FEDERAL REGISTER

Vol. 87 Friday

No. 198 October 14, 2022

Pages 62283–62720

OFFICE OF THE FEDERAL REGISTER

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Title 3—

The President

Executive Order 14086 of October 7, 2022

Enhancing Safeguards for United States Signals Intelligence Activities

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Purpose.* The United States collects signals intelligence so that its national security decisionmakers have access to the timely, accurate, and insightful information necessary to advance the national security interests of the United States and to protect its citizens and the citizens of its allies and partners from harm. Signals intelligence capabilities are a major reason we have been able to adapt to a dynamic and challenging security environment, and the United States must preserve and continue to develop robust and technologically advanced signals intelligence capabilities to protect our security and that of our allies and partners. At the same time, the United States recognizes that signals intelligence activities must take into account that all persons should be treated with dignity and respect, regardless of their nationality or wherever they might reside, and that all persons have legitimate privacy interests in the handling of their personal information. Therefore, this order establishes safeguards for such signals intelligence activities.

Sec. 2. *Signals Intelligence Activities.*

(a) *Principles.* Signals intelligence activities shall be authorized and conducted consistent with the following principles:

(i) Signals intelligence activities shall be authorized by statute or by Executive Order, proclamation, or other Presidential directive and undertaken in accordance with the Constitution and with applicable statutes and Executive Orders, proclamations, and other Presidential directives.

(ii) Signals intelligence activities shall be subject to appropriate safeguards, which shall ensure that privacy and civil liberties are integral considerations in the planning and implementation of such activities so that:

(A) signals intelligence activities shall be conducted only following a determination, based on a reasonable assessment of all relevant factors, that the activities are necessary to advance a validated intelligence priority, although signals intelligence does not have to be the sole means available or used for advancing aspects of the validated intelligence priority; and

(B) signals intelligence activities shall be conducted only to the extent and in a manner that is proportionate to the validated intelligence priority for which they have been authorized, with the aim of achieving a proper balance between the importance of the validated intelligence priority being advanced and the impact on the privacy and civil liberties of all persons, regardless of their nationality or wherever they might reside.

(iii) Signals intelligence activities shall be subjected to rigorous oversight in order to ensure that they comport with the principles identified above.

(b) *Objectives.* Signals intelligence collection activities shall be conducted in pursuit of legitimate objectives.

(i) *Legitimate objectives.*

(A) Signals intelligence collection activities shall be conducted only in pursuit of one or more of the following objectives:

(1) understanding or assessing the capabilities, intentions, or activities of a foreign government, a foreign military, a faction of a foreign nation, a foreign-based political organization, or an entity acting on behalf of or controlled by any such foreign government, military, faction, or political organization, in order to protect the national security of the United States and of its allies and partners;

(2) understanding or assessing the capabilities, intentions, or activities of foreign organizations, including international terrorist organizations, that pose a current or potential threat to the national security of the United States or of its allies or partners;

(3) understanding or assessing transnational threats that impact global security, including climate and other ecological change, public health risks, humanitarian threats, political instability, and geographic rivalry;

(4) protecting against foreign military capabilities and activities;

(5) protecting against terrorism, the taking of hostages, and the holding of individuals captive (including the identification, location, and rescue of hostages and captives) conducted by or on behalf of a foreign government, foreign organization, or foreign person;

(6) protecting against espionage, sabotage, assassination, or other intelligence activities conducted by, on behalf of, or with the assistance of a foreign government, foreign organization, or foreign person;

(7) protecting against threats from the development, possession, or proliferation of weapons of mass destruction or related technologies and threats conducted by, on behalf of, or with the assistance of a foreign government, foreign organization, or foreign person;

(8) protecting against cybersecurity threats created or exploited by, or malicious cyber activities conducted by or on behalf of, a foreign government, foreign organization, or foreign person;

(9) protecting against threats to the personnel of the United States or of its allies or partners;

(10) protecting against transnational criminal threats, including illicit finance and sanctions evasion related to one or more of the other objectives identified in subsection (b)(i) of this section;

(11) protecting the integrity of elections and political processes, government property, and United States infrastructure (both physical and electronic) from activities conducted by, on behalf of, or with the assistance of a foreign government, foreign organization, or foreign person; and

(12) advancing collection or operational capabilities or activities in order to further a legitimate objective identified in subsection (b)(i) of this section.

(B) The President may authorize updates to the list of objectives in light of new national security imperatives, such as new or heightened threats to the national security of the United States, for which the President determines that signals intelligence collection activities may be used. The Director of National Intelligence (Director) shall publicly release any updates to the list of objectives authorized by the President, unless the President determines that doing so would pose a risk to the national security of the United States.

(ii) *Prohibited objectives.*

(A) Signals intelligence collection activities shall not be conducted for the purpose of:

(1) suppressing or burdening criticism, dissent, or the free expression of ideas or political opinions by individuals or the press;

(2) suppressing or restricting legitimate privacy interests;

(3) suppressing or restricting a right to legal counsel; or

(4) disadvantaging persons based on their ethnicity, race, gender, gender identity, sexual orientation, or religion.

(B) It is not a legitimate objective to collect foreign private commercial information or trade secrets to afford a competitive advantage to United States companies and United States business sectors commercially. The

collection of such information is authorized only to protect the national security of the United States or of its allies or partners.

(iii) *Validation of signals intelligence collection priorities.*

(A) Under section 102A of the National Security Act of 1947, as amended (50 U.S.C. 3024), the Director must establish priorities for the Intelligence Community to ensure the timely and effective collection of national intelligence, including national intelligence collected through signals intelligence. The Director does this through the National Intelligence Priorities Framework (NIPF), which the Director maintains and presents to the President, through the Assistant to the President for National Security Affairs, on a regular basis. In order to ensure that signals intelligence collection activities are undertaken to advance legitimate objectives, before presenting the NIPF or any successor framework that identifies intelligence priorities to the President, the Director shall obtain from the Civil Liberties Protection Officer of the Office of the Director of National Intelligence (CLPO) an assessment as to whether, with regard to anticipated signals intelligence collection activities, each of the intelligence priorities identified in the NIPF or successor framework:

(1) advances one or more of the legitimate objectives set forth in subsection (b)(i) of this section;

(2) neither was designed nor is anticipated to result in signals intelligence collection in contravention of the prohibited objectives set forth in subsection (b)(ii) of this section; and

(3) was established after appropriate consideration for the privacy and civil liberties of all persons, regardless of their nationality or wherever they might reside.

(B) If the Director disagrees with any aspect of the CLPO's assessment with respect to any of the intelligence priorities identified in the NIPF or successor framework, the Director shall include the CLPO's assessment and the Director's views when presenting the NIPF to the President.

(c) *Privacy and civil liberties safeguards.* The following safeguards shall fulfill the principles contained in subsections (a)(ii) and (a)(iii) of this section.

(i) *Collection of signals intelligence.*

(A) The United States shall conduct signals intelligence collection activities only following a determination that a specific signals intelligence collection activity, based on a reasonable assessment of all relevant factors, is necessary to advance a validated intelligence priority, although signals intelligence does not have to be the sole means available or used for advancing aspects of the validated intelligence priority; it could be used, for example, to ensure alternative pathways for validation or for maintaining reliable access to the same information. In determining whether to collect signals intelligence consistent with this principle, the United States—through an element of the Intelligence Community or through an interagency committee consisting in whole or in part of the heads of elements of the Intelligence Community, the heads of departments containing such elements, or their designees—shall consider the availability, feasibility, and appropriateness of other less intrusive sources and methods for collecting the information necessary to advance a validated intelligence priority, including from diplomatic and public sources, and shall prioritize such available, feasible, and appropriate alternatives to signals intelligence.

(B) Signals intelligence collection activities shall be as tailored as feasible to advance a validated intelligence priority and, taking due account of relevant factors, not disproportionately impact privacy and civil liberties. Such factors may include, depending on the circumstances, the nature of the pursued objective; the feasible steps taken to limit the scope of the collection to the authorized purpose; the intrusiveness of the collection activity, including its duration; the probable contribution of the collection to the objective pursued; the reasonably foreseeable consequences to individuals, including unintended third parties; the nature and sensitivity

of the data to be collected; and the safeguards afforded to the information collected.

(C) For purposes of subsection (c)(i) of this section, the scope of a specific signals intelligence collection activity may include, for example, a specific line of effort or target, as appropriate.

(ii) *Bulk collection of signals intelligence.*

(A) Targeted collection shall be prioritized. The bulk collection of signals intelligence shall be authorized only based on a determination—by an element of the Intelligence Community or through an interagency committee consisting in whole or in part of the heads of elements of the Intelligence Community, the heads of departments containing such elements, or their designees—that the information necessary to advance a validated intelligence priority cannot reasonably be obtained by targeted collection. When it is determined to be necessary to engage in bulk collection in order to advance a validated intelligence priority, the element of the Intelligence Community shall apply reasonable methods and technical measures in order to limit the data collected to only what is necessary to advance a validated intelligence priority, while minimizing the collection of non-pertinent information.

(B) Each element of the Intelligence Community that collects signals intelligence through bulk collection shall use such information only in pursuit of one or more of the following objectives:

(1) protecting against terrorism, the taking of hostages, and the holding of individuals captive (including the identification, location, and rescue of hostages and captives) conducted by or on behalf of a foreign government, foreign organization, or foreign person;

(2) protecting against espionage, sabotage, assassination, or other intelligence activities conducted by, on behalf of, or with the assistance of a foreign government, foreign organization, or foreign person;

(3) protecting against threats from the development, possession, or proliferation of weapons of mass destruction or related technologies and threats conducted by, on behalf of, or with the assistance of a foreign government, foreign organization, or foreign person;

(4) protecting against cybersecurity threats created or exploited by, or malicious cyber activities conducted by or on behalf of, a foreign government, foreign organization, or foreign person;

(5) protecting against threats to the personnel of the United States or of its allies or partners; and

(6) protecting against transnational criminal threats, including illicit finance and sanctions evasion related to one or more of the other objectives identified in subsection (c)(ii) of this section.

(C) The President may authorize updates to the list of objectives in light of new national security imperatives, such as new or heightened threats to the national security of the United States, for which the President determines that bulk collection may be used. The Director shall publicly release any updates to the list of objectives authorized by the President, unless the President determines that doing so would pose a risk to the national security of the United States.

(D) In order to minimize any impact on privacy and civil liberties, a targeted signals intelligence collection activity that temporarily uses data acquired without discriminants (for example, without specific identifiers or selection terms) shall be subject to the safeguards described in this subsection, unless such data is:

(1) used only to support the initial technical phase of the targeted signals intelligence collection activity;

(2) retained for only the short period of time required to complete this phase; and

(3) thereafter deleted.

(iii) *Handling of personal information collected through signals intelligence.*

(A) *Minimization.* Each element of the Intelligence Community that handles personal information collected through signals intelligence shall establish and apply policies and procedures designed to minimize the dissemination and retention of personal information collected through signals intelligence.

(1) *Dissemination.* Each element of the Intelligence Community that handles personal information collected through signals intelligence:

(a) shall disseminate non-United States persons' personal information collected through signals intelligence only if it involves one or more of the comparable types of information that section 2.3 of Executive Order 12333 of December 4, 1981 (United States Intelligence Activities), as amended, states may be disseminated in the case of information concerning United States persons;

(b) shall not disseminate personal information collected through signals intelligence solely because of a person's nationality or country of residence;

(c) shall disseminate within the United States Government personal information collected through signals intelligence only if an authorized and appropriately trained individual has a reasonable belief that the personal information will be appropriately protected and that the recipient has a need to know the information;

(d) shall take due account of the purpose of the dissemination, the nature and extent of the personal information being disseminated, and the potential for harmful impact on the person or persons concerned before disseminating personal information collected through signals intelligence to recipients outside the United States Government, including to a foreign government or international organization; and

(e) shall not disseminate personal information collected through signals intelligence for the purpose of circumventing the provisions of this order.

(2) *Retention.* Each element of the Intelligence Community that handles personal information collected through signals intelligence:

(a) shall retain non-United States persons' personal information collected through signals intelligence only if the retention of comparable information concerning United States persons would be permitted under applicable law and shall subject such information to the same retention periods that would apply to comparable information concerning United States persons;

(b) shall subject non-United States persons' personal information collected through signals intelligence for which no final retention determination has been made to the same temporary retention periods that would apply to comparable information concerning United States persons; and

(c) shall delete non-United States persons' personal information collected through signals intelligence that may no longer be retained in the same manner that comparable information concerning United States persons would be deleted.

(B) *Data security and access.* Each element of the Intelligence Community that handles personal information collected through signals intelligence:

(1) shall process and store personal information collected through signals intelligence under conditions that provide appropriate protection and prevent access by unauthorized persons, consistent with the applicable safeguards for sensitive information contained in relevant Executive Orders, proclamations, other Presidential directives, Intelligence Community directives, and associated policies;

(2) shall limit access to such personal information to authorized personnel who have a need to know the information to perform their mission and have received appropriate training on the requirements of applicable United States law, as described in policies and procedures issued under subsection (c)(iv) of this section; and

(3) shall ensure that personal information collected through signals intelligence for which no final retention determination has been made is accessed only in order to make or support such a determination or to conduct authorized administrative, testing, development, security, or oversight functions.

(C) *Data quality.* Each element of the Intelligence Community that handles personal information collected through signals intelligence shall include such personal information in intelligence products only as consistent with applicable Intelligence Community standards for accuracy and objectivity, with a focus on applying standards relating to the quality and reliability of the information, consideration of alternative sources of information and interpretations of data, and objectivity in performing analysis.

(D) *Queries of bulk collection.* Each element of the Intelligence Community that conducts queries of unminimized signals intelligence obtained by bulk collection shall do so consistent with the permissible uses of signals intelligence obtained by bulk collection identified in subsection (c)(ii)(B) of this section and according to policies and procedures issued under subsection (c)(iv) of this section, which shall appropriately take into account the impact on the privacy and civil liberties of all persons, regardless of their nationality or wherever they might reside.

(E) *Documentation.* In order to facilitate the oversight processes set forth in subsection (d) of this section and the redress mechanism set forth in section 3 of this order, each element of the Intelligence Community that engages in signals intelligence collection activities shall maintain documentation to the extent reasonable in light of the nature and type of collection at issue and the context in which it is collected. The content of any such documentation may vary based on the circumstances but shall, to the extent reasonable, provide the factual basis pursuant to which the element of the Intelligence Community, based on a reasonable assessment of all relevant factors, assesses that the signals intelligence collection activity is necessary to advance a validated intelligence priority.

(iv) *Update and publication of policies and procedures.* The head of each element of the Intelligence Community:

(A) shall continue to use the policies and procedures issued pursuant to Presidential Policy Directive 28 of January 17, 2014 (Signals Intelligence Activities) (PPD–28), until they are updated pursuant to subsection (c)(iv)(B) of this section;

(B) shall, within 1 year of the date of this order, in consultation with the Attorney General, the CLPO, and the Privacy and Civil Liberties Oversight Board (PCLOB), update those policies and procedures as necessary to implement the privacy and civil liberties safeguards in this order; and

(C) shall, within 1 year of the date of this order, release these policies and procedures publicly to the maximum extent possible, consistent with the protection of intelligence sources and methods, in order to enhance the public's understanding of, and to promote public trust in, the safeguards pursuant to which the United States conducts signals intelligence activities.

(v) *Review by the PCLOB.*

(A) *Nature of review.* Consistent with applicable law, the PCLOB is encouraged to conduct a review of the updated policies and procedures described in subsection (c)(iv)(B) of this section once they have been issued to ensure that they are consistent with the enhanced safeguards contained in this order.

(B) *Consideration of review.* Within 180 days of completion of any review by the PCLOB described in subsection (c)(v)(A) of this section, the head of each element of the Intelligence Community shall carefully consider and shall implement or otherwise address all recommendations contained in such review, consistent with applicable law.

(d) *Subjecting signals intelligence activities to rigorous oversight.* The actions directed in this subsection are designed to build on the oversight mechanisms that elements of the Intelligence Community already have in place, in order to further ensure that signals intelligence activities are subjected to rigorous oversight.

(i) *Legal, oversight, and compliance officials.* Each element of the Intelligence Community that collects signals intelligence:

(A) shall have in place senior-level legal, oversight, and compliance officials who conduct periodic oversight of signals intelligence activities, including an Inspector General, a Privacy and Civil Liberties Officer, and an officer or officers in a designated compliance role with the authority to conduct oversight of and ensure compliance with applicable United States law;

(B) shall provide such legal, oversight, and compliance officials access to all information pertinent to carrying out their oversight responsibilities under this subsection, consistent with the protection of intelligence sources or methods, including their oversight responsibilities to ensure that any appropriate actions are taken to remediate an incident of non-compliance with applicable United States law; and

(C) shall not take any actions designed to impede or improperly influence such legal, oversight, and compliance officials in carrying out their oversight responsibilities under this subsection.

(ii) *Training.* Each element of the Intelligence Community shall maintain appropriate training requirements to ensure that all employees with access to signals intelligence know and understand the requirements of this order and the policies and procedures for reporting and remediating incidents of non-compliance with applicable United States law.

(iii) *Significant incidents of non-compliance.*

(A) Each element of the Intelligence Community shall ensure that, if a legal, oversight, or compliance official, as described in subsection (d)(i) of this section, or any other employee, identifies a significant incident of non-compliance with applicable United States law, the incident is reported promptly to the head of the element of the Intelligence Community, the head of the executive department or agency (agency) containing the element of the Intelligence Community (to the extent relevant), and the Director.

(B) Upon receipt of such report, the head of the element of the Intelligence Community, the head of the agency containing the element of the Intelligence Community (to the extent relevant), and the Director shall ensure that any necessary actions are taken to remediate and prevent the recurrence of the significant incident of non-compliance.

(e) *Savings clause.* Provided the signals intelligence collection is conducted consistent with and in the manner prescribed by this section of this order, this order does not limit any signals intelligence collection technique authorized under the National Security Act of 1947, as amended (50 U.S.C. 3001 *et seq.*), the Foreign Intelligence Surveillance Act of 1978, as amended (50 U.S.C. 1801 *et seq.*) (FISA), Executive Order 12333, or other applicable law or Presidential directive.

Sec. 3. *Signals Intelligence Redress Mechanism.*

(a) *Purpose.* This section establishes a redress mechanism to review qualifying complaints transmitted by the appropriate public authority in a qualifying state concerning United States signals intelligence activities for any covered violation of United States law and, if necessary, appropriate remediation.

(b) *Process for submission of qualifying complaints.* Within 60 days of the date of this order, the Director, in consultation with the Attorney General and the heads of elements of the Intelligence Community that collect or

handle personal information collected through signals intelligence, shall establish a process for the submission of qualifying complaints transmitted by the appropriate public authority in a qualifying state.

(c) *Initial investigation of qualifying complaints by the CLPO.*

(i) *Establishment.* The Director, in consultation with the Attorney General, shall establish a process that authorizes the CLPO to investigate, review, and, as necessary, order appropriate remediation for qualifying complaints. This process shall govern how the CLPO will review qualifying complaints in a manner that protects classified or otherwise privileged or protected information and shall ensure, at a minimum, that for each qualifying complaint the CLPO shall:

(A) review information necessary to investigate the qualifying complaint;

(B) exercise its statutory and delegated authority to determine whether there was a covered violation by:

(i) taking into account both relevant national security interests and applicable privacy protections;

(ii) giving appropriate deference to any relevant determinations made by national security officials; and

(iii) applying the law impartially;

(C) determine the appropriate remediation for any covered violation;

(D) provide a classified report on information indicating a violation of any authority subject to the oversight of the Foreign Intelligence Surveillance Court (FISC) to the Assistant Attorney General for National Security, who shall report violations to the FISC in accordance with its rules of procedure;

(E) after the review is completed, inform the complainant, through the appropriate public authority in a qualifying state and without confirming or denying that the complainant was subject to United States signals intelligence activities, that:

(1) ''the review either did not identify any covered violations or the Civil Liberties Protection Officer of the Office of the Director of National Intelligence issued a determination requiring appropriate remediation'';

(2) the complainant or an element of the Intelligence Community may, as prescribed in the regulations issued by the Attorney General pursuant to section 3(d)(i) of this order, apply for review of the CLPO's determinations by the Data Protection Review Court described in subsection (d) of this section; and

(3) if either the complainant or an element of the Intelligence Community applies for review by the Data Protection Review Court, a special advocate will be selected by the Data Protection Review Court to advocate regarding the complainant's interest in the matter;

(F) maintain appropriate documentation of its review of the qualifying complaint and produce a classified decision explaining the basis for its factual findings, determination with respect to whether a covered violation occurred, and determination of the appropriate remediation in the event there was such a violation, consistent with its statutory and delegated authority;

(G) prepare a classified ex parte record of review, which shall consist of the appropriate documentation of its review of the qualifying complaint and the classified decision described in subsection (c)(i)(F) of this section; and

(H) provide any necessary support to the Data Protection Review Court.

(ii) *Binding effect.* Each element of the Intelligence Community, and each agency containing an element of the Intelligence Community, shall comply with any determination by the CLPO to undertake appropriate remediation

pursuant to subsection (c)(i)(C) of this section, subject to any contrary determination by the Data Protection Review Court.

(iii) *Assistance.* Each element of the Intelligence Community shall provide the CLPO with access to information necessary to conduct the reviews described in subsection (c)(i) of this section, consistent with the protection of intelligence sources and methods, and shall not take any actions designed to impede or improperly influence the CLPO's reviews. Privacy and civil liberties officials within elements of the Intelligence Community shall also support the CLPO as it performs the reviews described in subsection (c)(i) of this section.

(iv) *Independence.* The Director shall not interfere with a review by the CLPO of a qualifying complaint under subsection (c)(i) of this section; nor shall the Director remove the CLPO for any actions taken pursuant to this order, except for instances of misconduct, malfeasance, breach of security, neglect of duty, or incapacity.

(d) *Data Protection Review Court.*

(i) *Establishment.* The Attorney General is authorized to and shall establish a process to review determinations made by the CLPO under subsection (c)(i) of this section. In exercising that authority, the Attorney General shall, within 60 days of the date of this order, promulgate regulations establishing a Data Protection Review Court to exercise the Attorney General's authority to review such determinations. These regulations shall, at a minimum, provide that:

(A) The Attorney General, in consultation with the Secretary of Commerce, the Director, and the PCLOB, shall appoint individuals to serve as judges on the Data Protection Review Court, who shall be legal practitioners with appropriate experience in the fields of data privacy and national security law, giving weight to individuals with prior judicial experience, and who shall not be, at the time of their initial appointment, employees of the United States Government. During their term of appointment on the Data Protection Review Court, such judges shall not have any official duties or employment within the United States Government other than their official duties and employment as judges on the Data Protection Review Court.

(B) Upon receipt of an application for review filed by the complainant or an element of the Intelligence Community of a determination made by the CLPO under subsection (c) of this section, a three-judge panel of the Data Protection Review Court shall be convened to review the application. Service on the Data Protection Review Court panel shall require that the judge hold the requisite security clearances to access classified national security information.

(C) Upon being convened, the Data Protection Review Court panel shall select a special advocate through procedures prescribed in the Attorney General's regulations. The special advocate shall assist the panel in its consideration of the application for review, including by advocating regarding the complainant's interest in the matter and ensuring that the Data Protection Review Court panel is well informed of the issues and the law with respect to the matter. Service as a special advocate shall require that the special advocate hold the requisite security clearances to access classified national security information and to adhere to restrictions prescribed in the Attorney General's regulations on communications with the complainant to ensure the protection of classified or otherwise privileged or protected information.

(D) The Data Protection Review Court panel shall impartially review the determinations made by the CLPO with respect to whether a covered violation occurred and the appropriate remediation in the event there was such a violation. The review shall be based at a minimum on the classified ex parte record of review described in subsection (c)(i)(F) of this section and information or submissions provided by the complainant,

the special advocate, or an element of the Intelligence Community. In reviewing determinations made by the CLPO, the Data Protection Review Court panel shall be guided by relevant decisions of the United States Supreme Court in the same way as are courts established under Article III of the United States Constitution, including those decisions regarding appropriate deference to relevant determinations of national security officials.

(E) In the event that the Data Protection Review Court panel disagrees with any of the CLPO's determinations with respect to whether a covered violation occurred or the appropriate remediation in the event there was such a violation, the panel shall issue its own determinations.

(F) The Data Protection Review Court panel shall provide a classified report on information indicating a violation of any authority subject to the oversight of the FISC to the Assistant Attorney General for National Security, who shall report violations to the FISC in accordance with its rules of procedure.

(G) After the review is completed, the CLPO shall be informed of the Data Protection Review Court panel's determinations through procedures prescribed by the Attorney General's regulations.

(H) After a review is completed in response to a complainant's application for review, the Data Protection Review Court, through procedures prescribed by the Attorney General's regulations, shall inform the complainant, through the appropriate public authority in a qualifying state and without confirming or denying that the complainant was subject to United States signals intelligence activities, that ''the review either did not identify any covered violations or the Data Protection Review Court issued a determination requiring appropriate remediation.''

(ii) *Binding effect.* Each element of the Intelligence Community, and each agency containing an element of the Intelligence Community, shall comply with any determination by a Data Protection Review Court panel to undertake appropriate remediation.

(iii) *Assistance.* Each element of the Intelligence Community shall provide the CLPO with access to information necessary to conduct the review described in subsection (d)(i) of this section, consistent with the protection of intelligence sources and methods, that a Data Protection Review Court panel requests from the CLPO and shall not take any actions for the purpose of impeding or improperly influencing a panel's review.

(iv) *Independence.* The Attorney General shall not interfere with a review by a Data Protection Review Court panel of a determination the CLPO made regarding a qualifying complaint under subsection (c)(i) of this section; nor shall the Attorney General remove any judges appointed as provided in subsection (d)(i)(A) of this section, or remove any judge from service on a Data Protection Review Court panel, except for instances of misconduct, malfeasance, breach of security, neglect of duty, or incapacity, after taking due account of the standards in the Rules for Judicial-Conduct and Judicial-Disability Proceedings promulgated by the Judicial Conference of the United States pursuant to the Judicial Conduct and Disability Act (28 U.S.C. 351 *et seq.*).

(v) *Record of determinations.* For each qualifying complaint transmitted by the appropriate public authority in a qualifying state, the Secretary of Commerce shall:

(A) maintain a record of the complainant who submitted such complaint;

(B) not later than 5 years after the date of this order and no less than every 5 years thereafter, contact the relevant element or elements of the Intelligence Community regarding whether information pertaining to the review of such complaint by the CLPO has been declassified and whether information pertaining to the review of any application for review submitted to the Data Protection Review Court has been declassified,

including whether an element of the Intelligence Community filed an application for review with the Data Protection Review Court; and

(C) if informed that such information has been declassified, notify the complainant, through the appropriate public authority in a qualifying state, that information pertaining to the review of their complaint by the CLPO or to the review of any application for review submitted to the Data Protection Review Court may be available under applicable law.

(e) *Annual review by PCLOB of redress process.*

(i) *Nature of review.* Consistent with applicable law, the PCLOB is encouraged to conduct an annual review of the processing of qualifying complaints by the redress mechanism established by section 3 of this order, including whether the CLPO and the Data Protection Review Court processed qualifying complaints in a timely manner; whether the CLPO and the Data Protection Review Court are obtaining full access to necessary information; whether the CLPO and the Data Protection Review Court are operating consistent with this order; whether the safeguards established by section 2 of this order are properly considered in the processes of the CLPO and the Data Protection Review Court; and whether the elements of the Intelligence Community have fully complied with determinations made by the CLPO and the Data Protection Review Court.

(ii) *Assistance.* The Attorney General, the CLPO, and the elements of the Intelligence Community shall provide the PCLOB with access to information necessary to conduct the review described in subsection (e)(i) of this section, consistent with the protection of intelligence sources and methods.

(iii) *Report and certification.* Within 30 days of completing any review described in subsection (e)(i) of this section, the PCLOB is encouraged to:

(A) provide the President, the Attorney General, the Director, the heads of elements of the Intelligence Community, the CLPO, and the congressional intelligence committees with a classified report detailing the results of its review;

(B) release to the public an unclassified version of the report; and

(C) make an annual public certification as to whether the redress mechanism established pursuant to section 3 of this order is processing complaints consistent with this order.

(iv) *Consideration of review.* Within 180 days of receipt of any report by the PCLOB described in subsection (e)(iii)(A) of this section, the Attorney General, the Director, the heads of elements of the Intelligence Community, and the CLPO shall carefully consider and shall implement or otherwise address all recommendations contained in such report, consistent with applicable law.

(f) *Designation of qualifying state.*

(i) To implement the redress mechanism established by section 3 of this order, the Attorney General is authorized to designate a country or regional economic integration organization as a qualifying state for purposes of the redress mechanism established pursuant to section 3 of this order, effective immediately or on a date specified by the Attorney General, if the Attorney General determines, in consultation with the Secretary of State, the Secretary of Commerce, and the Director, that:

(A) the laws of the country, the regional economic integration organization, or the regional economic integration organization's member countries require appropriate safeguards in the conduct of signals intelligence activities for United States persons' personal information that is transferred from the United States to the territory of the country or a member country of the regional economic integration organization;

(B) the country, the regional economic integration organization, or the regional economic integration organization's member countries of the regional economic integration organization permit, or are anticipated to permit, the transfer of personal information for commercial purposes between the territory of that country or those member countries and the territory of the United States; and

(C) such designation would advance the national interests of the United States.

(ii) The Attorney General may revoke or amend such a designation, effective immediately or on a date specified by the Attorney General, if the Attorney General determines, in consultation with the Secretary of State, the Secretary of Commerce, and the Director, that:

(A) the country, the regional economic integration organization, or the regional economic integration organization's member countries do not provide appropriate safeguards in the conduct of signals intelligence activities for United States persons' personal information that is transferred from the United States to the territory of the country or to a member country of the regional economic integration organization;

(B) the country, the regional economic integration organization, or the regional economic integration organization's member countries do not permit the transfer of personal information for commercial purposes between the territory of that country or those member countries and the territory of the United States; or

(C) such designation is not in the national interests of the United States.

Sec. 4. *Definitions.* For purposes of this order:

(a) ''Appropriate remediation'' means lawful measures designed to fully redress an identified covered violation regarding a specific complainant and limited to measures designed to address that specific complainant's complaint, taking into account the ways that a violation of the kind identified have customarily been addressed. Such measures may include, depending on the specific covered violation at issue, curing through administrative measures violations found to have been procedural or technical errors relating to otherwise lawful access to or handling of data, terminating acquisition of data where collection is not lawfully authorized, deleting data that had been acquired without lawful authorization, deleting the results of inappropriately conducted queries of otherwise lawfully collected data, restricting access to lawfully collected data to those appropriately trained, or recalling intelligence reports containing data acquired without lawful authorization or that were otherwise disseminated in a manner inconsistent with United States law. Appropriate remediation shall be narrowly tailored to redress the covered violation and to minimize adverse impacts on the operations of the Intelligence Community and the national security of the United States.

(b) ''Bulk collection'' means the authorized collection of large quantities of signals intelligence data that, due to technical or operational considerations, is acquired without the use of discriminants (for example, without the use of specific identifiers or selection terms).

(c) ''Counterintelligence'' shall have the same meaning as it has in Executive Order 12333.

(d) ''Covered violation'' means a violation that:

(i) arises from signals intelligence activities conducted after the date of this order regarding data transferred to the United States from a qualifying state after the effective date of the Attorney General's designation for such state, as provided in section 3(f)(i) of this order;

(ii) adversely affects the complainant's individual privacy and civil liberties interests; and

(iii) violates one or more of the following:

(A) the United States Constitution;

(B) the applicable sections of FISA or any applicable FISC-approved procedures;

(C) Executive Order 12333 or any applicable agency procedures pursuant to Executive Order 12333;

(D) this order or any applicable agency policies and procedures issued or updated pursuant to this order (or the policies and procedures identified in section 2(c)(iv)(A) of this order before they are updated pursuant to section 2(c)(iv)(B) of this order);

(E) any successor statute, order, policies, or procedures to those identified in section 4(d)(iii)(B)–(D) of this order; or

(F) any other statute, order, policies, or procedures adopted after the date of this order that provides privacy and civil liberties safeguards with respect to United States signals intelligence activities within the scope of this order, as identified in a list published and updated by the Attorney General, in consultation with the Director of National Intelligence.

(e) ''Foreign intelligence'' shall have the same meaning as it has in Executive Order 12333.

(f) ''Intelligence'' shall have the same meaning as it has in Executive Order 12333.

(g) ''Intelligence Community'' and ''elements of the Intelligence Community'' shall have the same meaning as they have in Executive Order 12333.

(h) ''National security'' shall have the same meaning as it has in Executive Order 13526 of December 29, 2009 (Classified National Security Information).

(i) ''Non-United States person'' means a person who is not a United States person.

(j) ''Personnel of the United States or of its allies or partners'' means any current or former member of the Armed Forces of the United States, any current or former official of the United States Government, and any other person currently or formerly employed by or working on behalf of the United States Government, as well as any current or former member of the military, current or former official, or other person currently or formerly employed by or working on behalf of an ally or partner.

(k) ''Qualifying complaint'' means a complaint, submitted in writing, that:

(i) alleges a covered violation has occurred that pertains to personal information of or about the complainant, a natural person, reasonably believed to have been transferred to the United States from a qualifying state after the effective date of the Attorney General's designation for such state, as provided in section 3(f)(i) of this order;

(ii) includes the following basic information to enable a review: information that forms the basis for alleging that a covered violation has occurred, which need not demonstrate that the complainant's data has in fact been subject to United States signals intelligence activities; the nature of the relief sought; the specific means by which personal information of or about the complainant was believed to have been transmitted to the United States; the identities of the United States Government entities believed to be involved in the alleged violation (if known); and any other measures the complainant pursued to obtain the relief requested and the response received through those other measures;

(iii) is not frivolous, vexatious, or made in bad faith;

(iv) is brought on behalf of the complainant, acting on that person's own behalf, and not as a representative of a governmental, nongovernmental, or intergovernmental organization; and

(v) is transmitted by the appropriate public authority in a qualifying state, after it has verified the identity of the complainant and that the complaint satisfies the conditions of section 5(k)(i)–(iv) of this order.

(l) ''Significant incident of non-compliance'' shall mean a systemic or intentional failure to comply with a principle, policy, or procedure of applicable United States law that could impugn the reputation or integrity of an element of the Intelligence Community or otherwise call into question the propriety of an Intelligence Community activity, including in light of any significant impact on the privacy and civil liberties interests of the person or persons concerned.

(m) ''United States person'' shall have the same meaning as it has in Executive Order 12333.

(n) ''Validated intelligence priority'' shall mean, for most United States signals intelligence collection activities, a priority validated under the process described in section 2(b)(iii) of this order; or, in narrow circumstances (for example, when such process cannot be carried out because of a need to address a new or evolving intelligence requirement), shall mean a priority set by the President or the head of an element of the Intelligence Community in accordance with the criteria described in section 2(b)(iii)(A)(1)–(3) of this order to the extent feasible.

(o) ''Weapons of mass destruction'' shall have the same meaning as it has in Executive Order 13526.

Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the 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, including orders of and procedures approved by the FISC, and subject to the availability of appropriations.

(c) Nothing in this order precludes the application of more privacy-protective safeguards for United States signals intelligence activities that would apply in the absence of this order. In the case of any conflict between this order and other applicable law, the more privacy-protective safeguards shall govern the conduct of signals intelligence activities, to the maximum extent allowed by law.

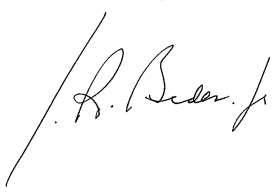
(d) Nothing in this order prohibits elements of the Intelligence Community from disseminating information relating to a crime for law enforcement purposes; disseminating warnings of threats of killing, serious bodily injury, or kidnapping; disseminating cyber threat, incident, or intrusion response information; notifying victims or warning potential victims of crime; or complying with dissemination obligations required by statute, treaty, or court order, including orders of and procedures approved by the FISC or other court orders.

(e) The collection, retention, and dissemination of information concerning United States persons is governed by multiple legal and policy requirements, such as those required by FISA and Executive Order 12333. This order is not intended to alter the rules applicable to United States persons adopted pursuant to FISA, Executive Order 12333, or other applicable law.

(f) This order shall apply to signals intelligence activities consistent with the scope of PPD–28's application to such activities prior to PPD–28's partial revocation by the national security memorandum issued concurrently with this order. To implement this subsection, the head of each agency containing an element of the Intelligence Community, in consultation with the Attorney General and the Director, is hereby delegated the authority to issue guidance, which may be classified, as appropriate, as to the scope of application of this order with respect to the element or elements of the Intelligence Community within their agency. The CLPO and the Data Protection Review Court, in carrying out the functions assigned to it under this order, shall treat such guidance as authoritative and binding.

(g) Nothing in this order confers authority to declassify or disclose classified national security information except as authorized pursuant to Executive Order 13526 or any successor order. Consistent with the requirements of Executive Order 13526, the CLPO, the Data Protection Review Court, and the special advocates shall not have authority to declassify classified national security information, nor shall they disclose any classified or otherwise privileged or protected information except to authorized and appropriately cleared individuals who have a need to know the information.

(h) This order creates an entitlement to submit qualifying complaints to the CLPO and to obtain review of the CLPO's decisions by the Data Protection Review Court in accordance with the redress mechanism established in section 3 of this order. This order is not intended to, and does not, create any other entitlement, 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. This order is not intended to, and does not, modify the availability or scope of any judicial review of the decisions rendered through the redress mechanism, which is governed by existing law.



THE WHITE HOUSE,
October 7, 2022.

[FR Doc. 2022–22531
Filed 10–13–22; 8:45 am]
Billing code 3395–F3–P

Presidential Documents

Proclamation 10474 of October 11, 2022

General Pulaski Memorial Day, 2022

By the President of the United States of America

A Proclamation

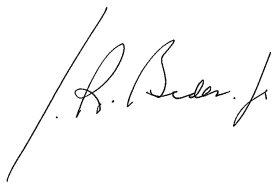
On September 11, 1777, Casimir Pulaski rode into battle with the Continental Army, led a skillful counterattack to slow the British advance, and helped save George Washington's life. Known as the ''Father of the American Cavalry,'' he would rise to the rank of Brigadier General, continue fighting for American independence in battles across the colonies, and eventually make the ultimate sacrifice in pursuit of revolutionary ideas: freedom, equality, and democracy. Today, we commemorate General Pulaski's heroism and service, honor generations of immigrants who followed in his path, and celebrate our Nation's rich Polish-American heritage.

Every day, the contributions of 9 million Polish-Americans help make this country a beacon of hope and opportunity. As small business owners and elected representatives of the people, as educators and doctors, as champions of civil rights and patriots serving in uniform at home and abroad, Polish-Americans make communities across our Nation more prosperous, vibrant, and humane.

As we continue to champion liberty and justice around the world, America draws great strength from the support of vital international allies like Poland. While Russia continues its unprovoked war in Ukraine, Poland and the United States stand shoulder-to-shoulder in defense of democracy and our collective security. As we pay tribute to General Pulaski and his legacy, may we always remember that the darkness of autocracy is no match for the flame of liberty that lights the souls of free people everywhere.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 11, 2022, as General Pulaski Memorial Day. I encourage all Americans to commemorate this occasion with appropriate programs and activities paying tribute to General Casimir Pulaski and honoring all those who defend the freedom of our great Nation.

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



[FR Doc. 2022–22533
Filed 10–13–22; 8:45 am]
Billing code 3395–F3–P

Presidential Documents

Proclamation 10475 of October 11, 2022

International Day of the Girl, 2022

By the President of the United States of America

A Proclamation

Ten years ago, on the first International Day of the Girl, the United States joined nations around the world to recognize the challenges that girls face and commit to expanding opportunity and equality for them in every part of the globe. Today, on this 10th anniversary, we know that when girls are empowered to dream big and reach their full potential, the possibilities for our world are limitless. From combating the climate crisis and standing up for human rights to fighting for equitable access to education, health care, and opportunity, girls are strengthening democracies, powering economies, and enriching communities everywhere.

Despite their dynamic potential, we must also recognize on this day that girls continue to face significant challenges in the United States and around the world. Hunger, homelessness, and lack of access to adequate health care and educational opportunities threaten their health and wellbeing and create barriers to their full and equal participation in society.

Both at home and abroad, gender-based violence compromises their safety—from child sexual abuse and exploitation to female genital cutting and child marriage. The direct and indirect impacts of gender-based violence and the effect they have on girls' potential and opportunity reinforce our commitment to building a world where all people can live free from violence or intimidation.

That is why my Administration has prioritized unlocking doors of opportunity and delivering the full measure of equity and dignity due to all girls. At home, we are championing equitable access to education, equal pay, and access to jobs and job training so that when girls grow up, they can choose their own path and lead the workforce of the future. We are taking action to expand girls' access to health care, which is critical to supporting their success. I am committed to addressing gender-based violence wherever it occurs—online, in school, at work, or at home—which is why I am proud to have reauthorized and strengthened the Violence Against Women Act. And by supporting LGBTQI+ rights across this Nation, I affirm that everyone deserves respect, protection, and belonging.

My Administration's commitment to empowering girls extends beyond our borders. The United States is supporting equitable access to health care by providing lifesaving HIV treatment to over 19 million people worldwide. We reached over two million adolescent girls and young women just last year. We have committed to improving access to education and learning for 15 million girls and young women by 2025. And we are committed to ending the scourge of gender-based violence globally—particularly in conflict zones, in humanitarian and refugee contexts, and in the aftermath of natural disasters where women and girls face distinct vulnerabilities.

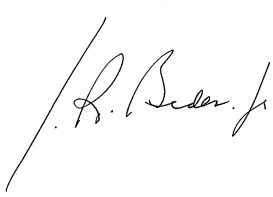
My Administration is also investing in education and programs to advance economic security for women and girls globally, including by pledging $50 million to the World Bank's Global Childcare Incentive Fund and calling on the Congress to provide $200 million for the Gender Equity and Equality Action Fund to support women's economic participation. I will continue to speak out for women and girls around the globe, including in Iran,

where brave young women are demonstrating to secure their basic rights, and I have called on the Congress to double funding for programs that promote gender equality worldwide.

When girls break barriers, they blaze trails for the generations that follow. Investing in their health, safety, education, and economic security moves us closer to building more just, equitable societies and flourishing democracies. It helps us develop leaders across sectors and enables us to create a strong workforce that is ready to meet the challenges and opportunities ahead. Together, we can prepare the next dreamers and doers to shape a new and better future for us all.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 11, 2022, as International Day of the Girl. I call upon the people of the United States to observe this day with programs, ceremonies, and activities that advance equality and opportunity for girls everywhere.

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



[FR Doc. 2022–22534
Filed 10–13–22; 8:45 am]
Billing code 3395–F3–P

Rules and Regulations

Federal Register
Vol. 87, No. 198
Friday, October 14, 2022

DEPARTMENT OF COMMERCE

Census Bureau

15 CFR Part 30

[Docket Number: 220928–0202]

RIN 0607–XC066

Foreign Trade Regulations (FTR): Cancellation of the Advanced Export Information (AEI) Pilot Program

AGENCY: Census Bureau, Department of Commerce.

ACTION: Announcement for the cancellation of the Advanced Export Information (AEI) pilot program.

SUMMARY: In a Solicitation of Pilot Program Participants in the **Federal Register** on January 31, 2014, the Census Bureau announced the implementation of the Advanced Export Information (AEI) pilot program to evaluate a new filing option in the Automated Export System and solicited AEI pilot program participants. The AEI pilot program filing option allowed participating exporters to submit a limited set of Electronic Export Information (EEI) in accordance with existing filing deadlines, followed by the full set of data elements submitted within five calendar days of the date of export. This notification announces that the Census Bureau, in cooperation with the U.S. Customs and Border Protection (CBP), has decided to cancel the AEI pilot program. This decision to eliminate the AEI pilot program as an AES filing option was made because the Census Bureau was unable to conduct sufficient analysis and evaluation of the pilot program due to a lack of adequate participation.

DATES: The Census Bureau cancels the Advanced Export Information (AEI) pilot program that was announced in a Solicitation of Pilot Program Participants published at 79 FR 5330 on January 31, 2014, effective December 13, 2022. On and after December 13, 2022, the remaining pilot program participants shall no longer report EEI through the AEI pilot program and instead shall report EEI to the Automated Export System in accordance with the Foreign Trade Regulations at 15 CFR 30.4.

FOR FURTHER INFORMATION CONTACT: Kiesha Downs, Chief, Trade Regulations Branch, Foreign Trade Division, U.S. Census Bureau, Washington, DC 20233–6010, by phone (301) 763–7079, or by email *kiesha.downs@census.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Census Bureau is responsible for collecting, compiling, and publishing trade statistics for the United States under the provisions of Title 13, United States Code (U.S.C.), Chapter 9, Section 301. The Automated Export System (AES) is the primary instrument used for collecting export trade data. The Census Bureau collects Electronic Export Information (EEI) through the AES, the electronic equivalent of the Shipper's Export Declaration (SED). The EEI is reported pursuant to the Foreign Trade Regulations, title 15, Code of Federal Regulations (CFR), part 30. The EEI consists of the data elements set forth in 15 CFR 30.6 for an export shipment and includes information such as the exporter's identifying information and detailed information concerning the exported product. Other agencies use the EEI for the purpose of enforcing U.S. export laws and regulations. Prior to the implementation of the Advanced Export Information (AEI) pilot program, the Foreign Trade Regulations allowed two filing options: predeparture filing and postdeparture filing. The AEI pilot program was introduced as a voluntary program in which selected exporters agreed to submit a limited set of EEI in accordance with existing filing deadlines, followed by the full set of data elements submitted within five calendar days of the date of export.

The notification to announce implementation of the AEI pilot program and to solicit pilot program participants, which was published in the **Federal Register** on January 31, 2014 (79 FR 5330), attracted only seven pilot program participants. As of July 1, 2022, the number of pilot participants dropped to two. Due to low participation, the Census Bureau was unable to conduct sufficient analysis and evaluation of the pilot program. Therefore, the Census Bureau, in cooperation with the U.S. Customs and Border Protection (CBP), has decided to cancel the AEI pilot program, thus eliminating it as an AES filing option. Thus, on and after the effective date of the cancellation of the AEI pilot program, the two remaining pilot program participants shall no longer report EEI through the AEI pilot program, and instead shall report EEI to the AES in accordance with the predeparture and postdeparture filing options as described in the Foreign Trade Regulations, 15 CFR 30.4.

Robert L. Santos, Director, Census Bureau, approved the publication of this notification in the **Federal Register**.

Dated: September 30, 2022.

Shannon Wink,

Program Analyst, Policy Coordination Office, U.S. Census Bureau.

[FR Doc. 2022–21748 Filed 10–13–22; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 201

[Docket No. NSD 103; Attorney General Order No. 5517–2022]

RIN 1105–AB68

Data Protection Review Court

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: As authorized and directed by the Executive order of October 7, 2022, ''Enhancing Safeguards for United States Signals Intelligence Activities,'' this rule amends Department of Justice regulations to establish within the Department a Data Protection Review Court (''DPRC''). The DPRC will review determinations made by the Civil Liberties Protection Officer of the Office of the Director of National Intelligence (''ODNI CLPO'') in response to qualifying complaints that allege certain violations of United States law in the conduct of United States signals intelligence activities. Applications for review by the DPRC must be filed by individuals through the appropriate public authority in a designated foreign

country or regional economic integration organization. To facilitate their independent and impartial review, DPRC judges will not be subject to the day-to-day supervision of the Attorney General and will be subject to removal protections. DPRC decisions, including the direction of appropriate remedial measures to be undertaken by United States intelligence agencies, will be final and binding. Individual complainants will not be informed whether they were subject to signals intelligence activities, but instead will receive a standardized notice that states that the DPRC's review has been completed and either did not identify any covered violations or the DPRC issued a determination requiring any appropriate remediation.

DATES: This rule is effective October 14, 2022.

FOR FURTHER INFORMATION CONTACT: J. Bradford Wiegmann, Deputy Assistant Attorney General, National Security Division, United States Department of Justice, Washington, DC 20530; telephone: (202) 514–1057.

SUPPLEMENTARY INFORMATION:

I. Background

Section 3 of the Executive order of October 7, 2022 authorizes and directs the Attorney General to issue regulations to establish a Data Protection Review Court as the second level of a two-level redress mechanism. The redress mechanism will provide for the review of qualifying complaints by individuals, filed through appropriate public authorities in designated foreign countries or regional economic integration organizations, alleging certain violations of United States law concerning United States signals intelligence activities. The Executive order of October 7, 2022 implements commitments made by the United States as part of the U.S.-EU Data Privacy Framework announced in March 2022 to foster trans-Atlantic data flows. The Framework was developed in response to a 2020 ruling by the Court of Justice of the European Union that invalidated the European Commission's ''adequacy decision'' for the United States, which was part of the then-existing U.S.-EU Privacy Shield Framework.

The new redress mechanism established by the Executive order of October 7, 2022 will have two levels. The first level is the investigation, review, and determination by the Civil Liberties Protection Officer of the Office of the Director of National Intelligence (''ODNI CLPO'') of whether a covered violation occurred and, where necessary, the appropriate remediation in response to a qualifying complaint. As a second level, the complainant or an element of the Intelligence Community may seek review by the DPRC of the ODNI CLPO's determinations.

The DPRC will be established within the Department of Justice (''Department''), consisting of individuals chosen from outside the United States Government, to provide independent and impartial review of applications for review. Exercising the Attorney General's authority under 28 U.S.C. 511 and 512 to provide his advice and opinion on questions of law and the authority delegated to the Attorney General under the Executive order of October 7, 2022, as delegated to the DPRC in this rule by the Attorney General pursuant to 28 U.S.C. 510, the DPRC will review whether the ODNI CLPO's determination regarding the occurrence of a covered violation was legally correct and supported by substantial evidence and whether, in the event of a covered violation, the ODNI CLPO's determination as to the appropriate remediation was consistent with the Executive order of October 7, 2022.

II. Discussion of Rule

This rule establishes within the Department a DPRC. The DPRC will review, upon an application for review, the ODNI CLPO's determinations made in response to a qualifying complaint, transmitted through the appropriate public authority in a designated foreign country or regional economic integration organization, from an individual who alleged a covered violation of United States law in the conduct of United States signals intelligence activities that adversely affected the complainant's individual privacy and civil liberties interests.

The DPRC will consist of six or more judges appointed by the Attorney General from outside the United States Government. To facilitate their independent and impartial review of the applications for review, the judges will not be subject to the day-to-day supervision of the Attorney General and may not be removed or subjected to other adverse action arising from their service on the DPRC, except for instances of misconduct, malfeasance, breach of security, neglect of duty, or incapacity. The DPRC panels will have access to the classified national security information they need to conduct their reviews and make decisions. In accordance with section 3(d)(ii) and (iv) of the Executive order of October 7, 2022, those decisions, including the direction of appropriate remedial measures, will be final and binding with respect to the application for review.

Applications for review may be filed by an individual complainant after receiving notification that the ODNI CLPO has completed its review or by an element of the Intelligence Community. Applications for review by complainants must be filed through the appropriate public authority in a ''qualifying state,'' which is defined under the rule as a country or regional economic integration organization designated as a qualifying state by the Attorney General under section 3(f) of the Executive order of October 7, 2022.

Each application will be reviewed by a three-judge panel of the DPRC convened by the Department's Office of Privacy and Civil Liberties (''OPCL''). Once convened, the presiding judge on the DPRC panel will select a Special Advocate who, in accordance with section 3(d)(i)(C) of the Executive order of October 7, 2022, will assist the panel by advocating regarding the complainant's interest in the matter and by ensuring that the panel is well informed regarding the issues and the law. The Special Advocate will not be the agent of or have an attorney-client relationship with the complainant and, in the interest of national security, will be subject to restrictions on communications with the complainant and the complainant's counsel to ensure that classified or otherwise privileged or protected information, including whether or not the complainant was subject to United States signals intelligence activities, is not disclosed.

Each DPRC panel will review the application before it to determine whether the ODNI CLPO's determination regarding whether a covered violation occurred was legally correct under the applicable law and supported by substantial evidence and whether any appropriate remediation was consistent with the Executive order of October 7, 2022. If the DPRC panel decides that the CLPO's determination does not meet these requirements, the panel will issue its own determination, including any appropriate remediation. In conducting this review, the panel will interpret the Executive order of October 7, 2022 exclusively according to United States law and legal traditions and, more generally, will be guided by decisions of the United States Supreme Court in the same way as a court established under Article III of the United States Constitution, including decisions on the appropriate deference to be provided relevant determinations of national security officials.

The panel will conduct its review based on the record of the ODNI CLPO's review, supplemented by any information or submissions from the

complainant, the Special Advocate, or an element of the Intelligence Community. The DPRC panel may also request that the ODNI CLPO supplement the record in response to specific questions from the panel. The DPRC panel's decision will be by majority vote, and the panel will issue a written decision setting out its determinations and the specification of any appropriate remediation.

The individual complainant will not be informed whether they were subject to signals intelligence activities. Instead, the individual will receive a standardized notice that states that the DPRC's review has been completed, namely that ''the review either did not identify any covered violations or the Data Protection Review Court issued determinations requiring appropriate remediation,'' and that the notification constitutes final agency action.

OPCL will provide administrative support to the DPRC and the Special Advocates.

III. Regulatory Certifications

A. Administrative Procedure Act

This rule involves the foreign affairs function of the United States, relates to a matter of agency management or personnel, and involves a matter relating to agency organization, procedure, or practice. As such, this rule is exempt from the usual requirements of prior notice and comment and a 30-day delay in the effective date. See 5 U.S.C. 553(a)(1), (a)(2), (b), and (d).

B. Regulatory Flexibility Act

An analysis under the Regulatory Flexibility Act was not required for this rule because the Department was not required to publish a general notice of proposed rulemaking for this matter. See 5 U.S.C. 601(2), 604(a).

C. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted for inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C 1501 *et seq.*

D. Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804(2). Further, because it relates to agency management or personnel, it is not a ''rule'' as that term is used in the Congressional Review Act, 5 U.S.C. 804(3)(b), and, accordingly, the reporting requirements of 5 U.S.C. 801 do not apply.

E. Paperwork Reduction Act of 1995

This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

F. Executive Orders 12866 and 13563—Regulatory Review

Because the rule involves the foreign affairs function of the United States, it is not a ''regulation or rule'' under section 3(d) of Executive Order 12866, ''Regulatory Planning and Review,'' and the requirements of that order and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' accordingly, do not apply. Nevertheless, this rule has been drafted and reviewed in accordance with section 1(b) of Executive Order 12866 and section 1(b) of Executive Order 13563.

G. Executive Order 13132—Federalism

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. Therefore, in accordance with section 6 of Executive Order 13132, ''Federalism,'' the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

H. Executive Order 12988—Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, ''Civil Justice Reform.''

List of Subjects in 28 CFR Part 201

Claims, Foreign relations, Privacy, Signals intelligence.

■ Accordingly, for the reasons set forth in the preamble, the Department of Justice adds part 201 to chapter I of title 28 of the Code of Federal Regulations to read as follows:

PART 201—DATA PROTECTION REVIEW COURT

Sec.

201.1 Purpose.
201.2 Definitions.
201.3 Appointment of judges and rules of procedure.
201.4 Appointment of Special Advocates.
201.5 Administrative support for the DPRC.
201.6 Applications for review.
201.7 Convening of panels, conduct of judges, and independence of the DPRC.
201.8 Special Advocates.
201.9 Consideration of applications and decisions.
201.10 Guiding principles of law.
201.11 Information security and classified national security information.
201.12 Disclaimer.

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510–512; Executive order of October 7, 2022.

§ 201.1 Purpose.

This part establishes an independent and impartial Data Protection Review Court (DPRC) to consider, in classified proceedings, applications for review of determinations made by the Civil Liberties Protection Officer of the Office of the Director of National Intelligence (ODNI CLPO) in response to qualifying complaints submitted through the redress mechanism established pursuant to section 3 of the Executive order of October 7, 2022, ''Enhancing Safeguards for United States Signals Intelligence Activities.''

§ 201.2 Definitions.

The terms ''appropriate remediation,'' ''covered violation,'' ''element of the Intelligence Community,'' ''Intelligence Community,'' ''national security,'' and ''qualifying complaint'' shall have the same meanings as they have in the Executive order of October 7, 2022. The term ''qualifying state'' means a country or regional economic integration organization designated as a qualifying state by the Attorney General pursuant to section 3(f) of the Executive order of October 7, 2022.

§ 201.3 Appointment of judges and rules of procedure.

(a) The Attorney General shall, in consultation with the Secretary of Commerce, the Director of National Intelligence, and the Privacy and Civil Liberties Oversight Board (PCLOB), appoint not fewer than six individuals to serve as judges on the DPRC for four-year renewable terms, choosing individuals who at the time of their initial appointment have not been employees of the executive branch in the previous two years.

(b) The Attorney General's appointments shall be informed by the criteria used by the executive branch in assessing candidates for the Federal judiciary, giving weight to any prior judicial experience, and shall be of individuals with appropriate experience in the fields of data privacy and national security law. The Attorney General shall endeavor to ensure that at least half of the judges at any given time have prior judicial experience, and all persons appointed as judges shall be active members in good standing of the bar of a State, Commonwealth, Territory, or

Possession, or of the District of Columbia and shall be duly licensed to practice law.

(c) During their term of appointment as judges on the DPRC, such judges shall not have any official duties or employment within the United States Government other than their official duties and employment as judges on the DPRC.

(d) The DPRC shall review and adopt by majority vote rules of procedure consistent with the Executive order of October 7, 2022 and this part, which thereafter shall be made publicly available and applied by each DPRC panel convened under § 201.7(a). The rules of procedure may thereafter be amended at such times and in such ways as a majority of the judges may deem necessary and appropriate to accomplish the work of the DPRC. A quorum of six judges shall be required for the initial adoption of and any amendments to the rules of procedure.

§ 201.4 Appointment of Special Advocates.

(a) The Attorney General shall, in consultation with the Secretary of Commerce, the Director of National Intelligence, and the PCLOB, appoint no fewer than two individuals to serve as Special Advocates for two-year renewable terms, choosing individuals who at the time of their initial appointment have not been employees of the executive branch in the previous two years.

(b) All persons appointed as Special Advocates shall have appropriate experience in the fields of data privacy and national security law, shall be experienced attorneys and active members in good standing of the bar of a State, Commonwealth, Territory, or Possession, or of the District of Columbia, and shall be duly licensed to practice law.

§ 201.5 Administrative support for the DPRC.

(a) The Office of Privacy and Civil Liberties of the Department of Justice (OPCL) shall be responsible for providing administrative support to the DPRC and the Special Advocates.

(b) The administrative support provided by OPCL shall include the following functions:

(1) Facilitating the Attorney General's consultations with other officials regarding the appointment of judges and Special Advocates;

(2) Drafting in consultation with relevant agencies rules of procedure and, when requested by the DPRC, any amendments thereto for consideration by the DPRC;

(3) Receiving applications for review of determinations made by the ODNI CLPO and receiving from the ODNI CLPO its record of review;

(4) Receiving and maintaining the confidentiality of any written information that a complainant filing an application for review wishes to provide to the DPRC and of any responses the complainant or their counsel provides to questions from the Special Advocate;

(5) Coordinating with the ODNI CLPO as needed on matters arising from an application for review;

(6) Securely maintaining records pursuant to applicable law;

(7) Making publicly available information about the DPRC, including the names of the judges and Special Advocates, the rules of procedure, and the process for filing an application for review, and such other information as the DPRC in its discretion deems appropriate for its function; and

(8) Providing other administrative support to the DPRC, its panels and judges, and the Special Advocates.

§ 201.6 Applications for review.

(a) A complainant may apply for review by the DPRC of a determination made by the ODNI CLPO in response to a qualifying complaint submitted by the complainant by filing an application for review with the appropriate public authority in a qualifying state, for forwarding to OPCL, no later than sixty (60) days after the date, as reported to OPCL by the appropriate public authority in a qualifying state, on which the complainant receives notification that the ODNI CLPO has completed its review.

(b) The complainant shall submit with the application for review, through the appropriate authority in a qualifying state, any information, including argument on questions of law or the application of law to the facts, that the complainant wishes to provide to the DPRC. The complainant may be represented by counsel in submitting this information. OPCL shall maintain the confidentiality of such information.

(c) An element of the Intelligence Community may apply for review by the DPRC of a determination made by the ODNI CLPO by filing an application for review with OPCL no later than sixty (60) days after the date on which the element of the Intelligence Community receives notification from the ODNI CPLO that the ODNI CLPO has completed its review of the qualifying complaint. An application for review filed by an element of the Intelligence Community may include any information that the element of the Intelligence Community wishes to provide to the DPRC, including argument on questions of law or the application of law to the facts. To prevent the disclosure of classified or otherwise privileged or protected information, the DPRC, Special Advocates, and OPCL shall not provide to the complainant any information relating to the existence, review, or outcome of any application for review filed by an element of the Intelligence Community.

§ 201.7 Convening of panels, conduct of judges, and independence of the DPRC.

(a) Upon receipt of an application for review, OPCL shall convene a panel of the DPRC by selecting three judges on a rotating basis, while ensuring if possible that at least one of the judges selected has prior judicial experience.

(b) The three judges on a DPRC panel shall select a presiding judge by unanimous agreement. If agreement is not reached within five (5) days of the convening of the DPRC panel, the presiding judge shall be the judge who was selected first by OPCL who has prior judicial experience; if no judge on the DPRC panel has such experience, the presiding judge shall be the judge selected first by OPCL.

(c) Judges on a DPRC panel shall conduct themselves in accordance with the Code of Conduct for United States Judges, except that a judge may participate in extrajudicial activities, including business activities, financial activities, non-profit fundraising activities, fiduciary activities, and the practice of law, where such extrajudicial activities do not interfere with the impartial performance of the judge's duties or the effectiveness or independence of the DPRC.

(d) A DPRC panel and its judges shall not be subject to the day-to-day supervision of the Attorney General. The Attorney General shall not remove a judge from a DPRC panel, remove a judge from the DPRC prior to the end of the judge's term of appointment under § 201.3(a), or take any other adverse action against a judge arising from service on the DPRC, except for instances of misconduct, malfeasance, breach of security, neglect of duty, or incapacity, after taking due account of the standards in the Rules for Judicial-Conduct and Judicial-Disability Proceedings promulgated by the Judicial Conference of the United States pursuant to the Judicial Conduct and Disability Act (28 U.S.C. 351 *et seq.*).

§ 201.8 Special Advocates.

(a) After a DPRC panel is convened under § 201.7(a), the presiding judge shall select a Special Advocate to assist the panel in the consideration of the application for review.

(b) The Special Advocate shall upon selection receive from OPCL the application for review and any information that the complainant provided under § 201.6(b). The Special Advocate shall not be the agent of the complainant, consistent with the rules of professional responsibility, and there shall be no attorney-client relationship between the Special Advocate and the complainant.

(c) The Special Advocate shall also have access to the record of the ODNI CLPO's review and any information or submissions provided to the DPRC panel by an element of the Intelligence Community.

(d) To prevent the disclosure of classified or otherwise privileged or protected information, the Special Advocate shall adhere to the following rules on communications with the complainant or the complainant's counsel:

(1) If the complainant did not file an application for review, the Special Advocate shall not communicate with the complainant or the complainant's counsel.

(2) If the complainant did file an application for review, the Special Advocate may at any stage submit to OPCL written questions for the complainant or the complainant's counsel. OPCL shall, in consultation with relevant elements of the Intelligence Community, review any such questions to ensure they do not disclose any classified or otherwise privileged or protected information and, subject to that limitation, shall convey the questions through the appropriate public authority in a qualifying state to the complainant or the complainant's counsel, with an invitation to provide written responses to the Special Advocate through the appropriate public authority in a qualifying state.

(e) The Special Advocate shall assist the DPRC panel in its consideration of the application for review, including by advocating regarding the complainant's interest in the matter and by ensuring that the DPRC panel is well informed of the issues and the law with respect to the matter. Where the complainant has filed an application for review, the submissions of the Special Advocate to the DPRC shall include the complainant's application for review and the information and responses to questions submitted to the Special Advocate by the complainant.

(f) Affected elements of the Intelligence Community shall be provided an opportunity to respond to submissions made by the Special Advocate.

§ 201.9 Consideration of applications and decisions.

(a) A DPRC panel shall consider an application for review in a manner that is timely, impartial, and consistent with the Executive order of October 7, 2022 and this part in order to determine whether a covered violation occurred and, if so, to determine any appropriate remediation.

(b) A DPRC panel shall conduct its review based on the record of the ODNI CLPO's review and any information or submissions provided by the complainant, the Special Advocate, or an element of the Intelligence Community. A DPRC panel may request that the ODNI CLPO supplement the record with specific explanatory or clarifying information and that the ODNI CLPO make additional factual findings where necessary to enable the DPRC panel to conduct its review.

(c) If the DPRC panel finds no evidence in the record indicating that signals intelligence activities occurred involving personal information of or about the complainant, the DPRC panel shall render a decision to that effect.

(d) In all other cases, the DPRC panel shall determine:

(1) Whether, under the applicable law as set forth in the definition of a covered violation in the Executive order of October 7, 2022, the ODNI CLPO's determination whether a covered violation occurred was legally correct and supported by substantial evidence; and

(2) Whether, in the event of a covered violation, the ODNI CLPO's determination as to the appropriate remediation was consistent with the Executive order of October 7, 2022.

(e) If a DPRC panel decides that a determination by the ODNI CLPO does not meet the standard set out in paragraph (d) of this section, the DPRC panel shall issue its own determination.

(f) Prior to determining an appropriate remediation under paragraph (e) of this section, a DPRC panel shall seek through the ODNI CLPO the views of affected elements of the Intelligence Community regarding the appropriate remediation, including an assessment of impacts on the operations of the Intelligence Community and the national security of the United States. The panel shall take due account of these views as well as customary ways of addressing a violation of the type identified.

(g) A DPRC panel shall make its decision by majority vote. Each DPRC panel shall issue a written decision setting out its determinations and the specification of any appropriate remediation. The decision of each DPRC panel shall be final and binding with respect to the application for review before it and shall be controlling only as to that application for review.

(h) After the issuance of a written decision under paragraph (g) of this section, OPCL shall forward the decision to the ODNI CLPO. If the complainant submitted an application for review in the case, OPCL shall notify the complainant through the appropriate public authority in a qualifying state, without confirming or denying whether the complainant was subject to signals intelligence activities, that:

(1) The DPRC completed its review;

(2) The review either did not identify any covered violations or the Data Protection Review Court issued a determination requiring appropriate remediation; and

(3) The notification to the complainant constitutes the final agency action in the matter.

(i) A DPRC panel shall provide a classified report on information indicating a violation of any authority subject to the oversight of the Foreign Intelligence Surveillance Court to the Assistant Attorney General for National Security, who shall report violations to the Foreign Intelligence Surveillance Court in accordance with its rules of procedure.

(j) For each application for review, OPCL shall maintain a record of the information reviewed by the DPRC panel and the decision of the DPRC panel, which records shall be made available for consideration as non-binding precedent to future DPRC panels considering applications for review.

§ 201.10 Guiding principles of law.

(a) The Executive order of October 7, 2022 and its terms shall be interpreted by the DPRC exclusively in light of United States law and the United States legal tradition, and not any other source of law.

(b) In a DPRC panel's review of an application under § 201.9, the DPRC panel shall be guided by relevant decisions of the United States Supreme Court in the same way as are courts established under Article III of the United States Constitution, including those decisions regarding appropriate deference to relevant determinations of national security officials.

§ 201.11 Information security and classified national security information.

(a) All proceedings before and other activities of the DPRC and all activities of the Special Advocates shall be governed by Executive Order 13526 of

December 29, 2009, ''Classified National Security Information,'' or any successor order, and this part.

(b) Judges may serve on a DPRC panel convened under § 201.7(a), and Special Advocates may be selected to assist a DPRC panel under § 201.8(a), only if they hold the requisite security clearances to access classified national security information. The DPRC and Special Advocates shall have no authority to declassify or grant any person access to any classified or otherwise privileged or protected information, including the information reviewed in or information about the existence or outcome of any proceedings before the DPRC or any information that would tend to reveal whether a complainant was subject to signals intelligence activities.

(c) The Department of Justice Security Officer shall be responsible for establishing security procedures for proceedings before and other activities of the DPRC and the Special Advocate, and for amending those procedures as necessary.

§ 201.12 Disclaimer.

This part governs the ability to obtain review of the ODNI CLPO's determinations by the DPRC in accordance with the redress mechanism established in section 3 of the Executive order of October 7, 2022. This part is not intended to, and does not, create any other entitlement, 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. This part is not intended to, and does not, modify the availability or scope of any judicial review of the decisions rendered through the redress mechanism, which is governed by existing law.

Dated: October 7, 2022.

Merrick B. Garland,

Attorney General.

[FR Doc. 2022–22234 Filed 10–13–22; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2022–0795]

RIN 1625–AA08

Special Local Regulation; Eureka Concert Spectator Area, Eureka Channel, Eureka, CA

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary local regulation for the navigable waters of Eureka Channel, in the vicinity of Woodley Island, in support of an onshore concert with spectator vessels. This special local regulation is necessary to protect the safety of life on these navigable waters and to ensure the safety of mariners transiting the area from the dangers associated with the large gathering of on water concert spectators. This special local regulation will temporarily establish the spectator area and safe access lane to be used for transit and emergency response access. This regulation is necessary to provide safety of life on the navigable waters during the event, which will be held on October 16, 2022.

DATES: This rule is effective on October 16, 2022 from 11 a.m. until 7 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG 2022–0795 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT William Harris, Waterways Management, U.S. Coast Guard; telephone (415) 399–7440, email *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) because it would be impracticable to do so. This rule must be effective on October 16, 2022, so we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because the rule must be effective on October 16, 2022, to ensure the safety of the participants and vessels during the Concert Event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041 (previously 33 U.S.C. 1233). The Captain of the Port Sector San Francisco (COTP) has determined that potential hazards associated with a large gathering of on water concert spectators on October 16, 2022, will be a safety concern for anyone within the Eureka Channel. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the special local regulation while the event is taking place.

IV. Discussion of the Rule

This rule establishes a special local regulation from 11 a.m. until 7 p.m. on October 16, 2022. This special local regulation involves a designated event anchorage in the vicinity of Woodley Island Marine. The event anchorage area will be established from a point along the southeastern shore of Woodley Island at 40°48′34.5″ N, 124°9′19.7″ W; thence along the Samoa Bridge to 40°48′30.3″ N, 124°9′15.7″; thence along the shore to 40°48′24.2″ N, 124°9′30.6″ W; thence to 40°48′29.4″ N, 124°9′32.8″ W and thence to the point of beginning. No vessel may moor or anchor within 50 yards of the southernmost shoreline to allow access for emergency vessels. This special local regulation also involves a no loitering zone to reduce congregating in Eureka Channel during this concert event from a point along the southwestern shore or Woodley Island at 40°48′28.0″ N, 124°10′0.0″ W; thence

along the shore to 40°48′29.4″ N, 124°9′32.8″ W; thence to 40°48′24.2″ N, 124°9′30.6″ W; thence along the shore to 40°48′21.9″ N, 124°9′59.9″ W and thence to the point of beginning.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and the time-of-day of the special local regulation. This special local regulation would impact a small designated area of the Eureka Channel for a short duration. Moreover the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This special local regulation involves a designated event anchorage from a point along the southeastern shore of Woodley Island at 40°48′34.5″ N, 124°9′19.7″ W; thence along the Samoa Bridge to 40°48′30.3″ N, 124°9′15.7″; thence along the shore to 40°48′24.2″ N, 124°9′30.6″ W; thence to 40°48′29.4″ N, 124°9′32.8″ W and thence to the point of beginning. This special local regulation also involves a no loitering zone to reduce congregating in Eureka Channel during this concert event from a point along the southwestern shore or Woodley Island at 40°48′28.0″ N, 124°10′0.0″ W; thence along the shore to 40°48′29.4″ N, 124°9′32.8″ W; thence to 40°48′24.2″ N, 124°9′30.6″ W; thence along the shore to 40°48′21.9″ N, 124°9′59.9″ W and thence to the point of beginning. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Memorandum For Record supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.T11–113 to read as follows:

§ 100.T11–113 Special Local Regulation; Eureka Concert Spectator Area, Eureka Channel, Eureka, CA.

(a) *Regulated area.* This special local regulation involves a designated event anchorage from a point along the southeastern shore of Woodley Island at 40°48′34.5″ N, 124°9′19.7″ W; thence along the Samoa Bridge to 40°48′30.3″ N, 124°9′15.7″; thence along the shore to 40°48′24.2″ N, 124°9′30.6″ W; thence to 40°48′29.4″ N, 124°9′32.8″ W and thence to the point of beginning. No vessel may moor or anchor within 50 yards of the southernmost shoreline to allow access for emergency vessels. This special local regulation also involves a no-loitering zone to reduce congregating in Eureka Channel during this concert event from a point along the southwestern shore or Woodley Island at 40°48′28.0″ N, 124°10′0.0″ W; thence along the shore to 40°48′29.4″ N, 124°9′32.8″ W; thence to 40°48′24.2″ N, 124°9′30.6″ W; thence along the shore to 40°48′21.9″ N, 124°9′59.9″ W and thence to the point of beginning.

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the regulations in this section.

(c) *Regulations.* All attendees are allowed to anchor within the designated event anchorage and are restricted from remaining within the regulated no-loitering area described in paragraph (a) of this section unless authorized by the Captain of the Port San Francisco or their designated representative.

(2) To seek permission to access or for inquiries, contact the COTP or the COTP's representative by VHF Channel 22A (157.100 mhz). Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from 11 a.m. to 7 p.m. on October 16, 2022.

Dated: October 7, 2022.

Taylor Q. Lam,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2022–22431 Filed 10–13–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0807]

Safety Zones in Reentry Sites; Tampa and Tallahassee, Florida

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard is activating two safety zones for the SpaceX Commercial Crew-4 mission, reentry vehicle splashdown, and recovery operations. These operations will occur in the U.S. Exclusive Economic Zone (EEZ). Our regulation for safety zones in reentry sites within the Seventh Coast Guard District identifies the regulated areas for this event. No U.S. flagged vessel may enter the safety zones unless authorized by the Captain of the Port St. Petersburg or a designated representative. Foreign-flagged vessels are encouraged to remain outside the safety zones.

DATES: The regulations in 33 CFR 165.T07–0289 will be enforced for the safety zones identified in the **SUPPLEMENTARY INFORMATION** section below for the dates and times specified.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Marine Science Technician second class Regina Cuevas, Waterways Management Division, U.S. Coast Guard; telephone 813–228–2191 ext 8333, email *Regina.L.Cuevas@uscg.mil.*

SUPPLEMENTARY INFORMATION: With this document, the Coast Guard Captain of the Port (COTP) St. Petersburg is activating two safety zones as listed in 33 CFR 165.T07–0289(a)(4) through (a)(5), on October 13, 2022 through October 20, 2022 for the SpaceX Commercial Crew-4 mission (Crew-4), reentry vehicle splashdown, and the associated recovery operations in the U.S. EEZ. These two safety zones are located within the COTP St. Petersburg Area of Responsibility (AOR) offshore of Tampa and Tallahassee, Florida. The COTP St. Petersburg is activating these safety zones in order to protect vessels and waterway users from the potential hazards created by reentry vehicle splashdowns and recovery operations in our exclusive economic zone and implements a special activities provision of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021. In accordance with the general regulations in 33 CFR part 165, subpart C, no U.S.-flagged vessel may enter the safety zones unless authorized by the COTP St. Petersburg or a designated representative except as provided in § 165.T07–0289(d)(3). All foreign-flagged vessels are encouraged to remain outside the safety zones.

There are three other safety zones listed in § 165.T07–0289(a)(1) through (a)(3), which are located within the COTP Jacksonville AOR, that are being simultaneously activated through a separate notification of enforcement of the regulation document issued under Docket Number USCG–2022–0805.[1]

Twenty-four hours prior to the Crew-4 recovery operations scheduled as early as October 13, 2022, the COTP Jacksonville or COTP St. Petersburg, or designated representative will inform the public whether any of the five safety zones described in § 165.T07–0289, paragraph (a), will remain activated (subject to enforcement). If one of the safety zones described in § 165.T07–0289, paragraph (a), remains activated, it will be enforced for four hours prior to the Crew-4 splashdown and remain activated until announced by Broadcast Notice to Mariners on VHF–FM channel 16, and/or Marine Safety Information Bulletin (as appropriate) that the safety zone is no longer subject to enforcement. After the Crew-4 reentry vehicle splashdown, the COTP or a designated representative will grant general permission to come no closer than 3 nautical miles of any reentry vehicle or space support vessel engaged in the recovery operations, within the activated safety zone described in § 165.T07–0289, paragraph (a). Once the reentry vehicle, and any personnel involved in reentry service, are removed from the water and secured onboard a space support vessel, the COTP or designated representative will issue a Broadcast Notice to Mariners on VHF–FM channel 16 announcing the activated safety zone is no longer subject to enforcement. The recovery

[1] This notification of enforcement of the regulation can be found at: *https://regulations.gov* by searching for docket number USCG–2022–0805.

operations are expected to last approximately one hour.

The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

Dated: October 7, 2022.

Michael P. Kahle,

Captain, U.S. Coast Guard, Captain of the Port Sector St. Petersburg.

[FR Doc. 2022–22391 Filed 10–13–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0354]

RIN 1625–AA00

Safety Zone; Mystic River, Mystic, CT

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Mystic River for the Mystic Seaport Bridge 100th Anniversary Fireworks Display. This action is necessary to provide for the safety of life on the navigable waters in the vicinity of the Mystic Bascule Bridge during a fireworks display. This rule would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Long Island Sound or a designated representative.

DATES: This rule is effective from 7:45 p.m. through 9:30 p.m. on Saturday, October 15, 2022 with a rain date effective from 7:45 p.m. through 9:30 p.m. on Sunday, October 16, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0354 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Marine Science Technician 2nd Class Mark Paget, Waterways Management Division, Sector Long Island Sound; Tele: (203) 468–4583; Email: *Mark.A.Paget@uscg.mil* .

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Long Island Sound
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On March 16, 2022, the Mystic Chamber of Commerce notified the Coast Guard that it will be conducting a fireworks display to commemorate the Mystic Seaport Bridge 100th Anniversary from 7:45 p.m. to 9:30 p.m. on Saturday, October 15, 2022, with a rain date scheduled from 7:45 p.m. to 9:30 p.m. on Sunday, October 16, 2022. The fireworks are to be launched from a barge in the Mystic River approximately 200 yards west of the Mystic River Boathouse Park, Mystic, CT. Hazards from fireworks displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris.

In response, on August 3, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Mystic River, Mystic, CT (87 FR 47381). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended September 2, 2022; we received 0 comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to to facilitate the safety of the persons and vessels involved in the fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Long Island Sound (COTP) has determined that potential hazards associated with the fireworks to be used in this October 15, 2022 display will be a safety concern for anyone within a 200-yard radius of the barge. This rule is needed to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published August 3, 2022. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 7:45 p.m. through 9:30 p.m. on Saturday, October 15, 2022 with a rain date scheduled from 7:45 p.m. through 9:30 p.m. on Sunday October 16, 2022. The safety zone will cover all navigable waters within 200 yards of a barge in the Mystic River located approximately 200 yards west of the Mystic River Boathouse Park, Mystic, CT. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 8 p.m. to 9 p.m. fireworks display. All persons or vessels would be prohibited from entering the safety zone without permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. Due to the size of the fall-out zone, vessel traffic will be impeded throughout the duration of the fireworks display.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety

zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.]

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting one hour and 45 minutes that would prohibit entry within 200 yards of a fireworks barge. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T151–0354 to read as follows:

§ 165.T151–0354 Safety Zone; Mystic River, Mystic, CT.

(a) *Location.* The following area is a safety zone: All waters within a 200 yard radius of the fireworks barge located at 41°21′54″ N, 71°57′59″ W.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by (203) 468–4444. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(c) *Enforcement period.* This section will be enforced from 7:45 p.m. through 9:30 p.m. on October 15, 2022 with a rain date scheduledon October 16, 2022.

Dated: October 11, 2022.

E.J. Van Camp,

Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.

[FR Doc. 2022–22395 Filed 10–13–22; 8:45 am]

BILLING CODE 9110–04–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 302

[Notice–MA–2022–11; Docket No. 2022–0002; Sequence No. 24]

Federal Travel Regulation (FTR); Relocation Allowances—Waiver of Certain Provisions of the FTR Chapter 302 for Official Relocation Travel to Locations in Florida, South Carolina, North Carolina, and the Commonwealth of Puerto Rico Impacted by Hurricanes Ian and Fiona

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notification of waiver.

SUMMARY: GSA informs Federal agencies that certain provisions of the FTR governing official relocation travel are temporarily waived for Florida, South Carolina, North Carolina, and the Commonwealth of Puerto Rico locations impacted by Hurricanes Ian and Fiona and that GSA Bulletin FTR 23–03, containing additional details of that waiver, is available.

DATES: October 14, 2022.

Applicability Date: This waiver is retroactively applicable for official relocation travel performed on or after the incident period dates impacted by Hurricanes Ian and Fiona. The FTR Bulletin expires 180 days from the respective effective dates, unless GSA publishes a document in the **Federal Register** extending or rescinding it.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Miller, Senior Policy Analyst, Office of Government-wide Policy, Office of Asset and Transportation Management, at 202–501–3822 or by email at *travelpolicy@gsa.gov.* Please cite Notice of GSA Bulletin FTR 23–03.

SUPPLEMENTARY INFORMATION:

Background

Federal agencies authorize relocation entitlements to those individuals listed at FTR § 302–1.1 and those assigned under the Government Employees Training Act (GETA) (5 U.S.C. chapter 41) which must be used within one year. Some agencies will authorize Temporary Quarters Subsistence Expenses (TQSE) and a Househunting trip (HHT) to assist employees with temporary expenses when relocating to the new duty station. The FTR limits the location of where temporary lodging may occur, how long they may receive assistance, and at what per diem rate expenses are based. Hurricanes Ian and Fiona have affected locations in Florida, South Carolina, North Carolina, and the Commonwealth of Puerto Rico, which has resulted in various travel-related disruptions to relocating employees.

As a result of the storm damage caused by Hurricanes Ian and Fiona, agencies should consider delaying all non-essential relocations to the affected areas given the statutory 120-day maximum for TQSE. Due to the lasting effects of the storm damage to these affected areas, finding lodging facilities and/or adequate meals may be difficult, and distance involved may be great, resulting in increased cost for relocation per diem expenses.

Accordingly, GSA allows agencies to determine whether to implement waivers of time limits established by the FTR for completion of all aspects of relocation, temporary quarter's locations at the new duty station and per diem rates for TQSE, and per diem rates for HHTs as of the following dates for the locations specified: (a) September 23, 2022, based on the Presidential Disaster Declaration DR–4673–FL dated September 29, 2022, to the locations in Florida, (b) September 23, 2022, based on the Presidential Disaster Declaration DR–4675 dated September 30, 2022, to the locations in Florida, (c) September 25, 2022, based on the Presidential Disaster Declaration EM–3585–SC dated September 29, 2022, to the locations in South Carolina, (d) September 28, 2022, based on the Presidential Disaster Declaration EM–3586–NC dated October 1, 2022, to the locations in North Carolina, and (e) September 17, 2022, based on the Presidential Disaster Declaration DR–4671–PR dated September 21, 2022, to the locations in the Commonwealth of Puerto Rico.

GSA Bulletin FTR 23–03 can be viewed at *https://www.gsa.gov/ftrbulletins.*

Saul Japson,

Principal Deputy Associate Administrator, Office of Government-wide Policy.

[FR Doc. 2022–22168 Filed 10–13–22; 8:45 am]

BILLING CODE P

Proposed Rules

Federal Register
Vol. 87, No. 198
Friday, October 14, 2022

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 COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 221006–0212]

RIN 0648–BL38

Flower Garden Banks National Marine Sanctuary Regulations

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule; request for public comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is issuing this proposed rule to remove a provision from one section of the existing Flower Garden Banks National Marine Sanctuary (FGBNMS) regulations, regarding the resolution of conflicting Federal agency regulations by the Director of the Office of National Marine Sanctuaries.

DATES: Comments must be received by November 14, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–NOS–2022–0047, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NOS–2022–0047 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: George P. Schmahl, Superintendent, Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, Texas 77551, at 409–356–0383, or *george.schmahl@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Flower Garden Banks National Marine Sanctuary

The National Marine Sanctuaries Act (NMSA) authorizes the Secretary of Commerce (Secretary) to designate and protect, as national marine sanctuaries, areas of the marine environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or aesthetic qualities. Day-to-day management of national marine sanctuaries is delegated by the Secretary to NOAA's ONMS. The primary objective of the NMSA is to protect nationally significant marine resources, including biological features such as coral reefs, and cultural resources, such as historic shipwrecks and archaeological sites. The mission of FGBNMS is to identify, protect, conserve, and enhance the natural and cultural resources, values, and qualities of the sanctuary and its regional environment for this and future generations.

FGBNMS is located in the northwestern Gulf of Mexico approximately 70 to 115 miles (113 to 185 kilometers) off the coasts of Texas and Louisiana. These offshore areas encompass a wide range of geologic features and habitat conditions that support several distinct biological communities, including the northernmost stony coral reefs in the continental United States. The banks, reefs, and similar formations provide the foundation for essential benthic habitats that support a wide variety of species. They are home to the most significant examples of coral and algal reefs, mesophotic and deepwater coral communities, and other biological assemblages in the Gulf of Mexico. The combination of location and geology makes FGBNMS extremely productive and diverse, and presents a unique set of challenges for managing and protecting its natural wonders.

When NOAA first designated FGBNMS on December 5, 1991 (56 FR 63634), and Congress subsequently passed a law recognizing the designation on January 17, 1992 (Pub. L. 102–251, Title I, Sec. 101), the sanctuary consisted of only two areas known as East and West Flower Garden Banks (56 FR 63634). Among other things, FGBNMS regulated a narrow range of activities, established permit and certification procedures, and exempted certain U.S. Department of Defense (DOD) activities from the sanctuary's prohibitions (56 FR 63634). The regulations also exempted activities necessary to respond to emergencies threatening life, property, or the environment (56 FR 63634). Those regulations became effective on January 18, 1994 (58 FR 65664). In 1996, Congress added Stetson Bank to the sanctuary (Pub. L. 104–283). The boundaries of Stetson Bank and West Flower Garden Bank were later amended to improve administrative efficiencies and increase the precision of all boundary coordinates based on new positioning technology (65 FR 81175, Dec. 22, 2000). Subsequently, on January 19, 2021, NOAA issued a final rule for the expansion of FGBNMS (86 FR 4953). The final rule went into effect on March 22, 2021 (86 FR 15404), and expanded the boundaries of FGBNMS from approximately 56 square miles to approximately 160 square miles (145 square kilometers to 414 square kilometers), and increased the number of protected reefs and banks (86 FR 4953). FGBNMS now protects East and West Flower Garden Banks, Stetson Bank, Horseshoe Bank, MacNeil Bank, Rankin/28 Fathom Banks, Bright Bank, Geyer Bank, Elvers Bank, McGrail Bank, Bouma Bank, Sonnier Bank, Rezak Bank, Sidner Bank, Parker Bank, and Aldrice Bank.

The areas designated as FGBNMS are currently managed by several Federal agencies that share jurisdiction over the area and its resources. These agencies include: the U.S. Department of the Interior, Bureau of Ocean Energy Management (BOEM) and Bureau of Safety and Environmental Enforcement (BSEE), who share primary jurisdiction

over offshore energy exploration and development; the U.S. Environmental Protection Agency (EPA), which is responsible for protecting the quality of the nation's waters; NOAA's National Marine Fisheries Service (NMFS) and Gulf of Mexico Fishery Management Council (GMFMC), which jointly manage the U.S fisheries; and, as previously stated above, NOAA's ONMS, which provides comprehensive management and protection to the sanctuary. Additionally, DoD and U.S. Coast Guard activities, as well as commercial shipping and other marine activities, occur in and around the waters of FGBNMS.

B. Summary of the Proposed Revision

This action responds to the issues raised by Federal agency partners during interagency review of the final rule to expand FGBNMS (86 FR 4953), and during interagency review of a separate, unrelated interim final rule to update and reorganize the existing sanctuary regulations and eliminate redundancies (87 FR 29606). Specifically, the Federal agency partners expressed concern that the sanctuary regulation at 15 CFR 922.122(b) does not reflect existing practice and may be an overreach of the ONMS Director's delegated authority under the NMSA. Specifically, section 922.122(b) provides that if a Federal agency regulation and a Sanctuary regulation conflict, then the regulation deemed by the Director of the ONMS as being more protective of Sanctuary resources and qualities shall govern. The NMSA does not contain express language that prescribes how potential conflicts with other Federal regulations are to be resolved. The NMSA instead establishes a framework ''to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities'' (16 U.S.C. 1431(b)(6)). The NMSA also ''provide[s] authority for comprehensive and coordinated conservation and management of . . . marine areas, and activities affecting them, in a manner which complements existing regulatory authorities'' (16 U.S.C. 1431(b)(2)). To ensure sanctuary regulations facilitate compatible use and complement existing regulatory authorities, the NMSA directs NOAA to consult with other Federal agencies on the proposed designation of new sites or expansion of existing sites (16 U.S.C. 1433(b)(2), 1434(a)(4)). It is through this consultation process, which occurs before the designation or expansion of sanctuaries, that potential conflicts among Federal agency regulations are typically resolved or avoided. NOAA is presently unaware of any situation in which 15 CFR 922.122(b) has ever been triggered, and section 922.122(b) does not reflect NOAA's preferred approach to resolve potential interagency regulatory conflicts. Therefore, to address the concerns raised by Federal partners, NOAA proposes to remove the existing language from 15 CFR 922.122(b) to reflect existing practice and better track the NMSA. The remaining paragraphs of 15 CFR 922.122 would remain unchanged.

A provision similar to 15 CFR 922.122(b) also appears in Article V of the terms of designation codified in appendix B of 15 CFR part 922, subpart L. This action does not modify that provision. Pursuant to section 304(a)(4) of the NMSA, the terms of designation may only be modified by the same procedures by which the designation is made. The process includes scoping, proposal, consultation with Federal agency partners and public review, as well as review by Congress. Because additional procedures are required to alter the terms of designation, NOAA is using regulatory action as the first step in the process.

II. Classification

A. National Environmental Policy Act

NOAA concludes that this action will not have a significant effect, individually or cumulatively, on the human environment. This action is categorically excluded from the requirement to prepare an Environmental Assessment or Environmental Impact Statement in accordance with the NOAA Categorical Exclusion G7 because there are no extraordinary circumstances precluding the application of this categorical exclusion. Specifically, this action is a notice of an administrative and legal nature, and any future effects of subsequent actions are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be subject to later NEPA analysis. This action would remove language that inaccurately describes how a conflict of regulatory authorities between Federal agencies would be addressed, and therefore, is an administrative issue. It does not commit the outcome of any particular Federal action taken by NOAA or other Federal agencies. Furthermore, individual Federal actions taken by ONMS or other Federal agencies will be subject to additional case-by-case analysis, as required under NEPA, which will be completed as any new Federal actions are submitted for specific projects and activities. In these situations, NOAA or other Federal agencies will ensure that the appropriate NEPA documentation is prepared prior to taking any final action. Any such NEPA analysis would describe the impacts of prospective projects or operations.

B. Executive Order 12866: Regulatory Impact

This notice of proposed rulemaking has been determined to be not significant within the meaning of Executive Order 12866. NOAA has considered this action under E.O. 12866. Based on that review, this action is not expected to have an annual effect on the economy of $100 million or more, or have an adverse effect in a material way on the economy. Furthermore, this action would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; or materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this E.O.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a rule, unless the head of the agency can certify, pursuant to 5 U.S.C. 605(b), that the action will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 605(b), the Chief Counsel for Regulations for the Department of Commerce has certified to the Office of Advocacy of the Small Business Administration that the proposed modifications of the regulations at 15 CFR part 922 would not have a significant economic impact on a substantial number of small entities.

Because the provision proposed to be removed from the FGBNMS regulations addresses potential conflicts of law between Federal agencies, NOAA does not anticipate any impact on small businesses. This proposed rule also does not establish any new reporting, recordkeeping, or other compliance requirements. This proposed action is strictly an administrative action with implications anticipated only on Federal agency partners. Further, since 15 CFR 922.122(b) has never been triggered, NOAA is strongly convinced there are no overarching impacts of this proposed administrative regulatory

update on any party, whether Federal or otherwise.

Since the impacts of this proposed administrative rule are only intended as an administrative flexibility for Federal agencies, NOAA does not anticipate an impact on marine sanctuary stakeholders that entail small businesses, including entities in the following North American Industry Classification System (NAICS) categories: consumptive and non-consumptive recreational charter businesses (NAICS codes 483114 and 483112); commercial fishing businesses (NAICS codes 114112 (Shellfish Fishing), 114111 (Finfish and mackerel fishing), and 114119 (other marine fishing)); sightseeing businesses (NAICS code 487210); and diving businesses (NAICS codes 611620 (Sports and Recreation Instruction), 561990 (All Other Support Services), 339920 (Sporting and Athletic Goods Manufacturing), 459110 (Sporting Goods Retailers)).

Based on the analysis presented above, NOAA concludes that the proposed action would result in no negative impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Marine resources, Natural resources.

Nicole R. LeBoeuf,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration.

Accordingly, for the reasons set forth above, NOAA proposes to amend part 922, title 15 of the Code of Federal Regulations as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

■ 1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

§ 922.122 [Amended]

■ 2. Amend § 922.122 by removing and reserving paragraph (b).

[FR Doc. 2022–22368 Filed 10–13–22; 8:45 am]

BILLING CODE 3510–NK–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4213

RIN 1212–AB54

Actuarial Assumptions for Determining an Employer's Withdrawal Liability

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation is proposing to provide interest rate assumptions that may be used by a plan actuary in determining a withdrawing employer's liability under a multiemployer plan.

DATES: Comments must be received by November 14, 2022 to be assured of consideration.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: reg.comments@pbgc.gov* with subject line ''4213 proposed rule.''
- *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101.

Commenters are strongly encouraged to submit comments electronically. PBGC expects to have limited personnel available to process comments submitted on paper by mail or hand delivery. Until further notice, any comments submitted on paper will be considered to the extent practicable.

All submissions received must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and refer to the 4213 proposed rule. All comments received will be posted without change to PBGC's website, *www.pbgc.gov,* including any personal information provided. Do not submit comments that include any personally identifiable information or confidential business information.

Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101, or calling 202–326–4040 during normal business hours. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

FOR FURTHER INFORMATION CONTACT: John Ginsberg (*ginsberg.john@pbgc.gov*), Assistant General Counsel, Multiemployer Law Division, Office of the General Counsel, at 202–229–3714, or Gregory Katz (*katz.gregory@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, at 202–227–8918. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

Executive Summary

The Pension Benefit Guaranty Corporation (PBGC) is proposing to provide interest rate assumptions that may be used by a plan actuary in determining a withdrawing employer's liability under a multiemployer plan.

PBGC's legal authority for this rulemaking comes from section 4213 of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to prescribe actuarial assumptions and methods for purposes of determining an employer's withdrawal liability, and from section 4002(b)(3) of ERISA, which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA.

Background

Withdrawal Liability

PBGC administers two independent insurance programs for private-sector defined benefit pension plans under title IV of ERISA—one for single-employer defined benefit pension plans and one for multiemployer defined benefit pension plans (multiemployer plans). In general, a multiemployer plan is a collectively bargained plan involving two or more unrelated employers. The multiemployer program protects benefits of approximately 10.9 million workers and retirees in approximately 1,360 plans.[1] This proposed rule applies only to multiemployer plans.

Under ERISA, an employer that withdraws from a multiemployer plan may be liable to the plan for withdrawal liability, which generally represents the employer's share of any unfunded vested benefits (UVBs) that the plan may have at the end of the plan year immediately preceding the plan year in which the employer withdraws. UVBs are the amount by which the present value of nonforfeitable benefits under the plan as of the valuation date exceeds the value of plan assets as of that date. The plan actuary determines the present value of all of the plan's nonforfeitable benefits using actuarial assumptions and methods. The assumptions include

[1] See PBGC FY 2021 Annual Report, page 3 at *https://www.pbgc.gov/sites/default/files/documents/pbgc-annual-report-2021.pdf.*

the interest rate—sometimes called the ''discount rate''—that is used to discount future benefit payments to their present value and the mortality tables used to determine the probability that each benefit payment will be made. Assuming a higher interest rate results in lower UVBs, whereas a lower rate leads to higher UVBs. Disputes between plans and employers about the value of UVBs are resolved through mandatory arbitration, and then, if necessary, litigation.

For plans terminated by mass withdrawal, PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) specifies actuarial assumptions for valuing benefits, including interest rates described in Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044).[2] These interest rates are based on the average market price of a life annuity, which PBGC determines from a quarterly survey of insurance companies and can be used to approximate the cost of purchasing annuities to cover benefits. Annuity prices are derived in part from yields on high-quality corporate bonds.

For ongoing plans, section 4213(a) of ERISA provides—

> The corporation may prescribe by regulation actuarial assumptions which may be used by a plan actuary in determining the unfunded vested benefits of a plan for purposes of determining an employer's withdrawal liability under this part. Withdrawal liability under this part shall be determined by each plan on the basis of—
>
> (1) actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan, or
>
> (2) actuarial assumptions and methods set forth in the corporation's regulations for purposes of determining an employer's withdrawal liability.

Because PBGC has not issued regulations under section 4213(a)(2), withdrawal liability determinations governed by section 4213(a) have heretofore been made under section 4213(a)(1).

Actuarial Variety in Selection of Assumptions

Plans have used a variety of approaches to determine withdrawal liability; three common approaches are described in the following paragraphs.

One approach uses the same interest rate assumption that is used to determine minimum funding requirements, based on the expected average return on plan assets over the long term. This approach applies the interest rate assumption used under section 431(b)(6) of the Internal Revenue Code (Code) and section 304(b)(6) of ERISA (funding interest rate assumption) to satisfy both standards under section 4213(a)(1)—that the actuarial assumptions and methods used to determine withdrawal liability are in the aggregate reasonable (taking into account the experience of the plan and reasonable expectations) and in combination offer the actuary's best estimate of anticipated experience.

Another approach focuses on the contrast between contributing employers and withdrawing employers. This approach identifies contributing employers as continuing to participate in the plan's investment portfolio and share in future gains and losses, including the risk of increased contributions if plan investments do not earn as much as the assumed funding interest rate. This approach considers that a withdrawing employer ceases to participate in the plan's investment experience because the employer is settling its liabilities once and for all and bears no risk of future losses. This approach therefore considers the use of settlement interest rate assumptions prescribed by PBGC under section 4044 of ERISA (4044 rates) to be appropriate to determine the amount sufficient to release a withdrawing employer from any future financial obligations to the plan. Those interest rate assumptions can be used to approximate the market price of purchasing annuities to cover the withdrawing employer's share of the plan's benefit liabilities, which are generally paid in the form of life annuities. From this perspective, the plan trustees' investment risk appetite, asset allocation choices, or the actuary's best estimate of the plan's future investment returns following the withdrawal are not relevant to the withdrawal liability assessment.

A third approach uses an interest rate assumption that employs both funding and settlement interest rate assumptions. For example, the actuary might value unfunded benefits using the funding interest rate assumption, and value funded benefits using a settlement interest rate assumption like PBGC's 4044 rates.

Recent Disputes

There has been increasing litigation over withdrawal liability determinations, centered on the interest rate assumption used to discount liabilities of ongoing plans. In five cases since 2018 (and an unknown number of arbitrations), a withdrawing employer has challenged its withdrawal liability assessment by arguing that the interest assumption that the plan actuary used to value nonforfeitable benefits failed to satisfy section 4213(a)(1) of ERISA because it was lower than the actuary's best estimate of anticipated average returns on plan investments. Court decisions have varied [3] and some have noted PBGC's unused authority to issue a regulation prescribing assumptions that may be used under section 4213(a)(2).[4]

Special Financial Assistance Interim Final Rule

On July 12, 2021 (at 86 FR 36598), PBGC published an interim final rule on special financial assistance (SFA) under new section 4262 of ERISA.[5] In footnote 18 of that rule's preamble, PBGC indicated that it intends to propose a separate rule of general applicability under section 4213(a) of ERISA to prescribe actuarial assumptions that may be used by a plan actuary in determining an employer's withdrawal liability. This proposed rule carries out PBGC's stated intention.

Overview of Regulation

Section 4213(a)(2) of ERISA authorizes PBGC to set forth in its regulations actuarial assumptions and methods that may be used by a plan actuary for the purpose of determining an employer's withdrawal liability as an alternative to the assumptions and methods used under section 4213(a)(1). This rule is being proposed under section 4213(a)(2) to make clear that use of 4044 rates, either as a standalone assumption or combined with funding interest assumptions represents a valid approach to selecting an interest rate assumption to determine withdrawal liability in all circumstances. Withdrawing employers will not be

[2] *See* 29 CFR 4281.13.

[3] *See United Mine Workers of Am. 1974 Pension Plan* v. *Energy W. Mining Co.,* No. 20–7054, 2022 WL 2568025 (D.C. Cir. July 8, 2022) (re 4044 rates); *Sofco Erectors, Inc.* v. *Trs. of Ohio, Operating Eng'rs, Pension Fund,* 15 F. 4th 407 (6th Cir. 2021) (re blend of 4044 rates and funding interest rate assumption); *GCIU Employer Retirement Fund* v. *MNG Enterprises, Inc.,* No. 2:21–cv–00061, 2021 WL 3260079 (C.D. Cal., July 8, 2021) (re 4044 rates), *appeals filed,* Nos. 21–55864, 21–55923; *Manhattan Ford Lincoln, Inc.* v. *UAW Local 259 Pension Fund,* 331 F. Supp. 3d 365 (D.N.J. 2018) (re blended rates), *appeal voluntarily dismissed; New York Times Co.* v. *Newspaper and Mail Deliverers'-Publishers' Pension Fund,* 303 F. Supp. 3d 236 (S.D.N.Y. 2018) (re blended rates), *appeals voluntarily dismissed.* In the cross-appeals of the *New York Times* decision, PBGC participated as *amicus curiae.*

[4] *See United Mine Workers,* 2022 WL 2568025, at *2; *Sofco Erectors,* 15 F. 4th at 420; *Manhattan Ford Lincoln,* 331 F. Supp. 3d at 393.

[5] The final rule on SFA was published July 8, 2022, at 87 FR 40968.

making future plan contributions, and ERISA accounts for this by requiring an employer to settle its share of the plan's unfunded liabilities. In the event of worse than expected investment performance or other actuarial experience following an employer's withdrawal, the plan cannot seek additional funds from that employer. Thus, a withdrawing employer shifts its share of investment risk and other risks to the plan and its remaining employers. If a party promising a pension, as an employer participating in a multiemployer plan indirectly does, were to shift all investment risk, mortality risk, and other asset and liability risks to an annuity provider, that party must pay the premium amount necessary to fund the promised pension liability. Accordingly, it is reasonable to base the amount needed to settle the employer's share of the liability on the market price of settling pension liabilities by purchasing annuities from private insurers.

The use of actuarial assumptions and methods prescribed by PBGC under section 4213(a)(2) would not be subject to the requirements of section 4213(a)(1), and accordingly, the plan's actuary would be permitted to determine withdrawal liability under the proposed rule without regard to section 4213(a)(1).

The proposed rule would specifically permit the use of an interest rate anywhere in the spectrum from 4044 rates alone to funding rates alone.[6] In the case of an interest assumption that involves two or more rates to value a plan's liabilities, such as a yield curve or the use of separate interest rates for benefits expected to be covered by current assets and for other benefits, this proposed rule would apply to the single interest rate that would result in the same liability measure as the multiple rates. PBGC requests comments on whether the final rule should restrict the allowable options to a narrower range of interest rates or to only specific methodologies for determining interest rates. In particular, should the top of the range of permitted interest rates under section 4213(a)(2) be lower than the typical funding interest rate assumption (which represents the expected return on a portfolio with a significant allocation to return-seeking assets)? PBGC also requests comments on what should be the relationship, if any, between (a) the estimated date of plan insolvency, expected investment mix, and/or funded ratio, and (b) permitted withdrawal liability assumptions.

Under § 4213.11(c) of the proposed rule, each assumption and method used, other than the interest assumption, would have to be reasonable (taking into account the experience of the plan and reasonable expectations). Additionally, the assumptions and methods other than the interest assumption would, in combination, have to offer the actuary's best estimate of anticipated experience under the plan. Note that the standards under proposed § 4213.11(c) echo the current standard for selecting actuarial assumptions for multiemployer funding under section 431(c)(3) of the Code and section 304(c)(3) of ERISA, which has been updated since the enactment of ERISA.[7] As with assumptions adopted under those sections, assumptions used under § 4213.11(c) would reflect the actuary's judgment as an independent professional generally bound by actuarial standards of practice. The standards in proposed § 4213.11(c) would apply to assumptions and methods other than interest assumptions. As discussed earlier in this preamble, consideration of the anticipated experience of the plan in selecting withdrawal liability interest assumptions is not necessarily appropriate in light of a withdrawing employer's lack of continued shared investment experience.

PBGC requests comments on whether the final rule should specify assumptions or methods other than interest assumptions. Also, if PBGC were to specify assumptions under section 4213(a) of ERISA that included demographic assumptions, such as mortality assumptions, that differed from plans' demographic assumptions, would plans be unlikely to use the PBGC assumptions because of those differences? If so, why? Although PBGC is specifically requesting comments on the issues discussed earlier in this preamble, PBGC also invites comment on any other issue relating to section 4213 withdrawal liability assumptions.

Applicability

The changes in this proposed rule would apply to the determination of withdrawal liability for employer withdrawals from multiemployer plans that occur on or after the effective date of the final rule. The proposed rule does not preclude the use of an interest rate assumption described in proposed § 4213.11(b) to determine unfunded vested benefits before the effective date of the final rule.

Regulatory Impact Analysis

(1) Relevant Executive Orders for Regulatory Impact Analysis

Under Executive Order (E.O.) 12866, Office of Management and Budget (OMB) reviews any regulation determined to be a ''significant regulatory action.'' Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) has an annual effect on the economy of $100 million or more, or adversely affects in a material way 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) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

OMB has determined that this proposed rule is economically significant under section 3(f)(1) and has therefore reviewed this rule under E.O. 12866.

E.O. 13563 supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in E.O. 12866, emphasizing the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. It directs agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects, distributive impacts, and equity).

PBGC has provided an assessment of the potential benefits, costs, and distributive impacts associated with this proposed rule.

(2) Introduction and Need for Regulation

Benefit levels in a multiemployer plan are typically set by trustees representing contributing employers and unions. As discussed earlier in this preamble, withdrawal liability generally represents an employer's share of the plan's unfunded vested benefits (UVBs) that

[6] The proposed rule would not override other statutory or regulatory provisions requiring the use of specific rates such as PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) which specifies actuarial assumptions for valuing benefits.

[7] *See* section 9307(b) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) (Pub. L. 100–203).

the plan may have at the end of the plan year immediately preceding the plan year in which the employer withdraws. Withdrawal liability is the portion of the UVBs allocable to the withdrawing employer and represents a plan's only opportunity to require a withdrawing employer to pay its allocated share of the unfunded liabilities. When a plan does not collect an adequate amount of withdrawal liability from a withdrawing employer or collects an amount that is less than a withdrawing employer's allocated share of the plan's UVBs, that burden is shifted to the remaining contributing employers in the plan. There is a higher likelihood that the plan will not be able to pay full accrued benefits, and ultimately, there is an increased likelihood that it would not have resources to pay basic (PBGC-guaranteed) benefits. In that case, a plan may have to cut benefits to the PBGC guarantee level and apply to PBGC for financial assistance, which shifts costs to plan participants and to others in the multiemployer insurance system who fund PBGC via annual premiums.

This proposed rule is needed to clarify that a plan actuary's use of 4044 rates represents a valid approach to selecting an interest rate assumption to determine withdrawal liability in all circumstances. The proposed rule would thereby reduce or eliminate the cost-shifting effects of impediments to actuaries' use of 4044 rates:

- As noted earlier in the preamble discussion, several recent court decisions (and an unknown number of arbitration decisions) have required plans to re-assess withdrawal liability using interest assumptions based on anticipated investment returns rather than 4044 rates (or a blend using such rates), resulting in lower withdrawal liability assessments.
- The delay, expense, and risk of adverse judgment involved with arbitration and litigation may provide an incentive for plans to settle withdrawal liability claims for less than the amount of withdrawal liability determined by the plan actuary, even in cases where the withdrawal liability dispute is not arbitrated or litigated.
- Recent court decisions may deter actuaries from using 4044 rates (or a blend incorporating such rates) instead of interest rate assumptions based solely on anticipated plan investment returns.

(3) Regulatory Action

Under this proposed rule, actuaries would be able to determine an employer's withdrawal liability on the basis of interest rate assumptions ranging from plan funding rates to 4044 rates, provided that the other assumptions and methods selected meet certain specified requirements.

Because PBGC expects the proposed rule will reduce the litigation risk for plans associated with selection of the interest assumption, PBGC believes that more plans will use 4044 rates, which would tend to increase withdrawal liability and a plan's collection of withdrawal liability assessments. PBGC also believes that increasing plans' withdrawal liability income would have an overall positive effect on the multiemployer system and PBGC's multiemployer program. It is also consistent with PBGC's mission to enhance the retirement security of workers and retirees.

(4) Estimated Impact of Regulatory Action

For the reasons discussed earlier, this proposed rule would tend to increase the amount of withdrawal liability that multiemployer plans assess and collect.

The aggregate economic impact of this proposed rule is best measured by the amount of additional withdrawal liability that multiemployer plans are expected to receive from withdrawing employers. PBGC estimates that, in the 20 years following the final rule's effective date, there will be a nominal increase in cumulative withdrawal liability payments ranging between $804 million and $2.98 billion. A 20-year time horizon was chosen to show the impact on withdrawal liability payments which, depending on the circumstances of the withdrawal, can last as long as 20 years, and to capture the impact on plans receiving SFA (which must calculate withdrawal liability using 4044 rates for at least 10 years). However, because the assumptions underlying this analysis become more speculative as projections reach further into the future, PBGC cannot reasonably estimate the impact after 20 years. While PBGC expects that the proposed rule will deter employer withdrawals, it will do so only at the margin, and this impact is difficult to estimate. Accordingly, this analysis does not model any change to the rate of employer withdrawals or decrease in contributions due to improved plan funding attributable to these changes because doing so would be too speculative.

Currently, the aggregate amount of withdrawal liability paid into the multiemployer plan system each year (taking into account the result of any dispute resolution process) is approximately $1.3 billion, based on a PBGC analysis of attachments to 2018 and 2019 Form 5500 Schedules MB.[8] As discussed later in this Regulatory Impact Analysis, because the increase in withdrawal liability paid to a plan (and the mechanics of how such increase would come about) would depend on how it currently calculates withdrawal liability, PBGC makes assumptions in this analysis about how plans currently calculate withdrawal liability. For the purpose of this analysis, in the absence of reliable data, current withdrawal liability calculations are assumed as follows: (a) plans for which the Schedule MB was signed by an actuary from the firm associated with the largest number of plans use a blend of funding interest rates and 4044 rates and (b) for remaining plans, 80 percent use funding interest rates and 20 percent use 4044 rates. Further, to simplify the analysis, 4044 rates are assumed to be 3 percent, an approximation of current 4044 rates.

PBGC's measurement of the increase in annual withdrawal liability paid attributable to this proposed rule depends on two primary assumptions: (1) the number and size of plans that change withdrawal liability assumptions because of this rulemaking (switching assumption), and (2) the value of reductions in withdrawal liability either directly resulting from the order of an arbitrator or judge interpreting section 4213(a)(1) of ERISA or agreed to by plans in recognition of the risk of similar arbitration and litigation outcomes that would occur if this proposed rule is not finalized (dispute resolution assumption). Due to a lack of reliable data upon which to base these assumptions and because the effect of the proposed rule could vary widely because it allows for a range of approaches, this analysis shows impacts when these assumptions are set at three different levels.

Because the impact is expected to be substantially lower in the first 10 years after the effective date of the final rule than in the period thereafter, PBGC is separating the impact into two separate time periods: the first 10 years after the effective date of the final rule and the time period thereafter. The reasons for this are as follows: (1) after the final rule's effective date, the number of withdrawal liability payments that would be affected would start at zero and increase over time (before leveling off when substantially all withdrawal liability payments are for withdrawals

[8] The 2019 Form 5500 instructions provide that all employer and employee contributions for the plan year must be shown on line 3 of the Schedule MB. If any of the contributions reported include amounts owed for withdrawal liability, a list of withdrawal liability payments and the dates such amounts were contributed must be attached.

occurring after the final rule's effective date) and (2) plans receiving SFA under section 4262 of ERISA are required to use 4044 rates for withdrawal liability calculations for at least the first 10 years after receiving SFA, and as a result, this rule would have no impact on withdrawal liability received by such plans in connection with approximately 10 years of withdrawals.

Within each time period, three sets of assumptions are shown in three tables under the ''Estimated Impact of Increase in Withdrawal Liability Received'' heading with respect to the switching assumption and the dispute resolution assumption. Row (a), the switching assumption, represents the assumed percentage of plans for which the plan is assumed to change from using funding interest rate assumptions to 4044 rates as a result of this proposed rule. The percentages represent what PBGC believes to be a reasonable range of the percentage of plans assumed to be using funding interest rates for withdrawal liability purposes that would switch to 4044 rates. Row (b), the dispute resolution assumption, represents, for plans currently using 4044 rates or a blend using such rates, in the absence of this rule, the assumed reduction in withdrawal liability payments received by plans due to litigation outcomes, or similar reductions done voluntarily as a result of the threat of litigation. This reduction is measured as the percent reduction in the difference between the expected value of withdrawal liability payments calculated using 4044 rates and the expected value of withdrawal liability payments calculated using funding rates. In calculating the estimated annual increase in withdrawal liability payments, it is assumed that after the rule is effective, plans using 4044 rates or a blend using such rates will receive the expected value of withdrawal liability payments for a given assessment without a reduction due to settlements. The dispute resolution assumption assumes that no plans currently using 4044 rates would, in the absence of this proposed rule, switch from using 4044 rates to funding rates. Assuming that some plans would switch would increase the annual economic impact to some extent.

The following tables summarize the estimated annual increases to withdrawal liability payments received by multiemployer pension plans and the present value of those increases at 3 percent and 7 percent discount rates:

ESTIMATED IMPACT OF INCREASE IN WITHDRAWAL LIABILITY RECEIVED

Estimated Impact Years 1–10 ($ Millions)

(a) % of Plans Switching to 4044 Rates	5%	10%	20%
(b) % of Dispute Resolutions for Plans Using 4044 Rates	2%	5%	10%
Year	Impact	Impact	Impact
1	$22	$44	$89
2	23	46	92
3	25	48	96
4	26	50	99
5	27	52	103
6	28	54	106
7	29	55	109
8	30	57	113
9	31	59	117
10	32	61	120
PV of Impact in First 10 Years (3% Interest)	233	451	898
PV of Impact in First 10 Years (7% Interest)	193	374	746

Estimated Impact Years 11–20 ($ Millions)

(a) % of Plans Switching to 4044 Rates	5%	10%	20%
(b) % of Dispute Resolutions for Plans Using 4044 Rates	2%	5%	10%
Year	Impact	Impact	Impact
11	$47	$89	$174
12	48	91	178
13	49	93	183
14	51	96	187
15	52	99	191
16	54	101	195
17	56	104	200
18	57	107	205
19	59	109	209
20	60	112	214
PV of Impact in Years 11–20 (3% Interest)	340	640	1,240
PV of Impact in Years 11–20 (7% Interest)	193	364	706

Estimated Present Value Impact Years 1–20 ($ Millions)

(a) % of Plans Switching to 4044 Rates	5%	10%	20%
(b) % of Dispute Resolutions for Plans Using 4044 Rates	2%	5%	10%
Nominal Value of Impact in Years 1–20	$804	$1,526	$2,981
PV of Impact in Years 1–20 (3% Interest)	$573	$1,091	$2,138
PV of Impact in Years 1–20 (7% Interest)	$386	$738	$1,452

Separate from the distributive impacts, because this rule would provide increased certainty in withdrawal liability determinations, plans and withdrawing employers would see substantial cost savings in the form of reduced arbitration and litigation costs.

The major expenses associated with a withdrawal liability dispute are attorney fees, arbitration fees (including fees to initiate arbitration and fees charged by an arbitrator), and fees charged by expert witnesses. Though costs will vary greatly from plan to plan based on the plan's benefit formula, size of the plan, attorney and expert witness rates, and other factors, PBGC estimates that a withdrawal liability arbitration, measuring from a request for plan sponsor review of a withdrawal liability determination through the end of arbitration would range from $82,500 to $222,000. For lengthy litigation, costs can be over $1 million. Assuming some arbitrations and litigation would be avoided entirely, and others would be less complex because they would not include disputes over interest assumptions, PBGC estimates that this proposed rule would result in an annual savings of $500,000 to $1 million, split evenly between plans and employers.

(5) Regulatory Alternatives Considered

PBGC considered a number of alternatives before deciding to issue this proposed rule. None of the alternatives were as cost-effective as the proposed rule.

One alternative PBGC considered is to not regulate under section 4213 of ERISA. Without a regulation, PBGC would expect a continuation of the recent trend in withdrawal liability dispute resolution toward requiring that withdrawal liability be based on funding rates (or rates closer to funding rates than to 4044 rates). PBGC believes that the adverse effect of employer withdrawals generally contributes to financial stress for plans (and their remaining employers and participants) that the use of 4044 rates in determining withdrawal liability would help alleviate. Inaction would constitute choice of the status quo, which could contribute to plan underfunding, benefit losses for participants, cost-shifting to remaining employers, and higher claims on PBGC's insurance system.

PBGC also considered issuing a proposed rule that would only authorize use of 4044 rates, without addressing the popular practice of using 4044 rates for benefits expected to be covered by existing assets and funding rates for other benefits. This limited approach would address the issue of comparatively low withdrawal liability assessments for plans that choose to use 4044 rates but by not providing flexibility for other plans, it would limit the effectiveness of the regulation.

Regulatory Flexibility Act

The Regulatory Flexibility Act [9] imposes certain requirements respecting rules that are subject to the notice-and-comment requirements of section 553(b) of the Administrative Procedure Act, or any other law,[10] and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities, section 603 of the Regulatory Flexibility Act requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the proposed rule describing the impact of the rule on small entities and seek public comment on such impact. Small entities include small businesses, organizations, and governmental jurisdictions.[11]

Small Entities

This proposed rule would directly regulate plans by prescribing interest assumptions for their use in calculating withdrawal liability. For purposes of the Regulatory Flexibility Act requirements with respect to this proposed rule, PBGC considers a small entity to be a plan with fewer than 100 participants.[12] This is substantially the same criterion PBGC uses in other regulations [13] and is consistent with certain requirements in title I of ERISA [14] and the Code,[15] as well as the definition of a small entity that PBGC and DOL have used for purposes of the Regulatory Flexibility Act.[16]

Thus, PBGC believes that assessing the impact of the proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration [17] under the Small Business Act. PBGC therefore requests comments on the appropriateness of the size standard used in evaluating the impact of its proposed rule on small entities.

Based on its definition of small entity, PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Based on data for recent premium filings, PBGC estimates that only 38 of the approximately 1,360 plans covered by PBGC's multiemployer program are small plans. Plans would be able, but not required, to set assumptions to determine withdrawal liability under this proposed rule. As discussed in the Regulatory Impact Analysis, because this proposed rule would authorize a wide range of commonly used interest assumptions, few plans would switch assumptions. In that analysis, PBGC estimated that, for plans currently using funding assumptions (which are assumed to be less than 80 percent of all plans), from 5 to 20 percent would switch to 4044 rates. Consequently, of the 38 small multiemployer plans, PBGC estimates that no more than 6 would switch assumptions.

For a plan that does move to 4044 rates as permitted under the proposed rule, this proposed rule would tend to have a positive economic impact because it would increase the amount of withdrawal liability collected, which could improve the plan's ability to remain solvent and to continue paying participants' benefits. For the few small plans expected to switch assumptions, PBGC estimates that, in the 20 years following the final rule's effective date, the nominal increase in cumulative withdrawal liability payments would not exceed $1 million. It could also deter employer withdrawals, however, as discussed in the Regulatory Impact Analysis, it will do so only at the margin, and this impact is difficult to estimate. There would be a higher

[9] 5 U.S.C. 601 *et seq.*

[10] The applicable definition of ''rule'' is found in section 601 of the Regulatory Flexibility Act. *See* 5 U.S.C. 601(2).

[11] The applicable definitions of ''small business,'' ''small organization,'' and ''small governmental jurisdiction'' are found in section 601 of the Regulatory Flexibility Act. *See* 5 U.S.C. 601.

[12] PBGC consulted with the Small Business Administration's Office of Advocacy before making this determination. Memorandum received from the U.S. Small Business Administration, Office of Advocacy on March 9, 2021.

[13] *See, e.g.,* special rules for small plans under part 4007 (Payment of Premiums).

[14] *See, e.g.,* 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.

[15] *See, e.g.,* section 430(g)(2)(B) of the Code, which permits plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.

[16] *See, e.g.,* PBGC's proposed rule on Reportable Events and Certain Other Notification Requirements, 78 FR 20039, 20057 (April 3, 2013) and DOL's final rule on Prohibited Transaction Exemption Procedures, 76 FR 66637, 66644 (Oct. 27, 2011).

[17] *See,* 13 CFR 121.201.

likelihood that plans that do not use 4044 rates provided by this proposed rule would eventually be unable to pay full benefits at current accrual rates. Plans would also see administrative savings in the form of reduced arbitration and litigation costs because some arbitrations and litigation would be avoided entirely, and others would be less complex because they would not include disputes over interest assumptions. As discussed in the Regulatory Impact Analysis, these savings could be as much as $82,500 to $222,000 for reduced arbitration costs and $1 million in reduced litigation costs for a plan when an arbitration or litigation is avoided. This proposed rule would not have negative impacts or costs on small plans because plans could choose whether to use interest assumptions prescribed by the regulation. PBGC expects the administrative costs, if any, associated with the proposed rule would be de minimis. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 do not apply.

Though this proposed rule would directly regulate plans, as discussed in the Regulatory Impact Analysis, it would indirectly impact employers, including small employers. This is because, for plans that switch assumptions, it would tend to increase the amount of withdrawal liability assessed by plans and withdrawing employers would pay the increases if they were to withdraw. The statutory process for allocating unfunded vested benefits to a withdrawing employer takes into account the employer's contribution history; employers with a history of higher contributions are allocated a larger share of UVBs while employers with a history of lower contributions are allocated a smaller share. Because small employers have small contribution levels, they would see smaller dollar increases in withdrawal liability than employers with large contribution levels. In addition, as discussed, if plans adopt the prescribed assumptions, employers in those plans may be less likely to withdraw. This effect, in combination with the higher withdrawal liability payments for employers who do withdraw, could contribute to the long-term solvency of multiemployer plans. Extended plan solvency would help ensure that participants and beneficiaries would receive promised benefits, which would enhance their income security and benefit the communities, including small businesses within those communities, in which they live.

PBGC considered declining to prescribe assumptions under section 4213, an alternative that would have less impact on small employers, but as discussed in the Regulatory Impact Analysis, doing so would contribute to plan underfunding. PBGC also considered issuing a proposed rule that would only authorize the use of 4044 rates, an alternative that would have resulted in higher withdrawal liability under section 4213(a)(2) of ERISA in comparison to the proposed rule, and thereby a larger impact on small employers who participate in plans that adopt that approach (but would likely have a smaller adoption rate than the section 4213(a)(2) assumptions in the proposed rule).

List of Subjects in 29 CFR 4213

Employee benefit plans, Pension insurance, Pensions.

■ For the reasons set forth in the preamble, PBGC proposes to amend 29 CFR chapter XL by adding part 4213 to read as follows:

PART 4213—ACTUARIAL ASSUMPTIONS

Sec.
4213.1 Purpose and organization.
4213.2 Definitions.
4213.11 Section 4213(a)(2) assumptions.

Authority: 29 U.S.C. 1302(b)(3), 1393.

§ 4213.1 Purpose and organization.

This part sets forth actuarial assumptions and methods under section 4213(a)(2) of ERISA as an alternative to the assumptions and methods under section 4213(a)(1) of ERISA for determining withdrawal liability.

§ 4213.2 Definitions.

For the purposes of this part:

Single effective interest rate means for a given interest assumption, the single rate of interest which, if used to determine the present value of the plan's liabilities, would result in an amount equal to the present value of the plan's liabilities determined using the given assumption, holding all other assumptions and methods constant.

§ 4213.11 Section 4213(a)(2) assumptions.

(a) In general. Withdrawal liability may be determined using actuarial assumptions and methods that satisfy the requirements of this section. Such actuarial assumptions and methods need not satisfy any other requirement under title IV of ERISA.

(b) Interest assumption (1) General rule. To satisfy the requirements of this section, the single effective interest rate for the interest assumption used to determine the present value of the plan's liabilities must be the rate in paragraph (b)(2) of this section, the rate in paragraph (b)(3) of this section, or a rate between those two rates.

(2) The rate in this paragraph (b)(2) is the single effective interest rate for the interest assumption prescribed in § 4044.52 of this chapter for the date as of which withdrawal liability is determined.

(3) The rate in this paragraph (b)(3) is the single effective interest rate for the interest assumption under section 304(b)(6) of ERISA for the plan year within which the date in paragraph (b)(2) of this section falls.

(c) Other assumptions. The assumptions and methods (other than the interest assumption) satisfy the requirements of this section if—

(1) Each is reasonable (taking into account the experience of the plan and reasonable expectations), and

(2) In combination, they offer the actuary's best estimate of anticipated experience under the plan.

Signed in Washington, DC.

Gordon Hartogensis,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2022–22304 Filed 10–13–22; 8:45 am]

BILLING CODE 7709–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–HQ–OAR–2004–0014; FRL–4940.2–03–OAR]

RIN 2060–AQ47

Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Reconsideration of Fugitive Emissions Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to repeal regulatory amendments promulgated through a final rule adopted in 2008 under the Clean Air Act (CAA or Act) that addressed the consideration of ''fugitive'' emissions of air pollutants from stationary sources when determining the applicability of certain permitting requirements under the Act. Those amendments have been stayed as a result of the reconsideration process. To bring closure to the reconsideration proceeding, the EPA is proposing to fully repeal the 2008 rule by removing

the stayed provisions of the regulatory amendments adopted in 2008. The EPA is also proposing to remove a related exemption for modifications that would be considered major solely due to the inclusion of fugitive emissions. As a result of the proposed changes, all existing major stationary sources would be required to include fugitive emissions in determining whether a physical or operational change constitutes a ''major modification,'' requiring a permit under the Prevention of Significant Deterioration (PSD) or Nonattainment New Source Review (NNSR) programs.

DATES:

Comments: Comments must be received on or before December 13, 2022.

Public hearing: If anyone contacts EPA requesting a public hearing by October 19, 2022, the EPA will hold a virtual public hearing. See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES:

Comments: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2004–0014, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2004–0014 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2004–0014.

Instructions: All submissions received must include the Docket ID No. EPA–HQ–OAR–2004–0014 for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: For information about this proposed rule, contact Mr. Matthew Spangler, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–05), Environmental Protection Agency, Research Triangle Park, NC; telephone number: (919) 541–0327; email address: *spangler.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this document is organized as follows:

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J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
X. Statutory Authority

I. General Information

A. Entities Potentially Affected by This Action

Entities potentially affected by this action include sources that do not belong to a source category listed in 40 Code of Federal Regulations (CFR) 52.21(b)(1)(iii) (and other identical provisions in other sections of the CFR). Entities potentially affected by this proposed action also include state and local air pollution control agencies responsible for permitting sources pursuant to the New Source Review (NSR) program.

B. Obtaining a Copy of This Document and Other Related Information

The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2004–0014. All documents in the dockets are listed in *https://www.regulations.gov/.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. Publicly available docket materials are available either in the docket for this action, Docket ID No. EPA–HQ–OAR–2004–0014, or electronically at *https://www.regulations.gov/.*

In addition to being available in the docket, an electronic copy of this **Federal Register** document will be posted at *https://www.epa.gov/nsr.*

C. Preparing Comments for the EPA

Instructions. Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0014, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted by mail as discussed below.

Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* For further information and updates on EPA Docket

Center services, please visit us online at *https://www.epa.gov/dockets.*

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/* or email. Clearly mark the part or all the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2004–0014. Note that written comments containing CBI and submitted by mail may be delayed and no hand deliveries will be accepted.

D. Participation in Virtual Public Hearing

To request a virtual public hearing, contact Ms. Pamela Long at (919) 541–0641 or by email at *long.pam@epa.gov.* If requested, the virtual hearing will be held on October 31, 2022. The hearing will convene at 9:00 a.m. Eastern Time (ET) and will conclude at 3:00 p.m. ET. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce further details at *https://www.epa.gov/nsr.*

Upon publication of this document in the **Federal Register**, the EPA will begin pre-registering speakers for the hearing, if a hearing is requested. To register to speak at the virtual hearing, please use the online registration form available at *https://www.epa.gov/nsr* or contact Ms. Pamela Long at (919) 541–0641 or by email at *long.pam@epa.gov.* The last day to pre-register to speak at the hearing will be October 26, 2022. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers in approximate order at: *https://www.epa.gov/nsr.*

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 3 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to *long.pam@epa.gov.* The EPA also recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/nsr.* While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact Ms. Pamela Long at (919) 541–0641 or by email at *long.pam@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or special accommodations such as audio description, please pre-register for the hearing with Ms. Pamela Long and describe your needs by October 21, 2022. The EPA may not be able to arrange accommodations without advanced notice.

II. Background

A. New Source Review Program

The NSR program was designed to protect public health and welfare from the effects of air pollution and to preserve and/or improve air quality throughout the nation. *See* 42 U.S.C. 7470(1), (2), (4). The NSR program requires certain stationary sources of air pollution to obtain air pollution permits prior to beginning construction. Construction of new sources with emissions above statutory thresholds, and modifications of existing sources emitting above those thresholds, that increase emissions of ''regulated NSR pollutants'' by more than amounts specified in the EPA's NSR regulations are subject to ''major source'' NSR requirements. New construction or modifications of smaller emitting sources and modifications of existing major sources that do not increase emissions by more than the thresholds in the major NSR regulations may be subject to minor NSR requirements or excluded from NSR altogether.

The major source NSR program includes two distinct programs that each have unique requirements for new or modified sources. The applicability of these two programs depends on whether the area where the source is located is exceeding the National Ambient Air Quality Standards (NAAQS). The PSD program, based on requirements in Part C of title I of the CAA, applies to pollutants for which the area is not exceeding the NAAQS (areas designated as attainment or unclassifiable) and to regulated NSR pollutants for which there are no NAAQS. The NNSR program, based on Part D of title I of the CAA, applies to pollutants for which the area is not meeting the NAAQS (areas designated as nonattainment).

To implement the requirements of the CAA for these programs, most states have EPA-approved State Implementation Plans (SIPs) containing PSD and NNSR preconstruction permitting programs that meet the minimum requirements reflected in the EPA's major NSR program regulations at 40 CFR 51.166 and 51.165. Upon EPA approval of a SIP, the state or local air agency becomes the permitting authority for major NSR permits for sources within its boundaries and issues permits under state law. Currently, state and local air agencies issue the vast majority of major NSR permits each year. When a state or local air agency does not have an approved NSR program, federal regulations apply and either the EPA issues the major NSR permits or a state or local air agency issues the major NSR permits on behalf of the EPA by way of a delegation agreement. For sources located in Indian Country, 18 U.S.C. 1151, the EPA is the permitting authority for major NSR.

The permitting program for construction of new non-major sources and minor modifications to major sources is known as the minor NSR program. CAA section 110(a)(2)(C) requires states to develop a program to regulate the construction and modification of any stationary source ''as necessary to assure that [NAAQS] are achieved.'' 42 U.S.C. 7410(a)(2)(C). The CAA and the EPA's regulations are less prescriptive regarding minimum requirements for minor NSR, so air agencies generally have more flexibility in designing minor NSR programs in their EPA-approved SIPs. Minor NSR

permits are almost exclusively issued by state and local air agencies, although the EPA issues minor NSR permits in many areas of Indian Country.

The applicability of the PSD, NNSR, and/or minor NSR programs to a stationary source must be determined in advance of construction and is a pollutant-specific determination. Thus, a stationary source may be subject to the PSD program for certain pollutants, NNSR for some pollutants, and minor NSR for others.

B. Applicability of the Major NSR Program

Major NSR applies to (1) construction of new major sources and (2) major modifications of existing major sources. In either case, the initial step in assessing applicability is to determine whether the new or modified source in question qualifies as a ''major stationary source.'' A new or existing source qualifies as a major stationary source if it ''emits or has the potential to emit'' a regulated NSR pollutant in an amount greater than the specified annual thresholds. For the PSD program, the major source threshold is 100 tons per year (tpy) for sources in certain source categories listed in the regulations, and 250 tpy for any other type of source. *See* 40 CFR 51.166(b)(1)(i)(*a*) and 52.21(b)(1)(i)(*a*). The major source threshold for NNSR is generally 100 tpy for all source categories but is lower for some pollutants in nonattainment areas classified as Serious, Severe, or Extreme. *See* 40 CFR 51.165(a)(1)(iv).

If a proposed *new* source's actual or potential emissions of a regulated NSR pollutant [1] are at or above the applicable major source threshold, it is subject to preconstruction review under major NSR for that pollutant.[2] Furthermore, under PSD, the proposed new source would also be subject to major NSR review for any other regulated NSR pollutant that it emits at or above the pollutant's ''significant'' emissions rate as defined in 40 CFR 51.166(b)(23) and 52.21(b)(23).

An *existing* major stationary source can be subject to major NSR when a proposed physical change or a change in the method of operation qualifies as a ''major modification.'' [3] A major modification occurs when a physical or operational change (*i.e.,* a construction project) would result in (1) a significant emissions increase of a regulated NSR pollutant, considering emissions increases and decreases from the project alone, and (2) a significant net emissions increase of a regulated NSR pollutant, considering the project as well as other contemporaneous emissions increases and decreases at the source. *See, e.g.,* 40 CFR 52.21(b)(2)(i) and (b)(52). As noted in the previous paragraph, the NSR regulations define the annual emissions rate considered ''significant'' for each regulated NSR pollutant. *See* 40 CFR 51.165(a)(1)(x), 51.166(b)(23), and 52.21(b)(23). In determining the increase in emissions from a physical or operational change, new emissions units are evaluated at their potential emissions, while existing and replacement units are generally evaluated by comparing their baseline actual emissions before the physical or operational change to their projected actual emissions after the change. *See, e.g.,* 40 CFR 52.21(a)(2)(iv)(*c–f*), (b)(7), and (b)(33).

C. Treatment of ''Fugitive Emissions'' in the Major NSR Program

For purposes of major NSR, ''fugitive emissions'' are defined as ''emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.'' *E.g.,* 40 CFR 52.21(b)(20). Examples of fugitive emissions include windblown dust from surface mines and volatile organic compounds (VOCs) emitted from leaking pipes and fittings at petroleum refineries. Section VII of this preamble further discusses the definition of ''fugitive emissions.''

For certain types of sources, fugitive emissions are treated differently from non-fugitive emissions in determining whether major NSR applies to a source. Fugitive emissions may be relevant to determining whether a source triggers major NSR in two distinct contexts.

First, for purposes of determining whether a new or existing source is a ''major stationary source,'' [4] quantifiable fugitive emissions are included in calculating a source's emissions only if the source belongs to one of the source categories specifically listed in the major NSR regulations. *See, e.g.,* 40 CFR 52.21(b)(1)(iii).[5] Thus, fugitive emissions from sources not belonging to a listed category are generally not included in determining whether a source is a major stationary source. The treatment of fugitive emissions in determining whether a new or existing source is a major source is well-established and is not impacted by this proposed action.

Second, the inclusion of fugitive emissions may impact whether a physical or operational change at a major stationary source results in a ''major modification.'' This proposed action addresses the treatment of fugitive emissions in this second context. As discussed further in Sections III and IV of this preamble, the EPA proposes to affirm its longstanding position that all existing major sources (regardless of source category) must include fugitive emissions when determining if a modification is major. A summary of the relevant history of the treatment of fugitive emissions in the context of modifications is presented in Section II.D of this preamble; additional discussion of the legal and policy considerations underlying this history is included in Section IV.A of this preamble.

[1] 40 CFR 52.21(b)(50) defines the term ''regulated NSR pollutant'' for purposes of PSD. The term generally includes pollutants for which a NAAQS has been promulgated and other pollutants subject to regulation under the CAA. This ''regulated NSR pollutant'' definition, however, excludes the Hazardous Air Pollutants regulated under section 112 of the CAA. For purposes of NNSR, ''regulated NSR pollutant'' is defined at 40 CFR 51.165(a)(1)(xxxvii).

[2] Physical changes at an existing non-major source can also establish a ''major stationary source'' if the physical change by itself would exceed the applicable major stationary source threshold. *E.g.,* 40 CFR 52.21(b)(1)(i)(*c*).

[3] Notably, modifications to existing non-major sources cannot be considered major modifications. However, as described in footnote 2, a physical change at an existing minor source that itself exceeds the major source thresholds would establish a major stationary source.

[4] The relevant statutory provisions use the terms ''major stationary source'' and ''major emitting facility'' interchangeably. *See* 42 U.S.C. 7479(1), 7602(j). The EPA uses the shorthand phrase ''major source'' to refer to this concept, and any reference to a ''major source'' in this preamble refers to the concept of ''major stationary source'' under NSR.

[5] A single stationary source may be comprised of multiple different pollutant-emitting activities. *See, e.g.,* 40 CFR 52.21(b)(5) and (6) (requiring the aggregation of all pollutant-emitting activities that belong to the same major industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control)). Although these activities might be assigned different source categories if viewed in isolation, EPA's longstanding approach is to examine the source as a whole and assign it to a single source category based on its ''primary activity.'' *See, e.g.,* 54 FR 48870, 48881 (November 28, 1989). Under this approach, if the source's primary activity is determined to be one of the listed source categories, then fugitive emissions from *all* pollutant-emitting activities that are part of that stationary source are considered in determining whether the source as a whole exceeds the relevant major source threshold. *See, e.g.,* 54 FR 48882; Letter from Cheryl Newton, EPA Region 5, to Janet McCabe, Indiana Department of Environmental Management (March 6, 2003) (*Newton Letter*). Even if the primary activity of a source does not fit within a listed source category, fugitive emissions should be quantified from emission units within the source that do belong to a listed category (*e.g.,* a boiler of sufficient size, or a coal cleaning plant); this is sometimes referred to as a ''nested'' or ''embedded'' source. *See, e.g., Newton Letter.* In this case, fugitive emissions from the ''nested'' portion of the source belonging to a listed source category *would* be included in determining whether (1) the ''nested'' portion of the source exceeded the relevant major source threshold (generally 100 tons per year), and whether (2) the source as a whole exceeded the relevant major source threshold (generally 250 tons per year for PSD).

Once a source is subject to the major NSR program, fugitive emissions are generally treated the same as stack emissions in determining which substantive requirements apply to the source.[6] Specifically, for PSD, once a new source is determined to be ''major'' (*i.e.,* over the 100 or 250 tpy threshold) for a particular pollutant, all emissions (including fugitive emissions) are included in all subsequent analysis, including PSD applicability for other individual pollutants (*i.e.,* comparing emissions to the significant emission rates), Best Available Control Technology (BACT) analyses, and air quality impact analyses. *E.g.,* 40 CFR 52.21(j)(2); *see also* 54 FR 48871 n.2. Similarly, once a modification is determined to be major with respect to at least one regulated NSR pollutant (and provided an exemption discussed in Section II.D of this preamble does not apply), fugitive emissions are included in all subsequent analyses. *E.g.,* 40 CFR 52.21(j)(3); *see also* 54 FR 48871 n.2; *In re Masonite Corp.,* 5 EAD 551, 582–83 (EAB 1994).

D. Fugitive Emissions in Major Modification Determinations

Following the 1977 CAA Amendments, the EPA's initial 1978 regulations implementing the major NSR program required that fugitive emissions from sources in all source categories be included in the first instance in calculating whether a new source or modification of an existing source was major.[7] However, in its 1979 *Alabama Power* decision that reviewed the 1978 regulations,[8] the D.C. Circuit held that CAA section 302(j) requires a rulemaking to identify the sources that must include fugitive emissions in determining whether a source is a ''major emitting facility'' (*i.e.,* ''major stationary source''). In response, in 1980 the EPA promulgated a list of source categories, along with a provision exempting sources not belonging to one of those listed source categories from substantive major NSR requirements if the source *or modification* would be considered ''major'' solely due to the inclusion of fugitive emissions. 45 FR 52676 (August 7, 1980) (promulgating, *e.g.,* 40 CFR 52.21(i)(4)(vii), which was later recodified at 40 CFR 52.21(i)(1)(vii) in 2002).[9]

In 1984, the EPA finalized revisions to the NSR regulations that were intended to better implement CAA section 302(j), the statutory provision on which the 1980 exemption was based. In the context of major source determinations, the EPA revised the definition of ''major source'' such that sources in non-listed source categories need not include fugitive emissions in the first instance in determining whether their emissions exceed major source thresholds. 49 FR 43202 (October 26, 1984). This reflected a more straightforward approach for major source determinations than the one established in the 1980 exemption.[10]

The EPA declined at that time to finalize a similar revision for major modifications. Instead, in a companion document to the 1984 final rule, the EPA proposed an ''interpretive ruling'' reevaluating and reversing the EPA's prior assumption that fugitive emissions should be treated the same in major source and major modification contexts. 49 FR 43211 (October 26, 1984). For major modification determinations, the EPA proposed to include quantifiable fugitive emissions from sources in *all* source categories when determining whether a physical or operational change meets the significance thresholds for a major modification. This was based on the EPA's interpretation that CAA section 302(j) does not apply in the major modification context, and that CAA section 111(a)(4), which defines ''modification,'' requires consideration of all types of emissions (as discussed further in Section IV.A of this preamble). Along with this interpretation, the EPA proposed to remove the 1980 exemption, which was no longer needed in the major source context after the 1984 revisions and which conflicted with the agency's proposed interpretation in the major modification context. In 1986, the EPA again solicited comment on the 1984 ''interpretive ruling.'' 51 FR 7090 (February 28, 1986).

The EPA ultimately ''retain[ed]'' and ''reaffirm[ed]'' the EPA's 1984 interpretive ruling in a 1989 action finalizing certain other rule revisions. 54 FR 48870 (November 28, 1989).[11] This interpretation—that all sources must include fugitive emissions in the major modification context—remained the EPA's position until 2008.[12] The EPA inadvertently failed to remove the 1980 exemption in the 1989 rule, creating an apparent conflict between the EPA's interpretation and the legacy regulatory text.

In 2002, the EPA finalized major revisions to its NSR regulations. 67 FR 80186 (December 31, 2002) (''NSR Reform Rule''). Among many other changes, and consistent with the 1989 interpretive ruling, this 2002 rule explicitly required the inclusion of fugitive emissions in calculating emissions increases for purposes of determining whether a physical or operational change constitutes a major modification for all major sources, regardless of source category.[13]

[6] *See generally Alabama Power* v. *Costle,* 636 F.2d 323, 369 (D.C. Cir. 1979) (''The terms of section 165, which detail the preconstruction review and permit requirements for each new or modified 'major emitting facility' apply with equal force to fugitive emissions and emissions from industrial point sources . . . . EPA is correct that a major emitting facility is subject to the requirements of section 165 for each pollutant it emits irrespective of the manner in which it is emitted.'').

[7] *See, e.g.,* 43 FR 26380, 26403–04 (June 19, 1978); *see also* 48 FR 38742, 38743 (August 25, 1983) (discussing history of the EPA's treatment of fugitive emissions in the 1978 rule and related rules); 49 FR 43202 (October 26, 1984) (same). These initial regulations excluded ''fugitive dust'' from air quality impact assessments, but this exclusion was vacated by the D.C. Circuit court. *See Alabama Power,* 636 F.2d at 370.

[8] *Alabama Power,* 636 F.2d 323.

[9] The 1980 rule also added this exemption to EPA's NSR regulations in 40 CFR 51.18 (later recodified in 40 CFR 51.165), 40 CFR 51.24 (later recodified in 40 CFR 51.166), and 40 CFR part 51 appendix S. Collectively, these four nearly identical provisions are referred to as the ''1980 exemption.'' For an illustration of how the 1980 exemption has functioned in the major modification context, see *In re Masonite Corp.,* 5 EAD 551, 581–83 (EAB 1994).

[10] Under the 1980 exemption, all sources were still required to include fugitive emissions in the first instance when calculating whether a new source or modification would be major. As a result, a non-listed source or modification could theoretically be classified as a major source but nonetheless exempt from substantive major NSR requirements if the terms of the exemption were met. In 1981, the EPA granted a petition for reconsideration of this aspect of the 1980 rules and clarified that the regulations were not intended to function this way. Instead, the intent was that any source in a non-listed category that would be ''major'' only if fugitive emissions were taken into account should not be considered ''major.'' *See* Letter from Douglas M. Costle, Administrator, EPA, to Robert T. Connery (January 19, 1981). The EPA's 1984 amendments to the ''major source'' definition codified this intent by excluding fugitive emissions from the major source calculation in the first instance. *See* 49 FR 43202 at 43204 and 43208–09 (October 26, 1984).

[11] Subsequent EPA rules have referred to this 1989 rule as ''finalizing'' the EPA's 1984 interpretive ruling. *E.g.,* 73 FR 77884 (December 19, 2008).

[12] In October 1990, the EPA released a draft New Source Review Workshop Manual, in which the agency stated that fugitive emissions ''are included in the potential to emit (and increases in the same due to modification)'' if they occur at one of the source categories listed pursuant to section 302(j). DRAFT NSR Workshop Manual at A.9 (1990). This phrasing seemingly contradicted the 1989 interpretive ruling, although the EPA later acknowledged that this language was not intended to change the EPA's policy in this area. 73 FR 77885 (December 19, 2008). A 1994 EPA Environmental Appeals Board decision, *In re. Masonite Corp.,* considered the existing regulatory text addressing the treatment of fugitive emissions in major modification determinations but did not evaluate or disturb the 1989 interpretation. *See* 5 EAD at 581–83.

[13] *See, e.g.,* 40 CFR 52.21(b)(41)(ii)(b) and 52.21(b)(48)(i)(a) (definitions of ''projected actual emissions'' and ''baseline actual emissions,'' both of which include fugitive emissions to the extent quantifiable).

Notwithstanding this affirmation and codification of the agency's longstanding position, the EPA again inadvertently left the 1980 exemption in the CFR.[14]

In 2003, the EPA received a petition from Newmont USA Ltd., dba Newmont Mining Corporation, requesting that the EPA reconsider the treatment of fugitive emissions in the provisions adopted in the 2002 NSR Reform Rule.[15] After granting the petition for reconsideration in 2004,[16] the EPA proposed in 2007 and finalized in 2008 a rule titled ''Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration of Inclusion of Fugitive Emissions'' (the Fugitive Emissions Rule). 72 FR 63850 (November 13, 2007); 73 FR 77882 (December 19, 2008). The Fugitive Emissions Rule, which became effective on January 20, 2009, reversed the EPA's position as set forth in the 1984 and 1989 interpretive rulings concerning the treatment of fugitive emissions for major modification purposes. Under the Fugitive Emissions Rule, only sources in listed source categories designated through rulemaking pursuant to section 302(j) of the Act needed to include fugitive emissions in determining whether a change is a major modification. Thus, the Fugitive Emissions Rule adopted the same approach for considering fugitive emissions when determining whether a change is a major modification as has been used since 1984 for determining whether a source is a major stationary source. Because the 2008 Fugitive Emissions Rule rendered the 1980 exemption obsolete in the major modification context, the EPA also removed the 1980 exemption in the 2008 rule.

E. Petition for Reconsideration and Administrative Stays of the Fugitive Emissions Rule

On February 17, 2009, the Natural Resources Defense Council (NRDC) submitted a petition for reconsideration of the 2008 Fugitive Emissions Rule under CAA 307(d)(7)(B).[17] On April 24, 2009, the EPA responded by letter indicating that the EPA was convening a reconsideration proceeding and granting a 3-month administrative stay of the rule.[18]

The initial 3-month administrative stay of the Fugitive Emissions Rule became effective on September 30, 2009. 74 FR 50115 (September 30, 2009). An interim final rule extending the stay for an additional 3 months became effective on December 31, 2009. 74 FR 65692 (December 11, 2009). An additional 18-month stay became effective on April 1, 2010. 75 FR 16012 (March 31, 2010). In each of these stay actions (beginning on September 30, 2009), the EPA not only stayed the CFR paragraphs added or changed by the Fugitive Emissions Rule, but also amended the CFR to temporarily reinstate the 1980 exemption (which had been removed by the 2008 rule).

These initial administrative stays were intended to ''effectuate this stay of the December 19, 2008, rule [by] reinstating previous provisions on a temporary basis.'' 74 FR 50115. However, in several cases, paragraphs of the affected regulations were stayed in their entirety, unintentionally staying existing regulatory provisions unrelated to those that were revised by the Fugitive Emissions Rule. To correct this error, on March 30, 2011, the EPA published an ''interim rule'' to more precisely effectuate the stay of the Fugitive Emissions Rule itself (*i.e.,* to stay only those portions of the NSR regulations that were added or revised by the 2008 rule, without staying other unrelated portions of the NSR regulations). 76 FR 17548 (March 30, 2011). In order to do this, the interim rule revised 47 paragraphs of the regulatory text that were changed by the Fugitive Emissions Rule, reverting these paragraphs to the regulatory text that existed prior to the Fugitive Emissions Rule.[19] And, as with the 2009 and 2010 actions, in the 2011 action, the EPA again added the 1980 exemption back to the four relevant sections of the CFR. The interim rule also extended the stay of seven other provisions indefinitely until the EPA completed its reconsideration of the Fugitive Emissions Rule.[20]

In summary, due to the EPA's stay actions described in this section, the Fugitive Emissions Rule only briefly took effect between January 20, 2009, and September 30, 2009. Since 2009, the regulations that predated the 2008 Fugitive Emissions Rule have been the operative regulations governing the treatment of fugitive emissions in the major modification context.

III. Proposed Action

A. Results of the EPA's Reconsideration

This proposed rule seeks to close out the reconsideration process initiated in 2009 in a manner that better aligns with the structure and purpose of the NSR program and that minimizes confusion for all stakeholders. After reevaluating the legal and policy bases of the Fugitive Emissions Rule, the EPA no longer considers that rule's treatment of fugitive emissions in the context of major modifications to be appropriate. Instead, for the reasons described further in Sections IV and V of this preamble, the EPA is proposing to reaffirm the EPA's longstanding interpretation of CAA sections 302(j) and 111(a)(4). Specifically, the EPA proposes to reaffirm its interpretation that the language in CAA section 302(j) regarding fugitive emissions applies only in the major source context, and not in the major modification context. The EPA proposes to interpret CAA section 111(a)(4) to require that all sources consider increases in all types of emissions (including fugitive emissions) in determining whether a proposed change would constitute a major modification. Accordingly, the EPA is proposing to repeal the 2008 Fugitive Emissions Rule by removing the portions of the 2008 rule that remain in the agency's NSR regulations.

Additionally, in light of the statutory interpretation presented in Section IV.C of this preamble, the EPA is proposing to remove the ''major solely due to the inclusion of fugitive emissions'' exemption first promulgated in 1980 and reinstated in 2009. As described in Section II.D of this preamble, this 1980 exemption was inadvertently left in the EPA's regulations from 1989 to 2008 despite the fact that the agency had interpreted the statute in that period (as EPA proposes now) to provide no such exemption in the context of

[14] Although the 1980 exemption was renumbered from 40 CFR 52.21(i)(4)(vii) to 40 CFR 52.21(i)(1)(vii) in the 2002 NSR Reform Rule, its content was not altered. As a result, the 1980 exemption—which speaks in terms of calculating *potential* emissions increases—does not align with the other changes effectuated in the 2002 rule, which focus on calculating or projecting *actual* emissions increases in determining whether a project is a major modification.

[15] Newmont Mining Corporation, EPA–HQ–OAR–2004–0014–0005.

[16] Jeffrey R. Holmstead, EPA, EPA–HQ–OAR–2004–0014–0014.

[17] John Walke, NRDC, EPA–HQ–OAR–2004–0014–0060.

[18] Lisa Jackson, EPA, EPA–HQ–OAR–2004–0014–0062.

[19] For a complete list of these provisions, *see* 76 FR 17551.

[20] Although the 2011 interim rule was effective immediately, the EPA also provided a public comment period. 76 FR 17551. This solicitation of comments pertained to the procedural action undertaken in the 2011 interim rule—measures to stay the effectiveness of the 2008 Fugitive Emissions Rule—and did not extend to the substance of the EPA's reconsideration of the 2008 Fugitive Emissions Rule. Nonetheless, several comments on the 2011 interim rule addressed substantive topics related to the EPA's reconsideration. The current proposed rule generally addresses those substantive comments as well as substantive comments provided during earlier regulatory actions. Commenters are welcome to submit or re-submit any comments relevant to the content of this proposed rule.

modifications. This inconsistency, along with other issues related to the 1980 exemption, has created significant uncertainty about the EPA's treatment of fugitive emissions in the major modification context.

B. Proposed Revisions to Regulations

The Fugitive Emissions Rule revised similar regulatory text in all four sections of the CFR associated with the major NSR program, including 40 CFR 51.165, 51.166, 52.21, and appendix S to part 51. This proposed action would revise the text in each of these four sections in order to fully repeal the 2008 rule.

As discussed in Section II.E of this preamble, the EPA's March 2011 interim rule revised 47 paragraphs of the regulatory text that had been changed by the Fugitive Emissions Rule, reverting these paragraphs back to the text that existed prior to the Fugitive Emissions Rule. These paragraphs need not be revised further in this action in order to repeal the Fugitive Emissions Rule. To the extent necessary, the EPA proposes in this action to affirm those changes to the regulatory text effectuated in the March 2011 interim rule and lift the ''interim'' label from those aspects of the 2011 rule.

Seven additional paragraphs that were added (instead of revised) by the Fugitive Emissions Rule were stayed in the EPA's 2009, 2010, and 2011 actions, but still exist within the EPA's NSR regulations. 40 CFR 51.165(a)(1)(v)(G), 51.165(a)(1)(vi)(C)(*3*), 51.166(b)(2)(v), 51.166(b)(3)(iii)(*d*), part 51 appx. S II.A.5(vii), 52.21(b)(2)(v), 52.21(b)(3)(iii)(*c*). These provisions are accompanied by a notation in the CFR (at the end of each CFR section) that these provisions are stayed and have no current legal effect. For these paragraphs, the EPA is proposing to concurrently lift the existing stay and remove these provisions from the regulations (the only way to remove these provisions is to lift the stay). In so doing, the EPA intends to permanently restore the relevant regulatory text that existed before the Fugitive Emissions Rule was promulgated.

Four paragraphs embodying the 1980 exemption were removed by the Fugitive Emissions Rule, but were reinstated in the EPA's 2009, 2010, and 2011 actions in order to effectuate a stay of the Fugitive Emissions Rule. 40 CFR 51.165(a)(4), 51.166(i)(1)(ii), 52.21(i)(1)(vii), and part 51 appx. S II.F. In light of the interpretation advanced in Section IV.C of this preamble—that all sources must account for fugitive emissions in determining whether a modification is major—the EPA is also proposing to remove these provisions embodying the 1980 exemption.

Given the number and complexity of the regulatory provisions impacted by the Fugitive Emissions Rule and the current proposal, the EPA specifically seeks comment on whether the proposed changes to the regulatory text, in addition to those changes previously made in 2011, will fully effectuate the repeal of the Fugitive Emissions Rule and conform the EPA's regulations to the interpretation described in Section IV.C of this preamble.

IV. Interpretation of CAA Sections 302(j) and 111(a)(4)

The plain language of CAA sections 302(j) and 111(a)(4), as well as the legislative history and case law involving these provisions, supports requiring that all existing major sources include fugitive emissions when determining whether a modification at the source requires a major NSR permit. This view is consistent with the approach the EPA has applied in the NSR program for most of the past 4 decades, but the EPA has inadvertently fostered uncertainty on this subject through its rulemaking actions and omissions. To end this uncertainty and better align the regulations with the structure and purpose of the NSR program, the EPA proposes to affirm the longstanding interpretation that fugitive emissions must be counted from all existing major sources when determining whether a modification is major. As discussed in Section V of this preamble, this approach properly accommodates the relevant policy considerations associated with balancing the potential air quality benefits that could result from this action with the potential impacts on a limited subset of sources.

A. Previous EPA Interpretations

When the EPA established the foundation for the current NSR program in response to the 1977 CAA Amendments, the EPA required all quantifiable emissions (including fugitive emissions) to be considered in determining whether sources are subject to major NSR. 43 FR 26388, 26395 (June 19, 1978) (''[T]he regulations do not exclude fugitive dust from the determination of potential emissions.'').[21] However, in recognition of concerns from the surface coal mining industry, the EPA's 1978 regulations excluded ''fugitive dust'' from air quality impact assessments for new and modified sources. *See, e.g.,* 40 CFR 52.21(k)(5) (1978); 43 FR 26395.

In its 1979 *Alabama Power* decision, the U.S. Court of Appeals for the D.C. Circuit considered various challenges to the 1978 NSR regulations, including those related to the treatment of fugitive emissions. In relevant part, the D.C. Circuit stated that it had ''reason to doubt whether EPA possesses the statutory authority to promulgate the [fugitive dust] exception in this manner.'' *Id.* at 370.[22] Although the court did not specifically resolve the matter, it nonetheless vacated and remanded the 1978 fugitive dust exemption ''[i]n light of [the court's] interpretation of section 302(j), and in accordance with [the court's] discussion as to the limits of EPA general exemption authority.''

The D.C. Circuit's discussion of CAA section 302(j) was particularly noteworthy. CAA section 302(j) defines ''major stationary source'' and ''major emitting facility'' as ''any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator).'' 42 U.S.C. 7602(j). The D.C. Circuit held that CAA ''section 302(j) specifically attaches a rulemaking requirement for the inclusion of fugitive emissions in the threshold calculation'' of determining whether a source is a ''major emitting facility.'' 636 F.2d at 369.[23]

In response to the *Alabama Power* decision, in its 1980 revisions to the NSR regulations, the EPA removed the 1978 partial exclusion for fugitive dust. In order to implement the CAA section 302(j) rulemaking requirement, the EPA also listed, by rule, a number of source categories for which fugitive emissions were to be considered in threshold determinations. *See* 45 FR 52676 (August 7, 1980) (promulgating, *e.g.,* 40

[21] As the EPA later explained, prior to 1980, the ''EPA considered *all* reasonably quantifiable emissions of a pollutant—including both point emissions (*e.g.,* from a stack or chimney) and fugitive emissions—on the ground[s] that the emissions deteriorate air quality regardless of how they emanate.'' 45 FR 52690 (August 7, 1980).

[22] In suggesting this, the court referred to another section of its opinion, where the court identified ''principles pertinent to an agency's authority to adopt general exemptions to statutory requirements.'' *Id.* at 357; *see id.* at 357–361.

[23] The D.C. Circuit found that the general definition of ''major stationary source'' or ''major emitting facility'' in CAA section 302(j) was not expressly modified by the PSD-specific definition of ''major emitting facility'' in CAA section 169(1) (which is silent with respect to fugitive emissions), and accordingly that CAA section 302(j)'s rulemaking requirement for fugitive emissions controlled with respect to the PSD program. 636 F.2d at 370.

CFR 52.21(i)(4)(vii), which was later recodified at 40 CFR 52.21(i)(1)(vii) in 2002). Specifically, although the 1980 regulations required all sources to include fugitive emissions in the first instance when determining whether a new source or modification was considered major, the 1980 rule provided an exemption from substantive major NSR requirements for sources that did not belong to a listed source category if the source or modification would be considered ''major'' solely due to the inclusion of fugitive emissions. This 1980 exemption did not differentiate between ''major source'' and ''major modification'' inquiries. However, the EPA did not discuss this lack of differentiation, nor did the EPA suggest that this result was required by CAA section 302(j) or the *Alabama Power* decision.[24]

When the EPA revised the NSR regulations in 1984 to better implement the CAA section 302(j) rulemaking requirement, it finalized regulatory text within the definition of ''major source'' that more directly excluded fugitive emissions from major source calculations for sources not in the listed source categories. 49 FR 43202 (October 26, 1984). However, the EPA decided not to finalize similar revisions with respect to major modifications. Instead, in a companion document accompanying the 1984 rule, the EPA for the first time took a closer look at the applicability of section 302(j) and the *Alabama Power* decision in the context of major modifications. The EPA explained that in its 1980 and 1983 regulatory actions, the ''EPA *assumed* that the rulemaking requirement in section 302(j) applies to modifications as well as to sources.'' 49 FR 43213 (October 26, 1984) (emphasis added).[25] The EPA further explained that the litigants and commenters on those 1980 and 1983 actions similarly ''carried that assumption into their communications, without evidencing any examination of it.'' *Id.* After examining the assumption for the first time in 1984, the EPA ''concluded that it appears to be incorrect.'' *Id.* Accordingly, the EPA proposed an ''interpretive rule'' outlining its interpretation that CAA section 302(j) did *not* apply in the major modification context, and that all sources (not just those in a listed source category) should include fugitive emissions in the major modification context. The 1984 proposed interpretive rule, summarized in the following paragraphs, explained the basis for the decision in considerable detail. *See* 49 FR 43213.

First, the EPA explained that the plain language of the Act strongly suggests that Congress did not intend the rulemaking requirement in section 302(j) to apply to modifications. The EPA noted that CAA section 302(j) on its face defines major source and does not speak to modifications of those sources. By contrast, the EPA noted that the definition of ''modification'' in CAA section 111(a)(4) (which is incorporated by the statutory provisions for major NSR[26]) appears to require the inclusion of fugitive emissions in threshold applicability determinations for modifications. CAA section 111(a)(4) provides that ''the term 'modification' means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emissions of any air pollutant not previously emitted.'' 42 U.S.C. 7411(a)(4). The EPA indicated that, in defining ''modification'' solely in terms of the total amount of pollution that a source change would produce, section 111(a)(4) suggests that Congress intended to establish here no qualitative distinction between different types of emissions (*e.g.,* fugitive or non-fugitive). Thus, the EPA concluded that Congress intended to require the inclusion of fugitive emissions for modifications without any intermediate rulemaking step. 49 FR 43213.

Next, the EPA's 1984 interpretive rule examined the legislative history surrounding these statutory provisions. With respect to CAA section 302(j), the EPA noted that the passages in the relevant House and conference reports that focus on CAA section 302(j) (as well as CAA section 302(j) itself) refer only to major sources, and not to modifications of these sources. 49 FR 43213 (citing H.R. Report No. 95–294, 95th Cong., 1st Sess. 4, 9, 144 (1977); H.S. Rep. No. 95–564, 95th Cong., 1st Sess. 172 (1977)). With respect to the reference to ''modification'' in the PSD provisions of the Act, the EPA indicated that the conference committee said that it ''[i]mplements conference agreement to cover 'modification' as well as 'construction' by defining 'construction' in Part C to conform to usage in other parts of the Act.'' *Id.* (quoting 123 Cong. Rec. H. 11957. col. 3 (daily ed.) (November 1, 1977)). The EPA posited that the phrase ''usage in other parts of the Act,'' most likely refers not only to CAA section 111(a)(4), but also to the EPA regulations implementing section 111 that were in effect at the time. *Id.* The EPA explained that those regulations (as well as CAA section 111(a)(4) itself) on their face require the inclusion of fugitive emissions in CAA section 111 applicability determinations, inasmuch as they concern themselves only with the quantity of the emissions in question. *Id.* (citing 40 CFR 60.14(a) (1977)). Moreover, the EPA explained that prior to the enactment of CAA section 302(j) in 1977, both the EPA and states made no distinction between fugitive and non-fugitive emissions in threshold applicability determinations. *Id.* (citing 40 CFR 51.18, 52.21(d)(1) (1977); 41 FR 55528 (December 21, 1976)). Given that CAA section 302(j) ran against longstanding practice throughout the agency's implementation of the CAA, the EPA suggested that if Congress had intended a change as to modifications, it probably would have said so explicitly, yet Congress said nothing. *Id.*

The 1984 interpretive rule also addressed practical issues related to the inclusion or exclusion of fugitive emissions in major modification determinations and concluded that including fugitive emissions in this context would be consistent with Congress's purposes, including the potential relief from the burdens of NSR afforded by the CAA section 302(j) rulemaking requirement. Given that the EPA's regulations did not require unlisted sources with predominantly fugitive emissions (*e.g.,* surface coal mines) to count fugitive emissions towards major source thresholds, the EPA noted that it is unlikely that those sources would be considered major sources in the first instance. And, because only modifications to an existing major source can be considered major modifications, the EPA concluded that it would be unlikely for sources of predominantly fugitive emissions to be subject to major NSR due to a

[24] The EPA's 1980 preamble discussion spoke generally of ''threshold determinations'' or ''threshold calculations'' but did not specifically evaluate whether or how both the major source and major modification inquiries were implicated by CAA section 302(j) and the *Alabama Power* decision. Where the EPA did speak more specifically to one of these inquiries, it spoke only to ''major emitting facility'' (*i.e.,* ''major source'') determinations under CAA sections 169(1) and 302(j). *See, e.g.,* 45 FR 52690.

[25] Put another way, the EPA's 1980 interpretation ''took it for granted'' that fugitive emissions would be treated the same for major source and major modification determinations. 72 FR 63857 (November 13, 2007).

[26] CAA section 169(2)(C), 42 U.S.C. 7479(2)(C), which governs the PSD program, states: ''The term 'construction' when used in connection with any source or facility, includes the modification (as defined in section 111(a) of this title) of any source or facility.'' CAA section 171(4), 42 U.S.C. 7501(4), which governs the NNSR program, states: ''The terms 'modification' and 'modified' mean the same as the term 'modification' as used in section 111(a)(4) of this title.''

modification, even under the EPA's proposed interpretation. 49 FR 43214.

When the EPA ''affirmed'' the 1984 interpretive rule in a related 1989 rulemaking, it did so based on the justifications presented in 1984, with some additional discussion based on comments received from stakeholders. *See* 54 FR 48882 (November 28, 1989). Specifically, commenters argued: (1) that congressional silence on the subject indicated a lack of guidance (rather than support for the EPA's position) and (2) because new sources and modifications are generally treated the same in most respects under the Act, there is no basis to treat them differently under CAA section 302(j). The EPA was not persuaded by these comments. The EPA concluded that its interpretation was both reasonable and proper, warranting deference under *Chevron, U.S.A. Inc.* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984). Additionally, the EPA reiterated and elaborated on its view that the agency's interpretation should have little general impact on sources of predominantly fugitive emissions like surface coal mines. This remained the EPA's interpretation of CAA sections 302(j) and 111(a)(4) until the Fugitive Emissions Rule was proposed in 2007 and finalized in 2008.[27]

The Fugitive Emissions Rule represented a significant shift in the EPA's treatment of fugitive emissions. This 2008 rule was the first time the EPA had, after focused deliberation, applied the CAA section 302(j) rulemaking requirement to major modifications, such that only sources in categories listed by rule would need to account for fugitive emissions when determining whether a project constituted a major modification.

To justify this changed interpretation, the EPA argued that the lack of any reference in CAA section 302(j) to ''major modification,'' in addition to a scant legislative history, created ambiguity and room for the EPA to extend CAA section 302(j) to the context of major modifications.[28] *See* 73 FR 77888 (December 19, 2008). The EPA stated that it could not conclude from the statutory text or legislative history what Congress specifically intended on this point.[29] Accordingly, the EPA suggested that Congress simply did not know enough to make the critical decisions regarding the treatment of fugitive emissions in the major source and major modification contexts, instead assigning resolution of these complex issues to the EPA. The EPA additionally posited that CAA ''section 302(j) evinces, at a minimum, an intent by Congress to require a special look at fugitive emissions for purposes of calculating a source's emissions for NSR purposes.'' 73 FR 77888.[30]

The EPA then explained the policy and programmatic reasons supporting its shift in approach. First, the EPA stated that its new position was most consistent with its earliest and most nearly contemporaneous construction of the statute in the 1980 NSR rules. The EPA argued that providing a more uniform approach—*i.e.,* treating fugitive emissions the same in both major source and major modification contexts—more accurately reflected the original intent of Congress in establishing CAA section 302(j) and the resulting EPA rules that followed. Second, the EPA said that the revised position better addressed an additional regulatory burden that had not been adequately recognized in the past. Specifically, the EPA asserted that the EPA's policies discussed in 1984 and 1989 would have imposed a new burden on major sources in unlisted source categories, ''since their fugitive emissions would be counted in determining whether they had made a change constituting a major modification and thus possibly subjecting those modifications to NSR review.'' 73 FR 77889.

[27] None of the EPA documents or actions that followed the 1989 interpretive ruling (*e.g.,* the EPA's 1990 DRAFT NSR workshop manual, the 1995 *Masonite* EAB decision, or the 2002 NSR Reform Rule) addressed the substance of the interpretations presented in 1989. As noted in the preamble to the 2008 rule, potentially conflicting statements in the 1990 DRAFT NSR workshop manual were not intended to reflect a change in position from the 1989 interpretive rule. *See* 73 FR 77885 (December 19, 2008). The 1995 *Masonite* EAB decision considered how the 1980 exemption (which, as noted in Section II.D of this preamble, was inadvertently not removed from the EPA's regulations in 1989) functioned in practice, and did not evaluate the EPA's 1989 interpretive rule or the statutory bases underlying the agency's 1989 interpretation. *See* 5 EAD at 581–83. The 2002 NSR Reform Rule explicitly codified the position expressed in the 1989 interpretive rule, without further discussion of the EPA's interpretation of the relevant statutory provisions.

[28] Notably, even as the EPA reversed its prior interpretation of CAA 302(j), it nonetheless maintained that the EPA's historical interpretation finalized in 1989 remained a reasonable construction of the statute.

[29] The EPA indicated that no authoritative conference or committee report addressed the issue of how fugitive emission should be addressed in NSR permitting. The EPA nonetheless addressed portions of the legislative history reflecting industry testimony detailing concerns with the feasibility of controlling or measuring fugitive emissions.

[30] The EPA's rationale in the Fugitive Emissions Rule focused on CAA section 302(j) and largely did not address CAA section 111(a)(4). After summarizing the EPA's prior interpretation (and public comments) relating to the CAA section 111(a)(4) definition of ''modification,'' the EPA simply asserted that this statutory provision does not ''address the issue'' without further discussion. 73 FR 77888.

B. NRDC's Petition for Reconsideration

NRDC's 2009 petition for reconsideration argued that the Fugitive Emissions Rule was unlawful and urged the EPA to return to its prior interpretation concerning fugitive emissions. NRDC's petition focused largely on the definition of ''modification'' in CAA section 111(a)(4). Citing CAA section 111(a)(4) and the D.C. Circuit's 2005 *New York* v. *EPA* decision (*New York I*),[31] NRDC emphasized that the definition of modification focuses exclusively on increases in ''actual'' emissions. NRDC asserted that the EPA's prior interpretations echoed this focus and did not differentiate between stack emissions and fugitive emissions, instead focusing on the total amount of pollution that a change at a source would produce. Citing the D.C. Circuit's 2006 *New York* v. *EPA* decision (*New York II*),[32] NRDC further asserted that the coverage of CAA section 111(a)(4) is broad—including *any* physical change that increases emissions—and subject only to narrow *de minimis* exceptions.

NRDC claimed that, in promulgating the Fugitive Emissions Rule, the EPA failed to address the definition of modification in CAA section 111(a)(4), explain its reversal of its interpretation of this statutory provision, or respond to comments concerning this provision. Moreover, NRDC claimed that the Fugitive Emissions Rule created an impermissible exemption to the definition of ''modification'' because the EPA did not (and could not) claim (1) that the exemption was supported by the *de minimis* doctrine, (2) that increased fugitive emissions do not qualify as ''the amount of any air pollutant emitted by such source'' under CAA section 111(a)(4), or (3) that exempt fugitive emissions increases do not fall within the meaning of ''any physical change'' or ''any'' change in the method of operation under CAA section 111(a)(4).[33] As noted previously, on April 24, 2009, the EPA responded by letter indicating that the EPA was convening a reconsideration proceeding.

C. Proposed Interpretation of CAA Sections 302(j) and 111(a)(4)

After reconsidering the 2008 Fugitive Emissions Rule, the EPA proposes to return to the position first articulated in 1984, adopted in a final action in 1989,

[31] 413 F.3d 3, 40 (D.C. Cir. 2005).

[32] 443 F.3d 880, 885 (D.C. Cir. 2006).

[33] The NRDC petition also raised other arguments, including a discussion of the legislative history of CAA section 302(j) and other concerns related to the implementation of the Fugitive Emissions Rule by state and local air agencies.

and which remained the EPA's interpretation until revisited in 2008. Given CAA section 302(j)'s silence with respect to modifications, in conjunction with the definition of ''modification'' in CAA section 111(a)(4), the EPA does not believe the CAA section 302(j) rulemaking requirement applies to major modification determinations. Moreover, the EPA does not consider it appropriate to allow existing major sources in non-listed source categories to omit increases and decreases in fugitive emissions when evaluating whether a physical or operational change constitutes a major modification. All major sources should include both stack and fugitive emissions in the major modification context.

The EPA considers this a prudent change in position. The EPA's treatment of fugitive emissions in modifications has a complicated history, particularly during the early years of the NSR program following the 1977 CAA Amendments. However, the interpretation advanced now most closely aligns with the interpretation of CAA section 302(j) originally proposed in 1984 and adopted in 1989. This interpretation was more thoughtful and fully developed than the one the EPA had followed from 1980 until 1984,[34] and has reflected the EPA's position for the majority of the NSR program's existence.[35] More importantly, the legal and policy reasoning advanced in the 1984 and 1989 actions (summarized in Section IV.A of this preamble), in light of more recent case law (*New York I* and *II*), reflects a more complete depiction of the relevant statutory authorities than the reasoning articulated in the 2008 Fugitive Emissions Rule. The EPA also believes this approach fully accommodates congressional intent and the practical and policy considerations surrounding this issue. Therefore, for the reasons detailed later in this preamble, the EPA is well-justified in returning to its longest-standing view concerning the treatment of fugitive emissions in the major modification context.

CAA section 302(j), as interpreted by the *Alabama Power* court, restricts the EPA's consideration of fugitive emissions in certain situations, requiring a rulemaking before the EPA can consider such emissions towards major stationary source thresholds. In extending this rulemaking requirement to major modifications, the 2008 rule focused largely on the fact that both CAA section 302(j) and the accompanying legislative history were silent with respect to the treatment of fugitive emissions for major modification purposes. The EPA concluded that CAA section 302(j) indicates congressional intent ''to require a special look at fugitive emissions for purposes of calculating a source's emissions for NSR purposes.'' 73 FR 77888 (December 19, 2008). This conclusion, while true to an extent, reflected an overbroad understanding of the ''special look'' required by CAA section 302(j), which is not specific to NSR[36] and only explicitly addresses one aspect of the expansive NSR program (major source determinations).[37] Notwithstanding this ''special look,'' the EPA did *not* in 2008 interpret CAA section 302(j) as *requiring* the EPA to conduct rulemaking to identify source categories prior to including fugitive emissions in the major modification context. Instead, the EPA determined that the congressional silence gave the agency the discretion to ''apply'' the CAA section 302(j) methodology to major modifications.[38] Moreover, in the final Fugitive Emissions Rule in 2008, the EPA acknowledged that its prior interpretation remained a permissible construction of the Act (as the agency had previously asserted in 1989). 73 FR 77888; *see* 54 FR 48883 (November 28, 1989).

Moreover, the EPA's 2008 conclusion that Congress ''simply did not know enough to make the critical decisions regarding the extent to which fugitive emissions should be included in threshold applicability determinations'' for both major source and major modification determinations is undermined by the fact that Congress chose to explicitly provide special treatment of fugitive emissions in the relevant definition of major source, while declining to do so in the relevant definition of major modification. As the EPA first explained in 1984, because the special treatment of fugitive emissions in CAA section 302(j) ''ran against the grain of longstanding practice[, i]f Congress had intended a change as to modifications, it probably would have said so explicitly, yet it said nothing.'' 49 FR 43213 (October 26, 1984).

On its face, CAA section 302(j) only applies to determining what constitutes a ''major stationary source.'' CAA section 302(j) does not merely reference this concept, but literally *defines* this specific term (along with the interchangeable term, ''major emitting facility''), and this term alone. Nothing in the definition of ''major stationary source'' in CAA section 302(j)—or its usage elsewhere in the NSR-relevant statutory provisions[39]—suggests that its restriction on counting fugitive emissions was intended to be extended to other, distinct definitions or inquiries, such as the operative definition of ''modification'' in CAA section 111(a)(4). Rather than expand this principle to other contexts, the silence in CAA section 302(j) with

[34] As noted in the EPA's 1984 action (and acknowledged in the Fugitive Emissions Rule itself), the EPA's interpretations prior to 1984 ''assumed'' and ''took for granted'' that fugitive emissions should be treated the same for major source and major modification decisions, without evaluating whether CAA section 302(j) or the D.C. Circuit's *Alabama Power* decision lent themselves to this result. *See* 49 FR 43213 (October 26, 1984); 72 FR 63857 (November 13, 2007). Thus, the EPA's claim in 2008 that the Fugitive Emissions Rule was ''most consistent with EPA's earliest and most nearly contemporaneous construction of the statute'' was not entirely accurate. 73 FR 77888 (December 19, 2008). By the EPA's 2008 logic, one could just as easily describe the EPA's 1978 approach—which considered fugitive emissions from all sources for both major source and major modification purposes—as the ''most nearly contemporaneous construction of the statute.'' However, both the EPA's 1978 and 1980–1983 approaches similarly neglected to fully consider of the specific text of CAA sections 302(j) and 111(a)(4).

[35] The EPA's alternate interpretation—proposed in 2007 and finalized in the 2008 Fugitive Emissions Rule—was effective for only a short period of time between the Fugitive Emissions Rule's effective date of January 20, 2009, and when the first stay of the rule became effective on September 30, 2009.

[36] For example, the definition of ''major stationary source'' in CAA section 302(j) is also implicated by the title V operating permits program. *See, e.g.,* 42 U.S.C. 7661(2)(B).

[37] Most aspects of the NSR program treat fugitive and non-fugitive emissions similarly. *See supra* note 6 and accompanying text.

[38] *Compare* 73 FR 77889 (December 19, 2008) (final rule, described in text) *with* 72 FR 63857 (November 13, 2007) (proposed rule, which had proposed to ''conclude that it is reasonable to interpret section 302(j) to *require* EPA to conduct rulemaking to identify source categories that should include their fugitive emissions for all threshold applicability purposes.'' (emphasis added)).

[39] The definitions of ''major stationary source'' (or ''major emitting facility'') in CAA section 302(j) and ''modification'' in CAA section 111(a)(4) are related in that both are implicated by the statutory provisions governing NSR applicability. For example, CAA section 165 states that the ''construction'' of a ''major emitting facility'' triggers PSD, and ''construction'' is defined by CAA section 169 to include both new construction as well as modifications, as defined in section 111(a). 42 U.S.C. 7475(a), 7479(2)(C). However, the fact that PSD can be triggered either by the construction of a new major source or by the modification of a major source does not mean that the restrictions in defining what constitutes a major source also apply to determining whether a modification has occurred to such a major source. The distinction between these two concepts is apparent throughout the EPA's NSR regulations, which apply different rules to new major sources and modified major sources. And, while the definition of ''major source'' and the restrictions in CAA section 302(j) continue to be relevant to major modifications to a certain extent—since only existing major sources can undergo a major modification—this preliminary inquiry into whether an existing source is a major source is distinct from the inquiry of whether a change at such a source amounts to a major modification.

respect to anything other than ''major source'' inquiries suggests Congress's intent to confine the fugitive emissions rulemaking requirement to major source determinations. The EPA's authority to apply a similar treatment in another, different context depends on the operative statutory provisions governing that context.[40] As discussed in the following paragraphs, in the context of determining whether a major modification has occurred, the EPA does not interpret CAA section 111(a)(4) as providing a basis for restricting consideration of fugitive emissions in such a manner.

The EPA's 1984 and 1989 interpretations of the definition of ''modification'' in CAA section 111(a)(4) formed a central tenet of the agency's prior position that *all* emissions—both stack and fugitive—must be accounted for in the modification context. CAA section 111(a)(4) provides that ''the term 'modification' means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emissions of any air pollutant not previously emitted.'' 42 U.S.C. 7411(a)(4).[41] As first stated in 1984, the EPA proposes to reaffirm in this rule that, in defining ''modification'' solely in terms of the total *amount* of pollution that a change would produce, Congress did not make a distinction between different types of emissions—stack or fugitive—in the context of modifications under the major NSR program. CAA section 111(a)(4)'s discussion of ''any'' physical or operational change, and its focus on increases in ''any air pollutant,'' further support this position. This is consistent with the EPA's historical interpretation of CAA section 111(a)(4) in other relevant contexts, namely the NSPS program. *See, e.g.,* 49 FR 43213 (October 26, 1984).

This interpretation is also consistent with case law discussing the boundaries on the EPA's authority to establish exemptions to major NSR. As early as 1979, the *Alabama Power* court expressed skepticism of the EPA's authority to promulgate its initial 1978 exemption for fugitive dust—remanding that provision and providing extensive discussion of the limits on EPA's general exemption authority. 636 F.2d at 370; *see id.* at 357–61. More recently, as noted in NRDC's petition for reconsideration, the D.C. Circuit's *New York I* and *New York II* decisions further explored the EPA's limited ability to establish exemptions to the definition of ''modification'' in the context of major NSR. In *New York I,* the court ''conclude[d] that the CAA unambiguously defines 'increases' in terms of actual emissions,'' explaining that the phrase '' 'the *amount* of any air pollutant *emitted* by [the] source' [in CAA section 111(a)(4)] plainly refers to actual emissions.'' 413 F.3d at 40. In *New York II,* the court stated the following: ''Because Congress used the word 'any,' EPA must apply NSR whenever a source conducts an emission-increasing activity that fits within one of the ordinary meanings of 'physical change.' '' 443 F.3d at 885. Additionally, in vacating an exclusion from NSR applicability, the court concluded, ''only physical changes that do not result in emission increases are excused from NSR.'' *Id.* at 887. Thus, allowing certain sources to omit fugitive emissions in determining whether a change is a major modification would run counter to the D.C. Circuit's direction that modifications must account for all actual emissions increases from ''any'' physical change (*i.e.,* not just changes that increase non-fugitive emissions), subject only to *de minimis* exceptions.

In summary, for purposes of major NSR, the EPA proposes to affirm that CAA section 302(j) requires rulemaking before considering a source's fugitive emissions only in the major source context, and not in the major modification context. The EPA proposes to restore its longest-standing interpretation that CAA section 111(a)(4) requires that all major sources consider increases in all types of emissions (including fugitive emissions) in determining whether a proposed change would constitute a major modification.

The EPA has considered the legal issues underlying the treatment of fugitive emissions in major modifications in multiple actions over the past 4 decades. During these prior actions, the EPA has also received and considered a substantial amount of feedback from stakeholders, upon which the conclusions in this proposal are based. However, the EPA solicits comment concerning the interpretation of CAA sections 302(j) and 111(a)(4) described in this section, in light of the authorities and considerations discussed in this Section. The EPA seeks comment on whether this interpretation supports repealing the 2008 Fugitive Emissions Rule, as well as removing the similar ''major solely due to the inclusion of fugitive emissions'' exemption first established in 1980.

V. Policy Considerations and Impact on Regulated Entities

Through this proposal, the EPA seeks to realign its NSR regulations to better reflect the purpose of the NSR program and to end the regulatory uncertainty that has surrounded the EPA's treatment of fugitive emissions in the major modification context over the past four decades. The EPA expects any impacts of this proposed action on a limited subset of the regulated community to be manageable.

A. Purposes of NSR

The NSR program was designed to protect public health and welfare from the effects of air pollution and to preserve and/or improve air quality throughout the nation. *See* 42 U.S.C. 7470(1), (2), (4). As the EPA has recognized since the early days of the NSR program, emissions deteriorate air quality regardless of how they emanate—whether stack or fugitive. 45 FR 52690 (August 7, 1980). Fugitive emissions in particular are more likely to have localized impacts on the air quality of communities located near these sources of pollution. The EPA welcomes comments from affected communities and other stakeholders on this topic and the broader air quality impacts of this rule.

Allowing large, existing sources of pollution to ignore increases in fugitive emissions when determining whether a project is a major modification, as the EPA did in its 2008 Fugitive Emissions Rule, could reduce the likelihood that projects would be subject to careful evaluation through the major NSR permitting process, notwithstanding significant increases in actual air pollution. This would undermine an important tool that the EPA and state and local air agencies use to preserve and improve air quality. Thus, the EPA's proposal seeks to preserve the ability to evaluate all increases of air pollution at existing major sources, regardless of origin, consistent with the purposes of NSR.

[40] Notably, the D.C. Circuit has emphasized the limited reach of CAA section 302(j) with respect to other areas of the CAA, such as the EPA's regulation of hazardous air pollutants under CAA section 112. *See NMA* v. *EPA,* 59 F.3d 1351, 1360–61 (D.C. Cir. 1995).

[41] The Fugitive Emissions Rule did not engage with this definition; instead, the EPA asserted simply that CAA section 111(a)(4) does not ''address the issue.'' Given that Congress was clearly able to provide special consideration for fugitive emissions in CAA section 302(j), the fact that CAA section 111(a)(4) does not specifically address fugitive emissions actually undercuts, rather than supports, the argument that fugitive emissions should be treated in a special way for purposes of determining whether a change is a major modification.

B. Increasing Clarity

By removing outdated and conflicting provisions from the CFR and aligning the regulatory text with the EPA's stated interpretation, the agency seeks to restore clarity, certainty, and consistency to the regulations. The proposed approach reflects a more straightforward, simplified test for determining whether a change at an existing source is a major modification. Collectively, the EPA expects these changes to assist existing major sources to better understand the requirements that might be applicable to planned modifications, and to streamline the permitting process.

First, the proposed rule would eliminate uncertainty caused by the EPA's stay of the 2008 rule and the revisions to the regulatory text made in 2011 to effectuate the stay. Viewing the current text of the CFR, it is difficult to understand the proper treatment of fugitive emissions. The CFR is currently a patchwork of regulations that includes some of the paragraphs promulgated by the 2008 rule (which are stayed, although this may not be readily apparent from the paragraphs themselves)[42] alongside reinstated paragraphs that predated, and conflict with, the stayed paragraphs from the 2008 rule. The proposed changes to remove the remaining stayed portions of the 2008 rule would restore much-needed clarity to the CFR.

Second, the proposed changes would eliminate uncertainty caused by inconsistencies between the EPA's longstanding interpretation of CAA sections 302(j) and 111(a)(4) and the 1980 exemption. As discussed in Section IV.A of this preamble, from 1989 through 2008, the EPA interpreted CAA sections 302(j) and 114(a)(4) to require all existing major sources to include fugitive emissions when determining whether a modification is major. Nonetheless, since 1980 (excepting a brief period in 2009), the NSR regulations have included an exemption allowing certain types of sources to avoid substantive major NSR requirements if a modification would be considered major solely due to the inclusion of fugitive emissions. The EPA's failure to remove this 1980 exemption in 1989 (and in subsequent actions) in light of the agency's interpretation has led to significant confusion for both permitting authorities and the regulated community. Additional confusion has resulted from the imprecise drafting of the 1980 exemption[43] and the fact that this regulatory text reflects outdated applicability procedures.[44] The EPA expects that removing the 1980 exemption to align the regulations with the EPA's longstanding interpretation (which the EPA proposes to affirm in the current action) will further eliminate uncertainty.

The proposed changes provide a more straightforward method for accounting emissions increases and decreases in the context of modifications, which could potentially reduce the administrative burden for certain sources affected by these changes and for permitting authorities processing permit applications. Specifically, if the 2008 rule is repealed and the 1980 exemption is removed, major sources in non-listed categories would no longer have to distinguish between fugitive and non-fugitive emissions in determining whether a future modification is major. Removing this potentially complicated and contentious analytical step from the permitting process would provide greater certainty for sources contemplating modifications and ease the administrative burden for both sources and permitting authorities.[45]

C. Previous Policy Considerations

After reevaluating the policy and programmatic reasons that motivated the 2008 Fugitive Emissions Rule, the EPA no longer views these considerations as warranting the same approach. First, in the 2008 rule, the EPA suggested—without explanation—that it is better to adopt a uniform approach to major source and major modification determinations (that is, to allow the same sources to exclude fugitive emissions from both types of determinations). 73 FR 77888 (December 19, 2008). Upon reflection, the EPA sees little benefit in pursuing this type of ''uniformity'' for uniformity's sake. Most elements of the NSR program make no distinction between stack and fugitive emissions; the ability for non-listed sources to exclude fugitive emissions in initially determining whether they constitute a major source is the unique exception. At a certain point in the NSR applicability evaluation process, *all* sources (including those in non-listed categories) must account for *all* emissions (including fugitive emissions) in determining which substantive requirements apply.[46] Thus, ''uniformity'' in the treatment of fugitive emissions is ultimately illusory. The more pertinent issue is whether the EPA's approach to determining what constitutes a ''major modification'' should align more closely with the preliminary determination of whether a non-listed source is a ''major source'' (where fugitive emissions are excluded), or with consequent determinations concerning the application of substantive major NSR requirements to a major source or modification (where fugitive emissions are included). For the reasons presented in this section, the EPA believes the latter reflects better policy.[47]

The EPA also said in 2008 that its prior approaches had not adequately recognized the regulatory burden associated with requiring all sources to consider fugitive emissions in the major modification context. For support, the EPA explained: ''our interpretation proposed in 1984 and finalized in 1989 imposed a new regulatory burden on major sources in a source category on the section 302(j) list, since their fugitive emissions would be counted in determining whether they had made a change constituting a major modification and thus possibly subjecting those modifications to NSR review.'' 73 FR 77889 (December 19, 2008). While this was a concise summary of the potential effect of the EPA's pre-2008 interpretations (and the one proposed in the current action), this statement did not address or contradict the EPA's more extensive consideration and discussion of the same issue in the interpretive rule proposed in 1984 and finalized in 1989. In these prior documents, the EPA explained that few sources would likely be impacted by the interpretation. *See* 54 FR 48882 (November 28, 1989). The following subsection addresses these potential impacts.

[42] The CFR notations indicating that these provisions are stayed are located at the end of each CFR section, relatively far from the stayed paragraphs themselves.

[43] *See supra* note 10 and accompanying text.

[44] *See supra* note 14 and accompanying text.

[45] These changes would not impact previously issued permits, and would only apply to permits issued after the finalization of this rule or the approval of a SIP reflecting similar changes, depending on the permitting authority.

[46] *See supra* note 6 and accompanying text. Notably, the 2008 Fugitive Emissions Rule itself further codified this principle. *See, e.g.,* 40 CFR 52.21(b)(20)(vii) (2009) (''For all other purposes of this section, fugitive emissions are treated in the same manner as other, non-fugitive emissions. This includes, but is not limited to, the treatment of fugitive emissions for the application of best available control technology (see paragraph (j) of this section), source impact analysis (see paragraph (k) of this section), additional impact analyses (see paragraph (o) of this section), and PALs (see paragraph (aa)(4)(i)(d) of this section).'').

[47] The proposed approach also establishes ''uniformity'' in that all existing major sources are treated the same in the modification context, regardless of source type.

D. Impacts on Regulated Entities

After reevaluating currently available information, the EPA expects that the proposed interpretation, and the resulting revocation of the 2008 Fugitive Emissions Rule and removal of the 1980 exemption will have a limited practical impact and result in limited increased burden for regulated entities, for the following reasons. First, revoking the 2008 Fugitive Emissions Rule should have almost no appreciable impact on the status quo, given that the 2008 rule has been stayed (in some form) since September 2009 (less than a year after becoming effective).

Second, removing the 1980 exemption from the regulations should also have a limited impact. To the EPA's knowledge, the exemption has generally not been relied on by sources, and the population of sources that could invoke the exemption is limited. The changes proposed in this rule would only impact sources that do not belong to a listed source category (as listed sources have to include fugitive emissions for major modification purposes under any scenario). More importantly, it would only impact those non-listed sources that are already considered existing major stationary sources (as major modifications can only occur at existing major sources).[48] Given that non-listed sources do not count fugitive emissions towards major source thresholds, the EPA understands the universe of such sources to be relatively small, particularly for sources of predominantly fugitive emissions that might be most concerned with the EPA's proposed changes. As explained in the EPA's 1989 interpretive rule, the EPA expects that major NSR applicability for sources of predominantly fugitive emissions would, in most situations, be attributable to other existing EPA regulations and policies—such as those defining the scope of a stationary source—and not to the EPA's interpretation of CAA section 302(j) with respect to modifications. *See* 54 FR 48883 (November 28, 1989); *see also* 51 FR 7092 (February 28, 1986). Non-listed sources with large quantities of non-fugitive (stack) emissions are more likely to be considered major sources, and thus could be impacted by this rule. However, the likelihood that such a source (with large amounts of non-fugitive emissions) would undertake a modification that would be major solely due to consideration of the source's fugitive emissions seems remote. In any case, as described in the following paragraphs, the EPA expects that any entities that are affected are likely well-positioned to handle the additional obligations of major NSR review.

The policy considerations that may have motivated Congress to enact CAA section 302(j), and which motivated the EPA's listing of certain source categories but not others in its definition of ''major source,'' are already effectively accomplished by allowing sources in non-listed categories to exclude fugitive emissions when determining whether they constitute a ''major source.'' As discussed in Section IV of this preamble, the sparse legislative history does not express a clear purpose for the treatment of fugitive emissions in CAA section 302(j). However, as the *Alabama Power* court suggested, CAA section 302(j) ''may well define a legislative response to the policy considerations presented by the regulation of sources where the predominant emissions are fugitive in origin, particularly fugitive dust.'' 636 F.2d at 369. The court also noted that the provision ''gives EPA flexibility to provide industry-by-industry consideration and appropriate tailoring of coverage.'' *Id.* The EPA believes that the industry-specific coverage afforded by allowing sources in non-listed source categories to omit fugitive emissions in determining whether they are a ''major source'' is sufficient coverage for NSR purposes. As noted in the preceding paragraph, by omitting fugitive emissions in determining whether a non-listed source is a major source, this significantly reduces the possibility that such a source of predominantly fugitive emissions would be considered major, accordingly limiting the possibility that future modifications at such a source would trigger major source NSR.

To the extent that any sources are impacted by this rule, such sources will, by definition, be existing major stationary sources. In the specific context at issue here, these sources are likely to be large, relatively well-resourced operations, given that their emissions will necessarily generally exceed 250 tons per year for at least one pollutant *even before considering fugitive emissions.* Thus, although these major sources do not belong to a listed source category, they nonetheless represent the type of ''facilities, which, due to their size, are financially able to bear the substantial regulatory costs imposed by the PSD provisions and which . . . are primarily responsible for emissions of the deleterious pollutants that befoul our nation's air.'' [49] If these facilities were constructed anew, they would be subject to the major NSR program (and, presumably, many if not most of these sources have already been through the major NSR permitting process). These sources should be familiar with the NSR program and able to manage any additional obligations imposed by this proposed regulatory change.

Accordingly, in light of these policy considerations and the legal constraints discussed in Section IV.C of this preamble, the EPA does not consider it necessary or prudent to extend a second, additional exemption to these existing major sources that are contemplating modifications, as the EPA did in the Fugitive Emissions Rule. Doing so would unnecessarily render future modifications less likely to trigger major NSR review, even in cases where a modification would significantly increase actual air pollution, frustrating the ultimate goals of the major NSR program (as discussed in Section V.A of this preamble). Overall, the EPA believes the interpretation and regulatory approach proposed in the current action strikes the appropriate balance to protect air quality while ensuring ''that economic growth will occur in a manner consistent with the preservation of existing clean air resources.'' 42 U.S.C. 7470(3).

The EPA's proposed conclusions regarding the limited potential impact of this action are based on the agency's experience over the past 4 decades as well as feedback received from stakeholders on prior actions. However, the EPA solicits additional comments from stakeholders on the practical impact of the proposed action, including the scope of overall programmatic impacts (*e.g.,* how many sources might be affected). Specifically, the EPA seeks information on the types and numbers of existing major sources that do not belong to a listed source category and that have predominantly fugitive emissions, or which might otherwise be affected by this rule. As

[48] Although physical changes to existing non-major sources could trigger major NSR if the physical change itself exceeded major source thresholds, this would not be considered a ''major modification,'' but rather, a new ''major source.'' *See, e.g.,* 40 CFR 52.21(b)(1)(i)(*c*). Thus, consideration of fugitive emissions in this context would be governed by the EPA's long-standing regulations governing the treatment of fugitive emissions in major source determinations, and non-listed sources would not count fugitive emissions towards the threshold.

[49] *Alabama Power,* 636 F.2d at 353 (explaining Congress's intention in establishing the definition of ''major emitting facility'' and ''major stationary source'' for PSD purposes in CAA section 169(1)). As the court stated, ''the Act does not give the agency a free hand authority to grant broad exemptions. Though the costs of compliance with section 165 [PSD] requirements are substantial, they can reasonably be borne by facilities that actually emit, or would actually emit when operating at full capacity, the large tonnage thresholds [for major stationary sources] specified in section 169(1).'' *Id.* at 354.

noted in the previous paragraphs, the EPA expects the number of such sources to be relatively small, but the EPA would welcome more quantitative information on this topic. Relatedly, the EPA solicits information about specific real-world or hypothetical examples of situations where a particular type of source might be affected by the proposed changes (*e.g.,* how the changes might impact a regulated entity's behavior in considering whether to undertake a modification).

VI. SIP Minimum Program Elements

If the EPA affirms the interpretation of CAA sections 302(j) and 111(a)(4) discussed in Section IV.C of this preamble—*i.e.,* that all existing major sources must account for fugitive emissions in determining whether a modification is major—the EPA proposes that the changes to the EPA regulations reflected in this rule would also be minimum program elements for SIPs. If this rule is finalized as proposed, it is likely that any SIPs containing an exemption for fugitive emissions in the major modification context will be less stringent than the minimum program elements specified in the EPA's regulations and would therefore need to be revised. The scope of necessary SIP revisions would be a case-specific inquiry and would depend on the nature of any final changes to the EPA's regulations as well as the nature of existing SIP provisions. Based on a preliminary review of existing EPA-approved SIPs, the EPA observes that very few state or local agencies have EPA-approved SIP provisions based on, or incorporating, the 2008 Fugitive Emissions Rule. This makes sense considering that the EPA stayed and amended the 2008 rule shortly after it became effective, leaving a relatively small window of time for states to adopt revisions based on the 2008 rule. However, the EPA understands that significantly more SIPs contain provisions based on, or incorporating, the 1980 exemption (as recodified in the 2002 NSR Reform Rule). Accordingly, if the EPA finalizes a rule that not only repeals the 2008 rule, but also removes the 1980 exemption from the EPA's regulations, a larger number of permitting authorities may be required to submit SIP revisions. If the EPA determines that conforming SIP revisions are necessary, states would be required to submit SIP revisions no later than three years after the final rule amending the EPA's regulations publishes in the **Federal Register**. 40 CFR 51.166(a)(6)(i). The EPA is soliciting comment on the need to establish the proposed changes as minimum program elements and the consequent potential for SIP revisions.

VII. Definition of ''Fugitive Emissions''

Fugitive emissions, for purposes of both the NSR and title V permitting programs, are defined as ''emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.'' *E.g.,* 40 CFR 52.21(b)(20), 70.2. The 2008 Fugitive Emissions Rule did not change this regulatory definition, but the preamble to that rule did include a discussion of ''guiding principles'' based on the EPA's interpretation of this regulatory definition. *See* 73 FR 77891 (December 19, 2008). Most of the principles articulated in the 2008 preamble simply restated or summarized prior EPA letters and memoranda expressing the EPA's interpretations and policies on the issue.[50] The EPA continues to follow its interpretations and policies concerning the definition of ''fugitive emissions'' that predated the 2008 rule, including those that were restated and summarized in the 2008 rule preamble. These positions were not affected by the 2008 rule or the stays of the 2008 rule. The EPA is providing the following summary of these interpretations and policies in order to provide clarity and certainty about how EPA intends to approach these issues.

Determining whether certain emissions are fugitive or non-fugitive at a particular source is inherently a fact-specific inquiry. All emissions which do actually pass through a stack, chimney, vent, or other functionally equivalent opening at a facility are non-fugitive. If emissions do not currently pass through such an opening, then one must evaluate whether such emissions could reasonably pass.[51] The EPA interprets the phrase ''reasonably pass'' by determining whether emissions could reasonably be collected or captured and discharged through a stack, chimney, vent, or functionally equivalent opening. Various criteria guide this case-by-case analysis, and no single criterion should be considered determinative. Relevant considerations include whether and to what extent similar facilities collect or capture similar emissions (including how common this practice is, and whether the EPA has established a national emissions standard or regulation that requires some sources in the source category to collect or capture the emissions) and the technical and economic feasibility (*e.g.,* cost) of collecting or capturing the emissions.

In addition to outlining these longstanding interpretations and policies, the preamble to the 2008 Fugitive Emissions Rule also expanded some of the factors that permitting authorities may consider when assessing whether certain emissions are fugitive or non-fugitive. Notably, the EPA said for the first time in the 2008 preamble that permitting authorities could consider the cost of *controlling* emissions when determining whether such emissions ''could not reasonably pass'' and accordingly whether such emissions should be considered fugitive or non-fugitive. The EPA understands that the stay of the 2008 rule left a question of whether EPA continued to support considering the cost of control in identifying whether emissions are fugitive. The EPA intended the initial 2009 stay (and all subsequent stays) of the 2008 Fugitive Emissions Rule to apply to the entire rulemaking effort, including the discussion of the definition of ''fugitive emissions'' contained within the rule's preamble. Thus, the EPA statements regarding the cost of control were also stayed and were not applied by EPA thereafter. Likewise, these statements regarding cost of control do not reflect the EPA's current thinking and should not be relied upon by states or sources in making permitting decisions. Instead, the EPA continues to apply the longstanding interpretations and policies that predated the 2008 rule, as summarized in the preceding paragraphs.

Although the EPA does not propose in this action to revise its longstanding approach for evaluating this issue, the EPA welcomes public comment on how to interpret and apply the definition of ''fugitive emissions'' in the NSR and

[50] For examples of these prior guidance documents, please see the EPA's online NSR and title V guidance databases, each of which include a topic page containing guidance related specifically to fugitive emissions: *https://www.epa.gov/nsr/new-source-review-policy-and-guidance-document-index* and *https://www.epa.gov/title-v-operating-permits/title-v-operating-permit-policy-and-guidance-document-index.*

[51] When the EPA finalized the definition of ''fugitive emissions'' in the 1980 PSD rulemaking to include the words ''reasonably pass,'' the agency explained that it did so in order to narrow the proposed definition of fugitive emissions to exclude not only those emissions that currently do pass through a stack, chimney, vent, or functionally equivalent opening, but also to those that do not currently pass but which could reasonably be made to pass through such an opening. The EPA explained: ''This change will ensure that sources will not discharge as fugitive emissions those emissions which would ordinarily be collected and discharged through stacks or other functionally equivalent openings, and will eliminate disincentives for the construction of ductwork and stacks for the collection of emissions.'' 45 FR 52693 (August 7, 1980).

title V regulations. To the extent that the EPA seeks to provide additional guidance on applying the definition of ''fugitive emissions'' in the future, any such guidance may be provided alongside, or separate from, any final action in this rulemaking concerning the treatment of fugitive emissions for major modifications. In the meantime, the EPA will continue to be responsive to case-specific inquiries from permitting authorities and regulated entities requesting the EPA's views on whether certain emissions should be considered fugitive or non-fugitive.

VIII. Environmental Justice Considerations

The proposed changes are not expected to have any effect or increased burden on communities with environmental justice concerns. Although the impact of this proposal is expected to be limited, requiring all existing major sources to include fugitive emissions in determining whether a change constitutes a major modification could potentially result in more projects subject to major NSR and installing pollution controls, improving the air quality for all communities, particularly those located near major sources with a large proportion of fugitive emissions.

IX. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Pursuant to E.O. 12866, the EPA has assessed the potential costs and benefits of this regulatory action. EPA believes the rule will have a limited practical impact and result in limited increased burden for regulated entities, as discussed in Section V.D. Any changes made in response to OMB recommendations have been documented in the docket.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2060–0003 for the PSD and NNSR permit programs. The burden associated with obtaining an NSR permit for a major stationary source undergoing a major modification is already accounted for under the approved information collection requests. A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. In general, major stationary sources undergoing major modifications are not small entities, as discussed in Section V of this preamble. State and local air agencies that could be affected by this rule do not qualify as small entities under the RFA.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded federal mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Nonetheless, if this rule is finalized as proposed, it is possible that some state and local air agencies will need to submit a small, one-time revision to their SIP. However, the rule could ultimately reduce regulatory impacts for these state and local agencies (and potentially affected sources) because they would no longer have to expend resources differentiating between fugitive and non-fugitive emissions when assessing whether a project constitutes a major modification.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. The EPA is currently the reviewing authority for PSD and NNSR permits issued in tribal lands and, as such, the revisions being proposed will not impose direct burdens on tribal authorities. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. Industries directly involved in energy production (*e.g.,* fossil fuel-fired power plants) will not be affected by this rule because they belong to a listed source category, and this rule only pertains to sources in non-listed source categories. As discussed in Section V of this preamble, the EPA considers it unlikely that this rule would affect other industries involved in energy supply that do not belong to a listed source category (*e.g.,* surface coal mining).

I. National Technology Transfer and Advancement Act (NTTA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The basis for this decision is contained in Section VIII of this preamble.

X. Statutory Authority

The statutory authority for this action is provided by 42 U.S.C. 7401 *et seq.*

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure,

Air pollution control, Carbon monoxide, Fees, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile organic compounds.

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Ammonia, Carbon monoxide, Greenhouse gases, Intergovernmental relations, Lead, Nitrogen dioxide, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Sulfur dioxide, Sulfur oxides, Volatile organic compounds.

Michael S. Regan,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

§ 51.165 [Amended]

■ 2. Amend § 51.165 by:
■ a. Lifting the stay on paragraphs (a)(1)(v)(G) and (a)(1)(vi)(C)(*3*);
■ b. Removing paragraphs (a)(1)(v)(G) and (a)(1)(vi)(C)(*3*); and
■ c. Removing and reserving paragraph (a)(4).

§ 51.166 [Amended]

■ 3. Amend § 51.166 by:
■ a. Lifting the stay on paragraphs (b)(2)(v) and (b)(3)(iii)(*d*);
■ b. Removing paragraphs (b)(2)(v) and (b)(3)(iii)(*d*); and
■ c. Removing and reserving paragraph (i)(1)(ii).

Appendix S to Part 51 [Amended]

■ 4. Amend appendix S to part 51 by:
■ a. Lifting the stay on paragraph II.A.5(vii);
■ b. Removing paragraph II.A.5(vii); and
■ c. Removing and reserving paragraph II.F.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

§ 52.21 [Amended]

■ 6. Amend § 52.21 by:
■ a. Lifting the stay on paragraphs (b)(2)(v) and (b)(3)(iii)(*c*);
■ b. Removing paragraphs (b)(2)(v) and (b)(3)(iii)(*c*); and
■ c. Removing and reserving paragraph (i)(1)(vii).

[FR Doc. 2022–22259 Filed 10–13–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0503; FRL–9936–01–R9]

Air Plan Approval; California; Innovative Clean Transit Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the California State Implementation Plan (SIP) concerning particulate matter (PM) and oxides of nitrogen (NO_X) emissions from public transit buses. We are proposing to approve State rules that regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before November 14, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0503 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jeffrey Buss, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4152 or by email at *buss.jeffrey@epa.gov.*

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

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I. The State's Submission

A. What rules did the State submit?

On December 14, 2018, the California Air Resources Board (CARB) adopted a set of rules referred to as the Innovative Clean Transit (ICT) regulation. On August 13, 2019, the California Office of Administrative Law (OAL) approved the ICT regulation, effective October 1, 2019. On February 13, 2020, CARB submitted the ICT regulation to the EPA as a revision to the California SIP.[1] Table 1 lists the specific sections of Title 13, Division 3, Chapter 1, Article 4.3 of the California Code of Regulations (CCR) that comprise the ICT regulation.

[1] CARB submitted the ICT Regulation electronically to the EPA on February 13, 2020 as an attachment to a letter dated February 12, 2020.

TABLE 1—SUBMITTED RULES

Agency	Section No. 13 CCR	Rule title	State effective date	Submission date
CARB	2023	Innovative Clean Transit Regulations Applicability and Scope	10/01/2019	02/13/2020
CARB	2023.1	Zero-Emission Bus Requirements	10/01/2019	02/13/2020
CARB	2023.2	Compliance Option for Joint Zero-Emission Bus Groups	10/01/2019	02/13/2020
CARB	2023.3	Zero-Emission Bus Bonus Credits	10/01/2019	02/13/2020
CARB	2023.4	Provisions for Exemption of a Zero-Emission Bus Purchase	10/01/2019	02/13/2020
CARB	2023.5	Zero-Emission Mobility Option	10/01/2019	02/13/2020
CARB	2023.6	Low-NO_X Engine Purchase Requirements	10/01/2019	02/13/2020
CARB	2023.7	Requirements to Use Renewable Fuels	10/01/2019	02/13/2020
CARB	2023.8	Reporting Requirements for Transit Agencies	10/01/2019	02/13/2020
CARB	2023.9	Record Keeping Requirements	10/01/2019	02/13/2020
CARB	2023.10	Authority to Suspend, Revoke or Modify	10/01/2019	02/13/2020
CARB	2023.11	Severability	10/01/2019	02/13/2020

In addition to the Final Regulation Order and documentation of OAL approval, CARB's February 13, 2020 SIP submission includes CARB Staff Report: Initial Statement of Reasons (August 7, 2018) and related appendices; the Notice of Public Hearing, dated July 24, 2018, for a hearing on September 27, 2018; CARB Resolution 18–60 (December 14, 2018) through which CARB adopted the ICT regulation; and the Final Statement of Reasons (June 2019) and related appendices. On August 13, 2019, the submission from CARB was deemed by operation of law to meet the completeness criteria in 40 CFR part 51, appendix V.[2]

On August 11, 2022, CARB supplemented the February 13, 2020 SIP submission.[3] The August 11, 2022 supplement includes certain additional definitions codifed in the CCR or California Health & Safety Code (CH&SC) that are relied upon in the ICT regulation. The specific definitions submitted on August 11, 2022 are listed in table 2.

TABLE 2—SUBMITTED ADDITIONAL DEFINITIONS RELIED UPON BY THE ICT REGULATION

Agency	CCR, CH&SC or CVC section	Title	State effective date
CARB	CH&SC 39012	Air Basin	01/01/1976
CARB	17 CCR 95481(a)(30)	Untitled but defines the term "compressed natural gas (CNG)"	07/01/2020
CARB	13 CCR 2208(c)(18)	Untitled but defines the term "Low-NO_X engine"	10/16/2017
CARB	17 CCR 60100(e)	Untitled but defines the Sonoma County portion of the North Coast Basin.	07/05/1978
CARB	17 CCR 60013	Lake Tahoe Air Basin	01/30/1976
CARB	17 CCR 95481(a)(130)	Untitled but defines the term "Renewable hydrocarbon diesel"	07/01/2020
CARB	17 CCR 95481(a)(22)	Untitled but defines the term "Biomethane"	07/01/2020
CARB	13 CCR 2020(b)	Definitions	01/02/2010

B. Are there other versions of these rules?

The ICT regulation replaces an earlier CARB regulation referred to as the Fleet Rule for Transit Agencies. CARB originally adopted the Fleet Rule for Transit Agencies in 2000, and amended the rule in 2004 and 2006. The Fleet Rule for Transit Agencies was never submitted or approved as part of the California SIP.

C. What is the purpose of the submitted rules?

Emissions of PM, including PM equal to or less than 2.5 microns in diameter ($PM_{2.5}$) and PM equal to or less than 10 microns in diameter (PM_{10}), contribute to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Additionally, emissions of NO_X contribute to the production of ground-level ozone, which harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM and NO_X emissions.

The purpose of the ICT regulation is to transition California public transit bus fleets to zero-emission technologies by 2040. The ICT regulation was developed to ensure transit service integrity and program feasibility through this transformation. The ICT regulation was included as one of the regulatory measures adopted by CARB in the 2016 State SIP Strategy to achieve emissions reductions of NO_X and PM emissions needed to attain the National Ambient Air Quality Standard (NAAQS), particularly in the South Coast and San Joaquin Valley air quality planning areas.[4] Furthermore, CARB notes that the ICT regulation furthers state environmental justice goals by transitioning to clean transportation modes in low-income and disadvantaged communities.[5]

As adopted, CARB estimates that the ICT regulation will reduce NO_X and PM emissions by approximately 7,032 and 39.4 tons, respectively, on a statewide

[2] *See* CAA section 110(k)(1)(B).

[3] Shirin Barfjani, Air Pollution Specialist, CARB, email correspondence to Jeffrey Buss, EPA Region 9, August 11, 2022.

[4] CARB, Revised Proposed 2016 State Strategy for the State Implementation Plan, March 7, 2017, pages 69–71. The EPA approved the 2016 State SIP Strategy as a revision to the California SIP at February 12, 2019, 84 FR 3302; corrected at May 3, 2019, 84 FR 19680; and at October 1, 2019, 84 FR 52005.

[5] CARB; Public Hearing to Consider the Proposed Innovative Clean Transit Regulation, a Replacement of the Fleet Rule for Public Agencies; Staff Report: Initial Statement of Reasons; Date of Release: August 7, 2018 (''CARB's ICT Staff Report''); chapter 7 (''Environmental Justice'').

basis between 2020 and 2050.[6] In addition, CARB anticipates that the Zero-Emission Bus (ZEB) technologies deployed under the ICT regulation will assist the future advanced technology deployment in other heavy-duty on-road sectors to further help achieve the emission reduction goals identified in the 2016 State SIP Strategy.

D. What requirements does the regulation establish?

The ICT regulation applies to any public transit agency that owns, operates, leases, rents, or contracts with another entity to operate buses in California, but the term ''transit agency'' does not mean a correctional facility, airport, college or university, national park, tour bus service provider, or an entity that provide shuttle services solely for patrons of its organization.[7] The regulation also does not apply to school buses, vehicles on rails, or trolleybuses even if operated by a public transit agency and does not apply to Caltrans, Caltrain, Amtrak, or any local school district.[8]

CARB's ICT regulation requires public transit agencies to submit a ZEB Rollout Plan approved by the applicable governing board that demonstrates how the agency plans for ZEB purchase and infrastructure buildout, and associated financial planning and workforce training by certain deadlines established in the regulation.[9] The regulation also establishes ZEB purchase requirements that provide for an increasing percentage of new buses [10] to be ZEBs such that, by January 1, 2029, all new bus purchases must be ZEBs.[11]

The regulation also provides for waivers for early compliance and provides certain compliance flexibility through provisions allowing pooling of resources among multiple transit agencies, establishing options for other, zero-emission transit services and allowing extensions or exemptions from ZEB purchase requirements for circumstances outside the transit agency's control.[12] The ICT regulation also requires generally that, when new conventional internal combustion engine bus or hybrid bus purchases are made, transit agencies must purchase buses with low-NO_X engines that meet certain criteria if low-NO_X engines are available for the bus type and propulsion system type being purchased.[13] For large transit agencies, the ICT regulation requires them to use renewable diesel or natural gas to fuel their buses that have not yet converted to ZEBs.[14] Finally, the ICT regulation includes reporting and recordkeeping requirements to ensure compliance with the regulation.[15]

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the regulation?

The EPA has evaluated the ICT regulation against the applicable procedural and substantive requirements of the CAA for SIPs and SIP revisions and has concluded that the ICT regulation meets all of the applicable requirements. Generally, SIPs must include enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary to meet the requirements of the Act [see CAA section 110(a)(2)(A)]; must provide necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out such SIP (and is not prohibited by any provision of federal or state law from carrying out such SIP) [see CAA section 110(a)(2)(E)]; must be adopted by a state after reasonable notice and public hearing [see CAA section 110(l)], and must not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act [see CAA section 110(l)].[16]

B. Does the regulation meet the evaluation criteria?

1. Did the State provide for reasonable public notice and hearing prior to adoption?

Under CAA section 110(l), SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. In 40 CFR 51.102(d), we specify that reasonable public notice in this context refers to at least 30 days. The ICT regulation was adopted by the CARB Board on December 14, 2018, through Resolution 18–60 following a public hearing held on that same day.[17] Prior to adoption, CARB published notice of a September 27, 2018 public hearing on July 24, 2018, and provided a 45-day comment period.[18] CARB subsequently provided public notice and a 15-day comment period on modifications made to the original draft regulation that was the subject of the September 27, 2018 hearing. The CARB Executive Officer submitted the final ICT rulemaking package to the California Office of Administrative Law (OAL) on July 3, 2019. OAL approved the rulemaking and filed with the California Secretary of State on August 13, 2019. The effective date under State law is October 1, 2019. CARB submitted the OAL-approved Final Regulation Order to the EPA on February 13, 2020, along with various other materials comprising the SIP submission package, including copies of public comments received during the two comment periods and CARB's responses to the comments.

Based on the materials provided in the February 13, 2020 SIP submission and summarized above, we find that CARB has met the procedural requirements for adoption and submission of SIPs and SIP revisions under CAA section 110(l) and 40 CFR 51.102.

2. Does the State have adequate legal authority to implement the regulation?

CARB has been granted both general and specific authority under the CH&SC to adopt and implement these regulations. CH&SC sections 39600 (''Acts required'') and 39601 (''Adoption of regulation; Conformance to federal law'') confer on CARB the general authority and obligation to adopt regulations and measures necessary to execute CARB's powers and duties imposed by State law. CH&SC sections 43013(a) and 43018 provide broad authority to achieve the maximum feasible and cost-effective emission

[6] CARB's ICT Staff Report, page IV–2.

[7] 13 CCR 2023(a)(1) and (b)(51).

[8] 13 CCR 2023(a)(2).

[9] 13 CCR 2023 and 2023.1.

[10] Under the ICT regulation, the term ''bus'' means a rubber-tire vehicle designed to transport passengers by road with gross vehicle weight rating (GVWR) greater than 14,000 pounds. See 13 CCR 2023(b)(6).

[11] 13 CCR 2023.1.

[12] 13 CCR 2023.1, 2023.2 and 2023.4.

[13] 13 CCR 2023.6

[14] 13 CCR 2023.7.

[15] 13 CCR 2023.8 and 2023.9.

[16] CAA section 193, which prohibits any pre-1990 SIP control requirement relating to nonattainment pollutants in nonattainment areas from being modified unless the SIP is revised to insure equivalent or greater emission reductions of such air pollutants, does not apply to the ICT rgulation because it does not represent pre-1990 SIP control requirements.

[17] CARB Resolution 18–60 (page 4) states: ''WHEREAS, In March 2017, the Board adopted the State Strategy for the State Implementation Plan, which identifies the deployment of zero-emission buses as a necessary component for California to achieve established near- and long-term air quality and climate mitigation targets (Resolution 17–7, March 23, 2017).''

[18] The July 24, 2018 public notice (page 20) states: ''If adopted by CARB, CARB plans to submit the proposed regulatory action to the United States Environmental Protection Agency (U.S. EPA) for approval as a revision to the California State Implementation Plan (SIP) required by the federal Clean Air Act (CAA). The adopted regulatory action would be submitted as a SIP revision because it amends regulations intended to reduce emissions of air pollutants in order to attain and maintain the National Ambient Air Quality Standards promulgated by U.S. EPA pursuant to the CAA.''

reductions from all mobile source categories, including both on-road and off-road diesel engines.

Moreover, we know of no obstacle under Federal or State law in CARB's ability to implement the regulations. As a general matter, the CAA assigns mobile source regulation to the EPA through title II of the Act and assigns stationary source regulation and SIP development responsibilities to the states through title I of the Act. More specifically, with respect to new motor vehicles, CAA section 209(a) provides that no state or any political subdivision may adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines. CAA section 209(b) provides that the EPA must issue waivers to California for standards otherwise preempted under CAA section 209(a) if certain criteria are met. However, in this instance, CARB is setting forth requirements related to transit bus purchases directed at public transit agencies and has not adopted or attempted to enforce a ''standard'' relating to the control of emissions from new motor vehicles for the purposes of CAA section 209(a) (*e.g.,* CARB has not set a regulatory requirement on private fleet operator purchases within the State).[19] Consequently, the ICT regulation is not preempted under CAA section 209(a) and does not require an EPA waiver under CAA section 209(b). The ICT regulation, however, does reduce emissions from a certain class of public vehicles and therefore is more stringent than the otherwise applicable State or Federal standards.

3. Is the regulation enforceable as required under CAA section 110(a)(2)?

We have evaluated the enforceability of the ICT regulation with respect to applicability and exemptions; standard of conduct and compliance dates; sunset provisions; discretionary provisions; and test methods, recordkeeping and reporting,[20] and have concluded for the reasons given below that the regulation is enforceable for the purposes of CAA section 110(a)(2).

First, with respect to applicability, we generally find that the ICT regulation is sufficiently clear as to which entities are subject to the requirements in the regulation and which entities are exempt.[21] Second, we find that the ICT regulation is, as a general matter, sufficiently specific so that the persons affected by the regulation are fairly on notice as to what the requirements and related compliance dates are.[22] To a large extent, we have already described the substantive requirements and compliance dates set forth in the ICT regulation in section I.D of this document. We note, however, that the definitions set forth in the ICT regulation cite to other sections of California code or regulation, and thus, the definitions in the ICT regulation would be ambiguous for the purposes of enforcement of the SIP unless the other sections of California code or regulation on which the ICT regulation relies are submitted and approved into the SIP along with the ICT regulation. On August 11, 2022, CARB supplemented the original SIP submission with additional sections of California code or regulation on which the ICT regulation relies (see table 2, above) to the EPA for SIP approval to avoid the potential ambiguity in the ICT regulation. With respect to compliance dates, we note that no compliance date in the ICT regulation extends past January 1, 2029, which is consistent with the attainment needs for California with respect to the attainment deadline for the South Coast and San Joaquin Valley ''Extreme'' nonattainment areas for the 2008 ozone NAAQS.

Third, the ICT regulation does not include sunset provisions. Fourth, we note that the ICT regulation does not contain provisions that allow for discretion on the part of CARB's Executive Officer. Such ''director's discretion'' provisions can undermine enforceability of a SIP regulation, and thus prevent full approval by EPA. In the case of the ICT regulation, the regulation allows transit agencies to request an exemption from the ZEB requirement under certain specified circumstances. Specifically, under 13 CCR 2023.4, transit agencies may request an exemption from purchasing ZEBs under any of five circumstances, all of which must be outside the transit agencies' control. Exemptions are allowed when:

1. a delay in bus delivery is caused by a setback in the construction of infrastructure needed for the ZEB;

2. available ZEBs cannot meet a transit agency's daily mileage needs;

3. available ZEBs do not have adequate gradeability performance to meet the transit agency's daily needs for any bus in its fleet;

4. a required ZEB type for the applicable weight class (based on gross vehicle weight rating (GVWR)) is unavailable for purchase; or

5. the ZEB purchase requirements in section 2023.1(a) cannot be met due to financial hardship.[23]

In each instance, the regulation sets forth the documentation required to establish an exemption, and, if fulfilled, the CARB Executive Officer must issue the exemption, thereby avoiding problematic ''director's discretion'' with respect to the issuance of exemptions by the CARB Executive Officer. Lastly, the ICT regulation includes recordkeeping and reporting requirements that are sufficient to ensure compliance with the applicable requirements.[24]

4. Do the regulations interfere with reasonable further progress (RFP) and attainment or any other applicable requirement of the Act?

The ICT regulation is an outgrowth of a commital measure for further deployment of zero-emission bus technologies in the public transit sector that was adopted by CARB in the 2016 State SIP Strategy. The ICT regulation would achieve incremental emissions reductions needed to attain the NAAQS, particularly in the South Coast and San Joaquin Valley air quality planning areas. Thus, we find that the approval of the ICT regulation is consistent with CAA section 110(l) and would not interfere with RFP, attainment or any other applicable requirement of the Act.

5. Will the State have adequate personnel and funding for the regulations?

Chapter XIII of CARB's ICT Staff Report addresses economic impacts associated with the ICT regulation, including personnel requirements for CARB and fiscal impacts to public transit agencies. CARB's economic impacts assessment concludes that the ICT regulation would require only one additional person-year for developing a reporting system and updating fleet information prior to initial reporting in 2020, assisting transit agencies with compliance and annual reporting,

[19] See *Engine Manufacturers Ass'n* v. *South Coast Air Quality Management District,* 541 U.S. 246 (2004) and subsequent history at 2005 WL 1163437 (C.D. Cal. 2005) and 498 F.3d. 1031 (9th Cir. 2007).

[20] These concepts are discussed in detail in an EPA memorandum from J. Craig Potter, EPA Assistant Administrator for Air and Radiation, et al., titled ''Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency,'' dated September 23, 1987.

[21] 13 CCR 2023.

[22] 13 CCR 2023.1.

[23] Financial hardship would be granted if a fiscal emergency is declared under a resolution by a transit agency's governing body following a public hearing, a transit agency can demonstrate that it cannot offset the incremental cost of purchasing all available zero-emission buses when compared to the cost of the same type of conventional bus, or a transit agency can demonstrate that it cannot offset the managed, net electricity cost for depot charging battery electric buses when compared to the fuel cost of the same type of conventional internal combustion engine buses. 13 CCR 2023.4(c)(5)(A).

[24] 13 CCR 2023.8 and 2023.9.

disseminating information to transit fleets, and enforcement (including auditing reported information, and site visits to confirm vehicle equipment).[25] As such, we find that CARB has adequate personnel and funding for the ICT regulation.

6. EPA's Regulation Evaluation Conclusion

Based on the above discussion, we believe these regulations are consistent with the relevant CAA requirements, policies and guidance.

