

Title 50—Wildlife and Fisheries

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AUTHORITY: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

SOURCE: 39 FR 1852, Jan. 15, 1974, unless otherwise noted.

NOTE TO PART 216: See also 50 CFR parts 228 and 229 for regulations governing certain incidental takings of marine mammals.

Subpart A—Introduction

§216.1 Purpose of regulations.

The regulations in this part implement the Marine Mammal Protection Act of 1972, 86 Stat. 1027, 16 U.S.C. 1361–1407, Pub. L. 92–522, which, among other things, restricts the taking, possession, transportation, selling, offering for sale, and importing of marine mammals.

§216.2 Scope of regulations.

This part 216 applies solely to marine mammals and marine mammal products as defined in §216.3. For regulations under the MMPA, with respect to other marine mammals and marine mammal products, see 50 CFR part 18.

[39 FR 1852, Jan. 15, 1974, as amended at 59 FR 50375, Oct. 3, 1994]

§216.3 Definitions.

In addition to definitions contained in the MMPA, and unless the context otherwise requires, in this part 216:

Acts means, collectively, the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1361 *et seq.*, the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*, and the Fur Seal Act of 1966, as amended, 16 U.S.C. 1151 *et seq.*

Active sportfishing means paying passengers have their terminal fishing gear (lures, hooks, etc.) in the water in an attempt to catch fish or, in the case of fishing involving chumming, fishing is considered to be in progress from the instant fish have been sighted taking bait (boiling) during that chumming process.

Administrator, Southwest Region means the Regional Administrator, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, or his or her designee.

Agreement on the International Dolphin Conservation Program (Agreement on the IDCP) means the Agreement establishing the formal binding IDCP that was signed in Washington, DC on May 21, 1998.

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Alaskan Native means a person defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)) (85 Stat. 588) as a citizen of the United States who is of one-fourth degree or more Alaska Indian (including Tsimishian Indians enrolled or not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood or combination thereof. The term includes any Native, as so defined, either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or group, of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or Native group. Any such citizen enrolled by the Secretary of the Interior pursuant to section 5 of the Alaska Native Claims Settlement Act shall be conclusively presumed to be an Alaskan Native for purposes of this part.

Article of handicraft means items made by an Indian, Aleut or Eskimo from the nonedible byproducts of fur seals taken for personal or family consumption which—

(1) Were commonly produced by Alaskan Natives on or before October 14, 1983;

(2) Are composed wholly or in some significant respect of natural materials, and;

(3) Are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tannery registered pursuant to §216.23(c) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as a cooperative, is permitted so long as no large scale mass production results.

Assistant Administrator means the Assistant Administrator for Fisheries,

National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Silver Spring, MD 20910, or his/her designee.

Authentic native articles of handicrafts and clothing means items made by an Indian, Aleut or Eskimo which (a) were commonly produced on or before December 21, 1972, and (b) are composed wholly or in some significant respect of natural materials, and (c) are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tannery registered pursuant to §216.23(c) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as a cooperative, is permitted so long as no large scale mass production results.

Bona fide scientific research: (1) Means scientific research on marine mammals conducted by qualified personnel, the results of which:

(i) Likely would be accepted for publication in a refereed scientific journal;

(ii) Are likely to contribute to the basic knowledge of marine mammal biology or ecology. (Note: This includes, for example, marine mammal parts in a properly curated, professionally accredited scientific collection); or

(iii) Are likely to identify, evaluate, or resolve conservation problems.

(2) Research that is not on marine mammals, but that may incidentally take marine mammals, is not included in this definition (see sections 101(a)(3)(A), 101(a)(5)(A), and 101(a)(5)(D) of the MMPA, and sections 7(b)(4) and 10(a)(1)(B) of the ESA).

Carrying capacity means the Regional Director's determination of the maximum amount of fish that a vessel can carry in short tons based on the greater of the amount indicated by the

builder of the vessel, a marine surveyor's report, or the highest amount reported landed from any one trip.

Certified charter vessel means a fishing vessel of a non-U.S. flag nation, which is operating under the jurisdiction of the marine mammal laws and regulations of another, harvesting, nation by a formal declaration entered into by mutual agreement of the nations.

Co-investigator means the on-site representative of a principal investigator.

Commercial fishing operation means the lawful harvesting of fish from the marine environment for profit as part of an ongoing business enterprise. Such terms may include licensed commercial passenger fishing vessel (as defined) activities, but no other sportfishing activities, whether or not the fish so caught are subsequently sold.

Commercial passenger fishing vessel means any vessel licensed for commercial passenger fishing purposes within the State out of which it is operating and from which, while under charter or hire, persons are legally permitted to conduct sportfishing activities.

Custody means holding a live marine mammal pursuant to the conditional authority granted under the MMPA, and the responsibility therein for captive maintenance of the marine mammal.

Declaration of Panama means the declaration signed in Panama City, Republic of Panama, on October 4, 1995.

Director, Office of Protected Resources means Director, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

Dolphin Mortality Limit (DML) means the maximum allowable number of incidental dolphin mortalities per calendar year assigned to a vessel, unless a shorter time period is specified.

Endangered Species means a species or subspecies of marine mammal listed as "endangered" pursuant to the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205 (see part 17 of this title).

ESA means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

ETP means the eastern tropical Pacific Ocean which includes the Pacific Ocean area bounded by 40° N. latitude,

40° S. latitude, 160° W. longitude and the coastlines of North, Central and South America.

Facility means, in the context specific to captive marine mammals: (1) One or more permanent primary enclosures used to hold marine mammals captive (i.e., pools, lagoons) and associated infrastructure (i.e., equipment and supplies necessary for the care and maintenance of marine mammals) where these enclosures are either located within the boundaries of a single contiguous parcel of land and water, or are grouped together within the same general area within which enclosure-to-enclosure transport is expected to be completed in less than one hour; or

(2) A traveling display/exhibit, where the enclosure(s) and associated infrastructure is transported together with the marine mammals.

Feeding is offering, giving, or attempting to give food or non-food items to marine mammals in the wild. It includes operating a vessel or providing other platforms from which feeding is conducted or supported. It does not include the routine discard of bycatch during fishing operations or the routine discharge of waste or fish byproducts from fish processing plants or other platforms if the discharge is otherwise legal and is incidental to operation of the activity.

First exporter means the person or company that first exports the fish or fish product, or, in the case of shipments that are subject to the labeling requirements of 50 CFR part 247 and that only contain fish harvested by vessels of the United States, the first seller of the fish or fish product.

Fisheries Certificate of Origin, or FCO, means NOAA Form 370, as described in §216.24(f)(4).

Force majeure means forces outside the vessel operator's or vessel owner's control that could not be avoided by the exercise of due care.

FSA means the Fur Seal Act of 1966, as amended, 16 U.S.C. 1151 *et seq.*

Fur seal means North Pacific fur seal, scientifically known as *Callorhinus ursinus*.

Hard part means any bone, tooth, baleen, treated pelt, or other part of a marine mammal that is relatively solid or durable.

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Harvesting nation means the country under whose flag one or more fishing vessels are documented, or which has by formal declaration agreed to assert jurisdiction over one or more certified charter vessels, from which vessel(s) fish are caught that are a part of any cargo or shipment of fish to be imported into the United States, regardless of any intervening transshipments.

Humane means the method of taking, import, export, or other activity which involves the least possible degree of pain and suffering practicable to the animal involved.

Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the Customs laws of the United States; except that, for the purpose of any ban issued under 16 U.S.C. 1371(a)(2) on the importation of fish or fish products, the definition of "import" in §216.24(f)(1)(ii) shall apply.

Incidental catch means the taking of a marine mammal (1) because it is directly interfering with commercial fishing operations, or (2) as a consequence of the steps used to secure the fish in connection with commercial fishing operations: *Provided*, That a marine mammal so taken must immediately be returned to the sea with a minimum of injury and further, that the taking of a marine mammal, which otherwise meets the requirements of this definition shall not be considered an incidental catch of that mammal if it is used subsequently to assist in commercial fishing operations.

Intentional purse seine set means that a tuna purse seine vessel or associated vessels chase marine mammals and subsequently make a purse seine set.

International Dolphin Conservation Program (IDCP) means the international program established by the agreement signed in La Jolla, California, in June 1992, as formalized, modified, and enhanced in accordance with the Declaration of Panama and the Agreement on the IDCP.

International Dolphin Conservation Program Act (IDCPA) means Public Law

105-42, enacted into law on August 15, 1997.

International Review Panel (IRP) means the International Review Panel established by the Agreement on the IDCP.

Intrusive research means a procedure conducted for bona fide scientific research involving: A break in or cutting of the skin or equivalent, insertion of an instrument or material into an orifice, introduction of a substance or object into the animal's immediate environment that is likely either to be ingested or to contact and directly affect animal tissues (i.e., chemical substances), or a stimulus directed at animals that may involve a risk to health or welfare or that may have an impact on normal function or behavior (i.e., audio broadcasts directed at animals that may affect behavior). For captive animals, this definition does not include:

(1) A procedure conducted by the professional staff of the holding facility or an attending veterinarian for purposes of animal husbandry, care, maintenance, or treatment, or a routine medical procedure that, in the reasonable judgment of the attending veterinarian, would not constitute a risk to the health or welfare of the captive animal; or

(2) A procedure involving either the introduction of a substance or object (i.e., as described in this definition) or a stimulus directed at animals that, in the reasonable judgment of the attending veterinarian, would not involve a risk to the health or welfare of the captive animal.

Label means a display of written, printed, or graphic matter on or affixed to the immediate container of any article.

Land or *landing* means to begin offloading any fish, to arrive in port with the intention of offloading fish, or to cause any fish to be offloaded.

Large-scale driftnet means a gillnet that is composed of a panel or panels of webbing, or a series of such gillnets, with a total length of 2.5 kilometers or more that is used on the high seas and allowed to drift with the currents and winds for the purpose of harvesting fish by entangling the fish in the webbing of the net.

Level A Harassment means any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild.

Level B Harassment means any act of pursuit, torment, or annoyance which 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 but which does not have the potential to injure a marine mammal or marine mammal stock in the wild.

Marine environment means the oceans and the seas, including estuarine and brackish waters.

Marine mammal means those specimens of the following orders, which are morphologically adapted to the marine environment, and whether alive or dead, and any part thereof, including but not limited to, any raw, dressed or dyed fur or skin: Cetacea (whales, dolphins, and porpoises) and Pinnipedia, other than walrus (seals and sea lions).

MMPA means the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1361 *et seq.*

Native village or town means any community, association, tribe, band, clan or group.

Optimum sustainable population is a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.

Per-stock per-year dolphin mortality limit means the maximum allowable number of incidental dolphin mortalities and serious injuries from a specified stock per calendar year, as established under the IDCP.

Pregnant means pregnant near term.

Pribilovians means Indians, Aleuts, and Eskimos who live on the Pribilof Islands.

Principal investigator means the individual primarily responsible for the

taking, importation, export, and any related activities conducted under a permit issued for scientific research or enhancement purposes.

Public display means an activity that provides opportunities for the public to view living marine mammals at a facility holding marine mammals captive.

Regional Director means the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930; or Regional Administrator, Northwest Regional Office, NMFS, 7600 Sandpoint Way, N.E., Building 1, Seattle, WA 98115; or Regional Administrator, Southeast Regional Office, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702; or Regional Administrator, Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802; or Regional Administrator, Pacific Islands Regional Office, NMFS, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814; or Regional Administrator, Alaska Regional Office, NMFS, PO Box 21668, Juneau, AK 99802.

Rehabilitation means treatment of beached and stranded marine mammals taken under section 109(h)(1) of the MMPA or imported under section 109(h)(2) of the MMPA, with the intent of restoring the marine mammal's health and, if necessary, behavioral patterns.

Secretary shall mean the Secretary of Commerce or his authorized representative.

Serious injury means any injury that will likely result in mortality.

Sexual harassment means any unwelcome sexual advance, request for sexual favors, or other verbal and physical conduct of a sexual nature which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Soft part means any marine mammal part that is not a hard part. Soft parts do not include urine or fecal material.

South Pacific Ocean means any waters of the Pacific Ocean that lie south of the equator.

South Pacific Tuna Treaty means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the

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United States of America (50 CFR part 300, subpart D).

Stranded or *stranded marine mammal* means a marine mammal specimen under the jurisdiction of the Secretary:

(1) If the specimen is dead, and is on a beach or shore, or is in the water within the Exclusive Economic Zone of the United States; or

(2) If the specimen is alive, and is on a beach or shore and is unable to return to the water, or is in the water within the Exclusive Economic Zone of the United States where the water is so shallow that the specimen is unable to return to its natural habitat under its own power.

Subsistence means the use of marine mammals taken by Alaskan Natives for food, clothing, shelter, heating, transportation, and other uses necessary to maintain the life of the taker or those who depend upon the taker to provide them with such subsistence.

Subsistence uses means the customary and traditional uses of fur seals taken by Pribilovians for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fur seals taken for personal or family consumption; and for barter, or sharing for personal or family consumption. As used in this definition—

(1) *Family* means all persons related by blood, marriage, or adoption, or any person living within a household on a permanent basis.

(2) *Barter* means the exchange of fur seals or their parts, taken for subsistence uses—

(i) For other wildlife or fish or their parts, or

(ii) For other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

Take means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal. This includes, without limitation, any of the following: The collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; the negligent or intentional operation of an aircraft or vessel, or the doing of

any other negligent or intentional act which results in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild.

Threatened species means a species of marine mammal listed as “threatened” pursuant to the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205.

Trip means a voyage starting when a vessel leaves port with all fish wells empty of fish and ending when a vessel unloads all of its fish.

Tuna product means any food product processed for retail sale and intended for human or animal consumption that contains an item listed in §216.24(f)(2)(i) or (ii), but does not include perishable items with a shelf life of less than 3 days.

Wasteful manner means any taking or method of taking which is likely to result in the killing of marine mammals beyond those needed for subsistence, subsistence uses, or for the making of authentic native articles of handicrafts and clothing, or which results in the waste of a substantial portion of the marine mammal and includes, without limitation, the employment of a method of taking which is not likely to assure the capture or killing of a marine mammal, or which is not immediately followed by a reasonable effort to retrieve the marine mammal.

[39 FR 1852, Jan. 15, 1974]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §216.3, see the List of Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§216.4 Other laws and regulations.

(a) *Federal*. Nothing in this part, nor any permit issued under authority of this part, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of the United States, including any applicable statutes or regulations relating to wildlife and fisheries, health, quarantine, agriculture, or customs.

(b) *State laws or regulations*. See part 403 of this chapter.

[39 FR 1852, Jan. 15, 1974, as amended at 41 FR 36662, Aug. 31, 1976; 58 FR 65134, Dec. 13, 1993]

§216.5 Payment of penalty.

The respondent shall have 30 days from receipt of the final assessment decision within which to pay the penalty assessed. Upon a failure to pay the penalty, the Secretary may request the Attorney General to institute a civil action in the appropriate United States District Court to collect the penalty.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981]

§216.6 Forfeiture and return of seized property.

(a) Whenever any cargo or marine mammal or marine mammal product has been seized pursuant to section 107 of the MMPA, the Secretary shall expedite any proceedings commenced under these regulations.

(b) Whenever a civil penalty has been assessed by the Secretary under these regulations, any cargo, marine mammal, or marine mammal product seized pursuant to section 107 of the MMPA shall be subject to forfeiture. If respondent voluntarily forfeits any such seized property or the monetary value thereof without court proceedings, the Secretary may apply the value thereof, if any, as determined by the Secretary, toward payment of the civil penalty.

(c) Whenever a civil penalty has been assessed under these regulations, and whether or not such penalty has been paid, the Secretary may request the Attorney General to institute a civil action in an appropriate United States District Court to compel forfeiture of such seized property or the monetary value thereof to the Secretary for disposition by him in such manner as he deems appropriate. If no judicial action to compel forfeiture is commenced within 30 days after final decision-making assessment of a civil penalty, pursuant to §216.60, such seized property shall immediately be returned to the respondent.

(d) If the final decision of the Secretary under these regulations is that respondent has committed no violation of the MMPA or of any permit or regulations issued thereunder, any marine mammal, marine mammal product, or other cargo seized from respondent in connection with the proceedings under these regulations, or the bond or other

monetary value substituted therefor, shall immediately be returned to the respondent.

(e) If the Attorney General commences criminal proceedings pursuant to section 105(b) of the MMPA, and such proceedings result in a finding that the person accused is not guilty of a criminal violation of the MMPA, the Secretary may institute proceedings for the assessment of a civil penalty under this part: *Provided*, That if no such civil penalty proceedings have been commenced by the Secretary within 30 days following the final disposition of the criminal case, any property seized pursuant to section 107 of the MMPA shall be returned to the respondent.

(f) If any seized property is to be returned to the respondent, the Regional Director shall issue a letter authorizing such return. This letter shall be dispatched to the respondent by registered mail, return receipt requested, and shall identify the respondent, the seized property, and, if appropriate, the bailee of the seized property. It shall also provide that upon presentation of the letter and proper identification, the seized property is authorized to be released. All charges for storage, care, or handling of the seized property accruing 5 days or more after the date of the return receipt shall be for the account of the respondent: *Provided*, That if it is the final decision of the Secretary under these regulations that the respondent has committed the alleged violation, all charges which have accrued for the storage, care, or handling of the seized property shall be for the account of the respondent.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981, and amended at 59 FR 50375, Oct. 3, 1994]

§216.7 Holding and bonding.

