Guard is establishing a temporary safety zone to provide for the safety of recreational and commercial vessel traffic during a vessel launch operation at the Todd Pacific Shipyards Facility. The area that Todd Pacific Shipyards Facility will use encompasses a high commercial traffic zone and the West Duwamish River mouth. The Coast Guard is establishing this zone to protect vessels and persons from the hazards associated with excessive vessel congestions within this restricted waterway. The safety zone is needed to keep vessels out of the affected area during the launch period.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone to encompass the waters of the Duwamish River extending 450 yards from the vessel launch site at Todd Pacific Shipyard, located at the entrance to the West Duwamish Waterway. The safety zone includes all waters within an area encompassed by the points 47°35′04″ N 122°21′30″ W, thence to 47°35′04″ N 122°21′50″ W, thence to 47°35′19″ N 122°21′50″ W, thence to 47°35′19″ N 122°21′30″ W, thence to 47°35′04″ N 122°21′30″ W. The safety zone does not extend on land. The temporary safety zone will be enforced from 1 a.m. to 10:30 a.m. on January 16, 2010 unless cancelled sooner by the Captain of the Port.

The Coast Guard, through this action, intends to promote the safety of personnel and vessels in the area. Entry into this zone by all vessels will be prohibited unless authorized by the Captain of the Port. This safety zone will be enforced by the U.S. Coast Guard. The Captain of the Port may be assisted in the enforcement of this safety zone by other Federal, state, or local agencies.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation is unnecessary. This expectation is based on the fact that the regulated area established by the regulation would encompass a small area that should not significantly impact commercial or recreational traffic. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the waters of the Duwamish River extending 450 yards from the vessel launch site at Todd Pacific Shipyard, located at the entrance to the West Duwamish Waterway from 1 a.m. to 10:30 a.m. on January 16, 2010. This safety zone will not have a significant impact due to the short duration and small area.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 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.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a temporary safety zone to allow a vessel launch evolution at Todd Pacific Shipyards, the duration of which will be less than one day. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

■ For the reasons set out 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: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 165.T13–127 to read as follows:

§ 165.T13–127 Safety Zone; Todd Pacific Shipyards Vessel Launch, West Duwamish Waterway, Seattle, WA.

(a) *Location.* The following area is a safety zone: The waters of the Duwamish River extending 450 yards from the vessel launch site at Todd Pacific Shipyard, located at the entrance to the West Duwamish Waterway, with an area encompassed by the points 47°35′04″ N 122°21′30″ W, thence to 47°35′04″ N 122°21′50″ W, thence to 47°35′19″ N 122°21′50″ W, thence to 47°35′19″ N 122°21′30″ W, thence to 47°35′04″ N 122°21′30″ W.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no vessel may enter, transit, moor, or anchor within this safety zone, except for vessels authorized by the Captain of the Port or her Designated Representative.

(c) *Enforcement Period.* From 1 a.m. to 10:30 a.m. on January 16, 2010 unless cancelled sooner by the Captain of the Port.

Dated: December 11, 2009.

S.E. Englebert,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2010–550 Filed 1–13–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0492; FRL–9096–9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the San Joaquin Valley Air Pollution Control District (SJVAPCD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on July 14, 2009 and concerns volatile organic compounds (VOCs) from confined animal facilities, such as dairies, cattle feedlots, and poultry and swine houses. Under the authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves a local rule that regulates these emission sources and directs California to correct rule deficiencies.

DATES: *Effective Date:* This rule is effective on February 16, 2010.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2009–0492 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the

hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, EPA Region IX, (415) 947–4115, *steckel.andrew@epa.gov.*

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

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II. Public Comments and EPA Responses
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IV. Statutory and Executive Order Reviews

I. Proposed Action

On July 14, 2009 (74 FR 33948), EPA proposed a limited approval and limited disapproval of the following rule that the California Air Resources Board (CARB) submitted for incorporation into the SIP.

Local agency	Rule #	Rule title	Adopted	Submitted
SJVAPCD	4570	Confined Animal Facilities	06/18/09	06/26/09

We proposed a limited approval because we determined that Rule 4570 improves the SIP and is largely consistent with the relevant CAA requirements. At the same time, we proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the Act. These provisions are discussed briefly below.

1. Rule 4570 exempts poultry operations between 400,000 and 650,000 chickens; these operations should be subject to the rule as major sources of VOC emissions.

2. The rule submittal did not provide adequate analysis to demonstrate that the rule's control measure menus implement reasonably available control technologies (RACT) for poultry and swine facilities. Such an analysis should review the availability and effectiveness of control measures for poultry and swine facilities, and may require rule revisions to ensure that the rule does not allow implementation of relatively ineffective control measures when more effective measures are reasonably available to a class of operations.

Our proposed action and Technical Support Document (TSD) contain more information on the basis for this rulemaking and on our evaluation of the submittal. The TSD provides examples of the types of concerns that should be addressed by the analysis discussed in deficiency #2.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the parties listed below.

1. Bill Mattos, President, California Poultry Federation (CPF), letter dated August 5, 2009.

2. Seyed Sadredin, Executive Director, SJVAPCD, letter dated August 27, 2009.

3. Paul Cort, EarthJustice (EJ), letter dated August 31, 2009.

4. Brent Newell, Legal Director, Center on Race, Poverty & the Environment (CRPE), letter dated August 31, 2009, on behalf of the following organizations: Association of Irritated Residents, Clean Water and Air Matter, Comité West Goshen, Comité Unido de Plainview, Comité Residentes Organizados al Servicio del Ambiente Sano, Committee for a Better Arvin, Fresno Metro Ministries, Natural Resources Defense Council, La Nueva Esperanza de Alpaugh, El Quinto Sol de America, South Shafter Project Committee, Shafter Chapter League of United Latin American Citizens, United for a Change in Tooleville, and La Voz de Tonyville.

A. California Poultry Federation (CPF) Comments

CPF Comment #1: EPA proposed to postpone deciding whether Rule 4570 implements RACT for dairies and cattle feedlots pending completion of the National Air Emissions Monitoring Study (NAEMS) research. EPA should similarly postpone a RACT decision for the poultry industry, which is also funding and actively participating in the NAEMS.

Response to CPF #1: The TSD for our proposed action explains that RACT is not clearly defined for confined animal facilities (CAFs) because there is limited information and regulation of CAF VOC emissions. Reflecting this uncertainty, SJVAPCD's RACT demonstration presented various reasons for why Rule 4570 implements RACT. Our TSD explains why some of these claims are not relevant and none definitively demonstrates RACT. We then made decisions based on our judgment of how the numerous factors, taken together, compare to RACT policy and precedent.

For dairies and cattle feedlots, we proposed to defer temporarily a RACT decision because the NAEMS and related research should help clarify RACT in the near future. We recognize that ongoing research should also help clarify RACT for poultry, which is participating in the NAEMS, too. However, our TSD explains that there are significantly more shortcomings with SJVAPCD's RACT demonstration for poultry than for dairy and cattle feedlots. For example, certain major poultry sources are not covered by the rule. Also, poultry sources have less variability, have lower control costs, and have other differences as identified on pages eight and nine of our TSD. While it is unclear at this time how the NAEMS will impact our understanding of RACT for dairies and cattle feedlots, it is unlikely that the NAEMS will lead to a finding that SJVAPCD's existing rule and RACT analysis for poultry is sufficient. Also, please *see* our response to EJ comment #7.

CPF Comment #2: EPA claimed that poultry operations may be less variable than other CAFs because poultry are generally housed in buildings. As a result, a few mitigation measures could generally be applied to the entire class of poultry operations. CPF, however, comments that poultry operations vary significantly, including among type of housing, poultry and manure management. Instead of menus, Rule 4570 could require one set of measures for all facilities, or could list different sets for each type of facility. Neither option would resolve equity issues of what constitutes RACT for different types of operations, since controls which are technically and economically available for one type of operation may not be feasible for others.

Response to CPF #2: We agree that variability in housing design, manure management and other factors can affect cost effectiveness of some VOC controls available to poultry facilities. We do not believe, however, that either SJVAPCD, or this comment has demonstrated that industry variability supports the specific Rule 4570 menus. For example, our TSD notes that table 6B of Rule 4570 provides four options to perform maintenance every 14 days—remove caked waste, clean under cages, adjust drinkers and repair pipe leaks. It is not obvious why industry variability in housing, poultry, manure management or other factors preclude SJVACPD from evaluating the cost-effectiveness of these measures and determining whether they

are appropriate to require generally for major types of poultry operations.

CPF Comment #3: EPA's TSD raises the issue of controlling VOCs with biofilters. CPF commented that biofilters are not cost-effective for existing poultry houses because they would require, among other things, large biofilters with significant installation, operation and maintenance costs; as well as, increased ducting, fans, and associated power needs. Other traditional end-of-stack control measures are similarly infeasible because of the high exhaust flow rates and low VOC concentrations.

Response to CPF #3: Our general objection remains regarding Rule 4570's menus for poultry control measures. As described in paragraph II.C.2 of our proposed action, the rule submittal did not provide adequate analysis to demonstrate that the control measure menus implement RACT for poultry facilities. Such analysis should review the availability and effectiveness of all control measures (work practices, add-on controls, *etc.*) Such analysis may necessitate rule revisions to ensure that the rule does not allow implementation of relatively ineffective control measures when more effective measures are reasonably available to a class of operations. While this comment provides relevant information on one component of the menus (add-on controls), SJVAPCD should analyze the menus thoroughly and present that analysis via their normal public review process.

CPF Comment #4: The primary source of VOC emissions from poultry is the microbial decomposition of organic matter in manure, which increases with moisture. As a result, CPF supports Rule 4570's emphasis on controlling moisture and microbial decomposition, rather than trying to remove dilute concentrations of VOC from large volumes of air.

Response to CPF #4: Our proposed action neither precludes focus on moisture and microbial decomposition, nor does it require add-on controls. Rather, it would largely direct SJVAPCD to better analyze the availability and effectiveness of controls and make appropriate rule revisions. Additional analysis could show, for example, that one set of measures for controlling moisture is far more cost-effective than another set and should be required of all facilities. Also, please *see* our response to CPF comment #3.

B. San Joaquin Valley Air Pollution Control District Comments

SJVAPCD Comment #1: EPA claimed that Rule 4570 does not address all 10 tpy VOC poultry sources as required. SJVAPCD comments that Rule 4570's threshold is 650,000 chickens. CARB used 0.025 pounds VOC per head per year (lb VOC/hd/yr) as an emission factor for both broilers and layers, which translates Rule 4570's applicability to 8 tons per year (tpy), which is safely below 10 tpy.

Response to SJVAPCD #1: Table 6 of SJVAPCD's April 16, 2009 RACT Demonstration and Table 10 of the rule's Staff Report assume 0.05 lb VOC/hd/year for layers, which translates Rule 4570's applicability to 16.25 tpy, significantly above the 10 tpy threshold. The comment does not state why or even if SJVAPCD believes this emission factor is no longer appropriate to use.

SJVAPCD Comment #2: Rule 4570's menu-approach should be approved as RACT because the least effective menu options have been incorporated in facility permits as best available control technology (BACT).

Response to SJVAPCD #2: Section C.3.g of EPA's TSD explains that SJVAPCD's BACT determinations help support the argument that Rule 4570 implements RACT, but are not sufficient in and of themselves to demonstrate RACT generically for three reasons. This comment relates to the second of these three reasons, item "b" as presented in the TSD. The comment does not, however, address the remaining two points we presented: (1) BACT determinations consider site-specific factors which may indicate that specific controls are feasible in one situation, but not in another; therefore, controls that are BACT for one source may not be BACT or even RACT for others; and, (2) EPA's lack of comment regarding BACT in individual permits should not be construed as EPA concurrence that the rule or the permits implement BACT; we may, for example, simply have been unable to review the permits because of competing resource demands.

SJVAPCD Comment #3: Rule 4570's menu approach should be approved because, while not compromising control of VOC emissions, it allows CAF operators to adjust to market driven changes and innovation in operations to further reduce emissions.

Response to SJVAPCD #3: EPA agrees that a menu approach can incorporate elements to address market and innovation needs; however, a menu-based rule intended to fulfill Federal RACT requirements must be supported by adequate analysis demonstrating that the menus implement RACT. Consistent with this position, EPA proposed to postpone a decision on whether Rule 4570 demonstrates RACT for dairies, beef feedlots and other cattle facilities. We also concluded that SJVAPCD had not demonstrated that Rule 4570's menus fulfill RACT for poultry and swine operations, and therefore proposed to disapprove the rule.

SJVAPCD Comment #4: Due to variability in poultry operations, SJVACPD cannot specify only one set of emission control requirements. Operations vary by capacity, poultry breeds and species, nutrient needs dictated by market plans, diets that vary by commodity costs, housing ventilation systems, housing coolant systems, housing construction and litter management practices.

Response to SJVAPCD #4: We appreciate that variability in operations may require different controls or control options for different types of operations. However, SJVAPCD has not demonstrated that variability in operations supports the specific Rule 4570 menu options. Also, please *see* our response to CPF comment #2.

SJVAPCD Comment #5: Over time, there could be additional innovations in how poultry or swine are raised or the market demand for poultry or swine could change. Rule 4570's menu format allows facility modifications to take advantage of new opportunities and technological advances which could result in additional reductions.

Response to SJVAPCD #5: Please *see* our response to SJVAPCD comment #3.

SJVACPD Comment #6: SJVAPCD conducted a top-down BACT analysis of poultry housing for a permit application and evaluated four traditional VOC control technologies: thermal oxidizer, catalytic oxidizer, carbon adsorption and biofilter. These controls were not found achieved in practice, so SJVAPCD analyzed their cost-effectiveness and found they failed SJVAPCD's $5,000 per ton VOC threshold. A similar conclusion can be made for swine. Since traditional add-on control is not cost-effective for BACT, it is also not cost-effective for RACT.

Response to SJVAPCD #6: Please *see* our response to CPF comment #3.

SJVAPCD Comment #7: SJVAPCD and CARB research adequately justifies approving Rule 4570 as RACT for California dairies. SJVAPCD developed a draft BACT document for dairy emissions and is at the forefront of implementing BACT for new dairies.

Response to SJVAPCD #7: We appreciate that SJVAPCD and CARB have supported extensive CAF research before and after developing Rule 4570. We believe results from the NAEMS and other SJVAPCD, CARB and EPA research scheduled to conclude soon should help clarify RACT for California dairies. We also note that this comment

does not provide the referenced draft BACT document for dairy emissions, nor does it provide further information to address the generic issues discussed in Section C.3.g of our TSD and above in our response to SJVAPCD comment #2.

C. EarthJustice (EJ) Comments

EJ Comment #1: EJ supports EPA's proposed limited approval/disapproval of Rule 4570 and agrees with the following conclusions from our proposal: (1) Rule 4570 fails to require controls for all major poultry operations; (2) SJVAPCD failed to demonstrate that Rule 4570 implements RACT for poultry and swine operations; and, (3) SJVAPCD must also review the menus for dairy and cattle feedlots.

Response to EJ #1: We note that our proposed action would recommend, not compel, item #3 regarding SJVAPCD review of the dairy and cattle feedlot menus.

EJ Comment #2: SJVAPCD has not supported its reliance on the State's large confined animal facility (LCAF) definition in setting Rule 4570 applicability thresholds. CAA section 172(c)(1) requires all reasonably available control measures (RACM) as expeditiously as practicable, so SJVAPCD must analyze and require all reasonable controls, including those for small sources. Instead, Rule 4570 uses applicability thresholds based on the State's LCAF definition without demonstrating that controlling smaller sources is unreasonable. The LCAF definition is even more inappropriate because SJVAPCD now estimates higher VOC emissions than assumed by the State (*e.g.,* 11.9 instead of 5.5 lb VOC/hd/yr for cattle).

Response to EJ #2: We agree that CAA section 182(b)(2) requires RACT for all major sources and CAA section 172(c)(1) requires the implementation of all RACM as needed for expeditious attainment. A discussion of whether additional controls would advance the attainment date of the ozone standard belongs in the context of SJVAPCD's ozone plan attainment demonstration. Today's action on Rule 4570 considers whether the rule as submitted is adequately enforceable, implements RACT and improves the SIP. The emission factor assumptions from SJVACPD's RACT demonstration suggest that Rule 4570's applicability thresholds capture all major sources except for the poultry threshold identified as deficient in our proposed action.

EJ Comment #3: SJVAPCD must, but did not, show that all Rule 4570 menus represent the lowest emission levels achievable as required by RACT.

Response to EJ #3: We believe this comment is addressed by our proposed action to defer a RACT decision for dairies and cattle feedlots and to require adequate analysis to demonstrate that Rule 4570 implements RACT for poultry and swine. We agree that SJVAPCD must review the availability and effectiveness of controls to address the RACT deficiency we identified concerning poultry and swine sources.

EJ Comment #4: SJVAPCD uses a "percent of profits" test to determine whether controls are economically feasible. For example, SJVAPCD claims that Rule 4570 will cost large dairies 9.6% of profits, so more stringent and expensive controls are not reasonably available. EJ comments that some industries can afford controls costing 10% of profits or more without impacting economic viability. EJ believes SJVAPCD should analyze possible CAF controls in a broader context, such as total compliance cost, economic impact on each sector of the industry, output demand elasticity, *etc.*

Response to EJ #4: Paragraph II.C.2. of our proposed action states that SJVAPCD has not adequately demonstrated that Rule 4570 implements RACT, and directs SJVAPCD to analyze the availability and effectiveness of possible controls for poultry and swine sources. The comment does not dispute this or other portions of our proposal, but provides more detail on how EJ believes the deficiency should be corrected. As a result, no changes to our proposal are needed. Regarding the substance of the comment, we believe "percent of profits" can provide useful information, but we also acknowledge that additional economic information could be helpful and appreciate that resource constraints limit the amount of analysis that SJVAPCD can perform. Also, we note that SJVAPCD has provided cost-effectiveness information in Appendix C of their Staff Report. We look forward to working with EJ, SJVAPCD and the affected industry to obtain a meaningful RACT analysis without overwhelming available SJVAPCD resources.

EJ Comment #5: EPA must appropriately revise 40 CFR 52.220(b)(12) to remove any possible claim that agricultural sources are exempt from permitting.

Response to EJ #5: Section 5.0 of Rule 4570 specifically requires a permit application for each CAF, and Section 5.4 requires implementation of all VOC emission mitigation measures, as contained in the application, on and after 365 days of submittal of the application. Therefore, to the extent that any such permitting exemption exists, it does not affect implementation of Rule 4570.

EJ Comment #6: Sections 5.12 and 5.13 of Rule 4570 allow facilities to ignore all specific requirements of sections 5.6 through 5.10 by preparing an alternative emission mitigation plan (AEMP) demonstrating 30% facility-wide reductions. EJ believes these plans are unenforceable because Rule 4570 provides no detail on how 30% is calculated or the plans approved. EJ also comments that SJVAPCD has not demonstrated that 30% represents RACT, particularly since SJVAPCD projects that the menus reduce emissions 36–72%.

Response to EJ #6: Because there is limited information available on CAF control efficiencies, we proposed to recommend, rather than compel, rule revisions at this time (*see* recommendation #6 on page 10 of our TSD). Similar directors' discretion provisions have been approved in other rules (e.g., SJVAPCD Rule 4550 regarding agricultural operations) where agencies have limited experience in quantifying emission impacts. Implementation of Rule 4570 and other CAF requirements and ongoing research should improve our understanding so that details for AEMPs in section 5.13 can be reasonably required in the near future. We also proposed to recommend rather than compel revising section 5.13's 30% emission reduction target consistent with the 36–72% menu-based emission projections (*see* recommendation #7 on page 10 of our TSD). We do not believe we have clear authority to compel changes to section 5.12 at this time, as it does not appear to apply to any major sources.

EJ Comment #7: EPA's proposal to postpone a decision on whether Rule 4570 implements RACT for dairies and beef feedlots is arbitrary and illegal under CAA section 110(k)(3). EPA claims the delay is appropriate pending results of an ongoing study, but EPA is required to act now based on the best available information. Regardless of the study results, Rule 4570's dairy and cattle feedlot provisions suffer from the same RACT defects as the poultry and swine provisions that EPA is disapproving.

Response to EJ #7: As we discussed in our response to CPF comment #1, we acknowledged deficiencies in the RACT demonstration for dairies and cattle feedlots, but proposed to defer temporarily a RACT decision because the NAEMS and related research should help clarify RACT in the near future. While we recognized that ongoing

research should also help clarify RACT for poultry and swine, our TSD explained that there are significantly more shortcomings with SJVAPCD's RACT demonstration for poultry and swine operations. As a result, while it is unclear how the NAEMS results will impact our understanding of RACT for dairies and cattle feedlots, it seems very unlikely that the NAEMS will lead to a finding that SJVAPCD's existing rule and RACT analysis for poultry and swine is sufficient. Also, please *see* our response to CPF comment #1.

EJ Comment #8: If EPA finalizes no action on dairy and cattle feedlot measures, EPA should appropriately discount the emission reduction benefits that are claimed for Rule 4570 in various attainment plans.

Response to EJ #8: If finalized as proposed, EPA's action would incorporate all provisions of Rule 4570 into the Federally enforceable SIP. EPA's action to disapprove and postpone various RACT demonstrations does not interfere with Federal or local rule implementation. Issues regarding the emission reductions attributed to Rule 4570 do not affect the basis for our action on the rule and should be addressed in context of our action on SJVAPCD's one-hour ozone plan.

D. Center on Race, Poverty and the Environment (CRPE) Comments

CRPE Comment #1: EPA should disapprove the RACT determination for dairies and cattle feedlots. There is no hard deadline for EPA to promulgate emission estimating methodologies referenced in the proposed action, so EPA may further delay a RACT determination beyond November 2011. In any case, available information already shows that dairies and cattle feedlots are significant VOC sources that require RACT.

Response to CRPE #1: We agree that some cattle and dairy operations are significant VOC sources that require RACT. We believe, however, that delaying a RACT determination for dairies and cattle feedlots is justified for reasons we discussed in Section D.3 of our TSD. All data collection efforts for the NAEMS are scheduled to conclude by May 2010 and we plan to promulgate emission estimating tools by November 2011. Nonetheless, we could require additional demonstration of RACT regarding dairies and cattle feedlots based on preliminary NAEMS data, unexpected delays, or other factors before or after November 2011 pursuant to CAA section 179(a)(1) and elsewhere. During this period of NAEMS data collection and analysis, we emphasize that the rule's requirements will continue to be implemented and enforced, and, as a result, continue to reduce VOC emissions from dairies and cattle feedlots. Also, please *see* our response to EJ comment #7.

CRPE Comment #2: Rule 4570's menu-based strategy violates CAA RACT provisions which require the lowest emission limitation that sources can meet considering technological and economic feasibility. Rule 4570 does not require all RACT, but merely a handful of measures from among several dozen. SJVAPCD concedes that operations can and will select the least-costly options, which are not necessarily the most effective, as RACT requires, at reducing emissions.

Response to CRPE #2: Menu-based rules can fulfill the RACT requirement if the menus effectively require the lowest emission limitations that sources can meet considering technological and economic feasibility. However, the deficiency identified in paragraph II.C.2 of our proposal reflects our agreement with the comment that SJVAPCD has not demonstrated that Rule 4570 meets RACT for poultry and swine menus. We are deferring our decision as to whether Rule 4570 meets RACT for dairy and beef cattle operations. Also, please *see* our response to EJ comment #3.

CRPE Comment #3: SJVAPCD improperly inflates the control effectiveness of Rule 4570 by claiming a 10% emission reduction for feeding cows by NRC guidelines both in the baseline emission estimates and then again in emission reductions associated with Rule 4570.

Response to CRPE #3: Today's action on Rule 4570 rests primarily on whether the rule as submitted is adequately enforceable, implements RACT and improves the SIP. Issues regarding the amount of associated emission reductions do not affect the basis for our action on Rule 4570 and are addressed within our action on SJVAPCD's one-hour ozone plan.

CRPE Comment #4: Rule 4570 merely codifies existing voluntary practices and does not generate real and quantifiable emission reductions. This violates CAA requirements for SIP rules to reduce emissions. EPA approval of this rule would be arbitrary and capricious because the emission reduction estimates for the vast majority of controls have no factual support.

Response to CRPE #4: Please *see* our response to CRPE comment #3.

CRPE Comment #5: EPA should disapprove the RACT demonstration for dairies and cattle feedlots and not allow SJVAPCD's 2004 SIP to take credit for VOC reductions from Rule 4570.

Response to CRPE #5: Please *see* our responses to previous CRPE comments.

Additional CRPE Comments: CRPE's August 31, 2009 letter provided comments on EPA's proposed actions on Rule 4570 (Docket No. EPA–R09–OAR–2009–0492) and on the SJVAPCD One-Hour Ozone Plan (Docket No. EPA–R09–OAR–2008–0693). CRPE comments that were not addressed above are primarily relevant to our proposed action on the SJVAPCD One-Hour Ozone Plan. We direct interested readers to those comments and our responses in our final action on the ozone plan.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rule. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rule. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act according to 40 CFR 52.31. In addition, EPA must promulgate a Federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months. Note that the submitted rule has been adopted by the SJVAPCD, and EPA's final limited disapproval does not prevent the local agency from enforcing it.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any

rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals and limited approvals/limited disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this limited approval/limited disapproval action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or Tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the limited approval/limited disapproval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." This final rule does not have Tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on Tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

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

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on *February 16, 2010.*

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *March 15, 2010.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: December 11, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(368) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(368) New and amended regulations were submitted on June 26, 2009 by the Governor's designee.

(i) Incorporation by Reference.

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

(*1*) Rule 4570, "Confined Animal Facilities," adopted on June 18, 2009.

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[FR Doc. 2010–489 Filed 1–13–10; 8:45 am]

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Proposed Rules

Federal Register
Vol. 75, No. 9
Thursday, January 14, 2010

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 THE TREASURY

Office of the Secretary

31 CFR Part 1

RIN 1505–AC22

Office of the Special Inspector General for the Troubled Asset Relief Program; Privacy Act of 1974; Proposed Implementation

AGENCY: Departmental Offices, Treasury.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the Department of the Treasury gives notice of a proposed amendment to this part to exempt several systems of records maintained by the Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) from certain provisions of the Privacy Act.

DATES: Comments must be received no later than February 16, 2010.

ADDRESSES: Comments should be sent to Bryan Saddler, Chief Counsel, Office of the Special Inspector General for the Troubled Asset Relief Program, 1500 Pennsylvania Avenue, NW., Room 1010, Washington, DC 20220. Comments will be made available for inspection upon written request. You may also submit comments through the Federal rulemaking portal at *http://www.regulations.gov* (follow the instructions for submitting comments).

FOR FURTHER INFORMATION CONTACT: Bryan Saddler, Chief Counsel, Office of the Special Inspector General for the Troubled Asset Relief Program, 1500 Pennsylvania Avenue, NW., Room 1010, Washington, DC 20220, (202) 927–8938.

SUPPLEMENTARY INFORMATION: The Emergency Economic Stabilization Act of 2008 (Act), Public Law 110–343, established the Troubled Asset Relief Program, and, at section 121 (12 U.S.C. 5231), created SIGTARP. SIGTARP is responsible for coordinating and conducting audits and investigations of any program established by the Secretary under sections 101 and 102 of the Act. SIGTARP's duties and operating authority are set forth under section 121 of the Act, as amended, and the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3. SIGTARP conducts, supervises, and coordinates audits and investigations relating to the programs and operations of the Troubled Asset Relief Program (TARP) and related entities.

The Department of the Treasury is publishing separately the notices of the new systems of records to be maintained by SIGTARP.

Under 5 U.S.C. 552a(j)(2), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is "maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision."

To the extent that these systems of records contain investigative material within the provisions of 5 U.S.C. 552a(j)(2), the Department of the Treasury proposes to exempt the following systems of records from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2):

DO .220—SIGTARP Hotline Database.

DO .221—SIGTARP Correspondence Database.

DO .222—SIGTARP Investigative MIS Database.

DO .223—SIGTARP Investigative Files Database.

DO .224—SIGTARP Audit Files Database.

The proposed exemption under 5 U.S.C. 552a(j)(2) for the above-referenced systems of records is from provisions 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g).

The following are the reasons why the investigative material contained in the above-referenced systems of records maintained by SIGTARP may be exempted from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2).

(1) 5 U.S.C. 552a(e)(4)(G) and (f)(l) enable individuals to inquire whether a system of records contains records pertaining to themselves. Disclosure of this information to the subjects of investigations would provide individuals with information concerning the nature and scope of any current investigation. Further, providing information as required by this provision would alert the individual to the existence of an investigation and afford the individual an opportunity to attempt to conceal his/her criminal activities so as to avoid apprehension, may enable the individual to avoid detection or apprehension, may enable the destruction or alteration of evidence of the criminal conduct that would form the basis for an arrest, and could impede or impair SIGTARP's ability to investigate the matter. In addition, to provide this type of information may enable individuals to learn whether they have been identified as subjects of investigation.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H), and (f)(2), (3), and (5) grant individuals access, or concern procedures by which an individual may gain access, to records pertaining to themselves. Disclosure of this information to the subjects of investigations would provide them with information concerning the nature and scope of any current investigation, may enable them to avoid detection or apprehension, may enable them to destroy or alter evidence of criminal conduct that would form the basis for their arrest, and could impede or impair SIGTARP's ability to investigate the matter. In addition, permitting access to investigative files and records could disclose the identity of confidential sources and the nature of the information supplied by informants as well as endanger the physical safety of those sources by exposing them to

possible reprisals for having provided the information. Confidential sources and informers might refuse to provide SIGTARP with valuable information unless they believe that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair SIGTARP's ability to perform its law enforcement responsibilities. Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities, thereby endangering the physical safety of those undercover officers by exposing them to possible reprisals. Permitting access in keeping with these provisions would also discourage other law enforcement and regulatory agencies from freely sharing information with SIGTARP and thus would restrict its access to information necessary to accomplish its mission most effectively.

(3) 5 U.S.C. 552a(d)(2), (3), and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to the individual or concern related procedures, and require the agency either to amend the record or to note the disputed portion of the record, and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend upon the individual having access to his or her records, and since an exemption from the provisions of 5 U.S.C. 552a relating to access to records is proposed, for the reasons set out in the preceding paragraph of this section, these provisions should not apply to the above-listed systems of records.

(4) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. Making accountings of disclosures available to the subjects of investigations would alert them to the fact that SIGTARP is conducting an investigation into their activities as well as identify the nature, scope, and purpose of that investigation. Providing accountings to the subjects of investigations would alert them to the fact that SIGTARP has information regarding their activities and could inform them of the general nature of that information. The subjects of the investigations, if provided an accounting of disclosures, would be able to take measures to avoid detection or apprehension by altering their operations or by destroying or concealing evidence that would form the basis for detection or apprehension.

(5) 5 U.S.C. 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. Since this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to the individual, and since an exemption from the provisions of 5 U.S.C. 552a relating to access to, and amendment of, records is proposed for the reasons set out in paragraph (2) of this section, this provision should not apply to these systems of records.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. Revealing sources of information could disclose investigative techniques and procedures, result in threats or reprisals against confidential informants by the subjects of investigations, and cause confidential informants to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(7) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive Order. The term "maintain," as defined in 5 U.S.C. 552a(a)(3), includes "collect" and "disseminate." The application of this provision could impair SIGTARP's ability to collect and disseminate valuable law enforcement information. In the early stages of an investigation, it may be impossible to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon review of information developed subsequently, prove particularly relevant and necessary to a law enforcement program. Compliance with the records maintenance criteria listed in the foregoing provision would require SIGTARP to periodically update the investigatory material it collects and maintains in these systems to ensure that the information remains timely and complete. Further, SIGTARP oftentimes will uncover evidence of violations of law that fall within the investigative jurisdiction of other law enforcement agencies. To promote effective law enforcement, SIGTARP will refer this evidence to other law enforcement agencies, including State, local, and foreign agencies, that have jurisdiction over the offenses to which the information relates. If required to adhere to the provisions of 5 U.S.C. 552a(e)(1), SIGTARP might be placed in the position of having to ignore information relating to violations of law not within its jurisdiction when that information comes to SIGTARP's attention during the collection and analysis of information in its records.

(8) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision to the above-referenced systems of records would impair SIGTARP's ability to collect, analyze, and disseminate investigative, intelligence, and enforcement information. During criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify the accuracy of the information obtained. SIGTARP often collects information about the subject of a criminal investigation from third parties, such as witnesses and informants. It is usually not feasible to rely upon the subject of the investigation as a credible source for information regarding his or her alleged criminal activities. An attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension.

(9) 5 U.S.C. 552a(e)(3) requires an agency to inform each individual, whom it asks to supply information, of the agency's authority for soliciting the information, whether disclosure of information is voluntary or mandatory, the principal purpose(s) for which the agency will use the information, the routine uses that may be made of the information, and the effects on the individual of not providing all or part of the information. The above-referenced systems of records should be exempted from these provisions to avoid impairing SIGTARP's ability to collect and maintain investigative material. Confidential sources or undercover law enforcement officers often obtain information under circumstances in which it is necessary to keep the true

purpose of their actions secret so as not to let the subject of the investigation or his or her associates know that a criminal investigation is in progress. Further, application of this provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, particularly where further investigation reveals that the subject was not involved in any criminal activity.

(10) 5 U.S.C. 552a(e)(5) requires an agency to maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. Since 5 U.S.C. 552a(a)(3) defines "maintain" to include "collect" and "disseminate," application of this provision to the systems of records would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. In collecting information during a criminal investigation, it is often neither possible nor feasible to determine accuracy, relevance, timeliness, or completeness at the time that the information is collected. Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when analyzed with other available information, become more relevant as an investigation progresses. Compliance with the records maintenance criteria listed in the foregoing provision would require the periodic review of SIGTARP's investigative records to insure that the records maintained in the system remain timely, accurate, relevant, and complete.

(11) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. The above-referenced systems of records should be exempted from this provision to avoid revealing investigative techniques and procedures outlined in those records and to prevent revelation of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(12) 5 U.S.C. 552a(g) provides for civil remedies to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual. The investigatory information in the above-referenced systems of records should be exempted from this provision to the extent that the civil remedies may relate to provisions of 5 U.S.C. 552a from which this would exempt the systems of records, since there should be no civil remedies for failure to comply with provisions from which SIGTARP is exempted. Exemption from this provision will also protect SIGTARP from baseless civil court actions that might hamper its ability to collect, analyze, and disseminate investigative, intelligence, and law enforcement data.

Under 5 U.S.C. 552a(k)(2), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is "investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2)." To the extent that these systems of records contain investigative material within the provisions of 5 U.S.C. 552a(k)(2), the Department of the Treasury proposes to exempt the following systems of records from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2):

DO .220—SIGTARP Hotline Database.

DO .221—SIGTARP Correspondence Database.

DO .222—SIGTARP Investigative MIS Database.

DO .223—SIGTARP Investigative Files Database.

DO .224—SIGTARP Audit Files Database.

The proposed exemption under 5 U.S.C. 552a(k)(2) for the above-referenced systems of records is from provisions 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

The following are the reasons why the investigative material contained in the above-referenced systems of records maintained by SIGTARP may be exempted from various provisions pursuant to 5 U.S.C. 552a(k)(2).

(1) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of disclosures of the record and the names and addresses of recipients. Making accountings of disclosures available to the subjects of investigations would alert them to the fact that SIGTARP is conducting an investigation into their activities as well as identify the nature, scope, and purpose of that investigation. The subjects of investigations, if provided an accounting of disclosures, would be able to take measures to avoid detection or apprehension by destroying or concealing evidence that would form the basis for detection or apprehension.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H), and (f)(2), (3), and (5) grant individuals access, or concern procedures by which an individual may gain access, to records pertaining to them. Disclosure of this information to the subjects of investigations would provide individuals with information concerning the nature and scope of any current investigation, may enable them to avoid detection or apprehension, may enable them to destroy or alter evidence of criminal conduct that would form the basis for their arrest, and could impede or impair SIGTARP's ability to investigate the matter. In addition, permitting access to investigative files and records could disclose the identity of confidential sources and the nature of the information supplied by informants as well as endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informers might refuse to provide SIGTARP with valuable information unless they believe that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair SIGTARP's ability to perform its law enforcement responsibilities. Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities, thereby endangering the physical safety of those undercover officers by exposing them to possible reprisals. Permitting access in keeping with these provisions would also discourage other law enforcement and regulatory agencies, foreign or domestic, from freely sharing information with SIGTARP and thus would restrict its access to information necessary to accomplish its mission most effectively.

(3) 5 U.S.C. 552a(d)(2), (3), and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to the individual or concern related procedures, and require the agency either to amend the record or to note the disputed portion of the record, and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to

whom the record is thereafter disclosed. Since these provisions depend upon the individual having access to his or her records, and since an exemption from the provisions of 5 U.S.C. 552a relating to access to records is proposed for the reasons set out in the preceding paragraph of this section, these provisions should not apply to the above-listed systems of records.

(4) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive Order. The term "maintain," as defined in 5 U.S.C. 552a(a)(3), includes "collect" and "disseminate." The application of this provision could impair SIGTARP's ability to collect and disseminate valuable law enforcement information. In the early stages of an investigation, it may be impossible to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon review of information developed subsequently, prove particularly relevant and necessary to the investigation. Compliance with the records maintenance provisions would require SIGTARP to periodically update the investigatory information it collects and maintains to ensure that the records in these systems remain timely, accurate, and complete. Further, SIGTARP oftentimes will uncover evidence of violations of law that fall within the investigative jurisdiction of other law enforcement agencies. To promote effective law enforcement, SIGTARP will refer this evidence to other law enforcement agencies, including State, local, and foreign agencies, that have jurisdiction over the offenses to which the information relates. If required to adhere to the provisions of 5 U.S.C. 552a(e)(1), SIGTARP might be placed in the position of having to ignore information relating to violations of law not within its jurisdiction when that information comes to SIGTARP's attention during the collection and analysis of information in its records.

(5) 5 U.S.C. 552a(e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the above-referenced systems of records could allow individuals to learn whether they have been identified as subjects of investigation. Access to such knowledge would impair SIGTARP's ability to carry out its mission, since individuals could take steps to avoid detection and destroy or hide evidence needed to prove the violation.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. Revealing sources of information could disclose investigative techniques and procedures, result in threats or reprisals against confidential informants by the subjects of investigations, and cause confidential informants to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

Any information from a system of records for which an exemption is claimed under 5 U.S.C. 552a(j) or (k) which is also included in another system of records retains the same exempt status such information has in the system for which such exemption is claimed.

This proposed rule is not a "significant regulatory action" under Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, it is hereby certified that this rule will not have significant economic impact on a substantial number of small entities. The term "small entity" is defined to have the same meaning as the terms "small business", "small organization" and "small governmental jurisdiction" as defined in the RFA.

The proposed regulation, issued under section 522a(j)(2) and (k) of the Privacy Act, is to exempt certain information maintained by the Department in the above systems of records from notification, access and amendment of a record by individuals who are citizens of the United States or an alien lawfully admitted for permanent residence. In as much as the Privacy Act rights are personal and apply only to U.S. citizens or an alien lawfully admitted for permanent residence, small entities, as defined in the RFA, are not provided rights under the Privacy Act and are outside the scope of this regulation.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1, Subpart C of Title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a, as amended.

2. Section 1.36 is amended as follows:

a. Paragraph (c)(1)(i) is amended by adding "DO .220—SIGTARP Hotline Database; DO .221—SIGTARP Correspondence Database; DO .222—SIGTARP Investigative MIS Database; DO .223—SIGTARP Investigative Files Database; and DO .224—SIGTARP Audit Files Database" to the table in numerical order.

b. Paragraph (g)(1)(i) is amended by adding "DO .220—SIGTARP Hotline Database; DO .221—SIGTARP Correspondence Database; DO .222—SIGTARP Investigative MIS Database; DO .223—SIGTARP Investigative Files Database, and DO .224—SIGTARP Audit Files Database" to the table in numerical order.

The additions to § 1.36 read as follows:

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 522a and this part.

* * * * *

(c) * * *

(1) * * *

(i) * * *

Number	System name
*	* * * *
DO .220 ...	SIGTARP Hotline Database.
DO .221 ...	SIGTARP Correspondence Database.
DO .222 ...	SIGTARP Investigative MIS Database.
DO .223 ...	SIGTARP Investigative Files Database.
DO .224 ...	SIGTARP Audit Files Database.
*	* * * *

* * * * *

(g) * * *

(1) * * *

(i) * * *

Number	System name
*	* * * *
DO .220 ...	SIGTARP Hotline Database.
DO .221 ...	SIGTARP Correspondence Database.
DO .222 ...	SIGTARP Investigative MIS Database.
DO .223 ...	SIGTARP Investigative Files Database.
DO .224 ...	SIGTARP Audit Files Database.
*	* * * *

* * * * *

Dated: January 4, 2010.

Melissa Hartman,

Acting Deputy Assistant Secretary for Privacy and Treasury Records.

[FR Doc. 2010–293 Filed 1–13–10; 8:45 am]

BILLING CODE 4810–25–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0513; FRL–9103–1]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Volatile Organic Compound Automobile Refinishing Rules for Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 5, 2009, the Indiana Department of Environmental Management (IDEM) submitted amendments to Indiana's automobile refinishing rule for approval into its State Implementation Plan (SIP). These rule revisions extend the applicability of Indiana's approved volatile organic compound (VOC) automobile refinishing rules to all persons in Indiana who sell or manufacture automobile refinishing coatings or who refinish motor vehicles. The rules are approvable because they are consistent with the Clean Air Act (Act) and EPA regulations, and should result in additional VOC emission reductions throughout Indiana.

DATES: Comments must be received on or before February 16, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0513, by one of the following methods:

1. *http://www.regulations.gov:* Follow the online instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 692–2551.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the regional office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The regional office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2009–0513. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steven Rosenthal at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052.

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

I. What Should I Consider as I Prepare My Comments for EPA?
II. What Action Is EPA Taking Today and What Is the Purpose of This Action?
III. What Is EPA's Analysis of Indiana's Automobile Refinishing Rule?
IV. Statutory and Executive Order Reviews

I. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What Action Is EPA Taking Today and What Is the Purpose of This Action?

EPA is proposing to approve rule revisions that broaden the coverage of Indiana's VOC automobile refinishing SIP rules to include to all persons in Indiana who sell or manufacture automobile refinishing coatings or who refinish motor vehicles. Given the revised rule's focus on VOC coating limitations and work practice standards, Indiana has also deleted references to control technology requirements.

III. What Is EPA's Analysis of Indiana's Automobile Refinishing Rule?

Background of Rule and Its Revisions

EPA issued National VOC Emission Standards for Automobile Refinishing Coatings at 40 CFR part 59, subpart B, on September 11, 1998 (64 FR 48815, as amended at 69 FR 18803, April 9, 2004), promulgated under the Consumer and Commercial Products provisions of section 183(e) of the Act. The VOC emission limits in this rule apply nationwide to manufacturers and importers of automobile refinishing coatings or coating components that sell or distribute these coatings in the United States.

On December 20, 1999, EPA approved 326 IAC 8–10, in which Indiana adopted the requirements in EPA's national rule, but applied its requirements to the sale of automobile refinishing coatings and the owners and operators of automobile refinishing facilities. Indiana's SIP rule also contains additional work practice standards that reduce VOC emissions by specifying acceptable methods of spray gun cleaning, the type of application equipment that can be used (which reduces the amount of overspray) and housekeeping practices (such as storing VOC-containing materials in closed containers) that reduce VOC emissions.

The revised rules submitted by Indiana expand the applicability of the previously approved rules from Clark, Floyd, Lake, Porter and Vanderburgh Counties to all of Indiana.

Analysis of Rule and Its Revisions

The revisions to Indiana's automobile refinishing rule, 326 IAC 8–10, are approvable because they are consistent with the Act and applicable EPA regulations, and should result in additional VOC emission reductions. A description of the rule revisions follows:

326 IAC 8–10–1 Applicability—This section has been revised so that after June 1, 2009, it applies to any person who sells automobile refinishing coatings or refinishes motor vehicles in all Indiana counties.

326 IAC 8–10–2 Definitions—The definitions of "control device," "control device efficiency" and "control system" have been deleted from this section because those terms are no longer used in this rule. A few other minor editorial and clarifying revisions have also been made.

326 IAC 8–10–3 Requirements—This section expands the applicability of the control requirements to all of Indiana and eliminates requirements that had specifically applied to only Vanderburgh County.

326 IAC 8–10–4 Means to limit VOC emissions—This section specifies the VOC limits that must be met by the owners or operators of a refinishing facility. It has been revised to eliminate the use of add-on control systems as a compliance option. This compliance option is not necessary because VOC content limits are more appropriate for automobile refinishing facilities than add-on control devices.

326 IAC 8–10–5 Work Practice Standards and 326 IAC 8–10–6 Compliance procedures have not been substantively revised.

326 IAC 8–10–7 Test procedures and 326 IAC 8–10–9 Recordkeeping and reporting—These sections have been revised primarily by removing the testing, recordkeeping and reporting requirements applicable to control devices. A new section, 326 IAC 8–10–9(e), has been added which requires the owners or operators of refinishing facilities subject to this rule to report any incidence in which a noncompliant coating was used within thirty days.

IV. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

Dated: December 30, 2009.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 2010–619 Filed 1–13–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R06–OAR–2009–0202; FRL–9103–2]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Arkansas; Redesignation of the Crittenden County, Arkansas Portion of the Memphis, Tennessee-Arkansas 1997 8-Hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On February 24, 2009, the State of Arkansas, through the Arkansas Department of Environmental Quality (ADEQ), submitted a request to redesignate the Arkansas portion of the bi-state Memphis, Tennessee-Arkansas (Memphis TN-AR) 1997 8-hour ozone nonattainment area to attainment for the

8-hour ozone National Ambient Air Quality Standard (NAAQS); and to approve the State Implementation Plan (SIP) revision containing a maintenance plan for the Arkansas portion of the bi-state Memphis TN-AR Area. The bi-state Memphis TN-AR 1997 8-hour ozone nonattainment area is composed of Memphis, Shelby County, Tennessee (Shelby County) and Crittenden County, Arkansas. In this action, EPA proposes to approve the 1997 8-hour ozone redesignation request for Crittenden County, Arkansas. Additionally, EPA proposes to approve the 1997 8-hour ozone maintenance plan for Crittenden County, including the state motor vehicle emissions budgets (MVEBs) for nitrogen oxides (NO_X) and volatile organic compounds (VOCs) for the years 2006 and 2021. This proposed approval of Arkansas' redesignation request is based on EPA's determination that Arkansas has demonstrated that Crittenden County has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the entire Memphis TN-AR ozone nonattainment area has attained the 1997 8-hour ozone standard.

DATES: Comments must be received on or before February 16, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2009–0202, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: donaldson.guy@epa.gov.*
3. *Fax:* (214) 665–7263.
4. *Mail:* EPA–R06–OAR–2009–0202 Air Planning Section, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
5. *Hand Delivery or Courier:* Mr. Guy Donaldson, Chief, Air Planning Section, Air Planning Branch, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2009–0202. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Riley, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–8542; fax number 214–665–7263; e-mail address *riley.jeffrey@epa.gov.*

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I. What Proposed Actions Is EPA Taking?

EPA proposes several related actions, which are summarized below and described in greater detail throughout this notice of rulemaking:

(1) To redesignate Crittenden County, Arkansas to attainment for the 1997 8-hour ozone NAAQS. EPA proposes to determine that the bi-state Memphis, TN-AR Area has attained the 1997 8-hour ozone standard, and that the Crittenden County, Arkansas portion has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. The bi-state Memphis, TN-AR 1997 8-hour ozone area comprises Shelby County in Tennessee and Crittenden County in Arkansas. Today's proposal addresses only the Arkansas portion of the bi-state Memphis, TN-AR 1997 8-hour ozone area. EPA is now proposing to approve a request to change the legal designation of Crittenden County, Arkansas from nonattainment to attainment for the 1997 8-hour ozone NAAQS.

(2) To approve Arkansas' 1997 8-hour ozone maintenance plan into the Arkansas SIP, including the 2006 and 2021 motor vehicle emissions budgets (MVEB's) that are part of the maintenance plan. EPA has already made a finding of adequacy for the MVEBs (74 FR 21356). These MVEBs apply only to Crittenden County, Arkansas. MVEB's contained in the Tennessee submittal for Shelby County will be addressed in a separate action. EPA proposes to approve Arkansas' 1997 8-hour ozone maintenance plan for Crittenden County (such approval being

one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Memphis TN-AR area (of which Crittenden County is a part) in attainment of the 1997 8-hour ozone NAAQS through 2021.

II. What Is the Background for EPA's Proposed Actions?

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOC react in the presence of sunlight to form ground-level ozone. NO_X and VOC are precursors of ozone. The CAA establishes a process for air quality management through the NAAQS. EPA establishes NAAQS for criteria pollutants as the maximum level of air pollution allowed to protect public health and welfare.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This standard is more stringent than the previous 1-hour ozone standard. Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). (See, 69 FR 23857 (April 30, 2004) for further information.) Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I, "*Comparisons with the Primary and Secondary Ozone Standards*" states:

The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm.;

The CAA requires EPA to designate as nonattainment any area that was violating the 1997 8-hour ozone NAAQS based on the three most recent years of ambient air quality data. The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for ozone nonattainment areas. (Both are found in title I, part D.) Subpart 1 (which EPA refers to as "basic" nonattainment) contains general, less prescriptive, requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as "classified" nonattainment) provides more specific requirements for certain ozone nonattainment areas. Some 1997 8-hour ozone nonattainment areas are subject only to the provisions of subpart 1. Other 1997 8-hour ozone nonattainment areas are also subject to the provisions of subpart 2. Under EPA's Phase 1 1997 8-hour ozone implementation rule (69 FR 23857) (Phase 1 Rule), signed on April 15, 2004, and published April 30, 2004, an area was classified under subpart 2 based on its 1997 8-hour ozone design value (i.e., the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas are covered under subpart 1, based upon their 8-hour ambient air quality design value.

Shelby County, Tennessee was originally designated as a marginal nonattainment area for the 1-hour ozone standard on November 6, 1991 (56 FR 56694). Crittenden County, Arkansas was not part of the nonattainment area during the 1991 1-hour designations. On February 16, 1995 (60 FR 3352) Shelby County was redesignated as attainment for the 1-hour ozone standard and is considered to be a 1-hour maintenance area subject to a CAA section 175A maintenance plan for the 1-hour standard.

On April 30, 2004, EPA designated the Memphis, TN-AR Area (which then included Crittenden County, Arkansas) as a "moderate" 1997 8-hour ozone nonattainment area (see, 69 FR 23857, April 30, 2004). On July 15, 2004, pursuant to section 181(a)(4) of the CAA, the States of Tennessee and Arkansas submitted a petition to EPA Regions 4 and 6, requesting a downward reclassification of the Memphis TN-AR nonattainment area from "moderate" to "marginal" for the 1997 8-hour ozone standard. The petition was based on the area's "moderate" design value of .092 ppm being within five percent of the maximum "marginal" design value of 0.091 ppm. Pursuant to Section 181(a)(4), areas with design values within five percent of the standard may request a reclassification under specific circumstances. Factors for EPA to consider as part of such a request are described in section 181(a)(4) of the CAA. The petition for reclassification to "marginal" was approved by EPA, and became effective on November 22, 2004 (see, 69 FR 56697, September 22, 2004). As a result of the downward classification, the new attainment date for the Memphis TN-AR "marginal" nonattainment area was set at June 15, 2007, consistent with the CAA, with an attainment determination to be based on 2004–2006 air quality data.

Air quality data monitored for the Memphis TN-AR nonattainment area subsequently showed that the area did not attain the 1997 8-hour ozone NAAQS by the June 15, 2007, deadline. Section 181(b)(2)(A) of the CAA provides that, when EPA finds that an area failed to attain by the applicable date, the area is reclassified by operation of law to the higher of: The next higher classification or the classification applicable to the area's ozone design value at the time of the required notice under section 181(b)(2)(B). The next higher classification for the Memphis TN-AR Nonattainment Area was "moderate." On March 28, 2008, the Memphis TN-AR nonattainment area was reclassified as "moderate" (73 FR 16547). EPA set a deadline of March 1, 2009 for the State to submit the moderate area SIP provisions required under the area's new classification (73 FR 16550).

In 2008, the ambient ozone data for the Memphis TN-AR Area showed attainment of the 1997 8-hour ozone NAAQS, using data from the 3-year period of 2006–2008. On February 24, 2009, Arkansas requested redesignation of Crittenden County, Arkansas to attainment for the 1997 8-hour ozone NAAQS. The redesignation request included three years of complete, quality-assured ambient air quality data for the ozone seasons (*March 1st thru November 30th*) of 2006–2008, indicating that the 1997 8-hour ozone NAAQS has been achieved for the entire Memphis TN-AR Area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

III. What Are the Criteria for Redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation providing that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

EPA provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. "Ozone and Carbon Monoxide Design Value Calculations," Memorandum from Bill Laxton, Director, Technical Support Division, June 18,1990;
2. "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the "Calcagni Memorandum");
5. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. "Technical Support Documents (TSD's) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
10. "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Proposing These Actions?

On February 24, 2009, Arkansas requested redesignation of the Arkansas portion (Crittenden County) of the bi-state Memphis TN-AR 1997 8-hour ozone nonattainment area to attainment for the 1997 8-hour ozone standard. EPA's evaluation indicates that the bi-state Memphis Area has attained the standard and that Crittenden County has met the requirements for redesignation set forth in section 107(d)(3)(E), including the maintenance plan requirements under section 175A of the CAA. EPA is also announcing the status of its adequacy determination and proposing approval of the 2006 and 2021 NO_X and VOC MVEBs which are relevant to the requested redesignation.

V. What Is the Effect of EPA's Proposed Actions?

Approval of Arkansas' redesignation request would change the legal designation of Crittenden County for the 1997 8-hour ozone NAAQS found at 40 CFR part 81. Approval of Arkansas' request would also incorporate into the Arkansas SIP, a plan for Crittenden County for maintaining the 1997 8-hour ozone NAAQS in the area through 2021. This maintenance plan includes contingency measures to remedy future violations of the 1997 8-hour ozone NAAQS. The maintenance plan also establishes state NO_X and VOC MVEBs for Crittenden County. Table 1 identifies the state NO_X and VOC MVEBs for the year 2006 and 2021 for Crittenden County.

TABLE 1—CRITTENDEN COUNTY NO_X AND VOC MVEBS

[Summer season tons per day]

	2006	2021
NO_X	6.27	1.84
VOC	2.95	1.39

Approval of Arkansas' maintenance plan would also result in approval of the NO_X and VOC state MVEBs. Additionally, EPA is notifying the public of the status of its adequacy determination for the 2006 and 2021 NO_X and VOC state MVEBs pursuant to 40 CFR 93.118(f)(1).

VI. What Is EPA's Analysis of the Request?

EPA proposes to determine that the Crittenden County portion of the Memphis TN-AR 1997 8-hour ozone nonattainment area has attained the 1997 8-hour ozone standard, and that all other redesignation criteria have been met for that portion of the Memphis TN-AR area. The basis for EPA's determination for the area is discussed in greater detail below.

Criteria (1)—Crittenden County, Arkansas has attained the 1997 8-hour ozone NAAQS.

EPA proposes to determine that the Crittenden County portion of the Memphis TN-AR area has attained the 1997 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 1997 8-hour ozone NAAQS if the air quality in the nonattainment area meets the standard, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 1997 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the EPA Air Quality System (AQS). The monitors generally should

have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

EPA reviewed ozone monitoring data from ambient ozone monitoring stations in the Memphis TN-AR area for the ozone season from 2006–2008. This data has been quality assured and is recorded in AQS. The fourth high averages for 2006, 2007 and 2008, and the 3-year average of these values (*i.e.,* design values), are summarized in Table 2:

TABLE 2—ANNUAL 4TH MAX HIGH AND DESIGN VALUE CONCENTRATION FOR 1997 8-HOUR OZONE FOR THE MEMPHIS, TN-AR AREA

[In parts per million]

County	Shelby County, Tennessee		Crittenden County, Arkansas
Monitor (AQS ID)	Memphis-Frayser Boulevard (#47–157–0021)	Edmond Orgill Park (#47–157–1004)	Marion (#05–035–0005)
2006	0.083	0.084	0.089
2007	0.081	0.080	0.084
2008	0.084	0.077	0.074
Design Value	0.082	0.080	0.082

As discussed above, the design value for an area is the highest design value recorded at any monitor in the area. Therefore, the design value for the Memphis TN-AR Area is 0.082 ppm, which meets the standard as described above. Preliminary data from 2009 also indicate the area continues to attain the standard. The data from 2009 is considered preliminary because it has not yet completed full data certification. As discussed in more detail below, Arkansas has committed to continue monitoring in this area in accordance with 40 CFR part 58. The data submitted by Arkansas provides an adequate demonstration that Crittenden County (as part of the Memphis TN-AR area) has attained the 1997 8-hour ozone NAAQS.

Criteria (2)—Arkansas has a fully approved SIP under section 110(k) for Crittenden County and Criteria (5)—Arkansas has met all Applicable Requirements under Section 110 and part D of the CAA.

Below is a summary of how these two criteria were met.

EPA has determined that Arkansas has met all applicable SIP requirements for Crittenden County under section 110 of the CAA (general SIP requirements). EPA has also determined that the Arkansas SIP satisfies the criterion that it meet applicable SIP requirements under part D of title I of the CAA (including requirements specific to subpart 2 marginal 1997 8-hour ozone nonattainment areas) in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the area and that if applicable, they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements.

a. Crittenden County, Arkansas Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

The September 4, 1992, Calcagni Memorandum (see "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E). Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also, Michael Shapiro Memorandum, ("SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide NAAQS On or After November 15, 1992," September 17, 1993), and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. See, section 175A(c) of the CAA; *Sierra Club,* 375 F.3d 537 (7th Cir. 2004); see also, 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

General SIP requirements. Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (NSR permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the transport of air pollutants (NO_X SIP Call, Clean Air Interstate Rule (CAIR)). The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of

the designation of any one particular area in the state. Thus, we do not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements that are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.,* for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See, Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also, the discussion on this issue in the Cincinnati, Ohio redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania redesignation (66 FR 50399, October 19, 2001).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Therefore, as discussed above, for purposes of redesignation, they are not considered applicable requirements. We have reviewed the Arkansas SIP and have concluded it meets the general requirements of section 110, to the extent that these are applicable for redesignation. EPA has previously approved provisions in the Arkansas SIP addressing section 110 elements under the 1-hour ozone NAAQS (See, 40 CFR 52.172).

In a letter to EPA dated March 28, 2008, the State set forth its belief that the existing SIP is also sufficient to meet the CAA 110(a)(2) requirements for the 1997 8-hour ozone NAAQS. EPA has not yet approved this submission, but such approval is not necessary for purposes of redesignation.

Part D requirements. EPA has also determined that the Arkansas SIP meets applicable SIP requirements under part D of the CAA. Sections 172–176 of the CAA, found in subpart 1 of part D, set forth the basic nonattainment requirements applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification and applies to the Memphis TN–AR area. As discussed in Section II, Crittenden County was classified as marginal, and then reclassified to moderate. In the reclassification, EPA required that the necessary SIP revisions for the new moderate area requirements be submitted by both Tennessee and Arkansas as expeditiously as practicable, but no later than March 1, 2009. The request for redesignation was submitted by Arkansas on February 24, 2009, prior to the date that the moderate area requirements came due. Thus, for purposes of redesignation, only the marginal area requirements under Part D, subpart 2 are applicable to Crittenden County.

A SIP revision submitted to EPA by the State of Arkansas on November 19, 2007 satisfied the marginal area requirements set forth in section 182(a)(1). This submittal consisted of an emissions inventory for the year 2002 containing NO_X, VOC and carbon monoxide (CO) emissions as precursors to ozone formation, as well as a revision to State Regulation 19, Chapter 7 (Sampling, Monitoring, and Reporting Requirements), to require emissions statements. EPA approved this SIP revision on January 15, 2009 (74 FR 2383). Requirements set forth in sections 182(a)(2)(A) (Reasonably Available Control Technology Corrections) and 182(a)(2)(B) (Savings Clause for Vehicle Inspection and Maintenance) are not applicable to Crittenden County due to its status of attainment of the 1-hour ozone standard. Requirements set forth in section 182(a)(2)(C) (Permit Programs) are discussed in the *NSR Requirements* section of this notice.

In addition to the fact that only the marginal classification part D requirements became due prior to submission of the redesignation request and therefore are applicable for purposes of redesignation, EPA believes it is reasonable to interpret the conformity requirements as not requiring approval prior to redesignation.

Section 176 Conformity Requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. *See, Wall* v. *EPA,* 265 F.3d 426, 438–40 (6th Cir. 2001) (upholding this interpretation). See also, 60 FR 62748 (December 7, 1995, Tampa, Florida). Although Crittenden County does not currently have fully approved conformity rules, a Memorandum of Agreement outlining interagency consultation procedures is in place for transportation conformity purposes.

NSR Requirements. Arkansas' permitting requirements for major sources in or impacting upon nonattainment areas are set forth in "Regulation No. 31—Nonattainment New Source Review Requirements." On July 3, 2006, Arkansas submitted Regulation No. 31 to address the marginal Nonattainment New Source Review (NNSR) permitting requirements in Crittenden County, and EPA approved the submittal on April 12, 2007 (72 FR 18394). This regulation applies to the construction and modification of any major stationary source of air pollution in a nonattainment area, as required by part D of Title I of the Act. Regulation No. 31 also includes provisions that implement EPA's designation of Crittenden County as an Economic Development Zone (EDZ) subject to the requirements of Section 173(a)(1)(B) of the Act. These provisions establish VOC and NO_X emissions caps and provide for the Director of ADEQ to grant growth allowances to affected sources in lieu of meeting the NNSR offset requirement. Arkansas has maintained that sources locating to the Memphis area will continue to undergo new source review requirements and existing source control will continue under the NNSR/EDZ program until Crittenden County is redesignated to attainment.

Upon redesignation, however, the identification of Crittenden County as a section 173 EDZ expires under federal law. The rules that apply for the 1997 8-hour ozone standard after

redesignation would be those contained in the Prevention of Significant Deterioration (PSD) SIP program. The State must reapply for EDZ status should Crittenden County be designated nonattainment under a revised 8-hour primary ozone standard. In any event, EPA notes that fully approved NSR is not required for redesignation to attainment as long as PSD applies after redesignation, and the area has shown it can attain and maintain without nonattainment NSR.

EPA has also determined that areas being redesignated need not comply with the requirement that a nonattainment NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without a part D NSR program in effect since PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment."

Arkansas in its submittal for Crittenden County showed that sources locating to the Crittenden area will be subject to PSD requirements and has demonstrated that Crittenden County will be able to maintain the standard without a part D nonattainment NSR program in effect. Therefore, Arkansas need not have a fully approved part D NSR program prior to approval of the redesignation request. Arkansas's PSD program will become effective in Crittenden County upon redesignation to attainment. See, rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorraine, Ohio (61 FR 20458, 20469–70, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Thus, EPA believes that Crittenden County, Arkansas has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of the CAA.

b. Crittenden County, Arkansas Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the applicable Arkansas SIP for Crittenden County, under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (*see* Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall,* 265 F.3d 426, at 438) plus any additional measures it may approve in conjunction with a redesignation action. See, 68 FR 25426 (May 12, 2003) and citations therein.

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that since the moderate area part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, they also are not applicable requirements for purposes of redesignation. As set forth above, the area has met all other applicable requirements for purposes of redesignation under its prior marginal classification.

Criteria (3)—The air quality improvement in the Memphis TN-AR 1997 8-hour Ozone Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable federal air pollution control regulations and other permanent and enforceable reductions.

EPA believes that Arkansas has demonstrated that the observed air quality improvement in the Memphis-Crittenden County Nonattainment Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state adopted measures. Additionally, new emissions control programs for fuels and motor vehicles will help ensure a continued decrease in emissions throughout the region.

Because Crittenden County is itself largely rural in nature, measured reductions in ozone concentrations in and around Crittenden County are largely attributable to permanent and enforceable reductions from emission sources of VOCs and NO_X in the Memphis area. There were reductions in Crittenden County. Table 3 summarizes several of the measures adopted that resulted in emissions reductions in Crittenden County.

TABLE 3—CRITTENDEN COUNTY EMISSION REDUCTIONS PROGRAMS

Mobile Sources
○ Tier 2 Fuel and Vehicle Emission Standards.
○ Federal Motor Vehicle Control Program.
○ Heavy Duty Diesel Rule (2007 Highway Rule).

TABLE 3—CRITTENDEN COUNTY EMISSION REDUCTIONS PROGRAMS—Continued

State and Local Measures
○ Stage I Vapor Recovery.
○ Proform Company, LLC closure, air permit voided.
○ CIBA Corporation reclassified to minor source, MACT standard modifications.
Additional Voluntary Reductions
○ Diesel Emissions Reduction Act—ADEQ received State Clean Diesel Grant in October 2008.
○ Retrofit of city and county (21 on-road, 12 non-road trucks) w/diesel oxidation catalyst.
○ Retrofit of 50 school buses w/diesel oxidation catalyst.
○ Retrofit of 12 refuse trucks w/diesel oxidation catalyst.
○ 196 California Air Resources Board certified gas cans exchanged in Crittenden County.
○ Truck stop electrification (equipped 65 parking spaces in Crittenden County).

Emission reductions in Shelby County as a result of federal motor vehicle controls from 2002 to 2006 are estimated to be 7 tons per day of VOCs and 28 tons per day of NO_X. Additionally, continuing new emissions control programs will help to ensure a further decrease in emissions throughout the area in the future. Crittenden County is expected to receive upwind benefits in emission reductions.

Regarding point source emissions, the Tennessee Valley Authority's (TVA) Allen Steam Plant located in Shelby County operates three coal-fired boilers. As a result of EPA's "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Region Transport of Ozone" (NO_X SIP Call), TVA began operation of two selective catalytic reduction (SCR) control units during the 2002 ozone control season, May 1st through September 30th. The third SCR began operating in 2003. Ozone season daily NO_X reductions in the area as a result of these controls equal approximately 45 tons per day.

These are substantial reductions when compared to the remaining total NO_X inventory from all sources in Shelby and Crittenden Counties in 2006 of 116.81 tons per day (99.09 tons per day in Shelby County and 17.72 tons per day in Crittenden County) and a VOC inventory of 128.67 tons per day (99.11 tons per day in Shelby County and 29.56 tons per day in Crittenden County).

Because of the uncertainty introduced by the recent court actions affecting the CAIR Rule and NO_X SIP Call, EPA undertook an analysis of the changes in NO_X expected across a broader region. In particular, EPA reviewed available projections of NO_X emissions from nearby states from 2002 to 2018. These values are presented in Tables 4 and 5:

TABLE 4—2002 BASE ANNUAL EMISSION INVENTORY SUMMARY FOR NO_X*

States	EGU point	Non-EGU point	Non-road	area	Mobile	Fires	Total
AR	24,722	47,698	62,472	21,700	141,894	5,492	303,978
KY	201,928	38,434	104,571	39,507	156,417	534	541,391
LA	111,703	199,218	114,711	93,069	180,664	6,942	706,307
MS	40,433	61,533	88,787	4,200	111,914	308	307,175
MO	145,438	36,144	99,306	32,435	189,852	2,442	505,617
TN	152,137	64,344	96,827	17,844	238,577	217	569,946
Total	676,361	447,371	566,674	208,755	1,019,318	15,935	2,934,414

* From Tennessee Regional Haze SIP, Appendix D, page D.3–5 and support table for Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation Plans, page 2–40, figure 2–4.

TABLE 5—2018 BASE ANNUAL EMISSION INVENTORY SUMMARY FOR NO_X*

States	EGU point	Non-EGU point	Non-road	Area	Mobile	Fires	Total
AR	34,938	36,169	34,305	25,672	33,640	5,600	170,324
KY	64,378	41,034	79,392	44,346	52,263	714	282,127
LA	44,485	225,748	106,685	114,374	44,806	6,969	543,067
MS	21,535	61,252	68,252	4,483	30,619	1,073	187,214
MO	83,181	51,489	59,625	35,213	50,861	2,442	282,811
TN	31,715	62,519	70,226	19,597	69,385	405	253,847
Total	280,232	478,211	418,485	243,685	281,574	17,203	1,708,390

* From Tennessee Regional Haze SIP, Appendix D, page D.3–5 and support table for Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation Plans, page 2–40, figure 2–4.

From 2002 to 2018 NO_X emissions are projected to decrease in the region by 1,215,024 tons/year or 41.4 percent in all. EGU NO_X anticipated decreases due to CAIR and the NO_X SIP Call were projected to be 198,150 tons per year. However, the largest source in this region remains the motor vehicle sector, which is projected to decrease 737,744 tons per year. Hence even without EGU controls on NO_X emissions, total NO_X emissions are projected to continually decrease throughout the maintenance period. As is noted in the following paragraph, the NO_X SIP Call will remain in effect.

The NO_X SIP Call requires states to make significant, specific emissions reductions. It also provided a mechanism, the NO_X Budget Trading Program, which states could use to achieve those reductions. When EPA promulgated CAIR, it discontinued (starting in 2009) the NO_X Budget Trading Program, 40 CFR 51.121(r), but created another mechanism—the CAIR ozone season trading program—which states could use to meet their SIP Call obligations, 70 FR 25289–90. EPA notes that a number of states, when submitting SIP revisions to require sources to participate in the CAIR ozone season trading program, removed the SIP provisions that required sources to participate in the NO_X Budget Trading Program. In addition, because the provisions of CAIR including the ozone season NO_X trading program remain in place during the remand (*North Carolina* v. *EPA*, 550 F.3d 1176 (DC Cir. Dec. 23, 2008)), EPA is not currently administering the NO_X Budget Trading Program. Nonetheless, all states regardless of the current status of their regulations that previously required participation in the NO_X Budget Trading Program, will remain subject to all of the requirements in the NO_X SIP Call even if the existing CAIR ozone season trading program is withdrawn or altered. In addition, the anti-backsliding provisions of 40 CFR 51.905(f) specifically provide that the provisions of the NO_X SIP Call, including the statewide NO_X emission budgets, continue to apply after revocation of the 1-hr standard.

All NO_X SIP Call states have SIPs that currently satisfy their obligations under the SIP Call, the SIP Call reduction requirements are being met, and EPA will continue to enforce the requirements of the NO_X SIP Call even after any response to the CAIR remand. For these reasons, EPA believes that regardless of the status of the CAIR program, the NO_X SIP Call requirements can be relied upon in demonstrating maintenance. Thus, the NO_X SIP Call adds to assurances that the area will remain in attainment.

These regional projections of emissions data have been prepared only through 2018. However, since motor vehicle and off road emissions continue to decrease long after a rule is adopted as the engine population is gradually replaced by newer engines, it is reasonable to assume that this projected decrease in regional NO_X emissions from mobile and non-road sources should continue through 2020 and assure that ozone in the Memphis region will continue to decline throughout the 10 year maintenance period. Hence we believe the projected regional NO_X reductions are adequate to assure that the Memphis region will continue demonstrating maintenance throughout the 10 year maintenance period.

Criteria (4)—The area has a fully approved maintenance plan pursuant to section 175A of the CAA.

In conjunction with its request to redesignate Crittenden County, Arkansas (as part of the Memphis TN-AR 1997 8-hour ozone nonattainment area) to attainment, Arkansas submitted a SIP revision to provide for the maintenance of the 1997 8-hour ozone NAAQS for at least 10 years after the

effective date of redesignation to attainment.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State of Arkansas must submit a revised maintenance plan, which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni Memorandum provides additional guidance on the content of a maintenance plan. The Calcagni Memorandum explains that an ozone maintenance plan should address five requirements: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, Arkansas' maintenance plan includes all the necessary components and is approvable as part of the redesignation request.

b. Attainment Emissions Inventory

In coordination with Shelby County, Tennessee, Arkansas selected 2006 "the attainment year" for the purposes of demonstrating attainment of the 1997 8-hour ozone NAAQS. This attainment inventory identifies the level of emissions in the area, which is sufficient to attain the 1997 8-hour ozone standard. Arkansas began development of this attainment inventory by first developing a baseline emissions inventory for the Memphis area. The year 2006 was chosen as the base year for developing a comprehensive ozone precursor emissions inventory for which projected emissions could be developed for 2009, 2012, 2015, 2017, 2018 and 2021. The projected inventory estimates emissions forward to 2021, which is beyond the 10-year interval required in Section 175(A) of the CAA. Non-road mobile emissions estimates were based on the EPA's NONROAD2005 model. On-road mobile source emissions were calculated using EPA's MOBILE6.2 emission factors model. The 2006 VOC and NO_X emissions, as well as the emissions for other years, for Crittenden County were developed consistent with EPA guidance, and are summarized in Tables 6 and 7 in the following subsection.

c. Maintenance Demonstration

The February 24, 2009 final submittal includes a maintenance plan for Crittenden County. This demonstration:

(i) Shows compliance and maintenance of the 1997 8-hour ozone standard by providing information to support the demonstration that current and future emissions of VOC and NO_X remain at or below attainment year 2006 emissions levels. The year 2006 was chosen as the attainment year because it is one of the most recent three years (*i.e.*, 2006, 2007, and 2008) for which Crittenden County has clean air quality data for the 1997 8-hour ozone standard.

(ii) Uses 2006 as the attainment year and includes future emission inventory projections for 2009, 2012, 2015, 2017, 2018, and 2021.

(iii) Identifies an "out year," at least 10 years (and beyond) after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, state NO_X and VOC MVEBs were established for the last year (2021) of the maintenance plan. Additionally, Arkansas chose, through interagency consultation, to establish MVEBs for the year 2006 for NO_X and VOC. EPA has already notified the public of its adequacy determination for these 2006 and 2021 MVEBs pursuant to 40 CFR 93.118(f)(1) (74 FR 21356).

(iv) Provides the following actual and projected emissions inventories, in tons per day (tpd) for Crittenden County, Arkansas. See, Tables 6 and 7.

TABLE 6—CRITTENDEN COUNTY VOC EMISSIONS

[Summer season tons per day]

Source category	2006	2009	2012	2015	2017	2018	2021
Point	2.13	2.17	2.27	2.36	2.43	2.47	2.62
Area	21.32	21.30	21.49	21.68	21.80	21.89	22.14
On-road *	3.12	2.63	2.30	1.97	1.75	1.68	1.50
Non-road **	2.99	2.85	2.60	2.36	2.19	2.14	1.97
Total	29.56	28.94	28.65	28.36	28.17	28.18	28.23

* Calculated using MOBILE 6.2.
** Calculated using NONROAD2005c.

TABLE 7—CRITTENDEN COUNTY AREA NO_X EMISSIONS

[Summer season tons per day]

Source category	2006	2009	2012	2015	2017	2018	2021
Point	1.09	1.15	1.22	1.29	1.34	1.37	1.45
Area	0.90	0.90	0.91	0.91	0.92	0.92	0.93
On-road *	6.27	5.13	4.12	3.12	2.45	2.30	1.84
Non-road **	9.46	9.38	9.10	8.82	8.63	8.39	7.66
Total	17.72	16.56	15.35	14.14	13.34	12.97	11.88

* Calculated using MOBILE 6.2.
** Calculated using NONROAD2005c.

Although the Arkansas SIP submission provided NO_X and VOC emissions for the attainment and future years for Crittenden County, EPA has considered emissions for the entire Memphis TN-AR area for demonstration of maintenance. Maintenance is demonstrated if the future year NO_X and VOC emission for the entire area remains at or below the level of the attainment year emissions. Both Tennessee and Arkansas chose 2006 for their "attainment year" for this area. It is important to note that this area is composed of two counties (Shelby County, Tennessee and Crittenden County, Arkansas) for which emissions should be considered. The area and point sources for both counties indicate a steady NO_X and VOC emission increase. However, large projected reductions in mobile source emissions more than compensate for this relatively small increase. Moreover, EPA's review of the entire area's total inventory for NO_X and VOCs indicate that future total area emissions are below the level of the total area attainment year emissions. Therefore, EPA believes that the 1997 8-hour ozone standard will be maintained in the future for the Memphis TN-AR area.

d. Monitoring Network

There are currently three monitors measuring ozone in the Memphis TN-AR Area (two in Shelby County, Tennessee and one in Crittenden County, Arkansas). ADEQ has committed, in the maintenance plan, to continue operation of the monitor in Crittenden County in compliance with 40 CFR part 58, and has addressed the requirement for monitoring.

e. Verification of Continued Attainment

Arkansas has the legal authority to enforce and implement the requirements of the ozone maintenance plan. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

Arkansas will track the progress of the maintenance plan by performing future reviews of triennial emissions inventory for Crittenden County using the latest emissions factors, models and methodologies. For these periodic inventories, Crittenden County will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions appear to have changed substantially, Arkansas will re-project emissions.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the February 24, 2009, submittal, Arkansas affirms that all programs instituted by the State and EPA will remain enforceable, and that sources are prohibited from reducing emissions controls following the redesignation of the area. The contingency plan included in the submittal provides a two-phase approach to tracking and triggering mechanisms to determine when contingency measures are needed and a process of developing and adopting appropriate control measures.

Phase I—Potential increases in local emissions specifically, when the certified triennial emissions inventory for VOCs or NO_X exceed the 2006 base year attainment inventory by ten percent or more and at least one documentation of an exceedance of the 1997 ozone NAAQS at any nonattainment monitor in the area based on certified data during the most recent monitoring season.

In the event this occurs, ADEQ will conduct an investigation into the cause to determine if the data are due to reporting errors or a non-recurring variance in the local emission profile. The investigation will be coordinated with the Memphis/Shelby County Health Department and the State of Tennessee as appropriate. If the investigation reveals the data are valid, ADEQ will expand voluntary programs and develop regulations to address the concerns. All regulatory programs will be implemented within 24 months and include a selection of measures shown in Table 8.

Phase II—Addresses a monitored violation of the 1997 ozone NAAQS in the nonattainment area according to certified data during the most recent monitoring season.

In the event this occurs, ADEQ will conduct an investigation to determine if the cause of the violation can be attributed to errors or clearly identifiable exceptional events outside of local control. ADEQ will solicit the involvement of all State agencies having jurisdiction in the surrounding area. If the investigation reveals the data are valid, provisions will be adopted and implemented within 24 months of the monitored violation and include a selection of measures shown in Table 8.

TABLE 8—CRITTENDEN COUNTY CONTINGENCY MEASURE OPTIONS

- Reasonable Available Control Technology (RACT) for VOC and NO_X sources.
- Anti-idling ordinances.
- Open burning restrictions during peak ozone season (May–September).
- Diesel retrofit/replacement initiatives.
- Programs or incentives to decrease motor vehicle use.
- Trip reduction ordinances.
- Implementation of a program to require additional emissions reductions from stationary sources.
- Implementation of a program to enhance inspection of stationary sources to ensure emissions control equipment is functioning properly.
- Implementation of fuel programs, including incentives for alternative fuels.
- Employer-based transportation management plans, including incentives.
- Programs to limit or restrict vehicle use in downtown areas, or other areas of high emissions concentration, particularly during periods of peak use.
- Programs for new construction and major reconstruction of paths for use by pedestrians or by non-motorized vehicles when economically feasible and in the public interest.
- Other currently unspecified control measures that might prove to be advantageous.

EPA believes that the maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan SIP revision submitted by Arkansas meets the requirements of section 175A of the CAA and is approvable.

VII. What Is EPA's Analysis of Arkansas' Proposed State NO_X and VOC MVEBs for Crittenden County, Arkansas?

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (reasonable further progress and attainment demonstration) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, an MVEB is established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. See 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

After interagency consultation with the transportation partners for Crittenden County, Arkansas has elected to develop state MVEBs for VOC and NO_X. Arkansas has developed these MVEBs, as required, for the last year of the Crittenden County maintenance plan, 2021, and a base year of 2006. The NO_x and VOC state MVEBs for Crittenden County are defined in Table 9 below.

TABLE 9—CRITTENDEN COUNTY NO_X AND VOC MVEBS

[Summer season tons per day]

	2006	2021
NO_X	6.27	1.84
VOC	2.95	1.39

Through this rulemaking, EPA is proposing to fully approve the 2006 and 2021 MVEBs for VOC and NO_X for Crittenden County into the SIP because EPA has determined that the area maintains the 1997 8-hour ozone standard with the emissions at the levels of the budgets. EPA has already made a finding of adequacy for these MVEBs (74 FR 21356), and they must be used for future conformity determinations.

VIII. What Is the Status of EPA's Adequacy Determination for the Proposed State NO_X and VOC MVEBs for the Years 2006 and 2021 for Crittenden County, Arkansas?

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must "conform" to (*i.e.,* be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. "Conformity" to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. If a transportation plan does not "conform," most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with a maintenance plan for that NAAQS.

When reviewing submitted "control strategy" SIPs or maintenance plans containing MVEBs, EPA may affirmatively find the MVEB contained therein "adequate" for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB must be used by state and Federal agencies in determining whether proposed transportation projects "conform" to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining "adequacy" of an MVEB are set out in 40 CFR 93.118(e)(4). The process for determining "adequacy" consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999, guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." This guidance was finalized in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change," on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for MVEBs is available in the proposed rule entitled, "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes," 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, Arkansas' maintenance plan submission includes VOC and NO_X state MVEBs for Crittenden County for the years 2006 and 2021. EPA reviewed both the VOCs and NO_X state MVEBs through the adequacy process. The Arkansas SIP submission, including the Crittenden County VOC and NO_X MVEBs, was open for public comment on EPA's adequacy Web site on March 11, 2009, found at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.* The EPA public comment period on adequacy of the 2006 and 2021 VOC and NO_X state MVEBs for Crittenden County, Arkansas closed on April 10, 2009. EPA did not receive any comments on the adequacy of the MVEBs, nor did EPA receive any requests for the SIP submittal. On May 7, 2009, EPA made a finding of adequacy for the MVEBs included in this 8-hour ozone maintenance plan. EPA provided a separate adequacy posting for the MVEBs in association with Shelby County, Tennessee. The status of the adequacy process for the Shelby County MVEBs is discussed in EPA's separate action related to Shelby County (74 FR 58277).

The new MVEBs for VOC and NO_X must be used for future transportation conformity determinations. For required regional emissions analysis years that involve the years 2006 through 2020, the applicable budgets for the purposes of conducting transportation conformity will be the new 2006 MVEBs; for required regional emissions analysis years that involve 2021 or beyond, the applicable budgets will be the new 2021 MVEBs. The 2006 and 2021 MVEBs are defined in section VII of this proposed rulemaking.

IX. Proposed Action on the Redesignation Request and Maintenance Plan SIP Revision Including Proposed Approval of the 2006 and 2021 State NO_X and VOC MVEBs for Crittenden County, Arkansas

EPA is proposing to make the determination that Crittenden County, Arkansas has met the criteria for redesignation from nonattainment to attainment for the 1997 8-hour ozone NAAQS. Further, EPA is proposing to approve Arkansas' February 24, 2009, SIP submittal including the redesignation request for Crittenden County, Arkansas (as part of the Memphis TN-AR 1997 8-hour ozone area). EPA's action with respect to the redesignation request for the Shelby County portion of the 1997 8-hour ozone area was proposed in a separate rulemaking (74 FR 59943). EPA believes that the redesignation request and complete quality-assured monitoring data demonstrate that the Memphis TN-AR area has attained, and will continue to maintain, the 1997 8-hour ozone standard, and that the Crittenden County portion of the area has met the other requirements for redesignation to attainment under CAA sections 107(d)(3)(E) and 175A.

EPA is also proposing to approve the maintenance plan for Crittenden County included as part of the February 24, 2009, SIP revision, including state NO_X and VOC MVEBs for 2006 and 2021. EPA has already made a finding of adequacy for the MVEBs included in this 8-hour ozone maintenance plan (74 FR 21356). EPA believes that the redesignation request and maintenance plan meet the requirements of CAA sections 107(d)(3)(E) and 175A.

X. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely affects the status of a geographical area, does not impose any new requirements on sources, or allow a state to avoid adopting or implementing other requirements and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997); because it is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: January 5, 2010.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2010–586 Filed 1–13–10; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2009–0027; 92220–1113–0000; ABC Code: C3]

RIN 1018–AW27

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Shovelnose Sturgeon as Threatened Due to Similarity of Appearance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS), announce the reopening of the comment period for our September 22, 2009, proposed rule to treat the shovelnose sturgeon (*Scaphirhynchus platorynchus*) as threatened under the "Similarity of Appearance" provisions of the Endangered Species Act of 1973, as amended (Act). We also announce the location and time of a public hearing to receive public comments on the proposal. If you have previously submitted comments, please do not resubmit them because we have already

incorporated them in the public record and will fully consider them in our final decision.

DATES: During this reopened comment period, we will consider comments received or postmarked on or before February 4, 2010. We may not consider any comments we receive after the closing date. We will hold a public hearing on the proposed rule on January 28, 2010. For more information, see the "Public Hearing" section below.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R6–ES–2009–0027.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R6–ES–2009–0027; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.
- *At the public hearing.* For more information, see the "Public Hearing" section below.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (*see* the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Pallid Sturgeon Recovery Coordinator, Billings Field Office, 2900 4th Avenue North, Room 301, Billings, MT 59101 (telephone 406/247–7365; facsimile 406/247–7364). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800/877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

On September 22, 2009, we published a proposed rule (74 FR 48215) to treat the shovelnose sturgeon (*Scaphirhynchus platorynchus*) as threatened under the "Similarity of Appearance" provisions of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). The shovelnose sturgeon (*Scaphirhynchus platorynchus*) and the endangered pallid sturgeon (*Scaphirhynchus albus*) are difficult to differentiate in the wild and inhabit overlapping portions of the Missouri and Mississippi River basins. Four States where the two species commonly coexist allow for commercial fishing of shovelnose sturgeon, which is in demand for its roe (eggs sold as caviar). The close resemblance in appearance between the two species creates substantial difficulty for fishermen, State regulators, and law enforcement personnel in differentiating between shovelnose and pallid sturgeon, both whole specimens and parts (including flesh and roe). This similarity of appearance has resulted in the documented take of pallid sturgeon and is a threat to the species. The determination that the shovelnose sturgeon should be treated as threatened due to similarity of appearance will substantially facilitate law enforcement actions to protect and conserve pallid sturgeon.

Listing the shovelnose sturgeon as threatened under the "similarity of appearance" provisions of the Act will extend take prohibitions to shovelnose sturgeon, shovelnose-pallid sturgeon hybrids, or their roe when associated with a commercial fishing activity. All otherwise legal activities within the identified areas that may involve shovelnose sturgeon and shovelnose-pallid sturgeon hybrids and which are conducted in accordance with applicable State, Federal, Tribal, and local laws and regulations will not be considered take under this proposed regulation.

Under the special 4(d) rule, take would only be prohibited where shovelnose and pallid sturgeons' range commonly overlap. Specifically, this includes the portion of the Missouri River in Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, and South Dakota; the portion of the Mississippi River in Arkansas, Illinois (downstream from Melvin Price Locks and Dam), Kentucky, Louisiana, Mississippi, Missouri (downstream from Melvin Price Locks and Dam), and Tennessee; the Platte River downstream of Elkhorn River confluence in Nebraska; the portion of the Kansas River downstream from Bowersock Dam in Kansas; the Yellowstone River downstream of the Bighorn River confluence in North Dakota and Montana; and the Atchafalaya River in Louisiana.

The proposed designation of similarity of appearance under section 4(e) of the Act would not extend any other protections of the Act, such as the requirements to designate critical habitat, the recovery planning provisions under section 4(f), or consultation requirements for Federal agencies under section 7, to shovelnose sturgeon. Therefore, should the proposal become final, Federal agencies would not be required to consult with us on activities they authorize, fund, or carry out that may affect shovelnose sturgeon.

Additional information on the pallid sturgeon and the proposal, including a copy of the **Federal Register** notice, can be found at: *http://www.fws.gov/mountain-prairie/missouririver/moriver_pallidsturgeon.htm.*

Public Comments

You may submit your comments and materials concerning the proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. If you submit a comment via *http://www.regulations.gov,* your entire comment—including your personal identifying information—will be posted on the Web site. If you submit a hardcopy comment 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 comments on *http://www.regulations.gov.*

We will take into consideration all comments and any additional information we received during this reopened comment period on the proposed rule during the preparation of a final rulemaking. Accordingly, the final decision may differ from the proposal.

Public Hearing

Section 4(b)(5)(E) of the Act requires that we hold one public hearing on the proposal, if requested. Our September 22, 2009 proposal required written requests for a public hearing to be submitted by November 6, 2009 (74 FR 48215). Prior to this deadline, we received several requests to hold or inform the public about informational meetings or public hearings.

Accordingly, we have scheduled an informational meeting (a brief presentation about the proposed rule with a question-and-answer period) from 4:30 p.m. to 6 p.m., and a public hearing from 6:30 p.m. to 8:30 p.m., on January 28, 2010, on the 3rd floor of the University Center, Southeast Missouri State University, One University Plaza, Cape Girardeau, MO 65307 (573–651–2282).

Anyone wishing to make an oral statement at the public hearing for the record is encouraged to provide a written copy of their statement to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Speakers can sign up only at the informational meeting and hearing. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us. If you have any questions concerning the

public hearing or need reasonable accommodations to attend and participate in the public hearing, please contact Jane Ledwin at (573) 234–2132, extension 109, as soon as possible, but no later than 1 week before the hearing date, to allow sufficient time to process requests. Information regarding the proposal is available in alternative formats upon request.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 29, 2009.

Jane Lyder,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–565 Filed 1–13–10; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 75, No. 9
Thursday, January 14, 2010

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 HEALTH AND HUMAN SERVICES

Office of Inspector General

Publication of OIG Updated Special Fraud Alert on Telemarketing by Durable Medical Equipment Suppliers

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice sets forth the recently issued OIG Updated Special Fraud Alert addressing telemarketing by durable medical equipment (DME) suppliers. For the most part, OIG Special Fraud Alerts address national trends in health care fraud, including potential violations of the anti-kickback statute for Federal health care programs. This Updated Special Fraud Alert updates the Special Fraud Alert on Telemarketing by Durable Medical Equipment Suppliers originally issued in March 2003 and continues to highlight the statutory provision prohibiting DME suppliers from making unsolicited telephone calls to Medicare beneficiaries regarding the furnishing of a covered item.

FOR FURTHER INFORMATION CONTACT: James A. Cannatti III, Senior Counsel, Office of Counsel to the Inspector General, (202) 205–0007.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Inspector General (OIG) was established at the Department of Health and Human Services by Congress in 1976 to identify and eliminate fraud, waste, and abuse in the Department's programs and to promote efficiency and economy in departmental operations. OIG carries out this mission through a nationwide program of audits, investigations, and inspections. To reduce fraud and abuse in the Federal health care programs, including Medicare and Medicaid, OIG actively investigates fraudulent schemes that are used to obtain money from these programs and, when appropriate, issues Special Fraud Alerts that identify practices in the health care industry that are particularly vulnerable to abuse.

OIG issues Special Fraud Alerts based on information it obtains concerning particular fraudulent or abusive practices within the health care industry. Special Fraud Alerts are intended for widespread dissemination to the health care provider community, as well as those charged with administering the Medicare and Medicaid programs. To date, OIG has published in the **Federal Register** the texts of 12 previously issued Special Fraud Alerts.[1]

This Updated Special Fraud Alert updates the Special Fraud Alert on Telemarketing by Durable Medical Equipment Suppliers originally issued in March 2003 and continues to focus on section 1834(a)(17) of the Social Security Act, which prohibits suppliers of DME, except under limited circumstances, from making unsolicited telephone calls to Medicare beneficiaries regarding the furnishing of a covered item, and possible telemarketing practices by DME suppliers through the use of independent marketing firms.

II. Updated Special Fraud Alert: Telemarketing by Durable Medical Equipment Suppliers (November 2009; Original Published March 2003)

Section 1834(a)(17)(A) of the Social Security Act prohibits suppliers of durable medical equipment (DME) from making unsolicited telephone calls to Medicare beneficiaries regarding the furnishing of a covered item, except in three specific situations: (i) The beneficiary has given written permission to the supplier to make contact by telephone; (ii) the contact is regarding a covered item that the supplier has already furnished the beneficiary; or (iii) the supplier has furnished at least one covered item to the beneficiary during the preceding 15 months. Section 1834(a)(17)(B) specifically prohibits payment to a supplier that knowingly submits a claim generated pursuant to a prohibited telephone solicitation. Accordingly, such claims for payment are false and violators are potentially subject to criminal, civil, and administrative penalties, including exclusion from Federal health care programs.

The Office of Inspector General (OIG) has received credible information that some DME suppliers continue to use independent marketing firms to make unsolicited telephone calls to Medicare beneficiaries to market DME, notwithstanding the clear statutory prohibition. Suppliers cannot do indirectly that which they are prohibited from doing directly. OIG has also been made aware of instances when DME suppliers, notwithstanding the clear statutory prohibition, contact Medicare beneficiaries by telephone based solely on treating physicians' preliminary written or verbal orders prescribing DME for the beneficiaries. A physician's preliminary written or verbal order is not a substitute for the requisite written consent of a Medicare beneficiary.

Except in the three specific circumstances described in the statute, section 1834(a)(17)(A) prohibits unsolicited telemarketing by a DME supplier to Medicare beneficiaries, whether contact with a beneficiary is made by the supplier directly or by another party on the DME supplier's behalf. Moreover, a DME supplier is responsible for verifying that marketing activities performed by third parties with which the supplier contracts or otherwise does business do not involve prohibited activity and that information purchased from such third parties was neither obtained, nor derived, from prohibited activity. If a claim for payment is submitted for items or services generated by a prohibited solicitation, both the DME supplier and the telemarketer are potentially liable for criminal, civil, and administrative penalties for causing the filing of a false claim, as well as criminal and civil penalties for using interstate telephone calls in furtherance of schemes to defraud.

What To Do If You Have Information About Fraud and Abuse Involving Medicare or Medicaid Programs

If you have information about DME suppliers or telemarketers engaging in any of the activities described above, contact any of the regional offices of OIG, U.S. Department of Health and

[1] All OIG Special Fraud Alerts are available on the OIG Web site at: *http://oig.hhs.gov/fraud/fraudalerts.asp.*

Human Services, at the following locations:

Regional offices	States served	Telephone
Boston	MA, CT, ME, NH, RI, VT	617–565–2664
New York	NY, NJ, PR, VI	212–264–1691
Philadelphia	PA, DE, DC, MD, VA, WV	215–861–4586
Atlanta	AL, GA, KY, NC, SC, TN, MS	404–562–7603
Chicago	IL, IN, MI, MN, OH, WI	312–353–2740
Dallas	TX, LA, AR, OK, NM	214–767–8406
Kansas City	MO, ND, SD, MT, KS, IA, CO, NE, UT, WY	816–426–4000
San Francisco	No. CA, OR, WA, ID, AK	415–437–7961
Los Angeles	So. CA, AZ, NV, HI	714–246–8302
Miami	FL	305–530–7756

Dated: December 14, 2009.

Daniel R. Levinson,

Inspector General.

[FR Doc. 2010–562 Filed 1–13–10; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT65

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice; Issuance of a scientific research permit.

SUMMARY: Notice is hereby given that NMFS has issued Permit 14516 to Dr. Jerry Smith to take certain species of California Coho and Steelhead Salmon for scientific research. The research will allow enhanced monitoring and management of these salmonid species..

ADDRESSES: The application, permit, and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 14516 from the list of available documents.

These documents are also available upon written request or by appointment, for Permit 14516: Protected Resources Division, NMFS, 777 Sonoma Avenue, Room 315, Santa Rosa, CA 95404 ph: (707) 575–6097, fax: (707) 578–3435).

FOR FURTHER INFORMATION CONTACT: Jeffrey Jahn at 707–575–6097, or e-mail: *Jeffrey.Jahn@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

The issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations (50 CFR parts 222–226) governing listed fish and wildlife permits.

Species Covered in This Notice

This notice is relevant to federally endangered Central California Coast (CCC) coho salmon (*Oncorhynchus kisutch*) and threatened Central California Coast (CCC) steelhead (*O. mykiss*).

Permit Issued

A notice of the receipt of an application for a scientific research permit (14516) was published in the **Federal Register** on August 17, 2009 (74 FR 41373). Permit 14516 was issued to Dr. Smith on October 6, 2009.

Permit 14516 authorizes: (1) capture (by backpack electrofishing and beach seine), handling, sample tissues (fin-clip and scales) and release of adult CCC coho salmon; (2) capture (by backpack electrofishing and beach seine), handling, sample tissues (scales) and release of adult CCC steelhead; (3) capture (by backpack electrofishing and beach seine), marking (using fin-clips), sample tissues (fin-clip and scales), and release juvenile CCC coho salmon; (4) capture (by backpack electrofishing, beach seine), handling, marking (using fin-clips), sample tissues (scales), and release of juvenile CCC steelhead; (5) capture (by beach seine), mark (using fin-clip), sample tissues (fin-clip and scales), and release CCC coho salmon smolts; (6) capture (by beach seine), mark (using fin-clip), sample tissues (scales), and release CCC steelhead; and (7) sample tissues (fin-clip and scales) of adult CCC coho salmon carcasses.

Permit 14516 authorizes unintentional lethal take of: juvenile and smolt CCC coho salmon and CCC steelhead not to exceed 2 percent of the total number of fish captured for each life stage and species. Permit 14516 does not authorize any lethal take of adult ESA-listed salmonids.

Permit 14516 is for research to be conducted in San Gregorio Creek Lagoon, Pescadero Creek Lagoon, and multiple sites in the Gazos, Waddell and Scott creek watersheds (including their lagoons) in San Mateo and Santa Cruz counties, California. The purpose of the research is to provide ESA-listed salmonid population, distribution, and habitat assessment data which will: (1) continue long-term monitoring of CCC coho salmon and CCC steelhead year class abundance, broodyear strength, and population abundance in Gazos, Waddell and Scott creek watersheds and assess habitat quality and its effects on population dynamics; (2) seasonally monitor salmonid use of Gazos, Waddell and Scott creek lagoons to determine habitat utilization (upstream vs. lagoon) and growth rates; and (3) monitor seasonal abundance and growth of steelhead in Pescadero and San Gregorio lagoons and to acquire smolt and adult life history information from scales. The issued permit does not include creel surveys at Pescadero Lagoon as requested by the applicant. Permit 14516 expires on November 30, 2014.

Dated: January 11, 2010.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–581 Filed 1–13–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of the Draft Environmental Assessment (Draft EA) for the Urban Stream Research Center Proposed To Be Constructed in Unincorporated Warrenville, IL and Request for Comments

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Availability of the Draft Environmental Assessment (Draft EA) for the Urban Stream Research Center proposed to be constructed in Unincorporated Warrenville, Illinois and request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration's (NOAA's) Office of Response and Restoration is announcing that a document entitled "Draft Environmental Assessment, Urban Stream Research Center" is available for public review and comment. In this document, that has been prepared under the requirements of the National Environmental Policy Act (42 USC 4321 *et seq.*), NOAA presents the proposal to construct an Urban Stream Research Center along the West Branch of the DuPage River in an unincorporated area of Warrenville, Illinois. In the Draft EA, NOAA considers and discloses any potential significant impacts to the quality of the human environment that may arise from the proposed project. The construction of the Urban Stream Research Center is one component ecological enhancement of a portion of the West Branch DuPage River, proposed to be funded in accordance with NOAA Grant Award No. FNA07NOS4630002, DuPage River Restoration. The purpose of this Notice is to inform the public of the availability of the Draft EA and seek public comment on the proposed project.

FOR FURTHER INFORMATION CONTACT: For further information contact Brendan Bray at 301–713–2989, ext. 122, by fax at 301–713–4389, or e-mail at *Brendan.Bray@noaa.gov.* Requests for copies of the Draft Environmental Assessment should be sent to Brendan Bray of NOAA, 1305 East West Highway, #10126, Silver Spring, MD 20910 or the document can be viewed online at *http://www.dupageco.orglswm.* Written comments on the plan should be sent to Brendan Bray of NOAA at the address listed above. Comments on the Draft Environmental Assessment must be submitted in writing on or before 30 days after publication of this notice.

SUPPLEMENTARY INFORMATION: The overall goal of this project is to build a facility that will allow the Forest Preserve District of DuPage County to meet its objectives to: 1. Augment the population densities and increase the diversity of freshwater mussel and non-game fish species that are in decline or extirpated in the West Branch of the DuPage River,

2. Evaluate the success and impacts of ongoing habitat restoration and remediation projects along the river, thereby benefiting fresh water mussel species, other wildlife, habitat areas, and public communities along the West Branch of the DuPage River,

3. Improve the success of urban aquatic habitat restoration and enhancement along the West Branch of the DuPage River, and

4. Provide educational opportunities for the public and other groups.

The grant recipient, DuPage County Stormwater Management Division, proposes to construct a research and education center on the publicly owned Roy C. Blackwell Forest Preserve. The preferred alternative, Urban Stream Research Center—New Constructed Facility, was created through input from the Forest Preserve District of DuPage County, the public, and NOAA.

Currently there are no facilities within Illinois to support common freshwater mussel propagation and augmentation. The Urban Stream Research Center will propagate and augment the population densities and increase the diversity of native freshwater mussel species and non-game fish species. Additionally, the Center will promote and encourage interdisciplinary research between universities and local, state, and federal conservation agencies (*e.g.,* Forest Preserve Distric of DuPage County, Natural History Survey, Illinois Department of Natural Resources, U.S. Fish and Wildlife Service, U.S. Geological Survey).

The proposed project would not result in significant adverse environmental impacts. Short-term, temporary, and localized construction-related impacts to air quality and increases in noise from the use of construction equipment are anticipated. However, over the long-term, the Center would benefit fish and wildlife, help to enhance the area's natural resources, and provide opportunities for research and educational programs.

Dated: January 5, 2010.

David Westerholm,

Director, Office of Response and Restoration.

[FR Doc. 2010–563 Filed 1–13–10; 8:45 am]

BILLING CODE 3S10–JE–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–836]

Certain Cut–to-Length Carbon–Quality Steel Plate from the Republic of Korea: Extension of the Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 14, 2010.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5760.

SUPPLEMENTARY INFORMATION:

Background

On September 24, 2009, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain cut–to-length carbon–quality steel plate from the Republic of Korea and intent to rescind the administrative review in part. *See Certain Cut–to-Length Carbon–Quality Steel Plate From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Administrative Review in Part*, 74 FR 48716 (September 24, 2009), as corrected in *Certain Cut–to-Length Carbon–Quality Steel Plate from the Republic of Korea: Correction to the Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Administrative Review in Part*, 74 FR 51834 (October 8, 2009). The review covers the period February 1, 2008, through January 31, 2009. The final results of the review are currently due no later than January 22, 2010.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the final results within 120 days after the date on which the preliminary results are published. If it is not practicable to

complete the final results within this time period and if the Department did not extend the time for issuing the preliminary results, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the completion of the final results to a maximum of 300 days after the date on which the preliminary results are published.

We determine that it is not practicable to complete the final results of this review within the original time limit because of certain issues involving new factual information submitted in an untimely manner. Therefore, we are extending the time period for issuing the final results of this review by 31 days until February 22, 2010.

This notice is published in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: January 8, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–582 Filed 1–13–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–832]

Pure Magnesium from the People's Republic of China: Extension of Time for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 14, 2010.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4243.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2009, the Department of Commerce ("the Department") published in the **Federal Register** a notice for an opportunity to request an administrative review of the antidumping duty order on pure magnesium from the People's Republic of China ("PRC"). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 20278 (May 1, 2009). Respondent, Tianjin Magnesium International Co., Ltd. ("TMI"), requested a review on May 28, 2009. Alcoa Inc. ("Alcoa"), a U.S. consumer of pure magnesium and importer of the subject merchandise, requested a review of Tianjin Xianghaiqi Resources Import & Export Trade Co., Ltd. ("TXR") on May 29, 2009. Petitioner, US Magnesium LLC ("US Magnesium") requested a review of TMI, TXR and Pan Asia Magnesium Co., Ltd. on June 1, 2009. The Department published in the **Federal Register** a notice of initiation of an administrative review of TMI for the period May 1, 2008, through April 30, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 30052 (June 24, 2009). Currently, the preliminary results of review are due no later than January 31, 2010.

Extension of Time Limit of Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

We determine that completion of the preliminary results of this review within the 245-day period is not practicable because the Department requires additional time to analyze information pertaining to the respondent's sales practices, factors of production, and to issue and review responses to supplemental questionnaires. Therefore, we require additional time to complete these preliminary results. As a result, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completion of the preliminary results of this review by 120 days until May 31, 2010. However, since May 31, 2010, falls on a federal holiday, a non–business day, the deadline for the preliminary determination will now be due no later than June 1, 2010, the next business day.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: January 6, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–608 Filed 1–13–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–412–801]

Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 14, 2010.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5760.

SUPPLEMENTARY INFORMATION:

Background

At the request of interested parties, the Department of Commerce (the Department) initiated administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, and the United Kingdom for the period May 1, 2008, through April 30, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 30052 (June 24, 2009), as corrected in *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review*, 74 FR 37690 (July 29, 2009). The preliminary results of the reviews are currently due no later than February 1, 2010.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review

within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month.

We determine that it is not practicable to complete the preliminary results of these reviews within the original time limit because we received requests from several respondents for extension of time to respond to our supplemental questionnaires and because we have scheduled verifications for several respondents in these reviews which have not yet been completed. Therefore, we are extending the time period for issuing the preliminary results of these reviews by 73 days until April 15, 2010.

This notice is published in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: January 8, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–585 Filed 1–13–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of Final Contracting Policy

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Availability of Final NOAA Ocean and Coastal Mapping Contracting Policy.

SUMMARY: The NOAA National Ocean Service is publishing the NOAA Ocean and Coastal Mapping Contracting Policy. This replaces the 2006 NOAA Hydrographic Services Contracting Policy.

DATES: No comments are solicited through this notice.

FOR FURTHER INFORMATION CONTACT: Roger L. Parsons, NOAA, Office of Coast Survey, National Ocean Service (NOS), NOAA (N/CS), 1315 East West Highway, Silver Spring, Maryland 20910; Telephone: 301–713–2776 x205, e-mail: *Roger.L.Parsons@noaa.gov.*

SUPPLEMENTARY INFORMATION: The contracting policy for ocean and coastal mapping services within the National Oceanic and Atmospheric Administration is final.

Background

NOAA promulgated an Ocean and Coastal Mapping Contracting Policy in response to the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11), specifically the Ocean and Coastal Mapping Integration Act (Act), 33 U.S.C. 3501 *et seq.,* which states: "The Administrator shall continue developing a strategy for expanding contracting with non-governmental entities to minimize duplication and take maximum advantage of non-governmental capabilities in fulfilling the Administration's mapping and charting responsibilities." House Report 108–56, which accompanied the FY2005 Consolidated Appropriations Act, had previously directed NOAA to expand contracting with non-governmental entities, but at that time, Congress limited this to hydrographic services programs funded under the "Mapping and Charting" section of the NOAA Budget. The 2009 contracting policy broadens the scope of NOAA's contracting efforts beyond "hydrographic services" to include "ocean and coastal mapping" services as defined in the Act.

NOAA primarily utilized the Hydrographic Services Review Panel (HSRP), a Federal Advisory Committee, and the public comment process to reevaluate its 2006 Hydrographic Services Contracting Policy. NOAA first sought input from the HSRP on the revised policy during a June 22, 2009, open public meeting/teleconference. During the meeting, the HSRP requested more time to review the revised policy and asked to have the topic discussed at the next regularly-scheduled meeting. NOAA placed the topic on the agenda for the September 23–24, 2009, HSRP meeting in Duluth, Minnesota. In the interim, NOAA published an August 19, 2009, notice in the **Federal Register** seeking public comment on the draft policy and providing a Web page whereby the public could review additional relevant documents, including the 2006 policy, a summary of proposed changes, and the Act. In addition to this public comment period, the public had an opportunity to provide both written and verbal comment at the June 22, 2009, and September 23—24, 2009, HSRP open public meetings. The **Federal Register** Notices announcing these two meetings, published on June 3, 2009, June 9, 2009, and September 2, 2009, stated the opportunities to provide both written and verbal comment at the two meetings. Written public comments were distributed to the members of the HSRP.

At the September 23–24, 2009, public meeting, the HSRP discussed the proposed draft NOAA Ocean and Coastal Mapping Contracting Policy and made the following recommendation: "The HSRP finds that NOAA's existing Hydrographic Services Contracting Policy is fairly and adequately constructed. The HSRP recommends that NOAA limit revisions to the policy, making only those precise language changes required to conform to the Ocean and Coastal Mapping Integration Act."

NOAA subsequently made limited revisions to the 2006 policy. The intent of the revisions is to broaden the scope of the policy beyond hydrographic services to include other NOAA ocean and coastal mapping activities and to clarify some of the wording in the 2006 policy.

Below is a summary of the substance of responsive public comments received and the resulting changes made to the policy based on those comments. Seven sets of comments were received; however, several comments were considered non-responsive to the draft policy.

Public comments were received that expressed concern that the revised language would potentially establish a new policy rationale and justification to avoid contracting, decrease contract support, or increase the opportunity for funds to be used by NOAA to compete with private industry. However, the revised policy does not reflect a change in NOAA's intent, which remains to contract for ocean and coastal mapping services when contracting is determined to be a cost-effective method of obtaining these services and to the extent funding is available.

Public comments were received that included concern over draft language that three conditions must be satisfied before NOAA contracted for ocean and coastal mapping services: the existence of qualified commercial sources, when contracting is determined to be the most cost-effective method of conducting these functions, and funding is available. After consideration, NOAA retained these conditions in the policy.

Public comments were received that included positive feedback concerning NOAA's use of Title IX of the Federal Property and Administrative Services Act (Brooks Act). It was requested that NOAA provide clarification in the policy of the statement "where otherwise deemed appropriate" when applying Title IX. NOAA believes the policy, as written, is clear. NOAA will procure the acquisition of hydrographic data in accordance with Title IX. When procuring the acquisition of data that

are not considered hydrographic data, NOAA will, in compliance with the Federal Acquisition Regulations, use its discretion in determining the most appropriate contracting vehicle to use, including Title IX.

Public comments were received that included concern over the removal of a reference to NOAA's annual hydrographic training and field procedures workshops. This section was removed from the policy because it was not directly related to the contracting process; however, it is NOAA's intent to invite NOAA contractors to future workshops. Also, as stated in the policy, future training opportunities for contractors are envisioned at NOAA's Ocean and Coastal Mapping Training Center, once established.

Public comments were received that expressed concern over draft language which provided examples of mapping activities that NOAA considers inherently governmental. After review, NOAA concurred that several of the draft examples were not inherently governmental and therefore eliminated those from the final policy.

NOAA Ocean and Coastal Mapping Contracting Policy

The National Oceanic and Atmospheric Administration (NOAA) recognizes that qualified commercial sources can provide competent, professional, and cost-effective ocean and coastal mapping services and expertise to NOAA in support of its diverse mapping missions. NOAA also recognizes that providing mapping services is a core mission requirement of NOAA under the 1947 Coast and Geodetic Survey Act, Hydrographic Services Improvement Act of 1998 (as amended), and other laws and authorities. In the interest of public and environmental safety and the furtherance of scientific knowledge, the Federal Government's responsibility for executing its ocean and coastal mapping missions is manifest and non-delegable. However, it is incumbent upon NOAA, as recommended by the Hydrographic Services Review Panel, a Federal Advisory Committee, to maintain operational ocean and coastal mapping core capabilities and supplement its operational capacity by contracting for ocean and coastal mapping services where appropriate and to the extent of available funding.

This policy statement documents the framework and conditions under which contracting will be employed to ensure an open and consistent approach. To support this policy, NOAA will maintain a dialogue with private sector organizations and constituent groups.

For the purposes of this policy and as defined in the Ocean and Coastal Mapping Integration Act, the term "ocean and coastal mapping" includes the acquisition, processing, and management of physical, biological, geological, chemical, and archeological characteristics and boundaries of ocean and coastal areas. This also includes hydrographic services. As defined in the Hydrographic Services Improvement Act, the term "hydrographic services" means the management, maintenance, interpretation, certification, and dissemination of bathymetric, hydrographic, shoreline, geodetic, geospatial, geomagnetic, tide and water level, and current information, including the production of nautical charts, nautical information, databases, and other products derived from hydrographic data. It is NOAA's intent to advance contracting and adhere to the principles of this policy to meet its diverse ocean and coastal mapping requirements.

It is the intent of NOAA to contract for ocean and coastal mapping services when such contracts are determined to be a cost-effective method of obtaining these services and to the extent funding is available. NOAA will procure ocean and coastal mapping services from qualified sources in accordance with its legal authorities, the Federal Acquisition Regulations (FAR), and the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 101 *et seq.*). Where required by law or where otherwise deemed appropriate, NOAA will procure the acquisition of hydrographic data [1] in accordance with Title IX of the Federal Property and Administrative Services Act (40 U.S.C. 1101 *et seq.*).[2]

NOAA may determine that a particular ocean and coastal mapping activity is inherently governmental or otherwise not subject to contracting. NOAA ocean and coastal mapping activities not subject to contracting may include, but are not limited to, services necessary to: (1) Monitor the quality of NOAA products; (2) promulgate and promote national and international technical standards and specifications; (3) conduct basic research and development and ensure the rapid transfer of derived technologies to the private sector; and (4) maintain the integrity and accuracy of Federal geodetic, navigational, and other databases.

To facilitate the leveraging of government mapping resources, NOAA will continue to make its coastal geospatial and hydrographic services contracts with private-sector companies available to State and local government entities that have a need for the services provided by these contracts and can provide adequate funding.

NOAA may task qualified commercial sources with ocean and coastal mapping services in any part of the U.S. Exclusive Economic Zone, territorial sea, Great Lakes, inland waters, and coastal watersheds for any mission-related purpose. The government's interests in and responsibilities for mapping vary broadly and experience has shown that maintaining flexibility is key to responding to the nation's changing needs for geospatial data.

Ancillary Statements and Actions

As recommended by the Hydrographic Services Review Panel, NOAA will continue to utilize a mix of in-house and private-sector resources to accomplish its ocean and coastal mapping missions. Costs and productivity will be monitored within each category (*i.e.,* public and private) to ensure best use of mapping resources. NOAA will continue to seek the optimal resource allocation between in-house and private-sector resources based on the strength of the governmental interest, the total requirement for ocean and coastal mapping services, and the particular operational capabilities of either government or private-sector resources that may make one resource more suitable for a given situation.

NOAA will continue to examine ways to improve its contracting processes, including minimizing the turnover frequency of contracting personnel and reducing the length of time required to award contracts and task orders. NOAA will continue to offer debriefings to successful and unsuccessful contractors after final contractor selection has been made in order to assist contractors with identifying significant weaknesses or deficiencies in their submissions. NOAA will continue with its efforts to establish an Ocean and Coastal Mapping Training Center, which, as conceived, will support NOAA's in-house hydrographic and acoustic surveying training requirements. In addition, the Center would provide training to NOAA and private sector contractors in

[1] *Hydrographic data means information that is acquired through hydrographic, bathymetric, photogrammetric, lidar, radar, remote sensing, or shoreline and other ocean- and coastal-related surveying; geodetic, geospatial, or geomagnetic measurements; tide, water level, and current observations; and is used in providing hydrographic services.*

[2] *Commonly known as the "Brooks Act" or A&E (Architectural or Engineering) contracting services, Title IX contracts are negotiated and awarded on the basis of demonstrated competence and qualifications (qualification-based selections or QBS) as opposed to price.*

techniques, standards, and technologies that support NOAA's many ocean and coastal mapping activities. Such training would be beneficial to current or prospective NOAA contractors seeking to improve their capabilities and proposal submissions.

Dated: January 7, 2010.

David M. Kennedy,

Acting Assistant Administrator, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–564 Filed 1–13–10; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT73

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings in Portland, OR.

DATES: The meetings will be held February 8–16, 2010. The Council will begin its plenary session at 8 a.m. on Wednesday, February 10 continuing through Tuesday, February 16. The Council's Advisory Panel (AP) will begin at 8 a.m., Monday, February 8 and continue through Friday, February 12. The Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Monday, February 8 and continue through Wednesday, February 10, 2010. The Enforcement Committee will meet Tuesday, February 9 from 1 p.m. to 5 p.m. All meetings are open to the public, except executive sessions.

ADDRESSES: The meetings will be held at the Benson Hotel, 309 SW Broadway, Portland, OR 97205.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports:

a. Executive Director's Report (including report on catch shares and marine spatial planning)

b. NMFS Management Report

c. Alaska Department of Fish and Game (ADF&G) Report

d. International Pacific Halibut Commission (IPHC) Report

e. U.S. Coast Guard Report

f. NMFS Enforcement Report/Alaska Fisheries Science Center (AFSC) Report

g. U.S. Fish & Wildlife Service Report

h. Protected Species Report (including update on Biological Opinion and Center for Independent Experts review and seabird update)

2. Halibut/Sablefish Individual Fishing Quotas (IFQs) Program: Review proposals, receive committee report, and take action as necessary; review discussion paper on Community Quota Entity Program.

3. Observer Program: Progress on Implementation Plan; Progress on Implementation Plan; Observer Advisory Committee report.

4. Bering Sea Aleutian Island (BSAI) Crab Issues: Initial review BSAI Crab Right of First Refusal; Initial review Western Aleutian Golden King Crab Regional Delivery; NOAA/Bering Sea Fisheries Foundation cooperative survey report; review methodology for Annual Catch Limits (ACLs) analysis and performance measures for rebuilding (SSC only).

5. Groundfish ACLs: Initial review of Groundfish ACL requirements.

6. Amendment 80 Cooperatives: Initial review of Amendment 80 Lost Vessel Replacement; Final action Amendment 80 Cooperative Formation.

7. Gulf of Alaska (GOA) Rockfish Program: Receive 2009 Cooperative Report; Refine alternatives for analysis.

8. American Fisheries Act (AFA): Receive 2009 Cooperative reports and 2010 Cooperative agreements.

9. Data Collection Discussion paper: Review discussion paper and take action as necessary.

10. Miscellaneous Issues: Review of analytical methods for BSAI Chum salmon bycatch (SSC only); review new area closure options for chum salmon bycatch alternatives; review preliminary Essential Fish Habitat (EFH) report (SSC only); review and adopt Habitats Areas of Particular Concern (HAPC) criteria and schedule; report and action as necessary on Aleutian Island Fishery Ecosystem Plan Addendum; review discussion paper on stranding of BSAI Pacific cod total allowable catch (T); review discussion paper on halibut PSC limits (T).

11. Staff Tasking: Review Committees and tasking.

12. Other Business

The SSC agenda will include the following issues:

1. C–5 (a) Amendment 80 Lost Vessel replacement
2. C–3 (a, b, c, d) BSAI Crab Issues
3. C–4 Groundfish ACLs
4. D–2 Data Collection
5. D–3(a, b, c) Groundfish Issues
6. National Standard 2 Guidelines

The Advisory Panel will address most of the same agenda issues as the Council, except for # 1 reports. The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/*

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: January 8, 2010.

William D. Chappell,

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

[FR Doc. 2010–492 Filed 1–13–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT75

New England Fishery Management Council; Public Hearings

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

ACTION: Monkfish Fishery Management Plan Amendment 5; Public Hearings; Request for Comments.

SUMMARY: The New England Fishery Management Council (Council) will hold six public hearings to solicit comments on proposals to be included in the Draft Amendment 5 to the

Monkfish Fishery Management Plan (FMP).

DATES: Written comments must be received on or before 5 p.m. EST, March 5, 2010. The public hearings will be held from February 8, 2010 to March 5, 2010. For specific dates and times, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The Council will take comments at public meetings in Fairhaven, MA; Gloucester, MA; Cambridge, MD; Riverhead, NY; Lakewood, NJ and Rockport, ME. For specific locations, see **SUPPLEMENTARY INFORMATION**. Written comments should be sent to Patricia Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Comments may also be sent via fax to (978) 281–9135 or submitted via e-mail to *monkamendment5@noaa.gov* with (Monkfish Amendment 5 Public Hearing Comments) in the subject line. Requests for copies of the public hearing document and other information should be directed to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council's Monkfish Committee is holding public hearings for Amendment 5 to the Monkfish Fishery Management Plan (FMP). The primary purpose of this amendment is to address the new requirements of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act that the Council adopt Annual Catch Limits (ACLs) and Accountability Measures (AMs) and manage the fishery at long-term sustainable levels. According to the Act, these measures must be adopted by 2011. Amendment 5 will also include revised biological and management reference points to bring the FMP into compliance with revised National Standard 1 Guidelines. Further, Amendment 5 will specify total allowable catch targets and associated days-at-sea (DAS) and trip limits for the directed fishery to supplant the current specifications that it adopted for the 2007–09 fishing years along with an extension provision which will apply for the 2010 fishing year. Amendment 5 contains proposals to make modifications to the FMP to improve the Research Set-Aside (RSA) Program, to minimize bycatch resulting from trip limit overages, to accommodate those vessels fishing in groundfish sectors who would no longer be required to use their allocated groundfish DAS, to require all limited access monkfish vessels to use a VMS when on a monkfish DAS, and to allow the landing of monkfish heads.

The public hearing document, as well as the draft Amendment 5 document incorporating an Environmental Assessment, is available on the Monkfish page of the Council(s website (*www.nefmc.org*) or from the Council office.

After the close of the public comment period, the Monkfish Oversight Committee and Industry Advisory Panel will review the comments and develop recommendations to the New England and Mid-Atlantic Fishery Management Councils on the measures to be submitted as final action for Amendment 5. The Councils will make their decisions in April, 2010 for submission to the National Marine Fisheries Service (NMFS). If approved by NMFS, Amendment 5 will take effect at the start of the 2011 fishing year.

The dates, times, locations and telephone numbers of the hearings are as follows:

Monday, February 8, 2010 at 1 p.m. - Hampton Inn, One Hampton Way, Fairhaven, MA 02719; telephone: (508) 990–8500;

Tuesday, February 9, 2010 at 1 p.m. - Massachusetts Department of Marine Fisheries Annisquam River Station, 30 Emerson Avenue, Gloucester, MA 01930; telephone: (978) 282–0308;

Thursday, February 11, 2010 at 8 a.m. - Hyatt Regency Chesapeake Bay Hotel, 100 Heron Boulevard at Route 50, Cambridge, MD 21613; telephone: (410) 901–1234;

Wednesday, February 24, 2010 at 1:30 p.m. - Holiday Inn Express East End, 1707 Old Country Road, Riverhead, NY 11901; telephone: (631) 548–1000;

Thursday, February 25, 2010 at 9 a.m. - Hilton Garden Inn, 1885 Route 70, Lakewood, NJ 08701; telephone: (732) 262–5232;

Friday, March 5, 2010 at 9 a.m. - Samoset Resort, 220 Warrenton Street, Rockport, ME 04856; telephone: (207) 594–2511.

Special Accommodations

These hearings are physically accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: January 8, 2010.

William D. Chappell,

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

[FR Doc. 2010–507 Filed 1–13–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Persulfates From the People's Republic of China: Notice of Rescission of the 2008–2009 Administrative Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 14, 2010.

FOR FURTHER INFORMATION CONTACT: Brandon Petelin, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–8173.

Background

On July 1, 2009, the Department of Commerce ("the Department") published a notice of opportunity to request an administrative review of the antidumping duty order on persulfates from the People's Republic of China ("PRC"). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 74 FR 31406 (July 1, 2009). On July 31, 2009, FMC Corporation ("FMC"), a domestic producer of persulfates, requested that the Department conduct an administrative review of Shanghai AJ Import & Export Corporation—United Initiators (Shanghai) Co., Ltd.'s exports to the United States for the period of review ("POR") July 1, 2008, through June 30, 2009. Pursuant to this request, the Department published a notice of the initiation of the administrative review of the antidumping duty order on persulfates from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 74 FR 42873 (August 25, 2009).

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of

initiation. On December 23, 2009, FMC timely withdrew its request for a review, and no other interested party requested a review of this company.[1] Therefore, the Department is rescinding this administrative review of the antidumping duty order on persulfates from the PRC covering the period July 1, 2008, through June 30, 2009, in accordance with 19 CFR 351.213(d)(1).

Assessment

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the publication of this notice in the **Federal Register**.

Notification to Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Pursuant to 19 CFR 351.402(f)(3), failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO, in accordance with 19 CFR 351.305 and as explained in the APO itself. Timely written notification of the return/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.

This notice is in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

[1] On November 16, 2009, in response to a request from FMC, the Department extended the deadline for FMC to withdraw its review request from November 23, 2009, until December 23, 2009.

Dated: January 8, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–584 Filed 1–13–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–HA–0001]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 15, 2010.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Naval Health Research Center, DoD Center for Deployment Health Research, Department 164, ATTN: Tyler C. Smith, MS, PhD., 140 Sylvester Rd., San Diego, CA, 92106–3521, or call (619) 553–7593.

Title; Associated Form; and OMB Number: Prospective Department of Defense Studies of U.S. Military Forces: The Millennium Cohort Study—OMB #0720–0029.

Needs and Uses: The Millennium Cohort Study responds to recent recommendations by Congress and by the Institute of Medicine to perform investigations that systematically collect population-based demographic and health data so as to track and evaluate the health of military personnel throughout the course of their careers and after leaving military service. The Millennium Cohort Study will also evaluate family impact by adding a spouse assessment component to the Cohort, called the Millennium Cohort Family Study.

Affected Public: Civilians, formerly Active Duty and activated Reservists in the U.S. Military, who enrolled and participated in Panels 1, 2, and 3 of the Millennium Cohort Study, and civilians who elect to participate in the Millennium Cohort Family Study.

Annual Burden Hours: 33,824.

Number of Respondents: 45,099.

Responses per Respondent: 1.

Average Burden per Response: 45 minutes.

Frequency: every 3 years.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Persons eligible to respond to this survey are those civilians now separated from military service who initially enrolled, gave consent and participated in the Millennium Cohort Study while on active duty in the Army, Navy, Air Force, Marine Corps or U.S. Coast Guard during the first, second, or third panel enrollment periods in 2001–2003, 2004–2006, or 2007–2008 respectively, as well as civilians that choose to participate in the Millennium Cohort Family Study.

Dated: January 8, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–471 Filed 1–13–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Military Leadership Diversity Commission (MLDC); Meeting

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the Military Leadership Diversity Commission (MLDC) will meet from February 10–12, 2010. Subject to the availability of space, the February 11 and 12 meetings will be open to the public.

DATES: The meeting will be held:

7:30 p.m. to 8:30 p.m., February 10, 2010 Administrative Working Meeting;
8 a.m. to 5:30 p.m., February 11, 2010;
8 a.m. to 5:30 p.m., February 12, 2010.

ADDRESSES: The meeting will be held at the Crowne Plaza Hampton Marina Hotel, 700 Settlers Landing Road, Hampton, VA 23669.

FOR FURTHER INFORMATION CONTACT: Master Chief Steven A. Hady, Designated Federal Officer, MLDC, at (703) 602–0838 or (571) 882–0140, 1851 South Bell Street, Suite 532, Arlington, Va. E-mail *Steven.Hady@wso.whs.mil.*

SUPPLEMENTARY INFORMATION: The purpose the meeting is for the commissioners of the Military Leadership Diversity Commission to continue their efforts to address congressional concerns as outlined in the commission charter.

Agenda

February 10, 2010 Administrative Working Meeting (Closed to the Public)

7:30 p.m.–8:30 p.m.

DFO opens meeting;
Discussion led by DFO on committee process management;
DFO adjourns the meeting.

February 11, 2010

8 a.m.–12 p.m.

DFO opens the meeting;
Commission Chairman opening remarks;
ADM John C. Harvey, Jr., Commander, U.S. Fleet Forces Command, addresses the MLDC;
Open discussion on legal implications;
Open discussion on career development: Branching and Assignments.

12 p.m.

DFO recesses the meeting.

1 p.m.–5:30 p.m.

DFO opens meeting;
Open discussion on career development: Diversity Management and Training;
Open discussion on Promotion;
Open discussion on Retention;
Commission Chairman closing remarks.

5:30 p.m.

DFO adjourns the meeting.

February 12, 2010

8 a.m.–12 p.m.

DFO opens the meeting;
Commission Chairman opening remarks;
Briefings from the Office of the Secretary of Defense (OSD) and Service representatives from organizations responsible for Implementation and Accountability;
General George W. Casey, Jr., Chief of Staff of the U.S. Army, addresses the MLDC.

12 p.m.

DFO recesses the meeting.

1 p.m.–5:30 p.m.

Briefings from OSD and Service representatives from organizations responsible for Implementation and Accountability (continued);
Mr. J. T. (Ted) Childs Jr. addresses MLDC;
Briefings from Service representatives from organizations responsible for Implementation and Accountability (continued);
Commission Chairman closing remarks.

5:30 p.m.

DFO adjourns the meeting.

Public's Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, the meetings on February 11 and 12, 2010, will be open to the public.

However, pursuant to 41 CFR 3.160(b), the Administrative Working Meeting on February 10, 2010 shall be closed to the public.

Please note that the availability of seating is on a first-come basis.

Written Statements

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Military Leadership Diversity Commission about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Military Leadership Diversity Commission.

All written statements shall be submitted to the Designated Federal Officer for the Military Leadership Diversity Commission (*see* **FOR FURTHER INFORMATION CONTACT**), and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at least five calendar days prior the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Military Leadership Diversity Commission until its next meeting.

The Designated Federal Officer will review all timely submissions with the Military Leadership Diversity Commission Chairperson and ensure they are provided to all members of the Military Leadership Diversity Commission before the meeting that is the subject of this notice.

Dated: January 8, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–472 Filed 1–13–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0002]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on February 16,

2010 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (720) 242–6631.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the contact under **FOR FURTHER INFORMATION CONTACT.**

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on January 5, 2010, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 2996, 61 FR 6427).

Dated: January 8, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7320

SYSTEM NAME:

Electronic Funds Transfer (EFT) Records (October 15, 2004, 69 FR 61225).

CHANGES:

* * * * *

SYSTEM NAME:

Add "Corporate" to the title before the word "Electronic".

SYSTEM LOCATION:

Delete entry and replace with "Defense Information Systems Agency (DISA), Defense Enterprise Computing Center (DECC) Ogden, Building 981, Southwest Dock, 7879 Wardleigh Road, Hill AFB, UT 84056–5997.

Defense Information Systems Agency (DISA), Defense Enterprise Computing Center (DECC) Mechanicsburg—Bldg 308, Naval Support Activity (NSA), 5450 Carlisle Pike, Mechanicsburg, PA 17050–2411.

Defense Finance and Accounting Service, Columbus, P.O. Box 182317 Columbus, OH 43218–2317.

Defense Finance and Accounting Service, Cleveland, 1240 E. 9th Street, Cleveland, OH 44199–8002.

Defense Finance and Accounting Service, Indianapolis, 8899 E. 56th St., Indianapolis, IN 46249–0100.

Defense Finance and Accounting Service, Rome, 325 Brooks Road, Rome, NY 13441–4527.

Defense Finance and Accounting Service, Limestone, 27 Arkansas Road, Limestone, ME 04751–6216."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Add on the second line after "retired military members;" the word "annuitants", and on the last line of the paragraph, a comma after "States", and then add the words "vendors/contractors,".

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Name, Social Security Number, home address, financial institution account number, account type, financial institution name, American Banking Association routing and transmittal number, lock box number, electronic funds transfer payment method, electronic funds transfer waiver, Commercial and Government Entity (CAGE), Dun and Bradstreet, Data Universal Numbering System (DUNS) numbers, and Tax Identification Numbers (TINs)."

* * * * *

PURPOSE(S):

Delete entry and replace with "The Electronic Funds Transfer Database will provide DoD with a central repository for Active Duty, Reserve, Guard, separated or retired military members, annuitants, academy nominees, applicants, cadets, dependents of military personnel, DoD civilian employees, other government employees paid by DFAS, foreign nationals residing in the United States, and vendor/contractor remittance information which will be used to verify the validity of payee and financial institution accounts prior to issuing an electronic payment."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Under State Guard Units, add routine use "To State Guard Units for the purposes of making electronic payments to guard members who are on State duty during times of emergency."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Retrieved by name, Social Security Number or taxpayer identification number".

* * * * *

RETENTION AND DISPOSAL:

Add after the first sentence, "Records are disposed of by burning, shredding, or degaussing electronic media."

* * * * *

NOTIFICATION PROCEDURES:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Corporate Communications and Legislative Liaison, Freedom of Information Act/Privacy Act Program Manager, DFAS–HAC/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Individual should provide their full name, Social Security Number (SSN), current address and telephone number."

RECORDS ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about them contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Corporate Communications and Legislative Liaison, Freedom of Information Act/Privacy Act Program Manager, DFAS–HAC/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Individual should provide their full name, Social Security Number (SSN), current address and telephone number."

CONTESTING RECORD PROCEDURES:

Delete the address in the paragraph and replace with "Defense Finance and Accounting Service, Corporate Communications and Legislative Liaison, Freedom of Information Act/Privacy Act Program Manager, DFAS–HAC/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Information is obtained from the Active

Duty, Reserve, Guard, separated or retired military members, annuitants, academy nominees, applicants, cadets, dependents of military personnel, DoD civilian employees, other government employees paid by DFAS, foreign nationals residing in the United States, and vendors/contractors."

* * * * *

T7320

SYSTEM NAME:

Corporate Electronic Funds Transfer (EFT) Records

SYSTEM LOCATION:

Defense Information Systems Agency (DISA), Defense Enterprise Computing Center (DECC) Ogden, Building 981, Southwest Dock, 7879 Wardleigh Road, Hill AFB, UT 84056–5997.

Defense Information Systems Agency (DISA), Defense Enterprise Computing Center (DECC) Mechanicsburg—Bldg 308, Naval Support Activity (NSA), 5450 Carlisle Pike, Mechanicsburg, PA 17050–2411.

Defense Finance and Accounting Service, Columbus, P.O. Box 182317 Columbus, OH 43218–2317.

Defense Finance and Accounting Service, Cleveland, 1240 E. 9th Street, Cleveland, OH 44199–8002.

Defense Finance and Accounting Service, Indianapolis, 8899 E. 56th St., Indianapolis, IN 46249–0100.

Defense Finance and Accounting Service, Rome, 325 Brooks Road, Rome, NY 13441–4527.

Defense Finance and Accounting Service, Limestone, 27 Arkansas Road, Limestone, ME 04751–6216.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense (DoD) civilian personnel, and other U.S. Government employees paid by DFAS; active military, former, and retired military members; annuitants; Reserve and National Guard personnel; academy nominees, applicants, and cadets; dependents of military personnel; foreign nationals residing in the United States, vendors/contractors, and all in receipt of payments from DFAS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, home address, financial institution account number, account type, financial institution name, American Banking Association routing and transmittal number, lock box number, electronic funds transfer payment method, electronic funds transfer waiver, Commercial and Government Entity (CAGE), Dun and Bradstreet, Data Universal Numbering System (DUNS) numbers, and Tax Identification Numbers (TINs).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Public Law 104–134, Debt Collection Improvement Act of 1996; DoD Financial Management Regulation 7000.14–R, Volumes 7B, 7C, 8, Military Pay Policy and Procedures—Retired Pay, Military Pay Policy and Procedures—Active Duty and Reserve Pay, Civilian Pay Policy and Procedures; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

The Electronic Funds Transfer Database will provide DoD with a central repository for Active Duty, Reserve, Guard, separated or retired military members, annuitants, academy nominees, applicants, cadets, dependents of military personnel, DoD civilian employees, other government employees paid by DFAS, foreign nationals residing in the United States, and vendor/contractor remittance information which will be used to verify the validity of payee and financial institution accounts prior to issuing an electronic payment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records or information contained therein may specifically be disclosed outside the Department of Defense as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Treasury Department to provide information on check issues and electronic funds transfers.

To the Internal Revenue Service to report taxable earnings and taxes withheld, accounting, and tax audits, and to compute or resolve tax liability or tax levies.

To the Social Security Administration to report earned wages by members for the Federal Insurance Contribution Act, accounting or tax audits, and death notices.

To the Department of Veterans Affairs to report compensation, waivers, and audits, life insurance accounting, disbursement and benefit determinations, and death notices.

To the American Red Cross and military relief societies to assist military personnel, and their dependents in determining the status of monthly pay, dependents' allotments, loans, and related financial transactions, and to perform other relief-related duties as requested by the service member.

To Federal Reserve banks to distribute payments made through the direct deposit system to financial organizations or their processing agents authorized by individuals to receive and deposit payments in their accounts.

To State Guard Units for the purposes of making electronic payments to guard members who are on State duty during times of emergency.

The DoD 'Blanket Routine Uses' published at the beginning of the Defense Finance and Accounting Service compilation of systems of records notices also apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act, (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966, (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number for individuals); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in computers and computer output products; electronic storage media, and hard copy documents.

RETRIEVABILITY:

Retrieved by name, Social Security Number or taxpayer identification number.

SAFEGUARDS:

Records are stored in office buildings protected by guards, controlled screening, visitor registers are used, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their official duties. Passwords and digital signatures are used to control

access to the systems data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the record system.

RETENTION AND DISPOSAL:

Records in this system are maintained for 6 years and 3 months after date of cutoff. Records are disposed of by burning, shredding, or degaussing electronic media.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Strategic Business Office, Defense Finance and Accounting Service, Columbus, P.O. Box 182317 Columbus, OH 43218–2317.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Corporate Communications and Legislative Liaison, Freedom of Information Act/Privacy Act Program Manager, DFAS–HAC/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Individual should provide their full name, Social Security Number (SSN), current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Corporate Communications and Legislative Liaison, Freedom of Information Act/Privacy Act Program Manager, DFAS–HAC/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Individual should provide their full name, Social Security Number (SSN), current address and telephone number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Defense Finance and Accounting Service, Corporate Communications and Legislative Liaison, Freedom of Information Act/Privacy Act Program Manager, DFAS–HAC/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

RECORD SOURCE CATEGORIES:

Information is obtained from the Active Duty, Reserve, Guard, separated or retired military members, annuitants, academy nominees, applicants, cadets, dependents of military personnel, DoD civilian employees, other government employees paid by DFAS, foreign nationals residing in the United States, and vendors/contractors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–473 Filed 1–13–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2010–0001]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Air Force proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on February 16, 2010 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Swilley at (703) 696–6489.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the contact under **FOR FURTHER INFORMATION CONTACT**.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on January 5, 2010, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 8, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F010 AFSPC A

SYSTEM NAME:

Telecommunications Notification System Records.

SYSTEM LOCATION:

Department of Air Force, 30 Space Communications Squadron, Building 12000, Room 104, 867 Washington Ave., Suite 205, Vandenberg Air Force Base, California 93437–6117.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Air Force Active Duty Service members, civilians, and government contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

First and last name, home address, work and cell phone numbers, employee type, office/unit name, home and work e-mail address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 10–218, Personnel Accountability in Conjunction with Natural Disasters or National Emergencies; Air Force Policy Directive; 10–2 Readiness, Air Force Policy Directive 10–4, Operations Planning, and Air Force Policy Directive 10–25, Emergency Management.

PURPOSE(S):

To provide notification, via electronic mail and telephone, for personnel recalls and real world and exercise threat conditions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air

Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

Data is retrieved by first and last name, and office name.

SAFEGUARDS:

Records may be accessed by the System Administrator, Command Post, and authorized designated Unit Control Representatives. They must have a Government Common Access Card (CAC) and associated Personal Identification Number (PIN) in addition to user identification and password for system access.

RETENTION AND DISPOSAL:

Records are deleted at the end of the year individual has departed the Air Base.

SYSTEM MANAGER(S) AND ADDRESS:

Command Post Superintendent, 30 Space Wing Space Communications Squadron, 867 Washington Avenue, Suite 200–1, Vandenberg Air Force Base, California 93437–6120.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Command Post Superintendent, 30 Space Wing Command Post 867 Washington Ave, Suite 205, Vandenberg Air Force Base, California 93437–6117.

Written request must include their full name and office name in the request letter.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves should address written inquiries to Command Post Superintendent, 30 Space Wing Command Post 867 Washington Ave, Suite 205, Vandenberg Air Force Base, California 93437–6117.

Written request must include their full name and office name in the request letter.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332, 32 CFR part 806b, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–474 Filed 1–13–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2010–0002]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Air Force is proposing to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on February 16, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Swilley at 703–696–6172.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the contact under **FOR FURTHER INFORMATION CONTACT**.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 11, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F052 USAFA A

SYSTEM NAME:

Cadet Chaplain Records (June 11, 1997; 62 FR 31793).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Command Chaplain, Headquarters, United States Air Force Academy, 2348 Sijan Drive, Suite 100, United States Air Force Academy, CO 80840–8280."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Name, Social Security Number (SSN), religious affiliation, background and interests; and choir audition consisting of musical capabilities."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 9331, Establishment; Superintendent; faculty, 10 U.S.C. 9337, Chaplain, and E.O. 9397 (SSN), as amended."

PURPOSE(S):

Delete entry and replace with "To identify incoming Fourth Class Cadet's religious affiliation, background data and interests. Cadet Chaplains and chapel managers assigned to the USAF Academy Cadet Chaplin's office use this information to organize cadet lay participation as ushers, choir members, lay readers, lectors, commentators, and religious education teachers. Choir audition records identify incoming cadet's musical capabilities and the music directors use this information."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Records are destroyed one year after graduation or discharge from the program. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting overwriting or degaussing."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Command Chaplain, Headquarters,

United States Air Force Academy, 2348 Sijan Drive, Suite 100, United States Air Force Academy, CO 80840–8280."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to Command Chaplain, Headquarters, United States Air Force Academy, 2348 Sijan Drive, Suite 100, United States Air Force Academy, CO 80840–8280.

Requests should contain individual's name and Social Security Number (SSN)."

RECORD ACCESS PROCEDURE:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to Command Chaplain, Headquarters, United States Air Force Academy, 2348 Sijan Drive, Suite 100, United States Air Force Academy, CO 80840–8280.

Requests should contain individuals' full name and Social Security Number (SSN)."

* * * * *

F052 USAFA A

SYSTEM NAME:

Cadet Chaplain Records.

SYSTEM LOCATION:

Command Chaplain, Headquarters, United States Air Force Academy, 2348 Sijan Drive, Suite 100, United States Air Force Academy, CO 80840–8280.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Academy Cadets.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), religious affiliation, background and interests, and choir audition consisting of musical capabilities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 9331, Establishment; Superintendent; faculty, 10 U.S.C. 9337, Chaplain, and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To identify incoming Fourth Class Cadet's religious affiliation, background data and interests. Cadet Chaplains and chapel managers assigned to the USAF Academy Cadet Chaplin's office use this information to organize cadet lay participation as ushers, choir members, lay readers, lectors, commentators, and religious education teachers. Choir audition records identify incoming cadet's musical capabilities and the music directors use this information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records or information may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computer and electronic storage media.

RETRIEVABILITY:

Retrieved by name and Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by the custodian, individuals responsible for servicing the record system in the course of their official duties, and by authorized personnel who are properly cleared for need-to-know. Records are stored in locked rooms and on computer storage devices protected by computer system software.

RETENTION AND DISPOSAL:

Records are destroyed one year after graduation or discharge from the program. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting overwriting or degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Command Chaplain, Headquarters, United States Air Force Academy, 2348 Sijan Drive, Suite 100, United States Air Force Academy, CO 80840–8280.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to Command Chaplain, Headquarters, United States Air Force Academy, 2348 Sijan Drive, Suite 100, United States Air Force Academy, CO 80840–8280.

Requests should contain individual's name and Social Security Number (SSN).

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to Command Chaplain, Headquarters, United States Air Force Academy, 2348 Sijan Drive, Suite 100, United States Air Force Academy, CO 80840–8280.

Requests should contain individual's full name and Social Security Number (SSN).

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORDS SOURCE CATEGORIES:

Information obtained from individual cadet.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–589 Filed 1–13–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs)—Employer Practices Related to Employment Outcomes Among Individuals With Disabilities

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–3.

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a funding priority for the Disability and Rehabilitation Research Projects and Centers Program administered by NIDRR. Specifically, this notice proposes a priority for RRTCs on Employer Practices Related to Employment Outcomes Among Individuals with Disabilities. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2010 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before February 16, 2010.

ADDRESSES: Address all comments about this notice to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6029, Potomac Center Plaza (PCP), Washington, DC 20202–2700.

If you prefer to send your comments by e-mail, use the following address: *donna.nangle@ed.gov.* You must include the term "Proposed Priority for an RRTC on Employer Practices Related to Employment Outcomes Among Individuals with Disabilities" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This notice of proposed priority is in concert with NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

This notice proposes a priority that NIDRR intends to use for RRTC competitions in FY 2010 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make an award for this priority. The decision to make an award will be based on the quality of applications received and available funding.

Invitation to Comment

We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priority, we urge you to clearly identify the specific topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in room 6029, 550 12th Street, SW., PCP, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC, time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Purpose of Program: The purpose of the Disability and Rehabilitation Research Project and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

RRTC Program

The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. In addition, NIDRR intends to require all RRTC applicants to meet the requirements of the *General Rehabilitation Research and Training Centers (RRTC) Requirements* priority that it published in a notice of final priorities in the **Federal Register** on February 1, 2008 (72 FR 6132). Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Statutory and Regulatory Requirements of RRTCs

RRTCs must—

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers of national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

Applicants for RRTC grants also must demonstrate in their applications how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Program Regulations: 34 CFR part 350.

Proposed Priority: This notice contains one proposed priority.

Employer Practices Related to Employment Outcomes Among Individuals With Disabilities

Background

Individuals with disabilities experience lower rates of employment than those without disabilities, and this disparity in employment rates is seen across all sociodemographic groups (Steinmetz, 2006; U.S. Census Bureau, 2006; U.S. Department of Labor, 2009).

This disparity in employment rates, as well as differences in other aspects of employment (*e.g.*, retention rates, job satisfaction, wages), appear to reflect, at least in part, differences in employer practices related to hiring, promoting, and retaining employees who have or acquire disabilities (U.S. Department of Labor, 2009). While it is difficult to obtain employer-level information, there is some recent evidence regarding the relationship between employer practices and outcomes for individuals with disabilities. In 2008, the Office of Disability Employment Policy of the U.S. Department of Labor funded an employer survey that examined employer practices related to hiring, advancing, and retaining employees with disabilities (U.S. Department of Labor, 2009). The study indicated that

companies reporting that they actively recruit employees with disabilities differ from other companies in several domains. For example, companies that recruited individuals with disabilities were generally less likely than others to identify challenges in hiring individuals with disabilities (*e.g.*, accommodation costs, nature of the work, concern about health care costs) and were more likely to identify strategies that were helpful in recruiting employees with disabilities (*e.g.*, developing a targeted recruitment program, visible top management commitment, providing flexible work schedules). In addition, companies that reported actively recruiting employees with disabilities were less likely to have identified the following concerns regarding hiring individuals with disabilities: That employing workers with disabilities increased the cost of doing business, that workers with disabilities lack relevant skills and experience, and that employees with disabilities posed greater risks to safety and productivity.

Analysis of the responses revealed that employer characteristics, including company size, sector of the economy, and industry type, were related to the employers' responses. Larger employers and employers in the public sector were more likely than other employers to report employing individuals with disabilities and actively recruiting applicants with disabilities. Larger companies were also more likely to report having hired employees with disabilities within the last 12 months. Smaller and medium-sized companies were more likely to report that health care costs, workers compensation costs, and fear of litigation were challenges in hiring individuals with disabilities. When asked about concerns related to hiring employees with disabilities, smaller and medium-sized companies were more likely to cite concerns about costs of employing individuals with disabilities and the belief that workers with disabilities lack relevant skills and experience. In contrast, larger companies were more concerned about supervisors' uncertainty regarding how to take disciplinary action against employees with disabilities. When questioned about perceived challenges to retaining employees with disabilities, smaller companies expressed greater concerns about the cost of health care coverage and workers compensation.

Responses also varied by organization type. Companies in construction, goods-producing, and retail trades were more likely than others to indicate that the nature of the work was a challenge in hiring individuals with disabilities. Public organizations were more likely than private sector agencies to report that they actively recruited employees with disabilities.

The results of this study suggest that organizations of different sizes, and from different industries and sectors of the economy, differ in employer practices with regard to individuals with disabilities. However, these findings are largely based on the attitudes, opinions or perceptions of employers, rather than on objectively measured employer practices and employment outcomes. Building upon these findings by obtaining empirical data about actual employer practices, and further investigating the extent to which these practices are associated with employment for individuals with disabilities, would inform the development of interventions to improve the number and diversity of employment opportunities for individuals with disabilities.

References

Steinmetz, E. (2006). Americans With Disabilities: 2002. Household Economic Studies Current Population Reports P70–107 Washington, DC: U.S. Census Bureau. *See http://www.census.gov/hhes/www/disability/sipp/disable02.html.*

U.S. Census Bureau (2006). American Community Survey table B1802: Selected Economic Characteristics for the Civilian Noninstitutionalized Population By Disability Status. Washington, DC: U.S. Census Bureau. See *http://factfinder.census.gov/servlet/STTable?_bm=y&-qr_name=ACS_2006_EST_G00_S1802&-geo_id=01000US&-ds_name=ACS_2006_EST_G00_&-_lang=en&-format=&-CONTEXT=st.*

U.S. Department of Labor (2009). Survey of Employer Perspectives on the Employment of People with Disabilities. *See http://www.dol.gov/odep/categories/research/index.htm.*

U.S. Department of Labor (2009). Labor force statistics from the Current Population Survey: Employment status and disability status, January 2009. *See http://www.bls.gov/cps/cpsdisability_012009.htm.*

Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Rehabilitation Research and Training Center (RRTC) on Employer Practices Related to Employment Outcomes Among Individuals with Disabilities. This RRTC must conduct research that contributes to our knowledge about the differences that exist in employer practices towards hiring individuals with disabilities and the relationship between different practices and employment outcomes for individuals with disabilities. This new knowledge will contribute to more targeted interventions to improve employer practices related to the employment of individuals with disabilities. Under this priority, the RRTC must contribute to the following outcomes:

(a) New knowledge of specific employer practices most strongly associated with desired employment outcomes for individuals with disabilities and the prevalence of these practices. The RRTC must contribute to this outcome by identifying and categorizing employer practices related to the hiring, retention, and advancement of individuals with disabilities and conducting research on the extent to which employers engage in specific practices that have been found in relevant research to promote positive employment outcomes for individuals with disabilities. Factors that are associated with such practices include, but are not limited to: employer size, geographic regions, sector of industry or the economy (*e.g.,* private sector, public sector, goods-producing, service-producing), employer preconceptions, and experience working with vocational rehabilitation agencies.

(b) Increased knowledge about how these practices relate to employer success in hiring, retention, and promotion of individuals with disabilities. Applicants must propose strategies to collect information about these practices and outcomes directly from employers, taking into account that it can be difficult to collect information about employer practices and outcomes. In addition, applicants are encouraged to use existing databases such as those maintained by the Equal Employment Opportunity Commission, the Small Business Administration, the Office of Federal Contract Compliance Programs, and disability insurance providers.

(c) Increased incorporation of findings into practice and policy. The RRTC must contribute to this outcome by:

(1) Collaborating with employer groups to develop, evaluate, or implement strategies to increase utilization of positive practices identified by the RRTC.

(2) Conducting training and dissemination activities to facilitate the utilization of research findings in employment and policy settings.

In addition, this RRTC must collaborate with:

(1) Relevant Rehabilitation Services Administration grantees, such as the 10 regional Technical Assistance and Continuing Education projects.

(2) Relevant grantees and programs in the Department of Labor, including the Office of Disability Employment

Policy's National Technical Assistance, Policy, and Research Center for Employers.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority: We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this proposed regulatory action.

The potential costs associated with this proposed regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action, we have determined that the benefits of the proposed priority justify the costs.

Discussion of Costs and Benefits

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This proposed priority will generate new knowledge through research and development activities.

Another benefit of this proposed priority is that the establishment of a new RRTC will support the research and will improve the lives of individuals with disabilities. The new RRTC will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to obtain, retain, and advance in employment.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 8, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–480 Filed 1–13–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Additional Guidance Regarding Application of Current Procedures for Testing Energy Consumption of Refrigerator-Freezers With Automatic Ice Makers

AGENCY: Office of the General Counsel, U.S. Department of Energy.

ACTION: Notice.

SUMMARY: This notice announces the Department of Energy's (DOE) guidance to ensure the consistent application of DOE's current test procedure to refrigerator-freezers with French doors, bottom-mounted freezers, and through-the-door (TTD) ice service (French door TTD models). This Guidance was issued on December 18, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Weiner at 202–586–9648.

SUPPLEMENTARY INFORMATION: The Energy Policy and Conservation Act of 1975, as amended, (EPCA or the Act) requires the Department of Energy (DOE or the Department) to prescribe standardized test procedures to measure the energy consumption of certain consumer products. *See* 42 U.S.C. 6293, 6295(r). The Department's current test procedure for residential refrigerator-freezers is set forth at 10 CFR Part 430, Subpart B, Appendix A1, Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Refrigerator-Freezers (Appendix A1). DOE issues this guidance to ensure the consistent application of the current test procedure to refrigerator-freezers with French doors, bottom-mounted freezers, and through-the-door (TTD) ice service (French door TTD models).

Appendix A1 requires products to be tested in accordance with the relevant sections of Association of Home Appliance Manufacturers (AHAM) standard HRF–1–1979 (HRF–1). *See* Appendix A1, section 2.2; 47 FR 34517 (Aug. 10, 1982). HRF–1 specifies that "automatic ice makers are to be inoperative during the test" ("ice maker exclusion"). *See* HRF–1, section 7.4.2. HRF–1 defines "automatic ice maker" as "[a] device, connected to a water supply, which automatically produces, harvests, and stores ice in a storage bin, with means to automatically interrupt the harvesting operation when the bin is filled to a predetermined amount." *Id.* at sec. 3.5.

At the time when AHAM developed and DOE adopted HRF–1, refrigerator-freezer models equipped with automatic ice makers located the ice maker in the freezer compartments, rather than separate ice compartments outside the

freezer. Further, ice maker controls were generally electro-mechanical (*i.e.* the electrical switches in the controls that turn functions on and off are operated by mechanical action). Thus, since the test procedure was adopted, DOE has typically applied HRF–1's ice maker exclusion by raising the baler arm bar of an automatic ice maker into its upright locked position, which stops ice production during normal operation. More specifically, this action stops the harvesting functions—the process of freeing or removing ice pieces from the ice mold of an automatic ice maker. Preventing the removal of ice from the ice mold, in turn, stops the subsequent activation of solenoid valves that allow the flow of more water into the ice maker. This longstanding test procedure renders the ice maker inoperative without affecting any energy-using functions of the product beyond active ice making operations. It most accurately reflects the real-world energy use of these devices because it includes in the efficiency calculation the energy used whenever the ice maker is powered on (as it will be most, if not all, of the time in normal household use), while excluding from the efficiency calculation the additional energy used when the ice maker is operative—*i.e.,* when it is *actively* making and harvesting ice. The additional energy that is used during these periods of active operation is excluded in recognition that these active ice making functions occur only intermittently—when the ice maker senses that the ice bin is not full.

Over the last few years, several manufacturers have introduced French door refrigerator-freezer models with bottom-mounted freezers and TTD ice service, which are designed to permit ice to be produced, stored, and dispensed at a consumer-friendly height through the door. The ice compartment is typically a special insulated compartment located within the fresh food compartment or mounted on one of the fresh food compartment doors. As these French door TTD models grew in number, DOE became aware that design variations led to the use of ice making components, such as the fill tube heater and ice ejection heater, that may consume energy beyond that used when the ice maker is actively making and harvesting ice. As a result, in some designs, turning the ice maker and its components off results in the machine using significantly less energy than when the ice maker is on, but not making ice.

In January 2009, DOE posted on its Web site a short statement on the application of this test procedure to refrigerator-freezers with automatic ice makers. *See http://www.energystar.gov/index.cfm?c=refrig.pr_refrigerators.* That January statement made clear that an ice storage bin must be maintained at a temperature to prevent the ice from melting during testing. We also stated that under DOE's test procedure, energy consumed by components that interact with the ice maker, but are not involved in making ice, must be included in calculating a product's reported total energy use.

We understand that, despite our consistent past practice and prior efforts to be clear, some manufacturers may have misapplied our test procedure with respect to ice making components in French door TTD models. DOE issues this guidance to eliminate any lingering inconsistency in the application of our procedure to these refrigerator-freezers. Specifically, we make clear our consistent view that, under the current test procedure, ice makers and all ice making components—including the fill tube heater and ice ejection heater—must be on and functioning as they would be when the icemaker is not actively making ice. The ice maker and all ice making components—including the fill tube heater and ice ejection heater—may be rendered "inoperative" by preventing the machine from making ice during the test, such as by creating a condition in which the machine senses a full bin of ice. Turning the ice maker and/or its components off during the test is not permitted because it may improperly exclude energy beyond that used during the intermittent periods when the ice maker is operative—*i.e.,* when it is actively making ice.

This application of the ice maker exclusion to French door TTD models follows from the plain language and intent of our test procedure, comports with the purpose of the Act, and is consistent with nearly 30 years of DOE understanding and practice. As stated above, HRF–1 specifies that "automatic ice makers are to be inoperative during the test." *See* HRF–1, section 7.4.2. DOE interprets "inoperative" by reference to the definition of an automatic ice maker. HRF–1 defines "automatic ice maker" as "[a] device, connected to a water supply, which automatically produces, harvests, and stores ice in a storage bin, *with means to automatically interrupt the harvesting operation when the bin is filled to a predetermined amount.*" *Id.* at sec. 3.5 (emphasis added). Thus, an ice maker is "inoperative" when the ice maker has "interrupt[ed] the harvesting operation," such as when the unit senses that "the bin is filled to a predetermined amount." As described above, such an action prevents the machine from making ice, by stopping the harvesting of ice, which in turn stops the production of additional ice, without affecting the energy consumed by other refrigerator-freezer functions.

Our application is also informed by EPCA's underlying purpose of advancing energy efficiency. 42 U.S.C. 6201(5). In authorizing DOE to promulgate test procedures, the Act provides that "[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency * * * of a covered product during a representative average use cycle or period of use." 42 U.S.C. 6293(b)(3). Guided by this provision, we apply our test procedures, to the extent possible, to reflect the energy consumed during representative consumer use. In our view, keeping the ice maker and its associated components on, but preventing them from making ice, better represents the average use of a refrigerator-freezer, such as when the machine has a full bin of ice in a consumer's home. Turning off either the ice maker or components associated with the ice maker, by contrast, does not represent the average use of a refrigerator-freezer, and may cause the machine to consume *less energy* than when the ice maker is on, but not making ice.

Finally, we emphasize that—far from a change to our existing view—this clarification of DOE's interpretation of HRF–1 is consistent with DOE's longstanding practice with respect to the ice maker exclusion. DOE has never interpreted the ice maker exclusion in our current test procedure to allow manufacturers to turn the ice maker or its components off. Rather, as described above, since this test procedure was adopted over twenty-seven years ago, DOE has applied the ice maker exclusion with the view that the ice maker should be on but prevented from making ice. Indeed, the advent of French door TTD models reinforces the importance of DOE's pre-existing approach, which ensures that the exclusion is narrowly targeted to exempt only active ice making energy from a product's total energy consumption.

This guidance, which reflects nearly 30 years of Department practice, represents the Department's interpretation of the existing test procedure. It is not intended to create or remove any rights or duties, nor is it intended to affect any other aspect of EPCA or DOE regulations. This guidance was originally issued on December 18, 2009, at *http://www1.eere.energy.gov/buildings/*

appliance_standards/residential/pdfs/rf_test_procedure_addl_guidance.pdf.

Dated: January 8, 2010.

Scott Blake Harris,

General Counsel.

[FR Doc. 2010–570 Filed 1–13–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. IC10–538–000, IC10–539–000, IC10–577–000, IC10–606–000, and IC10–607–000]

Commission Information Collection Activities (FERC–538, FERC–539, FERC–577, FERC–606, and FERC–607); Comment Request; Extensions

January 7, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collections and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the specific aspects of the information collections described below.

DATES: Comments in consideration of the collections of information are due March 16, 2010.

ADDRESSES: Comments may be filed either electronically or in paper format, and should refer to Docket Nos. IC10–538–000, IC10–539–000, IC10–577–000, IC10–606–000, and IC10–607–000. For comments that only pertain to some of the collections, specify the appropriate collection(s) and related docket number(s). Documents must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp*.

Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. First time users will have to establish a user name and password (*http://www.ferc.gov/docs-filing/eregistration.asp*) before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments through eFiling. Commenters filing electronically should not make a paper filing.

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

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp*. In addition, all comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's Web site using the "eLibrary" link and searching on Docket Numbers IC10–538, IC10–539, IC10–577, IC10–606, and IC10–607. For user assistance, contact FERC Online Support at: *ferconlinesupport@ferc.gov*, (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by telephone at (202) 502–8663, by fax at (202) 273–0873, or by e-mail at *ellen.brown@ferc.gov*.

SUPPLEMENTARY INFORMATION: For the purpose of publishing this notice and seeking public comment, FERC requests comments on the following information collections:

- *FERC–538*, Gas Pipeline Certificate: Section 7(a) Mandatory Initial Service, contained in 18 CFR Part 156; OMB Control No. 1902–0061;
- *FERC–539*, Gas Pipeline Certificates: Import/Export Related, contained in 18 CFR Parts 153 and 157; OMB Control No. 1902–0062;
- *FERC–577*, Gas Pipeline Certificates: Environmental Impact Statement, identifies FERC's information collections relating to 18 CFR Part 380 implementing NEPA and includes the environmental compliance conditions of 18 CFR 157.206(b); OMB Control No. 1902–0128;
- *FERC–606*, Notification of Request for Federal Authorization and Requests for Further Information, contained in 18 CFR Part 385; OMB Control No. 1902–0241; and
- *FERC–607*, Report on Decision or Action on Request for Federal Authorization, contained in 18 CFR Part 385; OMB Control No. 1902–0240.

The associated regulations, information collections, burdens, and OMB clearance numbers will continue to remain separate and distinct.

FERC–538. Under the Natural Gas Act (NGA) (Public Law 75–688) (15 U.S.C. 717–717w), upon application by a local distribution company or municipality, a natural gas pipeline company may be ordered by the Commission to extend or improve transportation facilities, to establish physical connections to serve, and to sell natural gas to the applicant. Filings pursuant to the provisions of Section 7(a) of the NGA are to contain all information necessary to advise the Commission fully concerning the service which the applicant has requested the Commission to direct the natural gas pipeline company to render (such as a request to direct a natural gas company to extend or improve its transportation facilities, and to sell natural gas to the municipality or person and, for such purpose, to extend its transportation facilities to communities immediately adjacent to such facilities or to territories served by the natural gas pipeline company).

FERC–539. Section 3 of the Natural Gas Act (NGA) (Public Law 75–688) (15 U.S.C. 717–717w) provides, in part, that "* * * no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order from the Commission authorizing it to do so." The 1992 amendments to Section 3 of the NGA concern importation or exportation from/to a nation which has a free trade agreement with the United States, and requires that such importation or exportation: (1) Shall be deemed to be a "first sale", *i.e.*, not a sale for a resale, and (2) Shall be deemed to be consistent with the public interest, and applications for such importation or exportation shall be granted without modification or delay.

With the ratification of the North American Free Trade Agreement and the Canadian Free Trade Agreement, the Federal regulatory focus on construction, operation, and siting of import and export facilities increased significantly.

FERC–577. Section 102(2)(c) of the of the National Environmental Policy Act of 1969 (NEPA) (Pub. L. 91–190) requires that all Federal agencies must include in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement on: the environmental impact on the proposed actions; any adverse environmental effects which cannot be avoided should the proposal be implemented; alternatives to the proposed action; the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented.

FERC–606 and FERC–607. Section 313 of EPAct 2005 directs the Commission: (1) To establish a schedule for state and federal agencies and officers to act on

requests for federal authorizations required for NGA section 3 and 7 gas projects, and (2) to maintain a complete consolidated record of all decisions or actions by the Commission and other agencies and officers with respect to federal authorizations.