C. The EPA's Recommendations To Further Improve the Rules

Several of the defined terms in the ICT regulation reference definitions set forth in paragraphs of other CCR sections that have been renumbered since the ICT regulation was adopted. The cross-references should be updated when CARB next considers amendments to the ICT regulation. The specific defined terms with the outdated CCR references include: (1) the term ''compressed natural gas (CNG),'' which should be updated to cite 17 CCR 95481(a)(30) rather than 17 CCR 95481(a)(27); (2) the term ''renewable hydrocarbon diesel,'' which should be updated to cite 17 CCR 95481(a)(130) rather than 17 CCR 95481(a)(123); and (3) the term ''biomethane,'' which should be updated to cite 17 CCR 95481(a)(22) rather than 17 CCR 95481(a)(20).

D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted ICT regulation because it fulfills all relevant requirements. We will accept comments from the public on this proposal until November 14, 2022. If we take final action to approve the submitted ICT regulation, our final action will incorporate the associated rules into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the California rules listed in tables 1 and 2 and discussed in Section I of this preamble. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Innovative Clean Transit regulation furthers state environmental justice goals by transitioning to clean transportation modes in low-income and disadvantaged communities. There is no information in the record inconsistent with the stated goals of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

List of Subjects in 40 CFR Part 52

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

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

Dated: October 3, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2022–21910 Filed 10–13–22; 8:45 am]

BILLING CODE 6560–50–P

[25] CARB's ICT Staff Report, page VIII–28.

FEDERAL MARITIME COMMISSION

46 CFR Part 541

[Docket No. FMC–2022–0066]

RIN 3072–AC90

Demurrage and Detention Billing Requirements

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission (Commission) is seeking public comment on a proposed rule that requires common carriers and marine terminal operators to include specific minimum information on demurrage and detention invoices and outlines certain billing practices relevant to appropriate timeframes for issuing invoices, disputing charges with the billing party, and resolving such disputes. The proposed rule addresses considerations identified in the Ocean Shipping Reform Act of 2022. The proposed rule would adopt minimum information that common carriers must include in a demurrage or detention invoice; add to this list additional information that must be included in or with a demurrage or detention invoice; further define prohibited practices by clarifying which parties may be appropriately billed for demurrage or detention charges; and establish billing practices that billing parties must follow when invoicing for demurrage or detention charges.

DATES: Submit comments on or before December 13, 2022.

ADDRESSES: You may submit comments by using the Federal eRulemaking Portal at *www.regulations.gov,* under Docket No. FMC–2022–0066, Demurrage and Detention Billing Requirements. Please refer to the ''Public Participation'' heading under the **SUPPLEMENTARY INFORMATION** section of this notice for detailed instructions on how to submit comments, including instructions on how to request confidential treatment and additional information on the rulemaking process.

FOR FURTHER INFORMATION CONTACT: William Cody, Secretary; Phone: (202) 523–5908; Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction and Background

As rising cargo volumes have increasingly put pressure on common carrier, port and terminal performance, demurrage and detention charges have for a variety of reasons substantially increased. For example, over a two-year period between 2020 and 2022, nine of the largest carriers serving the U.S. liner trades individually charged a total of approximately $8.9 billion in demurrage and detention charges and collected roughly $6.9 billion.[1] On July 28, 2021, Commissioner Rebecca F. Dye, the Fact Finding Officer for Fact Finding Investigation No. 29, *International Ocean Transportation Supply Chain Engagement* (Fact Finding No. 29), recommended, among other things, that the Commission ''[i]ssue an [Advance Notice of Proposed Rulemaking (ANPRM)] seeking industry input on whether the Commission should require common carriers [2] and marine terminal operators (MTOs) to include certain minimum information on or with demurrage and detention billings and adhere to certain practices regarding the timing of demurrage and detention billings.'' [3] The Fact Finding Officer expressed concern about certain demurrage and detention billing practices and a need to ensure that it is clear to shippers ''what is being billed by whom'' so that they can understand the charges.[4] The Commission approved this Fact Finding 29 recommendation on September 15, 2021.[5]

On February 15, 2022, the Commission issued an ANPRM to request industry views on potential demurrage and detention billing requirements.[6] Specifically, the Commission requested comments on whether a proposed regulation on demurrage and detention billing practices should apply to non-vessel-operating common carriers (NVOCCs) as well as vessel-operating common carriers (VOCCs), and whether the regulations should differ based on whether the billing party is a NVOCC or a VOCC.[7] The Commission also requested comments on whether proposed regulations on demurrage and detention billings should apply to MTOs.[8]

In addition to requesting comments regarding the applicability of demurrage and detention billing requirements to parties such as NVOCCs and MTOs, the Commission also requested comments on what information should be required in demurrage and detention invoices.[9] In addition to information necessary to identify the shipment (bill of lading number, container number, etc.), the Commission asked whether bills should include information on how the billing party calculated demurrage and detention charges.[10] For example, the Commission requested comments on whether it should require the billing party to include the following information: identifying clear and concise container availability dates in addition to vessel arrival dates for import shipments; and, for export shipments, the earliest return dates (and any modifications to those dates) as well as the availability of return locations and appointments, where applicable.[11] The Commission also requested comments on whether the bills should include information on any events (*e.g.,* container unavailability, lack of return locations, appointments, or other force-majeure reasons) that would justify stopping the clock on charges.[12]

In the ANPRM, the Commission stated that it was considering whether it should require common carriers and MTOs to adhere to certain practices regarding the timing of demurrage and detention billings. The Commission sought comments on whether the Commission should require billing parties to issue demurrage or detention invoices within 60 days after the charges stopped accruing.[13] The Commission stated that the Uniform Intermodal Interchange Agreement (UIIA) [14] on which the industry relies currently requires that invoices be issued within 60 days and asked whether the 60-day timeframe was effective in addressing concerns raised by billing parties, or whether a longer or shorter time period would be more appropriate.[15] In addition, the Commission requested comments on whether it should regulate the timeframe for refunds and, if so, what would be an appropriate timeframe.[16]

II. Summary of Comments

A. General Summary

The Commission received 82 comments in response to the ANPRM from 81 commenters.[17] The commenters represent the following interest groups:

[1] Fed. Mar. Comm'n, Detention and Demurrage (accessed on September 8, 2022), *https://www.fmc.gov/detention-and-demurrage/#:~:text=In%20dollar%20terms%2C%20the%20nine,over%20the%20two%2Dyear%20period.*

[2] There are two types of common carriers—vessel-operating common carriers, also called ocean common carriers, and non-vessel-operating common carriers. 46 U.S.C. 40102(7), (17), (18).

[3] *See Fact Finding Investigation No. 29, Interim Recommendations* at 6 (July 28, 2021) (Fact Finding 29 Interim Recommendations), available at: *https://www2.fmc.gov/ReadingRoom/docs/FFno29/FF29%20Interim%20Recommendations.pdf/.*

[4] Fact Finding 29 Interim Recommendations at 7.

[5] Fed. Mar. Comm'n, Press Release, FMC to Issue Guidance on Complaint Proceedings and Seek Comments on Demurrage and Detention Billings (Sept. 15, 2021), *https://www.fmc.gov/fmc-to-issue-guidance-on-complaint-proceedings-and-seek-comments-ondemurrage-and-detention-billings/.*

[6] Advance Notice of Proposed Rulemaking on Demurrage and Detention Billing Requirements, 87 FR 8506 (Feb. 15, 2022). *See* Docket No. 22–04, Demurrage and Detention Billing Requirements.

[7] 87 FR at 8507, 8508–8509 (Questions 1 and 7).

[8] 87 FR at 8507, 8509 (Questions 2 and 3).

[9] 87 FR at 8508.

[10] 87 FR at 8508.

[11] 87 FR at 8509 (Question 6).

[12] 87 FR at 8509 (Question 6).

[13] 87 FR at 8508, 8509 (Question 12).

[14] The UIIA is a standard industry contract that provides rules for the interchange of equipment between motor carriers and equipment providers, such as VOCCs. Participation is voluntary.

[15] 87 FR at 8508.

[16] 87 FR at 8508, 8509 (Question 14).

[17] The Commission received two comments from the Los Angeles Customs Brokers and Freight Forwarders Association (LACBFFA) filed on April 15, 2022 and April 22, 2022. The comments filed on April 22, 2022, incorporated a new section, ''5. Multiple Parties and Invoiced Party Identity,'' into the comments that LACBFFA filed on April 15, 2022. *Compare* Comments of the Los Angeles Customs Brokers and Freight Forwarders Association (Doc. No. 57) at 3 *with* Comments of the Los Angeles Customs Brokers and Freight Forwarders Association (Doc. No. 83) at 3–4.

VOCCs; MTOs; NVOCCs, freight forwarders, and customs brokers; motor carriers; and beneficial cargo owners (BCOs). The Commission also received comments from five entities with unknown affiliations, and three other commenters that did not fit into the above categories.[18] Comments from these eight entities were consistent with other commenter categories and are captured in the discussions below. All comments are identified below and are available on the docket at *https://www.regulations.gov* by their document number (Doc. No.). They are also available in the Commission's Reading Room, at: *https://www2.fmc.gov/readingroom/proceeding/22-04/.*

B. VOCCs

The Commission received comments from an individual VOCC and from two trade organizations that represent most of the largest VOCCs operating in U.S.-foreign ocean trade (collectively VOCC commenters).[19] In general, VOCC commenters cautioned the Commission against pursuing regulation in this area. There was an overall concern that such a regulation could overreach and ultimately create more harm than good. For example, WSC warned the Commission to ''focus on preventing what is unreasonable as opposed to seeking to re-make the waterfront in the image that it believes is most desirable.'' [20]

VOCC commenters noted the existing commercial relationships and how solutions to issues and innovation best develop through these natural relationships without outside parties, such as the Commission.[21] The existence of commercial relationships meant issues could be resolved in contractual relations and that regulations were generally unnecessary. VOCC commenters expressed concern about the Commission creating an environment where the Commission would create an unbalanced negotiation sphere.[22]

VOCC commenters asserted that the existence of commercial relationships lends itself to innovation. These commenters expressed concern that regulation in this area could stifle innovation. For example, WSC stated, ''a fixed form and process for invoices could stifle digital innovation to include initiatives to do business electronically, including automated invoices, use of block chain technology, and more broadly efforts to digitize the supply chain.'' [23]

Finally, VOCC commenters also stressed that implementation of these changes may prove difficult. These commenters noted that they have developed their own billing systems and because these systems must exchange information, any required changes would be significantly difficult.[24] OCEMA noted that it is important for ''the FMC to first consider technological feasibility, the scope and required time for systems development work that would be required to support any new requirements, and whether the proposed change would burden the ability to resolve items as part of a pre-pay process rather than a post-pay transaction.'' [25]

C. MTOs

The Commission received comments from an MTO and from three MTO trade organizations (collectively MTO commenters).[26] Like VOCC commenters, MTO commenters generally argued against any new regulation, particularly if such regulation would apply to MTOs.[27] One commenter observed that the Commission may already consider billing in evaluating demurrage and detention practices and so additional regulation was unnecessary.[28] Commenters claimed that current Commission regulations adequately protect the industry.

MTO commenters also noted the unique aspects of individual terminals. MTO commenters expressed concern about applying a ''one size fits all'' approach and cautioned the Commission about the unintended consequences and technological difficulties of pursuing this type of regulation.[29] For example, the National Association of Waterfront Employees (NAWE) expressed concern that establishing billing requirements ''will inevitably disrupt existing commercial relationships and could impact the competitiveness of MTOs that continue to face competition from neighboring foreign ports.'' [30] Other MTO commenters shared this view and asserted that compliance with any changes would create administrative burdens that could worsen current supply chain issues.[31] MTO commenters argued the costs of any new regulation would outweigh any benefits and cited technological limitations, international competition, and security concerns as reasons why the Commission should limit any regulation it decides to adopt.[32]

D. NVOCCs, Freight Forwarders, and Customs Brokers

The Commission received comments from ten NVOCCs, freight forwarders, and customs brokers, and five trade organizations that represent such entities (collectively ocean transportation intermediary (OTI)

[18] Comments of Ellen Baicher-Armstrong (Doc. No 39); Comments of RPM Warehouse and Transportation (Doc. No 32); Comments of J. Peter Hinge (Doc. No. 9); Comments of Ocean Logistics (Doc. No. 27); Comments of Naomi Hime (Doc. No. 18); Comments of the International Warehouse Logistics Association (Doc. No. 81); Comments of Veconinter USA LLC (Doc. No. 63); Comments of Weber Distribution LLC (Doc. No. 17).

[19] Comments of Crowley Lain America Services, LLC (Doc. No. 25); Comments of the Ocean Carrier Equipment Management Association, Inc. (Doc. No. 78); Comments of the World Shipping Council (Doc. No. 61). Ocean Carrier Equipment Management Association (OCEMA) and the World Shipping Council (WSC) represent 22 VOCCs, including: APL, CMA–CGM, COSCO, Evergreen, Hamburg Sud, Hapag Lloyd, HMM, Maersk, MSC, ONE, Wan Hai, and Zim.

[20] Doc. No. 61 at 2.

[21] *See e.g.,* Doc. No. 61 at 2 (''To the extent disagreements do arise, all parties are best served if those disagreements can be resolved promptly and amicably by the parties involved without the need for an outside adjudicator such as the FMC or an arbitrator.'').

[22] *See e.g.,* Doc. No. 78 at 2 (''the FMC should not seek to right every perceived wrong or to balance every unfavorable commercial term in a contract by placing its thumb on the scales to balance the results of legitimate commercial negotiations.'').

[23] Doc. No. 61 at 3.

[24] *See e.g.,* Doc. No. 61 at 3 (''Every carrier and every MTO has its own systems, and to the extent that those systems must exchange information (as would be the case for many of the data elements/scenarios described in question 6 below), the complexity is multiplied by the required interactions between systems. Many of the billing systems involved are global systems, adding complexity to any required changes.'').

[25] Doc. No. 78 at 1–2.

[26] Comments of the American Association of Port Authorities (Doc. No. 52); Comments of Maher Terminals LLC (Doc. No. 49); Comments of National Association of Waterfront Employers (Doc. No. 26); Comments of the Port of NY/NJ Sustainable Services Agreement (Doc. No. 68).

[27] *See e.g.,* Doc. No. 49 at 2. (''Maher believes that the Shipping Act of 1984, as amended . . . , and the Commission's regulations thereunder, particularly 46 U.S.C. 41102(c) and 46 CFR 545.4 and 545.5, provide a sufficient and flexible legal framework for determining the reasonableness of MTO demurrage billing practices.'')

[28] Doc. No. 26 at 2 (noted that the Interpretive Rule expressly recognizes the multitude of varying factors that influence the reasonableness of demurrage and detention charges. *See* 46 CFR 545.5(f) (''Nothing in this rule precludes the Commission from considering factors, arguments, and evidence in addition to those specifically listed in this rule.'')).

[29] *See e.g.,* Doc. No. 26 at 2.

[30] Doc. No. 26 at 2.

[31] *See e.g.,* Doc. No. 52 at 6–7 (''Additional information may be attainable, but would demand ports engage in costly, administrative data collection. These efforts would significantly undermine streamlined operations at ports and terminals and in turn, generate substantial congestion and backlogs.'').

[32] *See e.g.,* Doc. No. 52 at 10 (If ports are required to include extensive and detailed information on every billing, there is a national security risk that the aggregated data can be exploited by bad actors or competitors. Further, information regarding ports and terminal pricing, dwell times, and maritime practices risks the disclosure of business-sensitive proprietary information.).

commenters).[33] OTI commenters supported the Commission pursuing this regulation, but NVOCC commenters did not uniformly support applying any adopted regulation to NVOCCs.[34] Most NVOCCs argued that the regulation should not apply to NVOCCs because NVOCCs do not determine demurrage or detention rates.[35] Two NVOCCs indicated that the demurrage and detention billing requirements should apply to NVOCCs, but did not provide further explanation. However, one of these commenters stated that any new requirements that would apply to NVOCCs should differ from those that would apply to VOCCs because NVOCCs serve as an intermediary between the VOCCs and shippers.[36] In contrast, freight forwarders and customs brokers indicated that any proposed demurrage and detention billing requirements should apply to VOCCs and NVOCCs equally as they both charge demurrage and detention fees.[37]

OTI commenters generally agreed on other questions posed in the ANPRM. For example, OTI commenters responded that the proposed regulations should apply to MTOs because they issue demurrage and detention charges.[38] In addition, these commenters supported requiring billing parties to provide all information identified in Question 6 of the ANPRM as well as information on how to dispute charges to the billing party.[39] Some OTI commenters stated that the Commission should also require billing parties to certify that the charges comply with the Shipping Act of 1984, as amended.[40] These commenters were generally supportive of requiring billing parties to issue invoices within a specific timeframe (with most agreeing that the timeframe should be 30 days or less) and requiring billing parties to issue refunds within a specified timeframe.[41]

These commenters also stated that if the billing party invoices multiple parties, that the invoice should identify all billed parties and the basis for billing each. Furthermore, several commenters, especially customs brokers, asserted that they should not receive demurrage and detention invoices. For example, Los Angeles Customs Brokers and Freight Forwarders Association (LACBFFA) observed that shippers often name the customs broker as the ''notify party'' for customs purposes, and, as a result, custom brokers may receive demurrage or detention invoices.[42] Such commenters argued that customs brokers should not receive invoices because they have no part in the transportation, negotiation, handling, or inland transport, and that the Commission should prohibit common carriers and MTOs from billing parties only shown as a notify party on the Bills of Lading.[43]

E. BCOs

The Commission received comments from 26 BCOs and 15 trade organizations that represent these entities (collectively BCO commenters).[44] BCO commenters generally agreed on issues raised in the ANPRM. For example, BCO commenters responded that the regulations should apply to VOCCs, NVOCCs, and MTOs equally. The majority of BCO commenters stated that if the entity issued demurrage or detention charges, then the regulation should apply.[45] BCO commenters cited the need for uniform requirements to apply to all demurrage and detention invoices they receive, regardless of whether the billing party is

[33] Comments of Combined Freight International KAM (Doc. No. 16); Comments of Lance Sales, Inc. (Doc. No. 20); Comments of A Custom Brokerage, Inc. (Doc. No. 70); Comments of the International Association of Movers (Doc. No. 74); Comments of J & K Fresh LLC (Doc. No. 29); Comments of the Los Angeles Customs Brokers and Freight Forwarders Association (Doc. No 83); Comments of Mode Transportation, LLC (Doc. No. 13); Comments of the National Customs Brokers & Forwarders Association of America, Inc. (Doc. No. 62); Comments of the New York New Jersey Foreign Freight Forwarders and Brokers Association, Inc. (Doc. No. 76); Comments of the Pacific Coast Council of Customs Brokers and Freight Forwarders (Doc. No. 82); Comments of Page International (Doc. No. 19); Comments of Mohawk Global Logistics Corporation (Doc. No. 69); Comments of Thunder Bolt Logistics, LLC (Doc. No. 77); Comments of the Transportation Intermediaries Association (Doc. No. 48); Comments of John S. Connor Global Logistics (Doc. No. 75).

[34] One commenter did not support demurrage and detention billing requirements regulations to address the issues, but instead favored an industry solution. Doc. No. 20 at 1.

[35] Doc. No. 16 at 1; Doc. No. 13 at 3; Doc. No. 69 at 3; Doc. No. 70 at 2; Doc. No. 75; Doc. No. 75 at 2; Doc. No. 76 at 2; Doc. No. 77 at 2. *See* Doc. No. 62 and Doc. No. 83 (both discuss the regulations as applying to VOCCs and MTOs as the billing parties). Some of these commenters stated that the regulations should apply to NVOCCs if they ''mark up'' the charge. Doc. No. 13 at 3; Doc. No. 69 at 3; Doc. No. 75 at 2; Doc. No. 76 at 2; Doc. No. 77 at 2.

[36] Doc. No. 19 at 1; Doc. No. 48 at 3.

[37] Doc. No. 29 at 1; Doc. No. 74 at 1.

[38] Doc. No. 29 at 1; Doc. No. 74 at 1; Doc. No. 16 at 1; Doc. No. 13 at 4; Doc. No. 69 at 1; Doc. No. 70 at 2; Doc. No. 75 at 1; Doc. No. 62 at 4; Doc. No. 76 at 2; Doc. No. 19 at 1; Doc. No. 77 at 3; Doc. No. 48 at 3.

[39] Doc. No. 29 at 2–3; Doc. No. 74 at 1; Doc. No. 82 at 1; Doc. No. 16 at 2–3; Doc. No. 13 at 5, 7; Doc. No. 69 at 5, 7–8; Doc. No. 70 at 3, 5; Doc. No. 75 at 3–4; Doc. No. 83 at 2; Doc. No. 62 at 4; Doc. No. 76 at 4–5; Doc. No. 19 at 2–3; Doc. No. 77 at 5, 7; Doc. No. 48 at 4–7. Question 6 requested comments on whether billing parties should be required to provide the following information on demurrage and detention invoices: Bill of lading number; container number; billing date; payment due date; start/end of free time; start/end of demurrage/detention/per diem clock; demurrage/detention/per diem rate schedule; location of the notice of the charge (*i.e.,* tariff, service contract number and section, or MTO schedule); container availability dates and vessel arrival dates for import shipments; for export shipments, the earliest return dates (and any modifications to those dates); any intervening clock-stopping events, and whether the charge is a pass-through of charges levied by the MTO or port. 87 FR at 8509.

[40] *See* Doc. No. 77 at 5; Doc. No. 69 at 5; Doc. No. 75 at 3.

[41] Doc. No. 29 at 3; Doc. No. 19 at 3; Doc. No. 77 at 7; Doc. No. 48 at 6; Doc. No. 82 at 2; Doc. No. 83 at 2; Doc. No. 62 at 5; Doc. No. 70 at 5; Doc. No. 69 at 7; Doc. No. 75 at 4; Doc. No. 16 at 3; Doc. No. 13 at 7.

[42] Doc. No. 83 at 3.

[43] Doc. No. 83 at 3; Doc. No. 82 at 2–3.

[44] Comments of the Agriculture Transportation Coalition (Doc. No. 84); Comments of the American Association of Exporters and Importers (Doc. No. 65); Comments of the American Chemistry Council (Doc. No. 54); Comments of the American Coffee Corporation (Doc. No. 73); Comments of Association of California Recycling Industries (Doc. No. 21); Comments of the Auto Care Association (Doc. No. 79); Comments of Bostock North America (Doc. No. 30); Comments of BassTech International (Doc. No. 72); Comments of Calpine Containers, Inc. (Doc. No. 50); Comments of Jean-Luc Carriere (Doc. No. 5); Comments of the Consumer Technology Association (Doc. No. 67); Comments of Lani Ellingsworth (Doc. No. 11); Comments of Flooring One Source (Doc. No. 3); Comments of Braun Export (Doc. No. 14); Comments of The Grape Company (Doc. No. 42); Comments of LG Electronics USA, Inc. (Doc. No. 44); Comments of The Meadows Group, LLC (Doc. No. 22); Comments of the Meat Import Council of America, North American Meat Institute, and U.S. Meat Export Federation (Doc. No. 64); Comments of National Association of Chemical Distributors (Doc. No. 58); Comments of National Association of Manufacturers (Doc. No. 55); Comments of the National Industrial Transportation League (Doc. No. 60); Comments of National Milk Producers Federation and U.S. Dairy Export Council (Doc. No. 43); Comments of the National Retail Federation (Doc. No. 53); Comments of the North American Home Furnishings Association (Doc. No. 80); Comments of David Oppenheimer and Company, I, LLC (Doc. No. 40); Comments of Pacific Trellis Fruit (Doc. No. 71); Comments of Pinnacle Fresh USA, LLC (Doc. No. 31); Comments of TBC Corporation (Doc. No. 6); Comments of Potential Industries, Inc. (Doc. No. 4); Comments of Sbrocco International, Inc. (Doc. No. 66); Comments of Sony Electronics Inc. (Doc. No. 37); Comments of Streamlight, Inc. (Doc. No. 35); Comments of Suntreat Packing & Shipping Co. (Doc. No. 38); Comments of The Toy Association (Doc. No. 41); Comments of Trelleborg Wheel Systems Americas, Inc. (Doc. No. 34); Comments of USA Rice (Doc. No. 28); Comments of Vivion, Inc. (Doc. No. 8); Comments of Westco Chemicals, Inc. (Doc. No. 36); Comments of Green Fresh Imports (Doc. No. 85); Comments of United Furniture Industries, Inc./Lane Home Furnishing (Doc. No. 86).

[45] *See e.g.,* Doc. No. 67 at 2 (''[Consumer Technology Association] encourages the Commission to impose the same requirements as to minimum billing information on VOCCs, NVOCCs, and MTOs to facilitate industry-wide transparency.''); Doc. No. 58 at 2 (''[VOCCs, NVOCCs, and MTOs] all charge detention and demurrage fees, and [the National Association of Chemical Distributors] strongly recommends that each be included in any proposed detention and demurrage billing regulation.''); Doc. No. 55 at 1–2 (''These requirements should apply to all parties that may be involved in submitting demurrage and detention bills to shippers and BCOs, including VOCCs, NVOCCs, and MTOs.'').

a VOCC, NVOCC, or MTO. However, many of these BCOs preferred not to receive invoices from MTOs because they have no contractual relationship with the MTO.[46] Several BCO commenters expressed the opposite view and supported a requirement that MTOs bill the BCO directly to avoid additional fees from VOCCs when they pass through such charges.[47]

BCO commenters generally supported requiring billing parties to provide all information identified in Question 6 of the ANPRM and information on how to dispute charges to the billing party. Specifically, BCO commenters cited that requiring such information would put the burden to support the charge on the carrier and would, hopefully, limit the need to dispute charges.[48] They noted that the most helpful data to address disputed charges would be information related to stop-the-clock events, free time or charges applied when containers are not available for pickup, or when BCOs are unable to drop off containers at a terminal.[49] BCO commenters asserted that having access to the type of information listed in the ANPRM would help them verify the charges.[50]

Some BCO commenters stated that the Commission should also require billing parties to certify that the charges comply with the Shipping Act of 1984, as amended.[51] In addition, they also supported the requirement that if the billing party invoices more than one party, then the invoice must identify all billed parties and the basis for billing each party.

BCO commenters were generally supportive of requiring billing parties to include specific information regarding how the billed party may dispute a charge. Specifically, they supported requiring billing parties to provide contact information for disputes and instructions on how to file disputes or information applicable to the dispute process, such as when a charge may be waived or what documentation the billed party must submit with its request.[52]

Many BCO commenters supported requiring billing parties to issue demurrage or detention invoices within 60 days of when the charges stop accruing; many commenters supported a timeframe of 30 days or less.[53] As discussed below, BCO commenters supported a shorter timeframe for issuing demurrage and detention invoices because it is more likely that billed parties will have the information and documents necessary to verify the charges. They also complained that demurrage and detention invoices arrive months after the charges accrued and that billed parties lacked the documentation necessary to verify the charge due to passage of time.

F. Motor Carriers

The Commission received comments from six motor carriers and four motor carrier trade organizations (collectively Motor Carrier commenters).[54] For the most part, the Motor Carrier commenters expressed similar views as the BCO commenters. For example, the Motor Carrier commenters generally supported applying the demurrage and detention billing requirements to VOCCs, NVOCCs, and MTOs; requiring billing parties to provide all information listed in the ANPRM; requiring billing parties to identify all billed parties and the basis for each billed party; and requiring billing parties to issue invoices within a specific timeframe.

In addition, the Motor Carrier commenters expressed concern that billing parties frequently invoiced motor carriers, who have no contractual relationship with the billing parties. For example, the Association of Bi-State Motor Carriers (Bi-State) argued that ''motor carriers are not privy to the specifics of the contractual agreements between the shipper and billing parties, and should not be dragged into billing disputes.'' [55] However, Bi-State noted that billing parties sometimes threatened to prevent motor carriers from picking up or dropping off containers due to disputes with one of the motor carrier's customers.[56] As a result, Motor Carrier commenters alleged that they must cover the disputed charges in order to serve their other customers.[57] Accordingly, the Motor Carrier commenters encouraged the Commission to adopt an approach that would require the billing party to bill the customers (BCOs or shippers) directly, as they are the parties who have a contractual relationship with the billing parties.[58] As a result they said, motor carriers would no longer be responsible to pay such charges or risk business relationships with their other customers if one customer disputes those charges.

III. Ocean Shipping Reform Act of 2022

After the Commission issued the ANPRM and received comments, on June 16, 2022, the President signed the

[46] *See e.g.,* Doc. No. 65 at 5 (''Without a contractual connection between the MTO and the shipper, [American Association of Exporters and Importers] members don't see how this would work, and forcing shippers to have a contractual agreement with an MTO is not a good idea.''); Doc. No. 54 at 4 (''Without a contractual connection between the MTO and the shipper, such a requirement would be unworkable.''). Some BCO commenters noted, however, the invoice carriers send to shippers should identify the demurrage charges levied by the MTO to the carrier. *See e.g.,* Doc. No. 84 at 5; Doc. No. 64 at 6.

[47] *See e.g.,* Doc. No. 41 at 4 (its members pay demurrage to MTOs and detention to the carriers); Doc. No. 53 at 4 (supported this practice because it would help avoid VOCCs charging more than MTOs charge); Doc. No. 28 at 3 (over half of its survey respondents supported MTOs charging demurrage directly to shippers).

[48] *See e.g.,* Doc. No. 64 at 5 (the minimum requirements would put ''the burden on the common carrier to ensure more accurate, timely billing, which should, in theory, minimize superfluous charges and improve business practices.''); Doc. No. 67 at 2 (minimum billing requirements ''will promote transparency for all parties involved in shipping transactions, help ensure accountability, and deter unfair business practices[.]''); Doc. No. 58 at 2 (''A requirements for all relevant information . . . . would hold billing parties more accountable. It would prevent the VOCCs, NVOCCs, and MTOs from charging erroneous fees that shippers have little or no opportunities to contest.''); Doc. No. 43 at 4 (''Shippers need a full set of details about the containers subject to detention or demurrage charges to effectively assure they are properly assessed charges.'').

[49] Commenters report that most disputed charges include when free time starts and stops; countable days and whether the ''clock stopping'' events, such as there were no appointments, container was unavailable, terminal equipment, such as chassis, was unavailable, etc., should reduce the charges.

[50] *See e.g.,* Doc. No. 60 at 5 (including clock stopping events will ''facilitate the carrier to fulfill their responsibility to bill demurrage and detention charges to meet the incentivizing principle[.]''); Doc. No. 22 at 2–3 (omission of event that should stop the clock from invoices ''makes it impossible for shippers to verify whether they are actually accounted for when the final total is calculated.''); Doc. No. 8 at 2 (omission of minimum information ''makes it extremely difficult for shippers to be able to verify the amount charged are correct.''). *See also* Doc. No. 3 at 2; Doc. No. 44 at 2; Doc. No. 40 at 2; Doc. No. 35 at 2; Doc. No. 34 at 2; Doc. No. 64 at 5; Doc. No. 58 at 2; Doc. No. 55 at 2; Doc. No. 43 at 4.

[51] *See e.g.,* Doc. No. 65 at 4; Doc. No. 84 at 4; Doc. No. 43 at 5.

[52] *See e.g.,* Doc. No. 60 at 8; Doc. No. 28 at 3; Doc. No. 53 at 5; Doc. No. 43 at 5; Doc. No. 64 at 7; Doc. No. 67 at 6; Doc. No. 84 at 5; Doc. No. 21 at 4; Doc. No. 54 at 5; Doc. No. 79 at 5.

[53] A more detailed discussion of the timeframes supported by specific commenters is found in section IV.C.1, which discusses the proposed timeframe for billing parties to issue demurrage and detention invoices.

[54] Comments of Association of Bi-State Motor Carriers (Doc. No. 51); Comments of Harbor Trucking Association (Doc. No. 33); Comments of MTI, Inc. (Doc. No. 46); Comments of Golden State Logistics (Doc. No. 59); Comments of IMC Companies (Doc. No. 7); Comments of Intermodal Association of North America (Doc. No. 24); Comments of Intermodal Motor Carriers Conference (Doc. No. 47); Comments of William H. Kopke Jr. Inc. (Doc. No. 56); Comments of Marine Container Services LLC (Doc. No. 45); Comments of 1634, A Florida LLC (Doc. No. 15).

[55] Doc. No. 51 at 2.

[56] Doc. No. 51 at 2.

[57] Doc. No. 51 at 2; Doc. No. 47 at 2, 3.

[58] *See e.g.,* Doc. No. 51 at 1 (VOCCs should bill shippers directly); Doc. No. 47 at 2 (supported MTOs billing shippers directly because motor carriers ''are not aware of separate contractual arrangements.''); Doc. No. 33 at 8 (their members indicated that demurrage and detention should be billed directly to contracting party).

Ocean Shipping Reform Act of 2022 (OSRA 2022) into law.[59] In OSRA 2022, Congress amended various statutory provisions contained in Part A of Subtitle IV of Title 46, U.S. Code. Specifically, OSRA 2022 prohibits common carriers from issuing an invoice for demurrage or detention charges unless the invoice includes specific information to show that the charges comply with part 545 of title 46, Code of Federal Regulations and applicable provisions and regulations.[60] OSRA 2022 then lists the minimum information that common carriers must include in a demurrage or detention invoice:

(A) date that container is made available.

(B) the port of discharge.

(C) the container number or numbers.

(D) for exported shipments, the earliest return date.

(E) the allowed free time in days.

(F) the start date of free time.

(G) the end date of free time.

(H) the applicable detention or demurrage rule on which the daily rate is based.

(I) the applicable rate or rates per the applicable rule.

(J) the total amount due.

(K) the email, telephone number, or other appropriate contact information for questions or requests for mitigation of fees.

(L) a statement that the charges are consistent with any of Federal Maritime Commission rules with respect to detention and demurrage.

(M) a statement that the common carrier's performance did not cause or contribute to the underlying invoiced charges.[61]

Failure to include the required information on a demurrage or detention invoice eliminates any obligation of the billed party to pay the applicable charge.[62] In addition, OSRA 2022 also authorizes the Commission to revise the minimum information that common carriers must include on demurrage or detention invoices in future rulemakings. The Commission addresses this minimum information in this proposed rule.[63]

OSRA 2022 requires the Commission to initiate a rulemaking further defining prohibited practices by common carriers, marine terminal operators, shippers, and OTIs regarding the assessment of demurrage or detention charges.[64] OSRA 2022 also provides that such rulemaking must ''only seek to further clarify reasonable rules and practices *related* to the assessment of detention and demurrage charges to address the issues identified in the final rule published on May 18, 2020, entitled 'Interpretive Rule on Demurrage and Detention Under the Shipping Act' (or successor rule)[.]'' [65] Specifically, the Commission's rulemaking must clarify ''which parties may be appropriately billed for any demurrage, detention, or other similar per container charges.'' [66] The Commission offers that clarification in this proposed rule.

IV. Discussion of Proposed Rule

A. General Provisions

1. Purpose of Rule

This proposed rule would (1) adopt minimum information that common carriers must include in a demurrage or detention invoice that is listed in 46 U.S.C. 41104(d)(2); (2) add to this list additional information that must be included in or with a demurrage or detention invoice; (3) further define prohibited practices by clarifying which parties may be appropriately billed for demurrage or detention charges; and (4) establish billing practices that billing parties must follow when invoicing for demurrage or detention charges.

2. Scope and Applicability

This subpart sets forth regulations governing any invoice issued by an ocean common carrier, MTO, or NVOCC to a billed party or their designated agent for the collection of demurrage or detention charges. This regulation does not govern the billing relationships among and between ocean common carriers and MTOs.

As a preliminary matter, the Commission sought comment on to whom this rule should apply. Specifically, the Commission asked whether NVOCCs and MTOs should be bound by the requirements of the rule. The majority of commenters supported applying the rule to both NVOCCs and MTOs. The Commission has determined that the proposed rule would apply to MTOs and NVOCCs, as well as VOCCs, but will not regulate the billing arrangements between VOCCs and MTOs for the reasons discussed below.

a. Inclusion of NVOCCs

Fact Finding No. 29 recommended that the Commission regulate the demurrage and detention billings and billing practices of both common carriers and MTOs.[67] In its opening question to the ANPRM's list of requested information, the Commission asked if both NVOCCs and VOCCs should be included in the regulation.[68] Most commenters supported applying the regulations to NVOCCs. Generally, these commenters noted the importance of consistency across the industry and the need for everyone to adhere to uniform standards.[69] As described by the WSC, ''[t]he need for predictable and clear billing does not change on the basis of whether the billing entity does or does not operate ships—the distinction between VOCCs and NVOCCs. The customer benefits of transparent and timely billing apply equally in both instances[.]'' [70]

Few commenters opposed applying any proposed billing requirements to NVOCCs. The most common objection was that NVOCCs do not control any physical assets (*i.e.,* equipment or land) to be subject to the rule and that usually NVOCCs treat demurrage and detention charges as a pass-through cost.[71] One commenter noted that because a NVOCC has to pay a VOCC or MTO for these types of charges, an NVOCC has no reason to hold back sending an invoice to a BCO because that will leave the NVOCC with outstanding charges to the carrier.[72]

Although most NVOCCs are only passing through charges to BCOs, that does not change the fact that some NVOCCs invoice BCOs for demurrage and detention.[73] BCOs employing an

[59] Public Law 117–146, 136 Stat. 1272 (2022).

[60] Public Law 117–146 at Sec. 7(a)(1), 136 Stat. at 1274 (codified at 46 U.S.C. 41104(a)(15)).

[61] Public Law 117–146 at Sec. 7(a)(2), 136 Stat. at 1275 (codified at 46 U.S.C. 41104(d)(2)).

[62] Public Law 117–146 at Sec. 7(a)(2), 136 Stat. at 1275 (codified at 46 U.S.C. 41104(f)).

[63] Public Law 117–146 at Sec. 7(a)(2), 136 Stat. at 1275 (codified at 46 U.S.C. 41104(d)(2)).

[64] Public Law 117–146 at Sec. 7(b)(1), 136 Stat. at 1275.

[65] Public Law 117–146 at Sec. 7(b)(2), 136 Stat. at 1275 (emphasis added).

[66] Public Law 117–146 at Sec. 7(b)(2), 136 Stat. at 1275.

[67] Fact Finding No. 29 Interim Report at 6.

[68] 87 FR at 8509.

[69] *See e.g.,* Doc. No. 29 at 1 (stressed that ''there must be uniformity (One rule for demurrage and detention billing, no matter who bills it.)''); Doc. No. 60 at 3 (''[BCOs] are entitled to receive timely, accurate and explanatory billing from their contracted carrier whether the carriage is contracted pursuant to a bill of lading issued by an NVOCC or by a VOCC.'').

[70] Doc. No. 61 at 4.

[71] *See e.g.,* Doc. No. 69 at 3 (''NVOCCs do not generally file [demurrage and detention] schedules in their tariffs and do not generate [demurrage and detention] charges on their own. Instead, [these] charges originate with VOCCs and MTOs, and are merely passed through by NVOCCs as facilitators of the transaction.'').

[72] Doc. No. 13 at 4 (''there is no logic in the NVOCC unreasonably delaying billing or notifying the customer. The NVOCC is the party who is being billed by the carrier/terminal and will have the outstanding payables due to the carrier, so clearly, there is no general logic that encourages them to delay billing to their end customer.'').

[73] NVOCCs may also issue invoices that charge demurrage or detention based on their own tariff rules or negotiated rates. In addition, NVOCCs may

NVOCC generally do not interact with VOCCs and, as a result, the demurrage or detention invoice BCOs receive from an NVOCC may be their only notice about the origin and breakout of these charges. Additionally, because of its contractual relationship with the BCO, an NVOCC is often the only party in this transaction able to inform BCOs as to the nature of these charges. Furthermore, there is a greater need for transparency when the NVOCCs markup demurrage or detention charges assessed by VOCCs or MTOs or when NVOCCs charge demurrage or detention based on their own tariff rules or negotiated agreements.

Ultimately, this regulation is an outgrowth of the work done in Fact Finding No. 29. As noted in the Final Report, ''[t]hroughout the Fact Finding, industry members reported confusion about the information contained in invoices.'' [74] As discussed below, the intent of this rulemaking is to ensure that the person receiving the bill understands the charges regardless of whether the billing party is a VOCC, NVOCC, or an MTO.[75]

b. Inclusion of MTOs

MTOs often do not have direct contractual relationships with shippers. Instead, MTOs usually have contractual relationships with VOCCs, such as through terminal services agreements.[76] However, an MTO may separately assess demurrage as an implied contract in a court of law, provided that demurrage rates are published as part of the MTO's rate schedule.[77]

Commenters overwhelmingly argued that the proposed rule should apply to MTOs. Again, while the most common practice is for the MTO to invoice the VOCC and the VOCC to send a combined invoice to the shipper, several commenters also noted that in some cases MTOs bill shippers directly.[78] MTOs were generally opposed to the proposed regulations, citing that traditionally they do not invoice shippers directly, but instead work with VOCCs.[79]

The Commission's primary concern with this proposed regulation is to ensure billed parties understand the demurrage or detention invoices they receive. Although, at least under the traditional process, it appears that MTOs rarely interact with anyone other than the VOCC, in those cases where an MTO invoices a shipper, the MTO should be subject to the same regulations that apply to VOCCs and NVOCCs.

c. MTO and VOCC Relationships

This proposed regulation does not govern the billing relationships among and between VOCCs and MTOs. As noted earlier, the purpose of the proposed rule is to identify the minimum information billing parties must include on demurrage and detention invoices, and to improve the invoices' clarity. Although the Fact Finding No. 29 Final Report noted that shippers reported confusion about information contained in demurrage and detention invoices, the Fact-Finding Officer did not receive similar concerns from VOCCs about invoices they were receiving from MTOs.[80]

The ANPRM specifically asked whether the proposed regulation should apply to the format in which MTOs bill VOCCs.[81] Most OTI, BCO, and Motor Carrier commenters answered this question by discussing invoices they receive from carriers and the need to have charges originating from an MTO and charges originating from a VOCC distinguished.[82] This fact suggests that the primary concern that needs to be addressed in this proposed regulation is not the billing interactions between MTOs and VOCCs, but rather transparency and clarity on invoices issued to OTIs, shippers, and motor carriers.

Further, many MTOs and MTO trade organizations also argued that regulations in this realm were not warranted. For example, the NAWE explained, ''[t]he unique commercial relationships negotiated between VOCCs and MTOs have not been the source of demurrage complaints.'' [83] Other commenters cited the close commercial relationship shared by MTOs and VOCCs, which, they argued, made additional regulation unnecessary.[84]

The Commission received a few comments from VOCCs who favored extending regulations to cover the invoicing from MTOs to VOCCs. These comments were generally about maintaining accurate information throughout the process.[85] VOCC commenters stressed the importance of applying consistent information requirements at each stage in the supply chain.[86]

Notwithstanding the comments from OCEMA and WSC, the Commission has not received comments responding to the ANPRM or elsewhere that expressed concerns about the relationships or interactions between VOCCs and MTOs that warrant regulating the format used by MTOs to bill VOCCs. The Commission notes the strong commercial relationships between MTOs and VOCCs and is confident that these current contractual relationships will continue to ensure that the proper information is shared and that the party who ultimately receives the invoice is receiving accurate information. Thus, the Commission concludes that at this time it is not necessary to impose minimum billing information requirements for MTO invoices issued to VOCCs.

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also mark-up the demurrage or detention charge assessed by a VOCC or MTO.

[74] *Fact Finding Investigation 29: Final Report* at 51 (May 31, 2022) (Fact Finding 29 Final Report), available at: *https://www.fmc.gov/wp-content/uploads/2022/06/FactFinding29FinalReport.pdf.*

[75] *See* Fact Finding 29 Interim Recommendations at 6 (recommending a rulemaking on demurrage and detention billing requirements so that the person receiving the bill understands ''what is being billed and by whom.'').

[76] *See* 46 CFR 535.309.

[77] 46 U.S.C. 40501(f); 46 CFR 525.2.

[78] *See e.g.,* Doc. No. 61 at 4 (''MTOs can and do bill for demurrage, and there are multiple business models at ports around the country under which carriers bill on behalf of MTOs and vice versa.'')

[79] *See e.g.,* Doc. No. 49 at 2; Doc. No. 26 at 3.

[80] Fact Finding 29 Final Report at 51. *See e.g.,* Coalition for Fair Port Practices Petition for Rulemaking, FMC Docket No. P4–16, (Dec. 7, 2016); *Fact Finding Investigation No. 28: Final Report,* (Sep. 4, 2018), available at: *https://www2.fmc.gov/readingroom/docs/FF%20No.%2028/FF28_int_rpt2.pdf/.*

[81] 87 FR at 8509.

[82] *See e.g.,* Doc. No. 37 at 2 (noted that ''charges should be properly distinguished and identified so that by reviewing a bill the invoiced party can determine which charges are being passed along by VOCCs and which charges are being billed directly to the invoiced party in the first instance.'').

[83] Doc. No. 26 at 3. *See* Doc. No. 60 at 3 (''the assessment of the terms and charges by [MTOs] on [VOCCs] has not so far been a part of the scope of Fact Finding Investigation 28''); Doc. No. 49 at 3 (''Maher has not received any feedback from its carrier customers and other Terminal users that its free time and demurrage policies and practices are unclear or confusing, or that further regulations are necessary to improve clarity with respect to such policies and practices.'').

[84] Doc. No. 49 at 3 (''The Commission should not adopt a demurrage billing regulation that includes MTOs, let alone one that regulates the format in which MTOs charge demurrage to VOCCs. To the extent that Maher charges demurrage directly to its VOCC customers, as opposed to other Terminal users, those arrangements are set forth in privately negotiated, arms-length terminal service agreements, which are subject to tailored governing law and dispute resolution provisions.'').

[85] Doc. No. 61 at 4 (''It would be impractical if charges originating with MTOs, but potentially collected by common carriers, were not subject to the same minimum standards regarding included information. To the extent that a charge may be handled by multiple parties—whether on an agency basis or as a pass-through—it is critical that the relevant information be available to all parties in the chain.'').

[86] *See e.g.,* Doc. No. 78 at 3 (''OCEMA has no position on this issue at this time. However, OCEMA stresses the importance of consistency and transparency throughout the supply chain with respect to any information requirements imposed on VOCCs.'').

3. Definitions

a. Demurrage or Detention

For purposes of this proposed rule, the Commission defines the terms ''demurrage or detention'' broadly to include any charge assessed by common carriers and marine terminal operators related to the use of marine terminal space or shipping containers. This proposed definition is the same as the scope used in 46 CFR 545.5(b). The goal is to encompass all charges having the purpose or effect of demurrage or detention regardless of the labels given to those charges. Under this definition, for instance, a charge assessed by a common carrier for the use of containers outside a marine terminal would fall within the scope of this rule regardless of whether the charge was called ''detention'' or ''per diem.'' Similarly, a charge assessed because a container is taking up terminal space would fall within the scope of this rule even if the billing party called the charge something other than ''demurrage.'' Like the scope denoted in 46 CFR 545.5, the proposed rule specifically limits these definitions to ''shipping containers'' and excludes charges related to other equipment, such as chassis, because depending on the context, ''per diem'' can refer to containers, chassis, or both.

As previously expressed during the Commission's interpretive rulemaking at 46 CFR 545.5, the Commission supports defining demurrage and detention charges based on what asset is the source of the charge (land or container) as opposed to the location of a container (inside or outside a terminal).[87] In that prior rulemaking, the Commission discouraged use of terms such as ''storage'' and ''per diem'' as synonyms for demurrage and detention because these terms add additional complexity. The Commission reiterates those statements here and notes that, despite how it may be used in the industry, to ensure clarity the Commission generally favors using the term ''per diem'' to refer to the use of chassis.

b. Demurrage or Detention Invoice

The Commission proposes to broadly defining the term ''demurrage or detention invoice'' as meaning any statement, printed, written, or accessible online, that documents an assessment of demurrage or detention charges. By proposing a broad definition, the Commission intends the definition to include the existing variety of methods employed by common carriers and MTOs to invoice shippers, and to leave room for improvement of existing systems or adopting of any new, innovative invoicing methods.

The Commission received a few comments asking it to institute requirements on how invoices are displayed or presented to shippers.[88] Although there are a variety of existing methods to display and deliver this information, the Commission does not perceive a problem necessitating a regulatory solution at this time. The Commission intends the proposed definition to encompass the many existing and potential future methods that a bill might be presented and does not indicate a preference or requirement.

c. Billed Party

The Commission is proposing to define ''billed party'' as meaning the person receiving the demurrage or detention invoice and who is responsible for the payment of any incurred demurrage or detention charge. In the Commission's view, this proposed definition would best capture the intended scope of this term and eliminate any potential ambiguity as to its coverage.

d. Billing Party

This proposed rule would define the term ''billing party'' as meaning the VOCC, NVOCC, or MTO who issues a demurrage or detention invoice. The Commission acknowledges that, currently, in most circumstances the billing party will be a VOCC. For purposes of this proposed rule, this term is defined broadly to incorporate the occasions when an MTO or an NVOCC may issue a demurrage or detention invoice.

e. Billing Dispute

The term ''billing dispute'' would mean any disagreement with respect to the validity of the charges, or the method of their invoicing raised by the billed party or their agent to the billing party. This proposed definition, and more generally, this proposed rule, does not indicate a preference or requirement for the format in which a dispute may be raised. Instead, the Commission proposes a broad definition that incorporates all types of disputes raised by a billed party upon receiving a demurrage or detention invoice.

4. Properly Issued Invoices

OSRA 2022 directs the Commission to initiate a rulemaking that seeks to ''further clarify reasonable rules and practices related to the assessment of detention and demurrage charges[.]'' [89] Specifically, OSRA 2022 instructs the Commission to address ''which parties may be appropriately billed for any demurrage, detention, or other similar per container charge.'' [90] Under the proposed rule, a properly issued invoice is an invoice that is only issued to the person that has contracted with the billing party for the carriage of goods or space to store cargo, and is therefore the person responsible for the payment of any incurred demurrage or detention charge. This is often the shipper of record. The proposed rule would prohibit billing parties from issuing demurrage and detention invoices to persons other than the person for whose account the billing party provided ocean transportation or storage.

As a result of anecdotal reports indicating that billing parties sometimes sent invoices to multiple parties for the same shipments, the Commission asked whether this practice occurred regularly.[91] Many commenters described a current, wide-spread practice where the billing party sends the invoice to multiple parties, most of whom are not the recipient of the service giving rise to the invoiced charge.[92] The current system, in which parties who did not negotiate contract terms with the billing party are nonetheless bound by them, creates additional confusion and hardship and exacerbates problems in the supply chain. For example, one commenter noted that this practice often results in disputes among the parties.[93] Other commenters noted that invoicing multiple parties results in duplicative payments, which further complicates resolving invoice disputes.[94]

Although the Commission did not specifically request comments on prohibiting billing parties from

[87] Interpretive Rule on Demurrage and Detention Under the Shipping Act Final Rule, 85 FR 29638, 29666 (May 18, 2020) (codified at 46 CFR 545.5).

[88] *See e.g.,* Doc. No. 62 at 4–5 (''One way to make invoices more accessible is to provide recipients with a digital copy of the invoice (for example, through an electronic portal or online source) rather than solely by hardcopy.''); Doc. No. 81 at 2 (''Invoices should be readily available (*i.e.* online) so NVOCCs can provide statements to their customers.'').

[89] OSRA 2022, Section 7(b)(2).

[90] OSRA 2022, Section 7(b)(2).

[91] 87 FR at 8508–8509.

[92] *See e.g.,* Doc. No. 44 at 3; Doc. No. 37 at 2; Doc. No. 19 at 2; Doc. No. 15 at 3; Doc. No. 13 at 5–6; Doc. No. 8 at 3; Doc. No. 47 at 6; Doc. No. 48 at 5.

[93] Doc. No. 53 at 4.

[94] Doc. No. 28 at 2 (''According to most survey respondents, common carriers invoice multiple parties for demurrage and/or detention charges sometimes resulting in duplicative payments''); Doc. No. 13 at 6 (''We also see invoices being sent on the same container to multiple parties, and at times, it is paid more than once[.]'').

invoicing anyone except the party who contracted for the service (usually the shipper), the Commission received many comments urging it to adopt such regulations.[95] Commenters expressed frustration at the practice of billing demurrage and detention charges to parties who have not agreed to the charges or are not otherwise liable.[96] Other commenters suggested that common carriers bill third parties to shield customer relationships.[97]

Commenters who supported such a regulation generally agreed with the concept that only the parties to the contract (usually the shipper and common carrier), have insight into the contractual agreements between the shipper and common carrier.[98] Because third parties lack direct involvement and information, most would not be privy to the demurrage and detention terms negotiated by the parties to the original contractual agreement, and therefore are at a disadvantage if pulled into a dispute over such charges. One specific instance where not being a party to the contract is a disadvantage is in determining free time. As one commenter explained:

''Motor carriers are not a party to contracts and may not be aware of contractual allowances for free time. Yet motor carriers receive these invoices and are then responsible for working with ocean carriers and shippers to determine which contract the shipment was under and whether it allowed for additional free time beyond what has been billed.'' [99]

Other commenters also described the difficulty of verifying the accuracy of charges when they were not party to the agreements that determine the allotted free time.[100]

The Commission understands the concerns with invoices being sent to those individuals without a contractual relationship and acknowledges that this practice exacerbates dispute resolution and efficient movement of cargo. As was pointed out in the Final Report of the Supply Chain Innovation Team Initiative, the ''United States international supply chain is a complex, dynamic ecosystem'' and the ''lack of direct customer relationships between actors in this system (such as shippers and terminals) impedes cooperative problem-solving, exacerbates disruptions . . . and makes recovering from disruptions more difficult[.]'' [101] This is exactly the case here where motor carriers, custom brokers, and others who do not have customer relationships with common carriers are being asked to resolve disputes.

Many commenters also acknowledged the value of commercial relationships within the system. For example, many commenters opposed requiring MTOs to bill shippers directly because of a lack of direct commercial relationship.[102] Other commenters cited the value of the existing relationships between MTOs and VOCCs and the benefit it brings to the supply chain. For example, the National Industrial Transportation League noted, ''[t]he commercial relationship between [VOCCs] and their MTO partners should be valued for its ability to bring benefit to the ocean delivery system and, by extension, to the shipping public in a way that the transactional relationship between [BCOs] and [MTOs] cannot.'' [103] Parties involved in a continuous commercial relationship have made an investment in that relationship and are highly motivated to timely and effectively resolve problems as they arise in order to maintain a mutually beneficial, ongoing relationship.

The Commission believes that prohibiting billing parties from issuing demurrage and detention invoices to persons with whom they do not have a genuine commercial relationship will similarly benefit the supply chain. If the billed party has firsthand knowledge of the terms of its service contract with a common carrier, then they are in a better position to ensure that both they and the carrier are abiding by those terms. When demurrage or detention invoice disputes do arise, the billed party is in a better position than third parties such as truckers and customs brokers to analyze the accuracy of the charge. Further, when the billed party disputes a charge, they have an existing commercial relationship with the billing party and are in a better position to resolve the dispute.

Practically, the proposed rule would prohibit billing parties from invoicing motor carriers or customs brokers. If adopted, the proposed rule would not prevent motor carriers from paying on behalf of the billed party. Although a motor carrier could pay on behalf of a billed party, the motor carrier would not be liable for these charges and could not be penalized for nonpayment of charges. Although this arrangement is different from many of the billing systems currently employed, it would not be unprecedented. During Fact Finding Investigation No. 28, the Commission sought information on how contractual relationships, policies, and practices regarding demurrage and detention in the United States differ from those in other maritime nations. The Commission received information that, in other nations, VOCCs collect demurrage and detention charges (often combined), directly from shippers rather than motor carriers.[104]

Under the proposed rule, only the person who contracted with the common carrier for the carriage or storage of goods may be issued an invoice. The Commission is aware that there are a variety of shipping arrangements that allocate risks, obligations, and costs between the shipper and the consignee named on the bill of lading. Considering these arrangements, the Commission is specifically seeking comment on whether it would be appropriate to also include the consignee named on the bill of lading as another person who may

[95] *See e.g.,* Doc. No. 82 at 4; Doc. No. 56 at 3; Doc. No. 33 at 3; Doc. No. 51 at 1.

[96] *See e.g.,* Doc. No. 84 at 5 (''The carrier may not invoice a party merely because the carrier has expanded the list of parties which it includes as a merchant in its B/L'').

[97] *See* Doc. No. 82 at 4 (''The carriers are billing the party of least resistance. It appears the first and easiest choice under the ''Merchant Clause'' is to bill the US customs broker on import shipments as there would be minimal effort on the carrier's part (since the carrier's shipper may be based overseas), and the carrier prefers to avoid imposing detention/demurrage on a current or future customer BCO. Instead, the carrier lawyers pursue a small US customs broker with whom the carrier has not had, and likely will never have, any commercial relationship.'').

[98] Doc. No. 51 at 1 (''Members feel strongly that the VOCC should bill the customers directly, as they are the parties who formed the agreement. This would remove the drayage carrier from the equation, reduce confusion, and keep the business relationships clear.'').

[99] Doc. No. 47 at 2.

[100] *See* Doc. No. 33 at 3 (''If a motor carrier is paying demurrage, it is impossible to know if the billing is accurate since the motor carrier is not party to the contractual arrangements and agreed upon free time. On detention and per diem, since Motor Carriers are in possession of the containers under the interchange, they are constantly surveying the restrictions that exist for return of the container. However, motor carriers are still not party to the contract and subsequent free time agreements and therefore must work with shippers to determine which contract the shipment was under and if there was additional free time available from what was billed. This is another reason why only billing between contracting parties should be allowed. Motor carriers are not party to these contracts and therefore should not be billed.'').

[101] *Supply Chain Innovation Initiative: Final Report* at 3 (Dec. 5, 2017), available at: *https://www.fmc.gov/assets/1/Page/SCITFinalReport-reduced.pdf.*

[102] *See e.g.,* Doc. No. 52 at 8 (''Ports and MTOs do not bill directly to shippers or cargo owners; their strongest relationship lies with ocean carriers, whom they enter into contracts and interface with daily.''); Doc. No. 54 at 4 (''Without a contractual connection between the MTO and the shipper, such a requirement would be unworkable.'').

[103] Doc. No. 60 at 6. *See* Doc. No. 72 at 6.

[104] Fact Finding Investigation No. 28 Final Report at 3, Fed. Mar. Comm'n (Sep. 4, 2018), available at: *https://www2.fmc.gov/readingroom/docs/FF%20No.%2028/FF28_int_rpt2.pdf/.*

receive a demurrage or detention invoice. Including the consignee named on the bill of lading as an appropriately billed party for demurrage or detention charges in the Commission's proposed rule would memorialize an existing industry practice and allow the common carrier to bill either the person who contracted for the shipment of the cargo or consignee named on the bill of lading.

In sum, the proposed rule should simplify the current system and ensure that only the person with the most knowledge about the shipment and who is in the best position to understand and dispute the charge receives a demurrage or detention invoice. The Commission views the practice of sending an invoice to multiple parties involved in the shipping transaction rather than sending an invoice for demurrage or detention charges to only the person that has contracted with the billing party for the carriage or storage of goods as untenable. Therefore, the proposed rule would prohibit such a practice and require that only the person that has contracted with the billing party for the carriage or storage of goods receive an invoice for incurred demurrage or detention charges.

B. Required Billing Information

In the ANPRM, the Commission requested comment on the minimum information that should be required on billings.[105] Specifically, the ANPRM requested comment on whether it should require demurrage and detention invoices to include information necessary to identify the shipment (bill of lading number, container number, etc.); information on how the chargers were calculated (container availability date, vessel arrival dates for import shipments and earliest return date for export shipments, etc.); and information on events that justify stopping the clock on charges (*e.g.,* container unavailability, lack of return locations, lack of appointments, other force majeure reasons).[106] An overwhelming number of commenters supported the Commission requiring all of the information listed under Question 6 of the ANPRM. However, a small number of commenters opposed such a requirement. For example, NAWE, American Association of Port Authorities, and Port of NY/NJ Sustainable Services Agreement commented that some information listed in the ANPRM may be extremely burdensome or impossible to provide.[107] In addition, Maher believed that marine terminals should provide basic information on demurrage charges but did not support requiring one-size-fits-all billing information.[108]

OSRA 2022 requires common carriers to include the following information on demurrage and detention invoices: the date that the container is made available; the port of discharge; the container number or numbers; for exported shipments, the earliest return date; the allowed free time in days; the start date of free time; the end date of free time; the applicable detention or demurrage rule on which the daily rate is based; the applicable rate or rates per the applicable rule; the total amount due; the email, telephone number, or other appropriate contact information for questions or requests for mitigation of fees; a statement that the charges are consistent with any of Federal Maritime Commission rules with respect to detention and demurrage; and a statement that the common carrier's performance did not cause or contribute to the underlying invoiced charges.[109]

The proposed rule would require common carriers and MTOs to include all the information required in 46 U.S.C. 41104(d)(2), listed above on demurrage or detention invoices. The proposed rule also would require billing parties to include minimum information in addition to the information listed in 46 U.S.C. 41104(d)(2) to include specific identifying, timing, rate, and dispute resolution information, discussed in detail below. The Commission requests comments on whether it should require billing parties to include all the proposed information in demurrage and detention invoices. If the commenter opposes any of the proposed requirements, they should identify the information and the obstacles or burden to including such information on demurrage or detention invoices. If the commenter supports the proposed required information, they should explain how the specific information will assist them in verifying the accuracy of the charge or ascertaining how the charge was calculated.

1. Identifying Information

Under the proposed rule, the invoice must contain sufficient information to enable the billed party to identify the container(s) to which the charges apply, including: the bill of lading number(s); the container number(s); for imports, the port(s) of discharge; and the basis for why the invoiced party is the proper party of interest and thus liable for the charge. OSRA 2022 requires that invoices include the port of discharge and the container number.[110] The proposed rule clarifies that billing parties must only include ports of discharge for import shipments because providing the port of discharge on a demurrage or detention invoice would be less useful in the context of export shipments. The proposed rule would also require billing parties to include the bill of lading number and the basis for why the billed party was invoiced. Commenters expressed support for requiring billing parties to include the container number, bill of lading number, and basis for why the billed party is the proper party in interest. The ANPRM did not request comments on whether the invoice should include the port of discharge for import shipments.

a. Bill of Lading Number

The Commission received many comments in favor of including the bill of lading number as required information. Several commenters noted that without the bill of lading number it would be difficult to determine which shipment is being charged and to verify the accuracy of the charge.[111] However, the Commission received one comment that opposed such a requirement. OCEMA stated that the bill of lading number is not provided to billed parties that are not party to the transportation contract because disclosure may present a risk of violating legal or contractual non-disclosure requirements.[112] In response to this comment, the Commission notes that bill of lading numbers are available through publicly accessible import and export data systems, such as PIERS. In addition, the proposed rule would prohibit the billing party from issuing demurrage or detention invoices to a person other than the person for whose account the billing party provided ocean transportation or space to store goods. Further, commenters observed that demurrage and detention invoices already include bill of lading numbers.[113] Because the bill of lading number provides valuable identifying information to the billed party, the Commission proposes requiring this information on demurrage and detention invoices.

[105] 87 FR at 8508–8509.

[106] 87 FR at 8508. *See* Question 6, 87 FR at 8509.

[107] Doc. No. 26 at 5; Doc. No. 52 at 7; Doc. No. 68 at 1.

[108] Doc. No. 49 at 3.

[109] Public Law 117–146 at Sec. 7(a)(2), 136 Stat. at 1275 (codified at 46 U.S.C. 41104(d)(2)).

[110] 46 U.S.C. 41104(d)(2)(B) and (C).

[111] *See e.g.,* Doc. No. 22 at 2.

[112] Doc. No. 78 at 4.

[113] Doc. No. 52 at 7; Doc. No. 49 at 4.

b. Basis for Why Party Was Invoiced

The Commission received numerous comments asserting that billing parties issue invoices to multiple parties for the same charges and this sometimes results in duplicative payments.[114] Many commenters supported requiring billing parties to include the basis for why a party has been invoiced and is thus liable for the charge. Requiring billing parties to identify the basis for why billed parties are liable for the charge would enable billed parties to confirm that they are correctly billed the invoiced charges. The proposed rule is consistent with proposed § 541.4 that would prohibit billing parties from issuing demurrage and detention invoices to persons other than the person for whose account the billing party provided ocean transportation or space to store goods. Because the invoice would identify the basis for why the billed party is liable for the charge, they would be able to confirm that the billing party could issue an invoice to them under proposed § 541.4.

2. Timing Information

The invoice must contain sufficient information to enable the billed party to identify the relevant time for which the charges apply and the applicable due date for the invoiced charges, including: the billing date; the billing due date; the allowed free time in days; the start date of free time; the end date of free time; for imports, the container availability date; for exports, the earliest return date; and the specific date(s) for which demurrage or detention were charged. OSRA 2022 requires that invoices include the date the container is made available; for exported shipments, the earliest return date; the allowed free time in days; the start date of free time; and the end date of free time.[115] The proposed rule clarifies that the billing parties must only provide container availability date for import shipments. The proposed rule would also require billing parties to specify the dates for which demurrage and/or detention charges accrued, the billing date, and the billing due date.

a. Dates Demurrage or Detention Charges Accrued

The Commission received numerous comments in response to the ANPRM that indicated that invoices should reflect any ''clock-stopping'' events that would prevent the return of equipment, such as container unavailability or lack of return locations or appointment times.[116] OCEMA, however, opposed such a requirement and stated that this type of information is not always known at the time of invoicing and would therefore pose a risk of delaying the payment process and disrupt the flow of cargo.[117] Further, OCEMA asserted that information such as container and appointment availability are sourced from third party systems and therefore the timing and feasibility of providing this information is unknown.[118] WSC noted that carriers do not have visibility to such ''clock-stopping'' events and that shippers or motor carriers are more aware of challenges to container pick-up and drop-off.[119] Maher also commented that it does not provide ''clock-stopping events'' on their invoices because of the cost and administrative burden to providing such information.[120]

Instead of requiring billing parties to identify specific ''clock-stopping'' events on demurrage and detention invoices, the proposed rule would require the billing party to identify the specific dates on which they charged demurrage or detention. The proposed rule permits billing parties to take into account any intervening events that affected the charges, if known, and enables billed parties to confirm or dispute the validity of charges on specific dates. The proposed rule incorporates the intent of OSRA 2022 to shift the burden to billing parties to justify the demurrage or detention charges while allowing billing parties to correct invoices when the intervening events are not initially known to them.

b. Billing Date and Payment Due Date

The proposed rule would require the billing party to include the invoice billing date and payment due date. The proposed requirement to include the billing date and the payment due date will enable the billed party and the Commission to confirm that the billing parties are adhering to the proposed billing practices outlined in proposed § 541.7. If the billed party has the billing date information, they can confirm that the billed party issued the invoice within 30 days from when the charge was last incurred. In addition, providing the payment due date would notify the billed party of when they must pay the invoiced charges.

3. Rate Information

The invoice must contain sufficient information to enable the billed party to identify the amount due and readily ascertain how that amount was calculated, including: the total amount due; the applicable detention or demurrage rule (*i.e.,* the tariff name and rule number or applicable service contract number and section) on which the daily rate is based; and the specific rate or rates per the applicable tariff rule or service contract. The proposed rule incorporates the rate information requirements contained in OSRA 2022.[121] It also clarifies that when billing parties provide the applicable detention or demurrage rule on which the daily rate is based, the billing party should provide sufficient detail so that the billed party is able to locate the specific rate that should apply and confirm that the invoice includes the correct rate. Under the proposed rule, demurrage and detention invoices would include information necessary to ascertain the rate that the billing party applied, grounds for applying that rate, dates for which the billing party charged the rate, and the total amount due. This enhanced transparency will enable billed parties to efficiently confirm the charges and decide whether to dispute the invoiced charges.

A commenter expressed concern that providing the applicable detention or demurrage rule on which the daily rate is based could ''undermine service contract confidentiality.'' [122] However, because the proposed rule would prohibit billing parties from issuing a demurrage or detention invoice to a person other than the person for whose account the billing party provided ocean transportation or space to store goods, the billed party is already privy to the confidential contract or negotiated terms, including the specific agreed upon rate.

4. Dispute Information

Under the proposed rule, the invoice must contain sufficient information to enable the billed party to readily identify a contact to whom they may direct questions or concerns related to the invoice and understand the process to request fee mitigation, refund, or waiver. The proposed rule would require the invoice to include: an email, telephone number, or other appropriate contact information for questions or request for fee mitigation, refund, or waiver; an URL address of a publicly-accessible portion of the billing party's website that provides a detailed

[114] *See e.g.,* Doc. No. 13 at 5–6; Doc. No. 15 at 3; Doc. No. 18 at 2; Doc. No. 19 at 2; Doc. No. 37 at 2; Doc. No. 28 at 2.

[115] 46 U.S.C. 41104(d)(2)(A), (E)–(G).

[116] *See e.g.,* Doc. No. 13 at 5; Doc. No. 14 at 2; Doc. No. 15 at 2; Doc. No. 16 at 2; Doc. No. 17 at 2; Doc. No. 18 at 2; Doc. No. 19 at 2; Doc. No. 21 at 3; Doc. No. 29 at 2; Doc. No. 30 at 1; Doc. No. 44 at 2; Doc. No. 83 at 2.

[117] Doc. No. 78 at 5.

[118] Doc. No. 78 at 5.

[119] Doc. No. 61 at 7.

[120] Doc. No. 49 at 4.

[121] 46 U.S.C. 41104(d)(2)(H)–(J).

[122] Doc. No. 61 at 5.

description of information or documentation that the billed party must provide to successfully request fee mitigation, refund, or waiver; and defined timeframes that comply with the billing practices in this part, during which the billed party must request fee mitigation, refunds, or waivers and within which the billing party will resolve such requests. OSRA 2022 requires that the invoice include contact information for questions or requests for mitigation of fees.[123] The proposed rule would also require that the invoice include the URL address where billed parties can obtain a detailed description of the information or documentation that must be provided with a request for fee mitigation, refunds, or waivers. In addition, the proposed rule would require that the invoice provide defined timeframes by which the billed party must request fee mitigation, refunds, or waivers, and the timeframe by which the billing party would resolve such requests.

a. Website Address That Describes Information Required for Dispute Resolution

The proposed regulation would require the invoice to provide the URL address of a publicly-accessible portion of the billing party's website that describes the information that the billed party must provide to successfully request fee mitigation, refund, or waiver. Commenters indicated that shippers lack awareness regarding what information they should include when they request fee mitigation, refunds, or waivers.[124] Knowing what information or documentation must be filed with requests for fee mitigation, refunds, and waivers, will improve efficiency within the dispute process. Parties will not need to exchange communications that inform billed parties what information to include with their requests, notify billed parties that they did not file all the required information, or supplement pending requests with additional information. In addition, awareness of what information must be provided with any request for fee mitigation, refund, or waiver, will enable billed parties to collect the necessary information and decrease the number of requests denied on technicalities.

The Commission acknowledges that a billing party should require the same information to be submitted with requests for fee mitigation, refund, or waiver, regardless of which billed party is making the request. Thus, it is not necessary to include a detailed description of information or documents that the billed party must provide to successfully request a fee mitigation, refund, or waiver on each individual demurrage or detention invoice. However, it is important that billed parties can easily locate this information. To ensure that billed parties are able to find this vital information, the proposed rule would require the invoice to include the URL address for a publicly-accessible portion of the billing party's website that describes the required information. The Commission encourages billing parties to provide a URL address that is specific (*i.e.,* providing the billing party's homepage when there is no clear indication where this information can be found would be insufficient).

b. Defined Timeframes

The proposed rule would also require the invoice to include specific timeframes within which the billed party must submit a fee mitigation, refund, or waiver request and for when the billing party will resolve such requests. This proposed rule would require the timeframes to comply with the proposed billing practices in §§ 541.7 and 541.8. As a result, demurrage or detention invoices would notify the billed party of these key timeframes and required billing practices and the billed party would not need to be familiar with the Commission's regulations to know these key dates.

5. Certifications

Under the proposed rule, the invoice must contain a statement from the billing party that the demurrage or detention charge is consistent with any of the Commission's rules related to demurrage and detention, including the proposed rule and 46 CFR 545.5.[125] In addition, the proposed rule would require the invoice to include a statement from the billing party that their performance did not cause or contribute to the underlying invoiced charges. OSRA 2022 requires billing parties to include both statements on demurrage and detention invoices.[126] The proposed rule would incorporate these required statements. In addition, the proposed rule clarifies that the Commission's rules related to demurrage and detention include the proposed rule and the interpretive rule on demurrage and detention at 46 CFR 545.5. Although the ANPRM did not request comments on whether billing parties include such statements on demurrage and detention invoices, several commenters supported requiring such statements or similar statements.[127]

C. Billing Practices

1. 30-Day Timeframe To Issue Demurrage or Detention Invoices

In the ANPRM, the Commission noted concerns from stakeholders regarding the lack of clearly defined timeframes for the issuance of demurrage or detention invoices.[128] In Docket No. 19–05, several commenters asserted that billing parties should issue demurrage or detention invoices within specific timeframes.[129] When issuing the Interpretive Rule in May 2020, the Commission determined not to take action regarding deadlines for demurrage or detention invoices but stated that it reserved the right to address the issue at a later date.[130]

In the ANPRM, the Commission stated that it continued to receive reports of delays in receiving demurrage or detention invoices and the difficulties in validating the accuracy of the charges contained in invoices received months after the occurrence of the charges.[131] The Commission requested comments on whether it should require billing parties issue demurrage or detention invoices within 60 days of the occurrence of the charge, noting that this approach would align with the UIIA.[132] Specifically, the Commission stated that it was interested in whether the UIIA timeframe is effective and whether a longer or shorter deadline would be appropriate.[133]

Many commenters responded to the question of whether the Commission should require that billing parties issue demurrage or detention invoices within 60 days of when the charge stops accruing. Four commenters opposed requiring billing parties issue a demurrage or detention invoice within a specified timeframe.[134] Two commenters, WSC and OCEMA, asserted that the Commission should

[123] 46 U.S.C. 41104(d)(2)(K).

[124] *See e.g.,* Doc. No. 8 at 3; Doc. No. 13 at 7; Doc. No. 41 at 4; Doc. No. 43 at 5; Doc. No. 53 at 5; Doc. No. 65 at 5; Doc. No. 61 at 10; Doc. No. 63 at 4; Doc. No. 64 at 7; Doc. No. 67 at 6.

[125] 46 U.S.C. 41104(d)(2)(L).

[126] 46 U.S.C. 41104(d)(2)(M).

[127] *See e.g.,* Doc. No. 75 at 3; Doc. No. 43 at 5; Doc. No. 77 at 5; Doc. No. 69 at 5; Doc. No. 84 at 4.

[128] 87 FR at 8508.

[129] 85 FR at 29662.

[130] 85 FR at 29662.

[131] 87 FR at 8508.

[132] 87 FR at 8508.

[133] 87 FR at 8508.

[134] Doc. No. 61 at 9–10; Doc. No. 26 at 7; Doc. No. 68 at 1 (incorporates NAWE Comments); Doc. No. 78 at 6–7. WSC and OCEMA are associations that represent ocean common carriers. *See* Doc. No. 78 at 1. NAWE and PONYNJSSA are associations that represent marine terminal operators. Doc. No. 26 at 1; Doc. No. 68 at 1.

not regulate when billing parties issue demurrage or detention invoices because these timeframes should be set by contractual terms or commercial negotiations.[135] If, however, the Commission decides to require billing parties to issue demurrage or detention invoices within a specific timeframe, WSC and OCEMA stated the timeframe should be no shorter than 60 days.[136] In addition, both WSC and OCEMA noted that any such timeframe for issuing demurrage or detention invoices should allow for nuanced application of the deadline.[137] For example, both parties raised questions regarding how the deadline would apply to third-parties that pass through demurrage and detention charges.[138]

NAWE asserted that it is unnecessary for the Commission to regulate timeframes for billing parties, especially MTOs, to issue demurrage or detention invoices.[139] Specifically, NAWE observed that most MTOs use electronic data interchanges and electronic payment methods and are able to ''invoice'' demurrage or detention charges immediately after these charges stop accruing.[140] Because there are no delays for such MTOs in issuing demurrage or detention invoices, NAWE commented that there is no need for such regulations with regard to MTOs.[141]

The remaining commenters supported mandating a deadline within which a billing party must issue a demurrage or detention invoice. These include comments submitted by a customs broker; 10 motor carriers and motor carrier organizations; [142] 14 OTI and OTI organizations; [143] 31 BCOs and BCO trade organizations; [144] and five with unknown affiliations.[145]

These commenters cited several reasons in support of an invoice deadline. For example, several commenters asserted that having a deadline will provide billed parties with predictability and transparency regarding when they will receive their invoices.[146] In the ANPRM, the Commission requested information on how long it typically takes to receive a demurrage or detention invoice.[147] Responses to this question vary greatly. For example, some commenters stated that billed parties receive demurrage or detention invoices within several days after the charges stop accruing.[148] Other commenters claimed that it may take between 2–4 weeks to receive demurrage or detention invoices.[149] Most commenters however, stated that the time varies greatly and could range from 30 days to 24 months.[150] For example, the Meadows Group reported that it received demurrage and detention invoices an average of 120 days after the charge accrued, but that it also received invoices 24 months after the fact.[151] In addition, National Association of Manufacturers (NAM) stated that its members report a wide range of invoice delivery times, from as short as 30 days to as long as nearly 24 months.[152] In addition, commenters noted that the time it takes for a billing party to issue a demurrage or detention invoice varies on the charges assessed. For example, one commenter stated that billing parties invoice import demurrage before releasing containers, but that billing parties may take as long as 30 days to invoice export demurrage charges and 60 days to invoice import and export detention charges.[153]

In addition to providing transparency and predictability for when billing parties must issue demurrage or detention invoices, commenters noted that an invoicing deadline will ensure that billed parties will have the information readily available to verify the accuracy of the charges.[154] Similarly, many commenters claimed that timely billing will reduce costly and time-consuming research to verify charges, particularly when received months after the fact.[155] NAM explains that shippers and BCOs regularly receive costly bills months after the fact and that responding to such bills require diverting staff hours and attention away from cargo delivery and efficient logistics operations.[156] Furthermore, NAM asserted that instituting an invoice deadline will ''ensure that shippers and BCOs will be able to accurately maintain shipping information and records to validate any demurrage or detention bills[.]'' [157]

Most commenters agreed that billing parties should issue demurrage or detention invoices within a specific timeframe but disagreed on what that timeframe should be. Three commenters did not indicate a specific deadline in their comments but stressed the need for a timeliness standard.[158] Among the remaining commenters, 23 commenters supported a 60-day timeframe; [159] 25 commenters supported a 30-day timeframe; [160] and 11 commenters favored shorter timeframes ranging from five to twenty-one days.[161]

[135] Doc. No. 61 at 9–10; Doc. No. 78 at 6–7.

[136] Doc. No. 61 at 10; Doc. No. 78 at 7.

[137] Doc. No. 61 at 10; Doc. No. 78 at 7.

[138] Doc. No. 61 at 10; Doc. No. 78 at 7.

[139] Doc. No. 26 at 7.

[140] Doc. No. 26 at 7.

[141] Doc. No. 26 at 7.

[142] *See* Doc. No. 51; Doc. No. 56; Doc. No. 46; Doc. No. 56; Doc. No. 7; Doc. No. 15; Doc. No. 24; Doc. No. 33; Doc. No. 47; Doc. No. 17.

[143] *See* Doc. No. 13; Doc. No. 75; Doc. No. 70; Doc. No. 82; Doc. No. 69; Doc. No. 83; Doc. No. 60; Doc. No. 62; Doc. No. 19; Doc. No. 77; Doc. No. 48; Doc. No. 76; Doc. No. 63, Doc. No. 81.

[144] *See* Doc. No. 79; Doc. No. 3; Doc. No. 67; Doc. No. 6; Doc. No. 14; Doc. No. 8; Doc. No. 30; Doc. No. 38; Doc. No. 34; Doc. No. 22; Doc. No. 40; Doc. No. 42; Doc. No. 66; Doc. No. 37; Doc. No. 72; Doc. No. 71; Doc. No. 44; Doc. No. 21; Doc. No. 28; Doc. No. 41; Doc. No. 43; Doc. No. 64; Doc. No. 33; Doc. No. 53; Doc. No. 54; Doc. No. 65; Doc. No. 55; Doc. No. 58; Doc. No. 73; Doc. No. 35; Doc. No. 84.

[145] *See* Doc. No. 9; Doc. No. 18; Doc. No. 27; Doc.; Doc. No. 32.

[146] Doc. No. 67 at 5; Doc. No. 24 at 4; Doc. No. 83 at 3; Doc. No. 62 at 5; Doc. No. 8 at 2–3.

[147] 87 FR at 8509.

[148] Doc. No. 19 at 3; Doc. No. 37 at 3; Doc. No. 26 at 4; Doc. No. 49 at 5.

[149] Doc. No. 18 at 3; Doc. No. 25 at 2; Doc. No. 32 at 3; Doc. No. 44 at 4; Doc No. 14 at 3.

[150] Doc. No. 17 at 3 (3–6 months); Doc. No. 22 at 3 (120-day average, but have received invoices 24 months after); Doc. No. 33 at 9 (average is 30–60 days, but sometimes up to six months); Doc. No. 28 at 3 (average of 30–60 days but sometimes up to six months); Doc. No. 48 at 6 (members received invoices 180 days after a transaction took place); Doc. No. 54 at 4 (takes up to 6 months to receive an invoice); Doc. No. 55 at 2 (up to 24 months); Doc. No. 53 at 5 (averages 60–90 days, but as long as 8 months); Doc. No. 67 at 2, 5 (typically receive billings within 30 days, but sometimes 60 days or more); Doc. No. 3 at 3 (averaging 6–12 months). *See* Doc. No. 27 at 3; Doc. No. 46 at 2; Doc. No. 41 at 4.

[151] Doc. No. 22 at 3

[152] Doc. No. 55 at 2.

[153] Doc. No. 9 at 3; *see* Doc. No. 39 at 2; Doc. No. 56 at 2; Doc. No. 67 at 3; Doc. No. 60 at 8; Doc. No. 65 at 5; Doc. No. 64 at 6.

[154] Doc. No. 67 at 5; Doc. No. 58 at 3; Doc. No. 22 at 3; Doc. No. 84 at 4–5; Doc. No. 28 at 3.

[155] Doc. No. 13 at 7; Doc. No. 3 at 2; Doc. No. 54 at 5; Doc. No. 58 at 3; Doc. No. 55 at 2; Doc. No. 53 at 5; Doc. No. 65 at 4; Doc. No. 79 at 4.

[156] Doc. No. 55 at 2.

[157] Doc. No. 55 at 2.

[158] Doc. No. 51 at 2; Doc. No. 34 at 2; Doc. No. 35 at 2.

[159] Doc. No. 76 at 7; Doc. No. 65 at 5; Doc. No. 54 at 4; Doc. No. 39 at 2; Doc. No. 46 at 2; Doc. No. 32 at 2; Doc. No. 33 at 9; Doc. No. 9 at 3; Doc. No. 24 at 4; Doc. No. 81 at 4; Doc. No. 44 at 4; Doc. No. 58 at 3; Doc. No. 55 at 2; Doc. No. 43 at 5; Doc. No. 56 at 2; Doc. No. 53 at 5; Doc. No. 22 at 3; Doc. No. 37 at 3; Doc. No. 48 at 6; Doc. No. 28 at 3; Doc. No. 63 at 4; Doc. No. 8 at 3; Doc. No. 17 at 4.

[160] Doc. No. 3 at 2–3; Doc. No. 6 at 2; Doc. No. 7 at 4; Doc. No. 13 at 7; Doc. No. 14 at 4; Doc. No. 15 at 3; Doc. No. 29 at 3; Doc. No. 30 at 2; Doc. No. 40 at 3; Doc. No. 42 at 1 (citing Doc. No. 29); Doc. No. 47 at 3; Doc. No. 67 at 3; Doc. No. 66 at 1 (citing Doc. No. 29); Doc. No. 83 at 5; Doc. No. 60 at 8; Doc. No. 62 at 5; Doc. No. 64 at 6; Doc. No. 67 at 4–5; Doc. No. 72 at 7; Doc. No. 71 at 1 (citing Doc. No. 29); Doc. No. 75 at 3, 4; Doc. No. 70 at 5; Doc. No. 84 at 5; Doc. No. 82 at 2. Many of these commenters supported shorter timeframes as well. *See* Doc. No. 70 (supported 7 days); Doc. No. 60 at 8 (supported 5–15 days); Doc. No. 72 at 7 (supported 5–15 days); Doc. No. 64 at 6 (supported 14 days); Doc. No. 75 at 4 (supported 15 days); Doc. No. 82 at 2 (supported 21 days).

[161] Doc. No. 27 at 3 (5–10 days); Doc. No. 38 at 4 (10 days); Doc. No. 73 at 3–4 (10 days); Doc. No. 41 at 4 (10 days); Doc. No. 18 at 3 (10 days); Doc. No. 79 at 4 (10–14 days); Doc. No. 56 at 2–3 (14 days); Doc. No. 69 at 5, 7 (14 days); Doc. No. 77

Continued

Two commenters who supported the 60-day timeframe stated that this timeframe is reasonable and aligns with the UIIA timeframe.[162] For example, Intermodal Association of North America (IANA) asserted that the 60-day timeframe provided in the UIIA represents an industry standard because this requirement has been in effect for over 25 years.[163] Additionally, IANA opined that adopting the 60-day timeframe ''will reinforce, rather than disrupt, long-standing industry practices.'' [164] However, many commenters who supported the 60-day timeframe also urged the Commission to consider shorter timeframes.[165]

Many commenters also supported an invoice deadline shorter than 60 days for a variety of reasons. For example, commenters asserted that 60 days is too long and that, with billing parties using automated systems, 30 days is more than adequate time for billing parties to issue demurrage or detention invoices.[166] Moreover, commenters observed that several billing parties currently issue invoices within 30 days after the charges stop accruing.[167] In addition, OTI commenters stated that receiving demurrage and detention invoices from VOCCs and MTOs in a timely manner will allow OTIs to bill their clients within a reasonable timeframe which will hopefully facilitate collection of these charges.[168]

The Commission is proposing to require billing parties to issue demurrage or detention invoices to billed parties within 30 days from the date charges stop accruing. Although the proposed 30-day timeframe is shorter than the 60-day timeframe contained in the UIIA, commenters reported that demurrage or detention invoices generally arrive within the 30-day timeframe.[169] For example, MTOs indicated that, because of customer portals and electronic payment systems, invoices are available immediately when the charges stop accruing.[170] Because it appears that billing parties are capable of issuing demurrage or detention invoices, on average, within 30 days, applying this timeframe does not appear to be unreasonable. In addition, a 30-day deadline, which provides billing parties sufficient time to prepare an invoice, will also permit billed parties to verify the charges more efficiently. As commenters noted, the more time that passes between when the charges stop accruing and when the billed party receives an invoice, it is more difficult for the billed party to verify the charge because it is less likely that they have the necessary information or documentation to confirm a charge.

The Commission also proposes to excuse billed parties from paying assessed charges contained in invoices issued after the 30-day timeframe. If a billing party does not issue a demurrage or detention invoice within the required timeframe, then the charge would be void and the billed party would not be required to pay. Without such a provision, there would be no consequence for not meeting the 30-day timeframe. In addition, this proposed rule is consistent with the UIIA and supported by commenters.[171]

The 30-day timeframe would apply to VOCCs, MTOs, and NVOCCs. In the ANPRM, the Commission requested comments on whether the Commission should require different timeframes for VOCC and NVOCC demurrage and detention invoices.[172] Most commenters responded that the same timelines should apply to VOCCs and NVOCCs.[173] However, when NVOCCs pass through demurrage or detention charges assessed against them to their customers, it may be difficult for NVOCCs to issue a demurrage or detention invoice within the required timeframe if it does not receive the initial invoice in a timely manner.[174] In addition, OCEMA suggested that the invoice deadlines should ''allow nuance in the application of the deadline for factors that may justify delay[.]'' [175] The Commission requests comments discussing how it can best reflect the application of the deadline to NVOCCs that pass through demurrage or detention charges.

2. Timeframes for Disputing Charges and Resolving Disputes

The Commission proposes that billed parties submit any requests for fee mitigation, refund, or waiver to billing parties within 30 days of receiving a demurrage or detention invoice.[176] The proposed rule would provide billed parties 30 days to verify the invoiced charges; decide whether they would like to request fee mitigation, refund, or waiver; and collect the documentation to support its request. The proposed timeframe protects billed parties against unreasonable deadlines that billing parties may impose upon their customers. At the same time, the 30-day dispute timeframe would notify billed parties that, if they plan to request fee mitigation, refund, or waiver, they have a limited amount of time within which they must submit such a request and it would protect billing parties from untimely requests.

The 30-day timeframe for disputing charges is consistent with the timeframe for billed parties to dispute charges in the UIIA and is supported by commenters.[177] One commenter suggested extending the current dispute deadline from 30 to 60 days to allow carriers more time to audit and pay per diem invoices accordingly.[178] The Commission is proposing this timeframe in conjunction with its proposed 30-day timeframe for billing parties to issue demurrage or detention invoices. Because the proposed rules would require billing parties to issue invoices in a timelier manner, one anticipated benefit is that billed parties would be able to more quickly verify the charges as the documents necessary to confirm the charges would be more readily available. Accordingly, in the Commission's view, the 30-day timeframe is a reasonable one that permits billed parties to review the charges and request fee mitigation, refund, or waiver as necessary that they can meet readily.

at 7 (14–21 days); Doc. No. 21 at 3–4 (15 days); Doc. No. 19 at 3 (21 days).

[162] Doc. No. 43 at 5; Doc. No. 24 at 3.

[163] Doc. No. 24 at 3.

[164] Doc. No. 24 at 4.

[165] Doc. No. 65 at 5; Doc. No. 54 at 4; Doc. No. 81 at 4; Doc. No. 28 at 3.

[166] Doc. No. 29 at 2; Doc. No. 30 at 2; Doc. No. 38 at 4; Doc. No. 67 at 3; Doc. No. 73 at 4; Doc. No. 40 at 3; Doc. No. 56 at 3. *See* Doc. No. 60 at 8.

[167] *See* Doc. No. 29 at 2–3 (immediate billing is an industry standard for the perishable produce industry). *See also* Doc. No. 67 at 5; Doc. No. 30 at 2; Doc. No. 40 at 3; Doc. No. 38 at 4. Commenters report that they receive demurrage or detention invoices several days to one month after charges stop accruing. Doc. No. 19 at 3; Doc. No. 37 at 3; Doc. No. 26 at 4; Doc. No. 49 at 5; Doc. No. 18 at 3; Doc. No. 25 at 2; Doc. No. 32 at 3; Doc. No. 44 at 4; Doc. No. 14 at 3.

[168] Doc. No. 32 at 3; Doc. No. 69 at 5; Doc. No. 70 at 3, 5; Doc. No. 76 at 7; Doc. No. 77 at 5.

[169] Doc. No. 29 at 2–3; Doc. No. 67 at 5; Doc. No. 30 at 2; Doc. No. 40 at 3; Doc. No. 38 at 4; Doc. No. 19 at 3; Doc. No. 37 at 3; Doc. No. 26 at 4; Doc. No. 49 at 5; Doc. No. 18 at 3; Doc. No. 25 at 2; Doc. No. 32 at 3; Doc. No. 44 at 4; Doc. No. 14 at 3.

[170] Doc. No. 26 at 7; Doc. No. 49 at 4.

[171] UIIA at E.6.c; Doc. No. 84 at 5; Doc. No. 77 at 7; Doc. No. 69 at 5, 7; Doc. 75 at 4; Doc. No. 43 at 5.

[172] 87 FR at 8509.

[173] Doc. No. 3 at 2; Doc. No. 41 at 3; Doc. No. 64 at 5; Doc. No. 28 at 2; Doc. No. 43 at 4; Doc. No. 53 at 4; Doc. No. 51 at 2; Doc. No. 80 at 1; Doc. No. 61 at 8; Doc. No. 15 at 2; Doc. No. 22 at 3; Doc. No. 46 at 2.

[174] *See* Doc. No. 32 at 3; Doc. No. 69 at 5; Doc. No. 70 at 3, 5; Doc. No. 76 at 7; Doc. No. 77 at 5.

[175] Doc. No. 78 at 7. *See* Doc. No. 13 at 4; Doc. No. 61 at 10.

[176] The proposed 30-day deadline would apply to requests for fee mitigation, refunds, or waivers submitted by the billed party to the billing party through the billing parties' dispute process. The proposed rule does not apply to ''charge complaints'' authorized by section 10 of OSRA 2022 (codified in 46 U.S.C. 41310).

[177] UIIA at E.6.f; Doc. No. 84 at 4; Doc. No. 64 at 7; Doc. No. 43 at 5.

[178] Doc. No. 59 at 2.

The Commission proposes that, after receiving a fee mitigation, refund, or waiver request, a billing party must resolve the request within 30 days. This proposed deadline is consistent with the response deadline contained in the UIIA and supported by several commenters.[179] The proposed rule would require a billing party, after receiving a request to mitigate, refund, or waive a charge on a demurrage or detention invoice, to determine whether to grant or deny the request within 30 days of receiving the request. Resolution of a request also includes billing parties to mitigate, refund, or waive a charge, if appropriate, within the 30-day timeframe. If the billing party does not resolve the fee mitigation, refund, or waiver request within 30 days, then the charge at issue must be mitigated, refunded, or waived.

The proposed deadline would provide billed parties with certainty that it will receive a response to its fee mitigation, refund, or waiver request within a specific timeframe. Like receiving demurrage or detention invoices, commenters reported that the time it takes for billed parties to receive a refund varies greatly. For example, one commenter claimed that ''[r]efunds are paid when the carrier or terminal operator wants to do it'' and that it can take up to six months to receive a refund.[180] Commenters generally supported having a deadline for resolving requests for fee mitigation, refund, or waiver. As one commenter succinctly stated, ''just as bills must be paid within a certain amount of time, it seems only fair that refunds should be issued within a set time frame.'' [181] In that vein, proposing to require billing parties to resolve requests for fee mitigation, refunds, or waivers within 30 days of receipt ensures that such requests are not pending for an indefinite period of time.

[179] UIIA at H.1; Doc. No. 63 at 4; Doc. No. 43 at 5; Doc. No. 64 at 7; Doc. No. 41 at 4; Doc. No. 54 at 5; Doc. No. 33 at 11; Doc. No. 74 at 5. *See* Doc. No. 25, Attachment at 1 (states that the company aspires to address disputes within 30 days). Several commenters supported shorter timeframes; however, it appears that these commenters were discussing timeframes for when billing parties should issue refunds *after* they dismiss the charges at issue. *See* Doc. No. 39 at 3; Doc. No. 69 at 8; Doc. No. 46 at 3; Doc. No. 84 at 5; Doc. No. 75 at 5; Doc. No. 79 at 4; Doc. No. 3 at 3; Doc. No. 72 at 8; Doc. No. 60 at 9; Doc. No. 28 at 3; Doc. No. 21 at 4.

[180] Doc. No. 77 at 8. *See* Doc. No. 33 at 11; *see also* Doc. No. 22 at 4 (typically takes six months to receive a refund, may take as long as two years).

[181] Doc. No. 51 at 4. *See* Doc. No. 44 at 4 (''[r]efunds should be issued in a timely manner, certainly within a specified number of days'').

V. Public Participation

How do I prepare and submit comments?

You may submit comments by using the Federal eRulemaking Portal at *www.regulations.gov,* under Docket No. 2022–0066, Demurrage and Detention Billing Requirements. Please follow the instructions provided on the Federal eRulemaking Portal to submit comments.

How do I submit confidential business information?

The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If you would like to request confidential treatment, pursuant to 46 CFR 502.5, you must submit the following, by email, to *secretary@fmc.gov:*

- A transmittal letter that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
- A confidential copy of your comments, consisting of the complete filing with a cover page marked ''Confidential-Restricted,'' and the confidential material clearly marked on each page.
- A public version of your comments with the confidential information excluded. The public version must state ''Public Version—confidential materials excluded'' on the cover page and on each affected page and must clearly indicate any information withheld.

Will the Commission consider late comments?

The Commission will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date.

How can I read comments submitted by other people?

You may read the comments received by the Commission at *www.regulations.gov,* under Docket No. 2022–0066, Demurrage and Detention Billing Requirements.

VI. Rulemaking Analyses

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, provides that whenever an agency is required to publish a notice of proposed rulemaking under the Administrative Procedure Act (APA), 5 U.S.C. 553, the agency must prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) describing the impact of the proposed rule on small entities, unless the head of the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 605.

The proposed rule would require VOCCs, NVOCCs, and MTOs to including minimum billing information on detention and demurrage invoices. The rulemaking additionally requires billing parties that issue demurrage and detention invoices to follow certain billing practices; specifically, billed parties must issue demurrage and detention invoices within 30 days from when charges stop accruing.

The Commission presumes that VOCCs and MTOs generally do not qualify as small entities under the guidelines of the Small Business Administration (SBA).[182] The Commission previously stated that VOCCs and MTOs generally are large companies that exceed the employee (500) and/or annual revenue ($21.5 million) thresholds to be considered small business entities. However, the Commission presumes that NVOCCs are small business entities.

There are likely two types of costs imposed by the proposed rulemaking on the affected businesses. The imposition of a 30-day deadline to issue an invoice from when demurrage and detention charges stop accruing could result in a loss of revenue to the billing party. In additional, the minimum billing information requirements imposed by the proposed rule may require the billing party to collect additional information and change its billing information technology system to include all the required information on invoices.

Most of the costs of the rulemaking will be borne by VOCCs and MTOs as they generally assess demurrage and detention charges, and not NVOCCs. As discussed above, in most cases, NVOCCs pass through detention and demurrage charges billed to them on invoices generated by VOCCs or MTOs. Accordingly, NVOCCs should receive the minimum billing information required by the proposed rule from either the VOCC or MTO issuing the invoice. For these reasons, the Chairman of the Federal Maritime Commission certifies that if this rule is promulgated, it would not have a significant

[182] FMC Policy and Procedures regarding Proper Consideration of Small Entities in Rulemakings (Feb. 7, 2003), available at: *https://www.fmc.gov/wp-content/uploads/2018/10/SBREFA_Guidelines_2003.pdf.*

economic impact on a substantial number of small entities.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) requires Federal agencies to consider the environmental impacts of proposed major Federal actions significantly affecting the quality of the human environment, as well as the impacts of alternatives to the proposed action. When a Federal agency prepares an environmental assessment, the Council on Environmental Quality (CEQ) NEPA implementing regulations (40 CFR parts 1500 through 1508) require the Federal agency to ''include brief discussions of the need for the proposal, of alternatives [. . .], of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.'' 40 CFR 1508.9(b). This section serves as the Commission's Draft Environmental Assessment (Draft EA) for the proposed changes to 46 CFR part 541.

Upon completion of an environmental assessment, it was determined that the proposed rule will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.,* and that preparation of an environmental impact statement is not required. This Finding of No Significant Impact (''FONSI'') will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed by any of the methods described in the **ADDRESSES** section of the document. The FONSI and environmental assessment are available for inspection on the docket at *https://www.regulations.gov.*

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. The agency must submit collections of information in proposed rules to OMB in conjunction with the publication of the notice of proposed rulemaking. In compliance with the PRA, the Commission has submitted the proposed information collection to the Office of Management and Budget and is requesting comment on the proposed revision.

With the proposed addition of 46 CFR part 541, the Commission has identified specific billing information required on demurrage and detention invoices. Although some entities issue demurrage and detention invoices that contain most of the required information, many entities will likely need to revise their practices to include the required information. The Commission believes that the addition of 46 CFR part 541 will likely increase the overall industry burden, but that it will not have a significant impact on members of the shipping public.

Title: 46 CFR Part 541—Demurrage and Detention Billing Requirements

OMB Control Number: 3072–XXXX.

Abstract: 46 U.S.C. 41104(a)(15) and (d)(2) and 46 CFR part 541 subpart A, if adopted, require demurrage and detention invoices to contain certain additional information to increase transparency so that billed parties can identify the containers at issue, the applicable rate, dates for which charges accrued, and how to dispute charges. Further, 46 U.S.C. 41104(d)(2) and 46 CFR part 541, if adopted, also require demurrage and detention invoices to certify that the charges comply with applicable regulatory provisions and that the invoicing party's behavior did not contribute to the charges.

Current Action: The proposed rule implements statutory text that identifies the minimum information that billing parties must include on demurrage and detention invoices, identifies additional information that billing parties must include on demurrage and detention invoices, and clarifies which entities may receive demurrage and detention invoices.

Type of Request: Approve information collection.

Needs and Uses: The Commission identifies information that entities must include on demurrage and detention invoices to ensure compliance with the Shipping Act of 1984, as amended. Specifically, proposed 46 CFR part 541 subpart A implements the billing information requirements contained in 46 U.S.C. 41104(d)(2) and adds additional minimum information that billing parties must include on demurrage and detention invoices.

Frequency: The frequency of demurrage and detention invoices is determined by the billing party. It is the billing entity's responsibility to ensure that their demurrage and detention charges comply with applicable statutory and regulatory provisions. The Commission estimates that between five and ten percent of all containers moving in U.S.-foreign trade will receive a demurrage and/or detention invoice or an estimated range of 1,135,000 and 2,270,000 invoices annually.

Type of Respondents: VOCCs, MTOs, and NVOCCs are required to include specific information on their demurrage and detention invoices sent to billed parties.

Number of Annual Respondents: The Commission anticipates an annual respondent universe of 354 VOCCs and MTOs. The Commission did not include NVOCCs in its annual respondent universe because in most, if not all cases, NVOCCs pass through the demurrage and detention charges it receives to their customers. Because NVOCCs are passing through the charges they are not collecting the required minimum information themselves.

Estimated Time per Response: The Commission estimates a one-time burden of an estimated 25 hours per respondent to integrate the required billing information elements into their existing invoicing system. After this initial burden, the Commission anticipates that the estimated time to create and retain each demurrage or detention invoice to be six minutes or 0.1 hours.

Total Annual Burden: The Commission estimates a one-time burden for respondents to integrate the additional billing information elements, required by OSRA 2022 and by the proposed rule, into their existing invoicing system to be 8,850 person-hours and $882,522. After this initial integration, the Commission estimates the total annual burden to provide demurrage and detention invoices and to ensure accuracy to be 113,500–227,000 person-hours and $6,339,020–$12,678,040.

Comments are invited on:

- Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Whether the Commission's estimate for the burden of the information collection is accurate;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Please submit any comments, identified by the docket number in the heading of this document, by the methods described in the **ADDRESSES** section of this document.

Executive Order 12988 (Civil Justice Reform)

This proposed rule meets the applicable standards in E.O. 12988 titled, ''Civil Justice Reform,'' to minimize litigation, eliminate ambiguity, and reduce burden.

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at *https://www.reginfo.gov/public/do/eAgendaMain.*

List of Subjects in 46 CFR Part 541

Demurrage and detention; Common carriers; Exports; Imports; Marine terminal operators.

■ For the reasons set forth in the preamble, the Federal Maritime Commission proposes to add 46 CFR part 541 as follows:

PART 541—DEMURRAGE AND DETENTION

Subpart A—Demurrage and Detention Billing Requirements

Sec.

541.1 Purpose
541.2 Scope and applicability
541.3 Definitions
541.4 Properly issued invoices
541.5 Failure to include required information
541.6 Contents of invoice
541.7 Issuance of demurrage and detention invoices
541.8 Requests for fee mitigation, refund, or waiver
541.9–541.98 [Reserved]
541.99 OMB control number assigned pursuant to the Paperwork Reduction Act

Subpart B [Reserved]

Authority: 5 U.S.C. 553; 46 U.S.C. 40307, 40501–40503, 41101–41106, 40901–40904, and 46105; and 46 CFR 515.23.

Subpart A—Billing Requirements and Practices

§ 541.1 Purpose

This part establishes the minimum information that must be included on or with demurrage and detention invoices. It also establishes procedures that must be adhered to when invoicing for demurrage or detention.

§ 541.2 Scope and applicability

(a) This part sets forth regulations governing any invoice issued by an ocean common carrier, marine terminal operator, or non-vessel operating common carrier to a billed party or their designated agent for the collection of demurrage or detention charges.

(b) This regulation does not govern the billing relationships among and between ocean common carriers and marine terminal operators.

§ 541.3 Definitions

In addition to the definitions set forth in 46 U.S.C. 40102, when used in this part:

Billing dispute means any disagreement with respect to the validity of the charges, or the method of invoicing raised by the billed party or its agent to the billing party.

Billed party means the person receiving the demurrage or detention invoice and who is responsible for the payment of any incurred demurrage or detention charge.

Billing party means the ocean common carrier, marine terminal operator, or non-vessel operating common carrier who issues a demurrage or detention invoice.

Demurrage or detention mean any charges, including ''per diem'' charges, assessed by ocean common carriers, marine terminal operators, or non-vessel operating common carriers related to the use of marine terminal space (*e.g.,* land) or shipping containers, but not including freight charges.

Demurrage or detention invoice means any statement of charges printed, written, or accessible online that documents an assessment of demurrage or detention charges.

§ 541.4 Properly issued invoices

A properly issued invoice is a demurrage or detention invoice issued by a billing party to the person for whose account the billing party provided ocean transportation or storage.

(a) This person must have contracted with the billing party for the carriage or storage of goods and is therefore responsible for the payment of any incurred demurrage or detention charge.

(b) A billing party cannot issue an invoice to any other person.

§ 541.5 Failure to include required information

Failure to include any of the required minimum information in this part in a demurrage or detention invoice eliminates any obligation of the billed party to pay the applicable invoice.

§ 541.6 Contents of invoice.

At a minimum, an invoice for demurrage or detention charges must include the following information:

(a) *Identifying information.* The invoice must contain sufficient information to enable the billed party to identify the container(s) to which the charges apply, including:

(1) The Bill of Lading number(s);

(2) The container number(s);

(3) For imports, the port(s) of discharge; and

(4) The basis for why the invoiced party is the proper party of interest and thus liable for the charge.

(b) *Timing information.* The invoice must contain sufficient information to enable the billed party to identify the relevant time for which the charges apply, and the applicable due date for invoiced charges, including:

(1) The billing date;

(2) The billing due date;

(3) The allowed free time in days;

(4) The start date of free time;

(5) The end date of free time;

(6) For imports, the container availability date;

(7) For exports, the earliest return date; and

(8) The specific date(s) for which demurrage and/or detention were charged.

(c) *Rate information.* The invoice must contain sufficient information to enable the billed party to identify the amount due and readily ascertain how that amount was calculated, including:

(1) The total amount due;

(2) The applicable detention or demurrage rule (*i.e.,* the tariff name and rule number, applicable service contract number and section, or applicable negotiated arrangement) on which the daily rate is based; and

(3) The specific rate or rates per the applicable tariff rule or service contract.

(d) *Dispute information.* The invoice must contain sufficient information to enable the billed party to readily identify a contact to whom they may direct questions or concerns related to the invoice and understand the process to request fee mitigation, refund, or waiver, including:

(1) The email, telephone number, or other appropriate contact information for questions or request for fee mitigation, refund, or waiver;

(2) The URL address of a publicly-accessible portion of the billing party's website that provides a detailed description of information or documentation that the billed party must provide to successfully request fee mitigation, refund, or waiver; and

(3) Defined timeframes that comply with the billing practices in this part, during which the billed party must request a fee mitigation, refund, or waiver and within which the billing party will resolve such requests.

(e) *Certifications.* The invoice must contain statements from the billing party that:

(1) The charges are consistent with any of the Federal Maritime Commission's rules related to demurrage and detention, including, but not limited to, this part and 46 CFR 545.5; and

(2) The billing party's performance did not cause or contribute to the underlying invoiced charges.

§ 541.7 Issuance of demurrage and detention invoices.

(a) A billing party must issue a demurrage or detention invoice within thirty (30) days from the date on which the charge was last incurred. If the billing party does not issue demurrage or detention invoices within the required timeframe, then the billed party is not required to pay the charge.

(b) If the billing party invoices the incorrect party, the correct billed party must receive an invoice within thirty (30) days from the date the incorrect party disputes the charges with the billing party. An invoice to the correct billed party must be issued within sixty (60) days after the charges were last incurred. If the billed party does not receive demurrage or detention invoices within the required timeframe, then it is not required to pay the charge.

§ 541.8 Requests for fee mitigation, refund, or waiver.

(a) If a billed party requests mitigation, refund, or waiver of fees from the billing party, it must submit the request within thirty (30) days of receiving the invoice.

(b) If a billing party receives a fee mitigation, refund, or waiver request from a billed party, the billing party must resolve the request within thirty (30) days of receiving such a request. If the billing party fails to resolve the fee mitigation, refund, or waiver request within the 30-day deadline, the billed party is not required to pay the charge at issue.

§ 541.9–541.98 [Reserved]

§ 541.99 OMB control number assigned pursuant to the Paperwork Reduction Act.

The Commission has received Office of Management and Budget approval for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. In accordance with that Act, agencies are required to display a currently valid control number. In this regard, the valid control number for this collection of information is 3072–XXXX.

Subpart B [Reserved]

By the Commission.

William Cody,

Secretary.

[FR Doc. 2022–22290 Filed 10–13–22; 8:45 am]

BILLING CODE 6730–02–P

Notices

Federal Register
Vol. 87, No. 198
Friday, October 14, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket Number: USDA–2022–0015]

Notice of Request for Public Comment on Providing Financial Assistance for Producers and Landowners Determined To Have Experienced Discrimination

AGENCY: Office of the Secretary, U.S. Department of Agriculture.

ACTION: Request for information.

SUMMARY: Section 22007 of the Inflation Reduction Act of 2022 (''section 22007'') directs the U.S. Department of Agriculture (USDA) to provide financial assistance for producers and landowners determined to have experienced discrimination in the Department of Agriculture's farm lending programs. To help us design and implement policy to best provide the direct support called for by this provision, USDA is seeking input from the public to ensure that relevant information is considered. Accordingly, USDA is interested in your comments in response to the topics, categories, and questions presented in the **SUPPLEMENTARY INFORMATION** section of this document.

DATES: Interested persons are invited to submit comments on or before 11:59 p.m. Eastern Time November 14, 2022.

ADDRESSES: Comments may be submitted online via the Federal eRulemaking Portal. Go to *https://www.regulations.gov* and search for the Docket No. USDA–2022–0015. Follow the online instructions for submitting comments. All comments received will be posted without change and publicly available on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Liz Archuleta; telephone: (202) 720–7095; Email: *EquityRFI@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 22007 provides $2.2 billion for financial assistance for producers determined to have experienced discrimination in the Department of Agriculture's farm lending programs prior to January 1, 2021.

When USDA commits acts of discrimination, it not only hurts the individuals and entities directly impacted, it also breaks a trust with those directly affected and the communities of which they are part. This program provides USDA the ability to provide financial assistance for those who have been harmed in USDA's farm lending programs, but more fundamentally is about providing USDA the tools to rebuild that trust by directly acknowledging the wrongs that have been committed and taking concrete actions to offset those wrongs. It is critical that USDA restore and maintain the trust of individuals and communities where trust has been broken. A trusting and mutually supportive relationship between agricultural producers and USDA is essential to a safe and secure food supply chain and our nation's ability to produce food, feed, and fiber that is key to our daily lives and the US economy. USDA is seeking input from individuals, stakeholder organizations, and others on the options for implementation of this provision.

In doing so, USDA also aims to continue to demonstrate its commitment to upholding civil rights and making progress towards establishing and maintaining trust with agricultural producers.

The purpose of this notice is to request information and input on how USDA should implement this transformative authority. The input received relating to implementation of this program may inform future USDA equity activities.

Specifically, USDA is requesting public comment on the following issues and on other implementation issues that are not included on this list.

Issues for Consideration

The first issue in implementing section 22007 is the identification of those who are eligible for financial assistance. By the terms of the statute, relief under this provision is for ''farmers, ranchers, or forest landowners determined to have experienced discrimination prior to January 1, 2021, in Department of Agriculture farm lending programs.'' USDA specifically requests input from the public on this issue, including on questions such as:

- How should USDA identify those who have experienced discrimination under the USDA farm loan programs?
- What kind of documentation or evidence should be submitted in support of a determination of discrimination?

The second issue in implementing section 22007 is for those determined eligible, what factors should be considered in determining the amount and type of financial assistance provided. Under section 22007, ''the amount of financial assistance provided to a recipient may be not more than $500,000, as determined to be appropriate based on any consequences experienced from the discrimination.'' USDA specifically requests input from the public on this issue, including on questions such as:

- Should USDA attempt to estimate only economic losses or also non-economic losses of those who have suffered discrimination in USDA farm loan programs when calculating the amount of financial assistance provided? Alternatively, should USDA apply a fixed, uniform formula for calculating the amount of financial assistance provided? In any case, how should that calculation be done?
- Should previous payments received for past claims of discrimination be considered in determining financial assistance available under section 22007?
- Are there forms of non-monetary equitable relief that can be used in conjunction with the financial assistance provided under section 22007 for those who have experienced discrimination and who continue to farm or continue to participate in USDA farm loan programs?
- How, if at all, should USDA consider the recency of the discrimination as determined by the Secretary when determining appropriate level of financial assistance?

The third issue concerns the administration of the financial assistance program, including the role of the third-party entity (or entities) versus the role of USDA, selection of the third-party entity (or entities), and key components relating to the process of determining delivery of financial assistance. Section 22007 provides that the ''program shall be administered

through 1 or more qualified nongovernmental entities selected by the Secretary subject to standards set and enforced by the Secretary.'' USDA specifically requests input from the public on this issue, including on questions such as:

- What specific functions should the third-party entity (or entities) perform in assisting USDA in delivering financial assistance provided for under section 22007 to those who suffered discrimination under the USDA farm loan programs?
- What criteria should USDA use in the selection of the third-party entity (or entities)?
- What guidance should USDA provide to the selected entity (or entities)?

The fourth issue is the linkage or leveraging, if any, between the financial assistance provided in this program and other USDA programs. USDA specifically requests input from the public on this issue, including on questions such as:

- How should USDA use programs, funding, financial support, and other authorities, in conjunction with section 22007 financial assistance, to provide support for those who have experienced discrimination under the USDA farm loan programs?

Civil Rights Complaint

Information submitted through this document will not be processed as a civil rights complaint and will not be considered a complaint for determining whether a complaint was timely submitted.

To file a discrimination complaint on interactions with USDA, you can complete the form: *https://www.usda.gov/sites/default/files/documents/Complain_combined_6_8_12_508.pdf.*

You may submit the discrimination complaint to USDA by any of the following methods:

Mail: U.S. Department of Agriculture, Director, Center for Civil Rights Enforcement, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442; or

Email: program.intake@usda.gov.

If you need any assistance completing the form, call the following phone numbers:

- (202) 260–1026 (Local),
- (866) 632–9992 (Toll-free Customer Service),
- (800) 877–8339 (Local or Federal relay), or
- (866) 377–8642 (Relay voice users).

USDA Non-Discrimination Policy

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

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible agency or USDA TARGET Center at (202) 720–2600 or 844–433–2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English.

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

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

Elizabeth Archuleta,

Director, Office of Intergovernmental & External Affairs, U.S. Department of Agriculture.

[FR Doc. 2022–22435 Filed 10–13–22; 8:45 am]

BILLING CODE 3410–90–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nevada Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Nevada Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via *ZoomGov* at 3:00 p.m. Pacific on Monday, December 12, 2022. The purpose of the meeting is to begin planning upcoming web hearings on civil rights and teacher shortages.

DATES: The meeting will take place on Monday, December 12, 2022, from 3:00 p.m.–4:30 p.m. PT.

Link To Join (Audio/Visual): https://tinyurl.com/pm669pht.

Telephone (Audio Only): Dial (833) 435–1820 USA Toll Free; Meeting ID: 160 798 5959.

FOR FURTHER INFORMATION CONTACT: Ana Fortes, Designated Federal Officer, at *afortes@usccr.gov* or (202) 519–2938.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at (800) 877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email *afortes@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received within 30 days following the meeting. Written comments may be emailed to Angelica Trevino at *atrevino@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Nevada Advisory Committee link. Persons

interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome, Roll Call, and Announcements
II. Review Project Proposal
III. Plan for Web Hearings
a. Speakers
b. Dates
IV. Public Comment
V. Discuss Next Steps
VI. Adjournment

Dated: October 11, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–22374 Filed 10–13–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nevada Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Nevada Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via *ZoomGov* at 3 p.m. Pacific on Thursday, October 20, 2022. The purpose of the meeting is to narrow down and discuss details of project proposal on civil rights and teacher shortages.

DATES: The meeting will take place on Thursday, October 20, 2022, from 3 p.m.–4:30 p.m. PT.

ADDRESSES:

Link to Join (Audio/Visual): https://tinyurl.com/3tp9bpec.

Telephone (Audio Only): Dial (833) 435–1820 USA Toll Free; Meeting ID: 160 889 4050

FOR FURTHER INFORMATION CONTACT: Ana Fortes, Designated Federal Officer, at *afortes@usccr.gov* or (202) 519–2938.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at (800) 877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email *afortes@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received within 30 days following the meeting. Written comments may be emailed to Angelica Trevino at *atrevino@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Nevada Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome, Roll Call, and Announcements
II. Discuss Civil Rights Topics
III. Discuss Scope of Selected Topic
IV. Public Comment
V. Discuss Next Steps
VI. Adjournment

Dated: October 11, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–22379 Filed 10–13–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Virginia Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Virginia Advisory Committee (Committee) will hold a web meeting via Zoom on Tuesday, November 1, 2022, at 12:00 p.m. Eastern Time. The purpose of the meeting is to discuss identified findings and recommendations from previous panels on police oversight and accountability in Virginia.

DATES: The meeting will be held on: Tuesday, November 1, 2022, at 12:00 p.m. Eastern Time.

Meeting Link: https://www.zoomgov.com/j/1602995985.

Join by Phone: 1–551–285–1373 US; Meeting ID: 160 299 5985.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 1–202–618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call-in number (audio only) or online registration link (audio/visual). An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individual who is deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Melissa Wojnaroski at *mwojnaroski@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Virginia Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call

II. Approval of Minutes
III. Announcements and Updates
IV. Discussion: Report Draft
V. Next Steps
VI. Public Comments
VII. Adjournment

Dated: October 11, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–22380 Filed 10–13–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Pennsylvania Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold series of web-based panel discussions on Friday October 28, 2022 from 12 p.m.–2 p.m. eastern time, and Tuersday November 2, 2022 from 12 p.m.–2 p.m. eastern time. The purpose of these meetings is for the Committee to hear testimony regarding civil rights and fair housing in the state.

DATES:

• *Panel VI:* Friday October 28, 2022 from 12 p.m.–2 p.m. eastern time.

Link To Join (Audio/Visual): https://www.zoomgov.com/j/1607360741.

Telephone (Audio Only): (833) 435–1820 Toll Free; Meeting ID: 160 736 0741.

• *Panel VII:* Tuesday November 2, 2022 from 12 p.m.–2 p.m. eastern time.

Link To Join (Audio/Visual): https://www.zoomgov.com/j/1616092536.

Telephone (Audio Only): (833) 435–1820; Toll Free Meeting ID: 161 609 2536.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or (202) 618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may listen to these discussions.

Committee meetings are available to the public through the above listed online registration link. Telephone access will be provided upon registration for those who are unavailable to join the meeting online. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. American Sign Language interpretation will be provided. Indivudals with disabilities requiring other accommodations may contact Corrine Sanders at *csanders@usccr.gov* 10 days prior to the meeting to make their request.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 618–4158.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Pennsylvania Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email address.

Agenda

Welcome and Roll Call
Panel Discussion: Civil Rights and Fair Housing in Pennsylvania
Public Comment
Adjournment

Dated: October 11, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–22383 Filed 10–13–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Indiana Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Indiana Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold planning meetings via Zoom on Tuesday, November 1, 2022, and December 6, 2022 at 1 p.m. (ET) to discuss and select the topic for the Committee's civil rights project; votes may be taken.

DATES: The meeting will take place on Tuesday, November 1, 2022, and December 6, 2022, from 1 p.m.–2 p.m. (ET).

ADDRESSES:

Meeting Link (Audio/Visual): https://www.zoomgov.com/j/1601951921.

Telephone (Audio Only): Dial 833–435–1820 USA Toll Free; Meeting ID: 160 195 1921

FOR FURTHER INFORMATION CONTACT: Ivy Davis, DFO, at *idavis@usccr.gov* or 202-376–7533, or email Sarah Villanueva, Support Specialist, at *svillanueva@usccr.gov.*

SUPPLEMENTARY INFORMATION: Members of the public can listen to these discussions. Committee meetings are available to the public through the above call-in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hearing may follow the proceedings by first calling the Federal Relay Service at 800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Sarah Villanueva at *svillanueva@usccr.gov.* Persons who desire additional information may contact Ivy Davis at 202–539–8468.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Indiana Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Roll Call

II. Welcome
III. Project Planning
IV. Other Business
V. Next Meeting
VI. Public Comments
VII. Adjourn

Dated: October 11, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–22384 Filed 10–13–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nevada Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Nevada Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via *ZoomGov* at 3:00 p.m. Pacific on Monday, November 14, 2022. The purpose of the meeting is to review and vote on project proposal on civil rights and teacher shortages.

DATES: The meeting will take place on Monday, November 14, 2022, from 3:00 p.m.–4:30 p.m. PT.

Link to Join (Audio/Visual): https://tinyurl.com/yc4vfbpj

Telephone (Audio Only): Dial (833) 435–1820 USA Toll Free; Meeting ID: 160 932 8862

FOR FURTHER INFORMATION CONTACT: Ana Fortes, Designated Federal Officer, at *afortes@usccr.gov* or (202) 519–2938.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at (800) 877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email *afortes@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received within 30 days following the meeting. Written comments may be emailed to Angelica Trevino at *atrevino@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Nevada Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome, Roll Call, and Announcements
II. Review Project Proposal
III. Public Comment
IV. Discuss Next Steps
V. Adjournment

Dated: October 11, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–22375 Filed 10–13–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Generic Clearance for Questionnaire Pretesting Research

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on 06/29/2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Department of Commerce.

Title: Generic Clearance for Questionnaire Pretesting Research.

OMB Control Number: 0607–0725.

Form Number(s): Various.

Type of Request: Regular submission, Request for an Extension, without Change, of a Currently Approved Collection.

Number of Respondents: 5,500 per year.

Average Hours per Response: 1 hour.

Burden Hours: 5,500 hours annually.

Needs and Uses: The information collected in this program of developing and testing questionnaires will be used by staff from the Census Bureau and sponsoring agencies to evaluate and improve the quality of the data in the surveys and censuses that are ultimately conducted.

Affected Public: Individuals or households, businesses or other for profit, farms.

Frequency: TBD.

Respondent's Obligation: Voluntary.

Legal Authority: Data collection for this project is authorized under the authorizing legislation for the questionnaire being tested. This may be Title 13, Sections 131, 141, 161, 181, 182, 193, and 301 for Census Bureau-sponsored surveys, and Title 13, Section 8(b) for surveys sponsored by other Federal agencies. We do not now know what other titles will be referenced, since we do not know what survey questionnaires will be pretested during the course of the clearance.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0607–0725.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–22362 Filed 10–13–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC359]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Tugs Towing Drill Rig in Cook Inlet, Alaska

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

ACTION: Notice; issuance of incidental harassment authorizations.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued two incidental harassment authorizations (IHAs) to Hilcorp Alaska LLC to incidentally harass, by Level B harassment only, marine mammals during tugs towing jack-up rig activity in Cook Inlet, Alaska.

DATES: These authorizations are effective from September 14, 2022 through September 13, 2023 and September 14, 2023 through September 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sara Young, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental harassment authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

NMFS previously issued Incidental Take Regulations (ITRs) to Hilcorp for a suite of oil and gas activities in Cook Inlet, Alaska (84 FR 37442, July 31, 2019) and issued three letters of authorization (LOAs) under those ITRs. The ITRs covered activities including: two-dimensional (2D) and three-dimensional (3D) seismic surveys, geohazard surveys, and vibratory sheet pile driving. On September 17, 2019, Cook Inletkeeper and the Center for Biological Diversity filed suit in the District of Alaska challenging NMFS's issuance of the ITRs and LOAs and supporting documents (the Environmental Assessment (EA) and Endangered Species Act (ESA) Biological Opinion). In a decision issued on March 30, 2021, the court ruled largely in NMFS's favor, but found a lack of adequate support in NMFS's record for the agency's determination that tug towing of drill rigs in connection with production activity will not cause take of beluga whales and remanded back to NMFS for further analysis of tug use under the MMPA, ESA, and National Environmental Policy Act (NEPA).

Hilcorp notified NMFS that all activities described in their initial ITR application (2018) and for which incidental take was authorized have already been completed or will not be completed under the ITRs. Accordingly, NMFS has begun the process of withdrawing the 2019 ITRs. As a result, the only remaining activity to be analyzed for incidental take and authorization thereof is the use of tugs towing a jack-up rig.

On January 13, 2022, NMFS received a request from Hilcorp for two back-to-back IHAs to take marine mammals incidental to tugs towing a drill rig in Cook Inlet, Alaska. The application was deemed adequate and complete on March 8, 2022. Hilcorp's request is for take of small numbers of 12 species of marine mammals by Level B harassment only. Neither Hilcorp nor NMFS expects serious injury or mortality to result from this activity and, therefore, IHAs are appropriate.

As described in our **Federal Register** notice of proposed IHAs (87 FR 27597, May 9, 2022), NMFS considered the potential effects of tug towing a jack-up rig on marine mammals. The slow, predictable, and generally straight path of this tug configuration makes it unlikely that marine mammals would be exposed to the tugs towing a jack-up rig such that harassment would occur. However, there is overall potential for exposure in combination with the nature of the tug and jack-up rig configuration (*e.g.,* difficult to maneuver, potential need to operate at night), making it possible that take could occur over the total estimated period of tug activities. Because of this possibility, NMFS proposed take by Level B harassment from Hilcorp's use of tugs towing a jack-up rig in Cook Inlet, Alaska.

In a letter dated April 28, 2022, Hilcorp notified NMFS of their need to begin tugging the jack-up rig in May due to depleted energy reserves for the Southcentral Alaska region. NMFS concurred with Hilcorp's assessment that take of marine mammals by Level B harassment was unlikely to occur incidental to the transport of the jack-up rig from the Rig Tender's Dock in Nikiski to the Tyonek platform in middle Cook Inlet, as described in Hilcorp's letter. Hilcorp completed one move of their jack-up rig during the time that NMFS processed the request for IHAs; this rig move was included in Hilcorp's original application and was factored into our exposure estimate calculations accordingly. We have therefore removed that portion of the rig move from our analysis as it was already completed. Please refer to the Changes from Proposed IHAs to Final IHAs section later in this document for additional discussion. Below we discuss the IHAs as issued.

Description of Activity

Overview

Hilcorp Alaska, LLC (Hilcorp) plans to carry out activities that will occur during two separate consecutive one-year IHA periods—from September 1, 2022, to August 31, 2023 (Year 1), and from September 1, 2023, to August 31, 2024 (Year 2). Hilcorp plans to use three

ocean-going tugs to tow a jack-up rig in support of plugging and abandonment (P&A) of an existing well and to support production drilling at other locations in middle Cook Inlet and Trading Bay over the course of 2 years.

Dates and Duration

The schedule for Hilcorp's P&A and production drilling activities is provided in Table 1 below. The noise-producing rig-towing activities for which take is authorized would occur in between those activities, for approximately 14 days per year for Year 1 and 16 days for Year 2.

TABLE 1—DATES AND DURATIONS OF PLANNED ACTIVITIES IN COOK INLET

Project type	Cook Inlet region	Timing	Duration of activity *
Year 1:			
Plug and Abandonment of Well 17589.	Middle Cook Inlet	April–November	30 days.
Production Drilling	Middle Cook Inlet Trading Bay	April–November	180 days.
Year 2:			
Production Drilling	Middle Cook Inlet Trading Bay	April–November	180 days.

* Duration is in reference to the supported activity that requires the jack-up rig to be in a specific location. It is not reflective of the duration or the number of days the jack-up rig is towed.

Specific Geographic Region

Hilcorp's activities will take place in Cook Inlet, Alaska. For the purposes of this project, lower Cook Inlet refers to waters south of the East and West Forelands; middle Cook Inlet refers to waters north of the East and West Forelands and south of Threemile River on the west and Point Possession on the east; Trading Bay refers to waters from approximately the Granite Point Tank Farm on the north to the West Foreland on the south; and upper Cook Inlet refers to waters north and east of Beluga River on the west and Point Possession on the east. A map of the specific area in which Hilcorp plans to operate is provided in Figure 1 below.

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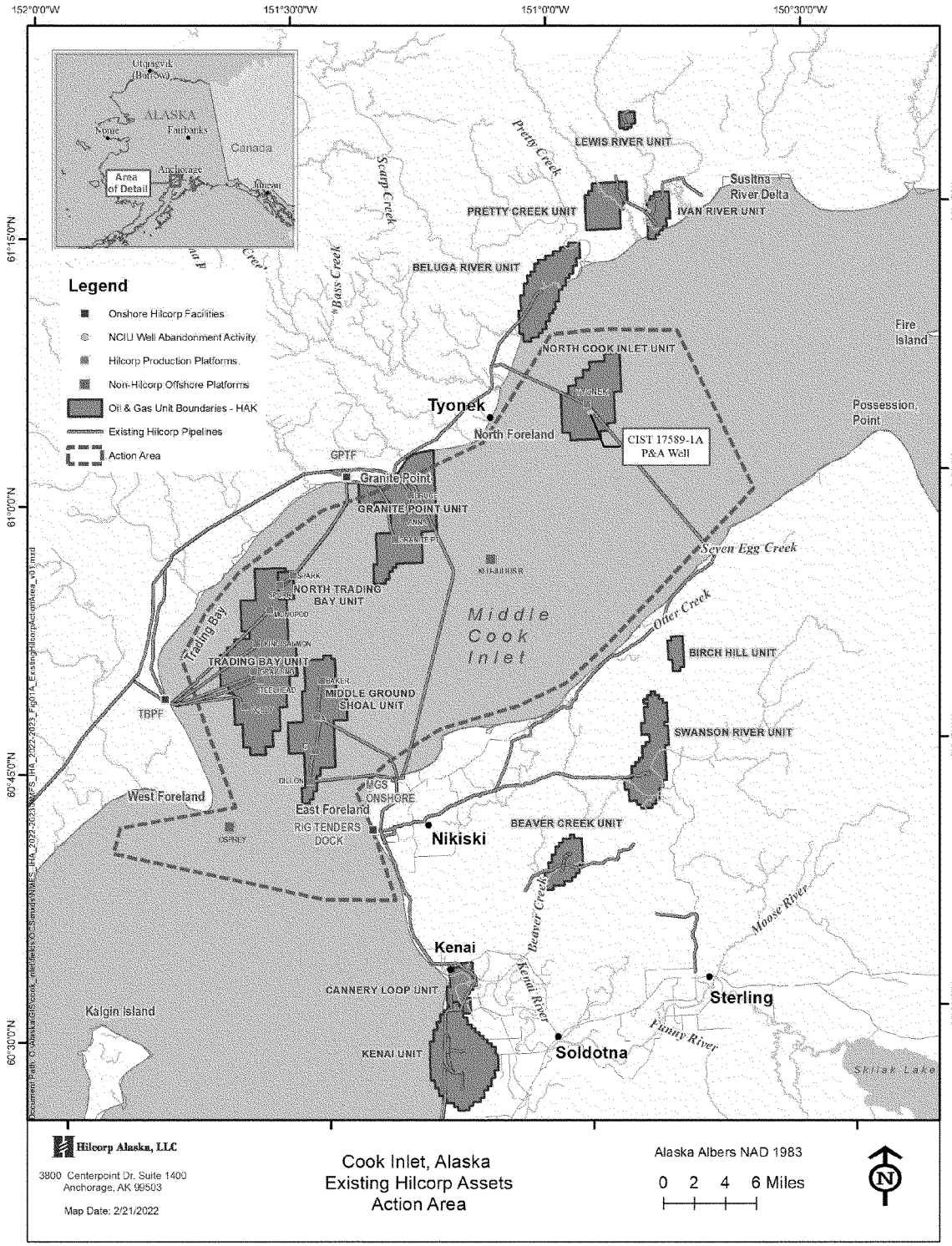

Figure 1 -- Map of Hilcorp's Activity Location

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Detailed Description of Specific Activity

Hilcorp plans to use three tugs to pull and position a jack-up rig in support of well plugging and abandonment (P&A) and support of production drilling by using the rig as a temporary drilling platform. Hilcorp plans to use the jack-up rig Spartan 151, or similar. A jack-up rig is a type of mobile offshore drill unit used in offshore oil and gas drilling activities. It is comprised of a buoyant mobile platform or hull with moveable legs that are adjusted to raise and lower

the hull over the surface of the water. The Spartan 151 (or similar) will be towed via three ocean-going tugs. The horsepower (hp) of each of the three tugs used to tow the jack-up rig may range between 4,000 and 8,000. Three tugs are needed to safely and effectively pull the jack-up rig into the correct position where it can be temporarily secured to the seafloor. Specifications of the tugs anticipated for use are provided in Table 2 below. If these specific tugs are not available, the tugs contracted would be of similar size and power to those listed in Table 2.

TABLE 2—DESCRIPTION OF TUGS TOWING THE JACK-UP RIG

Vessel name	Specifications
M/V Bering Wind.	22-m length x 10-m breadth, 144 gross tonnage.
M/V Anna T ...	32-m length x 11-m breadth, 160 gross tonnage.
M/V Bob Franco.	37-m length x 11-m breadth, 196 gross tonnage.

The amount of time the tugs are under load transiting, holding, and positioning the jack-up rig in Cook Inlet is tide-dependent. The power output of the tugs depends on whether the tugs are towing with or against the tide and can vary across a tide cycle as the current increases or decreases in speed over time. Hilcorp will make every effort to transit with the tide (which requires lower power output) and minimize transit against the tide (which requires higher power output).

The jack-up rig will be transported via towing by three ocean-going tugs, with final demobilization at the Rig Tenders Dock in Nikiski, Alaska (where mobilization began). Towing the jack-up rig northward with an incoming tide or southward with an outgoing tide requires less than half power, generally only 20 to 30 percent of total power output (Durham 2021, pers. comm.). A high slack tide is preferred to position the jack-up rig on an existing platform or well site. The relatively slow current and calm conditions at a slack tide enable the tugs to perform the fine movements necessary to safely position the jack-up rig within several feet of the platform. Positioning and securing the jack-up rig is generally performed at high slack tide rather than low slack tide to pin the legs down at an adequate height to ensure the hull of the jack-up rig remains above the water level of the subsequent incoming high tide. Because 12 hours elapse between each high slack tide, tugs are generally under load for those 12 hours during rig mobilization and demobilization, even if the towed distance is small, as high slack tides are preferred to both attach and detach the jack-up rig from the tugs. Once the tugs are on location with the jack-up rig at high slack tide (12 hours from the previous departure), there is a 1 to 2-hour window when the tide is slow enough for the tugs to initiate positioning the jack-up rig and pin the legs to the seafloor on location. The tugs are estimated to be under load, generally at half-power conditions or less, for up to 14 hours from the time of departure through the initial positioning attempt of the jack-up rig. If the first positioning attempt takes longer than anticipated, the increasing current speed prevents the tugs from safely positioning the jack-up rig on location. If the first positioning attempt is not successful, the jack-up rig will be pinned down at a nearby location and the tugs will be released from the jack-up rig and no longer under load. The tugs will remain nearby, generally floating with the current. Approximately an hour before the next high slack tide, the tugs will re-attach to the jack-up rig and reattempt positioning over a period of 2 to 3 hours. Positioning activities are generally at half power. If a third attempt is needed, the tugs would be under load holding or positioning the jack-up rig on a second day for up to 5 hours. The vast majority of the time, the jack-up rig can be successfully positioned over the platform in one or two attempts.

A location-to-location transport (*e.g.,* platform-to-platform) of a jack-up rig is conducted similarly to the mobilization from the Rig Tenders Dock described above with one main difference. In a location-to-location transport in middle Cook Inlet or Trading Bay, there is no harbor available for temporary staging to avoid transiting against the tide. Maintaining position of the jack-up rig against the tidal current can require more than half power (up to 90 percent power at the peak tidal outflow). However, greater than half power effort is only needed for short periods of time during the maximum tidal current, expected to be no more than 3 hours maximum. During a location-to-location transport, the tugs will transport the jack-up rig traveling with the tide in nearly all circumstances except in situations that threaten human safety and/or infrastructure integrity. There may be a situation wherein the tugs pulling the jack-up rig begin transiting with the tide to their next location, miss the tide window to safely set the jack-up rig on the platform or pin it nearby, and so have to transport the jack-up rig against the tide to a safe harbor. Tugs may also need to transport the jack-up rig against the tide if large pieces of ice or extreme wind events threaten the stability of the jack-up rig on the platform.

Although the variability in power output from the tugs can range from an estimated 20 percent to 90 percent throughout the hours under load with the jack-up rig, as described above, the majority of the hours (spent transiting, holding, and positioning) occur at half power or less. See the Estimated Take section below for more detail on assumptions related to power output.

Year 1—For the first year of activity, Hilcorp will use three tugs to pull the jack-up rig for P&A of Well 17589, which began in 2021 but was not completed due to equipment sourcing issues. Prior to pinning the jack-up rig legs to the seafloor, a multi-beam sonar may be used to ensure the seafloor is clear of debris that may impact the ability to pin down the legs of the platform. The multi-beam echosounder emits high frequency (240 kilohertz (kHz)) energy in a fan-shaped pattern of equidistant or equiangular beam spacing. The multi-beam sonar operates at a frequency outside of marine mammal hearing range and is not addressed further in our analysis. After the rig is secure, divers enter the water and use hand tools to complete the P&A process. In addition to the hand tools, the divers will also use water jets to wash away debris and marine growth on the structure (*e.g.,* a CaviDyne CaviBlaster). Based on measurements conducted by Hilcorp during 2017 use of water jets, the source level for the CaviBlaster® was estimated as 176 decibels (dB) re 1 micropascal (µPa) root mean square (rms) with a Level B harassment threshold of 860 m, with most energy concentrated above 500 Hz with a dominant tone near 2 kHz. Hilcorp plans to put a protected species observer (PSO) on watch to monitor the full extent of the harassment zone and shutdown when a marine mammal approaches the zone during water jet use. Because of this, Hilcorp is not requesting take associated with water jet use and it is not considered further in our analysis.

Hilcorp also plans to tug the jack-up rig to existing platforms in middle Cook Inlet and Trading Bay in support of production drilling activities from existing platforms and wellbores. Production drilling itself creates some small level of noise due to the use of generators and other potentially noise-generating equipment. Furie Operating Alaska, LLC, performed detailed underwater acoustic measurements in the vicinity of the Spartan 151 in 2011

(Marine Acoustics Inc., 2011) northeast of Nikiski Bay in water depths of 24.4 to 27.4 m (80 to 90 ft). Primary sources of rig-based acoustic energy were identified as coming from the D399/D398 diesel engines, the PZ–10 mud pump, ventilation fans, and electrical generators. The source level of one of the loudest acoustic sources, the diesel engines, was estimated to be 137 dB re 1 µPa rms at 1 m in the 141 to 178 Hz frequency range. Based on this measured level, the 120 dB rms acoustic received level isopleth would be approximately 50 m away from where the energy enters the water (jack-up leg or drill riser). Sound source levels were also measured by JASCO (a company) for drilling and mud pumping from the Yost jack-up rig in 2016. The primary sources of continuous sounds measured from the Yost were drilling (158 dB) and mu167d pumping (148.4 dB), producing 120 dB isopleths of 330 and 225 meters, respectively. The acoustic energy of drilling noise was found to be predominantly under 500 Hz (Denes and Austin, 2016a). Denes and Austin (2016) did not record other rig-based activities including cementing, running casing, and tripping in and out of the hole with drill string; however, these activities may also produce sounds similar to mud pumping. There is open water in all directions from the drilling location. Additionally, Hilcorp plans to monitor the area around the drilling platform for 30 minutes prior to starting drilling activities and delay their activity if marine mammals are seen close to the platform. Any marine mammal approaching the rig would be fully aware of its presence long before approaching or entering the zone of influence for behavioral harassment, and we are unaware of any specifically important habitat features (*e.g.,* concentrations of prey or refuge from predators) within the rig's zone of influence that would encourage marine mammal use and exposure to higher levels of noise closer to the source. Given the absence of any activity-, location-, or species-specific circumstances or other contextual factors that would increase concern, we do not expect routine drilling noise to result in the take of marine mammals.

In support of these activities, helicopters and support vessels transit from the mainland to the production sites to mobilize personnel and supplies. Helicopters will fly at 1,500 ft (457 m) or higher unless human safety is at risk or it is operationally impossible (*e.g.,* takeoff and landing points are so close together the aircraft cannot reach 1,500 ft or 30 m). During take-off and landing of a helicopter, it is expected that only a small amount of sound would penetrate the water because the helicopter will be moving vertically over the helipad and most of the sound is reflected and does not penetrate at angles greater than 13 degrees from vertical. Additionally, the platforms that helicopters are navigating to/from are already 100 or more feet above sea level, further reducing potential for harassment of marine mammals such that take is not requested nor authorized. Vessel trips to and from the location of the jack-up rig are expected to increase by two trips per day above normal activity levels. Hilcorp plans to maintain watch for marine mammals during supply vessel trips, stay at least 100 yards (91 m) away from marine mammals, reduce speed in poor visibility, and handle supply vessels such that an encounter with a marine mammal is unlikely and additional take for supply vessel activities is not requested nor authorized.

Year 2—For the second year of activity, Hilcorp does not plan to conduct P&A activities with the jack-up rig and will only be tugging the jack-up rig in support of production drilling activities.

The specific configuration of tugs towing the jack-up-rig as used by Hilcorp has not been analyzed previously. Hilcorp contracted JASCO Applied Sciences to conduct a sound source verification (SSV) of their tugs in operation in Cook Inlet during October 2021. This SSV measured tugs pulling the jack-up-rig at various power outputs (Lawrence *et al.,* 2022). This SSV returned a source level of 167.3 dB re 1 µPa for the 20 percent power scenario and a source level of 205.9 dB re 1 µPa for the 85 percent power scenario. Assuming a linear scaling of tug power, a source level of 185 dB re 1 µPa was then calculated as a single point source level for three tugs operating at 50 percent power output. This is approximately five dB higher than the literature summary described below.

Hilcorp conducted a literature review of available source level data for tugs under load in varying power output scenarios. Table 3 below provides values of measured source levels for tugs varying from 2,000 to 8,200 horsepower. For the purposes of this table, berthing activities could include tugs either pushing or pulling a load. The sound source levels appear correlated to speed and power output, with full power output and higher speeds generating more propeller cavitation and greater sound source levels than lower power output and lower speeds. Additional tug source levels are available from the literature, but they are not specific to tugs under load (rather they measured values for tugs during activities such as transiting, docking, and anchor pulling). For a summary of these additional tug values, see Table 7 in Hilcorp's application.

TABLE 3—LITERATURE VALUES OF MEASURED TUG SOURCE LEVELS

Vessel	Vessel length (m)	Speed (knots)	Activity	Source level @1 m (re: 1 µPa)	Horsepower	Reference
Eagle	32	9.6	Towing barge	173	6,770	Bassett *et al.,* 2012.
Valor	30	8.4	Towing barge	168	2,400	
Lela Joy	24	4.9	Towing barge	172	2,000	
Pacific Eagle	28	8.2	Towing barge	165	2,000	
Shannon	30	9.3	Towing barge	171	2,000	
James T Quigg	30	7.9	Towing barge	167	2,000	
Island Scout	30	5.8	Towing barge	174	4,800	
Chief	34	11.4	Towing barge	174	8,200	
Lauren Foss	45	N/A	Berthing barge	167	8,200	Austin *et al.,* 2013.
Seaspan Resolution	30	N/A	Berthing at half power	180	6,000	Roberts Bank Terminal 2 Technical Report, 2014.
Seaspan Resolution	30	N/A	Berthing at full power	200	6,000	

The Roberts Bank Terminal 2 Technical Report (2014), although not in Cook Inlet, includes repeated measurements of the same tug operating under different speeds and loads. This allows for a comparison of source levels from the same vessel at half power versus full power, which is an important distinction for Hilcorp's activities, as a small fraction of the total time spent by tugs under load will be at greater than 50 percent power. The Seaspan Resolution's half-power berthing scenario has a sound source level of 180 dB re 1 µPa at 1 m. In addition, the Roberts Bank Report (2014) analyzed 650 tug transits under varying load and speed conditions and reported mean tug source levels of 179.3 dB re 1 µPa at 1 m, the 25th percentile was 179.0 dB re 1 µPa at 1 m, and 5th percentile source levels were 184.9 dB re 1 µPa at 1 m.

Based solely on the literature review, a source level of 180 dB for a tug under load would be appropriate. However, Hilcorp's use of a three tug configuration would increase the literature source level to approximately 185dB. As one or two tugs are primarily under load, the third tug sits off to the side. NMFS still considers these tugs to be simultaneous sources. When considered in conjunction with the additional tugs present in the configuration as well as the SSV conducted by JASCO for Hilcorp's specific configuration, a source level of 185 dB for tugs towing a jack-up rig was carried forward for analysis.

Mitigation, monitoring, and reporting measures are described in detail later in this document (please see **Mitigation** and **Monitoring** and **Reporting**).

Comments and Responses

A notice of NMFS's proposal to issue IHAs to Hilcorp was published in the **Federal Register** on May 9, 2022 (87 FR 27597). That notice described, in detail, Hilcorp's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from Hilcorp, the Bureau of Ocean Energy Management (BOEM), and the Center for Biological Diversity (CBD) in conjunction with Cook Inletkeeper and Kachemak Bay Conservation Society (this group comment letter is referenced as CBD throughout this notice). These letters are available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-hilcorp-alaska-llc-oil-and-gas-activities-cook-inlet-alaska-0.* A summary of the commenters' recommendations as well as NMFS' responses is below.

Comment 1: NMFS received comments about how the proposed IHAs would relate to the Incidental Take Regulations (ITRs) NMFS issued to Hilcorp in 2019 (84 FR 37442, July 30, 2019). CBD commented that NMFS cannot ''segment'' its MMPA analysis for the activities proposed under the IHAs from its authorization of Hilcorp's oil and gas activities under the 5-year ITRs. Additionally, Hilcorp requested that NMFS withdraw the ITRs.

Response: The activities for which take was analyzed in the ITRs have already occurred or, per Hilcorp, will not occur during the remaining period of the ITR, which currently expires on July 30, 2024. Because none of the activity for which take was authorized under the ITRs is planned to occur under the ITRs, NMFS and Hilcorp determined there would be no benefit to undertaking the process of re-evaluating the ITRs. Instead it was determined that IHAs under section 101(a)(5)(D) would be an efficient vehicle for addressing incidental take from tug activities in a timely fashion, should authorization be needed, particularly compared to the process for rulemaking under section 101(a)(5)(A).

Hilcorp accordingly applied for two IHAs and NMFS evaluated the potential for take of marine mammals incidental to the tug activity Hilcorp included in its application. Given the type of activity Hilcorp plans to conduct, the fact that any potential take would be in the form of Level B harassment, only, and the timeframe of those activities, IHAs are appropriate. This is the course of action NMFS would advise for any applicant planning to conduct 2 years of approximately 14 days and 16 days of take-related activity per year, respectively, with the potential to result in take by harassment only.

As indicated above, and at Hilcorp's request, NMFS is undertaking the process to withdraw the ITRs to reduce any confusion. NMFS will not issue any more LOAs pursuant to the ITRs to authorize take incidental to Hilcorp's tug towing activities. Thus there is no possibility for NMFS to authorize incidental take of beluga whales simultaneously through an IHA and the ITRs.

Comment 2: BOEM commented that NMFS' **Federal Register** (FR) notice did not discuss potential effects of helicopters and support vessels described in Hilcorp's application for IHAs and that NMFS may benefit from analysis of effects to marine mammals from these activities.

Response: NMFS briefly discussed these activities in the Detailed Description of Specific Activity in the notice of proposed IHAs, following the discussion of water jets. That paragraph includes a discussion of why these activities were not considered further.

Comment 3: BOEM commented that NMFS could add clarity as to why 185 dB was used as an estimated source level for the multi-tug configuration by referring readers to the JASCO monitoring report for the sound source verification of Hilcorp's sources.

Response: NMFS omitted this source inadvertently. We have now included Lawrence *et al.* (2022) in our references for further information regarding the sound source verification used to derive a source level of 185 dB for the three-tug combination.

Comment 4: BOEM commented that NMFS may want to consider effects to Pacific white-sided dolphins based on an acoustics report (Castellote *et al.,* 2020).

Response: Based on this report and other information described below, NMFS has added take of Pacific white-sided dolphins to our analysis and authorizations. See **Description of Marine Mammals in the Area of Specified Activities** section for more discussion of the species and why they are included in our analysis.

Comment 5: BOEM noted page 27621 of the notice of proposed IHAs listed requirements for monitoring of pile driving activities.

Response: These requirements were included in error and have been removed from the final notice.

Comment 6: Hilcorp commented that the notice of proposed IHAs and draft EA incorrectly refers to Hilcorp's planned tugging activities as the ''proposed activity'' when the proposed activity from NMFS' perspective is the proposed issuance of IHAs to take marine mammals incidental to Hilcorp's planned activities.

Response: Hilcorp is correct and NMFS has clarified Hilcorp's planned activities from NMFS' activities in all documents.

Comment 7: Hilcorp contests NMFS' characterization of the project area as a ''non-industrial setting'' prior to the onset of Hilcorp's tugging activities. The oil and gas facilities in Cook Inlet, including Hilcorp's platforms, have been active, with daily activities, for the past 60 years.

Response: NMFS agrees that this area is not pristine, as Hilcorp's platforms and development structures are already in existence. However, Hilcorp's activities will introduce additional anthropogenic activity into the area,

such as increased vessels around the platforms, helicopter trips for personnel, supplies, *etc.* NMFS has clarified the characterization of the action area accordingly.

Comment 8: Hilcorp recommended that NMFS more clearly describe why any incidental marine mammal harassment related to tug-towing activities is likely to be very low due to the characteristics of those activities in the notice of issuance of IHAs and final EA.

Response: NMFS agrees with Hilcorp's characterization that a multi-tug configuration under load moves in a slow, predictable pattern that is unlikely to surprise marine mammals in the area and, further, animals near industrial activities may become habituated to regular activities in the area, as has been shown for Cook Inlet belugas around the Port of Anchorage, for example (61 North Environmental, 2020). However, given the sources levels, there is still the potential that some belugas may behaviorally respond in a manner that would qualify as a take. NMFS characterizes the type of harassment (behavioral disturbance only) that may occur from tugs in this **Federal Register** notice and has authorized Level B harassment out of caution due to several combined factors, as described in the **Potential Effects of Specified Activities on Marine Mammals and their Habitat** section.

Comment 9: Hilcorp recommends that NMFS clearly express its finding that the incidental harassment levels for each IHA constitutes a ''small number'' for each marine mammal stock regardless of NMFS's ''one-third'' standard.

Response: NMFS has made a small numbers finding for each IHA individually. The quantitative rationale for determining these numbers are ''small'' is put forth in Table 15 below.

Comment 10: Hilcorp requests that NMFS clarify that the renewal process is not necessary for the Year 2 IHA to become effective. Hilcorp specifically applied for, and NMFS proposed to issue, two separate, stand-alone IHAs. The Year 2 IHA would not be a ''renewed'' version of the Year 1 IHA. Hilcorp anticipates no need for renewal of the Year 1 IHA and requests removal of the renewal provision from the IHAs.

Response: Hilcorp is correct that the Year 2 IHA is not dependent upon a renewal of Year 1 and is a completely separate authorization from the Year 1 IHA. NMFS issued the Year 1 IHA to Hilcorp effective through September 13, 2023. NMFS has also issued a Year 2 IHA to Hilcorp with effective dates from September 14, 2023 to August 13, 2024. Further, at Hilcorp's request, NMFS will not consider a renewal of the Year 1 IHA and has removed the renewal provision from these IHAs.

Comment 11: Hilcorp recommends that NMFS clarify whether or not the EA relies upon the NEPA regulatory amendments recently adopted by the Council for Environmental Quality (CEQ) that became effective on May 20, 2022 (87 FR 2,453, April 20, 2022).

Response: Per NMFS' internal guidance dated June 17, 2022, NEPA reviews for actions initiated after September 14, 2020, but prior to May 20, 2022, will be conducted according to the 2020 CEQ regulations. In accordance with this guidance, NMFS' Environmental Assessment for this action references the 2020 CEQ regulations.

Comment 12: Hilcorp suggested several corrections or changes for clarity or to improve accuracy throughout the FR notice. Hilcorp commented that NFMS incorrectly characterized the straight line towing distance in the Marine Mammal Hearing section of the proposed IHA notice as 37 km when the distance used in the analysis was 64 km (40 mi). Hilcorp also comments that use of the phrase ''approximately 7 km'' was confusing as that was an estimation of the diameter of the ensonified area and that 3.8 km radius is a more precise characterization of the analysis of the ensonified area.

Response: These errors and clarifications have been fixed for this notice of the final IHAs.

Comment 13: The Center for Biological Diversity (CBD) recommended that NMFS stop allowing take of Cook Inlet beluga whales unless and until the agency conducts a comprehensive evaluation of the numerous threats. They note that NMFS developed 5-year action plans for each of the ''Species in the Spotlight'' that outline short-term efforts vital for stabilizing their populations and preventing their extinction. The first of the ''Key Actions Needed 2016–2020'' in NMFS's Species on the Spotlight Cook Inlet Beluga Whale 5-Year Action Plan is ''Reduce the Threat of Anthropogenic Noise in Cook Inlet Beluga Whale Habitat.'' They further note that the NMFS' Recovery Plan for Cook Inlet beluga whales (2016) (Recovery Plan) lists tugboats as the highest noise threat to critically endangered species.

Response: NMFS shares CBD's concern regarding the impacts of human activities on Cook Inlet beluga whales and is committed to supporting the conservation and recovery of the species. Under section 101(a)(5)(D) of the MMPA, NMFS considers the at risk status of Cook Inlet beluga whales (and other species) in both the negligible impact analysis and through our consideration of impact minimization measures that will support the least practicable adverse impact on those species. For example, the Hilcorp final rule included shutdown zones for Cook Inlet beluga whales that extended well beyond standard shutdown zones all the way to the Level B harassment isopleth. However section 101(a)(5)(D) also mandates that NMFS ''shall issue'' an IHA if we are able to make the necessary findings for any specified activity for which incidental take is requested.

In accordance with our implementing regulations at 50 CFR 216.104(c), we use the best available scientific evidence to determine whether the taking by the specified activity within the specified geographic region will have a negligible impact on the species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses. Based on the scientific evidence available, NMFS determined that the take incidental to Hilcorp's tugging of the jack-up rig, which is primarily acoustic in nature, transient, and of a low level, would have no more than a negligible impact and no unmitigable adverse impact on availability of marine mammals for subsistence uses. Moreover, Hilcorp proposed and NMFS has required in the IHAs a rigorous mitigation plan to further reduce potential impacts to Cook Inlet beluga whales and other marine mammals to the lowest level practicable. Protected species observers are required to conduct monitoring during all jack-up rig towing activity. Since publication of the proposed IHAs, aerial surveys have been incorporated to monitor for beluga presence when towing to or from the Tyonek platform as the more northern location is approaching an area of known Cook Inlet beluga whale use.

Our analysis indicates that issuance of these IHAs will not contribute to or worsen the observed decline of the Cook Inlet beluga whale population. Additionally, the ESA Biological Opinion determined that the issuance of these IHAs is not likely to jeopardize the continued existence of the Cook Inlet beluga whales or the western distinct population segment of Steller sea lions or to destroy or adversely modify Cook Inlet beluga whale critical habitat. The Biological Opinion also outlined Terms and Conditions and Reasonable and Prudent Measures to reduce impacts, which have been incorporated into the IHAs, including the aerial surveys discussed in the **Mitigation** section

below. Therefore, based on the analysis of potential effects, the parameters of the activity, and the rigorous mitigation and monitoring program, NMFS determined that the taking from the specified activity for Year 1 and for Year 2 would have a negligible impact on the Cook Inlet beluga whale stock.

Moreover, Hilcorp's jack-up rig towing activity would take only small numbers of marine mammals relative to their population sizes. Further, these takes represent one annual disturbance event for each of these individuals, or perhaps a few individuals could be disturbed a few times, in which case the number of impacted individual whales is even lower. As described in the **Federal Register** notice of proposed IHAs, NMFS used a method that incorporates density of marine mammals overlaid with the anticipated ensonified area to calculate an estimated number of takes for belugas, which was estimated to be less than 8 percent of the stock abundance, which NMFS considers small.

Regarding CBD's comment about tugboat noise, NMFS' Recovery Plan ranks noise from tugboats as the most important source that could potentially interfere with Cook Inlet beluga whale recovery based on signal characteristics and spatio-temporal acoustic footprint. However, notably, the Recovery Plan is referencing tugboat noise as a whole across all vessels and the entirety of Cook Inlet, not Hilcorp's specified activity in the specified location and geographic region, which is likely a small portion of overall tugboat use in Cook Inlet throughout the year. NMFS' biological opinion on NMFS' IHAs for Hilcorp's activity addressed the impacts of the marine mammal take NMFS is authorizing in the context of both the environmental baseline and the cumulative effects (including tugboats) and found that it likely would not jeopardize Cook Inlet beluga whales or destroy or adversely modify their Critical Habitat. In the MMPA analysis, NMFS addresses the signal characteristics and spatio-temporal overlap of Hilcorp's specific tug activity in the **Federal Register** notice and has authorized take accordingly.

In addition to implementing mitigation and measures to minimize the impact of Hilcorp's activity, more broadly NMFS is taking several proactive steps to address the decline of the species. NMFS provides online platforms that allow public access to search for and review NOAA Fisheries permits and authorizations, as well as consultations under section 7 of the ESA. Additionally, NMFS is supporting the development of a population consequences of disturbance model to further refine information about the effects of stressors on Cook Inlet beluga whale behavior, energetic costs, and vital rates. NMFS continues to conduct outreach and education to various stakeholders to minimize the potential for unauthorized take of Cook Inlet beluga whales. Lastly, NMFS is developing site-specific stranding response and disaster response guidelines for Cook Inlet, which could inform responses and further reduce impacts to Cook Inlet beluga whales.

Comment 14: CBD commented that the Recovery Plan recommends a review of the current system of allocation of takes by harassment of beluga whales to better reduce cumulative effects of harassment takes by numerous projects. CBD provides examples for the number of takes authorized by NMFS for various time periods, citing Migura and Bollini (2021).

Response: We note first that the Migura and Bollini (2021) paper cited by CBD seems to have led to a misunderstanding of the takes authorized or permitted by NMFS. In summary, CBD asserts that NMFS authorized nearly 120,000 takes of Cook Inlet belugas from 2017 to 2025 and that in 2020 alone, NMFS authorized the equivalent of 50 percent of the entire Cook Inlet beluga whale population to be ''incidentally'' harassed by industrial projects in the Inlet, such as oil and gas development and pile driving activities.

The vast majority of the asserted ~120,000 total takes (99 percent), including all of the very small amount of take by Level A harassment, were authorized under directed research or enhancement permits, which support research or actions identified in the Recovery Plan to address Cook Inlet beluga whale recovery goals. Further, the vast majority (~99 percent) of the total permitted research or enhancement take numbers cited by CBD are low-level MMPA Level B harassment from remote or non-invasive procedures that are considered not likely to adversely affect listed species pursuant to the ESA (*i.e.,* no associated take under the ESA is either expected to occur or exempted for those specific activities). We further note that based on the required post-research reporting from this 9-year period, an average of 25 percent of the permitted takes actually occurred. For the Directed Take Program, scientific research and enhancement permits authorize intentional close approaches that target marine mammals and that may result in harassment. These permitted takes generally are a larger number than the actual takes that occur because researchers need the ability to work in the field without running out of takes mid-season when optimal conditions and opportunities arise to meet their stated research objectives. Factors such as weather, funding, the pandemic, *etc.,* affect whether takes can be used.

Regarding the comprehensive evaluation and minimization of permitted takes, we reference the analysis that has already been completed through NMFS' 2019 Biological and Conference Opinion on the Proposed Implementation of a Program for the Issuance of Permits for Research and Enhancement Activities on Cetaceans in the Arctic, Atlantic, Indian, Pacific, and Southern Oceans (NMFS, 2019), which determined that the research and enhancement takes permitted by the program would not jeopardize the existence of any of the affected species. As part of our programmatic framework for permitting directed take of ESA species, the Permits and Conservation Division will continue to closely evaluate the number and manner of Cook Inlet beluga whale takes requested by each applicant, how the proposed research ties to recovery plan goals, and the collective number of authorized and requested takes to consider the potential cumulative impact of the activities to the population. Each directed take annual report is reviewed to understand how authorized takes were actually used and to closely monitor the impacts that permitted research methods are having on the target animals.

NMFS also has an active role on the Research subcommittee of the Cook Inlet Beluga Whale Recovery Implementation Task Force. Starting in 2021 the subcommittee increased efforts to monitor and coordinate research undertaken on Cook Inlet beluga whales each year. This effort includes pre- and post-season meetings with all parties conducting these studies to (1) coordinate field efforts and minimize harassment of whales, (2) learn of the latest findings by these groups and others. The subcommittee also plans to review new findings about threats listed in the Recovery Plan (NMFS, 2016) and identify data gaps as potential avenues for future research.

Regarding the incidental takes authorized for 2020, those takes represent instances of exposure above the Level B harassment threshold that could occur within a day. In other words, if those approximately 130 takes were assumed to be 130 separate individual whales, it would mean that those individual whales were each behaviorally disturbed on one day in that year. The more likely scenario is

that some of those 130 exposures were takes of the same whale on a few different days, and in fact a lesser number of individuals were taken, but still on only a few days within a year. In all cases, the necessary findings under MMPA and ESA were made prior to the authorization of the take. Further, ITAs issued for activities that may take Cook Inlet beluga whales typically include enhanced protective measures for beluga whales that include delaying the activity or shutting down if a beluga is sighted within the Level B harassment zone and avoiding activities in important feeding areas, such as the Susitna Delta. These measures ensure that in the unlikely event that a beluga whale is harassed by activities covered by an ITA, the impacts are expected to be of a comparatively low level of severity.

Comment 15: CBD commented that NMFS' actions contradict the recommendations of the Marine Mammal Commission, which has repeatedly urged NMFS to stop issuing authorizations until the agency better understands the decline in abundance.

Response: CBD cites letters NMFS received from the Marine Mammal Commission (MMC) for previous proposed incidental take authorizations before 2021 recommending NMFS refrain from authorizing take of Cook Inlet beluga whales until more is understood about the decline in abundance. NMFS responded to those comment letters (*e.g.,* 84 FR 37451, July 31, 2019) and we incorporate that response by reference. NMFS did not receive a comment letter from the MMC regarding the proposed IHAs for Hilcorp, but we refer the reader to the responses to comments 13 and 14 above.

Comment 16: CBD commented that the MMPA states that IHAs are valid for periods of not more than 1 year, but that NMFS is proposing a series of IHAs for the next 3 years without conducting a comprehensive analysis of take across all 3 years.

Response: Incidental harassment authorizations issued under section 101(a)(5)(D) for a specified activity are limited to periods of 1 year or less. Each IHA must satisfy the negligible impact standard for the authorized taking and include the means of effecting the least practicable adverse impact on the species or stock and its habitat and, where relevant, on the availability of such species or stock for taking for subsistence uses (*i.e.,* mitigation). NMFS considered Hilcorp's request for two IHAs for two distinct specified activities (identified as Year 1 and Year 2 activities) and, therefore, performed two distinct negligible impact analyses (because NMFS removed the possibility of a renewal of the IHAs at Hilcorp's request, there will not be a possibility for a third year). NMFS has a documented history of issuing consecutive IHAs to the same applicant, including sequential IHAs authorizing take of Cook Inlet beluga whales (85 FR 19294, April 6, 2020; 85 FR 1140, January 9, 2020; 85 FR 68291, October 28, 2020). Although it is not clear what is meant by a ''comprehensive'' analysis, under NMFS' implementing regulations for the MMPA, our negligible impact analyses take into account the ''baseline''; moreover, under NEPA, NMFS' EA considers all anthropogenic activities that NMFS is aware of, including those for which take is not authorized in the cumulative effects section and incorporates where appropriate into the environmental baseline under the ESA, NMFS' biological opinion considered the same types of activities in their environmental baseline and cumulative effects discussions.

Regarding the potential for a third year of activities through the issuance of a renewal at a later date, please see the response to comment 17.

Comment 17: CBD commented that issuance of renewals of IHAs via an expedited process is unlawful as it circumvents public comment timing laid out in the MMPA.

Response: NMFS' IHA renewal process meets all statutory requirements. All IHAs issued, whether an initial IHA or a renewal, are valid for a period of not more than 1 year; the public has 30 days to comment on proposed IHAs, with a cumulative total of 45 days for IHA renewals. The Request for Public Comments section in the notice of proposed IHA made clear that the agency was seeking comment on both the initial proposed IHA for this project and the potential issuance of a renewal. Because any renewal (as explained in the Request for Public Comments section) is limited to another year of identical or nearly identical activities (as described in the Description of Proposed Activity) or the same activities that were not completed within the 1-year period of the initial IHA, reviewers have the information needed to effectively comment on both the immediate proposed IHA and a possible 1-year renewal, should the IHA holder choose to request one in the coming months.

In prior responses to comments about IHA Renewals (*e.g.,* 84 FR 52464, October 02, 2019; 85 FR 53342, August 28, 2020), NMFS has explained how the Renewal process, as implemented, is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA, provides additional efficiencies beyond the use of abbreviated notices, and, further, promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process. Therefore, we intend to continue implementing the Renewal process.

In this case, as already stated, at Hilcorp's request NMFS removed the renewal provision from these IHAs.

Comment 18: CBD commented that NMFS' interpretation of ''small'' as it pertains to the small numbers analysis is unreasonable, and that a number may be considered small only if it is ''little or close to zero'' or ''limited in degree.''

Response: In NMFS' Final Rule for taking of marine mammals incidental to geophysical surveys in the Gulf of Mexico (86 FR 5322, January 19, 2021), NMFS fully describes its interpretation and implementation of ''small numbers''. Included as part of that discussion, NMFS explains the concept of ''small numbers'' in recognition that there could also be quantities of individuals taken that would correspond with ''medium'' and ''large'' numbers. As such, NMFS has established that one-third of the most appropriate population abundance number—as compared with the assumed number of individuals taken—is an appropriate limit with regard to ''small numbers.'' This relative approach is consistent with the statement from the legislative history that ''[small numbers] is not capable of being expressed in absolute numerical limits'' (H.R. Rep. No. 97–228, at 19 (September 16, 1981)), and relevant case law (*Center for Biological Diversity* v. *Salazar,* 695 F.3d 893, 907 (9th Cir. 2012) (holding that the U.S. Fish and Wildlife Service reasonably interpreted ''small numbers'' by analyzing take in relative or proportional terms)).

We note that the comment selectively includes a definition in support of CBD's favored position. For example, the definition of ''small'' in Webster's New Collegiate Dictionary (1981) included ''having little size, esp. as compared with other similar things.'' See also *www.merriam-webster.com/dictionary/* small (defining ''small'' as ''having comparatively little size''). These definitions comport with the small numbers interpretation developed by NMFS, which utilizes a proportionality approach.

Comment 19: CBD claims that NMFS's proposed IHAs failed to account for all sources of take.

Response: NMFS acknowledges that Hilcorp's overall activity in Cook Inlet

includes more than the activities for which take is authorized under these IHAs. Firstly, ITAs under the MMPA are a request-based authorization by which NMFS analyzes the potential for incidental harassment at the request of the applicant for the activities described. NMFS also considers other related activities by the applicant to assess whether they, alone or in combination with the specified activity for which take was requested, may result in take, and will advise if they should be included in the take application. In the specific example used by CBD that vessel trips may increase by two trips per day from normal platform operations, there is no indication that take is likely to occur nor has Hilcorp requested take due to supply vessel trips. While vessel noise can contribute to masking and is a contributor to elevated noise in the area, the manner in which Hilcorp plans to operate their support vessel (with inherent mitigation to avoid the presence of marine mammals) supports the assessment that an encounter with a marine mammal, let alone a disruption of their behavioral pattern, is unlikely to occur.

Comment 20: CBD commented that NMFS failed to consider noise from water jets, production drilling, helicopters, and vessel traffic.

Response: NMFS considered these additional sources and did not find authorization of take was warranted for these activities. Additional detail about these sources and NMFS' rationale is provided in the *Detailed Description of Specific Activity* section of this notice.

NMFS also disagrees with CBD's characterization that the MMPA definition of harassment ''includes not only those activities that will or are likely to cause take but those that 'ha[ve] the potential to injure . . . or . . . disturb a marine mammal.'" This is an incomplete recitation of the statutory definition of harassment. Level B harassment refers to an act of pursuit, torment, or annoyance that has the potential to disturb a marine mammal or marine mammal stock in the wild ''by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.'' This requires that an act have ''the potential to disturb by causing disruption of behavioral patterns,'' not simply result in a detectable change in motion or vocalization. See 84 FR 63268, 63285 (December 7, 2018).

Comment 21: CBD commented that NMFS is artificially lowering take estimates ''by calculating the number of harassments per activity by days of exposure rather than the instances of harassment.''

Response: In order to provide a practical, consistent, biology-based (*i.e.,* the Diel Cycle) currency for impact assessment across the wide range of take calculation methods applicants may use—for years NMFS has recommended that for the purposes of counting instances of take—we do not consider one individual as taken more than one time in a day, even if that an individual could be exposed to sound or other stressors multiple separate times in one day. For the purposes of the negligible impact analysis of the effects of the enumerated takes on any individuals and the stock, though, it is important to understand the likely nature of these enumerated instances of take (*e.g.,* momentary exposure versus multiple hours, high level versus low level), and that is how the potential for multiple exposures in a day (if expected) or longer duration exposures are appropriately considered in the analysis.

For Hilcorp, NMFS used the best available science to arrive at the most realistic characterization of potential harassment possible. In this instance, NMFS calculated the area likely to be ensonified above 120 dB and applied the best available density values for species in Cook Inlet to arrive at a number of individuals exposed in a single day. This is then multiplied by the number of days to result in the number of exposures across the entire duration of the activity (*e.g.,* 14 or 16 days, respectively). If anything, this calculation may be an overestimate as animals are not uniformly distributed across the action area, and the same individual animals may be exposed to sound levels greater than 120 dB several times over the duration of the activity but due to the constraints of our calculations, they are being considered as separate animals in our estimations.

Comment 22: CBD commented that NMFS' small numbers determination for Cook Inlet beluga whales fails to consider the status of the species. CBD claims that ''small'' must be considered against the status of the species and whether the percentage of take for each affected species will ensure that population levels are maintained at or restored to heathy numbers.

Response: NMFS disagrees with CBD's assertion. The argument to establish a small numbers threshold on the basis of stock-specific context is unnecessarily duplicative of the required negligible impact finding, in which relevant biological and contextual factors are considered in conjunction with the amount of take and would risk conflating the two standards. Similarly, CBD's assertion that NMFS' small numbers analysis must consider whether the percentage of take would restore a population to ''healthy number'' is not required by section 101(a)(5)(D) of the MMPA.

Comment 23: CBD commented that NMFS has no basis on which to conclude that additional harassment by noise has a negligible impact on Cook Inlet beluga whales as a species, given the population's lack of recovery and continued decline.

Response: In the Negligible Impact Analysis and Determination section, we describe how the take predicted and authorized for Hilcorp's tugboat activity (not additional harassment by noise at large), which is 11 in Year 1 and 22 in Year 2 for beluga whales, will have a negligible impact on all of the affected species. In summary, this determination is based upon the small numbers of beluga whales that might be exposed briefly during the 16 days of the activity, the comparatively low degree of behavioral harassment that might result from any one of the 11 or 22 instances of take that occur within a year, and the likelihood that the mitigation measures further lessen the likelihood of exposures. NMFS has considered the status and decline of Cook Inlet beluga whales in its analysis, as well as the importance of reducing impacts from anthropogenic noise, but nonetheless, there is no indication that brief exposure to low level noise not causing greater than Level B harassment would have a greater than negligible impact on Cook Inlet beluga whales.

Comment 24: CBD claims that NMFS incorrectly stated that Cook Inlet beluga whales are not known to engage in critical behaviors in the area where Hilcorp's project is planned.

Response: NMFS acknowledges observation of one potential but unconfirmed incidence of mating behavior in the Trading Bay area, but the extent to which critical behaviors occur in Hilcorp's project area is still unknown. (Lomac-Macnair *et al.,* 2016). Such behaviors have not been reported since. Surveys by NMFS or McGuire *et al.* (2020) with concentrated effort on the western coast of Cook Inlet have not yielded a comparable sighting. Other key behaviors, such as calving and feeding, are described in more detail below but are thought to occur primarily in other concentrated areas outside of Hilcorp's action area.

We are unaware of any information regarding areas where Cook Inlet belugas are more likely to engage in mating behavior, however, what is known about calving suggests that it is

most concentrated in the upper Inlet, north of Hilcorp's project area. McGuire *et al.* (2020) characterizes habitat use by age class in northern Cook Inlet and documented the majority of calves in the northernmost parts of Cook Inlet (*e.g.,* Susitna Delta) despite concentrated survey effort in areas along the west part of the Inlet heading south toward the Forelands. NMFS acknowledges that Cook Inlet beluga whales use the area, especially in spring and fall months, but their habitat range at those times is not nearly as constricted as their summer habitat, which is concentrated in a small area with high anthropogenic activity.

Cook Inlet beluga whales may well occur in the project area, which is why a small amount of take by Level B harassment is authorized for this species incidental to Hilcorp's jack-up rig towing. Tagging data, acoustic studies, and opportunistic sightings indicate that Cook Inlet belugas continue to occur in the upper inlet throughout the winter months, in particular the coastal areas from Trading Bay to Little Susitna River, with foraging behavior detected in lower Knik Arm and Chickaloon Bay, and also detected in several areas of the lower inlet such as the Kenai River, Tuxedni Bay, Big River, and NW Kalgin Island (Castellote *et al.,* 2011, 2020, 2021; C. Garner, pers. comm.; Shelden *et al.,* 2015, 2018). Belugas were historically seen in and around the Kenai and Kasilof rivers during June aerial surveys conducted by ADFG in the late 1970s and early 1980s and by NMFS starting in 1993 (Shelden *et al.,* 2015b), and throughout the summer by other researchers and local observers. In recent years, sightings in and near these rivers have been more typical in the spring and fall (Ovitz, 2019). It is unknown if this is due to increased monitoring efforts in the area or an increase in belugas using this area. While visual sightings indicate peaks in spring and fall, acoustic detections indicate that belugas can be present in the Kenai River throughout the winter (Castellote *et al.,* 2016). Despite the historic sightings (1970s–1990s) of belugas throughout the summer (June–August) in the area, recent acoustic detections and visual sightings indicate that there appears to be a steep decline in beluga presence in the Kenai River during the summer, despite an annual return in recent years of 1–1.8 million sockeye salmon, which are important beluga prey.

As described above, we have no reason to expect beluga whales to be concentrated in the path of Hilcorp's tug boats for the purposes of reproductive or feeding behaviors, but even if one or more of the 11 (Year 1) or 22 (Year 2) instances in which the brief tugboat operations intersects with an individual beluga is engaged in these behaviors, the anticipated short duration and low level disturbance of any such encounter would not be likely to impact reproductive or foraging success of any individuals.

Comment 25: CBD comments that NMFS' negligible impact determination relies largely on mitigation measures required under the IHAs that require visual observations, which it claims are ineffective.

Response: NMFS disagrees with this characterization of the negligible impact determination. Our discussion in the Negligible Impact Analysis and Determination section below contains the factors NMFS considered in reaching its negligible impact determinations. Although NMFS' implementing regulations at 50 CFR 216.104 (c) state that NMFS may incorporate successful implementation of mitigation measures to arrive at a negligible impact determination, for issuance of IHAs for Hilcorp's tug towing rig activity, NMFS did rely upon an assumption of set level of effectiveness in mitigation to make our negligible impact determinations. That said, based on prior monitoring efforts in Cook Inlet, it is clearly possible to detect and identify marine mammals to the species level at kilometers away from the source level, including beluga whales. This is dependent on several factors such as visual acuity, sea state, glare, animal behavior/body type, speed of travel for vessel and animal, *etc.*. NMFS does not assume total effectiveness of monitoring, but the demonstrated record of protected species observer sightings for activities in Cook Inlet illustrate that visual monitoring is appropriate for implementing mitigation such as avoidance in this case.

Comment 26: CBD commented that NMFS relied on Hilcorp's commitment to operate with the favorable tide to reduce the power output of the tugs without including the requirement in the IHAs.

Response: The requirement to use a favorable tide and operate at night if a favorable tide fell during nighttime hours was included in the Proposed IHAs Year 1 and Year 2 that were available on our website (*https://www.fisheries.noaa.gov/action/incidental-take-authorization-hilcorp-alaska-llc-oil-and-gas-activities-cook-inlet-alaska-0*) as measures 4.f and 4.g. It is also in the final IHAs.

Comment 27: CBD commented that NMFS failed to ensure the least practicable adverse impact on Cook Inlet beluga whales by failing to consider requiring the use of passive acoustic monitors to detect the presence of marine mammals.

Response: NMFS considered the use of passive acoustic monitoring for mitigation purposes in the rulemaking for Hilcorp's oil and gas activities in Cook Inlet. As we stated in the notice of proposed rulemaking, passive acoustic monitoring for previous activities in Cook Inlet where incidental take was authorized by NMFS has not been an effective mitigation or monitoring measure due to environmental conditions (84 FR 12330, 12368; April 1, 2019 (incorporating by reference discussion of limited effectiveness of passive acoustic monitoring for survey mitigation in Hilcorp's petition for rulemaking)). For the same reasons, we have determined passive acoustic monitoring is not likely to be sufficiently effective at detection for real-time mitigation for Hilcorp's tug towing activities and is not included in the IHAs.

As CBD notes, academic researchers have begun to implement more effective passive acoustic monitors for research purposes at several places in Cook Inlet (Castellote *et al.,* 2020). However, the framework used by those researchers is impractical, particularly for Hilcorp's planned activity, which primarily involves straight-line transit. An article on NOAA's website (*https://www.fisheries.noaa.gov/science-blog/beluga-whale-acoustic-monitoring-survey-post-3*) clearly illustrates the level of customization, expertise, and difficulty required to assemble a passive acoustic mooring to then deploy in the Inlet. Additionally, these instruments are stationary, which means to effectively use these monitors as a means of avoiding harassment of marine mammals during Hilcorp's activity, Hilcorp would need to build and successfully deploy dozens (or more) of stationary monitors along a route of travel that is subject to change depending upon weather or other environmental and shipping restrictions. Additionally, the data stored on these types of moorings is not accessible until they are retrieved by the researcher who deployed them. In the future, if an established network of passive acoustic monitors with shared access to the data is available, this could be a useful tool for implementing mitigation measures, but is currently not practicable.

Comment 28: CBD commented that NMFS failed to consider time-area restrictions for tugs such as Trading Bay in April and May and a prohibition on

activities from July through September (CBD did not specify a location for this proposed measure).

Response: NMFS did consider such a time-area restriction and does not agree that these proposed restrictions are appropriate under the least practicable adverse impact standard. Hilcorp's activity in Trading Bay would be either a single day of transit or several hours of positioning the jack-up rig at an existing well site. As discussed in our above comment response, there has been one published observation of potential (not confirmed) mating behavior of Cook Inlet beluga whales in Trading Bay. Surveys by NMFS or McGuire *et al.* with concentrated effort on the western coast of Cook Inlet have not yielded a comparable sighting. Closure of the entire area for two months is not practicable as Hilcorp would not be able to access the well sites that are part of the intended activity. As discussed above and in the species-specific section of the proposed IHAs, Cook Inlet belugas are highly concentrated in the upper Cook Inlet especially in the summer months (Goetz *et al.,* 2012; McGuire *et al.,* 2020). In the past, Cook Inlet beluga whales used the Kenai area in summer months but that trend has shifted in recent decades to occasional spring and fall sightings (Ovitz, 2019). Throughout the Inlet, mean group sizes during the summer and fall were largest in July and smallest in October, with the largest groups seen during mid-July and early August in the Susitna River Delta, while the smallest group sizes were in the Kenai River Delta. These patterns of high seasonal concentrations have continued to be documented since 2012 (*e.g.,* McGuire *et al.,* 2020). In reflection of this information, NMFS has imposed time area restrictions in the Susitna River Delta from April to November to reduce effects of Hilcorp's activity to the greatest extent practicable. In the case of the Tyonek platform, which lies within 10 miles of the mean lower-low water line of the Little Susitna and Beluga Rivers, Hilcorp will conduct aerial surveys to clear the Tyonek platform of Cook Inlet beluga whales to the greatest extent practicable. This evidence further suggests a closure in the middle Inlet during the summer months, in the season with longest daylight hours and best conditions for visual observations to implement mitigation and monitoring, is not appropriate under the least practicable adverse impact standard.

See also response to comment 24.

Comment 29: CBD stated that NMFS failed to consider noise-quieting engines such as electric tugboats.

Response: The citation provided by CBD regarding electric tugboats was a link to a concept drawing of a boat that is not expected to be on the seas in the U.S. until at least 2023. NMFS is not aware of any commercially available seaworthy tug vessels that are used in tandem (*e.g.,* three tug configuration) with effective quieting technologies or of any company or entity with electric tug fleets able to use them in tandem as required for Hilcorp's activities.

Comment 30: CBD commented that NMFS did not meaningfully consider the chosen clearance zone distance of 1,500 meters and that it is not equivalent to the Level B harassment zone.

Response: CBD is correct that the clearance zone required under the IHAs (1,500 m) is not equivalent to the Level B harassment zone (3,850 m). There is no requirement that the clearance zone be equal to or greater than the Level B harassment zone. Using the Level B harassment zone as the clearance zone would be impractical as identification of certain species may be unreliable at such distance in Cook Inlet's environmental conditions. The 1,500 m distance ensures more effective monitoring closest to the vessels, where any potential impact to animals is anticipated to be the greatest. While underway, protected species observers will observe for marine mammals to the greatest extent possible (and they are not limited to observing within 1,500 m of the vessel). Any marine mammal sighted by PSOs at any distance is noted and reported to NMFS, per the reporting requirements of the IHAs.

Comment 31: CBD comments that NMFS defines its purpose and need in the Environmental Assessment too narrowly, making issuance of successive IHAs the only option.

Response: NMFS disagrees with this characterization of purpose and need. Under section 101(a)(5)(D) of the MMPA, NMFS has an obligation to consider and grant requests for the taking of marine mammals incidental to a specified activity, provided they satisfy the relevant requirements. Hilcorp submitted an application for two IHAs, each covering 1 year of tug towing rig activity. Once deemed adequate and complete, NMFS had an obligation to consider and respond to these requests in the manner described in the implementing regulations. While Hilcorp's request for two IHAs did not guarantee that they would be issued (*i.e.,* if one or both years of the specified activity did not satisfy the relevant MMPA standards, NMFS would not issue the IHA(s)), characterizing the purpose and need to include issuance of only one IHA would not be in accordance with our requirement to consider both adequate and complete requests submitted by Hilcorp.

Comment 32: CBD commented that NMFS segmented its analysis of the impacts of Hilcorp's activities under these IHAs from the activities authorized under the ITRs.

Response: As explained earlier (see Comment 1), NMFS is in the process of withdrawing the ITRs based on Hilcorp's representations that they will not be undertaking any further activities for which take was authorized under the ITR during the remaining period of effectiveness. The only take currently authorized by NMFS incidental to Hilcorp's activities in Cook Inlet, Alaska, over the next 2 years is through the two IHAs for the take incidental to tugs towing the jack-up rig, as described in this notice.

Comment 33: CBD commented that NMFS failed to consider several additional alternatives under NEPA including: requiring the use of passive acoustic monitoring to detect the presence of marine mammals; requiring the use of drones to detect the presence of marine mammals; requiring the use of electric tugboats; restrictions on the timing of activities when Cook Inlet belugas are less likely to be present; restrictions on the overall amount of authorized activity, and authorizing take incidental to decommissioning activity but not production activity.

Response: Under NEPA, NMFS is required to consider a reasonable range of alternatives. Our EA considered the preferred alternative, which satisfied our purpose and need, and the no-action alternative. We also considered, but rejected from further consideration, two variations of the preferred alternative, including alternative technologies (such as electric tugboats). Similarly, as explained in a previous response, NMFS is not requiring mitigation such as passive acoustic monitoring or electric tugboats because they do not satisfy the MMPA's least practicable adverse impact standard. NMFS is requiring a time-area closure specifically to enhance protection for Cook Inlet beluga whales based on the best available science. This mitigation measure to protect Cook Inlet beluga whales in a biologically important area at times of known high density of whales was included in the preferred alternative. NMFS did not explore ''restrictions on the overall amount of authorized activity'' because NMFS does not authorize the underlying activity, and restricting the amount would have changed the applicant's specified activity (and further was not necessary

to reach our negligible impact determinations). NMFS did not consider authorizing take incidental to decommissioning (P&A) activity but not production activity because for purposes of our MMPA analyses of the impacts of the tug activities, these are exactly the same activity—the same three tugboats pulling and positioning one jack-up rig for the time windows provided in the project description. NMFS is not authorizing any take of marine mammals incidental to production drilling itself or decommissioning itself, but rather the moving of the jack-up rig into position, which will then be used to complete those activities. Authorizing take incidental to tugs towing the jack-up rig to be used only for decommissioning purposes would be arbitrary and capricious.

Comment 34: CBD commented that NMFS' EA failed to consider impacts from vessels and other sources associated with Hilcorp's activity, even if they do not rise to the level of take.

Response: NMFS disagrees with this characterization. In the description of the activity in NMFS' EA, as in the **Federal Register** notice of proposed IHAs, NMFS includes a discussion of other activity associated with Hilcorp's rig-towing and why it does not rise to the level of take. NMFS has included that discussion in this **Federal Register** notice as well with further detail about the way Hilcorp plans to conduct those activities that means take is unlikely. Aspects of these sources, such as increased vessel traffic or helicopter traffic to the area, are addressed in the EA in the Cumulative Effects section.

Comment 35: CBD commented that NMFS' EA relies on mitigation measures required in the IHAs to dismiss the significance of impacts from Hilcorp's activity, claiming that the mitigation measures rely on marine mammals being detected by observers which CBD considers ineffective. CBD did not provide any examples or citations of this in their description.

Response: NMFS does not rely on ineffective mitigation measures to dismiss the significance of impacts—as described in the EA, the primary reason the impacts are considered insignificant are because of the limited duration of the activity (14 and 16 days respectively), the low level of noise created by the tug configuration, and the low density of marine mammals in the action area resulting in small exposure estimates. Further, NMFS disagrees with the characterization that the mitigation measures are ''ineffective'' because they rely on visual detection. NMFS has received many marine mammal monitoring reports over the years demonstrating that visual observers for marine mammals are effective in Cook Inlet. At no point in the MMPA or NEPA analysis does NMFS assume that mitigation is 100 percent effective, as environmental conditions can confound monitoring effort, but there is a spectrum of effectiveness when implementing mitigation, and visual observation in Cook Inlet is an appropriate means for detecting marine mammals to implement mitigation zones.

Comment 36: CBD comments that NMFS' EA fails to properly analyze the current state of climate change and how new fossil fuel production contributes to climate change. CBD claims that NMFS must consider and disclose how facilitating fossil fuel production and total greenhouse gas emissions associated with the project will exacerbate climate change. As part of this analysis, CBD contends that NMFS must consider downstream greenhouse gas emissions.

Response: NMFS considers climate change in its EA. However, as described previously, NMFS does not authorize production drilling or any of Hilcorp's activities but rather take of marine mammals incidental to Hilcorp's activities. In Federal waters, BOEM conducts lease sales that provide qualified bidders the opportunity to bid on blocks of the outer continental shelf to gain conditional rights to explore, develop, and produce oil and natural gas in those blocks. BOEM's consideration of climate change for its lease sales is found in the agency's environmental compliance documents, such as the EIS written for Lease Sale 244 (BOEM, 2016), the most recent lease sale in Cook Inlet, Alaska. Of note, for Alaska state waters, Hilcorp would obtain necessary permits for production drilling from Alaska Department of Environmental Conservation. NMFS' IHAs cover take of marine mammals incidental to tugs towing and positioning a jack-up rig, which may occur even if Hilcorp produces no natural gas or oil from their wells with the jack-up rig.

Comment 37: CBD commented that NMFS failed to properly consider impacts to subsistence use as Hilcorp's activity would impede the recovery of Cook Inlet beluga whales, which in turn affects the beluga harvest.

Response: NMFS considered impacts on subsistence users, especially for species such as harbor seals, which are harvested by communities along Cook Inlet. NMFS found that take of Cook Inlet beluga whales incidental to Hilcorp's tug towing activity would have a negligible impact on the stock and there is no evidence to suggest that the impacts of 14 or 16 days of rig towing per year for 2 years (resulting in 11 and 22 low-level behavioral disturbance events, respectively), would impact the reproductive success or survival of any individual in any way, much less impede the recovery or impact the availability of Cook Inlet beluga whales for subsistence harvest were a harvest to occur.

Comment 38: CBD also commented that NMFS failed to take a hard look at cumulative impacts of the IHAs, specifically with respect to Cook Inlet beluga whales.

Response: NMFS disagrees with the assertion that cumulative impacts were not adequately considered, especially with respect to Cook Inlet beluga whales. Cook Inlet beluga whales are frequently discussed together with the other 11 species of marine mammal for which take is authorized, as cited in CBD's example regarding vessel noise, because effects of vessel noise on Cook Inlet beluga whales are expected to be highly similar to the effects of vessel noise on other marine mammals, except in that the number of takes is different (and lower) than some other species due to their likely distribution in the area. As described in Castellote *et al.* (2019), Cook Inlet beluga whales are one of the species that exhibits high site fidelity with a strong temporal correlation. Because of this, there is strong evidence that Cook Inlet beluga whales are not expected to occur in the project area during the ice-free season when Hilcorp would be towing the rigs in a largely offshore environment. While Cook Inlet beluga whales exhibit high site fidelity, it is not fidelity to the project area at the time of year and location of Hilcorp's platforms. They may be affected by other activities in the area where they would be expected to occur in ice-free seasons, such as the Port of Anchorage, and those activities are discussed in our Cumulative Effects section of the EA.

Cumulative impacts have been adequately addressed under NEPA in the final environmental assessment (EA) supporting NMFS' determination. In the final EA, we reviewed potential direct, indirect, and cumulative impacts to protected species and their environment, associated with NMFS' proposed action and alternatives. Separately, cumulative effects were analyzed as required through NMFS' required intra-agency consultation under section 7 of the ESA. The Biological Opinion (BiOp) that NMFS Alaska Region issued on September 9, 2022, determined that NMFS' action of issuing the IHAs is not likely to

jeopardize the continued existence of listed marine mammals or result in the destruction or adverse modification of critical habitat of such species, including Cook Inlet beluga whales.

Comment 39: CBD commented that NMFS' cumulative impacts analysis ignores the impacts of take of Cook Inlet beluga whales already authorized or occurring, including take from other ITAs, research permits, and unpermitted takes from vessel noise, water pollution, and other impacts. Further, CBD commented that NMFS should attempt to quantify take and analyze impacts to the species in the EA.

Response: NMFS agrees with CBD that a quantification of take may be helpful to the public and has included those numbers in the appropriate section of the EA's cumulative effects discussion. However, these take numbers are frequently taken out of context when purely summed. Takes of marine mammals, including Cook Inlet beluga whales, through other ITAs is considered in NMFS' environmental baseline when conducting the necessary analysis for issuance of these IHAs. There are other takes of Cook Inlet beluga whales authorized for scientific research and enhancement of the species. While they are all considered ''take'' for purposes of issuing an authorization or permit under the MMPA in advance of an activity, the context of these takes is important (see responses to Comments 13 and 14). Authorized takes, in the research context, are what allow researchers frequently cited by NMFS and CBD (*e.g.,* Castellote *et al.,* McGuire *et al.,* Shelden *et al.,* Hobbs *et al.*) to collect the scientific data necessary to inform their publications. Researchers' interactions with marine mammals are carefully controlled through permit conditions and reporting requirements, which often require research efforts to cease if any effects to important biological functions are detected by qualified researchers that are skilled at observing marine mammal behavior (NMFS, 2019).

The context of the take is of the utmost importance when cumulatively evaluating takes of marine mammals, as the intensity of impacts from a given activity can vary widely. For example, an animal exposed to noise levels just above our harassment threshold in a non-critical area may experience a small change in a behavioral pattern with no biological consequence while an animal exposed to very loud noise levels in an area where active critical foraging occurs could result in behavioral changes that may be more likely to impact fitness. While both of these examples would be characterized as Level B harassment, the resulting impact on the population could be different. Context differences such as these are analyzed in our negligible impact analysis for each application under the MMPA.

Furthermore, NMFS does not consider unpermitted ''takes'' explicitly in its analysis. It is difficult to determine if a take has occurred without monitoring in place to assess the effects of a particular activity. However, NMFS broadly and qualitatively addresses potential effects from other types of activity or development without distinguishing if any potential ''take'' is permitted. For example, NMFS considers potential effects of construction activities, some of which have the potential to result in take, in the Cumulative Effects section of the EA. NMFS discusses the overall effects of construction without discerning individual takes due to construction or attributing takes to a ''permitted'' or ''unpermitted'' status.

Comment 40: CBD commented that NMFS failed to consider Hilcorp's poor track record of environmental and safety violations and accidents and how this may affect the environmental impacts of Hilcorp's activities under the IHAs.

Response: Oil spills, accidents, or other disasters stemming from man-made structures in Cook Inlet are not considered, as they are not authorized and are a breach of authorizations and perhaps of other agencies' regulations. It is the responsibility of the applicants to comply with all additional regulations, and to work with the state to obtain approval of their Oil Discharge Prevention and Contingency Plans (ODPCP).

Comment 41: CBD commented that NMFS should reinitiate and complete consultation on the 5-year take regulations and issue a biological opinion that properly analyzes the impacts of all of Hilcorp's activities on threatened and endangered species and their habitats, including from tugs towing rigs.

Response: As described above, NMFS is in the process of withdrawing the incidental take regulations issued to Hilcorp in 2019, as none of the activity for which incidental take was authorized is planned to occur in the foreseeable future. The remaining take of marine mammals incidental to Hilcorp's activity is solely from Hilcorp's tug-towing activities, which are covered by these IHAs and for which consultation was completed. The resulting Biological Opinion was issued on September 9, 2022.

Changes From Proposed IHAs to Final IHAs

There are several changes from the proposed IHAs, starting with the timing of the activity. The Year 1 and Year 2 IHAs were initially proposed to become effective in April 2022 and April 2023, respectively. This timeline has been delayed during the course of processing the IHA requests. Hilcorp now requests that the Year 1 IHA be effective September 2022 and the Year 2 IHA become effective on September 2023. Since the conclusion of the public comment period in June 2022, NMFS has reviewed newly available information, including recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and incorporated this information into our analysis of impacts on marine mammals and their habitat. Additionally, NMFS removed the consideration of renewals of the IHAs at Hilcorp's request.

During the processing of the IHA requests, Hilcorp notified NMFS of the need to conduct the initial rig tow in June 2022. On April 28, 2022, Hilcorp sent a letter to NMFS describing the need to move the jack-up rig as well as the mitigation and monitoring Hilcorp planned to employ during the rig move to avoid take. In a letter dated May 17, 2022, in consideration of the low likelihood of exposures above the 120 dB harassment threshold, the short duration of the jack-up rig move, the further reduced likelihood of exposure above 120 dB supported by the expanded mitigation, and further, the reduced probability that an animal exposed to a received level above 120 dB tugboat noise would respond in a manner that qualifies as a take under the MMPA, NMFS concurred with Hilcorp's assessment that take of marine mammals by Level B harassment is unlikely to occur during the transport of the jack-up rig from the Rig Tender's Dock in Nikiski to the Tyonek platform in middle Cook Inlet. NMFS' concurrence letter did not authorize any take of marine mammals under the MMPA or ESA incidental to the rig move. As a result of this initial move, Hilcorp's planned Year 1 activities have been reduced to approximately 14 days of tug towing and positioning. This reduction in activity duration under the IHA, and appropriate reductions in take estimates, have been made throughout this notice and the Year 1 IHA.

Hilcorp began the mobilization process in June 2022 as described in their April 28, 2022, letter and fully abided by all of the minimization measures described therein. Three

ocean-going tugs towed the jack-up rig for 32.2 miles and the approximate total time under load including transiting, holding and positioning amounted to 27 hours. The jack-up rig was positioned at the Tyonek platform where it has remained since that mobilization. During the rig move, Hilcorp observed 14 harbor porpoises and six harbor seals at distances ranging from 75 meters to 4,960 meters from the tug towing jack-up rig configuration, and no beluga whales. Based on the distance at which some animals were observed and our assumed source levels, it is possible individual animals received sound levels greater than 120 dB, which is NMFS' current threshold for estimating when Level B harassment is predicted to occur, though there are other qualitative factors that may be considered. There are certain characteristics of tugging that reduce the probability that being exposed to received levels above 120 dB will result in disruption of behavioral patterns. Tugboats under load, especially a multi-tug configuration, are slow-moving as compared to typical recreational and commercial vessel traffic. Assuming an animal was stationary, exposure from the moving tug configuration would be on the order of minutes in any particular location. Hilcorp's monitoring report indicates these animals were traveling or swimming, with three animals changing their course of direction when approaching the tug configuration, suggesting their exposure time could have been even shorter. The slow, predictable, and generally straight path of this tug configuration further lessened the likelihood that exposures at the expected levels resulted in the harassment of marine mammals. The slow transit along a predictable path occurred in an area of routine vessel traffic where many large vessels move in slow straight-line paths, and some individuals are expected to be habituated to these sorts of exposures.

NMFS made two changes with respect to species and stocks included in the final IHAs. During the course of consultation under the ESA, it was brought to NMFS' attention that humpback whales in Cook Inlet could potentially belong to the Western North Pacific stock as well as the Central North Pacific stock. NMFS has considered both stocks in our analysis for the final IHAs. Additionally, BOEM suggested that Pacific white-sided dolphins be included based on acoustic detection data. They have been included in our analysis and take authorized in the final IHAs.

During the process of section 7 consultation under the ESA, Hilcorp notified NMFS that complying with the Susitna Delta mitigation zone as proposed would not be practicable for operations at their Tyonek platform because the location of the platform is within the Susitna Delta exclusion zone. The dates and applicability of the Susitna Delta exclusion zone have been changed from the proposed to final IHAs. The changes, as well as additional protective measures associated with the change, are described in more detail in the Mitigation section below.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 4 lists all species or stocks for which take is expected and authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow the Committee on Taxonomy (2021). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. 2021 SARs (*e.g.,* Muto *et al.,* 2022). All values presented in Table 4 are the most recent available at the time of publication and are available in the 2021 SARs (Muto *et al.* 2022) (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 4—MARINE MAMMAL SPECIES OR STOCKS FOR WHICH TAKE IS EXPECTED AND AUTHORIZED

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	-, -, N	26,960 (0.05, 25,849, 2016).	801	131
Family Balaenidae:						
Humpback whale	*Megaptera novaeangliae*	Western North Pacific	E, D, Y	1,107 (0.3, 865, 2006)	3	2.8
Humpback whale	*Megaptera novaeangliae*	Central North Pacific	E, D, Y	10,103 (0.3, 7,890, 2006)	83	26
Minke whale	*Balaenoptera acutorostrata*	Alaska	-, -, N	N/A (see SAR, N/A, see SAR).	UND	0
Family Balaenopteridae (rorquals):						
Fin whale	*Balaenoptera physalus*	Northeast Pacific	E, D, Y	see SAR (see SAR, see SAR, 2013).	see SAR	0.6

TABLE 4—MARINE MAMMAL SPECIES OR STOCKS FOR WHICH TAKE IS EXPECTED AND AUTHORIZED—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Beluga whale	*Delphinapterus leucas*	Cook Inlet	E, D, Y	279 (0.061, 267, 2018)	0.53	0
Killer whale	*Orcinus orca*	Alaska Resident	-, -, N	2,347 c (N/A, 2347, 2012).	24	1
Killer whale	*Orcinus orca*	Gulf of Alaska, Aleutian Islands, and Bering Sea Transient.	-, -, N	587 c (N/A, 587, 2012)	5.87	0.8
Pacific white-sided dolphin	*Lagenorhynchus obliquidens*	North Pacific	-, -, N	26,880 (N/A, unknown, 1998).	UND	0
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Gulf of Alaska	-, -, Y	31,046 (0.21, N/A, 1998)	UND	72
Dall's porpoise	*Phocoenoides dalli*	Alaska	-, -, N	see SAR (0.097, see SAR, 2015).	131	37
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller sea lion	*Eumetopias jubatus*	Western	E, D, Y	52,932 a (see SAR, 52,932, 2019).	318	254
California sea lion	*Zalophus californianus*	U.S.	-, -, N	257,606 (N/A, 233,515, 2014).	14,011	>320
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	Cook Inlet/Shelikof	-, -, N	28,411 (see SAR, 26,907, 2018).	807	107

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/*. CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable depending on the methodology described in the stock assessment report (SAR) and the date of last available survey data. Where necessary, NMFS refers reader to the SAR for more detail.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual mortality and serious injury often cannot be determined precisely and is in some cases presented as a minimum value or range.

As indicated above, all 12 species (with 14 managed stocks) in Table 4 temporally and spatially co-occur with the activity to the degree that take could reasonably occur, and we have authorized it. In addition, the northern sea otter may be found in Cook Inlet, Alaska. However, sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Pacific White-Sided Dolphin

Pacific white-sided dolphins are a pelagic species. They are found throughout the temperate North Pacific Ocean, north of the coasts of Japan and Baja California, Mexico (Muto *et al.,* 2018). They are most common between the latitudes of 38° North and 47° North (from California to Washington). The distribution and abundance of Pacific white-sided dolphins may be affected by large-scale oceanographic occurrences, such as El Niño, and by underwater acoustic deterrent devices (NPS, 2018a).

Scientific studies and data are lacking relative to the presence or abundance of Pacific white-sided dolphins in or near Cook Inlet, Alaska. Most observations of Pacific white-sided dolphins occur off the outer coast or in inland waterways near entrances to the open ocean. A report of acoustic monitoring efforts during Hilcorp's 3D seismic survey in 2020 concluded that Pacific white-sided dolphins were briefly detected near Iniskin Bay in Cook Inlet. Detections of vocalizations typically lasted on the order of minutes, suggesting the animals did not remain in the area and/or continue vocalizing for extended durations. These observational data, combined with anecdotal information, indicate that there is a small potential for Pacific white-sided dolphins to occur in the Project area. On May 7, 2014, Apache Alaska observed three Pacific white-sided dolphins during an aerial survey near Kenai. This is one of the only recorded visual observations of Pacific white-sided dolphins in Cook Inlet; they have not been reported in groups as large as those estimated in other parts of Alaska (*e.g.,* 92 animals in NMFS' IHAs for Tongass Narrows). Due to the cryptic nature of the species and the lack of maneuverability of the tug configuration, take of Pacific white-sided dolphins was added to the proposed authorizations for Year 1 and Year 2.

Humpback whale

Humpback whales are found throughout southern Alaska in a variety of marine environments, including open-ocean, near-shore waters, and areas with strong tidal currents (Dahlheim *et al.,* 2009). Most humpback whales are migratory and spend winters in the breeding grounds off either Hawaii or Mexico. Humpback whales are regularly present and feeding in Cook Inlet in the summer. Current threats to humpback whales include vessel strikes, spills, climate change, and commercial fishing operations (Muto *et al.,* 2021).

Humpback whales worldwide were designated as ''endangered'' under the Endangered Species Conservation Act in 1970, and were listed under the ESA at its inception in 1973. However, on September 8, 2016, NMFS published a final decision that changed the status of humpback whales under the ESA (81 FR 62259), effective October 11, 2016. The decision recognized the existence of 14 distinct population segments (DPSs) based on distinct breeding areas in tropical and temperate waters. Five of the 14 DPSs were classified under the ESA (4 endangered and 1 threatened),

while the other 9 DPSs were delisted. Humpback whales found in the project area are predominantly members of the Hawaii DPS, which is not listed under the ESA. However, based on analyses of photo-identification studies in Alaska, members of the Mexico DPS and the Western North Pacific DPS, which are listed as threatened and endangered respectively, are thought to occur in Cook Inlet. Approximately 1 percent of all humpback whales in Cook Inlet are thought to belong to the endangered Western North Pacific DPS and 11 percent are thought to belong to the threatened Mexico DPS. All other humpback whales present are thought to belong to the non-listed Hawaii DPS (Wade *et al.,* 2021). Members of different DPSs are known to intermix on feeding grounds; therefore, all waters off the coast of Alaska should be considered to have ESA-listed humpback whales. Critical habitat was recently designated near the entrance of lower Cook Inlet for Western North Pacific DPS and Mexico DPS humpback whales (86 FR 21082, April 21, 2021); however, Hilcorp's action area does not spatially overlap with any critical habitat designated for humpback whale DPS.

The DPSs of humpback whales that were identified through the ESA listing process do not necessarily equate to the existing MMPA stocks. The stock delineations of humpback whales under the MMPA are currently under review. Until this review is complete, NMFS considers humpback whales in Cook Inlet to primarily be part of the Central North Pacific stock, with a status of endangered under the ESA and designations of strategic and depleted under the MMPA (Muto *et al.,* 2021). As described in the above Changes from Proposed IHAs to Final IHAs, during the course of consultation under the Endangered Species Act, it was brought to NMFS' attention that humpback whales in Cook Inlet could occasionally be from the Western North Pacific stock, and therefore have been included as a potential stock in the Final IHAs.

In the summer, humpback whales are regularly present and feeding in the Cook Inlet region, including Shelikof Strait, Kodiak Island bays, and the Barren Islands, in addition to Gulf of Alaska regions adjacent to the southeast side of Kodiak Island (especially Albatross Banks), the Kenai and Alaska peninsulas, Elizabeth Island, as well as south of the Aleutian Islands. Humpbacks also may be present in some of these areas throughout autumn (Muto *et al.,* 2017).

Humpback whales have been observed during marine mammal surveys conducted in Cook Inlet; however, their presence is largely confined to lower Cook Inlet. During SAExploration's 2015 seismic program, three humpback whales were observed in Cook Inlet; two near the Forelands and one in Kachemak Bay (Kendall *et al.,* 2015). During NMFS Cook Inlet beluga whale aerial surveys from 2000 to 2018, there were 88 sightings of 191 estimated individual humpback whales in lower Cook Inlet (Shelden *et al.,* 2017). They have been regularly seen near Kachemak Bay during the summer months (Rugh *et al.,* 2005). There are observations of humpback whales as far north as Anchor Point, with recent summer observations extending to Cape Starichkof (Owl Ridge, 2014). Several humpback whale sightings occurred lower Cook Inlet between Iniskin Peninsula and Kachemak Bay near Augustine, Barren, and Elizabeth Islands (Shelden *et al.,* 2013, 2015, 2017). There were two sightings of three humpback whales observed near Ladd Landing north of the Forelands on the recent Harvest Alaska Cook Inlet Pipeline Extension (CIPL) project (Sitkiewicz *et al.,* 2018). There were 14 sightings of 38 humpback whales observed in the 2019 Hilcorp lower Cook Inlet seismic survey in the fall (Fairweather Science, 2020). This higher number of humpback whales was expected in the lower Cook Inlet region than Hilcorp's proposed work in the late summer/fall period.

Ferguson *et al.* (2015) identified a biologically important area (BIA), in which humpback whales are known to concentrate for feeding, in the Gulf of Alaska region. The BIA encompasses the waters east of Kodiak Island (the Albatross and Portlock Banks), a target for historical commercial whalers based out of Port Hobron, Alaska (Ferguson *et al.,* 2015; Reeves *et al.,* 1985; Witteveen *et al.,* 2007). This BIA also includes waters along the southeastern side of Shelikof Strait and in the bays along the northwestern shore of Kodiak Island. The highest densities of humpback whales around the Kodiak Island BIA occur from July–August (Ferguson *et al.,* 2015). This BIA lies directly south but does not spatially overlap with Hilcorp's proposed action area.

A detailed description of the of the other species likely to be affected by Hilcorp's tug towing jack-up rig activity, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (87 FR 27597, May 9, 2022); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 5.

TABLE 5—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The underwater noise from Hilcorp's tug towing jack-up rig activity has the potential to result in behavioral harassment of marine mammals in the vicinity of the survey area. The notice of proposed IHA (87 FR 27597, May 9, 2022) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from Hilcorp's tug towing jack-up rig activity on marine mammals and their habitat. The effects described in the notice of proposed IHAs are expected to be the same on Western North Pacific stock of humpback whales and Pacific white-sided dolphins as for the other species and stocks considered in the proposed IHAs. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here; please refer to the notice of proposed IHA (87 FR 27597, May 9, 2022).

Estimated Take

This section provides an estimate of the number of incidental takes authorized through these IHAs, which informs both NMFS' consideration of ''small numbers'' and the negligible impact determinations.

Harassment is the only type of take reasonably expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to the tugs towing and positioning the jack-up rig. Based on the nature of the activity, Level A harassment is neither anticipated nor authorized.

As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the authorized take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur permanent threshold shift (PTS) of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance or harassment from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Accordingly, based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to reasonably estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally affected in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile-driving, drilling) and above RMS SPL, 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

Hilcorp's activity includes the use of continuous (tug towing and positioning the rig) sources, and therefore the RMS SPL 120 dB re 1 μPa is applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine

Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). Hilcorp's activity includes the use of non-impulsive (tugs towing rig) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 6—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW)(Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW)(Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1µPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI, 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

As described above in the Detailed Description of Specific Activity, based on in situ measurements of Hilcorp's tug and a review of the available literature of tugs under load, a source level of 185 dB re 1 µPa was used for Hilcorp's three tug configuration for towing the jack-up-rig. Hilcorp contracted SLR Consulting to model the extent of the Level B harassment isopleth as well as the extent of the PTS isopleth for their activity.

Rather than applying practical spreading loss, SLR created a more detailed propagation loss model in an effort to improve the accuracy of the results by considering the influence of environmental variables (*e.g.* bathymetry) at the specific well sites, as Hilcorp's operational locations are known in advance. Modeling was conducted using dBSea software. The fluid parabolic equation modeling algorithm was used with 5 Padé terms (see pg. 57 in Hilcorp's application for more detail) to calculate the transmission loss between the source and the receiver at low frequencies (⅓-octave bands, 31.5 Hz up to 1 kHz). For higher frequencies (1 kHz up to 8 kHz) the ray tracing model was used with 1,000 reflections for each ray. Sound sources were assumed to be omnidirectional and modeled as points. The received sound levels for the project were calculated as follows: (1) One-third octave source spectral levels were obtained via reference spectral curves with subsequent corrections based on their corresponding overall source levels; (2) Transmission loss was modeled at one-third octave band central frequencies along 100 radial paths at regular increments around each source location, out to the maximum range of the bathymetry data set or until constrained by land; (3) The bathymetry variation of the vertical plane along each modeling path was obtained via interpolation of the bathymetry dataset which has 83 m grid resolution; (4) The one-third octave source levels and transmission loss were combined to obtain the received levels as a function of range, depth, and frequency; and (5) The overall received levels were calculated at a 1-m depth resolution along each propagation path by summing all frequency band spectral levels.

Model Inputs—Bathymetry data used in the model was collected from the NOAA National Centers for Environmental Information (AFSC, 2019). Using NOAA's temperature and salinity data, sound speed profiles were computed for depths from 0 to 100 meters for May, July, and October to capture the range of possible sound speed depending on the time of year Hilcorp's work could be conducted. These sound speed profiles were compiled using the Mackenzie Equation (1981) and are presented in Table 8 of Hilcorp's application. Geoacoustic parameters were also incorporated into the model. The parameters were based on substrate type and their relation to depth. These parameters are presented in Table 9 of Hilcorp's application.

Detailed broadband sound transmission loss modeling in dBSea used the source level of 185 dB re 1 µPa at 1 m calculated in one-third octave band levels (31.5 Hz to 64,000 Hz) for frequency dependent solutions. The frequencies associated with tug sound sources occur within the hearing range of marine mammals in Cook Inlet. Received levels for each hearing marine mammal group based on one-third octave auditory weighting functions were also calculated and integrated into the modeling scenarios of dBSea. For modeling the distances to relevant PTS thresholds, a weighting factor adjustment was not used; instead, the data on the spectrum associated with their source was used and incorporated the full auditory weighting function for each marine mammal hearing group.

Because Hilcorp plans to use the tugs towing the jack-up-rig for essentially two functions (positioning and towing), the activity was divided into two parts (stationary and mobile) and two approaches were taken for modeling the relevant isopleths.

Stationary—For stationary activity, two locations representative of where tugs will be stationary positioning the jack-up rig were selected for the model. These locations are in middle Cook Inlet near the Tyonek platform, and in lower Trading Bay where the production platforms are located, with water depths of 40 m and 20 m respectively. The modeling at these locations assumed a stationary 5-hour exposure to a broadband spectrum of 185 dB as described above. A 5-hour exposure duration was chosen to account for the up to 5-hour positioning attempts on individual days as well as events where the tugs need to hold the jack-up rig while waiting for a following tide. Stationary model results are presented in Table 7.

Mobile—For the mobile portion of the activity, a representative route was used from the Rig Tender's dock in Nikiski to the Tyonek platform, the northernmost platform in Cook Inlet (representing Middle Cook Inlet), as well as from the Tyonek Platform to the Dolly Varden platform in lower Trading Bay and then from the Dolly Varden platform back to the Rig Tender's Dock in Nikiski. This route is representative of a typical route the tugs may take; the specific route is not yet known because the order in which platforms will be drilled with the jack-up rig is not yet known. The lowest threshold for the onset of PTS is for high frequency cetaceans at 173 dB. Based on a source level of 185 dB, and assuming practical spreading, the high frequency cetacean PTS threshold of 173 dB would be reached at 6.3 meters away from the source. The mobile source modeling assumed a transit speed of 2.06 m/s for the tug configuration. With an assumed vessel speed of 2.06 m/s, it would take the vessel 6.11 seconds to traverse a distance of two times the radius, with two times the radius used because the source is omnidirectional and the ship is moving in a straight line. Although a source level of 185 dB incorporates the use of three tugs simultaneously, because the three tugs will likely not be perfectly aligned in space (*e.g.,* one could lag slightly behind the forward two), three separate six second exposures were summed (one for each tug passing in space) to arrive at a total duration of exposure of 18 seconds. While it is possible the duration of exposure could be as short as six seconds if all tugs were perfectly aligned, separate exposures for each tug were considered as the exact formation of the tugging vessels at any given time is unknown. Mobile source model results are presented in Table 8.

Because there is no temporal component associated with NMFS' current Level B threshold, making it a potentially conservative assumption given the transitory nature of the rig towing activity, the results of the modeled distance to the 120 dB threshold for both stationary and mobile tug use are presented in Table 9 below. The average of these distances was used for calculation of estimated exposure to Level B harassment (3,850 m).

The locations used in the stationary and mobile source models are depicted in Figure 2 below.

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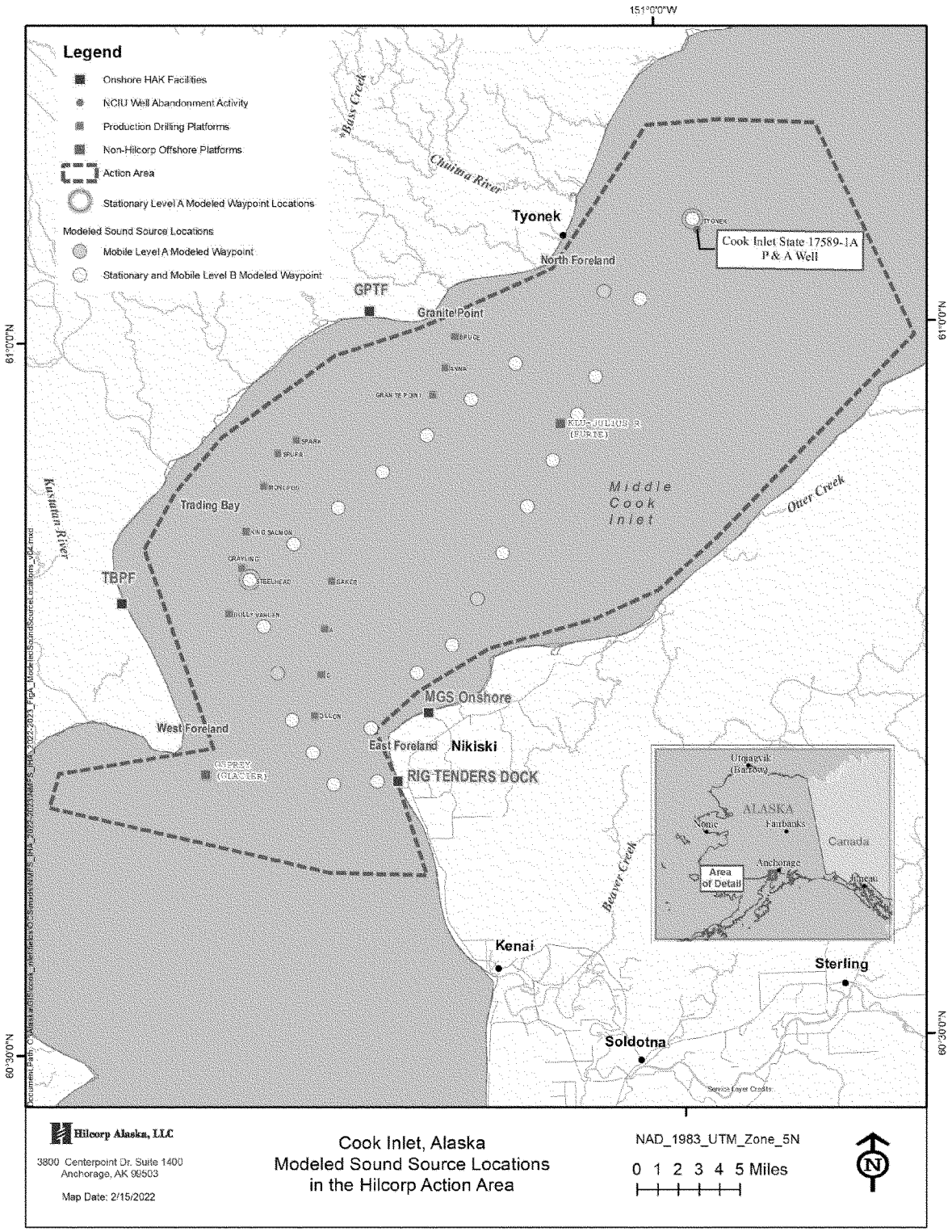

Figure 2 -- Locations Used for Stationary and Mobile Isopleth Models

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The outputs of the mobile and stationary models as distances to the relevant threshold (in meters) are presented below in Tables 7–9.

TABLE 7—AVERAGE DISTANCES TO PTS THRESHOLDS FOR STATIONARY ACTIVITY

Location	Season	Average distances (m) to PTS threshold by functional hearing group				
		LF	MF	HF	PW	OW
Trading Bay	May	100	72	716	59	
Trading Bay	July	122	73	697	63	
Trading Bay	October	98	72	694	59	
Middle Cook Inlet	May	83	83	643	77	
Middle Cook Inlet	July	89	85	664	78	
Middle Cook Inlet	October	80	84	661	78	
Average		95	78	679	69	0

TABLE 8—AVERAGE DISTANCES TO PTS THRESHOLDS FOR MOBILE ACTIVITY

Location	Season	Average distances (m) to PTS threshold by functional hearing group				
		LF	MF	HF	PW	OW
M2	May			10		
M2	July			5		
M2	October			10		
M11	May			10		
M11	July			5		
M11	October			10		
M22	May			10		
M22	July			5		
M22	October			10		
Average		0	0	8	0	0

TABLE 9—AVERAGE DISTANCES TO LEVEL B THRESHOLD

[stationary and mobile]
[120 dB]

Waypoint	Average distance to 120 dB threshold (m)			Season average distance to threshold (m)
	May	July	October	
M1	4,215	3,911	4,352	4,159
M2	3,946	3,841	4,350	4,046
M3	4,156	3,971	4,458	4,195
M4	4,040	3,844	4,364	4,083
M5	4,053	3,676	4,304	4,011
M6	3,716	3,445	3,554	3,572
M7	2,947	2,753	2,898	2,866
M8	3,270	3,008	3,247	3,175
M9	3,567	3,359	3,727	3,551
M10	3,600	3,487	3,691	3,593
M11	3,746	3,579	4,214	3,846
M12	3,815	3,600	3,995	3,803
M13	4,010	3,831	4,338	4,060
M14	3,837	3,647	4,217	3,900
M15	3,966	3,798	4,455	4,073
M16	3,873	3,676	4,504	4,018
M18	5,562	3,893	4,626	4,694
M20	5,044	3,692	4,320	4,352
M22	4,717	3,553	4,067	4,112
M24	4,456	3,384	4,182	4,007
M25	3,842	3,686	4,218	3,915
M26	3,690	3,400	3,801	3,630
M27	3,707	3,497	3,711	3,638
M28	3,546	3,271	3,480	3,432
M29	3,618	3,279	3,646	3,514
Average	3,958	3,563	4,029	3,850

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

Densities for marine mammals in Cook Inlet were derived from NMFS' Marine Mammal Laboratory (MML) aerial surveys, typically flown in June, from 2000 to 2018 (Rugh *et al.,* 2005; Shelden *et al.,* 2013, 2015, 2017, 2019). A survey was also conducted in 2021 but density information is not yet available. While the surveys are concentrated for a few days in June annually, which may skew densities for seasonally present species, they are still the best available long-term dataset of marine mammal sightings available in Cook Inlet. Density was calculated by summing the total number of animals observed and dividing the number sighted by the area surveyed. The total number of animals observed accounts for both lower and upper Cook Inlet. There are no density estimates available for California sea lions and Pacific white-sided dolphins in Cook Inlet, as they are so infrequently sighted. Densities are presented in Table 10 below.

TABLE 10—DENSITIES OF MARINE MAMMALS IN COOK INLET

Species	Density (indiv/km^2)
Humpback whale	0.001770
Minke whale	0.000009
Gray whale	0.000075
Fin whale	0.000311
Killer whale	0.000601
Beluga whale (MML lower CI)	0.000023
Beluga whale (MML middle CI)	0.001110
Goetz beluga—LCI	0.011106
Goetz beluga—NCI	0.001664
Goetz beluga—TB	0.015053
Dall's porpoise	0.000154
Harbor porpoise	0.004386
Pacific white-sided dolphin	0.000000
Harbor seal	0.241401
Steller sea lion	0.007609
California sea lion	0.000000

For beluga whales, two densities were considered as a comparison of available data. The first source considered was directly from the MML aerial surveys, as described above. Sighting data collected during aerial surveys is collected and then several correction factors are applied to address perception, availability, and proximity bias. These corrected sightings totals are then divided by the total area covered during the survey to arrive at a density value. Densities were derived for the entirety of Cook Inlet as well as for middle and lower Cook Inlet. Densities across all three regions are low and there is a known effect of seasonality on the distribution of the whales. Thus, densities derived directly from surveys flown in June might underestimate the density of beluga whales in lower Cook Inlet at other ice-free times of the year.

The other mechanism for arriving at beluga whale density considered here is the Goetz *et al.* (2012) habitat-based model. This model is derived from sightings and incorporates depth soundings, coastal substrate type, environmental sensitivity index, anthropogenic disturbance, and anadromous fish streams to predict densities throughout Cook Inlet. The output of this model is a beluga density map of Cook Inlet, which predicts spatially explicit density estimates for Cook Inlet belugas. Using the resulting grid densities, average densities were calculated for two regions applicable to Hilcorp's operations. The densities applicable to the area of activity (*i.e.,* the North Cook Inlet Unit density for middle Cook Inlet activities and the Trading Bay density for activities in Trading Bay) are provided in Table 11 below and were carried forward to the exposure estimates. Likewise, when a range is given, the higher end of the range was used out of caution to calculate exposure estimates (*i.e.,* Trading Bay in the Goetz model has a range of 0.004453 to 0.015053; 0.015053 was used for the exposure estimates).

TABLE 11—COOK INLET BELUGA WHALE DENSITIES BASED ON GOETZ *et al.* (2012) HABITAT MODEL

Project Location	Beluga whale density (ind/km^2)
North Cook Inlet Unit (middle Cook Inlet)	0.001664
Trading Bay Area	0.004453–0.015053

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate for each of the two IHAs.

Year 1 IHA—As described above, Hilcorp's tug towing rig activity was divided into two portions for the purpose of take estimation: stationary and mobile activity. For stationary activity, 5 hours of sound production per day was assumed for up to 14 days (seven moves or segments consisting of 2 days each). For the mobile portion of the activity, 1 day of 9 hours of mobile activity (assuming a source velocity of 2.06 m/s) and 6 days of 6 hours of mobile activity were assumed, for a total of 7 rig moves. The first 5 stationary hours are assumed to occur on the same day as the mobile hours, the second 5 stationary hours will occur the following day. The first 5 stationary

hours are assumed to occur on the same day as the mobile hours, the second 5 stationary hours will occur the following day.

Year 2 IHA—For stationary activity, 5 hours of sound production per day was assumed for up to 16 days. For mobile activity, 9 hours of sound production was assumed for 2 days, as well as 6 hours of sound production for 6 days, for a total of eight rig moves.

The ensonified areas calculated per activity type (stationary and mobile) for a single day were multiplied by marine mammal densities to get an estimate of exposures per day. This was then multiplied by the number of days of that type of activity (stationary or mobile) to arrive at the number of estimated exposures per year per activity type. These exposures by activity type were then summed to result in a number of exposures per year for all tug towing rig activity. The estimated exposures are provided below in Tables 12 and 13 for Year 1 and Year 2 of activity, respectively. As we are now considering one less rig mobilization in Year 1 than was considered in the notice of proposed IHAs, the calculated exposures for Year 1 are slightly lower than those of Year 2. There are two estimates for beluga whales provided in the tables below to demonstrate the difference in the calculations based on the chosen density value. As exposure estimates were calculated based on specific potential rig moves or well locations, the density value for beluga whales that was carried through the estimate was the higher density value for that particular location. There are no estimated exposures based on this method of calculation for Pacific white-sided dolphins and California sea lions because the assumed density is 0 animals/km^2.