(a) Any marine mammal, marine mammal product, or other cargo seized pursuant to section 107 of the MMPA shall be delivered to the appropriate Regional Director of the National Marine Fisheries Service (see §201.2 of this title) or his designee, who shall either hold such seized property or arrange for the proper handling and care of such seized property.

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(b) Any arrangement for the handling and care of seized property shall be in writing and shall state the compensation to be paid. Subpart F of 15 CFR part 904 contains additional procedures that govern seized property that is subject to forfeiture or has been forfeited under the MMPA.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981, and amended at 50 FR 12785, Apr. 1, 1985; 59 FR 50375, Oct. 3, 1994]

§216.8 Enforcement officers.

Enforcement Agents of the National Marine Fisheries Service shall enforce the provisions of the MMPA and may take any actions authorized by the MMPA with respect to enforcement. In addition, the Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal Agency for the purposes of enforcing this MMPA. Pursuant to the terms of section 107(b) of the MMPA, the Secretary may also designate officers and employees of any State or of any possession of the United States to enforce the provisions of this MMPA.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981, and amended at 59 FR 50375, Oct. 3, 1994]

Subpart B—Prohibitions

§216.11 Prohibited taking.

Except as otherwise provided in subparts C, D, and I of this part 216 or in part 228 or 229, it is unlawful for:

(a) Any person, vessel, or conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas, or

(b) Any person, vessel, or conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States, or

(c) Any person subject to the jurisdiction of the United States to take any marine mammal during the moratorium.

[39 FR 1852, Jan. 15, 1974, as amended at 47 FR 21254, May 18, 1982; 54 FR 21921, May 19, 1989]

§216.12 Prohibited importation.

(a) Except as otherwise provided in subparts C and D of this part 216, it is unlawful for any person to import any

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marine mammal or marine mammal product into the United States.

(b) Regardless of whether an importation is otherwise authorized pursuant to subparts C and D of this part 216, it is unlawful for any person to import into the United States any:

(1) Marine mammal:

(i) Taken in violation of the MMPA, or

(ii) Taken in another country in violation to the laws of that country;

(2) Any marine mammal product if

(i) The importation into the United States of the marine mammal from which such product is made would be unlawful under paragraph (b)(1) of this section, or

(ii) The sale in commerce of such product in the country of origin if the product is illegal.

(c) Except in accordance with an exception referred to in subpart C and §§216.31 (regarding scientific research permits only) and 216.32 of this part 216, it is unlawful to import into the United States any:

(1) Marine mammal which was pregnant at the time of taking.

(2) Marine mammal which was nursing at the time of taking, or less than 8 months old, whichever occurs later.

(3) Specimen of an endangered or threatened species of marine mammal.

(4) Specimen taken from a depleted species or stock of marine mammals, or

(5) Marine mammal taken in an inhumane manner.

(d) It is unlawful to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner proscribed by the Secretary of Commerce for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

[39 FR 1852, Jan. 15, 1974, as amended at 59 FR 50375, Oct. 3, 1994]

§216.13 Prohibited uses, possession, transportation, sales, and permits.

It is unlawful for:

(a) Any person to use any port, harbor or other place under the jurisdiction of the United States for any purpose in any way connected with a prohibited taking or an unlawful importation of any marine mammal or marine mammal product; or

(b) Any person subject to the jurisdiction of the United States to possess any marine mammal taken in violation of the MMPA or these regulations, or to transport, sell, or offer for sale any such marine mammal or any marine mammal product made from any such mammal.

(c) Any person subject to the jurisdiction of the United States to use in a commercial fishery, any means or method of fishing in contravention of regulations and limitations issued by the Secretary of Commerce for that fishery to achieve the purposes of this MMPA.

(d) Any person to violate any term, condition, or restriction of any permit issued by the Secretary.

[39 FR 1852, Jan. 15, 1974, as amended at 59 FR 50375, 50376, Oct. 3, 1994; 61 FR 21933, May 10, 1996]

§ 216.14 Marine mammals taken before the MMPA.

(a) Section 102(e) of the MMPA provides, in effect, that the MMPA shall not apply to any marine mammal taken prior to December 21, 1972, or to any marine mammal product, consisting of or composed in whole or in part of, any marine mammal taken before that date. This prior status of any marine mammal or marine mammal product may be established by submitting to the Director, National Marine Fisheries Service prior to, or at the time of importation, an affidavit containing the following:

- (1) The Affiant's name and address;
- (2) Identification of the Affiant;
- (3) A description of the marine mammals or marine mammal products which the Affiant desires to import;
- (4) A statement by the Affiant that, to the best of his knowledge and belief, the marine mammals involved in the application were taken prior to December 21, 1972;
- (5) A statement by the Affiant in the following language:

The foregoing is principally based on the attached exhibits which, to the best of my knowledge and belief, are complete, true and correct. I understand that this affidavit is being submitted for the purpose of inducing the Federal Government to permit the importation of—under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statements may subject me to the criminal penalties of 13 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(b) Either one of two exhibits shall be attached to such affidavit, and will contain either:

(1) Records or other available evidence showing that the product consists of or is composed in whole or in part of marine mammals taken prior to the effective date of the MMPA. Such records or other evidentiary material must include information on how, when, where, and by whom the animals were taken, what processing has taken place since taking, and the date and location of such processing; or

(2) A statement from a government agency of the country of origin exercising jurisdiction over marine mammals that any and all such mammals from which the products sought to be imported were derived were taken prior to December 21, 1972.

(c) No pre-Act marine mammal or pre-Act marine mammal product may be imported unless the requirements of this section have been fulfilled.

(d) This section has no application to any marine mammal or marine mammal product intended to be imported pursuant to §§ 216.21, 216.31 or § 216.32.

[39 FR 1852, Jan. 15, 1974, as amended at 59 FR 50375, 50376, Oct. 3, 1994]

§ 216.15 Depleted species.

The following species or population stocks have been designated by the Assistant Administrator as depleted under the provisions of the MMPA.

(a) Hawaiian monk seal (*Monachus schauinslandi*).

(b) Bowhead whale (*Balaena mysticetus*).

(c) North Pacific fur seal (*Callorhinus ursinus*). Pribilof Island population.

(d) Bottlenose dolphin (*Tursiops truncatus*), coastal-migratory stock along the U.S. mid-Atlantic coast.

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(e) Eastern spinner dolphin (*Stenella longirostris orientalis*).

(f) Northeastern offshore spotted dolphin (*Stenella attenuata*).

(g) Cook Inlet, Alaska, stock of beluga whales (*Delphinapterus leucas*). The stock includes all beluga whales occurring in waters of the Gulf of Alaska north of 58° North latitude including, but not limited to, Cook Inlet, Kamishak Bay, Chinitna Bay, Tuxedni Bay, Prince William Sound, Yakutat Bay, Shelikof Strait, and off Kodiak Island and freshwater tributaries to these waters.

(h) Eastern North Pacific Southern Resident stock of killer whales (*Orcinus orca*). The stock includes all resident killer whales in pods J, K, and L in the waters of, but not limited to, the inland waterways of southern British Columbia and Washington, including the Georgia Strait, the Strait of Juan de Fuca, and Puget Sound.

(i) AT1 stock of killer whales (*Orcinus orca*). The stock includes all killer whales belonging to the AT1 group of transient killer whales occurring primarily in waters of Prince William Sound, Resurrection Bay, and the Kenai Fjords region of Alaska.

[53 FR 17899, May 18, 1988, as amended at 58 FR 17791, Apr. 6, 1993; 58 FR 45074, Aug. 26, 1993; 58 FR 58297, Nov. 1, 1993; 59 FR 50376, Oct. 3, 1994; 65 FR 34597, May 31, 2000; 68 FR 31983, May 29, 2003; 69 FR 31324, June 3, 2004]

§216.16 Prohibitions under the General Authorization for Level B harassment for scientific research.

It shall be unlawful for any person to:

(a) Provide false information in a letter of intent submitted pursuant to §216.45(b);

(b) Violate any term or condition imposed pursuant to §216.45(d).

[59 FR 50376, Oct. 3, 1994]

§216.17 General prohibitions.

It is unlawful for any person to:

(a) Assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search, inspection, investigation or seizure in connection with enforcement of the MMPA, DPCIA, or IDCPA.

(b) Interfere with, delay, or prevent by any means the apprehension of an-

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other person, knowing that such person has committed any act prohibited by the MMPA.

(c) Resist a lawful arrest for any act prohibited under the MMPA.

(d) Make any false statement, oral or written, to an authorized officer concerning any act under the jurisdiction of the MMPA, DPCIA, IDCPA, or attempt to do any of the above.

(e) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the MMPA, DPCIA, or IDCPA.

[70 FR 19008, Apr. 12, 2005]

Subpart C—General Exceptions

§216.21 Actions permitted by international treaty, convention, or agreement.

The MMPA and these regulations shall not apply to the extent that they are inconsistent with the provisions of any international treaty, convention or agreement, or any statute implementing the same relating to the taking or importation of marine mammals or marine mammal products, which was existing and in force prior to December 21, 1972, and to which the United States was a party. Specifically, the regulations in subpart B of this part and the provisions of the MMPA shall not apply to activities carried out pursuant to the Interim Convention on the Conservation of North Pacific Fur Seals signed at Washington on February 9, 1957, and the Fur Seal Act of 1966, 16 U.S.C. 1151 through 1187, as in each case, from time to time amended.

[39 FR 1852, Jan. 15, 1974, as amended at 59 FR 50376, Oct. 3, 1994]

§216.22 Taking by State or local government officials.

(a) A State or local government official or employee may take a marine mammal in the normal course of his duties as an official or employee, and no permit shall be required, if such taking:

(1) Is accomplished in a humane manner;

(2) Is for the protection or welfare of such mammal or for the protection of the public health or welfare; and

(3) Includes steps designed to insure return of such mammal, if not killed in the course of such taking, to its natural habitat. In addition, any such official or employee may, incidental to such taking, possess and transport, but not sell or offer for sale, such mammal and use any port, harbor, or other place under the jurisdiction of the United States. All steps reasonably practicable under the circumstances shall be taken by any such employee or official to prevent injury or death to the marine mammal as the result of such taking. Where the marine mammal in question is injured or sick, it shall be permissible to place it in temporary captivity until such time as it is able to be returned to its natural habitat. It shall be permissible to dispose of a carcass of a marine mammal taken in accordance with this subsection whether the animal is dead at the time of taking or dies subsequent thereto.

(b) Each taking permitted under this section shall be included in a written report to be submitted to the Secretary every six months beginning December 31, 1973. Unless otherwise permitted by the Secretary, the report shall contain a description of:

- (1) The animal involved;
- (2) The circumstances requiring the taking;
- (3) The method of taking;
- (4) The name and official position of the State official or employee involved;
- (5) The disposition of the animal, including in cases where the animal has been retained in captivity, a description of the place and means of confinement and the measures taken for its maintenance and care; and
- (6) Such other information as the Secretary may require.

(c) Salvage of dead stranded marine mammals or parts therefrom and subsequent transfer.

(1) *Salvage.* In the performance of official duties, a state or local government employee; an employee of the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, or any other Federal agency with jurisdiction and conservation responsibilities in marine shoreline areas; or a person au-

thorized under 16 U.S.C. 1382(c) may take and salvage a marine mammal specimen if it is stranded and dead or it was stranded or rescued and died during treatment, transport, captivity or other rehabilitation subsequent to that stranding or distress if salvage is for the purpose of utilization in scientific research or for the purpose of maintenance in a properly curated, professionally accredited scientific collection.

(2) *Registration.* A person salvaging a dead marine mammal specimen under this section must register the salvage of the specimen with the appropriate Regional Office of the National Marine Fisheries Service within 30 days after the taking or death occurs. The registration must include:

- (i) The name, address, and any official position of the individual engaged in the taking and salvage;
- (ii) A description of the marine mammal specimen salvaged including the scientific and common names of the species;
- (iii) A description of the parts salvaged;
- (iv) The date and the location of the taking;
- (v) Such other information as deemed necessary by the Assistant Administrator.

(3) *Identification and curation.* The Regional Director will assign a single unique number to each carcass, and the parts thereof, that are salvaged under the provisions of this section. The person who salvaged the specimen may designate the number to be assigned. After this number is assigned, the person who salvaged the specimen must permanently mark that number on each separate hard part of that specimen and must affix that number with tags or labels to each soft part of that specimen or the containers in which that soft part is kept. Each specimen salvaged under this section must be curated in accordance with professional standards.

(4) *No sale or commercial trade.* No person may sell or trade for commercial purposes any marine mammal specimen salvaged under this section.

(5) *Transfer without prior authorization.* A person who salvages a marine mammal specimen under this section

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may transfer that specimen to another person if:

(i) The person transferring the marine mammal specimen does not receive remuneration for the specimen;

(ii) The person receiving the marine mammal specimen is an employee of the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, or any other Federal agency with jurisdiction and conservation responsibilities in marine shoreline areas; is a person authorized under 16 U.S.C. 1382(c); or is a person who has received prior authorization under paragraph (c)(6) of this section;

(iii) The marine mammal specimen is transferred for the purpose of scientific research, for the purpose of maintenance in a properly curated, professionally accredited scientific collection, or for educational purposes;

(iv) The unique number assigned by the National Marine Fisheries Service is on, marked on, or affixed to the marine mammal specimen or container; and

(v) Except as provided under paragraph (c)(8) of this section, the person transferring the marine mammal specimen notifies the appropriate Regional Office of the National Marine Fisheries Service of the transfer, including notification of the number of the specimen transferred and the person to whom the specimen was transferred, within 30 days after the transfer occurs.

(6) *Other transfers within the United States.* Except as provided under paragraphs (c)(5) and (c)(8) of this section, a person who salvages a marine mammal specimen, or who has received a marine mammal specimen under the provisions of this section, may not transfer that specimen to another person within the United States unless the Regional Director of the appropriate Regional Office of the National Marine Fisheries Service grants prior written authorization for the transfer. The Regional Director may grant authorization for the transfer if there is evidence that the conditions listed under paragraphs (c)(5)(i), (c)(5)(iii), and (c)(5)(iv) of this section are met.

(7) *Transfers outside of the United States.* A person who salvages a marine mammal specimen, or a person who has received a marine mammal specimen

under the provisions of this section, may not transfer that specimen to a person outside of the United States unless the Assistant Administrator grants prior written authorization for the transfer. The Assistant Administrator may grant authorization for the transfer if there is evidence that the conditions listed under paragraphs (c)(5)(i), (c)(5)(iii), and (c)(5)(iv) of this section are met.

(8) *Exceptions to requirements for notification or prior authorization.* A person may transfer a marine mammal specimen salvaged under this section without the notification required in paragraph (c)(5)(v) of this section or the prior authorization required in paragraph (c)(6) of this section if:

(i) The transfer is a temporary transfer to a laboratory or research facility within the United States so that analyses can be performed for the person salvaging the specimen; or

(ii) The transfer is a loan of not more than 1 year to another professionally accredited scientific collection within the United States.

[39 FR 1852, Jan. 15, 1974, as amended at 56 FR 41307, Aug. 20, 1991]

§216.23 Native exceptions.

(a) *Taking.* Notwithstanding the prohibitions of subpart B of this part 216, but subject to the restrictions contained in this section, any Indian, Aleut, or Eskimo who resides on the coast of the North Pacific Ocean or the Arctic Ocean may take any marine mammal without a permit, if such taking is:

(1) By Alaskan Natives who reside in Alaska for subsistence, or

(2) For purposes of creating and selling authentic native articles of handicraft and clothing, and

(3) In each case, not accomplished in a wasteful manner.

(b) *Restrictions.* (1) No marine mammal taken for subsistence may be sold or otherwise transferred to any person other than an Alaskan Native or delivered, carried, transported, or shipped in interstate or foreign commerce, unless:

(i) It is being sent by an Alaskan Native directly or through a registered agent to a tannery registered under paragraph (c) of this section for the

purpose of processing, and will be returned directly or through a registered agent to the Alaskan Native; or

(ii) It is sold or transferred to a registered agent in Alaska for resale or transfer to an Alaskan Native; or

(iii) It is an edible portion and it is sold in an Alaskan Native village or town.

(2) No marine mammal taken for purposes of creating and selling authentic native articles of handicraft and clothing may be sold or otherwise transferred to any person other than an Indian, Aleut or Eskimo, or delivered, carried, transported or shipped in interstate or foreign commerce, unless:

(i) It is being sent by an Indian, Aleut or Eskimo directly or through a registered agent to a tannery registered under paragraph (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Indian, Aleut or Eskimo; or

(ii) It is sold or transferred to a registered agent for resale or transfer to an Indian, Aleut, or Eskimo; or

(iii) It has first been transformed into an authentic native article of handicraft or clothing; or

(iv) It is an edible portion and sold (A) in an Alaskan Native village or town, or (B) to an Alaskan Native for his consumption.