FERC–606 requires agencies and officials responsible for issuing, conditioning, or denying requests for federal authorizations necessary for a proposed natural gas project to report to FERC regarding the status of an authorization request. This reporting requirement is intended to allow agencies to assist the FERC to make better informed determinations in establishing due dates for agencies' decisions.

FERC–607 requires agencies or officials to submit to FERC a copy of a decision or action on a request for federal authorization and an accompanying index to the documents and materials relied on in reaching a conclusion.

If the collections of data for FERC–538, FERC–539, FERC–577, FERC–606, and FERC–607 in general were not conducted, the Commission would not be able to meet its statutory responsibilities, would not be able to authorize and monitor certain energy projects to ensure that the construction of natural gas pipeline projects and LNG terminals are economically viable, and at the same time, protect the environment.

Action: The Commission is requesting three-year extensions of the current expiration dates for the FERC–538, FERC–539, FERC–577, FERC–606, and FERC–607, with no change to the reporting requirements.

Burden Statement: The estimated annual public reporting burdens and the associated public costs follow.

FERC Data collection	Projected number of respondents (1)	Number of responses per respondent (2)	Projected average burden hours per response (3)	Total annual burden hours[1] (1) × (2) × (3)
FERC–538	1	1	240	240
FERC–539	6	25.3	12	1821.6
FERC–577	92	16	193	284,096
FERC–606	48	35.46	4.4	7,489
FERC–607	48	34.45	6.3	10,423

[1] These figures may not be exact, due to rounding and/or truncating.

The total annual cost to respondents[1 2] is estimated as follows.

FERC Data collection	Total annual burden hours (1)	Estimated hourly cost[2] ($) (2)	Estimated total annual cost to respondents ($)[1] (2) × (1)
FERC–538	240	66.29	15,909
FERC–539	1821.6	66.29	120,753
FERC–577	284,096	66.29	18,832,723
FERC–606	7,489	66.29	496,446
FERC–607	10,423	66.29	690,941

[1] These figures may not be exact, due to rounding and/or truncating.
[2] Using 2,080 hours/year, the estimated cost for 1 full-time employee is $137,874/year. The estimated hourly cost is $66.29 (or $137,874/2,080).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–534 Filed 1–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM05–1–000]

Regulations Governing the Conduct of Open Seasons for Alaska Natural Gas Transportation Projects; Notice of Alaska Natural Gas Transportation Projects Open Season Pre-Filing Workshop

January 5, 2010.

On January 12, 2010, the Staff of the Federal Energy Regulatory Commission (FERC) will hold a workshop on the procedures and process for commenting upon and holding an open season for an Alaska Natural Gas Transportation Project. The Workshop is being hosted by the Alaska Department of Natural Resources and the Regulatory Commission of Alaska.

In 2005, in the above-referenced docket, FERC enacted regulations under the Alaska Natural Gas Pipeline Act which established the procedures for conducting open seasons for the purpose of making binding commitments for the acquisition of capacity on Alaskan natural gas transportation projects. Both Denali—The Alaska Gas Pipeline LLC and TransCanada Alaska Company LLC—Alaska Pipeline Project have publicly stated that they intend to hold open seasons for their respective Alaskan natural gas transportation projects in 2010.

Under FERC's open season regulations, prior to conducting an open season for an Alaskan natural gas transportation project, each project sponsor is required to submit a detailed open season plan to FERC. After receiving the project sponsor's open season plan, FERC will issue a notice requesting public comments on the open season plan and explain the procedure for submitting such comments. Absent unusual circumstances, FERC will act on the open season plan within 60 days of its submission by the project sponsor.

Both of these project sponsors have initiated FERC's pre-filing process, which is typically focused on FERC's environmental review of a project. However in this instance, the pre-filing process also includes FERC's review, approval, and oversight of the project sponsors' open season. FERC Staff is holding this Open Season Pre-Filing Workshop to provide interested parties an opportunity to learn about and discuss the procedures and process for commenting upon and holding an open season.

The workshop will be held on January 12, 2010, from 1 p.m. to 5 p.m. (AST) at: Tikhatnu Ballroom D, Anchorage Convention Center, Dena'Ina Civic and Convention Center, 600 West Seventh Avenue, Anchorage, AK 99501.

All interested parties may attend. The workshop will not be transcribed by the FERC Staff. Telephone participation will be available; Conference call participants should call in to 1–800–315–6338 and enter code 8800#.

For additional information concerning this event, please contact Richard Foley at 202–502–8955 or Mary O'Driscoll at 202–502–8680.

Kimberly D. Bose,

Secretary.

Alaska Natural Gas Transportation Projects Open Season Pre-Filing Workshop

Agenda

1 p.m.—Welcome and Opening Remarks
Anne Brown, Deputy State Pipeline Coordinator for the State of Alaska
1:15 p.m.—Explanation of FERC Open Season Policy and Alaskan Open Season Rules
Richard Foley, FERC Staff, Lead Certificate Manager for Alaskan Projects
2:15 p.m.—Explanation of FERC's Electronic Records and Filing System
Todd Ruhkamp, FERC Staff, Senior Certificate Analyst
2:45 p.m.—Break
3 p.m.—Questions and Discussion
4:45 p.m.—Closing Remarks and Adjourn

[FR Doc. 2010–530 Filed 1–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4632–032]

Clifton Power Corporation; Commissioner of Public Works of the City of Spartanburg, SC; Notice of Application for Transfer of License and Soliciting Comments and Motions To Intervene

January 7, 2010.

On November 4, 2009, Commissioner of Public Works of the City of Spartanburg, South Carolina (Applicant) filed an application for an involuntary transfer of license of the Clifton Mills #1 Hydroelectric Project No. 4632 located on the Pacolet River, in Spartanburg County, South Carolina.

The Applicant states it acquired the Clifton Mills #1 Hydroelectric Project from Clifton Power Corporation through foreclosure and seeks Commission approval for the involuntary transfer of the license for the project from Clifton Power Corporation to the Applicant.

Applicant Contacts: Ms. Sue G. Schneider, General Manager, Spartanburg Water, P.O. Box 251, Spartanburg, SC 29304, (864) 580–5647, e-mail *sschneider@sws-sssd.org* and Ms. Elizabeth W. Whittle, Nixon Peabody, LLP, 401 Ninth Street, NW., Suite 900, Washington, DC 20004, (202) 585–8338, e-mail: *ewhittle@nixonpeabody.com.*

FERC Contact: Patricia W. Gillis, (202) 502–8735.

Deadline for filing comments and motions to intervene: 30 days from the issuance of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii)(2008) and the instructions on the Commission's website under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the eLibrary link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–4632–032) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–535 Filed 1–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP10–31–000; CP10–32–000; PF08–24–000]

Calais Pipeline Company, LLC; Calais LNG Project Company, LLC; Notice of Application

January 6, 2010.

Take notice that on December 18, 2009, Calais LNG Project Company, LLC (Calais LNG) and Calais Pipeline Company, LLC (Calais Pipeline) 142

Main Street, P.O. Box 133, Calais, Maine 04619, filed applications in Docket Nos. CP10–31–000 and CP10–32–000, pursuant to Section 3 and Section 7(c) of the Natural Gas Act (NGA), respectively, as amended and Parts 153, 157, 284 and 380 of the Commission's regulations requesting: (1) Authorization to site, construct and operate a new liquefied natural gas (LNG) import, storage, and vaporization terminal and associated facilities on the St. Croix River in Calais, Maine and authority to utilize the terminal as the point of importation of LNG; (2) a certificate of public convenience and necessity authorizing Calais Pipeline to construct and operate approximately 20.7 miles of 36-inch-diameter pipeline and related facilities in order to transport natural gas from the proposed Calais LNG import terminal in Calais, Maine to a proposed interconnection with Maritimes & Northeast Pipeline in Princeton Maine; (3) a blanket certificate pursuant to Part 284, Subpart G of the Commission's regulations permitting Calais Pipeline to provide open-access natural gas transportation services; and (4) a blanket certificate pursuant to Part 157 of the Commission's regulations permitting Calais Pipeline to construct and operate facilities, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

The LNG terminal proposed by Calais LNG will be able to store up to 1,006,400 barrels of LNG in each of its three storage tanks and deliver 1.0 billion cubic feet (Bcf) per day of revaporized LNG to the Calais Pipeline. The Calais pipeline, in turn, will have a nominal capacity of 1.0 Bcf per day.

Any questions concerning this application should be directed to Carl H. Myers, Managing Member, Fuel Gas Solutions, LLC, One Meridian Boulevard, Suite 2001, Wyomissing, Pennsylvania 19610, (610) 568–1357 (phone), (610) 374–4288 (fax) or via e-mail at *cmyers@gasmark.com*.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "e-Library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

On June 18, 2008, the Commission staff granted Calais LNG's and Calais Pipeline's request to utilize the Pre-Filing Process and assigned Docket No. PF08–24 to staff activities involved with the Calais projects. Now as of the filing the December 18, 2009 application, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket Nos. CP10–31–000 and CP10–32–000, as noted in the caption of this Notice.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: January 27, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–531 Filed 1–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13643–000]

Basin Farm Renewable, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

January 6, 2010.

On December 10, 2009, the Basin Farm Renewable, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Basin Farm Renewable Energy Project Project, to be located on Saxtons River, in Westminster Township, Windham County, Vermont.

The proposed project would consist of: (1) A proposed stream bank intake on

the upper pool of the twin falls; (2) a proposed five-foot-diameter, 150-foot-long penstock; (3) a proposed 25-foot x 25-foot powerhouse containing one generating unit with a total generating capacity of 250 kW; (4) a proposed 3,000-foot-long, 12.47 kV transmission line; and (4) a tailrace. The project would have an estimated average annual generation of 764.0 megawatts-hours.

Applicant Contact: Mr. James World, 55 Main Street, Lancaster, NH 03584, phone (802) 463–3230.

FERC Contact: Michael Spencer, (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13643) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–529 Filed 1–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13640–000]

Basin Farm Renewable, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

January 6, 2010.

On December 10, 2009, the Basin Farm Renewable, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Basin Farm Renewable Energy Project, to be located on Saxtons River, in Westminster Township, Windham County, Vermont.

The proposed project would consist of: (1) A proposed stream bank intake on the upper pool of the twin falls; (2) a proposed five-foot-diameter, 150-foot-long penstock; (3) a proposed 25-foot × 25-foot powerhouse containing one generating unit with a total generating capacity of 250 kW; (4) a proposed 3,000-foot-long, 12.47 kV transmission line; and (5) a tailrace. The project would have an estimated average annual generation of 764.0 megawatts-hours.

Applicant Contact: Mr. James World, 55 Main Street, Lancaster, NH 03584, phone (802) 463–3230.

FERC Contact: Michael Spencer, (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13640) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–528 Filed 1–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13639–000]

North Unit Irrigation District; Notice of Competing Preliminary Permit Application Accepted for Filing and Soliciting Comments

January 6, 2010.

On December 9, 2009, North Unit Irrigation District filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the North Unit Diversion Dam Hydroelectric Project, located on the Deschutes River in Deschutes County, Oregon. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would utilize the existing North Canal Diversion Dam; and would consist of the following new facilities: (1) An approximately 50-foot-long, 8- to 10-foot-diameter penstock to accommodate flows up to 800 cubic feet per second; (2) a powerhouse containing two generating units having an installed capacity of 1.8 megawatts; (3) an approximately 500-foot-long, 21-kilovolt-ampere transmission line; and (4) appurtenant facilities. The proposed project would have an average annual generation of 7.2 gigawatt-hours.

Applicant Contact: Mike Britton, North Unit Irrigation District, 2024 NW. Beech Street, Madras, OR 97741, phone: (541) 475–3625, e-mail: *nuid@palmain.com.*

FERC Contact: Gina Krump, phone: (202) 502–6704, e-mail: *gina.krump@ferc.gov.*

Competing Applications: This application competes with Project No. 13560–000 filed August 27, 2009 and Project No. 13617–000 filed November 6, 2009.

Deadline for filing comments and motions to intervene: 60 days from the issuance of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at

FERCOnlineSupport@ferc.gov; call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13639) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–527 Filed 1–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13625–000]

Lock+™ Hydro Friends Fund XXX, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

January 6, 2010.

On November 13, 2009, Lock+™ Hydro Friends Fund XXX, LLC filed an application, pursuant to Section 4(f) of the Federal Power Act, proposing to study the feasibility of Project Green Dream (Project No. 13625), to be located at the New Cumberland Locks and Dam on the Ohio River, in Hancock County, West Virginia. The New Cumberland Locks and Dam are owned and operated by the U.S. Army Corps of Engineers.

Project Green Dream would include new facilities adjacent to the eastern end of the New Cumberland Locks and Dam. The proposed project would consist of: (1) One new approximately 450-foot-long, 220-foot-wide conduit; (2) two new approximately 109-foot-wide, 40-foot-tall lock frame modules, containing nine turbines each, with a total installed capacity of 36 megawatts; (3) new flow control doors; (4) a new tailrace; (5) a new switchyard, transformer, and control room; (6) a new approximately 1,000-foot-long, 36.7-kilovolt transmission line from the turbines to the new switchyard, and a new approximately 2,000-foot-long, 69-kilovolt transmission line from the new switchyard to an existing distribution line; (7) and appurtenant facilities. The project would have an estimated annual generation of 284,018 megawatt-hours.

Applicant Contact: Wayne F. Krouse, Lock+™ Hydro Friends Fund XXX, LLC, 5090 Richmond Avenue #390, Houston, TX 77056, (877) 556–6566 (ext. 709).

FERC Contact: Brandon Cherry, (202) 502–8328.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing application: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13625) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–526 Filed 1–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12635–001]

Moriah Hydro Corporation; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

January 6, 2010.

On November 2, 2009, Moriah Hydro Corporation filed an application, pursuant to section 4(f) of the Federal Power Act, for a successive preliminary permit to study the feasibility of the Mineville Pumped Storage Project, to be located in the existing Old Bed, New Bed, and Harmony Mines, within the town of Moriah in Essex County, New York. The mines are owned by the X–Earth Corporation of Elizabethtown, New York, Rhodia Corporation of Cranbury, New Jersey, and the Town of Moriah, New York.

The proposed pumped storage project would consist of the following: (1) An upper reservoir formed underground in Harmony Mine between the existing +400 and +1,000 foot elevation levels of the mine, with a surface area of about 50 acres and volume of approximately 2,400 acre-feet at normal water surface elevation of +1,000 feet Project Datum; (2) a lower reservoir formed underground in Harmony Mine between the existing −1,650 and −1,050 elevation levels of the mine, with a surface area of about 50 acres and volume of approximately 2,400 acre-feet at normal water surface elevation of +1,050 feet Project Datum; (3) two identical 2,500-foot-long, 120-inch-diameter vertical bored drop shafts; (4) a proposed concrete powerhouse 70-feet-wide by 280-feet-long by 40-feet-high, containing approximately 100 pump/turbine/generator units having a total installed capacity of 270 megawatts (MW); (5) a proposed underground, 1-mile-long, 115 kilovolt (kV) transmission line; and (6) appurtenant facilities.

The development would have an annual generation of 650 gigawatt-hours (GWh), which would be sold to a local utility.

Applicant Contact: Mr. James A. Besha, P.E., Moriah Hydro Corporation c/o Albany Engineering Corporation, 5 Washington Square, Albany, NY 12205, (518) 456–7712.

FERC Contact: John Ramer, (202) 502–8969.

Deadline for filing motions to intervene, competing applications (without notice of intent), or notices of intent to file competing applications: 60 days from the issuance date of this notice. Comments, motions to intervene, notices of intent, and competing applications may be electronically filed via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be filed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filling-comments.asp.* More information about this project can be viewed or printed on the "e-library" link of the Commission's Web site at

http://www.ferc.gov/docs-filings/elibrary.asp. Enter the docket number (P–12635–001) in the docket number field to access the document. For assistance, call toll free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–524 Filed 1–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–36–000]

Southern Natural Gas Company; Notice of Application

January 6, 2010.

Take notice that on December 29, 2009, Southern Natural Gas Company (Southern), 569 Brookwood Village, Suite 501, Birmingham, Alabama 35209, filed in the above referenced docket an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, for an order approving the abandonment of approximately 68.5 miles of pipe in various segments, replacement of approximately 225 feet of pipe, and the modification of certain other facilities located on Southern's North Main and North Main Loop Lines located in West Carroll and East Carroll Parishes, Louisiana, and Issaquena, Sharkey, Yazoo, Madison, Attala, and Winston Counties, Mississippi, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application may be directed to Patricia S. Francis, Senior Counsel, Southern Natural Gas Company, 569 Brookwood Village, Suite 501, Birmingham, Alabama 35209 at (205) 325–7696.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: January 27, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–519 Filed 1–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP10–34–000, PF09–12–000]

East Cheyenne Gas Storage, LLC; Notice of Application

January 6, 2010.

Take notice that on December 18, 2009, East Cheyenne Gas Storage, LLC (East Cheyenne), 10901 W. Toller Drive, Suite 200, Littleton, Colorado 80127, filed in the above referenced dockets an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Parts 157 and 284 of the Commission's regulations, for an order granting a certificate of public convenience to construct and operate an underground natural gas storage facility to provide up to 18.9 billion cubic feet (Bcf) of working gas capacity in Logan County, Colorado (Project), all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

East Cheyenne requests: (i) Authorization to construct, own, operate, and maintain a nearly depleted reservoir natural gas storage facility that will accommodate the injection, storage, and subsequent withdrawal of natural gas for redelivery in interstate

commerce; (ii) pre-granted abandonment authorization pursuant to section 7(b) of the NGA to dismantle and abandon the Project's proposed temporary West Peetz Compressor Station upon the in-service date of the permanent process facility; (iii) a blanket certificate pursuant to Part 284, Subpart G that will permit East Cheyenne to provide open-access firm and interruptible storage services on behalf of others in interstate commerce with pre-granted abandonment of such services; (iv) a blanket certificate pursuant to Part 157, Subpart F that will permit East Cheyenne to construct, acquire, operate, rearrange, and abandon certain facilities following construction of the proposed Project; (v) authorization to provide the proposed storage services at market-based rates; (vi) approval of the pro forma FERC Gas Tariff, under which East Cheyenne will provide open access storage services in interstate commerce; and (vii) waiver of the requirements of some of the Commission's regulations.

Any questions concerning this application may be directed to James F. Bowe, Jr., Dewey & LeBoeuf LLP, 1101 New York Avenue, NW., Washington, DC 20005–4213, at (202) 346–8000.

On May 13, 2009 the Commission staff granted East Cheyenne's request to utilize the Pre-Filing Process and assigned Docket No. PF09–12–000 to staff activities involved in the Project. Now as of the filing of the December 18, 2009 application, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP10–34–000, as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: January 27, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–518 Filed 1–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–33–000]

CenterPoint Energy Gas Transmission Company; Notice of Application

January 6, 2010.

Take notice that on December 18, 2009, CenterPoint Energy Gas Transmission Company (CEGT), 1111 Louisiana Street, Houston, Texas 77002–5231, filed with the Commission an application under Section 7(b) of the Natural Gas Act (NGA) for authorization to abandon by sale to ScissorTail Energy, LLC (ScissorTail) CEGT's Shawnee Compressor Station facilities and dehydrator located in Pittsburg County, Oklahoma. In conjunction with the abandonment, CEGT seeks determination that the facilities, once conveyed to ScissorTail, will be gathering facilities exempt from the Commission's jurisdiction under NGA section 1(b). This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions regarding the petition should be directed to B. Michelle Willis, Manager—Regulatory & Compliance, CenterPoint Energy Gas Transmission Company, P.O. Box 21734, Shreveport, Louisiana 71151 at (318) 429–3708.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: January 27, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–517 Filed 1–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12777–001]

Maine Maritime Academy; Notice of Declaration of Intention and Petition for Relief Filing and Soliciting Comments

January 6, 2010.

Take notice that the following declaration of intention and petition for relief from the requirements of hydropower licensing has been filed with the Commission and is available for public inspection.

a. *Type of Filing:* Declaration of Intention and Petition for Relief.

b. *Project No.:* 12777–001.

c. *Date Filed:* October 28, 2009.

d. *Applicant:* Maine Maritime Academy.

e. *Name of Project:* Bagaduce River Tidal Energy Project.

f. *Location:* In the Bagaduce River and Estuary, in Hancock County, Maine. The project would not occupy federal lands.

g. *Filed Pursuant to:* 18 CFR Part 24, Section 24.1.

h. *Applicant Contact:* Richard S. Armstrong, Executive Director, Tidal Energy Demonstration and Evaluation Center, Capt. Quick Hall, Maine Maritime Academy, Castine, ME 04420 (207) 326–2186.

i. *FERC Contact:* Tom Dean at (202) 502–6041.

j. *Deadline for filing comments:* 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors 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 intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "eFiling" link.

k. *Description of Project:* The Maine Maritime Academy (Academy) intends to deploy and test for short periods, for study purposes, hydrokinetic devices that would be located at sites located in Bagaduce Narrows and Castine Harbor. The experimental hydrokinetic devices could include: (1) 4.9-foot-diameter, 19.7-foot-long 4 kilowatt (kW) Cross Flow Darrius style rotors; (2) 13.1-foot-diameter, 3.3-foot-high 4 kW Cross Flow Savonius type rotors; and (3) 13.1-foot-diameter, 3.3-foot-long 6 kW Axial Flow turbines with an average capacity up to 1.5 kW. The devices would be mounted to floats attached to a concrete superstructure, concrete or stone blocks, and other gravity based weighted frameworks connected to research vessels, small launches or barges. The hydrokinetic devices would convert mechanical power from the tidal currents and the rise and fall of the tides in Bagaduce Narrows and Castine Harbor into electrical power without constructing a dam, reservoir, penstock, or powerhouse.

l. *Petition for Declaration of Intention:* The Academy asks that it be allowed, without a license under Part I of the Federal Power Act, to deploy, test, and study the type of facilities listed above, and use the power from the test devices to heat water or charge 3 or 4 batteries which could sustain a charge and power a 12/24/32 volt array of instruments and lights aboard research vessels or small barges. The Academy would initially test the hydrokinetic devices for 12 to 14 hours during tidal cycles, and once the initial tests were completed, would continue to test the devices for durability for up to five weeks. The deployment would provide educational experience for students to develop skills in deploying, retrieving, maintaining, and repairing hydrokinetic devices.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY,

(202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–525 Filed 1–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Construction and Operation of the Quartzsite Solar Energy Project, La Paz County, AZ (DOE/EIS–0440)

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Intent To Prepare an Environmental Impact Statement and To Conduct Scoping Meetings; Notice of Floodplain and Wetlands Involvement.

SUMMARY: The Western Area Power Administration (Western), an agency of the DOE, intends to prepare an environmental impact statement (EIS) for the proposed Quartzsite Solar Energy Project (Project) in La Paz County, near Quartzsite, Arizona. Quartzsite Solar Energy, LLC (QSE) has applied to Western to interconnect the proposed Project to Western's power transmission system. Western is issuing this notice to inform the public and interested parties about Western's intent to prepare an EIS, to conduct a public scoping process, and to invite the public to comment on the scope, proposed action, alternatives, and issues to be addressed in the EIS. Solar Reserve has applied to the Bureau of Land Management (BLM), Yuma Field Office for a right-of-way grant for the proposed solar power plant. Western will apply to BLM for a right-of-way grant for the proposed substation.

This EIS will address Western's Federal action of interconnecting the proposed Project to Western's transmission system and making any necessary modification to Western facilities to accommodate the interconnection. The EIS will also review the potential environmental impacts of QSE constructing, operating, and maintaining a 100-megawatt (MW) (net) solar-powered generating facility, consisting of a solar field of heliostat mirrors, power block, thermal energy storage system, substation site, transmission line, temporary laydown areas, and other ancillary facilities.

The BLM has agreed to be a cooperating agency for the EIS.

DATES: Public scoping meetings will be held:

1. January 26, 2010, BLM, Yuma Field Office, 2555 E. Gila Ridge Road, Yuma, AZ 85365.

2. January 27, 2010, Blue Water Casino, 11300 Resort Dr., Parker, AZ 85344.

3. January 28, 2010, Quartzsite Town Hall, 465 N. Plymouth Ave., Quartzsite, AZ 85346.

The public scoping meetings will begin at 6 p.m. and will end at 8 p.m. The meetings will be informal, and attendees will be able to speak directly with Western and QSE representatives about the proposed Project. The public scoping period begins with the publication of this notice and closes on February 16, 2010. Announcements will also be made by news release to the media, individual letter mailings, and posting on the Western Web site listed below.

ADDRESSES: Western will host public scoping meetings at the time and locations indicated in the **DATES** section. Oral or written comments may be provided at the public scoping meetings, mailed or e-mailed to Ms. Mary Barger. Comments should be addressed to Ms. Mary Barger, National Environmental Policy Act (NEPA) Document Manager, Western Area Power Administration, Desert Southwest Region, P.O. Box 6457, 615 S. 43rd Avenue, Phoenix, AZ 85005 or *quartzsitesolarEIS@wapa.gov.*

FOR FURTHER INFORMATION CONTACT: For information on the proposed Project and general information about interconnections with Western's transmission system, you may refer to the project Web site *http://www.wapa.gov/transmission/quartzsitesolar.htm* or contact Ms. Mary Barger, NEPA Document Manager, at the address above, by telephone (602) 605–2524, fax (602) 605–2630, or e-mail *quartzsitesolarEIS@wapa.gov*.

For general information on DOE's NEPA review procedures or status of a NEPA review, contact Ms. Carol M. Borgstrom, Director of NEPA Policy and Compliance, GC–54, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

For information on BLM's participation, contact Eddie Arreola, Supervisory Project Manager, Bureau of Land Management, One North Central Avenue, Phoenix, AZ 85004, telephone (602) 417–9505, fax (602) 417–9454, or e-mail *Quartzsite_Solar@blm.gov.*

SUPPLEMENTARY INFORMATION: Western, an agency within DOE, markets Federal hydroelectric power to preference customers, as specified by law. These customers include municipalities, cooperatives, irrigation districts, Federal and State agencies, and Native American tribes. Western's service territory covers 15 western states, of which Arizona is included. Western owns and operates more than 17,000 miles of high-voltage transmission lines.

QSE is a Santa Monica, California-based energy company formed by U.S. Renewables Group, a private equity firm focused exclusively on renewable energy.

Project Description and Alternatives

QSE proposes to construct a 100-MW (net), solar-powered electrical generation facility in La Paz County, Arizona. The solar power facility would occupy approximately 1,450 acres of BLM administered lands within a larger BLM administered area. The proposed Project would be located approximately six miles north of Quartzsite, and adjacent to Arizona State Route 95. The proposed Project, powerline and ancillary facilities would be on BLM administered land.

The proposed Project would use concentrating solar "power tower" technology to capture the sun's heat to make steam, which would power traditional steam turbine generators. The solar power facility would contain the power block, a central receiver or tower, solar fields which consist of mirrors or heliostats to reflect the sun's energy to the central tower, a thermal energy storage system, technical and non-technical buildings, a stormwater system, water supply and treatment systems, a wastewater system, and other supporting facilities.

Other Project components would include access roads, an electrical substation, and a transmission line. The access road would originate from Highway 95 and extend approximately 0.5 miles to the perimeter of the solar power facility.

QSE has applied to Western to interconnect the proposed Project to Western's transmission system. The transmission line from the solar facility would extend approximately 0.5 miles from the solar facility boundary to a new substation to be constructed adjacent to Western's existing line. The substation would be owned, operated, and maintained by Western, and would be located adjacent to Western's existing Bouse-Kofa 161-kV line that parallels State Route 95 in the vicinity of

Quartzsite, Arizona. The substation would be approximately 300 x 400 feet, or about 2 to 3 acres.

An on-site temporary laydown area would be used during the construction phase of the Project. The laydown areas, outside of the solar facility boundary, total approximately 30 acres and would be used for storage and assembly of proposed Project components and for temporary construction trailers.

Proposed Agency Action and Alternatives

Western's proposed actions are to build a new substation and to interconnect the proposed Project to Western's transmission system at the substation described above.

Western will also consider the no-action alternative in the EIS. Under the no-action alternative, Western would deny the interconnection request and would not build a new substation. For the purpose of impact analysis and comparison in the EIS, it will be assumed that the Applicant's proposed Project would not be built and the environmental impacts associated with construction and operation would not occur.

Agency Responsibilities

Because interconnection of the proposed Project would incorporate a major new generation resource into Western's power transmission system, Western has determined that an EIS is required under DOE NEPA implementing procedures, 10 CFR part 1021, Subpart D, Appendix D, class of action D6.[1] Western would be the lead Federal agency for preparing the EIS, as defined at 40 CFR 1501.5. The proposed Project would include construction of a new electrical generating facility, substation and transmission line across lands managed by the BLM; therefore, the BLM has agreed to be a cooperating agency for preparation of the EIS. Western will invite other Federal, State, local, and tribal agencies with jurisdiction by law or special expertise with respect to environmental issues to be cooperating agencies on the EIS, as defined at 40 CFR 1501.6. Such agencies may also make a request to Western to be a cooperating agency by contacting Ms. Barger at the address listed above in the **ADDRESSES** section. Because the proposed Project may involve action in floodplains or wetlands, this NOI also serves as a notice of proposed floodplain or wetland action, in accordance with DOE regulations for Compliance with Floodplain and Wetlands Environmental Review Requirements at 10 CFR 1022.12(a). The EIS will include a floodplain/wetland assessment and, if required, a floodplain/wetland statement of findings will be issued with the Final EIS or Western and BLM's Records of Decision (ROD).

[1] On October 4, 1999, DOE's Assistant Secretary for Environmental, Safety and Health delegated to Western's Administrator the authority to approve EISs for integrating transmission facilities with Western's transmission grid.

Environmental Issues

This notice is to inform agencies and the public of Western's intent to prepare an EIS and solicit comments and suggestions for consideration in the EIS. To help the public frame its comments, the following list contains potential environmental issues preliminarily identified for analysis in the EIS:

1. Impacts on protected, threatened, endangered, or sensitive species of animals or plants.
2. Impacts on migratory birds.
3. Introduction of noxious weeds, invasive and non-native species.
4. Impacts on recreation and transportation.
5. Impacts on land use, wilderness, farmlands, and Areas of Critical Environmental Concern.
6. Impacts on cultural or historic resources and tribal values.
7. Impacts on human health and safety.
8. Impacts on air, soil, and water resources (including air quality and surface water impacts).
9. Visual impacts.
10. Socioeconomic impacts and disproportionately high and adverse impacts to minority and low-income populations.

This list is not intended to be all-inclusive or to imply any predetermination of impacts. Western invites interested parties to suggest specific issues within these general categories, or other issues not included above, to be considered in the EIS.

Public Participation

The EIS process includes a public scoping period; public scoping meetings; public review and hearings on the draft EIS; publication of a final EIS; and publication of a ROD. The public scoping period begins with publication of this notice and closes February 16, 2010. At the conclusion of the NEPA process, Western will prepare a ROD. Persons interested in receiving future notices, Project information, copies of the EIS, and other information on the NEPA review process should contact Ms. Barger at the address listed above in the **ADDRESSES** section.

The purpose of the scoping meetings is to provide information about the proposed Project, review Project maps, answer questions, and take written comments from interested parties. All meeting locations will be handicapped-accessible. Anyone needing special accommodations should contact Ms. Barger to make arrangements.

The public will have the opportunity to provide written comments at the public scoping meetings. Written comments may also be sent to Ms. Barger by fax, e-mail, or U.S. Postal Service mail. To help define the scope of the EIS, comments should be received by Western no later than February 16, 2010.

Dated: January 6, 2010.

Timothy J. Meeks,

Administrator.

[FR Doc. 2010–605 Filed 1–13–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF10–2–000]

Northern Border Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Planned Princeton Lateral Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

January 7, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Princeton Lateral Project involving construction and operation of facilities by Northern Border Pipeline Company (Northern Border) in Bureau County, Illinois. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on February 8, 2010.

Comments may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this notice. In lieu of or in addition to sending written comments, we invite you to attend the public

scoping meeting we have scheduled as follows:

Date and time	Location
January 21, 2010, 7 p.m. (CST)	Princeton Public Library, 698 East Peru Street, Princeton, Illinois 61356.

This notice is being sent to the Commission's current environmental mailing list for this project, which includes affected landowners; Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with State law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" is available for viewing on the FERC Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Planned Project

Northern Border plans to construct and operate approximately 8.9 miles of 16-inch-diameter pipeline in Bureau County, Illinois. The Princeton Lateral Project would provide about 120 million standard cubic feet of natural gas per day to the Central Illinois Light Company (CILCO), a local distribution company. Northern Border states that its project would provide CILCO with the natural gas pipeline capacity to meet the natural gas demand in its service territory.

The Princeton Lateral Project would consist of the following facilities:

- Approximately 8.9 miles of 16-inch-diameter pipeline;
- One pig[1] launcher assembly; and
- One delivery meter station and appurtenant facilities.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the planned facilities would disturb about 88.7 acres of land for the aboveground facilities and the pipeline. Following construction, about 54.6 acres would be maintained for permanent operation of the project's facilities; the remaining acreage would be restored and allowed to revert to former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species; and
- Public safety.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. As part of our pre-filing review, we have begun to contact some Federal and State agencies to discuss their involvement in the scoping process and the preparation of the EA.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to those on our environmental mailing list. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section below.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the

[1] A pipeline "pig" is a device designed to internally clean or inspect the pipeline. A pig launcher/receiver is an aboveground facility where pigs are inserted or retrieved from the pipeline.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call 202–502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

more useful they will be. To ensure that your written comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before February 8, 2010.

For your convenience, there are three methods which you can use to submit your written comments to the Commission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the Quick Comment feature, which is located at *http://www.ferc.gov* under the link called "Documents and Filings." A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the "eFiling" feature that is listed under the "Documents and Filings" link. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file to your submission. New eFiling users must first create an account by clicking on the links called "Sign up" or "eRegister". You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file your comments with the Commission via mail by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

In all instances, please reference the project docket number (PF10–2–000) with your submission. Label one copy of the comments for the attention of Gas Branch 1, PJ–11.1.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities (as defined in the Commission's regulations), as well as those who comment on the project.

Becoming an Intervenor

Once Northern Border files its application with the Commission, you may want to become an "intervenor," which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "eFiling" link on the Commission's Web site. Please note that you may not request intervenor status at this time. You must wait until a formal application for the project is filed with the Commission.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits, in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact 202–502–8659. The eLibrary link also provides access to the texts of 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. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–532 Filed 1–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–31–000]

City of Pasadena, CA; Notice of Filing

January 6, 2010.

Take notice that on December 30, 2009, City of Pasadena, California filed its fifth annual revision to its Transmission Revenue Balancing Account Adjustment, consistent with its Transmission Owner Tariff and the California Independent System Operator Corporation Electric Tariff, CASIO Tariff, Appendix F, Schedule 3, § 8.1 Original Sheet No. 1215, to become effective January 1, 2010.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 20, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–523 Filed 1–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–30–000]

City of Azusa, CA; Notice of Filing

January 6, 2010.

Take notice that on December 30, 2009, City of Azusa, California filed its seventh annual revision to its Transmission Revenue Balancing Account Adjustment, consistent with its Transmission Owner Tariff and the California Independent System Operator Corporation Electric Tariff, CASIO Tariff, Appendix F, Schedule 3, § 8.1 Original Sheet No. 1215, to become effective January 1, 2010.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 20, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–522 Filed 1–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–57–002]

New York Independent System Operator, Inc.; Notice of Filing

January 5, 2010.

Take notice that on December 31, 2009, New York Independent System Operator, Inc filed in compliance with the Commission's September 3, 2009 Order, 128 FERC 61, 221 (2009) and the December 1, 2009 Extension of Time, revisions to Attachment S of its Open Access Transmission Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 21, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–520 Filed 1–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–25–001]

City of Anaheim, CA; Notice of Filing

January 5, 2010.

Take notice that on December 30, 2009, City of Anaheim, California filed a revised version of Appendix I to its Transmission Owner Tariff, revised Affidavit of Nancy Le, and revised Exhibit Nos. ANA–1 and ANA–2 to the Transmission Revenue Balancing Account Adjustment submitted on December 22, 2009.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 22, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–521 Filed 1–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–507–000]

ERA MA, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 7, 2010.

This is a supplemental notice in the above-referenced proceeding of ERA MA, 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 January 27, 2010.

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 should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–533 Filed 1–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Interconnection of the Proposed Hermosa West Wind Farm Project, Wyoming (DOE/EIS–0438)

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Intent To Prepare an Environmental Impact Statement and to Conduct Scoping Meetings; Notice of Floodplain and Wetlands Involvement.

SUMMARY: Shell WindEnergy Inc. (SWE) applied to interconnect their proposed 300-megawatt (MW) Hermosa West Wind Farm Project (Project) with the Western Area Power Administration's (Western) existing Craig—Ault 345-kilovolt (kV) transmission line in Albany County, Wyoming. Western will prepare an environmental impact statement (EIS) on the proposal to interconnect the Project in accordance with the National Environmental Policy Act of 1969 (NEPA), U.S. Department of Energy (DOE) NEPA Implementing Procedures, and the Council on Environmental Quality (CEQ) regulations for implementing NEPA.

Western's need for agency action is precipitated by SWE's application to interconnect with Western's power transmission system. Western needs to consider SWE's interconnection request under its Open Access Transmission Service Tariff (Tariff). This EIS will address Western's Federal action of interconnecting the proposed Project to Western's transmission system, constructing an interconnection facility on Western's existing Craig—Ault transmission line, and making necessary system modifications to accommodate the interconnection. By taking this action, power generated by the proposed Project would use Western's transmission system to reach the market.

Portions of the proposed Project may affect floodplains and wetlands, so this Notice of Intent (NOI) also serves as a notice of proposed floodplain or wetland action in accordance with DOE floodplain and wetland environmental review requirements.

DATES: Public scoping meetings are:

(1) January 26, 2010, from 3 p.m. to 8 p.m. in Cheyenne, Wyoming.

(2) January 27, 2010, from 3 p.m. to 8 p.m. in Laramie, Wyoming.

The public scoping period starts with the publication of this notice and ends on March 1, 2010. Western will consider all comments on the scope of the EIS received or postmarked by that date. The public is invited to submit comments on the proposed Project at any time during the EIS process.

ADDRESSES: Western will host public scoping meetings at Little America Hotel, 2800 West Lincolnway, Cheyenne, Wyoming; and at Hilton Garden Inn and UW Conference Center, 2229 East Grand Avenue, Laramie, Wyoming, to provide information on the Project and gather comments on the proposal. Oral or written comments may be provided at the public scoping meetings or mailed or e-mailed to Mark Wieringa, NEPA Document Manager, Corporate Services Office, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213, e-mail *wieringa@wapa.gov,* telephone (800) 336–7288.

FOR FURTHER INFORMATION CONTACT: For additional information on the proposed Project, the EIS process, or to receive a copy of the Draft EIS when it is published, contact Mark Wieringa at the addresses above. For general information on the DOE's NEPA review process, contact Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, GC–54, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, telephone (202) 586–4600 or (800) 472–2756, facsimile (202) 586–7031.

SUPPLEMENTARY INFORMATION: Western is a Federal power marketing agency within the DOE that markets and delivers Federal wholesale electric power (principally hydroelectric power) to municipalities, rural electric cooperatives, public utilities, irrigation districts, Federal and State agencies, and Native American tribes in 15 western and central States. The proposed Project would be located within Western's Rocky Mountain Region, which operates in Colorado, most of Wyoming, and portions of Nebraska, Kansas, Utah, and New Mexico. SWE applied to interconnect their proposed 300–MW Project with Western's existing Craig—Ault 345-kV transmission line in Albany County, Wyoming. The proposed Project would be located on private and State lands; no federally-managed land would be affected. There are no designated cooperating agencies at this time, but

cooperating agencies could be identified at a later date.

Western will prepare an EIS on the interconnection of the proposed Project in accordance with NEPA (42 U.S.C. 4321 *et seq.*); DOE NEPA Implementing Procedures (10 CFR part 1021), and the CEQ regulations for implementing NEPA (40 CFR parts 1500–1508).[1]

Purpose and Need for Agency Action

Western's need for agency action is precipitated by SWE's application to interconnect with Western's power transmission system. Western needs to consider SWE's interconnection request under Western's Tariff, which provides for open access to its transmission system through an interconnection if there is available capacity in the transmission system. This EIS will address Western's Federal action of constructing an interconnection facility on the existing Craig—Ault transmission line, and making necessary system modifications to accommodate the interconnection of SWE's proposed Project. Preliminary studies indicate that the power system can accommodate the proposed interconnection without negatively affecting system reliability or power deliveries to existing customers. The transmission system may require network and/or transmission system upgrades as determined in the final studies.

Proposed Action

Subject to compliance with the provisions of the Tariff, Western proposes to approve SWE's interconnection request and construct an interconnection facility on the Craig—Ault transmission line. By taking this action, power generated by the proposed Project would use Western's transmission system to reach the market.

Alternatives

Western will evaluate location options for the interconnection facility in the vicinity of the proposed Project along the existing Craig—Ault transmission line. Under the no action alternative, Western would not approve the interconnection request, nor construct the interconnection facility.

Applicant's Proposed Project

SWE's proposed Project would consist of up to 200 wind turbine generators with a combined total generating capacity of up to 300 MW, located within an 11,125-acre site in southeast Albany County, near the towns of Hermosa and Tie Siding. The turbines would be located in 11 north-south oriented strings of varying lengths, with the strings being approximately one-half mile apart. In addition to the turbines, other proposed Project facilities would include all-weather access roads to each turbine location; underground power collection lines linking turbines to the Project Substation; the Project Substation; a short high-voltage transmission line linking the Project Substation to Western's transmission system; operation and maintenance facilities and yard; Supervisory Control and Data Acquisition equipment and metering equipment; and a permanent meteorological tower. The proposed Project Substation would likely be co-located with Western's interconnection facility.

While Western's Federal action is to consider the interconnection request and the physical interconnection to Western's existing transmission system, the EIS will also identify and review the environmental impacts of SWE's proposed Project. SWE will complete necessary coordination with State and local agencies to permit their proposed Project.

Floodplain or Wetland Involvement

Since the proposed Project may involve action in floodplains or wetlands, this NOI also serves as a notice of proposed floodplain or wetland action. The EIS will include a floodplain/wetland assessment and floodplain/wetland statement of findings following DOE regulations for compliance with floodplain and wetlands environmental review (10 CFR part 1022).

Environmental Issues

The location of the proposed Project is in a sparsely populated portion of southeastern Wyoming. Available overview information indicates this area has a relatively low probability of substantial natural resources conflicts. SWE's siting process for the wind turbine strings and associated facilities considered sensitive resources, and the proposed Project was designed to avoid these areas. The EIS will evaluate the level of impact Western's proposed action and SWE's proposed Project would have on environmental resources within the 11,125-acre site, which may lead to minor modifications in the proposed Project to further avoid or minimize resource impacts. While no substantive resource conflicts have been identified thus far, the EIS will analyze the potential impacts on potentially affected environmental resources. Wind farm projects are generally known to have visual and noise effects, and may affect birds and bats.

Public Participation

Interested parties are invited to participate in the scoping process to help define the important resources and issues to be analyzed in depth, and to eliminate from detailed study issues that are not pertinent. The scoping process will involve all interested agencies (Federal, State, county, and local), Native American tribes, public interest groups, businesses, affected landowners, and individual members of the public.

Western will consult with affected tribes to jointly evaluate and address the potential effects on cultural resources, traditional cultural properties, or other resources important to the tribes. These consultations will be conducted in accordance with Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249), the President's memorandum of April 29, 1994, *Government-to-Government Relations with Native American Tribal Governments* (59 FR 22951), DOE-specific guidance on tribal interactions, and applicable natural and cultural resources laws and regulations.

Public scoping meetings will be held as described under **DATES** and **ADDRESSES** above. The meetings will be informal, and attendees will be able to speak directly with Western and SWE representatives about the proposed Project. The public is encouraged to provide information and comments on issues it believes Western should address in the EIS. Comments may be broad in nature or restricted to specific areas of concern. After gathering comments on the scope of the EIS, Western will address issues raised in the EIS. Comments on Western's proposed action and SWE's proposed Project will be accepted at any time during the EIS process, and may be directed to Western as described under **ADDRESSES** above.

Western's EIS process will include the public scoping meetings; consultation and coordination with appropriate Federal, State, county, and local agencies and tribal governments; involvement with affected landowners; distribution of and public review and comment on the Draft EIS; a formal public hearing or hearings on the Draft EIS; distribution of a published Final EIS; and publication of Western's Record of Decision in the **Federal Register**.

[1] On October 4, 1999, DOE's Assistant Secretary for Environmental, Safety and Health delegated to Western's Administrator the authority to approve EISs for integrating transmission facilities with Western's transmission grid.

Dated: January 6, 2010.

Timothy J. Meeks,

Administrator.

[FR Doc. 2010–569 Filed 1–13–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–12–000]

Florida Gas Transmission Company, LLC; Notice of Staff Protest to Proposed Blanket Certificate Activity

January 7, 2010.

Commission staff (Protestor) hereby protests the prior notice request filed under the provisions of Part 157, subpart F, of the Commission's regulations, by Florida Gas Transmission Company, LLC (FGT) on October 29, 2009 in the above referenced docket. Pursuant to its Part 157, subpart F, blanket certificate authority, FGT proposes to replace, upgrade, and relocate portions of the existing St. Petersburg and Clearwater South Laterals and Block Valve 24–10 in the City of Clearwater, Pinellas County, Florida. Protestor seeks to have this prior notice request processed as a case-specific application filed under section 7(c) of the Natural Gas Act (NGA) and Part 157, subpart A, of the Commission's regulations.[1]

Protestor notes that FGT did not provide documentation from the U.S. Fish and Wildlife Service (USFWS) to demonstrate the Project's compliance with the Endangered Species Act, as required under section 157.208(c)(9) of the Commission's regulations. Without the clearance from USFWS, environmental concerns cannot be adequately addressed before the protest period expires on January 8, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–536 Filed 1–13–10; 8:45 am]

BILLING CODE 6717–01–P

[1] Section 157.205(f) provides that a protested prior notice filing shall be treated as though it had filed a case-specific application under NGA section 7, unless, pursuant to section 157.205(g) the protestor withdraws its protest within 30 days after protests were due.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP10–134–000; RP09–423–000; RP09–423–002]

Columbia Gulf Transmission Company; Notice of Technical Conference

January 6, 2010.

Take notice that Commission Staff will convene a technical conference in the above-referenced proceedings on Tuesday, January 19, 2010 at 10 a.m. (EST), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The purpose of the technical conference is to consider the issues raised by Columbia Gulf Transmission Company's (Columbia Gulf) Incentive Fixed Fuel filing in Docket No. RP10–134–000 and what changes, if any, might be necessary or appropriate. Because Columbia Gulf's Incentive Fixed Fuel filing presents interrelated issues with the Transportation Retainage Adjustment filing in Docket Nos. RP09–423–000 and RP09–423–002, the technical conference will also consider the issues raised in those dockets that relate to the Incentive Fixed Fuel proposal.

Commission Staff and interested persons will have the opportunity to discuss all of the issues raised by Columbia Gulf's filings. Specifically, Columbia Gulf should be prepared to address all the concerns raised in the protests, and if necessary, to provide additional technical, engineering and operational support for its proposals. Any party proposing alternatives to Columbia Gulf's proposals should also be prepared to similarly support its position.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Anna Fernandez at (202) 502–6682 or e-mail *Anna Fernandez@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–516 Filed 1–13–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9102–9]

Clean Air Act Operating Permit Program; Petition for Objection to Federal Operating Permit for American Electric Power Service Corporation, Southwest Electric Power Company

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This document announces that the EPA Administrator has responded to a citizen petition asking EPA to object to the American Electric Power Service Corporation, Southwest Electric Power Company (AEP) operating permit issued by the Arkansas Department of Environmental Quality. Specifically, the Administrator has partially granted and partially denied the petition submitted by Environmental Integrity Project, Sierra Club and Audubon (Petitioners), to object to the title V operating permit for AEP to operate the John W. Turk, Jr. power plant in Fulton, Hempstead County, Arkansas (Turk plant).

Pursuant to section 505(b)(2) of the Clean Air Act (Act), the petitioner may seek judicial review of those portions of the petition which EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final order, the petition, and other supporting information at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view copies of the final order, petition, and other supporting information. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. The final order is also available electronically at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/aep_turk_response2008.pdf.*

FOR FURTHER INFORMATION CONTACT: Richard Barrett, Air Permits Section, Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7227, or e-mail at *barrett.richard@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and, as appropriate, object to operating

permits proposed by State permitting authorities under title V of the Act. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to title V operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

On November 24, 2008, EPA received a petition from the Petitioners requesting that EPA object to the issuance of the title V operating permit to AEP for the operation of the Turk plant. Specifically, the Petitioners claimed that: (1) The best available control technology (BACT) analysis for the Turk plant's prevention of significant deterioration (PSD) permit was flawed; (2) the maximum available control technology (MACT) analysis was flawed; (3) the permit failed to assure compliance with, and practical enforceability of, the emission limits and standards required for PSD permits and title V of the Act; and (4) EPA should object to the permit because it failed to regulate carbon dioxide (CO_2) and greenhouse gas (GHG) emissions from the Turk plant.

On December 15, 2009, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons behind EPA's conclusion to partially grant and partially deny the petition for objection.

Dated: January 6, 2010.

Lawrence E. Starfield,

Deputy Regional Administrator, Region 6.

[FR Doc. 2010–621 Filed 1–13–10; 8:45 am]

BILLING CODE P

FEDERAL COMMUNICATIONS COMMISSION

[IB Docket No. 04–286; DA 10–27]

Fourth Meeting of the Advisory Committee for the 2012 World Radiocommunication Conference

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, this notice advises interested persons that the fourth meeting of the WRC–12 Advisory Committee will be held at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2012 World Radiocommunication Conference. The WRC–12 Advisory Committee will consider any preliminary views and draft proposals introduced by the WRC–12 Advisory Committee's Informal Working Groups.

DATES: February 10, 2010, 11 a.m. to 12 noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, Designated Federal Official, WRC–12 Advisory Committee, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission established the WRC–12 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2012 World Radiocommunication Conference (WRC–12).

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the fourth meeting of the WRC–12 Advisory Committee. The WRC–12 Advisory Committee has an open membership. All interested parties are invited to participate in the WRC–12 Advisory Committee and to attend its meetings. The proposed agenda for the fourth meeting is as follows:

Agenda

Fourth Meeting of the WRC–12 Advisory Committee

Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554, February 10, 2010, 11 a.m. to 12 noon.

1. Opening Remarks.
2. Approval of Agenda.
3. Approval of the Minutes of the Third Meeting.
4. Informal Working Group Reports and Documents Relating to Preliminary Views.
5. New Guidelines for Federal Advisory Committee Membership.
6. Future Meetings.
7. Other Business.

Federal Communications Commission.

Mindel De La Torre,

Chief, International Bureau.

[FR Doc. 2010–604 Filed 1–13–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:34 a.m. on Tuesday, January 12, 2010, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, resolution, and corporate activities.

In calling the meeting, the Board determined, on motion of Director John E. Bowman (Acting Director, Office of Thrift Supervision), seconded by Vice Chairman Martin J. Gruenberg, concurred in by Director Thomas J. Curry (Appointive), Director John C. Dugan (Comptroller of the Currency), and Chairman Sheila C. Bair, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: January 12, 2010.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2010–668 Filed 1–12–10; 4:15 pm]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 010071–037.

Title: Cruise Lines International Association Agreement.

Parties: AMA Waterways; American Cruise Lines, Inc.; Azamara Cruises; Carnival Cruise Lines; Celebrity Cruises, Inc.; Costa Cruise Lines; Crystal Cruises; Cunard Line; Disney Cruise Line; Holland America Line; Hurtigruten, Inc.; Majestic America Line; MSC Cruises; NCL Corporation; Oceania Cruises; Orient Lines; Princess Cruises; Regent Seven Seas Cruises; Royal Caribbean International; Seabourn Cruise Line; SeaDream Yacht Club; Silversea Cruises, Ltd.; Uniworld River Cruises, Inc.; and Windstar Cruises.

Filing Party: Terry Dale, President; Cruise Lines International Association, Inc.; 910 SE 17th Street, Suite 400; Fort Lauderdale, FL 33316.

Synopsis: The amendment revises the Annual Travel Seller's fees and the members' annual basic and supplemental fees.

Agreement No.: 010099–052.

Title: International Council of Containership Operators.

Parties: A.P. Moller-Maersk A/S; China Shipping Container Lines Co., Ltd.; CMA CGM, S.A.; Compañía Chilena de Navegación Interoceánica S.A.; Compania SudAmericana de Vapores S.A.; COSCO Container Lines Co. Ltd; Crowley Maritime Corporation; Evergreen Marine Corporation (Taiwan), Ltd.; Hamburg-Süd KG; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; MISC Berhad; Mediterranean Shipping Co. S.A.; Mitsui O.S.K. Lines, Ltd.; Neptune Orient Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line, Ltd.; Pacific International Lines (Pte) Ltd.; United Arab Shipping Company (S.A.G.); Wan Hai Lines Ltd.; Yang Ming Transport Marine Corp.; and Zim Integrated Shipping Services Ltd.

Filing Party: John Longstreth, Esq.; K & L Gates LLP; 1601 K Street NW.; Washington, DC 20006–1600.

Synopsis: The amendment deletes Atlantic Container Line AB as a party to the agreement.

Dated: January 8, 2010.

By Order of the Federal Maritime Commission.

Tanga S. FitzGibbon,

Assistant Secretary.

[FR Doc. 2010–503 Filed 1–13–10; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act ("PRA"). The FTC seeks public comments on its proposal to extend through January 31, 2013, the current OMB clearance for information collection requirements contained in its Mail or Telephone Order Merchandise Trade Regulation Rule ("MTOR" or "Rule"). That clearance expires on January 31, 2010.

DATES: Comments must be filed by February 16, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted by using the following weblink: (*https://public.commentworks.com/ftc/MTORpra2*) (and following the instructions on the web-based form). Comments filed in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, N.W., Washington, DC 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Jock Chung, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580, (202) 326-2984.

SUPPLEMENTARY INFORMATION:

Request for Comments:

Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "Mail or Telephone Order Merchandise Trade Regulation Rule: FTC File No. R511929," to facilitate the organization of comments. Please note that your comment – including your name and your state – will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential" as provided in Section 6(f) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing matter for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted using the following weblink: (*https://public.commentworks.com/ftc/MTORpra2*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*https://public.commentworks.com/ftc/MTORpra2*). If this Notice appears at (*www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Website at (*http://www.ftc.gov*) to read the Notice and the news release describing it.

A comment filed in paper form should include the reference "Mail or Telephone Order Merchandise Trade Regulation Rule: FTC File No. R511929," both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Pennsylvania Avenue, N.W., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

On October 19, 2009, the FTC sought comment on the information collection requirements associated with the MTOR, 16 CFR Part 435 (Control Number: 3084-0106). 74 FR 53500. No comments were received. Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501-3521, the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before February 16, 2010.

Background:

The MTOR was promulgated in 1975 in response to consumer complaints that many merchants were failing to ship merchandise ordered by mail on time, failing to ship at all, or failing to provide prompt refunds for unshipped merchandise. A second rulemaking proceeding in 1993 demonstrated that the delayed shipment and refund problems of the mail order industry were also being experienced by consumers who ordered merchandise over the telephone. Accordingly, the Commission amended the Rule, effective on March 1, 1994, to include merchandise ordered by telephone, including by telefax or by computer through the use of a modem (*e.g.*, Internet sales), and the Rule was then renamed the "Mail or Telephone Order Merchandise Rule."

Generally, the MTOR requires a merchant to: (1) have a reasonable basis for any express or implied shipment representation made in soliciting the sale (if no express time period is promised, the implied shipment representation is 30 days); (2) notify the consumer and obtain the consumer's consent to any delay in shipment; and (3) make prompt and full refunds when the consumer exercises a cancellation option or the merchant is unable to meet the Rule's other requirements.[2]

The notice provisions in the Rule require a merchant who is unable to ship within the promised shipment time or 30 days to notify the consumer of a revised date and his or her right to cancel the order and obtain a prompt refund. Delays beyond the revised shipment date also trigger a notification requirement to consumers. When the MTOR requires the merchant to make a refund and the consumer has paid by credit card, the Rule also requires the merchant to notify the consumer either that any charge to the consumer's charge account will be reversed or that the merchant will take no action that will result in a charge.

Burden Statement:

Estimated total annual hours burden: 2,401,000 hours (rounded to the nearest thousand)

In its 2006 PRA-related **Federal Register** Notices[3] and corresponding submission to OMB, FTC staff estimated that established companies each spend an average of 50 hours per year on compliance with the Rule, and that new industry entrants spend an average of 230 hours (an industry estimate) for compliance measures associated with start-up.[4] Thus, the total estimated hours burden was calculated by multiplying the estimated number of established companies x 50 hours, multiplying the estimated number of new entrants x 230 hours, and adding the two products.

No provisions in the Rule have been amended or changed since staff's prior submission to OMB. Thus, the Rule's disclosure requirements remain the same. Moreover, no public comments were received regarding the above-noted estimates; thus, staff will apply them to the current PRA burden analysis.

Since the prior submission to OMB, however, the number of businesses engaged in the sale of merchandise by mail or by telephone has changed. Data from the U.S. Department of Commerce 2009 Statistical Abstract[5] indicates that between 2000 and 2005 the number of businesses subject to the MTOR grew from 26,800 to 33,600, or an average increase of 1,360 new businesses a year [(33,600 businesses in 2005 - 26,800 businesses in 2000) ÷ 5 years].[6] Assuming this growth rate continues, the average number of established businesses during the three-year period for which OMB clearance is sought for the Rule would be 41,760[7]:

Year:	Established Businesses	New Entrants
2010	40,400	1,360
2011	41,760	1,360
2012	43,120	1,360
Average:	41,760	1,360

In an average year during the three-year OMB clearance period, staff estimates that established businesses and new entrants will devote 2,401,000 hours, rounded to the nearest thousand, to comply with the MTOR [(41,760 established businesses x 50 hours) + (1,360 new entrants x 230 hours) = 2,400,800].

[2] The MTOR does not impose a recordkeeping requirements *per se*. 16 CFR § 435.1(d) provides that, in an action for noncompliance, the absence of records that establish that a respondent-seller uses systems and procedures to assure compliance will create a rebuttable presumption that the seller was not compliant, but the MTOR does not require a compliant seller to maintain any records. Merchants customarily keep records regarding their systems and procedures in the ordinary course of business, however; consequently, their retention of these documents does not constitute a "collection of information" under OMB's regulations that implement the PRA. *See* 5 CFR 1320.3(b)(2).

[3] 71 FR 60530 (Oct. 13, 2006); 71 FR 77751 (Dec. 27, 2006).

[4] Most of the estimated start-up time relates to the development and installation of computer systems geared to more efficiently handle customer orders.

[5] *See* Table 1008, "Retail Trade – Establishments, Employees and Payroll: 2000 and 2005,"U.S. Census Bureau, Statistical Abstract of the United States: 2009 (128th Edition), Washington, DC, 2008 (*http://www.census.gov/compendia/statab/tables/09s1008.pdf*).

[6] Conceptually, this might understate the number of new entrants in that it does not factor in the possibility that established businesses from an earlier year's comparison might have exited the market preceding the later year of measurement. Given the virtually unlimited diversity of retail establishments, it is very unlikely that there is a reliable external measure of such exit; nonetheless, as in the past, the Commission invites public comment that might better inform these estimates.

[7] As noted above, the existing OMB clearance for the Rule expires on January 31, 2010 and the FTC is seeking to extend the clearance through January 31, 2013. The average number of established businesses during the three-year clearance period was determined as follows: [(33,600 businesses in 2005 + (1,360 new entrants per year x 5 years)) + (33,600 businesses in 2005 + (1,360 new entrants per year x 6 years)) + (33,600 businesses in 2005 + (1,360 new entrants per year x 7 years))] ÷ 3 years.

The estimated PRA burden per merchant to comply with the MTOR is likely overstated. The mail-order industry has been subject to the basic provisions of the Rule since 1976 and the telephone-order industry since 1994. Thus, businesses have had several years (and some have had decades) to integrate compliance systems into their business procedures. Moreover, arguably much of the estimated time burden for disclosure-related compliance would be incurred even absent the Rule. Industry trade associations and individual witnesses have consistently taken the position that compliance with the MTOR is widely regarded by direct marketers as being good business practice. Providing consumers with notice about the status of their orders fosters consumer loyalty and encourages repeat purchases, which are important to direct marketers' success. Accordingly, the Rule's notification requirements would be followed in any event by most merchants to meet consumer expectations regarding timely shipment, notification of delay, and prompt and full refunds. Thus, it appears that much of the time and expense associated with Rule compliance may not constitute "burden" under the PRA.[8]

Estimated labor costs: $47,108,000 (rounded to the nearest thousand)

FTC staff derived labor costs by applying appropriate hourly cost figures to the burden hours described above. According to the most recent mean hourly income data available from the Bureau of Labor and Statistics, average payroll in 2008 for miscellaneous sales and related workers was $19.62/hr. Because the bulk of the burden of complying with the MTOR is borne by clerical personnel, staff believes that the average hourly payroll figure for miscellaneous sales and related workers is an appropriate measure of a direct marketer's average labor cost to comply with the Rule. Thus, the total annual labor cost to new and established businesses for MTOR compliance during the three-year period for which OMB approval is sought would be approximately $47,108,000 (2,401,000 hours x $19.62/hr.), rounded to the nearest thousand. Relative to direct industry sales, this total is negligible.[9]

Estimated annual non-labor cost burden: $0 or minimal

The applicable requirements impose minimal start-up costs, as businesses subject to the Rule generally have or obtain necessary equipment for other business purposes, *i.e.*, inventory and order management, and customer relations. For the same reason, staff anticipates printing and copying costs to be minimal, especially given that telephone order merchants have increasingly turned to electronic communications to notify consumers of delay and to provide cancellation options. Staff believes that the above requirements necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates, but that this would be a small portion of and subsumed within the ordinary training that employees receive apart from that associated with the information collected under the Rule.

Willard K. Tom

General Counsel

[FR Doc. 2010–558 Filed 1–13–10: 8:45 am]

BILLING CODE 6750–01–S

[8] Conceivably, in the three years since the FTC's most recent clearance request to OMB for this Rule, many businesses have upgraded the information management systems needed to comply with the Rule and to track orders more effectively. These upgrades, however, were primarily prompted by the industry's need to deal with growing consumer demand for merchandise (resulting, in part, from increased public acceptance of making purchases over the telephone and, more recently, the Internet). Accordingly, most companies now provide updated order information of the kind required by the Rule in their ordinary course of business. Under the OMB regulation implementing the PRA, burden is defined to exclude any effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.3(b)(2).

[9] Based on a $13.786 billion average yearly increase in sales for "electronic shopping and mail-order houses" from 2000 to 2007 (according to the 2009 Statistical Abstract), staff estimates that total mail or telephone order sales to consumers in the three-year period for which OMB clearance is sought will average $265.5 billion. Thus, the projected average labor cost for MTOR compliance by existing and new businesses for that period would amount to less than 0.018% of sales.

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0274]

Public Buildings Service; Submission for OMB Review; Art-in-Architecture Program National Artist Registry

AGENCY: Public Buildings Service, (GSA).

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding Art-in Architecture Program National Artist Registry. A request for public comments was published in the **Federal Register** at 74 FR 31278, on June 30, 2009. No comments were received.

The Art-in-Architecture Program is the result of a policy decision made in January 1963 by GSA Administrator Bernard L. Boudin who had served on the Ad Hoc Committee on Federal Office Space in 1961–1962.

The program has been modified over the years, most recently in 2000 when a renewed focus on commissioning works of art that are an integral part of the building's architecture and adjacent landscape was instituted. The program continues to commission works of art from living American artists. One-half of one percent of the estimated construction cost of new or substantially renovated Federal buildings and U.S. courthouses is allocated for commissioning works of art.

Public comments are particularly invited on: whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: February 16, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Harrison, Public Buildings Service, Office of the Chief Architect, Art-in-Architecture Program, 1800 F Street, NW., Room 3341, Washington, DC 20405, at telephone (202) 501–1812 or via e-mail to *susan.harrison@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (MVPR), General Services Administration, 1800 F Street, Room 4041, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0274, Art-in-Architecture Program National Artist Registry, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Art-in-Architecture Program actively seeks to commission works from the full spectrum of American artists and strives to promote new media and inventive solutions for public art. The GSA Form 7437, Art-in-Architecture Program National Artist Registry, will be used to collect information from artists across the

country to participate and to be considered for commissions.

B. Annual Reporting Burden

Respondents: 360.
Responses Per Respondent: 1.
Total Responses: .25.
Hours Per Response: .25.
Total Burden Hours: 90.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0274, Art-in-Architecture Program National Artist Registry, in all correspondence.

Dated: January 8, 2009.

Teresa Sorrenti,

Chief Information Officer.

[FR Doc. 2010–560 Filed 1–13–10; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

Notice of Availability of a Draft Environmental Impact Statement for the Construction of a New Land Port of Entry in International Falls, Koochiching County, MI

AGENCY: Public Buildings Service, GSA.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) and its implementing regulations, the U.S. General Services Administration (GSA), Great Lakes Region, announces the availability of a Draft Environmental Impact Statement (Draft EIS) assessing the potential impacts of a proposed new land port of entry (LPOE) in International Falls, Minnesota (the "Proposed Action"). At the request of Customs and Border Protection, the GSA is proposing to construct and operate a larger improved LPOE which meets the needs of the Federal Inspection Services and the design requirements of the GSA.

The existing facilities are undersized and functionally obsolete and, consequently, incapable of fully providing the level of security now required. The Proposed Action includes: (a) Identification of land requirements, including property acquisition; (b) demolition of existing government structures at the existing LPOE; (c) construction of a main administration building and ancillary support buildings; and (d) incorporation of the principles of sustainable design through the Leadership in Energy and Environmental Design Green Building Rating System of the U.S. Green Building Council.

The Proposed Action would improve the operational efficiency, safety, and security for federal agency personnel and cross-border travelers at International Falls, Minnesota. The specific objectives are to:

- Increase vehicle and pedestrian processing efficiency and capacity
- Reduce traffic queues and delays approaching the LPOE from both directions
- Minimize conflict points among different types of traffic crossing the border (passenger vehicles, commercial vehicles, trains, buses, and pedestrians)
- Add a functional secondary inspection area for commercial vehicles
- Accommodate future demands and new safety and security technologies and border initiatives

Alternatives being studied include alternative locations and layouts for the components of the LPOE that are identified in the concurrent GSA feasibility study including the main administration and ancillary support buildings, the associated transportation network, and parking. A no-build alternative also is being studied that evaluates the consequences of not constructing the LPOE. This alternative is included to provide a basis for comparison to the action alternatives described above as required by the NEPA regulations (40 CFR 1002.14(d)).

The GSA invites individuals, organizations and agencies to submit comments concerning the content and findings of the Draft EIS. The public comment period starts with the publication of this notice in the **Federal Register** and will continue for forty-five (45) days from the date of this notice. The GSA will consider and respond to comments received on the Draft EIS in preparing the Final EIS. The GSA expects to issue the Final EIS by Spring 2010 at which time its availability will be announced in the **Federal Register** and local media.

ADDRESSES: Written comments concerning the Draft EIS should be sent to Glenn Wittman, Regional Environmental Quality Advisor, U.S. General Services Administration, Public Buildings Service, Design & Construction Division, 230 South Dearborn Street, Room 3600, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Glenn Wittman by phone at (312) 353–6871 or by e-mail at *glenn.wittman@gsa.gov.*

SUPPLEMENTARY INFORMATION: The public comment period provides stakeholders with an opportunity to comment on the content and findings of the EIS for the Proposed Action. Copies are being distributed to selected stakeholders and are available for public review at the International Falls Public Library, the International Falls Area Chamber of Commerce, and the Koochiching County Administration Office.

Dated: January 7, 2010.

J. David Hood,

Regional Commissioner, Public Buildings Service, Great Lakes Region.

[FR Doc. 2010–559 Filed 1–13–10; 8:45 am]

BILLING CODE 6820–A9–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0600]

Draft Guidance for Industry on Tobacco Health Document Submission; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of December 28, 2009 (74 FR 68629). The notice announced the availability of a draft guidance entitled "Tobacco Health Document Submission." The notice published with an inadvertent error in the Supplementary Information, background section. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: May Nelson, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229, 240–276–1717, *May.Nelson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. E9–30657, appearing on page 68629, in the **Federal Register** of Monday, December 28, 2009, the following correction is made:

1. On page 68629, in the second column, in the **SUPPLEMENTARY INFORMATION**, **I. Background** section, in the second full paragraph, in the last sentence, the date "April 30, 2009" is corrected to read "April 30, 2010".

Dated: January 11, 2010.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2010–576 Filed 1–13–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review of R21 ONJ applications (PAR–06–556).

Date: February 11, 2010.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lynn M. King, PhD, Chief, Scientific Review Branch, National Institute of Dental and Craniofacial Research/NIH, 6701 Democracy Blvd., Bethesda, MD 20892–6402, 301–594–5006, *lynn.king@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 30, 2009.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–39 Filed 1–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function D Study Section.

Date: February 3–4, 2010.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: James W. Mack, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group: Arthritis, Connective Tissue and Skin Study Section.

Date: February 8–9, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 594–6376, *ansaria@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Musculoskeletal Regeneration.

Date: February 9–10, 2010.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Rajiv Kumar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Drug Discovery and Mechanisms of Antimicrobial Resistance Study Section.

Date: February 11–12, 2010.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102.

Contact Person: Guangyong Ji, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7808, Bethesda, MD 20892, 301–435–1146, *jig@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Oral, Dental and Craniofacial Sciences.

Date: February 17, 2010.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Rajiv Kumar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Medical Imaging.

Date: February 18–19, 2010.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Leonid V. Tsap, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892, (301) 435–2507, *tsapl@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 8, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–625 Filed 1–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Neurological Sciences Training Initial Review Group, NST–1 Subcommittee.

Date: February 8–9, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 1250 22nd Street NW., Washington, DC 20037.

Contact Person: Raul A. Saavedra, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC; 6001 Executive Blvd., Ste. 3208, Bethesda, MD 20892–9529, 301–496–9223, *saavedrr@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 7, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–622 Filed 1–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases, Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below in advance of the 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 grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: February 24, 2010.

Open: 8:30 a.m. to 11:45 a.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 4:15 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Diabetes, Endocrinology, and Metabolic Diseases Subcommittee.

Date: February 24, 2010.

Open: 1 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Digestive Diseases and Nutrition Subcommittee.

Date: February 24, 2010.

Open: 1 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Kidney, Urologic, and Hematologic Diseases Subcommittee.

Date: February 24, 2010.

Open: 1 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive, and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 8, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–626 Filed 1–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of meetings of the National Advisory Council for Human Genome Research.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Human Genome Research.

Date: February 8–9, 2010.

Open: February 8, 2010, 8:30 a.m. to 3 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: February 8, 2010, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: February 9, 2010, 8:30 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Mark S. Guyer, PhD, Director for Extramural Research, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9305, Bethesda, MD 20892, 301–496–7531, *guyerm@mail.nih.gov*.

Name of Committee: National Advisory Council for Human Genome Research.

Date: May 17–18, 2010.

Open: May 17, 2010, 8:30 a.m. to 3 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: May 17, 2010, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: May 18, 2010, 8:30 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Mark S. Guyer, PhD, Director for Extramural Research, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9305, Bethesda, MD 20892, 301–496–7531, *guyerm@mail.nih.gov*.

Information is also available on the Institute's/Center's home page: *http://www.genome.gov/11509849,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 7, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–609 Filed 1–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group, Genome Research Review Committee.

Date: March 4, 2010.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NHGRI Twinbrook Library, 5635 Fishers Lane, Suite 4076, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Keith McKenney, PhD Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, MSC 9306, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 7, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–613 Filed 1–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group, Biological Aging Review Committee.

Date: January 25, 2010.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Bita Nakhai, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814. 301–402–7701. *nakhaib@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Initial Review Group, Neuroscience of Aging Review Committee.

Date: March 4–5, 2010.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: William Cruce, PhD, Scientific Review Administrator, National Institute on Aging, Scientific Review Office, Gateway Building 2C–212, 7201 Wisconsin Ave., Bethesda, MD 20814. 301–402–7704. *crucew@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 7, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–612 Filed 1–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: January 21–22, 2010.

Closed: January 21, 2010, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Open: January 22, 2010, 8:30 a.m. to adjournment.

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, and other business of the Council.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Ann A. Hagan, PhD, Associate Director for Extramural Activities, NIGMS, NIH, DHHS, 45 Center Drive, Room 2AN24H, MSC6200, Bethesda, MD 20892–6200, (301) 594–4499, *hagana@nigms.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/about/advisory_council.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862,Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: January 8, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–617 Filed 1–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; CBPR and Health Disparities.

Date: January 27, 2010.

Time: 2:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call)

Contact Person: Michele C. Hindi-Alexander, PhD, Division of Scientific Review, National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6100 Executive Boulevard, Rm. 5B01, Bethesda, MD 20892, (301) 435–8382, *hindialm@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 8, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–615 Filed 1–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Clinical Trials Subcommittee.

Date: February 3–4, 2010.

Closed: February 3, 2010, 6 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Open: February 4, 2010, 8 a.m. to 10 a.m.

Agenda: To discuss clinical trials policy.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Petra Kaufmann, MD, Director, Office of Clinical Research—NINDS, National Institutes of Health, Neuroscience Center- Room 2216, 6001 Executive Blvd., Bethesda, MD 20892. 301–496–9135. *kaufmanp2@ninds.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 7, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–614 Filed 1–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee. The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

Date: March 10, 2010.

Time: 8 a.m. to 4 p.m.

Agenda: Update on the progress of the implementation of the Clinical Trials Working Group and the Translational Research Working Group reports.

Place: National Institutes of Health, Building 31, 6th Floor, C–Wing, Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Sheila A. Prindiville, MD, MPH, Director, Coordinating Center for Clinical Trials, Office of the Director, National Cancer Institute, National Institutes of Health, 6120 Executive Blvd., 3rd Floor Suite, Bethesda, MD 20892, 301–451–5048, *prindivs@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(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: January 11, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–611 Filed 1–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need additional information or special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Child Health and Human Development Council; Subcommittee on Planning and Policy.

Date: January 20, 2010.

Time: 9 a.m. to 11 a.m.

Agenda: Topics to be discussed include: (1) Report of the Acting Director, NICHD; (2) Deputy Director's review of the Remote Council Process; (3) Concept Review Clearance discussions.

Place: National Institutes of Health, Building 31, 31 Center Drive, Room 2A–48, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Elizabeth Wehr, Senior Public Health Analyst, Office of Science Policy, Analysis and Communication, NICHD/NIH/DHHS, 31 Center Drive, Suite 2A–18, Bethesda, MD 20892, 301–496–0805.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the Executive Secretary's need for confirmation from subcommittee members on their availability to participate in this Meeting.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nichd.nih.gov/about/nachhd.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 8, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–603 Filed 1–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review R13.

Date: February 19, 2010.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Mary Kelly, Scientific Review Officer, Scientific Review Branch, National Inst. of Dental & Craniofacial Research, NIH 6701 Democracy Blvd., Room 672, MSC 4878, Bethesda, MD 20892–4878, 301–594–4809, *mary_kelly@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; NIDCR Review of Small Research Grants for Data Analysis and Statistical Methodology (R03).

Date: February 22, 2010.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Victor Henriquez, PhD, Scientific Review Officer, DEA/SRB/NIDCR, 6701 Democracy Blvd., Room 668, Bethesda, MD 20892–4878, 301–451–2405, *henriquv@nidcr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 8, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–627 Filed 1–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–0080; Application for Surplus Federal Real Property Public Benefit Conveyance and BRAC Program for Emergency Management Use

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0080; FEMA Form 119–0–1 (replaces 60–25), Surplus Federal Real Property Application for Public Benefit Conveyance.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to take this opportunity to comment on a proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the application process for the conveyance of Federal real property for public benefit. The purpose of this form is to implement the processes and procedures for the successful, lawful, and expeditious conveyance of real property from the Federal Government to public entities such as State, local, city, town, or other like government bodies as it relates to emergency management response purposes, including Fire and Rescue services. Compliance will ensure that properties will be fully positioned to use at their highest and best potentials as required by General Services Administration and Department of Defense regulations, Federal law, Executive Orders, and the Code of Federal Regulations.

DATES: Comments must be submitted on or before March 15, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under Docket ID FEMA–2009–0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA–POLICY@dhs.gov.* Include Docket ID FEMA–2009–0001 in the subject line.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Jeannie Murphy-Knox, PBC/BRAC Coordinator, FEMA, (202) 646–4613 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION: Excess Federal real property is defined as property that is no longer mission critical to the needs of the Federal Government. The conveyance and disposal of excess real property is governed by the Federal Property and Administrative Services Act of 1949 (Property Act) as amended, 40 U.S.C. 541, *et seq.,* 40 U.S.C. 553, and applicable regulations (41 CFR 102–75.750 through 102.75.815).

Under the sponsorship of Federal Emergency Management Agency (FEMA) the Property Act gives the Administrator of the General Services Administration (GSA) authority to convey Federal real and related surplus property (without monetary consideration) to units of State and local government for emergency management response purposes, including fire rescue services. The scope and philosophy of GSA's real property policies are contained in 41 CFR Part 102–71.

Collection of Information

Title: Application for Surplus Federal Real Property Public Benefit Conveyance and BRAC Program for Emergency Management Use.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0080.

Form Titles and Numbers: FEMA Form 119–0–1 (replaces 60–25), Surplus Federal Real Property Application for Public Benefit Conveyance.

Abstract: Use of the Application for Surplus Federal Real Property Public Benefit Conveyance and Base Realignment and Closure (BRAC) Program for Emergency Management Use is necessary to implement the processes and procedures for the successful, lawful, and expeditious conveyance of real property from the Federal Government to public entities such as State, local, county, city, town, or other like government bodies, as it relates to emergency management response purposes, including fire and rescue services. Utilization of this application will ensure that properties will be fully positioned for use at their highest and best potentials as required by GSA and Department of Defense regulations, public law, Executive Orders, and the Code of Federal Regulations.

Affected Public: State, local, or Tribal Government.

Estimated Total Annual Burden Hours: 250 Hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate *	Total annual respondent cost
State, local, or Tribal Government.	Surplus Federal Real Property Application for Public Benefit Conveyances/ FEMA Form 119–0–1 (replaces 60–25).	50	1	50	4	200	$55.81	$11,162
State, local, or Tribal Government.	Annual Status Report/No Form.	50	1	50	1	50	55.81	2,791
Total	.....	50	.....	100	.....	250	.....	13,953

* **Note:** The "Avg. Hourly Wage Rate" for each respondent includes a 1.4 multiplier to reflect a fully-loaded wage rate.

Estimated Cost: There is no annual operation or maintenance cost associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–616 Filed 1–13–10; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–1070]

Certificate of Alternative Compliance for the Anchor Handling Tug Supply Vessel HOLIDAY

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the anchor handling tug supply vessel HOLIDAY as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternative Compliance was issued on November 30, 2009.

ADDRESSES: The docket for this notice is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2009–1070 in the "Keyword" box, and then clicking on "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call CWO2 David Mauldin, District Eight, Prevention Branch, U.S. Coast Guard, telephone 504–671–2153. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The anchor handling tug supply vessel HOLIDAY will be used for offshore supply operations. The horizontal distance between the forward and aft masthead lights may be 25′-11⅝″. Placing the aft masthead light at the horizontal distance from the forward masthead light as required by Annex I, paragraph 3(a) of the 72 COLREGS, and Annex I, Section 84.05(a) of the Inland Rules Act, would result in an aft masthead light location directly over the cargo deck, where it would interfere with loading and unloading operations.

The Certificate of Alternative Compliance allows for the horizontal separation of the forward and aft masthead lights to deviate from the requirements of Annex I, paragraph 3(a) of 72 COLREGS, and Annex I, Section 84.05(a) of the Inland Rules Act.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: 14 December 2009.

J.W. Johnson,

Commander, U.S. Coast Guard, Chief, Inspections and Investigations Branch, By Direction of the Commander, Eighth Coast Guard District.

[FR Doc. 2010–548 Filed 1–13–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–1071]

Certificate of Alternative Compliance for the Offshore Supply Vessel C–CHARIOT

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the offshore supply vessel C–CHARIOT as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternative Compliance was issued on December 4, 2009.

ADDRESSES: The docket for this notice is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov*, inserting USCG–2009–1071 in the "Keyword" box, and then clicking on "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call CWO2 David Mauldin, District Eight, Prevention Branch, U.S. Coast Guard, telephone 504–671–2153. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The offshore supply vessel C–CHARIOT will be used for offshore supply operations. The horizontal distance between the forward and aft masthead lights may be 21′-8¾″. Placing the aft masthead light at the horizontal distance from the forward masthead light as required by Annex I, paragraph 3(a) of the 72 COLREGS, and Annex I, Section 84.05(a) of the Inland Rules Act, would result in an aft masthead light location directly over the cargo deck where it would interfere with loading and unloading operations.

The Certificate of Alternative Compliance allows for the horizontal separation of the forward and aft masthead lights to deviate from the requirements of Annex I, paragraph 3(a) of 72 COLREGS, and Annex I, Section 84.05(a) of the Inland Rules Act.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: December 14, 2009.

J.W. Johnson,

Commander, U.S. Coast Guard, Chief, Inspections and Investigations Branch, By Direction of the Commander, Eighth Coast Guard District.

[FR Doc. 2010–549 Filed 1–13–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–1069]

Certificate of Alternative Compliance for the Tractor Tug FORTE

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the tractor tug FORTE as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternative Compliance was issued on November 30, 2009.

ADDRESSES: The docket for this notice is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2009–1069 in the "Keyword" box, and then clicking on "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call CWO2 David Mauldin, District Eight, Prevention Branch, U.S. Coast Guard, telephone 504–671–2153. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The tractor tug FORTE will be used for offshore supply operations. The horizontal distance between the forward and aft masthead lights may be 20′-9 9/16″. Placing the aft masthead light at the horizontal distance from the forward masthead light as required by Annex I, paragraph 3(a) of the 72 COLREGS, and Annex I, Section 84.05(a) of the Inland Rules Act, would result in an aft masthead light location directly over the cargo deck, where it would interfere with loading and unloading operations.

The Certificate of Alternative Compliance allows for the horizontal separation of the forward and aft masthead lights to deviate from the requirements of Annex I, paragraph 3(a) of 72 COLREGS, and Annex I, Section 84.05(a) of the Inland Rules Act.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: December 14, 2009.

J.W. Johnson,

Commander, U.S. Coast Guard, Chief, Inspections and Investigations Branch, By Direction of the Commander, Eighth Coast Guard District.

[FR Doc. 2010–547 Filed 1–13–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0010]

National Fire Academy Board of Visitors

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Notice of Open Teleconference Federal Advisory Committee Meeting.

SUMMARY: The National Fire Academy Board of Visitors will meet by teleconference on February 2, 2010.

DATES: The teleconference will take place Tuesday, February 2, 2010, from 10 a.m. to 12 p.m., e.s.t. Comments must be submitted by Tuesday, February 9, 2010.

ADDRESSES: Members of the public who wish to obtain the call-in number, access code, and other information for the public teleconference may contact Teressa Kaas as listed in the **FOR FURTHER INFORMATION CONTACT** section by February 1, 2010, as the number of teleconference lines is limited and available on a first-come, first served basis. Members of the public may also participate by coming to the National Emergency Training Center, Building H, Room 300, Emmitsburg, Maryland. Members of the general public who plan

to participate in the meeting should contact Teressa Kaas as listed in the **FOR FURTHER INFORMATION CONTACT** section, on or before February 1, 2010. Written material as well as requests to have written material distributed to each member of the committee prior to the meeting should reach Teressa Kaas as listed in the **FOR FURTHER INFORMATION CONTACT** section by February 1, 2010. Comments must be identified by docket ID FEMA–2008–0010 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: FEMA-RULES@dhs.gov.* Include the docket ID in the subject line of the message.
- *Fax:* 703–483–2999.
- *Mail:* Teressa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Instructions: All submissions received must include the docket ID for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the National Fire Academy Board of Visitors, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Teressa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, telephone (301) 447–1117, fax (301) 447–1173, and e-mail *teressa.kaas@dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The National Fire Academy Board of Visitors will be holding a teleconference for purposes of reviewing National Fire Academy Program activities, including the status of facility capital improvements, the budget update, the Academy update, Board discussions and new items. This meeting is open to the public.

The Chairperson of the National Fire Academy Board of Visitors shall conduct the teleconference in a way that will, in his judgment, facilitate the orderly conduct of business. During its teleconference, the committee welcomes public comment; however, comments will be permitted only during the public comment period. The Chairperson will make every effort to hear the views of all interested parties. Please note that the teleconference may end early if all business is completed.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Teressa Kaas as soon as possible.

Dated: January 6, 2010.

Denis G. Onieal,

Superintendent, National Fire Academy, United States Fire Administration, Federal Emergency Management Agency.

[FR Doc. 2010–590 Filed 1–13–10; 8:45 am]

BILLING CODE 9111–45–P

DEPARTMENT OF THE INTERIOR

Central Utah Project Completion Act

AGENCY: Department of the Interior, Office of the Assistant Secretary—Water and Science.

ACTION: Notice of Availability, Draft Environmental Assessment (Draft EA), Wasatch County Water Efficiency Project Recycled Water Project.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior and the Central Utah Water Conservancy District are evaluating the impacts of the proposed project.

This project anticipates conveying recycled water in the facilities of the Wasatch County Water Efficiency Project (WCWEP), Bonneville Unit, Central Utah Project (CUP). It would provide an opportunity for more effective and efficient management of water, make efficient use of recycled water, provide opportunities for stream and wetland benefits, and encourage the conservation and wise use of water, all of which are objectives of the CUP Completion Act.

The proposed action would allow recycled water to be conveyed and used in WCWEP facilities and through exchange become CUP water. All water supply commitments under the existing contracts and agreements will continue to be met.

DATES: Submit written comments on the Draft EA to Ms. Sarah Sutherland at the address below by February 16, 2010.

ADDRESSES: Send written comments on the Draft EA to Sarah Sutherland, WCWEP Recycled Water Project, 355 W. University Parkway, Orem, UT 84058–7303, by e-mail to *sarah@cuwcd.com,* or by Fax at 801–226–7171.

Copies of the Draft EA are available for inspection at:

- Central Utah Water Conservancy District, 355 West University Parkway, Orem, Utah 84058–7303.
- Department of the Interior, Central Utah Project Completion Act Office, 302 East 1860 South, Provo, Utah 84606.

In addition, the document is available at *http://www.cuwcd.com.*

FOR FURTHER INFORMATION CONTACT: Additional information may be obtained by contacting Mr. Lynn Hansen, Central Utah Project Completion Act Office, 302 East 1860 South, Provo, Utah 84606, by calling (801) 379–1238, or e-mail at *lhansen@usbr.gov.*

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 8, 2010.

Reed R. Murray,

Program Director, Central Utah Project Completion Act, Department of the Interior.

[FR Doc. 2010–575 Filed 1–13–10; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–8099–01; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the subsurface estate in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation. The lands are in the vicinity of Kuskokwim Delta Area, Alaska, and are located in:

Seward Meridian, Alaska

T. 1 N., R. 79 W.,
Secs. 5 and 6.
Containing approximately 1,271 acres.

T. 2 N., R. 79 W.,
Secs. 24 to 27, inclusive;
Secs. 34, 35, and 36.
Containing approximately 4,128 acres.

T. 1 N., R. 80 W.,
Secs. 1 to 18, inclusive.

Containing approximately 9,242 acres.

T. 2 N., R. 80 W.,
Secs. 19 to 36, inclusive.

Containing approximately 8,207 acres.

T. 1 N., R. 81 W.,
Secs. 1 to 4, inclusive;
Secs. 9 to 16, inclusive;

Containing approximately 5,730 acres.

T. 2 N., R. 81 W.,
Secs. 22 to 27 inclusive;
Secs. 34, 35, and 36.

Containing approximately 5,213 acres.

T. 4 N., R. 81 W.,
Secs. 17, 19, and 20;
Secs. 29, 30, 31, and 32.

Containing approximately 1,812 acres.

T. 2 N., R. 83 W.,
Sec. 1.

Containing approximately 25 acres.

T. 2 S., R. 84 W.,
Secs. 1, 2, 13, and 14.

Containing approximately 1,466 acres.

T. 1 S., R. 85 W.,
Secs. 13, 23, 24, and 25;
Secs. 26, 27, 35, and 36.

Containing approximately 3,390 acres.

T. 2 S., R. 86 W.,
Sec. 10;
Secs. 12 to 16, inclusive;
Secs. 20 to 24, inclusive;
Secs. 26 and 27.

Containing approximately 6,545 acres.
Aggregating approximately 47,029 acres.

Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until February 16, 2010 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Robert Childers,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2010–556 Filed 1–13–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–8099–01; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the subsurface estate in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation. The lands are in the vicinity of Kuskokwim Delta Area, Alaska, and are located in:

Seward Meridian, Alaska

T. 5 N., R. 76 W.,
Secs. 4 to 9, inclusive;
Secs. 16, 17, 20, and 21;
Secs. 28, 29, 32, and 33.

Containing approximately 6,024 acres.

T. 6 N., R. 76 W.,
Secs. 18 and 19;
Secs. 30 to 33, inclusive.

Containing approximately 2,523 acres.

T. 4 N., R. 77 W.,
Secs. 3, 22, 27, and 34.

Containing approximately 2,122 acres.

T. 5 N., R. 77 W.,
Secs. 1, 2, 3, and 10;
Secs. 11, 12, 14, and 15;
Secs. 19 to 23, inclusive;
Secs. 25 to 34, inclusive.

Containing approximately 11,903 acres.

T. 6 N., R. 77 W.,
Secs. 10 to 15, inclusive;
Sec. 18;
Secs. 23 to 26, inclusive;
Sec. 31.

Containing approximately 6,120 acres.

T. 3 N., R. 78 W.,
Secs. 7, 17, and 18;
Secs. 19, 20, 29, and 30.
Containing approximately 3,878 acres.

T. 5 N., R. 78 W.,
Secs. 4 to 9, inclusive;
Secs. 16 to 21, inclusive;
Secs. 28 to 33, inclusive.

Containing approximately 11,332 acres.

T. 6 N., R. 78 W.,
Secs. 5 to 8, inclusive;
Secs. 21 to 28, inclusive;
Secs. 33 to 36, inclusive.

Containing approximately 8,477 acres.
Aggregating approximately 52,379 acres.

Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until February 16, 2010 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Robert Childers,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2010–554 Filed 1–13–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–8099–01; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the subsurface estate in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation. The lands are in the vicinity of Kuskokwim Delta Area, Alaska, and are located in:

Seward Meridian, Alaska

T. 7 N., R. 77 W.,
Secs. 19 to 36, inclusive.

Containing approximately 9,605 acres.

T. 7 N., R. 78 W.,
Secs. 5 to 8, inclusive;
Secs. 17 to 20, inclusive;
Secs. 29 to 32, inclusive.

Containing approximately 5,789 acres.

T. 7 N., R. 79 W.,
Secs. 1 to 36, inclusive.

Containing approximately 21,756 acres.

T. 6 N., R. 80 W.,
Secs. 1 to 36, inclusive.

Containing approximately 22,352 acres.

T. 7 N., R. 80 W.,
Secs. 1, 2, and 3;
Secs. 10 to 15, inclusive;
Secs. 22 to 27, inclusive;
Secs. 34, 35, and 36.

Containing approximately 10,780 acres.

T. 6 N., R. 81 W.,
Secs. 12, 13, and 14;
Secs. 22 to 28, inclusive;
Secs. 33 to 36, inclusive.

Containing approximately 7,665 acres.
Aggregating approximately 77,947 acres.

Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until February 16, 2010 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Robert Childers,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2010–553 Filed 1–13–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–19155–12; LLAK964000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited. The lands are in the vicinity of Tanana, Alaska, and are located in:

Fairbanks Meridian, Alaska

T. 5 N., R. 23 W.,
Secs. 31 to 36, inclusive.

Containing approximately 3,839 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until February 16, 2010 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Hillary Woods,

Land Law Examiner, Land Transfer Adjudication I Branch.

[FR Doc. 2010–552 Filed 1–13–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

U.S. Forest Service

Notice of Call for Nominations for Appointment of Primary and Alternate Representatives for the City of Palm Desert to the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee

AGENCY: Bureau of Land Management, Interior; and U.S. Forest Service, Agriculture.

ACTION: Notice of call for nominations.

SUMMARY: This notice constitutes an open call to the public to submit nomination applications for one primary representative and one alternate representative for the City of Palm Desert, California, to the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee. Terms will begin on the date of appointment and will expire on December 16, 2011.

DATES: Nomination applications must be submitted to the address listed below no later than January 29, 2010.

ADDRESSES: Santa Rosa and San Jacinto Mountains National Monument Office, *Attn:* National Monument Manager, Advisory Committee Nomination Application, 1201 Bird Center Drive, Palm Springs, California 92262.

FOR FURTHER INFORMATION CONTACT: Jim Foote, National Monument Manager, Santa Rosa and San Jacinto Mountains National Monument, telephone (760) 833–7136; e-mail *jfoote@ca.blm.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (Pub. L. 106–351), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) have jointly established an advisory committee for the Santa Rosa and San Jacinto Mountains National Monument under the provisions of the Federal Advisory Committee Act. The purpose of the National Monument Advisory Committee (MAC) is to advise the Secretaries with respect to implementation of the National Monument Management Plan.

The MAC holds public meetings at least once per year. The Designated Federal Officer (DFO), or his/her designee, may convene additional meetings as necessary. All MAC members are volunteers serving without pay. Members of the MAC may be reappointed upon expiration of the member's current term.

All applicants must be citizens of the United States. Members are appointed by the Secretary of the Interior with concurrence by the Secretary of Agriculture. Applicants must be qualified through education, training, knowledge, or experience to give informed advice regarding an industry, discipline, or interest to be represented.

There is no limit to the number of nomination applications which may be submitted for the City of Palm Desert positions. Any individual may nominate himself or herself for appointment. Completed nomination applications should include letters of reference and/or recommendations from the City of Palm Desert, and any other information explaining the nominee's qualifications (*e.g.,* resume, curriculum vitae).

Nomination application packages are available at the address listed in the "**ADDRESSES**" section, through the Santa Rosa and San Jacinto Mountains National Monument Web site at *http://www.blm.gov/ca/st/en/fo/palmsprings/santarosa/mac_nominations.html*, via telephone request at (760) 833–7100, or through an e-mail request to *jfoote@ca.blm.gov.*

Each application package includes forms from the U.S. Department of the Interior and U.S. Department of Agriculture. All submitted nomination applications become the property of the Department of the Interior, Bureau of Land Management, and Santa Rosa and San Jacinto Mountains National Monument, and will not be returned. Nomination applications can only be applied to the current open public call for nominations.

John R. Kalish,

Field Manager, Palm Springs-South Coast Field Office, California Desert District, Bureau of Land Management.

Laurie Rosenthal,

District Ranger, San Jacinto Ranger District, San Bernardino National Forest, U.S. Forest Service.

[FR Doc. 2010–551 Filed 1–13–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2009–N275; 41910–1112–0000–F2]

Endangered and Threatened Wildlife and Plants; Permits; Timber Harvest in Williamsburg County, SC

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for an incidental take permit (ITP); availability of proposed low-effect habitat conservation plan (HCP); request for comment/information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of an incidental take permit (ITP) application and habitat conservation plan (HCP). Virginia H. McIntosh (applicant) requests a 5-year ITP under the Endangered Species Act of 1973, as amended (Act). The applicant anticipates taking two red-cockaded woodpecker (*Picoides borealis*) (RCW) groups incidental to timber harvesting in Williamsburg County, South Carolina (project). The applicant's HCP describes the mitigation and minimization measures the applicant proposes to address the effects of the project to the RCW.

DATES: We must receive any written comments on the ITP application and HCP on or before February 16, 2010.

ADDRESSES: If you wish to review the application and HCP, you may write the Field Supervisor at our Jacksonville Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256 or make an appointment to visit during normal business hours. If you wish to comment, you may mail or hand deliver comments to the Jacksonville Field Office, or you may e-mail comments to *paula_sisson@fws.gov*. For more information on reviewing documents and public comments and submitting comments, *see* **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Paula Sisson, Fish and Wildlife Biologist, Jacksonville Field Office (*see* **ADDRESSES**); telephone: 904/731–3134.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Please reference permit number TE236127–0 for the applicant for all requests or comments. If you do not receive a confirmation from us that we have received your e-mail message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**.

Background

The RCW is a territorial, nonmigratory species. It is the only North American woodpecker to excavate roost and nest cavities in living pine trees. This species' use of live pines may have evolved in response to living in a fire-maintained ecosystem where frequent fires, primarily in the growing season, eliminated most standing dead pines (snags).

The RCW has declined primarily due to conversion of mature pine forests to young pine plantations, agricultural fields, and residential and commercial development, and also because of hardwood encroachment in existing pine forests due to fire suppression. Presently, the largest known populations occur on federally owned lands such as military installations and national forests.

Applicant's Proposal

The applicant is requesting take of two groups of RCWs incidental to the project. The 286-acre (ac) project is located on SC County Road 158, 9.8 miles northwest of the Town of Kingstree, Williamsburg County, South Carolina. The proposed project includes the harvest of 73.8 ac of long leaf pine flatwoods mixed with isolated pond pine wetlands, pine flatwoods, and agricultural fields, which are currently the only remaining foraging habitat for the two groups of RCWs. The applicant proposes to mitigate for the take of the two groups by establishing two new groups at Brookgreen Gardens (Brookgreen), Georgetown County, South Carolina. The applicant will translocate the two existing RCW groups from the project site to Brookgreen after cavity inserts have been installed at the new site. The translocation process will continue until the two groups have been established at Brookgreen. As minimization for impacts to the species, timber harvesting activities will not be conducted until all RCWs have been relocated to Brookgreen.

We have determined that the applicant's proposal, including the proposed mitigation and minimization measures, would have minor or negligible effects on the species covered in the HCP. Therefore, we are making a preliminary determination that the ITP is a "low-effect" project and qualifies for categorical exclusion under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). We may revise this preliminary determination based on our review of public comments we receive

in response to this notice. A low-effect HCP is one involving (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

We will evaluate the HCP and comments we receive to determine whether the ITP application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the application meets those requirements, we will issue the ITP for incidental take of the RCW. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITP.

Authority

We provide this notice under Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

Dated: January 7, 2010.

David L. Hankla,

Field Supervisor, Jacksonville Field Office.

[FR Doc. 2010–577 Filed 1–13–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2009–N241; 12521–1261–0000–N3]

Palmyra Atoll National Wildlife Refuge, U.S. Pacific Island Territory

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement and announcement of public scoping.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare an environmental impact statement to evaluate eradication of nonnative rats on Palmyra Atoll National Wildlife Refuge (Refuge). We provide this notice to advise the public and other agencies of our intent, and obtain public comments, suggestions, and information on the scope of issues to consider in the EIS.

DATES: To ensure consideration, we must receive your written comments by March 1, 2010.

ADDRESSES: Additional information about the Refuge is available on the Internet at: *http://www.fws.gov/palmyraatoll/.* Send your comments or requests for information by any of the following methods.

E-mail: palmyra@fws.gov.

Fax: Attn: Beth Flint, (808) 792–9586.

U.S. Mail: Beth Flint, Acting Project Leader, Pacific Reefs National Wildlife Refuge Complex, 300 Ala Moana Blvd. Suite 5–231, Honolulu, HI 96850.

FOR FURTHER INFORMATION CONTACT: Beth Flint, Pacific Reefs National Wildlife Refuge Complex, phone (808) 792–9553.

SUPPLEMENTARY INFORMATION:

Refuge Overview

The Refuge is located in the Northern Line Islands, approximately 1,000 miles south of Honolulu, HI, in the Central Pacific Ocean. The Refuge was established in 2001 to protect, restore, and enhance migratory birds, coral reefs, and threatened and endangered species in their natural setting. Palmyra Atoll consists of approximately 54 small, heavily vegetated islets surrounding 3 central lagoons. Habitats consist of 680 acres of land and 15,512 acres of lagoons and shallow reefs. The Refuge's boundary extends seaward 12 nautical miles, encompassing 515,232 acres. Palmyra's terrestrial habitats support one of the largest remaining tropical coastal strand forests in the U.S. Pacific Islands. A diverse land crab fauna including the coconut crab, ecologically intact predator-dominated fish assemblages, and large seabird populations are important resources of this Refuge. The Refuge is closed to commercial fishing.

The original configuration of the atoll was significantly modified by the U.S. Navy during World War II. A network of roadways connecting the major islets and the construction of a north-south causeway altered natural water circulation. Introduced rats are severely degrading the terrestrial ecosystem of this important atoll by limiting the reproduction, recruitment, and establishment of several native tree species. Furthermore, the coconut palm, an invasive tree, already dominates 45 percent of Palmyra's forests. The spread of coconut palm is likely aided by rat-related recruitment and limitation of other tree species. Left unchecked, the combined effects of rats and coconut palms could drastically alter forest structure. Introduced rats on islands are also known to prey heavily on seabirds, which is likely preventing six seabird species from successfully nesting on the atoll. The rats also prey on native land crabs and directly compete with them for limited food resources. All of these impacts in turn affect the relationship between land and marine resources, and compromise the Service's ability to achieve Refuge purposes.

We furnish this notice in accordance with the National Environmental Policy Act (NEPA) as amended, and its implementing regulations; the National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd-668ee) (Refuge Administration Act); and Service policies. The Refuge Administration Act requires all lands within the National Wildlife Refuge System to be managed in accordance with achieving the purposes for which a refuge was established. For the Palmyra Atoll Refuge, the eradication of introduced rats would aid in achieving the following Refuge purposes.

- Perpetuate a functioning atoll ecosystem with natural diversity and abundance of fauna and flora.
- Preserve, restore, and enhance all terrestrial species of animals and plants that are endangered or threatened with becoming endangered.
- Provide for conservation of migratory bird resources at the Refuge.

We will prepare an EIS in accordance with NEPA and its implementing regulations. Public input during the EIS planning process is hereby solicited.

Preliminary Issues, Concerns, and Opportunities

We have identified the following preliminary issues, concerns, and opportunities we may consider during development of the EIS. We may identify additional issues during the public comment period. We will consider public comments during development of the EIS.

- What alternatives should be considered with regard to eradication of rats from Palmyra Refuge?
- How can we balance cost, efficacy, risks to nontarget species, and other variables?
- What current or planned island uses including natural resource management activities, public visitation, and scientific research at the atoll should we consider in the Draft EIS?
- What other island resources, including historic and cultural artifacts, specific biological resources, and physical attributes such as water quality and soils, should we consider in the Draft EIS?
- To document the effects and effectiveness of our Refuge management actions, what monitoring should the proposal include?

We will evaluate a range of alternatives in the EIS, and their potential effects on the environment and local communities. We estimate that the draft EIS will be available for public review in October 2010. We will

announce opportunities for public input throughout the EIS planning process.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 1, 2009.

David J. Wesley,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 2010–579 Filed 1–13–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

United States Geological Survey

Notice of an Open Meeting of the Advisory Committee on Water Information (ACWI)

AGENCY: United States Geological Survey.

ACTION: Notice of an open meeting of the Advisory Committee on Water Information (ACWI).

SUMMARY: Notice is hereby given of a meeting of the ACWI. This meeting is to discuss broad policy-related topics relating to national water initiatives, and the development and dissemination of water information, through reports from ACWI subgroups. The agenda will include results of the Department of Agriculture's Conservation Effects Assessment Program for the Upper Mississippi; an update by the Subcommittee on Ground Water regarding their National Framework for Ground Water Monitoring; a briefing on the Reservoir Sedimentation Database; status of the National Monitoring Network for U.S. Coastal Waters and their Tributaries; an update on Federal agency interactions with the regional water quality monitoring organizations of the Integrated Ocean Observing Systems; and updates on recent activities of the Methods and Data Comparability Board.

The ACWI was established under the authority of the Office of Management and Budget Memorandum M–92–01 and the Federal Advisory Committee Act. The purpose of the ACWI is to provide a forum for water information users and professionals to advise the Federal Government on activities and plans that may improve the effectiveness of meeting the Nation's water information needs. Member organizations help to foster communications between the Federal and non-Federal sectors on sharing water information.

Membership, limited to 35 organizations, represents a wide range of water resources interests and functions. Representation on the ACWI includes all levels of government, academia, private industry, and professional and technical societies. For more information on the ACWI, its membership, subgroups, meetings and activities, please see the Web site at: *http://ACWI.gov.*

DATES: The formal meeting will convene at 9 a.m. on February 10, 2010, and will adjourn at 4:30 p.m. on February 11, 2010.

ADDRESSES: The meeting will be held in the Reston, Virginia, area, within a few miles of Dulles International Airport. Information on the exact location can be obtained from Ms. Wendy E. Norton, ACWI Executive Secretary, whose contact information is shown below.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy E. Norton, ACWI Executive Secretary and Chief, Water Information Coordination Program, U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 417, Reston, VA 20192. Telephone: 703–648–6810; Fax: 703–648–5644; e-mail: *wenorton@usgs.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Up to a half hour will be set aside for public comment. Persons wishing to make a brief presentation (up to 5 minutes) are asked to provide a written request with a description of the general subject to Ms. Norton at the above address no later than February 3, 2010. It is requested that 65 copies of a written statement be submitted at the time of the meeting for distribution to members of the ACWI and placement in the official file. Any member of the public may submit written information and (or) comments to Ms. Norton for distribution at the ACWI meeting.

Dated: January 5, 2010.

Katherine Lins,

Chief, Office of Water Information.

[FR Doc. 2010–573 Filed 1–13–10; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Scientific Earthquake Studies Advisory Committee

AGENCY: U.S. Geological Survey.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 106–503, the Scientific Earthquake Studies Advisory Committee (SESAC) will hold its next meeting at the U.S. Geological Survey, John Wesley Powell National Center, Room 3B457, 12201 Sunrise Valley Drive, Reston, Virginia 20192. The Committee is comprised of members from academia, industry, and State government. The Committee shall advise the Director of the U.S. Geological Survey (USGS) on matters relating to the USGS's participation in the National Earthquake Hazards Reduction Program.

The Committee will receive updates and provide guidance on Earthquake Hazards Program activities and the status of teams supported by the Program.

Meetings of the Scientific Earthquake Studies Advisory Committee are open to the public.

DATES: January 26, 2010, commencing at 8:30 a.m. and adjourning at 4 p.m.

Contact: Dr. David Applegate, U.S. Geological Survey, MS 905, 12201 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–6714. *applegate@usgs.gov.*

Dated: January 6, 2010.

Suzette Kimball,

Associate Director for Geology, International, and Climate Change Programs.

[FR Doc. 2010–574 Filed 1–13–10; 8:45 am]

BILLING CODE 4311–AM–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–641]

In the Matter of Certain Variable Speed Wind Turbines and Components Thereof; Termination of Investigation With Final Determination of No Violation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate the investigation with a final determination of no violation in the above-captioned investigation under

section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337").

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on March 31, 2008, based upon a complaint filed on behalf of General Electric Company of Fairfield, Connecticut ("GE") on February 7, 2008. 73 FR 16910. The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain variable speed wind turbines and components thereof that infringe claims 121–125 of U.S. Patent No. 5,083,039 ("the '039 patent") and claims 1–12, 15–18, and 21–28 of U.S. Patent No. 6,921,985 ("the '985 patent"). The complaint named as respondents Mitsubishi Heavy Industries, Ltd. of Tokyo, Japan ("MHI"); Mitsubishi Power Systems, Inc. of Lake Mary, Florida ("MPSA"); and Mitsubishi Heavy Industries America, Inc. of New York, New York ("MHIA"). On October 8, 2008, the Commission issued notice of its determination not to review an initial determination ("ID") (Order No. 10) granting GE's motion to amend its complaint and the notice of investigation to add claims 1–19 of U.S. Patent No. 7,321,221 ("the '221 patent") to this investigation.

On August 7, 2009, the ALJ issued a final ID finding a violation of section 337 in this investigation. The ALJ found that there was a violation in the sale for importation, importation, or sale after importation by respondents MHI and MPSA with respect to claim 121 of the '039 patent and claim 15 of the '985 patent. The ALJ found that there was no violation with respect to these claims by MHIA. The ALJ also found that there was no violation of section 337 by any party with respect to claims 5, 7, and 8 of the '221 patent.

On August 24, 2009, the Commission received petitions and/or contingent petitions for review from: (1) MHI, MPSA, and MHIA; (2) GE; and (3) the Commission investigative attorney. On September 1, 2009, each of the parties filed responses thereto.

On October 8, 2009, the Commission issued notice of its determination to review the final ID, except with respect to the issue of importation and the intent finding underlying the ALJ's inequitable conduct determination. 72 FR 52975 (Oct. 15, 2009). The Commission requested briefing on the issues on review, including certain specific questions, in addition to remedy, the public interest, and bonding.

On October 23, 2009, the Commission issued notice of its determination to extend the deadline for public submissions on remedy, the public interest, and bonding to November 2, 2009, and for all responses to all remedy, the public interest, and bonding submissions to November 9, 2009.

On October 22, 2009, Mitsubishi, GE, the IA, and Iberdrola filed submissions in response to the notice of review. On October 30, 2009, Turner Bros., LLC filed a submission on remedy. On November 2, 2009, Mitsubishi, GE, and the IA filed reply submissions on violation. On November 9, 2009, Mitsubishi, GE, the IA, and Iberdrola filed reply submissions on remedy.

Having reviewed the final ID, the submissions on review, and the record, the Commission has determined to terminate the investigation with a final determination of no violation. A Commission opinion will issue shortly.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and under sections 210.42–.51 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.51).

Issued: January 8, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–499 Filed 1–13–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 21, 2009, and published in the **Federal Register** on September 8, 2009 (74 FR 46232), Alltech Associates Inc., 2051 Waukegan Road, Deerfield, Illinois 60015, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
4-Methylaminorex (cis isomer) (1590).	I
Alpha-ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (7348).	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (MDMA) (7405).	I
4-Methoxyamphetamine (7411)	I
Alpha-methyltryptamine (7432)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
5-Methoxy-N,N-diisopropyltryptamine (7439).	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458).	I
1-Phenylcyclohexylamine (7460)	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470).	I
Normorphine (9313)	I
Methamphetamine (1105)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II

Drug	Schedule
1-Piperidinocyclohexane-carbonitrile (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Dihydromorphine (9145)	II
Ecgonine (9180)	II
Meperidine intermediate-B (9233)	II
Noroxymorphone (9668)	II

The company plans to manufacture high purity drug standards used for analytical application only in clinical, toxicological, and forensic laboratories.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Alltech Associates to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Alltech Associates to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: January 6, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–512 Filed 1–13–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request; Employee Benefit Plan Claims Procedures Under ERISA

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments on a proposed extension of the current approval of information collection provisions incorporated in the regulation pertaining to employee benefit plan claims procedures under the Employee Retirement Income Security Act of 1974 (ERISA). A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted on or before March 15, 2010.

ADDRESSES: Direct all written comments to G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet e-mail address: *ebsa.opr@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 503 of ERISA requires each employee benefit plan to provide, pursuant to regulations promulgated by the Secretary of Labor, notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied. The notice must set forth the specific reasons for the denial and must be written in a manner calculated to be understood by the claimant. Plans must also give a participant or beneficiary whose claim has been denied a reasonable opportunity to obtain a full and fair review of any benefit claim denial by the appropriate named fiduciary.

The Department issued a regulation pertaining to benefit claims procedures in 1977 and amended that regulation in a Notice of Final Rulemaking (NFRM) published on November 21, 2000 (65 FR 70246). The regulation pertaining to benefit claims procedures is codified at 29 CFR 2560.503–1. The regulation requires plans to establish reasonable claims procedures that meet specified standards governing the timing and content of notices and disclosures. EBSA submitted an ICR for the information collections in 29 CFR 2560.503–1 to the Office of Management and Budget (OMB) for review and clearance in connection with publication of the NFRM, and OMB approved the information collections under OMB control number 1210–0053. That approval is scheduled to expire on April 30, 2010. After considering comments received in response to this notice, the Department intends to submit an ICR to OMB to request continuing approval. The public is not required to respond to an information collection unless it displays a valid control number. No change to the existing ICR is being proposed or made at this time.

II. Desired Focus of Comments

The Department of Labor (Department) is particularly interested in comments that

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Action

This notice requests comments on an extension of OMB's approval of the information collections included in 29 CFR 2560.503–1. The Department is not proposing or implementing changes to the existing ICR at this time. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Employee Benefit Plan Claims Procedures under ERISA.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0053.

Affected Public: Business or other for-profit; not-for-profit institutions.

Respondents: 5,900,000.

Responses: 321,000,000.

Estimated Total Burden Hours: 529,000.

Estimated Total Burden Cost (Operating and Maintenance): $423,052,000.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Dated: January 11, 2010.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 2010–588 Filed 1–13–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of Disability Employment Policy

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of proposed data collection.

SUMMARY: The U.S. Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation process to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This process helps ensure that requested data can be provided in the desired format, reporting burdens are minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Office of Disability Employment Policy (ODEP) is soliciting comments concerning a proposed data collection for the following survey: 2009 NATIONAL SURVEY OF PUBLIC ATTITUDES TOWARD PEOPLE WITH DISABILITIES. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section below on or before March 15, 2010.

ADDRESSES: Richard Horne, U.S. Department of Labor, Office of Disability Employment Policy, 200 Constitution Avenue, NW., Suite S–1303, Washington, DC 20210. *Telephone:* (202) 693–7880. This is not a toll-free number. *E-mail: horne.richard@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Horne, telephone: (202) 693–7880, *e-mail: horne.richard@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This survey project is a central part of the Task Order DOLU8942143, entitled *2009 National Survey of Public Attitudes toward People with Disabilities.* This Task Order is being administered by the Office of Disability Employment Policy (ODEP), a federal agency in the U.S. Department of Labor (DOL) and the lead agency in DOL's implementation of the employment-related goals of the President. ODEP's vision is to provide national leadership to increase employment opportunities for adults and youth with disabilities while striving to eliminate barriers to their employment. Social Dynamics LLC is contracted to design and implement the 2009 National Survey of Public Attitudes toward People with Disabilities.

This data collection is authorized pursuant to Public Law 106–554 which direct the Office of Disability Policy to provide initiatives to "further the objective of eliminating employment barriers to the training and employment of people with disabilities."

II. Desired Focus of Comments

The Department is particularly interested in comments which:

Evaluate 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;

Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility, and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Action

This proposed collection ICR covers: The Survey of Public Attitudes Toward People With Disabilities (PWD). The survey will build on the findings of previous surveys, with an emphasis on current attitudes and behaviors of people toward PWD. The survey will be conducted by telephone utilizing computer assisted telephone interviewing (CATI). The survey will also solicit free-text comments from respondents regarding their attitudes toward PWD in the workplace.

Agency: Office of Disability Employment Policy.

Titles: Survey of Public Attitudes Toward People with Disabilities.

OMB Number: Pending.

Frequency: One time.

Type of Response: Reporting.

Affected Public: People between 18 and 64 years of age.

Number of Respondents: 1,600.

EXHIBIT A–1—ESTIMATED HOUR AND ANNUAL COST RESPONSE BURDEN

Data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours	Annual burden (cost)
Pilot	9	1	15 min	2.25	$41.31
National survey	1,600	1	15 min	400	7,344
Non-participants contacted	2,847	1	5 min	237.25	4,356
Total					54,270

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Description: Changes instituted with the *Americans with Disabilities Act* of 1990 have made workplace discrimination against people with disabilities illegal, while guaranteeing their right to special accommodations in the workplace. Still, data continue to show low levels of employment and pay of people with disabilities when compared to people without disabilities.

This is true even as previous survey research studies on public attitudes report high rates of acceptance and positive ratings of satisfaction regarding workers with disabilities, though quasi-experimental and qualitative research contradict these findings. The connection between the general public's attitudes toward people with disabilities and their employment prospects as well as the impact of direct work contact with people with disabilities has not been explored with a large sample representative of the general population. More importantly, previous research on public attitudes toward people with disabilities (Harris Polls, 2003, 1998; Kaiser Family Foundation, 2004; Siperstein *et al.,* 2005) has used one or two-dimensional models of attitudinal measurement. This is a significant disadvantage to the development of knowledge in this area, especially with regard to the *behavioral* component of attitudes, which is not included in previous studies. Without a better understanding of the causal factors that compel an individual to act out her/his thoughts and emotions, the value of research on public attitudes toward people with disabilities is significantly diminished.

ODEP strongly believes that the research on public attitudes toward people with disabilities needs a strategic and scientifically based approach that rigorously collects and aggregates data from a larger sample of the American public, a more comprehensive approach to attitude measurement, and a multivariate predictive analytical approach to the analysis of findings. Therefore, the proposed 2009 survey is designed to meet those needs, as follows: The survey will draw a sample n = 1,600, which is roughly double the size of the sample of the 2005 National Survey of Consumer Attitudes; It will use a multidimensional validated scale of attitudes toward disabled people that has been tested in a multitude of published works since the mid-1990s; It will apply analytical methods that develop causal and associative explanations for both attitude change and development and the behavior of individuals.

Signed at Washington, DC this January 11, 2010.

Kathy Martinez,

Assistant Secretary.

[FR Doc. 2010–595 Filed 1–13–10; 8:45 am]

BILLING CODE 4510–FK–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that eight meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows (ending times are approximate):

American Masterpieces/Chamber Music (application review): January 20–21, 2010 in Room 714. This meeting, from 9 a.m. to 6 p.m. on January 20th and from 9 a.m. to 5:30 p.m. on January 21st, will be closed.

American Masterpieces/Chamber Music (application review): January 22, 2010 in Room 714. This meeting, from 9 a.m. to 5:15 p.m., will be closed.

Music/NEA Jazz Masters (review of nominations): January 27, 2010, by teleconference. This meeting, from 1 p.m. to 2 p.m. Eastern Standard Time, will be closed.

Music/NEA Jazz Masters (review of nominations): January 27, 2010, by teleconference. This meeting, from 3 p.m. to 4 p.m. Eastern Standard Time, will be closed.

Opera/NEA Opera Honors (review of nominations): February 2, 2010, by teleconference. This meeting, from 1 p.m. to 1:45 p.m., will be closed.

Opera/NEA Opera Honors (review of nominations): February 2, 2010, by teleconference. This meeting, from 2:30 p.m. to 3:15 p.m., will be closed.

American Masterpieces/Dance (application review): February 3–5, 2010 in Room 716. This meeting, from 9 a.m. to 6 p.m. on February 3rd and 4th, and from 9 a.m. to 3:30 p.m. on February 5th, will be closed.

International (application review): February 17, 2010, by teleconference. This meeting, from 2 p.m. to 4:10 p.m., will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of November 10, 2009, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: January 11, 2010.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 2010–555 Filed 1–13–10; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–8; NRC–2010–0011]

Constellation Energy; Notice of Docketing of Special Nuclear Material License SNM–2505 Amendment Application for the Calvert Cliffs Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license amendment application.

DATES: A request for hearing and/or petition for leave to intervene must be filed by March 15, 2010.

FOR FURTHER INFORMATION CONTACT: John Goshen, Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 492–3325; Fax number: (301) 492–3348; E-mail: *john.goshen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering an application dated June 15, 2009, from Constellation Energy (Constellation) to amend its Special Nuclear Material License No. SNM–2505, under the provisions of 10 CFR Part 72, for the receipt, possession, storage, and transfer of spent fuel, reactor-related Greater than Class C

(GTCC) waste and other radioactive materials associated with spent fuel storage at the Calvert Cliffs Independent Spent Fuel Storage Installation (ISFSI), located at the Calvert Cliffs Nuclear Power Plant site in Calvert County, Maryland. If granted, the revised license will authorize the applicant to allow fuel with a higher burnup to be stored at the Calvert Cliffs ISFSI. This application was docketed under 10 CFR Part 72; the ISFSI Docket No. is 72–8 and will remain the same for this action.

An NRC review, documented in a letter to Constellation dated July 21, 2009, found that the application contains sufficient information for the NRC staff to begin its technical review. The Commission will approve the license amendment if it determines that the application meets the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations, including the findings required by 10 CFR 72.40. These findings will be documented in a Safety Evaluation Report. The NRC has completed an environmental evaluation, in accordance with 10 CFR Part 51, and determined that preparation of an environmental impact statement is not warranted because there are no radiological environmental impacts due to granting the approval of the amendment.

II. Opportunity To Request a Hearing

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or, if a determination is made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2), and provide notice of the action taken and an opportunity for interested persons to request a hearing on whether the action should be rescinded or modified.

III. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: License Amendment Request dated June 15, 2009 (ML091680541) and the acceptance review letter dated July 21, 2009 (ML092020003). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 6th day of January 2010.

For the Nuclear Regulatory Commission.

John Goshen,

Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguard.

[FR Doc. 2010–567 Filed 1–13–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293; NRC–2010–0010]

Entergy Nuclear Operations, Inc.; Pilgrim Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Section 50.92, for Facility Operating License No. DPR–35, issued to Entergy Nuclear Operations, Inc. (Entergy or the licensee), for operation of Pilgrim Nuclear Power Station (Pilgrim), located in Plymouth County, MA. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the names on the plant license to match the names of the new companies. Entergy Nuclear Generation Company would be changed to Enexus Nuclear Pilgrim, LLC. Entergy Nuclear Operations, Inc. would be changed to EquaGen Nuclear LLC.

The proposed action is in accordance with the licensee's application dated September 30, 2008.

The Need for the Proposed Action

The proposed action for changing the name of the licensee results from restructuring of Entergy Corporation and the creation of Enexus Energy Corporation as consented to by the NRC Order dated July 28, 2008.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action and concludes that: (1) There is a reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

The details of the staff's safety evaluation will be provided in the license amendment that will be issued as part of the letter to the licensee approving the license amendment.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for Pilgrim, dated January 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on December 15, 2009, the NRC staff consulted with the Massachusetts State official of the Massachusetts Emergency Management Agency regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 30, 2008, Agencywide Documents Access and Management System (ADAMS) accession number ML082830135. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 7th day of January 2010.

For the Nuclear Regulatory Commission.

James Kim,

Project Manager, Plant Licensing Branch 1–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–566 Filed 1–13–10; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

Notification of Change in Location and Start Time

PREVIOUS ANNOUNCEMENT: 75 FR 1088, January 8, 2010.

PREVIOUSLY ANNOUNCED DATE OF MEETING: January 11 and 12, 2010.

STATUS: Closed.

CHANGE IN MEETING LOCATION AND TIME: Change location to Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., and change start time to January 12 at 10 a.m.

FOR MORE INFORMATION CONTACT: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2010–736 Filed 1–12–10; 4:15 pm]

BILLING CODE 7710–12–M

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12002 and #12003]

Pennsylvania Disaster #PA–00030

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 01/07/2010.

Incident: Bellefonte Borough Apartment Complex Fire.

Incident Period: 12/22/2009.

Effective Date: 01/07/2010.

Physical Loan Application Deadline Date: 03/08/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 10/07/2010.

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.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Centre.

Contiguous Counties:

Pennsylvania: Blair, Clearfield, Clinton, Huntingdon, Mifflin, Union.

The Interest Rates are:

	Percent
For Physical Damage	
Homeowners With Credit Available Elsewhere	5.125
Homeowners Without Credit Available Elsewhere	2.562
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12002 5 and for economic injury is 12003 0.

The Commonwealth which received an EIDL Declaration # is Pennsylvania.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: January 7, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–571 Filed 1–13–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration Nos. 12004 and 12005; Puerto Rico Disaster No. PR–00007]

Puerto Rico Disaster No. PR–00007

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Puerto Rico dated 01/07/2010.

Incident: Severe Storms and Flooding.

Incident Period: 12/24/2009 through 12/25/2009.

Effective Date: 01/07/2010.

Physical Loan Application Deadline Date: 03/08/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 10/07/2010.

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.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be

filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Municipality: Aibonito.

Contiguous Municipalities:

Puerto Rico: Barranquitas, Cayey, Cidra, Coamo, Salinas.

The Interest Rates are:

	Percent
For Physical Damage	
Homeowners with Credit Available Elsewhere	5.125
Homeowners without Credit Available Elsewhere	2.562
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.625
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12004 6 and for economic injury is 12005 0.

The Commonwealth which received an EIDL Declaration # is Puerto Rico.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: January 7, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–572 Filed 1–13–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17Ad–2(c), (d), and (h); SEC File No. 270–149; OMB Control No. 3235–0130.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 17Ad–2(c), (d), and (h), (17 CFR 240.17Ad–2(c), (d), and (h)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17Ad–2(e),(d), and (h) enumerates the requirements with which transfer agents must comply to inform the Commission or the appropriate regulator of a transfer agent's failure to meet the minimum performance standards set by the Commission rule by filing a notice.

While it is estimated there are 740 transfer agents, approximately five notices pursuant to Rule 17Ad–2(c), (d), and (h) are filed annually. In view of (a) The readily available nature of most of the information required to be included in the notice (since that information must be compiled and retained pursuant to other Commission rules); (b) the summary fashion in which such information must be presented in the notice (most notices are one page or less in length); and (c) the experience of the staff regarding the notices, the Commission staff estimates that, on the average, most notices require approximately one-half hour to prepare. The Commission staff estimates that transfer agents spend an average of two and a half hours per year complying with the rule.

Written comments are invited on: (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 estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to: Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: January 6, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–546 Filed 1–13–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Notice

Federal Register Citation of Previous Announcement: 75 FR 1425, January 11, 2010.

STATUS: Closed Meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, January 14, 2010 at 2 p.m.

CHANGE IN THE MEETING: Additional Item.

The following item has been added to the Thursday, January 14, 2010 Closed Meeting agenda: Post argument discussion.

Commissioner Walter, as duty officer, determined that Commission business required the above change.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: January 11, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–649 Filed 1–12–10; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61295; File No. SR–CBOE–2009–098]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange Fees for Fiscal Year 2010

January 6, 2010.

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 December 30, 2009, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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 CBOE. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its Fees Schedule to make various changes for Fiscal Year 2010. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), on the Commission's Web site (*http://www.sec.gov*), at the Exchange'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, CBOE 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. CBOE 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the CBOE Fees Schedule to make various fee changes. The proposed changes are the product of the Exchange's annual budget review. The fee changes were approved by the Exchange's Board of Directors pursuant to CBOE Rule 2.22 and will take effect on January 4, 2010. The Exchange proposes to amend certain fees, eliminate several fees to simplify the Fees Schedule, and clarify the Fees Schedule in several respects. The Exchange also seeks to establish fees for transactions in S&P 500 Dividend Index (DVS) options.

A. The Exchange proposes to amend the following fees:

Index Options Transaction Fees: The Exchange proposes to amend customer, voluntary professional and broker-dealer transaction fees for certain index options to create consistent fees for similar products and to simplify the fee structure for index options. The Exchange proposes to increase the customer ("C" origin code) transaction fee in S&P 100 options (OEX and XEO) from $.30 per contract to $.40 per contract, which is the same rate charged to customers for certain other CBOE proprietary index options (Dow Jones Industrial Average (DXL) and volatility index options). The Exchange proposes to reduce the customer transaction fee for Morgan Stanley Retail Index (MVR) options from $.40 per contract to $.18 per contract.

The Exchange proposes to increase the voluntary professional ("W" origin code) transaction fee in OEX options from $.20 per contract to $.40 per contract and in XEO options from $.30 per contract to $.40 per contract.[5] The Exchange proposes to increase the broker-dealer[6] transaction fee in OEX and XEO options from $.30 per contract to $.40 per contract. Currently, broker-dealer transaction fees for volatility index options are $.25 per contract for manual executions and $.45 per contract for electronic executions. The Exchange proposes to charge $.40 per contract for manual and electronic broker-dealer executions in volatility index options. Broker-dealer transaction fees are currently $.25 per contract for MVR options. The Exchange proposes to increase the broker-dealer transaction fee for electronic executions in MVR options to $.45 per contract.

ETF Options Transaction Fees: The Exchange proposes to amend broker-dealer transaction fees for certain ETF options to create consistent fees for similar products and to simplify the fee structure for ETF options. Currently, the broker-dealer transaction fee in QQQQ (PowerShares QQQ Trust) options and IWM (iShares Russell 2000 Index Fund) options is $.25 per contract. The Exchange proposes to increase the broker-dealer transaction fee for electronic executions in QQQQ and IWM options to $.45 per contract.

Surcharge Fees: The Exchange currently charges a $.06 per contract surcharge fee on all non-public customer[7] transactions in OEX, XEO, SPX and volatility index options. The Exchange proposes to increase the surcharge fee for OEX, XEO and SPX options to $.10 per contract and for volatility index options to $.08 per contract. The surcharge fee is assessed to help the Exchange recoup license fees the Exchange pays to index licensors for the right to list these products for trading and is similar to surcharge fees charged by other exchanges.

Floor Brokerage Fees: The Exchange currently charges floor brokers executing orders in OEX, SPX and DXL options $.04 per contract and $.02 per contract for crossed orders. The Exchange proposes to charge floor brokers executing orders in volatility index options $.02 per contract and $.01 per contract for crossed orders.

Cabinet Trade Transaction Fees: The Exchange has traditionally not assessed transaction fees for accommodation liquidations ("cabinet trades").[8] Cabinet trades refer to trades in listed options that are worthless or not actively traded. Due to the expansion of option classes participating in the Penny Pilot Program, the Exchange has found it increasingly difficult to distinguish cabinet trades from trades in Penny Pilot options classes for purposes of this fee waiver program. Therefore, the Exchange proposes to eliminate the fee waiver and begin assessing transaction fees for cabinet trades effective January 4, 2010.

Strategy Fee Cap: The Exchange currently caps market-maker, firm, and broker-dealer transaction fees associated with dividend, merger and short stock interest strategies, as described in Footnote 13 of the CBOE Fees Schedule.[9] Transaction fees are capped at $1,000 for all such strategies executed on the same trading day in the same options class, and are further capped at $50,000 per month per initiating member or firm. The Exchange proposes to reduce the per month per initiating member or firm cap from $50,000 to $25,000. The proposed fee cap reduction would enable the Exchange to remain competitive for these types of

[4] 17 CFR 240.19b–4(f)(2).

[5] The Commission notes that on December 24, 2009, CBOE filed a proposed rule change relating to fees for professional orders that also would become operative on January 4, 2010. *See* SR–CBOE–2009–101.

[6] Broker-Dealer transaction fees apply to broker-dealer orders (orders with "B" origin code), non-member market-maker orders (orders with "N" origin code) and orders from specialists in the underlying security (orders with "Y" origin code). *See* CBOE Fees Schedule, Footnote 16. Broker-dealer transaction fees also apply to certain orders with "F" origin code, specifically, orders from OCC members that are not CBOE members. The Exchange proposes to clarify Footnote 16 in this regard.

[7] The Surcharge Fee applies to all non-public customer transactions (i.e. CBOE and non-member market-maker, member firm and broker-dealer), including voluntary professionals and linkage orders except for satisfaction orders. *See* CBOE Fees Schedule, Section 1 (Index Options) and Footnote 14. The Commission notes that on December 24, 2009, CBOE filed a proposed rule change relating to fees for professional orders that also would become operative on January 4, 2010. *See* SR–CBOE–2009–101.

[8] *See* CBOE Fees Schedule, Footnote 7.

[9] The Strategy Fee Cap is in effect as a pilot program that is due to expire on March 1, 2010.

strategies and is similar to strategy fee caps at other options exchanges.

Customer Large Trade Discount Program: Customer ("C" origin code) transaction fees are capped for large trades in index, ETF and HOLDRs options.[10] Currently, the Exchange charges only the first 7,500 contracts of a customer order in volatility index options. The Exchange proposes to charge only the first 5,000 contracts of a customer order in volatility index options in order to attract additional order flow to the Exchange.

Membership Application Fees: Membership application fees are set forth in Section 11 of the CBOE Fees Schedule as well as in a regulatory circular ("Membership Fees Circular"). The Exchange proposes to amend certain membership application fees as reflected in the Fees Schedule and Membership Fees Circular included as part of Exhibit 5. Specifically, the Exchange proposes to increase the Non-Member Customer Business Fee from $1,000 to $2,500, the Lessor Firm Fee from $1,000 to $2,000, and the Renewal/Change of Status Fee from $250 to $500. The proposed changes would help the Exchange recover its costs in processing these applications.

B. The Exchange proposes to eliminate the following fees (with one exception as noted below):

Customer Complex Order Fee: The Exchange proposes to eliminate the transaction fee of $.18 per contract for customer complex orders in equity and QQQQ options that "take liquidity" from the Exchange's complex order book.[11]

Member Firm Proprietary Sliding Scale—License Fee Add-On: The Exchange's Member Firm Proprietary Sliding Scale program reduces a member firm's standard $.20 per contract transaction fee if the member firm reaches the volume thresholds set forth in the sliding scale in a month.[12] Due to the Exchange's obligation to pay license fees on certain products, the Exchange currently assesses a $.10 per contract license fee (a total of 10 cents per contract less any surcharge fees already assessed) on all licensed products except Nasdaq-100 (MNX, NDX) and Russell 2000 (RUT) options when a firm reaches the fifth tier of the sliding scale. The Exchange proposes to eliminate this license fee add-on to simplify the Fees Schedule. The Exchange will continue to charge the surcharge fees set forth in Section 1 (Index Options) of the Fees Schedule on trades in licensed products when a firm reaches the fifth tier of the sliding scale.

Miscellaneous Fees: The following fees are proposed to be eliminated as they are outdated and/or the Exchange has determined no longer to charge them: Installation, Relocation and Removal fees for single line phones under Section 8(F)(2) of the Fees Schedule; Installation, Relocation and Removal fees for Thomson[13] market data trading floor terminals, fees for Thomson's NYSE OpenBook data, and the Installation fee of $500 for satellite TV under Section 8(F)(10) of the Fees Schedule; Trade Processing Services fees (Electronic Output/Input Services and Market-Maker Paper Ticket Fees) under Section 9 of the Fees Schedule, except for the $.0025 per contract side fee for matched and unmatched data; Fees for electronic and paper filing of FOCUS reports under Section 12 of the Fees Schedule; Fee for a service provided to member firms by the Exchange to facilitate member firm payments to floor brokers for except for the [sic][14] floor brokerage services (Floor Broker Payment Program) under Section 13 of the Fees Schedule; Pass-through of periodic license or royalty fees, the fee for a hard copy subscription to the Exchange Bulletin, and the CFLEX Log-in fee under Section 15 (Miscellaneous) of the Fees Schedule; and Circuit Charges under Section 16 of the Fees Schedule.[15]

C. The Exchange proposes the following Fees Schedule clarifications:

Floor Brokerage Fees: The Exchange proposes to clarify Footnote 5 of the Fees Schedule relating to floor brokerage fees in three respects. First, the Exchange proposes to delete the sentence regarding assessment of the fee to Designated Primary Market-Makers ("DPMs") because DPMs no longer have an agency function. Second, the Exchange proposes to clarify that if a market-maker executes an order for an account in which the market-maker is not a registered participant as reflected in the Exchange's Membership Department records, the market-maker will be assessed a floor brokerage fee. Third, the Exchange proposes to clarify that order ID data is not required to be the same on both the buy and sell side of an order in order to be eligible for the discounted "crossed" rate.

Disputed Charges: The Exchange proposes to add to the Fees Schedule as Footnote 7 a statement that after three months, all fees as assessed by the Exchange are considered final by the Exchange. The purpose of this change is to encourage members to promptly review their Exchange invoices so that any disputed charges can be addressed in a timely manner.

Member Firm Proprietary Sliding Scale: The Exchange proposes to clarify Footnote 11 of the Fees Schedule relating to the Member Firm Proprietary Sliding Scale in three respects. First, the Exchange proposes to amend Footnote 11 to clarify that each member firm is responsible for notifying the Exchange's Membership Department of all of its affiliations with other members so that contracts of the firm and its affiliates may be aggregated for purposes of the sliding scale. Second, the Exchange proposes to clarify that it will aggregate the activity of separate member firms for purposes of the sliding scale if there is at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, which is the same way Exchange aggregates trading activity for the Liquidity Provider Sliding Scale.[16] Third, the Exchange proposes to clarify that a member firm's contracts executed pursuant to an OCC Clearing Member Trade Assignment (CMTA) agreement (*i.e.,* executed by another clearing firm and then transferred to the member firm's account at the OCC) are aggregated with the member firm's non-CMTA contracts for purposes of the sliding scale.

Position Transfer Fee: The Exchange charges a fee of $.02 per contract side for options positions transferred pursuant to Rule 6.49A.[17] The fee helps

[10] *See* CBOE Fees Schedule, Section 18.

[11] *See* CBOE Fees Schedule, Section 1 and Footnote 12.

[12] *See* CBOE Fees Schedule, Section 1 and Footnote 11.

[13] The Exchange also proposes to replace the reference to "ILX" in Section 8 of the Fees Schedule with "Thomson" to reflect the replacement of the ILX service with Thomson's service. ILX is a division of Thomson Financial.

[14] The Exchange inadvertently included the phrase "except for the" in its filing with the Commission and intended the text of this portion of the "Miscellaneous Fees" section to read: "[f]ee for a service provided to member firms by the Exchange to facilitate member firm payments to floor brokers for floor brokerage services (Floor Broker Payment Program) under Section 13 of the Fees Schedule * * *." Telephone call between Geoffrey Pemble, Special Counsel, Commission, and Jaime Galvan, Senior Attorney, CBOE, January 5, 2010.

[15] The Exchange also proposes the following clean-up changes to the Fees Schedule. The Exchange proposes to delete references to the CBOE S&P 500 BuyWrite Index (1/10th value) ("BXO") and CBOE S&P 500 Three-Month Realized Volatility ("RUH") from Section 1 (Index Options) to the Fees Schedule since the Exchange no longer trades these two classes. *See also* SR–CBOE–2009–054 (deleting RUH and BXO references from Footnote 6 to Fees Schedule). The Exchange also proposes to delete the "CBOEdirect Connectivity Fees" line item from Section 17 because those fees are now located in Section 16 of the Fees Schedule.

[16] *See* CBOE Fees Schedule, Footnote 10.

[17] CBOE Rule 6.49A provides for a special procedure to permit option positions to be offered on the floor of the Exchange in the event that the

offset costs the Exchange incurs in providing services to accommodate both on-floor and off-floor transfers of positions.[18] The fee is capped at $25,000 per transfer. The Exchange proposes to clarify the application of the $25,000 fee cap. Specifically, the Exchange proposes to clarify that for all on-floor transfers, both the position transferor (seller) and the transferee (buyer) are assessed a fee of $.02 per contract with a cap of $12,500 for each. If there are multiple transferees (buyers), each transferee is assessed a fee of $.02 per contract up to the $12,500 cap for the transferee side of the transfer package. For any off-floor transfer where regulatory review of a proposed transfer is solicited to determine whether the proposed transfer meets the off-floor transfer provisions of Rule 6.49A, the initiator of the review is assessed a fee of $.02 per contract with a cap of $25,000. If it is determined the position transfer must be affected on-floor, only the on-floor fee will be assessed.

Customer Large Trade Discount Program: The Exchange proposes to amend Section 18 of the Fees Schedule to clarify the calculation of the fee cap. The Exchange proposes to clarify that it will look at the trade date and order ID on each trade record to determine the qualification of an order for the fee cap. The order ID on each trade record must be the same in order for the Exchange to tie the trade records to the same order and accumulate the total contracts. The Exchange also proposes to clarify that for complex orders, the total contracts of an order (all legs) are counted for purposes of calculating the fee cap.

D. The Exchange proposes to establish fees for DVS options.

The Exchange recently received approval to list and trade options on the S&P 500 Dividend Index, which represents the accumulated ex-dividend amounts of all S&P 500 Index component securities over a specified accrual period (*e.g.,* quarterly, semi-annually, annually).[19]

Consistent with the changes being proposed in this filing, the amount of the transactions fees for DVS options shall be as follows:

- $0.20 per contract for Market-Maker and Designated Primary Market-Maker transactions; [20]
- $0.20 per contract for member firm proprietary transactions;
- $0.40 per contract for manually executed broker-dealer transactions;
- $0.40 per contract for electronically executed broker-dealer transactions;
- $0.40 per contract for voluntary professional transactions;[21]
- $0.40 per contract for customer transactions; and
- $0.10 per contract CFLEX surcharge fee.

The Exchange also proposes to adopt a $.10 per contract surcharge fee on all non-public customer transactions in DVS options to help the Exchange recoup license fees the Exchange pays to the reporting authority. The proposed surcharge fee is identical to the surcharge fee proposed to be increased from $0.06 per contract to $0.10 for non-public customer transactions in OEX, XEO and SPX options.

The Exchange's Liquidity Provider Sliding Scale shall apply to transaction fees in DVS options, but the Exchange's marketing fee[22] shall not apply. The Exchange believes the rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.[23]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[24] in general, and furthers the objectives of Section 6(b)(4)[25] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes the proposed index and ETF options transaction fee changes and floor brokerage fee change would create consistent fees for similar products and help to simplify the fee structure for these options. The proposed changes to the Strategy Fee Cap and Customer Large Trade Discount Program would result in reduced fees for market participants. The proposed changes to surcharge fees and membership application fees would help the Exchange recover costs. The Exchange believes the proposed fee eliminations and Fees Schedule clarifications would update and simplify the Fees Schedule. With respect to establishing fees for DVS options, the Exchange believes the new fees proposed by this filing are equitable and reasonable in that they will further the Exchange's goal of introducing new products to the marketplace that are competitively priced and will help the Exchange recoup license fees that the Exchange pays to the reporting authority.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act [26] and subparagraph (f)(2) of Rule 19b–4 thereunder.[27] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File

positions are being transferred as part of a sale or disposition of all or substantially all of the assets or options positions of the transferring party where the transferring party would not continue to be involved in managing or owning the transferred positions. The rule also provides for off-floor transfers of positions based on certain specified exemptions, as well as with the approval of the Exchange's President under extraordinary circumstances.

[18] *See* Securities Exchange Act Release No. 59193 (January 2, 2009), 74 FR 972 (January 9, 2009).

[19] *See* Securities Exchange Act Release No. 61136 (December 10, 2009) (approving SR–CBOE–2009–022).

[20] This is the standard rate that is subject to the Liquidity Provider Sliding Scale as set forth in Footnote 10 to the Fees Schedule.

[21] The Commission notes that on December 24, 2009, CBOE filed a proposed rule change relating to fees for professional orders that also would become operative on January 4, 2010. *See* SR–CBOE–2009–101.

[22] *See* Footnote 6 of the Fees Schedule.

[23] Linkage order fees are inapplicable for options on CBOE's proprietary products.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(4).

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f)(2).

Number SR–CBOE–2009–098 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–098. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2009–098 and should be submitted on or before February 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–537 Filed 1–13–10; 8:45 am]

BILLING CODE 8011–01–P

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61298; File No. SR–BX–2009–087]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 2240 and 2250 To Reflect Changes to Corresponding FINRA Rules

January 6, 2010.

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 December 30, 2009, NASDAQ OMX BX, Inc. (the "Exchange" or "BX") 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 Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[4] and Rule 19b–4 thereunder,[5] NASDAQ OMX BX, Inc. ("BX") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend BX Rules 2240 and 2250 to reflect recent changes to corresponding rules of the Financial Industry Regulatory Authority ("FINRA"). The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com,* at the Exchange'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

Many of BX's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, BX also proposes to initiate a process of modifying its rulebook to ensure that BX rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. In some cases, it will not be possible for the rule numbers of BX rules to mirror corresponding FINRA rules, because existing or planned BX rules make use of those numbers. However, wherever possible, BX plans to update its rules to reflect changes to corresponding FINRA rules.

This filing addresses BX Rule 2240 entitled "Disclosure of Control Relationship with Issuer" and 2250 entitled "Disclosure of Participation or Interest in Primary or Secondary Distribution." BX Rule 2240 62 [sic] makes reference to NASD 2240 [sic] entitled "Disclosure of Control Relationship with Issuer." The Commission approved a proposed rule change to adopt NASD Rule 2240 as FINRA Rule 2262, NASD Rule 2250 as FINRA Rule 2269 and NASD Rule 3340 as FINRA Rule 5260.[6]

FINRA transferred NASD Rule 2240 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2262. FINRA Rule 2262 provides that a member controlled by, controlling, or under common control with the issuer of any security must, before entering into any contract with or for a customer for the purchase or sale of such security, disclose to the customer the existence of such control; if such disclosure is not made in writing, it must be supplemented by written disclosure at or before the completion of the transaction.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] Securities Exchange Act Release No. 60659 (September 11, 2009), 74 FR 48117 (September 21, 2009) (SR–FINRA–2009–044).

FINRA transferred NASD Rule 2250 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2269. FINRA Rule 2269 provides that if a member is acting as a broker for a customer, or is acting for both the customer and some other person, or is acting as a dealer and receives or has promise of receiving a fee from a customer for advising the customer with respect to securities, then the member must, at or before the completion of any transaction for or with the customer in any security in the primary or secondary distribution of which the member is participating or is otherwise financially interested, give the customer written notification of the existence of such participation or interest.

FINRA transferred NASD Rule 3340 without material change into the Consolidated FINRA Rulebook as FINRA Rule 5260. FINRA Rule 5260 prohibits members from, directly or indirectly, effecting transactions or publishing quotations or indications of interest ("IOIs") in (1) any security with respect to which a trading halt is in effect; or (2) any security future when there is a regulatory trading halt in effect with respect to the underlying security. The trading and quoting conduct prohibited by Rule 3340 is triggered only when a trading halt is in effect. The rule also provides that, in the event that FINRA halts over-the-counter trading and quoting in NMS stocks because the Alternative Display Facility ("ADF") or a Trade Reporting Facility ("TRF") is unable to transmit real-time information to the applicable Securities Information Processor, members are not prohibited from trading through other markets for which trading is not halted.

BX is proposing to amend BX Rule 2240 by renaming Rule 2240 to new Rule 2262. Also, BX is proposing to amend BX Rule 2250 by renaming Rule 2250 to new Rule 2269. BX would delete current Rules 2240 and 2250. BX also proposes to amend the references to BX Rule 2240 and 2250 to instead state FINRA Rules 2262 and 2269 in the new Rules 2262 and 2269, respectively. Because Rule 3340 contains rule text that is substantially similar to Rule 5260, and does not incorporate Rule 5260 by reference, no changes are necessary to Rule 3340.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Sections [sic] 6(b)(5) of the Act,[8] in particular, in that the proposal 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed changes will conform BX Rules 2240 and 2250 to recent changes made to corresponding FINRA rules and rename Rules 2240 and 2250 to new Rules 2262 and 2269 respectively.

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, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2009–087 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–087. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission,[11] 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of BX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2009–087 and should be submitted on or before February 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–539 Filed 1–13–10; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/.*

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61303; File No. SR–CBOE–2009–102]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Chicago Board Options Exchange Stock Exchange Fees Schedule

January 6, 2010.

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 December 30, 2009, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 proposes to amend its CBOE Stock Exchange ("CBSX") Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's principal office, on the Commission's Web site (*http://www.sec.gov*), 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 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

CBSX proposes to make fee modifications in order to better attract business to the exchange. Specifically, CBSX proposes to change to $0.0030 per share its Taker Fee and Routing Fee applicable to transactions of securities priced at $1 or greater. CBSX proposes to change to 0.30% (of the dollar value of the transaction) its Taker Fee and Routing Fee for transactions in securities priced less than $1. CBSX proposes to change to $0.0025 per share the rebate for Makers, applicable to transactions in securities priced at $1 or greater.

CBSX also proposes to change the fee rates applicable to stock executions effected pursuant to Rules 6.53C, 6.74A.07 and 6.74B.01. Rule 6.53C is CBOE's complex order auction (COA) and book (COB) rule. The COA system facilitates the handling and execution of complex orders by allowing for complex orders to rest in the system and allowing for inbound complex orders to trigger an auction where auction participants may submit complex order responses to trade with the order that is being auctioned. Some complex orders contain a stock component (e.g. a buy-write order), and the stock component of a stock-option complex order handled by the system is executed on CBSX. This filing changes the rate applicable to the stock executions that result from stock-option orders trading pursuant to Rule 6.53C as follows: the order that triggered a COA auction or that triggered a trade with a resting COB order shall be charged $0.0020 per share subject to a $2.00 minimum charge (the $25.00 maximum charge will remain unchanged).

Rule 6.74A.07 is CBOE's Automated Improvement Mechanism (AIM) rule for complex orders. It allows complex orders (including stock-option orders) to be crossed after an electronic auction. Rule 6.74B.01 is the Solicitation Auction Mechanism. It allows for the execution of large size complex orders against solicited orders. Any stock executions resulting from orders processed through these mechanisms are handled on CBSX. This filing changes the rate applicable to the stock executions that result from stock-option orders trading pursuant to Rule 6.74A.07 and 6.74B.01 as follows: $0.0020 per share subject to a $2.00 minimum charge and $25.00 maximum charge (the $25.00 maximum charge will remain unchanged).

Lastly, this filing eliminates the CBSX market data rebate program. CBSX will cease issuing tape credits.

The fee changes will take effect on January 4, 2010.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[3] in general, and furthers the objectives of Section 6(b)(4) [4] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii) of the Act [5] and subparagraph (f)(2) of Rule 19b–4 thereunder.[6] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2009–102 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–102. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–102 and should be submitted on or before February 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–540 Filed 1–13–10; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61297; File No. SR–FINRA–2009–094]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Extending the Pilot Period Regarding the Use of Multiple MPIDs on FINRA Facilities

January 6, 2010.

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 December 29, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is proposing to extend through January 28, 2011, the current rules regarding the use of multiple Market Participant Symbols ("MPIDs") in FINRA Rules 6160 (with respect to Trade Reporting Facilities ("TRFs")), 6170 (with respect to the Alternative Display Facility ("ADF")), and 6480 (with respect to the OTC Reporting Facility ("ORF")).

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA has three rules governing the use of multiple MPIDs on FINRA facilities: Rule 6160 (Multiple MPIDs for Trade Reporting Facility Participants), Rule 6170 (Primary and Additional MPIDs for Alternative Display Facility Participants), and Rule 6480 (Multiple MPIDs for Quoting and Trading in OTC Equity Securities). The pilot period for all three rules is scheduled to expire on January 29, 2010. FINRA believes that there continue to be legitimate business reasons for members to maintain multiple MPIDs for use on FINRA facilities. Consequently, FINRA is proposing to extend the pilot period for each of the three rules until January 28, 2011. FINRA is not proposing any other changes to the rules at this time.

(a) Rule 6160

Rule 6160 provides that any Trade Reporting Facility Participant that wishes to use more than one MPID for purposes of reporting trades to a TRF must submit a written request to, and obtain approval from, FINRA Operations for such additional MPIDs. In addition, Supplementary Material to the rule states that FINRA considers the issuance of, and trade reporting with, multiple MPIDs to be a privilege and not a right. A Trade Reporting Facility Participant must identify the purpose(s) and system(s) for which the multiple MPIDs will be used. If FINRA determines that the use of multiple MPIDs is detrimental to the marketplace, or that a Trade Reporting Facility Participant is using one or more additional MPIDs improperly or for other than the purpose(s) identified by the Participant, FINRA staff retains full discretion to limit or withdraw its grant of the additional MPID(s) to such Trade Reporting Facility Participant for purposes of reporting trades to a TRF. FINRA believes that Rule 6160 is necessary to consolidate the process of issuing, and tracking the use of, multiple MPIDs used to report trades to TRFs.

Rule 6160 was approved by the Commission in 2006 on a pilot basis.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 54715 (November 6, 2006), 71 FR 66354 (November 14, 2006); *see also* Securities Exchange Act Release No.

Continued

The pilot period has been extended several times since the rule was originally adopted and currently expires on January 29, 2010.[5]

(b) Rule 6170

Rule 6170 provides that a Registered Reporting ADF ECN may request additional MPIDs for displaying quotes and orders and reporting trades through the ADF trade reporting facility, TRACS, for any ADF-Eligible Security. Registered Reporting ADF ECNs that are permitted the use of additional MPIDs for displaying quotes and orders are subject to the same rules applicable to the member's first quotation (*i.e.,* ECNs that display one or more additional quotes/orders are required to comply with all rules applicable to ECNs in their display of quotes/orders). Registered Reporting ADF ECNs are also prohibited from using an additional MPID to accomplish indirectly what they are prohibited from doing directly through their Primary MPID. In addition, FINRA staff retains full discretion to determine whether a bona fide regulatory and/or business need exists for being granted an additional MPID privilege and to limit or withdraw the additional MPID display privilege at any time. The procedures for requesting, and the restrictions surrounding the use of, multiple MPIDs are set forth in Supplementary Material to the rule.

The Commission approved Rule 6170 on a pilot basis on August 11, 2006.[6] The pilot period has been extended several times since the rule was originally adopted and currently expires on January 29, 2010.[7]

(c) Rule 6480

Like Rule 6160, Rule 6480 provides that any member that wishes to use more than one MPID for purposes of quoting an OTC Equity Security or reporting trades to the ORF must submit a written request to, and obtain approval from, FINRA Operations for such additional MPIDs. The rule also states that a member that posts a quotation in an OTC Equity Security and reports to a FINRA system a trade resulting from such posted quotation must utilize the same MPID for reporting purposes. In addition, Supplementary Material to the rule states that FINRA considers the issuance of, and trade reporting with, multiple MPIDs to be a privilege and not a right. When requesting an additional MPID(s), a member must identify the purpose(s) and system(s) for which the multiple MPIDs will be used. If FINRA determines that the use of multiple MPIDs is detrimental to the marketplace, or that a member is using one or more additional MPIDs improperly or for purposes other than the purpose(s) identified by the member, FINRA staff retains full discretion to limit or withdraw its grant of the additional MPID(s) to such member.

FINRA adopted Rule 6480 on a pilot basis on July 23, 2009, and the pilot period expires on January 29, 2010.[8]

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date of the proposed rule change will be January 29, 2010.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with these requirements because it will provide a process by which members can request, and FINRA can properly allocate, the use of additional MPIDs for displaying quotes and orders through the ADF or reporting trades to a TRF or the ORF.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–094 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–094. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent

54715A (November 14, 2006), 71 FR 67183 (November 20, 2006).

[5] *See* Securities Exchange Act Release No. 59183 (December 30, 2008), 74 FR 842 (January 8, 2009); Securities Exchange Act Release No. 57217 (January 28, 2008), 73 FR 6234 (February 1, 2008); Securities Exchange Act Release No. 55206 (January 31, 2007), 72 FR 5479 (February 6, 2007).

[6] *See* Securities Exchange Act Release No. 54307 (August 11, 2006), 71 FR 47551 (August 17, 2006). By its terms, the initial pilot period expired on January 26, 2007, to coincide with the expiration of the ADF pilot period. *See* Securities Exchange Act Release No. 53699 (April 21, 2006), 71 FR 25271 (April 28, 2006). On January 26, 2007, the Commission approved a proposed rule change to make the ADF rules permanent. *See* Securities Exchange Act Release No. 55181 (January 26, 2007), 72 FR 5093 (February 2, 2007).

[7] *See* Securities Exchange Act Release No. 59183 (December 30, 2008), 74 FR 842 (January 8, 2009); Securities Exchange Act Release No. 57217 (January 28, 2008), 73 FR 6234 (February 1, 2008); Securities Exchange Act Release No. 55206 (January 31, 2007), 72 FR 5479 (February 6, 2007).

[8] *See* Securities Exchange Act Release No. 60414 (July 31, 2009), 74 FR 39721 (August 7, 2009).

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2009–094 and should be submitted on or before February 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–538 Filed 1–13–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61304; File No. SR–CHX–2009–18]

Self-Regulatory Organizations; The Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend Its Co-Location Fees

January 6, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 22, 2009, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its Schedule of Participant Fees and Assessments (the "Fee Schedule"), effective the first month after the proposal is approved, relating to charges for co-location services.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm,* at the Exchange'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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange makes space available to Participants at its data center for the storage of their computer hardware and maintaining connections equipment to the CHX network. This hardware and connections equipment are used by Participants to increase the processing speed of information transferred from their systems to those of the Exchange and to reduce the latencies associated with order and information messaging. The practice of Participants to store physical computer hardware and network connections equipment on an exchange's premises is known as "co-location."[4]

Since 2004, the Exchange has charged fees to its Participants for its co-location services.[5] Initially, fees on co-located equipment were limited to computer hardware which was not used to direct orders to the Exchange, but that restriction was removed in 2006 with the transition to the Exchange's New Trading Model. The CHX charges Participants for the physical space associated with co-locating computer hardware and network equipment on its premises. This equipment is generally used for the transmission of order and execution messages, market data information and other information services between Participants and the Exchange's trading facilities, or other destinations. Charges for space are based upon the number of "U" (a commonly accepted unit of measurement of data center space) of shelf space used to store the equipment. Additionally, the CHX charges a co-location fee for the network connections equipment used to connect Participants to the CHX network.[6] These charges are intended to offset, at least in part, the costs borne by the Exchange for rent, utilities and maintenance of the space occupied by the co-located equipment.[7] In this filing, the Exchange seeks to increase the periodic charge for co-location of network connections equipment from $50/month to $100/month.

The CHX offers co-location to all of its Participants on an equal and non-discriminatory basis. As far as possible, the Exchange has architected its systems to eliminate or reduce differences amongst and between co-located and non-co-located access.[8] Participants which enter orders through co-located equipment access our network via the same common connections or gateway as Participants which do not co-locate.[9] Currently, the Exchange has sufficient space at its data center to accommodate

[4] The Exchange also allows non-Participants to co-locate computer hardware and connections equipment, provided that they enter into an agreement providing for, *inter alia,* the payment of fees for such co-location.

[5] *See* SR–CHX–2004–15 (May 19, 2004) (establishing fees for co-located computer hardware and network equipment); *See also* SR–CHX–2006–29 (October 26, 2006) (broadening the scope of such fees).

[6] This fee is separate from the Port fees charged pursuant to Section D of the CHX Fee Schedule for connections to the CHX Matching System. Port fees are not based upon the equipment stored on our premises, but rather upon the number of logical connections between the Exchange's Matching System and those of the Participant. The co-location fee for network connections equipment is a charge for various forms of cabling (POTS, ISDN, T1 lines, etc.) from the telecom provider's point of presence in our data center to our network. It is not necessary for Participants to co-locate network connection equipment at the CHX's data center in order to connect to our trading facilities, since they have the option to connect via an extranet service. Such extranet services connect to the Exchange in the same manner as orders routed through co-located equipment.

[7] The CHX does not separately charge for the electricity used to power the Participant's equipment or rent and other utilities associated with the space.

[8] Of course, Participants which co-locate would normally expect lower latencies and faster message turnaround times because of the physical proximity of their equipment to our systems.

[9] This description applies equally to both inbound messages (*e.g.,* new orders) and outbound messages (*e.g.,* execution reports).

all requests to co-locate computer equipment. We believe that we will continue to have adequate capacity to co-locate Participant computer hardware and network connections equipment for the foreseeable future. If for some reason that our capacity was exceeded, we would file a rule proposal with the Commission seeking to adopt a fair and neutral policy to accommodate requests to co-locate.

2. Statutory Basis

The Exchange believes that the proposed rule change 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 its members. The Exchange believes that the co-location charges are fair and reasonable inasmuch as they offset the Exchange's expenses involved in providing co-location services. The Exchange also believes that proposed rule change furthers the objectives of Section 6(b)(5) in particular,[12] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest. By providing co-location services in a fair and evenhanded manner to interested Participants, the Exchange believes that it is contributing to the rapid transmission of order and trade-related messages which are vital to the effective functioning of the national market system.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be 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 e-mail to rule-comments@sec.gov.* Please include File Number SR–CHX–2009–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2009–18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2009–18 and should be submitted on or before February 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–541 Filed 1–13–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61309; File No. SR–NYSE–2009–133]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Modify the Liquidity Credits Paid to Supplemental Liquidity Providers

January 7, 2010.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act"),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on December 30, 2009, New York Stock Exchange LLC (the "NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule changes 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 changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of credits paid to Supplemental Liquidity Providers ("SLPs") (i) to clarify that the current credits paid to SLPs relate only to transactions in securities with a trading price of $1.00 or more and (ii) to establish a liquidity credit for transactions in securities with a trading

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.19b–4.

price of less than $1.00. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 these statements may be examined at the places specified in Item IV below. The NYSE 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 NYSE pays credits to SLPs for providing liquidity in transactions in securities with a trading price of $1.00 or more. There are several different tiers at which these credits are paid, based on (i) whether the SLP has met the 3% average or more quoting requirement (the "Quoting Requirement") in Rule 107B for the applicable security and (ii) the amount of the SLPs average daily trading volume ("ADV") in the security in the applicable month. While the Exchange has always applied its existing credits for SLPs only to transactions in securities with a trading price of $1.00 or more, this is not apparent on the face of the price list. Therefore, the Exchange proposes to clarify the price list by amending it to specify that the current SLP liquidity credits apply only to transactions in securities with a trading price of $1.00 or more. In addition, the Exchange is adopting a new $0.0005 per share credit which will be paid to SLPs when they add liquidity in a security with a trading price of less than $1.00 with respect to which they have met the Quoting Requirement for the applicable month.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 [4] of the Act in general and Section 6(b)(4) of the Act [5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees and other charges, as the liquidity provided by SLPs is an important part of the NYSE market model and it is therefore appropriate to structure credits to incent liquidity provision by SLPs.

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 purpose 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 is effective upon filing pursuant to Section 19(b)(3)(A) [6] of the Act and Rule 19b–4(f)(2) [7] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSE–2009–133 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSE–2009–133. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[8] 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSE–2009–133 and should be submitted on or before February 4, 2010.[9]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–543 Filed 1–13–10; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61313; File No. SR–NYSEArca–2009–116]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 2.3

January 7, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on December 22, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. NYSE Arca filed the proposed rule change as a "non-controversial" proposal pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 2.3 governing ETP Application Procedures. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com*, on the Commission's Web site at *http://www.sec.gov*, at the Exchange, and at the Commission's Public Reference Room. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange'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 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 Statutory Basis for, the Proposed Rule Change

1. *Purpose*

The Exchange proposes to amend NYSE Arca Equities Rule 2.3 to permit the Exchange to offer an expedited application process for Equity Trading Permit ("ETP")[6] applicants that are current NYSE Arca Options Trading Permit ("OTP") Holders.

Currently, the NYSE Arca ETP application process does not take into consideration an applicant's OTP status. This creates a duplicative application review because the requirements to become a NYSE Arca OTP Holder are substantially similar to the NYSE Arca ETP requirements and satisfy the criteria reviewed in the NYSE Arca ETP application process. Additionally, the rules related to registration are substantially similar for both ETP and OTP applicants. This proposed rule would eliminate inefficiencies and unnecessary burdens by creating an expedited application process for applicants who are NYSE Arca OTP Holders.

This proposal is substantially similar to previously approved Nasdaq Rule 1013(a)(5)(C) and Nasdaq OMX BX Rule 1013(a)(5)(C). Accordingly, the Exchange proposes to revise NYSE Arca Equities Rule 2.3 by adding the following as new subsection (b):

> An applicant that is an approved NYSE Arca OTP Holder may apply to become an ETP Holder through an expedited process, by submitting a Short Form ETP Holder Application and an NYSE Arca Equities User Agreement. The Short Form ETP Holder Application shall contain information sufficient to establish the identity of the applicant as an approved NYSE Arca OTP Holder, its proposed activity on the Exchange, and certain contact personnel, in addition to any other information that may be required by the Exchange.

In doing so, the Exchange will offer NYSE Arca OTP Holders an expedited and efficient ETP application process consistent with procedures established on other exchanges.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the "Exchange Act"), in general, and furthers the objectives of Section 6(b)(5)[8] 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 seeks to revise its membership rules so that ETP applicants are not unnecessarily burdened by duplicative review procedures.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] *See* NYSE Arca Equities Rule 1.1(m) (definition of ETP); see also NYSE Arca Equities Rule 1.1(n) (definition of ETP Holder).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2009–116 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–116. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–116 and should be submitted on or before February 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–545 Filed 1–13–10; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61311; File No. SR–FINRA–2009–072]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend the Deficient Claims Rules of the Codes of Arbitration Procedure for Customer and Industry Disputes

January 7, 2010.