TABLE 12—TOTAL CALCULATED EXPOSURES FOR YEAR 1

Group	Species	Level A	Level B
LF Cetaceans	Humpback whale	0.000	3.065
	Minke whale	0.000	0.016
	Gray whale	0.000	0.129
	Fin whale	0.000	0.538
MF Cetaceans	Killer whale	0.000	1.041
	Beluga whale NMFS	0.000	1.922
	Beluga whale Goetz	0.000	9.411
	Pacific white-sided dolphin	0.000	0.000
HF Cetaceans	Dall's porpoise	0.001	0.266
	Harbor porpoise	0.031	7.595
Phocids	Harbor seal	0.011	418.051
Otariids	Steller sea lion	0.000	13.176
	California sea lion	0.000	0.000

TABLE 13—TOTAL CALCULATED EXPOSURES FOR YEAR 2

Group	Species	Level A	Level B
LF Cetaceans	Humpback whale	0.000	4.058
	Minke whale	0.000	0.021
	Gray whale	0.000	0.171
	Fin whale	0.000	0.712
MF Cetaceans	Killer whale	0.000	1.379
	Beluga whale NMFS	0.000	2.545
	Beluga whale Goetz	0.000	11.651
	Pacific white-sided dolphin	0.000	0.000
HF Cetaceans	Dall's porpoise	0.001	0.353
	Harbor porpoise	0.038	10.057
Phocids	Harbor seal	0.012	553.565
Otariids	Steller sea lion	0.000	17.448
	California sea lion	0.000	0.000

Based on the analysis described above, NMFS has not authorized take via Level A harassment related to Hilcorp's tug towing drill rig activity. For mobile tugging, the distances to the PTS thresholds for high frequency cetaceans (the only functional hearing group of concern based on the model results) are smaller than the overall size of the tug and rig configuration, making it unlikely a cetacean would remain close enough to the tug engines to incur PTS. For stationary positioning of the jack up rig, the PTS isopleths are up to 679 m for high frequency cetaceans, but calculated on the assumption that an animal would remain within several hundred meters of the jack-up rig for the full 5 hours of noise-producing activity. Given the location of the activity is not in an area known to be essential habitat for any marine mammal species with extreme site fidelity over the course of 2 days, the occurrence of PTS is unlikely. A table indicating the number of takes, by Level B harassment, authorized is provided below.

TABLE 14—TAKES (BY LEVEL B HARASSMENT) CALCULATED AND AUTHORIZED FOR YEAR 1 IHA AND YEAR 2 IHA

	Year 1 calculated	Year 1 authorized	Year 2 calculated	Year 2 authorized
Humpback whale	3.065	5	4.058	6
Minke whale	0.016	6	0.021	6

TABLE 14—TAKES (BY LEVEL B HARASSMENT) CALCULATED AND AUTHORIZED FOR YEAR 1 IHA AND YEAR 2 IHA—Continued

	Year 1 calculated	Year 1 authorized	Year 2 calculated	Year 2 authorized
Gray whale	0.129	2	0.171	2
Fin whale	0.538	4	0.712	4
Killer whale	1.041	10	1.379	10
Beluga whale	1.922 (MML), 9.411 (Goetz).	11	2.545 (MML), 11.651 (Goetz).	22
Pacific white-sided dolphin	0	3	0	3
Dall's porpoise	0.266	6	0.353	6
Harbor porpoise	7.595	44	10.057	44
Harbor seal	418.051	418	553.565	554
Steller sea lion	13.176	13	17.448	17
California sea lion	0	2	0	2

As illustrated by the table above, the estimated exposures for several species are less than one. While uncommon, these species have been previously sighted in Cook Inlet and some are unlikely to appear as solitary individuals when sighted.

For humpback whales, the number of takes authorized is increased from the calculated estimate of four to six individuals. There were two sightings of three humpback whales observed near Ladd Landing north of the Forelands during the Harvest Alaska CIPL project (Sitkiewicz *et al.,* 2018). Based on documented observations during the CIPL survey (the survey nearest the Action Area), Hilcorp requested six takes of humpback whales to allow for up to two sightings of three individuals, consistent with what was observed during the CIPL project. We expect a small number of humpback whale groups will be exposed, with most of these groups consisting of one or two animals. There is a small probability more humpbacks are exposed than the calculated, three humpbacks in Year 1 and four in Year 2, therefore, we added an additional median group size of two humpback whales to each year resulting in an exposure estimate of five humpbacks in Year 1 and six in Year 2.

Minke whale takes authorized are increased from the calculated less than one individual to five. Minke whales are commonly sighted in groups of two or three, as well as sightings of individuals. There were eight sightings of eight minke whales observed during the 2019 Hilcorp lower Cook Inlet seismic survey (Fairweather Science, 2020). As the occurrence of minke whales is expected to be less in middle Cook Inlet than lower Cook Inlet and considering the observed group sizes, Hilcorp is requesting six takes of minke whale to allow for the possibility of two sightings of a group of three individuals, both in Year 1 and again in Year 2.

During Apache's 2012 seismic program, nine gray whales were observed in June and July (Lomac-MacNair *et al.,* 2013). During Apache's seismic program in 2014, one gray whale was observed (Lomac-MacNair *et al.,* 2014). During SAExploration's seismic survey in 2015, the 2018 CIPL project, and Hilcorp's 2019 seismic survey, no gray whales were observed (Kendall *et al.,* 2015; Sitkiewicz *et al.,* 2018; Fairweather Science, 2020). Considering the Action Area is in middle Cook Inlet where sightings of gray whales are less common, Hilcorp is requesting two takes of gray whales to allow for the potential occurrence of two individual gray whales both in Year 1 and again in Year 2.

The number of fin whale takes authorized is increased from one to four individuals, as they may be seen in groups of two to seven individuals. During seismic surveys conducted in 2019 by Hilcorp in the lower Cook Inlet, fin whales were recorded in groups ranging in size from one to 15 individuals (Fairweather, 2020). During the NMFS aerial surveys in Cook Inlet from 2000 to 2018, 10 sightings of 26 estimated individual fin whales in lower Cook Inlet were observed (Shelden *et al.,* 2013, 2015, 2016, 2019). A total authorized take of four fin whales would account for two sightings of two animals, which is the lower end of the range of common group size. Exposure of up to four fin whales could occur in Year 1 and again in Year 2.

The number of authorized killer whale takes is increased to 10 from the calculated exposure of one. Killer whales are typically sighted in pods of a few animals to 20 or more (NOAA, 2022b). During seismic surveys conducted in 2019 by Hilcorp in the lower Cook Inlet, 21 killer whales were observed, either as single individuals or in groups ranging in size from 2 to 5 individuals (Fairweather, 2020). Based on documented sightings, Hilcorp requested 10 takes of killer whales to allow for 2 sightings with a group size of 5 individuals in Year 1 and again in Year 2.

Depending on the density data used for each activity, the estimated annual exposures for beluga whales is 3 to 10 animals. The number of takes authorized for beluga whales is 11 animals for Year 1 and 22 animals in Year 2 to allow for the possibility that more than one observation of typical Cook Inlet beluga groups occurs. The 2018 MML aerial survey (Shelden and Wade, 2019) estimated a median group size of approximately 11 beluga whales, although group sizes were highly variable (2 to 147 whales) as was the case in previous survey years (Boyd *et al.,* 2019). We are not accounting for multiple groups of 11 belugas for Year 1 given that a large portion of the total mobilization distance has already been traveled, making an encounter with multiple beluga groups less likely. Additionally, vessel-based surveys in 2019 observed beluga whale groups in the Susitna River Delta (roughly 24 km [15 miles] north of the Tyonek Platform) that ranged from 5 to 200 animals (McGuire *et al.,* 2021). The very large groups seen in the Susitna River Delta are not expected near Hilcorp's platforms, however, smaller groups (*i.e.,* around the median group size) could be traveling through to access the Susitna River Delta and other nearby coastal locations, particularly in the shoulder seasons when belugas are more likely to occur in middle Cook Inlet.

The number of Dall's porpoise takes authorized is increased from less than one estimated individual to six. Dall's porpoises are usually found in groups averaging between two and 12 individuals (NOAA, 2022c). During seismic surveys conducted in 2019 by Hilcorp in the lower Cook Inlet, Dall's porpoises were recorded in groups

ranging in size from two to seven individuals (Fairweather, 2020). The 2012 Apache survey recorded two groups of three individual Dall's porpoises (Lomac-MacNair, 2014). Because occurrence of Dall's porpoise is anticipated to be less in middle Cook Inlet than lower Cook Inlet, the smaller end of documented group sizes (three individuals) is used, and Hilcorp requests six takes of Dall's porpoise to allow for two sightings of three individuals similar to the numbers observed during the 2012 Apache survey. The same number of takes are authorized in Year 1 and Year 2 because the calculated exposure for each year is less than one, making the group size methodology equally applicable to Year 1 and Year 2.

Harbor porpoise takes are increased from an estimated 10 takes to 44 takes. Shelden *et al.* (2014) compiled historical sightings of harbor porpoises from lower to upper Cook Inlet that spanned from a few animals to 92 individuals. The 2018 CIPL project that occurred just north of the Action Area in Cook Inlet reported 29 sightings of 44 individuals (Sitkiewicz *et al.,* 2018). While the duration of days that the tugs are towing a jack-up rig will be less than the CIPL project, given the increase in sightings of harbor porpoise in recent years, the sighting of harbor porpoise during Hilcorp's rig move in June 2022, and the inability to shut down the tugs, Hilcorp requests 44 takes of harbor porpoise, commensurate with the number observed in the nearby CIPL project. Once the rig move to Tyonek is removed from the calculation, as Hilcorp completed that work before issuance of these IHAs, calculated exposure of harbor porpoise is less in Year 1 than in Year 2. However, based on Hilcorp's monitoring report during their initial rig move, more harbor porpoises were seen than expected, so NMFS did not reduce the authorized take for Year 1 from what was originally requested (which included the Tyonek rig move in the calculation). As a result, 44 takes of harbor porpoise are authorized for both Year 1 and Year 2.

Take of harbor seal and Steller sea lion authorized for Year 1 and Year 2 is based on the calculated exposure. Because Hilcorp already completed a rig move to Tyonek and that effort has been removed from the calculation, take for both species in Year 1 is less than in Year 2.

Calculated take of Pacific white-sided dolphins and California sea lions was zero because the assumed density in Cook Inlet is zero. For California sea lions, any potential sightings would likely be lone out of habitat individuals. Two solitary individuals were seen during the 2012 Apache seismic survey in Cook Inlet (Lomac-MacNair *et al.,* 2013). Two takes are authorized based on the potential that two lone animals could be sighted over a year of work, as was seen during Apache's year of work. For Pacific white-sided dolphins, the only reported visual sightings that NMFS is aware of was three dolphins from Apache's monitoring efforts in 2014 in Kenai, which is in the general vicinity of Hilcorp's planned activities. Therefore, NMFS authorized three takes of Pacific white-sided dolphins annually in case a repeated group of similar size is encountered. For both species, the same number of takes are authorized for Year 1 and Year 2 because the calculated exposure for each year would be zero given the lack of density data, making the group size methodology equally applicable to Year 1 and Year 2.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and Their Habitat

NMFS anticipates the project, in both of the two IHAs, will create an acoustic footprint above ambient sound levels of approximately 45 km^2 around the tugs positioning the jack-up rig or for approximately 3.8 km in all directions along a towing trajectory of approximately 64 km (40 mi). There is a discountable potential for marine mammals to incur PTS from the project, as source levels are relatively low, non-impulsive, and animals would have to remain at very close distances for multiple hours to accumulate acoustic energy at levels that could damage hearing. Therefore, we do not believe there is potential for Level A harassment. However, Hilcorp will implement a number of mitigation measures designed to reduce the potential for and severity of Level B harassment, protect belugas in important beluga whale habitat, and minimize the acoustic footprint of the project.

The tugs towing a jack-up rig are not able to shut down while transiting or positioning the rig. Hilcorp will maneuver the tugs towing the jack-up rig such that they maintain a consistent speed (approximately 4 knots) and avoid multiple changes of speed and direction to make the course of the vessels as predictable as possible to marine mammals in the surrounding environment, characteristics that are expected to be associated with a lower likelihood of disturbance. Hilcorp will implement a clearance zone of 1,500 meters around the centerpoint of the three tug configuration and will employ two NMFS-approved protected species observers (PSOs) to conduct marine mammal monitoring for all mobile and stationary activity involving tugs towing attached to the jack-up rig. Prior to commencing activities during daylight hours or if there is a 30-minute lapse in operational activities, the PSOs will monitor the clearance zone for marine mammals for 30 minutes. If no marine mammals are observed, operations may commence. If a marine mammal(s) is observed within the clearance zone during the clearing, the PSOs will

continue to watch until either: (1) the animal(s) is outside of and on a path away from the clearance zone; or (2) 15 minutes have elapsed if the species was a pinniped or small cetacean, or 30 minutes for large cetaceans whales. Once the PSOs have determined one of those conditions are met, operations may commence.

Should a marine mammal be observed during towing or positioning, the PSOs will monitor and carefully record any reactions observed until the jack-up rig has reached its intended position. No new operational activities would be started until the animal leaves the area; transitioning from tugging to positioning without shutting down is not considered a new operational activity. PSOs will also collect behavioral information on marine mammals sighted during monitoring efforts.

Hilcorp will make every effort to operate with the tide, resulting in a low power output from the tugs towing the jack-up rig. If human safety or equipment integrity is at risk, Hilcorp may necessarily operate in an unfavorable tidal state. Due to the nature of tidal cycles in Cook Inlet, it is possible the most favorable tide for the towing operation will occur during nighttime hours. Hilcorp will operate the tugs towing the jack-up rigs at night if the nighttime operations result in a lower power output from the tugs by operating with a favorable tide.

In low-light conditions, night-vision devices shown to be effective at detecting marine mammals in low-light conditions (*e.g.,* PVS–7 night-vision devices or similar) will be provided to PSOs to aid in low-light visibility. Every effort will be made to observe that the clearance zone is free of marine mammals by using night-vision devices, however it may not always be possible to see and clear the entire clearance zone prior to nighttime transport. PSOs will monitor the greatest extent feasible for 30 minutes immediately prior to the start of load bearing activities. If no marine mammals are observed, operations may commence. If a marine mammal is observed within the during the clearing, the PSOs will continue to watch until either: (1) the animal(s) is outside of and on a path away from the clearance zone; or (2) 15 minutes have elapsed if the species was a pinniped or small cetacean, or 30 minutes for large cetaceans whales. Once the PSOs have determined one of those conditions are met, operations may commence.

Out of concern for potential disturbance to Cook Inlet beluga whales in sensitive and essential habitat, Hilcorp will not conduct noise-producing activity within 16 km (10 miles) of the mean lower-low water (MLLW) line of the Susitna River Delta (Beluga River to the Little Susitna River) between April 15 and November 15 with the exception of work conducted at the Tyonek platform. The dates of applicability of this exclusion zone have been expanded based on new available science, including visual surveys and acoustic studies, which indicate that substantial numbers of Cook Inlet beluga whales continue to occur in the Susitna Delta area through at least mid-November (M. Castellote, pers. comm., T. McGuire, pers. comm.). As the MLLW is not a straight line but rather a jagged contour following the coastline, it is difficult to determine the southernmost extent of the zone during operations. For ease of implementation, the southernmost extent of the Susitna Delta exclusion zone will be considered a straight line from Tyonek at the west to Point Possession at the east (see Figure 3 below).

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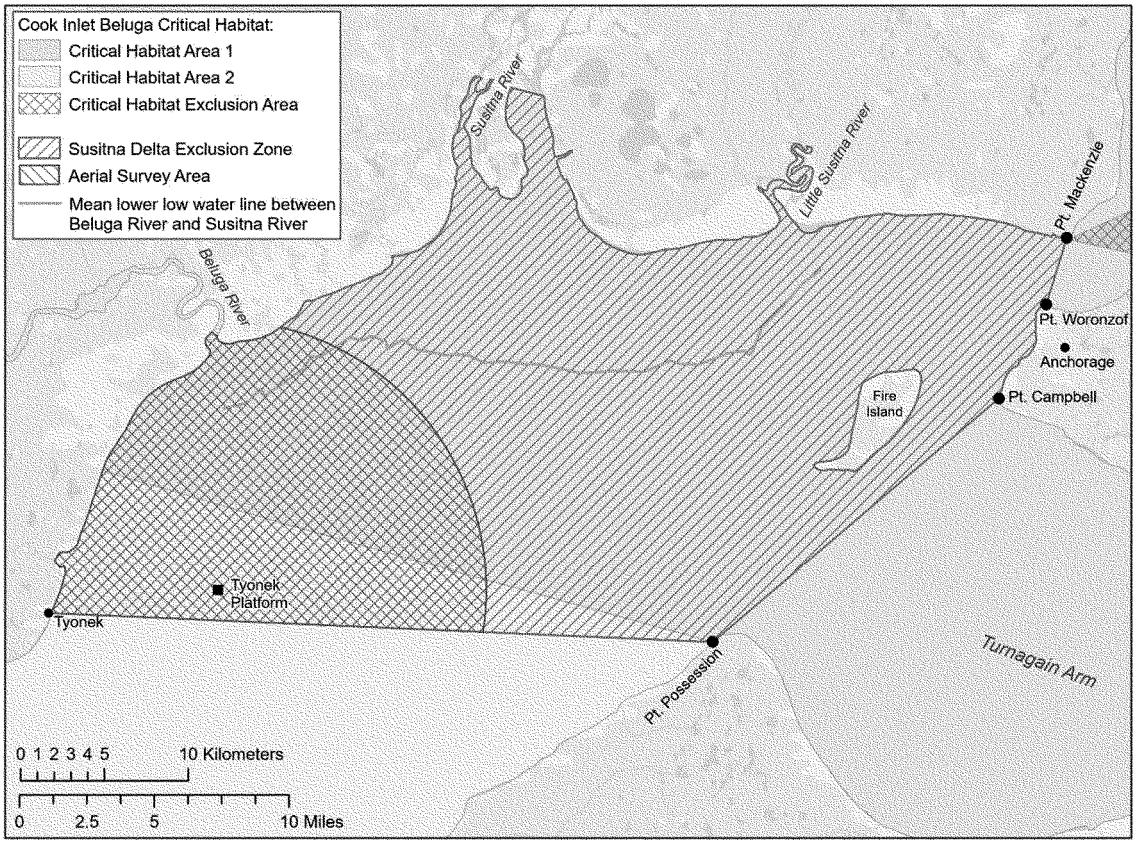

Figure 3 -- A map of the Susitna Delta exclusion zone and aerial survey area

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During the course of consultation under section 7 of the ESA, Hilcorp notified NMFS that adhering to the exclusion zone for the Tyonek platform would not be practicable given the operational and human safety concerns of accessing the platform outside of the open water season. Prior to tugging the jack-up rig to and from the Tyonek platform, Hilcorp will conduct a systematic aerial survey of all marine waters within a 10 mile radius of the Tyonek platform that intersects with the Susitna Delta exclusion zone, termed the aerial survey area (see Figure 3) to ensure the area is clear of beluga whales. Aerial surveys will be flown with a PSO observing for beluga whales at an altitude of approximately 1,000 ft (305 m). This survey will be conducted no more than 12 hours (one half of one tide cycle) prior to the proposed departure of the rig from its moored or anchored location. If beluga whales are observed during the aerial survey prior to mobilizing the jack-up rig to or from the Tyonek platform, Hilcorp will not begin mobilization of the rig until a subsequent aerial survey indicates the aerial survey area contains no beluga whales. Starting from the proposed departure date, Hilcorp will conduct aerial surveys as described above and if belugas are seen in the aerial survey area will defer moving the jack-up rig if there is another departure date that fits the tide/tug criteria for moving onto and off of the dock within 8 days. If the rig move is deferred until the next departure window occurring within 8 days of the first proposed departure date, Hilcorp will again conduct aerial surveys and will defer moving the rig until the last available tide for departure that allows the tugs to complete the transport in that second departure time frame. If beluga whales are observed in the aerial survey area prior to the last available tide in the already deferred second departure time-frame, Hilcorp will move the jack-up rig to its next location. If there is not another departure date within 8 days of the first proposed departure date, Hilcorp will conduct multiple aerial surveys (weather permitting) as described above and if belugas are seen in the aerial survey area will defer moving the rig until the last available tide in that initial departure window that fits with the tugs availability to complete the rig transport. If ice or other safety conditions exist that require the tugs to move the jack-up rig to preserve human safety, Hilcorp will move the jack-up rig to its next location even if belugas are observed in the aerial survey area.

Based on our evaluation of these measures, for both IHAs, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance and on the availability of such species or stock for subsistence uses.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be

present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Hilcorp will abide by all monitoring and reporting measures contained within their Marine Mammal Monitoring and Mitigation Plan, dated March 7, 2022. A summary of those measures and additional requirements required by NMFS is provided below.

A minimum of two NMFS-approved PSOs will be on-watch during all activities wherein the jack-up rig is attached to the tugs for the duration of the project. Minimum requirements for a PSO include:

(a) Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;

(b) Advanced education in biological science or related field (undergraduate degree or higher required)—PSOs may also substitute Alaska native traditional knowledge for experience;

(c) Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);

(d) Experience or training in the field identification of marine mammals, including the identification of behaviors;

(e) Sufficient training, orientation, or experience with the activity to provide for personal safety during observations;

(f) Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when tugging activities were conducted; dates and times when tugging activities were suspended; and marine mammal behavior; and

(g) Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

PSOs will be stationed aboard a tug or the jack-up rig, work in shifts lasting no more than 4 hours without a minimum of a 1 hour break, and will not be on-watch for more than 12 hours within a 24-hour period.

Hilcorp will submit monthly reports for all months in which tugs towing or positioning the jack-up rig occurs. A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of the tug towing jack-up rig activities for the year. It will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated marine mammal observation data sheets. Specifically, the report must include:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from tugging activity;
- Distance from tugging activities to marine mammals and distance from the marine mammals to the observation point;
- Locations of all marine mammal observations; and
- Other human activity in the area.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If NMFS submits comments, Hilcorp will submit a final report addressing NMFS comments within 30 days after receipt of comments.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHAs (if issued), such as an injury, serious injury or mortality, Hilcorp would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator. The report would include the following information:

- Description of the incident;
- Environmental conditions (*e.g.,* Beaufort sea state, visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with Hilcorp to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Hilcorp would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that Hilcorp discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), Hiclrop would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with Hilcorp to determine whether modifications in the activities are appropriate.

In the event that Hilcorp discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHAs (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Hilcorp would report the incident to the

Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator, within 24 hours of the discovery. Hilcorp would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in Table 15, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar in nature. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

The project would create an acoustic footprint around the project area for a total of 14 to 16 days per year from approximately April through October, though not necessarily in the same calendar year. Noise levels within the footprint would reach or exceed 120 dB rms. We anticipate the 120 dB footprint to be limited to no more than 45 km^2 around the tugs positioning the jackup rig or approximately 3.8 km in all directions along a towing trajectory of approximately 64 km. The habitat within the footprint is not heavily used by marine mammals during the project time frame (*e.g.,* Cook Inlet beluga whale Critical Habitat Area 2, within which the activity resulting in the take of marine mammals is anticipated to potentially occur, is designated for beluga fall and winter use) and marine mammals are not known to engage in critical behaviors associated with this portion of Cook Inlet (*e.g.,* no known breeding grounds, foraging habitat, *etc.*). Most animals will likely be transiting through the area; therefore, exposure would be brief. The tugs would be moving at a relatively slow speed and in a predictable manner that is not expected to result in more severe behavioral responses. Animals may swim around the project area, avoiding closer approaches to the boats, but we do not expect them to abandon any intended path.

Feeding behavior is not likely to be significantly impacted, as no areas of biological significance for marine mammal feeding are known to exist in the project area and individual marine mammals are not expected to be exposed to the noise from the activities repeatedly or in long durations. We also expect the number of animals exposed to be small relative to population sizes. Finally, Hilcorp will minimize potential exposure of marine mammals to elevated noise levels by not commencing tugging activities if marine mammals are observed within the immediate starting area. Hilcorp is also able to reduce the impact of their activity by conducting tugging operations with favorable tides whenever feasible. Given this, any behavioral disturbance is expected to be comparatively low level and unlikely to affect the reproduction success or survival of any individuals, much less the population or stock.

Potential impacts to marine mammal habitat were discussed previously in this document (see Potential Effects of Specified Activities on Marine Mammals and their Habitat). Marine mammal habitat may be impacted by elevated sound levels, but these impacts would be temporary. In addition to being temporary and short in overall duration, the acoustic footprint of both years of activity is small relative to the overall distribution of the animals in the area and their use of the area.

In summary and as described above, the following factors primarily support our determinations that the impacts resulting from the activities described for these two IHAs are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality, serious injury, or injury is anticipated or authorized;
- The mobile portion of the project does not involve noise sources capable of inducing PTS in any species other than high frequency cetaceans, and due to the small size of the PTS isopleth for high frequency cetaceans (6 meters), it is unlikely to occur;
- Exposure would likely be brief given transiting behavior of marine mammals in the action area and the small number of days on which the activity is occurring;
- Marine mammal densities are low in the project area; therefore, there will not be substantial numbers of marine mammals exposed to the noise from the project compared to the affected population sizes; and
- Hilcorp will monitor for marine mammals daily and minimize exposure to operational activities.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity described in the Year 1 IHA will have a negligible impact on all affected marine mammal species or stocks. Also, separately, NMFS finds that the total marine mammal take from the activity described in the Year 2 IHA will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of

abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance (as it is for all stocks in both the Year 1 and Year 2 IHAs), the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 15 provides the quantitative analysis informing our small numbers determinations for the Year 1 and Year 2 IHAs. For most species, the amount of take authorized represents less than approximately two percent of the population for each IHA. For beluga whales, the amount of take authorized represents slightly under 8 percent of the population for each IHA.

TABLE 15—PERCENT OF STOCK AUTHORIZED TO BE TAKEN BY LEVEL B HARASSMENT UNDER EACH IHA

Species	Stock	Abundance (Nbest)	Authorized take (Level B)	Percent of stock
Year 1:				
Humpback whale	Western North Pacific; Central North Pacific	1,107; 10,103	5	0.45; 0.05
Minke whale	Alaska	1,233	6	0.49
Gray whale	Eastern Pacific	26,960	2	0.01
Fin whale	Northeastern Pacific	2,554	4	0.16
Killer whale	Alaska Resident, Gulf of Alaska, Aleutian Islands, and Bering Sea Transient.	587; 2,347	10	1.7; 0.43
Beluga whale	Cook Inlet	279	11	3.94
Pacific white-sided dolphin	North Pacific	26,880	3	0.01
Dall's porpoise	Alaska	83,400	6	0.01
Harbor porpoise	Gulf of Alaska	31,046	44	0.14
Harbor seal	Cook Inlet/Shelikof	26,907	418	1.55
Steller sea lion	Western	53,624	13	0.02
California sea lion	U.S.	233,515	2	0.00
Year 2:				
Humpback whale	Western North Pacific; Central North Pacific	1,107; 10,103	6	0.5; 0.06
Minke whale	Alaska	1,233	6	0.49
Gray whale	Eastern Pacific	26,960	2	0.01
Fin whale	Northeastern Pacific	2,554	4	0.16
Killer whale	Alaska Resident Gulf of Alaska, Aleutian Islands, and Bering Sea Transient.	587	10	1.7; 0.43
Beluga whale	Cook Inlet	279	22	7.89
Pacific white-sided dolphin	North Pacific	26,880	3	0.01
Dall's porpoise	Alaska	83,400	6	0.01
Harbor porpoise	Gulf of Alaska	31,046	44	0.14
Harbor seal	Cook Inlet/Shelikof	26,907	554	2.06
Steller sea lion	Western	53,624	17	0.03
California sea lion	U.S.	233,515	2	0.00

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks for the Year 1 IHA. Separately, NMFS also finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks for the Year 2 IHA.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses by Alaska Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

To further minimize any potential effects of their action on subsistence activities, Hilcorp has outlined their communication plan for engaging with subsistence users in their Stakeholder Engagement Plan (Appendix B of Hilcorp's application). Hilcorp will be required to abide by this plan and update the plan accordingly.

Subsistence communities identified as project stakeholders near Hilcorp's middle Cook Inlet and Trading Bay activities include the Village of Salamatof and the Native Village of Tyonek. The ADF&G Community Subsistence Information System does not contain data for Salamatof. For the purposes of our analyses for the Year 1 and Year 2 IHAs, we can assume the subsistence uses are similar to those of nearby communities such as Kenai. At 3.5 km away from the closest point of approach, Tyonek is the closest subsistence community to Hilcorp's planned tug route. Tyonek, on the western side of lower Cook Inlet, has a subsistence harvest area that extends from the Susitna River south to Tuxedni Bay (BOEM, 2016). In Tyonek, harbor seals were harvested between June and September by 6 percent of the households (Jones *et al.,* 2015). Seals were harvested in several areas, encompassing an area stretching 32.2 km (20 miles) along the Cook Inlet coastline from the McArthur Flats north to the Beluga River. Seals were searched for or harvested in the Trading Bay areas as well as from the beach adjacent to Tyonek (Jones *et al.,* 2015).

Cook Inlet beluga whale subsistence harvest discontinued in 1999 as a result of both a voluntary moratorium by the

hunters that spring, and the passage of Public Law 106–31, section 3022 (later made permanent by Pub. L. 106–553, section 627), requiring any taking of Cook Inlet beluga whales by Alaska Natives to occur pursuant to a cooperative agreement between NMFS and affected Alaska Native organizations. A co-management agreement allowed the harvest of two whales in 2005 and one whale in 2006; however, no whales were taken in 2006 due to poor weather and the avoidance of females with calves. In 2008, NMFS issued regulations (73 FR 60976, October 15, 2008) establishing long-term limits on the maximum number of Cook Inlet beluga whales that may be taken for subsistence by Alaska Natives. These long-term harvest limits, developed for 5-year intervals, require that the abundance estimates reach a minimum 5-year average of 350 belugas (50 CFR 216.23(f)(2)(v)). No hunt has been authorized since 2006.

Subsistence hunting of whales is not known to currently occur in Cook Inlet. Hilcorp's tug towing jack-up rig activities may overlap with subsistence hunting of seals. However, these activities typically occur along the shoreline or very close to shore near river mouths, whereas most of Hilcorp's tugging is in the middle of the Inlet and rarely near the shoreline or river mouths. Any harassment to harbor seals is anticipated to be short-term, mild, and not result in any abandonment or behaviors that would make the animals unavailable to Alaska Natives.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the mitigation and monitoring measures, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from Hilcorp's activities under the Year 1 IHA. Separately, NMFS has also determined that there will not be an unmitigable adverse impact on subsistence uses from Hilcorp's activities under the Year 2 IHA.

National Environmental Policy Act

NMFS prepared an Environmental Assessment (EA) and analyzed the potential impacts to marine mammals that would result from the Hilcorp tug towing jack-up rig activity. A Finding of No Significant Impact (FONSI) was signed on September 14, 2022. A copy of the EA and FONSI is available upon request.

Endangered Species Act

NMFS authorized take of humpback whales (Mexico DPS, Western North Pacific DPS), fin whales (Northeastern Pacific stock), beluga whales (Cook Inlet stock), and Steller sea lion (Western DPS), which are listed under the ESA. The NMFS Alaska Regional Office Protected Resources Division issued a Biological Opinion on September 9, 2022 under section 7 of the ESA, on the issuance of an IHA to Hilcorp under section 101(a)(5)(D) of the MMPA by the NMFS Permits and Conservation Division. The Biological Opinion concluded that the action is not likely to jeopardize the continued existence of these populations, and is not likely to destroy or adversely modify critical habitat.

Authorization

NMFS has issued two IHAs to Hilcorp for the potential harassment of small numbers of 12 marine mammal species incidental to tugging a jack-up rig in Cook Inlet, Alaska, that include the aforementioned mitigation, monitoring and reporting requirements.

Dated: October 7, 2022.

Catherine G. Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–22343 Filed 10–13–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC442]

Fisheries of the South Atlantic, Gulf of Mexico, and Caribbean; Southeast Data, Assessment, and Review (SEDAR) Public Meeting

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

ACTION: Notice of SEDAR Procedural Workshop 8: Fishery Independent Index Development under Changing Survey Design.

SUMMARY: The SEDAR Procedural Workshop 8 for Fishery Independent Index Development will consist of a series of webinars, and an in-person workshop. See **SUPPLEMENTARY INFORMATION.**

DATES: The SEDAR Procedural Workshop 8 will be held Wednesday, November 2, 2022, from 9 a.m. until 5 p.m., Eastern; Thursday, November 3, 2022, from 9 a.m. until 5 p.m., Eastern; and Friday, November 4, 2022, from 9 a.m. until 3 p.m., Eastern. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the SEDAR process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The SEDAR Procedural Workshop 8 meeting will be held at the Gulf of Mexico Fishery Management Council Office, 4107 West Spruce Street Suite 200, Tampa, FL 33607; phone: (888) 833–1844.

SEDAR address: 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Program Manager, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366 or toll free: (866)/SAFMC–10; fax: (843) 769–4520; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: SEDAR procedural workshops provide an opportunity for focused discussion and deliberation on topics that arise in multiple assessments and are structured to develop best practices for addressing common issues across assessments. The SEDAR Steering Committee agreed that previously completed procedural workshops were effective and that similar workshops should be held to address other issues that affect multiple assessments. Continuing to address such global issues is recognized as important to continuing improvements in efficiency and quality.

The 8th procedural workshop will consider methods of addressing the development for fishery-independent indices of abundance under changing survey designs. Participants will prepare a SEDAR procedures document addressing their recommendations that will be used to guide future SEDAR assessments.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified 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 intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SEDAR office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: October 11, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–22389 Filed 10–13–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC436]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Habitat Protection and Ecosystem-Based Management Advisory Panel (Habitat AP).

DATES: The Habitat AP will meet on Tuesday, November 1, 2022, from 1 p.m. until 4 p.m., Wednesday, November 2, 2022, from 9 a.m. to 4 p.m., and Thursday, November 3, 2022, from 9 a.m. to 12 p.m. The meetings will be held in Charleston, SC.

ADDRESSES:

Meeting address: The meeting will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; phone: (843) 571–1000.

The meeting is open to the public and will also be available via webinar. Registration is required. Webinar registration, an online public comment form, and briefing book materials will be available two weeks prior to the meeting at: *https://safmc.net/advisory-council-meetings/.*

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The Habitat AP meeting agenda includes the following: NOAA overview of Deep Water Coral Mapping and Characterization in the South Atlantic Region; review and input on revisions to the Council's Beach Dredge and Fill and Large-Scale Coastal Engineering Policy Statement; initial discussion and guidance on updating the Council's energy policy; and an overview of the East Coast Climate Change Scenario Planning initiative.

The AP will also receive updates on Renewable Energy (Offshore Wind) Development in the South Atlantic; NOAA Fisheries Habitat Conservation Division's Essential Fish Habitat (EFH) 5-year review and EFH consultations over the past year; and other items.

The AP will develop recommendations for consideration by the Council's Habitat Protection and Ecosystem-Based Management Committee.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: October 11, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–22388 Filed 10–13–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC459]

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 Pacific Fishery Management Council (Pacific Council) and its advisory entities will hold online and in-person public meetings.

DATES: The Pacific Council and selected advisory committees will meet November 2–8, 2022 in Garden Grove, CA. The Pacific Council meeting will begin on Thursday, November 3, 2022, at 8 a.m. Pacific Time (PT), reconvening at 8 a.m. on Friday, November 4 through Tuesday, November 8, 2022. All meetings are open to the public, except for a Closed Session held from 8 a.m. to 9 a.m., Thursday, November 3, to address national security matters, international negotiations, litigation, or personnel matters including appointments to advisory bodies. The Pacific Council will meet as late as necessary each day to complete its scheduled business. The Pacific Council meeting will be held in a hybrid format with remote and in-person participation. The Council's Budget, Legislative, Scientific and Statistical, Enforcement Consultants, Highly Migratory Species, and Groundfish Committee meetings will occur in-person only in Garden Grove. All other advisory entities will meet by webinar only.

ADDRESSES: Meetings of the Pacific Council and aforementioned Committees will be held at the Hyatt Regency Orange County, 11999 Harbor Boulevard, Garden Grove, CA 92840; telephone: (714) 750–1234. The Council meetings will be held in-person and online. Specific meeting information, including directions on joining meetings, connecting to the live stream broadcast, and system requirements will be provided in the meeting materials on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Merrick Burden, Executive Director, Pacific Council; telephone: (503) 820–2418 or (866) 806–7204 toll-free, or access the Pacific Council website, *www.pcouncil.org,* for the proposed agenda and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The November 2022 meeting of the Pacific Council will be in person and streamed live on the internet. The broadcasts begin initially at 9 a.m., PT Thursday, November 3, 2022 through Tuesday, November 8, 2022. Broadcasts end when business for the day is complete. Only the audio portion and presentations displayed on the screen at the Pacific Council meeting will be broadcast. The audio portion for the public is listen-only except that an opportunity for oral public comment will be provided prior to Council Action on each agenda item. Additional information and instructions on joining or listening to the meeting

can be found on the Pacific Council's website (see *www.pcouncil.org*).

The following items are on the Pacific Council agenda, but not necessarily in this order. Agenda items noted as ''Final Action'' refer to actions requiring the Council to transmit a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the Magnuson-Stevens Fishery Conservation and Management Act. Additional detail on agenda items, Council action, and advisory entity meeting times, are described in Agenda Item A.4, Proposed Council Meeting Agenda, and will be in the advance briefing materials and posted on the Pacific Council website at *www.pcouncil.org* no later than Friday, October 14, 2022.

A. Call to Order
1. Opening Remarks
2. Roll Call
3. Executive Director's Report
4. Approve Agenda

B. Open Comment Period
1. Comments on Non-Agenda Items

C. Administrative Matters
1. Council Coordination Committee Report
2. National Marine Fisheries Service National Policy for Saltwater Recreational Fisheries
3. Legislative Matters
4. Chumash Heritage National Marine Sanctuary Designation
5. National Marine Fisheries Service Accomplishments and Priorities
6. Marine Planning
7. Fiscal Matters
8. Approval of Council Meeting Record
9. Membership Appointments and Council Operating Procedures
10. Future Council Meeting Agenda and Workload Planning

D. Salmon Management
1. National Marine Fisheries Service Report
2. Final Methodology Review
3. 2023 Preseason Management Schedule

E. Pacific Halibut Management
1. 2023 Catch Sharing Plan and Annual Regulations—Final Action
2. 2023 Commercial-Directed Fishery Regulations—Final Action

F. Habitat Issues
1. Current Habitat Issues

G. Highly Migratory Species Management
1. National Marine Fisheries Service Report
2. International Management Activities
3. Drift Gillnet Fishery Hard Caps—Final Action
4. Biennial Harvest Specifications and Management Measures—Preliminary

H. Groundfish Management
1. National Marine Fisheries Service Report
2. Trawl Catch Share Program and Inter-Sector Allocation Review—Hearing Schedule
3. Sablefish Gear Switching
4. Methodology Review—Final Fishery Impact Model Topics and Final Assessment Methodologies
5. Stock Definitions
6. Inseason Adjustments Including Pacific Whiting Set-Asides—Final Action
7. Electronic Monitoring

I. Coastal Pelagic Species Management
1. National Marine Fisheries Service Report
2. Preliminary Review of Exempted Fishing Permits for 2023
3. Fishery Management Plan Housekeeping Amendment
4. Stock Assessment Terms of Reference—Final Action
5. Stock Assessment Prioritization

Advisory Body Agendas

Advisory body agendas will include discussions of relevant issues that are on the Pacific Council agenda for this meeting and may also include issues that may be relevant to future Council meetings. Proposed advisory body agendas for this meeting will be available on the Pacific Council website, *www.pcouncil.org,* no later than Friday, October 14, 2022.

SCHEDULE OF ANCILLARY MEETINGS

Day 1—Wednesday, November 2, 2022.	
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Habitat Committee	8 a.m.
Highly Migratory Species Advisory Subpanel	8 a.m.
Highly Migratory Species Management Team	8 a.m.
Scientific and Statistical Committee	8 a.m.
Salmon Technical Team	8 a.m.
Legislative Committee	10 a.m.
Salmon Advisory Subpanel	1 p.m.
Budget Committee	1 p.m.
Enforcement Consultants	2 p.m.
Day 2—Thursday, November 3, 2022.	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Habitat Committee	8 a.m.
Highly Migratory Species Advisory Subpanel	8 a.m.
Highly Migratory Species Management Team	8 a.m.
Scientific and Statistical Committee	8 a.m.
Enforcement Consultants	As needed
Day 3—Friday, November 4, 2022.	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Highly Migratory Species Advisory Subpanel	8 a.m.
Highly Migratory Species Management Team	8 a.m.
Enforcement Consultants	As needed
Day 4—Saturday, November 5, 2022.	

SCHEDULE OF ANCILLARY MEETINGS—Continued

California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Coastal Pelagic Species Advisory Subpanel	8 a.m.
Coastal Pelagic Species Management Team	8 a.m.
Enforcement Consultants	As needed
Day 5—Sunday, November 6, 2022.	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Coastal Pelagic Species Advisory Subpanel	8 a.m.
Coastal Pelagic Species Management Team	8 a.m.
Enforcement Consultants	As needed
Day 6—Monday, November 7, 2022.	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	As needed
Day 7—Tuesday, November 8, 2022.	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document 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 intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 business days prior to the meeting date.

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

Dated: October 11, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–22390 Filed 10–13–22; 8:45 am]

BILLING CODE 3510–22–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for October 20, 2022, at 9 a.m. and will be held via online videoconference. Items of discussion may include buildings, infrastructure, parks, memorials, and public art.

Draft agendas, the link to register for the online public meeting, and additional information regarding the Commission are available on our website: *www.cfa.gov.* Inquiries regarding the agenda, as well as any public testimony, should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by emailing *cfastaff@cfa.gov;* or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated: 11 October in Washington, DC.

Susan Raposa,

Technical Information Specialist.

[FR Doc. 2022–22403 Filed 10–13–22; 8:45 am]

BILLING CODE 6330–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Innovation Board, Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Under Secretary of Defense for Research and Engineering, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Innovation Board (DIB) will take place.

DATES: Closed to the public, Monday, October 17, 2022 from 12 p.m. to 3:45 p.m. Open to the public virtually, Monday, October 17, 2022 from 4 p.m. to 5 p.m.

ADDRESSES: The address of the meeting is Room 3E188 in the Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Ms. Colleen Laughlin, (703) 697–7020 (voice), *colleen.r.laughlin.civ@mail.mil* or *osd.innovation@mail.mil* (email). Mailing address is Defense Innovation Board, 4800 Mark Center Drive, Suite 16F09–02, Alexandria, VA 22350–3600. The most current meeting agenda can be found on the DIB website at: *https://innovation.defense.gov.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C.), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Due to circumstances beyond the control of the Designated Federal Officer, the Defense Innovation Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its October 17, 2022 meeting. Accordingly, the Advisory Committee Management Officer for the

Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose of the Meeting: The mission of the DIB is to provide the Secretary of Defense and the Deputy Secretary of Defense independent advice and strategic insights on the emerging technologies landscape, adoption of commercial sector innovation best practices, and the impact of disruptive and emerging technologies and their relevance to DoD. The DIB focuses on (a) technology and capabilities, (b) practices and operations, (c) people and culture, and (d) other research and analysis of topics raised by the Secretary of Defense, the Deputy Secretary of Defense, or the Under Secretary of Defense for Research and Engineering towards achieving National Defense goals. The objective of the meeting is to obtain, review, and evaluate information related to the DIB's mission.

Agenda: The DIB's meeting will begin in closed session on October 17, 2022 at 12 p.m. eastern time with opening remarks by Ms. Colleen Laughlin, the Executive Director and Designated Federal Officer (DFO) and Mr. Michael Bloomberg, the DIB Chair. The DIB will participate in classified discussions on matters related to national defense. These discussions will focus on senior DoD leader's defense innovation priorities and challenges and the broader innovation and national security landscape. The DFO will then adjourn the closed board meeting at 3:45 p.m.

The DFO will reconvene the DIB in an open meeting from 4 p.m. to 5 p.m., with opening remarks by the DFO and the DIB Chair. The DIB will then do member introductions, followed by a discussion of DIB tasks and mandate. The DFO will review comments submitted by the public; those will be provided to the DIB Chair and Members in advance and will be posted to the DIB website as part of the public record. The meeting will conclude with closing remarks by the DIB Chair and adjournment of the open meeting by the Designated Federal Officer at 5 p.m. The latest version of the agenda will be available on the Board's website at: *https://innovation.defense.gov*.

Meeting Accessibility: In accordance with Section 10(d) of the FACA and 41 CFR 102–3.155, it is hereby determined that portions of the October 17, 2022 meeting of the DIB will include classified information and other matters covered by 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public on October 17, 2022 from 12 p.m. to 3:45 p.m. This determination was made in writing by the Under Secretary of Defense for Research and Engineering, in consultation with the DoD Office of General Counsel, based on the consideration that it is expected that discussions throughout this period will involve classified matters of national security. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of these portions of the meeting. To permit these portions of the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the DIB's findings and recommendations to the Secretary of Defense, the Deputy Secretary of Defense, and the Under Secretary of Defense for Research and Engineering.

Pursuant to section 10(a)(1) of the FACA and 41 CFR 102–3.140, the portion of the meeting on October 17, 2022 from 4 p.m. to 5 p.m. is open to the public virtually. Members of the public wishing to receive a link to the livestream webcast should register on the DIB website listed in this notice no later than October 14, 2022. Members of the media should RSVP to the Office of the Assistant to the Secretary of Defense (Public Affairs), at *osd.pentagon.pa.list.dop-atl@mail.mil.* Requests to attend the virtual public session must be received no later than 12 p.m. on Friday, October 14, 2022.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact the DFO (see the **FOR FURTHER INFORMATION CONTACT** section for contact information) no later than Friday, October 14, 2022 so that appropriate arrangements can be made.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, the public or interested organizations may submit written comments or statements to the DIB in response to the stated agenda of the meeting or in regard to the DIB's mission in general. Written comments may be submitted to the DFO via electronic mail (the preferred mode of submission) to the address *osd.innovation@mail.mil* in either Adobe Acrobat Portable Document Format (PDF) or Microsoft Word format. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The DFO will compile all written submissions and provide them to DIB members for consideration. Written comments or statements received after 12 p.m. October 14, 2022 may not be provided to the DIB until its next scheduled meeting. Please note that because the DIB operates under the provisions of the FACA, all submitted comments and statements will be treated as public documents and will be made available for public inspection, including but not limited to being posted on the DIB's website.

Oral Presentations: Individuals wishing to make an oral statement to the DIB at the virtual public meeting may be permitted to speak for up to two minutes. Anyone wishing to speak to the DIB should submit a request by email at *osd.innovation@mail.mil* no later than October 14, 2022 for planning purposes. Requests for making oral comments should include a copy or summary of planned remarks for archival purposes and must include the author's name, title or affiliation, address, and daytime phone number. Individuals may also be permitted to submit a comment request at the public meeting; however, depending on the number of individuals making prior requests to speak, the schedule may limit participation. Webcast attendees will be provided instructions with the livestream link if they wish to submit comments during the open meeting.

Dated: October 11, 2022.

Aaron T. Siegel,

Alternate Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–22377 Filed 10–13–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability and Virtual Public Meetings for the Draft Environmental Impact Statement for Proposed Land Acquisition at the Washington Navy Yard, Washington, District of Columbia

AGENCY: Department of the Navy (DoN), Department of Defense (DoD).

ACTION: Notice.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations, the DoN prepared and filed with the United States Environmental Protection Agency (U.S. EPA), a Draft Environmental Impact Statement (EIS) that evaluates the potential environmental effects associated with the acquisition of land at the Southeast Federal Center (SEFC), at the Washington Navy Yard (WNY), Washington, DC. The Navy proposes to obtain 6 acres of land on the SEFC (the SEFC E Parcels) to improve the overall Antiterrorism (AT) posture of the WNY.

By obtaining the SEFC E Parcels, the Navy would: (1) improve the WNY AT posture by reducing the encroachment threat posed by planned, private development on the SEFC E Parcels; (2) protect mission-critical activities conducted at the WNY from visual surveillance, and acoustic and electronic eavesdropping; and (3) enhance the overall safety of personnel, facilities, and infrastructure at the WNY.

Should the Navy obtain ownership of the SEFC E Parcels, the Navy is considering three alternative uses for the acquired property: construction and operation of a relocated Navy Museum, construction of administrative facilities, or maintaining the status quo (no new development).

DATES: The DoN is initiating a public comment period beginning on October 14, 2022 and extending through December 2, 2022. Comments submitted during the public comment period, including comments on alternatives, information and analysis, and the summary thereof, will become part of the public record, and substantive comments will be considered in the Final EIS. All comments must be postmarked or received electronically by 11:59 p.m. eastern standard time (EST) on December 2, 2022, for consideration in the Final EIS. The Navy will hold two virtual public meetings to receive comments on the Draft EIS. In addition, per section 106 of the National Historic Preservation Act (NHPA) (36 CFR part 800.2(5)(d)), this undertaking has the potential to have effects on historic resources associated with the WNY. The public will be able to submit comments on the analysis pursuant to section 106 of the NHPA.

The meetings will be held:

- November 15, 2022, 6 p.m. to 7 p.m.
- November 16, 2022, 1 p.m. to 2 p.m.

ADDRESSES: Information on how to participate in the virtual public meetings is available on the Navy project website at: *https://ndw.cnic.navy.mil/WNY-Land-Acquisition/1/.*

Notices of the virtual public meetings will also be published in The Washington Post and through a press release.

The Navy will receive comments on the Draft EIS and pursuant to section 106 of the National Historic Preservation Act:

- Verbally during each of the two virtual public meetings.
- Electronically via email: *NAVFACWashNEPA1@navy.mil.*
- By mail, postmarked no later than December 2, 2022, to the following address: Naval Facilities Engineering Systems Command Washington, Washington Navy Yard, ATTN: Navy EIS Project Manager, 1314 Harwood Street SE, Washington, DC 20374.

FOR FURTHER INFORMATION CONTACT: Naval Facilities Engineering Systems Command Washington, Washington Navy Yard, ATTN: Nik Tompkins-Flagg, Navy EIS Project Manager, 1314 Harwood Street SE, Washington, DC 20374, 202–685–8437, *NAVFACWashNEPA1@navy.mil.*

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare this EIS was published in the **Federal Register** on February 18, 2022 (**Federal Register** (FR) Document Number 2022–03632). The WNY continues to be the ''Quarterdeck of the Navy'' and serves as the Headquarters for Naval District Washington, where it houses numerous support activities for fleet and aviation communities. The purpose of the Proposed Action is to improve the overall WNY AT posture (*i.e.,* increase physical security and antiterrorism mitigation measures), as well as protect mission-critical activities at the WNY from visual surveillance, and acoustic and electronic eavesdropping. The need for the Proposed Action is to protect the WNY from encroachment that would result from proposed private development located adjacent to the northwest perimeter of the WNY.

The DoN is considering two action alternatives that meet the purpose of and need for the proposed action, as well as a no action alternative. The two action alternatives are: Alternative 1, Land Acquisition through Land Exchange, and Alternative 2, Direct Land Acquisition. Both action alternatives have the same three sub-alternatives that address reuse of the acquired property. The three sub-alternatives are: (A) construct and operate a relocated National Museum of the United States Navy; (B) construct and operate Navy administrative facilities; and (C) bring property within the WNY fence line, but leave the parcels in their current underdeveloped state.

Under the No Action Alternative, the Proposed Action would not occur. The Navy would not acquire or reuse the SEFC E Parcels. Instead, the private development on the SEFC E Parcels would proceed as planned. Private development on the SEFC E Parcels has already been approved by local government in accordance with zoning ordinances and is currently scheduled to begin construction as early as 2023.

Under Alternative 1, the Navy would exchange certain underutilized properties within the WNY Southeast Corner with a private developer to obtain acquisition rights and ownership of the approximately 6-acre SEFC E Parcels. GSA would then transfer ownership of the SEFC E parcels to the Navy via a federal-to-federal transfer. In exchange for acquisition rights, the Navy would transfer and/or lease underutilized assets (approximately 15 acres) at the WNY Southeast Corner to the developer. Land exchange of the SEFC E Parcels for the WNY Southeast Corner would require relocation of functions, including the Hazardous Waste Storage Site from the WNY Southeast Corner to other areas on the WNY. This alternative would also include future development on the WNY Southeast Corner by the private developer, and in-kind considerations at the WNY to be provided by the developer.

Under Alternative 2, the Navy would acquire the rights to the SEFC E Parcels from the developer through purchase or condemnation, and would receive the SEFC E Parcels from GSA through a federal-to-federal transfer. No WNY property would transfer to the developer, and no missions or tenants would need to be relocated under this alternative.

In the EIS, the DoN analyzes potential environmental impacts of the alternatives. Additionally, the DoN will conduct all coordination and consultation activities required by the National Historic Preservation Act and other laws, regulations, and Executive Orders determined to be applicable to the project. The DoN could implement mitigation and monitoring measures to avoid or reduce environmental impacts, as determined in cooperation with the appropriate regulatory agencies and consulting parties.

The DoN distributed the Draft EIS to federal agencies, other parties with which the DoN is consulting, and to other stakeholders, in accordance with 40 CFR 1503.1. Further, the DoN provided a press release to the local newspaper and distributed letters to stakeholders and other interested parties. The Draft EIS is also available for electronic viewing or download at: *https://ndw.cnic.navy.mil/WNY-Land-Acquisition/1/.*

Dated: October 7, 2022.

B.F. Roach,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2022–22261 Filed 10–13–22; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Reopening; Applications for New Awards; Promise Neighborhoods Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice; reopening of application period.

SUMMARY: On June 29, 2022, the Department of Education (Department) published in the **Federal Register** a notice inviting applications (NIA) for the fiscal year (FY) 2022 Promise Neighborhoods competition, Assistance Listing Number 84.215N. The NIA established a deadline date of September 27, 2022, for transmittal of applications, which was subsequently extended until October 7, 2022. This notice reopens this competition to allow more time for the preparation and submission of applications by eligible applicants that are affected applicants (as described in Eligibility below), located in Puerto Rico, portions of Alaska covered by a Presidential major disaster declaration, and areas under a Presidential major disaster or emergency declaration resulting from Hurricane Ian, which includes Florida, the Seminole Tribe of Florida, North Carolina, and South Carolina.

DATES: *Deadline for Transmittal of Applications for Affected Applicants:* October 21, 2022.

FOR FURTHER INFORMATION CONTACT: Rich Wilson, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W101, Washington, DC 20202–6450. Telephone: (202) 453–6709. Email: *Richard.Wilson@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: On June 29, 2022, we published the NIA for the FY 2022 Promise Neighborhoods competition in the **Federal Register** (87 FR 38719). On July 25, 2022, we published an extension notice in the **Federal Register** (87 FR 44107) because *Grants.gov*, the system used to submit applications electronically, was closed for site maintenance from September 23–29, 2022. We are reopening this competition for affected applicants described below to allow them more time—until October 21, 2022—to prepare and submit their applications.

Eligibility: The reopening of this competition applies to eligible applicants under the Promise Neighborhoods program that are affected applicants. An eligible applicant for this competition is defined in the NIA. To qualify as an affected applicant, the applicant must have a mailing address that is located in a jurisdiction that is part of one of the applicable federally declared disaster areas and must provide appropriate supporting documentation, if requested.

The affected areas are those in which assistance to individuals or public assistance has been authorized under the following FEMA declarations:

- Puerto Rico (*https://www.fema.gov/disaster/4671*);
- Portions of Alaska covered by a Presidential major disaster declaration (*https://www.fema.gov/disaster/4672*);
- Florida (*https://www.fema.gov/disaster/4673*);
- The Seminole Tribe of Florida (*https://www.fema.gov/disaster/4675*);
- North Carolina (*https://www.fema.gov/disaster/3586*); and
- South Carolina (*https://www.fema.gov/disaster/3585*).

Affected applicants that have already timely submitted applications under the FY 2022 Promise Neighborhood competition may submit a new application on or before the new application deadline of October 21, 2022, but they are not required to do so. If a new application is not submitted, the Department will use the application that was submitted by the original (or first extended) deadline. If a new application is submitted, the Department will consider the application that is last submitted and timely received by 11:59:59 p.m., Eastern Time, on October 21, 2022. Any application submitted by an affected applicant under the new deadline must contain evidence (*e.g.,* the applicant organization mailing address) that the applicant is located in one of the applicable federally declared disaster areas and, if requested, must provide appropriate supporting documentation.

We are not reopening the application period for all applicants. Applications from applicants that are not affected, as defined above, will not be accepted past the October 7, 2022, deadline.

Note: All information in the NIA for this competition remains the same, except for the deadline date for affected applicants.

Program Authority: 20 U.S.C. 7273–7274.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

James F. Lane,

Senior Advisor, Office of the Secretary, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary for the Office, Elementary and Secondary Education.

[FR Doc. 2022–22424 Filed 10–13–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–4–000.

Applicants: Bitter Ridge Wind Farm, LLC, Persimmon Creek Wind Farm 1, LLC, BGTF Zeus Holdings LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Bitter Ridge Wind Farm, LLC, et al.

Filed Date: 10/6/22.

Accession Number: 20221006–5177.

Comment Date: 5 p.m. ET 10/27/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–5–000.

Applicants: RWE Renewables Americas, LLC.

Description: Baron Winds LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 10/7/22.

Accession Number: 20221007–5005.

Comment Date: 5 p.m. ET 10/28/22.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–2–000.

Applicants: Pacific Gas and Electric Company.

Description: Petition for Declaratory Order of Pacific Gas and Electric Company.

Filed Date: 10/3/22.

Accession Number: 20221003–5359.

Comment Date: 5 p.m. ET 11/2/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1954–002.

Applicants: ITC Great Plains, LLC, Southwest Power Pool, Inc.

Description: Compliance filing: ITC Great Plains, LLC submits tariff filing per 35: ITC Great Plains, LLC Second Revised Order No. 864 Compliance Filing to be effective 1/27/2020.

Filed Date: 10/7/22.

Accession Number: 20221007–5091.

Comment Date: 5 p.m. ET 10/28/22.

Docket Numbers: ER22–469–002.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 1148R21 American Electric Power Service Corporation—Deficiency Response to be effective 12/1/2021.

Filed Date: 10/5/22.

Accession Number: 20221005–5133.

Comment Date: 5 p.m. ET 10/26/22.

Docket Numbers: ER22–643–002.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 3881SO Southwestern Power Admin & AEP OK—Deficiency Response to be effective 12/31/9998.

Filed Date: 10/5/22.

Accession Number: 20221005–5134.

Comment Date: 5 p.m. ET 10/26/22.

Docket Numbers: ER22–644–002.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 3882SO Southwestern Power Admin&Publ Ser—Deficiency Response to be effective 12/31/9998.

Filed Date: 10/5/22.

Accession Number: 20221005–5137.

Comment Date: 5 p.m. ET 10/26/22.

Docket Numbers: ER22–2660–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: SPS Amended Formula Rate Revisions to Incorporate Changes Accepted in Er22–201 to be effective 5/19/2021.

Filed Date: 10/7/22.

Accession Number: 20221007–5017.

Comment Date: 5 p.m. ET 10/28/22.

Docket Numbers: ER22–2690–001.

Applicants: PPL Electric Utilities Corporation, PJM Interconnection, L.L.C.

Description: Tariff Amendment: PPL Services Corporation submits tariff filing per 35.17(b): PJM TOs Response to Deficiency Letter in ER22–2690 to be effective 10/19/2022.

Filed Date: 10/5/22.

Accession Number: 20221005–5140.

Comment Date: 5 p.m. ET 10/26/22.

Docket Numbers: ER23–32–000.

Applicants: Duke Energy Florida, LLC.

Description: Tariff Amendment: DEF–ECOGEN Notice of Cancellation of LGIA SA No. 180 to be effective 12/6/2022.

Filed Date: 10/6/22.

Accession Number: 20221006–5135.

Comment Date: 5 p.m. ET 10/27/22.

Docket Numbers: ER23–33–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 13 to be effective 10/3/2022.

Filed Date: 10/6/22.

Accession Number: 20221006–5138.

Comment Date: 5 p.m. ET 10/27/22.

Docket Numbers: ER23–34–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: LS Power Grid California LLC (Gates 500kV) IA (TO SA 447) to be effective 10/7/2022.

Filed Date: 10/6/22.

Accession Number: 20221006–5143.

Comment Date: 5 p.m. ET 10/27/22.

Docket Numbers: ER23–35–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA/CSA, Service Agreement Nos. 6651/6652; Queue No. AG1–080 to be effective 9/7/2022.

Filed Date: 10/7/22.

Accession Number: 20221007–5011.

Comment Date: 5 p.m. ET 10/28/22.

Docket Numbers: ER23–36–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Cost Responsibility Agreement, SA No. 6614; Non-Queue No. NQ–187 to be effective 9/12/2022.

Filed Date: 10/7/22.

Accession Number: 20221007–5014.

Comment Date: 5 p.m. ET 10/28/22.

Docket Numbers: ER23–37–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: Deseret TSOA Rev 9 to be effective 12/7/2022.

Filed Date: 10/7/22.

Accession Number: 20221007–5034.

Comment Date: 5 p.m. ET 10/28/22.

Docket Numbers: ER23–38–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2022–10–07_SA 3142 Termination of ITC Midwest-EDF Renewables E&P (J495) to be effective 10/8/2022.

Filed Date: 10/7/22.

Accession Number: 20221007–5039.

Comment Date: 5 p.m. ET 10/28/22.

Docket Numbers: ER23–39–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2022–10–07_SA 3129 Termination of MidAmerican-Glaciers Edge Wind E&P (J506) to be effective 10/8/2022.

Filed Date: 10/7/22.

Accession Number: 20221007–5041.

Comment Date: 5 p.m. ET 10/28/22.

Docket Numbers: ER23–40–000.

Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2022–10–07_SA 3913 3914 OTP–NSP FCA & FSA (Forman-Canby-Fergus MPFP) to be effective 12/7/2022.

Filed Date: 10/7/22.

Accession Number: 20221007–5051.

Comment Date: 5 p.m. ET 10/28/22.

Docket Numbers: ER23–41–000.

Applicants: Duke Energy Business Services LLC, PJM Interconnection, L.L.C.

Description: Tariff Amendment: Duke Energy Business Services LLC submits tariff filing per 35.15: Notice of Termination of Amended and Restated IA, PJM SA No. 3137 to be effective 12/7/2022.

Filed Date: 10/7/22.

Accession Number: 20221007–5059.

Comment Date: 5 p.m. ET 10/28/22.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD22–5–000.

Applicants: North American Electric Reliability Corporation.

Description: Application of the North American Electric Reliability Corporation for approval of FAC–001–4 and FAC–002–4.

Filed Date: 6/14/22.

Accession Number: 20220614–5204.

Comment Date: 5 p.m. ET 10/28/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings

must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 7, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–22350 Filed 10–13–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX23–2–000]

EnerSmart Imperial Beach BESS LLC; Notice of Filing

Take notice that on October 6, 2022, pursuant to section 211 of the Federal Power Act,[1] and Section 9.3.3 of the San Diego Gas & Electric Company (SDG&E) Transmission Owner Tariff (SDG&E TO Tariff), and Section 4 of the SDG&E Wholesale Distribution Open Access Tariff (SDG&E Tariffs), EnerSmart Imperial Beach BESS LLC (EnerSmart Imperial Beach) filed an application requesting that the Federal Energy Regulatory Commission (Commission) issue an order requiring SDG&E to provide interconnection and transmission service for the proposed Imperial Beach BESS battery energy storage facility under the terms and conditions of the Transmission Control Agreement between SDG&E and the California Independent System Operator Corporation (CAISO), the SDG&E Tariffs, CAISO's Fifth Replacement FERC Electric Tariff, and the Small Generator Interconnection Agreements between EnerSmart Imperial Beach and SDG&E, dated May 31, 2022, as it may be in effect from time to time.[2]

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 and 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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 may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on November 7, 2022.

Dated: October 7, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–22351 Filed 10–13–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–2–000]

Gas Transmission Northwest LLC; Notice of Revised Schedule for Environmental Review of the GTN XPress Project

This notice provides the Federal Energy Regulatory Commission staff's revised schedule for completion of the environmental impact statement (EIS) for Gas Transmission Northwest LLC's (GTN) GTN XPress Project. The Notice of Intent issued on January 21, 2022 identified October 14, 2022 as the final EIS issuance date. However, numerous comments filed during the draft EIS comment period require additional time for Commission staff's analysis. As a result, staff has revised the schedule for issuance of the final EIS.

Schedule for Environmental Review

Issuance of the Notice of Availability of the final EIS—November 18, 2022
90-day Federal Authorization Decision Deadline [1]—February 16, 2023

If a schedule change becomes necessary, an additional notice will be provided so that the relevant agencies are kept informed of the project's progress.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP22–2), and follow the

[1] 16 U.S.C. 824j (2018).

[2] The SGIA is associated with application numbers W192 and W193 for two 3 MW battery energy storage facilities, interconnecting at two points of interconnection, specified as (i) an extension of Imperial Beach circuit 158 from the manhole M1528073924 and (ii) an extension of Imperial Beach circuit 532 from the manhole M1526873925.

[1] The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: October 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–22365 Filed 10–13–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX23–1–000]

EnerSmart Mesa Heights BESS LLC; Notice of Filing

Take notice that on October 6, 2022, pursuant to section 211 of the Federal Power Act,[1] and Section 9.3.3 of the San Diego Gas & Electric Company (SDG&E) Transmission Owner Tariff (SDG&E TO Tariff), and Section 4 of the SDG&E Wholesale Distribution Open Access Tariff (SDG&E Tariffs), EnerSmart Mesa Heights BESS LLC (EnerSmart Mesa Heights) filed an application requesting that the Federal Energy Regulatory Commission (Commission) issue an order requiring SDG&E to provide interconnection and transmission service for the proposed Mesa Heights BESS battery energy storage facility under the terms and conditions of the Transmission Control Agreement between SDG&E and the California Independent System Operator Corporation (CAISO), the SDG&E Tariffs, CAISO's Fifth Replacement FERC Electric Tariff, and the Small Generator Interconnection Agreement between EnerSmart Mesa Heights and SDG&E, dated May 31, 2022, as it may be in effect from time to time.[2]

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 and 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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 may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on November 7, 2022.

Dated: October 7, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–22349 Filed 10–13–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC22–22–000]

Commission Information Collection Activities (Ferc–539), Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–539 (Gas Pipeline Certificates: Import & Export Related Applications), which will be submitted to the Office of Management and Budget (OMB). The Commission published a 60-day notice in the **Federal Register** on August 1, 2022 and received no comments on the 60-day notice.

DATES: Comments on the collection of information are due November 14, 2022.

ADDRESSES: Send written comments on FERC 539 to OMB through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number 1902–0062 (Gas Pipeline Certificates: Import & Export Related Applications) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**.

Please submit copies of your comments (identified by Docket No. IC22–22–000 and the form) to the Commission as noted below. Electronic filing through *https://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service only, addressed to:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) delivery to:* Federal Energy Regulatory Commission, Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Please reference the specific collection number(s) and/or title(s) in your comments.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at: *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review field,'' select Federal Energy Regulatory Commission; click ''submit'' and select ''comment'' to the right of the subject collection. FERC submissions must be formatted and filed

[1] 16 U.S.C. 824j (2018).

[2] The SGIA is associated with application number W162 for the 3 MW battery energy storage facility, interconnecting at a single point of interconnection, specified as an extension of Mesa Heights circuit 1286 from the nearby pole P95664. SGIA at Attachment 2.

in accordance with submission guidelines at: *https://www.ferc.gov.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–539 (Gas Pipeline Certificates: Import & Export Related Applications).

OMB Control No.: 1902–0062.

Type of Request: Three-year extension of the FERC–539 with no changes to the current reporting requirements.

Abstract: The purpose of FERC–539 is to implement information collections pursuant to Section 3 of the Natural Gas Act (NGA).[1] This statute 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.'' [2] This statute applies not only to natural gas imported and/or exported via pipeline but also to any import and/or export of liquefied natural gas via a liquefied natural gas terminal. 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.

Estimate of Annual Burden: [3] The Commission estimates the annual public reporting burden for the information collection as:

FERC–539, GAS PIPELINE CERTIFICATES: IMPORT & EXPORT RELATED APPLICATIONS

Number of respondents	Number of responses per respondent	Total number of responses	Average burden hours & average cost [4] per response ($)	Total annual burden hours & total annual cost ($)	Cost per respondent ($)
(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) = (6)
6	2	12	15 hours; $1,305	180 hours; $15,660	$2,610

Comments: Comments are invited on: (1) whether the 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 and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: October 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–22364 Filed 10–13–22; 8:45 am]

BILLING CODE 6717–01–P

[1] 15 U.S.C. 717–717w

[2] 15 U.S.C. 717b

[3] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. See 5 CFR 1320 for additional information on the definition of information collection burden.

[4] The Commission staff estimates that industry is similarly situated in terms of hourly cost (for wages plus benefits). Based on the Commission's FY (Fiscal Year) 2021 average cost (for wages plus benefits), $87.00/hour is used.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 349–157]

Alabama Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 349–157.

c. *Date Filed:* July 21, 2022, as supplemented on September 23, 2022.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Martin Dam Hydroelectric Project.

f. *Location:* The Martin Dam Hydroelectric Project is located on the Tallapoosa River (Lake Martin), in Tallapoosa, Elmore, and Coosa counties, Alabama, and occupies federal land administered by the U.S. Bureau of Land Management; the non-project use is located in Elmore County.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Unzell Kelley, Alabama Power Company at (205) 517–0885 or *ukelley@southernco.com.*

i. *FERC Contact:* Shana High at (202) 502–8674 or *shana.high@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* November 7, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose,

Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–349–157. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears 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.

k. *Description of Request:* Alabama Power Company is requesting Commission authorization to permit Russell Lands, Inc. to expand Kowaliga Marina. As proposed, Kowaliga Marina would include 13 docks that would accommodate 258 boats and 45 personal watercraft, two forklift piers, a boat ramp, four breakwaters, a seawall, and riprap.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: October 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–22367 Filed 10–13–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–40–006]

Spire STL Pipeline LLC; Notice of Availability of the Final Environmental Impact Statement for the Spire STL Pipeline Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the continued operation of the Spire STL Pipeline Project (Spire STL), proposed by Spire STL Pipeline LLC (Spire) in the above-referenced docket. Spire requests the Commission to reissue a Certificate of Public Convenience and Necessity authorizing operation of the Spire STL.

The final EIS assesses the continued operation of the Spire STL in accordance with the requirements of the National Environmental Policy Act (NEPA). FERC staff concludes that impacts from the continued operation of the Spire STL would be less than significant, with the exception of climate change impacts resulting from GHG emissions that are not characterized as significant or insignificant.

The final EIS addresses the potential environmental effects of the continued operation of the following project facilities:

- 59.2 miles of 24-inch-diameter pipeline in Scott, Greene, and Jersey Counties, Illinois and St. Charles and St. Louis Counties, Missouri;
- 6.0 miles of 24-inch-diameter pipeline (the North County Extension) in St. Louis County, Missouri; and
- three new meter stations—the Rockies Express Pipeline LLC (REX) Receipt Station in Scott County, Illinois and the Laclede/Lange Delivery Station and Chain of Rocks station in St. Louis County, Missouri.

The Commission mailed a copy of the *Notice of Availability* of the final EIS to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The final EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the final EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*) select ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP17–40). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: October 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–22366 Filed 10–13–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–039]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed October 3, 2022 10 a.m. EST Through October 7, 2022 10 a.m. EST Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20220145, Final, FHWA, SC, I–526 Lowcountry Corridor West, Contact: Jeffrey (Shane) Belcher 803–253–3187.

Under 23 U.S.C. 139(n)(2), FHWA has issued a single document that consists of a final environmental impact statement and record of decision. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

EIS No. 20220146, Final, USN, HI, Pearl Harbor Naval Shipyard and Intermediate Maintenance Facility Dry Dock and Waterfront Production Facility at Joint Base Pearl Harbor-Hickam, Oahu, Hawaii, Review Period Ends: 11/14/2022, Contact: Andrea Von Burg Hall 808–472–1425.

EIS No. 20220147, Draft, USN, DC, Proposed Land Acquisition at Washington Navy Yard, Washington, DC, Comment Period Ends: 11/28/2022, Contact: Nik Tompkins-Flagg 202–685–8437.

EIS No. 20220148, Draft, TxDOT, TX, Spur 399 Extension, Comment Period Ends: 12/09/2022, Contact: Doug Booher 512–416–2663.

EIS No. 20220149, Final, FERC, MO, Spire STL Pipeline Project, Review Period Ends: 11/14/2022, Contact: Office of External Affairs 1–866–208–3372.

Dated: October 7, 2022.

Marthea Rountree,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2022–22360 Filed 10–13–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10283–01–OMS]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, Maine Department of Environmental Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Environmental Protection Agency's (EPA) approval of the Maine Department of Environmental Protection (ME DEP) request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA approves the authorized program revisions/modifications as of October 14, 2022.

FOR FURTHER INFORMATION CONTACT: Shirley M. Miller, U.S. Environmental Protection Agency, Office of Information Management, Mail Stop 2824T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566–2908, *miller.shirley@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On June 29, 2022, the Maine Department of Environmental Protection (ME DEP) submitted an application titled shared services integrated into CDX system for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed ME DEP's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve ME DEP's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR is being published in the **Federal Register**:

- Part 52: Approval and Promulgation of Implementation Plans (SIP/Clean Air Act Title II) Reporting under 40 CFR 50 through 52.

ME DEP was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: October 7, 2022.

Jennifer Campbell,

Director, Office of Information Management.

[FR Doc. 2022–22286 Filed 10–13–22; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: 2022–3029]

Agency Information Collection Activities: Comment Request; Form Title: EIB 12–01 Medium-Term Master Guarantee Agreement Disbursement Approval Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM Bank), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the

proposed information collection, as required by the Paperwork Reduction Act of 1995. EXIM Bank has an electronic disbursement approval processing system for guaranteed lenders with transactions documented under Medium-Term Master Guarantee Agreements. After an export transaction has been authorized by EXIM Bank and legal documentation has been completed, the lender will obtain and review the required disbursement documents (*e.g.,* invoices, bills of lading, Exporter's Certificate, etc.) and will disburse the proceeds of the loan for eligible goods and services. In order to obtain approval of the disbursement, the lender will access and complete an electronic questionnaire through EXIM Bank's online application system (EXIM Online). Using the form, the lender will input key data and request EXIM Bank's approval of the disbursement. EXIM Bank's action (approved or denied) is posted on the lender's history page. The information collected in the questionnaire will assist EXIM Bank in determining that each disbursement under a Medium-Term Guarantee meets all the terms and conditions for approval. The information collection tool can be reviewed at: *http://exim.gov/sites/default/files/pub/pending/eib12-01.pdf.*

DATES: Comments must be received on or before November 14, 2022 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038, Attn: OMB 3048–0049.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 12–01 Medium-Term Master Guarantee Agreement Disbursement Approval Request.

OMB Number: 3048–0049.

Type of Review: Regular.

Need and Use: The information requested enables EXIM Bank to determine that a disbursement under a Medium-Term Guarantee meets all of the terms and conditions for approval.

Affected Public:

This form affects lenders involved in the financing of U.S. goods and services exports.

Annual Number of Respondents: 150.

Estimated Time per Respondent: 30 minutes.

Annual Burden Hours: 75 hours.

Frequency of Reporting of Use: Annual.

Government Expenses:

Reviewing time per year: 38 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $1,615.00 (time*wages).

Benefits and Overhead: 20%.

Total Government Cost: $1,938.

Andy Chang,

Director, IT Records Management.

[FR Doc. 2022–22328 Filed 10–13–22; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2022–3030]

Agency Information Collection Activities: Comment Request; Form Title: EIB 12–02 Credit Guarantee Facility Disbursement Approval Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM Bank), as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

EXIM Bank has an electronic disbursement approval processing system for guaranteed lenders with Credit Guarantee Facilities. After a Credit Guarantee Facility (CGF) has been authorized by EXIM Bank and legal documentation has been completed, the lender will obtain and review the required disbursement documents (*e.g.,* invoices, bills of lading, Exporter's Certificate, etc.) and will disburse the proceeds of the loan for eligible goods and services. In order to obtain approval of the disbursement, the lender will access and complete an electronic questionnaire through EXIM Bank's online application system (EXIM Online). Using the form, the lender will input key data and request EXIM Bank's approval of the disbursement. EXIM Bank's action (approved or denied) is posted on the lender's history page. The information collected in the questionnaire will assist EXIM Bank in determining that each disbursement under a Medium-Term Guarantee meets all the terms and conditions for approval. The information collection tool can be reviewed at: *http://exim.gov/sites/default/files/pub/pending/eib12-02.pdf.*

DATES: Comments must be received on or before November 14, 2022 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038, Attn: OMB 3048–0046.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 12–02 Credit Guarantee Facility Disbursement Approval Request.

OMB Number: 3048–0046.

Type of Review: Regular.

Need and Use: The information requested enables EXIM Bank to determine that a disbursement under a Credit Guarantee Facility meets all of the terms and conditions for approval.

Affected Public:

This form affects lenders involved in the financing of U.S. goods and services exports.

Annual Number of Respondents: 50.

Estimated Time per Respondent: 60 minutes.

Annual Burden Hours: 50 hours.

Frequency of Reporting of Use: Annual.

Government Expenses:

Reviewing time per year: 25 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $1,062.50 (time*wages).

Benefits and Overhead: 20%.

Total Government Cost: $1,275.

Andy Chang,

Director, IT Records Management.

[FR Doc. 2022–22324 Filed 10–13–22; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2022–3032]

Agency Information Collection Activities: Comment Request; Form Title: EIB 15–04 Exporter's Certificate for Co-Financed Loan, Guarantee & MT Insurance Programs

AGENCY: Export-Import Bank of the United States.

ACTION: Renewal submission for OMB review and Final comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM Bank), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. EXIM Bank's borrowers, financial institution policy holders and guaranteed lenders provide this form to U.S. exporters, who certify to the eligibility of their exports for Ex-Im

Bank support. For direct loans and loan guarantees, the completed form is required to be submitted at time of disbursement and held by either the guaranteed lender or EXIM Bank. For MT insurance, the completed forms are held by the financial institution, only to be submitted to Ex-Im Bank in the event of a claim filing. EXIM Bank uses the referenced form to obtain exporter certifications regarding the export transaction, content sourcing, and their eligibility to participate in USG programs with respect to co-financed transactions. These details are necessary to determine the value and legitimacy of EXIM Bank financing support and claims submitted. It also provides the financial institutions a check on the export transaction's eligibility at the time it is fulfilling a financing request. The information collection tool can be reviewed at: *http://www.exim.gov/sites/default/files/pub/pending/eib15-04.pdf*.

DATES: Comments must be received on or before November 14, 2022 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038 Attn: OMB 3048–0052 EIB15–04.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 15–04 Exporter's Certificate for Co-Financing Transactions.

OMB Number: 3048–0052.

Type of Review: Regular.

Need and Use: The information collected will allow EXIM Bank to determine compliance and content for transaction requests submitted to EXIM Bank under its co-financed insurance and guarantee programs.

Affected Public:

This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 30.

Estimated Time per Respondent: 30 minutes.

Annual Burden Hours: 15 hours.

Frequency of Reporting of Use: As required.

Government Expenses:

Reviewing time per year: 2.5 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $106.25 (time*wages).

Benefits and Overhead: 20%.

Total Government Cost: $127.50.

Andy Chang,

Director, IT Records Management.

[FR Doc. 2022–22323 Filed 10–13–22; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2021–3031]

Agency Information Collection Activities: Comment Request; Form Title: EIB 03–02 Application for Medium Term Insurance, Direct Loan or Guarantee

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and final comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. The purpose of this collection is to gather information necessary to make a determination of eligibility of a transaction for EXIM assistance under its medium-term guarantee and insurance program.

DATES: Comments should be received on or before November 14, 2022 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 03–02) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038, Ave. NW Washington, DC The application tool can be reviewed at: *http://www.exim.gov/sites/default/files/pub/pending/eib03-02_0.pdf.*

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 03–02 Application for Medium Term Insurance, Direct Loan or Guarantee.

OMB Number: 3048–0014.

Type of Review: Update & Renewal.

Need and Use: The purpose of this collection is to gather information necessary to make a determination of eligibility of a transaction for EXIM assistance under its medium-term guarantee and insurance program.

Affected Public:

This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 200.

Estimated Time per Respondent: 2 hours.

Annual Burden Hours: 400 hours.

Frequency of Reporting or Use: As needed.

Government Expenses:

Reviewing Time per Year: 200 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $8,500 (time*wages).

Benefits and Overhead: 20%.

Total Government Cost: $10,200.

Andy Chang,

Director, IT Records Management.

[FR Doc. 2022–22325 Filed 10–13–22; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2022–3030]

Agency Information Collection Activities: Comment Request; Form Title: EIB 12–02 Credit Guarantee Facility Disbursement Approval Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM Bank), as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. EXIM Bank has an electronic disbursement approval processing system for guaranteed lenders with Credit Guarantee Facilities. After a Credit Guarantee Facility (CGF) has been authorized by EXIM Bank and legal documentation has been completed, the lender will obtain and review the required disbursement documents (*e.g.,* invoices, bills of lading, Exporter's Certificate, etc.) and will disburse the proceeds of the loan for eligible goods and services. In order to obtain approval of the disbursement, the lender will access and complete an electronic questionnaire through EXIM Bank's online application system (EXIM Online). Using the form, the lender will input key data and request EXIM Bank's approval of the disbursement. EXIM Bank's action (approved or denied) is posted on the lender's history page. The information collected in the questionnaire will assist EXIM Bank in determining that each disbursement under a Medium-Term Guarantee meets all the terms and conditions for approval. The information collection tool can be reviewed at: *http://exim.gov/sites/default/files/pub/pending/eib12-02.pdf.*

DATES: Comments must be received on or before November 14, 2022 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW,

Washington, DC 20038, Attn: OMB 3048–0046.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 12–02 Credit Guarantee Facility Disbursement Approval Request.

OMB Number: 3048–0046.

Type of Review: Regular.

Need and Use: The information requested enables EXIM Bank to determine that a disbursement under a Credit Guarantee Facility meets all of the terms and conditions for approval.

Affected Public:

This form affects lenders involved in the financing of U.S. goods and services exports.

Annual Number of Respondents: 50.

Estimated Time per Respondent: 60 minutes.

Annual Burden Hours: 50 hours.

Frequency of Reporting of Use: Annual.

Government Expenses:

Reviewing time per year: 25 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $1,062.50 (time*wages).

Benefits and Overhead: 20%.

Total Government Cost: $1,275.

Andy Chang,

Director, IT Records Management.

[FR Doc. 2022–22326 Filed 10–13–22; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice 2022–3028]

Agency Information Collection Activities: Final Collection; Comment Request; Form Title: EIB 09–01 Payment Default Report OMB 3048–0028

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. This collection allows insured/guaranteed parties and insurance brokers to report overdue payments from the borrower and/or guarantor. To facilitate completion, the form includes many checkboxes and self-populating fields. Also, customers can submit it electronically through EXIM Online, replacing paper reporting. EXIM provides insurance, loans, and loan guarantees for the financing of exports of goods and services. The form can be viewed at: *https://www.exim.gov/sites/default/files//forms/eib09-01_0.pdf*

DATES: Comments should be received on or before November 14, 2022 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038, Attn: OMB 3048–0049.

SUPPLEMENTARY INFORMATION: *Titles and Form Number:* EIB 09–01, Payment Default Report.

OMB Number: 3048–0028.

Type of Review: Regular.

Need and Use: The information requested enables insured/guaranteed parties and insurance brokers to report overdue payments from the borrower and/or guarantor.

Affected Public:

This form affects Insured/guaranteed parties and brokers.

Annual Number of Respondents: 500.

Estimated Time per Respondent: 15 minutes.

Annual Burden Hours: 125 hours.

Frequency of Reporting of Use: Annual.

Government Expenses:

Reviewing time per year: 8.3 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $354.02. (time*wages)

Benefits and Overhead: 20%.

Total Government Cost: $424.83.

Andy Chang,

Director, IT Records Management.

[FR Doc. 2022–22327 Filed 10–13–22; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1265; FR ID 108662]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before November 14, 2022.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *https://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal

Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1265.

Title: Connect America Fund—Performance Testing Measures.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 1,677 unique respondents; 4,196 responses.

Estimated Time per Response: 16 hours—60 hours.

Frequency of Response: Biennial reporting requirements, quarterly reporting requirements and annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 410, and 1302.

Total Annual Burden: 164,526 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: We note that the Universal Service Administrative Company (USAC) must preserve the confidentiality of certain data obtained from respondents; must not use the data except for purposes of administering the universal service programs or other purposes specified by the Commission; and must not disclose data in company-specific form unless directed to do so by the Commission. Materials or information submitted to the Commission or the Administrator will be confidential and not be available to the public.

Needs and Uses: In the *USF/ICC Transformation Order,* the Commission laid the groundwork for today's universal service programs providing $4.5 billion in support for broadband internet deployment in high-cost areas. *Connect America Fund, et al.,* Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10–90, et al., 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*). The *USF/ICC Transformation Order* required, among other things, that high-cost universal service recipients ''test their broadband networks for compliance with speed and latency metrics and certify to and report the results to the Universal Service Administrative Company (USAC) on an annual basis.'' *Id.* at 17705, para. 109. Pursuant to the Commission's direction in that Order, the Wireline Competition Bureau, the Wireless Telecommunications Bureau, and the Office of Engineering and Technology (the Bureaus and OET) adopted more specific methodologies for such testing in the *Performance Measures Order. See generally Performance Measures Order. See also* 47 CFR 54.313(a)(6) (requiring that recipients of high-cost support provide ''[t]he results of network performance tests pursuant to the methodology and in the format determined by the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology'').

This collection includes requirements for testing speed and latency to ensure that carriers are meeting the public interest obligations associated with their receipt of high-cost universal service support. Carriers will identify, from among the locations they have already submitted and certified in USAC's High Cost Universal Broadband (HUBB) portal, the locations where they have an active subscriber (deployment locations are reported under OMB Control Number 3060–1228, and active locations will be reported under this control number). From those subscriber locations, USAC will then select a random sample from which the carrier will be required to perform testing for speed and latency. Carriers that do not provide location information in the HUBB will use a randomization tool provided by USAC to select a random sample of locations for testing. The carrier will then be required to submit to USAC the results of the testing on an annual basis. The annual filing will include the testing results for each quarter from the prior year. The carrier's sample for each service tier (*e.g.* 10 Mbps/1 Mbps, 25 Mbps/1 Mbps) shall be regenerated every two years. During the two-year cycle, carriers will have the ability to add and remove subscriber locations if necessary, *e.g.,* as subscribership changes. This information collection addresses the burdens associated with these requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–22373 Filed 10–13–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1238; FR ID 109145]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments shall be submitted on or before December 13, 2022. If you anticipate that you will be

submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1238.

Title: First Amendment to Nationwide Programmatic Agreement for the Collocation of Wireless Antennas.

Form Number: Not applicable.

Type of Review: Extension of an approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and State, local, or Tribal governments.

Number of Respondents and Responses: 71 respondents; 765 responses.

Estimated Time per Response: 1 hour–5 hours.

Frequency of Response: Third party disclosure reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in Sections 1, 2, 4(i), 7, 301, 303, 309, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 157, 301, 303, 309, 332, and Section 106 of the National Historic Preservation Act of 1966, 54 U.S.C. 306108.

Total Annual Burden: 2,869 hours.

Total Annual Cost: $82,285.

Needs and Uses: The Commission will submit this information collection for approval after the comment period to obtain the full three-year clearance from the Office of Management and Budget (OMB). The Commission is requesting OMB approval for disclosure requirements pertaining to the *First Amendment to Nationwide Programmatic Agreement for the Collocation of Wireless Antennas* (First Amendment) to address the review of deployments of small wireless antennas and associated equipment under section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. 306108 (formerly codified at 16 U.S.C. 470f). The FCC, the Advisory Council on Historic Preservation (Council), and the National Conference of State Historic Preservation Officers (NCSHPO) amended the *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas* (Collocation Agreement) to account for the limited potential of small wireless antennas and associated equipment, including Distributed Antenna Systems (DAS) and small cell facilities, to affect historic properties. The Collocation Agreement addresses historic preservation review for collocations on existing towers, buildings, and other non-tower structures. Under the Collocation Agreement, most antenna collocations on existing structures are excluded from Section 106 historic preservation review, with a few exceptions defined to address potentially problematic situations. On August 3, 2016, the Commission's Wireless Telecommunications Bureau, ACHP, and NCSHPO finalized and executed the First Amendment to the Collocation Agreement, to tailor the Section 106 process for small wireless deployments by excluding deployments that have minimal potential for adverse effects on historic properties.

The following are the information collection requirements in connection with the amended provisions of appendix B of part 1 of the Commission's rules (47 CFR part 1, app. B):

- Stipulation VII.C of the amended Collocation Agreement provides that proposals to mount a small antenna on a traffic control structure (*i.e.,* traffic light) or on a light pole, lamp post or other structure whose primary purpose is to provide public lighting, where the structure is located inside or within 250 feet of the boundary of a historic district, are generally subject to review through the section 106 process. These proposed collocations will be excluded from such review on a case-by-case basis, if (1) the collocation licensee or the owner of the structure has not received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, an Indian Tribe, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties; and (2) the structure is not historic (not a designated National Historic Landmark or a property listed in or eligible for listing in the National Register of Historic Places) or considered a contributing or compatible element within the historic district, under certain procedures. These procedures require that applicant must request in writing that the SHPO concur with the applicant's determination that the structure is not a contributing or compatible element within the historic district, and the applicant's written request must specify the traffic control structure, light pole, or lamp post on which the applicant proposes to collocate and explain why the structure is not a contributing element based on the age and type of structure, as well as other relevant factors. The SHPO has thirty days from its receipt of such written notice to inform the applicant whether it disagrees with the applicant's determination that the structure is not a contributing or compatible element within the historic district. If within the thirty-day period, the SHPO informs the applicant that the structure is a contributing element or compatible element within the historic district or that the applicant has not provided sufficient information for a determination, the applicant may not deploy its facilities on that structure without completing the section 106 review process. If, within the thirty-day period, the SHPO either informs the applicant that the structure is not a contributing or compatible element within the historic district, or the SHPO fails to respond to the applicant within the thirty-day period, the applicant has no further Section 106 review obligations, provided that the collocation meets the certain volumetric and ground disturbance provisions.

The First Amendment to the Collocation Agreement established new exclusions from the Section 106 review process for physically small deployments like DAS and small cells, fulfilling a directive in the Commission's *Infrastructure Report and Order,* 80 FR 1238, Jan. 8, 2015, to further streamline review of these installations. These exclusions will continue to reduce the cost, time, and burden associated with deploying small facilities in many settings and provide opportunities to increase densification at low cost and with very little impact on historic properties.

Facilitating these deployments thus directly advances efforts to roll out 5G service in communities across the country.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–22385 Filed 10–13–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1238; FR ID 109146]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments shall be submitted on or before December 13, 2022. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0695.

Title: Section 87.219, Automatic Operations.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 55 respondents and 55 responses.

Estimated Time per Response: 0.7 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 154, 303 and 307.

Total Annual Burden: 39 hours.

Annual Cost Burden: $8,250.

Needs and Uses: If airports have control towers of Federal Aviation Administration (FAA) flight service stations and more than one licensee, and wants to have an automated aeronautical advisory station (Unicom), this rule requires that they must write an agreement and keep a copy of the agreement with each licensee's station authorization. This information will be used by compliance personnel for enforcement purposes and by licensees to clarify responsibility in operating Unicom.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–22382 Filed 10–13–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

TIME AND DATE: 10 a.m. on Tuesday, October 18, 2022.

PLACE: The meeting is open to the public. Out of an abundance of caution related to current and potential coronavirus developments, the public's means to observe this Board meeting will be via a Webcast live on the internet and subsequently made available on-demand approximately one week after the event. Visit *https://youtu.be/s7moPsvjKto* to view the meeting. If you need any technical assistance, please visit our Video Help page at: *https://www.fdic.gov/video.html.*

Observers requiring auxiliary aids (*e.g.,* sign language interpretation) for this meeting should email *DisabilityProgram@fdic.gov* to make necessary arrangements.

STATUS: Open.

MATTER TO BE CONSIDERED: Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of Minutes of a Board of Directors' Meeting Previously Distributed.

Memorandum and resolution re: Final Rule on Assessments—Amendments to Incorporate Troubled Debt Restructuring Accounting Standards Update.

Memorandum and resolution re: Designated Reserve Ratio for 2023.

Summary report of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Final Rule on Assessments, Revised Deposit Insurance Assessment Rates.

Memorandum and resolution re: Proposed Amendments to the Guidelines for Appeals of Material Supervisory Determinations.

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed to Debra A. Decker, Executive Secretary of the Corporation, at 202–898–8748.

Dated at Washington, DC, on October 11, 2022.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–22434 Filed 10–12–22; 11:15 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2022–0014]

Notice of Availability of the Final Supplemental Environmental Impact Statement

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services (HHS) announces the availability of the Final Supplemental Environmental Impact Statement (SEIS) for CDC's Roybal Campus in Atlanta, Georgia. The Final SEIS was prepared to address changes proposed since completing the 2014 Final Environmental Impact Statement (EIS) for the CDC Roybal Campus 2025 Master Plan (2014 Final EIS) and issuing a

Record of Decision (ROD) dated November 7, 2014. This announcement follows the requirements of the National Environmental Policy Act (NEPA) as implemented by the Council on Environmental Quality (CEQ) regulations and HHS environmental procedures.

DATES: The Final SEIS will be available October 14, 2022.

FOR FURTHER INFORMATION CONTACT: Thayra Riley, NEPA Coordinator, Office of Safety, Security, and Asset Management, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H20–4, Atlanta, Georgia 30329. Email: *cdc-roybalga-seis@cdc.gov.* Telephone: 770–488–8170.

SUPPLEMENTARY INFORMATION: In accordance with NEPA as implemented by CEQ regulations (40 CFR 1507.3) and HHS environmental procedures, CDC prepared a Final SEIS to analyze the effects of additional proposed components that were not analyzed in the 2014 Final EIS. The potential impacts of construction and operation of these components on the natural and built environment were evaluated.

Alternatives Considered

CDC analyzed two alternatives in the Final SEIS: The Proposed Action (Alternative 1) and the No Action Alternative. Alternative 1 consists of the construction and operation of a Hospital, Medical, and Infectious Waste Incinerator (HMIWI) in a new laboratory building and the operation of two emergency standby power diesel generators. The construction of a new laboratory was included in the 2014 Final EIS and was not re-evaluated in the SEIS. The No Action Alternative consists of the construction of the new laboratory without the HMIWI and two emergency standby power generators.

The Final SEIS evaluates the environmental impacts that may result from Alternative 1 and the No Action Alternative on the following resource categories: air quality, climate change and sustainability, environmental justice, and hazardous/medical/infectious waste. The Final SEIS identifies measures to mitigate potential adverse impacts.

Public Involvement

On January 28, 2022, CDC published a Notice of Intent to prepare a SEIS in the **Federal Register** (87 FR 4603). CDC announced a Notice of Availability (NOA) of the Draft SEIS on July 8, 2022 (87 FR 40844) and the public comment period ended August 22, 2022. During the public comment period, a virtual public meeting was held on July 27, 2022. Two participants attended the meeting.

CDC received five public comments.

- An individual submitted two comments stating they did not agree with the spending associated with the project.
  - CDC acknowledges the comment.
- A civic organization submitted one comment asking about noise or odors associated with lab operations and the stringency of the Georgia Department of Natural Resources, Environmental Protection Department (EPD) rules for handling, treating, and disposing of infectious waste.
  - CDC's response is that noise and odors were determined not to be issues that needed to be included in the SEIS associated with the addition of a new HMIWI and two new emergency standby power generators. Noise levels will not be an issue and will be controlled/limited to levels below Occupational Safety and Health Administration criteria (60 dBA within 4 feet, which is a normal speaking level). No odors will be released from the new incinerator system during operations. The Georgia EPD rules for handling, treating, and disposing of infectious waste are sufficiently stringent and protective of the environment, workers, and public health. CDC has been operating other incinerators on site and the handling of solid waste, including hazardous and medical waste, will continue to comply with Georgia EPD rules and regulations.
- A community advisory group submitted a request for CDC to present an update on the SEIS during the group's September 20, 2022 meeting.
  - CDC declined the request and provided instructions to submit comments on the docket.
- An individual submitted questions about the air quality modeling and cumulative impact analysis.
  - For the analysis of the addition of the HMIWI and two emergency generators, CDC conducted a quantitative analysis of carbon monoxide based on the methodology used during the 2014 Final EIS. The SEIS states that further analysis of the criteria pollutants and hazardous air pollutants would be conducted to support the updated Title V operating permit that is required due to the addition of the HMIWI. Cumulative impacts for the overall implementation of the Roybal Campus 2025 Master Plan were included in the 2014 Final FEIS. Cumulative impacts were considered in the SEIS Air Quality and climate change analysis. Since there are no impacts to environmental justice and negligible impacts to hazardous, medical, infectious waste, these would not contribute to significant cumulative impacts.

CDC made minor revisions to the SEIS based on these comments. The comments and CDC's responses are included in Appendix A of the Final SEIS.

Availability of the Final SEIS: The Final SEIS is available in the Supplemental Materials tab of the docket found on the Federal eRulemaking Portal: *https://www.regulations.gov,* identified by Docket No. CDC–2022–0014.

The NOA of the Final SEIS has been provided to Federal, State, and local agencies and organizations via mail and electronic mail to the interested parties list. The public is being notified of the availability of the Final SEIS through this **Federal Register** publication and a notice published in *The Atlanta Journal-Constitution.* CDC will finalize a ROD no sooner than November 7, 2022.

Angela K. Oliver,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2022–22370 Filed 10–13–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–0305]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Tobacco Products Subject to the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by November 14, 2022.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under

Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0768. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Tobacco Products Subject to the Federal Food, Drug, and Cosmetic Act

OMB Control Number 0910–0768—Extension

Tobacco products are governed by chapter IX of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (sections 900 through 920) (21 U.S.C. 387 through 21 U.S.C. 387t). Implementing regulations are found in 21 CFR subchapter K (parts 1100 through 1150 (21 CFR parts 1100 through 1150)). This information collection supports the reporting, recordkeeping, and third-party disclosure requirements associated with statutory requirements applicable to tobacco products and set forth in Agency regulations. Section 910(a)(1) of the FD&C Act defines a ''new tobacco product'' as a tobacco product that was not commercially marketed in the United States on February 15, 2007, or a modification (including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery, or form of nicotine, or any other additive or ingredient) of a tobacco product where the modified product was commercially marketed in the United States after February 15, 2007. An order under section 910(c)(1)(A)(i) of the FD&C Act is required prior to marketing a new tobacco product. This requirement applies unless the product has been shown to be substantially equivalent to a valid predicate product or is exempt from substantial equivalence (21 CFR 1107.1).

Section 910(b) of the FD&C Act states that a premarket tobacco application (PMTA) (part 1114) shall contain full reports of all investigations of health risks; a full statement of all components, ingredients, additives, and properties, and of the principle or principles of operation of such tobacco product; a full description of methods of manufacturing and processing (which includes a listing of all manufacturing, packaging, and control sites for the product); an explanation of how the product complies with applicable tobacco product standards; samples of the product and its components; and labeling.

FDA also encourages persons who would like to study their new tobacco product to meet with the Office of Science (OS) in the Center for Tobacco Products (CTP) to discuss their investigational plan. The request for a meeting should be sent in writing to the Director of CTP's Office of Science and should include adequate information for FDA to assess the potential utility of the meeting and to identify FDA staff necessary to discuss agenda items. Details regarding the process for requesting a meeting with OS and how FDA will respond may be found at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/meetings-industry-and-investigators-research-and-development-tobacco-products.*

FDA efforts regarding issuance of a final guidance for Harmful and Potentially Harmful Constituent reporting (and later a testing and reporting regulation under section 915 of the FD&C Act) is ongoing, and the guidance document will be issued consistent with our good guidance practice regulations found in 21 CFR 10.115, which provide for public comment at any time.

In the **Federal Register** of April 28, 2022 (87 FR 25280) we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
Obtaining an FDA Order Authorizing Marketing of Tobacco Product (PMTA application) and 21 CFR 25.40 Environmental Assessments	200	3.75	750	1,713	1,284,750
Request for Meeting with CTP's Office of Science to Discuss Investigational Plan	27	1	27	10	270
21 CFR part 1143 Cigar Warning Plans	1	1	1	1	1
Total					1,285,021

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates an average burden per respondent of 1,500 hours to prepare a PMTA seeking an order from FDA allowing the marketing of a new tobacco product. We assume, on average, an additional 213 hours is necessary to prepare an environmental assessment in accordance with the requirements of 21 CFR 25.40, for a total of 1,713 hours per PMTA application. This average represents a wide range of hours that will be required for these applications under different circumstances, with a small number requiring more hours (*e.g.,* as many as 5,000 hours for early applications that involve complex products and for which the company has no experience conducting studies or preparing analysis of public health impacts, or for which reliance on master files is not possible) as well as many requiring fewer hours (*e.g.,* as few as 50 hours for applications for products that are very similar to other new products). A PMTA may require one or more types of studies including chemical analysis, nonclinical studies, and clinical studies. FDA also estimates the number of PMTAs that FDA expects to receive annually will be 750 (642 electronic nicotine delivery systems (ENDS) Liquids and 108 ENDS Delivery Systems).

FDA anticipates that the 27 potential respondents to this collection may need to meet with CTP's Office of Science to discuss their investigational plans. This number has been reduced based on the average number of meeting requests received over the past 3 years. To request this meeting, applicants should compile and submit information to FDA for meeting approval. FDA estimates that it will take approximately 270 hours to compile and request a meeting with OS. We have revised the hours per response to be consistent with the meetings information collection for originally regulated products (OMB control number 0910–0731).

Based on the September 2020 order vacating the health warning requirements for cigars and pipe tobacco (set forth in 21 CFR 1143.3 and 1143.5) and remanding the Final Deeming Rule's warning requirements for cigars and pipe tobacco, we have removed the burden associated with this activity. We have included 1 token hour of burden associated with the requirements in part 1143 to acknowledge that the requirement remains in the regulations.

We have adjusted our burden estimate, which has resulted in a decrease to the currently approved burden. The total estimated burden for this information collection is 1,285,021 reporting hours and 778 annual responses. Our estimated burden for the information collection reflects an overall decrease of 2,779 hours and a corresponding decrease of 262 responses. We attribute this adjustment to updated information in the number of meeting requests with CTP's Office of Science to discuss investigational plans, the removal of burden for the cigar warning plans, the removal of the small-scale manufacturer reporting, and have therefore revised the estimated burden and number of respondents to the information collection.

Dated: October 5, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–22299 Filed 10–13–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–2316]

Discussion Paper: Distributed Manufacturing and Point-of-Care Manufacturing of Drugs; Request for Information and Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for information and comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing publication of a discussion paper providing information for stakeholders and soliciting public comments on specific areas of emerging and advanced manufacturing technologies. The discussion paper presents areas for consideration and policy development identified by the Center for Drug Evaluation and Research (CDER) scientific and policy experts associated with distributed manufacturing (DM) and point-of-care (POC) manufacturing for drugs, including biological products regulated by CDER and the Center for Biologics Evaluation and Research (CBER). FDA recognizes that regulatory policies and programs may need to evolve to enable the timely adoption of these technologies. The discussion paper includes a series of questions for each technology to stimulate feedback from the public.

DATES: Either electronic or written comments and information on the discussion paper must be submitted by December 13, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 13, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–N–2316 for ''Discussion Paper: Distributed Manufacturing and Point-of-Care Manufacturing of Drugs; Request for Information and Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions: To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on

https://www.regulations.gov. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Elizabeth Giaquinto Friedman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4162, Silver Spring, MD 20993, 240–402–7930, *Elizabeth.Giaquinto@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Advanced manufacturing is a general term for an innovative pharmaceutical manufacturing technology or approach that has the potential to improve the reliability and robustness of the manufacturing process and supply chain, and increase timely access to quality medicines for the American public. For the purposes of the discussion paper, all references to drugs include both human drugs and biological products (including those regulated by CBER), unless otherwise specified. Advanced manufacturing can: (1) integrate novel technological approaches, (2) use established techniques in an innovative way, or (3) apply production methods in a new domain. Advanced manufacturing can potentially be used for new or existing and large or small molecule drugs.

FDA has recognized and embraced the potential of advanced manufacturing for many years. CDER established the Emerging Technology Program in 2014 to work collaboratively with companies to support the use of advanced manufacturing. CDER has observed a rapid emergence of advanced manufacturing technologies through the Emerging Technology Program and recognizes that regulatory policies and programs may need to evolve to enable the timely adoption of these technologies. The National Academies of Sciences, Engineering, and Medicine issued a 2021 report entitled ''Innovation in Pharmaceutical Manufacturing on the Horizon: Technical Challenges, Regulatory Issues, and Recommendations'', noting potential innovations in integrated, flexible, and distributed manufacturing. These potential innovations include modular approaches to streamline drug development and production, and the deployment and use of highly portable manufacturing units. A range of drug manufacturers have recently engaged CDER through the Emerging Technology Program specifically regarding the development of portable and distributed manufacturing platforms.

CBER established the CBER Advanced Technologies Team in 2019 to promote dialogue, education, and input between CBER and prospective innovators and developers of advanced manufacturing technologies. Through these interactions, CBER has observed interest from manufacturers in the implementation of novel manufacturing approaches for CBER-regulated products. CBER also recognizes the need to consider developing a regulatory framework to facilitate the adoption of these emerging technologies. CBER expects the development of advanced manufacturing technologies associated with DM and POC manufacturing for products that it regulates.

The discussion paper (available on FDA's website at: CDER's Framework for Regulatory Advanced Manufacturing Evaluation (FRAME) Initiative | FDA) presents areas for consideration and policy development identified by CDER scientific and policy experts associated with DM and POC manufacturing that would be valuable as FDA considers developing a regulatory framework that contemplates these technologies for CDER- and CBER-regulated drug and biological products. For the purposes of the discussion paper, CDER and CBER define DM to be a decentralized manufacturing strategy consisting of a manufacturing platform of manufacturing units deployed to multiple locations; POC manufacturing is defined as a subset of DM that uses manufacturing units distributed to host sites in proximity to patient care (*e.g.,* healthcare facilities). Regulatory areas of consideration include applicable statutory provisions, regulations, and guidance related to quality assessment and inspections that could affect an applicant's ability to comply with the current regulatory framework or FDA's assessment of a marketing application.

II. Requested Information and Comments

Interested persons are invited to provide detailed comments to CDER and CBER (see **ADDRESSES**) on all aspects described in the discussion paper. The discussion paper is available on FDA's website for the FRAME initiative at: CDER's Framework for Regulatory Advanced Manufacturing Evaluation (FRAME) Initiative | FDA. To facilitate input, FDA has developed a series of questions after each technology described in the discussion paper. The questions are not meant to be exhaustive, and FDA is also interested in any other pertinent information stakeholders would like to share on this topic. This feedback will help inform the Agency's policy development regarding the technologies described in the discussion paper. FDA encourages stakeholders to provide the specific rationale and basis for their comments, including any available supporting data and information.

Dated: October 11, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–22386 Filed 10–13–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–0973]

Comparability Protocols for Postapproval Changes to the Chemistry, Manufacturing, and Controls Information in a New Drug Application, Abbreviated New Drug Application, or Biologics License Application; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Comparability Protocols for Postapproval Changes to the Chemistry, Manufacturing, and Controls Information in an NDA, ANDA, or BLA.'' This final guidance is intended to assist original applicants and holders of approved new drug applications (NDAs), abbreviated new drug applications (ANDAs), and biologics

license applications (BLAs) on implementing a chemistry, manufacturing, and controls (CMC) postapproval change(s) through the use of a comparability protocol (CP). In many cases, submission and approval of a CP will facilitate the subsequent implementation and reporting of CMC changes, which could result in moving a drug or biological product into distribution or facilitating a proactive approach to reinforcing the supply of a product sooner than if a CP were not used. This final guidance recommends a framework to promote continuous improvement in the manufacturing of quality drug and biological products. This document finalizes a revised draft guidance that published on April 20, 2016, entitled ''Comparability Protocols for Human Drugs and Biologics: Chemistry, Manufacturing, and Controls Information.'' A related draft guidance entitled ''Comparability Protocols—Protein Drug Products and Biological Products—Chemistry, Manufacturing, and Controls Information'' that published in September 2003, was withdrawn on May 6, 2015.

DATES: The announcement of the guidance is published in the **Federal Register** on October 14, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–D–0973 for ''Comparability Protocols for Postapproval Changes to the Chemistry, Manufacturing, and Controls Information in an NDA, ANDA, or BLA.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002 or the Center for Biologics Evaluation and Research, Office of Communication, Outreach, and Development, 10903 New Hampshire Ave., WO71, Room 3128, Silver Spring, MD 20903. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Stephen Moore, Center for Drug Evaluation and Research, Food and Drug Administration, Bldg. 51, Rm. 4159, 10903 New Hampshire Ave., Silver Spring, MD, 20993–0002, 301–796–7579 or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Comparability Protocols for Postapproval Changes to the Chemistry, Manufacturing, and Controls Information in an NDA, ANDA, or BLA.'' The final guidance is intended to assist original applicants and holders of approved applications for human drugs and biological products on implementing a CMC postapproval change(s) through the use of a CP. In this guidance, a comparability protocol is synonymous with a postapproval change management protocol in the International Council for Harmonisation (ICH) Q12 guidance ''Technical and Regulatory Considerations for Pharmaceutical Product Lifecycle Management'' (May 2021). The final guidance is not applicable to blood and blood components; biological products that also meet the definition of a device in section 201(h) of the Federal Food,

Drug, and Cosmetic Act; or human cells, tissues, or cellular or tissue-based products regulated solely under section 361 of the Public Health Service Act (42 U.S.C. 264) and 21 CFR part 1271.

On April 20, 2016, (81 FR 23303), FDA announced the availability of a revised draft guidance entitled ''Comparability Protocols for Human Drugs and Biologics: Chemistry, Manufacturing, and Controls Information.'' This was a revised draft of a draft guidance published in February 2003. We revised the February 2003 draft guidance in 2016 for the following reasons:

- To include current pharmaceutical quality concepts.
- To provide more flexibility regarding filing procedures for a notification of modifications to an approved CP in less burdensome reporting categories than a prior approval supplement.
- To add an appendix to address commonly asked questions.

The Center for Veterinary Medicine, which was included in the February 2003 draft guidance, published recommendations for animal drugs in a separate guidance.

We received a number of comments on the revised draft guidance, which the Agency considered carefully as it prepared this final guidance. Additional information has been included in the final guidance on proposing an appropriate reporting category for implementation of changes under a CP once approved. Additional examples have been included for notification of modifications to an approved CP in less burdensome reporting categories than a prior approval supplement. Information has been included in the appendix on cross-referencing of a master file, including a Drug Master File, in a CP and submitting a CP to a master file. Also, the recommendations in the guidance for industry ICH Q12 have been carefully considered when revising this guidance to maximize consistency. We also have made clarifications and editorial changes to the final guidance document.

This final guidance provides recommendations to original applicants and holders of approved applications for human drugs and certain biological products on implementing CMC postapproval change(s) through the use of a CP. In many cases, submission and approval of a CP will facilitate the subsequent implementation and reporting of CMC changes, which could result in moving a drug or biological product into distribution or facilitating a proactive approach to reinforcing the supply of a product sooner than if a CP were not used.

The final guidance recommends a framework to promote continuous improvement in the manufacturing of quality drug and biological products by encouraging applicants to employ the following:

- Effective use of knowledge and understanding of the product and manufacturing process;
- Risk management activities over the life cycle of a product; and
- An effective pharmaceutical quality system

This final guidance incorporates the modern regulatory concepts stated in the guidance for industry entitled ''PAT—A Framework for Innovative Pharmaceutical Development, Manufacturing, and Quality Assurance,'' the Pharmaceutical Quality for the 21st Century—A Risk Based Approach, the Critical Path Initiative, and the quality by design principles described in the guidance for industry entitled ''Q8(R2) Pharmaceutical Development.''

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Comparability Protocols for Postapproval Changes to the Chemistry, Manufacturing, and Controls Information in an NDA, ANDA, or BLA.'' It does not establish any rights for any person and, with the exception of section V, is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

As noted, insofar as section V of this guidance sets forth that certain modifications to an approved CP must be submitted in a changes being effected supplement or annual report rather than a prior approval supplement, it has binding effect, as indicated by the use of the words *must, shall,* or *required.* Such binding effect derives from section 506A of the FD&C Act, as implemented in 21 CFR 314.70 and 601.12.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338. The collections of information in 21 CFR parts 210 and 211 relating to current good manufacturing practices have been approved under OMB control number 0910–0139. The collections of information relating to section 351(k) of the PHS Act have been approved under OMB control number 0910–0718.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: October 7, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–22334 Filed 10–13–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–2335]

Prescription Drug User Fee Act VII; Independent Assessment of Communication Through Product Quality Information Requests During Application Review; Statement of Work; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the Statement of Work to assess communication between FDA and sponsors through product quality information requests during application review and to identify best practices and areas of improvement. The independent assessment is part of FDA performance commitments under the recent reauthorization of the Prescription Drug User Fee Act (PDUFA). The independent assessment of FDA and sponsors in communicating through product quality information requests is described in detail in the document entitled ''PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2023 Through 2027.'' As part of FDA performance commitments described in this document, the assessment will be conducted by an

independent contractor. FDA is providing for public comment on the statement of work before revising as needed and requesting contractor proposals.

DATES: Either electronic or written comments on the statement of work must be submitted by November 14, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 14, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–N–2335 for ''Prescription Drug User Fee Act VII Commitment to Assess Current Practices of the Food and Drug Administration and Sponsors in Communicating Through Product Quality Information Requests During Application Review.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Emily Ewing, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1148, Silver Spring, MD 20993–0002, 240–402–0196, *Emily.Ewing@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: PDUFA provides FDA with a source of stable, consistent funding that has made it possible for the Agency to focus on promoting innovative therapies and help bring to market critical products for patients. When PDUFA was originally authorized in 1992, it had a 5-year term. The program has been subsequently reauthorized every 5 years. To prepare for reauthorization of PDUFA for the next 5-year period (2023 to 2027), FDA conducted negotiations with the regulated industry and held regular consultations with public stakeholders, including patient advocates, consumer advocates, and healthcare professionals between September 2020 and February 2021.

Following these discussions, related public meetings, and Agency requests for public comment, FDA published the ''PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2023 Through 2027'' document, available at *https://www.fda.gov/media/151712/download,* also known as the PDUFA VII ''goals letter,'' to supplement the statute. The goals letter includes the performance goals, procedures, and commitments that apply to aspects of the human drug review program that are important for facilitating timely access to safe, effective, and innovative new medicines for patients. Several of these commitments aim to continue to enhance communication between FDA and sponsors during application review.

FDA and sponsors interact in a variety of ways throughout application review. One such way is via a communication called an information request (IR), sent to an applicant as the discipline review occurs. FDA uses IRs to request further information or clarification that is needed or would be helpful to allow completion of the discipline review. IRs may be in the form of letters, emails, or faxes.

FDA uses product quality IRs to request further information or clarification needed for FDA's assessment of identity, strength, quality, purity, or potency of drug substances or drug products. Ensuring that patients can have confidence in the safety and effectiveness of their medications is a longstanding priority for FDA. The Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) have

worked to address this priority in part by performing Chemistry, Manufacturing, and Controls (CMC) reviews for CDER-regulated and CBER-regulated products. CDER or CBER may issue a product quality, or CMC, IR as a result of CMC assessments conducted in support of the application.

IRs from both CDER and CBER are expected to follow Four-Part Harmony in which reviewers are expected to communicate: (1) what was provided, (2) what is the issue or deficiency, (3) what is needed, and (4) why it is needed. This expectation can be found in CDER's Manual of Policies and Procedures (MAPP) 5016.8, ''Communication Guidelines for Quality-Related Information Requests and Deficiencies.'' As a result of FDA's implementation of Four-Part Harmony in CMC–IRs, sponsors should understand what information FDA needs to continue their review. The PDUFA VII goals letter includes commitments for FDA to update and conduct training on existing policies and procedures (MAPPs and Standard Operating Policy and Procedure (SOPPs)), to reflect Four-Part Harmony. CDER MAPP 5016.8, ''Communication Guidelines for Quality-Related Information Requests and Deficiencies'' will be revised and made public. CBER SOPP 8401.1, ''Issuance of and Review of Responses to Information Request Communications to Pending Applications'' will also be revised.

In addition to updating the documents and conducting training, FDA is committed to contracting with an independent third party to assess current practices of CDER, CBER, and sponsors in communicating through product quality IRs during application review and effectiveness of Four-Part Harmony. This assessment will identify best practices and areas of improvement in communications between FDA review staff and sponsors through product quality IRs and is the subject of this task order.

The Statement of Work can be accessed at: *https://www.fda.gov/industry/prescription-drug-user-fee-amendments/pdufa-vii-assessment-fda-and-sponsor-communications-through-product-quality-information-requests.*

Dated: October 7, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–22335 Filed 10–13–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0008]

Request for Nominations for Individuals and Consumer Organizations for Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is requesting that any consumer organizations interested in participating in the selection of voting and/or nonvoting consumer representatives to serve on its advisory committees or panels notify FDA in writing. FDA is also requesting nominations for voting and/or nonvoting consumer representatives to serve on advisory committees and/or panels for which vacancies currently exist or are expected to occur in the near future. Nominees recommended to serve as a voting or nonvoting consumer representative may be self-nominated or may be nominated by a consumer organization. FDA seeks to include the views of individuals on its advisory committee regardless of their gender identification, religious affiliation, racial and ethnic identification, or disability status and, therefore, encourages nominations of appropriately qualified candidates from all groups.

DATES: Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests on an FDA advisory committee or panel may send a letter or email stating that interest to FDA (see **ADDRESSES**) by November 28, 2022, for vacancies listed in this notice. Concurrently, nomination materials for prospective candidates should be sent to FDA (see **ADDRESSES**) by November 28, 2022. Nominations will be accepted for current vacancies and for those that will or may occur through December 31, 2023.

ADDRESSES: All statements of interest from consumer organizations interested in participating in the selection process should be submitted electronically to *ACOMSSubmissions@fda.hhs.gov or* by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002.

Consumer representative nominations should be submitted electronically by logging into the FDA Advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm,* or by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002. Additional information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT:

For questions relating to participation in the selection process: Kimberly Hamilton, Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002, 301–796–8220, *kimberly.hamilton@fda.hhs.gov.*

For questions relating to specific advisory committees or panels, contact the appropriate contact person listed in table 1.

TABLE 1—ADVISORY COMMITTEE CONTACTS

Contact person	Committee/panel
Rakesh Raghuwanshi, Office of the Chief Scientist, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 3309, Silver Spring, MD 20993–0002, 301–796–4769, *Rakesh.Raghuwanshi@fda.hhs.gov*.	FDA Science Board Advisory Committee.
Prabhakara Atreya, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 1226, Silver Spring, MD 20993–0002, 240–402–8006, *Prabhakara.Altreya@fda.hhs.gov*.	Allergenic Products Advisory Committee.

TABLE 1—ADVISORY COMMITTEE CONTACTS—Continued

Contact person	Committee/panel
Moon Hee Choi, Center for Drugs Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2434, Silver Spring, MD 20993–0002, 301–796–2894, *MoonHee.Choi@fda.hhs.gov*.	Anesthetic and Analgesic Drug Products Advisory Committee, Non-Prescription Drugs Advisory Committee.
She-Chia Chen, Center for Drugs Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31 Rm. 2438, Silver Spring, MD 20993–0002, 240–402–5343, *She-Chia.Chen@fda.hhs.gov*.	Antimicrobial Drugs Advisory Committee.
Jessica Seo, Center for Drugs Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2412, Silver Spring, MD 20993–0002, 301–796–7699, *Jessica.Seo@fda.hhs.gov*.	Arthritis Advisory Committee, Peripheral and Central Nervous System Drugs Advisory Committee.
Yvette Staples, Center for Drugs Evaluation Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2438, Silver Spring, MD 20993–0002, 301–837–7126, *Yvette.Staples@fda.hhs.gov*.	Cardiovascular and Renal Drugs Advisory Committee, Medical Imaging Drugs Advisory Committee.
LaToya Bonner, Center for Drugs Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2428, Silver Spring, MD 20993–0002, 301–796–2855, *LaToya.Bonner@fda.hhs.gov*.	Endocrinologic and Metabolic Drugs Advisory Committee.
Takyiah Stevenson, Center for Drugs Evaluation Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2406, Silver Spring, MD 20993–0002, 240–402–2507, *Takyiah.Stevenson@fda.hhs.gov*.	Pharmacy Compounding Advisory Committee.
Joyce Frimpong, Center for Drugs Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2462, Silver Spring, MD 20993–0002, 301–796–7973, *Joyce.Frimpong@fda.hhs.gov*.	Psychopharmacologic Drugs Advisory Committee.
Candace Nalls, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993–0002, 301–636–0510, *Candace.Nalls@fda.hhs.gov*.	Anesthesiology and Respiratory Therapy Devices Panel; Clinical Chemistry and Clinical Toxicology Devices Panel; Ear, Nose and Throat Devices Panel; Gastroenterology-Urology Devices Panel; General and Plastic Surgery Devices Panel.
James Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993–0002, 301–796–6313, *James.Swink@fda.hhs.gov*.	Circulatory System Devices Panel; Microbiology Devices Panel.
Akinola Awojope, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5216, Silver Spring, MD 20993–0002, 301–636–0512, *Akinola.Awojope@fda.hhs.gov*.	Dental Products Panel; Obstetrics and Gynecology Devices Panel; Orthopaedic and Rehabilitation Devices Panel.
Jarrod Collier, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993–0002, 240–672–5763, *Jarrod.Collier@fda.hhs.gov*.	General Hospital and Personal Use Devices Panel; Hematology and Pathology Devices Panel; Molecular and Clinical Genetics Panel; Ophthalmic Devices Panel; Radiological Devices Panel.
James Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993–0002, 301–796–6313, *James.Swink@fda.hhs.gov*.	National Mammography Quality Assurance Advisory Committee.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting and/or nonvoting consumer representatives for the vacancies listed in table 2:

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
FDA Science Board Advisory Committee—The Science Board provides advice to the Commissioner of Food and Drugs Administration (Commissioner) and other appropriate officials on specific complex scientific and technical issues important to FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board provides advice that supports the Agency in keeping pace with technical and scientific developments, including in regulatory science; and input into the Agency's research agenda, and on upgrading its scientific and research facilities and training opportunities. It also provides, where requested, expert review of Agency-sponsored intramural and extramural scientific research programs.	1—Voting	Immediately.
Allergenic Products Advisory Committee—Knowledgeable in the fields of allergy, immunology, pediatrics, internal medicine, biochemistry, and related specialties.	1—Voting	Immediately.

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED—Continued

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
Anesthetic and Analgesic Drug Products Advisory Committee—Knowledgeable in the fields of anesthesiology, surgery, epidemiology or statistics, and related specialties.	1—Voting	April 1, 2023.
Non-Prescription Drugs Advisory Committee—Knowledgeable in the fields of internal medicine, family practice, clinical toxicology, clinical pharmacology, pharmacy, dentistry, and related specialties.	1—Voting	Immediately.
Antimicrobial Drugs Advisory Committee—Knowledgeable in the fields of infectious disease, internal medicine, microbiology, pediatrics, epidemiology or statistics, and related specialties.	1—Voting	May 1, 2023.
Arthritis Advisory Committee—Knowledgeable in the fields of arthritis, rheumatology, orthopedics, epidemiology or statistics, analgesics, and related specialties.	1—Voting	December 1, 2023.
Peripheral and Central Nervous Systems Drugs Advisory Committee—Knowledgeable in the fields of neurology, neuropharmacology, neuropathology, otolaryngology, epidemiology or statistics, and related specialties.	1—Voting	February 1, 2023.
Cardiovascular and Renal Drugs Advisory Committee—Knowledgeable in the fields of cardiology, hypertension, arrhythmia, angina, congestive heart failure, diuresis, and biostatistics.	1—Voting	July 1, 2023.
Medical Imaging Drugs Advisory Committee—Knowledgeable in the fields of nuclear medicine, radiology, epidemiology, statistics, and related specialties.	1—Voting	Immediately.
Endocrinologic and Metabolic Drugs Advisory Committee—Knowledgeable in the fields of endocrinology, metabolism, epidemiology or statistics, and related specialties.	1—Voting	Immediately.
Pharmacy Compounding Advisory Committee—Knowledgeable in the fields of pharmaceutical compounding, pharmaceutical manufacturing, pharmacy, medicine, and other related specialties.	1—Voting	October 1, 2023.
Psychopharmacologic Drugs Advisory Committee—Knowledgeable in the fields of psychopharmacology, psychiatry, epidemiology or statistics, and related specialties.	1—Voting	Immediately.
Anesthesiology and Respiratory Therapy Devices Panel—Anesthesiologists, pulmonary medicine specialists, or other experts who have specialized interests in ventilator support, pharmacology, physiology, or the effects and complications of anesthesia.	1—Nonvoting	Immediately.
Clinical Chemistry and Clinical Toxicology Devices Panel—Doctor of Medicine or Philosophy with experience in clinical chemistry (*e.g.,* cardiac markers), clinical toxicology, clinical pathology, clinical laboratory medicine, and endocrinology.	1—Nonvoting	Immediately.
Ear, Nose and Throat Devices Panel—Otologists, neurotologists, audiologists	1—Nonvoting	November 1, 2023.
Gastroenterology-Urology Devices Panel—Gastroenterologists, urologists, and nephrologists	1—Nonvoting	Immediately.
General and Plastic Surgery Devices Panel—Surgeons (general, plastic, reconstructive, pediatric, thoracic, abdominal, pelvic, and endoscopic); dermatologists; experts in biomaterials, lasers, wound healing, and quality of life; and biostatisticians.	1—Nonvoting	Immediately.
Circulatory System Devices Panel—Interventional cardiologists, electrophysiologists, invasive (vascular) radiologists, vascular and cardiothoracic surgeons, and cardiologists with special interest in congestive heart failure.	1—Nonvoting	Immediately.
Microbiology Devices Panel—Clinicians with an expertise in infectious disease, *e.g.,* pulmonary disease specialists, sexually transmitted disease specialists, pediatric infectious disease specialists, experts in tropical medicine and emerging infectious diseases, mycologists; clinical microbiologists and virologists; clinical virology and microbiology laboratory directors, with expertise in clinical diagnosis and in vitro diagnostic assays, *e.g.,* hepatologists; molecular biologists.	1—Nonvoting	Immediately.
Dental Products Panel—Dentists, engineers and scientists who have expertise in the areas of dental implants, dental materials, periodontology, tissue engineering, and dental anatomy.	1—Nonvoting	Immediately.
Obstetrics and Gynecology Devices Panel—Experts in perinatology, embryology, reproductive endocrinology, pediatric gynecology, gynecological oncology, operative hysteroscopy, pelviscopy, electrosurgery, laser surgery, assisted reproductive technologies, contraception, postoperative adhesions, and cervical cancer and colposcopy; biostatisticians and engineers with experience in obstetrics/gynecology devices; urogynecologists; experts in breast care; experts in gynecology in the older patient; experts in diagnostic (optical) spectroscopy; experts in midwifery; labor and delivery nursing.	1—Nonvoting	Immediately.
Orthopaedic and Rehabilitation Devices Panel—Orthopedic surgeons (joint spine, trauma, and pediatric); rheumatologists; engineers (biomedical, biomaterials, and biomechanical); experts in rehabilitation medicine, sports medicine, and connective tissue engineering; and biostatisticians.	1—Nonvoting	Immediately.
General Hospital and Personal Use Devices Panel—Internists, pediatricians, neonatologists, endocrinologists, gerontologists, nurses, biomedical engineers, or microbiologists/infection control practitioners or experts.	1—Nonvoting	Immediately.
Hematology and Pathology Devices Panel—Hematologists (benign and/or malignant hematology), hematopathologists (general and special hematology, coagulation and hemostasis, and hematological oncology), gynecologists with special interests in gynecological oncology, cytopathologists, and molecular pathologists with special interests in development of predictive biomarkers.	1—Nonvoting	Immediately.
Molecular and Clinical Genetics Devices Panel—Experts in human genetics and in the clinical management of patients with genetic disorders, *e.g.,* pediatricians, obstetricians, neonatologists. The Agency is also interested in considering candidates with training in inborn errors of metabolism, biochemical and/or molecular genetics, population genetics, epidemiology, and related statistical training. Additionally, individuals with experience in genetic counseling, medical ethics, as well as ancillary fields of study will be considered.	1—Nonvoting	Immediately.

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED—Continued

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
Ophthalmic Devices Panel—Ophthalmists with expertise in corneal-external disease, vitreo-retinal surgery, glaucoma, ocular immunology, ocular pathology; optometrists; vision scientists; and ophthalmic professionals with expertise in clinical trial design, quality of life assessment, electrophysiology, low vision rehabilitation, and biostatistics.	1—Nonvoting	Immediately.
Radiological Devices Panel—Physicians with experience in general radiology, mammography, ultrasound, magnetic resonance, computed tomography, other radiological subspecialties, and radiation oncology; scientists with experience in diagnostic devices, radiation physics, statistical analysis, digital imaging, and image analysis.	1—Nonvoting	Immediately.
National Mammography Quality Assurance Advisory Committee—Physician, practitioner, or other health professional whose clinical practice, research specialization, or professional expertise includes a significant focus on mammography.	3—Voting	Immediately.

I. Functions and General Description of the Committee Duties

A. FDA Science Board Advisory Committee

The Science Board Advisory Committee (Science Board) provides advice to the Commissioner of Food and Drugs (Commissioner) and other appropriate officials on specific complex scientific and technical issues important to FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board provides advice that supports the Agency in keeping pace with technical and scientific developments, including in regulatory science, and input into the Agency's research agenda and on upgrading its scientific and research facilities and training opportunities. It also provides, where requested, expert review of Agency-sponsored intramural and extramural scientific research programs.

B. Allergenic Products Advisory Committee

Reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of marketed and investigational allergenic biological products or materials that are administered to humans for the diagnosis, prevention, or treatment of allergies and allergic disease and makes appropriate recommendations to the Commissioner regarding the affirmation or revocation of biological product licenses, on the safety, effectiveness, and labeling of the products, on clinical and laboratory studies of such products, on amendments or revisions to regulations governing the manufacture, testing, and licensing of allergenic biological products, and on the quality and relevance of FDA's research programs.

C. Anesthetic and Analgesic Drug Products Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in anesthesiology and surgery.

D. Nonprescription Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products, or any other FDA-regulated product, for use in the treatment of a broad spectrum of human symptoms and diseases and advises the Commissioner either on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded or on the approval of new drug applications for such drugs. The Committee serves as a forum for the exchange of views regarding the prescription and nonprescription status, including switches from one status to another, of these various drug products and combinations thereof. The Committee may also conduct peer review of Agency sponsored intramural and extramural scientific biomedical programs in support of FDA's mission and regulatory responsibilities.

E. Antimicrobial Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders.

F. Arthritis Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of arthritis, rheumatism, and related diseases.

G. Peripheral and Central Nervous System Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of neurologic diseases.

H. Cardiovascular and Renal Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of cardiovascular and renal disorders.

I. Medical Imaging Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology.

J. Endocrinologic and Metabolic Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of endocrine and metabolic disorders.

K. Pharmacy Compounding Advisory Committee

Provides advice on scientific, technical, and medical issues concerning drug compounding by pharmacists and licensed practitioners.

L. Psychopharmacologic Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human

drug products for use in the practice of psychiatry and related fields.

M. Medical Devices Advisory Committee Panels

The Medical Devices Advisory Committee has established certain panels to review and evaluate data on the safety and effectiveness of marketed and investigational devices and make recommendations for their regulation. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area: (1) advises on the classification or reclassification of devices into one of three regulatory categories and advises on any possible risks to health associated with the use of devices; (2) advises on formulation of product development protocols; (3) reviews premarket approval applications for medical devices; (4) reviews guidelines and guidance documents; (5) recommends exemption of certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act; (6) advises on the necessity to ban a device; and (7) responds to requests from the Agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Dental Products Panel reviews and evaluates data concerning the safety and effectiveness of marketed and investigational products for use in dentistry, endodontics or bone physiology relative to the oral and maxillofacial area.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and Agency guidance and policies. The Panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or Agency decisions or actions.

N. National Mammography Quality Assurance Advisory Committee

Advises the Agency on the development of appropriate quality standards and regulations for mammography facilities; standards and regulations for bodies accrediting mammography facilities under this program; regulations with respect to sanctions; procedures for monitoring compliance with standards; establishing a mechanism to investigate consumer complaints; reporting new developments concerning breast imaging that should be considered in the oversight of mammography facilities. The Committee also advises on determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas; determining whether there will be a sufficient number of medical physicists after October 1, 1999; and determining the costs and benefits of compliance with these requirements.

II. Criteria for Members

Persons nominated for membership as consumer representatives on committees or panels should meet the following criteria: (1) demonstrate an affiliation with and/or active participation in consumer or community-based organizations, (2) be able to analyze technical data, (3) understand research design, (4) discuss benefits and risks, and (5) evaluate the safety and efficacy of products under review. The consumer representative should be able to represent the consumer perspective on issues and actions before the advisory committee; serve as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations; and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

III. Selection Procedures

Selection of members representing consumer interests is conducted through procedures that include the use of organizations representing the public interest and public advocacy groups. These organizations recommend nominees for the Agency's selection. Representatives from the consumer health branches of Federal, State, and local governments also may participate in the selection process. Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests should send a letter stating that interest to FDA (see **ADDRESSES**) within 30 days of publication of this document.

Within the subsequent 45 days, FDA will compile a list of consumer organizations that will participate in the selection process and will forward to each such organization a ballot listing at least two qualified nominees selected by the Agency based on the nominations received, together with each nominee's current curriculum vitae or résumé. Ballots are to be filled out and returned to FDA within 30 days. The nominee receiving the highest number of votes ordinarily will be selected to serve as the member representing consumer interests for that particular advisory committee or panel.

IV. Nomination Procedures

Any interested person or organization may nominate one or more qualified persons to represent consumer interests on the Agency's advisory committees or panels. Self-nominations are also accepted. Nominations must include a current, complete résumé or curriculum vitae for each nominee and a signed copy of the *Acknowledgement and Consent* form available at the FDA Advisory Nomination Portal (see **ADDRESSES**), and a list of consumer or community-based organizations for which the candidate can demonstrate active participation.

Nominations must also specify the advisory committee(s) or panel(s) for which the nominee is recommended. In addition, nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest. Members will be invited to serve for terms of up to 4 years.

FDA will review all nominations received within the specified timeframes and prepare a ballot containing the names of qualified nominees. Names not selected will remain on a list of eligible nominees and be reviewed periodically by FDA to determine continued interest. After selecting qualified nominees for the ballot, FDA will provide those consumer organizations that are participating in the selection process with the opportunity to vote on the listed nominees. Only organizations vote in the selection process. Persons who nominate themselves to serve as voting or nonvoting consumer representatives will not participate in the selection process.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: October 6, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–22305 Filed 10–13–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–1026]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Text Analysis of Proprietary Drug Name Interpretations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by November 14, 2022.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The title of this information collection is ''Text Analysis of Proprietary Drug Name Interpretations.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

For copies of the questionnaire: Office of Prescription Drug Promotion (OPDP) Research Team, *DTCresearch@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Text Analysis of Proprietary Drug Name Interpretations

OMB Control Number 0910—NEW

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA-regulated products in carrying out the provisions of the FD&C Act.

The Office of Prescription Drug Promotion's (OPDP) mission is to protect the public health by helping to ensure that prescription drug promotion is truthful, balanced, and accurately communicated. OPDP's research program provides scientific evidence to help ensure that our policies related to prescription drug promotion will have the greatest benefit to public health. Toward that end, we have consistently conducted research to evaluate the aspects of prescription drug promotion that are most central to our mission. Our research focuses in particular on three main topic areas: advertising features, including content and format; target populations; and research quality. Through the evaluation of advertising features, we assess how elements such as graphics, format, and disease and product characteristics impact the communication and understanding of prescription drug risks and benefits. Focusing on target populations allows us to evaluate how understanding of prescription drug risks and benefits may vary as a function of audience, and our focus on research quality aims at maximizing the quality of research data through analytical methodology development and investigation of sampling and response issues. This study will inform all three topic areas.

Because we recognize the strength of data and the confidence in the robust nature of the findings are improved through the results of multiple converging studies, we continue to develop evidence to inform our thinking. We evaluate the results from our studies within the broader context of research and findings from other sources, and this larger body of knowledge collectively informs our policies as well as our research program. Our research is documented on our home page, which can be found at *https://www.fda.gov/about-fda/center-drug-evaluation-and-research-cder/office-prescription-drug-promotion-opdp-research.* The website includes links to the latest **Federal Register** notices and peer-reviewed publications produced by our office.

As part of the prescription drug regulatory review process, sponsors propose proprietary names for their products. These names undergo a proprietary name review that involves the Office of Surveillance and Epidemiology, the relevant medical office, and OPDP. OPDP reviews names to assess for alignment with the FD&C Act, which provides, among other things, that labeling can misbrand a product if false or misleading representations are made (see 21 U.S.C. 321(n) and 352(a)). A proprietary name that appears in labeling could result in such misbranding if it is false or misleading. OPDP reviews, among other things, whether names: (1) overstate the efficacy or safety of the drug, (2) suggest drug indications that are not accurate, (3) suggest superiority without substantiation, or (4) are of a fanciful nature that misleadingly implies unique effectiveness or composition. It would be helpful in OPDP's review of promotional implications of proprietary names for data on consumer and prescriber interpretations of proposed proprietary names to be more readily available for consideration. The proposed research will use text analysis (*e.g.,* topic modeling and sentiment analysis) to learn how consumer and primary care physician (PCP) populations interpret prescription drug names, which will assist OPDP's consideration of promotional implications.

This proposed research builds upon and extends OPDP's research entitled ''Empirical Study of Promotional Implications of Proprietary Prescription Drug Names'' (86 FR 14440; March 16, 2021). That research involves an experimental design intended to assess names that potentially overstate the efficacy of a product. In contrast, the proposed research involves a survey design that comprises primarily open-ended questions intended to generate text for analysis, an approach that is unrestricted in its ability to assess text with different types of promotional implications (*e.g.,* minimization of risk and unsubstantiated claims of superiority, in addition to overstatement of efficacy). The proposed research will add to the depth and breadth of knowledge we can draw from during the review of proposed proprietary drug names.

The key objectives of the proposed research are as follows:

1. To apply new techniques such as topic modeling and sentiment analysis (forms of text analysis) to answer OPDP's research questions about

consumer and PCP interpretations of proprietary prescription drug names.

2. To help develop a methodological approach for assessing consumer and prescriber interpretations of drug names, which can potentially be used in the future as a standard assessment tool.

Our methodological approach will involve nationally representative samples. Consumers will be recruited from Ipsos Public Affairs KNOWLEDGEPANEL. PCPs will be recruited using a two-stage approach that will begin with a purchased list of PCPs based on the American Medical Association Physician Masterfile. These members will then be matched to one or more sample provider lists to recruit PCP participants for this study. We propose a sample of 300 consumers and 300 PCPs for the main study. We have designed a within-subjects experiment in which participants will be exposed to multiple drug names to maximize power to find differences with this sample size. The stimuli will comprise 60 experimental names and 60 control names. Participants will be randomized to 1 of 10 groups so that no one responds to more than 12 names in total. Each participant will see six experimental names and six control names. The experimental names will be names with suspected promotional implications, whereas the control names will not have suspected promotional implications. Names will be viewed in random order. Participants will respond in open-ended text boxes about their perceptions of each drug name. Supplementary closed-ended questions may also be presented. We will conduct text analysis of the responses and present descriptive results for individual drug names by participant cohort (*i.e.,* consumers versus PCPs), and we will also code and compare responses across types of drug names.

In the **Federal Register** of November 1, 2021 (86 FR 60254), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received two comments that were Paperwork Reduction Act (PRA) related. Within those submissions, FDA received multiple comments that the Agency has addressed. For brevity, some public comments are paraphrased and therefore may not state the exact language used by the commenter. All comments were considered even if they were not fully captured by our paraphrasing in this document. Comments and responses are numbered here for organizational purposes only.

(Comment 1) One comment contended that FDA should revise the questionnaire to capture real-world conditions more closely in which PCPs and consumers form impressions of proprietary names. The comment suggested that while FDA stated that ''[t]he experimental names will be names with suspected promotional implications'' in the **Federal Register** notice, the Agency does not approve proprietary names with ''suspected promotional implications.'' The comment also stated that FDA's proposed approach would not mimic the real-world conditions in which mention of a drug's indication triggers a requirement to provide safety information as well. The comment suggested that either FDA could consider providing only the drug name in a way that is similar to the information provided in reminder advertising, or it could provide a balanced presentation as required under the relevant regulations.

(Response 1) As previously described, sponsors propose proprietary names for their products, including those with promotional implications, as part of the prescription drug regulatory review process. One purpose of this study is to investigate methodological options for collecting insights from consumers and providers during the review process that might help FDA make determinations about whether drug names have promotional implications that misbrand a product. As for real-world conditions, our initial focus is on establishing correlation or causation in a more controlled setting—such as a randomized controlled trial or the type of rigorous experimental study we have planned.

(Comment 2) One comment suggested that FDA does not state how the information obtained from the specified study will be useful or how it will be used to inform name reviews. The comment then asserted that the link between this information and the implementation of FDA's misbranding authorities and proprietary name review, and thus the practical utility of the survey, is unclear.

(Response 2) FDA's review of proprietary names is conducted to help ensure that proposed proprietary names do not contribute to misbranding a drug or to other violation(s) of the FD&C Act and Agency regulations, particularly when that proprietary name appears in labeling. (See, *e.g.,* 21 U.S.C. 321(n) and 352(a).) We conduct our review of proprietary names in accordance with applicable legal authorities.

The existing study is a first step in exploring the utility of text analysis for collection of data on proprietary prescription drug names. Determining how names are processed and understood by consumers and healthcare providers (HCPs) is important information to be considered in the review of proposed prescription drug names. This program of research is being conducted to increase the body of evidence upon which experts can rely when assessing proposed proprietary names.

(Comment 3) One comment stated that FDA should revise question 1. The comment advised that the instructions should make clear that the respondent can write ''no impression'' if the name does not, in the respondent's view, communicate any information related to the particular attribute of the drug. In addition, the comment stated that the last question, asking respondents to write a brief narrative, is confusing and unnecessary and that the objective and practical utility of this exercise are unclear.

(Response 3) It was clear in our cognitive interviews that if respondents had no impression based on a drug name, they would be likely to type ''nothing'' or ''no impression'' as their response. The purpose of the last exercise is to examine the utility of an implicit measure of attitudes for comparison with the more explicit measures. If this measure proves to be unproductive in pre-testing, we may omit it from the main study. For instance, this implicit measure might be considered unproductive if it does not prompt any additional, unique text relative to what is offered in response to the earlier open-ended items.

(Comment 4) Two comments similarly claimed that questions two through six are leading, potentially confusing, duplicative of another question, or otherwise unnecessary. One comment recommended removing these questions.

(Response 4) These questions have been included as a way of validating the information recorded in question one. Based on other comments, such as one that challenged the use of yes/no questions, we have revised them to a 5-point Likert scale, ranging from strongly disagree to strongly agree. We will assess these questions further as part of pre-testing.

(Comment 5) One comment stated that FDA should limit patient and PCP participation to those who have experience with the fictitious drug indications. It further asserted that FDA should provide detail on how the patients and PCPs will be selected and how FDA will help ensure these participants have relevant experience. The comment suggested that FDA could add an open-ended question requesting that PCPs provide information about

their experiences in the disease areas for which the fictitious drugs are intended, patient populations, and settings to understand the real-world value of the responses.

(Response 5) Due to the large number of drug names and indications to be included in this study, the comment's suggestion is not feasible. However, we will add a measure to the screener to assess PCPs' and consumers' experiences with each of the indications. This variable can then be used as a covariate in analyses.

(Comment 6) One comment suggested that to ensure that the survey isolates the impressions given by the proprietary name, FDA should use only fictitious names for the survey.

(Response 6) We have removed all real drug names from the study and replaced them with fictitious names.

(Comment 7) One comment recommended removing all yes/no questions from the survey.

(Response 7) We have done so, changing the yes/no items to Likert scale items.

(Comment 8) One comment recommended that FDA should acknowledge that proposed names may include ''permissible suggestions'' and should include such fictitious examples. The comment conjectured that the survey appears to focus only on potential impermissible suggestions that may result from a drug's proprietary name. The comment submitted that proposed names should also be included that, for example, suggest the dosage form, frequency of delivery, structure of the drug, or general category of the drug's indications.

(Response 8) A previous study by this research team did include names such as those suggested above (*e.g.,* with the drug's indication embedded in the name). Those names are not included here to avoid duplication.

(Comment 9) One comment stated that FDA should explain its methodology for the text analysis and allow for stakeholder feedback on the proposed text analysis methodology.

(Response 9) We will examine and present descriptive results for individual names. However, given our goals of understanding promotional implications of prescription drug names across consumers and PCPs, we are also interested in whether there are differences in topic distributions across our treatment and control arms (control versus promotional implications) and between populations (consumers and PCPs). We will use topic modeling and sentiment analysis to answer those questions. We have described the purpose of the study, the design, and the population of interest, and we have provided the questionnaire to numerous individuals upon request.

(Comment 10) One comment expressed concerns about how degrees or levels of misbranding may be established or standardized for evaluating proposed proprietary prescription drug names. It stated that no information has yet been provided by FDA to inform how such standardization will be developed.

(Response 10) This study is not intended either to establish degrees or levels of misbranding or to standardize levels of misbranding for the evaluation of proposed drug names. The key objectives of the proposed research are to apply new techniques such as topic modeling and sentiment analysis to answer OPDP's research questions about consumer and PCP interpretations of proprietary prescription drug names and to help develop a methodological approach for assessing consumer and prescriber interpretations of drug names.

(Comment 11) A comment objected that FDA has not provided any information on how it will select target names to include in the pre-test and subsequently decide which target names will be used in the main study. The comment expressed concerns that the pre-test will not be able to develop multiple distinct levels of efficacy or indication implication among target names that will be reliably identifiable by HCPs or consumers. The comment asserted that a proprietary name may not be reliably classified and separated into multiple levels of implication.

(Response 11) Our full stimuli are under development during the PRA process. We do not make draft stimuli public during this time because of concerns that this may contaminate our participant pool and compromise our research. In our research proposals, we describe the purpose of the study, the design, the population of interest, and the estimated burden.

Names will be intentionally developed to have promotional implications (*e.g.,* overstatement of efficacy). Many of the names were used in our cognitive interviews. In addition, we will conduct up to two pre-tests, at which point, if any names are not distinguishable from those composed of random syllables, they will be replaced. A similar process was used in another recent study, with reliable results. Participants did distinguish between names created from random syllables and those with promotional implications.

(Comment 12) One comment advised that the pronunciation offered to a respondent would influence a respondent's impressions and that it would be important for FDA to control for this influence. The comment opined that the pronunciation should result in as neutral a reading as possible, not emphasizing any particular aspect of a name.

(Response 12) All drug names were recorded by the same voiceover specialist in as neutral a manner as possible.

(Comment 13) A comment similarly asserted that the impression formed from a visual cue (drug name written out) would influence and be influenced by an audio cue and vice versa. The comment contended that there would be less bias introduced by listening first to an audio cue. The comment also recommended that an audio cue first be provided, followed by the question about hearing the name, and that the visual image of the name would be presented followed by the question about seeing the name.

(Response 13) We agree that people access both the orthographic and phonological interpretations when they read. However, since our main comparison is within subjects, it is likely that there is some consistency in the order in which any one respondent listens to the pronunciation versus reading the word, and so any variation that may exist should not confound the effects of their own interpretation of the drug names. In addition, the comment's suggestion would double the number of open-ended questions for every drug name, increasing the survey burden substantially.

(Comment 14) One comment suggested altering the order of the prompts so that after gaining impressions following the audio and visual cues, the brief story or narrative prompt follows.

(Response 14) The currently proposed questionnaire follows this order.

(Comment 15) One comment argued that prompts should not be ''double-barreled'' and should not lead or prime the respondent to find benefits or other meanings where there may be none. The comment suggested that questions should ask separately about benefits and how well the drug would work and then also ask separately about risks and side effects. The comment suggested rephrasing to ''Does the drug name suggest the drug may have a benefit?'' or ''Does the drug name make you think about how well it might work?''.

(Response 15) We have edited the open-ended section of the study so that these questions are no longer separate items but merely instructions preceding the first question. The phrasing the

comment suggested is likely to lead to one-word answers ''yes'' or ''no,'' which does not provide the type of text response that is needed to conduct text analysis on the data. We did find in cognitive interviews that participants who did not perceive any meaning from a specific drug name said they would be likely to type ''nothing'' into the open-ended text box. Thus, we believe the study in its current form does allow for this possibility.

(Comment 16) One comment suggested very general questions should be asked first and then those that are more specific.

(Response 16) We have ordered the prompts from general to specific in line with the suggested comment.

(Comment 17) One comment proposed that researchers may want to consider reducing the number of drugs queried in the survey from 12 to 6 to elicit the richest text data from respondents and that it may be helpful to give a minimum word count for text responses.

(Response 17) Six drugs will not allow for enough power to make comparisons between the groups. However, if we find that we get many breakoffs (participants who begin the survey but do not complete it) in the pre-test (suggesting the survey burden is too high), we will reconsider the study design.

(Comment 18) One comment recommended that an iterative plan for analysis be developed such that there are checks for both internal and external validity at specified intervals. It further proposed that researchers may want to consider a context-specific analysis plan and argued that one common analysis approach or dictionary may not measure risk, side effects, and other constructs accurately across all drugs.

(Response 18) Though the topic modeling approach is designed to be exploratory for this study, we will calculate coherence metrics to assess model fit as well as perform validation exercises to assess if the generated topics can be easily interpreted.

(Comment 19) One comment recommended that an iterative plan for analysis be created based on a set of preliminary data along with the other research materials, such as the questionnaire, sampling plan, etc., so that it can be reviewed before execution of the full research.

(Response 19) We appreciate the comment. The pre-test will provide the valuable insight to create a specific analysis plan for the main study. The pilot data will help us assess assumptions about how respondents will respond to target names.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
General Consumer Population					
Pretest 1 screener (assumes 80% eligible)	22	1	22	0.08 (5 minutes)	1.8
Pretest 1 survey	17	1	17	0.33 (20 minutes)	5.6
Pretest 2 screener (assumes 80% eligible)	22	1	22	0.08 (5 minutes)	1.8
Pretest 2 survey	17	1	17	0.33 (20 minutes)	5.6
Main study screener (assumes 80% eligible)	413	1	413	0.08 (5 minutes)	33
Main study survey completes	330	1	330	0.33 (20 minutes)	108.9
PCP Population					
Pretest 1 screener (assumes 30% eligible)	57	1	57	0.08 (5 minutes)	4.6
Pretest 1 survey	17	1	17	0.33 (20 minutes)	5.6
Pretest 2 screener (assumes 30% eligible)	57	1	57	0.08 (5 minutes)	4.6
Pretest 2 survey	17	1	17	0.33 (20 minutes)	5.6
Main study screener (assumes 30% eligible)	1,100	1	1,100	0.08 (5 minutes)	88
Main study survey completes	330	1	330	0.33 (20 minutes)	108.9
Total					374

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

As with most online and mail surveys, it is always possible that some participants are in the process of completing the survey when the target number is reached and that those surveys will be completed and received before the survey is closed out. To account for this, we have estimated approximately 10 percent overage for both samples in the study.

Dated: October 5, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–22301 Filed 10–13–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1619]

Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's regulations regarding current good

manufacturing practice (CGMP) for dietary supplements.

DATES: Either electronic or written comments on the collection of information must be submitted by December 13, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 13, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2013–N–1619 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements—21 CFR Part 111

OMB Control Number 0910–0606—Extension

The Dietary Supplement Health and Education Act (DSHEA) (Pub. L. 103–417) added section 402(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 342(g)), which provides, in part, that the Secretary of Health and Human Services may, by regulation, prescribe good manufacturing practice for dietary supplements. Section 402(g) of the FD&C Act also stipulates that such regulations will be modeled after CGMP regulations for food and may not impose standards for which there are no current, and generally available,

analytical methodology. Section 402(g)(1) of the FD&C Act states that a dietary supplement is adulterated if it has been prepared, packed, or held under conditions that do not meet current good manufacturing practice regulations.

Accordingly, we have promulgated regulations in part 111 (21 CFR part 111) establishing minimum CGMP requirements pertaining to the manufacturing, packaging, labeling, or holding of dietary supplements to ensure their quality. Included among the requirements is recordkeeping, documenting, planning, control, and improvement processes of a quality control system. Implementation of these processes in a manufacturing operation serves as the backbone to CGMP. The records must show what is being manufactured and whether the controls in place ensure the product's identity, purity, strength, and composition and that limits on contaminants and measures to prevent adulteration are effective. Further, records must show whether and what deviations from control processes occurred, facilitate evaluation and corrective action concerning these deviations (including, where necessary, whether associated batches of product should be recalled from the marketplace), and enable a manufacturer to assure that the corrective action was effective. We believe the regulations in part 111 establish the minimum manufacturing practices necessary to ensure that dietary supplements are manufactured, packaged, labeled, or held in a manner that will ensure the quality of the dietary supplements during manufacturing, packaging, labeling, or holding operations.

Specifically, the recordkeeping requirements of the regulations in part 111 include establishing written procedures and maintaining records pertaining to: (1) personnel; (2) sanitation; (3) calibration of instruments and controls; (4) calibration, inspection, or checks of automated, mechanical, or electronic equipment; (5) maintaining, cleaning, and sanitizing equipment and utensils and other contact surfaces; (6) water used that may become a component of the dietary supplement; (7) production and process controls; (8) quality control; (9) components, packaging, labels and product received for packaging and labeling; (10) master manufacturing and batch production; (11) laboratory operations; (12) manufacturing operations; (13) packaging and labeling operations; (14) holding and distributing operations; (15) returned dietary supplements; and (16) product complaints.

Section 111.75(a)(1) (21 CFR 111.75(a)(1)) reflects FDA's determination that manufacturers that test or examine 100 percent of the incoming dietary ingredients for identity can be assured of the identity of the ingredient. However, we recognize that it may be possible for a manufacturer to demonstrate, through various methods and processes in use over time for its particular operation, that a system of less than 100 percent identity testing would result in no material diminution of assurance of the identity of the dietary ingredient as compared to the assurance provided by 100 percent identity testing. Section 111.75(a)(1) provides an opportunity for a manufacturer to make such a showing and reduce the frequency of identity testing of components that are dietary ingredients from 100 percent to some lower frequency. Section 111.75(a)(1) also sets forth the information a manufacturer is required to submit for an exemption from the requirement of 100 percent identity testing when a manufacturer petitions the Agency for such an exemption to 100 percent identity testing under 21 CFR 10.30 and the Agency grants such exemption.

Description of Respondents: Respondents to this collection of information include manufacturers, packagers and repackagers, labelers and re-labelers, holders, distributors, warehousers, exporters, importers, large businesses, and small businesses engaged in the dietary supplement industry. Respondents are from the private sector (for-profit businesses).

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section; activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
111.14; records of personnel practices, including documentation of training.	15,000	4	60,000	1	60,000
111.23; records of physical plant sanitation practices, including pest control and water quality.	15,000	1	15,000	0.2 (12 minutes)	3,000
111.35; records regarding equipment and utensils, including calibration and sanitation practices.	400	1	400	12.5	5,000
111.95; records of production and process control systems	250	1	250	45	11,250
111.140; records that quality control personnel must make and keep.	240	1,163	279,120	1	279,120
111.180; records associated with components, packaging, labels, and product received for packaging and labeling as a dietary supplement.	240	1,163	279,120	1	279,120
111.210; requirements for what the master manufacturing record must include.	240	1	240	2.5	600
111.260; requirements for what the batch production record must include.	145	1,408	204,160	1	204,160
111.325; records that quality control personnel must make and keep for laboratory operations.	120	1	120	15	1,800
111.375; records of the written procedures established for manufacturing operations.	260	1	260	2	520
111.430; records of the written procedures for packaging and labeling operations.	50	1	50	12.6	630
111.475; records of product distribution and procedures for holding and distributing operations.	15,000	1	15,000	0.4 (24 minutes)	6,000
111.535; records for returned dietary supplements	110	4	440	13.5	5,940
111.570; records regarding product complaints	240	600	144,000	0.5 (30 minutes)	72,000

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]—Continued

21 CFR section; activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Total					929,140

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
111.75; petition for exemption from 100 percent identity testing	1	1	1	8	8

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate. We base our estimates for the recordkeeping and reporting burdens on our experience with the recordkeeping and petition activities.

Dated: October 5, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–22303 Filed 10–13–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0945–New]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before November 14, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 264–0041. When submitting comments or requesting information, please include the document identifier 0945–New–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Nondiscrimination in Health Programs and Activities.

Type of Collection: New.

OMB No.: 0990–XXXX or 0990–NEW—Office for Civil Rights.

Abstract: This Information Collection Request is for a new collection of information as proposed in the Department of Health and Human Services (HHS) Office for Civil Rights (OCR) Notice of Proposed Rulemaking (NPRM) entitled Nondiscrimination in Health Programs and Activities (RIN: 0945–AA17). The purpose of this information collection is to ensure covered entities (any health program or activity, any part of which is receiving federal financial assistance from the Department and any health program or activity conducted by the Department or Title I entity) adhere to the statutory requirements under Section 1557. The proposed information collection helps covered entities demonstrate compliance with federal civil rights laws and their awareness of their obligations under those laws and respective HHS implementing regulations.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Recipients & State-based Exchanges with 15 or more employees	41,250	1	10	412,500
Recipients & State-based Exchanges	275,002	1	1.75	481,254
Total	316,252			893,754

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2022–22319 Filed 10–13–22; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Establishment of the Medicare Drug Rebate and Negotiations Group Within the Center for Medicare (CM)

AGENCY: Centers for Medicare & Medicaid Services, HHS.

SUMMARY: Establish the Medicare Drug Rebate and Negotiations Group within the Center for Medicare (CM) to implement the Drug Price Negotiation Program and the Inflation Rebate Program in Medicare Part B and Part D as authorized under the Inflation Reduction Act of 2022. CMS is responsible for implementing these new programs.

DATES: This reorganization was approved by the Secretary of Health and Human Services and takes effect October 8, 2022.

SUPPLEMENTARY INFORMATION: Statement of Organization, Functions, and Delegations of Authority Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) (last amended at **Federal Register**, Vol. 75, No. 56, pp. 14176–14178, dated March 24, 2010; Vol. 76, No. 203, pp. 65197–65199, dated October 20, 2011; Vol. 78, No. 86, p. 26051, dated May 3, 2013; Vol. 79, No. 2, pp. 397–398, dated January 3, 2014; and Vol. 84, No. 32, p. 4470, dated February 15, 2019) is amended to reflect the establishment of the Medicare Drug Rebate and Negotiations Group within the Center for Medicare (CM) to implement the Drug Price Negotiation Program and the Inflation Rebate Program in Medicare Part B and Part D as authorized under the Inflation Reduction Act of 2022. CMS is responsible for implementing these new programs.

Title I, Subtitle B, Part 1, sections 11001–11004, of the Inflation Reduction Act of 2022 (IRA) Public Law 117–169 enacted on August 16, 2022, establishes a new Drug Price Negotiation Program under Medicare Part B and Medicare Part D to lower prices for certain high-spend single source drugs. Title I, Subtitle B, sections 11101 and 11102 of the IRA also enacts a new program to establish Inflation Rebates in Medicare Part B and Medicare Part D. CMS is responsible for implementing these new programs.

The work required to implement and administer these new programs will be novel and differ significantly from the Medicare functions that CMS performs today. Given the unique nature of this new work, there is not an existing operating component, group, office or division in CMS or CM that performs these actions. Moreover, the scope and complexity of these new programs, and the deadlines for implementation, require that a new, dedicated organization be established to ensure that CMS is able to implement these programs successfully and on time. In order to implement and operate these new programs, CMS is creating a new group—the Medicare Drug Rebate and Negotiations Group—within CM.

Part F, Section FC. 10 (Organization) is revised as follows:

Center for Medicare, Medicare Drug Rebate and Negotiations Group

Part F, Section FC. 20 (Functions) for the new organization is as follows:

Medicare Drug Rebate and Negotiations Group

With regard to the Drug Price Negotiation Program, each year, the new group will negotiate drug prices with pharmaceutical manufacturers for certain Part B and Part D drugs. This will require identifying negotiation-eligible drugs, entering into agreements with manufacturers, collecting extensive data from manufacturers and other sources, calculating ceiling and maximum fair prices, negotiating prices with manufacturers, re-negotiating prices as necessary and publishing the results of the negotiation. Under the Inflation Rebate Program, manufacturers of certain drugs will be required to pay a penalty or ''rebate'' if the price of their drug increases faster than the rate of inflation. For this program, the new group will need to identify the universe of rebatable drugs under Part B and Part D; determine which drugs had price increases in excess of inflation; and compute, invoice, and collect rebates owed by manufacturers.

To carry out these functions, the major tasks of the new group will include:

- Developing policy, including identifying and vetting policy options and preparing policy memoranda, rulemaking and technical guidance;
- Briefing policy officials in CMS, U.S. Department of Health and Human Services (HHS), and Executive Office of the President (EOP);
- Establishing operational processes to collect data from manufacturers and other sources;
- Conducting pharmacoeconomic analyses and assessments of selected drugs;
- Establishing operational processes to negotiate and re-negotiate drug prices and conducting those negotiations with manufacturers;
- Establishing operational processes to calculate and invoice rebates;
- Developing contractual agreements with manufacturers necessary to effectuate both programs;
- Monitoring manufacturer compliance with programmatic rules;
- Procuring and managing contractors to support these functions;
- Conducting stakeholder outreach and educational materials; and
- Responding to inquiries from Congress, the press, and other external stakeholders.

Authority: 44 U.S.C. 3101.

Dated: October 7, 2022.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2022–22296 Filed 10–12–22; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The 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 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 contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Blueprint MedTech (BPMT) Biocompatibility, Sterilization, and Animal Studies.

Date: November 15, 2022.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ipolia R. Ramadan, Ph.D., Scientific Review Officer, Scientific Review

Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–4471, *ramadanir@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: October 11, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–22361 Filed 10–13–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2021–0345]

Notice of Availability of Draft Study; Extension of Comment Period

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability and extension of comment period.

SUMMARY: The Coast Guard is extending the comment period of the draft Pacific Coast Port Access Route Study (PAC–PARS) in order to provide stakeholders with additional time to provide the Coast Guard with valuable input. This study evaluates safe access routes for the movement of vessel traffic proceeding to or from ports or places along the western seaboard of the United States and determines whether a shipping safety fairway (''fairway'') and/or routing measures should be established, adjusted or modified.

DATES: Comments must be submitted to the online docket via *https://www.regulations.gov* on or before November 8, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2021–0345 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email LCDR Sara Conrad, Coast Guard Pacific Area (PAC–54), U.S. Coast Guard; telephone (510) 437–3813, email *Sara.E.Conrad@uscg.mil* or Mr. Tyrone Conner, Eleventh Coast Guard District (dpw), U.S. Coast Guard; telephone (510) 437–2968, email *Tyrone.L.Conner@uscg.mil* or Mr. John Moriarty, Thirteenth Coast Guard District (dpw), U.S. Coast Guard; telephone (206) 220–7274, email *John.F.Moriarty@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Public Participation and Comments

Two webinars are being offered to present the contents of the draft study to the public and answer questions. The first webinar was held on October 4th, 2022. The presentation slides and a recording of the webinar are available on the PAC–PARS Homeport website here: *https://cglink.uscg.mil/efedac43.* The second webinar will be held on Tuesday, October 11th, 2022 at 11:00am PST. The link to register can also be found on the PAC–PARS Homeport website: *https://cglink.uscg.mil/efedac43.*

We encourage you to submit comments (or related material) on the draft PAC–PARS. We will consider all submissions and may adjust our final recommendations based on your comments. If you submit a comment, please include the docket number for this notice, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *http://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2021–0345 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Viewing material in docket. To view documents mentioned in this notice as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Discussion

The draft PAC–PARS was published on August 26, 2022 (87 FR 52587). The original comment period closes on October 25, 2022. However, the Coast Guard has been notified that several stakeholders would like more time to prepare their comments on the draft study. The Coast Guard has decided that an extension of the public comment period would be appropriate to allow interested parties additional time to submit comments for Coast Guard's consideration. Thus, the comment period is extended by 14 days until November 8, 2022. This notice is issued under authority of 46 U.S.C. 70003(c)(1).

Dated: October 6, 2022.

L. Hannah,

Captain, U.S. Coast Guard, Chief, Pacific Area Preparedness Division.

[FR Doc. 2022–22339 Filed 10–13–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2279]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the

community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before January 12, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2279, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Assistant Administrator for Risk Management (Acting), Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Johnson County, Iowa and Incorporated Areas Project: 17–07–0294S Preliminary Date: April 20, 2022	
City of Coralville	City Hall, 1512 7th Street, Coralville, IA 52241.
City of Iowa City	Civic Center, 410 East Washington Street, Iowa City, IA 52240.
City of Shueyville	Shueyville City Hall, 2863 120th Street Northeast, Swisher, IA 52338.
City of Solon	City Hall, 101 North Iowa Street, Solon, IA 52333.
City of Swisher	City Hall, 66 2nd Street Southwest, Swisher, IA 52338.
Unincorporated Areas Johnson County	Johnson County Planning Development and Sustainability Department, 913 South Dubuque Street, Iowa City, IA 52240.
Linn County, Iowa and Incorporated Areas Project: 19–07–0020S Preliminary Date: March 21, 2022	
City of Cedar Rapids	City Hall, 101 1st Street Southeast, Cedar Rapids, IA 52401.
City of Center Point	City Hall, 200 Franklin Street, Center Point, IA 52213.
City of Marion	City Hall, 1225 6th Avenue, Suite 200, Marion, IA 52302.
City of Palo	City Hall, 2800 Hollenbeck Road, Palo, IA 52324.
Unincorporated Areas of Linn County	Linn County Planning and Development Department, 935 2nd Street Southwest, Cedar Rapids, IA 52404.

[FR Doc. 2022–22316 Filed 10–13–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65. The currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Assistant Administrator for Risk Management (Acting), Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Colorado:					
Arapahoe (FEMA Docket No.: B–2251).	City of Aurora, (21–08–1133P).	The Honorable Mike Coffman, Mayor, City of Aurora, 15151 East Alameda Parkway, Aurora, CO 80012.	Public Works Department, 15151 East Alameda Parkway, Aurora, CO 80012.	Sep. 9, 2022	080002
Arapahoe (FEMA Docket No.: B–2244).	City of Centennial, (21–08–1000P).	The Honorable Stephanie Piko, Mayor, City of Centennial, 13133 East Arapahoe Road, Centennial, CO 80112.	Southeast Metro Stormwater Authority, 7437 South Fairplay Street, Centennial, CO 80112.	Sep. 9, 2022	080315
Connecticut:					
Fairfield (FEMA Docket No.: B–2251).	Town of Greenwich (21–01–1171P).	The Honorable Fred Camillo, First Selectman, Town of Greenwich Board of Selectmen, 101 Field Point Road, 1st Floor, Greenwich, CT 06830.	Town Hall, 101 Field Point Road, Greenwich, CT 06830.	Sep. 14, 2022	090008
Florida:					
Broward (FEMA Docket No.: B–2244).	City of Lauderdale Lakes (21–04–5598P).	The Honorable Hazelle P. Rogers, Mayor, City of Lauderdale Lakes, 4300 Northwest 36th Street, Lauderdale Lakes, FL 33319.	Development Services Planning and Zoning Section, 3521 Northwest 43rd Avenue, Lauderdale Lakes, FL 33319.	Sep. 14, 2022	120043

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Pinellas (FEMA Docket No.: B–2251).	Unincorporated areas of Pinellas County (22–04–1973P).	The Honorable Charlie Justice, Chairman, Pinellas County Board of Commissioners, 315 Court Street, Clearwater, FL 33756.	Pinellas County Building Services Department, 440 Court Street, Clearwater, FL 33756.	Sep. 15, 2022	125139
Georgia:					
Douglas (FEMA Docket No.: B–2251).	Unincorporated areas of Douglas County (21–04–2703P).	The Honorable Romona Jackson Jones, Chair, Douglas County Commission, 8700 Hospital Drive, 3rd Floor, Douglasville, GA 30134.	Douglas County Courthouse, 8700 Hospital Drive, 3rd Floor, Douglasville, GA 30134.	Sep. 16, 2022	130306
Kentucky:					
Scott (FEMA Docket No.: B–2253).	City of Georgetown (22–04–2347P).	The Honorable Tom Prather, Mayor, City of Georgetown, 100 North Court Street, Georgetown, KY 40324.	Planning and Zoning Department, 230 East Main Street, Georgetown, KY 40324.	Sep. 12, 2022	210208
Maryland:					
Prince George's (FEMA Docket No.: B–2244).	City of Laurel (22–03–0012P).	The Honorable Craig A. Moe, Mayor, City of Laurel, 8103 Sandy Spring Road, Laurel, MD 20707.	City Hall, 8103 Sandy Spring Road, Laurel, MD 20707.	Sep. 9, 2022	240053
Oklahoma:					
Tulsa (FEMA Docket No.: B–2251).	City of Bixby (21–06–3360P).	Mr. Jared Cottle, Manager, City of Bixby, P.O. Box 70, Bixby, OK 74008.	Development, Services Department, 113 West Dawes Street, Bixby, OK 74008.	Sep. 19, 2022	400207
Pennsylvania:					
Montgomery (FEMA Docket No.: B–2244).	Township of Lower Frederick (22–03–0084P).	The Honorable Marla Hexter, Chair, Township of Lower Frederick, Board of Supervisors, 53 Spring Mount Road, Schwenksville, PA 19473.	Township Hall, 53 Spring Mount Road, Schwenksville, PA 19473.	Sep. 8, 2022	420952
South Dakota:					
Deuel (FEMA Docket No.: B–2251).	Town of Altamont (22–08–0536P).	The Honorable Jennifer Jensen, Mayor, Town of Altamont, 307 Carmen Street, Altamont, SD 57226.	Town Hall, 307 Carmen Street, Altamont, SD 57226.	Sep. 2, 2022	460320
Deuel (FEMA Docket No.: B–2251).	Town of Brandt (22–08–0536P).	The Honorable Greg Anderson, Mayor-President, Town of Brandt, P.O. Box 218, Brandt, SD 57218.	Town Hall, 112 Main Street, Brandt, SD 57218.	Sep. 2, 2022	460319
Texas:					
Dallas (FEMA Docket No.: B–2251).	City of DeSoto (21–06–3174P).	The Honorable Rachel L. Proctor, Mayor, City of DeSoto, 211 East Pleasant Run Road, DeSoto, TX 75115.	Development Services Department, 211 East Pleasant Run Road, DeSoto, TX 75115.	Sep. 7, 2022	480172
Denton (FEMA Docket No.: B–2244).	City of Fort Worth (22–06–0542P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102.	Sep. 15, 2022	480596
Denton (FEMA Docket No.: B–2251).	Town of Prosper (21–06–3249P).	The Honorable Ray Smith, Mayor, Town of Prosper, P.O. Box 307, Prosper, TX 75078.	Engineering Services Department, 250 West 1st Street, Prosper, TX 75078.	Sep. 12, 2022	480141
Denton (FEMA Docket No.: B–2251).	Unincorporated areas of Denton County (21–06–3249P).	The Honorable Andy Eads, Denton County Judge, 1 Courthouse Drive, Suite 100, Denton, TX 76201.	Denton County Development Services Department, 3900 Morse Street, Denton, TX 76208.	Sep. 12, 2022	480774

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Harris (FEMA Docket No.: B–2253).	City of Houston (21–06–2034P).	The Honorable Sylvester Turner, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	Floodplain Management department, 1002 Washington Avenue, Houston, TX 77002.	Sep. 12, 2022	480296
Johnson (FEMA Docket No.: B–2244).	City of Burleson (21–06–2082P).	The Honorable Chris Fletcher, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028.	City Hall, 141 West Renfro Street, Burleson, TX 76028.	Sep. 8, 2022	485459
Montgomery (FEMA Docket No.: B–2251).	City of Conroe (21–06–2197P).	The Honorable Jody Czajkoski, Mayor, City of Conroe, P.O. Box 3066, Conroe, TX 77305.	City Hall, 300 West Davis Street, Conroe, TX 77305.	Sep. 9, 2022	480484
Tarrant (FEMA Docket No.: B–2244).	City of Fort Worth (22–06–0310P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102.	Sep. 15, 2022	480596
Williamson (FEMA Docket No.: B–2244).	City of Georgetown (21–06–2319P).	Mr. David Morgan, Manager, City of Georgetown, P.O. Box 409, Georgetown, TX 78626.	Mapping and GIS Department, 300–1 Industrial Avenue, Georgetown, TX 78626.	Sep. 8, 2022	481048
Williamson (FEMA Docket No.: B–2244).	City of Round Rock (22–06–0132P).	The Honorable Craig Morgan, Mayor, City of Round Rock, 221 East Main Street, Round Rock, TX 78664.	City Hall, 221 East Main Street, Round Rock, TX 78664.	Sep. 8, 2022	481079
Williamson (FEMA Docket No.: B–2244).	Unincorporated areas of Williamson County (21–06–2319P).	The Honorable Bill Gravell, Jr., Williamson County Judge, 710 South Main Street, Suite 101, Georgetown, TX 78626.	Williamson County, Engineering Department, 3151 Southeast Inner Loop, Georgetown, TX 78626.	Sep. 1, 2022	481079
Williamson (FEMA Docket No.: B–2244).	Unincorporated areas of Williamson County (22–06–0132P).	The Honorable Bill Gravell, Jr., Williamson County Judge, 710 South Main Street, Suite 101, Georgetown, TX 78626.	Williamson County, Engineering Department, 3151 Southeast Inner Loop, Georgetown, TX 78626.	Sep. 8, 2022	481079
Utah:					
Washington (FEMA Docket No.: B–2251).	City of St. George (22–08–0191P).	The Honorable Michele Randall, Mayor, City of St. George, 175 East 200 North, St. George, UT 84770.	City Hall, 175 East 200 North, St. George, UT 84770.	Sep. 12, 2022	490177
Virginia:					
Charles City (FEMA Docket No.: B–2253).	Unincorporated areas of Charles City County (22–03–0523P).	Michelle Johnson, Administrator, Charles City County, P.O. Box 128, Charles City, VA 23030.	Charles City County, Government Administration Building, 10900 Courthouse Road, Charles City, VA 23030.	Sep. 9, 2022	510198
West Virginia:					
Wood (FEMA Docket No.: B–2244).	Unincorporated areas of Wood County (22-03-0440P).	The Honorable David Blair Couch, President, Wood County Commission, 1 Court Square, Suite 205, Parkersburg, WV 26101.	Wood County Commission Office, 1 Court Square, Suite 205, Parkersburg, WV 26101.	Sep. 9, 2022	540213

[FR Doc. 2022–22317 Filed 10–13–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0124]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Consideration of Deferred Action for Childhood Arrivals

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until December 13, 2022.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0124 in the body of the letter, the agency name and Docket ID USCIS–2012–0012. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2012–0012.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2012–0012 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Consideration of Deferred Action for Childhood Arrivals.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–821D; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information collected on this form is used by USCIS to determine eligibility of certain illegal aliens who entered the United States as minors and meet the following guidelines to be considered for Deferred Action for Childhood Arrivals:

1. Was under the age of 31 as of June 15, 2012;

2. Came to the United States before reaching his or her 16th birthday;

3. Has continuously resided in the United States since June 15, 2007, up to the present time;

4. Was present in the United States on June 15, 2012 and at the time of making his or her request for consideration of deferred action with USCIS;

5. Had no lawful status on June 15, 2012; NOTE: No lawful status on June 15, 2012 means that:

(a) You never had a lawful immigration status on or before June 15, 2012; or

(b) Any lawful immigration status or parole that you obtained prior to June 15, 2012 had expired as of June 15, 2012.

6. Is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a general education development (GED) certificate, or is an honorably discharged veteran of the U.S. Armed Forces or U.S. Coast Guard; and

7. Has not been convicted of a felony, a significant misdemeanor, or three or more misdemeanors, and does not otherwise pose a threat to national security or public safety.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the I–821D initial requests (paper) information collection is 32,655 annually, and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the I–821D renewal requests (paper) information collection is 335,020, and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the I–821D renewal requests (electronic) information collection is 91,919, and the estimated hour burden per response is 2.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,332,823 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $50,555,340.

Dated: October 07, 2022.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2022–22359 Filed 10–13–22; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MTM–79374–01]

Notice of Application for Withdrawal Extension and Public Meeting, Crystal Park Recreation Area; Beaverhead County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of application.

SUMMARY: On behalf of the United States Department of Agriculture, the United States Forest Service (USFS) filed an application with the Bureau of Land Management (BLM) requesting the Secretary of the Interior extend Public Land Order (PLO) No. 6958 for an additional 30-year term. PLO No. 6958 withdrew 220 acres of National Forest System lands in Beaverhead County, Montana, from location and entry under the United States mining laws, subject to valid existing rights, to protect the USFS-managed recreation area. The lands remain open to leasing under the mineral leasing laws, and to such uses as may be made on National Forest System lands. The withdrawal created by PLO No. 6958 will expire on March 1, 2023, unless extended. This notice announces to the public an opportunity to comment on the proposal and announces the date, time, and how to access the virtual public meeting to be held in conjunction with this withdrawal extension application.

DATES: Comments must be received by January 12, 2023. Notice is hereby given that the USFS will hold a virtual public meeting in connection with the withdrawal extension application on November 7, 2022, at 6:30 p.m. The USFS will publish instructions on how to access the online public meeting in the *Montana Standard* newspaper a minimum of 30 days prior to the meeting.

ADDRESSES: All written comments should be sent to the Office of the Regional Forester, Region One, 26 Fort Missoula Road, Missoula, Montana 59804.

FOR FURTHER INFORMATION CONTACT: Will Pedde, Land Status Program Manager, USFS Region One, (406) 329–3204 or via email at *will.pedde@usda.gov* or you may contact the USFS office at the earlier address.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or Tele Braille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The USFS filed an application requesting extension of the withdrawal established by PLO No. 6958 (58 FR 11968). PLO No. 6958 withdrew 220 acres of National Forest System lands in Beaverhead County, Montana, from location and entry under the United States mining laws (30 U.S.C. Ch.2), but not from leasing under the mineral leasing laws, or entry under the general land laws, subject to valid existing rights, for a 30-year term. PLO No. 6958 is incorporated herein by reference.

The purpose of the proposed extension is to preserve and protect the existing recreational opportunities, facilities, and capital improvements from locatable mineral development of the Crystal Park Recreation Area through the year 2053.

The use of a rights-of-way, interagency agreement, or cooperative agreement would not provide adequate protection for this site.

There are no suitable alternative sites available which would facilitate public opportunity for this type of recreation experience.

No water rights will be needed to fulfill the purpose of the requested withdrawal.

All interested persons who wish to submit comments, suggestions, or objections in connection with the withdrawal extension application may submit a written request to the Regional Forester by January 12, 2023, at the address in the **ADDRESSES** section earlier.

Comments, including names and street addresses of respondents, will be available for public review at Region One, 26 Fort Missoula Road, Missoula, Montana 59804, during regular business hours.

Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask the BLM in your comment to withhold from your personal identifying information from the public review, we cannot guarantee that we will be able to do so.

This application will be processed in accordance with the regulations set-forth in 43 CFR 2310.4.

Sonya Germann,

State Director.

[FR Doc. 2022–22398 Filed 10–13–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L19900000.PO0000.LLHQ320.22X; OMB Control No. 1004–0073]

Agency Information Collection Activities; Coal Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 13, 2022.

ADDRESSES: Send your written comments on this information collection request (ICR) by mail to Darrin King, Information Collection Clearance Officer, U.S. Department of the Interior, Bureau of Land Management, Attention PRA Office, 440 W 200 S #500, Salt Lake City, UT 84101; or by email to *BLM_HQ_PRA_Comments@blm.gov.* Please reference Office of Management and Budget (OMB) Control Number 1004–0073 in the subject line of your comments. The electronic submission of comments is recommended.

FOR FURTHER INFORMATION CONTACT: To request additional information about this Information Collection Request (ICR), contact Tom Huebner by email at *thuebner@blm.gov,* or by telephone at (307) 775–6195. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor, and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) 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;

(2) The accuracy of our estimate of the burden for this collection 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) How the agency might minimize the burden of the collection 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 response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This collection enables the BLM to learn the extent and qualities of Federal coal resources; evaluate the environmental impacts of coal leasing and development; determine the qualifications of prospective lessees to acquire and hold Federal coal leases; and ensure lessee compliance with applicable statutes, regulations, and lease terms and conditions. This OMB Control Number is currently scheduled to expire on April 30, 2023. The BLM plans to request that OMB renew this OMB Control Number for an additional three years.

Title of Collection: Coal Management (43 CFR parts 3400–3480).

OMB Control Number: 1004–0073.

Form Numbers: 3440–001—Application and License to Mine Coal (Free Use) and Form 3400–012—Coal Lease.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Applicants for, and holders of, coal exploration licenses; applicants/bidders for, and holders of, coal leases; applicants for, and holders of, licenses to mine coal; and surface owners and State and tribal governments whose lands overlie coal deposits.

Total Estimated Number of Annual Respondents: 1,017.

Total Estimated Number of Annual Responses: 1,017.

Estimated Completion Time per Response: Varies from 1 to 800 hours.

Total Estimated Number of Annual Burden Hours: 19,897.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $943,463.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Darrin A. King,

Information Collection Clearance Officer.

[FR Doc. 2022–22404 Filed 10–13–22; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK940000.L14100000.BX0000.223.LXSS001L0100]

Filing of Plats of Survey: Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of lands described in this notice are scheduled to be officially filed in the Bureau of Land Management (BLM), Alaska State Office, Anchorage, Alaska. The surveys, which were executed at the request of the Bureau of Indian Affairs (BIA) and BLM, are necessary for the management of these lands.

DATES: The BLM must receive protests by November 14, 2022.

ADDRESSES: You may buy a copy of the plats from the BLM Alaska Public Information Center, 222 W 7th Avenue, Mailstop 13, Anchorage, AK 99513. Please use this address when filing written protests. You may also view the plats at the BLM Alaska Public Information Center, Fitzgerald Federal Building, 222 W 7th Avenue, Anchorage, Alaska, at no cost.

FOR FURTHER INFORMATION CONTACT: Thomas O'Toole, Chief, Branch of Cadastral Survey, Alaska State Office, Bureau of Land Management, 222 W 7th Avenue, Anchorage, AK 99513; 907–271–4231; *totoole@blm.gov.* People who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the BLM during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lands surveyed are:

Copper River Meridian, Alaska

U.S. Survey No. 1871, accepted August 5, 2022, situated in T. 56 S., R. 72 E.
U.S. Survey No. 3851, accepted August 5, 2022, situated in T. 56 S., R. 72 E.
U.S. Survey No. 3852, accepted August 5, 2022, situated in T. 56 S., R. 72 E.
U.S. Survey No. 14549, accepted September 27, 2022, situated in T. 18 S., R. 18 E.
U.S. Survey No. 14553, accepted September 27, 2022, situated in T. 19 S., R. 17 E.
U.S. Survey No. 14554, accepted September 27, 2022, situated in T. 19 S., R. 17 E.
T. 27 N., R. 18 E., accepted September 21, 2022.
T. 28 N., R. 18 E., accepted September 21, 2022.

Fairbanks Meridian, Alaska

T. 7 S., R. 27 E., accepted September 21, 2022.

Seward Meridian, Alaska

U.S. Survey No. 4545, accepted August 23, 2022, situated in T. 12 N., R. 10 W.
U.S. Survey No. 14463, accepted August 5, 2022, situated in T. 31 S., R. 50 W.
U.S. Survey No. 14481, accepted August 5, 2022, situated in T. 8 S., R. 47 W.
T. 12 N., R. 10 W., accepted August 5, 2022.
T. 12 N., R. 11 W., accepted August 5, 2022.
T. 26 N., R. 64 W., accepted September 13, 2022.
T. 25 N., R. 65 W., accepted September 13, 2022.

T. 26 N., R. 65 W., accepted September 13, 2022.
T. 27 N., R. 65 W., accepted September 13, 2022.
T. 25 N., R. 66 W., accepted September 13, 2022.
T. 26 N., R. 66 W., accepted September 13, 2022.
T. 20 N., R. 67 W., accepted September 13, 2022.
T. 21 N., R. 67 W., accepted September 13, 2022.
T. 20 N., R. 69 W., accepted September 13, 2022.

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the State Director for the BLM in Alaska. The protest may be filed by mailing to BLM State Director, Alaska State Office, Bureau of Land Management, 222 W 7th Avenue, Anchorage, AK 99513 or by delivering it in person to BLM Alaska Public Information Center, Fitzgerald Federal Building, 222 W 7th Avenue, Anchorage, Alaska. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. You must file the notice of protest before the scheduled date of official filing for the plat(s) of survey being protested. The BLM will not consider any notice of protest filed after the scheduled date of official filing. A notice of protest is considered filed on the date it is received by the State Director for the BLM in Alaska during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed with the State Director for the BLM in Alaska within 30 calendar days after the notice of protest is filed.

If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the dismissal or resolution of all protests of the plat.

Before including your address, phone number, email address, or other personally identifiable information in a notice of protest or statement of reasons, you should be aware that the documents you submit, including your personally identifiable information, may be made publicly available in their entirety at any time. While you can ask the BLM to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chap. 3.

Thomas O'Toole,

Chief Cadastral Surveyor, Alaska.

[FR Doc. 2022–22318 Filed 10–13–22; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS– NPS0034116 PPWONRADC0; PPMRSNR1Y.NM0000; 222P103601; OMB Control Number 1024–NEW]

Agency Information Collection Activities; Visitor Perceptions of Climate Change Study

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 we, the National Park Service (NPS) are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before December 13, 2022.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Phadrea Ponds, NPS Information Collection Clearance Officer, 12201 Sunrise Valley Drive (MS–242), Reston, Virginia 20192; or by email to *phadrea_ponds@nps.gov.* Please reference Office of Management and Budget (OMB) Control Number 1024–NEW (PVIA) in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Larry Perez, Communications Coordinator, NPS Climate Change Response Program by email at *larry_perez@nps.gov* or by telephone at 970–267–2136. Please reference OMB Control Number 1024–NEW (PVIA) in the subject line of your comments. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection 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) How the agency might 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 response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The NPS is authorized by the National Park Service Protection, Interpretation, and Research in System (54 U.S.C. 100701) statutes to collect information used to enhance the management and planning of parks and their resources. The Climate Change Response Program (administered through the Natural Resource Stewardship and Science directorate) and the U.S. Fish and Wildlife Service (FWS) Human Dimensions Branch (administered through the Natural Resource Program Center within the National Wildlife Refuge System) are partnering to conduct a voluntary, on-site survey to understand park and

refuge visitors' attitudes, perceptions, and beliefs about climate-related topics.

Both the National Park System and the National Wildlife Refuge System protect places, resources, and experiences of importance to the American public. But climate change has serious implications for the protection of landscapes, ecosystems, recreational opportunities, and visitor experiences in parks and refuges. Thus, the NPS and FWS seek to better understand visitors' understanding and concerns about climate change.

Both the NPS and FWS administer high-quality programs of interpretation and education, and communication about pressing, climate-related topics is increasingly necessary. Audience analysis is important for guiding such efforts. Results of this survey will provide insight into topics, methods, and/or communications media of most interest to park and refuge visitors.

Title of Collection: Visitor Perceptions of Climate Change Study.

OMB Control Number: 1024–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: General Public.

Total Estimated Number of Annual Respondents: 6,720.

Estimated Completion Time per Response: 7 minutes.

Total Estimated Number of Annual Burden Hours: 784.

Respondent's Obligation: Voluntary.

Frequency of Collection: Once.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor nor is a person required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2022–22369 Filed 10–13–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–PCE–COR–NTS–NPS0034418; PPWOPCADT0, PPMPSPD1T.Y00000 (211); OMB Control Number 1024–0283]

Agency Information Collection Activities; Application for Designation as National Recreation Trail or National Water Trail

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before November 14, 2022.

ADDRESSES: Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to *http://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR–ICCO), 12201 Sunrise Valley Drive, (MS–242) Reston, VA 20191 (mail); or *phadrea_ponds@nps.gov* (email). Please include ''1024–0283'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Peter Bonsall, National Trails System Program Specialist, National Recreation Trails Coordinator for the Department of the Interior, 12795 W Alameda Parkway, Lakewood, CO 80228; at *peter_bonsall@nps.gov* (email), or (303) 969–2620 (telephone). Please reference OMB Control Number 1024–0283 in the subject line of your comments. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

On January 12, 2022, we published a **Federal Register** notice soliciting comments on this collection of information for 60 days, (87 FR 1779) ending on March 14, 2022. No comments were received.

We are again soliciting comments on the proposed ICR described below. We are especially interested in public comment addressing the following issues: (1) is the collection necessary to the proper functions of the NPS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the NPS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the NPS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The NPS administers the NRT program as authorized by section 4 of the National Trails System Act (16 U.S.C. 1243) and Secretarial Order No. 3319, which establishes National Water Trails as a class of National Recreation Trails and directs that such trails collectively be considered in a National Water Trails System.

The NPS uses forms 10–1002: *Application for Designation as National Water Trail* and 10–1003: *Application for Designation as National Recreation Trail,* to evaluate the applications for adherence to NRT requirements and criteria. NPS Approval of an application is based on (1) the sufficiency of information provided on the application form and in supporting documentation, such as photographs, maps, and written landowner consents that accompany the form, and (2) successfully meeting the NRT requirements and criteria. Successful applications are forwarded to the Secretary of the Interior for approval. Revisions to Forms 10–1002: *Application for Designation—National Water Trails System* and 10–1003: *Application for Designation—National Recreation Trail* are intended to better clarify trail attributes, provide more detailed public information, and align questions asked to establish a more unified application process.

Title of Collection: Application for Designation as National Recreation Trail or National Water Trail.

OMB Control Number: 1024–0283.

Form Number: NPS 10–1002: *Application for Designation as National Water Trail* and NPS 10–1003: *Application for Designation as National Recreation Trail.*

Type of Review: Revision of a currently approved collection.

Description of Respondents: Private individuals; businesses; educational institutions; nonprofit organizations; state, tribal, and local governments; and Federal agency land units.

Total Estimated Number of Annual Respondents: 30.

Total Estimated Number of Annual Responses: 30.

Total Estimated Number of Annual Burden Hours: 130 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

**rounded to nearest hour*

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2022–22363 Filed 10–13–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034710; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion Amendment: University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice; amendment.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California, Berkeley, has amended a Notice of Inventory Completion published in the **Federal Register** on February 2, 2005. This notice amends both the number of associated funerary objects and the cultural affiliation of the human remains and associated funerary objects removed from Sonoma County, CA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after November 14, 2022.

ADDRESSES: Alex Lucas; University of California, Berkeley; Office of Government and Community Relations, 120 California Hall, Berkeley, CA 94720, telephone (925) 791–7231, email *nagpra-ucb@berkeley.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of California, Berkeley. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of California, Berkeley.

Amendment

This notice amends the determinations published in a Notice of Inventory Completion in the **Federal Register** (70 FR 5466–5467, February 2, 2005). Repatriation of the items in the original Notice of Inventory Completion has not occurred.

Following additional consultation, this notice amends both the number of associated funerary objects and the cultural affiliation of the human remains and associated funerary objects removed from site CA–Son–5 in Sonoma County, CA.

The four associated funerary objects (previously identified as three associated funerary objects) are one stone pestle, one clam shell bead, one lot of shells, and one lot of stone blades and flakes.

Site CA–Son–5 is located in a region that has been occupied by Pomo speakers since approximately 5,000 B.C. Based on geographical location, age of the burial, and information provided during consultation, the human remains are culturally affiliated with descendants of the Pomo. The modern-day representatives of the Pomo in Sonoma County are the Cloverdale Rancheria of Pomo Indians of California; Dry Creek Rancheria of Pomo Indians, California (*previously* listed as Dry Creek Rancheria of Pomo Indians of California); Federated Indians of Graton Rancheria, California; Guidiville Rancheria of California; Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California; Lytton Rancheria of California; Middletown Rancheria of Pomo Indians of California; Pinoleville Pomo Nation, California (*previously* listed as Pinoleville Rancheria of Pomo Indians of California); and the Robinson Rancheria (*previously* listed as Robinson Rancheria Band of Pomo Indians, California).

Determinations (as Amended)

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the University of California, Berkeley has determined that:

- The human remains represent the physical remains of one individual of Native American ancestry.
- The four objects are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects and the Cloverdale Rancheria of Pomo Indians of California; Dry Creek Rancheria of Pomo Indians, California (*previously* listed as Dry Creek Rancheria of Pomo Indians of California); Federated Indians of Graton Rancheria, California; Guidiville Rancheria of California; Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California; Lytton Rancheria of California; Middletown Rancheria of Pomo Indians of California; Pinoleville Pomo Nation, California (*previously* listed as Pinoleville Rancheria of Pomo Indians of California); and the Robinson Rancheria (*previously* listed as Robinson Rancheria Band of Pomo Indians, California).

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after November 14, 2022. If competing requests for repatriation are received, the University of California, Berkeley

must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The University of California, Berkeley is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, 10.13, and 10.14.

Dated: October 5, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–22337 Filed 10–13–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–CHHO–34434; PPNCCHOHS0–PPMPSPD1Z.YM0000]

Chesapeake and Ohio Canal National Historical Park Commission Request for Nominations

AGENCY: National Park Service, Interior.

ACTION: Request for nominations.

SUMMARY: The National Park Service, U.S. Department of the Interior, is requesting nominations for qualified persons to serve as members of the Chesapeake and Ohio Canal National Historical Park Commission (Commission).

DATES: Written nominations must be received by December 13, 2022.

ADDRESSES: Send nominations to: Mackensie Henn, Assistant to the Superintendent, Chesapeake and Ohio Canal National Historical Park, 142 W Potomac Street, Williamsport, Maryland 21795, or by email *choh_information@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Mackensie Henn, by email *choh_information@nps.gov* or telephone at (240) 520–3135.

SUPPLEMENTARY INFORMATION: The Commission was established by section 6 of the Chesapeake and Ohio Canal Development Act (16 U.S.C. 410y–4) and terminated January 8, 2011. The Commission has been extended by Public Law 113–178 and the new termination date is September 26, 2024. The purpose of the Commission is to meet and consult with the Secretary of the Interior (Secretary), or the Secretary's designee, on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The Commission shall be composed of 19 members appointed by the Secretary for 5-year terms as follows: (1) Eight members to be appointed from recommendations submitted by the boards of commissioners or the county councils, as the case may be, of Montgomery, Frederick, Washington, and Allegany Counties, Maryland, of which two members shall be appointed from recommendations submitted by each such board or council, as the case may be; (2) Eight members to be appointed from recommendations submitted by the Governor of the State of Maryland, the Governor of the State of West Virginia, the Governor of the Commonwealth of Virginia, and the Mayor of the District of Columbia, of which two members shall be appointed from recommendations submitted by each such Governor or Mayor, as the case may be; and (3) Three members to be appointed by the Secretary, one of whom shall be designated Chair of the Commission and two of who shall be members of regularly constituted conservation organizations.

We are currently seeking members to represent all categories. The Chair will be appointed as a special Government employee (SGE). Please be aware that the individual selected to serve as the Chair will be required, prior to appointment, to file a Confidential Financial Disclosure Report in order to avoid involvement in real or apparent conflicts of interest. You may find a copy of the Confidential Financial Disclosure Report at the following website: *https://www.doi.gov/ethics/special-government-employees/financial-disclosure.* Additionally, after appointment, the Chair will be required to meet applicable financial disclosure and ethics training requirements. Please contact the Departmental Ethics Office at (202) 208–7960 or *DOI_Ethics@sol.doi.gov* with any questions about the SGE ethics requirements.

Nominations should be typed and should include a resume providing an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Commission and permit the Department to contact a potential member. All documentation, including letters of recommendation, must be compiled and submitted in one complete package. All those interested in membership, including current members whose terms are expiring, must follow the same nomination process. Members may not appoint deputies or alternates.

Members of the Commission serve without compensation. However, while away from their homes or regular places of business in the performance of services for the Commission as approved by the NPS, members may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed such expenses under section 5703 of title 5 of the United States Code.

(Authority: 16 U.S.C. 410y–4, as amended.)

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2022–22293 Filed 10–13–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034711; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Michigan, Ann Arbor, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Michigan has completed an inventory of human remains and associated funerary objects in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the University of Michigan. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the University of Michigan at

the address in this notice by November 14, 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Ben Secunda, NAGPRA Project Manager, University of Michigan, Office of Research, 3003 South State Street, First Floor, Wolverine Tower, Ann Arbor, MI 48109–1274, telephone (734) 764–1185, email *bsecunda@umich.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the University of Michigan, Ann Arbor, MI. The human remains and associated funerary objects were removed from the Moccasin Bluff site (20BE08) in Berrien County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Michigan Museum of Anthropological Archaeology (UMMAA) professional staff in consultation with representatives of the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Nottawaseppi Huron Band of the Potawatomi, Michigan (*previously* listed as Huron Potawatomi, Inc.); Pokagon Band of Potawatomi Indians, Michigan and Indiana; and the Prairie Band Potawatomi Nation (*previously* listed as Prairie Band of Potawatomi Nation, Kansas) (hereafter referred to as ''The Tribes'').

History and Description of the Remains

In 1948, human remains representing, at minimum, one individual were removed from the Moccasin Bluff site (20BE08) in Berrien County, MI, by UMMAA archeologist Hale Smith. Smith uncovered three burials while excavating a trench at the multi-component site. All the individuals were found buried in an extended position and oriented in the same direction. According to a publication, Smith identified three burials at the site, but he presumably only excavated one of the burials, which he then brought to the Museum. The date range for this burial is A.D. 1400–1820, based on the extended burial treatment, with individuals facing the same direction, and the associated funerary objects. All the human remains listed in this notice were excavated by Smith in 1948. The associated funerary objects came from excavations by Smith in 1948; Joseph Birdsell, who excavated the site in 1938, and donated some of the funerary objects he recovered to the UMMAA in 1947; and Arthur Jelinek, who excavated the site in 1961. The human remains are of one child ≤13 years old, of indeterminate sex. No known individual was identified. The nine associated funerary objects are one lot of earthenware vessel sections; four lots of earthenware body sherds; one lot of lithic flakes; one lot of earthenware body sherds and small sherd crumb; one lot of lithics, ceramic sherds, and unworked faunal bone fragments; and one lot of reconstructed sections of an earthenware vessel including rim and body sherds.

The human remains have been determined to be Native American based on mortuary treatment, diagnostic artifacts, and archeological context. A relationship of shared group identity can be reasonably traced between the Native American human remains from this site and the Potawatomi and Miami, based on archeological and historical records that indicate both Tribes had a predominant presence in the St. Joseph River Valley from the time of first contact with the French through the early-1800s. Both Tribes were known to have had close and friendly relations in this area. In the early-1800s, the Potawatomi leader Moccasin presided over a village in the immediate vicinity of the site (in present-day Buchanan, MI) on a bluff that now bears his name.

Determinations Made by the University of Michigan

Officials of the University of Michigan have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the nine objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Ben Secunda, NAGPRA Project Manager, University of Michigan, Office of Research, 3003 South State Street, First Floor, Wolverine Tower, Ann Arbor, MI 48109–1274, telephone (734) 764–1185, email *bsecunda@umich.edu,* by November 14, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The University of Michigan is responsible for notifying The Tribes that this notice has been published.

Dated: October 5, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–22336 Filed 10–13–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Control Number 1010–0006; Docket ID: BOEM–2017–0016]

Agency Information Collection Activities; Leasing of Sulfur or Oil and Gas in the Outer Continental Shelf

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Ocean Energy Management (BOEM) is proposing this information collection request (ICR) to renew Control Number 1010–0006 with revisions.

DATES: Comments must be received by the Office of Management and Budget (OMB) no later than November 14, 2022.

ADDRESSES: Submit your written comments on this ICR to the OMB's desk officer for the Department of the Interior at *www.reginfo.gov/public/do/PRAMain* within 30 days of publication of this notice. From the *www.reginfo.gov/public/do/PRAMain* landing page, find this information collection by selecting ''Currently under Review—Open for Public Comments'' or

by using the search function. Please provide a copy of your comments by parcel delivery to the BOEM Information Collection Clearance Officer, Anna Atkinson, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166; or by email to *anna.atkinson@boem.gov.* Please reference OMB Control Number 1010–0006 in the subject line of your comments. You may also comment by searching the docket number BOEM–2017–0016 at *http://www.reginfo.gov/public/do/PRAMain.*

FOR FURTHER INFORMATION CONTACT: Anna Atkinson by email at *anna.atkinson@boem.gov* or by telephone at 703–787–1025. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, BOEM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps BOEM assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BOEM's information collection requirements and provide the requested data in the desired format.

Title of Collection: ''Leasing of Sulfur or Oil and Gas in the Outer Continental Shelf.''

Abstract: This ICR concerns the paperwork requirements in 30 CFR parts 550, 556, and 560. This ICR also concerns the use of forms to process bonds, transfer interest in leases, and file relinquishments.

The Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the Outer Continental Shelf (OCS) and all operations conducted under a lease. Operations on the OCS must develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs; balance orderly energy resource development with protection of human, marine, and coastal environments; ensure the public a fair return on the resources of the OCS; and preserve and maintain free enterprise competition. Also, the Energy Policy and Conservation Act of 1975 prohibits certain lease bidding arrangements (42 U.S.C. 6213(a)).

OMB Control Number: 1010–0006.

Form Number:

- BOEM–0150, ''Assignment of Record Title Interest in Federal OCS Oil and Gas Lease'';
- BOEM–0151, ''Assignment of Operating Rights Interest in Federal OCS Oil and Gas Lease'';
- BOEM–0152, ''Relinquishment of Federal OCS Oil and Gas Lease'';
- BOEM–2028, ''Outer Continental Shelf (OCS) Mineral Lessee's or Operator's Bond'';
- BOEM–2028A, ''Outer Continental Shelf (OCS) Mineral Lessee's or Operator's Supplemental Bond''; and
- BOEM–2030, ''Outer Continental Shelf (OCS) Pipeline Right-of-Way Grant Bond''.

Type of Review: Revision of a currently approved information collection.

Respondents/Affected Public: Federal oil, gas, or sulfur lessees and operators; right-of-way grant holders.

Total Estimated Number of Annual Responses: 21,826 responses.

Total Estimated Number of Annual Burden Hours: 21,935 hours.

Respondent's Obligation: Mandatory or required to obtain or retain a benefit.

Frequency of Collection: On occasion or annual.

Total Estimated Annual Non-Hour Burden Cost: $766,053.

Estimated Reporting and Recordkeeping Hour Burden: We expect the burden estimate for the renewal will be 21,935 hours with 21,826 responses, which reflects an increase of 2,881 hours and 11,628 responses. One hour of the increase accounts for Alaska's surety bond submission (30 CFR 550.1011), which was not previously included in the annual burden hours. The remaining increase of 2,880 annual burden hours accounts for submissions of documents under 30 CFR 556.715 and 556.808. Under the current 1010–0006, BOEM accounted for the burden hours to file the requisite fees under 30 CFR 556.715 and 556.808 but did not account for the burden hours to submit the requisite documents.

The following table details the individual components and respective burden hour estimates of this ICR.

BURDEN BREAKDOWN

30 CFR Part 550 Subpart J	Reporting requirement *	Hour burden	Average number of annual responses	Annual burden hours
		Non-hour cost burdens		
550.1011(a)	Provide surety bond (Form BOEM–2030) and required information.	Gulf of Mexico 0.25	52	13
		Pacific 3.5	3	11
		Alaska 1	1	1
30 CFR 550, Subpart J, Total.			56 Responses	25 hours

30 CFR Part 556 and NTLs	Reporting requirement *	Hour burden	Average number of annual responses	Annual burden hours
		Non-hour cost burdens		
	Subpart A			
104(b)	Submit confidentiality agreement	0.25	500	125
106	Cost recovery and service fees; confirmation receipt	Cost recovery and service fees and associated documentation are covered under individual requirements throughout part. **		0
107	Submit required documentation electronically through BOEM-approved system; comply with filing specifications, as directed by notice in the **Federal Register** in accordance with 30 CFR 560.500.	Burden covered in 30 CFR 560.500		0
107	File seals, documents, statements, signatures, etc., to establish legal status of all future submissions (paper or electronic).	10 min	400	67
Subtotal			900	192
	Subpart B			
201–204	Submit nominations, suggestions, comments, and information in response to requests for information or comments, draft or proposed 5-year leasing program, etc., including information from States and local governments, Federal agencies, industry, and others.	Not considered an information collection (IC) as defined in 5 CFR 1320.3(h)(4).		0
202–204	Submit nominations & specific information requested in draft proposed 5-year leasing program, from States and local governments.	4	69	276
Subtotal			69	276
	Subpart C			
301; 302	Submit response & specific information requested in requests for industry interest and calls for information and nominations, etc., on areas proposed for leasing; including information from States and local governments.	Not considered IC as defined in 5 CFR 1320.3(h)(4).		0
302(d)	Request summary of interest (nonproprietary information) for calls for information and requests for interest, etc.	1	5	5
305; 306	States or local governments submit comments, recommendations, other responses on size, timing, or location of proposed lease sale. Request extension; enter agreement.	4	25	100
Subtotal			30	105
	Subpart D			
400–402; 405	Establish file for qualification; submit evidence and certification for lessee and bidder qualification. Provide updates; obtain BOEM approval & qualification number.	2	107	214
403(c)	Request hearing on disqualification	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
403; 404	Notify BOEM if you or your principals are excluded, disqualified, or convicted of a crime—Federal non- procurement debarment and suspension requirements; request exception; enter transaction.	1.5	50	75

30 CFR Part 556 and NTLs	Reporting requirement *	Hour burden	Average number of annual responses	Annual burden hours
		Non-hour cost burdens		
405	Notify BOEM of all mergers, name changes, or change of business.	Requirement not considered IC under 5 CFR 1320.3(h)(1).		0
Subtotal			157	289
	Subpart E			
500; 501	Submit bids, deposits, and required information, including GDIS & maps; in manner specified. Make data available to BOEM.	5	2,000	10,000
500(e); 517	Request reconsideration of bid decision	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
501(e)	Apply for reimbursement	Burden covered in OMB Control Number 1010–0048, 30 CFR 551.		0
511(b); 517	Submit appeal of listing on restricted joint bidders list; appeal bid decision.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
513; 514	File statement and detailed report of production. Make documents available to BOEM.	2	100	200
515	Request exemption from bidding restrictions; submit appropriate information.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
516	File agreement on determination of lessee following BOEM's notice of tie bid.	3.5	2	7
520; 521; 600(c)	Execute lease (includes submission of evidence of authorized agent, completion of steps leading to lease execution, and request adjusted effective date of lease); submit required data and rental.	1	852	852
520(b)	Provide acceptable bond for payment of a deferred bonus.	0.25	1	1
Subtotal			2,955	11,060
	Subparts F, G, H			
700–716	File application and required information for assignment or transfer of record title or any other lease interest (Form BOEM–0150) (includes sale, sublease, segregation exchange, transfer); request effective date and confidentiality; provide notifications. **.	1	1,414	1,414
		$198 fee × 1,414 forms = $279,972		
715(a); 808(a)	File required instruments creating or transferring working interests, etc., for record purposes. **.	1	2,369	2,369
		$29 fee × 2,369 filings = $68,701		
715(b); 808(b)	Submit ''non-required'' documents, for record purposes that respondents want BOEM to file with the lease document. *(Accepted on behalf of lessees as a service; BOEM does not require nor need them.)*.	.25	11,518	2,880
		$29 fee × 11,518 filings = $334,022		
800–810	File application and required information for assignment or transfer of operating interest (Form BOEM–0151) (includes sale, sublease, segregation exchange, severance, transfer); request effective date; provide notifications. **.	1	421	421
		$198 fee × 421 forms = $83,358		
Subtotal			15,722	7,084

30 CFR Part 556 and NTLs	Reporting requirement *	Hour burden	Average number of annual responses	Annual burden hours
		Non-hour cost burdens		
				$766,053
	Subpart I			
900(a)–(e); 901; 902; 903(a).	Submit form for OCS mineral lessee's and operator's bond (Form BOEM–2028); execute bond.	0.33	135	45
900(c), (d), (f), (g); 901(c), (d), (f); 902(e).	Demonstrate financial worth and ability to carry out present and future financial obligations, request approval of another form of security, or request reduction in amount of supplemental bond required on BOEM-approved forms. Monitor and submit required information.	3.5	166	581
900(e); 901; 902; 903(a)	Submit form for OCS mineral lessee's and operator's supplemental plugging & abandonment bond (Form BOEM–2028A); execute bond.	0.25	141	35
900(f), (g)	Submit authority for Regional Director to sell Treasury or alternate type of securities.	2	12	24
901	Submit exploration plan, development and production plan, development operations coordination document.	IC burden covered in separate approved collection for 1010–0151, 30 CFR part 550, subpart B.		0
901(f)	Submit oral/written comment on adjusted bond amount and information.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
903(b)	Notify BOEM of any lapse in bond coverage and action filed alleging lessee, surety, or guarantor is insolvent or bankrupt.	1	4	4
904	Provide plan and instructions to fund lease-specific abandonment account and related information; request approval to withdraw funds.	12	2	24
905	Provide third-party guarantee, indemnity agreement, financial and required information, related notices, reports, and annual update; notify BOEM if guarantor becomes unqualified.	19	46	874
905(d)(3); 906	Provide notice of and request approval to terminate period of liability, cancel bond, or other security; provide required information.	0.5	378	189
907(c)(2)	Provide information to demonstrate lease will be brought into compliance.	16	5	80
Subtotal			889	1,856
	Subpart K			
1101	Request relinquishment (Form BOEM–0152) of lease; submit required information.	1	247	247
1102	Request additional time to bring lease into compliance.	1	1	1
1102(c)	Comment on cancellation.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
Subtotal			248	248
30 CFR 556 Total			20,970	21,110
		$766,053 Non-Hour Cost Burdens		

30 CFR Part 560	Reporting requirement *	Hour burden	Average number of annual responses	Annual burden hours
560.224(a)	Request BOEM to reconsider field assignment of a lease.	Requirement not considered IC under 5 CFR 1320.3(h)(9)		0
560.500	Submit required documentation electronically through BOEM-approved system; comply with filing specifications, as directed by notice in the **Federal Register** (*e.g.,* bonding info.).	1	800	800

30 CFR Part 560	Reporting requirement*	Hour burden	Average number of annual responses	Annual burden hours
30 CFR 560 Total	.....	.....	800	800
Total Reporting for Collection.	.....	.....	21,826	21,935
	.....	.....	$766,053 Non-Hour Cost Burdens	

* In the future, BOEM may require electronic filing of certain submissions.
** Cost recovery/service fees.
—For requests of approval for various operations or submission of plans or applications, the burdens are included with other OMB-approved collections: for BOEM, 30 CFR part 550 (subpart A, Control Number 1010–0114; subpart B, Control Number 1010–0151); and for BSEE, 30 CFR part 250 (subpart A, Control Number 1014–0022; subpart D, Control Number 1014–0018).
—All submission for designation of operator (Form BOEM–1123) under 30 CFR parts 550, 556, and 560 are captured in OMB Control Number 1010–0114.

A **Federal Register** notice with a 60-day public comment period on this proposed ICR was published on May 24, 2022 (87 *FR* 31576). BOEM did not receive any comments during the 60-day comment period.

BOEM is again soliciting comments on the proposed ICR. BOEM is especially interested in public comments addressing the following issues: (1) is the collection necessary to the proper functions of BOEM; (2) what can BOEM do to ensure that this information is processed and used in a timely manner; (3) is the burden estimate accurate; (4) how might BOEM enhance the quality, utility, and clarity of the information to be collected; and (5) how might BOEM minimize the burden of this collection on the respondents, including minimizing the burden through the use of information technology?

Comments submitted in response to this notice are a matter of public record and will be available for public review on *www.reginfo.gov.* You should be aware that your entire comment—including your address, phone number, email address, or other personally identifiable information included in your comment—may be made publicly available. Even if BOEM withholds your information in the context of this ICR, your comment is subject to the Freedom of Information Act (FOIA). If your comment is requested under the FOIA, your information will only be withheld if BOEM determines that a FOIA exemption to disclosure applies. BOEM will make such a determination in accordance with the Department of the Interior's (DOI) FOIA regulations and applicable law.

In order for BOEM to consider withholding from disclosure your personally identifiable information, you must identify, in a cover letter, any information contained in your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequence of the disclosure of information, such as embarrassment, injury, or other harm.

Note that BOEM will make available for public inspection all comments on *www.reginfo.gov,* in their entirety, submitted by organizations and businesses or by individuals identifying themselves as representatives of organizations or businesses.

BOEM protects proprietary information in accordance with FOIA (5 U.S.C. 552), DOI's implementing regulations (43 CFR part 2), and 30 CFR parts 550 and 552 promulgated pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1352(c)).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Karen Thundiyil,

Chief, Office of Regulations, Bureau of Ocean Energy Management.

[FR Doc. 2022–22344 Filed 10–13–22; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1252]

Certain Robotic Floor Cleaning Devices and Components Thereof; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on October 7, 2022, the presiding administrative law judge (''ALJ'') issued an Initial Determination on Violation of Section 337. The ALJ also issued a Recommended Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public only.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202)708–2310. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting submissions on public interest issues raised by the recommended relief

should the Commission find a violation, specifically: (1) limited exclusion orders directed to certain robotic floor cleaning devices and components thereof imported, sold for importation, and/or sold after importation by respondents SharkNinja Operating LLC, SharkNinja Management LLC, SharkNinja Management Co., SharkNinja Sales Co., and EP Midco LLC, all of Needham, Massachusetts; and SharkNinja Hong Kong Co. Ltd. of Hong Kong Island, Hong Kong (collectively, the ''Respondents'') that infringe one or more of asserted claims 9 and 12 of U.S. Patent No. 9,884,423 and claims 1 and 9 of U.S. Patent No. 10,813,517; and (2) cease and desist orders directed to Respondents with respect to these asserted claims. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bonding issued in this investigation on October 7, 2022. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by the close of business on November 7, 2022.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1252'') in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 11, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–22381 Filed 10–13–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1318]

Certain Graphics Systems, Components Thereof, and Digital Televisions Containing the Same; Notice of Commission Decision Not To Review Initial Determinations Terminating the Investigation as to Certain Patent Claims and Granting Complainants' Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''the Commission'') has determined not to review two initial determinations (''IDs'') of the presiding administrative law judge (''ALJ''): (1) Order No. 23 terminating the investigation as to claims 17–21 of U.S. Patent No. 8,468,547 (''the '547 patent'') (collectively, the ''Withdrawn Claims''); and (2) Order No. 24 granting complainants' motion to amend the complaint and notice of investigation (''NOI'') in the above-captioned investigation to correct the names of two respondents.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 7, 2022, based on a complaint

filed on behalf of Advanced Micro Devices, Inc. of Santa Clara, California and ATI Technologies ULC of Ontario, Canada (collectively, ''Complainants''). 87 FR 34718–19 (Jun. 7, 2022). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain graphics systems, components thereof, and digital televisions containing the same by reason of infringement of certain claims of the '547 patent and U.S. Patent Nos. 7,742,053; 8,760,454; 11,184,628; and 8,854,381. The complaint further alleges that a domestic industry exists and is in the process of being established. The Commission's NOI named fourteen (14) respondents, including: TCL Industries Holdings Co., Ltd., TCL Technology Group Corporation, TCL King Electrical Appliances (Huizhou) Co. Ltd., and Shenzhen TCL New Technologies Co., Ltd., all of Guangdong, China; TCL Industries Holdings (H.K.) Limited, TCL Electronics Holdings Limited f/k/a TCL Multimedia Technology Holdings, Ltd., TTE Corporation, TCL Holdings (BVI) Limited, TCL MOKA International Limited, and TCL Overseas Marketing Ltd., all of New Territories, Hong Kong; TCL Smart Device (Vietnam) Co., Ltd. of Binh Duong Province, Vietnam; Manufacturas Avanzadas SA de CV of Chihuahua, Mexico; TCL Electronics Mexico, S de RL de CV of Distrito Federal, Mexico City, Mexico; and Realtek Semiconductor Corp. of Hsinchu, Taiwan. The Office of Unfair Import Investigations is not participating in the investigation.

On September 16, 2022, Complainants filed an unopposed motion to terminate the investigation as to the Withdrawn Claims based on the withdrawal of the allegations in the complaint as to those claims.

Also on September 16, 2022, Complainants filed an unopposed motion for leave to amend the complaint and NOI to change the name of respondent ''TCL Industries Holdings (H.K.) Limited'' to ''TCL Industries Holdings (H.K.) Co. Limited,'' and the name of respondent ''Shenzhen TCL New Technologies Co., Ltd.'' to ''Shenzhen TCL New Technology Co., Ltd.''

On September 20, 2022, the ALJ issued the subject IDs (Order Nos. 23, 24) granting both Complainants' motion for partial termination of the investigation as to the Withdrawn Claims and Complainants' motion for leave to amend the complaint and NOI. Order No. 23 finds that the motion for termination satisfies Commission Rule 210.21(a)(1), 19 CFR 210.21(a)(1), and that no extraordinary circumstances exist that would prevent the requested partial termination. Order No. 24 finds that Complainants have shown good cause to amend the NOI and that ''[c]orrection of a Respondent's name is in the interests of the parties and the public.'' *See* Order No. 24 at 2 (quoting Complainants' Motion at 3). No petitions for review were filed.

The Commission has determined not to review the subject IDs. Claims 17–21 of the '547 patent are terminated from this investigation, and the NOI is amended to correct the names of the indicated respondents.

The Commission vote for this determination took place on October 7, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: October 11, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–22356 Filed 10–13–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Electronic Devices, Semiconductor Devices, and Components Thereof, DN 3647;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Katherine M. Hiner, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf Bell Semiconductor, LLC on October 6, 2022. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of regarding certain electronic devices, semiconductor devices, and components thereof. The complainant names as respondents: NXP Semiconductors, N.V. of Netherlands; NXP B.V., of Netherlands; NXP USA, Inc. of Austin, TX; SMC Networks, Inc. d/b/a/IgniteNet, of Irvine, CA; Micron Technology, Inc. of Boise, ID; NVIDIA Corporation of Santa Clara, CA; Advanced Micro Devices, Inc. of Santa Clara, CA; Acer, Inc. of Taiwan; Acer America Corporation of San Jose, CA; Infineon Technologies AG of Germany; Infineon Technologies America Corp. of Milpitas, CA; Qualcomm Technologies, Inc. of San Diego, CA; Motorola Mobility LLC of Chicago, IL and Western Digital Technologies, Inc. of San Jose, CA. The complainant requests that the Commission issue a limited exclusion order and cease and desist orders and impose a bond upon respondent's alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3647'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures.) [1] Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: October 7, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–22353 Filed 10–13–22; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–1332]

Certain Semiconductors and Devices and Products Containing the Same, Including Printed Circuit Boards, Automotive Parts, and Automobiles; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 23, 2022, under section 337 of the Tariff Act of 1930, as amended, on behalf of Daedalus Prime LLC of Bronxville, New York. A supplement to the complaint was filed on September 12, 2022. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductors and devices and products containing the same, including printed circuit boards, automotive parts, and automobiles by reason of the infringement of certain claims of U.S. Patent No. 8,775,833 (''the '833 patent''); U.S. Patent No. 8,898,494 (''the '494 patent''); U.S. Patent No. 9,575,895 (''the '895 patent''); U.S. Patent No. 10,049,080 (''the '080 patent''); U.S. Patent No. 10,394,300 (''the '300 patent''); and U.S. Patent No. 10,705,588 (''the '588 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2022).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 6, 2022, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–18 of the '833 patent; claims 1–18 of the '494 patent; claims 1–17 of the '895 patent; claims 1–24 of the '080 patent; claims 1–19 of the '300 patent; and claims 1–20 of the '588 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''semiconductor chips and printed circuit boards for use in automobile infotainment systems and instrument clusters, and automobile infotainment systems, instrument clusters, and automobiles containing the same, and components thereof'';

(3) Pursuant to Commission Rule 210.50(b)(l), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. l337(d)(l), (f)(1), (g)(1)

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Daedalus Prime LLC, 51 Pondfield Road, Suite 3, Bronxville, NY 10708

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Avnet, Inc., 2211 South 47th Street, Phoenix, AZ 85034

Digi-Key Electronics, 701 Brooks Avenue South, Thief River Falls, MN 56701

Mercedes-Benz Group AG, 70546 Stuttgart, Germany

Mercedes-Benz AG, Epplestraβe 225, 70567 Stuttgart-Möhringen, Germany

Mercedes-Benz USA, LLC, 1 Mercedes-Benz Drive, Sandy Springs, GA 30328

Mouser Electronics, Inc., 1000 North Main Street, Mansfield, TX 76063

Newark, 300 S Riverside Plaza, Suite 2200, Chicago, IL 60606

NXP Semiconductors N.V., High Tech Campus 60, 5656 AG Eindhoven, Netherlands

NXP USA, Inc., 6501 W William Cannon Dr., Austin, TX 78735

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: October 7, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–22288 Filed 10–13–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1226]

Certain Artificial Eyelash Extension Systems, Products, and Components Thereof; Notice of the Commission's Final Determination Finding No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has found no violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On October 28, 2020, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on a complaint filed by Lashify, Inc. of Glendale, California (''Lashify''). *See* 85 FR 68366–67 (Oct. 28, 2020). The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, sale for importation, or sale after importation into the United States of certain artificial eyelash extension systems, products, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 10,660,388 (''the '388 patent'') and 10,721,984 (''the '984 patent''), and the sole claims of U.S. Design Patent Nos. D877,416 (''the D'416 patent'') and D867,664 (''the D'664 patent''), respectively (collectively, the ''Asserted Patents''). The complaint also alleges the existence of a domestic industry. The notice of

investigation (''NOI'') names nine respondents, including: KISS Nail Products, Inc. of Port Washington, New York (''KISS''); Ulta Beauty, Inc. of Bolingbrook, Illinois; CVS Health Corporation of Woonsocket, Rhode Island; Walmart, Inc. of Bentonville, Arkansas (''Walmart''); Qingdao Hollyren Cosmetics Co., Ltd. d/b/a Hollyren of Shandong Province, China (''Hollyren''); Qingdao Xizi International Trading Co., Ltd. d/b/a Xizi Lashes of Shandong Province, China (''Xizi Lashes''); Qingdao LashBeauty Cosmetic Co., Ltd. d/b/a Worldbeauty of Qingdao, China (''Worldbeauty''); Alicia Zeng d/b/a Lilac St. and Artemis Family Beginnings, Inc. of San Francisco, California (collectively, ''Lilac''); and Rachael Gleason d/b/a Avant Garde Beauty Co. of Dallas, Texas. *Id.* The Office of Unfair Import Investigations (''OUII'') is also a party to the investigation. *Id.*

The Commission later amended the complaint and NOI to substitute CVS Pharmacy, Inc. of Woonsocket, Rhode Island (''CVS'') in place of named respondent CVS Health Corporation and Ulta Salon, Cosmetics & Fragrance, Inc. of Bolingbrook, Illinois (''Ulta'') in place of named respondent Ulta Beauty, Inc. *See* Order No. 10, *unreviewed by* Comm'n Notice (Feb. 10, 2021); *see also* 86 FR 9535 (Feb. 16, 2021).

The Commission previously terminated the investigation as to claims 2–4 and 7 of the '388 patent and claims 6–8, 12, 18–19, 25–26, and 29 of the '984 patent based on Lashify's partial withdrawal of the complaint. *See* Order No. 24 (Apr. 23, 2021), *unreviewed by* Comm'n Notice (May 11, 2021). The Commission also previously terminated claims 2–5, 10–11, 14, 17, 21–22, and 24 of the '984 patent from the investigation. *See* Order No. 38 (June 22, 2021), *unreviewed by* Comm'n Notice (July 6, 2021).

The Commission previously terminated Rachael Gleason d/b/a Avant Garde Beauty Company from the investigation based on a Consent Order. *See* Order No. 28, *unreviewed by* Comm'n Notice (May 20, 2021).

The Commission previously determined that Lashify failed to satisfy the technical prong of the domestic industry requirement for the '388 patent, thus terminating that patent from the investigation. *See* Order No. 35, *unreviewed by* Comm'n Notice (July 9, 2021).

Prior to the issuance of the final initial determination, the remaining respondents included: KISS, Ulta, CVS, Walmart, Hollyren, Xizi Lashes, Worldbeauty, and Lilac (collectively, ''Respondents'').

On October 28, 2021, the presiding administrative law judge issued a final initial determination (''FID''), finding that no violation of section 337 has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain artificial eyelash extension systems, products, and components thereof. FID at 141–142. The FID finds that two accused products infringe the '984 patent and the'984 patent is not invalid, but also finds that Lashify has failed to satisfy the technical prong of the domestic industry requirement with respect to the '984 patent. The FID further finds that the D'416 patent and D'664 patent are infringed and not invalid, and that Lashify satisfied the technical prong with respect to both design patents. The FID further finds that Lashify has failed to satisfy the economic prong of the domestic industry requirement with respect to all of the Asserted Patents remaining in the investigation.

On November 29, 2021, respondents KISS, Ulta, Walmart, and CVS filed a joint submission on the public interest pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50 (a)(4)). Lashify and OUII did not file a statement on the public interest. No submissions were received in response to the Commission notice seeking public interest submissions. 86 FR 62844–45 (Nov. 12, 2021).

On January 20, 2022, the Commission determined to review the FID in part. 87 FR 4044–46 (Jan. 26, 2022). Specifically for the '984 patent, the Commission reviewed the FID's findings regarding the technical prong of the domestic industry requirement and the FID's findings that the asserted claims of the '984 patent are not invalid as obvious. *Id.* at 4045. The Commission also reviewed the FID's findings regarding the economic prong of the domestic industry requirement. *Id.* The Commission asked the parties to address two questions related to the issues under review with respect to the economic prong of the domestic industry requirement. *Id.*

On February 3, 2022, Lashify, Respondents, and OUII each filed an initial written response to the Commission's request for briefing. On February 10, 2022, Lashify, Respondents, and OUII each filed a reply submission.