(c) Any tannery, or person who wishes to act as an agent, within the jurisdiction of the United States may apply to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, for registration as a tannery or an agent which may possess and process marine mammal products for Indians, Aleuts, or Eskimos. The application shall include the following information:

(i) The name and address of the applicant;

(ii) A description of the applicant's procedures for receiving, storing, processing, and shipping materials;

(iii) A proposal for a system of book-keeping and/or inventory segregation by which the applicant could maintain accurate records of marine mammals received from Indians, Aleuts, or Eskimos pursuant to this section;

(iv) Such other information as the Secretary may request;

(v) A certification in the following language:

I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining the benefit of an exception under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(vi) The signature of the applicant.

The sufficiency of the application shall be determined by the Secretary, and in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The registration of a tannery or other agent shall be subject to such conditions as the Secretary prescribes, which may include, but are not limited to, provisions regarding records, inventory segregation, reports, and inspection. The Secretary may charge a reasonable fee for processing such applications, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce.

(d) Notwithstanding the preceding provisions of this section, whenever, under the MMPA, the Secretary determines any species of stock of marine mammals to be depleted, he may prescribe regulations pursuant to section 103 of the MMPA upon the taking of such marine animals by any Indian, Aleut, or Eskimo and, after promulgation of such regulations, all takings of such marine mammals shall conform to such regulations.

(e) *Marking and reporting of Cook Inlet Beluga Whales*—(1) *Definitions*. In addition to definitions contained in the MMPA and the regulations in this part:

(i) *Reporting* means the collection and delivery of biological data, harvest data, and other information regarding the effect of taking a beluga whale (*Delphinapterus leucas*) from Cook Inlet, as required by NMFS.

(ii) *Whaling captain or vessel operator* means the individual who is identified by Alaskan Natives as the leader of each hunting team (usually the other

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crew on the boat) and who is the whaling captain; or the individual operating the boat at the time the whale is harvested or transported to the place of processing.

(iii) *Cook Inlet* means all waters of Cook Inlet north of 59° North latitude, including, but not limited to, waters of Kachemak Bay, Kamishak Bay, Chinitna Bay, and Tuxedni Bay.

(2) *Marking*. Each whaling captain or vessel operator, upon killing and landing a beluga whale (*Delphinapterus leucas*) from Cook Inlet, Alaska, must remove the lower left jawbone, leaving the teeth intact and in place. When multiple whales are harvested during one hunting trip, the jawbones will be marked for identification in the field to ensure correct reporting of harvest information by placing a label marked with the date, time, and location of harvest within the container in which the jawbone is placed. The jawbone(s) must be retained by the whaling captain or vessel operator and delivered to NMFS at the Anchorage Field Office, 222 West 7th Avenue, Anchorage, Alaska 99513 within 72 hours of returning from the hunt.

(3) *Reporting*. Upon delivery to NMFS of a jawbone, the whaling captain or vessel operator must complete and mail a reporting form, available from NMFS, to the NMFS Anchorage Field Office within 30 days. A separate form is required for each whale harvested.

(i) To be complete, the form must contain the following information: the date and location of kill, the method of harvest, and the coloration of the whale. The respondent will also be invited to report on any other observations concerning the animal or circumstance of the harvest.

(ii) Data collected pursuant to paragraph (e) of this section will be reported on forms obtained from the Anchorage Field Office. These data will be maintained in the NMFS Alaska Regional Office in Juneau, Alaska, where such data will be available for public review.

(4) No person may falsify any information required to be set forth on the reporting form as required by paragraph (e) of this section.

(5) The Anchorage Field Office of NMFS is located in room 517 of the

Federal Office Building, 222 West 7th Avenue; its mailing address is: NMFS, Box 43, Anchorage, AK. 99513.

(f) *Harvest management of Cook Inlet beluga whales*—(1) *Cooperative management of subsistence harvest*. Subject to the provisions of 16 U.S.C. 1371(b) and any further limitations set forth in §216.23, any taking of a Cook Inlet beluga whale by an Alaska Native must be authorized under an agreement for the co-management of subsistence uses (hereinafter in this paragraph “co-management agreement”) between the National Marine Fisheries Service and an Alaska Native organization(s).

(2) *Limitations*. (i) *Sale of Cook Inlet beluga whale parts and products*. Authentic Native articles of handicraft and clothing made from nonedible by-products of beluga whales taken in accordance with the provisions of this paragraph may be sold in interstate commerce. The sale of any other part or product, including food stuffs, from Cook Inlet beluga whales is prohibited, provided that nothing herein shall be interpreted to prohibit or restrict customary and traditional subsistence practices of barter and sharing of Cook Inlet beluga parts and products.

(ii) *Beluga whale calves or adults with calves*. The taking of a calf or an adult whale accompanied by a calf is prohibited.

(iii) *Season*. All takings of beluga whales authorized under §216.23(f) shall occur no earlier than July 1 of each year.

(iv) *Taking during 2001–2004*. The harvest of Cook Inlet beluga whales is restricted during the four-year period of 2001–2004 as follows:

(A) *Strike limitations*. Subject to the suspension provision of subparagraph (C), a total of six (6) strikes, which could result in up to six landings, are to be allocated through co-management agreement(s).

(B) *Strike allocations*. Four strikes, not to exceed one per year, are allocated to the Native Village of Tyonek. The remaining two strikes will be allocated over the 4-year period through co-management agreement with other Cook Inlet community hunters, with no more than one such strike being allocated during every other year.

(C) *Emergency provisions.* Takings of beluga whales authorized under § 216.23 will be suspended whenever unusual mortalities exceed six (6) whales in any year. “Unusual mortalities” include all documented human-caused mortality (including illegal takings and net entanglements but excluding all legally harvested whales) and all documented mortality resulting from unknown or natural causes that occur above normal levels, considered for the purposes of this provision to be twelve beluga whales per year. The level of unusual mortalities shall be calculated by documenting mortality for the calendar year and subtracting twelve. The sum of this result and the carry over of unusual mortality from any previous year from which the population has not recovered is the level of unusual mortalities for the current year. If in any year the number of unusual mortalities exceeds six whales, no strikes will be allowed in that year or in subsequent years until the population has recovered from those mortalities through foregone future harvests and natural recruitment.

(v) *Taking during 2005 and subsequent years.* [Reserved]

[39 FR 1852, Jan. 15, 1974, as amended at 59 FR 50376, Oct. 3, 1994; 64 FR 27927, May 24, 1999; 69 FR 17980, Apr. 6, 2004]

§ 216.24 Taking and related acts incidental to commercial fishing operations by tuna purse seine vessels in the eastern tropical Pacific Ocean.

(a)(1) No marine mammal may be taken in the course of a commercial fishing operation by a U.S. purse seine fishing vessel in the ETP unless the taking constitutes an incidental catch as defined in § 216.3, and vessel and operator permits have been obtained in accordance with these regulations, and such taking is not in violation of such permits or regulations.

(2)(i) It is unlawful for any person using a U.S. purse seine fishing vessel of 400 short tons (st) (362.8 metric tons (mt)) carrying capacity or less to intentionally deploy a net on or to encircle dolphins, or to carry more than two speedboats, if any part of its fishing trip is in the ETP.

(ii) It is unlawful for any person using a U.S. purse seine fishing vessel of greater than 400 st (362.8 mt) carrying capacity that does not have a valid permit obtained under these regulations to catch, possess, or land tuna if any part of the vessel’s fishing trip is in the ETP.

(iii) It is unlawful for any person subject to the jurisdiction of the United States to receive, purchase, or possess tuna caught, possessed, or landed in violation of paragraph (a)(2)(ii) of this section.

(iv) It is unlawful for any person subject to the jurisdiction of the United States to intentionally deploy a purse seine net on, or to encircle, dolphins from a vessel operating in the ETP when there is not a DML assigned to that vessel.

(v) It is unlawful for any person subject to the jurisdiction of the United States to intentionally deploy a purse seine net on, or to encircle, dolphins from a vessel operating in the ETP with an assigned DML after a set in which the DML assigned to that vessel has been reached or exceeded.

(vi) Alleged violations of the Agreement on the IDCP and/or these regulations identified by the International Review Panel will be considered for potential enforcement action by NMFS.

(3) Upon written request made in advance of entering the ETP, the limitations in paragraphs (a)(2)(i) and (a)(2)(ii) of this section may be waived by the Administrator, Southwest Region, for the purpose of allowing transit through the ETP. The waiver will provide, in writing, the terms and conditions under which the vessel must operate, including a requirement to report to the Administrator, Southwest Region, the vessel’s date of exit from or subsequent entry into the permit area.

(b) *Permits*—(1) *Vessel permit.* The owner or managing owner of a U.S. purse seine fishing vessel of greater than 400 st (362.8 mt) carrying capacity that participates in commercial fishing operations in the ETP must possess a valid vessel permit issued under paragraph (b) of this section. This permit is not transferable and must be renewed

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annually. If a vessel permit holder surrenders his/her permit to the Administrator, Southwest Region, the permit will not be returned and a new permit will not be issued before the end of the calendar year. Vessel permits will be valid through December 31 of each year.

(2) *Operator permit.* The person in charge of and actually controlling fishing operations (hereinafter referred to as the operator) on a U.S. purse seine fishing vessel engaged in commercial fishing operations under a vessel permit must possess a valid operator permit issued under paragraph (b) of this section. Such permits are not transferable and must be renewed annually. To receive a permit, the operator must have satisfactorily completed all required training under paragraph (c)(5) of this section. The operator's permit is valid only when the permit holder is on a vessel with a valid vessel permit. Operator permits will be valid through December 31 of each year.

(3) *Possession and display.* A valid vessel permit issued pursuant to paragraph (b)(1) of this section must be on board the vessel while engaged in fishing operations, and a valid operator permit issued pursuant to paragraph (b)(2) of this section must be in the possession of the operator to whom it was issued. Permits must be shown upon request to NMFS enforcement agents, U.S. Coast Guard officers, or designated agents of NMFS or the Inter-American Tropical Tuna Commission (IATTC) (including observers). A vessel owner or operator who is at sea on a fishing trip when his or her permit expires and to whom a permit for the next year has been issued, may take marine mammals under the terms of the new permit without having to display it on board the vessel until the vessel returns to port.

(4) *Application for vessel permit.* The owner or managing owner of a purse seine vessel may apply for a permit from the Administrator, Southwest Region, allowing at least 15 days for processing. All vessel permit applications must be faxed to (562) 980-4027. An owner or managing owner requesting to have a vessel in excess of 400 st (362.8 mt) carrying capacity for which a DML was requested categorized as active on

the Vessel Register under §300.22(b)(4)(i) of this title must submit to the Administrator, Southwest Region, the vessel permit application, payment of the observer placement fee under paragraph (b)(6)(iii) of this section and payment of the vessel permit application processing fee no later than September 15 of the year prior to the year for which the DML was requested. The owner or managing owner of a vessel in excess of 400 st (362.8 mt) carrying capacity not requesting a DML must submit the vessel permit application, payment of the observer placement fee, and payment of the vessel permit application processing fee no later than November 30 of the year prior to the year for which the vessel permit was requested. An application must contain:

(i) The name, official number, tonnage, carrying capacity in short or metric tons, maximum speed in knots, processing equipment, and type and quantity of gear, including an inventory of equipment required under paragraph (c)(3) of this section if the application is for purse seining involving the intentional taking of marine mammals, of the vessel that is to be covered under the permit;

(ii) A statement of whether the vessel will make sets involving the intentional taking of marine mammals;

(iii) The type and identification number(s) of Federal, state, and local commercial fishing licenses under which vessel operations are conducted, and the dates of expiration;

(iv) The name(s) of the operator(s) anticipated to be used; and

(v) The name and signature of the applicant, whether he/she is the owner or the managing owner, his/her address, telephone and fax numbers, and, if applicable, the name, address, telephone and fax numbers of the agent or organization acting on behalf of the vessel.

(5) *Application for operator permit.* An applicant for an operator permit must provide the following information to the Administrator, Southwest Region, allowing at least 45 days for processing:

(i) The name, address, telephone and fax numbers of the applicant;

(ii) The type and identification number(s) of any Federal, state, and local fishing licenses held by the applicant;

(iii) The name of the vessel(s) on which the applicant anticipates serving as an operator;

(iv) The date, location, and provider of training required under paragraph (c)(5) of this section for the operator permit; and

(v) The applicant's signature or the signature of the applicant's representative.

(6) *Fees*—(i) *Vessel permit application fees.* Payment of the permit application fee is required before NMFS will issue a permit. The Assistant Administrator may change the amount of this fee at any time if a different fee is determined in accordance with the NOAA Finance Handbook. The amount of the fee will be printed on the vessel permit application form provided by the Administrator, Southwest Region.

(ii) *Operator permit fee.* There is no fee for the operator permit. The Assistant Administrator may require a fee at any time if a fee is determined in accordance with the NOAA Finance Handbook and specified by the Administrator, Southwest Region, on the application form.

(iii) *Observer placement fee.* The observer placement fee supports the placement of observers on individual vessels, and maintenance of the observer program, as established by the IATTC or other approved observer program.

(A) The owner or managing owner of a vessel for which a DML has been requested must submit the observer placement fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, no later than September 15 of the year prior to the calendar year for which the DML was requested. Payment of the observer placement fee must be consistent with the fee for active status on the Vessel Register under § 300.22(b)(4) of this title.

(B) The owner or managing owner of a vessel for which a DML has not been requested, but that is listed on the Vessel Register, as defined in § 300.21 of this title, must submit payment of the observer placement fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, no later than November 30 of the year prior to the cal-

endar year in which the vessel will be listed on the Vessel Register. Payment of the observer placement fee must be consistent with the vessel's status, either active or inactive, on the Vessel Register in § 300.22(b)(4) of this title.

(C) The owner or managing owner of a purse seine vessel that is licensed under the South Pacific Tuna Treaty must submit the observer placement fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, prior to obtaining an observer and entering the ETP to fish. Consistent with § 300.22(b)(1)(i) of this title, this class of purse seine vessels is not required to be listed on the Vessel Register under § 300.22(b)(4) of this title in order to purse seine for tuna in the ETP during a single fishing trip per calendar year of 90 days or less. Payment of the observer placement fee must be consistent with the fee for active status on the Vessel Register under § 300.22(b)(4) of this title.

(D) The owner or managing owner of a purse seine vessel listed as inactive on the Vessel Register at the beginning of the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under § 300.22(b)(4) of this title during the year, must pay the observer placement fee associated with active status less the observer placement fee associated with inactive status that was already paid before NMFS will request the IATTC Secretariat change the status of the vessel from inactive to active.

(E) The owner or managing owner of a purse seine vessel not listed on the Vessel Register at the beginning of the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under § 300.22(b)(4) of this title during the year, must pay the observer placement fee associated with active status before NMFS will request the IATTC Secretariat change the status of the vessel to active.

(F) Payments received after the dates specified in paragraphs (b) (6) (iii)(A) or (B) of this section will be subject to a 10 percent surcharge. The Administrator, Southwest Region, will forward all observer placement fees described in this section to the IATTC or to the

applicable organization approved by the Administrator, Southwest Region.

(7) *Application approval.* The Administrator, Southwest Region, will determine the adequacy and completeness of an application and, upon determining that an application is adequate and complete, will approve that application and issue the appropriate permit, except for applicants having unpaid or overdue civil penalties, criminal fines, or other liabilities incurred in a legal proceeding.

(8) *Conditions applicable to all permits—(i) General conditions.* Failure to comply with the provisions of a permit or with these regulations may lead to suspension, revocation, modification, or denial of a permit. The permit holder, vessel, vessel owner, operator, or master may be subject, jointly or severally, to the penalties provided for under the MMPA. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(ii) *Observer placement.* By obtaining a permit, the permit holder consents to the placement of an observer on the vessel during every trip involving operations in the ETP and agrees to payment of the fees for observer placement. No observer will be assigned to a vessel unless that vessel owner has submitted payment of observer fees to the Administrator, Southwest Region. The observers may be placed under an observer program of NMFS, IATTC, or another observer program approved by the Administrator, Southwest Region.

(iii) *Explosives.* The use of explosive devices is prohibited during all tuna purse seine operations that involve marine mammals.

(iv) *Reporting requirements.* (A) The vessel permit holder of each permitted vessel must notify the Administrator, Southwest Region or the IATTC contact designated by the Administrator, Southwest Region, at least 5 days in advance of the vessel's departure on a fishing trip to allow for observer placement on every trip.

(B) The vessel permit holder must notify the Administrator, Southwest Region, or the IATTC contact designated by the Administrator, Southwest Region, of any change of vessel operator at least 48 hours prior to departing on a fishing trip. In the case of a change

in operator due to an emergency, notification must be made within 72 hours of the change.

(v) *Data release.* By using a permit, the permit holder authorizes the release to NMFS and the IATTC of all data collected by observers aboard purse seine vessels during fishing trips under the IATTC observer program or another international observer program approved by the Administrator, Southwest Region. The permit holder must furnish the international observer program with all release forms required to authorize the observer data to be provided to NMFS and the IATTC. Data obtained under such releases will be used for the same purposes as would data collected directly by observers placed by NMFS and will be subject to the same standards of confidentiality.