I. Introduction

On October 28, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission (the "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 amend Rule 12307 of the Code of Arbitration for Customer Disputes (the "Customer Code") and Rule 13307 of the Code of Arbitration for Industry Disputes (the "Industry Code") (collectively, the "Codes") to clarify the date of filing of an arbitration claim once a deficiency is corrected. The proposed Rule change was published for comment in the **Federal Register** on December 2, 2009.[3] The Commission received two comment letters, both of which supported the proposed rule change.[4] This order approves the proposed rule change.

II. Description of the Proposal

When parties initiate arbitration claims in FINRA's arbitration forum, they must file a signed and dated submission agreement, pay all required filing fees, and provide a statement of claim explaining the facts and outlining the remedies requested.[5] If a party's claims do not comply with the Customer Code or Industry Code, as applicable, those claims are considered deficient.[6] FINRA received inquiries from constituents on how the arbitration forum determines the date of filing of a claim that was deficient when filed, but is later corrected.

To address these constituents' concerns, FINRA proposed to amend Rules 12307(b) of the Customer Code and 13307(b) of the Industry Code to clarify the date of filing of a deficient claim when the deficiency is corrected within 30 days from the time the party receives notice of the deficiency (the "Deficiency Period"). As amended, these rules would provide that if the deficiency is corrected within the Deficiency Period, the claim will be considered filed on the date the initial statement of claim was filed.

Two commenters addressed the proposed rule change and both urged the Commission to approve it.

III. Discussion and Commission Findings

The Commission finds the proposed rule change to be consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act in that it is designed, among other things, to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission believes it is important to provide persons using FINRA's arbitration forum clear guidance on how to determine the date of filing of a deficient claim. The proposed rule change should eliminate confusion, provide transparency concerning forum practice, and enhance the efficiency of case administration.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–FINRA–2009–072) be, and hereby is, approved.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 74 FR 63167 (Dec. 2, 2009).

[4] *See* letters from William A. Jacobson, Esq., Associate Clinical Professor of Law, Director, Cornell Securities Law Clinic and Sang Joon Kim, student, dated December 9, 2009, and Scott R. Shewan, President, Public Investors Arbitration Bar Association, dated December 17, 2009.

[5] Rule 12302(a)(1) of the Customer Code and Rule 13302(a)(1) of the Industry Code.

[6] A claim may be deficient because, for example, the party failed to file a properly signed and dated submission agreement, failed to pay all required filing fees, or failed to file the correct number of copies of the submission agreement, statement of claim or other supporting documents.

[7] In approving the 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).

[8] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–544 Filed 1–13–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61310; File No. SR–NYSEAmex–2009–102]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC To Modify Its Liquidity Credits and Establish Separate Liquidity Credits for Supplemental Liquidity Providers

January 7, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 31, 2009, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 proposes to modify its liquidity credits and establish liquidity credits for Supplemental Liquidity Providers ("SLPs"). These changes will take effect on January 1, 2010. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

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 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

NYSE Amex currently pays a rebate of $0.0030 per share to customers providing liquidity in securities with a trading price of at least $1.00 per share. With effect from January 1, 2010, this rebate will decrease to $0.0015 per share.

In a recent filing, the Exchange established a Supplemental Liquidity Provider ("SLP") program.[4] The Exchange proposes to establish a system of credits payable to SLPs when they provide liquidity to the Exchange. The Exchange will pay a credit of $0.0020 per share to SLPs when they add liquidity to the Exchange in securities with a per share price of $1.00 or more, if the SLP meets the 3% average or more quoting requirement in an assigned security pursuant to Rule 107B. However, if the SLP does not meet the 3% average or more quoting requirement in an assigned security pursuant to Rule 107B, it will be entitled to the same $0.0015 per share credit payable to all customers when adding liquidity to the Exchange in securities with a per share price of $1.00 or more. The Exchange will pay a credit of $0.0005 per share to SLPs when they add liquidity to the Exchange in securities with a per share price of less than $1.00, if the SLP meets the 3% average or more quoting requirement in an assigned security pursuant to Rule 107B.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6[5] of the Act in general and Section 6(b)(4) of the Act[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees and other charges as all similarly situated member organizations will be subject to the same fee structure.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[7] of the Act and subparagraph (f)(2) of Rule 19b–4[8] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Amex.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSEAmex–2009–102 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEAmex–2009–102. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* SR–NYSEAmex–2009–98.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[9] 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEAmex–2009–102 and should be submitted on or before February 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–542 Filed 1–13–10; 8:45 am]

BILLING CODE 8011–01–P

[9] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 6821]

60-Day Notice of Proposed Information Collection: DS–4100, Iran Program Grants Vetting, Information Collection 1405–0176

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Iran Program Grants
- *OMB Control Number:* 1405–0176
- *Type of Request:* Extension of a Currently Approved Collection
- *Originating Office:* Office of Iranian Affairs, Bureau of Near Eastern Affairs (NEA/IR)
- *Form Number:* DS–4100
- *Respondents:* Potential grantees and participants for Iran programs
- *Estimated Number of Respondents:* 100
- *Estimated Number of Responses:* 200
- *Average Hours Per Response:* 1
- *Total Estimated Burden:* 200
- *Frequency:* On occasion
- *Obligation to Respond:* Required to Obtain

DATE(S): The Department will accept comments from the public up to 60 days from January 14, 2010.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Danika Walters, Bureau of Near Eastern Affairs, U.S. Department of State, Washington, DC 20520, who may be reached on 202–647–1347, or via e-mail at *WaltersDL@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

The State Department has made the awarding of grants a key component of its Iran policy. As a condition of licensing these activities, the Office of Foreign Assets Control (OFAC) mandates that the Department conduct a vetting of potential Iran programs grantees and sub-grantees for counter-terrorism purposes. To conduct this vetting the Department envisions collecting information from grantees and sub-grantees regarding the identity and background of their key employees, board of directors, and program participants.

Methodology

We will collect this information either through fax or electronic submission.

Additional Information

Provide background or other information as applicable or useful. This is optional.

Dated: January 5, 2010.

Sara Horner,

Office Director, Office of Iranian Affairs, Bureau of Near Eastern Affairs, Department of State.

[FR Doc. 2010–599 Filed 1–13–10; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF STATE

[Public Notice 6865]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Global Undergraduate Exchange Program for Pakistan

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/E/SCA–10–01.

Catalog of Federal Domestic Assistance Number: 19.009.

Key Dates: Application Deadline: February 15, 2010.

Executive Summary: The Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs announces an open competition to administer the FY2010 Global Undergraduate Exchange Program for Pakistan. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3) in the United States may submit proposals to organize and carry out academic exchange activities for students from underrepresented sectors in Pakistan. The recipient organization will be responsible for the following aspects of the program: Placement of no less than 100 foreign students at accredited U.S. institutions (50 for fall semester 2010, 50 spring semester 2011) student travel to the U.S., orientation, enrichment programming, advising, monitoring and support, pre-return activities, evaluation, and follow-up with program alumni. Support for this program is being provided from special FY2009/FY2010 supplemental funds that have been appropriated to the Department. It is anticipated that the total amount of funding for FY2010 administrative and program costs will be $2,000,000 pending availability of funds.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Purpose: The principal objective of the Global Undergraduate Exchange Program for Pakistan (herein referred to as the "Global UGRAD—Pakistan") is to provide a substantive exchange experience at a U.S. college or university to a diverse group of emerging student leaders from underrepresented sectors in Pakistan. In this context, the recipient organization should ensure that participants are able to enroll full-time in courses at U.S. institutions alongside U.S. peers, and provide the participants with opportunities and enrichment activities designed to help them understand the U.S. and U.S. citizens inside and outside the classroom.

Participants will return to their home countries at the conclusion of the exchange program to re-enter colleges and universities there, and re-integrate with their home societies.

An objective of the program is to provide participants with tailored instruction in the academic skills and study habits required to be successful at the undergraduate level as well as be better prepared for higher level studies in the U.S. in the future.

The Global UGRAD—Pakistan will provide no less than 100 scholarships—50 for fall semester, 50 for spring semester—at U.S. institutions of higher education to outstanding students from non-elite sectors in Pakistan. Scholarships will be granted primarily to students who are currently enrolled in an undergraduate degree program in their home country, although students just completing their final year of high school will also be eligible. The recipient organization will place participants in non-degree programs at both two- and four-year U.S. colleges and universities.

The recipient organization should develop enrichment activities to enhance the participants' academic education, including having students participate in community service and make local presentations about their countries. All participants are required to return to their home countries immediately upon the conclusion of the program. Transfers of academic program or visa sponsorship of participants to another U.S. institution will not be considered.

ECA will award one cooperative agreement for this program. Programs and projects must conform to Bureau requirements and guidelines outlined in the Solicitation Package. ECA programs are subject to the availability of funds.

Programs must comply with J–1 Visa regulations. Please refer to the Solicitation Package for further information.

In a cooperative agreement, the South and Central Asia Programs Branch of the Office of Academic Exchange Programs in the Bureau of Educational and Cultural Affairs (ECA/A/E/SCA) is substantially involved in program activities above and beyond routine grant monitoring. ECA/A/E/SCA activities and responsibilities for this program are, but not limited to, the following:

1. Participating in the design and direction of program activities;
2. Approval of key personnel;
3. Final selection of program participants;
4. Approval and input for all program agendas and timelines;
5. Final approval of all student placements;
6. Final approval of internship placements;
7. Guidance in execution of all project components;
8. Arrangement for State Department speakers during workshops;
9. Assistance with participant emergencies;
10. Providing background information related to participants' home countries and cultures; and
11. Liaison with Public Affairs Sections of the U.S. Embassies and country desk officers at the State Department.

Note: All materials, publicity, and correspondence related to the program must acknowledge this as a program of the Bureau of Educational and Cultural Affairs, U.S. Department of State. The Bureau will retain copyright use of and distribute materials related to this program as it sees fit.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: FY2010.

Approximate Total Funding: $2,000,000.

Approximate Number of Awards: 1.

Anticipated Award Date: Pending availability of funds, the anticipated program start date will be May 1, 2010.

Anticipated Project Completion Date: December 31, 2011.

Additional Information: At this time, support for this program is being provided from special one-time FY2009/FY2010 supplemental funds that have been appropriated to the Department. In the event that additional funds become available in fiscal years 2011 and 2012, and pending successful implementation of the FY2010 funded program, ECA reserves the right to renew this grant for two additional fiscal years before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3).

III.2. Cost-Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal Government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements: (a) Bureau grant guidelines require that organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. ECA anticipates

awarding one grant, in the amount of up to $2,000,000 to support the program and administrative costs required to implement the program. Therefore, applicant organizations with less than four years experience in conducting international exchange programs are ineligible to apply under this competition. The Bureau encourages applications to provide the maximum levels of cost sharing and funding to in support of its program.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information To Request an Application Package:

Please contact the South and Central Asia Programs Branch, Office of Academic Exchange Programs, ECA/A/E/SCA, SA–5 Floor 4, U.S. Department of State, Washington, DC 20522–0504, 202–632–3270, *Fax:* 202–632–9411 or *AlamiLT@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/E/SCA–10–01 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. *Please see* section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Program Officer, Theresa Drake, and refer to the Funding Opportunity Number ECA/A/E/SCA–10–01 on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet:

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov*. Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f., Application Deadline and Methods of Submission section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to all Regulations Governing the J Visa: The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, recordkeeping, reporting and other requirements.

The award recipient will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: Office of Designation, ECA/EC/D, SA–5, Floor C2, Department of State, Washington, DC 20522–0582.

Please refer to Solicitation Package for further information.

IV.3d.2 Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law

104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation: Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the award recipient will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

The recipient organization will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. Describe your plans for: *i.e.* sustainability, overall program management, staffing, coordination with ECA and PAS or any other requirements.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—"Budget Information—Non-Construction Programs" along with a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

1. Participant expenses.

2. Administrative costs.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: February 15, 2010.

Reference Number: ECA/A/E/SCA–10–01.

Methods of Submission: Applications may be submitted in one of two ways:

(1.) In hard-copy, via a nationally recognized overnight delivery service (i.e., Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2.) Electronically through *http://www.grants.gov.*

Please Note: ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1., below rather than submitting electronically through Grants.gov. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the Grants.gov webportal as part of the Recovery Act stimulus package. As stated in this RFGP, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications: Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline

will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and eight (8) copies of the application should be sent to: Office of Academic Exchange Programs, ECA/A/E/SCA, SA–5, 4th Floor, 2200 C Street, NW., Washington, DC 20037.

Applicants submitting hard-copy applications must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassies for their review.

IV.3f.2—Submitting Electronic Applications: Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

Please Note: ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1. above, rather than submitting electronically through Grants.gov. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the *Grants.gov* webportal as part of the Recovery Act stimulus package. As stated in this RFGP, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via *Grants.gov.*

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov. Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to:

Grants.gov Customer Support
Contact Center Phone: 800–518–4726.
Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time.
E-mail: support@grants.gov.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. *There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.*

Please refer to the Grants.gov Web site, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. *Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.* ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process: The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Ability to achieve program objectives:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Multiplier Effect/Impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

5. *Institution's Record/Capacity:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. *Project Evaluation and Follow-on:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Proposals should also provide a plan for continued follow-on activity (with minimal Bureau support) ensuring that Bureau supported programs are not isolated events.

7. *Cost-effectiveness/Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

8. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by the U.S. Department of State's geographic area desk and overseas officers of program need, potential impact, and significance in the partner countries.

VI. Award Administration Information

VI.1a. Award Notices: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements: Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

Office of Management and Budget Circular A–87, "Cost Principles for State, Local and Indian Governments."

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants; http://fa.statebuy.state.gov.*

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF–PPR, "Performance Progress Report" Cover Sheet with all program reports.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (*Please refer* to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

Optional Program Data Requirements: Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Theresa Drake, South and Central Asia Programs Branch, Office of Academic Exchange Programs, ECA/A/E/SCA, SA–5 Floor 4, U.S. Department of State, Washington, DC 20522–0504, (202) 632–3277 and *Fax:* 202–632–9411, *http://www.exchanges.state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/SCA–10–01. Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: January 5, 2010.

Maura M. Pally,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–610 Filed 1–13–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 USC 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project, US Highway 50 between Robbins Run Sidehill to Rockwall Sidehill near Echo Summit in the County El Dorado, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before July 13, 2010. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Jody Brown, Caltrans Senior Environmental Planner, 2800 Gateway Oaks Drive, Sacramento, CA 95833 or call (916) 274–5908 or e-mail *jody_brown@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Caltrans proposes to upgrade the deteriorating masonry rock wall parapets at seven locations on US Highway 50 for the primary purpose of improving safety along the section of US Highway 50 known as Upper Meyers Grade at Echo Summit. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project, approved on December 29, 2009, in the Finding of No Significant Impact (FONSI) issued on December 29, 2009, and in other documents in the FHWA project records. The EA, FONSI, and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans EA and FONSI can be viewed and downloaded from the Caltrans environmental document library Web site at *http://www.dot.ca.gov/dist3/departments/envinternet/eldorado.htm.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal Aid-Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

4. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470]; Section 4(f) of the U.S. Department of Transportation Act of 1966 [49 U.S.C. 303].

5. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]; Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

6. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675.

7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1344].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management: E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*) (1)

Issued on: January 8, 2010.

Cindy Vigue,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. 2010–591 Filed 1–13–10; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 8, 2010.

The Department of Treasury will submit the following public information collection requirements 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. A copy of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

Dates: Written comments should be received on or before February 16, 2010 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–NEW.

Type of Review: New collection.

Title: Tax Return Preparer Complaint.

Form: Not yet assigned.

Description: This form will be used by taxpayers to report allegations of misconduct by tax return preparers. The form was created specifically for tax return preparer complaints and includes items necessary for the IRS to effectively evaluate the complaint and route to the appropriate function.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 1,500 hours.

OMB Number: 1545–NEW

Type of Review: New collection.

Title: Authorized Cyber Assistant Host Application.

Form: Not yet assigned.

Description: The form is used by a business to apply to become an Authorized Cyber Assistant Host. Information on this form will be used to assist in determining whether the applicant meets the qualifications to become a Cyber Assistant Host. Cyber Assistant is a software program that assists in the preparation of Form 1023, Application for Recognition of Exemption, under Section 501(c)(3).

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

Estimated Total Burden Hours: 200 hours.

OMB Number: 1545–NEW.

Type of Review: Existing collection without an OMB Control Number.

Title: Form 5316—Application for Group or Pooled Trust Ruling.

Form: 5316.

Description: Group/pooled trust sponsors file this form to request a determination letter from the IRS for a determination that the trust is a group trust arrangement as described in Rev. Rul. 81–100, 1981–1 C.B. 326 as modified and clarified by Rev. Rul. 2004–67, 2004–28 I.R.B.

Respondents: State, Local, and Tribal Governments.

Estimated Total Burden Hours: 3,800 hours.

Bureau Clearance Officer: R. Joseph Durbala, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 6129, Washington, DC 20224; (202) 622–3634.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2010–557 Filed 1–13–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Privacy Act of 1974, as Amended

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Proposed Privacy Act Systems of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) gives notice of the establishment of five Privacy Act systems of records.

DATES: Comments must be received no later than February 16, 2010. The new systems of records will be effective February 23, 2010 unless the Department receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to Bryan Saddler, Chief Counsel, Office of the Special Inspector General for the Troubled Asset Relief Program, 1801 L Street, NW., Washington, DC 20036. Comments will be made available for inspection upon written request. The Department will make such comments available for public inspection and copying in the Department's Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622–0990. All comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Bryan Saddler, Chief Counsel, Office of the Special Inspector General for the Troubled Asset Relief Program, 1801 L Street, NW., Washington, DC 20036, (202) 927–8938.

SUPPLEMENTARY INFORMATION: The Emergency Economic Stabilization Act of 2008 (Act), Public Law 110–343, established the Troubled Asset Relief Program, and, at section 121, created the Special Inspector General for the Troubled Asset Relief Program (SIGTARP). SIGTARP is responsible for coordinating and conducting audits and investigations of any program established by the Secretary under the Act. SIGTARP's duties and operating authority are set forth at section 121 of the Act, and in the Inspector General Act of 1978, 5 U.S.C. App. 3. SIGTARP exercises all duties and responsibilities of an Inspector General with respect to the purchase, management, and sale of assets by the Secretary of the Treasury under any program established by the Secretary under section 101 of the Act, and the management by the Secretary of any program established under section 102. To facilitate SIGTARP's audits, investigations, and other operations, it plans to create the following systems of records:

Treasury/DO. .220—SIGTARP Hotline Database.

Treasury/DO. .221—SIGTARP Correspondence Database.

Treasury/DO. .222—SIGTARP Investigative MIS Database.

Treasury/DO. .223—SIGTARP Investigative Files Database.

Treasury/DO. .224—SIGTARP Audit Files Database.

In the notice of proposed rulemaking, which is published separately in the **Federal Register**, SIGTARP is proposing to exempt records maintained in several systems from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

The report of a new system of records, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated November 30, 2000.

Sections 552a(e)(4) and (11) of title 5, United States Code, provide that an agency publish a notice of the establishment or revision of a record system which affords the public a 30-day period in which to submit comments. To meet this requirement, descriptions of the five new systems of records are published in their entirety below.

Dated: December 17, 2009.

Melissa Hartman,

Acting Deputy Assistant Secretary for Privacy and Treasury Records.

TREASURY/DO .220

SYSTEM NAME:

SIGTARP Hotline Database.

SYSTEM LOCATION:

Office of the Special Inspector General for the Troubled Asset Relief Program, 1801 L Street, NW., Washington, DC 20036.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Complainants who contact the SIGTARP Hotline.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Correspondence received from Hotline complainants; (2) records created of verbal communications with Hotline complainants; and (3) records used to process Hotline complaints, including information included in SIGTARP's other systems of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 5231, 5 U.S.C. App. 3, and 5 U.S.C. 301.

PURPOSE(S):

This system consists of complaints received by SIGTARP from individuals and their representatives, oversight committees, and others who conduct business with SIGTARP, and information concerning efforts to resolve these complaints; it serves as a record of the complaints and the steps taken to resolve them.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, foreign, State, local, Tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of

an indication of a potential violation of civil or criminal law or regulation;

(2) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Disclose information to another Federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(5) Disclose information to the Department of Justice when seeking legal advice, or when (a) the agency or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(6) Disclose information to the appropriate foreign, State, local, Tribal, or other public authority or self-regulatory organization for the purpose of (a) consulting as to the propriety of access to or amendment or correction of information obtained from that authority or organization, or (b) verifying the identity of an individual who has requested access to or amendment or correction of records;

(7) Disclose information to contractors and other agents who have been engaged by the Department or one of its bureaus to provide products or services associated with the Department's or bureau's responsibility arising under the FOIA/PA;

(8) Disclose information to the National Archives and Records Administration for use in records management inspections;

(9) Disclose information to appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(10) Disclose information to any source, either private or governmental, to the extent necessary to elicit information relevant to a SIGTARP audit or investigation;

(11) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing personnel actions or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(12) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger; and

(13) Disclose information to persons engaged in conducting and reviewing internal and external peer reviews of the Office of Inspector General to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization or to ensure auditing standards applicable to government audits by the Comptroller General of the United States are applied and followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By name of the correspondent and/or name of the individual to whom the record applies.

SAFEGUARDS:

The records are accessible to SIGTARP personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Paper records are maintained and disposed of in accordance with a record disposition schedule 12 approved by the National Archives Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Office of the Special Inspector General for the Troubled Asset Relief Program, 1801 L Street, NW., Washington, DC 20036.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). See 31 CFR 1.36.

TREASURY/DO .221

SYSTEM NAME:

SIGTARP Correspondence Database.

SYSTEM LOCATION:

Office of the Special Inspector General for the Troubled Asset Relief Program, 1801 L Street, NW., Washington, DC 20036.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Correspondents; and (2) persons upon whose behalf correspondence was initiated.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Correspondence received by SIGTARP and responses generated thereto; and (2) records used to respond to incoming correspondence, including information included in SIGTARP's other systems of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 5231, 5 U.S.C. App. 3, and 5 U.S.C. 301.

PURPOSE(S):

This system consists of correspondence received by SIGTARP from individuals and their representatives, oversight committees, and others who conduct business with SIGTARP and the responses thereto; it serves as a record of in-coming correspondence and the steps taken to respond thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, foreign, State, local, Tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Disclose information to another Federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(5) Disclose information to the Department of Justice when seeking legal advice, or when (a) the agency or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(6) Disclose information to the appropriate foreign, State, local, Tribal, or other public authority or self-regulatory organization for the purpose of (a) consulting as to the propriety of access to or amendment or correction of information obtained from that authority or organization, or (b) verifying the identity of an individual who has requested access to or amendment or correction of records;

(7) Disclose information to contractors and other agents who have been engaged by the Department or one of its bureaus to provide products or services associated with the Department's or bureau's responsibility arising under the FOIA/PA;

(8) Disclose information to the National Archives and Records Administration for use in records management inspections;

(9) Disclose information to appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(10) Disclose information to any source, either private or governmental, to the extent necessary to elicit information relevant to a SIGTARP audit or investigation;

(11) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing personnel actions or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(12) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger; and

(13) Disclose information to persons engaged in conducting and reviewing internal and external peer reviews of the Office of Inspector General to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization or to ensure auditing standards applicable to government audits by the Comptroller General of the United States are applied and followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By name of the correspondent and/or name of the individual to whom the record applies.

SAFEGUARDS:

The records are accessible to SIGTARP personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Paper records are maintained and disposed of in accordance with a record disposition schedule 12 approved by the National Archives Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Office of the Special Inspector General for the Troubled Asset Relief Program, 1801 L Street, NW., Washington, DC 20036.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. This system of records may contain

records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). See 31 CFR 1.36.

Treasury/DO .222

SYSTEM NAME:

SIGTARP Investigative MIS Database.

SYSTEM LOCATION:

Office of the Special Inspector General for the Troubled Asset Relief Program, 1801 L Street, NW., Washington, DC 20036.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects or potential subjects of investigative activities; witnesses involved in investigative activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Reports of investigations, which may include, but are not limited to, witness statements, affidavits, transcripts, police reports, photographs, documentation concerning requests and approval for consensual telephone and consensual non-telephone monitoring, the subject's prior criminal record, vehicle maintenance records, medical records, accident reports, insurance policies, police reports, and other exhibits and documents collected during an investigation; (2) status and disposition information concerning a complaint or investigation including prosecutive action and/or administrative action; (3) complaints or requests to investigate; (4) subpoenas and evidence obtained in response to a subpoena; (5) evidence logs; (6) pen registers; (7) correspondence; (8) records of seized money and/or property; (9) reports of laboratory examination, photographs, and evidentiary reports; (10) digital image files of physical evidence; (11) Documents generated for purposes of SIGTARP's undercover activities; (12) documents pertaining to the identity of confidential informants; and, (13) other documents collected and/or generated by the Office of Investigations during the course of official duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 5231, 5 U.S.C. App. 3, and 5 U.S.C. 301.

PURPOSE(S):

The purpose of this system of records is to maintain information relevant to complaints received by SIGTARP and collected as part of investigations conducted by SIGTARP's Office of Investigations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, foreign, State, local, Tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a potential violation of civil or criminal law or regulation;

(2) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Disclose information to another Federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(5) Disclose information to the Department of Justice when seeking legal advice, or when (a) the agency or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(6) Disclose information to the appropriate foreign, State, local, Tribal, or other public authority or self-regulatory organization for the purpose of (a) consulting as to the propriety of access to or amendment or correction of information obtained from that authority or organization, or (b) verifying the identity of an individual who has requested access to or amendment or correction of records;

(7) Disclose information to contractors and other agents who have been engaged by the Department or one of its bureaus to provide products or services associated with the Department's or bureau's responsibility arising under the FOIA/PA;

(8) Disclose information to the National Archives and Records Administration for use in records management inspections;

(9) Disclose information to appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(10) Disclose information to any source, either private or governmental, to the extent necessary to elicit information relevant to a SIGTARP audit or investigation;

(11) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing personnel actions or conducting administrative hearings or

appeals, or if needed in the performance of other authorized duties;

(12) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger; and

(13) Disclose information to persons engaged in conducting and reviewing internal and external peer reviews of the Office of Inspector General to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization or to ensure auditing standards applicable to Government audits by the Comptroller General of the United States are applied and followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By name, Social Security Number, and/or case number.

SAFEGUARDS:

The records are accessible to SIGTARP personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

These records are currently not eligible for disposal. SIGTARP is in the process of requesting approval from the National Archives and Records Administration of records disposition schedules concerning all records in this system of records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Office of the Special Inspector General for the Troubled Asset Relief Program, 1801 L Street, NW., Washington, DC 20036.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Chief Counsel, Office of the Special Inspector General for the Troubled Asset Relief Program, 1801 L Street, NW., Washington, DC 20036. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

Treasury/DO .223

SYSTEM NAME:

SIGTARP Investigative Files Database.

SYSTEM LOCATION:

Office of the Special Inspector General for the Troubled Asset Relief Program, 1801 L Street, NW., Washington, DC 20036.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects or potential subjects of investigative activities; witnesses involved in investigative activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Reports of investigations, which may include, but are not limited to, witness statements, affidavits, transcripts, police reports, photographs, documentation concerning requests and approval for consensual telephone and consensual non-telephone monitoring, the subject's prior criminal record, vehicle maintenance records, medical records, accident reports, insurance policies, police reports, and other exhibits and documents collected during an investigation; (2) status and disposition information concerning a complaint or investigation including prosecutive action and/or administrative action; (3) complaints or requests to investigate; (4) subpoenas and evidence obtained in response to a subpoena; (5) evidence logs; (6) pen registers; (7) correspondence; (8) records of seized money and/or property; (9) reports of laboratory examination, photographs, and evidentiary reports; (10) digital image files of physical evidence; (11) Documents generated for purposes of SIGTARP's undercover activities; (12) documents pertaining to the identity of confidential informants; and, (13) other documents collected and/or generated by the Office of Investigations during the course of official duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 5231, 5 U.S.C. App. 3, and 5 U.S.C. 301.

PURPOSE(S):

The purpose of this system of records is to maintain information relevant to complaints received by SIGTARP and collected as part of investigations conducted by SIGTARP's Office of Investigations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, foreign, State, local, Tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a potential violation of civil or criminal law or regulation;

(2) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Disclose information to another Federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(5) Disclose information to the Department of Justice when seeking legal advice, or when (a) the agency or

(b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(6) Disclose information to the appropriate foreign, State, local, Tribal, or other public authority or self-regulatory organization for the purpose of (a) consulting as to the propriety of access to or amendment or correction of information obtained from that authority or organization, or (b) verifying the identity of an individual who has requested access to or amendment or correction of records;

(7) Disclose information to contractors and other agents who have been engaged by the Department or one of its bureaus to provide products or services associated with the Department's or bureau's responsibility arising under the FOIA/PA;

(8) Disclose information to the National Archives and Records Administration for use in records management inspections;

(9) Disclose information to appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(10) Disclose information to any source, either private or governmental, to the extent necessary to elicit information relevant to a SIGTARP audit or investigation;

(11) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing personnel actions or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(12) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger; and

(13) Disclose information to persons engaged in conducting and reviewing internal and external peer reviews of the Office of Inspector General to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization or to ensure auditing standards applicable to Government audits by the Comptroller General of the United States are applied and followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By name, Social Security Number, and/or case number.

SAFEGUARDS:

The records are accessible to SIGTARP personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

These records are currently not eligible for disposal. SIGTARP is in the process of requesting approval from the National Archives and Records Administration of records disposition schedules concerning all records in this system of records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Office of the Special Inspector General for the Troubled Asset Relief Program, 1801 L Street, NW., Washington, DC 20036.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

Treasury/DO .224

SYSTEM NAME:

SIGTARP Audit Files Database.

SYSTEM LOCATION:

Office of the Special Inspector General for the Troubled Asset Relief Program, 1801 L Street, NW., Washington, DC 20036.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Auditors, certain administrative support staff, contractors of SIGTARP, and certain subjects and/or witnesses referenced in SIGTARP's audit activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Audit reports; and (2) working papers, which may include copies of correspondence, evidence, subpoenas, other documents collected and/or generated by the Office of Audit during the course of official duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 5231, 5 U.S.C. App. 3, and 5 U.S.C. 301.

PURPOSES:

This system is maintained in order to act as a management information system for SIGTARP audit projects and personnel and to assist in the accurate and timely conduct of audits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, foreign, State, local, Tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a potential violation of civil or criminal law or regulation;

(2) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Disclose information to another Federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(5) Disclose information to the Department of Justice when seeking legal advice, or when (a) the agency or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(6) Disclose information to the appropriate foreign, State, local, Tribal, or other public authority or self-regulatory organization for the purpose of (a) consulting as to the propriety of access to or amendment or correction of information obtained from that authority or organization, or (b) verifying the identity of an individual who has requested access to or amendment or correction of records;

(7) Disclose information to contractors and other agents who have been engaged by the Department or one of its bureaus to provide products or services associated with the Department's or bureau's responsibility arising under the FOIA/PA;

(8) Disclose information to the National Archives and Records Administration for use in records management inspections;

(9) Disclose information to appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(10) Disclose information to any source, either private or governmental, to the extent necessary to elicit information relevant to a SIGTARP audit or investigation;

(11) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing personnel actions or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(12) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger; and

(13) Disclose information to persons engaged in conducting and reviewing internal and external peer reviews of the Office of Inspector General to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization or to ensure auditing standards applicable to Government audits by the Comptroller General of the United States are applied and followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By name of the auditor, support staff, contractors, or subject of the audit.

SAFEGUARDS:

The records are accessible to SIGTARP personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

These records are currently not eligible for disposal. SIGTARP is in the process of requesting approval from the National Archives and Records Administration of records disposition schedules concerning all records in this system of records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Office of the Special Inspector General for the Troubled Asset Relief Program, 1801 L Street, NW., Washington, DC 20036.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3),

(e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). See 31 CFR 1.36.

[FR Doc. 2010–294 Filed 1–13–10; 8:45 am]

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Federal Register

Thursday,
January 14, 2010

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902; 50 CFR Parts 223 and 665

Western Pacific Fisheries; Regulatory Restructuring; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 223 and 665

[Docket No. 071220872–91431–03]

RIN 0648–AU71

Western Pacific Fisheries; Regulatory Restructuring

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

ACTION: Final rule.

SUMMARY: This final rule restructures western Pacific fishery regulations to be consistent with five new area-specific fishery ecosystem plans (FEP). This final rule also amends references to the Paperwork Reduction Act (PRA) information collection requirements to reflect the restructuring. The purpose of this rule is to make the regulations easier for the public to use by organizing existing fishing regulations by geographic location.

DATES: This final rule is effective February 16, 2010.

ADDRESSES: Copies of the five FEPs (American Samoa, Hawaii, Mariana Archipelago, Pacific Remote Island Areas, and Western Pacific Pelagics), and the Final Programmatic Environmental Impact Statement (PEIS) that was prepared for the FEPs and regulatory restructuring are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, or *http://www.wpcouncil.org.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to William L. Robinson, NMFS PIR, 1601 Kapiolani Blvd. Suite 1110, Honolulu, HI 96814, and by e-mail to *David_Rostker@omb.eop.gov* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Brett Wiedoff, NMFS PIR, 808–944–2272.

SUPPLEMENTARY INFORMATION: This **Federal Register** document is also accessible at *http://www.gpoaccess.gov/fr.*

In December 2009, the Secretary of Commerce approved the five western Pacific FEPs. This final rule restructures western Pacific fishery regulations to be consistent with the FEP organization, making the regulations easier to use for fishermen, managers, and the general public. No substantive changes are made to the regulations. Several definitions are added to reference the FEPs, some sections are redesignated and revised to reflect each geographic area, several errors are corrected, and administrative titles and telephone numbers are updated.

This final rule redesignates old subparts A (General) and B (Western Pacific Fisheries-General) of 50 CFR part 665 as new subpart A (General). Old Subpart C (Western Pacific Pelagic Fisheries) is redesignated as new subpart F (Western Pacific Pelagic Fisheries). Old subparts D (Western Pacific Crustacean Fisheries), E (Bottomfish and Seamount Groundfish Fisheries), F (Precious Coral Fisheries), and G (Western Pacific Coral Reef Ecosystem Fisheries) are redesignated as B (American Samoa Fisheries), C (Hawaii Fisheries), D (Mariana Archipelago Fisheries), and E (Pacific Remote Island Area Fisheries). Each of these new geographic subparts identifies the management unit species (MUS) managed under the FEPs, as well as area restrictions within the management area. Each subpart is also organized by fishery. Fishery-specific regulations are redesignated and revised to reflect the correct cross-referenced sections and FEP naming conventions for the respective fishery sections in each of the four archipelagic ecosystem subparts.

This final rule redesignates regulations that define the fishery management process as new section 50 CFR 665.18, Framework Measures, in subpart A. This rule also corrects inadvertent errors in 50 CFR part 665 relating to cross-referenced section citations, and it updates several administrative names and contact information.

In a final rule published on December 12, 2008, (73 FR 75615) paragraphs (o) through (u) in old § 665.22 were redesignated as paragraphs (m) through (s) in § 665.15. That redesignation should also have included old § 665.22(n). This final rule corrects the error.

This final rule also corrects an error related to sea turtle mitigation measures. On March 28, 2000, NMFS published a final rule that implemented several measures intended to mitigate injuries to sea turtles by the Hawaii pelagic longline fishery, including requirements to carry and use line clippers, dip nets, and dehookers (65 FR 16346). In a subsequent final rule published on November 15, 2005, relating to sea turtle mitigation measures (70 FR 69282), the regulations relating to line clippers in § 665.32 were inadvertently omitted. This final rule corrects the error in new § 665.812.

In the definition of western Pacific pelagic MUS, the spelling of the scientific names for the pelagic thresher shark and yellowfin tuna are corrected, and the scientific name of the bigeye thresher shark is revised to include the species, which was inadvertently omitted from the definition. The scientific names of a Hawaii black coral and the pelagic armorhead are also updated.

This final rule also corrects current regulations to reflect that certain provisions have been superseded. In old 50 CFR 665.22 (new § 668.802), paragraph (gg) prohibits Hawaii shallow-set longline fishing north of the Equator with hooks other than offset circle hooks sized 18/0 or larger with a 10 degree offset. This paragraph is superseded by paragraph (jj), which prohibits such fishing from *any* western Pacific longline vessel. Similarly, in old 50 CFR 665.22, paragraph (hh) prohibits Hawaii shallow-set longline fishing north of the Equator with bait other than mackerel-type bait. This provision is superseded by paragraph (kk), which prohibits such fishing from any western Pacific longline vessel. In old 50 CFR 665.22, paragraph (dd) prohibits owning or operating any western Pacific longline vessel without having on board a valid protected species workshop certificate issued by NMFS; paragraph (ll) applies that prohibition only to Hawaii longline operators, a subset of those covered in paragraph (dd). In old 50 CFR 665.22, paragraph (aa) prohibits operating a vessel under a longline limited access permit for American Samoa or Hawaii without complying with sea turtle handling requirements. This paragraph is superseded by paragraph (ii), which requires a vessel registered for use under *any* pelagic fishing permit to comply with sea turtle handling requirements. Thus, paragraphs (aa), (gg), (hh), and (ll) are removed.

A technical clarification in old 50 CFR 665.72(d) (new § 665.211(d)) revises the exception to the possession of Hawaii Restricted Bottomfish Species after the total allowable catch limit is reached.

This final rule adds or revises several definitions to be consistent with the FEPs and restructured regulations, corrects errors in cross referencing, removes duplicative text, adds geographic information, and corrects inadvertent omissions. A technical clarification at § 665.12 removes the

definition for "Bottomfish management area" and "Lobster closed area" as these terms are artifacts from old regulations and are not currently used in part 665.

This final rule removes a duplicate requirement for fishermen to complete a short-tailed albatross recovery data form. In old § 665.35(b), paragraph (8) was inadvertently duplicated by paragraph (12). This final rule corrects the error by removing the redundant paragraph.

In a previous regulatory restructuring (71 FR 17985, April 10, 2006), the regulations were redesignated section-by-section from old 50 CFR part 660 to new 50 CFR part 665. In the resulting regulations, artifact cross-references to part 660 remain, and these are corrected in this final rule. Also, in § 665.1(c), the cross-reference to 50 CFR part 600 subpart N was inadvertently changed to incorrectly reference 50 CFR part 665. This error is also corrected.

The following table lists the distribution of the subparts and sections in 50 CFR part 665 in this restructuring:

Old section	New section
Subpart A—General	Subpart A—General
§ 665.1 Purpose and scope	§ 665.1 Purpose and scope.
§ 665.2 Relation to other laws	§ 665.2 Relation to other laws.
§ 665.3 Reporting and recordkeeping	§ 665.14 Reporting and recordkeeping.
§ 665.4 Licensing and registration	§ 665.3 Licensing and registration.
Subpart B—Western Pacific Fisheries—General	Subpart B—American Samoa Fisheries
§ 665.11 Purpose and scope	§ 665.1 Purpose and scope.
§ 665.12 Definitions	§ 665.12 Definitions.
	§ 665.101 Definitions. (American Samoa)
	§ 665.121 Definitions. (American Samoa)
	§ 665.141 Definitions. (American Samoa)
	§ 665.161 Definitions. (American Samoa)
	§ 665.201 Definitions. (Hawaii)
	§ 665.221 Definitions. (Hawaii)
	§ 665.241 Definitions. (Hawaii)
	§ 665.261 Definitions. (Hawaii)
	§ 665.401 Definitions. (Marianas)
	§ 665.421 Definitions. (Marianas)
	§ 665.441 Definitions. (Marianas)
	§ 665.461 Definitions. (Marianas)
	§ 665.601 Definitions. (PRIA)
	§ 665.621 Definitions. (PRIA)
	§ 665.641 Definitions. (PRIA)
	§ 665.661 Definitions. (PRIA)
	§ 665.800 Definitions. (Western Pacific Pelagic)
§ 665.13 Permits and fees	§ 665.13 Permits and fees.
§ 665.14 Reporting and recordkeeping	§ 665.14 Reporting and recordkeeping.
§ 665.15 Prohibitions	§ 665.15 Prohibitions.
§ 665.16 Vessel identification	§ 665.16 Vessel identification.
§ 665.17 Experimental fishing	§ 665.17 Experimental fishing.
§ 665.18 Area restrictions	§ 665.99 Area restrictions. (American Samoa)
	§ 665.199 Area restrictions. (Hawaii)
	§ 665.399 Area restrictions. (Marianas)
	§ 665.599 Area Restrictions. (PRIA)
§ 665.19 Vessel monitoring system	§ 665.19 Vessel monitoring system.
Subpart C—Western Pacific Pelagic Fisheries	Subpart C—Hawaii Fisheries
§ 665.21 Permits	§ 665.801 Permits.
§ 665.22 Prohibitions	§ 665.802 Prohibitions.
§ 665.23 Notifications	§ 665.803 Notifications.
§ 665.24 Gear identification	§ 665.804 Gear identification.
§ 665.26 Longline fishing prohibited area management	§ 665.806 Longline fishing prohibited area management.
§ 665.27 Exemptions for longline fishing prohibited areas; procedures	§ 665.807 Exemptions for longline fishing prohibited areas; procedures.
§ 665.28 Conditions for at-sea observer coverage	§ 665.808 Conditions for at-sea observer coverage.
§ 665.29 Port privileges and transiting for unpermitted U.S. longline vessels.	§ 665.809 Port privileges and transiting for unpermitted U.S. longline vessels.
§ 665.30 Prohibition of drift gillnetting	§ 665.810 Prohibition of drift gillnetting.
§ 665.31 Framework adjustments to management measures	§ 665.18 Framework adjustments to management measures.
§ 665.32 Sea turtle take mitigation measures	§ 665.812 Sea turtle take mitigation measures.
§ 665.33 Western Pacific longline fishing restrictions	§ 665.813 Western Pacific longline fishing restrictions.
§ 665.34 Protected species workshop	§ 665.814 Protected species workshop.
§ 665.35 Pelagic longline seabird mitigation measures	§ 665.815 Pelagic longline seabird mitigation measures.
§ 665.36 American Samoa longline limited entry program	§ 665.816 American Samoa longline limited entry program.
§ 665.37 American Samoa pelagic fishery area management	§ 665.817 American Samoa pelagic fishery area management.

Old section	New section
§ 665.38 Exemptions for American Samoa large vessel prohibited areas.	§ 665.818 Exemptions for American Samoa large vessel prohibited areas.
Subpart D—Western Pacific Crustacean Fisheries	Subpart D—Mariana Archipelago Fisheries
§ 665.41 Permits	§ 665.142 Permits. (American Samoa) § 665.242 Permits. (Hawaii) § 665.442 Permits. (Marianas) § 665.642 Permits. (PRIA)
§ 665.42 Prohibitions	§ 665.143 Prohibitions. (American Samoa) § 665.243 Prohibitions. (Hawaii) § 665.443 Prohibitions. (Marianas) § 665.643 Prohibitions. (PRIA)
§ 665.43 Notifications	§ 665.144 Notifications. (American Samoa) § 665.244 Notifications. (Hawaii) § 665.444 Notifications. (Marianas) § 665.644 Notifications. (PRIA)
§ 665.44 Lobster size and condition restrictions—Permit Area 2	§ 665.249 Lobster size and condition restrictions—Permit Area 2.
§ 665.45 Closed seasons	§ 665.250 Closed seasons.
§ 665.46 Closed areas	§ 665.251 Closed areas.
§ 665.47 Gear identification	§ 665.246 Gear identification.
§ 665.48 Gear restrictions	§ 665.245 Gear restrictions.
§ 665.49 At-sea observer coverage	§ 665.145 At-sea observer coverage. (American Samoa) § 665.247 At-sea observer coverage. (Hawaii) § 665.445 At-sea observer coverage. (Marianas) § 665.645 At-sea observer coverage. (PRIA)
§ 665.50 Harvest limitation program	§ 665.252 Harvest limitation program.
§ 665.51 Monk seal protective measures	§ 665.248 Monk seal protective measures.
§ 665.52 Monk seal emergency protective measures.	
§ 665.53 Framework procedures	§ 665.18 Framework adjustments to management measures.
§ 665.54 Five-year review	
Subpart E—Bottomfish and Seamount Groundfish Fisheries	Subpart E—Pacific Remote Island Area Fisheries.
§ 665.61 Permits.	§ 665.203 Permits. (Hawaii) § 665.404 Permits. (Marianas) § 665.603 Permits. (PRIA)
§ 665.62 Prohibitions	§ 665.103 Prohibitions. (American Samoa) § 665.204 Prohibitions. (Hawaii) § 665.405 Prohibitions. (Marianas) § 665.604 Prohibitions. (PRIA)
§ 665.63 Notification	§ 665.205 Notification. (Hawaii)
§ 665.64 Gear restrictions	§ 665.104 Gear restrictions. (American Samoa) § 665.206 Gear Restrictions. (Hawaii) § 665.406 Gear restrictions. (Marianas) § 665.605 Gear restrictions. (PRIA)
§ 665.65 At-sea observer coverage	§ 665.105 At-sea observer coverage. (American Samoa) § 665.207 At-sea observer coverage. (Hawaii) § 665.407 At-sea observer coverage. (Marianas) § 665.606 At-sea observer coverage. (PRIA)
§ 665.66 Protected species conservation	§ 665.208 Protected species conservation.
§ 665.67 Framework for regulatory adjustments	§ 665.18 Framework adjustments to management measures.
§ 665.68 Fishing moratorium on Hancock Seamount	§ 665.209 Fishing moratorium on Hancock Seamount.
§ 665.69 Management subareas	§ 665.98 Management area. (American Samoa) § 665.198 Management areas. (Hawaii) § 665.202 Management subareas. (Hawaii) § 665.398 Management areas. (Marianas) § 665.402 Management subareas. (Marianas) § 665.598 Management area. (PRIA)
§ 665.70 Bottomfish fishery area management	§ 665.403 Bottomfish fishery area management.
§ 665.71 Hawaii restricted bottomfish species	§ 665.210 Hawaii restricted bottomfish species.
§ 665.72 Total Allowable Catch (TAC) limit	§ 665.211 Total Allowable Catch (TAC) limit.
§ 665.73 Non-commercial bag limits	§ 665.212 Non-commercial bag limits.
Subpart F—Precious Corals Fisheries	Subpart F—Western Pacific Pelagic Fisheries
§ 665.81 Permits	§ 665.162 Permits. (American Samoa) § 665.262 Permits. (Hawaii) § 665.462 Permits. (Marianas) § 665.662 Permits. (PRIA)
§ 665.82 Prohibitions	§ 665.163 Prohibitions. (American Samoa)

Old section	New section
	§ 665.263 Prohibitions. (Hawaii)
	§ 665.463 Prohibitions. (Marianas)
	§ 665.663 Prohibitions. (PRIA)
§ 665.83 Seasons	§ 665.168 Seasons. (American Samoa)
	§ 665.267 Seasons. (Hawaii)
	§ 665.468 Seasons. (Marianas)
	§ 665.668 Seasons. (PRIA)
§ 665.84 Quotas	§ 665.167 Quotas. (American Samoa)
	§ 665.269 Quotas. (Hawaii)
	§ 665.467 Quotas. (Marianas)
	§ 665.667 Quotas. (PRIA)
§ 665.85 Closures	§ 665.166 Closures. (American Samoa)
	§ 665.268 Closures. (Hawaii)
	§ 665.466 Closures. (Marianas)
	§ 665.666 Closures. (PRIA)
§ 665.86 Size restrictions	§ 665.165 Size restrictions. (American Samoa)
	§ 665.265 Size restrictions. (Hawaii)
	§ 665.465 Size restrictions. (Marianas)
	§ 665.665 Size restrictions. (PRIA)
§ 665.87 Area restrictions	§ 665.266 Area restrictions. (Hawaii)
§ 665.88 Gear restrictions	§ 665.164 Gear restrictions, (American Samoa)
	§ 665.264 Gear restrictions. (Hawaii)
	§ 665.464 Gear restrictions. (Marianas)
	§ 665.664 Gear restrictions. (PRIA)
§ 665.89 Framework procedures	§ 665.18 Framework adjustments to management measures.
§ 665.90 Gold coral harvest moratorium	§ 665.169 Gold coral harvest moratorium. (American Samoa)
	§ 665.270 Gold coral harvest moratorium. (Hawaii)
	§ 665.469 Gold coral harvest moratorium. (Marianas)
	§ 665.669 Gold coral harvest moratorium. (PRIA)
Subpart G—Western Pacific Coral Reef Ecosystem Fisheries	None
§ 665.601 Relation to other laws	§ 665.123 Relation to other laws. (American Samoa)
	§ 665.223 Relation to other laws. (Hawaii)
	§ 665.423 Relation to other laws. (Marianas)
	§ 665.623 Relation to other laws. (PRIA)
§ 665.602 Permits and fees	§ 665.124 Permits and Fees. (American Samoa)
	§ 665.224 Permits and Fees. (Hawaii)
	§ 665.424 Permits and Fees. (Marianas)
	§ 665.624 Permits and Fees. (PRIA)
§ 665.603 Prohibitions	§ 665.125 Prohibitions. (American Samoa)
	§ 665.225 Prohibitions. (Hawaii)
	§ 665.425 Prohibitions. (Marianas)
	§ 665.625 Prohibitions. (PRIA)
§ 665.604 Notifications	§ 665.126 Notifications. (American Samoa)
	§ 665.226 Notifications. (Hawaii)
	§ 665.426 Notifications. (Marianas)
	§ 665.626 Notifications. (PRIA)
§ 665.605 Allowable gear and gear restrictions	§ 665.127 Allowable gear and gear restrictions. (American Samoa)
	§ 665.227 Allowable gear and gear restrictions. (Hawaii)
	§ 665.427 Allowable gear and gear restrictions. (Marianas)
	§ 665.627 Allowable gear and gear restrictions. (PRIA)
§ 665.606 Gear identification	§ 665.128 Gear identification. (American Samoa)
	§ 665.228 Gear identification. (Hawaii)
	§ 665.428 Gear identification. (Marianas)
	§ 665.628 Gear identification. (PRIA)
§ 665.607 Framework for regulatory adjustments	§ 665.18 Framework for regulatory adjustments.
§ 665.608 Regulatory area	§ 665.98 Management area. (American Samoa)
	§ 665.222 Management area. (Hawaii)
	§ 665.422 Management area. (Marianas)
	§ 665.598 Management area. (PRIA)
§ 665.609 Annual reports	§ 665.18 Framework for regulatory adjustments.
Table 1 to Part 665—Quotas for Precious Corals Permit Areas	§ 665.167 Quotas. (American Samoa)
	§ 665.269 Quotas. (Hawaii)
	§ 665.467 Quotas. (Marianas)
	§ 665.667 Quotas. (PRIA)
Table 2 to Part 665—Currently Harvested Coral Reef Taxa	§ 665.121 Definitions. (American Samoa)
	§ 665.221 Definitions. (Hawaii)
	§ 665.421 Definitions. (Marianas)
	§ 665.621 Definitions. (PRIA)
Table 3 to Part 665—Potentially Harvested Coral Reef Taxa	§ 665.121 Definitions. (American Samoa)

Old section	New section
	§ 665.221 Definitions. (Hawaii)
	§ 665.421 Definitions. (Marianas)
	§ 665.621 Definitions. (PRIA)
Figure 1 to Part 665—Carapace Length of Lobsters	Figure 1 to Part 665—Carapace Length of Lobsters
Figure 2 to Part 665—Length of Fishing Vessel	Figure 2 to Part 665—Length of Fishing Vessel
None	Figure 3 to Part 665—Sample Fabricated Arceneaux Line Clipper
None	§ 665.100 American Samoa Bottomfish and Seamount Groundfish Fisheries.
	§ 665.120 American Samoa Coral Reef Ecosystem Fisheries.
	§ 665.140 American Samoa Crustacean Fisheries.
	§ 665.160 American Samoa Precious Coral Fisheries.
None	§ 665.200 Hawaii Bottomfish and Seamount Groundfish Fisheries.
	§ 665.220 Hawaii Coral Reef Ecosystem Fisheries.
	§ 665.240 Hawaii Crustacean Fisheries.
	§ 665.260 Hawaii Precious Coral Fisheries.
None	§ 665.400 Mariana Bottomfish and Seamount Groundfish Fisheries.
	§ 665.420 Mariana Coral Reef Ecosystem Fisheries.
	§ 665.440 Mariana Crustacean Fisheries.
	§ 665.460 Mariana Precious Coral Fisheries.
None	§ 665.600 PRIA Bottomfish and Seamount Groundfish Fisheries.
	§ 665.620 PRIA Coral Reef Ecosystem Fisheries.
	§ 665.640 PRIA Crustacean Fisheries.
	§ 665.660 PRIA Precious Coral Fisheries.
None	§ 665.798 Management Area. (Western Pacific Pelagic)

Revisions to Paperwork Reduction Act (PRA) References

Section 3507 of the PRA requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection, and 15 CFR 902.1(b) identifies the location of NOAA regulations for which OMB approvals have been issued. Because this final rule codifies recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to correctly reference the new sections resulting from the reorganization.

The following table lists the derivation of the NOAA PRA approvals for regulatory requirements in 50 CFR part 665:

Old section	New section	OMB Control No.
§ 665.13 Permits and fees	§ 665.13 Permits and fees	0648–0463, –0490, –0577, –0584, –0586, and –0589.
§ 665.14 Reporting and recordkeeping	§ 665.14 Reporting and recordkeeping	0648–0214, –0462, –0577, –0584, –0586, and –0589.
§ 665.16 Vessel identification	§ 665.16 Vessel identification	0648–0361, –0584, –0586, and –0589.
§ 665.17 Experimental fishing	§ 665.17 Experimental fishing	0648–0214 and –0490.
§ 665.19 Vessel monitoring system	§ 665.19 Vessel monitoring system	0648–0441, –0519, and –0584.
§ 665.21(l) Permits; Hawaii longline limited access permit.	§ 665.801 Permits	0648–0490.
§ 665.21(g) Permits; squid jig	§ 665.801(g)	0648–0589.
§ 665.23 Notifications	§ 665.803 Notifications	0648–0214.
§ 665.24 Gear identification	§ 665.804 Gear identification	0648–0360.
§ 665.27 Exemptions for longline fishing prohibited areas; procedures.	§ 665.807 Exemptions for longline fishing prohibited areas; procedures.	0648–0490.
§ 665.28 Conditions for at-sea observer coverage.	§ 665.808 Conditions for at-sea observer coverage.	0648–0214.
§ 665.35 Pelagic longline seabird mitigation measures.	§ 665.815 Pelagic longline seabird mitigation measures.	0648–0456.
§ 665.41 Permits	§ 665.142 Permits.	0648–0490 and –0586.
	§ 665.242 Permits.	
	§ 665.442 Permits.	
	§ 665.642 Permits.	
§ 665.43 Notifications	§ 665.144 Notifications	0648–0214.
	§ 665.244 Notifications.	
	§ 665.444 Notifications.	
	§ 665.644 Notifications.	
§ 665.47 Gear identification	§ 665.246 Gear identification	0648–0360.
§ 665.49 At-sea observer coverage	§ 665.145 At-sea observer coverage	0648–0214.
	§ 665.247 At-sea observer coverage.	
	§ 665.445 At-sea observer coverage.	
	§ 665.645 At-sea observer coverage	
§ 665.61 Permits	§ 665.203 Permits	0648–0490 and –0584.
	§ 665.404 Permits.	
	§ 665.603 Permits.	
§ 665.63 Notification	§ 665.205 Notification	0648–0214.

Old section	New section	OMB Control No.
§ 665.65 At-sea observer coverage	§ 665.105 At-sea observer coverage	0648–0214.
	§ 665.207 At-sea observer coverage.	
	§ 665.407 At-sea observer coverage.	
	§ 665.606 At-sea observer coverage.	
§ 665.81 Permits	§ 665.162 Permits	0648–0490.
	§ 665.262 Permits.	
	§ 665.462 Permits.	
	§ 665.662 Permits.	
§ 665.602 Permits and Fees	§ 665.124 Permits and Fees	0648–0463.
	§ 665.224 Permits and Fees.	
	§ 665.424 Permits and Fees.	
	§ 665.624 Permits and Fees.	
§ 665.604 Notifications	§ 665.126 Notifications	0648–0462.
	§ 665.226 Notifications.	
	§ 665.426 Notifications.	
§ 665.606 Gear identification	§ 665.128 Gear identification	0648–0360.
	§ 665.228 Gear identification.	
	§ 665.428 Gear identification.	
	§ 665.628 Gear identification.	

Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

Additional background information on this final rule may be found in the preamble to the proposed rule, and is not repeated here.

Comments and Responses

On November 19, 2009, NMFS published a proposed rule and request for public comment (74 FR 60050). The public comment period ended on December 4, 2009. NMFS received no public comments.

Changes From the Proposed Rule

NMFS made several administrative changes to the final rule for consistency with changes implemented by a recent, separate rulemaking. On December 10, 2009, NMFS published a final rule that removed or revised several regulations for western Pacific longline fishing (74 FR 65460). In § 665.800, the definition of shallow-set certificate was removed. The prohibition against shallow-set fishing without certificates on board at § 665.802(bb) was also removed. The technical requirements for sea turtle dehookers were clarified at § 665.812(a)(7)(iii). The sea turtle mitigation requirements at § 665.812 were reorganized for clarity. Requirements of the annual shallow-set effort limitation program at § 665.813(a), (c), and (e) were removed. The annual limit on sea turtle interactions and related administrative procedures at § 665.813(b) were revised. The circle hook specifications at § 665.813(f) were clarified. This final rule updates the regulatory text to be consistent with the above changes.

In the proposed rule, NMFS indicated that it would make administrative clarifications in several cross-references to 50 CFR part 665 that are found in 50 CFR part 404 regarding the Northwestern Hawaiian Islands Marine National Monument. This is part of a joint chapter between NOAA and the U.S. Fish and Wildlife Service, and amendments to part 404 need to be issued in a rule signed by an official from both agencies. Thus, NOAA will address amendments to part 404 later in a jointly-issued rule. No changes are made to part 404 in this final rule.

Classification

The Regional Administrator, NMFS Pacific Islands Region, determined that the restructured regulations are necessary for the conservation and management of western Pacific fisheries and that they are consistent with FEPs, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

A PEIS was prepared for the FEPs, and a Notice of Availability of the final PEIS was published on October 30, 2009 (74 FR 56194). The PEIS discusses impacts on target and non-target stocks, including bottomfish, pelagic fish, precious corals, coral reef ecosystem species, crustaceans, essential fish habitat and habitat areas of particular concern, protected species, fishery participants and communities, and administration and enforcement. This action is administrative in that it restructures existing western Pacific fishery regulations at 50 CFR part 665, and none of the alternatives, or the actions considered as part of the alternatives, change existing fisheries, or the impact of continuing activities under the respective FEPs. All of the current fisheries in the western Pacific that are managed under the FEPs have been reviewed for compliance with applicable laws. None of the actions considered result in irreversible or irretrievable commitments of resources and none results in significant or unavoidable adverse impacts.

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

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

This final rule contains collection-of-information requirements subject to the PRA that have been approved by OMB, as follows:

1. Approved under 0648–0214, 0648–0577, 0648–0584, 0648–0586, and 0649–0589. (a) Pacific Islands Region (PIR) logbook family of forms estimated at 5 minutes (min) per reporting action; (b) pre-trip and post-landing notifications estimated at 5 min per reporting action; (c) experimental fishing reports estimated at 4 hours (hr) per reporting action; (d) sales and transshipment reports estimated at 5 min per reporting action; (e) report on gear left at sea estimated at 5 min per reporting action; (f) claims for reimbursement for lost fishing time estimated at 4 hr per claim; (g) request for pelagics area closure exemption estimated at 1 hr per request;

and (h) observer placement meetings estimated at 1 hr per reporting action. (§§ 665.14, 665.17, 665.105, 665.144, 665.145, 665.205, 665.207, 665.244, 665.247, 665.407, 665.444, 665.445, 665.606, 665.644, 665.645, 665.803, and 665.808.)

2. Approved under 0648–0360, 0648–0361, 0648–0584, 0648–0586, and 0648–0589. PIR gear and vessel and identification estimated at 45 min to 1 hr 15 min per vessel for vessel identification and 2 min for each gear marking. (§§ 665.16, 665.128, 665.228, 665.246, 665.428, 665.628, and 665.804.)

3. Approved under 0648–0441, 0648–0519, and 0648–0584. PIR vessel monitoring system (a) installation, estimated at 4 hr per reporting action; (b) repair and maintenance, estimated at 2 hr per reporting action; and (c) hourly automated position reports, estimated at 24 sec per day. (§ 665.19.)

4. Approved under 0648–0456. PIR seabird interaction reporting (a) at-sea notification, estimated at 1 hr per reporting action; (b) reporting on recovery data form, estimated at 1 hr per reporting action; and (c) specimen tagging, estimated at 0.5 hr per reporting action. (§ 665.815.)

5. Approved under 0648–0462. PIR coral reef logbook reporting (a) at-sea notification, estimated at 3 min per reporting action; (b) logbook reporting, estimated at 0.5 hr per reporting action; and (c) transshipment reports, estimated at 15 min per reporting action. (§§ 665.14, 665.126, 665.226, and 665.426.)

6. Approved under 0648–0463. PIR coral reef special permit (a) application, estimated at 2 hr per application; and (b) special permit appeals, estimated at 3 hr per appeal. (§§ 665.124, 665.224, 665.424, and 665.624.)

7. Approved under 0648–0490, 0648–0577, 0648–0584, 0648–0586, and 0649–0589: (a) PIR permit family of forms estimated at 0.5 hr per permit action; (b) experimental fishing permits, estimated at 2 hr per application; and (c) appeals from permit actions estimated at 2 hr per permit appeal. (§§ 665.13, 665.17, 665.142, 665.162, 665.203, 665.242, 665.262, 665.404, 665.442, 665.462, 665.603, 665.642, 665.662, 665.801, and 665.807.)

Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to William L. Robinson, NMFS PIR, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814, and by e-mail to *David_Rostker@omb.eop.gov* or fax to 202–395–7285.

Notwithstanding any other provision of law, no person is 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 PRA unless that collection displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 223

Exports, Imports, Marine mammals, Transportation.

50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian natives, Northern Mariana Islands, Pacific remote island areas, Reporting and recordkeeping requirements.

Dated: December 23, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 15 CFR chapter IX, 50 CFR chapter II, 50 CFR chapter IV, and 50 CFR chapter VI are amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for Part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. Amend the table in § 902.1(b) by:

■ a. Removing the entries and corresponding OMB numbers under 50 CFR for §§ 665.21(k), 665.23, 665.24, 665.27, 665.28, 665.35, 665.41, 665.43, 665.48, 665.61, 665.63, 665.65, 665.81, 665.602, 665.604, and 665.606.

■ b. Amending the table in § 902.1(b) by revising the entries for §§ 665.13, 665.14, 665.16, 665.17, and 665.19, and

■ c. Adding new entries and corresponding OMB numbers under 50 CFR for §§ 665.105 through 665.815.

The revisions and additions read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * *	* * *
50 CFR	
* * * *	* * *
665.13	–0463, –0490, –0577, –0584, –0586, and –0589.
665.14	–0214, –0462, –0577, –0584, –0586, and –0589.
665.16	–0361, –0584, –0586, and –0589.
665.17	–0214 and –0490.
665.19	–0441, –0519, and –0584.
665.105	–0214.
665.124	–0463.
665.126	–0462.
665.128	–0360.
665.142	–0490 and –0586.
665.144	–0214.
665.145	–0214.
665.162	–0490.
665.203	–0490 and –0577.
665.205	–0214.
665.207	–0214.
665.224	–0463.
665.226	–0462.

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
665.228	–0360.
665.242	–0490 and –0586.
665.244	–0214.
665.246	–0360.
665.247	–0214.
665.262	–0490.
665.404	–0490 and –0584.
665.407	–0214.
665.424	–0463.
665.426	–0462.
665.428	–0360.
665.442	–0490 and –0586.
665.444	–0214.
665.445	–0214.
665.462	–0490.
665.603	–0490.
665.606	–0214.
665.624	–0463.
665.628	–0360.
665.642	–0490 and –0586.
665.644	–0214.
665.445	–0214.
665.662	–0490.
665.801	–0490 and –0589.
665.803	–0214.
665.804	–0360.
665.807	–0490.
665.808	–0214.
665.815	–0456.

* * * * * * *

50 CFR CHAPTER II

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 4. The authority citation for 50 CFR part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 *et seq.*

■ 5. In § 223.206, revise paragraph (d)(9) introductory text to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(9) *Restrictions applicable to Pacific pelagic longline vessels.* In addition to the general prohibitions specified in § 600.725 of chapter VI of this title, it is unlawful for any person who is not operating under a western Pacific longline permit under § 665.801 of this title to do any of the following on the high seas of the Pacific Ocean east of 150° W. long. and north of the Equator (0° N. lat.):

* * * * *

50 CFR CHAPTER VI

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 6. The authority citation for 50 CFR part 665 continues to read as follows:

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

■ 7. Revise part 665 to read as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

Subpart A—General

Sec.

665.1 Purpose and scope.
665.2 Relation to other laws.
665.3 Licensing and registration.
665.4–665.11 [*Reserved*]
665.12 Definitions.
665.13 Permits and fees.
665.14 Reporting and recordkeeping.
665.15 Prohibitions.
665.16 Vessel identification.
665.17 Experimental fishing.
665.18 Framework adjustments to management measures.
665.19 Vessel monitoring system.

Subpart B—American Samoa Fisheries

665.98 Management area.
665.99 Area restrictions.
665.100 American Samoa bottomfish fisheries [*Reserved*].
665.101 Definitions.
665.102 [*Reserved*]
665.103 Prohibitions.
665.104 Gear restrictions.
665.105 At-sea observer coverage.
665.106–665.119 [*Reserved*]
665.120 American Samoa coral reef ecosystem fisheries [*Reserved*].
665.121 Definitions.
665.122 [*Reserved*]
665.123 Relation to other laws.
665.124 Permits and fees.
665.125 Prohibitions.
665.126 Notifications.
665.127 Allowable gear and gear restrictions.
665.128 Gear identification.
665.129–665.139 [*Reserved*]
665.140 American Samoa crustacean fisheries [*Reserved*].
665.141 Definitions.
665.142 Permits.
665.143 Prohibitions.
665.144 Notifications.
665.145 At-sea observer coverage.
665.146–665.159 [*Reserved*]
665.160 American Samoa precious coral fisheries [*Reserved*].
665.161 Definitions.
665.162 Permits.
665.163 Prohibitions.
665.164 Gear restrictions.
665.165 Size restrictions.
665.166 Closures.
665.167 Quotas.
665.168 Seasons.
665.169 Gold coral harvest moratorium.

Subpart C—Hawaii Fisheries

665.198 Management areas.
665.199 Area restrictions [*Reserved*].
665.200 Hawaii bottomfish and seamount groundfish fisheries [*Reserved*].
665.201 Definitions.
665.202 Management subareas.
665.203 Permits.
665.204 Prohibitions.
665.205 Notification.
665.206 Gear restrictions.
665.207 At-sea observer coverage.
665.208 Protected species conservation.
665.209 Fishing moratorium on Hancock Seamount.

665.210 Hawaii restricted bottomfish species.
665.211 Total Allowable Catch (TAC) limit.
665.212 Non-commercial bag limits.
665.213–665.219 [*Reserved*]
665.220 Hawaii coral reef ecosystem fisheries [*Reserved*].
665.221 Definitions.
665.222 Management area.
665.223 Relation to other laws.
665.224 Permits and fees.
665.225 Prohibitions.
665.226 Notifications.
665.227 Allowable gear and gear restrictions.
665.228 Gear identification.
665.229–665.239 [*Reserved*]
665.240 Hawaii crustacean fisheries [*Reserved*].
665.241 Definitions.
665.242 Permits.
665.243 Prohibitions.
665.244 Notifications.
665.245 Gear restrictions.
665.246 Gear identification.
665.247 At-sea observer coverage.
665.248 Monk seal protective measures.
665.249 Lobster size and condition restrictions in Permit Area 2.
665.250 Closed seasons.
665.251 Closed areas.
665.252 Harvest limitation program.
665.253–665.259 [*Reserved*]
665.260 Hawaii precious coral fisheries [*Reserved*].
665.261 Definitions.
665.262 Permits.
665.263 Prohibitions.
665.264 Gear restrictions.
665.265 Size restrictions.
665.266 Area restrictions.
665.267 Seasons.
665.268 Closures.
665.269 Quotas.
665.270 Gold coral harvest moratorium.

Subpart D—Mariana Archipelago Fisheries

665.398 Management areas.
665.399 Area restrictions.
665.400 Mariana bottomfish fisheries [*Reserved*].
665.401 Definitions.
665.402 Management subareas.
665.403 Bottomfish fishery area management.
665.404 Permits.
665.405 Prohibitions.
665.406 Gear restrictions.
665.407 At-sea observer coverage.
665.418–665.419 [*Reserved*]
665.420 Mariana coral reef ecosystem fisheries [*Reserved*].
665.421 Definitions.
665.422 Management area.
665.423 Relation to other laws.
665.424 Permits and fees.
665.425 Prohibitions.
665.426 Notifications.
665.427 Allowable gear and gear restrictions.
665.428 Gear identification.
665.429–665.439 [*Reserved*]
665.440 Mariana crustacean fisheries [*Reserved*].
665.441 Definitions.
665.442 Permits.
665.443 Prohibitions.
665.444 Notifications.
665.445 At-sea observer coverage.
665.446–665.459 [*Reserved*]
665.460 Mariana precious coral fisheries [Reserved].
665.461 Definitions.
665.462 Permits.
665.463 Prohibitions.
665.464 Gear restrictions.
665.465 Size restrictions.
665.466 Closures.
665.467 Quotas.
665.468 Seasons.
665.469 Gold coral harvest moratorium.

Subpart E—Pacific Remote Island Area Fisheries

665.598 Management area.
665.599 Area Restrictions.
665.600 PRIA bottomfish fisheries [*Reserved*].
665.601 Definitions.
665.602 [*Reserved*]
665.603 Permits.
665.604 Prohibitions.
665.605 Gear restrictions.
665.606 At-sea observer coverage.
665.607–665.619 [*Reserved*]
665.620 PRIA coral reef ecosystem fisheries [Reserved].
665.621 Definitions.
665.622 [*Reserved*]
665.623 Relation to other laws.
665.624 Permits and fees.
665.625 Prohibitions.
665.626 Notifications.
665.627 Allowable gear and gear restrictions.
665.628 Gear identification.
665.640 PRIA crustacean fisheries.
665.629–665.639 [*Reserved*]
665.641 Definitions.
665.642 Permits.
665.643 Prohibitions.
665.644 Notifications
665.645 At-sea observer coverage.
665.646–665.659 [*Reserved*]
665.660 PRIA precious coral fisheries [Reserved].
665.661 Definitions.
665.662 Permits.
665.663 Prohibitions.
665.664 Gear restrictions.
665.665 Size restrictions.
665.666 Closures.
665.667 Quotas.
665.668 Seasons.
665.669 Gold coral harvest moratorium.

Subpart F—Western Pacific Pelagic Fisheries

665.798 Management area.
665.799 Area restrictions.
665.800 Definitions.
665.801 Permits.
665.802 Prohibitions.
665.803 Notifications.
665.804 Gear identification.
665.805 [*Reserved*]
665.806 Longline fishing prohibited area management.
665.807 Exemptions for longline fishing prohibited areas; procedures.
665.808 Conditions for at-sea observer coverage.
665.809 Port privileges and transiting for unpermitted U.S. longline vessels.
665.810 Prohibition of drift gillnetting.
665.811 [*Reserved*]
665.812 Sea turtle take mitigation measures.
665.813 Western Pacific longline fishing restrictions.
665.814 Protected species workshop.
665.815 Pelagic longline seabird mitigation measures.
665.816 American Samoa longline limited entry program.
665.817 American Samoa pelagic fishery area management.
665.818 Exemptions for American Samoa large vessel prohibited areas.
FIGURE 1 TO PART 665. CARAPACE LENGTH OF LOBSTERS
FIGURE 2 TO PART 665. LENGTH OF FISHING VESSELS
FIGURE 3 TO PART 665. SAMPLE FABRICATED ARCENEAUX LINE CLIPPER

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

Subpart A—General

§ 665.1 Purpose and scope.

(a) The regulations in this part govern fishing for western Pacific fishery ecosystem MUS by vessels of the United States that operate or are based inside the outer boundary of the U.S. EEZ around American Samoa, Hawaii, Guam, the Northern Mariana Islands, Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, and Wake Island.

(b) General regulations governing fishing by all vessels of the United States and by fishing vessels other than vessels of the United States are contained in 50 CFR part 600.

(c) Regulations governing the harvest, possession, landing, purchase, and sale of shark fins are found in 50 CFR part 600 subpart N.

(d) This subpart contains regulations that are common to all western Pacific fisheries managed under Fishery Ecosystem Plans (FEPs) prepared by the Western Pacific Fishery Management Council under the Magnuson-Stevens Act.

(e) Regulations specific to individual areas and fisheries are included in subparts B through F of this part.

(f) Nothing in subparts B through F of this part is intended to supersede any valid state or Federal regulations that are more restrictive than those published here.

§ 665.2 Relation to other laws.

NMFS recognizes that any state law pertaining to vessels registered under the laws of that state while operating in the fisheries regulated under this part, that is consistent with this part and the FEPs implemented by this part, shall continue in effect with respect to fishing activities regulated under this part.

§ 665.3 Licensing and registration.

Any person who is required to do so by applicable state law or regulation must comply with licensing and registration requirements in the exact manner required by applicable state law or regulation.

§§ 665.4–665.11 [Reserved]

§ 665.12 Definitions.

In addition to the definitions in the Magnuson-Stevens Act, § 600.10 of this chapter, and subparts B through F of this part, general definitions for western Pacific fisheries have the following meanings:

American Samoa FEP means the Fishery Ecosystem Plan for American Samoa.

Bottomfish FMP means the Fishery Management Plan for Bottomfish and Seamount Groundfish of the Western Pacific Region established in 1986 and replaced by FEPs.

Carapace length means a measurement in a straight line from the ridge between the two largest spines above the eyes, back to the rear edge of the carapace of a spiny lobster (see Figure 1 to this part).

Circle hook means a fishing hook with the point turned perpendicularly back towards the shank.

Commercial fishing means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter, or trade. All lobster fishing in Crustacean Permit Area 1 is considered commercial fishing.

Commonwealth of the Northern Mariana Islands (CNMI) means the Northern Mariana Islands.

Coral Reef Ecosystems FMP means the Fishery Management Plan for Coral Reef Ecosystems of the Western Pacific Region established in 2004 and replaced by FEPs.

Council means the Western Pacific Fishery Management Council.

Crustacean receiving vessel means a vessel of the United States to which lobsters taken in a crustacean management area are transferred from another vessel.

Crustaceans FMP means the Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region established in 1982 and replaced by FEPs.

Currently harvested coral reef taxa (CHCRT) means coral reef associated species, families, or subfamilies, as defined in §§ 665.121, 665.221, 665.421, and 665.621, that have annual landings greater than 454.54 kg (1,000 lb) as reported on individual state, commonwealth, or territory catch reports or through creel surveys. Fisheries and research data from many of these species have been analyzed by regional management agencies.

Dead coral means any precious coral that no longer has any live coral polyps or tissue.

EFP means an experimental fishing permit.

First level buyer means:

(1) The first person who purchases, with the intention to resell, management unit species, or portions thereof, that were harvested by a vessel that holds a permit or is otherwise regulated under crustacean fisheries in subparts B through E of this part; or

(2) A person who provides recordkeeping, purchase, or sales assistance in the first transaction involving MUS (such as the services provided by a wholesale auction facility).

Fishing gear, as used in regulations for the American Samoa, CNMI, Hawaii, and PRIA bottomfish fisheries in subparts B through E of this part, includes:

(1) Bottom trawl, which means a trawl in which the otter boards or the footrope of the net are in contact with the sea bed;

(2) Gillnet, (see § 600.10);

(3) Hook-and-line, which means one or more hooks attached to one or more lines;

(4) Set net, which means a stationary, buoyed, and anchored gill net; and

(5) Trawl, (see § 600.10).

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel lands fish.

Fishing year means the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31, with the exception of fishing for Hawaii Restricted Bottomfish Species and any precious coral MUS.

Freeboard means the straight line vertical distance between a vessel's working deck and the sea surface. If the vessel does not have gunwale door or stern door that exposes the working deck, freeboard means the straight line vertical distance between the top of a vessel's railing and the sea surface.

Harvest guideline means a specified numerical harvest objective.

Hawaiian Archipelago means the Main and Northwestern Hawaiian Islands, including Midway Atoll.

Hawaii FEP means the Fishery Ecosystem Plan for the Hawaiian Archipelago.

Hookah breather means a tethered underwater breathing device that pumps air from the surface through one or more hoses to divers at depth.

Incidental catch or incidental species means species caught while fishing for the primary purpose of catching a different species.

Land or landing means offloading fish from a fishing vessel, arriving in port to begin offloading fish, or causing fish to be offloaded from a fishing vessel.

Large vessel means, as used in this part, any vessel equal to or greater than 50 ft (15.2 m) in length overall.

Length overall (LOA) or length of a vessel as used in this part, means the horizontal distance, rounded to the nearest foot (with any 0.5 foot or 0.15 meter fraction rounded upward), between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments (see Figure 2 to this part). "Stem" is the foremost part of the vessel, consisting of a section of timber or fiberglass, or cast forged or rolled metal, to which the sides of the vessel are united at the fore end, with the lower end united to the keel, and with the bowsprit, if one is present, resting on the upper end. "Stern" is the aftermost part of the vessel.

Live coral means any precious coral that has live coral polyps or tissue.

Live rock means any natural, hard substrate, including dead coral or rock, to which is attached, or which supports, any living marine life form associated with coral reefs.

Low-use marine protected area (MPA) means an area of the U.S. EEZ where fishing operations have specific restrictions in order to protect the coral reef ecosystem, as specified under area restrictions in subparts B through F of this part.

Main Hawaiian Islands (MHI) means the islands of the Hawaii Archipelago lying to the east of 161° W. long.

Mariana Archipelago means Guam and the Northern Mariana Islands.

Mariana FEP means the Fishery Ecosystem Plan for the Mariana Archipelago.

Medium vessel, as used in this part, means any vessel equal to or more than 40 ft (12.2 m) and less than 50 ft (15.2 m) LOA.

Non-commercial fishing means fishing that does not meet the definition of commercial fishing.

Non-precious coral means any species of coral other than those listed under the definitions for precious coral in §§ 665.161, 665.261, 665.461, and 665.661.

Non-selective gear means any gear used for harvesting coral that cannot discriminate or differentiate between types, size, quality, or characteristics of living or dead coral.

Northwestern Hawaiian Islands (NWHI) means the islands of the Hawaiian Archipelago lying to the west of 161° W. long.

No-take MPA means an area of the U.S. EEZ that is closed to fishing for or harvesting of any MUS, as defined in subparts B through F of this part.

Offload means to remove MUS from a vessel.

Offset circle hook means a circle hook in which the barbed end of the hook is displaced relative to the parallel plane of the eyed end, or shank, of the hook when laid on its side.

Owner, as used in the regulations for the crustacean fisheries in subparts B through E of this part and § 665.203(i) and (j), means a person who is identified as the current owner of the vessel as described in the Certificate of Documentation (Form CG–1270) issued by the United States Coast Guard (USCG) for a documented vessel, or in a registration certificate issued by a state, a territory, or the USCG for an undocumented vessel. As used in the regulations for the precious coral fisheries in subparts B through E of this part and § 665.203(c) through (h), the definition of "owner" in § 600.10 of this chapter continues to apply.

Pacific Islands Regional Office (PIRO) means the headquarters of the Pacific Islands Region, NMFS, located at 1601 Kapiolani Blvd., Suite 1110, Honolulu, Hawaii 96814; telephone number 808–944–2200.

Pacific remote island areas (PRIA, or U.S. island possessions in the Pacific Ocean) means Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, Wake Island, and Midway Atoll.

Pelagics FEP means the Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific Region.

Pelagics FMP means the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region that was established in 1987 and replaced by the western Pacific pelagic FEP.

Potentially harvested coral reef taxa (PHCRT) means coral reef associated species, families, or subfamilies, as defined in §§ 665.121, 665.221, 665.421, and 665.621, for which little or no information is available beyond general taxonomic and distribution descriptions. These species have either not been caught in the past or have been harvested annually in amounts less than 454.54 kg (1,000 lb).

Precious Corals FMP means the Fishery Management Plan for Precious Corals of the Western Pacific Region established in 1983 and replaced by fishery ecosystem plans (FEPs).

PRIA FEP means the Fishery Ecosystem Plan for the Pacific Remote Island Areas of Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, and Wake Island.

Protected species means an animal protected under the MMPA, as amended, listed under the ESA, as amended, or subject to the Migratory Bird Treaty Act, as amended.

Receiving vessel means a vessel that receives fish or fish products from a fishing vessel, and with regard to a vessel holding a permit under § 665.801(e), that also lands western Pacific pelagic MUS taken by other vessels using longline gear.

Regional Administrator means Regional Administrator, Pacific Islands Region, NMFS (see Table 1 of § 600.502 of this chapter for address).

Selective gear means any gear used for harvesting coral that can discriminate or differentiate between type, size, quality, or characteristics of living or dead coral.

Special Agent-In-Charge (SAC) means the Special Agent-In-Charge, NMFS, Pacific Islands Enforcement Division, or a designee of the SAC, located at 1601 Kapiolani Blvd., Suite 950, Honolulu, HI 96814, telephone number 808–203–2500.

Special permit means a permit issued to allow fishing for coral reef ecosystem MUS in low-use MPAs or to fish for any PHCRT.

State of Hawaii commercial marine license means the license required by the State of Hawaii for anyone to take marine life for commercial purposes (also known as the commercial fishing license).

Transship means to offload or otherwise transfer MUS or products thereof to a receiving vessel.

Trap means a box-like device used for catching and holding lobsters or fish.

U.S. harvested coral means coral caught, taken, or harvested by vessels of the United States within any fishery for which an FMP or FEP has been implemented under the Magnuson-Stevens Act.

Vessel monitoring system unit (VMS unit) means the hardware and software owned by NMFS, installed on vessels by NMFS, and required to track and transmit the positions of certain vessels.

Western Pacific fishery management area means those waters shoreward of the outer boundary of the EEZ around American Samoa, Guam, Hawaii, CNMI, Midway, Johnston and Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, and Howland Islands.

§ 665.13 Permits and fees.

(a) *Applicability.* The requirements for permits for specific Western Pacific fisheries are set forth in subparts B through F of this part.

(b) *Validity.* Each permit is valid for fishing only in the specific fishery management areas identified on the permit.

(c) *Application.* (1) A Western Pacific Federal fisheries permit application may be obtained from NMFS PIRO to apply for a permit or permits to operate in any of the fisheries regulated under subparts B through F of this part. The completed application must be submitted to PIRO. In no case shall PIRO accept an application that is not on the Western Pacific Federal fisheries permit application form.

(2) A minimum of 15 days after the day PIRO receives a complete application should be allowed for processing a permit application for fisheries under subparts B through F of this part. If an incomplete or improperly completed application is filed, the applicant will be sent a letter of notice of deficiency. If the applicant fails to correct the deficiency within 30 days following the date of the letter of notification of deficiency, the application will be considered abandoned.

(d) *Change in application information.* Any change in the permit application information or vessel documentation, submitted under paragraph (c) of this section, must be reported to PIRO in writing within 15 days of the change to avoid a delay in processing the permit application. A minimum of 10 days from the day the information is received by PIRO should be given for PIRO to record any change in information from the permit application submitted under paragraph (c) of this section. Failure to report such changes may result in a delay in processing an application, permit holders failing to receive important notifications, or sanctions pursuant to the Magnuson-Stevens Act at 16 U.S.C. 1858(g) or 15 CFR part 904, subpart D.

(e) *Issuance.* After receiving a complete application submitted under paragraph (c) of this section, the Regional Administrator will issue a permit to an applicant who is eligible under this part, as appropriate.

(f) *Fees.* (1) PIRO will not charge a fee for a permit issued under §§ 665.142, 665.162, 665.242, 665.262, 665.442, 665.462, 665.642, or 665.662 of this part, for a Ho'omalu limited access permit issued under § 665.203, or for a Guam bottomfish permit issued under § 665.404.

(2) PIRO will charge a non-refundable processing fee for each application (including transfers and renewals) for the permits listed in paragraphs (f)(2)(i)

through (viii) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, for determining the administrative costs of each special product or service incurred in processing the permit. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude the issuance, transfer or renewal of any of these permits:

(i) Hawaii longline limited access permit.

(ii) Mau Zone limited access permit.

(iii) Coral reef ecosystem special permit.

(iv) American Samoa longline limited access permit.

(v) MHI non-commercial bottomfish permit.

(vi) Western Pacific squid jig permit.

(vii) Crustacean permit.

(viii) CNMI commercial bottomfish permit.

(g) *Expiration.* Permits issued under subparts B through F of this part are valid for the period specified on the permit unless revoked, suspended, transferred, or modified under 15 CFR part 904.

(h) *Replacement.* Replacement permits may be issued, without charge, to replace lost or mutilated permits. An application for a replacement permit is not considered a new application.

(i) *Transfer.* An application for a permit transfer under §§ 665.203(d), 665.242(e), or 665.801(k), or for registration of a permit for use with a replacement vessel under § 665.203(i), must be submitted to PIRO as described in paragraph (c) of this section.

(j) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(k) *Display.* Any permit issued under this subpart, or a facsimile of such permit, must be on board the vessel at all times while the vessel is fishing for, taking, retaining, possessing, or landing MUS shoreward of the outer boundary of the fishery management area. Any permit issued under this section must be displayed for inspection upon request of an authorized officer.

(l) *Sanctions.* Procedures governing sanctions and denials are found at subpart D of 15 CFR part 904.

(m) *Permit appeals.* Procedures for appeals of permitting and administrative actions are specified in the relevant subparts of this part.

§ 665.14 Reporting and recordkeeping.

(a) Except for precious coral and crustacean fisheries, any person who is required to do so by applicable state law or regulation must make and/or file all reports of MUS landings containing all data and in the exact manner required by applicable state law or regulation.

(b) *Fishing record forms*—(1) *Applicability.* (i) The operator of any fishing vessel subject to the requirements of §§ 665.124, 665.142, 665.162, 665.203(a)(2), 665.224, 665.242, 665.262, 665.404, 665.424, 665.442, 665.462, 665.603, 665.624, 665.642, 665.662, or 665.801 must maintain on board the vessel an accurate and complete record of catch, effort, and other data on paper report forms provided by the Regional Administrator, or electronically as specified and approved by the Regional Administrator, except as allowed in paragraph (b)(1)(iii) of this section.

(ii) All information specified by the Regional Administrator must be recorded on paper or electronically within 24 hours after the completion of each fishing day. The logbook information, reported on paper or electronically, for each day of the fishing trip must be signed and dated or otherwise authenticated by the vessel operator in the manner determined by the Regional Administrator, and be submitted or transmitted via an approved method as specified by the Regional Administrator, and as required by this paragraph (b).

(iii) In lieu of the requirements in paragraph (a)(1)(i) of this section, the operator of a fishing vessel registered for use under a Western Pacific squid jig permit pursuant to the requirements of § 665.801(g) may participate in a state reporting system. If participating in a state reporting system, all required information must be recorded and submitted in the exact manner required by applicable state law or regulation.

(2) *Timeliness of submission.* (i) If fishing was authorized under a permit pursuant to §§ 665.142, 665.242, 665.442, 665.404, 665.162, 665.262, 665.462, 665.662, or 665.801, the vessel operator must submit the original logbook information for each day of the fishing trip to the Regional Administrator within 72 hours of the end of each fishing trip, except as allowed in paragraph (iii) of this section.

(ii) If fishing was authorized under a permit pursuant to § 665.203(a)(2), the vessel operator or vessel owner must submit the original logbook form for each day of the fishing trip to the Regional Administrator within 72 hours of the end of each fishing trip.

(iii) If fishing was authorized under a PRIA bottomfish permit pursuant to § 665.603(a), PRIA pelagic troll and handline permit pursuant to § 665.801(f), crustacean fishing permit for the PRIA (Permit Area 4) pursuant to § 665.642(a), or a precious coral fishing permit for Permit Area X–P–PI pursuant to § 665.662, the original logbook form for each day of fishing within EEZ waters around the PRIA must be submitted to the Regional Administrator within 30 days of the end of each fishing trip.

(iv) If fishing was authorized under a permit pursuant to §§ 665.124, 665.224, 665.424, or 665.624, the original logbook information for each day of fishing must be submitted to the Regional Administrator within 30 days of the end of each fishing trip.

(c) *Transshipment logbooks.* Any person subject to the requirements of §§ 665.124(a)(2), 665.224(a)(2), 665.424(a)(2), 665.624(a)(2), or 665.801(e) must maintain on board the vessel an accurate and complete NMFS transshipment logbook containing report forms provided by the Regional Administrator. All information specified on the forms must be recorded on the forms within 24 hours after the day of transshipment. Each form must be signed and dated by the receiving vessel operator. The original logbook for each day of transshipment activity must be submitted to the Regional Administrator within 72 hours of each landing of western Pacific pelagic MUS. The original logbook for each day of transshipment activity must be submitted to the Regional Administrator within 7 days of each landing of coral reef ecosystem MUS.

(d) *Sales report.* The operator of any fishing vessel subject to the requirements of §§ 665.142, 665.242, 665.442, or 665.642, or the owner of a medium or large fishing vessel subject to the requirements of § 665.404(a)(2) must submit to the Regional Administrator, within 72 hours of offloading of crustacean MUS, an accurate and complete sales report on a form provided by the Regional Administrator. The form must be signed and dated by the fishing vessel operator.

(e) *Packing or weigh-out slips.* The operator of any fishing vessel subject to the requirements of §§ 665.142, 665.242, 665.442, or 665.642 must attach packing or weighout slips provided to the operator by the first-level buyer(s), unless the packing or weighout slips have not been provided in time by the buyer(s).

(f) *Modification of reporting and recordkeeping requirements.* The Regional Administrator may, after consultation with the Council, initiate rulemaking to modify the information to be provided on the fishing record forms, transshipment logbook, and sales report

forms and timeliness by which the information is to be provided, including the submission of packing or weighout slips.

(g) *Availability of records for inspection.* (1) Western Pacific pelagic MUS. Upon request, any fish dealer must immediately provide an authorized officer access to inspect and copy all records of purchases, sales, or other transactions involving western Pacific pelagic MUS taken or handled by longline vessels that have permits issued under this subpart or that are otherwise subject to subpart F of this part, including, but not limited to, information concerning:

(i) The name of the vessel involved in each transaction and the owner and operator of the vessel.

(ii) The weight, number, and size of each species of fish involved in each transaction.

(iii) Prices paid by the buyer and proceeds to the seller in each transaction.

(2) *Crustacean MUS.* Upon request, any first-level buyer must immediately allow an authorized officer and any employee of NMFS designated by the Regional Administrator, to access, inspect, and copy all records relating to the harvest, sale, or transfer of crustacean MUS taken by vessels that have permits issued under this subpart or §§ 665.140 through 665.145, 665.240 through 665.252, 665.440 through 665.445, or 665.640 through 665.645 of this part. This requirement may be met by furnishing the information on a worksheet provided by the Regional Administrator. The information must include, but is not limited to:

(i) The name of the vessel involved in each transaction and the owner or operator of the vessel.

(ii) The amount, number, and size of each MUS involved in each transaction.

(iii) Prices paid by the buyer and proceeds to the seller in each transaction.

(3) Bottomfish and seamount groundfish MUS. Any person who is required by state laws and regulations to maintain records of landings and sales for vessels regulated by this subpart and by §§ 665.100 through 665.105, 665.200 through 665.212, 665.400 through 665.407, and 665.600 through 665.606 of this part must make those records immediately available for Federal inspection and copying upon request by an authorized officer.

(4) *Coral reef ecosystem MUS.* Any person who has a special permit and who is required by state laws and regulations to maintain and submit records of catch and effort, landings and sales for coral reef ecosystem MUS by this subpart and §§ 665.120 through 665.128, 665.220 through 665.228, 665.420 through 665.428, or 665.620 through 665.628 of this part must make those records immediately available for Federal inspection and copying upon request by an authorized officer as defined in § 600.10 of this chapter.

(h) *State reporting.* Any person who has a permit under §§ 665.124, 665.203, 665.224, 665.404, 665.424, 665.603, or 665.624 and who is regulated by state laws and regulations to maintain and submit records of catch and effort, landings and sales for vessels regulated by subparts B through F of this part must maintain and submit those records in the exact manner required by state laws and regulations.

§ 665.15 Prohibitions.

In addition to the prohibitions in § 600.725 of this chapter, it is unlawful for any person to:

(a) Engage in fishing without a valid permit or facsimile of a valid permit on board the vessel and available for inspection by an authorized officer, when a permit is required under §§ 665.13 or 665.17, unless the vessel was at sea when the permit was issued under § 665.13, in which case the permit must be on board the vessel before its next trip.

(b) File false information on any application for a fishing permit under § 665.13 or an EFP under § 665.17.

(c) Fail to file reports in the exact manner required by any state law or regulation, as required in § 665.14.

(d) Falsify or fail to make, keep, maintain, or submit any logbook or logbook form or other record or report required under §§ 665.14 and 665.17.

(e) Refuse to make available to an authorized officer or a designee of the Regional Administrator for inspection or copying, any records that must be made available in accordance with § 665.14.

(f) Fail to affix or maintain vessel or gear markings, as required by §§ 665.16, 665.128, 665.228, 665.246, 665.428, 665.628, or 665.804.

(g) Violate a term or condition of an EFP issued under § 665.17.

(h) Fail to report any take of or interaction with protected species as required by § 665.17(k).

(i) Fish without an observer on board the vessel after the owner or agent of the owner has been directed by NMFS to make accommodations available for an observer under §§ 665.17, 665.105, 665.145, 665.207, 665.247, 665.407, 665.445, 665.606, 665.645, or 665.808.

(j) Refuse to make accommodations available for an observer when so directed by the Regional Administrator under §§ 665.105, 665.145, 665.207, 665.247, 665.407, 665.445, 665.606, 665.645, or 665.808, or under any provision in an EFP issued under § 665.17.

(k) Fail to notify officials as required in §§ 665.126, 665.144, 665.205, 665.226, 665.244, 665.426, 665.444, 665.626, 665.644, 665.803, or 665.808.

(l) Fish for, take or retain within a no-take MPA, defined in §§ 665.99, 665.199, 665.399, or 665.599, any bottomfish MUS, crustacean MUS, western Pacific pelagic MUS, precious coral, seamount groundfish or coral reef ecosystem MUS.

(m) Fail to comply with a term or condition governing the vessel monitoring system in violation of § 665.19.

(n) Fish for, catch, or harvest MUS without an operational VMS unit on board the vessel after installation of the VMS unit by NMFS, in violation of § 665.19(e)(2).

(o) Possess MUS, that were harvested after NMFS has installed the VMS unit on the vessel, on board that vessel without an operational VMS unit, in violation of § 665.19(e)(2).

(p) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or attempt any of the same; or move or remove a VMS unit without the prior permission of the SAC in violation of § 665.19(e)(3).

(q) Make a false statement, oral or written, to an authorized officer, regarding the use, operation, or maintenance of a VMS unit, in violation of § 665.19(e).

(r) Interfere with, impede, delay, or prevent the installation, maintenance, repair, inspection, or removal of a VMS unit, in violation of § 665.19(e).

(s) Interfere with, impede, delay, or prevent access to a VMS unit by a NMFS observer, in violation of § 665.808(f)(4).

(t) Connect or leave connected additional equipment to a VMS unit without the prior approval of the SAC, in violation of § 665.19(f).

§ 665.16 Vessel identification.

(a) Each fishing vessel subject to this subpart, except those identified in paragraph (e) of this section, must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be visible from enforcement vessels and aircraft.

(b) The official number must be affixed to each vessel subject to this part in block Arabic numerals at least 18 inches (45.7 cm) in height for fishing and receiving vessels of 65 ft (19.8 m) LOA or longer, and at least 10 inches (25.4 cm) in height for all other vessels,

except that vessels in precious coral fisheries and 65 ft (19.8 m) LOA or longer must be marked in block Arabic numerals at least 14 inches (35.6 cm) in height. Marking must be legible and of a color that contrasts with the background.

(c) The vessel operator must ensure that the official number is clearly legible and in good repair.

(d) The vessel operator must ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the official number from an enforcement vessel or aircraft.

(e) The following fishing vessels are exempt from the vessel identification requirements in this section:

(1) A vessel registered for use under a MHI non-commercial bottomfish permit that is in compliance with State of Hawaii bottomfish vessel registration and marking requirements.

(2) A vessel less than 40 ft (12.2 m) LOA registered for use under a CNMI commercial bottomfish permit that is in compliance with CNMI bottomfish vessel registration and marking requirements.

§ 665.17 Experimental fishing.

(a) *General.* The Regional Administrator may authorize, for limited purposes, the direct or incidental harvest of MUS that would otherwise be prohibited by this part. No experimental fishing may be conducted unless authorized by an EFP issued by the Regional Administrator in accordance with the criteria and procedures specified in this section. EFPs will be issued without charge.

(b) *Observers.* No experimental fishing for crustacean MUS may be conducted unless a NMFS observer is aboard the vessel.

(c) *Application.* An applicant for an EFP must submit to the Regional Administrator at least 60 days before the desired date of the EFP a written application including, but not limited to, the following information:

(1) The date of the application.

(2) The applicant's name, mailing address, and telephone number.

(3) A statement of the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP.

(4) A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals.

(5) For each vessel to be covered by the EFP:

(i) Vessel name.

(ii) Name, address, and telephone number of owner and operator.

(iii) USCG documentation, state license, or registration number.

(iv) Home port.

(v) Length of vessel.

(vi) Net tonnage.

(vii) Gross tonnage.

(6) A description of the species (directed and incidental) to be harvested under the EFP and the amount of such harvest necessary to conduct the experiment.

(7) For each vessel covered by the EFP, the approximate times and places fishing will take place, and the type, size, and amount of gear to be used.

(8) The signature of the applicant.

(d) *Incomplete applications.* The Regional Administrator may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(e) *Issuance.* (1) If an application contains all of the required information, NMFS will publish a notice of receipt of the application in the **Federal Register** with a brief description of the proposal and will give interested persons an opportunity to comment. The Regional Administrator will also forward copies of the application to the Council, the USCG, and the fishery management agency of the affected state, accompanied by the following information:

(i) The current utilization of domestic annual harvesting and processing capacity (including existing experimental harvesting, if any) of the directed and incidental species for which an EFP is being requested.

(ii) A citation of the regulation or regulations that, without the EFP, would prohibit the proposed activity.

(iii) Biological information relevant to the proposal.

(2) At a Council meeting following receipt of a complete application, the Regional Administrator will consult with the Council and the Director of the affected state fishery management agency concerning the permit application. The applicant will be notified in advance of the meeting at which the application will be considered, and invited to appear in support of the application, if the applicant desires.

(3) Within 5 working days after the consultation in paragraph (e)(2) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the EFP and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(i) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.

(ii) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect any species of fish in a significant way.

(iii) Issuance of the EFP would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.

(iv) Activities to be conducted under the EFP would be inconsistent with the intent of this section or the management objectives of the FEP.

(v) The applicant has failed to demonstrate a valid justification for the permit.

(vi) The activity proposed under the EFP would create a significant enforcement problem.

(4) The decision to grant or deny an EFP is final and unappealable. If the permit is granted, NMFS will publish a notice in the **Federal Register** describing the experimental fishing to be conducted under the EFP. The Regional Administrator may attach terms and conditions to the EFP consistent with the purpose of the experiment including, but not limited to:

(i) The maximum amount of each species that can be harvested and landed during the term of the EFP, including trip limits, where appropriate.

(ii) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the EFP.

(iii) The times and places where experimental fishing may be conducted.

(iv) The type, size, and amount of gear which may be used by each vessel operated under the EFP.

(v) The condition that observers be carried aboard vessels operating under an EFP.

(vi) Data reporting requirements.

(vii) Such other conditions as may be necessary to assure compliance with the purposes of the EFP consistent with the objectives of the FEP.

(f) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than one (1) year from the date of issuance, unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.

(g) *Alteration.* Any EFP that has been altered, erased, or mutilated is invalid.

(h) *Transfer.* EFPs issued under subparts B through F of this part are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(i) *Inspection.* Any EFP issued under subparts B through F of this part must be carried aboard the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(j) *Sanctions.* Failure of the holder of an EFP to comply with the terms and conditions of an EFP, the provisions of subparts A through F of this part, any other applicable provision of this part, the Magnuson-Stevens Act, or any other regulation promulgated thereunder, is grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP will be governed by 15 CFR part 904 subpart D. Other sanctions available under the statute will be applicable.

(k) *Protected species.* Persons fishing under an EFP must report any incidental take or fisheries interaction with protected species on a form provided for that purpose. Reports must be submitted to the Regional Administrator within 3 days of arriving in port.

§ 665.18 Framework adjustments to management measures.

Framework measures described below for each specific fishery are valid for all management areas, except where specifically noted in this section.

(a) *Pelagic measures*—(1) *Introduction.* Adjustments in management measures may be made through rulemaking if new information demonstrates that there are biological, social, or economic concerns in the fishery. The following framework process authorizes the implementation of measures that may affect the operation of the fisheries, gear, harvest guidelines, or changes in catch and/or effort.

(2) *Annual report.* By June 30 of each year, the Council-appointed pelagics monitoring team will prepare an annual report on the fisheries in the management area. The report shall contain, among other things, recommendations for Council action and an assessment of the urgency and effects of such action(s).

(3) *Procedure for established measures.* (i) Established measures are regulations for which the impacts have been evaluated in Council or NMFS documents in the context of current conditions.

(ii) The Council may recommend to the Regional Administrator that established measures be modified, removed, or reinstituted. Such recommendation shall include supporting rationale and analysis, and shall be made after advance public notice, public discussion, and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(4) *Procedure for new measures.* (i) New measures are regulations for which the impacts have not been evaluated in Council or NMFS documents in the context of current conditions.

(ii) The Council will publicize, including by **Federal Register** notice, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a **Federal Register** notice summarizing the Council's deliberations, rationale, and analysis for the preferred action, and the time and place for any subsequent Council meeting(s) to consider the new measure. At subsequent public meeting(s), the Council will consider public comments and other information received to make a recommendation to the Regional Administrator about any new measure. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(b) *Crustacean measures*—(1) *Introduction.* New management measures may be added through rulemaking if new information demonstrates that there are biological, social, or economic concerns in Permit Areas 1, 2, or 3. The following framework process authorizes the implementation of measures that may affect the operation of the fisheries, gear, harvest guidelines, or changes in catch and/or effort.

(2) *Annual report.* By June 30 of each year, the Council-appointed team will prepare an annual report on the fisheries in the management area. The report shall contain, among other things, recommendations for Council action and an assessment of the urgency and effects of such action(s).

(3) *Procedure for established measures.* (i) Established measures are regulations for which the impacts have been evaluated in Council or NMFS documents in the context of current conditions.

(ii) The Council may recommend to the Regional Administrator that established measures be modified, removed, or reinstituted. Such recommendation shall include supporting rationale and analysis, and shall be made after advance public notice, public discussion, and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(4) *Procedure for new measures.* (i) New measures are regulations for which the impacts have not been evaluated in Council or NMFS documents in the context of current conditions.

(ii) The Council will publicize, including by a **Federal Register** document, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a **Federal Register** document summarizing the Council's deliberations, rationale, and analysis for the preferred action, and the time and place for any subsequent Council meeting(s) to consider the new measure. At subsequent public meeting(s), the Council will consider public comments and other information received to make a recommendation to the Regional Administrator about any new measure. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(c) *Bottomfish measures*—(1) *Annual reports.* By June 30 of each year, a Council-appointed bottomfish monitoring team will prepare an annual report on the fishery by area covering the following topics:

(i) Fishery performance data.

(ii) Summary of recent research and survey results.

(iii) Habitat conditions and recent alterations.

(iv) Enforcement activities and problems.

(v) Administrative actions (*e.g.,* data collection and reporting, permits).

(vi) State and territorial management actions.

(vii) Assessment of need for Council action (including biological, economic, social, enforcement, administrative, and state/Federal needs, problems, and trends). Indications of potential problems warranting further investigation may be signaled by the following indicator criteria:

(A) Mean size of the catch of any species in any area is a pre-reproductive size.

(B) Ratio of fishing mortality to natural mortality for any species.

(C) Harvest capacity of the existing fleet and/or annual landings exceed best estimate of MSY in any area.

(D) Significant decline (50 percent or more) in bottomfish catch per unit of effort from baseline levels.

(E) Substantial decline in ex-vessel revenue relative to baseline levels.

(F) Significant shift in the relative proportions of gear in any one area.

(G) Significant change in the frozen/fresh components of the bottomfish catch.

(H) Entry/exit of fishermen in any area.

(I) Per-trip costs for bottomfish fishing exceed per-trip revenues for a significant percentage of trips.

(J) Significant decline or increase in total bottomfish landings in any area.

(K) Change in species composition of the bottomfish catch in any area.

(L) Research results.

(M) Habitat degradation or environmental problems.

(N) Reported interactions between bottomfish fishing operations and protected species in the NWHI.

(viii) Recommendations for Council action.

(ix) Estimated impacts of recommended action.

(2) *Recommendation of management action.* (i) The team may present management recommendations to the Council at any time. Recommendations may cover actions suggested for Federal regulations, state/territorial action, enforcement or administrative elements, and research and data collection. Recommendations will include an assessment of urgency and the effects of not taking action.

(ii) The Council will evaluate the team's reports and recommendations, and the indicators of concern. The Council will assess the need for one or more of the following types of management action: Catch limits, size limits, closures, effort limitations, access limitations, or other measures.

(iii) The Council may recommend management action by either the state/territorial governments or by Federal regulation.

(3) *Federal management action.* (i) If the Council believes that management action should be considered, it will make specific recommendations to the Regional Administrator after requesting and considering the views of its Scientific and Statistical Committee and Bottomfish Advisory Panel and obtaining public comments at a public hearing.

(ii) The Regional Administrator will consider the Council's recommendation and accompanying data, and, if he or she concurs with the Council's recommendation, will propose regulations to carry out the action. If the Regional Administrator rejects the Council's proposed action, a written explanation for the denial will be provided to the Council within 2 weeks of the decision.

(iii) The Council may appeal a denial by writing to the Assistant Administrator, who must respond in writing within 30 days.

(iv) The Regional Administrator and the Assistant Administrator will make their decisions in accord with the Magnuson-Stevens Act, other applicable law, and the bottomfish measures of the FEPs.

(v) To minimize conflicts between the Federal and state management systems, the Council will use the procedures in paragraph (c)(2) of this section to respond to state/territorial management actions. Council consideration of action would normally begin with a representative of the state or territorial government bringing a potential or actual management conflict or need to the Council's attention.

(4) *Access limitation procedures.* (i) Access limitation may be adopted under this paragraph (c)(4) only for the NWHI, American Samoa, and Guam.

(ii) If access limitation is proposed for adoption or subsequent modification through the process described in this paragraph (c)(4), the following requirements must be met:

(A) The bottomfish monitoring team must consider and report to the Council on present participation in the fishery; historical fishing practices in, and dependence on, the fishery; economics of the fishery; capability of fishing vessels used in the fishery to engage in other fisheries; cultural and social framework relevant to the fishery; and any other relevant considerations.

(B) Public hearings must be held specifically addressing the limited access proposals.

(C) A specific advisory subpanel of persons experienced in the fishing industry will be created to advise the Council and the Regional Administrator on administrative decisions.

(D) The Council's recommendation to the Regional Administrator must be approved by a two-thirds majority of the voting members.

(5) *Five-year review.* The Council will conduct a comprehensive review on the effectiveness of the Mau Zone limited access program 5 years following implementation of the program. The Council will consider the extent to which the FEP objectives have been met and verify that the target number of vessels established for the fishery is appropriate for current fishing activity levels, catch rates, and biological condition of the stocks. The Council may establish a new target number based on the 5-year review.

(d) *Precious coral measures*—(1) *Introduction.* Established management measures may be revised and new management measures may be established and/or revised through rulemaking if new information demonstrates that there are biological, social, or economic concerns in a precious coral permit area. The following framework process authorizes the implementation of measures that may affect the operation of the fisheries, gear, quotas, season, or levels of catch and/or in effort.

(2) *Annual report.* By June 30 of each year, the Council-appointed precious coral team will prepare an annual report on the fisheries in the management area. The report will contain, among other things, recommendations for Council action and an assessment of the urgency and effects of such action(s).

(3) *Procedure for established measures.* (i) Established measures are regulations for which the impacts have been evaluated in Council or NMFS documents in the context of current conditions.

(ii) The Council may recommend to the Regional Administrator that established measures be modified, removed, or reinstituted. Such recommendation will include supporting rationale and analysis and will be made after advance public notice, public discussion, and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(4) *Procedure for new measures.* (i) New measures are regulations for which the impacts have not been evaluated in Council or NMFS documents in the context of current conditions.

(ii) The Council will publicize, including by a **Federal Register** document, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a **Federal Register** document summarizing the Council's deliberations, rationale, and analysis for the preferred action and the time and place for any subsequent Council meeting(s) to consider the new measure. At a subsequent public meeting, the Council will consider public comments and other information received before making a recommendation to the Regional Administrator about any new measure. If approved by the Regional

Administrator, NMFS may implement the Council's recommendation by rulemaking.

(e) *Coral reef ecosystem measures*—(1) *Procedure for established measures.* (i) Established measures are regulations for which the impacts have been evaluated in Council or NMFS documents in the context of current conditions.

(ii) The Council may recommend to the Regional Administrator that established measures be modified, removed, or reinstituted. Such recommendation shall include supporting rationale and analysis, and shall be made after advance public notice, public discussion and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(2) *Procedure for new measures.* (i) New measures are regulations for which the impacts have not been evaluated in Council or NMFS documents in the context of current conditions. New measures include, but are not limited to, catch limits, resource size limits, closures, effort limitations, reporting and recordkeeping requirements.

(ii) The Regional Administrator will publicize, including by **Federal Register** notice, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a document summarizing the Council's deliberations, rationale, and analysis for the preferred action, and the time and place for any subsequent Council meeting(s) to consider the new measure. At subsequent public meeting(s), the Council will consider public comments and other information received to make a recommendation to the Regional Administrator about any new measure. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(A) The Regional Administrator will consider the Council's recommendation and supporting rationale and analysis, and, if the Regional Administrator concurs with the Council's recommendation, will propose regulations to carry out the action. If the Regional Administrator rejects the Council's proposed action, the Regional Administrator will provide a written explanation for the denial within 2 weeks of the decision.

(B) The Council may appeal a denial by writing to the Assistant Administrator, who must respond in writing within 30 days.

(C) The Regional Administrator and the Assistant Administrator will make their decisions in accordance with the Magnuson-Stevens Act, other applicable laws, and the FEPs.

(D) To minimize conflicts between the Federal and state/territorial/commonwealth management systems, the Council will use the procedures in this paragraph (e)(2)(ii) to respond to state/territorial/commonwealth management actions. The Council's consideration of action would normally begin with a representative of the state, territorial or commonwealth government bringing a potential or actual management conflict or need to the Council's attention.

(3) *Annual report.* By July 31 of each year, a Council-appointed coral reef ecosystem monitoring team will prepare an annual report on coral reef fisheries of the western Pacific region. The report will contain, among other things:

(i) Fishery performance data, summaries of new information and assessments of need for Council action.

(ii) Recommendation for Council action. The Council will evaluate the annual report and advisory body recommendations and may recommend management action by either the state/territorial/commonwealth governments or by Federal regulation.

(iii) If the Council believes that management action should be considered, it will make specific recommendations to the Regional Administrator after considering the views of its advisory bodies.

§ 665.19 Vessel monitoring system.

(a) *Applicability.* The holder of any of the following permits is subject to the vessel monitoring system requirements in this part:

(1) Hawaii longline limited access permit issued pursuant to § 665.801(b);

(2) American Samoa longline limited entry permit, for vessel size Class C or D, issued pursuant to § 665.801(c);

(3) Vessels permitted to fish in Crustacean Permit Area 1 VMS Subarea; or

(4) CNMI commercial bottomfish permit, if the vessel is a medium or large bottomfish vessel, issued pursuant to § 665.404(a)(2).

(b) *VMS unit.* Only a VMS unit owned by NMFS and installed by NMFS complies with the requirement of this subpart.

(c) *Notification.* After a permit holder subject to § 665.19(a) has been notified by the SAC of a specific date for installation of a VMS unit on the permit holder's vessel, the vessel must carry and operate the VMS unit after the date scheduled for installation.

(d) *Fees and charges.* During the experimental VMS program, the holder of a permit subject to § 665.19(a) shall not be assessed any fee or other charges to obtain and use a VMS unit, including the communication charges related directed to requirements under this section. Communication charges related to any additional equipment attached to the VMS unit by the owner or operator shall be the responsibility of the owner or operator and not NMFS.

(e) *Permit holder duties.* The holder of a permit subject to § 665.19(a) and master of the vessel must:

(1) Provide opportunity for the SAC to install and make operational a VMS unit after notification.

(2) Carry and continuously operate the VMS unit on board whenever the vessel is at sea.

(3) Not remove, relocate, or make non-operational the VMS unit without prior approval from the SAC.

(f) *Authorization by the SAC.* The SAC has authority over the installation and operation of the VMS unit. The SAC may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit when deemed appropriate by the SAC.

Subpart B—American Samoa Fisheries

§ 665.98 Management area.

The American Samoa fishery management area is the EEZ seaward of the Territory of American Samoa with the inner boundary coterminous with the seaward boundaries of the Territory of American Samoa and the outer boundary designated as a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries.

§ 665.99 Area restrictions.

Fishing is prohibited in all no-take MPAs. The following U.S. EEZ waters around American Samoa are no-take MPAs: Landward of the 50 fm (91.5 m) curve around Rose Atoll, as depicted on National Ocean Survey Chart Number 83484.

§ 665.100 American Samoa bottomfish fisheries [Reserved].

§ 665.101 Definitions.

As used in §§ 665.100 through 665.119:

American Samoa bottomfish management unit species (American

Samoa bottomfish MUS) means the following fish:

Samoan name	English common name	Scientific name
palu-gutusiliva	red snapper, silvermouth	*Aphareus rutilans.*
asoama	gray snapper, jobfish	*Aprion virescens.*
sapoanae	giant trevally, jack	*Caranx ignobilis.*
tafauli	black trevally, jack	*Caranx lugubris.*
fausi	blacktip grouper	*Epinephelus fasciatus.*
papa, velo	lunartail grouper	*Variola louti.*
palu malau	red snapper	*Etelis carbunculus.*
palu-loa	red snapper	*Etelis coruscans.*
filoa-gutumumu	Ambon emperor	*Lethrinus amboinensis.*
filoa-paomumu	redgill emperor	*Lethrinus rubrioperculatus.*
savane	blueline snapper	*Lutjanus kasmira.*
palu-i'usama	yellowtail snapper	*Pristipomoides auricilla.*
palu-'ena'ena	pink snapper	*Pristipomoides filamentosus.*
palu-sina	yelloweye snapper	*Pristipomoides flavipinnis.*
palu	pink snapper	*Pristipomoides seiboldii.*
palu-ula, palu-sega	snapper	*Pristipomoides zonatus.*
malauli	amberjack	*Seriola dumerili.*

§ 665.102 [Reserved]

§ 665.103 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person to fish for American Samoa bottomfish MUS using gear prohibited under § 665.104.

§ 665.104 Gear restrictions.

(a) *Bottom trawls and bottom set gillnets.* Fishing for American Samoa bottomfish MUS with bottom trawls and bottom set gillnets is prohibited.

(b) *Possession of gear.* The possession of a bottom trawl or bottom set gillnet within the American Samoa fishery management area is prohibited.

(c) *Poisons and explosives.* The possession or use of any poisons, explosives, or intoxicating substances for the purpose of harvesting bottomfish is prohibited.

§ 665.105 At-sea observer coverage.

All fishing vessels subject to §§ 665.100 through 665.105 must carry an observer when directed to do so by the Regional Administrator.

§§ 665.106–665.119 [Reserved]

§ 665.120 American Samoa coral reef ecosystem fisheries [Reserved].

§ 665.121 Definitions.

As used in §§ 665.120 through 665.139:

American Samoa coral reef ecosystem management unit species (American Samoa coral reef ecosystem MUS) means all of the Currently Harvested Coral Reef Taxa and Potentially Harvested Coral Reef Taxa listed in this section and which spend the majority of their non-pelagic (post-settlement) life stages within waters less than or equal to 50 fathoms in total depth.

American Samoa Currently Harvested Coral Reef Taxa:

Family name	Samoan name	English common name	Scientific name
Acanthuridae (Surgeonfishes)	afinamea	orange-spot surgeonfish	*Acanthurus olivaceus.*
		yellowfin surgeonfish	*Acanthurus xanthopterus.*
	Aanini	convict tang	*Acanthurus triostegus.*
		eye-striped surgeonfish	*Acanthurus dussumieri.*
	ponepone, gaitolama	blue-lined surgeon	*Acanthurus nigroris.*
	Alogo	blue-banded surgeonfish	*Acanthurus lineatus.*
	pone-i'usama	blackstreak surgeonfish	*Acanthurus nigricauda.*
	laulama,	whitecheek surgeonfish	*Acanthurus nigricans.*
	Maogo	white-spotted surgeonfish	*Acanthurus guttatus.*
		ringtail surgeonfish	*Acanthurus blochii.*
	ponepone	brown surgeonfish	*Acanthurus nigrofuscus.*
		elongate surgeonfish	*Acanthurus mata.*
		mimic surgeonfish	*Acanthurus pyroferus.*
	Pone	yellow-eyed surgeonfish	*Ctenochaetus strigosus.*
	pone, pala'ia, logoulia	striped bristletooth	*Ctenochaetus striatus.*
		two-spot bristletooth	*Ctenochaetus binotatus.*
	ume-isu	bluespine unicornfish	*Naso unicornus.*
	ili'ilia, umelei	orangespine unicornfish	*Naso lituratus.*
		black tongue unicornfish	*Naso hexacanthus.*
	ume-masimasi	bignose unicornfish	*Naso vlamingii.*
		whitemargin unicornfish	*Naso annulatus.*
	ume-ulutao	spotted unicornfish	*Naso brevirostris.*
		barred unicornfish	*Naso thynnoides.*
Balistidae (Triggerfishes)	sumu, sumu-laulau	titan triggerfish	*Balistoides viridescens.*
		orangestriped triggerfish	*Balistapus undulatus.*
	sumu-'apa'apasina, sumu-si'umumu.	pinktail triggerfish	*Melichthys vidua.*
	sumu-uli	black triggerfish	*Melichthys niger.*

Family name	Samoan name	English common name	Scientific name
	sumu-laulau	blue triggerfish	*Pseudobalistes fuscus.*
	sumu-uo'uo, sumu-aloalo	picassofish	*Rhinecanthus aculeatus.*
	sumu-gase'ele'ele	bridled triggerfish	*Sufflamen fraenatum.*
	Atule	bigeye scad	*Selar crumenophthalmus.*
	atuleau, namuauli	mackerel scad	*Decapterus macarellus.*
Carcharhinidae (Sharks)	malie-aloalo	grey reef shark	*Carcharhinus amblyrhynchos.*
	Aso	silvertip shark	*Carcharhinus albimarginatus.*
	Malie	Galapagos shark	*Carcharhinus galapagensis.*
	apeape, malie-alamata	blacktip reef shark	*Carcharhinus melanopterus.*
	Malu	whitetip reef shark	*Triaenodon obesus.*
Holocentridae (Soldierfish, squirrelfish.	malau-ugatele, malau-va'ava'a	bigscale soldierfish	*Myripristis berndti.*
	malau-tui	bronze soldierfish	*Myripristis adusta.*
		blotcheye soldierfish	*Myripristis murdjan.*
		brick soldierfish	*Myripristis amaena.*
	malau-mamo, malau-va'ava'a	scarlet soldierfish	*Myripristis pralinia.*
	malau-tuauli	violet soldierfish	*Myripristis violacea.*
		whitetip soldierfish	*Myripristis vittata.*
		yellowfin soldierfish	*Myripristis chryseres.*
	malau-pu'u	pearly soldierfish	*Myripristis kuntee.*
		double tooth squirrelfish	*Myripristis hexagona.*
		blackspot squirrelfish	*Sargocentron melanospilos.*
	malau-tianiu	file-lined squirrelfish	*Sargocentron microstoma.*
		pink squirrelfish	*Sargocentron tiereoides.*
	malau-tui, malau-talapu'u, malau-tusitusi, malau-pauli.	crown squirrelfish	*Sargocentron diadema.*
		peppered squirrelfish	*Sargocentron punctatissimum.*
		blue-lined squirrelfish	*Sargocentron tiere.*
	tamalu, mu-malau, malau-toa	saber or long jaw squirrelfish	*Sargocentron spiniferum.*
		spotfin squirrelfish	*Neoniphon* spp.
Kuhliidae (Flagtails)	Safole, inato	barred flag-tail	*Kuhlia mugil.*
Kyphosidae (Rudderfish)	nanue, mata-mutu, mutumutu	rudderfish	*Kyphosus cinerascens Kyphosus biggibus.*
	Nanue	rudderfish	*Kyphosus vaigienses.*
Labridae (Wrasses)	lalafi, tagafa malakea	napoleon wrasse	*Cheilinus undulatus.*
	Lalafi-matamumu	triple-tail wrasse	*Cheilinus trilobatus.*
	lalafi-matapua'a	floral wrasse	*Cheilinus chlorourus.*
	lalafi-pulepule	harlequin tuskfish	*Cheilinus fasciatus.*
	sugale	bandcheek wrasse	*Oxycheilinus diagrammus.*
	sugale	arenatus wrasse	*Oxycheilinus arenatus.*
	sugale-tatanu	whitepatch wrasse	*Xyrichtys aneitensis.*
	sugale-mo'o	cigar wrasse	*Cheilio inermis.*
	sugale-laugutu, sugale-uli, sugale-aloa, sugale-lupe.	blackeye thicklip	*Hemigymnus melapterus*
	sugale-gutumafia	barred thicklip	*Hemigymnus fasciatus.*
	lape, sugale-pagota	three-spot wrasse	*Halichoeres trimaculatus.*
	sugale-a'au, sugale-pagota, ifigi	checkerboard wrasse	*Halichoeres hortulanus.*
	sugale-uluvela	weedy surge wrasse	*Halichoeres margaritaceus.*
	uloulo-gatala, patagaloa	surge wrasse	*Thalassoma purpureum.*
	lape-moana	red ribbon wrasse	*Thalassoma quinquevittatum.*
	sugale-samasama	sunset wrasse	*Thalassoma lutescens.*
	sugale-la'o, sugale-taili, sugale-gasufi.	rockmover wrasse	*Novaculichthys taeniourus.*
Mullidae (Goatfishes)	i'asina, vete, afulu	yellow goatfish	*Mulloidichthys* spp.
	Vete	yellowfin goatfish	*Mulloidichthys vanicolensis.*
	afolu, afulu	yellowstripe goatfish	*Mulloidichthys flavolineatus.*
	afoul, afulu	banded goatfish	*Parupeneus* spp.
	tusia, tulausaena, ta'uleia	dash-dot goatfish	*Parupeneus barberinus.*
	matulau-moana	doublebar goatfish	*Parupeneus bifasciatus.*
	moana-ula	redspot goatfish	*Parupeneus heptacanthus.*
	i'asina, vete, afulu, moana	yellowsaddle goatfish	*Parupeneus cyclostomas.*
	matulau-ilamutu	side-spot goatfish	*Parupeneus pleurostigma.*
	i'asina, vete, afulu	multi-barred goatfish	*Parupeneus multifaciatus.*
Mugilidae (Mullets)	anae, aua. fuafua	fringelip mullet	*Crenimugil crenilabis.*
	moi, poi	false mullet	*Neomyxus leuciscus.*
Muraenidae (Moray eels)	Pusi	yellowmargin moray eel	*Gymnothorax flavimarginatus.*
	maoa'e	giant moray eel	*Gymnothorax javanicus.*
	pusi-pulepule	undulated moray eel	*Gymnothorax undulatus.*
Octopodidae (Octopus)	fe'e fe'e	octopus octopus	*Octopus cyanea, Octopus ornatus.*
Polynemidae	umiumia, i'ausi	threadfin	*Polydactylus sexfilis.*
Pricanthidae (Bigeye)	matapula	glasseye	*Heteropriacanthus cruentatus.*
	matapula	bigeye	*Priacanthus hamrur.*
Scaridae (Parrotfishes)	Fuga	stareye parrotfish	*Calotomus carolinus.*

Family name	Samoan name	English common name	Scientific name
	fuga, galo-uluto'i, fuga-valea, laea-mamanu.	parrotfish	*Scarus* spp.
	ulapokea, laea-ulapokea	Pacific longnose parrotfish	*Hipposcarus longiceps*.
Scombridae	Tagi	dogtooth tuna	*Gymnosarda unicolor*.
Siganidae (Rabbitfish)	loloa, lo	forktail rabbitfish	*Siganus aregenteus*.
Sphyraenidae (Barracuda)	Sapatu	heller's barracuda	*Sphyraena helleri*.
	Saosao	great barracuda	*Sphyraena barracuda*.
Turbinidae (turban shells, green snails.	Alili	green snails	*Turbo* spp.

American Samoa Potentially Harvested Coral Reef Taxa:

Samoan name	English common name	Scientific name
sugale, sugale-vaolo, sugale-a'a, lalafi, lape-a'au, la'ofia.	wrasses (Those species not listed as CHCRT)	Labrida.
malie, apoapo, moemoeao	sharks (Those species not listed as CHCRT)	Carcharhinidae, Sphyrnidae.
Fai	rays and skates	Dasyatididae, Myliobatidae.
pe'ape'a	batfishes	Ephippidae.
mutumutu, misimisi, ava'ava-moana	sweetlips	Haemulidae.
talitaliuli	remoras	Echeneidae.
mo'o, mo'otai	tilefishes	Malacanthidae.
Tiva	dottybacks	Pseudochromidae.
aneanea, tafuti	prettyfins	Plesiopidae.
Tapua	coral crouchers	Caracanthidae.
	flashlightfishes	Anomalopidae.
gatala, ataata, vaolo, gatala-uli, gatala-sega, gatala-aleva, ateate, apoua, susami, gatala-sina, gatala-mumu.	groupers (Those species not listed as CHCRT or BMUS).	Serrandiae.
lupo, lupota, mamalusi, ulua, sapoanae, taupapa, nato, filu, atuleau, malauli-apamoana, malauli-sinasama, malauli-matalapo'a, lai.	jacks and scads (Those species not listed as CHCRT or BMUS).	Carangidae.
Malau	soldierfishes and squirrelfishes (Those species not listed as CHCRT).	Holocentridae.
i'asina, vete, afulu, afoul, ulula'oa	goatfishes (Those species not listed as CHCRT).	Mullidae.
pone, palagi	surgeonfishes (Those species not listed as CHCRT).	Acanthuridae.
pelupelu, nefu	herrings	Clupeidae.
nefu, file	anchovies	Engraulidae.
mano'o, mano'o-popo, mano'o-fugafuga, mano'o-apofusami, mano'o-a'au.	gobies	Gobiidae.
mu, mu-taiva, tamala, malai, feloitega, mu-mafalaugutu, savane-ulusama, matala'oa.	snappers (Those species not listed as CHCRT or BMUS).	Lutjanidae.
sumu, sumu-papa, sumu-taulau	trigger fishes (Those species not listed as CHCRT).	Balistidae.
Lo	rabbitfishes (Those species not listed as CHCRT).	Siganidae.
nanue, matamutu, mutumutu	rudderfishes (Those species not listed as CHCRT).	Kyphosidae.
ulisega, atule-toto	fusiliers	Caesionidae.
filoa, mata'ele'ele, ulamalosi	emperors (Those species not listed as CHCRT or BMUS).	Lethrinidae.
pusi, maoa'e, atapanoa, u'aulu, apeape, fafa, gatamea, pusi-solasulu.	eels (Those species not listed as CHCRT)	Muraenidae, Chlopsidae, Congridae, Moringuidae, Ophichthidae.
fo, fo-tusiloloa, fo-si'umu, fo-loloa, fo-tala, fo-manifi, fo-aialo, fo-tuauli.	cardinalfishes	Apogonidae.
pe'ape'a, laulaufau	moorish idols	Zanclidae.
tifitifi, si'u, i'usamasama, tifitifi-segaula, laulafau-laumea, alosina.	butterfly fishes	Chaetodontidae.
tu'u'u, tu'u'u-sama, tu'u'u-lega, tu'u'u-ulavapua, tu'u'u-matamalu, tu'u'u-alomu, tu'u'u-uluvela, tu'u'u-atugauli, tu'u'u-tusiuli, tu'u'u-manini.	angelfishes	Pomacanthidae.
tu'u'u, mutu, mamo, tu'u'u-lumane	damselfishes	Pomacentridae.
i'atala, la'otele, nofu	scorpionfishes	Scorpaenidae.
mano'o, mano'o-mo'o, mano'o-palea, mano'o-la'o.	blennies	Blenniidae.
sapatu	barracudas (Those species not listed as CHCRT).	Sphyraenidae.

Samoan name	English common name	Scientific name
la'o, ulutu'i, lausiva	hawkfishes (Those species not listed as CHCRT).	Cirrhitidae.
la'otale, nofu	frogfishes	Antennariidae.
	pipefishes and seahorses	Syngnathidae.
ta'oto	sandperches	Pinguipedidae.
tagi	dog tooth tuna	*Gymnosarda unicolor.*
taoto-ena, taoto-sama, 'au'aulauti, taotito	trumpetfish	*Aulostomus chinensis.*
taotao, taoto-ama	cornetfish	*Fistularia commersoni.*
sue, sue-vaolo, sue-va'a, sue-lega, sue-mu, sue-uli, sue-lape, sue-afa, sue-sugale.	puffer fishes and porcupine fishes	Tetradontidae.
ali	flounders and soles	Bothidae, Soleidae.
moamoa	trunkfishes	Ostraciidae.
fugafuga, tuitui, sava'e	sea cucumbers and sea urchins	Echinoderms.
amu	blue corals	Heliopora.
amu	organpipe corals	Tubipora.
	ahermatypic corals	Azooxanthellates.
amu	mushroom corals	Fungiidae.
amu	small and large coral polyps	
amu	fire corals	Millepora.
amu	soft corals and gorgonians.	
lumane, matalelei	anemones	Actinaria.
	soft zoanthid corals (Those species not listed as CHCRT).	Zoanthinaria.
		Mollusca.
sisi-sami	sea snails	Gastropoda.
aliao, alili		*Trochus* spp.
sea	sea slugs	Opistobranches.
	black lipped pearl oyster	*Pinctada margaritifera.*
faisua	giant clam	Tridacnidae.
pipi, asi, fatuaua, tio, pae, fole	other clams	Other Bivalves.
ula, pa'a, kuku, papata	lobsters, shrimps, mantis shrimps, true crabs and hermit crabs (Those species not listed as Crustacean MUS).	Crustaceans.
	sea squirts	Tunicates.
	sponges	Porifera.
amu	lace corals	Stylasteridae.
amu	hydroid corals	Solanderidae.
	segmented worms (Those species not listed as CHCRT).	Annelids.
limu	seaweed	Algae.
	Live rock.	

All other American Samoa coral reef ecosystem MUS that are marine plants, invertebrates, and fishes that are not listed in the American Samoa CHCRT table or are not American Samoa bottomfish, crustacean, precious coral, or western Pacific pelagic MUS.

§ 665.122 [Reserved]

§ 665.123 Relation to other laws.

To ensure consistency between the management regimes of different Federal agencies with shared management responsibilities of fishery resources within the American Samoa fishery management area, fishing for American Samoa coral reef ecosystem MUS is not allowed within the boundary of a National Wildlife Refuge unless specifically authorized by the USFWS, regardless of whether that refuge was established by action of the President or the Secretary of the Interior.

§ 665.124 Permits and fees.

(a) *Applicability.* Unless otherwise specified in this subpart, § 665.13 applies to coral reef ecosystem permits.

(1) *Special permit.* Any person of the United States fishing for, taking or retaining American Samoa coral reef ecosystem MUS must have a special permit if they, or a vessel which they operate, is used to fish for any:

(i) American Samoa coral reef ecosystem MUS in low-use MPAs as defined in § 665.99;

(ii) American Samoa Potentially Harvested Coral Reef Taxa in the coral reef ecosystem management area; or

(iii) American Samoa coral reef ecosystem MUS in the coral reef ecosystem management area with any gear not specifically allowed in this subpart.

(2) *Transshipment permit.* A receiving vessel must be registered for use with a transshipment permit if that vessel is used in the American Samoa coral reef ecosystem management area to land or transship PHCRT, or any American Samoa coral reef ecosystem MUS harvested within low-use MPAs.

(3) *Exceptions.* The following persons are not required to have a permit under this section:

(i) Any person issued a permit to fish under any FEP who incidentally catches American Samoa coral reef ecosystem MUS while fishing for bottomfish MUS, crustacean MUS, western Pacific pelagic MUS, precious coral, or seamount groundfish.

(ii) Any person fishing for American Samoa CHCRT outside of an MPA, who does not retain any incidentally caught American Samoa PHCRT; and

(iii) Any person collecting marine organisms for scientific research as described in § 665.17, or § 600.745 of this chapter.

(b) *Validity.* Each permit will be valid for fishing only in the fishery management area specified on the permit.

(c) *General requirements.* General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits are contained in § 665.13.

(d) *Special permit.* The Regional Administrator shall issue a special permit in accordance with the criteria and procedures specified in this section.

(1) *Application.* An applicant for a special or transshipment permit issued under this section must complete and submit to the Regional Administrator, a Special Coral Reef Ecosystem Fishing Permit Application Form issued by NMFS. Information in the application form must include, but is not limited to, a statement describing the objectives of the fishing activity for which a special permit is needed, including a general description of the expected disposition of the resources harvested under the permit (*i.e.,* stored live, fresh, frozen, preserved; sold for food, ornamental, research, or other use; and a description of the planned fishing operation, including location of fishing and gear operation, amount and species (directed and incidental) expected to be harvested and estimated habitat and protected species impacts).

(2) *Incomplete applications.* The Regional Administrator may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected and completed in writing.

(3) *Issuance.* (i) If an application contains all of the required information, the Regional Administrator will forward copies of the application within 30 days to the Council, the USCG, the fishery management agency of the affected state, and other interested parties who have identified themselves to the Council, and the USFWS.

(ii) Within 60 days following receipt of a complete application, the Regional Administrator will consult with the Council through its Executive Director, USFWS, and the Director of the affected state fishery management agency concerning the permit application and will receive their recommendations for approval or disapproval of the application based on:

(A) Information provided by the applicant;

(B) The current domestic annual harvesting and processing capacity of the directed and incidental species for which a special permit is being requested;

(C) The current status of resources to be harvested in relation to the overfishing definition in the FEP;

(D) Estimated ecosystem, habitat, and protected species impacts of the proposed activity; and

(E) Other biological and ecological information relevant to the proposal. The applicant will be provided with an opportunity to appear in support of the application.

(iii) Following a review of the Council's recommendation and supporting rationale, the Regional Administrator may:

(A) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the FEP, the national standards, the Endangered Species Act, and other applicable laws, approve or deny a special permit; or

(B) Reject the Council's recommendation, in which case, written reasons will be provided by the Regional Administrator to the Council for the rejection.

(iv) If the Regional Administrator does not receive a recommendation from the Council within 60 days of Council receipt of the permit application, the Regional Administrator can make a determination of approval or denial independently.

(v) Within 30 working days after the consultation in paragraph (d)(3)(ii) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the special permit and, if denied, the reasons for the denial. Grounds for denial of a special permit include the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.

(B) According to the best scientific information available, the directed or incidental catch in the season or location specified under the permit would detrimentally affect any coral reef resource or coral reef ecosystem in a significant way, including, but not limited to issues related to, spawning grounds or seasons, protected species interactions, EFH, and habitat areas of particular concern (HAPC).

(C) Issuance of the special permit would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.

(D) The method or amount of harvest in the season and/or location stated on the permit is considered inappropriate based on previous human or natural impacts in the given area.

(E) NMFS has determined that the maximum number of permits for a given area in a given season has been reached and allocating additional permits in the same area would be detrimental to the resource.

(F) The activity proposed under the special permit would create a significant enforcement problem.

(vi) The Regional Administrator may attach conditions to the special permit, if it is granted, consistent with the management objectives of the FEP, including, but not limited to: (A) The maximum amount of each resource that can be harvested and landed during the term of the special permit, including trip limits, where appropriate.

(B) The times and places where fishing may be conducted.

(C) The type, size, and amount of gear which may be used by each vessel operated under the special permit.

(D) Data reporting requirements.

(E) Such other conditions as may be necessary to ensure compliance with the purposes of the special permit consistent with the objectives of the FEP.

(4) *Appeals of permit actions.* (i) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, conditioning, or suspension of their permit or a permit affecting their interests to the Regional Administrator. In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the original action(s) by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(ii) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, or permit holder, as appropriate, and will request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Regional Administrator will rule on the appeal in accordance with the permit eligibility criteria set forth in this section and the FEP, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as deemed appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons therefore, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(iii) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer

designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the **Federal Register.** Such a hearing shall normally be held no later than 30 days following publication of the notice in the **Federal Register,** unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested parties, may appear personally and/or be represented by counsel at the hearing and may submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(iv) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action constitutes final action for the agency for the purposes of the Administrative Procedure Act.

(5) The Regional Administrator may, for good cause, extend any time limit prescribed in this section for a period not to exceed 30 days either upon his or her own motion or upon written request from the Council, appellant or applicant stating the reason(s) therefore.

§ 665.125 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15 of this part, it is unlawful for any person to do any of the following:

(a) Fish for, take, retain, possess or land any American Samoa coral reef ecosystem MUS in any low-use MPA as defined in § 665.99 unless:

(1) A valid permit has been issued for the hand harvester or the fishing vessel operator that specifies the applicable area of harvest;

(2) A permit is not required, as outlined in § 665.124; or

(3) The American Samoa coral reef ecosystem MUS possessed on board the vessel originated outside the management area and this can be demonstrated through receipts of purchase, invoices, fishing logbooks or other documentation.

(b) Fish for, take, or retain any American Samoa coral reef ecosystem MUS species:

(1) That is determined overfished with subsequent rulemaking by the Regional Administrator;

(2) By means of gear or methods prohibited under § 665.127;

(3) In a low-use MPA without a valid special permit; or

(4) In violation of any permit issued under §§ 665.13, 665.123, or 665.124.

(c) Fish for, take, or retain any wild live rock or live hard coral except under a valid special permit for scientific research, aquaculture seed stock collection or traditional and ceremonial purposes by indigenous people.

§ 665.126 Notifications.

Any special permit holder subject to the requirements of this subpart must contact the appropriate NMFS enforcement agent in American Samoa, Guam, or Hawaii at least 24 hours before landing any coral reef ecosystem MUS unit species harvested under a special permit, and report the port and the approximate date and time at which the catch will be landed.

§ 665.127 Allowable gear and gear restrictions.

(a) American Samoa coral reef ecosystem MUS may be taken only with the following allowable gear and methods:

(1) Hand harvest;

(2) Spear;

(3) Slurp gun;

(4) Hand net/dip net;

(5) Hoop net for Kona crab;

(6) Throw net;

(7) Barrier net;

(8) Surround/purse net that is attended at all times;

(9) Hook-and-line (includes handline (powered or not), rod-and-reel, and trolling);

(10) Crab and fish traps with vessel ID number affixed; and (11) Remote-operating vehicles/submersibles.

(b) American Samoa coral reef ecosystem MUS may not be taken by means of poisons, explosives, or intoxicating substances. Possession or use of these materials by any permit holder under this subpart who is established to be fishing for coral reef ecosystem MUS in the management area is prohibited.

(c) Existing FEP fisheries shall follow the allowable gear and methods outlined in their respective plans.

(d) Any person who intends to fish with new gear not included in this section must describe the new gear and its method of deployment in the special permit application. A decision on the permissibility of this gear type will be made by the Regional Administrator after consultation with the Council and the director of the affected state fishery management agency.

§ 665.128 Gear identification.

(a) The vessel number must be affixed to all fish and crab traps on board the vessel or deployed in the water by any vessel or person holding a permit under §§ 665.13 or 665.124 or that is otherwise established to be fishing for American Samoa coral reef ecosystem MUS in the management area.

(b) *Enforcement action.* (1) Traps not marked in compliance with paragraph (a) of this section and found deployed in the coral reef ecosystem management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

(2) Unattended surround nets or bait seine nets found deployed in the coral reef ecosystem management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

§§ 665.129–665.139 [Reserved]

§ 665.140 American Samoa Crustacean Fisheries [Reserved].

§ 665.141 Definitions.

As used in §§ 665.140 through 665.159:

American Samoa crustacean management unit species means the following crustaceans:

Samoan name	English common name	Scientific name
Ula	spiny lobster	*Panulirus marginatus, Panulirus penicillatus.*
Papata	slipper lobster	Scyllaridae.
pa'a	Kona crab	*Ranina ranina.*
	deepwater shrimp	*Heterocarpus* spp.

Crustacean Permit Area 3 (Permit Area 3) includes the EEZ around American Samoa.

§ 665.142 Permits.

(a) *Applicability.* (1) The owner of any vessel used to fish for lobster in Permit Area 3 must have a permit issued for that vessel.

(2) The owner of any vessel used to fish for deepwater shrimp in Crustacean Permit Area 3 must have a permit issued for that vessel.

(b) *General requirements.* General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits issued under this section, as applicable, are contained in § 665.13.

(c) *Application.* An application for a permit required under this section will be submitted to PIRO as described in § 665.13. If the application for a limited access permit is submitted on behalf of a partnership or corporation, the application must be accompanied by a supplementary information sheet obtained from PIRO and contain the names and mailing addresses of all partners or shareholders and their respective percentage of ownership in the partnership or corporation.

§ 665.143 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, in Crustacean Permit Area 3, it is unlawful for any person to fish for, take, or retain deepwater shrimp without a permit issued under § 665.142.

§ 665.144 Notifications.

(a) The operator of any vessel fishing subject to the requirements of this subpart must:

(1) Report, not less than 24 hours, but not more than 36 hours, before landing, the port, the approximate date and the approximate time at which spiny and slipper lobsters will be landed.

(2) Report, not less than 6 hours and not more than 12 hours before offloading, the location and time that offloading of spiny and slipper lobsters will begin.

(b) The Regional Administrator will notify permit holders of any change in the reporting method and schedule required in paragraphs (a)(1) and (a)(2) of this section at least 30 days prior to the opening of the fishing season.

§ 665.145 At-sea observer coverage.

All fishing vessels subject to §§ 665.140 through 665.145 and subpart A of this part must carry an observer when requested to do so by the Regional Administrator.

§§ 665.146–665.159 [Reserved]

§ 665.160 American Samoa precious coral fisheries [Reserved].

§ 665.161 Definitions.

As used in §§ 665.160 through 665.169:

American Samoa precious coral management unit species (American Samoa precious coral MUS) means any coral of the genus *Corallium* in addition to the following species of corals:

Local name	English common name	Scientific name
Amu piniki-mumu	Pink coral (also known as red coral)	*Corallium secundum, Corallium regale, Corallium laauense.*
Amu auro	Gold coral	*Gerardia* spp., *Callogorgia gilberti, Narella* spp., *Calyptrophora* spp.
Amu ofe	Bamboo coral	*Lepidisis olapa, Acanella* spp.
Amu ofe	Black coral	*Antipathes dichotoma, Antipathes grandis, Antipathes ulex.*

American Samoa precious coral permit area means the area encompassing the precious coral beds within the U.S. EEZ around American Samoa. Each bed is designated by a permit area code and assigned to one of the following four categories:

(1) Established beds. [*Reserved*]

(2) Conditional beds. [*Reserved*]

(3) Refugia. [*Reserved*]

(4) Exploratory Area. Permit Area X–P–AS includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of American Samoa.

§ 665.162 Permits.

(a) Any vessel of the United States fishing for, taking, or retaining American Samoa precious coral MUS in any American Samoa precious coral permit area must have a permit issued under § 665.13.

(b) Each permit will be valid for fishing only in the permit area specified on the permit. Precious Coral Permit Areas are defined in § 665.161.

(c) No more than one permit will be valid for any one vessel at any one time.

(d) No more than one permit will be valid for any one person at any one time.

(e) The holder of a valid permit to fish one permit area may obtain a permit to fish another permit area only upon surrendering to the Regional Administrator any current permit for the precious coral fishery issued under § 665.13.

(f) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits for the precious coral fishery are contained in § 665.13.

§ 665.163 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and in § 665.15, it is unlawful for any person to:

(a) Use any vessel to fish for, take, retain, possess or land precious coral in any precious coral permit area, unless a permit has been issued for that vessel and area as specified in § 665.13 and that permit is on board the vessel.

(b) Fish for, take, or retain any species of American Samoa precious coral MUS in any precious coral permit area:

(1) By means of gear or methods prohibited by § 665.164.

(2) In refugia specified in § 665.161.

(3) In a bed for which the quota specified in § 665.167 has been attained.

(4) In violation of any permit issued under § 665.13 or § 665.17.

(5) In a bed that has been closed pursuant to §§ 665.166 or 665.169.

(c) Take and retain, possess, or land any live pink coral or live black coral from any precious coral permit area that is less than the minimum height specified in § 665.165 unless:

(1) A valid EFP was issued under § 665.17 for the vessel and the vessel was operating under the terms of the permit; or

(2) The coral originated outside coral beds listed in this paragraph, and this can be demonstrated through receipts of purchase, invoices, or other documentation.

§ 665.164 Gear restrictions.

Only selective gear may be used to harvest coral from any precious coral permit area.

§ 665.165 Size restrictions.

The height of a live coral specimen shall be determined by a straight line measurement taken from its base to its most distal extremity. The stem diameter of a living coral specimen shall be determined by measuring the greatest diameter of the stem at a point no less than 1 inch (2.54 cm) from the top surface of the living holdfast.

(a) Live pink coral harvested from any precious coral permit area must have attained a minimum height of 10 inches (25.4 cm).

(b) *Black coral.* Live black coral harvested from any precious coral permit area must have attained either a minimum stem diameter of 1 inch (2.54 cm), or a minimum height of 48 inches (122 cm).

§ 665.166 Closures.

(a) If the Regional Administrator determines that the harvest quota for any coral bed will be reached prior to the end of the fishing year, NMFS shall publish a notice to that effect in the **Federal Register** and shall use other means to notify permit holders. Any such notice must indicate the reason for the closure, the bed being closed, and the effective date of the closure.

(b) A closure is also effective for a permit holder upon the permit holder's actual harvest of the applicable quota.

§ 665.167 Quotas.

(a) General. The quotas limiting the amount of precious coral that may be taken in any precious coral permit area during the fishing year are listed in § 665.167(d). Only live coral is counted toward the quota. The accounting period for all quotas begins July 1, 1983.

(b) *Conditional bed closure.* A conditional bed will be closed to all nonselective coral harvesting after the quota for one species of coral has been taken.

(c) *Reserves and reserve release.* The quotas for exploratory area X–P–AS will be held in reserve for harvest by vessels of the United States in the following manner:

(1) At the start of the fishing year, the reserve for the American Samoa exploratory area will equal the quota minus the estimated domestic annual harvest for that year.

(2) As soon as practicable after December 31 each year, the Regional Administrator will determine the amount harvested by vessels of the United States between July 1 and December 31 of the year that just ended on December 31.

(3) NMFS will release to TALFF an amount of precious coral for each exploratory area equal to the quota minus two times the amount harvested by vessels of the United States in that July 1–December 31 period.

(4) NMFS will publish in the **Federal Register** a notification of the Regional Administrator's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

(d) The American Samoa exploratory permit area X–P–AS has an annual quota of 1,000 kg for all American Samoa precious coral MUS combined with the exception of black corals.

§ 665.168 Seasons.

The fishing year for precious coral begins on July 1 and ends on June 30 the following year.

§ 665.169 Gold coral harvest moratorium.

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2013.

Subpart C—Hawaii Fisheries

§ 665.198 Management area.

The Hawaii fishery management area is the EEZ seaward of the State of Hawaii, including the Main Hawaiian Islands (MHI) and Northwestern Hawaiian Islands (NWHI), with the inner boundary a line coterminous with the seaward boundaries of the State of Hawaii and the outer boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

§ 665.199 Area restrictions [Reserved].

§ 665.200 Hawaii bottomfish and seamount groundfish fisheries [Reserved].

§ 665.201 Definitions.

As used in §§ 665.200 through 665.219:

Hawaii bottomfish management unit species (Hawaii bottomfish MUS) means the following species:

Local name	English common name	Scientific name
Lehi	silver jaw jobfish	*Aphareus rutilans.*
Uku white papio, ulua au	gray jobfish	*Aprion virescens.*
kea	giant trevally	*Caranx ignobilis.*
ulua la'uli	black jack	*Caranx lugubris.*
hāpu'upu'u	sea bass	*Epinephalus quernus.*
Ehuonaga, 'ula'ula	red snapper	*Etelis carbunculus.*
koa'e	longtail snapper	*Etelis coruscans.*
ta'ape	blue stripe snapper	*Lutjanus kasmira.*
kalekale	yellowtail snapper	*Pristipomoides auricilla.*
'ōpakapaka	pink snapper	*Pristipomoides filamentosus.*
kalekale	pink snapper	*Pristipomoides seiboldii.*
gindai	snapper	*Pristipomoides zonatus.*
pig ulua, butaguchi	thicklip trevally	*Pseudocaranx dentex.*
kahala	amberjack	*Seriola dumerili.*

Hawaii restricted bottomfish species fishing year means the year beginning at 0001 HST on September 1 and ending at 2400 HST on August 31 of the next calendar year.

Main Hawaiian Islands non-commercial bottomfish permit means the permit required by § 665.203(a)(2) to own or fish from a vessel that is used in any non-commercial vessel-based fishing, landing, or transshipment of any Hawaii bottomfish MUS in the MHI Management Subarea.

Protected species study zone means the waters within 50 nm, as designated by the Regional Administrator pursuant to § 665.208, around the following islands of the NWHI and as measured from the following coordinates:

Name	N. lat.	W. long.
Nihoa Island	23°05′	161°55′
Necker Island	23°35′	164°40′
French Frigate Shoals	23°45′	166°15′
Gardner Pinnacles	25°00′	168°00′
Maro Reef	25°25′	170°35′
Laysan Island	25°45′	171°45′
Lisianski Island	26°00′	173°55′
Pearl and Hermes Reef	27°50′	175°50′
Midway Island	28°14′	177°22′
Kure Island	28°25′	178°20′

Seamount Groundfish means the following species:

Common name	Scientific name
Armorhead	*Pseudopentaceros wheeleri.*
Alfonsin	*Beryx splendens.*
Raftfish	*Hyperoglyphe japonica.*

§ 665.202 Management subareas.

(a) The Hawaii fishery management area is divided into subareas with the following designations and boundaries:

(1) Main Hawaiian Islands means the U.S. EEZ around the Hawaiian Archipelago lying to the east of 161°20′ W. long.

(2) Northwestern Hawaiian Islands means the EEZ around the Hawaiian Archipelago lying to the west of 161°20′ W. long. For the purposes of regulations issued under this subpart, Midway Island is treated as part of the NWHI Subarea.

(i) Ho'omalu Zone means that portion of the EEZ around the NWHI west of 165° W. long.

(ii) Mau Zone means that portion of the EEZ around the NWHI between 161°20′ W. long. and 165° W. long.

(3) Hancock Seamount means that portion of the EEZ in the Northwestern Hawaiian Islands west of 180°00′ W. long. and north of 28°00′ N. lat.

(b) The inner boundary of each management subarea is a line coterminous with the seaward boundaries of the State of Hawaii.

(c) The outer boundary of each management subarea is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

§ 665.203 Permits.

(a) *Applicability*—(1) *Northwestern Hawaiian Islands.* The owner of any vessel used to fish for, land, or transship Hawaii bottomfish MUS shoreward of the outer boundary of the NWHI subarea must have a permit issued under this section, and the permit must be registered for use with that vessel. PIRO will not register a single vessel for use with a Ho'omalu Zone permit and a Mau Zone permit at the same time. Mau Zone permits issued before June 14, 1999, became invalid June 14, 1999, except that a permit issued to a person who submitted a timely application under paragraph (b)(3) of this section is valid until the permit holder either receives a Mau Zone limited entry permit or until final agency action is taken on the permit holder's application. The Ho'omalu Zone and the Mau Zone limited entry systems described in this section are subject to abolition, modification, or additional effort limitation programs.

(2) *MHI non-commercial.* The owner of a vessel that is used for and any person who participates in non-commercial, vessel-based fishing, landing, or transshipment of Hawaii bottomfish MUS in the MHI management subarea is required to obtain an MHI non-commercial bottomfish permit or a State of Hawaii Commercial Marine License. If one or more persons on a vessel-based bottomfish fishing trip holds an MHI non-commercial permit, then the entire trip is considered non-commercial, and not commercial. However, if any commercial fishing occurs during or as a result of a vessel-based fishing trip, then the fishing trip is considered commercial, and not non-commercial. Charter boat customers are not subject to the requirements of the section.

(b) *Submission.* (1) An application for a permit required under this section must be submitted to PIRO as described in § 665.13.

(2) Ho'omalu Zone limited access permit. In addition to an application under § 665.13(c), each applicant for a Ho'omalu Zone permit must also submit a supplementary information sheet provided by PIRO, which must be signed by the vessel owner or a designee and include the following information:

(i) The qualification criterion that the applicant believes he or she meets for issuance of a limited access permit;

(ii) A copy of landings receipts or other documentation, with a certification from a state or Federal agency that this information is accurate, to demonstrate participation in the NWHI bottomfish fishery; and

(iii) If the application is filed by a partnership or corporation, the names of each of the individual partners or shareholders and their respective percentages of ownership of the partnership or corporation.

(3) Mau Zone limited access permit. PIRO will not accept applications for a new Mau Zone permit after June 14, 1999. In addition to an application under § 665.13(c), each applicant for a Mau Zone permit must also submit a supplementary information sheet provided by PIRO, which must be signed by the vessel owner or a designee and include the following information:

(i) The qualification criterion that the applicant believes he or she meets for issuance of a limited access permit;

(ii) Copy of State of Hawaii catch report(s) to demonstrate that the permitted vessel had made qualifying landings of bottomfish from the Mau Zone; and

(iii) If the application is filed by a partnership or corporation, the names of each of the individual partners or shareholders and their respective percentage of ownership of the partnership or corporation.

(c) Sale or transfer of Ho'omalu limited access permits to new vessel owners.

(1) A Ho'omalu zone permit may not be sold or otherwise transferred to a new owner.

(2) A Ho'omalu zone permit or permits may be held by a partnership or corporation. If 50 percent or more of the ownership of the vessel passes to persons other than those listed in the original application, the permit will lapse and must be surrendered to the Regional Administrator.

(d) Transfer of Ho'omalu Zone limited access permits to replacement vessels.

(1) Upon application by the owner of a permitted vessel, the Regional Administrator will transfer that owner's permit to a replacement vessel owned by that owner, provided that the replacement vessel does not exceed 60

ft (18.3 m) LOA. The replacement vessel must be put into service no later than 12 months after the owner applies for the transfer, or the transfer shall be void.

(2) An owner of a permitted vessel may apply to the Regional Administrator for transfer of that owner's permit to a replacement vessel greater than 60 ft (18.3 m) LOA. The Regional Administrator may transfer the permit upon determining, after consultation with the Council and considering the objectives of the limited access program, that the replacement vessel has catching power that is comparable to the rest of the vessels holding permits for the fishery, or has catching power that does not exceed that of the original vessel, and that the transfer is not inconsistent with the objectives of the program. The Regional Administrator shall consider vessel length, range, hold capacity, gear limitations, and other appropriate factors in making determinations of catching power equivalency and comparability of the catching power of vessels in the fishery.

(e) Ho'omalu Zone limited access permit renewal.

(1) A qualifying landing for Ho'omalu Zone permit renewal is a landing of at least 2,500 lb (1,134 kg) of Hawaii bottomfish MUS from the Ho'omalu Zone or a landing of at least 2,500 lb (1,134 kg) of fish from the Ho'omalu Zone, of which at least 50 percent by weight was Hawaii bottomfish MUS. A permit is eligible for renewal for the next calendar year if the vessel covered by the permit made three or more qualifying landings during the current calendar year.

(2) The owner of a permitted vessel that did not make three or more qualifying landings of bottomfish in a year may apply to the Regional Administrator for a waiver of the landing requirement. If the Regional Administrator finds that failure to make three landings was due to circumstances beyond the owner's control, the Regional Administrator may renew the permit. A waiver may not be granted if the failure to make three landings was due to general economic conditions or market conditions, such that the vessel operations would not be profitable.

(f) Issuance of new Ho'omalu Zone limited access permits. The Regional Administrator may issue new Ho'omalu Zone limited access permits under § 665.13 if the Regional Administrator determines, in consultation with the Council, that bottomfish stocks in the Ho'omalu Zone are able to support additional fishing effort.

(g) Eligibility for new Ho'omalu Zone limited access permits. When the Regional Administrator has determined that new permits may be issued, they shall be issued to applicants based upon eligibility, determined as follows:

(1) *Point system.* (i) Two points will be assigned for each year in which the applicant was owner or captain of a vessel that made three or more of any of the following types of landings in the NWHI:

(A) Any amount of Hawaii bottomfish MUS, regardless of weight, if made on or before August 7, 1985;

(B) At least 2,500 lb (1,134 kg) of Hawaii bottomfish MUS, if made after August 7, 1985; or

(C) At least 2,500 lb (1,134 kg) of any fish lawfully harvested from the NWHI, of which at least 50 percent by weight was bottomfish, if made after August 7, 1985.

(ii) One point will be assigned for each year in which the applicant was owner or captain of a vessel that landed at least 6,000 lb (2,722 kg) of bottomfish from the MHI.

(iii) For any one year, points will be assigned under either paragraph (g)(1)(i) or (g)(1)(ii) of this section, but not under both paragraphs.

(iv) Before the Regional Administrator issues a Ho'omalu zone permit to fish for bottomfish under this section, the primary operator and relief operator named on the application form must have completed a protected species workshop conducted by NMFS.

(2) *Restrictions.* An applicant must own at least a 25 percent share in the vessel that the permit would cover, and only one permit will be assigned to any vessel.

(3) *Order of issuance.* New permits shall be awarded to applicants in descending order, starting with the applicant with the largest number of points. If two or more persons have an equal number of points, and there are insufficient new permits for all such applicants, the new permits shall be awarded by the Regional Administrator through a lottery.

(4) *Notification.* The Regional Administrator shall place a notice in the **Federal Register** and shall use other means to notify prospective applicants of the opportunity to file applications for new permits under this program.

(h) Eligibility for new Mau Zone limited access permits.

(1) PIRO will issue an initial Mau Zone permit to a vessel owner who qualifies for at least three points under the following point system:

(i) An owner who held a Mau Zone permit on or before December 17, 1991, and whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS on or before December 17, 1991, shall be assigned 1.5 points.

(ii) An owner whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS during 1991 shall be assigned 0.5 point.

(iii) An owner whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS during 1992 shall be assigned 1.0 point.

(iv) An owner whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS during 1993 shall be assigned 1.5 points.

(v) An owner whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS during 1994 shall be assigned 2.0 points.

(vi) An owner whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS during 1995 shall be assigned 2.5 points.

(vii) An owner whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS during 1996 shall be assigned 3.0 points.

(viii) Before PIRO issues a Mau Zone permit to fish for bottomfish under this section, the primary operator and relief operator named on the application form must have completed a protected species workshop conducted by NMFS.

(2) For purposes of this paragraph (h), a "qualifying landing" means any amount of Hawaii bottomfish MUS lawfully harvested from the Mau Zone and offloaded for sale. No points shall be assigned to an owner for any qualifying landings reported to the State of Hawaii more than 1 year after the landing.

(3) More than one Mau Zone permit may be issued to an owner of two or more vessels, provided each of the owner's vessels for which a permit will be registered for use has made the required qualifying landings for the owner to be assigned at least three eligibility points.

(4) A Mau Zone permit holder who does not own a vessel at the time initial permits are issued must register the permit for use with a vessel owned by the permit holder within 12 months from the date the permit was issued. In the interim, the permit holder may register the permit for use with a leased or chartered vessel. If within 12 months of initial permit issuance, the permit holder fails to apply to PIRO to register the permit for use with a vessel owned by the permit holder, then the permit shall expire.

(5) For each of paragraphs (h)(1)(i) through (h)(1)(viii) of this section, PIRO shall assign points based on the landings of one permitted vessel to only one owner if the vessel did not have

multiple owners during the time frame covered by the subordinate paragraphs. If a vessel had multiple owners during a time frame covered by any of paragraphs (h)(1)(i) through (h)(1)(viii) of this section (including joint owners, partners, or shareholders of a corporate owner), PIRO will assign the points for that subordinate paragraph to a single owner if only one owner submits an application with respect to the landings of that vessel during that time frame. If multiple owners submit separate applications with respect to the same landings of the same vessel during the same time frame, then PIRO shall:

(i) Adhere to any written agreement between the applicants with respect to who among them shall be assigned the aggregate point(s) generated by landings during such time frame(s), or

(ii) If there is no agreement:

(A) Shall issue the applicants a joint permit provided the vessel's landings during such time frames generated at least three points, or

(B) In the event the vessel's landings during such time frame(s) generated less than three points, shall not assign any points generated by the vessel's landings during such time frame(s).

(i) Ownership requirements and registration of Mau Zone limited access permits for use with other vessels.

(1) A Mau Zone permit may be held by an individual, partnership, or corporation. No more than 49 percent of the underlying ownership interest in a Mau Zone permit may be sold, leased, chartered, or otherwise transferred to another person or entity. If more than 49 percent of the underlying ownership of the permit passes to persons or entities other than those listed in the original permit application supplemental information sheet, then the permit expires and must be surrendered to PIRO.

(2) A Mau Zone permit holder may apply under § 665.13 to PIRO to register the permit for use with another vessel if that vessel is owned by the permit holder, and is no longer than 60 ft (18.3 m) LOA.

(3) If a Mau Zone permit holder sells the vessel for which the permit is registered for use, the permit holder must, within 12 months of the date of sale, apply to PIRO to register the permit for use with a vessel owned by the permit holder. If the permit holder has not applied to register a replacement vessel within 12 months, then the permit expires.

(4) If a permitted vessel owned by the permit holder is sold or becomes unseaworthy, the Mau Zone permit with which the vessel was registered may be registered for use with a leased or chartered vessel for a period not to exceed 12 months from the date of registration of the leased or chartered vessel. If by the end of that 12-month period the permit holder fails to apply to PIRO to register the permit for use with a vessel owned by the permit holder, then the permit expires.

(j) Mau Zone limited access permit renewal.

(1) A Mau Zone permit will be eligible for renewal if the vessel for which the permit is registered for use made at least five separate fishing trips with landings of at least 500 lb (227 kg) of Hawaii bottomfish MUS per trip during the calendar year. Only one landing of bottomfish MUS per fishing trip to the Mau Zone will be counted toward the landing requirement.

(2) If the vessel for which the permit is registered for use fails to meet the landing requirement of paragraph (j)(1) of this section, the owner may apply to the Regional Administrator for a waiver of the landing requirement. Grounds for a waiver are limited to captain incapacitation, vessel breakdowns, and the loss of the vessel at sea if the event prevented the vessel from meeting the landing requirement. Unprofitability is not sufficient for waiver of the landing requirement.

(3) Failure of the permit holder to register a vessel for use under the permit does not exempt a permit holder from the requirements specified in this paragraph.