Having reviewed the record of the investigation, including the FID and the parties' submissions, the Commission has determined to find no violation of section 337 as to any Asserted Patent. Specifically, with respect to the '984 patent, the Commission has determined to: (1) affirm, with supplemental analysis, the FID's finding that Lashify has failed to satisfy the technical prong of the domestic industry requirement; and (2) take no position regarding whether claims 1, 9, 23, and 27 of the '984 patent are invalid for obviousness under 35 U.S.C. 103. The Commission has further determined to affirm, with supplemental reasoning, the FID's finding that Lashify failed to satisfy the economic prong of the domestic industry requirement for any of the Asserted Patents. Commissioners Karpel and Schmidtlein concur in the determination of no violation as to the '984 patent. However, they find a violation of section 337 as to the D'416 and D'664 patents. Specifically, they find that Lashify has satisfied the economic prong of the domestic industry requirement under subsection 337(a)(3)(B), but not under subsection 337(a)(3)(A), with respect to the D'416 and D'664 patents. They take no position on subsection 337(a)(3)(C) with respect to the D'416 and D'664 patents, or on whether Lashify satisfies the economic prong for the '984 patent.

The investigation is terminated with a finding of no violation of section 337. The Commission's reasoning in support of its determinations is set forth more fully in its opinion. The reasoning in support of the separate views of Commissioners Karpel and Schmidtlein is set forth in the Separate Views of Commissioners Karpel and Schmidtlein in Dissent on the Economic Prong of the Domestic Industry Requirement as to U.S. Design Patent Nos. D877,416 and D867,664, issued concurrently therewith.

The Commission vote for this determination took place on October 6, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 6, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–22287 Filed 10–13–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–22–043]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 21, 2022 at 11 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 701–TA–545–546 and 731–TA–1291–1297 (Review) and 731–TA–808 (Fourth Review) (Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, Netherlands, Russia, South Korea, Turkey, and the United Kingdom). The Commission is currently scheduled to complete and file its determinations and views of the Commission on November 9, 2022.
5. Outstanding action jackets: none.

CONTACT PERSON FOR MORE INFORMATION: William Bishop, Supervisory Hearings and Information Officer, 202–205–2595.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: October 11, 2022.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2022–22436 Filed 10–12–22; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On October 6, 2022, the Department of Justice lodged a proposed Consent Decree (''Consent Decree'') with the United States District Court for the District of New Jersey in the lawsuit entitled *United States and the State of New Jersey, Department of Environmental Protection* v. *Stony Brook Regional Sewerage Authority,* Civil Action No. 3:22–cv–05922.

In a Complaint, the United States, on behalf of the U.S. Environmental Protection Agency (''EPA''), and the State of New Jersey, on behalf of the Department of Environmental Protection, alleges that the Stony Brook Regional Sewerage Authority (''SBRSA'') violated the Clean Air Act (the ''Act''), 42 U.S.C. 7413, by violating: (1) the Solid Waste Combustion provisions in Section 129 of the Clean Air Act, 42 U.S.C. 7429, and (2) the Federal Plan Requirements for Sewage Sludge Incineration Units Constructed on or Before October 14, 2010, 40 CFR part 62, subpart LLL (''Subpart LLL''). The proposed Consent Decree in this case requires SBRSA to pay a civil penalty of $335,750; to complete and submit a control plan and site-specific monitoring plan that include procedures to measure the mercury concentration in its sewage sludge; to conduct a Subpart LLL-compliant performance test; to develop and undertake standard operating procedures and recordkeeping and reporting obligations to minimize the use of the bypass stack; to undertake root cause analyses and corrective actions whenever there is an exceedance of the limit for the mercury concentration of the sewage sludge or the bypass stack is used; and, to pay stipulated penalties for violations of Consent Decree requirements. In addition, the Consent Decree requires a New Jersey-sponsored environmental project, to be overseen by the state, involving a contribution to the New Jersey Department of Environmental Protection's Environmental Mitigation Project Fund.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and the State of New Jersey, Department of Environmental Protection* v. *Stony Brook Regional Sewerage Authority,* D.J. Ref. No. 90–5–2–1–12080. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $13.50 (25 cents per page reproduction cost), payable to the United States Treasury.

Henry Friedman,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 2022–22289 Filed 10–13–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Innovation and Opportunity Act; Native American Employment and Training Council

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), as amended, and the Workforce Innovation and Opportunity Act (WIOA), notice is hereby given of the next meeting of the Native American Employment and Training Council (Council), as constituted under WIOA.

DATES: The meeting will begin at 9:00 a.m., (Pacific Daylight Time) on Sunday, October 30, 2022, and continue until 4:30 p.m. The meeting will reconvene at 9:00 a.m., on Monday, October 31, 2022, and adjourn at 4:30 p.m. The period from 3:00 p.m., to 4:00 p.m., on October 31, 2022, is reserved for participation and comment by members of the public.

ADDRESSES: The meeting will be held in person at the Citizen Hotel, 926 J Street, Sacramento, California, 95814. The meeting will also be accessible virtually on the Zoom.gov platform. To join the meeting use the following:

https://www.zoomgov.com/j/1612156612

Meeting ID: 161 215 6612

SUPPLEMENTARY INFORMATION: Council members and members of the public are encouraged to log on to Zoom.gov early to allow for connection issues and troubleshooting.

Members of the public not present may submit a written statement by

Tuesday, October 25, 2022, to be included in the record of the meeting. Statements are to be submitted to Athena R. Brown, Designated Federal Officer (DFO), and U.S. Department of Labor at *brown.athena@dol.gov.* Persons who need special accommodations should contact Suzie Casal at (202) 309–8589 or *casal.suzie@dol.gov,* at least two business days before the meeting. The formal agenda will focus on the following topics: (1) NAETC issues/discussion, (2) Introduction to National Congress of American Indians Training and Key Priorities, (3) NAETC Two-Year Strategic Plan Update; (4) 477 Update from Federal Partners Meeting; (5) Upcoming Regional/National TAT conferences; (6) DINAP Report Out and Updates; and (7) public comment.

FOR FURTHER INFORMATION CONTACT: Athena R. Brown, DFO, Division of Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, Room C–4311, 200 Constitution Avenue NW, Washington, DC, 20210. Telephone number (202) 693–3737 (VOICE) (this is not a toll-free number).

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2022–22402 Filed 10–13–22; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Data Users Advisory Committee; Notice of Meeting and Agenda

The Bureau of Labor Statistics Data Users Advisory Committee will meet on Thursday, November 10, 2022. This meeting will be held virtually.

The Committee provides advice to the Bureau of Labor Statistics from the points of view of data users from various sectors of the U.S. economy, including the labor, business, research, academic, and government communities. The Committee advises on technical matters related to the collection, analysis, dissemination, and use of the Bureau's statistics, on its published reports, and on the broader aspects of its overall mission and function.

The agenda for the meeting is as follows:

12:00 p.m. Commissioner's Welcome and Review of Agency Developments
12:30 p.m. Update on NextGen News Releases
1:15 p.m. Student MLR
1:45 p.m. Break
2:00 p.m. Reaching new audiences: New ways of presenting data for novice users: Scrollytelling and BLS educational material
2:45 p.m. Reaching those with Limited English Proficiency
3:15 p.m. BLS Apps: CareerInfo and Local Data
3:45 p.m. Discussion of Future Topics and Concluding Remarks
4:00 p.m. Conclusion

The meeting is open to the public. Anyone planning to attend the meeting should contact Ebony Davis, Data Users Advisory Committee, at *Davis.Ebony@bls.gov.* Any questions about the meeting should be addressed to Mrs. Davis. Individuals who require special accommodations should contact Mrs. Davis at least two days prior to the meeting date.

Signed at Washington, DC, this 7th day of October 2022.

Leslie Bennett,

Chief, Division of Management Systems.

[FR Doc. 2022–22322 Filed 10–13–22; 8:45 am]

BILLING CODE 4510–24–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Legal Services Corporation's (LSC) Board of Directors and its seven committees will meet October 20–21, 2022. On Thursday, October 20, the first meeting will begin at 9 a.m. Central Daylight Time (CDT), with the next meeting commencing promptly upon adjournment of the immediately preceding meeting. On Friday, October 21, the first meeting will again begin at 8 a.m., CDT, with the next meeting commencing promptly upon adjournment of the immediately preceding meeting.

PLACE:

Public Notice of Virtual Meeting: LSC will conduct the October 20–21, 2022 meetings in-person and via Zoom.

Public Observation: Unless otherwise noted herein, the Board and all committee meetings will be open to public observation via Zoom. Members of the public who wish to participate remotely in the public proceedings may do so by following the directions provided below.

Directions for Open Sessions

Thursday, October 20, 2022

- To join the Zoom meeting by computer, please use this link.
- *https://lsc-gov.zoom.us/j/84817635983?pwd=Wmx4Nit3NkZ3SUpZaTNLYlRMUE5PQT09&from=addon*
  - *Meeting ID:* 848 1763 5983
  - *Passcode:* 102022
- To join the Zoom meeting with one tap from your mobile phone, please click dial:
  - +13017158592,,84817635983# US (Washington, DC)
  - +13126266799,,84817635983# US (Chicago)
- To join the Zoom meeting by telephone, please dial one of the following numbers:
  - +1 301 715 8592 US (Washington, DC)
  - +1 312 626 6799 US (Chicago)
  - +1 646 876 9923 US (New York)
  - +1 346 248 7799 US (Houston)
  - +1 408 638 0968 US (San Jose)
  - +1 253 215 8782 US (Tacoma)
  - *Meeting ID:* 848 1763 5983
  - *Passcode:* 102022
  - If calling from outside the U.S., find your local number here: *https://lsc-gov.zoom.us/u/acCVpRj1FD*

Friday, October 21, 2022

- To join the Zoom meeting by computer, please use this link.
  - *https://lsc-gov.zoom.us/j/89663269110?pwd=N2poRVFTMUN2dVRrTUdNYzZlV1FNdz09&from=addon*
  - *Meeting ID:* 896 6326 9110
  - *Passcode:* 102122
- To join the Zoom meeting with one tap from your mobile phone, please click dial:
  - +13017158592,,89663269110# US (Washington, DC)
  - +16468769923,,89663269110# US (New York)
- To join the Zoom meeting by telephone, please dial one of the following numbers:
  - +1 301 715 8592 US (Washington, DC)
  - +1 646 876 9923 US (New York)
  - +1 312 626 6799 US (Chicago)
  - +1 408 638 0968 US (San Jose)
  - +1 253 215 8782 US (Tacoma)
  - +1 346 248 7799 US (Houston)
  - *Meeting ID:* 896 6326 9110
  - *Passcode:* 102122
  - If calling from outside the U.S., find your local number here: *https://lsc-gov.zoom.us/u/acCVpRj1FD*

Once connected to Zoom, please immediately mute your computer or telephone. Members of the public are asked to keep their computers or telephones muted to eliminate background noise. To avoid disrupting the meetings, please refrain from placing the call on hold if doing so will trigger recorded music or other sound.

From time to time, the Board or Committee Chair may solicit comments

from the public. To participate in the meeting during public comment, use the 'raise your hand' or 'chat' functions in Zoom and wait to be recognized by the Chair before stating your questions and/or comments.

STATUS: Open, except as noted below.

Audit Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to meeting to discuss follow-up work by the Office of Compliance and Enforcement relating to open Office of Inspector General investigations.

Institutional Advancement Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public for a briefing on development activities, an update on LSC's 50th anniversary fundraising activities, and to discuss prospective members of the Leaders Council and Emerging Leaders Council.

Board of Directors—Open, except that, upon a vote of the Board of Directors, a portion of the meeting may be closed to the public for briefings by management and LSC's Inspector General and for the Board to consider and act on the General Counsel's report on potential and pending litigation involving LSC as well as a list of prospective Leaders Council and Emerging Leaders Council members.

Any portion of the closed session consisting solely of briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session.[1]

A verbatim written transcript will be made of the closed session of the Audit, Board, and Institutional Advancement Committee meetings. The transcript of any portions of the closed sessions falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), (7), (9) and (10), will not be available for public inspection. A copy of the General Counsel's Certification that, in his opinion, the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

MEETING SCHEDULE

	Start time (all CDT)
Thursday, October 20, 2022:	
1. Meeting of the Communications Subcommittee of the Institutional Committee	9 a.m. CDT.
2. Finance Committee Meeting.	
3. Audit Committee Meeting.	
4. Delivery of Legal Services Committee Meeting.	
Friday, October 21, 2022:	
1. Institutional Advancement Committee	8 a.m. CDT.
2. Open Board Meeting.	
3. Closed Board Meeting.	

Thursday, October 20, 2022

Meeting of Communications Subcommittee of the Institutional Advancement Committee

Open Session

1. Approval of Agenda
2. Approval of Minutes of the Subcommittee's Open Session Meeting on July 14, 2022
3. Communications and Social Media Update
   - *Carl Rauscher, Director of Communications and Media Relations, Legal Services Corporation*
4. Public Comment
5. Consider and Act on Other Business
6. Consider and Act on Motion to Adjourn the Meeting

Finance Committee Meeting

Open Session

1. Approval of Meeting Agenda
2. Approval of Minutes of the Committee's Open Session Meetings on June 13, June 30, July 5, and July 14, 2022
3. Approval of Minutes of the Committee's Closed Session Meeting on July 14, 2022
4. Presentation of LSC's Financial Report for Fiscal Year 2022, Ending September 30, 2022
   - *Debbie Moore, Chief Financial Officer and Treasurer*
5. Report on Fiscal Year 2023 Appropriation and Supplemental Requests
   - *Carol Bergman, Vice President for Government Relations and Public Affairs*
6. Report on Fiscal Year 2023 Management and Grants Oversight Budget
   - *Ron Flagg, President*
   - *Debbie Moore, Chief Financial Officer and Treasurer*
7. Report on Fiscal Year 2024 Budget Request
   - *Carol Bergman, Vice President for Government Relations and Public Affairs*
8. Briefing on Capitol Hill Visits During the Executive Directors Conference
   - *Carol Bergman, Vice President for Government Relations and Public Affairs*
9. Public Comment
10. Consider and Act on Other Business
11. Consider and Act on Motion to Adjourn the Meeting

Audit Committee Meeting

Open Session

1. Approval of Agenda
2. Approval of Minutes of the Committee's Open Session Meeting on July 13, 2022
3. Briefing by the Office of Inspector General
   - *Roxanne Caruso, Acting Inspector General & Assistant Inspector General for Audit*
4. Review LSC's Efforts, Including Training and Education, to Help Ensure that LSC Employees and Grantees Act Ethically and Safeguard LSC Funds
   - *Will Gunn, Vice President for Legal Affairs*
   - *Lynn Jennings, Vice President for Grants Management*
   - *Debbie Moore, Treasurer & Chief Financial Officer*
   - *Stefanie Davis, Senior Associate General Counsel for Regulations and Ethics Officer*
   - *Roxanne Caruso, Acting Inspector General & Assistant Inspector General for Audit*
   - *Daniel O'Rourke, Assistant Inspector General for Investigations*

[1] 5 U.S.C. 552b (a) (2) and (b). See also 45 CFR 1622.2 & 1622.3.

5. Management Update Regarding Risk Management
   - *Will Gunn, Vice President for Legal Affairs*
6. Briefing About Follow-Up by the Office of Compliance and Enforcement on Referrals by the Office of Inspector General Regarding Audit Reports and Annual Financial Statement Audits of Grantees
   - *Lora Rath, Director, Office of Compliance and Enforcement*
   - *Roxanne Caruso, Acting Inspector General & Assistant Inspector General for Audit*
7. Public Comment
8. Consider and Act on Other Business
9. Consider and Act on Motion to Adjourn the Open Session Meeting and Proceed to a Closed Session

Closed Session

1. Approval of Minutes of the Committee's Closed Session Meeting on July 13, 2022
2. Briefing by Office Compliance and Enforcement on Active Enforcement Matter(s) and Follow-Up on Open Investigation Referrals from the Office of Inspector General
   - *Lora Rath, Director, Office of Compliance and Enforcement*
3. Consider and Act on Motion to Adjourn the Meeting

Delivery of Legal Services Committee Meeting

Open Session

1. Approval of Agenda
2. Approval of Minutes of the Committee's Open Session Meeting on July 13, 2022
3. LSC Performance Criteria Revisions Update
   - *Lynn Jennings, Vice President for Grants Management*
   - *Joyce McGee, Director, Office of Program Performance*
   - *Evora Thomas, Consultant*
4. Panel Discussion: Disaster Legal Aid
   - *Leslie Powell-Beaudreaux, Executive Director, Legal Services of North Florida*
   - *Maria Thomas Jones, Executive Director, Legal Aid of Northwest Texas*
   - *Laura Tuggle, Executive Director, Southeast Louisiana Legal Services*

   Moderator: Joyce McGee, Director, Office of Program Performance
5. Public Comment
6. Consider and Act on Other Business
7. Consider and Act on a Motion to Adjourn the Meeting

Friday, October 21, 2022

Institutional Advancement Committee Meeting

Open Session

1. Approval of Agenda
2. Approval of Minutes of the Institutional Advancement Committee's Open Session Meeting on July 13, 2022
3. Update on Leaders Council and Emerging Leaders Council
   - *John G. Levi, Chairman of the Board*
4. Development Report
   - *Nadia Elguindy, Director of Institutional Advancement*
5. Update on Privately Funded Initiatives
   - Veterans Task Force Implementation
     - *Stefanie Davis, Senior Assistant General Counsel and Ethics Officer*
   - Executive Director Conference and Midwest Capstone Disaster Conference
     - *Lynn Jennings, Vice President for Grants Management*
   - Rural Justice Task Force
     - *Jessica Wechter, Special Assistant to the President*
6. Public Comment
7. Consider and Act on Other Business
8. Consider and Act on Motion to Adjourn the Open Session Meeting and Proceed to a Closed Session

Closed Session

1. Approval of Minutes of the Institutional Advancement Committee's Closed Session Meeting on July 13, 2022
2. Development Activities Report
   - *Nadia Elguindy, Director of Institutional Advancement*
3. Update on LSC's 50th Anniversary Fundraising Campaign
   - *Nadia Elguindy, Director of Institutional Advancement*
   - *Leo Latz, Latz & Company*
4. Consider and Act on Motion to Approve Leaders Council and Emerging Leaders Council Invitees
5. Consider and Act on Other Business
6. Consider and Act on Motion to Adjourn the Meeting

Board of Directors

Open Session

1. Pledge of Allegiance
2. Approval of Agenda
3. Approval of Minutes of the Board's Open Session Meeting on July 14, 2022
4. Chairman's Report
5. Members' Reports
6. President's Report
7. Inspector General's Report
8. Consider and Act on the Report of the Governance and Performance Review Committee, following its September 23, 2022, Videoconference Meeting
9. Consider and Act on the Report of the Operations and Regulations Committee, following its October 4, 2022, Videoconference Meeting
10. Consider and Act on the Report of the Finance Committee
11. Consider and Act on the Report of the Audit Committee
12. Consider and Act on the Report of the Delivery of Legal Services Committee
13. Consider and Act on the Report of the Institutional Advancement Committee
14. Public Comment
15. Consider and Act on Other Business
16. Consider and Act on Motion to Adjourn the Open Session Meeting and Proceed to a Closed Session

Closed Session

1. Approval of Minutes of the Board's Closed Session Meeting on July 14, 2022
2. Management Briefing
3. Inspector General Briefing
4. Consider and Act on General Counsel's Report on Potential and Pending Litigation Involving Legal Services Corporation
5. Consider and Act on List of Prospective Leaders Council and Emerging Council Invitees
6. Consider and Act on Motion to Adjourn the Meeting

CONTACT PERSON FOR MORE INFORMATION: Kaitlin Brown, Executive and Board Project Coordinator, at (202) 295–1555. Questions may also be sent by electronic mail to *brownk@lsc.gov*.

Non-Confidential Meeting Materials: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at *https://www.lsc.gov/about-lsc/board-meeting-materials.*

Dated: October 11, 2022.

Kaitlin D. Brown,

Executive and Board Project Coordinator, Legal Services Corporation.

[FR Doc. 2022–22452 Filed 10–12–22; 11:15 am]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2023–001]

National Industrial Security Program Policy Advisory Committee (NISPPAC); Meeting

AGENCY: Information Security Oversight Office (ISOO), National Archives and Records Administration (NARA).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: We are announcing an upcoming National Industrial Security Program Policy Advisory Committee (NISPPAC) meeting in accordance with the Federal Advisory Committee Act and implementing regulations.

DATES: The meeting will be on November 2, 2022, from 10 a.m–1 p.m EST.

Location: This meeting will be a virtual meeting. See supplementary procedures below.

FOR FURTHER INFORMATION CONTACT: Heather Harris Pagán, ISOO Program Analyst, by telephone at 202.357.5351 or by email at *ISOO@nara.gov.* Contact ISOO at *ISOO@nara.gov* and the NISPPAC at *NISPPAC@nara.gov.*

SUPPLEMENTARY INFORMATION: This virtual meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulations at 41 CFR 102–3. The Committee will discuss National Industrial Security Program policy matters.

Procedures: Members of the public must register in advance through the Event Services link *https://ems8.intellor.com?do=register&t=1&p=844912* if you wish to attend. NISPPAC members, ISOO employees, and speakers should send an email to *NISPPAC@nara.gov* for the appropriate registration information instead of registering with the above link.

Tasha Ford,

Committee Management Officer.

[FR Doc. 2022–22392 Filed 10–13–22; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

700th Meeting of the Advisory Committee on Reactor Safeguards (ACRS)

In accordance with the purposes of sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232(b)), the Advisory Committee on Reactor Safeguards (ACRS) will hold meetings on November 1–4, 2022. The Committee will be conducting meetings that will include some Members being physically present at the NRC while other Members participate remotely. Interested members of the public are encouraged to participate remotely in any open sessions via MS Teams or via phone at 301–576–2978, passcode 365074284#. A more detailed agenda including the MSTeams link may be found at the ACRS public website at *https://www.nrc.gov/reading-rm/doc-collections/acrs/agenda/index.html.* If you would like the MSTeams link forwarded to you, please contact the Designated Federal Officer as follows: *Quynh.Nguyen@nrc.gov,Derek.Widmayer@nrc.gov* or *Lawrence.Burkhart@nrc.gov.*

Tuesday, November 1, 2022

1 p.m.–1:05 p.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

1:05 p.m.–2:45 p.m.: SECY on Potential Expansion of Current NRC policy on Common Cause Failures (Open)—The Committee will have presentations and discussion with representatives from the NRC staff regarding the subject topic.

2:45 p.m.–3:45 p.m.: Committee Deliberation on SECY on Potential Expansion of Current NRC policy on Common Cause Failures (Open)—The Committee will deliberate regarding the subject topic.

3:45 p.m.–5:15 p.m.: Regulatory Guide (RG) 1.82, Revision 5, ''Water Sources for Long-term Recirculation Cooling following a Loss-of-Coolant Accident'' (Open)—The Committee will have presentations and discussion with representatives from the NRC staff regarding the subject topic.

5:15 p.m.–6 p.m.: Committee Deliberation on RG 1.82, Revision 5, ''Water Sources for Long-term Recirculation Cooling following a Loss-of-Coolant Accident'' (Open)—The Committee will deliberate regarding the subject topic.

Wednesday, November 2, 2022

8:30 a.m.–10:30 a.m.: 10 CFR part 53, ''Risk-Informed, Technology-Inclusive Regulatory Framework for Commercial Nuclear Plants,'' Proposed Rulemaking Language (Open)—The Committee will have presentations and discussion with representatives from the NRC staff regarding the subject topic.

10:30 a.m.–11:30 a.m.: Committee Deliberation on 10 CFR part 53, ''Risk-Informed, Technology-Inclusive Regulatory Framework for Commercial Nuclear Plants,'' Proposed Rulemaking Language (Open)—The Committee will deliberate regarding the subject topic.

1 p.m.–6 p.m.: Preparation of Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

Thursday, November 3, 2022

8:30 a.m.–6:00 p.m.: Preparation of Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

Friday, November 4, 2022

8:30 a.m.–11:30 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee and Reconciliation of ACRS Comments and Recommendations/Preparation of Reports/SHINE Memoranda Review and Deliberation (Open/Closed)—The Committee will hear discussion of the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings, and/or proceed to preparation of reports as determined by the Chairman. [NOTE: Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]. [NOTE: Pursuant to 5 U.S.C. 552b(c)(2), a portion of this meeting may be closed to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS.]

1:30 p.m.–6 p.m.: Preparation of Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on June 13, 2019 (84 FR 27662). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen or Derek Widmayer, Cognizant ACRS Staff and the Designated Federal Officer (Telephone: 301–415–5844, Email: *Derek.Widmayer@nrc.gov* or *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the cognizant ACRS staff if such rescheduling would result in major inconvenience.

An electronic copy of each presentation should be emailed to the cognizant ACRS staff at least one day before the meeting.

In accordance with subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting

may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System component of NRC's Agencywide Documents Access and Management System, which is accessible from the NRC website at *https://www.nrc.gov/reading-rm/adams.html* or *https://www.nrc.gov/reading-rm/doc-collections/#ACRS/.*

Dated: October 11, 2022.

Russell E. Chazell,

Federal Advisory Committee Management Officer, Office of the Secretary.

[FR Doc. 2022–22352 Filed 10–13–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0231]

Guide for Assessing, Monitoring, and Mitigating Aging Effects on Electrical Equipment Used in Production and Utilization Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a new Regulatory Guide (RG) 1.248, ''Guide for Assessing, Monitoring, and Mitigating Aging Effects on Electrical Equipment Used in Production and Utilization Facilities.'' This RG describes an approach that is acceptable to the staff of the NRC to meet regulatory requirements for managing, monitoring, and mitigating the aging effects on electrical equipment. It endorses Institute of Electrical and Electronics Engineers (IEEE) Standard (Std.) 1205 2014, ''IEEE Guide for Assessing, Monitoring, and Mitigating Aging Effects on Electrical Equipment Used in Nuclear Power Generating Stations and Other Nuclear Facilities.''

DATES: Revision 0 to RG 1.248 is available on October 14, 2022.

ADDRESSES: Please refer to Docket ID NRC–2021–0231 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0231. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's Public Document Room (PDR), Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

RG 1.248 and the regulatory analysis may be found in ADAMS under Accession Nos. ML22221A220 and ML21288A112, respectively.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Michael Eudy, telephone: 301–415–3104, email: *Michael.Eudy@nrc.gov* and Mohammad Sadollah, telephone: 301–415–6804, email: *Mohammad.Sadollah@nrc.gov.* Both are staff of the Office of Nuclear Regulatory Research at the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a new guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses. RG 1.248 was issued with a temporary identification of Draft Regulatory Guide, DG–1393.

II. Additional Information

The NRC published a notice of the availability of DG–1393 in the **Federal Register** on February 3, 2022 (87 FR 6204) for a 30-day public comment period. The public comment period closed on March 7, 2022. Public comments on DG–1393 and the staff responses to the public comments are available under ADAMS under Accession No. ML22221A222.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting, and Issue Finality

The NRC staff may use this RG as a reference in its regulatory processes, such as licensing, inspection, or enforcement, as appropriate. However, the NRC staff does not intend to use the guidance in this RG to support NRC staff actions in a manner that would constitute backfitting as that term is defined in section 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Backfitting,'' and as described in NRC Management Directive 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests,'' nor does the NRC staff intend to use the guidance to affect the issue finality of an approval under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants. The staff also does not intend to use the guidance to support NRC staff actions in a manner that constitutes forward fitting as that term is defined and described in MD 8.4. If a licensee believes that the NRC is using this RG in a manner inconsistent with the discussion in this Implementation section, then the licensee may file a backfitting or forward fitting appeal with the NRC in accordance with the process in MD 8.4.

V. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/*

contactus.html. Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: October 7, 2022.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2022–22300 Filed 10–13–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 99902088; NRC–2022–0167]

Abilene Christian University

AGENCY: Nuclear Regulatory Commission.

ACTION: Construction permit application; receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is providing public notice of receipt and availability of an application for a construction permit from Abilene Christian University (ACU). The construction permit application is dated August 12, 2022.

DATES: October 14, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0167 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0167. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern tme (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard F. Rivera, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7190; email: *Richard.Rivera@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

ACU filed with the NRC pursuant to Section 104c of the Atomic Energy Act and part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' an application dated August 12, 2022, for a construction permit for one research reactor proposed to be located in Abilene, Texas. The reactor is to be identified as the Molten Salt Research Reactor.

The application is available in ADAMS Package Accession No. ML22227A201, which includes the transmittal letter and the preliminary safety analysis report. The information submitted by the applicant includes certain administrative information, such as financial qualifications submitted pursuant to 10 CFR 50.33, ''Contents of applications; general information,'' as well as technical information submitted pursuant to 10 CFR 50.34, ''Contents of applications; technical information.'' The environmental report was also submitted as part of the preliminary safety analysis report.

The NRC staff is currently undertaking its acceptance review of the application. If the application is accepted for docketing, subsequent **Federal Register** notices will be issued that address the acceptability of the tendered construction permit application for docketing and provisions for participation of the public in the permitting process.

Dated: October 7, 2022.

For the Nuclear Regulatory Commission.

Richard F. Rivera,

Project Manager, Advanced Reactor Licensing Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2022–22294 Filed 10–13–22; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. In accordance with the Paperwork Reduction Act of 1995 and implementing OMB guidance, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB.

DATES: Submit comments on or before December 13, 2022.

ADDRESSES: Address written comments and recommendations for the proposed information collection to Virginia Burke, FOIA/Privacy Act Officer, by email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Virginia Burke, FOIA/Privacy Act Officer, at (202) 692–1887, or *PCFR@peacecorps.gov.*

SUPPLEMENTARY INFORMATION:

Title: Peace Corps Awareness and Affinity: National Survey of U.S. Adults.

OMB Control Number: 0420–****.

Form number: PC–2210.

Type of Request: New collection.

Affected Public: Individuals.

Respondents Obligation to Reply: Voluntary.

Respondents: Members of the public and prospective Peace Corps Volumteer applicants.

Burden to the Public:

(a) *Estimated number of respondents:* 6,200.

(b) *Frequency of response:* Twice.

(c) *Estimated average burden per response:* .188 hours.

(d) *Estimated total reporting burden:* 2333.32 hours.

(e) *Estimated annual cost to respondents:* 0.00.

General Description of Collection: The Peace Corps experienced unprecedented challenges during the COVID–19 pandemic, including recalling its entire Volunteer workforce in March 2020. The Peace Corps will launch a new national awareness and recruitment campaign as it returns to full service to promote the organization, its mission, goals, and values, and to attract and recruit qualified and diverse Volunteer applicants. The Peace Corps' Office of Communications will use the information collected by the Peace Corps Awareness and Affinity: National Survey of U.S. Adults to help assess the effectiveness of the new campaign. The survey will also collect information to help broaden the pool of potential Volunteers and engage more diverse audiences. This information collection will also be used to gather information and insights to identify key audience segments and help ensure the efficiency and success of future marketing efforts by:

- Identifying levels of awareness, knowledge, attitudes and opinions about the Peace Corps among the general U.S. public and targeted audience segments;
- Collecting insights to inform communications, education, and outreach strategies by understanding which themes resonate most with different audience segments; and,
- Determining the best channels for communication

The Office of Communications will conduct this survey twice: once to serve as a baseline prior to the launch of its national awareness and recruitment campaign, and once after the campaign has launched to assess campaign impact.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on October 11, 2022.

Virginia Burke,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2022–22372 Filed 10–13–22; 8:45 am]

BILLING CODE 6051–01–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 14, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 3, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 59 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–5, CP2023–5.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–22312 Filed 10–13–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* October 14, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 7, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 7 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–11 and CP2023–11.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–22387 Filed 10–13–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 14, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 3, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Parcel Select Contract 53 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–3, CP2023–3.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–22306 Filed 10–13–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 14, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 5, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 60 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–6, CP2023–6.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–22310 Filed 10–13–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 14, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 7, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 62 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–8, CP2023–8.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–22308 Filed 10–13–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 14, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 7, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 64 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–10, CP2023–10.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–22309 Filed 10–13–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 14, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 7, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 63 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–9, CP2023–9.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–22314 Filed 10–13–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 14, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 3, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 57 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–2, CP2023–2.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–22311 Filed 10–13–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 14, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 5, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel*

Select Service Contract 61 to Competitive Product List. Documents are available at *www.prc.gov,* Docket Nos. MC2023–7, CP2023–7.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–22313 Filed 10–13–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 14, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 3, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 58 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–4, CP2023–4.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–22307 Filed 10–13–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96011; File No. SR–CboeBZX–2022–006]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Disapproving a Proposed Rule Change To List and Trade Shares of the WisdomTree Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

October 11, 2022.

I. Introduction

On January 25, 2022, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the WisdomTree Bitcoin Trust (''Trust'') under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on February 14, 2022.[3]

On March 18, 2022, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On May 13, 2022, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act [6] to determine whether to approve or disapprove the proposed rule change,[7] and on August 4, 2022, the Commission designated a longer period for Commission action on the proposed rule change.[8]

This order disapproves the proposed rule change. The Commission concludes that BZX has not met its burden under the Exchange Act and the Commission's Rules of Practice to demonstrate that its proposal is consistent with the requirements of Exchange Act Section 6(b)(5), which requires, in relevant part, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.'' [9]

When considering whether BZX's proposal to list and trade the Shares is designed to prevent fraudulent and manipulative acts and practices, the Commission applies the same analytical framework used in its orders considering previous proposals to list bitcoin [10]-based commodity trusts and bitcoin-based trust issued receipts to assess whether a listing exchange of an exchange-traded product (''ETP'') can meet its obligations under Exchange Act Section 6(b)(5).[11] As the Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 94184 (Feb. 8, 2022), 87 FR 8318 (''Notice''). Comments received on the proposed rule change are available at: *https://www.sec.gov/comments/sr-cboebzx-2022-006/srcboebzx2022006.htm.* BZX previously filed, and the Commission disapproved, a substantially similar proposal to list and trade the Shares of the Trust. *See* Notice of Filing of a Proposed Rule Change to List and Trade Shares of the WisdomTree Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 91521 (Apr. 9, 2021), 86 FR 19917 (Apr. 15, 2021); Order Disapproving a Proposed Rule Change To List and Trade Shares of the WisdomTree Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93700 (Dec. 1, 2021), 86 FR 69322 (Dec. 7, 2021) (SR–CboeBZX–2021–024) (''WisdomTree Order'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 94476, 87 FR 16800 (Mar. 24, 2022).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 94907, 87 FR 30546 (May 19, 2022).

[8] *See* Securities Exchange Act Release No. 95422, 87 FR 48738 (Aug. 10, 2022).

[9] 15 U.S.C. 78f(b)(5).

[10] Bitcoins are digital assets that are issued and transferred via a decentralized, open-source protocol used by a peer-to-peer computer network through which transactions are recorded on a public transaction ledger known as the ''bitcoin blockchain.'' The bitcoin protocol governs the creation of new bitcoins and the cryptographic system that secures and verifies bitcoin transactions. *See, e.g.,* Notice, 87 FR at 8320.

[11] *See* Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (Aug. 1, 2018) (SR-BatsBZX–2016–30) (''Winklevoss Order''); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, To Amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) and To List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201–E, Securities Exchange Act Release No. 88284 (Feb. 26, 2020), 85 FR 12595 (Mar. 3, 2020) (SR–NYSEArca–2019–39) (''USBT Order''); WisdomTree Order; Order Disapproving a Proposed Rule Change To List and Trade Shares of the Valkyrie Bitcoin Fund Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares), Securities Exchange Act Release No. 93859 (Dec. 22, 2021), 86 FR 74156 (Dec. 29, 2021) (SR–NYSEArca–2021–31) (''Valkyrie Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Kryptoin Bitcoin ETF Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93860 (Dec. 22, 2021), 86 FR 74166 (Dec. 29, 2021) (SR–CboeBZX–2021–029) (''Kryptoin Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the First Trust SkyBridge Bitcoin ETF Trust Under NYSE Arca Rule 8.201–E, Securities Exchange Act Release No. 94006 (Jan. 20, 2022), 87 FR 3869 (Jan. 25, 2022) (SR–NYSEArca–2021–37) (''SkyBridge Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Wise Origin Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 94080 (Jan. 27, 2022), 87 FR 5527 (Feb. 1, 2022) (SR–CboeBZX–2021–039) (''Wise Origin Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the NYDIG Bitcoin ETF Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares), Securities Exchange Act Release No. 94395 (Mar. 10, 2022), 87 FR 14932 (Mar. 16, 2022) (SR–NYSEArca–2021–57) (''NYDIG Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Global X Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 94396 (Mar. 10, 2022), 87 FR 14912 (Mar. 16, 2022) (SR–CboeBZX–2021–052) (''Global X Order''); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 94571 (Mar. 31, 2022), 87 FR 20014 (Apr. 6, 2022) (SR–CboeBZX–2021–051) (''ARK 21Shares Order'');

has explained, an exchange that lists bitcoin-based ETPs [12] can meet its obligations under Exchange Act Section 6(b)(5) by demonstrating that the exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying or reference bitcoin assets.[13]

In this context, the terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist in detecting and deterring misconduct, and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[14] A surveillance-sharing agreement must be entered into with a ''significant market'' to assist in detecting and deterring manipulation of the ETP, because a person attempting to manipulate the ETP is reasonably likely to also engage in trading activity on that ''significant market.'' [15]

Although surveillance-sharing agreements are not the exclusive means by which a listing exchange of a commodity-trust ETP can meet its obligations under Exchange Act Section 6(b)(5), such agreements have previously provided the basis for the exchanges that list commodity-trust ETPs to meet those obligations, and the Commission has historically recognized their importance. And where, as here, a listing exchange fails to establish that other means to prevent fraudulent and manipulative acts and practices will be sufficient, the listing exchange must enter into a surveillance-sharing agreement with a regulated market of significant size because such agreements detect and deter fraudulent and manipulative activity.[16]

The Commission has long recognized that surveillance-sharing agreements ''provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur'' and thus ''enable the Commission to continue to effectively protect investors and promote the public interest.'' [17] As the Commission has emphasized, it is essential for an exchange listing a derivative securities product to have the ability that surveillance-sharing agreements provide to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules.[18] The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.[19]

The Commission has explained that the ability of a national securities exchange to enter into surveillance-sharing agreements ''furthers the protection of investors and the public interest because it will enable the [e]xchange to conduct prompt investigations into possible trading violations and other regulatory improprieties.'' [20] The Commission has also long taken the position that surveillance-sharing agreements are important in the context of exchange listing of derivative security products, such as equity options, because a surveillance-sharing agreement ''permits the sharing of information'' that is ''necessary to detect'' manipulation and ''provide[s] an important deterrent to manipulation because [it] facilitate[s] the availability of information needed to fully investigate a potential

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Order Disapproving a Proposed Rule Change To List and Trade Shares of the One River Carbon Neutral Bitcoin Trust Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares), Securities Exchange Act Release No. 94999 (May 27, 2022), 87 FR 33548 (June 2, 2022) (SR–NYSEArca–2021–67) (''One River Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Bitwise Bitcoin ETP Trust Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares), Securities Exchange Act Release No. 95179 (June 29, 2022), 87 FR 40282 (July 6, 2022) (SR–NYSEArca–2021–89) (''Bitwise Order''); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of Grayscale Bitcoin Trust under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares), Securities Exchange Act Release No. 95180 (June 29, 2022), 87 FR 40299 (July 6, 2022) (SR–NYSEArca–2021–90) (''Grayscale Order''). In addition, orders were issued by delegated authority on the following matters: Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the SolidX Bitcoin Trust Under NYSE Arca Equities Rule 8.201, Securities Exchange Act Release No. 80319 (Mar. 28, 2017), 82 FR 16247 (Apr. 3, 2017) (SR–NYSEArca–2016–101) (''SolidX Order''); Order Disapproving a Proposed Rule Change To List and Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF, Securities Exchange Act Release No. 83904 (Aug. 22, 2018), 83 FR 43934 (Aug. 28, 2018) (SR–NYSEArca–2017–139) (''ProShares Order''); Order Disapproving a Proposed Rule Change To List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF, Securities Exchange Act Release No. 83913 (Aug. 22, 2018), 83 FR 43923 (Aug. 28, 2018) (SR–CboeBZX–2018–001) (''GraniteShares Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the VanEck Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93559 (Nov. 12, 2021), 86 FR 64539 (Nov. 18, 2021) (SR–CboeBZX–2021–019) (''VanEck Order''); Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Teucrium Bitcoin Futures Fund Under NYSE Arca Rule 8.200–E, Commentary .02 (Trust Issued Receipts), Securities Exchange Act Release No. 94620 (Apr. 6, 2022), 87 FR 21676 (Apr. 12, 2022) (SR–NYSEArca–2021–53) (''Teucrium Order''); Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade Shares of the Valkyrie XBTO Bitcoin Futures Fund Under Nasdaq Rule 5711(g), Securities Exchange Act Release No. 94853 (May 5, 2022), 87 FR 28848 (May 11, 2022) (SR–NASDAQ–2021–066) (''Valkyrie XBTO Order'').

[12] As used in this order, the term ''ETFs'' refers to open-end exchange-traded funds that register the offer and sale of their shares under the Securities Act of 1933 (''Securities Act'') and are regulated as investment companies under the Investment Company Act of 1940 (''1940 Act''). The term ''ETPs'' refers to exchange-traded products that register the offer and sale of their shares under the Securities Act but are not regulated under the 1940 Act, such as commodity trusts and trust issued receipts.

[13] *See* USBT Order, 85 FR at 12596. *See also* Winklevoss Order, 83 FR at 37592 n.202 and accompanying text (discussing previous Commission approvals of commodity-trust ETPs); GraniteShares Order, 83 FR at 43925–27 nn.35–39 and accompanying text (discussing previous Commission approvals of commodity-futures ETPs).

[14] *See* Winklevoss Order, 83 FR at 37594. *See also* USBT Order, 85 FR at 12596–97; WisdomTree Order, 86 FR at 69322.

[15] *See* USBT Order, 85 FR at 12597.

[16] *See* Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products, Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952, 70954, 70959 (Dec. 22, 1998) (File No. S7–13–98) (''NDSP Adopting Release''). *See also* Winklevoss Order, 83 FR at 37593–94; ProShares Order, 83 FR at 43936; GraniteShares Order, 83 FR at 43924; USBT Order, 85 FR at 12596.

[17] NDSP Adopting Release, 63 FR at 70954, 70959. *See also id.* at 70959 (''It is essential that the SRO [self-regulatory organization] have the ability to obtain the information necessary to detect and deter market manipulation, illegal trading and other abuses involving the new derivative securities product. Specifically, there should be a comprehensive ISA [information-sharing agreement] that covers trading in the new derivative securities product and its underlying securities in place between the SRO listing or trading a derivative product and the markets trading the securities underlying the new derivative securities product.'').

[18] *See* NDSP Adopting Release, 63 FR at 70959.

[19] *See* Winklevoss Order, 83 FR at 37592–93 (discussing Letter from Brandon Becker, Director, Division of Market Regulation, Commission, to Gerard D. O'Connell, Chairman, Intermarket Surveillance Group (June 3, 1994), *available at https://www.sec.gov/divisions/marketreg/mr-noaction/isg060394.htm*).

[20] Securities Exchange Act Release No. 27877 (Apr. 4, 1990), 55 FR 13344 (Apr. 10, 1990) *(N*otice of Filing and Order Granting Accelerated Approval to Proposed Rule Change Regarding Cooperative Agreements With Domestic and Foreign Self-Regulatory Organizations) (SR–NYSE–90–14).

manipulation if it were to occur.'' [21] With respect to ETPs, when approving the listing and trading of one of the first commodity-linked ETPs—a commodity-linked exchange-traded note—on a national securities exchange, the Commission continued to emphasize the importance of surveillance-sharing agreements, stating that the listing exchange had entered into surveillance-sharing agreements with each of the futures markets on which pricing of the ETP would be based and stating that ''[t]hese agreements should help to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making [the commodity-linked notes] less readily susceptible to manipulation.'' [22]

Consistent with these statements, for the commodity-trust ETPs approved to date for listing and trading, there has been in *every* case at least one significant, regulated market for trading futures on the underlying commodity and the ETP listing exchange has entered into surveillance-sharing agreements with, or held Intermarket Surveillance Group (''ISG'') membership in common with, that market.[23] Moreover, the surveillance-sharing agreements have been consistently present whenever the Commission has approved the listing and trading of derivative securities, even where the underlying securities were also listed on national securities exchanges—such as options based on an index of stocks traded on a national securities exchange—and were thus subject to the Commission's direct regulatory authority.[24]

Listing exchanges have also attempted to demonstrate that other means besides surveillance-sharing agreements will be sufficient to prevent fraudulent and manipulative acts and practices, including that the bitcoin market as a whole or the relevant underlying bitcoin market is ''uniquely'' and ''inherently'' resistant to fraud and manipulation.[25] In response, the Commission has stated that, if a listing exchange could establish that the underlying market inherently possesses a unique resistance to manipulation beyond the protections that are utilized by traditional commodity or securities markets, the listing market would not necessarily need to enter into a surveillance-sharing agreement with a regulated significant market.[26] Such resistance to fraud and manipulation, however, must be novel and beyond those protections that exist in traditional commodity markets or securities markets for which surveillance-sharing agreements in the context of listing derivative securities products have been consistently present.[27]

Here, BZX contends that approval of the proposal is consistent with Section 6(b)(5) of the Exchange Act, and, in particular, Section 6(b)(5)'s requirement that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.[28] As discussed in more detail below, BZX asserts that the proposal is consistent with Section 6(b)(5) of the Exchange Act because the Exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size,[29] and there exist other means to prevent fraudulent and manipulative acts and practices that are sufficient to justify dispensing with the detection and deterrence of fraud and manipulation provided by a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin.[30]

In the analysis that follows, the Commission examines whether the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act by addressing: in Section III.B.1 assertions that other means besides surveillance-sharing agreements will be sufficient to prevent fraudulent and manipulative acts and practices; in Section III.B.2 assertions that BZX has entered into a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin; in Section III.B.3 assertions that the

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[21] Securities Exchange Act Release No. 33555 (Jan. 31, 1994), 59 FR 5619, 5621 (Feb. 7, 1994) (SR–Amex–93–28) (order approving listing of options on American Depositary Receipts (''ADR'')) (''ADR Option Order''). The Commission further stated that it ''generally believes that having a comprehensive surveillance sharing agreement in place, between the exchange where the ADR option trades and the exchange where the foreign security underlying the ADR primarily trades, will ensure the integrity of the marketplace. The Commission further believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement.'' *Id.*

[22] Securities Exchange Act Release No. 35518 (Mar. 21, 1995), 60 FR 15804, 15807 (Mar. 27, 1995) (SR–Amex–94–30). *See also* Winklevoss Order, 83 FR at 37593 n.206.

[23] *See* Winklevoss Order, 83 FR at 37594. See also SolidX Order, 82 FR at 16254–55 n.125 for a discussion of the representations the Commission has received from listing exchanges in connection with proposals to list commodity-trust ETPs about the existence of a significant, regulated market for trading futures on the underlying commodity and the listing exchanges' ability to obtain trading information with respect to such market. Furthermore, the Commission notes that each of those cases dealt with a futures market that had been trading for a long period of time before an exchange proposed a commodity-trust ETP based on the asset underlying those futures. For example, silver futures and gold futures began trading in 1933 and 1974, respectively, *see https://www.cmegroup.com/media-room/historical-first-trade-dates.html,* and the first ETPs based on spot silver and gold were approved for listing and trading in 2006 and 2004. *See* Securities Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967 (Mar. 24, 2006) (SR–Amex–2005–072) (order approving iShares Silver Trust); Securities Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614 (Nov. 5, 2004) (SR–NYSE–2004–22) (order approving streetTRACKS Gold Shares). Platinum futures and palladium futures began trading in 1956 and 1968, respectively, *see https://www.cmegroup.com/media-room/historical-first-trade-dates.html,* and the first ETPs based on spot platinum and palladium were approved for listing and trading in 2009. *See* Securities Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895 (Dec. 29, 2009) (SR–NYSEArca–2009–94) (order approving ETFS Palladium Trust); Securities Exchange Act Release No. 61219 (Dec. 22, 2009), 74 FR 68886 (Dec. 29, 2009) (SR–NYSEArca–2009–95) (order approving ETFS Platinum Trust). Copper futures began trading in 1988, *see https://www.cmegroup.com/media-room/historical-first-trade-dates.html#metals,* and the first ETPs based on spot copper were approved for listing and trading in 2012. *See* Securities Exchange Act Release No. 68440 (Dec. 14, 2012), 77 FR 75468 (Dec. 20, 2012) (SR–NYSEArca–2012–28) (order approving JPM XF Physical Copper Trust).

[24] *See* USBT Order, 85 FR at 12597; ADR Option Order, 59 FR at 5621. The Commission has also recognized that surveillance-sharing agreements provide a necessary deterrent to fraud and manipulation in the context of index options even when (i) all of the underlying index component stocks were either registered with the Commission or exempt from registration under the Exchange Act; (ii) all of the underlying index component stocks were traded in the U.S. either directly or as ADRs on a national securities exchange; and (iii) effective international ADR arbitrage alleviated concerns over the relatively smaller ADR trading volume, helped to ensure that ADR prices reflected the pricing on the home market, and helped to ensure more reliable price determinations for settlement purposes, due to the unique composition of the index and reliance on ADR prices. *See* Securities Exchange Act Release No. 26653 (Mar. 21, 1989), 54 FR 12705, 12708 (Mar. 28, 1989) (SR-Amex-87–25) (stating that ''surveillance-sharing agreements between the exchange on which the index option trades and the markets that trade the underlying securities are necessary'' and that ''[t]he exchange of surveillance data by the exchange trading a stock index option and the markets for the securities comprising the index is important to the detection and deterrence of intermarket manipulation''). And the Commission has explained that surveillance-sharing agreements ''ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses'' even when approving options based on an index of stocks traded on a national securities exchange. *See* Securities Exchange Act Release No. 30830 (June 18, 1992), 57 FR 28221, 28224 (June 24, 1992) (SR–Amex–91–22).

[25] *See* USBT Order, 85 FR at 12597.

[26] *See* Winklevoss Order, 83 FR at 37580, 37582–91 (addressing assertions that ''bitcoin and [spot] bitcoin markets,'' generally, as well as one bitcoin trading platform, specifically, have unique resistance to fraud and manipulation). *See also* USBT Order, 85 FR at 12597.

[27] *See* USBT Order, 85 FR at 12597, 12599.

[28] *See* Notice, 87 FR at 8327–29, 8331–34.

[29] *See id.* at 8327–28, 8332–33.

[30] *See id.* at 8328–29, 8333.

Commission must approve the proposal because the Commission has approved the listing and trading of ETFs and ETPs that hold CME bitcoin futures; and in Section III.C assertions that the proposal is consistent with the protection of investors and the public interest.

Based on its analysis, the Commission concludes that BZX has not established that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify dispensing with the detection and deterrence of fraud and manipulation provided by a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin. The Commission further concludes that BZX has not established that it has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin, the underlying bitcoin assets that would be held by the Trust. As discussed further below, BZX repeats various assertions made in prior bitcoin-based ETP proposals that the Commission has previously addressed and rejected, including in the prior WisdomTree Order—and more importantly, BZX does not respond to the Commission's reasons for rejecting those assertions. As a result, the Commission is unable to find that the proposed rule change is consistent with the statutory requirements of Exchange Act Section 6(b)(5).

The Commission emphasizes that its disapproval of this proposed rule change does not rest on an evaluation of the relative investment quality of a product holding spot bitcoin versus a product holding CME bitcoin futures, or an assessment of whether bitcoin, or blockchain technology more generally, has utility or value as an innovation or an investment. Rather, the Commission is disapproving this proposed rule change because, as discussed below, BZX has not met its burden to demonstrate that its proposal is consistent with the requirements of Exchange Act Section 6(b)(5).

II. Description of the Proposed Rule Change

As described in more detail in the Notice,[31] the Exchange proposes to list and trade the Shares of the Trust under BZX Rule 14.11(e)(4), which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

The investment objective of the Trust would be to gain exposure to the price of bitcoin, less expenses and liabilities of the Trust's operation.[32] The Trust would hold bitcoin and would calculate the Trust's net asset value (''NAV'') daily based on the value of bitcoin as reflected by the CF Bitcoin US Settlement Price (''Reference Rate''). The Reference Rate was created, and is administered, by CF Benchmarks Ltd. (''Benchmark Administrator''), an independent entity.[33] The Reference Rate is a once-a-day benchmark rate of the U.S. dollar price of bitcoin (USD/BTC), calculated as of 4:00 p.m. E.T., and is based on materially the same methodology (except calculation time) [34] as the Benchmark Administrator's CME CF Bitcoin Reference Rate (''BRR''), which is the rate on which CME bitcoin futures contracts are cash-settled in U.S. dollars.[35] The Reference Rate aggregates the trade flow of several bitcoin platforms (current platform composition of the Reference Rate is Bitstamp, Coinbase, Gemini, itBit, and Kraken, collectively, ''Constituent Bitcoin Platforms''). In calculating the Reference Rate, the methodology creates a joint list of the trade prices and sizes from the Constituent Bitcoin Platforms between 3:00 p.m. E.T. and 4:00 p.m. E.T. and then divides this list into 12 equally-sized time intervals of five minutes and calculates the volume-weighted median trade price for each of those time intervals. The Reference Rate is the arithmetic mean of these 12 volume-weighted median trade prices.[36]

Each Share would represent a fractional undivided beneficial interest in and ownership of the Trust. The Trust's assets would consist of bitcoin held by the Custodian on behalf of the Trust. The Trust generally does not intend to hold cash or cash equivalents. However, there may be situations where the Trust would unexpectedly hold cash on a temporary basis.[37]

The Administrator would determine the NAV and NAV per Share of the Trust on each day that the Exchange is open for regular trading after 4:00 p.m. E.T. (often by 5:30 p.m. E.T. and almost always by 8:00 p.m. E.T.). The NAV of the Trust would be the aggregate value of the Trust's assets, less total liabilities of the Trust, each determined on the basis of generally accepted accounting principles. In determining the Trust's NAV, the Administrator would value the bitcoin held by the Trust based on the price set by the Reference Rate as of 4:00 p.m. E.T.[38]

The Trust would provide information regarding the Trust's bitcoin holdings, as well as an Intraday Indicative Value (''IIV'') per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV would be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day.[39]

When the Trust sells or redeems its Shares, it would do so in ''in-kind'' transactions in blocks of 50,000 Shares at the Trust's NAV. Authorized participants would deliver, or facilitate the delivery of, bitcoin to the Trust's account with the Custodian in exchange for Shares when they purchase Shares, and the Trust, through the Custodian, would deliver bitcoin to such authorized participants when they redeem Shares with the Trust.[40]

Further, BZX represents that, although the Trust would not be an investment company registered under the 1940 Act, in seeking to protect investors and the public, the Sponsor has taken 1940 Act considerations into account in the structure of the Trust's operation.[41]

III. Discussion

A. The Applicable Standard for Review

The Commission must consider whether BZX's proposal is consistent with the Exchange Act. Section 6(b)(5) of the Exchange Act requires, in relevant part, that the rules of a national securities exchange be designed ''to

[31] *See supra* note 3. According to the Exchange, the Trust has filed an amended registration statement on Form S–1 under the Securities Act dated December 8, 2021 (File No. 333–254134) (''Registration Statement'').

[32] *See* Notice, 87 FR at 8329. WisdomTree Digital Commodity Services, LLC (''Sponsor'') is the sponsor of the Trust, and Delaware Trust Company is the trustee. U.S. Bank, N.A. would serve as the custodian of the Trust (''Custodian''). U.S. Bancorp Fund Services, LLC dba U.S. Bank Global Fund Services would be the administrator and transfer agent (''Administrator'') of the Trust. Foreside Fund Services LLC would be the marketing agent in connection with the creation and redemption of Shares. *See id.* at 8318–19, 8329.

[33] *See id.* at 8329. The Commission notes that the Benchmark Administrator's website states that the Reference Rate was *discontinued* as of April 2022. *See https://www.cfbenchmarks.com/blog/cessation-of-the-cf-bitcoin-us-settlement-price-and-cf-ether-dollar-us-settlement-price.* The Exchange has not amended its filing to indicate how the Trust would value bitcoin following discontinuation of the Reference Rate.

[34] The Reference Rate is calculated as of 4:00 p.m. E.T., whereas the BRR is calculated as of 4:00 p.m. London Time. *See id.* at 8329 n.77.

[35] *See id.* at 8329.

[36] *See id.* at 8329–30.

[37] *See id.* at 8329.

[38] *See id.* at 8330.

[39] *See id.* at 8334.

[40] *See id.* at 8329.

[41] *See id.* at 8323–24. For a more detailed description of those considerations, *see infra* note 221 and accompanying text.

prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.'' [42] Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [43]

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[44] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[45] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.[46]

B. Whether BZX Has Met Its Burden To Demonstrate That the Proposal Is Designed To Prevent Fraudulent and Manipulative Acts and Practices

(1) Assertions That Other Means Besides Surveillance-Sharing Agreements Will Be Sufficient to Prevent Fraudulent and Manipulative Acts and Practices

(i) Assertions Regarding the Bitcoin Market

As stated above, the Commission has recognized that a listing exchange could demonstrate that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify dispensing with the detection and deterrence of fraud and manipulation provided by a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying bitcoin assets, including by demonstrating that the bitcoin market as a whole or the relevant underlying bitcoin market is uniquely and inherently resistant to fraud and manipulation.[47] Such resistance to fraud and manipulation, however, must be novel and beyond those protections that exist in traditional commodities or securities markets.[48]

(a) BZX's Assertions

BZX asserts that bitcoin is resistant to price manipulation. According to BZX, the geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin.[49] BZX asserts that fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging.[50] In addition, BZX states that, to the extent that there are bitcoin platforms engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other platforms because participants will generally ignore markets with quotes that they deem non-executable.[51] BZX further argues that the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin on any single venue would require manipulation of the global bitcoin price in order to be effective.[52] According to BZX, arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin trading venue.[53] As a result, BZX concludes that the potential for manipulation on a bitcoin trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.[54]

BZX also argues that the significant liquidity in the spot bitcoin market and the impact of market orders on the overall price of bitcoin mean that attempting to move the price of bitcoin is costly and has grown more expensive over the past year.[55] According to BZX, in January 2020, for example, the cost to buy or sell $5 million worth of bitcoin averaged roughly 30 basis points (compared to 10 basis points in February 2021) with a market impact of 50 basis points (compared to 30 basis points in February 2021). For a $10 million market order, the cost to buy or sell was roughly 50 basis points (compared to 20 basis points in February 2021) with a market impact of 80 basis points (compared to 50 basis points in February 2021). BZX contends that, as the liquidity in the spot bitcoin market increases, it follows that the impact of $5 million and $10 million orders will continue to decrease.[56]

(b) Analysis

As with the previous proposals, the Commission here concludes that the record does not support a finding that the bitcoin market is inherently and uniquely resistant to fraud and manipulation. BZX does not sufficiently contest the presence of possible sources of fraud and manipulation in the spot bitcoin market that the Commission has identified in previous orders, including: (1) ''wash'' trading; [57] (2) persons with a

[42] 15 U.S.C. 78f(b)(5). Pursuant to Section 19(b)(2) of the Exchange Act, 15 U.S.C. 78s(b)(2), the Commission must disapprove a proposed rule change filed by a national securities exchange if it does not find that the proposed rule change is consistent with the applicable requirements of the Exchange Act. Exchange Act Section 6(b)(5) states that an exchange shall not be registered as a national securities exchange unless the Commission determines that ''[t]he rules of the exchange are 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange.'' 15 U.S.C. 78f(b)(5).

[43] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[44] *See id.*

[45] *See id.*

[46] *Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 447 (DC Cir. 2017) (''Susquehanna'').

[47] *See* USBT Order, 85 FR at 12597 n.23. The Commission is not applying a ''cannot be manipulated'' standard. Instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met. *See id.*

[48] *See id.* at 12597.

[49] *See* Notice, 87 FR at 8327 n.65.

[50] *See id.*

[51] *See id.*

[52] *See id.*

[53] *See id.*

[54] *See id.*

[55] *See id.* at 8328–29.

[56] *See id.*

[57] *See also CFTC* v. *Gemini Trust Co., LLC,* No. 22–cv–4563 (S.D.N.Y. filed June 2, 2022) (alleging, among other things, failure by Gemini personnel to disclose to the Commodity Futures Trading

dominant position in bitcoin manipulating bitcoin pricing; (3) hacking of the bitcoin network and trading platforms; (4) malicious control of the bitcoin network; (5) trading based on material, non-public information (for example, plans of market participants to significantly increase or decrease their holdings in bitcoin, new sources of demand for bitcoin, or the decision of a bitcoin-based investment vehicle on how to respond to a ''fork'' in the bitcoin blockchain, which would create two different, non-interchangeable types of bitcoin) or based on the dissemination of false and misleading information; (6) manipulative activity involving purported ''stablecoins,'' including Tether (USDT); and (7) fraud and manipulation at bitcoin trading platforms.[58]

BZX asserts that, because of how bitcoin trades occur, including through continuous means and through fragmented platforms, arbitrage across the bitcoin platforms essentially helps to keep global bitcoin prices aligned with one another, thus hindering manipulation. The Exchange, however, does not provide any data or analysis to support its assertions, either in terms of how closely bitcoin prices are aligned across different bitcoin trading venues or how quickly price disparities may be arbitraged away.[59] Here, the Exchange provides no evidence to support its assertion of efficient price arbitrage across bitcoin platforms, let alone any evidence that price arbitrage in the bitcoin market is novel or unique so as to warrant the Commission dispensing with the detection and deterrence of fraud and manipulation provided by a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin. As stated above, ''unquestioning reliance'' on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.[60]

In any event, the Commission has explained that efficient price arbitrage is not sufficient to support the finding that a market is uniquely or inherently resistant to manipulation such that the Commission can dispense with surveillance-sharing agreements.[61] The Commission has stated, for example, that even for equity options based on securities listed on national securities exchanges, the Commission relies on surveillance-sharing agreements to detect and deter fraud and manipulation.[62] Equities that underlie such options trade on U.S. equity markets that are deep, liquid, and highly interconnected.[63] Moreover, BZX does not take into account that a market participant with a dominant ownership position would not find it prohibitively expensive to overcome the liquidity supplied by arbitrageurs and could use dominant market share to engage in manipulation.[64]

In addition, the Exchange makes the unsupported claim that, to the extent that there are bitcoin platforms engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, market participants will generally ignore those platforms. However, the record does not demonstrate that wash trading and other possible sources of fraud and manipulation in the broader bitcoin spot market will be ignored by market participants.[65] Without the necessary data or other evidence, the Commission has no basis on which to conclude that bitcoin platforms are insulated from prices of others that engage in or permit fraud or manipulation.[66]

Further, the continuous nature of bitcoin trading does not support the finding that the bitcoin market is uniquely or inherently resistant to manipulation, and neither do linkages among markets, as BZX asserts.[67] Even in the presence of continuous trading or linkages among markets, formal (such as those with consolidated quotations or routing requirements) or otherwise (such as in the context of the fragmented, global bitcoin markets), manipulation of asset prices, as a general matter, can occur simply through trading activity that creates a false impression of supply or demand.[68]

Moreover, the data furnished by BZX regarding the cost to move the price of bitcoin, and the market impact of such attempts, are incomplete.[69] BZX does not provide meaningful analysis pertaining to how these figures compare to other markets or why one must conclude, based on the numbers provided, that the bitcoin market is costly to manipulate. In addition, BZX's analysis of the market impact of a mere two sample transactions is not sufficient evidence to conclude that the bitcoin market is resistant to manipulation.[70] The Commission thus concludes that the record does not demonstrate that the nature of bitcoin trading renders the bitcoin market inherently and uniquely resistant to fraud and manipulation. Even assuming that the Commission agreed with BZX's premise that it is costly to manipulate the bitcoin market and it is becoming increasingly so, any such evidence speaks only to establish that there is potentially some resistance to manipulation, not that it establishes *unique* resistance to manipulation that would justify dispensing with the detection and deterrence of fraud and manipulation provided by a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin.[71]

Commission (''CFTC'') that Gemini customers could and did engage in collusive or wash trading).

[58] *See* USBT Order, 85 FR at 12600–01 & nn.66–67 (discussing J. Griffin & A. Shams, *Is Bitcoin Really Untethered?* (Oct. 28, 2019), *available at https://ssrn.com/abstract=3195066* and published in 75 J. Finance 1913 (2020)); Winklevoss Order, 83 FR at 37585–86; WisdomTree Order, 86 FR at 69326; Global X Order, 87 FR at 14916; ARK 21Shares Order, 87 FR at 20019; One River Order, 87 FR at 33554; Bitwise Order, 87 FR at 40283–84; Grayscale Order, 87 FR at 40305.

[59] For example, the Registration Statement states that ''[i]f increases in throughput on the Bitcoin network lag behind growth in usage of bitcoin, average fees and settlement times may increase considerably . . . which could adversely impact the value of the Shares.'' *See* Registration Statement at 20. BZX does not provide data or analysis to address, among other things, whether such risks of increased fees and bitcoin transaction settlement times may affect the arbitrage effectiveness that BZX asserts. *See also infra* note 73 and accompanying text (referencing statements made in the Registration Statement that contradict assertions made by BZX).

[60] *See supra* note 46.

[61] *See* Winklevoss Order, 83 FR at 37586; SolidX Order, 82 FR at 16256–57; USBT Order, 85 FR at 12601; WisdomTree Order, 86 FR at 69325; Valkyrie Order, 86 FR at 74159–60; Kryptoin Order, 86 FR at 74170; Wise Origin Order, 87 FR at 5531; ARK 21Shares Order, 87 FR at 20019; Grayscale Order, 87 FR at 40306.

[62] *See, e.g.,* USBT Order, 85 FR at 12601; WisdomTree Order, 86 FR at 69329; Valkyrie Order, 86 FR at 74160; Kryptoin Order, 86 FR at 74170; Wise Origin Order, 87 FR at 5531; ARK 21Shares Order, 87 FR at 20019; Grayscale Order, 87 FR at 40306–07.

[63] *See* Market Data Infrastructure Adopting Release, Securities Exchange Act Release No. 90610 (Dec. 9, 2020); 86 FR 18596, 18606–07 (Apr. 9, 2021); Market Data Infrastructure Proposing Release, Securities Exchange Act Release No. 88216 (Feb. 14, 2020), 85 FR 16726, 16728 (Mar. 24, 2020); Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010). *See also* ARK 21Shares Order, 87 FR at 20019 n.70.

[64] *See, e.g.,* Winklevoss Order, 83 FR at 37584; USBT Order, 85 FR at 12600–01; WisdomTree Order, 86 FR at 69325.

[65] *See infra* note 89 and accompanying text.

[66] *See* USBT Order, 85 FR at 12601; WisdomTree Order, 86 FR at 69325.

[67] *See* Winklevoss Order, 83 FR at 37585 n.92 and accompanying text.

[68] *See id.* at 37585. *See also, e.g.,* WisdomTree Order, 86 FR at 69325–26.

[69] *See* WisdomTree Order, 86 FR at 69326.

[70] Aside from stating that the ''statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021,'' the Exchange provides no other information pertaining to the methodology used to enable the Commission to evaluate these findings or their significance. *See* Notice, 87 FR at 8328–29 nn.74–75.

[71] *See* USBT Order, 85 FR at 12601; WisdomTree Order, 86 FR at 69326; Kryptoin Order, 86 FR at

Continued

Finally, BZX does not address risk factors specific to the bitcoin blockchain and bitcoin platforms, described in the Trust's Registration Statement, that undermine the argument that the bitcoin market is inherently resistant to fraud and manipulation.[72] For example, the Registration Statement acknowledges that ''bitcoin [platforms] on which bitcoin trades are relatively new and, in some cases, unregulated, and, therefore, may be more exposed to fraud and security breaches than established, regulated exchanges for other financial assets or instruments''; that ''as an intangible asset without centralized issuers or governing bodies, bitcoin has been, and may in the future be, subject to security breaches, cyberattacks or other malicious activities''; that ''[t]he trading for bitcoin occurs on multiple trading venues that have various levels and types of regulation, but are not regulated in the same manner as traditional stock and bond exchanges'' and if these spot markets ''do not operate smoothly or face technical, security or regulatory issues, that could impact the ability of Authorized Participants to make markets in the Shares'' which could lead to ''trading in the Shares [to] occur at a material premium or discount to the NAV''; that the bitcoin blockchain could be vulnerable to a ''51% attack,'' in which a bad actor that controls a majority of the processing power dedicated to mining on the bitcoin network may be able to alter the bitcoin blockchain on which the bitcoin network and bitcoin transactions rely; that ''some bitcoin [platforms] have been closed due to fraud and manipulative activity'' and that larger bitcoin platforms are more likely to be ''appealing targets for hackers''; and that ''[b]itcoin [platforms] may be more exposed to the risk of market manipulation than exchanges for more traditional assets.'' [73] The Exchange also acknowledges in the proposed rule change that ''largely unregulated currency and spot commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight.'' [74]

(ii) Assertions Regarding the Reference Rate and the Create/Redeem Process

(a) BZX's Assertions

The Exchange also asserts that the Reference Rate, which it uses to value the Trust's bitcoin, is itself resistant to manipulation based on the Reference Rate's methodology.[75] The Exchange states that the Reference Rate is calculated based on the ''Relevant Transactions'' [76] of all of its Constituent Bitcoin Platforms. All Relevant Transactions are added to a joint list, recording the time of execution, trade price, and size for each transaction, and the list is partitioned by timestamp into 12 equally-sized time intervals of five-minute length.[77] For each partition separately, the volume-weighted median trade price is calculated from the trade prices and sizes of all Relevant Transactions.[78] The Reference Rate is then determined by the arithmetic mean of the volume-weighted medians of all partitions.[79] According to BZX, ''[b]y employing the foregoing steps, the Reference Rate thereby seeks to ensure that transactions in bitcoin conducted at outlying prices do not have an undue effect on the value of a specific partition, large trades or clusters of trades transacted over a short period of time will not have an undue influence on the index level, and the effect of large trades at prices that deviate from the prevailing price are mitigated from having an undue influence on the benchmark level.'' [80] BZX concludes its analysis of the Reference Rate by noting that ''an oversight function is implemented by the Benchmark Administrator in seeking to ensure that the Reference Rate is administered through codified policies for Reference Rate integrity.'' [81]

In addition, the Exchange states that to qualify as part of the bitcoin pricing input for the Trust, a Constituent Bitcoin Platform must: (a) have policies to ensure fair and transparent market conditions at all times and have processes in place to identify and impede illegal, unfair or manipulative trading practices; and (b) comply with applicable law and regulation, including, but not limited to, capital markets regulations, money transmission regulations, client money custody regulations, know-your-client (''KYC'') regulations and anti-money laundering (''AML'') regulations.[82]

Simultaneously with its assertions regarding the Reference Rate, BZX also states that, because the Trust will engage in in-kind creations and redemptions only, the ''manipulability of the Reference Rate [is] significantly less important.'' [83] The Exchange elaborates that, ''because the Trust will not accept cash to buy bitcoin in order to create new shares or . . . be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important.'' [84] According to BZX, when authorized participants create Shares with the Trust, they would need to deliver a certain number of bitcoin per Share (regardless of the valuation used), and when they redeem with the Trust, they would similarly expect to receive a certain number of bitcoin per Share.[85] As such, BZX argues that, even if the price used to value the Trust's bitcoin is manipulated, the ratio of bitcoin per Share does not change, and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value.[86] This, according to BZX, not only mitigates the risk associated with potential manipulation, but also discourages and disincentivizes manipulation of the Reference Rate because there is little financial incentive to do so.[87]

(b) Analysis

Based on the assertions made and the information provided with respect to the Reference Rate and the create/redeem process, the record is inadequate to conclude that BZX has articulated other means to prevent fraud and manipulation that are sufficient to justify dispensing with the detection and deterrence of fraud and manipulation provided by a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin.

The record does not demonstrate that the proposed methodology for calculating the Reference Rate would make the proposed ETP resistant to

74171; Global X Order, 87 FR at 14916; Wise Origin Order, 87 FR at 5531; Grayscale Order, 87 FR at 40306.

[72] *See* WisdomTree Order, 86 FR at 69326.

[73] Registration Statement at 11, 18–19, 25, 37–38. *See also* Winklevoss Order, 83 FR at 37585.

[74] Notice, 87 FR at 8320.

[75] *See* Notice, 87 FR at 8333.

[76] According to the Exchange, a ''Relevant Transaction'' is any cryptocurrency versus U.S. dollar spot trade that occurs during the observation window between 3:00 p.m. and 4:00 p.m. E.T. on a Constituent Bitcon Platform in the BTC/USD pair that is reported and disseminated by a Constituent Bitcoin Platform and observed by the Benchmark Adminstrator. *See id.* at 8329 n.78.

[77] *See id.* at 8329.

[78] *See id.* According to the Exchange, a volume-weighted median differs from a standard median in that a weighting factor, in this case trade size, is factored into the calculation. *See id.*

[79] *See id.* at 8330.

[80] *Id.*

[81] *Id.*

[82] *See id.*

[83] *See id.* at 8333.

[84] *See id.*

[85] *See id.*

[86] *See id.*

[87] *See id.*

fraud or manipulation such that the ability to detect and deter fraud and manipulation that is provided by a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin is unnecessary. Specifically, BZX has not assessed the possible influence that spot platforms not included among the Constituent Bitcoin Platforms would have on bitcoin prices used to calculate the Reference Rate.[88] As discussed above, BZX does not sufficiently contest the presence of possible sources of fraud and manipulation in the spot bitcoin market generally.[89] Instead, BZX focuses its analysis on the eligibility and attributes of the Constituent Bitcoin Platforms, as well as the Reference Rate's methodology that calibrates the pricing input generated by the Constituent Bitcoin Platforms (such as partitioning the Relevant Transactions into equally-sized time intervals and using volume-weighted median trade prices). What the Exchange does not address, however, is that, to the extent that trading on spot bitcoin platforms not directly used to calculate the Reference Rate affects prices on the Constituent Bitcoin Platforms, the activities on those other platforms—where various kinds of fraud and manipulation from a variety of sources may be present and persist—may affect whether the Reference Rate is resistant to manipulation. Importantly, the record does not demonstrate that these possible sources of fraud and manipulation in the broader spot bitcoin market do not affect the Constituent Bitcoin Platforms that represent a portion of the spot bitcoin market. To the extent that fraudulent and manipulative trading on the broader bitcoin market could influence prices or trading activity on the Constituent Bitcoin Platforms, the Constituent Bitcoin Platforms (and thus the Reference Rate) would not be inherently resistant to manipulation.[90]

In addition, while BZX asserts that aspects of the Reference Rate methodology mitigate the impact of fraud and manipulation on the Shares, the Commission can find no basis to conclude that the Reference Rate methodology constitutes a novel means beyond the protections utilized by traditional commodity or securities markets to prevent fraud and manipulation that is sufficient to justify dispensing with the detection and deterrence of fraud and manipulation provided by a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin. BZX has not shown that its proposed use of 12 equally-sized time intervals of five minute length over the observation window between 3:00 p.m. and 4:00 p.m. E.T. to calculate the Reference Rate would effectively be able to eliminate fraudulent or manipulative activity that is not transient. As the Commission has previously stated, fraud and manipulation in the spot bitcoin market could persist for a ''significant duration.'' [91] The Exchange does not explain how the use of such partitions would protect against the effects of the wash and fictitious trading that may persist in the spot bitcoin market for a significant duration.[92] While the Reference Rate methodology records the time of execution, trade price, and size for each Relevant Transaction, partitions the list of Relevant Transactions by timestamp into equally-sized time intervals, and calculates the weighted median trade price from the trade prices and sizes of such Relevant Transactions, this methodology could at most attenuate, but not eliminate, the effect of manipulative activity on the Constituent Bitcoin Platforms—just as it could at most attenuate, but would not eliminate, the effect of bona fide liquidity demand on those platforms.[93]

Moreover, the Exchange's assertions that the Reference Rate's methodology helps make the Reference Rate resistant to manipulation conflict with the Registration Statement. Specifically, the Registration Statement represents, among other things, that ''[b]itcoin [platforms] on which bitcoin trades . . . may be more exposed to fraud and security breaches than established, regulated exchanges for other financial assets or instruments, which could have a negative impact on the performance of the Trust.'' [94] Constituent Bitcoin Platforms are a subset of the bitcoin platforms currently in existence. Although the Sponsor raises concerns regarding fraud and security of bitcoin platforms in the Registration Statement, the Exchange does not explain how or why such concerns are consistent with its assertion that the Reference Rate is resistant to fraud and manipulation.

The Commission thus concludes that the Exchange has not demonstrated that its Reference Rate methodology makes the proposed ETP resistant to manipulation. While the proposed procedures for calculating the Reference Rate using only prices from the Constituent Bitcoin Platforms are intended to provide some degree of protection against attempts to manipulate the Reference Rate, these procedures are not sufficient for the Commission to dispense with the detection and deterrence of fraud and manipulation provided by a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin.[95]

In addition, while BZX represents that a Constituent Bitcoin Platform must have policies to ensure fair and transparent market conditions at all times and have processes in place to identify and impede illegal, unfair, or manipulative trading practices, and comply with applicable law and regulation, including, but not limited to, capital markets regulations, money transmission regulations, client money custody regulations, KYC regulations and AML regulations, any oversight relating to such policies, processes, and regulations, including KYC and AML regulations, is not a substitute for a surveillance-sharing agreement between the Exchange and a *regulated* market of significant size related to the underlying bitcoin assets. KYC and AML regulation, for example, do not substitute for the sharing of information about market trading activity or clearing activity that a surveillance-sharing agreement would afford. As the Commission has explained, there are substantial differences between such regulations and the Commission's regulation of national securities exchanges.[96] For example, the Commission's market oversight of national securities exchanges includes substantial requirements, including the requirement to have rules that are ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with

[88] As discussed above, while the Exchange asserts that bitcoin prices on platforms with wash trades or other activity intended to manipulate the price of bitcoin would generally be ignored, the Commission has no basis on which to conclude that bitcoin platforms are insulated from prices of others that engage in or permit fraud or manipulation. *See supra* note 66 and accompanying text.

[89] *See supra* notes 65–66 and accompanying text.

[90] *See* USBT Order, 85 FR at 12601; WisdomTree Order, 86 FR at 69327; Kryptoin Order, 86 FR at 74172; Valkyrie Order, 86 FR at 74161; SkyBridge Order, 87 FR at 3873; Grayscale Order, 87 FR at 40309.

[91] *See* USBT Order, 85 FR at 12601 n.66; *see also id.* at 12607.

[92] *See* WisdomTree Order, 86 FR at 69327.

[93] *See* SolidX Order, 82 FR at 16257.

[94] Registration Statement at 19.

[95] *See* WisdomTree Order, 86 FR at 69327–28.

[96] KYC and AML regulation have been referenced in other bitcoin-based ETP proposals as a purportedly alternative means by which such ETPs would be uniquely resistant to manipulation. *See* USBT Order, 85 FR at 12603 n.101 and accompanying text. *See also, e.g.,* WisdomTree Order, 86 FR at 69328 n.95; Kryptoin Order, 86 FR at 74173 n.98; ARK 21Shares Order, 87 FR at 20022 n.107; Grayscale Order, 87 FR at 40308 n.111.

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.'' [97] Moreover, national securities exchanges must file proposed rules with the Commission regarding certain material aspects of their operations,[98] and the Commission has the authority to disapprove any such rule that is not consistent with the requirements of the Exchange Act.[99] Thus, national securities exchanges are subject to Commission oversight of, among other things, their governance, membership qualifications, trading rules, disciplinary procedures, recordkeeping, and fees.[100] The Constituent Bitcoin Platforms have none of these requirements—none are registered as a national securities exchange and none are comparable to a national securities exchange or futures exchange.[101]

In addition, the Exchange states that the Benchmark Administrator would implement an oversight function to ensure that the Reference Rate is administered through codified policies for Reference Rate integrity.[102] However, the record does not suggest that the purported oversight represents a unique measure to resist or prevent fraud or manipulation beyond protections that exist in traditional securities or commodities markets.[103] Rather, the oversight performed by the Benchmark Administrator appears to be for the purpose of ensuring the accuracy and integrity of the Reference Rate. Such Reference Rate accuracy and integrity oversight serves a fundamentally different purpose as compared to the regulation of national securities exchanges and the requirements of the Exchange Act. While the Commission recognizes that this may be an important function in ensuring the integrity of the Reference Rate, such requirements do not imbue the Benchmark Administrator with regulatory authority similar to that which the Exchange Act confers upon self-regulatory organizations such as national securities exchanges.[104] Furthermore, other commodity-based ETPs approved by the Commission for listing and trading utilize reference rates or indices administered by similar benchmark administrators,[105] and the Commission has not, in those instances, dispensed with the need for a surveillance-sharing agreement with a significant regulated market.

Further, BZX does not explain the significance of the Reference Rate's purported resistance to manipulation to the overall analysis of whether the proposal to list and trade the Shares is designed to prevent fraud and manipulation.[106] To the extent that BZX's argument is that the price of the Trust's Shares would be resistant to manipulation if the Reference Rate is resistant to manipulation, BZX has not established in the record a basis for this conclusion because BZX has not established a link between the price of the Shares and the Reference Rate, either in the primary or secondary market. The Trust uses the Reference Rate to calculate the value of the bitcoin it holds according to the methodology discussed above.[107] However, the Trust will create or redeem baskets in the primary market only upon the receipt or distribution of bitcoins from/to authorized participants, and only for the amount of bitcoin represented by the Shares in such baskets, *without* reference to the value of such bitcoin as determined by the Reference Rate or otherwise.[108] In the secondary market, the Shares would trade at market-based prices, and market partcipants may or may not take into account the value of bitcoin as measured by the Reference Rate in determining such prices. The Exchange provides no information on the relationship between the Reference Rate and secondary market prices generally, or how the use of the Reference Rate would mitigate fraud and manipulation of the Shares in the secondary market.[109]

Moreover, the Exchange's arguments are contradictory. While arguing that the Reference Rate is resistant to manipulation, the Exchange simultaneously downplays the importance of the Reference Rate in light of the Trust's in-kind creation and redemption mechanism.[110] The Exchange points out that the Trust will create and redeem Shares in-kind, not in cash, which renders the NAV calculation, and thereby the ability to manipulate NAV, ''significantly less

[97] 15 U.S.C. 78f(b)(5).

[98] 17 CFR 240.19b-4(a)(6)(i).

[99] Section 6 of the Exchange Act, 15 U.S.C. 78f, requires national securities exchanges to register with the Commission and requires an exchange's registration to be approved by the Commission, and Section 19(b) of the Exchange Act, 15 U.S.C. 78s(b), requires national securities exchanges to file proposed rule changes with the Commission and provides the Commission with the authority to disapprove proposed rule changes that are not consistent with the Exchange Act. Designated contract markets (''DCMs'') (commonly called ''futures markets'') registered with and regulated by the CFTC must comply with, among other things, a similarly comprehensive range of regulatory principles and must file rule changes with the CFTC. *See, e.g.,* Designated Contract Markets (DCMs), CFTC, *available at http://www.cftc.gov/IndustryOversight/TradingOrganizations/DCMs/index.htm.*

[100] *See* Winklevoss Order, 83 FR at 37597.

[101] *See* USBT Order, 85 FR at 12603–05 and n.101; VanEck Order, 86 FR at 64545 and n.89; WisdomTree Order, 86 FR at 69328 and n.95; Kryptoin Order, 86 FR at 74173 and n.98; ARK 21Shares Order, 87 FR at 20021–22 and n.107; Grayscale Order, 87 FR at 40308 and n.110.

[102] *See supra* note 81 and accompanying text.

[103] *See, e.g.,* WisdomTree Order, 86 FR at 69328; Valkyrie Order, 86 FR at 74162.

[104] *See* WisdomTree Order, 86 FR at 69329; One River Order, 87 FR at 33556; Grayscale Order, 87 FR at 40310. The Benchmark Administrator does not itself exercise governmental regulatory authority. Rather, the Benchmark Administrator is a registered, privately-held company in England. *See https://blog.cfbenchmarks.com/legal/* (stating that the Benchmark Administrator is authorized and regulated by the UK Financial Conduct Authority (''FCA'') as a registered Benchmark Administrator (FRN 847100) under the EU benchmark regulation, and further noting that the Benchmark Administrator is a member of the Crypto Research group of companies which is in turn a member of the Payward, Inc. group of companies, and Payward, Inc. is the owner and operator of the Kraken Exchange, a venue that facilitates the trading of cryptocurrencies). The Benchmark Administrator's relationship with the Constituent Bitcoin Platforms is based on such platforms' participation in the determination of reference rates, such as the Reference Rate. While the Benchmark Administrator is regulated by the FCA as a benchmark administrator, the FCA's regulations do not extend to the Constituent Bitcoin Platforms by virtue of their trade prices serving as input data underlying the Reference Rate. *See* USBT Order, 85 FR at 12604. *See also* WisdomTree Order, 86 FR at 69328–29.

[105] *See, e.g.,* Securities Exchange Act Release Nos. 80840 (June 1, 2017) 82 FR 26534 (June 7, 2017) (SR–NYSEArca–2017–33) (approving the listing and trading of shares of certain trusts seeking to track the Solactive GLD EUR Gold Index, Solactive GLD GBP Gold Index, and the Solactive GLD JPY Gold Index).

[106] The Commission has previously considered and rejected similar arguments about the valuation of bitcoin according to a benchmark or reference price. *See, e.g.,* SolidX Order, 82 FR at 16258; Winklevoss Order, 83 FR at 37587–90; USBT Order, 85 FR at 12599–601; WisdomTree Order, 86 FR at 69327–29;Valkyrie Order, 86 FR at 74162; ARK 21Shares Order, 87 FR at 20022; Grayscale Order, 87 FR at 40310.

[107] *See supra* notes 32–36 and accompanying text.

[108] *See* Notice, 87 FR at 8330. According to the Exchange, to create, ''the total deposit of bitcoin required is an amount of bitcoin that is in the same proportion to the total assets of the Trust, net of accrued expenses and other liabilities, on the date the order to purchase is properly received, as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the date the order is received.'' The required deposit is determined ''for a given day by dividing the number of bitcoin held by the Trust as of the opening of business on that business day, adjusted for the amount of bitcoin constituting estimated accrued but unpaid fees and expenses of the Trust as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by the aggregation of shares (*i.e.,* 50,000) associated with a creation unit.''

[109] *See* WisdomTree Order, 86 FR at 69329 and n.108; Valkyrie Order, 86 FR at 74162; ARK 21Shares Order, 87 FR at 20022; Grayscale Order, 87 FR at 40310.

[110] *See supra* notes 83–84 and accompanying text.

important.'' [111] In BZX's own words, the Trust will not accept cash to buy bitcoin in order to create shares or sell bitcoin to pay cash for redeemed shares, so the price that the Sponsor uses to value the Trust's bitcoin ''is not particularly important.'' [112] If the Reference Rate that the Trust uses to value the Trust's bitcoin ''is not particularly important,'' it follows that the Reference Rate's resistance to manipulation is not material to the Shares' susceptibility to fraud and manipulation. As the Exchange does not address or provide any analysis with respect to these issues, the Commission cannot conclude that the Reference Rate aids in the determination that the proposal to list and trade the Shares is designed to prevent fraudulent and manipulative acts and practices.[113]

Finally, the Commission finds that BZX has not demonstrated that in-kind creations and redemptions provide the Shares with a unique resistance to manipulation. The Commission has previously addressed similar assertions.[114] As the Commission stated before, in-kind creations and redemptions are a common feature of ETPs, and the Commission has not previously relied on the in-kind creation and redemption mechanism as a basis for excusing exchanges that list ETPs from entering into surveillance-sharing agreements with significant, regulated markets related to the portfolio's assets.[115] Accordingly, the Commission is not persuaded here that the Trust's in-kind creations and redemptions afford it a unique resistance to manipulation.[116]

(2) Assertions That BZX Has Entered Into a Comprehensive Surveillance-Sharing Agreement With a Regulated Market of Significant Size Related to the Underlying Bitcoin Assets

As BZX has not demonstrated that other means besides surveillance-sharing agreements will be sufficient to prevent fraudulent and manipulative acts and practices, the Commission next examines whether the record supports the conclusion that BZX has entered into a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying bitcoin assets. In this context, the term ''market of significant size'' includes a market (or group of markets) as to which (i) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist in detecting and deterring misconduct, and (ii) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[117]

As the Commission has explained, it considers two markets that are members of the ISG to have a comprehensive surveillance-sharing agreement with one another, even if they do not have a separate bilateral surveillance-sharing agreement.[118] Accordingly, based on the common membership of BZX and the CME in the ISG,[119] BZX has the equivalent of a comprehensive surveillance-sharing agreement with the CME. However, while the Commission recognizes that the CFTC regulates the CME futures market,[120] including the CME bitcoin futures market, and thus such market is ''regulated,'' in the context of the proposed ETP, the record does not, as explained further below, establish that the CME bitcoin futures market is a ''market of significant size'' related to spot bitcoin, the underlying bitcoin assets that would be held by the Trust.

(i) Whether There is a Reasonable Likelihood That a Person Attempting To Manipulate the ETP Would Also Have To Trade on the CME Bitcoin Futures Market to Successfully Manipulate the ETP

The first prong in establishing whether the CME bitcoin futures market constitutes a ''market of significant size'' related to spot bitcoin is the determination that there is a reasonable likelihood that a person attempting to manipulate the ETP would have to trade on the CME bitcoin futures market to successfully manipulate the ETP. In previous Commission orders, the Commission explained that the lead-lag relationship between the bitcoin futures market and the spot market is ''central'' to understanding this first prong.[121]

(a) BZX's Assertions

The Exchange asserts in its proposal that the significant growth in CME bitcoin futures across each of trading volumes, open interest, large open interest holders, and total market participants over the last two years are reflective of that market's growing influence on the spot price.[122] The Exchange represents that, from October 25, 2021, through November 19, 2021, CFTC-regulated bitcoin futures represented approximately $2.9 billion in notional trading volume on CME on a daily basis, and notional volume was

[111] Notice, 87 FR at 8333 (''While the Sponsor believes that the Reference Rate which it uses to value the Trust's bitcoin is itself resistant to manipulation based on the methodology further described below, the fact that creations and redemptions are only available in-kind makes the manipulability of the Reference Rate significantly less important.'').

[112] *Id.* (concluding that ''because the Trust will not accept cash to buy bitcoin in order to create new shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important.'').

[113] *See* WisdomTree Order, 86 FR at 69329.

[114] *See* Winklevoss Order, 83 FR at 37589–90; USBT Order, 85 FR at 12607–08; WisdomTree Order, 86 FR at 69329.

[115] *See, e.g.,* iShares COMEX Gold Trust, Securities Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751–55 (Jan. 26, 2005) (SR–Amex–2004–38); iShares Silver Trust, Securities Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14969, 14974 (Mar. 24, 2006) (SR–Amex–2005–072).

[116] Putting aside the Exchange's various assertions about the nature of bitcoin and the bitcoin market, the Reference Rate, and the Shares, the Exchange also does not address concerns the Commission has previously identified, including the susceptibility of bitcoin markets to potential trading on material, non-public information (such as plans of market participants to significantly increase or decrease their holdings in bitcoin; new sources of demand for bitcoin; the decision of a bitcoin-based investment vehicle on how to respond to a ''fork'' in the bitcoin blockchain, which would create two different, non-interchangeable types of bitcoin), or to the dissemination of false or misleading information. *See* Winklevoss Order, 83 FR at 37585. *See also* USBT Order, 85 FR at 12600–01.

[117] *See* Winklevoss Order, 83 FR at 37594.

[118] *See id.* at 37580 n.19.

[119] *See* Notice, 87 FR at 8328, 8333.

[120] While the Commission recognizes that the CFTC regulates the CME, the CFTC is not responsible for direct, comprehensive regulation of the underlying spot bitcoin market. *See* Winklevoss Order, 83 FR at 37587, 37599. *See also* WisdomTree Order, 86 FR at 69330 n.118; Kryptoin Order, 86 FR at 74174 n.119; SkyBridge Order, 87 FR at 3874 n.80; Wise Origin Order, 87 FR at 5534 n.93; ARK 21Shares Order, 87 FR at 20023 n.121; Bitwise Order, 87 FR at 40286 n.54; Grayscale Order, 87 FR at 40311 n.138.

[121] *See, e.g.,* USBT Order, 85 FR at 12612 (''[E]stablishing a lead-lag relationship between the bitcoin futures market and the spot market is central to understanding whether it is reasonably likely that a would-be manipulator of the ETP would need to trade on the bitcoin futures market to successfully manipulate prices on those spot platforms that feed into the proposed ETP's pricing mechanism. In particular, if the spot market leads the futures market, this would indicate that it would not be necessary to trade on the futures market to manipulate the proposed ETP, even if arbitrage worked efficiently, because the futures price would move to meet the spot price.''). When considering past proposals for spot bitcoin ETPs, the Commission has discussed whether there is a lead-lag relationship between the regulated market (*e.g.,* the CME) and the market on which the assets held by the ETP would have traded (*i.e.,* spot bitcoin platforms), as part of an analysis of whether a would-be manipulator of the spot bitcoin ETP would need to trade on the regulated market to effect such manipulation. *See, e.g.,* USBT Order, 85 FR at 12612. *See also* VanEck Order, 86 FR at 64547; WisdomTree Order, 86 FR at 69330–31; Kryptoin Order, 86 FR at 74175–76; SkyBridge Order, 87 FR at 3875–76; Wise Origin Order, 87 FR at 5535–36, 5539–40; ARK 21Shares Order, 87 FR at 20023–24; Bitwise Order, 87 FR at 40287–89; Grayscale Order, 87 FR at 40311–13.

[122] *See* Notice, 87 FR at 8328, 8333.

never below $1.2 billion per day.[123] The Exchange also represents that ''[o]pen interest was over $4 billion for the entirety of the period and at one point reached $5.5 billion.'' [124] BZX further asserts that ''[n]early every measurable metric related to CME Bitcoin Futures has trended consistently up since launch and/or accelerated upward in the past year.'' [125] As an example, the Exchange states that ''there was approximately $12 billion in trading in Bitcoin Futures in August 2021 compared to $3.9 billion, $4.5[] billion, and $9[ ] billion in total trading in August 2017, August 2018, and August 2019, respectively.'' [126] The Exchange states that ''Bitcoin Futures traded over $500m and represented $1.5 billion in open interest compared to $115 million in December 2019.'' [127] BZX also asserts that the number of large open interest holders [128] ''has continued to increase even as the price of bitcoin has risen, as have the number of unique accounts trading Bitcoin Futures.'' [129]

Moreover, acording to the Exchange, the Sponsor believes that ''academic research corroborates this overall trend and supports the thesis that bitcoin futures, and more particularly CME [b]itcoin [f]utures[,] given the recent significant growth in that market, is a predominant influence in bitcoin price formation.'' [130]

BZX also contends that ''[w]here CME [b]itcoin [f]utures act as a predominant influence on the price in the spot market, such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Reference Rate) would have to participate in the CME [b]itcoin [f]utures market, it follows that a potential manipulator of the Shares would similarly have to transact in the CME [b]itcoin [f]utures market because the Reference Rate is based on spot prices.'' [131] Further, BZX asserts that ''the Trust only allows for in-kind creation and redemption, which . . . reduces the potential for manipulation of the Shares through manipulation of the Reference Rate or any of its individual constituents, again emphasizing that a potential manipulator of the Shares would have to manipulate the entirety of the bitcoin spot market, of which the CME [b]itcoin [f]utures market appears to be a predominant influence.'' [132] As such, the Exchange believes that the first prong of the significant market test is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.[133]

(b) Analysis

The record does not demonstrate that there is a reasonable likelihood that a person attempting to manipulate the proposed ETP would have to trade on the CME bitcoin futures market to successfully manipulate the proposed ETP. Specifically, BZX's assertions about the general upward trends in trading volume and open interest of, and in the number of large open interest holders and number of unique accounts trading in, CME bitcoin futures do not establish that the CME bitcoin futures market is of significant size.[134] While BZX provides data showing *absolute* growth in the size of the CME bitcoin futures market, it provides no data *relative* to the concomitant growth in either the spot bitcoin markets or other bitcoin futures markets (including unregulated futures markets). Moreover, even if the CME has grown in relative size, as the Commission has previously articulated, including in the WisdomTree Order, the interpretation of the term ''market of significant size'' or ''significant market'' depends on the interrelationship between the market with which the listing exchange has a surveillance-sharing agreement and the proposed ETP.[135] BZX's recitation of data reflecting the size of the CME bitcoin futures market, alone, either currently or in relation to previous years, is not sufficient to establish an interrelationship between the CME bitcoin futures market and the proposed ETP.[136]

In addition, the econometric evidence in the record for the proposal does not support the conclusion that an interrelationship exists between the CME bitcoin futures market and the spot bitcoin market such that it is reasonably likely that a person attempting to manipulate the proposed ETP would also have to trade on the CME bitcoin futures market.[137] The Exchange and the Sponsor, as they have done previously, rely on the findings of one section of the Hu, Hou & Oxley paper; [138] however, they do not address issues that the Commission has previously raised, including in the WisdomTree Order, with respect to this paper.[139] As the Commission explained in the WisdomTree Order, the findings of this paper's Granger causality analysis, which is widely used to formally test for lead-lag relationships, are concededly mixed.[140]

[123] *See id.* at 8321.

[124] *Id.*

[125] *Id.* at 8325.

[126] *Id.* The Exchange does not define the term ''Bitcoin Futures'' in its filing.

[127] *Id.*

[128] The Exchange states that a ''large open interest holder in Bitcoin Futures is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. At a price of approximately $46,996 per bitcoin on 8/31/21, more than 80 firms had outstanding positions of greater than $5.8 million in Bitcoin Futures.'' *Id.* at 8326 n.61.

[129] *Id.* at 8326.

[130] *Id.* at 8327 (citing to (a) representations made and comments submitted with respect to the proposed rule changes in connection with the ARK 21Shares Order and the Wise Origin Order, and (b) Hu, Y., Hou, Y. and Oxley, L. (2019), ''What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective'' (*available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7481826/*) (''Hu, Hou & Oxley'')). The Exchange references the following conclusion from the ''time-varying price discovery'' section of Hu, Hou & Oxley: ''There exist no episodes where the Bitcoin spot markets dominates the price discovery processes with regard to Bitcoin futures. This points to a conclusion that the price formation originates solely in the Bitcoin futures market. We can, therefore, conclude that the Bitcoin futures markets dominate the dynamic price discovery process based upon time-varying information share measures. Overall, price discovery seems to occur in the Bitcoin futures markets rather than the underlying spot market based upon a time-varying perspective.'' *Id.* at n.62

[131] *Id.* at 8328, 8333.

[132] *Id.* at 8328.

[133] *See id.*

[134] *See* WisdomTree Order, 86 FR at 69330.

[135] *See* USBT Order, 85 FR at 12611. *See also* WisdomTree Order, 86 FR at 69330; Kryptoin Order, 86 FR at 74175; SkyBridge Order, 87 FR at 3875; Wise Origin Order, 87 FR at 5534.

[136] *See* USBT Order, 85 FR at 12612. The Commission has previously considered and rejected similar arguments. *See, e.g.,* VanEck Order, 86 FR at 64547; WisdomTree Order, 86 FR at 69330; Kryptoin Order, 86 FR at 74175–76; SkyBridge Order, 87 FR at 3875–76; Wise Origin Order, 87 FR at 5534–35; Global X Order, 87 FR at 14919; Grayscale Order, 87 FR at 40312.

[137] *See also* USBT Order, 85 FR at 12611; WisdomTree Order, 86 FR at 69330–31; Wise Origin Order, 87 FR at 5535; NYDIG Order, 87 FR at 14938; Global X Order, 87 FR at 14920; ARK 21Shares, 87 FR at 20024; Bitwise Order, 87 FR at 40288–89; Grayscale Order, 87 FR at 40312–13.

[138] *See supra* note 130.

[139] *See, e.g.,* WisdomTree Order, 86 FR at 69331 (discussing that the paper's use of daily price data, as opposed to intraday prices may not be able to distinguish which market incorporates new information faster; and discussing that the paper found inconclusive evidence that futures prices lead spot bitcoin prices—in particular, that the months at the end of the paper's sample period showed, using Granger causality methodology, that the spot market was the leading market—and that the record did not include evidence to explain why this would not indicate a shift towards prices in the spot market leading the futures market that would be expected to persist into the future). *See also* USBT Order, 85 FR at 12613 n.244.

[140] The paper finds that the CME bitcoin futures market dominates the spot markets in terms of Granger causality, but that the causal relationship is bi-directional, and a Granger causality episode from March 2019 to June/July 2019 runs from bitcoin spot prices to CME bitcoin futures prices. The paper concludes: ''[T]he Granger causality episodes are not constant throughout the whole sample period. Via our causality detection methods, market participants can identify when markets are being led by futures prices and when they might not

Moreover, while the Exchange highlights data and analyses submitted to the Commission in connection with the Wise Origin Order and the ARK 21Shares Order to support the premise that the CME bitcoin futures market leads the spot bitcoin market,[141] the Commission disapproved the proposals related to these submissions, and the Commission raised issues with respect to these submissions—including with the data and analyses therein—that the Exchange does not address.[142]

The Exchange does not provide results of its own lead-lag analysis or provide any additional evidence of an interrelationship between the CME bitcoin futures market, which is the regulated market, and spot bitcoin platforms, which are the markets on which the assets held by the proposed ETP would trade. As discussed in previous disapprovals, including the WisdomTree Order, analyses regarding whether the CME bitcoin futures market leads the spot market remain inconclusive.[143] Thus, as in previous disapprovals, because the lead-lag analysis regarding whether the CME bitcoin futures market leads the spot market is ''central'' to understanding the first prong, the Commission determines that the evidence in the record is inadequate to conclude that an interrelationship exists between the CME bitcoin futures market and the spot bitcoin market such that it is reasonably likely that a person attempting to manipulate the proposed ETP would have to trade on the CME bitcoin futures market to successfully manipulate the proposed ETP.

The Exchange also makes additional assertions [144] that are conclusory and presuppose that the CME bitcoin futures market is a ''predominant influence'' on the spot bitcoin market. For example, the Exchange's assertion that ''a potential manipulator of the Shares would . . . have to transact in the CME [b]itcoin [f]utures market because the Reference Rate is based on spot prices'' [145] presupposes that ''CME [b]itcoin [f]utures act as a predominant influence on the price in the spot market'' [146] and assumes a link between the Reference Rate and the Shares that, as discussed above,[147] the Exchange has not established. Likewise, the Exchange states that the Trust's in-kind create/redeem process supports the conclusion that a would-be manipulator would have to trade on the CME bitcoin futures market to successfully manipulate the proposed ETP because the ''CME [b]itcoin [f]utures market appears to be a predominant influence'' on the spot bitcoin market.[148] However, as discussed already, the evidence in the record is inadequate to conclude that CME bitcoin futures prices lead spot bitcoin prices, let alone the premise that the CME bitcoin futures market has a ''predominant influence'' on the spot bitcoin market.

The Commission thus concludes that the information that BZX provides is not sufficient to support a determination that it is reasonably likely that a would-be manipulator of the proposed ETP would have to trade on the CME bitcoin futures market to successfully manipulate the proposed ETP. Therefore, the information in the record also does not establish that the CME bitcoin futures market is a ''market of significant size'' related to the assets to be held by the proposed ETP.

(ii) Whether It is Unlikely That Trading in the Proposed ETP Would Be the Predominant Influence on Prices in the CME Bitcoin Futures Market

The second prong in establishing whether the CME bitcoin futures market constitutes a ''market of significant size'' related to spot bitcoin is the determination that it is unlikely that trading in the proposed ETP would be the predominant influence on prices in the CME bitcoin futures market.[149]

(a) BZX's Assertions

BZX asserts that ''trading in the Shares would not be the predominant force on prices in the CME [b]itcoin [f]utures market (or spot market) for a number of reasons, including the significant volume in the CME [b]itcoin [f]utures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market.'' [150] Moreover, BZX asserts that ''the Shares should trade close to NAV given that market participants would arbitrage any significant price deviations between the price of the Shares and prices in the spot market.'' [151]

In addition to the CME bitcoin futures market data points cited above, BZX represents that ''the spot market for bitcoin is also very liquid.'' [152] According to the Exchange, based on data from February 2021, the cost to buy or sell $5 million worth of bitcoin averages roughly 10 basis points with a market impact of 30 basis points.[153] According to the Exchange, based on the same data, the cost to buy or sell a $10 million market order of bitcoin ''is roughly 20 basis points with a market impact of 50 basis points.'' [154] According to the Exchange ''[s]tated another way, a market participant could enter a market buy or sell order for $10 million of bitcoin and only move the market 0.5%.'' [155] As such, BZX concludes that ''the combination of CME [b]itcoin [f]utures acting as a predominant influence on price discovery, the overall size of the bitcoin market, and the ability for market participants, including authorized participants creating and redeeming in-kind with the Trust, to buy or sell large amounts of bitcoin without significant market impact will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or CME [b]itcoin [f]utures markets.'' [156]

be.'' *See* Hu, Hou & Oxley, *supra* note 130. *See also* WisdomTree Order, 86 FR at 69331.

[141] *See supra* note *130 and accompanying text.*

[142] *See, e.g.,* Wise Origin Order, 87 FR at 5534–36, 5539–40; ARK 21Shares Order, 87 FR at 20023–24.

[143] As the academic literature and listing exchanges' analyses pertaining to the pricing relationship between the CME bitcoin futures market and spot bitcoin market have developed, the Commission has critically reviewed those materials. *See* Grayscale Order, 87 FR at 40311–13; Bitwise Order, 87 FR at 40286–89; ARK 21Shares Order, 87 FR at 20024; Global X Order, 87 FR at 14920; Wise Origin Order, 87 FR at 5535–36, 5539–40; Kryptoin Order, 86 FR at 74176; WisdomTree Order, 86 FR at 69330–32; VanEck Order, 86 FR at 64547–48; USBT Order, 85 FR at 12613.

[144] *See supra* notes 131–132.

[145] Notice, 87 FR at 8328, 8333.

[146] Notice, 87 FR at 8333.

[147] *See supra* notes 106–109 and accompanying text.

[148] Notice, 87 FR at 8328 (''the Trust only allows for in-kind creation and redemption, which . . . reduces the potential for manipulation of the Shares through manipulation of the Reference Rate or any of its individual constituents, again emphasizing that a potential manipulator of the Shares would have to manipulate the entirety of the bitcoin spot market, of which the CME [b]itcoin [f]utures market appears to be a predominant influence'').

[149] *See* Winklevoss Order, 83 FR at 37594; USBT Order, 85 FR at 12596–97.

[150] Notice, 87 FR at 8328, 8333.

[151] *Id.*

[152] *Id.*

[153] These statistics are sourced from CoinRoutes from February 2021 and are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021. *See* Notice, 87 FR at 8328–29 nn.74–75.

[154] Notice, 87 FR at 8328.

[155] *Id.*

[156] *Id.* In addition, the Exchange states that the largest bitcoin futures ETF represents 3,803 contracts of the total 9,625 contracts of open interest in December CME bitcoin futures as of December 2, 2021, (roughly 40% of open interest) and that this directly contradicts the previously articulated standards by the Commission in the disapproval orders issued for spot bitcoin ETPs related to whether the trading in the ETP would be the predominant influence on prices in that market. *See id.* at 8324. The Commission disagrees. The proposed rule change does not relate to the same underlying holdings as such ETFs, which provide exposure to bitcoin through CME bitcoin futures. The Commission considers the proposed rule change on its own merits and under the standards

Continued

(b) Analysis

The Commission does not agree with BZX's assertions, which are substantially the same assertions that BZX made, and the Commission discussed, in the WisdomTree Order. Now, as then, the record does not demonstrate that it is unlikely that trading in the proposed ETP would be the predominant influence on prices in the CME bitcoin futures market. As the Commission has already addressed and rejected one of the bases of BZX's assertion—that CME bitcoin futures lead price discovery [157]—the Commission will only address below the other two bases: the overall size of, and the impact of buys and sells on, the bitcoin market.

BZX's assertions about the potential effect of trading in the Shares on the CME bitcoin futures market and spot bitcoin market are general and conclusory, citing to the aforementioned trade volume of the CME bitcoin futures market and the size and liquidity of the spot bitcoin market, as well as the market impact of a single transaction in spot bitcoin, without any analysis or evidence to support these assertions. For example, there is no limit on the amount of mined bitcoin that the Trust may hold. Yet BZX does not provide any information on the expected growth in the size of the Trust and the resultant increase in the amount of bitcoin held by the Trust over time, or on the overall expected number, size, and frequency of creations and redemptions—or how any of the foregoing could (if at all) influence prices in the CME bitcoin futures market. Thus, the Commission cannot conclude, based on BZX's statements alone and absent any evidence or analysis in support of BZX's assertions, that it is unlikely that trading in the ETP would be the predominant influence on prices in the CME bitcoin futures market.[158]

The Commission also is not persuaded by BZX's assertions about the minimal effect a market order to buy or sell bitcoin would have on the bitcoin market.[159] While BZX concludes by way of an example of a $10 million market order that buying or selling large amounts of bitcoin would have insignificant market impact, the conclusion does not analyze the extent of any impact on the CME bitcoin futures market or the CME bitcoin futures market's prices. Accordingly, such statistics, without more, are not relevant to the Commission's consideration of whether trading in the ETP would be the predominant influence on prices in the CME bitcoin futures market.

To the extent that BZX is suggesting that a single $10 million order in bitcoin would have immaterial impact on the prices in the CME bitcoin futures market, the Exchange has not adequately explained why *a single market order in spot bitcoin* is an appropriate proxy for trading in the Shares. As stated above, the second prong in establishing whether the CME bitcoin futures market constitutes a ''market of significant size'' is the determination that it is unlikely that *trading in the proposed ETP* would be the predominant influence on prices in the CME bitcoin futures market. While authorized participants of the Trust might transact in the spot bitcoin market as part of their creation or redemption of Shares, the Shares themselves would be traded in the secondary market on BZX. Furthermore, the record does not discuss the expected number or trading volume of the Shares, or establish the potential effect of the Shares' trade prices on CME bitcoin futures prices. For example, BZX does not provide any data or analysis about the potential effect the quotations or trade prices of the Shares might have on market-maker quotations in CME bitcoin futures contracts and whether those effects would constitute a predominant influence on the prices of those futures contracts.[160]

Moreover, although BZX asserts that ''the Shares should trade close to NAV given that market participants would arbitrage any significant price deviations between the price of the Shares and prices in the spot market,'' [161] the Exchange does not provide any additional data or analysis to support such an assertion; [162] nor does the Exchange show that the arbitrage that may exist between the Shares and prices in the *spot* bitcoin markets demonstrates that the Shares would not be the predominant force on prices in the *CME bitcoin futures* market.

Thus, the Commission cannot conclude, based on the assertions in the filing and absent sufficient evidence or analysis in support of these assertions, that it is unlikely that trading in the proposed ETP would be the predominant influence on prices in the CME bitcoin futures market.

Therefore, because BZX has not provided sufficient information to establish both prongs of the ''market of significant size'' determination, the Commission cannot conclude that the CME bitcoin futures market is a ''market of significant size'' related to spot bitcoin such that BZX would be able to rely on a surveillance-sharing agreement with the CME to provide sufficient protection against fraudulent and manipulative acts and practices.

(3) Assertions That the Proposed Spot Bitcoin ETP Is Comparable to Bitcoin Futures-Based ETFs

(i) BZX's Assertions

BZX asserts that, after allowing the listing and trading of bitcoin futures ETFs that hold primarily CME bitcoin futures, disapproving spot bitcoin ETPs ''seems . . . arbitrary and capricious.'' [163] BZX asserts that, if the CME bitcoin futures market were not, in the opinion of the Commission, a regulated market of significant size, permitting bitcoin futures ETFs that trade on such market ''would seem to be inconsistent with the requirement under the [Exchange] Act of being designed to 'prevent fraudulent and manipulative acts and practices.' '' [164] BZX argues that this is particularly true for the Trust, which would use the Reference Rate as its price source to calculate its daily NAV, ''with inputs from *the same* bitcoin trading platforms. . . and materially the same methodology as is used to price CME [b]itcoin [f]utures.'' [165] According to BZX, the Constituent Bitcoin Platforms' pricing inputs and methodology (except for the calculation time) are the same ''with respect to the Trust and CME bitcoin futures.'' [166] BZX asserts that any

applicable to it. Namely, with respect to this proposed rule change, the Commission must apply the standards as provided by Section 6(b)(5) of the Exchange Act, which it has applied in connection with its orders considering previous proposals to list bitcoin-based commodity trusts and bitcoin-based trust issued receipts. *See supra* note 11 and accompanying text. *See also infra* Section III.B.3.

[157] *See supra* Section III.B.2.i.b.

[158] *See* VanEck Order, 86 FR at 64548–59; WisdomTree Order, 86 FR at 69332–33; Kryptoin Order, 86 FR at 74177; SkyBridge Order, 87 FR at 3879; Wise Origin Order, 87 FR at 5537; ARK 21Shares Order, 87 FR at 20025; Global X Order, 87 FR at 14921.

[159] *See* Notice, 87 FR at 8328 (''For a $10 million market order, the cost to buy or sell is roughly 20 basis points with a market impact of 50 basis points. Stated another way, a market participant could enter a market buy or sell order for $10 million of bitcoin and only move the market 0.5%.'').

[160] *See* VanEck Order, 86 FR at 64549; WisdomTree Order, 86 FR at 69333; Kryptoin Order, 86 FR at 74177; SkyBridge Order, 87 FR at 3879; Wise Origin Order, 87 FR at 5537; ARK 21Shares Order, 87 FR at 20025; Global X Order, 87 FR at 14921.

[161] Notice, 87 FR at 8328.

[162] *See also supra* notes 106–109 and accompanying text.

[163] Notice, 87 FR at 8325.

[164] *Id.* at 8323; 15 U.S.C. 78f(b)(5).

[165] Notice, 87 FR at 8323 (emphasis in the original).

[166] *Id.*

objective review of the proposals to list spot bitcoin ETPs compared to the already listed and traded bitcoin futures ETFs would lead to the conclusion that spot bitcoin ETPs should be available to U.S. investors [167] because ''any concerns related to preventing fraudulent and manipulative acts and practices related to [s]pot [b]itcoin ETPs would apply equally to the spot markets underlying the futures contracts held by a [CME] [b]itcoin [f]utures ETF.'' [168]

Further, as discussed in more detail below,[169] while the Trust is not an investment company registered under the 1940 Act,[170] according to BZX, ''the Sponsor has taken 1940 Act considerations into account in structuring the Trust's operations in seeking 'to protect investors and the public interest.' '' [171] According to BZX, ''the Sponsor has structured the Trust's operations to operate as if certain 1940 Act provisions apply, providing transparency and investor protections such that a distinction between [bitcoin futures] ETFs and [spot bitcoin] ETPs is unwarranted.'' [172]

(ii) Analysis

The Commission disagrees with these assertions and conclusions. The proposed rule change does not relate to the same underlying holdings as ETFs regulated under the 1940 Act that provide exposure to bitcoin through CME bitcoin futures, or CME bitcoin futures-based ETPs that have registered their offerings under the Securities Act but are not regulated under the 1940 Act. The Commission considers the proposed rule change on its own merits and under the standards applicable to it. Namely, with respect to this proposed rule change, the Commission must apply the standards as provided by Section 6(b)(5) of the Exchange Act, which it has applied in connection with its orders considering previous proposals to list bitcoin-based commodity trusts and bitcoin-based trust issued receipts.[173]

In focusing on whether ''concerns related to preventing fraudulent and manipulative acts and practices related to [s]pot [b]itcoin ETPs would apply equally to the spot markets underlying the futures contracts held by a [CME] [b]itcoin [f]utures ETF,'' [174] the Exchange mischaracterizes the framework that the Commission has articulated in the Winklevoss Order. As stated in the Winklevoss Order, the Commission is not applying a ''cannot be manipulated''approach—either on the CME bitcoin futures market or the spot bitcoin markets. Rather, as the Commission has repeatedly emphasized, and also summarized above, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, is placing the burden on BZX to demonstrate the validity of its contention that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify dispensing with the detection and deterrence of fraud and manipulation provided by a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin,[175] or to establish that it has entered into such a surveillance-sharing agreement.

Consistent with this approach, the Commission's consideration (and thus far, disapproval) of proposals to list and trade spot bitcoin ETPs does not focus on an assessment of the overall risk of fraud and manipulation in the spot bitcoin or futures markets, or on the extent to which such risks are similar.[176] Rather, the Commission's focus has been consistently on whether the listing exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying bitcoin assets of the ETP under consideration, so that it would have the necessary ability to detect and deter manipulative activity. For reasons articulated in the orders approving proposals to list and trade CME bitcoin futures-based ETPs (*i.e.,* the Teucrium Order and the Valkyrie XBTO Order), the Commission found that in each such case the listing exchange has entered into such a surveillance-sharing agreement.[177] Applying the same framework to this proposed spot bitcoin ETP, however, as discussed and explained above, the Commission finds that BZX has not.

Moreover, for the CME bitcoin futures ETPs under consideration in the Teucrium Order and the Valkyrie XBTO Order, the proposed ''significant'' regulated market (*i.e.,* the CME) with which the listing exchange has a surveillance-sharing agreement is the *same* market on which the underlying bitcoin assets (*i.e.,* CME bitcoin futures contracts) trade. As explained in those Orders, the CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the CME bitcoin futures ETP by manipulating the price of CME bitcoin futures contracts, whether that attempt is made by directly trading on the CME bitcoin futures market or indirectly by trading outside of the CME bitcoin futures market.[178] Regarding the approved Teucrium Bitcoin Futures Fund in the Teucrium Order (''Fund''), for example, when the CME shares its surveillance information with the listing exchange, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the Fund.[179] Accordingly, the Commission explains in the Teucrium Order and the Valkyrie XBTO Order that it is unnecessary for a listing exchange to establish a reasonable likelihood that a would-be manipulator would have to trade on the CME itself to manipulate a proposed ETP whose only non-cash holdings would be CME bitcoin futures contracts.[180]

However, as the Commission also states in those Orders, this reasoning does not extend to spot bitcoin ETPs. Spot bitcoin markets are not currently ''regulated.'' [181] If an exchange seeking

[167] *See* Notice, 87 FR at 8324.

[168] *Id.* at 8325.

[169] *See* Section III.C, *infra.*

[170] *See id.* at 8329 (according to the Registration Statement, ''the Trust is neither an investment company registered under the [1940 Act], as amended, nor a commodity pool for purposes of the Commodity Exchange Act . . . , and neither the Trust nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.'').

[171] *Id.* at 8323. *See also supra* note 41 and accompanying text (summarizing the 1940 Act considerations taken into account by the Sponsor in structuring the Trust's operations).

[172] *Id.*

[173] *See supra* note 11 and accompanying text.

[174] *See* Notice, 87 FR at 8325.

[175] *See supra* notes 42–45 and accompanying text.

[176] The Commission's past general discussion on the risk of fraud and manipulation in the spot bitcoin or futures markets is only in response to arguments raised by the proposing listing exchanges (or commenters) that mitigating factors against fraud and manipulation in the spot bitcoin or futures markets should compel the Commission to dispense with the detection and deterrence of fraud and manipulation provided by a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying bitcoin assets. *See, e.g.,* Winklevoss Order, 83 FR at 37580, 37582–91 (addressing assertions that ''bitcoin and [spot] bitcoin markets,'' generally, as well as one bitcoin trading platform, specifically, have unique resistance to fraud and manipulation). *See also* USBT Order, 85 FR at 12597, 12599–12608. But even in such instance, the central issue is about the necessity of such a surveillance-sharing agreement, not the overall risk of fraud and manipulation in the spot bitcoin or futures markets, or the extent to which such risks are similar.

[177] *See* Teucrium Order, 87 FR at 21678–81; Valkyrie XBTO Order, 87 FR at 28850–53.

[178] *See* Teucrium Order, 87 FR at 21679; Valkyrie XBTO Order, 87 FR at 28851.

[179] *See* Teucrium Order, 87 FR at 21679.

[180] *See id.*

[181] *See* Teucrium Order, 87 FR at 21679 n.46 (citing USBT Order, 85 FR at 12604; NYDIG Order, 87 FR at 14936 nn.65–67). *See also* Valkyrie XBTO Order, 87 FR at 28851 n.42.

to list a spot bitcoin ETP relies on the CME as the regulated market with which it has a comprehensive surveillance-sharing agreement, the assets held by the spot bitcoin ETP would not be traded on the CME. Because of this significant difference, with respect to a spot bitcoin ETP, there would be reason to question whether a surveillance-sharing agreement with the CME would, in fact, assist in detecting and deterring fraudulent and manipulative misconduct affecting the price of the spot bitcoin held by that ETP. If, however, an exchange proposing to list and trade a spot bitcoin ETP identifies the CME as the regulated market with which it has a comprehensive surveillance-sharing agreement, the exchange could overcome the Commission's concern by demonstrating that there is a reasonable likelihood that a person attempting to manipulate the spot bitcoin ETP would have to trade on the CME in order to manipulate the ETP, because such demonstration would help establish that the exchange's surveillance-sharing agreement with the CME would have the intended effect of aiding in the detection and deterrence of fraudulent and manipulative misconduct related to the spot bitcoin held by the ETP.[182]

Because, here, BZX is seeking to list a spot bitcoin ETP that relies on the CME as the purported ''significant'' regulated market with which it has a comprehensive surveillance-sharing agreement, the assets held by the proposed ETP would *not* be traded on the CME. Thus there is reason to question whether a surveillance-sharing agreement with the CME would, in fact, assist in detecting and deterring fraudulent and manipulative misconduct affecting the price of the spot bitcoin held by the proposed ETP.[183] An exchange can overcome this concern by demonstrating that there is a reasonable likelihood that a person attempting to manipulate the proposed ETP would have to trade *on the CME* in order to manipulate the ETP because such demonstration would help establish that an exchange's surveillance-sharing agreement with the CME would have the intended effect of aiding in the detection and deterrence of fraudulent and manipulative misconduct related to the spot bitcoin held by the proposed ETP.[184] As discussed and explained above,[185] the Commission finds that BZX has not made such demonstration.

To the extent that the Exchange is arguing that the CME's surveillance would, in fact, assist in detecting and deterring fraudulent and manipulative misconduct that impacts spot bitcoin ETPs in the same way as it would for misconduct that impacts the CME bitcoin futures ETFs/ETPs, the information in the record for this filing does not support such a claim. First, while BZX emphasizes that the ''pricing inputs and methodology (except for the calculation time)'' for the Reference Rate are ''the same'' as for the BRR,[186] this does not—absent supporting data—establish any link between prices of shares of any CME bitcoin futures ETFs/ETPs and the prices of Shares of the proposed spot bitcoin ETP. There is no evidence in the record that shares of CME bitcoin futures ETFs/ETPs are priced according to the BRR. The BRR is a once-a-day reference rate of the U.S. dollar price of one bitcoin as of 4:00 p.m., London Time.[187] The BRR aggregates the trade flow of its constituent spot bitcoin platforms—Coinbase, Gemini, LMAX Digital, itBit, Kraken, and Bitstamp [188]—during a specific one-hour calculation window.[189] While the BRR is used to value the final cash settlement of CME bitcoin futures contracts, it is not generally used for daily cash settlement of such contracts,[190] nor is it claimed to be used for any intra-day trading of such contracts. In addition, CME bitcoin futures ETFs do not hold their CME bitcoin futures contracts to final cash settlement; rather, the contracts are rolled [191] prior to their settlement dates. Moreover, the shares of CME bitcoin futures ETFs trade in secondary markets, and there is no evidence in the record for this filing that such intra-day, secondary market trading prices are determined by the BRR.

There is also no evidence in the record that the Shares' prices would be determined by the Reference Rate.[192] The Reference Rate aggregates the trade flow of the Constituent Bitcoin Platforms—the current Constituent Bitcoin Platforms are Bitstamp, Coinbase, Gemini, itBit and Kraken—during an observation window between 3:00 p.m. and 4:00 p.m. E.T. into the U.S. dollar price of one bitcoin at 4:00 p.m. E.T. While the Reference Rate would be used daily to value the bitcoins held by the Trust, the Reference Rate would not be used for the creation or redemption of Shares, nor is it claimed that the Reference Rate would be used for any intra-day secondary market trading of the Shares.[193] Rather, the Share price would be discovered through continuous intra-day, secondary market interactions of buy and sell interests.[194]

Thus, although the Exchange focuses on the similarities between the BRR and the Reference Rate,[195] there is no

[182] *See* Teucrium Order, 87 FR at 21679 n.46; Valkyrie XBTO Order, 87 FR at 28851 n.42.

[183] *See* Teucrium Order, 87 FR at 21679 n.46; Valkyrie XBTO Order, 87 FR at 28851 n.42. There is reason to question whether the CME's surveillance would capture manipulation of spot bitcoin that occurs off of the CME, if, for example, off-CME manipulation of spot bitcoin does not also similarly impact CME bitcoin futures contracts.

[184] *See* Teucrium Order, 87 FR at 21679 n.46; Valkyrie XBTO Order, 87 FR at 28851 n.42.

[185] *See* Section III.B.2.i, *supra.*

[186] *See* Notice, 87 FR at 8323. The Reference Rate is calculated as of 4:00 p.m. E.T., whereas the BRR is calculated as of 4:00 p.m. London Time. *See* Notice, 87 FR at 8329 n.77.

[187] *See https://docs-cfbenchmarks.s3.amazonaws.com/CME+CF+Reference+Rates+Methodology.pdf.*

[188] *See https://docs-cfbenchmarks.s3.amazonaws.com/CME+CF+Constituent+Exchanges.pdf.*

[189] *See https://www.cmegroup.com/trading/files/bitcoin-reference-rate-methodology.pdf.* This one-hour window is partitioned into 12, five-minute intervals, where the BRR is calculated as the equally-weighted average of the volume-weighted medians of all 12 partitions. *See id.*

[190] Under normal procedures, daily cash settlements are generally based on the volume-weighted average price of trading activity on CME Globex between 2:59 p.m. and 3:00 p.m., Central Time). *See https://www.cmegroup.com/confluence/display/EPICSANDBOX/Bitcoin* for a description of CME bitcoin futures daily settlement procedures.

[191] Rolling a futures contract refers to extending the expiration of a position by closing out the futures contract that is nearing expiration and opening a new position in a futures contract with a later expiration.

[192] As noted above, *see supra* note 33, the Commission understands that the Reference Rate was discontinued as of April 2022. Because the Exchange has not amended its filing or its assertions with respect to the Reference Rate, the Commission's analysis herein responds to the Exchange's arguments as presented in its filing by assuming that the Reference Rate continues to be published.

[193] *See supra* notes 106–109 and accompanying text.

[194] As discussed above, the use of the Reference Rate by the Trust to determine the value of its bitcoin does not support the finding that the Exchange has established other means to prevent fraud and manipulation that are sufficient to justify dispensing with the detection and deterrence of fraud and manipulation provided by a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin. *See* Section III.B.1.ii, *supra.* Likewise, the Commission has previously rejected arguments by listing exchanges that the use of a reference rate similar to the BRR to value bitcoin held by proposed spot bitcoin ETPs provides other means to prevent fraud and manipulation that are sufficient to justify dispensing with the detection and deterrence of fraud and manipulation provided by a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin. *See* Wise Origin Order, 87 FR at 5532–33; SkyBridge Order, 87 FR at 3877. Accordingly, the Reference Rate and the BRR, and the similarities between the BRR and the Reference Rate, are not informative in the Commission's determination of whether the Exchange has established other means to prevent fraud and manipulation.

[195] Despite the Exchange's claim that the Reference Rate uses ''inputs from *the same* bitcoin trading platforms'' as the BRR, the BRR includes trade flow from LMAX Digital, which platform does

evidence in the record that the shares of any CME bitcoin futures ETF/ETP, or the Shares of the proposed spot bitcoin ETP, would trade in the secondary market at a price related to (or informed by) the BRR or the Reference Rate.[196]

Second, even if the Exchange had demonstrated a link between the BRR and/or the Reference Rate and the prices of bitcoin futures ETFs/ETPs and/or the proposed spot bitcoin ETP, which it has not, it does not necessarily follow that the CME's surveillance would, in fact, assist in detecting and deterring fraudulent and manipulative misconduct that impacts spot bitcoin ETPs in the same way as it would for misconduct that impacts the CME bitcoin futures ETFs/ETPs—particularly when such misconduct occurs off of the CME itself.[197] For example, even assuming, for the sake of argument, that the BRR and/or the Reference Rate is a potential link between prices on certain spot bitcoin platforms and CME bitcoin futures prices, it does not—absent supporting data—necessarily follow that *any* manipulation that impacts spot bitcoin *also similarly* impacts CME bitcoin futures contracts. The Exchange has not provided analysis or data that assesses the reaction (if any) of CME bitcoin futures contracts to instances of fraud and manipulation in spot bitcoin markets.

In addition, the disapproval of the proposal would not constitute an ''arbitrary and capricious'' administrative action in violation of the Administrative Procedure Act.[198]

Importantly, the issuers are not similarly situated. The issuers of CME bitcoin futures-based ETFs/ETPs propose to hold only CME bitcoin futures contracts (which are traded on the CME itself) as their only non-cash holdings, and the Trust proposes to hold only spot bitcoin (which is not traded on the CME). As explained in detail above, and in the Teucrium Order, Valkyrie XBTO Order, and the Grayscale Order, because of this important difference, for a spot bitcoin ETP, there is reason to question whether a surveillance-sharing agreement with the CME would, in fact, assist in detecting and deterring fraudulent and manipulative misconduct affecting the price of the spot bitcoin held by that ETP.[199] And as discussed above, neither the Exchange nor any other evidence in the record for this filing, sufficiently demonstrates that the CME's surveillance can be reasonably relied upon to capture the effects of manipulation of the *spot* bitcoin assets underlying the proposed ETP when such manipulation is not attempted on the CME itself.

Moreover, the analytical framework for assessing compliance with the requirements of Exchange Act Section 6(b)(5) that the Commission applies here (*i.e.,* comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying bitcoin assets) is the same one that the Commission has applied in each of its orders considering previous proposals to list bitcoin-based commodity trusts and trust issued receipts.[200] The Commission has applied this framework to each proposal by analyzing the evidence presented by the listing exchange and statements made by commenters.[201] Exchange Act Section 6(b)(5) can be satisfied by a proper showing; the Commission has in fact recently approved proposals by the Exchange and the Nasdaq Stock Market to list and trade shares of ETPs holding CME bitcoin futures as their only non-cash holdings.[202] And in the orders approving the CME bitcoin futures-based ETPs, the Commission explicitly discussed how an exchange seeking to list and trade a spot bitcoin ETP could overcome the lack of a one-to-one relationship between the regulated market with which it has a surveillance-sharing agreement and the market(s) on which the assets held by a spot bitcoin ETP could be traded: by demonstrating that there is a reasonable likelihood that a person attempting to manipulate the spot bitcoin ETP would have to trade on the regulated market (*i.e.,* on the CME) to manipulate the spot bitcoin ETP.[203]

When considering past proposals for spot bitcoin ETPs, the Commission has, in particular, reviewed the econometric and/or statistical evidence in the record to determine whether the listing exchange's proposal has met the applicable standard.[204] The Commission's assessment fundamentally presents quantitative, empirical questions, but, as discussed above, the Exchange has not provided evidence sufficient to support its arguments. Instead, the Exchange makes various assertions that are not supported by the limited data in the record regarding, among other things, CME bitcoin futures trading size, volume, and open interest, and spot bitcoin market capitalization, or the relationship between spot bitcoin prices and CME bitcoin futures prices (including the lead-lag relationship between the spot market and the CME bitcoin futures market), and the record contains insufficient empirical analysis or quantitative evidence of any such data to support the Exchange's conclusions.[205]

The Exchange also argues that ''a distinction between [bitcoin futures] ETFs and [spot bitcoin] ETPs is unwarranted'' because the Trust has agreed to voluntarily comply with some requirements of the 1940 Act.[206] While, as stated by the Exchange, an undertaking by the Trust to comply voluntarily with certain requirements of the 1940 Act may provide some level of transparency and promote certain types of investor protection, it does not alter the Commission's analysis under the Exchange Act relating to a spot bitcoin ETP.[207] As discussed above, the

not appear to be included as a Constituent Bitcoin Platform of the Reference Rate.

[196] In addition, the Commission's determination in the Teucrium Order and the Valkyrie XBTO Order to approve the listing and trading of the relevant CME bitcoin futures ETPs was not based on the ETPs' use—or lack of use—of the BRR (or any other similar pricing mechanism) for the calculation of NAV, or on the fact that the BRR is used for the final cash settlement of CME bitcoin futures contracts. Rather, as discussed above, the Commission approved the listing and trading of such CME bitcoin futures ETPs, not because of the BRR, but because the Commission found that the listing exchanges satisfy the requirement pertaining to a surveillance-sharing agreement with a regulated market of significant size related to the underlying bitcoin assets—which for such ETPs are CME bitcoin futures contracts, not spot bitcoin.

[197] *See also supra* note 183.

[198] The Commission is disapproving this proposed rule change because BZX has not met its burden to demonstrate that its proposal is consistent with the requirements of Exchange Act Section 6(b)(5). The Commission's disapproval of this proposed rule change does not rest on an evaluation of the relative investment quality of a product holding spot bitcoin versus a product holding CME bitcoin futures, or an assessment of whether bitcoin, or blockchain technology more generally, has utility or value as an innovation or an investment. See, *e.g.,* Winklevoss Order, 83 FR at 37580; USBT Order, 85 FR at 12597; One River Order, 87 FR at 33550; Grayscale Order, 87 FR at 40318 n.227.

[199] *See supra* note 183 and accompanying text.

[200] *See supra* notes 11–24 and accompanying text.

[201] *See supra* note 11.

[202] *See* Teucrium Order and Valkyrie XBTO Order, *supra* note 11.

[203] *See supra* note 182 and accompanying text.

[204] *See, e.g.,* USBT Order, 85 FR at 12612–13; VanEck Order, 86 FR at 64547–48; WisdomTree Order, 86 FR at 69330–32; Kryptoin Order, 86 FR at 74175–76; NYDIG Order, 87 FR at 14938–39; Wise Origin Order, 87 FR at 5534–36; Global X Order, 87 FR at 14919–20; ARK 21Shares Order, 87 FR at 20023–24; Bitwise Order, 87 FR at 40286–92; Grayscale Order, 87 FR at 40311–14.

[205] *See* Sections III.B.1 & III.B.2, *supra.*

[206] *See supra* note 172 and accompanying text.

[207] The 1940 Act provides for the regulation of investment companies. *See* 15 U.S.C. 80a. In general, the 1940 Act is designed to minimize conflicts of interest and is focused on disclosure to the investing public of information about the fund and its investment objectives, as well as on investment company structure and operations. *See https://www.sec.gov/investment/laws-and-rules.* The requirements of Section 6(b)(5) of the Exchange Act, on the other hand, apply to the rules of national securities exchanges and require, among other things, that such rules be designed to prevent

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proposed rule change does not relate to the same underlying holdings as either ETFs regulated under the 1940 Act that provide exposure to bitcoin through CME bitcoin futures, or CME bitcoin futures-based ETPs that have registered their offerings under the Securities Act but are not regulated under the 1940 Act.[208] And as discussed above, neither the Exchange nor any other evidence in the record for this filing, sufficiently demonstrates that the CME's surveillance can be reasonably relied upon to capture the effects of manipulation of the spot bitcoin assets underlying the proposed ETP when such manipulation is not attempted on the CME itself. The requirements of Section 6(b)(5) of the Exchange Act apply to the rules of national securities exchanges. Accordingly, the relevant obligation to have a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin, or other means to prevent fraudulent and manipulative acts and practices that are sufficient to justify dispensing with such a surveillance-sharing agreement, resides with the listing exchange. Because there is insufficient evidence in the record demonstrating that BZX has satisfied this obligation, the Commission cannot approve the proposed ETP for listing and trading on BZX.

C. Whether BZX Has Met Its Burden To Demonstrate That the Proposal Is Designed To Protect Investors and the Public Interest

BZX contends that, if approved, the proposed ETP would protect investors and the public interest. However, the Commission must consider these potential benefits in the broader context of whether the proposal meets each of the applicable requirements of the Exchange Act.[209] Because BZX has not demonstrated that its proposed rule change is designed to prevent fraudulent and manipulative acts and practices, the Commission must disapprove the proposal.

(1) BZX's Assertions

The Exchange states that the proposal is designed to protect investors and the public interest. BZX asserts that access for U.S. retail investors to gain exposure to bitcoin via a transparent and U.S. regulated, exchange-traded vehicle remains limited.[210] According to the Exchange, current options include: (i) paying a potentially high premium (and high management fees) to buy over-the-counter (''OTC'') bitcoin funds, to the advantage of more sophisticated investors that are able to create shares at NAV directly with the issuing trust; (ii) facing the technical risk, complexity, and generally high fees associated with buying spot bitcoin; (iii) purchasing shares of operating companies that they believe will provide proxy exposure to bitcoin with limited disclosure about the associated risks; or (iv) through the purchase of bitcoin futures ETFs that represents a sub-optimal investment for long-term investors.[211] Meanwhile, the Exchange represents that investors in many other countries, including Canada [212] and Brazil, are able to use more traditional exchange-listed and traded products (including exchange-traded funds holding physical bitcoin) to gain exposure to bitcoin, disadvantaging U.S. investors and leaving them with more risky means of getting bitcoin exposure.[213] Additionally, investors in other countries and regions, specifically Canada and Europe, generally pay lower fees than U.S. retail investors that invest in OTC bitcoin funds due to the fee pressure that results from increased competition among available bitcoin investment options.[214] Without an approved and regulated spot bitcoin ETP in the U.S. as a viable alternative, BZX argues that U.S. investors could seek to purchase shares of non-U.S. bitcoin vehicles in order to get access to bitcoin exposure, and given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with an U.S. exchange listed ETP.[215]

BZX argues that over the past 1.5 years, U.S. investor exposure to bitcoin through OTC bitcoin funds has grown into the tens of billions of dollars and more than a billion dollars of exposure through bitcoin futures ETFs.[216] With that growth, BZX asserts, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for bitcoin futures ETFs and premium/discount volatility and management fees for OTC bitcoin funds.[217] The Exchange understands the Commission's previous focus on potential manipulation of a spot bitcoin ETP in prior disapproval orders, but now believes that such concerns have been sufficiently mitigated, and that the growing and quantifiable investor protection concerns should be a central consideration as the Commission reviews this proposal.[218] The Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in bitcoin futures ETFs and operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative for investors to self-custodying spot bitcoin.[219]

In addition, BZX represents that the Sponsor has taken 1940 Act considerations into account in structuring the Trust's operations in seeking ''to protect investors and the public interest.'' [220] Although the Trust would not be an investment company registered under the 1940 Act, the Exchange represents that: (a) the Trust would qualify as an investment company under Accounting Standards Update 2013–08 and, as such, the Sponsor would ensure that the Trust's financial statements would be audited at least annually by an independent registered public accounting firm and,

fraudulent and manipulative acts and practices. 15 U.S.C. 78f(b)(5).

[208] Although counsel for the sponsor of the Teucrium Bitcoin Futures Fund submitted a letter to the Commission stating that the trust, which was not regulated under the 1940 Act, intended to comply with certain requirements of the 1940 Act, the Commission did not rely on this representation as a basis for its approval of the proposed rule change. *See* Teucrium Order, 87 FR at 21682. *See also* letter from W. Thomas Conner, Shareholder, VedderPrice, dated September 1, 2021, at 9.

[209] *See* Winklevoss Order, 83 FR at 37602. *See also* GraniteShares Order, 83 FR at 43931; ProShares Order, 83 FR at 43941; USBT Order, 85 FR at 12615; WisdomTree Order, 86 FR at 69333; Valkyrie Order, 86 FR at 74163; Kryptoin Order, 86 FR at 74178; SkyBridge Order, 87 FR at 3880; Wise Origin Order, 87 FR at 5537; ARK 21Shares Order, 87 FR at 20026; Global X Order, 87 FR at 14921; Bitwise Order, 87 FR at 40292; Grayscale Order, 87 FR at 40319.

[210] *See* Notice, 87 FR at 8322.

[211] *See id.*

[212] The Exchange notes that the Purpose Bitcoin ETF, a retail physical bitcoin ETP launched in Canada, reportedly reached $1.2 billion in assets under management as of October 15, 2021, demonstrating the demand for a North American market listed bitcoin ETP. *See id.* at 8322 n.46.

[213] The Exchange notes that securities regulators in a number of other countries have either approved or otherwise allowed the listing and trading of bitcoin ETPs. Specifically, these funds include the Purpose Bitcoin ETF, Bitcoin ETF, VanEck Vectors Bitcoin ETN, WisdomTree Bitcoin ETP, Bitcoin Tracker One, BTCetc bitcoin ETP, Amun Bitcoin ETP, Amun Bitcoin Suisse ETP, 21Shares Short Bitcoin ETP, CoinShares Physical Bitcoin ETP. *See id.* at 8322 n.47.

[214] *See id.* at 8322.

[215] *See id.*

[216] *See id.* at 8329.

[217] *See id.*

[218] *See id.*

[219] *See id.*

[220] *See id.* at 8323.

as part of such audit, the auditor would be expected to perform procedures similar to those used for ETFs registered under the 1940 Act; (b) the Sponsor would facilitate the Trust's compliance with the financial record keeping and reporting requirements under the Sarbanes-Oxley Act of 2002; (c) the Trust's Custodian would qualify as a ''custodian'' under the 1940 Act, and the Custodian would agree to exercise reasonable care, prudence, and diligence such as a person having responsibility for the safekeeping of property of the Trust would exercise; (d) the Trust would be subject to the transparency requirements of Rule 6c–11 under the 1940 Act; (e) the Sponsor would adopt procedures to ensure there are no transactions with affiliated persons that would be prohibited by Section 17 of the 1940 Act and the applicable rules and regulations thereunder; (f) the Trust would maintain a fidelity bond for the benefit of the Trust in the maximum amount required by Rule 17g–1 under the 1940 Act; and (g) the Sponsor or applicable service provider of the Trust would maintain the books and records of the Trust in satisfaction of the requirements of Section 31 of the 1940 Act.[221]

(2) Analysis

The Commission disagrees that the proposal should be approved because it is designed to protect investors and the public interest. Here, even if it were true that, compared to trading in unregulated spot bitcoin markets or OTC bitcoin funds, trading a spot bitcoin-based ETP on a national securities exchange could provide some additional protection to investors, or that the Shares would provide more efficient exposure to bitcoin than other products on the market such as bitcoin futures ETPs, or that approval of a spot bitcoin ETP could enhance competition, the Commission must consider this potential benefit in the broader context of whether the proposal meets each of the applicable requirements of the Exchange Act.[222] Moreover, the same consideration applies despite the Exchange's representation that the Sponsor would voluntarily apply certain provisions of the 1940 Act, as described above, to the Trust. Pursuant to Section 19(b)(2) of the Exchange Act, the Commission must approve a proposed rule change filed by a national securities exchange if it finds that the proposed rule change is consistent with the applicable requirements of the Exchange Act—including the requirement under Section 6(b)(5) that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices—and it must disapprove the filing if it does not make such a finding.[223] Thus, even if a proposed rule change purports to protect investors from a particular type of investment risk—such as experiencing a potentially high premium/discount by investing in an OTC bitcoin fund or roll costs by investing in bitcoin futures ETPs—or purports to provide benefits to investors and the public interest—such as enhancing competition—the proposed rule change may still fail to meet the requirements under the Exchange Act.[224]

For the reasons discussed above, BZX has not met its burden of demonstrating an adequate basis in the record for the Commission to find that the proposal is consistent with Exchange Act Section 6(b)(5),[225] and, accordingly, the Commission must disapprove the proposal.[226]

IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Exchange Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that proposed rule change SR–CboeBZX–2022–006 be, and it hereby is, disapproved.

By the Commission.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–22345 Filed 10–13–22; 8:45 am]

BILLING CODE 8011–01–P

[221] *See id.* at 8323–24.

[222] *See supra* note 209.

[223] *See* Exchange Act Section 19(b)(2)(C), 15 U.S.C. 78s(b)(2)(C). *See also Affiliated Ute Citizens of Utah* v. *United States,* 406 U.S. 128, 151 (1972) (Congress enacted the Exchange Act largely ''for the purpose of avoiding frauds''); *Gabelli* v. *SEC,* 568 U.S. 442, 451 (2013) (The ''SEC's very purpose'' is to detect and mitigate fraud.).

[224] *See* SolidX Order, 82 FR at 16259; VanEck Order, 86 FR at 54550–51; WisdomTree Order, 86 FR at 69344; Kryptoin Order, 86 FR at 74179; Valkyrie Order, 86 FR at 74163; SkyBridge Order, 87 FR at 3881; Wise Origin Order, 87 FR at 5538; ARK 21Shares Order, 87 FR at 20026–27.

[225] 15 U.S.C. 78f(b)(5).

[226] In disapproving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2022–0053]

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes one revision of an OMB-approved information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

Office of Management and Budget (OMB), *Attn:* Desk Officer for SSA, *Comments: https://www.reginfo.gov/public/do/PRAMain.* Submit your comments online referencing Docket ID Number [SSA–2022–0053].

Social Security Administration (SSA), OLCA, *Attn:* Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, *Fax:* 410–966–2830, *Email address: OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *https://www.reginfo.gov/public/do/PRAMain,* referencing Docket ID Number [SSA–2022–0053].

The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than December 13, 2022. Individuals can obtain copies of the collection instrument by writing to the above email address.

Certificate of Coverage Request—20 CFR 404.1913—0960–0554

The United States (U.S.) has agreements with 30 foreign countries to eliminate double Social Security coverage and taxation where, except for the provisions of the agreement, a worker would be subject to coverage and taxes in both countries. These agreements contain rules for determining the country under whose laws the worker's period of employment is covered, and to which country the

worker will pay taxes. The agreements further dictate that, upon the request of the worker or employer, the country under whose system the period of work is covered will issue a certificate of coverage. The certificate serves as proof of exemption from coverage and taxation under the system of the other country. The information we collect assists us in determining a worker's coverage and in issuing a U.S. certificate of coverage as appropriate. Per our agreements, we ask a set number of questions to the workers and employers prior to issuing a certificate of coverage; however, our agreements with Denmark, Netherlands, Norway, and Sweden require us to ask more questions in those countries. Respondents are workers and employers wishing to establish exemption from foreign Social Security taxes.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars)*	Total annual opportunity cost (dollars) **
Requests via Letter—Individuals (minus Denmark, Netherlands, Norway, Poland & Sweden)	5,833	1	40	3,889	$28.01 *	$108,931 **
Requests via Internet—Individuals (minus Denmark, Netherlands, Norway, Poland & Sweden)	9,761	1	40	6,507	28.01 *	182,261 **
Requests via Letter—Individuals in Denmark, Netherlands, Norway, & Sweden	284	1	44	208	28.01 *	5,826 **
Requests via Letter—Individuals in Poland	16	1	41	11	28.01 *	308 **
Requests via Internet—Individuals in Denmark, Netherlands, Norway, & Sweden	427	1	44	313	28.01 *	8,767 **
Requests via Internet—Individuals in Poland	25	1	41	17	28.01 *	476 *
Requests via Letter—Employers (minus Denmark, Netherlands, Norway, Poland & Sweden)	26,047	1	40	17,365	28.01 *	486,394 **
Requests via Internet—Employers (minus Denmark, Netherlands, Norway, Poland, & Sweden)	39,096	1	40	26,064	28.01*	730,053**
Requests via Letter—Employers in Denmark, Netherlands, Norway, & Sweden	1,137	1	44	834	28.01 *	23,360 **
Requests via Letter—Employers in Poland	57	1	41	39	28.01 *	1,092 **
Requests via Internet—Employers in Denmark, Netherlands, Norway, & Sweden	1,704	1	44	1,250	28.01 *	35,013 **
Requests via Internet—Employers in Poland	86	1	41	59	28.01 *	1,653 **
Totals	84,473	.....	.....	56,556	.....	1,584,134 **

* We based this figure on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm).*

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Dated: October 7, 2022.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2022–22302 Filed 10–13–22; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 11887]

Imposition of Nonproliferation Measures Against Foreign Persons, Including a Ban on United States Government Procurement

AGENCY: Bureau of International Security and Nonproliferation, State Department.

SUMMARY: A determination has been made that a number of foreign persons have engaged in activities that warrant the imposition of measures pursuant to section 3 of the Iran, North Korea, and Syria Nonproliferation Act. The Act provides for sanctions on foreign entities and individuals for the transfer to or acquisition from Iran since January 1, 1999; the transfer to or acquisition from Syria since January 1, 2005; or the transfer to or acquisition from North Korea since January 1, 2006, of goods, services, or technology controlled under multilateral control lists (Missile Technology Control Regime, Australia Group, Chemical Weapons Convention, Nuclear Suppliers Group, Wassenaar Arrangement) or otherwise having the potential to make a material contribution to the development of weapons of mass destruction (WMD) or cruise or ballistic missile systems. The latter category includes (a) items of the same kind as those on multilateral lists but falling below the control list parameters when it is determined that such items have the potential of making a material contribution to WMD or cruise or ballistic missile systems, (b) items on U.S. national control lists for WMD/missile reasons that are not on multilateral lists, and (c) other items with the potential of making such a material contribution when added through case-by-case decisions.

DATES: Applicable October 3, 2022.

FOR FURTHER INFORMATION CONTACT: On general issues: Pam Durham, Office of Missile, Biological, and Chemical Nonproliferation, Bureau of International Security and Nonproliferation, Department of State, Telephone (202) 647–4930. For U.S. Government procurement ban issues: Eric Moore, Office of the Procurement Executive, Department of State, Telephone: (703) 875–4079.

SUPPLEMENTARY INFORMATION: On October 3, 2022, the U.S. Government applied the measures authorized in section 3 of the Iran, North Korea, and Syria Nonproliferation Act (Pub. L. 109–353) against the following foreign persons identified in the report submitted pursuant to section 2(a) of the Act:

Beijing J&A Industry & Trade Co. Ltd. (People's Republic of China); and any successor, sub-unit, or subsidiary thereof;

Linda Zhai (PRC individual);

Synnat Pharma Pvt Ltd (India) and any successor, sub-unit, or subsidiary thereof;

OTOBOT Project Group (Turkey) and any successor, sub-unit, or subsidiary thereof.

Accordingly, pursuant to Section 3 of the Act, the following measures are imposed on these persons:

1. No department or agency of the U.S. government may procure or enter into any contract for the procurement of any goods, technology, or services from these foreign persons, except to the extent that the Secretary of State otherwise may determine;

2. No department or agency of the U.S. government may provide any assistance to these foreign persons, and these persons shall not be eligible to participate in any assistance program of the U.S. government, except to the extent that the Secretary of State otherwise may determine;

3. No U.S. government sales to these foreign persons of any item on the United States Munitions List are permitted, and all sales to these persons of any defense articles, defense services, or design and construction services under the Arms Export Control Act are terminated; and

4. No new individual licenses shall be granted for the transfer to these foreign persons of items the export of which is controlled under the Export Control Reform Act of 2018 or the Export Administration Regulations, and any existing such licenses are suspended.

These measures shall be implemented by the responsible departments and agencies of the U.S. government and will remain in place for two years from the effective date, except to the extent that the Secretary of State may subsequently determine otherwise. These measures are independent of and in addition to any other sanctions imposed on such entities and/or individuals by other federal agencies under separate legal authorities.

Choo S. Kang,

Assistant Secretary for International Security and Nonproliferation, Department of State.

[FR Doc. 2022–22347 Filed 10–13–22; 8:45 am]

BILLING CODE 4710–25–P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from the Hagerstown/Eastern Panhandle Metropolitan Planning Organization (WB22–54—10/4/22) for permission to use data from the Board's 2019 masked Carload Waybill Sample. A copy of this request may be obtained from the Board's website under docket no. WB22–54.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Regena Smith-Bernard,

Clearance Clerk.

[FR Doc. 2022–22315 Filed 10–13–22; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Conforming Amendments: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: The U.S. International Trade Commission (USITC) has implemented certain changes to the Harmonized Tariff Schedule of the United States (HTSUS) to reflect Harmonized System modifications adopted by the World Customs Organization and changes to statistical categories. This notice announces conforming amendments to legal note provisions in the HTSUS associated with the actions in the section 301 investigation of China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation.

DATES: The conforming amendments announced in Annex I to this notice are applicable as of October 14, 2022. The conforming amendments announced in Annex II to this notice apply as of July 1, 2022.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Associate General Counsel Philip Butler, Assistant General Counsel Rachel Hasandras, or Assistant General Counsel David Salkeld at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The U.S. Trade Representative has taken actions under section 301 of the Trade Act of 1974, as amended, in the form of additional duties on products of China in the investigation of China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation. The China 301 actions are set out in notes to the HTSUS. *See, e.g.,* 87 FR 26797 (section A—summarizing the trade actions and modifications).

In Presidential Proclamation 10326 of December 23, 2021, the President directed the USITC to implement certain changes in tariff subheadings of the HTSUS, consistent with Harmonized System amendments adopted by the World Customs Organization. The changes were effective January 27, 2022. Additionally, the USITC implemented changes to certain ten-digit statistical categories approved by the Committee for Statistical Annotation of Tariff Schedules (formulated pursuant to section 484(f) of the Tariff Act of 1930, as amended (19 U.S.C. 1484(f)), effective July 1, 2022.

B. Conforming Amendments

To maintain the pre-existing product coverage of the China 301 actions, conforming amendments to the corresponding note provisions in the HTSUS are required.

Annex I to this notice makes conforming amendments to a U.S. note in ch. 99 of the HTSUS in light of the changes in tariff subheadings made by the USITC in accordance with Presidential Proclamation 10326. In particular, this notice makes conforming amendments to U.S. note 20

subdivisions (b), (f), and (s)(i) to subchapter III of chapter 99 of the HTSUS, as set out in the Annexes to the notices published at 85 FR 85831 (December 29, 2020), 86 FR 13785 (March 10, 2021), and 86 FR 63438 (November 16, 2021) in the above-titled investigation under section 301. The conforming amendments are applicable as of October 14, 2022.

Annex II to this notice makes conforming amendments to accommodate recent changes to the HTSUS made pursuant to 19 U.S.C. 1484(f). In particular, the conforming amendments affect U.S. note 20 subdivisions (sss)(iii)(6) and (8); and U.S. note 20 subdivisions (ttt)(iii)(9), (11), (179), and (180), as set out in the Annexes to the notices published at 86 FR 63438 (November 16, 2021), 87 FR 33871 (June 3, 2022), and 87 FR 17380 (March 28, 2022). Like all exclusions under the Section 301 investigation, these conforming amendments apply to entries of goods that are not liquidated or to entries that are liquidated, but not final.

C. Confirmation of CBP Instructions

Cargo Systems Messaging Service (CSMS) No. 51166038 (sent Feb. 28, 2022) (*https://content.govdelivery.com/accounts/USDHSCBP/bulletins/30cbb56*), addressed duty treatment for HTSUS subheading 2202.99.91 as provided for under HTSUS 9903.88.03, effective January 27, 2022, in light of changes to the HTSUS made by the USITC in accordance with Presidential Proclamation 10326. This notice confirms the U.S. Customs and Border Protection instructions as maintaining the pre-existing product coverage of the 301 actions.

Annex I

1. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on October 14, 2022, note 20(b) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is amended by deleting ''8541.40.95''.

2. Effective on October 14, 2022, note 20(f) to subchapter III of chapter 99 of the HTSUS is amended:

a. by inserting ''2202.99.91'' in numerical sequence; and

b. by deleting the following subheading numbers:

''3402.11.40
5703.20.10
7019.39.50
7019.59.30
7019.59.40
7019.59.70
7019.59.90
7419.99.50
9013.90.50''.

3. Effective on October 14, 2022, note 20(s)(i) to subchapter III of chapter 99 of the HTSUS is amended:

a. by inserting ''1704.90.78'' in numerical sequence; and

b. by deleting ''6201.11.00''.

Annex II

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on July 1, 2022:

1. Note 20(sss)(iii)(6) to subchapter III of chapter 99 of the HTSUS is modified by deleting ''5603.12.0090'' and by inserting ''5603.12.0090 prior to July 1, 2022; 5603.12.0070 or 5603.12.0095 effective July 1, 2022'' in lieu thereof.

2. Note 20(sss)(iii)(8) to subchapter III of chapter 99 of the HTSUS is modified by deleting ''5603.92.0090'' and by inserting ''5603.92.0090 prior to July 1, 2022; 5603.92.0070 or 5603.92.0095 effective July 1, 2022'' in lieu thereof.

3. Note 20(ttt)(iii)(9) to subchapter III of chapter 99 of the HTSUS is modified by deleting ''5603.12.0090'' and by inserting ''5603.12.0090 prior to July 1, 2022; 5603.12.0070 or 5603.12.0095 effective July 1, 2022'' in lieu thereof.

4. Note 20(ttt)(iii)(11) to subchapter III of chapter 99 of the HTSUS is modified by deleting ''5603.92.0090'' and by inserting ''5603.92.0090 prior to July 1, 2022; 5603.92.0070 or 5603.92.0095 effective July 1, 2022'' in lieu thereof.

5. Note 20(ttt)(iii)(179) to subchapter III of chapter 99 of the HTSUS is modified by deleting ''9403.20.0081'' and by inserting ''9403.20.0081 prior to July 1, 2022; described in statistical reporting number 9403.20.0082 effective July 1, 2022'' in lieu thereof.

6. Note 20(ttt)(iii)(180) to subchapter III of chapter 99 of the HTSUS is modified by deleting ''9403.20.0081 effective July 1, 2019'' and by inserting ''9403.20.0081 effective July 1, 2019 through June 30, 2022; described in statistical reporting number 9403.20.0082 effective July 1, 2022'' in lieu thereof.''

Greta Peisch,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2022–22354 Filed 10–13–22; 8:45 am]

BILLING CODE 3390–F3–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Technical Amendments to Two Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: This notice announces the U.S. Trade Representative's determination to make two technical amendments to certain previously reinstated exclusions associated with the section 301 investigation of China Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation.

DATES: The technical amendments announced in the Annex to this notice apply as of October 12, 2021, and extend through December 31, 2022.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Associate General Counsel Philip Butler, Assistant General Counsel Rachel Hasandras, or Assistant General Counsel David Salkeld at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Annex to this notice makes technical amendments to U.S. note subdivisions 20(ttt)(iii)(50) and (ttt)(iii)(51) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS), as set out in the Annex of the notice published at 87 FR 17380 (March 28, 2022), to correct the descriptions of the articles covered by the exclusions.

Like all exclusions under this Section 301 investigation, these technical amendments apply to entries of goods that are not liquidated or to entries that are liquidated, but not final.

Annex

1. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on October 12, 2021, and through December 31, 2022, note 20(ttt)(iii)(50) to subchapter III of chapter 99 of the HTSUS is modified by deleting ''each measuring not more than 98 cm by 52 cm by 17 cm,''.

2. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on October 12, 2021, and through December 31, 2022, note 20(ttt)(iii)(51) to subchapter III of chapter 99 of the HTSUS is modified by deleting ''each measuring not more than 81 cm by 39 cm by 11 cm,''.

Greta Peisch,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2022–22355 Filed 10–13–22; 8:45 am]

BILLING CODE 3390–F3–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0122; FMCSA–2013–0123; FMCSA–2013–0125; FMCSA–2014–0102; FMCSA–2014–0107; FMCSA–2015–0327; FMCSA–2015–0328; FMCSA–2015–0329; FMCSA–2017–0057; FMCSA–2017–0059; FMCSA–2017–0060; FMCSA–2018–0139; FMCSA–2019–0109; FMCSA–2019–0111; FMCSA–2020–0024; FMCSA–2020–0025]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 40 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2013–0122, FMCSA–2013–0123, FMCSA–2013–0125, FMCSA–2014–0102, FMCSA–2014–0107, FMCSA–2015–0327, FMCSA–2015–0328, FMCSA–2015–0329, FMCSA–2017–0057, FMCSA–2017–0059, FMCSA–2017–0060, FMCSA–2018–0139, FMCSA–2019–0109, FMCSA–2019–0111, FMCSA–2020–0024, or FMCSA–2020–0025 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy,* the comments are searchable by the name of the submitter.

II. Background

On August 10, 2022, FMCSA published a notice announcing its decision to renew exemptions for 40 individuals from the hearing standard in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (87 FR 48749). The public comment period ended on September 9, 2022, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 3, 1971).

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based upon its evaluation of the 40 renewal exemption applications, FMCSA announces its decision to exempt the following drivers from the hearing requirement in § 391.41 (b)(11).

As of June 17, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 23 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (87 FR 48749):

Paul Aseka (TX)
James Bogart (KS)
Thomas Buretz (FL)
Forrest Carroll (OH)
Glenn Ferguson (TX)
Ariel Gonzalez (RI)
Nicholas Green (FL)
Richard Hadlock (IL)
Sean Hunt (SC)
Jesus Javier (NJ)
Larry Lang (TX)
Yoel Lopez-Perez (FL)
Bryan MacFarlane (OH)
Darren Nordquist (WI)
Anthony Panto (NJ)
Ernst Pratt (PA)
Brian Shoup (SC)
William Symonds (IL)
Steven Tipton (IA)
Daniel Tricolici (MA)
Wayne Turner (IL)
Fernando Velasquez (TX)
Scott Weeaks (OK)

The drivers were included in docket number FMCSA–2013–0122, FMCSA–2013–0123, FMCSA–2013–0125, FMCSA–2014–0107, FMCSA–2015–0327, FMCSA–2015–0328, FMCSA–2015–0329, FMCSA–2017–0057, FMCSA–2017–0059, FMCSA–2018–0139, FMCSA–2019–0109, FMCSA–2019–0111, or FMCSA–2020–0024. Their exemptions were applicable as of June 17, 2022 and will expire on June 17, 2024.

As of June 18, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (87 FR 48749):

Joshua Affholter (MI)
Gantulga Badarach (IL)
Awash Demoz (MD)
Muhammad Javed (IN)
Charles O'Bryan (NY)
Anna Ruiz (AZ)
Kyle Taylor (GA)

The drivers were included in docket number FMCSA–2020–0025. Their

exemptions were applicable as of June 18, 2022 and will expire on June 18, 2024.

As of June 25, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (87 FR 48749):

Alfredo Ramirez (TX); Julie Ramirez (TX); and Hayden Teesdale (TX).

The drivers were included in docket number FMCSA–2014–0102. Their exemptions were applicable as of June 25, 2022 and will expire on June 25, 2024.

As of June 29, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (87 FR 48749):

Leroy Carter (OH)

Robert Cates (NM)

Brodey DiPasquale (MD)

Richard Fisher (PA)

Kimberly Foss (OR)

Marcel Paul (WA)

Jason Winemiller (IL)

The drivers were included in docket number FMCSA–2017–0060. Their exemptions were applicable as of June 29, 2022 and will expire on June 29, 2024.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–22342 Filed 10–13–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0036]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 13 individuals for an exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before November 14, 2022.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2022–0036 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number, FMCSA–2022–0036, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2022–0036), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/docket?D=FMCSA-2022-0036*. Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2022–0036, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy,* the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The 13 individuals listed in this notice have requested an exemption from the hearing requirement in 49 CFR 391.41(b)(11). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 3, 1971).

On February 1, 2013, FMCSA announced in a Notice of Final Disposition titled, ''Qualification of Drivers; Application for Exemptions; National Association of the Deaf,'' (78 FR 7479), its decision to grant requests from 40 individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers. Since that time the Agency has published additional notices granting requests from hard of hearing and deaf individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers.

III. Qualifications of Applicants

Frank Darracott

Mr. Darracott, 54, holds a class A commercial learner's permit in Florida.

Tonnette Garza

Ms. Garza, 44, holds a class E driver's license in Florida.

Andrew Gibson

Mr. Gibson, 35, holds a class C driver's license in Texas.

Tyler Harmount

Mr. Harmount, 22, holds a class C driver's license in California.

Maxwell Latin

Mr. Latin, 31, holds a class C driver's license in Maryland.

Paradise Larizza

Ms. Larizza, 28, holds a class C driver's license in Oregon.

Hank Moore

Mr. Moore, 56, holds a class C driver's license in Kansas.

Mayur Motiwale

Mr. Motiwale, 41, holds a class D driver's license in New Jersey.

Michael Reed

Mr. Reed, 61, holds a class A commercial driver's license in Arkansas.

Chad Smith

Mr. Smith, 43, holds a class D driver's license in Ohio.

Justin Turner

Mr. Turner, 23, holds a class C driver's license in Texas.

Cody Upchurch

Mr. Upchurch, 44, holds a class C driver's license in Texas.

Thomas Williamson

Mr. Williamson, 22, holds a class D driver's license in Illinois.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–22341 Filed 10–13–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2021–0032]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Consolidated Vehicles' Owner's Manual Requirements for Motor Vehicles and Motor Vehicle Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on a reinstatement with modification of a previously approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) summarized below will be submitted to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. This document describes a collection of information for which NHTSA intends to seek OMB approval on Vehicle Owner's Manual Requirements for Motor Vehicles and Motor Vehicle Equipment.

DATES: Comments must be submitted on or before November 14, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection, including suggestions for reducing burden, should be submitted to the Office of Management and Budget at *www.reginfo.gov/public/do/PRAMain.* To find this particular information collection, select ''Currently under Review—Open for Public Comment'' or use the search function.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact James Myers, NHTSA, 1200 New Jersey Avenue SE, West Building, Room W43–320, NRM–100, Washington, DC 20590. Mr. Myers' telephone number is 202–493–0031. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), a Federal agency must receive approval from the Office of Management and Budget (OMB) before it collects certain information from the public and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. In compliance with these requirements, this notice announces that the following information collection request will be submitted OMB.

A **Federal Register** notice with a 60-day comment period soliciting public comments on the following information collection was published on February 22, 2022.

Title: Consolidated Vehicle Owner's Manual Requirements for Motor Vehicles and Motor Vehicle Equipment.

OMB Control Number: 2127–0541.

Form Number: N/A.

Type of Request: Request for reinstatement with modification of a previously approved collection of information.

Type of Review Requested: Regular.

Length of Approval Requested: Three years from date of approval.

Summary of the Collection of Information: The National Traffic and Motor Vehicle Act, authorizes the Secretary of Transportation (NHTSA by delegation), at 49 U.S.C. 30111, to issue Federal Motor Vehicle Safety Standards (FMVSS) that set performance standards for motor vehicles and items of motor vehicle equipment. Further, the Secretary (NHTSA by delegation) is authorized, at 49 U.S.C. 30117, to require manufacturers to provide information to first purchasers of motor vehicles or items of motor vehicle equipment related to performance and safety in printed materials that are attached to or accompany the motor vehicle or item of motor vehicle equipment. NHTSA has exercised this authority to require manufacturers to provide certain specified safety information to be readily available to consumers and purchasers of motor vehicles and items of motor vehicle equipment. This information is most often provided in vehicle owners' manuals and the requirements are found in 49 CFR parts 563, 571, and 575. This information collection request only covers requirements or requests to provide information that is not provided verbatim in the regulation or standard. The information requirements or requests are included in: Part 563, ''Event data recorders;'' FMVSS No. 108, ''Lamps, reflective devices, and associated equipment;'' FMVSS No. 110, ''Tire selection and rims;'' FMVSS No. 138, ''Tire Pressure Monitoring Systems;'' FMVSS No. 202a, ''Head restraints;'' FMVSS No. 205, ''Glazing materials;'' FMVSS No. 208, ''Occupant crash protection;'' FMVSS No. 210, ''Seat belt assembly anchorages;'' FMVSS No. 213, ''Child restraint systems;'' FMVSS No. 225, ''Child restraint anchorage systems;'' FMVSS No. 226, ''Ejection mitigation;'' FMVSS No. 303, ''Fuel System Integrity of Compressed Natural Gas Vehicles;'' section 575.103, ''Truck-camper loading;'' section 575.104, ''Uniform tire quality grading standards;'' and section 575.105, ''Vehicle rollover.''

Part 563—Event data recorders. Section 563.11 requires manufacturers of vehicles equipped with event data recorders (EDRs) to provide a prescribed statement (provided verbatim) in the owner's manual,[1] which is not an information collection. Section 563.11 also states that the owner's manual may include additional information about the form, function, and capabilities of the EDR, in supplement to the required statement. This voluntary disclosure of information is an information collection for which NHTSA is seeking approval. There is a slight burden for respondents to include the voluntary additional information in their owner's manuals. The vehicle manufacturers which provide this additional information in the owner's manual incur minimal burden. We conservatively estimate that half of the 406 vehicle models for light duty vehicles will have owner's manuals that contain this supplemental information and that the burden for updating and reviewing this information will be 1 hour per model line. This would result in 203 annual burden hours (203 vehicle model lines × 1 hour of time × 1 manual per model).

It is estimated that the word content in the owner's manual required by Part 563 would be 100 text words. Hence, the cost burden to vehicle manufacturers is estimated to be $30,566.25 (17,100,939 total vehicles × 50% of vehicles including added language in the owner's manuals × 100 text words × 1.1 production factor × 0.25 printing factor × $0.00013 per word). Cost burdens for this regulation were not included in the previous information collection request.

FMVSS No. 108, ''*Lamps, reflective devices, and associated equipment.*'' This standard requires that certain lamps and reflective devices with certain performance levels be installed on motor vehicles to assure that the roadway is properly illuminated, that vehicles can be readily seen, and the signals can be transmitted to other drivers sharing the road during day, night, and inclement weather. In addition to establishing performance requirements for those lamps and reflective devices, FMVSS No. 108 also contains provisions requiring manufacturers to provide instructions or information on the lighting device. FMVSS No. 108, S10.18.8.2 requires manufacturers to provide instructions for proper aiming of a vehicle's Vehicle Headlamp Aiming Device (VHAD) headlamps. FMVSS No. 108, S9.4.1.1 requires manufacturers to provide information regarding how to operate semiautomatic beam switching devices.

NHTSA estimates 50% of vehicle models will offer adaptive driving beam headlighting systems on at least one trim level that will include a VHAD. Further, NHTSA estimates manufacturers will require 4 hours per each new vehicle model and 1 hour for carry-over vehicle models to gather the necessary VHAD aiming instructions for the owner's manual. FMVSS No. 108 permits each manufacturer a choice in placing headlamp aiming instruction in the owner's manual or on a label affixed to the vehicle. We estimate about half of the VHAD aiming applications would be on labels attached to the VHAD, with the remainder (50%) using information in the owner's manual to convey the necessary information. The annual burden hours required by FMVSS No. 108's VHAD section in the owner's manual is 383 hours ((438 models × 0.5 use VHAD × 0.25 new models × 4 hours/model) + (438 models × 0.5 use VHAD × 0.75 non-new models × 1 hour/model)).

We estimate that approximately 80% of new vehicle models include a semiautomatic beam switching device (SAB) on at least one trim level for the U.S. market. For new model vehicles the time to collect, prepare, and review the required information is estimated to be 4 hours per manual. For carry-over vehicles, we estimate 1 hour to review the required information for continued accuracy. The annual burden hours required by FMVSS No. 108's semiautomatic beam switching device section in the owner's manual is 613 hours ((438 models × 0.8 offer SABs × 0.25 new models × 4 hours/model) + (438 models × 0.8 offer SABs × 0.75 non-new models × 1 hour/model)).

The annual printing annual cost burden to the respondents to include the information required by FMVSS No. 108's VHAD section in the owner's manual is $38,208 (17,100,000 vehicles × 0.5 use VHAD × 0.5 provide info in manual × 250 words of text × 1.1 production factor × 0.25 printing factor

[1] 49 CFR 563.11(a).

× $0.00013 per word). The annual printing cost burden to the respondents to include the information required by FMVSS No. 108's semiautomatic beam switching device section in the owner's manual is $244,530 (17,100,000 vehicles × 0.8 use SABs × 500 words of text × 1.1 production factor × 0.25 printing factor × $0.00013 per word).

FMVSS No. 110, ''*Tire selection and rims.*'' This standard specifies requirements for tire selection to prevent tire overloading. The vehicle's normal load and maximum load on the tire shall not be greater than applicable specified limits. The standard requires a permanently affixed vehicle placard specifying vehicle capacity weight, designated seating capacity, manufacturer-recommended cold tire inflation pressure, and manufacturer's recommended tire size. The standard further specifies rim construction requirements, load limits of non-pneumatic spare tires, and labeling requirements for non-pneumatic spare tires, including a required placard. Owner's manual information is required for non-pneumatic spare tires.

Currently, manufacturers do not equip current passenger vehicles, trucks, buses, trailers, or motorcycles with non-pneumatic spare tires. If vehicles were equipped with non-pneumatic spare tires, the number of annual burden hours imposed on manufacturers who choose to equip their vehicles with this equipment would be determined from the number of model lines produced annually (of which an estimated 25% are new and 75% are on-new, a repeat of previous years' model lines) multiplied by the portion of vehicle models equipped with non-pneumatic spare tires multiplied by the estimated number of hours required to assemble the required information (estimated to be 4 hours of review for new vehicles and 1 hour to review the information for non-new vehicles). The product of these factors would provide the number of hours required by manufacturers to produce necessary information to place into an owner's manual ''master'' for printing. The printing cost burden for these owner's manuals would be the number of vehicles produced annually multiplied by the portion of vehicles equipped with non-pneumatic spare tires, multiplied by certain printing factors (an estimated 500 text words required per owner's manual, a 1.1 multiplier to account for aftermarket manuals, a 0.25 printing factor, and a $0.00013 cost per word). Because manufacturers do not equip current passenger vehicles, trucks, buses, trailers, or motorcycles with non-pneumatic spare tires, NHTSA estimates the hour burden as 0 hours, and the printing cost at $0.

FMVSS No. 138, ''*Tire pressure monitoring systems.*'' This standard specifies requirements for a tire pressure monitoring system to warn the driver of an under-inflated tire condition. Its purpose is to reduce the likelihood of a vehicle crash resulting from tire failure due to operation in an under-inflated condition. The standard requires the owner's manual to include specific information on the low-pressure warning telltale and the malfunction indicator telltale.

The information required by FMVSS No. 138 to be included in the owner's manual is provided verbatim and may be taken from the Federal regulation in its entirety. FMVSS No. 138, also states that the owner's manual may include additional information about the low-pressure telltale and the malfunction indicator telltale. NHTSA estimates the burden to be 1 hour for the respondents to format their owner's manuals to include the text and additional information. There is an average of 438 model lines each year that include tire pressure monitoring information in the owner's manual. Therefore, NHTSA estimates the total annual burden hours for § 571.138 to be 438 hours (438 model lines × 1 manual per model × 1 hour).

It is estimated that the information required by FMVSS No. 138 in the owner's manual is equivalent to 400 words of text. This would result in $244,530 in cost burden to the respondents (17,100,000 vehicles × 400 words of text × 1.1 production factor × 0.25 printing factor × $0.00013 per word).

FMVSS No. 202a, ''*Head restraints.*'' This standard specifies requirements for head restraints. The standard, which seeks to reduce whiplash injuries in rear collisions, currently requires head restraints for front outboard designated seating positions in passenger cars and in light multipurpose passenger vehicles, trucks and buses with a gross vehicle weight rating of 4,536 kg or less and specifies requirements for optionally provided rear outboard seat head restraints in the same vehicles. The standard requires that vehicle manufacturers include information in owner's manuals for vehicles manufactured on or after September 1, 2008. The owner's manual must clearly identify which seats are equipped with head restraints. If the head restraints are removable, the owner's manual must provide instructions on how to remove the head restraint by a deliberate action distinct from any act necessary for adjustment, and how to reinstall the head restraints. The owner's manual must warn that all head restraints must be reinstalled to properly protect vehicle occupants. Finally, the owner's manual must describe, in an easily understandable format, the adjustment of the head restraints and/or seat back to achieve appropriate head restraint position relative to the occupant's head.

It is estimated that 438 model lines need to be reviewed annually, but only a fraction (25 percent) need major revision each year. It is further estimated that it would take 5 hours to complete the major revisions. The remaining fraction of model lines (75 percent) only require reverification of existing information. The total annual burden hours are estimated to be 876 hours (438 model lines × 0.25 needing revision × 5 hours plus 438 model lines × 0.75 needing revision × 1 hour).

The word count required to disclose the required head restraint information in the owner's manual is estimated to be 1,200 words. The annual cost burden to the respondents to include the information required by FMVSS No. 202a in the owner's manual is $733,590 (17,100,000 vehicles × 1,200 words of text × 1.1 production factor × 0.25 printing factor × $0.00013 per word).

FMVSS No. 205, ''*Glazing materials.*'' This standard specifies requirements for all glazing material used in windshields, windows, and interior partitions of motor vehicles. Its purpose is to reduce injuries resulting from impact to glazing surfaces, to ensure a necessary degree of transparency in motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through the vehicle windows in collisions. More detailed information regarding the care and maintenance of plastic glazing items, such as a glass-plastic windshield, is required to be placed in the vehicle owner's manual.

It is estimated that the burden to provide information in the owner's manual for detailed care and maintenance is minimal because manufacturers already provide this type of information in the vehicle cleaning and maintenance section of the owner's manual. NHTSA estimates a burden for each manual of 1 hour because manufacturers would need to verify that detailed care and maintenance information has been included in their cleaning and maintenance section of the owner's manual. The annual estimated burden from § 571.205 is 176.0 hours (176 model lines × 1 manual per model × 1 hour).

The word count required in the owner's manual is estimated to be 210 words. Only buses and low speed vehicles currently use plastic type glazing, so NHTSA estimates there are

17,400 new vehicles each year that include glazing information in the owner's manual. The annual cost burden to the respondents to include the information required by FMVSS No. 205 is $130.15 (17,400 vehicles × 210 words of text × 1.1 production factor × 0.25 printing factor × $0.00013 per word).

FMVSS No. 208, ''*Occupant crash protection.*'' This standard specifies requirements for both active and passive occupant crash protection systems for passenger cars, multipurpose passenger vehicles, trucks, and small buses. Certain safety features, such as air bags, or the care and maintenance of air bag systems, are required to be explained to the owner by means of the owner's manual. For example, the owner's manual must describe the vehicle's air bag system and provide precautionary information about the proper positioning of the occupants, including children. The owner's manual must also warn that no objects should be placed over or near the air bag covers. There is also required information about the operation of seat belt assemblies and other information that could total up to about 20 pages in the owner's manual. This material would also need to be kept current with the latest technical information on an annual basis.

A conservative estimated burden to produce the required text and information is 16 hours (or 2 days). It is also estimated that a fraction (25 percent) of the model lines would require updates annually. The remaining fraction of model lines (75 percent) only require reverification (1-hour burden) of existing information. This would result in 2,750 annual burden hours (579 vehicle model lines × 0.25 percent that need updating × 16 hours of time plus 579 model lines × 0.75 needing revision × 1 hour).

It is estimated that the word content in the owner's manual required by FMVSS No. 208 would be 5,400 text words. Hence, the cost burden to vehicle manufacturers is estimated to be $3,397,680 (17,600,000 total vehicles × 5,400 text words × 1.1 production factor × 0.25 printing factor × $0.00013 per word).

FMVSS No. 210, ''*Seat belt assembly anchorages.*'' This standard specifies requirements for seat belt assembly anchorages to ensure effective occupant restraint and to reduce the likelihood of failure in a crash. FMVSS No. 210 requires that manufacturers place the following information in the vehicle owner's manual: (a) an explanation that child restraints are designed to be secured by means of the vehicle's seat belts, and (b) a statement alerting vehicle owners that children are always safer in the rear seat.

It is estimated that it would take a vehicle manufacturer no more than 1 hour per vehicle model line to assemble all of the FMVSS No. 210 information for inclusion in the owner's manual. This would result in 438 annual burden hours (438 vehicle model lines × 1 manual per model × 1 hour).

It is estimated that the word content in the owner's manual required by FMVSS No. 210 would be 400 text words. Hence, the cost burden to vehicle manufacturers is estimated to be $244,530 (17,100,000 total vehicles × 400 text words × 1.1 production factor × 0.25 printing factor × $0.00013 per word).

FMVSS No. 213, ''*Child restraint systems.*'' This standard specifies requirements for child restraint systems and requires that manufacturers provide consumers with detailed information relating to child safety in air bag-equipped vehicles. The vehicle owner's manual must include information about the operation and do's and don'ts of built-in child seats. NHTSA estimates that there are no more than 20 vehicle models that are equipped with built-in child restraints. However, as stated in FMVSS No. 213, the information must be made available on strategically placed labels within the vehicles, in addition to the vehicle's owner's manual. Thus, it is assumed that the burden hours would be minimal since the information is already available from the information required to produce the labels. This would result in 20 annual burden hours (20 vehicle model lines × 1 manual per model × 1 hour).

It is estimated that the recurring information required for child safety in the owner's manual would be 500 text words. NHTSA estimates that 5% of vehicles may be in lines that offer built in child restraints. Hence, the cost burden to vehicle manufacturers is estimated to be $15,730 (17,600,000 total vehicles × 5% × 500 text words × 1.1 production factor × 0.25 printing factor × $0.00013 per word).

FMVSS No. 225; ''*Child restraint anchorage systems.*'' This standard establishes requirements for child restraint anchorage systems to ensure their proper location and strength for the effective securing of child restraints, to reduce the likelihood of the anchorage systems' failure, and to increase the likelihood that child restraints are properly secured and thus more fully achieve their potential effectiveness in motor vehicles. The vehicle owner's manual must provide written instructions, in English, for using the tether anchorages and the child restraint anchorage system in the vehicle. Instructions must at a minimum indicate which seating positions in the vehicle are equipped with tether anchorages and child restraint anchorage systems, explain the meaning of markings provided to locate the lower anchorages, and include instructions that provide a step-by-step procedure (including diagrams) for properly attaching a child restraint system's tether strap to the tether anchorages.

NHTSA estimates that it takes a vehicle manufacturer no more than 5 hours to compile the required material and that only a fraction (25 percent) would need major revisions each year. The remaining fraction of model lines (75 percent) only require reverification (1-hour burden) of existing information. This would result in 876 annual burden hours ((438 vehicle model lines × 1 manual per model × 0.25 (percent requiring major revisions) × 5 hours of time) + (438 model lines × 1 manual per model × 0.75 (percent requiring reverification) × 1 hour)).

NHTSA estimates that the word content in the owner's manual required by FMVSS No. 225 would be 1,500 text words. Hence, the cost burden to vehicle manufacturers is estimated to be $943,800 (17,600,000 total vehicles × 1,500 text words × 1.1 production factor × 0.25 printing factor × $0.00013 per word).

FMVSS No. 226, ''*Ejection mitigation.*'' This standard establishes vehicle requirements intended to reduce the partial and complete ejection of vehicle occupants through side windows in crashes, particularly rollover crashes. The standard applies to passenger cars, and to multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kg (10,000 pounds) or less. Written information must be provided that describes any ejection mitigation countermeasure that deploys in the event of a rollover and a discussion of the readiness indicator with a list of the elements of the system being monitored by the indicator, a discussion of the purpose and location of the telltale, and instructions to the consumer on the steps to take if the telltale is illuminated.

It is estimated that it would take a vehicle manufacturer no more than 8 hours to compile the required material and it is estimated that a fraction (25 percent) would need major revisions each year. The remaining fraction of model lines (75 percent) only require reverification (1-hour burden) of existing information. This would result in 1,204.5 annual burden hours (438

vehicle model lines × 1 manual per model × 0.25 (percent that need updating) × 8 hours of time plus 438 model lines × 1 manual per model × 0.75 (percent needing revision) × 1 hour).

It is estimated that the word content in the owner's manual required by FMVSS No. 226 would be 3,000 text words. Hence, the cost burden to vehicle manufacturers is estimated to be $1,833,975 (17,100,000 total vehicles × 3,000 text words × 1.1 production factor × 0.25 printing factor × $0.00013 per word).

FMVSS No. 303, ''*Fuel System Integrity of Compressed Natural Gas Vehicles.*'' This standard specifies requirements for the integrity of motor vehicle fuel systems using compressed natural gas (CNG), including the CNG fuel systems of bi-fuel, dedicated, and dual fuel CNG vehicles. This regulation requires manufacturers to permanently label CNG vehicles, near the vehicle refueling connection, with service pressure information and the statement ''See instructions on fuel container for inspection and service life.'' Manufacturers of CNG vehicles shall also provide a first purchaser this information in either an owner's manual or a one-page document. The service pressure information required for the owner's manuals under FMVSS No. 303 is developed by manufacturers as part of their routine engineering development for their vehicles. Therefore, there is a slight burden of 1 hour for respondents to include this information in their owner's manuals. This would result in 18 annual burden hours (18 vehicle model lines × 1 manual per model × 1 hour of time).

It is estimated that no more than 50 words are required in the owner's manual to comply with the requirements in FMVSS No. 303. There are conservatively 20,000 CNG vehicles produced annually. Hence, the cost burden to CNG vehicle manufacturers is estimated to be $35.75 (20,000 total units × 50 text words × 1.1 production factor × 0.25 printing factor × $0.00013 per word). Cost burdens for this regulation were not included in the previous information collection request.

Section 575.103, ''*Truck-camper loading.*'' This regulation requires manufacturers of slide-in campers to affix to each camper a label that contains information relating to identification and proper loading of the camper and to provide more detailed loading information in the owner's manual. This regulation also requires manufacturers of trucks that would accommodate slide-in campers to specify the cargo weight ratings and the longitudinal limits within which the center of gravity for the cargo weight rating should be located. The information required for the owner's manuals under section 575.103 is developed by manufacturers as part of their routine engineering development for their vehicles. The figures to include in truck and slide-in camper owner's manuals are provided in the regulation. Therefore, there is a slight 1-hour burden for respondents to include this information in their owner's manuals. This would result in 35 annual burden hours (35 vehicle model lines × 1 manual per model × 1 hour of time).

It is estimated that 480 words are minimally required in the owner's manual to comply with § 575.103. There are approximately 2,300,000 pickup trucks and 11,000 truck camper units produced annually. These total to an annual production of 2,311,000 units. Hence, the cost burden to vehicle manufacturers is estimated to be $39,656.76 (2,311,000 total units × 480 text words × 1.1 production factor × 0.25 printing factor × $0.00013 per word).

Section 575.104, ''*Uniform tire quality grading standards.*'' This regulation requires manufacturers of motor vehicles to inform the drivers of the type and quality of the tires with which their vehicles are equipped. A statement, which manufacturers shall include in the owner's manual, is provided in the regulation in its entirety or equivalent form. Hence there is a slight 1-hour burden on the respondents for inclusion of this information into their owner's manuals. This would result in 579 annual burden hours (579 vehicle model lines × 1 manual per model × 1 hour of time).

It is estimated that 390 words are minimally required in the owner's manual to comply with § 575.104. There are approximately 13,857,300 vehicles covered by this regulation. Hence, the cost burden to vehicle manufacturers is estimated to be $193,205.41 (13,857,300 total vehicles × 390 text words × 1.1 production factor × 0.25 printing factor × $0.00013 per word). Cost burdens for this regulation were not included in the previous information collection request.

Section 575.105, ''*Vehicle rollover.*'' This regulation requires manufacturers of utility vehicles [2] to alert the drivers of those vehicles that they have a higher possibility of rollover than other vehicle types and to advise them of steps that can be taken to reduce the possibility of rollover and/or to reduce the likelihood of injury in a rollover. A statement, which manufacturers shall include in the owner's manual, is provided in the regulation in its entirety or equivalent form. Hence there is a slight 1-hour burden on the respondents for inclusion of this information into their owner's manuals. This would result in 18 annual burden hours (18 vehicle model lines × 1 manual per model × 1 hour of time).

It is estimated that 117 words are minimally required in the owner's manual to comply with § 575.105. There are approximately 2,700,000 utility vehicles with 4-wheel drive and a wheelbase of 110 inches or less. Therefore, the cost burden to vehicle manufacturers is estimated to be $11,293.43 (2,700,000 total vehicles × 117 text words × 1.1 production factor × 0.25 printing factor × $0.00013 per word). Cost burdens for this regulation were not included in the previous information collection request.

Description of the Need for the Information and Proposed Use of the Information:

The purpose of requiring certain information to be provided in manuals is to ensure owners and operators are provided with readily accessible important information about critical components of their vehicles, such as the performance of their vehicle or instructions for proper operation. The Federal program for reducing highway fatalities, injuries and crashes is likely to be adversely affected if the information is not collected, since consumers would not be made readily aware of certain important safety provisions that apply to critical components of their vehicles and would not have a readily accessible source of information when circumstances require such information.

Earlier 60-Day Notice:

A **Federal Register** Notice, 87 FR 9787, with a 60-day comment period soliciting comments on the following information collection was published on February 22, 2022. No comments were received for that notice.

Affected Public: Vehicle manufacturers.

Estimated Number of Respondents: 52.

Frequency: On Occasion.

Number of Responses: 52.

Estimated Total Annual Burden Hours: 8,628.

Estimated Total Combined Annual Burden Costs: $8,406,632.

The table below summarizes the total hour burden, associated labor costs, and printing cost estimates.

[2] 49 CFR 575.105 states *Utility vehicles* means multipurpose passenger vehicles (other than those which are passenger car derivatives) which have a wheelbase of 110 inches or less and special features for occasional off-road operation.

TABLE 1—ESTIMATED HOUR BURDEN AND ASSOCIATED LABOR COSTS

Part/section	Brief title	Estimated total annual burden hours	Estimated total annual labor costs at $50.44/hour
563	Event Data Recorders	203	$10,239
571.108	Lighting-VHAD	383	19,319
571.108	Lighting-SABs	613	30,920
571.110	Tire Selection and Rims	0	0
571.138	Tire Pressure Monitoring	438	22,093
571.202a	Head Restraints	876	44,185
571.205	Glazing	176	8,877
571.208	Crash Protection	2,750	138,710
571.210	Seat Belt Anchors	438	22,093
571.213	Child Restraints	20	1,009
571.225	Child Restraint Anchorages	876	44,185
571.226	Ejection Mitigation	1,205	60,755
571.303	CNG Fuel Systems	18	908
575.103	Truck-Camper Loading	35	1,765
575.104	Tire Quality	579	29,205
575.105	Utility Vehicles	18	908
Totals		8,628	435,171

TABLE 2—ESTIMATED PRINTING COSTS

Part/section	Brief title	Estimated total costs to respondents
563	Event Data Recorders	$30,566
571.108	Lighting-VHAD	38,208
571.108	Lighting-SABs	244,530
571.110	Tire Selection and Rims	0
571.138	Tire Pressure Monitoring Systems	244,530
571.202a	Head Restraints	733,590
571.205	Glazing	131
571.208	Occupant Crash Protection	3,397,680
571.210	Seat Belt Assembly Anchors	244,530
571.213	Child Restraints Systems	15,730
571.225	Child Restraint Anchorage Systems	943,800
571.226	Ejection Mitigation	1,833,975
571.303	Fuel System Integrity of Compressed Natural Gas Vehicles	36
575.103	Truck-Camper Loading	39,657
575.104	Uniform Tire Quality Grading Standards	193,205
575.105	Vehicle Rollover	11,293
Total Printing Costs		7,971,461

Public Comments Invited:

You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, 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.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2022–22298 Filed 10–13–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0071]

Denial of Motor Vehicle Defect Petition, DP20–002

AGENCY: National Highway Traffic Safety Administration, (NHTSA), Department of Transportation.

ACTION: Denial of a petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a defect petition, DP20–002, submitted by Mr. V.T. Wakefield (the Petitioner) to NHTSA (the Agency) by a letter dated December 12, 2019. The petition

requested that the Agency initiate a safety defect investigation of passenger compartment fires attributed to HVAC blower motor connectors overheating in Model Year (MY) 2006–2010 Pontiac Solstice and Saturn Sky vehicles (the ''subject vehicles''). After conducting a technical review of: (1) consumer complaints identified by the petitioner; (2) consumer complaint information in NHTSA's databases; and (3) information provided by General Motors (GM) in response to the Agency's information request regarding vehicle fires and complaints received by GM, NHTSA's Office of Defect Investigations (ODI) has concluded that the issues raised by the petition do not warrant a defect investigation. Accordingly, the Agency has denied the petition.

FOR FURTHER INFORMATION CONTACT: Mr. Alexander Argant, Vehicle Defect Division A, Office of Defects Investigation, NHTSA 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–366–8787. Email: *alexander.argant@dot.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

Interested persons may petition NHTSA requesting that the Agency initiate an investigation to determine whether a motor vehicle or an item of replacement equipment does not comply with an applicable motor vehicle safety standard or contains a defect that relates to motor vehicle safety. 49 U.S.C. 30162(a)(2); 49 CFR 552.1. Upon receipt of a properly filed petition, the Agency conducts a technical review of the petition, material submitted with the petition and any additional information. 49 U.S.C. 30162(a)(2); 49 CFR 552.6. The technical review may consist solely of a review of information already in the possession of the Agency or it may include the collection of information from the motor vehicle manufacturer and/or other sources. After conducting the technical review and considering appropriate factors, which may include, but are not limited to, the nature of the complaint, allocation of Agency resources, Agency priorities, the likelihood of uncovering sufficient evidence to establish the existence of a defect and the likelihood of success in any necessary enforcement litigation, the Agency will grant or deny the petition. *See* 49 U.S.C. 30162(a)(2); 49 CFR 552.8.

Background Information

In a letter dated December 12, 2019, the petitioner, Mr. V.T. Wakefield, requested that NHTSA initiate an investigation into passenger compartment fires in Model Years (MY) 2006–2010 Saturn Sky and Pontiac Solstice vehicles. The petitioner alleged the fires were caused by the overheating of the HVAC blower motor connector. The petitioner further alleged that Saturn Sky and Pontiac Solstice vehicles experience the same electrical problem (overheating HVAC blower resistor) addressed by NHTSA Safety Recall 15V–421, which involved MY2006–2010 Hummer H3 and 2009–2010 Hummer H3T vehicles. The petitioner's complaint reported that the affected parts in the Sky and Solstice vehicles are identical to those covered by Recall 15V–421.

NHTSA has based its decision on a review of the material cited by the petitioner in his complaint and petition, information submitted by GM in response to the Agency's information request letter, and other pertinent information in NHTSA's databases.

Summary of the Petition

The petitioner alleges that MY2006–2010 Saturn Sky and Pontiac Solstice vehicles can pose a fire risk due to the overheating of the HVAC blower motor connectors. The petitioner cites the fact the Sky and Solstice vehicles use the same blower motor parts as the Hummer H3 and H3T vehicles that were recalled under Safety Recall 15V–421 for a potential fire risk.

GM filed Safety Recall 15V–421 on June 15, 2015 to remedy the connector module that controls the blower motor speed in the HVAC system of MY2006–2010 Hummer H3 and 2009–2010 Hummer H3T vehicles. The module may overheat under extended operational periods at high and medium-high blower speeds in those vehicles. The recall followed eleven (11) related fires affecting a fleet of 165,000 vehicles with five to ten years of time in service.

Office of Defects Investigation Analysis

An analysis of General Motors (GM) complaint data and information in NHTSA's databases identified thirteen unique vehicle identification numbers (VINs) with reported incidents that could pertain to blower motor overheating, smoking, or melting in the 90,938 MY2006–2010 Saturn Sky and Pontiac Solstice vehicles produced. Two of the thirteen cited incidents reported smoke and thermal damage that may be attributed to the HVAC blower motor although neither incident was confirmed through vehicle inspection. One incident was with a MY2008 Saturn Sky that had substantial field exposure including a frontal crash that occurred one month prior to the August 2017 thermal incident. The Saturn Sky thermal incident was reported as plastic dripping from the dash and a fire in the carpet. A root cause could not be identified for this thermal event.

The other incident was with a MY2007 Pontiac Solstice. The owner did not inform the manufacturer nor take their vehicle to a dealer for evaluation after reporting an electrical smell and observing smoke in the glove box in December 2016. No inspection of the vehicle was conducted.

Most of the 13 incidents reported an overheated or discolored connector with attendant loss of HVAC blower fan function. GM reported 354 warranty claims with the subject components for the Sky and Solstice, none of which included a report of fire and only one report of smoke. Over a period of ten to fourteen years in service, there are two reports of smoke or thermal damage.

While the subject Sky and Solstice vehicles and the recalled Hummer H3 and H3T vehicles do share common components, the Sky and Solstice vehicles have demonstrated very different behavior and the HVAC system has a lower power draw than the recalled Hummer H3 and H3T vehicles. The recalled H3 and H3T vehicles generate over triple the failure rate of the Sky and Solstice vehicles. GM suggested in its response to the Agency's information request that this difference was due to the larger interior volume of a recalled Hummer vehicle imposing a heavier electrical load and duty cycle on its HVAC blower. The duty cycle is defined as how long it takes for the vehicle to cool down enough before the HVAC blower motor fan speed is lowered or turned off completely.

Additionally, due to the size differential between the Sky and Solstice vehicles and the recalled Hummer H3 and H3T vehicles, the parts have a different power draw. The Sky and Solstice vehicles, due to their smaller size, draw less wattage, which reduces the likelihood of a thermal event. This condition in the Sky and Solstice vehicles typically leads to an inoperable HVAC blower motor as opposed to a thermal event.

Despite the commonality of parts in the Sky and Solstice vehicles with those that were the basis of a safety recall, the subject vehicles have not demonstrated a safety defect trend that would likely lead to a safety recall or merit further investigation by the Agency. The subject vehicles have a low rate of reported thermal events over the ten to fourteen years they have been in service with the most recent occurring in 2017. The HVAC blower motor was not confirmed

to be the root cause for either thermal event cited above.

After thoroughly assessing the material submitted by the petitioner, information already in NHTSA's possession, information submitted by GM in response to an information request, and the potential risks to safety implicated by the petitioner's allegation, NHTSA does not believe that the petition warrants a formal investigation at this time. Consequently, the petition is denied. As with all potential motor vehicle safety risks, NHTSA will continue to review any new information or incidents as they are submitted to the Agency. The denial of this petition does not foreclose the Agency from taking further action if warranted or making a future finding that a safety-related defect exists based on additional information the Agency may receive.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR1.95 and 501.8.

Anne L. Collins,

Associate Administrator for Enforcement.

[FR Doc. 2022–22394 Filed 10–13–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0034]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Compliance Labeling Warning Devices

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for public comment on the reinstatement of a previously approved collection of information.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) summarized below, regarding the reinstatement of a previously approved collection of information on Federal Motor vehicle Safety Standard (FMVSS) No. 125, will be submitted to the Office of Management and Budget for review and approval. The ICR describes the labeling requirement for warning devices and its expected burden. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on May 3, 2022. No comments were received.

DATES: Comments must be submitted on or before November 14, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection, including suggestions for reducing burden, should be submitted to the Office of Management and Budget at *www.reginfo.gov/public/do/PRAMain.* To find this particular information collection, select ''Currently under Review—Open for Public Comment'' or use the search function.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Toyoaki Nogami, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, West Building—4th Floor—Room W43–462, 1200 New Jersey Avenue SE, Washington, DC 20590. He can be reached at (202) 366–1810. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), a Federal agency must receive approval from the Office of Management and Budget (OMB) before it collects certain information from the public and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. In compliance with these requirements, this notice announces that the following information collection request will be submitted OMB.

A **Federal Register** notice with a 60-day comment period soliciting public comments on the following information collection was published on May 3, 2022 (87 FR 26253).

Title: 49 CFR 571.125. Standard No. 125; Warning devices, Compliance Labeling of Warning Devices.

OMB Control Number: 2127–0506.

Type of Request: Reinstatement of a previously approved information.

Type of Review Requested: Regular.

Length of Approval Requested: Three years from date of approval.

Summary of the Collection of Information: The National Traffic and Motor Vehicle Safety Act of 1966, authorizes the Secretary of Transportation (NHTSA by delegation), at 49 U.S.C. 30111 to issue Federal Motor Vehicle Safety Standards (FMVSS) that set performance standards for motor vehicles and items of motor vehicle equipment. 49 U.S.C. 30115 (*https://www.govinfo.gov/link/uscode/49/30115*) requires manufacturers of motor vehicles or motor vehicle equipment to certify that the vehicle or equipment complies with applicable motor vehicle safety standards prescribed under this chapter. Section 30115 further specifies that certification of equipment may be shown by a label or tag on the equipment or on the outside of the container in which the equipment is delivered to certify that items of motor vehicle equipment subject to FMVSS comply with all applicable standards. Further, the Secretary (NHTSA by delegation) is authorized, at 49 U.S.C. 30117 (*https://www.govinfo.gov/link/uscode/49/30117*), to require manufacturers to provide information to first purchasers of motor vehicles or motor vehicle equipment when the vehicle or equipment is purchased, in the form of printed matter placed in the vehicle or attached to the vehicle or motor vehicle equipment.

Federal Motor Vehicle Safety Standard (FMVSS) No. 125, ''Warning devices'' specifies requirements for devices, without self-containing energy sources, that are designed to be carried in buses and trucks with a Gross Vehicle Weight Rating (GVWR) greater than 10,000 pounds, although they can be carried in other vehicles. These devices are used to warn approaching traffic of the presence of a stopped vehicle. This requirement does not apply to devices designed to be permanently affixed to the vehicle. The purpose of the standard is to reduce deaths and injuries due to rear end collisions between moving traffic and disabled vehicles. To ensure that the warning devices provide effective warnings to approaching traffic of the presence of a stopped vehicle, the standard sets forth specific requirements for the chromaticity of the reflex reflective material and fluorescent material affixed to both faces of the device.

In addition to performance requirements, the FMVSS No. 125 requires manufacturers to permanently and legibly mark their warning devices with (a) the manufacturer's name, (b) the month and year of manufacture, and (c) the symbol DOT, or the statement that the warning device complies with all applicable FMVSS. Manufacturers must also provide, with each warning device they manufacture, instructions printed or attached to the device in a manner that cannot easily be removed, for the operator to understand its erection and placement and a recommendation that the driver activate the vehicle hazard warning signal lamps before leaving the vehicle.

Since the last notice, the total burden hours were revised from one hour to three hours based on the number of respondents and required reporting tasks. The total annual cost burden was

revised from $26 to $4,075, and the number of responses increased from 2.85 million to 4.31 million based on the number of trucks registered in the United States. In addition, maintenance and materials costs were updated.

Description of the Need for the Information and Proposed Use of the Information: Manufacturers of warning devices are required to certify that their products meet the requirements of FMVSS No. 125. Without the identification information provided by the certification, NHTSA would be unable to identify the manufacturer of equipment that fails to meet the minimum performance for reflectivity and ability to withstand environmental conditions consistent with roadsides on which they are to be used. The instruction labeling also serves the safety purpose of FMVSS No. 125 by providing important information to operators, thereby increasing the likelihood of correct usage. Without labeling and instructions, a driver may not properly erect or place the warning devices in a manner that reduces the risk of rear end crashes with disabled vehicles. Federal Motor Carriers Safety Administration (FMCSA) also requires the placement of warning devices around buses and trucks that have a Gross Vehicle Weight Rating (GVWR) greater than 10,000 pounds, for warning to approaching traffic when they are disabled on a highway or shoulder. The labeling requirement assists FMCSA enforcement with the ability to verify that warning devices being used in commercial motor vehicles meet the minimum performance levels for safety.

Affected Public: Manufacturers of warning devices.

Estimated Number of Respondents: 3.

The respondents are likely to be manufacturers of warning devices. The agency estimates that currently there are three manufacturers producing warning devices for use in motor vehicles.

Frequency: As needed.

Number of Responses: 4,3200,000.

Estimated Total Annual Burden Hours: 3 hours.

NHTSA was able to identify three manufacturers of warning devices. NHTSA estimates there are approximately 4.32 million labels affixed to warning devices each year.

This is based on the total number of truck tractors and other medium- and heavy-duty trucks registrations, which was 14,369,339 in 2019.[1] NHTSA estimates that 1 out of 10 trucks requires a new set of warning devices each year or, approximately 1.44 million (1,436,934 or rounded to 1.44 million), and each warning device requires three labels. Accordingly, NHTSA estimates that the three respondents produce 4.32 million labels each year, for an annual average of 1.44 million labels per respondent. Because the labels are molded onto the warning devices and cases, NHTSA estimates that the only time burden associated with this collection is time required to log the production of the molding presses in a highly-automated production process, which NHTSA estimates will take each manufacturer 1 hour per year. Accordingly, NHTSA estimates the total burden for this collection to be 3 hours (3 respondents × 1 hour). Using the estimate from the Bureau of Labor Statistics (BLS) for the average hourly compensation for Molders and Molding Machine Setters, Operators, and Tenders, Metal and Plastic (BLS Occupation code 51–4070) in the Motor Vehicle Manufacturing Industry, NHTSA estimate the loaded labor cost is $34.67 per hour.[2] Thus, the total labor cost associated with the burden hours is $104.01 for all responses generated by all 3 respondents together. Table 1 provides a summary of the estimated burden hours and labor costs associated with those submissions.

TABLE 1—SUMMARY OF BURDEN HOURS AND ASSOCIATED LABOR COSTS

Number of respondents	Estimated annual hour burden per respondent	Average hourly labor cost	Annual labor cost per respondent	Total annual burden hours	Total annual labor costs
3	1 hour	$34.67[2]	$34.67	3	$104.01

Estimated Total Annual Burden Cost: $4,075 per year.

NHTSA estimates that the total annual cost to respondents is $4,075.00, or $.00094 per response ($4,075 ÷ 4.32 million labels). This cost is comprised of the annualized cost of depreciation of purchase and modification of the equipment required for molding the labels onto the warning devices and cases and the annual cost of materials required for the labeling.

The initial cost to the respondents was based on estimated costs for modifying the die-mold such that it creates the label during normal production. The cost to manufacturers of the label requirement is the amortization of the die mold modification and the additional material consumed. The labels are to be placed on every warning device manufactured. The labels are produced during the normal course of steady flow manufacturing operation without a direct time penalty. The sole method used for producing the label is a process by which the required information is molded into the parts and/or cases directly. The cost of modifying a die mold to include the required information is estimated to be $10,000 per mold. The typical life of a die-mold of this type is 30 years, for a straight-line depreciation of the molds ($10,000 divided by 30) equal to $333.33 per mold. Part of the required information is included on the molds that create the warning devices, while the remaining information (instructions) is included within the molds that create the cases that are supplied with the warning devices. Each of the three manufacturers is estimated to have 2 warning device molds and 2 case molds for a total of 12 molds. Accordingly, NHTSA estimates the total cost for equipment to be $4,000 per year (($333.33 × 4 molds) × 3 respondents = $4,000).

The additional material required to produce the instructions is expected to be very small because the engraving depth is approximately 0.1 mm with a text width of 0.5 mm and a length of 300

[1] Bureau of Transportation Statistics, Table titled ''Number of U.S. Truck Registrations by Type | Bureau of Transportation Statistics,'' *https://www.bts.gov/browse-statistical-products-and-data/national-transportation-statistics/number-us-truck.*

[2] The hourly wage is estimated to be $24.48 per hour. National Industry-Specific Occupational Employment and Wage Estimates NAICS 336100—Motor Vehicle Manufacturing, May 2020, *https://www.bls.gov/oes/current/naics4_336100.htm#51-0000,* last accessed November 5, 2021. The Bureau of Labor Statistics estimates that wages represent 70.6 percent of total compensation to private workers, on average. Bureau of Labor Statistics. Employer Costs for Employee Compensation—June 2021. *https://www.bls.gov/news.release/ecec.t04.htm,* last accessed November 5, 2021. Therefore, NHTSA estimates the total hourly compensation cost to be $34.67.

mm, resulting in a volume of material of 1.5 mm^3 per warning device, or 6,480,000 mm^3 per year (1.5×4.32 million devices). The price of polypropylene is estimated at $1,100 per ton with a density of 0.95 g/cm^3 ($1.0472 \times 10-8$ tons/mm^3). The total material price is thus estimated to be $74.64 (($1.0472 \times 10-8$ tons/mm^3) × $1,100 × 6,480,000 mm^3) per year, rounded to $75 per year.

TABLE 2—SUMMARY OF COSTS

	Estimated annual depreciation cost per mold	Number of molds per respondent	Annual cost per respondent	Number of respondents	Total annual cost burden all respondents
Die Mold Cost	$333.33	4	$1,333.33	3	$4,000.00
	Annual number of labels (m)	Annual number of labels per respondent (m)	Annual cost per respondent	Number of respondents	Total annual cost burden all respondents
Material Cost	4.32	1.44	25.00	3	75.00
Total Costs			1,358.33		4,075.00

Public Comments Invited:

You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, 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.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2022–22297 Filed 10–13–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. app. 2, 10(a)(2), that a meeting will be held at the United States Treasury Department, 15th Street and Pennsylvania Avenue NW, Washington, DC on November 1, 2022 at 9:00 a.m. of the following debt management advisory committee: Treasury Borrowing Advisory Committee.

At this meeting, the Treasury is seeking advice from the Committee on topics related to the economy, financial markets, Treasury financing, and debt management. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. app. 2, 10(d) and Public Law 103–202, 202(c)(1)(B)(31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. app. 2, 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, 202(c)(1)(B).

Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. app. 2, 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Director for Office of Debt Management (202) 622–1876.

Dated: October 11, 2022.

Frederick E. Pietrangeli,

Director, Office of Debt Management.

[FR Doc. 2022–22321 Filed 10–13–22; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special-Disabilities Programs, Amended Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act (5 U.S.C. app. 2), that a meeting of the Federal

Advisory Committee on Prosthetics and Special-Disabilities Programs will be held on Tuesday, October 25–Wednesday, October 26, 2022. The meeting will be a hybrid meeting, held in-person at VA Central Office, 810 Vermont Avenue NW, Washington, DC, Room 630, and virtually via WebEx. The meeting sessions will begin and end as follows:

Date	Time (Eastern standard time)
October 25, 2022	9:00 a.m–3:00 p.m.
October 26, 2022	9:00 a.m–1:00 p.m.

The meeting sessions are open to the public virtually.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on VA's prosthetics programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Committee also provides advice to the Secretary on special-disabilities programs, which are defined as any program administered by the Secretary to serve Veterans with spinal cord injuries, blindness or visual impairments, loss of extremities or loss of function, deafness or hearing impairment, and other serious incapacities in terms of daily life functions.

On October 25, 2022, the Committee will convene open (hybrid) sessions on Recreation Therapy and Creative Arts Therapy Service, National Veterans Sports Programs and Special Events, Prosthetic and Sensory Aids Service, Rehabilitation Research and Development Service, and the Office of Integrated Veterans Care.

On October 26, 2022, the Committee members will convene open (hybrid) sessions on Audiology and Speech Pathology Service and Blind Rehabilitation Service.

No time will be allocated at this meeting for receiving oral presentations from the public. However, the public may submit written statements for the Committee's review. Public comments may be received no later than October 17, 2022, for inclusion in the official meeting record. Please send these comments to Dr. Lauren Racoosin, Designated Federal Officer, Rehabilitation and Prosthetic Services, Veterans Health Administration at *Lauren.Racoosin@va.gov.*

Members of the public should contact Dr. Lauren Racoosin, at *Lauren.Racoosin@va.gov* and provide your name, professional affiliation, email address, and phone number, who wish to obtain a copy of the agenda. Any member of the public wishing to attend or seeking additional information should contact Dr. Racoosin. Members of the public may attend the meeting only virtually due to room capacity limitations. To join, please use the WebEx link below: *https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=m326ad3b10acfa27572452e9d1c6e1401.*
Audio Only 404.397.1596/Access Code 2761 980 5183.

Dated: October 11, 2022.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–22378 Filed 10–13–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Education, Notice of Meeting

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. app. 2., that the Veterans' Advisory Committee on Education (''Committee'') will meet on November 29, 2022–November 30, 2022, from 10 a.m. to 5 p.m., eastern standard time in Washington, DC. All sessions are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of education and training programs for Veterans, Servicepersons, Reservists, and Dependents of Veterans including programs under chapters 30, 32, 33, 35, and 36 of title 38, and chapter 1606 of title 10, United States Code.

During the meeting sessions, the Committee will hear reports from three subcommittees (Modernization, Veteran Vocational Education and Training Programs and Distance Learning) and will receive other updates and briefings.

Interested persons may attend virtually via Microsoft Teams. Please email *EDUSTAENG.VBAVACO@va.gov* prior to November 25, 2022 if you wish to attend or you can dial-in by phone (for audio only) at 1–872–701–0185 (Toll-Free) using the Conference ID: 503 072 155#.

Although no time will be allotted for receiving oral presentations from the public, individuals wishing to share information with the Committee may submit written statements for the Committee's review to Mr. Joseph Maltby, Designated Federal Official, Department of Veterans Affairs, by email at *EDUSTAENG.VBAVACO@va.gov*. Comments will be accepted until close of business on Monday, November 28, 2022. In the communication, the writers must identify themselves and state the organization or association they represent for inclusion in the official record.

Dated: October 11, 2022.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–22358 Filed 10–13–22; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 87 Friday,

No. 198 October 14, 2022

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Chamaecrista lineata var. keyensis (Big Pine Partridge Pea), Chamaesyce deltoidea ssp. serpyllum (Wedge Spurge), Linum arenicola (Sand Flax), and Argythamnia blodgettii (Blodgett's Silverbush); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2022–0116; FF09E21000 FXES1111090FEDR 223]

RIN 1018–BE51

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Chamaecrista lineata* var. *keyensis* (Big Pine Partridge Pea), *Chamaesyce deltoidea* ssp. *serpyllum* (Wedge Spurge), *Linum arenicola* (Sand Flax), and *Argythamnia blodgettii* (Blodgett's Silverbush)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for *Chamaecrista lineata* var. *keyensis* (Big Pine partridge pea), *Chamaesyce deltoidea* ssp. *serpyllum* (wedge spurge), *Linum arenicola* (sand flax), and *Argythamnia blodgettii* (Blodgett's silverbush) under the Endangered Species Act (Act). In total, approximately 1,462 acres (592 hectares) for Big Pine partridge pea and approximately 1,379 acres (558 hectares) for wedge spurge, in Monroe County, Florida, and approximately 5,090 acres (2,060 hectares) for sand flax and 16,635 acres (6,732 hectares) for Blodgett's silverbush in Miami-Dade and Monroe Counties, Florida, fall within the boundaries of the proposed critical habitat designations. If we finalize this rule as proposed, it would extend the Act's protections to the species' critical habitat. We also announce the availability of a draft economic analysis of the proposed designation of critical habitat for these four plant species.

DATES: We will accept comments received or postmarked on or before December 13, 2022. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 28, 2022.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2022–0116, which is the docket number for this rulemaking action. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R4–ES–2022–0116, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

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

Availability of supporting materials: For the proposed critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file and are available at *https://www.fws.gov/office/florida-ecological-services/library* and at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2022–0116. Any supporting information that we developed for this critical habitat designation will be available on the Service's website or at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Lourdes Mena, Classification and Recovery Division Manager, U.S. Fish and Wildlife Service, Florida Ecological Services Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256; by telephone 904–731–3134; or by facsimile 904–731–3045. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a proposed rule. Under the Act, when we determine that any species is a threatened or endangered species, we must designate critical habitat, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 1531 *et seq.*).

What this document does. This document proposes to designate critical habitat for three plant species, Big Pine partridge pea, wedge spurge, and sand flax, listed as endangered species under the Act, and one plant species, Blodgett's silverbush, listed as a threatened species under the Act (September 29, 2016 (81 FR 66842)).

The basis for our action. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Draft economic analysis of the proposed designation of critical habitat. We have prepared an analysis of the probable economic impacts of the proposed critical habitat designation and related factors. In this document, we announce the availability of the draft economic analysis and seek additional public review and comment.

Public comment. We are seeking comments and soliciting information from the public on our proposed designation to make sure we consider the best scientific and commercial information available in developing our final designation. Because we will consider all comments and information we receive during the comment period, our final determination may differ from this proposal. We will respond to substantive comments we receive during the comment period in our final rule.

Peer review. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of determinations under section 4 of the Act, including listing determinations and critical habitat designations, we are seeking comments from independent specialists. The purpose of peer review is to ensure that our critical habitat

designation is based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in the biology, habitat, and threats to the species addressed herein. We have invited these peer reviewers to comment on our specific assumptions and conclusions in this critical habitat proposal during the public comment period for this proposed rule (see **DATES**, above).

Information Requested

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

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including information regarding the following factors that the regulations identify as reasons why designation of critical habitat may be not prudent:

(a) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species; or

(b) Such designation of critical habitat would not be beneficial to the species. In determining whether a designation would not be beneficial, the factors the Services may consider include but are not limited to: whether the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or whether any areas meet the definition of ''critical habitat.''

(2) Specific information on:

(a) The amount and distribution of Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush habitat.

(b) Any additional areas occurring within the range of the species, *i.e.,* south and central Florida peninsula and the Florida Keys, that should be included in the designation because they (i) were occupied at the time of listing in 2016 and contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations, or (ii) were unoccupied at the time of listing, and are essential for the conservation of the species, because they have potential to successfully support introduced or reintroduced populations of these species.

(c) While we seek comments on any additional areas under (b)(i) and (ii) above, we particularly seek comments on the following unoccupied areas, including information on whether these areas have the potential to support introduced or reintroduced populations: No Name Key, Upper and Lower Sugarloaf Keys, Cudjoe Key, and Little Pine Key in Monroe County, Florida; and Trinity Pinelands, Nixon Smiley, Quail Roost Pineland, and Navy Wells in Miami-Dade County, Florida.

(d) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change.

(e) Whether we have appropriately identified the physical or biological features that are essential to the conservation for each species.

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

(4) Information on the projected and reasonably likely impacts of climate change on Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush and proposed critical habitat.

(5) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts and any additional information regarding probable economic impacts that we should consider.

(6) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act. If you think we should exclude any additional areas, please provide information regarding the existence of a meaningful economic or other relevant impact supporting a benefit of exclusion.

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

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a final critical habitat determination. Section 4(b)(2) of the Act directs that the Secretary shall designate critical habitat on the basis of the best scientific information data available.

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

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Because we will consider all comments and information we receive during the comment period, our final designation may differ from this proposal. Based on the new information we receive (and any comments on that new information), our final designation may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, or may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion. Such final decisions would be a logical outgrowth of this proposal, as long as we: (1) base the decisions on the best scientific and commercial data available after considering all of the relevant factors; (2) do not rely on factors Congress has not intended us to consider; and (3) articulate a rational connection between the facts found and the conclusions made, including why we changed our conclusion.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the

Federal Register and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of virtual public hearings is consistent with our regulation at 50 CFR 424.16(c)(3).

Acronyms Used in This Document

For the convenience of the reader, we provide this list of some of the acronyms used in this proposed rule:

CCAA = candidate conservation agreements with assurances
CCP = comprehensive conservation plan
DoD = Department of Defense
ENP = Everglades National Park
FKWEA = Florida Keys Wildlife and Environmental Area
FNAI = Florida Natural Areas Inventory
HARB = Homestead Air Reserve Base
HCP = habitat conservation plan
INRMP = integrated natural resources management plan
KWNAS = Key West Naval Air Station
NKDR = National Key Deer Refuge
NWRs = National Wildlife Refuges
SHA = safe harbor agreements
SOCSO = Special Operations Command South
USDA = U.S. Department of Agriculture

Previous Federal Actions

On September 29, 2015, we proposed to list Big Pine partridge pea, wedge spurge, and sand flax as endangered species and Blodgett's silverbush as a threatened species under the Act (80 FR 58536). On September 29, 2016, we finalized the listing (81 FR 66842). At the time of our proposal, we determined that critical habitat was prudent, but not determinable because we lacked specific information on the impacts of our designation. In our final listing rule, we stated we were in the process of obtaining information on the impacts of the designation (81 FR 66842). All previous Federal actions for Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush are described in detail in our final rule listing the four plant species as endangered and threatened species under the Act (81 FR 66842).

It is our intent to discuss in this proposed rule only those topics directly relevant to the designation of critical habitat for Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush. For more information on the taxonomy, life history, habitat, population descriptions, and factors affecting the species, please refer to the September 29, 2015, proposed listing rule for these species (80 FR 58536) and the September 29, 2016, final listing rule (81 FR 66842).

Critical Habitat

Background

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for threatened and endangered species. In 2019, jointly with the National Marine Fisheries Service, the Service issued final rules that revised the regulations in 50 CFR parts 17 and 424 regarding how we add, remove, and reclassify threatened and endangered species and the criteria for designating listed species' critical habitat (84 FR 45020 and 84 FR 44752; August 27, 2019). At the same time the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (collectively, the 2019 regulations).

However, on July 5, 2022, the U.S. District Court for the Northern District of California vacated the 2019 regulations (*Center for Biological Diversity* v. *Haaland,* No. 4:19–cv–05206–JST, Doc. 168 (N.D. Cal. July 5, 2022) (*CBD* v. *Haaland*)), reinstating the regulations that were in effect before the effective date of the 2019 regulations as the law governing species classification and critical-habitat decisions. Accordingly, in developing the analysis contained in this proposal, we applied the pre-2019 regulations, which may be reviewed in the 2018 edition of the Code of Federal Regulations at 50 CFR 424.02 and 424.12(a)(1) and (b)(2). Because of the ongoing litigation regarding the court's vacatur of the 2019 regulations, and the resulting uncertainty surrounding the legal status of the regulations, we also undertook an analysis of whether the proposal would be different if we were to apply the 2019 regulations. That analysis, which we described in a separate memo in the decisional file and posted on *https://www.regulations.gov,* concluded that we would have reached the same proposal if we had applied the 2019 regulations. For the four plants, we find that critical habitat is prudent under either regulatory scheme because we determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to all four species. In addition, in the final listing rule (81 FR 66842; September 29, 2016), illegal collection of any of the four Florida Keys plants was not identified as a threat under Factor B, and identification and mapping of critical habitat is not expected to initiate any such threat. We also determined the occupied areas may be adequate to ensure the conservation of these species. For Blodgett's silverbush, the amount and distribution of critical habitat we are proposing for designation in occupied areas would allow existing and future established populations to maintain their existing distributions; expand their distributions into suitable nearby areas (needed to offset habitat loss and fragmentation); increase the size of each population to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished; and maintain their ability to withstand local or unit-level environmental fluctuations or catastrophic events. Accordingly, we have not identified unoccupied areas that are essential for the conservation of this species at this time. For Big Pine partridge pea, wedge spurge, and sand flax, we identified areas of remaining pine rockland habitat that we are considering whether these areas meet the definition of unoccupied critical habitat for these three species.

On September 21, 2022, the U.S. Circuit Court of Appeals for the Ninth Circuit stayed the district court's July 5, 2022, order vacating the 2019 regulations until a pending motion for reconsideration before the district court is resolved (*In re: Cattlemen's Ass'n,* No. 22–70194). The effect of the stay is that the 2019 regulations are currently the governing law. Because a court order requires us to submit this proposal to the **Federal Register** by September 30, 2022, it is not feasible for us to revise the proposal in response to the Ninth Circuit's decision. Instead, we hereby adopt the analysis in the separate memo that applied the 2019 regulations as our primary justification for the proposal. However, due to the continued uncertainty resulting from the ongoing litigation, we also retain the analysis in this preamble that applies the pre-2019 regulations and we conclude that, for the reasons stated in our separate memo analyzing the 2019 regulations, this proposal would have been the same if we had applied the 2019 regulations.

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

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Designation also does not allow the government or public to access private lands, nor does designation require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific occupied areas, we focus on those features that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations

(50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that a designation of critical habitat is not prudent when any of the following situations exist:

(i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or

(ii) Such designation of critical habitat would not be beneficial to the species. In determining whether a designation would not be beneficial, the factors the Services may consider include but are not limited to: Whether the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or whether any areas meet the definition of ''critical habitat.''

As discussed in the final listing rule (81 FR 66842), there is currently no imminent threat of take attributed to collection or vandalism identified under Factor B for these species, and identification and mapping of critical habitat is not expected to initiate or increase the degree of any such threat. In our listing determination for these species, we determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to these species. Accordingly, the designation of critical habitat is likely to be beneficial. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) have been met, we have determined that the designation of critical habitat is prudent for Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush.

Critical Habitat Determinability

Having determined that designation of critical habitat is prudent for each species, under section 4(a)(3) of the Act, we must find whether critical habitat for Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of ''critical habitat.''

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

At the time of our proposal, we determined that critical habitat was prudent, but not determinable because we lacked specific information on the impacts of our designation (80 FR 58536). In our final listing rule, we stated we were in the process of obtaining information on the impacts of the designation (81 FR 66842). We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where these species are located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush.

Physical or Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features'' as the features that support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkali soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or absence of a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

We derive the specific physical or biological features essential to Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush from studies of the species' habitat, ecology, and life history as described below. Additional information can be found in the September 29, 2015, proposed listing rule (80 FR 58536) and the September 29, 2016, final listing rule (81 FR 66842) for these species. We have determined that the following physical or biological features are essential to the conservation of Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush.

Big Pine Partridge Pea, Wedge Spurge, and Sand Flax

Space for Individual and Population Growth and for Normal Behavior

Plant Community and Competitive Ability

Big Pine partridge pea, wedge spurge, and sand flax occur in the lower Florida Keys in Monroe County in communities classified as pine rockland and on disturbed sites adjacent to pine rocklands, such as roadside and mowed areas still dominated by native species (see more detailed description of disturbed sites below). In addition, sand flax occurs on the Miami Rock Ridge in Miami-Dade County in pine rockland, on disturbed sites adjacent to pine rockland, and on two canal banks that likely incorporated pine rockland substrate as fill (Bradley and Gann 1999, p. 61; Hodges and Bradley 2006, p. 37). These communities and their associated native plant species are described in the Background section of the September 29, 2015, proposed listing rule (80 FR 58536) and in the September 29, 2016, final listing rule (81 FR 66842) for Big Pine partridge pea, wedge spurge, and sand flax. These habitats and their associated plant communities provide

vegetation structure that allows for adequate growing space, moisture, sunlight, pollinators, and a competitive regime that is required for Big Pine partridge pea, wedge spurge, and sand flax to persist and spread.

Pine rocklands are a fire-maintained ecosystem characterized by an open canopy, understory, and a limestone substrate (often exposed). Open canopy conditions are required to allow sufficient sunlight to reach the herbaceous layer and permit growth and flowering of Big Pine partridge pea, wedge spurge, and sand flax (Ross and Ruiz 1996, pp. 5–6; Bradley and Saha 2009, p. 4). These species also require a calcareous limestone substrate that varies from nearly bare to thin layers or small pockets of shallow soil to provide suitable growing conditions (*e.g.,* pH, nutrients, anchoring, and proper drainage). As a result of these marginal soil conditions, plants such as Big Pine partridge pea, wedge spurge, and sand flax rely on sparse competition and periodic disturbance to thrive and persist. This combination of ecosystem characteristics (*i.e.,* open canopy with a partially exposed limestone substrate and periodic disturbance) occurs only in pine rockland habitats (as opposed to rockland hammock, which occurs in conjunction with pine rockland and has a limestone substrate but a closed canopy).