(9) *Mortality and serious injury reports.* The Administrator, Southwest Region, will provide to the public periodic status reports summarizing the estimated incidental dolphin mortality and serious injury by U.S. vessels of individual species and stocks.

(c) *Purse seining by vessels with Dolphin Mortality Limits (DMLs).* In addition to the terms and conditions set forth in paragraph (b) of this section, any permit for a vessel to which a DML has been assigned under paragraph (c)(9) of this section and any operator permit when used on such a vessel are subject to the following terms and conditions:

(1) A vessel may be used to chase and encircle schools of dolphins in the ETP only under the immediate direction of the holder of a valid operator's permit.

(2) *No retention of live marine mammals.* Except as otherwise authorized by a specific permit, live marine mammals incidentally taken must be immediately returned to the ocean without further injury. The operator of a purse seine vessel must take every precaution to refrain from causing or permitting incidental mortality or serious injury of marine mammals. Live marine mammals may not be brailled, sacked up, or hoisted onto the deck during ortza retrieval.

(3) *Gear and equipment required for valid permit.* A vessel possessing a vessel permit for purse seining involving

the intentional taking of marine mammals may not engage in fishing operations involving the intentional deployment of the net on or encirclement of dolphins unless it is equipped with a dolphin safety panel in its purse seine, has the other required gear and equipment, and uses the required procedures.

(i) *Dolphin safety panel.* The dolphin safety panel must be a minimum of 180 fathoms in length (as measured before installation), except that the minimum length of the panel in nets deeper than 18 strips must be determined in a ratio of 10 fathoms in length for each strip of net depth. It must be installed so as to protect the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline that begins at the outboard end of the last bowbunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The dolphin safety panel must consist of small mesh webbing not to exceed 1 1/4 inches (3.18 centimeters (cm)) stretch mesh extending downward from the corkline and, if present, the base of the dolphin apron to a minimum depth equivalent to two strips of 100 meshes of 4 1/4 inches (10.80 cm) stretch mesh webbing. In addition, at least a 20-fathom length of corkline must be free from bunchlines at the apex of the backdown channel.

(ii) *Dolphin safety panel markers.* Each end of the dolphin safety panel and dolphin apron, if present, must be identified with an easily distinguishable marker.

(iii) *Dolphin safety panel hand holds.* Throughout the length of the corkline under which the dolphin safety panel and dolphin apron are located, hand hold openings must be secured so that they will not allow the insertion of a 1 3/8 inch (3.50 cm) diameter cylindrical-shaped object.

(iv) *Dolphin safety panel corkline hangings.* Throughout the length of the corkline under which the dolphin safety panel and dolphin apron if present, are located, corkline hangings must be inspected by the vessel operator following each trip. Hangings found to have loosened to the extent that a cylindrical-shaped object with a 1 3/8 inch (3.50 cm) diameter can be inserted be-

tween the cork and corkline hangings, must be tightened so as not to allow the insertion of a cylindrical-shaped object with a 1 3/8 inch (3.50 cm) diameter.

(v) *Speedboats.* A minimum of three speedboats in operating condition must be carried. All speedboats carried aboard purse seine vessels and in operating condition must be rigged with tow lines and towing bridles or towing posts. Speedboat hoisting bridles may not be substituted for towing bridles.

(vi) *Raft.* A raft suitable to be used as a dolphin observation-and-rescue platform must be carried.

(vii) *Facemask and snorkel, or viewbox.* At least two facemasks and snorkels or viewboxes must be carried.

(viii) *Lights.* The vessel must be equipped with lights capable of producing a minimum of 140,000 lumens of output for use in darkness to ensure sufficient light to observe that procedures for dolphin release are carried out and to monitor incidental dolphin mortality.

(4) *Vessel inspection*—(i) *Annual.* At least once during each calendar year, purse seine nets and other gear and equipment required under § 216.24(c)(3) must be made available for inspection and for a trial set/net alignment by an authorized NMFS inspector or IATTC staff as specified by the Administrator, Southwest Region, in order to obtain a vessel permit.

(ii) *Reinspection.* Purse seine nets and other gear and equipment required by these regulations must be made available for reinspection by an authorized NMFS inspector or IATTC staff as specified by the Administrator, Southwest Region. The vessel permit holder must notify the Administrator, Southwest Region, of any net modification at least 5 days prior to departure of the vessel in order to determine whether a reinspection or trial set/net alignment is required.

(iii) *Failure to pass inspection.* Upon failure to pass an inspection or reinspection, a vessel may not engage in purse seining involving the intentional taking of marine mammals until the deficiencies in gear or equipment are corrected as required by NMFS.

(5) *Operator permit holder training requirements.* An operator must maintain

proficiency sufficient to perform the procedures required herein, and must attend and satisfactorily complete a formal training session approved by the Administrator, Southwest Region, in order to obtain his or her permit. At the training session, an attendee will be instructed on the relevant provisions and regulatory requirements of the MMPA and the IDCP, and the fishing gear and techniques that are required for reducing serious injury and mortality of dolphin incidental to purse seining for tuna. Operators who have received a written certificate of satisfactory completion of training and who possess a current or previous calendar year permit will not be required to attend additional formal training sessions unless there are substantial changes in the relevant provisions or implementing regulations of the MMPA or the IDCP, or in fishing gear and techniques. Additional training may be required for any operator who is found by the Administrator, Southwest Region, to lack proficiency in the required fishing procedures or familiarity with the relevant provisions or regulations of the MMPA or the IDCP.

(6) *Marine mammal release requirements.* All operators fishing pursuant to paragraph (c) of this section must use the following procedures during all sets involving the incidental taking of marine mammals in association with the capture and landing of tuna.

(i) *Backdown procedure.* Backdown must be performed following a purse seine set in which dolphins are captured in the course of catching tuna, and must be continued until it is no longer possible to remove live dolphins from the net by this procedure. At least one crewmember must be deployed during backdown to aid in the release of dolphins. Thereafter, other release procedures required will be continued so that all live dolphins are released prior to the initiation of the sack-up procedure.

(ii) *Prohibited use of sharp or pointed instrument.* The use of a sharp or pointed instrument to remove any marine mammal from the net is prohibited.

(iii) *Sundown sets prohibited.* On every set encircling dolphin, the backdown procedure must be completed no later than one-half hour after sundown, ex-

cept as provided here. For the purpose of this section, sundown is defined as the time at which the upper edge of the sun disappears below the horizon or, if the view of the sun is obscured, the local time of sunset calculated from tables developed by the U.S. Naval Observatory or other authoritative source approved by the Administrator, Southwest Region. A sundown set is a set in which the backdown procedure has not been completed and rolling the net to sack-up has not begun within one-half hour after sundown. Should a set extend beyond one-half hour after sundown, the operator must use the required marine mammal release procedures including the use of the high intensity lighting system. In the event a sundown set occurs where the seine skiff was let go 90 or more minutes before sundown, and an earnest effort to rescue dolphins is made, the International Review Panel of the IDCP may recommend to the United States that in the view of the International Review Panel, prosecution by the United States is not recommended. Any such recommendation will be considered by the United States in evaluating the appropriateness of prosecution in a particular circumstance.

(iv) *Dolphin safety panel.* During backdown, the dolphin safety panel must be positioned so that it protects the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline that begins at the outboard end of the last bow bunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point.

(7) *Experimental fishing operations.* The Administrator, Southwest Region, may authorize experimental fishing operations, consistent with the provisions of the IDCP, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce or eliminate dolphin mortality or serious injury, or do not require the encirclement of dolphins in the course of fishing operations. The Administrator, Southwest Region, may waive, as appropriate, any requirements of this section except DMLs and the obligation to carry an observer.

(i) A vessel permit holder may apply for an experimental fishing operation waiver by submitting the following information to the Administrator, Southwest Region, no less than 90 days before the date the proposed operation is intended to begin:

(A) The name(s) of the vessel(s) and the vessel permit holder(s) to participate;

(B) A statement of the specific vessel gear and equipment or procedural requirement to be exempted and why such an exemption is necessary to conduct the experiment;

(C) A description of how the proposed modification to the gear and equipment or procedures is expected to reduce incidental mortality or serious injury of marine mammals;

(D) A description of the applicability of this modification to other purse seine vessels;

(E) The planned design, time, duration, and general area of the experimental operation;

(F) The name(s) of the permitted operator(s) of the vessel(s) during the experiment;

(G) A statement of the qualifications of the individual or company doing the analysis of the research; and

(H) Signature of the permitted operator or of the operator's representative.

(ii) The Administrator, Southwest Region, will acknowledge receipt of the application and, upon determining that it is complete, will publish a notice in the FEDERAL REGISTER summarizing the application, making the full application available for inspection and inviting comments for a minimum period of 30 days from the date of publication.

(iii) The Administrator, Southwest Region, after considering the information submitted in the application identified in paragraph (c)(7)(i) of this section and the comments received, will either issue a waiver to conduct the experiment that includes restrictions or conditions deemed appropriate, or deny the application, giving the reasons for denial.

(iv) A waiver for an experimental fishing operation will be valid only for the vessels and operators named in the permit, for the time period and areas specified, for trips carrying an observer

designated by the Administrator, Southwest Region, and when all the terms and conditions of the permit are met.

(v) The Administrator, Southwest Region, may suspend or revoke an experimental fishing waiver in accordance with 15 CFR part 904 if the terms and conditions of the waiver or the provisions of the regulations are not followed.

(8) *Operator permit holder performance requirements.* [Reserved]

(9) *Vessel permit holder mortality limits.* For purposes of this paragraph, the term "vessel permit holder" includes both the holder of a current vessel permit and also the holder of a vessel permit for the following year.

(i) By September 1 each year, a vessel permit holder desiring a DML for the following year must provide to the Administrator, Southwest Region, the name of the U.S. purse seine fishing vessel(s) of carrying capacity greater than 400 st (362.8 mt) that the owner intends to use to intentionally deploy purse seine fishing nets in the ETP to encircle dolphins in an effort to capture tuna during the following year. NMFS will forward the list of purse seine vessels to the Director of the IATTC on or before October 1, or as otherwise required by the IDCP, for assignment of a DML for the following year under the provisions of Annex IV of the Agreement on the IDCP.

(ii) Each vessel permit holder that desires a DML only for the period between July 1 to December 31 must provide the Administrator, Southwest Region, by September 1 of the prior year, the name of the U.S. purse seine fishing vessel(s) of greater than 400 st (362.8 mt) carrying capacity that the owner intends to use to intentionally deploy purse seine fishing nets in the ETP to encircle dolphins in an effort to capture tuna during the period. NMFS will forward the list of purse seine vessels to the Director of the IATTC on or before October 1, or as otherwise required under the IDCP, for possible assignment of a DML for the 6-month period July 1 to December 31. Under the IDCP, the DML will be calculated by the IDCP from any unutilized pool of DMLs in accordance with the procedure described in Annex IV of the Agreement

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on the IDCP and will not exceed one-half of an unadjusted full-year DML as calculated by the IDCP.

(iii)(A) The Administrator, Southwest Region, will notify vessel owners of the DML assigned for each vessel for the following year, or the second half of the year, as applicable.

(B) The Administrator, Southwest Region, may adjust the DMLs in accordance with Annex IV of the Agreement on the IDCP. All adjustments of full-year DMLs will be made before January 1, and the Administrator, Southwest Region, will notify the Director of the IATTC of any adjustments prior to a vessel departing on a trip using its adjusted DML. The notification will be no later than February 1 in the case of adjustments to full-year DMLs, and no later than May 1 in the case of adjustments to DMLs for the second half of the year.

(C) In accordance with the requirements of Annex IV of the Agreement on the IDCP, the Administrator, Southwest Region, may adjust a vessel's DML if it will further scientific or technological advancement in the protection of marine mammals in the fishery or if the past performance of the vessel indicates that the protection or use of the yellowfin tuna stocks or marine mammals is best served by the adjustment, within the mandates of the MMPA. Experimental fishing operation waivers or scientific research permits will be considered a basis for adjustments.

(iv)(A) A vessel assigned a full-year DML that does not make a set on dolphins by April 1 or that leaves the fishery will lose its DML for the remainder of the year, unless the failure to set on dolphins is due to force majeure or other extraordinary circumstances as determined by the International Review Panel.

(B) A vessel assigned a DML for the second half of the year will be considered to have lost its DML if the vessel has not made a set on dolphins before December 31, unless the failure to set on dolphins is due to force majeure or extraordinary circumstances as determined by the International Review Panel.

(C) Any vessel that loses its DML for 2 consecutive years will not be eligible

to receive a DML for the following year.

(D) NMFS will determine, based on available information, whether a vessel has left the fishery.

(1) A vessel lost at sea, undergoing extensive repairs, operating in an ocean area other than the ETP, or for which other information indicates that vessel will no longer be conducting purse seine operations in the ETP for the remainder of the period covered by the DML will be determined to have left the fishery.

(2) NMFS will make all reasonable efforts to determine the intentions of the vessel owner. The owner of any vessel that has been preliminarily determined to have left the fishery will be provided notice of such preliminary determination and given the opportunity to provide information on whether the vessel has left the fishery prior to NMFS making a final determination under 15 CFR part 904 and notifying the IATTC.

(v) Any vessel that exceeds its assigned DML after any applicable adjustment under paragraph (c)(9)(iii) of this section will have its DML for the subsequent year reduced by 150 percent of the overage, unless another adjustment is determined by the International Review Panel, as mandated by the Agreement on the IDCP.

(vi) A vessel that is covered by a valid vessel permit and that does not normally fish for tuna in the ETP but desires to participate in the fishery on a limited basis may apply for a per-trip DML from the Administrator, Southwest Region, at any time, allowing at least 60 days for processing. The request must state the expected number of trips involving sets on dolphins and the anticipated dates of the trip or trips. The request will be forwarded to the Secretariat of the IATTC for processing in accordance with Annex IV of the Agreement on the IDCP. A per-trip DML will be assigned if one is made available in accordance with the terms of Annex IV of the Agreement on the IDCP. If a vessel assigned a per-trip DML does not set on dolphins during that trip, the vessel will be considered to have lost its DML unless this was a result of force majeure or other extraordinary circumstances as determined by the International Review

Panel. After two consecutive losses of a DML, a vessel will not be eligible to receive a DML for the next fishing year.

(vii) Observers will make their records available to the vessel operator at any reasonable time, including after each set, in order for the operator to monitor the balance of the DML(s) remaining for use.

(viii) Vessel and operator permit holders must not deploy a purse seine net on or encircle any school of dolphins containing individuals of a particular stock of dolphins for the remainder of the calendar year:

(A) after the applicable per-stock per-year dolphin mortality limit for that stock of dolphins (or for that vessel, if so assigned) has been reached or exceeded; or

(B) after the time and date provided in actual notification or notification in the FEDERAL REGISTER by the Administrator, Southwest Region, based upon the best available evidence, stating when any applicable per-stock per-year dolphin mortality limit has been reached or exceeded, or is expected to be reached in the near future.

(ix) If individual dolphins belonging to a stock that is prohibited from being taken are not reasonably observable at the time the net skiff attached to the net is released from the vessel at the start of a set, the fact that individuals of that stock are subsequently taken will not be cause for enforcement action provided that all procedures required by the applicable regulations have been followed.

(x) Vessel and operator permit holders must not intentionally deploy a purse seine net on or encircle dolphins intentionally:

(A) after a set in which the vessel's DML, as adjusted, has been reached or exceeded; or

(B) after the date and time provided in actual notification by letter, facsimile, radio, or electronic mail, or notice in the FEDERAL REGISTER by the Administrator, Southwest Region, based upon the best available evidence, that intentional sets on dolphins must cease because the total of the DMLs assigned to the U.S. fleet has been reached or exceeded, or is expected to be exceeded in the near future.

(d) *Purse seining by vessels without assigned DMLs.* In addition to the requirements of paragraph (b) of this section, a vessel permit used for a trip not involving an assigned DML and the operator's permit when used on such a vessel are subject to the following terms and conditions: a permit holder may take marine mammals provided that such taking is an accidental occurrence in the course of normal commercial fishing operations and the vessel does not intentionally deploy its net on, or to encircle, dolphins; marine mammals taken incidental to such commercial fishing operations must be immediately returned to the environment where captured without further injury, using release procedures such as hand rescue, or aborting the set at the earliest effective opportunity; and the use of one or more rafts and facemasks or viewboxes to aid in the rescue of dolphins is recommended.

(e) *Observers*—(1) The holder of a vessel permit must allow an observer duly authorized by the Administrator, Southwest Region, to accompany the vessel on all fishing trips in the ETP for the purpose of conducting research and observing operations, including collecting information that may be used in civil or criminal penalty proceedings, forfeiture actions, or permit sanctions. A vessel that fails to carry an observer in accordance with these requirements may not engage in fishing operations.

(2) Research and observation duties will be carried out in such a manner as to minimize interference with commercial fishing operations. Observers must be provided access to vessel personnel and to dolphin safety gear and equipment, electronic navigation equipment, radar displays, high powered binoculars, and electronic communication equipment. The navigator must provide true vessel locations by latitude and longitude, accurate to the nearest minute, upon request by the observer. Observers must be provided with adequate space on the bridge or pilothouse for clerical work, as well as space on deck adequate for carrying out observer duties. No vessel owner, master, operator, or crew member of a permitted vessel may impair, or in any

way interfere with, the research or observations being carried out. Masters must allow observers to use vessel communication equipment necessary to report information concerning the take of marine mammals and other observer collected data upon request of the observer.