(k) Appeals of permit actions.

(1) Except as provided in subpart A of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, or revocation of his or her permit to the Regional Administrator.

(2) In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action appealed, and the reasons therefore, and must be submitted within 30 days of the appealed action. The appellant may request an informal hearing on the appeal.

(3) The Regional Administrator, in consultation with the Council, will decide the appeal in accordance with the FEP and implementing regulations and based upon information relative to the application on file at NMFS and the Council, the summary record kept of any hearing, the hearing officer's recommended decision, if any, and any other relevant information.

(4) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose. The applicant or permit holder may appear personally and/or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(5) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. The Regional Administrator's decision on the application is the final administrative decision of the Department of Commerce, and is effective on the date the Administrator signs the decision.

§ 665.204 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person to do any of the following:

(a) Fish for Hawaii bottomfish or seamount groundfish MUS using gear prohibited under § 665.206.

(b) Fish for, or retain on board a vessel, Hawaii bottomfish MUS in the Ho'omalu Zone or the Mau Zone without the appropriate permit registered for use with that vessel issued under § 665.13.

(c) Serve as primary operator or relief operator on a vessel with a Mau or Ho'omalu Zone permit without completing a protected species workshop conducted by NMFS, as required by § 665.203.

(d) Fail to notify the USCG at least 24 hours prior to making any landing of bottomfish taken in the Ho'omalu Zone, as required by § 665.205.

(e) Fish within any protected species study zone in the NWHI without notifying the Regional Administrator of the intent to fish in these zones, as required under § 664.205.

(f) Falsify or fail to make or file reports of all fishing activities shoreward of the outer boundary of the MHI management subarea, in violation of § 665.14(a) or (b).

(g) Own a vessel or fish from a vessel that is used to fish non-commercially for any Hawaii bottomfish MUS in the MHI management subarea without either a MHI non-commercial bottomfish permit or a State of Hawaii Commercial Marine License, in violation of §§ 665.2 or 665.203(a)(2).

(h) Fish for or possess any Hawaii Restricted Bottomfish Species as specified in § 665.210, in the MHI management subarea after a closure of the fishery, in violation of § 665.211.

(i) Sell or offer for sale any Hawaii Restricted Bottomfish Species, as

specified in § 665.210, after a closure of the fishery, in violation of § 665.211.

(j) Harvest, possess, or land more than a total of five fish (all species combined) identified as Hawaii Restricted Bottomfish Species in § 665.210 from a vessel in the MHI management subarea, while holding a MHI non-commercial bottomfish permit, or while participating as a charter boat customer, in violation of § 665.212.

§ 665.205 Notification.

(a) The owner or operator of a fishing vessel subject to § 665.203(a)(1) must inform PIRO at least 72 hours (not including weekends and holidays) before leaving port, of his or her intent to fish within the protected species study zones defined in § 665.201. The notice must include the name of the vessel, name of the operator, intended departure and return date, and a telephone number at which the owner or operator may be contacted during the business day (8 a.m. to 5 p.m.) to indicate whether an observer will be required on the subject fishing trip.

(b) The operator of a fishing vessel that has taken Hawaii bottomfish MUS in the Ho'omalu Zone must contact the USCG, by radio or otherwise, at the 14th District, Honolulu, HI; Pacific Area, San Francisco, CA; or 17th District, Juneau, AK, at least 24 hours before landing, and report the port and the approximate date and time at which the bottomfish will be landed.

§ 665.206 Gear restrictions.

(a) *Bottom trawls and bottom set gillnets.* Fishing for Hawaii bottomfish and seamount groundfish MUS with bottom trawls and bottom set gillnets is prohibited.

(b) *Possession of gear.* Possession of a bottom trawl and bottom set gillnet by any vessel having a permit under § 665.203 or otherwise established to be fishing for Hawaii bottomfish or seamount groundfish MUS in the management subareas is prohibited.

(c) *Poisons and explosives.* The possession or use of any poisons, explosives, or intoxicating substances for the purpose of harvesting Hawaii bottomfish and seamount groundfish MUS is prohibited.

§ 665.207 At-sea observer coverage.

(a) All fishing vessels subject to §§ 665.200 though 665.212 must carry an observer when directed to do so by the Regional Administrator.

(b) PIRO will advise the vessel owner or operator of any observer requirement within 72 hours (not including weekends or holidays) of receipt of the notice provided pursuant to § 665.205(a). If an observer is required, the owner or operator will be informed of the terms and conditions of observer coverage, and the time and place of embarkation of the observer.

(c) All observers must be provided with sleeping, toilet, and eating accommodations at least equal to that provided to a full crew member. A mattress or futon on the floor, or a cot, is not acceptable in place of a regular bunk. Meal and other galley privileges must be the same for the observer as for other crew members.

(d) Female observers on a vessel with an all-male crew must be accommodated either in a single-person cabin or, if reasonable privacy can be ensured by installing a curtain or other temporary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing of common facilities must be established and approved by the Regional Administrator prior to the vessel's departure from port.

§ 665.208 Protected species conservation.

The Regional Administrator may change the size of the protected species study zones defined in § 665.201 of this subpart:

(a) If the Regional Administrator determines that a change in the size of the study zones would not result in fishing for bottomfish in the NWHI that would adversely affect any species listed as threatened or endangered under the ESA.

(b) After consulting with the Council.

(c) Through notification in the **Federal Register** published at least 30 days prior to the effective date or through actual notice to the permit holders.

§ 665.209 Fishing moratorium on Hancock Seamount.

Fishing for Hawaii bottomfish and seamount groundfish MUS on the Hancock Seamount is prohibited through August 31, 2010.

§ 665.210 Hawaii restricted bottomfish species.

Hawaii restricted bottomfish species means the following species:

Local name	English common name	Scientific name
lehi	silver jaw jobfish	*Aphareus rutilans.*
ehu	squirrelfish snapper	*Etelis carbunculus.*
onaga	longtail snapper	*Etelis coruscans.*
opakapaka	Pink snapper	*Pristipomoides filamentosus.*
kalekale	snapper	*Pristipomoides sieboldii.*
gindai	snapper	*Pristipomoides zonatus.*
hapu'upu'u	sea bass	*Epinephelus quernus.*

§ 665.211 Total Allowable Catch (TAC) limit.

(a) TAC limits will be set annually for the fishing year by NMFS, as recommended by the Council, based on the best available scientific, commercial, and other information, and taking into account the associated risk of overfishing.

(b) The Regional Administrator shall publish a notice indicating the annual TAC limit in the **Federal Register** by August 31 of each year, and shall use other means to notify permit holders of the TAC limit for the year.

(c) When the TAC limit specified in this section is projected to be reached based on analyses of available information, the Regional Administrator shall publish a notice to that effect in the **Federal Register** and shall use other means to notify permit holders. The notice will include an advisement that the fishery will be closed beginning at a specified date, which is not earlier than 14 days after the date of filing the closure notice for public inspection at the Office of the Federal Register, until the end of the fishing year in which the TAC is reached.

(d) On and after the date specified in § 665.211(c), no person may fish for or possess any Hawaii Restricted Bottomfish Species as specified in § 665.210 in the MHI management subarea, except as otherwise allowed in this section.

(e) On and after the date specified in § 665.211(c), no person may sell or offer for sale Hawaii Restricted Bottomfish

Species as specified in § 665.210, except as otherwise authorized by law.

(f) Fishing for, and the resultant possession or sale of, Hawaii Restricted Bottomfish Species by vessels legally registered to Mau Zone, Hoʻomalu Zone, or PRIA bottomfish fishing permits and conducted in compliance with all other laws and regulations, is exempted from this section.

§ 665.212 Non-commercial bag limits.

No more than a total of five fish (all species combined) identified as Hawaii Restricted Bottomfish Species as specified in § 665.210, may be harvested, possessed, or landed by any individual participating in a non-commercial vessel-based fishing trip in the MHI management subarea. Charter boat customers are also subject to the bag limit.

§§ 665.213–665.219 [Reserved]

§ 665.220 Hawaii coral reef ecosystem fisheries [Reserved].

§ 665.221 Definitions.

As used in §§ 665.220 through 665.239:

Hawaii coral reef ecosystem management unit species (Hawaii coral reef ecosystem MUS) means all of the Currently Harvested Coral Reef Taxa and Potentially Harvested Coral Reef Taxa listed in this section and which spend the majority of their non-pelagic (post-settlement) life stages within waters less than or equal to 50 fathoms in total depth.

Hawaii Currently Harvested Coral Reef Taxa:

Family name	Local name	English common name	Scientific name
Acanthuridae (Surgeonfishes)	naʻenaʻe	orange-spot surgeonfish	*Acanthurus olivaceus.*
	Pualu	yellowfin surgeonfish	*Acanthurus xanthopterus.*
	Manini	convict tang	*Acanthurus triostegus.*
	Palani	eye-striped surgeonfish	*Acanthurus dussumieri.*
	Maiko	blue-lined surgeon	*Acanthurus nigroris.*
	maiko, maikoiko	whitebar surgeonfish	*Acanthurus leucopareius.*
		whitecheek surgeonfish	*Acanthurus nigricans.*
	ʻapi	white-spotted surgeonfish	*Acanthurus guttatus.*
	Pualu	ringtail surgeonfish	*Acanthurus blochii.*
	maiʻiʻi	brown surgeonfish	*Acanthurus nigrofuscus.*
	Kole	yellow-eyed surgeonfish	*Ctenochaetus strigosus.*
	NA	striped bristletooth	*Ctenochaetus striatus.*
	Kala	bluespine unicornfish	*Naso unicornus.*
	kalalei, umaumalei	orangespine unicornfish	*Naso lituratus.*
Acanthuridae (Surgeonfishes)	kala holo	black tongue unicornfish	*Naso hexacanthus.*
	Kala	whitemargin unicornfish	*Naso annulatus.*
	kala lolo	spotted unicornfish	*Naso brevirostris.*
		gray unicornfish	*Naso caesius.*
	lauʻipala	yellow tang	*Zebrasoma flavescens.*
Balistidae (Triggerfish)	humuhumu hiʻukole	pinktail triggerfish	*Melichthys vidua.*
	humuhumu ʻeleʻele	black triggerfish	*Melichthys niger.*
	humuhumu nukunuku apuaʻa	picassofish	*Rhinecanthus aculeatus.*
		bridled triggerfish	*Sufflamen fraenatum.*
Carangidae (Jacks)	akule, hahalu	bigeye scad	*Selar crumenophthalmus.*
	ʻopelu, ʻopelu mama	mackerel scad	*Decapterus macarellus.*
Carcharhinidae (Sharks)	Manō	grey reef shark	*Carcharhinus amblyrhynchos.*
	Manō	galapagos shark	*Carcharhinus galapagensis.*
	Manō	blacktip reef shark	*Carcharhinus melanopterus.*
	manō lalakea	whitetip reef shark	*Triaenodon obesus.*
Holocentridae (Soldierfish/Squirrelfish).	menpachi, ʻuʻu	bigscale soldierfish	*Myripristis berndti.*
	menpachi, ʻuʻu	brick soldierfish	*Myripristis amaena.*
	menpachi, ʻuʻu	yellowfin soldierfish	*Myripristis chryseres.*
	menpachi, ʻuʻu	pearly soldierfish	*Myripristis kuntee.*
	ʻalaʻihi	file-lined squirrelfish	*Sargocentron microstoma.*
	ʻalaʻihi	crown squirrelfish	*Sargocentron diadema.*
	ʻalaʻihi	peppered squirrelfish	*Sargocentron punctatissimum.*
	ʻalaʻihi	blue-lined squirrelfish	*Sargocentron tiere.*
	ʻalaʻihi	Hawaiian squirrelfish	*Sargocentron xantherythrum.*
	ʻalaʻihi	saber or long jaw squirrelfish	*Sargocentron spiniferum.*
	ʻalaʻihi	spotfin squirrelfish	*Neoniphon* spp.
Kuhliidae (Flagtails)	ʻaholehole	Hawaiian flag-tail	*Kuhlia sandvicensis.*
Kyphosidae (Rudderfish)	Nenue	rudderfish	*Kyphosus biggibus.*
	Nenue	rudderfish	*Kyphosus cinerascens.*
	Nenue	rudderfish	*Kyphosus vaigiensis.*
Labridae (Wrasses)	ʻaʻawa	saddleback hogfish	*Bodianus bilunulatus.*
	poʻou	ring-tailed wrasse	*Oxycheilinus unifasciatus.*
	laenihi, nabeta	razor wrasse	*Xyrichtys pavo.*
	kupoupou hoʻu	cigar wrasse	*Cheilio inermis.*
		surge wrasse	*Thalassoma purpureum.*
		red ribbon wrasse	*Thalassoma quinquevittatum.*
		sunset wrasse	*Thalassoma lutescens.*
		rockmover wrasse	*Novaculichthys taeniourus.*
Mullidae (Goatfishes)	Weke	yellow goatfish	*Mulloidichthys* spp.
	weke nono	orange goatfish	*Mulloidichthys pfleugeri.*
	wekeʻula	yellowfin goatfish	*Mulloidichthys vanicolensis.*
	wekeʻa or weke aʻa	yellowstripe goatfish	*Mulloidichthys flavolineatus.*
	kumu, moano	banded goatfish	*Parupeneus* spp.

Family name	Local name	English common name	Scientific name
	Munu	doublebar goatfish	*Parupeneus bifasciatus.*
	moano kea, moano kale	yellowsaddle goatfish	*Parupeneus cyclostomas.*
	Malu	side-spot goatfish	*Parupeneus pleurostigma.*
	Moano	multi-barred goatfish	*Parupeneus multifaciatus.*
	weke pueo	bandtail goatfish	*Upeneus arge.*
Mugilidae (Mullets)	‘ama‘ama	stripped mullet	*Mugil cephalus.*
	Uouoa	false mullet	*Neomyxus leuciscus.*
Muraenidae (Moray eels)	puhi paka	yellowmargin moray eel	*Gymnothorax flavimarginatus.*
	Puhi	giant moray eel	*Gymnothorax javanicus.*
	puhi laumilo	undulated moray eel	*Gymnothorax undulatus.*
	Puhi	dragon eel	*Enchelycore pardalis.*
Octopodidae (Octopus)	he‘e mauli, tako	octopus	*Octopus cyanea.*
	he‘e, tako	octopus	*Octopus ornatus.*
Polynemidae	Moi	threadfin	*Polydactylus sexfilis.*
Priacanthidae (Big-eyes)	‘aweoweo	glasseye	*Heteropriacanthus cruentatus.*
	‘aweoweo	bigeye	*Priacanthus hamrur.*
Scaridae (Parrotfish)	uhu, palukaluka	parrotfish	*Scarus* spp.
	panuhunuhu	stareye parrotfish	*Calotomus carolinus.*
Sphyraenidae (Barracuda)	kawele‘a, kaku	Heller’s barracuda	*Sphyraena helleri.*
	Kaku	great barracuda	*Sphyraena barracuda.*
Turbinidae		green snails turban shells	*Turbo* spp.
Zanclidae	kihikihi	moorish idol	*Zanclus cornutus.*
Chaetodontidae	kikakapu	butterflyfish	*Chaetodon auriga.*
	kikakapu	raccoon butterflyfish	*Chaetodon lunula.*
	kikakapu	saddleback butterflyfish	*Chaetodon ephippium.*
Sabellidae		featherduster worm.	

Hawaii Potentially Harvested Coral Reef Taxa:

Local name	English common name	Scientific name
Hinalea	wrasses (Those species not listed as CHCRT)	Labridae.
Manō	sharks (Those species not listed as CHCRT)	Carcharhinidae, Sphyrnidae.
Hihimanu	rays and skates	Dasyatididae, Myliobatidae.
roi, hapu‘upu ‘u	groupers, seabass (Those species not listed as CHCRT or in BMUS).	Serrandiae.
	tilefishes	Malacanthidae.
dobe, kagami, pa‘opa‘o, papa, omaka, ulua	jacks and scads (Those species not listed as CHCRT or in BMUS).	Carangidae.
‘u‘u	solderfishes and squirrelfishes (Those species not listed as CHCRT).	Holocentridae.
weke, moano, kumu	goatfishes (Those species not listed as CHCRT).	Mullidae.
na‘ena ‘e, maikoiko	surgeonfishes (Those species not listed as CHCRT).	Acanthuridae.
	remoras	Echeneidae.
Puhi	eels (Those species not listed as CHCRT)	Muraenidae, Congridae, Ophichthidae.
‘upapalu	cardinalfishes	Apogonidae.
	herrings	Clupeidae.
Nehu	anchovies	Engraulidae.
	coral crouchers	Caracanthidae.
‘o‘opu	gobies	Gobiidae.
to‘au	snappers (Those species not listed as CHCRT or in BMUS).	Lutjanidae.
Nunu	trumpetfish	*Aulostomus chinensis.*
nunu peke	cornetfish	*Fistularia commersoni.*
Kihikihi	moorish Idols	Zanclidae.
Kikakapu	butterflyfishes	Chaetodontidae.
	angelfishes	Pomacanthidae.
Mamo	damselfishes	Pomacentridae.
nohu, okoze	scorpionfishes, lionfishes	Scorpaenidae.
pa o’o	blennies	Blenniidae.
Kaku	barracudas (Those species not listed as CHCRT).	Sphyraenidae.
	sandperches	Pinguipedidae.
paki‘i	flounders and soles	Bothidae, Soleidae, Pleurnectidae.
Makukana	trunkfishes	Ostraciidae.
humu humu	trigger fishes (Those species not listed as CHCRT).	Balistidae.
Nenue	rudderfishes (Those species not listed as CHCRT).	Kyphosidae.

Local name	English common name	Scientific name
po'opa'a	hawkfishes (Those species not listed as CHCRT).	Cirrhitidae.
'o'opu hue, fugu	puffer fishes and porcupine fishes	Tetradontidae.
	frogfishes	Antennariidae.
	pipefishes and seahorses	Syngnathidae.
namako, lole, wana	sea cucumbers and sea urchins (Those species not listed as CHCRT).	Echinoderms. Mollusca.
ko'a	ahermatypic corals	Azooxanthellates.
ko'a	mushroom corals	Fungiidae.
ko'a	small and large coral polyps	
	soft corals and gorgonians	
	anemones	Actinaria.
	soft zoanthid corals	Zoanthinaria.
	hydroid corals	Solanderidae.
ko'a	lace corals	Stylasteridae.
ula, a'ama, mo'ala, 'alakuma	lobsters, shrimps, mantis shrimps, true crabs and hermit crabs (Those species not listed as CMUS).	Crustaceans.
		Hydrozoans, Bryzoans.
	black-lip pearl oyster	*Pinctada margaritifera.*
	other clams	Other Bivalves.
	sea squirts	Tunicates.
	sponges	Porifera.
tako, he'e	octopi	Cephalopods.
	sea snails	Gastropoda.
	sea slugs	Opistobranchs.
Limu	seaweed	Algae. Live rock.
	segmented worms (Those species not listed as CHCRT).	Annelids.
All other Hawaii coral reef ecosystem MUS that are marine plants, invertebrates, and fishes that are not listed in the Hawaii CHCRT table or are not Hawaii bottomfish, crustacean, precious coral, seamount groundfish or western Pacific pelagic MUS.		

§ 665.222 Management area.

The Hawaii coral reef ecosystem management area is as follows:

(a) The U.S. EEZ around the Hawaiian Archipelago lying to the east of 160°50′ W. long.

(b) The inner boundary of the management area is the seaward boundary of the State of Hawaii.

(c) The outer boundary of the management area is the outer boundary of the U.S. EEZ.

§ 665.223 Relation to other laws.

To ensure consistency between the management regimes of different Federal agencies with shared management responsibilities of fishery resources within the Hawaii coral reef ecosystem management area, fishing for Hawaii coral reef ecosystem MUS is not allowed within the boundary of a National Wildlife Refuge unless specifically authorized by the USFWS, regardless of whether that refuge was established by action of the President or the Secretary of the Interior.

§ 665.224 Permits and fees.

(a) *Applicability.* Unless otherwise specified in this subpart, § 665.13 applies to Hawaii coral reef ecosystem permits.

(1) *Special permit.* Any person of the United States fishing for, taking or retaining Hawaii coral reef ecosystem MUS must have a special permit if they, or a vessel which they operate, is used to fish for any:

(i) Hawaii coral reef ecosystem MUS in low-use MPAs as defined in § 665.199;

(ii) Hawaii Potentially Harvested Coral Reef Taxa in the coral reef ecosystem management area; or

(iii) Hawaii coral reef ecosystem MUS in the coral reef ecosystem management area with any gear not specifically allowed in this subpart.

(2) *Transshipment permit.* A receiving vessel must be registered for use with a transshipment permit if that vessel is used in the Hawaii coral reef ecosystem management area to land or transship PHCRT, or any Hawaii coral reef ecosystem MUS harvested within low-use MPAs.

(3) *Exceptions.* The following persons are not required to have a permit under this section:

(i) Any person issued a permit to fish under any FEP who incidentally catches Hawaii coral reef ecosystem MUS while fishing for bottomfish MUS, crustacean MUS, western Pacific pelagic MUS, precious coral, or seamount groundfish.

(ii) Any person fishing for Hawaii CHCRT outside of an MPA, who does not retain any incidentally caught Hawaii PHCRT; and

(iii) Any person collecting marine organisms for scientific research as described in § 665.17, or § 600.745 of this chapter.

(b) *Validity.* Each permit will be valid for fishing only in the fishery management area specified on the permit.

(c) *General requirements.* General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits are contained in § 665.13.

(d) *Special permit.* The Regional Administrator shall issue a special permit in accordance with the criteria and procedures specified in this section.

(1) *Application.* An applicant for a special or transshipment permit issued under this section must complete and submit to the Regional Administrator a Special Coral Reef Ecosystem Fishing Permit Application Form issued by NMFS. Information in the application form must include, but is not limited to a statement describing the objectives of the fishing activity for which a special permit is needed, including a general description of the expected disposition

of the resources harvested under the permit (*i.e.,* stored live, fresh, frozen, preserved, sold for food, ornamental, research, or other use, and a description of the planned fishing operation, including location of fishing and gear operation, amount and species (directed and incidental) expected to be harvested and estimated habitat and protected species impacts).

(2) *Incomplete applications.* The Regional Administrator may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(3) *Issuance.* (i) If an application contains all of the required information, the Regional Administrator will forward copies of the application within 30 days to the Council, the USCG, the fishery management agency of the affected state, and other interested parties who have identified themselves to the Council, and the USFWS.

(ii) Within 60 days following receipt of a complete application, the Regional Administrator will consult with the Council through its Executive Director, USFWS, and the Director of the affected state fishery management agency concerning the permit application and will receive their recommendations for approval or disapproval of the application based on:

(A) Information provided by the applicant;

(B) The current domestic annual harvesting and processing capacity of the directed and incidental species for which a special permit is being requested;

(C) The current status of resources to be harvested in relation to the overfishing definition in the FEP;

(D) Estimated ecosystem, habitat, and protected species impacts of the proposed activity; and

(E) Other biological and ecological information relevant to the proposal. The applicant will be provided with an opportunity to appear in support of the application.

(iii) Following a review of the Council's recommendation and supporting rationale, the Regional Administrator may:

(A) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the FEP, the national standards, the Endangered Species Act, and other applicable laws, approve or deny a special permit; or

(B) Reject the Council's recommendation, in which case, written reasons will be provided by the Regional Administrator to the Council for the rejection.

(iv) If the Regional Administrator does not receive a recommendation from the Council within 60 days of Council receipt of the permit application, the Regional Administrator can make a determination of approval or denial independently.

(v) Within 30 working days after the consultation in paragraph (d)(3)(ii) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the special permit and, if denied, the reasons for the denial. Grounds for denial of a special permit include the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.

(B) According to the best scientific information available, the directed or incidental catch in the season or location specified under the permit would detrimentally affect any coral reef resource or coral reef ecosystem in a significant way, including, but not limited to, issues related to spawning grounds or seasons, protected species interactions, EFH, and habitat areas of particular concern (HAPC).

(C) Issuance of the special permit would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.

(D) The method or amount of harvest in the season and/or location stated on the permit is considered inappropriate based on previous human or natural impacts in the given area.

(E) NMFS has determined that the maximum number of permits for a given area in a given season has been reached and allocating additional permits in the same area would be detrimental to the resource.

(F) The activity proposed under the special permit would create a significant enforcement problem.

(vi) The Regional Administrator may attach conditions to the special permit, if it is granted, consistent with the management objectives of the FEP, including, but not limited to:

(A) The maximum amount of each resource that can be harvested and landed during the term of the special permit, including trip limits, where appropriate.

(B) The times and places where fishing may be conducted.

(C) The type, size, and amount of gear which may be used by each vessel operated under the special permit.

(D) Data reporting requirements.

(E) Such other conditions as may be necessary to ensure compliance with the purposes of the special permit consistent with the objectives of the FEP.

(4) *Appeals of permit actions.* (i) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, conditioning, or suspension of their permit or a permit affecting their interests to the Regional Administrator. In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the original action(s) by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(ii) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional information in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Regional Administrator will rule on the appeal in accordance with the permit eligibility criteria set forth in this section and the FEP, as appropriate, based on information relative to the application on file at NMFS and the Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as deemed appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons therefore, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(iii) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the **Federal Register.** Such a hearing shall normally be held no later than 30 days following publication of the notice in the **Federal Register,** unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested parties, may appear personally and/or be represented by counsel at the hearing and submit

information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(iv) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action constitutes final action for the agency for the purposes of the Administrative Procedure Act.

(5) Any time limit prescribed in this section may be extended for good cause, for a period not to exceed 30 days, by the Regional Administrator, either upon his or her own motion or upon written request from the Council, appellant or applicant stating the reason(s) therefore.

§ 665.225 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15 of this part, it is unlawful for any person to do any of the following:

(a) Fish for, take, retain, possess or land any Hawaii coral reef ecosystem MUS in any low-use MPA as defined in § 665.199 unless:

(1) A valid permit has been issued for the hand harvester or the fishing vessel operator that specifies the applicable area of harvest;

(2) A permit is not required, as outlined in § 665.224; or

(3) The Hawaii coral reef ecosystem MUS possessed on board the vessel originated outside the management area and this can be demonstrated through receipts of purchase, invoices, fishing logbooks or other documentation.

(b) Fish for, take, or retain any Hawaii coral reef ecosystem MUS species:

(1) That is determined overfished with subsequent rulemaking by the Regional Administrator.

(2) By means of gear or methods prohibited under § 665.227.

(3) In a low-use MPA without a valid special permit.

(4) In violation of any permit issued under §§ 665.13 or 665.224.

(c) Fish for, take, or retain any wild live rock or live hard coral except under a valid special permit for scientific research, aquaculture seed stock collection or traditional and ceremonial purposes by indigenous people.

§ 665.226 Notifications.

Any special permit holder subject to the requirements of this subpart must contact the appropriate NMFS enforcement agent in American Samoa, Guam, or Hawaii at least 24 hours before landing any Hawaii coral reef ecosystem MUS unit species harvested under a special permit, and report the port and the approximate date and time at which the catch will be landed.

§ 665.227 Allowable gear and gear restrictions.

(a) Hawaii coral reef ecosystem MUS may be taken only with the following allowable gear and methods:

(1) Hand harvest;

(2) Spear;

(3) Slurp gun;

(4) Hand net/dip net;

(5) Hoop net for Kona crab;

(6) Throw net;

(7) Barrier net;

(8) Surround/purse net that is attended at all times;

(9) Hook-and-line (includes handline (powered or not), rod-and-reel, and trolling);

(10) Crab and fish traps with vessel ID number affixed; and

(11) Remote-operating vehicles/submersibles.

(b) Hawaii coral reef ecosystem MUS may not be taken by means of poisons, explosives, or intoxicating substances. Possession or use of these materials by any permit holder under this subpart who is established to be fishing for Hawaii coral reef ecosystem MUS in the Hawaii management area is prohibited.

(c) Existing FEP fisheries shall follow the allowable gear and methods outlined in their respective plans.

(d) Any person who intends to fish with new gear not included in this section must describe the new gear and its method of deployment in the special permit application. A decision on the permissibility of this gear type will be made by the Regional Administrator after consultation with the Council and the director of the affected state fishery management agency.

§ 665.228 Gear identification.

(a) The vessel number must be affixed to all fish and crab traps on board the vessel or deployed in the water by any vessel or person holding a permit under §§ 665.13 or 665.224 or that is otherwise established to be fishing for Hawaii coral reef ecosystem MUS in the Hawaii management area.

(b) *Enforcement action.* (1) Traps not marked in compliance with paragraph (a) of this section and found deployed in the Hawaii coral reef ecosystem management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

(2) Unattended surround nets or bait seine nets found deployed in the Hawaii coral reef ecosystem management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

§§ 665.229–665.239 [Reserved]

§ 665.240 Hawaii crustacean fisheries [Reserved].

§ 665.241 Definitions.

As used in §§ 665.240 through 665.259:

Hawaii crustacean management area is divided into the following areas:

(1) *Crustacean Permit Area 1 (Permit Area 1)* means the EEZ around the NWHI.

(2) *Crustacean Permit Area 2 (Permit Area 2)* means the EEZ around the MHI.

(3) *Crustacean Permit Area 1 VMS Subarea* means an area within the EEZ around the NWHI 50 nm from the center geographical positions of the islands and reefs in the NWHI as follows:

Name	N. lat.	W. long.
Nihoa Island	23°05′	161°55′
Necker Island	23°35′	164°40′
French Frigate Shoals	23°45′	166°15′
Gardner Pinnacles	25°00′	168°00′
Maro Reef	25°25′	170°35′
Laysan Island	25°45′	171°45′
Lisianski Island	26°00′	173°55′
Pearl and Hermes Reef	27°50′	175°50′
Midway Island	28°14′	177°22′
Kure Island	28°25′	178°20′

Name	N. lat.	W. long.
The remainder of the VMS subarea is delimited by parallel lines tangent to and connecting the 50-nm areas around the following: from Nihoa Island to Necker Island; from French Frigate Shoals to Gardner Pinnacles; from Gardner Pinnacles to Maro Reef; from Laysan Island to Lisianski Island; and from Lisianski Island to Pearl and Hermes Reef.		

Hawaii crustacean management unit species (Hawaii crustacean MUS) means the following crustaceans:

Local name	English common name	Scientific name
Ula	spiny lobster	*Panulirus marginatus, Panulirus penicillatus.*
ula papapa	slipper lobster	Scyllaridae.
papa'i kua loa	Kona crab	*Ranina ranina.*
	deepwater shrimp	*Heterocarpus* spp.

Interested parties means the State of Hawaii Department of Land and Natural Resources, the Council, holders of permits issued under § 665.242, and any person who has notified the Regional Administrator of his or her interest in the procedures and decisions described in § 665.248, and who has specifically requested to be considered an "interested party."

Lobster grounds refers, singularly or collectively, to the following four areas in Crustacean Permit Area 1 that shall be used to manage the lobster fishery:

(1) Necker Island Lobster Grounds—waters bounded by straight lines connecting the following coordinates in the order presented: 24°00′ N. lat., 165°00′ W. long.; 24°00′ N. lat., 164°00′ W. long.; 23°00′ N. lat., 164°00′ W. long.; and 23°00′ N. lat., 165°00′ W. long.

(2) Gardner Pinnacles Lobster Grounds—waters bounded by straight lines connecting the following coordinates in the order presented: 25°20′ N. lat., 168°20′ W. long.; 25°20′ N. lat., 167°40′ W. long.; 24°20′ N. lat., 167°40′ W. long.; and 24°20′ N. lat., 168°20′ W. long.

(3) Maro Reef Lobster Grounds—waters bounded by straight lines connecting the following coordinates in the order presented: 25°40′ N. lat., 171°00′ W. long.; 25°40′ N. lat., 170°20′ W. long.; 25°00′ N. lat., 170°20′ W. long.; and 25°00′ N. lat., 171°00′ W. long.

(4) General NWHI Lobster Grounds—all waters within Crustacean Permit Area 1 except for the Necker Island, Gardner Pinnacles, and Maro Reef Lobster Grounds.

§ 665.242 Permits.

(a) *Applicability.* (1) The owner of any vessel used to fish for lobster in Permit Area 1 must have a limited access permit issued for such vessel.

(2) The owner of any vessel used to fish for lobster in Permit Area 2 must have a permit issued for such a vessel.

(3) The owner of any vessel used to fish for deepwater shrimp in Crustacean Permit Areas 1 or 2 must have a permit issued for that vessel.

(4) Harvest of Hawaii crustacean MUS within the Northwestern Hawaiian Islands Marine National Monument is subject to the requirements of 50 CFR part 404.

(b) *General requirements.* General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits issued under this section, as applicable, are contained in § 665.13.

(c) *Application.* An application for a permit required under this section will be submitted to PIRO as described in § 665.13. If the application for a limited access permit is submitted on behalf of a partnership or corporation, the application must be accompanied by a supplementary information sheet obtained from PIRO and contain the names and mailing addresses of all partners or shareholders and their respective percentage of ownership in the partnership or corporation.

(d) *Lobster Limited Access Permit Requirements.* (1) A lobster limited access permit is valid for fishing only in Crustacean Permit Area 1.

(2) Only one permit will be assigned to any vessel.

(3) No vessel owner will have permits for a single vessel to harvest lobsters in Permit Areas 1 and 2 at the same time.

(4) A maximum of 15 limited access permits can be valid at any time.

(e) *Transfer or sale of limited access permits.* (1) Permits may be transferred or sold, but no one individual, partnership, or corporation will be allowed to hold a whole or partial interest in more than one permit, except that an owner who qualifies initially for more than one permit may maintain those permits, but may not obtain additional permits. Layering of partnerships or corporations shall not insulate a permit holder from this requirement.

(2) If 50 percent or more of the ownership of a limited access permit is passed to persons other than those listed on the permit application, PIRO must be notified of the change in writing and provided copies of the appropriate documents confirming the changes within 30 days.

(3) Upon the transfer or sale of a limited access permit, a new application must be submitted by the new permit owner according to the requirements of § 665.13. The transferred permit is not valid until this process is completed.

(f) *Replacement of a vessel covered by a limited access permit.* A limited access permit issued under this section may, without limitation as to frequency, be transferred by the permit holder to a replacement vessel owned by that person.

(g) *Issuance of limited access permits to future applicants.* (1) The Regional Administrator may issue limited access permits under this section when fewer than 15 vessel owners hold active permits.

(2) When the Regional Administrator has determined that limited access permits may be issued to new persons, a notice shall be placed in the **Federal Register,** and other means will be used to notify prospective applicants of the opportunity to obtain permits under the limited access management program.

(3) A period of 90 days will be provided after publication of the **Federal Register** notice for submission of new applications for a limited access permit.

(4) Limited access permits issued under this paragraph (g) will be issued first to applicants qualifying under paragraph (g)(4)(i) of this section. If the number of limited access permits available is greater than the number of applicants that qualify under paragraph

(g)(4)(i) of this section, then limited access permits will be issued to applicants under paragraph (g)(4)(ii) of this section.

(i) First priority to receive limited access permits under this paragraph (g) goes to owners of vessels that were used to land lobster from Permit Area 1 during the period 1983 through 1990, and who were excluded from the fishery by implementation of the limited access system. If there are insufficient permits for all such applicants, the new permits shall be issued by the Regional Administrator through a lottery.

(ii) Second priority to receive limited access permits under paragraph (g) goes to owners with the most points, based upon a point system. If two or more owners have the same number of points and there are insufficient permits for all such owners, the Regional Administrator shall issue the permits through a lottery. Under the point system, limited access permits will be issued, in descending order, beginning with owners who have the most points and proceeding to owners who have the least points, based on the following:

(A) Three points shall be assigned for each calendar year after August 8, 1985, that the applicant was the operator of a vessel that was used to land lobster from Permit Area 1.

(B) Two points shall be assigned for each calendar year or partial year after August 8, 1985, that the applicant was the owner, operator, or crew member of a vessel engaged in either commercial fishing in Permit Area 2 for lobster, or fishing in Permit Area 1 for fish other than lobster with an intention to sell all or part of the catch.

(C) One point shall be assigned for each calendar year or partial year after August 8, 1985, that the applicant was the owner, operator, or crew member of a vessel engaged in any other commercial fishing in the EEZ surrounding Hawaii.

(5) A holder of a new limited access permit must own at least a 50 percent share in the vessel that the permit would cover.

§ 665.243 Prohibitions.

In addition to the general prohibitions specified in 50 CFR §§ 600.725 and 665.15, it is unlawful for any person to do any of the following:

(a) In Permit Area 1, it is unlawful for any person to—

(1) Fish for, take, or retain lobsters—

(i) Without a limited access permit issued under § 665.242.

(ii) By methods other than lobster traps or by hand for lobsters, as specified in § 665.245.

(iii) From closed areas for lobsters, as specified in § 665.251.

(iv) During a closed season, as specified in § 665.250.

(v) After the closure date, as specified in § 665.252, and until the fishery opens again in the following calendar year.

(vi) In a lobster grounds after closure of that grounds as specified in § 665.252(b).

(2) Fail to report before landing or offloading as specified in § 665.244.

(3) Fail to comply with any protective measures implemented under § 665.248.

(4) Leave a trap unattended in the Hawaii crustacean management area except as provided in § 665.245.

(5) Maintain on board the vessel or in the water more than 1,200 traps per fishing vessel, of which no more than 1,100 can be assembled traps, as specified in § 665.245.

(6) Land lobsters taken in Permit Area 1 after the closure date, as specified in § 665.252, until the fishery opens again the following year.

(7) Refuse to make available to an authorized officer and employee of NMFS designated by the Regional Administrator for inspection and copying any records that must be made available in accordance with § 665.14(g)(2).

(8) Possess on a fishing vessel that has a limited access permit issued under § 665.242 any lobster trap in Crustacean Permit Area 1 when fishing for lobster is prohibited as specified in §§ 665.248, 665.250(a), or 665.252, or except as allowed under § 665.245(a)(7).

(9) Possess on a fishing vessel that has a limited access permit issued under this subpart any lobster trap in Crustacean Permit Area 1 VMS Subarea when fishing for lobsters is prohibited as specified in §§ 665.248, 665.250(a), or 665.252, except as allowed under § 665.245(a)(8).

(10) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or to attempt any of the same while engaged in the Permit Area 1 fishery; or to move or remove a VMS unit while engaged in the Permit Area 1 fishery without first notifying the Regional Administrator.

(11) Make a false statement, oral or written, to the Regional Administrator or an authorized officer, regarding the certification, use, operation, or maintenance of a VMS unit used in the fishery.

(12) Fail to allow an authorized officer to inspect and certify a VMS unit used in the fishery.

(13) Possess, on a fishing vessel that has a limited access permit issued under this subpart, any lobster trap in a lobster grounds that is closed under § 665.252(b), unless the vessel has an operational VMS unit, certified by NMFS, on board.

(b) In Permit Area 2, it is unlawful for any person to—

(1) Fish for, take, or retain lobsters—

(i) By methods other than lobster traps or by hand, as specified in § 665.245; or

(ii) During a closed season, as specified in § 665.250(b).

(2) Retain or possess on a fishing vessel any lobster taken in Permit Area 2 that is less than the minimum size specified in § 665.249.

(3) Possess on a fishing vessel any lobster or lobster part taken in Permit Area 2 in a condition where the lobster is not whole and undamaged as specified in § 665.249.

(4) Retain or possess on a fishing vessel, or remove the eggs from, any egg-bearing lobster, as specified in § 665.249.

(5) Possess on a fishing vessel that has a permit for Permit Area 2 issued under this subpart any lobster trap in Permit Area 2 when fishing for lobster in the MHI is prohibited during the months of May, June, July, and August.

(c) In Crustacean Permit Areas 1 and 2, it is unlawful for any person to fish for, take, or retain deepwater shrimp without a permit issued under § 665.242.

§ 665.244 Notifications.

(a) The operator of any vessel subject to the requirements of this subpart must:

(1) Report, not less than 24 hours, but not more than 36 hours, before landing, the port, the approximate date and the approximate time at which spiny and slipper lobsters will be landed.

(2) Report, not less than 6 hours and not more than 12 hours before offloading, the location and time that offloading of spiny and slipper lobsters will begin.

(b) The Regional Administrator will notify permit holders of any change in the reporting method and schedule required in paragraph (a) of this section at least 30 days prior to the opening of the fishing season.

§ 665.245 Gear restrictions.

(a) *Permit Area 1.* (1) Lobsters may be taken only with lobster traps or by hand. Lobsters may not be taken by means of poisons, drugs, other chemicals, spears, nets, hook, or explosives.

(2) The smallest opening of an entry way of any lobster trap may not allow any sphere or cylinder greater than 6.5 inches (16.5 cm) in diameter to pass from outside the trap to inside the trap.

(3) Each lobster trap must have a minimum of two escape vent panels that meet the following requirements:

(i) Panels must have at least four unobstructed circular holes no smaller than 67 mm in diameter, with centers at least 82 mm apart.

(ii) The lowest part of any opening in an escape vent panel must not be more than 85 mm above the floor of the trap.

(iii) Panels must be placed opposite one another in each trap.

(4) A vessel fishing for or in possession of lobster in any permit area may not have on board the vessel any trap that does not meet the requirements of paragraphs (a)(1), (2), and (3) of this section.

(5) A maximum of 1,200 traps per vessel may be maintained on board or in the water, provided that no more than 1,100 assembled traps are maintained on board or in the water. If more than 1,100 traps are maintained, the unassembled traps may be carried as spares only, in order to replace assembled traps that may be lost or become unusable.

(6) Traps shall not be left unattended in any permit area, except in the event of an emergency, in which case the vessel operator must notify the SAC of the emergency that necessitated leaving the traps on the grounds, and the location and number of the traps, within 24 hours after the vessel reaches port.

(7) A vessel whose owner has a limited access permit issued under this subpart and has an operating VMS unit certified by NMFS may enter Crustacean Permit Area 1 with lobster traps on board on or after June 25, but must remain outside the Crustacean Permit Area 1 VMS Subarea until the NWHI lobster season opens on July 1.

(8) A vessel whose owner has a limited access permit issued under this subpart and has on board an operational VMS unit certified by NMFS may transit Crustacean Permit Area 1, including Crustacean Permit Area 1 VMS Subarea, with lobster traps on board for the purpose of moving to another lobster grounds or returning to port following the closure date, as specified in § 665.252, providing the vessel does not stop or fish and is making steady progress to another lobster grounds or back to port as determined by NMFS.

(9) The operator of a permitted vessel must notify the Regional Administrator or an authorized officer no later than June 15 of each year if the vessel will use a VMS unit in the fishery and allow for inspection and certification of the unit.

(b) Permit Area 2. Lobsters may be taken only with lobster traps or by hand. Lobsters may not be taken by means of poisons, drugs, other chemicals, spears, nets, hooks, or explosives.

§ 665.246 Gear identification.

In Permit Area 1, the vessel's official number must be marked legibly on all traps and floats maintained on board the vessel or in the water by that vessel.

§ 665.247 At-sea observer coverage.

All fishing vessels subject to §§ 665.240 though 665.252 and subpart A of this part must carry an observer when requested to do so by the Regional Administrator.

§ 665.248 Monk seal protective measures.

(a) *General.* This section establishes a procedure that will be followed if the Regional Administrator receives a report of a monk seal death that appears to be related to the lobster fishery in Permit Area 1.

(b) *Notification.* Upon receipt of a report of a monk seal death that appears to be related to the lobster fishery, the Regional Administrator will notify all interested parties of the facts known about the incident. The Regional Administrator will also notify them that an investigation is in progress, and that, if the investigation reveals a threat of harm to the monk seal population, protective measures may be implemented.

(c) *Investigation.* (1) The Regional Administrator will investigate the incident reported and will attempt to:

(i) Verify that the incident occurred.

(ii) Determine the extent of the harm to the monk seal population.

(iii) Determine the probability of a similar incident recurring.

(iv) Determine details of the incident such as:

(A) The number of animals involved.

(B) The cause of the mortality.

(C) The age and sex of the dead animal(s).

(D) The relationship of the incident to the reproductive cycle, for example, breeding season (March–September), non-breeding season (October–February).

(E) The population estimates or counts of animals at the island where the incident occurred.

(F) Any other relevant information.

(v) Discover and evaluate any extenuating circumstances.

(vi) Evaluate any other relevant factors.

(2) The Regional Administrator will make the results of the investigation available to the interested parties and request their advice and comments.

(d) *Determination of relationship.* The Regional Administrator will review and evaluate the results of the investigation and any comments received from interested parties. If there is substantial evidence that the death of the monk seal was related to the lobster fishery, the Regional Administrator will:

(1) Advise the interested parties of his or her conclusion and the facts upon which it is based.

(2) Request from the interested parties their advice on the necessity of protective measures and suggestions for appropriate protective measures.

(e) *Determination of response.* The Regional Administrator will consider all relevant information discovered during the investigation or submitted by interested parties in deciding on the appropriate response. Protective measures may include, but are not limited to, changes in trap design, changes in gear, closures of specific areas, or closures for specific periods of time.

(f) *Action by the Regional Administrator.* If the Regional Administrator decides that protective measures are necessary and appropriate, the Regional Administrator will prepare a document that describes the incident, the protective measures proposed, and the reasons for the protective measures; provide it to the interested parties; and request their comments.

(g) *Implementation of protective measures.* (1) If, after completing the steps described in paragraph (f) of this section, the Regional Administrator concludes that protective measures are necessary and appropriate, the Regional Administrator will recommend the protective measures to the Assistant Administrator and provide notice of this recommendation to the Chairman of the Council and the Director of the Division of Aquatic Resources, Department of Land and Natural Resources, State of Hawaii.

(2) If the Assistant Administrator concurs with the Regional Administrator's recommendation, NMFS will publish an action in the **Federal Register** that includes a description of the incident that triggered the procedure described in this section, the protective measures, and the reasons for the protective measures.

(h) *Notification of "no action."* If, at any point in the process described in this section, the Regional Administrator or Assistant Administrator decides that no further action is required, the interested parties will be notified of this decision.

(i) *Effective dates.* (1) The protective measures will take effect 10 days after the date of publication in the **Federal Register.**

(2) The protective measures will remain in effect for the shortest of the following time periods:

(i) Until the Hawaii FEP and this section are amended to respond to the problem;

(ii) Until other action that will respond to the problem is taken under the ESA;

(iii) Until the Assistant Administrator, following the procedures set forth in paragraph (j) of this section, decides that the protective measures are no longer required and repeals the measures; or

(iv) For the period of time set forth in the **Federal Register** notification, not to exceed 3 months. The measures may be renewed for 3 months after again following procedures in paragraphs (b) through (g) of this section.

(j) *Repeal.* (1) If the Assistant Administrator decides that protective measures may no longer be necessary for the protection of monk seals, the Assistant Administrator will notify the interested parties of this preliminary decision and the facts upon which it is based. The Assistant Administrator will request advice on the proposed repeal of the protective measures.

(2) The Assistant Administrator will consider all relevant information obtained by the Regional Administrator or submitted by interested parties in deciding whether to repeal the protective measures.

(3) If the Assistant Administrator decides to repeal the protective measures—

(i) Interested parties will be notified of the decision; and

(ii) Notification of repeal and the reasons for the repeal will be published in the **Federal Register.**

(k) *Monk seal emergency protective measures*—(1) *Determination of emergency.* If, at any time during the process described in paragraphs (a) through (j) of this section, the Regional Administrator determines that an emergency exists involving monk seal mortality related to the lobster fishery and that measures are needed immediately to protect the monk seal population, the Regional Administrator will—

(i) Notify the interested parties of this determination and request their immediate advice and comments.

(ii) Forward a recommendation for emergency action and any advice and comments received from interested parties to the Assistant Administrator.

(2) *Implementation of emergency measures.* If the Assistant Administrator agrees with the recommendation for emergency action—

(i) The Regional Administrator will determine the appropriate emergency protective measures.

(ii) NMFS will publish the emergency protective measures in the **Federal Register.**

(iii) The Regional Administrator will notify the interested parties of the emergency protective measures. Holders of permits to fish in Permit Area I will be notified by certified mail. Permit holders that the Regional Administrator knows are on the fishing grounds also will be notified by radio.

(3) *Effective dates.* (i) Emergency protective measures are effective against a permit holder at 12:01 a.m., local time, of the day following the day the permit holder receives actual notice of the measures.

(ii) Emergency protective measures are effective for 10 days from the day following the day the first permit holder is notified of the protective measures.

(iii) Emergency protective measures may be extended for an additional 10 days, if necessary, to allow the completion of the procedures set out in § 665.252.

§ 665.249 Lobster size and condition restrictions in Permit Area 2.

(a) Only spiny lobsters with a carapace length of 8.26 cm or greater may be retained (see Figure 1 to this part).

(b) Any lobster with a punctured or mutilated body, or a separated carapace and tail, may not be retained.

(c) A female lobster of any size may not be retained if it is carrying eggs externally. Eggs may not be removed from female lobsters.

§ 665.250 Closed seasons.

(a) Lobster fishing is prohibited in Permit Area 1 during the months of January through June, inclusive.

(b) Lobster fishing is prohibited in Permit Area 2 during the months of May, June, July, and August.

§ 665.251 Closed areas.

All lobster fishing is prohibited:

(a) Within 20 nm of Laysan Island.

(b) Within the EEZ landward of the 10-fathom curve as depicted on National Ocean Survey Charts, Numbers 19022, 19019, and 19016.

§ 665.252 Harvest limitation program.

(a) *General.* Harvest guidelines for the Necker Island Lobster Grounds, Gardner Pinnacles Lobster Grounds, Maro Reef Lobster Grounds, and General NWHI Lobster Grounds for Permit Area 1 will be set annually for the calendar year and shall:

(1) Apply to the total catch of spiny and slipper lobsters.

(2) Be expressed in terms of numbers of lobsters.

(b) *Harvest guideline.* (1) The Regional Administrator shall use information from daily lobster catch reports and lobster sales reports from previous years, and may use information from research sampling and other sources to establish the annual harvest guideline in accordance with the FEP after consultation with the Council.

(2) NMFS shall publish a document indicating the annual harvest guideline in the **Federal Register** by February 28 of each year and shall use other means to notify permit holders of the harvest guideline for the year.

(3) The Regional Administrator shall determine, on the basis of the information reported to NMFS by the operator of each vessel fishing, when the harvest guideline for each lobster ground will be reached.

(4) Notice of the date when the harvest guideline for a lobster ground is expected to be reached and specification of the closure date of the lobster grounds will be provided to each permit holder and/or operator of each permitted vessel at least 24 hours in advance of the closure. After a closure, the harvest of lobster in that lobster ground is prohibited, and the possession of lobster traps on board the vessel in that lobster ground is prohibited unless allowed under § 665.245(a)(8).

(5) With respect to the notification in paragraph (b)(4) of this section, NMFS shall provide each permit holder and operator of each permitted vessel with the following information, as appropriate:

(i) Determination of when the overall harvest guideline for Crustacean Permit Area 1 will be reached;

(ii) Closure date after which harvest of lobster or possession of lobster traps on board the vessel in a lobster grounds is prohibited;

(iii) Closure date after which the possession of lobster traps on board the vessel in Crustacean Permit Area 1 is prohibited by any permitted vessel that is not operating a VMS unit certified by NMFS; and

(iv) Specification of when further landings of lobster will be prohibited by permitted vessels not carrying an operational VMS unit, certified by NMFS, on board.

(c) *Monitoring and adjustment.* The operator of each vessel fishing during the open season shall report lobster catch (by species) and effort (number of trap hauls) data while at sea to NMFS in Honolulu. The Regional Administrator shall notify permit holders of the reporting method, schedule, and logistics at least 30 days prior to the opening of the fishing season.

§§ 665.253–665.259 [Reserved]

§ 665.260 Hawaii precious coral fisheries [Reserved].

§ 665.261 Definitions.

As used in §§ 665.260 through 665.270:

Hawaii precious coral management unit species (Hawaii precious coral MUS) means any coral of the genus *Corallium* in addition to the following species of corals:

English common name	Scientific name
Pink coral (also known as red coral)	*Corallium secundum, Corallium regale, Corallium laauense.*
Gold coral	*Gerardia* spp., *Callogorgia gilberti, Narella* spp., *Calyptrophora* spp.
Bamboo coral	*Lepidisis olapa, Acanella* spp.
Black coral	*Antipathes griggi, Antipathes grandis, Antipathes ulex.*

Hawaii precious coral permit area means the area encompassing the precious coral beds within the EEZ around Hawaii. Each bed is designated by a permit area code and assigned to one of the following four categories:

(1) *Established beds.* (i) Makapu'u (Oahu), Permit Area E–B–1, includes the area within a radius of 2.0 nm of a point at 21°18.0′ N. lat., 157°32.5′ W. long.

(ii) Au'au Channel (Maui), Permit Area E–B–2, includes the area west and south of a point at 21°10′ N. lat., 156°40′ W. long., and east of a point at 21° N. lat., 157° W. long., and west and north of a point at 20°45′ N. lat., 156°40′ W. long.

(2) *Conditional beds.* (i) Keahole Point (Hawaii), Permit Area C–B–1, includes the area within a radius of 0.5 nm of a point at 19°46.0′ N. lat., 156°06.0′ W. long.

(ii) Kaena Point (Oahu), Permit Area C–B–2, includes the area within a radius of 0.5 nm of a point at 21°35.4′ N. lat., 158°22.9′ W. long.

(iii) Brooks Bank, Permit Area C–B–3, includes the area within a radius of 2.0 nm of a point at 24°06.0′ N. lat., 166°48.0′ W. long.

(iv) 180 Fathom Bank, Permit Area C–B–4, N.W. of Kure Atoll, includes the area within a radius of 2.0 nm of a point at 28°50.2′ N. lat., 178°53.4′ W. long.

(3) *Refugia.* Westpac Bed, Permit Area R–1, includes the area within a radius of 2.0 nm of a point at 23°18′ N. lat., 162°35′ W. long.

(4) *Exploratory areas.* Permit Area X–P–H includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of the State of Hawaii.

§ 665.262 Permits.

(a) Any vessel of the United States fishing for, taking, or retaining Hawaii precious coral MUS in any Hawaiian Archipelago precious coral permit area must have a permit issued under § 665.13.

(b) Each permit will be valid for fishing only in the permit area specified on the permit. Precious Coral Permit Areas are defined in § 665.261.

(c) No more than one permit will be valid for any one vessel at any one time.

(d) No more than one permit will be valid for any one person at any one time.

(e) The holder of a valid permit to fish one permit area may obtain a permit to fish another permit area only upon surrendering to the Regional Administrator any current permit for the precious coral fishery issued under § 665.13.

(f) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits for the precious coral fishery are contained in § 665.13.

§665.263 Prohibitions.

In addition to the general prohibitions specified in 50 CFR 600.725 and in 665.15, it is unlawful for any person to:

(a) Use any vessel to fish for, take, retain, possess or land precious coral in any Hawaii precious coral permit area, unless a permit has been issued for that vessel and area as specified in § 665.13 and that permit is on board the vessel.

(b) Fish for, take, or retain any species of Hawaii precious coral MUS in any precious coral permit area:

(1) By means of gear or methods prohibited by § 665.264.

(2) In refugia specified in § 665.261.

(3) In a bed for which the quota specified in § 665.269 has been attained.

(4) In violation of any permit issued under §§ 665.13 or 665.17.

(5) In a bed that has been closed pursuant to §§ 665.268 or 665.270.

(c) Take and retain, possess, or land any live pink coral or live black coral from any precious coral permit area that is less than the minimum height specified in § 665.265 unless:

(1) A valid EFP was issued under § 665.17 for the vessel and the vessel was operating under the terms of the permit; or

(2) The coral originated outside coral beds listed in this paragraph, and this can be demonstrated through receipts of purchase, invoices, or other documentation.

§ 665.264 Gear restrictions.

Only selective gear may be used to harvest coral from any precious coral permit area.

§ 665.265 Size restrictions.

The height of a live coral specimen shall be determined by a straight line measurement taken from its base to its most distal extremity. The stem diameter of a living coral specimen shall be determined by measuring the greatest diameter of the stem at a point no less than 1 inch (2.54 cm) from the top surface of the living holdfast.

(a) Live pink coral harvested from any precious coral permit area must have attained a minimum height of 10 inches (25.4 cm).

(b) *Black coral.* Live black coral harvested from any precious coral permit area must have attained either a minimum stem diameter of 1 inch (2.54 cm), or a minimum height of 48 inches (122 cm).

§ 665.266 Area restrictions.

Fishing for coral on the WestPac Bed is not allowed. The specific area closed to fishing is all waters within a 2-nm radius of the midpoint of 23°18.0′ N. lat., 162°35.0′ W. long.

§ 665.267 Seasons.

The fishing year for precious coral begins on July 1 and ends on June 30 the following year, except at the Makapu'u and Au'au Channel Beds, which have a two-year fishing period that begins July 1 and ends June 30, two years later.

§ 665.268 Closures.

(a) If the Regional Administrator determines that the harvest quota for any coral bed will be reached prior to the end of the fishing year, or the end of the 2-year fishing period at Makapu'u Bed or Au'au Channel Bed, NMFS shall publish a notice to that effect in the **Federal Register** and shall use other

means to notify permit holders. Any such notice must indicate the reason for the closure, the bed being closed, and the effective date of the closure.

(b) A closure is also effective for a permit holder upon the permit holder's actual harvest of the applicable quota.

§ 665.269 Quotas.

(a) *General.* The quotas limiting the amount of precious coral that may be taken in any precious coral permit area during the fishing year are listed in § 665.269(d). Only live coral is counted toward the quota. The accounting period for all quotas begins July 1, 1983.

(b) *Conditional bed closure.* A conditional bed will be closed to all nonselective coral harvesting after the quota for one species of coral has been taken.

(c) *Reserves and reserve release.* The quotas for exploratory area X–P–H will be held in reserve for harvest by vessels of the United States in the following manner:

(1) At the start of the fishing year, the reserve for the Hawaii exploratory areas will equal the quota minus the estimated domestic annual harvest for that year.

(2) As soon as practicable after December 31 each year, the Regional Administrator will determine the amount harvested by vessels of the United States between July 1 and December 31 of the year that just ended on December 31.

(3) NMFS will release to TALFF an amount of Hawaii precious coral for each exploratory area equal to the quota minus two times the amount harvested by vessels of the United States in that July 1–December 31 period.

(4) NMFS will publish in the **Federal Register** a notification of the Regional Administrator's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

(d) Quotas for precious coral permit areas.

Type of coral bed	Name of coral bed	Harvest quota in kilograms	Number of years
Established Beds	Au'au Channel	Black: 5,000	2
	Makapu'u	Pink: 2,000	2
		Gold: 0 (zero)	
		Bamboo: 500	2
Conditional Beds	180 Fathom Bank	Pink: 222	1
		Gold: 67	1
		Bamboo: 56	1
	Brooks Bank	Pink: 444	1
		Gold: 133	1
		Bamboo: 111	1
	Kaena Point	Pink: 67	1
		Gold: 20	1
		Bamboo: 17	1
	Keahole Point	Pink: 67	1
		Gold: 20	1
		Bamboo: 17	1
Refugia	Westpac	All: 0 (zero)	
Exploratory Area	Hawaii	1,000 per area (all species combined except black corals).	1

Notes:
1. No fishing for coral is authorized in refugia.
2. A moratorium on gold coral harvesting is in effect through June 30, 2013.

§ 665.270 Gold coral harvest moratorium.

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2013.

Subpart D—Mariana Archipelago Fisheries

§ 665.398 Management area.

The Mariana fishery management area is the EEZ seaward of Guam and CNMI with the inner boundary a line coterminous with the seaward boundaries of Guam and CNMI and the outer boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries.

§ 665.399 Area restrictions.

Anchoring by all fishing vessels over 50 ft (15.25 m) LOA is prohibited in the U.S. EEZ seaward of Guam west of 144°30′ E. long. except in the event of an emergency caused by ocean conditions or by a vessel malfunction that can be documented.

§ 665.400 Mariana bottomfish fisheries [Reserved].

§ 665.401 Definitions.

As used in §§ 665.400 through 665.419:

CNMI commercial bottomfish permit means the permit required by § 665.404(a)(2) to engage in commercial fishing for Mariana bottomfish MUS in the CNMI management subarea.

Guam bottomfish permit means the permit required by § 665.404(a)(1) to use a large vessel to fish for, land, or transship Mariana bottomfish MUS shoreward of the outer boundary of the Guam subarea of the Mariana fishery management area.

Mariana bottomfish management unit species (Mariana bottomfish MUS) means the following fish:

Local name Chamorro/Carolinian	English common name	Scientific name
Lehi/maroobw	red snapper, silvermouth	*Aphareus rutilans.*
Gogunafon/aiwe	gray snapper, jobfish	*Aprion virescens.*
Tarakitu/etam	Giant trevally, jack	*Caranx ignobilis.*
Tarakiton attelong/orong	Black trevally, jack	*Caranx lugubris.*
Gadao/meteyil	blacktip grouper	*Epinephelus fasciatus.*

Local name Chamorro/Carolinian	English common name	Scientific name
Bueli/bwele	lunartail grouper	*Variola louti.*
Buninas agaga'/falaghal moroobw	red snapper	*Etelis carbunculus.*
Abuninas/taighulupegh	red snapper	*Etelis coruscans.*
Mafuti/atigh	redgill emperor	*Lethrinus rubrioperculatus.*
Mafuti/loot	Ambon emperor	*Lethrinus amboinensis.*
Funai/saas	blueline snapper	*Lutjanus kasmira.*
Buninas/falaghal-maroobw	yellowtail snapper	*Pristipomoides auricilla.*
Buninas or pakapaka/falaghal-maroobw	pink snapper	*Pristipomoides filamentosus.*
Buninas/falaghal-maroobw	yelloweye snapper	*Pristipomoides flavipinnis.*
	pink snapper	*Pristipomoides seiboldii.*
Buninas rayao amariyu/falaghal-maroobw	snapper	*Pristipomoides zonatus.*
Tarakiton tadong/Meseyugh	amberjack	*Seriola dumerili.*

§ 665.402 Management subareas.

The Mariana fishery management area is divided into bottomfish management subareas with the following designations and boundaries:

(a) *Guam Management Subarea* means the EEZ seaward of the Territory of Guam, with the inner boundary defined as a line coterminous with the seaward boundary of the Territory of Guam.

(b) *CNMI Management Subarea* means the EEZ seaward of the CNMI. The CNMI Management Subarea is further divided into subareas with the following designations and boundaries:

(1) *CNMI Inshore Area* means that portion of the EEZ within 3 nautical miles from the shoreline of the CNMI.

(2) *CNMI Offshore Area* means that portion of the EEZ seaward of 3 nautical miles from the shoreline of the CNMI.

(c) The outer boundary of each fishery management area is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries, except that the outer boundary of the CNMI Inshore Area is 3 nautical miles from the shoreline. The boundary between the fishery management areas of Guam and CNMI extends to those points which are equidistant between Guam and the island of Rota in the CNMI. CNMI and Guam management subareas are divided by a line intersecting these two points: 148° E. long., 12° N. lat., and 142° E. long., 16° N. lat.

§ 665.403 Bottomfish fishery area management.

(a) *Guam large vessel bottomfish prohibited area (Area GU–1).* A large vessel of the United States, as defined in § 665.12, may not be used to fish for Mariana bottomfish MUS in the Guam large vessel bottomfish prohibited area, defined as the U.S. EEZ waters surrounding Guam that are enclosed by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
GU–1–A	14°16′	144°17′
GU–1–B	13°50′	143°52′
GU–1–C	13°17′	143°46′
GU–1–D	12°50′	143°54′
GU–1–E	12°30′	144°14′
GU–1–F	12°25′	144°51′
GU–1–G	12°57′	145°33′
GU–1–H	13°12′	145°43′
GU–1–I	13°29′44″	145°48′27″
GU–1–A	14°16′	144°17′

(b) *CNMI medium and large vessel bottomfish prohibited areas.* A medium or large vessel of the United States, as defined in § 665.12, may not be used to fish commercially for Mariana bottomfish MUS in the following areas:

(1) *CNMI Southern Islands (Area NM–1).* The CNMI Southern Islands prohibited area is defined as the waters of the U.S. EEZ surrounding CNMI that are enclosed by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
NM–1–A	14°9′	144°15′
NM–1–B	16°10′47″	145°12′
NM–1–C	16°10′47″	146°53′
NM–1–D	14°48′	146°33′
NM–1–E	13°27′	145°43′
NM–1–A	14°9′	144°15′

(2) *CNMI Alamagan Island (Area NM–2).* The CNMI Alamagan Island prohibited area is defined as the waters of the U.S. EEZ surrounding CNMI that are enclosed by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
NM–2–A	17°26′	145°40′
NM–2–B	17°46′	145°40′
NM–2–C	17°46′	146°00′
NM–2–D	17°26′	146°00′
NM–2–A	17°26′	145°40′

§ 665.404 Permits.

(a) *Applicability*—(1) *Guam large vessel.* The owner of any large vessel used to fish for, land, or transship Mariana bottomfish MUS shoreward of the outer boundary of the Guam subarea must have a permit issued under this section, and the permit must be registered for use with that vessel.

(2) Commonwealth of the Northern Mariana Islands (CNMI) commercial. The owner of any vessel used to commercially fish for, transship, receive, or land Mariana bottomfish MUS shoreward of the outer boundary of the CNMI management subarea must have a permit issued under this section, and the permit must be registered for use with that vessel.

(b) *Submission.* An application for a permit required under this section must be submitted to PIRO as described in § 665.13.

§ 665.405 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person to do any of the following:

(a) Fish for Mariana bottomfish MUS using gear prohibited under § 665.406.

(b) Use a large vessel that does not have a valid Guam bottomfish permit registered for use with that vessel to fish for, land, or transship Mariana bottomfish MUS shoreward of the outer boundary of the Guam management subarea of the bottomfish fishery management area in violation of § 665.404(a).

(c) Use a large vessel to fish for Mariana bottomfish MUS within the Guam large vessel bottomfish prohibited area, as defined in § 665.403(a).

(d) Land or transship, shoreward of the outer boundary of the Guam management subarea of the bottomfish fishery management area, Mariana bottomfish MUS that were harvested in violation of § 665.405(c).

(e) Use a vessel to fish commercially for Mariana bottomfish MUS shoreward of the outer boundary of the CNMI management subarea without a valid CNMI commercial bottomfish permit registered for use with that vessel, in violation of § 665.404(a)(2).

(f) Use a medium or large vessel, as defined in § 665.12, to fish for Mariana bottomfish MUS within the CNMI medium and large vessel bottomfish prohibited areas, as defined in § 665.403(b).

(g) Retain, land, possess, sell, or offer for sale, shoreward of the outer boundary of the CNMI management subarea, Mariana bottomfish MUS that were harvested in violation of § 665.405(f), except that Mariana bottomfish MUS that are harvested legally may be transferred to a receiving vessel shoreward of the outer boundary of the CNMI medium and large vessel bottomfish prohibited area as defined in § 665.403(b).

(h) Falsify or fail to make, keep, maintain, or submit a Federal logbook as required under § 665.14(b) when using a vessel to engage in commercial fishing for Mariana bottomfish MUS shoreward of the outer boundary of the CNMI management subarea in violation of § 665.14(b).

§ 665.406 Gear restrictions.

(a) Bottom trawls and bottom set gillnets. Fishing for bottomfish with bottom trawls and bottom set gillnets is prohibited.

(b) *Possession of gear.* Possession of a bottom trawl and bottom set gillnet by any vessel having a permit under § 665.404 or otherwise established to be fishing for bottomfish in the management subareas is prohibited.

(c) *Poisons and explosives.* The possession or use of any poisons, explosives, or intoxicating substances for the purpose of harvesting bottomfish is prohibited.

§ 665.407 At-sea observer coverage.

All fishing vessels subject to §§ 665.400 through 665.407 must carry an observer when directed to do so by the Regional Administrator.

§§ 665.408–665.419 [Reserved]

§ 665.420 Mariana coral reef ecosystem fisheries [Reserved].

§ 665.421 Definitions.

As used in §§ 665.420 through 665.439:

Mariana coral reef ecosystem management unit species (Mariana coral reef ecosystem MUS) means all of the Currently Harvested Coral Reef Taxa and Potentially Harvested Coral Reef Taxa listed in this section and which spend the majority of their non-pelagic (post-settlement) life stages within waters less than or equal to 50 fathoms in total depth.

Mariana Currently Harvested Coral Reef Taxa:

Family name	Local name (Chamorro/ Carolinian)	English common name	Scientific name
Acanthuridae (Surgeonfishes)		orange-spot surgeonfish	*Acanthurus olivaceus.*
	hugupao dangulo/mowagh	yellowfin surgeonfish	*Acanthurus xanthopterus.*
	Kichu/limell	convict tang	*Acanthurus triostegus.*
		eye-striped surgeonfish	*Acanthurus dussumieri.*
		blue-lined surgeon	*Acanthurus nigroris.*
		whitebar surgeonfish	*Acanthurus leucopareius.*
		whitebar surgeonfish	*Acanthurus leucopareius.*
	Hiyok/filaang	blue-banded surgeonfish	*Acanthurus lineatus.*
		blackstreak surgeonfish	*Acanthurus nigricauda.*
		whitecheek surgeonfish	*Acanthurus nigricans.*
		white-spotted surgeonfish	*Acanthurus guttatus.*
		ringtail surgeonfish	*Acanthurus blochii.*
		brown surgeonfish	*Acanthurus nigrofuscus.*
		mimic surgeonfish	*Acanthurus pyroferus.*
		Yellow tang	*Zebrasoma flavescens.*
		striped bristletooth	*Ctenochaetus striatus.*
		twospot bristletooth	*Ctenochaetus binotatus.*
	tataga/igh-falafal	bluespine unicornfish	*Naso unicornus.*
	hangon/bwulaalay	orangespine unicornfish	*Naso lituratus.*
		humpnose unicornfish	*Naso tuberosus.*
		black tongue unicornfish	*Naso hexacanthus.*
		bignose unicornfish	*Naso vlamingii.*
		whitemargin unicornfish	*Naso annulatus.*
		spotted unicornfish	*Naso brevirostris.*
		humpback unicornfish	*Naso brachycentron.*
		gray unicornfish	*Naso caesius.*
Balistidae (Triggerfishes)		titan triggerfish	*Balistoides viridescens.*
		clown triggerfish	*Balistoides conspicillum.*
		orange striped triggerfish	*Balistapus undulatus.*
		pinktail triggerfish	*Melichthys vidua.*
		black triggerfish	*Melichthys niger.*
		blue triggerfish	*Pseudobalistes fuscus.*
		Picassofish	*Rhinecanthus aculeatus.*
		wedged Picassofish	*Balistoides rectangulus.*
		bridled triggerfish	*Sufflamen fraenatus.*
Carangidae (Jacks)	atulai/peti	Bigeye scad	*Selar crumenophthalmus.*
		mackerel scad	*Decapterus macarellus.*
Carcharhinidae (Sharks)		grey reef shark	*Carcharhinus amblyrhynchos.*
		silvertip shark	*Carcharhinus albimarginatus.*
		Galapagos shark	*Carcharhinus galapagensis.*
		blacktip reef shark	*Carcharhinus melanopterus.*
		whitetip reef shark	*Triaenodon obesus.*
Holocentridae (Solderfish/ Squirrelfish.	saksak/mweel	bigscale soldierfish	*Myripristis berndti.*
	sagamelon	bronze soldierfish	*Myripristis adusta.*
	sagamelon	blotcheye soldierfish	*Myripristis murdjan.*
	sagamelon	brick soldierfish	*Myripristis amaena.*

Family name	Local name (Chamorro/ Carolinian)	English common name	Scientific name
	sagamelon	scarlet soldierfish	*Myripristis pralinia.*
	sagamelon	violet soldierfish	*Myripristis violacea.*
	sagamelon	whitetip soldierfish	*Myripristis vittata.*
	sagamelon	yellowfin soldierfish	*Myripristis chryseres.*
	sagamelon	pearly soldierfish	*Myripristis kuntee.*
	sagamelon	tailspot squirrelfish	*Sargocentron caudimaculatum.*
		file-lined squirrelfish	*Sargocentron microstoma.*
	chalak	crown squirrelfish	*Sargocentron diadema.*
	sagsag/leet	blue-lined squirrelfish	*Sargocentron tiere.*
	sisiok	saber or long jaw squirrelfish	*Sargocentron spiniferum.*
	sagsag/leet	spotfin squirrelfish	*Neoniphon* spp.
Kuhliidae (Flagtails)		barred flag-tail	*Kuhlia mugil.*
Kyphosidae (Rudderfish)	Guili	rudderfish	*Kyphosus biggibus.*
	Guili/schpwul	rudderfish	*Kyphosus cinerascens.*
	guilen puengi/reel	rudderfish	*Kyphosus vaigienses.*
Labridae (Wrasses)	tangison/maam	floral wrasse	*Cheilinus chlorourus.*
	tangison/maam	napoleon wrasse	*Cheilinus undulatus.*
	lalacha mamate/Porou	triple-tail wrasse	*Cheilinus trilobatus.*
		harlequin tuskfish, red-breasted wrasse.	*Cheilinus fasciatus.*
		ring-tailed wrasse	*Oxycheilinus unifasciatus.*
		razor wrasse	*Xyrichtys pavo.*
		whitepatch wrasse	*Xyrichtys aneitensis.*
		cigar wrasse	*Cheilio inermis.*
		blackeye thicklip	*Hemigymnus melapterus.*
		barred thicklip	*Hemigymnus fasciatus.*
		three-spot wrasse	*Halichoeres trimaculatus.*
		checkerboard wrasse	*Halichoeres hortulanus.*
		weedy surge wrasse	*Halichoeres margaritacous.*
		three-spot wrasse	*Halichoeres trimaculatus.*
		surge wrasse	*Thalassoma purpureum.*
		red ribbon wrasse	*Thalassoma quinquevittatum.*
		sunset wrasse	*Thalassoma lutescens.*
		longface wrasse	*Hologynmosus doliatus.*
		rockmover wrasse	*Novaculichthys taeniourus.*
Mullidae (Goatfishes)		yellow goatfish	*Mulloidichthys* spp.
	satmoneti/wichigh	yellowfin goatfish	*Mulloidichthys vanicolensis.*
	satmoneti (adult) ti'ao (juvenile)	yellowstripe goatfish	*Mulloidichthys flaviolineatus.*
		banded goatfish	*Parupeneus* spp.
	satmonetiyo/failighi	dash-dot goatfish	*Parupeneus barberinus.*
	satmoneti acho/sungoongo	doublebar goatfish	*Parupeneus bifasciatus.*
		redspot goatfish	*Parupeneus heptacanthus.*
	satmoneti (adult) ti'ao (juvenile)	white-lined goatfish	*Parupeneus ciliatus.*
	satmoneti (adult) ti'ao (juvenile)	yellowsaddle goatfish	*Parupeneus cyclostomas.*
	satmoneti (adult) ti'ao (juvenile)	side-spot goatfish	*Parupeneus pleurostigma.*
	satmoneti (adult) ti'ao (juvenile)	multi-barred goatfish	*Parupeneus multifaciatus.*
		band tail goatfish	*Upeneus arge.*
Mugilidae (Mullets)	laiguan (adult) Agues (juvenile)	striped mullet	*Mugil cephalus.*
	laiguan (adult) Agues (juvenile)	Engel's mullet	*Moolgarda engeli.*
	laiguan (adult) Agues (juvenile)	fringelip mullet	*Crenimugil crenilabis.*
Muraenidae (Moray eels)		yellowmargin moray eel	*Gymnothorax flavimarginatus.*
		giant moray eel	*Gymnothorax javanicus.*
		undulated moray eel	*Gymnothorax undulatus.*
Octopodidae (Octopus)	gamsun	octopus	*Octopus cyanea.*
	gamsun	octopus	*Octopus ornatus.*
Polynemidae		threadfin	*Polydactylus sexfilis.*
Pricanthidae (Bigeye)		glasseye	*Heteropriacanthus cruentatus.*
		Bigeye	*Priacanthus hamrur.*
Scaridae (Parrotfishes)	atuhong/roow	humphead parrotfish	*Bolbometopon muricatum.*
	palakse (sm.) laggua (lg.)	parrotfish	*Scarus* spp.
	gualafi/oscha	Pacific longnose parrotfish	*Hipposcarus longiceps.*
	palaksin chaguan	stareye parrotfish	*Calotomus carolinus.*
Scombridae	White tuna/ayul	dogtooth tuna	*Gymnosarda unicolor.*
Siganidae (Rabbitfish)	hiting/manahok/llegh	forktail rabbitfish	*Siganus aregentus.*
	hiting	golden rabbitfish	*Siganus guttatus.*
	hiting galagu	gold-spot rabbitfish	*Siganus punctatissimus.*
		Randall's rabbitfish	*Siganus randalli.*
	hiting/sesyon/palawa	scribbled rabbitfish	*Siganus spinus.*
	hiting	vermiculate rabbitfish	*Siganus vermiculatus.*
Sphyraenidae (Barracuda)		Heller's barracuda	*Sphyraena helleri.*
		great barracuda	*Sphyraena barracuda.*
Turbinidae (turban/green snails)	aliling pulan/aliling tulompu	green snails	*Turbo* spp.
		turban shells.	

Mariana Potentially Harvested Coral Reef Taxa:

English common name	Scientific name
Wrasses (Those species not listed as Currently Harvested Coral Reef Taxa or CHCRT).	Labridae.
Sharks	Carcharhinidae, Sphyrnidae.
Rays and skates	Dasyatididae, Myliobatidae.
Groupers (Those species not listed as CHCRT or Bottomfish Management Unit Species or BMUS).	Serrandiae.
Jacks and Scads (Those species not listed as CHCRT or BMUS)	Carangidae.
Solderfishes and Squirrelfishes (Those species not listed as CHCRT)	Holocentridae.
Goatfishes (Those species not listed as CHCRT)	Mullidae.
Surgeonfishes (Those species not listed as CHCRT)	Acanthuridae.
Batfishes	Ephippidae.
Monos	Monodactylidae.
Sweetlips	Haemulidae.
Remoras	Echeneidae.
Tilefishes	Malacanthidae.
Emperors (Those species not listed as CHCRT)	Lethrinidae.
Dottybacks	Pseudochromidae.
Prettyfins	Plesiopidae.
Eels (Those species not listed as CHCRT)	Muraenidae, Chlopsidae, Congridae, Ophichthidae.
Cardinalfishes	Apogonidae.
Moorish Idols	Zanclidae.
Trumpetfish	*Aulostomus chinensis.*
Cornetfish	*Fistularia commersoni.*
Butterfly fishes	Chaetodontidae.
Angelfishes	Pomacanthidae.
Damselfishes	Pomacentridae.
Scorpionfishes	Scorpaenidae.
Coral crouchers	Caracanthidae.
Flashlightfishes	Anomalopidae.
Herrings	Clupeidae.
Anchovies	Engraulidae.
Gobies	Gobiidae.
Blennies	Blenniidae.
Barracudas (Those species not listed as CHCRT)	Sphyraenidae.
Snappers (Those species not listed as CHCRT or BMUS)	Lutjanidae.
Trigger fishes (Those species not listed as CHCRT)	Balistidae.
Rabbitfishes (Those species not listed as CHCRT)	Siganidae.
Sandperches	Pinguipedidae.
Dog tooth tuna	*Gymnosarda unicolor.*
Rudderfishes (Those species not listed as CHCRT)	Kyphosidae.
Flounders, Soles	Bothidae. Soleidae.
Trunkfishes	Ostraciidae.
Fusiliers	Caesionidae.
Hawkfishes	Cirrhitidae.
Frogfishes	Antennariidae.
Pipefishes, Seahorses	Syngnathidae.
Puffer fishes, Porcupine fishes	Tetradontidae.
Blue corals	Heliopora.
Organpipe corals	Tubipora.
Ahermatypic corals	Azooxanthellates.
Sea cucumbers, Sea urchins (Those species not listed as CHCRT)	Echinoderms. Mollusca.
Sea snails	Gastropoda.
Turban shells	*Trochus* spp.
Sea slugs	Opistobranchs.
Black lipped pearl oyster	*Pinctada margaritifera.*
Giant clam	Tridacnidae.
Other Clams	Other Bivalves.
Mushroom corals	Fungiidae.
Small and large coral polyps.	
Fire corals	Millepora.
Soft corals, Gorgonians.	
Anemones	Actinaria.
Soft zoanthid corals	Zoanthinaria. Hydrozoans, Bryzoans.
Sea squirts	Tunicates.
Sponges	Porifera.

English common name	Scientific name
	Cephalopods.
Lobsters, Shrimps/Mantis shrimps, true crabs and hermit crabs (Those species not listed as CMUS).	Crustacea.
Lace corals	Stylasteridae.
Hydroid corals	Solanderidae.
Seaweed	Algae.
Segmented worms	Annelids.
Live rock.	
All other Mariana coral reef ecosystem MUS that are marine plants, invertebrates, and fishes that are not listed in the Mariana CHCRT table or are not Mariana bottomfish, crustacean, precious coral or western Pacific pelagic MUS.	

§ 665.422 Management area.

The Mariana coral reef management area consists of the U.S. EEZ around Guam and the offshore area of the CNMI or that portion of the U.S. EEZ around CNMI between three nautical miles offshore and the outer boundary of the U.S. EEZ. The inner boundary of the management area is the seaward boundaries of the Territory of Guam, and a line three nautical miles seaward from the shoreline of CNMI. The outer boundary of the management area is the outer boundary of the U.S. EEZ or adjacent international maritime boundaries. The CNMI and Guam management area is divided by a line intersecting these two points: 148° E. long., 12° N. lat., and 142° E. long., 16° N. lat.

§ 665.423 Relation to other laws.

To ensure consistency between the management regimes of different Federal agencies with shared management responsibilities of fishery resources within the Mariana coral reef ecosystem management area, fishing for Mariana coral reef ecosystem MUS is not allowed within the boundary of a National Wildlife Refuge unless specifically authorized by the USFWS, regardless of whether that refuge was established by action of the President or the Secretary of the Interior.

§ 665.424 Permits and fees.

(a) *Applicability.* Unless otherwise specified in this subpart, § 665.13 applies to coral reef ecosystem permits.

(1) *Special permit.* Any person of the United States fishing for, taking or retaining Mariana coral reef ecosystem MUS must have a special permit if they, or a vessel which they operate, is used to fish for any:

(i) Mariana coral reef ecosystem MUS in low-use MPAs as defined in § 665.399;

(ii) Mariana Potentially Harvested Coral Reef Taxa in the coral reef ecosystem management area; or

(iii) Mariana Coral reef ecosystem MUS in the Mariana coral reef ecosystem management area with any gear not specifically allowed in this subpart.

(2) *Transshipment permit.* A receiving vessel must be registered for use with a transshipment permit if that vessel is used in the Mariana coral reef ecosystem management area to land or transship Mariana PHCRT, or any Mariana coral reef ecosystem MUS harvested within low-use MPAs.

(3) *Exceptions.* The following persons are not required to have a permit under this section:

(i) Any person issued a permit to fish under any FEP who incidentally catches Mariana coral reef ecosystem MUS while fishing for bottomfish MUS, crustacean MUS, western Pacific pelagic MUS, precious coral, or seamount groundfish.

(ii) Any person fishing for Mariana CHCRT outside of an MPA, who does not retain any incidentally caught Mariana PHCRT.

(iii) Any person collecting marine organisms for scientific research as described in § 665.17, or § 600.745 of this chapter.

(b) *Validity.* Each permit will be valid for fishing only in the fishery management area specified on the permit.

(c) *General requirements.* General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits are contained in § 665.13.

(d) *Special permit.* The Regional Administrator shall issue a special permit in accordance with the criteria and procedures specified in this section.

(1) *Application.* An applicant for a special or transshipment permit issued under this section must complete, and submit to the Regional Administrator, a Special Coral Reef Ecosystem Fishing Permit Application Form issued by NMFS. Information in the application form must include, but is not limited to, a statement describing the objectives of the fishing activity for which a special permit is needed, including a general description of the expected disposition of the resources harvested under the permit (i.e., stored live, fresh, frozen, preserved; sold for food, ornamental, research, or other use; and a description of the planned fishing operation, including location of fishing and gear operation, amount and species (directed and incidental) expected to be harvested and estimated habitat and protected species impacts).

(2) *Incomplete applications.* The Regional Administrator may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected and completed in writing.

(3) *Issuance.* (i) If an application contains all of the required information, the Regional Administrator will forward copies of the application within 30 days to the Council, the USCG, the fishery management agency of the affected state, and other interested parties who have identified themselves to the Council, and the USFWS.

(ii) Within 60 days following receipt of a complete application, the Regional Administrator will consult with the Council through its Executive Director, USFWS, and the Director of the affected state fishery management agency concerning the permit application, and will receive their recommendations for approval or disapproval of the application based on:

(A) Information provided by the applicant;

(B) The current domestic annual harvesting and processing capacity of the directed and incidental species for which a special permit is being requested;

(C) The current status of resources to be harvested in relation to the overfishing definition in the FEP;

(D) Estimated ecosystem, habitat, and protected species impacts of the proposed activity; and

(E) Other biological and ecological information relevant to the proposal. The applicant will be provided with an

opportunity to appear in support of the application.

(iii) Following a review of the Council's recommendation and supporting rationale, the Regional Administrator may:

(A) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the FEP, the national standards, the Endangered Species Act, and other applicable laws, approve or deny a special permit; or

(B) Reject the Council's recommendation, in which case, written reasons will be provided by the Regional Administrator to the Council for the rejection.

(iv) If the Regional Administrator does not receive a recommendation from the Council within 60 days of Council receipt of the permit application, the Regional Administrator can make a determination of approval or denial independently.

(v) Within 30 working days after the consultation in paragraph (d)(3)(ii) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the special permit and, if denied, the reasons for the denial. Grounds for denial of a special permit include the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.

(B) According to the best scientific information available, the directed or incidental catch in the season or location specified under the permit would detrimentally affect any coral reef resource or coral reef ecosystem in a significant way, including, but not limited to, issues related to spawning grounds or seasons, protected species interactions, EFH, and habitat areas of particular concern (HAPC).

(C) Issuance of the special permit would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.

(D) The method or amount of harvest in the season and/or location stated on the permit is considered inappropriate based on previous human or natural impacts in the given area.

(E) NMFS has determined that the maximum number of permits for a given area in a given season has been reached and allocating additional permits in the same area would be detrimental to the resource.

(F) The activity proposed under the special permit would create a significant enforcement problem.

(vi) The Regional Administrator may attach conditions to the special permit, if it is granted, consistent with the management objectives of the FEP, including, but not limited to:

(A) The maximum amount of each resource that can be harvested and landed during the term of the special permit, including trip limits, where appropriate.

(B) The times and places where fishing may be conducted.

(C) The type, size, and amount of gear which may be used by each vessel operated under the special permit.

(D) Data reporting requirements.

(E) Such other conditions as may be necessary to ensure compliance with the purposes of the special permit consistent with the objectives of the FEP.

(4) Appeals of permit actions.

(i) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, conditioning, or suspension of their permit or a permit affecting their interests to the Regional Administrator. In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the original action(s) by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(ii) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Regional Administrator will rule on the appeal in accordance with the permit eligibility criteria set forth in this section and the FEP, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as deemed appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons therefore, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(iii) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the **Federal Register**. Such a hearing shall normally be held no later than 30 days following publication of the notice in the **Federal Register**, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested parties, may appear personally and/or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(iv) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action constitutes final action for the agency for the purposes of the Administrative Procedure Act.

(5) The Regional Administrator may extend, for good cause, any time limit prescribed in this section for a period not to exceed 30 days, either upon his or her own motion or upon written request from the Council, appellant or applicant stating the reason(s) therefore.

§ 665.425 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15 of this part, it is unlawful for any person to do any of the following:

(a) Fish for, take, retain, possess or land any Mariana coral reef ecosystem MUS in any low-use MPA as defined in § 665.399 unless:

(1) A valid permit has been issued for the hand harvester or the fishing vessel operator that specifies the applicable area of harvest;

(2) A permit is not required, as outlined in § 665.424 of this part; or

(3) The Mariana coral reef ecosystem MUS possessed on board the vessel originated outside the management area and this can be demonstrated through receipts of purchase, invoices, fishing logbooks or other documentation.

(b) Fish for, take, or retain any Mariana coral reef ecosystem MUS species:

(1) That is determined overfished with subsequent rulemaking by the Regional Administrator.

(2) By means of gear or methods prohibited under § 665.427.

(3) In a low-use MPA without a valid special permit.

(4) In violation of any permit issued under §§ 665.13 or 665.424.

(c) Fish for, take, or retain any wild live rock or live hard coral except under a valid special permit for scientific research, aquaculture seed stock collection or traditional and ceremonial purposes by indigenous people.

§ 665.426 Notifications.

Any special permit holder subject to the requirements of this subpart must contact the appropriate NMFS enforcement agent in American Samoa, Guam, or Hawaii at least 24 hours before landing any Mariana coral reef ecosystem MUS unit species harvested under a special permit, and report the port and the approximate date and time at which the catch will be landed.

§ 665.427 Allowable gear and gear restrictions.

(a) Mariana coral reef ecosystem MUS may be taken only with the following allowable gear and methods:

(1) Hand harvest;

(2) Spear;

(3) Slurp gun;

(4) Hand net/dip net;

(5) Hoop net for Kona crab;

(6) Throw net;

(7) Barrier net;

(8) Surround/purse net that is attended at all times;

(9) Hook-and-line (includes handline (powered or not), rod-and-reel, and trolling);

(10) Crab and fish traps with vessel ID number affixed; and

(11) Remote-operating vehicles/submersibles.

(b) Mariana coral reef ecosystem MUS may not be taken by means of poisons, explosives, or intoxicating substances. Possession or use of these materials by any permit holder under this subpart who is established to be fishing for Mariana coral reef ecosystem MUS in the management area is prohibited.

(c) Existing FEP fisheries shall follow the allowable gear and methods outlined in their respective plans.

(d) Any person who intends to fish with new gear not included in this section must describe the new gear and its method of deployment in the special permit application. A decision on the permissibility of this gear type will be made by the Regional Administrator after consultation with the Council and the director of the affected state fishery management agency.

§ 665.428 Gear identification.

(a) The vessel number must be affixed to all fish and crab traps on board the vessel or deployed in the water by any vessel or person holding a permit under §§ 665.13 or 665.424 or that is otherwise established to be fishing for Mariana coral reef ecosystem MUS in the management area.

(b) *Enforcement action.* (1) Traps not marked in compliance with paragraph (a) of this section and found deployed in the coral reef ecosystem management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

(2) Unattended surround nets or bait seine nets found deployed in the coral reef ecosystem management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

§§ 665.429–665.439 [Reserved]

§ 665.440 Mariana crustacean fisheries. [Reserved]

§ 665.441 Definitions.

As used in §§ 665.440 through 665.459:

Crustacean Permit Area 5 (Permit Area 5) means the EEZ around Guam and the EEZ seaward of points 3 nautical miles from the shoreline of the CNMI.

Mariana crustacean management unit species means the following crustaceans:

Local name	English common name	Scientific name
Mahonggang	spiny lobster	*Panulirus marginatus, Panulirus penicillatus.*
pa'pangpang	slipper lobster	Scyllaridae.
	Kona crab	*Ranina ranina.*
	deepwater shrimp	*Heterocarpus* spp.

§ 665.442 Permits.

(a) *Applicability.* (1) The owner of any vessel used to fish for lobster in Permit Area 3 must have a permit issued for such a vessel.

(2) The owner of any vessel used to fish for deepwater shrimp in Crustacean Permit Area 5 must have a permit issued for that vessel.

(b) *General requirements.* General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits issued under this section, as applicable, are contained in § 665.13.

(c) *Application.* An application for a permit required under this section shall be submitted to PIRO as described in § 665.13. If the application for a limited access permit is submitted on behalf of a partnership or corporation, the application must be accompanied by a supplementary information sheet obtained from PIRO and contain the names and mailing addresses of all partners or shareholders and their respective percentage of ownership in the partnership or corporation.

§ 665.443 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person in Crustacean Permit Area 5 to fish for, take, or retain deepwater shrimp without a permit issued under § 665.442.

§ 665.444 Notifications.

(a) The operator of any vessel subject to the requirements of this subpart must:

(1) Report, not less than 24 hours, but not more than 36 hours, before landing, the port, the approximate date and the approximate time at which spiny and slipper lobsters will be landed.

(2) Report, not less than 6 hours and not more than 12 hours before offloading, the location and time that offloading of spiny and slipper lobsters will begin.

(b) The Regional Administrator will notify permit holders of any change in the reporting method and schedule required in paragraphs (a)(1) and (2) of this section at least 30 days prior to the opening of the fishing season.

§ 665.445 At-sea observer coverage.

All fishing vessels subject to §§ 665.440 through 665.445 and subpart A of this part must carry an observer when requested to do so by the Regional Administrator.

§§ 665.446–665.459 [Reserved]

§ 665.460 Mariana precious coral fisheries [Reserved].

§ 665.461 Definitions.

Mariana precious coral management unit species means any coral of the genus *Corallium* in addition to the following species of corals:

English common name	Scientific name
Pink coral (also known as red coral)	*Corallium secundum, Corallium regale, Corallium laauense.*
Gold coral	*Gerardia* spp., *Callogorgia gilberti, Narella* spp., *Calyptrophora* spp.
Bamboo coral	*Lepidisis olapa, Acanella* spp.
Black coral	*Antipathes dichotoma, Antipathes grandis, Antipathes ulex.*

Mariana precious coral permit area means the area encompassing the precious coral beds within the EEZ around the Mariana Archipelago. Each bed is designated by a permit area code and assigned to one of the following four categories:

(1) Established beds. [*Reserved*]

(2) Conditional beds. [*Reserved*]

(3) Refugia. [*Reserved*]

(4) Exploratory Area.

(i) Permit Area X–P–G includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of Guam.

(ii) Permit Area X–P–CNMI includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of points 3 nautical miles from the shoreline of the CNMI.

§ 665.462 Permits.

(a) Any vessel of the United States fishing for, taking, or retaining Mariana precious coral MUS in any Mariana Archipelago precious coral permit area must have a permit issued under § 665.13.

(b) Each permit will be valid for fishing only in the permit area specified on the permit. Precious Coral Permit Areas are defined in § 665.461.

(c) No more than one permit will be valid for any one vessel at any one time.

(d) No more than one permit will be valid for any one person at any one time.

(e) The holder of a valid permit to fish one permit area may obtain a permit to fish another permit area only upon surrendering to the Regional Administrator any current permit for the precious coral fishery issued under § 665.13.

(f) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits for the precious coral fishery are contained in § 665.13.

§ 665.463 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and in § 665.15, it is unlawful for any person to:

(a) Use any vessel to fish for, take, retain, possess or land Mariana precious coral MUS in any Mariana precious coral permit area, unless a permit has been issued for that vessel and area as specified in § 665.13 and that permit is on board the vessel.

(b) Fish for, take, or retain any species of Mariana precious coral MUS in any Mariana precious coral permit area:

(1) By means of gear or methods prohibited by § 665.464.

(2) In refugia specified in § 665.461.

(3) In a bed for which the quota specified in § 665.467 has been attained.

(4) In violation of any permit issued under §§ 665.13 or 665.17.

(5) In a bed that has been closed pursuant to §§ 665.466 or 665.469.

(c) Take and retain, possess, or land any live pink coral or live black coral from any precious coral permit area that is less than the minimum height specified in § 665.465 unless: (1) A valid EFP was issued under § 665.17 for the vessel and the vessel was operating under the terms of the permit; or

(2) The coral originated outside coral beds listed in this paragraph, and this can be demonstrated through receipts of purchase, invoices, or other documentation.

§ 665.464 Gear restrictions.

Only selective gear may be used to harvest coral from any precious coral permit area.

§ 665.465 Size restrictions.

The height of a live coral specimen shall be determined by a straight line measurement taken from its base to its most distal extremity. The stem diameter of a living coral specimen shall be determined by measuring the greatest diameter of the stem at a point no less than 1 inch (2.54 cm) from the top surface of the living holdfast.

(a) Live pink coral harvested from any precious coral permit area must have attained a minimum height of 10 inches (25.4 cm).

(b) *Black coral.* Live black coral harvested from any precious coral permit area must have attained either a minimum stem diameter of 1 inch (2.54 cm), or a minimum height of 48 inches (122 cm).

§ 665.466 Closures.

(a) If the Regional Administrator determines that the harvest quota for any coral bed will be reached prior to the end of the fishing year, NMFS shall publish a notice to that effect in the **Federal Register** and shall use other means to notify permit holders. Any such notice must indicate the reason for the closure, the bed being closed, and the effective date of the closure.

(b) A closure is also effective for a permit holder upon the permit holder's actual harvest of the applicable quota.

§ 665.467 Quotas.

(a) *General.* The quotas limiting the amount of precious coral that may be taken in any precious coral permit area during the fishing year are listed in § 665.467(d). Only live coral is counted toward the quota. The accounting period for all quotas begins July 1, 1983.

(b) *Conditional bed closure.* A conditional bed will be closed to all nonselective coral harvesting after the quota for one species of coral has been taken.

(c) *Reserves and reserve release.* The quotas for exploratory areas X–P–G and X–P–CNMI will be held in reserve for harvest by vessels of the United States in the following manner:

(1) At the start of the fishing year, the reserve for the Guam and CNMI exploratory areas will equal the quota minus the estimated domestic annual harvest for that year.

(2) As soon as practicable after December 31 each year, the Regional Administrator will determine the amount harvested by vessels of the United States between July 1 and December 31 of the year that just ended on December 31.

(3) NMFS will release to TALFF an amount of precious coral for each exploratory area equal to the quota minus two times the amount harvested by vessels of the United States in that July 1–December 31 period.

(4) NMFS will publish in the **Federal Register** a notification of the Regional Administrator's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

(d) The Guam and CNMI exploratory permit areas, X–P–GU and X–P–CNMI, each have annual quotas of 1,000 kg for all precious coral MUS combined with the exception of black corals.

§ 665.468 Seasons.

The fishing year for precious coral begins on July 1 and ends on June 30 the following year.

§ 665.469 Gold coral harvest moratorium.

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2013.

Subpart E—Pacific Remote Island Area Fisheries

§ 665.598 Management area.

The PRIA fishery management area is the EEZ seaward of Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, and Wake Island, Pacific Remote Island Areas with the inner boundary a line coterminous with the seaward boundaries of the above atolls, reefs and islands PRIA and the outer boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries.

§ 665.599 Area restrictions.

(a) Fishing is prohibited in all no-take MPAs. The following U.S. EEZ waters are no-take MPAs: Landward of the 50 fathom (fm) (91.5 m) curve at Jarvis, Howland, and Baker Islands, and Kingman Reef; as depicted on National Ocean Survey Chart Numbers 83116 and 83153.

(b) Low-use MPAs. The following U.S. EEZ waters in the Western Pacific Region are low-use MPAs: All waters between the shoreline and the 50 fm (91.5 m) curve around Johnston Atoll, Palmyra Atoll, and Wake Island as depicted on National Ocean Survey Chart Numbers 83637, 83157 and 81664.

§ 665.600 PRIA bottomfish fisheries [Reserved].

§ 665.601 Definitions.

As used in §§ 665.600 through 665.619:

PRIA bottomfish fishing permit means the permit required by § 665.603 to use a vessel to fish for PRIA bottomfish MUS in the EEZ around the PRIA, or to land bottomfish MUS shoreward of the outer boundary of the EEZ around the PRIA, with the exception of EEZ waters around Midway Atoll.

PRIA bottomfish management unit species (PRIA bottomfish MUS) means the following fish:

English common name	Scientific name
Silver jaw jobfish	*Aphareus rutilans.*
Giant trevally	*Caranx ignobilis.*
Black jack	*Caranx lugubris.*
Blacktip grouper	*Epinephelus fasciatus.*
Sea bass	*Epinephelus quernus.*
Red snapper	*Etelis carbunculus.*
Longtail snapper	*Etelis coruscans.*
Redgill emperor	*Lethrinus rubrioperculatus.*
Yellowtail snapper	*Pristipomoides auricilla.*
Pink snapper	*Pristipomoides filamentosus.*
Pink snapper	*Pristipomoides seiboldii.*
Lunartail, lyretail grouper	*Variola louti.*

§ 665.602 [Reserved]

§ 665.603 Permits.

(a) *Applicability.* PRIA. The owner of any vessel used to fish for, land, or transship PRIA bottomfish MUS shoreward of the outer boundary of the PRIA subarea must have a permit issued under this section, and the permit must be registered for use with that vessel.

(b) *Submission.* An application for a permit required under this section must be submitted to PIRO as described in § 665.13.

§ 665.604 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.16, it is unlawful for any person to do any of the following:

(a) Fish for PRIA bottomfish MUS using gear prohibited under § 665.605.

(b) Fish for, or retain on board a vessel, PRIA bottomfish MUS in the PRIA without the appropriate permit registered for use with that vessel issued under § 665.13.

(c) Falsify or fail to make or file all reports of PRIA bottomfish MUS landings taken in the PRIA, containing all data in the exact manner, as specified in § 665.14(b).

§ 665.605 Gear restrictions.

(a) *Bottom trawls and bottom set gillnets.* Fishing for PRIA bottomfish MUS with bottom trawls and bottom set gillnets is prohibited.

(b) *Possession of gear.* Possession of a bottom trawl and bottom set gillnet by any vessel having a permit under § 665.603 or otherwise established to be fishing for PRIA bottomfish MUS in the PRIA fishery management area is prohibited.

(c) *Poisons and explosives.* The possession or use of any poisons, explosives, or intoxicating substances for the purpose of harvesting PRIA bottomfish is prohibited.

§ 665.606 At-sea observer coverage.

All fishing vessels subject to §§ 665.600 through 665.606 must carry an observer when directed to do so by the Regional Administrator.

§§ 665.607–665.619 [Reserved]

§ 665.620 PRIA coral reef ecosystem fisheries [Reserved].

§ 665.621 Definitions.

As used in §§ 665.620 through 665.639:

PRIA coral reef ecosystem management unit species (PRIA coral reef ecosystem MUS) means all of the Currently Harvested Coral Reef Taxa and Potentially Harvested Coral Reef Taxa listed in this section and which

spend the majority of their non-pelagic (post-settlement) life stages within waters less than or equal to 50 fathoms in total depth.

PRIA Currently Harvested Coral Reef Taxa:

Family name	English common name	Scientific name
Acanthuridae (Surgeonfishes)	orange-spot surgeonfish.	*Acanthurus olivaceus.*
	yellowfin surgeonfish	*Acanthurus xanthopterus.*
	convict tang	*Acanthurus triostegus.*
	eye-striped surgeonfish	*Acanthurus dussumieri.*
	blue-lined surgeon	*Acanthurus nigroris.*
	Whitebar surgeonfish	*Acanthurus leucopareius.*
	blue-banded surgeonfish	*Acanthurus lineatus.*
	blackstreak surgeonfish	*Acanthurus nigricauda.*
	whitecheek surgeonfish	*Acanthurus nigricans.*
	white-spotted surgeonfish	*Acanthurus guttatus.*
	Ringtail surgeonfish	*Acanthurus blochii.*
	brown surgeonfish	*Acanthurus nigrofuscus.*
	yellow-eyed surgeonfish	*Ctenochaetus strigosus.*
	striped bristletooth	*Ctenochaetus striatus.*
	twospot bristletooth	*Ctenochaetus binotatus.*
	Yellow tang	*Zebrasoma flavescens.*
	bluespine unicornfish	*Naso unicornus.*
	orangespine unicornfish	*Naso lituratus.*
	black tongue unicornfish	*Naso hexacanthus.*
	bignose unicornfish	*Naso vlamingii.*
	whitemargin unicornfish	*Naso annulatus.*
	spotted unicornfish	*Naso brevirostris.*
Labridae (Wrasses)	Napoleon wrasse	*Cheilinus undulatus.*
	Triple-tail wrasse	*Cheilinus trilobatus.*
	Floral wrasse	*Cheilinus chlorourus.*
	ring-tailed wrasse	*Oxycheilinus unifasciatus.*
	bandcheek wrasse	*Oxycheilinus diagrammus.*
	Barred thicklip	*Hemigymnus fasciatus.*
	three-spot wrasse	*Halichoeres trimaculatus.*
	red ribbon wrasse	*Thalassoma quinquevittatum.*
	Sunset wrasse	*Thalassoma lutescens.*
Mullidae (Goatfishes)	Yellow goatfish	*Mulloidichthys.* spp.
	Orange goatfish	*Mulloidichthys pfleugeri.*
	yellowstripe goatfish	*Mulloidichthys flavolineatus.*
	Banded goatfish	*Parupeneus.* spp.
Mullidae (Goatfishes)	dash-dot goatfish	*Parupeneus barberinus.*
	yellowsaddle goatfish	*Parupeneus cyclostomas.*
	multi-barred goatfish	*Parupeneus multifaciatus.*
	bantail goatfish	*Upeneus arge.*
Mugilidae (Mullets)	fringelip mullet	*Crenimugil crenilabis.*
	engel's mullet	*Moolgarda engeli.*
	false mullet	*Neomyxus leuciscus.*
Muraenidae (Moray eels)	yellowmargin moray eel	*Gymnothorax flavimarginatus.*
	giant moray eel	*Gymnothorax javanicus.*
	undulated moray eel	*Gymnothorax undulatus.*
Octopodidae	Octopus	*Octopus cyanea.*
	Octopus	*Octopus ornatus.*
Pricanthidae (Bigeye)	Glasseye	*Heteropriacanthus cruentatus.*
Scaridae (Parrotfishes)	Humphead parrotfish	*Bolbometopon muricatum.*
	parrotfish	*Scarus.* spp.
	pacific longnose parrotfish	*Hipposcarus longiceps.*
	stareye parrotfish	*Calotomus carolinus.*
Scombridae	Dogtooth tuna	*Gymnosarda unicolor.*
Sphyraenidae (Barracuda)	great barracuda	*Sphyraena barracuda.*

PRIA Potentially Harvested Coral Reef Taxa:

English common name	Scientific name
wrasses (Those species not listed as CHCRT)	Labridae.
sharks (Those species not listed as CHCRT)	Carcharhinidae, Sphyrnidae.
rays and skates	Myliobatidae, Mobulidae.
groupers (Those species not listed as CHCRT or as BMUS)	Serrandiae.
jacks and scads (Those species not listed as CHCRT or as BMUS)	Carangidae.
solderfishes and squirrelfishes (Those species not listed as CHCRT)	Holocentridae.
goatfishes (Those species not listed as CHCRT)	Mullidae.

English common name	Scientific name
Batfishes	Ephippidae.
Sweetlips	Haemulidae.
Remoras	Echeneidae.
Tilefishes	Malacanthidae.
Dottybacks	Pseudochromidae.
Prettyfins	Plesiopidae.
surgeonfishes (Those species not listed as CHCRT)	Acanthuridae.
emperors (Those species not listed as CHCRT or as BMUS)	Lethrinidae.
Herrings	Clupeidae.
Gobies	Gobiidae.
snappers (Those species not listed as CHCRT or as BMUS)	Lutjanidae.
trigger fishes (Those species not listed as CHCRT)	Balistidae.
rabbitfishes (Those species not listed as CHCRT)	Siganidae.
eels (Those species not listed as CHCRT)	Muraenidae, Chlopsidae, Congridae, Ophichthidae.
Cardinalfishes	Apogonidae.
moorish idols	Zanclidae.
butterfly fishes	Chaetodontidae.
Angelfishes	Pomacanthidae.
Damselfishes	Pomacentridae.
Scorpionfishes	Scorpaenidae.
Blennies	Blenniidae.
barracudas (Those species not listed as CHCRT)	Sphyraenidae.
Sandperches	Pinguipedidae.
rudderfishes (Those species not listed as CHCRT)	Kyphosidae.
Fusiliers	Caesionidae.
hawkfishes (Those species not listed as CHCRT)	Cirrhitidae.
Frogfishes	Antennariidae.
pipefishes, seahorses	Syngnathidae.
flounders, soles	Bothidae.
Trunkfishes	Ostraciidae.
puffer fishes, porcupine fishes	Tetradontidae.
Trumpetfish	*Aulostomus chinensis*.
Cornetfish	*Fistularia commersoni*.
blue corals	Heliopora.
organpipe corals	Tubipora.
ahermatypic corals	Azooxanthellates.
mushroom corals	Fungiidae.
small and large coral polyps	
fire corals	Millepora.
soft corals, gorgonians	
Anemones	Actinaria.
soft zoanthid corals	Zoanthinaria.
	Hydrozoans, Bryzoans.
sea squirts	Tunicates.
sea cucumbers and sea urchins	Echinoderms.
Those species not listed as CHCRT	Mollusca.
sea snails	Gastropoda.
	Trochus.
sea slugs	Opistobranchs.
black lipped pearl oyster	*Pinctada margaritifera*.
giant clam	Tridacnidae.
other clams	Other Bivalves.
	Cephalopods.
lobsters, shrimps/mantis shrimps, true crabs and hermit crabs	Crustaceans.
(Those species not listed as CMUS)	
Sponges	Porifera.
lace corals	Stylasteridae.
hydroid corals	Solanderidae.
segmented worms	Annelids.
Seaweed	Algae.
Live rock.	

All other PRIA coral reef ecosystem MUS that are marine plants, invertebrates, and fishes that are not listed in the PRIA CHCRT table or are not PRIA bottomfish, crustacean, precious coral, or western Pacific pelagic MUS.

§ 665.622 [Reserved]

§ 665.623 Relation to other laws.

To ensure consistency between the management regimes of different Federal agencies with shared management responsibilities of fishery resources within the PRIA fishery management area, fishing for PRIA coral reef ecosystem MUS is not allowed within the boundary of a National Wildlife Refuge unless specifically authorized by the USFWS, regardless of whether that refuge was established by action of the President or the Secretary of the Interior.

§ 665.624 Permits and fees.

(a) *Applicability.* Unless otherwise specified in this subpart, § 665.13 applies to coral reef ecosystem permits.

(1) *Special permit.* Any person of the United States fishing for, taking or retaining PRIA coral reef ecosystem MUS must have a special permit if they, or a vessel which they operate, is used to fish for any:

(i) PRIA Coral reef ecosystem MUS in low-use MPAs as defined in § 665.599;

(ii) PRIA Potentially Harvested Coral Reef Taxa in the PRIA coral reef ecosystem management area; or

(iii) PRIA Coral reef ecosystem MUS in the PRIA coral reef ecosystem management area with any gear not specifically allowed in this subpart.

(2) *Transshipment permit.* A receiving vessel must be registered for use with a transshipment permit if that vessel is used in the PRIA coral reef ecosystem management area to land or transship PRIA PHCRT, or any PRIA coral reef ecosystem MUS harvested within low-use MPAs.

(3) *Exceptions.* The following persons are not required to have a permit under this section:

(i) Any person issued a permit to fish under any FEP who incidentally catches PRIA coral reef ecosystem MUS while fishing for bottomfish MUS, crustacean MUS, western Pacific pelagic MUS, precious coral, or seamount groundfish.

(ii) Any person fishing for PRIA CHCRT outside of an MPA, who does not retain any incidentally caught PRIA PHCRT.

(iii) Any person collecting marine organisms for scientific research as described in § 665.17, or § 600.745 of this chapter.

(b) *Validity.* Each permit will be valid for fishing only in the fishery management area specified on the permit.

(c) *General requirements.* General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits are contained in § 665.13.

(d) *Special permit.* The Regional Administrator shall issue a special permit in accordance with the criteria and procedures specified in this section.

(1) *Application.* An applicant for a special or transshipment permit issued under this section must complete and submit to the Regional Administrator a Special Coral Reef Ecosystem Fishing Permit Application Form issued by NMFS. Information in the application form must include, but is not limited to, a statement describing the objectives of the fishing activity for which a special permit is needed, including a general description of the expected disposition of the resources harvested under the permit (*i.e.,* stored live, fresh, frozen, preserved; sold for food, ornamental, research, or other use; and a description of the planned fishing operation, including location of fishing and gear operation, amount and species (directed and incidental) expected to be harvested and estimated habitat and protected species impacts).

(2) *Incomplete applications.* The Regional Administrator may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected and completed in writing.

(3) *Issuance.* (i) If an application contains all of the required information, the Regional Administrator will forward copies of the application within 30 days to the Council, the USCG, the fishery management agency of the affected state, and other interested parties who have identified themselves to the Council, and the USFWS.

(ii) Within 60 days following receipt of a complete application, the Regional Administrator will consult with the Council through its Executive Director, USFWS, and the Director of the affected state fishery management agency concerning the permit application and will receive their recommendations for approval or disapproval of the application based on:

(A) Information provided by the applicant;

(B) The current domestic annual harvesting and processing capacity of the directed and incidental species for which a special permit is being requested;

(C) The current status of resources to be harvested in relation to the overfishing definition in the FEP;

(D) Estimated ecosystem, habitat, and protected species impacts of the proposed activity; and

(E) Other biological and ecological information relevant to the proposal. The applicant will be provided with an opportunity to appear in support of the application.

(iii) Following a review of the Council's recommendation and supporting rationale, the Regional Administrator may:

(A) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the FEP, the national standards, the Endangered Species Act, and other applicable laws, approve or deny a special permit; or

(B) Reject the Council's recommendation, in which case, written reasons will be provided by the Regional Administrator to the Council for the rejection.

(iv) If the Regional Administrator does not receive a recommendation from the Council within 60 days of Council receipt of the permit application, the Regional Administrator can make a determination of approval or denial independently.

(v) Within 30 working days after the consultation in paragraph (d)(3)(ii) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the special permit and, if denied, the reasons for the denial. Grounds for denial of a special permit include the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.

(B) According to the best scientific information available, the directed or incidental catch in the season or location specified under the permit would detrimentally affect any coral reef resource or coral reef ecosystem in a significant way, including, but not limited to issues related to, spawning grounds or seasons, protected species interactions, EFH, and habitat areas of particular concern (HAPC).

(C) Issuance of the special permit would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.

(D) The method or amount of harvest in the season and/or location stated on the permit is considered inappropriate based on previous human or natural impacts in the given area.

(E) NMFS has determined that the maximum number of permits for a given area in a given season has been reached and allocating additional permits in the same area would be detrimental to the resource.

(F) The activity proposed under the special permit would create a significant enforcement problem.

(vi) The Regional Administrator may attach conditions to the special permit, if it is granted, consistent with the management objectives of the FEP, including but not limited to:

(A) The maximum amount of each resource that can be harvested and landed during the term of the special permit, including trip limits, where appropriate.

(B) The times and places where fishing may be conducted.

(C) The type, size, and amount of gear which may be used by each vessel operated under the special permit.

(D) Data reporting requirements.

(E) Such other conditions as may be necessary to ensure compliance with the purposes of the special permit consistent with the objectives of the FEP.

(4) Appeals of permit actions.

(i) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, conditioning, or suspension of their permit or a permit affecting their interests to the Regional Administrator. In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the original action(s) by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(ii) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Regional Administrator will rule on the appeal in accordance with the permit eligibility criteria set forth in this section and the FEP, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as deemed appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(iii) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the **Federal Register.** Such a hearing shall normally be held no later than 30 days following publication of the notice in the **Federal Register**, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested parties, may appear personally and/or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(iv) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator shall notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action constitutes final action for the agency for the purposes of the Administrative Procedure Act.

(5) The Regional Administrator may, for good cause, extend any time limit prescribed in this section for a period not to exceed 30 days, either upon his or her own motion or upon written request from the Council, appellant or applicant stating the reason(s) therefore.

§ 665.625 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person to do any of the following:

(a) Fish for, take, retain, possess or land any PRIA coral reef ecosystem MUS in any low-use MPA as defined in § 665.599 unless:

(1) A valid permit has been issued for the hand harvester or the fishing vessel operator that specifies the applicable area of harvest;

(2) A permit is not required, as outlined in § 665.624;

(3) The PRIA coral reef ecosystem MUS possessed on board the vessel originated outside the management area and this can be demonstrated through receipts of purchase, invoices, fishing logbooks or other documentation.

(b) Fish for, take, or retain any PRIA coral reef ecosystem MUS species:

(1) That is determined overfished with subsequent rulemaking by the Regional Administrator.

(2) By means of gear or methods prohibited under § 665.627.

(3) In a low-use MPA without a valid special permit.

(4) In violation of any permit issued under §§ 665.13 or 665.624.

(c) Fish for, take, or retain any wild live rock or live hard coral except under a valid special permit for scientific research, aquaculture seed stock collection or traditional and ceremonial purposes by indigenous people.

§ 665.626 Notifications.

Any special permit holder subject to the requirements of this subpart must contact the appropriate NMFS enforcement agent in American Samoa, Guam, or Hawaii at least 24 hours before landing any PRIA coral reef ecosystem MUS unit species harvested under a special permit, and report the port and the approximate date and time at which the catch will be landed.

§ 665.627 Allowable gear and gear restrictions.

(a) Coral reef ecosystem MUS may be taken only with the following allowable gear and methods:

(1) Hand harvest;

(2) Spear;

(3) Slurp gun;

(4) Hand net/dip net;

(5) Hoop net for Kona crab;

(6) Throw net;

(7) Barrier net;

(8) Surround/purse net that is attended at all times;

(9) Hook-and-line (includes handline (powered or not), rod-and-reel, and trolling);

(10) Crab and fish traps with vessel ID number affixed; and

(11) Remote-operating vehicles/submersibles.

(b) PRIA coral reef ecosystem MUS may not be taken by means of poisons, explosives, or intoxicating substances. Possession or use of these materials by any permit holder under this subpart who is established to be fishing for coral reef ecosystem MUS in the management area is prohibited.

(c) PRIA coral reef ecosystem MUS may not be taken by means of spearfishing with SCUBA at night (from 6 p.m. to 6 a.m.) in the U.S. EEZ waters around Howland Island, Baker Island, Jarvis Island, Wake Island, Kingman Reef, Johnston Atoll and Palmyra Atoll.

(d) Existing FEP fisheries shall follow the allowable gear and methods outlined in their respective plans.

(e) Any person who intends to fish with new gear not included in this section must describe the new gear and its method of deployment in the special permit application. A decision on the permissibility of this gear type will be made by the Regional Administrator after consultation with the Council and the director of the affected state fishery management agency.

§ 665.628 Gear identification.

(a) The vessel number must be affixed to all fish and crab traps on board the vessel or deployed in the water by any vessel or person holding a permit under §§ 665.13 or 665.624 or that is otherwise established to be fishing for PRIA coral

reef ecosystem MUS in the PRIA fishery management area.

(b) *Enforcement action.* (1) Traps not marked in compliance with paragraph (a) of this section and found deployed in the PRIA fishery management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

(2) Unattended surround nets or bait seine nets found deployed in the coral reef ecosystem management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

§§ 665.629–665.639 [Reserved]

§ 665.640 PRIA crustacean fisheries [Reserved].

§ 665.641 Definitions.

As used in §§ 665.640 through 665.659:

Crustacean Permit Area 4 (Permit Area 4) means the EEZ around Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, and Wake Island.

PRIA crustacean fishing permit means the permit required by § 665.642 to use a vessel to fish for PRIA crustacean MUS in the PRIA fishery management area, or to land crustacean MUS shoreward of the outer boundary of the PRIA fishery management area.

PRIA crustacean management unit species means the following crustaceans:

English common name	Scientific name
Spiny lobster	*Panulirus marginatus, Panulirus penicillatus.*
Slipper lobster	Scyllaridae.
Kona crab	*Ranina ranina.*
Deepwater shrimp	*Heterocarpus.* spp.

§ 665.642 Permits.

(a) *Applicability.* (1) The owner of any vessel used to fish for lobster in Permit Area 4 must have a permit issued for that vessel.

(2) The owner of any vessel used to fish for deepwater shrimp in Crustacean Permit Area 4 must have a permit issued for that vessel.

(b) *General requirements.* General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits issued under this section, as applicable, are contained in § 665.13.

(c) *Application.* An application for a permit required under this section will be submitted to PIRO as described in § 665.13. If the application for a limited access permit is submitted on behalf of a partnership or corporation, the application must be accompanied by a supplementary information sheet obtained from PIRO and contain the names and mailing addresses of all partners or shareholders and their respective percentage of ownership in the partnership or corporation.

§ 665.643 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person in Crustacean Permit Area 4 to fish for, take, or retain deepwater shrimp without a permit issued under § 665.642.

§ 665.644 Notifications.

(a) The operator of any vessel subject to the requirements of this subpart must:

(1) Report, not less than 24 hours, but not more than 36 hours, before landing, the port, the approximate date and the approximate time at which spiny and slipper lobsters will be landed.

(2) Report, not less than 6 hours and not more than 12 hours before offloading, the location and time that offloading of spiny and slipper lobsters will begin.

(b) The Regional Administrator will notify permit holders of any change in the reporting method and schedule required in paragraphs (a)(1) and (2) of this section at least 30 days prior to the opening of the fishing season.

§ 665.645 At-sea observer coverage.

All fishing vessels subject to §§ 665.640 through 665.645 and subpart A of this part must carry an observer when requested to do so by the Regional Administrator.

§§ 665.646–665.659 [Reserved]

§ 665.660 PRIA precious coral fisheries [Reserved].

§ 665.661 Definitions.

As used in §§ 665.660 through 665.669:

PRIA precious coral management unit species (PRIA precious coral MUS) means any coral of the genus *Corallium* in addition to the following species of corals:

English common name	Scientific name
Pink coral (also known as red coral)	*Corallium secundum, Corallium regale, Corallium laauense.*
Gold coral	*Gerardia* spp., *Callogorgia gilberti, Narella* spp., *Calyptrophora* spp.
Bamboo coral	*Lepidisis olapa, Acanella* spp.
Black coral	*Antipathes dichotoma, Antipathes grandis, Antipathes ulex.*

PRIA precious coral permit area means the area encompassing the precious coral beds within the EEZ around the PRIA. Each bed is designated by a permit area code and assigned to one of the following four categories:

(1) Established beds. [*Reserved*]

(2) Conditional beds. [*Reserved*]

(3) Refugia. [*Reserved*]

(4) Exploratory Area. Permit Area X–P–PI includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll and Wake Island.

§ 665.662 Permits.

(a) Any vessel of the United States fishing for, taking, or retaining PRIA precious coral MUS in any PRIA precious coral permit area must have a permit issued under § 665.13.

(b) Each permit will be valid for fishing only in the permit area specified on the permit. Precious Coral Permit Areas are defined in § 665.661.

(c) No more than one permit will be valid for any one vessel at any one time.

(d) No more than one permit will be valid for any one person at any one time.

(e) The holder of a valid permit to fish one permit area may obtain a permit to fish another permit area only upon surrendering to the Regional Administrator any current permit for the precious coral fishery issued under § 665.13.

(f) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits for the precious coral fishery are contained in § 665.13.

§ 665.663 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and in § 665.15, it is unlawful for any person to:

(a) Use any vessel to fish for, take, retain, possess or land PRIA precious coral MUS in any precious coral permit area, unless a permit has been issued for that vessel and area as specified in § 665.13 and that permit is on board the vessel.

(b) Fish for, take, or retain any species of PRIA precious coral MUS in any precious coral permit area:

(1) By means of gear or methods prohibited by § 665.664.

(2) In refugia specified in § 665.661.

(3) In a bed for which the quota specified in § 665.667 has been attained.

(4) In violation of any permit issued under §§ 665.13 or 665.17.

(5) In a bed that has been closed pursuant to §§ 665.666 or 665.669.

(c) Take and retain, possess, or land any live pink coral or live black coral from any precious coral permit area that is less than the minimum height specified in § 665.665 unless:

(1) A valid EFP was issued under § 665.17 for the vessel and the vessel was operating under the terms of the permit; or

(2) The coral originated outside coral beds listed in this paragraph, and this can be demonstrated through receipts of purchase, invoices, or other documentation.

§ 665.664 Gear restrictions.

Only selective gear may be used to harvest coral from any precious coral permit area.

§ 665.665 Size restrictions.

The height of a live coral specimen shall be determined by a straight line measurement taken from its base to its most distal extremity. The stem diameter of a living coral specimen shall be determined by measuring the greatest diameter of the stem at a point no less than 1 inch (2.54 cm) from the top surface of the living holdfast.

(a) Live pink coral harvested from any precious coral permit area must have attained a minimum height of 10 inches (25.4 cm).

(b) *Black coral.* Live black coral harvested from any precious coral permit area must have attained either a minimum stem diameter of 1 inch (2.54 cm), or a minimum height of 48 inches (122 cm).

§ 665.666 Closures.

(a) If the Regional Administrator determines that the harvest quota for any coral bed will be reached prior to the end of the fishing year, NMFS shall publish a notice to that effect in the **Federal Register** and shall use other means to notify permit holders. Any such notice must indicate the reason for the closure, the bed being closed, and the effective date of the closure.

(b) A closure is also effective for a permit holder upon the permit holder's actual harvest of the applicable quota.

§ 665.667 Quotas.

(a) *General.* The quotas limiting the amount of precious coral that may be taken in any precious coral permit area during the fishing year are listed in § 665.667(d). Only live coral is counted toward the quota. The accounting period for all quotas begins July 1, 1983.

(b) *Conditional bed closure.* A conditional bed will be closed to all nonselective coral harvesting after the quota for one species of coral has been taken.

(c) *Reserves and reserve release.* The quotas for exploratory area, X–P–PI, will be held in reserve for harvest by vessels of the United States in the following manner: (1) At the start of the fishing year, the reserve for the PRIA exploratory area will equal the quota minus the estimated domestic annual harvest for that year. (2) As soon as practicable after December 31 each year, the Regional Administrator will determine the amount harvested by vessels of the United States between July 1 and December 31 of the year that just ended on December 31. (3) NMFS will release to TALFF an amount of precious coral for each exploratory area equal to the quota minus two times the amount harvested by vessels of the United States in that July 1–December 31 period. (4) NMFS will publish in the **Federal Register** a notification of the Regional Administrator's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

(d) PRIA exploratory permit area, X–P–PI, has an annual quota of 1,000 kg for all precious coral MUS combined with the exception of black corals.

§ 665.668 Seasons.

The fishing year for precious coral begins on July 1 and ends on June 30 the following year.

§ 665.669 Gold coral harvest moratorium.

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2013.

Subpart F—Western Pacific Pelagic Fisheries

§ 665.798 Management area.

The western Pacific Pelagic fishery management area includes all areas of fishing operations in the EEZ or on the high seas for any vessels of the United States or persons that:

(a) Fish for, possess, or transship western Pacific pelagic fishery MUS within the EEZ waters around American Samoa, CNMI, Guam, Hawaii, or PRIA; or

(b) Land western Pacific pelagic fishery MUS in American Samoa, CNMI, Guam, Hawaii, or PRIA.

§ 665.799 Area restrictions.

(a) Fishing is prohibited in all no-take MPAs designated in this section.

(b) No-take MPAs. The following U.S. EEZ waters are no-take MPAs:

(1) Landward of the 50-fathom (fm) (91.5-m) curve at Jarvis, Howland, and Baker Islands, and Kingman Reef; as depicted on National Ocean Survey Chart Numbers 83116 and 83153;

(2) Landward of the 50-fm (91.5-m) curve around Rose Atoll, as depicted on National Ocean Survey Chart Number 83484.

§ 665.800 Definitions.

As used in §§ 665.798 through 665.818:

American Samoa longline limited access permit means the permit required by § 665.801 to use a vessel shoreward of the outer boundary of the EEZ around American Samoa to fish for western Pacific pelagic MUS using longline gear or to land or transship western Pacific pelagic MUS that were caught in the EEZ around American Samoa using longline gear.

American Samoa pelagics mailing list means the list maintained by PIRO of names and mailing addresses of parties interested in receiving notices of availability for American Samoa longline limited access permits.

Basket-style longline gear means a type of longline gear that is divided into units called "baskets" each consisting of a segment of main line to which 10 or more branch lines with hooks are spliced. The mainline and all branch

lines are made of multiple braided strands of cotton, nylon, or other synthetic fibers impregnated with tar or other heavy coatings that cause the lines to sink rapidly in seawater.

Deep-set or Deep-setting means the deployment of, or deploying, respectively, longline gear in a manner consistent with all the following criteria: With all float lines at least 20 meters in length; with a minimum of 15 branch lines between any two floats (except basket-style longline gear which may have as few as 10 branch lines between any two floats); without the use of light sticks; and resulting in the possession or landing of no more than 10 swordfish (*Xiphias gladius*) at any time during a given trip. As used in this definition "float line" means a line used to suspend the main longline beneath a float and "light stick" means any type of light emitting device, including any fluorescent "glow bead," chemical, or electrically powered light that is affixed underwater to the longline gear.

Fish dealer means any person who:

(1) Obtains, with the intention to resell, western Pacific pelagic MUS, or portions thereof, that were harvested or received by a vessel that holds a permit or is otherwise regulated under bottomfish fisheries in this subpart; or

(2) Provides recordkeeping, purchase, or sales assistance in obtaining or selling such MUS (such as the services provided by a wholesale auction facility).

Hawaii longline limited access permit means the permit required by § 665.801 to use a vessel to fish for western Pacific pelagic MUS with longline gear in the EEZ around Hawaii or to land or transship longline-caught western Pacific pelagic MUS shoreward of the outer boundary of the EEZ around Hawaii.

Longline fishing prohibited area means the portions of the EEZ in which longline fishing is prohibited as specified in § 665.806.

Longline fishing vessel means a vessel that has longline gear on board the vessel.

Longline gear means a type of fishing gear consisting of a main line that exceeds 1 nm in length, is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached; except that, within the protected species zone as defined in § 665.806, longline gear means a type of fishing gear consisting of a main line of any length that is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached.

Pelagic handline fishing means fishing for western Pacific pelagic MUS from a stationary or drifting vessel using hook and line gear other than longline gear.

Pelagic troll fishing (trolling) means fishing for western Pacific pelagic MUS from a moving vessel using hook and line gear.

PRIA pelagic troll and handline fishing permit means the permit required by § 665.801 to use a vessel shoreward of the outer boundary of the EEZ around the PRIA to fish for western Pacific pelagic MUS using pelagic handline or troll fishing methods.

Receiving vessel permit means a permit required by § 665.801(c) for a receiving vessel to transship or land western Pacific pelagic MUS taken by other vessels using longline gear.

Shallow-set or shallow-setting means the deployment of, or deploying, respectively, longline gear in a manner that does not meet the definition of deep-set or deep-setting as defined in this section.

Squid jig fishing means fishing for squid that are western Pacific pelagic MUS using a hook or hooks attached to a line that is raised and lowered in the water column by manual or mechanical means.

Western Pacific general longline permit means the permit authorized under § 665.801 to use a vessel shoreward of the outer boundary of the EEZ around Guam, CNMI, Johnston or Palmyra Atolls, Kingman Reef, or Wake, Jarvis, Baker or Howland Islands to fish for western Pacific pelagic MUS using longline gear or to land or to transship western Pacific pelagic MUS that were caught using longline gear.

Western Pacific pelagic management unit species means the following species:

English common name	Scientific name
Tunas:	
Albacore	*Thunnus alalunga.*
bigeye tuna	*Thunnus obesus.*
yellowfin tuna	*Thunnus albacares.*
northern bluefin tuna	*Thunnus thynnus.*
skipjack tuna	*Katsuwonus pelamis.*
Kawakawa	*Euthynnus affinis.*
other tuna relatives	*Auxis* spp., *Scomber* spp., *Allothunnus* spp.
Billfishes:	
Indo-Pacific blue marlin	*Makaira mazara.*
black marlin	*Makaira indica.*
striped marlin	*Tetrapturus audax.*
shortbill spearfish	*Tetrapturus angustirostris.*
Swordfish	*Xiphias gladius.*
Sailfish	*Istiophorus platypterus.*
Sharks:	
pelagic thresher shark	*Alopias pelagicus.*
bigeye thresher shark	*Alopias superciliosus.*
common thresher shark	*Alopias vulpinus.*
silky shark	*Carcharhinus falciformis.*
oceanic whitetip shark	*Carcharhinus longimanus.*
blue shark	*Prionace glauca.*
shortfin mako shark	*Isurus oxyrinchus.*
longfin mako shark	*Isurus paucus.*
salmon shark	*Lamna ditropis.*
Other pelagic fishes:	
mahimahi (dolphinfish)	*Coryphaena* spp.
Wahoo	*Acanthocybium solandri.*
Moonfish	*Lampris* spp.

English common name	Scientific name
Oilfish	Gempylidae.
Pomfret	Bramidae.
Squid:	
diamondback squid	*Thysanoteuthis rhombus.*
neon flying squid	*Ommastrephes bartramii.*
purpleback flying squid	*Sthenoteuthis oualaniensis.*

§ 665.801 Permits.

(a) A vessel of the United States must be registered for use with a valid permit under the High Seas Fishing Compliance Act if that vessel is used to fish on the high seas, as required under § 300.15 of this title.

(b) A vessel of the United States must be registered for use under a valid Hawaii longline limited access permit if that vessel is used:

(1) To fish for western Pacific pelagic MUS using longline gear in the EEZ around the Hawaiian Archipelago; or

(2) To land or transship, shoreward of the outer boundary of the EEZ around the Hawaiian Archipelago, western Pacific pelagic MUS that were harvested using longline gear.

(c) A vessel of the United States must be registered for use under a valid American Samoa longline limited access permit, in accordance with § 665.816, if that vessel is used to:

(1) Fish for western Pacific pelagic MUS using longline gear in the EEZ around American Samoa;

(2) Land shoreward of the outer boundary of the EEZ around American Samoa western Pacific pelagic MUS that were harvested using longline gear in the EEZ around American Samoa; or

(3) Transship shoreward of the outer boundary of the EEZ around American Samoa western Pacific pelagic MUS that were harvested using longline gear in the EEZ around American Samoa or on the high seas.

(d) A vessel of the United States must be registered for use under a valid Western Pacific general longline permit, American Samoa longline limited access permit, or Hawaii longline limited access permit if that vessel is used to:

(1) Fish for western Pacific pelagic MUS using longline gear in the EEZ around Guam, CNMI, or PRIA (with the exception of Midway Atoll); or

(2) Land or transship shoreward of the outer boundary of the EEZ around Guam, CNMI, or PRIA (with the exception of Midway Atoll), western Pacific pelagic MUS that were harvested using longline gear.

(e) A receiving vessel of the United States must be registered for use with a valid receiving vessel permit if that vessel is used to land or transship, shoreward of the outer boundary of the EEZ around American Samoa, Hawaii, Guam, CNMI, or PRIA, western Pacific pelagic MUS that were harvested using longline gear.

(f) A vessel of the United States must be registered for use with a valid PRIA pelagic troll and handline fishing permit if that vessel is used to fish for western Pacific pelagic MUS using pelagic handline or trolling fishing methods in the EEZ around the PRIA (with the exception of Midway Atoll).

(g) A vessel of the United States must be registered for use under a Western Pacific squid jig fishing permit, if that vessel is more than 50 ft (15.4 m) LOA and is used to squid jig fish in EEZ waters around American Samoa, CNMI, Guam, Hawaii, or PRIA.

(h) Any required permit must be valid and on board the vessel and available for inspection by an authorized agent, except that, if the permit was issued (or registered to the vessel) during the fishing trip in question, this requirement applies only after the start of any subsequent fishing trip.

(i) A permit is valid only for the vessel for which it is registered. A permit not registered for use with a particular vessel may not be used.

(j) An application for a permit required under this section will be submitted to PIRO as described in § 665.13.

(k) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, and sanctions for permits issued under this section, as applicable, are contained in § 665.13.

(l) A Hawaii longline limited access permit may be transferred as follows:

(1) The owner of a Hawaii longline limited access permit may apply to transfer the permit:

(i) To a different person for registration for use with the same or another vessel; or

(ii) For registration for use with another U.S. vessel under the same ownership.

(2) [*Reserved*]

(m) A Hawaii longline limited access permit will not be registered for use with a vessel that has a LOA greater than 101 ft (30.8 m).

(n) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) a Hawaii longline limited access permit.

(o) Permit appeals. Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or any permit owner may appeal to the Regional Administrator the granting, denial, conditioning, suspension, or transfer of a permit or requested permit under this section. To be considered by the Regional Administrator, the appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the action(s) by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(1) Upon receipt of an appeal authorized by this section, the Regional Administrator may request additional information. Upon receipt of sufficient information, the Regional Administrator will decide the appeal in accordance with the criteria set out in this part for qualifying for, or renewing, limited access permits. In making such decision, the Administrator will review relevant portions of the Western Pacific Pelagic FEP, to the extent such review would clarify the criteria in this part. Such decision will be based upon information relative to the application on file at NMFS and the Council and any additional information available; the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (o)(3) of this section; and such other considerations as deemed appropriate. The Regional Administrator will notify the appellant of the decision and the reasons therefore, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(2) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose. Such a hearing normally shall be held no later than 30 days following receipt of the appeal, unless the hearing officer extends the time. The appellant and, at the discretion of the hearing officer, other interested persons, may appear

personally and/or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend, in writing, a decision to the Regional Administrator.

(3) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify the appellant, and interested persons, if any, of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action shall constitute final Agency action for purposes of the Administrative Procedure Act.

(4) In the case of a timely appeal from an American Samoa longline limited access permit initial permit decision, the Regional Administrator will issue the appellant a temporary American Samoa longline limited access permit. A temporary permit will expire 20 days after the Regional Administrator's final decision on the appeal. In no event will a temporary permit be effective for longer than 60 days.

(5) With the exception of temporary permits issued under paragraph (o)(4) of this section, the Regional Administrator, for good cause, may extend any time limit prescribed in this section for a period not to exceed 30 days, either upon his/her own motion or upon written request from the appellant stating the reason(s) therefore.

§ 665.802 Prohibitions.

In addition to the prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify or fail to make and/or file all reports of western Pacific pelagic MUS landings, containing all data and in the exact manner, as required by applicable state law or regulation, as specified in § 665.14(a), provided that the person is required to do so by applicable state law or regulation.

(b) Use a vessel without a valid permit issued under the High Seas Fishing Compliance Act to fish for western Pacific pelagic MUS using longline gear, on the high seas, in violation of §§ 665.801(a), and 300.15 of this title.

(c) Use a vessel in the EEZ around the Hawaiian Archipelago without a valid Hawaii longline limited access permit registered for use with that vessel, to fish for western Pacific pelagic MUS using longline gear, in violation of § 665.801(b)(1).

(d) Use a vessel shoreward of the outer boundary of the EEZ around the Hawaiian Archipelago without a valid Hawaii longline limited access permit registered for use with that vessel, to land or transship western Pacific pelagic MUS that were harvested with longline gear, in violation of § 665.801(b)(2).

(e) Use a vessel in the EEZ around American Samoa without a valid American Samoa longline limited access permit registered for use with that vessel, to fish for western Pacific pelagic MUS using longline gear, in violation of § 665.801(c)(1).

(f) Use a vessel shoreward of the outer boundary of the EEZ around American Samoa without a valid American Samoa longline limited access permit registered for use with that vessel, to land western Pacific pelagic MUS that were caught with longline gear within the EEZ around American Samoa, in violation of § 665.801(c)(2).

(g) Use a vessel within the EEZ around American Samoa without a valid American Samoa longline limited access permit registered for use with that vessel, to transship western Pacific pelagic MUS that were caught with longline gear, in violation of § 665.801(c)(3).

(h) Use a vessel in the EEZ around Guam, CNMI, or PRIA (with the exception of Midway Atoll) without either a valid Western Pacific general longline permit, American Samoa longline limited access permit or a Hawaii longline limited access permit registered for use with that vessel, to fish for western Pacific pelagic MUS using longline gear, in violation of § 665.801(d)(1).

(i) Use a vessel shoreward of the outer boundary of the EEZ around Guam, CNMI, or PRIA (with the exception of Midway Atoll) without either a valid Western Pacific general longline permit, American Samoa longline limited access permit or a Hawaii longline limited access permit registered for use with that vessel, to land or transship western Pacific pelagic MUS that were harvested using longline gear, in violation of § 665.801(d)(2).

(j) Use a vessel shoreward of the outer boundary of the EEZ around American Samoa, CNMI, Guam, Hawaii, or PRIA, to land or transship western Pacific pelagic MUS caught by other vessels using longline gear, without a valid receiving vessel permit registered for use with that vessel, in violation of § 665.801(e).

(k) Use a vessel in the EEZ around the PRIA employing handline or trolling methods to fish for western Pacific pelagic MUS without a valid PRIA pelagic troll and handline fishing permit registered for use for that vessel, in violation of § 665.801(f).

(l) Fish in the fishery after failing to comply with the notification requirements in § 665.803.

(m) Fail to comply with notification requirements set forth in § 665.803 or in any EFP issued under § 665.17.

(n)–(u) [*Reserved*]

(v) Fish with longline gear within a longline fishing prohibited area, except as allowed pursuant to an exemption issued under §§ 665.17 or 665.807, in violation of § 665.806.

(w) Fish for western Pacific pelagic MUS with longline gear within the protected species zone, in violation of § 665.806(b).

(x) Fail to comply with a term or condition governing the observer program established in § 665.808, if using a vessel registered for use with a Hawaii longline limited access permit, or a vessel registered for use with a size Class B, C or D American Samoa longline limited access permit, to fish for western Pacific pelagic MUS using longline gear.

(y) Fail to comply with other terms and conditions that the Regional Administrator imposes by written notice to either the permit holder or the designated agent of the permit holder to facilitate the details of observer placement.

(z) Fail to fish in accordance with the seabird take mitigation techniques set forth at §§ 665.815(a)(1) or 665.815(a)(2) when operating a vessel registered for use under a Hawaii longline limited access permit.

(aa)–(bb) [*Reserved*]

(cc) Own or operate a vessel registered for use under any longline permit issued under § 665.801 while engaged in longline fishing for western Pacific pelagic MUS and fail to be certified for completion of a NMFS protected species workshop, in violation of § 665.814(a).

(dd) Own or operate a vessel registered for use under any longline permit issued under § 665.801 while engaged in longline fishing for western Pacific pelagic MUS without having on board a valid protected species workshop certificate issued by NMFS or a legible copy thereof, in violation of § 665.814(d).

(ee) Possess light sticks on board a vessel registered for use under a Hawaii longline limited access permit at any time during a trip for which notification to NMFS under § 665.803(a) indicated that deep-setting would be done, in violation of § 665.813(d).

(ff) Fail to carry, or fail to use, a line clipper, dip net, or dehooker on a vessel registered for use under any longline

permit issued under § 665.801, in violation of § 665.812.

(gg)–(hh) [*Reserved*]

(ii) When operating a vessel registered for use under any longline limited access permit issued under § 665.801, fail to comply with the sea turtle handling, resuscitation, and release requirements, in violation of § 665.812(b).

(jj) Engage in shallow-setting from a vessel registered for use under any longline permit issued under § 665.801 north of the Equator (0° lat.) with hooks other than circle hooks sized 18/0 or larger with an offset not to exceed 10 degrees, in violation of § 665.813(f).

(kk) Engage in shallow-setting from a vessel registered for use under any longline permit issued under § 665.801 north of the Equator (0° lat.) with bait other than mackerel-type bait, in violation of § 665.813(g).

(ll) [*Reserved*]

(mm) Fail to use a line setting machine or line shooter, with weighted branch lines, to set the main longline when operating a vessel that is registered for use under a Hawaii longline limited access permit and equipped with monofilament main longline, when making deep sets north of 23° N. lat., in violation of § 665.815(a)(1) or (a)(2).

(nn) Fail to employ basket-style longline gear such that the mainline is deployed slack when operating a vessel registered for use under a Hawaii longline limited access north of 23° N. lat., in violation of § 665.815(a)(2)(v).

(oo) Fail to maintain and use blue dye to prepare thawed bait when operating a vessel registered for use under a Hawaii longline limited access permit that is fishing north of 23° N. lat., in violation of § 665.815(a)(2)(vi) through (viii).

(pp) Fail to retain, handle, and discharge fish, fish parts, and spent bait, strategically when operating a vessel registered for use under a Hawaii longline limited access permit that is fishing north of 23° N. lat., in violation of § 665.815(a)(2)(i) through (iv).

(qq) Fail to be begin the deployment of longline gear at least 1 hour after local sunset or fail to complete the setting process before local sunrise from a vessel registered for use under a Hawaii longline limited access permit while shallow-setting north of 23° N. lat., in violation of § 665.815(a)(4).

(rr) Fail to handle short-tailed albatrosses that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival, in violation of § 665.815(b).

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

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

(uu)–(vv) [*Reserved*]

(ww) Fail to handle seabirds other than short-tailed albatrosses that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival, in violation of § 665.815(c).

(xx) Use a large vessel to fish for western Pacific Pelagic MUS within an American Samoa large vessel prohibited area except as allowed pursuant to an exemption issued under § 665.818.

(yy) Fish for western Pacific pelagic MUS using gear prohibited under § 665.810 or not permitted by an EFP issued under § 665.17.

(zz) Use a vessel that is greater than 50 ft (15.4 m) LOA to squid jig fish in EEZ waters around American Samoa, CNMI, Guam, Hawaii, or PRIA, without a Western Pacific squid jig fishing permit registered for use with that vessel, in violation of § 665.801(g).

§ 665.803 Notifications.

(a) The permit holder, or designated agent, for any vessel registered for use under a Hawaii longline limited access permit, or for any vessel greater than 40 ft (12.2 m) LOA that is registered for use under an American Samoa longline limited access permit, shall provide a notice to the Regional Administrator at least 72 hours (not including weekends and Federal holidays) before the vessel leaves port on a fishing trip, any part of which occurs in the EEZ around the Hawaiian Archipelago or American Samoa. The vessel operator will be presumed to be an agent designated by the permit holder unless the Regional Administrator is otherwise notified by the permit holder. The permit holder or designated agent for a vessel registered for use under Hawaii longline limited access permits must also provide notification of the trip type (either deep-setting or shallow-setting).

(b) The permit holder, or designated agent, for any vessel registered for use under a Western Pacific squid jig fishing permit that is greater than 50 ft (15.4 m) LOA, shall provide a notice to the Regional Administrator at least 72 hours (not including weekends and Federal holidays) before the vessel leaves port on a fishing trip, any part of which occurs in western Pacific EEZ waters. The vessel operator will be presumed to be an agent designated by the permit holder unless the Regional Administrator is otherwise notified by the permit holder.

(c) For purposes of this section, the notice must be provided to the office or telephone number designated by the Regional Administrator. The notice must provide the official number of the vessel, the name of the vessel, the intended departure date, time, and location, the name of the operator of the vessel, and the name and telephone number of the permit holder or designated agent to be available between 8 a.m. and 5 p.m. (local time) on weekdays for NMFS to contact to arrange observer placement.

(d) The operator of any vessel subject to the requirements of this subpart who does not have on board a VMS unit while transiting the protected species zone as defined in § 665.806, must notify the NMFS Special-Agent-In-Charge immediately upon entering and immediately upon departing the protected species zone. The notification must include the name of the vessel, name of the operator, date and time (GMT) of access or exit from the protected species zone, and location by latitude and longitude to the nearest minute.

(e) The permit holder for any American Samoa longline limited access permit, or an agent designated by the permit holder, must notify the Regional Administrator in writing within 30 days of any change to the permit holder's contact information or any change to the vessel documentation associated with a permit registered to an American Samoa longline limited access permit. Complete changes in the ownership of the vessel registered to an American Samoa longline limited access permit must also be reported to PIRO in writing within 30 days of the change. Failure to report such changes may result in a delay in processing an application, permit holders failing to receive important notifications, or sanctions pursuant to the Magnuson-Stevens Act at 16 U.S.C. 1858(g) or 15 CFR part 904, subpart D.

§ 665.804 Gear identification.

(a) *Identification.* The operator of each permitted vessel in the fishery management area must ensure that the official number of the vessel be affixed to every longline buoy and float, including each buoy and float that is attached to a radar reflector, radio antenna, or flag marker, whether attached to a deployed longline or possessed on board the vessel. Markings

must be legible and permanent, and must be of a color that contrasts with the background material.

(b) *Enforcement action.* Longline gear not marked in compliance with paragraph (a) of this section and found deployed in the EEZ will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

§ 665.805 [Reserved]

§ 665.806 Longline fishing prohibited area management.

(a) *Prohibited areas.* Longline fishing shall be prohibited in the longline fishing prohibited areas as defined in paragraphs (b), (c), and (d) of this section.

(b) *Longline protected species zone.* (1) The protected species zone is 50 nm from the center geographical positions of certain islands and reefs in the NWHI, as follows:

Name	N. lat.	W. long.
Nihoa Island	23°05′	161°55′
Necker Island	23°35′	164°40′
French Frigate Shoals	23°45′	166°15′
Gardner Pinnacles	25°00′	168°00′
Maro Reef	25°25′	170°35′
Laysan Island	25°45′	171°45′
Lisianski Island	26°00′	173°55′
Pearl and Hermes Reef	27°50′	175°50′
Midway Island	28°14′	177°22′
Kure Island	28°25′	178°20′

(2) Where the areas are not contiguous, parallel lines drawn tangent to and connecting those semicircles of the 50-nm areas that lie between Nihoa Island and Necker Island, French Frigate Shoals and Gardner Pinnacles, Gardner Pinnacles and Maro Reef, and Lisianski Island and Pearl and Hermes Reef, shall delimit the remainder of the protected species zone.

(c) *Main Hawaiian Islands (MHI).* (1) From February 1–September 30 each year, the longline fishing prohibited area around the MHI is the portion of the EEZ seaward of Hawaii bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
A	18°05′	155°40′
B	18°20′	156°25′
C	20°00′	157°30′
D	20°40′	161°40′
E	21°40′	161°55′
F	23°00′	161°30′
G	23°05′	159°30′
H	22°55′	157°30′
I	21°30′	155°30′
J	19°50′	153°50′
K	19°00′	154°05′
A	18°05′	155°40′

(2) From October 1 through the following January 31 each year, the longline fishing prohibited area around the MHI is the portion of the EEZ seaward of Hawaii bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
A	18°05′	155°40′
L	18°25′	155°40′
M	19°00′	154°45′
N	19°15′	154°25′
O	19°40′	154°20′
P	20°20′	154°55′
Q	20°35′	155°30′
R	21°00′	155°35′
S	22°30′	157°35′
T	22°40′	159°35′
U	22°25′	160°20′
V	21°55′	160°55′
W	21°40′	161°00′
E	21°40′	161°55′
D	20°40′	161°40′
C	20°00′	157°30′
B	18°20′	156°25′
A	18°05′	155°40′

(d) *Guam.* The longline fishing prohibited area around Guam is the waters seaward of Guam bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
A	14°25′	144°00′
B	14°00′	143°38′
C	13°41′	143°33′33″
D	13°00′	143°25′30″
E	12°20′	143°37′
F	11°40′	144°09′
G	12°00′	145°00′
H	13°00′	145°42′
I	13°27′	145°51′

§ 665.807 Exemptions for longline fishing prohibited areas; procedures.

(a) An exemption permitting a person to use longline gear to fish in a portion(s) of the Hawaii longline fishing prohibited area will be issued to a person who can document that he or she:

(1) Currently owns a Hawaii longline limited access permit issued under this part and registered for use with his or her vessel;

(2) Before 1970, was the owner or operator of a vessel when that vessel landed western Pacific pelagic MUS taken on longline gear in an area that is now within the Hawaii longline fishing prohibited area;

(3) Was the owner or operator of a vessel that landed western Pacific pelagic MUS taken on longline gear in an area that is now within the Hawaii longline fishing prohibited area, in at least 5 calendar years after 1969, which need not be consecutive; and

(4) In any one of the 5 calendar years, was the owner or operator of a vessel that harvested at least 80 percent of its total landings, by weight, of longline-caught western Pacific pelagic MUS in an area that is now in the Hawaii longline fishing prohibited area.

(b) Each exemption shall specify the portion(s) of the Hawaii longline fishing prohibited area, bounded by longitudinal and latitudinal lines drawn to include each statistical area, as appearing on Hawaii State Commercial Fisheries Charts, in which the exemption holder made the harvest documented for the exemption application under paragraph (a)(4) of this section.

(c) Each exemption is valid only within the portion(s) of the Hawaii longline fishing prohibited area specified on the exemption.

(d) A person seeking an exemption under this section must submit an application and supporting documentation to PIRO at least 15 days before the desired effective date of the exemption.

(e) If the Regional Administrator determines that a gear conflict has occurred and is likely to occur again in the Hawaii longline fishing prohibited area between a vessel used by a person holding an exemption under this section and a non-longline vessel, the Regional

Administrator may prohibit all longline fishing in the Hawaii longline fishing prohibited area around the island where the conflict occurred, or in portions thereof, upon notice to each holder of an exemption who would be affected by such a prohibition.

(f) The Council will consider information provided by persons with Hawaii longline limited access permits issued under this part who believe they have experienced extreme financial hardship resulting from the Hawaii longline area closure, and will consider recommendations of the Pelagic Advisory Review Board to assess whether exemptions under this section should continue to be allowed, and, if appropriate, revise the qualifying criteria in paragraph (a) of this section to permit additional exemptions.

(1) If additional exemptions are needed, the Council will advise the Regional Administrator in writing of its recommendation, including criteria by which financial hardships will be mitigated, while retaining the effectiveness of the longline fishing prohibited area.

(2) Following a review of the Council's recommendation and supporting rationale, the Regional Administrator may:

(i) Reject the Council's recommendation, in which case written reasons will be provided by the Regional Administrator to the Council for the rejection; or

(ii) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the Pelagics FEP, the national standards, and other applicable law, initiate rulemaking to implement the Council's recommendations.

§ 665.808 Conditions for at-sea observer coverage.

(a) NMFS shall advise the permit holder or the designated agent of any observer requirement at least 24 hours (not including weekends and Federal holidays) before any trip for which NMFS received timely notice in compliance with these regulations.

(b) The "Notice Prior to Fishing Trip" requirements in this subpart commit the permit holder to the representations in the notice. The notice can be modified by the permit holder or designated agent because of changed circumstance, if the Regional Administrator is promptly provided a modification to the notice that complies with the notice requirements. The notice will also be considered modified if the Regional Administrator and the permit holder or designated agent agrees to placement changes.

(c) When NMFS notifies the permit holder or designated agent of the obligation to carry an observer in response to a notification under this subpart, or as a condition of an EFP issued under § 665.17, the vessel may not engage in the fishery without taking the observer.

(d) A NMFS observer shall arrive at the observer's assigned vessel 30 minutes before the time designated for departure in the notice or the notice as modified, and will wait 1 hour for departure.

(e) A permit holder must accommodate a NMFS observer assigned under these regulations. The Regional Administrator's office, and not the observer, will address any concerns raised over accommodations.

(f) The permit holder, vessel operator, and crew must cooperate with the observer in the performance of the observer's duties, including:

(1) Allowing for the embarking and debarking of the observer.

(2) Allowing the observer access to all areas of the vessel necessary to conduct observer duties.

(3) Allowing the observer access to communications equipment and navigation equipment as necessary to perform observer duties.

(4) Allowing the observer access to VMS units to verify operation, obtain data, and use the communication capabilities of the units for official purposes.

(5) Providing accurate vessel locations by latitude and longitude or loran coordinates, upon request by the observer.

(6) Providing sea turtle, marine mammal, or seabird specimens as requested.

(7) Notifying the observer in a timely fashion when commercial fishing operations are to begin and end.

(g) The permit holder, operator, and crew must comply with other terms and conditions to ensure the effective deployment and use of observers that the Regional Administrator imposes by written notice.

(h) The permit holder must ensure that assigned observers are provided living quarters comparable to crew members and are provided the same meals, snacks, and amenities as are normally provided to other vessel personnel. A mattress or futon on the floor or a cot is not acceptable if a regular bunk is provided to any crew member, unless other arrangements are approved in advance by the Regional Administrator.

(i) Reimbursement requirements are as follows:

(1) Upon observer verification of vessel accommodations and the number of assigned days on board, NMFS will reimburse vessel owners a reasonable amount for observer subsistence as determined by the Regional Administrator.

(2) If requested and properly documented, NMFS will reimburse the vessel owner for the following:

(i) Communications charges incurred by the observer.

(ii) Lost fishing time arising from a seriously injured or seriously ill observer, provided that notification of the nature of the emergency is transmitted to the Observer Program, NMFS (see address for PIRO Regional Administrator) at the earliest practical time. NMFS will reimburse the owner only for those days during which the vessel is unable to fish as a direct result of helping the NMFS employee who is seriously injured or seriously ill. Lost fishing time is based on time traveling to and from the fishing grounds and any documented out-of-pocket expenses for medical services. Payment will be based on the current target fish market prices and that vessel's average target fish catch retained per day at sea for the previous 2 years, but shall not exceed $5,000 per day or $20,000 per claim. Detailed billing with receipts and supporting records are required for allowable communication and lost fishing time claims. The claim must be completed in ink, showing the claimant's printed name, address, vessel name, observer name, trip dates, days observer was on board, an explanation of the charges, and claimant's dated signature with a statement verifying the claim to be true and correct. Requested reimbursement claims must be submitted to the Fisheries Observer Branch, Pacific Islands Region, NMFS. NMFS will not process reimbursement invoices and documentation submitted more than 120 days after the occurrence.

(j) If a vessel normally has cabins for crew members, female observers on a vessel with an all-male crew must be accommodated either in a single person cabin or, if NMFS concludes that adequate privacy can be ensured by installing a curtain or other temporary divider, in a two-person shared cabin. If the vessel normally does not have cabins for crew members, alternative accommodations must be approved by NMFS. If a cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, or if no cabin is assigned, then arrangements for sharing common facilities must be established and approved in advance by NMFS.

§ 665.809 Port privileges and transiting for unpermitted U.S. longline vessels.

A U.S. longline fishing vessel that does not have a permit under subpart A of this part may enter waters of the fishery management area with western Pacific pelagic MUS on board, but may not land or transship any western Pacific pelagic MUS on board the vessel. The vessel's longline gear must be stowed or secured so it is rendered unusable during the time the vessel is in those waters.

§ 665.810 Prohibition of drift gillnetting.

Fishing with drift gillnets in the fishery management area is prohibited, except where authorized by an EFP issued under § 665.17.

§ 665.811 [Reserved]

§ 665.812 Sea turtle take mitigation measures.

(a) Possession and use of required mitigation gear. The gear required in paragraph (a) of this section must be used according to the sea turtle handling requirements set forth in paragraph (b) of this section.

(1) Hawaii longline limited access permits. Any owner or operator of a vessel registered for use under a Hawaii longline limited access permit must carry aboard the vessel line clippers meeting the minimum design standards specified in paragraph (a)(5) of this section, dip nets meeting the minimum design standards specified in paragraph (a)(6) of this section, and dehookers meeting the minimum design and performance standards specified in paragraph (a)(7) of this section.

(2) Other longline vessels with freeboards of more than 3 ft (0.91m). Any owner or operator of a longline vessel with a permit issued under § 665.801 other than a Hawaii limited access longline permit and that has a freeboard of more than 3 ft (0.91 m) must carry aboard the vessel line clippers meeting the minimum design standards specified in paragraph (a)(5) of this section, dip nets meeting the minimum design standards specified in paragraph (a)(6) of this section, and dehookers meeting this minimum design and performance standards specified in paragraph (a)(7) of this section.

(3) Other longline vessels with freeboards of 3 ft (0.91 m) or less. Any owner or operator of a longline vessel with a permit issued under § 665.801 other than a Hawaii limited access longline permit and that has a freeboard of 3 ft (0.91 m) or less must carry aboard their vessels line clippers capable of cutting the vessels fishing line or leader within approximately 1 ft (0.3 m) of the eye of an embedded hook, as well as wire or bolt cutters capable of cutting through the vessel's hooks.

(4) Handline, troll, pole-and-line, and other vessels using hooks other than longline vessels. Any owner or operator of a vessel fishing under the Pelagics FEP with hooks other than longline gear are not required to carry specific mitigation gear, but must comply with the handling requirements set forth in paragraph (b) of this section.

(5) *Line clippers.* Line clippers are intended to cut fishing line as close as possible to hooked or entangled sea turtles. NMFS has established minimum design standards for line clippers. The Arceneaux line clipper (ALC) is a model line clipper that meets these minimum design standards and may be fabricated from readily available and low-cost materials (see Figure 3 to this part). The minimum design standards are as follows:

(i) A protected cutting blade. The cutting blade must be curved, recessed, contained in a holder, or otherwise afforded some protection to minimize direct contact of the cutting surface with sea turtles or users of the cutting blade.

(ii) Cutting blade edge. The blade must be capable of cutting 2.0–2.1 mm monofilament line and nylon or polypropylene multistrand material commonly known as braided mainline or tarred mainline.

(iii) An extended reach holder for the cutting blade. The line clipper must have an extended reach handle or pole of at least 6 ft (1.82 m).

(iv) Secure fastener. The cutting blade must be securely fastened to the extended reach handle or pole to ensure effective deployment and use.

(6) *Dip nets.* Dip nets are intended to facilitate safe handling of sea turtles and access to sea turtles for purposes of cutting lines in a manner that minimizes injury and trauma to sea turtles. The minimum design standards for dip nets that meet the requirements of this section nets are:

(i) An extended reach handle. The dip net must have an extended reach handle of at least 6 ft (1.82 m) of wood or other rigid material able to support a minimum of 100 lb (34.1 kg) without breaking or significant bending or distortion.

(ii) Size of dip net. The dip net must have a net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm). The bag mesh openings may be no more than 3 inches by 3 inches (7.62 cm by 7.62 cm).

(7) *Dehookers.* (i) Long-handled dehooker for ingested hooks. This item is intended to be used to remove ingested hooks from sea turtles that cannot be boated, and to engage a loose hook when a turtle is entangled but not hooked and line is being removed. One long-handled dehooker for ingested hooks is required on board. The minimum design and performance standards are as follows:

(A) *Hook removal device.* The hook removal device must be constructed of 5/16 inch (7.94 mm) 316L stainless steel and have a dehooking end no larger than 1 7/8 inches (4.76 cm) outside diameter. The device must be capable of securely engaging and controlling the leader while shielding the barb of the hook to prevent the hook from re-engaging during removal. It must not have any unprotected terminal points (including blunt ones), as these could cause injury to the esophagus during hook removal. The device must be of a size capable of securing the range of hook sizes and styles used by the vessel.

(B) *Extended reach handle.* The hook removal device must be securely fastened to an extended reach handle or pole with a length equal to or greater than 150 percent of the vessel's freeboard or 6 ft (1.83 m), whichever is greater. It is recommended that the handle be designed so that it breaks down into sections. The handle must be sturdy and strong enough to facilitate the secure attachment of the hook removal device.

(ii) Long-handled dehooker for external hooks. This item is intended to be used to remove externally-hooked hooks from sea turtles that cannot be boated. The long-handled dehooker for ingested hooks described in paragraph (a)(7)(i) of this section meets this requirement. The minimum design and performance standards are as follows:

(A) *Construction.* The device must be constructed of 5/16 inch (7.94 mm) 316 L stainless steel rod. A 5 inch (12.70 cm) tube T-handle of 1 inch (2.54 cm) outside diameter is recommended, but not required. The dehooking end must be blunt with all edges rounded. The device must be of a size capable of securing the range of hook sizes and styles used by the vessel.

(B) *Handle.* The handle must have a length equal to or greater than the vessel's freeboard or 3 ft (0.91 m), whichever is greater.

(iii) Long-handled device to pull an "inverted V." This item is intended to be used to pull an "inverted V" in the fishing line when disentangling and dehooking entangled sea turtles. One long-handled device to pull an "inverted V" is required on the vessel. The minimum design and performance standards are as follows:

(A) *Hook end.* It must have a hook-shaped end, like that of a standard boat hook or gaff, which must be constructed of stainless steel or aluminum.

(B) *Handle.* The handle must have a length equal to or greater than 150 percent of the vessel's freeboard or 6 ft (1.83 m), whichever is greater. The handle must be sturdy and strong enough to allow the hook end to be effectively used to engage and pull an "inverted V" in the line.

(C) The long-handled dehookers described in paragraphs (a)(7)(i) and (ii) of this section meet this requirement.