Disturbed areas that support Big Pine partridge pea, wedge spurge, and sand flax consist of sites that formerly were pine rocklands, but in most cases have no remaining pine canopy because of previous disturbance from clearing or scraping. In addition, some disturbed areas that support sand flax are sites where pine rockland substrate was used as fill. These include roadsides, firebreaks, and other areas that are infrequently mowed, or have no pine canopy but retain native pine rockland herbs, grass species, and substrate (Bradley and van der Heiden 2013, pp. 7–12; Bradley 2006, p. 37: Bradley and Gann 1999, p. 61).

Sand flax occurrences reported from marl prairie are at sites that have been artificially drained (Bradley and Van Der Heiden 2013, p. 11) or are scraped pine rocklands that function more like marl prairie (Kernan and Bradley 1996, p. 11). As with disturbed roadside habitats, it is possible that dry marl prairies have become refugia for the sand flax as fire regimes and natural areas were altered and destroyed over the last century. However, the Service does not consider marl prairie to be a primary habitat for sand flax.

The total remaining area of pine rockland in the lower Florida Keys (Monroe County) is now approximately 1,899 acres (ac) (769 hectares (ha)), most of which is on Big Pine Key (1,480 ac (599 ha)) (U.S. Geological Survey (USGS) 2019). In mainland south Florida (Miami-Dade County), development and agriculture have reduced pine rockland habitat by 90 percent. Recent vegetation mapping in Everglades National Park (ENP) indicates there are a total of 14,211 ac (5,751 ha) of pine rocklands remaining in ENP, which includes the largest remaining area of pine rockland (approximately 10,895 ac (4,409 ha)) in Florida (Long Pine Key) (Ruiz 2022). Outside of ENP, pine rockland habitat decreased from approximately 185,329 ac (75,000 ha) in the early 1900s to only 3,707 ac (1,500 ha) in 2014 (Possley et al. 2014, p. 154) and 2,275 ac (921 ha) in 2019 (USGS 2019), leaving only about 1.2 percent of the pine rocklands on the Miami Rock Ridge remaining, and much of what is left are small remnants scattered throughout the Miami metropolitan area, isolated from other natural areas (Herndon 1998, p. 1). Based on the data presented above, outside of ENP the total remaining area of pine rockland in Miami-Dade and Monroe Counties is now 4,174 ac (1,689 ha) (approximately 2,275 ac (921 ha) in Miami-Dade County and 1,899 ac (769 ha) in the Florida Keys (Monroe County)). The extreme rarity of high-quality pine rockland habitat supporting Big Pine partridge pea, wedge spurge, and sand flax elevates the importance of disturbed remnant sites that still retain some pine rockland species.

We consider pine rockland to be the primary habitat for Big Pine partridge pea, wedge spurge, and sand flax. However, adjacent disturbed areas currently supporting the species are considered essential when adjacent pine rocklands do not support an existing population or are of insufficient size or connectivity to support a population of Big Pine partridge pea, wedge spurge, and sand flax. Therefore, based on the information above, we identify upland habitats consisting of pine rocklands and adjacent disturbed areas to be a physical or biological feature essential to the conservation of these species.

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

Climate (Temperature and Precipitation)

Big Pine partridge pea, wedge spurge, and sand flax require adequate rainfall and do not tolerate prolonged freezing temperatures. The climate of south Florida where these species occur is characterized by distinct wet and dry seasons, a monthly mean temperature above 64.4°F (F) (18° Celsius (C)) in every month of the year, and annual rainfall averaging 30 to 60 inches (in) (75 to 150 centimeters (cm)) (Gabler et al. 1994, p. 211). Rainfall within the range of sand flax varies from an annual average of 60–65 in (153–165 cm) in the northern portion of the Miami Rock Ridge to an average of 35–40 in (89–102 cm) in the lower Florida Keys (Snyder et al. 1990, p. 238). Areas of pine rockland that are adjacent to wetlands may experience prolonged flooded periods lasting up to 60 days, while those at higher elevation have shorter or no annual flooding period (Florida Natural Areas Inventory (FNAI) 2010a, p. 2). Freezes can occur in the winter months but are very infrequent at this latitude in Florida. Therefore, based on the information above, we determined a subtropical humid (Miami-Dade County) or tropical humid (Monroe County) climate to be an essential physical feature for Big Pine partridge pea, wedge spurge, and sand flax.

Soils

Substrates supporting Big Pine partridge pea, wedge spurge, and sand flax are composed of oolitic limestone that is at or very near the surface. Solution holes occasionally form where the surface limestone is dissolved by organic acids. There is typically very little soil development, consisting primarily of accumulations of low-nutrient sand, marl, clayey loam, and organic debris found in solution holes, depressions, and crevices on the limestone surface (FNAI 2010a, p. 62). However, extensive sandy pockets can be found at the northern end of the Miami Rock Ridge, beginning from approximately North Miami Beach and extending south to approximately SW 216 Street (which runs east-west approximately one-half mile south of Quail Roost Pineland) (Service 1999, p. 3–162).

These substrates provide anchoring, nutrients, moisture regime, and suitable soil chemistry for Big Pine partridge pea, wedge spurge, and sand flax; they facilitate a community of associated plant species that creates competition which allows Big Pine partridge pea, wedge spurge, and sand flax to persist and spread. Therefore, based on the information above, we identify substrates derived from calcareous limestone (often exposed with little soil development) that provide nutritional requirements and suitable growing conditions (*e.g.,* pH, nutrients, anchoring and drainage) to be an essential physical feature for Big Pine

partridge pea, wedge spurge, and sand flax.

Cover or Shelter

As mentioned previously, Big Pine partridge pea, wedge spurge, and sand flax occur in pine rocklands and adjacent disturbed areas in the lower Florida Keys (Bradley and Gann 1999, pp. 17–18; Bradley 2006, p. 21). In addition, sand flax occurs in pine rocklands on the Miami Rock Ridge in Miami-Dade County. These pine rocklands are characterized by an open canopy of *Pinus elliottii* var. *densa* (South Florida slash pine). The shrub/understory layer is also characteristically open, although the height and density of the shrub layer varies based on fire frequency, with understory plants growing taller and denser as time since fire increases. The open canopy and understory of pine rocklands are required to allow sufficient sunlight to reach the herbaceous layer and permit growth and flowering of Big Pine partridge pea, wedge spurge, and sand flax (Bradley and Gann 1999, pp. 17–18; Bradley 2006, p. 37).

Disturbed areas that are adjacent to pine rocklands that support Big Pine partridge pea, wedge spurge, and sand flax may have little to no pine canopy, but an herbaceous layer dominated by native herbs and grasses. Usually, these are former (remnant) pine rocklands that have a history of disturbance (clearing or scraping). These sites tend to be infrequently (every 2–3 months) mowed areas adjacent to existing pine rocklands, such as roadsides and fields. These areas can provide the open conditions required by Big Pine partridge pea, wedge surge, and sand flax (Bradley 2006, p. 37).

Therefore, based on the information above, we identify vegetation composition and structure characterized by an open canopy of South Florida slash pine and understory that allows for sufficient sunlight and space for individual growth and population expansion to be an essential feature for Big Pine partridge pea, wedge spurge, and sand flax.

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

Big Pine partridge pea reproduction is sexual, and flowers require insect visitation for pollination. Though many types of insects visit Big Pine partridge pea flowers, effective pollination can be performed only by buzz-pollinating bees (Liu and Koptur 2003, pp. 1184–1186). Seed production is higher when cross-pollination occurs. In addition, seed germination rates are higher from cross-pollinated flowers, suggesting that inbreeding depression occurs in seeds produced through self-pollination (Liu and Koptur 2003, pp. 1184–1186). Taken together, these findings indicate that insect pollination is crucial to the plant's reproduction and progeny fitness. Declines in pollinator visitation may cause decreased seed production, which could lead to lower seedling establishment and numbers of mature plants.

The biology and demography of wedge spurge have received considerable study. Small groups of the plant are scattered widely across the pine rocklands of Big Pine Key (Herndon 1993, in Bradley and Gann 1999, p. 31), with a population estimated at 368,557 in 2014 (Bradley et al. 2015, p. 21). The population was confirmed to still be present in 2019 (Lange et al. 2019, p. 16). Wedge spurge reproduction is sexual and likely requires insect visitation for pollination. Other species of *Chamaesyce* are completely reliant on insects for pollination and seed production while others are capable of self-pollination. Pollinators may include bees, flies, ants, and wasps (Ehrenfeld 1976, pp. 95–97, 406).

Little is known about the life history of sand flax, including pollination biology, seed production, or dispersal. Sand flax reproduction is sexual, with new plants generated from seeds. A recent study found that pollinators are important in fruit production of sand flax (Harris and Koptur 2022, pp. 7–8). Effective pollination has been found from small bees and flies that visit the flowers of sand flax (Harris and Koptur 2022, pp. 4–6). This recent information suggests that insect pollination is important to the species' reproduction. Therefore, like Big Pine partridge pea and wedge spurge, declines in pollinator visitation may cause decreased seed or fruit production of sand flax, which could lead to lower seedling establishment and numbers of mature plants.

The pine rocklands and adjacent disturbed habitats identified above as essential physical or biological features provide a plant community with associated plant species that foster a competitive regime suitable to Big Pine partridge pea, wedge spurge, and sand flax and contain adequate open space for the recruitment of new plants. Associated plant species in these habitats attract and provide cover for insect pollinators required for Big Pine partridge pea pollination, wedge spurge, and sand flax.

Therefore, based on the information above, we identify pine rockland habitat and adjacent disturbed areas containing the presence of native pollinators for natural pollination and reproduction to be an essential feature for Big Pine partridge pea, wedge spurge, and sand flax.

Habitats Representative of the Historical, Geographical, and Ecological Distributions of the Species

Big Pine partridge pea, wedge spurge, and sand flax continue to occur in habitats that are representative of the species' historical, geographical, and ecological distribution, although their current ranges have been reduced. These species are currently found in pine rocklands, and they also occur in adjacent disturbed areas, such as roadsides. As described above, these habitats provide a community of associated plant and animal species that are compatible with Big Pine partridge pea, wedge spurge, and sand flax. In addition, these habitats provide the vegetation structure that provides adequate sunlight levels and open space for plant growth and regeneration, and substrates with adequate moisture availability and suitable soil chemistry needed for these species. Representative communities are located on Federal, State, local, and private conservation lands that implement conservation measures benefitting these species.

Disturbance Regime

Pine rockland habitat that could support or currently supports Big Pine partridge pea, wedge spurge, and sand flax depend on a disturbance regime of wild or prescribed fire to open the canopy in order to provide light levels sufficient to support these species. Fire return intervals of 5 to 7 years generate the lowest extinction and population decline probabilities for Big Pine partridge pea (Liu et al. 2005, p. 210). The historical frequency and magnitude of fire allowed for the persistence of Big Pine partridge pea, wedge spurge, and sand flax by maintaining an open canopy and understory and preventing succession (transition) of pine rocklands to hardwood-dominated community (rockland hammock). In the absence of fire, some areas of pine rockland may have closed canopies, resulting in areas lacking enough available sunlight to support Big Pine partridge pea, wedge spurge, and sand flax. Most of these areas can be enhanced if habitats are managed with a combination of mechanical hardwood removal and prescribed fire. Disturbed sites that support Big Pine partridge pea, wedge spurge, and sand flax are typically maintained by infrequent mowing. Mowing is similar in effect to fire in that

it limits encroachment of hardwood species and maintains open canopy conditions suitable for these species. We consider wildfire to be the natural disturbance factor for pine rocklands and Big Pine partridge pea, wedge spurge, and sand flax. In adjacent disturbed areas currently supporting the species, mowing serves some of the ecological function of fire and maintains suitable habitat conditions (open canopy) for these species.

Therefore, based on the information above, we identify periodic natural (*e.g.,* fire) or nonnatural (*e.g.,* prescribed fire, mowing) disturbance regimes to maintain open canopy conditions in South Florida pine rocklands, to be an important process to maintain essential features for Big Pine partridge pea, wedge spurge, and sand flax.

Summary of Physical or Biological Features Essential to the Conservation of Big Pine Partridge Pea, Wedge Spurge, and Sand Flax

Based on the best available science related to the life history and ecology of these species, as outlined in the discussion above, we have determined that the following physical or biological features are essential to the conservation of Big Pine partridge pea, wedge spurge, and sand flax:

South Florida pine rockland habitat and adjacent disturbed areas:

(1) Consisting of calcareous limestone substrate (often exposed with little soil development) that provides nutritional requirements and suitable growing conditions (*e.g.,* pH, nutrients, anchoring and drainage);

(2) Characterized by an open canopy of *Pinus elliottii* var. *densa* (South Florida slash pine) and understory with a high proportion of native pine rockland plant species to provide for sufficient sunlight to permit growth and flowering;

(3) Subjected to a monthly mean temperature characteristic of the subtropical humid classification in Miami-Dade County and tropical humid classification in Monroe County in every month of the year and short hydroperiods ranging of up to 60 days each year;

(4) Subjected to periodic natural (*e.g.,* fire) or nonnatural (*e.g.,* prescribed fire, mowing) disturbance regimes to maintain open canopy conditions; and

(5) Containing the presence of native pollinators for natural pollination and reproduction.

Blodgett's Silverbush

Space for Individual and Population Growth and for Normal Behavior

Plant Community and Competitive Ability

Blodgett's silverbush occurs in the Florida Keys in Monroe County and on the Miami Rock Ridge in Miami-Dade County in communities classified as pine rockland, rockland hammock, and coastal berm, as well as disturbed sites adjacent to these habitats, such as roadsides and mowed areas still dominated by native species (Bradley and Gann 1999, p. 3). These communities and their associated native plant species are described in the final listing rule for Blodgett's silverbush published in the **Federal Register** on September 29, 2016 (81 FR 66842). These habitats and their associated plant communities provide vegetation structure that allows for adequate growing space, moisture, sunlight, pollinators, and a competitive regime that is required for Blodgett's silverbush to persist and spread. As discussed above for Big Pine partridge pea, wedge spurge, and sand flax, pine rocklands are a fire-maintained ecosystem characterized by an open canopy and understory and a limestone substrate (often exposed). Rockland hammock is a species-rich tropical hardwood forest on upland sites in areas where limestone is very near the surface and often exposed. Coastal berms are landscape features found along low-energy coastlines in south Florida and the Florida Keys. Coastal berm is a short forest or shrub thicket found on long, narrow, storm-deposited ridges (sand dunes) of loose sediment formed by a mixture of coarse shell fragments, pieces of coralline algae, and other coastal debris.

Similar to the other species, open canopy conditions are required to allow sufficient sunlight to reach the herbaceous layer and permit growth and flowering of Blodgett's silverbush. These conditions are maintained by fire in pine rocklands. In rockland hammocks, only the edges and canopy disruption in the interior provide enough sunlight for Blodgett's silverbush. Canopy disruption on rockland hammocks can occur due to natural events such as hurricanes and storm surge. Human disturbance, especially mowing, also maintains suitable conditions in disturbed areas, as discussed above for Big Pine partridge pea, wedge spurge, and sand flax. The plant also requires a calcareous limestone substrate that varies from nearly bare to thin layers or small pockets of shallow soil in pine rocklands, to shallow organic soils over calcareous limestone in rockland hammocks, and deep, calcareous sandy soils typical of coastal berm to provide suitable growing conditions (*e.g.,* pH, nutrients, anchoring, and proper drainage). As a result of these marginal soil conditions, plants such as Blodgett's silverbush rely on sparse competition and periodic disturbance to thrive and persist. This combination of ecosystem characteristics (*i.e.,* open canopy and limestone substrate) occurs in pine rocklands, along edges and gaps in rockland hammocks, and in coastal berm.

Disturbed areas that support Blodgett's silverbush consist of sites that formerly were pine rocklands or rockland hammocks, but in most cases have no remaining pine or hardwood canopy because of previous disturbance (clearing or scraping). These include roadsides, firebreaks, and other areas that are infrequently mowed or have no tree canopy but retain native herbs, grass species, and substrate (Bradley 2006, p. 37: Bradley and Gann 1999, p. 61).

Loss of pine rockland habitat in Miami-Dade and Monroe County is discussed above for Big Pine partridge pea, wedge spurge, and sand flax. In addition, modification and destruction from residential and commercial development have severely impacted rockland hammocks and coastal berm that support Blodgett's silverbush. Rockland hammocks were once abundant in Miami-Dade and Monroe Counties but are now considered imperiled locally and globally (FNAI 2010b, pp. 24–26). The tremendous development and agricultural pressures in south Florida have resulted in significant reductions of rockland hammock (Phillips 1940, p. 167; Snyder et al. 1990, pp. 271–272; FNAI 2010b, pp. 24–26).

The extreme rarity of high-quality pine rockland, rockland hammock, and coastal berm habitat supporting Blodgett's silverbush in Miami-Dade and Monroe Counties elevates the importance of disturbed remnant sites that still retain some habitat values.

We consider pine rocklands, edges or gaps in rockland hammocks, and coastal berm to be the primary habitats for Blodgett's silverbush. However, adjacent disturbed areas currently supporting the species are considered more important when adjacent pine rocklands, rockland hammocks, or coastal berm do not support an existing population, or are of insufficient size or connectivity to support a population of Blodgett's silverbush. Therefore, based on the information above, we identify upland

habitats consisting of pine rocklands, rockland hammocks, coastal berms, and adjacent disturbed areas to be physical or biological features essential to the conservation of Blodgett's silverbush.

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

Climate (Temperature and Precipitation)

Blodgett's silverbush requires adequate rainfall and does not tolerate prolonged freezing temperatures. The climate of south Florida where Blodgett's silverbush occurs is classified as subtropical humid (Miami-Dade County) and tropical humid (Monroe County), as described above for Big Pine partridge pea, wedge spurge, and sand flax. Rainfall within the range of Blodgett's silverbush varies from an annual average of 60–65 in (153–165 cm) in the northern portion of the Miami Rock Ridge to an average of 35–40 in (89–102 cm) in the lower Florida Keys (Snyder et al. 1990, p. 238). Areas of pine rockland that are adjacent to wetlands may experience prolonged flooded periods lasting up to 60 days, while those at higher elevation have shorter or no annual flooding period (FNAI 2010a, p. 2). Freezes can occur in the winter months but are very infrequent at this latitude in Florida. Therefore, based on the information above, we determined this type of climate to be an essential physical feature for Blodgett's silverbush.

Soils

Substrates supporting Blodgett's silverbush are composed of oolitic limestone that is at or very near the surface. Solution holes occasionally form where the surface limestone is dissolved by organic acids. In pine rocklands, there is typically very little soil development, consisting primarily of accumulations of low-nutrient sand, marl, clayey loam, and organic debris found in solution holes, depressions, and crevices on the limestone surface (FNAI 2010a, p. 62). However, extensive sandy pockets can be found at the northern end of the Miami Rock Ridge, beginning from approximately North Miami Beach and extending south to approximately SW 216 Street (which runs east-west approximately one-half mile south of Quail Roost Pineland) (Service 1999, p. 3–162). Rockland hammock occurs on a thin layer of highly organic soil covering limestone on high ground that does not regularly flood (FNAI 2010b p. 1). In coastal berms, deep, calcareous sandy soils are the typical substrate of this habitat.

These substrates provide anchoring, nutrients, moisture regime, and suitable soil chemistry for Blodgett's silverbush; and facilitate a community of associated plant species that create a competitive regime that allows Blodgett's silverbush to persist and spread. Therefore, based on the information above, we identify substrates derived from calcareous limestone (often exposed with little soil development in pine rocklands; with a thin to thick organic soil layer in the case of rockland hammocks; deep, calcareous soils in coastal berm) that provide nutritional requirements and suitable growing conditions (*e.g.,* pH, nutrients, anchoring and drainage) to be an essential physical feature for Blodgett's silverbush.

Cover or Shelter

As previously mentioned, Blodgett's silverbush occurs in pine rockland, rockland hammock, and coastal berm habitats in the lower Florida Keys in Monroe County and the Miami Rock Ridge in Miami-Dade County; and adjacent disturbed areas (Bradley and Gann, 1999, p. 3). Pine rocklands of the Florida Keys are characterized by an open canopy of South Florida slash pine. The shrub/understory layer is also characteristically open, although the height and density of the shrub layer varies based on fire frequency, with understory plants growing taller and denser as time since fire increases. The open canopy and understory of pine rocklands are required to allow sufficient sunlight to reach the herbaceous layer and permit growth and flowering of Blodgett's silverbush (Ross and Ruiz 1996, pp. 5–6; Bradley and Saha 2009, p.4).

Rockland hammock forest floor is largely covered by leaf litter and may have an organic soil layer of variable depth. Rockland hammocks typically have larger, more mature trees and deep organic soil layer in the interior, while the margins can be almost impenetrable in places with dense growth of smaller shrubs, trees, and vines and shallow organic soil layer. Mature hammocks may be open beneath a tall, well-defined canopy and subcanopy. More commonly, in less mature or disturbed hammocks, dense woody vegetation of varying heights from canopy to short shrubs is often present. Herbaceous species are occasionally present and generally sparse in coverage (FNAI 2010b p. 1).

Coastal berm is a short forest or shrub thicket found on long, narrow, storm-deposited ridges (sand dunes). Structure and composition of the vegetation is variable depending on height and time since the last storm event. The most stable berms may share some tree species with rockland hammocks, but generally have a greater proportion of shrubs and herbs. This is a structurally variable community that may appear in various stages of succession following storm disturbance, from scattered herbaceous beach colonizers to a dense stand of tall shrubs (FNAI 2010c, p. 2).

Disturbed areas that are adjacent to pine rocklands, rockland hammocks, and coastal berms that support Blodgett's silverbush may have little to no pine or hardwood canopy, but an herbaceous layer dominated by native herbs and grasses. Usually these are former (remnant) pine rocklands or rockland hammocks that have a history of disturbance (clearing or scraping). These sites tend to be infrequently (every 2–3 months) mowed areas adjacent to existing pine rocklands or rockland hammocks, such as roadsides and fields. These areas provide the open conditions required by Blodgett's silverbush (Bradley 2006, p. 37).

Therefore, based on the information above, we identify vegetation composition and structure characterized by an open canopy and understory that allows for sufficient sunlight, and space for individual growth and population expansion, to be an essential feature for Blodgett's silverbush.

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

Little is known about the life history of Blodgett's silverbush, including pollination biology, seed production, or dispersal. Blodgett's silverbush reproduction is sexual, with new plants generated from seeds. This species likely requires insect visitation for pollination, although there is limited information on this.

The pine rocklands, rockland hammocks, coastal berms, and adjacent disturbed habitats identified above as physical or biological features provide a plant community with associated plant species that foster a competitive regime suitable to Blodgett's silverbush and contain adequate open space for the recruitment of new plants. Associated plant species in these habitats attract and provide cover for insect pollinators required for Blodgett's silverbush pollination.

Therefore, based on the information above, we identify pine rockland, rockland hammock, and coastal berm habitat and adjacent disturbed areas containing the presence of native pollinators for natural pollination and reproduction to be an essential feature for Blodgett's silverbush.

Habitats Representative of the Historical, Geographic, and Ecological Distributions of the Species

Blodgett's silverbush continues to occur in habitats that are representative of the species' historical, geographical, and ecological distribution although its range has been reduced. The species is currently found in pine rocklands, rockland hammocks, and coastal berms, and it also occurs in adjacent disturbed areas. As described above, these habitats provide a community of associated plant and animal species that are compatible with Blodgett's silverbush, vegetation structure that provides adequate sunlight levels and open space for plant growth and regeneration, and substrates with adequate moisture availability and suitable soil chemistry. Representative communities are located on Federal, State, local, and private conservation lands that implement conservation measures benefitting the species.

Disturbance Regime

Pine rockland habitat that could or currently support Blodgett's silverbush depend on a disturbance regime of wild or prescribed fire to open the canopy and provide light levels sufficient to support Blodgett's silverbush. The historical frequency and magnitude of fire allowed for the persistence of Blodgett's silverbush, maintaining an open canopy and understory, and preventing succession (transition) of pine rocklands to hardwood-dominated community (rockland hammock). In the absence of fire, some areas of pine rockland may have closed canopies, resulting in areas lacking enough available sunlight to support Blodgett's silverbush. Most of these areas can be restored if habitats are managed with a combination of mechanical hardwood removal and prescribed fire.

Rockland hammock is susceptible to fire, frost, canopy disruption, and ground water reduction. Rockland hammock can be the advanced successional stage of pine rockland, especially in cases where rockland hammock is adjacent to pine rockland. In such cases, when fire is excluded from pine rockland for 15 to 25 years, it can succeed to rockland hammock vegetation. Historically, rockland hammocks in south Florida evolved with fire in the landscape, fire most often extinguished near the edges when it encountered the hammock's moist microclimate and litter layer. However, rockland hammocks are susceptible to damage from fire during extreme drought or when the water table is lowered. In these cases, fire can cause tree mortality and consume the organic soil layer. Rockland hammocks are also sensitive to the strong winds and storm surge associated with hurricanes (FNAI 2010b p. 2).

Coastal berms are deposited by storm waves along low-energy coasts. Their distance inland depends on the height of the storm surge. Coastal berms that are deposited far enough inland and remain undisturbed may in time succeed to hammock. This is a structurally variable community that may appear in various stages of succession following storm disturbance, from scattered herbaceous beach colonizers to a dense stand of tall shrubs (FNAI 2010c, p. 2).

The sparsely vegetated edges or interior portions laid open by canopy disruption are the areas of rockland hammock and coastal berm that have light levels sufficient to support Blodgett's silverbush. However, the dynamic nature of the habitat means that areas not currently open may become open in the future as a result of canopy disruption from hurricanes, while areas currently open may develop denser canopy over time, eventually rendering that portion of the hammock unsuitable for Blodgett's silverbush.

Disturbed sites that support Blodgett's silverbush are typically maintained by infrequent mowing. Mowing is similar in effect to fire in that it limits encroachment of hardwood species and maintains open canopy conditions suitable for Blodgett's silverbush. We consider wildfire to be the natural disturbance factor for pine rocklands. Periodic hurricanes and storm surge are the natural disturbance factors for rockland hammock and coastal berm. In adjacent disturbed areas currently supporting the species, mowing serves some of the ecological function of fire and maintains suitable habitat conditions (open canopy) for the species.

Therefore, based on the information above, we identify periodic natural (*e.g.,* fire, hurricanes) or nonnatural (*e.g.,* prescribed fire, mowing) disturbance regimes that maintain open canopy conditions to be essential features for Blodgett's silverbush.

Summary of Physical or Biological Features Essential to the Conservation of Blodgett's Silverbush

Based on the best available science related to the life history and ecology of the species, as outlined in the discussion above, we have determined that the following physical or biological features are essential to the conservation of Blodgett's silverbush:

South Florida pine rockland, rockland hammock, or coastal berm habitats and adjacent disturbed areas:

(1) Consisting of limestone substrate that provides nutritional requirements and suitable growing conditions (*e.g.,* pH, nutrients, anchoring and drainage);

(2) Characterized by an open canopy and understory with a high proportion of native plant species to provide for sufficient sunlight to permit growth and flowering;

(3) Subjected to a monthly mean temperature characteristic of the subtropical humid classification in Miami-Dade County and tropical humid classification in Monroe County in every month of the year, with short hydroperiods ranging of up to 60 days each year;

(4) Subjected to periodic natural (*e.g.,* fire, hurricanes, storm surge) or nonnatural (*e.g.,* prescribed fire, mowing) disturbance regimes to maintain open canopy conditions; and

(5) Containing the presence of native pollinators for natural pollination and reproduction.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush may require special management considerations or protection to reduce threats related to habitat loss, fragmentation, and modification primarily due to development; inadequate fire management; nonnative plants; hurricanes and storm surge; changes in disturbance regime; and sea level rise. For an in-depth discussion of threats, see Summary of Factors Affecting the Species in our September 29, 2015, proposed listing rule (80 FR 58536) and September 29, 2016, final listing rule (81 FR 66842).

Some of these threats (*e.g.,* habitat loss, inadequate fire management) can be addressed by special management considerations or protection while others (*e.g.,* sea level rise, hurricanes, storm surge) may be beyond the control of landowners and managers. However, even when landowners or land managers may not be able to control all the threats, they may be able to address or ameliorate the effects of the threats. Habitat loss is a primary threat to Big Pine partridge pea, wedge spurge, sand

flax, and Blodgett's silverbush. Loss of pine rocklands, rockland hammock, and coastal berm to development has reduced these habitats in Monroe and Miami-Dade Counties.

Habitat fragmentation can have negative effects on populations, especially rare plants, and can affect survival and recovery (Aguilar et al. 2006, pp. 968–980; Aguilar et al. 2008, pp. 5177–5188; Potts et al. 2010, pp. 345–352). In general, habitat fragmentation causes habitat loss, habitat degradation, habitat isolation, changes in species composition, changes in species interactions, increased edge effects, and reduced habitat connectivity (Fahrig 2003, pp. 487–515; Fischer and Lindenmayer 2007, pp. 265–280). Habitat fragments are often functionally smaller than they appear because edge effects (such as increased nonnative, invasive species or wind speeds) impact the available habitat within the fragment (Lienert and Fischer 2003, p. 597). For example, decreases in Big Pine partridge pea seed production near urban areas due to increased seed predation, compared with areas away from development have been reported (Liu and Koptur 2003, p. 1184).

Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush occur on a mix of private and publicly owned lands, most of which are managed for conservation. Populations that occur on private land or non-conservation public land are vulnerable to habitat loss, while populations on conservation lands are vulnerable to the effects of habitat degradation if disturbance regimes are disrupted (*e.g.,* through inadequate fire management or change in management practices on disturbed sites that support the species). Prolonged lack of fire in pine rockland typically results in succession to rockland hammock, and displacement of native species by invasive, nonnative plants often occurs. Changes in management practices at disturbed sites may include changes in mowing frequency or height, herbicide use, deposition of fill material, and sodding. Further development and degradation of pine rockland, rockland hammock, and coastal berm increase fragmentation and decrease the conservation value of the remaining functioning habitats. In addition, pine rocklands are expected to be further degraded and fragmented due to anticipated sea level rise, which would fully or partially inundate most pine rocklands and increase salinity of the water table and soils. These impacts are likely to cause vegetation shifts in additional pine rocklands, particularly in the lower Florida Keys. Some existing pine rockland, rockland hammock, and coastal berm areas are also projected to be developed for housing as the human population grows and adjusts to rising sea levels.

In summary, the features essential to the conservation of Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush may require special management considerations or protection to reduce threats and conserve these features. Actions that could ameliorate threats include, but are not limited to:

(1) Increase habitat restoration and management efforts, including fire management and nonnative plant control;

(2) Protect, restore, or enhance inland or higher elevation habitats where these species occur and are predicted to be unaffected or less affected by sea level rise;

(3) Augment existing small populations; and

(4) Conduct annual or seasonal monitoring efforts, or monitoring conducted prior to, but coordinated with habitat and fire management planning to refine management efforts over time.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat.

We are proposing to designate critical habitat in areas within the geographical area occupied by these species at the time of listing in 2016. At this time, we have not identified specific areas outside the geographical range occupied by the species that are essential for the species' conservation. However, as discussed below, we are considering whether areas outside the geographical range of the Big Pine Partridge Pea, wedge spurge, and sand flax at the time of listing meet the definition of critical habitat. If we determine some or all of those areas are critical habitat for these species, we will include them in our final designation.

We anticipate that full recovery for Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush will require continued protection of the remaining extant populations and habitat and augmenting existing small populations. Recovery of Big Pine partridge pea, wedge spurge, and sand flax may also require reestablishing populations in additional areas (*i.e.,* unoccupied areas) to approximate more closely the species' historical distribution to ensure adequate numbers of plants exist in stable populations and these populations occur over their entire geographic range. This scenario could help to reduce the chance that catastrophic events, such as storms, will simultaneously affect all known populations. However, some of the historical locations no longer contain suitable habitat, and thus are not proposed.

Small plant populations or those with limited distributions, such as Big Pine partridge pea, wedge spurge, and sand flax, are vulnerable to relatively minor environmental disturbances (Frankham 2005, pp. 135–136) that could result in the loss of genetic diversity from genetic drift, the random loss of genes, and inbreeding (Ellstrand and Elam 1993, pp. 217–237; Leimu et al. 2006, pp. 942–952). Plant populations with lowered genetic diversity are more prone to local extinction (Barrett and Kohn 1991, pp. 4, 28). Smaller plant populations generally have lower genetic diversity, and lower genetic diversity may in turn lead to even smaller populations by decreasing the species' ability to adapt, thereby increasing the probability of population extinction (Newman and Pilson 1997, p. 360; Palstra and Ruzzante 2008, pp. 3428–3447). Because of the dangers associated with small populations or limited distributions, the recovery of many rare plant species, such as Big Pine partridge pea, wedge spurge, and sand flax, may include the creation of new sites or reintroductions to ameliorate these effects.

In considering our proposal of critical habitat, we identified the following conservation strategy and goals for Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush:

(1) Conserve existing viable populations with sufficient native habitat;

(2) Work with partners to conserve existing populations, and implement efforts that will benefit the species and its habitat; and

(3) Augment existing populations and facilitate establishment/reestablishment of populations into suitable protected habitat.

To facilitate the application of our conservation strategy and goals for these species, we utilized the Shaffer and Stein (2000, entire) methodology for

conserving the resiliency, representation, and redundancy of imperiled species. Resiliency is the ability to sustain populations through the natural range of favorable and unfavorable conditions. Representation ensures adaptive capacity within a species and allows it to respond to environmental changes. This can be facilitated by conserving not just genetic diversity, but also the species' associated habitat type and plant communities. Redundancy ensures an adequate number of sites with resilient populations such that the species has the ability to withstand catastrophic events. Implementation of this methodology has been widely accepted as a reasonable conservation strategy (Tear et al. 2005, p. 841).

Big Pine Partridge Pea

Big Pine partridge pea is endemic to the lower Florida Keys in Monroe County, Florida. Historical records exist for occurrences in pine rocklands on five islands: Big Pine Key, Ramrod Key, Cudjoe Key, No Name Key, and Lower Sugarloaf Key (Hodges and Bradley 2006, pp. 20–21). At the time of listing and currently, native populations of the plant occur only on Big Pine Key and Cudjoe Key since the species has been extirpated from Ramrod Key and Lower Sugarloaf Key (Bradley and Gann 1999, p. 18; Hodges and Bradley 2006, p. 21; Lange et al. 2019). In 2019, a population was successfully introduced in NKDR on No Name Key. Except for Ramrod Key, all these Keys still contain pine rockland habitat. While the Big Pine Key population is relatively large, estimated at 313,914 plants in 2013 (Bradley et al. 2015, p. 21), the Cudjoe Key population was relatively small, consisting of approximately 150 individuals ((Hodges and Bradley 2006, p. 21), and recent surveys did not find the species there (Lange et al. 2019, p. 16). Therefore, if the species is not found at Cudjoe Key during future surveys, reintroductions may be needed at Cudjoe Key.

Given the species occurs only within the lower Florida Keys, it has inherently low redundancy; with only two extant populations at the time of listing, the current redundancy of native populations has been even further reduced from historical levels. In addition, because there currently are three populations (two native and one reintroduced) across the naturally limited historical range of the species, Big Pine partridge pea is vulnerable to stochastic extinction events from natural or other disturbances (such as hurricanes or storm surge) that could affect the entire geographic range of the species. Both natural populations occur on small islands where the amount of suitable remaining habitat is limited (low resiliency), and much of the remaining habitat may be lost to sea level rise over the next century. Therefore, we are proposing critical habitat units that contain the physical or biological features essential to the conservation of the species and that support both extant populations at the time of listing.

Additionally, we acknowledge that areas unoccupied at the time of listing may be essential for the conservation of the Big Pine partridge pea. We are considering whether areas of remaining pine rockland habitat on Little Pine Key, No Name Key, and Sugarloaf Keys meet the definition of critical habitat. The area on Little Pine Key consists of approximately 97 ac (39 ha) of pine rockland habitat in Monroe County and is comprised entirely of lands in Federal ownership, 100 percent of which are located within NKDR. Pine rocklands cover about two-thirds of the interior portion of the island. We note that this area wholly overlaps with designated critical habitat for silver rice rat and Bartram's scrub-hairstreak butterfly. The area on No Name Key includes approximately 123 ac (50 ha) of pine rockland habitat in Monroe County comprised of a combination of Federal lands within NKDR, State lands, County lands, and property in private or other ownership). State lands are interspersed within NKDR lands and managed as part of the Refuge. We note that this area wholly overlaps with designated critical habitat for Bartram's scrub-hairstreak butterfly. Finally, on Sugarloaf Keys, we are considering approximately 73 ac (30 ha) of pine rockland habitat north of U.S. 1, comprised of a combination of Federal lands within NKDR, County lands, and property in private or other ownership. We note that these areas on Sugarloaf Keys wholly overlap with the areas being proposed as critical habitat for the sand flax and the endangered key deer occurs throughout this area. We will determine whether these areas are essential to protect habitat needed to recover the species and establish new populations within the range of the species such that they meet the definition of critical habitat. If we decide some or all of these areas are essential to the conservation of the Big Pine partridge pea, we will include them in our final critical habitat determination (see also Information Requested, above).

Wedge Spurge

Wedge spurge is endemic to the lower Florida Keys in Monroe County, Florida. Its historical range encompassed pine rocklands on Big Pine Key. At the time of listing and currently, the only native population of the plant currently occurs on Big Pine Key, with small groups of plants scattered widely across the island. The Big Pine population is relatively large, estimated at 368,557 individuals in 2014 (Bradley et al. 2015, pp. 24–25); the presence of this population was verified in 2019 (Lange et al. 2019, p. 16). However, since the time the species was listed, a population was successfully introduced in NKDR on No Name Key. While the Big Pine Key population is relatively large, estimated at 368,557 individuals in 2014 (Bradley et al. 2015, pp. 24–25), it is the only extant native population.

Given the species occurs within the lower Florida Keys, it has inherently low redundancy; with only one extant populations at the time of listing, the current redundancy of native population has been reduced from historical levels. Because there currently are only two populations (one native and one introduced) across the naturally limited historical range, wedge spurge is vulnerable to stochastic extinction events from natural or other disturbances (such as hurricanes or storm surge) that could affect the entire geographic range of wedge spurge. The sole natural population occurs on a small island where the amount of suitable habitat is limited (low resiliency) and much of that habitat may be lost to sea level rise over the next century. Therefore, the resiliency of the population and redundancy of the wedge spurge will continue to be limited by the amount of pine rockland habitat remaining in the lower Florida Keys. We are proposing a critical habitat unit that contains the physical or biological features essential to the conservation of the species and supports the single native population on Big Pine Key extant at the time of listing.

Additionally, we acknowledge that areas unoccupied at the time of listing may be essential for the conservation of the wedge spurge. We are considering whether areas of remaining pine rockland habitat on Little Pine Key, No Name Key, Cudjoe Key, and Sugarloaf Keys of the wedge spurge meet the definition of critical habitat. The area on Little Pine Key consists of approximately 97 ac (39 ha) of pine rockland habitat in Monroe County and is comprised entirely of lands in Federal ownership, 100 percent of which are located within NKDR. Pine rocklands cover about two-thirds of the interior portion of the island. We note that this area wholly overlaps with designated critical habitat for silver rice rat and

Bartram's scrub-hairstreak butterfly. The area on No Name Key includes approximately 123 ac (50 ha) of pine rockland habitat in Monroe County comprised of a combination of Federal lands within NKDR, State lands, County lands, and property in private or other ownership. State lands are interspersed within NKDR lands and managed as part of the Refuge. We note that this area wholly overlaps with designated critical habitat for Bartram's scrub-hairstreak butterfly. The area on Cudjoe Key consists of approximately 88 ac (33 ha) of pine rockland habitat in Monroe County and is comprised of a combination of Federal lands within NKDR, State lands, County lands, and property in private or other ownership. State lands are interspersed within NKDR lands and managed as part of the Refuge. We note that this area wholly overlaps with designated critical habitat for silver rice rat. Finally, on Sugarloaf Keys, we are considering approximately 73 ac (30 ha) of pine rockland habitat north of U.S. 1, comprised of a combination of Federal lands within NKDR, County lands, and property in private or other ownership. We note that these areas on Sugarloaf Keys wholly overlap with the areas being proposed as critical habitat for the sand flax and the endangered key deer occurs throughout this area. We will determine whether these areas are essential to protect habitat needed to recover the species and establish new populations within the range of the species such that they meet the definition of critical habitat. If we decide some or all of these areas are essential for the conservation of the wedge spurge, we will include them in our final critical habitat determination (see also Information Requested, above).

Sand Flax

Sand flax has a historical range consisting of central and southern Miami-Dade County and Monroe County in the lower Florida Keys (Bradley and Gann 1999, p. 61). At the time of listing and currently, there were twelve extant populations of sand flax, with eight extant populations in Miami-Dade County and four extant populations in the Florida Keys. In Miami-Dade County, historical records for the species were widespread from the Coconut Grove area to the southern part of the county, close to what is now the main entrance to ENP and Turkey Point (Bradley and Gann 1999, p. 61). In 2013, sand flax populations were found at six sites, containing an estimated total of 107,060 plants (Bradley and van der Heiden 2013, p. 4). In Miami-Dade County, recent observations include confirmation of the species' continued presence at the Richmond Pinelands, Martinez Pineland Preserve, Department of Defense (DoD) Special Operations Command South (SOCSO) and Homestead Air Reserve Base (HARB), and the C–102 and L–31E canal levee populations. Additionally, a new population was established at Rockdale Pineland in 2019 (Possley, pers. comm. 2019). The four largest populations of sand flax include Homestead, Florida (located on the HARB and SOCSO DoD sites), estimated at 96,037 individuals; the C–102 canal levee and L–31E canal levee sites, estimated at 1,000 to 10,000 plants, respectively; and Big Pine Key, estimated at 2,676 individuals. All other sites have fewer than 100 individuals, except Martinez pinelands (100–200 individuals) and Lower Sugarloaf Key (531 individuals). Two populations occupy levees that cannot be restored to pine rockland habitat, rendering sand flax vulnerable to stochastic extinction events from natural or other disturbances (such as hurricanes or storm surge) that could affect the entire geographic range of sand flax.

In the Florida Keys (Monroe County), there are historical records of the species from Big Pine Key, Ramrod Key, Upper and Lower Sugarloaf Keys, Park Key, Boca Chica Key, Middle Torch Key (Bradley and Gann 1999, p. 61), and Big Torch Key (Hodges 2010, p. 10). The current distribution of sand flax includes four islands: Big Pine Key, Upper and Lower Sugarloaf Keys, and Big Torch Key. Additionally, a population was successfully introduced in NKDR on No Name Key since the time of listing.

Resiliency of sand flax will continue to be limited by the reduced amount of pine rockland habitat remaining in Florida. All Miami-Dade populations are on small remnant pine rockland sites and adjacent disturbed areas, while all Monroe County populations occur on small islands. In both cases, the amount of suitable remaining habitat is limited (low resiliency) and much of the remaining habitat may be lost to sea level rise over the next century. Therefore, we are proposing critical habitat units that contain the physical or biological features essential to the conservation of the species and support the seven extant populations at the time of listing.

Additionally, we acknowledge that areas unoccupied at the time of listing may be essential for the conservation of the sand flax. We are considering whether areas of remaining pine rockland habitat on Little Pine Key, No Name Key, Cudjoe Key, and Sugarloaf Keys of the wedge spurge meet the definition of critical habitat. The area on Little Pine Key consists of approximately 97 ac (39 ha) of pine rockland habitat in Monroe County and is comprised entirely of lands in Federal ownership, 100 percent of which are located within NKDR. Pine rocklands cover about two-thirds of the interior portion of the island. We note that this area wholly overlaps with designated critical habitat for silver rice rat and Bartram's scrub-hairstreak butterfly. The area on No Name Key includes approximately 123 ac (50 ha) of pine rockland habitat in Monroe County comprised of a combination of Federal lands within NKDR, State lands, County lands, and property in private or other ownership. State lands are interspersed within NKDR lands and managed as part of the Refuge. We note that this area wholly overlaps with designated critical habitat for Bartram's scrub-hairstreak butterfly. The area on Cudjoe Key consists of approximately 88 ac (33 ha) of pine rockland habitat in Monroe County and is comprised of a combination of Federal lands within NKDR, State lands, County lands, and property in private or other ownership. State lands are interspersed within NKDR lands and managed as part of the Refuge. We note that this area wholly overlaps with designated critical habitat for silver rice rat. The area of Trinity Pinelands consists of approximately 48 ac (19 ha) of pine rockland habitat in Miami-Dade County and is comprised of a combination of State lands, County lands, and property in private or other ownership. We note that this area wholly overlaps with designated critical habitat for Carter's small-flowered flax (*Linum carteri var. carteri*) and Florida brickell-bush. The area of Nixon Smiley consists of approximately 264 ac (107 ha) of pine rockland habitat in Miami-Dade County comprised of a combination of State lands, County lands, and property in private or other ownership. We note that this area wholly overlaps with designated critical habitat for Carter's small-flowered flax and Florida brickell-bush. The area of U.S. Department of Agriculture (USDA) Subtropical Horticulture Research Station consists of approximately 297 ac (120 ha) of pine rockland habitat in Miami-Dade County and is comprised of a combination of Federal lands, State lands, and property in private or other ownership. We note that this area wholly overlaps with designated critical habitat for Carter's small-flowered flax and Florida brickell-bush. The area of Quail's Roost consists of approximately 256 ac (104 ha) of pine rockland habitat in Miami-Dade County and is comprised

of a combination of State lands, County lands, and property in private or other ownership. We note that this area wholly overlaps with designated critical habitat for Carter's small-flowered flax, Florida brickell-bush, and Bartram's scrub hairstreak butterfly. The area of Navy Wells consists of approximately 558 ac (226 ha) of pine rockland habitat in Miami-Dade County and is comprised of a combination of State lands, County lands, and property in private or other ownership. We note that this area wholly overlaps with designated critical habitat for Carter's small-flowered flax, Florida brickell-bush, Bartram's scrub hairstreak butterfly, and Florida leafwing butterfly. We will determine whether these areas are essential to protect habitat needed to recover the species and establish new populations within the range of the species such that they meet the definition of critical habitat. If we decide some or all of these areas are essential for the conservation of the wedge spurge, we will include them in our final critical habitat determination (see also Information Requested, above).

Blodgett's Silverbush

Blodgett's silverbush historically occurred from central and southern Miami-Dade County from Brickell Hammock to Long Pine Key in ENP, and in Monroe County throughout the Florida Keys (Monroe County) from Totten Key south to Key West (Bradley and Gann 1999, p. 2). At the time of listing and currently, the Blodgett's silverbush consists of 20 extant populations in Miami-Dade County and Monroe County in the Florida Keys. Blodgett's silverbush is currently known from central Miami-Dade County from Coral Gables and southern Miami-Dade County to Long Pine Key in ENP, and from nine islands in the Florida Keys, from Windley Key (Bradley and Gann 1999, p. 3) southwest to Boca Chica Key (Hodges and Bradley 2006, pp. 10, 43). At least eight of the 20 extant populations of Blodgett's silverbush consist of fewer than 100 individuals. These small populations are at risk of adverse effects from reduced genetic variation, an increased risk of inbreeding depression, and reduced reproductive output. Many of these populations are small and isolated from each other, decreasing the likelihood that they could be naturally reestablished if extinction from one location occurred.

Resiliency will continue to be limited by the reduced amount of pine rockland, rockland hammock, and coastal habitat remaining in Miami-Dade and Monroe Counties. All Miami-Dade County populations are on small remnant pine rockland, rockland hammock, and coastal berm sites and adjacent disturbed areas, while all Monroe County populations occur on small islands. In both cases, the amount of suitable remaining habitat is limited (low resiliency) and much of the remaining habitat may be lost to sea level rise over the next century. Therefore, we are proposing to designate critical habitat units within the historical range of Blodgett's silverbush and that contain the physical or biological features essential to the conservation of the species, where the species was extant at the time of listing.

The amount and distribution of critical habitat being proposed for designation would allow existing (native) populations of Blodgett's silverbush to:

(1) Maintain their existing distribution;

(2) Expand their distribution into suitable nearby areas (needed to offset habitat loss and fragmentation);

(3) Use habitat depending on habitat availability (response to changing nature of coastal habitat including sea level rise) and support genetic diversity;

(4) Increase the size of each population to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished; and

(5) Maintain their ability to withstand local or unit-level environmental fluctuations or catastrophes.

Sources of Data to Identify Critical Habitat Boundaries

We have determined that all areas known to be occupied at the time of listing should be proposed for critical habitat designation because all occupied sites are necessary to conserve the species. To determine the location and boundaries of occupied critical habitat, the Service used sources of data and information for Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush that include the following:

(1) Species occurrence spatial data and ArcGIS geographic information system software to spatially depict the location and extent of documented populations of the species;

(2) Reports prepared by FNAI, Fairchild Tropical Botanical Garden, Institute for Regional Conservation, National Park Service, and Florida Department of Environmental Protection;

(3) Historical records found in reports and associated voucher specimens housed at herbaria, all of which are referenced in the above-mentioned reports;

(4) Digitally produced habitat maps provided by Miami-Dade and Monroe Counties; and

(5) Aerial images of Miami-Dade and Monroe Counties. The presence of pine rocklands was determined through the use of GIS spatial data depicting the current habitat status. These habitat data for the Florida Keys were developed by Monroe County from 2006 aerial images, and ground conditions for many areas were checked in 2009. Habitat data from Monroe County identifies pine rockland habitat. Habitat data for Miami-Dade County were developed by Miami-Dade Department of Environmental Protection for the Natural Forest Community program and include pine rocklands and rockland hammocks. Pine rockland, rockland hammock, and coastal berm habitat follow predictable landscape patterns and have a recognizable signature in the aerial imagery. Aerial imagery was utilized to identify disturbed areas adjacent to pine rocklands, rockland hammock, and coastal berm.

We delineated critical habitat unit boundaries for these species using the following criteria:

(1) The delineation included space to allow for the successional nature of the habitats (*i.e.,* gain and loss of areas with sufficient light availability due to disturbance of the vegetation, driven by natural events such as inundation and hurricanes, or through natural or prescribed fire) and habitat transition or loss due to sea level rise.

(2) All areas (*i.e.,* physical or biological features) will require special management to be able to support a higher density of plants within the occupied space. These areas generally are habitats where some of the habitat features have been degraded or lost through natural or human causes. These areas would help to offset the anticipated loss and degradation of habitat occurring or expected from the effects of climate change (such as sea level rise) or development.

(3) The areal extent of a plant population is dynamic over time within suitable habitat, while a survey represents a snapshot in time. Unsurveyed areas near mapped populations likely support plants currently or did in the past.

Areas Occupied at the Time of Listing

The proposed occupied critical habitat designation for Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush focuses on areas within the historical range that have retained the necessary habitat characteristics that will allow for the maintenance and expansion of existing

populations, and the establishment or reestablishment of populations through reintroduction (*i.e.,* Cudjoe Key for Big Pine partridge pea). The proposed occupied critical habitat units were delineated based on documented extant populations at the time of listing. These units include the mapped extent of the population and nearby areas that contain one or more of the physical or biological features essential to the conservation of the species.

In summary, for areas within the geographic area occupied by Big Pine partridge pea, wedge spurge, and sand flax at the time of listing, we delineated critical habitat unit boundaries using the following criteria:

(1) Pine rockland habitat that was occupied by the species at the time of listing;

(2) Presence of suitable pine rockland habitat and sufficient essential features; and

(3) Whether the pine rockland habitat is natural versus human-made habitat that was not historically pine rockland.

For Big Pine partridge pea, two occupied units (Big Pine Key and Cudjoe Key) are proposed as critical habitat. We consider pine rockland to be the primary habitat for Big Pine partridge pea. Adjacent disturbed areas currently supporting the species are also considered essential when adjacent pine rocklands do not support an existing population or are of insufficient size or connectivity to support a population of the species. While pine rockland habitat occurs on numerous other Keys, including nearby Sugarloaf Keys and Little Pine Key, none support existing populations of Big Pine partridge pea now nor did they at the time of listing. As mentioned previously, after the time of listing, a population of Big Pine partridge pea was introduced on No Name Key, which has high-quality pine rockland habitat and currently supports the reintroduced population. Plants and seeds were introduced in 2019 by Fairchild Tropical Botanical Garden, in cooperation with NKDR and the Florida Department of Agriculture and Consumer Services. This action aligns with the recovery strategy that the Service will seek to implement for this species. We are considering whether areas on these Keys may be essential for the conservation of the Big Pine partridge pea. If we determine they are, they will be included in our final designation.

For wedge spurge, one unit (one population: Big Pine Key) is proposed as critical habitat. We consider pine rockland to be the primary habitat for wedge spurge. Adjacent disturbed areas currently supporting the species are also considered essential when adjacent pine rocklands do not support an existing population or are of insufficient size or connectivity to support a population of the species. Even though pine rockland habitat is present on numerous other Keys, including nearby Little Pine Key, Cudjoe Key, and Sugarloaf Keys, none support existing populations of the species now, nor did they at the time of listing or historically. As mentioned previously, after the time of listing, a population of wedge spurge was introduced on No Name Key. We are considering whether areas on these Keys may be essential for the conservation of the wedge spur. If we determine they are, they will be included in our final designation.

For sand flax, five units containing seven populations are proposed for critical habitat. We consider pine rockland to be the primary habitat for sand flax. While pine rockland habitat occurs on numerous other keys in Monroe County and other areas in Miami-Dade County, these do not support existing populations of sand flax now, nor did they historically or at the time of listing, and are therefore not proposed as critical habitat. Adjacent disturbed areas currently supporting the species are also considered essential when adjacent pine rocklands do not support an existing population or are of insufficient size or connectivity to support a population of sand flax. Such is the case for the area we are proposing as critical habitat on Sugarloaf Key (see below).

Two well-maintained levees in Miami-Dade County support large populations of sand flax, which were established when fill used to construct the levees included pine rockland substrate and the seeds of pine rockland species, such as sand flax. While these levees support robust populations of sand flax, they are not included in proposed critical habitat because the habitat is human-made, and these populations are not natural populations or purposefully established. In addition, we do not expect these areas to support the needs of the species long-term, as the maintenance of these areas may not be compatible with the species over time. In addition, there are roadside areas on Middle Torch Key, Big Torch Key, and Lower Sugarloaf Keys that support sand flax, but are not associated with an adjacent pine rockland. These populations may also have been established at these sites through the deposition of fill. Because these areas are mowed occasionally, they provide the open conditions required by sand flax (Bradley 2006, p. 37). However, these areas are not included in proposed critical habitat, because the habitat is human-made, do not contain the physical or biological features (*i.e.,* these disturbed areas are not adjacent to native pine rockland and are not characterized by an open canopy and understory with a high proportion of native plant species occurring in pine rockland habitat), and they are not adjacent to pine rockland that would facilitate expansion of the population into natural habitat.

As mentioned previously, there is remaining pine rockland habitat on numerous other Keys, including Little Pine Key and Cudjoe Key, and areas in Miami-Dade County, including Trinity Pinelands, Nixon Smiley, Quail's Roost, Navy Wells, and USDA Horticulture Research Station, but these areas do not currently or at the time of listing support existing populations of sand flax. No Name Key currently supports a reintroduced populations of sand flax in NKDR. We are considering whether these areas may be essential for the conservation of the sand flax. If so, we will include them in our final designation.

For Blodgett's silverbush, for areas within the geographic area occupied at the time of listing, we delineated critical habitat unit boundaries using the following criteria:

(1) Pine rockland, rockland hammock, and coastal berm habitats that were occupied by Blodgett's silverbush at the time of listing;

(2) Presence of suitable pine rockland, rockland hammock, and coastal berm habitats and sufficient essential features; and

(3) Whether the pine rockland, rockland hammock, and coastal berm habitats are natural versus human-made habitat that was not historically pine rockland, rockland hammock, or coastal berm.

For Blodgett's silverbush, 13 occupied units contain 18 populations are proposed as critical habitat for the species. We consider pine rockland to be one of the primary habitats for Blodgett's silverbush. In addition, we consider rockland hammock and coastal berm to be primary habitats for the species. Adjacent disturbed areas currently supporting the species are also considered essential when adjacent pine rocklands, rockland hammocks, or coastal berms do not support an existing population or are of insufficient size or connectivity to support a population of sand flax. While pine rockland habitat, rockland hammock, and coastal berm occurs on numerous other Keys and areas in Miami-Dade County, these do not support existing populations of Blodgett's silverbush now, nor did they

historically or at the time of listing, and therefore, are not proposed as critical habitat. We have not identified any specific areas outside the geographical area occupied by the species at the time it was listed that are essential for the conservation of the species. Accordingly, we are not proposing any unoccupied areas as critical habitat.

In summary, for areas within the geographical area occupied by Big Pine partridge pea, wedge spurge, and sand flax at the time of listing, we delineated critical habitat unit boundaries by evaluating habitat suitability of pine rockland habitat within the historical range of the plant and retained those areas that contain some or all of the physical or biological features essential to the conservation of the species and that may require special management. For areas within the geographical area occupied by Blodgett's silverbush at the time of listing, we delineated critical habitat unit boundaries by evaluating habitat suitability of pine rockland, rockland hammocks, and coastal berm habitats within the historical range of the plant and retained those areas that contain some or all of the physical or biological essential to the conservation of the species and that may require special management.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features essential to the conservation of these species, nor are they essential to the conservation of the species themselves. 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 or biological features in the adjacent critical habitat.

We are proposing for designation as critical habitat those lands that we have determined were occupied at the time of listing and which contain one or more of the physical or biological features that are essential to support life-history processes of the species. For Big Pine partridge pea, two units are proposed for designation based on one or more of the physical or biological features being present to support the specie's life-history processes. Both units contain all of the identified physical or biological features and support multiple life-history processes. For wedge spurge, one unit is proposed for designation based on one or more of the physical or biological features being present to support wedge spurge's life-history processes. The unit contains all of the identified physical or biological features and supports multiple life-history processes. For sand flax, five units are proposed for designation based on one or more of the physical or biological features being present to support sand flax's life-history processes. Some units contain all of the identified physical or biological features and support multiple life-history processes. Some units contain only some of the physical or biological features necessary to support sand flax particular use of that habitat. For Blodgett's silverbush, 13 units are proposed for designation based on one or more of the physical or biological features being present to support Blodgett's silverbush's life-history processes. Some units contain all of the identified physical or biological features and support multiple life-history processes. Some units contain only some of the physical or biological features necessary to support Blodgett's silverbush's particular use of that habitat.

The proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Proposed Regulation Promulgation. We include more detailed information on the boundaries of the proposed critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *https://www.regulations.gov* at Docket No. FWS–R4–ES–2022–0116, on our internet site at *https://www.fws.gov/office/florida-ecological-services/library* and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Proposed Critical Habitat Designation for Big Pine Partridge Pea

We are proposing to designate approximately 1,462 ac (592 ha) in two units as critical habitat for Big Pine partridge pea. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for Big Pine partridge pea. The two areas we propose as critical habitat are:

(1) BPP1—Big Pine Key, Monroe County, Florida, and

(2) BPP2—Cudjoe Key in Monroe County, Florida.

Land ownership within the proposed critical habitat consists of Federal (67 percent), State (16 percent), County (10 percent), and private and other (7 percent). Other lands include areas for which ownership information is unclear or unavailable. Table 1 shows each critical habitat unit by area, land ownership, and occupancy.

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR BIG PINE PARTRIDGE PEA

[Includes total area, area by land ownership, and occupancy. All areas rounded to the nearest whole acre (ac) and hectare (ha)]

Critical habitat unit	Total ac (ha)	Federal ac (ha)	State ac (ha)	County ac (ha)	Private/other ac (ha)
BPP1—Big Pine Key	1,379 (558)	912 (369)	228 (92)	144 (58)	96 (39)
BPP2—Cudjoe Key	83 (33)	66 (27)	3 (1)	1 (0.5)	12 (5)
Total	1,462 (592)	978 (396)	231 (93)	145 (59)	108 (44)
Percent of Total		67%	16%	10%	7%

Note: Area sizes may not sum due to rounding or minor mapping discrepancies. Both units are occupied by the species.

Nearly all the lands (99.7 percent; all except approximately 4 ac (2 ha)) contained within units proposed as critical habitat for Big Pine partridge pea are designated critical habitat for other federally listed species.

We present brief descriptions of each proposed critical habitat unit and the justification for why each meets the definition of critical habitat for Big Pine partridge pea, below.

Unit BPP1: Big Pine Key, Monroe County, Florida

Unit BPP1 consists of 1,379 ac (558 ha) in Monroe County, Florida. This unit includes Federal lands within NKDR (912 ac (369 ha)), State lands (228 ac (92 ha)), County lands (144 ac (58 ha)), and property in private or other ownership (96 ac (39 ha)). State lands are interspersed within NKDR lands and managed as part of the Refuge.

This unit was occupied at the time the species was listed and is currently occupied by one Big Pine Partridge pea population. This unit contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Special management considerations or protection may be required within this unit to address lack of fire; nonnative plant and animal species; and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Big Pine partridge pea.

The unit is part of lands contained within the Lower Florida Keys National Wildlife Refuges (NWRs), which includes NKDR, Key West NWR, and Great White Heron NWR. The Comprehensive Conservation Plan (CCP) for the Lower Florida Keys NWRs promotes the enhancement of wildlife populations by maintaining and enhancing a diversity and abundance of habitats for native plants and animals and provides specifically for maintaining and expanding populations of plant species including Big Pine partridge pea. The Service conducts nonnative species control and prescribed fire in areas that could support Big Pine partridge pea.

Unit BPP1 is also designated critical habitat for the Florida leafwing (*Anaea troglodyta floridalis*) and Bartram's scrub-hairstreak (*Strymon acis bartrami*) butterflies.

Unit BPP2: Cudjoe Key, Monroe County, Florida

Unit BPP2 consists of 83 ac (33 ha) in Monroe County, Florida. This unit includes Federal lands within NKDR (66 ac (27 ha)), State lands (3 ac (1 ha)), County lands (1 ac (0.5 ha)), and property in private or other ownership (12 ac (5 ha)). State lands are interspersed within NKDR lands and managed as part of the Refuge.

This unit was occupied at the time the species was listed, but the population here may have since been extirpated (Possley 2020, pers. comm.). The unit does, however, still contain all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Special management considerations or protection may be required within this unit to address lack of fire; nonnative plant and animal species; and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Big Pine partridge pea.

The unit is part of lands contained within the Lower Florida Keys NWRs, which includes NKDR, Key West NWR, and Great White Heron NWR. The CCP for the Lower Florida Keys NWRs promotes the enhancement of wildlife populations by maintaining and enhancing a diversity and abundance of habitats for native plants and animals and provides specifically for maintaining and expanding populations of plant species including Big Pine partridge pea. The Service conducts nonnative species control in areas that could support Big Pine partridge pea.

The entirety of Unit BPP2 is also designated critical habitat for the silver rice rat (*Oryzomys palustris natator*).

Proposed Critical Habitat Designation for Wedge Spurge

We are proposing to designate approximately 1,379 ac (558 ha) in one unit as critical habitat for wedge spurge. The critical habitat area we describe below constitutes our current best assessment of lands that meet the definition of critical habitat for wedge spurge. The area we propose as critical habitat is: WS1—Big Pine Key, Monroe County, Florida.

Land ownership within the proposed critical habitat consists of Federal (66 percent), State (16 percent), County (10 percent), and private and other (7 percent). Other lands include areas for which ownership information is unclear or unavailable. Table 2 shows these units by land ownership, area, and occupancy.

TABLE 2—PROPOSED CRITICAL HABITAT UNIT FOR WEDGE SPURGE

[Includes area, area by land ownership, and occupancy. All areas rounded to the nearest whole acre (ac) and hectare (ha)]

Critical habitat unit	Total ac (ha)	Federal ac (ha)	State ac (ha)	County ac (ha)	Private/other ac (ha)
WS1—Big Pine Key	1,379 (558)	912 (369)	228 (92)	144 (58)	96 (39)
Total	1,379 (558)	912 (369)	228 (92)	144 (58)	96 (39)
Percent of Total		66%	16%	10%	7%

Note: Area sizes may not sum due to rounding or minor mapping discrepancies. The one unit is occupied by the species.

Nearly all the lands (99.7 percent; all except approximately 4 ac (2 ha)) contained within units proposed as critical habitat for wedge spurge are designated critical habitat for other federally listed species. Additionally, the lands in Unit WS1—Big Pine Key are the same lands proposed for Big Pine partridge pea in BPP1, above.

We present brief descriptions of the proposed critical habitat unit and the justification for why it meets the definition of critical habitat for wedge spurge, below.

Unit WS1: Big Pine Key, Monroe County, Florida

Unit WS1 consists of 1,379 ac (558 ha) in Monroe County. This unit includes Federal lands within NKDR (912 ac (369 ha)), State lands (228 ac (92 ha)), County land (144 ac (58 ha)), and property in private or other ownership (96 ac (39 ha)). State lands are interspersed within NKDR lands and managed as part of the Refuge.

This unit was occupied at the time the species was listed and is currently occupied by one wedge spurge

population. This unit contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Special management considerations or protection may be required within this unit to address lack of fire; nonnative plant and animal species; and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports wedge spurge.

The unit is part of lands contained within the Lower Florida Keys NWRs, which includes NKDR, Key West NWR, and Great White Heron NWR. The CCP for the Lower Florida Keys NWRs promotes the enhancement of wildlife populations by maintaining and enhancing a diversity and abundance of habitats for native plants and animals and provides specifically for maintaining and expanding populations of candidate plant species including wedge spurge. The Service conducts nonnative species control and prescribed fire in areas that support wedge spurge.

Nearly all (99.7 percent; all except 4 ac (2 ha)) of unit WS1 is also designated critical habitat for the Florida leafwing and Bartram's scrub-hairstreak butterflies.

Proposed Critical Habitat Designation for Sand Flax

We are proposing to designate approximately 5,090 ac (2,060 ha) in five units as critical habitat for sand flax. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for sand flax.

The five areas we propose as critical habitat are:

(1) SF1—Big Pine Key, Monroe County, Florida;

(2) SF2—Upper and Lower Sugarloaf Keys, Monroe County, Florida;

(3) SF3—Richmond Pinelands, Miami-Dade County, Florida;

(4) SF4—Camp Owaissa Bauer, Miami-Dade County, Florida; and

(5) SF5—Homestead, Miami-Dade County, Florida.

We have determined that these five areas meet the definition of critical habitat. While Unit 5 meets the definition of critical habitat, a portion of the lands and features contained therein are on lands of SOCSO and covered by their INRMP, and as a result the SOCSO lands within this unit are being exempted from critical habitat (please refer to the Exemptions: *Application of Section 4(a)(3) of the Act* section of this proposed rule).

Land ownership within the proposed critical habitat consists of Federal (49 percent), State (6 percent), County (35 percent), and private and other (10 percent). Table 3 shows these units by land ownership, area, and occupancy.

TABLE 3—PROPOSED CRITICAL HABITAT UNITS FOR SAND FLAX

[Includes area, area by land ownership, and occupancy. All areas rounded to the nearest whole acres (ac) and hectares (ha)]

Critical habitat unit	Total ac (ha)	Federal ac (ha)	State ac (ha)	County ac (ha)	Private/other ac (ha)
SF1—Big Pine Key	1,379 (558)	912 (369)	228 (92)	144 (58)	96 (39)
SF2—Upper and Lower Sugarloaf Keys	116 (47)	63 (25)	38 (15)	10 (4)	6 (2)
SF3—Richmond Pinelands	987 (399)	191 (77)	0 (0)	609 (247)	187 (76)
SF4—Camp Owaissa Bauer	315 (128)	0 (0)	49 (20)	154 (62)	113 (46)
SF5—Homestead	2,292 (928)	1,334 (540)	0 (0)	867 (351)	91 (37)
Total	5,090 (2,060)	2,499 (1,011)	314 (127)	1,783 (722)	493 (199)
Percent of Total		49%	6%	35%	10%

Note: Area sizes may not sum due to rounding or minor mapping discrepancies. All 5 units are occupied by the species.

The Big Pine Key unit (SF1) proposed for sand flax in the Florida Keys comprises the same lands proposed for Big Pine partridge pea (BPP1) and wedge spurge (WS1) above. Of the five units, two are currently designated under the Act as critical habitat for the silver rice rat; five are designated as critical habitat for the Bartram's scrub-hairstreak butterfly; three are designated as critical habitat for the Florida leafwing butterfly; and two are designated as critical habitat for the Florida brickell-bush (*Brickellia mosieri*) and Carter's small-flowered flax (*Linum carteri* ssp. *smallii*).

Approximately half of the lands contained within units proposed as critical habitat for sand flax (52 percent; 2,660 ac (1,076 ha)) are designated critical habitat for other federally listed species.

We present brief descriptions of each proposed critical habitat unit and the justification for why each meets the definition of critical habitat for sand flax, below.

Unit SF1: Big Pine Key, Monroe County, Florida

Unit SF1 consists of 1,379 ac (558 ha) in Monroe County. This unit includes Federal lands within NKDR (912 ac (369 ha)), State lands (228 ac (92 ha)), County land (144 ac (58 ha), and property in private or other ownership (96 ac (39 ha)). State lands are interspersed within NKDR lands and managed as part of the Refuge.

This unit was occupied at the time the species was listed and is currently occupied by one sand flax population. This unit contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Special management considerations or protection may be required within this unit to address lack of fire; nonnative plant and animal species; and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports sand flax.

The unit is part of lands contained within the Lower Florida Keys NWRs, which includes NKDR, Key West NWR, and Great White Heron NWR. The CCP for the Lower Florida Keys NWRs promotes the enhancement of wildlife populations by maintaining and enhancing a diversity and abundance of habitats for native plants and animals and provides specifically for maintaining and expanding populations of candidate plant species including sand flax. The Service conducts nonnative species control and

prescribed fire in areas that support sand flax.

The entirety of unit SF1 is also designated critical habitat for the Florida leafwing and Bartram's scrub-hairstreak butterflies.

Unit SF2: Sugarloaf Keys, Monroe County, Florida

Unit SF2 consists of 116 ac (47 ha) in Monroe County. This unit includes Federal lands within NKDR (63 ac (25 ha)), State lands (38 ac (15 ha)), County lands (10 ac (4 ha)), and property in private or other ownership (6 ac (2 ha)).

This unit was occupied at the time the species was listed and is currently occupied by one sand flax population. This unit contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Special management considerations or protection may be required within this unit to address threats of lack of fire; nonnative plant and animal species; and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports sand flax. The unit is part of lands contained within the Lower Florida Keys NWRs, which includes NKDR, Key West NWR, and Great White Heron NWR. The CCP for the Lower Florida Keys NWRs promotes the enhancement of wildlife populations by maintaining and enhancing a diversity and abundance of habitats for native plants and animals and provides specifically for maintaining and expanding populations of candidate plant species including sand flax. The Service conducts nonnative species control in areas that could support sand flax.

Unit SF2 is not designated critical habitat for any other species.

Unit SF3: Richmond Pinelands and Surrounding Areas, Miami-Dade County, Florida

Unit SF3 consists of approximately 987 ac (399 ha) in Miami-Dade County. The unit comprises Federal lands owned by the U.S. Coast Guard (USCG), U.S. Army Corps of Engineers (USACE), Federal Bureau of Prisons (FBP), and National Oceanic and Atmospheric Administration (NOAA) (191 ac (77 ha)); County lands within and adjacent to Larry and Penny Thompson Park, Martinez Preserve, Zoo Miami, and Eachus Pineland (609 ac (247 ha)); and parcels in private or other ownership (187 ac (76 ha)), including the onsite preserve and offsite mitigation areas associated with the Coral Reef Commons HCP (110 ac (44.5) ha)).

This unit was occupied at the time the species was listed and is currently occupied by two sand flax populations. This unit contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Special management considerations or protection may be required within this unit to address lack of fire; nonnative plant and animal species; and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports sand flax.

Sand flax is a covered species under the Coral Reef Commons HCP. Because sand flax is a covered species under this HCP and the preserves included within this proposed critical habitat unit are being managed for the conservation of the species and pine rockland habitat, the onsite preserve and the offsite mitigation area are being considered for exclusion from critical habitat under section 4(b)(2) of the Act (please refer to Consideration of Impacts Under Section 4(b)(2) of the Act section of this proposed rule).

The entirety of unit SF3 is also designated critical habitat for Carter's small-flowered flax and Florida brickell-bush; significant portions are designated for Bartram's scrub-hairstreak butterfly and Florida leafwing butterfly.

Unit SF4: Camp Owaissa Bauer and Surrounding Areas, Miami-Dade County, Florida

Unit SF4 consists of approximately 315 ac (128 ha) of habitat in Miami-Dade County. The unit comprises State lands within Owaissa Bauer Pineland Addition, Ingram Pineland, West Biscayne Pineland, and Fuchs Hammock Addition (49 ac (20 ha)); County lands including Camp Owaissa Bauer, Pine Island Lake Park, Seminole Wayside Park, and Northrop Pineland (154 ac (62 ha)); and parcels in private and other ownership (113 ac (46 ha)), including the private conservation area, Pine Ridge Sanctuary.

This unit was occupied at the time the species was listed and is currently occupied by one sand flax population. This unit contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Special management considerations or protection may be required within this unit to address lack of fire; nonnative plant and animal species; and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports sand flax.

The entirety of unit SF4 is also designated critical habitat for Carter's small-flowered flax and Florida brickell-bush; and large portions of unit SF4 are designated critical habitat for Bartram's scrub-hairstreak butterfly and Florida leafwing butterfly.

Unit SF5: Homestead and Surrounding Areas, Miami-Dade County, Florida

Unit SF5 consists of approximately 2,292 ac (928 ha) in Miami-Dade County. The unit comprises Federal lands owned by DoD (1,334 ac (540 ha)), lands owned by Miami-Dade County (867 ac (351 ha)), and parcels in private or other ownership (91 ac (37 ha)).

A portion (approximately 25 ac (10 ha)) of the lands and features contained within this unit are on lands of SOCSO and covered by their updated and signed INRMP, and as a result, the SOCSO lands within this unit are being exempted from critical habitat (please refer to the Exemptions: *Application of Section 4(a)(3) of the Act* section of this proposed rule). The HARB is working with the Service to incorporate additional conservation measures for sand flax in revisions to their INRMP, but the revised INRMP is currently being drafted and has not yet been approved and signed. Therefore, lands that are part of HARB that have been determined to be essential to the conservation of sand flax are not being exempted and are included in this proposal. If the revised INRMP is approved and signed before we finalize this designation, we would exempt this area in the final designation.

This unit was occupied at the time the species was listed and is currently occupied by two sand flax populations. This unit contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Special management considerations or protection may be required within this unit to address lack of fire; nonnative plant and animal species; and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports sand flax.

Unit SF5 does not contain previously designated critical habitat, but the

endangered Small's milkpea (*Galactia smallii*) occurs throughout the unit.

Proposed Critical Habitat Designation for Blodgett's Silverbush

We are proposing to designate approximately 16,667 ac (6,745 ha) in 13 units as critical habitat for Blodgett's silverbush. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for Blodgett's silverbush. The 13 areas we propose as critical habitat are:

(1) BS1—Key Largo, Monroe County, Florida;

(2) BS2—Plantation Key, Monroe County, Florida;

(3) BS3—Windley Key, Monroe County, Florida;

(4) BS4—Lignumvitae Key, Monroe County, Florida;

(5) BS5—Lower Matecumbe Key, Monroe County, Florida;

(6) BS6—Marathon, Monroe County, Florida;

(7) BS7—Big Pine Key, Monroe County, Florida;

(8) BS8—Big Munson Island, Monroe County, Florida;

(9) BS9—U.S. Department of Agriculture (USDA) Subtropical Horticulture Research Station, Miami-Dade County, Florida;

(10) BS10—Richmond Pineland, Miami-Dade County, Florida;

(11) BS11—Quail Roost Pineland, Miami-Dade County, Florida;

(12) BS12—Camp Owaissa Bauer, Miami-Dade County, Florida; and

(13) BS13—Everglades National Park, Miami-Dade County, Florida.

We have determined that these 13 areas meet the definition of critical habitat. While the habitat within Key West Naval Air Station (KWNAS) meets the definition of critical habitat, the lands and features contained therein are covered under the KWNAS INRMP that provides benefits to Blodgett's silverbush and its habitat and therefore will be exempted from critical habitat (see Exemptions: *Application of Section 4(a) (3) of the Act,* below).

Land ownership within the proposed critical habitat consists of Federal (64 percent), State 17 (19 percent), County (7 percent), and private and other (9 percent). Table 4 shows these units by land ownership, area, and occupancy.

TABLE 4—PROPOSED CRITICAL HABITAT UNITS FOR BLODGETT'S SILVERBUSH

[Including area, area by land ownership, and occupancy. All areas rounded to the nearest whole acre (ac) and hectare (ha)]

Critical habitat unit	Total ac (ha)	Federal ac (ha)	State ac (ha)	County ac (ha)	Private/other ac (ha)
BS1—Key Largo	3,060 (1,238)	595 (241)	2,024 (819)	214 (86)	227 (92)
BS2—Plantation Key	175 (71)	0 (0)	26 (10)	33 (13)	116 (47)
BS3—Windley Key	30 (12)	0 (0)	28 (11)	1 (1)	0 (0)
BS4—Lignumvitae Key	159 (64)	0 (0)	157 (64)	2 (1)	0 (0)
BS5—Lower Matecumbe Key	64 (26)	0 (0)	27 (11)	6 (3)	31 (13)
BS6—Marathon	103 (42)	0 (0)	66 (27)	0 (0)	38 (15)
BS7—Big Pine Key	1,867 (756)	1,259 (509)	328 (133)	160 (65)	122 (49)
BS8—Big Munson Island	28 (11)	0 (0)	0 (0)	0 (0)	28 (11)
BS9—USDA Subtropical Horticulture Research Station	630 (255)	155 (63)	253 (103)	182 (74)	40 (16)
BS10—Richmond Pinelands	987 (399)	191 (77)	0 (0)	609 (247)	187 (76)
BS11—Quail Roost Pineland	412 (167)	0 (0)	174 (70)	100 (40)	139 (56)
BS12—Camp Owaissa Bauer	392 (159)	0 (0)	69 (28)	184 (74)	139 (56)
BS13—Everglades National Park	8,728 (3,532)	8,595 (3,478)	0 (0)	0 (0)	133 (54)
Total	16,635 (6,732)	10,794 (4,368)	3,151 (1,275)	1,490 (603)	1,199 (485)
Percent of Total		64%	19%	7%	9%

Note: Area sizes may not sum due to rounding or minor mapping discrepancies. All 13 units are occupied by the species.

Many of the lands contained within units proposed as critical habitat for Blodgett's silverbush (15,247 ha (6,170 ha), or 91.5 percent) are designated critical habitat for other federally listed species.

We present brief descriptions of each proposed critical habitat unit and the justification for why each meets the definition of critical habitat for Blodgett's silverbush, below.

Unit BS1: Key Largo, Monroe County, Florida

Unit BS1 consists of 3,060 ac (1,238 ha) in Monroe County. This unit includes Federal lands within Crocodile Lake NWR (595 ac (241 ha)), State lands within Dagny Johnson Botanical State Park, John Pennekamp Coral Reef State Park, and the Florida Keys Wildlife and Environmental Area (FKWEA) (2,024 ac (819 ha)), County lands (214 ac (86 ha)), and property in private or other ownership (227 ac (92 ha)).

This unit was occupied at the time the species was listed and is currently occupied by two Blodgett's silverbush populations. This unit contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Special management considerations or protection may be required within this unit to address lack of fire; nonnative plant and animal species; and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Blodgett's silverbush.

Part of the unit is within the Crocodile Lake NWR. The CCP for Crocodile Lake NWR promotes the enhancement of wildlife populations by maintaining and enhancing a diversity and abundance of habitats for native plants and animals and provides specifically for maintaining and expanding populations of plant species including Blodgett's silverbush. The Service conducts nonnative species control in areas that could support the species.

The entirety of unit BS1 is included in designated critical habitat for the American crocodile *(Crocodylus acutus),* Cape Sable thoroughwort (*Chromolaena frustrata*), and Florida semaphore cactus (*Consolea corallicola*).

Unit BS2: Plantation Key, Monroe County, Florida

Unit BS2 consists of 175 ac (71 ha) in Monroe County. This unit includes State lands within the FKWEA (26 ac (10 ha)), County lands (33 ac (13 ha)), and property in private or other ownership (116 ac (47 ha)).

This unit was occupied at the time the species was listed and is currently occupied by one Blodgett's silverbush population. This unit contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Special management considerations or protection may be required within this unit to address lack of fire; nonnative plant and animal species; and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Blodgett's silverbush.

The entirety of Unit BS2 is designated critical habitat for the American crocodile.

Unit BS3: Windley Key, Monroe County, Florida

Unit BS3 consists of 30 ac (12 ha) in Monroe County. This unit includes State lands within Windley Key Fossil Reef Geologic State Park (28 ac (11 ha)) and County property (1 ac (0.5 ha)). The unit is located on Windley Key on the north side of the Overseas Highway.

This unit was occupied at the time the species was listed and is currently occupied by one Blodgett's silverbush population. This unit contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Special management considerations or protection may be required within this unit to address lack of fire; nonnative plant and animal species; and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Blodgett's silverbush.

The entirety of Unit BS3 includes designated critical habitat for the American crocodile.

Unit BS4: Lignumvitae Key, Monroe County, Florida

Unit BS4 consists of 159 ac (64 ha) in Monroe County. This unit comprises State lands in Lignumvitae Key Botanical State Park (157 ac (64 ha)) and County property (1 ac (0.5 ha)). This unit includes the entire upland area of Lignumvitae Key.

This unit was occupied at the time the species was listed and is currently occupied by one Blodgett's silverbush population. This unit contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Special management considerations or protection may be required within this unit to address lack of fire; nonnative plant and animal species; and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Blodgett's silverbush.

The management activities implemented by Florida State Parks promote the enhancement of wildlife populations by maintaining and enhancing a diversity and abundance of habitats for native plants and animals. Florida State Parks conducts nonnative species control in areas that could support Blodgett's silverbush.

The entirety of unit BS4 is included in designated critical habitat for the American crocodile and Cape Sable thoroughwort.

Unit BS5: Lower Matecumbe Key, Monroe County, Florida

Unit BS5 consists of 64 ac (26 ha) in Monroe County. This unit includes State lands that are part of Lignumvitae Key Botanical State Park (27 ac (11 ha)), County property (6 ac (3 ha)), and property in private or other ownership (31 ac (13 ha)).

This unit was occupied at the time the species was listed and is currently occupied by one Blodgett's silverbush population. This unit contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Special management considerations or protection may be required within this unit to address lack of fire; nonnative plant and animal species; and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Blodgett's silverbush.

The management activities implemented by Florida State Parks in part of this unit promote the enhancement of wildlife populations by maintaining and enhancing a diversity and abundance of habitats for native plants and animals. Florida State Parks conducts nonnative species control in areas that support Blodgett's silverbush.

The entirety of unit BS5 is included in designated critical habitat for the American crocodile and Cape Sable thoroughwort.

Unit BS6: Marathon, Monroe County, Florida

Unit BS6 consists of 103 ac (42 ha) in Monroe County. This unit includes State lands within FKWEA (66 ac (27 ha)) and property in private or other ownership, including land owned by The Florida Keys Land and Sea Trust (38 ac (15 ha)).

This unit was occupied at the time the species was listed and is currently occupied by one Blodgett's silverbush population. This unit contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Special management considerations or protection may be required within this unit to address lack of fire; nonnative plant and animal species; and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Blodgett's silverbush.

Unit BS6 does not include any designated critical habitat for other species.

Unit BS7: Big Pine Key, Monroe County, Florida

Unit BS7 consists of 1,867 ac (756 ha) in Monroe County. This unit includes Federal lands within NKDR (1,259 ac (509 ha)), State lands (328 ac (133 ha)), County lands (160 ac (65 ha)), and property in private or other ownership (122 ac (49 ha)).

This unit was occupied at the time the species was listed and is currently occupied by two Blodgett's silverbush populations. This unit contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Special management considerations or protection may be required within this unit to address lack of fire; nonnative plant and animal species; and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that

help improve habitat that supports Blodgett's silverbush.

The unit is part of lands contained within the Lower Florida Keys NWRs, which includes NKDR, Key West NWR, and Great White Heron NWR. The CCP for the Lower Florida Keys NWRs promotes the enhancement of wildlife populations by maintaining and enhancing a diversity and abundance of habitats for native plants and animals and provides specifically for maintaining and expanding populations of plant species including Blodgett's silverbush. The Service conducts nonnative species and prescribed fire control in areas that support Blodgett's silverbush.

The entirety of unit BS7 is designated critical habitat for the Florida leafwing and Bartram's scrub-hairstreak butterflies; Cape Sable thoroughwort; and Florida semaphore cactus. The endangered Key Deer occurs through the unit, but no critical habitat is designated for that species.

Unit BS8: Big Munson Island, Monroe County, Florida

Unit BS8 consists of 28 ac (11 ha) in Monroe County. This unit is composed entirely of lands owned by the Boy Scouts of America. The unit includes all of the coastal berm and rockland hammock habitat on the island.

This unit was occupied at the time the species was listed and is currently occupied by one Blodgett's silverbush population. This unit contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Special management considerations or protection may be required within this unit to address lack of fire; nonnative plant and animal species; and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Blodgett's silverbush.

The entirety of unit BS8 is designated critical habitat for the Cape Sable thoroughwort. The endangered Key deer occurs through the unit, but no critical habitat is designated for that species.

Unit BS9: USDA Subtropical Horticulture Research Station and Surrounding Areas, Miami-Dade County, Florida

Unit BS9 consists of approximately 630 ac (255 ha) of habitat in Miami-Dade County. The unit comprises Federal lands within the USDA Subtropical Horticulture Research Station (155 ac (63 ha)); State lands within the R. Hardy Matheson Preserve, Ludlam Pineland, Deering Estate at Cutler, and Deering Estate South Addition (253 ac (103 ha)); County lands within Bill Sadowski Park and Matheson Hammock (182 ac (74 ha)), and parcels in private ownership (40 ac (16 ha)).

This unit was occupied at the time the species was listed and is currently occupied by two Blodgett's silverbush populations. This unit contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Special management considerations or protection may be required within this unit to address lack of fire; nonnative plant and animal species; and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Blodgett's silverbush.

The entirety of unit BS9 includes designated critical habitat for the Carter's small-flowered flax and Florida brickell-bush.

Unit BS10: Richmond Pinelands and Surrounding Areas, Miami-Dade County, Florida

Unit BS10 consists of approximately 987 ac (399 ha) in Miami-Dade County. The unit comprises Federal lands owned by the USCG, USACE, FBP, and NOAA (191 ac (77 ha)); County lands within and adjacent to Larry and Penny Thompson Park, Martinez Preserve, Zoo Miami, and Eachus Pineland (609 ac (247 ha)); and parcels in private or other ownership (187 ac (76 ha)), including the onsite preserve and offsite mitigation areas associated with the Coral Reef Commons HCP (110 ac (44.5) ha).

This unit was occupied at the time the species was listed and is currently occupied by one Blodgett's silverbush population. This unit contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Special management considerations or protection may be required within this unit to address lack of fire; nonnative plant and animal species; and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Blodgett's silverbush.

Blodgett's silverbush is a covered species under the Coral Reef Commons HCP. Because Blodgett's silverbush is a covered species under this HCP and the preserves included within this proposed critical habitat unit are being managed for the conservation of the species and pine rockland habitat, the onsite preserve and the offsite mitigation area are being considered for exclusion from critical habitat under section 4(b)(2) of the Act (please refer to Consideration of Impacts Under Section 4(b)(2) of the Act section of this proposed rule).

The entirety of unit BS10 is designated critical habitat for Carter's small-flowered flax, Florida brickell-bush, Bartram's scrub hairstreak butterfly, and Florida leafwing butterfly.

Unit BS11: Quail Roost Pineland and Surrounding Areas, Miami-Dade County, Florida

Unit BS11 consists of approximately 412 ac (167 ha) in Miami-Dade County. The unit comprises State lands within Quail Roost Pineland, Goulds Pineland and Addition, Silver Palm Groves Pineland, Castellow Hammock, Ross Hammock, Hardin Hammock, and Silver Palm Hammock (174 ac (70 ha)); County/local lands including Medsouth Park, Black Creek Forest, and Rock Pit #46 (100 ac (40 ha)); and parcels in private ownership (139 ac (56 ha)), including Porter-Russell Pineland owned by the Tropical Audubon Society.

This unit was occupied at the time the species was listed and is currently occupied by one possibly extirpated Blodgett's silverbush population and one population with uncertain status. This unit contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Special management considerations or protection may be required within this unit to address lack of fire; nonnative plant and animal species; and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Blodgett's silverbush.

The entirety of unit BS11 is designated critical habitat for the Carter's small-flowered flax, Florida brickell-bush, and Bartram's scrub hairstreak butterfly.

Unit BS12: Camp Owaissa Bauer and Surrounding Areas, Miami-Dade County, Florida

Unit BS12 consists of approximately 392 ac (159 ha) of habitat in Miami-

Dade County. The unit comprises State lands within Owaissa Bauer Pineland Addition, West Biscayne Pineland, Ingram Pineland, Fuchs Hammock Addition, and Meissner Hammock (69 ac (28 ha)); County lands, including Camp Owaissa Bauer, Pine Island Lake Park, Seminole Wayside Park, Northrop Pineland, Hattie Bauer Hammock, and Fuchs Hammock (184 ac (74 ha)); and parcels in private ownership (139 ac (56 ha)), including the private conservation area, Pine Ridge Sanctuary.

This unit was occupied at the time the species was listed and is currently occupied by three Blodgett's silverbush populations. This unit contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Special management considerations or protection may be required within this unit to address lack of fire; nonnative plant and animal species; and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Blodgett's silverbush.

The entirety of Unit BS12 is designated critical habitat for Carter's small-flowered flax, Florida brickell-bush, and Bartram's scrub hairstreak butterfly.

Unit BS13: Everglades National Park—Pine Island and Surrounding Areas, Miami-Dade County, Florida

Unit BS13 consists of approximately 8,728 ac (3,532 ha) in Miami-Dade County. The unit comprises Federal lands in ENP (8,595 ac (3,478 ha)) and parcels in private or other ownership (133 ac (54 ha)). The unit includes pine rocklands and numerous rockland hammocks in the vicinity of Long Pine Key in ENP.

This unit was occupied at the time the species was listed and is currently occupied by one Blodgett's silverbush population. This unit contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Special management considerations or protection may be required within this unit to address lack of fire; nonnative plant and animal species; and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Blodgett's silverbush.

The entirety of unit BS13 is designated critical habitat for Bartram's scrub hairstreak butterfly and Florida leafwing butterfly.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final rule revising the definition of destruction or adverse modification on February 11, 2016 (81 FR 7214) (although we also published a revised definition after that (on August 27, 2019. Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, if subsequent to the previous consultation: (a) if the amount or extent of taking specified in the incidental take statement is exceeded; (b) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (c) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (d) if a new species is listed or critical habitat designated that may be affected by the identified action. In such situations, Federal agencies sometimes may need to

request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the ''Destruction or Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that we may, during a consultation under section 7(a)(2) of the Act, find are likely to destroy or adversely modify critical habitat for Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush include, but are not limited to:

(1) Actions that would significantly alter the hydrology or substrate, such as ditching or filling. Such activities may include, but are not limited to, road construction or maintenance, and residential, commercial, or recreational development.

(2) Actions that would significantly alter vegetation structure or composition, such as clearing vegetation for construction of roads, residential and commercial development, recreational facilities, and trails.

(3) Actions that would introduce nonnative species that would significantly alter vegetation structure or composition. Such activities may include, but are not limited to, residential and commercial development and road construction.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the DoD, or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act Improvement Act of 1997 (16 U.S.C. 670a) (Sikes Act), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

The Sikes Act required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an INRMP by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act, if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the proposed critical habitat designation for Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush to determine if they meet the criteria for exemption from critical habitat under section 4(a)(3) of the Act. The following areas are DoD lands with completed, Service-approved INRMPs within the proposed critical habitat designation for Blodgett's silverbush: KWNAS and SOCSO.

Approved INRMPs

Key West Naval Air Station (KWNAS). We have determined that approximately 133 ac (54 ha) of coastal berm and pine rocklands habitat on Boca Chica Key contain the physical or biological features that are essential to the conservation of Blodgett's silverbush. These specific lands are owned and managed by DoD as part of the KWNAS. In July 2020, KWNAS, in coordination with the Service, updated their INRMP to included management and protective measures that provide a conservation benefit to Blodgett's silverbush and its habitat. The Service has approved these management and protective measures, and the INRMP has been signed. As a result, the DoD lands on KWNAS that we have determined contain the physical or biological features that are essential to the conservation of Blodgett's silverbush are being exempted from inclusion in critical habitat under section 4(a)(3)(B)(i) of the Act. Therefore, these specific lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 133 ac (54 ha) of habitat in this proposed critical habitat designation for Blodgett's silverbush because of this exemption.

Special Operations Command South (SOCSO). We have determined that approximately 25 ac (10 ha) pine rocklands habitat located within SOCSO contain physical or biological features that are essential to the conservation of Blodgett's silverbush. These specific lands are owned and managed by DoD. In July 2020, SOCSO in coordination with the Service, updated their INRMP to included management and protective measures that provide a conservation benefit to Blodgett's silverbush and its habitat. The Service has approved these management and protective measures, and the INRMP has been signed. As a result, the DoD lands on SOCSO that we have determined contain the physical or biological features that are essential to the conservation of Blodgett's silverbush are being exempted from inclusion in critical habitat under section 4(a)(3)(B)(i) of the Act. Therefore, these specific lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 25 ac (10 ha) of habitat in this proposed critical habitat

designation for Blodgett's silverbush because of this exemption.

Homestead Air Reserve Base (HARB). We have determined that approximately 1,309 ac (530 ha) of pine rocklands and adjacent disturbed areas of habitat on HARB contain physical or biological features that are essential to the conservation of sand flax. These specific lands are owned and managed by DoD as part of the HARB. In July 2020, HARB, in coordination with the Service, began discussions about revising their INRMP to include management and protective measures that provide a conservation benefit to sand flax and its habitat. The Service will review these management and protective measures. If the revised INRMP is approved and signed before we finalize this designation, we would exempt this area in the final designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act, 81 FR 7226 (Feb. 11, 2016) (2016 Policy)—both of which were developed jointly with the National Marine Fisheries Service (NMFS). We also refer to a 2008 Department of the Interior Solicitor's opinion entitled ''The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act'' (M–37016). We explain each decision to exclude areas, as well as decisions not to exclude, to demonstrate that the decision is reasonable.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.''

The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary section 4(b)(2) exclusion analysis.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. Section 3(f) of E.O. 12866 identifies four criteria when a regulation is considered a ''significant'' rulemaking, and requires additional analysis, review, and approval if met. The criterion relevant here is whether the designation of critical habitat may have an economic effect of greater than $100 million in any given year (section 3(f)(1)). Therefore, our consideration of economic impacts uses a screening analysis to assess whether a designation of critical habitat for these species is likely to exceed the economically significant threshold.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush (IEc 2021, entire). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographic areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation.

The presence of the listed species in occupied areas of critical habitat means

that any destruction or adverse modification of those areas will also likely jeopardize the continued existence of the species. Therefore, designating occupied areas as critical habitat typically causes few if any incremental impacts above and beyond the impacts of listing the species. Accordingly, the screening analysis focuses on areas of unoccupied critical habitat. The screening analysis also assesses whether units are unoccupied by the species and thus may require additional management or conservation efforts as a result of the critical habitat designation for the species; these additional efforts may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM are what we consider our draft economic analysis (DEA) of the proposed critical habitat designation for Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush; our DEA is summarized in the narrative below.

As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas that may be affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush, first we identified, in the IEM dated September 15, 2021, probable incremental economic impacts associated with the following categories of activities:

(1) Land management and restoration (including, but not limited to, nonnative species control, prescribed fire, and hydrologic restoration);

(2) Roadway and bridge construction and maintenance;

(3) Right-of-way maintenance;

(4) Commercial or residential development; and

(5) Recreation (including construction and maintenance of recreation infrastructure).

We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designations generally will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush are present, Federal agencies already are required to consult with the Service under section 7 of the Act on activities they authorize, fund, or carry out that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process. In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush critical habitat. Because the designation of critical habitat for these species is being proposed several years following the listing of these species, data, such as from consultation history, is available to help us discern which conservation efforts are attributable to these species being listed and those which will result solely from the designation of critical habitat. The following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species and (2) any actions that would likely adversely affect the essential physical or biological features of occupied critical habitat are also likely to adversely affect these species. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for these species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

Approximately 1,462 ac (592 ha) in two units in Monroe County, Florida, are being proposed for designation as critical habitat for the Big Pine partridge pea. Both units are occupied by the Big Pine partridge pea. Approximately 1,379 ac (558 ha) in one unit in Monroe County, Florida, is being proposed for designation as critical habitat for the wedge spurge; the unit is occupied by the species. Approximately 5,090 ac (2,060 ha) in five units in Monroe and Miami-Dade Counties, Florida, are being proposed for designation as critical habitat for sand flax. All five units are occupied by sand flax. Approximately 16,635 ac (6,732 ha) in 13 units in Miami-Dade and Monroe Counties, Florida, are being proposed for designation as critical habitat for the Blodgett's silverbush. All 13 units are occupied by the Blodgett's silverbush. Land ownership across the units for all four plants includes Federal lands (64 percent), State of Florida lands (17 percent), county lands (12 percent), and private lands (7 percent). Approximately 83 percent of the total proposed designated critical habitat area for all four plants overlaps with existing designated critical habitat for other species.

Because all of the area proposed for designation is occupied, most actions that may affect these species would also affect designated critical habitat, and it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of these four plants. Therefore, only administrative costs are expected in the proposed critical habitat designation. While the analysis for adverse modification of critical habitat will require time and resources by both the Federal action agency and the Service, it is believed that, in most circumstances, these costs would predominantly be administrative in nature and would not be significant.

The economic costs of critical habitat designation for these species will most likely be limited to additional administrative efforts to consider adverse modification in section 7 consultations. This finding is based on the following factors: (1) All of the proposed critical habitat units for the four plants are considered occupied by the species; (2) A number of additional baseline protections exist for the species due to the presence of other listed species and designated critical habitats, with approximately 83 percent of the proposed critical habitat overlapping with designated critical habitat for other pine rockland habitat species; and (3) A number of management plans and conservation plans also provide baseline protections to the species in proposed critical habitat areas. Additionally, if we finalize critical habitat to include areas that are unoccupied by the Big Pine partridge pea, wedge spurge, and sand flax, those areas under consideration wholly overlap with other federally listed species or designated critical habitat for other listed species. Accordingly, the costs associated with designation of unoccupied areas would also likely be limited to additional administrative efforts to consider adverse modification in section 7 consultations.

In total, approximately 2 formal consultations, 39 informal consultations, and 2 technical assistance efforts that will include these species are anticipated to occur during the next 10 years in proposed critical habitat

areas, with costs to the Service and action agencies of approximately $11,500 annually. Although the specific geographic distribution of these costs is uncertain, it appears likely that most costs would occur in the ENP unit, which comprises 46 percent of proposed critical habitat for these four plants. Any costs that would be associated with unoccupied critical habitat would not significantly increase this amount.

Potential private property value effects are possible due to public perception of impacts to private lands. The designation of critical habitat may cause some developers or landowners to perceive those private lands will be subject to use restrictions or litigation from third parties, resulting in costs. However, any costs associated with public perception are speculative and not possible to quantify. Further, only seven percent of the proposed critical habitat designation is privately owned land, leading to, at most, nominal incremental costs potentially arising from changes in public perception of lands included in the designation.

The total annual incremental costs of critical habitat designation for these four plants are anticipated to be approximately $11,500 per year, and economic benefits are also anticipated to be small. Therefore, critical habitat designation for these four plants is unlikely to generate costs or benefits exceeding $100 million in a single year, and this proposed rule is unlikely to meet the threshold for an economically significant rule, with regard to costs under E.O. 12866.

We are soliciting data and comments from the public on the DEA discussed above, as well as on all aspects of this proposed rule and our required determinations. During the development of a final designation, we will consider the information presented in the DEA and any additional information on economic impacts we receive during the public comment period to determine whether any specific areas should be considered for exclusion from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Exclusions

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared an analysis of the probable economic impacts of the proposed critical habitat designation and related factors. At this time, we are not considering any exclusions based on economic impacts.

During the development of a final designation, we will consider any additional economic impact information received through the public comment period, and as such areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Consideration of National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (*e.g.,* a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), then national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of ''critical habitat.'' However, the Service must still consider impacts on national security, including homeland security, on those lands or areas not covered by section 4(a)(3)(B)(i) because section 4(b)(2) requires the Service to consider those impacts whenever it designates critical habitat. Accordingly, if DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, it must provide a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If we conduct an exclusion analysis because the agency provides a reasonably specific justification or because we decide to exercise the discretion to conduct an exclusion analysis, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

We have evaluated whether any of the lands within the proposed designation of critical habitat are owned by DoD or DHS or could lead to national-security or homeland-security impacts if designated. In this section, we describe the areas within the proposed designation that are owned by DoD or DHS or for which designation could lead to national-security or homeland-security impacts. For each area, we describe the available information indicating whether we have reason to consider excluding the area from the designation. If, during the comment period, we identify or receive information about additional areas for which designation may result in incremental national-security or homeland-security impacts, then we may consider conducting a discretionary exclusion analysis to determine whether to exclude those additional areas under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19.

DHS Land Parcel

We have determined that some lands within the Richmond Pinelands and surrounding areas units (Units SF3 and BS10) of the proposed designation of critical habitat for sand flax and Blodgett's silverbush are owned, managed, or used by the USCG, which is part of the DHS.

The USCG property is separated into two main areas: the Communication Station (COMMSTA) Miami and the Civil Engineering Unit (CEU). The COMMSTA houses transmitting and receiving antennas. The CEU plans and executes projects at regional shore

facilities, such as construction and post-disaster assessments.

The USCG parcel contains approximately 100 ac (40 ha) of standing pine rocklands. The remainder of the site, outside of the developed areas, is made up of scraped pine rocklands that are mowed three to four times per year for maintenance of a communications antenna field. While disturbed, this scraped area maintains sand substrate and many native pine rockland species, including documented occurrences of sand flax and Blodgett's silverbush. As of the drafting of this document, the USCG parcel has a draft management plan that includes management of pine rockland habitats, including vegetation control and prescribed fire and protection of lands from further development or degradation. This management plan is anticipated to be finalized in late 2022. In addition, the standing pine rockland area is partially managed through an active recovery grant to the Institute for Regional Conservation. Under this grant, up to 39 ac (16 ha) of standing pine rocklands will undergo invasive vegetation control.

Based on a review of the specific mission of the USCG facility in conjunction with the measures and efforts set forth in the draft management plan to preserve pine rockland habitat and protect sensitive and listed species, we have determined that it is unlikely that the critical habitat, if finalized as proposed, would negatively impact the facility or its operations. As a result, we do not anticipate any impact on national security. However, if through the public comment period we receive information regarding impacts on national security or homeland security from designating this area as critical habitat, then as part of developing the final designation of critical habitat, we will conduct a discretionary exclusion analysis to determine whether to exclude these areas under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19.

DoD Land Parcel

As discussed above, we have determined that the USACE, a branch of the Department of Defense, retains ownership over a 121-ac (49-ha) parcel in Units SF3 and BS10 of the proposed designation of critical habitat for sand flax and Blodgett's silverbush, respectively. More than 85 ac (34 ha) of this parcel are forested but not managed for preservation of natural resources. The USACE does not have an INRMP or any specific management plan for sand flax or Blodgett's silverbush or their habitat covering these lands. Activities conducted on this site are unknown; however, we do not anticipate any impact on national security.

Following our process for coordinating with Federal partners, we contacted the DoD and DHS about this designation and shared the IEM for their feedback. Neither agency identified any potential national-security impact, nor requested an exclusion from critical habitat based on potential national-security impacts. However, if through the public comment period we receive information regarding impacts on national security or homeland security from designating particular areas as critical habitat, then as part of developing the final designation of critical habitat, we may consider conducting a discretionary exclusion analysis to determine whether to exclude those areas under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19.

Considerations of Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security discussed above. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area—such as HCPs, safe harbor agreements (SHAs), or candidate conservation agreements with assurances (CCAAs)—or whether there are non-permitted conservation agreements and partnerships that may be impaired by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, social, or other impacts that might occur because of the designation. When analyzing other relevant impacts of including a particular area in a designation of critical habitat, we weigh those impacts relative to the conservation value of the particular area. To determine the conservation value of designating a particular area, we consider a number of factors, including, but not limited to, the additional regulatory benefits that the area would receive due to the protection from destruction or adverse modification 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.

In the case of these species, the benefits of critical habitat include public awareness of the presence of these species and the importance of habitat protection, and, where a Federal nexus exists, habitat protection for these species due to protection from destruction or adverse modification of critical habitat. Continued implementation of an ongoing management plan that provides conservation equal to or more than the protections that result from a critical habitat designation would reduce those benefits of including that specific area in the critical habitat designation.

We evaluate the existence of a conservation plan when considering the benefits of inclusion. 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 or 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.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction of the species. If excluding an area from critical habitat will result in extinction, we will not exclude it from the designation.

Private or Other Non-Federal Conservation Plans Related to Permits Under Section 10 of the Act

HCPs for incidental take permits under section 10(a)(1)(B) of the Act provide for partnerships with non-Federal entities to minimize and mitigate impacts to listed species and their habitat. In some cases, HCP permittees agree to do more for the conservation of the species and their habitats on private lands than designation of critical habitat would provide alone. We place great value on the partnerships that are developed during the preparation and implementation of HCPs.

CCAAs and SHAs are voluntary agreements designed to conserve candidate and listed species, respectively, on non-Federal lands. In exchange for actions that contribute to the conservation of species on non-Federal lands, participating property owners are covered by an ''enhancement of survival'' permit under section 10(a)(1)(A) of the Act, which authorizes incidental take of the covered species that may result from implementation of conservation actions, specific land uses, and, in the case of SHAs, the option to return to a baseline condition under the agreements. The Service also provides enrollees assurances that we will not impose further land-, water-, or resource-use restrictions, or require additional commitments of land, water, or finances, beyond those agreed to in the agreements.

When we undertake a discretionary section 4(b)(2) exclusion analysis based on permitted conservation plans (*e.g.,* CCAAs, SHAs, and HCPs), we anticipate consistently excluding such areas if incidental take caused by the activities in those areas is covered by the permit under section 10 of the Act and the CCAA/SHA/HCP meets all of the following three factors (see the 2016 Policy for additional details):

a. The permittee is properly implementing the CCAA/SHA/HCP and is expected to continue to do so for the term of the agreement. A CCAA/SHA/HCP is properly implemented if the permittee is and has been fully implementing the commitments and provisions in the CCAA/SHA/HCP, implementing agreement, and permit.

b. The species for which critical habitat is being designated is a covered species in the CCAA/SHA/HCP, or very similar in its habitat requirements to a covered species. The recognition that the Services extend to such an agreement depends on the degree to which the conservation measures undertaken in the CCAA/SHA/HCP would also protect the habitat features of the similar species.

c. The CCAA/SHA/HCP specifically addresses that species' habitat and meets the conservation needs of the species in the planning area.

The proposed critical habitat designation includes areas that are covered by the following permitted plan providing for the conservation of sand flax and Blodgett's silverbush: Coral Reef Commons HCP.

Coral Reef Commons Habitat Conservation Plan

In preparing this proposal, we have determined that lands associated with the Coral Reef Commons HCP within Unit SF3 for sand flax and Unit BS10 for Blodgett's silverbush (Richmond Pinelands and surrounding areas) are included within the boundaries of the proposed critical habitat.

Coral Reef Commons is a mixed-use community, which consists of 900 apartments, retail stores, restaurants, and parking. In 2017, an HCP and associated permit under section 10 of the Act was developed and issued for the Coral Reef Commons development.

As part of the HCP and permit, an approximately 53-ac (21-ha) onsite preserve (same as the area for proposed critical habitat designation) was established under a conservation encumbrance that will be managed in perpetuity for pine rockland habitat and sensitive and listed species, including sand flax and Blodgett's silverbush.

The Center for Southeastern Tropical Advanced Remote Sensing site is an offsite mitigation area for Coral Reef Commons comprising 57 ac (23 ha). Both the onsite preserve and the offsite mitigation area are being managed to maintain healthy pine rockland habitat using invasive, exotic plant management, mechanical treatment, and prescribed fire, addressing both the habitat and conservation needs of the species. Since initiating the Coral Reef Commons HCP, pine rockland restoration efforts have been conducted within all of the management units in both the onsite preserve and the offsite mitigation area. A second round of prescribed fire began in February 2021. Currently, the onsite preserve meets or exceeds the success criteria described for proper implementation of the HCP.

Critical habitat within Units SF3 and BS10 that is associated with the Coral Reef Commons HCP is limited to the onsite preserve and offsite mitigation area. Based on a cursory review of the HCP and proposed critical habitat for sand flax and Blodgett's silverbush, we do not anticipate requesting any additional conservation measures for these species beyond those that are currently in place. Therefore, at this time, we are considering excluding those specific lands associated with the Coral Reef Commons HCP that are in the preserve and off-site mitigation area from the final designation of critical habitat for sand flax and Blodgett's silverbush. However, we will more thoroughly review the HCP, its implementation of the conservation measures for sand flax and Blodgett's silverbush and their habitat therein, and public comment on this issue prior to finalizing critical habitat, and if appropriate, exclude from critical habitat for sand flax and Blodgett's silverbush those lands associated with the Coral Reef Commons HCP that are in the preserves and offsite mitigation area.

Monroe County HCP for Big Pine and No Name Keys

Lands within the Monroe County HCP for Big Pine and No Name Keys are included within proposed critical habitat for Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush. However, we have determined that the Monroe County HCP for Big Pine and No Name Keys does not include Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush as ''covered species,'' and they are not mentioned specifically anywhere in the HCP document. Because they are not covered species, the HCP will not trigger surveys or conservation measures for these species. We are requesting comments on the benefit to Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush from the Monroe County HCP for Big Pine and No Name Keys; however, at this time, we are not proposing the exclusion of any areas within the HCP from the proposed critical habitat.

We have determined that there are no additional HCPs or other management plans for Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush.

Tribal Lands

Several Executive orders, Secretarial orders, and policies concern working with Tribes. These guidance documents generally confirm our trust responsibilities to Tribes, recognize that Tribes have sovereign authority to control Tribal lands, emphasize the importance of developing partnerships with Tribal governments, and direct the Service to consult with Tribes on a government-to-government basis.

A joint Secretarial Order that applies to both the Service and the National Marine Fisheries Service (NMFS)—Secretarial Order 3206, *American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act* (June 5, 1997) (S.O. 3206)—is the most comprehensive of the various guidance documents related to Tribal relationships and Act implementation, and it provides the most detail directly relevant to the designation of critical habitat. In addition to the general direction discussed above, the Appendix to S.O. 3206 explicitly recognizes the right of Tribes to participate fully in any listing process that may affect Tribal rights or Tribal trust resources; this includes the designation of critical habitat. Section

3(b)(4) of the Appendix requires the Service to consult with affected Tribes ''when considering the designation of critical habitat in an area that may impact Tribal trust resources, Tribally-owned fee lands, or the exercise of Tribal rights.'' That provision also instructs the Service to avoid including Tribal lands within a critical habitat designation unless the area is essential to conserve a listed species, and it requires the Service to ''evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands.''

Our implementing regulations at 50 CFR 424.19 and the 2016 Policy are consistent with S.O. 3206. When we undertake a discretionary exclusion analysis, in accordance with S.O. 3206 we consult with any Tribe whose Tribal trust resources, tribally owned fee lands, or Tribal rights may be affected by including any particular areas in the designation, and we evaluate the extent to which the conservation needs of the species can be achieved by limiting the designation to other areas. When we undertake a discretionary section 4(b)(2) exclusion analysis, we always consider exclusion of Tribal lands, and give great weight to Tribal concerns in analyzing the benefits of exclusion. However, S.O. 3206 does not override the Act's statutory requirement of designation of critical habitat. As stated above, we must consult with any Tribe when a designation of critical habitat may affect Tribal lands or resources. The Act requires us to identify areas that meet the definition of ''critical habitat'' (*i.e.,* areas occupied at the time of listing that contain the essential physical or biological features that may require special management or protection and unoccupied areas that are essential to the conservation of a species), without regard to land ownership. While S.O. 3206 provides important direction, it expressly states that it does not modify the Secretary's statutory authority under the Act or other statutes.

The proposed critical habitat designation does not include any Tribal lands.

Summary of Exclusions Considered Under 4(b)(2) of the Act

Based on the information provided by entities seeking exclusion, as well as any additional public comments we receive, we will evaluate whether areas in the proposed critical habitat units are appropriate for exclusion from the final designation under section 4(b)(2) of the Act. If our analysis indicates that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then the Secretary may exercise her discretion to exclude the lands from the final designation. At this time, we are considering excluding those specific lands associated with the Coral Reef Commons HCP that are in the preserve and offsite mitigation area from the final designation of critical habitat for sand flax and Blodgett's silverbush (units SF3 and BS10). In conclusion, we specifically solicit comments on the inclusion or exclusion of such areas.

During the development of a final designation, we will consider any information currently available or received during the public comment period regarding other relevant impacts of the proposed designation and will determine whether these or any other specific areas should be considered for exclusion from the final critical habitat designation under authority of section 4(b)(2), our implementing regulations at 50 CFR 424.19, and the 2016 Policy.

Required Determinations

Clarity of the Rule

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

(1) Be logically organized;

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

(3) Use clear language rather than jargon;

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

(5) Use lists and tables wherever possible.

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

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this proposed rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under

this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated if we adopt the proposed critical habitat designation. The RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities. In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare statements of energy effects when undertaking certain actions. We do not foresee any energy development projects, supply distribution, or use that may affect or be affected by the proposed critical habitat for Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush. Further, in our evaluation of potential economic impacts, we did not find that this proposed critical habitat designation would significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following finding:

(1) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this proposed rule would significantly or uniquely affect small governments. The government lands being proposed for critical habitat designation are owned by the State of Florida, DoD, National Park Service, and the Service. None of these government entities fit the definition of ''small governmental jurisdiction.'' Therefore, a small government agency plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the proposed designation of critical habitat for Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush, and it concludes that, if

adopted, this designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the elements of physical or biological features essential to the conservation of the species. The proposed areas of designated critical habitat are presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

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

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with regulations adopted pursuant to section 4(a) of 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)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

As discussed above (see *Exclusions Based on Other Relevant Impacts*), we have determined that there are no Tribal lands that were occupied by Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush at the time of listing that contain the features essential for conservation of the species, and no Tribal lands unoccupied by Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush that are essential for the conservation of the species. As a result, there are no Tribal lands affected by the proposed designation of critical habitat for these species.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Florida Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. In § 17.12 in paragraph (h), revise the entries for ''*Argythamnia blodgettii* (Blodgett's silverbush)'', ''*Chamaesyce deltoidea* ssp. *serpyllum* (Wedge spurge)'', ''*Chamaecrista lineata* var. *keyensis* (Big Pine partridge pea)'', and ''*Linum arenicola* (Sand flax)'', under ''Flowering Plants'' in the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
		Flowering Plants		
*	*	*	*	*
Argythamnia blodgettii	Blodgett's silverbush	Wherever found	T	81 FR 66842, 9/29/2016; 50 CFR 17.96(a).[CH]
*	*	*	*	*
Chamaecrista lineata var. *keyensis*.	Big Pine partridge pea	Wherever found	E	81 FR 66842, 9/29/2016; 50 CFR 17.96(a).[CH]
*	*	*	*	*
Chamaesyce deltoidea ssp. *serpyllum*.	Wedge spurge	Wherever found	E	81 FR 66842; 9/29/2016; 50 CFR 17.96(a).[CH]
*	*	*	*	*
Linum arenicola	Sand flax	Wherever found	E	81 FR 66842, 9/29/2016;50 CFR 17.96(a).[CH]
*	*	*	*	*

■ 3. Amend § 17.96 in paragraph (a) by adding entries in alphabetical order under Family Euphorbiaceae for ''*Argythamnia blodgettii* (Blodgett's silverbush)'' and ''*Chamaesyce deltoidea* ssp. *serpyllum* (wedge spurge)'', under Family Fabaceae for ''*Chamaecrista lineata* var. *keyensis* (Big Pine partridge pea)'', and under Family Linaceae for ''*Linum arenicola* (sand flax)'', to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Euphorbiaceae: *Argythamnia blodgettii* (Blodgett's Silverbush)

(1) Critical habitat units are depicted for Miami-Dade and Monroe Counties, Florida, on the maps below.

(2) Within these areas, the physical or biological features essential to the conservation of *Argythamnia blodgettii* consist of south Florida pine rockland, rockland hammock, or coastal berm habitats and adjacent disturbed areas that:

(i) Consist of limestone substrate that provides nutritional requirements and suitable growing conditions (*e.g.,* pH, nutrients, anchoring, and drainage);

(ii) Are characterized by an open canopy and understory with a high proportion of native plant species to provide for sufficient sunlight to permit growth and flowering;

(iii) Are subjected to a monthly mean temperature characteristic of the subtropical humid classification in Miami-Dade County and tropical humid classification in Monroe County in every month of the year and short hydroperiods ranging of up to 60 days each year;

(iv) Are subjected to periodic natural (*e.g.,* fire, hurricanes) or nonnatural (*e.g.,* prescribed fire, mowing) disturbance regimes to maintain open canopy conditions; and

(v) Contain the presence of native pollinators for natural pollination and reproduction.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [EFFECTIVE DATE OF FINAL RULE].

(4) Critical habitat map units. Data layers defining map units were created using ESRI ArcGIS mapping software. The projection used was Albers Conical Equal Area (Florida Geographic Data Library), NAD 1983 HARN. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. Shapefiles for the critical habitat units are available to the public at the Service's internet site, *https://www.fws.gov/office/florida-ecological-services/library,* and a list of coordinates outlining the units are available at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2022–0116, at *https://www.fws.gov/office/florida-ecological-services/library,* and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Note: Index maps of all critical habitat units for *Argythamnia blodgettii* (Blodgett's silverbush) follow:

Figure 1 to *Argythamnia blodgettii* (Blodgett's silverbush) paragraph (5)

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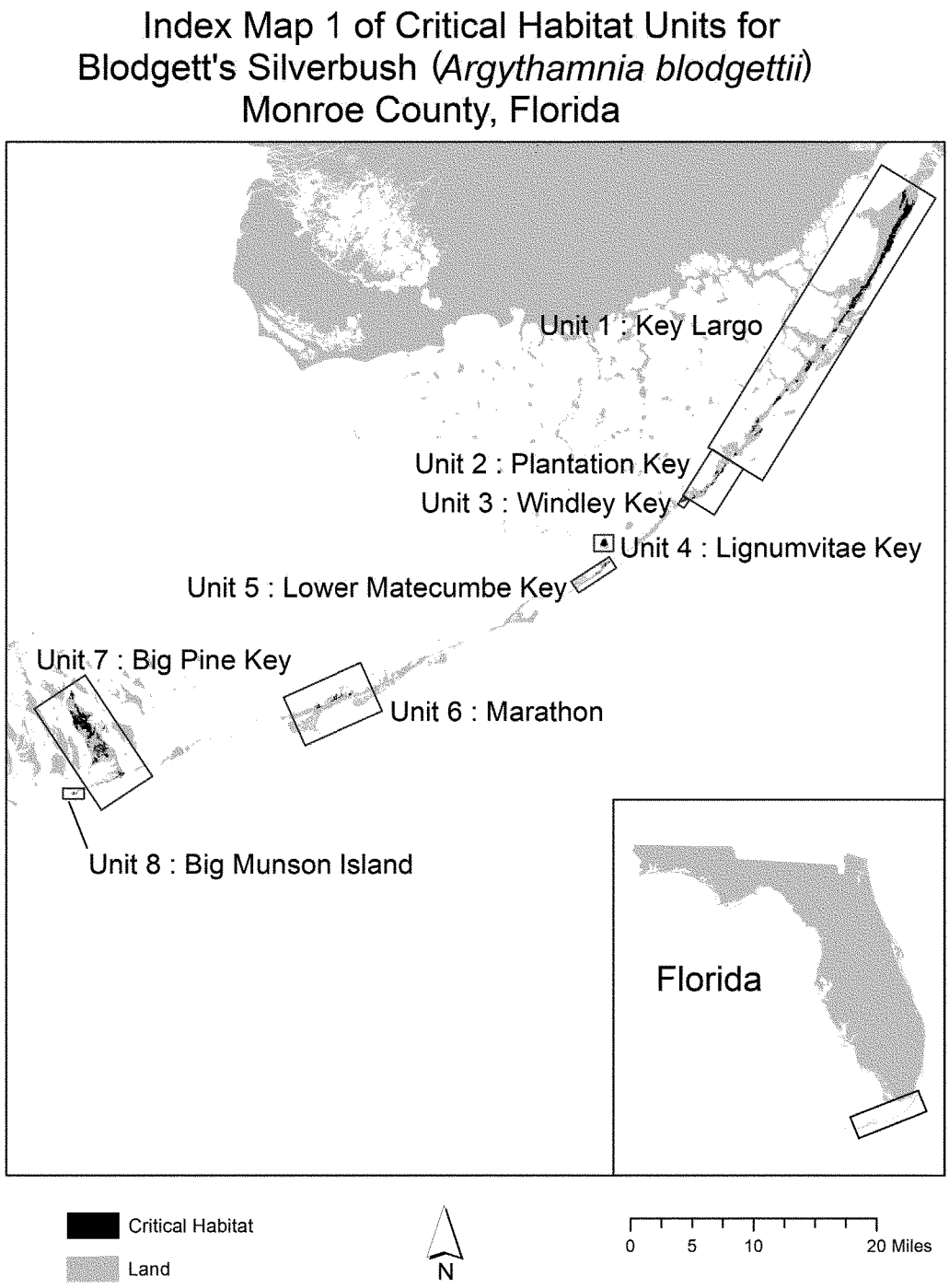
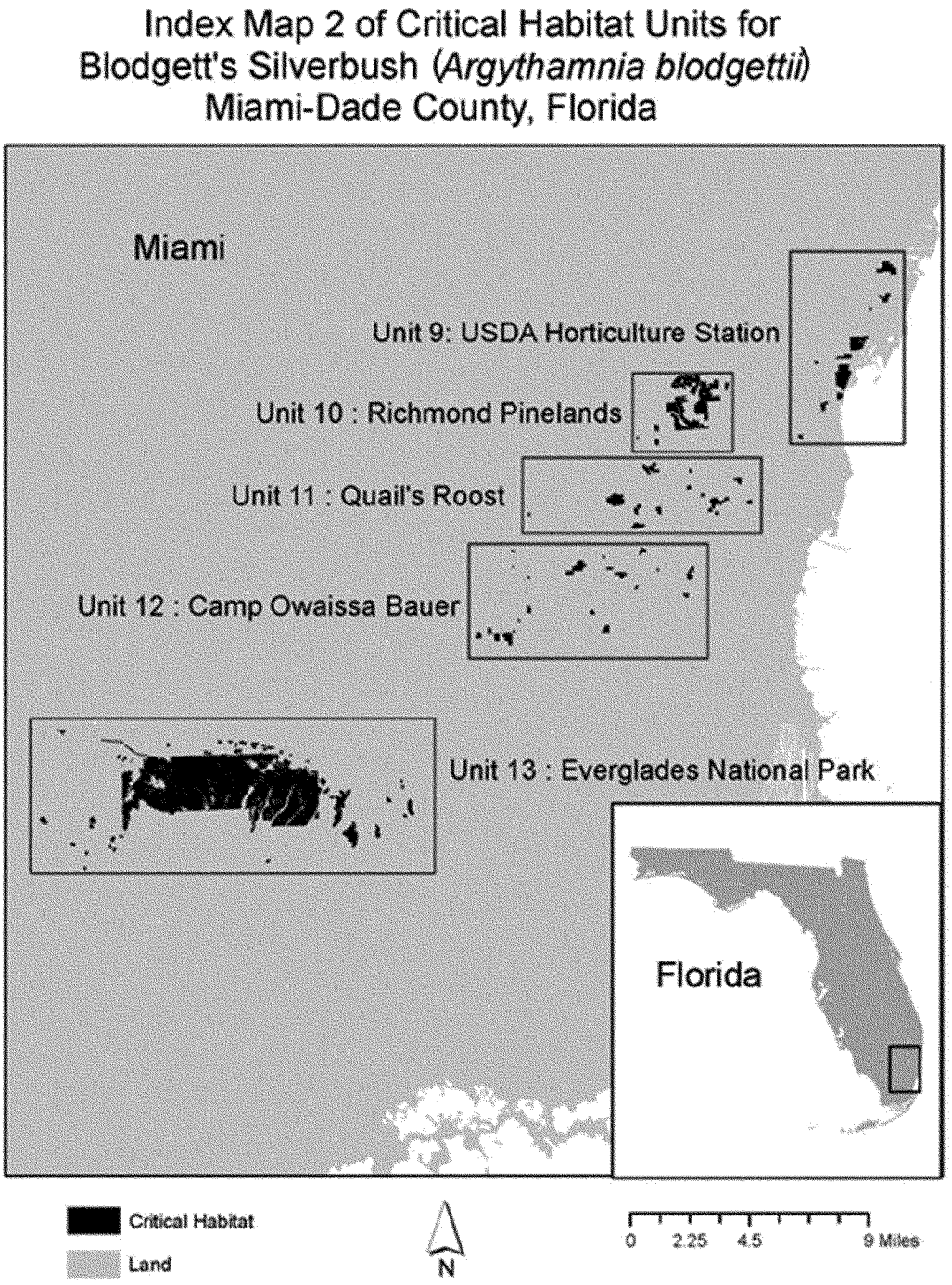


Figure 2 to *Argythamnia blodgettii* (Blodgett's silverbush) paragraph (5)



(6) Unit 1: BS1—Key Largo, Monroe County, Florida.

(i) This unit consists of 3,060 ac (1,238 ha). This unit extends from near the northern tip of Key Largo, along the length of the island to the southern tip. It is bordered on the east by the Atlantic Ocean and on the west by Florida Bay. The unit also includes a portion of El Radabob Key.

(ii) Map of Unit 1 follows:

Figure 3 to *Argythamnia blodgettii* (Blodgett's silverbush) paragraph (6)(ii)

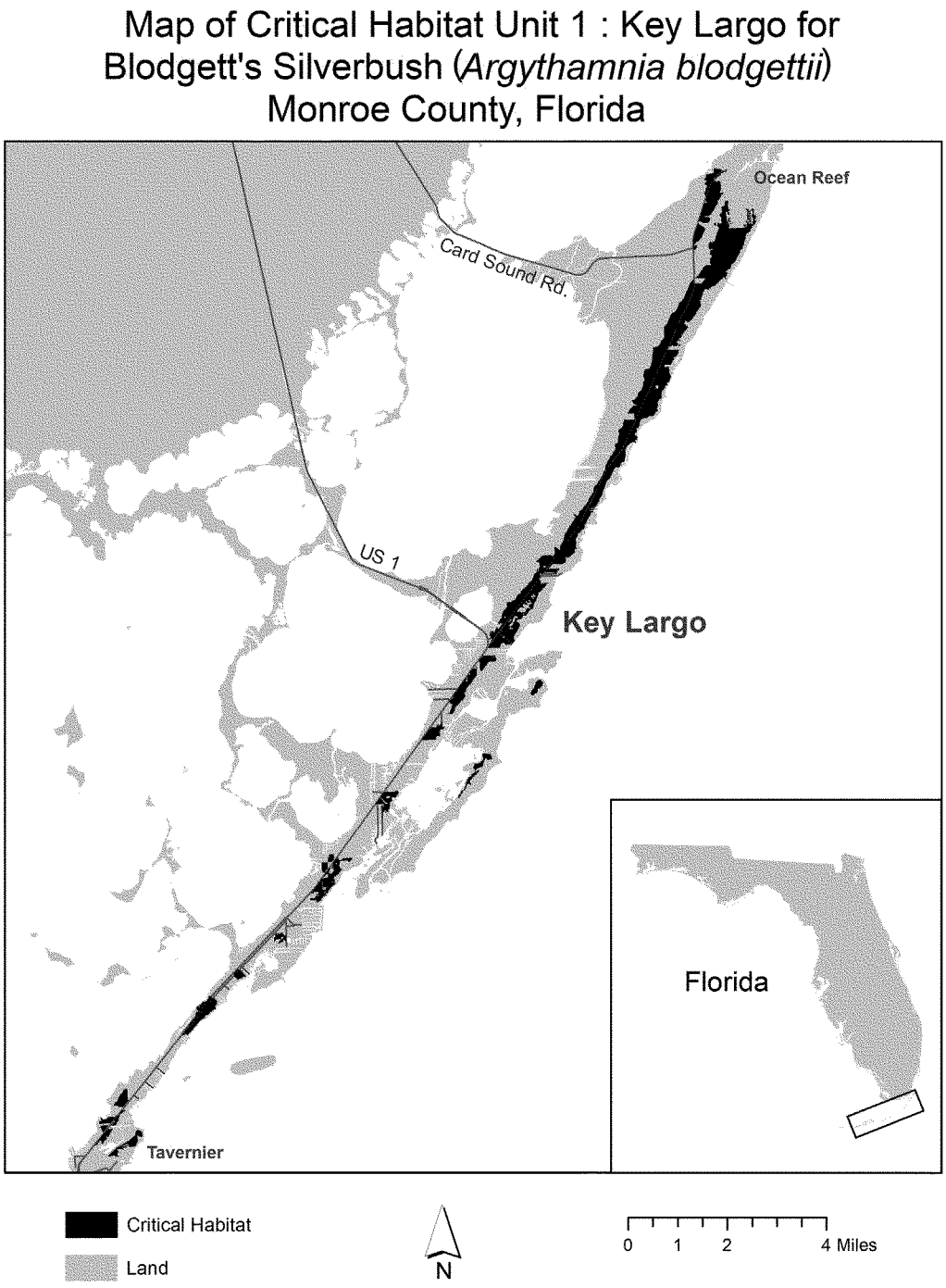
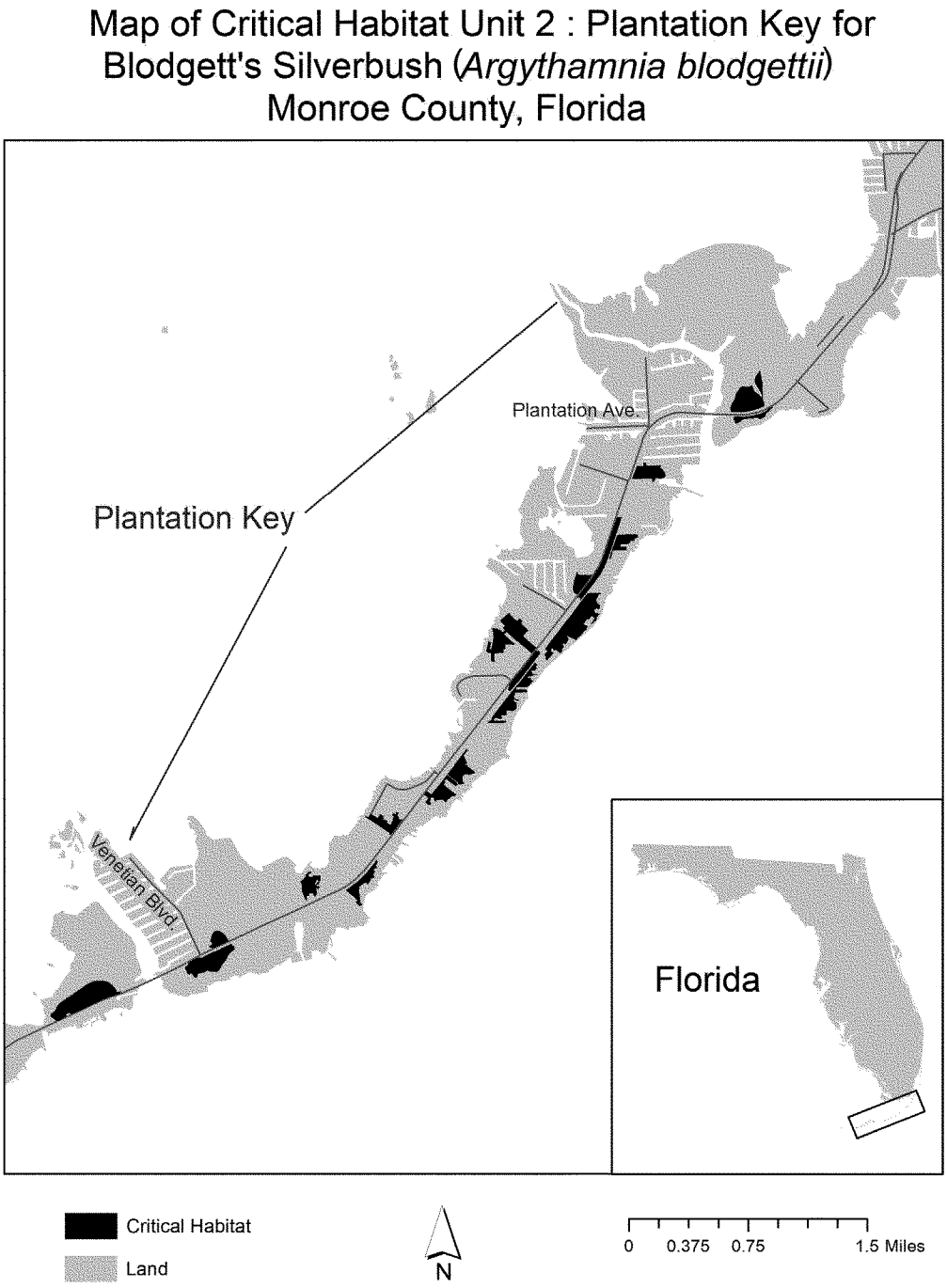


Figure 4 to *Argythamnia blodgettii* (Blodgett's silverbush) paragraph (7)(ii)

(7) Unit 2: BS2—Plantation Key, Monroe County, Florida.

(i) This unit consists of 175 ac (71 ha). The unit originates on the north end of Plantation Key just south of Ocean Drive and continues intermittently until the south end of the island. The unit is bordered on the east by the Atlantic Ocean and on the west by Florida Bay.

(ii) Map of Unit 2 follows:

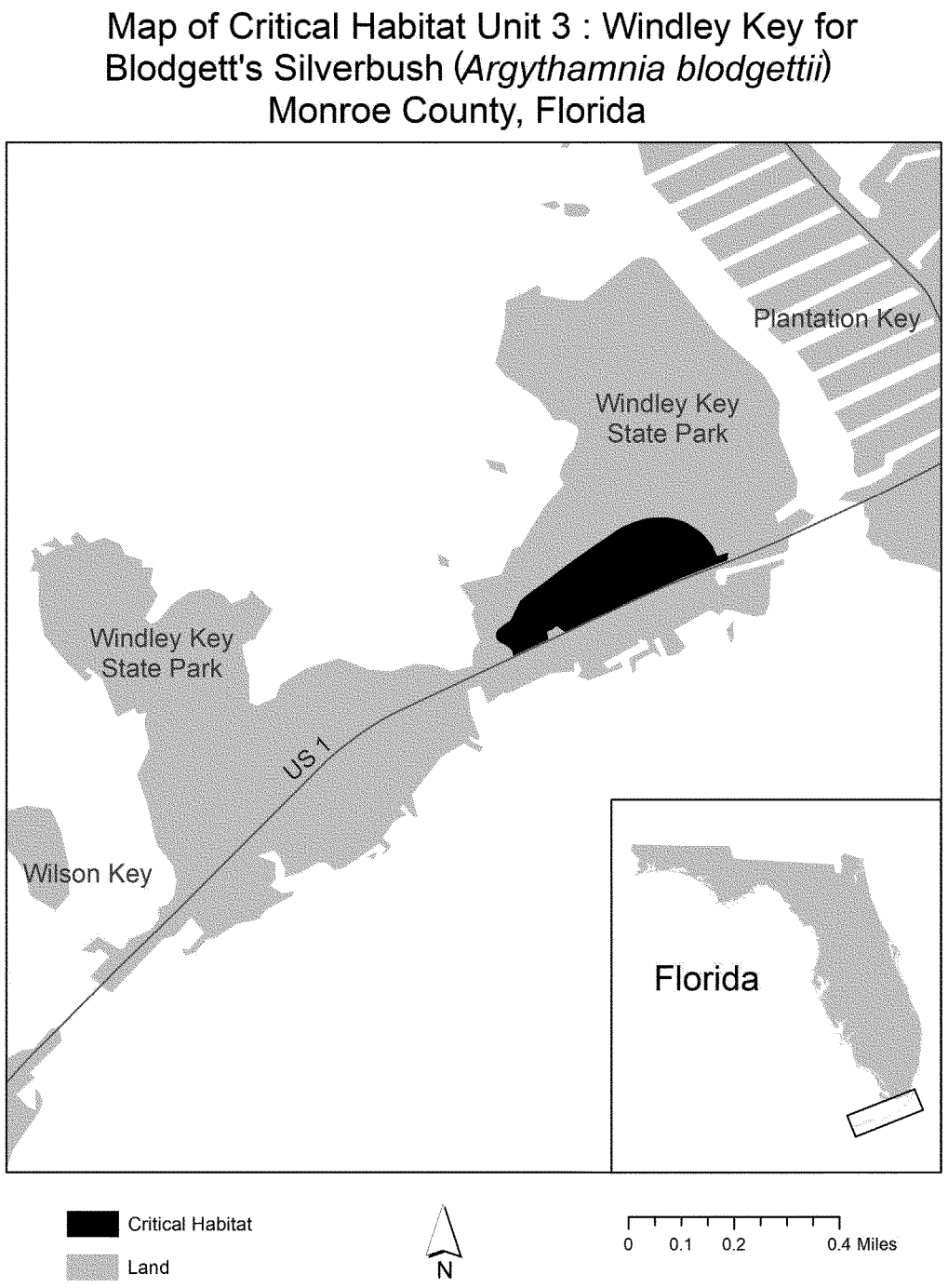


(8) Unit 3: BS3—Windley Key, Monroe County, Florida.

(i) This unit consists of 30 ac (12 ha). The unit is located on Windley Key on the north side of the Overseas Highway.

(ii) Map of Unit 3 follows:

Figure 5 to *Argythamnia blodgettii* (Blodgett's silverbush) paragraph (8)(ii)

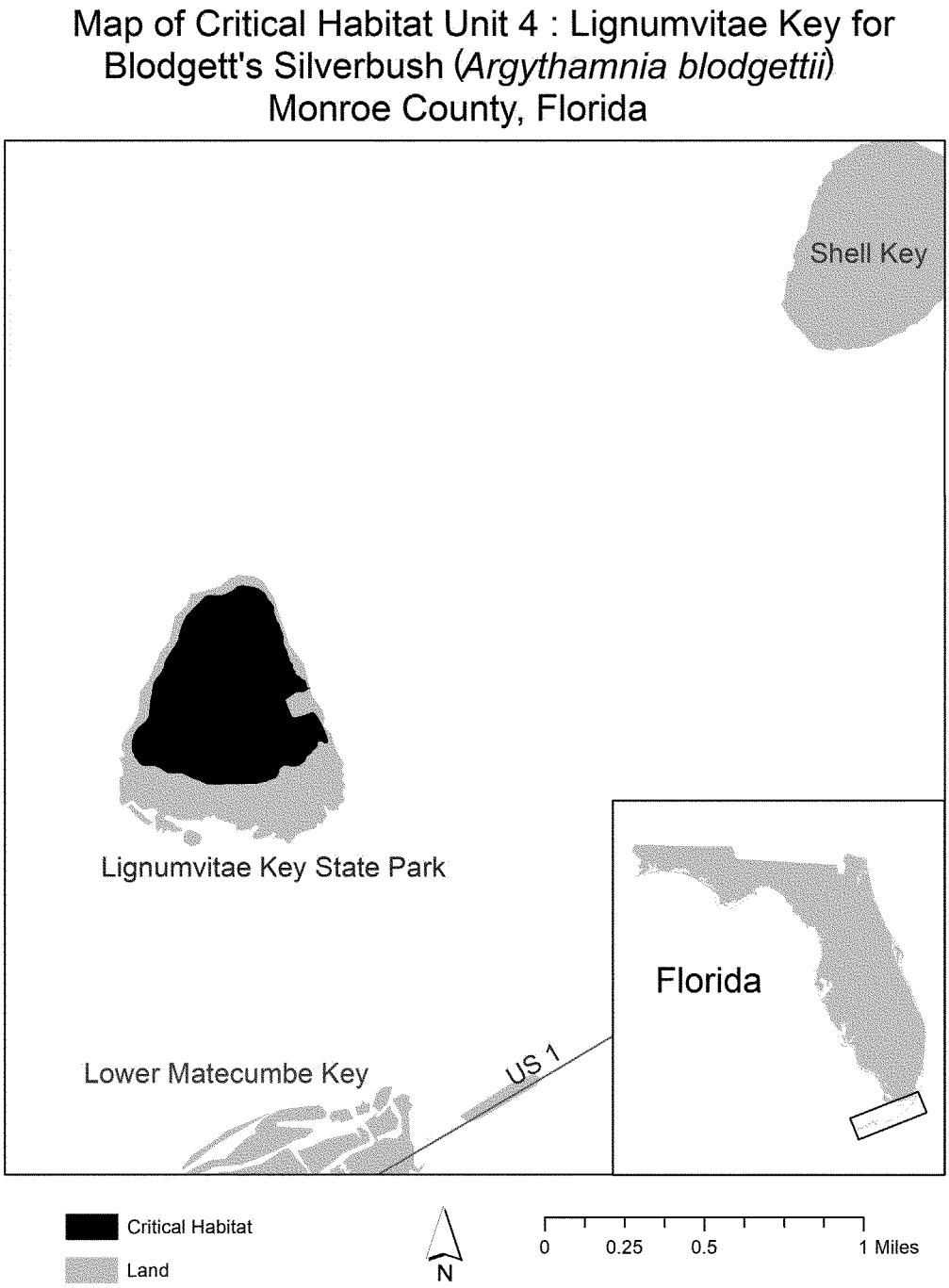


(9) Unit 4: BS4—Lignumvitae Key, Monroe County, Florida.

(i) This unit consists of 159 ac (64 ha). This unit includes the entire upland area of Lignumvitae Key.

(ii) Map of Unit 4 follows:

Figure 6 to *Argythamnia blodgettii* (Blodgett's silverbush) paragraph (9)(ii)

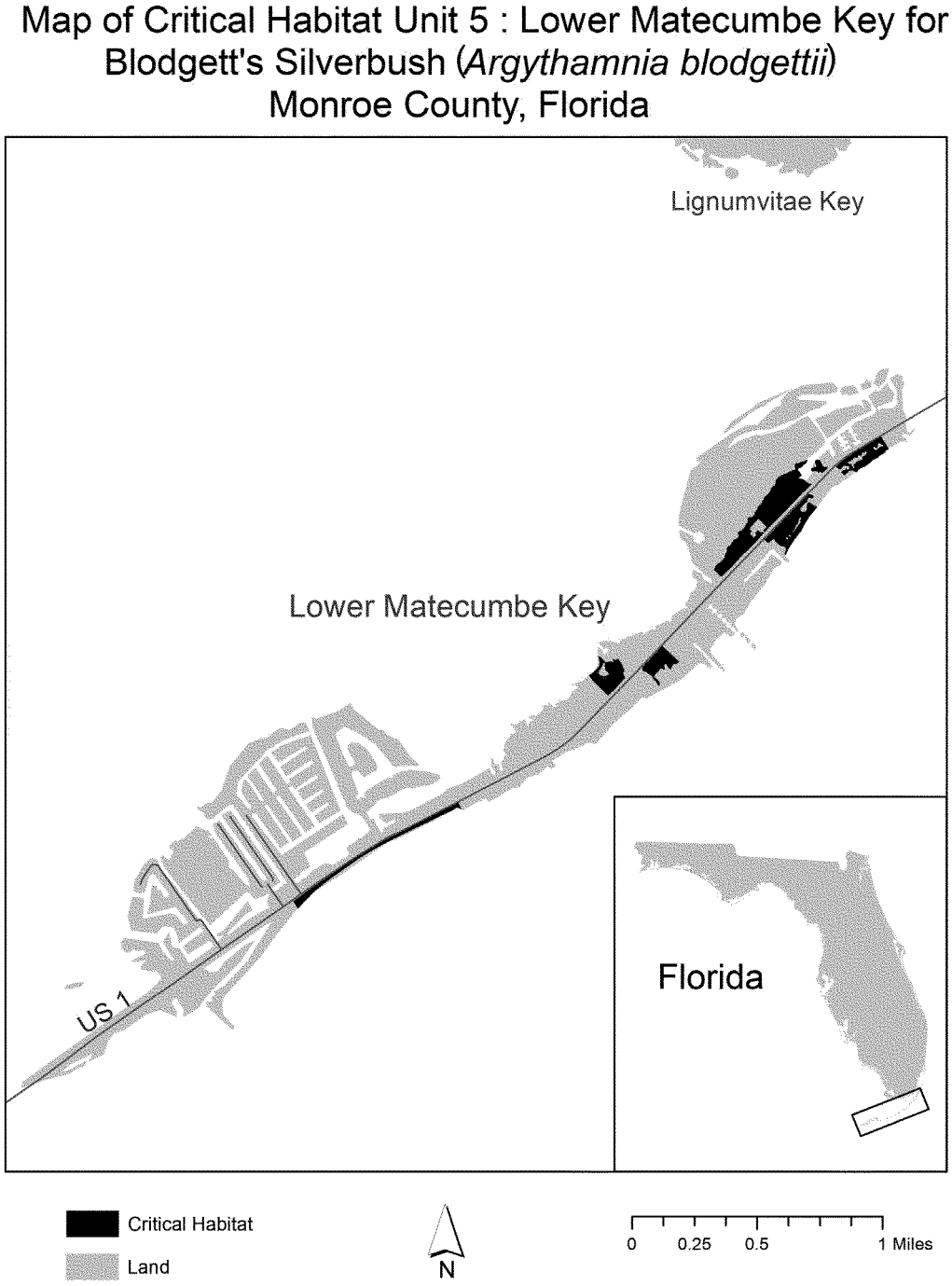


(10) Unit 5: BS5—Lower Matecumbe Key, Monroe County, Florida.

(i) This unit consists of 64 ac (26 ha). This unit extends from the east side of U.S. 1 from 0.14 mi (0.2 km) from the north edge of Lower Matecumbe Key, situated across U.S. 1 from Davis Lane and Tiki Lane. The unit continues on either side of U.S. 1 approximately 0.4 mi (0.6 km) from the north edge of Lower Matecumbe Key for approximately 0.6 mi (0.9 km).

(ii) Map of Unit 5 follows:

Figure 7 to *Argythamnia blodgettii* (Blodgett's silverbush) paragraph (10)(ii)



(11) Unit 6: BS6—Marathon, Monroe County, Florida.

(i) This unit consists of 103 ac (42 ha). The unit consists of several areas along the Overseas Highway. Starting at Crawl Key to the north, proceeding southward encompassing hardwood hammock areas on Long Point Key, Fat Deer Key, and Vaca Key; and coastal berm on the south shore of Boot Key.

(ii) Map of Unit 6 follows:

Figure 8 to *Argythamnia blodgettii* (Blodgett's silverbush) paragraph (11)(ii)

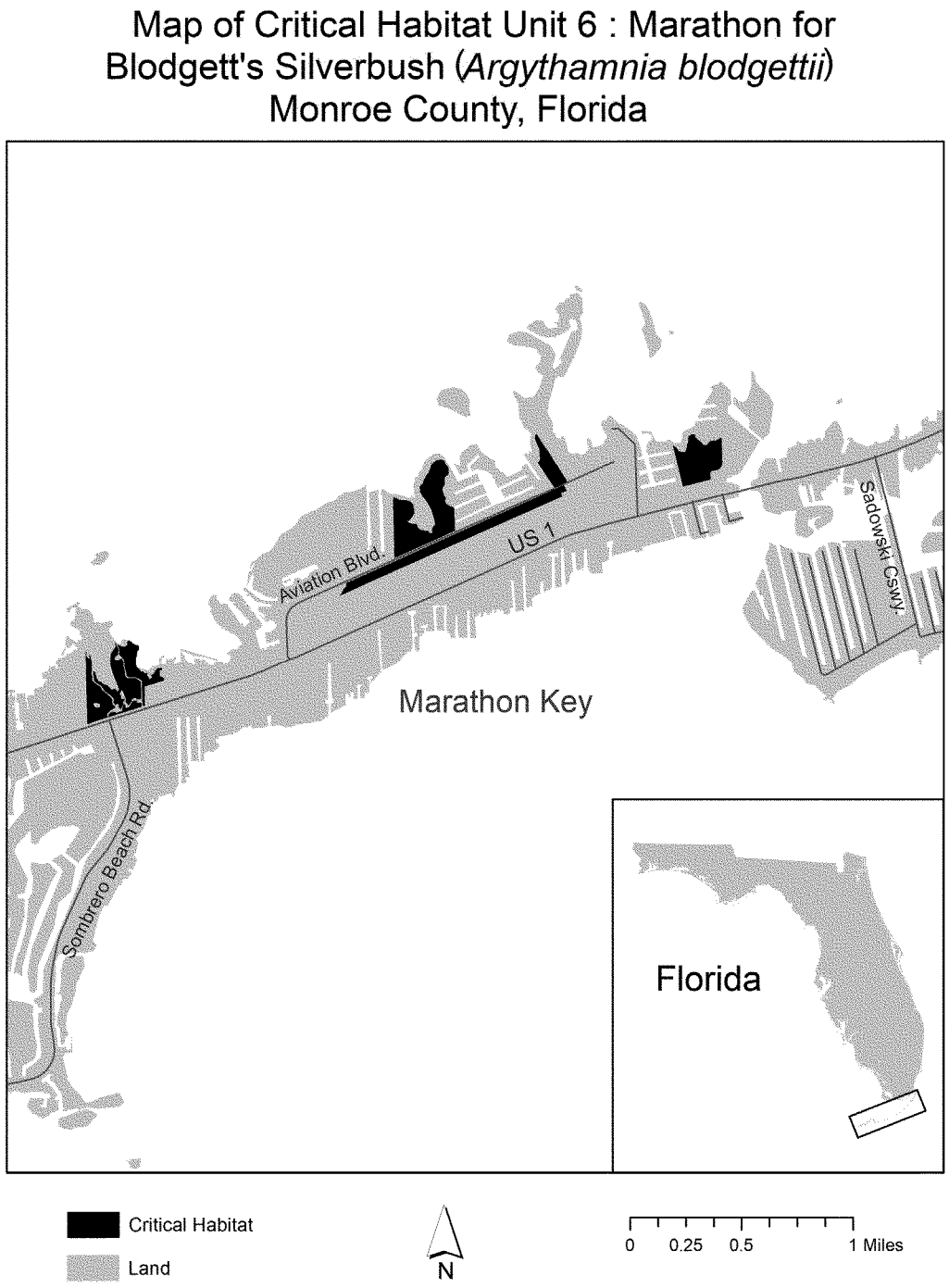


Figure 9 to *Argythamnia blodgettii* (Blodgett's silverbush) paragraph (12)(ii)

(12) Unit 7: BS7—Big Pine Key, Monroe County, Florida.

(i) This unit consists of 1,867 ac (756 ha). This unit extends from near the northern tip of Big Pine Key to its southern shore, encompassing most of the undeveloped pine rocklands and rockland hammock habitat remaining on Big Pine Key.

(ii) Map of Unit 7 follows:

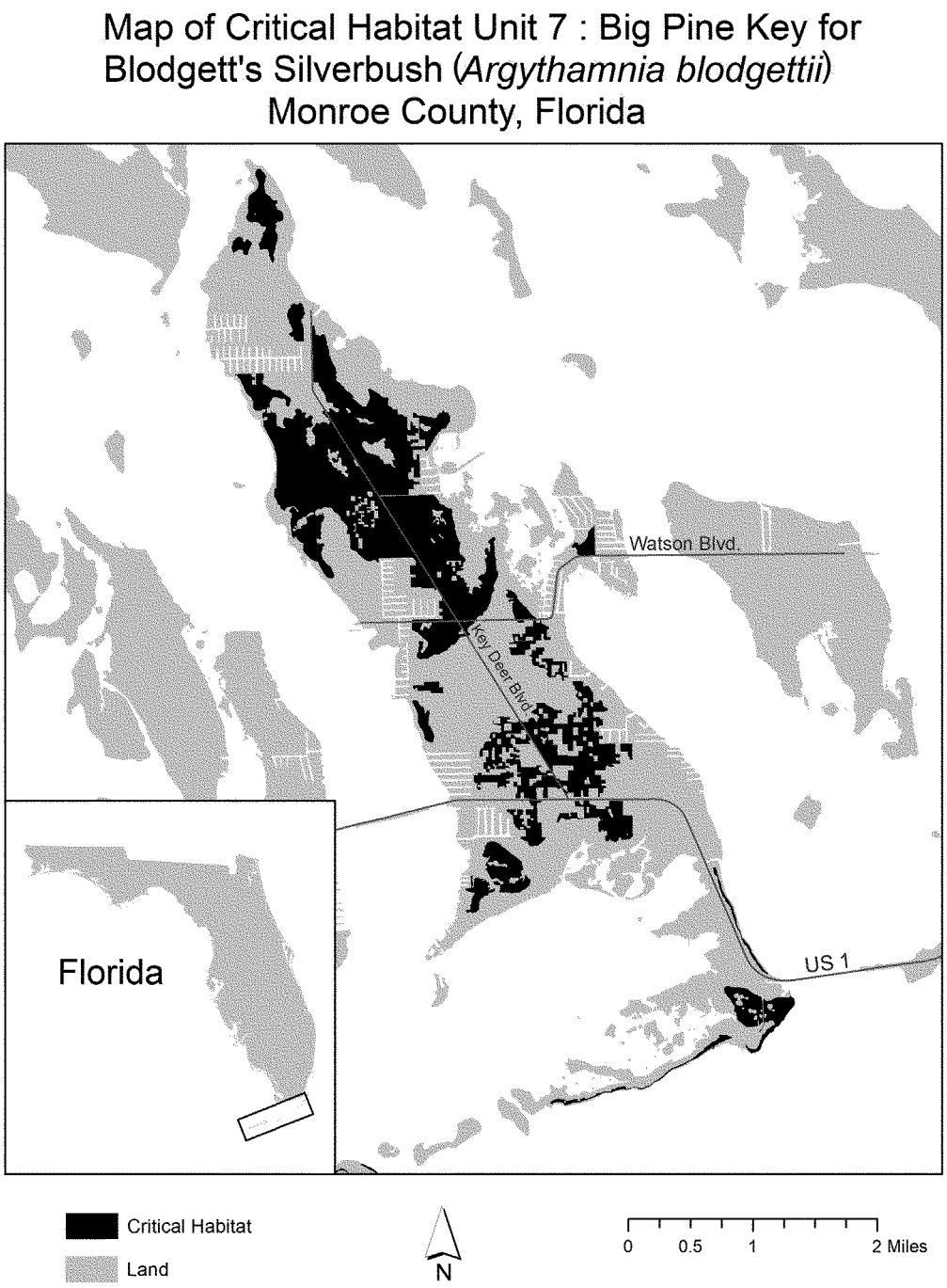
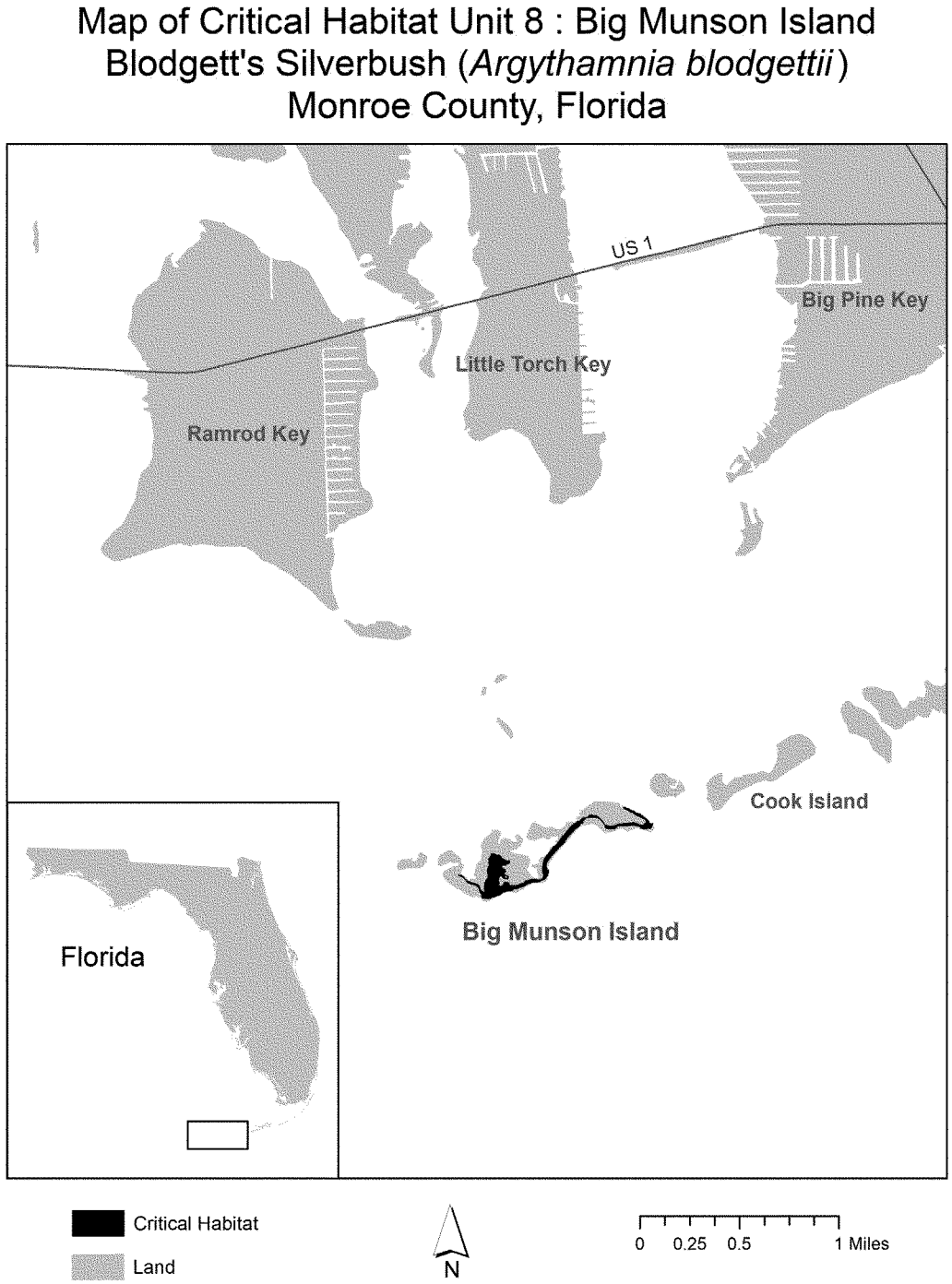


Figure 10 to *Argythamnia blodgettii* (Blodgett's silverbush) paragraph (13)(ii)

(13) Unit 8: BS8—Big Munson Island, Monroe County, Florida.

(i) This unit consists of 28 ac (11 ha). The unit includes all coastal berm and rockland hammock habitat on the island.

(ii) Map of Unit 8 follows:



(14) Unit 9: BS9—U.S. Department of Agriculture, Subtropical Horticulture Research Station, and surrounding areas, Miami-Dade County, Florida.

(i) This unit consists of approximately 630 ac (255 ha). This unit is bordered on the north by SW 112 Street, on the south by the intersection of Old Cutler Road and Franjo Road (County Road (CR) 977), on the east by the Atlantic Ocean, and on the west by U.S. 1 (South Dixie Highway).

(ii) Map of Unit BS9 follows:

Figure 11 to *Argythamnia blodgettii* (Blodgett's silverbush) paragraph (14)(ii)

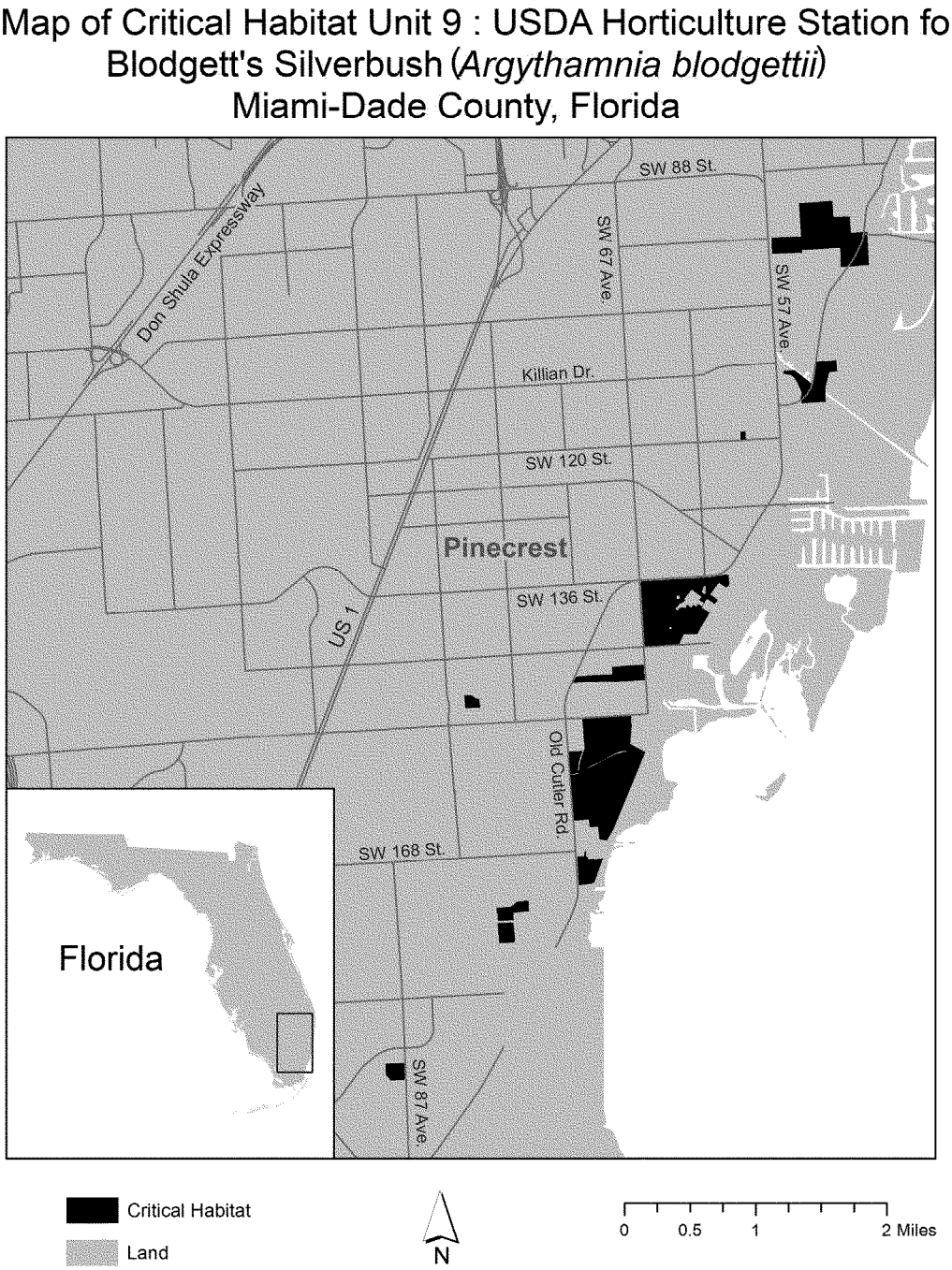
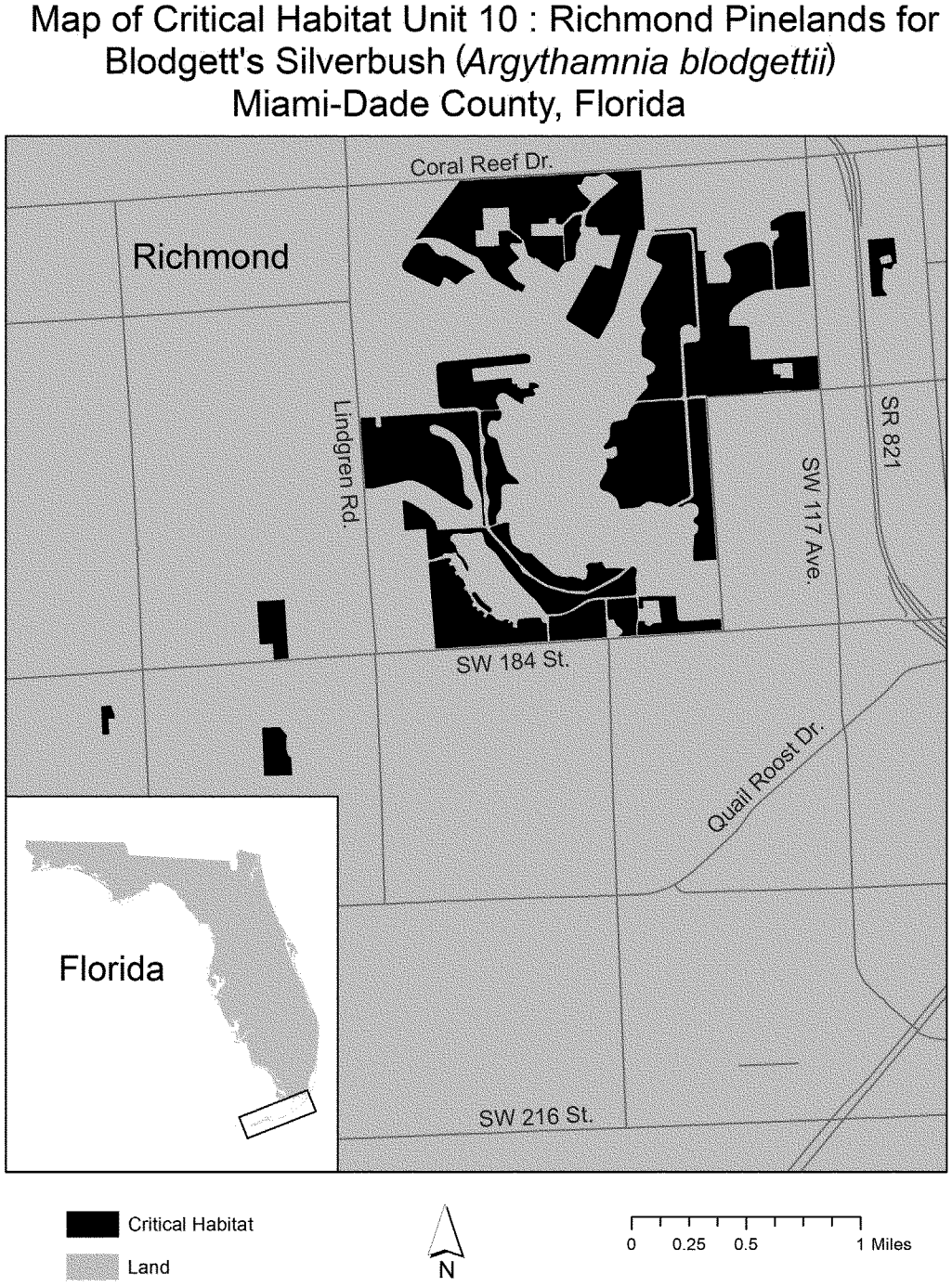


Figure 12 to *Argythamnia blodgettii* (Blodgett's silverbush) paragraph (15)(ii)

(15) Unit 10: BS10—Richmond Pinelands and surrounding areas, Miami-Dade County, Florida.

(i) This unit consists of approximately 987 ac (399 ha). This unit is bordered on the north by SW 152 Street (Coral Reef Drive), on the south by SW 200 St (Quail Drive/SR 994), on the east by U.S. 1 (South Dixie Highway), and on the west by SW 177 Avenue (Krome Avenue).

(ii) Map of Unit 10 follows:



(16) Unit 11: BS11—Quail Roost Pineland and surrounding areas, Miami-Dade County, Florida.

(i) This unit consists of approximately 412 ac (167 ha). This unit is bordered on the north by SW 200 St (Quail Drive/SR 994), on the south by SW 248 Street, on the east by the Florida Turnpike, and on the west by SW 194 Avenue.

(ii) Map of Unit 11 follows:

Figure 13 to *Argythamnia blodgettii* (Blodgett's silverbush) paragraph (16)(ii)

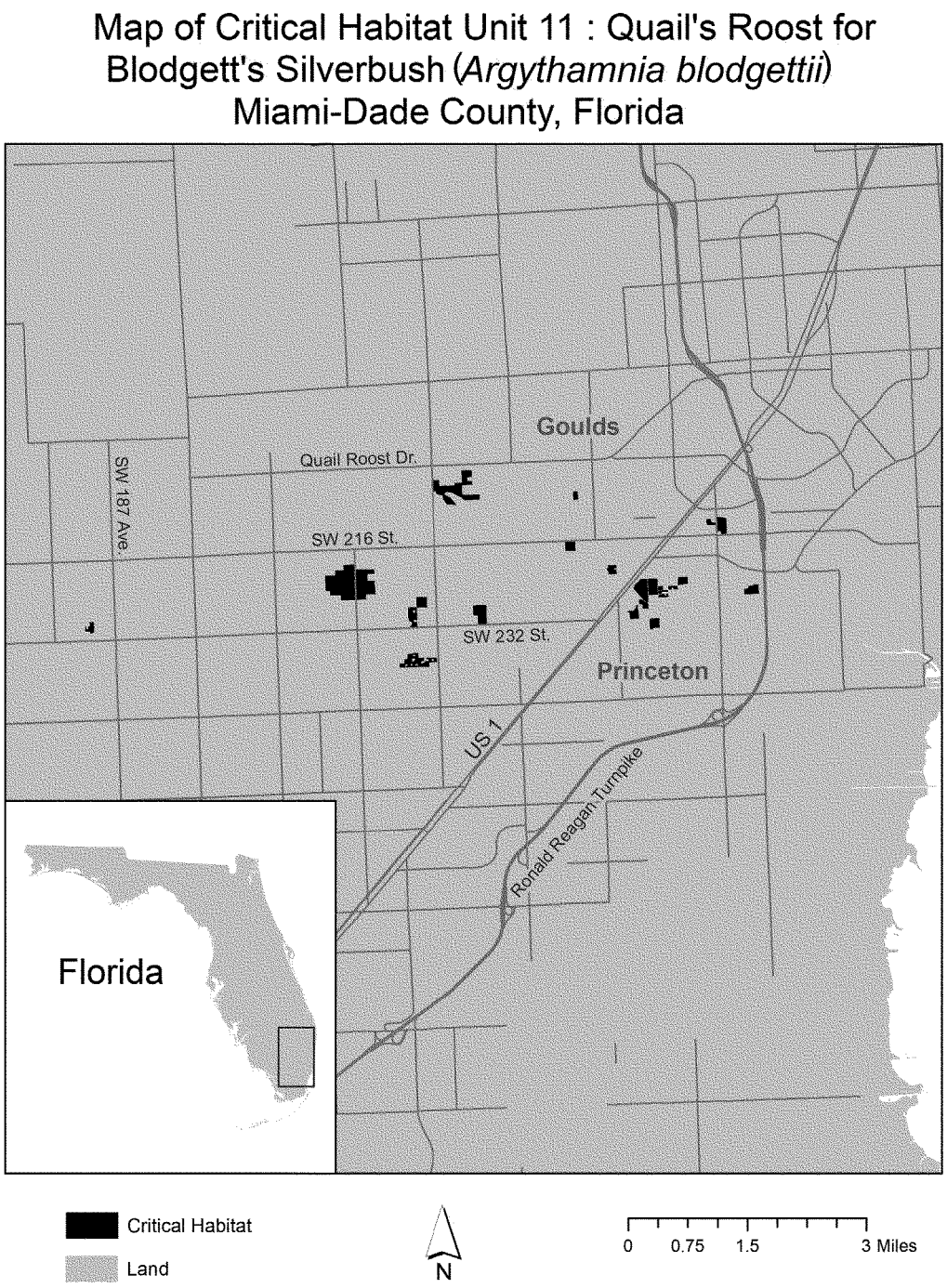
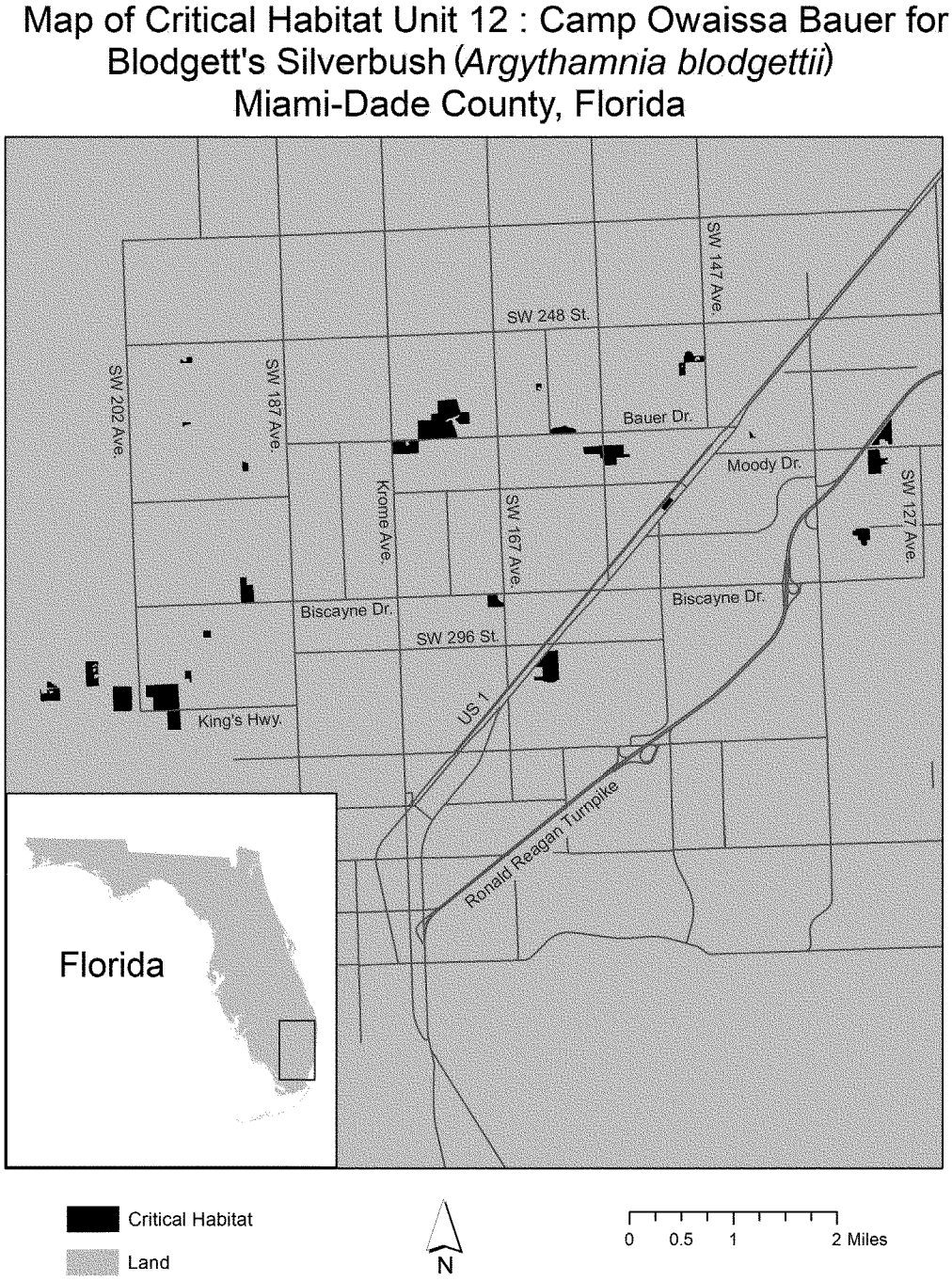


Figure 14 to *Argythamnia blodgettii* (Blodgett's silverbush) paragraph (17)(ii)

(17) Unit 12: BS12—Camp Owaissa Bauer and surrounding areas, Miami-Dade County, Florida.

(i) This unit consists of approximately 392 ac (159 ha). This unit is bordered on the north by SW 248 Street, on the south by SW 312 Street, on the east by SW 112 Avenue, and on the west by SW 217 Avenue.

(ii) Map of Unit 12 follows:



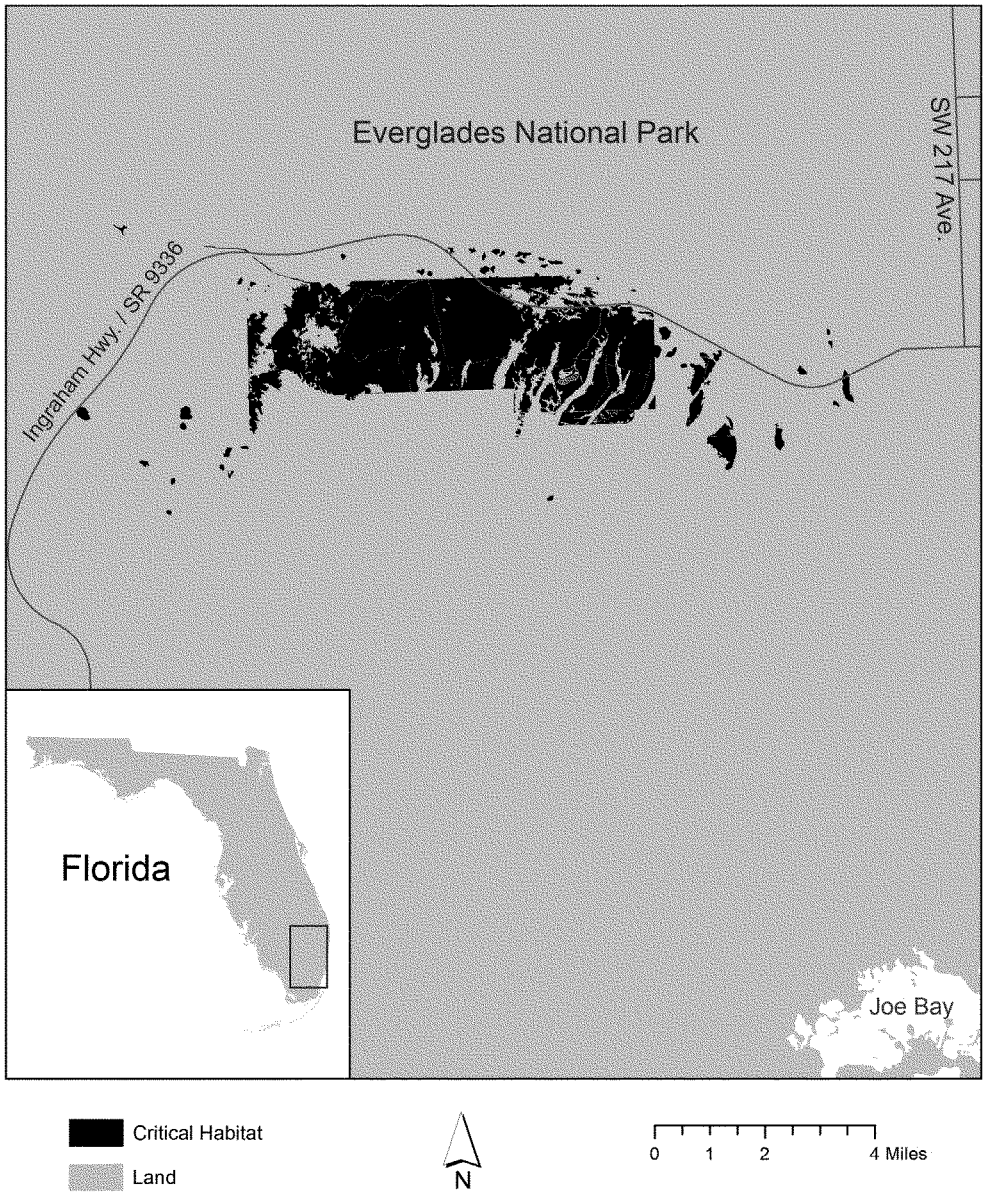
(18) Unit 13: BS13—Everglades National Park, Long Pine Key and surrounding areas, Miami-Dade County, Florida.

(i) This unit consists of approximately 8,728 ac (3,532 ha). This unit is located within the boundary of Everglades National Park.

(ii) Map of Unit 13 follows:

Figure 15 to *Argythamnia blodgettii* (Blodgett's silverbush) paragraph (18)(ii)

Map of Critical Habitat Unit 13 : Everglades National Park for Blodgett's Silverbush (*Argythamnia blodgettii*) Miami-Dade County, Florida



Family Euphorbiaceae: *Chamaesyce deltoidea* ssp. *serpyllum* (wedge spurge)

(1) Critical habitat is depicted for Monroe County, Florida, on the map below.

(2) Within these areas, the physical or biological features essential to the conservation of *Chamaesyce deltoidea* ssp. *serpyllum* consist of South Florida pine rockland habitat and adjacent disturbed areas that:

(i) Consist of calcareous limestone substrate (often exposed with little soil development) that provides nutritional requirements and suitable growing conditions (*e.g.,* pH, nutrients, anchoring, and drainage);

(ii) Are characterized by an open canopy of *Pinus elliottii* var. *densa* (South Florida slash pine) and understory with a high proportion of native pine rockland plant species to provide for sufficient sunlight to permit growth and flowering;

(iii) Are subjected to a monthly mean temperature characteristic of the subtropical humid classification in Miami-Dade County and tropical humid classification in Monroe County in every month of the year and short hydroperiods ranging of up to 60 days each year;

(iv) Are subjected to periodic natural (*e.g.,* fire) or nonnatural (*e.g.,* prescribed fire, mowing) disturbance regimes to maintain open canopy conditions; and

(v) Contain the presence of native pollinators for natural pollination and reproduction.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [EFFECTIVE DATE OF FINAL RULE].

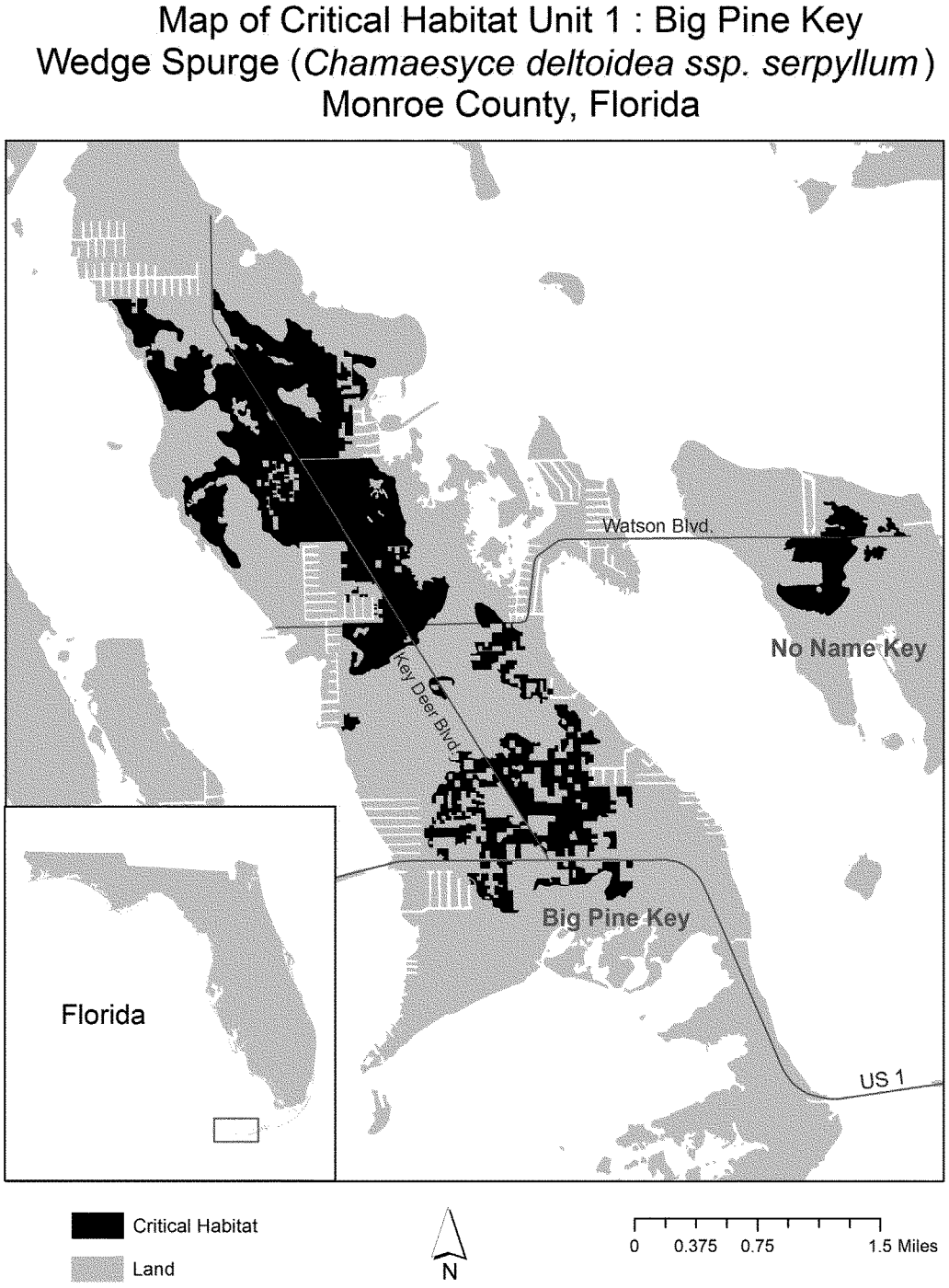
(4) Critical habitat map unit. Data layers defining the map unit were created using ESRI ArcGIS mapping software. The projection used was Albers Conical Equal Area (Florida Geographic Data Library), NAD 1983 HARN. The map in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. Shapefiles for the critical habitat unit are available to the public at the Service's internet site, *https://www.fws.gov/office/florida-ecological-services/library,* and a list of coordinates outlining the proposed Units are available at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2022–0116, at *https://www.fws.gov/office/florida-ecological-services/library,* and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Unit 1: WS1—Big Pine Key, Monroe County, Florida.

(i) This unit consists of 1,379 ac (558 ha). The unit begins on northern Big Pine Key on the southern side of Gulf Boulevard, continues south on both sides of Key Deer Boulevard (CR 940) to the vicinity of Osprey Lane on the western side of CR 940 and Tea Lane to the east of CR 940; then resumes on both sides of CR 940 from Osprey Lane to south of Driftwood Lane; then resumes south of Osceola Street, between Fern Avenue to the west and Baba Lane to the east; then resumes north of Watson Boulevard in the vicinity of Avenue C; then continues south on both sides of Avenue C to South Street; then resumes on both sides of CR 940 south to U.S. 1 between Ships Way to the west and Sands Street to the east; then resumes south of U.S. 1 from Newfound Boulevard to the west and Deer Run Trail to the east; then resumes south of U.S. 1 from Palomino Horse Trail to the west and Industrial Road to the east.

(ii) Map of Unit 1 follows:

Figure 1 to *Chamaesyce deltoidea* ssp. *serpyllum* (wedge spurge) paragraph (5)(ii)



* * * * *

Family Fabaceae: *Chamaecrista lineata* var. *keyensis* (Big Pine partridge pea)

(1) Critical habitat units are depicted for Monroe County, Florida, on the maps below.

(2) Within these areas, the physical or biological features essential to the conservation of *Chamaecrista lineata* var. *keyensis* consist of South Florida pine rockland habitat and adjacent disturbed areas that:

(i) Consist of calcareous limestone substrate (often exposed with little soil development) that provides nutritional requirements and suitable growing conditions (*e.g.,* pH, nutrients, anchoring and drainage);

(ii) Are characterized by an open canopy of *Pinus elliottii* var. *densa* (South Florida slash pine) and understory with a high proportion of native pine rockland plant species to provide for sufficient sunlight to permit growth and flowering;

(iii) Are subjected to a monthly mean temperature characteristic of the subtropical humid classification in Miami-Dade County and tropical humid classification in Monroe County in every month of the year and short hydroperiods ranging of up to 60 days each year;

(iv) Are subjected to periodic natural (*e.g.,* fire) or nonnatural (*e.g.,* prescribed fire, mowing) disturbance regimes to maintain open canopy conditions; and

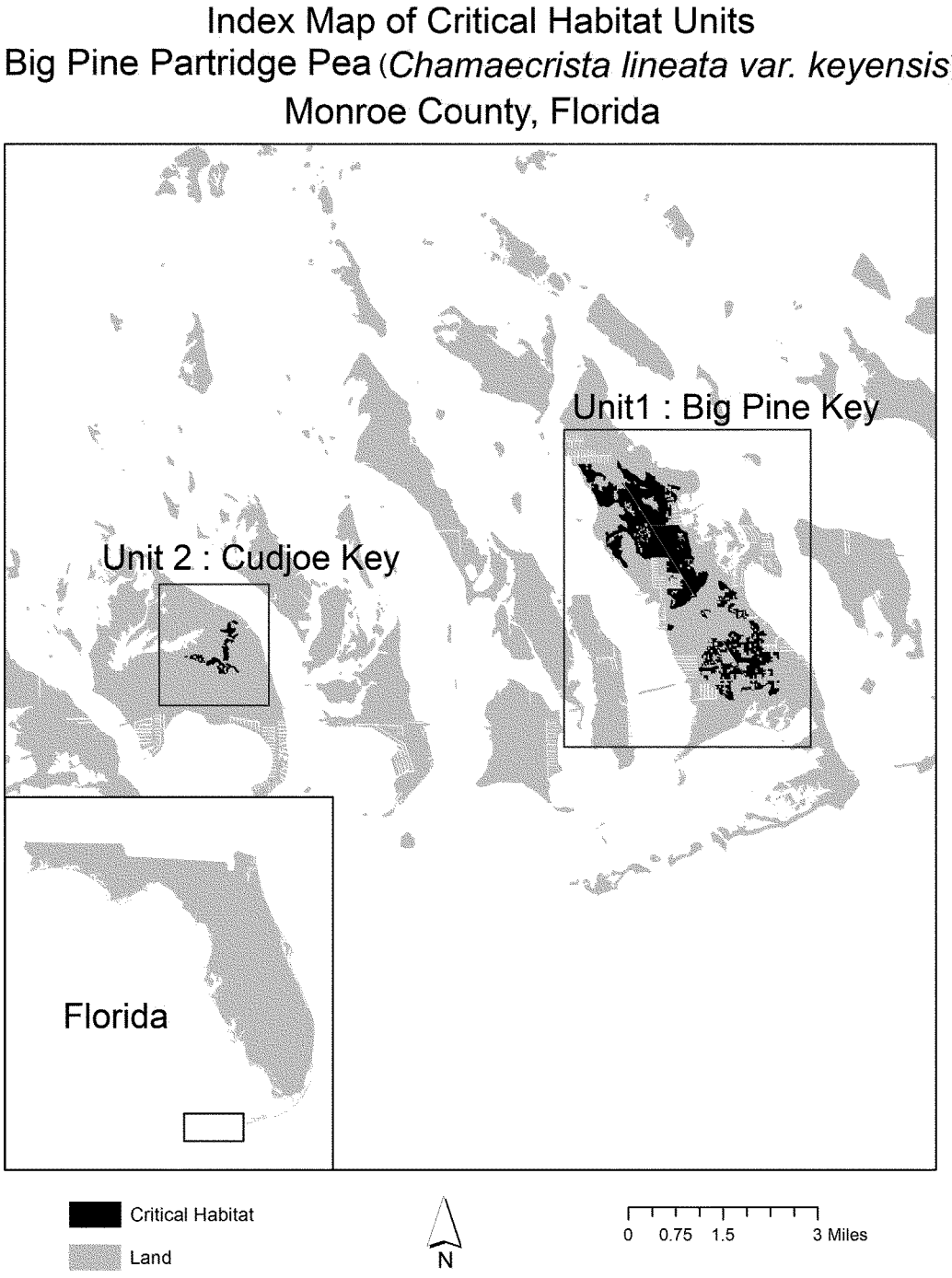
(v) Contain the presence of native pollinators for natural pollination and reproduction.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [EFFECTIVE DATE OF FINAL RULE].

(4) Critical habitat map units. Data layers defining map units were created using ESRI ArcGIS mapping software. The projection used was Albers Conical Equal Area (Florida Geographic Data Library), NAD 1983 HARN. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. Shapefiles for the critical habitat units are available to the public at the Service's internet site, *https://www.fws.gov/office/florida-ecological-services/library,* and a list of coordinates outlining the units are available at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2022–0116, at *https://www.fws.gov/office/florida-ecological-services/library,* and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Note: Index map of all critical habitat units for *Chamaecrista lineata* var. *keyensis* (Big Pine partridge pea) follows:

Figure 1 to *Chamaecrista lineata* var. *keyensis* (Big Pine partridge pea) paragraph (5)

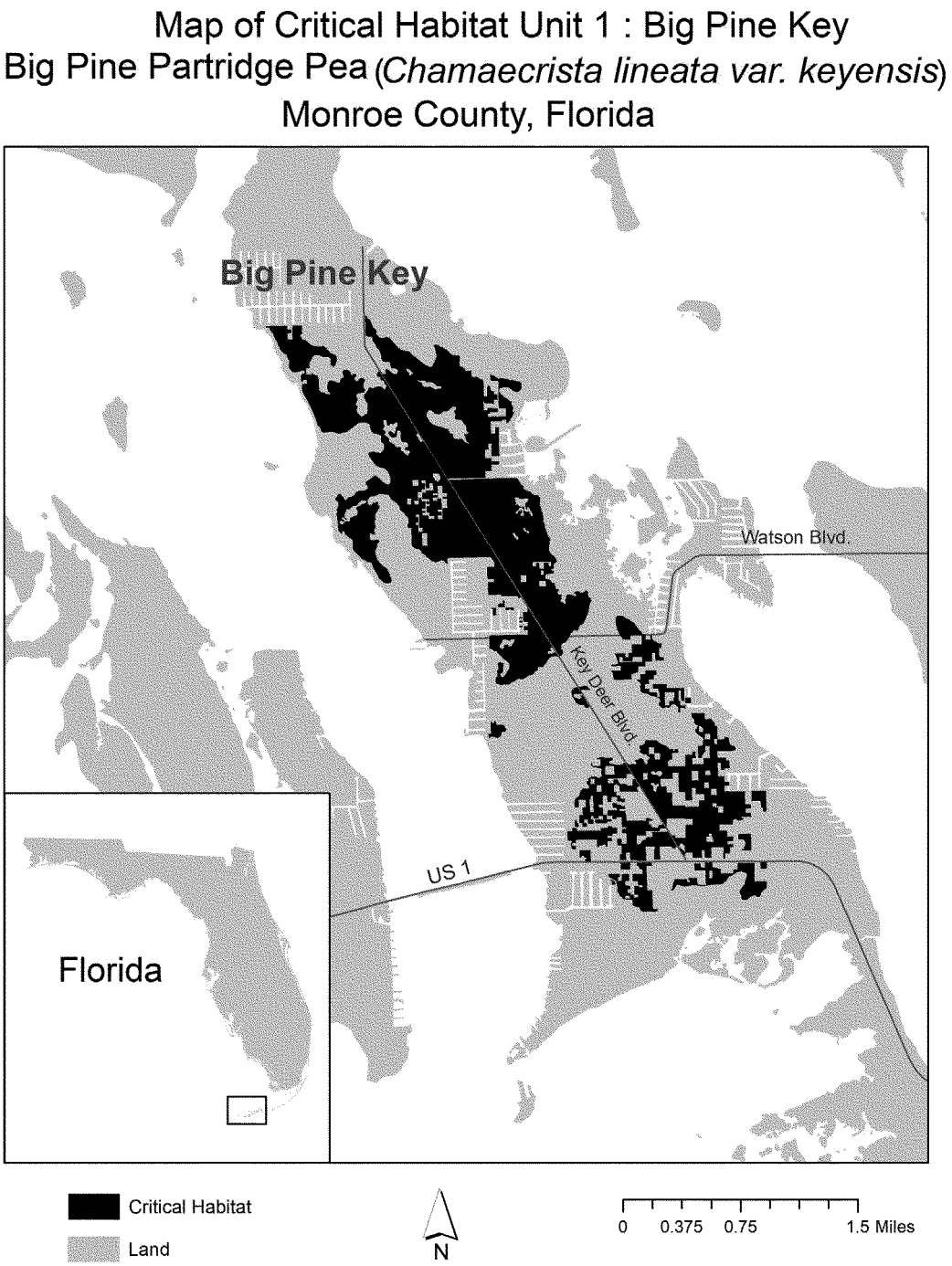


(6) Unit 1: BPP1—Big Pine Key, Monroe County, Florida.

(i) This unit consists of 1,379 ac (558 ha). The unit begins on northern Big Pine Key on the southern side of Gulf Boulevard, continues south on both sides of Key Deer Boulevard (CR 940) to the vicinity of Osprey Lane on the western side of CR 940 and Tea Lane to the east of CR 940; then resumes on both sides of CR 940 from Osprey Lane to south of Driftwood Lane; then resumes south of Osceola Street, between Fern Avenue to the west and Baba Lane to the east; then resumes north of Watson Boulevard in the vicinity of Avenue C; then continues south on both sides of Avenue C to South Street; then resumes on both sides of CR 940 south to U.S. 1 between Ships Way to the west and Sands Street to the east; then resumes south of U.S. 1 from Newfound Boulevard to the west and Deer Run Trail to the east; then resumes south of U.S. 1 from Palomino Horse Trail to the west and Industrial Road to the east.

(ii) Map of Unit 1 follows:

Figure 2 to *Chamaecrista lineata* var. *keyensis* (Big Pine partridge pea) paragraph (6)(ii)

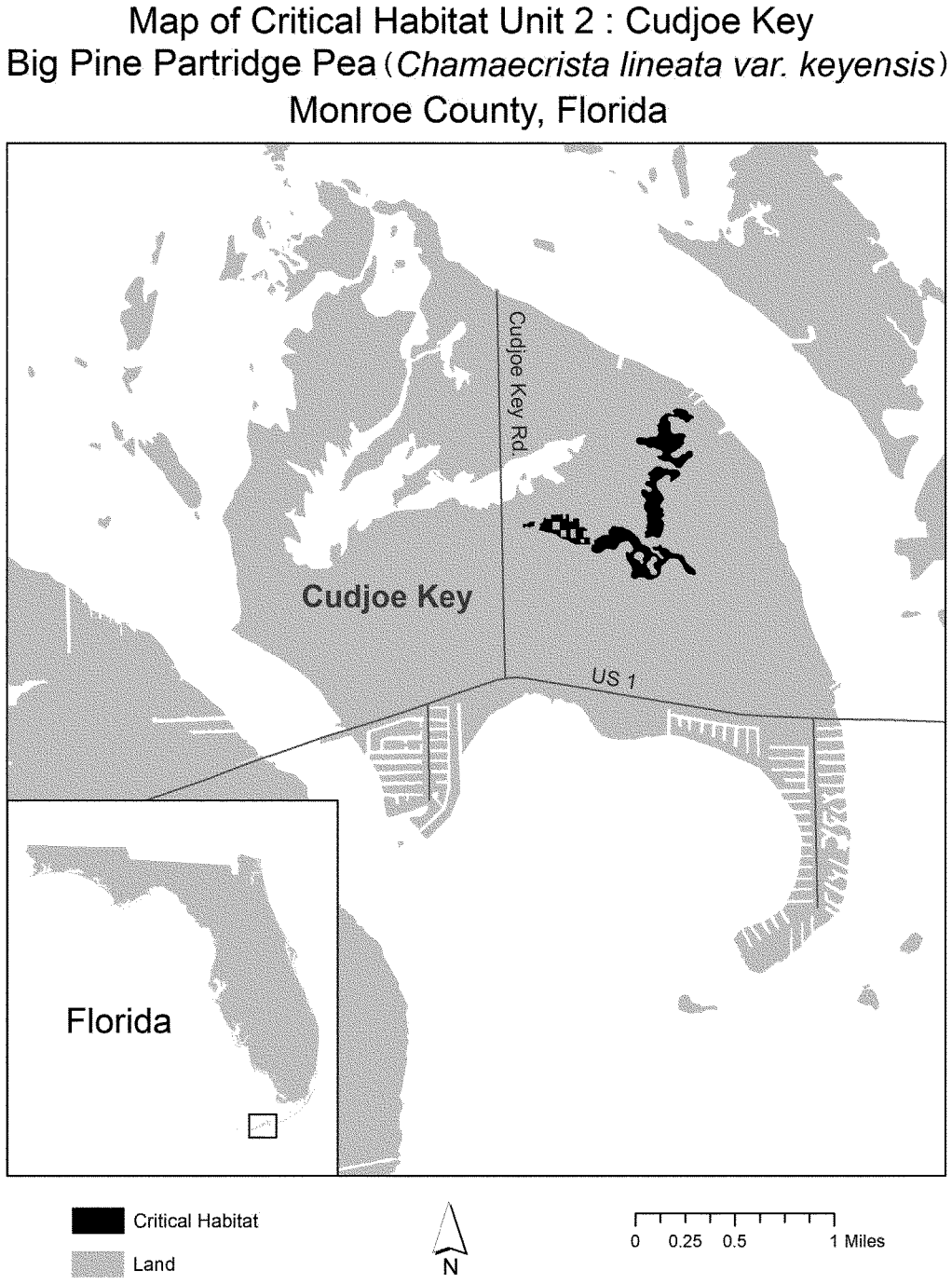


(7) Unit 2: BPP2—Cudjoe Key, Monroe County, Florida.

(i) This unit consists of 83 ac (33 ha). The unit is north of U.S. 1 and extends east from Blimp Avenue to Cutthroat Drive.

(ii) Map of Unit 2 follows:

Figure 3 to *Chamaecrista lineata* var. *keyensis* (Big Pine partridge pea) paragraph (7)(ii)



* * * * *

Family Linaceae: *Linum arenicola* (sand flax)

(1) Critical habitat units are depicted for Miami-Dade and Monroe Counties, Florida, on the maps below.

(2) Within these areas, the physical or biological features essential to the conservation of *Linum arenicola* consist of South Florida pine rockland habitat and adjacent disturbed areas that:

(i) Consist of calcareous limestone substrate (often exposed with little soil development) that provides nutritional requirements and suitable growing conditions (*e.g.,* pH, nutrients, anchoring, and drainage);

(ii) Are characterized by an open canopy of *Pinus elliottii* var. *densa* (South Florida slash pine) and understory with a high proportion of native pine rockland plant species to provide for sufficient sunlight to permit growth and flowering;

(iii) Are subjected to a monthly mean temperature characteristic of the subtropical humid classification in Miami-Dade County and tropical humid classification in Monroe County in

every month of the year and short hydroperiods ranging of up to 60 days each year;

(iv) Are subjected to periodic natural (*e.g.,* fire) or nonnatural (*e.g.,* prescribed fire, mowing) disturbance regimes to maintain open canopy conditions; and

(v) Contain the presence of native pollinators for natural pollination and reproduction.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [EFFECTIVE DATE OF FINAL RULE].

(4) Critical habitat map units. Data layers defining map units were created using ESRI ArcGIS mapping software. The projection used was Albers Conical Equal Area (Florida Geographic Data Library), NAD 1983 HARN. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. Shapefiles for the critical habitat units are available to the public at the Service's internet site, *https://www.fws.gov/office/florida-ecological-services/library,* and a list of coordinates outlining the units are available at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2022–0116, at *https://www.fws.gov/office/florida-ecological-services/library,* and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Note: Index maps of all critical habitat units for *Linum arenicola* (sand flax) follow:

Figure 1 to *Linum arenicola* (sand flax) paragraph (5)

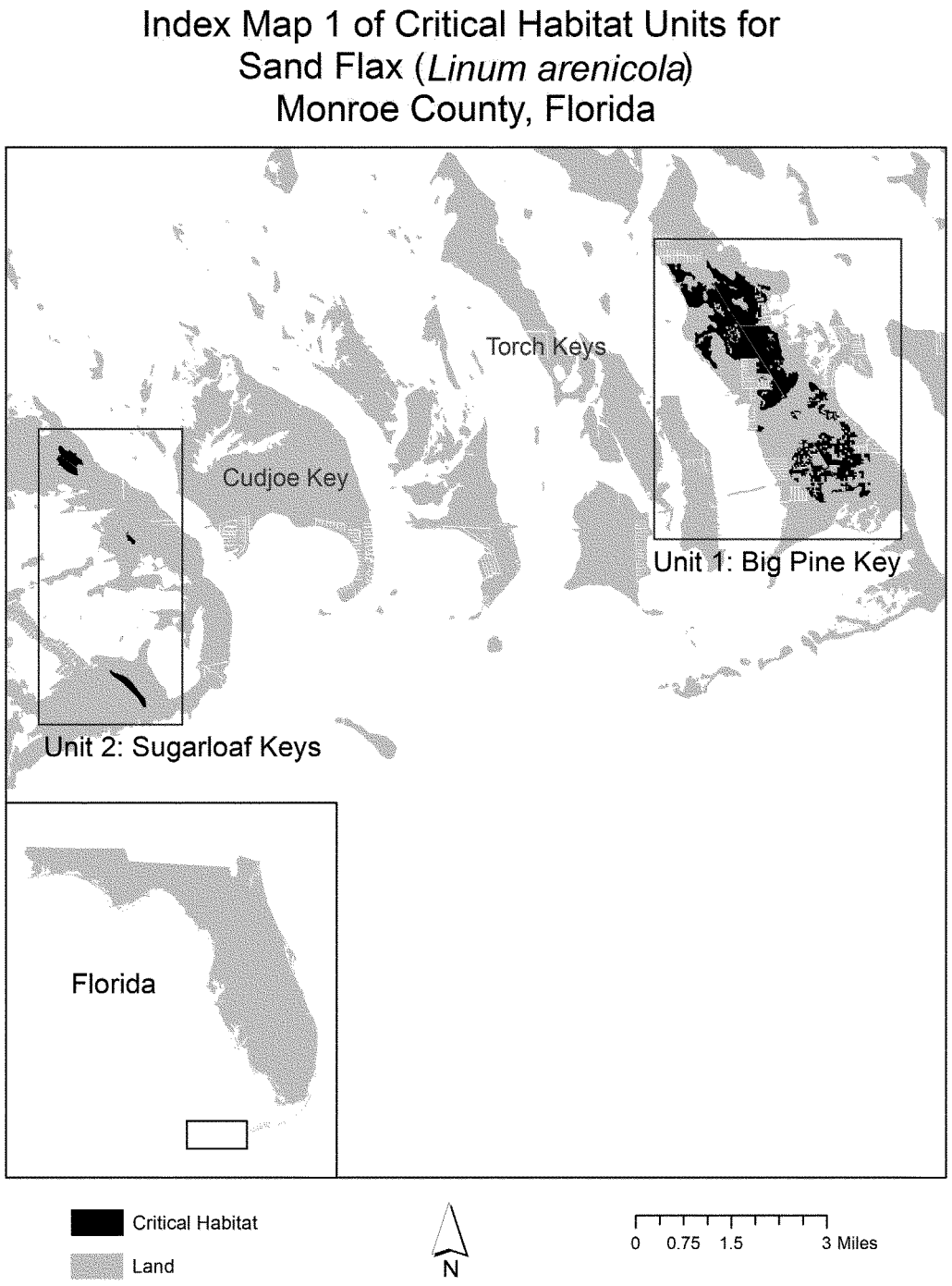
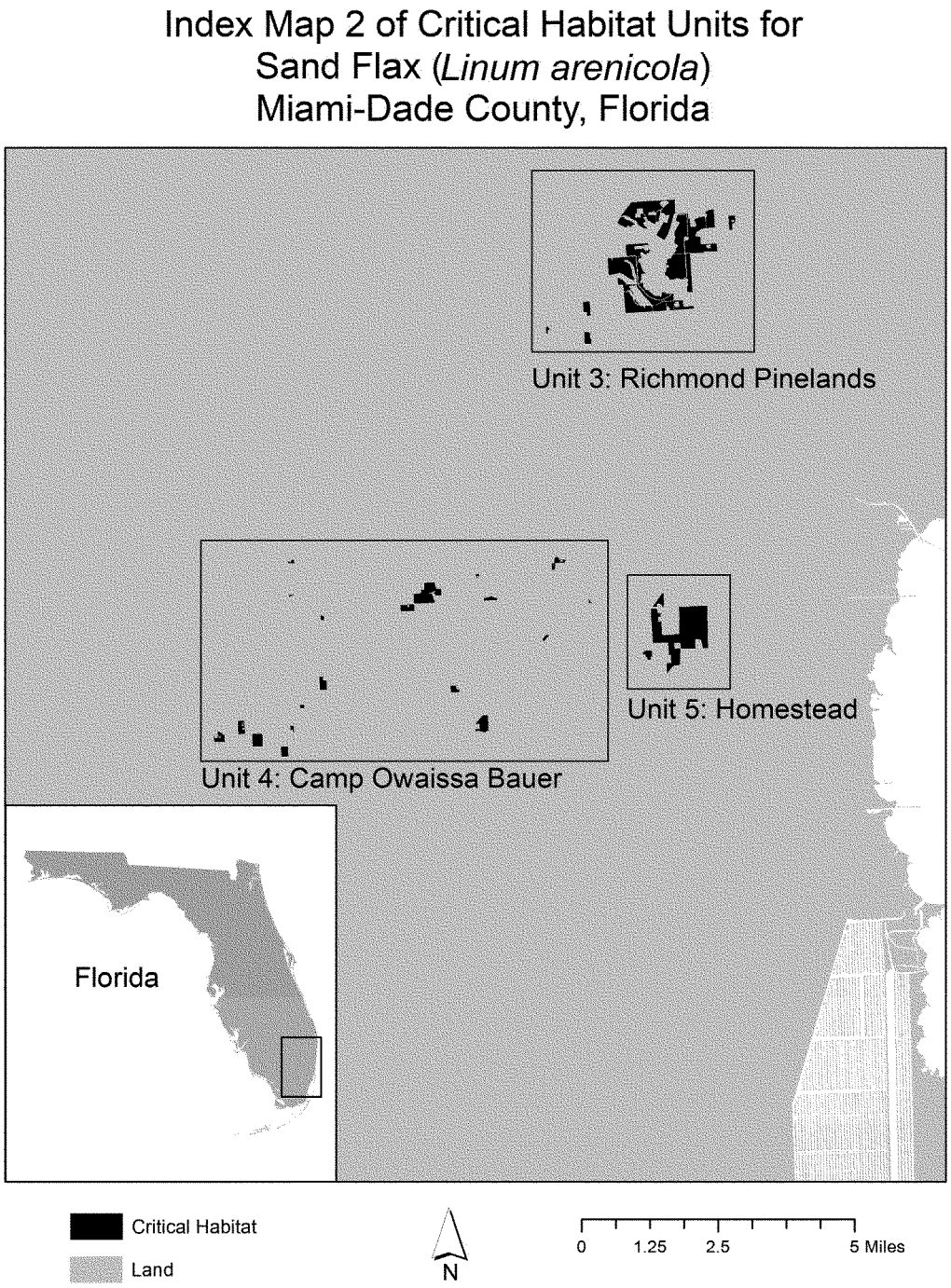


Figure 2 to *Linum arenicola* (sand flax) paragraph (5)



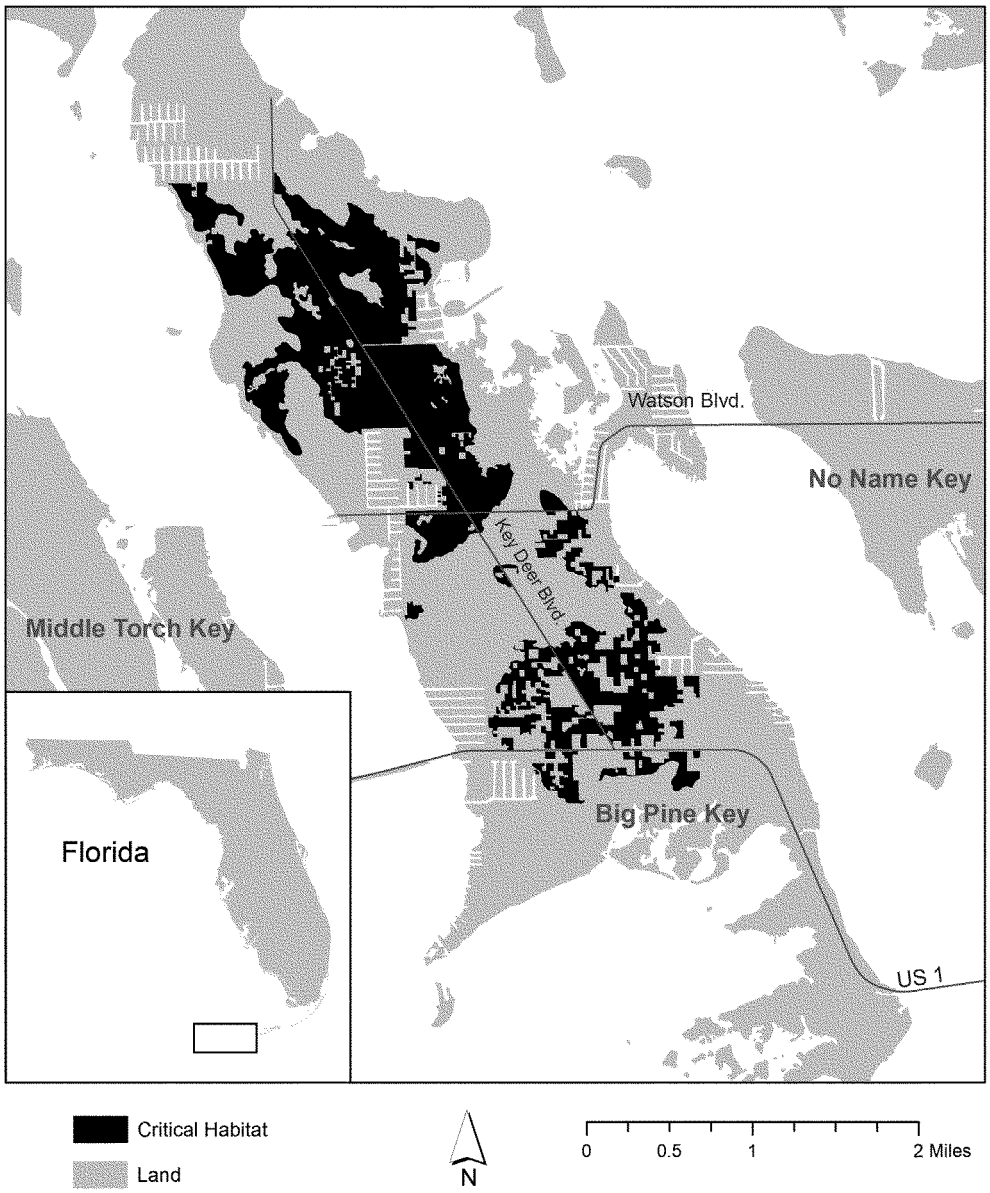
(6) Unit 1: SF1—Big Pine Key, Monroe County, Florida.

(i) This unit consists of 1,379 ac (558 ha). The unit begins on northern Big Pine Key on the southern side of Gulf Boulevard, continues south on both sides of Key Deer Boulevard (CR 940) to the vicinity of Osprey Lane on the western side of CR 940 and Tea Lane to the east of CR 940; then resumes on both sides of CR 940 from Osprey Lane to rest south of the vicinity of Driftwood Lane; then resumes south of Osceola Street, between Fern Avenue to the west and Baba Lane to the east; then resumes north of Watson Boulevard in the vicinity of Avenue C; then continues south on both sides of Avenue C to South Street; then resumes on both sides of CR 940 south to U.S. 1 between Ships Way to the west and Sands Street to the east; then resumes south of U.S. 1 from Newfound Boulevard to the west and Deer Run Trail to the east; then resumes south of U.S. 1 from Palomino Horse Trail to the west and Industrial Road to the east.

(ii) Map of Unit 1 follows:

Figure 3 to *Linum arenicola* (sand flax) paragraph (6)(ii)

Map of Critical Habitat Unit 1 : Big Pine Key
Sand Flax (*Linum arenicola*)
Monroe County, Florida



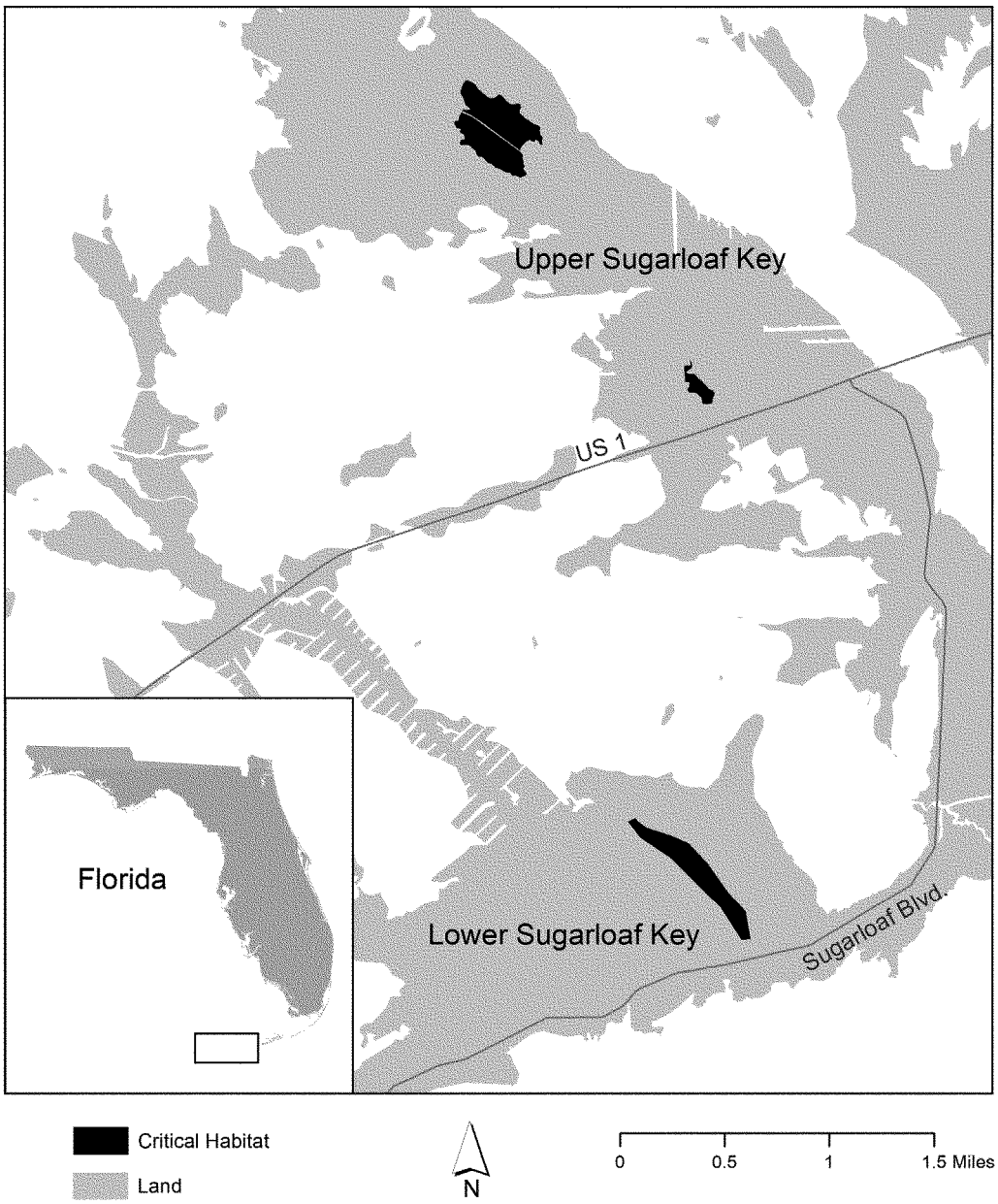
(7) Unit 2: SF2—Upper and Lower Sugarloaf Keys, Monroe County, Florida.

(i) This unit consists of 116 ac (47 ha). On Upper Sugarloaf Key, the unit is located north of U.S. 1, extending for approximately 0.5 mi (0.8 km) along both sides of Crane Boulevard, starting approximately 0.8 mi (1.3 km) from the intersection of Crane Road and Rosalind Road. A second area extends south from Pelico Road for approximately 0.2 mi (0.4 km). On Lower Sugarloaf Key, two disturbed roadside areas that support sand flax are along either side of Sugarloaf Boulevard and Square Circle, between Caymen Drive and County Road 939.

(ii) Map of Unit 2 follows:

Figure 4 to *Linum arenicola* (sand flax) paragraph (7)(ii)

Map of Critical Habitat Unit 2 : Upper and Lower Sugarloaf Keys
Sand Flax (*Linum arenicola*)
Monroe County, Florida



(8) Unit 3: SF3—Richmond Pinelands and Surrounding Areas, Miami-Dade County, Florida.

(i) This unit consists of approximately 987 ac (399 ha). This unit is bordered on the north by SW 152 Street (Coral Reef Drive), on the south by SW 200 St. (Quail Drive/SR 994), on the east by U.S. 1 (South Dixie Highway), and on the west by SW 177 Avenue (Krome Avenue).

(ii) Map of Unit 3 follows:

Figure 5 to *Linum arenicola* (sand flax) paragraph (8)(ii)

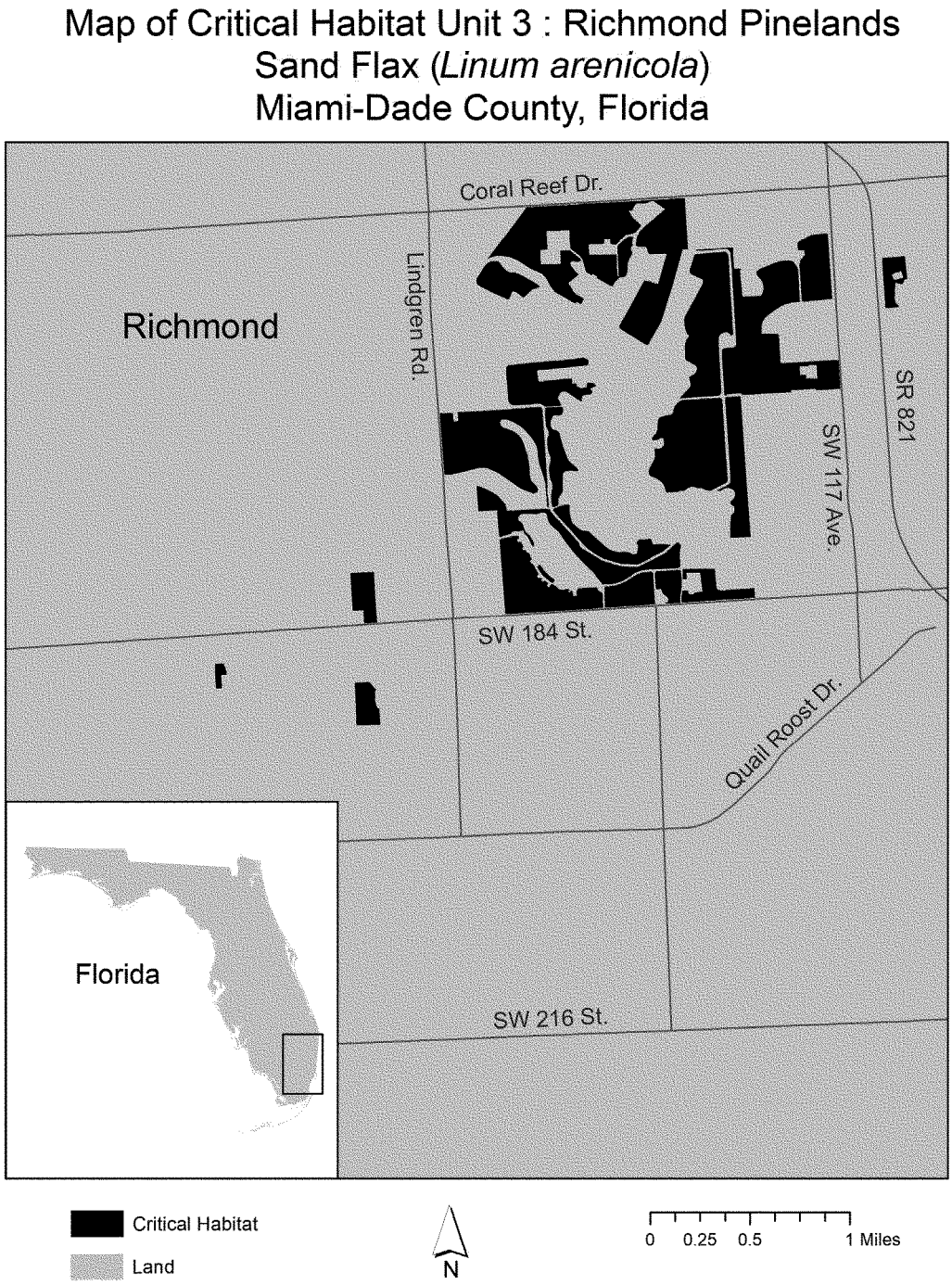
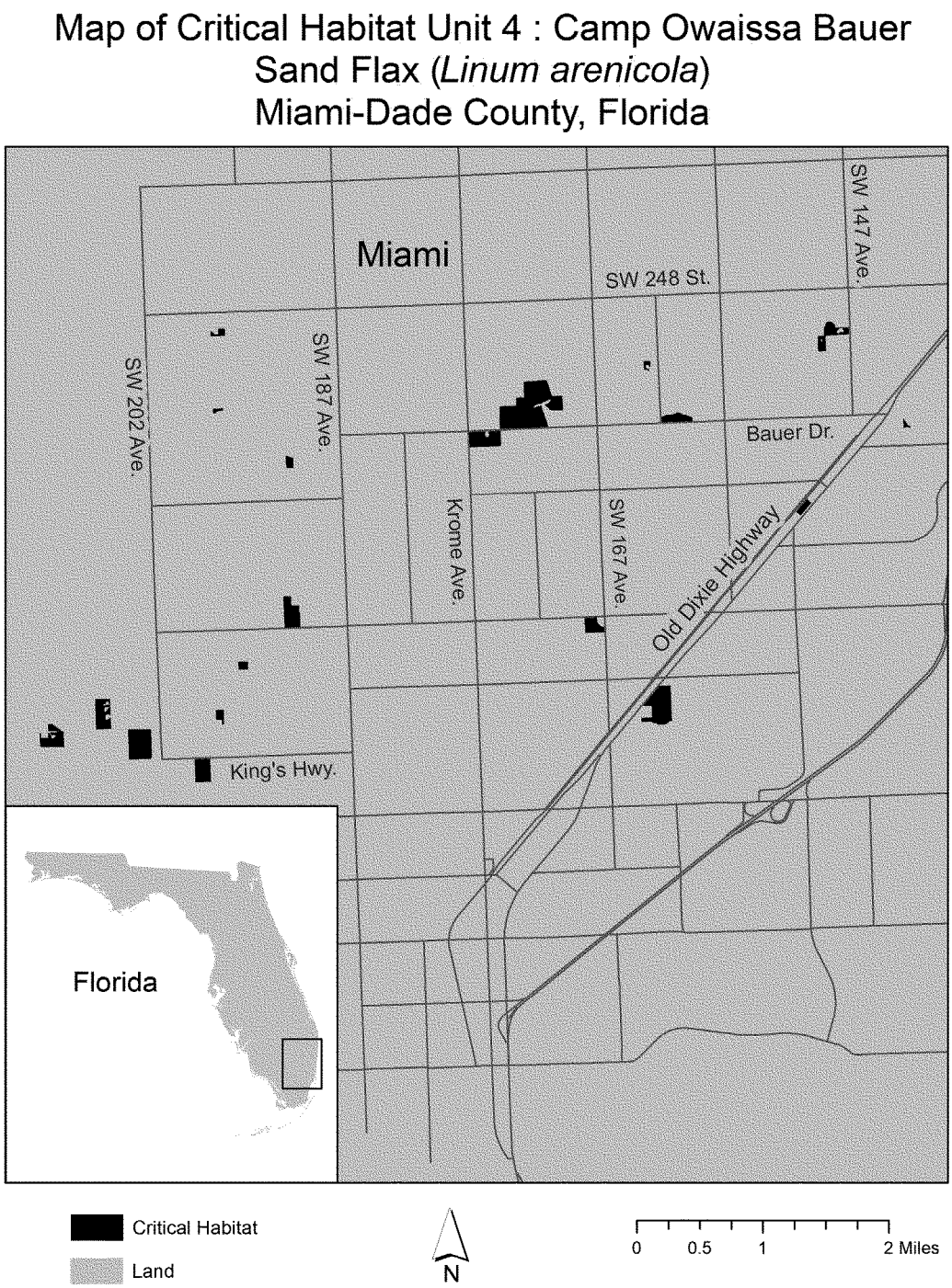


Figure 6 to *Linum arenicola* (sand flax) paragraph (9)(ii)

(9) Unit 4: SF4—Camp Owaissa Bauer and Surrounding Areas, Miami-Dade County, Florida.