(3) Any marine mammals killed during fishing operations that are accessible to crewmen and requested from the permit holder or master by the observer must be brought aboard the vessel and retained for biological processing, until released by the observer for return to the ocean. Whole marine mammals or marine mammal parts designated as biological specimens by the observer must be retained in cold storage aboard the vessel until retrieved by authorized personnel of NMFS or the IATTC when the vessel returns to port for unloading.

(4) It is unlawful for any person to forcibly assault, impede, intimidate, interfere with, or to influence or attempt to influence an observer, or to harass (including sexual harassment) an observer by conduct that has the purpose or effect of unreasonably interfering with the observer's work performance, or that creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(5)(i) All observers must be provided sleeping, toilet and eating accommodations at least equal to that provided to a full crew member. A mattress or futon on the floor or a cot is not acceptable in place of a regular bunk. Meal and other galley privileges must be the same for the observer as for other crew members.

(ii) Female observers on a vessel with an all-male crew must be accommodated either in a single-person cabin or, if reasonable privacy can be ensured by installing a curtain or other temporary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet

and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing common facilities must be established before the placement meeting and approved by NMFS or other approved observer program and must be followed during the entire trip.

(iii) In the event there are one or more female crew members, the female observer must be provided a bunk in a cabin shared solely with female crew members, and provided toilet and shower facilities shared solely with these female crew members.

(f) *Importation, purchase, shipment, sale and transport.* (1)(i) It is illegal to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if the fish have been caught with commercial fishing technology that results in the incidental kill or incidental serious injury of marine mammals in excess of that allowed under this part for U.S. fishermen, or as specified at paragraph (f)(6) of this section.

(ii) For purposes of this paragraph (f), and in applying the definition of an "intermediary nation," an import occurs when the fish or fish product is released from a nation's Customs' custody and enters into the commerce of the nation. For other purposes, "import" is defined in §216.3.

(2) *Imports requiring a Fisheries Certificate of Origin.* Shipments of tuna, tuna products, and certain other fish products identified by the U.S. Harmonized Tariff Schedule (HTS) numbers listed in paragraphs (f)(2)(i), (f)(2)(ii) and (f)(2)(iii) of this section may not be imported into the United States unless a properly completed Fisheries Certificate of Origin (FCO), NOAA Form 370, is filed with the U.S. Customs Service at the time of importation.

(i) *HTS numbers requiring a Fisheries Certificate of Origin, subject to yellowfin tuna embargo.* The following HTS numbers identify yellowfin tuna or yellowfin tuna products (other than fresh tuna) known to be imported into the United States. All shipments imported into the United States under these HTS numbers must be accompanied by an FCO. The scope of yellowfin tuna embargoes and procedures for attaining an affirmative finding are described

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under paragraphs (f)(6) and (f)(8) of this section, respectively.

(A) *Frozen*:

0303.42.0020 Yellowfin tuna, whole, frozen
 0303.42.0040 Yellowfin tuna, eviscerated, head on, frozen
 0303.42.0060 Yellowfin tuna, other, frozen

(B) *Airtight Containers*: (products containing Yellowfin).

1604.14.1010 Tuna, non-specific, in oil, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each
 1604.14.1090 Tuna, non-specific, in oil, in airtight containers, other
 1604.14.2291 Tuna, other than albacore, not in oil, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each, under quota
 1604.14.2299 Tuna, other than albacore, not in oil, in airtight containers, under quota
 1604.14.3091 Tuna, other than albacore, not in oil, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each, over quota
 1604.14.3099 Tuna, other than albacore, not in oil, in airtight containers, over quota

(C) *Loins*: (Yellowfin).

1604.14.4000 Tuna, not in airtight containers, not in oil, weighing with their contents over 6.8 kg
 1604.14.5000 Tuna, not in airtight containers, other

(D) *Other*: (products containing Yellowfin).

0304.20.2066 Other fish, fillets, skinned, in blocks weighing over 4.5 kg, frozen
 0304.20.6096 Other fish, fillets, frozen
 1604.20.2500 Balls and cakes, not in oil, in airtight containers, other
 1604.20.3000 Balls and cakes, other

(ii) *HTS numbers requiring a Fisheries Certificate of Origin, not subject to yellowfin tuna embargo.* The following HTS numbers identify tuna or tuna products, (other than fresh tuna or yellowfin tuna identified in paragraph (f)(2)(i)) of this section, known to be imported into the United States. All shipments imported into the United States under these HTS numbers must be accompanied by an FCO.

(A) *Frozen*:

0303.41.0000 Albacore or longfinned tunas, frozen
 0303.43.0000 Skipjack, frozen
 0303.44.0000 Bigeye, frozen
 0303.45.0000 Bluefin, frozen
 0303.46.0000 Bluefin Southern, frozen
 0303.49.0100 Other tuna, frozen

(B) *Airtight Containers*: (Other than Yellowfin).

1604.14.1010 Tuna, non-specific, in oil, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each

1604.14.1090 Tuna, non-specific, in oil, in airtight containers, other
 1604.14.2251 Tuna, albacore, not in oil, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each, under quota
 1604.14.2259 Tuna, albacore, not in oil, in airtight containers, other, under quota
 1604.14.2291 Tuna, other than albacore, not in oil, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each, under quota
 1604.14.2299 Tuna, other than albacore, not in oil, in airtight containers, other, under quota
 1604.14.3051 Tuna, albacore, not in oil, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each, over quota
 1604.14.3059 Tuna, albacore, not in oil, in airtight containers, other, over quota
 1604.14.3091 Tuna, other than albacore, not in oil, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each, over quota
 1604.14.3099 Tuna, other than albacore, not in oil, in airtight containers, other, over quota

(C) *Loins*: (Other than Yellowfin).

1604.14.4000 Tuna, not in airtight containers, in bulk or in immediate containers weighing with their contents over 6.8 kg, in oil
 1604.14.5000 Tuna, not in airtight containers, other

(D) *Other*: (only if the product contains tuna).

0304.20.2066 Other fish, fillets, skinned, in blocks weighing over 4.5 kg, frozen
 0304.20.6096 Other fish, fillets, frozen
 1604.20.2500 Balls and cakes, not in oil, in airtight containers, other
 1604.20.3000 Balls and cakes, other

(iii) *Exports from driftnet nations only: HTS numbers requiring a Fisheries Certificate of Origin and official certification.* The following HTS numbers identify categories of fish and shellfish, in addition to those identified in paragraphs (f)(2)(i) and (f)(2)(ii) of this section, known to have been harvested using a large-scale driftnet and imported into the United States. Shipments exported from a large-scale driftnet nation, as identified under paragraph (f)(7) of this section, and imported into the United States under any of the HTS numbers listed in paragraph (f)(2) of this section must be accompanied by an FCO and the official statement described in paragraph (f)(4)(xiii) of this section.

(A) *Frozen*:

0303.19.0012 Salmon, chinook, frozen
 0303.19.0022 Salmon, chum, frozen
 0303.19.0032 Salmon, pink, frozen

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0303.19.0052	Salmon, coho, frozen
0303.19.0062	Salmon, Pacific, non-specific, frozen
0303.21.0000	.....	Trout, frozen
0303.22.0000	.....	Salmon, Atlantic and Danube, frozen
0303.29.0000	.....	Salmonidae, other, frozen
0303.75.0010	.....	Dogfish, frozen
0303.75.0090	.....	Other sharks, frozen
0303.79.2041	.....	Swordfish steaks, frozen
0303.79.2049	.....	Swordfish, other, frozen
0303.79.4097	.....	Fish, other, frozen
0304.20.2066	.....	Fish, fillet, skinned, in blocks, frozen over 4.5 kg
0304.20.6008	.....	Salmonidae, salmon fillet, frozen
0304.20.6092	.....	Swordfish fillets, frozen
0304.20.6096	.....	Fish, fillet, other, frozen
0307.49.0010	.....	Squid, other, fillet, frozen
<i>(B) Canned:</i>		
1604.11.2020	.....	Salmon, pink, canned in oil, in airtight containers
1604.11.2030	.....	Salmon, sockeye, canned in oil, in airtight containers
1604.11.2090	.....	Salmon, other, canned in oil, in airtight containers
1604.11.4010	.....	Salmon, chum, canned, not in oil
1604.11.4020	.....	Salmon, pink, canned, not in oil
1604.11.4030	.....	Salmon, sockeye, canned, not in oil
1604.11.4040	.....	Salmon, other, canned, not in oil
1604.11.4050	.....	Salmon, other, canned, not in oil
1604.19.2000	.....	Fish, other, in airtight containers, not in oil
1604.19.3000	.....	Fish, other, in airtight containers, in oil
1605.90.6050	.....	Squid, loligo, prepared/preserved
1605.90.6055	.....	Squid, other, prepared/preserved
<i>(C) Other:</i>		
0305.30.6080	.....	Fish, other, fillet, dried/salted/brine
0305.49.4040	.....	Fish, other, smoked
0305.59.2000	.....	Shark fins, dried
0305.59.4000	.....	Fish, other, dried
0305.69.4000	.....	Salmon, other, salted (or in brine)
0305.69.5000	.....	Fish, other, salted (or in brine), in immediate containers, not over 6.8 kg
0305.69.6000	.....	Fish, other, salted (or in brine)
0307.49.0050	.....	Squid, other, frozen/dried/salted/brine
0307.49.0060	.....	Squid, other, & cuttle fish frozen/dried/salted/brine

(3) *Disposition of Fisheries Certificates of Origin.* The FCO described in paragraph (f)(4) of this section may be obtained from the Administrator, Southwest Region, or downloaded from the Internet at <http://swr.nmfs.noaa.gov/noaa370.htm>.

(i) A properly completed FCO and its attached certificates, if applicable, must accompany the required U.S. Customs entry documents that are filed at the time of import.

(ii) FCOs and associated certifications, if any, that accompany imported shipments of tuna must be submitted by the importer of record to the Tuna Tracking and Verification Program, Southwest Region, within 30 days of the shipment's entry into the commerce of the United States. FCOs submitted via mail should be sent to

Tuna Tracking and Verification Program, Southwest Region, P.O. Box 32469, Long Beach, CA 90832-2469. Copies of the documents may be submitted electronically using a secure file transfer protocol (FTP) site. Importers of record interested in submitting FCOs and associated certifications via FTP may contact a representative of the Tuna Tracking and Verification Program at the following email address: SWRTuna.Track@noaa.gov. The Tuna Tracking and Verification Program will facilitate secure transfer and protection of certifications by assigning a separate electronic folder for each importer. Access to the electronic folder will require a user identification and password. The Tuna Tracking and Verification Program will assign each importer a unique user identification and password. Safeguarding the confidentiality of the user identification and password is the responsibility of the importer to whom they are assigned. Copies of the documents may also be submitted via mail either on compact disc or as hard copies. All electronic submissions, whether via FTP or on compact disc, must be in either Adobe Portable Document Format (PDF) or as an image file embedded in a Microsoft Word, Microsoft PowerPoint, or Corel WordPerfect file.

(iii) FCOs that accompany imported shipments of tuna destined for further processing in the United States must be endorsed at each change in ownership and submitted to the Administrator, Southwest Region, by the last endorser when all required endorsements are completed.

(iv) Importers and exporters are required to retain their records, including FCOs, import or export documents, invoices, and bills of lading for 2 years, and such records must be made available within 30 days of a request by the Secretary or the Administrator, Southwest Region.

(4) *Contents of Fisheries Certificate of Origin.* An FCO, certified to be accurate by the exporter(s) of the accompanying shipment, must include the following information:

- (i) Customs entry identification;
- (ii) Date of entry;
- (iii) Exporter's full name and complete address;

(iv) Importer's or consignee's full name and complete address;

(v) Species description, product form, and HTS number;

(vi) Total net weight of the shipment in kilograms;

(vii) Ocean area where the fish were harvested (ETP, western Pacific Ocean, south Pacific Ocean, eastern Atlantic Ocean, western Atlantic Ocean, Caribbean Sea, Indian Ocean, or other);

(viii) Type of fishing gear used to harvest the fish (purse seine, longline, baitboat, large-scale driftnet, gillnet, trawl, pole and line, or other);

(ix) Country under whose laws the harvesting vessel operated based upon the flag of the vessel or, if a certified charter vessel, the country that accepted responsibility for the vessel's fishing operations;

(x) Dates on which the fishing trip began and ended;

(xi) The name of the harvesting vessel;

(xii) Dolphin-safe condition of the shipment, described by checking the appropriate statement on the form and attaching additional certifications if required;

(xiii) For shipments harvested by vessels of a nation known to use large-scale driftnets, as determined by the Secretary pursuant to paragraph (f)(7) of this section, the High Seas Driftnet Certification contained on the FCO must be dated and signed by a responsible government official of the harvesting nation, certifying that the fish or fish products were harvested by a method other than large-scale driftnet; and

(xiv) Each additional importer, exporter, or processor who takes custody of the shipment must sign and date the form to certify that the form and attached documentation accurately describes the shipment of fish that they accompany.

(5) *Dolphin-safe label.* Tuna or tuna products sold in or exported from the United States that include on the label the term "dolphin-safe" or any other term or symbol that claims or suggests the tuna were harvested in a manner not injurious to dolphins are subject to the requirements of subpart H of this part (§ 216.90 *et seq.*).

(6) *Scope of embargoes*—(i) *ETP yellowfin tuna embargo.* Yellowfin tuna or products of yellowfin tuna harvested using a purse seine in the ETP identified by an HTS number listed in paragraph (f)(2)(i) of this section may not be imported into the United States if such tuna or tuna products were:

(A) Harvested on or after March 3, 1999, the effective date of section 4 of the IDCPA, and harvested by, or exported from, a nation that the Assistant Administrator has determined has jurisdiction over purse seine vessels of greater than 400 st (362.8 mt) carrying capacity harvesting tuna in the ETP, unless the Assistant Administrator has made an affirmative finding required for importation for that nation under paragraph (f)(8) of this section;

(B) Exported from an intermediary nation, as defined in Section 3 of the MMPA, and a ban is currently in force prohibiting the importation from that nation under paragraph (f)(9) of this section; or

(C) Harvested before March 3, 1999, the effective date of Section 4 of the IDCPA, and would have been banned from importation under Section 101(a)(2) of the MMPA at the time of harvest.

(ii) *Driftnet embargo.* A shipment containing fish or fish products identified by an HTS number listed in paragraph (f)(2) of this section may not be imported into the United States if it is harvested by a large-scale driftnet, or if it is exported from or harvested on the high seas by any nation determined by the Assistant Administrator to be engaged in large-scale driftnet fishing, unless a government official of the large-scale driftnet nation completes, signs and dates the High Seas Driftnet section of the FCO certifying that the fish or fish products were harvested by a method other than large-scale driftnet.

(iii) *Pelly certification.* After 6 months of an embargo being in place against a nation under this section, the Secretary will certify that nation under section 8(a) of the Fishermen's Protective Act (22 U.S.C. 1978(a)). When such an embargo is lifted, the Secretary will terminate the certification under Section 8(d) of that Act (22 U.S.C. 1978(d)).

(iv) *Coordination.* The Assistant Administrator will promptly advise the Department of State and the Department of Homeland Security of embargo decisions, actions, and finding determinations.

(7) *Large-scale driftnet nation: determination.* Based upon the best information available, the Assistant Administrator will determine which nations have registered vessels that engage in fishing using large-scale driftnets. Such determinations will be published in the FEDERAL REGISTER. A responsible government official of any such nation may certify to the Assistant Administrator that none of the nation's vessels use large-scale driftnets. Upon receipt of the certification, the Assistant Administrator may find, and publish such finding in the FEDERAL REGISTER, that none of that nation's vessels engage in fishing with large-scale driftnets.