(iv) Short-handled dehooker for ingested hooks. This item is intended to be used to remove ingested hooks, externally hooked hooks, and hooks in the front of the mouth of sea turtles that can be boated. One short-handled dehooker for ingested hooks is required on board. The minimum design and performance standards are as follows:

(A) *Hook removal device.* The hook removal device must be constructed of ¼ inch (6.35 mm) 316 L stainless steel, and the design of the dehooking end must be such to allow the hook to be secured and the barb shielded without re-engaging during the hook removal process. The dehooking end must be no larger than 1–5/16 inch (3.33 cm) outside diameter. It must not have any unprotected terminal points (including blunt ones), as this could cause injury to the esophagus during hook removal. The dehooking end must be of a size appropriate to secure the range of hook sizes and styles used by the vessel.

(B) *Sliding plastic bite block.* The dehooker must have a sliding plastic bite block, which is intended to be used to protect the sea turtle's beak and facilitate hook removal if the turtle bites down on the dehooker. The bite block must be constructed of a ¾ inch (1.91 cm) inside diameter high impact plastic cylinder (for example, Schedule 80 PVC) that is 10 inches (25.40 cm) long. The dehooker and bite block must be configured to allow for 5 inches (12.70 cm) of slide of the bite block along the shaft of the dehooker.

(C) *Shaft and handle.* The shaft must be 16 to 24 inches (40.64 to 60.69 cm) in length, and must have a T-handle 4 to 6 inches (10.16 to 15.24 cm) in length and ¾ to 1¼ inches (1.90 to 3.18 cm) in diameter.

(v) Short-handled dehooker for external hooks. This item is intended to be used to remove externally hooked hooks from sea turtles that can be boated. One short-handled dehooker for external hooks is required on board. The short-handled dehooker for ingested hooks required to comply with paragraph (a)(7)(v) of this section meets this requirement. The minimum design and performance standards are as follows:

(A) *Hook removal device.* The hook removal device must be constructed of 5/16 inch (7.94 cm) 316 L stainless steel, and the design must be such that a hook can be rotated out without pulling it out at an angle. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used by the vessel.

(B) *Shaft and handle.* The shaft must be 16 to 24 inches (40.64 to 60.69 cm) in length, and must have a T-handle 4 to 6 inches (10.16 to 15.24 cm) in length and ¾ to 1¼ inches (1.90 to 3.18 cm) in diameter.

(8) Tire. This item is intended to be used for supporting a turtle in an upright orientation while it is on board. One tire is required on board, but an assortment of sizes is recommended to accommodate a range of turtle sizes. The tire must be a standard passenger vehicle tire and must be free of exposed steel belts.

(9) Long-nose or needle-nose pliers. This item is intended to be used to remove deeply embedded hooks from the turtle's flesh that must be twisted in order to be removed, and also to hold in place PVC splice couplings when used as mouth openers. One pair of long-nose or needle-nose pliers is required on board. The minimum design standards are as follows: The pliers must be 8 to 14 inches (20.32 to 35.56 cm) in length. It is recommended that they be constructed of stainless steel material.

(10) Wire or bolt cutters. This item is intended to be used to cut through hooks in order to remove all or part of the hook. One pair of wire or bolt cutters is required on board. The minimum design and performance standards are as follows: The wire or bolt cutters must be capable of cutting hard metals, such as stainless or carbon steel hooks, and they must be capable of cutting through the hooks used by the vessel.

(11) Monofilament line cutters. This item is intended to be used to cut and remove fishing line as close to the eye of the hook as possible if the hook is swallowed or cannot be removed. One pair of monofilament line cutters is required on board. The minimum design standards are as follows: Monofilament line cutters must be 6 to 9 inches (15.24 to 22.86 cm) in length. The blades must be 1¾ (4.45 cm) in length and ⅝ inches (1.59 cm) wide when closed.

(12) Mouth openers and gags. These items are intended to be used to open the mouths of boated sea turtles, and to keep them open when removing ingested hooks in a way that allows the hook or line to be removed without causing further injury to the turtle. At least two of the seven different types of mouth openers and gags described below are required on board. The seven types and their minimum design standards are as follows.

(i) A block of hard wood. A block of hard wood is intended to be used to gag open a turtle's mouth by placing it in the corner of the jaw. It must be made of hard wood of a type that does not splinter (for example, maple), and it must have rounded and smoothed edges. The dimensions must be 10 to 12 inches (24.50 to 30.48 cm) by ¾ to 1¼ inches (1.90 to 3.18 cm) by ¾ to 1¼ inches (1.90 to 3.18 cm).

(ii) A set of three canine mouth gags. A canine mouth gag is intended to be used to gag open a turtle's mouth while allowing hands-free operation after it is in place. A set of canine mouth gags must include one of each of the following sizes: small (5 inches, 12.7 cm), medium (6 inches, 15.2 cm), and large (7 inches, 17.8 cm). They must be constructed of stainless steel. A 1¾ inch (4.45 cm) long piece of vinyl tubing (¾ inch, 1.91 cm) outside diameter and ⅝ inch (1.59 cm) inside diameter) must be placed over the ends of the gags to protect the turtle's beak.

(iii) A set of two sturdy canine chew bones. A canine chew bone is intended to be used to gag open a turtle's mouth by placing it in the corner of the jaw. They must be constructed of durable nylon, zylene resin, or thermoplastic polymer, and strong enough to withstand biting without splintering. To accommodate a variety of turtle beak sizes, a set must include one large (5½ to 8 inches (13.97 to 20.32 cm) in length) and one small (3½ to 4½ inches (8.89 to 11.43 cm) in length) canine chew bones.

(iv) A set of two rope loops covered with hose. A set of two rope loops covered with a piece of hose is intended to be used as a mouth opener and to keep a turtle's mouth open during hook and/or line removal. A set consists of two 3-foot (0.91 m) lengths of poly braid rope, each covered with an 8 inch (20.32 cm) section of ½ inch (1.27 cm) or ¾ inch (1.91 cm) light-duty garden hose, and each tied into a loop.

(v) A hank of rope. A hank of rope is intended to be used to gag open a sea turtle's mouth by placing it in the corner of the jaw. A hank of rope is made from a 6 foot (1.83 m) lanyard of braided nylon rope that is folded to create a hank, or looped bundle, of rope. The hank must be 2 to 4 inches (5.08 to 10.16 cm) in thickness.

(vi) A set of four PVC splice couplings. PVC splice couplings are intended to be used to allow access to the back of the mouth of a turtle for hook and line removal by positioning them inside a turtle's mouth and holding them in place with long-nose or needle-nose pliers. The set must consist of the following Schedule 40 PVC splice coupling sizes: 1 inch (2.54 cm), 1¼ inches (3.18 cm), 1½ inches (3.81 cm), and 2 inches (5.08 cm).

(vii) A large avian oral speculum. A large avian oral speculum is intended to be used to hold a turtle's mouth open and control the head with one hand while removing a hook with the other hand. It must be 9 inches (22.86 cm) in length and constructed of 3/16 inch (4.76 mm) wire diameter surgical stainless steel (Type 304). It must be covered with 8 inches (20.32 cm) of clear vinyl tubing 5/16 inch (7.94 mm) outside diameter, 3/16 inch (4.76 mm) inside diameter.

(b) Handling requirements. If a sea turtle is observed to be hooked or entangled in fishing gear from any vessel fishing under the Pelagics FEP, vessel owners and operators must use the required mitigation gear set forth in paragraph (a) of this section to comply with these handling requirements. Any hooked or entangled sea turtle must be handled in a manner to minimize injury and promote survival.

(1) Sea turtles that cannot be brought aboard. In instances where a sea turtle is too large to be brought aboard or the sea turtle cannot be brought aboard without causing further injury to the sea turtle, the vessel owner or operator must disentangle and remove the gear, or cut the line as close as possible to the hook or entanglement, to remove the maximum amount of the gear from the sea turtle.

(2) Sea turtles that can be brought aboard. In instances where a sea turtle is not too large to be brought aboard, or the sea turtle can be brought aboard without causing further injury to the turtle, the vessel owner or operator must take the following actions:

(i) Immediately bring the sea turtle aboard;

(ii) Handle the sea turtle in accordance with the procedures in paragraphs (b)(3) and (b)(4) of this section; and

(iii) Disentangle and remove the gear, or cut the line as close as possible to the hook or entanglement, to remove the maximum amount of the gear from the sea turtle.

(3) *Sea turtle resuscitation.* If a sea turtle appears dead or comatose, the following actions must be taken:

(i) Place the sea turtle on its belly (on the bottom shell or plastron) so that the sea turtle is right side up and its hindquarters elevated at least 6 inches (15.24 cm) for a period of no less than 4 hours and no more than 24 hours. The amount of the elevation varies with the size of the sea turtle; greater elevations are needed for larger sea turtles;

(ii) Administer a reflex test at least once every 3 hours. The test is to be performed by gently touching the eye and pinching the tail of a sea turtle to determine if the sea turtle is responsive;

(iii) Keep the sea turtle shaded and damp or moist (but under no circumstances place the sea turtle into a container holding water). A water-soaked towel placed over the eyes, carapace and flippers is the most effective method of keeping a sea turtle moist; and

(iv) Return to the sea any sea turtle that revives and becomes active in the manner described in paragraph (b)(4) of this section. Sea turtles that fail to revive within the 24-hour period must also be returned to the sea in the manner described in paragraph (b)(4) of this section.

(4) *Sea turtle release.* After handling a sea turtle in accordance with the requirements of paragraphs (b)(2) and (b)(3) of this section, the sea turtle must be returned to the ocean after identification unless NMFS requests the retention of a dead sea turtle for research. In releasing a sea turtle the vessel owner or operator must:

(i) Place the vessel engine in neutral gear so that the propeller is disengaged and the vessel is stopped, and release the sea turtle away from deployed gear; and

(ii) Observe that the turtle is safely away from the vessel before engaging the propeller and continuing operations.

(5) Other sea turtle requirements. No sea turtle, including a dead turtle, may be consumed or sold. A sea turtle may be landed, offloaded, transshipped or kept below deck only if NMFS requests the retention of a dead sea turtle for research.

§ 665.813 Western Pacific longline fishing restrictions.

(a) [*Reserved*]

(b) Limits on sea turtle interactions.

(1) Maximum annual limits are established on the number of physical interactions that occur each calendar year between leatherback and loggerhead sea turtles and vessels registered for use under Hawaii longline limited access permits while shallow-setting.

(i) The annual limit for leatherback sea turtles (*Dermochelys coriacea*) is 16, and the annual limit for loggerhead sea turtles (*Caretta caretta*) is 46.

(ii) If any annual sea turtle interaction limit in paragraph (b)(i) of this section is exceeded in a calendar year, the annual limit for that sea turtle species will be adjusted downward the following year by the number of interactions by which the limit was exceeded.

(iii) No later than January 31 of each year the Regional Administrator will publish a notice in the **Federal Register** of the applicable annual sea turtle interaction limits established pursuant to paragraphs (b)(i) and (b)(ii) of this section.

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

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

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

(c) [*Reserved*]

(d) Vessels registered for use under a Hawaii longline limited access permit may not have on board at any time during a trip for which notification to NMFS under § 665.803(a) indicated that

deep-setting would be done any float lines less than 20 meters in length or light sticks. As used in this paragraph "float line" means a line used to suspend the main longline beneath a float and "light stick" means any type of light emitting device, including any fluorescent "glow bead," chemical, or electrically powered light that is affixed underwater to the longline gear.

(e) [*Reserved*]

(f) Any owner or operator of a vessel registered for use under any longline permit issued under § 665.801 must use only circle hooks sized 18/0 or larger, with an offset not to exceed 10 degrees, when shallow-setting north of the Equator (0° lat.). As used in this paragraph, an offset circle hook sized 18/0 or larger is one with an outer diameter at its widest point no smaller than 1.97 inches (50 mm) when measured with the eye of the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis). As used in this paragraph, the allowable offset is measured from the barbed end of the hook, and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side.

(g) Any owner or operator of a vessel registered for use under any longline permit issued under § 665.801 must use only mackerel-type bait when shallow-setting north of the Equator (0° lat.). As used in this paragraph, mackerel-type bait means a whole fusiform fish with a predominantly blue, green or gray back and predominantly gray, silver or white lower sides and belly.

(h) Owners and operators of vessels registered for use under a Hawaii longline limited access permit may make sets only of the type (shallow-setting or deep-setting) indicated in the notification to NMFS pursuant to § 665.803(a).

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

(j) Owners and operators of vessels registered for use under a Hawaii longline limited access permit may land or possess no more than 10 swordfish from a fishing trip for which the permit holder notified NMFS under § 665.803(a) that the vessel would engage in a deep-setting trip.

§ 665.814 Protected species workshop.

(a) Each year, both the owner and the operator of a vessel registered for use under any longline permit issued under § 665.801 must attend and be certified for completion of a workshop conducted by NMFS on interaction mitigation techniques for sea turtles, seabirds and other protected species.

(b) A protected species workshop certificate will be issued by NMFS annually to any person who has completed the workshop.

(c) An owner of a vessel registered for use under any longline permit issued under § 665.801 must have a valid protected species workshop certificate issued by NMFS to the owner of the vessel, in order to maintain or renew their vessel registration.

(d) An owner and an operator of a vessel registered for use under any longline permit issued under § 665.801 must have on board the vessel a valid protected species workshop certificate issued by NMFS to the operator of the vessel, or a legible copy thereof.

§ 665.815 Pelagic longline seabird mitigation measures.

(a) *Seabird mitigation techniques.* When deep-setting or shallow-setting north of 23° N. lat. or shallow-setting south of 23° N. lat., owners and operators of vessels registered for use under a Hawaii longline limited access permit, must either side-set according to paragraph (a)(1) of this section, or fish in accordance with paragraph (a)(2) of this section.

(1) Side-setting. Owners and operators of vessels opting to side-set under this section must fish according to the following specifications:

(i) The mainline must be deployed as far forward on the vessel as practicable, and at least 1 m (3.3 ft) forward from the stern of the vessel;

(ii) The mainline and branch lines must be set from the port or the starboard side of the vessel;

(iii) If a mainline shooter is used, the mainline shooter must be mounted as far forward on the vessel as practicable, and at least 1 m (3.3 ft) forward from the stern of the vessel;

(iv) Branch lines must have weights with a minimum weight of 45 g (1.6 oz);

(v) One weight must be connected to each branch line within 1 m (3.3 ft) of each hook;

(vi) When seabirds are present, the longline gear must be deployed so that baited hooks remain submerged and do not rise to the sea surface; and

(vii) A bird curtain must be deployed. Each bird curtain must consist of the following three components: a pole that is fixed to the side of the vessel aft of the line shooter and which is at least 3 m (9.8 ft) long; at least three main streamers that are attached at regular intervals to the upper 2 m (6.6 ft) of the pole and each of which has a minimum diameter of 20 mm (0.8 in); and branch streamers attached to each main streamer at the end opposite from the pole, each of which is long enough to drag on the sea surface in the absence of wind, and each of which has a minimum diameter 10 mm (0.4 in).

(2) Alternative to side-setting. Owners and operators of vessels that do not side-set must do the following:

(i) Discharge fish, fish parts (offal), or spent bait while setting or hauling longline gear, on the opposite side of the vessel from where the longline gear is being set or hauled, when seabirds are present;

(ii) Retain sufficient quantities of fish, fish parts, or spent bait between the setting of longline gear for the purpose of strategically discharging it in accordance with paragraph (a)(2)(i) of this section;

(iii) Remove all hooks from fish, fish parts, or spent bait prior to its discharge in accordance with paragraph (a)(2)(i) of this section;

(iv) Remove the bill and liver of any swordfish that is caught, sever its head from the trunk and cut it in half vertically and periodically discharge the butchered heads and livers in accordance with paragraph (a)(2)(i) of this section;

(v) When using basket-style longline gear north of 23° N. lat., ensure that the main longline is deployed slack to maximize its sink rate;

(vi) Use completely thawed bait that has been dyed blue to an intensity level specified by a color quality control card issued by NMFS;

(vii) Maintain a minimum of two cans (each sold as 0.45 kg or 1 lb size) containing blue dye on board the vessel; and

(viii) Follow the requirements in paragraphs (a)(3) and (a)(4) of this section, as applicable.

(3) Deep-setting requirements. The following additional requirements apply to vessels engaged in deep-setting using a monofilament main longline north of 23° N. lat. that do not side-set. Owners and operators of these vessels must do the following:

(i) Employ a line shooter; and

(ii) Attach a weight of at least 45 g (1.6 oz) to each branch line within 1 m (3.3 ft) of the hook.

(4) Shallow-setting requirement. In addition to the requirements set forth in paragraphs (a)(1) and (a)(2) of this section, owners and operators of vessels engaged in shallow-setting that do not side-set must begin the deployment of longline gear at least 1 hour after local sunset and complete the deployment no later than local sunrise, using only the minimum vessel lights to conform with

navigation rules and best safety practices.

(b) Short-tailed albatross handling techniques. If a short-tailed albatross is hooked or entangled by a vessel registered for use under a Hawaii longline limited access permit, owners and operators must ensure that the following actions are taken:

(1) Stop the vessel to reduce the tension on the line and bring the bird on board the vessel using a dip net;

(2) Cover the bird with a towel to protect its feathers from oils or damage while being handled;

(3) Remove any entangled lines from the bird; and

(4) Determine if the bird is alive or dead.

(i) If dead, freeze the bird immediately with an identification tag attached directly to the specimen listing the species, location and date of mortality, and band number if the bird has a leg band. Attach a duplicate identification tag to the bag or container holding the bird. Any leg bands present must remain on the bird. Contact NMFS, the USCG, or the USFWS at the numbers listed on the Short-tailed Albatross Handling Placard distributed at the NMFS protected species workshop, inform them that you have a dead short-tailed albatross on board, and submit the bird to NMFS within 72 hours following completion of the fishing trip.

(ii) If alive, handle the bird in accordance with paragraphs (b)(5) through (11) of this section.

(5) Place the bird in a safe enclosed place;

(6) Immediately contact NMFS, the USCG, or the USFWS at the numbers listed on the Short-tailed Albatross Handling Placard distributed at the NMFS protected species workshop and request veterinary guidance;

(7) Follow the veterinary guidance regarding the handling and release of the bird;

(8) If the bird is externally hooked and no veterinary guidance is received within 24–48 hours, handle the bird in accordance with paragraphs (c)(4) and (c)(5) of this section, and release the bird only if it meets the following criteria:

(i) Able to hold its head erect and respond to noise and motion stimuli;

(ii) Able to breathe without noise;

(iii) Capable of flapping and retracting both wings to normal folded position on its back;

(iv) Able to stand on both feet with toes pointed forward; and

(v) Feathers are dry.

(9) Any seabird that is released in accordance with paragraph (b)(8) of this section or under the guidance of a veterinarian must be placed on the sea surface;

(10) If the hook has been ingested or is inaccessible, keep the bird in a safe, enclosed place and submit it to NMFS immediately upon the vessel's return to port. Do not give the bird food or water; and

(11) Complete the short-tailed albatross recovery data form issued by NMFS.

(c) Non-short-tailed albatross seabird handling techniques. If a seabird other than a short-tailed albatross is hooked or entangled by a vessel registered for use under a Hawaii longline limited access permit owners and operators must ensure that the following actions are taken:

(1) Stop the vessel to reduce the tension on the line and bring the seabird on board the vessel using a dip net;

(2) Cover the seabird with a towel to protect its feathers from oils or damage while being handled;

(3) Remove any entangled lines from the seabird;

(4) Remove any external hooks by cutting the line as close as possible to the hook, pushing the hook barb out point first, cutting off the hook barb using bolt cutters, and then removing the hook shank;

(5) Cut the fishing line as close as possible to ingested or inaccessible hooks;

(6) Leave the bird in a safe enclosed space to recover until its feathers are dry; and

(7) After recovered, release seabirds by placing them on the sea surface.

§ 665.816 American Samoa longline limited entry program.

(a) *General.* Under § 665.801(c), certain U.S. vessels are required to be registered for use under a valid American Samoa longline limited access permit. With the exception of reductions in permits in vessel size Class A under paragraph (c)(1) of this section, the maximum number of permits will be capped at the number of initial permits actually issued under paragraph (f) of this section.

(b) *Terminology.* For purposes of this section, the following terms have these meanings:

(1) Documented participation means participation proved by, but not necessarily limited to, a properly submitted NMFS or American Samoa logbook, an American Samoa creel survey record, a delivery or payment record from an American Samoa-based cannery, retailer or wholesaler, an American Samoa tax record, an individual wage record, ownership title, vessel registration, or other official documents showing:

(i) Ownership of a vessel that was used to fish in the EEZ around American Samoa, or

(ii) Evidence of work on a fishing trip during which longline gear was used to harvest western Pacific pelagic MUS in the EEZ around American Samoa. If the applicant does not possess the necessary documentation of evidence of work on a fishing trip based on records available only from NMFS or the Government of American Samoa (*e.g.,* creel survey record or logbook), the applicant may issue a request to PIRO to obtain such records from the appropriate agencies, if available. The applicant should provide sufficient information on the fishing trip to allow PIRO to retrieve the records.

(2) Family means those people related by blood, marriage, and formal or informal adoption.

(c) Vessel size classes. The Regional Administrator shall issue American Samoa longline limited access permits in the following size classes:

(1) Class A: Vessels less than or equal to 40 ft (12.2 m) LOA. The maximum number will be reduced as Class B–1, C–1, and D–1 permits are issued under paragraph (f)(5) of this section.

(2) Class B: Vessels over 40 ft (12.2 m) to 50 ft (15.2 m) LOA.

(3) Class B–1: Maximum number of 14 permits for vessels over 40 ft (12.2 m) to 50 ft (15.2 m) LOA, to be made available according to the following schedule:

(i) Four permits in the first calendar year after the Regional Administrator has issued all initial permits in Classes A, B, C, and D (initial issuance);

(ii) In the second calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first four, plus four additional permits;

(iii) In the third calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first eight, plus four additional permits; and

(iv) In the fourth calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first 12, plus two additional permits.

(4) Class C: Vessels over 50 ft (15.2 m) to 70 ft (21.3 m) LOA.

(5) Class C–1: Maximum number of six permits for vessels over 50 ft (15.2) to 70 ft (21.3 m) LOA, to be made available according to the following schedule:

(i) Two permits in the first calendar year after initial issuance;

(ii) In the second calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first two, plus two additional permits; and

(iii) In the third calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first four, plus two additional permits.

(6) Class D: Vessels over 70 ft (21.3 m) LOA.

(7) Class D–1: Maximum number of 6 permits for vessels over 70 ft (21.3 m) LOA, to be made available according to the following schedule:

(i) Two permits in the first calendar year after initial issuance;

(ii) In the second calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first two, plus two additional permits; and

(iii) In the third calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first four, plus two additional permits.

(d) A vessel subject to this section may only be registered with an American Samoa longline limited access permit of a size class equal to or larger than the vessel's LOA.

(e) Initial permit qualification. Any U.S. national or U.S. citizen or company, partnership, or corporation qualifies for an initial American Samoa longline limited access permit if the person, company, partnership, or corporation, on or prior to March 21, 2002, owned a vessel that was used during the time of their ownership to harvest western Pacific pelagic MUS with longline gear in the EEZ around American Samoa, and that fish was landed in American Samoa:

(1) Prior to March 22, 2002; or

(2) Prior to June 28, 2002, provided that the person or business provided to NMFS or the Council, prior to March 22, 2002, a written notice of intent to participate in the pelagic longline fishery in the EEZ around American Samoa.

(f) Initial permit issuance.

(1) Any application for issuance of an initial permit must be submitted to PIRO no later than 120 days after the effective date of this final rule. The Regional Administrator shall publish a notice in the **Federal Register,** send notices to persons on the American Samoa pelagics mailing list, and use other means to notify prospective applicants of the availability of permits. Applications for initial permits must be made, and application fees paid, in accordance with §§ 665.13(c)(1), 665.13 (d), and 665.13 (f)(2). A complete application must include documented participation in the fishery in accordance with § 665.816(b)(1). If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary information sheet obtained from the Regional Administrator, containing the names and mailing addresses of all owners, partners, and corporate officers.

(2) Only permits of Class A, B, C, and D will be made available for initial issuance. Permits of Class B–1, C–1, and D–1, will be made available in subsequent calendar years.

(3) Within 30 days of receipt of a completed application, the Assistant Regional Administrator for Sustainable Fisheries, PIRO, shall make a decision on whether the applicant qualifies for an initial permit and will notify the successful applicant by a dated letter. The successful applicant must register a vessel, of the equivalent size class or smaller to which the qualifying vessel would have belonged, to the permit within 120 days of the date of the letter of notification, and maintain this vessel registration to the permit for at least 120 days. The successful applicant must also submit a supplementary information sheet, obtained from the Regional Administrator, containing the name and mailing address of the owner of the vessel to which the permit is registered. If the registered vessel is owned by any entity other than a sole owner, the names and mailing addresses of all owners, partners, and corporate officers must be included.

(4) An appeal of a denial of an application for an initial permit shall be processed in accordance with § 665.801(o) of this subpart.

(5) After all appeals on initial permits are concluded in any vessel size class, the maximum number of permits in that class shall be the number of permits issued during the initial issuance process (including appeals). The maximum number of permits will not change, except that the maximum number of Class A permits will be reduced if Class A permits are replaced by B–1, C–1, or D–1 permits under paragraph (h) of this section. Thereafter, if any Class A, B, C, or D permit becomes available, the Regional Administrator shall re-issue that permit according to the process set forth in paragraph (g) of this section.

(g) Additional permit issuance.

(1) If the number of permits issued in Class A, B, C, or D, falls below the maximum number of permits, the Regional Administrator shall publish a notice in the **Federal Register,** send notices to persons on the American Samoa pelagics mailing list, and use other means to notify prospective applicants of any available permit(s) in that class. Any application for issuance of an additional permit must be submitted to PIRO no later than 120 days after the date of publication of the notice on the availability of additional permits in the **Federal Register.** A complete application must include documented participation in the fishery in accordance with § 665.816(b)(1). The Regional Administrator shall issue permits to persons according to the following priority standard:

(i) First priority accrues to the person with the earliest documented participation in the pelagic longline fishery in the EEZ around American Samoa on a Class A sized vessel.

(ii) The next priority accrues to the person with the earliest documented participation in the pelagic longline fishery in the EEZ around American Samoa on a Class B size, Class C size, or Class D size vessel, in that order.

(iii) In the event of a tie in the priority ranking between two or more applicants, the applicant whose second documented participation in the pelagic longline fishery in the EEZ around American Samoa is first in time will be ranked first in priority. If there is still a tie between two or more applicants, the Regional Administrator will select the successful applicant by an impartial lottery.

(2) Applications must be made, and application fees paid, in accordance with §§ 665.13(c)(1), 665.13(d), and 665.13(f)(2). If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary information sheet, obtained from the Regional Administrator, containing the names and mailing addresses of all owners, partners, and corporate officers that comprise ownership of the vessel for which the permit application is prepared.

(3) Within 30 days of receipt of a completed application, the Assistant Regional Administrator for Sustainable Fisheries shall make a decision on whether the applicant qualifies for a permit and will notify the successful applicant by a dated letter. The successful applicant must register a vessel of the equivalent vessel size or smaller to the permit within 120 days of the date of the letter of notification. The successful applicant must also submit a supplementary information sheet, obtained from the Regional Administrator, containing the name and mailing address of the owner of the vessel to which the permit is registered. If the registered vessel is owned by any entity other than a sole owner, the names and mailing addresses of all owners, partners, and corporate officers must be included. If the successful applicant fails to register a vessel to the permit within 120 days of the date of the letter of notification, the Assistant Regional Administrator for Sustainable

Fisheries shall issue a letter of notification to the next person on the priority list or, in the event that there are no more prospective applicants on the priority list, re-start the issuance process pursuant to paragraph (g)(1) of this section. Any person who fails to register the permit to a vessel under this paragraph (g)(3) within 120 days shall not be eligible to apply for a permit for 6 months from the date those 120 days expired.

(4) An appeal of a denial of an application for a permit shall be processed in accordance with § 665.801(o).

(h) Class B–1, C–1, and D–1 Permits.

(1) Permits of Class B–1, C–1, and D–1 will be initially issued only to persons who hold a Class A permit and who, prior to March 22, 2002, participated in the pelagic longline fishery around American Samoa.

(2) The Regional Administrator shall issue permits to persons for Class B–1, C–1, and D–1 permits based on each person's earliest documented participation, with the highest priority given to that person with the earliest date of documented participation.

(3) A permit holder who receives a Class B–1, C–1, or D–1 permit must relinquish his or her Class A permit and that permit will no longer be valid. The maximum number of Class A permits will be reduced accordingly.

(4) Within 30 days of receipt of a completed application for a Class B–1, C–1, and D–1 permit, the Regional Administrator shall make a decision on whether the applicant qualifies for a permit and will notify the successful applicant by a dated letter. The successful applicant must register a vessel of the equivalent vessel size or smaller to the permit within 120 days of the date of the letter of notification. The successful applicant must also submit a supplementary information sheet, obtained from the Regional Administrator, containing the name and mailing address of the owner of the vessel to which the permit is registered. If the registered vessel is owned by any entity other than a sole owner, the names and mailing addresses of all owners, partners, and corporate officers must be included.

(5) An appeal of a denial of an application for a Class B–1, C–1, or D–1 permit shall be processed in accordance with § 665.801(o).

(6) If a Class B–1, C–1, or D–1 permit is relinquished, revoked, or not renewed pursuant to paragraph (j)(1) of this section, the Regional Administrator shall make that permit available according to the procedure described in paragraph (g) of this section.

(i) Permit transfer. The holder of an American Samoa longline limited access permit may transfer the permit to another individual, partnership, corporation, or other entity as described in this section. Applications for permit transfers must be submitted to the Regional Administrator within 30 days of the transfer date. If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary information sheet, obtained from the Regional Administrator, containing the names and mailing addresses of all owners, partners, and corporate officers. After such an application has been made, the permit is not valid for use by the new permit holder until the Regional Administrator has issued the permit in the new permit holder's name under § 665.13(c).

(1) Permits of all size classes except Class A. An American Samoa longline limited access permit of any size class except Class A may be transferred (by sale, gift, bequest, intestate succession, barter, or trade) to the following persons only:

(i) A western Pacific community located in American Samoa that meets the criteria set forth in § 305(I)(2) of the Magnuson-Stevens Act, 16 U.S.C. § 1855(I)(2), and its implementing regulations, or

(ii) Any person with documented participation in the pelagic longline fishery in the EEZ around American Samoa.

(2) Class A Permits. An American Samoa longline limited access permit of Class A may be transferred (by sale, gift, bequest, intestate succession, barter, or trade) to the following persons only:

(i) A family member of the permit holder,

(ii) A western Pacific community located in American Samoa that meets the criteria set forth in § 305(I)(2) of the Magnuson-Stevens Act, 16 U.S.C. 1855, and its implementing regulations, or

(iii) Any person with documented participation in the pelagic longline fishery on a Class A size vessel in the EEZ around American Samoa prior to March 22, 2002.

(3) Class B–1, C–1, and D–1 Permits. Class B–1, C–1, and D–1 permits may not be transferred to a different owner for 3 years from the date of initial issuance, except by bequest or intestate succession if the permit holder dies during those 3 years. After the initial 3 years, Class B–1, C–1, and D–1 permits may be transferred only in accordance with the restrictions in paragraph (i)(1) of this section.

(j) Permit renewal and registration of vessels.

(1) Use requirements. An American Samoa longline limited access permit will not be renewed following 3 consecutive calendar years (beginning with the year after the permit was issued in the name of the current permit holder) in which the vessel(s) to which it is registered landed less than:

(i) For permit size Classes A or B: a total of 1,000 lb (455 kg) of western Pacific pelagic MUS harvested in the EEZ around American Samoa using longline gear, or

(ii) For permit size Classes C or D: a total of 5,000 lb (2,273 kg) of western Pacific pelagic MUS harvested in the EEZ around American Samoa using longline gear.

(2) [Reserved]

(k) Concentration of ownership of permits. No more than 10 percent of the maximum number of permits, of all size classes combined, may be held by the same permit holder. Fractional interest will be counted as a full permit for the purpose of calculating whether the 10–percent standard has been reached.

(l) Three year review. Within 3 years of the effective date of this final rule, the Council shall consider appropriate revisions to the American Samoa limited entry program after reviewing the effectiveness of the program with respect to its biological and socioeconomic objectives, concerning gear conflict, overfishing, enforceability, compliance, and other issues.

§ 665.817 American Samoa pelagic fishery area management.

(a) *Large vessel prohibited areas.* A large vessel of the United States may not be used to fish for western Pacific pelagic MUS in the American Samoa large vessel prohibited areas as defined in paragraphs (b) and (c) of this section, except as allowed pursuant to an exemption issued under § 665.818.

(b) *Tutuila Island, Manu'a Islands, and Rose Atoll (AS–1).* The large vessel prohibited area around Tutuila Island, the Manu'a Islands, and Rose Atoll consists of the waters of the EEZ around American Samoa enclosed by straight lines connecting the following coordinates:

Point	S. lat.	W. long.
AS–1–A	13°30′	167°25′
AS–1–B	15°13′	167°25′

and from Point AS–1–A westward along the latitude 13°30′ S. until intersecting the U.S. EEZ boundary with Samoa, and from Point AS–1–B westward along the latitude 15°13′ S. until intersecting the U.S. EEZ boundary with Samoa.

(c) Swains Island (AS–2). The large vessel prohibited area around Swains Island consists of the waters of the EEZ around American Samoa enclosed by straight lines connecting the following coordinates:

Point	S. lat.	W. long.
AS–2–A	11°48′	171°50′
AS–2–B	11°48′	170°20′

and from Point AS–2–A northward along the longitude 171°50′ W. until intersecting the U.S. EEZ boundary with Tokelau, and from Point AS–2–B northward along the longitude 170°20′ W. until intersecting the U.S. EEZ boundary with Tokelau.

§ 665.818 Exemptions for American Samoa large vessel prohibited areas.

(a) An exemption will be issued to a person who currently owns a large vessel to use that vessel to fish for western Pacific pelagic MUS in the American Samoa large vessel prohibited management areas, if the person seeking the exemption had been the owner of that vessel when it was registered for use with a Western Pacific general longline permit, and has made at least one landing of western Pacific pelagic MUS in American Samoa on or prior to November 13, 1997.

(b) A landing of western Pacific pelagic MUS for the purpose of this section must have been properly recorded on a NMFS Western Pacific Federal daily longline form that was submitted to NMFS, as required in § 665.14.

(c) An exemption is valid only for a vessel that was registered for use with a Western Pacific general longline permit and landed western Pacific pelagic MUS in American Samoa on or prior to November 13, 1997, or for a replacement vessel of equal or smaller LOA than the vessel that was initially registered for use with a Western Pacific general longline permit on or prior to November 13, 1997.

(d) An exemption is valid only for the vessel for which it is registered. An exemption not registered for use with a particular vessel may not be used.

(e) An exemption may not be transferred to another person.

(f) If more than one person, *e.g.,* a partnership or corporation, owned a large vessel when it was registered for use with a Western Pacific general longline permit and made at least one landing of western Pacific pelagic MUS in American Samoa on or prior to November 13, 1997, an exemption issued under this section will be issued to only one person.

FIGURE 1 TO PART 665. CARAPACE LENGTH OF LOBSTERS

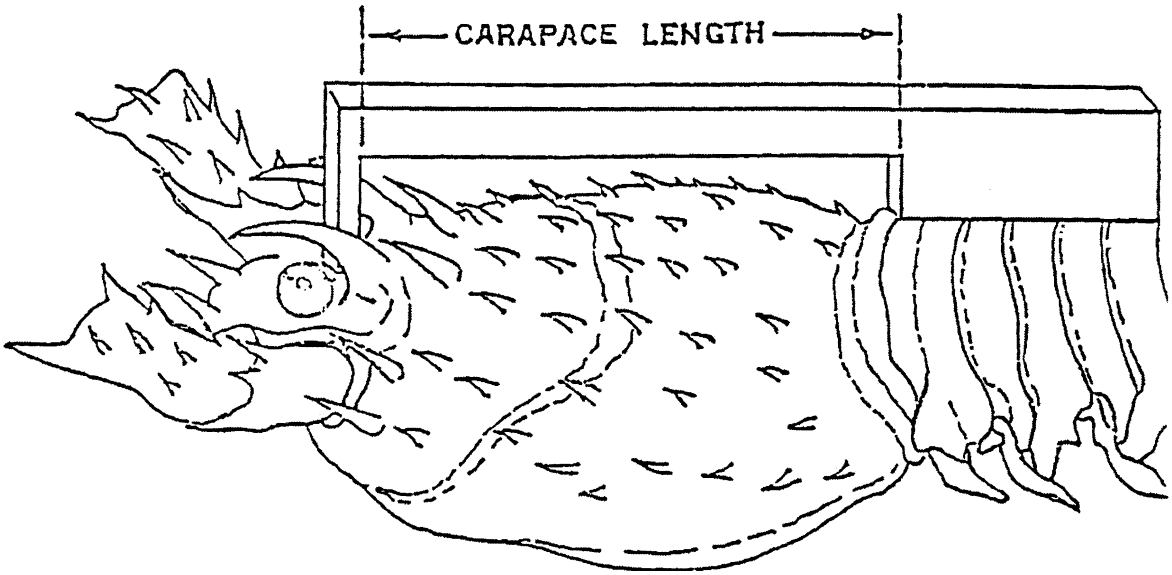


FIGURE 2 TO PART 665. LENGTH OF FISHING VESSELS

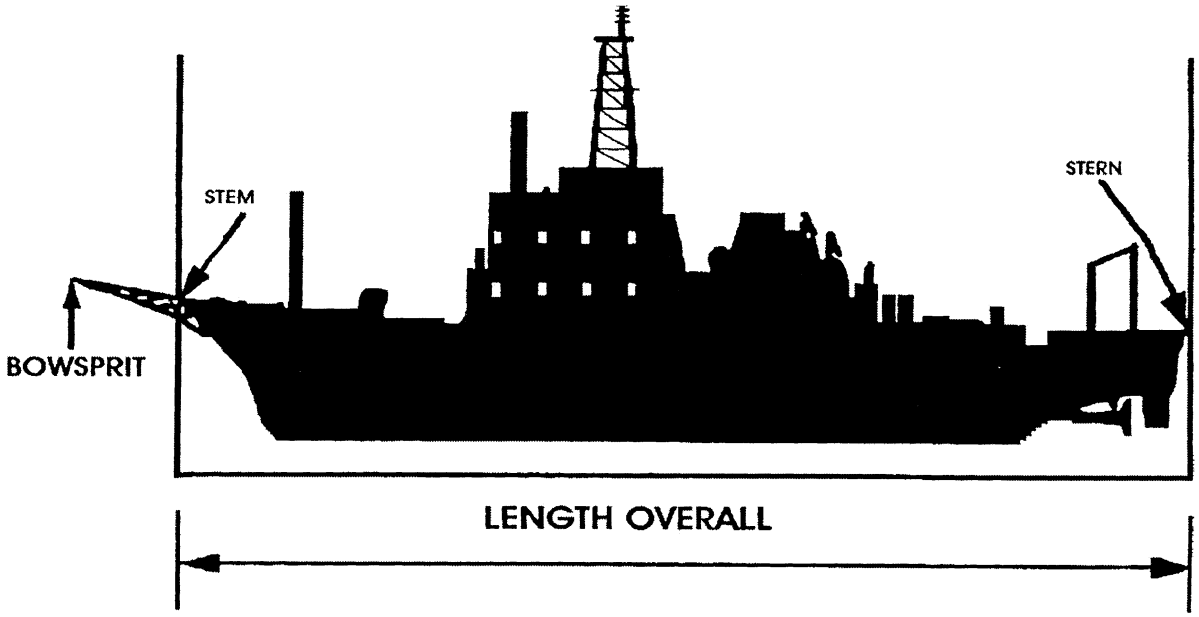
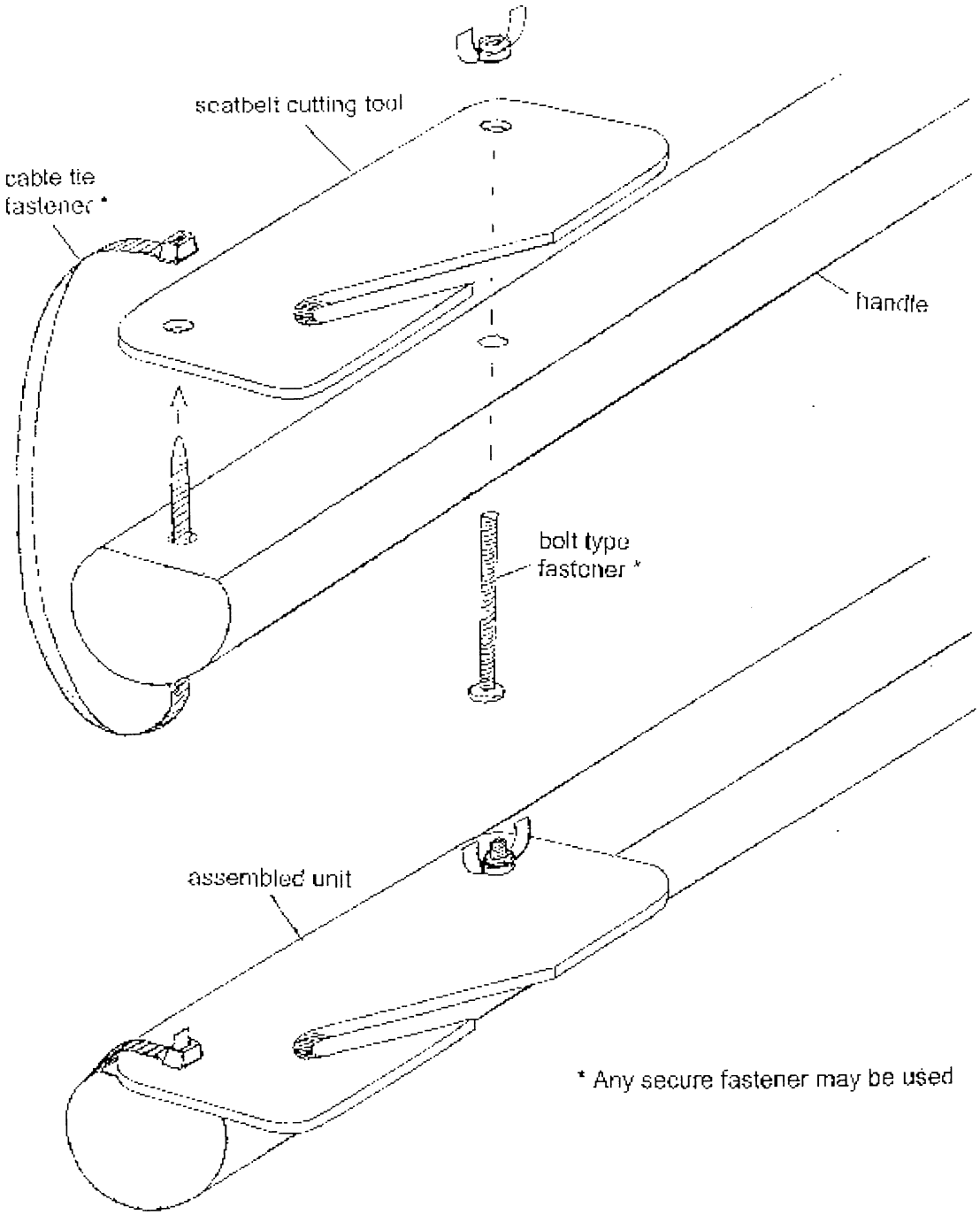


FIGURE 3 TO PART 665. SAMPLE FABRICATED ARCENEAUX LINE CLIPPER



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Federal Register

Thursday,
January 14, 2010

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for Bull Trout in the Coterminous United States; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R1-ES-2009-0085]
[[MO 92210-0-0009]

[RIN 1018-AW88]

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for Bull Trout in the Coterminous United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule, announcement of public hearing, and announcement of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise the designation of critical habitat for the bull trout (*Salvelinus confluentus*) under the Endangered Species Act of 1973, as amended. In total, approximately 36,498 kilometers (km) (22,679 miles (mi)) of streams (which includes 1,585.7 km (985.30 mi) of marine shoreline area in the Olympic Peninsula and Puget Sound), and 215,870 hectares (ha) (533,426 acres (ac)) of reservoirs or lakes are being proposed for the revised critical habitat designation. The revised proposed critical habitat is located in Adams, Benewah, Blaine, Boise, Bonner, Boundary, Butte, Camas, Canyon, Clearwater, Custer, Elmore, Gem, Idaho, Kootenai, Lemhi, Lewis, Nez Perce, Owyhee, Shoshone, Valley, and Washington counties in Idaho; Deer Lodge, Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Mineral, Missoula, Powell, Ravalli, and Sanders counties in Montana; Baker, Clatsop, Columbia, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lane, Linn, Malheur, Morrow, Multnomah, Sherman, Umatilla, Union, Wallowa, Wasco, and Wheeler counties in Oregon; Asotin, Benton, Chelan, Clallam, Clark, Columbia, Cowlitz, Douglas, Franklin, Garfield, Grant, Grays Harbor, Island, Jefferson, King, Kittitas, Klickitat, Mason, Okanogan, Pend Oreille, Pierce, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, Walla Walla, Whatcom, Whitman, and Yakima counties in Washington; and Elko county, Nevada.

DATES: *Written Comments*: We will accept comments received or postmarked on or before March 15, 2010. Because of the anticipated interest in this proposed designation, we are planning on holding a public hearing and several public meetings.

Public Hearing: We will hold a public hearing in Boise, Idaho on February 25, 2010, from 7 p.m. to 9 p.m.; and public meetings in:

- Bend, Oregon on February 2, 2010, 5:30 p.m. to 7:30 p.m.;
- Chiloquin, Oregon on February 3, 2010, 6 p.m. to 8 p.m.;
- LaGrande, Oregon on February 4, 2010, 5:30 p.m. to 7:30 p.m.;
- Post Falls, Idaho on February 11, 2010, 4 p.m. to 7 p.m.;
- Missoula, Montana on February 16, 2010, 3 p.m. to 8 p.m.;
- Elko, Nevada on February 17, 2010, 5 p.m. to 7 p.m.;
- Wenatchee, Washington on February 23, 2010, 6 p.m. to 8 p.m.; and
- Boise, Idaho on February 25, 2010, 4 p.m. to 6 p.m.

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

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Search for docket FWS-R1-ES-2009-0085 and then follow the instructions for submitting comments.
- *U.S. mail or hand-delivery*: Public Comments Processing, Attn: FWS-R1-ES-2009-0085; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.
- *Public Hearing*: We will hold the public hearing at Boise Centre on the Grove, 850 W. Front Street, Boise, Idaho.
- *Public Meetings:* We will hold the public meetings at:
  - o Hollingshead Barn, 1235 NE Jones Road, Bend Oregon;
  - o Chiloquin Community Center, 140 S. 1st Street, Chiloquin, Oregon;
  - o Blue Mountain Conference Center, 404 12th Street, la Grande, Oregon;
  - o Red Lion Templins Inn, 414 East 1st Avenue, Post Falls, Idaho;
  - o Montana Fish, Wildlife, and Parks Headquarters, 3201 Spurgin Road, Missoula, Montana;
  - o Elko Convention Center, Gold Room, 700 Moren Way, Elko, Nevada;
  - o Wenatchee-Okanogan National Forest Headquarters, 215 Melody Lane, Wenatchee, Washington; and
  - o Boise Centre on the Grove, 850 W. Front Street, Boise, Idaho.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Jeff Foss, Field Supervisor, U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office, 1387 South Vinnell Way, Boise, ID 83702; telephone 208-378-5243; facsimile 208-378-5262. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned government agencies, the scientific community, industry, or other interested parties concerning this proposed rule. Verbal testimony or written comments may also be presented during the public hearing (see the **Public Hearing** section below for more information). We will consider information and recommendations from all interested parties. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree to which threats can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation;

(2) Specific information on:

- The amount and distribution of bull trout habitat,
- What areas occupied at the time of listing that contain features essential to the conservation of the species should be included in the designation and why,
- Special management considerations or protections that the features essential to the conservation of the bull trout that have been identified in this proposal may require, including managing for the potential effects of climate change, and
- What areas not occupied at the time of listing are essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the areas occupied by the species, and their possible impacts on proposed critical habitat;

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

(5) Whether the benefits of excluding any particular area from critical habitat

outweigh the benefits of including that area as critical habitat under section 4(b)(2) of the Act, after considering the potential impacts and benefits of the proposed critical habitat designation. Under section 4(b)(2) of the Act, we may exclude an area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of including that particular area as critical habitat, unless failure to designate that specific area as critical habitat will result in the extinction of the species. We request specific information on:

• The benefits of including specific areas in the final designation and supporting rationale,

• The benefits of excluding specific areas from the final designation and supporting rationale, and

• Whether any specific exclusions may result in the extinction of the species and why (see Exclusions section below).

(6) Whether our exemptions under section 4(a)(3)(B) of the Act of the lands on Department of Defense (DOD) land at the Bayview Acoustic Research Detachment (ARD) Naval Surface Warfare Center, Bayview Idaho; Naval Radio Station Jim Creek in western Washington; Naval Station Everett in western Washington; Naval Air Station Whidbey Island in western Washington, and U.S. Army Fort Lewis Installation in western Washington, are or are not appropriate, and why;

(7) Specific information on the following areas considered to be essential to the conservation of the species:

• Mainstem and tributary habitats within the White Salmon River Critical Habitat Subunit (CHSU) that are believed to be unoccupied, but which are considered essential for providing foraging, migration, and overwintering (FMO) habitat or spawning and rearing areas to reestablish a population within this system;

• Unoccupied tributaries within the Lake Pend Oreille, Pend Oreille River, and lower Priest River CHSU that are considered essential for providing spawning and rearing areas to reestablish a population within the Pend Oreille River; and

• Areas of mainstem habitat in the Yakima River (Yakima River Critical Habitat Unit (CHU)) and Touchet River (Walla Walla River Basin CHU) for which we have limited or no documented evidence of occupancy, but which are currently believed to be essential for providing connectivity to the mainstem Columbia River and Walla Walla River, respectively, for the fluvial life-history form;

(8) Specific information on areas of habitat that were historically occupied, or areas for which we have limited evidence of occupancy, which we do not consider to be essential to the conservation of the species in this proposed rule. These areas include Okanogan River; Lake Chelan and Stehekin River; west side tributaries to Hood Canal (e.g., Dosewallips River, Duckabush River, Quilcene River); and Willapa River;

(9) Specific information on areas believed to be unoccupied in the Klamath River basin, but essential for FMO habitat;

(10) Specific information as to whether the six recovery units identified in the "Critical Habitat Background" section accurately reflect the conservation needs of bull trout;

(11) Information on the projected and reasonably likely impacts of climate change on bull trout, and any special management needs or protections that may be needed in the critical habitat areas we are proposing.

(12) Information on the extent to which the description of potential economic impacts in the DEA is complete and accurate, and specifically:

• Whether regulatory protections and conservation activities already being implemented for salmon, steelhead, bull trout , other species, or other concerns (e.g., water quality) in areas proposed as critical habitat are appropriate to include as baseline costs (e.g., costs that would occur regardless of critical habitat designation for bull trout) for purposes of our economic analysis, and if not, why not;

• Whether there are incremental costs of critical habitat designation (e.g., costs attributable solely to critical habiatat designation) that have not been appropriately identified or considered in our economic analysis, including costs associated with future administrative costs or project modifications that may be required by Federal agencies related to section 7 consultation under the Act;

• Whether there are incremental economic benefits of critical habitat designation that have not been appropriately identified or considered in our economic analysis.

(13) Information on whether existing special management considerations or protections being implemented in areas designated as critical habitat for salmon by the National Marine Fisheries Service (NOAA Fisheries) are adequate for conserving essential bull trout habitat where proposed bull trout critical habitat overlaps, and if not, why not.

(14) We have organized the Primary Constituent Elements (PCEs) of bull trout critical habitat based on the life-history needs of the species. We are considering reorganizing the PCEs in order to improve clarity, into broad habitat attributes (water bodies and migratory corridors), and identify specific needs of bull trout within these broad categories. This approach would likely require repetition of specific features, but may be more understandable by making clear the relationships between the needs of the species and the specific locations where those needs are provided. We request comments on whether this reorganization would improve clarity of the PCEs.

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

(16) Specific information on ways to improve the clarity of this rule as it pertains to completion of consultations under section 7 of the Endangered Species Act.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If you provide personal identifying information, in addition to the required items specified in the previous paragraphs, such as your street address, phone number, or e-mail address, 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.

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

We are holding a public hearing on the date listed in the **DATES** section at the address listed in the **ADDRESSES** section. We are holding this public hearing to provide interested parties an opportunity to present verbal testimony (formal, oral comments) or written comments regarding the proposed critical habitat designation and the associated Draft Economic Analysis. An informational session will precede the hearing from 4 p.m. to 6 p.m. During

this session, Service biologists will be available to provide information and address questions on the proposed rule in advance of the formal hearing.

People needing reasonable accommodations in order to attend and participate in the public hearings should contact Jeff Foss, Idaho Fish and Wildlife Office, at 208-378-5243 as soon as possible (see **FOR FURTHER INFORMATION CONTACT** section). In order to allow sufficient time to process requests, please call no later than one week before the hearing date.

We are also holding public meetings on the dates listed in the **DATES** section at the addresses listed in the **ADDRESSES** section. During the public meetings, Service biologists will be available to provide information and address questions on the proposed rule. However, we will not accept verbal testimony at these public meetings.

Information regarding this notice is available in alternative formats upon request.

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. For further information on the bull trout biology and habitat, population abundance and trend, distribution, demographic features, habitat use and conditions, threats, and conservation measures, please see the Bull Trout 5-year Review Summary and Evaluation, completed April 25, 2008. This document is available on the Idaho Fish and Wildlife Office web site at *http://ecos.fws.gov/docs/five_year_review/doc1907.pdf*.

Description, Distribution, Habitat and Recovery

Bull trout have more specific habitat requirements than most other salmonids (Rieman and McIntyre 1993, p. 4). Habitat components that particularly influence their distribution and abundance include water temperature, cover, channel form and stability, spawning and rearing substrate conditions, and migratory corridors (Fraley and Shepard 1989, p. 138; Goetz 1989, p. 19; Watson and Hillman 1997, p. 247). This proposed rule identifies those physical and biological features essential to bull trout conservation.

Bull trout are members of the char subgroup of the family Salmonidae and are native to waters of western North America. Bull trout range throughout the Columbia River and Snake River basins, extending east to headwater streams in Montana and Idaho, into Canada, and in the Klamath River basin of south-central Oregon. The distribution of populations, however, is scattered and patchy (Goetz 1989, p. 4; Ziller 1992, p. 6; Rieman and McIntyre 1993, p. 3; Light *et al.* 1996, p. 44; Quigley and Arbelbide 1997, p. 1176).

Bull trout exhibit a number of life-history strategies. Stream-resident bull trout complete their entire life cycle in the tributary streams where they spawn and rear. Most bull trout are migratory, spawning in tributary streams where juvenile fish usually rear from one to four years before migrating to either a larger river (fluvial) or lake (adfluvial) where they spend their adult life, returning to the tributary stream to spawn (Fraley and Shepard 1989, p. 133). Resident and migratory forms may be found together, and either form can produce resident or migratory offspring (Rieman and McIntyre 1993, p. 2).

Bull trout, coastal cutthroat trout (*Oncorhynchus clarki clarki*), Pacific salmon (*Oncorhynchus* spp.), and some other species are commonly referred to as anadromous (fish that can migrate from saltwater to freshwater to reproduce). However, bull trout, coastal cutthroat trout, and some other species that enter the marine environment are more properly termed amphidromous. Unlike strictly anadromous species, such as Pacific salmon, amphidromous species often return seasonally to fresh water as subadults, sometimes for several years, before returning to spawn (Wilson 1997, p. 5). The amphidromous life-history form of bull trout is unique to the Coastal–Puget Sound population (64 FR 58921; November 1, 1999). For additional information on the biology of this life form, see our June 25, 2004, proposed critical habitat designation for the Jarbidge River, Coastal–Puget Sound, and Saint Mary–Belly River populations of bull trout (69 FR 35767).

The decline of bull trout is primarily due to habitat degradation and fragmentation, blockage of migratory corridors, poor water quality, past fisheries management practices, impoundments, dams, water diversions, and the introduction of nonnative species (63 FR 31647; June 10, 1998; 64 FR 17112; April 8, 1999). Finalization of the 2002 draft recovery plan was held in abeyance pending completion of the 5–year review process, and was also affected by resource demands associated with the litigation discussed below. The bull trout 5–year review (Service 2008, p. 45) recommended that the recovery units identified in the 2002 draft recovery plan be updated throughout their range based on assemblages of bull trout core areas (metapopulations or interacting breeding populations) that retain genetic and ecological integrity and are significant to the distribution of bull trout throughout the conterminous United States. After consulting with biologists from states, Federal agencies, and Native American tribes, and applying the best scientific information available, we identified six recovery units for bull trout in the conterminous United States. Please refer to the "Critical Habitat" section below for additional information on this topic.

Previous Federal Actions

On November 29, 2002, we proposed to designate critical habitat for the Klamath River and Columbia River bull trout populations (67 FR 71235). On October 6, 2004, we finalized the critical habitat designation for the Klamath River and Columbia River bull trout populations (69 FR 59995). On June 25, 2004, we proposed to designate critical habitat for the Jarbidge, Coastal–Puget Sound, and Saint Mary–Belly River bull trout populations (69 FR 35767). On September 26, 2005, we designated critical habitat for the Klamath River, Columbia River, Jarbidge River, Coastal–Puget Sound, and Saint Mary–Belly River populations of bull trout (70 FR 56212). Please refer to the above-mentioned rules for a detailed summary of previous Federal actions completed prior to publication of this proposed rule.

On January 5, 2006, a complaint was filed in Federal district court by the Alliance for the Wild Rockies, Inc. and Friends of the Wild Swan, alleging the Service failed to designate adequate critical habitat, failed to rely on the best scientific and commercial data available, failed to consider the relevant factors that led to listing, and failed to properly assess the economic benefits and costs of critical habitat designation. Other allegations included an inadequate analysis and the unlawful use of exclusions. On March 23, 2009, the Service provided notice to the U.S. District Court for the District of Oregon that we would seek remand of the final critical habitat rule for bull trout based on the findings of an Investigative Report by the Department of the Interior Inspector General (USDI 2008, pp. 10–38). On July 1, 2009, the court granted our request for a voluntary remand of the 2005 final rule and directed the Service to submit a new proposed rule to the **Federal Register** by December 31, 2009, and to submit a final decision on that proposed rule to the **Federal Register** by September 30, 2010 (*Alliance for the Wild Rockies v. Allen*, 2009 U.S. Dist. LEXIS 63122 (D. Or., July 1, 2009)). The court directed that the existing critical habitat rule shall remain in effect until completion of the remanded decision.

Summary of Changes from Previously Designated Critical Habitat

Approximately 36,498 km (22,679 mi) of streams (which includes 1,585.7 km (985.3 mi) of marine shoreline area, and 215,870 ha (533,426 ac) of reservoirs or lakes) are being proposed as revised critical habitat in this rule. Areas that were proposed as critical habitat in the November 29, 2002, proposed designation for the Klamath River and Columbia River bull trout populations (67 FR 71235) and the June 25, 2004, proposed designation for the Jarbidge, Coastal–Puget Sound, and Saint Mary–Belly River bull trout populations (69 FR 35767) are identified in Table 1 below. Based on better occupancy data and refined information on the importance of certain habitats, we are proposing to designate 3 percent more critical habitat in streams (measured on a linear basis) and 10 percent less critical habitat in lakes and reservoirs (measured by area) than were proposed in the combined 2002 and 2004 proposed rules.

TABLE 1.—EXTENT OF PROPOSED BULL TROUT CRITICAL HABITAT IN THE COMBINED 2002 AND 2004 PROPOSED RULES (67 FR 71235; 69 FR 35767)

Bull Trout Population	Stream length		Lakes, Reservoirs and Marshes		Marine shoreline		States
	km	mi	ha	ac	km	mi	
Klamath DPS	476	296	13,735	33,939			OR
Columbia River DPS (CDPS)	14,416	8,958	83,219	205,639			ID
CDPS	5,341	3,319	88,051	217,577			MT
CDPS	5,460	3,391	18,077	44,670			OR
CDPS	4,034	2,507	12,503	30,897			WA
Jarbidge	211	131					ID/NV
Coastal–Puget Sound	3,685	2,290	21,262	52,540	1,585	985	WA
St. Mary–Belly	142	88	2,548	6,295			MT
Total	33,765	20,980	239,395	591,577	1,585	985	

This proposed rule differs from the September 26, 2005, final critical habitat designation for bull trout (70 FR 56212) in the following ways:

In the 2005 final rule, we designated approximately 6,161 km (3,828 mi) of streams and 57,9578 ha (143,218 ac) of lakes in Idaho, Montana, Oregon, and Washington; and 1,585 km (985 mi) of shoreline paralleling marine habitat in Washington as critical habitat (70 FR 56212). No critical habitat was designated in the Jarbidge River basin (70 FR 56249–56251). In this rule, we are proposing to designate 36,498 km (22,679 mi) of streams (which includes 1,585.7 km (985.3 mi) of marine shoreline area in the Olympic Peninsula and Puget Sound), and 215,870 ha (533,426 ac) of lakes and reservoirs as critical habitat, which includes 266.9 km (165.9 mi) of streams in the Jarbidge River basin.

In the 2005 final rule, we did not designate any unoccupied critical habitat because the Secretary concluded that it was not possible to make a determination that such lands were essential to the conservation of the species (70 FR 56232). In this rule, we are proposing to designate 1,495 km (929 mi) of streams (four percent of the total) that are outside the geographical area occupied by the species at the time it was listed that have been determined to be essential for the conservation of the species.

In the 2005 rule, a variety of areas were exempted from critical habitat designation under section 4(a)(3) of the Act or excluded from designation as critical habitat under section 4(b)(2) of the Act (70 FR 56232). These areas included several DOD facilities; certain Tribal lands; Nisqually National Wildlife Refuge lands; lands subject to Habitat Conservation Plans (HCPs); lands subject to Federal or State management plans (including PACFISH, INFISH, Interior Columbia Basin Ecosystem Management Project, Northwest Forest Plan, Southwest Idaho Land and Resource Management Plan, Southeast Oregon Resource Management Plan, Federal Columbia River Power System, Snake River Basin Adjudication); waters impounded behind dams; and all lands that were proposed as critical habitat in the Jarbidge River in Nevada.

Federal agencies have an independent responsibility under section 7(a)(1) of the Act to use their programs in furtherance of the Act and to utilize their authorities to carry out programs for the conservation of endangered and threatened species. We consider the development and implementation of land management plans by Federal agencies to be consistent with this statutory obligation under section 7(a)(1) of the Act. For this reason, Federal land management plans, in and of themselves, are generally not an appropriate basis for excluding essential habitat, thus this rule does not propose to exclude any Federal lands under section 4(b)(2) of the Act. However, in some areas, Federal land management agencies actively manage for bull trout and its habitat and conduct specific conservation actions for the species. Therefore, in this proposed rule, we are asking for specific information regarding whether the effects of these actions are such that the benefits of excluding these particular areas from critical habitat outweigh the benefits of including these area as critical habitat under section 4(b)(2) of the Act (see "Application of Section 4(b)(2) of the Act" below).

In addition, we are exempting several DOD facilities under section 4(a)(3) of the Act based on existing Integrated Natural Resource Management Plans that provide a benefit to bull trout, and we are considering excluding certain non-Federal lands under section 4(b)(2) of the Act based on other conservation management considerations (see "Exemptions under Section 4(a)(3) of the Act" and "Application of Section 4(b)(2) of the Act" below). We are also proposing to designate 266.9 km (165.9 mi) of streams in the Jarbidge River basin.

Two economic analyses related to previous bull trout critical habitat proposed rules were prepared in 2004 and 2005, which followed a co-extensive analytical approach, consistent with recent court rulings. Those analyses considered conservation and protection activities for bull trout, without distinguishing between impacts associated with listing the species and those associated with the designation of critical habitat. The economic analysis prepared for this proposed rule does not follow the coextensive analytical approach, and differentiates between

baseline and incremental economic impacts. Under this approach, because of the conservation measures already in place for salmon, steelhead, the Klamath suckers, and other protected fish species, our analysis indicates that the incremental economic impact in areas occupied by bull trout will be small, and the most significant incremental effect will be in those areas not currently occupied (less than four percent of the areas being proposed as critical habitat). The majority of forecast incremental costs are associated with unoccupied critical habitat in the Upper Willamette River Basin and are associated with conservation efforts undertaken at flood control facilities. The discussion under "Draft Economic Analysis" below provides additional information in this regard.

The PCEs in this rule are similar to those described in the 2005 final designation (70 FR 56236); however, we are proposing an additional PCE related to the presence of nonnative fish that may prey on, compete with, or inbreed with, bull trout. In addition, we are considering reorganizing the PCEs, as noted above, into broad habitat attributes (water bodies and migratory corridors), and identify specific needs of bull trout within these broad categories. This reorganization would keep all of the PCEs presented in this proposal intact, but organizing them in such a way as to show the most important broad categories first, and then breaking them down into specific descriptions.

A small proportion of critical habitat designated in the 2005 final rule is not being proposed as critical habitat in this revision. These areas include streams and lakes determined either not to include bull trout or any of their PCEs, or not to be essential to their conservation. For example, Sycan Marsh in the Klamath River basin no longer holds enough water to support bull trout, so we propose the stream channels through the marsh as critical habitat, allowing connectivity among populations, instead of the entire marsh. The remainder of the areas designated in the 2005 final rule would remain designated as critical habitat if this proposed revision is finalized. A similarly small proportion of habitat proposed in this rule was not designated in the 2005 final rule. These areas include streams and lakes since determined to be occupied by bull trout, to provide one or more PCEs, or as essential to their conservation. For example, the mainstem Columbia River and the lower portions of connecting tributaries such as the John Day River have been found to be more important for FMO habitat for bull trout than was previously understood. All areas known to contain the most important bull trout habitat and PCEs, or that may be unoccupied but essential to their conservation, are proposed in this rule.

Copies of the previous proposed and final bull trout critical habitat rules and a map showing the relationship of the 2005 final rule and this proposed rule are available on the Idaho Fish and Wildlife Office web site at *http://www.fws.gov/pacific/bulltrout*.

Critical Habitat

Background

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

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) essential to the conservation of the species, and

(b) which may require special management considerations or protection; and

(2) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means 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 prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by the landowner. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply but even in the event of a destruction or adverse modification finding, the Federal action agency's and the applicant's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time it was listed must contain the physical and biological features that are essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify habitat areas that provide essential life cycle needs of the species (areas on which are found the physical and biological features (PBFs) laid out in the appropriate quantity and spatial arrangement for the conservation of the species), based on the best scientific data available. Under the regulation at 50 CFR 424.12(e), we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species and that designation limited to those areas occupied at the time of listing would be inadequate to ensure the conservation of the species. When the best available scientific data do not demonstrate that the conservation needs of the species require such additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. An area currently occupied by the species but that was not occupied at the time of listing may, however, be essential to the conservation of the species and may be included in the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria,

establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be proposed as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, 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, based on scientific data not now available to the Service. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that are important to the conservation of the species, but are outside the critical habitat designation, will continue to be subject to conservation actions Federal agencies implement under section 7(a)(1) of the Act. Areas that support populations are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Relationship of Critical Habitat to Recovery Planning

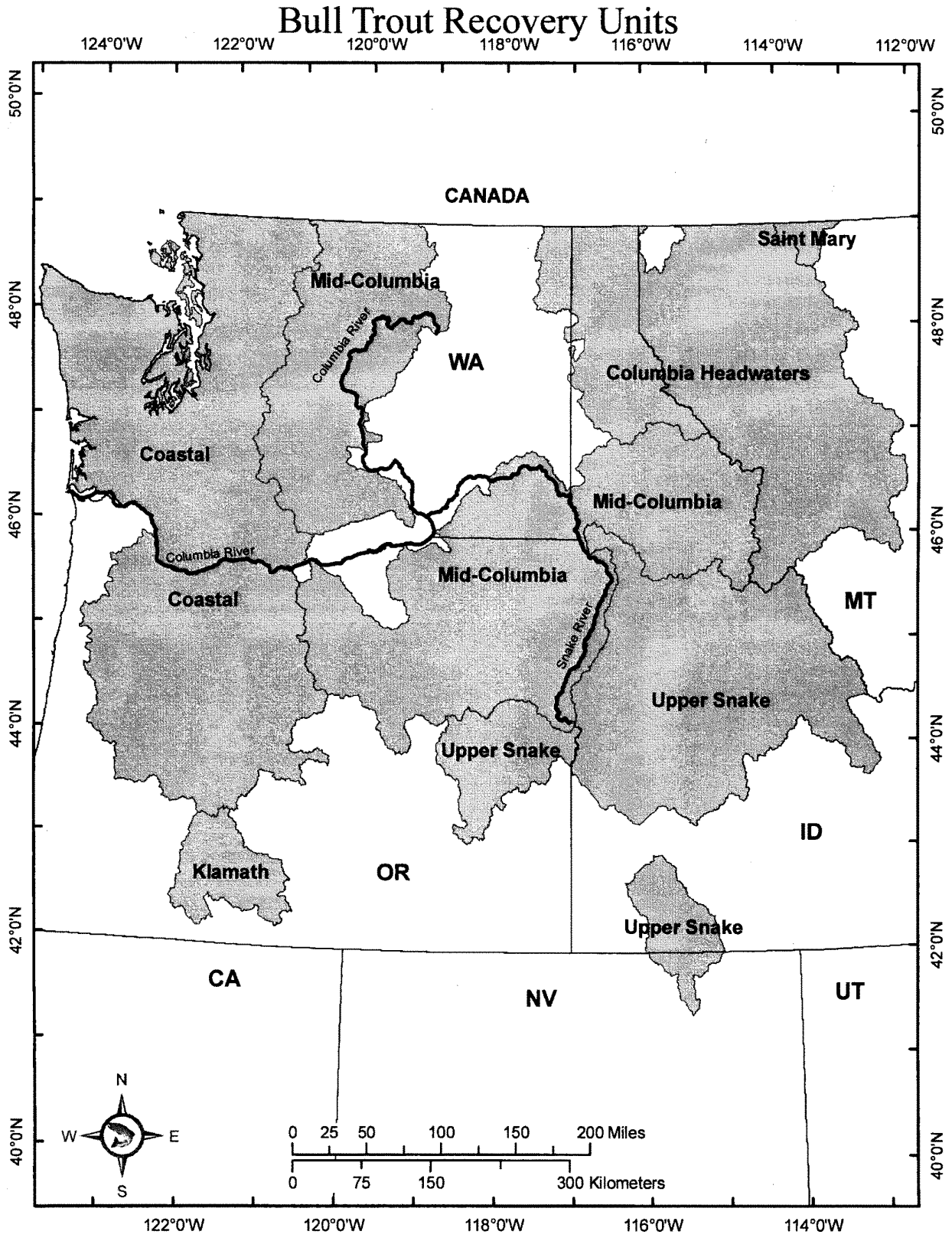
In developing this proposed rule, we considered the conservation relationship between the proposed critical habitat designation and recovery planning. Although recovery plans formulate the recovery strategy for a species, they are not regulatory documents, and there are no specific protections, prohibitions, or requirements afforded a species based solely on a recovery plan. Furthermore, although critical habitat designation can contribute to the overall recovery strategy for a species, it does not, by itself, achieve recovery plan goals. The Act states in section 3(5)(C), "except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species." In most cases, it is not the intent of the Act to designate critical habitat for every population and every documented historical location of a species. Instead, the focus of critical habitat designation is on habitat that contains the physical and biological features essential to conservation of the species.

The 5–year review (Service 2008, p. 45) recommended, in part, that we update recovery units from the 2002 draft recovery plan for bull trout throughout their range (Service 2002), based on assemblages of bull trout core areas (metapopulations or interacting breeding populations) that retain genetic and ecological integrity and are significant to the distribution of bull trout throughout the conterminous United States. To complete the recovery unit update, we consulted with biologists from States, Federal agencies, and Native American tribes, using the best scientific information available. Factors that were considered in determining the geographic arrangement of the updated recovery units included ensuring (1) resiliency by protecting large areas of high-quality habitat; (2) redundancy by protecting multiple populations; and (3) representation by protecting diverse genetic and life-history aspects of bull trout populations distributed throughout the range of the listed entity (Tear *et al.* 2005, p. 841).

Bull trout are listed under the Act as "Threatened" throughout the coterminous United States primarily due to habitat threats. In 2008 the Service completed a 5–year review of bull trout status and concluded in part that it should reevaluate the number of bull trout Distinct Population Segments (DPSs), and consider reclassifying bull trout into separate DPSs. The Service subsequently recommended not immediately pursuing reclassification due to time and cost constraints, but applied relevant factors in its 1996 DPS policy. As a result, six draft recovery units (RUs) were identified. Subsequent to identifying these six RUs, we evaluated each RU and determined that they were needed to ensure a resilient, redundant, and representative distribution of bull trout populations throughout the range of the listed entity. To accomplish these goals, we need to protect large areas of high-quality habitat, protect multiple populations, and protect diverse genetic and life-history aspects.

The six draft recovery units identified for bull trout in the conterminous United States include: Mid-Columbia recovery unit; Saint Mary recovery unit; Columbia Headwaters recovery unit; Coastal recovery unit; Klamath recovery unit; and Upper Snake recovery unit (Figure 1). Conserving each RU is essential to conserving the listed entity as a whole. These six new biologically based recovery units will be proposed to replace the 27 recovery units previously identified in the bull trout draft recovery plan (Service 2002, Chapter 1, p. 3).

Figure 1. Map of bull trout draft recovery units



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Areas that support populations, but are outside the critical habitat designation, may continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act, we use the best scientific data available in determining areas that contain the features that are essential to the conservation of bull trout. Data sources include research published in peer-reviewed journals and previous Service documents on the species, including the final listing determination (FR 64 58909–58933; November 1, 1999), the bull trout draft recovery plan (Service 2002), and the bull trout 5–year review (Service 2008). Additionally, we utilized regional Geographic Information System (GIS) shape files for area calculations and mapping.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas occupied at the time of listing to propose as critical habitat, we consider the physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. These features are the PCEs laid out in the appropriate quantity and spatial arrangement for conservation of the species. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

As discussed in greater detail below, we derived nine specific PCEs required for bull trout from the biological needs of the species as described or referred to in the **Background** section of this proposed rule and the following information. The nine PCEs relate to (1) water quality; (2) migration corridors; (3) food availability; (4) instream habitat; (5) water temperature; (6) substrate characteristics; (7) stream flow; (8) water quantity; and (9) nonnative species.

Space for Individual and Population Growth and for Normal Behavior

Streams and groundwater sources with high water quality and cold temperatures, complex habitat, and migratory corridors provide space for individual and population growth and for normal behavior for bull trout.

Bull trout exhibit a number of life-history strategies. Stream-resident bull trout complete their entire life cycle in the tributary streams where they spawn and rear. Some bull trout are migratory, spawning in tributary streams where juvenile fish usually rear from one to four years before migrating to either a larger river (fluvial form) or lake (adfluvial form) where they spend their adult life, returning to the tributary stream to spawn (Fraley and Shepard 1989, p. 133). These migratory forms occur in areas where conditions allow for movement from upper watershed spawning streams to larger downstream waters that contain greater foraging opportunities (Dunham and Rieman 1999, p. 646). Resident and migratory forms may be found together, and either form can produce resident or migratory offspring (Rieman and McIntyre 1993, p. 2). Where ocean environments are accessible to bull trout they may also migrate to and from salt water (amphidromy).

The ability to migrate is important to the persistence of bull trout local populations (Rieman and McIntyre 1993, p. 2; Gilpin 1997, p. 4; Rieman and Clayton 1997, p 6; Rieman *et al.* 1997, p. 1121). Bull trout rely on migratory corridors to move from spawning and rearing habitats to foraging and overwintering habitats and back. Migratory bull trout become much larger than resident fish in the more productive waters of larger streams and lakes, leading to increased reproductive potential. Stream resident populations are associated with headwater streams in mountainous regions where cold water and velocity barriers are common. Typically, these streams are smaller and have higher gradients than those occupied by adfluvial and fluvial populations. In these headwater streams, resident bull trout are associated with deep pools and in-stream cover, and most stream-resident populations are dwarfed (McPhail and Baxter 1996, p. 12). The use of migratory corridors by bull trout also results in increased dispersion, facilitating gene flow among local populations (interbreeding groups) when individuals from different local populations interbreed, stray, or return to non-natal streams. Also, local populations that have been extirpated by catastrophic events may become reestablished because of movements by bull trout through migratory corridors (Rieman and McIntyre 1993, p. 7; MBTSG 1998, p. 45).

Lakes and reservoirs also figure prominently in meeting the life-cycle requirements of bull trout. For adfluvial (migrating between lakes and rivers or streams) bull trout populations, lakes and reservoirs provide an important component of the core FMO habitat and are integral to maintaining the adfluvial life-history strategy that is commonly exhibited by bull trout. When juvenile bull trout emigrate downstream to a lake or reservoir from the spawning and rearing streams in its headwaters, they enter a more productive lentic (still or slow-moving water) environment that allows them to achieve rapid growth and energy storage.

Some reservoirs may have adversely affected bull trout, while others have provided benefits. For example, the basin of Hungry Horse Reservoir has functioned adequately for 50 years as a surrogate home for stranded Flathead Lake bull trout trapped upstream of the dam when it was completed. While this is an artificial impoundment, the habitat the reservoir provides and the presence of an enhanced prey base of native minnows, suckers, and whitefish within the reservoir sustain a large adfluvial bull trout population. Additionally, while barriers to migration are often viewed as a negative consequence of dams, the connectivity barrier at Hungry Horse Dam has served an important, albeit unintended, function in restricting the proliferation of nonnative *Salvelinus* species (including brook trout (*Salvelinus fontinalis*) and lake trout (*Salvelinus namaycush*)) from downstream areas upstream above the dam.

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

Bull trout are opportunistic feeders that prey upon other organisms. Prey selection is primarily a function of size

and life-history strategy. Resident and juvenile migratory bull trout prey on terrestrial and aquatic insects, macro-zooplankton, and small fish (Donald and Alger 1993, p. 244; McPhail and Baxter 1996, p. 15). Adult migratory bull trout feed almost exclusively on other fish (Rieman and McIntyre 1993, p. 3). Habitats must provide the necessary aquatic and adjacent terrestrial conditions to harbor prey species in sufficient quantity and diversity to meet the physiological requirements necessary to maintain bull trout populations. An abundant food base, including a broad array of terrestrial organisms of riparian origin, aquatic macroinvertebrates, and forage fish, supports individual and population growth and allows for normal bull trout behavior.

Cover or Shelter

At all life stages, bull trout require complex forms of cover, including large woody debris, undercut banks, boulders, and pools (Fraley and Shepard 1989, pp. 137-138; Watson and Hillman 1997, p. 249). Juveniles and adults frequently inhabit side channels, stream margins, and pools with suitable cover (Sexauer and James 1997, p. 368). McPhail and Baxter (1996, p. 11) reported that newly emerged fry are secretive and hide in gravel along stream edges and side channels. They also reported that juveniles are found mainly in pools but also in riffles and runs, maintain focal sites near the bottom, and are strongly associated with instream cover, particularly overhead cover such as woody debris or riparian vegetation. Bull trout have been observed overwintering in deep beaver ponds or pools containing large woody debris (Jakober 1995, p. 90). Adult bull trout migrating to spawning areas have been recorded as staying two to four weeks at the mouths of spawning tributaries in deeper holes or near logs or cover debris (Fraley and Shepard 1989, p. 137). Bull trout may also use lotic (swift-flowing water) and in some cases saltwater environments seasonally for reasons that include use as cover. Riparian vegetation; large wood; variable stream channel morphology including deep pools, side-channels, undercut banks and substrates; and in some cases access to downstream environments provide cover and shelter, which support individual and population growth and allow for normal bull trout behavior.

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

Bull trout have more specific habitat requirements than most other salmonids (Rieman and McIntyre 1993, p. 4). Habitat components that particularly influence their distribution and abundance include water temperature, cover, channel form and stability, spawning and rearing substrate conditions, and migratory corridors (Fraley and Shepard 1989, p. 138; Goetz 1989, p. 19; Watson and Hillman 1997, p. 247).

Watson and Hillman (1997, p. 248) concluded watersheds must have specific physical characteristics to provide the necessary habitat requirements for bull trout spawning and rearing, and that the characteristics are not necessarily ubiquitous throughout the watersheds in which bull trout occur. The preferred spawning habitat of bull trout consists of low-gradient stream reaches with loose, clean gravel (Fraley and Shepard 1989, p. 133). Bull trout typically spawn from August to November during periods of decreasing water temperatures (Swanberg 1997, p. 735). However, migratory forms are known to begin spawning migrations as early as April and to move upstream as much as 250 km (155 mi) to spawning areas (Fraley and Shepard 1989 p. 138; Swanberg 1997, p. 735).

Fraley and Shepard (1989, p. 137) reported that initiation of spawning by bull trout in the Flathead River system appeared to be related largely to water temperature, with spawning initiated when water temperatures dropped below 10 °Celsius (°C) (50 °Fahrenheit (°F)). Goetz (1989, pp. 22–32) reported a temperature range from 4 to 10 °C (39 to 50 °F). Such areas often are associated with cold-water springs or groundwater upwelling (Rieman *et al.* 1997, p. 1121; Baxter *et al.* 1999, p. 137). Fraley and Shepard (1989, p. 137) also found that groundwater influence and proximity to cover are important factors influencing spawning site selection. They reported the combination of relatively specific requirements resulted in a restricted spawning distribution in relation to available stream habitat.

Depending on water temperature, egg incubation is normally 100 to 145 days (Pratt 1992, p. 5). Water temperatures of 1.2 to 5.4 °C (34.2 to 41.7 °F) have been reported for incubation, with an optimum (best embryo survivorship) temperature reported to be from 2 to 4 °C (36 to 39 °F) (Fraley and Shepard 1989, p. 138; McPhail and Baxter 1996, p. 10). Juveniles remain in the substrate after hatching, such that the time from egg deposition to emergence of fry can exceed 200 days. During the relatively long incubation period in the gravel, bull trout eggs are especially vulnerable to fine sediments and water quality degradation (Fraley and Shepard 1989, p. 141). Increases in fine sediment appear to reduce egg survival and emergence (Pratt 1992, p. 6). Juveniles are likely also affected. High juvenile densities have been reported in areas characterized by a diverse cobble substrate and a low percent of fine sediments (Shepard *et al.* 1984, p. 6). Habitats with cold water temperature, appropriately-sized stream substrate, and stream substrate with a low level of fine material (i.e., less than 12 percent of fine substrate less than 0.85 millimeter (mm) (0.03 inch (in.)) in diameter) are necessary factors for egg incubation and juvenile rearing that supports individual and population growth (WFPB 1997, pp. 98, F-25).

Habitats Protected from Disturbance or Representative of the Historic, Geographical, and Ecological Distributions of the Species

There are some habitats throughout the range of the species that are well protected from disturbance and representative of ideal ecological conditions of the species. These areas mainly include wilderness, national parks, and other public lands specifically protected from most human disturbance (e.g., State parks), and often constitute bull trout "strongholds" with robust, well-distributed populations. Some populations outside of these areas may still be well protected for other reasons (e.g., conservation easements, Habitat Conservation Plans, Safe Harbor Agreements), but many other populations are threatened by human actions.

Water diversion and reservoir development can reduce stream flow, reduce the amount of water available in a stream channel, change water quality, and alter groundwater regimes. These changes may collectively impact habitat and passage for bull trout and can cause increases in water temperatures.

Impoundments may also increase nonnative species predation and competition, which can significantly affect bull trout populations. Some nonnative fish species that prey on bull trout include lake trout, walleye (*Sander vitreum*), northern pike (*Esox lucius*), smallmouth bass (*Micropterus dolomieu*), and brown trout (*Salmo trutta*). Brown trout or other introduced salmonids such as rainbow trout (*Onchorynchus mykiss*), as well as smallmouth bass, northern pike, walleye, and other species also compete with bull trout for limited resources. Brook trout commonly hybridize with bull trout (Ratliff and Howell 1992, p. 16; Leary *et al.* 1993, p. 857).

The stability of stream channels and stream flows are important habitat characteristics for bull trout populations (Rieman and McIntyre 1993, p. 5). The side channels, stream margins, and pools with suitable cover for bull trout are sensitive to activities that directly or indirectly affect stream channel stability and alter natural flow patterns. For example, altered stream flow in the fall may disrupt bull trout during the spawning period, and channel instability may decrease survival of eggs and young juveniles in the gravel during winter through spring (Fraley and Shepard 1989, p. 141; Pratt 1992, p. 6; Pratt and Huston 1993, p. 70). Streams with a natural hydrograph (those with normal discharge variations over time as a response to seasonal precipitation); permanent water; and an absence of nonnative species are representative of the highest quality ecological habitat of the species. Streams with these characteristics provide space for individual and population growth.

We propose bull trout habitats of two primary use types: spawning and rearing (SR), and foraging, migration, and overwintering (FMO). All nine PCEs listed below may be found in, or be essential to, bull trout in each of these two habitat use types. This proposed rule identifies over 3,500 water body segments as either SR or FMO habitat. Due to a lack of sufficiently detailed data, we do not identify the specific PCEs present for each water body segment. Future consultations with the Service on specific agency actions will help identify those PCEs that are most important in a specific water body segment. Factors such as time of year, seasonal precipitation, drought conditions, and other phenomenon can influence the essential physical and biological features present at any particular location at any particular time across its range given the variability of habitats used by bull trout. In addition, attributes such as stream flow and substrate size and composition are influenced by stream order and gradient. Accordingly, establishing an upper and lower range of conditions for specific attributes in some cases may be impracticable.

Primary Constituent Elements for Bull Trout

Based on the above needs and our current knowledge of the life-history, biology, and ecology of the species and the characteristics of the habitat necessary to sustain the essential life-history functions of the species, we have identified the following PCEs for bull trout critical habitat.

(1) Springs, seeps, groundwater sources, and subsurface water connectivity (hyporehic flows) to contribute to water quality and quantity and provide thermal refugia.

(2) Migratory habitats with minimal physical, biological, or water quality impediments between spawning, rearing, overwintering, and freshwater and marine foraging habitats, including but not limited to permanent, partial, intermittent, or seasonal barriers.

(3) An abundant food base, including terrestrial organisms of riparian origin, aquatic macroinvertebrates, and forage fish.

(4) Complex river, stream, lake, reservoir, and marine shoreline aquatic environments and processes with features such as large wood, side channels, pools, undercut banks and substrates, to provide a variety of depths, gradients, velocities, and structure.

(5) Water temperatures ranging from 2 to 15 °C (36 to 59 °F), with adequate thermal refugia available for temperatures at the upper end of this range. Specific temperatures within this range will vary depending on bull trout life-history stage and form; geography; elevation; diurnal and seasonal variation; shade, such as that provided by riparian habitat; and local groundwater influence.

(6) Substrates of sufficient amount, size, and composition to ensure success of egg and embryo overwinter survival, fry emergence, and young-of-the-year and juvenile survival. A minimal amount (e.g., less than 12 percent) of fine substrate less than 0.85 mm (0.03 in.) in diameter and minimal embeddedness of these fines in larger substrates are characteristic of these conditions.

(7) A natural hydrograph, including peak, high, low, and base flows within historic and seasonal ranges or, if flows are controlled, they minimize departures from a natural hydrograph.

(8) Sufficient water quality and quantity such that normal reproduction, growth, and survival are not inhibited.

(9) Few or no nonnative predatory (e.g., lake trout, walleye, northern pike, smallmouth bass; inbreeding (e.g., brook trout); or competitive (e.g., brown trout) species present.

Criteria Used To Identify Critical Habitat

As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining areas that contain the physical and biological features essential to the conservation of bull trout that may require special management considerations or protection, and areas outside of the geographical area occupied at the time of listing that are essential for bull trout conservation (Service 2009; also see "Previous Federal Actions" section). The steps we followed in identifying critical habitat were:

(1) Our initial step in identifying critical habitat was to determine, in accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, the physical and biological habitat features essential to the conservation of the species, as explained in the previous section. We reviewed the best available scientific data pertaining to the habitat requirements of this species, including consulting with biologists from partner agencies and entities including Federal, State, tribal, and private biologists; experts from other scientific disciplines such as hydrology and forestry; resource users; and other stakeholders with an interest in bull trout and the habitats they depend on for survival and recovery. We also reviewed available data concerning bull trout habitat use and preferences, habitat conditions, threats, limiting factors, population demographics, and known locations, distribution, and abundances of bull trout.

(2) We then identified the geographical areas occupied by bull trout at the time of listing and areas not occupied that may be essential for the conservation of bull trout. We used data gathered during the bull trout recovery planning process and the bull trout draft recovery plan (Service 2002), and supplemented that data with recent data developed by State agencies, tribes, the U.S. Forest Service (USFS), and other entities. This data was used to update bull trout status and distribution data for purposes of the proposed critical habitat designation. For areas where we had data gaps, we solicited expert opinions from knowledgeable fisheries biologists in the local area. Material reviewed included data in reports submitted during section 7 consultations, reports from biologists holding section 10(a)(1)(A) recovery permits, research published in peer-reviewed scientific journals, academic theses, State and Federal government agency reports, and regional GIS overlays.

(3) We identified specific areas within each of the six new draft recovery units described above that contain the physical and biological features essential to bull trout conservation, considering distribution, abundance, trend, and connectivity needs. The objective was to ensure the areas proposed for designation as critical

habitat would effectively serve the goals we believe are important for recovery: (a) conserve the opportunity for diverse life-history expression; (b) conserve the opportunity for genetic diversity; (c) ensure that bull trout are distributed across representative habitats; (d) ensure sufficient connectivity among populations; (e) ensure sufficient habitat to support population viability (e.g., abundance, trend indices); (f) address threats (see "Special Management Considerations or Protection" below), including climate change (see below); and (g) ensure sufficient redundancy in conserving population units. The above recovery goals take into account the threats and physical and biological needs of the species throughout its range, and focus on its range-wide recovery needs.

All critical habitat areas being proposed occur within the six new draft recovery units described above. Some areas contained the physical and biological features, but did not meet one or more of the above recovery goals because those features were not present in an appropriate quantity and spatial arrangement. Accordingly, we determined that such areas are not essential to bull trout conservation. For example, some areas contained spawning habitat (PCEs 5 and 6), but are disconnected from other populations and not large enough to support viable bull trout populations. Other areas were not included in this proposal because of limited habitat, marginal habitat, low bull trout density, or only sporadic presence of bull trout recorded.

Predicted global climate change appears likely to pose additional threats to bull trout in many parts of their range in the coterminous United States; downscaled regional climate models for the Columbia River basin predict a general air temperature warming of 1.0 to 2.5 °C (33.8 to 36.5 °F) or more by 2050 (Reiman *et al.* 2007, p. 1,552). This predicted temperature trend will have important effects on the regional distribution and local extent of habitats available to salmonids (Rieman *et al.* 2007, p. 1,552). The optimal water temperatures for bull trout appear to be substantially lower than those for other salmonids (Rieman *et al.* 2007, p. 1,553). Coldwater fish do not physically adapt well to thermal increases (McCullough *et al.* 2009, pp. 96–101). Instead, they are more likely to change their behavior, alter the timing of certain behaviors, experience increased physical and biochemical stress, and exhibit reduced growth and survival (McCullough *et al.* 2009, pp. 98–100). Bull trout spawning and initial rearing areas are currently largely constrained by low fall and winter water temperatures, and existing thermally suitable habitat patches are often isolated from one another (Rieman *et al.* 2007, p. 1,553). With a warming climate, thermally suitable bull trout spawning and rearing areas are predicted to shrink during warm seasons, in some cases very dramatically, becoming even more isolated from one another under moderate climate change scenarios (Rieman *et al.* 2007, pp. 1,558–1,562; Porter and Nelitz 2009, pp. 5–7).

Climate change will likely interact with other stressors, such as habitat loss and fragmentation (Rieman *et al.* 2007, pp. 1,558–1,560; Porter and Nelitz 2009, p. 3); invasions of nonnative fish (Rahel *et al.* 2008, pp. 552–553); diseases and parasites (McCullough *et al* 2009, p. 104); predators and competitors (McMahon *et al.* 2007, pp. 1,313–1,323; Rahel *et al.* 2008, pp. 552–553); and flow alteration (McCullough *et al.* 2009, pp. 106–108), to render some current spawning, rearing, and migratory habitats marginal or wholly unsuitable. For example, introduced congeneric populations of brook trout are widely distributed throughout the range of bull trout. McMahon *et al.* (2007, p. 1,320) demonstrated the presence of brook trout has a marked negative effect on bull trout, an effect that is magnified at higher water temperatures (16–20 °C (60–68 °F)). Changes and complex interactions are difficult to predict at a spatial scale relevant to bull trout conservation efforts, and key gaps exist in our understanding of whether bull trout (and other coldwater fishes) can behaviorally adapt to climate change.

We considered probable effects of climate change on bull trout by first qualitatively screening core areas to assess those which might be most vulnerable to climate change effects, and highlighting them in our 2008 update of status and threats data in the core area template documents (Service 2008, p. 15). For example, in many locations we prioritized cold water spring habitats for conservation because they may be among the most resistant habitats to climate change effects. In other locations we deemphasized protection of some already low-elevation, warmer, marginal bull trout habitats, anticipating that they would become even less valuable for the future conservation of bull trout. Over a period of decades, climate change may directly threaten the integrity of the essential physical and biological features described in PCEs 1, 2, 3, 5, 7, 8 and 9. Protecting bull trout strongholds and cold water refugia from disturbance and ensuring connectivity among populations were important considerations in addressing this potential impact.

Over 30 years of research into wildlife population sizes required for long-term viability (avoiding extinction) suggests that a minimum number of 5,000 individuals may be needed in light of rapidly changing environmental conditions such as accelerated climate change (Traill *et al.* 2009, p. 3). Although the minimum number of individuals may vary depending on the species involved, for bull trout, we have included additional unoccupied habitats in those areas where occupied habitats currently support far less than this number of individuals, so there are adequate PCEs for those small populations to recover. For example, in the Klamath basin where bull trout status is weak and threats are high (that is, where there are low number of individuals or populations, and poor habitat quality), we are proposing to designate all occupied habitat and some unoccupied habitat to ensure sufficient connectivity among existing bull trout populations. Unoccupied habitat proposed for protection is in FMO habitat, and is intended to ensure connectivity among existing, currently isolated bull trout populations. Conversely, examples of occupied areas that are not proposed as critical habitat include those where bull trout occur in low densities in very isolated or tenuous populations, areas where bull trout are heavily compromised by nonnative species, or areas where available habitat is restricted.

(4) In selecting areas to propose as critical habitat, we considered factors specific to each river system, such as size (i.e., stream order), gradient, channel morphology, connectivity to other aquatic habitats, and habitat complexity and diversity, as well as range-wide recovery considerations. We took into account the fact that bull trout habitat preference ranges from small headwater streams used largely for spawning and rearing, to downstream mainstem portions of river networks used for rearing, foraging, migration, or overwintering.

To help determine which of these specific areas are essential to bull trout conservation, we considered the species' status in each recovery unit by evaluating whether: (a) bull trout are rare and exposed to threats, such that recovery needs include removing threats from essentially all existing occurrences and restoring bull trout to portions of their historic range, or (b) bull trout are declining and exposed to threats, such that recovery needs include stopping the decline and eliminating threats

across key portions of their range, such as currently occupied strongholds.

NatureServe is a nonprofit conservation organization whose mission is to provide the scientific basis for effective conservation action. The NatureServe database is sometimes used as one of several factors in identifying species which may warrant listing under the Act, but in other cases the information in the NatureServe database is limited in its usefulness for that purpose. Additionally, NatureServe has developed a computer spreadsheet tool used world-wide for evaluating a suite of factors related to rarity, trends, and threats to assess the extinction or extirpation risk of species and ecosystems. We did use this spreadsheet tool in analyzing the data we have for the bull trout. The protocol for assigning a conservation status rank to a species or population of a species is based on using biological data to derive a score for each of ten conservation status factors, which are grouped into three categories based on the characteristic of the factor: rarity (six factors such as population size or habitat area), trends (two factors), and threats (two factors) (Master *et al.* 2007, pp. 6–11). By inserting extensive biological data for bull trout collected by the Service and its partners through 2007 into the NatureServe status assessment ranking tool spreadsheet for each of 118 bull trout core areas or watersheds throughout their range, we were able to determine the relative status and threats within each of the 118 bull trout core areas or watersheds and each of the 6 draft recovery units.

The proposed critical habitat designation identifies specific areas essential to the conservation of the bull trout local populations and spawning and rearing streams of highest conservation value. Factors taken into account at the smaller local population scale included the largest areas or populations, most highly connected populations, and areas with the highest conservation potential (i.e., the quantity and quality of physical and biological features present). At the larger core area scale, the proposed designation also focuses on areas having the highest conservation value by applying the factors that were applied at the local population scale. At both the local population and core area scales, the proposed designation emphasizes essential FMO habitats of highest conservation value, such as habitats that connect local populations and core areas and provide required space for life-history functions. In some areas, specific areas outside the geographical area occupied by bull trout at the time of listing have been determined to be essential for the conservation of the species and are being proposed as critical habitat. In those areas, bull trout habitat and population loss over time necessitates reestablishing bull trout in currently unoccupied habitat areas to achieve recovery.

Based on the considerations described above, we propose a greater proportion of occupied habitat and more unoccupied habitat for protection in areas where bull trout demonstrate less resiliency, redundancy, and representation, and less critical habitat elsewhere. We find that areas occupied at the time of listing are inadequate to ensure the conservation of the species. Therefore, we are proposing additional areas outside the geographical area occupied by the species at the time it is listed. For example, in the Klamath Basin Recovery Unit where threats to bull trout are greatest, we are proposing to designate all habitat known to be occupied at the time of listing that contains the physical and biological features essential to the conservation of the species and which may require special management considerations or protection, and we propose designating a substantial proportion of unoccupied habitat outside of the geographical area occupied by the species at the time of listing that has been determined to be essential for bull trout conservation. Our primary consideration in proposing critical habitat for occupied areas is to protect species strongholds for spawning and rearing and FMO habitats. Our primary consideration for most unoccupied areas is restoring connectivity among populations by protecting FMO habitats.

When determining proposed critical habitat boundaries within this proposed rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical and biological features essential for bull trout. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical and biological features in the adjacent critical habitat.

We are proposing for designation of critical habitat lands that we have determined were occupied at the time of listing and contain sufficient PBFs to support life-history functions essential for the conservation of the species and lands outside of the geographical area occupied at the time of listing that we have determined are essential for the conservation of bull trout.

We are proposing to designate 32 critical habitat units (CHUs) within the geographical area occupied by the species at the time of listing. These units have an appropriate quantity and spatial arrangement of physical and biological features present that supports bull trout metapopulations, life processes, and overall species conservation. Twenty-nine of the units contain all of the physical and biological features identified in this proposed rule, supporting multiple life-history requirements. Three of the mainstem river units in the Columbia and Snake River basins contain most of the physical and biological features necessary to support the bull trout's particular use of that habitat, other than those associated with PCEs 5 and 6, which relate to breeding habitat. Lakes and reservoirs within these units also contain most of the physical and biological features necessary to support bull trout, other than those associated with PCEs 1, 4, and 6. Marine nearshore habitats within the Olympic Peninsula and Puget Sound CHUs contain only a subset of the identified physical and biological features for bull trout (PCEs 2, 3, 5, and 8). However, these habitats are important to conserving a diverse life-history expression and representative habitats.

Special Management Considerations or Protection

The term critical habitat is defined in section 3(5)(A) of the Act, in part, as geographical areas on which are found those physical and biological features essential to the conservation of the species and which may require special management considerations or protections. Accordingly, 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. Although the determination that special management considerations or protection may be required is not a prerequisite to designating critical

habitat in areas essential to the conservation of the species that were unoccupied at the time of listing, all areas being proposed as critical habitat require some level of management to address current and future threats to bull trout, to maintain or enhance the physical and biological features essential to its conservation, and to ensure the recovery of the species.

The primary land and water management activities impacting the physical and biological features essential to the conservation of bull trout which may require special management considerations within the proposed critical habitat units include timber harvest and road building (forest management practices), agriculture and agricultural diversions, livestock grazing, dams, mining, and nonnative species presence or introduction (Beschta *et al.* 1987, p. 194; Chamberlin *et al.* 1991, p. 194; Furniss *et al.* 1991, p. 297; Meehan 1991, pp. 6–10; Nehlsen *et al.* 1991, p. 4; Sedell and Everest 1991, p. 6; Craig and Wissmar 1993, p. 18; Frissell 1993, p. 350; Henjum *et al.* 1994, p. 6; McIntosh *et al.* 1994, p. 37; Wissmar *et al.* 1994, p. 28; MBTSG 1995a, p. i; MBTSG 1995b, p. i; MBTSG 1995c, p. i; MBTSG 1995d, p. 1; USDA and USDI 1995, p. 8, 1997, pp. 132–144; Light *et al.* 1996, p. 6; MBTSG 1996a, p. ii; MBTSG 1996b, p. 1; MBTSG 1996c, p. i; MBTSG 1996d, p. i; MBTSG 1996e, p. i; MBTSG 1996f, p. 1; MBTSG 1996g, p. 7; MBTSG 1996h, p. 7). Urbanization and residential development may also impact the physical and biological features, and these features may require special management considerations or protections due to these development impacts.

Timber harvest and road building in, or close to, riparian areas can immediately reduce stream shading and cover, channel stability, and large woody debris recruitment, and it can increase sedimentation and peak stream flows (Chamberlin *et al.* 1991, p. 180). These activities can subsequently lead to increased stream temperatures and bank erosion and decreased long-term stream productivity. The effects of road construction and associated maintenance account for a majority of sediment loads to streams in forested areas. In addition, stream crossings also can impede fish passage (Shepard *et al.* 1984, p. 1; Cederholm and Reid 1987, p. 392; Furniss *et al.* 1991, p. 301). Sedimentation affects streams by reducing pool depth, altering substrate composition, reducing interstitial space, and causing braiding of channels (Rieman and McIntyre 1993, p. 6), which reduce carrying capacity. Sedimentation negatively affects bull trout embryo survival and juvenile bull trout rearing densities (Shepard *et al.* 1984, p. 6; Pratt 1992, p. 6). An assessment of the interior Columbia Basin ecosystem revealed that increasing road densities were associated with declines in four nonanadromous salmonid species (bull trout; Yellowstone cutthroat trout (*Oncorhyncus clarki bouvieri*); westslope cutthroat trout (*O. c. lewisi*); and redband trout (*O. mykiss* ssp.)) within the Columbia River basin, likely through a variety of factors associated with roads. Bull trout were less likely to use highly roaded basins for spawning and rearing and, if present, were likely to be at lower population levels (Quigley and Arbelbide 1997, p. 1183). These activities can directly and immediately threaten the integrity of the essential physical and biological features described in PCEs 1–6. Special management considerations or protections that may be needed for the essential features include the implementation of best management practices that could result in project modifications specifically designed to reduce these impacts in streams with bull trout, particularly in spawning and rearing habitat. Such best management practices could result in project modifications that require measures to ensure that road stream crossings do not impede fish migration or occur in or near spawning/rearing areas, or increase road surface drainage.

Agricultural practices and associated activities adjacent to streams and in upland portions of watersheds also can adversely affect the physical and biological features essential to bull trout conservation. Irrigation withdrawals, including diversions, can dewater spawning and rearing streams, impede fish passage and migration, and entrain fish into the irrigation ditch from the river. Discharging pollutants such as nutrients, agricultural chemicals, animal waste, and sediment into spawning and rearing waters is also detrimental (Spence *et al.* 1996, p. 128). Agricultural practices regularly include stream channelization and diking, large woody debris and riparian vegetation removal, and bank armoring (Spence *et al.* 1996, p. 127). Improper livestock grazing can promote streambank erosion and sedimentation and limit the growth of riparian vegetation important for temperature control, streambank stability, fish cover, and detrital input (Platts 1991, pp. 397–399). In addition, grazing often results in increased organic nutrient input in streams (Platts 1991, p. 423). These activities can directly and immediately threaten the integrity of the essential physical and biological features described in PCEs 1–8. Special management for the essential features could include best management practices that could include project modifications specifically designed to reduce these types of impacts in streams with bull trout, such as fencing livestock from streamsides, moving animal feeding operations away from surface waters, using riparian buffer strips near crop fields, minimizing water withdrawal from streams, avoiding stream channel and spring head manipulation, and avoiding stream dewatering.

Dams constructed without fish passage features, or with poorly designed fish passage features, create barriers to migratory bull trout, precluding access to suitable spawning, rearing, and migration habitats. Dams disrupt the connectivity within and between watersheds essential for maintaining aquatic ecosystem function (Naiman *et al.* 1992, p. 127; Spence *et al.* 1996, p. 141) and bull trout subpopulation interaction (Rieman and McIntyre 1993, p. 15). Natural recolonization of historically occupied sites can be precluded by migration barriers (e.g., McCloud Dam in California). These activities can directly and immediately threaten the integrity of the essential physical and biological features described in PCEs 2–7 and 9. Special management considerations that may be needed for the essential features include the implementation of best management practices that could result in project modifications, such as providing fish passage, specifically designed to reduce these impacts in streams with bull trout.

Mining can degrade aquatic systems by generating sediment and heavy metals pollution, altering water pH levels, and changing stream channels and flow (Martin and Platts 1981, p. 2). These activities can directly and immediately threaten the integrity of the essential physical and biological features described in PCEs 1, 6, 7, and 8, even if they occur some distance upstream from critical habitat. Special management for these essential features could require best management practices that could result in project modifications specifically designed to reduce these impacts in streams with bull trout, such as avoiding surface water impacts from mining activities and neutralizing or containing toxic materials generated.

Introductions of nonnative species by the Federal Government, State fish and game departments, and unauthorized private parties across the range of bull trout have resulted in predation,

declines in abundance, local extirpations, and hybridization of bull trout (Bond 1992, p. 3; Howell and Buchanan 1992, p. viii; Donald and Alger 1993, p. 245; Leary *et al.* 1993, p. 857; Pratt and Huston 1993, p. 75; MBTSG 1995b, p. 10; MBTSG 1995d, p. 21; Platts *et al.* 1995, p. 9; MBTSG 1996g, p. 7; Palmisano and Kaczynski, in litt.1997, p. 29). Nonnative species may exacerbate stresses on bull trout from habitat degradation, fragmentation, isolation, and species interactions (Rieman and McIntyre 1993, p. 3). These activities can, over time, directly threaten the integrity of the essential physical and biological features described in PCE 9. Special management needs and considerations for this essential feature could require the implementation of best management practices that could result in project modifications specifically designed to reduce these impacts in streams with bull trout, such as avoiding future introductions, eradicating or controlling introduced species, and managing habitat to favor bull trout over other species.

Urbanization and residential development in watersheds has led to decreased habitat complexity (uniform stream channels and simple nonfunctional riparian areas), impediments and blockages to fish passage, increased surface runoff (more frequent and severe flooding), and decreased water quality and quantity (Spence *et al.* 1996, pp. 130–134). In nearshore marine areas, urbanization and residential development has led to significant loss or physical alteration of intertidal and shoreline habitats, as well as led to the contamination of many estuarine and nearshore areas (PSWQAT 2000, p. 47; BMSL *et al.* 2001, ch. 10, pp. 1–27 ; Fresh *et al.* 2004, p. 1). Activities associated with urbanization and residential development can incrementally threaten the integrity of the essential physical and biological features described in PCEs 1–5, 7, and 8. Special management for these essential features could require best management practices that could result in project modifications specifically designed to reduce these impacts in streams with bull trout, such as setting back developments from riparian areas, minimizing water runoff from urban areas directly to streams, minimizing hard surfaces such as pavement in watersheds, and minimizing impacts related to fertilizer application.

Proposed Critical Habitat Designation

We are proposing 32 critical habitat units in 6 recovery units for bull trout. Each CHU is comprised of a number of specific streams or reservoir/lake areas, which are identified as subunits in this proposed rule.

In freshwater areas, critical habitat includes the stream channels within the designated stream reaches and a lateral extent as defined by the bankfull elevation on one bank to the bankfull elevation on the opposite bank. If bankfull elevation is not evident on either bank, the ordinary high-water line determines the lateral extent of critical habitat. The lateral extent of critical habitat in lakes is defined by the perimeter of the water body as mapped on standard 1:24,000 scale topographic maps. In marine nearshore areas, the inshore extent of critical habitat is the mean higher high-water (MHHW) line, including tidally influenced freshwater heads of estuaries. Critical habitat extends offshore to the depth of 10 meters (m) (33 feet (ft)) relative to the mean low low-water (MLLW) line.

The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for bull trout. A total of 36,497.70 km (22,678.5 mi) of streams (which includes 1,587.7 km (985.3 mi) of marine shoreline area (Table 2), and 215,870.1 ha (533,426.4 ac) of reservoir and lake surface area (Table 3) are proposed as bull trout critical habitat. A total of 1,495 km (929 mi; four percent) of stream and marine shoreline distance was unoccupied at the time of listing, with the remainder occupied. A total of 17,422 km (10,825 mi; 48 percent) of stream habitat is used for spawning and rearing, with the remainder—and all reservoirs and lakes—used for FMO. Tables 4 and 5 present total stream shoreline distance and reservoir and lake surface area proposed in each state. Table 6 presents the ownership for all stream shoreline distances proposed as critical habitat.

TABLE 2.—STREAM/SHORELINE DISTANCE PROPOSED FOR DESIGNATION AS BULL TROUT CRITICAL HABITAT BY CRITICAL HABITAT UNIT AND REFERENCING RECOVERY UNIT

Recovery Unit	Critical habitat unit	Kilometers	Miles
Coastal	1.Olympic Peninsula	1,292.9	803.4
	1.Olympic Peninsula (Marine)	673.8	418.7
	2.Puget Sound	2,737.3	1,700.8
	2.Puget Sound (Marine)	911.9	566.6
	3.Lower Columbia River Basins	360.9	224.3
	4.Upper Willamette River	304.9	189.5
	5.Hood River	113.1	70.3
	6.Lower Deschutes River	463.2	287.8
	7.Odell Lake	27.4	17.0
	8.Mainstem Lower Columbia River	342.2	212.6
Klamath	9.Klamath River Basin	440.0	273.4
Mid-Columbia	10.Upper Columbia River Basins	1,125.9	699.6
	11.Yakima River	1,191.4	740.3
	12.John Day River	1,176.4	731.0
	13.Umatilla River	211.8	131.6
	14.Walla Walla River Basin	452.7	281.3
	15.Lower Snake River Basins	284.2	176.6
	16.Grande Ronde River	1,057.7	657.2
	17.Imnaha River	285.7	177.5
	18.Sheep and Granite Creeks	47.9	29.7
	19.Hells Canyon Complex	399.3	248.1
	20.Powder River Basin	404.3	251.2
	21.Clearwater River	2,702.1	1,679.0
	22.Mainstem Upper Columbia River	522.7	324.8
	23.Mainstem Snake River	552.2	343.1

TABLE 2.—STREAM/SHORELINE DISTANCE PROPOSED FOR DESIGNATION AS BULL TROUT CRITICAL HABITAT BY CRITICAL HABITAT UNIT AND REFERENCING RECOVERY UNIT—Continued

Recovery Unit	Critical habitat unit	Kilometers	Miles
Upper Snake	24. Malheur River Basin	250.7	155.8
	25.Jarbidge River	266.9	165.9
	26.Southwest Idaho River Basins	2,716.7	1,688.1
	27.Salmon River Basin	8,119.4	5,045.1
	28.Little Lost River	206.6	128.4
Columbia Headwaters	29.Coeur d'Alene River Basin	819.6	509.3
	30.Kootenai River Basin	587.0	364.7
	31.Clark Fork River Basin	5,332.1	3,313.2
Saint Mary	32.Saint Mary River Basin	116.8	72.6
	Total	36,497.7	22,678.5

TABLE 3.—AREA OF RESERVOIRS OR LAKES PROPOSED FOR DESIGNATION AS BULL TROUT CRITICAL HABITAT BY CRITICAL HABITAT UNIT

Critical habitat unit	Hectares	Acres
1.Olympic Peninsula	3,366.2	8,318.1
2.Puget Sound	17,890.5	44,208.3
3.Lower Columbia River Basins	4,856.1	11,999.7
4.Upper Willamette River	3,601.5	8,899.6
5.Hood River	36.9	91.1
6.Lower Deschutes River	1,670.2	4,127.3
7.Odell Lake	1,387.1	3,427.6
9.Klamath River Basin	3,775.5	9,329.5
10.Upper Columbia River Basins	1,033.2	2,553.1
11.Yakima River	6,285.2	15,531.0
16.Grande Ronde River	605.2	1,495.5
21.Clearwater River	6,721.9	16,610.2
24.Malheur River Basin	715.9	1,768.9
26.Southwest Idaho River Basins	15,540.2	38,400.6
27.Salmon River Basin	1,659.5	4,100.6
29.Coeur d'Alene River Basin	12,606.9	31,152.2
30.Kootenai River Basin	12,089.2	29,873.1
31.Clark Fork River Basin	119,473.5	295,225.5
32.Saint Mary River Basin	2,555.4	6,314.5
Total	215,870.1	533,426.40

TABLE 4.—STREAM/SHORELINE DISTANCE PROPOSED FOR DESIGNATION AS BULL TROUT CRITICAL HABITAT BY STATE

State	Kilometers	Miles
Idaho	15,563.4	9,670.6
Montana	4,978.8	3,093.7
Nevada	137.3	85.3
Oregon	4,988.3	3,099.6
Oregon/Idaho	273.8	170.1
Washington	8,421.1	5,232.6
Washington Marine	1,585.7	985.3
Washington/Idaho	59.9	37.2
Washington/Oregon	489.0	303.9
Total	36,497.30	22,678.30

TABLE 5.—AREA OF RESERVOIRS OR LAKES PROPOSED FOR DESIGNATION AS BULL TROUT CRITICAL HABITAT BY STATE

State	Hectares	Acres
Idaho	80,093.2	19,7914.7
Montana	90,553.3	22,3762.2
Oregon	11,792.3	29,139.5
Washington	33,431.2	82,610.3
Total	215,870.1	533,426.40

TABLE 6.—STREAM/SHORELINE DISTANCE PROPOSED FOR DESIGNATION AS BULL TROUT CRITICAL HABITAT BY OWNERSHIP

Ownership	Kilometers	Miles
Federal	21,276	13,220
Federal/Private	422	262
Federal/State	4	2
State	889	552
Tribal	683	424
Private	13,223	8,216
Total	36,497	22,676

We present a brief description of all critical habitat designated in each of 32 units below, organized by recovery unit. Maps depicting the units and subunits are included with the proposed amendatory language below. For a more detailed textual and graphic description of all units and subunits, please see our website at *http://www.fws.gov/pacific/bulltrout*, or contact the Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** above). The areas being proposed as critical habitat below satisfy each of the above "Criteria Used to Identify Critical Habitat" considerations, and will conserve the opportunity for diverse life-history expression and genetic diversity; ensure that bull trout are distributed across representative habitats; ensure sufficient connectivity among populations; ensure sufficient habitat to support population viability; address threats; and ensure sufficient redundancy in conserving population units. The characteristics of each Critical Habitat Unit, Subunit, and in some cases water body segment that establish why a specific area is essential to the conservation of bull trout are identified in the reference (Service 2009). Examples of attributes that were considered include habitat use (FMO, spawning and rearing), occupancy data, geographic limits, accessibility, presence or absence of barriers, genetic analysis (used in metapopulation context), population data, habitat condition, and presence of anadromous salmonids.

Coastal Recovery Unit

Unit 1: Olympic Peninsula Unit

The Olympic Peninsula CHU is located in northwestern Washington. Bull trout populations inhabiting the Olympic Peninsula comprise the coastal component of the Coastal–Puget Sound population. The unit includes approximately 1,292.9 km (803.4 mi) of stream, 3,366.2 ha (8,318.1 ac) of lake surface area, and 673.8 km (418.7 mi) of marine shoreline proposed as critical habitat. This CHU is bordered by Hood Canal to the east, Strait of Juan de Fuca to the north, the Pacific Ocean to the west, and the Lower Columbia River Basins and Puget Sound CHUs to the south. It extends across portions of Grays Harbor, Clallam, Mason, Pacific, and Jefferson Counties. All of the major river basins initiate from the Olympic Mountains. The Olympic Peninsula CHU is divided into 10 CHSUs. Although delta areas and small islands are difficult to map and may not be specifically identified by name, included within the critical habitat proposal are delta areas where streams form sloughs and braids and the nearshore of small islands found within the proposed marine areas. The State of Washington has assigned most streams a stream catalog number. Typically, if an unnamed stream or stream with no official U.S. Geological Survey name is proposed for critical habitat within the Puget Sound CHU, the stream catalog number is provided for reference. In those cases where tributary streams do not have a catalog number, they are referred to as "unnamed" or a locally accepted name is used. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 pp. 9–11), or *http://www.fws.gov/pacific/bulltrout*.

Unit 2: Puget Sound Unit

The Puget Sound CHU includes approximately 2,737.3 km (1,700.8 mi) of streams; 17,890.5 ha (44,208.3 ac) of lake surface area; and 911.9 km (566.6 mi) of marine shoreline proposed as critical habitat. The CHU is bordered by the Cascade Range to the east, Puget Sound to the west, Lower Columbia River Basins and Olympic Peninsula CHUs to the south, and the U.S.–Canada border to the north. The CHU extends across Whatcom, Skagit, Snohomish, King, Pierce, Thurston, and Island Counties in Washington. The major river basins initiate from the Cascade Range and flow west, discharging into Puget Sound, with the exception of the Chilliwack River system, which flows northwest into British Columbia, discharging into the Fraser River. The Puget Sound CHU is divided into 13 CHSUs. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 pp. 11–13), or *http://www.fws.gov/pacific/bulltrout*.

Unit 3: Lower Columbia River Basins Unit

The Lower Columbia River Basins CHU consists of portions of the Lewis, White Salmon, and Klickitat Rivers and associated tributaries in southwestern and south-central Washington. The CHU extends across Clark, Cowlitz, Klickitat, Skamania, and Yakima Counties. Approximately 360.9 km (224.3 mi) of stream and 4,856.1 ha (11,999.7 ac) of reservoir surface area are proposed as critical habitat. There are three bull trout local populations in the Lewis River watershed and one in the Klickitat River watershed. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 p. 14), or *http://www.fws.gov/pacific/bulltrout*.

Unit 4: Upper Willamette River Unit

The Upper Willamette River CHU includes 304.9 km (189.5 mi) of streams and 3,601.5 ha (8,899.6 ac) of lake surface area is proposed as critical

habitat in the McKenzie River and Middle Fork Willamette River subbasins of western Oregon. This unit is located primarily within Lane County, but also extends into Linn County.

There are three known bull trout local populations in the McKenzie River subbasin and one bull trout local population in the Middle Fork Willamette River subbasin. With the exception of a short reach of the mainstem Willamette River and the mainstem Middle Fork Willamette River (including reservoirs) below Hills Creek Dam, segments proposed as critical habitat are occupied by bull trout. The stream segments that make up the Willamette River Unit are described below. This unit provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 pp. 14–15), or *http://www.fws.gov/pacific/bulltrout*.

Unit 5: Hood River Unit

The Hood River CHU includes the mainstem Hood River and three major tributaries: Clear Branch Hood River, West Fork Hood River, and East Fork Hood River. A total of 113.1 km (70.3 mi) of stream and 36.9 ha (91.1 ac) of lake surface is proposed as critical habitat. Portions of the mainstem Columbia River utilized as FMO by Hood River bull trout are discussed in the Lower Mainstem Columbia River section of this document.

The Hood River CHU, located on the western slopes of the Cascades Mountains in northwest Oregon, lies entirely within Hood River County, Oregon. There are two local populations identified as essential: (1) Clear Branch Hood River above Clear Branch Dam and (2) Hood River and tributaries below Clear Branch Dam. This unit provides spawning and rearing habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 p. 15), or *http://www.fws.gov/pacific/bulltrout*.

Unit 6: Lower Deschutes River Unit

The Lower Deschutes River CHU is located in Wasco, Sherman, Jefferson, Deschutes, and Crook Counties in central Oregon. There are five known local population in the lower Deschutes River basin: (1) Warm Springs River; (2) Shitike Creek; (3) Whitewater River; (4) Jefferson Creek–Candle Creek Complex; and (5) Jack Creek–Canyon Creek–Heising Spring Complex.

The Lower Deschutes River CHU includes (1) the Metolius River basin, consisting of Canyon Creek, Jack Creek, Heising Spring, Candle Creek, Jefferson Creek, Whitewater River, the mainstem Metolius River, and Lake Billy Chinook; (2) the mainstem Deschutes River from Lake Billy Chinook to Big Falls; (3) Whychus Creek upstream to the USFS 6360 Road crossing; (4) Crooked River from its confluence with Lake Billy Chinook upstream to Highway 97; (5) Shitike Creek; (6) Warm Springs River; and (7) mainstem Deschutes River from the Pelton Regulating Dam downstream to the Columbia River.

Approximately 463.2 km (287.8 mi) of streams and 1,670.2 ha (4,127.3 ac) of lake and reservoir surface area in the lower Deschutes River basin are proposed as critical habitat. A portion of the reaches occur on the Confederated Tribes of Warm Springs lands. The following stream segments are included in the Lower Deschutes River CHU. This unit provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 p. 15), or *http://www.fws.gov/pacific/bulltrout*.

Unit 7: Odell Lake Unit

The Odell Lake CHU lies entirely within the Deschutes National Forest in Deschutes and Klamath Counties, Oregon. Total proposed critical habitat in this unit includes 27.4 km (17.0 mi) of streams and 1,387.1 ha (3,427.6 ac) of lake surface area. The single Odell Lake bull trout population has been isolated from the Deschutes River population by a lava flow that impounded Odell Creek and formed Davis Lake approximately 5,500 years ago. Odell Lake is the only remaining natural adfluvial population of bull trout in Oregon. The following lake area and stream segments are included in this CHU. This unit provides spawning and rearing habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 p. 16), or *http://www.fws.gov/pacific/bulltrout*.

Unit 8: Mainstem Lower Columbia River Unit

The Mainstem Lower Columbia River CHU extends from the mouth of the Columbia River to John Day Dam and is located in the states of Oregon and Washington. It includes Clatsop, Columbia, Multnomah, Hood River, Wasco, and Sherman Counties in Oregon and Pacific, Wahkiakum, Cowlitz, Clark, Skamania, and Klickitat Counties in Washington. A total of 342.2 km (212.6 mi) of stream are being proposed as critical habitat. This unit provides connecting habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 p. 16), or *http://www.fws.gov/pacific/bulltrout*.

Unit 9: Klamath River Basin Unit (Klamath Recovery Unit)

The Klamath River Basin CHU is located in south-central Oregon and includes three CHSUs: (1) Upper Klamath Lake CHSU; (2) Sycan River CHSU; and (3) Upper Sprague River CHSU. It includes portions of Klamath and Lake Counties in Oregon. Total proposed critical habitat in this unit includes 440.0 km (273.4 mi) of streams and 3,775.5 ha (9,329.5 ac) of lake surface area. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 pp. 16–18), or *http://www.fws.gov/pacific/bulltrout*.

Unit 10: Upper Columbia River Basins Unit (Mid-Columbia Recovery Unit)

The Upper Columbia River Basins CHU includes the entire drainages of three CHSUs in central and north-central Washington on the east slopes of the Cascade Range and east of the Columbia River between Wenatchee, Washington, and the Okanogan River drainage: (1) Wenatchee River CHSU in Chelan County; (2) Entiat River CHSU in Chelan County; and (3) Methow River CHSU in Okanogan County. The Upper Columbia River Basins CHU also includes the Lake Chelan basin (with some proposed critical habitat and Okanogan River basin) which historically provided spawning and rearing and FMO habitat. But it is unclear what role these drainages may play in recovery. A total of 1,125.9 km

(699.6 mi) of streams and 1,033.2 ha (2,553.1 ac) of lake surface area in this CHU are proposed as critical habitat to provide for spawning and rearing, FMO habitat to support three core areas essential for conservation and recovery. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 pp. 18–19), or *http://www.fws.gov/pacific/bulltrout*.

Unit 11: Yakima River Unit

The Yakima River CHU supports adfluvial, fluvial, and resident life-history forms of bull trout. This CHU includes the mainstem Yakima River and tributaries from its confluence with the Columbia River upstream from the mouth of the Columbia River upstream to its headwaters at the crest of the Cascade Range. The Yakima River CHU is located on the eastern slopes of the Cascade Range in south-central Washington and encompasses the entire Yakima River basin located between the Klickitat and Wenatchee Basins. The Yakima River basin is one of the largest basins in the State of Washington; it drains southeast into the Columbia River near the town of Richland, Washington. The basin occupies most of Yakima and Kittitas Counties, about half of Benton County, and a small portion of Klickitat County. This CHU does not contain any subunits because it supports one core area. A total of 1,191.4 km (740.3 mi) of stream habitat and 6,285.2 ha (15,531.0 ac) of lake and reservoir surface area in this CHU are proposed as critical habitat. One of the largest populations of bull trout (South Fork Tieton River population) in central Washington is located above the Tieton Dam and supports the core area. This CHU supports two potential resident local populations identified in the U.S. Fish and Service's 2008 five year review (Service 2008, p. 6). This unit provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 pp. 19–20), or *http://www.fws.gov/pacific/bulltrout*.

Unit 12: John Day River Unit

The John Day River CHU in the John Day River basin in eastern Oregon includes portions of the mainstem John Day River, North Fork John Day River, Middle Fork John Day River, and their tributary streams within Wheeler, Grant, and Umatilla Counties in Oregon. A total of 1,176.4 km (731.0 mi) of streams are proposed as critical habitat.

Four CHSUs are defined for the John Day River CHU: Lower Mainstem John Day River, Upper Mainstem John Day River, North Fork John Day River, and Middle Fork John Day River. The latter three generally correspond to core areas. All proposed critical habitat designations are essential to the long-term conservation of the species. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 p. 20), or *http://www.fws.gov/pacific/bulltrout*.

Unit 13: Umatilla River Unit

The Umatilla River CHU is located in northeastern Oregon in Umatilla and Union Counties. There are two local populations in this unit: one in the North Fork Umatilla River and one in North Fork Meacham Creek. Bull trout in this basin are primarily fluvial migrants that overwinter in middle and lower sections of the mainstem Umatilla River.

Approximately 211.8 km (131.8 mi) of stream is proposed as critical habitat for bull trout in the Umatilla River basin. Approximately 48.7 km (30.3 mi) of stream within the Confederated Tribes of the Umatilla Indian Reservation lands is being proposed as critical habitat. The stream segments that make up the Umatilla River CHU are described below. This unit provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 p. 21), or *http://www.fws.gov/pacific/bulltrout*.

Unit 14: Walla Walla River Basin Unit

The Walla Walla River Basin CHU straddles the Oregon–Washington State line in the eastern part of both States and includes two CHSUs. The unit includes 452.7 km (281.3 mi) of stream, extending across portions of Umatilla and Wallowa Counties in Oregon and Walla Walla and Columbia Counties in Washington. There are five known bull trout local populations in this unit: two in the Walla Walla River basin and three in the Touchet River basin. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 p. 21), or *http://www.fws.gov/pacific/bulltrout*.

Unit 15: Lower Snake River Basins Unit

The Lower Snake River Basins CHU is located in southeast Washington and contains two CHSUs: (1) Tucannon River basin CHSU located in Columbia and Garfield Counties and (2) Asotin Creek basin CHSU within Garfield and Asotin Counties. Approximately 284.2 km (176.6 mi) of stream are proposed as critical habitat for bull trout within this unit. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 pp. 21–22), or *http://www.fws.gov/pacific/bulltrout*.

Unit 16: Grande Ronde River Unit

The Grande Ronde River CHU is located in northeast Oregon and southeast Washington and includes the Grande Ronde core area and the Little Minam core area. The Grande Ronde core area includes large portions of Union and Wallowa Counties and a small portion of Umatilla County in Oregon and about one-third of Asotin County and small portions of Columbia and Garfield Counties in Washington. The Little Minam core area is located entirely within the Eagle Cap Wilderness on the western edge of the Wallowa subbasin in both Union and Wallowa Counties in Oregon.

The Grande Ronde River CHU contains at least ten local populations in the Grande Ronde River basin: (1) Upper Grande Ronde; (2) Catherine; (3) Indian; (4) Minam/Deer; (5) Lostine/Bear; (6) Upper Hurricane; (7) North Fork Wenaha; (8) South Fork Wenaha; (9) Butte and West Fork Butte; and (10) Lookingglass. The Little Minam River, a separate core area and a tributary to the Minam River, encompasses tributaries containing one local population located above a barrier falls at approximately

9.0 km (5.6 mi) upstream, as well as the Little Minam River below the barrier to its confluence with the Minam River. The Grande Ronde River CHU includes 1,057.7 km (657.2 mi) of streams and 605.2 ha (1,495.5 ac) of lakes and reservoirs proposed as critical habitat. This unit provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 pp. 22–23), or *http://www.fws.gov/pacific/bulltrout*.

Unit 17: Imnaha River Unit

The Imnaha River CHU extends across Wallowa, Baker, and Union Counties in northeastern Oregon. The CHU contains approximately 285.7 km (177.5 mi) of river proposed as critical habitat and four local populations: (1) Mainstem Imnaha River; (2) Big Sheep Creek and tributary streams (Big Sheep Creek is considered to be one local population above and below the Wallowa Valley Irrigation Canal); (3) Little Sheep Creek and tributary streams; and (4) McCully Creek, which could be considered one or two local populations depending if Big Sheep Creek above and below the diversion are separated. This unit provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 p. 23), or *http://www.fws.gov/pacific/bulltrout*.

Unit 18: Sheep and Granite Creeks Unit

This CHU is located within Adams and Idaho Counties in Idaho, approximately 21.0 km (13.0 mi) east of Riggins, Idaho. In the Sheep and Granite Creeks CHU, 47.9 km (29.7 mi) of streams are proposed as critical habitat. This unit provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 p. 23), or *http://www.fws.gov/pacific/bulltrout*.

Unit 19: Hells Canyon Complex Unit

The Hells Canyon Complex is located in Adams County, Idaho, and Baker County, Oregon. This CHU contains 399.3 km (248.1 mi) of streams proposed as critical habitat. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 pp. 23–24), or *http://www.fws.gov/pacific/bulltrout*.

Unit 20: Powder River Basin Unit

The Powder River Basin CHU includes approximately 404.3 km (251.2 mi) of stream proposed as critical habitat and is located within Baker, Union, and Wallowa Counties in northeastern Oregon. This unit is thought to contain 10 local populations of bull trout and 1 potential local population. Several unoccupied sections of the Powder River mainstem have been proposed to provide connectivity and recovery opportunities for local populations. The stream segments that make up the Powder River Basin CHU are described below. This unit provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 p. 24), or *http://www.fws.gov/pacific/bulltrout*.

Unit 21: Clearwater River Unit

The Clearwater River CHU is located east of Lewiston, Idaho, and extends from the Snake River confluence at Lewiston on the west to headwaters in the Bitterroot Mountains along the Idaho–Montana border on the east in Nez Perce, Latah, Lewis, Clearwater, Idaho, and Shoshone Counties. This unit includes five CHSUs: Lower/Middle Fork Clearwater River; North Fork Clearwater River (and Fish Lake); South Fork Clearwater River; Lochsa River (and Fish Lake); and the Selway River. In the Clearwater River CHU, 2,702.1 km (1,679.0 mi) of streams and 6,721.9 ha (16,610.2 ac) of lake and reservoir surface area are proposed as critical habitat. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 pp. 24–26), or *http://www.fws.gov/pacific/bulltrout*.

Unit 22: Mainstem Upper Columbia River Unit

The Mainstem Upper Columbia River CHU includes the Columbia River from John Day Dam upstream 522.7 km (324.8 mi) to Chief Joseph Dam. The Columbia River generally flows south from Canada, southwest through Washington, and west through Oregon. The Columbia River drains from its headwaters in Alberta, Canada, and the west slopes of the Rocky Mountains in Montana. This reach of river is heavily influenced by Grand Coulee Dam operations, which provide hydroelectricity and irrigation water. The Mainstem Upper Columbia River CHU supports FMO habitat for fluvial bull trout; several accounts exist of bull trout in the Columbia River between the Yakima and John Day Rivers. The Mainstem Upper Columbia River CHU provides connectivity to the Mainstem Lower Columbia River CHU and 13 additional CHUs (Clearwater River, Powder River Basin, Imnaha River, Grande Ronde River, Walla Walla River Basin, Umatilla River, John Day River, Yakima River, Mainstem Snake River, Lower Snake River Basins, Hells Canyon Complex, Sheep and Granite Creeks, and Upper Columbia River Basins). The Mainstem Upper Columbia River CHU is located in north-central, central, and south-central Washington and north-central and northeast Oregon. This CHU is within Klickitat, Franklin, Benton, Grant, Yakima, Kittitas, Chelan, Douglas, and Okanogan Counties in Washington and Sherman, Gilliam, Morrow, and Umatilla Counties in Oregon. Several dams, all of which have reports of bull trout using their ladders, are located throughout this portion of the Columbia River, including John Day, McNary, Priest Rapids, Wanapum, Rock Island, Rocky Reach, and Wells Dams. For a justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 p. 26), or *http://www.fws.gov/pacific/bulltrout*.

Unit 23: Mainstem Snake River Unit

The Mainstem Snake River CHU is located from the confluence with the Columbia River upstream to the head of Brownlee Reservoir. The Snake River is the largest tributary to the Columbia River and forms the border between Washington and Idaho from Clarkston/Lewiston upstream to Oregon. The Snake River also forms the boundary between Idaho and Oregon, and at that

point upstream to the upper limit of Brownlee Reservoir, forms this CHU. The Snake River is within Franklin, Walla Walla, Columbia, Whitman, and Asotin Counties in Washington; Wallowa, Whitman, Baker, and Malheur Counties in Oregon; and Nez Perce, Idaho, Adams, and Washington Counties in Idaho.

In the lower section of the Snake River are a series of dams and locks built by the U.S. Army Corps of Engineers (COE). The Lower Granite, Little Goose, Lower Monumental, and Ice Harbor Dams generate hydroelectric power and provide barge traffic navigation to Lewiston, Idaho. The major features in the Hells Canyon Hydroelectric Complex reach of the Snake River are Hells Canyon, Oxbow, and Brownlee Dams and their reservoirs. These projects are owned and operated by the Idaho Power Company to produce electrical power. The Mainstem Snake River CHU includes 552.2 km (343.1 mi) of streams proposed as critical habitat. This unit provides foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 p. 26), or *http://www.fws.gov/pacific/bulltrout*.

Unit 24: Malheur River Basin Unit (Upper Snake Recovery Unit)

The Malheur River Basin CHU is in eastern Oregon within Grant, Baker, Harney, and Malheur Counties. A total of 250.7 km (155.8 mi) of streams and 715.9 ha (1,768.9 ac) of reservoir surface area are proposed as critical habitat. There are two local bull trout populations (Upper Malheur and North Fork Malheur Rivers (Service 2002, pp. 34–35)). The Bull Trout Draft Recovery Plan also identified several streams, including Bosonberg Creek, McCoy Creek, and Corral Basin Creek, for expansion of bull trout range within the upper Malheur River local population (Service 2002, pp. 34–35). Summit Creek is considered potential suitable bull trout habitat and is included in the proposed designation. This unit provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 p. 27), or *http://www.fws.gov/pacific/bulltrout*.

Unit 25: Jarbidge River Unit

The Jarbidge River CHU encompasses the Jarbidge and Bruneau River basins, which drain into the Snake River within C.J. Strike Reservoir upstream of Grand View, Idaho. The Jarbidge River CHU is located approximately 70 miles north of Elko within Owyhee County in southwestern Idaho and Elko County in northeastern Nevada.

The Jarbidge River CHU includes 266.9 km (165.9 mi) of streams proposed as critical habitat. The Jarbidge River CHU contains six local populations of resident and migratory bull trout and the stream segments in the Jarbidge River CHU provide either FMO or spawning and rearing habitat. These habitats maintain the population and the migratory life-history form essential to the species' long-term conservation and provide habitat necessary for the recovered distribution of bull trout (Service 2004b, pp. 7–9). The stream segments that make up the Jarbidge Unit are described below. This unit provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 p. 27), or *http://www.fws.gov/pacific/bulltrout*.

Unit 26: Southwest Idaho River Basins Unit

The Southwest Idaho River Basins CHU is located in southwest Idaho in the following counties: Adams, Boise, Camas, Canyon, Elmore, Gem, Valley, and Washington. This unit includes eight CHSUs: Anderson Ranch, Arrowrock Reservoir, South Fork Payette River, Deadwood River, Middle Fork Payette River, North Fork Payette River, Squaw Creek, and Weiser River. The Southwest Idaho River Basins CHU includes approximately 2,716.7 km (1,688.1 mi) of streams and 15,540.2 ha (38,400.6 ac) of lake and reservoir surface area proposed as critical habitat. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 pp. 27–28), or *http://www.fws.gov/pacific/bulltrout*.

Unit 27: Salmon River Basin Unit

The Salmon River basin extends across central Idaho from the Snake River to the Montana–Idaho border. The Salmon River Basin CHU extends across portions of Adams, Blaine, Custer, Idaho, Lemhi, Nez Perce, and Valley Counties in Idaho. There are 10 CHSUs: Little-Lower Salmon River, Opal Lake, Lake Creek, South Fork Salmon River, Middle Salmon–Panther River, Middle Fork Salmon River, Middle Salmon Chamberlain River, Upper Salmon River, Lemhi River, and Pahsimeroi River. The Salmon River Basin CHU includes 8,119.4 km (5,045.1 mi) of stream and 1,659.5 ha (4,100.6 ac) of lake and reservoir surface area proposed as critical habitat. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 pp. 29–30), or *http://www.fws.gov/pacific/bulltrout*.

Unit 28: Little Lost River Unit

Located within Butte, Custer, and Lemhi Counties in east-central Idaho, near the town of Arco, Idaho, designated critical habitat in the Little Lost River CHU includes 206.6 km (128.4 mi) of streams proposed as critical habitat. This unit provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 p. 30), or *http://www.fws.gov/pacific/bulltrout*.

Unit 29: Coeur d'Alene River Basin Unit (Columbia Headwaters Recovery Unit)

Located in Kootenai, Shoshone, Benewah, Bonner, and Latah Counties in Idaho, the Coeur d'Alene River Basin CHU includes the entire Coeur d'Alene Lake basin in northern Idaho. A total of 819.6 km (509.3 mi) of streams and 12,606.9 ha (31,152.2 ac) of lake surface area are proposed as critical habitat. There are no subunits within the Coeur d'Alene River Basin CHU. This unit provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for

documentation of occupancy by bull trout, see Service (2009 p. 31), or *http://www.fws.gov/pacific/bulltrout*.

Unit 30: Kootenai River Basin Unit

The Kootenai River Basin CHU is located in the northwestern corner of Montana and the northeastern tip of the Idaho panhandle and includes the Kootenai River watershed upstream and downstream of Libby Dam. The Kootenai River flows in a unique horseshoe configuration, entering the United States from British Columbia, Canada, and then traversing across northwest Montana and the northern Idaho panhandle before returning to British Columbia from Idaho where it eventually joins the upper Columbia River drainage. The Kootenai River Basin CHU includes two CHSUs: the downstream Kootenai River CHSU in Boundary County, Idaho, and Lincoln County, Montana, and the upstream Lake Koocanusa CHSU in Lincoln County, Montana. The entire Kootenai River Basin CHU includes 587.0 km (364.7 mi) of streams and 12,089.2 ha (29,873.1 ac) of lake and reservoir surface area proposed as critical habitat. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 pp. 31–32), or *http://www.fws.gov/pacific/bulltrout*.

Unit 31: Clark Fork River Basin Unit

The Clark Fork River Basin CHU includes the northeastern corner of Washington (Pend Oreille County), the panhandle portion of northern Idaho (Boundary, Bonner, and Kootenai Counties), and most of western Montana (Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Lewis and Clark, Ravalli, Granite, and Deer Lodge Counties). This unit includes 12 CHSUs, organized primarily on the basis of major watersheds: Lake Pend Oreille, Pend Oreille River, and lower Priest River (Lake Pend Oreille); Priest Lakes and Upper Priest River (Priest Lakes); Lower Clark Fork River; Middle Clark Fork River; Upper Clark Fork River; Flathead Lake, Flathead River, and Headwater Lakes (Flathead); Swan River and Lakes (Swan); Hungry Horse Reservoir, South Fork Flathead River, and Headwater Lakes (South Fork Flathead); Bitterroot River; Blackfoot River; Clearwater River and Lakes; and Rock Creek. The Clark Fork River Basin CHU includes 5,332.1 km (3,313.2 mi) of streams and 119,473.5 ha (295,225.5 ac) of 45 lakes and reservoirs proposed as critical habitat. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 pp. 32–36), or *http://www.fws.gov/pacific/bulltrout*.

Unit 32: Saint Mary River Basin Unit (Saint Mary Recovery Unit)

We are proposing to designate critical habitat for bull trout in identified stream segments and lakes in the Saint Mary River Basin CHU in Montana. The entire U.S. portion of the Saint Mary River drainage, which forms the Saint Mary River Basin CHU, is located in Glacier County, Montana. The total stream distance proposed for designation as critical habitat in Montana is about 116.8 km (72.6 mi), and the five lakes have a surface area of about 2,555.4 ha (6,314.5 ac).

Most high-elevation waters in Glacier National Park were historically fishless. Due to natural migration barriers, bull trout occupancy in the headwaters of the Belly River drainage (directly west of and adjacent to the Saint Mary River drainage) was confined to only a very minor portion of the U.S habitat near the international border. Due to this restricted U.S. distribution and the fact that all FMO habitat for these populations is in Alberta, Canada, the Belly River headwaters in unroaded backcountry of Glacier National Park are not included in this proposed critical habitat designation. This unit provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual water bodies are proposed as critical habitat, and for documentation of occupancy by bull trout, see Service (2009 p. 36), or *http://www.fws.gov/pacific/bulltrout*.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the U.S. Courts of Appeal for the Fifth and Ninth Circuits have invalidated our definition of "destruction or adverse modification" (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. U.S. Fish and Wildlife Service *et al.*, 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain those physical or biological features that relate to the ability of the area to periodically support the species) to serve its intended conservation role for the species.

Federal activities that may affect bull trout or its designated critical habitat require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring 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 us under section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7 consultation process. 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 permitted do not require section 7 consultation.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure the activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely

modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define "reasonable and prudent alternatives" at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action;
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction;
- Are economically and technologically feasible; and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the "Jeopardy" and "Adverse Modification" Standards

Jeopardy Standard

Currently, the Service applies an analytical framework for bull trout jeopardy analysis that relies heavily on the importance of known core area populations to the survival and recovery of bull trout. The section 7(a)(2) of the Act analysis is focused not only on these populations, but also on the habitat conditions that support them.

The jeopardy analysis usually expresses the survival and recovery needs of bull trout in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, the jeopardy analysis focuses on the range-wide status of bull trout, the factors responsible for that condition, and what is necessary for this species to survive and recover. An emphasis is also placed on characterizing the condition of bull trout in the area affected by the proposed Federal action and the role of affected populations in the survival and recovery of bull trout. That context is then used to determine the significance of adverse and beneficial effects of the proposed Federal action and any cumulative effects for purposes of making the jeopardy determination. Core areas form the building blocks that provide for conserving the bull trout's evolutionary legacy as represented by major genetic groups. The jeopardy analysis also considers any conservation measures that may be proposed by a Federal action agency to minimize or compensate for adverse project effects to the bull trout or to promote its recovery.

If a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding may be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Adverse Modification Standard

The analytical framework described in the Director's December 9, 2004, memorandum is used to complete section 7(a)(2) analyses for Federal actions affecting bull trout critical habitat. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or retain those physical and biological features that relate to the ability of the area to periodically support the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for bull trout. As discussed above, the role of critical habitat is to support the life-history needs of the species and provide for the conservation of the species. Generally, the conservation role of bull trout critical habitat units is to support viable core area populations.

Since the primary threat to bull trout is habitat loss or degredation, the jeopardy analysis under section 7 of the Act for a project with a Federal nexus will most likely evaluate the effects of the action on the conservation or functionality of the habitat for the bull trout. Because of this, we believe that in many cases the analysis of the project to address designated critical habitat will be comparable. As such, we do not anticipate, for many circumstances, that the outcome of the consultation to address critical habitat will result in any significant additional project modifications or measures.

When consulting under section 7(a)(2) in designated critical habitat, independent analyses are conducted for jeopardy to the species and adverse modification of critical habitat. In occupied bull trout habitat, any adverse modification determination would likely also result in a jeopardy determination for the same action. As such, project modifications that may be needed to minimize impacts to the species would coincidentally minimize impacts to critical habitat. Accordingly, in occupied critical habitat it is unlikely that an analysis would identify a difference between measures needed to avoid the destruction or adverse modification of critical habitat from measures needed to avoid jeopardizing the species. Alternatively, in unoccupied critical habitat, we would not conduct a jeopardy analysis, however, measures to avoid the destruction or adverse modification may be necessary to ensure that the affected critical habitat area can continue to serve its intended conservation role for the species, or retain the physical and biological features related to the ability of the area to periodically support the species.

The adverse modification analysis focuses on the range-wide status of critical habitat, the factors responsible for that condition, and what is necessary for critical habitat to provide the necessary conservation value to the bull trout. An emphasis is placed on characterizing the functional condition of critical habitat PCEs in the area affected by the proposed Federal action. This analysis then addresses how the critical habitat PCEs will be affected, and in turn, how this will influence the conservation role of critical habitat units in support of viable core area populations. That context is then used to determine the significance of adverse and beneficial effects of the proposed Federal action and any cumulative effects for purposes of making the adverse modification determination at the range-wide scale. If a proposed Federal action would alter the physical or biological features of critical habitat to an extent that appreciably reduces the conservation function of critical habitat for the bull trout, an adverse modification finding for the proposed action is considered to be warranted. The intended purpose of critical habitat to support viable core areas establishes a sensitive scale for relating effects of an

action on CHUs or subunits to the conservation function of the entire designated critical habitat.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and, therefore, result in consultation for the bull trout include, but are not limited to:

(1) Detrimental alteration of the minimum flow or the natural flow regime of any of the designated stream segments. Possible actions would include groundwater pumping, impoundment, water diversion, and hydropower generation. We note that such flow alterations resulting from actions affecting tributaries of the designated stream reaches may also destroy or adversely modify critical habitat.

(2) Alterations to the designated stream segments that could indirectly cause significant and detrimental effects to bull trout habitat. Possible actions include vegetation manipulation, timber harvest, road construction and maintenance, prescribed fire, livestock grazing, off-road vehicle use, powerline or pipeline construction and repair, mining, and development. Riparian vegetation profoundly influences instream habitat conditions by providing shade, organic matter, root strength, bank stability, and large woody debris inputs to streams. These characteristics influence water temperature, structure and physical attributes (useable habitat space, depth, width, channel roughness, cover complexity), and food supply.

(3) Detrimental alteration of the channel morphology of any of the designated stream segments. Possible actions would include channelization; impoundment; road and bridge construction; deprivation of substrate source; destruction and alteration of aquatic or riparian vegetation; reduction of available floodplain; removal of gravel or floodplain terrace materials; and excessive sedimentation from mining, livestock grazing, road construction, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances. We note that such actions in the upper watershed (beyond the riparian area) may also destroy or adversely modify critical habitat. For example, timber harvest activities and associated road construction in upland areas can lead to changes in channel morphology by altering sediment production, debris loading, and peak flows.

(4) Detrimental alterations to the water chemistry in any of the designated stream segments. Possible actions would include release of chemical or biological pollutants into the surface water or connected groundwater at a point source or by dispersed releases (nonpoint).

(5) Proposed activities that are likely to result in the introduction, spread, or augmentation of nonnative species in any of the designated stream segments. Possible actions would include fish stocking, use of live bait fish, aquaculture, improper construction and operation of canals, and interbasin water transfers.

(6) Proposed activities that are likely to create significant instream barriers to bull trout movement. Possible actions would include water diversions, impoundments, and hydropower generation where effective fish passage facilities, mechanisms, or procedures are not provided.

We consider all 32 CHUs to contain features essential to the conservation of the bull trout. All units are within the geographic range of the species, and portions of all units were occupied by the species at the time of listing (based on observations made within the last 20 years). All units are likely to be used by the bull trout for foraging, migrating, overwintering, spawning, or rearing.

Federal agencies already consult with us on activities in areas currently occupied by the bull trout to ensure that their actions do not jeopardize the continued existence of the bull trout. These agencies may need to request reinitiation on some of their existing activities if the agency has continued discretional involvement or control and if the activity may affect designated critical habitat. However, we anticipate the burden of reinitiation will be minor because of the aforementioned similarity between measures needed to avoid the destruction or adverse modification of critical habitat and measures needed to avoid jeopardizing the species. In addition, consultation tools such as streamlining and programmatic consultations are commonly implemented to minimize the administrative costs associated with consultation within the range of the bull trout. We expect these tools will continue be used for any reinitiations of consultation for bull trout critical habitat, thereby minimizing any additional administrative costs associated with designating the critical habitat.

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:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and

A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Publ. L. 108–136) amended the Act to limit areas eligible for designation of critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. § 1533(a)(3)(B)(i)) now provides, "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. § 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

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 Columbia and Coastal-Puget Sound populations of bull trout and which contain those features essential to the species' conservation, to determine if these installations may warrant consideration for exemption under section 4(a)(3) of the Act. Each of the

Department of Defense (DOD) installations identified below has been conducting surveys and habitat management to benefit the bull trout, and reporting the results of their efforts to the Service. Cooperation between the DOD installations and the Service on specific conservation measures continues.

Approved Integrated Natural Resources Management Plans

We have examined the INRMPs for each of these military installations to determine whether they provide benefits to bull trout.

Acoustic Research Detachment (ARD) Naval Surface Warfare Center

The Bayview Acoustic Research Detachment (ARD) Naval Surface Warfare Center, Bayview, Idaho, has an approved INRMP. This property includes approximately 9.0 ha (22.0 ac) of developed land on the shore of Lake Pend Oreille and 7.0 ha (17.3 ac) of lake area. There are no tributary streams within this area utilized by bull trout for spawning or early life rearing, but the lake area does contain important FMO habitat for bull trout.

Bayview ARD's INRMP outlines protection and management strategies for natural resources on the center, including fish species and their habitats. The plan benefits bull trout through the protection of kokanee salmon spawning habitat, a primary food source for bull trout. The Bayview ARD property in Scenic Bay hosts from 40 to 70 percent of the kokanee spawning activity in Lake Pend Oreille, depending on the year. The INRMP includes measures to minimize impacts to kokanee habitat by limiting facility boat traffic during spawning periods (November–December) and implementing sediment control measures. Furthermore, interpretive signs have been placed throughout the property to educate employees and the public regarding various aspects of the region's natural resources, threatened or endangered species (including bull trout), and geological history. The INRMP requires the natural resource manager to provide ARD INRMP awareness training to facilitate INRMP implementation.

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 Bayview ARD INRMP and that conservation efforts identified in the INRMP will provide a benefit to bull trout occurring in habitats within or adjacent to Bayview ARD. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 7 ha (16 ac) of habitat in this proposed critical habitat designation because of this exemption.

Naval Radio Station Jim Creek, Naval Station Everett, Naval Air Station Whidbey Island, and U.S. Army Fort Lewis Installation

Naval Radio Station Jim Creek in western Washington has an approved INRMP. The Naval Radio Station Jim Creek occurs in the Jim Creek watershed. The lower reaches of Jim Creek provide foraging habitat for subadult and adult bull trout. The Naval Radio Station Jim Creek INRMP provides benefits to bull trout through (1) restoration of riparian buffers along Jim Creek, (2) protection of Jim Creek from erosion and sedimentation, and (3) protection of Jim Creek from contaminants and herbicides.

Naval Station Everett in western Washington has an approved INRMP. The Naval Station Everett property includes land on or near the shores of Puget Sound that contain important foraging and migration habitat for amphidromous (fish that move between fresh and salt water but not to breed) bull trout. The Naval Station Everett's INRMP benefits bull trout by providing (1) protection to bull trout in the marine environment from oil spills around berthing naval vessels; (2) bioswales to prevent the release of toxins, contaminants, and oils from reaching the water column through storm drains; and (3) restoration of riparian habitat on Navy lands located along the Middle Fork Quilceda Creek.

Naval Air Station Whidbey Island in western Washington has an approved INRMP. The Naval Station Whidbey Island property includes land on or near the shores of Puget Sound that contain important foraging and migration habitat for amphidromous bull trout. Naval Aviation Station Whidbey Island's INRMP benefits bull trout through (1) monitoring and managing livestock grazing, (2) managing road building and maintenance to prevent erosion and sedimentation of bull trout habitat, (3) assuring proper disposal of hazardous materials, and (4) implementation of their Integrated Pest Management Plan's best management practices to protect aquatic environments.

The U.S. Army Fort Lewis Installation (Fort Lewis) located in western Washington has an approved INRMP. Fort Lewis borders the Nisqually River and Puget Sound near important foraging and migration habitat for amphidromous bull trout. The INRMP for Fort Lewis benefits bull trout through (1) protecting and enhancing wetlands (e.g., all wetlands–marshes, lakes, rivers, and streams are protected with 300-foot-wide riparian buffers to maintain cold water temperatures, prevent sediment from entering the streams, and to provide for woody debris); (2) controlling invasive plant species that often diminish water quality and impact native plants and animals; and (3) restoring salmon spawning habitat and access to increase salmon productivity, which contributes to and enhances the bull trout prey base.

Habitat features essential to bull trout conservation are present within or immediately adjacent to each of these DOD installations, and each installation has an approved INRMP. Activities occurring on these installations are being conducted in a manner that provides a benefit to bull trout. In addition, these installations already consult with us under section 7 of the Act on their actions (including those occurring in the open water training and testing areas) that may adversely affect bull trout and their habitat.

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 Naval Radio Station Jim Creek, Naval Station Everett, Naval Air Station Whidbey Island, and U.S. Army Fort Lewis Installation INRMPs and that conservation efforts identified in the INRMPs will provide a benefit to bull trout occurring in habitats within or adjacent to DOD installations. Therefore, lands within these installations are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately a total of 40 km (24.9 mi) of habitat determined to contain features essential to the conservation of the bull trout in this proposed critical habitat designation because of these exemptions.

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Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate or 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 impacts of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific

data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts to national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis, we make this determination, then we can exclude the area only if such exclusion would not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in the overall conservation of the bull trout through the continuation, strengthening, or encouragement of partnerships and the implementation of management plans or programs that provide equal to or more conservation for the bull trout than could be achieved through a designation of critical habitat.

In the case of bull trout, where there may be little additional regulatory effects in areas occupied by the species resulting from the designation, the benefits of critical habitat include educational benefits resulting from identification of the features essential to the conservation of bull trout and the delineation of the areas important for its recovery. Further, there may be additional benefits realized by providing landowners, stakeholders, and project proponents greater certainty about which specific areas are important for bull trout that should be effectively addressed through coordination and consultation of activities that may affect those areas or essential features contained therein. Thus, critical habitat designation increases public awareness of bull trout presence and the importance of habitat protection and, in cases where a Federal nexus exists, increases habitat protection for bull trout due to the protection from adverse modification or destruction of critical habitat.

When we evaluate the existence of a conservation plan when considering the benefits of exclusion, we consider a variety of factors including, but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical and biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

The Secretary can consider the existence of conservation agreements and other land management plans with Federal, private, State, and Tribal entities when making decisions under section 4(b)(2) of the Act. The Secretary may also consider voluntary partnerships and conservation plans, and weigh the implementation and effectiveness of these against that of designation. Consideration of relevant impacts of designation or exclusion under section 4(b)(2) may include, but is not limited to, any of the following factors: (1) whether the plan provides specific information on how it protects the species and the physical and biological features, and whether the plan is at a geographic scope commensurate with the species; (2) whether the plan is complete and will be effective at conserving and protecting of the physical and biological features; (3) whether a reasonable expectation exists that conservation management strategies and actions will be implemented, that those responsible for implementing the plan are capable of achieving the objectives, that an implementation schedule exists, and that adequate funding exists; (4) whether the plan provides assurances that the conservation strategies and measures will be effective (i.e., identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan); (5) whether the plan has a monitoring program or adaptive management to ensure that the conservation measures are effective; (6) the degree to which the record supports a conclusion that a critical habitat designation would impair the benefits of the plan; (7) the extent of public participation; (8) demonstrated track record of implementation success; (9) level of public benefits derived from encouraging collaborative efforts and encouraging private and local conservation efforts; and (10) the effect designation would have on partnerships.

After evaluating the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to determine whether the benefits of excluding a particular area outweigh the benefits of its inclusion in critical habitat. If we determine that the benefits of excluding a particular area outweigh the benefits of its inclusion, then the Secretary can exercise his discretion to exclude the area, provided that the exclusion will not result in the extinction of the species.

Based on the information provided by entities seeking exclusion, as well as any additional public comments received, we will evaluate whether certain lands in proposed critical habitat may be appropriate for exclusion from the final designation. If our analysis results in a determination that the benefits of excluding particular areas from the final designation outweigh the benefits of designating those areas as critical habitat, then the Secretary may exercise his discretion to exclude the particular areas from the final designation.

Under section 4(b)(2) of the Act, we must consider all relevant impacts, including economic impacts. In addition to economic impacts (discussed in **Economics Analysis** section below), we consider a number of factors in a section 4(b)(2) analysis. For example, we consider whether there are lands owned by the DOD where a national security impact might exist. We also consider whether Federal or private landowners or other public agencies have developed management plans or HCPs for the area or whether there are conservation partnerships that would be encouraged or discouraged by designation of, or exclusion from, critical habitat in an area. In addition, we look at the presence of tribal lands or Tribal trust resources that might be affected, and consider the government-to-government relationship of the United States with the tribal entities. We also consider any social impacts that might occur because of the designation. To ensure that our final determination is based on the best available information, we are inviting comments on any foreseeable economic, national security, or other potential impacts resulting from this proposed designation

of critical habitat from governmental, business, or private interests and, in particular, any potential impacts on small businesses.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. The Navy conducts essential training and testing within the marine waters of Crescent Harbor and Dabob Bay in western Washington. These activities are conducted in open marine waters not controlled by the military and are not included in adjacent military INRMPs. However, because these training and testing activities may be essential for national security, we are evaluating whether it may be appropriate to consider the particular areas where these activities occur for exclusion from the final designation of critical habitat under section 4(b)(2) of the Act.

Exclusions Based on Other Relevant Factors

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

Most federally-listed species in the United States will not recover without cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (Lubowski *et al.* 2006, p. 35), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.*2002, p. 720). Stein *et al.* (1995, p. 400) found that only about 12 percent of listed species were found almost exclusively on Federal lands (90 to 100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally-listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to landownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998, p. 1407; Crouse *et al.*2002, p. 720; James 2002, p. 271). Building partnerships and promoting voluntary cooperation of landowners is essential to understanding the status of species on non-Federal lands and necessary to implement recovery actions, such as the reintroduction of listed species, habitat restoration, and habitat protection.

Many non-Federal landowners derive satisfaction from contributing to endangered species recovery. Conservation agreements with non-Federal landowners, safe harbor agreements, other conservation agreements, easements, and State and local regulations enhance species conservation by extending species protections beyond those available through section 7 consultations. We encourage non-Federal landowners to enter into conservation agreements based on a view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through regulatory methods (61 FR 63854).

Many private landowners, however, are wary of the possible consequences of attracting endangered species to their property. Mounting evidence suggests that some regulatory actions by the government, while well intentioned and required by law, can (under certain circumstances) have unintended negative consequences for the conservation of species on private lands (Wilcove *et al.*1996, pp. 5–6; Bean 2002, pp. 2–3; Conner and Mathews 2002, pp. 1–2; James 2002, pp. 270–271; Koch 2002, pp. 2–3; Brook *et al.*2003, pp. 1639–1643). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability. This perception results in anti-conservation incentives because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.*1999, pp. 1264–1265; Brook *et al.*2003, pp. 1644–1648).

According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.*1999, p. 1263; Bean 2002, p. 2; Brook *et al.*2003, pp. 1644–1648). The magnitude of this negative outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, and control of invasive species) are necessary for species conservation (Bean 2002, pp. 3–4). We believe the judicious exclusion of specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone.

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7(a)(2) of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. Thus, the benefits of excluding areas that are covered by partnerships or voluntary conservation efforts can, in specific circumstances, be high.

Benefits of Excluding Lands with Habitat Conservation Plans

The benefits of excluding lands with approved HCPs from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed as a result of the critical habitat designation. Many HCPs take years to develop and, upon completion, are consistent with the recovery objectives for listed species covered within the plan area. Many conservation plans also provide conservation benefits to unlisted sensitive species.

A related benefit of excluding lands covered by approved HCPs from critical habitat designation is that it can make it easier for us to seek new partnerships with future plan participants, including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. HCPs often cover a wide range of species, including species that are not State and federally-listed and would otherwise receive little protection from development. By excluding these lands, we preserve our current partnerships and encourage additional future conservation actions.

We also note that permit issuance in association with HCP applications requires consultation under section 7(a)(2) of the Act, which would include the review of the effects of all HCP-covered activities that might adversely impact the species under a jeopardy standard, including possibly significant habitat modification (see definition of

"harm" at 50 CFR 17.3), even without the critical habitat designation. In addition, all other Federal actions that may affect the listed species would still require consultation under section 7(a)(2) of the Act, and we would review these actions for possible significant habitat modification in accordance with the definition of harm referenced above.

For the reasons discussed under the "Application of Section 4(b)(2) of the Act" section of this rule, if the Secretary decides to exercise his discretion under section 4(b)(2) of the Act, we have identified certain areas that we are considering excluding from the final revised critical habitat designation for bull trout. However, we solicit comments on the inclusion or exclusion of such particular areas (see Public Comments section). During the development of the final revised designation, we will consider economic impacts, public comments, and other new information. As a result, additional particular areas, in addition to those identified below for potential exclusion in this proposed rule, may be excluded from the final critical habitat designation under section 4(b)(2) of the Act.

We consider a current plan to be appropriate for consideration for exclusion from a final critical habitat designation under section 4(b)(2) of the Act if:

(1) It provides for the conservation of the essential physical and biological features;

(2) there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; and

(3) the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

Below is a brief description of each plan and the lands proposed as critical habitat covered by each plan that we are considering for exclusion from critical habitat designation under section 4(b)(2) of the Act.

Plum Creek Native Fish Habitat Conservation Plan

The Service is considering excluding bull trout habitat occurring on lands managed under the Plum Creek Native Fish Habitat Conservation Plan in the Kootenai and Clark Fork CHUs in the Columbia Headwaters draft recovery unit in Montana. Plum Creek Timber Company initiated an effort in 1997 to develop a conservation strategy for native salmonids (including bull trout) occurring on 647,500 ha (1.6 million ac) of Plum Creek's timberlands in Montana, Idaho, and Washington. The stated purpose of the Plum Creek Native Fish Habitat Conservation Plan (NFHCP) was to help conserve native salmonids and their ecosystems while allowing Plum Creek to continue to conduct commercial timber harvest within a framework of long-term regulatory certainty and flexibility. The NFHCP was permitted in 2000; Plum Creek no longer owns any of the lands that were covered under that HCP in the States of Idaho and Washington.