(i) This unit consists of approximately 315 ac (128 ha). This unit is bordered on the north by SW 248 Street, on the south by SW 312 Street, on the east by SW 112 Avenue, and on the west by SW 217 Avenue.

(ii) Map of Unit 4 follows:



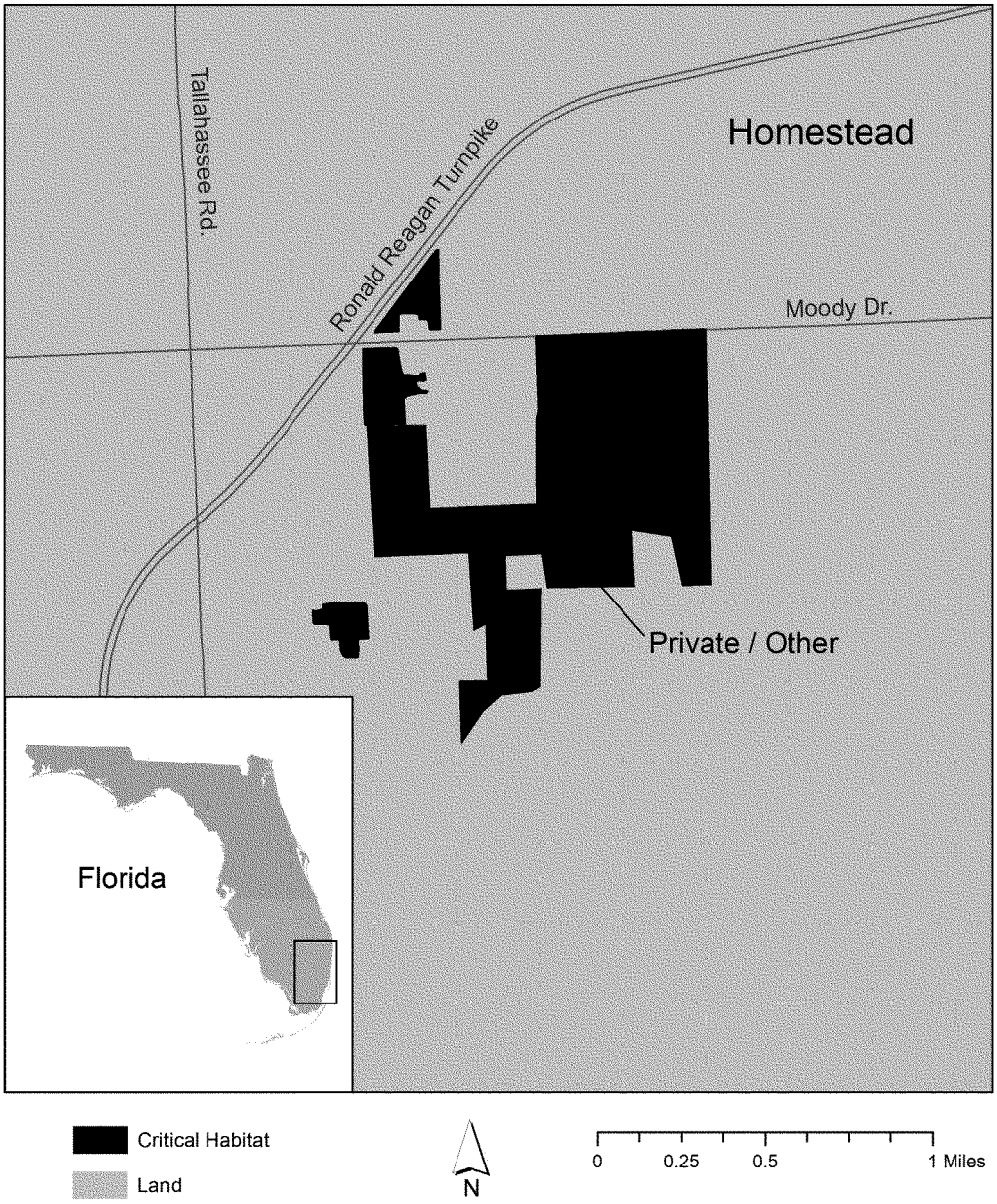
(10) Unit 5: SF5—Homestead and Surrounding Areas, Miami-Dade County, Florida.

(i) This unit consists of approximately 2,292 ac (928 ha). The unit closely follows the Homestead Air Reserve Base property line to the east of SW 137th Avenue and extends north to SW 288th Street, roughly along the Homestead Air Reserve Base boundary. North of SW 288th Street, the unit includes the large undeveloped area extending east from SW 278th Street to 1 mi (1.6 km) west of SW 112th Avenue and bounded to the north by SW 268th Street.

(ii) Map of Unit 5 follows:

Figure 7 to *Linum arenicola* (sand flax) paragraph (10)(ii)

Map of Critical Habitat Unit 5 : Homestead
Sand Flax (*Linum arenicola*)
Miami-Dade County, Florida



* * * * *

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–21587 Filed 10–13–22; 8:45 am]

BILLING CODE 4333–15–C

FEDERAL REGISTER

Vol. 87 Friday,

No. 198 October 14, 2022

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Sideroxylon reclinatum* ssp. *austrofloridense* (Everglades bully), *Digitaria pauciflora* (Florida pineland crabgrass), *Chamaesyce deltoidea* ssp. *pinetorum* (pineland sandmat), and *Dalea carthagenensis* var. *floridana* (Florida prairie-clover); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2022–0125; FF09E21000 FXES1111090FEDR 223]

RIN 1018–BE48

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Sideroxylon reclinatum* ssp. *austrofloridense* (Everglades bully), *Digitaria pauciflora* (Florida pineland crabgrass), *Chamaesyce deltoidea* ssp. *pinetorum* (pineland sandmat), and *Dalea carthagenensis* var. *floridana* (Florida prairie-clover)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for *Sideroxylon reclinatum* ssp. *austrofloridense* (Everglades bully), *Digitaria pauciflora* (Florida pineland crabgrass), *Chamaesyce deltoidea* ssp. *pinetorum* (pineland sandmat), and *Dalea carthagenensis* var. *floridana* (Florida prairie-clover) under the Endangered Species Act of 1973 (Act), as amended. In total, approximately 179,680 acres (72,714 hectares) for Everglades bully, 177,879 acres (71,985 hectares) for Florida pineland crabgrass, 8,867 acres (3,588 hectares) for pineland sandmat, and 179,300 acres (72,560 hectares) for Florida prairie-clover in Monroe, Collier, and Miami-Dade Counties, Florida, fall within the boundaries of the proposed critical habitat designations. If we finalize this rule as proposed, it would extend the Act's protections to the species' critical habitats. We also announce the availability of a draft economic analysis (DEA) of the proposed designations of critical habitat for these four plant species.

DATES: We will accept comments received or postmarked on or before December 13, 2022. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 28, 2022.

ADDRESSES:

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2022–0125, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2022–0125; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church VA 22041–3803.

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

Availability of supporting materials: For the proposed critical habitat designations, the coordinates or plot points or both from which the maps are generated are included in the decision file for these critical habitat designations and are available at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2022–0125 and on the Service's website at *https://www.fws.gov/office/florida-ecological-services/library.* Additional supporting information that we developed for these critical habitat designations will be available on the Service's website, at *https://www.regulations.gov,* or both.

FOR FURTHER INFORMATION CONTACT: Lourdes Mena, Classification and Recovery Division Manager, U.S. Fish and Wildlife Service, Florida Ecological Services Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256; by telephone 904–731–3134; or by facsimile 904–731–3045. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, when we determine that any species is an endangered or threatened species, we must designate critical habitat, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule through the Administrative Procedure Act rulemaking process.

What this document does. This document proposes to designate critical habitat for one plant species, Florida prairie-clover, that is listed as an endangered species under the Act and for three plant species, Everglades bully, Florida pineland crabgrass, and pineland sandmat that are listed as threatened species under the Act (see listing rule at 82 FR 46691, October 6, 2017).

The basis for our action. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific and commercial data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Draft economic analysis of the proposed designations of critical habitat. We have prepared an analysis of the probable economic impacts of the proposed critical habitat designations and related factors. In this document, we announce the availability of the draft economic analysis and seek additional public review and comment.

Public comment. We are seeking comments and soliciting information from the public on our proposed designations to make sure we consider the best scientific and commercial information available in developing our final designations. Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal. We will respond to substantive comments we receive during the comment period in our final rule.

Peer review. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of determination

under section 4 of the Act, including listing determinations and critical habitat designations, we are seeking comments from independent specialists. The purpose of peer review is to ensure that our critical habitat designations are based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in the biology, habitat, and threats to the species addressed in this proposed rule. We have invited these peer reviewers to comment on our specific assumptions and conclusions in this critical habitat proposal during the public comment period for this proposed rule (see **DATES**, above).

Information Requested

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

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including information regarding the following factors that the regulations identify as reasons why designation of critical habitat may be not prudent:

(a) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species; or

(b) Such designation of critical habitat would not be beneficial to the species. In determining whether a designation would not be beneficial, the factors the Services may consider include but are not limited to: Whether the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or whether any areas meet the definition of ''critical habitat.''

(2) Specific information on:

(a) The amount and distribution of Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover habitat;

(b) Any additional areas occurring within the range of the species, *i.e.,* south and central Florida, that should be included in the designations because they (i) are occupied at the time of listing and contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations, or (ii) are unoccupied at the time of listing and are essential for the conservation of the species because they have potential to successfully support introduced or reintroduced populations of these species;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) Whether we have appropriately identified the physical or biological features that are essential to the conservation for each species.

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

(4) Information on the projected and reasonably likely impacts of climate change on Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover and proposed critical habitat.

(5) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts and any additional information regarding probable economic impacts that we should consider.

(6) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designations, and the related benefits of including or excluding specific areas.

(7) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act. If you think we should exclude any additional areas, please provide information supporting a benefit of exclusion.

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

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a final critical habitat determination. Section 4(b)(2) of the Act directs that the Secretary shall designate critical habitat on the basis of the best scientific data available.

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

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Because we will consider all comments and information we receive during the comment period, our final designations may differ from this proposal. Based on the new information we receive (and any comments on that new information), our final designations may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, or may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES.** Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

On October 11, 2016, we proposed to list Florida prairie-clover as an endangered species and Everglades bully, Florida pineland crabgrass, and

pineland sandmat as threatened species under the Act (81 FR 70282). On October 6, 2017, we published our final determination in the **Federal Register** (82 FR 46691) and added Florida prairie-clover as an endangered species and Everglades bully, Florida pineland crabgrass, and pineland sandmat as threatened species to the List of Endangered and Threatened Plants at 50 CFR 17.12(h). At the time of our proposal, we determined that critical habitat was prudent, but not determinable, because we lacked specific information on the impacts of our designation. In our final listing rule (82 FR 46691; October 6, 2017), we stated we were in the process of obtaining information on the impacts of the designation. All previous Federal actions for Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover are outlined in our proposed listing rule for the four plant species (81 FR 70282; October 11, 2016).

It is our intent to discuss in this proposed rule only those topics directly relevant to the designation of critical habitat for Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover. For more information on the taxonomy, life history, habitat, population descriptions, and factors affecting the species for Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover, please refer to the October 11, 2016, proposed listing rule (81 FR 70282) and the October 6, 2017, final listing rule (82 FR 46691) for these species.

Background

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for threatened and endangered species. In 2019, jointly with the National Marine Fisheries Service, the Service issued final rules that revised the regulations in 50 CFR parts 17 and 424 regarding how we add, remove, and reclassify threatened and endangered species and the criteria for designating listed species' critical habitat (84 FR 45020 and 84 FR 44752; August 27, 2019).

However, on July 5, 2022, the U.S. District Court for the Northern District of California vacated the 2019 regulations (*Center for Biological Diversity* v. *Haaland,* No. 4:19–cv–05206–JST, Doc. 168 (N.D. Cal. July 5, 2022) (*CBD* v. *Haaland*)), reinstating the regulations that were in effect before the effective date of the 2019 regulations as the law governing species classification and critical habitat decisions. Accordingly, in developing the analysis contained in this proposal, we applied the pre-2019 regulations, which may be reviewed in the 2018 edition of the Code of Federal Regulations at 424.02 and 424.12(a)(1) and (b)(2)). Because of the ongoing litigation regarding the court's vacatur of the 2019 regulations, and the resulting uncertainty surrounding the legal status of the regulations, we also undertook an analysis of whether the proposal would be different if we were to apply the 2019 regulations. That analysis, which we described in a separate memo in the decisional file and posted on *https://www.regulations.gov,* concluded that we would have reached the same proposal if we had applied the 2019 regulations because under either regulatory scheme we find that critical habitat is prudent for the four plant species and that the occupied areas proposed for critical habitat are adequate to ensure the conservation of the species. The amount and distribution of critical habitat we are proposing for designation in occupied areas would allow existing and future established populations of Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover to maintain their existing distributions; expand their distributions into suitable nearby areas (needed to offset habitat loss and fragmentation); increase the size of each population to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished; and maintain their ability to withstand local or unit-level environmental fluctuations or catastrophic events. Accordingly, we have not identified unoccupied areas that are essential for the conservation of the species at this time.

On September 21, 2022, the U.S. Circuit Court of Appeals for the Ninth Circuit stayed the district court's July 5, 2022, order vacating the 2019 regulations until a pending motion for reconsideration before the district court is resolved (*In re: Cattlemen's Ass'n,* No. 22–70194). The effect of the stay is that the 2019 regulations are currently the governing law. Because a court order requires us to submit this proposal to the **Federal Register** by September 30, 2022, it is not feasible for us to revise the proposal in response to the Ninth Circuit's decision. Instead, we hereby adopt the analysis in the separate memo that applied the 2019 regulations as our primary justification for the proposal. However, due to the continued uncertainty resulting from the ongoing litigation, we also retain the analysis in this preamble that applies the pre-2019 regulations and we conclude that, for the reasons stated in our separate memo analyzing the 2019 regulations, this proposal would have been the same if we had applied the 2019 regulations.

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

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land

ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would likely result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the listing rules and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) currently in effect state that a designation of critical habitat is not prudent when one or both of the following situations exist:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species; or

(ii) Such designation of critical habitat would not be beneficial to the species. In determining whether a designation would not be beneficial, the factors the Services may consider include, but are not limited to: Whether the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or whether any areas meet the definition of ''critical habitat.''

No imminent threat of take attributed to collection or vandalism was identified under Factor B for these species in the final listing rule (82 FR 46691; October 6, 2017), nor has such a threat been identified since, and identification and mapping of critical habitat is not expected to initiate or increase the degree of any such threat. In our listing determination for these species, we determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to these species. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) has been met, we have determined that the designation of critical habitat is prudent for Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover.

Critical Habitat Determinability

Having determined that designation of critical habitat is prudent for each species, under section 4(a)(3) of the Act we must find whether critical habitat for Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of ''critical habitat.''

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

At the time of our proposal, we determined that critical habitat was prudent, but not determinable because we lacked specific information on the impacts of our designation (81 FR 70282; October 11, 2016). In our final listing rule, we stated we were in the process of obtaining information on the impacts of the designation (82 FR 46691; October 6, 2017). We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where these species are located. At this time, we are proposing to designate critical habitat, to the maximum extent prudent, for Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover.

Physical or Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. Following vacatur of the 2019 regulations, our regulations now in effect at 50 CFR 424.02 define ''physical or biological features'' as the features that support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or absence of a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential features to support the life history of the species.

In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

We derive the specific physical or biological features essential to Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover from studies of these plants' habitat, ecology, and life history as described below. Additional information can be found in the October 11, 2016, proposed listing rule (81 FR 70282) and October 6, 2017, final listing rule (82 FR 46691) for these species. We have determined that the following physical or biological features are essential to the conservation of Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie.

Everglades Bully, Florida Pineland Crabgrass, and Pineland Sandmat

Space for Individual and Population Growth and for Normal Behavior

Plant Community and Competitive Ability—Everglades bully and Florida pineland crabgrass occur in pine rockland and marl prairies, as well as the ecotone between these habitats in Collier, Miami-Dade, and Monroe Counties (Gann et al. 2006, p. 12; Bradley et al. 2013, p. 4; Gann 2015, p. 30; Maschinski et al. 2002, p. 79), whereas pineland sandmat occurs only in communities classified as pine rockland habitat in Miami-Dade and Monroe Counties (Bradley and Gann 1999, p. 24). Detailed descriptions of these communities and their associated native plant species for Everglades bully, Florida pineland crabgrass, and pineland sandmat are provided under Background in the October 11, 2016, proposed listing rule (81 FR 70282) and under Summary of Biological Status and Threats in the October 6, 2017, final listing rule (82 FR 46691). These habitats and their associated plant communities provide vegetation structure that allows for adequate growing space, moisture, sunlight, pollinators, and a competitive regime that is required for Everglades bully, Florida pineland crabgrass, and pineland sandmat to persist and spread. Pine rocklands and marl prairies are fire-maintained ecosystems characterized by an open canopy and understory and a limestone substrate (often exposed). Open canopy conditions are required to allow sufficient sunlight to reach the herbaceous layer and permit growth and flowering of Everglades bully, Florida pineland crabgrass, and pineland sandmat (Ross and Ruiz 1996, pp. 5–6; Bradley and Saha 2009, p. 4). These species also require a calcareous limestone substrate that varies from nearly bare to thin layers or small pockets of shallow soil to provide suitable growing conditions (*e.g.,* pH, nutrients, anchoring, and proper drainage). As a result of these marginal soil conditions, plants such as Everglades bully, Florida pineland crabgrass, and pineland sandmat rely on sparse competition and periodic disturbance to thrive and persist. This combination of ecosystem characteristics (*i.e.,* open canopy with a partially exposed limestone substrate and periodic disturbance) occurs only in pine rockland habitats (as opposed to rockland hammock, which occurs in conjunction with pine rockland and has a limestone substrate but a closed canopy) and marl prairie habitats.

In Miami-Dade County, development and agriculture have reduced pine rockland habitat by 90 percent in mainland south Florida. Recent vegetation mapping in Everglades National Park (ENP) indicates there are a total of 14,211 acres (ac) (5,751 hectares (ha)) of pine rocklands remaining in ENP, which includes the largest remaining area of pine rockland (approximately 10,895 ac (4,409 ha)) in Florida (Long Pine Key) (Ruiz et al. 2022). Outside of ENP, pine rockland habitat decreased from approximately 185,329 ac (75,000 ha) in the early 1900s to only 3,707 ac (1,500 ha) in 2014 (Possley et al. 2014, p. 154) and 2,275 ac (921 ha) in 2019 (USGS 2019, p. 28), leaving only about 1.2 percent of the pine rocklands on the Miami Rock Ridge remaining. Further, much of what is left are small remnants scattered throughout the Miami metropolitan area, isolated from other natural areas

(Herndon 1998, p. 1). The extreme rarity of high-quality pine rockland habitat supporting Everglades bully, Florida pineland crabgrass, and pineland sandmat and marl prairie habitat supporting Everglades bully and Florida pineland crabgrass elevates the importance of disturbed remnant sites that still retain some pine rockland species.

We consider pine rockland and adjacent ecotonal areas to be primary habitat for Everglades bully, Florida pineland crabgrass, and pineland sandmat. Similarly, we also consider marl prairie and adjacent ecotonal areas to be primary habitat for Everglades bully and Florida pineland crabgrass. Therefore, based on the information above, we identify upland habitats consisting of pine rocklands and adjacent ecotonal areas to be a physical or biological feature essential to the conservation of Everglades bully, Florida pineland crabgrass, and pineland sandmat. Additionally, we identify upland habitats consisting of marl prairie and adjacent ecotonal areas to be a physical or biological feature essential to the conservation of Everglades bully and Florida pineland crabgrass.

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

Climate (Temperature and Precipitation)—Everglades bully, Florida pineland crabgrass, and pineland sandmat require adequate rainfall and do not tolerate prolonged freezing temperatures. The climate of south Florida where Everglades bully, Florida pineland crabgrass, and pineland sandmat occur is characterized by distinct wet and dry seasons, a monthly mean temperature above 64.4 degrees (°) Fahrenheit (F) (18 °Celsius (C)) in every month of the year, and annual rainfall averaging 30 to 60 inches (in) (75 to 150 centimeters (cm)) (Gabler et al. 1994, p. 211). Areas of pine rockland that are adjacent to wetlands may experience prolonged flooded periods lasting up to 60 days, while those at higher elevation have shorter or no annual flooding period (Florida Natural Areas Inventory (FNAI) 2010, p. 2). Freezes can occur in the winter months but are very infrequent at this latitude in Florida. Therefore, based on the information above, we determined a subtropical humid climate (Miami-Dade County) or tropical humid climate (Collier and Monroe Counties) to be an essential physical feature for Everglades bully, Florida pineland crabgrass, and pineland sandmat.

Soils—Substrates supporting Everglades bully, Florida pineland crabgrass, and pineland sandmat are composed of oolitic limestone that is at or very near the surface (Kernan and Bradley 1996, p. 2). Solution holes occasionally form where the surface limestone is dissolved by organic acids. There is typically very little soil development, consisting primarily of accumulations of low-nutrient sand, marl, clayey loam, and organic debris found in solution holes, depressions, and crevices on the limestone surface (FNAI 2010, p. 62). However, these species can be found at the northern end of the Miami Rock Ridge, where the substrate includes extensive sandy pockets, beginning from approximately North Miami Beach and extending south to approximately SW 216 Street (which runs east-west approximately one-half mile south of Quail's Roost Pineland) (Service 1999, p. 3–162).

These substrates provide anchoring, nutrients, moisture regime, and suitable soil chemistry for Everglades bully, Florida pineland crabgrass, and pineland sandmat; they facilitate a community of associated plant species that creates competition, which allows these species to persist and spread. Therefore, based on the information above, we identify substrates derived from calcareous limestone (often exposed with little soil development) that provide nutritional requirements and suitable growing conditions (*e.g.,* pH, nutrients, anchoring, and drainage) to be an essential physical feature for Everglades bully, Florida pineland crabgrass, and pineland sandmat.

Hydrology—Pine rocklands occur on relatively flat, moderately to well drained terrain from 6 to 21 feet (ft) (2 to 7 meters (m)) above sea level. Drainage varies according to the porosity of the limestone substrate but is generally rapid. Consequently, most sites are wet for only short periods following heavy rains. During the rainy season, however, some sites may be shallowly inundated by slow-flowing surface water for up to 60 days each year (hydroperiods) (FNAI 2010, p. 62). Marl prairies also are dependent on short hydroperiods (up to 60 days). Longer hydroperiods favor the development of peat and the dominance of sawgrass while shorter hydroperiods permit the invasion of woody species (FNAI 2010, p. 108). Therefore, based on the information above, we identify pine rockland habitat with short hydroperiods (up to 60 days) to be an essential feature for Everglades bully, Florida pineland crabgrass, and pineland sandmat. Additionally, we identify marl prairie habitat with short hydroperiods (up to 60 days) to be an essential habitat feature for Everglades bully and Florida pineland crabgrass.

Cover or Shelter

Everglades bully, Florida pineland crabgrass, and pineland sandmat occur in open to semi-open canopy habitats. Pine rockland is characterized by an open canopy of *Pinus elliottii* var. *densa* (South Florida slash pine), with a limited subcanopy (Snyder et al. 1990, p. 253). Marl prairie is characterized by a sparsely vegetated, grass-dominated community. Although the vegetative community is diverse, most marl prairie plant species contribute little cover, and over 90 percent of the cover is contributed by only two or three dominant species in any given area (FNAI 2010, p. 108). The spatial and temporal distribution of open canopy areas varies in these habitats based on time since the last disturbance, such as fire, caused canopy openings.

An open canopy and understory are required to allow sufficient sunlight to reach the herbaceous layer and permit growth and flowering of Everglades bully, Florida pineland crabgrass, and pineland sandmat. Therefore, based on the information above, we identify vegetation composition and structure characterized by an open to semi-open canopy that allows for sufficient sunlight and space for individual growth and population expansion to be an essential feature for Everglades bully, Florida pineland crabgrass, and pineland sandmat.

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

Little is known about the life history of Everglades bully, Florida pineland crabgrass, and pineland sandmat, including pollination biology, seed production, or dispersal. Reproduction is sexual, with new plants generated from seeds. Therefore, insect pollination is likely important to these species' reproduction, and declines in pollinator visitation may cause decreased seed or fruit production of Everglades bully, Florida pineland crabgrass, and pineland sandmat, which could lead to lower seedling establishment and numbers of mature plants.

The pine rocklands, marl prairies, and adjacent ecotonal habitats identified above as essential features provide a plant community with associated plant species that foster a competitive regime suitable to Everglades bully, Florida pineland crabgrass, and pineland sandmat and contain adequate open space for the recruitment of new plants. Associated plant species in these habitats attract and provide cover for

insect pollinators required for Everglades bully, Florida pineland crabgrass, and pineland sandmat pollination (for more information, see Background in the October 11, 2016, proposed listing rule (81 FR 70282) and Summary of Biological Status and Threats in the October 6, 2017, final listing rule (82 FR 46691)).

Therefore, based on the information above, we identify pine rockland and adjacent ecotonal areas containing the presence of native pollinators for natural pollination and reproduction to be an essential feature for Everglades bully, Florida pineland crabgrass, and pineland sandmat. Additionally, we identify marl prairie and adjacent ecotonal areas containing the presence of native pollinators for natural pollination and reproduction to be an essential feature for Everglades bully and Florida pineland crabgrass.

Habitats Representative of the Historical, Geographic, and Ecological Distributions of the Species

Everglades bully, Florida pineland crabgrass, and pineland sandmat continue to occur in habitats that are protected from incompatible human disturbance, which are habitats representative of the species' historical, geographical, and ecological distributions, although their ranges have been reduced. These species are still found in pine rocklands, and, in addition, Everglades bully and Florida pineland crabgrass are still found in marl prairies, along with the ecotonal regions between these two habitat types. As described above, these habitats provide a community of associated plant and animal species that are compatible with Everglades bully, Florida pineland crabgrass, and pineland sandmat. In addition, these habitats provide the vegetation structure that provides adequate sunlight levels and open space for plant growth and regeneration, and substrates with adequate moisture availability and suitable soil chemistry needed for these species. Representative communities are located on Federal, State, local, and private conservation lands that implement conservation measures benefitting the species.

Disturbance Regime—Pine rockland and marl prairie habitats that could or currently support Everglades bully, Florida pineland crabgrass, and pineland sandmat depend on natural disturbance regimes from hurricanes or fires to open the canopy in order to provide light levels sufficient to support the species. The historical frequency and magnitude of hurricanes and fire have allowed for the persistence of Everglades bully, Florida pineland crabgrass, and pineland sandmat by occasionally creating areas of open canopy. In the absence of disturbance, these habitats may have closed canopies, resulting in areas lacking enough available sunlight to support Everglades bully, Florida pineland crabgrass, and pineland sandmat. Most of these areas can be restored if habitats are managed with a combination of mechanical hardwood removal and prescribed fire. We consider wildfire to be the natural disturbance factor for pine rocklands, marl prairies, and adjacent ecotonal areas. Therefore, we identify habitats that are subjected to periodic natural (*e.g.,* hurricanes, fire) or unnatural (*e.g.,* prescribed fire) disturbance regimes to maintain open canopy conditions in pine rocklands, marl prairies, and adjacent ecotonal areas as essential habitat features for Everglades bully, Florida pineland crabgrass, and pineland sandmat.

Summary of Physical or Biological Features Essential to the Conservation of Everglades Bully, Florida Pineland Crabgrass, and Pineland Sandmat

Based on the best available science related to the life history and ecology of these species, as outlined in the discussion above, we have determined that the following physical or biological features are essential to the conservation of Everglades bully and Florida pineland crabgrass:

South Florida pine rockland, marl prairie, and adjacent ecotonal areas:

(1) Consisting of calcareous limestone substrate (often exposed with little soil development) that provides nutritional requirements and suitable growing conditions (*e.g.,* pH, nutrients, anchoring, and drainage);

(2) Characterized by an open to semi-open canopy and understory with a high proportion of native plant species to provide for sufficient sunlight to permit growth and flowering;

(3) Subjected to a monthly mean temperature characteristic of the subtropical humid classification in Miami-Dade County or the tropical humid classification in Collier and Monroe Counties and short hydroperiods ranging up to 60 days each year;

(4) Subjected to periodic natural (*e.g.,* hurricanes, fire) or unnatural (*e.g.,* prescribed fire) disturbance regimes to maintain open canopy conditions; and

(5) Containing the presence of native pollinators for natural pollination and reproduction.

Based on the best available science related to the life history and ecology of the species, as outlined in the discussion above, we have determined that the following physical or biological features are essential to the conservation of pineland sandmat:

South Florida pine rockland and adjacent ecotonal areas:

(1) Consisting of calcareous limestone substrate (often exposed with little soil development) that provides nutritional requirements and suitable growing conditions (*e.g.,* pH, nutrients, anchoring, and drainage);

(2) Characterized by an open canopy and understory with a high proportion of native pine rockland plant species to provide for sufficient sunlight to permit growth and flowering;

(3) Subjected to a monthly mean temperature characteristic of the subtropical humid classification in Miami-Dade County and short hydroperiods ranging up to 60 days each year;

(4) Subjected to periodic natural (*e.g.,* hurricanes, fire) or unnatural (*e.g.,* prescribed fire) disturbance regimes to maintain open canopy conditions; and

(5) Containing the presence of native pollinators for natural pollination and reproduction.

Florida Prairie-Clover

Space for Individual and Population Growth and for Normal Behavior

Plant Community and Competitive Ability—Florida prairie-clover occurs in Collier, Miami-Dade, and Monroe Counties in communities classified as pine rockland, marl prairie, rockland hammock, and coastal berm, in addition to disturbed sites adjacent to these habitats, such as roadsides and mowed areas still dominated by native species (Bradley and Gann 1999, p. 3; Gann 2015, p. 26). These communities and their associated native plant species are described in the October 11, 2016, proposed listing rule (81 FR 70282) and the October 6, 2017, final listing rule (82 FR 46691). These habitats and their associated plant communities provide vegetation structure that allows for adequate growing space, moisture, sunlight, pollinators, and a competitive regime that is required for Florida prairie-clover to persist and spread. The plant also requires a calcareous limestone substrate that varies from nearly bare to thin layers or small pockets of shallow soil to provide suitable growing conditions (*e.g.,* pH, nutrients, anchoring, and proper drainage). As a result of these marginal soil conditions, plants such as Florida prairie-clover rely on sparse competition and periodic disturbance to thrive and persist.

As discussed above for Everglades bully, Florida pineland crabgrass, and

pineland sandmat, pine rocklands and marl prairies are fire-maintained ecosystems characterized by an open canopy and understory and a limestone substrate (often exposed). Rockland hammock is a species-rich tropical hardwood forest on upland sites in areas where limestone is very near the surface and often exposed. Coastal berms are landscape features found along low-energy coastlines in south Florida and the Florida Keys. Coastal berm is a short forest or shrub thicket found on long, narrow, storm-deposited ridges (sand dunes) of loose sediment formed by a mixture of coarse shell fragments, pieces of coralline algae, and other coastal debris.

Like Everglades bully, Florida pineland crabgrass, and pineland sandmat, open canopy conditions are required to allow sufficient sunlight to reach the herbaceous layer and permit growth and flowering of Florida prairie-clover. These conditions are maintained by fire in pine rocklands and marl prairies. In rockland hammocks, only the edges and canopy disruption in the interior provide enough sunlight for Florida prairie-clover. Canopy disruption on rockland hammocks can occur due to natural events such as hurricanes and storm surge. Human disturbance, especially mowing, also maintains suitable conditions in disturbed areas. The plant also requires a limestone substrate to provide suitable growing conditions (*e.g.,* pH, nutrients, anchoring, and proper drainage). This combination of ecosystem characteristics (*i.e.,* open canopy and limestone substrate) occurs in pine rocklands, along edges and gaps in rockland hammocks, and in coastal berm.

Disturbed areas that support Florida prairie-clover consist of sites that formerly were pine rocklands or rockland hammocks, but in most cases have no remaining pine or hardwood canopy because of previous disturbance (clearing or scraping). These include roadsides, firebreaks, levees, and other areas that are infrequently mowed, or have no tree canopy but retain native herbs and grass species (Bradley 2006, p. 37: Bradley and Gann 1999, p. 61).

Loss of pine rockland habitat in Miami-Dade and Monroe Counties is discussed above for the other three species. Habitat modification and destruction from residential and commercial development have severely impacted rockland hammocks and coastal berm that support Florida prairie-clover. Rockland hammocks were once abundant in Miami-Dade and Monroe Counties but are now considered imperiled locally and globally (FNAI 2010, pp. 24–26). Development and agricultural pressures in south Florida have resulted in significant reductions of rockland hammock (Phillips 1940, p. 167; Snyder et al. 1990, pp. 271–272; FNAI 2010, pp. 24–26).

The extreme rarity of high-quality pine rockland, rockland hammock, and coastal berm habitat supporting Florida prairie-clover in Miami-Dade and Monroe Counties elevates the importance of disturbed remnant sites that still retain some habitat values. We consider pine rocklands; marl prairies; edges or gaps in rockland hammocks; and coastal berm to be the primary habitats for Florida prairie-clover. However, adjacent disturbed areas currently supporting the species are considered more important when adjacent pine rocklands, marl prairie, rockland hammocks, or coastal berm do not support an existing population, or are of insufficient size or connectivity to support a population of Florida prairie-clover. Therefore, based on the information above, we identify upland habitats consisting of pine rocklands, marl prairie, rockland hammocks, coastal berm, and adjacent disturbed areas to be an essential habitat feature for Florida prairie-clover.

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

Climate (Temperature and Precipitation)—Florida prairie-clover requires adequate rainfall and does not tolerate prolonged freezing temperatures. The climate of south Florida where Florida prairie-clover occurs is classified as tropical humid and subtropical humid, as described above for Everglades bully, Florida pineland crabgrass, and pineland sandmat. Rainfall within the range of Florida prairie-clover varies from an annual average of 60–65 in (153–165 cm) in the northern portion of the Miami Rock Ridge to an average of 35–40 in (89–102 cm) in the lower Florida Keys (Snyder et al. 1990, p. 238). Freezes can occur in the winter months but are very infrequent at this latitude in Florida. Therefore, based on the information above, we determined this type of climate to be an essential habitat feature for Florida prairie-clover.

Soils—Substrates supporting Florida prairie-clover are composed of oolitic limestone that is at or very near the surface. Solution holes occasionally form where the surface limestone is dissolved by organic acids. There is typically very little soil development, consisting primarily of accumulations of low-nutrient sand, marl, clayey loam, and organic debris found in solution holes, depressions, and crevices on the limestone surface (FNAI 2010, p. 62). However, Florida prairie-clover can be found at the northern end of the Miami Rock Ridge, where the substrate includes extensive sandy pockets, beginning from approximately North Miami Beach and extending south to approximately SW 216 Street (which runs east-west approximately one-half mile south of Quail Roost Pineland) (Service 1999, p. 3–162). Rockland hammock occurs on a thin layer of highly organic soil covering limestone on high ground that does not regularly flood (FNAI 2010, pp. 24–26). In coastal berms, deep, calcareous sandy soils are the typical substrate of this habitat.

These substrates provide anchoring, nutrients, moisture regime, and suitable soil chemistry for Florida prairie-clover, and they facilitate a community of associated plant species that create a competitive regime that allows Florida prairie-clover to persist and spread. Therefore, based on the information above, we identify substrates derived from calcareous limestone (often exposed with little soil development in pine rocklands; with a thin to thick organic soil layer in the case of rockland hammocks; deep, calcareous soils in coastal berm) that provide nutritional requirements and suitable growing conditions (*e.g.,* pH, nutrients, anchoring, and drainage) that provide anchoring and nutritional requirements to be an essential feature for Florida prairie-clover.

Hydrology—Pine rocklands occur on relatively flat, moderately to well drained terrain from 2 to 7 meters above sea level. Drainage varies according to the porosity of the limestone substrate but is generally rapid. Consequently, most sites are wet for only short periods following heavy rains. During the rainy season, however, some sites may be shallowly inundated by slow-flowing surface water for up to 60 days each year (FNAI 2010, p. 62). Marl prairies also are dependent on short hydroperiods up to 60 days. Longer hydroperiods favor the development of peat and the dominance of sawgrass; shorter hydroperiods permit the invasion of woody species (FNAI 2010, p. 108). Therefore, based on the information above, we identify pine rockland, rockland hammock, marl prairie, and coastal berm habitats with short hydroperiods (up to 60 days) to be an essential habitat feature for Florida prairie-clover.

Cover or Shelter

As previously mentioned, Florida prairie-clover occurs in pine rocklands,

marl prairies, rockland hammocks, and coastal berms, and in adjacent disturbed areas, in Monroe and Miami-Dade Counties (Bradley and Gann 1999, p. 3). Pine rockland is characterized by an open canopy of South Florida slash pine, with a limited subcanopy (Snyder et al. 1990, p. 253). Marl prairie is a sparsely vegetated, grass-dominated community. Although the vegetative community is diverse, most marl prairie plant species contribute little cover and over 90 percent of the cover is contributed by only two or three dominant species in any given area (FNAI 2010, p. 107). The open canopy and understory of pine rocklands and marl prairies allow sufficient sunlight to reach the herbaceous layer and permit growth and flowering of Florida prairie-clover (Ross and Ruiz 1996, pp. 5–6; Bradley and Saha 2009, p. 4).

Rockland hammock forest floor is largely covered by leaf litter and may have an organic soil layer of variable depth. Rockland hammocks typically have larger, more mature trees in the interior and deep organic soil layer in the interior, while the margins can be almost impenetrable in places with dense growth of smaller shrubs, trees, and vines and shallow organic soil layer. Mature hammocks may be open beneath a tall, well-defined canopy and subcanopy. More commonly, in less mature or disturbed hammocks, dense woody vegetation of varying heights from canopy to short shrubs is often present. Herbaceous species are occasionally present and generally sparse in coverage (FNAI 2010, pp. 24–26).

Coastal berm is a short forest or shrub thicket found on long, narrow, storm-deposited ridges (sand dunes). Structure and composition of the vegetation is variable depending on height and time since the last storm event. The most stable berms may share some tree species with rockland hammocks, but generally have a greater proportion of shrubs and herbs. This is a structurally variable community that may appear in various stages of succession following storm disturbance, from scattered herbaceous beach colonizers to a dense stand of tall shrubs (FNAI 2010, pp. 73–74).

Disturbed areas that are adjacent to pine rocklands, marl prairies, rockland hammocks, and coastal berms that support Florida prairie-clover may have little to no pine or hardwood canopy, but may have an herbaceous layer dominated by native herbs and grasses. Usually these are former (remnant) pine rocklands or rockland hammocks that have a history of disturbance (clearing or scraping). These sites tend to be infrequently (every 2 to 3 months) mowed areas adjacent to existing pine rocklands or rockland hammocks, such as roadsides and fields. These areas provide the open conditions required by Florida prairie-clover (Bradley 2006, p. 37).

Therefore, based on the information above, we identify vegetation composition and structure characterized by an open canopy and understory that allows for adequate sunlight and space for individual growth and population expansion, to be an essential habitat feature for Florida prairie-clover.

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

Little is known about the life history of Florida prairie-clover, including pollination biology, seed production, or dispersal. Reproduction is sexual, with new plants generated from seeds. This species likely requires insect visitation for pollination, although there is limited information on this.

The pine rocklands, marl prairies, rockland hammocks, coastal berms, and adjacent disturbed habitats identified above as physical or biological features provide a plant community with associated plant species that foster a competitive regime suitable to Florida prairie-clover and contain adequate open space for the recruitment of new plants. Associated plant species in these habitats attract and provide cover for insect pollinators required for Florida prairie-clover pollination (for more information, see Background in the October 11, 2016, proposed listing rule (81 FR 70282) and Summary of Biological Status and Threats in the October 6, 2017, final listing rule (82 FR 46691)).

Therefore, based on the information above, we identify pine rockland, marl prairie, rockland hammock, and coastal berm habitats, and adjacent disturbed areas, containing the presence of native pollinators for natural pollination and reproduction to be essential habitat features for Florida prairie-clover.

Habitats Representative of the Historical, Geographic, and Ecological Distributions of the Species

Florida prairie-clover continues to occur in habitats that are representative of the species' historical, geographical, and ecological distribution, although its range has been reduced. The species is currently found in pine rocklands, marl prairies, rockland hammocks, and coastal berms, and it also occurs in adjacent disturbed areas. As described above, these habitats provide a community of associated plant and animal species that are compatible with Florida prairie-clover, vegetation structure that provides adequate sunlight levels and open space for plant growth and regeneration, and substrates with adequate moisture availability and suitable soil chemistry. Representative communities are located on Federal, State, local, and private conservation lands that implement conservation measures benefitting the species.

Disturbance Regime—Pine rockland habitat that could or that currently supports Florida prairie-clover depends on a disturbance regime of wild or prescribed fire to open the canopy in order to provide light levels sufficient to support Florida prairie-clover. The historical frequency and magnitude of fire allowed for the persistence of Florida prairie-clover by maintaining an open canopy and understory and preventing succession (transition) of pine rocklands to hardwood-dominated community (rockland hammock). In the absence of fire, some areas of pine rockland may have closed canopies, resulting in areas lacking enough available sunlight to support Florida prairie-clover. Most of these areas can be restored if habitats are managed with a combination of mechanical hardwood removal and prescribed fire.

Rockland hammock is susceptible to fire, frost, canopy disruption, and ground water reduction. Rockland hammock can be the advanced successional stage of pine rockland, especially in cases where rockland hammock is adjacent to pine rockland. In such cases, when fire is excluded from pine rockland for 15 to 25 years, it can succeed to rockland hammock vegetation. Historically, rockland hammocks in south Florida evolved with fire in the landscape; fire most often extinguished near the edges when it encountered the hammock's moist microclimate and litter layer. However, rockland hammocks are susceptible to damage from fire during extreme drought or when the water table is lowered. In these cases, fire can cause tree mortality and consume the organic soil layer. Rockland hammocks are also sensitive to the strong winds and storm surge associated with infrequent hurricanes (FNAI 2010, p. 25).

Coastal berms are deposited by storm waves along low-energy coasts. Their distance inland depends on the height of the storm surge. Coastal berms that are deposited far enough inland and remain long-undisturbed may in time succeed to hammock. This is a structurally variable community that may appear in various stages of succession following storm disturbance, from scattered herbaceous beach

colonizers to a dense stand of tall shrubs (FNAI 2010, p. 73).

The sparsely vegetated edges or interior portions laid open by canopy disruption are the areas of rockland hammock and coastal berm that have light levels sufficient to support Florida prairie-clover. However, the dynamic nature of these habitats means that areas not currently open may become open in the future because of canopy disruption from hurricanes, while areas currently open may develop denser canopy over time, eventually rendering those portions of rockland hammock or coastal berm unsuitable for Florida prairie-clover.

Disturbed sites that support Florida prairie-clover are typically maintained by infrequent mowing. Mowing is similar in effect to fire in that it limits encroachment of hardwood species and maintains open canopy conditions suitable for Florida prairie-clover. We consider fire to be the natural disturbance factor for pine rocklands and marl prairie; periodic hurricanes and storm surge are the natural disturbance factors for rockland hammock and coastal berm. In adjacent disturbed areas currently supporting the species, mowing serves some of the ecological function of fire and maintains suitable habitat conditions (open canopy) for the species.

Therefore, based on the information above, we identify periodic natural (*e.g.,* fire, hurricanes, and storm surge) or unnatural (*e.g.,* prescribed fire, mowing) disturbance regimes that maintain open canopy conditions to be essential habitat features for Florida prairie-clover.

Summary of Physical or Biological Features Essential to the Conservation of Florida Prairie-Clover

Based on the best available science related to the life history and ecology of the species, as outlined in the discussion above, we have determined that the following physical or biological features are essential to the conservation of Florida prairie-clover:

South Florida pine rockland, marl prairie, rockland hammock, and coastal berm habitat and adjacent disturbed areas:

(1) Consisting of limestone substrate that provides nutritional requirements and suitable growing conditions (*e.g.,* pH, nutrients, anchoring, and drainage);

(2) Characterized by an open canopy and understory with a high proportion of native plant species to provide for sufficient sunlight to permit growth and flowering;

(3) Subjected to a monthly mean temperature characteristic of the subtropical humid classification in Miami-Dade County or the tropical humid classification in Collier and Monroe Counties and short hydroperiods ranging up to 60 days each year;

(4) Subjected to periodic natural (*e.g.,* fire, hurricanes, and storm surge) or unnatural (*e.g.,* prescribed fire, mowing) disturbance regimes to maintain open canopy conditions; and

(5) Containing the presence of native pollinators for natural pollination and reproduction.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover may require special management considerations or protection to reduce threats related to habitat loss, fragmentation, and modification primarily due to development; inadequate fire management; nonnative plants; hurricanes and storm surge; changes in disturbance regime; and sea level rise. (For an in-depth discussion of threats, see Summary of Biological Status and Threats in the October 11, 2016, proposed listing rule (81 FR 70282) and Summary of Factors Affecting the Species in the October 6, 2017, final listing rule (82 FR 46691)).

Some of these threats (*e.g.,* habitat loss, inadequate fire management) can be addressed by special management considerations or protection while others (*e.g.,* sea level rise, hurricanes, storm surge) are beyond the control of landowners and managers. However, even when landowners or land managers may not be able to control all the threats, they may be able to address the results of the threats. Habitat loss is a primary threat to Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover. For example, in Miami-Dade County, development and agriculture have reduced pine rockland habitat by 90 percent in mainland south Florida. Recent vegetation mapping in ENP indicates there are a total of 14,211 ac (5,751 ha) of pine rocklands remaining in ENP, which includes the largest remaining area of pine rockland (approximately 10,895 ac (4,409 ha)) in Florida (Long Pine Key) (Ruiz et al. 2022). Outside of ENP, pine rockland habitat decreased from approximately 185,329 ac (75,000 ha) in the early 1900s to only 3,707 ac (1,500 ha) in 2014 (Possley et al. 2014, p. 154) and 2,275 ac (921 ha) in 2019 (USGS 2019, p. 28), leaving only about 1.2 percent of the pine rocklands on the Miami Rock Ridge remaining, and much of what is left are small remnants scattered throughout the Miami metropolitan area, isolated from other natural areas (Herndon 1998, p. 1). Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover occur on a mix of private and publicly owned lands, most of which are managed for conservation.

Habitat fragmentation can have negative effects on populations, especially rare plants, and can affect survival and recovery (Aguilar et al. 2006, pp. 968–980; Aguilar et al. 2008, pp. 5177–5188; Potts et al. 2010, pp. 345–352). In general, habitat fragmentation causes habitat loss, habitat degradation, habitat isolation, changes in species composition, changes in species interactions, increased edge effects, and reduced habitat connectivity (Fahrig 2003, pp. 487–515; Fischer and Lindenmayer 2007, pp. 265–280). Habitat fragments are often functionally smaller than they appear because edge effects (such as increased nonnative, invasive species or wind speeds) impact the available habitat within the fragment (Lienert and Fischer 2003, p. 597).

Populations of these species that occur on private land or non-conservation public land are vulnerable to habitat loss, while populations on conservation lands are vulnerable to the effects of habitat degradation if disturbance regimes are disrupted (*e.g.,* through inadequate fire management or change in management practices on disturbed sites that support the species). Prolonged lack of fire in pine rockland typically results in succession to rockland hammock, and displacement of native species by invasive, nonnative plants often occurs. While Florida prairie-clover also occurs in rockland hammocks, the change from pine is a significant concern because pine rocklands are an extremely rare habitat. Changes in management practices at disturbed sites may include changes in mowing frequency or height, herbicide use, deposition of fill material, and sodding. Further development and degradation of pine rocklands, marl prairies, rockland hammock, and coastal berm increase fragmentation and decrease the conservation value of the remaining functioning habitats. In addition, pine rocklands and marl

prairies are expected to be further degraded and fragmented due to anticipated sea level rise, which would fully or partially inundate these habitats, and cause increases in the salinity of the water table and soils resulting in vegetation shifts in additional pine rocklands in South Florida. Some existing pine rockland, marl prairie, rockland hammock, and coastal berm areas are also projected to be developed for housing as the human population grows and adjusts to changing sea levels.

In summary, the features essential to the conservation of Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover may require special management considerations or protection to reduce threats and conserve these features. Actions that could ameliorate threats include, but are not limited to:

(1) Increase habitat restoration and management efforts, including fire management and nonnative plant control;

(2) Protect, restore, or enhance inland or higher elevation habitats where these species occur and are predicted to be unaffected or less affected by sea-level rise;

(3) Augment existing small populations; and

(4) Conduct annual or seasonal monitoring efforts, or conduct monitoring prior to, but coordinated with, habitat and fire management planning to refine management efforts over time.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific and commercial data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat.

We are proposing to designate critical habitat in areas within the geographical area occupied by these species at the time of their listing in 2017. We are not currently proposing to designate any areas outside the geographical area occupied by these species at the time of listing in 2017 because we have not identified any unoccupied areas that meet the definition of critical habitat.

Ranges

Everglades Bully

The historical range of Everglades bully includes Collier, Miami-Dade, and Monroe Counties, Florida. There are currently 14 extant populations of Everglades bully across these 3 counties. In Miami-Dade County, of 13 historical records for Everglades bully, 11 populations were extant at the time of listing, while 2 (Grant Hammock and Nixon-Smiley Preserve) were extirpated at the time of listing (Bradley et al. 2013, p. 1). The largest population (10,000–100,000 individuals) of Everglades bully in Miami-Dade County occurs at Long Pine Key in ENP (Hodges and Bradley 2006, p. 42; Gann et al. 2006, p. 11; Gann 2015, p. 9). In Monroe and Collier Counties, of two historical records for Everglades bully, two populations were extant at the time of listing in the Lostman's Pines section of Big Cypress National Preserve (BCNP; Monroe County). Since listing, an additional population was discovered in BCNP (extending into Collier County) that owing to the size and maturity of plants, was clearly extant at the time of listing (Lange et al. 2022, pp. 7–8).

The species was historically collected as far south as Key Largo, in the Florida Keys, but was extirpated at the time of listing and is still extirpated from the island. The species was not found during recent surveys of pine rocklands on Key Largo (Hodges and Bradley 2006, p. 42) or elsewhere in the Florida Keys (Gann et al. 2002, p. 526; Corogin and Judd 2014, p. 412).

Six out of 14 extant Everglades bully populations have fewer than 100 individuals (low resiliency). These small populations are at risk of adverse effects from reduced genetic variation, an increased risk of inbreeding depression, and reduced reproductive output. Many of these populations are small and isolated from each other, decreasing the likelihood that they could be naturally re-established if extinction from one location occurred.

Florida Pineland Crabgrass

The historical range of Florida pineland crabgrass consists of central and southern Miami-Dade County along the Miami Rock Ridge, from the southern Miami to Long Pine Key region of ENP (Bradley and Gann 1999, p. 49) and BCNP in mainland Monroe County (Bradley et al. 2013, p. 2). The current range of Florida pineland crabgrass includes two extant populations, one in ENP (Miami-Dade County) and another in BCNP (mainland Monroe County). Since listing, surveys in BCNP have revealed that the population is more extensive than was known at the time of listing (Lange et al. 2022, p. 8). Outside these areas, of five historical records for Florida pineland crabgrass on Miami Rock Ridge, all were extirpated at the time of listing and remain extirpated.

The extant Florida pineland crabgrass population in ENP has 100,000–200,000 individuals (Gann 2015, p. 142; Maschinki and Lange 2015, p. 18), and the extant population in BCNP has more than 10,000 individuals (Bradley 2005 pers comm.), which suggests some level of resiliency. However, these two populations are isolated from one another, and redundancy is reduced from historical levels as several populations in Miami-Dade County have been extirpated. This increases the risk from catastrophic events and decreases the likelihood that they could naturally re-establish if extinction from one location occurred.

Pineland Sandmat

The historical range of pineland sandmat includes Miami-Dade County, Florida, specifically within the southern portion of the Miami Rock Ridge, from the Richmond Pine Rocklands of southern Miami to the Long Pine Key region of ENP (Bradley and Gann 1999, p. 24). The current range of pineland sandmat includes 20 extant populations in Miami-Dade County, although 98 percent of the pine rocklands outside of the ENP have been lost to development. In Miami-Dade County, of 21 historical records for pineland sandmat, 20 populations were extant at the time of listing, while 1 (Larry Penny Thompson Park) was extirpated at the time of listing (J. Possley 2011, pers. comm.). The largest population of pineland sandmat in Miami-Dade County occurs at ENP.

Ten out of 20 extant pineland sandmat populations have fewer than 100 individuals (low resiliency). These small populations are at risk of adverse effects from reduced genetic variation, an increased risk of inbreeding depression, and reduced reproductive output. Many of these populations are small and isolated from each other, decreasing the likelihood that they could be naturally re-established in the event that extinction from one location would occur.

Florida Prairie-Clover

The historical range of Florida prairie-clover includes Miami-Dade, Monroe, Collier, and Palm Beach Counties (Gann et al. 2015, pp. 25–26). There have been no reports of this plant from Palm Beach County since 1918 (Bradley and Gann 1999, p. 42).

In Miami-Dade County, of 12 historical records for Florida prairie-clover, 7 populations were extant at the time of listing, while 4 (Castellow Hammock, the Coral Gables area, Cox Hammock, and ENP) were considered extirpated at the time of listing (Bradley and Gann 1999, pp. 42–43; Maschinski et al. 2014, p. 39), and the status of one population (Pineland south of Miami River) was unknown (Bradley 2005 pers. comm.). In the final listing rule (82 FR 46691), the ENP populations were considered extirpated because the last official record was from 1964. Surveys were sporadic since that time, however, suitable habitat remained, and the species was recorded at ENP in 2018. Given the dynamic nature of this species and its response to localized disturbances, it likely occurs somewhat cryptically until mowing or fire produces suitable conditions for the species to be readily observed. Therefore, since Florida prairie-clover was found at ENP in 2018, only a year after listing, and was not introduced, we assume the species occurred at ENP at the time of listing in 2017.

The largest populations of Florida prairie-clover in Miami-Dade County occur at Crandon Park, Charles Deering Estate, and R. Hardy Matheson Preserve, with population sizes ranging from 98 to 500 plants (Maschinski et al. 2015, pp. 30–32) at each location.

In Monroe and Collier Counties, Florida prairie-clover is extant only within BCNP, where there is at least one population (Pernas 2021, pers. comm.).

The current range of Florida prairie-clover consists of 9 extant populations; 8 in Miami-Dade County, including at least one in ENP, and at least one extant population in Monroe and Collier Counties in BCNP (Pernas 2021, pers comm.). Many of these populations are small and isolated from each other, decreasing the likelihood that they could be naturally re-established if extinction from one location occurred.

We anticipate that full recovery for Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover will require continued protection of the remaining extant populations and habitat and augmenting extant populations. It may also require reestablishing populations in occupied areas to provide connectivity among populations to there are adequate numbers of plants and stable populations. This will help to reduce the chance that catastrophic events, such as storms, will simultaneously affect all known populations. However, some of the historical locations no longer contain suitable habitat, and thus are not proposed as designated critical habitat. Accordingly, we have not identified unoccupied areas that are essential for the conservation of the species at this time.

Conservation Strategy

In considering our proposal of critical habitat, we identified the following conservation strategy for Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover:

(1) Conserve existing populations with sufficient native habitat;

(2) Work with partners to conserve existing populations, and implement efforts that will benefit the species and its habitat; and

(3) Augment existing populations and facilitate establishment/re-establishment of populations into suitable protected habitat.

To facilitate the application of our conservation strategy and goals for Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover, we utilized the Shaffer and Stein (2000) methodology for conserving imperiled species known as the 'three Rs': representation, resiliency, and redundancy. Resiliency is the ability to sustain populations through the natural range of favorable and unfavorable conditions. Representation ensures adaptive capacity within a species and allows it to respond to environmental changes. This can be facilitated by conserving not just genetic diversity, but also the species' associated habitat type and plant communities. Redundancy ensures an adequate number of sites with resilient populations such that the species has the ability to withstand catastrophic events. Implementation of this methodology has been widely accepted as a reasonable conservation strategy (Tear et al. 2005, p. 841).

The amount and distribution of critical habitat we are proposing for designation in occupied areas would allow existing and future established populations of Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover to:

(1) Maintain their existing distributions;

(2) Expand their distributions into suitable nearby areas (needed to offset habitat loss and fragmentation);

(3) Use habitat depending on habitat availability (response to changing nature of coastal habitat, including sea level rise) and support genetic diversity;

(4) Increase the size of each population to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished; and

(5) Maintain their ability to withstand local or unit-level environmental fluctuations or catastrophic events.

Everglades Bully

Resiliency will continue to be limited by the reduced amount of pine rockland and marl prairie habitats remaining in Miami-Dade, Collier, and Monroe Counties. All Everglades bully populations, outside of ENP and BCNP, are on small remnant pine rockland and marl prairie and adjacent ecotonal areas (less than 1,000 ac (404 ha)) in Miami-Dade County. Therefore, the resiliency of the populations and redundancy of the species will continue to be influenced by the amount of habitat remaining in the Monroe, Collier, and Miami-Dade Counties. We are proposing to designate critical habitat units that contain the physical or biological features essential to the conservation of the species and that support extant populations at the time of listing. We have not identified any specific areas outside the geographical area occupied by the species at the time it was listed that are essential for the conservation of the species. Accordingly, we are not proposing any unoccupied areas as critical habitat.

Florida Pineland Crabgrass

Resiliency will continue to be limited by the reduced amount of pine rockland and marl prairie habitats remaining in Miami-Dade, Collier, and Monroe Counties. All habitat for the historical Florida pineland crabgrass populations, outside of ENP and BCNP, is now on small remnant pine rockland, marl prairie, and ecotonal areas in Miami-Dade County. We are proposing critical habitat units that contain the physical or biological features essential to the conservation of the species and supported extant populations at the time of listing. We have not identified any specific areas outside the geographical area occupied by the species at the time it was listed that are essential for the conservation of the species. Accordingly, we are not proposing unoccupied areas as critical habitat.

Pineland Sandmat

Resiliency will continue to be limited by the reduced amount of pine rockland habitat remaining in Miami-Dade County. Most of the pineland sandmat populations, outside of ENP, are on small remnant pine rockland sites and adjacent ecotonal areas. Therefore, the resiliency of the populations and redundancy of the species will continue

to be influenced by the amount of habitat remaining in the Miami-Dade County. We are proposing to designate as critical habitat for the pineland sandmat all pine rocklands remaining within the historical range of the species where the species was extant at the time of listing and that contain the physical or biological features essential to the conservation of the species. We have not identified any specific areas outside the geographical area occupied by the species at the time it was listed that are essential for the conservation of the species. Accordingly, we are not proposing any unoccupied areas as critical habitat.

Resiliency will continue to be limited by the reduced amount of pine rockland, marl prairie, rockland hammock, and coastal berms habitats remaining in Miami-Dade, Collier, and Monroe Counties. Most Florida prairie-clover populations are on small remnant pine rockland sites and adjacent disturbed areas, with population sizes only ranging from the tens to hundreds of individuals. Five of the eight extant population have fewer than 25 individuals. Therefore, the resiliency of the populations and redundancy of the species will continue to be influenced by the amount of habitat remaining in the Monroe, Collier, and Miami-Dade Counties. We are proposing critical habitat units that contain the physical or biological features essential to the conservation of the species and supported extant populations at the time of listing. We have not identified any specific areas outside the geographical area occupied by the species at the time it was listed that are essential for the conservation of the species. Accordingly, we are not proposing any unoccupied areas as critical habitat.

Sources of Data to Identify Critical Habitat Boundaries

We have determined that all areas known to be occupied at the time of listing should be proposed for critical habitat designation because all occupied sites are necessary to conserve the species. To determine the location and boundaries of occupied critical habitat, the Service used the following sources of data and information for Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover:

(1) Species occurrence spatial data and ArcGIS geographic information system (GIS) software to spatially depict the location and extent of documented populations of Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover;

(2) Reports prepared by FNAI, Fairchild Tropical Botanical Garden (FTBG), Institute for Regional Conservation (IRC), National Park Service (NPS), and Florida Department of Environmental Protection (FDEP);

(3) Historical records found in reports and associated voucher specimens housed at herbaria, all of which are referenced in the above-mentioned reports;

(4) Digitally produced habitat maps provided by Miami-Dade, Collier, and Monroe Counties; and

(5) Aerial images of Miami-Dade, Collier, and Monroe Counties. The presence of pine rocklands and marl prairie was determined using GIS and spatial data depicting the current habitat status. These habitat data for Miami-Dade County were developed by Miami-Dade Department of Environmental Protection (DERM), for the Natural Forest Community (NFC) program, and include pine rocklands and marl prairie. Pine rockland, rockland hammock, and coastal berm habitat follow predictable landscape patterns and have a recognizable signature in the aerial imagery. Aerial imagery was utilized to identify these habitats in Monroe and Collier Counties and disturbed areas adjacent to marl prairie, pine rocklands, rockland hammock, and coastal berm.

We delineated critical habitat unit boundaries using the following criteria:

(1) The delineation included space to allow for the successional nature of the habitats (*i.e.,* gain and loss of areas with sufficient light availability due to disturbance of the vegetation, driven by natural events such as inundation and hurricanes and through prescribed fire), and habitat transition or loss due to sea level rise.

(2) All areas (*i.e.,* physical or biological features) may require special management to be able to support a higher density of the plants within the occupied space. These areas generally are habitats where some of the habitat features have been degraded or lost through natural or human causes. These areas would help to offset the anticipated loss and degradation of habitat occurring or expected from the effects of climate change (such as sea level rise) or due to development.

(3) The areal extent of a plant population is dynamic over time within suitable habitat, while a survey represents a snapshot in time. Unsurveyed areas near mapped populations likely support plants currently or did in the past.

Areas Occupied at the Time of Listing

The proposed occupied critical habitat designation for Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover focuses on areas within the plants' historical ranges that have retained the essential habitat features that will allow for the maintenance and expansion of existing populations. The proposed occupied critical habitat units were delineated around extant populations at the time of listing. These units include the mapped extent of the population that contains one or more of the essential physical or biological features essential to the conservation of the species.

For areas within the geographic area occupied by Everglades bully and Florida pineland crabgrass at the time of listing, we delineated critical habitat unit boundaries using the following criteria:

(1) Pine rockland and marl prairie habitat, and the transitional areas (ecotones) between these and other vegetation types that was occupied by the species at the time of listing; and

(2) Presence of suitable habitat and physical or biological essential features.

For Everglades bully, five occupied units are being proposed as critical habitat. These five units encompass the 14 extant populations of Everglades bully in Collier, Monroe, and Miami-Dade Counties. We consider pine rockland and marl prairies to be the primary habitat for Everglades bully. Adjacent ecotonal areas currently supporting the species are also considered essential when adjacent pine rocklands and marl prairies do not support an existing population or are of insufficient size or connectivity to support a population of the species. We have not identified any specific areas outside the geographical area occupied by the species at the time it was listed that are essential for the conservation of the species. Accordingly, we are not proposing unoccupied critical habitat for the Everglades bully.

For Florida pineland crabgrass, two occupied units are being proposed as critical habitat. These two units encompass the two extant populations of Florida pineland crabgrass in Monroe and Miami-Dade Counties. We consider pine rockland and marl prairies to be the primary habitat for Florida pineland crabgrass. Adjacent ecotonal areas currently supporting the species are also considered essential when adjacent pine rocklands and marl prairies do not support an existing population or are of insufficient size or connectivity to support a population of the species. We have not identified any specific areas outside the geographical area occupied by the species at the time it was listed that are essential for the conservation of

the species. Accordingly, we are not proposing unoccupied critical habitat for the Florida pineland crabgrass.

For areas within the geographic area occupied by pineland sandmat at the time of listing, we delineated critical habitat unit boundaries using the following criteria:

(1) Pine rockland habitat and the transitional areas (ecotones) between pine rocklands and adjacent habitat that was occupied by the species at the time of listing;

(2) Pine rockland habitat that is currently occupied by the species; and

(3) Presence of essential physical or biological features.

For pineland sandmat, three occupied units are being proposed as critical habitat. These three units encompass the 20 extant populations of pineland sandmat in Miami-Dade County. We consider pine rockland to be the primary habitat for pineland sandmat. Adjacent ecotonal areas currently supporting the species are also considered essential when adjacent pine rocklands do not support an existing population or are of insufficient size or connectivity to support a population of the species. We have not identified any specific areas outside the geographical area occupied by the species at the time it was listed that are essential for the conservation of the species. Accordingly, we are not proposing unoccupied critical habitat for the pineland sandmat.

For areas within the geographic area occupied by Florida prairie-clover at the time of listing, we delineated critical habitat unit boundaries using the following criteria:

(1) Pine rockland, marl prairie, rockland hammock, and coastal berm habitat and the transitional areas (ecotones) between these and other vegetation types that was occupied by the species at the time of listing;

(2) Pine rockland, marl prairie, rockland hammock, and coastal berm habitat that is currently occupied by the species; and

(3) Presence of essential physical or biological features.

For Florida prairie-clover, four occupied units are being proposed as critical habitat. These four units encompass the eight extant populations of Florida prairie-clover in Collier and Miami-Dade Counties. We consider pine rockland, marl prairie, rockland hammock, and coastal berm to be the primary habitats for Florida prairie-clover. Adjacent disturbed areas currently supporting the species are also considered essential when adjacent pine rockland, marl prairie, rockland hammock, and coastal berm habitats do not support an existing population or are of insufficient size or connectivity to support a population of the species. In addition, because we have determined that occupied habitat is sufficient to conserve the species, we did not propose any unoccupied areas as critical habitat.

In summary, for areas within the geographical area occupied by Everglades bully and Florida pineland crabgrass, at the time of listing, we delineated critical habitat unit boundaries around extant populations at the time of listing and also evaluating habitat suitability of pine rockland and marl prairie habitats within the historical range of the plants. We retained those areas that contain some or all of the essential physical or biological features essential to the conservation of the species and that may require special management. For areas within the geographical area occupied by pineland sandmat at the time of listing, we delineated critical habitat unit boundaries around extant populations at the time of listing and also evaluating habitat suitability of pine rockland habitat within the historical range of the plant. We retained those areas that contain some or all of the essential physical or biological features essential to the conservation of the species and that may require special management. For areas within the geographical area occupied by Florida prairie-clover at the time of listing, we delineated critical habitat unit boundaries around extant populations at the time of listing and also evaluating habitat suitability of pine rockland, marl prairie, rockland hammock, and coastal berm habitats within the historical range of the plant. We retained those areas that contain some or all of the essential physical or biological features essential to the conservation of the species and that may require special management.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features essential to the conservation of the plants, nor are they essential to the conservation of the species themselves. 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 or biological features in the adjacent critical habitat.

The critical habitat designations are defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Proposed Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designations in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *https://www.regulations.gov* at Docket No. FWS–R4–ES–2022–0125, on our internet site at *https://www.fws.gov/office/florida-ecological-services/library,* and at the field office responsible for the designations (see **FOR FURTHER INFORMATION CONTACT**, above).

Proposed Critical Habitat Designation for Everglades Bully

We are proposing to designate approximately 179,680 ac (72,714 ha) in five units as critical habitat for Everglades bully. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for Everglades bully. All areas with known extant populations at the time of listing are proposed for designation as critical habitat. Some units currently may contain multiple populations, but the number can vary over a 1- to 5-year period due to the dynamic nature of this species in response to disturbance. The five areas we propose as critical habitat are:

(1) EB1, Big Cypress National Preserve, Collier, Miami-Dade, and Monroe Counties, Florida;

(2) EB2, Everglades National Park, Miami-Dade County, Florida;

(3) EB3, Richmond Pine Rocklands, Miami-Dade County, Florida;

(4) EB4, Quail Roost Pineland, Miami-Dade County, Florida; and

(5) EB5, Navy Wells, Miami-Dade County, Florida.

Land ownership within the proposed critical habitat consists of Federal (86 percent), State (0.1 percent), County (13 percent), and private and other (1 percent). Other lands include areas for which ownership information is unclear or unavailable. Table 1 shows these units by land ownership, area, and occupancy.

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR EVERGLADES BULLY, INCLUDING TOTAL AREA, AREA BY LAND OWNERSHIP, AND OCCUPANCY

[All areas rounded to the nearest whole acre (ac) and hectare (ha).]

Unit	Total ac (ha)	Federal ac (ha)	State ac (ha)	County ac (ha)	Private/ other ac (ha)	Occupied
EB1—Big Cypress National Preserve.	169,885 (68,750)	146,014 (59,090)	0 (0)	22,411 (9,070)	1,460 (591)	Yes.
EB2—Everglades National Park	7,994 (3,235)	7,860 (3,181)	0 (0)	0 (0)	133 (54)	Yes.
EB3— Richmond Pine Rocklands	987 (399)	191 (77)	0 (0)	609 (247)	187 (76)	Yes.
EB4—Quail Roost Pineland	256 (104)	0 (0)	103 (42)	47 (19)	107 (43)	Yes.
EB5—Navy Wells	558 (226)	0 (0)	74 (30)	324 (131)	160 (65)	Yes.
Total	179,680 (72,714)	154,065 (62,348)	177 (72)	23,391 (9,467)	2,048 (829)	
Percent of Total	.....	86	0.1	13	1	

Note: Area sizes may not sum due to rounding or minor mapping discrepancies.

Approximately 5.4 percent (9,763 ac (3,951 ha)) of the lands contained within units proposed as critical habitat for Everglades bully are already designated critical habitat for other federally listed species. Most of the lands proposed in this rule that are not designated as critical habitat for other federally listed species occur in the BCNP.

We present brief descriptions of the proposed critical habitat units and the justification for why they meet the definition of critical habitat for Everglades bully, below. All proposed critical habitat units were occupied at the time of listing and are currently occupied. All units contain all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Unit EB1: Big Cypress National Preserve, Collier, Miami-Dade, and Monroe Counties, Florida

Unit EB1 consists of approximately 169,885 ac (68,750 ha) in Collier, Miami-Dade, and Monroe Counties, Florida. The unit is comprised of lands in BCNP, including Federal lands in BCNP (146,014 ac (59,090 ha)) and County lands (22,411 ac (9,070 ha)) and parcels in private or other ownership (1,460 ac (591 ha)) within BCNP.

Special management considerations or protection may be required within this unit to address threats of nonnative plant and animal species, lack of fire, off-road vehicle use, oil and gas exploration and extraction, and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Everglades bully.

This unit is part of lands contained within the BCNP. Within this unit, as part of their 2019 Fire Management Plan (NPS 2019), the NPS conducts nonnative species control and prescribed fire in areas that could support Everglades bully.

Unit EB1 does not contain previously designated critical habitat. The federally threatened eastern indigo snake (*Drymarchon couperi*), federally endangered Florida panther (*Puma* (=*Felis*) *concolor coryi*), and federally endangered Florida bonneted bat (*Eumops floridanus*) occur in this unit.

Unit EB2: Everglades National Park, Miami-Dade County, Florida

Unit EB2 consists of approximately 7,994 ac (3,235 ha) in Miami-Dade County. The unit is comprised of Federal lands in ENP (ENP) (7,860 ac (3,181 ha)) and parcels in private or other ownership (133 ac (54 ha)). The unit includes Long Pine Key and some of the surrounding areas in ENP.

Special management considerations or protection may be required within this unit to address threats of nonnative plant and animal species, lack of fire, and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Everglades bully.

This unit is part of lands contained within the ENP. Within this unit, as part of their General Management Plan (NPS 2015), the NPS conducts nonnative species control and prescribed fire in areas that support or could support Everglades bully.

The entirety of Unit EB2 is designated critical habitat for the federally endangered Bartram's scrub-hairstreak (*Strymon acis bartrami*) and Florida leafwing (*Anaea troglodyta floridalis*) butterflies. The federally threatened eastern indigo snake occurs in this unit.

Unit EB3: Richmond Pine Rocklands and Surrounding Areas, Miami-Dade County, Florida

Unit EB3 consists of approximately 987 ac (399 ha) in Miami-Dade County. The unit is comprised of Federal lands owned by the U.S. Coast Guard, U.S. Army Corps of Engineers, Federal Bureau of Prisons, and National Oceanic and Atmospheric Administration (191 ac (77 ha)); County lands within and adjacent to Larry and Penny Thompson Park, Martinez Preserve, Zoo Miami, and Eachus Pineland (609 ac (247 ha)); and parcels in private or other ownership, including the preserve and mitigation area associated with the Coral Reef Commons Habitat Conservation Plan (HCP) (187 ac (76 ha)).

Special management considerations or protection may be required within this unit to address threats of nonnative plant and animal species, lack of fire, and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Everglades bully. Within this unit, the Miami-Dade DERM conducts nonnative species control, prescribed fire, and mechanical vegetation treatments on lands owned by Miami-Dade County. The U.S. Coast Guard also conducts nonnative species control and mechanical vegetation treatments on their property in this unit. The actions help improve habitat that supports Everglades bully.

Within this unit, approximately 109.3 ac (44.2 ha) of land owned by Coral Reef Commons is proposed for critical habitat designation for Everglades bully. Everglades bully is a covered species under the Coral Reef Commons Habitat Conservation Plan. Because Everglades bully is a covered species under the Coral Reef Commons HCP and the preserve and mitigation area within this

proposed critical habitat unit are being managed for the conservation of the species and pine rockland habitat, the on-site preserve and the off-site mitigation area are being considered for exclusion from critical habitat under section 4(b)(2) of the Act (please refer to Consideration of Impacts Under Section 4(b)(2) of the Act, below).

The entirety of unit EB3 is designated critical habitat for the following federally endangered species: Carter's small-flowered flax (*Linum carteri* var. *carteri*), Florida brickell-bush (*Brickellia mosieri*), and Bartram's scrub-hairstreak and Florida leafwing butterflies. The federally threatened eastern indigo snake and federally endangered Florida bonneted bat occur in this unit.

Unit EB4: Quail Roost Pineland and Surrounding Areas, Miami-Dade County, Florida

Unit EB4 consists of approximately 256 ac (104 ha) in Miami-Dade County. The unit is comprised of State lands within Quail Roost Pineland, Goulds Pineland and Addition, and Silver Palm Groves Pineland (103 ac (42 ha)); County lands, including Medsouth Park, Black Creek Forest, and Rock Pit #46 (47 ac (19 ha)); and parcels in private ownership (107 ac (43 ha)), including Porter-Russell Pineland owned by the Tropical Audubon Society.

Special management considerations or protection may be required within this unit to address threats of nonnative plant and animal species, lack of fire, and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Everglades bully. Within this unit, DERM conducts nonnative species control, prescribed fire, and mechanical vegetation treatments on lands owned by Miami-Dade County.

The entirety of unit EB4 is designated critical habitat for the federally endangered Carter's small-flowered flax and Florida brickell-bush, and much of the area is designated critical habitat for the federally endangered Bartram's scrub-hairstreak butterfly. The federally threatened eastern indigo snake and federally endangered Florida bonneted bat occur in this unit.

Unit EB5: Navy Wells Pineland Preserve and Surrounding Areas, Miami-Dade County, Florida

Unit EB5 consists of approximately 558 ac (226 ha) of habitat in Miami-Dade County. The unit is comprised of State lands within Florida City Pineland, Palm Drive Pineland, Navy Wells Pineland Preserve (portion), and Navy Wells Pineland #39 (74 ac (30 ha)); County/local lands, including Navy Wells Pineland Preserve (portion) and Sunny Palms Pineland (324 ac (131 ha)); and parcels in private ownership (160 ac (65 ha)).

Special management considerations or protection may be required within this unit to address threats of nonnative plant and animal species, lack of fire, and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Everglades bully. Within this unit, DERM conducts nonnative species control, prescribed fire, and mechanical vegetation treatments on lands owned by Miami-Dade County.

The entirety of unit EB5 is designated critical habitat for the following federally endangered species: Carter's small-flowered flax, Florida brickell-bush, and Bartram's scrub-hairstreak and Florida leafwing butterflies. The federally threatened eastern indigo snake and federally endangered Florida bonneted bat occur in this unit.

Proposed Critical Habitat Designation for Florida Pineland Crabgrass

We are proposing to designate approximately 177,879 ac (71,985 ha) in two units as critical habitat for Florida pineland crabgrass. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for Florida pineland crabgrass. The two areas we propose as critical habitat are:

(1) FPCG1, Big Cypress National Preserve, Collier, Miami-Dade, and Monroe Counties, Florida; and

(2) FPCG2, Everglades National Park, Miami-Dade County, Florida.

Land ownership within the proposed critical habitat consists of Federal (86 percent), County (13 percent), and private and other (1 percent). Other lands include areas for which ownership information is unclear or unavailable. Table 2 shows these units by land ownership, area, and occupancy.

TABLE 2—PROPOSED CRITICAL HABITAT UNITS FOR FLORIDA PINELAND CRABGRASS, INCLUDING AREA, AREA BY LAND OWNERSHIP, AND OCCUPANCY

[All areas rounded to the nearest whole acres (ac) and hectares (ha).]

Unit	Total ac (ha)	Federal ac (ha)	State ac (ha)	County ac (ha)	Private/ other ac (ha)	Occupied
FPCG1—Big Cypress National Preserve.	169,885 (68,750)	146,014 (59,090)	0 (0)	22,411 (9,070)	1,460 (591)	Yes.
FPCG2—Everglades National Park	7,994 (3,235)	7,860 (3,181)	0 (0)	0 (0)	133 (54)	Yes.
Total	177,879 (71,985)	153,874 (62,271)	0 (0)	22,411 (9,070)	1,593 (645)	
Percent of Total		86	0	13	1	

Note: Area sizes may not sum due to rounding or minor mapping discrepancies.

Approximately 5 percent (8,894 ac (3,599 ha)) of the area proposed as critical habitat for Florida pineland crabgrass is also currently designated under the Act as critical habitat for the federally endangered Bartram's scrub-hairstreak and Florida leafwing butterflies.

We present brief descriptions of the proposed critical habitat units and the justification for why they meet the definition of critical habitat for Florida pineland crabgrass, below.

Unit FPCG1: Big Cypress National Preserve, Collier, Miami-Dade, and Monroe Counties, Florida. All proposed critical habitat units were occupied at the time of listing and are currently occupied. All units contain all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Unit FPCG1 consists of approximately 169,885 ac (68,750 ha) in Collier, Miami-Dade, and Monroe Counties. The unit is comprised of Federal lands in BCNP (146,014 ac (59,090 ha)), County

lands (22,411 ac (9,070 ha)), and parcels in private or other ownership (1,460 ac (591 ha)).

Special management considerations or protection may be required within this unit to address threats of nonnative plant and animal species, lack of fire, off-road vehicle use, oil and gas exploration and extraction, and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Florida pineland crabgrass.

This unit is part of lands within BCNP. Within this unit, as part of their 2019 Fire Management Plan (NPS 2019), the NPS conducts nonnative species control and prescribed fire in areas that support or could support Florida pineland crabgrass.

Unit FPCG1 does not contain previously designated critical habitat. The federally threatened eastern indigo snake, federally endangered Florida panther, and federally endangered Florida bonneted bat occur in this unit.

Unit FPCG2: Everglades National Park, Miami-Dade County, Florida

Unit FPCG2 consists of approximately 7,994 ac (3,235 ha) in Miami-Dade County. The unit is comprised of Federal lands in ENP (7,860 ac (3,181 ha) and parcels in private or other ownership (133 ac (54 ha)). The unit includes Long Pine Key and some of the surrounding areas in ENP.

Special management considerations or protection may be required within this unit to address threats of nonnative plant and animal species, lack of fire, and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Florida pineland crabgrass.

This unit is part of lands within ENP. Within this unit, as part of their General Management Plan (NPS 2015), the NPS conducts nonnative species control and prescribed fire in areas that support or could support Florida pineland crabgrass.

The entirety of unit FPCG2 is designated critical habitat for the federally endangered Bartram's scrub-hairstreak and Florida leafwing butterflies. The federally threatened eastern indigo snake, federally endangered Florida panther, and federally endangered Florida bonneted bat occur in this unit.

Proposed Critical Habitat Designation for Pineland Sandmat

We are proposing to designate approximately 8,867 ac (3,588 ha) in three units as critical habitat for pineland sandmat. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for pineland sandmat. All areas with known extant populations at the time of listing are proposed for designation as critical habitat. The units currently may contain multiple populations, but the number can vary over a 1- to 5-year period due to the dynamic nature of this species in response to disturbance. The three areas we propose as critical habitat are:

(1) PS1, Everglades National Park, Miami-Dade County, Florida;

(2) PS2, Camp Owaissa Bauer, Miami-Dade County, Florida; and

(3) PS3, Navy Wells, Miami-Dade County, Florida.

Land ownership within the proposed critical habitat consists of Federal (89 percent), State (1 percent), County (5 percent), and private and other (5 percent). Other lands include areas for which ownership information is unclear or unavailable. Table 3 shows these units by land ownership, area, and occupancy.

TABLE 3—PROPOSED CRITICAL HABITAT UNITS FOR PINELAND SANDMAT, INCLUDING AREA, AREA BY LAND OWNERSHIP, AND OCCUPANCY

[All areas rounded to the nearest whole acre (ac) and hectare (ha).]

Unit	Total ac (ha)	Federal ac (ha)	State ac (ha)	County ac (ha)	Private/ other ac (ha)	Occupied
PS1—Everglades National Park	7,994 (3,235)	7,860 (3,181)	0 (0)	0 (0)	133 (54)	Yes.
PS2—Camp Owaissa Bauer	315 (127)	0 (0)	49 (20)	145 (59)	122 (49)	Yes.
PS3—Navy Wells	558 (226)	0 (0)	74 (30)	310 (125)	174 (70)	Yes.
Total	8,867 (3,588)	7,860 (3,181)	123 (50)	455 (184)	429 (173)	
Percent of Total	.....	89	1	5	5	

Note: Area sizes may not sum due to rounding or small mapping discrepancies.

Approximately 99.9 percent (8,854 ac (3,583 ha)) of the lands contained within units proposed as critical habitat for pineland sandmat are already designated critical habitat for other federally listed species.

We present brief descriptions of the proposed critical habitat units and the justification for why they meet the definition of critical habitat for pineland sandmat, below. All proposed critical habitat units were occupied at the time of listing and are currently occupied. All units contain all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Unit PS1: Everglades National Park, Miami-Dade County, Florida

Unit PS1 consists of approximately 7,994 ac (3,235 ha) in Miami-Dade County. The unit is comprised of Federal lands in ENP (7,860 ac (3,181 ha)) and parcels in private or other ownership (133 ac (54 ha)). The unit includes Long Pine Key and some of the surrounding areas in ENP.

Special management considerations or protection may be required within this unit to address threats of nonnative plant and animal species, lack of fire, and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports pineland sandmat.

This unit is part of lands within ENP. Within this unit, as part of their General Management Plan (NPS 2015), the NPS conducts nonnative species control and prescribed fire in areas that support or could support pineland sandmat.

The entirety of unit PS1 is designated critical habitat for the federally endangered Bartram's scrub-hairstreak and Florida leafwing butterflies. The federally threatened eastern indigo snake, federally endangered Florida panther, and federally endangered Florida bonneted bat occur in this unit.

Unit PS2: Camp Owaissa Bauer and Surrounding Areas, Miami-Dade County, Florida

Unit PS2 consists of approximately 315 ac (127 ha) of habitat in Miami-Dade County. The unit is comprised of State lands within Owaissa Bauer Pineland Addition, West Biscayne Pineland, Ingram Pineland, and Fuchs Hammock Addition (49 ac (20 ha)); County lands, including Camp Owaissa Bauer, Pine Island Lake Park, Seminole Wayside Park, and Northrop Pineland (145 ac (59 ha)); and parcels in private ownership (122 ac (49 ha)), including the Pine Ridge Sanctuary (a private conservation area).

Special management considerations or protection may be required within this unit to address threats of nonnative plant and animal species, lack of fire, and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports pineland sandmat.

The entirety of unit PS2 is designated critical habitat for the following federally endangered species: Carter's small-flowered flax, Florida brickell-bush, and Bartram's scrub-hairstreak butterfly. The federally threatened eastern indigo snake occurs in this unit.

Unit PS3: Navy Wells Pineland Preserve and Surrounding Areas, Miami-Dade County, Florida

Unit PS3 consists of approximately 558 ac (226 ha) of habitat in Miami-Dade County. The unit is comprised of State lands within Florida City Pineland, Palm Drive Pineland, Navy Wells Pineland Preserve (a portion), and Navy Wells Pineland #39 (74 ac (30 ha)); County lands, including Navy Wells Pineland Preserve (a portion) and Sunny Palms Pineland (310 ac (125 ha)); and parcels in private ownership (174 ac (70 ha)).

Special management considerations or protection may be required within this unit to address threats of nonnative plant and animal species, lack of fire, and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports pineland sandmat.

The entirety of unit PS3 is designated critical habitat for the following federally endangered species: Carter's small-flowered flax, Florida brickell-bush, and Bartram's scrub-hairstreak and Florida leafwing butterflies. The federally threatened eastern indigo snake occurs in this unit.

Proposed Critical Habitat Designation for Florida Prairie-Clover

We are proposing to designate approximately 179,300 ac (72,560 ha) in four units as critical habitat for Florida prairie-clover. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for Florida prairie-clover. All areas with known extant populations at the time of listing are proposed for designation as critical habitat. Some units currently contain multiple populations, but the number can vary over a 1- to 5-year period due to the dynamic nature of this species in response to disturbance. The four areas we propose as critical habitat are:

(1) FPC1, Big Cypress National Preserve, Collier, Miami-Dade, and Monroe Counties, Florida;

(2) FPC2, Everglades National Park, Miami-Dade County, Florida;

(3) FPC3, U.S. Department of Agriculture (USDA) Subtropical Horticultural Research Station, Miami-Dade County, Florida; and

(4) FPC4, Crandon Park, Miami-Dade County, Florida.

Land ownership within the proposed critical habitat consists of Federal (86.2 percent), State (0.7 percent), County (12.6 percent), and private and other (0.5 percent). Other lands include areas for which ownership information is unclear or unavailable. Table 4 shows these units by land ownership, area, and occupancy.

TABLE 4—PROPOSED CRITICAL HABITAT UNITS FOR FLORIDA PRAIRIE-CLOVER, INCLUDING AREA, AREA BY LAND OWNERSHIP, AND OCCUPANCY

[All areas rounded to the nearest whole acre (ac) and hectare (ha)]

Unit	Total ac (ha)	Federal ac (ha)	State ac (ha)	County ac (ha)	Private/ other ac (ha)	Occupied
FPC1—Big Cypress National Preserve.	169,885 (68,750)	146,014 (59,090)	0 (0)	22,411 (9,070)	1,460 (591)	Yes.
FPC2—Everglades National Park	8,728 (3,532)	8,595 (3,478)	0 (0)	0 (0)	133 (54)	Yes.
FPC3—USDA	630 (255)	145 (58)	253 (103)	192 (78)	40 (16)	Yes.
FPC4—Crandon Park	57 (23)	0 (0)	0 (0)	57 (23)	0 (0)	Yes.
Total	179,300 (72,560)	154,754 (62,627)	253 (103)	22,660 (9,170)	1,633 (661)	
Percent of Total		86%	1%	13%	1%	

Note: Area sizes may not sum due to rounding or minor mapping discrepancies.

Approximately 4.6 percent of the lands (8,310 ac (3,363 ha)) contained within units proposed as critical habitat for Florida prairie-clover are designated critical habitat for other federally listed species.

We present brief descriptions of the proposed critical habitat units and the justification for why they meet the definition of critical habitat for Florida prairie-clover, below. All proposed critical habitat units were occupied at the time of listing and are currently occupied. All units contain all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species.

Unit FPC1: Big Cypress National Preserve, Collier, Miami-Dade, and Monroe Counties, Florida

Unit FPC1 consists of approximately 169,885 ac (68,750 ha) in Collier, Miami-Dade, and Monroe County. The unit is comprised of Federal lands in BCNP (146,014 ac (59,090 ha)), County land (22,411 ac (9,070 ha), and parcels in private or other ownership (1,460 ac (591 ha)).

Special management considerations or protection may be required within this unit to address threats of nonnative plant and animal species, lack of fire, off-road vehicle use, oil and gas exploration and extraction, and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Florida prairie-clover.

This unit is part of lands within BCNP. Within this unit, as part of their 2019 Fire Management Plan (NPS 2019), the NPS conducts nonnative species control and prescribed fire in areas that support or could support Florida prairie-clover.

Unit FPC1 does not contain previously designated critical habitat. The federally threatened eastern indigo snake, federally endangered Florida panther, and federally endangered Florida bonneted bat occur in this unit.

Unit FPC2: Everglades National Park, Miami-Dade County, Florida

Unit FPC2 consists of approximately 8,728 ac (3,532 ha) in Miami-Dade County. The unit is comprised of Federal lands in ENP (8,595 ac (3,478 ha) and parcels in private or other ownership (133 ac (54 ha)). The unit includes Long Pine Key and some of the surrounding areas in ENP.

Special management considerations or protection may be required within this unit to address threats of nonnative plant and animal species, lack of fire, and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Florida prairie-clover.

This unit is part of lands within ENP. Within this unit, as part of their General Management Plan (NPS 2015), the NPS conducts nonnative species control and prescribed fire in areas that support or could support pineland sandmat. Most (91.6 percent) of unit FPC2 is designated critical habitat for the federally endangered Bartram's scrub-hairstreak and Florida leafwing butterflies. The federally threatened eastern indigo snake, federally endangered Florida panther, and federally endangered Florida bonneted bat occur in this unit.

Unit FPC3: USDA Subtropical Horticultural Research Station and Surrounding Areas, Miami-Dade County, Florida

Unit FPC3 consists of approximately 630 ac (255 ha) of habitat in Miami-Dade County. The unit is comprised of Federal lands within the USDA Subtropical Horticultural Research Station (145 ac (58 ha)); State lands within the R. Hardy Matheson Preserve, Ludlam Pineland, Deering Estate at Cutler, and Deering Estate South Addition (253 ac (103 ha)); County lands within Bill Sadowski Park and Matheson Hammock (192 ac (78 ha)); and parcels in private ownership (40 ac (16 ha)).

Special management considerations or protection may be required within this unit to address threats of nonnative plant and animal species, lack of fire, and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Florida prairie-clover.

The entirety of unit FPC3 is designated critical habitat for the federally endangered Carter's small-flowered flax and Florida brickell-bush. The federally threatened eastern indigo snake occurs in this unit.

Unit FPC4: Crandon Park, Miami-Dade County, Florida

Unit FPC4 consists of approximately 57 ac (23 ha) in Miami-Dade County. The unit is comprised entirely of land owned by Miami-Dade County. The unit includes coastal berm and rockland hammock on the east side of County Road 913 to the shoreline, from the vicinity of the Marjorie Stoneman Douglas Biscayne Nature Center to near the northern tip of the island.

Special management considerations or protection may be required within this unit to address threats of nonnative plant and animal species, lack of fire, and sea level rise. Nonnative species control, prescribed fire, and mechanical vegetation treatments are all actions that help improve habitat that supports Florida prairie-clover.

Unit FPC4 does not contain previously designated critical habitat. The federally threatened eastern indigo snake occurs in this unit.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final rule revising the definition of destruction or adverse modification on February 11, 2016 (81 FR 7214). (We also published a revised definition after that (on August 27, 2019)) Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation: (a) if the amount or extent of taking specified in the incidental take statement is exceeded; (b) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (c) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (d) if a new species is listed or critical habitat designated that may be affected by the identified action. In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but Congress also enacted some exceptions in 2018 to the requirement to reinitiate consultation on certain land management plans on the basis of a new species listing or new designation of critical habitat that may be affected by the subject Federal action (see the Consolidated Appropriations Act, 2018 (Pub. L. 115–141), Division O, 132 Stat. 1059 (2018)).

Application of the ''Destruction or Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that we may, during a consultation under section 7(a)(2) of the Act, find are likely to destroy or adversely modify critical habitat for Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover include, but are not limited to:

(1) Actions that would significantly alter the hydrology or substrate, such as ditching or filling. Such activities may include, but are not limited to, road construction or maintenance, and residential, commercial, or recreational development.

(2) Actions that would significantly alter vegetation structure or composition, such as clearing vegetation for construction of roads, residential and commercial development, recreational facilities, and trails.

(3) Actions that would introduce nonnative species that would significantly alter vegetation structure or composition. Such activities may include, but are not limited to, residential and commercial development and road construction.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DOD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act Improvement Act of 1997 (16 U.S.C. 670a) (Sikes Act), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. No DOD lands with a completed INRMP are within the proposed critical habitat designations for Everglades bully, Florida pineland crabgrass, pineland sandmat, or Florida prairie-clover.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (hereafter, the ''2016 Policy''; 81 FR 7226, February 11, 2016), both of which were developed jointly with the National Marine Fisheries Service (NMFS). We also refer to a 2008 Department of the Interior Solicitor's opinion entitled, ''The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act'' (M–37016). We explain each decision to exclude areas, as well as decisions not to exclude, to demonstrate that the decision is reasonable.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific activities for the benefit of the species and its habitat within the areas

proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.''

The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. Section 3(f) of E.O. 12866 identifies four criteria when a regulation is considered a ''significant'' rulemaking, and requires additional analysis, review, and approval if met. The criterion relevant here is whether the designation of critical habitat may have an economic effect of greater than $100 million in any given year (section 3(f)(1)). Therefore, our consideration of economic impacts uses a screening analysis to assess whether a designation of critical habitat for these species is likely to exceed the economically significant threshold.

For these particular designations, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from the proposed designations of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover (IEc 2021, entire). We began by conducting a screening analysis of the proposed designations of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographic areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The presence of the listed species in occupied areas of critical habitat means that any destruction or adverse modification of those areas is also likely to jeopardize the continued existence of the species. Therefore, designating occupied areas as critical habitat typically causes little if any incremental impacts above and beyond the impacts of listing the species. Accordingly, the screening analysis focuses on areas of unoccupied critical habitat. The screening analysis also assesses whether units are unoccupied by the species and thus may require additional management or conservation efforts as a result of the critical habitat designation for the species; these additional efforts may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM are what we consider our draft economic analysis (DEA) of the proposed critical habitat designations for Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover; our DEA is summarized in the narrative below.

As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designations. In our evaluation of the probable incremental economic impacts that may result from the proposed designations of critical habitat for Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover, first we identified, in the IEM dated August 30, 2021, probable incremental economic impacts associated with the following categories of activities:

(1) Federal lands management (National Park Service, U.S. Fish and Wildlife Service, National Oceanic and Atmospheric Administration, U.S. Coast Guard, U.S. Army Corps of Engineers);

(2) Roadway and bridge construction and maintenance;

(3) Oil and gas exploration and extraction;

(4) Commercial or residential development; and

(5) Recreation (including construction and maintenance of recreation infrastructure).

We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover are present, Federal agencies already are required to consult with the Service under section 7 of the Act on activities they authorize, fund, or carry out that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover. Because the designation of critical habitat for these species is being proposed several years after these species were listed under the Act, data from our consultation history are available to help us discern which

conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. The following specific circumstances help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would likely adversely affect the essential physical or biological features of occupied critical habitat are also likely to adversely affect these species. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for these species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of these proposed designations of critical habitat.

Approximately 179,680 ac (72,714 ha) in five units in Collier, Monroe, and Miami-Dade Counties, Florida, are being proposed for designation as critical habitat for the Everglades bully. All five units are occupied by Everglades bully. Approximately 177,879 ac (71,985 ha) in two units in Collier, Monroe, and Miami-Dade Counties, Florida, are being proposed for designation as critical habitat for Florida pineland crabgrass; both units are occupied by the species. Approximately 8,867 ac (3,588 ha) in three units in Miami-Dade County, Florida, are being proposed for designation as critical habitat for pineland sandmat. All three units are occupied by pineland sandmat. Approximately 179,300 ac (72,560 ha) in four units in Collier, Monroe, and Miami-Dade Counties, Florida, are being proposed for designation as critical habitat for Florida prairie-clover. All four units are occupied by Florida prairie-clover. Land ownership across the units for all four plants includes Federal lands (85 percent), State of Florida lands (less than 1 percent), county lands (13 percent), and private lands (1 percent). The majority of the proposed area for Everglades bully, Florida pineland crabgrass, and Florida prairie-clover is within BCNP. Approximately 6 percent of the total proposed designated critical habitat area for all four plants overlaps with existing designated critical habitat for other species.

Because all of the area proposed for designation is occupied, most actions that may adversely affect designated critical habitat would also adversely affect the species, and it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of these four plants. Therefore, only administrative costs are expected in the proposed critical habitat designation. While the analysis for adverse modification of critical habitat will require time and resources by both the Federal action agency and the Service, it is believed that, in most circumstances, these costs would predominantly be administrative in nature and would not be significant.

The economic costs of critical habitat designation for these four plants will most likely be limited to additional administrative efforts to consider adverse modification in section 7 consultations. This finding is based on the following factors: (1) All of the proposed critical habitat units for the four plants are considered occupied by the species; (2) a number of additional baseline protections exist for the species due to the presence of other listed species and designated critical habitats, with approximately 6 percent of the proposed critical habitat overlapping with designated critical habitat for other species; and (3) nearly 100 percent of the proposed critical habitat is occupied by other federally listed species, including Florida panther and Florida bonneted bat. Several management plans and conservation plans also provide baseline protections to the species in proposed critical habitat areas.

In total, approximately 20 formal consultations, 123 informal consultations, and 29 technical assistance efforts that will include the four plants are anticipated to occur during the next 10 years in proposed critical habitat areas, with costs to the Service and Federal action agencies of approximately $43,600 annually. Although the specific geographic distribution of these costs is uncertain, it appears likely that most costs would occur in the BCNP units, which comprises 94 percent of proposed critical habitat in total for these four plants.

Potential private property value effects are possible due to public perception of impacts to private lands. The designation of critical habitat may cause some developers or landowners to perceive that private lands will be subject to use restrictions or litigation from third parties, resulting in costs. However, any costs associated with public perception are speculative and not possible to quantify. Further, only 1 percent of the proposed critical habitat designations is privately owned land, leading to at-most nominal incremental costs arising from changes in public perception of lands included in the designations.

The total annual incremental costs of critical habitat designation for these four plants are anticipated to be approximately $43,600 per year, and economic benefits are also anticipated to be small. Therefore, critical habitat designation for these four plants is unlikely to generate costs or benefits exceeding $100 million in a single year, and this rule is unlikely to meet the threshold for an economically significant rule, with regard to costs under E.O. 12866.

We are soliciting data and comments from the public on the DEA discussed above, as well as all aspects of this proposed rule and our required determinations. During the development of final designations, we will consider the information presented in the DEA and any additional information on economic impacts received during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designations under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of these species.

Exclusions

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared an analysis of the probable economic impacts of the proposed critical habitat designations and related factors. At this time, we are not considering any exclusions based on economic impacts.

During the development of final designations, we will consider any additional economic impact information received through the public comment period, and as such, areas may be excluded from the final critical habitat designations under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Consideration of National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (*e.g.,* a DOD installation that is in the process of revising its INRMP for a newly listed species or a species

previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), then national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of ''critical habitat.'' However, the Service must still consider impacts on national security, including homeland security, on those lands or areas not covered by section 4(a)(3)(B)(i) because section 4(b)(2) requires the Service to consider those impacts whenever it designates critical habitat. Accordingly, if DOD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DOD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, it must provide a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If we conduct an exclusion analysis because the agency provides a reasonably specific justification or because we decide to exercise the discretion to conduct an exclusion analysis, we will defer to the expert judgment of DOD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

We have evaluated whether any of the lands within the proposed designations of critical habitat are owned by DOD or DHS or could lead to national-security or homeland-security impacts if designated. Below, we describe the areas within the proposed designations that are owned by DOD or DHS or for which designation could lead to national-security or homeland-security impacts. For each area, we describe the available information indicating whether we have reason to consider excluding the area from the designations. If, during the comment period, we identify or receive information about additional areas for which designations may result in incremental national-security or homeland-security impacts, then we may consider conducting a discretionary exclusion analysis to determine whether to exclude those additional areas under authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

DHS Land Parcel

We have determined that some lands within the Richmond Pine Rocklands and surrounding areas unit (Unit EB3) of the proposed designation of critical habitat for Everglades bully are owned, managed, or utilized by the U.S. Coast Guard, which is part of the DHS.

The U.S. Coast Guard property is separated into two main areas: the Communication Station (COMMSTA) Miami and the Civil Engineering Unit (CEU). The COMMSTA houses transmitting and receiving antennas. The CEU plans and executes projects at regional shore facilities, such as construction and post-disaster assessments.

The U.S. Coast Guard parcel contains approximately 100 ac (40 ha) of standing pine rocklands. The remainder of the site, outside of the developed areas, is made up of scraped pine rocklands that are mowed three to four times per year for maintenance of a communications antenna field. While disturbed, this scraped area maintains sand substrate and many native pine rockland species, including documented occurrences of Everglades bully. As of the drafting of this proposed rule, the U.S. Coast Guard parcel has a draft management plan that includes management of pine rockland habitats, including vegetation control and prescribed fire and protection of lands from further development or degradation, and is anticipated to be finalized in late 2022. In addition, the standing pine rockland area is partially managed through an active recovery grant to the Institute for Regional Conservation. Under this grant, up to 39 ac (16 ha) of standing pine rocklands will undergo invasive vegetation control.

Based on a review of the specific mission of the U.S. Coast Guard facility in conjunction with the measures and efforts set forth in the draft management plan to preserve pine rockland habitat and protect sensitive and listed species, we have determined that it is unlikely that the critical habitat, if finalized as proposed, would negatively impact the facility or its operations. As a result, we do not anticipate any impact on national security. Consequently, the Secretary does not intend to exercise her discretion to exclude any areas from the final designations based on impacts on national security. We will, however, review this determination, in light of any new information and public comments we receive prior to making a decision in the final rule.

DOD Land Parcel

As discussed above, we have determined that the U.S. Army Corps of Engineers (Corps), a branch of the DOD, retains ownership over a 121-ac (49-ha) parcel in Unit EB3 of the proposed designation of critical habitat for Everglades bully. More than 85 ac (34 ha) of this parcel are forested but not managed for preservation of natural resources. The Corps does not have an INRMP or any specific management plan for the Everglades bully or its habitat covering these lands. Activities conducted on this site are unknown, but we do not anticipate any impact on national security.

Following our process for coordinating with Federal partners, we contacted the DOD and DHS about this designation and shared the IEM for their feedback. Neither agency identified any potential national-security impact, nor requested an exclusion from critical habitat based on potential national-security impacts. Consequently, the Secretary does not intend to exercise her discretion to exclude any areas from the final designations based on impacts on national security. However, if through the public comment period we receive information regarding impacts on national security or homeland security from designating particular areas as critical habitat, then as part of developing the final designations of critical habitat, we may consider conducting a discretionary exclusion analysis to determine whether to exclude those areas under authority of section 4(b)(2) of the Act and our

implementing regulations at 50 CFR 424.19.

Consideration of Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security discussed above. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area—such as HCPs, safe harbor agreements (SHAs), or candidate conservation agreements with assurances (CCAAs)—or whether there are non-permitted conservation agreements and partnerships that may be impaired by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, or other impacts that might occur because of the designation. When analyzing other relevant impacts of including a particular area in a designation of critical habitat, we weigh those impacts relative to the conservation value of the particular area. To determine the conservation value of designating a particular area, we consider a number of factors, including, but not limited to, the additional regulatory benefits that the area would receive due to the protection from destruction or adverse modification 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.

In the case of Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover, the benefits of critical habitat include public awareness of the presence of these four plant species and the importance of habitat protection, and, where a Federal nexus exists, habitat protection for the four species due to protection from destruction or adverse modification of critical habitat. Continued implementation of an ongoing management plan that provides conservation equal to or more than the protections that result from a critical habitat designation would reduce those benefits of including that specific area in the critical habitat designation.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction of the species. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Private or Other Non-Federal Conservation Plans Related to Permits Under Section 10 of the Act

HCPs for incidental take permits under section 10(a)(1)(B) of the Act provide for partnerships with non-Federal entities to minimize and mitigate impacts to listed species and their habitat. In some cases, HCP permittees agree to do more for the conservation of the species and their habitats on private lands than designation of critical habitat would provide alone. We place great value on the partnerships that are developed during the preparation and implementation of HCPs.

CCAAs and SHAs are voluntary agreements designed to conserve candidate and listed species, respectively, on non-Federal lands. In exchange for actions that contribute to the conservation of species on non-Federal lands, participating property owners are covered by an ''enhancement of survival'' permit under section 10(a)(1)(A) of the Act, which authorizes incidental take of the covered species that may result from implementation of conservation actions, specific land uses, and, in the case of SHAs, the option to return to a baseline condition under the agreements. The Service also provides enrollees assurances that we will not impose further land-, water-, or resource-use restrictions, or require additional commitments of land, water, or finances, beyond those agreed to in the agreements.

When we undertake a discretionary section 4(b)(2) exclusion analysis based on permitted conservation plans (*e.g.,* CCAAs, SHAs, and HCPs), we anticipate consistently excluding such areas if incidental take caused by the activities in those areas is covered by the permit under section 10 of the Act and the CCAA/SHA/HCP meets all of the following three factors (see the 2016 Policy for additional details):

a. The permittee is properly implementing the CCAA/SHA/HCP and is expected to continue to do so for the term of the agreement. A CCAA/SHA/HCP is properly implemented if the permittee is and has been fully implementing the commitments and provisions in the CCAA/SHA/HCP, implementing agreement, and permit.

b. The species for which critical habitat is being designated is a covered species in the CCAA/SHA/HCP, or very similar in its habitat requirements to a covered species. The recognition that the Services extend to such an agreement depends on the degree to which the conservation measures undertaken in the CCAA/SHA/HCP would also protect the habitat features of the similar species.

c. The CCAA/SHA/HCP specifically addresses that species' habitat and meets the conservation needs of the species in the planning area.

The proposed critical habitat designations include areas that are covered by the following permitted plan providing for the conservation of Everglades bully: Coral Reef Commons HCP.

Coral Reef Commons Habitat Conservation Plan—In preparing this proposal, we have determined that lands associated with the Coral Reef Commons HCP within Unit EB3 for Everglades bully (Richmond Pine Rocklands and surrounding areas) are included within the boundaries of the proposed critical habitat.

Coral Reef Commons is a mixed-use community, which consists of 900 apartments, retail stores, restaurants, and parking. In 2017, a HCP and associated permit under section 10 of the Act was developed and issued for the Coral Reef Commons development.

As part of the HCP and permit, an approximately 53-ac (21-ha) on-site preserve (same as the area for proposed critical habitat designation) was established under a conservation encumbrance that will be managed in perpetuity for pine rockland habitat and sensitive and listed species, including Everglades bully.

The Center for Southeastern Tropical Advanced Remote Sensing (CSTARS) site is an offsite mitigation area for Coral Reef Commons comprised of 57 ac (23 ha). Both the on-site preserve and the off-site mitigation area are being managed to maintain healthy pine rockland habitat through the use of invasive, exotic plant management; mechanical treatment; and prescribed fire. Since initiating the Coral Reef Commons HCP, pine rockland restoration efforts have been conducted within all of the management units in both the on-site preserves and the off-site mitigation area. A second round of prescribed fire began in February 2021. Currently, the on-site preserves meet or exceed the success criteria described in the HCP.

Critical habitat within (EB3) that is associated with the Coral Reef Commons HCP is limited to the on-site preserves and off-site mitigation area. Based on a cursory review of the HCP and proposed critical habitat for Everglades bully, we do not anticipate requesting any additional conservation measures for this species beyond those that are currently in place. Therefore, at this time, we are considering excluding those specific lands associated with the Coral Reef Commons HCP that are in the preserve and off-site mitigation area from the final designation of critical habitat for Everglades bully. However, we will more thoroughly review the HCP, its implementation of the conservation measures for Everglades bully and its habitat therein, and public comment on this issue prior to finalizing critical habitat, and, if appropriate, in the final rule, exclude from critical habitat for Everglades bully those lands associated with the Coral Reef Commons HCP that are in the on-site preserves and off-site mitigation area.

We have determined that there are no additional HCPs or other management plans for Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover.

Tribal Lands

Several Executive Orders, Secretarial Orders, and policies concern working with Tribes. These guidance documents generally confirm our trust responsibilities to Tribes, recognize that Tribes have sovereign authority to control Tribal lands, emphasize the importance of developing partnerships with Tribal governments, and direct the Service to consult with Tribes on a government-to-government basis.

A joint Secretarial Order that applies to both the Service and the National Marine Fisheries Service (NMFS)—Secretarial Order 3206, *American Indian Tribal Rights, Federal–Tribal Trust Responsibilities, and the Endangered Species Act* (June 5, 1997) (S.O. 3206)—is the most comprehensive of the various guidance documents related to Tribal relationships and Act implementation, and it provides the most detail directly relevant to the designation of critical habitat. In addition to the general direction discussed above, the appendix to S.O. 3206 explicitly recognizes the right of Tribes to participate fully in any listing process that may affect Tribal rights or Tribal trust resources; this includes the designation of critical habitat. Section 3(B)(4) of the appendix requires the Service to consult with affected Tribes ''when considering the designation of critical habitat in an area that may impact tribal trust resources, tribally-owned fee lands, or the exercise of tribal rights.'' That provision also instructs the Service to avoid including Tribal lands within a critical habitat designation unless the area is essential to conserve a listed species, and it requires the Service to ''evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands.''

Our implementing regulations at 50 CFR 424.19 and the 2016 Policy are consistent with S.O. 3206. When we undertake a discretionary exclusion analysis, in accordance with S.O. 3206 we consult with any Tribe whose Tribal trust resources, Tribally owned fee lands, or Tribal rights may be affected by including any particular areas in the designation, and we evaluate the extent to which the conservation needs of the species can be achieved by limiting the designation to other areas. When we undertake a discretionary 4(b)(2) exclusion analysis, we always consider exclusion of Tribal lands, and give great weight to Tribal concerns in analyzing the benefits of exclusion.

However, S.O. 3206 does not override the Act's statutory requirement of designation of critical habitat. As stated above, we must consult with any Tribe when a designation of critical habitat may affect Tribal lands or resources. The Act requires us to identify areas that meet the definition of ''critical habitat'' (*i.e.,* areas occupied at the time of listing that contain the essential physical or biological features that may require special management or protection and unoccupied areas that are essential to the conservation of a species), without regard to land ownership. While S.O. 3206 provides important direction, it expressly states that it does not modify the Secretary's statutory authority under the Act or other statutes.

There are no Tribal lands in the proposed critical habitat designations for Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover.

Summary of Exclusions Considered Under 4(b)(2) of the Act

At this time, we are considering excluding those specific lands associated with the Coral Reef Commons HCP that are in the preserve and off-site mitigation area from the final designation of critical habitat for Everglades bully (unit ES3). In conclusion, we specifically solicit comments on the inclusion or exclusion of such areas.

During the development of final designations, we will consider any information currently available or received during the public comment period regarding other relevant impacts of the proposed designations and will determine whether these or any other specific areas should be considered for exclusion from the final critical habitat designations under authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19 and the 2016 Policy.

Required Determinations

Clarity of the Rule

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

(1) Be logically organized;

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

(3) Use clear language rather than jargon;

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

(5) Use lists and tables wherever possible.

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

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that

the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under these proposed designations as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated if we adopt the proposed critical habitat designations. The RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, the proposed critical habitat designations will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designations would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final, the proposed critical habitat designations would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not foresee any energy development projects, supply, distribution, or use that may affect or be affected by the proposed critical habitat for pineland sandmat. There may be energy development projects (*i.e.,* oil and gas exploration and extraction activities) at BCNP that may affect or be affected by the proposed critical habitat for Everglades bully, Florida pineland crabgrass, and Florida prairie-clover. However, in our evaluation of potential economic impacts, we did not find that the proposed critical habitat designations for Everglades bully, Florida pineland crabgrass, and Florida prairie-clover would significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following finding:

(1) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal

funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments. The government lands being proposed for critical habitat designation are owned by the State of Florida, Miami-Dade and Monroe Counties, and numerous Federal agencies (USCG, NOAA, Corps, FBP, USDA, and NPS). None of these government entities fit the definition of ''small governmental jurisdiction.'' Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the proposed designations of critical habitat for Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover, and it concludes that, if adopted, the designations of critical habitat do not pose significant takings implications for lands within or affected by the designations.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (federalism), this proposed rule does not have significant federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of the proposed critical habitat designations with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the States, or on the relationship between the Federal government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designations may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the physical or biological features essential to the conservation of the species. The proposed areas of critical habitat are presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rulemaking does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

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

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that

Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

As discussed above (see ''Tribal Lands'' under Exclusions), we have determined that no Tribal lands fall within the boundaries of the proposed critical habitat designations for Everglades bully, Florida pineland crabgrass, pineland sandmat, or Florida prairie-clover, so no Tribal lands would be affected by the proposed designations of critical habitat for these species.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Florida Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Signing Authority

Martha Williams, Director of the U.S. Fish and Wildlife Service, approved this action on September 20, 2022, for publication. On September 30, 2022, Martha Williams authorized the undersigned to sign the document electronically and submit it to the Office of the Federal Register for publication as an official document of the U.S. Fish and Wildlife Service.

Proposed Regulation Promulgation

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

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. In § 17.12, amend paragraph (h) by revising the entries for ''*Chamaesyce deltoidea* ssp. *pinetorum*'', ''*Dalea carthagenensis* var. *floridana*'', ''*Digitaria pauciflora*'', and ''*Sideroxylon reclinatum* ssp. *austrofloridense*'' in the List of Endangered and Threatened Plants under FLOWERING PLANTS, to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
FLOWERING PLANTS				
* *	*	* *		* *
Chamaesyce deltoidea ssp. *pinetorum*.	Pineland sandmat	Wherever found	T	82 FR 46691, 10/6/2017; 50 CFR 17.96(a).[CH]
* *	*	* *		* *
Dalea carthagenensis var. *floridana*.	Florida prairie-clover	Wherever found	E	82 FR 46691, 10/6/2017; 50 CFR 17.96(a).[CH]
* *	*	* *		* *
Digitaria pauciflora	Florida pineland crabgrass	Wherever found	T	82 FR 46691, 10/6/2017; 50 CFR 17.96(a).[CH]
* *	*	* *		* *
Sideroxylon reclinatum ssp. *austrofloridense*.	Everglades bully	Wherever found	T	82 FR 46691, 10/6/2017; 50 CFR 17.96(a).[CH]
* *	*	* *		* *

■ 3. In § 17.96, amend paragraph (a) by:

■ a. Adding an entry for ''Family Euphorbiaceae: *Chamaesyce deltoidea* ssp. *pinetorum,* (pineland sandmat)'' following the entry for ''Family Ericaceae: *Gonocalyx concolor*'';

■ b. Adding an entry for ''Family Fabaceae: *Dalea carthagenensis* var. *floridana* (Florida prairie-clover)'' following the entry for ''Family Fabaceae: *Astragalus pycnostachyus* var. *lanosissimus* (Ventura Marsh milk-vetch)'';

■ c. Adding an entry for ''Family Poaceae: *Digitaria pauciflora* (Florida pineland crabgrass)'' following the entry for ''Family Plantaginaceae: *Penstemon debilis* (Parachute penstemon)''; and

■ d. Adding an entry for ''Family Sapotaceae: *Sideroxylon reclinatum* ssp. *austrofloridense* (Everglades bully)'' following the entry for ''Family Rubiaceae: *Catesbaea melanocarpa* (no common name)''.

The additions read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Euphorbiaceae: *Chamaesyce deltoidea* ssp. *pinetorum* (pineland sandmat)

(1) Critical habitat units are depicted for Miami-Dade County, Florida, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the pineland sandmat are South Florida pine rockland and adjacent ecotonal areas:

(i) Consisting of calcareous limestone substrate (often exposed with little soil development) that provides nutritional requirements and suitable growing conditions (*e.g.,* pH, nutrients, anchoring, and drainage);

(ii) Characterized by an open canopy and understory with a high proportion of native pine rockland plant species to

provide for sufficient sunlight to permit growth and flowering;

(iii) Subjected to a monthly mean temperature characteristic of the subtropical humid classification in Miami-Dade County and short hydroperiods ranging up to 60 days each year;

(iv) Subjected to periodic natural (*e.g.,* hurricanes, fire) or unnatural (*e.g.,* prescribed fire) disturbance regimes to maintain open canopy conditions; and

(v) Containing the presence of native pollinators for natural pollination and reproduction.

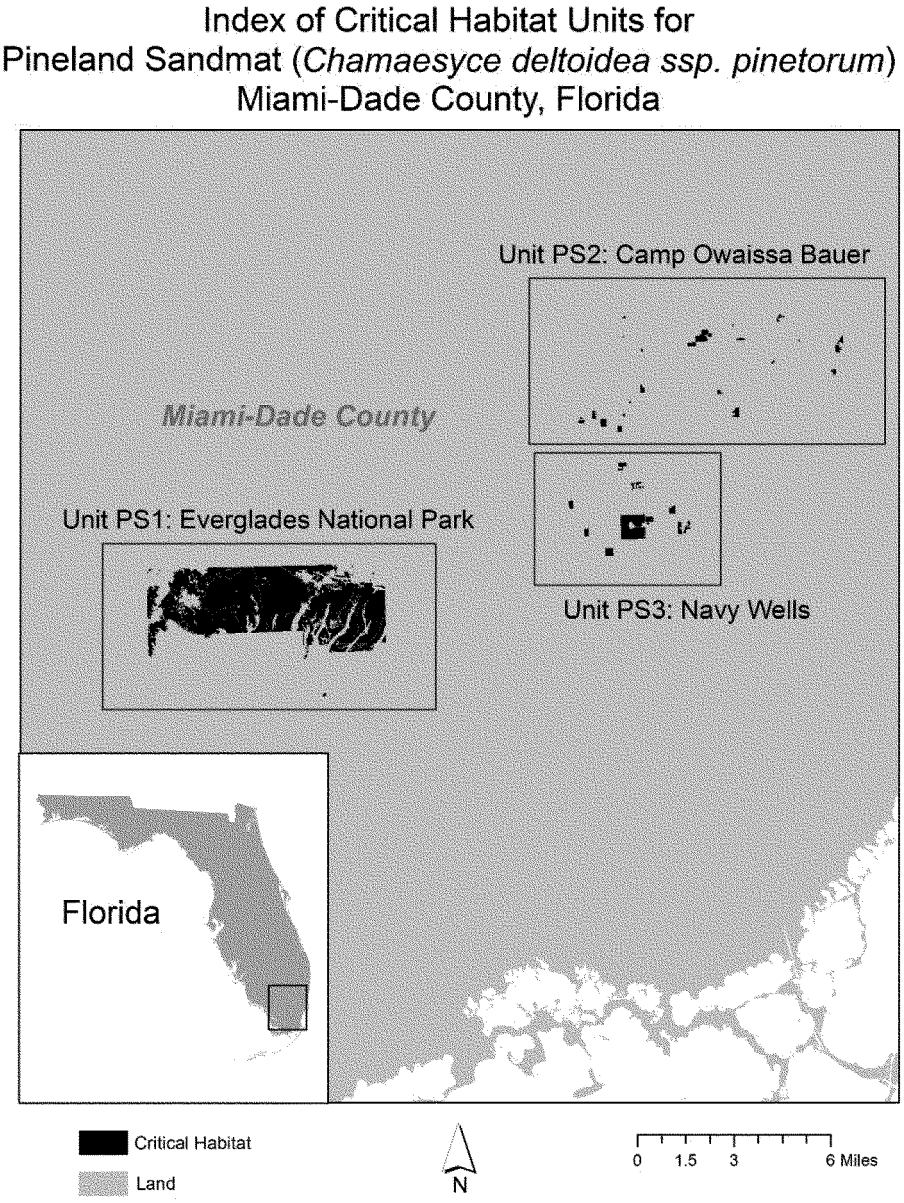
(3) Critical habitat does not include human-made structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of the final rule.

(4) Data layers defining map units were created using ESRI ArcGIS mapping software. The projection used was Albers Conical Equal Area (Florida Geographic Data Library), North American Datum (NAD) 1983 High Accuracy Reference Network (HARN). The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *https://www.fws.gov/office/florida-ecological-services,* at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2022–0125, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map of critical habitat units for pineland sandmat follows:

Figure 1 to Family Euphorbiaceae: *Chamaesyce deltoidea* ssp. *pinetorum* (pineland sandmat) paragraph (5)

BILLING CODE 4333–15–P



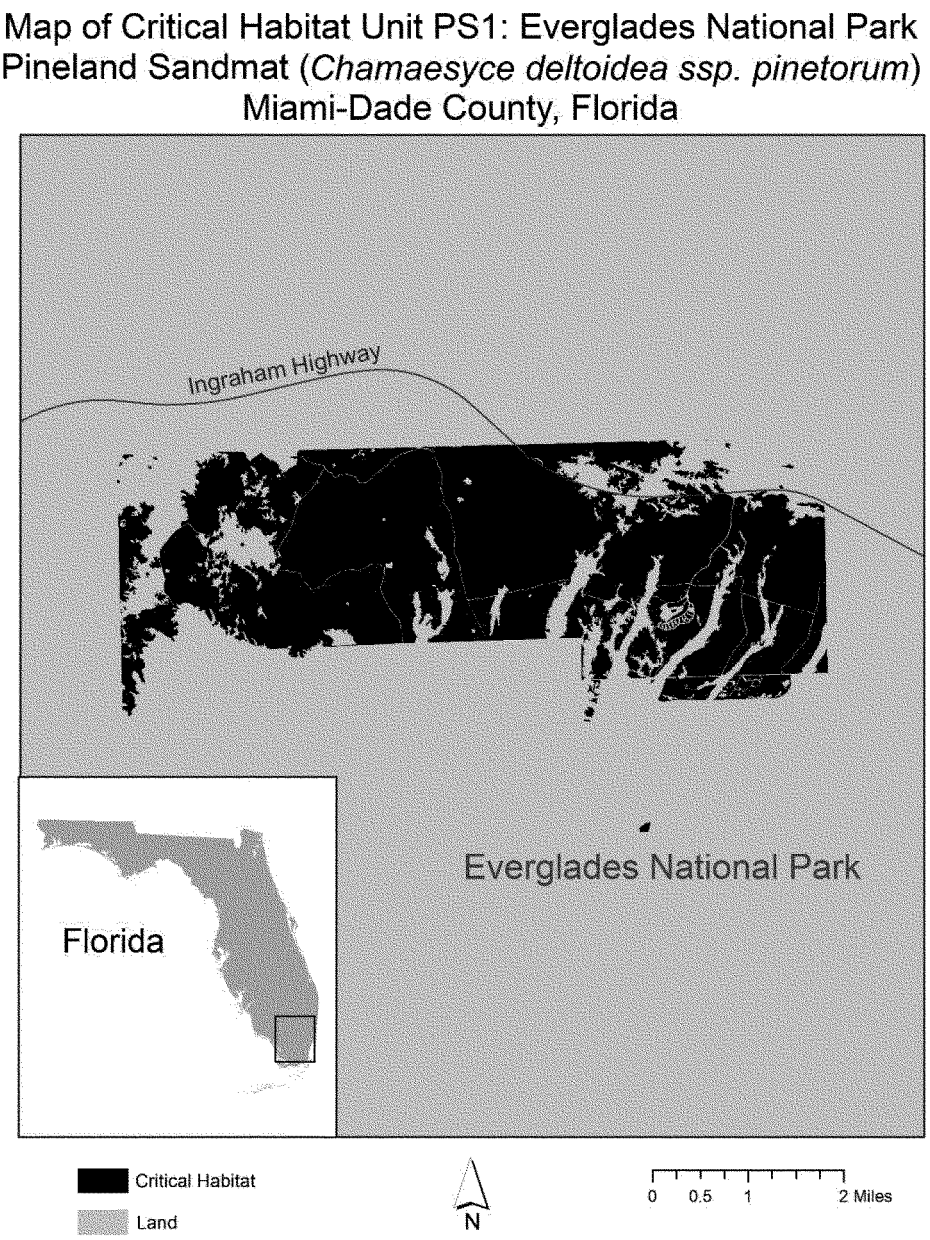
(6) PS1: Everglades National Park, Miami-Dade County, Florida.

(i) Unit PS1 consists of approximately 7,994 acres (ac) (3,235 hectares (ha)) in Miami-Dade County, Florida. This unit is comprised of lands on Long Pine Key

and surrounding areas in Everglades National Park.

(ii) Map of Unit PS1 follows:

Figure 2 to Family Euphorbiaceae: *Chamaesyce deltoidea* ssp. *pinetorum* (pineland sandmat) paragraph (6)(ii)



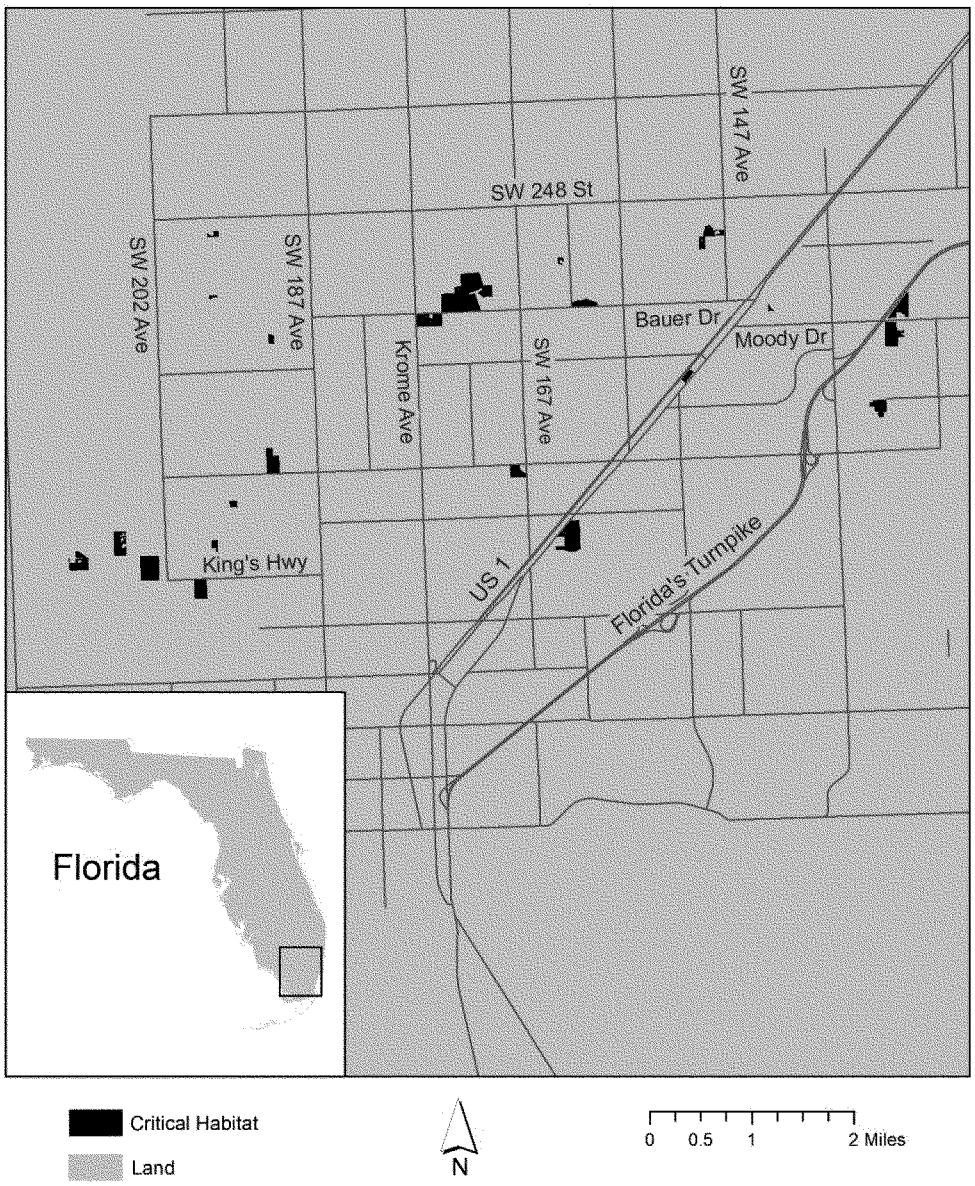
(7) PS2: Camp Owaissa Bauer and surrounding areas, Miami-Dade County, Florida.

(i) Unit PS2 consists of approximately 315 ac (127 ha) of habitat in Miami-Dade County, Florida. This unit is bordered on the north by SW 248 Street, on the south by SW 312 Street, on the east by SW 112 Avenue, and on the west by SW 217 Avenue.

(ii) Map of Unit PS2 follows:

Figure 3 to Family Euphorbiaceae: *Chamaesyce deltoidea* ssp. *pinetorum* (pineland sandmat) paragraph (7)(ii)

Map of Critical Habitat Unit PS2: Camp Owaissa Bauer Pineland Sandmat (*Chamaesyce deltoidea ssp. pinetorum*) Miami-Dade County, Florida



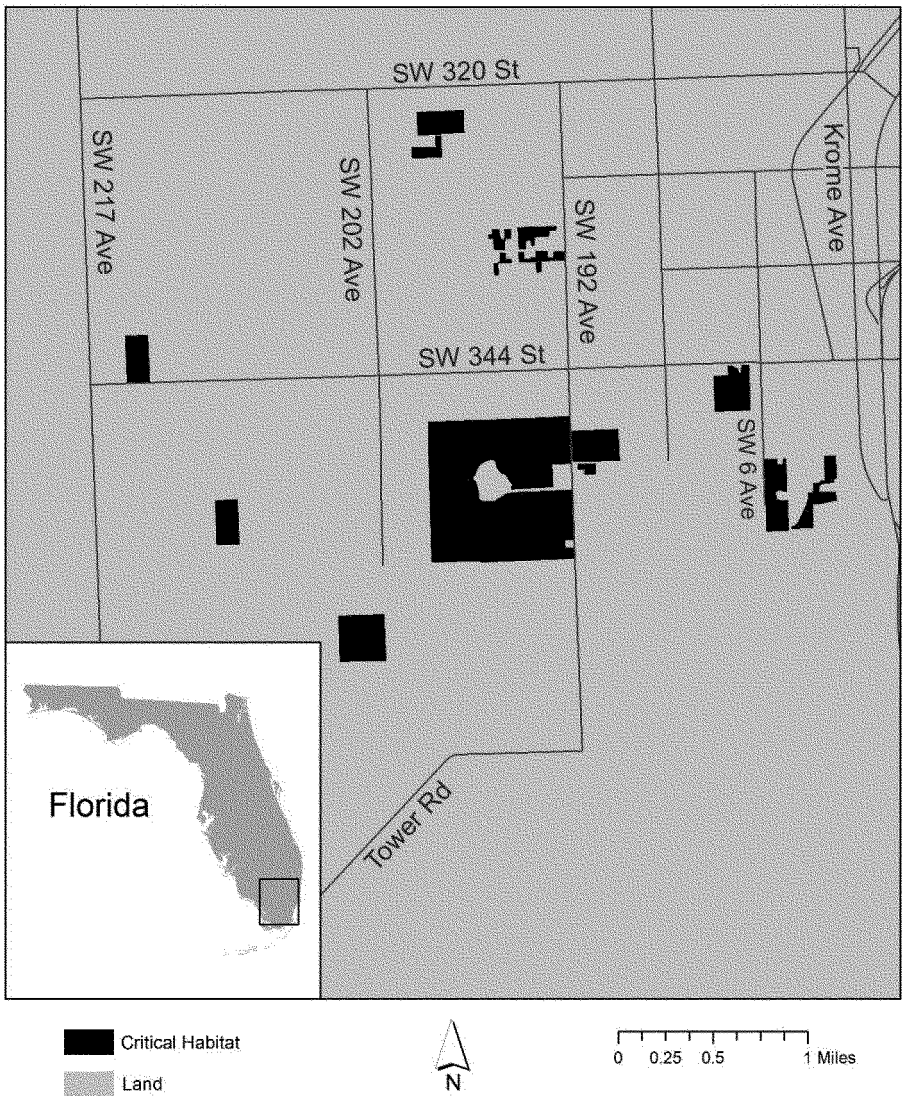
(8) PS3: Navy Wells Pineland Preserve and surrounding areas, Miami-Dade County, Florida.

(i) Unit PS3 consists of approximately 558 ac (226 ha) of habitat in Miami-Dade County, Florida. This unit is bordered on the north by SW 320 Street, on the south by SW 368 Street, on the east by U.S. 1 (South Dixie Highway), and on the west by SW 217 Avenue.

(ii) Map of Unit PS3 follows:

Figure 4 to Family Euphorbiaceae: *Chamaesyce deltoidea* ssp. *pinetorum* (pineland sandmat) paragraph (8)(ii)

Map of Critical Habitat PS3: Navy Wells
Pineland Sandmat (*Chamaesyce deltoidea ssp. pinetorum*)
Miami-Dade County, Florida



* * * * *

Family Fabaceae: *Dalea carthagenensis* var. *floridana* (Florida prairie-clover)

(1) Critical habitat units are depicted for Collier, Miami-Dade County, and Monroe Counties, Florida, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the Florida prairie-clover are South Florida pine rockland, marl prairie, rockland hammock, and coastal berm habitat and adjacent disturbed areas:

(i) Consisting of limestone substrate that provides nutritional requirements and suitable growing conditions (*e.g.,* pH, nutrients, anchoring, and drainage);

(ii) Characterized by an open canopy and understory with a high proportion of native plant species to provide for sufficient sunlight to permit growth and flowering;

(iii) Subjected to a monthly mean temperature characteristic of the subtropical humid classification in Miami-Dade County or the tropical humid classification in Collier and Monroe Counties and short hydroperiods ranging up to 60 days each year;

(iv) Subjected to periodic natural (*e.g.,* fire, hurricanes, and storm surge) or unnatural (*e.g.,* prescribed fire, mowing) disturbance regimes to maintain open canopy conditions; and

(v) Containing the presence of native pollinators for natural pollination and reproduction.

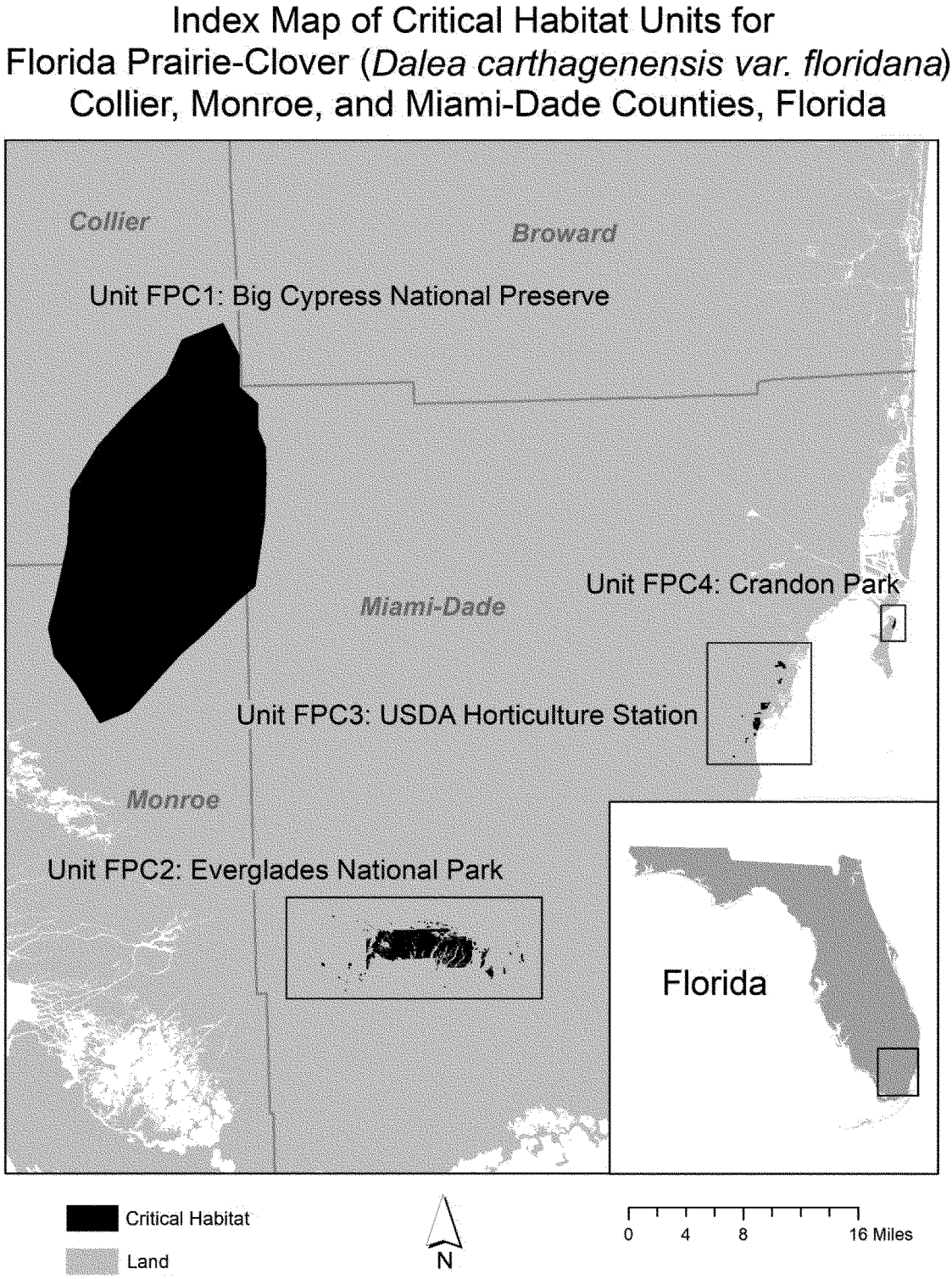
(3) Critical habitat does not include human-made structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of the final rule.

(4) Data layers defining map units were created using ESRI ArcGIS mapping software. The projection used was Albers Conical Equal Area (Florida Geographic Data Library), North American Datum (NAD) 1983 High Accuracy Reference Network (HARN). The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical

habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *https://www.fws.gov/office/florida-ecological-services,* at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2022–0125, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map of all critical habitat units for Florida prairie-clover follows:

Figure 1 to Family Fabaceae: *Dalea carthagenensis* var. *floridana* (Florida prairie-clover) paragraph (5)

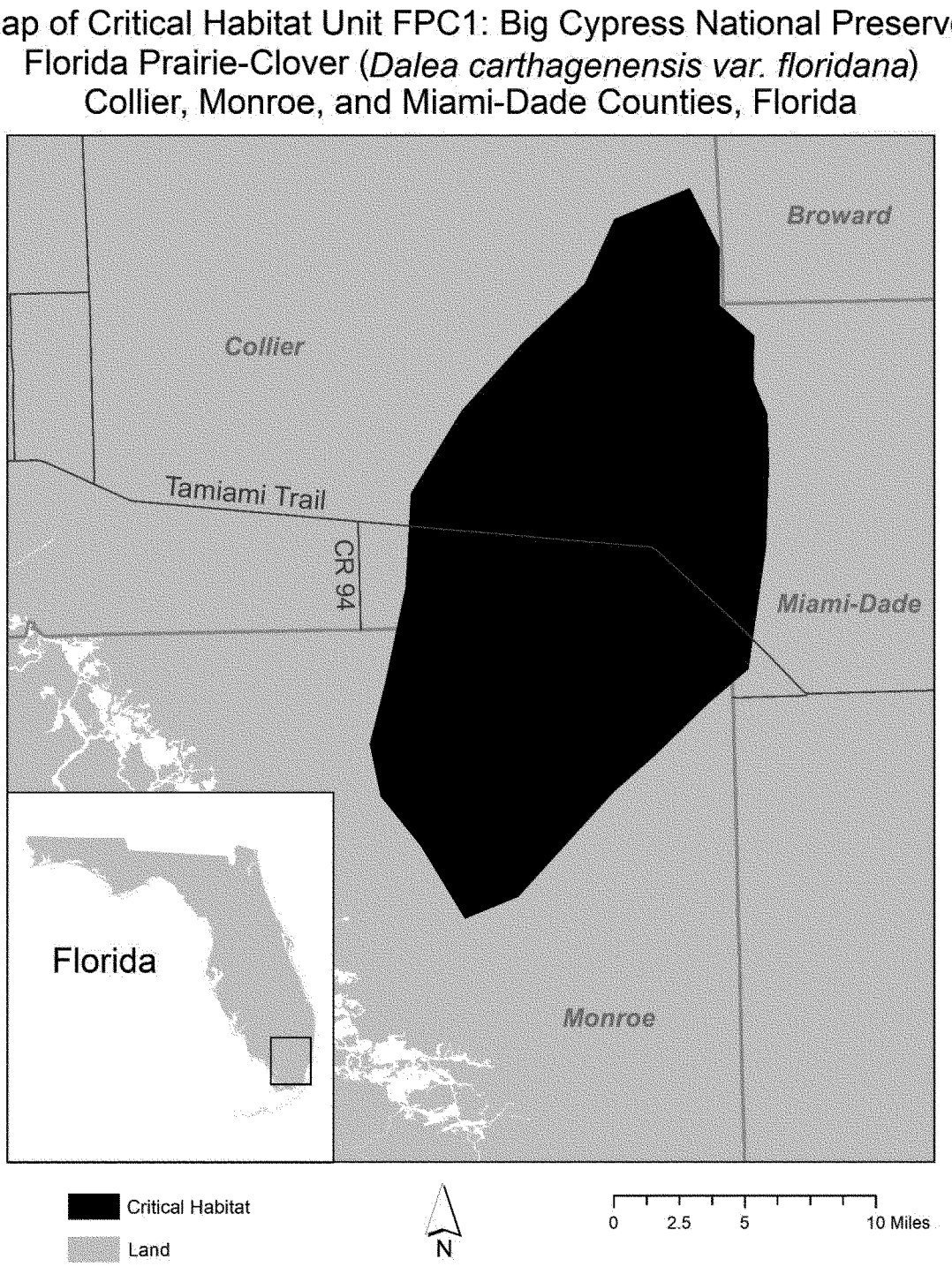


(6) FPC1: Big Cypress National Preserve, Collier, Miami-Dade, and Monroe Counties, Florida.

(i) Unit FPC1 consists of approximately 169,885 acres (ac) (68,750 hectares (ha)) in Collier, Miami-Dade, and Monroe County, Florida. The unit is comprised of lands primarily in Big Cypress National Preserve.

(ii) Map of Unit FPC1 follows:

Figure 2 to Family Fabaceae: *Dalea carthagenensis* var. *floridana* (Florida prairie-clover) paragraph (6)(ii)

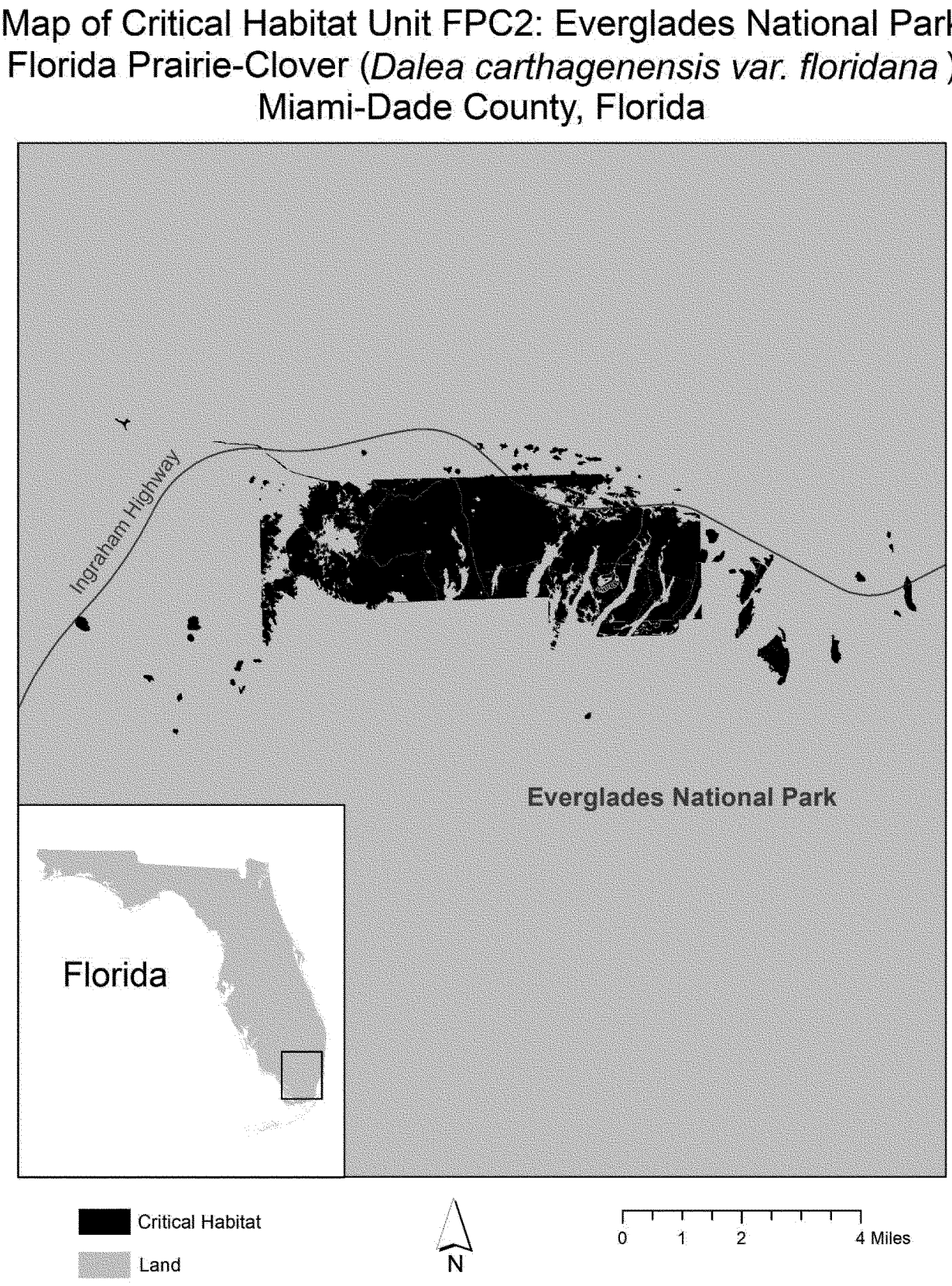


(7) FPC2: Everglades National Park, Miami-Dade County, Florida.

(i) Unit FPC2 consists of approximately 8,728 ac (3,532 ha) in Miami-Dade County, Florida. This unit is comprised of lands on Long Pine Key and surrounding areas in Everglades National Park.

(ii) Map of Unit FPC2 follows:

Figure 3 to Family Fabaceae: *Dalea carthagenensis* var. *floridana* (Florida prairie-clover) paragraph (7)(ii)

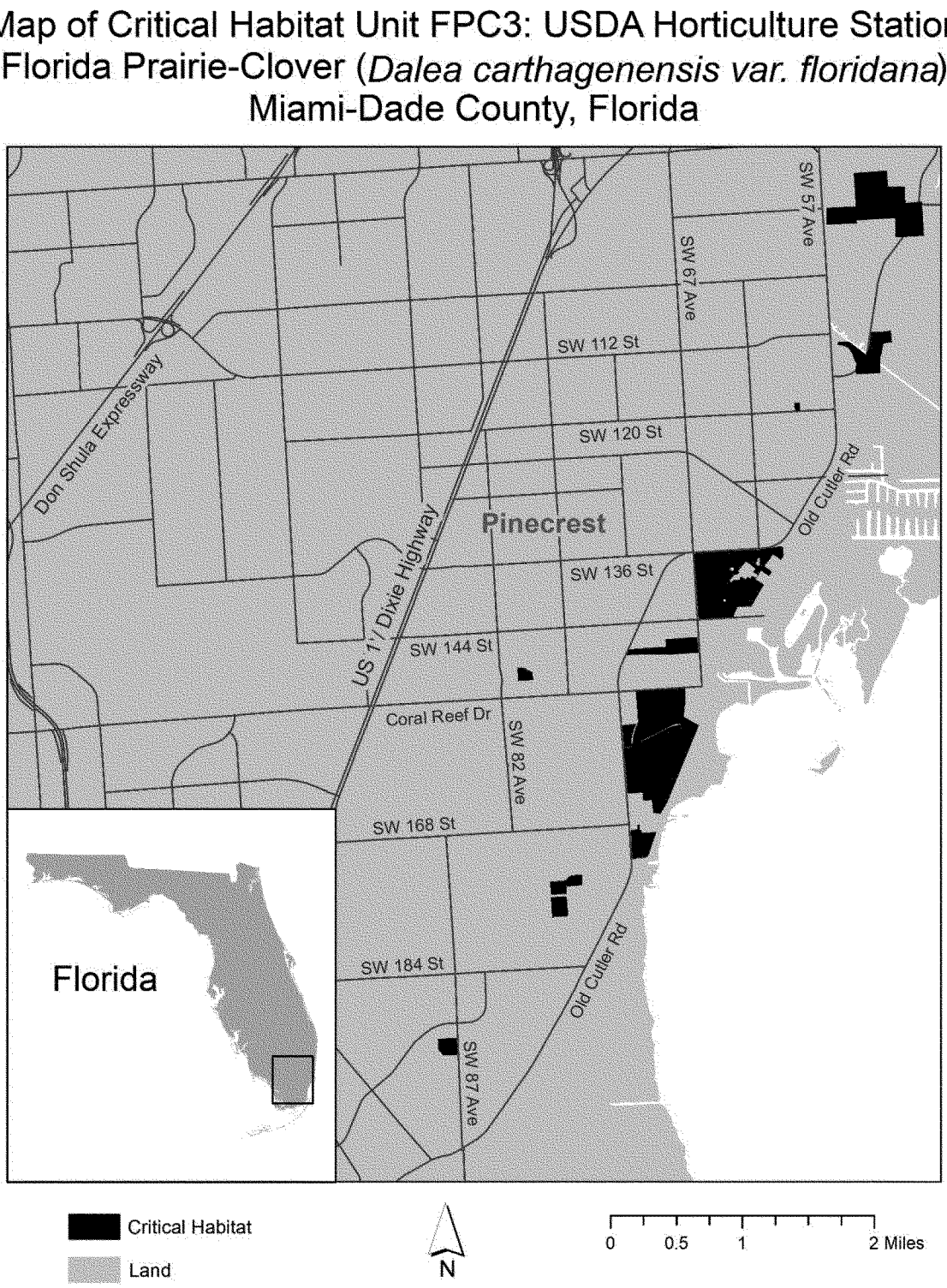


(8) FPC3: U.S. Department of Agriculture Subtropical Horticultural Research Station and surrounding areas, Miami-Dade County, Florida.

(i) Unit FPCG3 consists of approximately 630 ac (255 ha) of habitat in Miami-Dade County, Florida.

(ii) Map of Unit FPC3 follows:

Figure 4 to Family Fabaceae: *Dalea carthagenensis* var. *floridana* (Florida prairie-clover) paragraph (8)(ii)



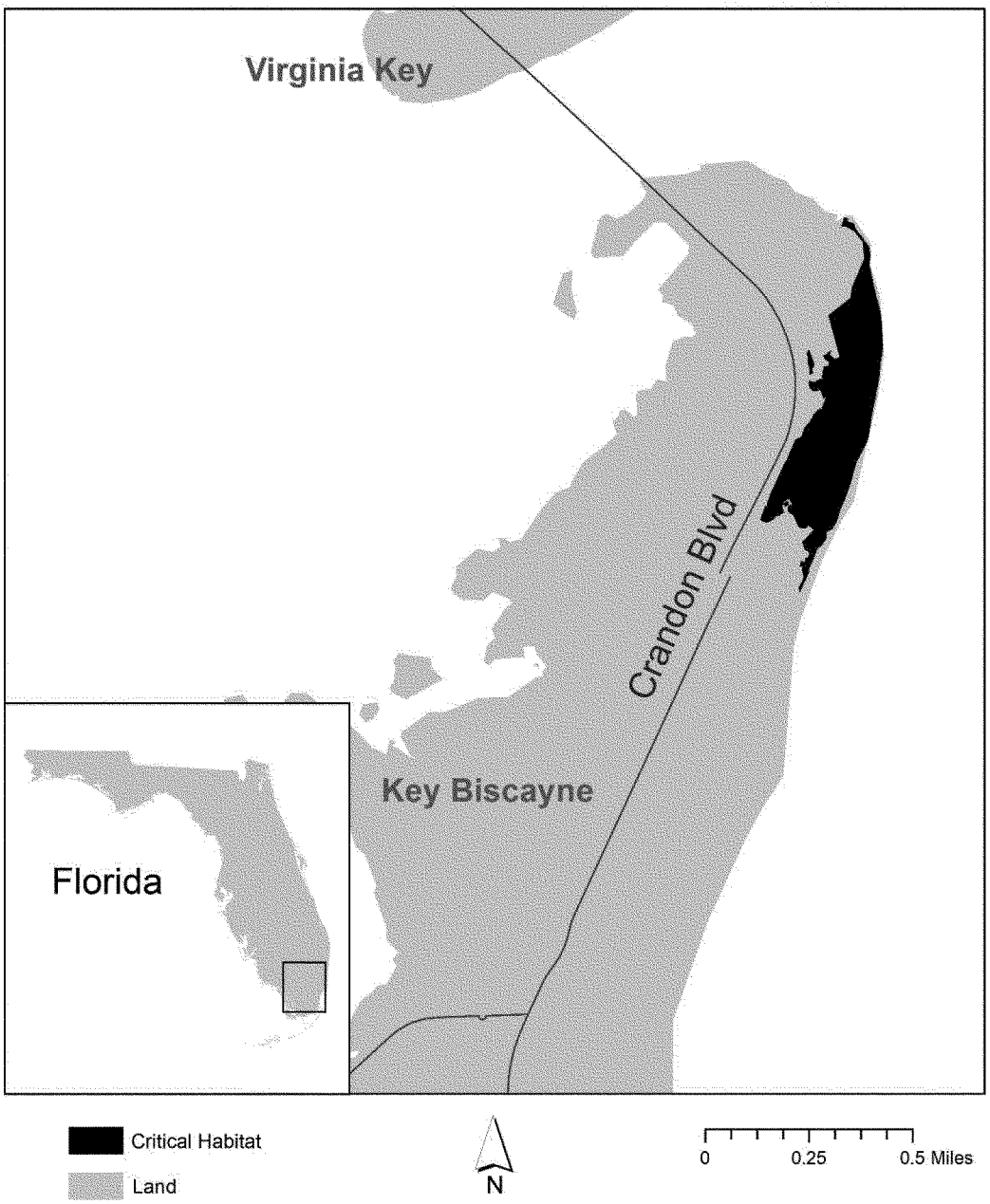
(9) Unit FPC4: Crandon Park, Miami-Dade County, Florida.

(i) Unit FPC4 consists of approximately 57 ac (23 ha) in Miami-Dade County, Florida. The unit includes coastal berm and rockland hammock on the east side of County Road 913 to the shoreline, from the vicinity of the Marjorie Stoneman Douglas Biscayne Nature Center to near the northern tip of the island.

(ii) Map of Unit FPC4 follows:

Figure 5 to Family Fabaceae: *Dalea carthagenensis* var. *floridana* (Florida prairie-clover) paragraph (9)(ii)

Map of Critical Habitat Unit FPC4: Crandon Park
Florida Prairie-Clover (*Dalea carthagenensis var. floridana*)
Miami-Dade County, Florida



* * * * *

Family Poaceae: *Digitaria pauciflora* (Florida pineland crabgrass)

(1) Critical habitat units are depicted for Collier, Miami-Dade, and Monroe Counties, Florida, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the Florida pineland crabgrass are South Florida pine rockland, marl prairie, and adjacent ecotonal areas:

(i) Consisting of calcareous limestone substrate (often exposed with little soil development) that provides nutritional requirements and suitable growing conditions (*e.g.,* pH, nutrients, anchoring, and drainage);

(ii) Characterized by an open to semi-open canopy and understory with a high proportion of native plant species to provide for sufficient sunlight to permit growth and flowering;

(iii) Subjected to a monthly mean temperature characteristic of the subtropical humid classification in Miami-Dade County or the tropical humid classification in Collier and Monroe Counties and short hydroperiods ranging up to 60 days each year;

(iv) Subjected to periodic natural (*e.g.,* hurricanes, fire) or unnatural (*e.g.,* prescribed fire) disturbance regimes to maintain open canopy conditions; and

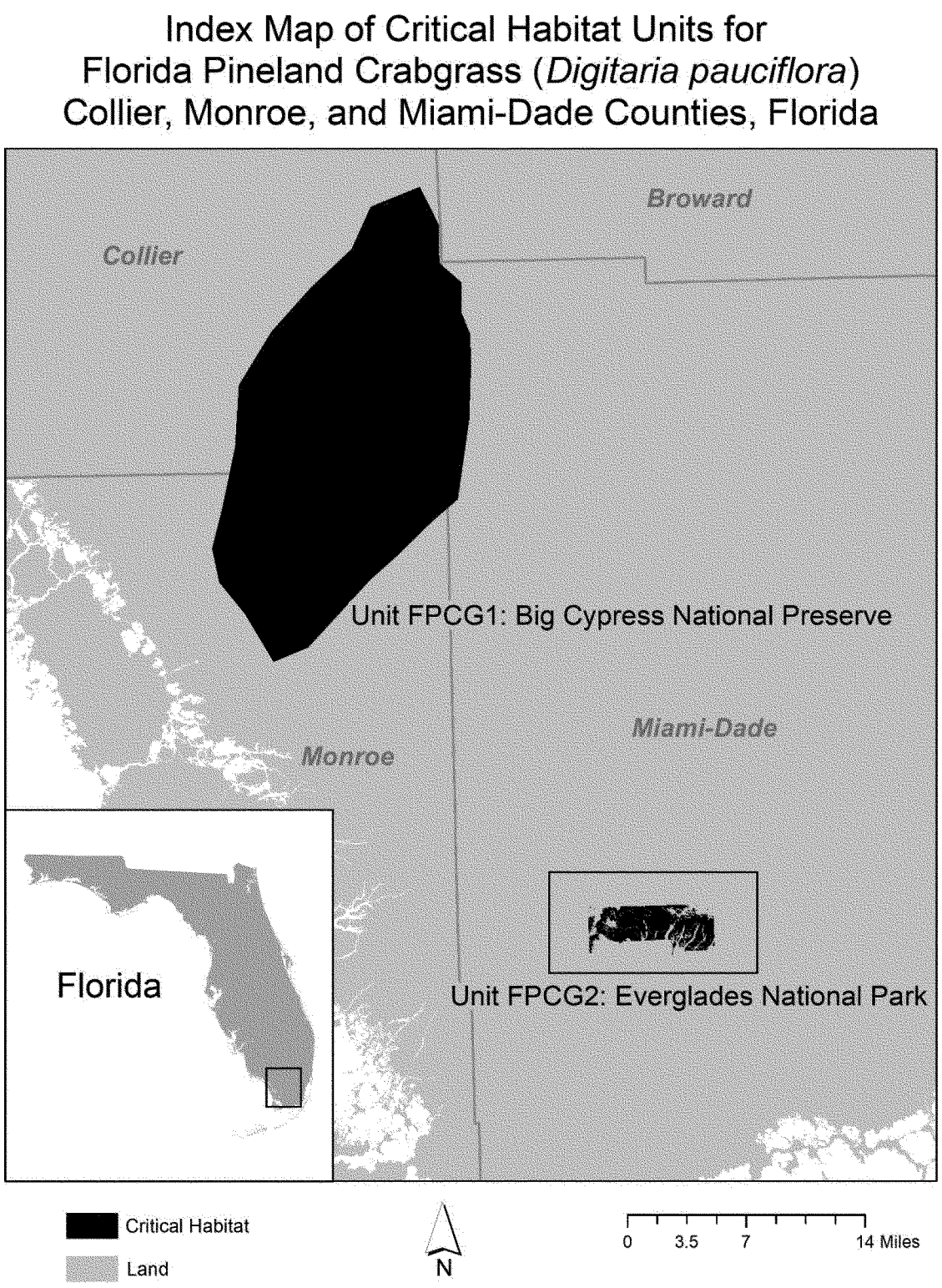
(v) Containing the presence of native pollinators for natural pollination and reproduction.

(3) Critical habitat does not include human-made 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 the final rule.

(4) Data layers defining map units were created using ESRI ArcGIS mapping software. The projection used was Albers Conical Equal Area (Florida Geographic Data Library), North American Datum (NAD) 1983 High Accuracy Reference Network (HARN). The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *https://www.fws.gov/office/florida-ecological-services,* at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2022–0125, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map of all critical habitat units for Florida pineland crabgrass follows:

Figure 1 to Family Poaceae: *Digitaria pauciflora* (Florida pineland crabgrass) paragraph (5)



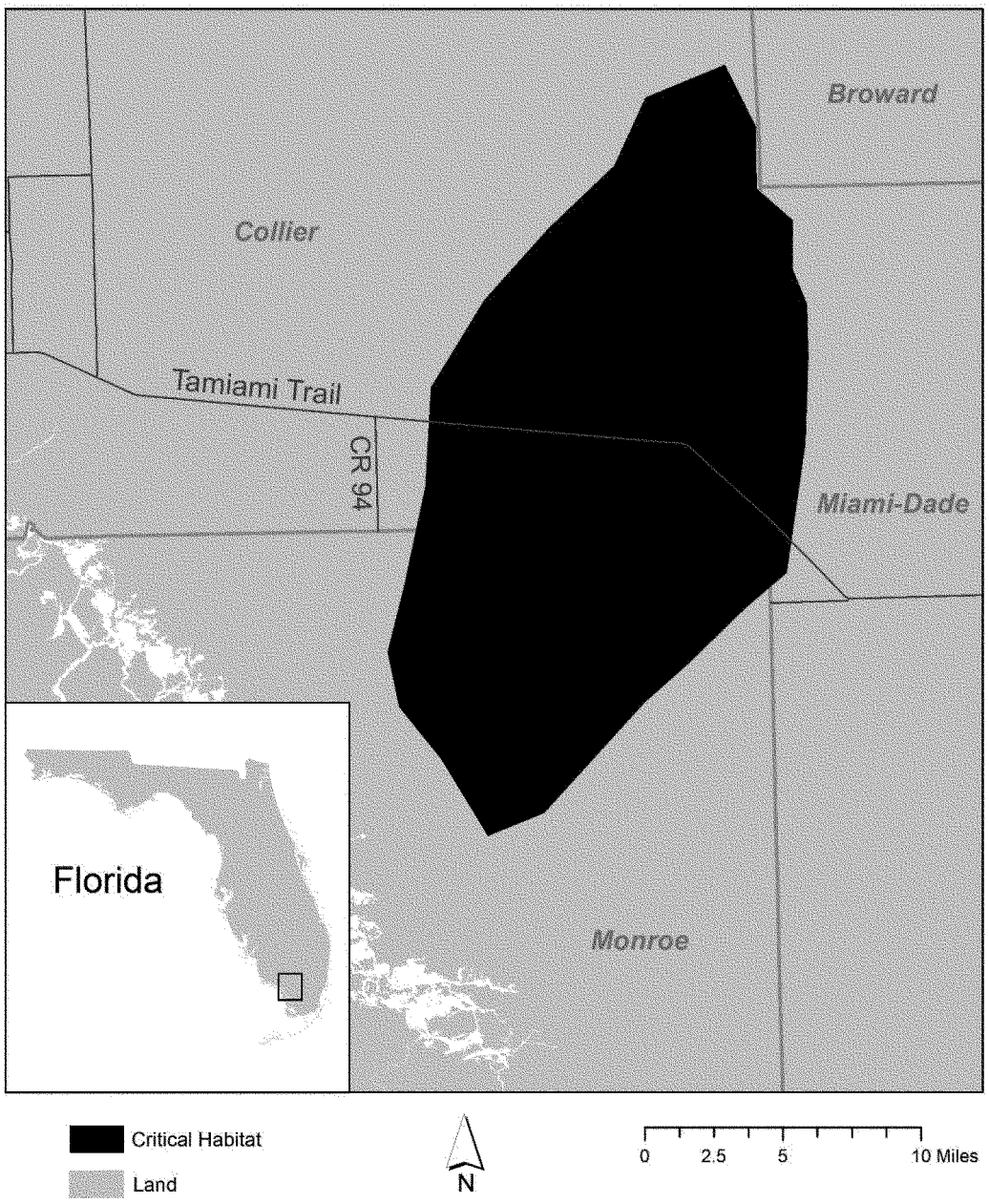
(6) FPCG1: Big Cypress National Preserve, Collier, Miami-Dade, and Monroe Counties, Florida.

(i) Unit FPCG1 consists of approximately 169,885 acres (ac) (68,750 hectares (ha)) in Collier, Miami-Dade, and Monroe Counties, Florida. This unit is comprised of lands primarily in Big Cypress National Preserve.

(ii) Map of Unit FPCG1 follows:

Figure 2 to Family Poaceae: *Digitaria pauciflora* (Florida pineland crabgrass) paragraph (6)(ii)

Map of Critical Habitat Unit FPCG1: Big Cypress National Preserve
Florida Pineland Crabgrass (*Digitaria pauciflora*)
Collier, Monroe, and Miami-Dade Counties, Florida



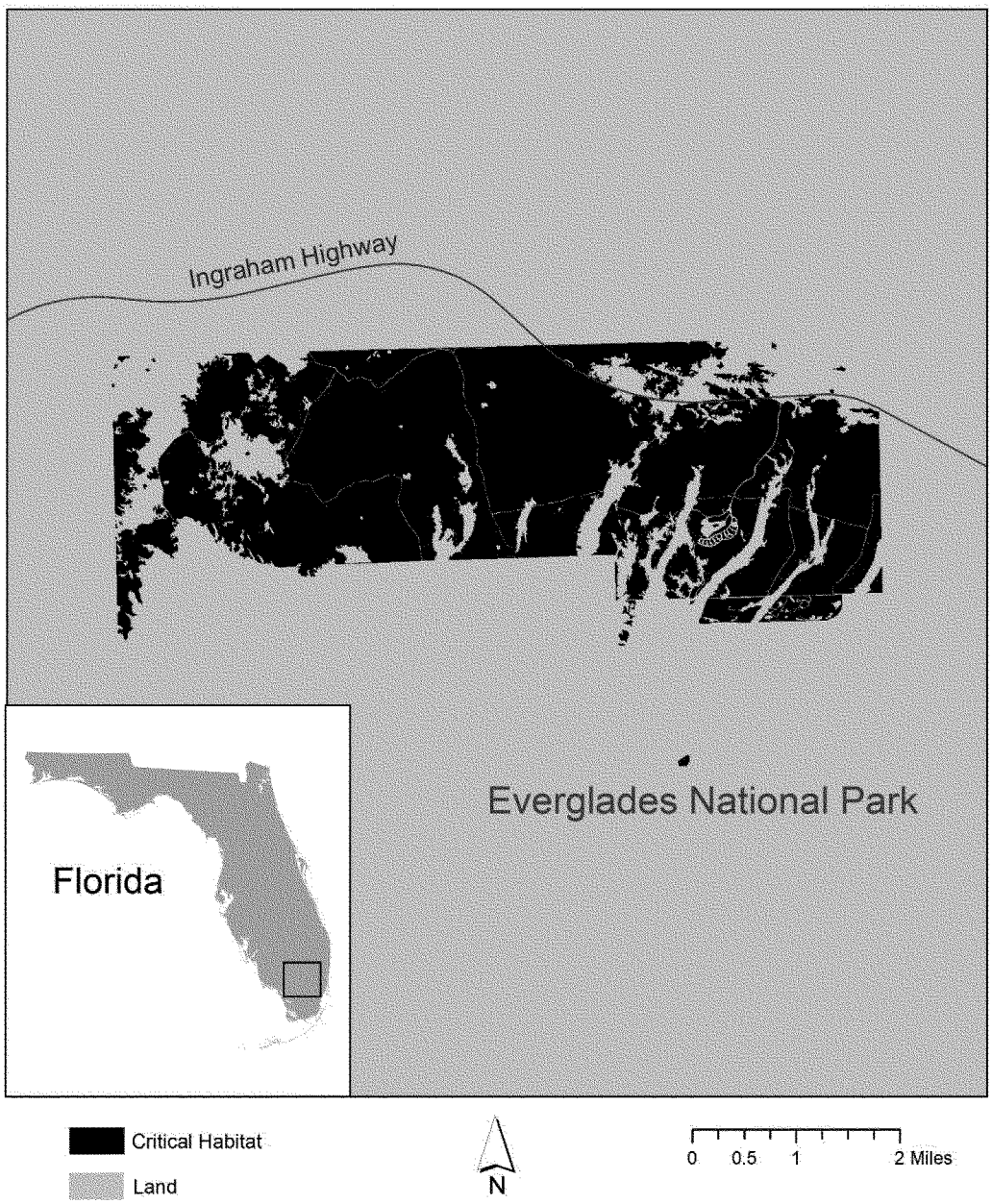
(7) FPCG2: Everglades National Park, Monroe County, Florida.

(i) Unit FPCG2 consists of approximately 7,994 ac (3,235 ha) in Miami-Dade County, Florida. This unit is comprised of lands on Long Pine Key and surrounding areas in Everglades National Park.

(ii) Map of Unit FPCG2 follows:

Figure 3 to Family Poaceae: *Digitaria pauciflora* (Florida pineland crabgrass) paragraph (7)(ii)

Map of Critical Habitat Unit FPCG2: Everglades National Park
Florida Pineland Crabgrass (*Digitaria pauciflora*)
Miami-Dade County, Florida



* * * * *

Family Sapotaceae: *Sideroxylon reclinatum* ssp. *austrofloridense* (Everglades bully)

(1) Critical habitat units are depicted for Collier, Miami-Dade, and Monroe Counties, Florida, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the Everglades bully are South Florida pine rockland, marl prairie, and adjacent ecotonal areas:

(i) Consisting of calcareous limestone substrate (often exposed with little soil development) that provides nutritional requirements and suitable growing conditions (*e.g.,* pH, nutrients, anchoring, and drainage);

(ii) Characterized by an open to semi-open canopy and understory with a high proportion of native plant species to provide for sufficient sunlight to permit growth and flowering;

(iii) Subjected to a monthly mean temperature characteristic of the subtropical humid classification in Miami-Dade County or the tropical humid classification in Collier and Monroe Counties and short hydroperiods ranging up to 60 days each year;

(iv) Subjected to periodic natural (*e.g.,* hurricanes, fire) or unnatural (*e.g.,* prescribed fire) disturbance regimes to maintain open canopy conditions; and

(v) Containing the presence of native pollinators for natural pollination and reproduction.

(3) Critical habitat does not include human-made 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 the final rule.

(4) Data layers defining map units were created using ESRI ArcGIS mapping software. The projection used was Albers Conical Equal Area (Florida Geographic Data Library), North American Datum (NAD) 1983 High Accuracy Reference Network (HARN). The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *https://www.fws.gov/office/florida-ecological-services/library,* at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2022–0125, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index maps of all critical habitat units for Everglades bully follows:

Figure 1 to Family Sapotaceae: *Sideroxylon reclinatum* ssp. *austrofloridense* (Everglades bully) paragraph (5)

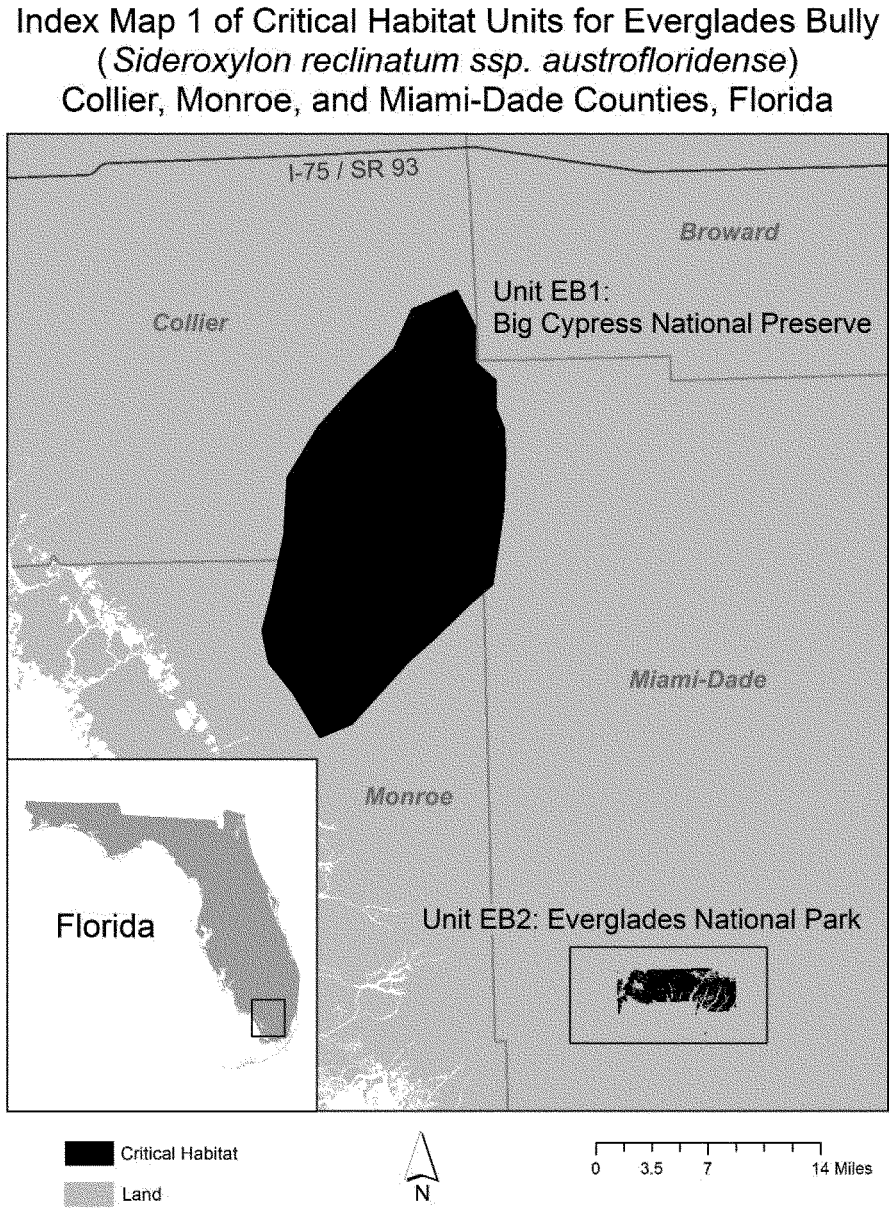
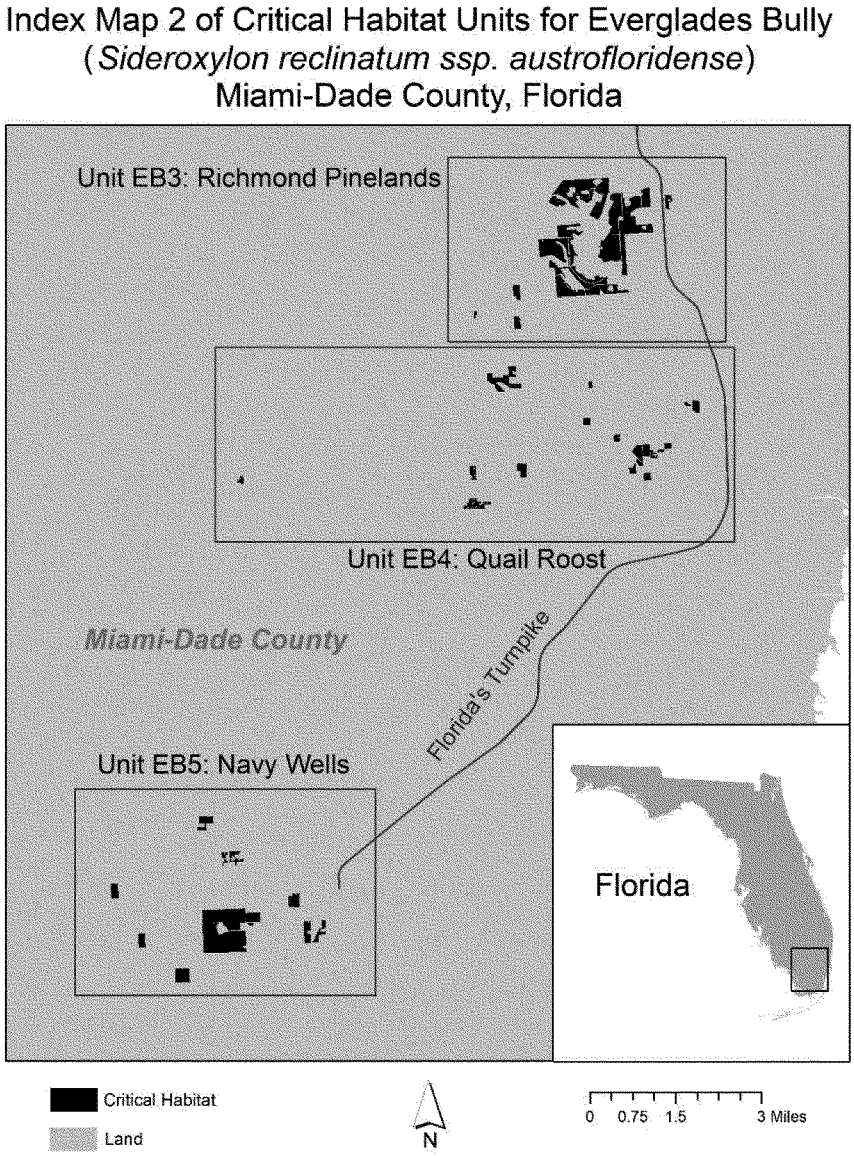


Figure 2 to Family Sapotaceae: *Sideroxylon reclinatum* ssp. *austrofloridense* (Everglades bully) paragraph (5)

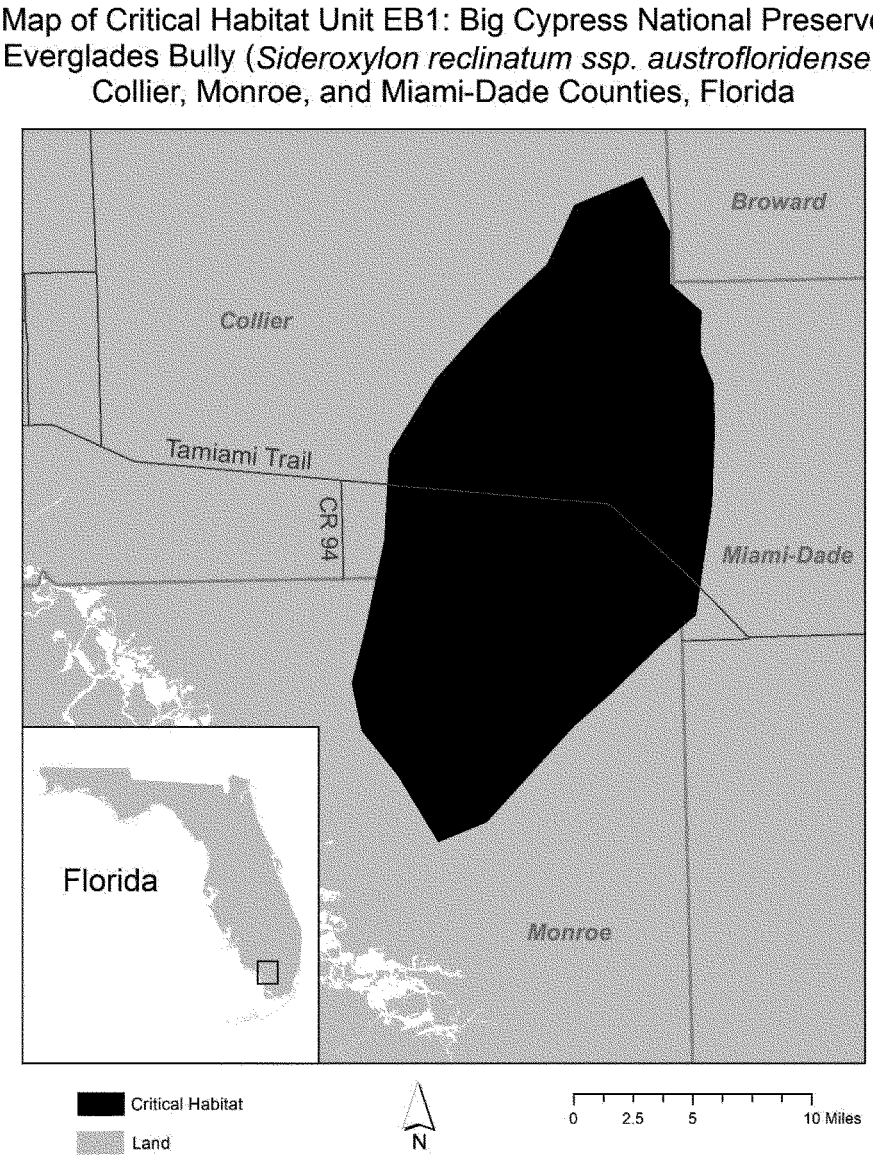


(6) Unit EB1: Big Cypress National Preserve, Collier, Miami-Dade, and Monroe Counties, Florida.

(i) Unit EB1 consists of 169,885 ac (68,750 ha) in Collier, Miami-Dade, and Monroe County, Florida. The unit is comprised of lands primarily in Big Cypress National Preserve.

(ii) Map of Unit EB1 follows:

Figure 3 to Family Sapotaceae: *Sideroxylon reclinatum* ssp. *austrofloridense* (Everglades bully) paragraph (6)(ii)

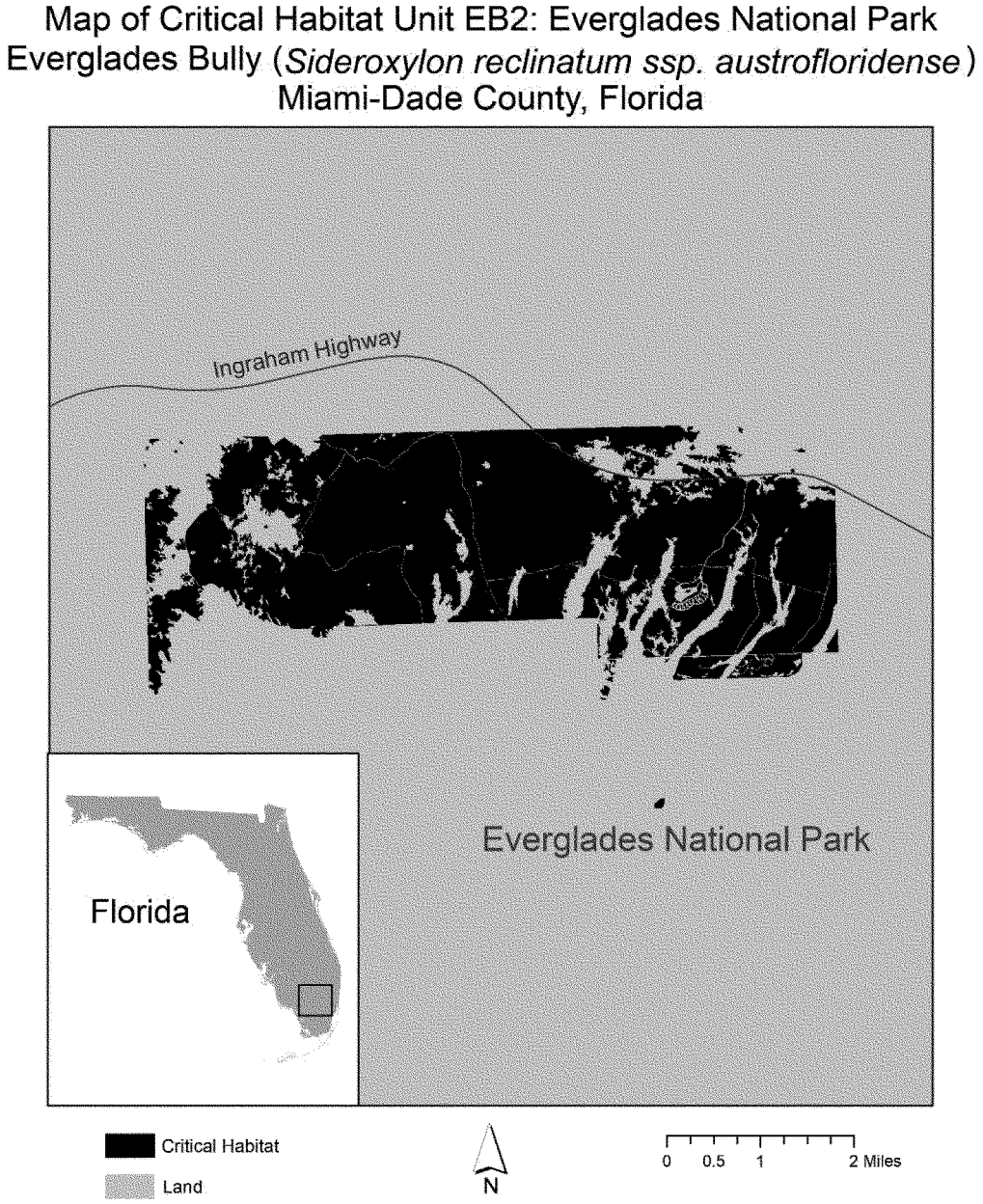


(7) Unit EB2: Everglades National Park, Miami-Dade County, Florida.

(i) Unit EB2 consists of approximately 7,994 ac (3,235 ha) in Miami-Dade County, Florida. This unit is comprised of lands on Long Pine Key and surrounding areas in Everglades National Park.

(ii) Map of Unit EB2 follows:

Figure 4 to Family Sapotaceae: *Sideroxylon reclinatum* ssp. *austrofloridense* (Everglades bully) paragraph (7)(ii)



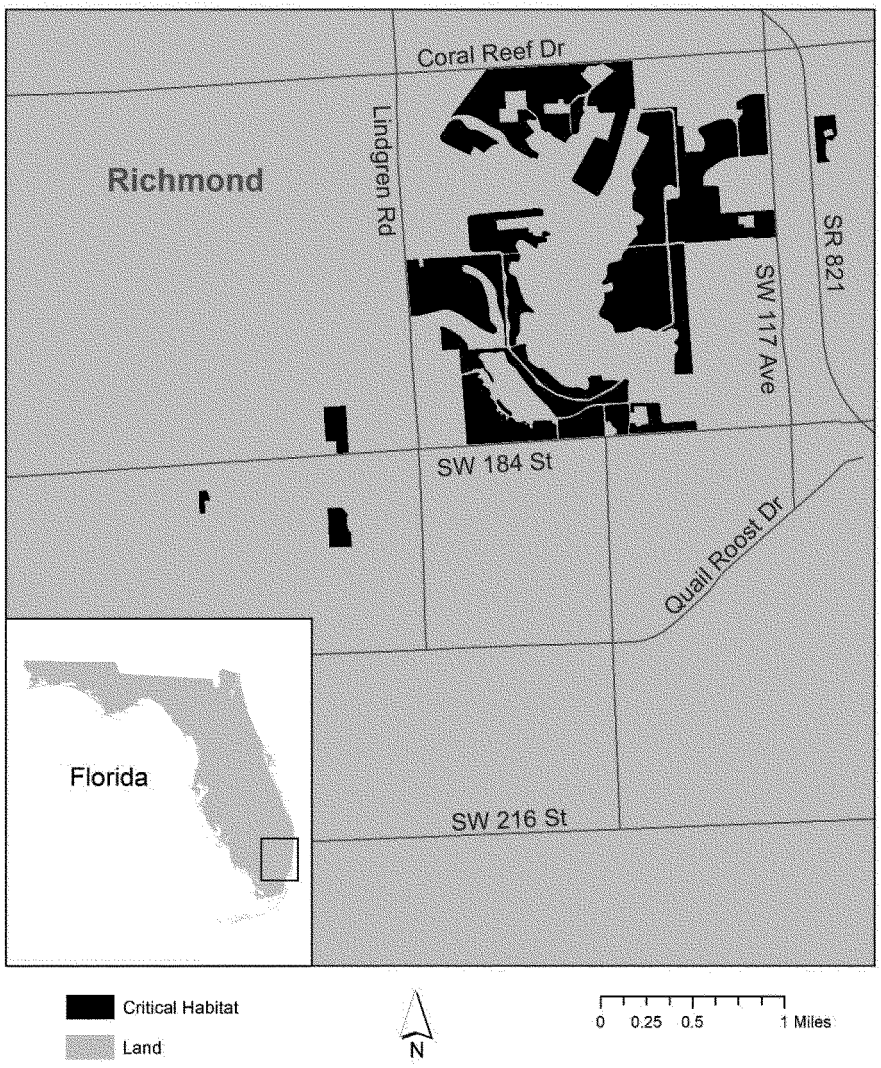
(8) Unit EB3: Richmond Pinelands and surrounding areas, Miami-Dade County, Florida.

(i) Unit EB3 consists of approximately 987 ac (399 ha) in Miami-Dade County, Florida. This unit is bordered on the north by SW 152 Street (Coral Reef Drive), on the south by SW 200 St (Quail Drive/SR 994), on the east by U.S. 1 (South Dixie Highway), and on the west by SW 177 Avenue (Krome Avenue).

(ii) Map of Unit EB3 follows:

Figure 5 to Family Sapotaceae: *Sideroxylon reclinatum* ssp. *austrofloridense* (Everglades bully) paragraph (8)(ii)

Map of Critical Habitat Unit EB3: Richmond Pinelands
Everglades Bully (*Sideroxylon reclinatum ssp. austrofloridense*)
Miami-Dade County, Florida



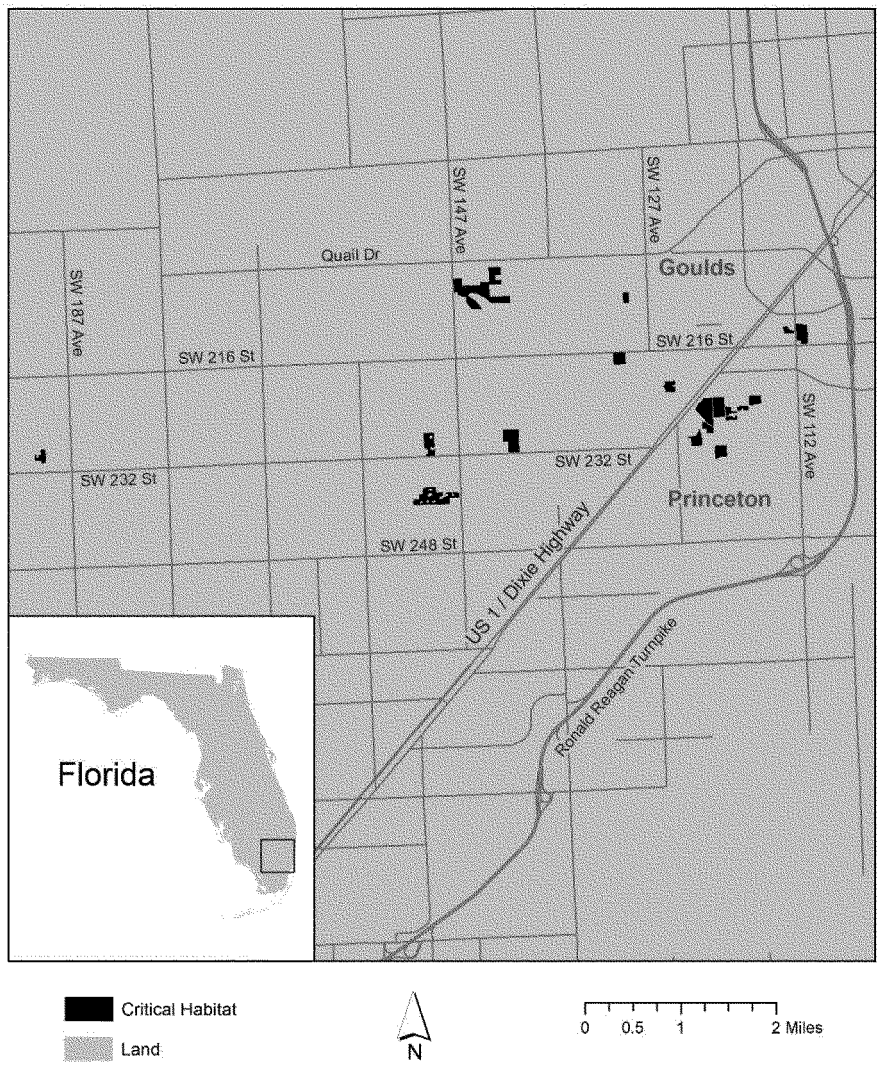
(9) Unit EB4: Quail Roost Pineland and surrounding areas, Miami-Dade County, Florida.

(i) Unit EB4 consists of approximately 256 ac (104 ha) in Miami-Dade County, Florida. This unit is bordered on the north by SW 200 St (Quail Drive/SR 994), on the south by SW 248 Street, on the east by the Florida Turnpike, and on the west by SW 194 Avenue.

(ii) Map of Unit EB4 follows:

Figure 6 to Family Sapotaceae: *Sideroxylon reclinatum* ssp. *austrofloridense* (Everglades bully) paragraph (9)(ii)

Map of Critical Habitat Unit EB4: Quail Roost
Everglades Bully (*Sideroxylon reclinatum ssp. austrofloridense*)
Miami-Dade County, Florida



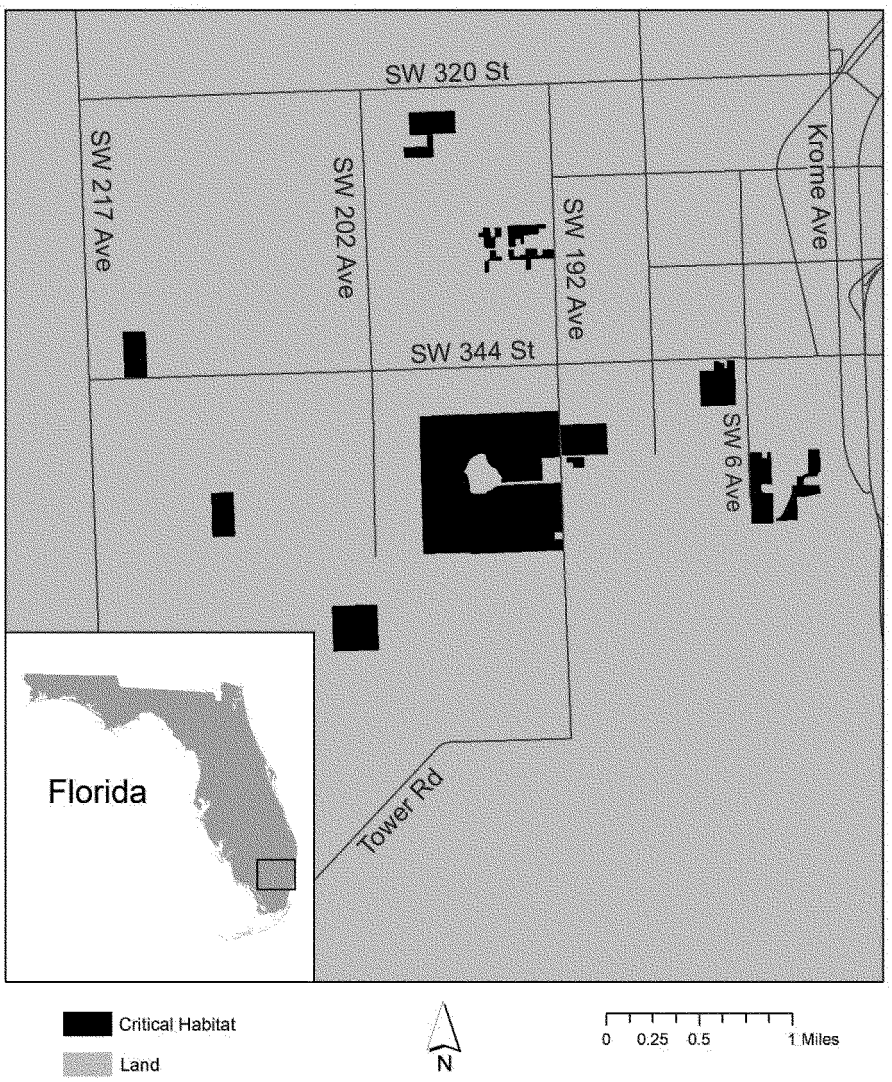
(10) Unit EB5: Navy Wells Pineland Preserve and surrounding areas, Miami-Dade County, Florida.

(i) Unit EB5 consists of approximately 558 ac (226 ha) of habitat in Miami-Dade County, Florida. This unit is bordered on the north by SW 320 Street, on the south by SW 368 Street, on the east by U.S. 1 (South Dixie Highway), and on the west by SW 217 Avenue.

(ii) Map of Unit EB5 follows:

Figure 7 to Family Sapotaceae: *Sideroxylon reclinatum* ssp. *austrofloridense* (Everglades bully) paragraph (10)(ii)

Map of Critical Habitat Unit EB5: Navy Wells
Everglades Bully (*Sideroxylon reclinatum ssp. austrofloridense*)
Miami-Dade County, Florida



* * * * *

Madonna Baucum,

Chief, Policy and Regulations Branch, U.S. Fish and Wildlife Service.

[FR Doc. 2022–21604 Filed 10–13–22; 8:45 am]

BILLING CODE 4333–15–C

FEDERAL REGISTER

Vol. 87 Friday,

No. 198 October 14, 2022

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Rim Rock Crowned Snake and Key Ring-Necked Snake and Designation of Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2022–0022; FF09E21000 FXES1111090FEDR 223]

RIN 1018–BE84

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Rim Rock Crowned Snake and Key Ring-Necked Snake and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list two Florida species, the Key ring-necked snake (*Diadophis punctatus acricus*) and the rim rock crowned snake (*Tantilla oolitica*), and propose to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). This determination also serves as our 12-month finding on the petition to list the Key ring-necked snake and the rim rock crowned snake. After a review of the best available scientific and commercial information, we find that listing both species is warranted. Accordingly, we propose to list both species as endangered species under the Act. If we finalize this rule as proposed, it would add the species to the List of Endangered and Threatened Wildlife and extend the Act's protections to both species. We also propose to designate critical habitat for the Key ring-necked snake and the rim rock crowned snake under the Act. In total, approximately 2,604 acres (ac) (1,054) hectares (ha) in Monroe County, Florida, and approximately 5,972 ac (2,418 ha) in Miami-Dade County and Monroe County, Florida, fall within the boundaries of the proposed critical habitat designation for the Key ring-necked snake and the rim rock crowned snake, respectively. We announce the availability of a draft economic analysis of the proposed designation of critical habitat for both species.

DATES: We will accept comments received or postmarked on or before December 13, 2022. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 28, 2022.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2022–0022, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R4–ES–2022–0022, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

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

Availability of supporting materials: For the proposed critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file and are available at *https://www.fws.gov/office/florida-ecological-services* and at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2022–0022. Additional supporting information that we developed for this proposed rule will be available on the Service's website, at *https://www.regulations.gov,* or both.

FOR FURTHER INFORMATION CONTACT: Lourdes Mena, Division Manager, Classification and Recovery, Florida Ecological Services Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256–7517; *lourdes_mena@fws.gov;* telephone 904–731–3134. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become endangered within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that the Key ring-necked snake and the rim rock crowned snake both meet the Act's definition of an endangered species; therefore, we are proposing to list them as such and are proposing a designation of critical habitat for both species. Both listing a species as an endangered or threatened species and designating critical habitat can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process.

What this document does. We propose to list both the Key ring-necked snake and the rim rock crowned snake as endangered species under the Act, and we propose to designate critical habitat for both species.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the Key ring-necked snake and the rim rock crowned snake are facing threats due to development (Factor A), fire suppression (Factor A), and effects associated with climate change, particularly sea level rise and saltwater intrusion (Factor E).

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data

available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, their habitats, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of these species, including the locations of any additional populations of these species.

(5) Information on the immediacy and magnitude of threats to the rim rock crowned snake in the upper and lower Florida Keys.

(6) Whether we should consider evaluating populations of the rim rock crowned snake as distinct population segments.

(7) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including information regarding the following factors that the regulations identify as reasons why designation of critical habitat may be not prudent:

(a) The species are threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species; or

(b) Such designation of critical habitat would not be beneficial to the species. In determining whether a designation would not be beneficial, the factors the Services may consider include but are not limited to: Whether the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or whether any areas meet the definition of ''critical habitat.''

(8) Specific information on:

(a) The amount and distribution of Key ring-necked snake and rim rock crowned snake habitat;

(b) Any additional areas occurring within the range of the species that should be included in the designation because they (1) are occupied at the time of listing and contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations, or (2) are unoccupied at the time of listing and are essential for the conservation of the species.

(c) For areas not occupied at the time of listing that may be essential for the conservation of the species, we particularly seek comments on whether any additional unoccupied areas should be designated for either species. For the rim rock crowned snake, we ask for information on areas in the Environmentally Endangered Lands (EEL) program in Miami-Dade County that may be essential to the conservation of the rim rock crowned snake. For the Key ring-necked snake, we request information or additional survey data to determine whether we should designate unoccupied critical habitat on Key West for the Key ring-necked snake; and

(d) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change.

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

(10) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.

(11) Information on the extent to which the description of probable economic impacts in the draft economic analysis (DEA) is a reasonable estimate of the likely economic impacts and any additional information regarding probable economic impacts that we should consider.

(12) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act. Specific information we seek includes the effectiveness of the Monroe County habitat conservation plan (HCP) in protecting pine rocklands and rockland hammock habitat and in providing for conservation of the Key ring-necked snake and the rim rock crowned snake.

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

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. If you request exclusion of a particular area or areas from the final designation, please provide information regarding the existence of a meaningful economic or other relevant impact supporting the benefit of exclusion of that particular area.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available, and section 4(b)(2) of the Act directs that the Secretary shall designate critical habitat on the basis of the best scientific data available.

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

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot

guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that either or both species are threatened instead of endangered, or we may conclude that either or both species do not warrant listing as either endangered species or threatened species. For critical habitat, our final designation may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, or may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

Both the Key ring-necked snake and the rim rock crowned snake were included as Category 2 candidate species in our December 30, 1982 (47 FR 58454), September 18, 1985 (50 FR 37958), January 6, 1989 (54 FR 554), November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982), candidate notices of review (CNORs). Category 2 included taxa for which information in our possession indicated that a proposed listing rule was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support a proposed rule.

In the CNOR published on February 28, 1996 (61 FR 7596), we announced a revised list of plant and animal taxa that were regarded as candidates for possible addition to the Lists of Endangered and Threatened Wildlife and Plants. The revised candidate list included only former Category 1 species. Former Category 2 species were removed from the candidate list in order to reduce confusion about the conservation status of these species and to clarify that we no longer regarded these species as candidates for listing. Since both the Key ring-necked snake and the rim rock crowned snake were Category 2 species, they were no longer recognized as candidate species as of the publication of the February 28, 1996, CNOR.

On July 11, 2012, we received a petition from the Center for Biological Diversity requesting that 53 species of reptiles and amphibians, including the Key ring-necked snake and the rim rock crowned snake, be listed as endangered or threatened and critical habitat be designated under the Act.

On July 1, 2015, we published a 90-day finding (80 FR 37568) that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted for both the Key ring-necked snake and the rim rock crowned snake. This proposed rule constitutes our 12-month petition finding for both species.

Supporting Documents

A species status assessment (SSA) team prepared SSA reports for both the Key ring-necked snake and the rim rock crowned snake (Service 2021a, entire; Service 2021b, entire). The SSA teams were composed of Service biologists, in consultation with other species experts. The SSA reports represent a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sent the Key ring-necked snake SSA report to five independent peer reviewers for review, including scientists with expertise in wildlife biology, herpetology, and conservation biology. We received two responses. We sent the rim rock crowned snake SSA report to five independent peer reviewers, including scientists with expertise in wildlife biology, herpetology, and conservation biology. We received three responses.

I. Proposed Listing Determination

Background

Key Ring-Necked Snake

A thorough review of the taxonomy, life history, and ecology of the Key ring-necked snake (*Diadophis punctatus acricus*) is presented in the SSA report (version 1.0; Service 2021a, pp. 2–5). The Key ring-necked snake is one of 14 distinct subspecies of ring-necked snakes in North America, all of which are subspecies of *D. punctatus.* It is one of the smallest subspecies of the Family Dipsadidae; an adult specimen will average between 6 and 10 inches (in) (15.2 to 25.4 centimeters (cm)). A recent review of phylogenetic data supports the current subspecies classification for the Key ring-necked snake (Hoffman 2019, entire).

This slender snake has a pale grayish-brown head; a grayish-black dorsal surface; and a yellow, orange, or bright red abdomen which fades to orange/red underneath the tail (Florida Fish and Wildlife Conservation Commission (FWC) 2013, p. 1). The pupil is round, and the juvenile color is similar to that of the adult (Ernst and Ernst 2003, p. 92; FWC 2013, p. 1). The characteristic neck ring is indistinct or virtually absent in both juveniles and adults.

Little life-history information is available on the Key ring-necked snake, especially as it relates to microhabitat, feeding, and reproduction. Life-history characteristics are thought to be similar to the southern ring-necked snake. In general, mating of ring-necked snakes can occur in the spring or fall, delayed fertilization is possible, and eggs are laid in June or early July. Females lay 1 to 10 eggs at a time each year (1 clutch/year) in covered, moist locations (Ernst and Ernst 2003, p. 95). Juveniles are thought to hatch in August and September.

Suitable habitat appears to consist of pinelands, pine rocklands, tropical hammock, rockland hammock, limestone outcroppings, and rocky pine scrub areas (McDiarmid 1978, p. 41; Lazell 1989, p. 134; Auth and Scott 1996, p. 33; Enge et al. 2003, pp. 26–28). Most of the observations in the Florida Keys were from pine rocklands or nearby rockland hammocks. This subspecies appears to be restricted to areas near permanent freshwater that often occur as small holes in the oolitic (a sedimentary rock, usually limestone, composed of minute rounded concretions) substrate that underlies pine rocklands and rockland hammock habitat (Lazell 1989, pp. 134, 136). All *Diadophis* apparently require moist microhabitats to balance evaporative

water loss from the body (Myers 1965, p. 4; Clark 1967, pp. 492–494).

Key ring-necked snakes have been documented on seven lower Florida Keys: Key West, Big Pine Key, Little Torch Key, Middle Torch Key, No Name Key, Cudjoe Key, and Stock Island (Auth and Scott 1996, p. 33; FWC 2011, p. 3; 2013, p. 1; Mays and Enge 2016, pp. 11, 13; J. Mays 2020, pers. comm.) (see figure 1, below). A unique characteristic of the Florida Keys is the thin (<3.94 in (10 cm)) layer of sediment on the islands beneath which lies a bed of limestone, and below that a shallow layer of freshwater referred to as a freshwater lens (U.S. Geological Survey (USGS) 2019a, p. 1). Because the density of freshwater is less than the underlying saltwater, it floats to the top and into the limestone rock formations where it becomes available to the island's biota. The volume of a freshwater lens fluctuates in response to rainfall, evapotranspiration, and human use (local wells).

Systematic recent surveys have not been conducted for the Key ring-necked snake across all of the Florida Keys; therefore, the true spatial distribution of populations throughout the Florida Keys is unclear and our current understanding of the subspecies' distribution is primarily based on historical records. Consequently, this subspecies may occur on Florida Keys other than those reported.

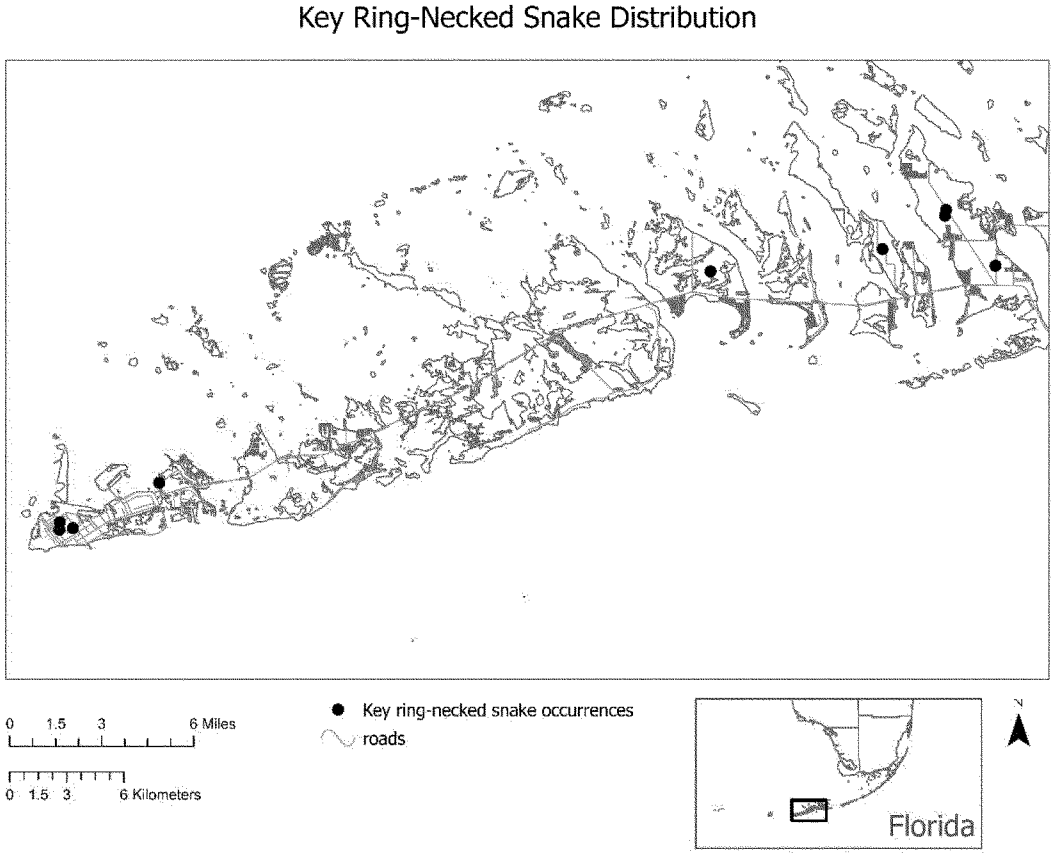


Figure 1.—Distribution and occurrences of the Key ring-necked snake.

Rim Rock Crowned Snake

A thorough review of the taxonomy, life history, and ecology of the rim rock crowned snake (*Tantilla oolitica*) is presented in the SSA report (version 1.0; Service 2021b, pp. 10–20). The rim rock crowned snake is in the family Colubridae, part of the black-headed, crowned, and flat-headed snake genus *Tantilla,* with 76 currently recognized species ranging from the southern United States to northern Argentina (Powell et al. 2016, pp. 395–400). The rim rock crowned snake is most closely related to the southeastern crowned snake (*T. coronata*) taxonomically, although it is located geographically closer to the Florida crowned snake (*T. relicta;* Ernst and Ernst 2003, pp. 353–355). No genetic analysis has been conducted on the rim rock crowned snake.

Rim rock crowned snakes have a black head (''cap'') that is continuous from snout to neck (''collar''), transitioning to tan or beige on its back, and a pinkish white to cream belly. There is often a pale blotch just behind the eye. Specimens from the Florida Keys may have a pale neckband that is not present in mainland specimens, separating the black cap from the black collar (Porras and Wilson 1979, pp. 218–220). Adults range 7–9 in (18–23 cm) in length. Females reach a greater length than do males, but have shorter tails (Ernst and Ernst 2003, pp. 353–355). Hatchlings range from 3–3.5 in (7.5–9.0 cm) in length.

The reproduction, longevity, and diet of the rim rock crowned snake are unknown, but if it is similar to the closely related southeastern crowned snake, it probably matures at 2 years old and may live to be at least 5 years old in the wild (Todd et al. 2008, p. 392). There may be three eggs in a clutch, and they may be able to produce two clutches annually (Ernst and Ernst 2003, pp. 353–355). There is no information as to whether eggs or juvenile rim rock crowned snakes require different habitat than adults. Predators are likely larger snake species that inhabit the same areas. It may also be preyed upon by the

slender brown scorpion (*Centruroides gracilis*), which is abundant in rockland habitat (Porras and Wilson 1979, pp. 218–220).

The rim rock crowned snake is a mostly fossorial (underground) species that inhabits shallow soil over limestone formations, and it can sometimes be found in rotten stumps and under anthropogenic surface detritus, fallen logs, and rocks (Duellman and Schwarz 1958, p. 306; Rochford et al. 2010, p. 99; Yirka et al. 2010, p. 386; FWC 2011, p. 3; Hines 2011, p. 353). These snakes are vulnerable to desiccation, so they usually occupy moist microhabitats (Powell et al. 2016, pp. 395–400). Refugia in pine rocklands and rockland hammock are provided by holes and crevices in the limestone, piles of rock rubble, pockets of organic matter accumulating in solution holes, and shallow depressions in the limestone (Enge et al. 2003, pp. 27–28). Rim rock crowned snakes likely come to the surface after rains (Porras and Wilson 1979, pp. 218–220), possibly because of flooding of its underground refugia.

The rim rock crowned snake has been historically found in the lower Florida Keys, in particular Key West and Big Pine Key; the upper Florida Keys; and the southeastern Florida peninsula within Miami-Dade County, in a variety of locations (see figure 2, below). Within this limited range, the rim rock crowned snake is found in pine rocklands and rockland hammock, which consist of a limestone substrate and outcroppings. Pine rocklands habitat is fire-maintained and dominated by pine trees and a diverse understory of grasses and forbs/herbs. In contrast, rockland hammock contains more hardwood shrubs and trees due to less fire influence. There are also occurrence records from human-altered habitats such as roadsides, vacant lots, and pastures with shrubby growth and slash pines (*Pinus elliottii*) (Duellman and Schwarz 1958, p. 306; Hines 2011, pp. 352–356).

Because of the rim rock crowned snake's cryptic and fossorial nature, a method to formally census remaining populations throughout its range has not been developed. We do not have any information on the current status of the rim rock crowned snake in these areas and based our understanding of the species' range on observational records and habitat suitability. Limited dispersal is thought to occur between rim rock crowned snake populations within the Florida Keys because there is no evidence that indicates they readily swim to other islands. Additionally, areas in Miami-Dade County where populations may remain are likely isolated from others due to physical barriers from a dense urban interface.

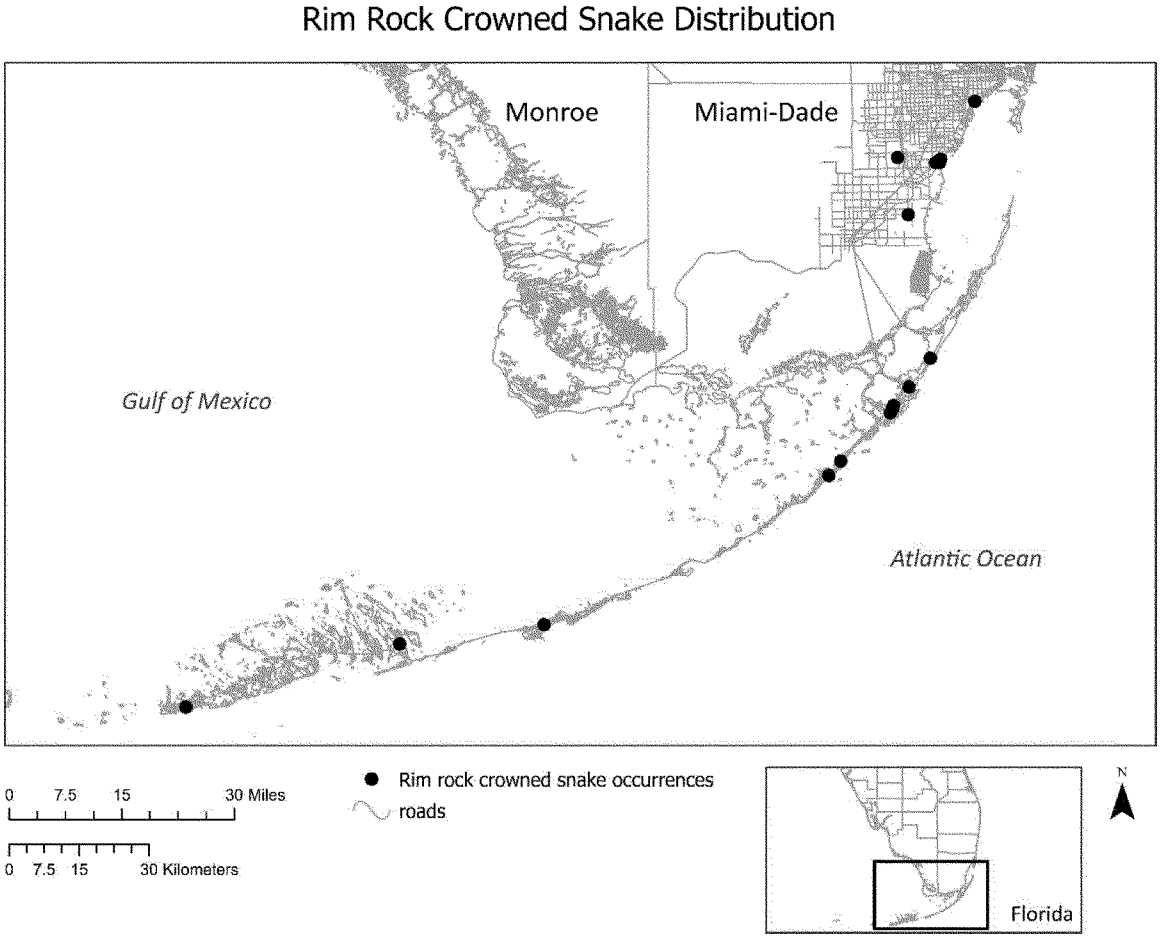


Figure 2.—Distribution and occurrences of the rim rock crowned snake.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating

critical habitat for threatened and endangered species. In 2019, jointly with the National Marine Fisheries Service, the Service issued final rules that revised the regulations in 50 CFR parts 17 and 424 regarding how we add, remove, and reclassify threatened and endangered species and the criteria for designating listed species' critical habitat (84 FR 45020 and 84 FR 44752; August 27, 2019). At the same time the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (collectively, the 2019 regulations).

However, on July 5, 2022, the U.S. District Court for the Northern District of California vacated the 2019 regulations (*Center for Biological Diversity* v. *Haaland,* No. 4:19–cv–05206–JST, Doc. 168 (N.D. Cal. July 5, 2022) (*CBD* v. *Haaland*)), reinstating the regulations that were in effect before the effective date of the 2019 regulations as the law governing species classification and critical habitat decisions. Accordingly, in developing the analysis contained in this proposal, we applied the pre-2019 regulations, which may be reviewed in the 2018 edition of the Code of Federal Regulations at 50 CFR 17.31, 17.71, 424.02, 424.11(d) and (e), and 424.12(a)(1) and (b)(2)). Because of the ongoing litigation regarding the court's vacatur of the 2019 regulations, and the resulting uncertainty surrounding the legal status of the regulations, we also undertook an analysis of whether the proposal would be different if we were to apply the 2019 regulations. That analysis, which we described in a separate memo in the decisional file and posted on *https://www.regulations.gov,* concluded that we would have reached the same proposal if we had applied the 2019 regulations. The differences in the 2009 Solicitor's opinion and 2019 regulations do not change our determination of what constitutes the foreseeable future for the rim rock crowned snake. Under either regulatory scheme we find that critical habitat is prudent for the two snakes. For the Key ring-necked snake, we did not identify any unoccupied areas essential for the conservation of the Key ring-necked snake, which is consistent with 2016 and 2019 regulations. For the rim rock crowned snake, by the year 2040, all suitable habitat in the lower Florida Keys and up to half of suitable habitat in the upper Florida Keys will be affected by sea level rise and saltwater intrusion. As such, we are also proposing to designate areas not currently occupied by the species, because we determined the unoccupied units are essential for the conservation of the rim rock crowned snake. It is reasonably certain that the unoccupied units will contribute to the conservation of the species by providing additional areas for rim rock crowned snake recovery actions, including population establishment, and the unoccupied units contain all of the physical or biological features that are essential to the conservation of the species and it has the abiotic and biotic features that currently or periodically contain the resources and conditions necessary to support one or more life processes of the rim rock crowned snake.

On September 21, 2022, the U.S. Circuit Court of Appeals for the Ninth Circuit stayed the district court's July 5, 2022, order vacating the 2019 regulations until a pending motion for reconsideration before the district court is resolved (*In re: Cattlemen's Ass'n,* No. 22–70194). The effect of the stay is that the 2019 regulations are currently the governing law. Because a court order requires us to submit this proposal to the **Federal Register** by September 30, 2022, it is not feasible for us to revise the proposal in response to the Ninth Circuit's decision. Instead, we hereby adopt the analysis in the separate memo that applied the 2019 regulations as our primary justification for the proposal. However, due to the continued uncertainty resulting from the ongoing litigation, we also retain the analysis in this preamble that applies the pre-2019 regulations and we conclude that, for the reasons stated in our separate memo analyzing the 2019 regulations, this proposal would have been the same if we had applied the pre-2019 regulations.

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Because the decision in *CBD* v. *Haaland* vacated our 2019 regulations with respect to our consideration of foreseeable future, we refer to a 2009 Department of the Interior Solicitor's opinion entitled ''The Meaning of 'Foreseeable Future' in Section 3(20) of the Endangered Species Act'' (M–37021). The Solicitor's opinion

states that the foreseeable future ''must be rooted in the best available data that allow predictions into the future'' and extends as far as those predictions are ''sufficiently reliable to provide a reasonable degree of confidence in the prediction, in light of the conservation purposes of the Act.'' *Id.* at 13.

It is not always possible or necessary to define the foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA reports document the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the two species, including assessment of the potential threats to the species. The SSA reports do not represent our decision on whether the species should be proposed for listing as endangered or threatened species under the Act. However, they do provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA reports, which can be found at Docket No. FWS–R4–ES–2022–0022 on *https://www.regulations.gov* and at *https://www.fws.gov/office/florida-ecological-services.*

To assess Key ring-necked snake and rim rock crowned snake viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and their resources, and the threats that influence the species' current and future conditions, to assess the species' overall viability and the risks to that viability.

Key Ring-Necked Snake—Population and Subspecies Needs

In this discussion, we outline the resource needs of individuals and populations of the Key ring-necked snake. As part of the assessment, we first identify and describe the four most influential factors representing the individual and population needs for the subspecies: prey, refugia, water, and available suitable habitat. Due to the relative rarity of this subspecies and its secretive nature, many aspects of the life history of this taxon as well as information on population status and trends are poorly known. We rely upon ecologically and genetically similar species to draw inferences when data are lacking.

For prey, the Key ring-necked snake is assumed to be similar to other *Diadophis* species (such as the southern ring-necked snake), which prey upon small insects, snakes, lizards (anoles, geckos), slugs, amphibians (frogs, tadpoles), and earthworms (Ernst and Ernst 2003, p. 96; FWC 2013, p. 2).

Key ring-necked snakes require refugia to escape and hide from predators and to regulate body temperature. Refugia in pine rocklands and rockland hammock are likely provided by holes and crevices in the limestone, piles of rock rubble, and pockets of organic matter accumulating in solution holes and shallow depressions in the oolitic limestone (Enge et al. 2003, p. 28). Snakes are ectothermic organisms, which require an external heat source to warm their bodies in order to increase body function and productivity. Snakes can also become too hot, leading to desiccation. Therefore, a warm, moist habitat, typically subterranean or shielded from the sun, is likely a preferred refugium to escape from predators and to properly maintain homeostasis (suitable internal temperature and moisture levels).

Water is essential for Key ring-necked snake survival. This subspecies appears to be restricted to areas near permanent freshwater sources that often occur as small holes in the limestone (Lazell 1989, pp. 134, 136). The extensive network of holes, tunnels, and cavities in the limestone substrate most likely assists in creating more permanent water sources. During times of drought, these sources may become scarce and the Key ring-necked snakes may need to seek out other freshwater sources. Consequently, it is important for the Key ring-necked snake to have multiple freshwater sources in case one becomes depleted, contaminated, or unavailable. If all local water sources within a snake's home range become dry, the snake may need to expend more energy and time in search of new water sources.