(8) *Affirmative finding procedure for nations harvesting yellowfin tuna using a purse seine in the ETP.* (i) The Assistant Administrator will determine, on an annual basis, whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation or by the IDCP and the IATTC, and will publish the finding in the FEDERAL REGISTER. A finding will remain valid for 1 year or for such other period as the Assistant Administrator may determine. An affirmative finding will be terminated if the Assistant Administrator determines that the requirements of this paragraph are no longer being met. Every 5 years, the government of the harvesting nation must submit such documentary evidence directly to the Assistant Administrator and request an affirmative finding. Documentary evidence must be submitted by the harvesting nation for the first affirmative finding application. The Assistant Administrator may require the submission of supporting documentation or other verification of statements made in connection with requests to allow importations. An affirmative finding applies to yellowfin tuna and yellowfin tuna products that were harvested by vessels of the nation after March 3, 1999. To make an affirmative finding,

the Assistant Administrator must find that:

(A) The harvesting nation participates in the IDCP and is either a member of the IATTC or has initiated (and within 6 months thereafter completed) all steps required of applicant nations, in accordance with article V, paragraph 3, of the Convention establishing the IATTC, to become a member of that organization;

(B) The nation is meeting its obligations under the IDCP and its obligations of membership in the IATTC, including all financial obligations;

(C)(I) The annual total dolphin mortality of the nation's purse seine fleet (including certified charter vessels operating under its jurisdiction) did not exceed the aggregated total of the mortality limits assigned by the IDCP for that nation's purse seine vessels for the year preceding the year in which the finding would start; or

(2)(i) Because of extraordinary circumstances beyond the control of the nation and the vessel captains, the total dolphin mortality of the nation's purse seine fleet (including certified charter vessels operating under its jurisdiction) exceeded the aggregated total of the mortality limits assigned by the IDCP for that nation's purse seine vessels; and

(ii) Immediately after the national authorities discovered the aggregate mortality of its fleet had been exceeded, the nation required all its vessels to cease fishing for tuna in association with dolphins for the remainder of the calendar year; and

(D)(I) In any years in which the parties agree to a global allocation system for per-stock per-year individual stock quotas, the nation responded to the notification from the IATTC that an individual stock quota had been reached by prohibiting any additional sets on the stock for which the quota had been reached;

(2) If a per-stock per-year quota is allocated to each nation, the annual per-stock per-year dolphin mortality of the nation's purse seine fleet (including certified charter vessels operating under its jurisdiction) did not exceed the aggregated total of the per-stock per-year limits assigned by the IDCP for that nation's purse seine vessels (if

any) for the year preceding the year in which the finding would start; or

(3)(i) Because of extraordinary circumstances beyond the control of the nation and the vessel captains, the per-stock per-year dolphin mortality of the nation's purse seine fleet (including certified charter vessels operating under its jurisdiction) exceeded the aggregated total of the per-stock per-year limits assigned by the IDCP for that nation's purse seine vessels; and

(ii) Immediately after the national authorities discovered the aggregate per-stock mortality limits of its fleet had been exceeded, the nation required all its vessels to cease fishing for tuna in association with the stocks whose limits had been exceeded, for the remainder of the calendar year.

(iii) *Documentary Evidence and Compliance with the IDCP*—(A) *Documentary Evidence*. The Assistant Administrator will make an affirmative finding under paragraph (f)(8)(i) of this section only if the government of the harvesting nation provides directly to the Assistant Administrator, or authorizes the IATTC to release to the Assistant Administrator, complete, accurate, and timely information that enables the Assistant Administrator to determine whether the harvesting nation is meeting the obligations of the IDCP, and whether ETP-harvested tuna imported from such nation comports with the tracking and verification regulations of subpart H of this part.

(B) *Revocation*. After considering the information provided under paragraph (f)(8)(ii)(A) of this section, each party's financial obligations to the IATTC, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations that diminish the effectiveness of the IDCP, the Assistant Administrator, in consultation with the Secretary of State, will revoke an affirmative finding issued to a nation that is not meeting the obligations of the IDCP.

(iv) A harvesting nation may apply for an affirmative finding at any time by providing to the Assistant Administrator the information and authorizations required in paragraphs (f)(8)(i) and (f)(8)(ii) of this section, allowing at least 60 days from the submission of

complete information to NMFS for processing.

(v) The Assistant Administrator will make or renew an affirmative finding for the period from April 1 through March 31 of the following year, or portion thereof, if the harvesting nation has provided all the information and authorizations required by paragraphs (f)(8)(i) and (f)(8)(ii) of this section, and has met the requirements of paragraphs (f)(8)(i) and (f)(8)(ii) of this section.

(vi) *Reconsideration of finding*. The Assistant Administrator may reconsider a finding upon a request from, and the submission of additional information by, the harvesting nation, if the information indicates that the nation has met the requirements under paragraphs (f)(8)(i) and (f)(8)(ii) of this section.

(9) *Intermediary nation*. Except as authorized under this paragraph, no yellowfin tuna or yellowfin tuna products harvested by purse seine in the ETP classified under one of the HTS numbers listed in paragraph (f)(2)(i) of this section may be imported into the United States from any intermediary nation.

(i) An "intermediary nation" is a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to Section 101(a)(2)(B) of the MMPA.

(ii) Shipments of yellowfin tuna that pass through any nation (e.g. on a 'through Bill of Lading') and are not entered for consumption in that nation are not considered to be imports to that nation and thus, would not cause that nation to be considered an intermediary nation under the MMPA.

(iii) The Assistant Administrator will publish in the FEDERAL REGISTER a notice announcing when NMFS has determined, based on the best information available, that a nation is an "intermediary nation." After the effective date of that notice, the import restrictions of this paragraph shall apply.

(iv) *Changing the status of intermediary nation determinations*. Imports

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from an intermediary nation of yellowfin tuna and yellowfin tuna products classified under any of the HTS numbers in paragraph (f)(2)(i) of this section may be imported into the United States only if the Assistant Administrator determines, and publishes a notice of such determination in the FEDERAL REGISTER, that the intermediary nation has provided certification and reasonable proof that it has not imported in the preceding 6 months yellowfin tuna or yellowfin tuna products that are subject to a ban on direct importation into the United States under Section 101(a)(2)(B) of the MMPA. At that time, the nation shall no longer be considered an “intermediary nation” and these import restrictions shall no longer apply.

(v) The Assistant Administrator will review decisions under this paragraph upon the request of an intermediary nation. Such requests must be accompanied by specific and detailed supporting information or documentation indicating that a review or reconsideration is warranted. For purposes of this paragraph, the term “certification and reasonable proof” means the submission to the Assistant Administrator by a responsible government official from the nation of a document reflecting the nation’s customs records for the preceding 6 months, together with a certification attesting that the document is accurate.

(10) *Fish refused entry.* If fish is denied entry under paragraph (f)(2) of this section, the Port Director of Customs shall refuse to release the fish for entry into the United States.

(11) *Disposition of fish refused entry into the United States.* Fish that is denied entry under paragraph (f)(2) of this section and that is not exported under Customs supervision within 90 days shall be disposed of under Customs laws and regulations at the importer’s expense. Provided, however, that any disposition shall not result in an introduction into the United States of fish caught in violation of the MMPA.

(12) *Market Prohibitions.* (i) It is unlawful for any person to sell, purchase, offer for sale, transport, or ship in the United States, any tuna or tuna prod-

ucts unless the tuna products are either:

(A) Dolphin-safe under subpart H of this part; or

(B) Harvested in compliance with the IDCP by vessels under the jurisdiction of a nation that is a member of the IATTC or has initiated, and within 6 months thereafter completes, all steps required by an applicant nation to become a member of the IATTC.

(ii) It is unlawful for any exporter, transshipper, importer, processor, or wholesaler/distributor to possess, sell, purchase, offer for sale, transport, or ship in the United States, any tuna or tuna products bearing a label or mark that refers to dolphins, porpoises, or marine mammals unless the label or mark complies with the requirements of 16 U.S.C. 1385(d).

(g) *Penalties.* Any person or vessel subject to the jurisdiction of the United States will be subject to the penalties provided for under the MMPA for the conduct of fishing operations in violation of these regulations. Penalties for violating these regulations may include, but are not limited to, civil monetary fines, permit suspension or revocation, and reductions in current and future DMLs. Recommended sanctions are identified in the IDCPA/DPCIA Tuna/Dolphin Civil Administrative Penalty Schedule. Procedures for the imposition of penalties under the MMPA are found at 15 CFR part 904.

[69 FR 55297, Sept. 13, 2004, as amended at 70 FR 19008, Apr. 12, 2005]

§216.25 Exempted marine mammals and marine mammal products.

(a) The provisions of the MMPA and these regulations shall not apply:

(1) To any marine mammal taken before December 21, 1972¹, or

(2) To any marine mammal product if the marine mammal portion of such product consists solely of a marine mammal taken before such date.

(b) The prohibitions contained in §216.12(c) (3) and (4) shall not apply to marine mammals or marine mammal

¹In the context of captive maintenance of marine mammals, the only marine mammals exempted under this section are those that were actually captured or otherwise in captivity before December 21, 1972.

products imported into the United States before the date on which a notice is published in the FEDERAL REGISTER with respect to the designation of the species or stock concerned as depleted or endangered.

(c) Section 216.12(b) shall not apply to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

[39 FR 1852, Jan. 15, 1974, as amended at 56 FR 43888, Sept. 5, 1991; 59 FR 50376, Oct. 3, 1994]

§ 216.26 Collection of certain marine mammal parts without prior authorization.

Notwithstanding any other provision of this subpart:

(a) Any bones, teeth or ivory of any dead marine mammal may be collected from a beach or from land within $\frac{1}{4}$ of a mile of the ocean. The term *ocean* includes bays and estuaries.

(b) Notwithstanding the provisions of subpart D, soft parts that are sloughed, excreted, or discharged naturally by a living marine mammal in the wild may be collected or imported for bona fide scientific research and enhancement, provided that collection does not involve the taking of a living marine mammal in the wild.

(c) Any marine mammal part collected under paragraph (a) of this section or any marine mammal part collected and imported under paragraph (b) of this section must be registered and identified, and may be transferred or otherwise possessed, in accordance with § 216.22(c). In registering a marine mammal part collected or imported under paragraph (b) of this section, the person who collected or imported the part must also state the scientific research or enhancement purpose for which the part was collected or imported.

(d) No person may purchase, sell or trade for commercial purposes any marine mammal part collected or imported under this section.

(e) The export of parts collected without prior authorization under paragraph (b) of this section may occur

if consistent with the provisions at § 216.37(d) under subpart D.

[39 FR 1852, Jan. 15, 1974, as amended at 59 FR 50376, Oct. 3, 1994; 61 FR 21933, May 10, 1996]

§ 216.27 Release, non-releasability, and disposition under special exception permits for rehabilitated marine mammals.

(a) *Release requirements.* (1) Any marine mammal held for rehabilitation must be released within six months of capture or import unless the attending veterinarian determines that:

(i) The marine mammal might adversely affect marine mammals in the wild;

(ii) Release of the marine mammal to the wild will not likely be successful given the physical condition and behavior of the marine mammal; or

(iii) More time is needed to determine whether the release of the marine mammal to the wild will likely be successful. Releasability must be reevaluated at intervals of no less than six months until 24 months from capture or import, at which time there will be a rebuttable presumption that release into the wild is not feasible.

(2) The custodian of the rehabilitated marine mammal shall provide written notification prior to any release into the wild.

(i) Notification shall be provided to:

(A) The NMFS Regional Director at least 15 days in advance of releasing any beached or stranded marine mammal, unless advance notice is waived in writing by the Regional Director; or

(B) The Office Director at least 30 days in advance of releasing any imported marine mammal.

(ii) Notification shall include the following:

(A) A description of the marine mammal, including its physical condition and estimated age;

(B) The date and location of release; and

(C) The method and duration of transport prior to release.

(3) The Regional Director, or the Office Director as appropriate, may:

(i) Require additional information prior to any release;

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(ii) Change the date or location of release, or the method or duration of transport prior to release;

(iii) Impose additional conditions to improve the likelihood of success or to monitor the success of the release; or

(iv) Require other disposition of the marine mammal.

(4) All marine mammals must be released near wild populations of the same species, and stock if known, unless a waiver is granted by the Regional Director or the Office Director.

(5) All marine mammals released must be tagged or marked in a manner acceptable to the Regional Director or the Office Director. The tag number or description of the marking must be reported to the Regional Director or Office Director following release.

(b) *Non-releasability and postponed determinations.* (1) The attending veterinarian shall provide the Regional Director or Office Director with a written report setting forth the basis of any determination under paragraphs (a)(1)(i) through (iii) of this section.

(2) Upon receipt of a report under paragraph (b)(1) of this section, the Regional Director or Office Director, in their sole discretion, may:

(i) Order the release of the marine mammal;

(ii) Order continued rehabilitation for an additional 6 months; or

(iii) Order other disposition as authorized.

(3) No later than 30 days after a marine mammal is determined unreleasable in accordance with paragraphs (a)(1)(i) through (iii) of this section, the person with authorized custody must:

(i) Request authorization to retain or transfer custody of the marine mammal in accordance with paragraph (c) of this section, or;

(ii) Humanely euthanize the marine mammal or arrange any other disposition of the marine mammal authorized by the Regional Director or Office Director.

(4) Notwithstanding any of the provisions of this section, the Office Director may require use of a rehabilitated marine mammal for any activity authorized under subpart D in lieu of animals taken from the wild.

(5) Any rehabilitated beached or stranded marine mammal placed on public display following a non-releasability determination under paragraph (a)(1) of this section and pending disposition under paragraph (c) of this section, or any marine mammal imported for medical treatment otherwise unavailable and placed on public display pending disposition after such medical treatment is concluded, must be held in captive maintenance consistent with all requirements for public display.

(c) *Disposition for a special exception purpose.* (1) Upon receipt of an authorization request made under paragraph (b)(3)(i) of this section, or release notification under (a)(2), the Office Director may authorize the retention or transfer of custody of the marine mammal for a special exception purpose authorized under subpart D.

(2) The Office Director will first consider requests from a person authorized to hold the marine mammal for rehabilitation. The Office Director may authorize such person to retain or transfer custody of the marine mammal for scientific research, enhancement, or public display purposes.

(3) The Office Director may authorize retention or transfer of custody of the marine mammal only if:

(i) Documentation has been submitted to the Office Director that the person retaining the subject animal or the person receiving custody of the subject animal by transfer, hereinafter referred to as the recipient, complies with public display requirements of 16 U.S.C. 1374(c)(2)(A) or, for purposes of scientific research and enhancement, holds an applicable permit, or an application for such a special exception permit under §216.33 or a request for a major amendment under §216.39 has been submitted to the Office Director and has been found complete;

(ii) The recipient agrees to hold the marine mammal in conformance with all applicable requirements and standards; and

(iii) The recipient acknowledges that the marine mammal is subject to seizure by the Office Director:

(A) If, at any time pending issuance of the major amendment or permit, the Office Director determines that seizure

is necessary in the interest of the health or welfare of the marine mammal;

(B) If the major amendment or permit is denied; or

(C) If the recipient is issued a notice of violation and assessment, or is subject to permit sanctions, in accordance with 15 CFR part 904.

(4) There shall be no remuneration associated with any transfer, provided that, the transferee may reimburse the transferor for any and all costs associated with the rehabilitation and transport of the marine mammal.

(5) Marine mammals undergoing rehabilitation or pending disposition under this section shall not be subject to public display, unless such activities are specifically authorized by the Regional Director or the Office Director, and conducted consistent with the requirements applicable to public display. Such marine mammals shall not be trained for performance or be included in any aspect of a program involving interaction with the public; and

(6) Marine mammals undergoing rehabilitation shall not be subject to intrusive research, unless such activities are specifically authorized by the Office Director in consultation with the Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals, and are conducted pursuant to a scientific research permit.

(d) Reporting. In addition to the report required under §216.22(b), the person authorized to hold marine mammals for rehabilitation must submit reports to the Regional Director or Office Director regarding release or other disposition. These reports must be provided in the form and frequency specified by the Regional Director or Office Director.

[61 FR 21933, May 10, 1996]

Subpart D—Special Exceptions

§ 216.30 [Reserved]

§ 216.31 Definitions.

For the purpose of this subpart, the definitions set forth in 50 CFR part 217 shall apply to all threatened and endangered marine mammals, unless a

more restrictive definition exists under the MMPA or part 216.

[61 FR 21935, May 10, 1996]

§ 216.32 Scope.

The regulations of this subpart apply to:

(a) All marine mammals and marine mammal parts taken or born in captivity after December 20, 1972; and

(b) All marine mammals and marine mammal parts that are listed as threatened or endangered under the ESA.

[61 FR 21935, May 10, 1996]

§ 216.33 Permit application submission, review, and decision procedures.

(a) *Application submission.* Persons seeking a special exemption permit under this subpart must submit an application to the Office Director. The application must be signed by the applicant, and provide in a properly formatted manner all information necessary to process the application. Written instructions addressing information requirements and formatting may be obtained from the Office Director upon request.

(b) *Applications to export living marine mammals.* For applicants seeking a special exception permit to export living marine mammals, the application must:

(1) Be submitted through the Convention on International Trade in Endangered Fauna and Flora management authority of the foreign government or, if different, the appropriate agency or agencies of the foreign government that exercises oversight over marine mammals.

(2) Include a certification from the foreign government that:

(i) The information set forth in the application is accurate;

(ii) The laws and regulations of the foreign government involved allow enforcement of the terms and conditions of the permit, and that the foreign government will enforce all terms and conditions; and

(iii) The foreign government involved will afford comity to any permit amendment, modification, suspension or revocation decision.

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(c) *Initial review.* (1) NMFS will notify the applicant of receipt of the application.

(2) During the initial review, the Office Director will determine:

(i) Whether the application is complete.

(ii) Whether the proposed activity is for purposes authorized under this subpart.

(iii) If the proposed activity is for enhancement purposes, whether the species or stock identified in the application is in need of enhancement for its survival or recovery and whether the proposed activity will likely succeed in its objectives.

(iv) Whether the activities proposed are to be conducted consistent with the permit restrictions and permit specific conditions as described in §216.35 and §216.36(a).

(v) Whether sufficient information is included regarding the environmental impact of the proposed activity to enable the Office Director:

(A) To make an initial determination under the National Environmental Policy Act (NEPA) as to whether the proposed activity is categorically excluded from preparation of further environmental documentation, or whether the preparation of an environmental assessment (EA) or environmental impact statement (EIS) is appropriate or necessary; and

(B) To prepare an EA or EIS if an initial determination is made by the Office Director that the activity proposed is not categorically excluded from such requirements.