Currently, there are 392,393 ha (969,624 ac) of remaining Plum Creek land in Montana that are still covered by the original permit under the NFHCP. The NFHCP provisions cover approximately 550,700 ha (1.4 million ac) in western Montana and within its headwaters of the Columbia River basin (Clark Fork and Kootenai River watersheds). In 2003–2004, when the Stimson Lumber Company (Stimson) acquired about 32,650 ha (80,681 ac) of lands previously owned by Plum Creek, Stimson legally assumed all of the Plum Creek NFHCP commitments in that area by executing an assignment and assumption agreement. In 2008, the Montana Working Forests Project was initiated, which will result in the transfer of over 125,580 ha (310,312 ac) of Plum Creek NFHCP lands to The Nature Conservancy (TNC). Funds for the acquisition were obtained through a provision within the 2008 Farm Bill, and most of those lands are destined to eventually be transferred to either the Service or the Montana Department of Natural Resources and Conservation (DNRC) and Montana Fish, Wildlife, and Parks (FWP). Phase III of the Montana Working Forests Project is expected to close at the end of 2010 and will include an additional 28,135 ha (69,522 ac). Similar to Stimson, and through an agreement, TNC assumed the NFHCP commitments on previously owned Plum Creek lands for the first two phases of the Montana Working Forests Project and is anticipated to do the same for Phase III.

Montana Department of Natural Resources and Conservation Habitat Conservation Plan

The Service is considering excluding bull trout habitat occurring on 175,263 ha (433,084 ac) of lakes managed under the proposed DNRC Habitat Conservation Plan in the Kootenai, Clark Fork and Saint Mary CHUs in the Columbia Headwaters draft recovery unit, contingent on the compatibility of timing between the final HCP and the final bull trout revised critical habitat rule. The DNRC is developing an HCP for forest management activities on its forested State trust lands in Montana, which are managed by the Trust Lands Management Division (TLMD). The mission of the TLMD is to manage trust land resources to produce revenues for the trust beneficiaries while considering environmental factors and protecting the future income-generating capacity of the land. Under its forest management program, the TLMD generates revenues for trust beneficiaries through timber harvest on classified forest trust lands. DNRC manages its forested trust lands in accordance with the State Forest Land Management Plan (SFLMP) (DNRC 1996) and the Administrative Rules of Montana (ARMs) for Forest Management (ARMs 36.11.401–456) (Forest Management ARMs). DNRC's forested trust lands also support Federally-listed threatened species. The ARMs direct DNRC to confer with the Service to develop habitat mitigation measures to address the needs of listed species.

This proposed HCP is a programmatic plan that identifies DNRC's proposal for managing federally-listed species on DNRC's forested trust lands. Species covered under the HCP include bull trout, westslope cutthroat trout, Columbia redband trout, grizzly bear (*Ursus arctos*), and Canada lynx (*Lynx canadensis*). DNRC has proposed that a permit be issued under section 10(a)(1)(B) of the Act by the Service for a period of 50 years, and views the HCP as a long-term program for addressing and improving habitat needs across the landscape. DNRC evaluated which trust lands to include in the HCP by assessing where species overlapped with trust lands containing appreciable amounts of manageable forest area. This approach was adopted to ensure those lands facing the greatest risk of impacts from forest management actions were included in the plan so risks could be mitigated.

The HCP project area includes primarily forested trust lands, but it contains other non-forested trust lands that are portions of, or are needed to access, forested parcels included in the HCP project area. The DNRC HCP would cover forest management activities on forested trust lands that provide habitat for the HCP species and include timber harvest (commercial timber, salvage harvest, and silvicultural treatments such as thinning); other forest management activities (slash disposal, prescribed burning, site preparation, reforestation, fertilization, forest inventory, and access to forested lands for weed control); roads (forest management road construction,

reconstruction, maintenance, use, and associated gravel quarrying for forest road surface materials, as well as installation, removal, and replacement of stream crossing structures); and livestock grazing (grazing licenses on classified forest trust lands).

The public comment period for the DNRC HCP closed October 6, 2009; the current schedule calls for publishing the Final Environmental Impact Statement (FEIS) in October 2010. The Record of Decision (ROD) would be finalized 30 days after publication of the FEIS, and a section 10(a)(1)(B) permit could be issued at that time, if the Service determines that issuance of a permit is appropriate. To be considered for exclusion from the final designation of critical habitat for the bull trout, the DNRC HCP will need to be completed and finalized prior to the finalization of critical habitat, which is due by September 30, 2010.

Washington Department of Natural Resources Habitat Conservation Plan

The Service is considering excluding lands managed under the Washington Department of Natural Resources (WDNR) HCP in the Coastal Recovery Unit: Puget Sound, Olympic Peninsula, and Lower Columbia CHUs. The WDNR HCP covers State forest trust lands within the range of the northern spotted owl (*Strix occidentalis caurina*) in the State of Washington. The majority of the lands covered by the HCP (approximately 526,100 ha (1.3 million ac) is west of the Cascade Crest and includes the Olympic Peninsula and southwest Washington. The remainder of the lands are on the east side of the Cascade Range within the range of the northern spotted owl. The HCP covers activities primarily associated with commercial forest management. West of the Cascade Crest, the HCP covers all species, including bull trout and other salmonids. On the east side of the Cascade Crest, bull trout and other aquatic species are not covered under the HCP, and DNR follows State forest practice rules for riparian management and other forestry activities. The DNR HCP lands on the west side of the Olympic Peninsula are managed as the Olympic Experimental State Forest. The multispecies portion of the HCP depends upon several broad-scale conservation approaches: spotted owl conservation, marbled murrelet (*Brachyramphus marmoratus*) conservation, riparian conservation, certain species-specific protection measures, protection of uncommon habitats, and provisions to maintain a range of forest types across the HCP landscape.

Green Diamond Habitat Conservation Plan

The Service is considering excluding bull trout habitat on lands managed under the Green Diamond Habitat Conservation Plan in Coastal Recovery Unit, Olympic Peninsula CHU. In October 2000, Simpson Timber Company (now Green Diamond), completed an HCP, and we issued a permit authorizing incidental take associated with forestry operations on the company's Washington timberlands located on or adjacent to the Olympic Peninsula in Mason, Thurston, and Grays Harbor Counties. The HCP is designed to conserve riparian forests, improve water quality, prevent management-related hill-slope instability, and address hydrological maturity of small subbasins. The HCP addresses five listed species, including bull trout, and 46 non-listed species. The HCP covers the land owned by Green Diamond along the lower reaches of the North and South Fork Skokomish Rivers, the upper South Fork Skokomish River, West Fork Satsop River, and Canyon River.

City of Seattle Cedar River Watershed Habitat Conservation Plan

The Service is considering excluding bull trout habitat on lands managed under the City of Seattle Cedar River Watershed HCP in the Coastal Recovery Unit, Puget Sound CHU. In April 2000, the City of Seattle completed an HCP, and we issued an incidental take permit authorizing water withdrawal and water supply activities affecting flows in the lower Cedar River and reservoir levels in Chester Morse Lake. The plan provides for forestry restoration activities, including riparian thinning, road abandonment, and timber stand improvement in the upper Cedar River Watershed in King County. The HCP is designed to provide adequate fish flows in the lower Cedar River for the spawning and rearing of several salmonid species, manage water levels in Chester Morse Lake and Masonry Dam Reservoir to benefit instream flows in the lower Cedar River and bull trout spawning access to lake tributaries, and manage these lands in the upper Cedar River as an ecological reserve. Several research actions are directed at understanding how all life stages of bull trout use Chester Morse Lake and Masonry Pool and how adult bull trout use tributaries to the lake for spawning. The HCP covers 83 species of fish and wildlife, including bull trout and 6 other listed species.

Tacoma Water Green River Water Supply Operations and Watershed Protection Habitat Conservation Plan

The Service is considering excluding bull trout habitat on lands managed under the Tacoma Green River Water Supply Operations and Watershed Protection HCP in the Coastal Recovery Unit, Puget Sound CHU. The Tacoma Water Green River Water Supply Operations and Watershed Protection HCP was completed in July 2001, addressing upstream and downstream fish passage issues, flows in the Middle and lower Green River, and timber and watershed management activities on Tacoma-owned land in the upper Green River Watershed. The HCP covers 32 species (including bull trout), and includes an upstream fish passage facility that will open up 57,000 ha (140,800 ac) of previously blocked fish habitat, sponsorship and funding for a downstream fish-passage facility at the Corps of Engineers' Howard Hanson Dam, water-flow improvements, improved riparian forest management on Tacoma's lands, and several major habitat restoration projects.

Washington State Forest Practices Rules and Forest Practices Regulations

The Service is considering excluding all public and private lands in the State of Washington that would be managed under the Washington forest practice rules. These lands occur in the Coastal Recovery Unit (Puget Sound, Olympic Peninsula, and Lower Columbia CHUs), Mid-Columbia Recovery Unit (Snake River Basin, Walla Walla River Basins, Yakima River, and Upper Columbia River CHUs), and the Columbia Headwaters Recovery Unit (Clark Fork River Basin CHU). Beginning in late 1996, faced with the imminent listing of several salmonid species under the Act, including bull trout, a diverse group of stakeholders in Washington State agreed to address emerging riparian habitat issues. The effort resulted in the Forests and Fish Report (FFR) in April 1999. Later that year, the Washington State Legislature passed the Forest Practices Salmon Recovery Act (Engrossed Substitute House Bill 2091), which directed the Washington Forest Practices Board to adopt new rules, encouraging the Forest Practices Board to follow the recommendations of the FFR. To further the purpose of regulatory stability, the Forest Practices Salmon Recovery Act also limited future changes to the new rules so that, outside of a court order or legislative directive, new rules could be adopted by the Forest Practices Board only if the changes or new rules are consistent with

the recommendations resulting from the scientifically based adaptive management process included in the FFR. The language further solidified the adaptive management process as a key component of the FFR conservation program.

Following the passage in 1999 of emergency forest practices rules based on the FFR, the Washington Forest Practices Board adopted new permanent rules in May 2001. Effective July 2001, these rules cover a wide variety of forest practices and include (1) a new, more functional, classification of rivers and streams on non-Federal and non-tribal forestland; (2) improved plans for properly designing, maintaining, and upgrading existing and new forest roads; (3) additional protections for unstable slopes; and (4) greater protections for riparian areas intended to restore or maintain properly functioning aquatic and riparian habitat conditions. In addition to these substantive provisions, the rules adopted the procedural recommendations of the FFR that address adaptive management, training, and other features. The Washington State Legislature and the U.S. Congress continued to support the collaboration with significant funding for the research, monitoring, and adaptive management activities called for in the FFR. In May 2006, the State forest practice rules were formally incorporated into the Washington State Forest Practices HCP.

Conservation Partnerships on Non-Federal Lands

Lewis River Hydroelectric Project Conservation Easements

The Service is considering excluding 48 km (30 mi) of bull trout habitat associated with the Lewis River Hydroelectric Project Conservation Easements in the Coastal Recovery Unit, Columbia River Basin CHU. PacifiCorp manages four projects and three dams impounding river habitat on the Lewis River in Washington, located in portions of Clark, Cowlitz, and Skamania Counties. Bull trout are present in all of the reservoirs; the upper two reservoirs are used by the majority of individuals within the spawning populations. A settlement agreement (Agreement) for the relicensing of the Yale, Merwin, Swift No. 1, and Swift No. 2 Hydroelectric Projects was signed on November 30, 2004. Conservation measures are incorporated in the Agreement to minimize or compensate for the effects of the projects on listed species, including bull trout. Conservation measures for bull trout include: perpetual conservation covenants on PacifiCorp's lands in the Cougar/Panamaker Creek area and PacifiCorp and Cowlitz PUD's lands along the Swift Creek arm of Swift Creek Reservoir, upstream and downstream fish passage improvements at all reservoirs, limiting factors analysis for bull trout to determine additional enhancement measures, public information program to protect bull trout, and monitoring and evaluation efforts for bull trout conservation measures. This agreement will also restore anadromous salmon to the upper Lewis River system, restoring a significant part of the historic forage base for bull trout.

Snake River Basin Adjudication

The Service is considering excluding bull trout habitat on 18,615,000 ha (46 million ac) of lands managed under the Snake River Basin Adjudication agreement in central Idaho. The stream flows in the basin were subject to litigation for 21 years. Litigants were the Federal Government, Nez Perce Tribe, and State of Idaho. In 2004, a settlement was reached by the parties in the proceeding. A Mediator's Term Sheet was developed to guide the settlement of the case, which identifies the responsibilities of the parties over the 30–year term of the agreement. The settlement was announced on May 15, 2004, by the Secretary of the Interior, Nez Perce Tribal Executive Committee Chairman, and Governor of Idaho.

As part of the settlement, the parties agreed to establish a habitat fund under two separate accounts, one for the Nez Perce Tribe and one for the State. The State account is managed through cooperative agreements under section 6 of the Act, and addresses off-reservation stream flow and forestry programs. The funds will be used to conduct habitat protection and restoration projects in the Salmon and Clearwater River basins (tributaries to the Snake River), including programs intended to protect and restore listed fish and their habitat. The United States will contribute $38 million to these accounts according to a schedule determined by Congress in the enacting legislation. To date, the State has received $5 million per year for 3 years and is expected to receive an additional $5 million for the next 2 years. Most of the funds have been used to acquire conservation easements on lands with anadromous habitat and some limited habitat restoration.

On December 8, 2004, the Snake River Water Rights Act of 2004 was enacted to resolve outstanding issues; reach a final settlement of tribal claims; authorize, ratify, and confirm the Agreement among the parties; direct Federal agencies to execute and perform necessary actions to carry out the agreement; and authorize actions and appropriations under the Snake River Basin Adjudication (SRBA) and the Act for the United States to meet its obligations. On March 31, 2005, a Memorandum of Agreement was signed between the State of Idaho, Nez Perce Tribe, Service, and National Marine Fisheries Service (NMFS) to establish a process for using the habitat trust fund accounts for habitat protection and restoration projects in the Salmon and Clearwater River basins in Idaho.

In a March 2005 letter, in response to a request from the State of Idaho, the Service and NMFS provided specific information as to the standard that would be the basis for the cooperative agreement under section 6 of the Act to implement the term sheet. In that letter, the two agencies indicated that meeting the express statutory requirements in section 6 of the Act for an adequate and active program for the conservation of the species, in this case, bull trout and salmon, would be required.

The Service, the National Marine Fisheries Service (NMFS), and the State are in the process of developing a Draft EIS for entering into a Cooperative Agreement on the Idaho Forestry Program. This Program would apply to private and State lands in the Clearwater and Salmon River basins. The Service will evaluate whether the Idaho Forestry Program will meet the requirements of section 6 and section 7 of the Act.

At the time the negotiations on the adjudication were completed, the bull trout was a listed species, but critical habitat had not been designated. The negotiations culminating in the final term sheet were completed prior to designation of critical habitat.

Tribal Lands–Exclusions under Section 4(B)(2) of the Act

In accordance with the Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997); the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands may be better managed under tribal authorities, policies, and programs than through Federal regulation where tribal management addresses the conservation needs of listed species. Based on this

philosophy, we believe that, in many cases, designation of tribal lands as critical habitat may provide little additional benefit to threatened and endangered species. In addition, such designation may be viewed by tribes as unwarranted and an unwanted intrusion into tribal self-governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend.

We will take into consideration our partnerships and existing conservation actions that tribes have or are currently implementing when conducting our exclusion analysis in the final critical habitat designation. If the Secretary decides to exercise his discretion under section 4(b)(2) of the Act, we are considering lands covered by the tribes identified below for possible exclusion from final critical habitat. We are requesting comments regarding these areas and will continue to investigate whether any Indian lands overlap, and may warrant exclusion from, critical habitat for bull trout. We also request comments and information concerning other tribal activities that may be affected in areas proposed as critical habitat on lands other than tribal lands.

For this proposed critical habitat designation for bull trout, we reviewed maps indicating that some areas under consideration as critical habitat overlap with Indian lands. Indian lands are those defined in the Secretarial Order "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997), including: (1) lands held in trust by the United States for the benefit of any Indian tribe; (2) lands held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation; (3) fee lands, either within or outside the reservation boundaries, owned by the tribal government; and (4) fee lands within the reservation boundaries owned by individual Indians.

Our preliminary assessment indicates that the federally-recognized tribes in Table 7 have lands that may include or be adjacent to waterbodies under consideration for designation as critical habitat for bull trout. Based on the best available information, there are approximately 683 kilometers (424 miles) of streams and shoreline areas in or adjacent to Tribal lands being proposed as critical habitat for bull trout (Table 6).

Tribes have played a significant role in the development of HCPs, local watershed plans, or other habitat plans and have conducted numerous habitat restoration and research projects designed to protect or improve habitat for listed species. If such lands are identified, the benefits of exclusion could include: (1) the furtherance of established national policies, our Federal trust obligations and our deference to management of natural resources on their lands; (2) the maintenance of effective long-term working relationships to promote species conservation on an ecosystem-wide basis; (3) the allowance for continued meaningful collaboration and cooperation in scientific work to learn more about the conservation needs of the species on an ecosystem-wide basis; and (4) continued respect for tribal sovereignty over management of natural resources on Indian lands through established tribal natural resource programs. A list of tribal lands meeting the criteria of a tribal management or conservation plan, with proposed critical habitat unit and water body name, follows in Table 7.

TABLE 7.—TRIBAL LANDS MEETING THE CRITERIA OF A TRIBAL MANAGEMENT OR CONSERVATION PLAN AND THE PROPOSED CRITICAL HABITAT UNIT AND WATER BODY AFFECTED

Tribal Nation	Critical habitat unit	Stream/water body name
Confederated Tribes of Warm Springs	Deschutes River Basin	Deschutes River, Shitike Creek, Jefferson Creek, Warm Springs River, Metolius River
Confederated Tribes of the Umatilla	Umatilla River and Walla Walla River Basin	Umatilla River, South Fork Touchet River, Meacham Creek, Squaw Creek
Burns Paiute Tribe	Malheur River Basin	Malheur River
Nez Perce Tribe	Clearwater River	Mainstem, North Fork, Middle Fork, and South Fork Clearwater River, Lolo Creek, Clear Creek, and Dworshak Reservoir
Coeur d'Alene Tribe	Coeur d'Alene River Basin	Lake Coeur d'Alene and tributaries
Blackfeet Nation	Saint Mary River Basin	Saint Mary River
Confederated Salish and Kootenai Tribes	Clark Fork River Basin	Flathead Lake, Lower Flathead River, Jocko River, Mission Creek, Post Creek
Kalispel Tribe	Clark Fork River Basin	Pend Oreille River
Yakama Nation	Yakima and Lower Columbia River Basins	Yakima River, Ahtanum Creek, and South Fork Ahtanum Creek, West Fork Klikitat River, Little Muddy Creek, Crawford Creek, Clearwater Creek, Trappers Creek, Fish Lake Stream, unnamed tributary that meets Fish Lake Stream, and Two Lakes Stream
Confederated Tribes of the Chehalis	Olympic Peninsula	Chehalis River
Hoh Tribe	Olympic Peninsula	Hoh River and Pacific Coast nearshore
Jamestown S'Klallam Tribe	Olympic Peninsula	Dungeness River
Lower Elwha Klallam Tribe	Olympic Peninsula	Elwha River and Strait of Juan De Fuca Nearshore

TABLE 7.—TRIBAL LANDS MEETING THE CRITERIA OF A TRIBAL MANAGEMENT OR CONSERVATION PLAN AND THE PROPOSED CRITICAL HABITAT UNIT AND WATER BODY AFFECTED—Continued

Tribal Nation	Critical habitat unit	Stream/water body name
Quileute Tribe	Olympic Peninsula	Pacific Coast Nearshore
Quinault Nation	Olympic Peninsula	Quinault River, Lake Quinault, Pacific Coast nearshore, Raft River, Queets River, Salmon River, Moclips River, and Cook Creek
Skokomish Tribe	Olympic Peninsula	Skokomish River, Nalley Slough, Skobob Creek, and Hood Canal nearshore
Lummi Nation	Puget Sound	Nooksack River and Puget Sound nearshore
Muckleshoot Tribe	Puget Sound	White River
Nisqually Tribe	Puget Sound	Nisqually River
Nooksack Tribe	Puget Sound	Nooksack River
Puyallup Tribe	Puget Sound	Puyallup River and Puget Sound nearshore
Sauk-Suiattle Tribe	Puget Sound	Sauk River
Swinomish Tribe	Puget Sound	Swinomish Channel and Puget Sound nearshore
Tulalip Tribes	Puget Sound	Puget Sound nearshore

Federal Lands-Exclusions under Section 4(B)(2) of the Act

As noted above, Federal agencies have an independent responsibility under section 7(a)(1) of the Act to use their programs in furtherance of the Act and to utilize their authorities to carry out programs for the conservation of endangered and threatened species. We consider the development and implementation of land management plans by Federal agencies to be consistent with this statutory obligation under section 7(a)(1) of the Act. Therefore, Federal land management plans, in and of themselves, are generally not an appropriate basis for excluding essential habitat. Some broad-scale Federal resource management plans (e.g., INFISH, PACFISH, and the Northwest Forest Plan) may provide conservation benefits to bull trout as well as all other aquatic species within the plan boundaries. In addition, in some places, Federal land management agencies may actively manage for bull trout and conduct specific conservation actions for the species. We are therefore requesting comments regarding existing specific conservation actions that Federal land management agencies have or are currently implementing on their lands, and will take this information into account when conducting our exclusion analysis in the final critical habitat designation.

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat.

We have prepared a Draft Economic Analysis (DEA), which identifies and analyzes the potential economic impacts associated with the proposed designation of critical habitat for bull trout. The DEA quantifies the economic impacts of all potential conservation efforts for bull trout; some of these costs would likely be incurred regardless of whether or not we designate critical habitat. The economic impact of the 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, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur if we finalize the proposed critical habitat designation.

The DEA estimates impacts based on activities that are reasonably foreseeable, including, but not limited to, activities that are currently authorized, permitted, or funded, or for which proposed plans are currently available to the public. The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for bull trout over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information was available for most activities to reasonably forecast activity levels for projects beyond a 20–year timeframe. The DEA identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing. The DEA quantifies economic impacts of conservation efforts for bull trout associated with the following categories of activity: (1) forest management practices (timber sales, fuel reduction, salvage logging); (2) residential and commercial development; (3) dams (hydropower and others); (4) agriculture

and agricultural diversions; (5) roads; (6) mining; (7) livestock grazing; and (8) other activities (utilities, restoration, nonnative species management, recreation, other instream activities).

Of the currently proposed critical habitat areas, nearly 31,865 km (19,800 mi), or 87 percent, were previously proposed as bull trout critical habitat. Two detailed economic analyses of those past proposals were conducted in 2004 and 2005. Both of these analyses were made available for, and received, public comment. Due to extensive overlap between the current proposed critical habitat and the past proposals, the economic analysis prepared for this proposal draws heavily on still-valid data contained within the two prior economic analyses. Costs associated with bull trout conservation efforts estimated in the earlier economic analyses have been updated to current dollars, adjusted to reflect the currently proposed unit boundaries, and reported to provide context for the reported incremental costs associated with the currently proposed critical habitat designation.

Total future (2012-2032) baseline impacts are estimated to be $96.3 million to $103.0 million annually (assuming a 7 percent discount rate); discount rates express future costs and benefits at today's equivalent value. This estimate includes not only conservation activity costs resulting from the bull trout being listed under the Act, but also estimated costs of related conservation activities for salmon, steelhead, and other fish species, along with water quality and habitat protection, in overlapping areas where other protected species occur with bull trout. Under the baseline scenario, nearly half of all estimated costs are due to conservation efforts imposed on forest management activities. Costs imposed on development activities and dam operations make up most of the remaining estimated costs. Costs associated with project modifications to forest management activities account for nearly 44 percent of estimated baseline impacts. These costs are expected to be associated with conservation measures imposed on timber harvest activities, including efforts to reduce sedimentation timing restrictions, elimination of fish barriers, and changes to harvest methods. Under the high cost scenario, costs associated with project modifications imposed on development activities account for 25 percent of projected baseline impacts. These costs result from implementation of stormwater control requirements. Costs associated with project modifications imposed on dam operations account for 18 percent of estimated baseline impacts under the high cost scenario. These costs result from projected conservation efforts, including providing fish passage (fish ladder or trap and haul operations), temperature control projects, habitat acquisition, and seasonal adjustments of flow.

Because of all conservation measures in place for salmon, steelhead, the Klamath suckers, and other protected fish species, we believe the incremental regulatory and economic effect of critical habitat designation in areas occupied by bull trout will be small, and the most significant incremental effect will be in those areas not currently occupied (less than 4 percent of the proposed critical habitat) by the species. As a result, the DEA estimates that total potential incremental economic impacts in areas proposed as critical habitat over the next 20 years will be $4.97 million to $7.13 million annually (assuming a 7 percent discount rate); the range of costs represents uncertainty in the types and costs of project modifications. The majority of forecast incremental costs are associated with unoccupied critical habitat in the Upper Willamette River Basin, and are associated with conservation efforts undertaken at flood control facilities. For unoccupied areas overlapping with previous bull trout critical habitat proposals, cost estimates are drawn from the previous economic analyses and assigned to the critical habitat units proposed in this rule. For newly proposed unoccupied areas, the analysis focuses on identifying additional conservation efforts that may be expected as a result of critical habitat designation for bull trout. The 116 km (72 mi) of newly proposed unoccupied critical habitat that is already designated as critical habitat for listed salmon were not included in the incremental analysis. Existing (baseline) conservation efforts required in designated salmon critical habitat areas would generally be adequate to address bull trout conservation needs, and no significant additional conservation efforts are expected to be necessary. Dam operations are expected to incur the greatest incremental economic impacts, followed by forest management and administrative costs. Estimated incremental costs associated with dam project modifications range from $2.12 million to $2.52 million annually, and are primarily related to conservation efforts in the Upper Willamette River Basin. Project modifications could include fish passage (such as fish ladders and trap and haul operations), temperature control projects, and seasonal changes to flow. Estimated incremental costs associated with forest management projects range from $0.41 million to $1.65 million annually, associated with efforts to reduce sedimentation, timing restrictions, elimination of fish barriers (e.g., culverts), and changes to harvest methods.

Estimated incremental costs associated with additional section 7 administrative efforts (Federal agency consultations) are expected to be $1.99 million annually. Absent reasonably foreseeable economic impacts that are distinctly attributable to the critical habitat portion of the analysis, economic impacts from conservation efforts that avoid adverse modification of critical habitat coincidental to avoiding jeopardizing the species would be coextensive with the impacts of bull trout listing and within the regulatory baseline.

Benefits, as well as costs, can result from critical habitat designation. Bull trout conservation efforts for critical habitat may lead to improved water quality, increased open space, flood control, or aesthetic benefits. Indirect use benefits may also result (e.g., increased hiking or wildlife-viewing activities). Conservation efforts for bull trout critical habitat have the potential to result in increased bull trout populations, which in turn could result in increases in recreational fishing opportunities over the long term. In addition, increased bull trout population size could result in enhanced non-use value by the public (e.g., existence value). Existing studies support the conclusion that preservation of fish species in general is likely to generate substantial benefits to the public. However, absent information on the long term biological or physical changes expected to occur in bull trout critical habitat areas as a result of critical habitat designation, the DEA does not quantify these benefits.

The DEA is available for review at *http://www.regulations.gov*. We are seeking data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period, including information received during, or in response to, the public hearing.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek

the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed designation of critical habitat.

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

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **ADDRESSES** section. In anticipation of the interest in this proposed rule, we have already scheduled the public hearing and several public meetings. See the **DATES** and **ADDRESSES** section of this proposed rule for information regarding the scheduled public hearing and public meetings.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is significant and has reviewed this proposed rule under Executive Order 12866 (E.O. 12866). OMB based its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government;

(2) Whether the rule will create inconsistencies with other Federal agencies' actions;

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients; or

(4) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. 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 consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine whether a designation of critical habitat could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define "substantial number" or "significant economic impact."

Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Under the Act, designation of critical habitat only affects activities carried out, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so would not result in any additional effects under the Act. However, there are some state laws that limit activities in designated critical habitat even where there is no federal nexus. If there is a Federal nexus, Federal agencies will be required to consult with us under section 7 of the Act on activities they fund, permit, or carry out that may affect critical habitat. If we conclude, in a biological opinion, that a proposed action is likely to destroy or adversely modify critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid destroying or adversely modifying critical habitat.

A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Within the proposed critical habitat designation, the types of actions or authorized activities that we have identified as potential concerns and that may be subject to consultation under section 7 if there is a Federal nexus are: operation of dams; forest management practices; livestock grazing; agriculture and irrigation diversions; management

of roads; mining; and management of nonnative species.

Any existing and planned projects, land uses, and activities that could affect the proposed critical habitat but have no Federal involvement would not require section 7 consultation with the Service, so they are not restricted by the requirements of the Act. Federal agencies may need to reinitiate a previous consultation if discretionary involvement or control over the Federal action has been retained or is authorized by law and the activities may affect critical habitat.

The DEA and its associated Initial Regulatory Flexibility Analysis (IRFA) estimate that total potential incremental economic impacts in areas proposed as critical habitat over the next 20 years will be $4.97 to $7.13 million annually, assuming a 7 percent discount rate. Incremental impacts are expected to consist of: (1) project modifications occurring within newly proposed unoccupied areas; and (2) administrative costs associated with consultations under section 7 of the Act. In total, third parties (some of which may be small entities) may bear a total annual impact of up to $5.6 million in incremental impacts. In unoccupied areas, project modifications may be associated with dam modifications, bridge replacement, grazing lease modification, road maintenance, and changes to timber harvest. In total, annual incremental costs associated with project modifications are forecast at $5.1 million (discounted at 7 percent). The DEA also forecasts the number of additional section 7 consultations that may take place as a result of critical habitat. Based on this forecast, annual incremental consultation costs that may be borne by third parties are forecast at $441,000 in total (discounted at 7 percent). Of the potentially affected entities in the proposed critical habitat areas, 97 percent are small entities, and depending on the unit, small entities may bear between 93 and 100 percent of the estimated impacts. The Small Business Size Standard for the industry sectors that could potentially be affected by the proposed critical habitat designation are as follows:

• Dams and Water Diversions Category: Electric Power Generation, Transmission and Distribution–4 million megawatts for the preceding year, and Water supply and Irrigation Systems–$7.0 million average annual receipts.

• Agriculture Category: Crop Production (Oilseed and Grain Farming; Vegetable and Melon Farming; and Fruit and Tree Nut Farming–$750,000 average annual receipts; and Food Manufacturing–500 employees.

• Grazing Category: Beef Cattle Ranching and Farming–$750,000 average annual receipts.

• Roads Category: Highway, Street and Bridge Construction–$33.5 million average annual receipts.

• Development Category: New Single–Family Housing Construction (except Operative Builders); New Multifamily Housing Construction (except Operative Builders); New Housing Operative Builders–$33.5 million average annual receipts; and Land Subdivision–$7.0 million.

• Forest Managent Category: Logging–500 employees; Timber Tract Operations, and Support Activities for Forestry–$7.0 million average annual receipts.

• Mining Category: Mining (except Oil and Gas), and Construction Sand and Gravel Mining–500 employees.

• Other Activities Category: Oil and Gas Pipeline and Related Structures Construction; Power and Communication Line and Related Structures Construction; and Other Heavy and Civil Engineering Construction–$33.5 million average annual receipts; Marinas–$7.0 million average annual receipts; Water and Sewer Line and Related Structures Construction–$33.5 million average annual receipts; and Sewage Treatment Facilities–$7.0 million average annual receipts.

If each of the 23,800 small entities located within the study area were to share the annualized costs, they could bear from $0 up to $60,300 per entity, depending on the affected industry. This would translate into an annual average cost of $234 per entity. This in turn translates into a projected range of impacts from 0.0007 to 0.03 percent, or in other words, less than 1 percent impact for all sectors. The expected annual impacts to the affected industries are significantly less than the annual revenues that could be garnered by a single small operator in those industries, and as such, impacts are low relative to potential revenues. We are seeking public comments regarding the estimated incremental impacts of this critical habitat designation on small entities. Specifically, we are interested in whether there is evidence suggesting that the economic impact of section 7(a)(2) consultations in areas currently occupied by the species is expected to be larger or smaller than estimated in this analysis.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or Tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or Tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the

Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) As discussed in the DEA of the proposed designation of critical habitat for bull trout, we do not believe that this rule would significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The DEA concludes that incremental impacts may occur due to project modifications occurring within newly proposed, unoccupied areas and administrative costs associated with section 7 consultations. The DEA estimates that total potential incremental economic impacts in areas proposed as critical habitat over the next 20 years will be $4.97 to $7.13 million annually, assuming a 7 percent discount rate. Based on the range of potential incremental costs that have been identified, we do not believe that this rule will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order (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 bull trout in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for bull trout does not pose significant takings implications for lands within or affected by the designation.

Federalism

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant federalism effects. A federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Washington, Oregon, Idaho, Montana, and Nevada. The 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 and biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) 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

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the physical and biological features within the designated areas to assist the public in understanding the habitat needs of the bull trout.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).]

Clarity of the Rule

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

(a) Be logically organized;

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

(c) Use clear language rather than jargon;

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

(e) Use lists and tables wherever possible.

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

Government-to-Government Relationship with Tribes

Our preliminary assessment indicates that 24 Federally-recognized Tribes in Table 7 have lands that may include or be adjacent to waterbodies under consideration for designation as critical habitat for bull trout. Based on the best available information, there are approximately 683 kilometers (424 miles) of streams and shoreline areas in or adjacent to Tribal lands being proposed as critical habitat for bull trout (Table 6).

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act", we readily acknowledge our responsibilities to work directly with Tribes in developing programs for

healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

Maintaining an effective trust relationship between the Federal government and Tribes promotes (1) the furtherance of established national policies, our Federal trust obligations and our deference to management of natural resources on their lands; (2) the maintenance of effective long-term working relationships to promote species conservation on an ecosystem-wide basis; (3) the allowance for continued meaningful collaboration and cooperation in scientific work to learn more about the conservation needs of the species on an ecosystem-wide basis; and (4) continued respect for Tribal sovereignty over management of natural resources on Indian lands through established tribal natural resource programs. We have engaged in preliminary discussions and coordination with our Tribal partners during development of the proposed rule, and are soliciting specific comments and information from tribes on areas being proposed as critical habitat on tribal land and on lands other than Tribal lands. The final rule will fully consider the Federal government's obligations to Federally-recognized Tribes, and comments and information received from the Tribes regarding the actions being implemented to conserve bull trout on Tribal lands and lands other than Tribal lands.

Energy Supply, Distribution, or Use

Executive Order E.O. 13211 pertains to regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The Office of Management and Budget (OMB) provides guidance for implementing this Executive Order, outlining nine outcomes (criteria) that may constitute "a significant adverse effect" when compared with the regulatory action under consideration. Two of these criteria are relevant to the bull trout economic analysis: (1) reduction in electricity production in excess of one billion kilowatts-hours per year or in excess of 500 megawatts of installed capacity and (2) increases in the cost of energy production in excess of one percent. The two primary activities that might lead to reduced energy generation are operation of the Federal Columbia River Power System (FCRPS) and operation of FERC-licensed hydroelectric dams. Incremental impacts to dam operations are expected to consist largely of the costs of installing fish passage capabilities. Some dam operators may also undertake relatively minor movements of peak energy production during the year. This practice does not reduce average energy production, but rather changes the temporal distribution of that power. Therefore, no impacts to electricity production or installed capacity are forecast. Given the high thresholds defined in the OMB guidance (i.e., reduction in electricity production in excess of one billion kilowatts-hours per year, increases in the cost of energy production in excess of one percent) and the fact that bull trout is unlikely to be the primary species leading to changes in flow regimes (because of the presence of listed salmon), it is unlikely the electricity industry will experience a "significant adverse effect" as a result of critical habitat designation for bull trout. The protection of bull trout stream and lake habitats should not require significant changes to energy management, and because bull trout have been listed under the Endangered Species Act for the past 10 years, with critical habitat designated over parts of its range for the past four years, and there have been no actions that have significantly affected energy supply, distribution or use over that time. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary authors of this package are the staff members of the following Fish and Wildlife Offices: Idaho, Montana, Washington, Oregon, Nevada, and Klamath Falls.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.95(e) by revising critical habitat for "Bull Trout (*Salvelinus confluentus*)" as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) Fishes.

* * * * *

Bull trout (*Salvelinus confluentus*)

(1) *Locations of critical habitat*: Critical habitat units are depicted in the following States and counties on the maps and as described below:

State	Counties
(i) Idaho	Adams, Benewah, Blaine, Boise, Bonner, Boundary, Butte, Camas, Canyon, Clearwater, Custer, Elmore, Gem, Idaho, Kootenai, Lemhi, Lewis, Nez Perce, Owyhee, Shoshone, Valley, Washington
(ii) Montana	Deer, Lodge, Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Mineral, Missoula, Powell, Ravalli, Sanders
(iii) Nevada	Elko
(iv) Oregon	Baker, Clatsop, Columbia, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lane, Linn, Malheur, Morrow, Multnomah, Sherman, Umatilla, Union, Wallowa, Wasco, Wheeler
(v) Washington	Asotin, Benton, Chelan, Clallam, Clark, Columbia, Cowlitz, Douglas, Franklin, Garfield, Grant, Grays Harbor, Island, Jefferson, King, Kittitas, Klickitat, Mason, Okanogan, Pend Oreille, Pierce, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, Walla Walla, Whatcom, Whitman, Yakima

(2) *Topographic features included in the critical habitat designation.* Critical habitat includes the stream channels within the designated stream reaches; designated lakes and reservoirs; and inshore portions of marine nearshore areas, including tidally influenced freshwater heads of estuaries indicated on the maps beginning with paragraph (e)(6) of this section.

(i) Critical habitat includes the stream channels within the designated stream reaches and a lateral extent as defined by the bankfull elevation on one bank to the bankfull elevation on the opposite bank. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain and is reached at a discharge that generally has a recurrence interval of 1 to 2 years on the annual flood series. If bankfull elevation is not evident on either bank, the ordinary high-water line must be used to determine the lateral extent of critical habitat. The lateral extent of designated lakes is defined by the perimeter of the water body as mapped on standard 1:24,000 scale topographic maps.

(ii) Critical habitat includes the inshore extent of critical habitat for marine nearshore areas (the mean higher high-water (MHHW) line), including tidally influenced freshwater heads of estuaries. The MHHW line refers to the average of all the higher high-water heights of the two daily tidal levels. Adjacent shoreline riparian areas, bluffs, and uplands are not designated as critical habitat. However, it should be recognized that the quality of marine habitat along shorelines is intrinsically related to the character of these adjacent features, and human activities that occur outside of the MHHW line can have major effects on physical and biological features of the marine environment. The offshore extent of critical habitat for marine nearshore areas is based on the extent of the photic zone, which is the layer of water in which organisms are exposed to light. Critical habitat extends offshore to the depth of 10 meters (m) (33 feet (ft)) relative to the mean low low-water (MLLW) line (average of all the lower low-water heights of the two daily tidal levels). This equates to the average depth of the photic zone and is consistent with the offshore extent of the nearshore habitat identified National Oceanic and Atmospheric Administration in the National Tidal Datum 1983 Through 2001. This area between the MHHW line and minus 10 MLLW line is considered the habitat most consistently used by bull trout in marine waters based on known use, forage fish availability, and ongoing migration studies and captures geological and ecological processes important to maintaining these habitats. This area contains essential foraging habitat and migration corridors such as estuaries, bays, inlets, shallow subtidal areas, and intertidal flats.

(3) *The Primary Constituent Elements (PCEs) of critical habitat.* Within the critical habitat, the PCEs for bull trout are those habitat components that are essential for the primary biological needs of foraging, reproducing, rearing of young, dispersal, genetic exchange, or sheltering. The PCEs are as follows:

(i) Springs, seeps, groundwater sources, and subsurface water connectivity (hyporehic flows) to contribute to water quality and quantity and provide thermal refugia.

(ii) Migratory habitats with minimal physical, biological, or water quality impediments between spawning, rearing, overwintering, and freshwater and marine foraging habitats, including but not limited to permanent, partial, intermittent, or seasonal barriers.

(iii) An abundant food base, including terrestrial organisms of riparian origin, aquatic macroinvertebrates, and forage fish.

(iv) Complex river, stream, lake, reservoir, and marine shoreline aquatic environments and processes with features such as large wood, side channels, pools, undercut banks and substrates, to provide a variety of depths, gradients, velocities, and structure.

(v) Water temperatures ranging from 2 to 15 °C (36 to 59 °F), with adequate thermal refugia available for temperatures at the upper end of this range. Specific temperatures within this range will vary depending on bull trout life-history stage and form; geography; elevation; diurnal and seasonal variation; shade, such as that provided by riparian habitat; and local groundwater influence.

(vi) Substrates of sufficient amount, size, and composition to ensure success of egg and embryo overwinter survival, fry emergence, and young-of-the-year and juvenile survival. A minimal amount (e.g., less than 12 percent) of fine substrate less than 0.85 mm (0.03 in.) in diameter and minimal embeddedness of these fines in larger substrates are characteristic of these conditions.

(vii) A natural hydrograph, including peak, high, low, and base flows within historic and seasonal ranges or, if flows are controlled, they minimize departures from a natural hydrograph.

(viii) Sufficient water quality and quantity such that normal reproduction, growth, and survival are not inhibited.

(ix) Few or no nonnative predatory (e.g., lake trout, walleye, northern pike, smallmouth bass; inbreeding (e.g., brook trout); or competitive (e.g., brown trout) species present.

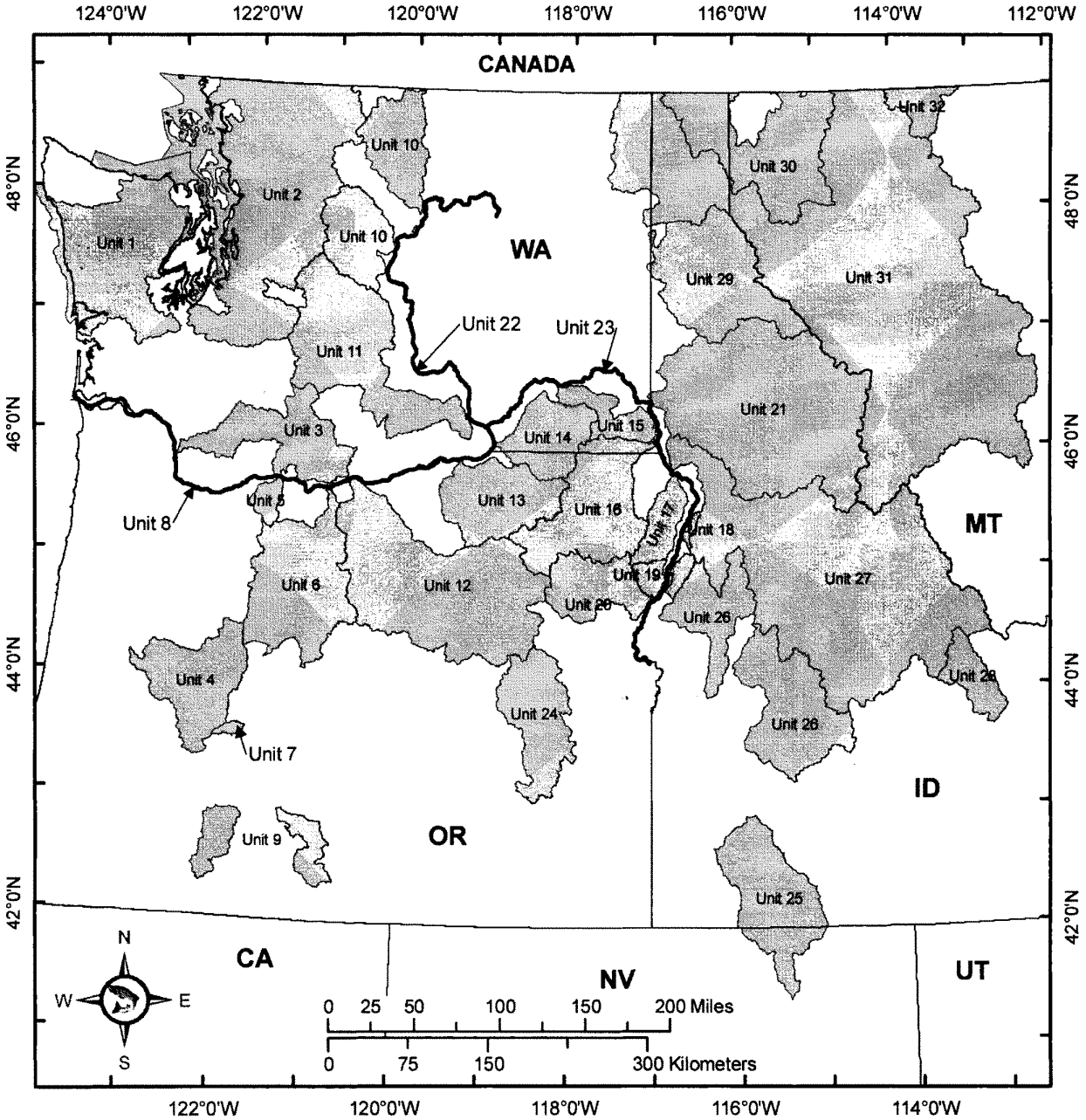
(4) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(5) Critical habitat map units. Data layers defining map units were created using U.S. Geological Survey (USGS) Hydrologic Unit Code maps (HUCs) at a scale of 1:250,000 down to the 4th level cataloging unit. In some cases, 5th and 6th level HUCs were also used and some finer scale watersheds developed using United States Geological Survey 10-meter Digital Elevation Model and 1:24,000 scale hydrography layers. The marine boundaries for the Puget Sound and Olympic Peninsula critical habitat unit (CHU) were based on Washington Department of Natural Resources 1:24,000 scale county boundaries and HUCs.

(6) Index map of critical habitat units for bull trout follows:

BILLING CODE 4310–55–S

Index Map: Critical Habitat Units



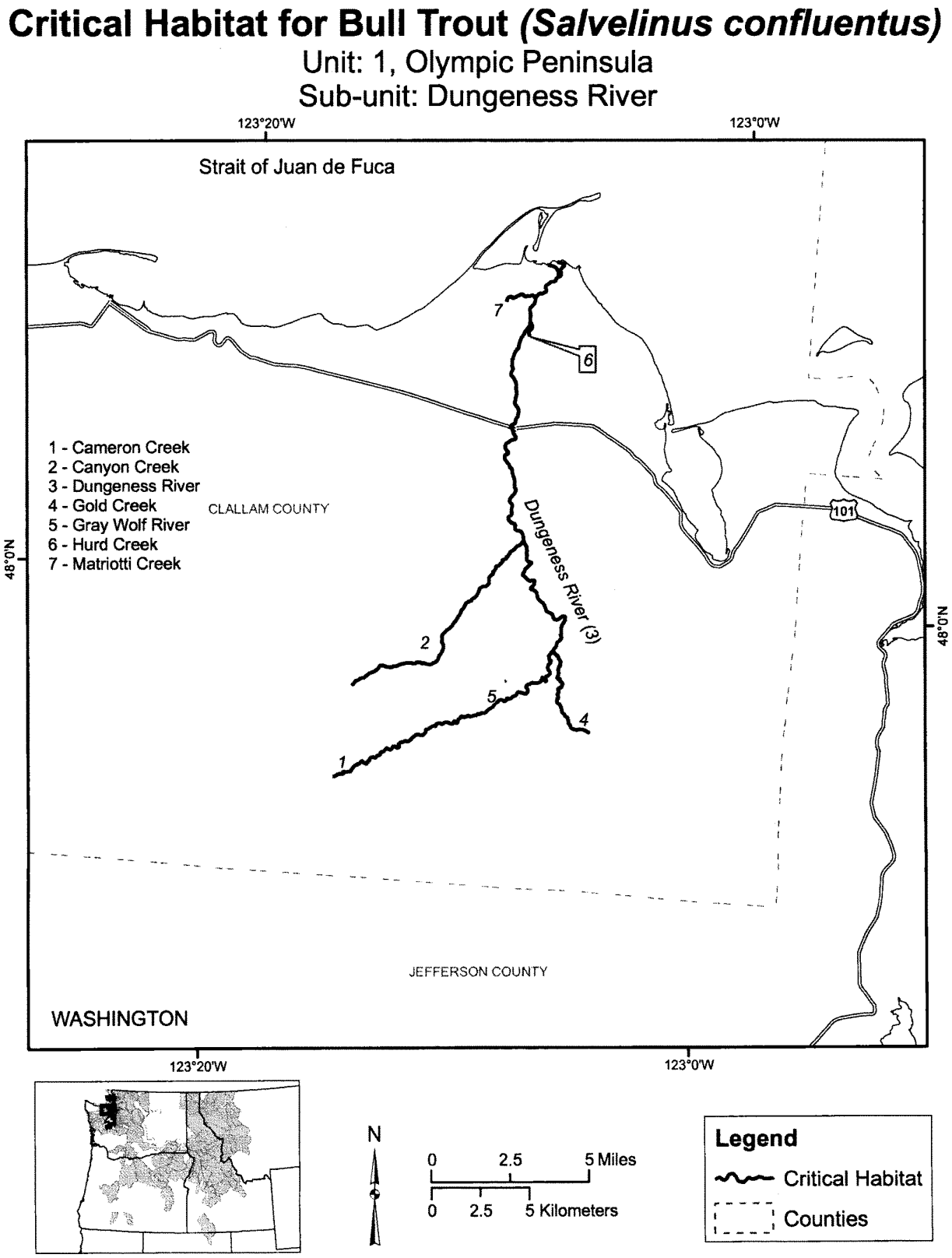
1	Olympic Peninsula	11	Yakima River	22	Mainstem Upper Columbia River
2	Puget Sound	12	John Day River	23	Mainstem Snake River
3	Lower Columbia River Basins	13	Umatilla River	24	Malheur River Basin
4	Upper Willamette River	14	Walla Walla River Basin	25	Jarbidge River
5	Hood River	15	Lower Snake River Basins	26	Southwest Idaho River Basins
6	Lower Deschutes River	16	Grande Ronde River	27	Salmon River Basin
7	Odell Lake	17	Imnaha River	28	Little Lost River
8	Mainstem Lower Columbia River	18	Sheep / Granite Creeks	29	Coeur d'Alene River Basin
9	Klamath River Basin	19	Hells Canyon Complex	30	Kootenai River Basin
10	Upper Columbia River Basins	20	Powder River Basin	31	Clark Fork River Basin
		21	Clearwater River	32	Saint Mary River Basin

(7) Unit 1: Olympic Peninsula Unit, Washington.

(i) Dungeness River Subunit.

(A) [Reserved for textual description of unit.]

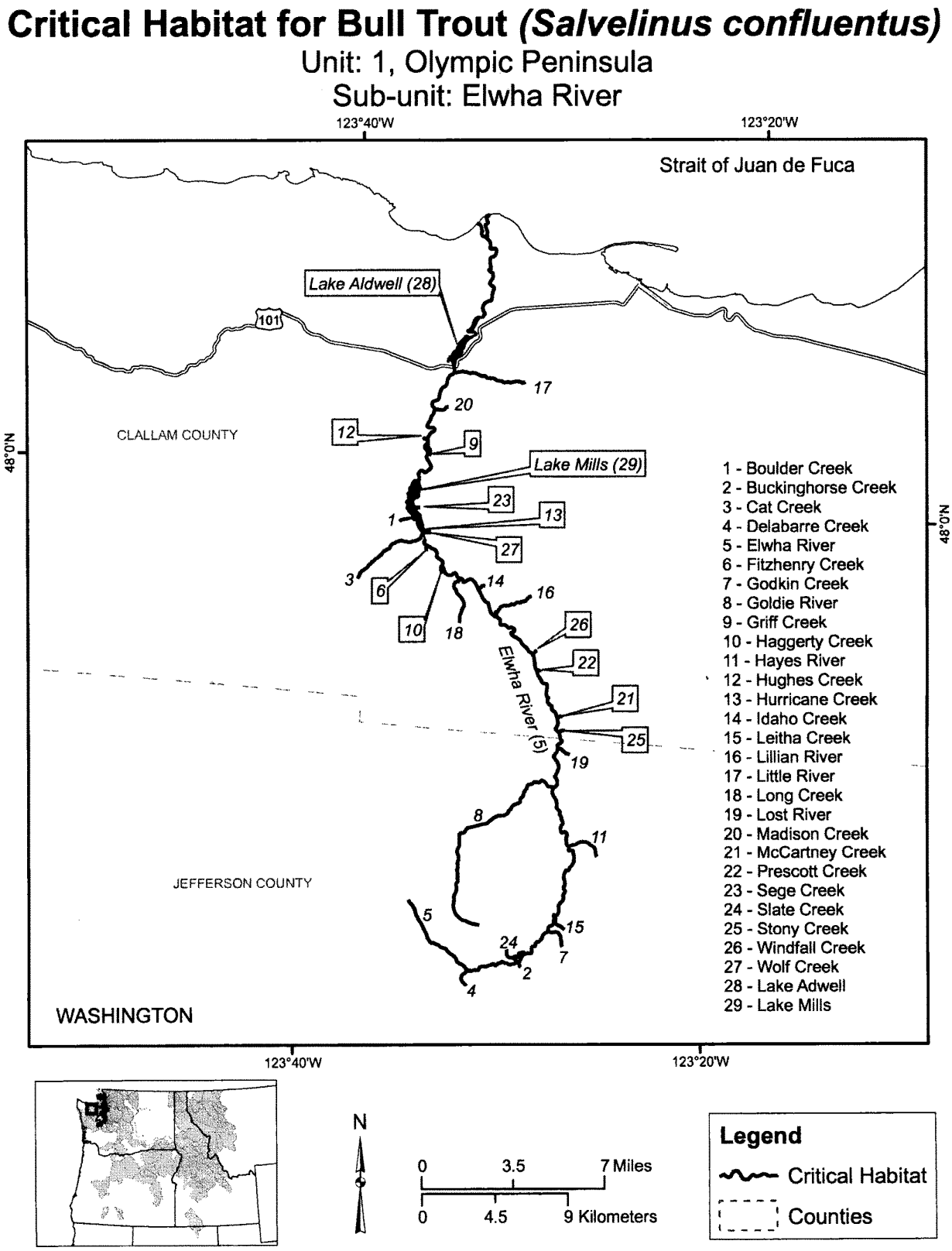
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Dungeness River Subunit, follows:



(ii) Elwha River Subunit.

(A) [Reserved for textual description of unit.]

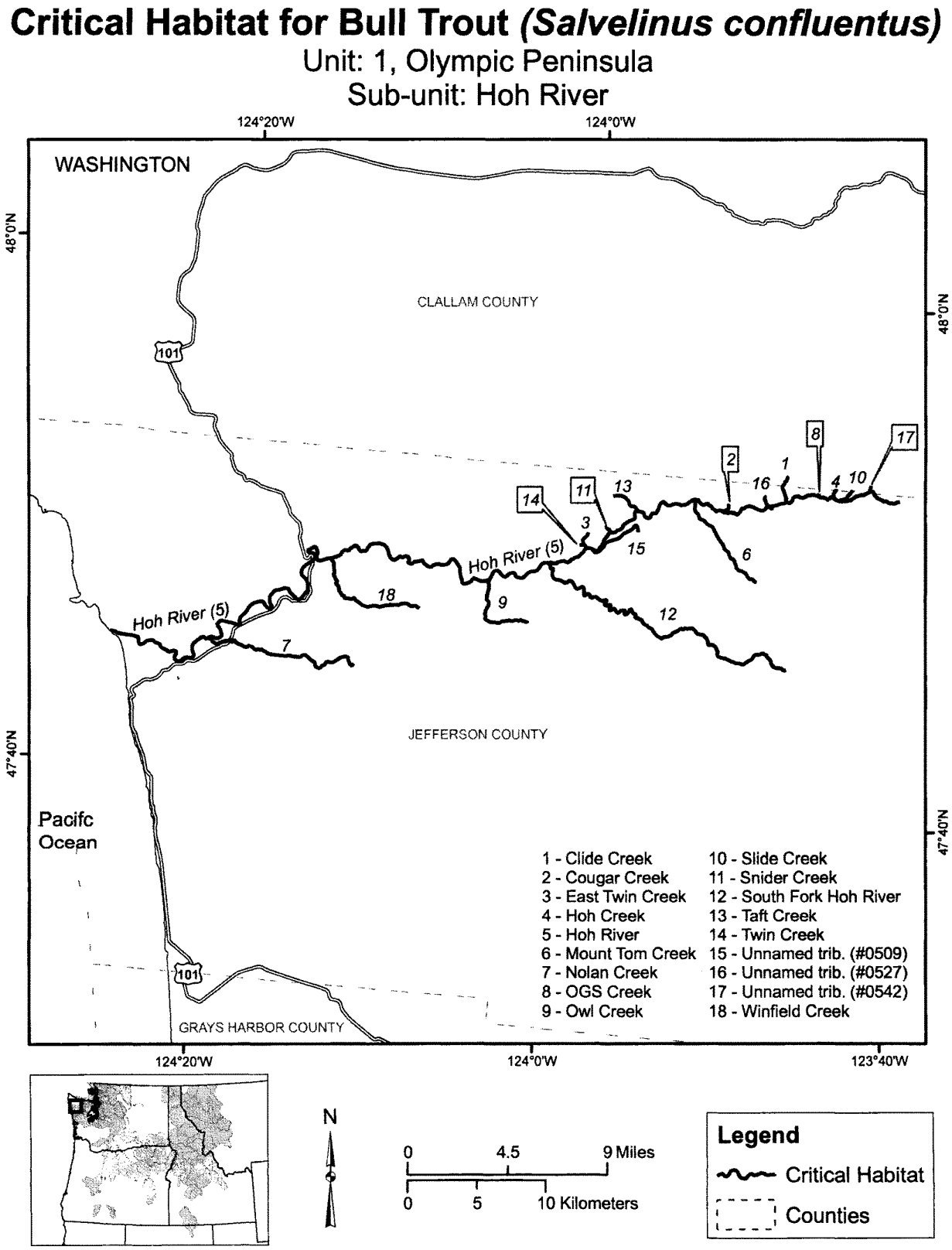
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Elwha River Subunit, follows:



(iii) Hoh River Subunit.

(A) [Reserved for textual description of unit.]

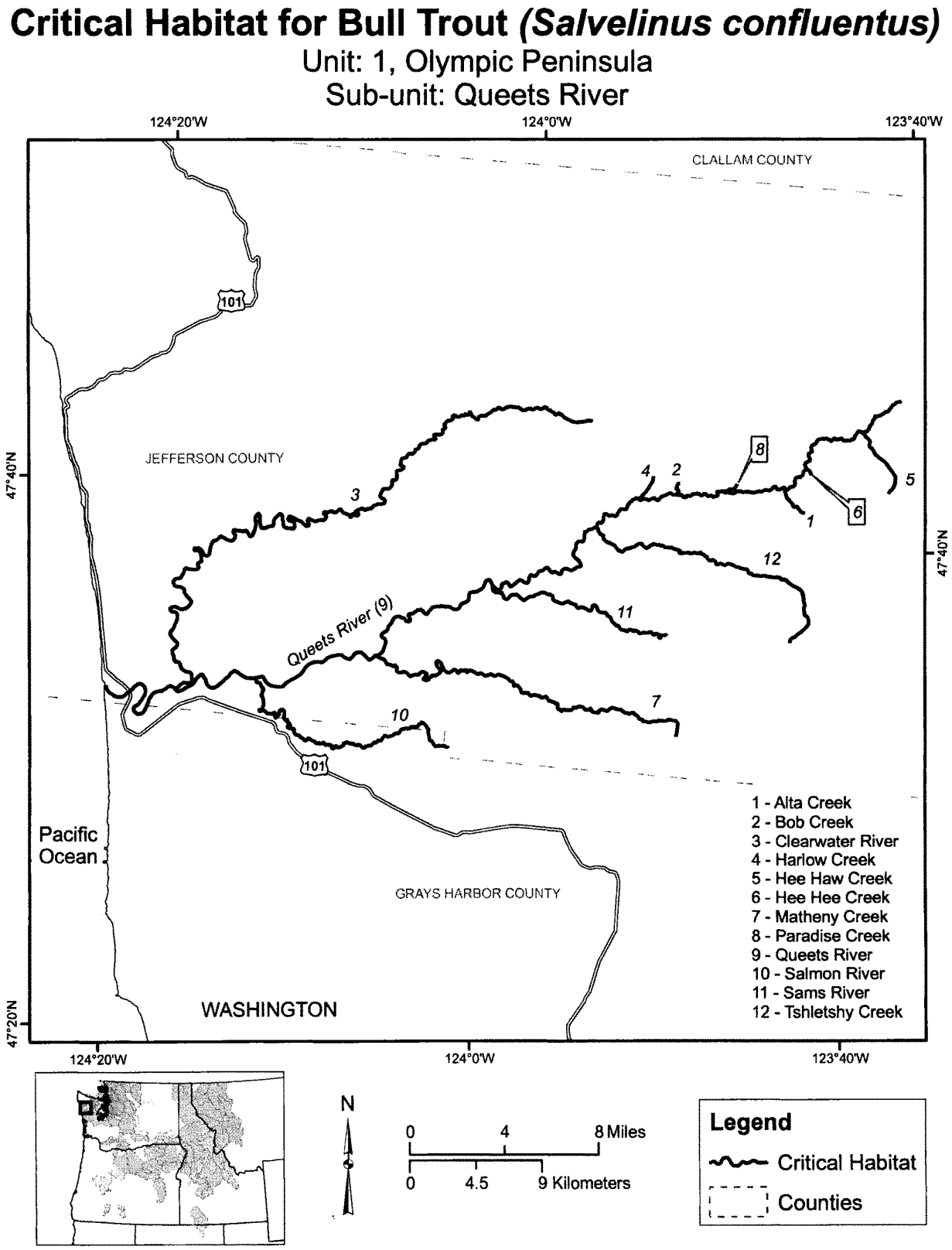
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus),* Hoh River Subunit, follows:



(iv) Queets River Subunit.

(A) [Reserved for textual description of unit.]

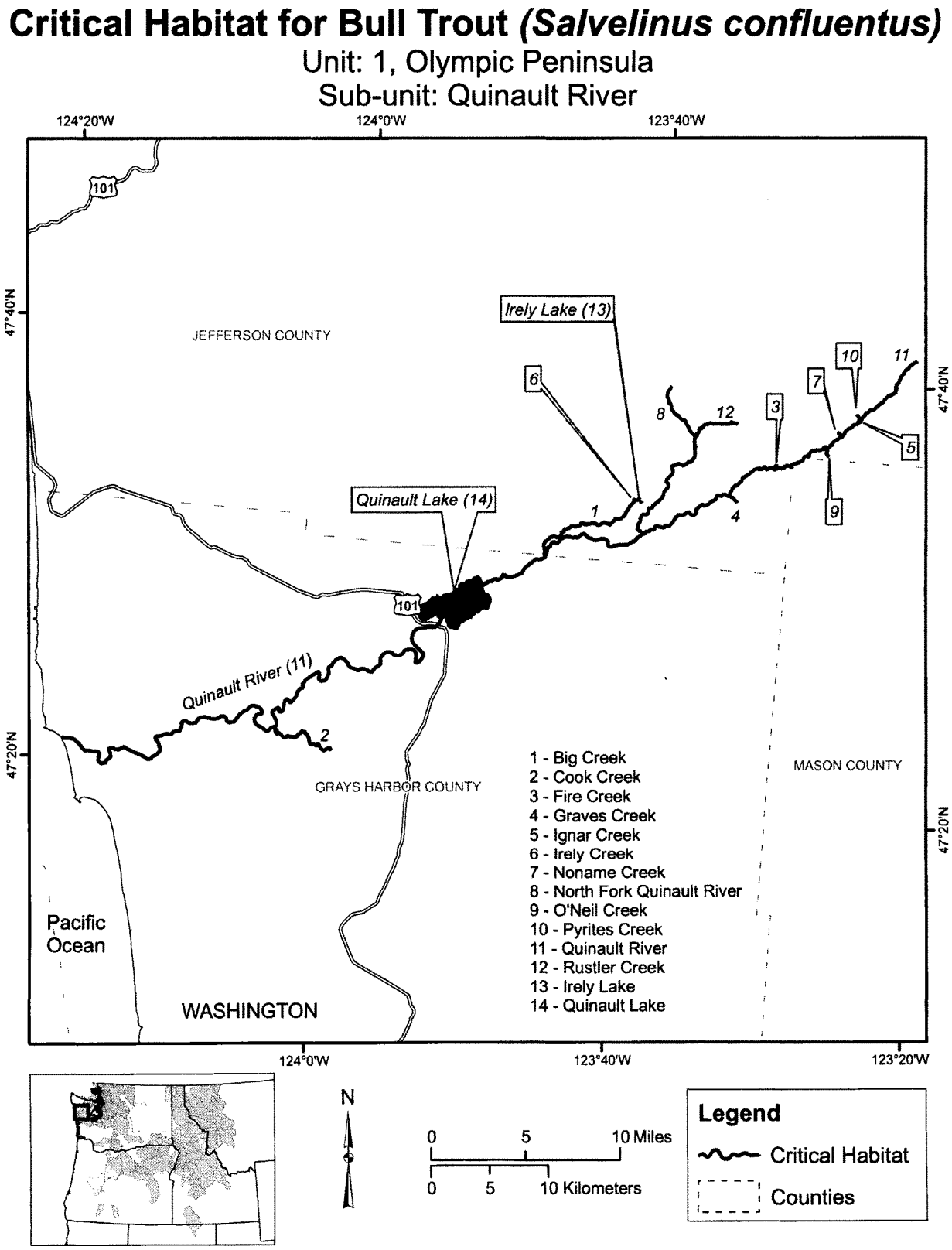
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus),* Queets River Subunit, follows:



(v) Quinault River Subunit.

(A) [Reserved for textual description of unit.]

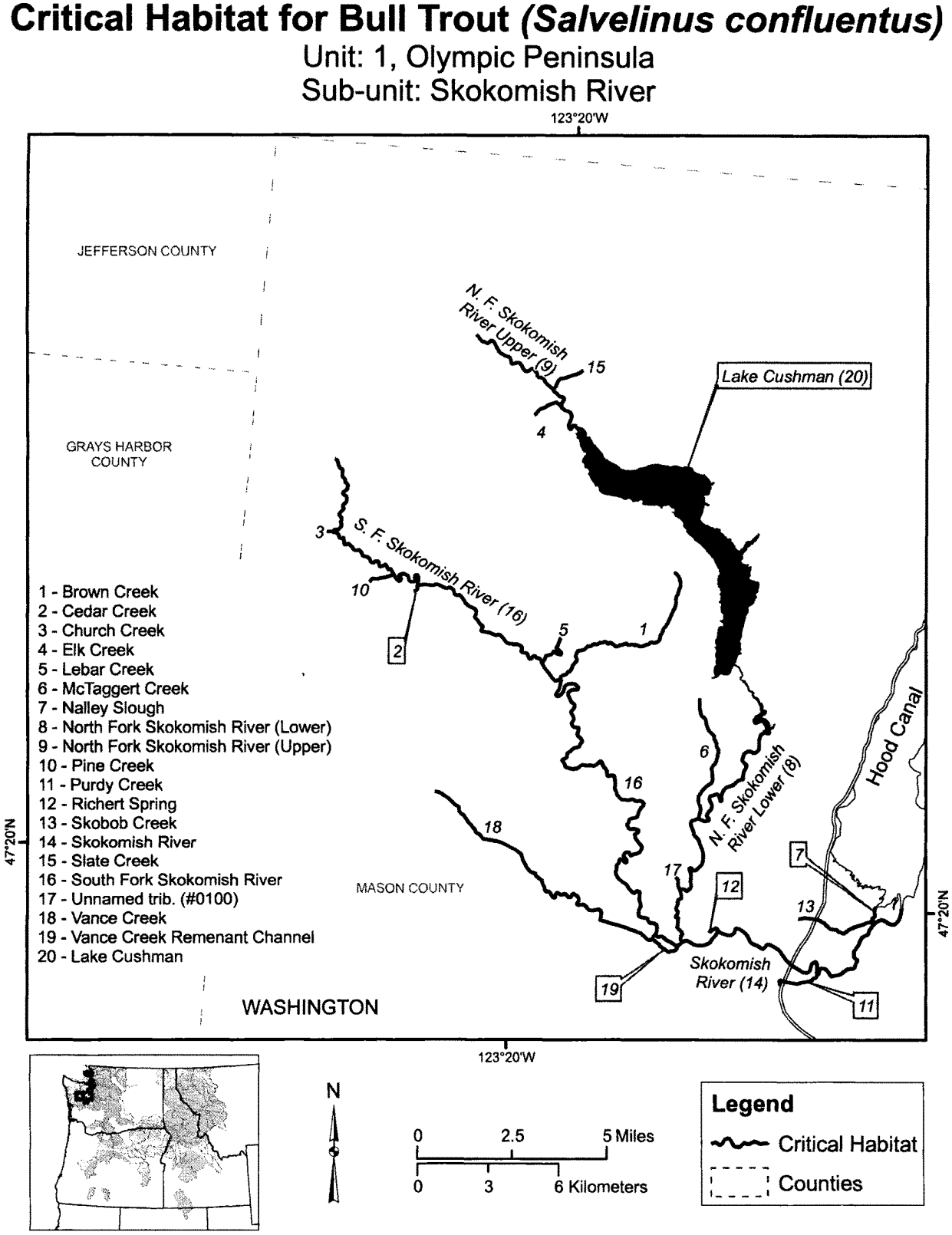
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Quinault River Subunit, follows:



(vi) Skokomish River Subunit.

(A) [Reserved for textual description of unit.]

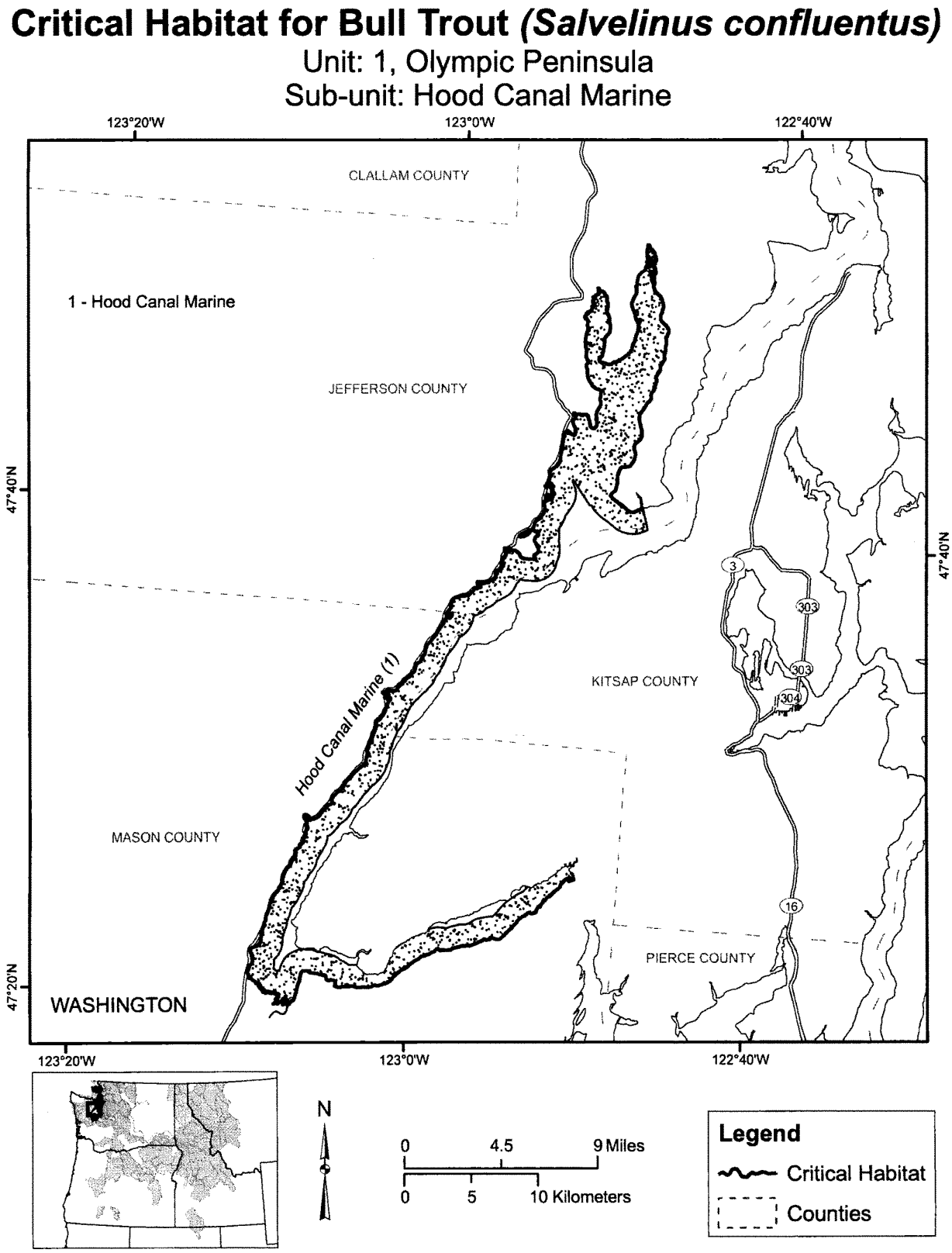
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Skokomish River Subunit, follows:



(vii) Hood Canal Subunit.

(A) [Reserved for textual description of unit.]

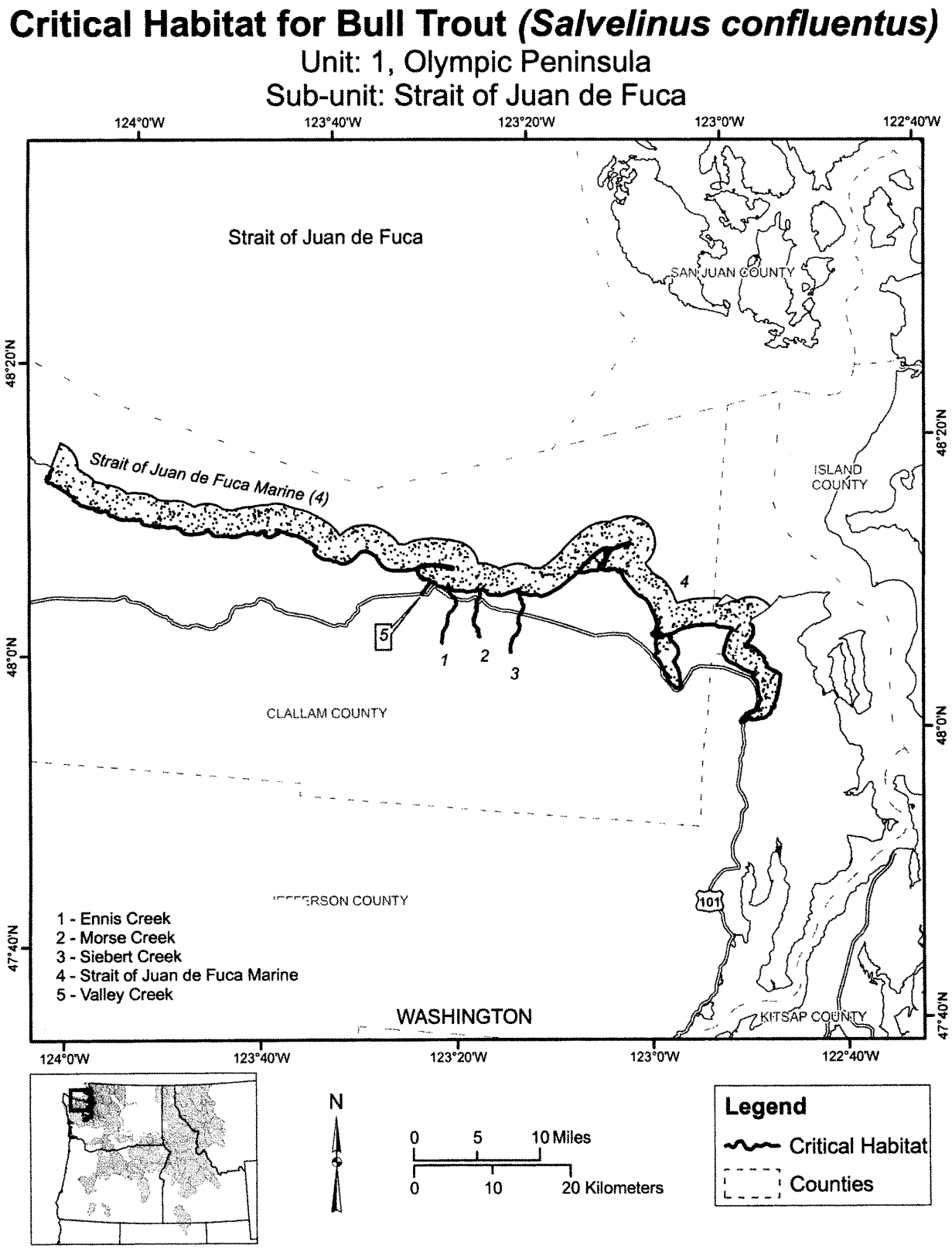
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Hood Canal Subunit, follows:



(viii) Strait of Juan de Fuca Subunit.

(A) [Reserved for textual description of unit.]

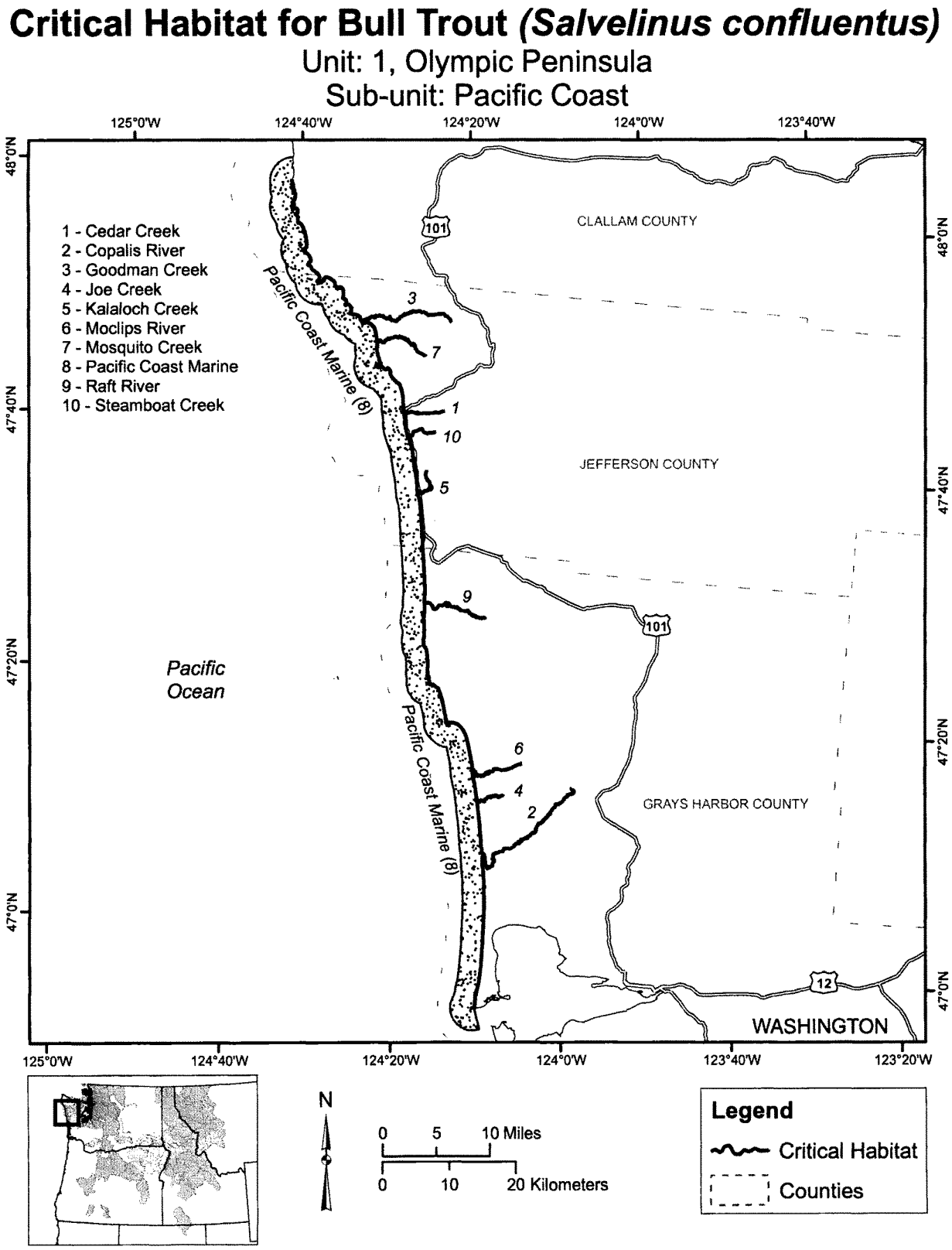
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Juan de Fuca Subunit, follows:



(ix) Pacific Coast Subunit.

(A) [Reserved for textual description of unit.]

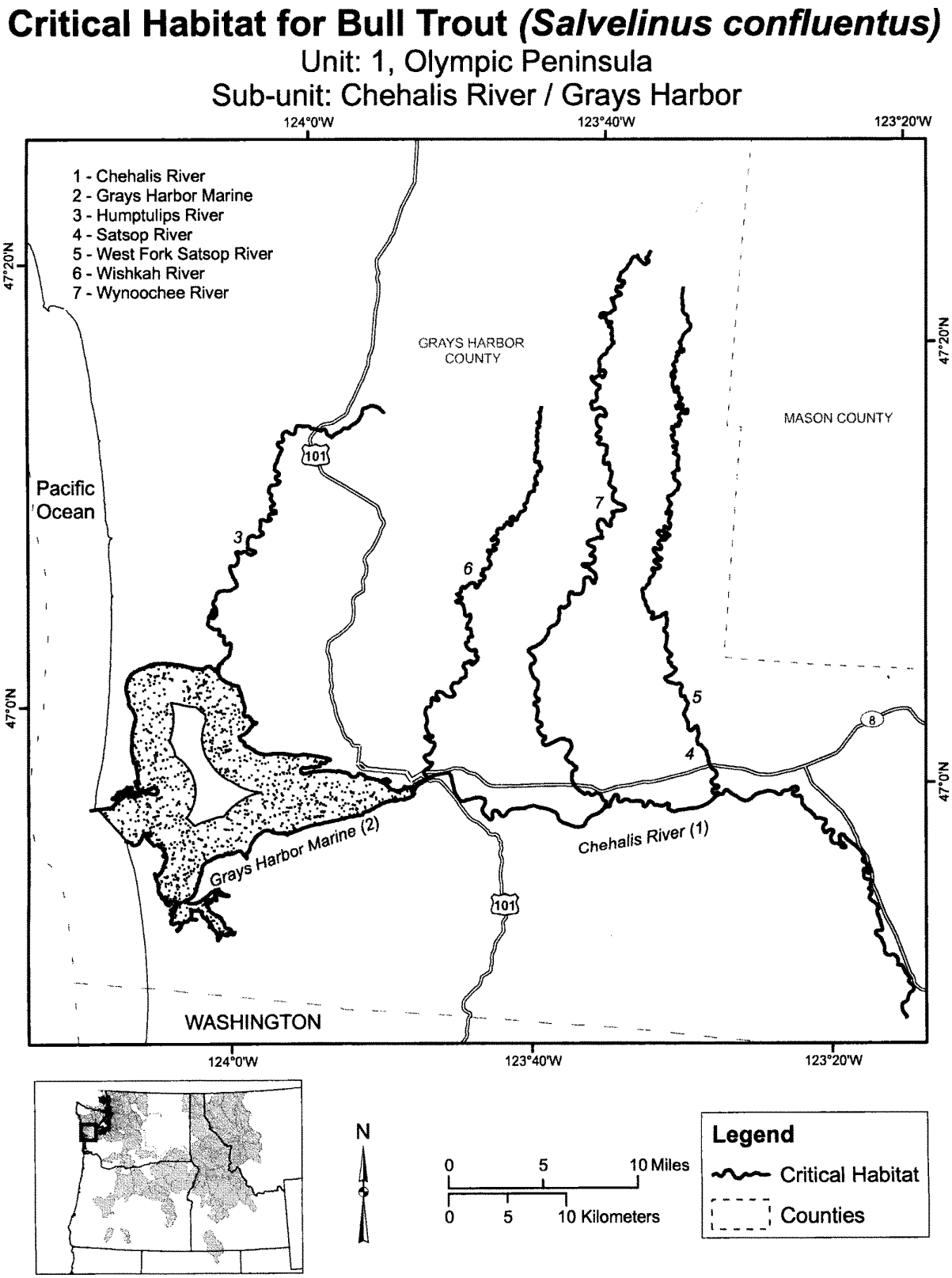
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Pacific Coast Subunit, follows:



(x) Chehalis River/Grays Harbor Subunit.

(A) [Reserved for textual description of unit.]

(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Chehalis River/Grays Harbor Subunit, follows:

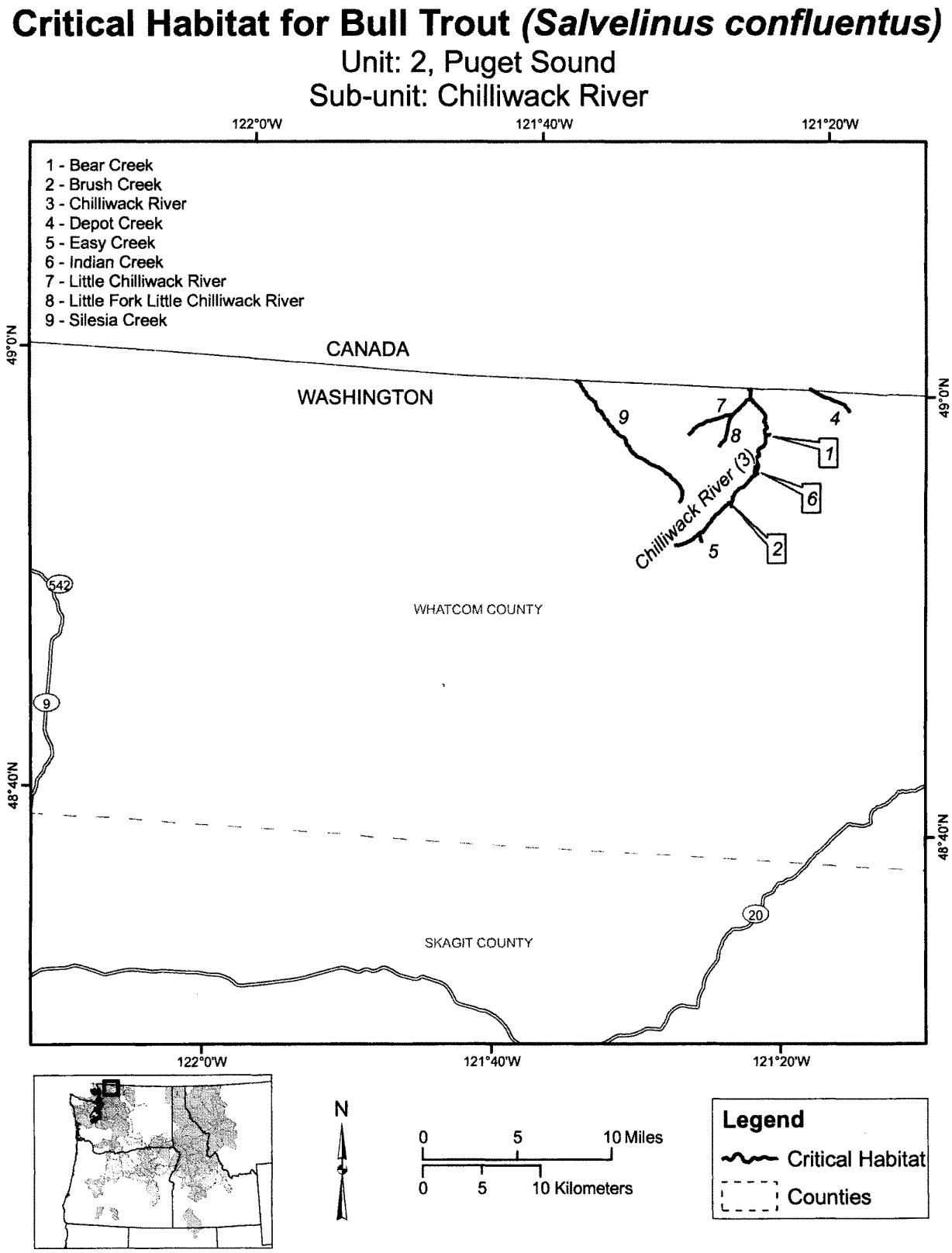


(8) Unit 2: Puget Sound Unit, Washington.

(i) Chilliwack River Subunit.

(A) [Reserved for textual description of unit.]

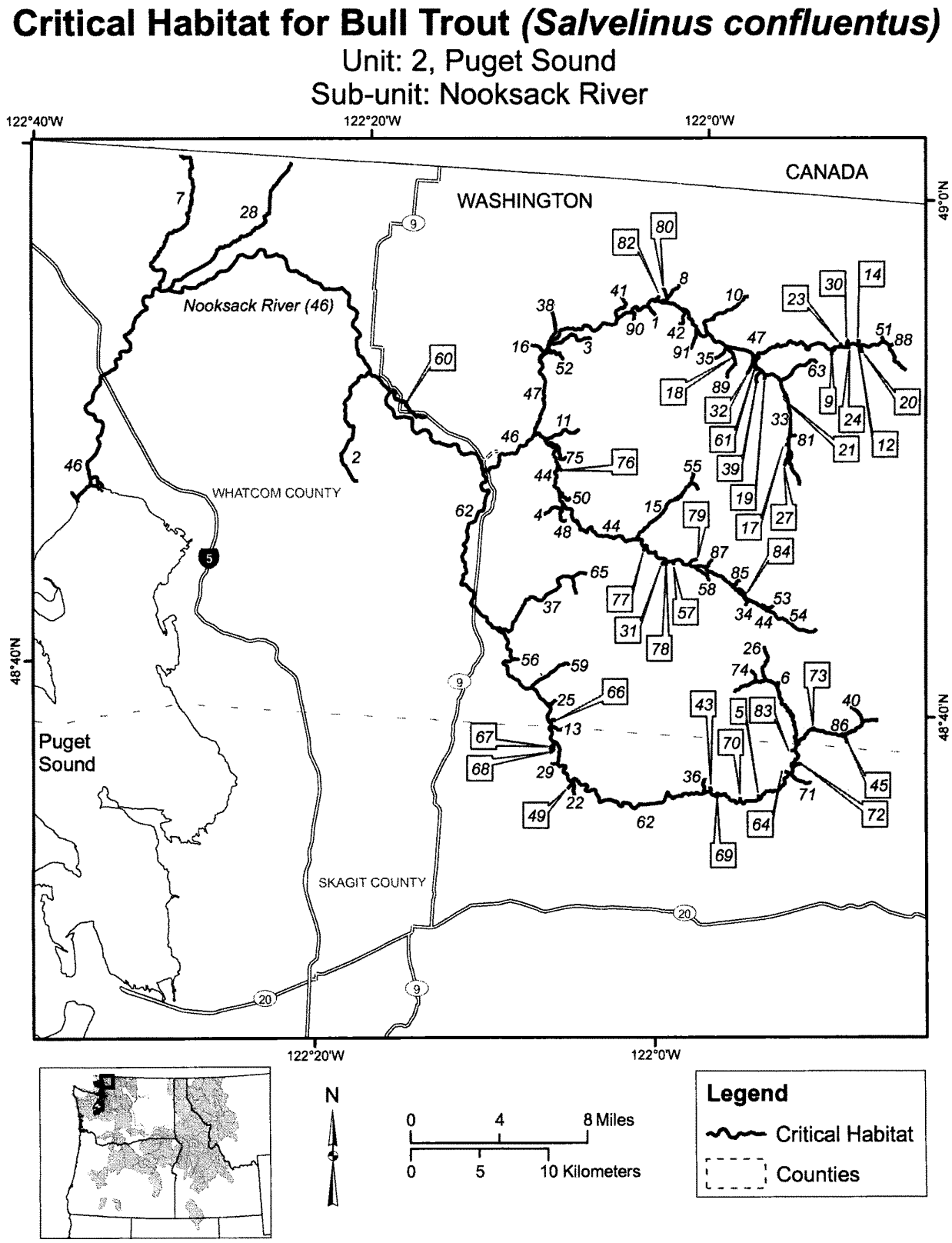
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Chilliwack River Subunit, follows:



(ii) Nooksack River Subunit.

(A) [Reserved for textual description of unit.]

(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Nooksack River Subunit, follows:



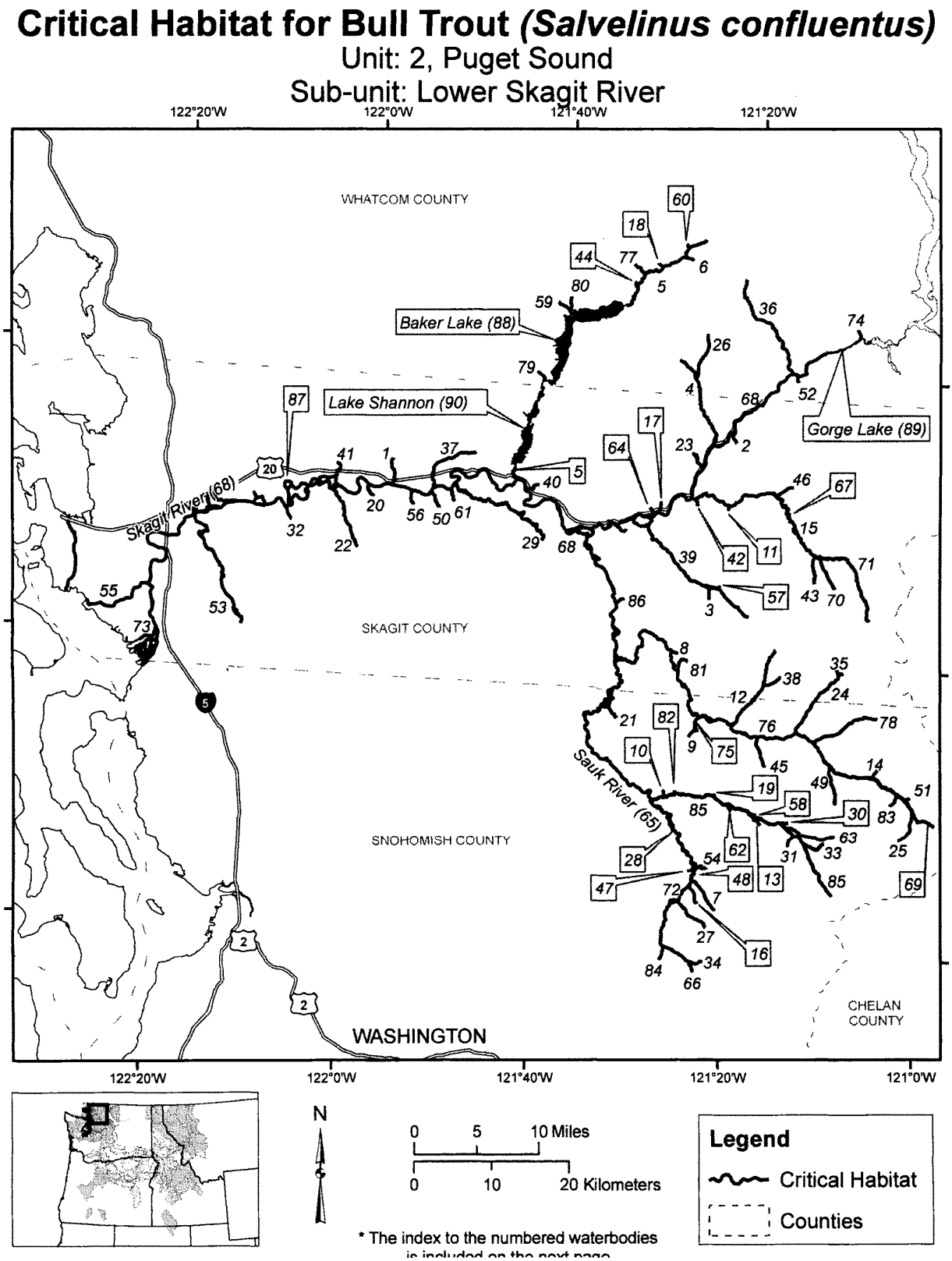
Unit 2: Puget Sound
Sub-Unit: Nooksack River

1 - Aldrich Creek (#0423)
2 - Anderson Creek
3 - Bear Creek
4 - Bear Creek (#0353)
5 - Bear Lake Outlet (#0317)
6 - Bell Creek
7 - Bertrand Creek
8 - Boulder Creek
9 - Boyd Creek
10 - Canyon Creek
11 - Canyon Creek (Canyon Lake Ck)
12 - Cascade Creek
13 - Cavanaugh Creek
14 - Chainup Creek
15 - Clearwater Creek
16 - Coal Creek
17 - Coal Creek (Upper)
18 - Cornell Creek
19 - Davis Creek
20 - Deadhorse Creek
21 - Deep Creek
22 - Deer Creek
23 - Deerhorn Creek
24 - Ditch Creek
25 - Edfro Creek
26 - Elbow Creek / Lake Doreen Outlet (#0331)
27 - Falls Creek
28 - Fishtrap Creek
29 - Fobes Creek
30 - Fossil Creek
31 - Galbraith Creek
32 - Gallop Creek
33 - Glacier Creek
34 - Green Creek
35 - Hedrick Creek
36 - Howard Creek
37 - Hutchinson Creek
38 - Kendall Creek
39 - Little Creek
40 - Loomis Creek
41 - Maple Creek
42 - McDonald Creek (#0435)
43 - McGinnis Creek
44 – M. F. Nooksack River
45 - Monument Creek (#0324)
46 - Nooksack River
47 – N. F. Nooksack River
48 - Peat Bog Creek (#0352)
49 - Plumbago Creek
50 - Porter Creek
51 - Powerhouse Creek
52 - Racehorse Creek
53 - Rankin Creek
54 - Ridley Creek
55 - Rocky Creek
56 - Saxson Creek
57 - Seymour Creek
58 - Sister Creek
59 - Skookum Creek
60 - Smith Creek
61 - Son of Gallop
62 – S. F. Nooksack River
63 - Thompson Creek
64 - Three Lakes Outlet (#0319)
65 - Unnamed trib. (#0265)
66 - Unnamed trib. (#0284)
67 - Unnamed trib. (#0290)
68 - Unnamed trib. (#0291)
69 - Unnamed trib. (#0315)
70 - Unnamed trib. (#0316)
71 - Unnamed trib. (#0320)
72 - Unnamed trib. (#0321)
73 - Unnamed trib. (#0323)
74 - Unnamed trib. (#0332)
75 - Unnamed trib. (#0347)
76 - Unnamed trib. (#0349)
77 - Unnamed trib. (#0367)
78 - Unnamed trib. (#0371)
79 - Unnamed trib. (#0374)
80 - Unnamed trib. (#0425)
81 - Unnamed trib. (#0476)
82 - Unnamed trib. downstream Boulder Ck
83 - Unnamed trib. downstream Wanlick Ck
84 - Unnamed trib. upstream Wallace Ck
85 - Wallace Creek
86 - Wanlick Creek
87 - Warm Creek
88 - Wells Creek
89 - West Cornell Creek
90 - West Slide Creek (#0422)
91 - Wildcat Creek

(iii) Skagit River Subunit.

(A) [Reserved for textual description of unit.]

(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Skagit River Subunit, follows:



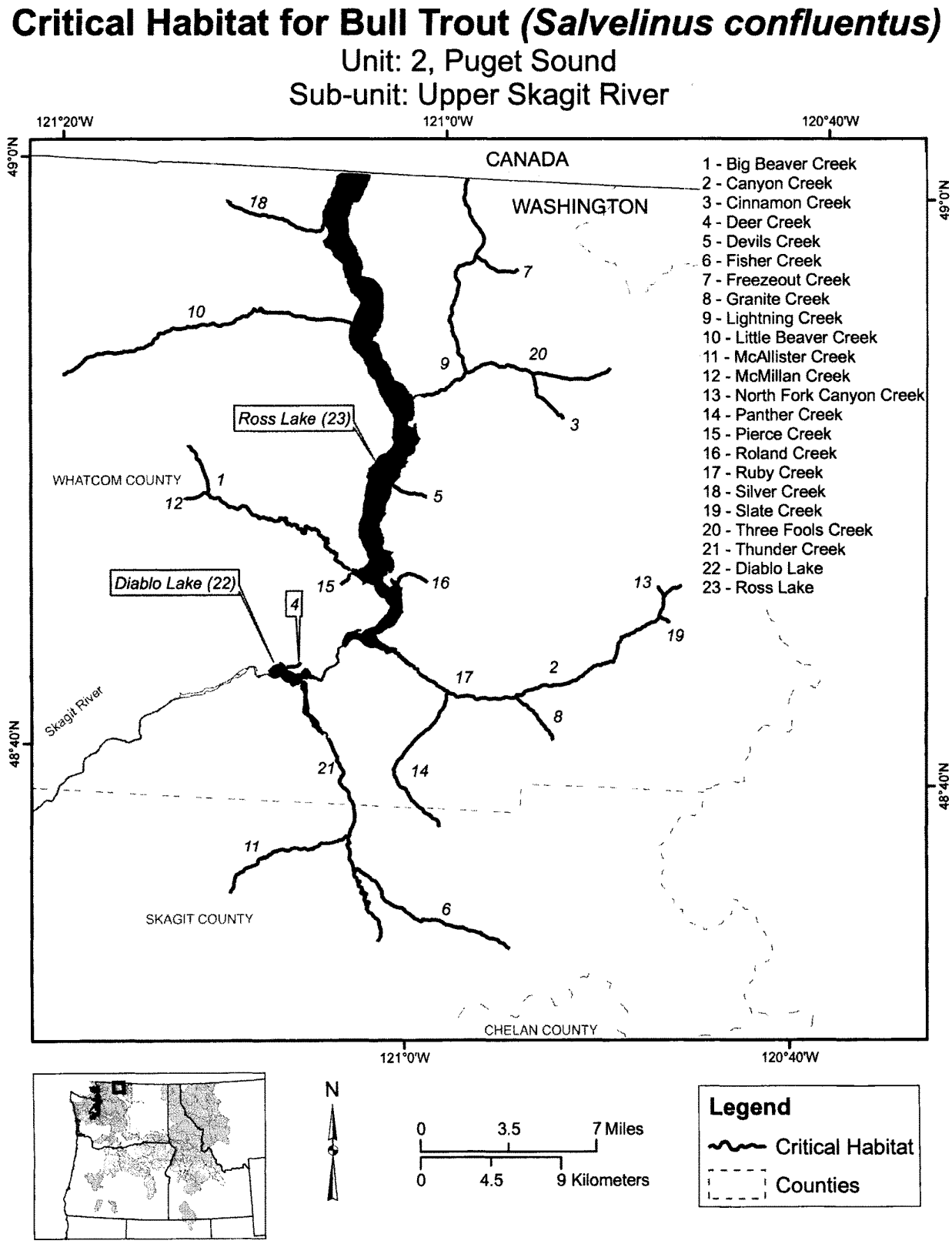
Unit 2: Puget Sound
Sub-unit: Lower Skagit

1 - Alder Creek
2 - Alma Creek
3 - Arrow Creek
4 - Bacon Creek
5 - Baker River
6 - Bald Eagle Creek
7 - Bedal Creek
8 - Big Creek
9 - Black Creek
10 - Black Oak Creek
11 - Boulder Creek
12 - Buck Creek
13 - Camp Creek
14 - Canyon Creek
15 - Cascade River
16 - Chocwick Creek
17 - Corkindale Creek
18 - Crystal Creek
19 - Crystal Creek
20 - Cumberland Creek
21 - Dan Creek
22 - Day Creek
23 - Diobsud Creek
24 - Downey Creek
25 - Dusty Creek
26 - East Fork Bacon Creek
27 - Elliott Creek
28 - Falls Creek
29 - Finney Creek
30 - Fire Creek
31 - Fourteenmile Creek
32 - Gilligan Creek
33 - Glacier Creek
34 - Glacier Creek
35 - Goat Creek
36 - Goodell Creek
37 - Grandy Creek
38 - Horse Creek
39 - Illabot Creek
40 - Jackman Creek
41 - Jones Creek
42 - Jordan Creek
43 - Kindy Creek
44 - Lake Creek
45 - Lime Creek
46 - Marble Creek
47 - Martin Creek
48 - Merry Brook Creek
49 - Milk Creek
50 - Mill Creek
51 - Miners Creek
52 - Newhalem Creek
53 - Nookachamps Creek
54 - North Fork Sauk River
55 - North Fork Skagit River
56 - O'Toole Creek
57 - Otter Creek
58 - Owl Creek
59 - Park Creek
60 - Pass Creek
61 - Pressentin Creek
62 - Pugh Creek
63 - Pumice Creek
64 - Rocky Creek
65 - Sauk River
66 - Seventysix Gulch
67 - Sibley Creek
68 - Skagit River
69 - Small Creek
70 - Sonny Boy Creek
71 - South Fork Cascade River
72 - South Fork Sauk River
73 - South Fork Skagit River
74 - Stetattle Creek
75 - Straight Creek
76 - Suiattle River
77 - Sulphide Creek
78 - Sulphur Creek
79 - Sulphur Creek (Lake Shannon)
80 - Swift Creek
81 - Tenas Creek
82 - Unnamed trib. (#1119)
83 - Vista Creek
84 - Weden Creek
85 - White Chuck River
86 - White Creek
87 - Wiseman Creek
88 - Baker Lake
89 - Gorge Lake
90 - Lake Shannon

(iv) Upper Skagit River Subunit.

(A) [Reserved for textual description of unit.]

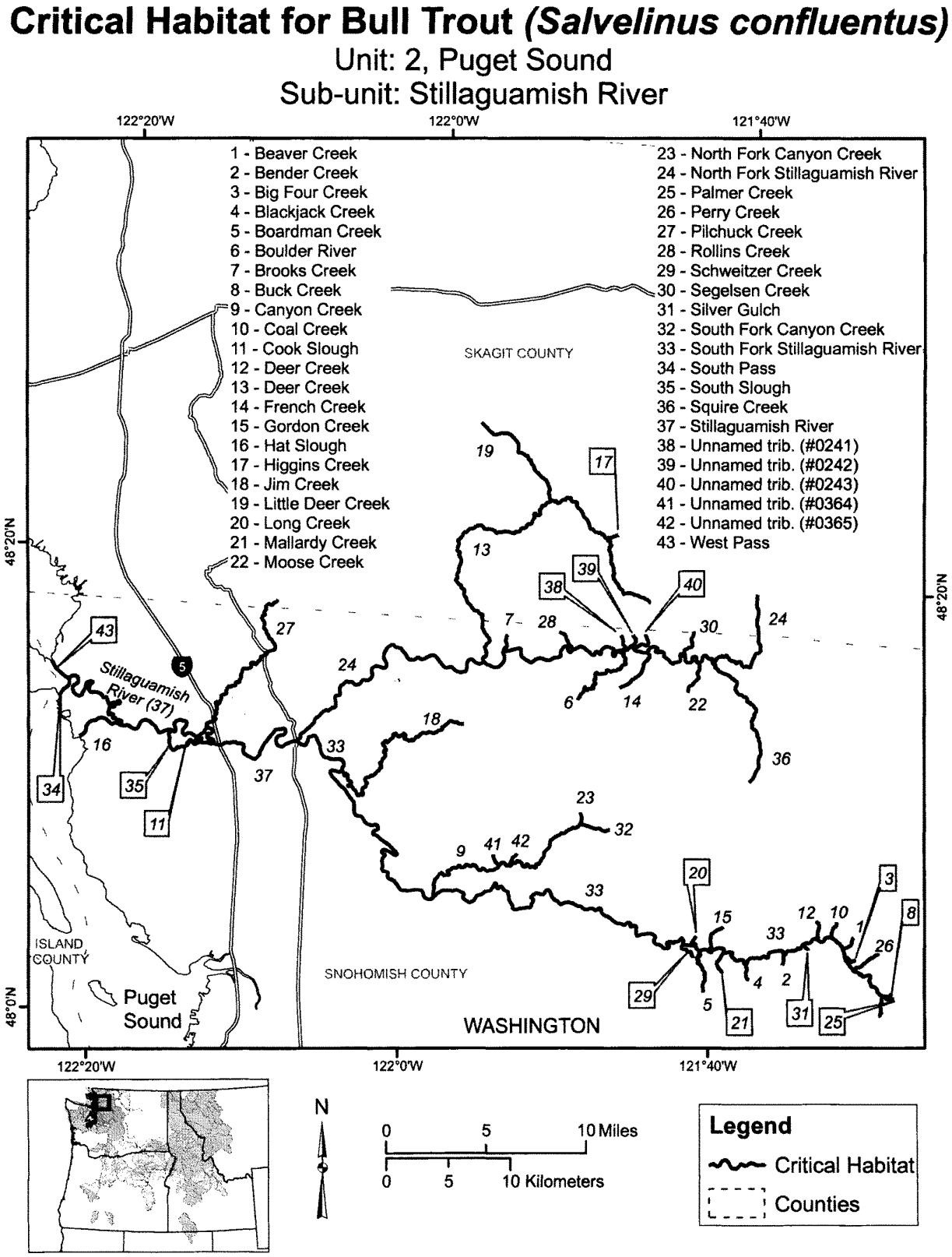
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Upper Skagit River Subunit, follows:



(v) Stillaguamish River Subunit.

(A) [Reserved for textual description of unit.]

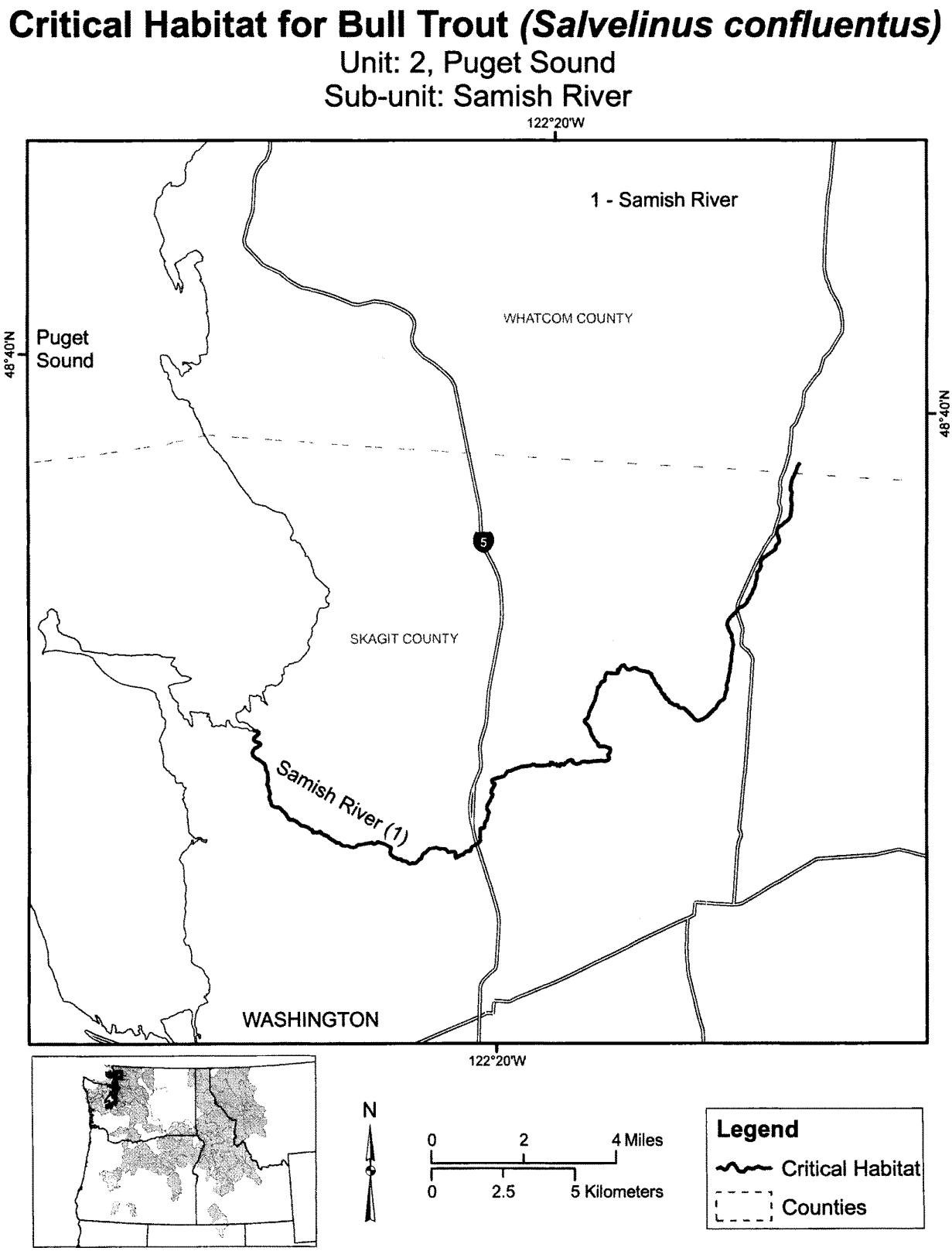
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Stillaguamish River Subunit, follows:



(vi) Samish River Subunit.

(A) [Reserved for textual description of unit.]

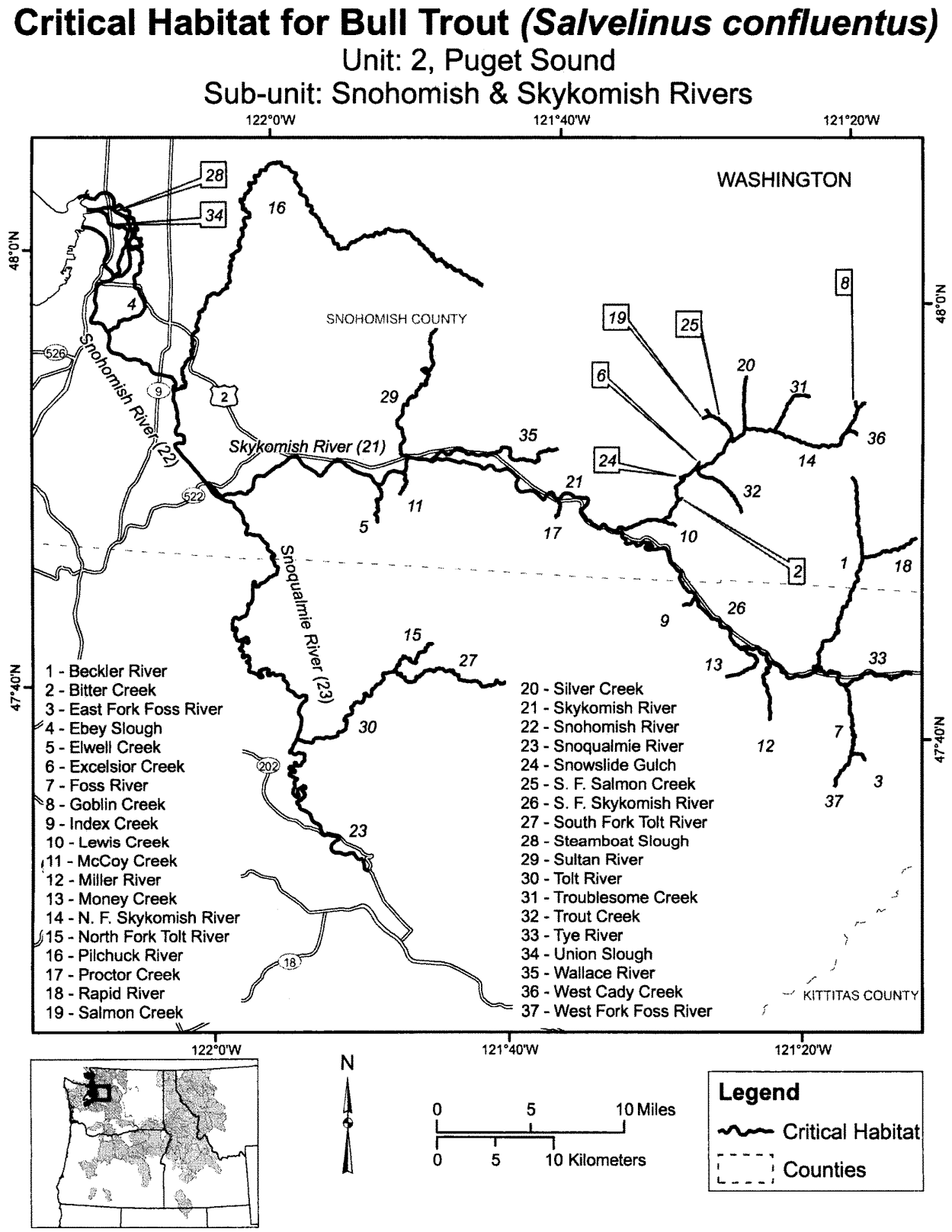
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Samish River Subunit, follows:



(vii) Snohomish–Skykomish River Subunit.

(A) [Reserved for textual description of unit.]

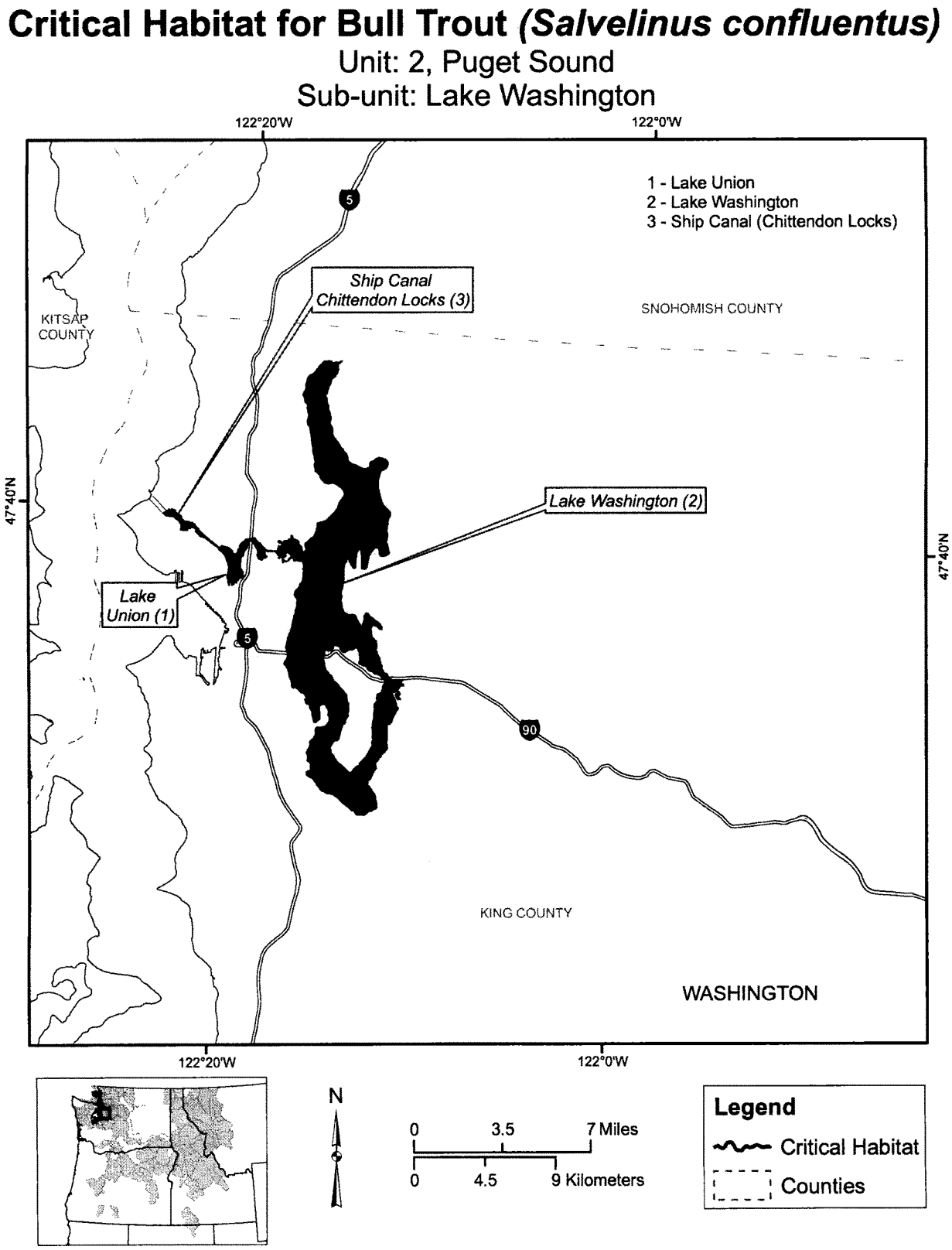
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Snohomish–Skykomish River Subunit, follows:



(viii) Lake Washington Subunit.

(A) [Reserved for textual description of unit.]

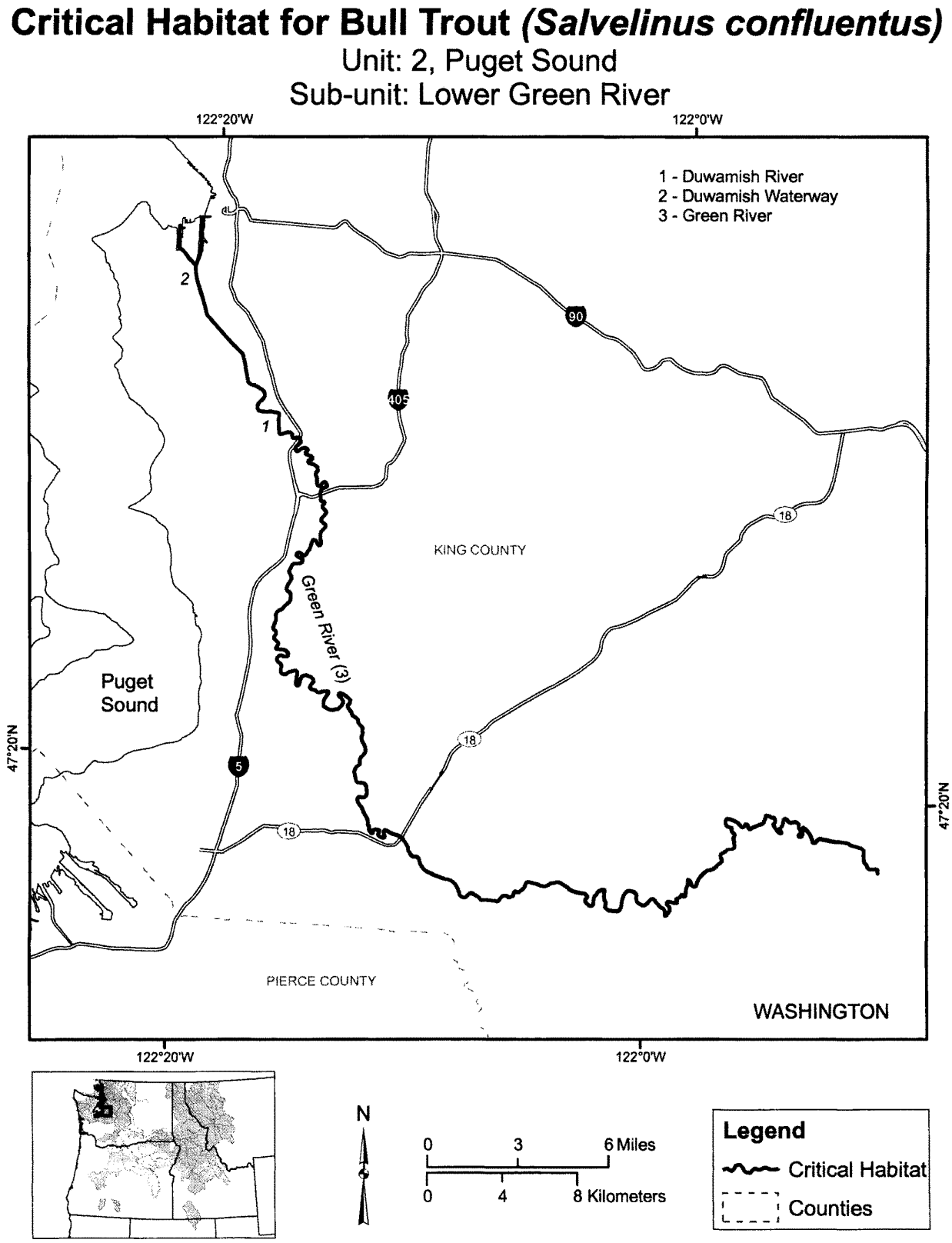
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Lake Washington Subunit, follows:



(ix) Lower Green River Subunit.

(A) [Reserved for textual description of unit.]

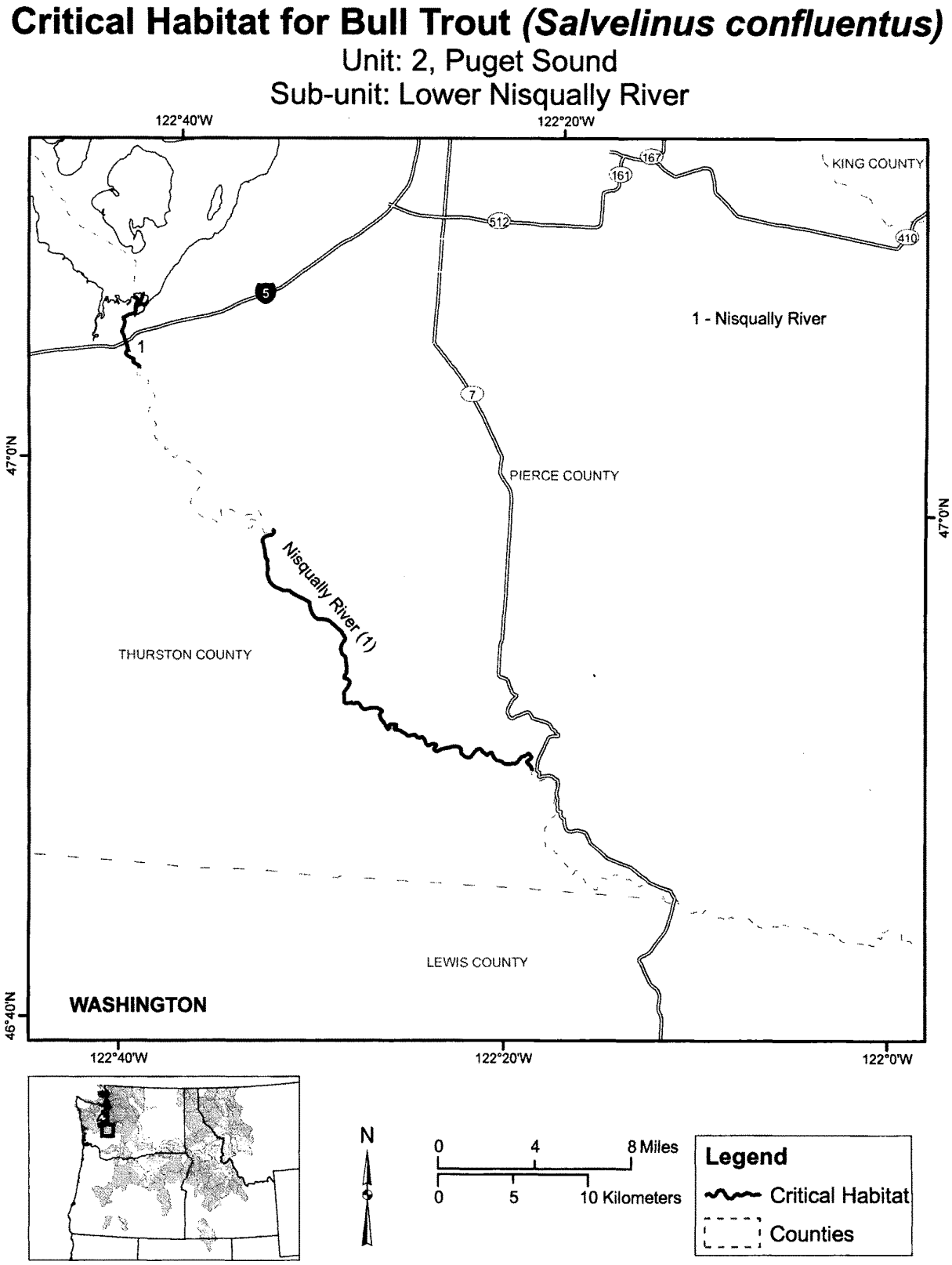
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Lower Green River Subunit, follows:



(x) Lower Nisqually River Subunit.

(A) [Reserved for textual description of unit.]

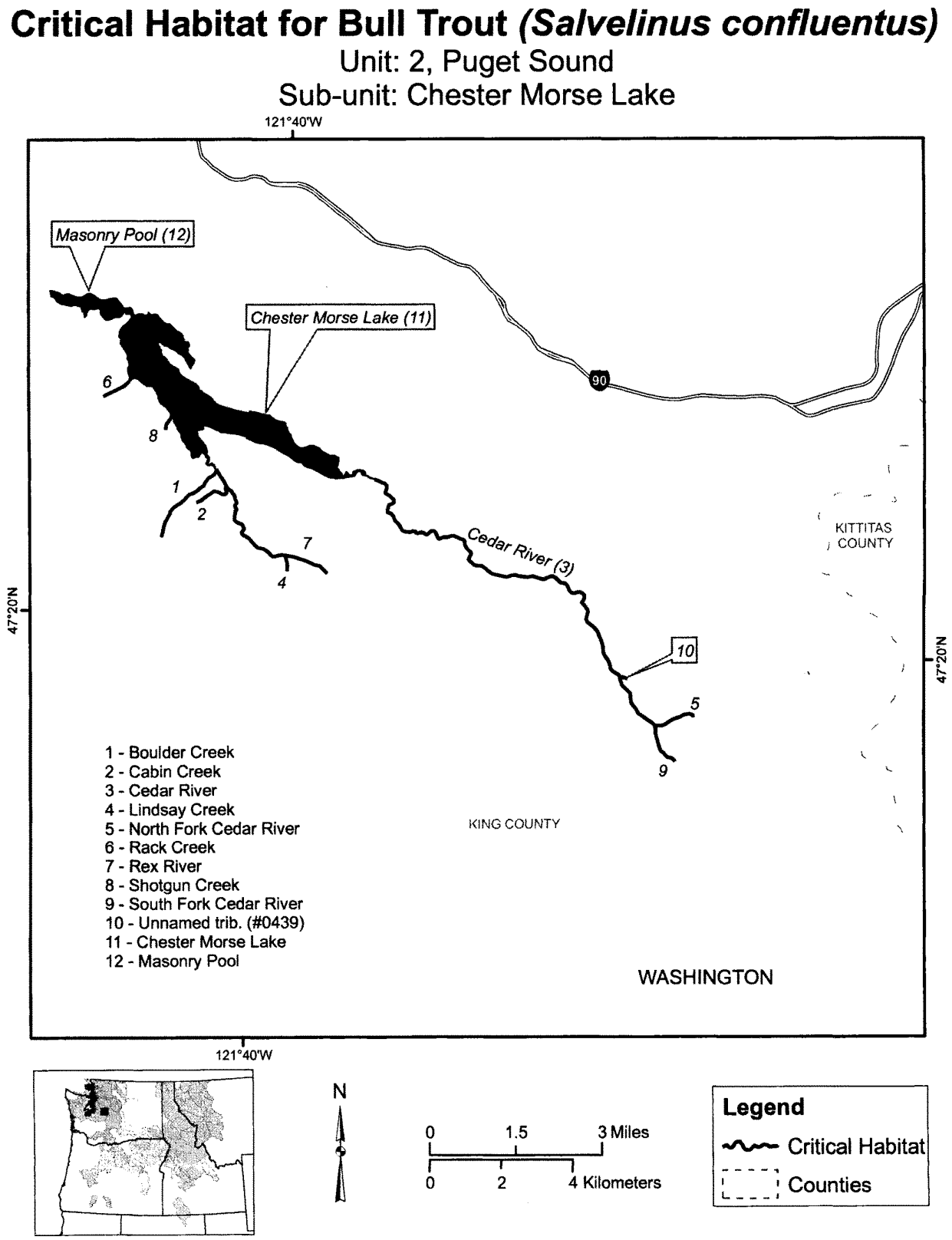
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Lower Nisqually River Subunit, follows:



(xi) Chester Morse Lake Subunit.

(A) [Reserved for textual description of unit.]

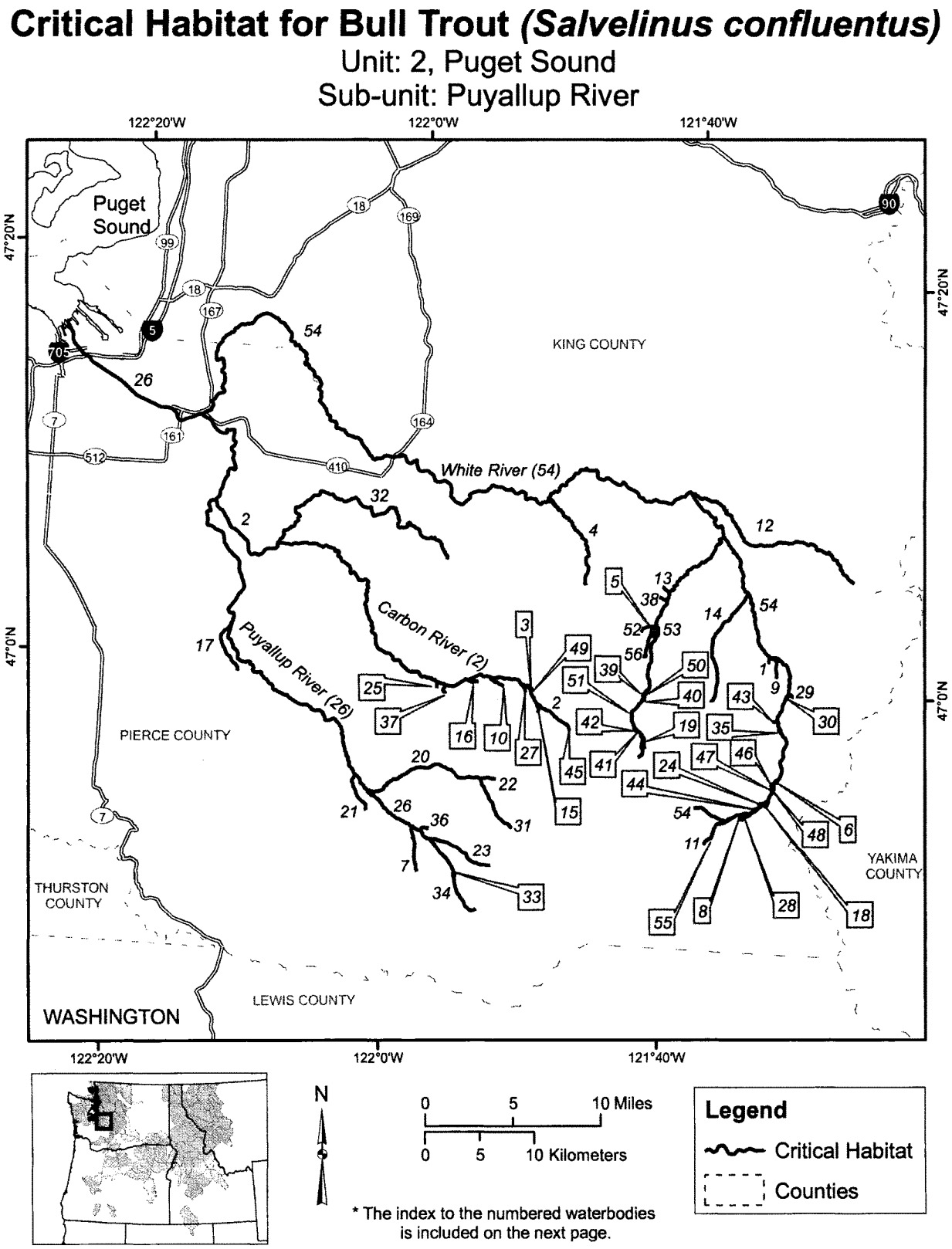
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Chester Morse Lake Subunit, follows:



(xii) Puyallup River Subunit.

(A) [Reserved for textual description of unit.]

(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Puyallup River Subunit, follows:



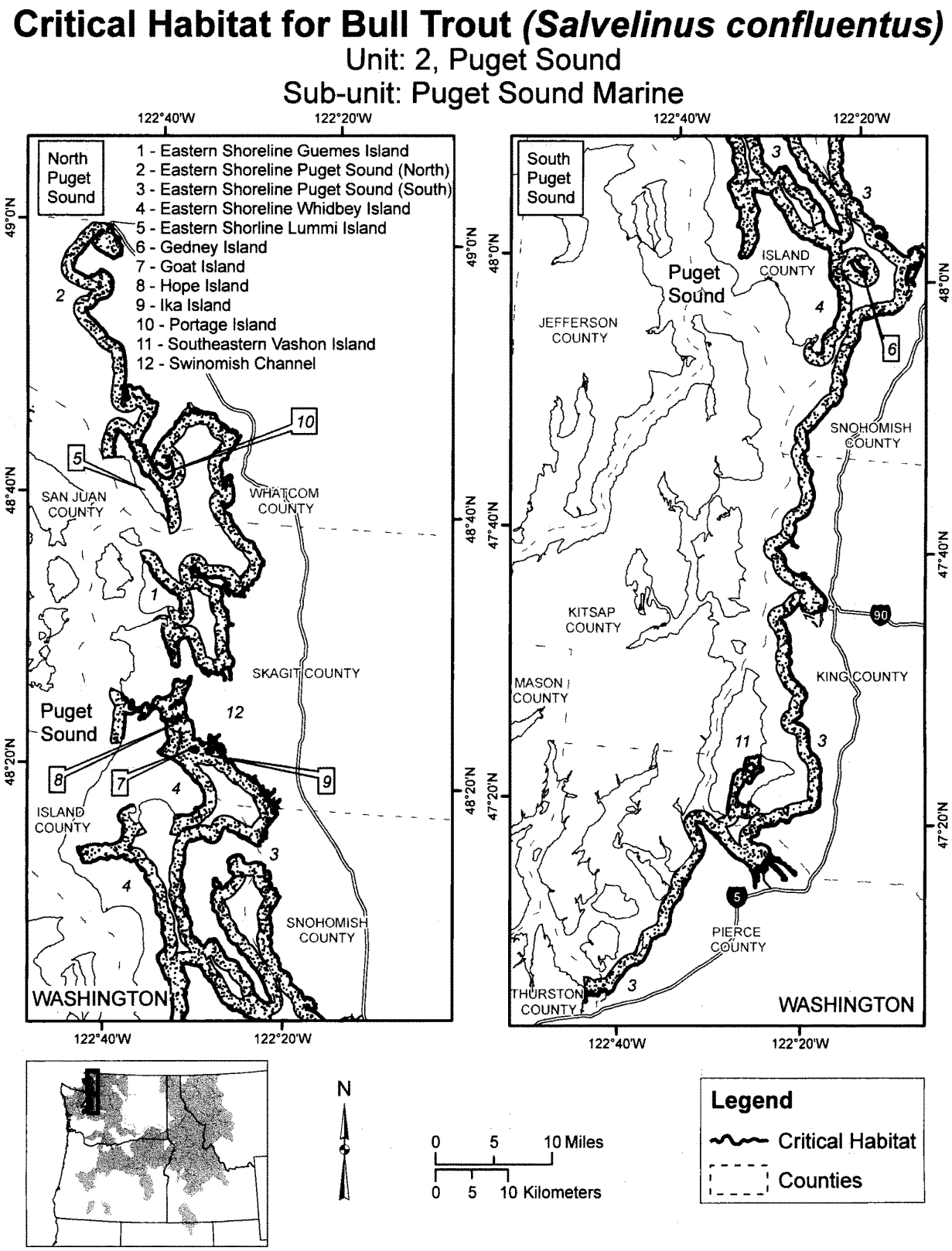
Unit 2: Puget Sound
Sub-Unit: Puyallup River

1 - Buck Creek
2 - Carbon River
3 - Chenuis Creek
4 - Clearwater River
5 - Cripple Creek
6 - Crystal Creek
7 - Deer Creek
8 - Discovery Creek
9 - Doe Creek
10 - Falls Creek
11 - Fryingpan Creek
12 - Greenwater River
13 - Hazzard Creek
14 - Huckleberry Creek
15 - Ipsut Creek
16 - June Creek
17 - Kapowsin Creek
18 - Klickitat Creek
19 - Lodi Creek
20 - Mowich River
21 - Niesson Creek
22 - North Mowich River
23 - North Puyallup River
24 - Parallel Creek
25 - Poch Creek
26 - Puyallup River
27 - Ranger Creek
28 - Shaw Creek
29 - Silver Creek
30 - Silver Springs
31 - South Mowich River
32 - South Prairie Creek
33 - South Puyallup River
34 - St.Andrews Creek
35 - Sunrise Creek
36 - Swift Creek
37 - Tolmie Creek
38 - Unnamed trib. (#0194)
39 - Unnamed trib. (#0217)
40 - Unnamed trib. (#0219)
41 - Unnamed trib. (#0226)
42 - Unnamed trib. (#0234)
43 - Unnamed trib. (#0336)
44 - Unnamed trib. (#0364)
45 - Unnamed trib. (#0565)
46 - Unnamed trib. (LB1) upstream of Crystal Ck
47 - Unnamed trib. (LB2) upstream of Crystal Ck
48 - Unnamed trib. (RB) upstream of Crystal Ck
49 - Unnamed trib. upstream Chenius Ck
50 - Unnamed trib. upstream of (#0214)
51 - Van Horn Creek
52 - Viola Creek
53 - West Fork White River
54 - White River
55 - Wright Creek
56 - Wrong Creek

(xiii) Puget Sound Marine Subunit.

(A) [Reserved for textual description of unit.]

(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Puget Sound Marine Subunit, follows:

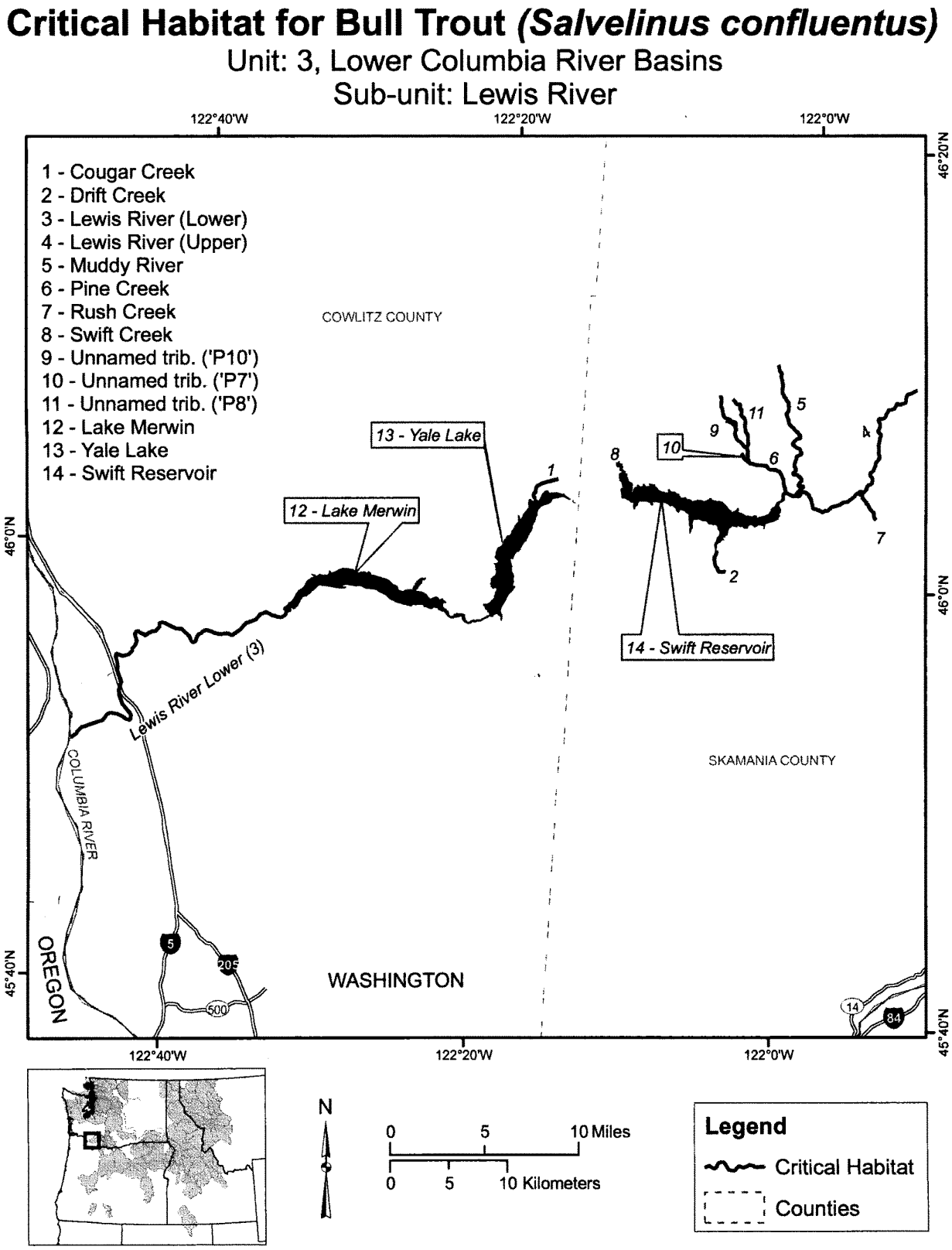


(9) Unit 3: Lower Columbia River Basins Unit, Washington.

(i) Lewis River Subunit.

(A) [Reserved for textual description of unit.]

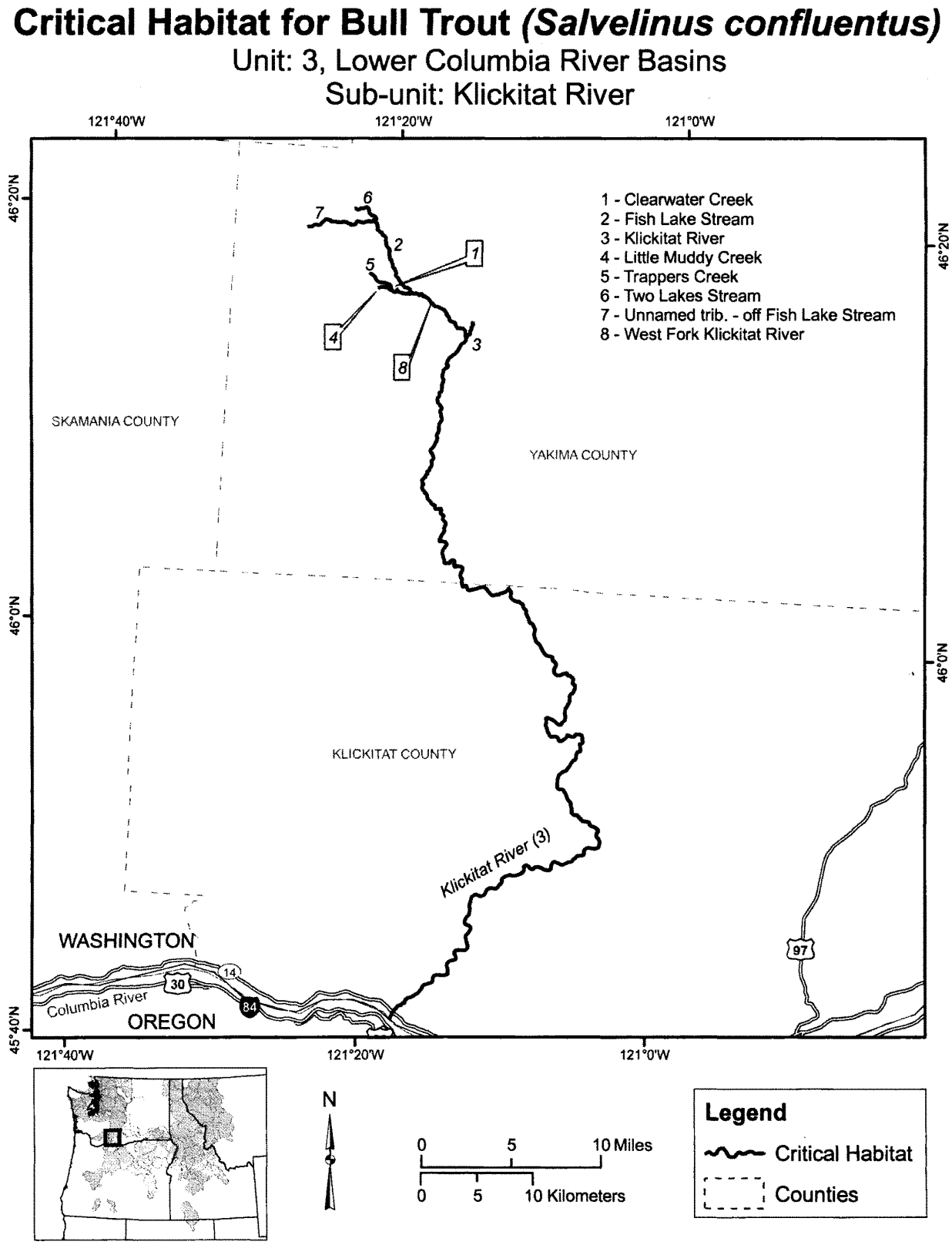
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Lewis River Subunit, follows:



(ii) Klickitat River Subunit.

(A) [Reserved for textual description of unit.]

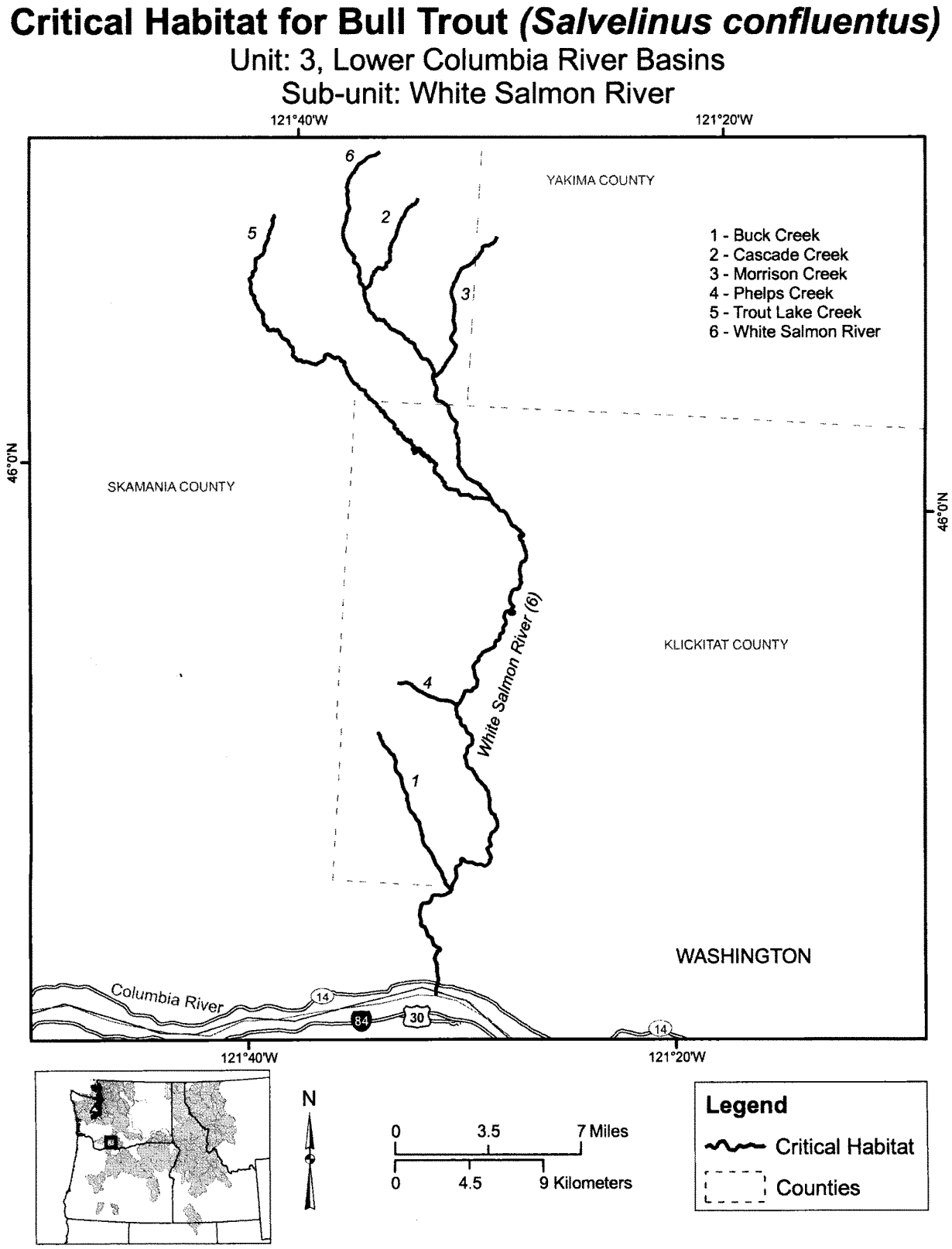
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Klickitat River Subunit, follows:



(iii) White Salmon River Subunit.

(A) [Reserved for textual description of unit.]

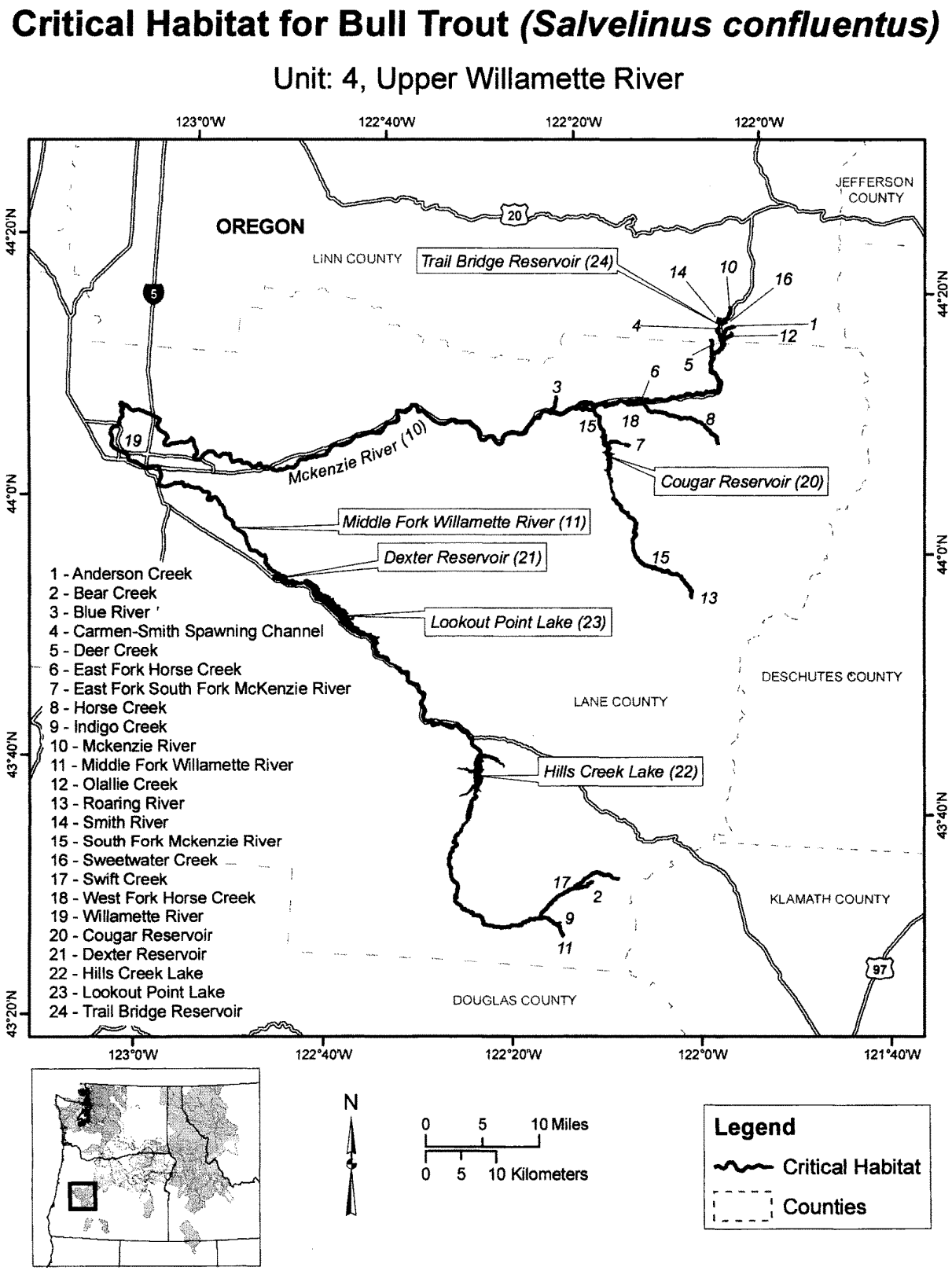
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), White Salmon River Subunit, follows:



(10) Unit 4: Upper Willamette River Unit, Oregon.

(i) [Reserved for textual description of unit.]

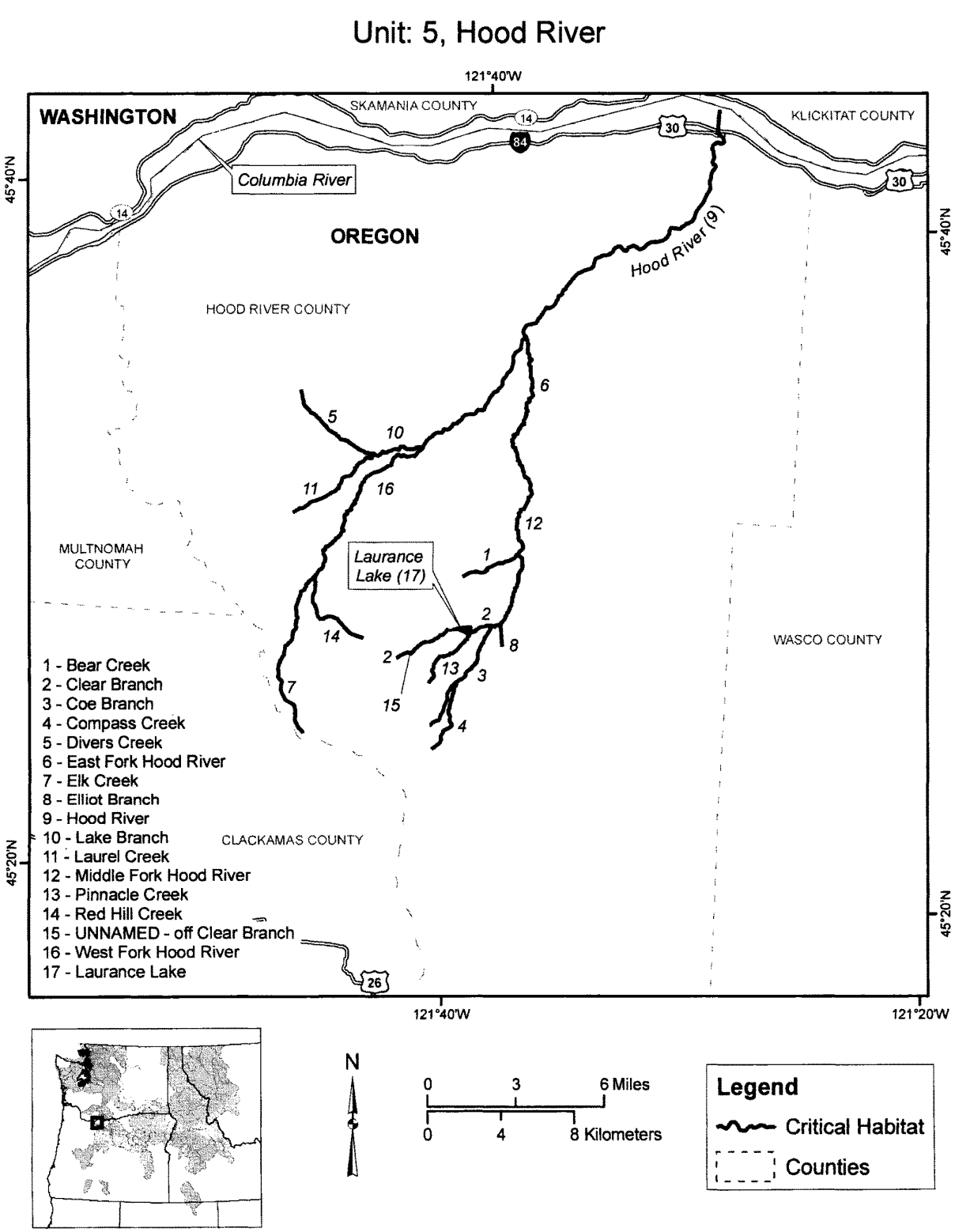
(ii) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Upper Willamette Unit, follows:



(11) Unit 5: Hood River Unit, Oregon.

(i) [Reserved for textual description of unit.]

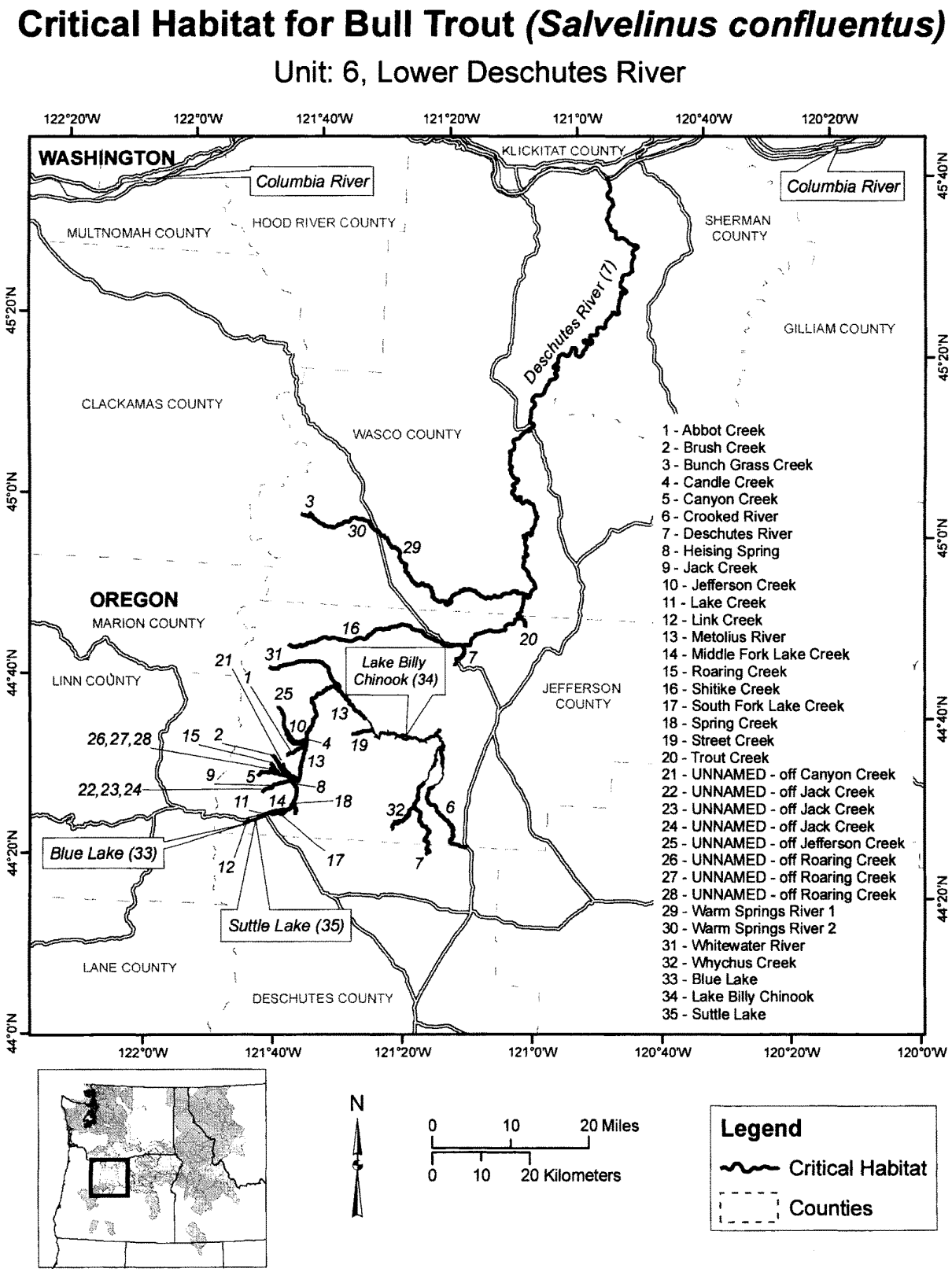
(ii) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Hood River Unit, follows:



(12) Unit 6: Lower Deschutes River Unit, Oregon.