The most influential need for population viability is available suitable habitat. Home range is defined as the area a snake traverses for its normal daily activities (Burt 1943, pp. 350–351; Miller 2008, p. 16). The specific acreage associated with the Key ring-necked snake's home range is unknown; however, an individual was documented traveling 154.2 feet (ft) (47 meters (m)) between coverboards (Lazell 1989, p. 134). Over 400 mark recapture measurements of ring-necked snakes in Kansas indicated a mean travel distance of 262 ft (80m) with a maximum distance of 5,577 ft (1,700 m) (Fitch 1975, p. 25). In another study, a different ring-neck snake subspecies (*Diadophis punctatus*) in northern Michigan was documented to travel between 20 ft (6 m) and 1 mile (1,609 m) (Blanchard et al. 1979, pp. 382, 385). Thus, although ring-necked snakes generally only move within a small home range, they will occasionally disperse over longer distances through suitable habitat.

In regard to population size and distribution of the Key ring-necked snake, there may be either distinct, non-interbreeding populations at each Key, or some occasional but rare level of dispersal from rafting (oceanic dispersal whereby a species travels between islands on a mass or raft of vegetation) between Keys, providing at least a small level of connectivity between individual populations. Because the Key ring-necked snake appears to be isolated to the Keys, the relatively small, archipelago of islands can each support only a small number of individuals (or separate populations).

Due to the cryptic nature of the Key ring-necked snake and limited research, there is virtually no information concerning the population structure and demographics exhibited by this subspecies. Additionally, no information exists on the abundance (number of individuals) or growth rate of these populations. Therefore, we base our assessment of the health and resiliency of these populations on the condition of its habitat as a proxy. That said, continued occurrence of populations over time at known locations suggest some ability to withstand stochastic events on the Keys, historically.

Populations of the Key ring-necked snake are supported by the existence of suitable available habitat (pine rocklands and rockland hammock) across the subspecies' range. Therefore, a strong correlation to habitat availability and Key ring-necked snake populations can be assumed but not at a level of certainty in which the presence of suitable pine rockland or rockland hammock habitat can be used as a surrogate for Key ring-necked snake presence.

Passive dispersal of individual Key ring-necked snakes among the Florida Keys may be occurring on a very limited and random basis. The level to which immigration and emigration via dispersal acts as a factor towards population resiliency and prevention against extinction for this subspecies is unknown. Many of the Florida Keys have yet to be surveyed for Key ring-necked snakes, but if occupied, they could act as ''stepping stones'' in the random dispersal of individual snakes by way of swimming or rafting. That said, due to the limited size of the Florida Keys, the distance between the Keys, and the fact that swimming has not been documented in Key ring-necked snakes, dispersal is not likely, and, thus, it has a limited influence on population dynamics. Overall, we lack detailed scientific information on the extent of the Key ring-necked snake's individual populations and population structure. Thus, our understanding of the factors influencing Key ring-necked snake resiliency is limited.

Because systematic recent surveys have not been conducted for the Key ring-necked snake across all of the Florida Keys, the true spatial distribution of populations throughout the Florida Keys is unclear and our current understanding of the subspecies' distribution is primarily based on historical records.

As discussed above, widely distributed populations offer better redundancy than if the populations all occur in close proximity and are vulnerable to similar threats at the same intensity or timing. Because of the Key ring-necked snake's limited geographic range, the species is exposed to threats concurrently and of similar frequency, intensity, and duration across its range. For example, the entire subspecies is vulnerable to the effects of a hurricane passing over the Florida Keys. Additionally, the extent of suitable habitat is naturally limited in the Keys. Consequently, there is little natural redundancy or ''backup'' for the available habitat, and natural expansion or movement of the subspecies to new areas is not probable. The minimum number of sufficiently resilient populations necessary to sustain the subspecies is unknown. Based on the presence of pine rocklands and rockland hammock habitat (total acreage 7,006 ac (2,835 ha)) in the upper Florida Keys, redundancy could be higher if discrete populations occur across the upper Florida Keys. However, the range of this subspecies appears to be restricted to the lower Florida Keys (Mays 2020, pers. comm.). Given the low likelihood of dispersal between islands, we considered islands in the lower Florida Keys (Key West, Big Pine Key, Little Torch Key, Middle Torch Key, No Name Key, Cudjoe Key, and Stock Island) as separate Key ring-necked snake populations.

As currently indicated, the Key ring-necked snake occupies a small geographic area, making it vulnerable to large-scale threats (for example, storm events/hurricanes, sea level rise) that affect the entire Florida Keys archipelago.

Because of the Key ring-necked snake's narrow geographic and ecological range, there is little variation in habitat types occupied. Also, the Key ring-necked snake does not occur across different ecosystems or have access to different systems in which to adapt. Therefore, the Key ring-necked snake has a narrow breadth of genetic and environmental diversity within and among populations.

Rim Rock Crowned Snake—Population and Species Needs

As part of the population needs assessment for the rim rock crowned snake, we identified and described the most influential factors (available prey, water, refugia, and suitable habitat) representing the individual and population needs for the species.

The diet of rim rock crowned snakes probably consists of centipedes, insects, and other small invertebrates, similar to the diet of other members of the genus *Tantilla.* Prey eaten by wild and captive *T. coronata* include tenebrionid beetle larvae, earthworms, snails, centipedes, spiders, cutworms, wireworms, and termites and their larvae (Ernst and Ernst 2003, pp. 353–355). We do not know what the prey-related requirements (abundance variety, range, etc.) are to maintain viability.

Water is essential for rim rock crowned snake survival. We have no specific information on the amount of water they require; however, similar species of *Tantilla* tend to survive in warm, moist conditions where water is intermittently available. Small amounts of water can be found in depressions and holes in the limestone substrate, which fill from rain fall or overnight dew. The extensive network of holes, tunnels, and cavities in the limestone substrate may also lead to more permanent water sources. During times of drought, these sources may become scarce, and the snake may need to seek out other fresh water sources. The rim rock crowned snake must have multiple fresh water sources in case one becomes depleted, contaminated, or unavailable. If all local water sources within a snake's home range become dry, the snake may need to expend more energy and time in search of new water sources.

Rim rock crowned snakes require refugia to escape and hide from predators and to regulate body temperature. Refugia in pine rocklands and rockland hammock are provided by holes and crevices in the limestone, piles of rock rubble, and pockets of organic matter accumulating in solution holes and shallow depressions in the limestone (Enge et al. 2003, pp. 27–28). Snakes are ectothermic organisms, which require an external heat source for homeostasis. Snakes can also become too hot, consequently leading to desiccation. Therefore, a warm, moist habitat, typically subterranean or shielded from the sun, is likely a preferred refugium to escape from

predators and to properly maintain homeostasis.

We do not know how much suitable habitat and habitat connectivity is required to maintain viability. An observation of a rim rock crowned snake was recorded (Hines 2011, pp. 352–356) at the Barnacle Historic State Park in Coconut Grove, Miami, Florida, a site that consists of only 6 ac (2 ha) of rockland hammock habitat. We do not know if pine rocklands or rockland hammocks are more suitable for the rim rock crowned snake, as they have been observed in both. Home range is defined as the area a snake traverses for its normal daily activities (Burt 1943, pp. 350–351; Miller 2008, p. 16). The rim rock crowned snake's home range size is unknown.

Rim rock crowned snake populations need abundant individuals within habitat patches of adequate area and quality to maintain survival and reproduction despite disturbance. Therefore, a strong correlation to habitat availability and rim rock crowned snake populations can be assumed, but not at a level of certainty in which the presence of suitable pine rockland or rockland hammock habitat can be used as a surrogate for rim rock crowned snake presence.

Despite these uncertainties, data indicate that the limited and patchy distribution of occupied suitable habitat is negatively affecting population resiliency across the species' range. The majority of suitable rim rock crowned snake habitat in southeastern Miami-Dade County and the Florida Keys has been developed and is highly impacted by human activities. Additionally, the Florida Keys are limited naturally in their land area.

Dispersal of individual snakes among the fragmented suitable habitat in Miami-Dade County could occur, but if it does, it is expected to be on a limited and random basis. The level to which immigration and emigration via dispersal influence population resiliency and extinction risk is unknown. Above-ground dispersal may not be as effective in a highly urbanized environment. The limited size of the suitable habitat and the distance of urban barriers between them suggest that dispersal is unlikely to currently influence the population dynamics. The extent to which rim rock crowned snakes are able to use subterranean cavities of the Miami limestone rock ridge to subvert urban barriers is unknown. Because the underlying rock ridge throughout Miami-Dade County is porous, there is potential for individuals to use it as a means of dispersal to avoid urban barriers. If used, it could allow more successful random dispersal of individual snakes than above-ground means. However, the extent of influence of dispersal remains largely unknown.

In the Florida Keys, passive dispersal of individual snakes among keys may be occurring on a very limited and random basis. The level to which immigration and emigration via dispersal acts as a factor towards population resiliency and prevention against extinction for this species is unknown. Many of the Florida Keys have yet to be searched, but if occupied, they could act as ''stepping stones'' in the random dispersal of individual snakes. However, the limited size of the Florida Keys and the distance between them means that dispersal is not likely; thus, it currently has a limited influence on population dynamics.

No recent surveys have been conducted for the rim rock crowned snake; therefore, the true spatial distribution of populations throughout Miami-Dade County and the Florida Keys is unclear, and our current image of the species' distribution is primarily based on historical records. Consequently, this species may very well occur on other areas in Miami-Dade County or the Florida Keys other than those reported, and the importance of the other areas (other than those with identified populations) to the overall species' resiliency is unclear. To date, no genetic analysis has been conducted on the rim rock crowned snake. Consequently, it is unknown whether or not genetically discrete populations exist in the upper or lower Florida Keys or Miami-Dade County where this species has been historically reported. No information exists on the abundance or growth rate of these populations.

Having multiple populations distributed across the landscape offers better redundancy than if the populations all occur in very close proximity and are vulnerable to stressors with the same intensity or timing. For example, the entire species is vulnerable to the effects of a hurricane passing over south Florida. Limited acreage of suitable habitat remains in Miami-Dade County and the Florida Keys; consequently, there is limited opportunity for natural expansion, and movement of the species to new areas is not probable.

Species redundancy for the rim rock crowned snake is provided by individuals being distributed across Miami-Dade County and the upper and lower Florida Keys. However, due to the lack of recent surveys conducted within Miami-Dade County and the Florida Keys, the current rim rock crowned snake's range is unknown. Despite a level of redundancy provided by the discrete populations and individuals found dispersed across Miami-Dade County and the Florida Keys, the rim rock crowned snake lacks redundancy because of its small endemic range. For some large-scale stressors (storm events and hurricanes) that affect southeastern Florida and the Florida Keys, the species is vulnerable to the timing and intensity of impacts. Overall, the rim rock crowned snake needs multiple, interconnected, healthy populations across its range.

Given the low likelihood of dispersal between islands, we considered islands in the Florida Keys as separate rim rock crowned snake populations. In the upper Keys, north Key Largo, south Key Largo, Plantation Key, Upper Matecombe Key, Lower Matecombe Key, and Marathon (Grassy and Vaca Keys) are considered separate populations. In the lower Keys, Big Pine Key and Key West are considered separate populations. Similarly, due to physical barriers (roads, structures, canals, etc.), we considered the Miami-Dade County locations as distinct populations: Arch Creek Park, Barnacle Historic State Park (BHSP), Bill Sadowski Park, Deering Estate/Ludlum Pineland Area/Chapman Field (DLC), Ned Glenn Pineland, Rockdale and Richmond Pine Rocklands Tract (Zoo Miami).

With regard to representation, the rim rock crowned snake occurs across a narrow geographic and ecological range. Consequently, there is no variation across distance or elevation as there is for other wider-ranging species. The rim rock crowned snake has not been found to occur across different ecosystems, and it is not known if it disperses farther from the limestone rock ridge in southeastern peninsular Florida.

As mentioned previously, no genetic analyses have been conducted on the rim rock crowned snake. Hence, the genetic diversity of this species is unknown, and there is little environmental diversity beyond the two habitat types where the species is found. Similarly, it is unclear if there are morphological or behavioral differences between different rim rock crowned snake populations.

Threats Discussion

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA reports, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the

species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Following are summary evaluations of six threats analyzed in the SSAs for both the Key ring-necked snake and the rim rock crowned snake: Development (Factor A), fire suppression (Factor A), sea level rise (Factor A), saltwater intrusion (Factor A), shifts in seasonal patterns of rainfall and temperature (Factor A), and storm events (Factor A). We also evaluate existing regulatory mechanisms (Factor D) and ongoing conservation measures.

In the SSAs, we also considered four additional threats: Overutilization due to recreational, educational, and scientific use (Factor B); disease (Factor C); predation (Factor C); and invasive species (Factor E). We concluded that, as indicated by the best available scientific and commercial information, these threats are currently having little to no impact on either the Key ring-necked snake or the rim rock crowned snake and their habitat, and thus their overall effect now and into the future is expected to be minimal. Therefore, we will not present summary analyses of those threats in this document, but we will consider them in our cumulative assessment of impacts to the species. For full descriptions of all threats and how they impact the species, please see both SSA reports (Service 2021a, pp. 9–21; Service 2021b, pp. 25–40).

Key Ring-Necked Snake—Current Threats and Condition

We do not have fine-scale information to determine different levels of threats within individual populations of the Key ring-necked snake. Thus, for this subspecies, we considered threats and population resiliency on the scale of individual islands in that area.

Development

The Key ring-necked snake inhabits a variety of rockland habitat in Monroe County that has been and is still desirable for residential and commercial development (Service 1999, p. 3–174). Over half of the rockland habitat within the Florida Keys has been and continues to be altered, degraded, or destroyed for residential and commercial development (Hodges and Bradley 2006, pp. 8–9). Urban development and historical land use for agriculture have greatly reduced the extent of pine rocklands in the Florida Keys. Additionally, the quality of some pine rocklands has declined in the Keys because the remaining habitat patches are isolated and confined by surrounding urban development. Although individual snakes show some tolerance of habitat alteration, development and conversion of suitable snake habitat can impact all life stages of the Key ring-necked snake. In addition to direct impacts from loss of soils for nesting and movement and the loss of shelter and shade for adult snakes, ground cover and availability of invertebrate food sources can be reduced. Indirectly, connectivity is further decreased, hindering the finding of mates and the dispersal to new locations by juveniles.

Currently, total habitat area potentially available to Key ring-necked snakes in the lower Florida Keys consists of 1,899 ac (769 ha) of pine rocklands habitat and 3,806 ac (1,540 ha) of rockland hammock habitat (USGS 2019b, p. 4). While the hammock habitats are widespread across many islands in various sizes, pine rocklands remain on only five islands in the lower Florida Keys. One of these islands, Big Pine Key, has 1,480 ac (599 ha) (78 percent) of total pine rocklands area, while other Keys (Little Pine Key, No Name Key, Cudjoe Key, and Sugarloaf Key) contain only small areas of hardwood-invaded pine rocklands. The Florida Keys Carrying Capacity Study conducted in 2003 (Monroe County 2016, entire), concluded that development in the Florida Keys has surpassed the carrying capacity of upland habitats to maintain their ecological integrity, that any further development in the Florida Keys would exacerbate secondary and indirect impacts to remaining habitat, and that any further urbanization in areas dominated by native vegetation would exacerbate habitat loss and fragmentation.

Some habitat protections are currently in place for the Key ring-necked snake. In 2006, Monroe County implemented an HCP for Big Pine Key and No Name Key that incorporates guidelines and recommendations from the 2003 study. The primary goal of the HCP is to maintain and implement a system that directs future growth to meet goals, including to protect natural resources and to encourage a compact pattern of development. Subsequently, future development on these islands must meet the requirements of the HCP. Furthermore, to fulfill the HCP's mitigation requirement, Monroe County has been actively acquiring parcels of high-quality habitat for listed species and managing them for conservation, including pine rocklands habitat on Big Pine Key and No Name Key. Although the Key ring-necked snake is not a covered species under this HCP, we still expect the habitat protections afforded by the HCP to provide the Key ring-necked snake some protection from development.

Suitable habitat for the Key ring-necked snake is protected within preserves such as the Florida Keys National Wildlife Refuge Complex. The complex spans two Key ring-necked snake populations on No Name Key and Big Pine Key. Overall, 4,711.36 ac (1,906.62 ha) (82.6 percent) of pine rockland and rockland hammock habitats in the lower Keys are protected or under conservation (Florida Natural Areas Inventory (FNAI) 2019). The remaining suitable habitat for the Key ring-necked snake is extremely vulnerable to development. Other than these avenues to protect suitable habitat, the existing regulatory mechanisms and conservation measures do not address the impacts of development.

The effects of development have the potential to reduce individual survival of Key ring-necked snakes and, therefore, may decrease population resiliency. Resiliency may be further reduced due to loss of connectivity between populations, both as dispersal within populations as they become fragmented and dispersal between occurrences on individual islands. Similarly, because the Key ring-necked snake is endemic to only a few lower Florida Key islands, losing even a few populations to the effects of development would result in a substantial reduction in subspecies redundancy. The Monroe County HCP may prevent further development of pine rocklands, although population resiliency would continue to decline as habitats remain degraded due to impacts associated with development.

Fire Suppression

In addition to historical loss of habitat via urban development and agriculture, the quality of pine rocklands has declined due to fire suppression. Further, the quality of some pine rocklands has declined in the Keys because they are isolated and confined by surrounding urban development that restricts the use of prescribed fire, which is the principal management tool. Prescribed fire must be periodically

introduced to sustain the pine rocklands community structure. In the absence of fire, pine rocklands are invaded by many of the species found in hardwood hammocks, they lose their herbaceous flora, and they move along a successional trajectory toward hammock (Service 1999, pp. 3–173). These rockland hammocks are generally present where pine rocklands were not burned for a long period of time, leading to pine rocklands fragmentation. This fragmentation in turn increases the risk of invasion by exotic vegetation along the interface with disturbed or developed areas, further altering, degrading, or destroying suitable habitat for the Key ring-necked snake.

Although Key ring-necked snakes occur in areas where fire has been suppressed, pine rocklands habitat quality is reduced by lack of fire. Thus, fire suppression has the potential to reduce population resiliency through ongoing habitat degradation.

Climate Change

The predominant threat currently affecting the Key ring-necked snake and its habitat is the rapid and intense shifts in climate occurring as a result of increasing greenhouse gas emissions. The entire Florida Keys archipelago is being affected by increases in sea level, saltwater intrusion, increases in tide and tidal flooding, and shifts in seasonal climate pattern. In the SSA report and this proposed rule, we discuss the effects of climate change on the Key ring-necked snake in terms of sea level rise, saltwater intrusion, shifts in seasonal patterns of rainfall and temperature, and storm events (Service 2021a, pp. 23–28).

Sea level rise—The Key ring-necked snake is vulnerable to current and predicted sea level rise across its entire range because it is located only in the Florida Keys, where the effects of increasing sea levels, higher tidal surges, increased coastal and inland flooding, and saltwater intrusion are currently being experienced (Benedict et al. 2018, pp. 9, 13, 31, 7–i; Service 2019, p. 1). The Florida Keys are among the most vulnerable areas to the effects of sea level rise due to their low mean elevation of less than 4 ft (1.2 m) (Service 2019, p. 9). Consequently, the lowest parts of the Florida Keys are highly susceptible to flooding, with parts of the islands farther upland at risk of inundation and saltwater intrusion.

Global sea level has increased by 8 to 9 in (0.20 to 0.23 m) since 1880, with the rate of increase doubling over the past 20 years (Service 2017, p. 5). From 1913 to 2018, the mean high-water line on Key West rose 0.09 in (0.23 cm) per year (National Oceanic and Atmospheric Administration (NOAA) 2019; Service 2021a, Figure 3). On Vaca Key, sea levels rose 0.14 in (0.36 cm) per year between 1971 (start of data collection) and 2018 (NOAA 2019; Service 2021a, Figure 3).

Recent analysis is now indicating an accelerated rate of sea level rise for the eastern United States above that of the global rate (Park and Sweet 2015, entire; Sweet et al. 2017, pp. 39–41, Sweet et al. 2022, pp. 20–21). The accelerated sea level rise in south Florida is being attributed to shifts in the Florida Current due to added ocean mass brought on by the melting Antarctic and Greenland ice packs and thermal expansion from the warming ocean (Park and Sweet 2015, entire; Rahmstorf et al. 2015, entire; Deconto and Pollard 2016, p. 596; Sweet et al. 2017, pp. vi, 14, 15, 18, Sweet et al. 2022, pp. 22–23). For this reason, adding approximately 15 percent to global mean sea level rise projections is recommended for southeast Florida and the Florida Keys (Park and Sweet 2015, entire; Southeast Florida Regional Climate Change Compact 2012, p. 35). The most recent intermediate sea level scenario for the Florida Keys projects a 1.1–1.2 m (3.6–3.9 ft) increase by 2100 (Sweet et al. 2022, pp. 20–21).

Based on a case study of Big Pine Key in the lower Florida Keys, saltwater intrusion due to sea level rise will begin to negatively affect the root zone of the island's upland vegetation as early as 2030, and increasing saltwater intrusion of groundwater has already been documented (USGS 2019a, pp. 1, 3). As a result, freshwater-dependent flora and fauna, which comprise much of the island's biota, will disappear. By 2040, under intermediate climate scenarios, approximately 88 percent of pine rocklands and 96 percent of rockland hammock habitat in the lower Florida Keys are expected to be impacted by sea level rise (USGS 2019a, entire). By 2040, under extreme climate scenarios, approximately 98 percent of pine rocklands and 99 percent of rockland hammock habitat in the lower Florida Keys are expected to be impacted by sea level rise (USGS 2019a, entire).

The effects of sea level rise could impact the Key ring-necked snake both through loss of individuals during flooding events, and alteration of suitable habitat, causing a loss in population resiliency. If flooding is severe enough, it could extirpate entire populations, leading to a substantial loss of redundancy.

Saltwater intrusion—Higher tidal surges, coastal and inland flooding, and saltwater intrusion due to increasing sea levels are currently being experienced in the Florida Keys. In the Florida Keys, high tide flooding events primarily affect low-lying coastal areas and exposed pine rockland and rockland hammock habitats. With worsening storms and extreme tidal events, storm surges along the Florida Keys will increase in frequency and severity over time and will impact habitats farther inland. Additionally, with continued increase in sea level rise, high tide/king tide flood frequencies are also expected to rapidly increase, with potentially severe damage to remaining rockland habitat. Pine rocklands species, particularly the dominant canopy species (slash pine), have little ability to tolerate saltwater (USGS 2019b, p. 2).

Salt from ocean water deposited during these high-water events has the potential to remain in place in and under the soil for long periods of time, which negatively impacts vegetative growth. For pine rockland and rockland hammock forests to be sustained in such an ecosystem, nutrient cycling must be extremely efficient (that is, there can be little leaching of nutrients beyond the root zone). In other instances, the effects of more powerful storm surges, rising sea levels, and saltwater intrusion of the islands' freshwater lens have contributed to the conversion and loss of pine forest habitat in the Florida Keys to more halophilic (salt-loving) vegetation such as mangroves and buttonwood (Alexander 1976, pp. 219–222; Ross et al. 1994, pp. 151–154). As discussed above in Background, a unique characteristic of the Florida Keys is the existence of a freshwater lens below each island that is critically important for humans, flora, fauna, and a variety of habitats. Consequently, pine rocklands habitat has already undergone a significant reduction in the Florida Keys due to sea level rise (Ross et al. 1994, p. 154). Currently, some of these areas are occupied by halophytic (salt-tolerant) vegetation such as mangroves and buttonwood (Alexander 1976, pp. 219–222) owing to high tide flooding as a result of rising sea level but also due to saltwater intrusion of the islands' freshwater lens. Over time, further vegetation succession will result in halophytic vegetation dominance on the remaining land and more expansive estuaries across much of the island.

Overall, saltwater intrusion from storm surge and flooding causes the loss of habitat, habitat conversion, and reduction in the capacity of freshwater storage and the freshwater resources relied upon by the Key ring-necked snake to maintain its thermoregulatory requirements. These effects will

continue to result in the loss of suitable habitat, displacement landward to less suitable habitat, and the loss of individual Key ring-necked snakes.

Shifts in seasonal patterns of rainfall and temperature—In the United States, the average temperatures have increased by 1.3 to 1.9 degrees Fahrenheit (°F) (0.77 to 1.1 degrees Celsius (°C)) since recordkeeping began in 1895 (Service 2017, p. 2). The decade from 2000 to 2009 is documented as the warmest on record (Service 2017, p. 2). Since 1991, average temperatures in south Florida have increased 1.5 °F (0.83 °C) or more (Service 2017, p. 2). Continued increases in surface air temperature are expected even if there was an immediate and aggressive reduction in human-produced greenhouse gas emissions (Intergovernmental Panel on Climate Change (IPCC) 2018, pp. 1–11).

We presume that the normal range of temperatures in which activity occurs for the Key ring-necked snake is consistent with that which it has experienced in south Florida. Any continuously higher average number of hot days out of the Key ring-necked snake's optimum range or a permanent shift in average air temperature out of this range has the potential to cause physiological stress. In more extreme cases, once an ectothermic organism is exposed to a temperature outside of its activity temperature range, it is closer to reaching a critical thermal maximum/minimum, in which locomotion becomes uncoordinated and the animal loses its ability to escape conditions that will lead to its death (Zug et al. 2001, pp. 179–188). Key ring-necked snakes may become more vulnerable to situations involving critical thermal maximum when habitat loss and fragmentation limit its ability to move or find suitable microhabitats. Additionally, ambient temperature out of the optimal range will physically influence the environment of nests, which may modify incubation periods, embryo temperatures, egg survival, and hatching times. Physiological stress can also result in a variety of risks including increased predation, reduced reproductive performance, and reduced foraging success.

Precipitation patterns are also changing. Since 1900, annual average precipitation in south Florida has increased by 5 to 10 percent (Service 2017, p. 4). Shifts in seasonal rainfall events are also currently being documented (U.S. Global Change Research Program (USGCRP) 2018, pp. 745–808). The south Florida dry season (November through April) has become wetter, the rainy season (May through October) has become drier, and current projections show that this trend will continue. This could have detrimental effects on the Key ring-necked snake's seasonal feeding, breeding, and sheltering patterns. Heavy downpours are currently increasing and have especially increased over the last 30 to 50 years. The frequency and intensity of heavy downpours in the Florida Keys have increased by 27 percent since the 1970s (Service 2017, p. 4). Increased inland flooding is predicted during heavy rain events in low-lying areas. With worsening storms, storm surges along coastlines become stronger and push farther inland. Consequently, more powerful storm surges will exacerbate the effects of the increased sea level along the Florida Keys' shorelines.

Currently, the existing regulatory mechanisms and conservation measures do not address the impacts of shifting seasonal patterns of rainfall and temperature. Although changes in seasonal weather patterns in south Florida have been documented (Service 2017, entire), direct impacts on the Key ring-necked snake's habitat have not been observed. However, with increased flooding events associated with climate change and sea level rise, the magnitude of this threat could increase into the future, decreasing population resiliency across the range of the subspecies.

Storm events—There has been a substantial increase in Atlantic hurricane activity by most measures since the early 1980s, the period during which high-quality satellite data first became available. These include measures of intensity, frequency, and duration as well as the number of strongest (Category 4 and 5) storms (Walsh et al. 2014, p. 20). Strong rainstorms, tropical storms, and hurricanes are all-natural parts of a tropical ecosystem. However, although these events are common occurrences, the vulnerability of Key ring-necked snake populations increases as the quantity and quality of their habitat is compromised. This is especially true when the frequency of storm surges increases without adequate time for habitats to recover.

Hurricane activity has been above normal since the Atlantic Multi-Decadal Oscillation (AMO) (the natural variability of the sea surface temperature in the Atlantic Ocean) went into its warm phase around 1992. While the incidence of tropical storms in southeast Florida (including the Keys) is above normal, this frequency is expected to decrease with climate change, but the intensity of the storms is expected to increase by approximately 20 percent (Service 2017, p. 7). This increased intensity results in larger tidal storm surge and greater destruction than historically documented. Ecosystem resiliency is reduced when impacts by extreme events such as floods or storms occur (Service 2017, p. 7). Saltwater intrusion from storm surge and flooding results in displacement landward to less suitable habitat and the loss of individual Key ring-necked snakes. The limestone substrate, on which snakes likely rely for cover, prey, and nesting, will become flooded more frequently, resulting in a higher frequency and longevity of displacement and stress.

Information on how strong storms impact this subspecies is lacking. However, information does exist on the impacts to habitat from hurricanes and other strong storms that have occurred in the region, providing some insight of the potential damage and loss to the Key ring-necked snake from such storms. These events likely disturb and reduce the quantity and quality of their resources (such as food and cover) and may do so significantly depending upon the severity and proximity of the storm center. This is particularly true when storm surges bring in nutrient-rich sediment that exacerbate soil accretion, salt deposition, and vegetation loss (Dingler et al. 1995, p. 296; Jackson et al. 1995, p. 321).

Additionally, saltwater surges and short-term flooding of upland habitats from strong storms and hurricanes in the Keys have the potential to kill some Key ring-necked snakes and their prey. In 2005, Hurricane Wilma (Category 3) passed just north of the Florida Keys, causing maximum storm tides 5 to 6 ft (1.5 to 1.8 m) above mean sea level in Key West and flooding approximately 60 percent of the city. On Boca Chica and Big Pine Keys, Hurricane Wilma caused a storm surge of 5 to 8 ft (1.5 to 2.4 m) (Kasper 2007, pp. 10–16). In 2017, the combined effect of storm surge and the tide from Hurricane Irma produced maximum inundation levels of 5 to 8 ft (1.5 to 2.4 m) above ground level for portions of the lower Florida Keys from Cudjoe Key eastward to Big Pine Key and Bahia Honda Key, near and to the east of where Irma's center made landfall (Cangialosi et al. 2018, pp. 8–9). A storm surge of 13 ft (4 m) would completely submerge Big Pine Key (Lopez et al. 2004, p. 284).

Currently, the existing regulatory mechanisms and conservation measures do not address the impacts of storm events. The effects of storm events have the potential to reduce individual survival, which could then lead to a reduction in the snake's resiliency and redundancy. While past storms have not resulted in complete inundation of

islands, an increase in the intensity and frequency of storms or a direct hit from a strong hurricane could cause significant reductions in subspecies numbers, further limiting the subspecies' population resiliency and making it even more vulnerable to all other threats.

Summary of Threats

Multiple threats are currently impacting the Key ring-necked snake and its habitat. Although individual populations are no longer likely to be lost to development, ongoing habitat degradation associated with urbanization of both pine rocklands and rockland hammock habitat and fire suppression of pine rocklands are continuing to reduce the availability of the features that the Key ring-necked snake needs for feeding, breeding, and sheltering, thus decreasing population resiliency. Because of the current barriers to dispersal, recolonization is unlikely after a population is extirpated.

Even minor threats that impact just a few individuals in a population need to be considered for their additive effects. For example, threats like predation and invasive species may have low impacts on their own, but combined with impacts of other threats, they are further reducing already low numbers of Key ring-necked snakes. These minor threats were considered cumulatively for their effects to the Key ring-necked snake and, while they may reduce the numbers for some individual populations, were currently found not to impose negative effects at the population level.

Additionally, various threats can originate from a similar cause but produce interdependent effects on the subspecies. For example, greenhouse gas emissions increase the rate and severity of climactic changes, which act in combination as threats on the subspecies. These include sea level rise, seasonal shifts in timing and amounts of precipitation, shifts in temperature patterns, and increased storm intensities that affect the subspecies. Sea level rise reduces available habitat. Because the average high-water line is now higher than historical levels, areas not typically flooded are now flooded on a more regular basis. The rate of sea level rise in the Florida Keys—specifically at NOAA's KYWF1–8724580 Key West ocean data buoy—had been an average rate of 0.09 inch/year (2.3 mm/year) prior to the previous decade (1990s; NOAA 2016, unpaginated). In the early 2000s, sea level rise began to accelerate exponentially and was estimated at 0.3 inch/year (7.6 mm/year) in 2016 (NOAA 2016, unpaginated).

The severity of threats may also be exacerbated by the Key ring-necked snake's limited distribution and small population size. There are no records that demonstrate that the Key ring-necked snake was ever distributed beyond the lower Florida Keys. Thus, it has, and probably has always had, low natural redundancy. Currently, it is found only on seven lower Florida Key islands. Rarity is not in itself a threat; however, small population size can exacerbate the effects of ongoing threats, making the subspecies more vulnerable to extirpation. As discussed previously, the Key ring-necked snake is a narrow endemic, meaning it has naturally low redundancy to help it buffer against stochastic and catastrophic events.

Currently, the existing regulatory mechanisms and conservation measures do not address the impacts of climate change, sea level rise, and saltwater intrusion. As mentioned above, sea level has increased exponentially since the early 2000s (NOAA 2016, unpaginated). Therefore, the effects of saltwater intrusion have likely degraded existing habitat that supports the Key ring-necked snake, leading to reductions in the features (such as freshwater) that the subspecies needs, and thus reducing population resiliency. The effects of saltwater intrusion are primarily habitat-based, but some individual snakes could also be lost. Signs of saltwater intrusion impacts are currently documented on Big Pine Key, where pine trees have been replaced by salt-tolerant mangrove. The magnitude of this threat has the potential to greatly increase in the future with the projected severity of sea level rise.

Current Condition of Populations

To characterize the current status of Key ring-necked snake populations, we assigned each stressor as low, moderate, or high impacts to the subspecies based on criteria (see table 1, below); these impacts are occurring at the individual (moderate risk) and population (high risk) levels. The risk of each threat, using the risk scoring criteria in tables 1 and 2, was applied to each population and used to assess the overall population condition (see table 3, below). More specifically, point values were summed for each threat (listed in table 1, below) to determine an overall population condition score (scoring criteria listed in table 2, below) and summarized to convey the current condition of each population of the subspecies (see table 3, below). An area with a high risk of threat as described in tables 1 and 2 will result in low population condition in table 3, and a low risk of threat will result in a high population condition. Each population received similar scores, due to limited information for the subspecies and its small endemic range. Based on the cumulative risk of threats to each population, we then estimated the current condition of each population and the likelihood of persistence of each population (Table 2). We defined populations in the SSA report and this proposed rule by the boundary of each island, as we lack information on possible population divisions within each island or about distribution between islands.

Overall, all populations of the Key ring-necked snake are in low condition and reduced from historical condition, with ongoing effects from habitat degradation, fire suppression, sea level rise, and saltwater intrusion. Though populations are currently extant on all known islands throughout the species' range, the species is only found on seven islands in a similar ecological setting. Thus, species representation and redundancy are low.

TABLE 1—CURRENT CONDITIONS BASED ON RISK OF THREATS

Threat	Low risk (1)	Moderate risk (2)	High risk (3)
Development	Development occurrence protected by land management plan.	The level of development would affect suitable habitat and displace some individual snakes, but not at an extent to affect snake populations.	A significant amount of suitable habitat would be lost due to development such that snake populations would be impacted.
Disease	No impacts	Some individual snakes would exhibit signs of disease, but impacts would not be widespread enough in the snake population to affect resiliency.	Disease would be prevalent in populations across the range of the subspecies, decreasing population resiliency.

TABLE 1—CURRENT CONDITIONS BASED ON RISK OF THREATS—Continued

Threat	Low risk (1)	Moderate risk (2)	High risk (3)
Fire suppression in pine rocklands.	Ongoing, regular fire maintenance.	The level of fire suppression would affect some suitable habitat and displace some individual snakes, but not at an extent to affect population resiliency.	A significant amount of suitable habitat would be lost due to fire suppression such that snake population resiliency would be impacted.
Predation	No impacts	Some individual snakes would be predated, but impacts would not be widespread throughout snake populations.	Predation would be prevalent in populations across the range of the subspecies, decreasing population resiliency.
Invasive species	No impacts	Invasive plants would not outcompete native plants to the extent that a significant amount of suitable snake habitat is altered. Nonnative fauna would outcompete some individual snakes for food, or prey on some snakes, but the effects would not be widespread in the snake population.	Invasive plants would outcompete native plants altering habitat so it is no longer suitable for the snake. Nonnative fauna may outcompete snakes for food, or prey on snakes such that populations are impacted.
Sea level rise	No impacts	Individual snakes will be affected by increasing sea levels, higher tidal surges, and increased coastal and inland flooding.	The severity of increasing sea levels, higher tidal surges, and increased coastal and inland flooding would impact snake populations and possibly extirpate areas.
Saltwater intrusion	No impacts	Some individual snakes will be displaced by the frequency and severity of saltwater intrusion and its impact to suitable snake habitat.	The frequency and severity of saltwater intrusion and its impact to suitable snake habitat would impact snake populations, decreasing population resiliency.
Shifts in seasonal patterns of rainfall and temperature.	No impacts	Individual snakes would be affected by the frequency and intensity in these seasonal patterns changes, but not to the extent that population resiliency would be affected.	The frequency and intensity in these seasonal patterns changes would impact snake populations.
Storm events	No impacts	The intensity, frequency, and duration of storm events would be at a level in which the quantity and quality of individual snake needs are compromised, and some snakes would be displaced landward to less suitable habitat.	The intensity, frequency, and duration of storm events would be at a significant level such that the quantity and quality of snake resources were reduced, and snake populations would be displaced.

TABLE 2—RISK AND OVERALL POPULATION CONDITION SCORING CRITERIA FOR CURRENT AND FUTURE CONDITIONS OF POPULATIONS

Overall population condition	Risk of threat	Population persistence over 60 years	Probability of persistence (%)
High (9–13 points)	1	Very Likely	91–100
Moderate (14–18 points)	2	Likely	51–90
Low (19–24 points)	3	Unlikely to likely as not	0–50

Point values for each threat (see table 1, above) were summed within an analysis area to determine the overall population condition score.

TABLE 3—THE RISK OF THREATS AND THEIR EFFECT ON THE POPULATION CONDITION OF THE KEY RING-NECKED SNAKE

Area	Development	Fire suppression of pine rocklands	Disease	Predation	Invasive species	Sea level rise	Saltwater intrusion	Shifts in seasonal patterns of rainfall and temperature	Storms	Population condition
Big Pine Key	Moderate	Moderate	Low	Low	Low	High	High	High	High	Low.
Cudjoe Key	Moderate	Moderate	Low	Low	Low	High	High	High	High	Low.
Key West	Moderate	Moderate	Low	Low	Low	High	High	High	High	Low.
Little Torch Key	Moderate	Moderate	Low	Low	Low	High	High	High	High	Low.
Middle Torch Key	Moderate	Moderate	Low	Low	Low	High	High	High	High	Low.
No Name Key	Moderate	Moderate	Low	Low	Low	High	High	High	High	Low.
Stock Island	Moderate	Moderate	Low	Low	Low	High	High	High	High	Low.

The subspecies was analyzed by island. Note that the first nine columns rank the condition of threats, while the final column ranks population condition. Thus, multiple columns of high threat risk result in low population condition.

Rim Rock Crowned Snake—Current Threats and Condition

We do not have fine-scale information to determine different levels of threats within individual populations of the rim rock crowned snake. Thus, for this species, we considered threats at a larger scale in three general areas: eastern Miami-Dade County, the upper Florida Keys, and the lower Florida Keys, and on individual islands where data were available. We also considered population resiliency in isolated habitat patches in the Miami-Dade area and on individual islands in the Florida Keys. We considered North Key Largo and

Key Largo as two separate populations due to the distances between occurrences and due to several barriers to movement.

Development

The rim rock crowned snake inhabits upland rockland habitat (pine rocklands and rockland hammock) that is also desirable for residential and commercial development (Service 1999, p. 3–174). Urban development and agriculture have greatly reduced the extent of pine rocklands and rockland hammock habitat in eastern Miami-Dade County and the Florida Keys. Additionally, the quality of some pine rocklands has declined in the Keys because the remaining habitat patches are isolated and confined by surrounding urban development. Individual rim rock crowned snakes are occasionally documented in roadsides, vacant lots, trash piles, and pastures with shrubby growth and slash pines (FWC 2011, pp. 2–3; Hines 2011, pp. 352–356), but it is unknown whether these individuals are tolerating urban conditions or have been displaced. However, development and conversion of rockland habitat can impact all life stages of the rim rock crowned snake due to direct habitat loss and mortality. In addition to direct impacts from loss of soils for nesting and movement, ground cover and availability of invertebrate food sources can be reduced. Loss of habitat reduces shelter and shade for adults and decreases connectivity, thereby hindering dispersal by juveniles and finding of mates.

Extensive land clearing for human population growth, development, and agriculture in Miami-Dade and Monroe Counties has altered, degraded, or destroyed thousands of acres of suitable habitat for rim rock crowned snakes. Throughout south Florida, development and agriculture have reduced pine rocklands habitat to approximately 3 percent of historical levels. Currently, the total habitat area available in Miami-Dade County is approximately 2,275 ac (921 ha) of pine rocklands habitat and 609 ac (247 ha) of rockland hammock habitat, not including Everglades National Park (where the rim rock crowned snake has never been found), or less than 10 percent of the historical extent of this habitat. In the lower Florida Keys, the total area of pine rocklands habitat is approximately 1,899 ac (769 ha), and the total area of rockland hammock habitat is approximately 3,806 ac (1,540 ha), or less than half of the historical extent of this habitat. While the hammock habitats are widespread across many islands in various sizes, pine rocklands remain on only five islands in the lower Florida Keys and none of the upper Florida Keys. The total area covered by rockland hammock in the upper Florida Keys is 7,006 ac (2,835 ha).

Some habitat protections are currently in place for the rim rock crowned snake. Starting in 1990, Miami-Dade County's EEL program began acquiring pine rocklands and other natural areas to preserve and protect from development. Once acquired, the EEL program funds land management to maintain and protect the habitat. Since the program's inception, more than 1,500 ac (607 ha) of pine rocklands have become EEL preserves (Miami-Dade County 2019). Rim rock crowned snakes have been found at four EEL preserves.

Additionally, Monroe County implemented an HCP for Big Pine and No Name Keys starting in 2006. In 2007, a rim rock crowned snake was observed on Big Pine Key (Hines 2011, p. 353). Subsequently, development on these islands has to meet the requirements of the HCP in regard to future development. In order to fulfill the HCP's mitigation requirement, Monroe County has been actively acquiring parcels of high-quality habitat for listed species and managing them for conservation, including pine rocklands habitat on Big Pine and No Name Keys. Although the rim rock crowned snake is not a covered species under this HCP, we still expect the habitat protections afforded by the HCP to provide the rim rock crowned snake some protection from development, as the areas where the snakes occur will be avoided due to protections for species that are covered by the HCP.

Suitable habitat for the rim rock crowned snake is protected within Federal preserves such as Everglades National Park, Crocodile Lake National Wildlife Refuge, and the National Key Deer Refuge; however, the rim rock crowned snake has only been documented in the National Key Deer Wildlife Refuge and Crocodile Lake National Wildlife Refuge. Most of the other records are located on State, local government, or privately owned lands, which are all small fragments of suitable habitat. Extensive pine rocklands habitat is present in the Long Pine Key area of Everglades National Park. However, despite extensive survey efforts (Dalrymple et al. 1991, entire), no evidence of the rim rock crowned snake has been found in Everglades National Park.

Over 90 percent of suitable rockland habitat for rim rock crowned snakes has been lost due to human development in south Florida including the Florida Keys, meaning some populations (and thus redundancy) have already been lost. For example, rim rock crowned snakes were previously detected at sites in Miami near intersections of SW 27 Avenue/SW 24 Street, Old Cutler Road/Red Road, and US 1/SW 154 Ave. There are also numerous historical records detected at locations in the greater Miami metropolitan area (Kendall, Coral Gables, Ludlum, Homestead Air Base). However, no rim rock crowned snakes have been found at these locations since the 1980s. Furthermore, extensive urbanization surrounding these remaining habitats reduces survival, via rendering the species less able to withstand environmental and demographic stochasticity and disturbances (that is, reduced resiliency). Resiliency may be further reduced due to loss of connectivity between populations. Because the rim rock crowned snake is endemic to only the southeastern part of the Florida peninsula and the Florida Keys, losing even a few populations to the effects of development would result in a substantial reduction in species redundancy. However, most of the remaining habitat patches are protected, meaning few additional populations are likely to be extirpated due to development, although habitat degradation could result in continued decreases in population resiliency as the species' needs, such as prey and cover, are lost.

Fire Suppression

As discussed above under ''Development,'' urban development and historical conversion to agriculture has greatly reduced the extent of pine rocklands in southeastern Florida and the Florida Keys. The quality of remaining pine rocklands has declined because those areas are isolated by surrounding urban development that restricts the use of prescribed fire, which is the principal management tool for pine rocklands. Prescribed fire must be periodically introduced to sustain the pine rocklands community structure. In the absence of fire, pine rocklands are invaded by many of the species found in hardwood hammocks. They lose their herbaceous flora and move along a successional trajectory toward hammock (Service 1999, p. 3–173). These rockland hammocks are generally present where pine rocklands were not burned for a long period of time, creating more pine rocklands fragmentation. This fragmentation of pine rocklands in the South Florida and the Florida Keys increases the risk of invasion by exotic vegetation along the interface with disturbed or developed areas, further altering, degrading, or destroying

suitable habitat for the rim rock crowned snake.

Although rim rock crowned snakes can still persist in areas where fire has been suppressed, habitat quality is reduced by lack of fire. Thus, the effects of fire suppression in pine rocklands have the potential to reduce population resiliency through ongoing habitat degradation that impacts the rim rock crowned snake and its habitat.

Climate Change

The predominant threat currently affecting the rim rock crowned snake and its habitat are the rapid and intense shifts in climate occurring as a result of increasing greenhouse gas emissions. South Florida and the Florida Keys are being affected by increases in sea level, saltwater intrusion, increases in tide and tidal flooding, and shifts in seasonal climate pattern. In the SSA report and this proposed rule, we discuss the effects of climate change on the rim rock crowned snake in terms of sea level rise, saltwater intrusion, shifts in seasonal patterns of rainfall and temperature, and storm events.

Sea level rise—The rim rock crowned snake is vulnerable to current and predicted sea level rise and saltwater intrusion across its entire range because it is located only in south Florida. South Florida, including the Florida Keys, are among the most vulnerable areas to the effects of sea level rise due to their low mean elevation of less than 1.2 m (4 ft) (Service 2019, p. 9). Consequently, south Florida is highly susceptible to flooding, with lands farther upland at risk of inundation and saltwater intrusion. The effects of increasing sea levels, higher tidal surges, coastal and inland flooding, and saltwater intrusion are currently being experienced in south Florida and the Florida Keys (Benedict et al. 2018, pp. 9, 13, 31, 7–i; Service 2019, p. 1).

As discussed above in *Key Ring-necked Snake—Current Condition* under ''Climate Change,'' *Sea level rise,* the Florida Keys are particularly vulnerable to sea level rise, and the Florida Keys and South Florida are experiencing higher levels of sea level rise than other parts of the globe, as well as higher tidal surges, increased coastal and inland flooding, and saltwater intrusion (Benedict et al. 2018, pp. 9, 13, 31, 7–i; Service 2019, p. 1).

Consequently, pine rocklands habitat has already undergone a significant reduction in the Florida Keys due to sea level rise (Ross et al. 1994, p. 154). As mentioned previously, some of these areas are currently occupied by halophytic (salt-tolerant) vegetation such as mangroves and buttonwood (Alexander 1976, pp. 219–222) owing to high tide flooding as a result of rising sea level but also due to saltwater intrusion of the islands' freshwater lens.

The effects of sea level rise could impact the rim rock crowned snake by loss of individuals during flooding events, causing a loss in population resiliency. If flooding is severe enough, it could extirpate entire populations, particularly in the lower Florida Keys, leading to a substantial loss of redundancy of the species.

Saltwater intrusion—Higher tidal surges, coastal and inland flooding, and saltwater intrusion due to increasing sea levels are currently being experienced in south Florida and the Florida Keys. With worsening storms and extreme tidal events, storm surges along south Florida and the Keys will increase in frequency and severity over time and will impact habitats farther inland. As discussed above in *Key Ring-necked Snake—Current Condition* under ''Climate Change,'' *Saltwater intrusion,* this threat will result in habitat degradation and the loss of individual snakes. For the rim rock crowned snake, these effects have been primarily felt in populations in the Florida Keys, although some coastal populations in eastern Miami-Dade County may also experience some small amounts of saltwater intrusion.

Currently, the existing regulatory mechanisms and conservation measures do not address the impacts of saltwater intrusion. As mentioned above, sea level has increased exponentially since the early 2000s (NOAA 2016, unpaginated). The effects of saltwater intrusion have likely degraded existing habitat that supports the rim rock crowned snake in the Keys, leading to reductions in the features (such as freshwater) that the species needs, and thus reducing population resiliency. The effects of saltwater intrusion are primarily habitat-based, but some individual snakes could also be lost. Signs of saltwater intrusion impacts have been documented on Big Pine Key, where pine trees have been replaced by salt-tolerant mangrove. The magnitude of this threat has the potential to greatly increase with the projected future severity of sea level rise.

Shifts in seasonal patterns of rainfall and temperature—As discussed above in *Key Ring-necked Snake—Current Condition* under ''Climate Change,'' *Shifts in seasonal patterns of rainfall and temperature,* rising greenhouse gases are resulting in increasing temperatures and shifting precipitation patterns. Like the Key ring-necked snake, the rim rock crowned snake is a fossorial ectotherm and, therefore, dependent on gaining heat from its microhabitat or by coming into contact with the undersides of warm surfaces (for example, rocks) that are exposed to direct sunlight. As with the Key ring-necked snake, increased temperatures could result in a permanent shift in average air temperature out of rim rock crowned snake's optimal range, causing physiological stress. Physiological stress can manifest into a variety of risks including predation, reduced performance, and reduced foraging success. Altered precipitation patterns could have detrimental effects on the seasonal feeding, breeding, and sheltering patterns for the rim rock crowned snake. Increased inland flooding is predicted during heavy rain events in low-lying areas. With worsening storms, storm surges along coastlines can become stronger and push farther inland. Consequently, more powerful storm surges will exacerbate the effects of the increased sea level along south Florida and Florida Keys' shorelines and could have impacts on rockland habitat.

Currently, the existing regulatory mechanisms and conservation measures do not address the impacts of shifting seasonal patterns of rainfall and temperature. Although changes in seasonal weather patterns in south Florida have been documented (Service 2017, entire), direct impacts on the rim rock crowned snake or its habitat have not been observed. However, with increased flooding events associated with sea level rise from climate change, the magnitude of this threat could increase into the future, particularly for populations in the Florida Keys and coastal areas of Miami-Dade County, decreasing population resiliency.

Storm events—Changing patterns in hurricane activity are having similar effects to the rim rock crowned snake as to the Key ring-necked snake, as discussed above in *Key Ring-necked Snake—Current Condition* under ''Climate Change,'' *Storm events.* The health of the rim rock crowned snake becomes vulnerable when the quantity and quality of their resources (for example, food, cover/substrate) are compromised. This can particularly happen in the case of storm surges and with an increase in the number of incidences (for example, being impacted repeatedly without time to recover). Saltwater intrusion from storm surge and flooding results in displacement landward to less suitable habitat and the loss of individual rim rock crowned snakes. The limestone substrate, which rim rock crowned snakes likely rely on for cover, prey, and nesting, will become more frequently flooded,

creating a higher frequency and longevity of displacement and stress. Storm events likely disturb and reduce the quantity and quality of the resources for the rim rock crowned snake.

Hurricane Andrew (1992) hit southern Miami-Dade County with sustained winds in excess of 145 miles per hour (233 kilometers per hour), impacting 99 percent of pine rocklands. Within 1 year of the event, many adult trees were dead, outbreaks of *Ips* beetles (including *I. calligraphis, I. avulsus,* and *I. grandicollis*) had been reported, and two species of weevil (*Hylobius pales, Pachylobius picivorus*) had attacked juvenile trees. The outbreak has been attributed to the combination of wind damage and drought following a very dry spring, making the trees more susceptible to infestation. In a fall 1993 follow-up survey of Miami-Dade County pine rocklands, only 2 of 18 sites had living mature pines. The loss of the pines affected fire fuel production and could allow invasive species to further impact pine rocklands (Service 1999, p. 3–176).

Currently, the existing regulatory mechanisms and conservation measures do not influence or address the storm events. The effects of storm events have the potential to reduce individual survival, which could then lead to a reduction in the snake's resiliency and redundancy. While past storms have not resulted in complete inundation of islands, an increase in the intensity and frequency of storms has the potential to produce complete inundation of suitable snake habitat, and therefore possible extirpation of the species.

Summary of Threats

Multiple threats are currently impacting the rim rock crowned snake at the individual and population level and its habitat. The risk of each threat was based on the scoring criteria in tables 1 and 2, above, as applied to each population, and used to assess the overall population condition (see table 4, below).

Although individual populations are less likely to be lost to development, ongoing habitat degradation associated with urbanization and fire suppression in pine rocklands are continuing to reduce the availability of the features that the rim rock crowned snake needs for feeding, breeding, and sheltering, thus decreasing population resiliency. Additionally, all effects associated with climate change are interrelated, with shifts in the magnitude of severe storms contributing to increased flooding events that have the potential to extirpate entire populations of the rim rock crowned snake. Although a severe hurricane is unlikely to flood all populations at once, if a hurricane were to extirpate most populations, it would leave the remainder of the species significantly more vulnerable to other threats. Because of the current barriers to dispersal for populations in Miami-Dade County, recolonization is unlikely after a population is extirpated. Some populations, for example on Big Pine Key, may be able to recolonize extirpated sites because there are fewer barriers to dispersal due to less urbanization.

Even minor threats that impact just a few individuals in a population need to be considered for their additive effects. For example, threats like predation and invasive species may have low impacts on their own, but combined with impacts of other threats, they are further reducing already low numbers of rim rock crowned snakes. These minor threats were considered cumulatively for their effects to the rim rock crowned snake and, while they may reduce the numbers for some individual populations, were currently found not to impose negative effects at the population level.

Additionally, various threats can originate from a similar cause but produce a set of interdependent effects on the species. For example, greenhouse gas emissions increase the rate and severity of climactic changes, which act in combination as threats on the species. These include sea level rise, seasonal shifts in timing and amounts of precipitation, shifts in temperature patterns, and increased storm intensities that affect the species. Sea level rise further reduces available habitat. Because the average high-water line is now higher than historical levels, areas not typically flooded are now flooded on a more regular basis.

The severity of threats may also be exacerbated by the rim rock crowned snake's limited distribution and small population size. The rim rock crowned snake is not known to have occurred beyond the southeastern peninsula of Florida or the Florida Keys. Thus, it has, and probably has always had, low representation and redundancy. Currently, it is thought to exist in seven small and fragmented parcels in eastern Miami-Dade County, six islands in the upper Florida Keys, and two lower Florida Key islands. Rarity is not in itself a threat; however, small population size can exacerbate the effects of ongoing threats, making the species more vulnerable to threats.

Current Condition of Populations

As with the Key ring-necked snake, to characterize the current status of the rim rock crowned snake, we assigned each stressor as low, moderate, or high impacts to the subspecies (table 1, table 2). We summarize the current condition of rim rock crowned snake populations in table 4. Overall, the current condition of populations in the Miami-Dade area is moderate, and the condition of populations in the Florida Keys is low.

Given the species' limited distribution and limited ecological setting, representation is currently low. However, the species has moderate redundancy, as it has multiple populations distributed throughout the Miami-Dade area and the Upper and Lower Florida Keys.

TABLE 4—THE THREAT RISK AND THE EFFECT ON THE CURRENT CONDITION OF RIM ROCK CROWNED SNAKE POPULATIONS

Population	Development	Fire suppression in pine rocklands	Disease	Predation	Invasive species	Sea level rise	Saltwater intrusion	Shifts in seasonal patterns of rainfall and temperature	Storms	Population condition
MIAMI-DADE COUNTY										
Arch Creek	Moderate	High	Low	Low	Low	Moderate	Moderate	Moderate	Moderate	Moderate.
BHSP	Moderate	High	Low	Low	Low	Moderate	Moderate	Moderate	Moderate	Moderate.
Bill Sadowski	Moderate	High	Low	Low	Low	Moderate	Moderate	Moderate	Moderate	Moderate.
DLC	Moderate	High	Low	Low	Low	Moderate	Moderate	Moderate	Moderate	Moderate.
Ned Glenn	Moderate	High	Low	Low	Low	Moderate	Moderate	Moderate	Moderate	Moderate.
Rockdale	Moderate	High	Low	Low	Low	Moderate	Moderate	Moderate	Moderate	Moderate.

TABLE 4—THE THREAT RISK AND THE EFFECT ON THE CURRENT CONDITION OF RIM ROCK CROWNED SNAKE POPULATIONS—Continued

Population	Development	Fire suppression in pine rocklands	Disease	Predation	Invasive species	Sea level rise	Saltwater intrusion	Shifts in seasonal patterns of rainfall and temperature	Storms	Population condition
MIAMI-DADE COUNTY										
Richmond Pine Rocklands.	Moderate	High	Low	Low	Low	Moderate	Moderate	Moderate	Moderate	Moderate.
UPPER FLORIDA KEYS										
North Key Largo	Moderate	High	Low	Low	Low	High	High	High	High	Low.
South Key Largo	Moderate	High	Low	Low	Low	High	High	High	High	Low.
Plantation Key	Moderate	High	Low	Low	Low	High	High	High	High	Low.
Upper Matecombe Key	Moderate	High	Low	Low	Low	High	High	High	High	Low.
Lower Matecombe Key	Moderate	High	Low	Low	Low	High	High	High	High	Low.
Marathon	Moderate	High	Low	Low	Low	High	High	High	High	Low.
LOWER FLORIDA KEYS										
Big Pine Key	Moderate	Moderate	Low	Low	Low	High	High	High	High	Low.
Key West	Moderate	Moderate	Low	Low	Low	High	High	High	High	Low.

Note that the first nine columns rank the condition of threats, while the final column ranks population condition. Thus, multiple columns of high threat risk result in low population condition.

Future Threats and Condition

To examine the potential future condition of the snakes, four plausible future scenarios were developed. The scenarios focused on a range of conditions based on climate change scenarios and projections for land development. The range of what is likely to happen in each scenario is described based on current condition and how resiliency, representation, and redundancy would be expected to change. The levels of certainty or uncertainty are addressed in each scenario. Given that there is uncertainty as to exact future trends of many threats, these future scenarios are meant to explore the range of plausible future scenarios and examine the snakes' response across the range of these conditions.

We define viability as the ability to sustain populations over time. For this to occur, a species must have a sufficient number and distribution of healthy populations to withstand changes in its biological (predators, disease) and physical (habitat loss, climate change) environment, environmental stochasticity (flooding, storm surge), and catastrophic events (hurricanes). In considering the future scenarios for the Key ring-necked snake and the rim rock crowned snake, we analyzed expected changes in development up through 2070 based on the timeframe forecast in the urban planning documents (Zwick and Carr 2006, entire), shifts in seasonal patterns of rainfall and temperature (up through 2100), and climate change (sea level rise and saltwater intrusion) from 2030 to 2100. That said, we focused on changes that are expected in the next 20 to 60 years (*i.e.,* by 2040–2080) because virtually no habitat is forecasted to be present in the lower Florida Keys by 2080. The habitat in Miami-Dade County is forecasted to continue on the same trend up to 2100 as predicted from 2040–2080 (USGS 2019b, d, entire). We do not have any information on future trends of other threats (disease, predation, invasive species, and collection).

We chose four plausible scenarios to examine the potential impacts to Key ring-necked snake and rim rock crowned snake populations from development, fire suppression of pine rocklands habitat, climate impacts (sea level rise and saltwater intrusion), storm events, and shifts in seasonal patterns of rainfall and temperature. We determined the population condition (using criteria described above in table 1) given our future projections of threats.

In order to understand the impacts of sea level rise and associated impacts on the Key ring-necked snake and the rim rock crowned snake, we contracted a study with the USGS to measure the potential future impacts on pine rocklands and rockland hammock habitat in the range of the Key ring-necked snake and the rim rock crowned snake (USGS 2019, entire). The study calculated the impacts of root zone salinization, regional sea level rise, and high tide effects on suitable habitat in Miami-Dade County and the Florida Keys in 10-year intervals between 2030 and 2100. In this proposed rule, we present a summary of those results. Detailed descriptions of the study and its results are available in the SSA reports for the Key ring-necked snake and the rim rock crowned snake (Service 2021a, pp. 25–27; Service 2021b, pp. 43–47).

Key Ring-Necked Snake—Future Threats and Condition

Because we determined that the current condition of the Key ring-necked snake is consistent with an endangered species (see Determination of Species Status, below), we are not presenting the results of the future scenarios in this rule. For more information on the future condition, future threats, and future scenarios for the Key ring-necked snake, please see the SSA report (Service 2021a, pp. 21–33).

Rim Rock Crowned Snake—Future Threats and Condition

Development—Future Impacts

Future development is very likely to continue across the range of the rim rock crowned snake. Suitable habitat that is projected to be lost in all of these scenarios is privately owned and not currently under conservation.

Miami-Dade and Monroe Counties are not anticipated to undergo dramatic land use changes by 2070, because most land in these counties is already allocated to development, agriculture, or conservation (Carr and Zwick 2016, pp. 20–22). Of remaining pine rocklands

and rockland hammock habitat, 76 percent in eastern Miami-Dade County, 79 percent in the upper Florida Keys, and 83 percent in the lower Florida Keys are protected or conserved (FNAI 2019). However, because such limited habitat area remains, any remaining suitable unprotected habitat for the rim rock crowned snake is extremely vulnerable to development if left unprotected, and even the loss of one population (particularly in the Miami-Dade area) could have a significant effect on the species.

Of the suitable habitat for rim rock crowned snake remaining in Miami-Dade County, between 19 and 21 percent is expected to be lost to development by 2070 (Carr and Zwick 2016, pp. 20–22). Although the expected population growth in Monroe County in the Florida Keys is relatively modest, all vacant private lands not protected for conservation purposes are projected to be developed, including lands currently inaccessible for development, such as islands not attached to the Overseas Highway (U.S. 1) (Zwick and Carr 2006, pp. 14–15). This development will have the potential to further reduce the amount of suitable habitat for the rim rock crowned snake.

Fire Suppression—Future Impacts

Fire suppression has had considerable negative impacts on pine rocklands communities. The condition of some extant pine rocklands has declined and become degraded because of inadequate management or because they are isolated and confined by surrounding development that restricts the use of prescribed fire, which is the primary management tool. We do not expect the amount of prescribed burning to increase in the future, so we anticipate that existing habitat will continue to decline in quality and undergo habitat conversion to hammock habitats, particularly in eastern Miami-Dade County.

Climate Change—Future Impacts

In Florida, sea level is projected to rise between 1 ft (0.4 m) at the low end and up to 8.4 ft (3.2 m) at the high end by 2100 (USGS 2019b, p. 1). Due to sea level rise, low-lying islands and coastal areas have increasingly become more vulnerable to high tide flooding, which is rapidly increasing in frequency, depth, and extent (Sweet et al. 2018, p. 3). In South Florida as well as the Keys, storm surge and high tide flooding events primarily affect low-lying coastal areas and exposed habitats such as pine rocklands and rockland hammocks. With continued increase in sea level rise, high tide/king tide flood frequencies are also expected to rapidly increase, with potentially severe damage to remaining rockland habitat in the Florida Keys. Pine rocklands species, particularly the dominant canopy species (slash pine), have little ability to tolerate saltwater (USGS 2019b, p. 2). As mentioned above, pine rocklands habitat has already undergone a significant reduction in the Florida Keys due to sea level rise (Ross et al. 1994, p. 154) and some of these areas are occupied by halophytic (salt-tolerant) vegetation such as mangroves and buttonwood (Alexander 1976, pp. 219–222). As discussed above in Background, a unique characteristic of the Florida Keys is the existence of a freshwater lens below each island that is critically important for humans, flora, fauna, and a variety of habitats.

In eastern Miami-Dade County, a shallow layer of highly permeable limestone forms the unconfined Biscayne aquifer. Because this aquifer is unconfined, the top-most layer makes up the water table and directly interacts with natural and humanmade bodies of water. The Biscayne aquifer merges with the floor of Biscayne Bay and the Atlantic Ocean, making it a coastal aquifer. Being a coastal aquifer, there is a potential for contamination from lowered water tables, primarily from over-pumping due to residential and commercial use, which could allow salt water intrusion and could be exacerbated by sea level rise.

The anticipated impacts of sea level rise and high tides for the rim rock crowned snake for our four future scenarios are shown below in tables 5–9. There is no table for pine rocklands habitat change in the upper Florida Keys, as there is no pine rocklands habitat there.

TABLE 5—PREDICTED PINE ROCKLANDS HABITAT CHANGES WITH AN INTERMEDIATE (I) OR EXTREME (E) RSLR (RELATIVE SEA LEVEL RISE; SWEET ET AL. 2017, PP. VI, VII, 12, 21) AND MODERATE HIGH TIDE EFFECT (2.7 FT (0.82 m)), IN THE YEARS 2040, 2060 AND 2080, IN EASTERN MIAMI-DADE COUNTY

Future scenario	RSLR height (m)	Year	Current pine rocklands (ac) in Miami-Dade	Area (ac) of pine rocklands affected by both RSLR and high tide	Percent of pine rocklands affected by both RSLR and high tide
1	0.31	2040 **I**	2,275.02	4.3	0.19
2	0.54	2060 **I**		13.6	0.60
3	0.83	2080 **I**		51.5	2.26
4	0.60	2040 **E**		20.3	0.89

TABLE 6—PREDICTED ROCKLAND HAMMOCK HABITAT CHANGES WITH AN INTERMEDIATE (I) OR EXTREME (E) RSLR (RELATIVE SEA LEVEL RISE; SWEET ET AL. 2017, PP. VI, VII, 12, 21) AND MODERATE HIGH TIDE EFFECT (2.7 FT (0.82 m)), IN THE YEARS 2040, 2060 AND 2080, IN EASTERN MIAMI-DADE COUNTY

Future scenario	RSLR height (m)	Year	Current rockland hammock (ac) in Miami-Dade	Area (ac) of rockland hammock affected by both RSLR and high tide	Percent of rockland hammock affected by both RSLR and high tide
1	0.31	2040 **I**	609.37	58.0	9.51
2	0.54	2060 **I**		78.9	12.95
3	0.83	2080 **I**		113.4	18.61
4	0.60	2040 **E**		85.7	14.06

TABLE 7—PREDICTED ROCKLAND HAMMOCK HABITAT CHANGES WITH AN INTERMEDIATE (I) OR EXTREME (E) RSLR (RELATIVE SEA LEVEL RISE; SWEET ET AL. 2017, PP. VI, VII, 12, 21) AND MODERATE HIGH TIDE EFFECT (2.7 FT (0.82 M)), IN THE YEARS 2040, 2060 AND 2080, IN THE UPPER FLORIDA KEYS

Future scenario	RSLR height (m)	Year	Current rockland hammock (ac) in upper Keys	Area (ac) of rockland hammock affected by both RSLR and high tide	Percent of rockland hammock affected by both RSLR and high tide
1	0.31	2040 **I**	7,005.60	3,273.8	46.73
2	0.54	2060 **I**		3,930.8	56.11
3	0.83	2080 **I**		4,686.5	66.90
4	0.60	2040 **E**		4,097.7	58.49

TABLE 8—PREDICTED PINE ROCKLANDS HABITAT CHANGES WITH AN INTERMEDIATE (I) OR EXTREME (E) RSLR (RELATIVE SEA LEVEL RISE; SWEET ET AL. 2017, PP. VI, VII, 12, 21) AND MODERATE HIGH TIDE EFFECT (2.7 FT (0.82 M)), IN THE YEARS 2040, 2060 AND 2080, IN THE LOWER FLORIDA KEYS

Future scenario	RSLR height (m)	Year	Current pine rocklands (ac) in lower Keys	Area (ac) of pine rocklands affected by both RSLR and high tide	Percent of pine rocklands affected by both RSLR and high tide
1	0.31	2040 **I**	1,899.35	1,674.4	88.16
2	0.54	2060 **I**		1,834.9	96.61
3	0.83	2080 **I**		1,898.9	99.98
4	0.60	2040 **E**		1,864.9	98.19

TABLE 9—PREDICTED ROCKLAND HAMMOCK HABITAT CHANGES WITH AN INTERMEDIATE (I) OR EXTREME (E) RSLR (RELATIVE SEA LEVEL RISE; SWEET ET AL. 2017, PP. VI, VII, 12, 21) AND MODERATE HIGH TIDE EFFECT (2.7 FT [0.82 M]), IN THE YEARS 2040, 2060 AND 2080, IN THE LOWER FLORIDA KEYS

Future scenario	RSLR height (m)	Year	Current rockland hammock (ac) in lower Keys	Area (ac) of rockland hammock affected by both RSLR and high tide	Percent of rockland hammock affected by both RSLR and high tide
1	0.31	2040 **I**	3,805.60	3,668.3	96.39
2	0.54	2060 **I**		3,749.5	98.53
3	0.83	2080 **I**		3,778.4	99.29
4	0.60	2040 **E**		3,758.2	98.75

Extreme weather events are another impact of climate change likely to impact pine rocklands and rockland hammock habitat. Plant species common to both habitats have little ability to tolerate salt stress due to saltwater intrusion or inundation owing to high tide events and sea level rise. Although the effects during severe storm events may be temporary, high mortality of pine rocklands and rockland hammock plant species may occur. Thus, climate change-induced storm events may reduce the resiliency of both pine rocklands and rockland hammock habitats.

Annual average temperature over the contiguous United States is projected to rise. Increases of approximately 2.5 °F (1.4 °C) are projected for the period 2021–2050 relative to 1976–2005 in all representative concentration pathway (RCP) greenhouse gas emission scenarios, implying recent record-setting years may be common in the next few decades. Much larger increases in temperature are projected by late century (2071–2100): 2.8–7.3 °F (1.6–4.1 °C) in RCP 4.5 and 5.8–11.9 °F (3.2–6.6 °C) in RCP 8.5 (USGCRP 2018, p. 159). In addition, extreme heat events in Florida are projected to increase relative to 1986–2005 (Service 2017, p. 2). Due to the already released, human-induced emissions of greenhouse gases present in the environment, another 0.5 °F (0.3 °C) increase in surface air temperature would be expected, even if there was a sudden end to all human-induced greenhouse gas emissions (Carter *et al.* 2014, pp. 414–415). For the State of Florida, this would equate to an increase of more than 30 to 40 days of extreme heat events for Florida's coastal areas (Service 2017, p. 2). An increase in temperature also causes an increase in evapotranspiration in plants, which will change vegetation growth and survival, leading to changes in plant communities, which could indirectly affect rim rock crowned snakes.

Extreme rainfall events have increased in frequency and intensity in the southeastern United States, and there is high confidence they will continue to increase in the future. Both the frequency and severity of extreme precipitation events are projected to continue increasing in the southeast region (Easterling *et al.* 2017, p. 223). Future projections of average precipitation are uncertain, but an increase in intense rainfall is projected. Although average summer precipitation may not change, higher temperatures will increase the rate of soil moisture loss, and, thereby, droughts will likely be more intense (USGCRP 2018, pp. 1004, 1134). Dry consecutive days are expected to increase up to 30 percent in south Florida by 2100 (Service 2017, p. 7). Extreme conditions can be

detrimental for the rim rock crowned snake. Decreased water availability, exacerbated by population growth and land-use change, will continue to increase competition for water (USGCRP 2018, p. 1112). Increasing drought intensity will likely trigger more frequent wildfire events, which may be beneficial to rim rock crowned snake by increasing habitat quality. Additionally, greater rainfall rates during hurricanes are expected with about a 20 percent increase near the center of storms, increasing risks of severe and damaging flooding (Service 2017, pp. 4–5). Periods of extreme drought and/or heavy rainfall can cause losses and alteration in plant and animal communities, which could affect the rim rock crowned snake directly or indirectly. For example, with an increase in flooding frequency, rim rock crowned snakes may be more frequently displaced from underground refugia, leading to higher mortality risk. Alternatively, more periods of extreme drought may reduce the abundance of prey, decreasing the ability of rim rock crowned snakes to feed. Climate change-induced shifts in seasonal patterns of rainfall and temperature may reduce the rim rock crowned snake's overall resiliency, especially when extreme events occur within areas of multiple populations.

Future Scenarios

In all four future scenarios, habitat supporting the rim rock crowned snake is expected to undergo significant losses due to regional sea level rise, particularly in the lower Florida Keys. Populations in Miami-Dade County would be the least impacted by regional sea level rise and saltwater intrusion. Under the highest climate impacts, by 2080, 18.6 percent of rockland hammock habitat and only 2.3 percent of pine rocklands habitat in Miami-Dade County would be affected by regional sea level rise (see tables 5 and 6, above; see also Service 2021b, table 13). Therefore, no additional mortality in that part of the range from regional sea level rise and high tide would be expected due to little habitat loss or alteration. However, as discussed earlier, land development pressure on remaining undeveloped lands in pine rocklands is expected to be high, as is fire suppression. Of the 2,898 ac (1,173 ha) of suitable habitat in Miami-Dade County, 82.6 percent is protected; however, these areas will still be affected by ongoing habitat degradation. The remaining unprotected habitat (17.4 percent) will likely be lost or degraded due to high development pressure, which could result in total loss, encroachment, or fire suppression of the habitat. The result of these impacts is a decrease in resiliency for all populations in Miami-Dade County under all future scenarios (Table 10).

Storm events and associated storm surges will be a greater source of mortality and habitat alteration throughout the Florida Keys in all future scenarios, therefore reducing population resiliency. Projected sea level rise will increase the inland penetration and residence time of saltwater during storm surge events, and impact the freshwater lens, both of which will accelerate habitat modification and loss. Additionally, sea level rise in the Florida Keys will increase saltwater intrusion and inundation, and root zone salinity over the coming decades. This will result in the loss of habitat, changes in freshwater-dependent habitat, and loss of individual snakes. In the upper Florida Keys, between 46.7 and 58.5 percent of rockland hammock habitat could be lost to sea level rise, with the severity and timing varying with each climate scenario (see table 7, above). The most severe impacts are expected in the lower Florida Keys, with habitat losses due to relative sea level rise and high tides of 88.2 and 96.4 percent of pine rocklands and rockland hammock habitats, respectively (see tables 8 and 9, above). Overall, we expect a trend toward a reduction of populations in the upper Florida Keys and probable extirpation of populations in the lower Florida Keys (table 10).

The ability of this species to adapt to changing environmental conditions is extremely limited. The rim rock crowned snake will not survive living in the anticipated more saline or more wet habitat, both of which will alter the vegetation community. This reduction in suitable habitat will lead to fewer populations and individuals occurring in the Keys. Therefore, a reduction in species representation in the lower and upper Florida Keys populations is expected. However, a reduction in species representation is not expected in the Miami-Dade County populations under any future scenario, despite a decline in resiliency of these populations.

Redundancy is currently low for the rim rock crowned snake, and with the continued loss or degradation to its habitat in the lower and upper Florida Keys as outlined above, we expect loss of populations, thereby further reducing the species' ability to withstand catastrophic events such as hurricanes. Although the rim rock crowned snake populations in Miami-Dade County are largely unaffected in all future scenarios in that they are projected to remain extant, the loss of populations in the lower (extirpation by 2040) and upper Florida Keys leaves the rim rock crowned snake more vulnerable to extinction.

TABLE 10—PREDICTED POPULATION CONDITION OF THE RRCS UNDER FOUR SCENARIOS

Area	Current	2040I	2060I	2080I	2040E
Lower Florida Keys	Low	Possibly extirpated	Presumed extirpated	Presumed extirpated	Presumed extirpated
Upper Florida Keys	Low	Low	Low	Low	Low
Miami-Dade County	Moderate	Low	Low	Low	Low

Determination

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of endangered species or threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

For both the Key ring-necked snake and the rim rock crowned snake, we

presented summary evaluations of six threats analyzed in the SSAs: Development (Factor A), fire suppression (Factor A), sea level rise (Factor A), saltwater intrusion (Factor A), shifts in seasonal patterns of rainfall and temperature (Factor A), and storm events (Factor A). We also evaluated existing regulatory mechanisms (Factor D) and ongoing conservation measures. In the SSA, we also considered four additional potential threats: overutilization due to recreational, educational, and scientific use (Factor B); disease (Factor C); predation (Factor C), and invasive species (Factor E). We concluded that, as indicated by the best available scientific and commercial information, these four potential threats are currently having little to no impact on either the Key ring-necked snake or the rim rock crowned snake and their habitats, and thus their overall effects now and into the future are expected to be minimal. However, we consider them in the determination for each species, because although these minor threats may have low impacts on their own, combined with impacts of other threats, they could further reduce the already low number of Key ring-necked snakes or rim rock crowned snakes.

In considering the foreseeable future for the Key ring-necked snake and the rim rock crowned snake, we analyzed expected changes in development through 2070 based on the available model datasets, shifts in seasonal patterns of rainfall and temperature through 2100, and climate change (sea level rise and saltwater intrusion) from 2030 to 2100. That said, we focused on changes that are expected in the next 60 years because virtually no habitat for either species is forecasted to be present in the lower Florida Keys by 2080. We determined that this timeframe represents a period of time for which we can reliably predict both the threats to the species and the species' response to those threats.

Key Ring-Necked Snake: Status Throughout All of Its Range

The Key ring-necked snake is a narrow endemic that inhabits a limited range, with individuals recorded on seven islands. Historically, urban development and historical conversion of suitable habitat for agriculture greatly reduced the extent of suitable habitat for the Key ring-necked snake. Currently, degradation associated with urbanization and fire suppression of pine rocklands is decreasing the quality of remaining habitat, and thereby decreasing population resiliency. Much of the pine rockland habitat where the Key ring-necked snake is found is protected; however, the remaining parcels are at very high risk of development. Since the Key ring-necked snake's range is so limited, any development of habitat that supports the subspecies would have a high level of impact on the subspecies, decreasing both population resiliency and the already limited redundancy.

Furthermore, effects associated with climate change and sea level rise (that is, higher tidal surges, coastal and inland flooding, saltwater intrusion) are already being observed in the Florida Keys. Before the effects of inundation due to sea level rise are fully realized, vegetation succession to a halophytic dominated habitat occurs as pine rockland plant species, particularly the dominant canopy species (slash pine), have little ability to tolerate saltwater. Thus, saltwater intrusion has resulted in degradation and loss of suitable pine rocklands habitat as well as the freshwater sources on which the Key ring-necked snake relies. Currently, habitat succession due to saltwater intrusion has resulted in conversion of suitable habitat for the Key ring-necked snake from rockland or hammock habitat into habitat that is unsuitable for the species such as salt-tolerant mangroves. Sea level rise is exacerbated by effects from increased rainfall and higher than average storm surges from hurricanes and other tropical storms. Because of their low mean elevation of less than 4 ft (1.2 m), the lowest parts of the Florida Keys are highly susceptible to flooding, with parts of the islands farther upland at risk of inundation and saltwater intrusion from these storm events. As a result of these ongoing impacts and others identified above, the seven known populations of the Key ring-necked snake are currently in low condition, and the overall viability of the species is likely reduced from historical levels.

The primary threat currently facing the Key ring-necked snake is climate change and sea level rise. All effects associated with climate change are interrelated, with increases in the magnitude of severe storms contributing to increased flooding events that have the potential to extirpate populations of the Key ring-necked snake. Although a severe hurricane is unlikely to flood all populations at once, if a hurricane were to extirpate most populations, it would leave the remainder of the subspecies significantly more vulnerable to other threats. In addition to effects associated with current rates of sea level rise, storms are also becoming more frequent and intense, accelerating habitat modification and further reducing population resiliency.

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we find that the Key ring-necked snake is currently experiencing significant impacts due to development, fire suppression, climate change, and sea level rise throughout its very limited range. Because the Key ring-necked snake is endemic to only the lower Florida Key islands, and all populations for the species are in low condition due to impacts of threats (such as ongoing habitat degradation, fire suppression, and impacts from saltwater intrusion), we find the species is at a high risk of extinction. Thus, after assessing the best available information, we conclude that the Key ring-necked snake is in danger of extinction throughout all of its range.

Key Ring-Necked Snake: Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We have determined that the Key ring-necked snake is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because the Key ring-necked snake warrants listing as endangered throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020) (*Everson*), which vacated the provision of the SPR Policy providing that if the Services determine that a species is threatened throughout all of its range, the Services will not analyze whether the species is endangered in a significant portion of its range.

Key Ring-Necked Snake: Determination of Status

Our review of the best available scientific and commercial information indicates that the Key ring-necked snake meets the definition of an endangered species. Therefore, we propose to list the Key ring-necked snake as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Rim Rock Crowned Snake: Status Throughout All of Its Range

The rim rock crowned snake is endemic to only the southeastern part of the Florida peninsula and the Florida Keys. Currently, the resiliency of the seven populations in the Miami-Dade area is moderate, and the resiliency of

the eight populations in the Florida Keys is low. However, the rim rock crowned snake is facing a variety of threats across its range. The effects of urbanization and degradation are impacting the rim rock crowned snake across its range, but the effects are particularly severe in eastern Miami-Dade County. Although 75 percent of remaining suitable habitat for the rim rock crowned snake in that part of the range is protected, the habitat is spread across Miami-Dade County in small, isolated fragments. These fragments are undergoing degradation due to edge effects, and pine rocklands habitat is being further degraded due to fire suppression, which causes it to undergo transition to dense canopy that is less suitable for the rim rock crowned snake. Thus, although individual populations are currently less likely to be lost to new development, ongoing habitat degradation associated with urbanization and fire suppression in pine rocklands will continue to reduce the availability of features that the rim rock crowned snake needs, thus decreasing population resiliency. Although several populations in this part of the species' range are extant, we expect the effects of habitat degradation will increase in magnitude into the future, particularly in pine rocklands habitat where prescribed burning does not occur, further reducing resiliency.

Rangewide, the rim rock crowned snake is also facing threats due to the ongoing occurrence of more severe storms and the increased incidence and intensity of storm surge that accompanies these storms. Increased rainfall, along with the threats of sea level rise and higher than average storm surges, is already reducing the amount of available habitat due to inundation, particularly within the Florida Keys. Because of their low mean elevation of less than 4 ft (1.2 m), the lowest parts of the Florida Keys are highly susceptible to flooding, with parts of the islands farther upland at risk of inundation and saltwater intrusion from these storm events. Saltwater intrusion has resulted in degradation and loss of suitable pine rocklands and rockland hammock habitats—through vegetation shifting to halophytic species—in the Florida Keys as well as the freshwater sources on which the rim rock crowned snake relies. All of this, in turn, negatively affects snake movement, reproduction, and food availability. Succession to more halophytic vegetation has likely altered the density and type of prey available to the rim rock crowned snake in these areas, decreasing population resiliency. In addition, the underground spaces, such as the limestone substrate that the rim rock crowned snake inhabits, are vulnerable to sea level rise, and increased frequency in flooding of underground areas increases the amount of time that species are displaced from refugia. This displacement makes them more vulnerable to predation, and combined with losses of foraging and breeding opportunities (reproduction), this further decreases population resiliency. Although a severe hurricane would be unlikely to flood all populations across the species' range at once, if a hurricane were to extirpate multiple populations, it would leave the remainder of the species significantly more vulnerable to other threats, including threats that currently only have a minor impact on the species.

Given the species' limited distribution and limited ecological setting, species representation is currently low. However, the species has moderate redundancy, as it has multiple populations distributed throughout the Miami-Dade area (7 populations in moderate condition) and the Upper and Lower Florida Keys (8 populations in low condition). Thus, although these threats may cause the species to become endangered in the foreseeable future, we do not find that threats at their current magnitude are reducing resiliency and redundancy such that the species is in danger of extinction now across the species' range.

In the foreseeable future, we anticipate that threats associated with climate change, including the effects of storm events (for example, storm surges, high tide), saltwater intrusion, and sea level rise, will continue to increase in magnitude and have the greatest influence on population resiliency, particularly in the Florida Keys. Tropical storms will continue to become more frequent and intense, accelerating habitat modification and reducing population resiliency. Additionally, the Florida Keys will continue to face increased saltwater intrusion and sea level rise, which will continue to cause habitat alteration and loss. Acting together, these threats will cause irreversible habitat modification and loss that will be further exacerbated by ongoing and increasing levels of inundation. Populations of the rim rock crowned snake in the lower and upper Florida Keys may begin experiencing significant losses in the next 10–20 years. By 2040, the upper Keys populations will experience loss of nearly half of its current habitat and the lower Keys populations may potentially be extirpated.

In Miami-Dade County, the effects of storm events (for example, storm surges, high tide), saltwater intrusion, and sea level rise would not exert much influence on population resiliency in the foreseeable future. However, given that there is a relatively low amount of suitable habitat to begin with (2,898 ac (1,172.8 ha)) when compared to the Florida Keys (12,711 ac (5,144 ha)), additional threats may exert pressure, which in combination, could stress the resiliency of the Miami-Dade populations, and further reduce species redundancy as a whole in the future. Dispersal of individual snakes to other populations is unlikely and would only occur in isolated, random circumstances.

The urban environment of metropolitan Miami presents many challenges for dispersing snakes, including roads, highways, commercial and residential development, canals, and vast storm water retention areas. Encroachment and degradation are likely to increase in magnitude in the foreseeable future for most remaining habitat, and risk of development of the 25 percent of unprotected suitable habitat in Miami-Dade County is high. As the urban interface of metropolitan Miami increases in density, the likelihood of prescribed burning decreases, which in turn decreases remaining habitat quality. If the habitat in Miami-Dade County is the only remaining habitat within the rim rock crowned snake's range due to the effects of climate change discussed above in the Florida Keys, extinction may occur much more quickly due to the small amount of suitable habitat left on the mainland, which will likely degrade in quality, with populations becoming increasingly isolated from one another.

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we find that the rim rock crowned snake is facing threats across its range due to development, fragmentation, and effects associated with climate change. However, the species currently maintains enough population resiliency and species redundancy that it is not in danger of extinction now. Within the foreseeable future, unprotected habitat in eastern Miami-Dade County will continue to be lost due to development, and protected habitat will continue to undergo degradation due to edge effects and fire suppression. In the Florida Keys, up to half of available habitat in the upper Keys and nearly all habitat in the lower Keys could be lost by 2040. Thus, after assessing the best available information, we conclude that the rim rock crowned

snake is not currently in danger of extinction but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Rim Rock Crowned Snake: Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Everson* vacated the aspect of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (Final Policy) (79 FR 37578; July 1, 2014) that provided that the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Everson,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (that is, endangered). In undertaking this analysis for the rim rock crowned snake, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered.

For the rim rock crowned snake, we considered whether there are any portions of the species' current range that may have a different status. We identified the Florida Keys portion of the species' range because all eight populations are currently in low condition. Within the Florida Keys, the effects associated with climate change and sea level rise (that is, higher tidal surges, coastal and inland flooding, saltwater intrusion) are already being observed. Before the effects of inundation due to sea level rise are fully realized, vegetation succession to a halophytic dominated habitat occurs as pine rockland species, particularly the dominant canopy species (slash pine), have little ability to tolerate saltwater. Thus, saltwater intrusion has resulted in degradation and loss of suitable pine rocklands habitat as well as the freshwater sources on which the rim rock crowned snake relies. Currently, habitat succession due to saltwater intrusion has resulted in conversion of suitable habitat for the rim rock crowned snake from rockland or hammock habitat into habitat that is unsuitable for the species, such as salt-tolerant mangroves. Succession to more halophytic vegetation has likely altered the density and type of prey available to the rim rock crowned snake in these areas, decreasing population resiliency.

Sea level rise is exacerbated by effects from increased rainfall and higher than average storm surges from hurricanes and other tropical storms. Underground spaces, such as the limestone substrate that the rim rock crowned snake inhabits, are vulnerable to sea level rise. Increased frequency in flooding of subterranean areas increases the amount of time that species are displaced from refugia, making them more vulnerable to predation and extreme temperatures. This, combined with losses of foraging and breeding opportunities, further decreases population resiliency.

As mentioned above, within the Florida Keys portion, the eight populations currently have low resiliency. Given the species' current condition within the Keys and ongoing impacts from climate change and sea level rise which are already being realized, we find that the Florida Keys portion of the rim rock crowned snake is in danger of extinction.

We then proceeded to the significance question, asking whether this portion of the range (*i.e.,* the Florida Keys portion of the rim rock crowned snake) is significant. The Service's most recent definition of ''significant'' within agency policy guidance has been invalidated by court order (see *Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018)). In undertaking this analysis for the rim rock crowned snake, we considered whether the Florida Keys portion of the species' range may be significant based on its biological importance to the overall viability of the rim rocked crown snake. Therefore, for the purposes of this analysis, when considering whether this portion is significant, we considered whether the portion may (1) occur in a unique habitat or ecoregion for the species, (2) contain high quality or high value habitat relative to the remaining portions of the range, for the species' continued viability in light of the existing threats, (3) contain habitat that is essential to a specific life-history function for the species and that is not found in the other portions (for example, the principal breeding ground for the species) or (4) contain a large geographic portion of the suitable habitat relative to the remaining portions of the range for the species.

The Florida Keys portion of the range contains the largest patches of intact pine rockland and rockland hammock habitats within the rim rock crowned snake's range. Currently, the Florida Keys accounts for roughly 82 percent (12,711 of 15,595 ac (5,144 of 6,311 ha)) of suitable pine rockland and rockland hammock habitat and 53 percent (8 of 15) of extant populations within the range of the rim rock crowned snake. In the lower Florida Keys, the total area of pine rocklands habitat is approximately 1,899 ac (769 ha), and the total area of rockland hammock habitat is approximately 3,806 ac (1,540 ha). While the hammock habitats are widespread across many islands in various sizes, pine rocklands remain on only five islands in the lower Florida Keys and none of the upper Florida Keys. The total area covered by rockland hammock in the upper Florida Keys is 7,006 ac (2,835 ha). The Florida Keys portion constitutes a large geographic area relative to the remaining portions of the range, as this area encompasses 82 percent of the rangewide suitable habitat for the rim rock crowned snake. Therefore, having assessed the Florida Keys portion's biological significance in terms of the above habitat considerations, we find the information substantially indicates this portion is significant to the rim rock crowned snake.

Accordingly, having determined that the Florida Keys portion of the species' range (1) is significant, and (2) is currently in danger of extinction, we find the rim rock crowned snake meets the definition of an endangered species. This is consistent with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* 321 F. Supp. 3d 1011 (N.D. Cal. 2018), and Center for Biological Diversity v. Jewell, 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017)

Rim Rock Crowned Snake: Determination of Status

Our review of the best available scientific and commercial information indicates that the rim rock crowned snake meets the Act's definition of an

endangered species. Therefore, we propose to list the rim rock crowned snake as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies, including the Service, and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

The recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions while a recovery plan is being developed. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) may be established to develop and implement recovery plans. The recovery planning process involves the identification of actions that are necessary to halt and reverse the species' decline by addressing the threats to its survival and recovery. The recovery plan identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery outline, draft recovery plan, final recovery plan, and any revisions will be available on our website as they are completed (*https://www.fws.gov/endangered*), or from our Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (for example, restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If these species are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. Additionally, pursuant to section 6 of the Act, the State of Florida would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Key ring-necked snake and the rim rock crowned snake. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance.*

Although the Key ring-necked snake and the rim rock crowned snake are only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for these species. Additionally, we invite you to submit any new information on these species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

For the Key ring-necked snake, Federal agency actions within the species' habitat that may require conference, consultation, or both, with the Service as described in the preceding paragraph could include management and any other landscape-altering activities on Federal lands administered by the administered by the Service (National Key Deer Refuge); issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; construction and management of pipeline and power line rights-of-way by the Federal Energy Regulatory Commission; construction and maintenance of roads, bridges, or highways by the Federal Highway Administration.

For the rim rock crowned snake, Federal agency actions within the species' habitat that may require conferencing with the Service as described in the preceding paragraph could include management and any other landscape-altering activities on Federal lands administered by the administered by the Service (National Key Deer Refuge, Crocodile Lake National Wildlife Refuge); issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; construction and management of pipeline and power line rights-of-way by the Federal Energy Regulatory Commission; construction and maintenance of roads, bridges, or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot,

wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any species listed as an endangered species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. Based on the best available information, the following actions are unlikely to result in a violation of section 9 for the Key ring-necked snake or the rim rock crowned snake, if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive:

(1) Recreational use with minimal ground disturbance (for example, hiking, walking); and

(2) Herbicide and pesticide use that is carried out in accordance with any existing regulations, permit and label requirements, and best management practices.

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act for the Key ring-necked snake or rim rock crowned snake if they are not authorized in accordance with applicable law; this list is not comprehensive:

(1) Unauthorized handling or collecting of the species;

(2) Sale or purchase of specimens, except for properly documented antique specimens of this taxon at least 100 years old, as defined by section 10(h)(1) of the Act.

(3) Activities resulting in ground disturbance in occupied Key ring-necked snake or rim rock crowned snake habitat (for example, plowing, mowing, burning, land leveling or clearing, grading, disking, soil compaction, soil removal, dredging, excavation, deposition of dredged or fill material, erosion and deposition of sediment/soil);

(4) Introduction of nonnative species that compete with or prey upon the Key ring-necked snake or rim rock crowned snakes.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

II. Critical Habitat for the Key Ring-Necked Snake and the Rim Rock Crowned Snake

Background

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

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features:

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (that is, range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can

designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. As discussed above, the court in *CBD* v. *Haaland* vacated the 2019 regulations which modified the criteria for designating critical habitat, including designating critical habitat in areas outside the geographical area occupied by the species. Therefore, the regulations that now govern designations of critical habitat, are those regulations that published on February 11, 2016 (81 FR 7438).

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of these species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that a designation of critical habitat is not prudent when any of the following situations exist:

(i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or

(ii) Such designation of critical habitat would not be beneficial to the species. In determining whether a designation would not be beneficial, the factors the Services may consider include but are not limited to: Whether the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or whether any areas meet the definition of ''critical habitat.''

As discussed earlier in this document, there is currently no imminent threat of collection or vandalism identified under Factor B for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. In our SSAs and proposed listing determinations for the Key ring-necked snake and the rim rock crowned snake, we determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to both species. Accordingly, critical habitat is likely to be beneficial for the species. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) have been met and because the Secretary has not determined that designation of critical habitat would not be prudent based on the best scientific data available, we have determined that the designation of critical habitat is prudent for both the Key ring-necked snake and the rim rock crowned snake.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the Key ring-necked snake and the rim rock crowned snake is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of ''critical habitat.''

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located. This and other information representing the best scientific data available led us to conclude that the designation of critical habitat is determinable for the Key ring-necked snake and the rim rock crowned snake.

Physical or Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features'' as the features that support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex

combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or absence of a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Space for Individual and Population Growth and for Normal Behavior

The Key ring-necked snake and the rim rock crowned snake are endemic to, and occur exclusively within, pine rocklands and rockland hammock habitat; the Key ring-necked snake occurs only in the lower Florida Keys, and the rim rock crowned snake occurs in Miami-Dade County and throughout the Florida Keys. Pine rocklands are a fire-adapted/maintained ecosystem characterized by an open canopy (sparsely spaced pine trees) and understory (grasses and forbs/herbs) and a limestone substrate (often exposed) with sparse soils on top. This combination of ecosystem characteristics (open canopy and limestone substrate) occurs only in the pine rocklands habitat of south Florida.

Pine rocklands habitat that supports the rim rock crowned snake is characterized by an open canopy of south Florida slash pine. Subcanopy development is rare in well-maintained pine rocklands with only occasional hardwoods such as wild tamarind (*Lysiloma bahamensis*) and live oak (*Quercus virginiana*). The shrub/understory layer is also characteristically open, although the height and density of the shrub layer varies based on fire frequency, with understory plants growing taller and denser as the time between fires increases.

While the amount of pine rocklands and/or rockland hammock habitat necessary to support Key ring-necked snake and rim rock crowned snake individual and population growth and normal behavior is unknown, preservation of these features is essential for the species.

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

The Key ring-necked snake diet is assumed to be similar to other *Diadophis* species (for example, the southern ring-necked snake), which prey upon small insects, snakes, lizards, slugs, amphibians, and earthworms (Ernst and Ernst 2003, p. 96; FWC 2013, p. 2). The rim rock crowned snake diet is assumed to be similar to other *Tantilla* species (for example, the southeastern crowned snake), which prey upon centipedes, insects, and other small invertebrates such as tenebrionid beetle larvae, earthworms, snails, centipedes, spiders, cutworms, wireworms, and termites and their larvae (Ernst and Ernst 2003, pp. 353–355). The prey-related requirements (abundance, diversity, range, etc.) for a population of either species to maintain viability is unknown.

Water is essential for survival of the Key ring-necked snake and rim rock crowned snake. We have no specific information on the amount of water they require; however, the Key ring-necked snake and species of crowned snake similar to the rim rock crowned snake appear to be restricted to areas near permanent freshwater sources that often occur as small holes in the limestone (Lazell 1989, pp. 134, 136). Small amounts of water can be found in depressions and holes in the limestone substrate of pine rocklands and rockland hammock habitat, which fill from rain or overnight dew fall. The extensive network of holes, tunnels, and cavities in the limestone substrate most likely assists in creating more permanent water sources. During time of drought, these sources may become scarce and the Key ring-necked snake and the rim rock crowned snake may need to seek out other fresh water sources. Consequently, it is important for the Key ring-necked snake and the rim rock crowned snake to have multiple freshwater sources in case one becomes depleted, contaminated, or unavailable. If all local water sources within a snake's home range become dry, the snake may need to expend more energy and time in search of new water sources (Zug et al. 2001, p. 208).

Cover or Shelter

Key ring-necked snakes and rim rock crowned snakes require refugia to escape and hide from predators and regulate body temperature. Currently, there is no specific information on the exact requirement for suitable refugia. The Key ring-necked snake and the rim rock crowned snake are mostly fossorial species that likely inhabit holes and crevices in the limestone, piles of rock rubble, and pockets of organic matter accumulating in solution holes and shallow depressions in the oolitic limestone (Enge et al. 2003, pp. 27–28). Snakes are ectothermic organisms which require an external heat source to warm their bodies in order to increase body function and productivity. Snakes can also become too hot, leading to desiccation. Therefore, a warm, moist microhabitat, typically subterranean or shielded from the sun, is likely preferred refugia to escape from predators and to properly maintain suitable internal temperature and moisture levels.

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

Life-history characteristics of the Key ring-necked snake are thought to be similar to the southern ring-necked snake. In general, mating of ring-necked snakes can occur in the spring or fall, delayed fertilization is possible, and females lay 1 to 10 eggs (1 clutch per year) in covered, moist locations in June or early July (Ernst and Ernst 2003, p. 95). Juveniles are thought to hatch in August and September. For the rim rock crowned snake, life-history characteristics are thought to be similar to the southeastern crowned snake. In general, females may lay up to three eggs in a clutch and may be able to produce two clutches annually (Ernst and Ernst 2003, pp. 353–355).

Based on their small size and limited range, eggs, juveniles, and adults likely are found in the same habitat.

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

Pine rocklands habitat is currently listed as critically imperiled globally (FNAI 2010, p. 3). Urban development and agriculture has greatly reduced the extent of pine rocklands in eastern Miami-Dade County and the Florida Keys. Within this range, the quality of remaining pine rocklands has declined because they are isolated and confined by surrounding urban development, which restricts the use of prescribed fire that is the principal management tool. Prescribed fire must be periodically introduced to sustain a proper community structure. In general, pine rocklands depend on a fire regime composed of a surface fire of low or mixed intensity, and a 5–7 year fire return interval.

In the absence of fire, pine rocklands are invaded by many of the species found in hardwood hammocks, they lose their herbaceous flora, and they move along a successional trajectory toward hammock (Service 1999, p. 3–173). These rockland hammocks are generally present where pine rocklands were not burned for a long period of time, creating more pine rocklands fragmentation. Rockland hammock consists of a more closed canopy containing more hardwood shrubs and trees due to a rare or infrequent fire regime. Rockland hammock is a hardwood forest that represents an advanced successional stage of pine rocklands that results from the absence of fire.

This fragmentation of pine rocklands and rockland hammock in eastern Miami-Dade County and the Florida Keys increases the risk of invasion by exotic vegetation along the interface with disturbed or developed areas, further altering, degrading, or destroying suitable habitat for the Key ring-necked snake and rim rock crowned snake.

Because the Key ring-necked snake and the rim rock crowned snake have been documented in both habitat types, it is not clear if one or the other is more suitable for either species. Populations of the Key ring-necked snake and the rim rock crowned snake are supported by the existence of suitable available habitat across their ranges. Therefore, a strong correlation to habitat availability and populations of these snakes can be assumed, but not at a level of certainty in which the presence of rockland hammock or pine rockland habitat can be used as a surrogate for presence. We do not know how much suitable habitat and habitat connectivity is required for populations of either the Key ring-necked snake or the rim rock crowned snake to maintain viability. That said, the most influential need at a population level for both species is available suitable habitat. There may be distinct, non-interbreeding populations at each island or isolated parcel, or there may be some rare dispersal between some parcels or from rafting between some islands providing at least a low level of connectivity between individual populations. Because the Key ring-necked snake appears to be isolated to the lower Florida Keys and the rim rock crowned snake appears restricted to the Florida Keys and eastern Miami-Dade County, the relatively small, patchily distributed islands or parcels can each support only a small number of individuals or separate populations. The distribution and quantity of available suitable habitat across the range necessary to support populations of either the Key ring-necked snake or the rim rock crowned snake are unknown.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of the Key ring-necked snake and the rim rock crowned snake from studies of the species' habitat, ecology, and life history as described above. Additional information can be found in the SSA reports (Service 2021a, entire; Service 2021b, entire), both of which are available on *https://www.regulations.gov* under Docket No. FWS–R4–ES–2022–0022. We have determined that the following physical or biological features are essential to the conservation of the Key ring-necked snake and the rim rock crowned snake:

(1) Pine rocklands habitat that contains:

(a) Refugia consisting of a limestone rock substrate with holes, crevices, and shallow depressions; piles of rock rubble; and pockets of organic matter accumulating in solution holes;

(b) Suitable prey;

(c) Warm, moist microhabitats to maintain homeostasis; and

(d) A natural or prescribed fire regime at 5- to 7-year intervals that maintains the pine rocklands habitat and associated plant community.

(2) Rockland hammock habitat that contains:

(a) Refugia consisting of a limestone rock substrate with holes, crevices, and shallow depressions; piles of rock rubble; and pockets of organic matter accumulating in solution holes;

(b) Suitable prey;

(c) Warm, moist microhabitats to maintain homeostasis; and

(d) Little or no fire maintenance.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of the Key ring-necked snake and the rim rock crowned snake may require special management considerations or protection to reduce threats posed by: Land use conversion, primarily due to urban, agricultural, and recreational use; encroachment of invasive species; activities that cause surface or subsurface disturbance; fire suppression and low fire frequencies (pine rocklands); destructive fires in rockland hammock; random effects of drought or floods; and fragmentation from new roads or development. Management activities that could ameliorate these threats include (but are not limited to): Maintaining suitable pine rocklands and rockland hammock habitats in areas with existing populations through prescribed fire, mechanical treatments (that is, brush clearing, herbicide treatment), and invasive species control; restoring historical habitat and establishing new populations in the lower, middle, and upper Florida Keys or Miami-Dade County (rim rock crowned snake only); controlling exotic and invasive plant management plan; prohibiting management activities that could cause surface or subsurface disturbance unless carried out in accordance with a habitat management plan developed by a Federal, State, or County entity that identifies those areas where pine rocklands habitat is succeeding to hardwood-dominant habitat based on fire suppression, or to halophilic vegetation due to sea level rise; establishing and enhancing connectivity between currently occupied populations and adjacent suitable habitat; facilitating habitat restoration through the use of prescribed fire every 5 to 7 years for pine rocklands habitat; and implementing habitat management plans based on site-specific conditions for rockland hammock habitat.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR

424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat.

For the Key ring-necked snake, we are not currently proposing to designate any areas outside the geographical area occupied by the species because we have not identified any unoccupied areas that are essential for the conservation of the species.

For the rim rock crowned snake, we are proposing to designate critical habitat in areas outside the geographical area occupied by the species at the time of listing because we have determined that those areas are essential for the conservation of the species. We have determined that the unoccupied areas contain one or more of the physical or biological features essential to the species and are essential because by the year 2040, all suitable habitat for rim rock crowned snake in the lower Florida Keys and up to half of suitable habitat in the upper Florida Keys will be affected by sea level rise and saltwater intrusion. Therefore, we identified suitable habitat in Miami-Dade County that is essential to provide for species redundancy into the foreseeable future.

Sources of data for these two species and their habitat requirements include multiple databases maintained by museums, universities, and State agencies in Florida; papers by researchers involved in wildlife biology and conservation activities; peer-reviewed articles on these species and/or their relatives; State agency reports; and numerous survey reports for projects throughout the species' ranges.

For areas within the geographic area occupied by the Key ring-necked snake and the rim rock crowned snake at the time of listing, we delineated critical habitat unit boundaries using the following criteria:

(1) We determined occupied areas for each species by reviewing the best available scientific and commercial data on occurrence records. The range of survey records was selected due to scarcity of records throughout the range of each species. As discussed in Background, both species are extremely cryptic and spend most of their time underground. Because of their cryptic nature, we determined that if suitable habitat containing the physical or biological features was still present in an area where a Key ring-necked snake or a rim rock crowned snake was previously detected, that there was a high likelihood that the species would still be present even if it had not been recently detected. Therefore, based on the best available information, in order to determine occupied areas for the species, we used occurrence points ranging from 2010 to present for the Key ring-necked snake and 1996 to present for the rim rock crowned snake.

(2) We selected all suitable habitat (habitat that contained the physical or biological features) within a 1-mi (1.6-km) radius of an occurrence record. A 1-mi radius was based on the maximum recapture distance of 1 mi (1.6 km) recorded during a demographic study of the ringneck snake in Kansas (Fitch 1975, p. 25).

(3) We selected additional contiguous suitable habitat that contained all the physical or biological features (PBFs) that extended beyond the 1-mi (1.6-km) radius to include dispersal areas for the two species.

(4) We then constrained the boundary of a critical habitat unit based on potential effects of physical barriers (for example, roads wider than 2 lanes or water) that cause habitat fragmentation and prevent connectivity and dispersal opportunities within units, as we consider that individuals of either species would be unable or unlikely to pass such barriers.

We conclude that the occupied areas we are proposing for critical habitat provide for the conservation of both species, because they are suitable habitat that contain all the physical or biological features for all extant populations and facilitate connectivity and dispersal opportunities within units.

As previously stated, we also identified unoccupied areas for the rim rock crowned snake to be essential for its conservation. For areas outside the geographic area occupied by the species at the time of proposed listing for the rim rock crowned snake, we first looked for areas historically occupied by the rim rock crowned snake. However, many areas where rim rock crowned snakes were historically observed have been converted due to urban and agricultural development and are no longer suitable for the species. Further, populations in the Florida Keys are vulnerable to sea level rise now and will become more vulnerable in the foreseeable future. Therefore, we have determined that in order to recover the species, additional populations will need to be established in high-quality pine rockland or rockland hammock habitat that is actively protected and managed. We searched for other areas within the historical geographic area occupied by the species that contain high-quality pine rocklands or rockland hammock habitat and evaluated each site for its potential conservation based on quality of habitat, vulnerability to sea level rise, and existing protections and management of the habitat and sites. Based on these criteria, we identified two areas that contain appropriate habitat for the species (all physical or biological features essential for the conservation of the species are present in these areas) but for which we could not verify whether the areas were occupied. Accordingly, we find these areas unoccupied. The two unoccupied areas are located within the historical range as well as within Miami-Dade County far enough inland such that effects from projected sea level rise would have minimal impact to habitat. Therefore, we include these two areas as proposed critical habitat for the purpose of reestablishing populations, which are essential for the conservation of the species since populations are likely to be lost in the lower and upper Florida Keys due to projected sea level rise. Furthermore, the addition of two reestablished populations in Miami-Dade County would increase the redundancy of the species and reduce the chance that a catastrophic event would eliminate all populations in this area.

We conclude that these areas are essential for the conservation of the species because they provide areas for reestablishing populations, and they are high-quality habitat that contain all the physical or biological features for the rim rock crowned snake.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for the Key ring-necked snake and the rim rock crowned snake. 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 or biological features in the adjacent critical habitat.

For the Key ring-necked snake, we propose to designate as critical habitat lands that we have determined are occupied at the time of listing (that is, currently occupied) and that contain all of the physical or biological features that are essential to support life-history processes of the subspecies. Our proposed critical habitat designation includes all areas currently occupied by the species. For the rim rock crowned snake only, as discussed above, we have also identified, and propose for designation as critical habitat, unoccupied areas that are essential for the conservation of the species.

All units contain all of the identified physical or biological features and support multiple life-history processes, including all unoccupied units for the rim rock crowned snake.

The proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Proposed Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *https://www.regulations.gov* at Docket No. FWS–R4–ES–2022–0022 and on our internet site (*https://www.fws.gov/office/florida-ecological-services*).

Proposed Critical Habitat Designation for the Key Ring-Necked Snake

We are proposing four units as critical habitat for the Key ring-necked snake. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Key ring-necked snake. The four areas we propose as critical habitat are: (1) Big Pine Key, (2) Middle Torch Key, (3) Cudjoe Key, and (4) Stock Island. Table 11 shows the proposed critical habitat units, the land ownership, and the approximate area of each unit. All proposed units for the Key ring-necked snake are occupied.

TABLE 11—PROPOSED CRITICAL HABITAT UNITS FOR THE KEY RING-NECKED SNAKE

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)	Occupied?
1. Big Pine Key	Federal	1,174 (475)	Yes
	State	366 (148)	
	Local/County	62 (25)	
	Private	77 (31)	
	Unknown/Undefined	54 (22)	
2. Middle Torch Key	Federal	59 (24)	Yes
	State	211 (85)	
	Private	57 (23)	
	Unknown/Undefined	29 (12)	
3. Cudjoe Key	Federal	332 (134)	Yes
	State	76 (31)	
	Local/County	45 (18)	
	Private	28 (11)	
	Unknown/Undefined	26 (10)	
4. Stock Island	Local/County	8 (3)	Yes
Total		2,604 (1,054)	

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for the Key ring-necked snake, below.

Unit 1: Big Pine Key

Unit 1 encompasses 1,734 ac (702 ha) within Monroe County in the lower Florida Keys and contains all of the essential physical or biological features for the subspecies. This unit is occupied. The northern portion of the unit is located in a primarily rural area. The habitat associated with the central and southern portions of the unit is located in rural areas but is sparsely fragmented by two-lane roads and residential and commercial development. The majority of habitat in this unit is federally owned by the Service, within the National Key Deer Wildlife Refuge, while other large tracts are owned by the National Park Service and the State of Florida. Smaller tracts of habitat are owned by Monroe County, local government, and private entities. The physical or biological features in this unit may require special management to protect them from development and fire suppression (in pine rocklands). This unit is also vulnerable to effects from sea level rise, saltwater intrusion, and storms.

Unit 2: Middle Torch Key

Unit 2 encompasses approximately 356 ac (144 ha) within Monroe County in the lower Florida Keys and contains all of the essential physical or biological features for the subspecies. This unit is occupied. The State owns a significant portion of the habitat in this unit and a smaller portion is owned by both Federal and private entities. The State of Florida and the Service own and manage the Florida Keys Wildlife and Environmental Area and the National Key Deer Wildlife Refuge, respectively. The habitat is only slightly fragmented in the center and at the northern- and southern-most locations. The slight habitat fragmentation is due to a small amount of residential development and a two-lane road. The physical or biological features in this unit may require special management to protect them from development. This unit is also vulnerable to effects from sea level rise, saltwater intrusion, and storms.

Unit 3: Cudjoe Key

Unit 3 encompasses five subunits that total approximately 507 ac (205 ha) within Monroe County in the lower Florida Keys and contains all of the essential physical or biological features for the subspecies. This unit is occupied. In the two southern-most subunits, the habitat is fragmented by two- and four-lane roads and residential and commercial development. The habitat associated with the other three

subunits is located in rural areas, only sparsely fragmented by two-lane roads and residential and commercial development. The majority of the habitat in this unit is owned and managed by the Service and associated with the National Key Deer Wildlife Refuge. The physical or biological features in this unit may require special management to protect them from development and fire suppression (in pine rocklands). This unit is also vulnerable to effects from sea level rise, saltwater intrusion, and storms.

Unit 4: Stock Island

Unit 4 encompasses approximately 8 ac (3 ha) within Monroe County in the lower Florida Keys and contains all of the essential physical or biological features for the subspecies. This unit is occupied. The habitat in this unit is surrounded and/or fragmented by residential and commercial development. The vast majority of habitat is owned by the City of Key West. The physical or biological features in this unit may require special management to protect them from development. This unit is also vulnerable to effects from sea level rise, saltwater intrusion, and storms.

Proposed Critical Habitat Designation for the Rim Rock Crowned Snake

We are proposing 11 units as critical habitat for the rim rock crowned snake. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the rim rock crowned snake. The 11 areas we propose as critical habitat are: (1) Richmond Pine Rocklands, (2) Deering Estate Complex/Bill Sadowski Park, (3) Barnacle, (4) Camp Owaissa Bauer, (5) Navy Wells, (6) North Key Largo, (7) Key Largo, (8) Tavernier, (9) Vaca Key, (10) Big Pine Key, (11) Key West. Table 12 shows the proposed critical habitat units, the approximate area of each unit, the ownership of each unit, and whether the unit is occupied.

TABLE 12—PROPOSED CRITICAL HABITAT UNITS FOR THE RIM ROCK CROWNED SNAKE

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)	Occupied?
1. Richmond Pine Rocklands	Federal	160 (65)	Yes
	Local/County	513 (208)	
	Private	144 (58)	
2. Deering Estate Complex/Bill Sadowski Park	State	241 (98)	Yes
	Local/County	19 (8)	
	Private	31 (13)	
3. Barnacle	State	3 (1)	Yes
	Private	1 (0.4)	
	Unknown/Undefined	1 (0.4)	
4. Camp Owaissa Bauer	State	9 (4)	No
	Local/County	83 (34)	
	Private	4 (2)	
5. Navy Wells	State	85 (34)	No
	Local/County	240 (97)	
	Private	0.05 (0.02)	
6. North Key Largo	Federal	601 (243)	Yes
	State	1,484 (601)	
	Local/County	24 (9)	
	Private	53 (21)	
7. Key Largo	State	151 (61)	Yes
	Local/County	56 (23)	
	Private	91 (37)	
8. Tavernier	State	98 (40)	Yes
	Local/County	30 (12)	
	Private	54 (22)	
9. Vaca Key	County/Local	1 (0.4)	Yes
	Private	58 (23)	
10. Big Pine Key	Federal	1,200 (486)	Yes
	State	380 (154)	
	Local/County	71 (29)	
	Private	77 (31)	
11. Key West	Local/County	5 (2)	Yes
	Private	3 (1)	
Total		5,972 (2,418)	

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for the rim rock crowned snake below.

Unit 1: Richmond Pine Rocklands

Unit 1 consists of 817 ac (331 ha) and contains all of the essential physical or biological features for the species. This unit is occupied. Located within Miami-Dade County, this unit is fragmented by commercial and residential development, Federal and local government installations, and the Zoo Miami facility. Unit 1 is completely surrounded by a dense urban matrix typical of the Miami metropolitan area. Habitat areas associated with Unit 1 have experienced a significant amount

of sustained and recent urban development contributing to habitat loss but also have been the focus of land acquisition for conservation. A recent private land development project within the boundaries of the proposed unit has contributed to fragmentation and loss of suitable habitat. Several large tracts of suitable habitat are owned by Miami-Dade County, but only a fraction are managed and protected in perpetuity. The remainder are protected as Natural Forest Communities (NFCs). This program provides only temporary protection, habitat management is not required, and a portion of the parcel may be developed. Landowners include Federal Government agencies (U.S. Coast Guard, U.S. Army Corps of Engineers, and U.S. Office of Public Buildings), Miami-Dade County, University of Miami (private), and other private entities. Approximately 80 ac (32 ha) of the U.S. Coast Guard property is proposed for designation as critical habitat in this unit. The Coral Reef Commons HCP has been finalized to protect and manage 53 ac (21 ha) of pine rocklands (north end of Unit 1) within the project footprint, and an additional 57 ac (23 ha) to the south of the project footprint, but still within Unit 1. Thus, we are considering these two parcels in this unit for exclusion under the Coral Reef Commons HCP.

The physical or biological features in this unit may require special management to protect them from development and fire suppression (in pine rocklands). This unit is also vulnerable to effects from storms.

Unit 2: Deering Estate Complex/Bill Sadowski Park

Unit 2 consists of 291 ac (119 ha) and contains all of the essential physical or biological features for the species. This unit is occupied. Located within Miami-Dade County, this unit is fragmented by residential communities, light commercial development, and canals. The Biscayne Bay borders the majority of Unit 2 to the east, with suburban development surrounding the remaining areas. Habitat areas associated with Unit 2 have experienced a relatively stable environment as most are adjacent to neighborhoods or the Biscayne Bay but also have been the focus of land acquisition for conservation. The majority of lands within this unit are conserved and managed by the County as Bill Sadowski Park and Deering Estate. Landowners include the State of Florida, Miami-Dade County, the Deering Estate Foundation (private), and other private entities. The physical or biological features in this unit may require special management to protect them from development and fire suppression (in pine rocklands). This unit is also vulnerable to effects from storms.

Unit 3: Barnacle

Unit 3 consists of 5 ac (2 ha) and contains all of the essential physical or biological features for the species. This unit is occupied. Located within Miami-Dade County, this unit is surrounded by an established urban matrix on all sides except the Biscayne Bay to the east. The majority of suitable habitat is within the boundaries of the Barnacle Historic State Park, a State of Florida property, and additional habitat is owned by private entities or is of unknown/undefined ownership. The physical or biological features in this unit may require special management to protect them from development and fire suppression (in pine rocklands). This unit is also vulnerable to effects from storms.

Unit 4: Camp Owaissa Bauer

Unit 4 consists of 96 ac (39 ha) and contains all of the essential physical or biological features for the species. Located within Miami-Dade County, agriculture lands and light residential communities surround the unit, and a two-lane road separates the larger north portion from the south portion. The unit is considered unoccupied, as there are no records of rim rock crowned snake observations; however, it contains all physical or biological features, is within the species' historical range, and is located inland, away from projected habitat losses from sea level rise as predicted for the Florida Keys populations. Therefore, Unit 4 would serve as a suitable reestablishment site to increase species redundancy when population losses are expected to occur in the Florida Keys in the future; thus, this area is essential for the conservation of the species. The majority of the unit is owned by Miami-Dade County, and is managed by Miami-Dade County's Environmentally Endangered Lands program. Some small parcels are owned by the State of Florida and private or unknown/undefined entities.

Unit 5: Navy Wells

Unit 5 consists of 325 ac (132 ha) and contains all of the essential physical or biological features for the species. It is located within Miami-Dade County; agriculture lands and light residential development surround the unit. The unit is considered unoccupied, as there are no records of rim rock crowned snake observations; however, it contains all physical or biological features, is within the species' historical range, and is located inland, away from projected habitat losses from sea level rise as predicted for the Florida Keys populations. Therefore, Unit 5 would serve as a suitable reestablishment site to increase species redundancy when population losses are expected to occur in the Florida Keys in the future; thus, this area is essential for the conservation of the species. The majority of the unit is owned by Miami-Dade County, and the State of Florida owns a large tract of land, both of which are managed by Miami-Dade County's Environmentally Endangered Lands program. Some small parcels are owned by private entities.

Unit 6: North Key Largo

Unit 6 consists of 2,162 ac (875 ha) and contains all of the essential physical or biological features for the species. This unit is occupied. It is located within Monroe County and includes the city of Key Largo of the upper Florida Keys islands. This unit is surrounded by the Atlantic Ocean to the east and the Florida Bay to the west. Habitat consists primarily of contiguous habitat owned by several Federal agencies (National Park Service, Naval Air Station, U.S. Coast Guard, and the Service), in which the Service owns the majority as Crocodile Lake National Wildlife Refuge (Refuge). Other Federal land owners have turned over ownership to the Service (Dixon 2020, pers. comm.), but records may not reflect this yet. Parcels previously owned by the other Federal entities are embedded within the Refuge and have been managed as part of the Refuge. The State of Florida owns and manages Dagny Johnson Key Largo Hammock Botanical Park within this unit. Monroe County, local government, and private entities own additional habitat within this unit. The physical or biological features in this unit may require special management to protect them from development. This unit is also vulnerable to effects from sea level rise, saltwater intrusion, and storms.

Unit 7: Key Largo

Unit 7 consists of 298 ac (121 ha) and contains all of the essential physical or biological features for the species. This unit is occupied. Located within Monroe County and part of the city of Key Largo, of the upper Florida Keys islands, the habitat in this unit is surrounded and/or fragmented by suburban and urban development. The majority of habitat consists of habitat owned by private entities and the State of Florida (John Pennekamp Coral Reef State Park). Smaller portions of habitat are owned by Monroe County. Habitat connectivity among occurrences is lacking within the unit; fragmentation is

from residential and light commercial development, as well as canals and two-lane roads. The physical or biological features in this unit may require special management to protect them from development. This unit is also vulnerable to effects from sea level rise, saltwater intrusion, and storms.

Unit 8: Tavernier

Unit 8 consists of 181 ac (73 ha) and contains all of the essential physical or biological features for the species. This unit is occupied. Located within Monroe County and part of the city of Tavernier, within the upper Florida Keys islands, the habitat in this unit is surrounded and/or fragmented by suburban and urban development, canals, and two-lane roads. The State of Florida (Dove Creek Hammock), county/local government, and private entities own land in this unit. The physical or biological features in this unit may require special management to protect them from development. This unit is also vulnerable to effects from sea level rise, saltwater intrusion, and storms.

Unit 9: Vaca Key

Unit 9 consists of 59 ac (24 ha) and contains all of the essential physical or biological features for the species. This unit is occupied. Located within Monroe County and part of the city of Marathon, within the upper Florida Keys, the habitat in this unit is surrounded and/or fragmented by suburban and urban development. The majority of habitat is owned by private entities, including the Florida Keys Land Trust Inc. Additionally, Monroe County owns an important tract that is within dispersal distance of the land trust property. The physical or biological features in this unit may require special management to protect them from development and fire suppression (in pine rocklands). This unit is also vulnerable to effects from sea level rise, saltwater intrusion, and storms.

Unit 10: Big Pine Key

Unit 10 consists of 1,729 ac (700 ha) and contains all of the essential physical or biological features for the species. This unit is occupied. Located within Monroe County within the lower Florida Keys, the central and southern portions of the unit are surrounded and/or fragmented by residential communities, some light commercial development, and two-lane roads. The northern portion of the unit is primarily rural with some two-lane roads and residential communities scattered throughout. The majority of habitat in this unit is federally owned, specifically as National Key Deer Wildlife Refuge. Large tracts are also owned by the National Park Service, other Federal ownership, and the State of Florida. Smaller tracts of habitat are owned by Monroe County, local government, and private entities. The physical or biological features in this unit may require special management to protect them from development and fire suppression (in pine rocklands). This unit is also vulnerable to effects from sea level rise, saltwater intrusion, and storms.

Unit 11: Key West

Unit 11 consists of 9 ac (4 ha) and contains all of the essential physical or biological features for the species. This unit is occupied. It is located within Monroe County and part of the city of Key West, within the lower Florida Keys. Large resorts and hotels are located to the east, and the Key West International Airport is located to the south of this unit. The remaining areas around the unit are undeveloped. Unit 11 is owned by Monroe County, local government, and private entities. The physical or biological features in this unit may require special management to protect them from development and fire suppression (in pine rocklands). This unit is also vulnerable to effects from sea level rise, saltwater intrusion, and storms.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final rule revising the definition of destruction or adverse modification on February 11, 2016 (81 FR 7214) (although we also published a revised definition after that (on August 27, 2019); that 2019 definition was subsequently vacated by the court in *CBD* v. *Haaland*). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation: (a) if the amount or extent of taking specified in the incidental take statement is exceeded; (b) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (c) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (d) if a new species is listed or critical habitat designated that may be affected by the identified action.

In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the ''Destruction or Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that we may, during a consultation under section 7(a)(2) of the Act, consider likely to destroy or adversely modify critical habitat include, but are not limited to: Construction, land development, and agriculture that require clearing, digging, and/or otherwise altering suitable habitat. Clearing of vegetation and digging could remove vegetation cover, leaf litter, woody debris, and limestone substrate, which would contribute to losses of shelter, ability to thermo-regulate, prey, sites for laying and incubating eggs, and conditions for a warm, moist microhabitat. Additionally, development, agriculture, and construction projects can further fragment tracts of suitable habitat, inhibiting dispersal by the Key ring-necked snake and the rim rock crowned snake between remaining areas of suitable habitat, and cause habitat degradation by making it more difficult to conduct prescribed fire in pine rocklands habitat. Furthermore, in areas protected and managed for conservation, prescribed fire and other management activities (mechanical clearing, out-planting, etc.) have the potential to harm individuals; however, the long-term benefits typically far outweigh the potential harm.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act Improvement Act of 1997 (16 U.S.C. 670a) (Sikes Act), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. No DoD lands with a completed INRMP are within the proposed critical habitat designation for either the Key ring-necked snake or the rim rock crowned snake.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act, 81 FR 7226 (Feb. 11, 2016) (2016 Policy)—both of which were developed jointly with the National Marine Fisheries Service (NMFS). We also refer to a 2008 Department of the Interior Solicitor's opinion entitled ''The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act'' (M–37016). We explain each decision to exclude areas, as well as decisions not to exclude, to demonstrate that the decision is reasonable.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by

comparing scenarios both ''with critical habitat'' and ''without critical habitat.''

The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (for example, under the Federal listing as well as other Federal, State, and local regulations). Therefore, the baseline represents the costs of all efforts attributable to the listing of the species under the Act (that is, conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess, to the extent practicable, the probable impacts to both directly and indirectly affected entities. Section 3(f) of E.O. 12866 identifies four criteria when a regulation is considered a ''significant'' rulemaking, and requires additional analysis, review, and approval if met. The criteria relevant here is whether the designation of critical habitat may have an economic effect of greater than $100 million in any given year (section 3(f)(1)). Therefore, our consideration of economic impacts uses a screening analysis to assess whether a designation of critical habitat for the Key ring-necked snake or the rim rock crowned snake is likely to exceed the economically significant threshold.

For these particular designations, we developed incremental effects memorandums (IEMs) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEMs was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Key ring-necked snake and the rim rock crowned snake (Industrial Economics, Incorporated (IEc) 2021, entire). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographic areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (that is, absent critical habitat designation) and includes any probable incremental economic impacts where land and water use may already be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The presence of the listed species in occupied areas of critical habitat means that any destruction or adverse modification of those areas will also likely jeopardize the continued existence of the species. Therefore, designating occupied areas as critical habitat typically causes little if any incremental impacts above and beyond the impacts of listing the species. Accordingly, the screening analysis focuses on areas of unoccupied critical habitat. If the proposed critical habitat designation contains any unoccupied units, the screening analysis assesses whether those units require additional management or conservation efforts that may incur incremental economic impacts. This screening analysis, combined with the information contained in our IEMs, constitute what we consider to be our draft economic analysis (DEA) of the proposed critical habitat designation for the Key ring-necked snake and the rim rock crowned snake; our DEA is summarized in the narrative below.

As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas that may be affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the Key ring-necked snake and the rim rock crowned snake, first we identified, in the IEM dated April 19, 2021, probable incremental economic impacts associated with the following categories of activities: (1) Land development (commercial and residential); (2) agriculture development; (3) refuge activities (construction related to infrastructure, asphalt road and debris removal, mechanical treatments to support prescribed fire, invasive species removal, out planting, prescribed fire); and (4) recreational activities. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If we list the species, in areas where the species is present, Federal agencies would be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If, when we list the species, we also finalize the proposed critical habitat designations, our consultation would include an evaluation of measures to avoid the destruction or adverse modification of critical habitat.

In our IEMs, we attempted to clarify the distinction between the effects that would result from the species being listed and those attributable to the critical habitat designation (that is, difference between the jeopardy and adverse modification standards) for the Key ring-necked snake's and the rim rock crowned snake's critical habitat. Because the designations of critical habitat for Key ring-necked snake and the rim rock crowned snake are proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would likely adversely affect the essential physical or biological features of occupied critical habitat are also likely to adversely affect the

species. The IEMs outline our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for the Key ring-necked snake totals approximately 2,604 ac (1,054 ha). All units are occupied. The proposed critical habitat for the rim rock crowned snake totals 5,972 ac (2,418 ha). Of the 11 critical habitat units for the rim rock crowned snake, 9 are occupied and 2 are considered unoccupied.

When an action is proposed in an area of designated critical habitat, and the proposed activity has a Federal nexus, the need for consultation is triggered. Any incremental costs associated with consideration of potential effects to the critical habitat are a result of this consultation process. For all occupied areas, the economic costs of critical habitat designations will most likely be limited to additional administrative efforts to consider adverse modification in section 7 consultations, as the listing of both species is happening concurrently with critical habitat designation, and all occupied units would still need to undergo section 7 consultation due to listing regardless of critical habitat designation. While this additional analysis will require time and resources by both the Federal action agency and the Service, it is believed that, in most circumstances, these costs would predominantly be administrative in nature and would not be significant. In total, critical habitat designations for the Key ring-necked snake and the rim rock crowned snake are unlikely to generate costs or benefits exceeding $100 million in a single year. For the Key ring-necked snake, the analysis predicted that approximately one formal consultation, three informal consultations, and three technical assistance efforts are anticipated to occur annually in proposed critical habitat areas. For the rim rock crowned snake, the analysis predicted that approximately two formal consultations, eight informal consultations, and nine technical assistance efforts are anticipated to occur annually in proposed critical habitat areas (IEc 2021, p. 3). For the Key ring-necked snake, approximately 85 percent of the proposed areas overlap with existing designations for species including Bartram's scrub-hairstreak butterfly (*Strymon acis bartrami*), the Lower Florida Keys distinct population segment of the rice rat (*Oryzomys palustris natator*), and Florida semaphore cactus (*Consolea corallicola*). For the rim rock crowned snake, approximately 90 percent of the proposed areas overlaps with other designations, including Bartram's scrub-hairstreak butterfly, Florida leafwing butterfly (*Anaea troglodyta floridalis*), Florida brickell-bush (*Brickellia mosieri*), Carter's small-flowered flax (*Linum carteri* var. *carteri*), and the Florida distinct population segment of the American crocodile (*Crocodylus acutus*).

Overall, we expect that agency administrative costs for consultation, incurred by the Service and the consulting Federal agency, would be minor (less than $6,000 per consultation effort) and, therefore, would not be significant (IEc 2021, p. 22). The total annual incremental costs of critical habitat designations for the Key ring-necked snake and rim rock crowned snake are anticipated to be less than $14,400 per year and $35,200 per year, respectively.

Incremental costs may occur outside of the section 7 consultation process if the designation of critical habitat triggers additional requirements or project modifications under State or local laws, regulations, or management strategies. These types of costs typically occur if the designation increases awareness of the presence of the species or the need for protection of its habitat. Given that both the Key ring-necked snake and the rim rock crowned snake are covered by certain existing Federal and State protections, project proponents may already be aware of the presence of the two species. For example, the rim rock crowned snake is a covered species under the Coral Reef Commons HCP, and both the Key ring-necked snake and rim rock crowned snake are listed as ''State-designated Threatened'' on Florida's Endangered and Threatened Species list. The species are further protected through habitat management and conservation under Florida's Imperiled Species Management Plan, the Florida Keys Wildlife and Environmental Area Management Plan, Monroe County Year 2030 Comprehensive Plan, and the National Key Deer Wildlife Refuge. Therefore, designating critical habitat is unlikely to provide information to State or local agencies that would result in new regulations or actions (IEc 2021, pp. 20–21).

With regard to the two unoccupied units for the rim rock crowned snake, additional costs are unlikely because the proposed units substantially overlap with critical habitat designations for other species (over 95 percent total overlap for each unit). In these areas, consultations for listed species and designated critical habitat are likely to have already resulted in protections for habitat suitable for the rim rock crowned snake even absent listing or critical habitat designation.

We are soliciting data and comments from the public on the DEA discussed above, as well as on all aspects of this proposed rule and our required determinations. During the development of a final designation, we will consider the information presented in the DEA and any additional information on economic impacts we receive during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Consideration of National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (for example, a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), then national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of ''critical habitat.'' However, the Service must still consider impacts on national security, including homeland security, on those lands or areas not covered by section 4(a)(3)(B)(i), because section 4(b)(2) requires the Service to consider those impacts whenever it designates critical habitat. Accordingly, if DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-

security impacts, it must provide a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If we conduct an exclusion analysis because the agency provides a reasonably specific justification or because we decide to exercise the discretion to conduct an exclusion analysis, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the Key ring-necked snake are not owned or managed by the DoD or DHS, and, therefore, we anticipate no impact on national security or homeland security. For the rim rock crowned snake, as mentioned above, approximately 80 ac (32 ha) of the U.S. Coast Guard property is proposed for designation as critical habitat in the Richmond Pine Rocklands unit (Unit 1). This U.S. Coast Guard property is separated into two main areas: the Communication Station (COMMSTA) Miami and the Civil Engineering Unit (CEU). The COMMSTA houses transmitting and receiving antennas. The CEU plans and executes projects at regional shore facilities, such as construction and post-disaster assessments.

The U.S. Coast Guard parcel contains approximately 80 ac (32 ha) of pine rocklands. The U.S. Coast Guard parcel has a draft management plan that includes management of pine rockland habitats, including vegetation control and prescribed fire and protection of lands from further development or degradation. In addition, the standing pine rockland area is partially managed through an active recovery grant to the Institute for Regional Conservation. Under this grant, up to 39 ac (16 ha) of standing pine rocklands will undergo invasive vegetation control.

Based on a review of the specific mission of the U.S. Coast Guard facility in conjunction with the measures and efforts set forth in the draft management plan to preserve pine rockland habitat and protect sensitive and listed species, we have determined that it is unlikely that the critical habitat, if finalized as proposed, would negatively impact the facility or its operations. As a result, we do not anticipate any impact on national security.

However, if through the public comment period we receive information regarding impacts on national security or homeland security from designating particular areas as critical habitat, then as part of developing the final designation of critical habitat, we will conduct a discretionary exclusion analysis to determine whether to exclude those areas under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19.

Consideration of Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security discussed above. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area—such as HCPs, safe harbor agreements (SHAs), or candidate conservation agreements with assurances (CCAAs)—or whether there are non-permitted conservation agreements and partnerships that may be impaired by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, social, or other impacts that might occur because of the designation.

For the Key ring-necked snake, we have not identified any areas to consider for exclusion from critical habitat. In preparing this proposal, we have determined that there are currently no management plans for the Key ring-necked snake, and no HCPs where the Key ring-necked snake is a covered species. Additionally, the proposed designation does not include any Tribal lands or trust resources. Therefore, we anticipate no impact on Tribal lands, partnerships, or HCPs from this proposed critical habitat designation. However, during the development of a final designation, we will consider any information currently available or received during the public comment period. If we evaluate information regarding a request for an exclusion and we do not exclude, we will fully describe our rationale for not excluding in the final critical habitat determination.

For the rim rock crowned snake, we are considering a portion of one unit (Unit 1: Richmond Pine Rocklands) for exclusion due to other relevant impacts because of the presence of an HCP that includes the rim rock crowned snake as a covered species. When analyzing other relevant impacts of including a particular area in a designation of critical habitat, we weigh those impacts relative to the conservation value of the particular area. To determine the conservation value of designating a particular area, we consider a number of factors, including, but not limited to, the additional regulatory benefits that the area would receive due to the protection from destruction or adverse modification 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.

In the case of the rim rock crowned snake, the benefits of critical habitat include public awareness of the presence of the rim rock crowned snake and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the rim rock crowned snake due to protection from destruction or adverse modification of critical habitat. Continued implementation of an ongoing management plan that provides conservation equal to or more than the protections that result from a critical habitat designation would reduce those benefits of including that specific area in the critical habitat designation.

We evaluate the existence of a conservation plan when considering the benefits of inclusion. 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 or 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.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction of the species. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Private or Other Non-Federal Conservation Plans Related to Permits Under Section 10 of the Act

HCPs for incidental take permits under section 10(a)(1)(B) of the Act provide for partnerships with non-Federal entities to minimize and mitigate impacts to listed species and their habitats. In some cases, HCP permittees agree to do more for the conservation of the species and their habitats on private lands than designation of critical habitat would provide alone. We place great value on the partnerships that are developed during the preparation and implementation of HCPs.

CCAAs and SHAs are voluntary agreements designed to conserve candidate and listed species, respectively, on non-Federal lands. In exchange for actions that contribute to the conservation of species on non-Federal lands, participating property owners are covered by an ''enhancement of survival'' permit under section 10(a)(1)(A) of the Act, which authorizes incidental take of the covered species that may result from implementation of conservation actions, specific land uses, and, in the case of SHAs, the option to return to a baseline condition under the agreements. We also provide enrollees assurances that we will not impose further land-, water-, or resource-use restrictions, or require additional commitments of land, water, or finances, beyond those agreed to in the agreements.

When we undertake a discretionary section 4(b)(2) exclusion analysis based on permitted conservation plans (such as CCAAs, SHAs, and HCPs), we anticipate consistently excluding such areas if incidental take caused by the activities in those areas is covered by the permit under section 10 of the Act and the CCAA/SHA/HCP meets all of the following three factors (see the 2016 Policy for additional details):

(a) The permittee is properly implementing the CCAA/SHA/HCP and is expected to continue to do so for the term of the agreement. A CCAA/SHA/HCP is properly implemented if the permittee is and has been fully implementing the commitments and provisions in the CCAA/SHA/HCP, Implementing Agreement, and permit.

(b) The species for which critical habitat is being designated is a covered species in the CCAA/SHA/HCP, or very similar in its habitat requirements to a covered species. The recognition that the Services extend to such an agreement depends on the degree to which the conservation measures undertaken in the CCAA/SHA/HCP would also protect the habitat features of the similar species.

(c) The CCAA/SHA/HCP specifically addresses that species' habitat and meets the conservation needs of the species in the planning area.

The proposed critical habitat designation includes areas that are covered by the following permitted plan providing for the conservation of the rim rock crowned snake: the Coral Reef Commons HCP.

Coral Reef Commons Habitat Conservation Plan—In preparing this proposal, we have determined that lands associated with the Coral Reef Commons HCP within the Richmond Pine Rocklands unit (Unit 1) are included within the boundaries of the proposed critical habitat.

Coral Reef Commons is a mixed-use community, which consists of 900 apartments, retail stores, restaurants, and parking. In 2017, an HCP and associated permit under section 10 of the Act was developed and issued for the Coral Reef Commons development. As part of the HCP and permit, an approximately 53-ac (21-ha) on-site preserve (same as the area for proposed critical habitat designation) was established under a conservation encumbrance that will be managed in perpetuity for pine rocklands habitat and sensitive and listed species, including the rim rock crowned snake. An additional pine rocklands area of approximately 57 ac (23 ha) on the University of Miami's Center for Southeastern Tropical Advanced Remote Sensing site is an off-site mitigation area for Coral Reef Commons. Both the on-site preserve and the off-site mitigation area are being managed to maintain healthy pine rocklands habitat through the use of invasive, exotic plant management; mechanical treatment; and prescribed fire. Since initiating the Coral Reef Commons HCP, pine rocklands restoration efforts have been conducted within all of the management units in both the on-site preserves and the off-site mitigation area. A second round of prescribed fire began in February 2021. Currently, the on-site preserves meet or exceed the success criteria described in the HCP.

Critical habitat within Unit 1 that is associated with the Coral Reef Commons HCP is limited to the on-site preserves and off-site mitigation area. Based on our review of the HCP and proposed critical habitat for the rim rock crowned snake, we do not anticipate needing any additional conservation measures for the species beyond those that are currently in place. Therefore, we are considering excluding those specific lands associated with the Coral Reef Commons HCP that are in the preserve and off-site mitigation area from the final designation of critical habitat for the rim rock crowned snake. After consideration of public comment on this issue, we will analyze in the final rule whether the benefits of excluding the lands described above from the final designation of critical habitat for the rim rock crowned snake outweigh the benefits of designating those lands as critical habitat. Based on that analysis, the Secretary may exercise her discretion to exclude the lands from the final designation.

Summary of Exclusions Considered Under 4(b)(2) of the Act

For the Key ring-necked snake, we are not considering at this time any exclusions from the proposed designation based on economic impacts, national security impacts, or other relevant impacts—such as partnerships, management, or protection afforded by cooperative management efforts—under section 4(b)(2) of the Act. However, in this proposed rule, we seek information from the public with respect to whether there are any areas that should be considered for exclusion from the critical habitat designation. (Please see **ADDRESSES** for instructions on how to submit comments).

We are considering whether to exclude the following areas under section 4(b)(2) of the Act from the final critical habitat designation for the rim rock crowned snake: a portion of Unit 1 (Richmond Pine Rocklands) covered by the Coral Reef Commons HCP (102 ac (41.3 ha)), which includes onsite preserves and offsite mitigation areas.

In conclusion, for the rim rock crowned snake, we are considering exclusions based on other relevant

impacts. We specifically solicit comments on the inclusion or exclusion of such areas. During the development of a final designation, we will consider any information currently available or received during the public comment period regarding other relevant impacts of the proposed designation and will determine whether these or any other specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19, and the 2016 Policy.

Required Determinations

Clarity of the Rule

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

(1) Be logically organized;

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

(3) Use clear language rather than jargon;

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

(5) Use lists and tables wherever possible.

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

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (that is, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated if we adopt the proposed critical habitat designation. The RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that this proposed critical habitat designation would significantly affect energy supplies, distribution, or use, as there are no energy facilities within the boundaries of the proposed critical habitat units for either the Key ring-necked snake or the rim rock crowned snake. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following finding:

(1) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this proposed rule would significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments and, as such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Key ring-necked snake and the rim rock crowned snake in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the proposed designation of critical habitat for the Key ring-necked snake and the rim rock crowned snake, and it concludes that, if adopted, this designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the physical or biological features essential to the conservation of the species. The proposed areas of critical habitat are

presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

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

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), E.O. 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribal lands fall within the boundaries of the proposed critical habitat for the Key ring-necked snake or the rim rock crowned snake, so no Tribal lands would be affected by the proposed designation.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Florida Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11, amend paragraph (h) by adding entries to the List of Endangered and Threatened Wildlife for ''Snake, Key ring-necked'' and ''Snake, rim rock crowned'' in alphabetical order under REPTILES to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
Reptiles				
*	*	*	*	*
Snake, Key ring-necked	*Diadophis punctatus acricus.*	Wherever found	E	[**Federal Register** citation when published as a final rule]; 50 CFR 17.95(c).[CH]
*	*	*	*	*
Snake, rim rock crowned	*Tantilla oolitica*	Wherever found	E	[**Federal Register** citation when published as a final rule]; 50 CFR 17.95(c).[CH]
*	*	*	*	*

■ 3. In § 17.95, amend paragraph (c) by:

■ a. Adding an entry for ''Key Ring-necked Snake (*Diadophis punctatus acricus*)'' immediately following the entry for ''New Mexican Ridge-Nosed Rattlesnake (*Crotalus willardi obscurus*)''; and

■ b. Adding an entry for ''Rim Rock Crowned Snake (*Tantilla oolitica*)'' immediately following the entry for ''Key Ring-necked Snake (*Diadophis punctatus acricus*)''.

The additions read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(c) *Reptiles.*

* * * * *

Key Ring-Necked Snake (*Diadophis punctatus acricus*)

(1) Critical habitat units are depicted for Monroe County, Florida, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the Key ring-necked

snake consist of the following components:

(i) Pine rocklands habitat that contains:

(A) Refugia consisting of a limestone rock substrate with holes, crevices, and shallow depressions; piles of rock rubble; and pockets of organic matter accumulating in solution holes;

(B) Suitable prey;

(C) Warm, moist microhabitats to maintain homeostasis; and

(D) A natural or prescribed fire regime at 5- to 7-year intervals that maintains the pine rocklands habitat and associated plant community.

(ii) Rockland hammock habitat that contains:

(A) Refugia consisting of a limestone substrate with holes, crevices, and shallow depressions; piles of rock rubble; and pockets of organic matter accumulating in solution holes;

(B) Suitable prey;

(C) Warm, moist microhabitat to maintain homeostasis; and

(D) Little or no fire maintenance.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [EFFECTIVE DATE OF THE FINAL RULE].

(4) Data layers defining map units were created using ESRI ArcGIS mapping software along with various spatial data layers. ArcGIS was also used to calculate the size of habitat areas. The projection used in mapping and calculating distances and locations within the units was Albers Conical Equal Area (Florida Geographic Data Library), North American Datum of 1983 (NAD 1983) High Accuracy Reference Network (HARN). The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *https://www.fws.gov/office/florida-ecological-services,* at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2022–0022, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map follows:

Figure 1 to Key Ring-necked Snake (*Diadophis punctatus acricus*) paragraph (5)

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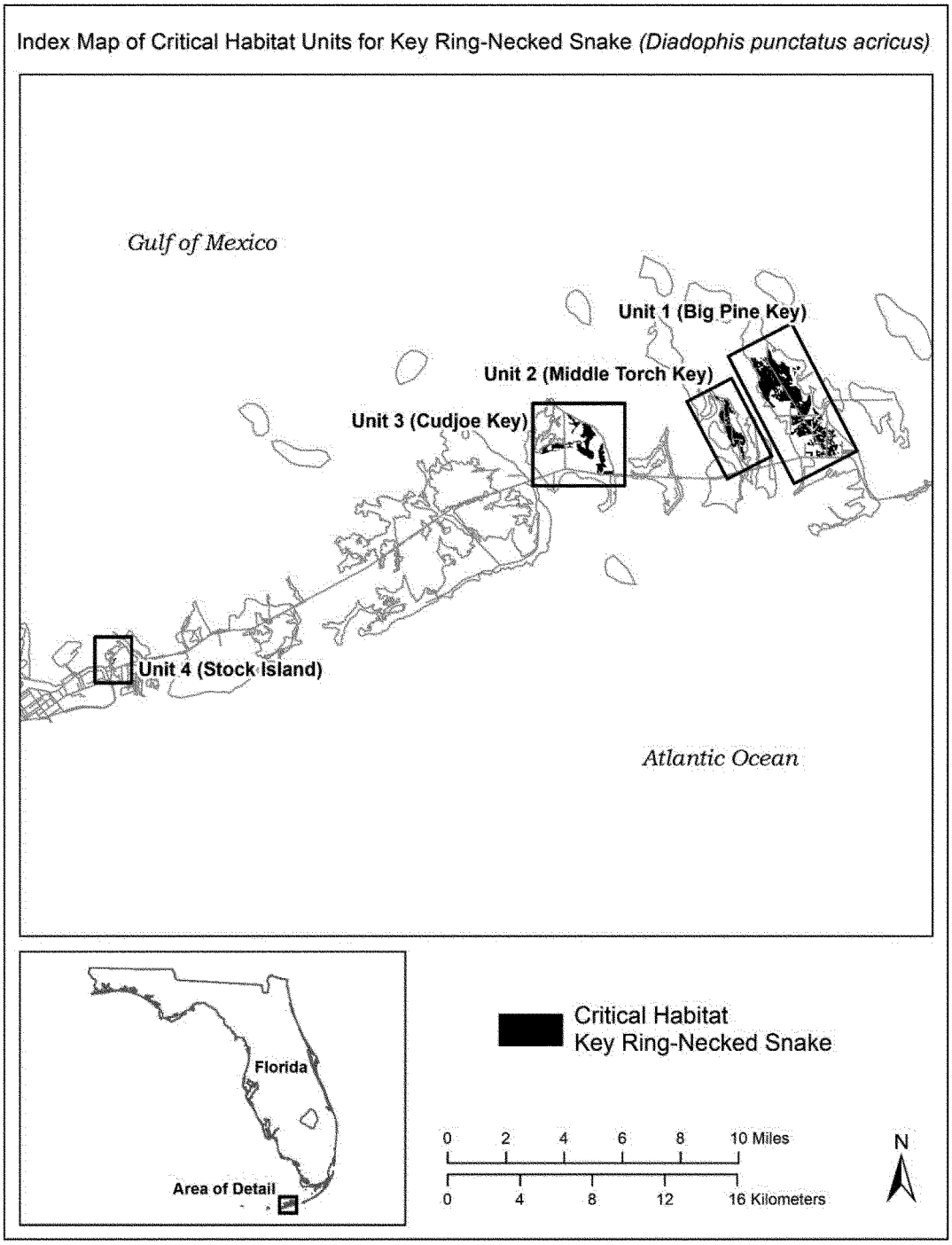
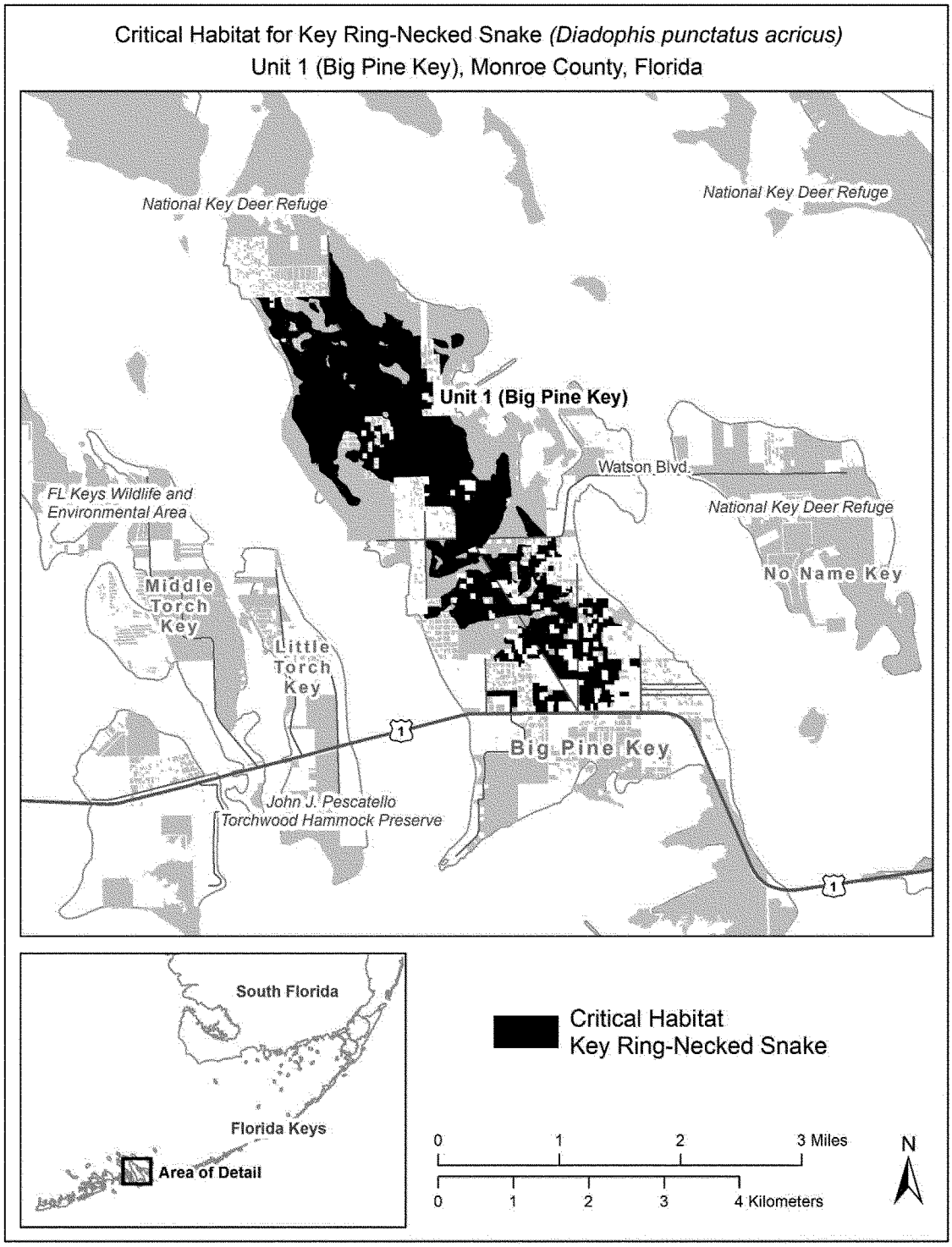


(6) Unit 1: Big Pine Key, Monroe County, Florida.

(i) Unit 1 encompasses 1,734 acres (ac) (702 hectares (ha)) north of U.S. 1 within Monroe County, within the lower Florida Keys. The majority of habitat in this unit (1,174 ac (475 ha)) is owned and managed by the Service and associated with the National Key Deer Wildlife Refuge and by the National Park Service; other large tracts are owned by the State of Florida (366 ac (148 ha)). Smaller tracts of habitat are owned by Monroe County, local government, and private entities (194 ac (79 ha)).

(ii) Map of Unit 1 follows:

Figure 2 to Key Ring-necked Snake (*Diadophis punctatus acricus*) paragraph (6)(ii)

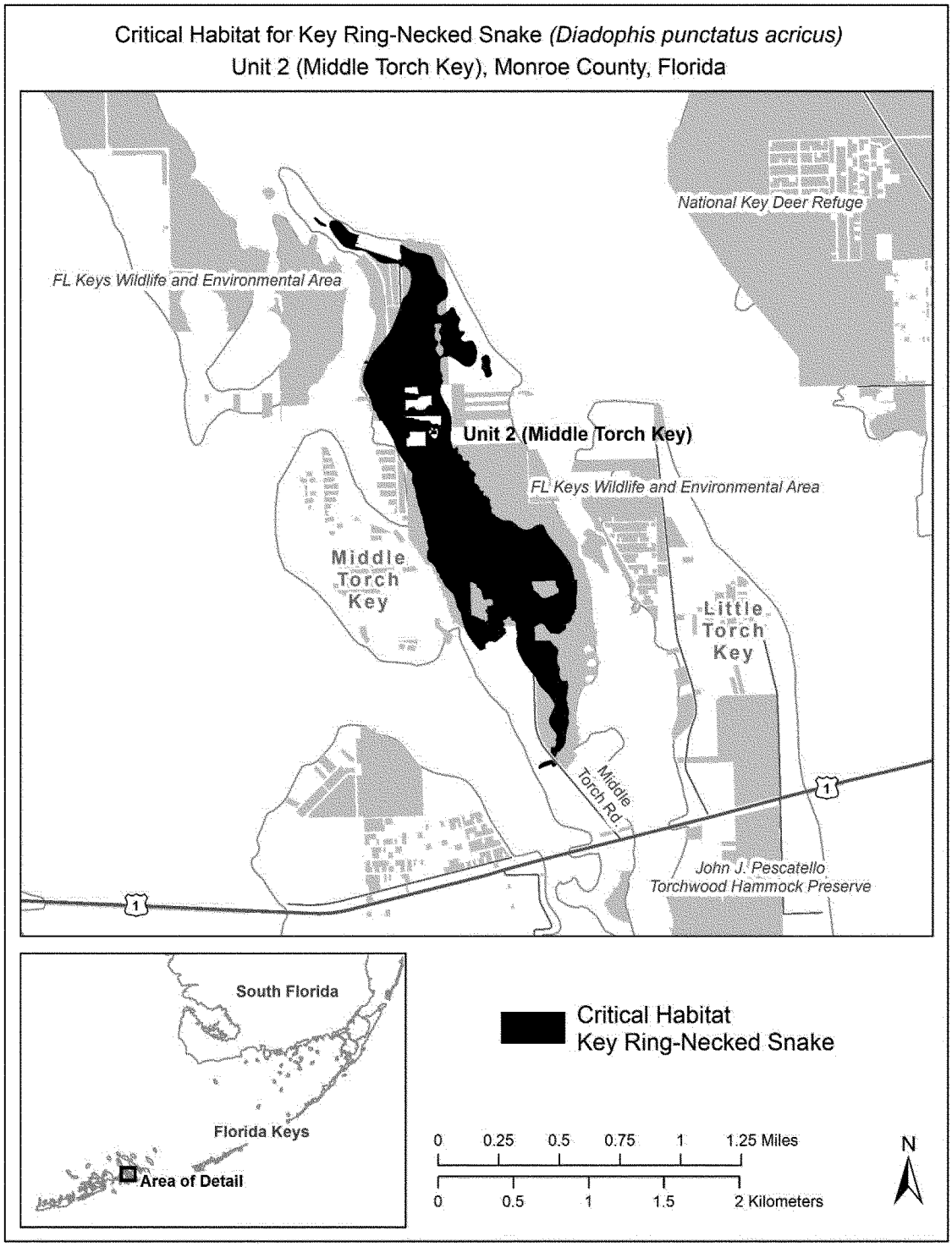


(7) Unit 2: Middle Torch Key, Monroe County, Florida.

(i) Unit 2 encompasses approximately 356 ac (144 ha) north of U.S. 1 and east and west of Middle Torch Road within Monroe County. The State owns a significant portion of the habitat (211 ac (85 ha)), and a smaller portion is owned by both Federal (59 ac (24 ha)) and private entities (86 ac (35 ha)).

(ii) Map of Unit 2 follows:

Figure 3 to Key Ring-necked Snake (*Diadophis punctatus acricus*) paragraph(7)(ii)

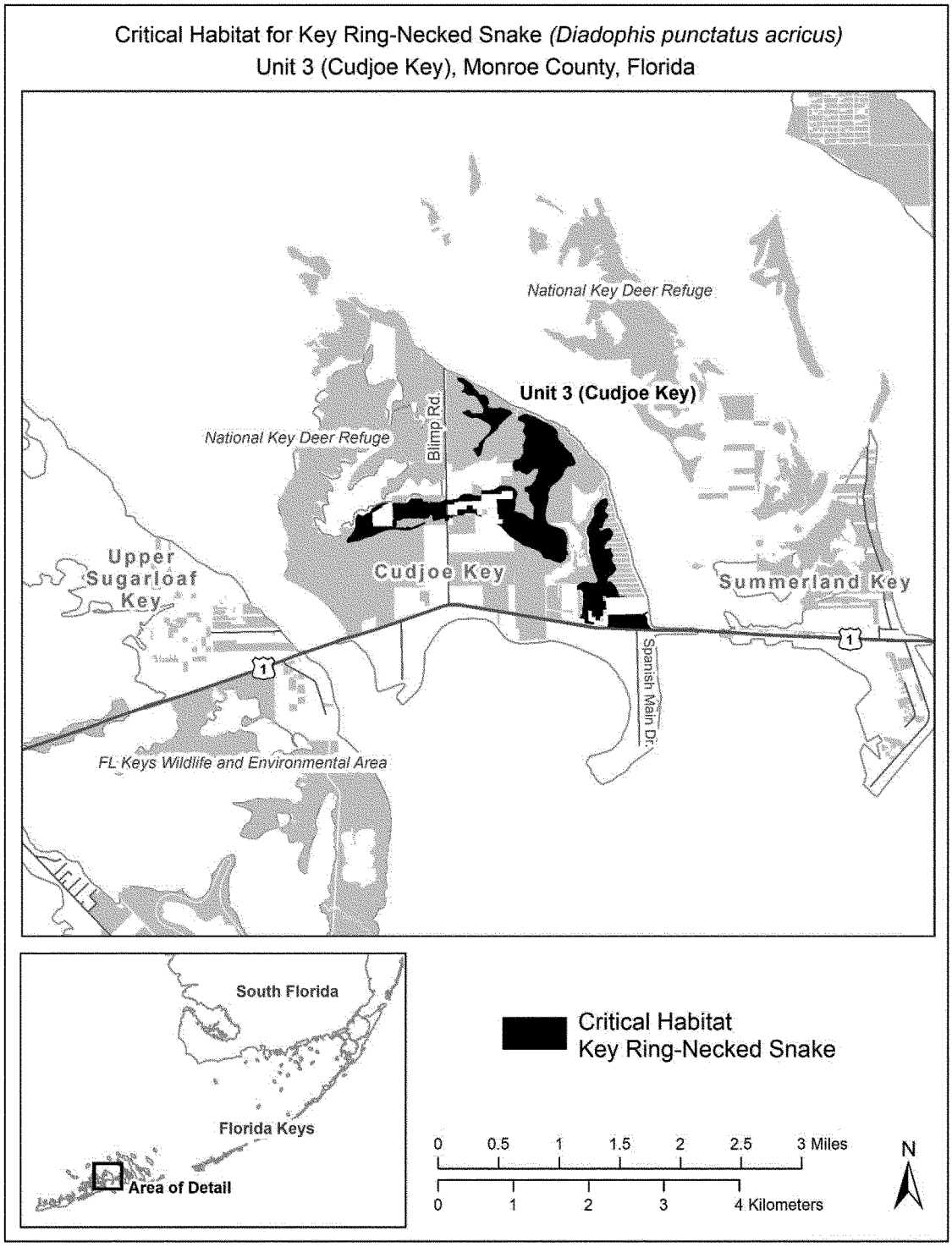


(8) Unit 3: Cudjoe Key, Monroe County, Florida.

(i) Unit 3 encompasses five subunits that total approximately 507 ac (205 ha) north of U.S. 1 and east and west of Blimp Road within Monroe County. The majority of the habitat in this unit is owned and managed by the Service and associated with the National Key Deer Wildlife Refuge (332 ac (134 ha)). The remainder of the unit is owned by State, local, and private entities (175 ac (71 ha)).

(ii) Map of Unit 3 follows:

Figure 4 to Key Ring-necked Snake (*Diadophis punctatus acricus*) paragraph (8)(ii)

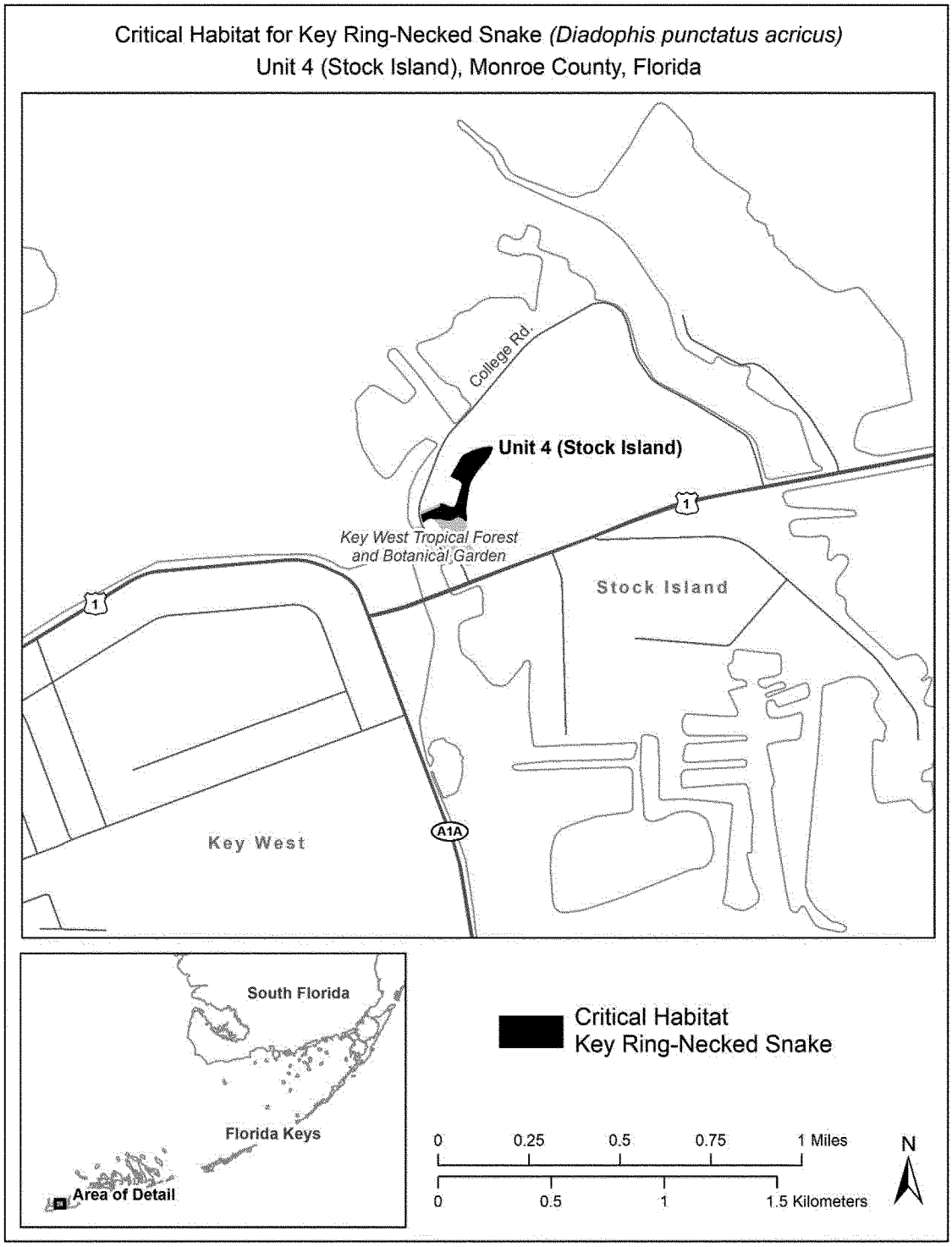


(9) Unit 4: Stock Island, Monroe County, Florida.

(i) Unit 4 encompasses approximately 8 ac (3 ha) north of U.S. 1 and east of College Road within Monroe County, within the lower Florida Keys. Nearly all habitat in this unit is owned by the City of Key West.

(ii) Map of Unit 4 follows:

Figure 5 to Key Ring-necked Snake (*Diadophis punctatus acricus*) paragraph (9)(ii)



Rim Rock Crowned Snake (*Tantilla oolitica*)

(1) Critical habitat units are depicted for Miami-Dade and Monroe Counties, Florida, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the rim rock crowned snake consist of the following components:

(i) Pine rocklands habitat that contains:

(A) Refugia consisting of a limestone rock substrate with holes, crevices, and shallow depressions; piles of rock rubble; and pockets of organic matter accumulating in solution holes;

(B) Suitable prey;

(C) Warm, moist microhabitats to maintain homeostasis; and

(D) A natural or prescribed fire regime at 5- to 7-year intervals that maintains the pine rocklands habitat and associated plant community.

(ii) Rockland hammock habitat that contains:

(A) Refugia consisting of a limestone substrate with holes, crevices, and shallow depressions; piles of rock rubble; and pockets of organic matter accumulating in solution holes;

(B) Suitable prey;

(C) Warm, moist microhabitat to maintain homeostasis; and

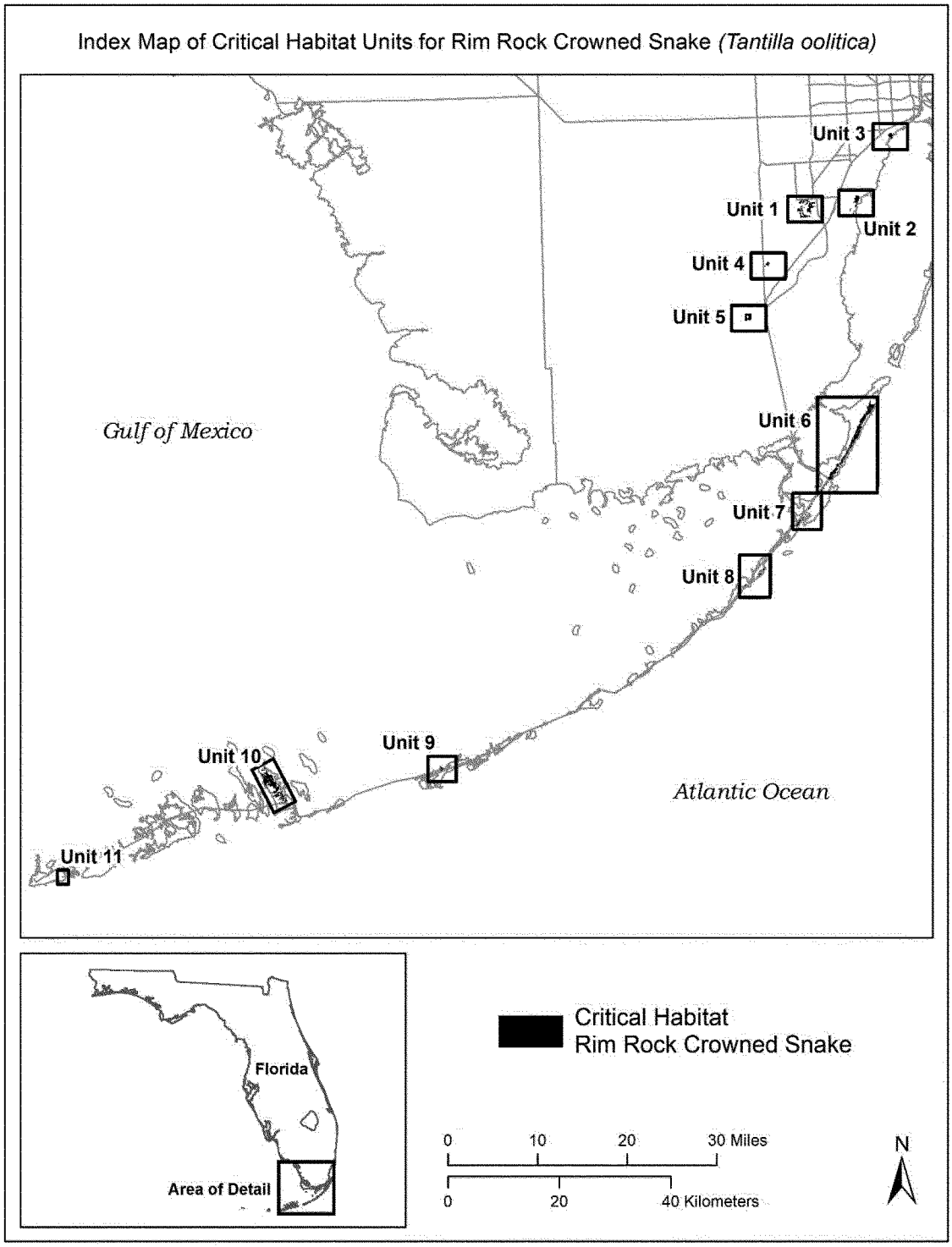
(D) Little or no fire maintenance.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [EFFECTIVE DATE OF THE FINAL RULE].

(4) Data layers defining map units were created using ESRI ArcGIS mapping software along with various spatial data layers. ArcGIS was also used to calculate the size of habitat areas. The projection used in mapping and calculating distances and locations within the units was Albers Conical Equal Area (Florida Geographic Data Library), NAD 1983 HARN. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *https://www.fws.gov/office/florida-ecological-services,* at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2022–0022, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map follows:

Figure 1 to Rim Rock Crowned Snake (*Tantilla oolitica*) paragraph (5)

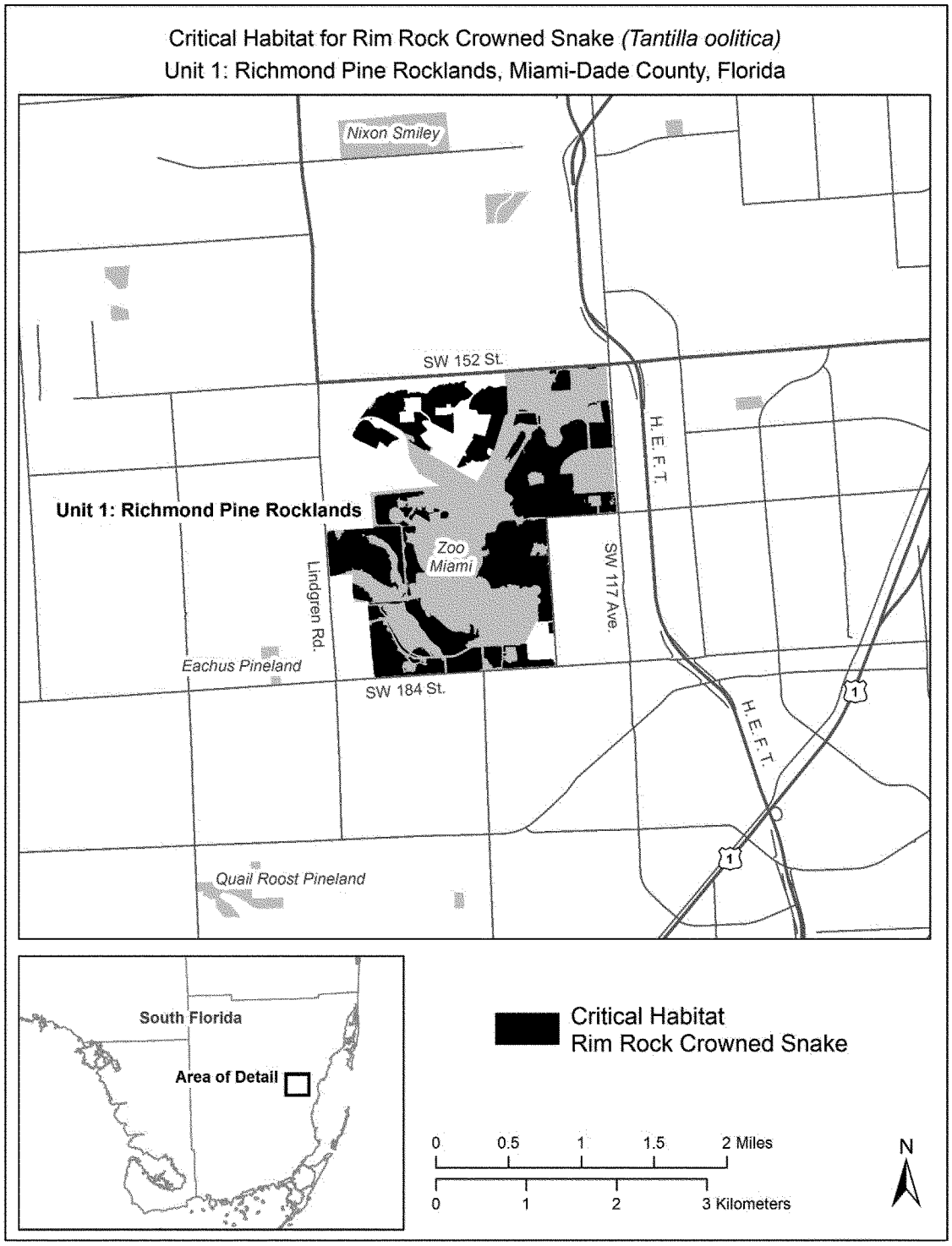


(6) Unit 1: Richmond Pine Rocklands, Miami-Dade County, Florida.

(i) Unit 1 consists of 819 acres (ac) (331 hectares (ha)) in Miami-Dade County. It is composed of 160 ac (65 ha) of Federal land and 659 ac (267 ha) of County and private lands. This unit is bordered on the north by SW 152 Street (Coral Reef Drive), on the south by SW 200 St (Quail Drive/SR 994), on the east by U.S. 1 (South Dixie Highway), and on the west by SW 177 Avenue (Krome Avenue).

(ii) Map of Unit 1 follows:

Figure 2 to Rim Rock Crowned Snake (*Tantilla oolitica*) paragraph (6)(ii)

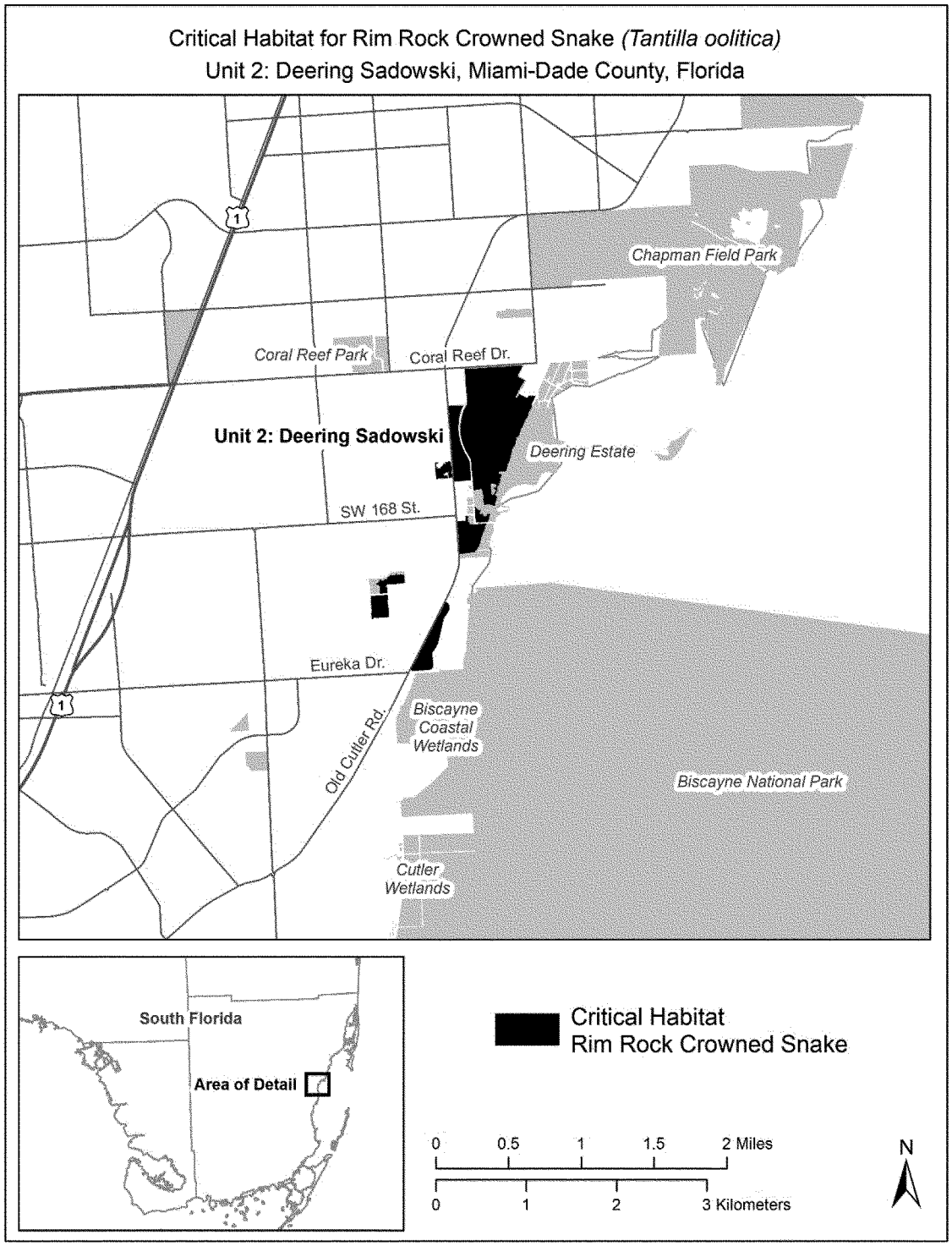


(7) Unit 2: Deering Estate Complex/Bill Sadowski Park, Miami-Dade County, Florida.

(i) Unit 2 consists of 293 ac (119 ha) in Miami-Dade County, including 241 ac (98 ha) of State land, 19 ac (8 ha) of County owned lands, and 31 ac (12 ha) of private lands. The majority of lands within this unit are conserved and managed by the County as Bill Sadowski Park and Deering Estate. The majority of the unit is bordered on the north by Coral Reef Drive, on the west by Old Cutler Road, to the south by Eureka Drive, and to the east by unsuitable habitat within the Deering Estate, which is further bordered by the Biscayne Bay. A small parcel of the Deering Estate included in Unit 2 is located west of Old Cutler Road, and is bordered on the east by SW 7th Avenue and by residential property on the north and south. Bill Sadowski Park, an outparcel of Unit 2, is bordered by Cutler Drain (Canal C–100) on the north, SW 79th Avenue on the west, SW 78th Avenue on the east, and SW 178th Terrace on the south.

(ii) Map of Unit 2 follows:

Figure 3 to Rim Rock Crowned Snake (*Tantilla oolitica*) paragraph (7)(ii)

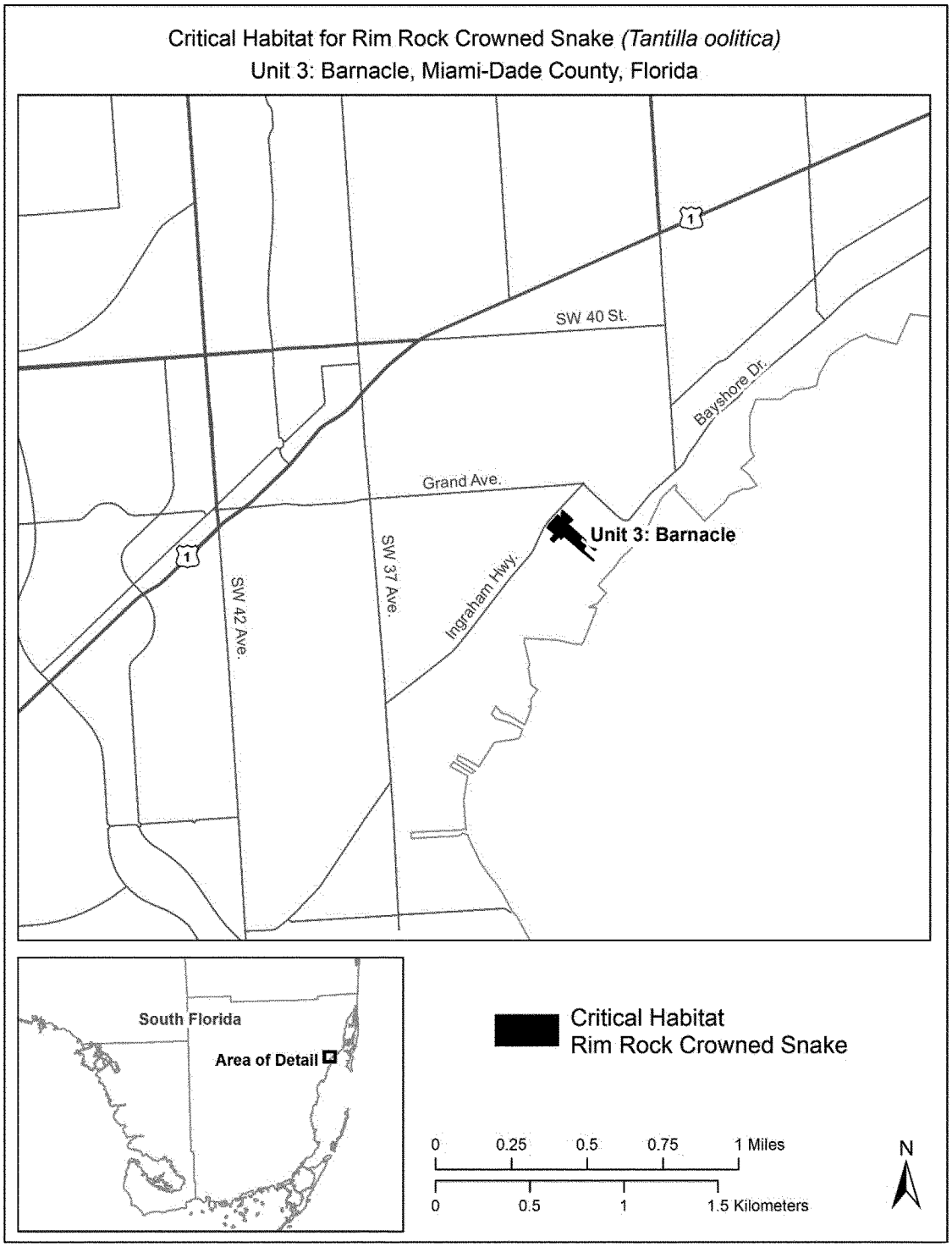


(8) Unit 3: Barnacle, Miami-Dade County, Florida.

(i) Unit 3 consists of 6 ac (2 ha) in Miami-Dade County, including 3 ac (1 ha) of State land. The remaining acres are local or private ownership. The majority of the unit is within the boundaries of the Barnacle Historic State Park. This unit is bordered by Main Highway on the northwest, Via Abitare Way on the southwest, an unnamed residential road on the northeast, and the Biscayne Bay on the southeast.

(ii) Map of Unit 3 follows:

Figure 4 to Rim Rock Crowned Snake (*Tantilla oolitica*) paragraph (8)(ii)

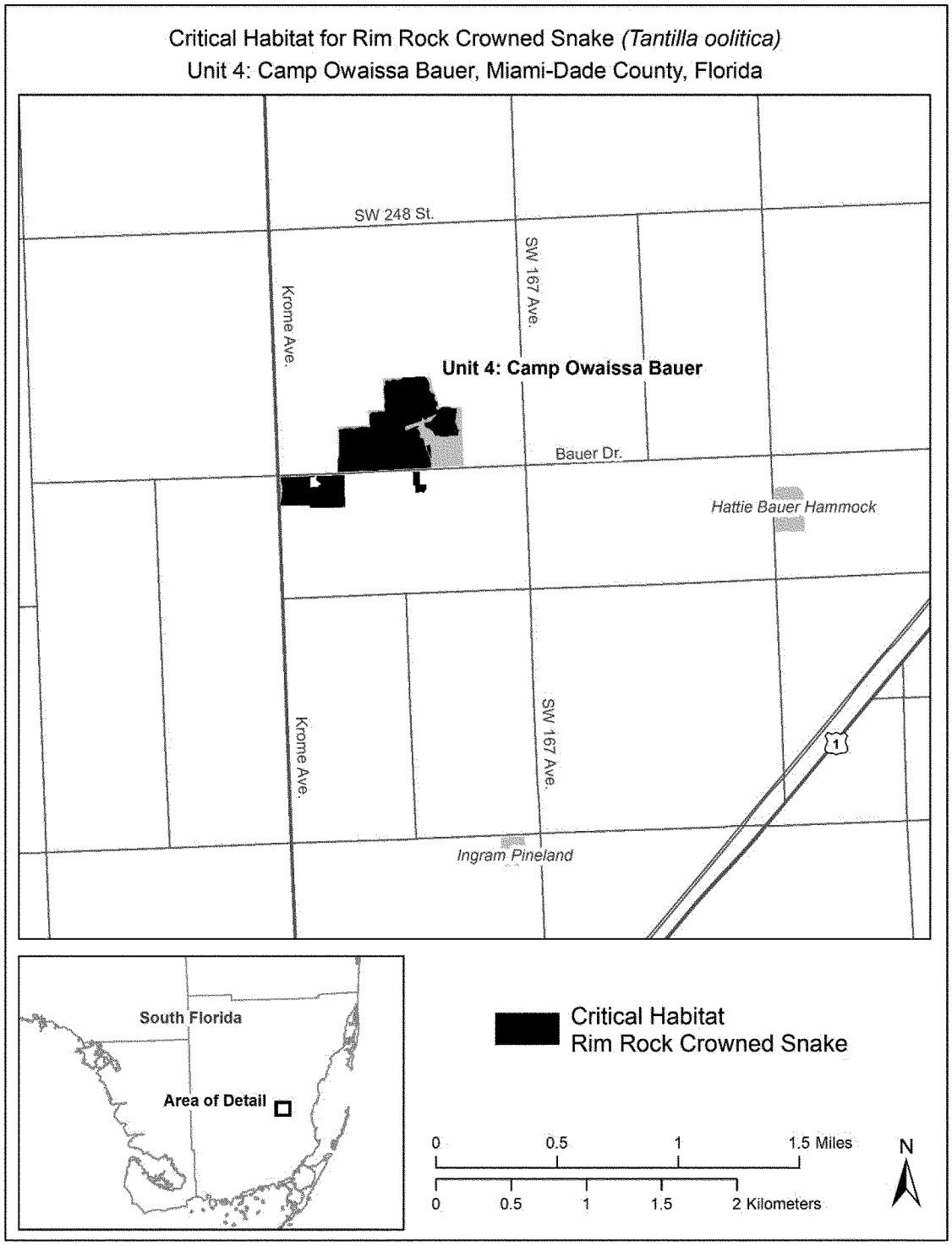


(9) Unit 4: Camp Owaissa Bauer, Miami-Dade County, Florida.

(i) Unit 4 consists of 96 ac (39 ha) in Miami-Dade County, with 9 ac (4 ha) of State land, 83 ac (34 ha) of County owned lands, and 4 ac (2 ha) of private lands. The majority of the unit is owned by Miami-Dade County and is managed by Miami-Dade County's Environmentally Endangered Lands program. The unit is bordered by State Road 997 on the west and SW 167th Avenue on the east.

(ii) Map of Unit 4 follows:

Figure 5 to Rim Rock Crowned Snake (*Tantilla oolitica*) paragraph (9)(ii)

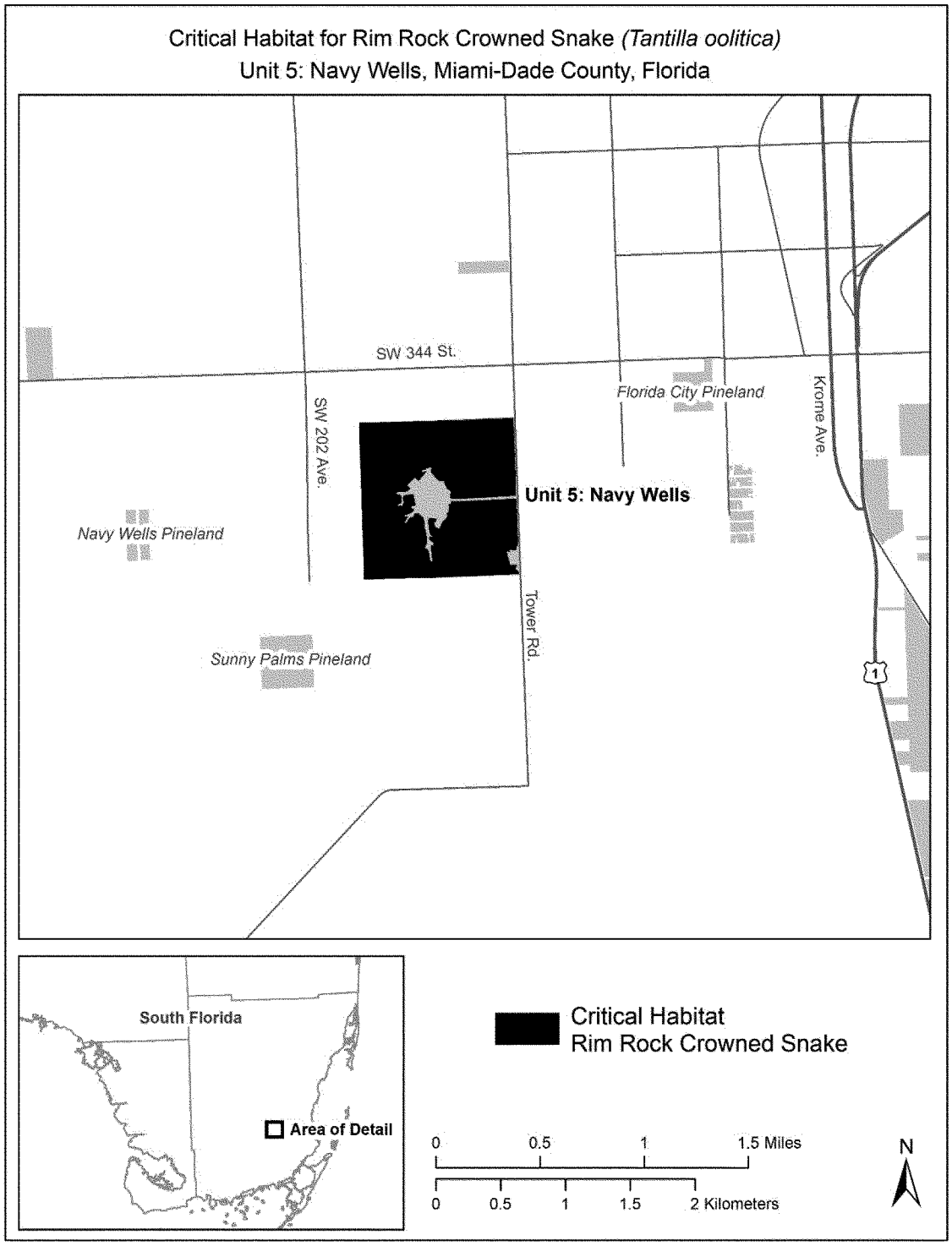


(10) Unit 5: Navy Wells, Miami-Dade County, Florida.

(i) Unit 5 consists of 326 ac (132 ha) in Miami-Dade County. It includes 85 ac (34 ha) of State lands and 240 ac (97 ha) of County owned land. The unit is bordered by State Road 9336 on the east, and Lucille Drive (SW 360th Street) on the south. The majority of the unit is owned by Miami-Dade County, and the State of Florida owns a large tract of land, both of which are managed by Miami-Dade County's Environmentally Endangered Lands program.

(ii) Map of Unit 5 follows:

Figure 6 to Rim Rock Crowned Snake (*Tantilla oolitica*) paragraph (10)(ii)

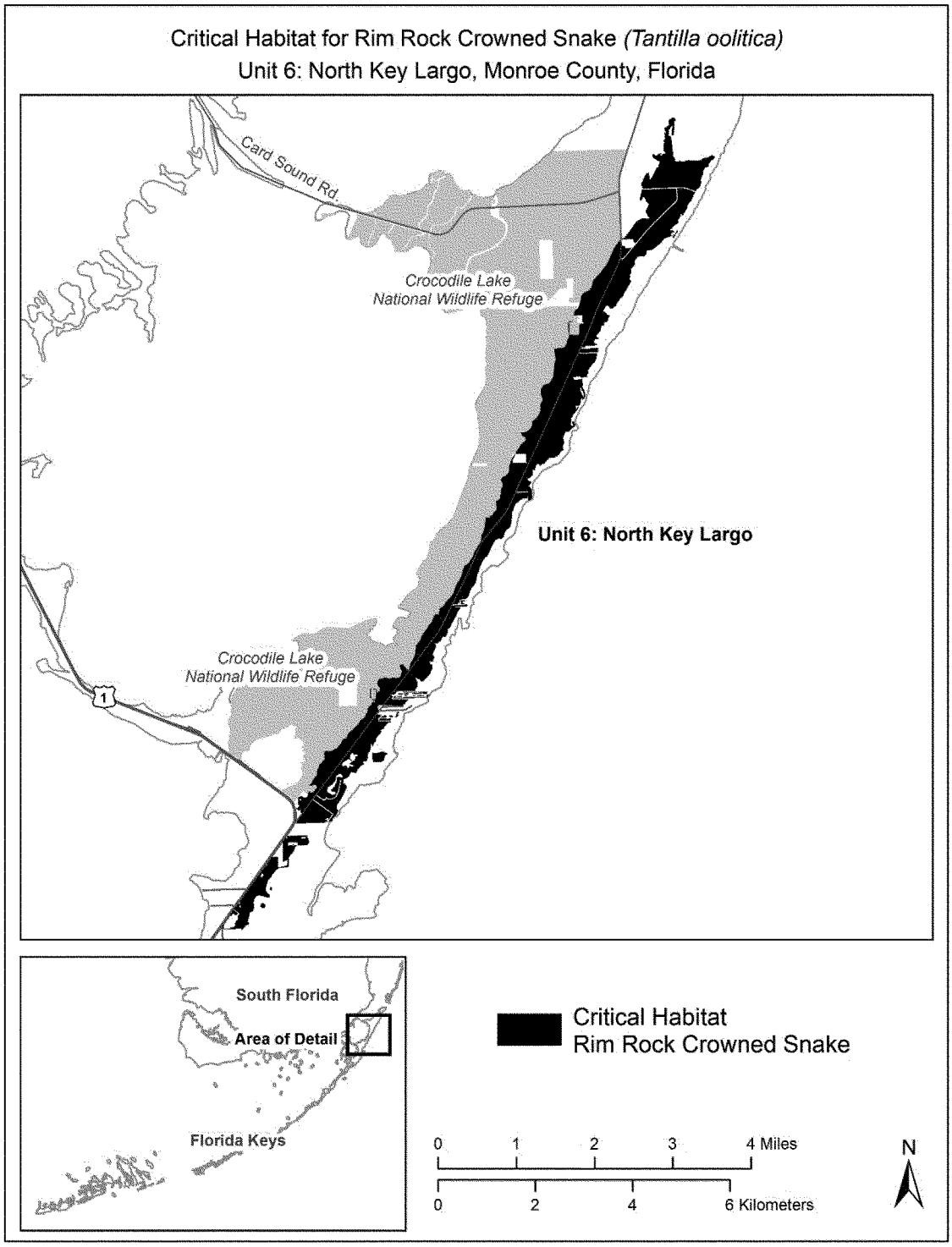


(11) Unit 6: North Key Largo, Monroe County, Florida.

(i) Unit 6 consists of 2,161 ac (875 ha) in Monroe County, Florida, in the upper Florida Keys. This unit is surrounded by the Atlantic Ocean to the east and the Florida Bay to the west. The unit is bisected by County Road 905 and U.S. Highway 1, which runs in a northeast to southwest direction in the center of North Key Largo south to Key Largo. It consists of 601 ac (243 ha) of Federal lands, 1,484 ac (601 ha) of State lands, 24 ac (9 ha) of locally owned lands, and 53 ac (21 ha) of private lands. The majority of Federal land in this unit is owned and managed by the Service and associated with Crocodile Lake National Wildlife Refuge.

(ii) Map of Unit 6 follows:

Figure 7 to Rim Rock Crowned Snake (*Tantilla oolitica*) paragraph (11)(ii)

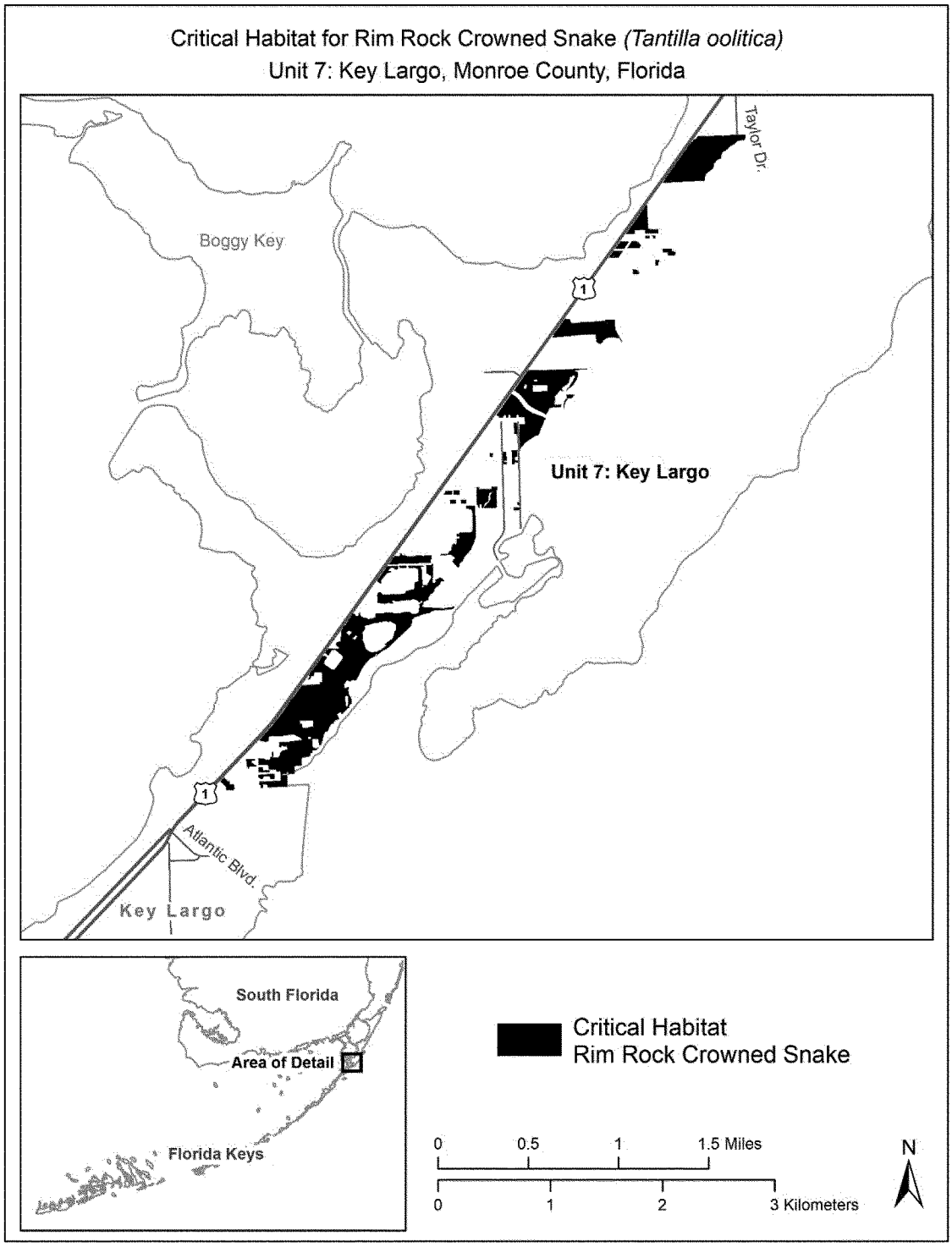


(12) Unit 7: Key Largo, Monroe County, Florida.

(i) Unit 7 consists of 298 ac (121 ha) in Monroe County, Florida, in the upper Florida Keys. This unit is bordered by U.S. Highway 1 on the northwest. It consists of 151 ac (40 ha) of State lands, 56 ac (23 ha) of County/local government owned lands, and 91 ac (37 ha) of private lands. The majority of habitat consists of habitat owned by private entities and the State of Florida (John Pennekamp Coral Reef State Park).

(ii) Map of Unit 7 follows:

Figure 8 to Rim Rock Crowned Snake (*Tantilla oolitica*) paragraph (12)(ii)

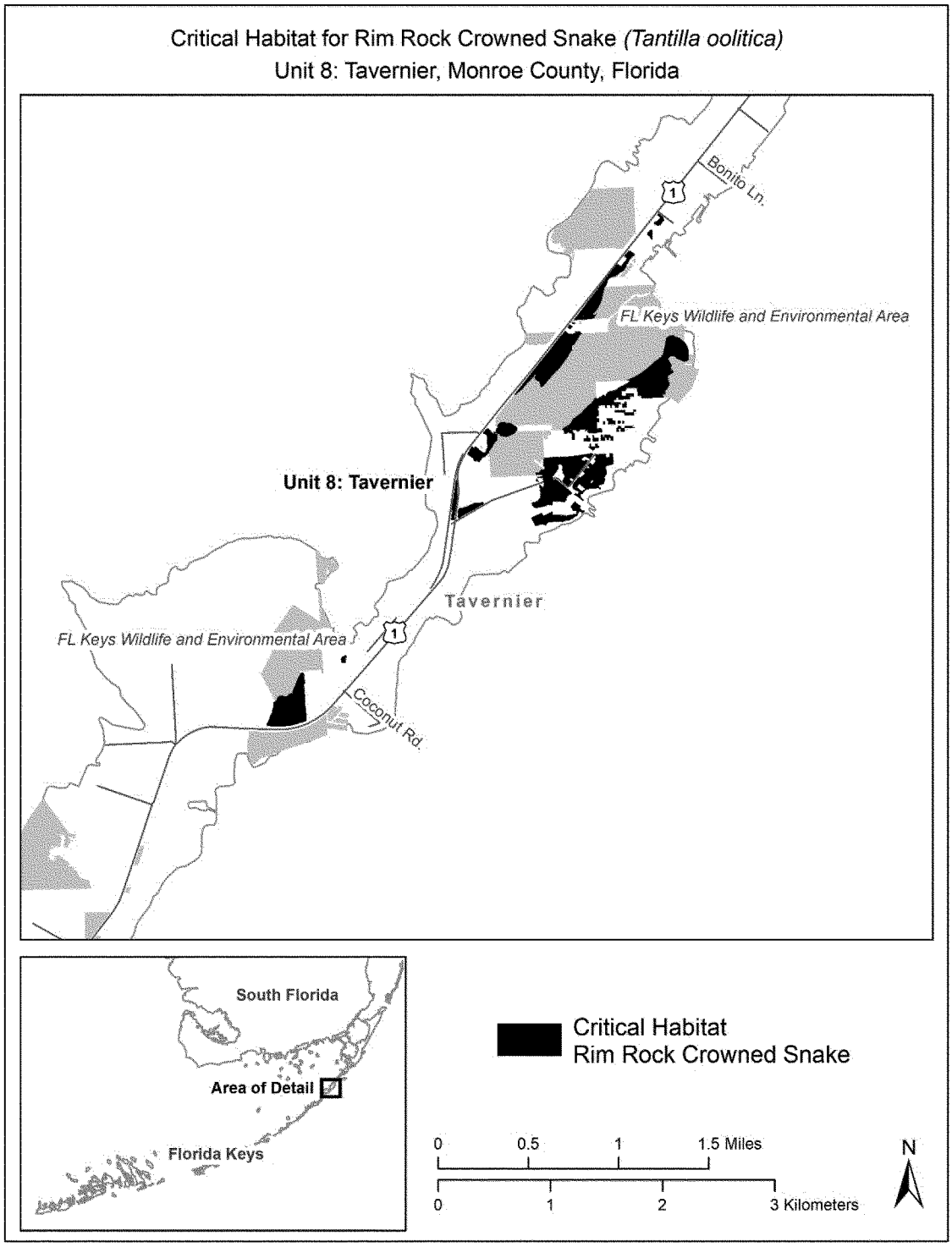


(13) Unit 8: Tavernier, Monroe County, Florida.

(i) Unit 8 consists of 181 ac (73 ha) in Monroe County, Florida, in the upper Florida Keys. The majority of the unit is bordered by U.S. Highway 1 on the northwest, and Peace Avenue on the north. Two outparcels are bordered by U.S. Highway 1 on the southeast. Located within Monroe County and part of the city of Tavernier, within the upper Florida Keys islands, the habitat in this unit is surrounded and/or fragmented by suburban and urban development, canals, and two-lane roads. It consists of 98 ac (40 ha) of State lands, 30 ac (12 ha) of County/local government owned lands, and 54 ac (22 ha) of private lands.

(ii) Map of Unit 8 follows:

Figure 9 to Rim Rock Crowned Snake (*Tantilla oolitica*) paragraph (13)(ii)

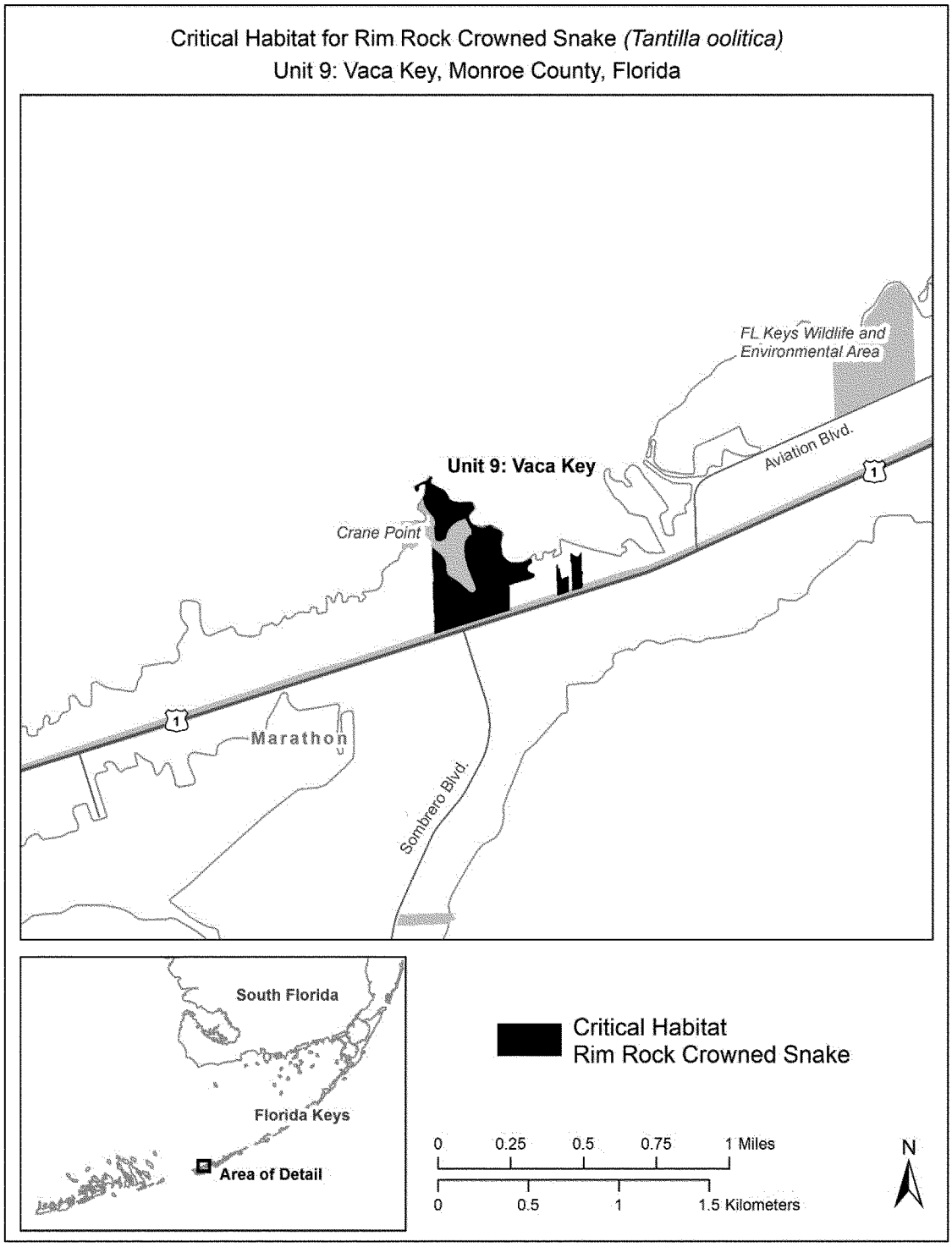


(14) Unit 9: Vaca Key, Monroe County, Florida.

(i) Unit 9 consists of 59 ac (24 ha) of habitat in Monroe County, Florida, in the upper Florida Keys. This unit is bordered by U.S. Highway on the south. It is composed of 58 ac (23.5 ha) of privately owned land, and 1 ac (0.4 ha) of lands owned by County/local government.

(ii) Map of Unit 9 follows:

Figure 10 to Rim Rock Crowned Snake (*Tantilla oolitica*) paragraph (14)(ii)

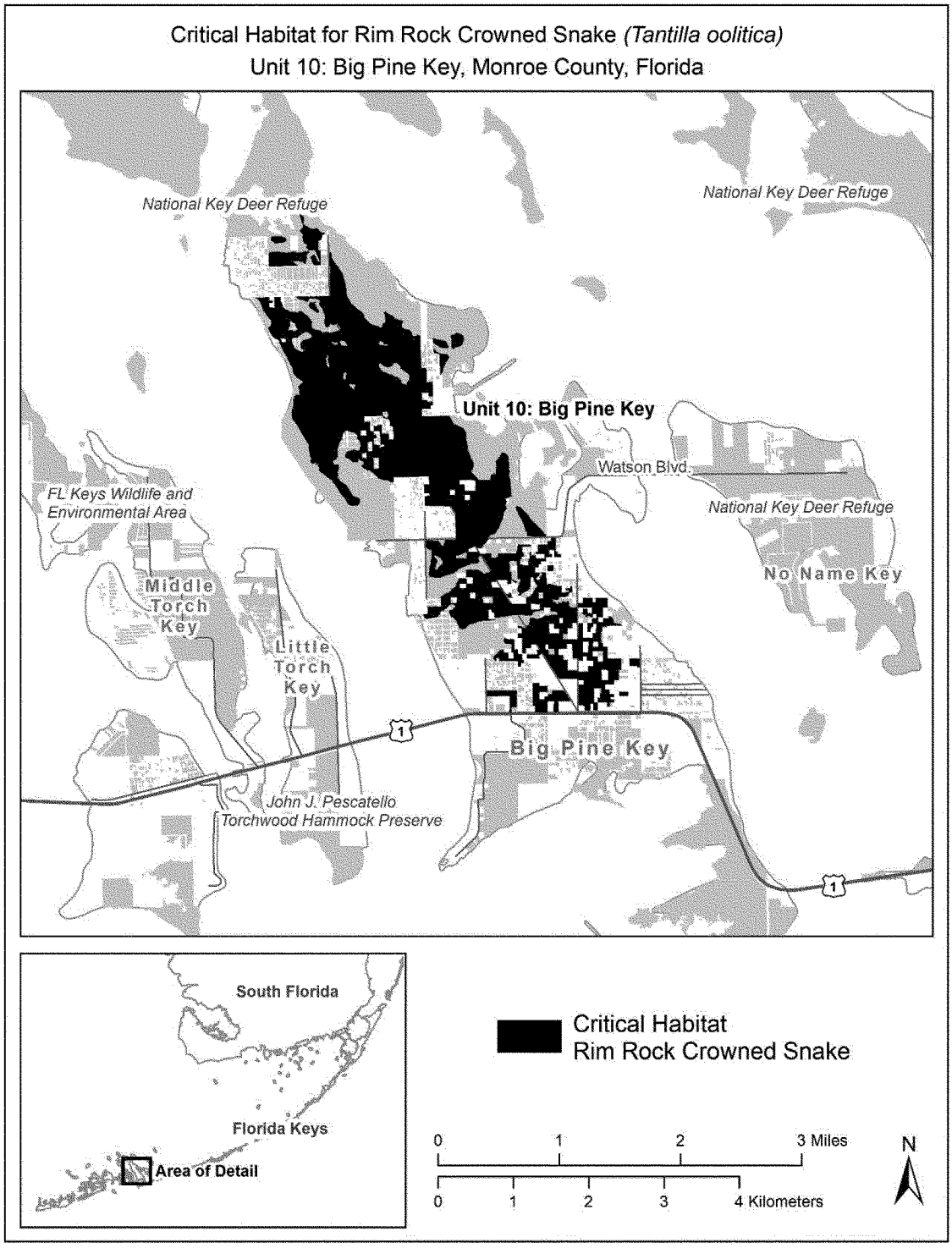


(15) Unit 10: Big Pine Key, Monroe County, Florida.

(i) Unit 10 consists of 1,729 ac (700 ha) in Monroe County, Florida, in the lower Florida Keys. This unit is bordered by U.S. Highway 1 on the south. It consists of 1,200 ac (486 ha) of Federal land, 380 ac (154 ha) of State lands, 71 ac (29 ha) of locally owned lands, and 77 ac (31 ha) of private lands. The majority of this unit is owned and managed by the Service and associated with the National Key Deer Wildlife Refuge.

(ii) Map of Unit 10 follows:

Figure 11 to Rim Rock Crowned Snake (*Tantilla oolitica*) paragraph (15)(ii)

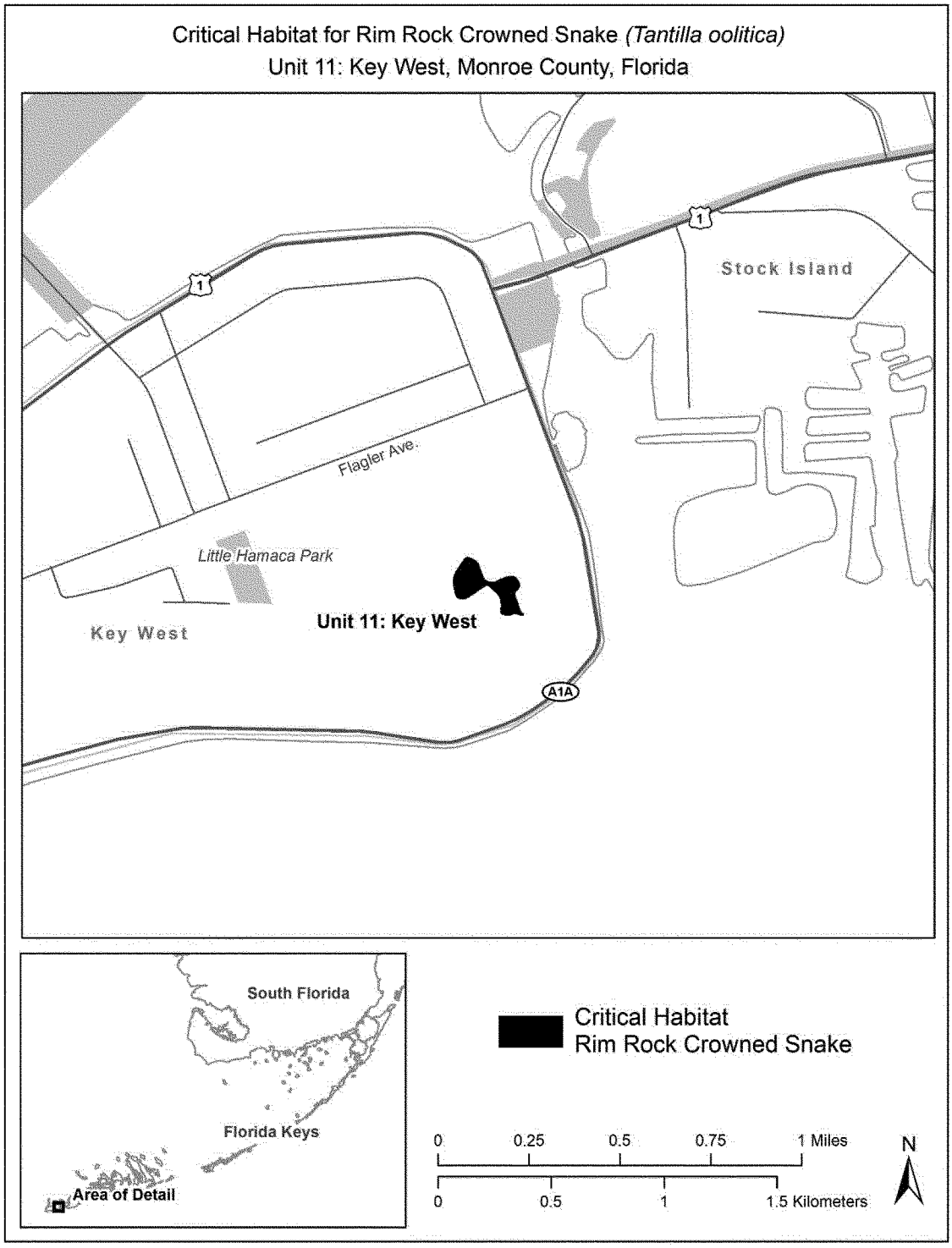


(16) Unit 11: Key West, Monroe County, Florida.

(i) Unit 11 consists of 9 ac (4 ha) in Monroe County, Florida, in the lower Florida Keys. Large resorts and hotels are located to the east and the Key West International Airport is located to the south of this unit. It consists of 5 ac (2 ha) of local/County-owned land and 3 ac (1 ha) of private land.

(ii) Map of Unit 11 follows:

Figure 12 to Rim Rock Crowned Snake (*Tantilla oolitica*) paragraph (16)(ii)



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Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–21543 Filed 10–13–22; 8:45 am]

BILLING CODE 4333–15–C

FEDERAL REGISTER

Vol. 87 Friday,
No. 198 October 14, 2022

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 660

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Pacific Coast Groundfish Fishery Management Plan; Amendment 30; 2023–24 Biennial Specifications and Management Measure; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 220915–0191]

RIN 0648–BL48

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Pacific Coast Groundfish Fishery Management Plan; Amendment 30; 2023–24 Biennial Specifications and Management Measures

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

ACTION: Proposed rule; notice of availability of a draft environmental assessment; request for comments.

SUMMARY: This proposed rule would establish the 2023–24 harvest specifications for groundfish caught in the U.S. exclusive economic zone seaward of Washington, Oregon, and California, consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the Pacific Coast Groundfish Fishery Management Plan. This proposed rule would also revise management measures intended to keep the total annual catch of each groundfish stock or stock complex within the annual catch limits. These proposed measures are intended to help prevent overfishing, rebuild overfished stocks, achieve optimum yield, and ensure management measures are based on the best scientific information available. This proposed rule would also make minor corrections to the regulations. Additionally, this proposed rule announces the receipt of exempted fishing permit applications. NMFS has made a preliminary determination that these applications warrant further consideration. NMFS requests public comment on these applications. This action also would implement portions of Amendment 30 to the Pacific Coast Groundfish Fishery Management Plan, which would specify a shortbelly rockfish catch threshold to initiate Council review; extend the length of the limited entry fixed gear sablefish primary season; change the use of Rockfish Conservation Area boundaries; expand the use of Block Area Closures to control catch of groundfish; and correct the definition of Block Area Closures. In accordance with the National Environmental Policy Act of 1969, as amended, NMFS also announces the availability of a draft environmental assessment that analyzes the potential effects of the associated proposed rule.

DATES: Comments must be received no later than November 14, 2022.

ADDRESSES: Submit your comments on the proposed rule, draft environmental assessment, and exempted fishing permit applications, identified by NOAA–NMFS–2022–0080, by the following method:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA–NMFS–2022–0080 in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments. The exempted fishing permit (EFP) applications will be available under Supporting Documents through the same link.

Instructions: Comments must be submitted by the above method to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and NMFS will post for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Please specify whether the comments provided are associated with the proposed rule, draft environmental assessment, or EFP applications.

Electronic Access

This rule is accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov/.* The draft Environmental Assessment (EA) which addresses the National Environmental Policy Act, Presidential Executive Order 12866, and the Regulatory Flexibility Act, is accessible via the internet at the NMFS West Coast Region website at *https://www.fisheries.noaa.gov/region/west-coast.* Background information and documents including an analysis for this action (Analysis), which addresses the statutory requirements of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) are available from the Pacific Fishery Management Council's website at *https://www.pcouncil.org.* The final 2022 Stock Assessment and Fishery Evaluation (SAFE) report for Pacific Coast groundfish, as well as the SAFE reports for previous years, are available from the Pacific Fishery Management Council's website at *https://www.pcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Brian Hooper, Fishery Management Specialist, at 206–526–6117 or *brian.hooper@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Chapter 5 of the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) requires the Pacific Fishery Management Council (Council) to assess the biological, social, and economic conditions of the Pacific coast groundfish fishery and use this information to develop harvest specifications and management measures at least biennially. This proposed rule is based on the Council's final recommendations for harvest specifications and management measures for the 2023–24 biennium made at its April and June 2022 meetings.

The Council deemed the proposed regulations necessary and appropriate to implement these actions in an August 29, 2022, letter from Council Executive Director, Merrick Burden, to Acting Regional Administrator Scott Rumsey. Under the Magnuson-Stevens Act, NMFS is required to publish proposed rules for comment after preliminarily determining whether they are consistent with applicable law. We are seeking comment on the proposed regulations in this action and whether they are consistent with the PCGFMP, the Magnuson-Stevens Act and its National Standards, and other applicable law.

Concurrent with this proposed rule, NMFS also published a Notice of Availability (NOA) to announce the proposed Amendment 30 to the PCGFMP. The NOA requests public review and comment on proposed changes to the Council fishery management plan document (87 FR 54445; September 6, 2022). Public comments are being solicited on the amendment through November 7, 2022, the end of the comment period for the NOA. Public comments on the proposed rule must be received by the end of the comment period on the Amendment, as published in the NOA, to be considered in the approval/disapproval decision on the Amendment. All comments received by the end of the comment period on the amendment, whether specifically directed to the Amendment, or the proposed rule, will be considered in the

approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

An action included in this proposed rule would affect the season dates for the retention of incidentally caught halibut in the sablefish primary fishery north of Point Chehalis. The Northern Pacific Halibut Act of 1982 (Halibut Act), 16 U.S.C. 773–773k, gives the Secretary of Commerce (Secretary) responsibility for implementing the provisions of the Convention between Canada and the United States for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Halibut Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). The Halibut Act requires that the Secretary adopt regulations to carry out the purposes and objectives of the Halibut Convention and Halibut Act (16 U.S.C. 773c). Additionally, as provided in the Halibut Act, the Regional Fishery Management Councils having authority for the geographic area concerned may develop, and the Secretary of Commerce may implement, regulations governing harvesting privileges among U.S. fishermen in U.S. waters that are in addition to, and not in conflict with, approved International Pacific Halibut Commission (IPHC) regulations (16 U.S.C. 773c(c)).

A. Specification and Management Measure Development Process

In 2021, the Northwest Fisheries Science Center (NWFSC) conducted full stock assessments for Dover sole, lingcod, vermilion rockfish/sunset rockfish, and spiny dogfish. The NWFSC conducted data moderate assessments for copper rockfish, quillback rockfish, and squarespot rockfish off California. The NWFSC conducted an update assessment of sablefish. Additionally, the NWFSC reviewed catch-only assessment updates for a number of previously assessed stocks (arrowtooth flounder, petrale sole, canary rockfish and darkblotched rockfish), as well as a new yelloweye rockfish catch report. The NWFSC did not update assessments for the remaining stocks, so harvest specifications for these stocks are based on assessments from previous years. The full stock assessments used to set catch limits for this biennium are available on the Council's website (*https://www.pcouncil.org/*).

The Council's stock assessment review panel (STAR panel) reviewed the stock assessments, including assessments on stocks for which some biological indicators are available, as described below, for technical merit, and to determine that each stock assessment document was sufficiently complete. Finally, the Council's Scientific and Statistical Committee (SSC) reviewed the stock assessments and STAR panel reports and made its recommendations to the Council (Agenda Item G.5, June 2021 Council meeting; Agenda Item C.6, September 2021 Council Meeting; Agenda Item E.2, November 2021 Council Meeting).

The Council considered the new stock assessments, stock assessment updates, catch-only updates, public comment, recommendations from the SSC, and advice from its advisory bodies over the course of six Council meetings during development of its recommendations for the 2023–24 harvest specifications and management measures. At each Council meeting between June 2021 and June 2022, the Council made a series of decisions and recommendations that were, in some cases, refined after further analysis and discussion. Agenda Item G.6, Supplemental Revised Attachment 1, June 2021 describes the Council's meeting schedule for developing the 2023–24 biennial harvest specifications. Additionally, detailed information, including the supporting documentation the Council considered at each meeting, is available at the Council's website, *www.pcouncil.org.*

The 2023–24 biennial management cycle was the fourth cycle following PCGFMP Amendment 24 (80 FR 12567, March 10, 2015), which established default harvest control rules and was analyzed through an Environmental Impact Statement (EIS) (Final Environmental Impact Statement for Pacific Coast Groundfish Harvest Specifications and Management Measures for 2015–2016 and Biennial Periods Thereafter, and Amendment 24 to the PCGFMP, published January 2015). The EIS described the ongoing implementation of the PCGFMP and default harvest control rules. Under Amendment 24, the default harvest control rules used to determine the previous biennium's harvest specifications (*i.e.,* overfishing limits (OFLs), acceptable biological catches (ABCs), and annual catch limits (ACLs)) are applied automatically to the best scientific information available to determine the future biennium's harvest specifications. NMFS implements harvest specifications based on the default harvest control rules used in the previous biennium unless the Council makes a recommendation to deviate from the default. Therefore, this rule implements the default harvest control rules, consistent with the last biennium (2021–22), for most stocks, and discusses Council-recommended departures from the defaults. The draft EA supporting this action identifies the preferred harvest control rules, management measures, and other management changes that were not described in the 2015 EIS, and will be posted on the NMFS West Coast Region webpage (see Electronic Access).