(3) The Office Director may consult with the Marine Mammal Commission (Commission) and its Committee of Scientific Advisors on Marine Mammals (Committee) in making these initial, and any subsequent, determinations.

(4) Incomplete applications will be returned with explanation. If the applicant fails to resubmit a complete application or correct the identified deficiencies within 60 days, the application will be deemed withdrawn. Applications that propose activities inconsistent with this subpart will be returned with explanation, and will not be considered further.

(d) *Notice of receipt and application review.* (1) Upon receipt of a valid, complete application, and the preparation of any NEPA documentation that has been determined initially to be required, the Office Director will publish a notice of receipt in the FEDERAL REGISTER. The notice will:

(i) Summarize the application, including:

(A) The purpose of the request;

(B) The species and number of marine mammals;

(C) The type and manner of special exception activity proposed;

(D) The location(s) in which the marine mammals will be taken, from which they will be imported, or to which they will be exported; and

(E) The requested period of the permit.

(ii) List where the application is available for review.

(iii) Invite interested parties to submit written comments concerning the application within 30 days of the date of the notice.

(iv) Include a NEPA statement that an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an EA or EIS, that an EA was prepared resulting in a finding of no significant impact, or that a final EIS has been prepared and is available for review.

(2) The Office Director will forward a copy of the complete application to the Commission for comment. If no comments are received within 45 days (or such longer time as the Office Director may establish) the Office Director will consider the Commission to have no objection to issuing a permit.

(3) The Office Director may consult with any other person, institution, or agency concerning the application.

(4) Within 30 days of publication of the notice of receipt in the FEDERAL REGISTER, any interested party may submit written comments or may request a public hearing on the application.

(5) If the Office Director deems it advisable, the Office Director may hold a public hearing within 60 days of publication of the notice of receipt in the FEDERAL REGISTER. Notice of the date, time, and place of the public hearing

will be published in the FEDERAL REGISTER not less than 15 days in advance of the public hearing. Any interested person may appear in person or through representatives and may submit any relevant material, data, views, or comments. A summary record of the hearing will be kept.

(6) The Office Director may extend the period during which any interested party may submit written comments. Notice of the extension must be published in the FEDERAL REGISTER within 60 days of publication of the notice of receipt in the FEDERAL REGISTER.

(7) If, after publishing a notice of receipt, the Office Director determines on the basis of new information that an EA or EIS must be prepared, the Office Director must deny the permit unless an EA is prepared with a finding of no significant impact. If a permit is denied under these circumstances the application may be resubmitted with information sufficient to prepare an EA or EIS, and will be processed as a new application.

(e) *Issuance or denial procedures.* (1) Within 30 days of the close of the public hearing or, if no public hearing is held, within 30 days of the close of the public comment period, the Office Director will issue or deny a special exception permit.

(2) The decision to issue or deny a permit will be based upon:

(i) All relevant issuance criteria set forth at § 216.34;

(ii) All purpose-specific issuance criteria as appropriate set forth at § 216.41, § 216.42, and § 216.43;

(iii) All comments received or views solicited on the permit application; and

(iv) Any other information or data that the Office Director deems relevant.

(3) If the permit is issued, upon receipt, the holder must date and sign the permit, and return a copy of the original to the Office Director. The permit shall be effective upon the permit holder's signing of the permit. In signing the permit, the holder:

(i) Agrees to abide by all terms and conditions set forth in the permit, and all restrictions and relevant regulations under this subpart; and

(ii) Acknowledges that the authority to conduct certain activities specified in the permit is conditional and subject to authorization by the Office Director.

(4) Notice of the decision of the Office Director shall be published in the FEDERAL REGISTER within 10 days after the date of permit issuance or denial and shall indicate where copies of the permit, if issued, may be reviewed or obtained. If the permit issued involves marine mammals listed as endangered or threatened under the ESA, the notice shall include a finding by the Office Director that the permit:

(i) Was applied for in good faith;

(ii) If exercised, will not operate to the disadvantage of such endangered or threatened species; and

(iii) Is consistent with the purposes and policy set forth in section 2 of the ESA.

(5) If the permit is denied, the Office Director shall provide the applicant with an explanation for the denial.

(6) Under the MMPA, the Office Director may issue a permit for scientific research before the end of the public comment period if delaying issuance could result in injury to a species, stock, or individual, or in loss of unique research opportunities. The Office Director also may waive the 30-day comment period required under the ESA in an emergency situation where the health or life of an endangered or threatened marine mammal is threatened and no reasonable alternative is available. If a permit is issued under these circumstances, notice of such issuance before the end of the comment period shall be published in the FEDERAL REGISTER within 10 days of issuance.

(7) The applicant or any party opposed to a permit may seek judicial review of the terms and conditions of such permit or of a decision to deny such permit. Review may be obtained by filing a petition for review with the appropriate U.S. District Court as provided for by law.

[61 FR 21935, May 10, 1996]

§ 216.34 Issuance criteria.

(a) For the Office Director to issue any permit under this subpart, the applicant must demonstrate that:

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(1) The proposed activity is humane and does not present any unnecessary risks to the health and welfare of marine mammals;

(2) The proposed activity is consistent with all restrictions set forth at §216.35 and any purpose-specific restrictions as appropriate set forth at §216.41, §216.42, and §216.43;

(3) The proposed activity, if it involves endangered or threatened marine mammals, will be conducted consistent with the purposes and policies set forth in section 2 of the ESA;

(4) The proposed activity by itself or in combination with other activities, will not likely have a significant adverse impact on the species or stock;

(5) Whether the applicant's expertise, facilities, and resources are adequate to accomplish successfully the objectives and activities stated in the application;

(6) If a live animal will be held captive or transported, the applicant's qualifications, facilities, and resources are adequate for the proper care and maintenance of the marine mammal; and

(7) Any requested import or export will not likely result in the taking of marine mammals or marine mammal parts beyond those authorized by the permit.

(b) The opinions or views of scientists or other persons or organizations knowledgeable of the marine mammals that are the subject of the application or of other matters germane to the application will be considered.

[61 FR 21936, May 10, 1996]

§216.35 Permit restrictions.

The following restrictions shall apply to all permits issued under this subpart:

(a) The taking, importation, export, or other permitted activity involving marine mammals and marine mammal parts shall comply with the regulations of this subpart.

(b) The maximum period of any special exception permit issued, or any major amendment granted, is five years from the effective date of the permit or major amendment. In accordance with the provisions of §216.39, the period of a permit may be extended by a minor amendment up to 12 months

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beyond that established in the original permit.

(c) Except as provided for in §216.41(c)(1)(v), marine mammals or marine mammal parts imported under the authority of a permit must be taken or imported in a humane manner, and in compliance with the Acts and any applicable foreign law. Importation of marine mammals and marine mammal parts is subject to the provisions of 50 CFR part 14.

(d) The permit holder shall not take from the wild any marine mammal which at the time of taking is either unweaned or less than eight months old, or is a part of a mother-calf/pup pair, unless such take is specifically authorized in the conditions of the special exception permit. Additionally, the permit holder shall not import any marine mammal that is pregnant or lactating at the time of taking or import, or is unweaned or less than eight months old unless such import is specifically authorized in the conditions of the special exception permit.

(e) Captive marine mammals shall not be released into the wild unless specifically authorized by the Office Director under a scientific research or enhancement permit.

(f) The permit holder is responsible for all activities of any individual who is operating under the authority of the permit;

(g) Individuals conducting activities authorized under the permit must possess qualifications commensurate with their duties and responsibilities, or must be under the direct supervision of a person with such qualifications;

(h) Persons who require state or Federal licenses to conduct activities authorized under the permit must be duly licensed when undertaking such activities;

(i) Special exception permits are not transferable or assignable to any other person, and a permit holder may not require any direct or indirect compensation from another person in return for requesting authorization for such person to conduct the taking, import, or export activities authorized under the subject permit;

(j) The permit holder or designated agent shall possess a copy of the permit when engaged in a permitted activity, when the marine mammal is in transit incidental to such activity, and whenever marine mammals or marine mammal parts are in the possession of the permit holder or agent. A copy of the permit shall be affixed to any container, package, enclosure, or other means of containment, in which the marine mammals or marine mammal parts are placed for purposes of transit, supervision, or care. For marine mammals held captive and marine mammal parts in storage, a copy of the permit shall be kept on file in the holding or storage facility.

[61 FR 21936, May 10, 1996]

§ 216.36 Permit conditions.

(a) *Specific conditions.* (1) Permits issued under this subpart shall contain specific terms and conditions deemed appropriate by the Office Director, including, but not limited to:

(i) The number and species of marine mammals that are authorized to be taken, imported, exported, or otherwise affected;

(ii) The manner in which marine mammals may be taken according to type of take;

(iii) The location(s) in which the marine mammals may be taken, from which they may be imported, or to which they may be exported, as applicable, and, for endangered or threatened marine mammal species to be imported or exported, the port of entry or export;

(iv) The period during which the permit is valid.

(2) [Reserved]

(b) *Other conditions.* In addition to the specific conditions imposed pursuant to paragraph (a) of this section, the Office Director shall specify any other permit conditions deemed appropriate.

[61 FR 21937, May 10, 1996]

§ 216.37 Marine mammal parts.

With respect to marine mammal parts acquired by take or import authorized under a permit issued under this subpart:

(a) Marine mammal parts are transferrable if:

(1) The person transferring the part receives no remuneration of any kind for the marine mammal part;

(2) The person receiving the marine mammal part is:

(i) An employee of NMFS, the U.S. Fish and Wildlife Service, or any other governmental agency with conservation and management responsibilities, who receives the part in the course of their official duties;

(ii) A holder of a special exception permit which authorizes the take, import, or other activity involving the possession of a marine mammal part of the same species as the subject part; or

(iii) In the case of marine mammal parts from a species that is not depleted, endangered or threatened, a person who is authorized under section 112(c) of the MMPA and subpart C of this part to take or import marine mammals or marine mammal parts;

(iv) Any other person specifically authorized by the Regional Director, consistent with the requirements of paragraphs (a)(1) and (a)(3) through (6) of this section.

(3) The marine mammal part is transferred for the purpose of scientific research, maintenance in a properly curated, professionally accredited scientific collection, or education, provided that, for transfers for educational purposes, the recipient is a museum, educational institution or equivalent that will ensure that the part is available to the public as part of an educational program;

(4) A unique number assigned by the permit holder is marked on or affixed to the marine mammal part or container;

(5) The person receiving the marine mammal part agrees that, as a condition of receipt, subsequent transfers may only occur subject to the provisions of paragraph (a) of this section; and

(6) Within 30 days after the transfer, the person transferring the marine mammal part notifies the Regional Director of the transfer, including a description of the part, the person to whom the part was transferred, the purpose of the transfer, certification that the recipient has agreed to comply with the requirements of paragraph (a) of this section for subsequent transfers,

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and, if applicable, the recipient's permit number.

(b) Marine mammal parts may be loaned to another person for a purpose described in paragraph (a)(3) of this section and without the agreement and notification required under paragraphs (a)(5) and (6) of this section, if:

(1) A record of the loan is maintained; and

(2) The loan is for not more than one year. Loans for a period greater than 12 months, including loan extensions or renewals, require notification of the Regional Director under paragraph (a)(6).

(c) Unless other disposition is specified in the permit, a holder of a special exception permit may retain marine mammal parts not destroyed or otherwise disposed of during or after a scientific research or enhancement activity, if such marine mammal parts are:

(1) Maintained as part of a properly curated, professionally accredited collection; or

(2) Made available for purposes of scientific research or enhancement at the request of the Office Director.

(d) Marine mammal parts may be exported and subsequently reimported by a permit holder or subsequent authorized recipient, for the purpose of scientific research, maintenance in a properly curated, professionally accredited scientific collection, or education, provided that:

(1) The permit holder or other person receives no remuneration for the marine mammal part;

(2) A unique number assigned by the permit holder is marked on or affixed to the marine mammal specimen or container;

(3) The marine mammal part is exported or reimported in compliance with all applicable domestic and foreign laws;

(4) If exported or reimported for educational purposes, the recipient is a museum, educational institution, or equivalent that will ensure that the part is available to the public as part of an educational program; and

(5) Special reports are submitted within 30 days after both export and reimport as required by the Office Director under §216.38.

[61 FR 21937, May 10, 1996]

§216.38 Reporting.

All permit holders must submit annual, final, and special reports in accordance with the requirements established in the permit, and any reporting format established by the Office Director.

[61 FR 21937, May 10, 1996]

§216.39 Permit amendments.

(a) *General.* Special exception permits may be amended by the Office Director. Major and minor amendments may be made to permits in response to, or independent of, a request from the permit holder. Amendments must be consistent with the Acts and comply with the applicable provisions of this subpart.

(1) A *major amendment* means any change to the permit specific conditions under §216.36(a) regarding:

(i) The number and species of marine mammals that are authorized to be taken, imported, exported, or otherwise affected;

(ii) The manner in which these marine mammals may be taken, imported, exported, or otherwise affected, if the proposed change may result in an increased level of take or risk of adverse impact;

(iii) The location(s) in which the marine mammals may be taken, from which they may be imported, and to which they may be exported, as applicable; and

(iv) The duration of the permit, if the proposed extension would extend the duration of the permit more than 12 months beyond that established in the original permit.

(2) A *minor amendment* means any amendment that does not constitute a major amendment.

(b) *Amendment requests and proposals.*

(1) Requests by a permit holder for an amendment must be submitted in writing and include the following:

(i) The purpose and nature of the amendment;

(ii) Information, not previously submitted as part of the permit application or subsequent reports, necessary to determine whether the amendment satisfies all issuance criteria set forth at §216.34, and, as appropriate, §216.41, §216.42, and §216.43.

(iii) Any additional information required by the Office Director for purposes of reviewing the proposed amendment.

(2) If an amendment is proposed by the Office Director, the permit holder will be notified of the proposed amendment, together with an explanation.

(c) *Review of proposed amendments*—(1) *Major amendments.* The provisions of § 216.33(d) and (e) governing notice of receipt, review and decision shall apply to all proposed major amendments.

(2) *Minor amendments.* (i) After reviewing all appropriate information, the Office Director will provide the permit holder with written notice of the decision on a proposed or requested amendment, together with an explanation for the decision.

(ii) If the minor amendment extends the duration of the permit 12 months or less from that established in the original permit, notice of the minor amendment will be published in the FEDERAL REGISTER within 10 days from the date of the Office Director's decision.

(iii) A minor amendment will be effective upon a final decision by the Office Director.

[61 FR 21937, May 10, 1996]

§ 216.40 Penalties and permit sanctions.

(a) Any person who violates any provision of this subpart or permit issued thereunder is subject to civil and criminal penalties, permit sanctions and forfeiture as authorized under the Acts, and 15 CFR part 904.

(b) All special exception permits are subject to suspension, revocation, modification and denial in accordance with the provisions of subpart D of 15 CFR part 904.

[61 FR 21938, May 10, 1996]

§ 216.41 Permits for scientific research and enhancement.

In addition to the requirements under §§ 216.33 through 216.38, permits for scientific research and enhancement are governed by the following requirements:

(a) *Applicant.* (1) For each application submitted under this section, the applicant shall be the principal investigator

responsible for the overall research or enhancement activity. If the research or enhancement activity will involve a periodic change in the principal investigator or is otherwise controlled by and dependent upon another entity, the applicant may be the institution, governmental entity, or corporation responsible for supervision of the principal investigator.

(2) For any scientific research involving captive maintenance, the application must include supporting documentation from the person responsible for the facility or other temporary enclosure.

(b) *Issuance Criteria.* For the Office Director to issue any scientific research or enhancement permit, the applicant must demonstrate that:

(1) The proposed activity furthers a bona fide scientific or enhancement purpose;

(2) If the lethal taking of marine mammals is proposed:

(i) Non-lethal methods for conducting the research are not feasible; and

(ii) For depleted, endangered, or threatened species, the results will directly benefit that species or stock, or will fulfill a critically important research need.

(3) Any permanent removal of a marine mammal from the wild is consistent with any applicable quota established by the Office Director.

(4) The proposed research will not likely have significant adverse effects on any other component of the marine ecosystem of which the affected species or stock is a part.

(5) For species or stocks designated or proposed to be designated as depleted, or listed or proposed to be listed as endangered or threatened:

(i) The proposed research cannot be accomplished using a species or stock that is not designated or proposed to be designated as depleted, or listed or proposed to be listed as threatened or endangered;

(ii) The proposed research, by itself or in combination with other activities will not likely have a long-term direct or indirect adverse impact on the species or stock;

(iii) The proposed research will either:

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(A) Contribute to fulfilling a research need or objective identified in a species recovery or conservation plan, or if there is no conservation or recovery plan in place, a research need or objective identified by the Office Director in stock assessments established under section 117 of the MMPA;

(B) Contribute significantly to understanding the basic biology or ecology of the species or stock, or to identifying, evaluating, or resolving conservation problems for the species or stock; or

(C) Contribute significantly to fulfilling a critically important research need.