(i) [Reserved for textual description of unit.]

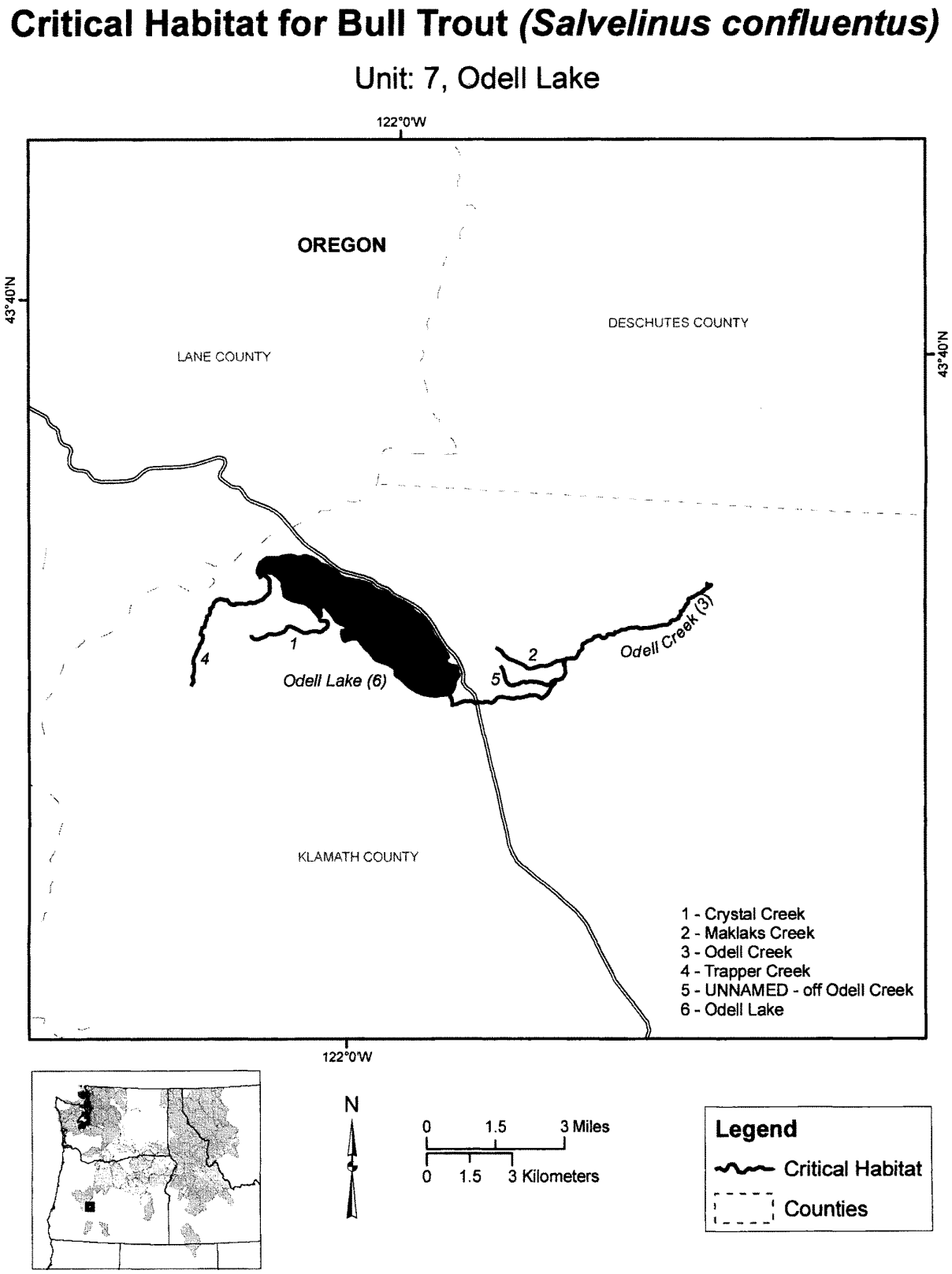
(ii) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Lower Deschutes River Unit, follows:



(13) Unit 7: Odell Lake Unit, Oregon.

(i) [Reserved for textual description of unit.]

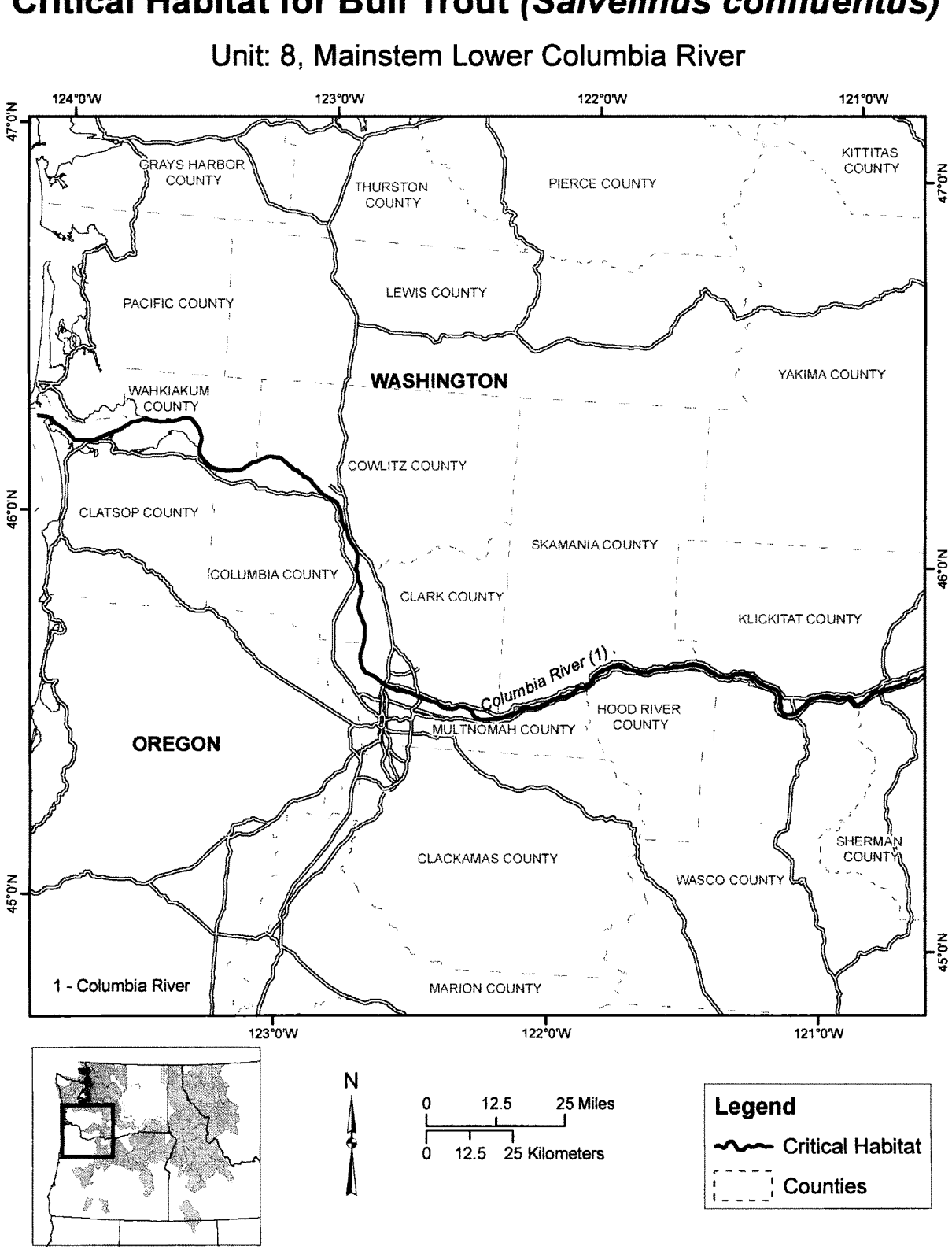
(ii) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Odell Lake Unit, follows:



(14) Unit 8: Mainstem Lower Columbia River Unit, Oregon and Washington.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Mainstem Lower Columbia River Unit, follows:

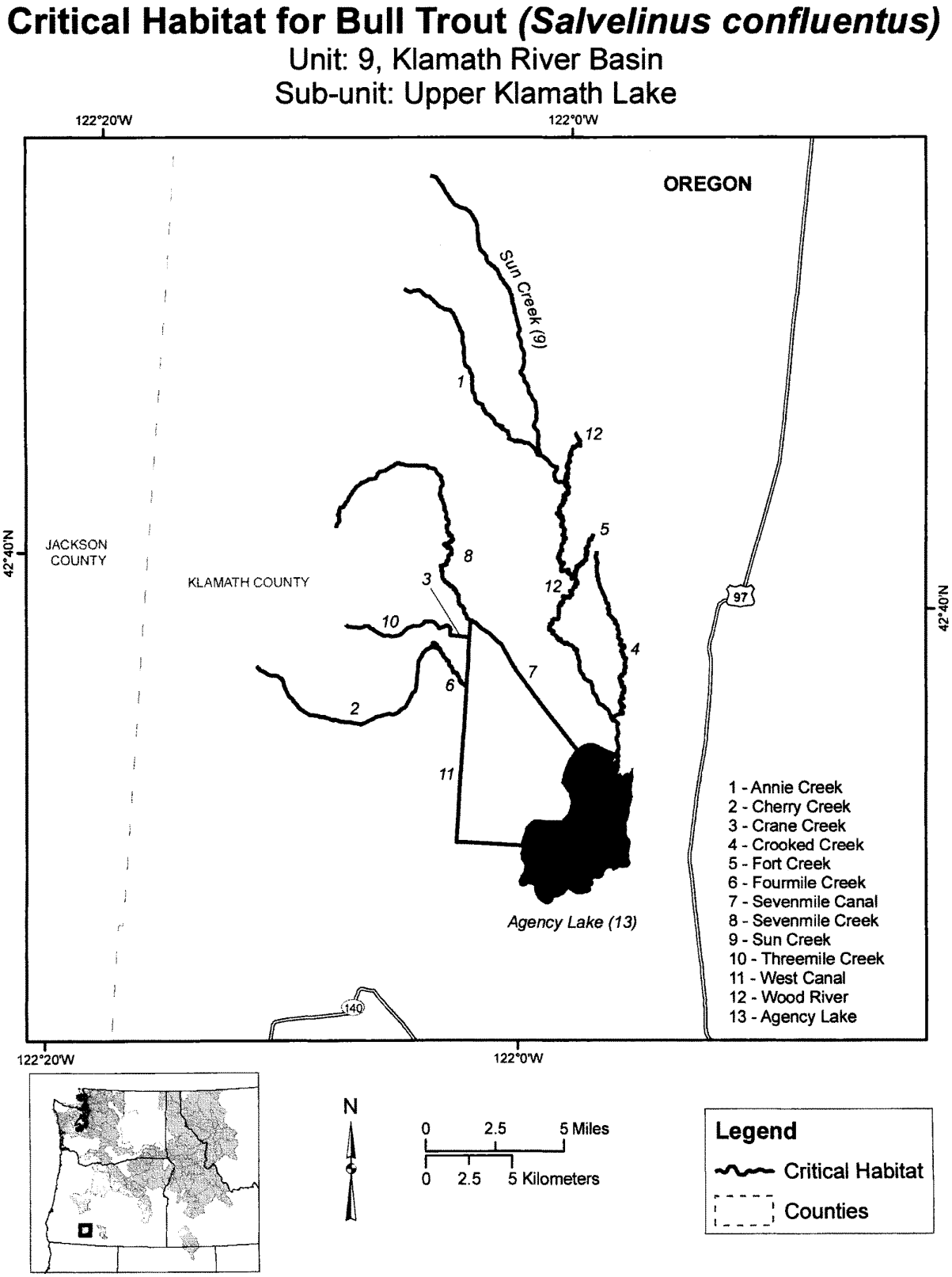


(15) Unit 9: Klamath River Basin Unit, Oregon.

(i) Upper Klamath Lake Subunit.

(A) [Reserved for textual description of unit.]

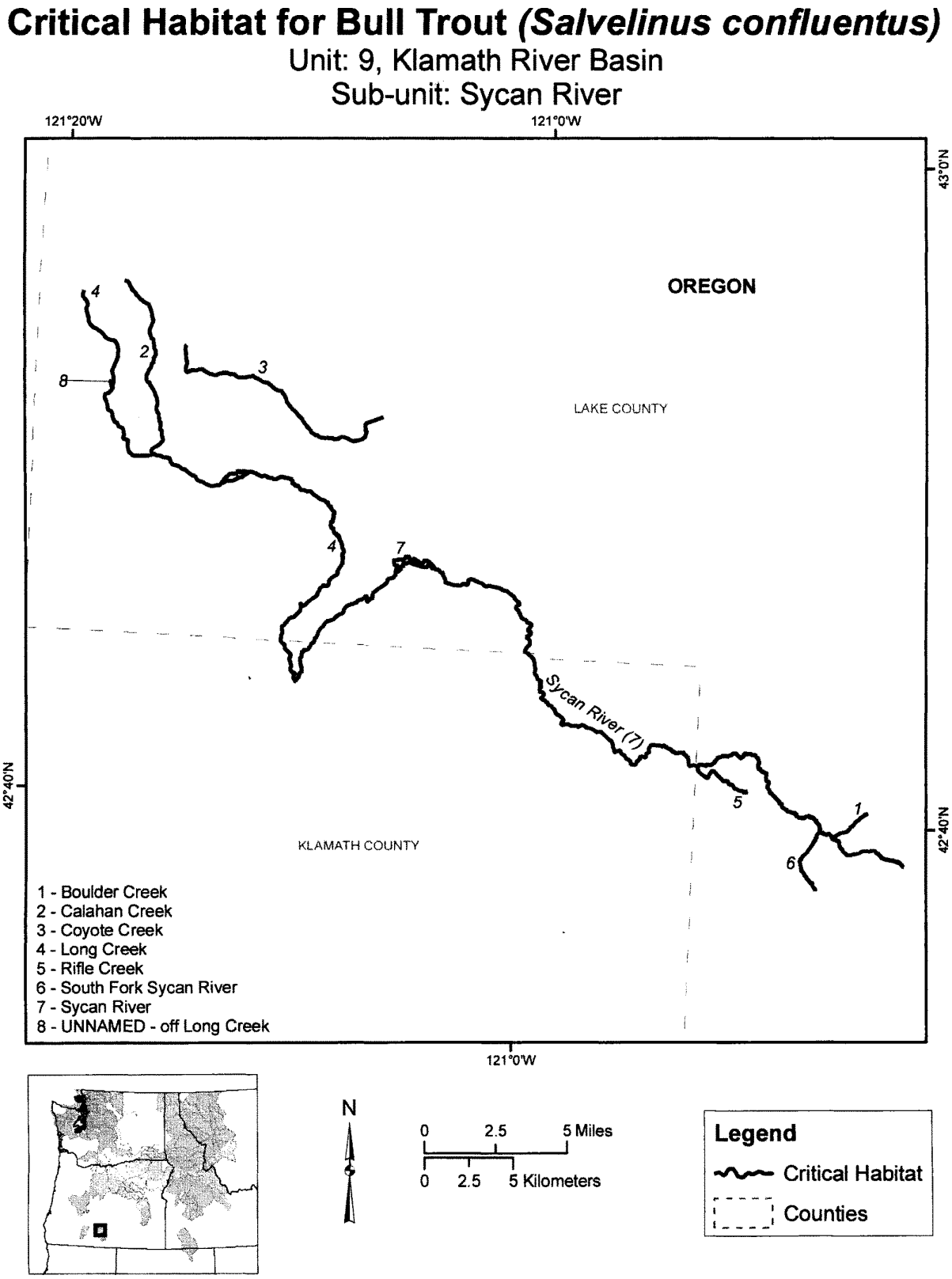
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Klamath Lake Subunit, follows:



(ii) Sycan River Subunit.

(A) [Reserved for textual description of unit.]

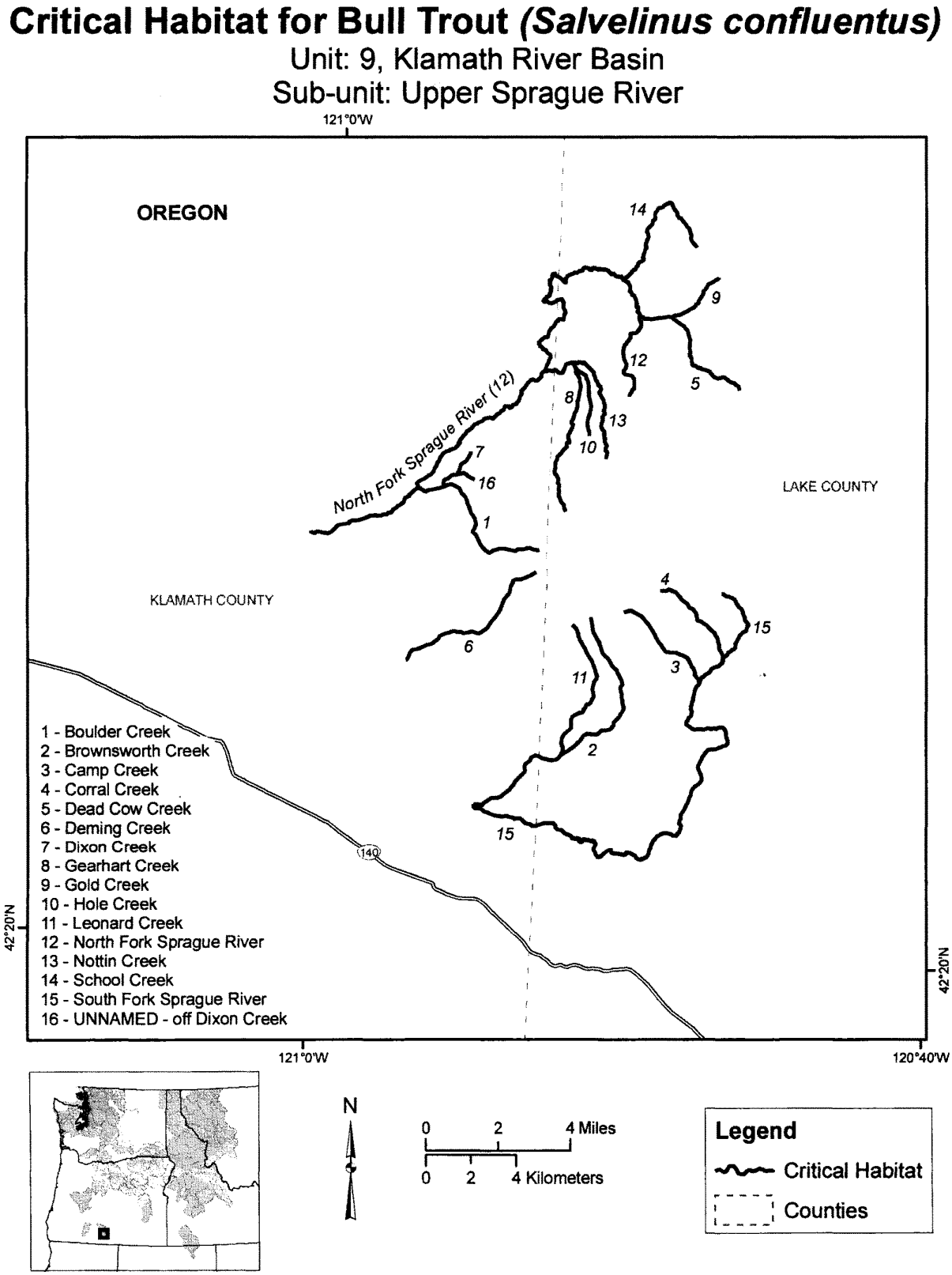
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Sycan River Subunit, follows:



(iii) Upper Sprague River Subunit.

(A) [Reserved for textual description of unit.]

(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Upper Sprague River Subunit, follows:

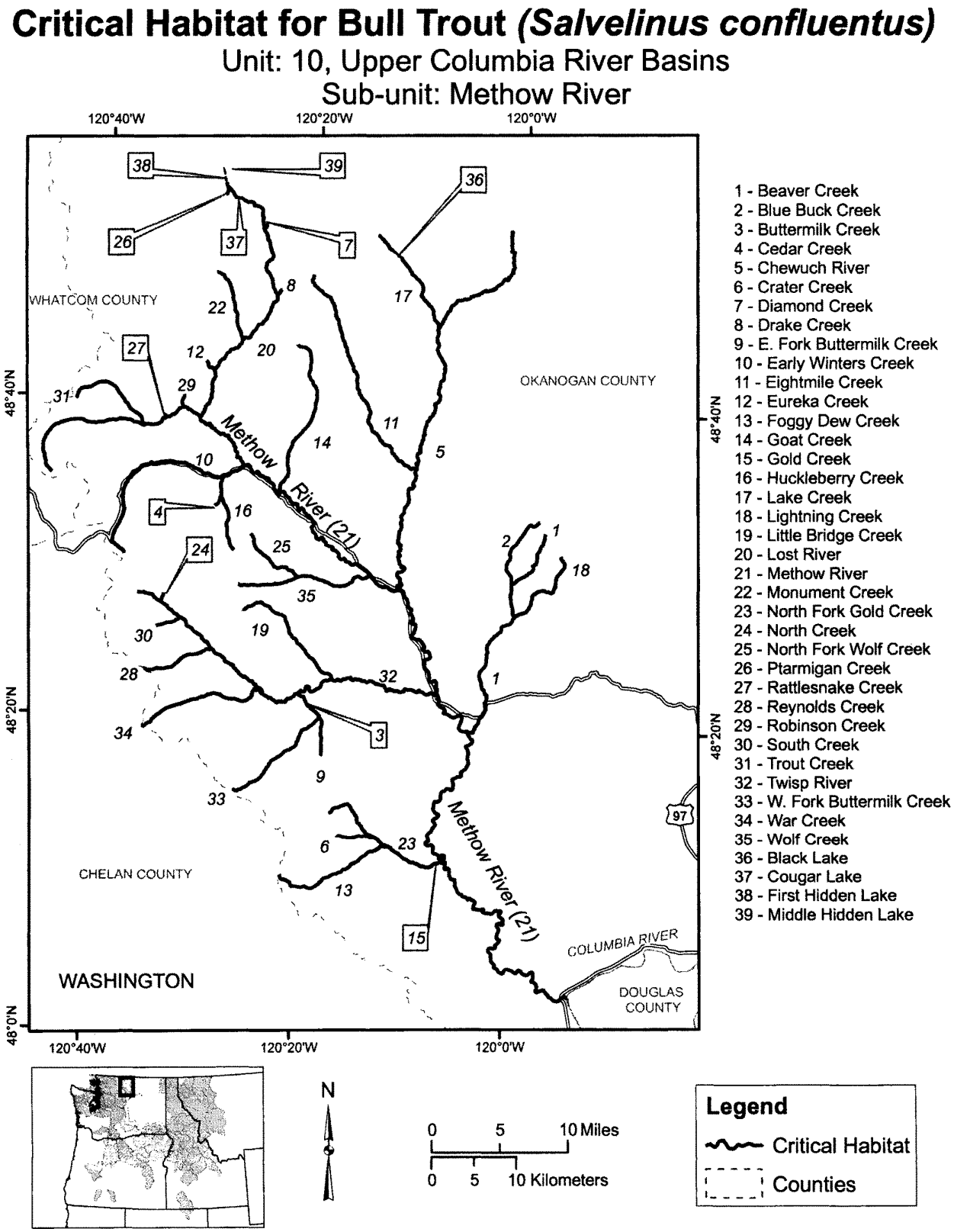


(16) Unit 10: Upper Columbia River Basins Unit, Washington.

(i) Methow River Subunit.

(A) [Reserved for textual description of unit.]

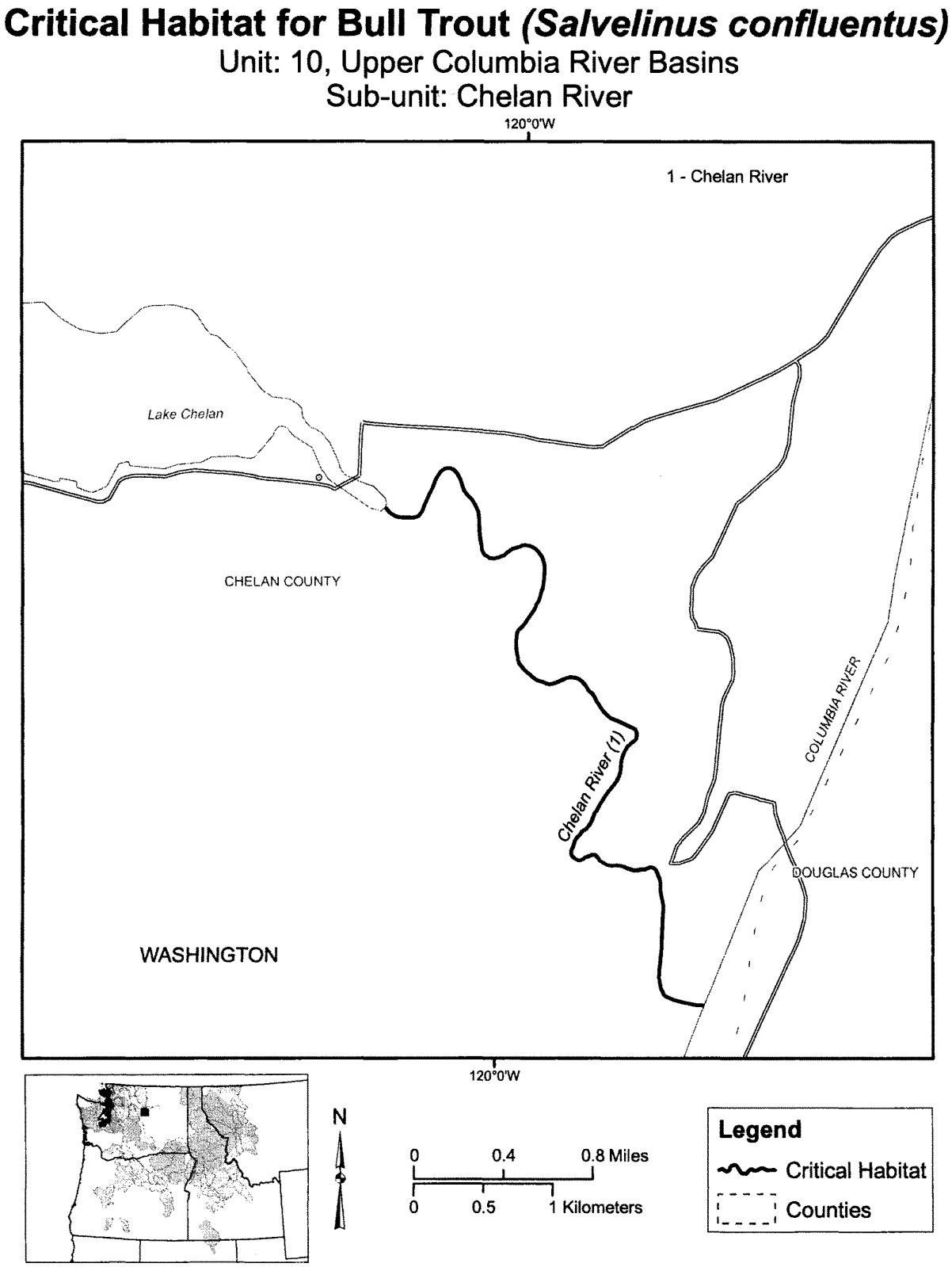
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Methow River Subunit, follows:



(ii) Chelan River Subunit.

(A) [Reserved for textual description of unit.]

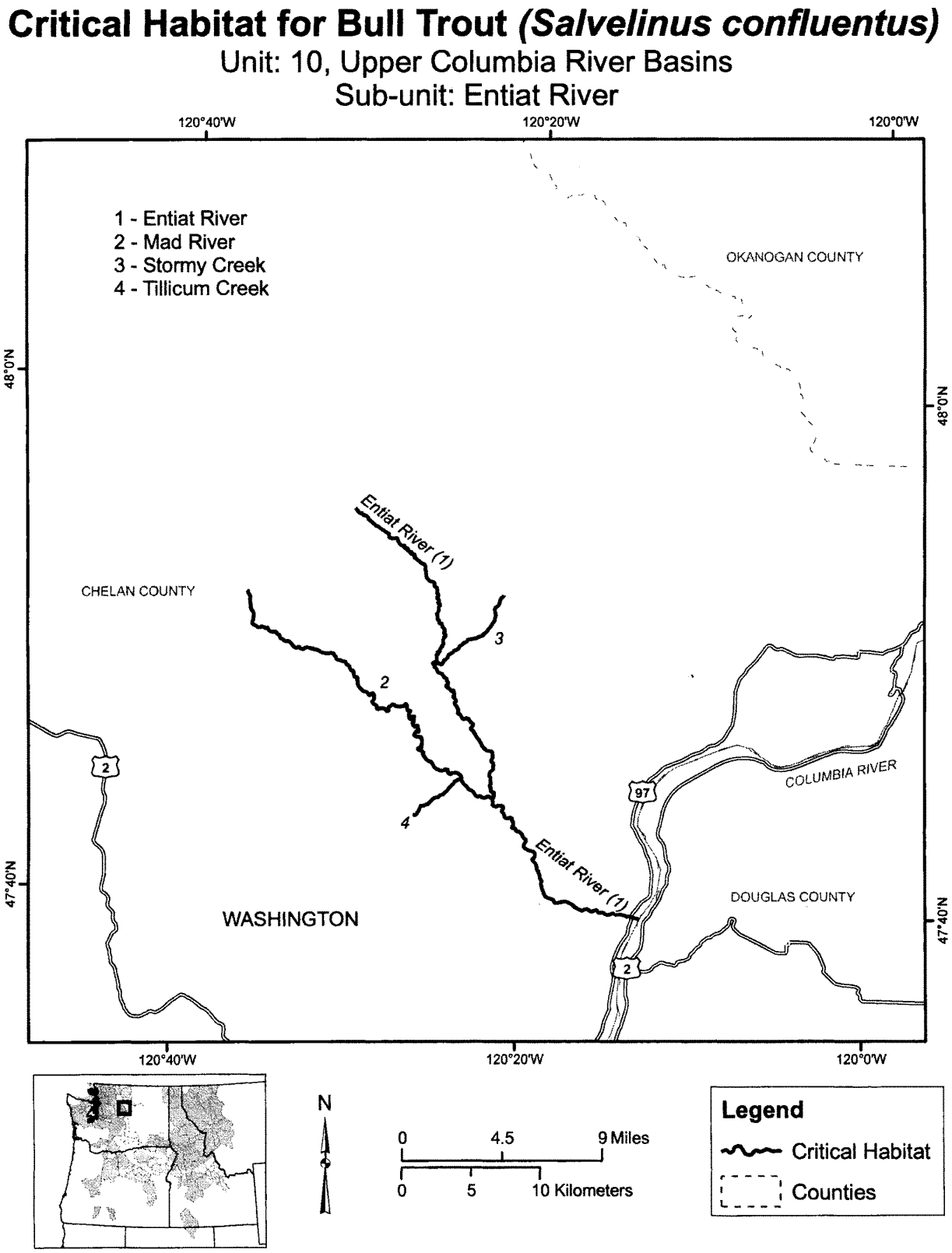
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Chelan River Subunit, follows:



(iii) Entiat River Subunit.

(A) [Reserved for textual description of unit.]

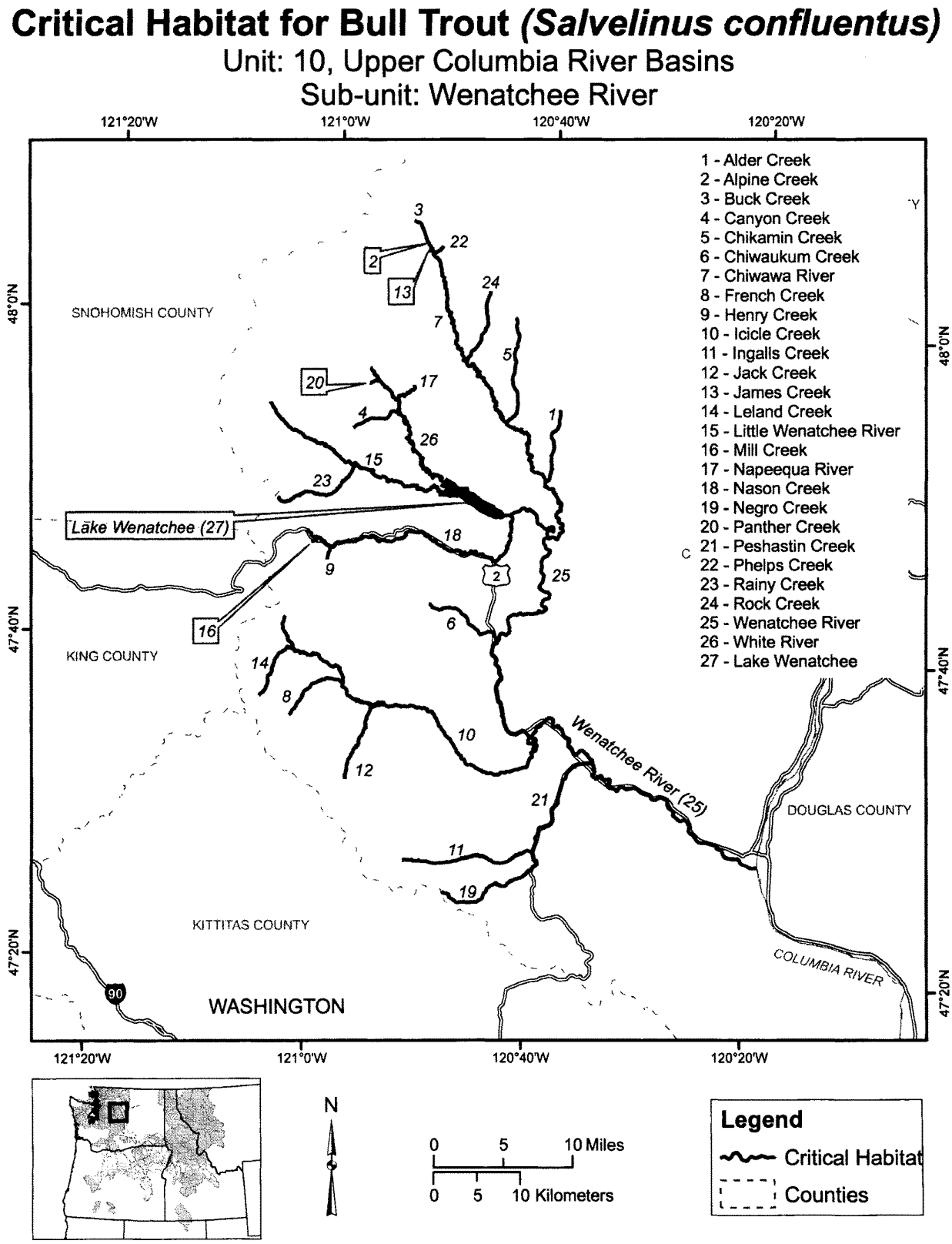
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Entiat River Subunit, follows:



(iv) Wenatchee River Subunit.

(A) [Reserved for textual description of unit.]

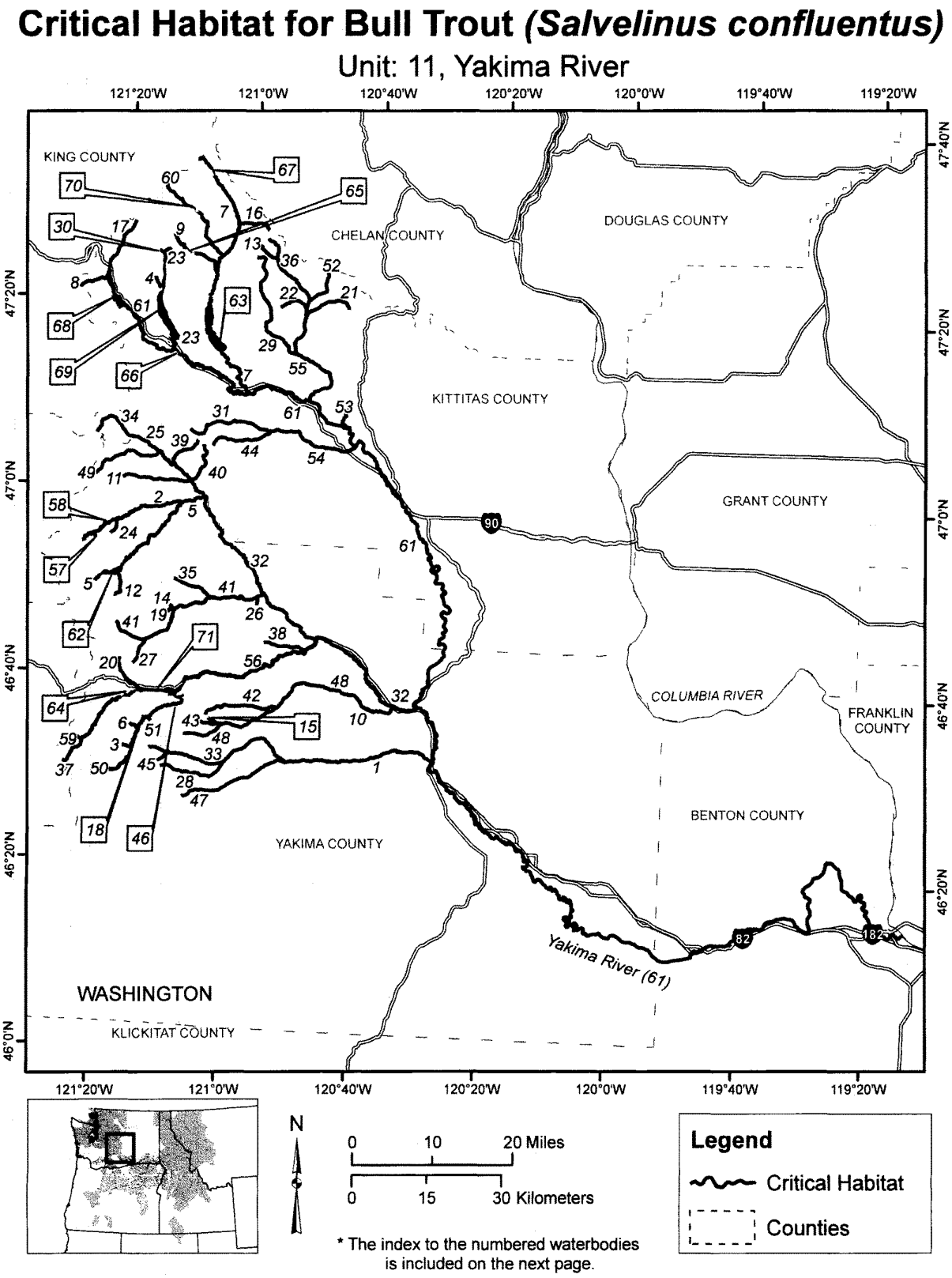
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Wenatchee River Subunit, follows:



(17) Unit 11: Yakima River Unit.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*),Yakima River Unit, follows:



Unit 11: Yakima River

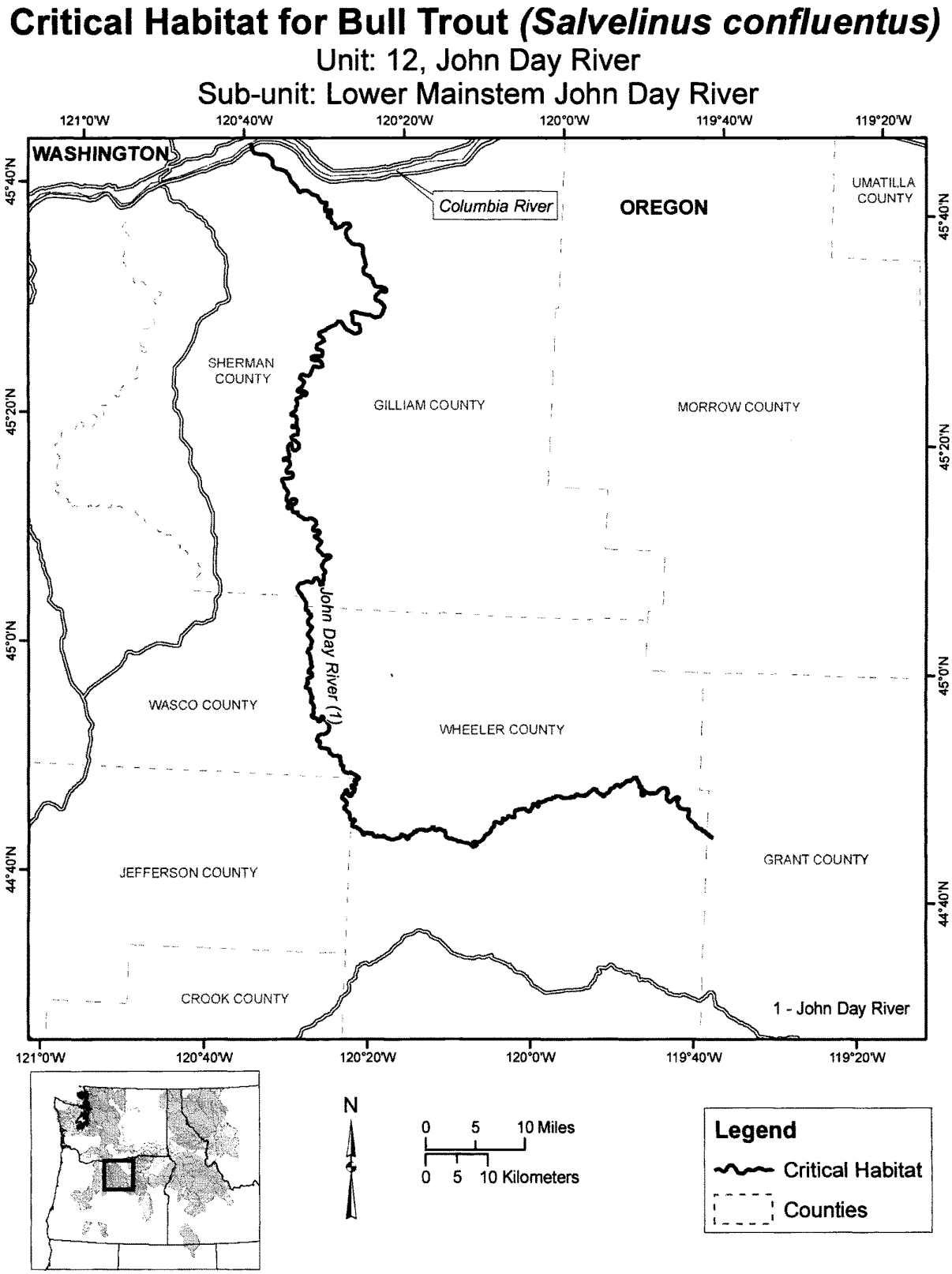
1 - Ahtanum Creek
2 - American River
3 - Bear Creek
4 - Box Canyon Creek
5 - Bumping River
6 - Camp Creek
7 - Cle Elum River
8 - Cold Creek
9 - Cooper River
10 - Cowiche Creek
11 - Crow Creek
12 - Deep Creek
13 - DeRoux Creek
14 - Dog Creek
15 - Fall Creek
16 - Fortune Creek
17 - Gold Creek
18 - Grey Creek
19 - Hindoo Creek
20 - Indian Creek
21 - Jack Creek
22 - Jungle Creek
23 - Kachess River
24 - Kettle Creek
25 - Little Naches River
26 - Little Rattlesnake Creek
27 - Little Wildcat Creek
28 - M.F. Ahtanum Creek
29 - Middle Fork Teanaway River
30 - Mineral Creek
31 - N. Fork Taneaum Creek
32 - Naches River
33 - North Fork Ahtanum Creek
34 - North Fork Little Naches River
35 - North Fork Rattlesnake Creek
36 - North Fork Teanaway River
37 - North Fork Tieton River
38 - Oak Creek
39 - Pileup Creek
40 - Quartz Creek
41 - Rattlesnake Creek
42 - Reynolds Creek
43 - Rock Creek
44 - S. Fork Taneaum Creek
45 - Shellneck Creek
46 - Short And Dirty Creek
47 - South Fork Ahtanum Creek
48 - South Fork Cowiche Creek
49 - South Fork Little Naches River
50 - South Fork Tieton River
51 - Spruce Creek
52 - Stafford Creek
53 - Swauk Creek
54 - Taneaum Creek
55 - Teanaway River
56 - Tieton River
57 - Timber Creek
58 - Union Creek
59 - Unnamed stream
60 - Waptus River
61 - Yakima River
62 - Bumping Lake
63 - Cle Elum Lake
64 - Clear Lake
65 - Cooper Lake
66 - Easten Lake
67 - Hyas Lake
68 - Kachess Lake
69 – Keechelus Lake
70 - Waptus Lake
71 - Rimrock Lake

(18) Unit 12: John Day River Unit, Oregon.

(i) Lower Mainstem John Day River Subunit.

(A) [Reserved for textual description of unit.]

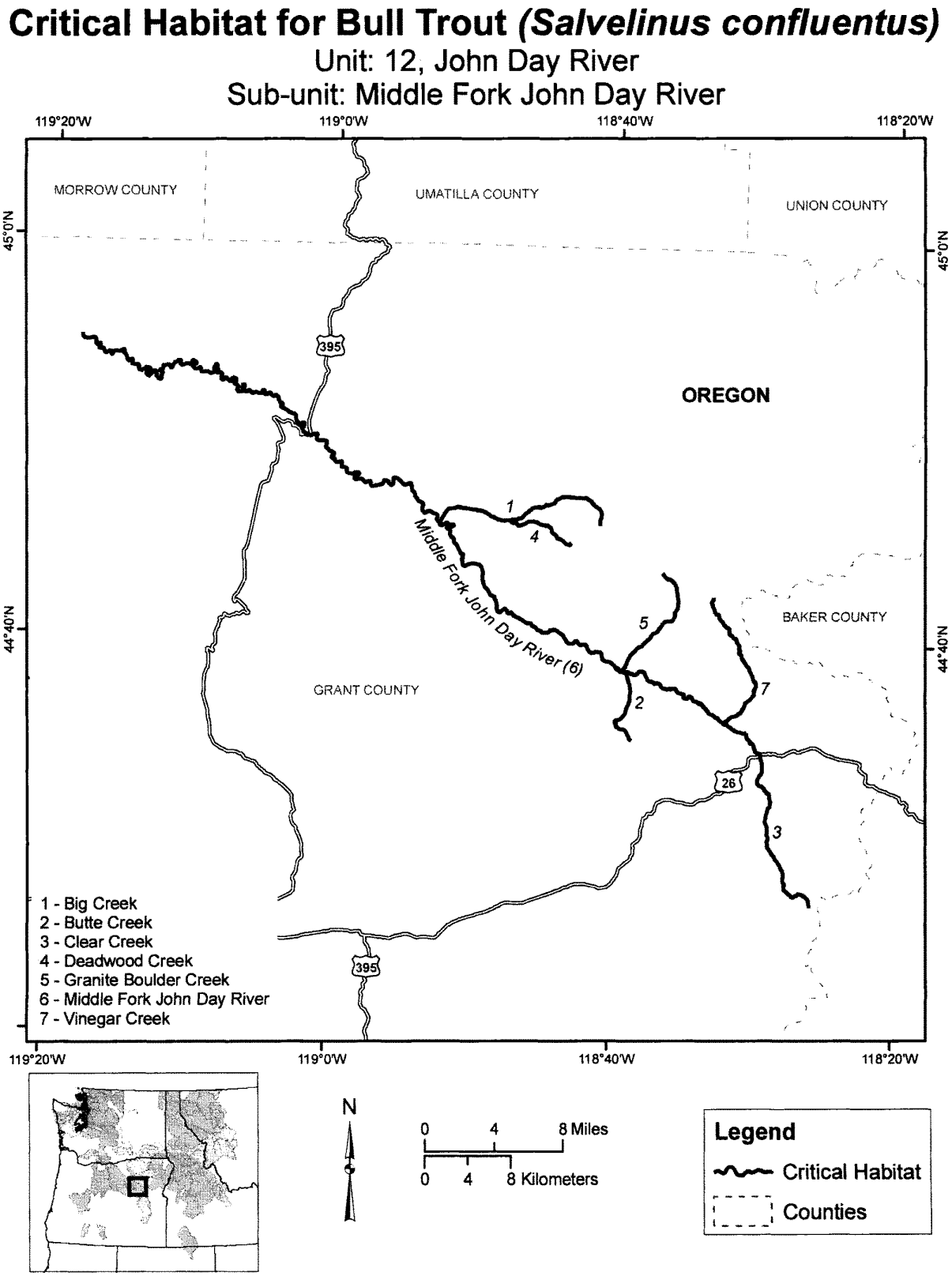
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Lower Mainstem John Day River Subunit follows:



(ii) Middle Fork John Day River Subunit.

(A) [Reserved for textual description of unit.]

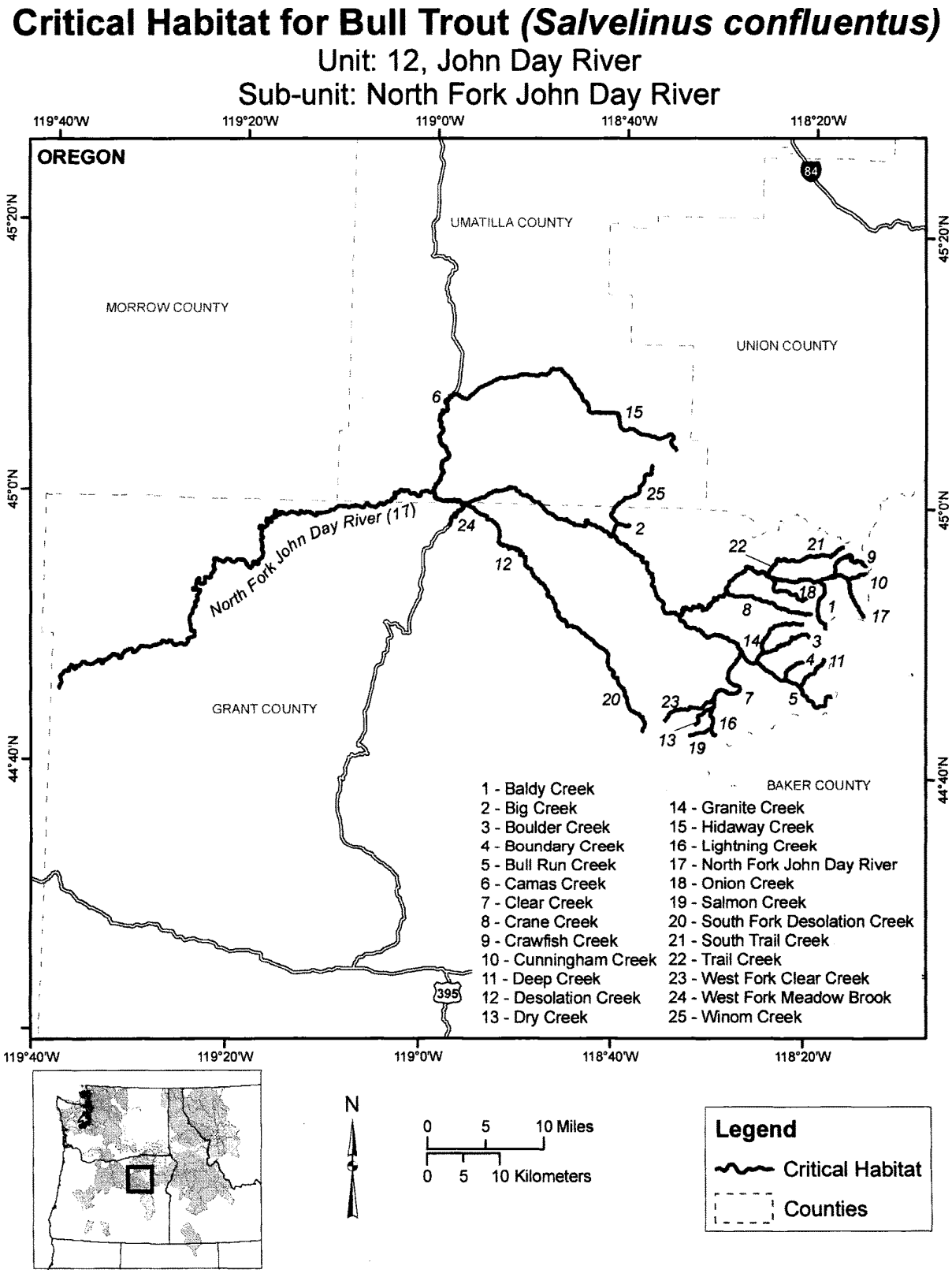
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Middle Fork John Day River Subunit follows:



(iii) North Fork John Day River Subunit

(A) [Reserved for textual description of unit.]

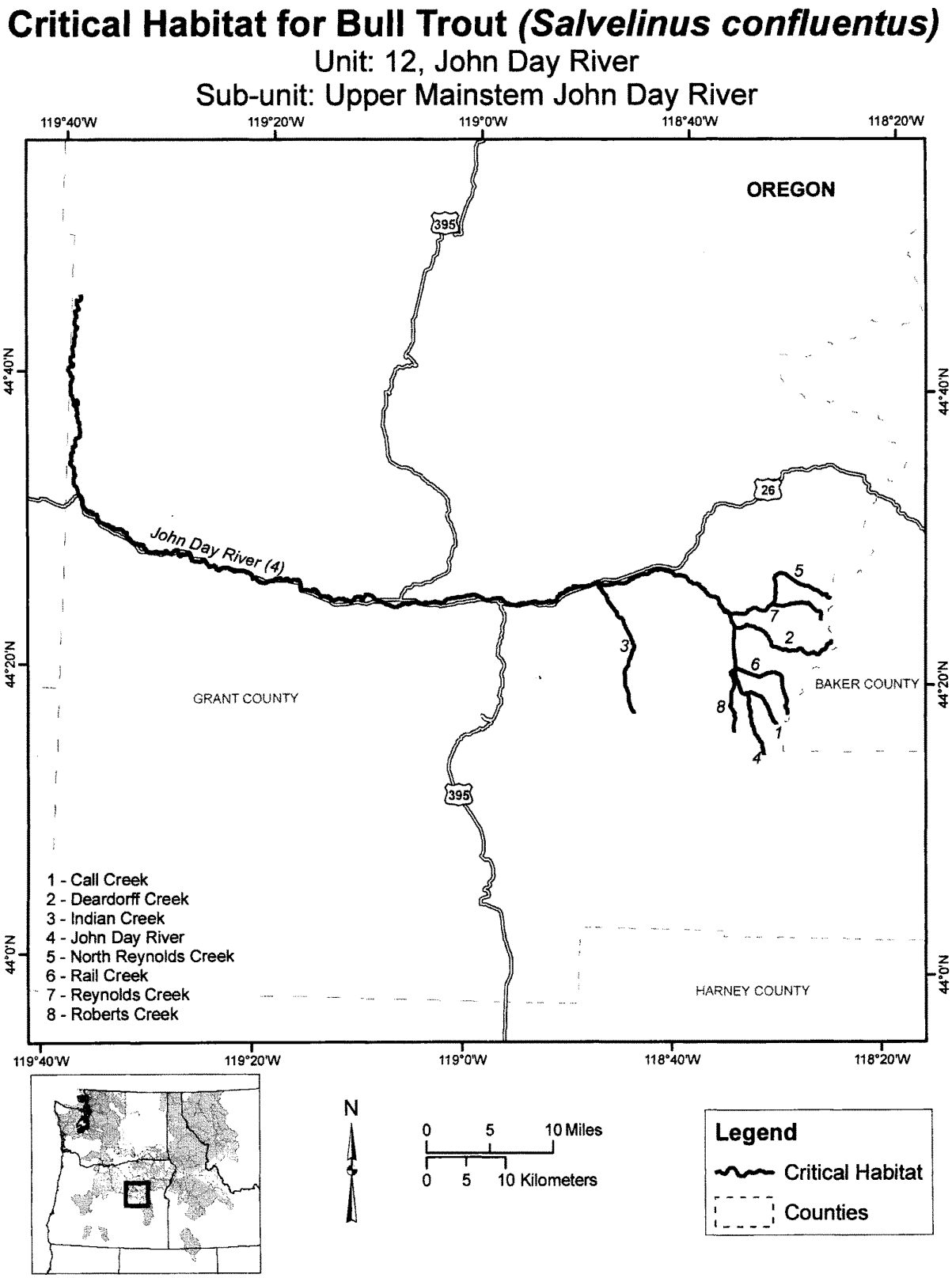
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), North Fork John Day River Subunit, follows



(iv) Upper Mainstem John Day River Subunit.

(A) [Reserved for textual description of unit.]

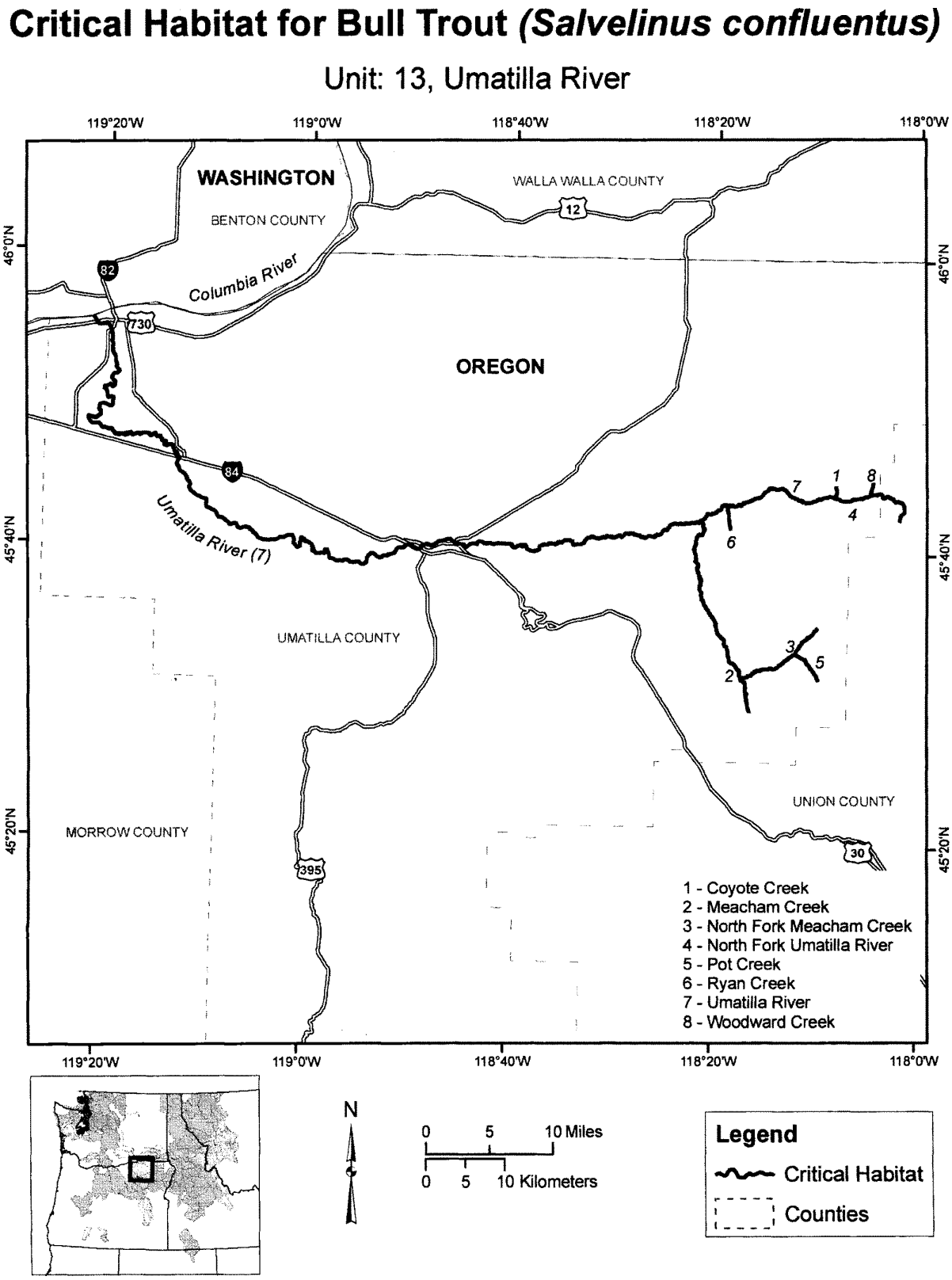
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Upper Mainstem John Day River Subunit, follows:



(19) Unit 13: Umatilla River Unit, Oregon.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Umatilla River Unit, follows:

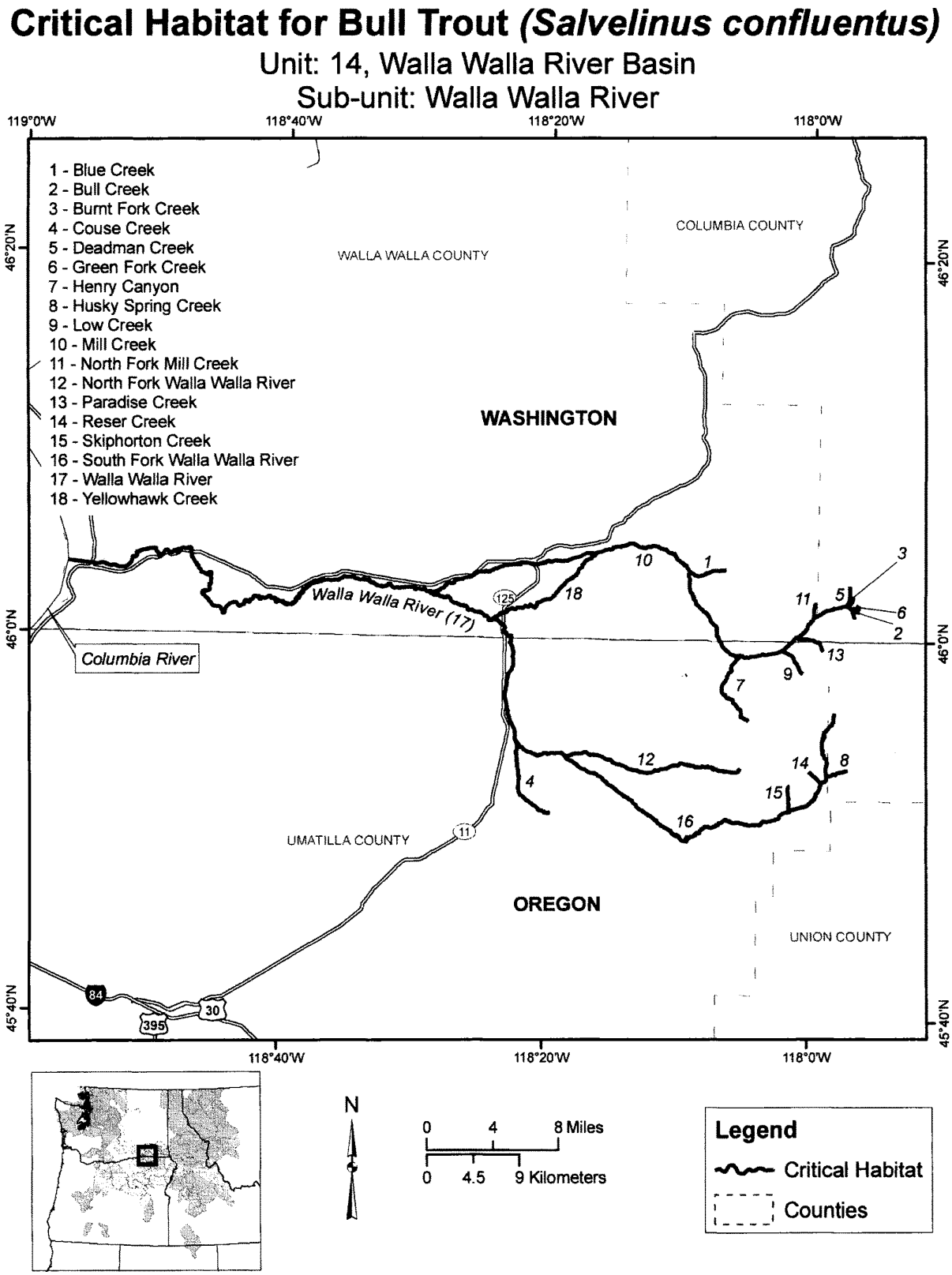


(20) Unit 14: Walla Walla River Basin Critical Habitat Unit, Oregon and Washington.

(i) Walla Walla River Subunit.

(A) [Reserved for textual description of unit.]

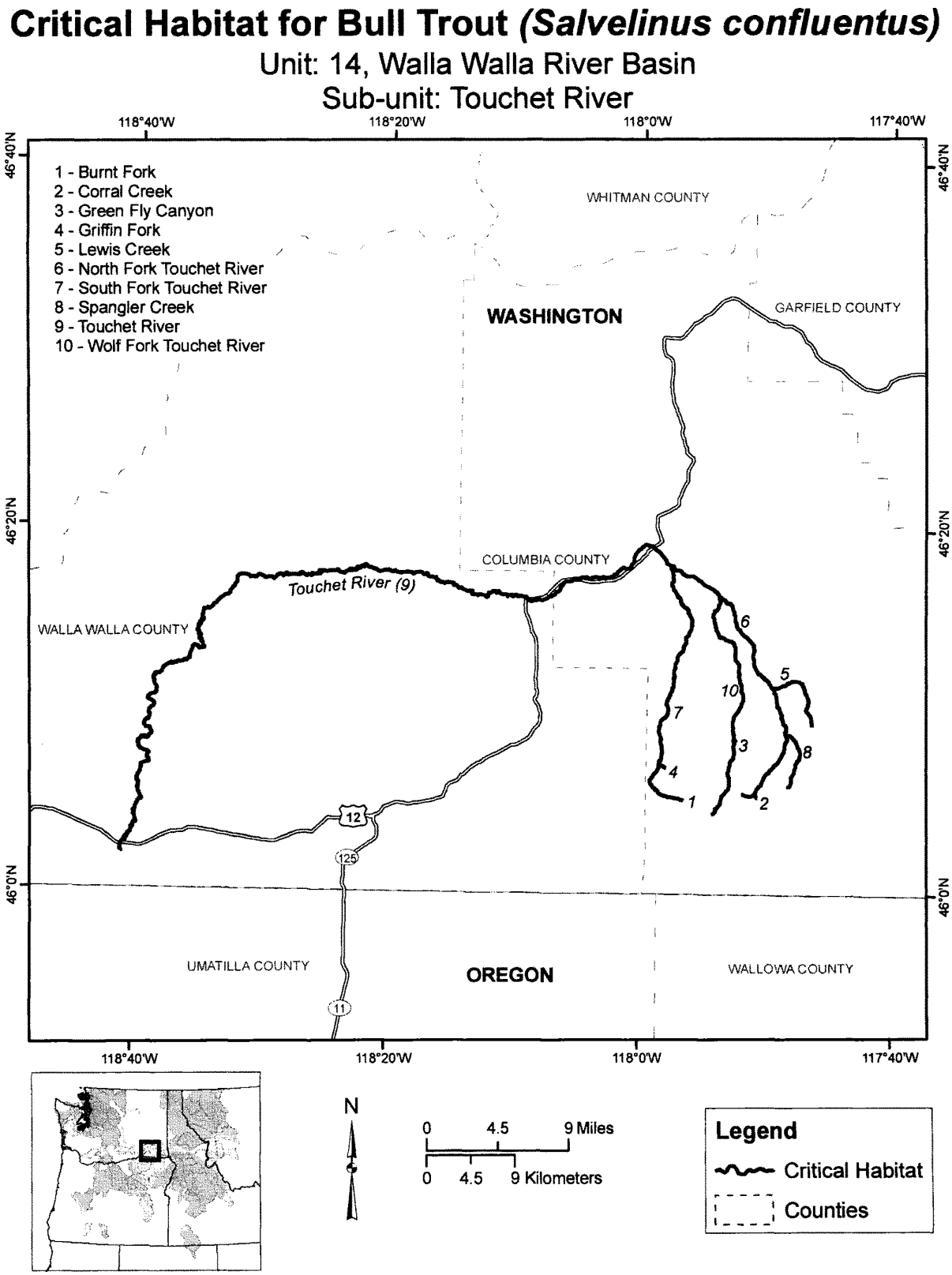
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Walla Walla River Subunit, follows:



(ii) Touchet River Subunit.

(A) [Reserved for textual description of unit.]

(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Touchet River Subunit, follows:

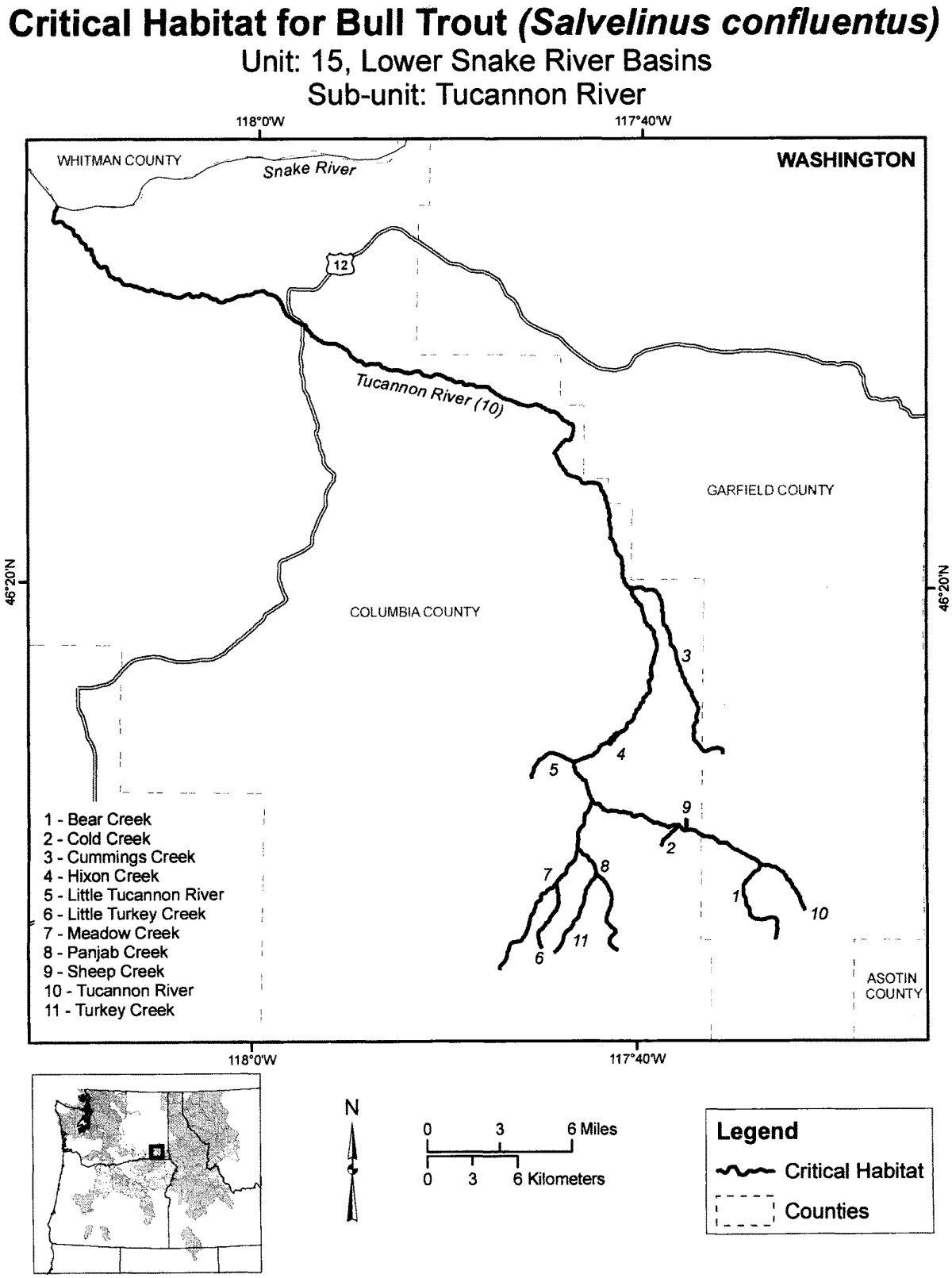


(21) Unit 15: Lower Snake River Basins Unit, Washington.

(i) Tucannon River Subunit.

(A) [Reserved for textual description of unit.]

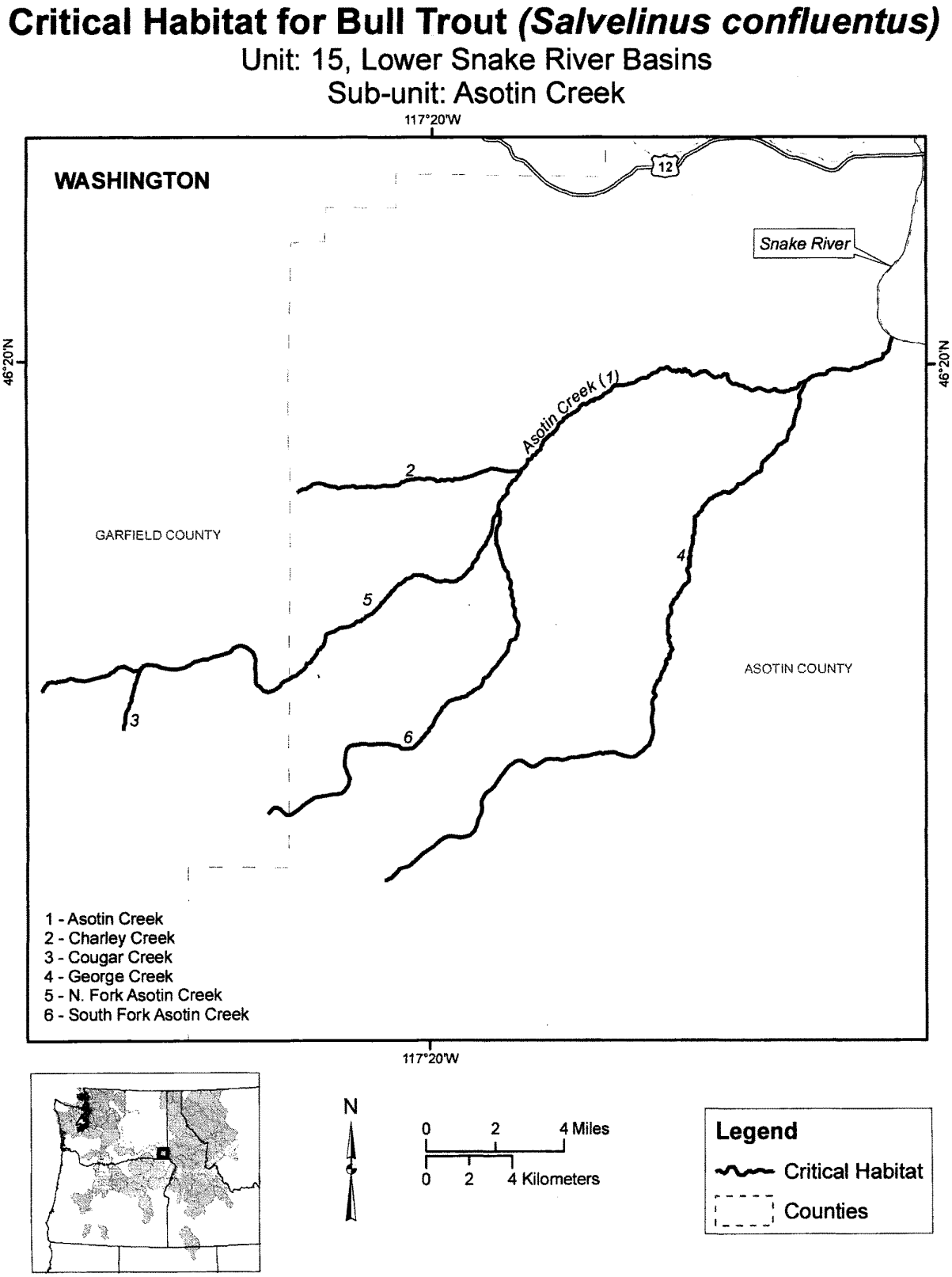
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Tucannon River Subunit, follows:



(ii) Asotin Creek Subunit.

(A) [Reserved for textual description of unit.]

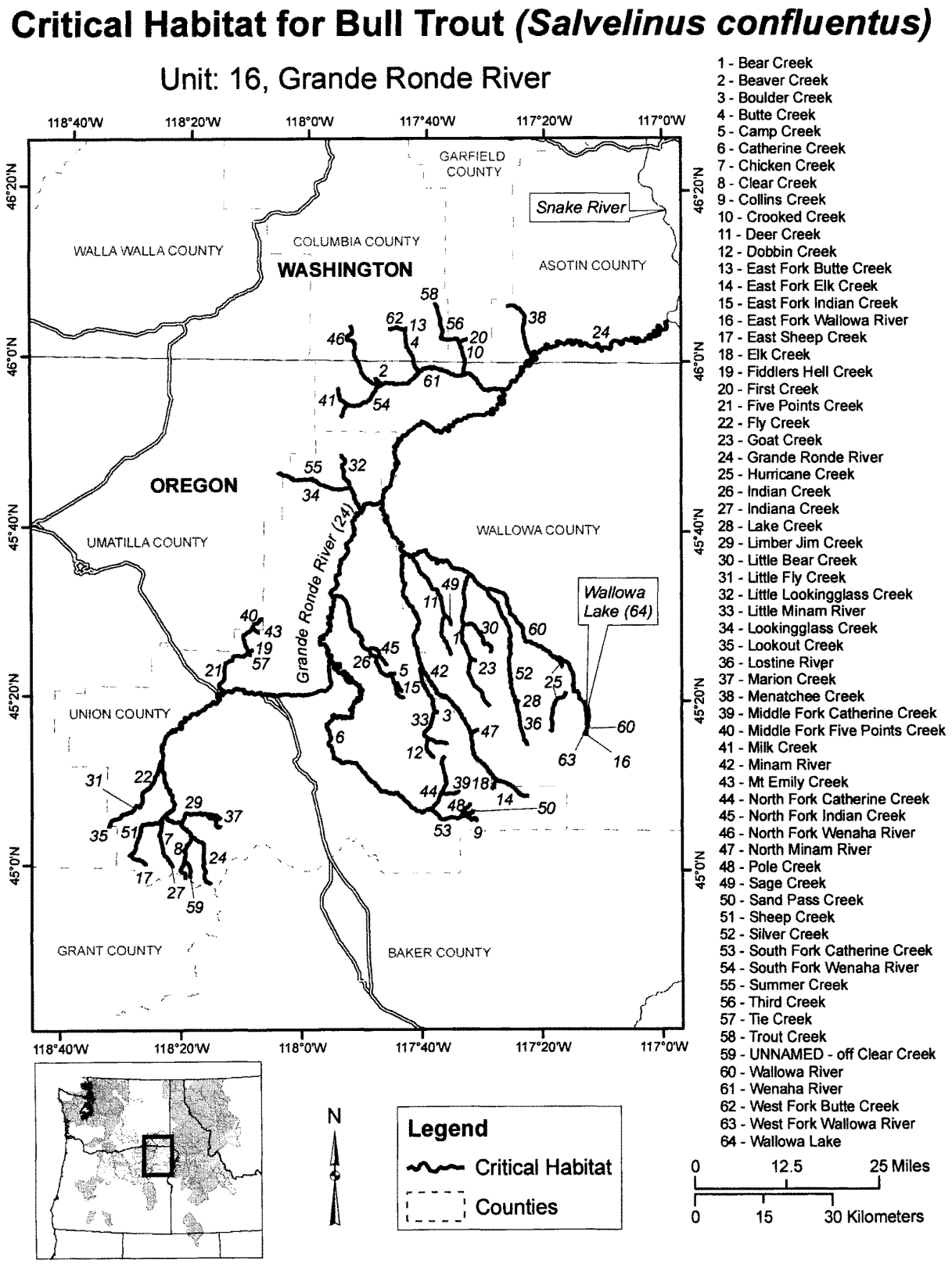
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Asotin Creek Subunit, follows:



(22) Unit 16: Grande Ronde River Unit, Oregon and Washington.

(i) [Reserved for textual description of unit.]

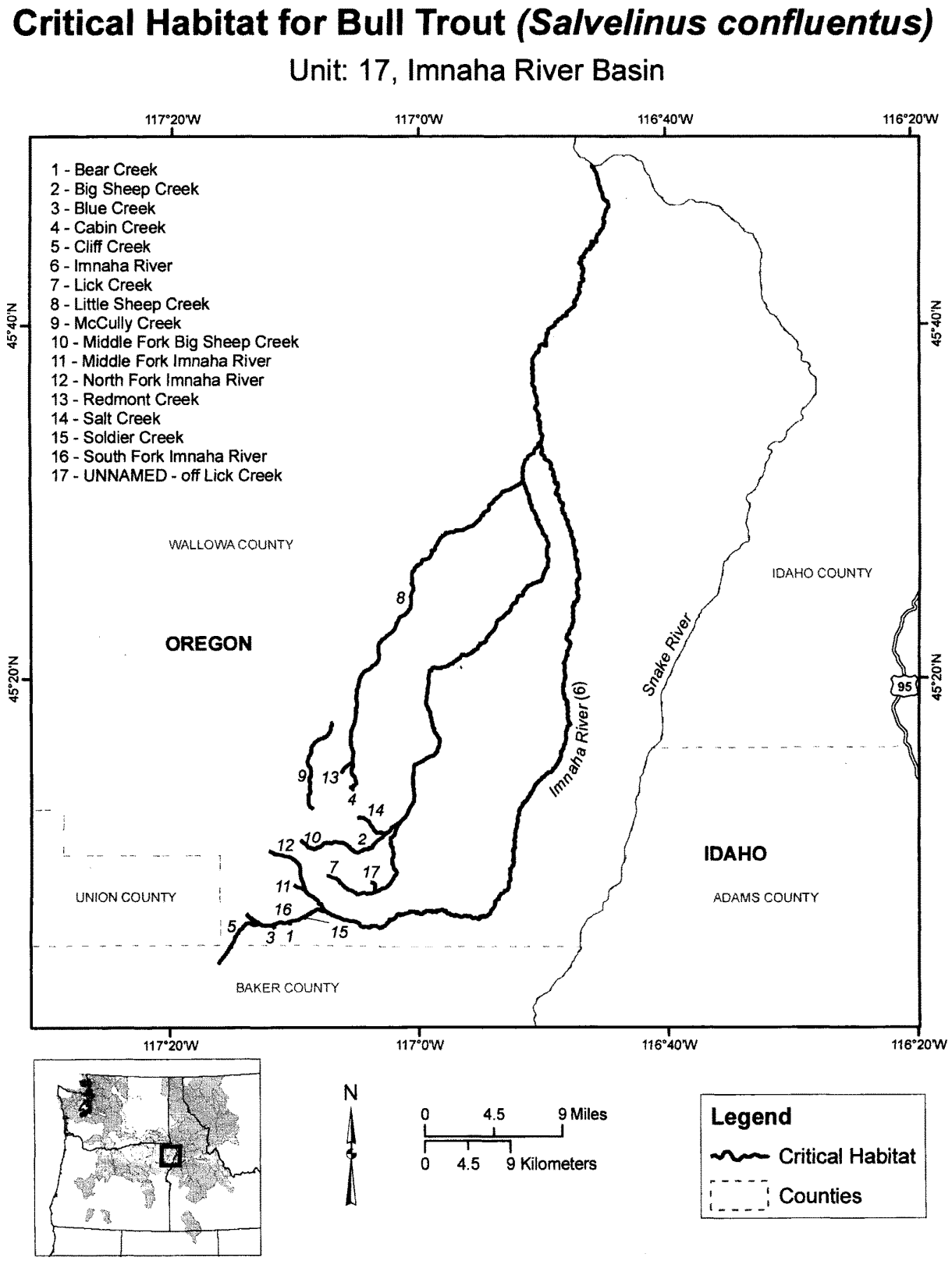
(ii) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Grande Ronde River Unit, follows:



(23) Unit 17: Imnaha River Unit, Oregon.

(i) [Reserved for textual description of unit.]

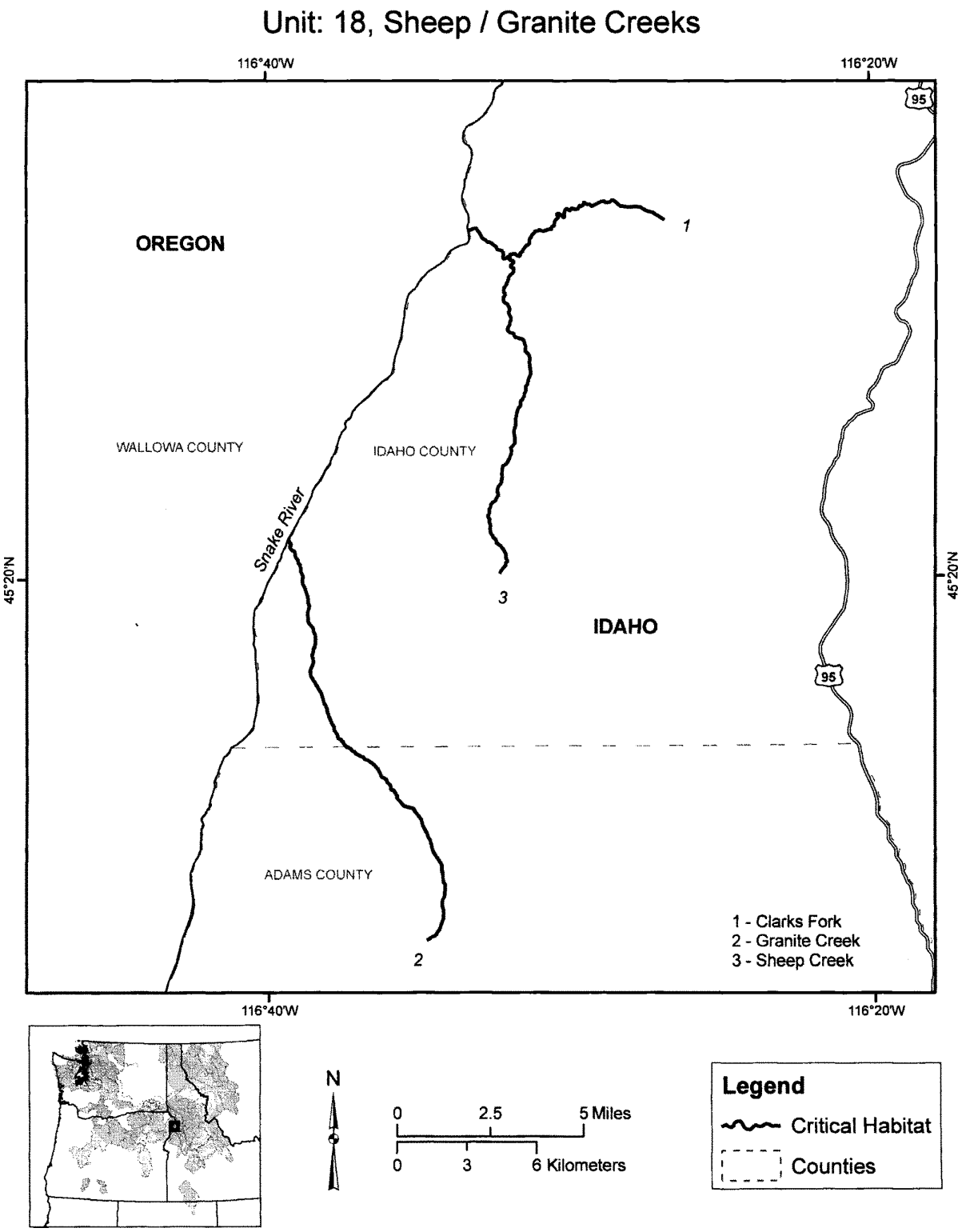
(ii) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Imnaha River Unit, follows:



(24) Unit 18: Sheep and Granite Creeks Unit, Idaho.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Sheep and Granite Creeks Unit, follows:

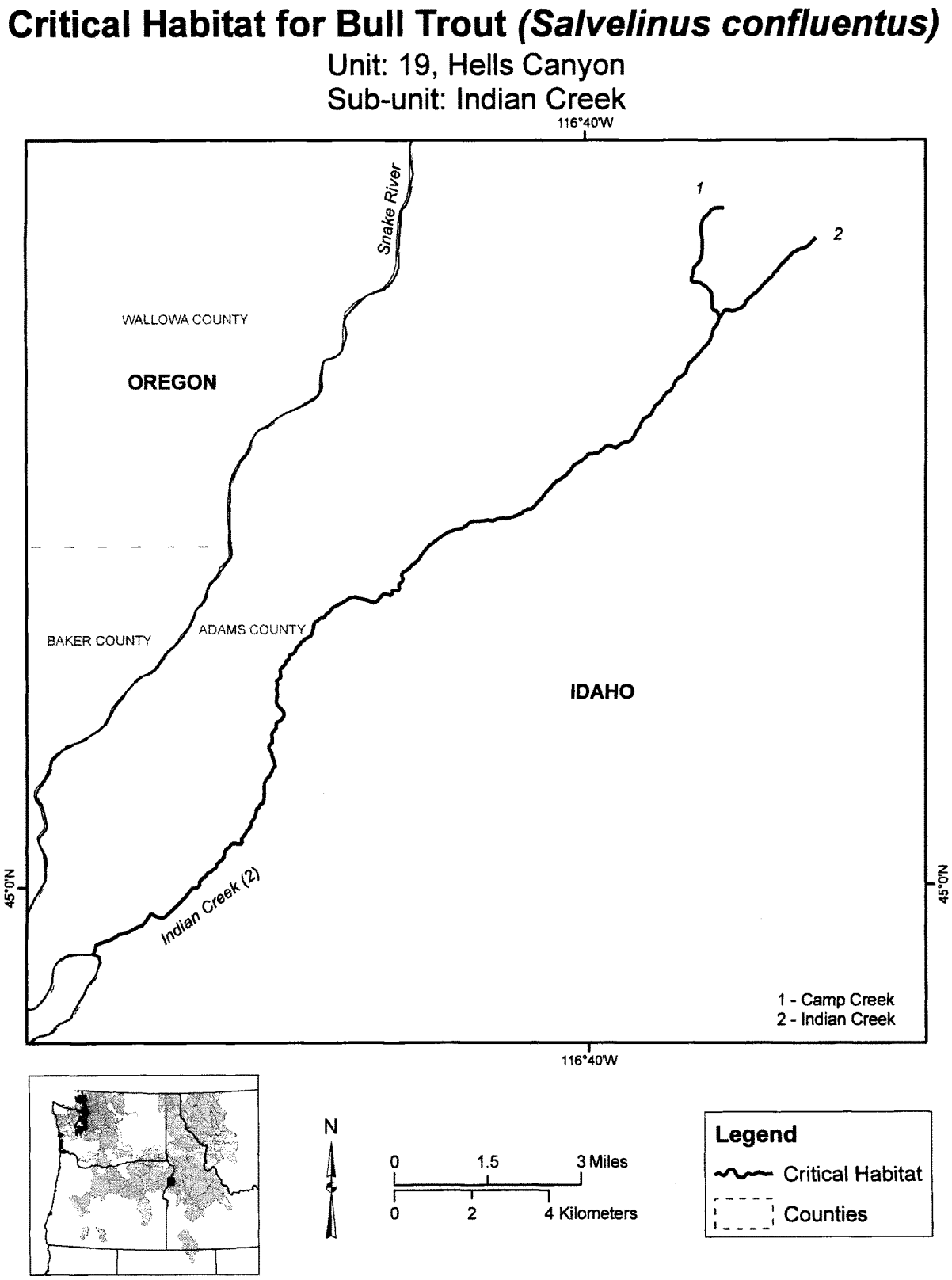


(25) Unit 19: Hells Canyon Complex Unit, Oregon.

(i) Indian Creek Subunit.

(A) [Reserved for textual description of unit.]

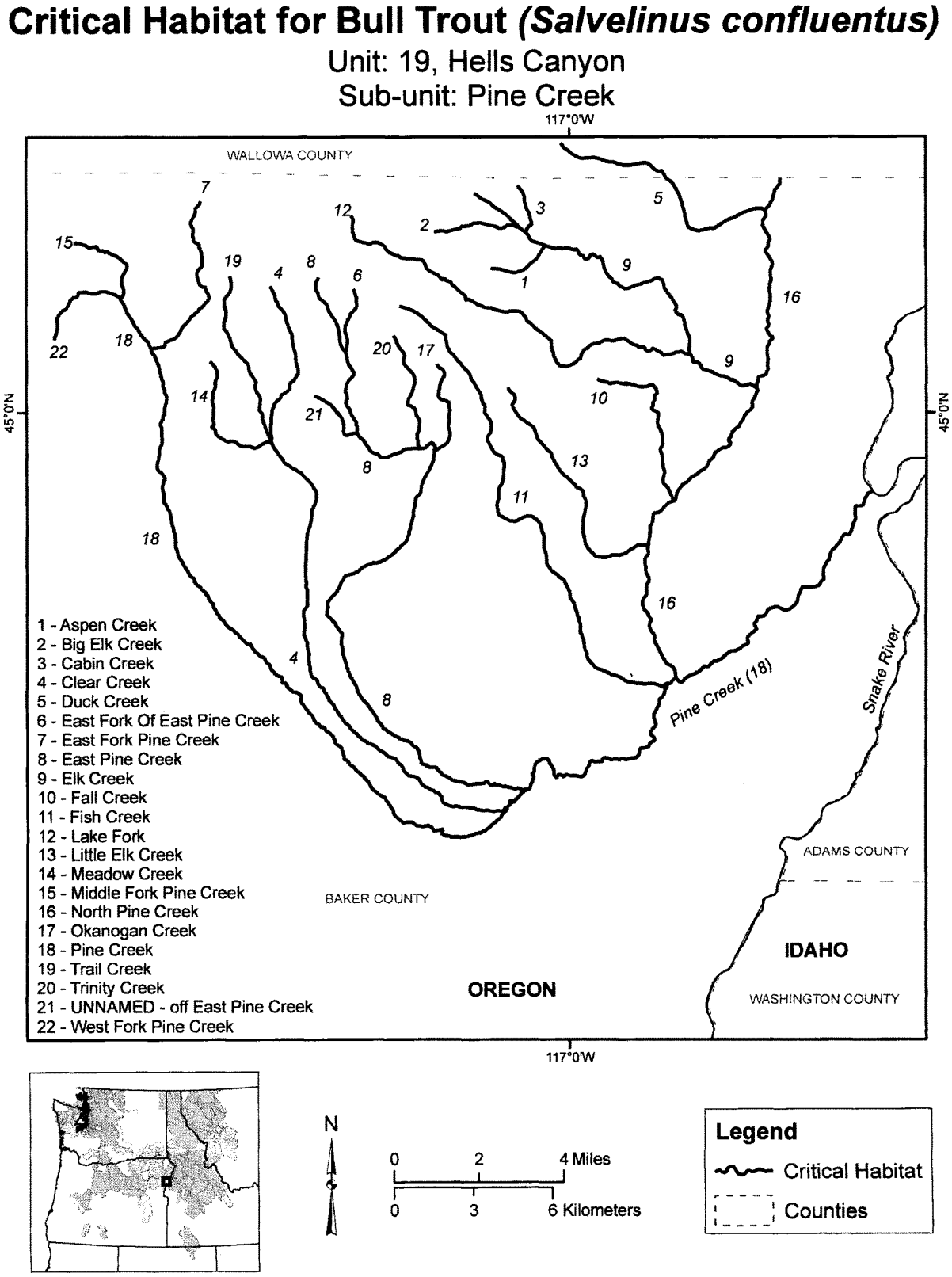
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Indian Creek Subunit, follows:



(ii) Pine Creek Subunit.

(A) [Reserved for textual description of unit.]

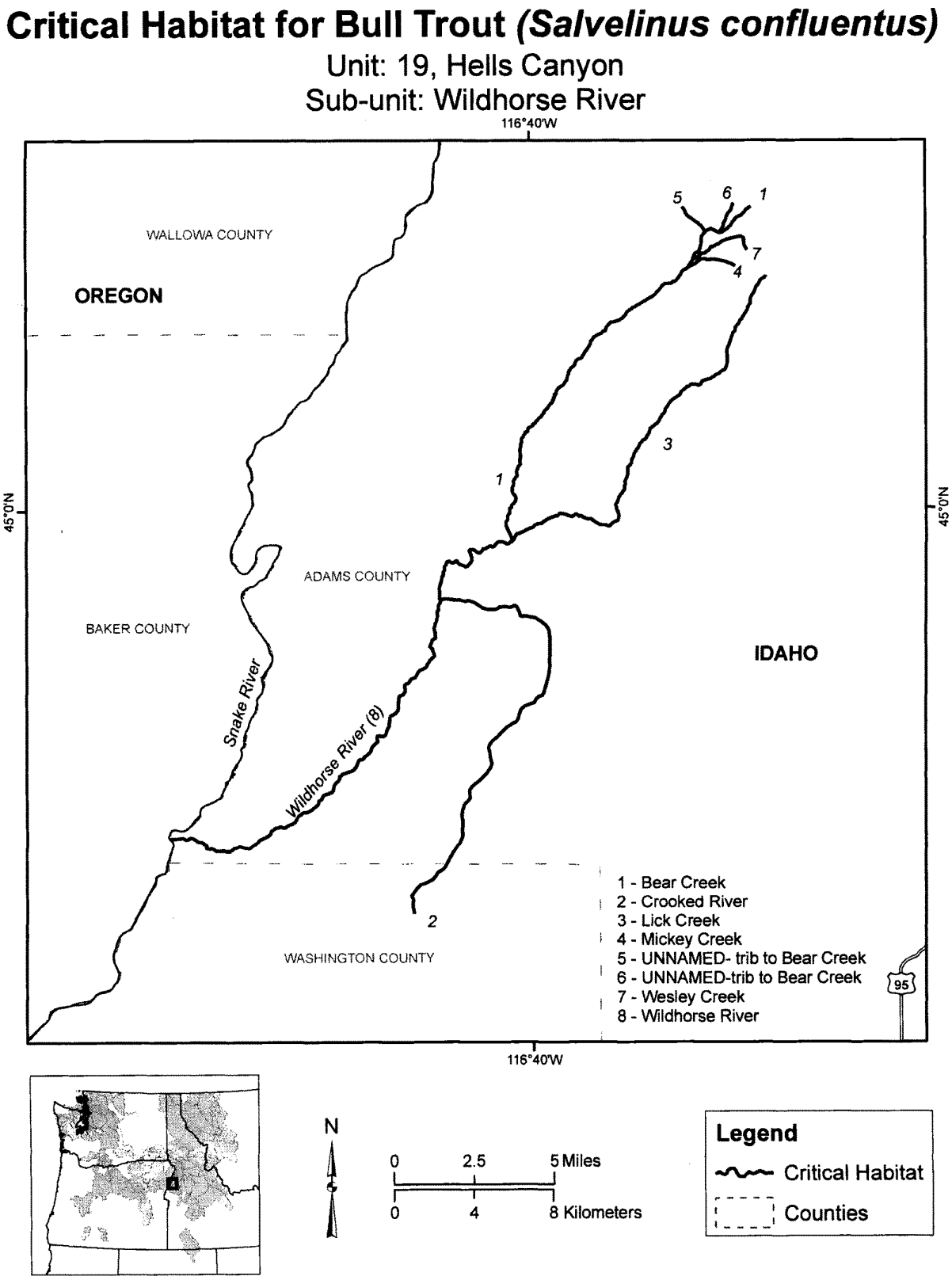
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Pine Creek Subunit, follows:



(iii) Wildhorse River Subunit.

(A) [Reserved for textual description of unit.]

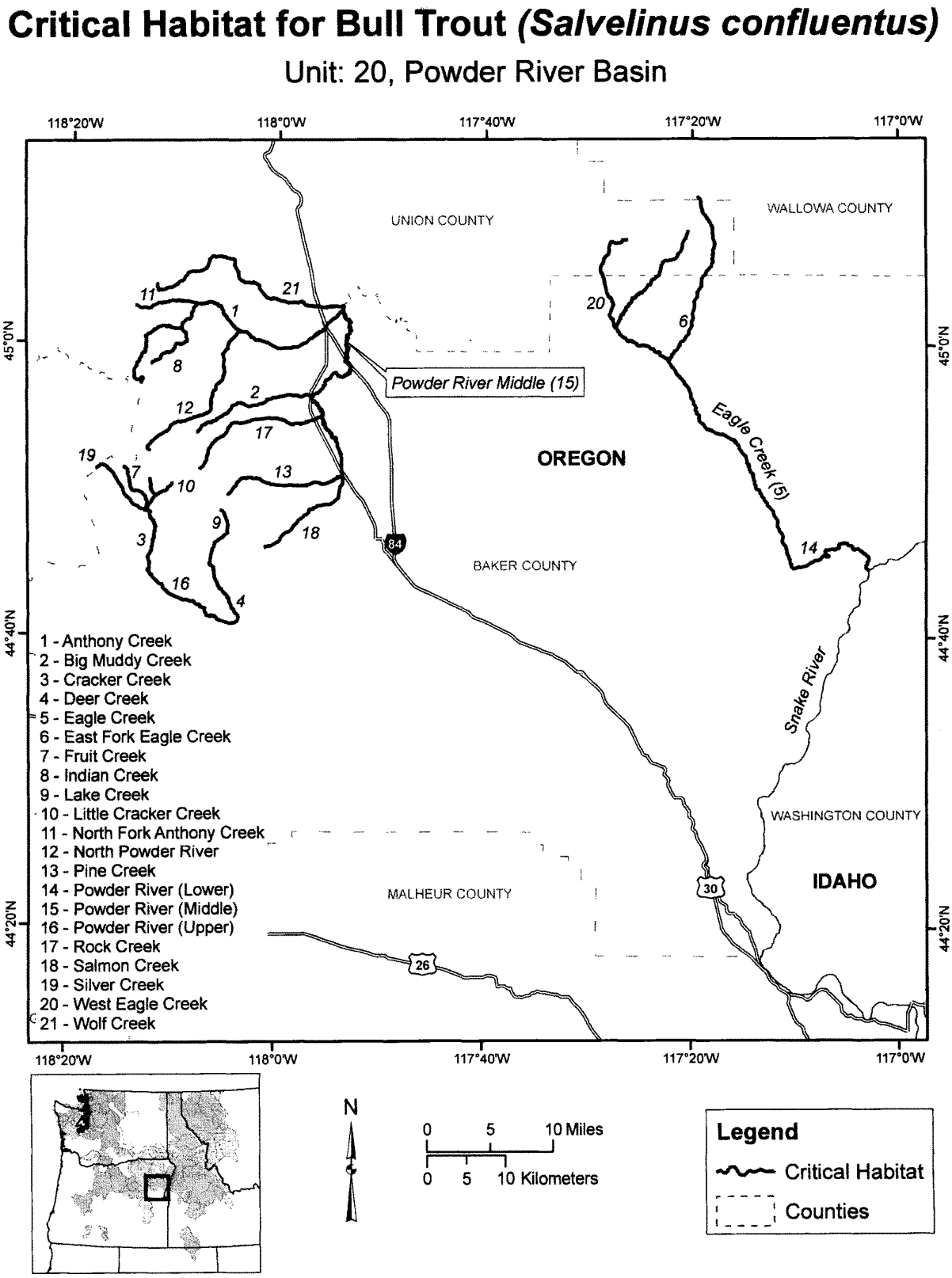
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Wildhorse River Subunit, follows:



(26) Unit 20: Powder River Basin Unit, Oregon.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Powder River Basin Unit, follows:

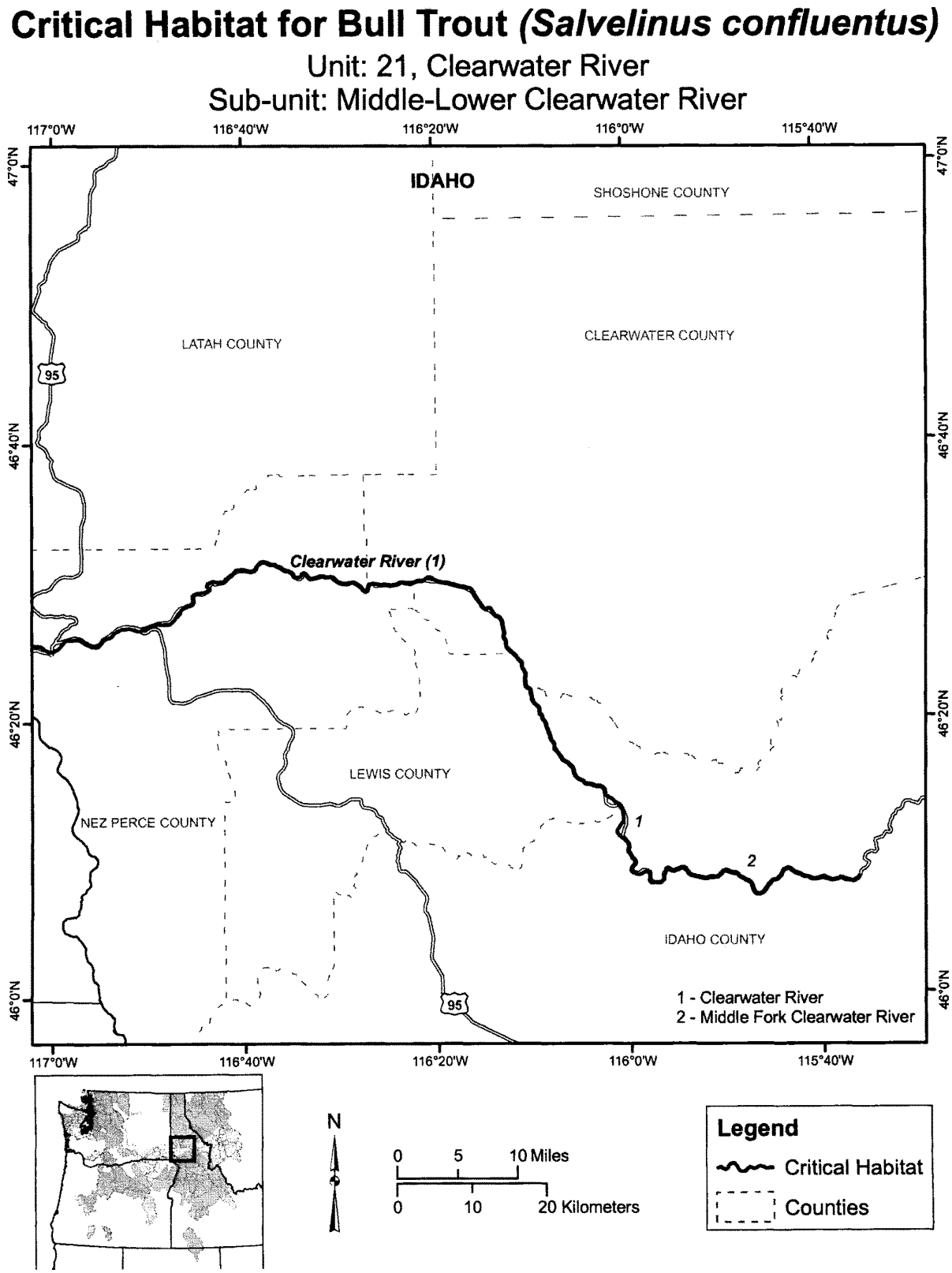


(27) Unit 21: Clearwater River Unit, Idaho.

(i) Middle–Lower Fork Clearwater River Subunit

(A) [Reserved for textual description of unit.]

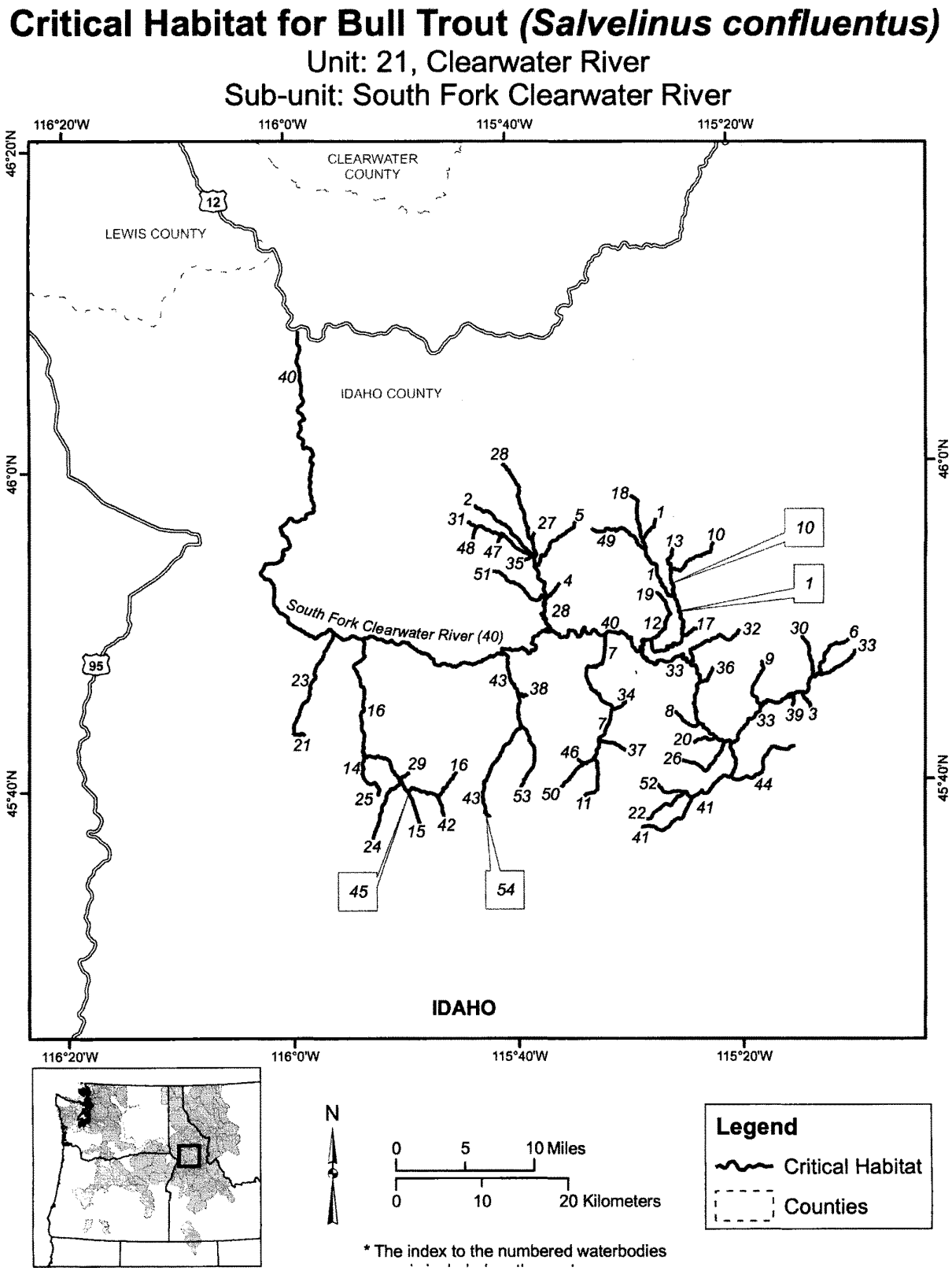
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Middle–Lower Fork Clearwater River Subunit, follows:



(ii) South Fork Clearwater River Subunit.

(A) [Reserved for textual description of unit.]

(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), South Fork Clearwater River Subunit, follows:



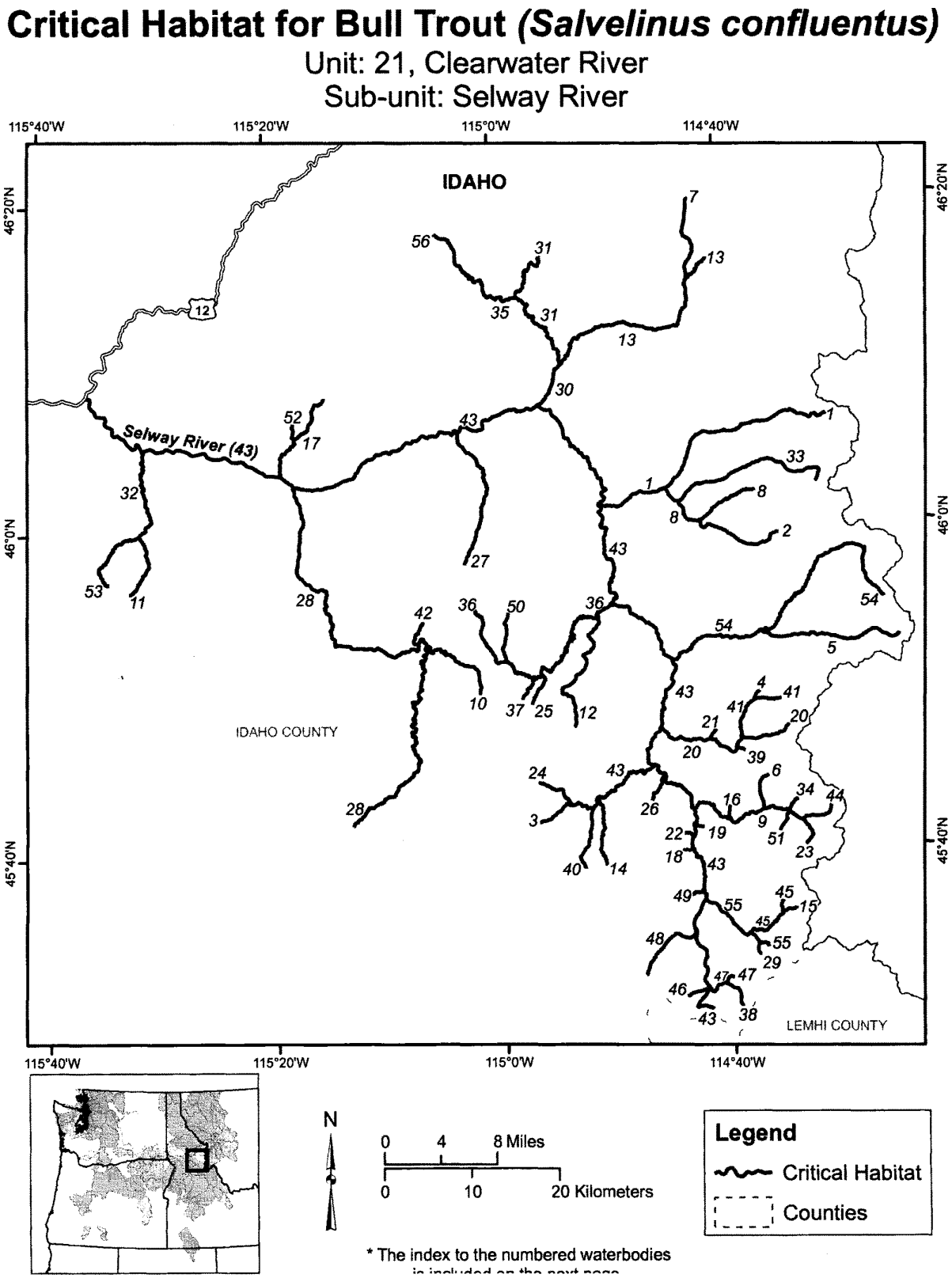
Unit: 21, Clearwater River
Sub-unit: South Fork Clearwater River

1 - American River
2 - Baldy Creek
3 - Baston Creek
4 - Bear Creek
5 - Beaver Creek
6 - Bridge Creek
7 - Crooked River
8 - Dawson Creek
9 - Ditch Creek
10 - E.Fk. American River
11 - East Fork Crooked River
12 - Elk Creek
13 - Flint Creek
14 - Gospel Creek
15 - Hagen Creek
16 - Johns Creek
17 - Kirks Fk. American River
18 - Lick Creek
19 - Little Elk Creek
20 - Little Moose Creek
21 - Melton Creek
22 - Middle Fork.Red River
23 - Mill Creek
24 - Moores Creek
25 - Moores Lake Creek
26 - Moose Butte Creek
27 - Mule Creek
28 - Newsome Creek
29 - Open Creek
30 - Otterson Creek
31 - Pilot Creek
32 - Red Horse Creek
33 - Red River
34 - Relief Creek
35 - Sawmill Creek
36 - Siegel Creek
37 - Silver Creek
38 - Sixmile Creek
39 - Soda Creek
40 - South Fork Clearwater River
41 - South Fork Red River
42 - Taylor Creek
43 - Tenmile Creek
44 - Trapper Creek
45 - Twin Lakes Creek
46 – UNNAMED - off West Fork Crooked River
47 - UNNAMED 1 - off Pilot Creek
48 - UNNAMED 2 - off Pilot Creek
49 - W.Fk. American River
50 - West Fork Crooked River
51 - West Fork Newsome Creek
52 - West Fork Red River
53 - Williams Creek
54 - Wiseboy Creek

(iii) Selway River Subunit.

(A) [Reserved for textual description of unit.]

(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Selway River Subunit, follows:



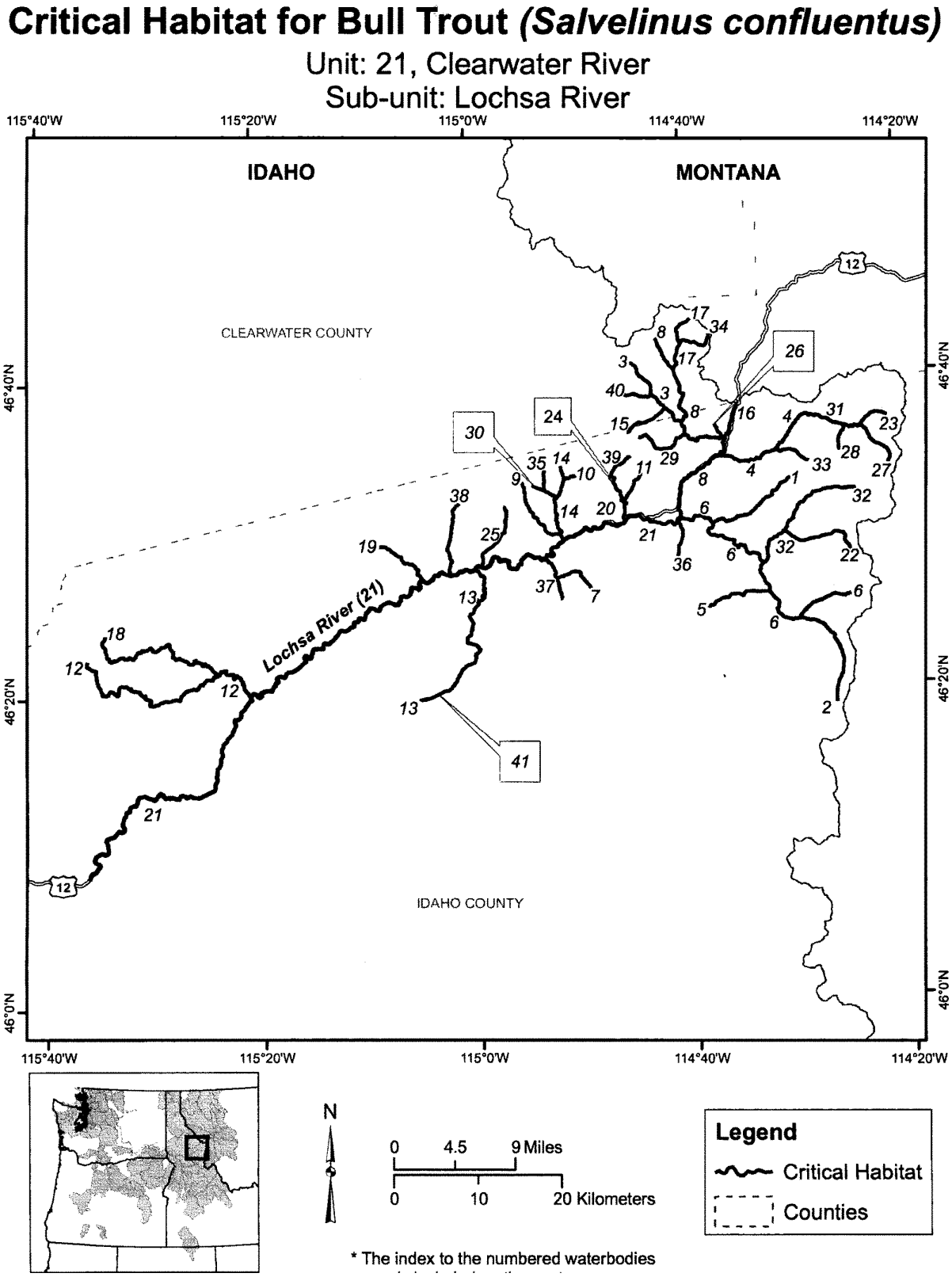
Unit: 21, Clearwater River
Sub-unit: Selway River

1 - Bear Creek
2 - Brushy Fork Creek
3 - Burnt Knob Creek
4 - Burnt Strip Creek
5 - Canyon Creek
6 - Cayuse Creek
7 - Cedar Creek
8 - Cub Creek
9 - Deep Creek
10 - E.Fk. Meadow Creek
11 - E.Fk. O'Hara Creek
12 - Eagle Creek
13 - East Fork Moose Creek
14 - Flat Creek
15 - French Creek
16 - Gabe Creek
17 - Gedney Creek
18 - Gold Pan Creek
19 - Hells Half Acre Creek
20 - Indian Creek
21 - Jack Creek
22 - Kim Creek
23 - Lazy Creek
24 - Little Clearwater River
25 - Lynx Creek
26 - Magruder Creek
27 - Marten Creek
28 - Meadow Creek
29 - Mist Creek
30 - Moose Creek
31 - North Fork Moose Creek
32 - O'Hara Creek
33 - Paradise Creek
34 - Pete Creek
35 - Rhoda Creek
36 - Running Creek
37 - S.Fk. Running Creek
38 - S.Fk. Surprise Creek
39 - Saddle Gulch
40 - Salamander Creek
41 - Schofield Creek
42 - Schwar Creek
43 - Selway River
44 - Slow Gulch Creek
45 - Storm Creek
46 - Stripe Creek
47 - Surprise Creek
48 - Swet Creek
49 - Three Lakes Creek
50 - Tom Creek
51 - Vance Creek
52 - W.Fk. Gedney Creek
53 - W.Fk. O'Hara Creek
54 - White Cap Creek
55 - Wilkerson Creek
56 - Wounded Doe Creek

(iv) Lochsa River Subunit.

(A) [Reserved for textual description of unit.]

(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Lochsa River Subunit, follows:



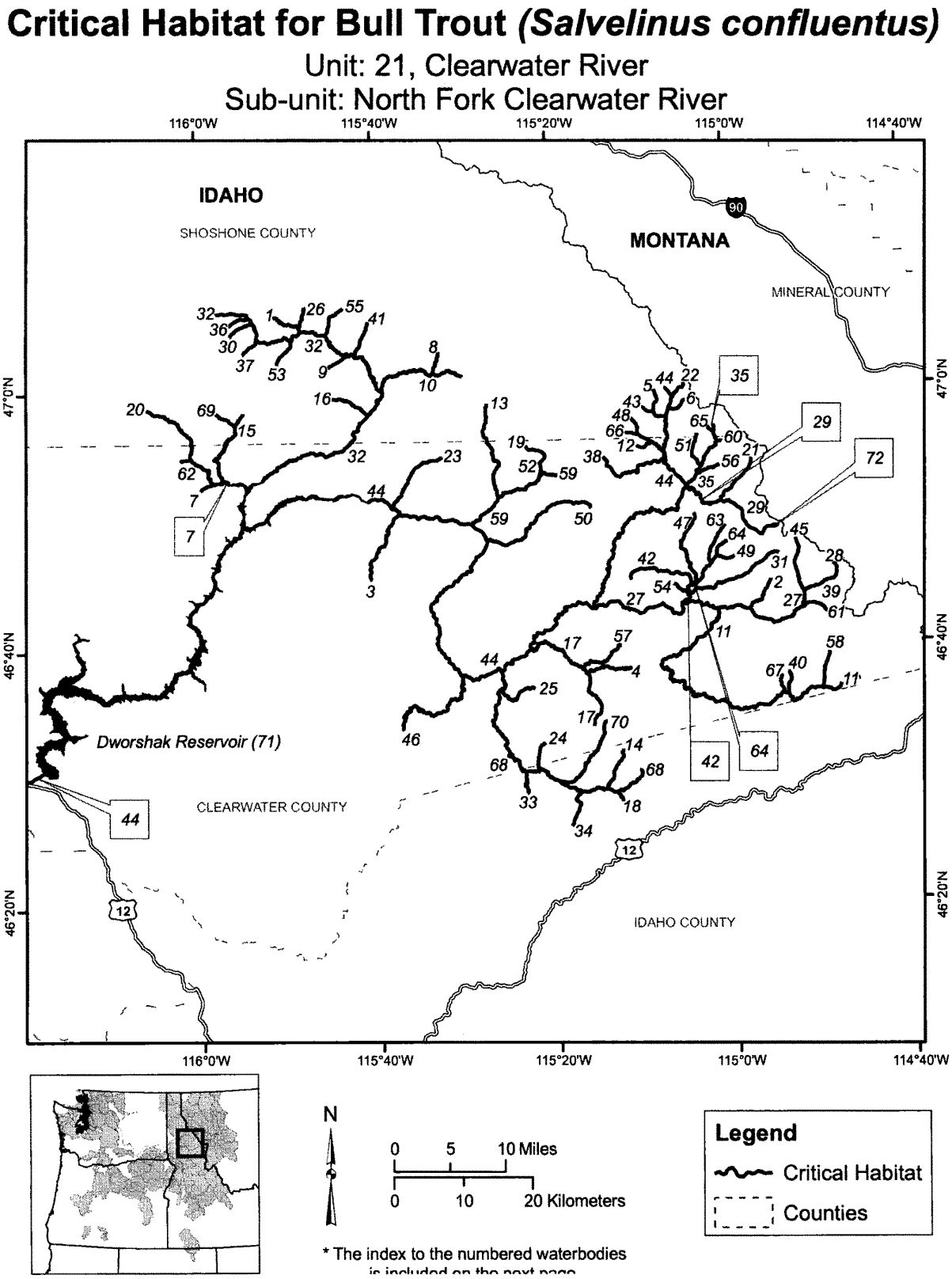
Unit: 21, Clearwater River
Sub-unit: Lochsa River

1 - Beaver Creek
2 - Big Flat Creek
3 - Boulder Creek
4 - Brushy Fork
5 - Colt Creek
6 - Colt Killed Creek
7 - Cooperation Creek
8 - Crooked Fork
9 - Doe Creek
10 - E.Fk. Fishing Creek
11 - East Fork Legendary Bear Creek
12 - Fish Creek
13 - Fish Lake Creek
14 - Fishing Creek
15 - Fox Creek
16 - Haskell Creek
17 - Hopeful Creek
18 - Hungery Creek
19 - Indian Grave Creek
20 - Legendary Bear Creek
21 - Lochsa River
22 - Maud Creek
23 - N.Fk. Spruce Creek
24 - Parachute Creek
25 - Postoffice Creek
26 - Rock Creek
27 - S.Fk. Spruce Creek
28 - Shoot Creek
29 - Shotgun Creek
30 - Spring Creek
31 - Spruce Creek
32 - Storm Creek
33 - Twin Creek
34 - UNNAMED - off Hopeful Creek
35 - W.Fk. Fishing Creek
36 - Walton Creek
37 - Warm Springs Creek
38 - Weir Creek
39 - West Fork Legendary Bear Creek
40 - Williams Lake Creek
41 - Fish Lake (Lochsa)

(v) North Fork Clearwater River Subunit.

(A) [Reserved for textual description of unit.]

(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), North Fork Clearwater Subunit, follows:



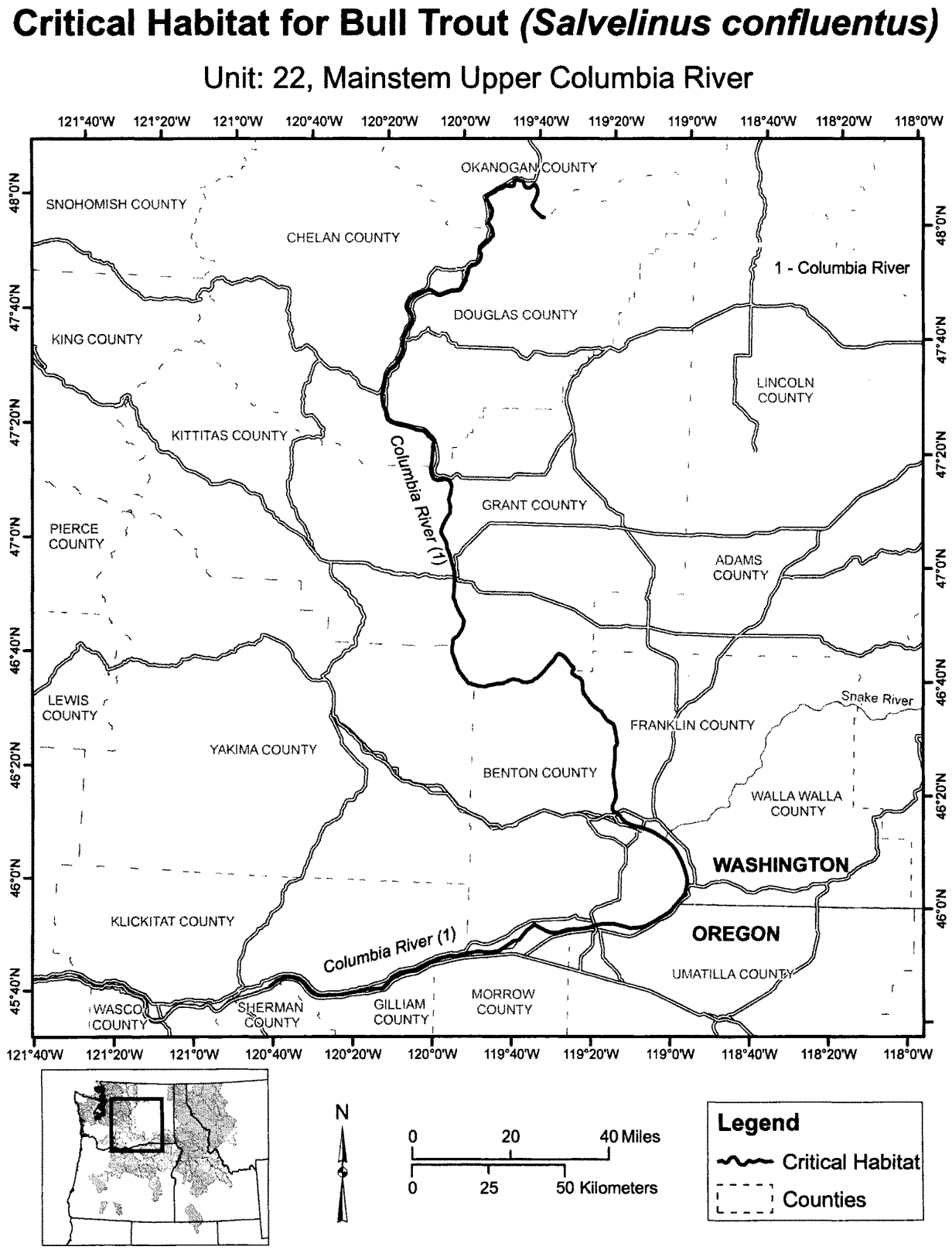
Unit: 21, Clearwater River
Sub-unit: North Fork Clearwater River

1 - Adair Creek
2 - Bear Creek
3 - Beaver Creek
4 - Bill Creek
5 - Bostonian Creek
6 - Boundary Creek
7 - Breakfast Creek
8 - Buck Creek
9 - Butte Creek (North Fork Clearwater)
10 - Canyon Creek
11 - Cayuse Creek
12 - Chamberlain Creek
13 - Collins Creek
14 - Corral Creek
15 - Floodwood Creek
16 - Foehl Creek
17 - Fourth of July Creek
18 - Fro Creek
19 - Frost Creek
20 - Glover Creek
21 - Goose Creek
22 - Graves Creek
23 - Isabella Creek
24 - Johnagan Creek
25 - Johnny Creek
26 - Jungle Creek
27 - Kelly Creek
28 - Kid Lake Creek
29 - Lake Creek
30 - Little Lost Lake Creek
31 - Little Moose Creek
32 - Little North Fork Clearwater River
33 - Little Weitas Creek
34 - Liz Creek
35 - Long Creek
36 - Lost Lake Creek
37 - Lund Creek
38 - Meadow Creek
39 - Middle Fork Kelly Creek
40 - Mink Creek
41 - Montana Cr
42 - Moose Creek
43 - Niagra Gulch
44 - North Fork Clearwater River
45 - North Fork Kelly Creek
46 - Orogrande Creek
47 - Osier Creek
48 - Placer Creek
49 - Pollock Creek
50 - Quartz Creek
51 - Rawhide Creek
52 - Roaring Creek
53 - Rocky Run
54 - Ruby Creek
55 - Rutledge Creek
56 - Short Creek
57 - Shot Creek
58 - Silver Creek
59 - Skull Creek
60 - Slate Creek
61 - South Fork Kelly Creek
62 - Stoney Creek
63 - Sugar Creek
64 - Swamp Creek
65 - UNNAMED - off Long Creek
66 - Vanderbilt Gulch
67 - Weasel Creek
68 - Weitas Creek
69 - West Fork Floodwood Creek
70 - Windy Creek
71 - Dworshak Reservoir
72 - Fish Lake

(28) Unit 22: Mainstem Upper Columbia River Unit, Oregon and Washington.

(i) [Reserved for textual description of unit.]

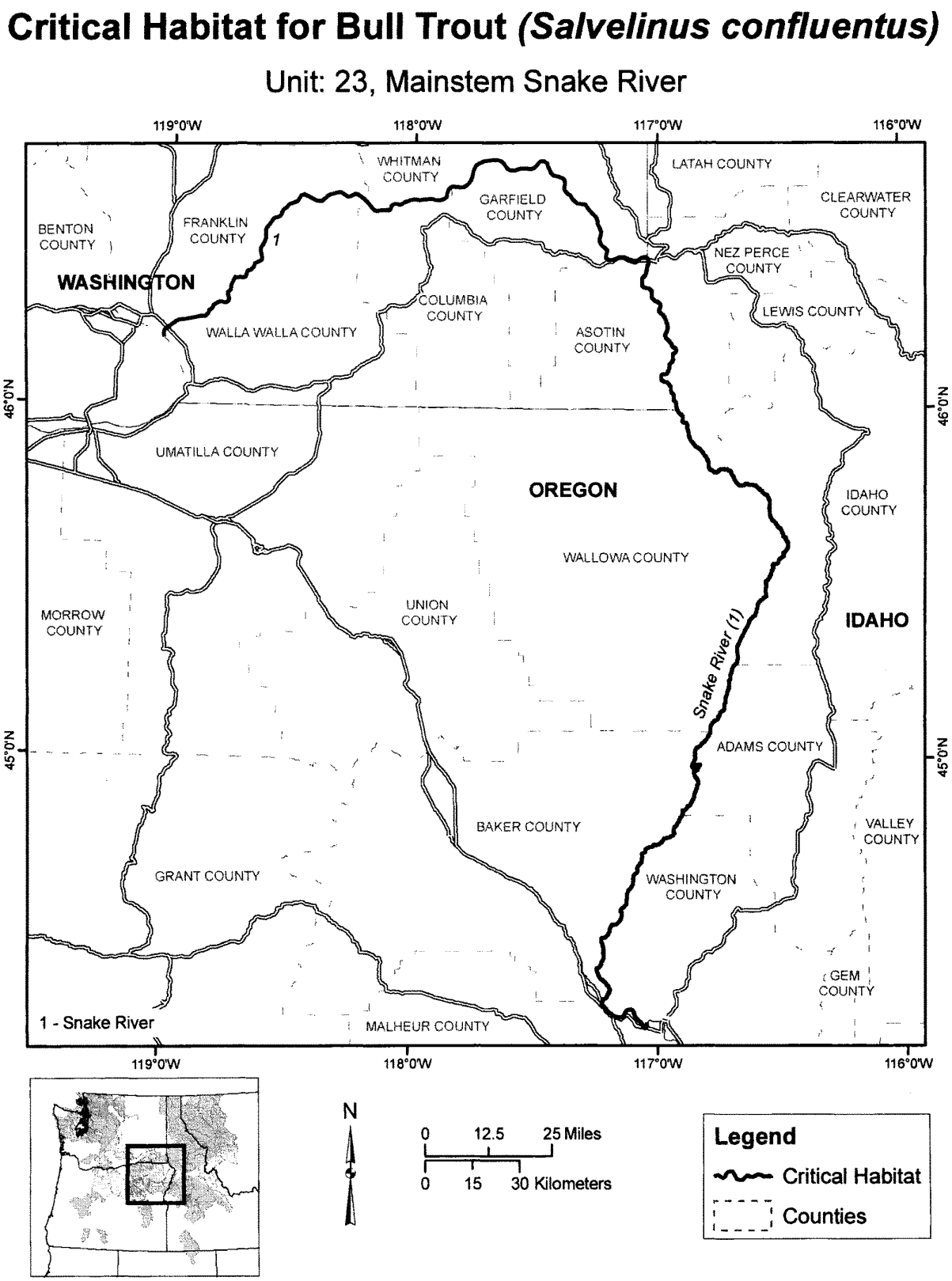
(ii) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Upper Columbia River Unit, follows:



(29) Unit 23: Mainstem Snake River Unit, Idaho, Oregon, and Washington.

(i) [Reserved for textual description of unit.]

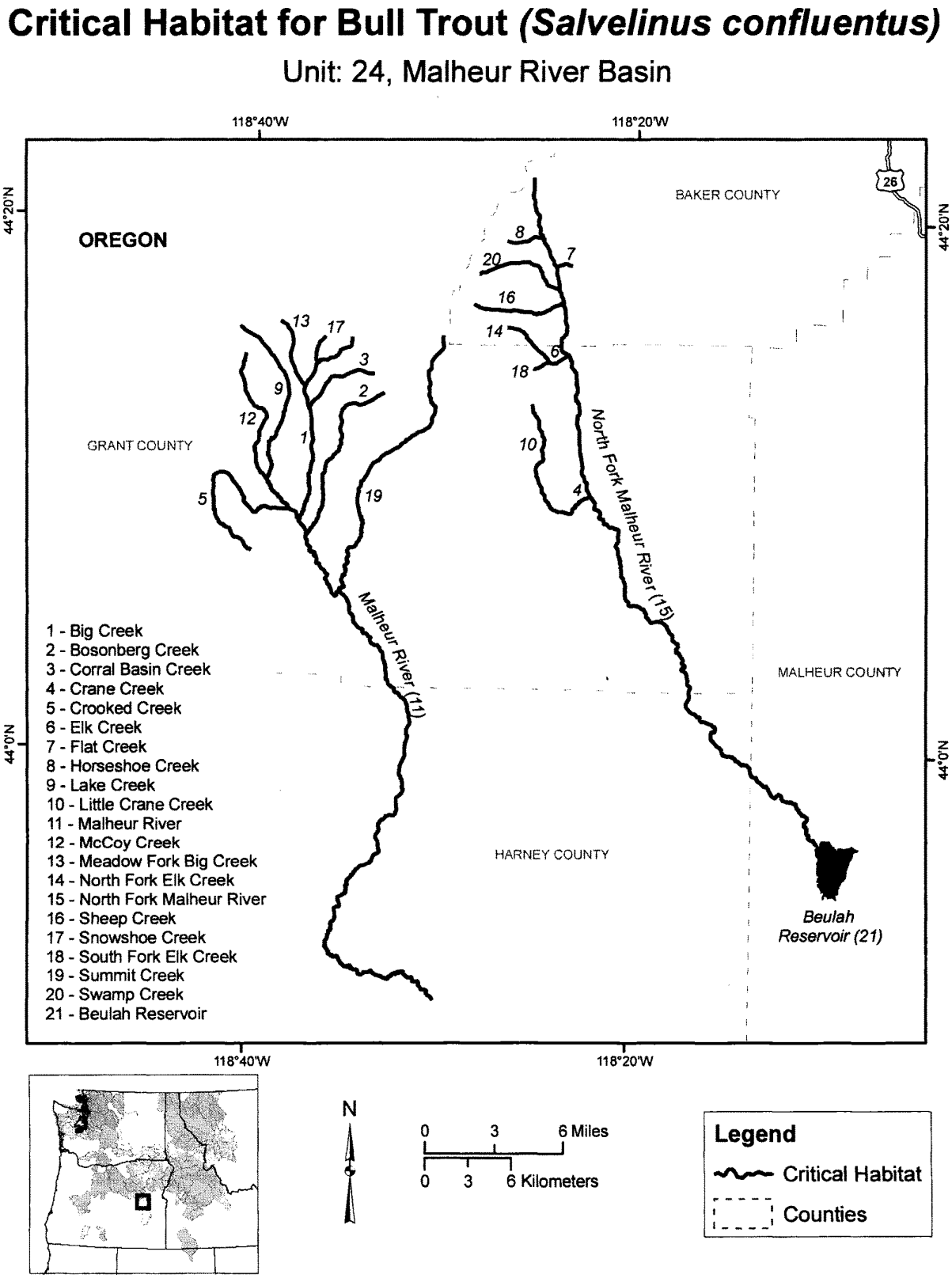
(ii) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Mainstem Snake River Unit, follows:



(30) Unit 24: Malheur River Basin Unit, Oregon.

(i) [Reserved for textual description of unit.]

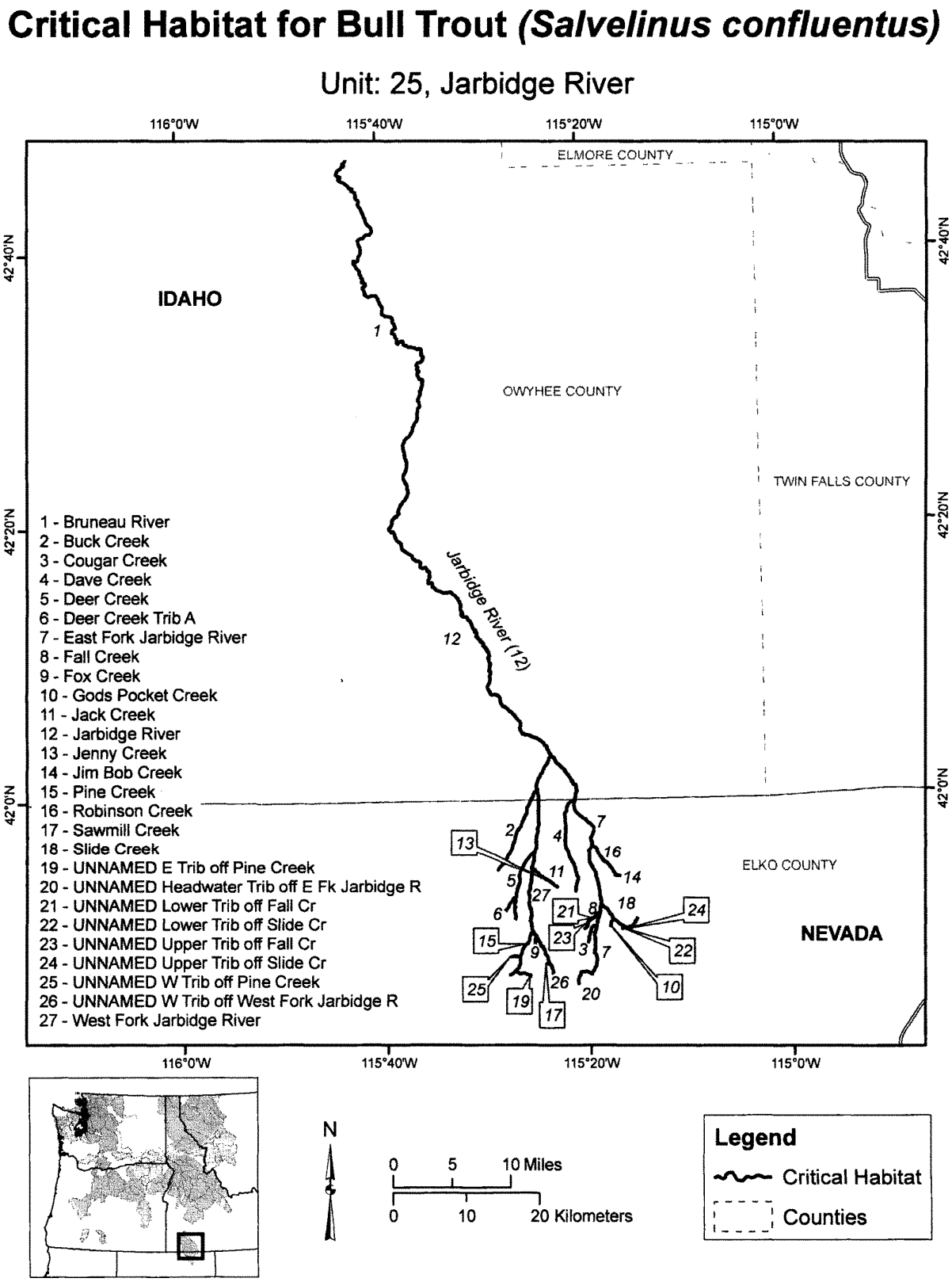
(ii) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Malheur River Basin Unit, follows:



(31) Unit 25: Jarbidge River Unit, Idaho and Nevada.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Jarbidge River Unit, follows:

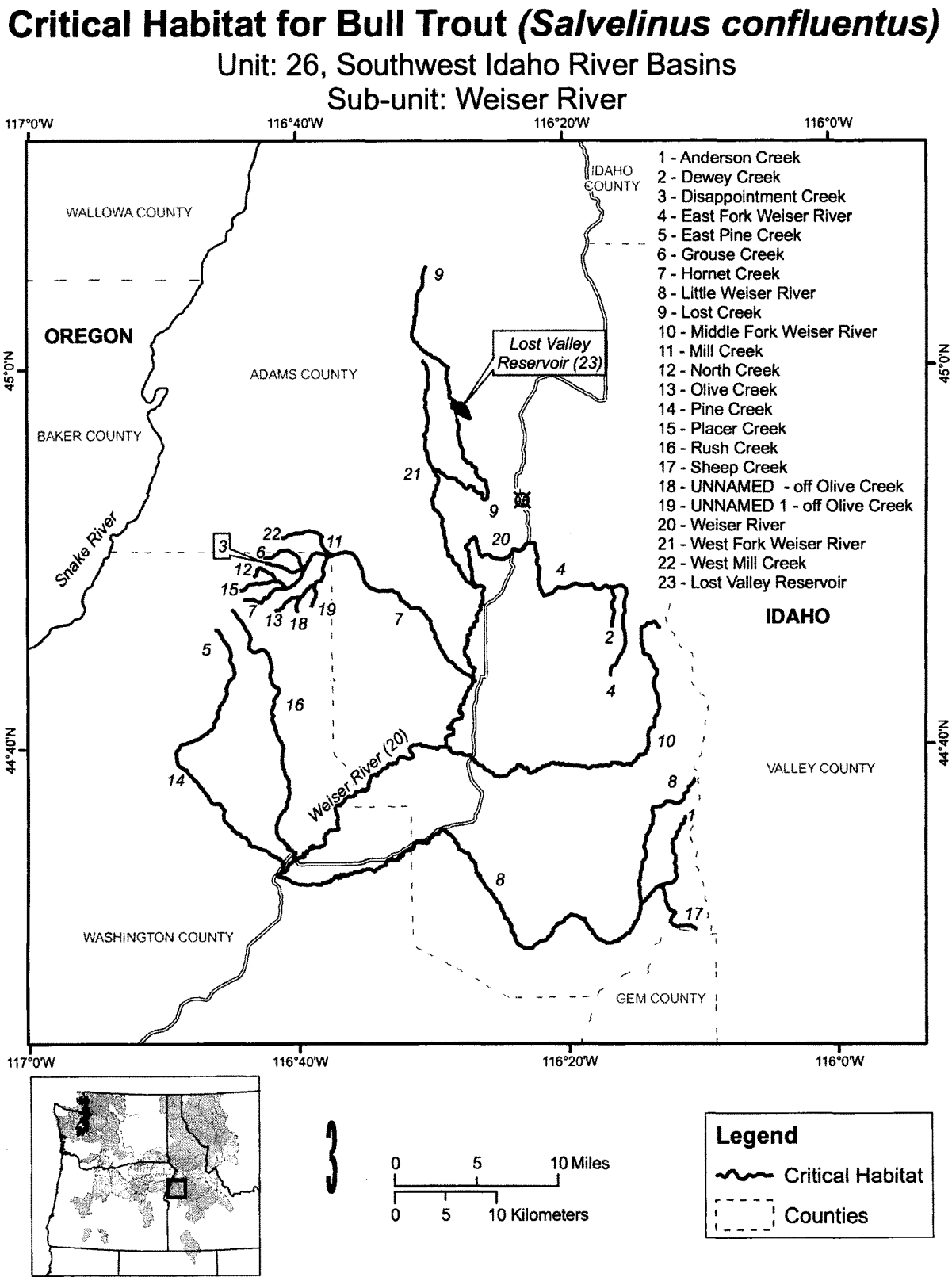


(32) Unit 26: Southwest Idaho River Basins Unit, Idaho.

(i) Weiser River Subunit.

(A) [Reserved for textual description of unit.]

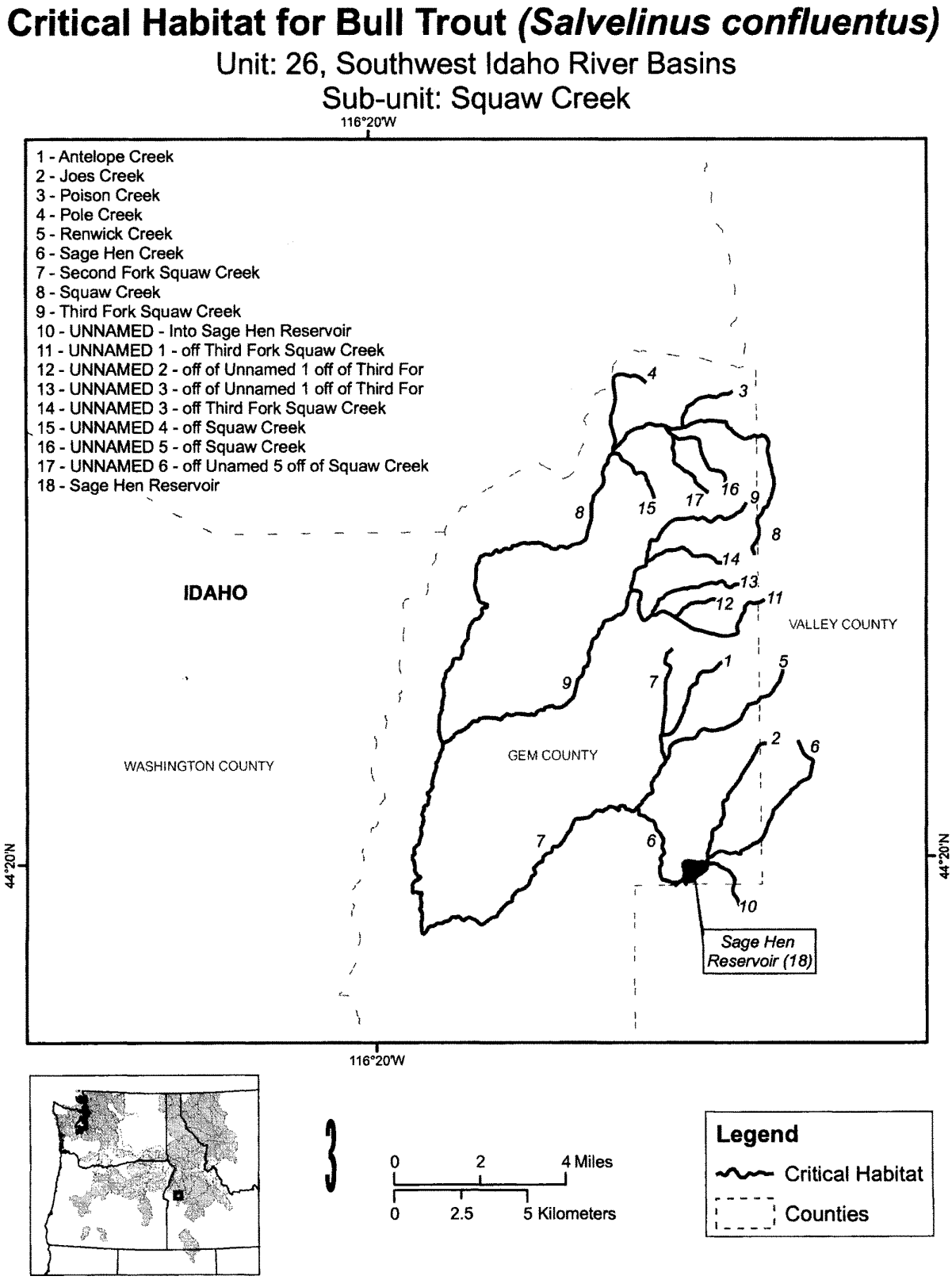
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Weiser River Subunit, follows:



(ii) Squaw Creek Subunit.

(A) [Reserved for textual description of unit.]

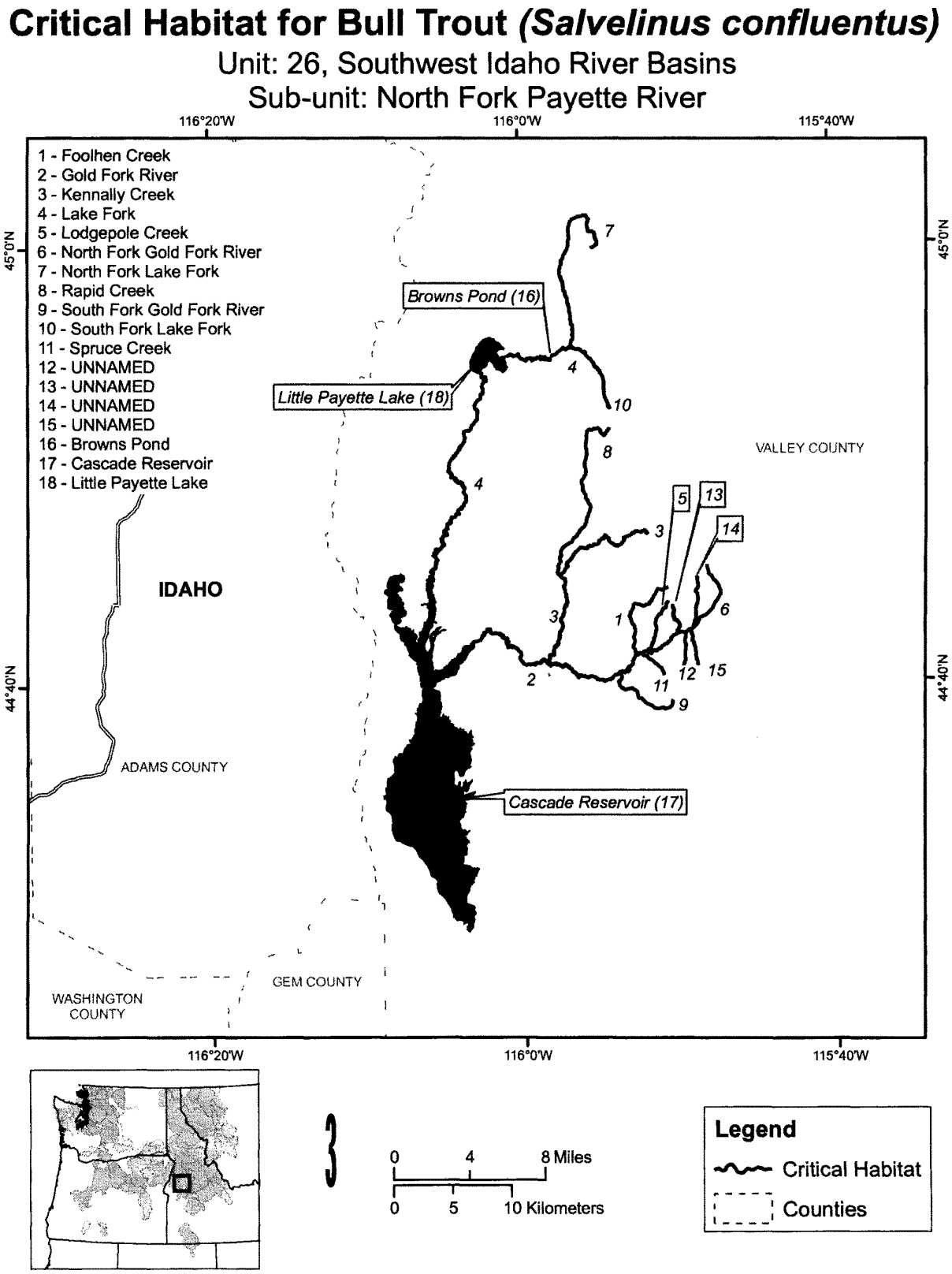
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Squaw Creek Subunit, follows:



(iii) North Fork Payette River Subunit.

(A) [Reserved for textual description of unit.]

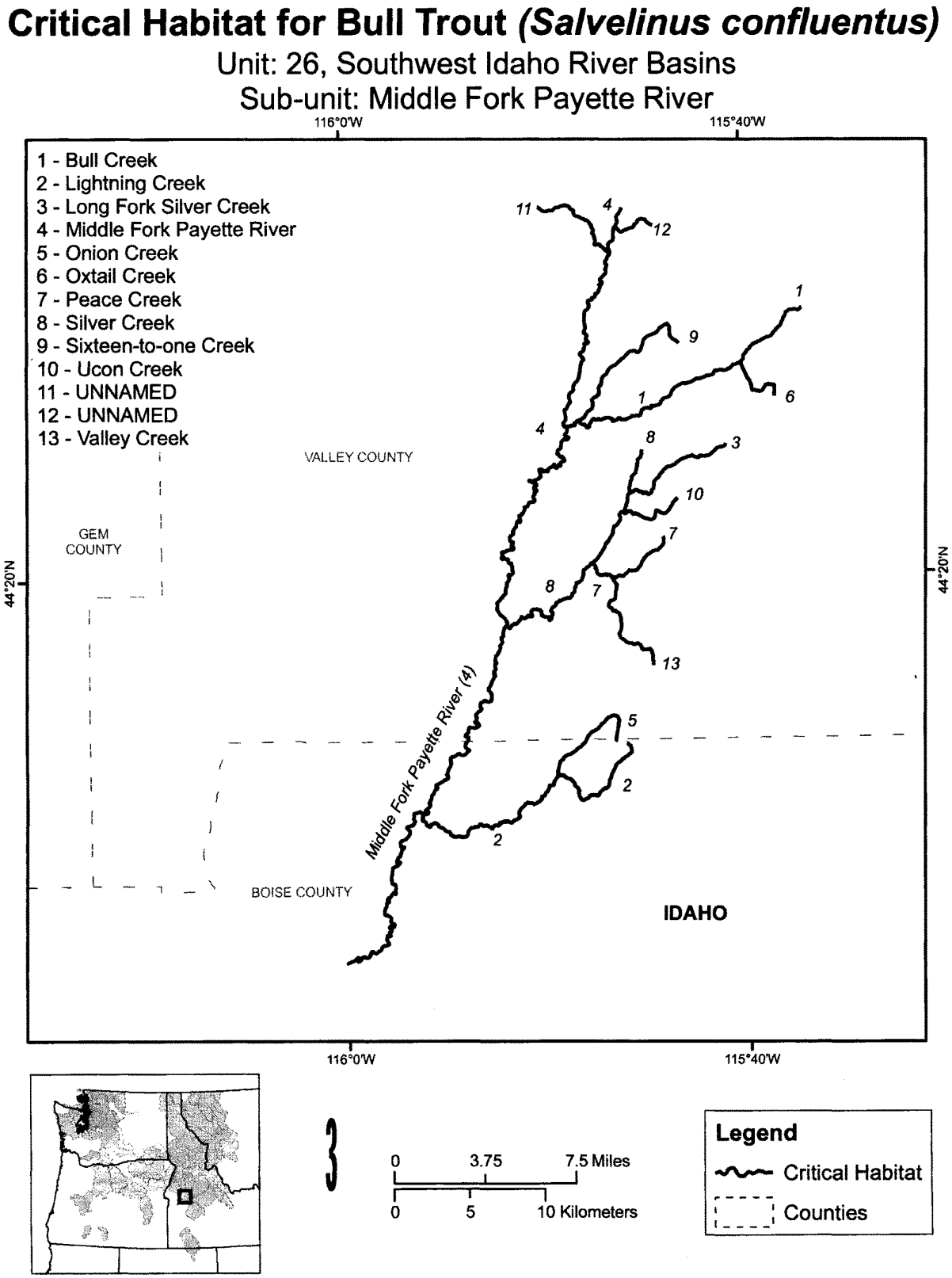
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), North Fork Payette River Subunit, follows:



(iv) Middle Fork Payette River Subunit.

(A) [Reserved for textual description of unit.]

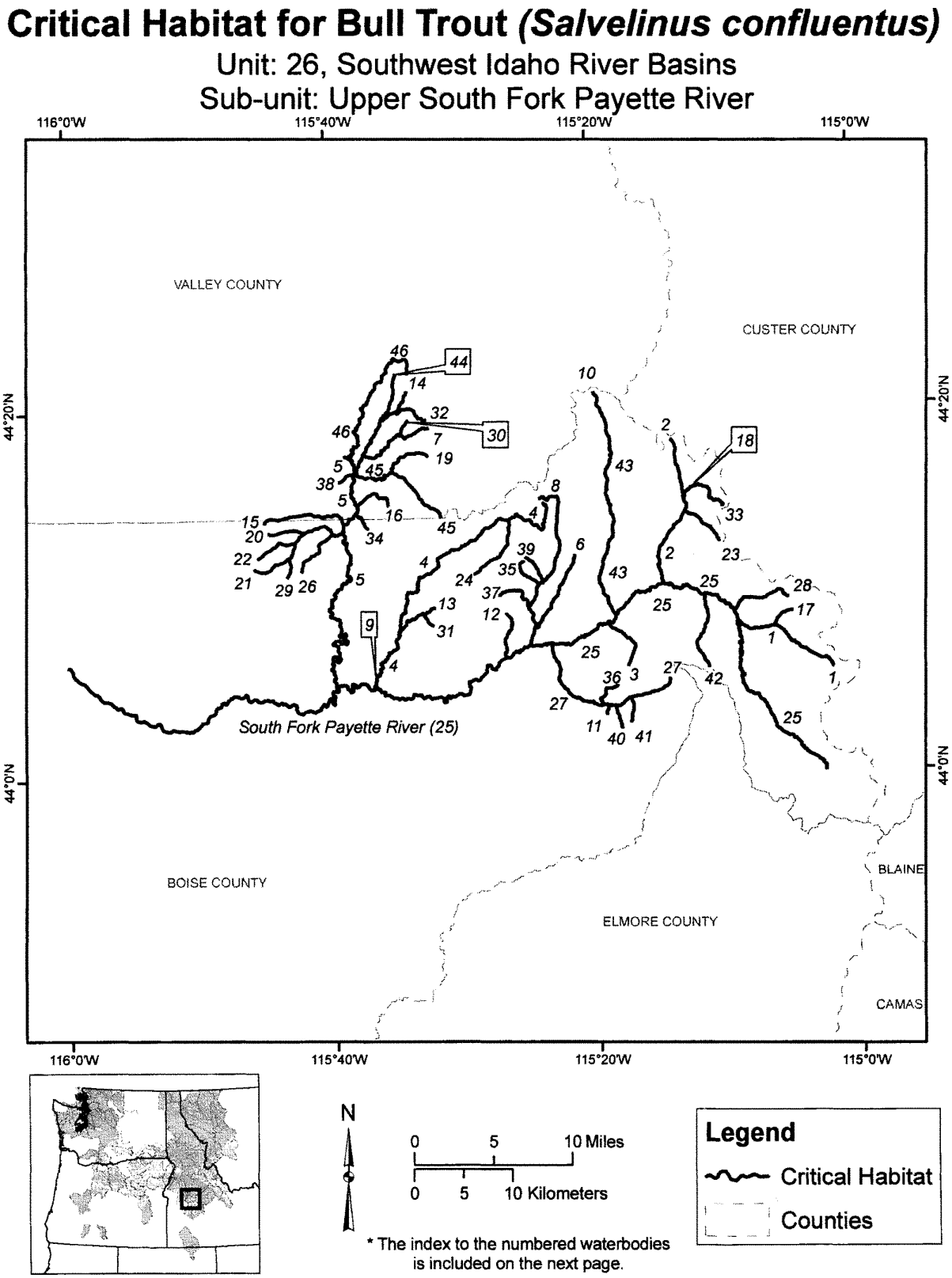
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Middle Fork Payette River Subunit, follows:



(v) Upper South Fork Payette River Subunit.