Information regarding the OFLs, ABCs, and ACLs proposed for groundfish stocks and stock complexes in 2023–24 is presented below, followed by a discussion of the proposed management measures for commercial and recreational groundfish fisheries.

II. Proposed Harvest Specifications

This proposed rule would set 2023–24 harvest specifications and management measures for 127 of the 128 groundfish stocks or management units which currently have ACLs or ACL contributions to stock complexes managed under the PCGFMP, except for Pacific whiting. Pacific whiting harvest specifications are established annually through a separate bilateral process with Canada.

The proposed OFLs, ABCs, and ACLs are based on the best available biological and socioeconomic data, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. The PCGFMP specifies a series of three stock categories for the purpose of setting maximum sustainable yield (MSY),[1] OFLs, ABCs, ACLs, and rebuilding standards. Category one represents the highest level of information quality available, while category three represents the lowest. Category one stocks are the relatively few stocks for which the NWFSC can conduct a ''data rich'' quantitative stock assessment that incorporates catch-at-age, catch-at-length, or other data. The SSC can generally calculate OFLs and overfished/rebuilding thresholds for these stocks, as well as ABCs, based on the uncertainty of the biomass estimated within an assessment or the variance in biomass estimates between assessments for all stocks in this category. The set of category two stocks includes a large number of stocks for which some

[1] MSY is the largest long-term average catch that can be taken from a fish stock under prevailing environmental and fishery conditions.

biological indicators are available, yet status is based on a ''data-moderate'' quantitative stock assessment. The category three stocks include minor stocks which are caught, but for which there is, at best, only information on landed biomass. For stocks in this category, there is limited data available for the SSC to quantitatively determine MSY, OFL, or an overfished threshold. Typically, catch-based methods (*e.g.,* depletion-based stock reduction analysis, depletion corrected average catch, and average catches) are used to determine the OFL for category three stocks. A detailed description of each of these categories can be found in Section 4.2 of the PCGFMP.

A. Proposed OFLs for 2023 and 2024

The OFL serves as the maximum amount of fish that can be caught in a year without resulting in overfishing. Overfishing occurs when a stock has a harvest rate, denoted as $F_{x\%}$, is set higher than the rate that produces the stock's MSY. The SSC derives OFLs for groundfish stocks with stock assessments by applying the harvest rate to the current estimated biomass (B). Harvest rates represent the rates of fishing mortality (F) that will reduce the female spawning potential ratio (SPR) to X percent of its unfished level. As an example, a harvest rate of $F_{40\%}$ is more aggressive than $F_{45\%}$ or $F_{50\%}$ harvest rates because $F_{40\%}$ allows more fishing mortality on a stock (as it allows a harvest rate that would reduce the stock to 40 percent of its unfished level). The OFL does not account for scientific or management uncertainty, so the SSC typically recommends an ABC that is lower than the OFL in order to account for this uncertainty. Usually, the greater the amount of scientific uncertainty, the lower the ABC is set compared to the OFL.

For 2023–24, the Council maintained its policy of using a default harvest rate as a proxy for the fishing mortality rate that is expected to achieve F_{MSY}. The Council also maintained the same default harvest rate proxies as used in the 2021–22 biennium, based on the SSC's recommendations: $F_{30\%}$ for flatfish (meaning an SPR harvest rate that would reduce the stock to 30 percent of its unfished level), $F_{50\%}$ for rockfish (including longspine and shortspine thornyheads), $F_{50\%}$ for elasmobranchs, and $F_{45\%}$ for other groundfish such as sablefish and lingcod. For unassessed stocks, the Council recommended using a historical catch-based approach (*e.g.,* average catch, depletion-corrected average catch, or depletion-based stock reduction analysis) to set the OFL. See Tables 1a and 2a to Part 660, Subpart C in the proposed regulatory text supporting this rule for the proposed 2023–24 OFLs.

The SAFE document for 2022, includes a detailed description of the scientific basis for all of the SSC-recommended OFLs proposed in this rule, and is available at the Council's website, *www.pcouncil.org.*

B. Proposed ABCs for 2023 and 2024

The ABC is the stock or stock complex's OFL reduced by an amount associated with scientific uncertainty. The SSC-recommended P star-sigma approach determines the amount by which the OFL is reduced to account for this uncertainty. Under this approach, the SSC recommends a sigma (σ) value. The σ value is generally based on the scientific uncertainty in the biomass estimates generated from stock assessments and is usually related to the stock category. After the SSC determines the appropriate σ value, the Council chooses a P star (P*) based on its chosen level of risk aversion to address the consequences of the stock being elsewhere within the uncertainty represented by sigma.

A P* of 0.5 equates to no additional reduction beyond the σ value reduction. The PCGFMP specifies the upper limit of P* will be 0.45. The P*-sigma approach is discussed in detail in the proposed and final rules for the 2011–12 (75 FR 67810, November 3, 2010; 76 FR 27508, May 11, 2011) and 2013–14 (77 FR 67974, November 12, 2012; 78 FR 580, January 3, 2013) biennial harvest specifications and management measures.

The SSC quantified major sources of scientific uncertainty in the estimates of OFLs and generally recommended a σ value of 0.5 for category one stocks, a σ value of 1.0 for category two stocks, and a σ value of 2.0 for category three stocks. For category two and three stocks, there is greater scientific uncertainty in the OFL estimate because the assessments for these stocks are informed by less data than the assessments for category one stocks. Therefore, the scientific uncertainty buffer is generally greater than that recommended for stocks with data-rich stock assessments. Assuming the same P* is applied, a larger σ value results in a larger reduction from the OFL. For 2023–24, the Council continued the general policy of using the SSC-recommended σ values for each stock category.

For 2023–24, the Council maintained the P* policies it established for the previous biennium for most stocks, except when calculating the contribution of black rockfish to the Oregon blue/deacon/black rockfish complex. The Council considered alternative P* values for lingcod south of 40°0′ N lat., lingcod north of 40°10′ N lat., sablefish, spiny dogfish, vermilion and sunset rockfishes south of 4010′ N lat., and vermilion and sunset rockfishes north of 40°0′ N lat., but ultimately decided to maintain the default P* value used in the previous biennium. The Council recommended using P* values of 0.45 for all individually managed category one stocks, except yelloweye rockfish. Combining the category one σ value of 0.5 with the P* value of 0.45 results in a reduction of 6.1 percent from the OFL when deriving the ABC. For category two stocks, the Council's general policy was to apply a P* of 0.4, with a few exceptions. The Council recommended applying a P* of 0.45 for big skate, English sole, lingcod south of 40°10′ N lat., lingcod north of 40°10′ N lat., longnose skate, Pacific ocean perch, and all of the stocks managed in the Oregon blue/deacon/black rockfish complex, Nearshore Rockfish complexes, Shelf Rockfish Complexes, Slope Rockfish complexes, and the Other Fish complex. When combined with the σ values of 1.00 for category two, a P* value of 0.45 corresponds to an 11.8 percent reduction and a P* value of 0.40 corresponds to a 22.4 percent reduction. For category three stocks, the Council's general policy was to apply a P* value of 0.45 for these stocks, except the Council recommended a P* value of 0.40 for cowcod between 40°10′ N lat. and 34°27′ N lat., Pacific cod, starry flounder, and all stocks in the Other Flatfish complex. When combined with the σ values of 2.00 for category three, a P* value of 0.45 corresponds to 22.2 percent reduction and a P* value of 0.40 corresponds to a 39.8 percent reduction. See Table 1–3 of Agenda F.3, Supplemental Revised Attachment 1, April 2022 Council meeting for the full description of σ and P* values by stock. See Tables 1a and 2a to Part 660, Subpart C in the in the proposed regulatory text of this proposed rule for the proposed 2023–24 ABCs.

C. Proposed ACLs for 2023 and 2024

The Council recommends ACLs for each groundfish stock or management unit as defined in the PCGFMP. To determine the ACL for each stock, the Council will determine the best estimate of current stock abundance and its relation to the precautionary and overfished/rebuilding thresholds. Under the PCGFMP, the biomass level that produces MSY, or B_{MSY}, is defined as the precautionary threshold. When the biomass for an assessed category one or

two stock falls below B_{MSY}, the ACL is set below the ABC using a harvest rate reduction to help the stock return to the B_{MSY} level, which is the management target for groundfish stocks. If a stock biomass is larger than B_{MSY}, the ACL may be set equal to the ABC, or the ACL may be set below the ABC to address conservation objectives, socioeconomic concerns, management uncertainty, or other factors necessary to meet management objectives. The overfished/rebuilding threshold is 25 percent of the estimated unfished biomass level for non-flatfish stocks or 50 percent of B_{MSY}, if known. The overfishing/rebuilding threshold for flatfish stocks is 12.5 percent of the estimated unfished biomass level. When a stock is below B_{MSY} (the precautionary threshold) but above the overfishing/rebuilding threshold, it is considered to be in the precautionary zone.

Under PCGFMP Amendment 24, the Council set up default harvest control rules, which established default policies that would be applied to the best available scientific information to set ACLs each biennial cycle, unless the Council has reasons to diverge from that harvest control rule. A complete description of the default harvest control rules for setting ACLs is described in the proposed and final rule for the 2015–16 harvest specifications and management measures and PCGFMP Amendment 24 (80 FR 687, January 6, 2015; 80 FR 12567, March 10, 2015).

The PCGFMP defines the 40–10 harvest control rule for stocks with a B_{MSY} proxy of $B_{40\%}$ that are in the precautionary zone as the standard reduction. The analogous harvest control rule with the standard reduction for assessed flatfish stocks is the 25–5 harvest control rule for flatfish stocks with a B_{MSY} proxy of $B_{25\%}$. The further the stock biomass is below the precautionary threshold, the greater the reduction in ACL relative to the ABC, until at $B_{10\%}$ for a stock with a B_{MSY} proxy of $B_{40\%}$, or $B_{5\%}$ for a stock with a B_{MSY} proxy of $B_{25\%}$, the ACL would be set at zero.

Under the PCGFMP, harvest control rules are typically applied at the component species level for stock complexes to calculate ACLs. Resulting contribution values of each component species, or ACL contributions, are summed to equal the stock complex ACLs. For example the ACL contributions of black rockfish off of Oregon and quillback rockfish contribute to the overall ACL for Oregon black/deacon/blue rockfish stock complex and the Nearshore Rockfish complexes respectively.

Under the PCGFMP, the Council may recommend setting the ACL at a different level than what the default harvest control rules specify as long as the ACL does not exceed the ABC and complies with the requirements of the Magnuson-Stevens Act (see the Analysis for information on the Magnuson-Stevens Act). For most of the stocks and stock complexes managed with harvest specifications for 2023–24, the Council chose to maintain the default harvest control rules from the previous biennial cycle. For the Oregon black/deacon/blue rockfish stock complex and the Nearshore Rockfish complexes, the Council recommended deviating from the default harvest control rule by changing how the contribution of black rockfish off of Oregon and quillback rockfish off of California are calculated. Table 1 presents a summary table of the proposed changes to default harvest control rules for certain stocks for 2023–24. Each of these changes is discussed further below.

TABLE 1—PROPOSED CHANGES TO HARVEST CONTROL RULES FOR 2023–24

Stock complex component	Alternative	Harvest control rule	ACL contribution to stock complex [a] [b]
Black Rockfish off of Oregon.	Default	ACL contribution = ABC (P* = 0.45)	477 mt (2023), 471 mt (2024).
	Proposed change	ACL contribution = 2020 ABC	512 mt (2023), 512 mt (2024).
Quillback Rockfish off of California.	Default	ACL contribution < ABC with the 40–10 adjustment [c] off California only (P* = 0.45).	2023 statewide ACL contribution = 0.11 mt; 2024 statewide ACL contribution = 0.42 mt.
	Proposed change	ACL contribution < ABC (SPR 0.55; P* 0.45)	2023 statewide ACL contribution = 1.76 mt; 2024 statewide ACL contribution = 1.93 mt.

[a] Default ACL is for 2023 and 2024 under the default harvest control rule, Proposed change ACL is for 2023 and 2024 under the alternative harvest specifications.

[b] The ACL contribution for quillback rockfish off of California are apportioned to create the ACL contributions to the nearshore rockfish complexes north and south of 40° 10′ N lat. The apportionment was determined by the proportion of catch between 2005 and 2020 north and south of 40°10′ N lat. in California where 49.6 percent of the statewide ACL is apportioned to the area between 42° and 40°10′ N lat. for the California contribution to the northern complex, and 50.4 percent to the area south of 40°10′ N lat. for the contribution to the southern complex.

[c] The 40–10 adjustment is applied to only some component species when calculating the complex ACL, where a precautionary reduction is warranted, per the PCGFMP at section 4.6.1. The 40–10 adjustment reduces the harvest rate to help the stock return to the maximum sustainable yield level.

Oregon Black Rockfish

Oregon black rockfish is a category two stock, managed as part of the Oregon blue/deacon/black rockfish complex. Oregon black rockfish was first assessed as a single stock in 2015. In 2019, the Oregon black rockfish stock was estimated to be at 56 percent of its unfished spawning output. For 2021–22, the NWFSC conducted a catch-only update to the 2015 assessment by adding realized catch data from 2015–2018 and estimates of catch for 2019 and 2020. For 2021–2022, the Council recommended and NMFS approved a departure from the default harvest control rule on a case-specific basis to adopt an ABC for both years equal to the 2020 value (512 metric tons). The intent of the departure was to provide fishery stability, without significantly affecting stock status.

Black rockfish is the primary target stock for nearshore recreational and commercial fisheries in Oregon and attainment of the ACL contribution is high. In 2017, Oregon recreational fisheries were shut down early because of black rockfish concerns, and the Council received public testimony as to the severe negative consequences for charter business operators and tourist-revenue dependent coastal communities resulting from this closure. Due to the constraining nature of black rockfish in Oregon and the biomass level being above the precautionary threshold, the Oregon Department of Fish and Wildlife (ODFW) recommended an alternative harvest control rule where the 2020 ABC of 512 mt is specified in 2023 and 2024, and the ACL contributions are set equal to ABCs. The Magnuson-Stevens Act and the PCGFMP allow the SSC to recommend an ABC that differs from the

ABC control rule on a case by case basis, provided the SSC offers justification for its recommended deviation. In 2025, the current default harvest control rule (ABC=ACL, P* of 0.45) would once again apply to Oregon black rockfish.

Catch-only projections for black rockfish (Agenda Item E.3, Attachment 3, November 2021) were completed for two scenarios that differed according to the timeframe for which ABCs/ACL contributions of 512 mt were assumed (2021–2022 vs 2021–2024). For both scenarios, previously assumed catch projections for 2019 and 2020 were replaced with the lower observed catches for those years. Under both scenarios, the long-term projections result in a projected stock biomass at 54 percent of its unfished spawning output in 2032. Stocks with biomass estimates greater than 40 percent depletion are above the precautionary thresholds in the PCGFMP. Because the biomass is the same under either scenario, the SSC endorsed this alternative harvest control rule for use in 2023–24.

Therefore based on the Analysis, the Council has recommended and NMFS is proposing alternative harvest specifications for black rockfish off of Oregon as part of the Oregon blue/deacon/black rockfish complex. The alternative harvest control rule would implement an ACL for the 2023 and 2024 biennium of 512 mt in each year. This ACL contributes to the overall stock complex ACL.

Quillback Rockfish Off California

Quillback rockfish is managed as part of the Nearshore Rockfish complexes north and south of 40°10′ N lat. Quillback rockfish was assessed in 2021 (Agenda Item E.2, Attachment 4, November 2021). Due to differences in data availability and fishery exploitation, the quillback rockfish assessment split the species into three separate assessment areas by state boundary line. For purposes of stock status determination (*i.e.,* whether the stock or stock complex is subject to overfishing or overfished), the assessments were combined to reflect (1) the status of quillback rockfish as a part of the nearshore rockfish complexes and (2) that quillback rockfish off California are not a stock defined separately from quillback rockfish off Oregon and Washington. However, the individual assessment areas suggested differences in abundance and potential localized depletion, which are addressed through this action as described below. The assessment for the portion of quillback rockfish off California indicated that portion is depleted.

The Council recommended, and NMFS proposes, applying the default harvest control rule, P* 0.45, for quillback rockfish off of Washington and Oregon. Under the default harvest control rule for the portion quillback rockfish off of California, a precautionary adjustment (*i.e.,* the 40–10 adjustment) would be applied. However, the Council anticipated scientific information about the population dynamics of the various stocks would improve over time. This information would result in improved estimates of appropriate harvest rates and the default values from the 40–10 adjustment could be replaced. In response to the best available scientific information related to the depletion specific to the portion of quillback rockfish off California estimated in the assessment, the Council recommended additional steps to reduce mortality in that assessment area. The Council considered a range of alternative harvest control rules for the portion of quillback rockfish off California based on the January 2022 draft rebuilding analysis which is available at *https://www.pcouncil.org/stock-assessments-star-reports-stat-reports-rebuilding-analyses-terms-of-reference/groundfish-stock-assessment-documents/*. The Council's SSC endorsed the rebuilding analysis for use in management, with which the alternative harvest control rules are consistent. However, as noted above, because for status determination purposes in the 2023–2024 biennium, quillback rockfish off California are not a stock defined separately from quillback rockfish off Oregon and Washington and are part of a stock complex. NMFS has not determined that any stock or stock complex is overfished and development of a rebuilding plan is not required.

The Council recommended setting the California statewide ACL contribution of quillback rockfish to the complexes below the statewide ABC contribution of quillback rockfish to the complexes to allow the spawning output of quillback rockfish in this assessment area to increase toward the management target. The statewide harvest specifications were then apportioned to create the ACL contributions to the nearshore rockfish complexes north and south of 40°10′ N lat. The apportionment was determined by the proportion of catch between 2005 and 2020 north and south of 40°10′ N lat. in California where 49.6 percent of the statewide ACL is apportioned to the area between 42° and 40°10′ N lat. for the California contribution to the northern complex, and 50.4 percent to the area south of 40°10′ N lat. for the contribution to the southern complex. The California statewide ACL was used to inform the Council's recommendation on harvest specifications for the nearshore rockfish complexes, and precautionary management measures for quillback rockfish (see Sections III.G, III.M, and III.N).

Therefore, based on the best scientific information available as detailed in the Analysis and Agenda Item F.6.a Supplemental Groundfish Management Team Report 2, June 2022, the Council has recommended, and NMFS is proposing, alternative harvest specifications for quillback rockfish as part of the Nearshore Rockfish complexes north and south of 40°10′ N lat. The alternative harvest control rule would implement a statewide ACL contribution of 1.76 mt in 2023 and 1.93 mt in 2024. Based on the apportionment described above, the ACL contribution for the portion of quillback rockfish off of California to the Nearshore Rockfish complex north of 40°10′ N lat. would be 0.87 mt in 2023 and 0.89 mt in 2024. The ACL contribution for the portion of quillback rockfish off of California to the Nearshore Rockfish complex south of 40°10′ N lat. would be 0.96 mt in 2023 and 0.97 mt in 2024.

Stocks in Rebuilding Plans

When NMFS declares a stock overfished, the Council must develop and manage the stock in accordance with a rebuilding plan. For overfished stocks in the PCGFMP, this means that the harvest control rule for overfished stocks sets the ACL based on the rebuilding plan. The proposed rules for the 2011–12 (75 FR 67810, November 3, 2010) and 2013–14 (77 FR 67974, November 14, 2012) harvest specifications and management measures contain extensive discussions on the management approach used for overfished stocks, which are not repeated here. In addition, the SAFE document posted on the Council's website at *https://www.pcouncil.org/groundfish/safe-documents/* contains a detailed description of each overfished stock, its status and management, as well as the SSC's approach for rebuilding analyses. This document provides information on yelloweye rockfish, which is the only remaining rebuilding stock in the PCGFMP. NMFS declared yelloweye rockfish overfished in 2002. The Council adopted a rebuilding plan for the stock in 2004, and revised the rebuilding plan in 2011 under Amendment 16–4 to the PCGFMP, and again during the 2019–20 biennium (83 FR 63970, December 12, 2018). The Council proposed yelloweye rockfish ACLs for 2023 and 2024 are

based on the current yelloweye rockfish rebuilding plan, so additional details are not repeated here. Appendix F to the PCGFMP contains the most recent rebuilding plan parameters, as well as a history of each overfished stock, and can be found at *https://www.pcouncil.org/groundfish/fisherymanagement-plan/.*

Additionally, the Council recommended, and NMFS is proposing, to establish annual catch targets (ACTs) within the non-trawl allocation harvest guideline (HG). The non-trawl sector includes the limited entry fixed gear (LEFG) and open access (OA) fisheries as well as the recreational fisheries for Washington, Oregon, and Californ ia. The nearshore fisheries occur seaward of Oregon and California and are subject to both Federal and state HGs as well as other state-specific management measures. The non-nearshore fisheries include the limited entry and Federal open access fixed gear fleets. Tables 2 and 3 outline the proposed harvest specifications for 2023 and 2024 for yelloweye rockfish.

TABLE 2—2023 HARVEST SPECIFICATIONS FOR YELLOWEYE ROCKFISH

	OFL (mt)	ABC (mt)	ACL (mt)	HG (mt)	ACT (mt)
All sectors	123	103	66	55.3	
Non-trawl				50.9	39.9
Non-Nearshore				10.7	8.4
Nearshore					
Washington Recreational				13.2	10.4
Oregon Recreational				11.7	9.2
California Recreational				15.3	12.0
Trawl				4.4	

TABLE 3—2024 HARVEST SPECIFICATIONS FOR YELLOWEYE ROCKFISH

	OFL (mt)	ABC (mt)	ACL (mt)	HG (mt)	ACT (mt)
All sectors	123	103	66	55.3	
Non-trawl				50.9	39.9
Non-Nearshore				10.7	8.4
Nearshore					
Washington Recreational				13.2	10.4
Oregon Recreational				11.7	9.2
California Recreational				15.3	12.0
Trawl				4.4	

The Council recommended using ACTs for the non-trawl sector as a precaution. As discussed in the Analysis, because yelloweye rockfish catch has been restricted for many years, it is difficult to project encounter rates. This precautionary approach to higher catch limits would allow more access to target fisheries for the non-trawl sector, while also managing for the uncertainty and volatility in catch of this rebuilding stock by this sector.

D. Summary of ACL Changes From 2022 to 2023–24

Table 4 compares the ACLs for major stocks and stock complexes for 2022 and 2023–24. Under this proposed rule, of the 42 stocks and stock complexes managed with ACLs in 2022, 8 stocks would have higher ACLs in 2023 and 2024 than in 2022, 23 would have ACLs that would decrease in 2023 from 2022, and 7 would have ACLs that would be close to the amount in place in 2022. Three stocks (Dover sole, Pacific cod, and starry flounder), and one stock complex (Other fish), would have the same ACLs in 2022, 2023, and 2024. Under this proposed rule, the ACL for yelloweye rockfish would increase by 29.4 percent. This is based on the projections from the 2017 rebuilding analysis and the default harvest control rule specifying ACLs based on the SPR harvest rate of 65 percent. This predicted slow rate of rebuilding is anticipated for this slow growing species. One stock (arrowtooth flounder) has an ACL that would increase more than 100 percent. This increase is due to new information provided in the 2021 catch-only assessment update. The 37.5 percent increase in sablefish north of 36° N lat. is due to new information from the update assessment of sablefish. The 31.1 percent decrease in lingcod south of 40°10′ N lat. is due to new information provided in the 2021 stock assessment.

TABLE 4—ACLS FOR MAJOR STOCKS AND MANAGEMENT UNITS FOR 2022, AND 2023–24

Stock/complex	Area	ACL (mt)			Percent change 2022 to 2023
		2022	2023	2024	
YELLOWEYE ROCKFISH	Coastwide	51	66	66	29.4
Arrowtooth Flounder	Coastwide	8,458	18,632	14,178	120.3
Big Skate	Coastwide	1,389	1,320	1,267	−5.0
Black Rockfish	WA	291	290	289	−0.3
Black Rockfish	CA	341	334	329	−2.1
Bocaccio	S of 40°10′	1,724	1,842	1,828	6.8
Cabezon	CA	195	182	171	−6.7

TABLE 4—ACLS FOR MAJOR STOCKS AND MANAGEMENT UNITS FOR 2022, AND 2023–24—Continued

Stock/complex	Area	ACL (mt)			Percent change 2022 to 2023
		2022	2023	2024	
Cabezon/Kelp Greenling	WA	17	20	17	17.6
Cabezon/Kelp Greenling	OR	190	185	180	−2.6
California Scorpionfish	Coastwide	275	262	252	−4.7
Canary Rockfish	Coastwide	1,307	1,284	1,267	−1.8
Chilipepper	S of 40°10′	2,259	2,183	2,121	−3.4
Cowcod	S of 40°10′	82	80	79	−2.4
Darkblotched Rockfish	Coastwide	831	785	750	−5.5
Dover Sole	Coastwide	50,000	50,000	50,000	0.0
English Sole	Coastwide	9,101	9,018	8,960	−0.9
Lingcod	N of 40°10′	4,958	4,378	3,854	−11.7
Lingcod	S of 40°10′	1,172	726	722	−38.1
Longnose Skate	Coastwide	1,761	1,708	1,660	−3.0
Longspine Thornyhead	N of 34°27′	2,452	2,295	2,162	−6.4
Longspine Thornyhead	S of 34°27′	774	725	683	−6.3
Pacific Cod	Coastwide	1,600	1,600	1,600	0.0
Pacific Ocean Perch	N of 40°10′	3,711	3,573	3,443	−3.7
Petrale Sole	Coastwide	3,660	3,485	3,285	−4.8
Sablefish	N of 36°	6,172	8,486	7,780	37.5
Sablefish	S of 36°	2,203	2,338	2,143	6.1
Shortspine Thornyhead	N of 34°27′	1,393	1,359	1,328	−2.4
Shortspine Thornyhead	S of 34°27′	737	719	702	−2.4
Spiny Dogfish	Coastwide	1,585	1,456	1,407	−8.1
Splitnose	S of 40°10′	1,630	1,592	1,553	−2.3
Starry Flounder	Coastwide	392	392	392	0.0
Widow Rockfish	Coastwide	13,788	12,624	11,482	−8.4
Yellowtail Rockfish	N of 40°10′	5,831	5,666	5,560	−2.8
Blue/Deacon/Black Rockfish	OR	600	597	594	−0.5
Nearshore Rockfish North	N of 40°10′	77	93	91	20.8
Nearshore Rockfish South	S of 40°10′	1,010	887	891	−11.2
Other Fish	Coastwide	223	223	223	0.0
Other Flatfish	Coastwide	4,838	4,862	4,874	0.5
Shelf Rockfish North	N of 40°10′	1,450	1,283	1,278	−11.5
Shelf Rockfish South	S of 40°10′	1,428	1,469	1,469	2.9
Slope Rockfish North	N of 40°10′	1,568	1,540	1,516	−1.8
Slope Rockfish South	S of 40°10′	705	701	697	−0.6

Note: Rebuilding stocks are capitalized.

III. Proposed Management Measures

This section describes proposed management measures used to further allocate the ACLs to the various components of the fishery (*i.e.,* biennial fishery harvest guidelines and set-asides) and management measures to control fishing. Management measures for the commercial fishery modify fishing behavior during the fishing year to ensure catch does not exceed the ACL, and include trip and cumulative landing limits, time/area closures, size limits, and gear restrictions. Management measures for the recreational fisheries include bag limits, size limits, gear restrictions, fish dressing requirements, and time/area closures.

A. Deductions From the ACLs

Before making allocations to the primary commercial and recreational components of groundfish fisheries, the Council recommends ''off-the-top deductions,'' or deductions from the ACLs to account for anticipated mortality for certain types of activities: harvest in Pacific Coast treaty Indian tribal fisheries; harvest in scientific research activities; harvest in non-groundfish fisheries (incidental catch); and harvest that occurs under EFPs. These off-the-top deductions are proposed for individual stocks or stock complexes and can be found in the footnotes to Tables 1a and 2a to part 660, subpart C in the regulatory text of this proposed rule. The details of the EFPs are discussed below in Section III.H.

B. Tribal Fisheries

The Quileute Tribe, Quinault Indian Nation, Makah Indian Tribe, and Hoh Indian Tribe (collectively, ''the Pacific Coast Tribes'') implement management measures for Tribal fisheries both independently as sovereign governments and cooperatively with the management measures in the Federal regulations. The Pacific Coast Tribes work through the Pacific Fishery Management Council process to maintain groundfish set-asides, harvest guidelines, and allocations pursuant to treaty fishing rights and as co-managers of the resource. The Pacific Coast Tribes may adjust their Tribal fishery management measures inseason to stay within the Tribal set-asides and allocations and within the estimated impacts to overfished stocks. Table 5 provides the proposed Tribal harvest set-asides and allocations proposed for the 2023–24 biennium for groundfish species other than Pacific whiting, which is allocated through a separate annual specifications process. These targets are consistent with the 2022 targets, with the exception of Pacific ocean perch (increased to 130 mt) and darkblotched rockfish (increased to 5 mt).

TABLE 5—PROPOSED TRIBAL HARVEST SET-ASIDES AND ALLOCATIONS FOR THE 2023–24 BIENNIUM COMPARED TO THOSE IN PLACE IN 2022

Stock	Off the top deduction	
	2022 (mt)	2023–2024 (mt)
Arrowtooth Flounder	2,041	2,041
Big Skate	15	15
WA Black Rockfish	18	18
Canary Rockfish	50	50
Darkblotched Rockfish	0.2	5
Dover Sole	1,497	1,497
English Sole	200	200
Lingcod N of 40°10′ N lat	250	250
Longnose Skate	220	220
Longspine Thornyhead N of 34°27′ N lat	30	30
Pacific cod	500	500
Pacific Ocean Perch	9.2	130
Petrale Sole	350	350
Sablefish N of 36° N lat.[a]	656.6	849 (2023) 778 (2024)
Shortspine Thornyhead S of 34°27′ N lat	50	50
Spiny Dogfish	275	275
Widow rockfish	200	200
Yellowtail Rockfish	1,000	1,000
WA Cabezon/Kelp Greenling	2	2
Nearshore Rockfish North	1.5	1.5
Other Flatfish	60	60
Shelf Rockfish North	30	30
Slope Rockfish North	36	36

[a] Sablefish is allocated according to Amendment 6 of the PCGFMP and 50 CFR 660.50(f)(2).

The Pacific Coast Tribes proposed trip limit management in Tribal fisheries for 2023–24—for several stocks, including several rockfish stocks and stock complexes. This rule proposes the trip limits for Tribal fisheries as provided to the Council at its June 2022 meeting in Supplemental Tribal Report 1, Agenda Item F.6.a. For rockfish stocks, Tribal regulations will continue to require full retention of all overfished rockfish stocks and marketable non-overfished rockfish stocks. The Pacific Coast Tribes will continue to develop management measures, including depth, area, and time restrictions, in the directed Tribal Pacific halibut fishery in order to minimize incidental catch of yelloweye rockfish.

C. Biennial Fishery Allocations

The Council routinely recommends 2-year trawl and non-trawl allocations during the biennial specifications process for stocks without formal allocations (as defined in Section 6.3.2 of the PCGFMP) or stocks where the long-term allocation is suspended because the stock is declared overfished.

The trawl and non-trawl allocations, with the exception of sablefish north of 36° N lat., are based on the fishery harvest guideline. The fishery harvest guideline is the tonnage that remains after subtracting the off-the-top deductions described in Section III., A, entitled ''Deductions from the ACLs,'' in this preamble. The trawl and non-trawl allocations and recreational harvest guidelines are designed to accommodate anticipated mortality in each sector as well as variability and uncertainty in those mortality estimates. Additional information on the Council's allocation framework and formal allocations can be found in Section 6.3 of the PCGFMP and § 660.55 of the Federal regulations. Allocations described below are detailed in the harvest specification tables appended to 50 CFR part 660, subpart C in the regulatory text of this proposed rule.

Big Skate

The Council recommended and NMFS is proposing the allocations shown in Table 6 for big skate in 2023 and 2024. These allocations are anticipated to accommodate estimates of mortality of big skate, by sector, in 2023–24. Allocations of big skate are determined on a biennial basis. For 2023–24, the Council elected to maintain the current big skate split of 95 percent to the trawl fishery and 5 percent to the non-trawl fishery. This results in a trawl allocation of 1,197.2 mt and a non-trawl allocation of 63 mt in 2023, as well as a trawl allocation of 1,146.8 mt and a non-trawl allocation of 60.4 mt in 2024. No further allocations or deductions are made.

TABLE 6—2023 AND 2024 TRAWL/NON-TRAWL ALLOCATIONS OF BIG SKATE

	Percentage	2023 Allocation (mt)	2024 Allocation (mt)
Trawl	95	1,197.2	1,146.8
Non-trawl	5	63	60.4

Bocaccio South of 40°10′ N Lat.

Specifications for bocaccio are determined through the biennial specifications process. For 2023–24, the Council recommended and NMFS is proposing the allocations shown in Table 7 for bocaccio in 2023 and 2024, which maintain the allocation structure from the previous biennium. These allocations are anticipated to accommodate estimates of mortality of bocaccio, by sector, in 2023–24. In each year, the fishery harvest guideline is split with 39 percent going to the trawl sectors and 61 percent to the non-trawl sectors. For the trawl sector this results in an allocation of 700.3 mt in 2023 and 694.9 mt in 2024. The non-trawl sectors would receive 1,093.5 mt in 2023 and 1,085 mt in 2024. The non-trawl allocation is then distributed between the commercial (nearshore and non-nearshore fisheries) and California recreational fisheries. In 2023, the commercial sector would receive 30.9 percent of the non-trawl allocation or 337.9 mt, and the California recreational sector would receive 755.6 mt. In 2024, the same percentage would remain in place with the commercial sector receiving 335.3 mt and the California recreational sector receiving 749.7 mt.

TABLE 7—2023 AND 2024 ALLOCATIONS OF BOCACCIO

	Percentage	2023 Allocation (mt)	2024 Allocation (mt)
Trawl	39	700.3	694.9
Non-trawl [a]	61	1,093.5	1,085

[a] The California recreational sector share of the non-trawl allocation is 755.6 mt in 2023 and 749.7 mt in 2024.

Canary Rockfish

The Council recommended and NMFS is proposing the allocations in Table 8 for canary rockfish in 2023 and 2024, which maintain the status quo proportions from the 2021–22 biennium. These allocations are anticipated to accommodate estimates of mortality of canary rockfish, by sector, in 2023–24. For canary rockfish, the fishery harvest guideline is distributed to the trawl and non-trawl sectors with trawl receiving 72.3 percent and non-trawl sectors receiving 27.7 percent each year. In 2023, the trawl sector would receive 880.7 mt of canary rockfish, of which 36 mt would be deducted to account for bycatch in the at-sea sectors, and the remaining 844.7 mt would be distributed to the shorebased individual fishing quota (IFQ) sector. In 2023, the non-trawl sector would receive 337.4 mt which is distributed to the commercial non-trawl (121.5 mt), WA recreational (41.5 mt), OR recreational (62.4 mt), and CA recreational (112.0 mt) fisheries. In 2024, the trawl sector would receive 868.4 mt of canary rockfish, of which 36 mt would be deducted to account for bycatch in the at-sea sectors, and the remaining 832.4 mt would be distributed to the shorebased IFQ sector. The non-trawl sector would receive 332.7 mt, which is distributed to the commercial non-trawl sector (119.8 mt), WA recreational (40.9 mt), OR recreational (61.5 mt), and CA recreational (110.5 mt) fisheries.

TABLE 8—2023 AND 2024 ALLOCATIONS OF CANARY ROCKFISH

	2023 Allocation (mt)	2024 Allocation (mt)
Shorebased IFQ Program	844.7	832.4
At-sea Sectors	36	36
Nearshore/Non-nearshore	121.5	119.8
Washington recreational	41.5	40.9
Oregon recreational	62.4	61.5
California recreational	112.0	110.5

Cowcod

For 2023–24, the Council recommended and NMFS is proposing to remove the 50 mt ACT for cowcod south of 40°10′ N lat. that was in place during the 2021–22 biennium. The ACT was included in the 2021–22 biennium out of concern of the risk of exceeding the ACL and to account for stock assessment uncertainty. Improved inseason monitoring tools have been effective at monitoring cowcod mortality and reducing management uncertainty. Therefore, the Council recommended removing the 50 mt ACT to provide additional flexibility and stability to the non-trawl sector south of 40°10′ N lat. Table 9 shows the trawl/non-trawl allocations for cowcod for 2023 and 2024. NMFS anticipates the proposed allocation structure will accommodate estimates of mortality of cowcod, by sector, in 2023–24. The fishery harvest guideline is distributed to the trawl and non-trawl sectors, with the trawl sector receiving 36 percent and the non-trawl sector receiving 64 percent each year. The trawl sector would receive 24.8 mt of cowcod in 2023 and 24.4 mt in 2024. The non-trawl sector would receive 44.0 mt in 2023 and 43.4 mt in 2024, which is distributed to the commercial and recreational sectors as a 50/50 split. The Council also recommended, and NMFS proposes, sector-specific ACTs based on the 50/50 split. For 2023 the commercial sector ACT would be 22 mt and the recreational sector ACT would be 22 mt. For 2024 the commercial sector ACT would be 21.7 mt and the recreational sector ACT would be 21.7 mt. Utilizing sector-specific ACTs within the non-trawl sector, in addition to maintaining the proposed zero retention requirement in the non-trawl sector, should help to reduce management uncertainty with the proposed removal of the 50 mt ACT below the fishery harvest guideline.

TABLE 9—2023 AND 2024 TRAWL/NON-TRAWL ALLOCATIONS OF COWCOD

	Percentage	2023 Allocation (mt)	2024 Allocation (mt)
Trawl	36	24.8	24.4
Non-trawl	64	44.1	43.4

Lingcod South of 40°10′ N Lat.

The Council recommended and NMFS is proposing the trawl/non-trawl allocations for lingcod south of 40°10′ N lat. in Table 10. These allocations are anticipated to accommodate estimates of mortality of lingcod, by sector, in 2023–24.

Specifications for the lingcod south of 40°10′ N lat. were established through the biennial process with a trawl/non-trawl allocation for the 2023–24 specifications of 40 percent of the harvest guideline to trawl sector and 60 percent to non-trawl sector. In 2023, the distribution results in 285.2 mt to the trawl sector and 427.8 mt to the non-trawl sectors. In 2024, the distribution results in 285.2 mt to the trawl sectors and 425.4 mt to the non-trawl sectors. No further allocations or distributions are made.

TABLE 10—2023 AND 2024 TRAWL/NON-TRAWL ALLOCATIONS OF LINGCOD SOUTH OF 40°10′ N LAT.

	Percentage	2023 Allocation (mt)	2024 Allocation (mt)
Trawl	40	285.2	283.6
Non-trawl	60	427.8	425.4

Longnose Skate

The Council recommended and NMFS is proposing the trawl/non-trawl allocations for longnose skate in Table 11. The allocation percentages, 90 percent to trawl and 10 percent to non-trawl, reflect historical catch of longnose skate in the two sectors. These allocations are anticipated to accommodate estimates of mortality of longnose skate, by sector, in 2023–24. In 2023, the 90/10 distribution results in 1,311.0 mt to the trawl sectors and 145.7 mt to the non-trawl sectors. In 2024, the distribution results in 1,267.8 mt to the trawl sectors and 140.9 mt to the non-trawl sectors.

TABLE 11—2023 AND 2024 TRAWL/NON-TRAWL ALLOCATIONS OF LONGNOSE SKATE

	Percentage	2023 Allocation (mt)	2024 Allocation (mt)
Trawl	90	1,311.0	1,267.8
Non-trawl	10	145.7	140.9

Minor Shelf Rockfish

Allocations for Minor Shelf Rockfish are recommended by the Council and proposed by NMFS for each biennial cycle. The proposed allocations for 2023 and 2024 are shown in Table 12. Specifications for the shelf rockfish complex north of 40°10′ N lat. were established through the biennial process with a trawl/non-trawl allocation for the 2023–24 specifications of 60.2 percent to trawl sectors and 39.8 percent to non-trawl sectors. In 2023, the distribution results in 729.7 mt to the trawl sectors and 482.4 mt to the non-trawl sectors. In 2024, the distribution results in 726.7 mt to the trawl sectors and 480.4 mt to the non-trawl sectors. Of the amount going to the trawl sectors, 35 mt is deducted each year from the trawl allocation to account for bycatch in the at-sea whiting sectors, with the remaining 694.7 mt in 2023 and 691.7 mt in 2024 going to the shorebased IFQ fishery. No further allocations or distributions are made.

Specifications for the shelf rockfish complex south of 40°10′ N lat. were established through the biennial process with a trawl/non-trawl allocation for the 2023–24 specifications of 12.2 percent to trawl sectors and 87.8 percent to non-trawl sectors. In 2023 and 2024, the distribution results in 163.9 mt to the trawl sectors and 1,173.2 mt to the non-trawl sectors. No further allocations or distributes are made.

TABLE 12—TRAWL/NON-TRAWL ALLOCATIONS FOR MINOR SHELF ROCKFISH NORTH AND SOUTH OF 40°10′ N LAT.

	Percentage	2023 Allocations (mt)	2024 Allocations (mt)
Minor Shelf Rockfish north of 40°10′ N lat.:			
Trawl	60.2	729.7	726.7
Non-trawl	39.8	482.4	480.4
Minor Shelf Rockfish south of 40°10′ N lat.:			
Trawl	12.2	163.0	163.0
Non-trawl	87.8	1,173.2	1,173.2

Slope Rockfish Complex

Allocations for slope rockfish complex south of 40°10′ N lat., including custom shares for blackgill rockfish, are recommended by the Council and proposed by NMFS for each biennial cycle. The proposed allocations for 2023 and 2024 are shown in Table 13. The Council recommended blackgill rockfish within the slope rockfish complex south of 40°10′ N lat. be managed by setting an HG for blackgill rockfish that was equal to the species specific ACL contribution to the slope rockfish complex south of 40°10′ N lat. The blackgill rockfish HG was then used to allocate 41 percent to the trawl sector and 59 percent to the non-trawl sector. Then, trawl (63 percent) and non-trawl (37 percent) allocations were applied to the remaining species in the complex. Finally, the off-the top set-asides are then deducted to produce the final two-year allocations. In 2023, the distribution results in 378.7 mt to the trawl sectors and 279.3 mt to the non-trawl sectors. In 2024, the distribution results in 381.mt to the trawl sectors and 280.2 mt to the non-trawl sectors.

TABLE 13—TRAWL/NON-TRAWL ALLOCATIONS FOR MINOR SLOPE ROCKFISH SOUTH OF 40°10′ N LAT.

Category	2023 Allocations (mt)		2024 Allocations (mt)	
	Trawl	Non-trawl	Trawl	Non-trawl
Blackgill rockfish share	70.7 (41%)	101.7 (59%)	69.7 (41%)	100.2 (59%)
"Other slope rockfish" share	330.5 (63%)	194.1 (37%)	334.6 (63%)	196.5 (37%)
Share (mt)	401.2	295.8	404.3	296.7
Total	697.0		701.0	
Percentage of total share	57.56%	42.44%	57.67%	42.33%
Total combined off-top	39		39	
Apportioned off-top	22.4	16.6	22.5	16.5
Final two year allocation	378.7	279.3	381.8	280.2

Petrale Sole

The Council recommended and NMFS is proposing the trawl/non-trawl allocations for petrale sole in Table 14. These allocations are anticipated to accommodate estimates of mortality of petrale sole, by sector, in 2023–24. For the 2023–24 biennium, 30 mt of petrale sole would be allocated to the non-trawl sector and the remainder would go to the trawl sector each year. In 2023, the distribution results in 3,068.8 mt to the trawl sector. In 2024, the trawl sector would receive 2,868.8 mt.

TABLE 14—2023 AND 2024 TRAWL/NON-TRAWL ALLOCATIONS OF PETRALE SOLE

	Percentage	2023 Allocation (mt)	2024 Allocation (mt)
Trawl	.....	3,068.8	2,868.8
Non-trawl	.....	30	30

Widow Rockfish

The Council recommended and NMFS is proposing the trawl/non-trawl allocations for widow rockfish in Table 15. These allocations are anticipated to accommodate estimates of mortality of widow rockfish, by sector, in 2023–24. For the 2023–24 biennium, 400 mt of widow rockfish would be allocated to the non-trawl sector and the remainder would go to the trawl sector each year. In 2023, the distribution results in 11,985.7 mt to the trawl sector. In 2024, the trawl sector would receive 10,843.7 mt.

TABLE 15—2023 AND 2024 TRAWL/NON-TRAWL ALLOCATIONS OF WIDOW ROCKFISH

	Percentage	2023 Allocation (mt)	2024 Allocation (mt)
Trawl	.....	11,985.7	10,843.7
Non-trawl	.....	400	400

D. Corrections and Additional Waypoints for Rockfish Conservation Areas

Rockfish Conservation Areas (RCAs) are large area closures intended to reduce the catch of a stock or stock complex by restricting fishing activity at specific depths. The boundaries for RCAs are defined by straight lines connecting a series of latitude and longitude coordinates that approximate depth contours. These sets of coordinates, or lines, are not gear or fishery specific, but can be used in combination to define an area. NMFS then implements fishing restrictions for a specific gear and/or fishery within each defined area.

For the 2023–24 biennium, the Council recommended and NMFS is proposing line modifications seaward of California around Eel Canyon (near Eureka), Mendocino Canyon, Mattole Canyon, the Farallon Islands (near San Francisco), the Channel Islands (near Santa Barbara and east of Anacapa Island), Redondo Canyon, Santa

Catalina Island, Lasuen Knoll, and Santa Clemente Island, as well as in near Albion, Monterey Bay, Point Sur, Morro Bay, Port Hueneme, Santa Monica Bay, Point Vincente, Huntington Beach, and San Diego. These modifications would better align existing RCA coordinates with chart-based depth contours, reduce boundary line crossovers, and address enforcement concerns. See Section 2.1 of the Analysis for more details on these changes.

The Council's recommendation would have deleted point (130) on the boundary line approximating the 50 fathoms (fm) (91 m) depth contour. This was the only point for this boundary line at 36° N lat. Points at each commonly used geographic coordinates (latitudes) defined in paragraph (2) at § 660.11 ''North-South management area'' should be retained to maintain functionality and enforceability of these depth-based lines when they are used to form closed areas such as Block Area Closures or the Non-trawl Rockfish Conservation Area. Therefore, NMFS is making an administrative change to modify the point instead of deleting it. This will maintain the shape of the boundary line the Council recommended, but will also maintain the functionality and enforceability needed. This is an administrative change and does not change the on-the-water location of the line that was recommended by the Council at its June 2022 meeting.

NMFS is republishing § 660.72(j)(220) through (222) to correct the paragraph designation of paragraph (j)(221). The ''1'' was mistakenly omitted during prior revisions so it was published as a second paragraph (j)(22) in that section. This correction is not substantive, and does not change the on-the-water effects of these regulations, aside from reducing potential confusion about multiple paragraphs (j)(22).

E. Limited Entry Trawl

The limited entry trawl fishery is made up of the shorebased IFQ program, whiting and non-whiting, and the at-sea whiting sectors. For some stocks and stock complexes with a trawl allocation, an amount is first set-aside for the at-sea whiting sector with the remainder of the trawl allocation going to the shorebased IFQ sector. Set-asides are not managed by NMFS or the Council except in the case of a risk to the ACL.

At-Sea Set Asides

For several species, the trawl allocation is reduced by an amount set-aside for the at-sea whiting sector. This amount is designed to accommodate catch by the at-sea whiting sector when they are targeting Pacific whiting. The Council is recommending and NMFS is proposing the set-asides in Table 16 for the 2023–24 biennium. The Council considered a set-aside for Pacific spiny dogfish but did not recommend establishing one.

TABLE 16—2023–24 AT-SEA SET-ASIDES FOR VESSELS TARGETING PACIFIC WHITING WHILE FISHING AS PART OF THE AT-SEA SECTOR

Stock or stock complex	Area	At-sea set-aside amount (mt)
Arrowtooth Flounder	Coastwide	70
Canary rockfish	Coastwide	36
Darkblotched rockfish	Coastwide	76.4
Dover sole	Coastwide	10
Lingcod	N of 40°10′ N lat	15
Longnose skate	Coastwide	5
Minor shelf rockfish	N of 40°10′ N lat	35
Minor slope rockfish	N of 40°10′ N lat	300
Other flatfish	Coastwide	35
Pacific halibut	Coastwide	10
Pacific ocean perch	N of 40°10′ N lat	300
Petrale sole	Coastwide	5
Sablefish	N of 36° N lat	100
Shortspine thornyhead	N of 34°27′ N lat	70
Widow rockfish	Coastwide	476
Yellowtail rockfish	N of 40°10′ N lat	320

Incidental Trip Limits for IFQ Vessels

For vessels fishing in the Shorebased IFQ Program, with either groundfish trawl gear or non-trawl gears, the following incidentally-caught stocks are managed with trip limits:

Minor Nearshore Rockfish north and south, Washington black rockfish, Oregon black/blue/deacon rockfish, cabezon (46°16′ to 40°10′ N lat. and south of 40°10′ N lat.), spiny dogfish, longspine thornyhead south of 34° N lat., big skate, California scorpionfish, longnose skate, Pacific whiting, and the Other Fish complex. For all these stocks, this rule proposes maintaining the same IFQ fishery trip limits for these stocks for the start of the 2023–24 biennium as those in place in 2022. Additionally, this rule proposes maintaining the trip limit for blackgill rockfish within the southern slope rockfish complex. The trip limit would be unlimited to start the 2023 fishing year. The purpose of the blackgill trip limit would be to allow the Council to reduce targeting of blackgill rockfish inseason, if needed. Trip limits for the IFQ fishery can be found in Table 1 North and Table 1 South to part 660, subpart D. Changes to trip limits would be considered a routine measure under § 660.60(c), and may be implemented or adjusted, if determined necessary, through inseason action.

F. LEFG and OA Non-Trawl Fishery

Management measures for the LEFG and OA non-trawl fisheries tend to be similar because the majority of participants in both fisheries use hook-and-line gear. Management measures, including area restrictions (*e.g.,* non-trawl RCA) and trip limits in these non-trawl fisheries, are generally designed to allow harvest of target stocks while keeping catch of overfished stocks low. LEFG trip limits are specified in Table 2 (North) and Table 2 (South) to subpart E. OA trip limits are specified in Table 3 (North) and Table 3 (South) to subpart F in the regulatory text of this proposed rule.

Sablefish Trip Limits

Sablefish are managed separately north and south of 36° N lat. For the portion of the stock north of 36° N lat., the Council recommended and NMFS proposes removing the daily trip limit for the OA fishery and maintaining the same weekly and bimonthly trip limits as were in place in the start of 2022. For the portion south of 36° N lat., the Council recommended, and NMFS proposes, the same weekly and bimonthly trip limits as were in place in the start of 2022. The proposed sablefish trip limits for 2023–24 are shown in Table 17.

TABLE 17—SABLEFISH TRIP LIMITS FOR LIMITED ENTRY AND OPEN ACCESS SECTORS NORTH AND SOUTH OF 36° N LAT.

Sector	Area	Jan–Feb	Mar–Apr	May–Jun	Jul–Aug	Sept–Oct	Nov–Dec
Limited entry	north of 36° N lat	2,400 lb (1089 kg)/week; not to exceed 4,800 lb (2,177 kg) bi-monthly.					
	south of 36° N lat	2,500 lb (1,134 kg)/week.					
Open access	north of 36° N lat	2,000 lb (907 kg)/week; not to exceed 4,000 lb (1,814 kg) bi-monthly.					
	south of 36° N lat	2,000 lb (907 kg)/week; not to exceed 4,000 lb (1,814 kg) bi-monthly.					

LEFG and OA Trip Limits

The Council recommended, and NMFS is proposing, status quo trip limits for LEFG and OA fisheries in 2023. The Council considered changes to the quillback rockfish and copper rockfish trip limits off California but reaffirmed the limits set through inseason action for 2022 (86 FR 72863; December 23, 2021). That action intended to reduce mortality of quillback and copper rockfish by implementing sub-trip limits of 75 lbs (34 kg) per 2 months within the 2,000 lbs (907 kg) per 2 months Minor Nearshore Rockfish limit for the areas between 42°–40°10′ N lat., and south of 40°10′ N lat. The Council could recommend further adjustment to the sub-trip limits through additional inseason action once more data on the current limits is collected and the effects on mortality, particularly discard mortality, are better understood. NMFS notes that allowing the continuation of fishery-dependent data collection through minimal retention would be very beneficial for future stock assessments. Additionally, further reductions on quillback rockfish, an important species in the live fish market, in the commercial Nearshore Fishery could destabilize the niche fishery. More information on these trip limits can be found in the Analysis.

Primary Sablefish Tier Limits

Some limited entry fixed gear permits are endorsed to receive annual sablefish quota, or tier limits. Vessels registered with one, two, or up to three of these permits may participate in the primary sablefish fishery. The proposed tier limits are as follows: in 2023, Tier 1 at 72,904 lb (33,069 kg), Tier 2 at 33,138 lb (15,031 kg), and Tier 3 at 18,936 lb (8,589 kg). For 2024, Tier 1 at 66,805 lb (30,302 kg), Tier 2 at 30,366 lb (13,774 kg), and Tier 3 at 17,352 lb (7,871 kg).

G. Recreational Fisheries

This section describes the recreational fisheries management measures proposed for 2023–24. The Council primarily recommends depth restrictions and groundfish conservation areas to constrain catch within the recreational harvest guidelines for each stock. Washington, Oregon, and California each proposed, and the Council recommended, different combinations of seasons, bag limits, area closures, and size limits for stocks targeted in recreational fisheries. These measures are designed to limit catch of overfished stocks found in the waters adjacent to each state while allowing target fishing opportunities in their particular recreational fisheries. The following sections describe the recreational management measures proposed in each state.

Washington

The state of Washington manages its marine fisheries in four areas: Marine Area 1 extends from the Oregon/Washington border to Leadbetter Point; Marine Area 2 extends from Leadbetter Point to the mouth of the Queets Rivers; Marine Area 3 extends from the Queets River to Cape Alava; and Marine Area 4 extends from Cape Alava to the Sekiu River. This proposed rule would adopt the following season structure in Table 18.

Table 18 -- Washington Recreational Fishing Season Structure

Marine Area	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
3 and 4 (North Coast)	Closed			Open		Open <20 fm (37 m) June 1- July 31 a/ b/ g/		Open			Closed	
2 (South Coast)	Closed			Open c/ d/ g/		Open d/ g/					Closed	
1 (Columbia River)	Closed			Open e/ f/ g/							Closed	

a/ Retention of lingcod, Pacific cod and sablefish allowed >20 fm (37 m) on days when Pacific halibut is open.
b/ Retention of yellowtail and widow rockfish is allowed > 20 fm (37 m) in July.
c/ From May 1 through May 31 lingcod retention prohibited > 30 fm (55 m) except on days that the primary halibut season is open.
d/ When lingcod is open, retention is prohibited seaward of line drawn from Queets River (47°31.70' N. lat. 124°45.00' W. Long.) to Leadbetter Point (46° 38.17' N. lat. 124°30.00' W. Long.), except on days open to the primary halibut fishery and, June 1 – 15 and September 1 - 30.
e/ Retention of groundfish allowed during the all-depth Pacific halibut fishery. Lingcod retention is only allowed north of the WA-OR border with halibut on board.
f/ Retention of lingcod is prohibited seaward of a line drawn from Leadbetter Point (46° 38.17' N. lat. 124°21.00' W. Long.) to 46° 33.00' N. lat. 124°21.00' W. Long. year round except lingcod retention is allowed from June 1 - June 15 and September 1 - September 30.
g/ Retention of copper rockfish, quillback rockfish, and vermilion rockfish is prohibited from May 1 through July 31.

The Washington recreational fishery would be open from the second Saturday in March through the third Saturday in October. The aggregate groundfish bag limits in waters adjacent to Washington would continue to be nine fish in all areas with a sub-bag limit for cabezon (one per day), rockfish (seven per day), lingcod (two per day). The flatfish limit would continue to be five fish, and is not counted towards the groundfish bag limit of nine but is in addition to it.

The retention of copper rockfish, quillback rockfish, and vermilion rockfish during the months of May, June, and July would be prohibited. As stated by the Washington Department of Fish and Wildlife (WDFW) in its analysis for this proposal, these prohibitions for copper rockfish and quillback rockfish are projected to keep mortality below the species specific ACL contributions. For vermilion, the prohibition is expected to lower mortality while maintaining some data flow needed for stock assessments (Agenda Item F.6.a, WDFW Report 1, June 2022).

Consistent with the 2021–22 biennium, the Council recommended and NMFS is proposing to continue to prohibit recreational fishing for groundfish and Pacific halibut inside the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA), a C-shaped closed area off the northern Washington coast. The South Coast Recreational YRCA and the Westport Offshore YRCA would remain open to recreational fishing for the 2023–24 biennium. Coordinates for YRCAs are defined at § 660.70.

Oregon

The Council recommend that Oregon recreational fisheries in 2023–24 would operate under an all months all depths season structure to start the 2023 fishing year. The Council recommended maintaining the 2021–22 aggregate bag limits and size limits in Oregon recreational fisheries for 2023–24. The proposed limits are: three lingcod per day, with a minimum size of 22 in (56 cm); 25 flatfish per day, excluding Pacific halibut; and a marine fish aggregate bag limit of 10 fish per day, where cabezon have a minimum size of 16 in (41 cm). Oregon long-leader gear fishing and ''all-depth'' Pacific halibut fishing would continue to be allowed on the same trip. This rule proposes sablefish, Pacific cod, and other flatfish species (sole, flounder, sanddab) may be retained on ''all-depth'' halibut trips. This measure would provide additional opportunity for anglers participating in the ''all depth'' halibut fishery and reduce potential regulatory discards. Based on the Analysis, additional effort would not be expected (*i.e.,* no new trips occurring), because anglers would just have this additional opportunity on trips they are already taking. Therefore, no additional impacts to yelloweye rockfish, Chinook salmon, or coho salmon would be expected.

Oregon often adopts more restrictive measures in state rule. This enables the ODFW to tighten or ease restrictions inseason based on quota status and projected mortality. The Federal rules serve as a backstop, while state rules can be adjusted more rapidly in response to inseason circumstances, improving management responsiveness and the ability to achieve conservation and opportunity objectives. For example, ODFW anticipates continuing the prohibition on retaining quillback rockfish in the recreational fishery (and all non-trawl commercial fisheries) in 2023–24.

California

The Council manages recreational fisheries in waters seaward of California in five separate management areas. Season and area closures differ between California management areas to limit incidental catch of overfished stocks and stocks of concern while providing as much recreational fishing opportunity as possible. The Council's

recommended California season structure for 2023 and 2024 is a substantial departure from 2021 and 2022. In order to reduce total mortality of quillback rockfish and copper rockfish, each management area would incur a reduction in fishing time in nearshore waters of 30 percent or more. This, in combination with the proposed novel utilization of the RCA described in Section III.N, would create an ''offshore only fishery'' during certain months. Recreational fishing for groundfish would continue to be prohibited in waters less than 100 fm (183 m) around Cordell Bank as described in § 660.360(c)(3)(i)(C).

In the Northern Management Area (42° N lat. to 40°10′ N lat.), the fishery for California rockfish, cabezon, greenling complex (RCG complex), as defined at § 660.360(c)(3)(ii), and the fishery for lingcod would be closed January 1 to May 14, open in all depths from May 15 to October 15, and closed October 16 to December 31.

In the Mendocino Management Area (40°10′ N lat. to 38°57.5′ N lat.), and the San Francisco Management Area (38°57.5′ N lat. to 37°11′ N lat.) the RCG complex fishery and the lingcod fishery would be closed January 1 to May 14, open May 15 to July 15 seaward of the 50 fm (91 m) RCA line, and open in all depths from July 16 to December 31.

In the Central Management Area (37°11′ N lat. to 34°27′ N lat.), the RCG complex fishery and the lingcod fishery would be closed January 1 to April 30, open May 1 to September 30 in all depths, and open October 1 to December 31 seaward of the 50 fm (91 m) RCA line.

In the Southern Management Area (34°27′ N lat. to U.S./Mexico border), the RCG complex fishery and the lingcod fishery would be closed January 1 to March 31, open April 1 to September 15 in all depths, and open September 16 to December 31 seaward of the 50 fm (91 m) RCA line.

Table 19 shows the proposed season structure and depth limits by management area in 2023 and 2024 for the RCG complex fishery and lingcod fishery.

Table 19 -- Proposed Season Structure and Depth Limits by Management Area for the 2023 and 2024 in the California RCG Complex and Lingcod Fisheries

Management Area	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Northern (42° N. lat. to 40°10' N. lat.)	CLOSED				May 15-October 15 All Depths					CLOSED		
Mendocino (40°10' N. lat. to 38°57.50' N. lat.)	CLOSED				May 15-July 15 >50 fm (91 m)		July 16-December 31 All Depths					
San Francisco (38°57.50' N. lat. to 37°11' N. lat.)	CLOSED				May 15-July 15 >50 fm (91 m)		July 16-December 31 All Depths					
Central (37°11' N. lat. to 34°27' N. lat.)	CLOSED				May 1-September 30 All Depths					October 1-December 1 >50 fm		
Southern (South of 34°27' N. lat.)	CLOSED			April 1-September 15 All Depths						September 16-December 31 >50 fm		

In times and areas where an RCA is closed seaward of an RCA line (*i.e.,* when an ''off-shore only'' fishery is active in that management area) the following would be prohibited: (1) possession or retention of nearshore rockfish (defined as black rockfish, blue rockfish, black and yellow rockfish, brown rockfish, China rockfish, copper rockfish, calico rockfish, gopher rockfish, kelp rockfish, grass rockfish, olive rockfish, quillback rockfish, and treefish), cabezon, and greenlings in all depths of the Exclusive Economic Zone (EEZ) throughout the management area; (2) possession and retention of all rockfish, cabezon, greenlings, and lingcod would be prohibited shoreward of the RCA boundary line within the EEZ, except that vessels may transit through waters shoreward of the RCA line with no fishing gear in the water.

In all Management Areas, California scorpionfish, ''Other Flatfish'' (as defined at § 660.11), petrale sole and starry flounder, leopard shark, and ''Other Federal Groundfish'' would be open year-round at all depths. ''Other Federal groundfish'' as defined in state regulations, (Section 28.49, Title 14, California Code of Regulations) include soupfin shark, Dover sole, English sole, arrowtooth flounder, spiny dogfish, skates, ratfish, grenadiers, finescale codling, Pacific cod, Pacific whiting, sablefish and thornyheads.

The Council recommended that size limits and bag limits would remain the same as 2022 for all stocks. The Council also recommended and NMFS is proposing to continue sub-bag limits of one quillback rockfish, one copper rockfish, and four vermilion rockfish within the 10-fish RCG daily bag and possession limit.

Continuing the one-fish sub-bag limits for quillback and copper rockfish would allow for fishery-dependent data

collection, specifically biological data. Maintaining the flow of this data is very important for future stock assessments as data gaps would add uncertainty in the results of future assessments. As described in Section 11 of the Analysis, the Council analyzed quillback rockfish, copper rockfish, and vermilion rockfish sub-bag limits ranging from 10 to 0 fish (*i.e.,* no retention) within the 10-fish RCG bag limit. California Department of Fish and Wildlife (CDFW) tracks groundfish mortality inseason on a weekly and/or monthly basis to ensure that mortality remains within allowable limits. Further changes to the sub-bag limit or to prohibit retention may be recommended by the Council inseason, as necessary, to limit mortality and achieve specifications.

In addition to the regulatory management measures to reduce mortality of copper and quillback rockfish in 2022 (86 FR 72863; December 23, 2021), the fishery industry has undertaken several voluntary measures including dissemination of enhanced species identification information, avoidance procedures, and no retention when a biological sampler is not aboard. Per public testimony at the June 2022 Council meeting, the industry plans to continue these voluntary measures in 2023 and 2024. NMFS expects these mandatory and voluntary measures would substantially reduce mortality of quillback and copper rockfish.

H. Exempted Fishing Permits

Issuing EFPs is authorized by regulations implementing the Magnuson-Stevens Act at 50 CFR 600.745, which state that EFPs may be used to authorize fishing activities that would otherwise be prohibited.

At its June 2022 meeting, the Council recommended NMFS approve five EFP applications for the 2023 fishing year and preliminarily approve the EFP applications for the 2024 fishing year. The Council considered these EFP applications concurrently with the 2023–2024 biennial harvest specifications and management process because expected catch under most EFP projects is included in the catch limits for groundfish stocks. All of the EFP applications are renewals. Two EFP applications request to test the use of natural bait while fishing inside the non-trawl Rockfish Conservation Area (NT–RCA), which is proposed to be prohibited as part of measures allowing non-trawl vessels to use select hook and line gear configurations within the NT–RCA (see part J of this section). One EFP application requests to test whether removing certain gear, time, and area restrictions may impact the nature and extent of bycatch of protected and prohibited species. The final two EFP applications request to retain certain prohibited species in order to collect fishery-dependent data for potential use in upcoming stock assessments. A summary of each EFP application is provided below:

- *Groundfish EFP Proposal—Yellowtail Rockfish Jig Fishing off California:* Barbara Emley of the San Francisco Community Fishing Association and private open access fisherman Daniel Platt submitted a renewal application for research that has been conducted since 2013 (herein referred to as the ''Emley-Platt EFP''). From 2013–2022, this EFP tested the efficacy of a commercial jig gear configured to target underutilized, midwater yellowtail and shelf rockfish species while avoiding the rebuilding, bottom-dwelling yelloweye rockfish inside the NT–RCA. As part of this 2023–24 harvest specifications and management measures action, the Council recommended, and NMFS proposed, this EFP gear type be approved for legal use inside the NT–RCA (see part J of this section). Therefore, if this rulemaking is implemented as proposed, the associated exemptions from the prohibitions on fishing and/or transiting inside the non-trawl RCA with non-trawl gear would no longer be needed for this EFP project beginning in 2023. However, the application contains a new request for 2023 and 2024, which is to test the effect of using natural bait on the shrimp fly gear. Even if the commercial jig gear is legalized for use inside the NT–RCA through this action, there would still be a requirement to use artificial bait, which has been used in the EFP project since 2013. Testing the use of natural bait could gather data to inform the Council on changes to catch composition while using natural bait compared to artificial bait. If this proposed rule and EFP proposal are approved, this EFP project would require exemptions from: (1) the prohibition on fishing with natural bait inside the NT–RCA (see proposed regulation below at § 660.330 (b)(3)(i)(D)); and (2) the open access trip limits in Table 3 (South) to part 660, subpart F (vessels that fish between 40°10′ N lat. and 34°27′ have specified EFP catch limits). If this EFP gear type is not approved for legal use inside the NT–RCA as proposed in this rulemaking, then this EFP project would require additional exemptions from: (1) the prohibition to fish inside the non-trawl RCA with non-trawl gear (see § 660.330(d)(12)(i)); (2) the prohibition on transiting through the non-trawl RCA without non-trawl gear stowed (see § 660.330(d)(12)(ii)); and (3) the prohibition on retaining and landing groundfish harvested from inside the non-trawl RCA with non-trawl gear (see § 660.330(d)(12)(iii)). In addition to the request to use natural bait, the 2023–24 application also requests a geographic expansion of the EFP to include additional area in northern and southern California. If approved, NMFS would authorize up to 7 vessels to test the use of natural bait inside the non-trawl RCA off the California coast—specifically between the Oregon/California border (was previously limited to 40°10′ N lat.) and the U.S./Mexico border (was previously limited to Point Conception, California), at depths ranging from 35 to 150 fathoms (64 to 274 meters (m)). The EFP Director did not request any additional EFP allocations for the geographic expansion north of 40°10′ N lat.; those vessels would fish under the open access trip limits in Table 3 (North) to part 660, subpart F.

- *Groundfish EFP Proposal—Monterey Bay Regional EFP Targeting Chilipepper Rockfish:* Real Good Fish of Moss Landing, California submitted a renewal application to continue research that has been conducted since 2019. Similar to the Emley-Platt EFP, the Council recommended this gear type be approved for legal use inside the NT–RCA, but with the requirement to use artificial bait. Therefore, this application also includes a request to test the use of natural bait on the groundfish troll gear. If this proposed rule and EFP proposal are approved, this EFP project would require exemptions from: (1) the prohibition on fishing with natural bait inside the NT–RCA (see proposed regulation below at § 660.330 (b)(3)(ii)(E)); and (2) the open access trip limits in Table 3 (South) to part 660, subpart F. If this EFP gear type is not approved for legal use inside the NT–RCA as proposed in this rulemaking, then this EFP project would require additional exemptions from: (1) the prohibition to fish inside the non-trawl RCA with non-trawl gear (see § 660.330(d)(12)(i)); (2) the prohibition on transiting through the non-trawl RCA without non-trawl gear stowed (see § 660.330(d)(12)(ii)); and (3) the prohibition on retaining and landing groundfish harvested from inside the non-trawl RCA with non-trawl gear (see § 660.330(d)(12)(iii)). If approved, NMFS would authorize up to 10 vessels to test the use of natural bait inside the non-trawl RCA off the California coast—

specifically in areas with canyon edges and walls that have historically produced high volumes of chilipepper rockfish catch and at depths ranging from 40 to 150 fathoms (73 to 274 m).

• *Groundfish EFP Proposal—Year-round Coastwide Midwater Rockfish EFP: Monitoring and Minimizing Salmon Bycatch When Targeting Rockfish in the Shorebased IFQ Fishery, 2023–2024:* West Coast Seafood Processors, Oregon Trawl Commission, Midwater Trawlers Cooperative, and the Environmental Defense Fund submitted a renewal application to continue research that has been conducted since 2017; the multi-year EFP project is collectively referred to as the ''Trawl Gear EFP.'' The purpose of the EFP is for vessels participating in the West Coast Groundfish Trawl Rationalization Program's Limited Entry Shorebased Individual Fishing Quota (IFQ) Program to test whether removing certain gear, time, and area restrictions may impact the nature and extent of bycatch of protected and prohibited species (*i.e.,* Chinook salmon, coho, eulachon, and green sturgeon). The EFP project would require exemptions for vessels fishing with bottom trawl groundfish gear from: (1) the requirement to use selective flatfish trawl gear, and the prohibition on using small footrope gear other than selective flatfish trawl gear between 42° and 40°10′ North latitude and shoreward of the boundary line approximating the 100 fathom (fm) depth contour (see § 660.130(c)(2)(i) and (c)(2)(ii)); and (2) the requirement that selective flatfish trawl must be a two-seamed net with no more than two riblines, excluding the codend (see § 660.130(b)(1)(ii)(A)). The EFP project would require exemptions for vessels fishing with midwater trawl groundfish gear from: (1) the prohibition on fishing outside the primary season dates for the Pacific whiting IFQ fishery (see § 660.112(b)(1)(x) and § 660.130(c)(3)); and (2) the prohibition on fishing south of 40°10′ N lat. shoreward of the boundary line approximating the 150 fm depth contour (see § 660.130(c)(3)(ii) and (c)(4)(ii)(B)). The EFP project would require exemptions for vessels fishing with either midwater or bottom trawl groundfish gear from: (1) the prohibition on retaining certain prohibited species (see § 660.12 (a)(1)); and (2) the requirement to discard certain prohibited species at sea (see § 660.140(g)(1)). If this EFP is approved, NMFS would set a bycatch limit of 1,000 Chinook salmon north of 42° N lat. and 100 Chinook salmon south of 42° N lat. for vessels declared into the EFP, regardless of gear type. If either of these bycatch limits are reached, NMFS would revoke the EFP for both gear types in the respective management area (*i.e.,* north or south of 42° N lat.). Participating vessels would also be required to retain all salmon (excluding salmon already sampled by NMFS' West Coast Groundfish Observer Program) until offloading. If approved, NMFS would authorize up to 60 vessels to participate in the EFP.

• *Groundfish EFP Proposal—California Department of Fish and Wildlife 2023–2024 EFP:* The California Department of Fish and Wildlife (CDFW) submitted a renewal application for research that has been conducted since 2021. The purpose of the EFP project is to collect fishery-dependent biological data for cowcod for inclusion in future stock assessments. The EFP project would require an exemption from the prohibition to retain cowcod in the California recreational fishery (see § 660.360(c)(3)). The EFP would also provide that any cowcod taken and retained would not count against the recreational bag limit for the aggregate of rockfish, cabezon, and greenlings. If approved, NMFS would authorize up to 20 vessels that participate in the California recreational fishery to retain cowcod and transfer the cowcod to CDFW groundfish staff upon landing.

• *Groundfish EFP Proposal—Washington Department of Fish Wildlife Enhanced Yelloweye Recreational Fishery Biological Sampling EFP:* The Washington Department of Fish and Wildlife (WDFW) submitted a renewal application for research that has been conducted since 2021. The purpose of the EFP project is to collect fishery-dependent biological data for yelloweye rockfish for inclusion in future stock assessments. The EFP project would require an exemption from the prohibition to retain yelloweye rockfish in the Washington recreational fishery (see § 660.360(c)(1)(ii)). The EFP would also provide that any yelloweye rockfish taken and retained would not count against the recreational bag limit for rockfish. If approved, NMFS would authorize up to 15 vessels that participate in the Washington recreational fishery to retain yelloweye rockfish and transfer the yelloweye rockfish to WDFW staff upon landing.

During the 2-year period of EFP activities from 2023 to 2024, all vessels participating in the non-trawl RCA EFP projects (*i.e.,* the renewal applications submitted by Emley-Platt and Real Good Fish) would adhere to EFP set-asides for targeted and incidental groundfish and other species, which were considered and approved by the Council at their June 2022 meeting. The one exception would be for Emley-Platt vessels fishing north of 40°10′ N lat., which would fish pursuant to open access trip limits in Table 3 (North) to part 660, subpart F, as the EFP Director did not request additional EFP set-asides for this area. These EFP set-asides are off-the-top deductions from the 2023–2024 applicable ACLs, meaning any landings and discards that occur under these EFPs would be accounted for within the applicable ACLs. EFP set-asides would not be needed for the Trawl Gear EFP as landings and discards of IFQ species would be accounted for through the participating vessel's IFQ. Vessels participating in the non-trawl RCA EFP projects and the Trawl Gear EFP would be required to have 100 percent observer coverage. All cowcod mortality under the CDFW EFP project is expected to occur in conjunction with routine recreational fishing activities and would be calculated as part of the normal recreational catch estimation process. All yelloweye rockfish taken under the WDFW EFP project would be counted against the Washington recreational harvest guideline for yelloweye rockfish. NMFS would not require 100 percent observer coverage for vessels participating in the CDFW and WDFW EFP projects because recreational vessels do not meet the minimum size requirements under Federal regulations to carry an observer.

NMFS does not expect any impacts to the environment, essential fish habitat, or protected or prohibited species from these EFPs beyond those analyzed for the groundfish fishery as a whole in applicable biological opinions (available at: *https://www.fisheries.noaa.gov/species/west-coast-groundfish#management*), the draft EA for the Pacific Coast Groundfish Fishery 2023–2024 Harvest Specifications and Management Measures (see **ADDRESSES**), or the EA for the 2018 Trawl Gear EFP dated December 2017 (available at: *https://www.fisheries.noaa.gov/region/west-coast*).

After publication of this document in the **Federal Register**, NMFS may approve and issue permits for the proposed EFP projects for the 2023 fishing year after the close of the public comment period. All five EFP applications are available under ''Supporting and Related Materials'' (see **ADDRESSES**). NMFS will consider comments submitted in deciding whether to approve the applications as requested. NMFS may approve the applications in their entirety or may make any alterations needed to achieve the goals of the EFP projects. NMFS would not issue another **Federal**

Register notice soliciting public comment on renewing these EFP projects for 2024 unless: (1) the applicants modify and resubmit their applications to NMFS; (2) changes to relevant fisheries regulations warrant a revised set of exemptions authorized under the EFP projects; or (3) NMFS' understanding of the current biological and economic impacts from EFP fishing activities substantially changes.

I. Shortbelly Rockfish 2,000 mt Catch Threshold To Initiate Council Review

Shortbelly rockfish is one of the most abundant rockfish species in the California Current Ecosystem and is a key forage species for many fish, birds, and marine mammals. The Council recommended and NMFS approved the designation of shortbelly rockfish as an ecosystem component (EC) species through Amendment 29 to the PCGFMP, as part of the 2021–2022 groundfish management measure process (85 FR 79880, December 11, 2020). The Notice of Availability for Amendment 29 (85 FR 54529, September 2, 2020) provides additional background on shortbelly rockfish. The Council monitors and tracks shortbelly rockfish mortality inseason. Shortbelly rockfish are not, and have not historically been, a directed target of commercial or recreational fisheries. Due to their small size, shortbelly rockfish are not currently marketable. However, concerns over the potential future development of a directed fishery prompted the Council to note during the 2021–2022 groundfish management measure process that it would consider taking action if mortality of shortbelly rockfish in the fishery exceeds, or is projected to exceed, 2,000 mt in a calendar year. This guidance was not formalized in the PCGFMP as part of Amendment 29. Therefore, the Council recommended and NMFS is proposing to amend the PCGFMP to add language stating that if shortbelly rockfish mortalities exceed, or are projected to exceed, 2,000 mt in a calendar year, the Council would review relevant fishery information and consider if management changes were warranted, including, but not limited to reconsideration of its current classification as an EC species. To estimate mortality and provide for catch accounting, NMFS proposes a sorting requirement for shortbelly rockfish in the LEFG and OA fisheries. For more information on this measure, see the NOA for Amendment 30 and the Analysis.

NMFS notes that routine management measures as laid out in 50 CFR 660.60(c) are not currently available for shortbelly rockfish management because shortbelly rockfish is an EC species. Shortbelly rockfish would need to be redesignated as ''in the fishery'' prior to routine management measures being available for inseason use. However, the Council could recommend, consistent with the points of concern framework (FMP Section 6.2.2), management measures to minimize bycatch or bycatch mortality of EC species as laid out in 50 CFR 600.305(c)(5). Depending on the issue triggering the need for management measures, this pathway might require revisiting the EC designation.

J. Non-Bottom Contact Hook-and-Line Gear Allowance in the Non-Trawl Rockfish Conservation Area

In order to provide additional opportunity to commercial non-trawl fisheries to target healthy stocks, relieve pressure on overfished or constraining nearshore stocks, and limit impacts to sensitive habitats, the Council recommended, and NMFS proposes, allowing non-trawl vessels to use select hook-and-line gear configurations within the NT–RCA which were tested through EFPs as described above in Section III.H. The non-trawl fisheries are distinguished by the types of gears permitted to be used to harvest their catch. OA fisheries are allowed to use any ''open access'' gear, including hook-and-line, pot, and troll gear. Limited entry fixed gear (LEFG) vessels are restricted to using the gear endorsed on their registered permit (longline or pot/trap) or are held to the lower landing limits associated with the OA sector when using alternative gears. Vessels participating in the shorebased IFQ sector with fixed gear (*i.e.,* gear switchers) are permitted to use any legal groundfish gear. Participants in all three fisheries are prohibited from fishing in the NT–RCA unless permitted (*e.g.,* fishing for other flatfish or through an EFP).

This proposed action would allow vessels in the directed open access fishery targeting groundfish to operate inside the NT–RCA from 46°16′ N lat. to the U.S./Mexico border with non-bottom contact hook-and-line gear only, subject to the specifications below. Prohibited bottom contact hook-and-line gears would include bottom longline, commercial vertical hook-and-line gear (anchored to the bottom), and dinglebar gear. Vessels would need to declare their intent to fish within the NT–RCA and their gear type prior to departure. Vessels could fish inside and outside of the non-trawl RCA on the same trip but could only carry one type of legal non-bottom contact hook-and-line gear on-board the vessel when fishing occurs in the NT–RCA. Vessels that typically fish in the LEFG or IFQ sector would be required to declare into the OA fishery to utilize this proposed management measure and would be subject to the lower OA trip limits.

The proposed action would include a new gear definition. Legal ''non-bottom contact hook-and-line gear'' would be defined as stationary vertical jig gear attached to the vessel and not anchored to the bottom, and groundfish troll gear. The following requirements would apply to stationary vertical jig gear: (1) must be a minimum of 50 feet between the bottom weight and the lowest fishing hook; (2) no more than 4 vertical mainlines may be used at one time with no more than 25 hooks on each mainline, and; (3) no more than 100 hooks may be in the water at one time, with no more than 25 extra hooks on board the vessel. ''Groundfish troll gear'' would be defined as a horizontally-suspended monofilament mainline attached to a troll wire. The following requirements would apply to groundfish troll gear: (1) must be a minimum of 50 feet between the bottom weight and the troll wire's connection to the horizontal mainline; (2) no more than 1 mainline may be used at one time; and (3) no more than 500 hooks may be in the water at one time, with no more than 25 extra hooks on board the vessel; hooks must be spaced apart by a visible marker (*e.g.,* floats, line wraps, colored lines splices), with no more than 25 hooks between each marker and no more than 20 markers on the mainline.

Under the proposed action both stationary vertical jig gear and groundfish troll gear could be equipped with artificial lures and flies. Natural bait or weighted hooks could not be used nor be on board the vessel during the trip. This restriction is expected to mitigate any potential additional seabird bycatch effects, as seabirds are known to dive on baited hooks and potentially become entangled.

In order to fish inside the NT–RCA, vessels would be required to declare into the directed open access fishery, and would not be permitted to declare into any other fishery if fishing inside the NT–RCA.

This proposed management measure may provide increased opportunity for West Coast vessels to expand their portfolios, especially in light of the proposed restrictions related to quillback and copper rockfishes (see Section III.G), but it is likely that a limited group of vessels will take advantage of this opportunity given its limitations. Effort would likely be constrained by fuel prices, potential offshore travel danger to ''sport-like''

OA vessels, and the Vessel Monitoring System (VMS) requirement. Given the barriers to access the area, it is unlikely the non-trawl allocations for midwater rockfish would be exceeded.

Based on the Analysis (Section 8) and data from the non-trawl EFPs (*i.e.,* Emley-Platt and Real Good Fish EFPs), the gear configurations proposed have relatively low bycatch of groundfish species of concern while being able to harvest healthy midwater rockfish. Under this proposal, non-trawl attainments of healthy midwater rockfish species would likely increase, while impacts to nearshore stocks of concern including quillback and copper rockfish would be limited. Under this proposed new gear and area flexibility, mortality of yelloweye rockfish and cowcod could increase but is expected to remain within the proposed harvest specifications. Additionally, because the gears are designed to not contact the bottom, the proposed gear types have minimal impacts on habitat.

K. LEFG Sablefish Primary Season Extension

This proposed action would permanently extend the LEFG primary sablefish tier fishery (hereinafter referred to as primary fishery) season end date from October 31 to December 31. The primary fishery would close on December 31, or close for an individual vessel owner when the tier limit for the sablefish endorsed permit(s) registered to the vessel has been reached, whichever is earlier. This proposed action would also extend the incidental halibut retention allowance provision for the primary fishery north of Point Chehalis, Washington from October 31 to the date/time specified by the International Pacific Halibut Commission (IPHC) annually for the closure of commercial fisheries coastwide, or until the quota is taken, whichever comes first. After the specified date/time, any incidental halibut would need to be discarded as a prohibited species. The proposed action would not change any other aspects of the program (*e.g.,* stacking privileges, transferability).

The primary sablefish fishery tier program is a limited access privilege program set up under Amendment 14 to PCGFMP (66 FR 41152, August 7, 2001). Participants hold limited entry permits with a pot gear and/or longline gear endorsement and a sablefish endorsement.

Under Amendment 14, as set out in 50 CFR 660.231, the permit holder of a sablefish-endorsed permit receives a tier limit, which is an annual share of the sablefish catch allocation to this sector. NMFS sets three different tier limits through the biennial harvest specifications and management measures process (see Section III.F for the proposed 2023 limits); and up to three permits may be stacked at one time on a vessel participating in the fishery. Stacked tier limits are combined to provide a cumulative catch limit for that vessel. After vessels have caught their full tier limits, they are allowed to move into other fisheries for sablefish, specifically the limited entry or open access trip limit fishery, or fisheries for other species.

Under Amendment 14, the sablefish primary season has historically been open from April 1 through October 31 of each year, though individual permit holders may only fish up to their tier limits and so may be required to cease fishing prior to October 31. These season dates were put into regulation during the development and implementation of the fishery under Amendment 14 to the PCFMP. Prior to the implementation of Amendment 14, the sablefish fishery had operated as a 'derby' style fishery, with a season length lasting a few weeks to a few days. Under Amendment 14, the fishery began operating under a seven-month season. The seven-month season structure, as opposed to a year-long season, was intended to allow for timely catch accounting so that the sector allocation was not exceeded. As of 2017, commercial vessels landing sablefish are required to submit e-tickets within 24 hours of offload, ''to improve timeliness and accuracy of sablefish catch reporting in the limited entry fixed gear fisheries and open access fisheries'' (§ 660.213). Given the increase in speed of modern catch accounting, the original reason for the seven-month season is no longer applicable.

In response to industry requests and Council recommendation, NMFS issued emergency rules in 2020 and 2021 (85 FR 68001, October 27, 2020; 86 FR 59873, October 29, 2021) to temporarily extend the sablefish primary fishery from October 31 to December 31. These emergency actions were intended to mitigate COVID–19 pandemic related disruptions in the fishery by allowing participants more time to harvest their full tier limits.

The Analysis discusses that the primary fishery has experienced lower than average attainment since 2019 amidst higher than average sablefish allocations. Even with the season extension in 2020 and 2021, attainment was only 80 and 74 percent of the sector allocation, respectively. A season extension could provide opportunity and flexibility for vessels to fish their full tier limits and maximize economic benefits.

As detailed in the Analysis, the additional two months proposed in this measure would give primary tier vessels the flexibility to make safer decisions and plan their season based on markets and weather with the ultimate goal of increasing attainment and profitability. Habitat and gear-related impacts resulting from this proposed measure would likely be similar to those of an October 31st season end date, because roughly the same number of fixed gear vessels are expected to participate in the groundfish fishery as a whole. The overall amount of permits in this sector is static; however, some permits are not used every year, or vessels may stack permits, which ultimately reduces the potential number of participants. This proposed measure could increase the amount of time that humpback whales are likely to co-occur with the primary tier fishery. However, the proposed measure would likely have negligible additional impact on humpback whales compared to the 7-month season because, (1) based on migration patterns the likelihood of humpback whale aggregations interacting with fishing gear decreases from October to December, (2) the majority of the effort during the entire sablefish primary fishery season would continue to occur via bottom longline gear and not pot gear, and (3) extending the season would be unlikely to increase the overall amount of pot gear used throughout the season due to restrictions on gear endorsements.

Vessels in the primary fishery north of Point Chehalis, Washington using bottom longline gear are also allowed to retain incidentally caught Pacific halibut up to a specific limit specified at 50 CFR 660.231(b)(3)(iv). Halibut are encountered regularly in the normal operation of the sablefish primary fishery due to the co-occurrence of halibut and sablefish in the same environments, and the design and function of fixed gear. This retention is allowed until the sablefish primary season ends and it contributes additional economic value to this sector. The extended retention allowance proposed in this action would ensure additional economic benefits and reduce regulatory discards of commercially valuable incidental halibut.

The IPHC adopts a closure date for Pacific halibut in all commercial fisheries, which the primary fishery is subject to, and closure dates are typically set at mid- to late-November but was set at December 7 in 2021 and 2022. The IPHC typically sets the season

closure date in late January of that year during its annual meeting. Per 50 CFR 300.62, NMFS publishes the IPHC's regulations setting forth annual management measures in the **Federal Register** by March 15 each year. For example, NMFS published the 2022 annual management measures governing the Pacific halibut fishery on March 7, 2022 (87 FR 12604).

Extending the incidental Pacific halibut allowance for the primary tier fishery to the date annually specified by the IPHC would reduce regulatory discards, provide more opportunity for an important alternative income source, and result in minimal additional impacts to Pacific halibut mortality.

L. Correction to the Definition of Block Area Closures

NMFS proposes a minor change to the PCGFMP to resolve a mismatch between the FMP and current regulatory text. The salmon bycatch minimization measures action (86 FR 10857; February 23, 2021) established Block Area Closures (BACs) as a tool to minimize salmon bycatch. BACs are described in multiple regulation sections (*e.g.,* 50 CFR 660.11 Conservation area(s); § 660.111 Block area closures; § 660.60(c)(3)(i)). The regulations articulate the Council's intent to manage incidental salmon bycatch by vessels using groundfish midwater trawl gear in the EEZ off of Washington, Oregon, and California with Block Area Closures (BACs). However, inadvertently, the FMP was not updated to be consistent with regulations. To avoid potential future implementation delays, updates would be made to the FMP that are consistent with Council intent described in the salmon bycatch mitigation rulemaking document (86 FR 10857, February 23, 2021). The FMP would be revised to include language that BACs are available in the EEZ seaward of Washington, Oregon and California state waters for vessels using limited entry bottom trawl gear and in the EEZ seaward of Washington, Oregon and California state waters for vessels using midwater trawl gear. For more information on this measure, see the NOA for Amendment 30 and the Analysis.

M. Annual Catch Targets for Quillback and Copper Rockfish

The 2021 stock assessments indicated that the portion of quillback rockfish and copper rockfish off the coast of California are likely experiencing localized depletion. An Annual Catch Target (ACT), as defined at 50 CFR 660.11, is a management target set below the ACL to account for management uncertainty. ACTs may be used as an accountability measure to ensure against exceeding an ACL or accomplish management objectives. As they are part of a stock complex, the ACL contributions for copper rockfish and quillback rockfish are combined with the ACL contributions from the other stocks in the complex to set ACLs for the Nearshore Rockfish complexes north and south of 40°10′ N lat. In setting specifications, the Council, for analytic purposes, calculated three ACL contributions for quillback rockfish that corresponded to state boundaries, which were combined and then apportioned based on historical catch to determine the overall ACL contribution for quillback rockfish to each Nearshore Rockfish complex (see Section II.C).

The Council recommended, and NMFS proposes, setting ACTs for copper rockfish and quillback rockfish. For copper rockfish, the ACT would be set equal to its ACL contribution for the portion of the stock found off of California and would be set at 91.54 mt in 2023, and 94.72 mt in 2024. For quillback rockfish, an ACT would be set for the portion of the stock found off of California and would be set at 1.86 mt in 2023, and 1.97 mt in 2024.

Given quillback and copper rockfish are managed in a stock complex, the proposed ACTs would essentially formalize the ACL contributions for management purposes. Setting the ACTs equal to the ACL contributions would allow the Council to recommend necessary management measures inseason when the ACL contribution is met or projected to be met. Exceeding the ACL contribution for stocks in a complex would otherwise typically not trigger a Council response or accountability measure. In order to allow tracking of mortality against the ACT, this proposed rule also includes sorting requirements for quillback and copper rockfish.

CDFW closely monitors commercial and recreational landings of quillback and copper rockfish and the Council would receive updates on landings at each Council meeting. The management response to an overage or projected overage would be highly situational. Therefore, as an accountability measure, should the ACT be exceeded or projected to be exceeded, the Council would consider routine inseason management measures (*e.g.,* bag limit reductions or depth restrictions) at regular Council meetings.

N. Novel Utilization of Existing Rockfish Conservation Area Boundary Lines

The Council recommended, and NMFS proposes, a novel utilization of the previously established Rockfish Conservation Area (RCA) boundary lines for the recreational fishery seaward of California (§ 660.360(c)(3)). Recreational RCA boundary lines are a set of connecting waypoints which approximate a depth contour (§ 660.71 through § 660.73). These lines have historically been used to allow fishing shoreward of a specific RCA boundary line and prohibit fishing seaward of that line. This proposed rule would also allow fishing seaward of a specified RCA boundary line and prohibit fishing shoreward of that line. For example, fishing could be prohibited in Federal waters shoreward of the 30, 40, 50, 60, 75, 100, or 125, fathom line. Additionally, this novel use of the RCA would allow logistical flexibility for the management of overfished species like yelloweye rockfish (current RCA utilization) and non-overfished species that include species of concern such as quillback rockfish, copper rockfish, or cowcod (novel RCA utilization). This new management measure, if approved, may be used during the regular season setting process through the biennial specifications and management measures or as an inseason action to achieve harvest specifications.

This proposed measure is intended to be a tool to reduce mortality for nearshore rockfish species of concern (*e.g.,* quillback rockfish, copper rockfish, or cowcod) or rebuilding yelloweye rockfish by shifting fishing effort away from the habitats and depths where those stocks are most commonly encountered, and onto shelf and slope waters to target other, healthier groundfish stocks. This measure would provide more flexibility in managing groundfish fisheries seaward of California and is designed to be combined with other season structure options and bag limit options to create a suite of management measures which take steps to achieve harvest specifications and minimize impacts to California fisheries and coastal communities. The effectiveness of this proposed management tool would be limited based on the prevalence of each species in state waters as compared to in the EEZ. The majority of fishery effort for copper and quillback rockfish off California is in state waters, therefore, the overall effectiveness of this management measure may be constrained.

The Analysis discusses uncertainty with model projections when RCA boundary lines are utilized in this novel way, especially for species with a deeper depth distribution, like cowcod and yelloweye rockfish. The California Department of Fish and Wildlife's

weekly and monthly tracking processes have been an effective and reliable tool to closely monitor recreational inseason mortality and provide timely and accurate information to apply inseason adjustments, such as changes to depth limits, season length, or bag limits, to fisheries.

This proposed measure is intended to limit the negative socioeconomic impacts that could otherwise occur as a result of the need to reduce mortality for quillback and copper rockfishes, and stay within harvest guidelines for yelloweye rockfish and cowcod.

The Analysis discusses the impact of this measure on the recreational boat-based groundfish fisheries in California. Short-term and long-term impacts would likely occur as the sector adjusts to new regulations and fishery operations. Loss of fishing vessels, captains and crew leaving the industry and the potential closures of landings and fishing tackle providers are possible. Innovations in fishing gears or a shift in angler preference for target species could provide new opportunities for anglers, businesses, and communities. These changes could have positive long-term effects, but would not bring immediate relief to communities that would be negatively impacted by fisheries reductions related to quillback rockfish.

Changes to angler behavior are difficult to predict, but anglers may choose to opt out of the groundfish fishery due to fuel costs and other difficulties in reaching fishing grounds, safety concerns related to fishing offshore, logistical constraints associated with smaller vessels, such as vessel size and fuel capacity, and the physical effort of reeling fish up from deeper depths. It is likely the increased distance and travel time associated with offshore RCA lines would reduce small vessel effort. Effort may shift to other state and federally managed fisheries such as Pacific halibut, salmon, California scorpionfish, highly migratory species, coastal pelagic species, California sheephead, California halibut, striped bass, kelp bass, and others as anglers search for other available fishing targets.

In a report (Agenda Item F.6.a, June 2022) to the Council, the Groundfish Advisory Subpanel (GAP) noted that once shelf rockfish species are aboard, it restricts fishermen's ability to fish inshore waters. The GAP stated that mornings are when the outer waters are most accessible due to weather patterns. During the afternoons, winds generally make exposed deep waters unfishable and that is when inshore access is most needed.

As described in Section III.G, in addition to the regulatory management measures to reduce mortality of copper and quillback rockfish in 2022 (and proposed for 2023–2024), the fishery industry has untaken several voluntary measures including dissemination of enhanced species identification information, avoidance procedures, and no retention when a biological sampler is not aboard. It is expected that these mandatory and voluntary measures will substantially reduce mortality. If mortality is lower than expected through the regular inseason monitoring and reporting, the Council and NMFS would consider relieving restrictions during the biennium in order to reduce socioeconomic impacts, while keeping mortality within the recommended ACTs.

For more information on this measure, see the NOA for Amendment 30 and the Analysis.

O. Block Area Closures for Groundfish Mitigation

This proposed rule would make Block Area Closures (BACs) available as a routine management measure to control catch of groundfish by midwater trawl and bottom trawl vessels. BACs could be implemented in the EEZ seaward of Washington, Oregon, and California. BACs could be implemented within tribal Usual and Accustomed (U&A) fishing areas but would only apply to non-tribal vessels. This proposed rule would prohibit midwater trawl and/or bottom trawl fishing within the BAC boundaries.

BACs are size variable spatial closures bounded by latitude lines, defined at 50 CFR 660.11, and depth contour approximations defined at 50 CFR 660.71 through 660.74 ((10 fm (18 m) through 250 fm (457 m)), and § 660.76 (700 fm (1280 m)). Amendment 28 to the FMP (84 FR 63966; November 19, 2019) first established BACs as a management tool. The salmon bycatch minimization measures action (86 FR 10857; February 23, 2021) established BACs as a tool to minimize salmon bycatch. This proposed measure would align the outermost available depth boundaries (*i.e.,* 700 fathoms) across all midwater and bottom trawl BACs used to control groundfish catch.

The BAC tool would allow the Council to recommend, and NMFS to implement, size variable area closures as a routine management measure to address specific areas of high catch or bycatch of one or more specific groundfish species rather than large fixed closure areas (*e.g.,* Bycatch Reduction Area or BRA). BACs would allow for the trawl fishery to remain open in areas outside of the BACs.

This proposed rule would not implement specific individual BACs. BACs could not be used to close an area to any type of fishing other than groundfish bottom or midwater trawling. This proposed rule would allow NMFS to close or reopen BACs preseason (*e.g.,* before the start of the fishing year or before the start of the Pacific whiting fishery) or inseason. The approach would be consistent with existing ''routine inseason'' frameworks already in the FMP and regulations. Most trip, bag, and size limits, and some Groundfish Conservation Area closures in the groundfish fishery, including BRAs and BACs, have been designated ''routine'' management measures in the PCGFMP and in § 660.60(c). The Council can use routine management measures to rapidly implement or modify these management measures through a single Council meeting process. Inseason changes to routine management measures are announced in the **Federal Register** pursuant to the requirements of the Administrative Procedures Act. If good cause exists under the Administrative Procedure Act to waive notice and comment, a single **Federal Register** notice will announce routine inseason BACs approved by NMFS.

When deciding whether to recommend BACs for NMFS to implement, consistent with the PCGFMP, the Council will consider environmental impacts, including economic impacts, and public comment via the Council process. Depending on the circumstances, NMFS may close areas for a defined period of time, for example, a few months or the remainder of the fishing year, or maintain the closure for an indefinite period of time, for example, until reopened by a subsequent action. NMFS may close one or more BACs and the size of the BACs can vary. A **Federal Register** notice will announce the geographic boundaries (described with coordinates in codified regulations) of one or more BACs, the effective dates, applicable gear/fishery restrictions, as well as the purpose and rationale. NMFS would also disseminate this information on BACs through public notices and posting on the West Coast Region website (see **ADDRESSES** for electronic access information).

This action is needed because fishery managers do not currently have appropriate scaled spatial tools to mitigate trawl-based groundfish catches, while also minimizing economic impacts to the fishing industry. BAC could be an important tool to manage a species like Pacific spiny dogfish, which

exhibit spatial and seasonal aggregations, that may be limiting based on recent stock assessment outlook.

During development of this measure, the Council noted BACs should be considered a last-resort measure behind industry implemented avoidance measures. The Council also noted BAC were not intended to be used for habitat protection because of their flexible nature.

P. Corrections

This rule proposes minor corrections to the regulations at 50 CFR 600. These regulations are associated with Amendment 29 (85 FR 79880, December 11, 2020), Amendment 21–4 to the PCGFMP (84 FR 68799, December 17, 2019), and the 2019–2020 biennial harvest specifications (83 FR 63970, December 12, 2018). These minor corrections are necessary to reduce confusion and inconsistencies in the regulatory text and ensure the regulations accurately implement the Council's intent.

The Council recommended and NMFS approved the designation of shortbelly rockfish as an ecosystem component species through Amendment 29, as part of the 2021–2022 groundfish management measure process. That rule erroneously did not update the definition of ''Ecosystem component species'' at § 660.11 to reflect that designation. This rule proposes to include shortbelly rockfish in the list of species designated as ecosystem component species at § 660.11. Additionally, Amendment 29 erroneously included shortbelly rockfish trip limits for limited entry fixed gear and open access vessels. As an ecosystem component species, shortbelly rockfish is not managed ''in the fishery,'' and therefore should not be subject to trip limits. This rule proposes to remove the shortbelly rockfish trip limit from Table 2 (North) and Table 2 (South) to Part 660, Subpart E, as well as Table 3 (North) and Table 3 (South) to Part 660, Subpart F.

The final rule for Amendment 29 made changes to the trawl/non-trawl allocations established through Amendment 21 to the PCGFMP (75 FR 32993, June 10, 2010). That rule erroneously did not update § 660.55(c)(1) Table 1 to reflect those changes. This rule proposes to correct § 660.55(c)(1) Table 1 by removing the allocations for canary rockfish, as well as petrale sole, widow rockfish, lingcod south of 40°10′ N lat., and the slope rockfish complex south of 40°10′ N lat.. Per Amendment 29, these allocations between the trawl and non-trawl fisheries are determined through the biennial harvest specifications process to better align these allocations with current harvest trends. The Council's recommended and NMFS' proposed allocations through the 2023–2024 specifications process are shown Tables 1b and 2b in the proposed regulatory text for this proposed rule.

Amendment 21–4 moved darkblotched rockfish, pacific ocean perch, and widow rockfish from at-sea allocations to set-asides. That rule erroneously did not update § 660.140 to reflect those changes. This rule proposes to amend § 660.140 to remove these species from paragraph (c)(3)(iii) and add them to paragraph (c)(3)(iv).

Amendment 29 removed the at-sea set-asides from Table 1d to Subpart C of part 660. However, cross references indicating that the at-sea set-asides are located at Table 1d to Subpart C remain, erroneously. This rule proposes removing these cross references in § 660.150 and § 660.160 and clarifying that the at-sea set-asides are described in the biennial specifications.

The final rule for the 2019–2020 biennial harvest specifications contained a revision to the depth boundary within which commercial fixed gear and recreational gear are allowed to operate in the Western Cowcod Conservation Area. Fishing was permitted shoreward of the 20 fathom (fm) (36.6 m) depth contour prior to the 2019–2020 biennial harvest specifications final rule. The final rule revised the depth boundary to allow fishing shoreward of the 40 fm (73 m) depth contour. In the regulations for this change at § 660.360(c)(3)(i)(B), NMFS did not explicitly describe how the 40 fm (73 m) depth contour is delineated, or cross reference the depth contour definition in existing regulations. This rule proposes to correct these regulations to note that a coordinate list describing the 40 fm (73 m) depth contour can be found in § 660.71.

IV. Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the PCGFMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. In making its final determination, NMFS will take into account the complete record, including the data, views, and comments received during the comment period.

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the North Pacific Fishery Management Council, and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council, having authority for a particular geographical area, to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. The proposed action is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off the United States.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the PCGFMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, regulations implementing the PCGFMP establish a procedure by which the tribes with treaty fishing rights in the area covered by the PCGFMP request new allocations or regulations specific to the tribes, in writing, before the first of the two meetings at which the Council considers groundfish management measures. The regulations at 50 CFR 660.50 further direct NMFS to develop tribal allocations and regulations in consultation with the affected tribes. The tribal management measures in this proposed rule have been developed following these procedures. The tribal representative on the Council made a motion to adopt the non-whiting tribal management measures, which was passed by the Council. Those management measures, which were developed and proposed by the tribes, are included in this proposed rule.

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

NMFS prepared an analyses for this action, which address the statutory requirements of the Magnuson-Stevens Act, Presidential Executive Order 12866, and the Regulatory Flexibility Act. The full suite of alternatives analyzed by the Council can be found on the Council's website at *www.pcouncil.org.* NMFS addressed the statutory requirements of the National Environmental Policy Act through preparation of an EIS and an EA. NMFS prepared an EIS for the 2015–16 biennial harvest specifications and management measures and is available from NMFS (see **ADDRESSES**). This EIS examined the harvest specifications and

management measures for 2015–16 and 10-year projections for routinely adjusted harvest specifications and management measures. The 10-year projections evaluated the impacts of the ongoing implementation of harvest specifications and management measures and to evaluate the impacts of the routine adjustments that are the main component of each biennial cycle. Therefore, the EA for the 2023–24 cycle tiers from the 2015–16 EIS and focuses on the harvest specifications and management measures that were not within the scope of the 10-year projections in the 2015–16 EIS. A copy of the draft EA is available from NMFS (see **ADDRESSES**). This action also announces a public comment period on the draft EA.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. An estimated six businesses primarily engaged in seafood product preparation and packaging and employing 750 or fewer persons may be affected by this action. An estimated 629 commercial fishing businesses with less than $11 million in annual gross receipts may be affected by this action. An estimated 431 charter fishing boats may be affected by this action, all of which are assumed to have annual receipts of less than $7.5 million and therefore be considered small businesses. One governmental jurisdiction, with a population of less than 50,000 persons and therefore considered small, may be affected by this action. An estimated five not-for-profit organizations with combined annual receipts of less than $7.5 million may be affected by this action. An estimated eight small trust, estates, and agency accounts with annual receipts of less than $32.5 million may be affected by this action. The purpose of this proposed rule is to conserve Pacific Coast groundfish stocks by preventing overfishing, while still allowing harvest opportunity among the various fishery sectors. This will be accomplished by implementing the 2023–2024 annual specifications in the U.S. exclusive economic zone off the West Coast. The harvest specifications affect large and small entities similarly, and for this biennium, several of the catch limits are proposed to increase, providing benefit to all participants. Additionally, this proposed rule contains several of new management measures that are likely to benefit vessels, specifically openings of previously closed fishing grounds. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no new information collection burden under the Paperwork Reduction Act of 1995. This action will require non-trawl sector participants to declare into the open access fishery and specify the non-bottom contact gear type to be used if fishing in the non-trawl RCA. The collection of such information was previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0648–0573.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 16, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. Amend § 660.11 by:
■ a. Revising paragraph (1)(vi)(c) under the definition of ''Conservation areas(s)'';
■ b. Revising paragraph (1) under the definition of ''Fishing gear'' and adding a paragraph (12);
■ c. Revising paragraph (10) under the definition of ''Groundfish''.

The revisions read as follows:

§ 660.11 General definitions.

* * * * *

Conservation area(s) * * *

(1) * * *

(vi) * * *

(C) *Recreational RCAs.* Recreational RCAs are closed areas intended to protect overfished rockfish species. In the EEZ seaward of California, recreational RCAs are also intended to limit catch of non-overfished groundfish species. Recreational RCAs may either have boundaries defined by general depth contours or boundaries defined by specific latitude and longitude coordinates approximating depth contours. Boundaries for the recreational RCAs throughout the year are provided in the text in subpart G of this part under each state (Washington, Oregon and California) and may be modified by NMFS inseason pursuant to § 660.60(c).

* * * * *

Fishing gear includes the following types of gear and equipment:

(1) *Bottom contact gear* means fishing gear designed or modified to make contact with the bottom. This includes, but is not limited to, beam trawl, bottom trawl, dredge, fixed gear, set net, demersal seine, dinglebar gear, and other gear (including experimental gear) designed or modified to make contact with the bottom. Gear used to harvest bottom dwelling organisms (*e.g.* by hand, rakes, and knives) are also considered bottom contact gear for purposes of this subpart. Non-bottom contact gear is defined in paragraph (12) of this definition.

* * * * *

(12) *Non-bottom contact gear* means fishing gear designed or modified to not make contact with the bottom. This includes, but is not limited to, commercial vertical hook-and-line gear not anchored to the bottom (*e.g.,* vertical jig gear or rod-and-reel gear with weights suspended off the bottom) and troll gear.

* * * * *

Groundfish * * *

* * * * *

(10) ''Ecosystem component species'' means species that are included in the PCGFMP but are not ''in the fishery'' and therefore not actively managed and do not require harvest specifications. Ecosystem component species are not targeted in any fishery, not generally retained for sale or personal use, and are not determined to be subject to overfishing, approaching an overfished condition, or overfished, nor are they likely to become subject to overfishing or overfished in the absence of conservation and management measures. Ecosystem component species include: All skates listed here in paragraph (2), except longnose skate and big skate; all grenadiers listed here in paragraph (5); soupfin shark; ratfish; finescale codling; and shortbelly rockfish as listed here in paragraph (7)(ii).

* * * * *

■ 3. In § 660.25, revise paragraphs (b)(4)(v)(C) and (b)(4)(vi)(D) to read as follows:

§ 660.25 Permits.

* * * * *

(b) * * *

(4) * * *

(v) * * *

(C) *Sablefish-endorsed permits.* If a permit owner submits an application to register a sablefish-endorsed limited

entry permit to a new permit owner or vessel owner during the primary sablefish season described at § 660.231 (generally April 1 through December 31), the initial permit owner must certify on the application form the cumulative quantity, in round weight, of primary season sablefish landed against that permit as of the application signature date for the then current primary season. The new permit owner or vessel owner must sign the application form acknowledging the amount of landings to date given by the initial permit owner. This certified amount should match the total amount of primary season sablefish landings reported on state landing receipts. As required at § 660.12(b), any person landing sablefish must retain on board the vessel from which sablefish is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings from the primary season containing all data, and in the exact manner, required by the applicable state law throughout the primary sablefish season during which a landing occurred and for 15 days thereafter.

* * * * *

(vi) * * *

(D) *Sablefish-endorsed permits.* If a permit owner submits an application to register a sablefish-endorsed limited entry permit to a new vessel during the primary sablefish season described at § 660.231 (generally April 1 through December 31), the initial permit owner must certify on the application form the cumulative quantity, in round weight, of primary season sablefish landed against that permit as of the application signature date for the then current primary season. The new permit owner or vessel owner associated with the new vessel must sign the application form acknowledging the amount of landings to date given by the initial permit owner. This certified amount should match the total amount of primary season sablefish landings reported on state landing receipts. As required at § 660.12(b), any person landing sablefish must retain on board the vessel from which sablefish is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings from the primary season containing all data, and in the exact manner, required by the applicable state law throughout the primary sablefish season during which a landing occurred and for 15 days thereafter.

* * * * *

■ 4. In § 660.50, revise paragraph (f)(2)(ii) to read as follows:

§ 660.50 Pacific Coast treaty Indian fisheries.

* * * * *

(f) * * *

(2) * * *

(ii) The Tribal allocation is 849 mt in 2023 and 778 mt in 2024 per year. This allocation is, for each year, 10 percent of the Monterey through Vancouver area (North of 36° N lat.) ACL. The Tribal allocation is reduced by 1.7 percent for estimated discard mortality.

* * * * *

■ 5. In § 660.55, revise Table 1 to paragraph (c)(1) to read as follows:

§ 660.55 Allocations.

* * * * *

(c) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (c)(1)—ALLOCATION AMOUNTS AND PERCENTAGES FOR LIMITED ENTRY TRAWL AND NON-TRAWL SECTORS SPECIFIED FOR FMP GROUNDFISH STOCKS AND STOCK COMPLEXES

Stock or complex	All non-treaty LE trawl sectors	All non-treaty non-trawl sectors
Arrowtooth Flounder	95%	5%
Chilipepper Rockfish S of 40°10′ N lat	75%	25%
Darkblotched Rockfish	95%	5%
Dover Sole	95%	5%
English Sole	95%	5%
Lingcod N of 40°10′ N lat	45%	55%
Longspine Thornyhead N of 34°27′ N lat	95%	5%
Pacific Cod	95%	5%
Pacific Ocean Perch	95%	5%
Sablefish S of 36° N lat	42%	58%
Shortspine Thornyhead N of 34°27′ N lat	95%	5%
Shortspine Thornyhead S of 34°27′ N lat	50 mt	Remaining Yield
Splitnose Rockfish S of 40°10′ N lat	95%	5%
Starry Flounder	50%	50%
Yellowtail Rockfish N of 40°10′ N lat	88%	12%
Minor Slope Rockfish N rth of 40°10′ N lat	81%	19%
Other Flatfish	90%	10%

* * * * *

■ 6. Amend § 660.71 by:

■ a. Removing paragraphs (e)(193), (e)(277), and (r)(20);

■ b. Redesignating paragraphs (e)(194) through (276) as (e)(193) through (275), (e)(278) through (336) as (e)(276) through (334), (o)(113) through (218) as (o)(114) through (219), (q)(25) as (q)(26), and (r)(21) through (r)(23) as (r)(20) through (r)(22);

■ c. Revising paragraphs (e)(144) and (e)(192); newly redesignated paragraphs (e)(263), (e)(274), (e)(280), (e)(287), (e)(307), and paragraphs (h)(13), (i)(1), (i)(9), (i)(14), (i)(20), (i)(34), (j)(27), (j)(30), (j)(40)

■ d. Revising paragraphs (o)(95), (o)(97), (o)(112);

■ e. Adding new paragraphs (o)(113);

■ f. Revising newly redesignated paragraphs (o)(181), (o)(193), (0)(215), and (o)(216) and paragraphs (q)(8), (q)(14), (q)(19), (q)(24);

■ g. Adding new paragraph (q)(25); and

■ h. Revising newly redesignated paragraphs (r)(8), (r)(15).

The additions and revisions read as follows:

§ 660.71 Latitude/longitude coordinates defining the 10-fm (18-m) through 40-fm (73-m) depth contours.

* * * * *

(e) * * *

* * * * *

(144) 39°16.88′ N lat., 123°49.29′ W long.;
* * * * *
(192) 36°33.20′ N lat., 121°57.50′ W long.;
* * * * *
(263) 34°06.13′ N lat., 119°15.26′ W long.;
* * * * *
(274) 34°04.66′ N lat., 119°04.51′ W long.;
* * * * *
(280) 33°59.78′ N lat., 118°47.26′ W long.;
* * * * *
(287) 33°50.29′ N lat., 118°24.58′ W long.;
* * * * *
(307) 33°35.26′ N lat., 118°02.55′ W long.;
* * * * *
(h) * * *
* * * * *
(13) 33 °56.75′ N lat., 119°49.13′ W long.;
* * * * *
(i) * * *
* * * * *
(1) 33°02.98′ N lat., 118°37.64′ W long.;
* * * * *
(9) 32°54.79′ N lat., 118°33.34′ W long.;
* * * * *
(14) 32°48.05′ N lat., 118°26.81′ W long.;
* * * * *
(20) 32°49.04′ N lat., 118°20.71′ W long.;
* * * * *
(34) 33°02.98′ N lat., 118°37.64′ W long.;
* * * * *
(j) * * *
* * * * *
(27) 33°28.77′ N lat., 118°32.95′ W long.;
* * * * *
(30) 33°27.58′ N lat., 118°29.51′ W long.;
* * * * *
(40) 33°20.21′ N lat., 118°18.50′ W long.;
* * * * *
(o) * * *
* * * * *
(95) 40 °22.41′ N lat., 124°24.19′ W long.;
* * * * *
(97) 40°18.71′ N lat., 124°22.63′ W long.;
* * * * *
(112) 39°22.63′ N lat., 123°51.03′ W long.;
(113) 39°11.86′ N lat., 123°48.83′ W long.;
* * * * *
(181) 34°08.23′ N lat., 119°13.21′ W long.;
* * * * *
(193) 33°49.87′ N lat., 118° 24.15′ W long.;
* * * * *
(215) 32°51.90′ N lat., 117°16.32′ W long.;
(216) 32°52.11′ N lat., 117°19.33′ W long.;
* * * * *
(q) * * *
* * * * *
(8) 32° 54.78′ N lat., 118°33.44′ W long.;
* * * * *
(14) 32°45.53′ N lat., 118°24.82′ W long.;
* * * * *
(19) 32°49.70′ N lat., 118°21.04′ W long.;
* * * * *
(24) 33°02.98′ N lat., 118°35.40′ W long.;
(25) 33°03.36′ N lat., 118°37.57′ W long.; and
* * * * *
(r) * * *
* * * * *
(8) 33°20.88′ N lat., 118°30.54′ W long.;
* * * * *
(15) 33°22.24′ N lat., 118°19.99′ W long.;
* * * * *

■ 7. Amend § 660.72 by:
■ a. Revising paragraphs (a)(74) and (75), (a)(106) and (107), (a)(130), (a)(132) and (133),
■ b. Redesignating paragraphs (a)(134) through (200) as (a)(135) through (201);
■ c. Adding new paragraph (a)(134);
■ d. Revising paragraphs (a)(147) and (148), (a)(162), (a)(169), (a)(171), (a)(173), (a)(174)
■ e. Revising paragraphs (c)(18), (c)(33), (d)(2) through (4), (f)(89), (f)(96), (f)(129), (f)(143) and (144), (f)(146), (f)(155), (f)(159), (f)(169), (f)(175) and (176), (f)(208), (g)(17), (h)(2), (h)(4) through (6), (i)(6);
■ f. Removing paragraph (j)(140);
■ g. Redesignating paragraphs (j)(99) through (139) as (j)(100) through (140);
■ h. Adding new paragraph (j)(99);
■ i. Revising newly redesignated paragraphs (j)(100), and (j)(109) and paragraphs (j)(154), (j)(157), (j)(166), (j)(186) and (187), (j)(189) and (190), (j)(206), (j)(208) through (210), (j)(215), (j)(220) through (222), (j)(227), (k)(29), (l)(3), (m)(1), (m)(3) and (4), (m)(6), (m)(15), and (m)(18).

The additions and revisions read as follows:

§ 660.72 Latitude/longitude coordinates defining the 50 fm (91 m) through 75 fm (137 m) depth contours.

* * * * *
(a) * * *
* * * * *
(74) 40°23.71′ N lat., 124°28.32′ W long.;
(75) 40°22.53′ N lat., 124°24.67′ W long.;
* * * * *
(106) 37°49.84′ N lat., 123°16.05′ W long.;
(107) 37°35.67′ N lat., 122°55.43′ W long.;
* * * * *
(130) 36°00.00′ N lat., 121°34.95′ W long.;
* * * * *
(132) 35°40.44′ N lat., 121° 22.43′ W long.;
(133) 35°27.11′ N lat., 121°03.55′ W long.;
(134) 35°14.91′ N lat., 120°56.67′ W long.;
* * * * *
(147) 34°07.83′ N lat., 119°13.48′ W long.;
(148) 34°07.71′ N lat., 119°13.29′ W long.;
* * * * *
(162) 33°51.33′ N lat., 118°36.00′ W long.;
* * * * *
(169) 33°48.25′ N lat., 118°26.97′ W long.;
* * * * *
(171) 33°44.11′ N lat., 118°25.23′ W long.;
* * * * *
(173) 33°38.16′ N lat., 118°15.65′ W long.;
(174) 33°37.47′ N lat., 118° 16.62′ W long.;
* * * * *
(c) * * *
* * * * *
(18) 33°58.76′ N lat., 119°32.27′ W long.;
* * * * *
(33) 34°02.47′ N lat., 120°30.00′ W long.;
* * * * *
(d) * * *
* * * * *
(2) 33°02.53′ N lat., 118°34.25′ W long.;
(3) 32°55.51′ N lat., 118°28.92′ W long.;
(4) 32°54.99′ N lat., 118°27.72′ W long.;
* * * * *
(f) * * *
* * * * *

(89) 40°34.26′ N lat., 124°29.52′ W long.;
* * * * *
(96) 40°21.58′ N lat., 124°24.87′ W long.;
* * * * *
(129) 36°51.42′ N lat., 121°57.62′ W long.;
* * * * *
(143) 36°10.30′ N lat., 121°43.00′ W long.;
(144) 36°02.54′ N lat., 121°36.43′ W long.;
* * * * *
(146) 35°58.21′ N lat., 121°32.88′ W long.;
* * * * *
(155) 34°23.05′ N lat., 119°56.25′ W long.;
* * * * *
(159) 34°03.80′ N lat., 119°12.70′ W long.;
* * * * *
(169) 33°55.20′ N lat., 118°33.18′ W long.;
* * * * *
(175) 33°49.93′ N lat., 118°26.36′ W long.;
(176) 33°50.68′ N lat., 118°26.15′ W long.;
* * * * *
(208) 32°43.03′ N lat., 117°20.43′ W long.;
* * * * *
(g) * * *
* * * * *
(17) 33°59.22′ N lat., 119°55.49′ W long.;
* * * * *
(h) * * *
* * * * *
(2) 33°02.56′ N lat., 118°34.19′ W long.;
* * * * *
(4) 32°55.01′ N lat., 118°27.70′ W long.;
(5) 32°49.77′ N lat., 118°20.92′ W long.;
(6) 32°48.38′ N lat., 118°20.02′ W long.;
* * * * *
(i) * * *
* * * * *
(6) 33°25.39′ N lat., 118°22.80′ W long.;
* * * * *
(j) * * *
* * * * *
(99) 40°39.40′ N lat., 124°28.90′ W long.;
(100) 40°36.96′ N lat., 124°28.02′ W long.;
* * * * *
(109) 40°21.65′ N lat., 124°24.89′ W long.;
* * * * *
(154) 37°04.49′ N lat., 122°38.50′ W long.;
* * * * *
(157) 37°01.16′ N lat., 122°24.50′ W long.;
* * * * *
(166) 36°49.80′ N lat., 121°57.93′ W long.;
* * * * *
(186) 36°10.35′ N lat., 121°43.03′ W long.;
(187) 36°02.50′ N lat., 121°36.47′ W long.;
* * * * *
(189) 36°00.00′ N lat., 121°35.32′ W long.;
(190) 35°58.20′ N lat., 121°32.97′ W long.;
* * * * *
(206) 34°03.70′ N lat., 119°12.77′ W long.;
* * * * *
(208) 34°04.44′ N lat., 119°04.90′ W long.;
(209) 34°02.94′ N lat., 119°02.89′ W long.;
(210) 34°01.30′ N lat., 119°00.48′ W long.;
* * * * *
(215) 33°58.99′ N lat., 118°47.33′ W long.;
* * * * *
(220) 33°49.85′ N lat., 118°32.31′ W long.;
(221) 33°49.61′ N lat., 118°28.07′ W long.;
(222) 33°49.77′ N lat., 118°26.34′ W long.;
* * * * *
(227) 33°44.07′ N lat., 118°25.28′ W long.;
* * * * *
(k) * * *
* * * * *
(29) 33°51.69′ N lat., 120°07.98′ W long.;
* * * * *
(l) * * *
* * * * *
(3) 32°55.57′ N lat., 118°28.84′ W long.;
* * * * *
(m) * * *
(1) 33°28.13′ N lat., 118°38.25′ W long.;
* * * * *
(3) 33°28.94′ N lat., 118°30.81′ W long.;
(4) 33°26.73′ N lat., 118°27.35′ W long.;
* * * * *
(6) 33°25.42′ N lat., 118°22.76′ W long.;
* * * * *
(15) 33°24.94′ N lat., 118°32.29′ W long.;
* * * * *
(18) 33°28.13′ N lat., 118°38.25′ W long.;
* * * * *

■ 8. Amend § 660.73 by:
■ a. Revising paragraphs (a)(159) through (322);
■ b. Adding new paragraphs (a)(323) through (329);
■ c. Revising paragraphs (d)(10), (e)(188) and (189), (e)(264), (e)(272), (e)(274) through (276), (e)(284) through (286), (e)(290), (e)(318) through (323), (e)(350) through (363);
■ d. Adding new paragraphs (e)(364) through (371); and
■ e. Revising paragraphs (f), (g)(12) and (13), (h) and (l).

The additions and revisions read as follows:

§ 660.73 Latitude/longitude coordinates defining the 100 fm (183 m) through 150 fm (274 m) depth contours.

* * * * *
(a) * * *
(159) 40°39.44′ N lat., 124°29.08′ W long.;
(160) 40°37.08′ N lat., 124°28.29′ W long.;
(161) 40°34.76′ N lat., 124°29.82′ W long.;
(162) 40°36.78′ N lat., 124°37.06′ W long.;
(163) 40°32.44′ N lat., 124°39.58′ W long.;
(164) 40°30.37′ N lat., 124°37.30′ W long.;
(165) 40°28.48′ N lat., 124°36.95′ W long.;
(166) 40°24.82′ N lat., 124°35.12′ W long.;
(167) 40°23.30′ N lat., 124°31.60′ W long.;
(168) 40°23.52′ N lat., 124°28.78′ W long.;
(169) 40°22.43′ N lat., 124°25.00′ W long.;
(170) 40°21.72′ N lat., 124°24.94′ W long.;
(171) 40°21.87′ N lat., 124°27.96′ W long.;
(172) 40°21.40′ N lat., 124°28.74′ W long.;
(173) 40°19.68′ N lat., 124°28.49′ W long.;
(174) 40°17.73′ N lat., 124°25.43′ W long.;
(175) 40°18.37′ N lat., 124°23.35′ W long.;
(176) 40°15.75′ N lat., 124°26.05′ W long.;
(177) 40°16.75′ N lat., 124°33.71′ W long.;
(178) 40°16.29′ N lat., 124°34.36′ W long.;
(179) 40°10.13′ N lat., 124°21.92′ W long.;
(180) 40°07.70′ N lat., 124°18.44′ W long.;

(181) 40°08.84′ N lat., 124°15.86′ W long.;
(182) 40°06.39′ N lat., 124°17.26′ W long.;
(183) 40°03.15′ N lat., 124°14.43′ W long.;
(184) 40°02.19′ N lat., 124°12.85′ W long.;
(185) 40°02.89′ N lat., 124°11.78′ W long.;
(186) 40°02.78′ N lat., 124°10.70′ W long.;
(187) 40°04.57′ N lat., 124°10.08′ W long.;
(188) 40°06.06′ N lat., 124°08.30′ W long.;
(189) 40°04.05′ N lat., 124°08.93′ W long.;
(190) 40°01.17′ N lat., 124°08.80′ W long.;
(191) 40°01.00′ N lat., 124°09.96′ W long.;
(192) 39°58.07′ N lat., 124°11.81′ W long.;
(193) 39°56.39′ N lat., 124°08.69′ W long.;
(194) 39°54.64′ N lat., 124°07.30′ W long.;
(195) 39°53.86′ N lat., 124°07.95′ W long.;
(196) 39°51.95′ N lat., 124°07.63′ W long.;
(197) 39°48.78′ N lat., 124°03.29′ W long.;
(198) 39°47.36′ N lat., 124°03.31′ W long.;
(199) 39°40.08′ N lat., 123°58.37′ W long.;
(200) 39°36.16′ N lat., 123°56.90′ W long.;
(201) 39°30.75′ N lat., 123°55.86′ W long.;
(202) 39°31.62′ N lat., 123°57.33′ W long.;
(203) 39°30.91′ N lat., 123°57.88′ W long.;
(204) 39°01.79′ N lat., 123°56.59′ W long.;
(205) 38°59.42′ N lat., 123°55.67′ W long.;
(206) 38°58.89′ N lat., 123°56.28′ W long.;
(207) 38°57.50′ N lat., 123°56.28′ W long.;
(208) 38°54.72′ N lat., 123°55.68′ W long.;
(209) 38°48.95′ N lat., 123°51.85′ W long.;
(210) 38°36.67′ N lat., 123°40.20′ W long.;
(211) 38°33.82′ N lat., 123°39.23′ W long.;
(212) 38°29.02′ N lat., 123°33.52′ W long.;
(213) 38°18.88′ N lat., 123°25.93′ W long.;
(214) 38°14.12′ N lat., 123°23.26′ W long.;
(215) 38°11.07′ N lat., 123°22.07′ W long.;
(216) 38°03.18′ N lat., 123°20.77′ W long.;
(217) 38°00.00′ N lat., 123°23.08′ W long.;
(218) 37°55.07′ N lat., 123°26.81′ W long.;
(219) 37°50.66′ N lat., 123°23.06′ W long.;
(220) 37°45.18′ N lat., 123°11.88′ W long.;
(221) 37°35.67′ N lat., 123°01.20′ W long.;
(222) 37°26.81′ N lat., 122°55.57′ W long.;
(223) 37°26.78′ N lat., 122°53.91′ W long.;
(224) 37°25.74′ N lat., 122°54.13′ W long.;
(225) 37°25.33′ N lat., 122°53.59′ W long.;
(226) 37°25.29′ N lat., 122°52.57′ W long.;
(227) 37°24.50′ N lat., 122°52.09′ W long.;
(228) 37°23.25′ N lat., 122°53.12′ W long.;
(229) 37°15.58′ N lat., 122°48.36′ W long.;
(230) 37°11.00′ N lat., 122°44.50′ W long.;
(231) 37°07.00′ N lat., 122°41.25′ W long.;
(232) 37°03.18′ N lat., 122°38.15′ W long.;
(233) 37°00.48′ N lat., 122°33.93′ W long.;
(234) 36°58.70′ N lat., 122°27.22′ W long.;
(235) 37°00.85′ N lat., 122°24.70′ W long.;
(236) 36°58.00′ N lat., 122°24.14′ W long.;
(237) 36°58.74′ N lat., 122°21.51′ W long.;
(238) 36°56.97′ N lat., 122°21.32′ W long.;
(239) 36°51.52′ N lat., 122°10.68′ W long.;
(240) 36°48.39′ N lat., 122°07.60′ W long.;
(241) 36°47.43′ N lat., 122°03.22′ W long.;
(242) 36°50.95′ N lat., 121°58.03′ W long.;
(243) 36°49.92′ N lat., 121°58.01′ W long.;
(244) 36°48.86′ N lat., 121°58.80′ W long.;
(245) 36°47.76′ N lat., 121°58.68′ W long.;
(246) 36°48.39′ N lat., 121°51.10′ W long.;
(247) 36°45.74′ N lat., 121°54.17′ W long.;
(248) 36°45.51′ N lat., 121°57.72′ W long.;
(249) 36°38.84′ N lat., 122°01.32′ W long.;
(250) 36°35.62′ N lat., 122°00.98′ W long.;
(251) 36°32.46′ N lat., 121°59.15′ W long.;
(252) 36°32.79′ N lat., 121°57.67′ W long.;
(253) 36°31.98′ N lat., 121°56.55′ W long.;
(254) 36°31.79′ N lat., 121°58.40′ W long.;
(255) 36°30.73′ N lat., 121°59.70′ W long.;
(256) 36°30.31′ N lat., 122°00.22′ W long.;
(257) 36°29.35′ N lat., 122°00.28′ W long.;
(258) 36°27.66′ N lat., 121°59.80′ W long.;
(259) 36°26.22′ N lat., 121°58.35′ W long.;
(260) 36°21.20′ N lat., 122°00.72′ W long.;
(261) 36°20.47′ N lat., 122°02.92′ W long.;
(262) 36°18.46′ N lat., 122°04.51′ W long.;
(263) 36°15.92′ N lat., 122°01.33′ W long.;
(264) 36°13.81′ N lat., 121°57.40′ W long.;
(265) 36°14.43′ N lat., 121°55.43′ W long.;
(266) 36°10.24′ N lat., 121°43.08′ W long.;
(267) 36°07.66′ N lat., 121°40.91′ W long.;
(268) 36°02.49′ N lat., 121°36.51′ W long.;
(269) 36°01.08′ N lat., 121°36.63′ W long.;
(270) 36°00.00′ N lat., 121°35.41′ W long.;
(271) 35°57.84′ N lat., 121°32.81′ W long.;
(272) 35°50.36′ N lat., 121°29.32′ W long.;
(273) 35°39.03′ N lat., 121°22.86′ W long.;
(274) 35°24.27′ N lat., 121°02.74′ W long.;
(275) 35°16.53′ N lat., 121°00.39′ W long.;
(276) 35°04.82′ N lat., 120°53.96′ W long.;
(277) 34°52.51′ N lat., 120°51.62′ W long.;
(278) 34°43.36′ N lat., 120°52.12′ W long.;
(279) 34°38.06′ N lat., 120°49.65′ W long.;
(280) 34°30.85′ N lat., 120°44.76′ W long.;
(281) 34°27.00′ N lat., 120°39.00′ W long.;
(282) 34°21.90′ N lat., 120°25.25′ W long.;
(283) 34°24.86′ N lat., 120°16.81′ W long.;
(284) 34°22.80′ N lat., 119°57.06′ W long.;
(285) 34°18.59′ N lat., 119°44.84′ W long.;

(286) 34°15.04′ N lat., 119°40.34′ W long.;
(287) 34°14.40′ N lat., 119°45.39′ W long.;
(288) 34°12.32′ N lat., 119°42.41′ W long.;
(289) 34°09.71′ N lat., 119°28.85′ W long.;
(290) 34°04.70′ N lat., 119°15.38′ W long.;
(291) 34°03.33′ N lat., 119°12.93′ W long.;
(292) 34°02.72′ N lat., 119°07.01′ W long.;
(293) 34°03.90′ N lat., 119°04.64′ W long.;
(294) 34°02.75′ N lat., 119°02.88′ W long.;
(295) 33°59.44′ N lat., 119°03.43′ W long.;
(296) 33°59.12′ N lat., 118°59.59′ W long.;
(297) 33°59.84′ N lat., 118°57.29′ W long.;
(298) 33°58.83′ N lat., 118°46.69′ W long.;
(299) 33°58.73′ N lat., 118°41.76′ W long.;
(300) 33°55.09′ N lat., 118°34.11′ W long.;
(301) 33°54.09′ N lat., 118°38.42′ W long.;
(302) 33°51.00′ N lat., 118°36.66′ W long.;
(303) 33°49.06′ N lat., 118°31.86′ W long.;
(304) 33°49.69′ N lat., 118°26.49′ W long.;
(305) 33°49.35′ N lat., 118°26.04′ W long.;
(306) 33°47.60′ N lat., 118°31.13′ W long.;
(307) 33°39.82′ N lat., 118°18.31′ W long.;
(308) 33°35.68′ N lat., 118°16.81′ W long.;
(309) 33°32.85′ N lat., 118°09.41′ W long.;
(310) 33°35.14′ N lat., 118°04.95′ W long.;
(311) 33°33.56′ N lat., 118°00.63′ W long.;
(312) 33°34.25′ N lat., 117°53.44′ W long.;
(313) 33°31.65′ N lat., 117°49.21′ W long.;
(314) 33°16.07′ N lat., 117°34.74′ W long.;
(315) 33°07.06′ N lat., 117°22.71′ W long.;
(316) 33°02.81′ N lat., 117°21.17′ W long.;
(317) 33°01.76′ N lat., 117°20.51′ W long.;
(318) 32°59.90′ N lat., 117°19.38′ W long.;
(319) 32°57.29′ N lat., 117°18.94′ W long.;
(320) 32°56.15′ N lat., 117°19.54′ W long.;
(321) 32°55.30′ N lat., 117°19.38′ W long.;
(322) 32°54.27′ N lat., 117°17.17′ W long.;
(323) 32°52.94′ N lat., 117°17.11′ W long.;
(324) 32°52.66′ N lat., 117°19.67′ W long.;
(325) 32°50.95′ N lat., 117°21.17′ W long.;
(326) 32°47.11′ N lat., 117°22.98′ W long.;
(327) 32°45.60′ N lat., 117°22.64′ W long.;
(328) 32°42.79′ N lat., 117°21.16′ W long.; and
(329) 32°34.22′ N lat., 117°21.20′ W long.

* * * * *

(d) * * *

* * * * *

(10) 34°02.97′ N lat., 119°16.89′ W long.;

* * * * *

(e) * * *

* * * * *

(188) 40°22.32′ N lat., 124°25.15′ W long.;
(189) 40°21.85′ N lat., 124°25.09′ W long.;

* * * * *

(264) 36°51.44′ N lat., 122°10.79′ W long.;

* * * * *

(272) 36°45.52′ N lat., 121°57.74′ W long.;

* * * * *

(274) 36°38.84′ N lat., 122°01.44′ W long.;
(275) 36°35.62′ N lat., 122°01.06′ W long.;
(276) 36°32.41′ N lat., 121°59.18′ W long.;

* * * * *

(284) 36°13.66′ N lat., 121°57.17′ W long.;
(285) 36°14.35′ N lat., 121°55.38′ W long.;
(286) 36°10.18′ N lat., 121°43.26′ W long.;

* * * * *

(290) 35°59.96′ N lat., 121°35.39′ W long.;

* * * * *

(318) 34°07.06′ N lat., 120°10.42′ W long.;
(319) 34°08.93′ N lat., 120°18.34′ W long.;
(320) 34°11.04′ N lat., 120°25.20′ W long.;
(321) 34°13.01′ N lat., 120°29.29′ W long.;
(322) 34°09.41′ N lat., 120°37.69′ W long.;
(323) 34°03.20′ N lat., 120°34.52′ W long.;

* * * * *

(350) 33°48.70′ N lat., 118°31.99′ W long.;
(351) 33°48.87′ N lat., 118°29.47′ W long.;
(352) 33°48.37′ N lat., 118°29.40′ W long.;
(353) 33°47.63′ N lat., 118°31.57′ W long.;
(354) 33°39.78′ N lat., 118°18.40′ W long.;
(355) 33°35.50′ N lat., 118°16.85′ W long.;
(356) 33°32.46′ N lat., 118°10.90′ W long.;
(357) 33°32.81′ N lat., 118°07.30′ W long.;
(358) 33°34.38′ N lat., 118°05.94′ W long.;
(359) 33°34.42′ N lat., 118°03.95′ W long.;
(360) 33°33.40′ N lat., 118°01.26′ W long.;
(361) 33°34.11′ N lat., 117°54.07′ W long.;
(362) 33°31.61′ N lat., 117°49.30′ W long.;
(363) 33°16.36′ N lat., 117°35.48′ W long.;
(364) 33°06.81′ N lat., 117°22.93′ W long.;
(365) 32°59.28′ N lat., 117°19.69′ W long.;
(366) 32°55.37′ N lat., 117°19.55′ W long.;
(367) 32°53.12′ N lat., 117°17.49′ W long.;
(368) 32°52.56′ N lat., 117°20.75′ W long.;
(369) 32°46.42′ N lat., 117°23.45′ W long.;
(370) 32°42.71′ N lat., 117°21.45′ W long.; and
(371) 32°34.54′ N lat., 117°23.04′ W long.

* * * * *

(f) The 125 fm (229 m) depth contour around San Clemente Island off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°04.86′ N lat., 118°37.89′ W long.;
(2) 33°02.67′ N lat., 118°34.07′ W long.;
(3) 32°55.97′ N lat., 118°28.95′ W long.;
(4) 32°55.06′ N lat., 118°27.66′ W long.;
(5) 32°49.79′ N lat., 118°20.84′ W long.;
(6) 32°48.02′ N lat., 118°19.49′ W long.;
(7) 32°47.37′ N lat., 118°21.72′ W long.;
(8) 32°43.58′ N lat., 118°24.54′ W long.;
(9) 32°47.74′ N lat., 118°30.39′ W long.;

(10) 32°49.74′ N lat., 118°32.11′ W long.;
(11) 32 °53.36′ N lat., 118°33.44′ W long.;
(12) 32 °54.89′ N lat., 118°35.37′ W long.;
(13) 33 °00.20′ N lat., 118°38.72′ W long.;
(14) 33 °03.15′ N lat., 118°39.80′ W long.; and
(15) 33 °04.86′ N lat., 118°37.89′ W long.;
* * * * *
(g) * * *
* * * * *
(12) 33°19.85′ N lat., 118°32.25′ W long.;
(13) 33°20.82′ N lat., 118°32.98′ W long.;
* * * * *
(h) The 125 fm (229 m) depth contour around Lasuen Knoll off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°24.50′ N lat., 118°01.08′ W long.;
(2) 33°23.35′ N lat., 117°59.83′ W long.;
(3) 33°23.69′ N lat., 117°58.47′ W long.;
(4) 33°24.76′ N lat., 117°59.33′ W long.; and
(5) 33°24.50′ N lat., 118°01.08′ W long.
* * * * *
(l) The 150 fm (274 m) depth contour used around Lasuen Knoll off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°25.07′ N lat., 117°59.26′ W long.;
(2) 33°23.69′ N lat., 117°58.13′ W long.;
(3) 33°23.18′ N lat., 117°59.87′ W long.;
(4) 33°24.61′ N lat., 118°01.31′ W long.; and
(5) 33°25.07′ N lat., 117°59.26′ W long.
* * * * *

■ 9. In § 660.74, revise paragraphs (d), (j), and (p)(3) through (7) to read as follows:

§ 660.74 Latitude/longitude coordinates defining the 180 fm (329 m) through 250 fm (457 m) depth contours.

* * * * *
(d) The 180 fm (329 m) depth contour used around Lasuen Knoll off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°25.05′ N lat., 118°01.70′ W long.;
(2) 33°25.41′ N lat., 117°59.36′ W long.;
(3) 33°23.49′ N lat., 117°57.47′ W long.;
(4) 33°23.02′ N lat., 117°59.78′ W long.;
(5) 33°23.85′ N lat., 118°00.88′ W long.; and
(6) 33°25.05′ N lat., 118°01.70′ W long.
* * * * *
(j) The 200 fm (366 m) depth contour used around Lasuen Knoll off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°25.91′ N lat., 117°59.44′ W long.;
(2) 33°23.37′ N lat., 117°56.97′ W long.;
(3) 33°22.88′ N lat., 117°59.72′ W long.;
(4) 33°23.85′ N lat., 118°01.03′ W long.;
(5) 33°25.20′ N lat., 118°01.89′ W long.; and
(6) 33°25.91′ N lat., 117°59.44′ W long.
* * * * *
(p) * * *
* * * * *
(3) 33°23.83′ N lat., 117°56.19′ W long.;
(4) 33°22.24′ N lat., 117°57.20′ W long.;
(5) 33°22.78′ N lat., 117°59.68′ W long.;
(6) 33°23.79′ N lat., 118°01.32′ W long.;
(7) 33°25.79′ N lat., 118°02.25′ W long.;
* * * * *

■ 10. Revise Tables 1a through 1c to part 660, subpart C, to read as follows:
* * * * *

TABLE 1a. TO PART 660, SUBPART C—2023, SPECIFICATIONS OF OFL, ABC, ACL, ACT AND FISHERY HG
[(Weights in metric tons). Capitalized stocks are rebuilding.]

Stocks	Area	OFL	ABC	ACL [a]	Fishery HG [b]
YELLOWEYE ROCKFISH [c]	Coastwide	123	103	66	55.3
Arrowtooth Flounder [d]	Coastwide	26,391	18,632	18,632	16,537
Big Skate [e]	Coastwide	1,541	1,320	1,320	1,260.2
Black Rockfish [f]	California (S of 42° N lat)	368	334	334	332.1
Black Rockfish [g]	Washington (N of 46°16′ N lat)	319	290	290	271.8
Bocaccio [h]	S of 40°10′ N lat	2,009	1,842	1,842	1,793.9
Cabezon [i]	California (S of 42° N lat)	197	182	182	180.4
California Scorpionfish [j]	S of 34°27′ N lat	290	262	262	258.4
Canary Rockfish [k]	Coastwide	1,413	1,284	1,284	1,215.1
Chilipepper [l]	S of 40°10′ N lat	2,401	2,183	2,183	2,085
Cowcod [m]	S of 40°10′ N lat	113	80	80	68.8
Cowcod	(Conception)	94	69	NA	NA
Cowcod	(Monterey)	19	11	NA	NA
Darkblotched Rockfish [n]	Coastwide	856	785	785	761.2
Dover Sole [o]	Coastwide	63,834	59,685	50,000	48,402.9
English Sole [p]	Coastwide	11,133	9,018	9,018	8,758.5
Lingcod [q]	N of 40°10′ N lat	5,010	4,378	4,378	4,098.4
Lingcod [r]	S of 40°10′ N lat	846	739	726	710.5
Longnose Skate [s]	Coastwide	1,993	1,708	1,708	1,456.7
Longspine Thornyhead [t]	N of 34°27′ N lat	4,616	3,019	2,295	2,241.3
Longspine Thornyhead [u]	S of 34°27′ N lat	725	722.8		
Pacific Cod [v]	Coastwide	3,200	1,926	1,600	1,094
Pacific Ocean Perch [w]	N of 40°10′ N lat	4,248	3,573	3,573	3,427.5
Pacific Whiting [x]	Coastwide	x	x	x	x
Petrale Sole [y]	Coastwide	3,763	3,485	3,485	3,098.8
Sablefish [z]	N of 36° N lat	11,577	10,825	8,486	See Table 1c
Sablefish [aa]	S of 36° N lat	2,338	2,310.6		
Shortspine Thornyhead [bb]	N of 34°27′ N lat	3,177	2,078	1,359	1,280.7
Shortspine Thornyhead [cc]	S of 34°27′ N lat	719	712.3		
Spiny Dogfish [dd]	Coastwide	1,911	1,456	1,456	1,104.5
Splitnose [ee]	S of 40°10′ N lat	1,803	1,592	1,592	1,573.4
Starry Flounder [ff]	Coastwide	652	392	392	343.7
Widow Rockfish [gg]	Coastwide	13,633	12,624	12,624	12,385.7
Yellowtail Rockfish [hh]	N of 40°10′ N lat	6,178	5,666	5,666	4,638.5

TABLE 1a. TO PART 660, SUBPART C—2023, SPECIFICATIONS OF OFL, ABC, ACL, ACT AND FISHERY HG—Continued

[(Weights in metric tons). Capitalized stocks are rebuilding.]

Stocks	Area	OFL	ABC	ACL [a]	Fishery HG [b]
Stock Complexes					
Blue/Deacon/Black Rockfish [ii]	Oregon	679	597	597	595.2
Cabezon/Kelp Greenling [jj]	Oregon	202	185	185	184.2
Cabezon/Kelp Greenling [kk]	Washington	25	20	20	18.0
Nearshore Rockfish North [ll]	N of 40°10′ N lat	110	93	93	89.7
Nearshore Rockfish South [mm]	S of 40°10′ N lat	1,089	897	887	882.5
Other Fish [nn]	Coastwide	286	223	223	201.8
Other Flatfish [oo]	Coastwide	7,887	4,862	4,862	4,641
Shelf Rockfish North [pp]	N of 40°10′ N lat	1,614	1,283	1,283	1,212.1
Shelf Rockfish South [qq]	S of 40°10′ N lat	1,835	1,469	1,469	1,336.2
Slope Rockfish North [rr]	N of 40°10′ N lat	1,819	1,540	1,540	1,474.6
Slope Rockfish South [ss]	S of 40°10′ N lat	870	701	701	662.1

[a] Annual catch limits (ACLs), annual catch targets (ACTs) and harvest guidelines (HGs) are specified as total catch valueS

[b] Fishery HGs means the HG or quota after subtracting Pacific Coast treaty Indian tribes allocations and projected catch, projected research catch, deductions for fishing mortality in non-groundfish fisheries, and deductions for EFPs from the ACL or ACT.

[c] Yelloweye rockfish. The 66 mt ACL is based on the current rebuilding plan with a target year to rebuild of 2029 and an SPR harvest rate of 65 percent. 10.7 mt is deducted from the ACL to accommodate the Tribal fishery (5 mt), EFP fishing (0.12 mt), research catch (2.92 mt), and incidental open access mortality (2.66 mt) resulting in a fishery HG of 55.3 mt. The non-trawl HG is 50.9 mt. The combined non-nearshore/nearshore HG is 10.7 mt. Recreational HGs are: 13.2 mt (Washington); 11.7 mt (Oregon); and 15.3 mt (California). In addition, the non-trawl ACT is 39.9 mt, and the combined non-nearshore/nearshore ACT is 8.4 mt. Recreational ACTs are: 10.4 mt (Washington), 9.2 mt (Oregon), and 12.0 mt (California).

[d] Arrowtooth flounder. 2,094.98 mt is deducted from the ACL to accommodate the Tribal fishery (2,041 mt), research catch (12.98 mt) and incidental open access mortality (41 mt), resulting in a fishery HG of 16,537 mt.

[e] Big skate. 59.8 mt is deducted from the ACL to accommodate the Tribal fishery (15 mt), research catch (5.49 mt), and incidental open access mortality (39.31 mt), resulting in a fishery HG of 1,260.2 mt.

[f] Black rockfish (California). 2.26 mt is deducted from the ACL to accommodate EFP fishing (1.0 mt), research catch (0.08 mt), and incidental open access mortality (1.18 mt), resulting in a fishery HG of 332.1 mt.

[g] Black rockfish (Washington). 18.1 mt is deducted from the ACL to accommodate the Tribal fishery (18 mt) and research catch (0.1 mt), resulting in a fishery HG of 271.8 mt.

[h] Bocaccio south of 40°10′ N lat. Bocaccio are managed with stock-specific harvest specifications south of 40°10′ N lat. and within the Minor Shelf Rockfish complex north of 40°10′ N lat. 48.12 mt is deducted from the ACL to accommodate EFP fishing (40 mt), research catch (5.6 mt), and incidental open access mortality (2.52 mt), resulting in a fishery HG of 1,793.9 mt. The California recreational fishery south of 40°10′ N lat. has an HG of 755.6 mt.

[i] Cabezon (California). 1.63 mt is deducted from the ACL to accommodate EFP fishing (1 mt), research catch (0.02 mt), and incidental open access fishery mortality (0.61 mt), resulting in a fishery HG of 180.4 mt.

[j] California scorpionfish south of 34°27′ N lat. 3.89 mt is deducted from the ACL to accommodate research (0.18 mt) and the incidental open access fishery (3.71 mt), resulting in a fishery HG of 258.4 mt.

[k] Canary rockfish. 68.91 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), EFP fishing (6 mt), and research catch (10.08 mt), and incidental open access mortality (2.83 mt), resulting in a fishery HG of 1,215.1 mt. The combined nearshore/non-nearshore HG is 121.2 mt. Recreational HGs are: 41.4 mt (Washington); 62.3 mt (Oregon); and 111.7 mt (California).

[l] Chilipepper rockfish south of 40°10′ N lat. Chilipepper are managed with stock-specific harvest specifications south of 40°10′N lat. and within the Minor Shelf Rockfish complex north of 40°10′ N lat. 97.7 mt is deducted from the ACL to accommodate EFP fishing (70 mt), research catch (14.04 mt), incidental open access fishery mortality (13.66 mt), resulting in a fishery HG of 2,085 mt.

[m] Cowcod south of 40°10′ N lat. Cowcod are managed with stock-specific harvest specifications south of 40°10′ N lat. and within the Minor Shelf Rockfish complex north of 40°10′ N lat. 11.17 mt is deducted from the ACL to accommodate EFP fishing (1 mt), research catch (10 mt), and incidental open access mortality (0.17 mt), resulting in a fishery HG of 68.8 mt.

[n] Darkblotched rockfish. 23.76 mt is deducted from the ACL to accommodate the Tribal fishery (5 mt), EFP fishing (0.5 mt), research catch (8.46 mt), and incidental open access mortality (9.8 mt) resulting in a fishery HG of 761.2 mt.

[o] Dover sole. 1,597.11 mt is deducted from the ACL to accommodate the Tribal fishery (1,497 mt), research catch (50.84 mt), and incidental open access mortality (49.27 mt), resulting in a fishery HG of 48,402.9 mt.

[p] English sole. 259.52 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), research catch (17 mt), and incidental open access mortality (42.52 mt), resulting in a fishery HG of 8,758.5 mt.

[q] Lingcod north of 40°10′ N lat. 279.63 mt is deducted from the ACL for the Tribal fishery (250 mt), research catch (17.71 mt), and incidental open access mortality (11.92 mt) resulting in a fishery HG of 4,098.4 mt.

[r] Lingcod south of 40°10′ N lat. 15.5 mt is deducted from the ACL to accommodate EFP fishing (4 mt), research catch (3.19 mt), and incidental open access mortality (8.31 mt), resulting in a fishery HG of 710.5 mt.

[s] Longnose skate. 251.3 mt is deducted from the ACL to accommodate the Tribal fishery (220 mt), research catch (12.46 mt), and incidental open access mortality (18.84 mt), resulting in a fishery HG of 1,456.7 mt.

[t] Longspine thornyhead north of 34°27′ N lat. 53.71 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), research catch (17.49 mt), and incidental open access mortality(6.22 mt), resulting in a fishery HG of 2,241.3 mt.

[u] Longspine thornyhead south of 34°27′ N lat. 2.24 mt is deducted from the ACL to accommodate research catch (1.41 mt) and incidental open access mortality (0.83 mt), resulting in a fishery HG of 722.8 mt.

[v] Pacific cod. 506 mt is deducted from the ACL to accommodate the Tribal fishery (500 mt), research catch (5.47 mt), and incidental open access mortality (0.53 mt), resulting in a fishery HG of 1,094 mt.

[w] Pacific ocean perch north of 40°10′ N lat. Pacific ocean perch are managed with stock-specific harvest specifications north of 40°10′ N lat. and within the Minor Slope Rockfish complex south of 40°10′ N lat. 145.48 mt is deducted from the ACL to accommodate the Tribal fishery (130 mt), research catch (5.39 mt), and incidental open access mortality (10.09 mt), resulting in a fishery HG of 3,427.5 mt.

[x] Pacific whiting. Pacific whiting are assessed annually. The final specifications will be determined consistent with the U.S-Canada Pacific Whiting Agreement and will be announced after the Council's April 2023 meeting.

[y] Petrale sole. 386.24 mt is deducted from the ACL to accommodate the Tribal fishery (350 mt), EFP fishing (1 mt), research catch (24.14 mt), and incidental open access mortality (11.1 mt), resulting in a fishery HG of 3,098.8 mt.

[z] Sablefish north of 36° N lat. The sablefish coastwide ACL value is not specified in regulationS The coastwide sablefish ACL value is apportioned north and south of 36° N lat., using the rolling 5-year average estimated swept area biomass from the NMFS NWFSC trawl survey, with 78.4 percent apportioned north of 36° N lat. and 21.6 percent apportioned south of 36° N lat. The northern ACL is 8,486 mt and is reduced by 849 mt for the Tribal allocation (10 percent of the ACL north of 36° N lat.). The 849 mt Tribal allocation is reduced by 1.7 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 1c.

[aa] Sablefish south of 36° N lat. The ACL for the area south of 36° N lat. is 2,338 mt (21.6 percent of the calculated coastwide ACL value). 27.4 mt is deducted from the ACL to accommodate research catch (2.40 mt) and incidental open access mortality (25 mt), resulting in a fishery HG of 2,310.6 mt.

[bb] Shortspine thornyhead north of 34°27′ N lat. 78.3 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), research catch (10.48 mt), and incidental open access mortality (17.82 mt), resulting in a fishery HG of 1,280.7 mt for the area north of 34°27′ N lat.

[cc] Shortspine thornyhead south of 34°27′ N lat. 6.71 mt is deducted from the ACL to accommodate research catch (0.71 mt) and incidental open access mortality (6 mt), resulting in a fishery HG of 712.3 mt for the area south of 34°27′ N lat.

[dd] Spiny dogfish. 351.48 mt is deducted from the ACL to accommodate the Tribal fishery (275 mt), EFP fishing (1 mt), research catch (41.85 mt), and incidental open access mortality (33.63 mt), resulting in a fishery HG of 1,104.5 mt.

[ee] Splitnose rockfish south of 40°10′ N lat. 18.42 mt is deducted from the ACL to accommodate EFP fishing (1.5 mt), research catch (11.17 mt), and incidental open access mortality (5.75 mt), resulting in a fishery HG of 1,573.4 mt.

[ff] Starry flounder. 48.28 mt is deducted from the ACL to accommodate the Tribal fishery (2 mt), research catch (0.57 mt), and incidental open access mortality (45.71 mt), resulting in a fishery HG of 343.7 mt.

[gg] Widow rockfish. 238.32 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), EFP fishing (18 mt), research catch (17.27 mt), and incidental open access mortality (3.05 mt), resulting in a fishery HG of 12,385.7 mt.

[hh] Yellowtail rockfish north of 40°10′ N lat. Yellowtail rockfish are managed with stock-specific harvest specifications north of 40°10′ N lat. and within the Minor Shelf Rockfish complex south of 40°10′ N lat. 1,027.55 mt is deducted from the ACL to accommodate the Tribal fishery (1,000 mt), research catch (20.55 mt), and incidental open access mortality (7 mt), resulting in a fishery HG of 4,638.5 mt.

[ii] Black rockfish/Blue rockfish/Deacon rockfish (Oregon). 1.82 mt is deducted from the ACL to accommodate research catch (0.08 mt) and incidental open access mortality (1.74 mt), resulting in a fishery HG of 595.2 mt.
[jj] Cabezon/kelp greenling (Oregon). 0.79 mt is deducted from the ACL to accommodate research catch (0.05 mt), and incidental open access mortality (0.74 mt), resulting in a fishery HG of 184.2 mt.
[kk] Cabezon/kelp greenling (Washington). 2 mt is deducted from the ACL to accommodate the Tribal fishery, resulting in a fishery HG is 18 mt.
[ll] Nearshore Rockfish north of 40°10′ N lat. 3.27 mt is deducted from the ACL to accommodate the Tribal fishery (1.5 mt), research catch (0.47 mt), and incidental open access mortality (1.3 mt), resulting in a fishery HG of 89.7 mt. State specific HGs are Washington (17.7 mt), Oregon (32.0 mt), and California (39.6 mt). The ACT for copper rockfish (California) is 6.93 mt. The ACT for quillback rockfish (California) is 0.87 mt.
[mm] Nearshore Rockfish south of 40°10′ N lat. 4.54 mt is deducted from the ACL to accommodate research catch (2.68 mt) and incidental open access mortality (1.86 mt), resulting in a fishery HG of 882.5 mt. The ACT for copper rockfish is 84.61 mt. The ACT for quillback rockfish is 0.89 mt.
[nn] Other Fish. The Other Fish complex is comprised of kelp greenling off California and leopard shark coastwide. 21.24 mt is deducted from the ACL to accommodate research catch (6.29 mt) and incidental open access mortality (14.95 mt), resulting in a fishery HG of 201.8 mt.
[oo] Other Flatfish. The Other Flatfish complex is comprised of flatfish species managed in the PCGFMP that are not managed with stock-specific OFLs/ABCs/ACLS Most of the species in the Other Flatfish complex are unassessed and include: butter sole, curlfin sole, flathead sole, Pacific sanddab, rock sole, sand sole, and rex sole. 220.79 mt is deducted from the ACL to accommodate the Tribal fishery (60 mt), research catch (23.63 mt), and incidental open access mortality (137.16 mt), resulting in a fishery HG of 4,641.2 mt.
[pp] Shelf Rockfish north of 40°10′ N lat. 70.94 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), research catch (15.32 mt), and incidental open access mortality (25.62 mt), resulting in a fishery HG of 1,212.1 mt.
[qq] Shelf Rockfish south of 40°10′ N lat. 132.77 mt is deducted from the ACL to accommodate EFP fishing (50 mt), research catch (15.1 mt), and incidental open access mortality (67.67 mt) resulting in a fishery HG of 1,336.2 mt.
[rr] Slope Rockfish north of 40°10′ N lat. 65.39 mt is deducted from the ACL to accommodate the Tribal fishery (36 mt), and research catch (10.51 mt), and incidental open access mortality (18.88 mt), resulting in a fishery HG of 1,474.6 mt.
[ss] Slope Rockfish south of 40°10′ N lat. 38.94 mt is deducted from the ACL to accommodate EFP fishing (1 mt), research catch (18.21 mt), and incidental open access mortality (19.73 mt), resulting in a fishery HG of 662.1 mt. Blackgill rockfish has a stock-specific HG for the entire groundfish fishery south of 40°10′ N lat. set equal to the species′ contribution to the ACL. Harvest of blackgill rockfish in all groundfish fisheries south of 40°10′ N lat. counts against this HG of 172.4 mt.

TABLE 1b. TO PART 660, SUBPART C—2023, ALLOCATIONS BY SPECIES OR SPECIES GROUP

[Weight in metric tons]

Stocks/stock complexes	Area	Fishery HG or ACT	Trawl		Non-trawl	
			%	Mt	%	Mt
YELLOWEYE ROCKFISH[a]	Coastwide	55.3	8	4.4	92	50.9
Arrowtooth flounder	Coastwide	16,537	95	15,710.2	5	826.9
Big skate[a]	Coastwide	1,260.2	95	1,197.2	5	63
Bocaccio[a]	S of 40°10′ N lat	1,793.9	39.04	700.3	60.96	1,093.5
Canary rockfish[a]	Coastwide	1,215.1	72.281	878.3	27.719	336.8
Chilipepper rockfish	S of 40°10′N lat	2,085	75	1,563.8	25	521.3
Cowcod[a b]	S of 40°10′ N lat	68.8	36	24.8	64	44.1
Darkblotched rockfish	Coastwide	761.2	95	723.2	5	38.1
Dover sole	Coastwide	48,402.8	95	45,982.7	5	2,420.1
English sole	Coastwide	8,758.5	95	8,320.6	5	437.9
Lingcod	N of 40′10° N lat	4,098.4	45	1,844.3	55	2,254.1
Lingcod[a]	S of 40′10° N lat	710.5	40	284.2	60	426.3
Longnose skate[a]	Coastwide	1,456.7	90	1,311	10	145.7
Longspine thornyhead	N of 34°27′ N lat	2,241.3	95	2,129.2	5	112.1
Pacific cod	Coastwide	1,094	95	1,039.3	5	54.7
Pacific ocean perch	N of 40°10′ N lat	3,427.5	95	3,256.1	5	171.4
Pacific whiting[c]	Coastwide	TBD	100	TBD	0	0
Petrale sole[a]	Coastwide	3,098.8	.....	3,068.8	.....	30
Sablefish	N of 36° N lat	NA	See Table 1c			
Sablefish	S of 36° N lat	2,310.6	42	970.5	58	1,340.1
Shortspine thornyhead	N of 34°27′ N lat	1,280.7	95	1,216.7	5	64
Shortspine thornyhead	S of 34°27′ N lat	712.3	.....	50	.....	662.3
Splitnose rockfish	S of 40°10′ N lat	1,572.4	95	1,494.7	5	78.7
Starry flounder	Coastwide	343.7	50	171.9	50	171.9
Widow rockfish[a]	Coastwide	12,385.7	.....	11,985.7	.....	400
Yellowtail rockfish	N of 40°10′ N lat	4,638.5	88	4,081.8	12	556.6
Other Flatfish	Coastwide	4,641.2	90	4,177.1	10	464.1
Shelf Rockfish[a]	N of 40°10′ N lat	1,212.1	60.2	729.7	39.8	482.4
Shelf Rockfish[a]	S of 40°10′ N lat	1,336.2	12.2	163	87.8	1,173.2
Slope Rockfish	N of 40°10′ N lat	1,474.6	81	1,194.4	19	280.2
Slope Rockfish[a]	S of 40°10′ N lat	662.1	63	417.1	37	245

[a] Allocations decided through the biennial specification process.
[b] The cowcod non-trawl allocation is further split 50:50 between the commercial and recreational sectors. This results in a sector-specific ACT of 22 mt for the commercial sector and 22 mt for the recreational sector.
[c] Consistent with regulations at § 660.55(i)(2), the commercial harvest guideline for Pacific whiting is allocated as follows: 34 percent for the C/P Coop Program; 24 percent for the MS Coop Program; and 42 percent for the Shorebased IFQ Program. No more than 5 percent of the Shorebased IFQ Program allocation may be taken and retained south of 42° N lat. before the start of the primary Pacific whiting season north of 42° N lat.

TABLE 1c. TO PART 660, SUBPART C—SABLEFISH NORTH OF 36° N LAT. ALLOCATIONS, 2023

[Weight in metric tons]

Year	ACL	Set-asides		Recreational estimate	EFP	Commercial HG	Limited entry HG		Open access HG	
		Tribal[a]	Research				Percent	mt	Percent	mt[b]
2023	8,486	849	30.7	6	1	7,600	90.6	6,885	9.4	714

Year	LE all	Limited entry trawl[c]			Limited entry fixed gear[d]		
		All trawl	At-sea whiting	Shorebased IFQ	All FG	Primary	DTL
2023	6,885	3,994	100	3,893.5	2,892	2,458	434

[a] The tribal allocation is further reduced by 1.7 percent for discard mortality resulting in 834.6 mt in 2023.

[b] The open access HG is taken by the incidental OA fishery and the directed OA fishery.
[c] The trawl allocation is 58 percent of the limited entry HG.
[d] The limited entry fixed gear allocation is 42 percent of the limited entry HG.

■ 11. Revise Tables 2a through 2c to Part 660, Subpart C, to read as follows:

TABLE 2a. TO PART 660, SUBPART C—2024, AND BEYOND, SPECIFICATIONS OF OFL, ABC, ACL, ACT AND FISHERY HARVEST GUIDELINES

[Weights in metric tons. Capitalized stocks are overfished.]

Stocks	Area	OFL	ABC	ACL [a]	Fishery HG [b]
YELLOWEYE ROCKFISH [c]	Coastwide	123	103	66	55.3
Arrowtooth Flounder [d]	Coastwide	20,459	14,178	14,178	12,083
Big Skate [e]	Coastwide	1,492	1,267	1,267	1,207.2
Black Rockfish [f]	California (S of 42° N lat.)	364	329	329	326.6
Black Rockfish [g]	Washington (N of 46°16′ N lat.)	319	289	289	270.5
Bocaccio [h]	S of 40°10′ N lat.	2,002	1,828	1,828	1,779.9
Cabezon [i]	California (S of 42° N lat.)	185	171	171	169.4
California Scorpionfish [j]	S of 34°27′ N lat.	280	252	252	248
Canary Rockfish [k]	Coastwide	1,401	1,267	1,267	1,198.1
Chilipepper [l]	S of 40°10′ N lat.	2,346	2,121	2,121	2,023.4
Cowcod [m]	S of 40°10′ N lat.	112	79	79	67.8
Cowcod	(Conception)	93	67	NA	NA
Cowcod	(Monterey)	19	12	NA	NA
Darkblotched Rockfish [n]	Coastwide	822	750	750	726.2
Dover Sole [o]	Coastwide	55,859	51,949	50,000	48,402.9
English Sole [p]	Coastwide	11,158	8,960	8,960	8,700.5
Lingcod [q]	N of 40°10′ N lat	4,455	3,854	3,854	3,574.4
Lingcod [r]	S of 40°10′ N lat	855	740	722	706.5
Longnose Skate [s]	Coastwide	1,955	1,660	1,660	1,408.7
Longspine Thornyhead [t]	N of 34°27′ N lat	4,433	2,846	2,162	2,108.3
Longspine Thornyhead [u]	S of 34°27′ N lat			683	680.8
Pacific Cod [v]	Coastwide	3,200	1,926	1,600	1,094
Pacific Ocean Perch [w]	N of 40°10′ N lat	4,133	3,443	3,443	3,297.5
Pacific Whiting [x]	Coastwide	(x)	(x)	(x)	(x)
Petrale Sole [y]	Coastwide	3,563	3,285	3,285	2,898.8
Sablefish [z]	N of 36° N lat	10,670	9,923	7,780	See Table 2c
Sablefish [aa]	S of 36° N lat			2,143	2,115.6
Shortspine Thornyhead [bb]	N of 34°27′ N lat	3,162	2,030	1,328	1,249.7
Shortspine Thornyhead [cc]	S of 34°27′ N lat			702	695.3
Spiny Dogfish [dd]	Coastwide	1,883	1,407	1,407	1,055.5
Splitnose [ee]	S of 40°10′ N lat	1,766	1,553	1,553	1,534.3
Starry Flounder [ff]	Coastwide	652	392	392	343.7
Widow Rockfish [gg]	Coastwide	12,453	11,482	11,482	11,243.7
Yellowtail Rockfish [hh]	N of 40°10′ N lat	6,090	5,560	5,560	4,532.5
Stock Complexes					
Blue/Deacon/Black Rockfish [ii]	Oregon	671	594	594	592.2
Cabezon/Kelp Greenling [jj]	Washington	22	17	17	15
Cabezon/Kelp Greenling [kk]	Oregon	198	180	180	179.2
Nearshore Rockfish North [ll]	N of 40°10′ N lat	109	91	91	87.7
Nearshore Rockfish South [mm]	S of 40°10′ N lat	1,097	902	891	886.5
Other Fish [nn]	Coastwide	286	223	223	201.8
Other Flatfish [oo]	Coastwide	7,946	4,874	4,874	4,653.2
Shelf Rockfish North [pp]	N of 40°10′ N lat	1,610	1,278	1,278	1,207
Shelf Rockfish South [qq]	S of 40°10′ N lat	1,838	1,469	1,469	1,336.2
Slope Rockfish North [rr]	N of 40°10′ N lat	1,797	1,516	1,516	1,450.6
Slope Rockfish South [ss]	S of 40°10′ N lat	868	697	697	658.1

[a] Annual catch limits (ACLs), annual catch targets (ACTs) and harvest guidelines (HGs) are specified as total catch values.
[b] Fishery HGs means the HG or quota after subtracting Pacific Coast treaty Indian tribes allocations and projected catch, projected research catch, deductions for fishing mortality in non-groundfish fisheries, and deductions for EFPs from the ACL or ACT.
[c] Yelloweye rockfish. The 66 mt ACL is based on the current rebuilding plan with a target year to rebuild of 2029 and an SPR harvest rate of 65 percent. 10.7 mt is deducted from the ACL to accommodate the Tribal fishery (5 mt), EFP fishing (0.12 mt), research catch (2.92 mt), and incidental open access mortality (2.66 mt) resulting in a fishery HG of 55.3 mt. The non-trawl HG is 50.9 mt. The combined non-nearshore/nearshore HG is 10.7 mt. Recreational HGs are: 13.2 mt (Washington); 11.7 mt (Oregon); and 15.3 mt (California). In addition, the non-trawl ACT is 39.9, and the combined non-nearshore/nearshore ACT is 8.4 mt. Recreational ACTs are: 10.4 mt (Washington), 9.2 (Oregon), and 12.0 mt (California).
[d] Arrowtooth flounder. 2,094.98 mt is deducted from the ACL to accommodate the Tribal fishery (2,041 mt), research catch (12.98 mt) and incidental open access mortality (41 mt), resulting in a fishery HG of 12,083 mt.
[e] Big skate. 59.8 mt is deducted from the ACL to accommodate the Tribal fishery (15 mt), research catch (5.49 mt), and incidental open access mortality (39.31 mt), resulting in a fishery HG of 1,207.2 mt.
[f] Black rockfish (California). 2.26 mt is deducted from the ACL to accommodate EFP fishing (1.0 mt), research catch (0.08 mt), and incidental open access mortality (1.18 mt), resulting in a fishery HG of 326.6 mt.

[g] Black rockfish (Washington). 18.1 mt is deducted from the ACL to accommodate the Tribal fishery (18 mt) and research catch (0.1 mt), resulting in a fishery HG of 270.5 mt.

[h] Bocaccio south of 40°10′ N lat. Bocaccio are managed with stock-specific harvest specifications south of 40°10′ N lat. and within the Minor Shelf Rockfish complex north of 40°10′ N lat. 48.12 mt is deducted from the ACL to accommodate EFP fishing (40 mt), research catch (5.6 mt), and incidental open access mortality (2.52 mt), resulting in a fishery HG of 1,779.9 mt. The California recreational fishery south of 40°10′ N lat. has an HG of 749.7 mt.

[i] Cabezon (California). 1.63 mt is deducted from the ACL to accommodate EFP fishing (1 mt), research catch (0.02 mt), and incidental open access mortality (0.61 mt), resulting in a fishery HG of 169.4 mt.

[j] California scorpionfish south of 34°27′ N lat. 3.89 mt is deducted from the ACL to accommodate research catch (0.18 mt) and incidental open access mortality (3.71 mt), resulting in a fishery HG of 248 mt.

[k] Canary rockfish. 68.91 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), EFP fishing (6 mt), research catch (10.08 mt), and incidental open access mortality (2.83 mt), resulting in a fishery HG of 1,198.1 mt. The combined nearshore/non-nearshore HG is 119.4 mt. Recreational HGs are: 40.8 mt (Washington); 61.4 mt (Oregon); and 110.2 mt (California).

[l] Chilipepper rockfish south of 40°10′ N lat. Chilipepper are managed with stock-specific harvest specifications south of 40°10′ N lat. and within the Minor Shelf Rockfish complex north of 40°10′ N lat. 97.7 mt is deducted from the ACL to accommodate EFP fishing (70 mt), research catch (14.04 mt), incidental open access mortality (13.66 mt), resulting in a fishery HG of 2,023.4 mt.

[m] Cowcod south of 40°10′ N lat. Cowcod are managed with stock-specific harvest specifications south of 40°10′ N lat. and within the Minor Shelf Rockfish complex north of 40°10′ N lat. 11.17 mt is deducted from the ACL to accommodate EFP fishing (1 mt), research catch (10 mt), and incidental open access mortality (0.17 mt), resulting in a fishery HG of 67.8 mt.

[n] Darkblotched rockfish. 23.76 mt is deducted from the ACL to accommodate the Tribal fishery (5 mt), EFP fishing (0.5 mt), research catch (8.46 mt), and incidental open access mortality (9.8 mt) resulting in a fishery HG of 726.2 mt.

[o] Dover sole. 1,597.11 mt is deducted from the ACL to accommodate the Tribal fishery (1,497 mt), research catch (50.84 mt), and incidental open access mortality (49.27 mt), resulting in a fishery HG of 48,402.9 mt.

[p] English sole. 259.52 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), research catch (17 mt), and incidental open access mortality (42.52 mt), resulting in a fishery HG of 8,700.5 mt.

[q] Lingcod north of 40°10′ N lat. 279.63 mt is deducted from the ACL for the Tribal fishery (250 mt), research catch (17.71 mt), and incidental open access mortality (11.92 mt) resulting in a fishery HG of 3,574.4 mt.

[r] Lingcod south of 40°10′ N lat. 15.5 mt is deducted from the ACL to accommodate EFP fishing (4 mt), research catch (3.19 mt), and incidental open access mortality (8.31 mt), resulting in a fishery HG of 706.5 mt.

[s] Longnose skate. 251.3 mt is deducted from the ACL to accommodate the Tribal fishery (220 mt), and research catch (12.46 mt), and incidental open access mortality (18.84 mt), resulting in a fishery HG of 1,408.7 mt.

[t] Longspine thornyhead north of 34°27′ N lat. 53.71 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), research catch (17.49 mt), and incidental open access mortality (6.22 mt), resulting in a fishery HG of 2,108.3 mt.

[u] Longspine thornyhead south of 34°27′ N lat. 2.24 mt is deducted from the ACL to accommodate research catch (1.41 mt) and incidental open access mortality (0.83 mt), resulting in a fishery HG of 680.8 mt.

[v] Pacific cod. 506 mt is deducted from the ACL to accommodate the Tribal fishery (500 mt), research catch (5.47 mt), and incidental open access mortality (0.53 mt), resulting in a fishery HG of 1,094 mt.

[w] Pacific ocean perch north of 40°10′ N lat. Pacific ocean perch are managed with stock-specific harvest specifications north of 40°10′ N lat. and within the Minor Slope Rockfish complex south of 40°10′ N lat. 145.48 mt is deducted from the ACL to accommodate the Tribal fishery (130 mt), EFP fishing, research catch (5.39 mt), and incidental open access mortality (10.09 mt), resulting in a fishery HG of 3,297.5 mt.

[x] Pacific whiting. Pacific whiting are assessed annually. The final specifications will be determined consistent with the U.S.-Canada Pacific Whiting Agreement and will be announced after the Council's April 2023 meeting.

[y] Petrale sole. 386.24 mt is deducted from the ACL to accommodate the Tribal fishery (350 mt), EFP fishing (1 mt), research catch (24.14 mt), and incidental open access mortality (11.1 mt), resulting in a fishery HG of 2,898.8 mt.

[z] Sablefish north of 36° N lat. The sablefish coastwide ACL value is not specified in regulations. The sablefish coastwide ACL value is apportioned north and south of 36° N lat., using the rolling 5-year average estimated swept area biomass from the NMFS NWFSC trawl survey, with 78.4 percent apportioned north of 36° N lat. and 21.6 percent apportioned south of 36° N lat. The northern ACL is 7,780 mt and is reduced by 778 mt for the Tribal allocation (10 percent of the ACL north of 36° N lat.). The 778 mt Tribal allocation is reduced by 1.7 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 1c.

[aa] Sablefish south of 36° N lat. The ACL for the area south of 36° N lat. is 2,143 mt (21.6 percent of the calculated coastwide ACL value). 27.4 mt is deducted from the ACL to accommodate research catch (2.40 mt) and the incidental open access fishery (25 mt), resulting in a fishery HG of 2,115.6 mt.

[bb] Shortspine thornyhead north of 34°27′ N lat. 78.3 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), research catch (10.48 mt), and incidental open access mortality (17.82 mt), resulting in a fishery HG of 1,249.7 mt for the area north of 34°27′ N lat.

[cc] Shortspine thornyhead south of 34°27′ N lat. 6.71 mt is deducted from the ACL to accommodate research catch (0.71 mt) and incidental open access mortality (6 mt), resulting in a fishery HG of 695.3 mt for the area south of 34°27′ N lat.

[dd] Spiny dogfish. 351.48 mt is deducted from the ACL to accommodate the Tribal fishery (275 mt), EFP fishing (1 mt), research catch (41.85 mt), and incidental open access mortality (33.63 mt), resulting in a fishery HG of 1,055.5 mt.

[ee] Splitnose rockfish south of 40°10′ N lat. Splitnose rockfish in the north is managed in the Slope Rockfish complex and with stock-specific harvest specifications south of 40°10′ N lat. 18.42 mt is deducted from the ACL to accommodate EFP fishing (1.5 mt), research catch (11.17 mt), and incidental open access mortality (5.75 mt), resulting in a fishery HG of 1,534.3 mt.

[ff] Starry flounder. 48.28 mt is deducted from the ACL to accommodate the Tribal fishery (2 mt), research catch (0.57 mt), and incidental open access mortality (45.71 mt), resulting in a fishery HG of 343.7 mt.

[gg] Widow rockfish. 238.32 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), EFP fishing (18 mt), research catch (17.27 mt), and incidental open access mortality (3.05 mt), resulting in a fishery HG of 11,243.7 mt.

[hh] Yellowtail rockfish north of 40°10′ N lat. Yellowtail rockfish are managed with stock-specific harvest specifications north of 40°10′ N lat. and within the Minor Shelf Rockfish complex south of 40°10′ N lat. 1,027.55 mt is deducted from the ACL to accommodate the Tribal fishery (1,000 mt), research catch (20.55 mt), and incidental open access mortality (7 mt), resulting in a fishery HG of 4,532.5 mt.

[ii] Black rockfish/Blue rockfish/Deacon rockfish (Oregon). 1.82 mt is deducted from the ACL to accommodate research catch (0.08 mt), and incidental open access mortality (1.74 mt), resulting in a fishery HG of 592.2 mt.

[jj] Cabezon/kelp greenling (Washington). 2 mt is deducted from the ACL to accommodate the Tribal fishery, resulting in a fishery HG is 15 mt.

[kk] Cabezon/kelp greenling (Oregon). 0.79 mt is deducted from the ACL to accommodate research catch (0.05 mt) and incidental open access mortality (0.74 mt), resulting in a fishery HG of 179.2 mt.

[ll] Nearshore Rockfish north of 40°10′ N lat. 3.27 mt is deducted from the ACL to accommodate the Tribal fishery (1.5 mt), research catch (0.47 mt), and incidental open access mortality (1.31 mt), resulting in a fishery HG of 87.7 mt. State-specific HGs are 17.2 mt (Washington), 30.9 mt (Oregon), and 39.9 mt (California). The ACT for copper rockfish (California) is 6.99 mt. The ACT for quillback rockfish (California) is 0.96 mt.

[mm] Nearshore Rockfish south of 40°10′ N lat. 4.54 mt is deducted from the ACL to accommodate research catch (2.68 mt) and incidental open access mortality (1.86 mt), resulting in a fishery HG of 886.5 mt. The ACT for copper rockfish is 87.73 mt. The ACT for quillback rockfish is 0.97 mt.

[nn] Other Fish. The Other Fish complex is comprised of kelp greenling off California and leopard shark coastwide. 21.24 mt is deducted from the ACL to accommodate research catch (6.29 mt) and incidental open access mortality (14.95 mt), resulting in a fishery HG of 201.8 mt.

[oo] Other Flatfish. The Other Flatfish complex is comprised of flatfish species managed in the PCGFMP that are not managed with stock-specific OFLs/ABCs/ACLs. Most of the species in the Other Flatfish complex are unassessed and include: butter sole, curlfin sole, flathead sole, Pacific sanddab, rock sole, sand sole, and rex sole. 220.79 mt is deducted from the ACL to accommodate the Tribal fishery (60 mt), research catch (23.63 mt), and incidental open access mortality (137.16 mt), resulting in a fishery HG of 4,653.2 mt.

[pp] Shelf Rockfish north of 40°10′ N lat. 70.94 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), research catch (15.32 mt), and incidental open access mortality (25.62 mt), resulting in a fishery HG of 1,207.1 mt.
[qq] Shelf Rockfish south of 40°10′ N lat. 132.77 mt is deducted from the ACL to accommodate EFP fishing (50 mt), research catch (15.1 mt), and incidental open access mortality (67.67 mt) resulting in a fishery HG of 1,336.2 mt.
[rr] Slope Rockfish north of 40°10′ N lat. 65.39 mt is deducted from the ACL to accommodate the Tribal fishery (36 mt), research catch (10.51 mt), and incidental open access mortality (18.88 mt), resulting in a fishery HG of 1,450.6 mt.
[ss] Slope Rockfish south of 40°10′ N lat. 38.94 mt is deducted from the ACL to accommodate EFP fishing (1 mt), research catch (18.21 mt), and incidental open access mortality (19.73 mt), resulting in a fishery HG of 658.1 mt. Blackgill rockfish has a stock-specific HG for the entire groundfish fishery south of 40°10′ N lat. set equal to the species' contribution to the 40–10-adjusted ACL. Harvest of blackgill rockfish in all groundfish fisheries south of 40°10′ N lat. counts against this HG of 169.9 mt.

TABLE 2b. TO PART 660, SUBPART C—2024, AND BEYOND, ALLOCATIONS BY SPECIES OR SPECIES GROUP
[Weight in metric tons]

Stocks/stock complexes	Area	Fishery HG or ACT	Trawl		Non-trawl	
			%	Mt	%	Mt
YELLOWEYE ROCKFISH [a]	Coastwide	55.3	8	4.4	92	50.9
Arrowtooth flounder	Coastwide	12,083	95	11,478.9	5	604.2
Big skate [a]	Coastwide	1,207.2	95	1,146.8	5	60.4
Bocaccio [a]	S of 40°10′ N lat	1,779.9	39.04	694.9	60.96	1,085
Canary rockfish [a]	Coastwide	1,198.1	72.3	866.2	27.7	331.9
Chilipepper rockfish	S of 40°10′ N lat	2,023.4	75	1,517.6	25	505.9
Cowcod [a b]	S of 40°10′ N lat	67.8	36	24.4	64	43.4
Darkblotched rockfish	Coastwide	726.2	95	689.9	5	36.3
Dover sole	Coastwide	4,8402.9	95	45,982.7	5	2,420.1
English sole	Coastwide	8,700.5	95	8265.5	5	435
Lingcod	N of 40°10′ N lat	3,574.4	45	1,608.5	55	1,965.9
Lingcod [a]	S of 40°10′ N lat	706.5	40	282.6	60	423.9
Longnose skate [a]	Coastwide	1,408.7	90	1,267.8	10	140.9
Longspine thornyhead	N of 34°27′ N lat	2,108.3	95	2,002.9	5	105.4
Pacific cod	Coastwide	1,094	95	1,039.3	5	54.7
Pacific ocean perch	N of 40°10′ N lat	3,297.5	95	3,132.6	5	164.9
Pacific whiting [c]	Coastwide	TBD	100	TBD	0	0
Petrale sole [a]	Coastwide	2898.8	.....	2,868.8	.....	30
Sablefish	N of 36° N lat	NA	See Table 2c			
Sablefish	S of 36° N lat	2,115.6	42	888.6	58	1,227
Shortspine thornyhead	N of 34°27′ N lat	1,249.7	95	1,187.2	5	62.5
Shortspine thornyhead	S of 34°27′ N lat	695.3	.....	50	.....	645.3
Splitnose rockfish	S of 40°10′ N lat	1,534.3	95	1,457.6	5	76.7
Starry flounder	Coastwide	343.7	50	171.9	50	171.9
Widow rockfish [a]	Coastwide	11,243.7	.....	10,843.7	.....	400
Yellowtail rockfish	N of 40°10′ N lat	4,532.5	88	3,988.6	12	543.9
Other Flatfish	Coastwide	4,653.2	90	4,187.9	10	465.3
Shelf Rockfish [a]	N of 40°10′ N lat	1,207.1	60.2	726.7	39.8	480.4
Shelf Rockfish [a]	S of 40°10′ N lat	1,336.2	12.2	163	87.8	1,173.2
Slope Rockfish	N of 40°10′ N lat	1,450.6	81	1,175	19	275.6
Slope Rockfish [a]	S of 40°10′ N lat	658.1	63	414.6	37	243.5

[a] Allocations decided through the biennial specification process.
[b] The cowcod non-trawl allocation is further split 50:50 between the commercial and recreational sectors. This results in a sector-specific ACT of 21.7 mt for the commercial sector and 21.7 mt for the recreational sector.
[c] Consistent with regulations at § 660.55(i)(2), the commercial harvest guideline for Pacific whiting is allocated as follows: 34 percent for the C/P Coop Program; 24 percent for the MS Coop Program; and 42 percent for the Shorebased IFQ Program. No more than 5 percent of the Shorebased IFQ Program allocation may be taken and retained south of 42° N lat. before the start of the primary Pacific whiting season north of 42° N lat.

TABLE 2c. TO PART 660, SUBPART C—SABLEFISH NORTH OF 36° N LAT. ALLOCATIONS, 2024 AND BEYOND
[Weights in metric tons]

Year	ACL	Set-asides		Recreational estimate	EFP	Commercial HG	Limited entry HG		Open access HG	
		Tribal [a]	Research				Percent	mt	Percent	mt [b]
2024	7,780	778	30.7	6	1	6,964	90.6	6,309	9.4	665

Year	LE All	Limited Entry Trawl [c]			Limited Entry Fixed Gear [d]		
		All Trawl	At-sea whiting	Shorebased IFQ	All FG	Primary	DTL
2024	6,309	3,659	100	3,559	2,650	2,252	397

[a] The tribal allocation is further reduced by 1.7 percent for discard mortality resulting in 764.8 mt in 2024.
[b] The open access HG is taken by the incidental OA fishery and the directed OA fishery.
[c] The trawl allocation is 58 percent of the limited entry HG.
[d] The limited entry fixed gear allocation is 42 percent of the limited entry HG.

* * * * *

■ 12. In § 660.111, revise the definition of ''Block area closures or BACs'' to read as follows:

§ 660.111 Trawl fishery—definitions.

* * * * *

Block area closures or *BACs* are a type of groundfish conservation area, defined at § 660.11, bounded on the north and south by commonly used geographic coordinates, defined at § 660.11, and on the east and west by the EEZ, and

boundary lines approximating depth contours, defined with latitude and longitude coordinates at §§ 660.71 through 660.74 (10 fm through 250 fm), and § 660.76 (700 fm). BACs may be implemented or modified as routine management measures, per regulations at § 660.60(c). BACs may be implemented in the EEZ seaward of Washington, Oregon and California for vessels using limited entry bottom trawl and/or midwater trawl gear. BACs may be implemented within tribal Usual and Accustomed fishing areas but may only apply to non-tribal vessels. BACs may close areas to specific trawl gear types (*e.g.,* closed for midwater trawl, bottom trawl, or bottom trawl unless using selective flatfish trawl) and/or specific programs within the trawl fishery (*e.g.,* Pacific whiting fishery or MS Coop Program). BACs may vary in their geographic boundaries and duration. Their geographic boundaries, applicable gear type(s) and/or specific trawl fishery program, and effective dates will be announced in the **Federal Register**. BACs may have a specific termination date as described in the **Federal Register**, or may be in effect until modified. BACs that are in effect until modified by Council recommendation and subsequent NMFS action are set out in Tables 1 (North) and 1 (South) of this subpart.

* * * * *

■ 13. In § 660.140, revise paragraphs (c)(3)(iii) and (iv), and Table 1 to paragraph (d)(1)(ii)(D) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(c) * * *

(3) * * *

(iii) For IFQ species listed in the trawl/non-trawl allocation table, specified at § 660.55(c), subpart C, allocations are determined by applying the trawl column percent to the fishery harvest guideline minus any set-asides for the mothership and C/P sectors for that species.

(iv) The remaining IFQ species (canary rockfish, bocaccio, cowcod, yelloweye rockfish, darkblotched rockfish, POP, widow rockfish, minor shelf rockfish N of 40°10′ N lat., and minor shelf rockfish S of 40°10′ N lat., and minor slope rockfish S of 40°10′ N lat.) are allocated through the biennial specifications and management measures process minus any set-asides for the mothership and C/P sectors for that species.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) * * *

TABLE 1 TO PARAGRAPH (d)(1)(ii)(D)—SHOREBASED TRAWL ALLOCATIONS FOR 2023 AND 2024

IFQ species	Area	2023 Shorebased trawl allocation (mt)	2024 Shorebased trawl allocation (mt)
YELLOWEYE ROCKFISH	Coastwide	4.42	4.42
Arrowtooth flounder	Coastwide	15,640.17	11,408.87
Bocaccio	South of 40°10′ N lat	700.33	694.87
Canary rockfish	Coastwide	842.50	830.22
Chilipepper	South of 40°10′ N lat	1,563.80	1517.60
Cowcod	South of 40°10′ N lat	24.80	24.42
Darkblotched rockfish	Coastwide	646.78	613.53
Dover sole	Coastwide	45,972.75	45,972.75
English sole	Coastwide	8,320.56	8,265.46
Lingcod	North of 40°10′ N lat	1,829.27	1,593.47
Lingcod	South of 40°10′ N lat	284.20	282.60
Longspine thornyhead	North of 34°27′ N lat	2,129.23	2,002.88
Pacific cod	Coastwide	1,039.30	1,039.30
Pacific halibut (IBQ) [a]	North of 40°10′ N lat	TBD	TBD
Pacific ocean perch	North of 40°10′ N lat	2,956.14	2,832.64
Pacific whiting [a]	Coastwide	TBD	TBD
Petrale sole	Coastwide	3,063.76	2,863.76
Sablefish	North of 36° N lat	3,893.50	3,559.38
Sablefish	South of 36° N lat	970.00	889.00
Shortspine thornyhead	North of 34°27′ N lat	1,146.67	1,117.22
Shortspine thornyhead	South of 34°27′ N lat	50	50
Splitnose rockfish	South of 40°10′ N lat	1,494.70	1,457.60
Starry flounder	Coastwide	171.86	171.86
Widow rockfish	Coastwide	11,509.68	10,367.68
Yellowtail rockfish	North of 40°10′ N lat	3,761.84	3,668.56
Other Flatfish complex	Coastwide	4,142.09	4,152.89
Shelf Rockfish complex	North of 40°10′ N lat	694.70	691.65
Shelf Rockfish complex	South of 40°10′ N lat	163.02	163.02
Slope Rockfish complex	North of 40°10′ N lat	894.43	874.99
Slope Rockfish complex	South of 40°10′ N lat	417.1	414.58

[a] Managed through an international process. These allocation will be updated when announced.

* * * * *

■ 14. In § 660.150, revise paragraph (c)(1) to read as follows:

§ 660.150 Mothership (MS) Coop Program.

* * * * *

(c) * * *—(1) *MS Coop Program species.* All species other than Pacific whiting are managed with set-asides for the MS and C/P Coop Programs, as described in the biennial specifications.

* * * * *

■ 15. In § 660.160, revise paragraph (c)(1)(ii) to read as follows:

§ 660.160 Catcher/processor (C/P) Coop Program.

* * * * *

(c) * * *

(1) * * *

(ii) Species with set-asides for the MS and C/P Programs, as described in the biennial specifications.

* * * * *

■ 16. In § 660.213, revise paragraph (d)(2) to read as follows:

§ 660.213 Fixed gear fishery—recordkeeping and reporting.

* * * * *

(d) * * *

(2) For participants in the sablefish primary season, the cumulative limit period to which this requirement applies is April 1 through December 31 or, for an individual vessel owner, when the tier limit for the permit(s) registered to the vessel has been reached, whichever is earlier.

* * * * *

■ 17. In § 660.230, revise (c)(2)(i) through (iii) and add paragraph (d)(11)(v) to read as follows:

§ 660.230 Fixed gear fishery—management measures.

* * * * *

(c) * * *

(2) * * *

(i) *Coastwide*—arrowtooth flounder, big skate, black rockfish, blue/deacon rockfish, canary rockfish, darkblotched rockfish, Dover sole, English sole, lingcod, longnose skate, longspine thornyhead, petrale sole, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, other fish, other flatfish, Pacific cod, Pacific whiting, rougheye/blackspotted rockfish, sablefish, shortbelly rockfish, shortraker rockfish, shortspine thornyhead, spiny dogfish, starry flounder, widow rockfish, and yelloweye rockfish;

(ii) *North of 40°10′ N lat.*—cabezon (California), copper rockfish (California), Oregon cabezon/kelp greenling complex, POP, quillback rockfish (California), Washington cabezon/kelp greenling complex, yellowtail rockfish; and

(iii) *South of 40°10′ N lat.*—blackgill rockfish, bocaccio, bronzespotted rockfish, cabezon, California scorpionfish, chilipepper rockfish, copper rockfish, cowcod, minor shallow nearshore rockfish, minor deeper nearshore rockfish, Pacific sanddabs, quillback rockfish, splitnose rockfish, and vermilion rockfish.

(d) * * *

(11) * * *

(v) It is lawful to fish within the non-trawl RCA seaward of Oregon and California (between 46°16′ N lat. and the U.S./Mexico border) with open access non-bottom contact hook-and-line gear configurations as specified at § 660.330(b)(3)(i–ii), subject to applicable crossover provisions at § 660.60(h)(7), and provided that a valid declaration report as required at § 660.13(d) has been filed with NMFS OLE.

* * * * *

■ 18. In § 660.231, revise paragraphs (b)(1), (b)(3)(i), and (b)(3)(iv) to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery.

* * * * *

(b) * * *—(1) *Season dates.* North of 36° N lat., the sablefish primary season for the limited entry, fixed gear, sablefish-endorsed vessels begins at 12 noon local time on April 1 and closes at 12 noon local time on December 31, or closes for an individual vessel owner when the tier limit for the sablefish endorsed permit(s) registered to the vessel has been reached, whichever is earlier, unless otherwise announced by the Regional Administrator through the routine management measures process described at § 660.60(c).

* * * * *

(3) * * *

(i) A vessel participating in the primary season will be constrained by the sablefish cumulative limit associated with each of the permits registered for use with that vessel. During the primary season, each vessel authorized to fish in that season under paragraph (a) of this section may take, retain, possess, and land sablefish, up to the cumulative limits for each of the permits registered for use with that vessel (*i.e.,* stacked permits). If multiple limited entry permits with sablefish endorsements are registered for use with a single vessel, that vessel may land up to the total of all cumulative limits announced in this paragraph for the tiers for those permits, except as limited by paragraph (b)(3)(ii) of this section. Up to 3 permits may be registered for use with a single vessel during the primary season; thus, a single vessel may not take and retain, possess or land more than 3 primary season sablefish cumulative limits in any one year. A vessel registered for use with multiple limited entry permits is subject to per vessel limits for species other than sablefish, and to per vessel limits when participating in the daily trip limit fishery for sablefish under § 660.232. In 2023, the following annual limits are in effect: Tier 1 at 72,904 lb (33,069 kg), Tier 2 at 33,138 lb (15,031 kg), and Tier 3 at 18,936 lb (8,589 kg). In 2024 and beyond, the following annual limits are in effect: Tier 1 at 66,805 lb (30,302 kg), Tier 2 at 30,366 lb (13,774 kg), and Tier 3 at 17,352 lb (7,871 kg).

* * * * *

(iv) *Incidental Pacific halibut retention north of Pt. Chehalis, WA (46°53.30′ N lat.).* From April 1 through the closure date set by the International Pacific Halibut Commission for Pacific halibut in all commercial fisheries, vessels authorized to participate in the sablefish primary fishery, licensed by the International Pacific Halibut Commission for commercial fishing in Area 2A (waters off Washington, Oregon, California), and fishing with longline gear north of Pt. Chehalis, WA (46°53.30′ N lat.) may possess and land up to 150 lb (68 kg) dressed weight of Pacific halibut for every 1,000 lb (454 kg) dressed weight of sablefish landed, and up to two additional Pacific halibut in excess of the 150-lbs-per-1,000-pound limit per landing. NMFS publishes the International Pacific Halibut Commission's regulations setting forth annual management measures, including the closure date for Pacific halibut in all commercial fisheries, in the **Federal Register** by March 15 each year, 50 CFR 300.62. ''Dressed'' Pacific halibut in this area means halibut landed eviscerated with their heads on. Pacific halibut taken and retained in the sablefish primary fishery north of Pt. Chehalis may only be landed north of Pt. Chehalis and may not be possessed or landed south of Pt. Chehalis.

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■ 19. Revise Table 2 (North) to part 660, subpart E, to read as follows:

Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10′ N Lat.

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Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 1/1/2023

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 40°10' N. lat.	30 fm line[1/] - 100 fm line[1/]					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Bank, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
3	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	8,000 lb/ 2 months					
4	**Pacific ocean perch**	3,600 lb/ 2 months					
5	**Sablefish**	2,400 lb/ week, not to exceed 4,800 lb /2 months					
6	**Longspine thornyhead**	10,000 lb/ 2 months					
7	**Shortspine thornyhead**	2,000 lb/ 2 months				2,500 lb/ 2 months	
8 9 10	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/ 7/]**	10,000 lb/ month					
11	**Whiting**	10,000 lb/ trip					
12	**Minor Shelf Rockfish[2/]**	800 lb/ month					
13	**Widow rockfish**	4,000 lb/ 2 months					
14	**Yellowtail rockfish**	3,000 lb/ month					
15	**Canary rockfish**	3,000 lb/ 2 months					
16	**Yelloweye rockfish**	CLOSED					
17	**Minor Nearshore Rockfish, Oregon black/blue/deacon rockfish, & black rockfish[4/]**						
18	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish[3/]					
19	42°00' N. lat. - 40°10' N. lat. Minor Nearshore Rockfish	2,000 lb/ 2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish					
20	42°00' N. lat. - 40°10' N. lat. Black Rockfish	7,000 lb/ 2 months					
21	**Lingcod[5/]**						
22	North of 42°00' N. lat.	5,000 lb/ 2 months					
23	42°00' N. lat. - 40°10' N. lat.	2,000 lb/ 2 months					
24	**Pacific cod**	1,000 lb/ 2 months					
25	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months		100,000 lb/ 2 months	
26	**Longnose skate**	Unlimited					
27	**Other Fish[6/] & Cabezon in California**	Unlimited					
28	**Oregon Cabezon/Kelp Greenling**	Unlimited					
29	**Big skate**	Unlimited					

TABLE 2 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Bocaccio, chilipepper and cowcod are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

7/ LEFG vessels may be allowed to fish inside groundfish conservation areas using hook and line only. See § 660.230 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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■ 20. Review Table 2 (South) to part 660, subpart E, to read as follows:

Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N. la

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 1/1/2023

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	40°10' N. lat. - 38°57.5' N. lat.	40 fm line[1/] - 125 fm line[1/]					
2	38°57.5' N. lat. -34°27' N. lat.	50 fm line[1/] - 125 fm line[1/]					
3	South of 34°27' N. lat.	100 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4	**Minor Slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months, of which no more than 6,000 lb may be blackgill rockfish					
5	**Splitnose rockfish**	40,000 lb/ 2 months					
6	**Sablefish**						
7	40°10' N. lat. - 36°00' N. lat.	2,400 lb/ week, not to exceed 4,800 lb/ 2 months					
8	South of 36°00' N. lat.	2,500 lb/ week					
9	**Longspine thornyhead**	10,000 lb/ 2 months					
10	**Shortspine thornyhead**						
11	40°10' N. lat. - 34°27' N. lat.	2,000 lb/ 2 months			2,500 lb/ 2 months		
12	South of 34°27' N. lat.	3,000 lb/ 2 months					
13	**Dover sole, arrowtooth flounder, petrale**	10,000 lb/ month					
14	**sole, English sole, starry flounder, Other**						
15	**Flatfish[3/8/]**						
16	**Whiting**	10,000 lb/ trip					
17	**Minor Shelf Rockfish[2/]**						
18	40°10' N. lat. - 34°27' N. lat.	8,000 lb/ 2 months, of which no more than 500 lb may be vermilion					
19	South of 34°27' N. lat.	5,000 lb/ 2 months, of which no more than 3,000 lb may be vermilion					
20	**Widow**						
21	40°10' N. lat. - 34°27' N. lat.	10,000 lb/ 2 months					
22	South of 34°27' N. lat.	8,000 lb/ 2 months					
23	**Chilipepper**						
24	40°10' N. lat. - 34°27' N. lat.	10,000 lb. / 2 months					
25	South of 34°27' N. lat.	8,000 lb. / 2 months					
26	**Canary rockfish**	3,500 lb/ 2 months					
27	**Yelloweye rockfish**	CLOSED					
28	**Cowcod**	CLOSED					
29	**Bronzespotted rockfish**	CLOSED					
30	**Bocaccio**	6,000 lb/ 2 months					
31	**Minor Nearshore Rockfish**						
32	Shallow nearshore[4/]	2,000 lb/ 2 months					
33	Deeper nearshore[5/]	2,000 lb/ 2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish					
34	**California Scorpionfish**	3,500 lb/ 2 months					
35	**Lingcod[6/]**	1,600 lb / 2 months					
36	**Pacific cod**	1,000 lb/ 2 months					
37	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
38	**Longnose skate**	Unlimited					
39	**Other Fish[7/] & Cabezon in California**	Unlimited					
40	**Big Skate**	Unlimited					

TABLE 2 (South)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Pacific ocean perch is included in the trip limits for Minor Slope Rockfish. Blackgill rockfish have a species specific trip sub-limit within the Minor Slope Rockfish cumulative limit. Yellowtail rockfish are included in the trip limits for Minor Shelf Rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other Flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial minimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

8/ LEFG vessels may be allowed to fish inside groundfish conservation areas using hook and line only. See § 660.230 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

* * * * *

■ 22. In § 660.330, add paragraphs (b)(3) and (d)(12)(v), and revise paragraphs (c)(2)(i) through (iii) to read as follows:

§ 660.330 Open access fishery—management measures.

* * * * *

(b) * * *

(3) *Non-trawl RCA gear.* Inside the non-trawl RCA, only legal non-bottom contact hook-and-line gear configurations may be used for target fishing for groundfish by vessels that participate in the directed open access sector as defined at § 660.11. Legal non-bottom contact hook-and-line gear means stationary vertical jig gear attached to the vessel and not anchored to the bottom, and groundfish troll gear, subject to the specifications below.

(i) *Stationary vertical jig gear.* The following requirements apply to stationary vertical jig gear:

(A) Must be a minimum of 50 feet between the bottom weight and the lowest fishing hook;

(B) No more than 4 vertical mainlines may be used in the water at one time with no more than 25 hooks on each mainline;

(C) No more than 100 hooks may be in the water at one time, with no more than 25 extra hooks on board the vessel; and

(D) Natural bait or weighted hooks may not be used nor be on board the vessel. Artificial lures and flies are permitted.

(ii) *Groundfish troll gear.* The following requirements apply to groundfish troll gear:

(A) Must be a minimum of 50 feet between the bottom weight and the troll

wire's connection to the horizontal mainline;

(B) No more than 1 mainline may be used in the water at one time;

(C) No more than 500 hooks may be in the water at one time, with no more than 25 extra hooks on board the vessel;

(D) Hooks must be spaced apart by a visible maker (*e.g.,* floats, line wraps, colored line splices), with no more than 25 hooks between each marker and no more than 20 markers on the mainline; and

(E) Natural bait or weighted hooks may not be used nor be on board the vessel. Artificial lures and flies are permitted.

* * * * *

(c) * * *

(2) * * *

(i) *Coastwide*—arrowtooth flounder, big skate, black rockfish, blue/deacon rockfish, canary rockfish, darkblotched rockfish, Dover sole, English sole, lingcod, longnose skate, longspine thornyhead, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, other fish, other flatfish, Pacific cod, Pacific sanddabs, Pacific whiting, petrale sole, shortbelly rockfish, shortraker rockfish, rougheye/blackspotted rockfish, sablefish, shortspine thornyhead, spiny dogfish, starry flounder, widow rockfish, and yelloweye rockfish;

(ii) *North of 40°10′ N lat.*—cabezon (California), copper rockfish (California), Oregon cabezon/kelp greenling complex, POP, quillback rockfish (California), Washington cabezon/kelp greenling complex, yellowtail rockfish; and

(iii) *South of 40°10′ N lat.*—blackgill rockfish, bocaccio, bronzespotted rockfish, cabezon, chilipepper rockfish, copper rockfish, cowcod, minor shallow nearshore rockfish, minor deeper nearshore rockfish, quillback rockfish, splitnose rockfish, and vermilion rockfish.

(d) * * *

(12) * * *

(v) Target fishing for groundfish off Oregon and California (between 46°16′ N. lat. and the U.S./Mexico border) is allowed within the non-trawl RCA for vessels participating in the directed open access sector as defined at § 660.11, subject to the gear restrictions at § 660.330(b)(3)(i–ii), and provided a valid declaration report as required at § 660.13(d) has been filed with NMFS OLE.

* * * * *

■ 23. Revise Table 3 (North) to part 660, subpart F, to read as follows:

Table 3 (North) to Part 660, Subpart F—Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10′ N Lat.

Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table

1/1/2023

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 40°10' N. lat.	30 fm line[1/] - 100 fm line[1/]					
	See §§660.60, 660.330 and 660.333 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Bank, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
3	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	2,000 lb/ month					
4	**Pacific ocean perch**	100 lb/ month					
5	**Sablefish**	2,000 lb/ week, not to exceed 4,000 lb/ 2 months					
6	**Shortpine thornyheads**	50 lb/ month					
7	**Longspine thornyheads**	50 lb/ month					
8	**Dover sole, arrowtooth flounder, petrale**	5,000 lb/ month					
9	**sole, English sole, starry flounder, Other**						
10	**Flatfish[3/ 7/]**						
11	**Whiting**	300 lb/ month					
12	**Minor Shelf Rockfish[2/]**	800 lb/ month					
13	**Widow rockfish**	2,000 lb/ 2 months					
14	**Yellowtail rockfish**	1,500 lb/ month					
15	**Canary rockfish**	1,000 lb/ 2 months					
16	**Yelloweye rockfish**	CLOSED					
17	**Minor Nearshore Rockfish, Oregon black/blue/deacon rockfish, & black rockfish**						
18	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish [4/]					
19	42°00' N. lat. - 40°10' N. lat. Minor Nearshore Rockfish	2,000 lb/ 2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish					
20	42°00' N. lat. - 40°10' N. lat. Black rockfish	7,000 lb/ 2 months					
21	**Lingcod[5/]**						
22	North of 42°00' N. lat.	2,500 lb/ month					
23	42°00' N. lat. - 40°10' N. lat.	1,000 lb/ month					
24	**Pacific cod**	1,000 lb/ 2 months					
25	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
26	**Longnose skate**	Unlimited					
27	**Big skate**	Unlimited					
28	**Other Fish[6/] & Cabezon in California**	Unlimited					
29	**Oregon Cabezon/Kelp Greenling**	Unlimited					
30	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish and lingcod, as described below)*						
31	North	*Salmon trollers may retain and land up to 500 lb of yellowtail rockfish per month as long as salmon is on board, both within and outside of the RCA. Salmon trollers may retain and land up to 1 lingcod per 2 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. The lingcod limit only applies during times when lingcod retention is allowed, and is not "CLOSED." Theses limits are within the per month limits described in the table above, and not in addition to those limits. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.*					
32	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*						
33	North	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

7/ Open access vessels may be allowed to fish inside groundfish conservation areas using hook and line only. See § 660.330 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

* * * * *

■ 24. Revise Table 3 (South) to part 660, subpart F, to read as follows:

Table 3 (South) to Part 660, Subpart F—Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10′ N Lat.

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 1/1/2023

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	40°10' N. lat. - 38°57.5' N. lat.	40 fm line[1/] - 125 fm line[1/]					
2	38°57.5' N. lat. -34°27' N. lat.	50 fm line[1/] - 125 fm line[1/]					
3	South of 34°27' N. lat.	100 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	10,000 lb/ 2 months, of which no more than 2,500 lb may be blackgill rockfish					
5	**Splitnose rockfish**	200 lb/ month					
6	**Sablefish**						
7	40°10' N. lat. - 36°00' N. lat.	2,000 lb/ week, not to exceed 4,000 lb/ 2 months					
8	South of 36°00' N. lat.	2,000 lb/ week, not to exceed 6,000 lb/ 2 months					
9	**Shortpine thornyheads**						
10	40°10' N. lat. - 34°27' N. lat.	50 lb/ month					
11	**Longspine thornyheads**						
12	40°10' N. lat. - 34°27' N. lat.	50 lb/ month					
13	**Shortpine thornyheads and longspine thornyheads**						
14	South of 34°27' N. lat.	100 lb/ day, no more than 1,000 lb/ 2 months					
15 16 17	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/8/]**	5,000 lb/ month					
18	**Whiting**	300 lb/ month					
19	**Minor Shelf Rockfish[2/]**						
20	40°10' N. lat. - 34°27' N. lat.	4,000 lb/ 2 months, of which no more than 400 lb may be vermilion					
21	South of 34°27' N. lat.	3,000 lb/ 2 months, of which no more than 1,200 lb may be vermilion					
22	**Widow rockfish**						
23	40°10' N. lat. - 34°27' N. lat.	6,000 lb/ 2 months					
24	South of 34°27' N. lat.	4,000 lb/ 2 months					
25	**Chilipepper**						
26	40°10' N. lat. - 34°27' N. lat.	6,000 lb/ 2 months					
27	South of 34°27' N. lat.	4,000 lb/ 2 months					
22	**Canary rockfish**	1,500 lb/ 2 months					
23	**Yelloweye rockfish**	CLOSED					
24	**Cowcod**	CLOSED					
25	**Bronzespotted rockfish**	CLOSED					
26	**Bocaccio**	4,000 lb/ 2 months					
30	**Minor Nearshore Rockfish**						
31	Shallow nearshore[4/]	2,000 lb/ 2 months					
32	Deeper nearshore[5/]	2,000 lb/ 2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish					
33	**California Scorpionfish**	3,500 lb/ 2 months					
34	**Lingcod[6/]**	700 lb / months					
35	**Pacific cod**	1,000 lb/ 2 months					
36	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
37	**Longnose skate**	Unlimited					
38	**Big skate**	Unlimited					
39	**Other Fish[7/] & Cabezon in California**	Unlimited					

TABLE 3 (South)

Table 3 (South) Continued

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 1/1/2023

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
40	40°10' N. lat. - 38°57.5' N. lat.	40 fm line[1/] - 125 fm line[1/]					
41	38°57.5' N. lat. -34°27' N. lat.	50 fm line[1/] - 125 fm line[1/]					
42	South of 34°27' N. lat.	100 fm line[1/] - 150 fm line[1/] (also applies around islands)					
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
43	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish, as described below)*						
44	South of 40°10' N. lat.	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lb of Chinook salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 4,000 lb per 2 month limit for minor shelf rockfish between 40o10' and 34o27' N lat., and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.					
45	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**						
46	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**						
47	*40°10' N. lat. - 38°00' N. lat.*	*100 fm line[1/] - 200 fm line[1/]*		*100 fm line[1/] - 150 fm line[1/]*			*100 fm line[1/] - 200 fm line[1/]*
48	*38°00' N. lat. - 34°27' N. lat.*	*100 fm line[1/] - 150 fm line[1/]*					
49	*South of 34°27' N. lat.*	*100 fm line[1/] - 150 fm line[1/]*					
50		Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 29).					
51	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*						
52	South	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/ day and 1,500 lb/ trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary rockfish, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/ trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

Table 3 (South) Continued

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Pacific ocean perch is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limits. Yellowtail rockfish is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial minimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other fish" are defined at § 660.11 and includes kelp greenling off California and leopard shark.

8/ Open access vessels may be allowed to fish inside groundfish conservation areas using hook and line only. See § 660.330 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

* * * * *

■ 25. Amend § 660.360 by:

■ a. Adding paragraph (c)(3)(iv)(A) through (D);

■ b. Revising Table 1 to paragraph (c)(1)(i)(D), paragraphs (c)(1)(ii), (c)(2)(i)(B), (c)(2)(iii)(D), (c)(3) introductory text, (c)(3)(i)(A), (c)(3)(i)(B), (c)(3)(ii), (c)(3)(ii)(A)(*1*) through (*5*), (c)(3)(iii)(A)(*1*) through (*5*), (c)(3)(iv), and (c)(3)(v)(A).

The additions and revisions read as follows:

§ 660.360 Recreational fishery—management measures.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(D) * * *

TABLE 1 TO PARAGRAPH (C)(1)(I)(D)—WASHINGTON RECREATIONAL FISHING SEASON STRUCTURE

Marine Area	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
3 and 4 (North Coast)	Closed		Open			Open < 20 fm June 1-July 31 a/ b/ g/		Open			Closed	
2 (South Coast)	Closed		Open c/d/ g/			Open d/ g/					Closed	
1 (Columbia River)	Closed		Open e/ f/ g/								Closed	

a/ Retention of Pacific cod, sablefish, lingcod, bocaccio, silvergray rockfish, canary rockfish, widow rockfish, and yellowtail rockfish allowed >20 fm on days when recreational Pacific halibut is open.
b/ Retention of yellowtail and widow rockfish is allowed > 20 fm in July.
c/ From May 1 through May 31 lingcod retention prohibited > 30 fathoms except on days that the primary Pacific halibut season is open.
d/ When lingcod is open, retention is prohibited seaward of line drawn from Queets River (47°31.70' N. Lat. 124°45.00' W. Long.) to Leadbetter Point (46° 38.17' N. Lat. 124°30.00' W. Long.), except on days open to the primary halibut fishery and, June 1 – 15 and September 1 - 30.
e/ Retention of flatfish, sablefish, Pacific cod, yellowtail rockfish, widow rockfish, canary rockfish, redstriped rockfish, greenstriped rockfish, silvergray rockfish, chilipepper, bocaccio, and blue/deacon rockfish allowed during the all-depth Pacific halibut fishery. Lingcod retention is only allowed north of the WA-OR border with halibut on board.
f/ Retention of lingcod is prohibited seaward of a line drawn from Leadbetter Point (46° 38.17' N. Lat. 124°21.00' W. Long.) to 46° 33.00' N. Lat. 124°21.00' W. Long. year round except lingcod retention is allowed from June 1 - June 15 and Septembert 1 - September 30.
g/ Retention of copper rockfish, quillback rockfish, and vermilion rockfish is prohibited from May 1 through July 31.

(ii) *Rockfish.* In areas of the EEZ seaward of Washington (Washington Marine Areas 1–4) that are open to recreational groundfish fishing, there is a 7 rockfish per day bag limit. Taking and retaining yelloweye rockfish is prohibited in all Marine Areas. Taking and retaining copper rockfish, quillback rockfish, and vermilion rockfish is prohibited in all Marine Areas during May, June and July.

* * * * *

(2) * * *

(i) * * *

(B) *Recreational rockfish conservation area (RCA).* Fishing for groundfish with recreational gear is prohibited within the recreational RCA, a type of closed area or groundfish conservation area, except with long-leader gear (as defined at § 660.351). It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA, except with long-leader gear (as defined at § 660.351). A vessel fishing in the recreational RCA may not be in possession of any groundfish unless otherwise stated. [For example, if a vessel fishes in the recreational salmon fishery within the recreational RCA, the vessel cannot be in possession of groundfish while within the recreational RCA. The vessel may, however, on the same trip fish for and retain groundfish shoreward of the recreational RCA on the return trip to port.] Off Oregon, from January 1 through December 31, recreational fishing for groundfish is allowed in all depths. Coordinates approximating boundary lines at the 10-fm (18-m) through 100-fm (183-m) depth contours can be found at § 660.71 through § 660.73.

* * * * *

(iii) * * *

(D) *In the Pacific halibut fisheries.* Retention of groundfish is governed in part by annual management measures for Pacific halibut fisheries, which are published in the **Federal Register**. Between the Columbia River and Humbug Mountain, during days open to the ''all-depth'' sport halibut fisheries, when Pacific halibut are onboard the vessel, no groundfish, except sablefish, Pacific cod, and other species of flatfish (sole, flounder, sanddab), may be taken and retained, possessed or landed, except with long-leader gear (as defined at § 660.351). ''All-depth'' season days are established in the annual management measures for Pacific halibut fisheries, which are published in the **Federal Register** and are announced on the NMFS Pacific halibut hotline, 1–800–662–9825.

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* * * * *

(3) *California.* Seaward of California, for groundfish species not specifically mentioned in this paragraph, fishers are subject to the overall 20-fish bag limit for all species of finfish, of which no more than 10 fish of any one species may be taken or possessed by any one person. Petrale sole, Pacific sanddab, and starry flounder are not subject to a bag limit. Recreational spearfishing for all federally-managed groundfish, is exempt from closed areas and seasons, consistent with Title 14 of the California Code of Regulations. This exemption applies only to recreational vessels and divers provided no other fishing gear, except spearfishing gear, is on board the vessel. California state law may provide regulations similar to Federal regulations for kelp greenlings. Retention of cowcod, yelloweye rockfish, and bronzespotted rockfish, is prohibited in the recreational fishery seaward of California all year in all

areas. Retention of species or species groups for which the season is closed is prohibited in the recreational fishery seaward of California all year in all areas, unless otherwise authorized in this section. For each person engaged in recreational fishing in the EEZ seaward of California, the following closed areas, seasons, bag limits, and size limits apply:

(i) * * *

(A) *Recreational rockfish conservation areas.* The recreational RCAs are areas that are closed to recreational fishing for certain groundfish. Fishing for the California rockfish, cabezon, greenling complex (RCG Complex), as defined in § 660.360(c)(3)(ii), and lingcod with recreational gear is prohibited within the recreational RCA. It is unlawful to take and retain, possess, or land the RCG Complex and lingcod taken with recreational gear within the recreational RCA, unless otherwise authorized in this section. A vessel fishing in the recreational RCA may not be in possession of any species prohibited by the restrictions that apply within the recreational RCA. For example, if a vessel fishes in the recreational salmon fishery within the recreational RCA, the vessel cannot be in possession of the RCG Complex and lingcod while in the recreational RCA. The vessel may, however, on the same trip fish for and retain rockfish shoreward of the recreational RCA on the return trip to port. If the season is closed for a species or species group, fishing for that species or species group is prohibited both within the recreational RCA and outside of the recreational RCA, unless otherwise authorized in this section. In times and areas where a recreational RCA is closed shoreward of a recreational RCA line (*i.e.,* when an ''off-shore only'' fishery is active in that management area) possession or retention of nearshore rockfish (defined as black rockfish, blue rockfish, black and yellow rockfish, brown rockfish, China rockfish, copper rockfish, calico rockfish, gopher rockfish, kelp rockfish, grass rockfish, olive rockfish, quillback rockfish, and treefish), cabezon, and greenlings is prohibited in all depths throughout the area; and possession and retention of all rockfish, cabezon, greenlings, and lingcod is prohibited shoreward of the recreational RCA boundary line, except that vessels may transit through waters shoreward of the recreational RCA line with no fishing gear in the water. Coordinates approximating boundary lines at the 30 fm (55 m) through 100 fm (183 m) depth contours can be found at § 660.71 through § 660.73. The recreational fishing season structure and RCA depth boundaries seaward of California by management area and month are as follows:

(*1*) Between 42° N lat. (California/Oregon border) and 40°10′ N lat. (Northern Management Area), recreational fishing for the RCG Complex and lingcod is closed from January 1 through May 14, is open at all depths from May 15 through October 15, and is closed October 16 through December 31.

(*2*) Between 40°10′ N lat. and 38°57.50′ N lat. (Mendocino Management Area), recreational fishing for the RCG Complex and lingcod is closed from January 1 through May 14; prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from May 15 through July 15 (seaward of 50 fm is open), and is open at all depths from July 16 through December 31.

(*3*) Between 38°57.50′ N lat. and 37°11′ N lat. (San Francisco Management Area), recreational fishing for the RCG Complex and lingcod s closed from January 1 through May 14; is prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from May 15 through July 15 (seaward of 50 fm is open), and is open at all depths from July 16 through December 31. Closures around Cordell Bank (see paragraph (c)(3)(i)(C) of this section) also apply in this area.

(*4*) Between 37°11′ N lat. and 34°27′ N lat. (Central Management Area), recreational fishing for the RCG Complex and lingcod is closed from January 1 through April 30, is open at all depths from May 1 through September 30; and is prohibited in the EEZ shoreward of a boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from October 1 through December 31 (seaward of 50 fm is open).

(*5*) South of 34°27′ N lat. (Southern Management Area), recreational fishing for the RCG Complex and lingcod is closed from January 1 through March 31, open at all depths from April 1 through September 15; and is prohibited in the EEZ shoreward of a boundary line approximating the 50 fm (91 m) depth contour from September 16 through December 31 along the mainland coast and along islands and offshore seamounts (seaward of 50 fm is open), except in the CCAs where fishing is prohibited seaward of the 40 fm (73 m) depth contour when the fishing season is open (see paragraph (c)(3)(i)(B) of this section).

(B) *Cowcod conservation areas.* The latitude and longitude coordinates of the Cowcod Conservation Areas (CCAs) boundaries are specified at § 660.70. Recreational fishing for all groundfish is prohibited within the CCAs, except as specified in this paragraph. Fishing for California scorpionfish, petrale sole, starry flounder, and ''Other Flatfish'' is permitted within the CCAs as specified in paragraphs (c)(3)(iv) and (c)(3)(v) of this section. Recreational fishing for the following species is permitted shoreward of the boundary line approximating the 40 fm (37 m) depth contour when the season, as specified in paragraphs (c)(3)(ii)(A)(5) and (c)(3)(iii)(A)(5) of this section, for those species is open south of 34°27′ N lat.: Minor nearshore rockfish, cabezon, kelp greenling, lingcod, and shelf rockfish. Retention of all groundfish except California scorpionfish, petrale sole, starry flounder, and ''Other Flatfish'', is prohibited within the CCA. Coordinates for the boundary line approximating the 40 fm (73 m) depth contour are listed in § 660.71. It is unlawful to take and retain, possess, or land groundfish taken within the CCAs, except for species authorized in this section.

* * * * *

(ii) *RCG complex.* The California rockfish, cabezon, greenling complex (RCG Complex) includes all rockfish, kelp greenling, rock greenling, and cabezon. This category does not include California scorpionfish, also known as ''sculpin''.

(A) * * *

(*1*) Between 42° N lat. (California/Oregon border) and 40°10′ N lat. (North Management Area), recreational fishing for the RCG complex is open from May 15 through October 15 (*i.e.,* recreational fishing for the RCG complex is closed from January 1 through May 14, and October 16 through December 31).

(*2*) Between 40°10′ N lat. and 38°57.50′ N lat. (Mendocino Management Area), recreational fishing for the RCG Complex is open from May 15 through December 31 (*i.e.,* recreational fishing for the RCG complex is closed from January 1 through May 14).

(*3*) Between 38°57.50′ N lat. and 37°11′ N lat. (San Francisco Management Area), recreational fishing for the RCG complex is open from May 15 through December 31 (*i.e.,* recreational fishing for the RCG complex is closed from January 1 through May 14).

(*4*) Between 37°11′ N lat. and 34°27′ N lat. (Central Management Area),

recreational fishing for the RCG complex is open from May 1 through December 31 (*i.e.,* recreational fishing for the RCG complex is closed from January 1 through April 30).

(*5*) South of 34°27′ N lat. (Southern Management Area), recreational fishing for the RCG Complex is open from April 1 through December 31 (*i.e.,* recreational fishing for the RCG complex is closed from January 1 through the March 31).

* * * * *

(iii) * * *

(A) * * *

(*1*) Between 42° N lat. (California/Oregon border) and 40°10′ N lat. (Northern Management Area), recreational fishing for lingcod is open from May 15 through October 15 (*i.e.,* recreational fishing for lingcod is closed from January 1 through May 14, and October 16 through December 31).

(*2*) Between 40°10′ N lat. and 38°57.50′ N lat. (Mendocino Management Area), recreational fishing for lingcod is open from May 15 through December 31 (*i.e.,* recreational fishing for lingcod is closed from January 1 through May 14).

(*3*) Between 38°57.50′ N lat. and 37°11′ N lat. (San Francisco Management Area), recreational fishing for lingcod is open from May 15 through December 31 (*i.e.,* recreational fishing for lingcod is closed from January 1 through May 14).

(*4*) Between 37°11′ N lat. and 34°27′ N lat. (Central Management Area), recreational fishing for lingcod is open from May 1 through December 31 (*i.e.,* recreational fishing for lingcod is closed from January 1 through April 30).

(*5*) South of 34°27′ N lat. (Southern Management Area), recreational fishing for lingcod is open from April 1 through December 31 (*i.e.,* recreational fishing for lingcod is closed from January 1 through March 31)

* * * * *

(iv) ''*Other Flatfish,*'' *petrale sole, and starry flounder.* ''Other Flatfish'' are defined at § 660.11, and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

(A) *Seasons.* Recreational fishing for ''Other Flatfish,'' petrale sole, and starry flounder is open from January 1 through December 31. When recreational fishing for ''Other Flatfish,'' petrale sole, and starry flounder is open, it is permitted both outside and within the recreational RCAs described in paragraph (c)(3)(i) of this section and the CCAs described in paragraph (c)(3)(i)(B) of this section.

(B) *Bag limits, hook limits.* In times and areas where the recreational season for ''Other Flatfish,'' petrale sole, and starry flounder is open, ''Other Flatfish'' are subject to the overall 20-fish bag limit for all species of finfish, of which there may be no more than 10 fish of any one species; there is no daily bag limit for petrale sole, starry flounder and Pacific sanddab.

(C) *Size limits.* There are no size limits for ''Other Flatfish,'' petrale sole, and starry flounder.

(D) *Dressing/Filleting.* ''Other Flatfish,'' petrale sole, and starry flounder may be filleted at sea. Fillets may be of any size, but must bear intact a one-inch (2.6 cm) square patch of skin.

(v) * * *

(A) *Seasons.* When recreational fishing for California scorpionfish is open, it is permitted both outside of and within the recreational RCAs described in paragraph (c)(3)(i) of this section. Recreational fishing for California scorpionfish is open from January 1 through December 31.

* * * * *

[FR Doc. 2022–20430 Filed 10–13–22; 8:45 am]

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