(A) [Reserved for textual description of unit.]

(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Upper South Fork Payette River Subunit, follows:



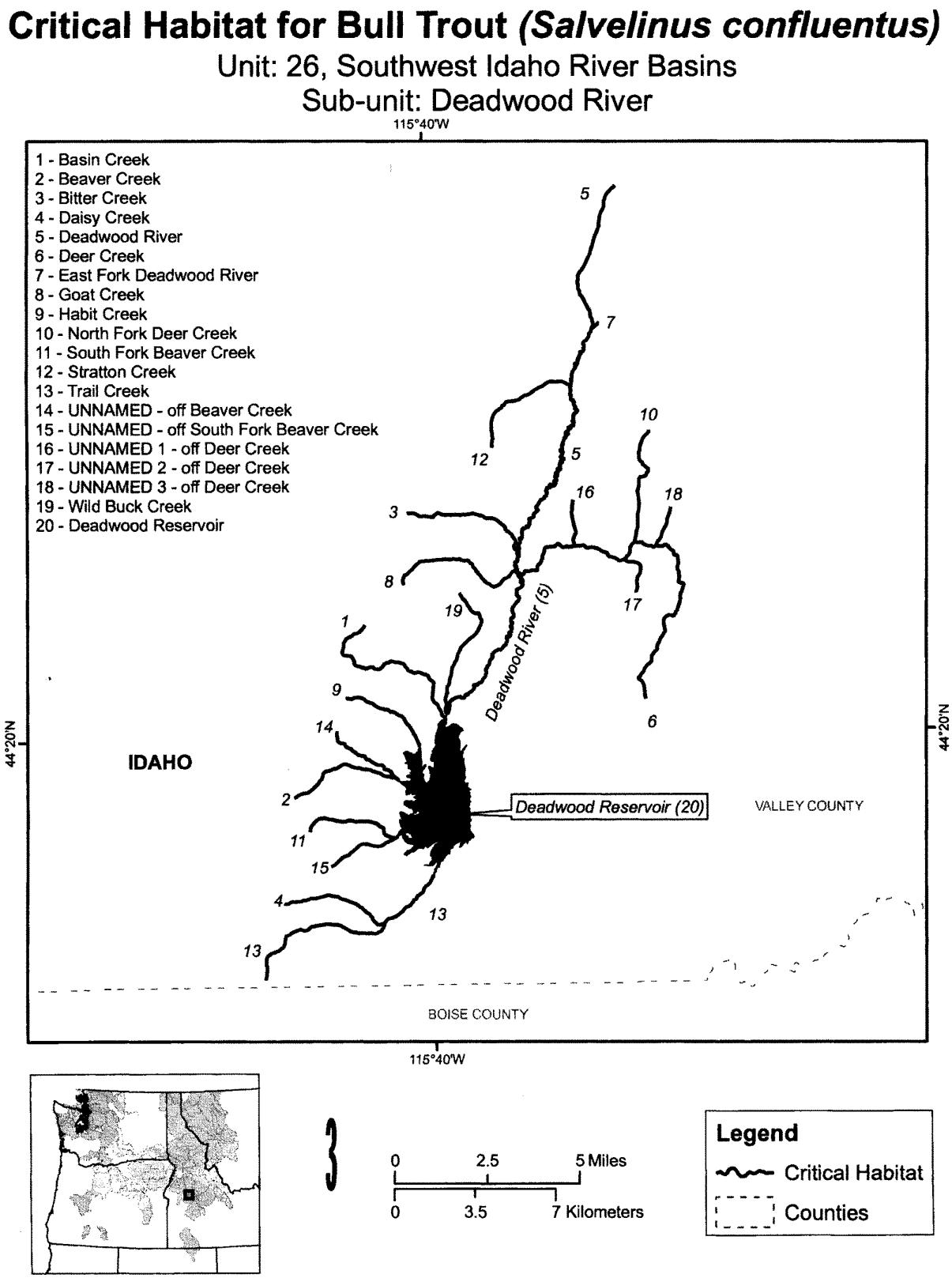
Unit: 26, Southwest Idaho River Basins
Sub-Unit: Upper South Fork Payette River Unit

1 - Baron Creek
2 - Canyon Creek
3 - Chapman Creek
4 - Clear Creek
5 - Deadwood River
6 - East Fork Eightmile Creek
7 - East Fork Warm Springs Creek
8 - Eightmile Creek
9 - Garney Creek
10 - Gates Creek
11 - Horseshoe Creek
12 - Kettle Creek
13 - Long Creek
14 - Middle Fork Warm Springs Creek
15 - Ninemile Creek
16 - No Man Creek
17 - North Fork Baron Creek
18 - North Fork Canyon Creek
19 - North Fork Whitehawk Creek
20 - Packsaddle Creek
21 - Scott Creek
22 - Smith Creek
23 - South Fork Canyon Creek
24 - South Fork Clear Creek
25 - South Fork Payette River
26 - South Fork Scott Creek
27 - Tenmile Creek
28 - Trail Creek
29 - Unnamed
30 - UNNAMED - off East Fork Warm Springs Creek
31 - UNNAMED - off Long Creek
32 - UNNAMED - off Middle Fork Warm Springs Creek
33 - UNNAMED - off North Fork Canyon Creek
34 - UNNAMED 1 - off Deadwood River
35 - UNNAMED 1 - off Eightmile Creek
36 - UNNAMED 1 - off Tenmile Creek
37 - UNNAMED 1a - off Eightmile Creek
38 - UNNAMED 2 - off Deadwood River
39 - UNNAMED 2 - off Eightmile Creek
40 - UNNAMED 2 - off Tenmile Creek
41 - UNNAMED 3 - off Tenmile Creek
42 - Wapiti Creek
43 - Warm Spring Creek
44 - Warm Springs Creek
45 - Whitehawk Creek
46 - Wilson Creek

(vi) Deadwood River Subunit.

(A) [Reserved for textual description of unit.]

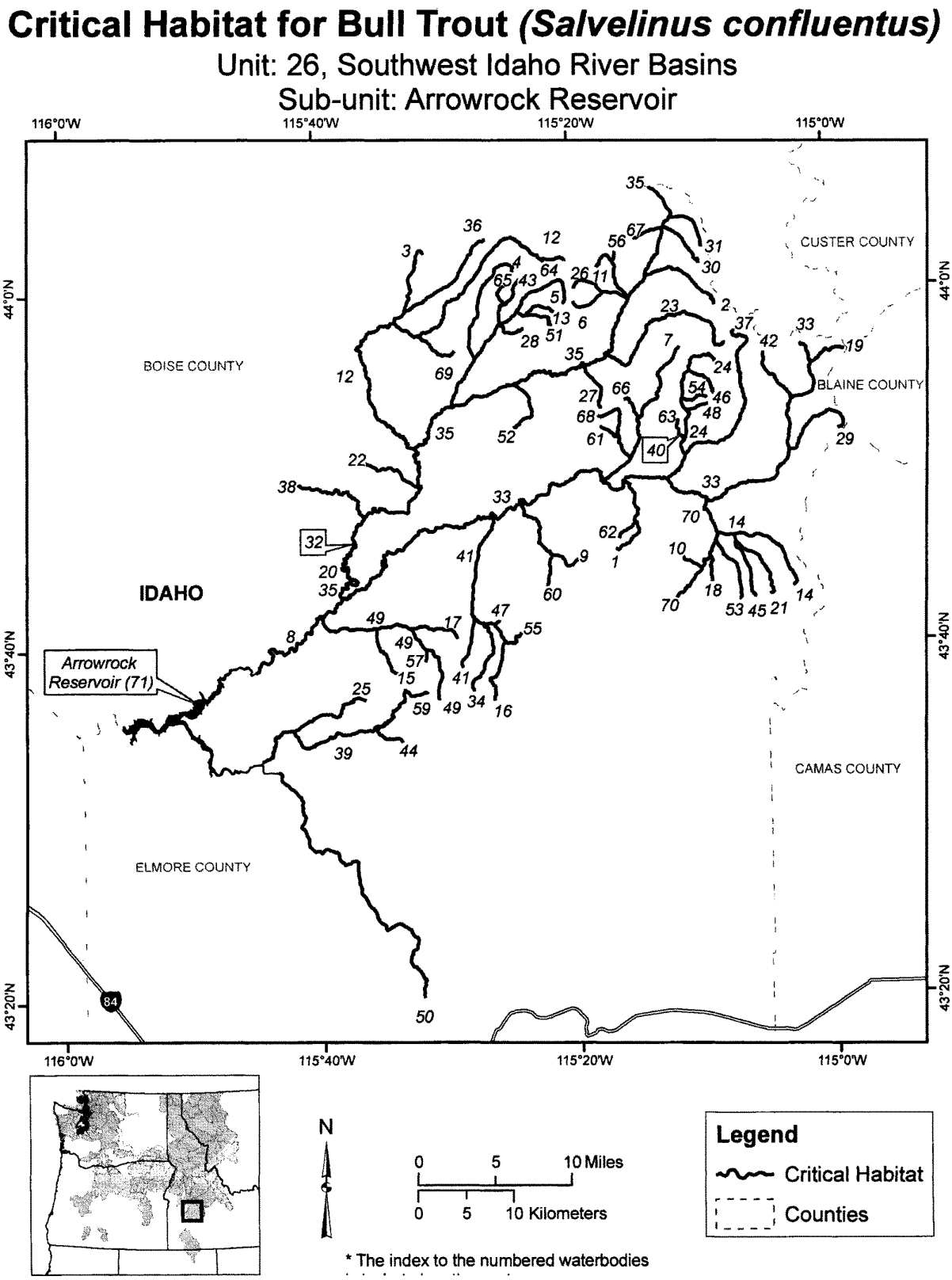
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Deadwood River Subunit, follows:



(vii) Arrowrock Subunit.

(A) [Reserved for textual description of unit.]

(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Arrowrock Subunit, follows:



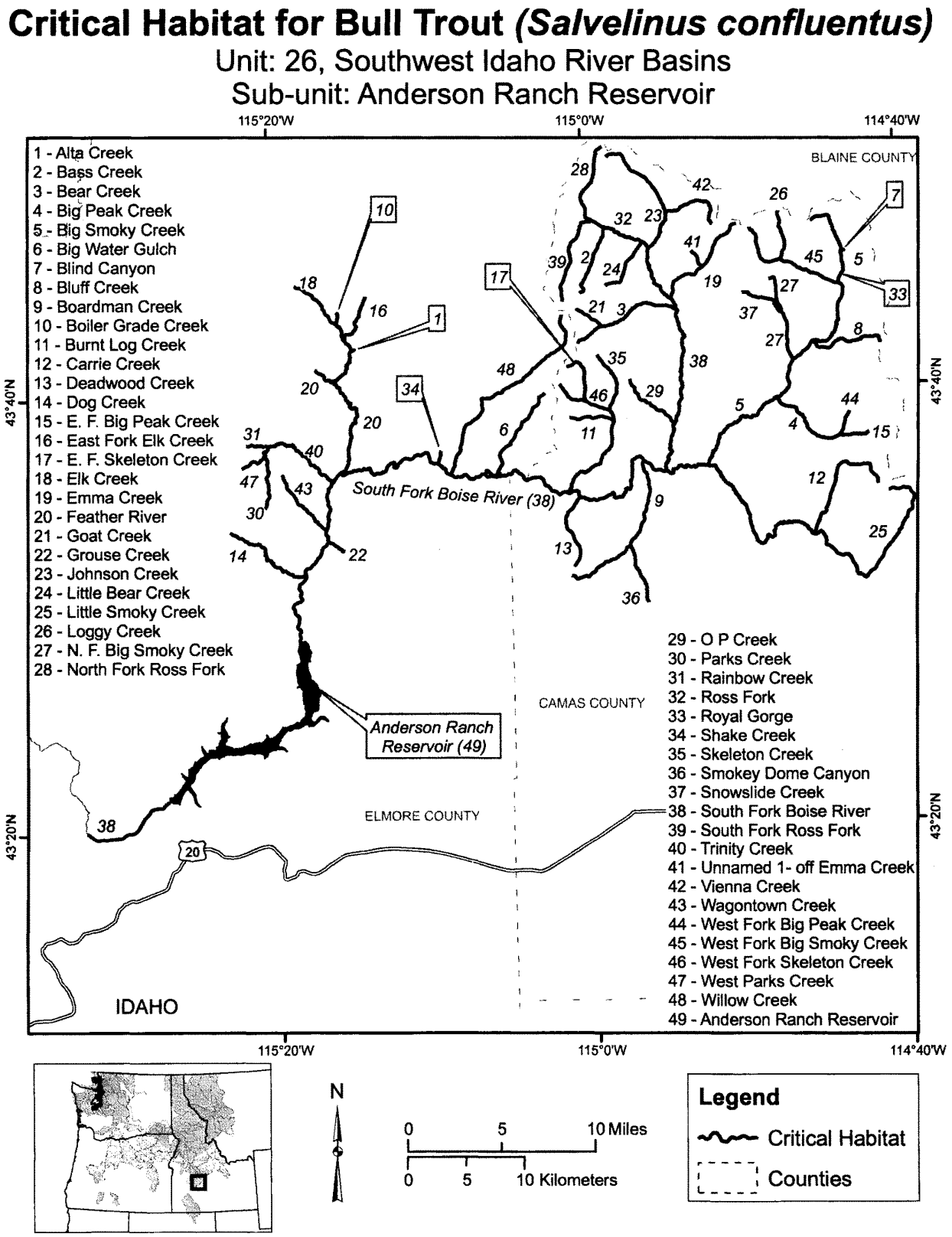
Unit: 26, Southwest Idaho River Basins
Sub-unit: Arrowrock Reservoir

1 - Bald Mountain Creek
2 - Ballentyne Creek
3 - Banner Creek
4 - Bear Creek
5 - Bear River
6 - Big Silver Creek
7 - Black Warrior Creek
8 - Boise River
9 - Buck Creek
10 - Corbus Creek
11 - Cow Creek
12 - Crooked River
13 - Cub Creek
14 - Decker Creek
15 - Devils Creek
16 - East Fork Roaring River
17 - East Fork Sheep Creek
18 - East Fork Yuba River
19 - Flytrip Creek
20 - French Creek
21 - Grouse Creek
22 - Hungarian Creek
23 - Johnson Creek
24 - Little Queens River
25 - Little Rattlesnake Creek
26 - Little Silver Creek
27 - Lodgepole Creek
28 - Louise Creek
29 - Mattingly Creek
30 - McLeod Creek
31 - McPhearson Creek
32 - Meadow Creek
33 - Middle Fork Boise River
34 - Middle Fork Roaring River
35 - North Fork Boise River
36 - Pikes Fork
37 - Queens River
38 - Rabbit Creek
39 - Rattlesnake Creek
40 - Right Creek
41 - Roaring River
42 - Rock Creek
43 - Rockey Creek
44 - Russel Gulch
45 - Sawmill Creek
46 - Scenic Creek
47 - Scotch Creek
48 - Scott Creek
49 - Sheep Creek
50 - South Fork Boise River
51 - South Fork Cub Creek
52 - Trail Creek
53 - Trail Creek-Yuba
54 - Tripod Creek
55 - UNNAMED
56 - Unnamed
57 - Unnamed
58 - Unnamed
59 - Unnamed
60 - UNNAMED
61 - UNNAMED
62 - UNNAMED
63 - Unnamed
64 - Unnamed
65 - UNNAMED
66 - UNNAMED - off Black Warrior Creek
67 - West Fork Creek
68 - West Warrior Creek
69 - Willow Creek
70 - Yuba River
71 - Arrowrock Reservoir

(viii) Anderson Ranch Subunit.

(A) [Reserved for textual description of unit.]

(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Anderson Ranch Subunit, follows:

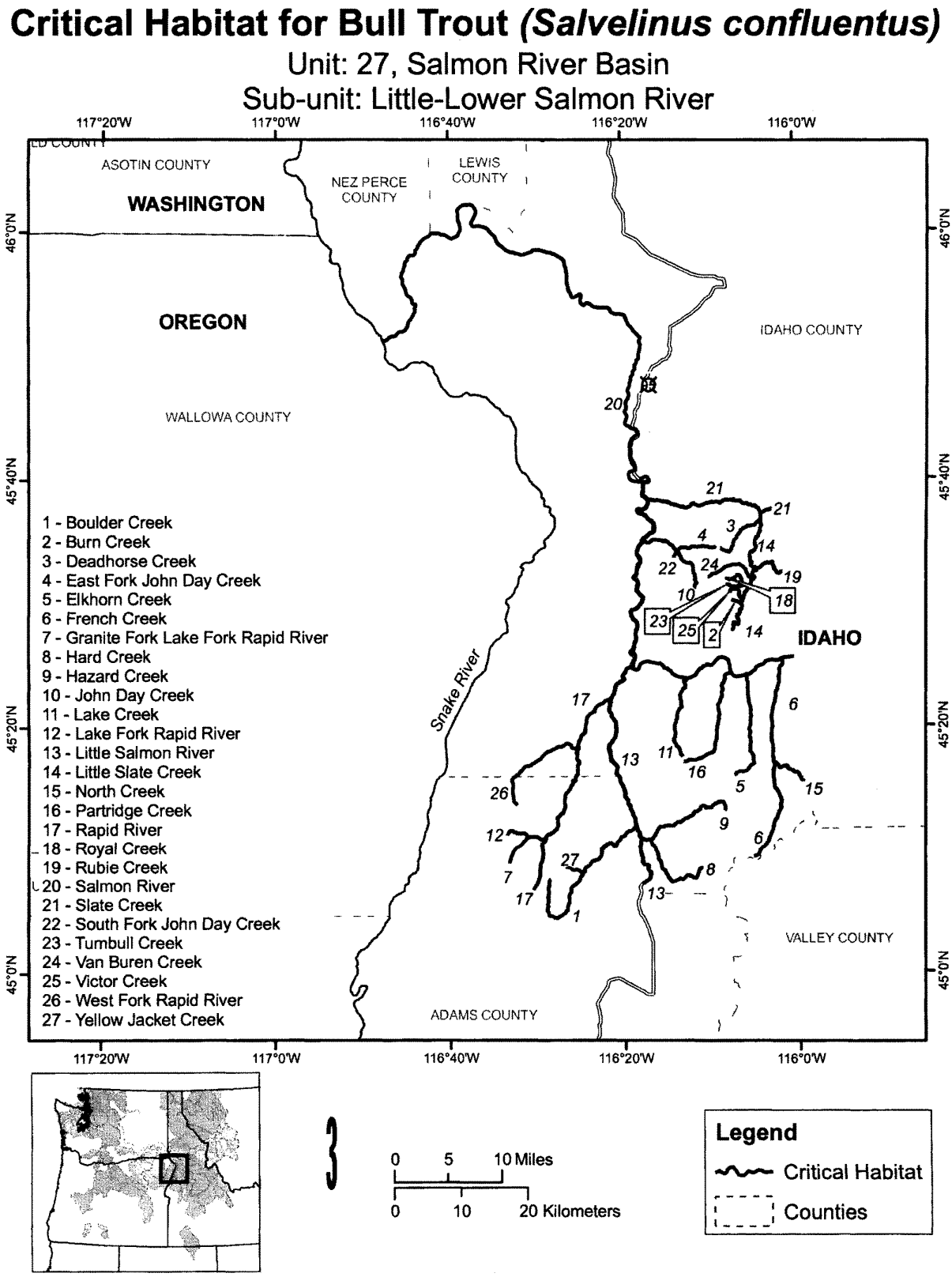


(33) Unit 27: Salmon River Basin Unit, Idaho.

(i) Little-Lower Salmon Subunit.

(A) [Reserved for textual description of unit.]

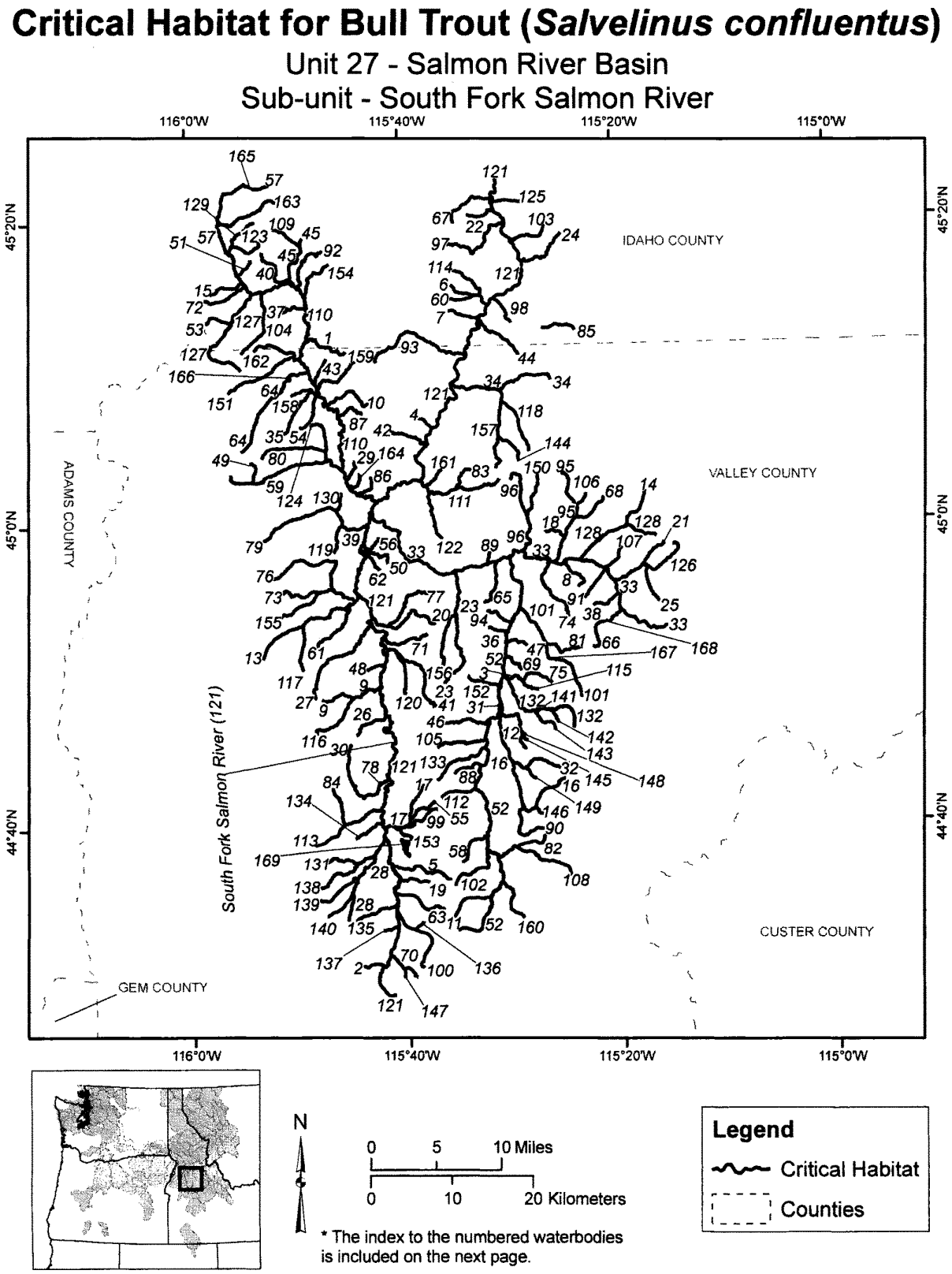
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Little-Lower Salmon Subunit, follows:



(ii) South Fork Salmon River Subunit.

(A) [Reserved for textual description of unit.]

(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), South Fork Salmon River Subunit, follows:



Unit 27 - Salmon River Basin
Sub-unit – South Fork Salmon River

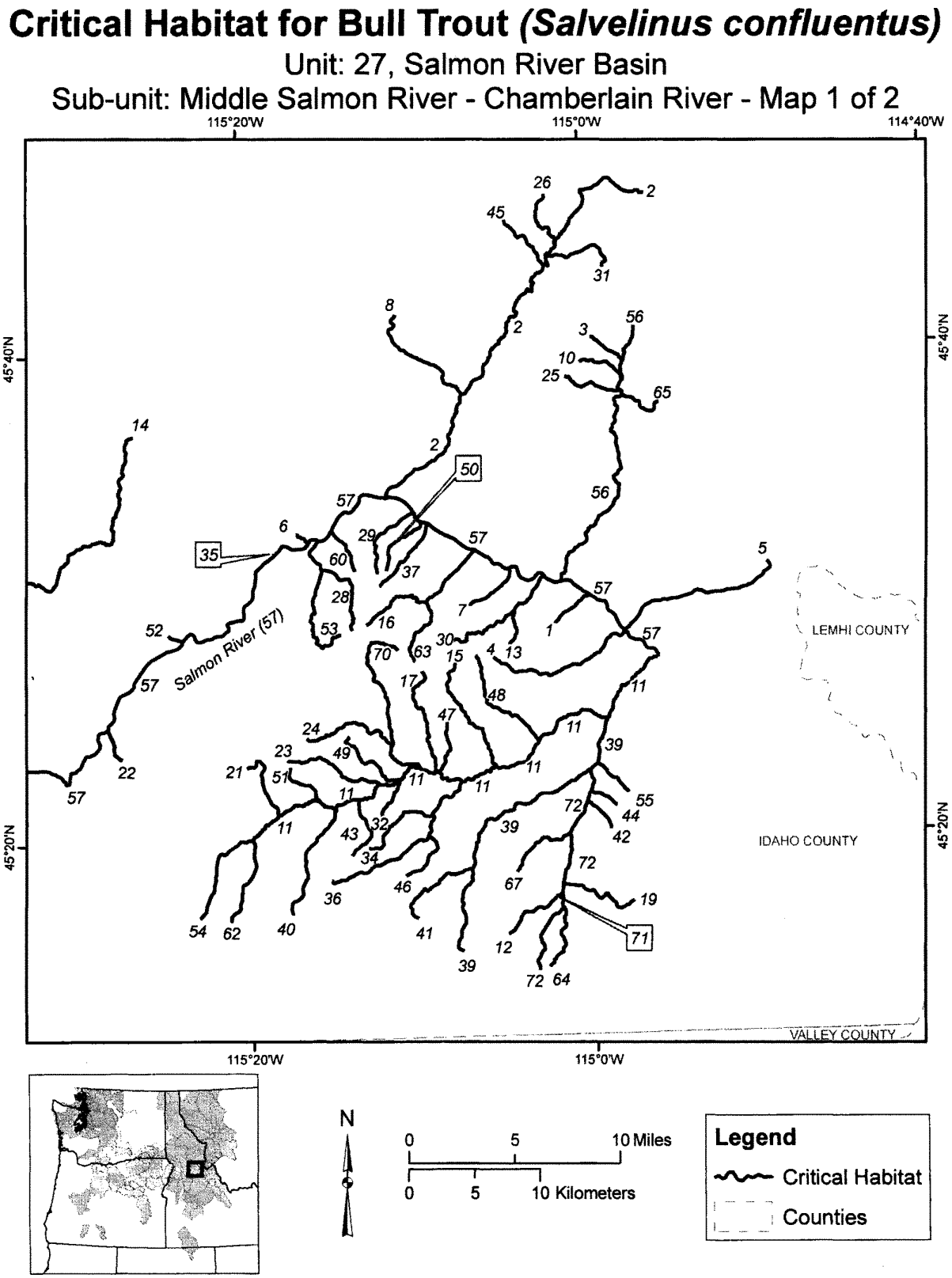
1 - Alez Creek
2 - Back Creek
3 - Bear Creek
4 - Bear Creek
5 - Bear Creek
6 - Big Buck Creek
7 - Big Flat Creek
8 - Bishop Creek
9 - Blackmare Creek
10 - Blue Lake Creek
11 - Boulder Creek
12 - Buck Creek
13 - Buckhorn Creek
14 - Bum Creek
15 - Burgdorf Creek
16 - Burntlog Creek
17 - Cabin Creek
18 - Camp Creek
19 - Camp Creek
20 - Camp Creek
21 - Cane Creek
22 - Carlson Creek
23 - Caton Creek
24 - Chicken Creek
25 - Cinnabar Creek
26 - Cliff Creek
27 - Cougar Creek
28 - Curtis Creek
29 - Deep Creek
30 - Dollar Creek
31 - Dutch Creek
32 - East Fork Burntlog Creek
33 - East Fork South Fork Salmon River
34 - Elk Creek
35 - Enos Creek
36 - Falls Creek
37 - Fernan Creek
38 - Fiddle Creek
39 - Fitsum Creek
40 - Flat Creek
41 - Fourmile Creek
42 - Fritser Creek
43 - Grimmet Creek
44 - Grouse Creek
45 - Grouse Creek
46 - Halfway Creek
47 - Hanson Creek
86 - Oompaul Creek
87 - Paradise Creek
88 - Park Creek
89 - Parks Creek
90 - Peanut Creek
91 - Pepper Creek
92 - Piah Creek
93 - Pony Creek
94 - Porcupine Creek
95 - Profile Creek
96 - Quartz Creek
97 - Raines Creek
98 - Rattlesnake Creek
99 - Reeves Creek
100 - Rice Creek
101 - Riordan Creek
102 - Rock Creek
103 - Rooster Creek
104 - Ruby Creek
105 - Rustican Creek
106 - Ryan Creek
107 - Salt Creek
108 - Sand Creek
109 - Sand Creek
110 - Secesh River
111 - Sheep Creek
112 - Sheep Creek
113 - Six-Bit Creek
114 - Smith Creek
115 - South Fork Bear Creek
116 - South Fork Blackmare Creek
117 - South Fork Buckhorn Creek
118 - South Fork Elk Creek
119 - South Fork Fitsum Creek
120 - South Fork Fourmile Creek
121 - South Fork Salmon River
122 - South Fork Sheep Creek
123 - South Fork Threemile Creek
124 - Split Creek
125 - Station Creek
126 - Sugar Creek
127 - Summit Creek
128 - Tamarack Creek
129 - Threemile Creek
130 - Tie Creek
131 - Trail Creek
132 - Trapper Creek

48 - Holdover Creek
49 - Hum Creek
50 - Indian Creek
51 - Jeanette Creek
52 - Johnson Creek
53 - Josephine Creek
54 - Jungle Creek
55 - Knee Creek
56 - Krassel Creek
57 - Lake Creek
58 - Landmark Creek
59 - Lick Creek
60 - Little Buck Creek
61 - Little Buckhorn Creek
62 - Little Indian Creek
63 - Lodgepole Creek
64 - Loon Creek
65 - Loosum Creek
66 - Meadow Creek
67 - Mill Creek
68 - Missouri Creek
69 - Moose Creek
70 - Mormon Creek
71 - Nasty Creek
72 - Nethker Creek
73 - Nick Creek
74 - No Mans Creek
75 - North Fork Bear Creek
76 - North Fork Buckhorn Creek
77 - North Fork Camp Creek
78 - North Fork Dollar Creek
79 - North Fork Fitsum Creek
80 - North Fork Lick Creek
81 - North Fork Riordan Creek
82 - North Fork Sand Creek
83 - North Fork Sheep Creek
84 - North Fork Six-bit Creek
85 - North Fork Wolf Fang Creek
133 - Trout Creek
134 - Two-bit Creek
135 - Tyndall Creek
136 - UNNAMED - Off Rice Creek
137 - UNNAMED - Off South Fork Salmon River
138 - UNNAMED - Off Trail Creek
139 - UNNAMED 1 - Off Curtis Creek
140 - UNNAMED 2 - Off Curtis Creek
141 - Unnamed Trib 1-Off Trapper Creek
142 - Unnamed Trib 2-Off Trapper Creek
143 - UNNAMED Trib 3- Off Trapper Creek
144 - Unnamed Tributary to West Fork Elk Creek
145 - Unnamed-Off Buck Creek
146 - Unnamed-Off Burntlog Creek
147 - Unnamed-Off Mormon Creek
148 - Unnamed-Off Unnamed to Buck Creek
149 - Unnamed-Off Unnamed to Burntlog Creek
150 - Vein Creek
151 - Victor Creek
152 - Wardenhoff Creek
153 - Warm Lake Creek
154 - Warm Spring Creek
155 - West Fork Buckhorn Creek
156 - West Fork Caton Creek
157 - West Fork Elk Creek
158 - West Fork Enos Creek
159 - Whangdoodle Creek
160 - Whiskey Creek
161 - Willey Creek
162 - Willow Basket Creek
163 - Willow Creek
164 - Zena Creek
165 - Lake Creek Lake
166 - Loon Lake
167 - Riordan Lake
168 - Unnamed Lake on Meadow Creek
169 - Warm Lake

(iii) Middle Salmon River–Chamberlain River Subunit.

(A) [Reserved for textual description of unit.]

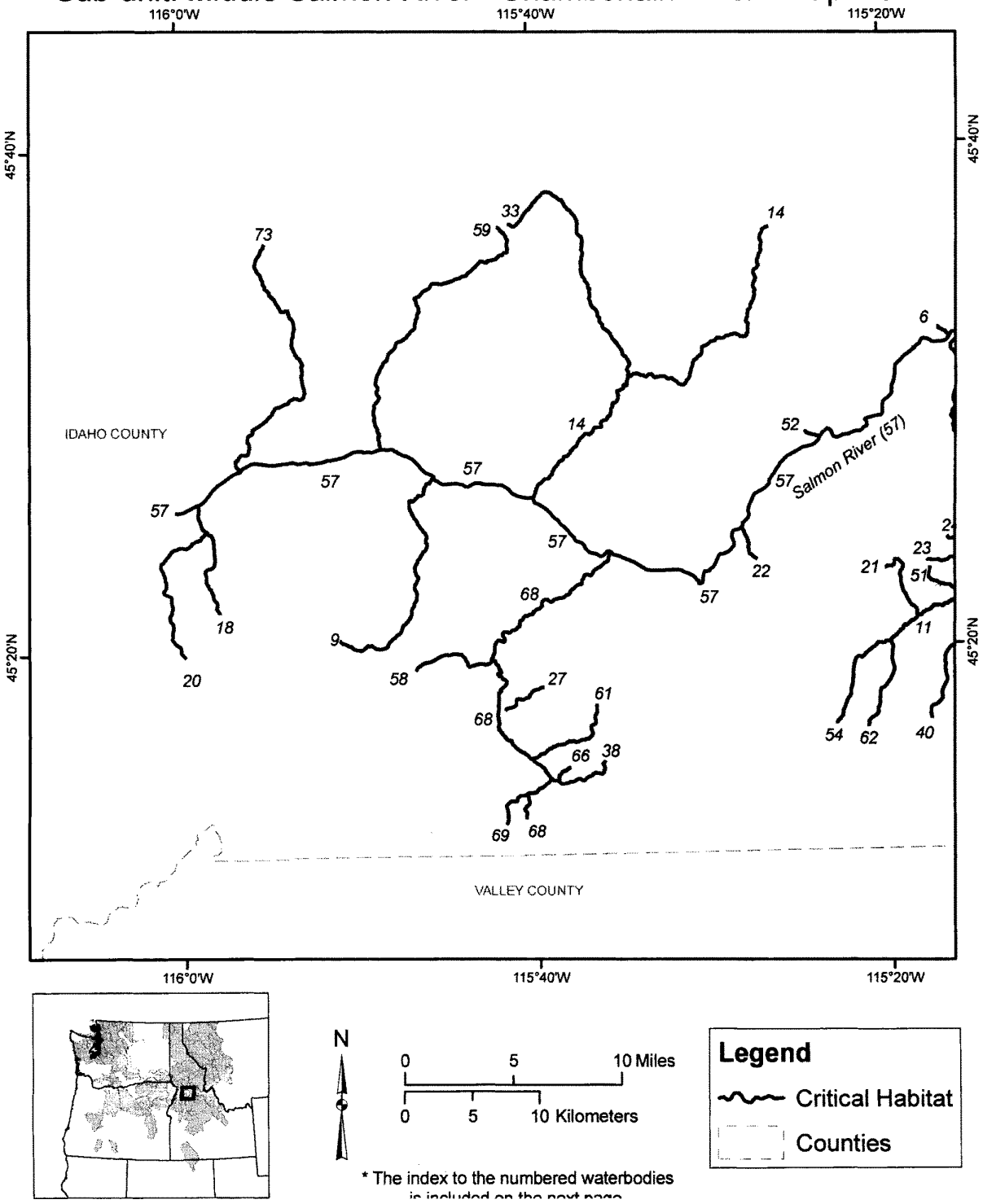
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Middle Salmon River–Chamberlain River Subunit, follows:



Critical Habitat for Bull Trout *(Salvelinus confluentus)*

Unit: 27, Salmon River Basin

Sub-unit: Middle Salmon River - Chamberlain River - Map 2 of 2



* The index to the numbered waterbodies is included on the next page

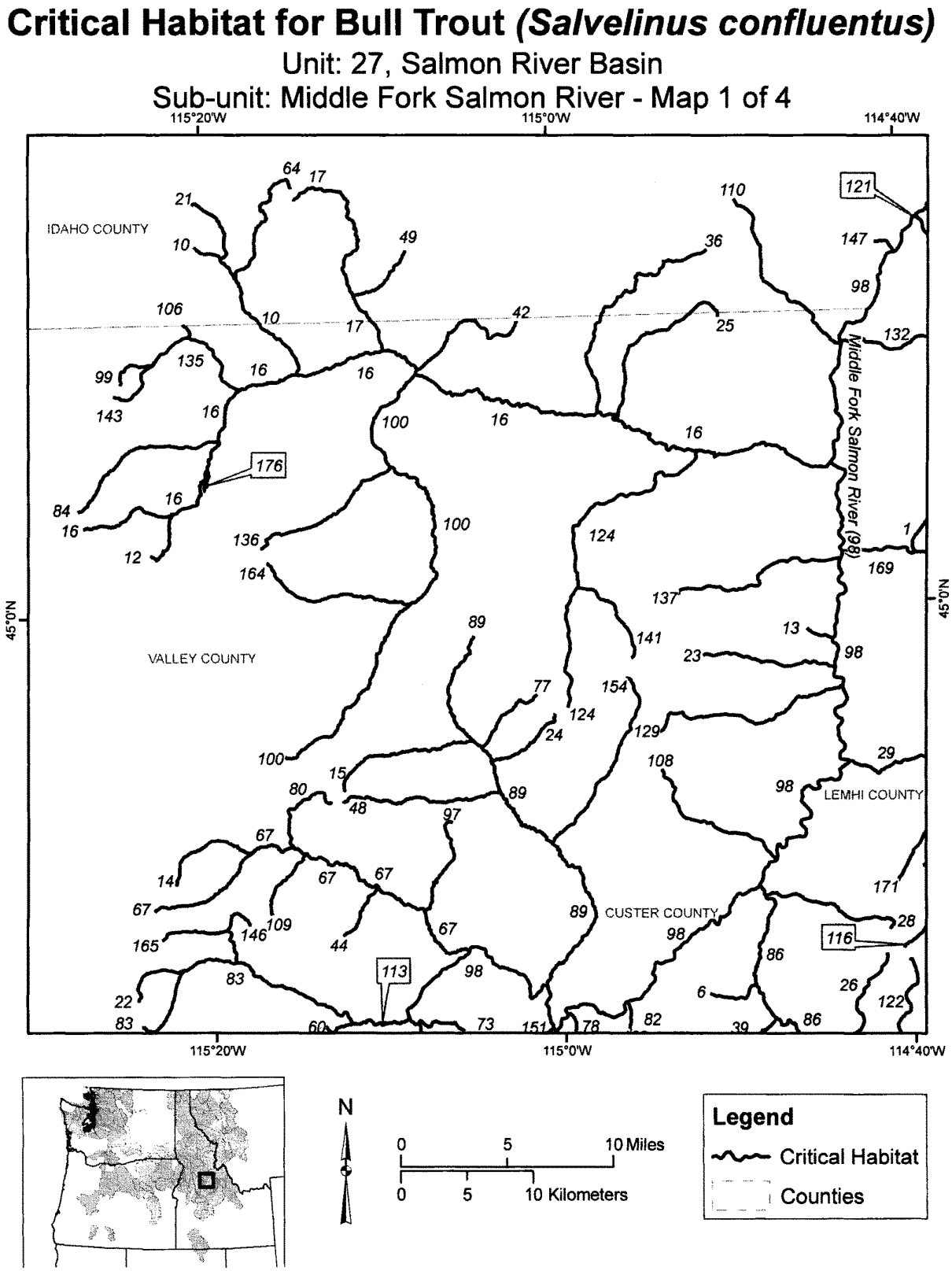
Unit: 27, Salmon River Basin
Sub-Unit: Middle Salmon River Chamberlain River

1 - Arctic Creek
2 - Bargamin Creek
3 - Basin Creek
4 - Big Bear Creek
5 - Big Harrington Creek
6 - Big Mallard Creek
7 - Bruin Creek
8 - Cache Creek
9 - California Creek
10 - Camp Creek
11 - Chamberlain Creek
12 - Club Creek
13 - Cold Creek
14 - Crooked Creek
15 - Deer Creek
16 - Dillinger Creek
17 - Dog Creek
18 - East Fork Fall Creek
19 - East Fork Whimstick Creek
20 - Fall Creek
21 - Fish Creek
22 - Fivemile Creek
23 - Flossie Creek
24 - Game Creek
25 - Goodman Creek
26 - Green Creek
27 - Guard Creek
28 - Hartan Creek
29 - Hida Creek
30 - Hot Springs Creek
31 - Hot Springs Creek
32 - Hotzel Creek
33 - Lake Creek
34 - Little Lodgepole Creek
35 - Little Mallard Creek
36 - Lodgepole Creek
37 - Magpie Creek
38 - Mayflower Creek
39 - McCalla Creek
40 - Moose Creek
41 - Moose Jaw Creek
42 - My Creek
43 - No Name Creek
44 - Our Creek
45 - Poet Creek
46 - Pole Creek
47 - Pup Creek
48 - Queen Creek
49 - Ranch Creek
50 - Raven Creek
51 - Red Top Creek
52 - Rhett Creek
53 - Richardson Creek
54 - Rim Creek
55 - Root Creek
56 - Sabe Creek
57 - Salmon River
58 - Schissler Creek
59 - Sheep Creek
60 - Silge Creek
61 - Slaughter Creek
62 - South Fork Chamberlain Creek
63 - South Fork Dillinger Creek
64 - South Fork Whimstick Creek
65 - Twist Creek
66 - Unnamed-North Fork Mayflower Creek
67 - Wapiti Creek
68 - Warren Creek
69 - Webfoot Creek
70 - West Fork Chamberlain Creek
71 - West Fork Whimstick Creek
72 - Whimstick Creek
73 - Wind River

(iv) Middle Fork Salmon River Subunit.

(A) [Reserved for textual description of unit.]

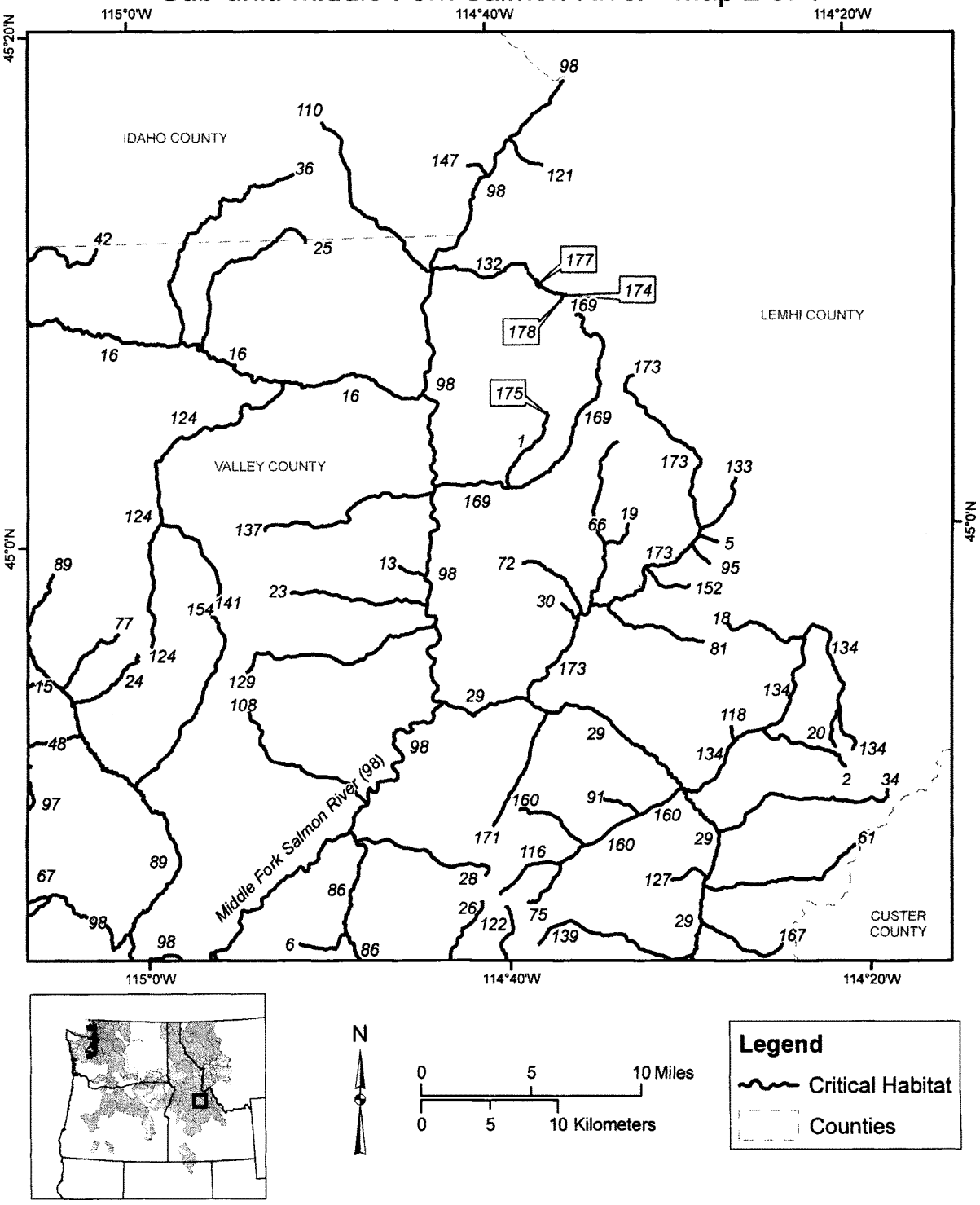
(B) **Note:** Maps of Critical Habitat for the bull trout (*Salvelinus confluentus*), Middle Fork Salmon River Subunit, follows.



Critical Habitat for Bull Trout *(Salvelinus confluentus)*

Unit: 27, Salmon River Basin

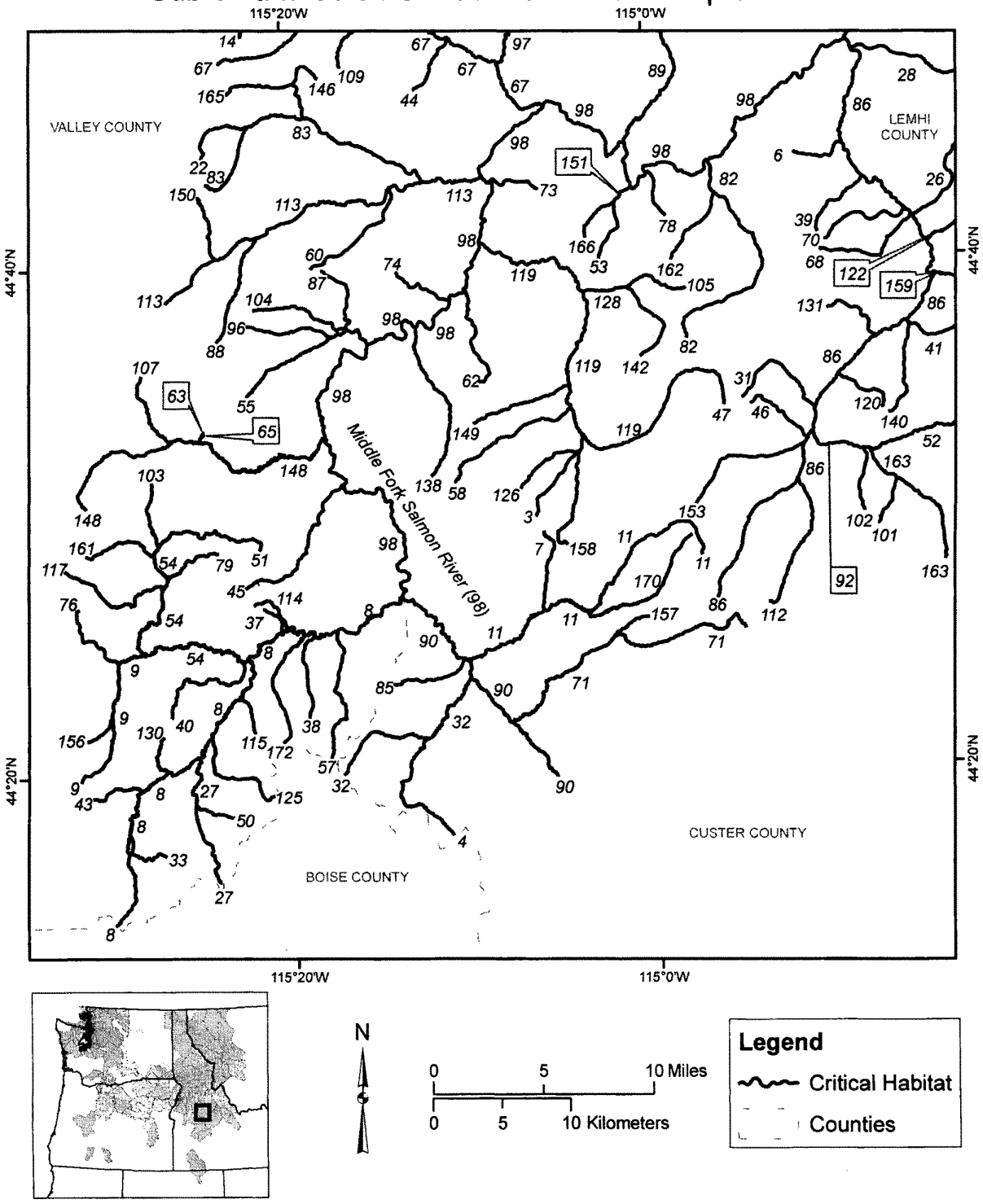
Sub-unit: Middle Fork Salmon River - Map 2 of 4



Critical Habitat for Bull Trout *(Salvelinus confluentus)*

Unit: 27, Salmon River Basin

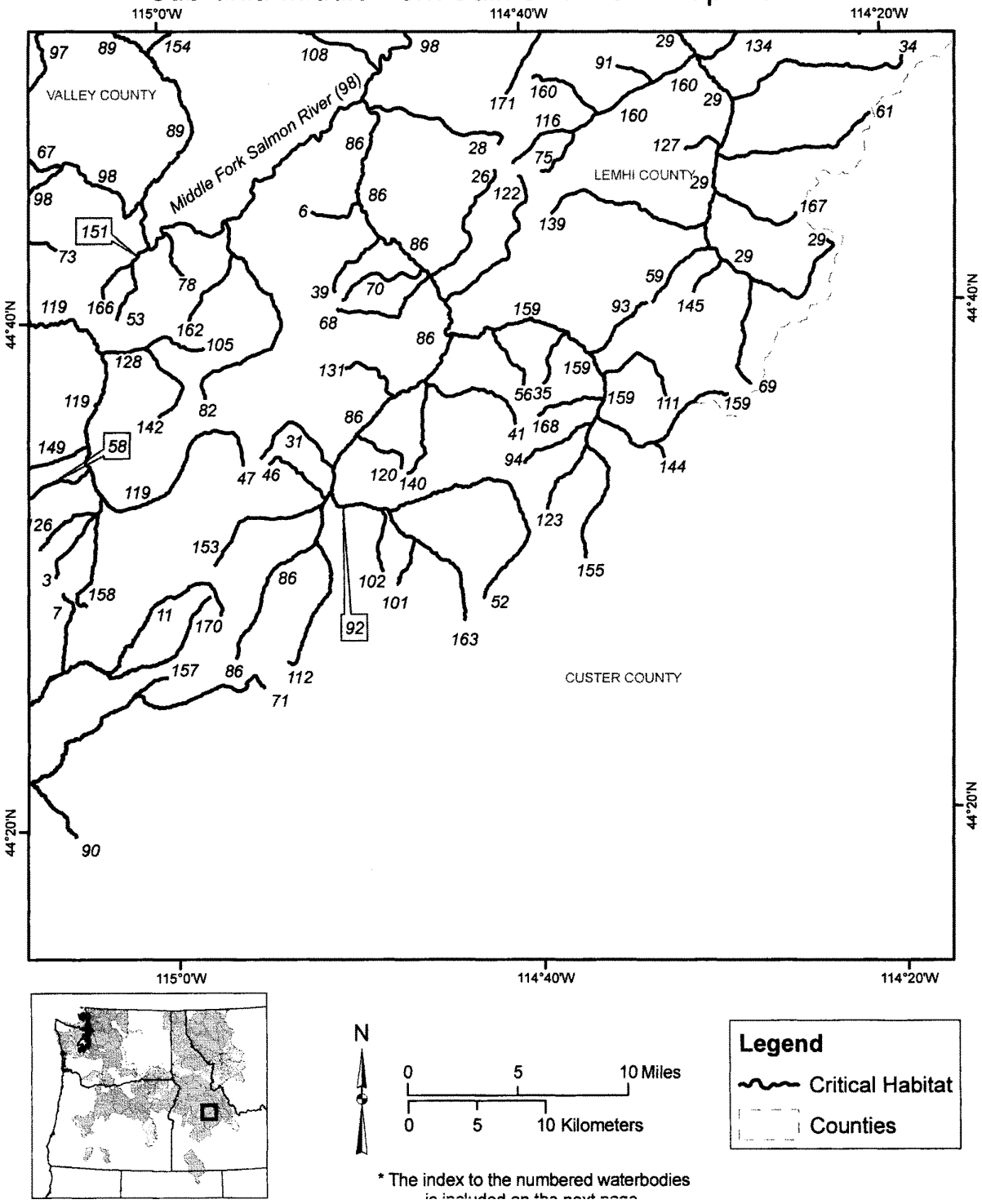
Sub-unit: Middle Fork Salmon River - Map 3 of 4



Critical Habitat for Bull Trout *(Salvelinus confluentus)*

Unit: 27, Salmon River Basin

Sub-unit: Middle Fork Salmon River - Map 4 of 4



* The index to the numbered waterbodies is included on the next page.

Unit: 27, Salmon River Basin
Sub-Unit: Middle Fork Salmon River

1 - Alpine Creek
2 - Arrastra Creek
3 - Baldwin Creek
4 - Banner Creek
5 - Beagle Creek
6 - Bear Creek-Loon
7 - Bear Creek-Marsh
8 - Bear Valley Creek
9 - Bearskin Creek
10 - Beaver Creek
11 - Beaver Creek
12 - Belvidere Creek
13 - Bernard Creek
14 - Big Chief Creek
15 - Big Cottonwood Creek
16 - Big Creek
17 - Big Ramey Creek
18 - Birdseye Creek
19 - Blackeagle Creek
20 - Blue Fork Silver Creek
21 - Boulder Creek
22 - Browning Creek
23 - Brush Creek
24 - Buck Creek
25 - Cabin Creek
26 - Cabin Creek-Loon
27 - Cache Creek
28 - Cache Creek-Loon
29 - Camas Creek
30 - Camp Creek
31 - Canyon Creek
32 - Cape Horn Creek
33 - Casner Creek
34 - Castle Creek
35 - Cat Creek
36 - Cave-Big Creek
37 - Chip Creek
38 - Cold Creek
39 - Cold Spring Creek-Loon
40 - Cook Creek
41 - Cottonwood Creek
42 - Crooked Creek
43 - Cub Creek
44 - Cultus Creek
45 - Dagger Creek
46 - Deer Creek
47 - Duffield Creek
48 - Dynamite Creek
49 - East Fork Big Ramey Creek
50 - East Fork Cache Creek
51 - East Fork Elk Creek
52 - East Fork Mayfield Creek
53 - East Fork Thomas Creek
54 - Elk Creek
55 - Elkhorn Creek
56 - Fir Creek
57 - Fir Creek
58 - Float Creek
59 - Fly Creek
60 - Forty-Five Creek
61 - Furnace Creek
62 - Greyhound Creek
63 - Half Moon Creek
64 - Hand Creek
65 - Honeymoon Creek
66 - Hoodoo Creek
67 - Indian Creek
68 - Indian Creek-Loon
69 - J Fell Creek
70 - Jack Creek
71 - Knapp Creek
72 - Lake Creek
73 - Lake Creek
74 - Lake Creek
75 - Liberty Creek
76 - Little Beaver Creek
77 - Little Cottonwood Creek
78 - Little Creek
79 - Little East Fork Elk Creek
80 - Little Indian Creek
81 - Little Jacket Creek
82 - Little Loon Creek
83 - Little Pistol Creek
84 - Logan Creek
85 - Lola Creek
86 - Loon Creek
87 - Lucky Creek
88 - Luger Creek
89 - Marble Creek
90 - Marsh Creek
91 - Martindale Creek
92 - Mayfield Creek
93 - McHoney Creek
94 - McKee Creek
95 - Meadow Creek
96 - Middle Fork Elkhorn Creek
97 - Middle Fork Indian Creek
98 - Middle Fork Salmon River
99 - Middle Fork Smith Creek
100 - Monumental Creek
101 - Mystery Creek
102 - Nelson Creek
103 - North Fork Elk Creek
104 - North Fork Elkhorn Creek
105 - North Fork Sheep Creek
106 - North Fork Smith Creek
107 - North Fork Sulphur Creek
108 - Norton Creek
109 - Papoose Creek
110 - Papoose Creek
111 - Parker Creek
112 - Pioneer Creek - Loon
113 - Pistol Creek
114 - Poker Creek
115 - Pole Creek
116 - Pole Creek-Camas
117 - Porter Creek
118 - Rams Creek
119 - Rapid River
120 - Rat Creek
121 - Roaring Creek
122 - Rock Creek-Loon
123 - Rush Creek
124 - Rush Creek
125 - Sack Creek
126 - Seafoam Creek
127 - Sheep Creek
128 - Sheep Creek
129 - Sheep Creek-Lmf
130 - Sheep Trail Creek
131 - Shell Creek
132 - Ship Island Creek

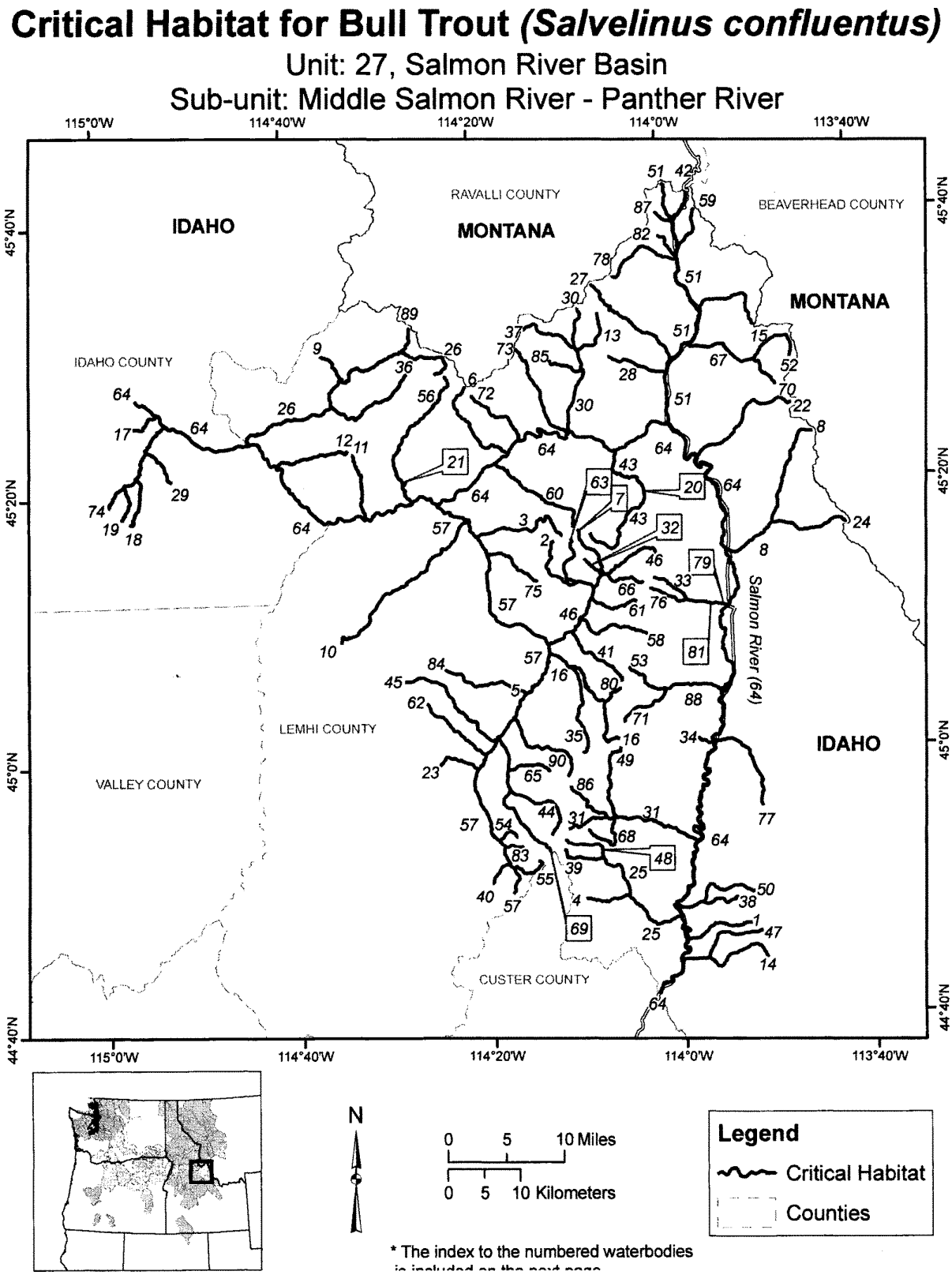
Unit: 27, Salmon River Basin
Sub-Unit: Middle Fork Salmon River

133 - Shovel Creek
134 - Silver Creek
135 - Smith Creek
136 - Snowslide Creek
137 - Soldier Creek
138 - Soldier Creek
139 - South Fork Camas Creek
140 - South Fork Cottonwood Creek
141 - South Fork Rush Creek
142 - South Fork Sheep Creek
143 - South Fork Smith Creek
144 - South Fork Warm Spring Creek
145 - Spider Creek
146 - Springfield Creek
147 - Stoddard Creek
148 - Sulphur Creek
149 - Sulphur Creek-Rapid
150 - Thirty-Eight Creek
151 - Thomas Creek
152 - Trail Creek
153 - Trail Creek-Loon
154 - Trail Creek-Marble
155 - Trapper Creek
156 - Unnamed to Bearskin Creek
157 - Unnamed-to Knapp Creek
158 - Vanity Creek
159 - Warm Spring Creek
160 - West Fork Camas Creek
161 - West Fork Elk Creek
162 - West Fork Little Loon Creek
163 - West Fork Mayfield Creek
164 - West Fork Monumental Creek
165 - West Fork Springfield Creek
166 - West Fork Thomas Creek
167 - White Goat Creek
168 - Wickiup Creek-Loon
169 - Wilson Creek
170 - Winnemucca Creek
171 - Woodtick Creek
172 - Wyoming Creek
173 - Yellowjacket Creek
174 - Airplane Lake
175 - Alpine Creek Lake #5
176 - Big Creek Marsh
177 - Ship Island Lake #1
178 - Shoban Lake

(v) Middle Salmon–Panther River Subunit.

(A) [Reserved for textual description of unit.]

(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Middle Salmon–Panther River Subunit, follows:



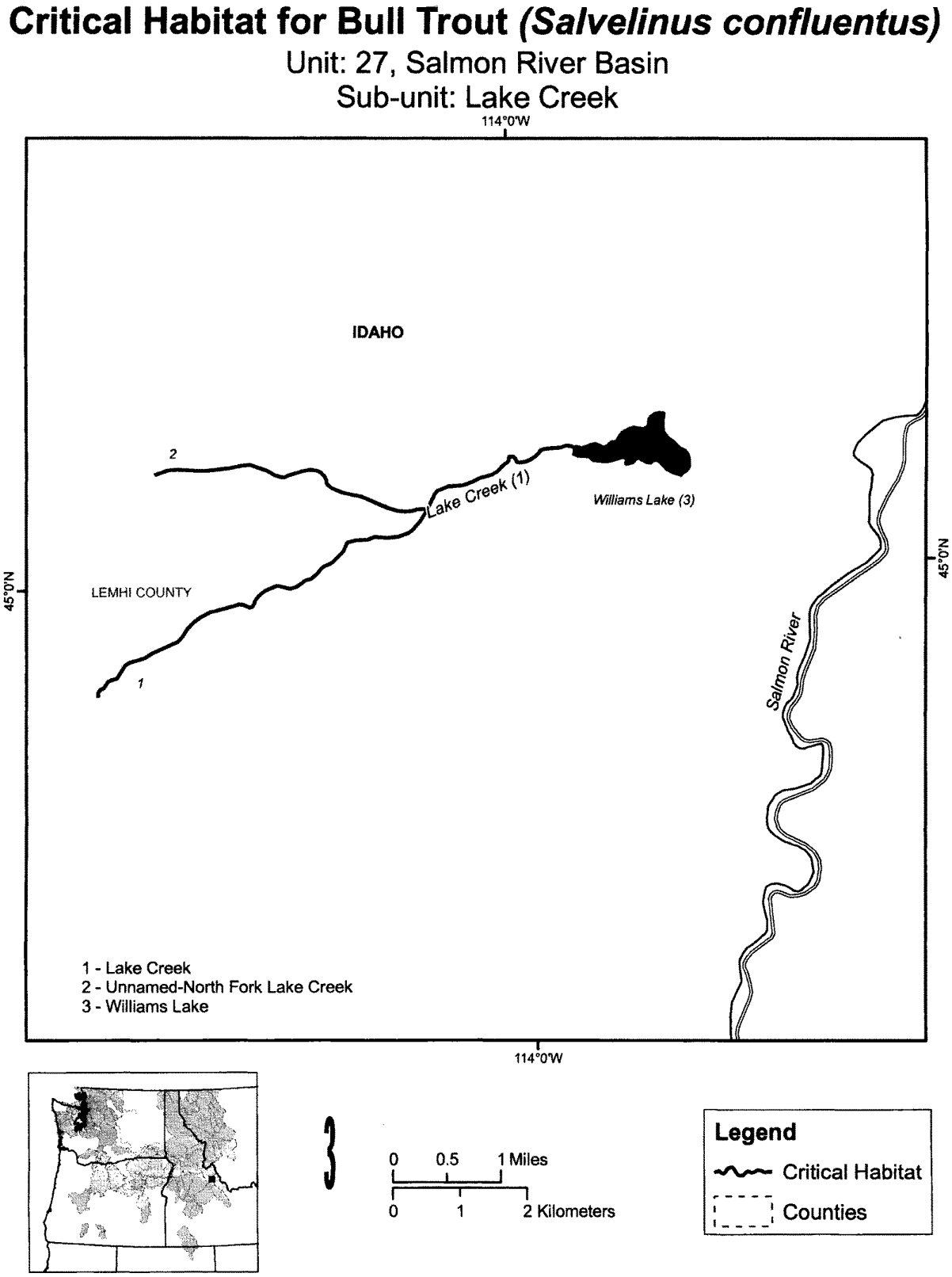
Unit: 27, Salmon River Basin
Sub-Unit: Middle Salmon River – Panther River

1 - Allison Creek
2 - Arnett Creek
3 - Beaver Creek
4 - Big Hat Creek
5 - Blackbird Creek
6 - Boulder Creek
7 - Camp Creek
8 - Carmen Creek
9 - Cayuse Creek
10 - Clear Creek
11 - Colson Creek
12 - Corn Creek
13 - Corral Creek
14 - Cow Creek
15 - Dahlonega Creek
16 - Deep Creek
17 - Devils Toe Creek
18 - Disappointment Creek
19 - Dismal Creek
20 - Dump Creek
21 - East Fork Owl Creek
22 - Fourth of July Creek
23 - Fourth of July Creek
24 - Freeman Creek
25 - Hat Creek
26 - Horse Creek
27 - Hughes Creek
28 - Hull Creek
29 - Hungry Creek
30 - Indian Creek
31 - Iron Creek
32 - Jefferson Creek
33 - Jesse Creek
34 - Lake Creek
35 - Little Deep Creek
36 - Little Horse Creek
37 - McConn Creek
38 - McKim Creek
39 - Middle Fork Hat Creek
40 - Mink Creek
41 - Moccasin Creek
42 - Moose Creek
43 - Moose Creek
44 - Moyer Creek
45 - Musgrove Creek
46 - Napias Creek
47 - North Fork Cow Creek
48 - North Fork Hat Creek
49 - North Fork Iron Creek
50 - North Fork McKim Creek
51 - North Fork Salmon River
52 - North Fork Sheep Creek
53 - North Fork Williams Creek
54 - Opal Creek
55 - Otter Creek
56 - Owl Creek
57 - Panther Creek
58 - Phelan Creek
59 - Pierce Creek
60 - Pine Creek
61 - Pony Creek
62 - Porphyry Creek
63 - Rapps Creek
64 - Salmon River
65 - Salt Creek
66 - Sharkey Creek
67 - Sheep Creek
68 - South Fork Iron Creek
69 - South Fork Moyer Creek
70 - South Fork Sheep Creek
71 - South Fork Williams Creek
72 - Spring Creek
73 - Squaw Creek
74 - Starvation Creek
75 - Trail Creek
76 - Turner Gulch (Trib to Jesse Creek)
77 - Twelvemile Creek
78 - Twin Creek
79 - Unnamed
80 - UNNAMED - off Deep Creek
81 - Unnamed-Needed bypass channel
82 - Vine Creek
83 - Weasel Creek
84 - West Fork Blackbird Creek
85 - West Fork Indian Creek
86 - West Fork Iron Creek
87 - West Fork North Fork Salmon River
88 - Williams Creek
89 - Woods Creek
90 - Woodtick Creek

(vi) Lake Creek Subunit.

(A) [Reserved for textual description of unit.]

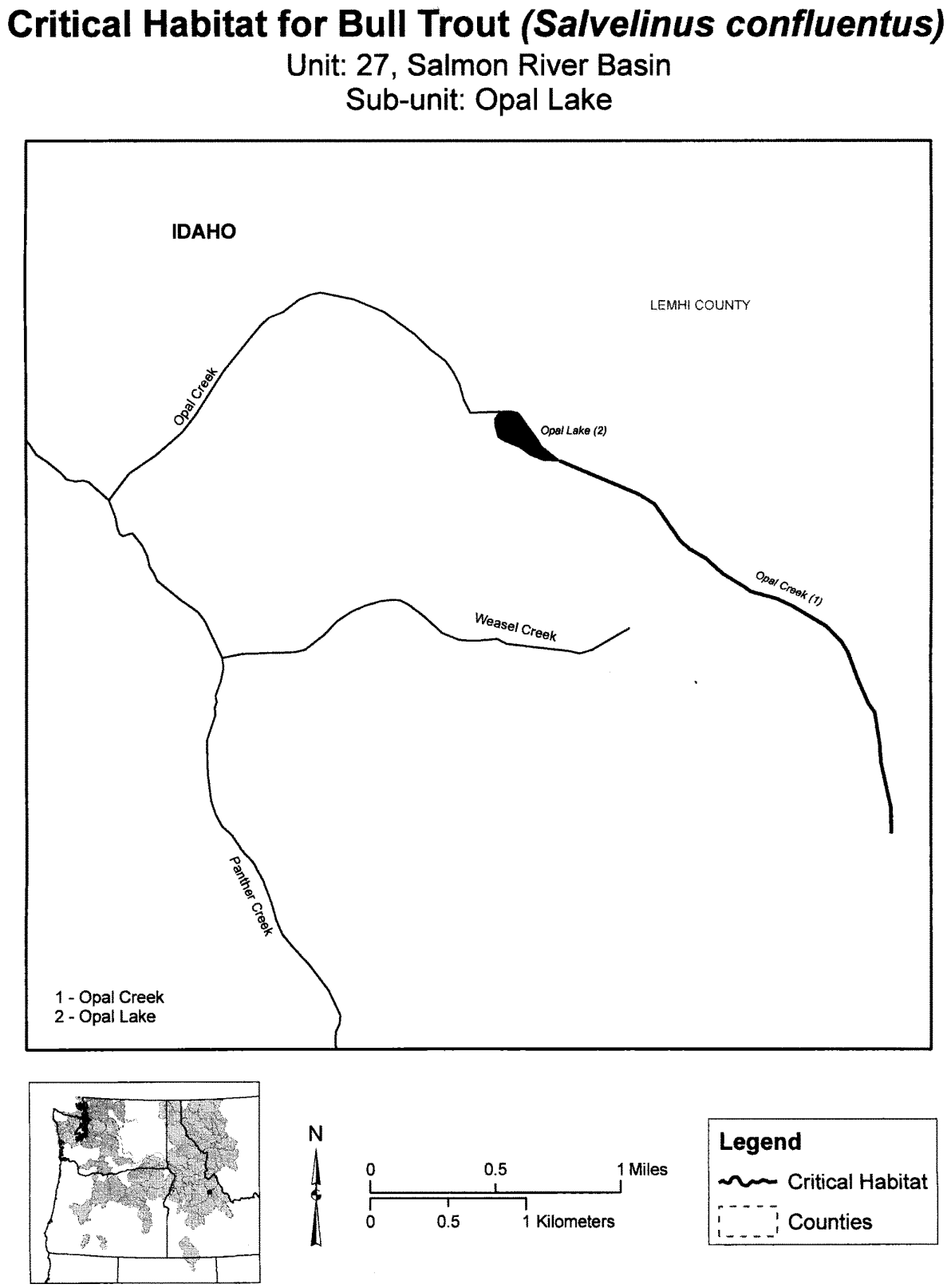
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Lake Creek Subunit, follows:



(vii) Opal Lake Subunit.

(A) [Reserved for textual description of unit.]

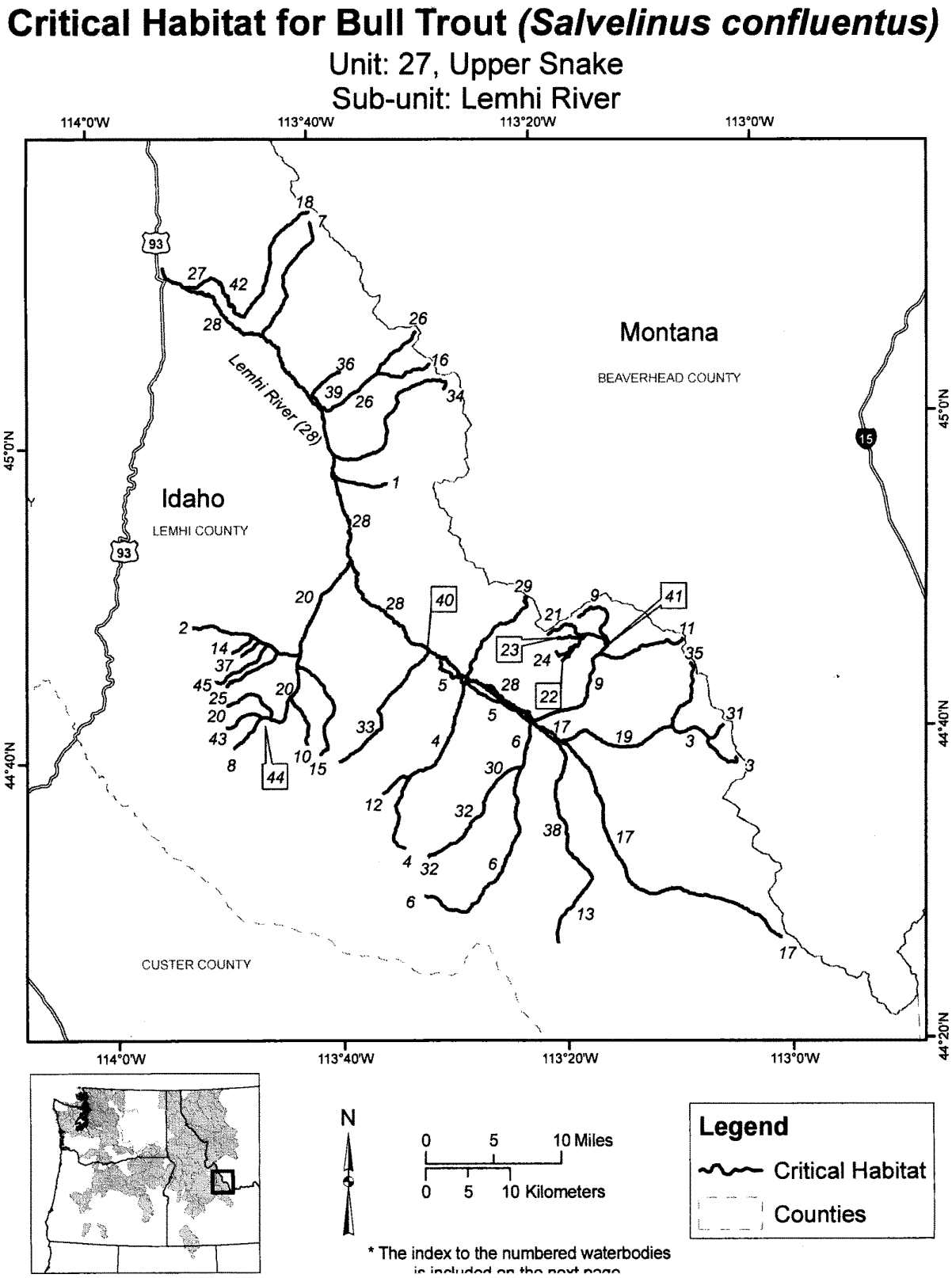
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Opal Lake Subunit, follows:



(viii) Lemhi River Subunit.

(A) [Reserved for textual description of unit.]

(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Lemhi River Subunit, follows:



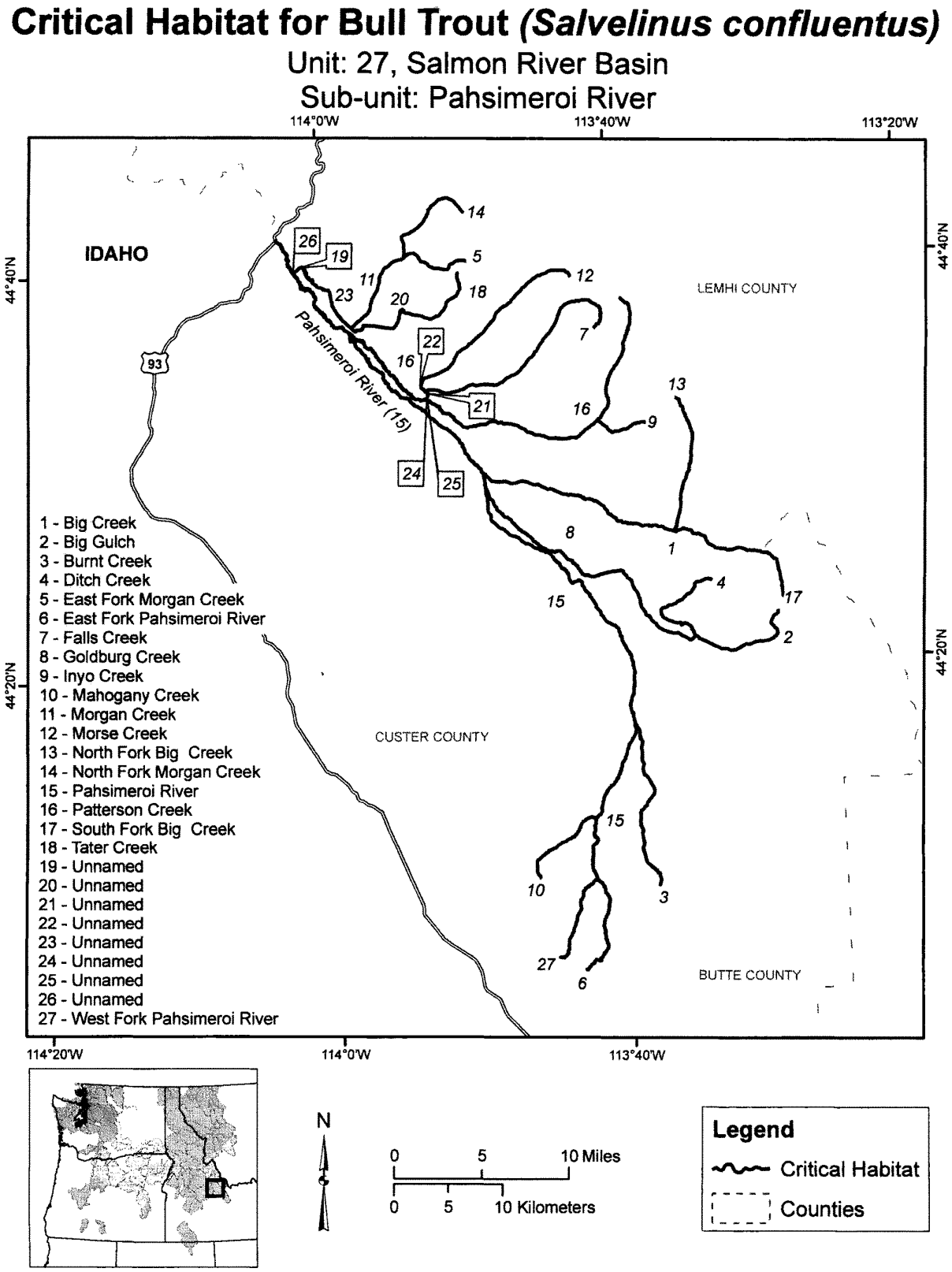
Unit 27: Upper Snake
Sub-Unit: Lemhi River

1 - Agency Creek
2 - Bear Valley Creek
3 - Big Bear Creek
4 - Big Eightmile Creek
5 - Big Springs Creek
6 - Big Timber Creek
7 - Bohannon Creek
8 - Bray Creek
9 - Canyon Creek
10 - Cooper Creek
11 - Cruikshank Creek
12 - Dairy Creek
13 - Deer Creek
14 - Deer Creek
15 - East Fork Hayden Creek
16 - East Fork Kenney Creek
17 - Eighteenmile Creek
18 - Geertson Creek
19 - Hawley Creek
20 - Hayden Creek
21 - Hood Gulch Springs 1
22 - Hood Gulch Springs 2
23 - Hood Gulch Springs 3
24 - Hood Gulch Springs 4
25 - Kadletz Creek
26 - Kenney Creek
27 - Kirtley Creek
28 - Lemhi River
29 - Little Eightmile Creek
30 - Little Timber Creek
31 - Meadow Creek
32 - Middle Fork Little Timber Creek
33 - Mill Creek
34 - Pattee Creek
35 - Reservoir Creek
36 - Sandy Creek
37 - Short Creek
38 - Texas Creek
39 - Unnamed
40 - Unnamed - didgitized
41 - Unnamed - digitized
42 - Unnamed - Diversion between Geertson Creek an
43 - WEST FORK HAYDEN CR
44 - West Fork Hayden Creek
45 - Wright Creek

(ix) Pahsimeroi River Subunit.

(A) [Reserved for textual description of unit.]

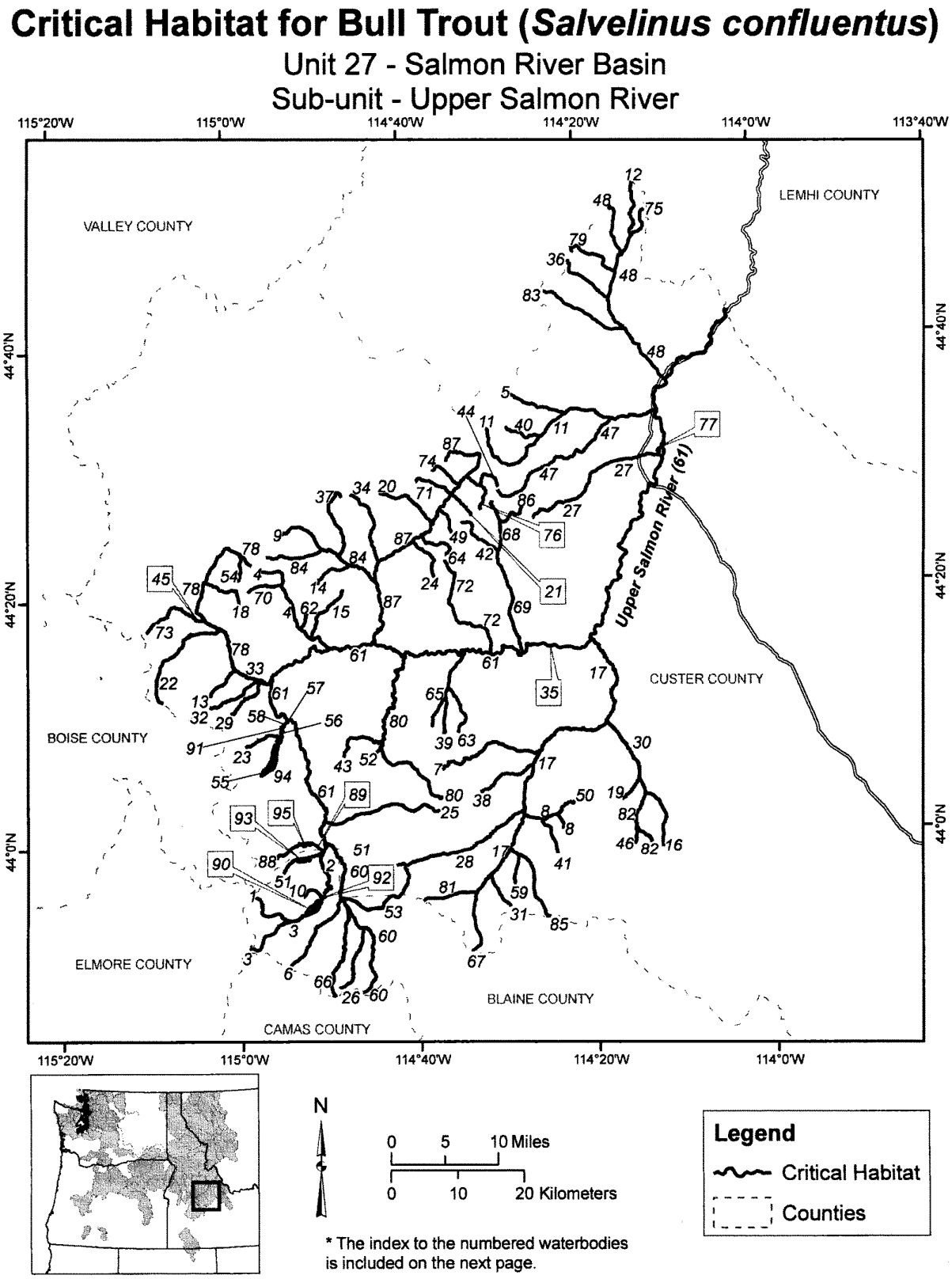
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Pahsimeroi River Subunit, follows:



(x) Upper Salmon River Subunit.

(A) [Reserved for textual description of unit.]

(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Upper Salmon River Subunit, follows:



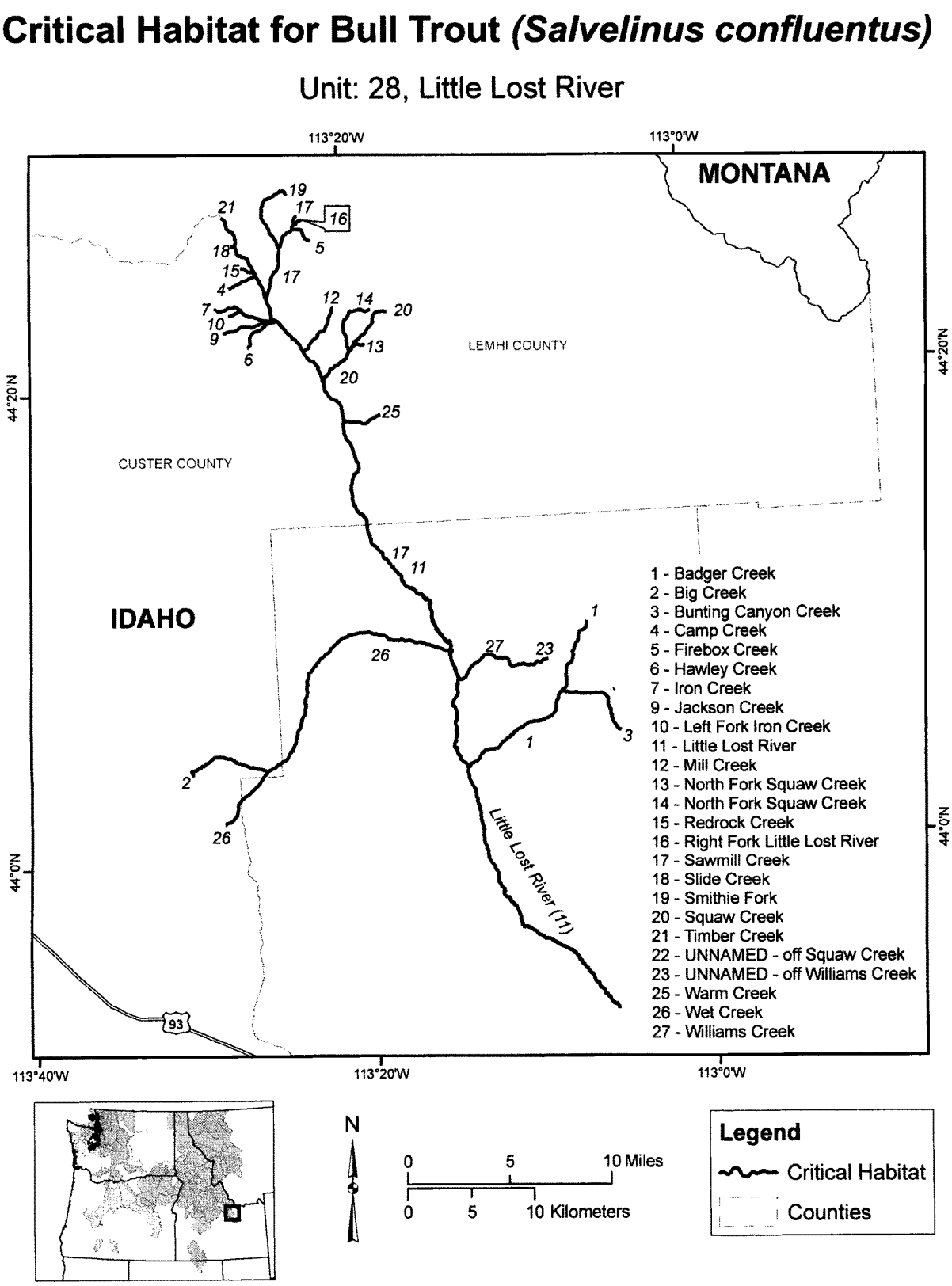
Unit 27 - Salmon River Basin
Sub-unit - Upper Salmon River

1 - Alpine Creek
2 - Alturas Lake Creek (Above Lake)
3 - Alturas Lake Creek (Below Lake)
4 - Basin Creek
5 - Bear Creek
6 - Beaver Creek
7 - Big Boulder Creek
8 - Bowery Creek
9 - Cabin Creek
10 - Cabin Creek
11 - Challis Creek
12 - Corral Creek
13 - Crooked Creek
14 - Deadwood Creek
15 - East Basin Creek
16 - East Fork Herd Creek
17 - East Fork Salmon River
18 - East Fork Valley Creek
19 - East Pass Creek
20 - Eightmile Creek
21 - Elevenmile Creek
22 - Elk Creek
23 - Fishhook Creek
24 - Fivemile Creek
25 - Fourth of July Creek
26 - Frenchman Creek
27 - Garden Creek
28 - Germania Creek
29 - Goat Creek
30 - Herd Creek
31 - Ibex Creek
32 - Iron Creek
33 - Job Creek
34 - Jordan Creek
35 - Kinnikinic Creek
36 - Lick Creek
37 - Lightning Creek
38 - Little Boulder Creek
39 - Livingston Creek
40 - Lodgepole Creek
41 - Long Tom Creek
42 - Martin Creek
43 - Martin Creek
44 - McKay Creek
45 - Meadow Creek - mouth to Trap Cr
46 - Meridian Creek
47 - Mill Creek
48 - Morgan Creek
49 - Ninemile Creek
50 - North Fork Bowery Creek
51 - Pettit Lake Creek
52 - Pigtail Creek
53 - Pole Creek
54 - Prospect Creek
55 - Redfish Lake Creek - inlet to ~ 0.1 km upstream
56 - Redfish Lake Creek - L Redfish Lk to Redfish
57 - Redfish Lake Creek - mouth to L. Redfish Lk
58 - Redfish Lake Creek - mouth to Redfish Lk
59 - Roaring Creek
60 - Salmon River - Alturas Lk Creek to headwater
61 - Salmon River - mouth to Alturas Lk Creek
62 - Short Creek
63 - Silver Rule Creek
64 - Sixmile Creek
65 - Slate Creek
66 - Smiley Creek
67 - South Fork East Fork Salmon River
68 - Squaw Creek - Martin Cr to headwaters
69 - Squaw Creek - mouth to Martin Cr
70 - Sunday Creek
71 - Tenmile Creek
72 - Thompson Creek
73 - Trap Creek
74 - Twelvemile Creek
75 - UNNAMED - off Corral Creek
76 - UNNAMED - off McKay Creek
77 - Unnamed-Garden Creek
78 - Valley Creek
79 - Van Horn Creek
80 - Warm Springs Creek
81 - West Fork East Fork Salmon River
82 - West Fork Herd Creek
83 - West Fork Morgan Creek
84 - West Fork Yankee Fork
85 - West Pass Creek
86 - Willow Creek
87 - Yankee Fork
88 - Yellowbelly Creek - Yellowbelly Lk to Farley
89 - Yellowbelly Lake - Alturas Lk Cr to Yellowbelly Lk
90 - Alturas Lake
91 - Little Redfish Lake
92 - Perkins Lake
93 - Petit Lake
94 - Redfish Lake
95 - Yellowbelly Lake

(34) Unit 28: Little Lost River Unit, Idaho.

(i) [Reserved for textual description of unit.]

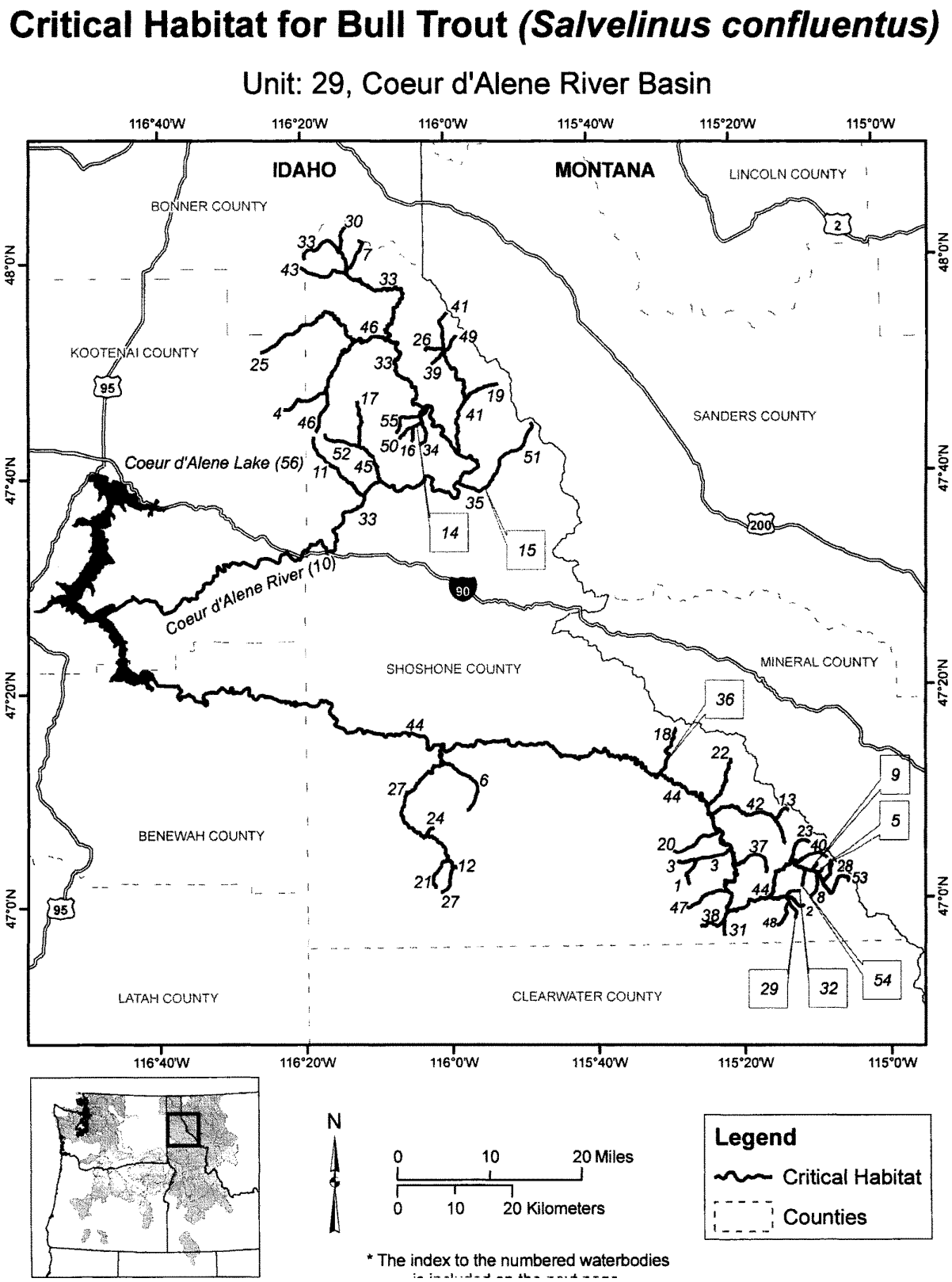
(ii) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Little Lost River Unit, follows:



(35) Unit 29: Coeur d'Alene River Basin Unit, Idaho.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Coeur d'Alene River Basin Unit follows:



Unit: 29, Coeur d'Alene River Basin

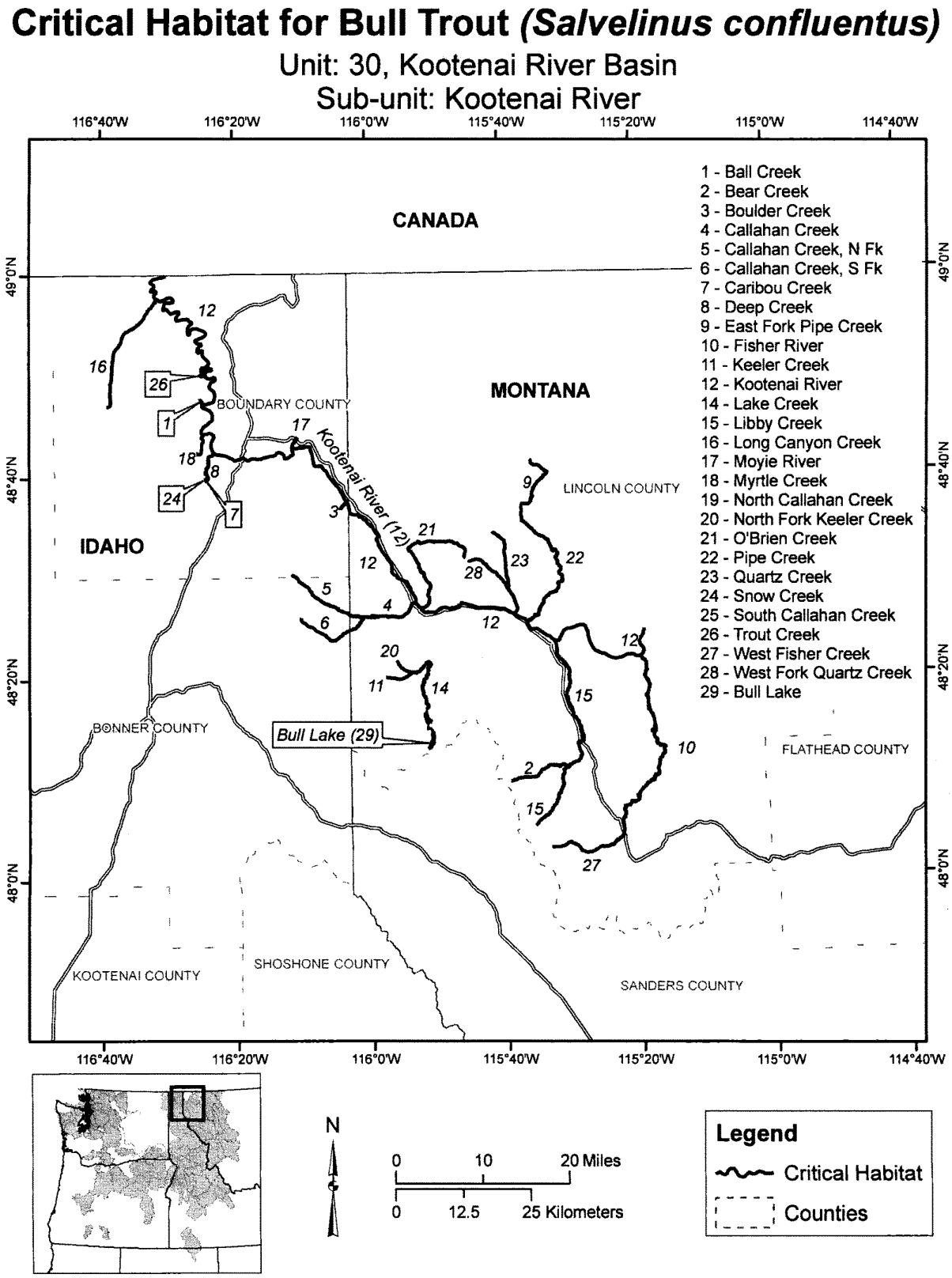
1 - Bad Bear Creek
2 - Bean Creek
3 - Beaver Creek
4 - Big Elk Creek
5 - Bluebells Creek
6 - Boulder Creek
7 - Buckskin Creek
8 - California Creek
9 - Cascade Creek (St. Joe trib)
10 - Coeur d'Alene River
11 - Cougar Creek
12 - Delaney Creek
13 - Dolly Creek
14 - Downey Creek
15 - Eagle Creek
16 - East Fork Downey Creek
17 - East Fork Steamboat Creek
18 - Entente Creek
19 - Falls Creek
20 - Fly Creek
21 - Freezeout Creek
22 - Gold Creek
23 - Heller Creek
24 - Homestead Creek
25 - Independence Creek
26 - Little Lost Fork
27 - Marble Creek
28 - Medicine Creek
29 - Mill Creek
30 - Mosquito Creek
31 - My Creek
32 - North Fork Bean Creek
33 - North Fork Coeur d'Alene River
34 - North Grizzly Creek
35 - Prichard Creek
36 - Quartz Creek
37 - Red Ives Creek
38 - Ruby Creek
39 - Sentinel Creek
40 - Sherlock Creek
41 - Shoshone Creek
42 - Simmons Creek
43 - Spruce Creek
44 - St. Joe River
45 - Steamboat Creek
46 - Tepee Creek
47 - Timber Creek
48 - Tinear Creek
49 - Ulm Creek
50 - West Fork Downey Creek
51 - West Fork Eagle Creek
52 - West Fork Steamboat Creek
53 - Wisdom Creek
54 - Yankee Bar Creek
55 - Yellow Dog Creek
56 - Coeur d'Alene Lake

(36) Unit 30: Kootenai River Basin Unit, Idaho and Montana.

(i) Kootenai River Subunit.

(A) [Reserved for textual description of unit.]

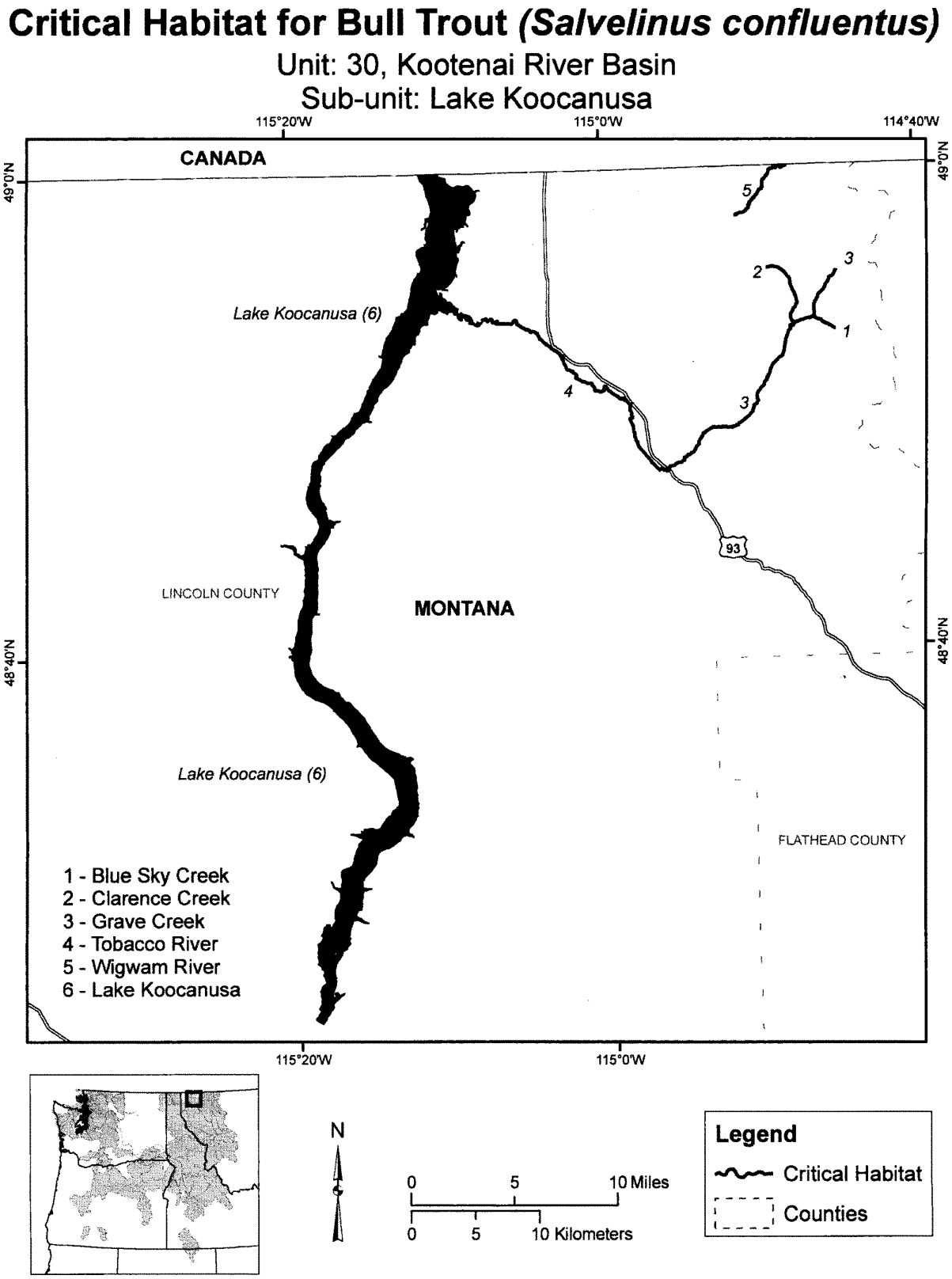
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Kootenai River Subunit, follows:



(ii) Lake Koocanusa Subunit.

(A) [Reserved for textual description of unit.]

(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Lake Koocanusa Subunit, follows:

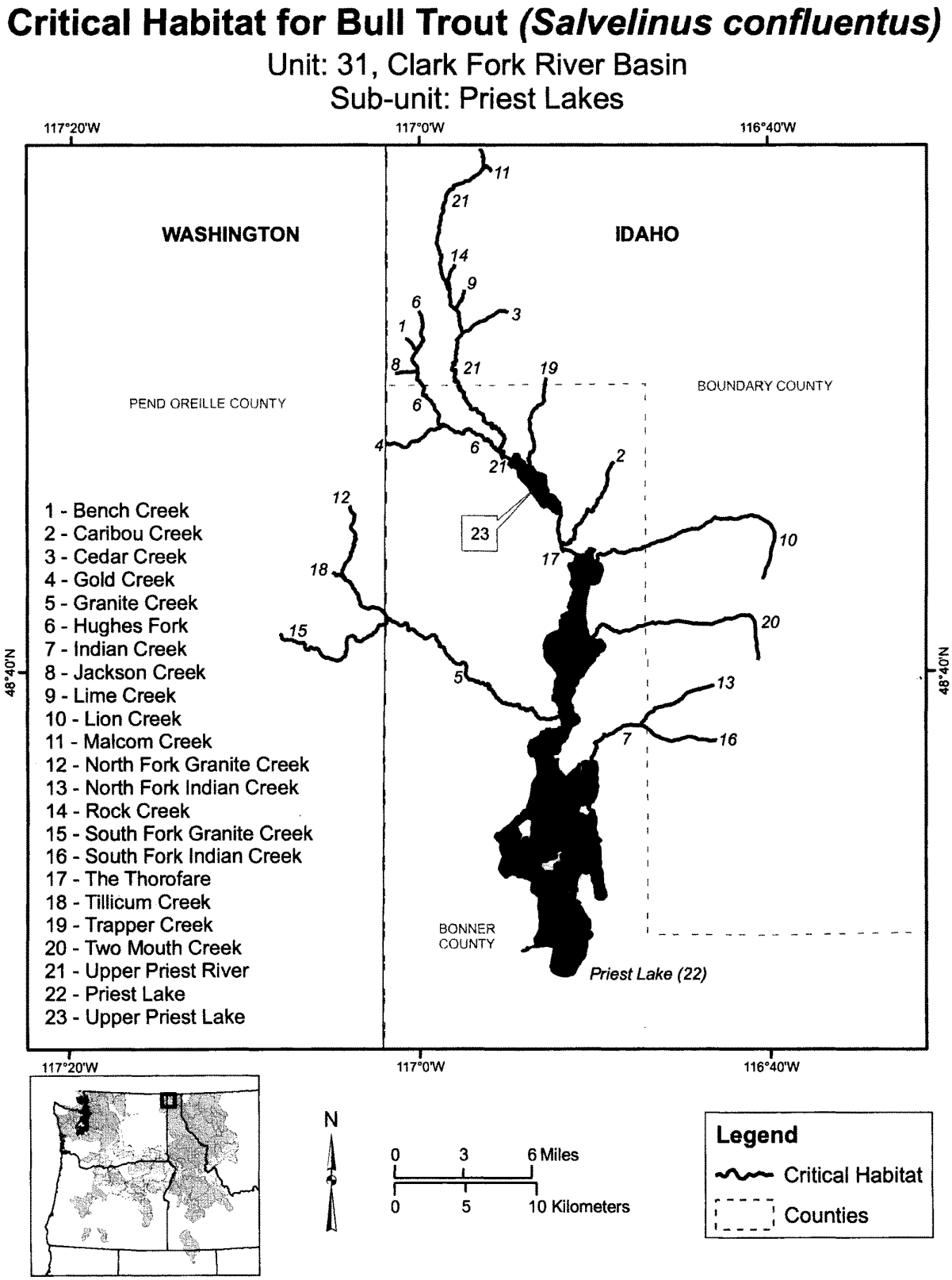


(36) Unit 31: Clark Fork River Basin Unit, Idaho, Montana, and Washington.

(i) Priest Lakes and Upper Priest River (Priest Lakes) Subunit.

(A) [Reserved for textual description of unit.]

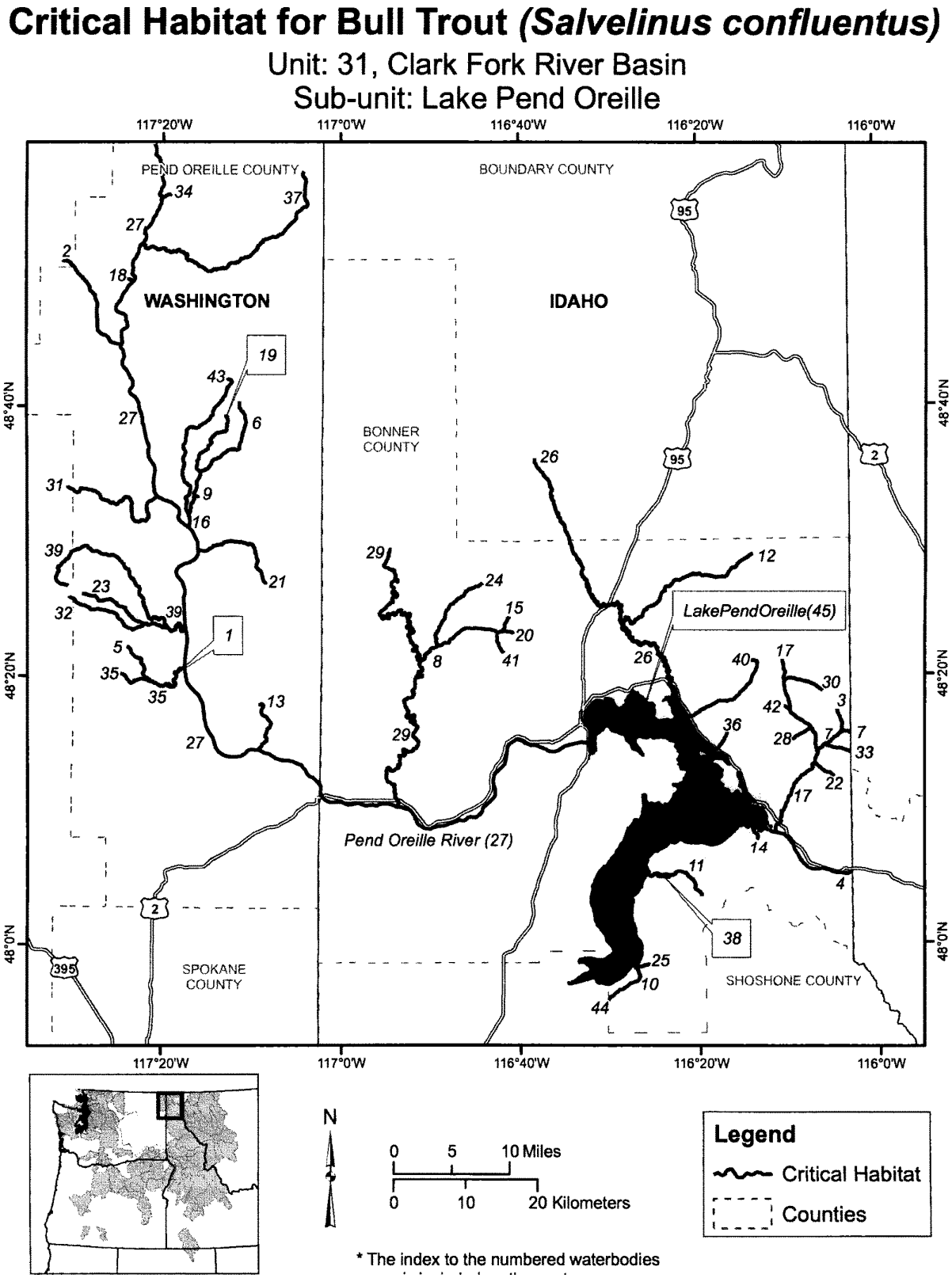
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Priest Lakes and Upper Priest River (Priest Lakes) Subunit, follows:



(ii) Lake Pend Oreille, Pend Oreille River, and lower Priest River (Lake Pend Oreille) Subunit

(A) [Reserved for textual description of unit.]

(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Lake Pend Oreille, Pend Oreille River, and lower Priest River (Lake Pend Oreille) Subunit, follows:



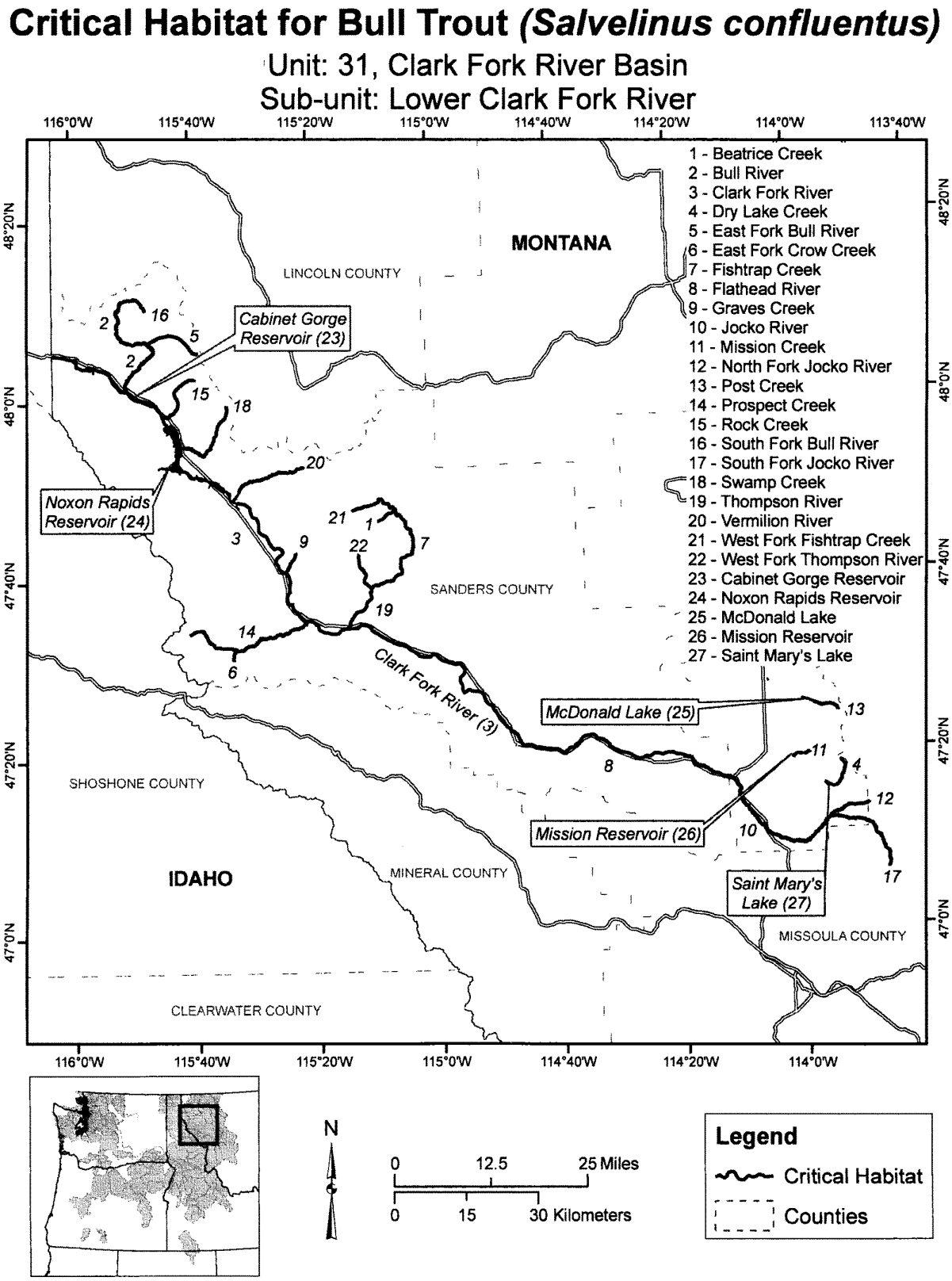
Unit: 31, Clark Fork River Basin
Sub-unit: Lake Pend Oreille

1 - Calispell Creek
2 - Cedar Creek
3 - Char Cr
4 - Clark Fork River
5 - E. Fork Small Creek
6 - East Branch LeClerc Creek
7 - East Fork Cr
8 - East River
9 - Fourth of July Creek
10 - Gold Creek
11 - Granite Creek
12 - Grouse Creek
13 - Indian Creek
14 - Johnson Cr
15 - Keokee Creek
16 - LeClerc Creek
17 - Lightning Creek
18 - Lunch Creek
19 - Middle Branch Le Clerc Creek
20 - Middle Fork East River
21 - Mill Creek
22 - Morris Creek
23 - N.F. Of S. Fork Tacoma Creek
24 - North Fork East River
25 - North Gold Creek
26 - Pack River
27 - Pend Oreille River
28 - Porcupine Creek
29 - Priest River
30 - Rattle Creek
31 - Ruby Creek
32 - S. Fork Tacoma Creek
33 - Savage Cr
34 - Slate Creek
35 - Small Creek
36 - Strong Creek
37 - Sullivan Creek
38 - Sullivan Springs
39 - Tacoma Creek
40 - Trestle Creek
41 - Uleda Creek
42 - Wellington Creek
43 - West Branch LeClerc Creek
44 - West Gold Creek
45 - Lake Pend Oreille

(iii) Lower Clark Fork River Subunit.

(A) [Reserved for textual description of unit.]

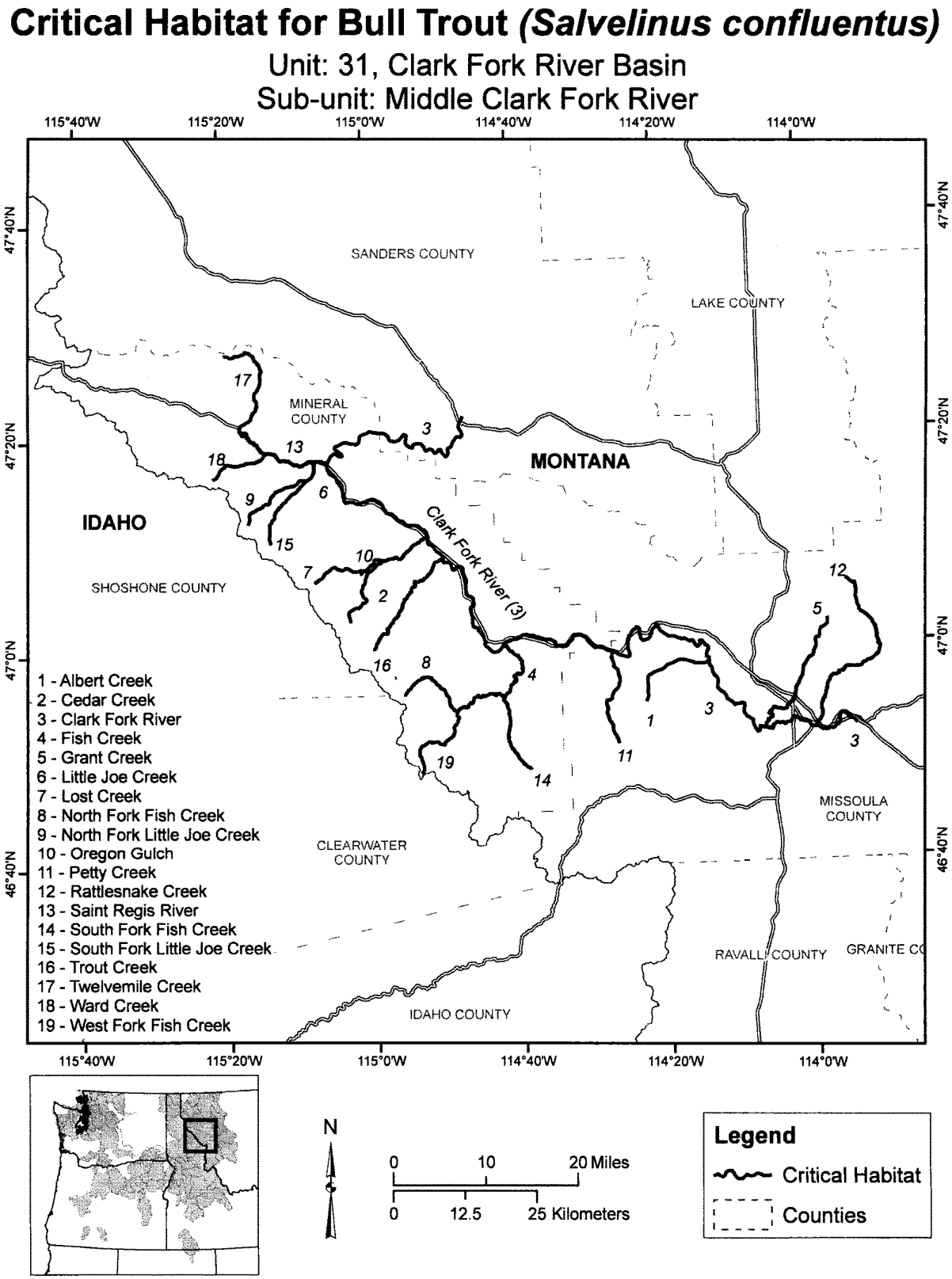
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Lower Clark Fork River Subunit, follows:



(iv) Middle Clark Fork River Subunit.

(A) [Reserved for textual description of unit.]

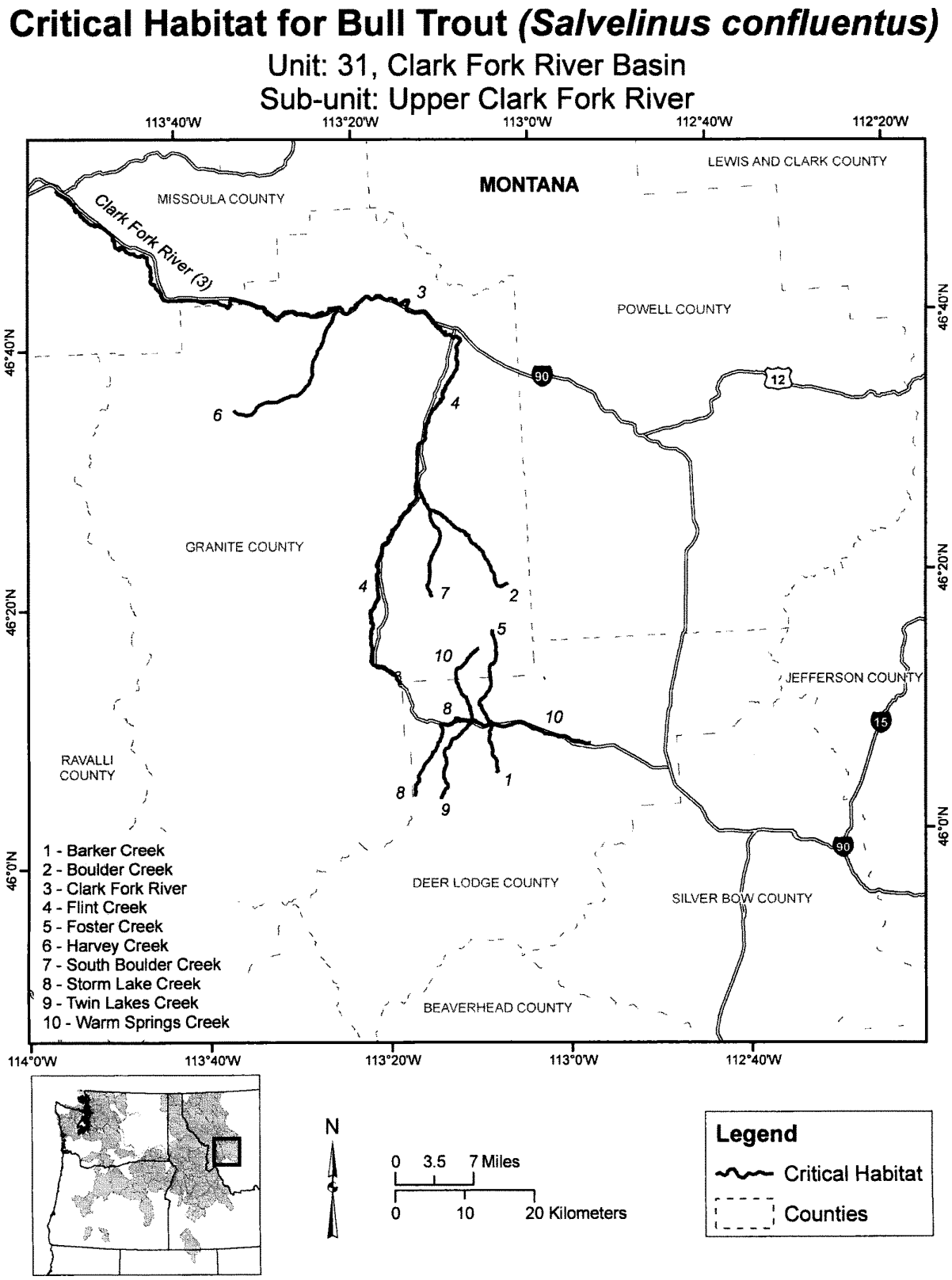
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Middle Clark Fork River Subunit, follows:



(v) Upper Clark Fork River Subunit.

(A) [Reserved for textual description of unit.]

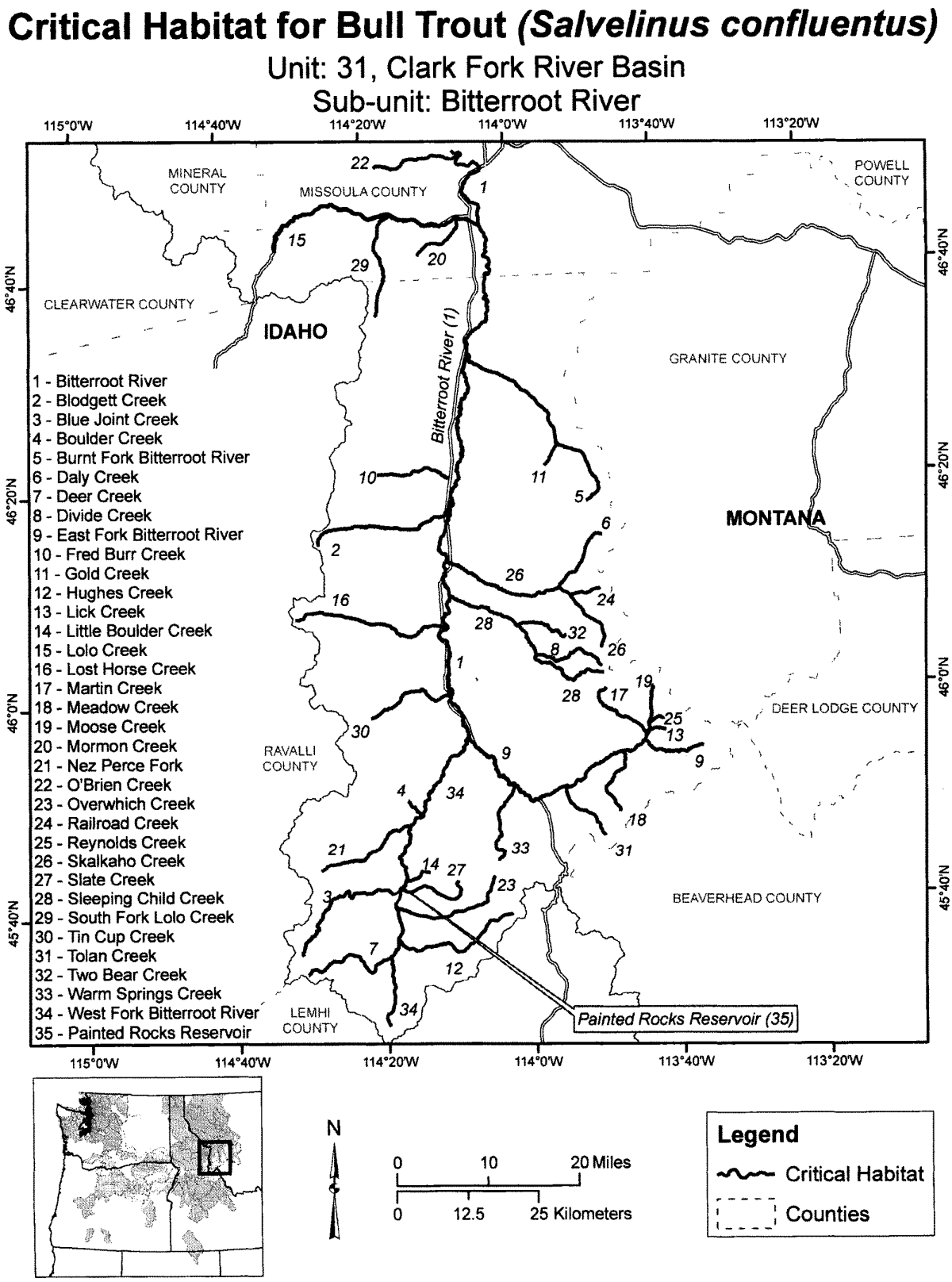
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Upper Clark Fork River Subunit, follows:



(vi) Bitterroot River Subunit.

(A) [Reserved for textual description of unit.]

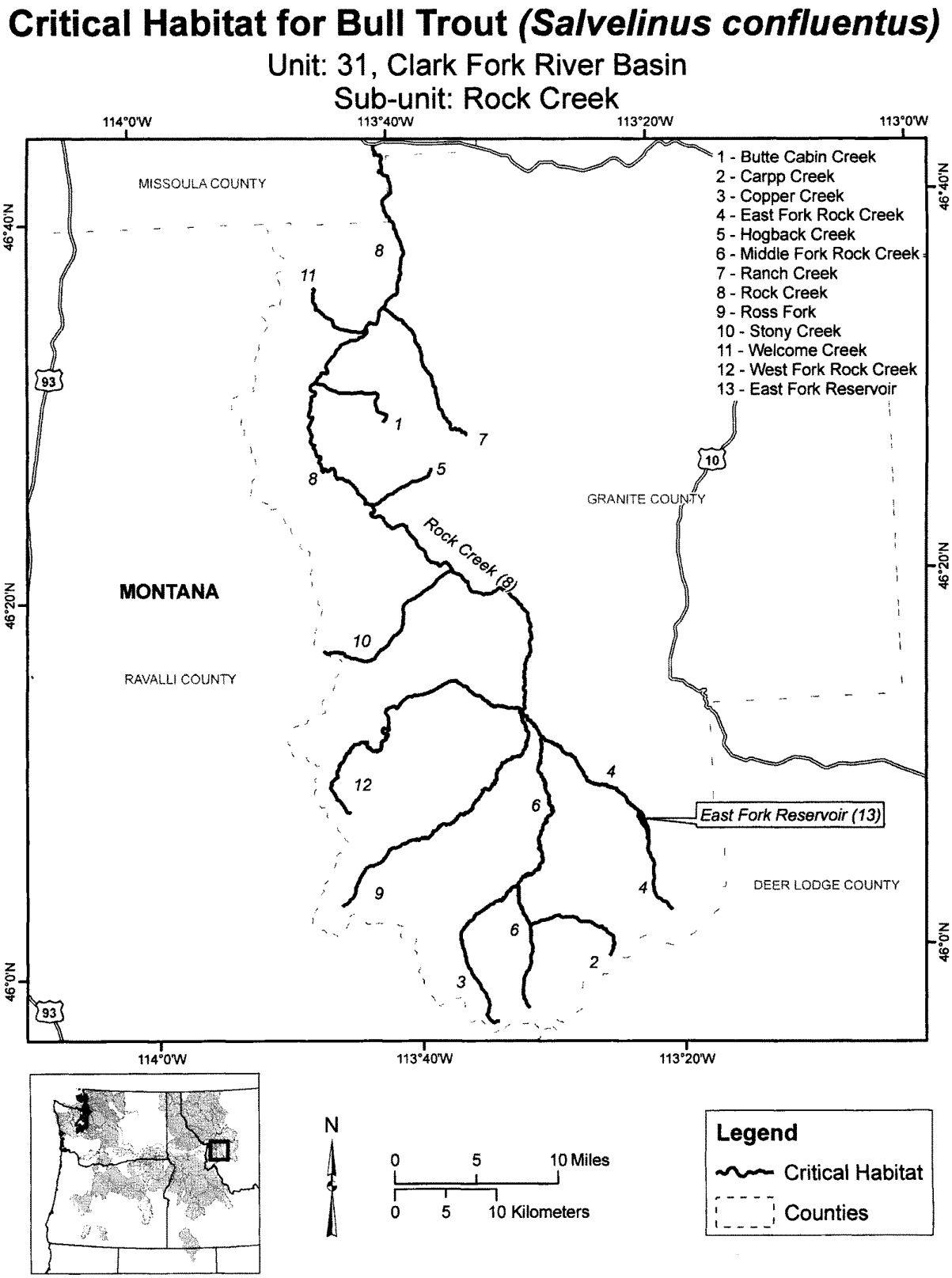
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Bitterroot River Subunit, follows:



(vii) Rock Creek Subunit

(A) [Reserved for textual description of unit.]

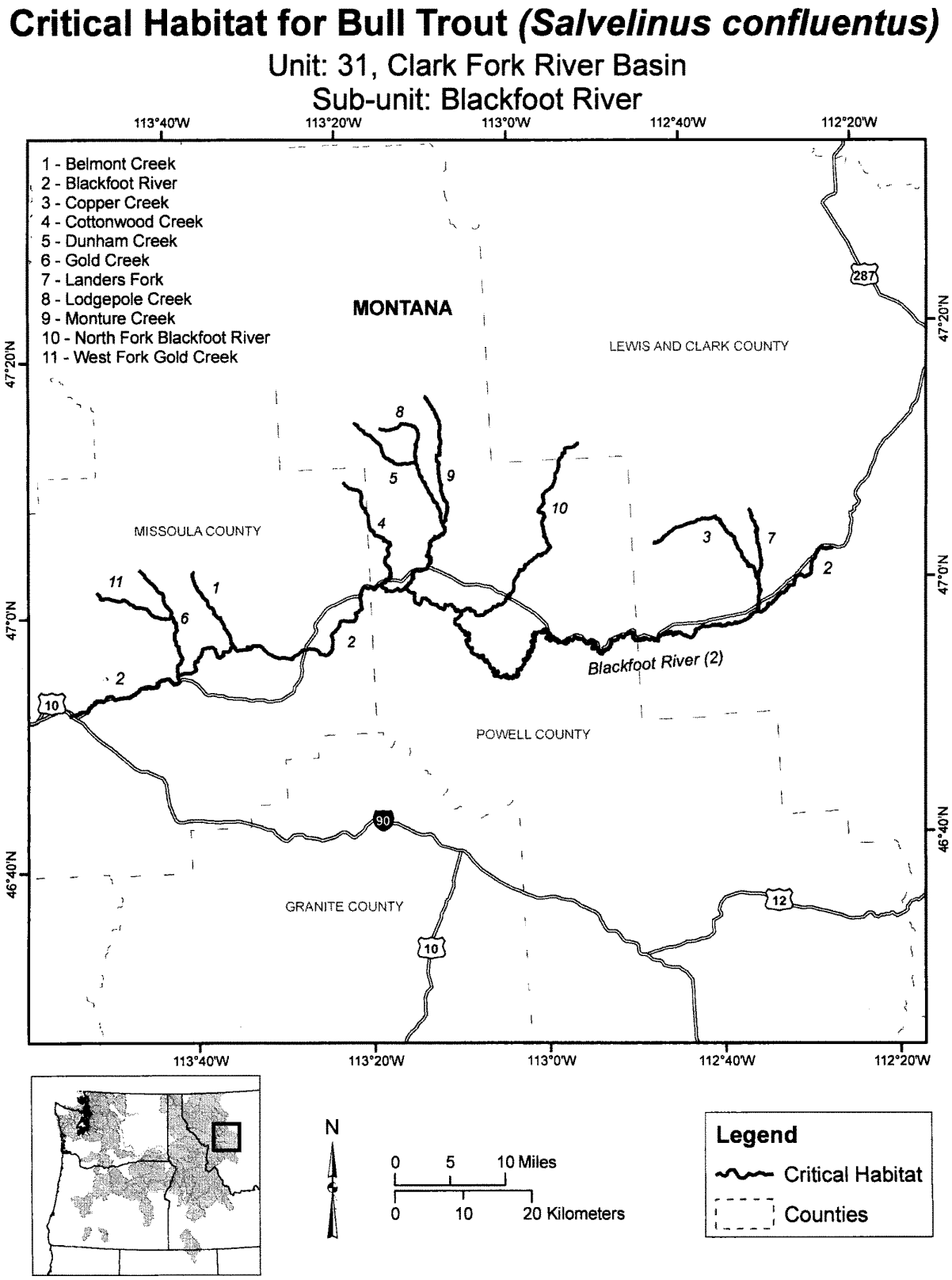
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Rock Creek Subunit, follows:



(viii) Blackfoot River Subunit.

(A) [Reserved for textual description of unit.]

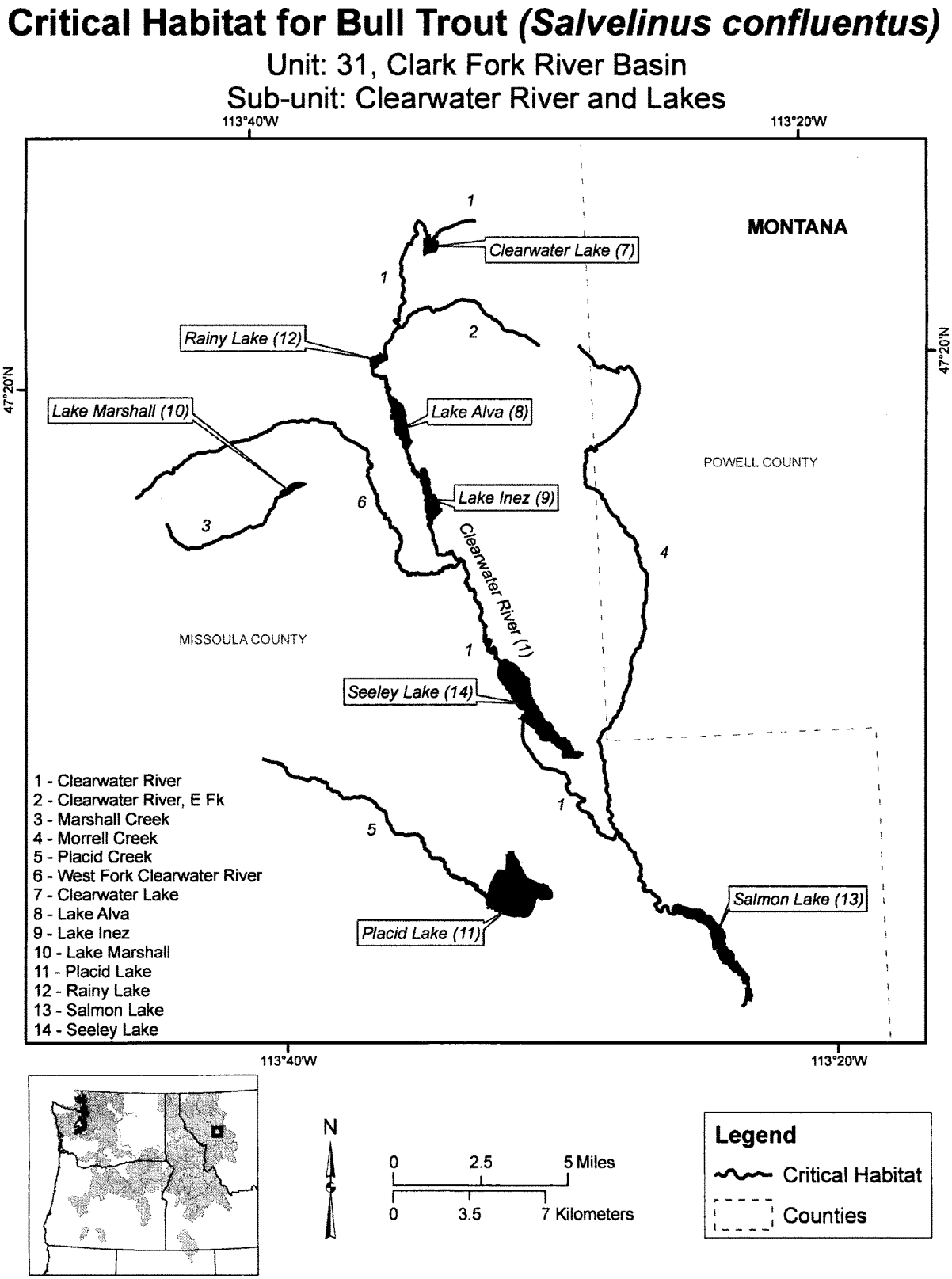
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Blackfoot River Subunit, follows:



(ix) Clearwater River and Lakes Subunit.

(A) [Reserved for textual description of unit.]

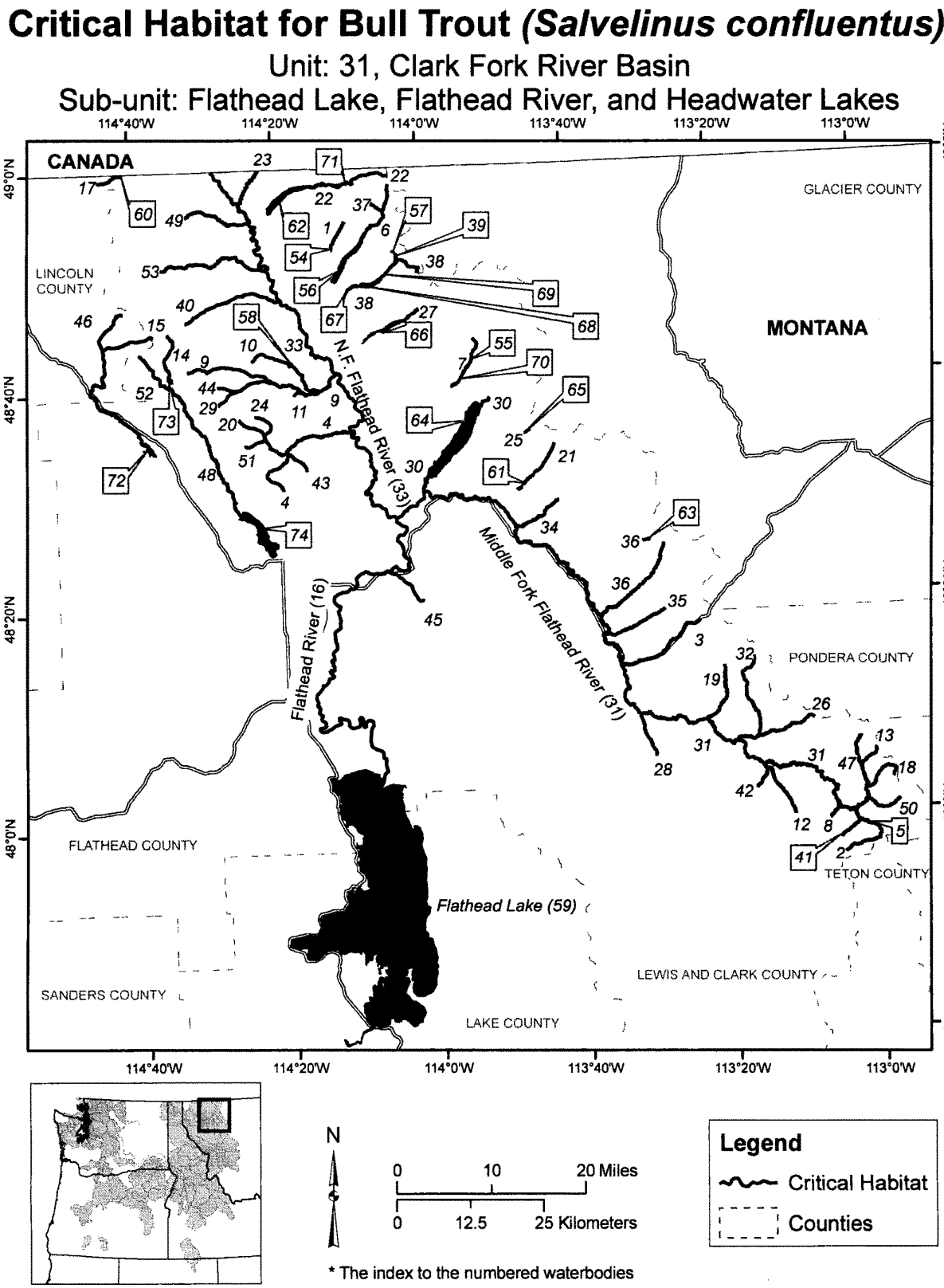
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Clearwater River and Lakes Subunit, follows:



(x) Flathead Lake, Flathead River, and Headwater Lakes (Flathead) Subunit.

(A) [Reserved for textual description of unit.]

(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Flathead Lake, Flathead River, and Headwater Lakes (Flathead) Subunit follows:



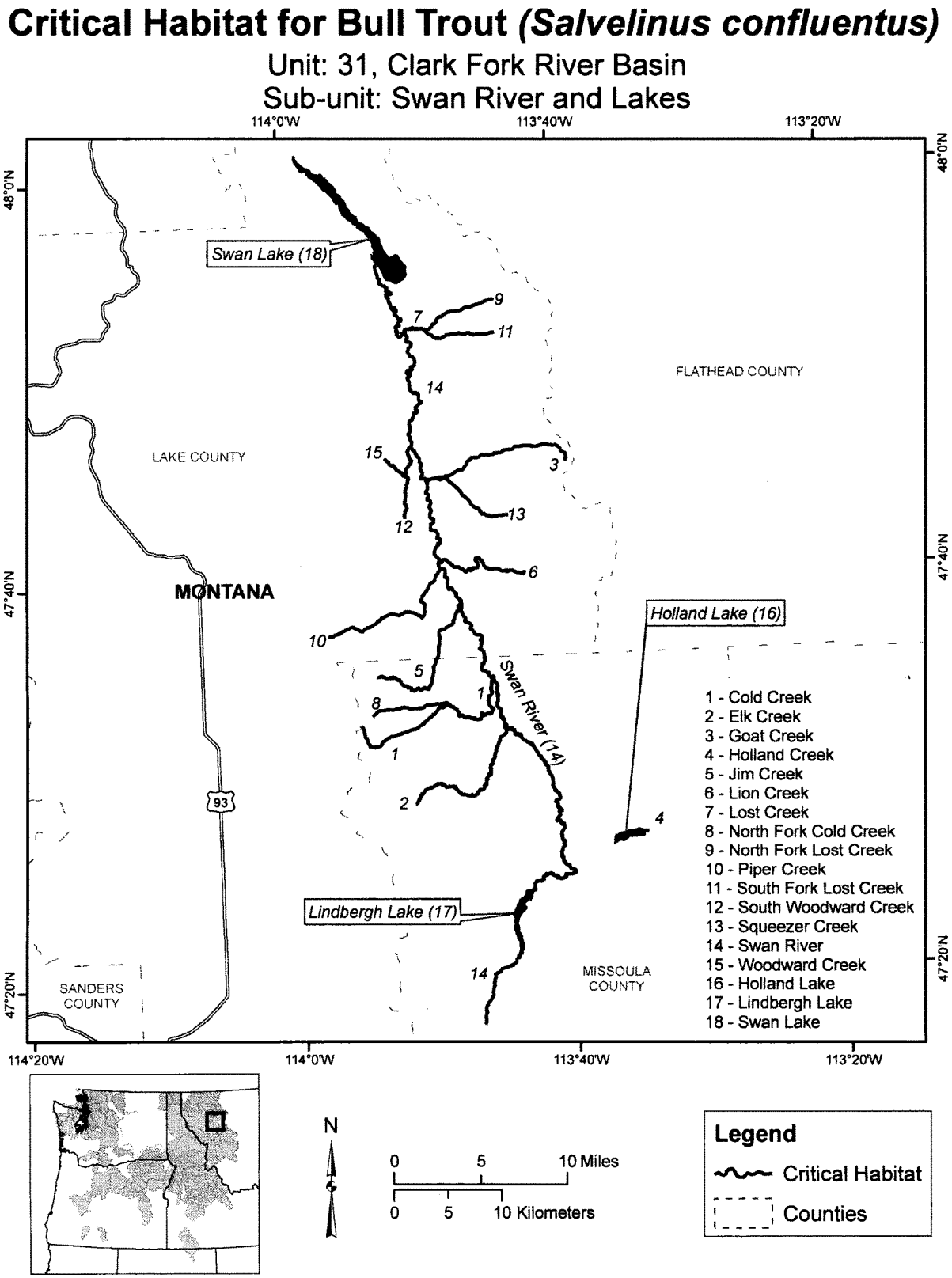
Unit: 31, Clark Fork River Basin
Sub-unit: Flathead Lake, Flathead River, and Headwater Lakes

1 - Akokala Creek
2 - Basin Creek
3 - Bear Creek
4 - Big Creek
5 - Bowl Creek
6 - Bowman Creek
7 - Camas Creek
8 - Clack Creek
9 - Coal Creek
10 - Cyclone Creek
11 - Dead Horse Creek
12 - Dolly Varden Creek
13 - East Fork Strawberry Creek
14 - East Fork Swift Creek
15 - Fitzsimmons Creek
16 - Flathead River
17 - Frozen Creek
18 - Gateway Creek
19 - Granite Creek
20 - Hallowat Creek
21 - Harrison Creek
22 - Kintla Creek
23 - Kishenehn Creek
24 - Kletomus Creek
25 - Lincoln Creek
26 - Lodgepole Creek
27 - Logging Creek
28 - Long Creek
29 - Mathias Creek
30 - McDonald Creek
31 - Middle Fork Flathead River
32 - Morrison Creek
33 - North Fork Flathead River
34 - Nyack Creek
35 - Ole Creek
36 - Park Creek
37 - Pocket Creek
38 - Quartz Creek
39 - Rainbow Creek
40 - Red Meadow Creek
41 - Scalp Creek
42 - Schafer Creek
43 - Skookoleel Creek
44 - South Fork Coal Creek
45 - South Fork Flathead River
46 - Stillwater River
47 - Strawberry Creek
48 - Swift Creek
49 - Trail Creek
50 - Trail Creek
51 - Werner Creek
52 - West Fork Swift Creek
53 - Whale Creek
54 - Akokala Lake
55 - Arrow Lake
56 - Bowman Lake
57 - Cerulean Lake
58 - Cyclone Lake
59 - Flathead Lake
60 - Frozen Lake
61 - Harrison Lake
62 - Kintla Lake
63 - Lake Isabel
64 - Lake McDonald
65 - Lincoln Lake
66 - Logging Lake
67 - Lower Quartz Lake
68 - Middle Quartz Lake
69 - Quartz Lake
70 - Trout Lake
71 - Upper Kintla Lake
72 - Upper Stillwater Lake
73 - Upper Whitefish Lake
74 - Whitefish Lake

(xi) Swan River and Lakes (Swan) Subunit.

(A) [Reserved for textual description of unit.]

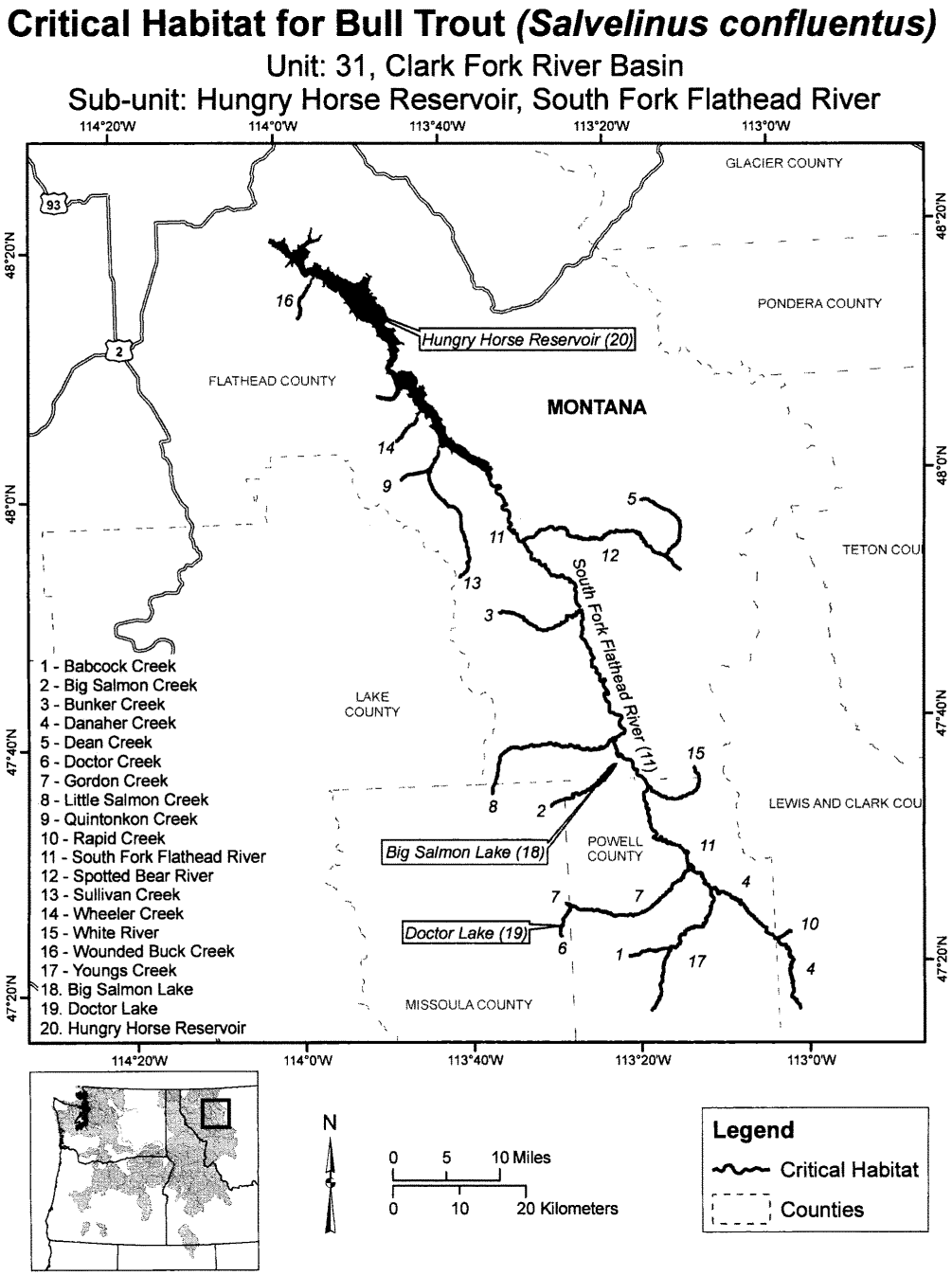
(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Swan River and Lakes (Swan) Subunit, follows:



(xii) Hungry Horse Reservoir, South Fork Flathead River and Headwater Lakes (South Fork Flathead) Subunit.

(A) [Reserved for textual description of unit.]

(B) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Hungry Horse Reservoir, South Fork Flathead River and Headwater Lakes (South Fork Flathead) Subunit, follows:



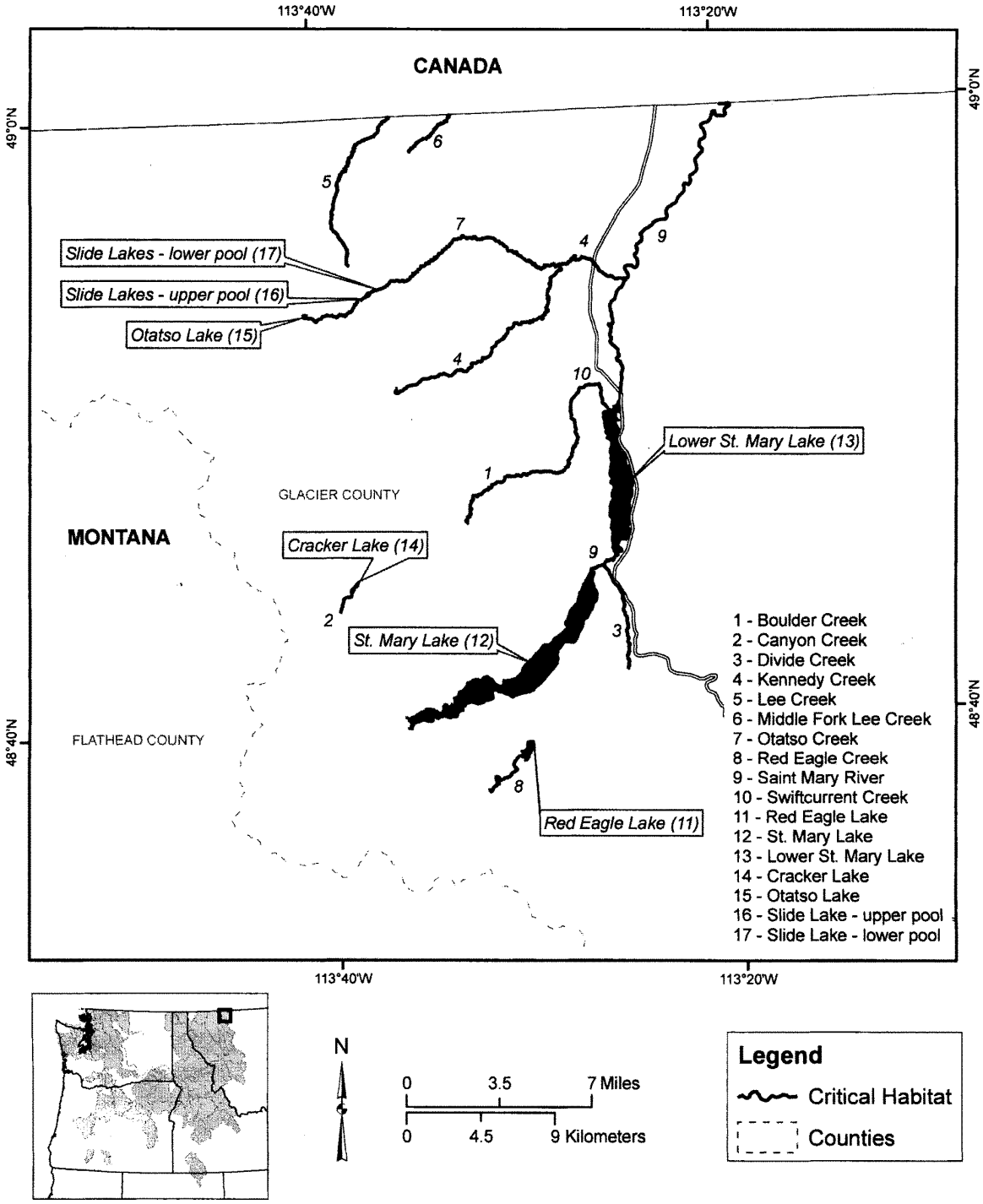
(37) Unit 32: Saint Mary River Basin Unit, Montana.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map of Critical Habitat for the bull trout (*Salvelinus confluentus*), Saint Mary River Basin Unit, follows:

Critical Habitat for Bull Trout *(Salvelinus confluentus)*

Unit: 32, Saint Mary River Basin



* * * * *

Dated: December 31, 2009

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–176 Filed 1–13–10; 8:45 am]

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H.R. 4284/P.L. 111–124
To extend the Generalized System of Preferences and the Andean Trade Preference Act, and for other purposes. (Dec. 28, 2009; 123 Stat. 3484)

H.R. 3819/P.L. 111–125
To extend the commercial space transportation liability regime. (Dec. 28, 2009; 123 Stat. 3486)

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