(6) For proposed enhancement activities:

(i) Only living marine mammals and marine mammal parts necessary for enhancement of the survival, recovery, or propagation of the affected species or stock may be taken, imported, exported, or otherwise affected under the authority of an enhancement permit. Marine mammal parts would include in this regard clinical specimens or other biological samples required for the conduct of breeding programs or the diagnosis or treatment of disease.

(ii) The activity will likely contribute significantly to maintaining or increasing distribution or abundance, enhancing the health or welfare of the species or stock, or ensuring the survival or recovery of the affected species or stock in the wild.

(iii) The activity is consistent with:

(A) An approved conservation plan developed under section 115(b) of the MMPA or recovery plan developed under section 4(f) of the ESA for the species or stock; or

(B) If there is no conservation or recovery plan, with the Office Director's evaluation of the actions required to enhance the survival or recovery of the species or stock in light of the factors that would be addressed in a conservation or recovery plan.

(iv) An enhancement permit may authorize the captive maintenance of a marine mammal from a threatened, endangered, or depleted species or stock only if the Office Director determines that:

(A) The proposed captive maintenance will likely contribute directly to

the survival or recovery of the species or stock by maintaining a viable gene pool, increasing productivity, providing necessary biological information, or establishing animal reserves required to support directly these objectives; and

(B) The expected benefit to the species or stock outweighs the expected benefits of alternatives that do not require removal of marine mammals from the wild.

(v) The Office Director may authorize the public display of marine mammals held under the authority of an enhancement permit only if:

(A) The public display is incidental to the authorized captive maintenance;

(B) The public display will not interfere with the attainment of the survival or recovery objectives;

(C) The marine mammals will be held consistent with all requirements and standards that are applicable to marine mammals held under the authority of the Acts and the Animal Welfare Act, unless the Office Director determines that an exception is necessary to implement an essential enhancement activity; and

(D) The marine mammals will be excluded from any interactive program and will not be trained for performance.

(vi) The Office Director may authorize non-intrusive scientific research to be conducted while a marine mammal is held under the authority of an enhancement permit, only if such scientific research:

(A) Is incidental to the permitted enhancement activities; and

(B) Will not interfere with the attainment of the survival or recovery objectives.

(c) *Restrictions.* (1) The following restrictions apply to all scientific research permits issued under this subpart:

(i) Research activities must be conducted in the manner authorized in the permit.

(ii) Research results shall be published or otherwise made available to the scientific community in a reasonable period of time.

(iii) Research activities must be conducted under the direct supervision of

the principal investigator or a co-investigator identified in the permit.

(iv) Personnel involved in research activities shall be reasonable in number and limited to:

(A) Individuals who perform a function directly supportive of and necessary to the permitted research activity; and

(B) Support personnel included for the purpose of training or as backup personnel for persons described in paragraph (c)(1)(iv)(A).

(v) Any marine mammal part imported under the authority of a scientific research permit must not have been obtained as the result of a lethal taking that would be inconsistent with the Acts, unless authorized by the Office Director.

(vi) Marine mammals held under a permit for scientific research shall not be placed on public display, included in an interactive program or activity, or trained for performance unless such activities:

(A) Are necessary to address scientific research objectives and have been specifically authorized by the Office Director under the scientific research permit; and

(B) Are conducted incidental to and do not in any way interfere with the permitted scientific research; and

(C) Are conducted in a manner consistent with provisions applicable to public display, unless exceptions are specifically authorized by the Office Director.

(vii) Any activity conducted incidental to the authorized scientific research activity must not involve any taking of marine mammals beyond what is necessary to conduct the research (i.e., educational and commercial photography).

(2) Any marine mammal or progeny held in captive maintenance under an enhancement permit shall be returned to its natural habitat as soon as feasible, consistent with the terms of the enhancement permit and the objectives of an approved conservation or recovery plan. In accordance with section 10(j) of the ESA, the Office Director may authorize the release of any population of an endangered or threatened species outside the current range of such species if the Office Director de-

termines that such release will further the conservation of such species.

[61 FR 21938, May 10, 1996]

§ 216.42 Photography. [Reserved]

§ 216.43 Public display. [Reserved]

§ 216.44 Applicability/transition.

(a) *General.* The regulations of this subpart are applicable to all persons, including persons holding permits or other authorizing documents issued before June 10, 1996, by NMFS for the take, import, export, or conduct of any otherwise prohibited activity involving a marine mammal or marine mammal part for special exception purposes.

(b) *Scientific research.* Any intrusive research as defined in § 216.3, initiated after June 10, 1996, must be authorized under a scientific research permit. Intrusive research authorized by the Office Director to be conducted on captive marine mammals held for public display purposes prior to June 10, 1996, must be authorized under a scientific research permit one year after June 10, 1996.

[61 FR 21939, May 10, 1996]

§ 216.45 General Authorization for Level B harassment for scientific research.

(a) *General Authorization.* (1) Persons are authorized under section 104(c)(3)(C) of the MMPA to take marine mammals in the wild by Level B harassment, as defined in § 216.3, for purposes of bona fide scientific research *Provided, That:*

(i) They submit a letter of intent in accordance with the requirements of paragraph (b) of this section, receive confirmation that the General Authorization applies in accordance with paragraph (c) of this section, and comply with the terms and conditions of paragraph (d) of this section; or

(ii) If such marine mammals are listed as endangered or threatened under the ESA, they have been issued a permit under Section 10(a)(1)(A) of the ESA and implementing regulations at 50 CFR parts 217–227, particularly at § 222.23 through § 222.28, to take marine mammals in the wild for the purpose of scientific research, the taking authorized under the permit involves such

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Level B harassment of marine mammals or marine mammal stocks, and they comply with the terms and conditions of that permit.

(2) Except as provided under paragraph (a)(1)(ii) of this section, no taking, including harassment, of marine mammals listed as threatened or endangered under the ESA is authorized under the General Authorization. Marine mammals listed as endangered or threatened under the ESA may be taken for purposes of scientific research only after issuance of a permit for such activities pursuant to the ESA.

(3) The following types of research activities will likely qualify for inclusion under the General Authorization: Photo-identification studies, behavioral observations, and vessel and aerial population surveys (except aerial surveys over pinniped rookeries at altitudes of less than 1,000 ft).

(b) *Letter of intent.* Except as provided under paragraph (a)(1)(ii) of this section, any person intending to take marine mammals in the wild by Level B harassment for purposes of bona fide scientific research under the General Authorization must submit, at least 60 days before commencement of such research, a letter of intent by certified return/receipt mail to the Chief, Permits Division, F/PR1, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910-3226.

(1) The letter of intent must be submitted by the principal investigator (who shall be deemed the applicant). For purposes of this section, the principal investigator is the individual who is responsible for the overall research project, or the institution, governmental entity, or corporation responsible for supervision of the principal investigator.

(2) The letter of intent must include the following information:

(i) The name, address, telephone number, qualifications and experience of the applicant and any co-investigator(s) to be conducting the proposed research, and a curriculum vitae for each, including a list of publications by each such investigator relevant to the objectives, methodology, or other aspects of the proposed research;

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(ii) The species or stocks of marine mammals (common and scientific names) that are the subject of the scientific research and any other species or stock of marine mammals that may be harassed during the conduct of the research;

(iii) The geographic location(s) in which the research is to be conducted, e.g., geographic name or lat./long.;

(iv) The period(s) of time over which the research will be conducted (up to five years), including the field season(s) for the research, if applicable;

(v) The purpose of the research, including a description of how the proposed research qualifies as bona fide research as defined in §216.3; and

(vi) The methods to be used to conduct the research.

(3) The letter of intent must be signed, dated, and certified by the applicant as follows:

In accordance with section 104(c)(3)(C) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and implementing regulations (50 CFR part 216), I hereby notify the National Marine Fisheries Service of my intent to conduct research involving only Level B harassment on marine mammals in the wild, and request confirmation that the General Authorization for Level B Harassment for Scientific Research applies to the proposed research as described herein. I certify that the information in this letter of intent is complete, true, and correct to the best of my knowledge and belief, and I understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or penalties under the MMPA and implementing regulations. I acknowledge and accept that authority to conduct scientific research on marine mammals in the wild under the General Authorization is a limited conditional authority restricted to Level B harassment only, and that any other take of marine mammals, including the conduct of any activity that has the potential to injure marine mammals (i.e., Level A harassment), may subject me to penalties under the MMPA and implementing regulations.

(c) *Confirmation that the General Authorization applies or notification of permit requirement.* (1) Not later than 30 days after receipt of a letter of intent as described in paragraph (b) of this section, the Chief, Permits Division, NMFS will issue a letter to the applicant either:

(i) Confirming that the General Authorization applies to the proposed scientific research as described in the letter of intent;

(ii) Notifying the applicant that all or part of the research described in the letter of intent is likely to result in a taking of a marine mammal in the wild involving other than Level B harassment and, as a result, cannot be conducted under the General Authorization, and that a scientific research permit is required to conduct all or part of the subject research; or

(iii) Notifying the applicant that the letter of intent fails to provide sufficient information and providing a description of the deficiencies, or notifying the applicant that the proposed research as described in the letter of intent is not bona fide research as defined in § 216.3.

(2) A copy of each letter of intent and letter confirming that the General Authorization applies or notifying the applicant that it does not apply will be forwarded to the Marine Mammal Commission.

(3) Periodically, NMFS will publish a summary document in the FEDERAL REGISTER notifying the public of letters of confirmation issued.

(d) *Terms and conditions.* Persons issued letters of confirmation in accordance with paragraph (c) of this section are responsible for complying with the following terms and conditions:

(1) Activities are limited to those conducted for the purposes, by the means, in the locations, and during the periods of time described in the letter of intent and acknowledged as authorized under the General Authorization in the confirmation letter sent pursuant to paragraph (c) of this section;

(2) Annual reports of activities conducted under the General Authorization must be submitted to the Chief, Permits Division (address listed in paragraph (b) of this section) within 90 days of completion of the last field season(s) during the calendar year or, if the research is not conducted during a defined field season, no later than 90 days after the anniversary date of the letter of confirmation issued under paragraph (c) of this section. Annual reports must include:

(i) A summary of research activities conducted;

(ii) Identification of the species and number of each species taken by Level B harassment;

(iii) An evaluation of the progress made in meeting the objectives of the research as described in the letter of intent; and

(iv) Any incidental scientific, educational, or commercial uses of photographs, videotape, and film obtained as a result of or incidental to the research and if so, names of all photographers.

(3) Authorization to conduct research under the General Authorization is for the period(s) of time identified in the letter of intent or for a period of 5 years from the date of the letter of confirmation issued under paragraph (c) of this section, whichever is less, unless extended by the Director or modified, suspended, or revoked in accordance with paragraph (e) of this section;

(4) Activities conducted under the General Authorization may only be conducted under the on-site supervision of the principal investigator or co-investigator(s) named in the letter of intent. All personnel involved in the conduct of activities under the General Authorization must perform a function directly supportive of and necessary for the research being conducted, or be one of a reasonable number of support personnel included for the purpose of training or as back-up personnel;

(5) The principal investigator must notify the appropriate Regional Director, NMFS, (Regional Director) in writing at least 2 weeks before initiation of on-site activities. The Regional Director shall consider this information in efforts to coordinate field research activities to minimize adverse impacts on marine mammals in the wild. The principal investigator must cooperate with coordination efforts by the Regional Director in this regard;

(6) If research activities result in a taking which exceeds Level B harassment, the applicant shall:

(i) Report the taking within 12 hours to the Director, Office of Protected Resources, or his designee as set forth in the letter authorizing research; and

(ii) Temporarily discontinue for 72 hours all field research activities that

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resulted in the taking. During this time period, the applicant shall consult with NMFS as to the circumstances surrounding the taking and any precautions necessary to prevent future taking, and may agree to amend the research protocol, as deemed necessary by NMFS.

(7) NMFS may review scientific research conducted pursuant to the General Authorization. If requested by NMFS, the applicant must cooperate with any such review and shall:

(i) Allow any employee of NOAA or any other person designated by the Director, Office of Protected Resources to observe research activities; and

(ii) Provide any documents or other information relating to the scientific research;

(8) Any photographs, videotape, or film obtained during the conduct of research under the General Authorization must be identified by a statement that refers to the General Authorization or ESA permit number, and includes the file number provided by NMFS in the confirmation letter, the name of the photographer, and the date the image was taken. This statement must accompany the image(s) in all subsequent uses or sales. The annual report must note incidental scientific, educational, or commercial uses of the images, and if there are any such uses, the names of all photographers; and

(9) Persons conducting scientific research under authority of the General Authorization may not transfer or assign any authority granted thereunder to any other person.

(e) *Suspension, revocation, or modification.* (1) NMFS may suspend, revoke, or modify the authority to conduct scientific research under the General Authorization if:

(i) The letter of intent included false information or statements of a material nature;

(ii) The research does not constitute bona fide scientific research;

(iii) Research activities result in takings of marine mammals other than by Level B harassment;

(iv) Research activities differ from those described in the letter of intent submitted by the applicant and letter of confirmation issued by NMFS; or

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(v) The applicant violates any term or condition set forth in this section.

(2) Any suspension, revocation, or modification is subject to the requirements of 15 CFR part 904.

[59 FR 50376, Oct. 3, 1994]

§216.46 U.S. citizens on foreign flag vessels operating under the International Dolphin Conservation Program.

The MMPA's provisions do not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations in the ETP which are outside the U.S. exclusive economic zone (as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)), while employed on a fishing vessel of a harvesting nation that is participating in, and in compliance with, the IDCP.

[65 FR 56, Jan. 3, 2000]

§216.47 Access to marine mammal tissue, analyses, and data.

(a) *Applications for the National Marine Mammal Tissue Bank samples (NMMTB).* (1) A principal investigator, contributor or holder of a scientific research permit issued in accordance with the provisions of this subpart may apply for access to a tissue specimen sample in the NMMTB. Applicants for tissue specimen samples from the NMMTB must submit a signed written request with attached study plan to the Marine Mammal Health and Stranding Response Program (MMHSRP) Program Manager, Office of Protected Resources, NMFS. The written request must include:

(i) A clear and concise statement of the proposed use of the banked tissue specimen. The applicant must demonstrate that the proposed use of the banked tissue is consistent with the goals of the NMMTB and the MMHSRP.

(A) The goals of the MMHSRP are to facilitate the collection and dissemination of reference data on marine mammals and health trends of marine mammal populations in the wild; to correlate the health of marine mammals and marine mammal populations in the wild with available data on physical, chemical, and biological environmental

parameters; and to coordinate effective responses to unusual mortality events.

(B) The goal of the NMMTB is to maintain quality controlled marine mammal tissues that will permit retrospective analyses to determine environmental trends of contaminants and other analytes of interest and that will provide the highest quality samples for analyses using new and innovative techniques.

(ii) A copy of the applicant's scientific research permit. The applicant must demonstrate that the proposed use of the banked tissue is authorized by the permit;

(iii) Name of principal investigator, official title, and affiliated research or academic organization;

(iv) Specific tissue sample and quantity desired;

(v) Research facility where analyses will be conducted. The applicant must demonstrate that the research facility will follow the Analytical Quality Assurance (AQA) program, which was designed to ensure the accuracy, precision, level of detection, and inter-compatibility of data resulting from chemical analyses of marine mammal tissues. The AQA consists of annual interlaboratory comparisons and the development of control materials and standard reference materials for marine mammal tissues;

(vi) Verification that funding is available to conduct the research;

(vii) Estimated date for completion of research, and schedule/date of subsequent reports;

(viii) Agreement that all research findings based on use of the banked tissue will be reported to the NMMTB, MMHSRP Program Manager and the contributor; and the sequences of tissue specimen samples that are used/released for genetic analyses (DNA sequencing) will be archived in the National Center for biotechnology Information's GenBank. Sequence accessions in GenBank should document the source, citing a NIST field number that identifies the animal; and

(ix) Agreement that credit and acknowledgment will be given to U.S. Fish and Wildlife Service (USFWS), US Geologic Service (USGS), National Institute of Standards and Technology (NIST), the Minerals Management

Service (MMS), NMFS, the NMMTB, and the collector for use of banked tissues.

(2) The applicant shall insert the following acknowledgment in all publications, abstracts, or presentations based on research using the banked tissue:

The specimens used in this study were collected by [the contributor] and provided by the National Marine Mammal Tissue Bank, which is maintained in the National Biomonitoring Specimen Bank at NIST and which is operated under the direction of NMFS with the collaboration of MMS, USGS, USFWS, and NIST through the Marine Mammal Health and Stranding Response Program [and the Alaska Marine Mammal Tissue Archival Project if the samples are from Alaska].

(3) Upon submission of a complete application, the MMHSRP Program Manager will send the request and attached study plan to the following entities which will function as the review committee:

(i) Appropriate Federal agency (NMFS or USFWS) marine mammal management office for that particular species; and

(ii) Representatives of the NMMTB Collaborating Agencies (NMFS, USFS, USGS Biological Resources Division, and NIST) If no member of the review committee is an expert in the field that is related to the proposed research activity, any member may request an outside review of the proposal, which may be outside of NMFS or USFWS but within the Federal Government.

(4) The MMHSRP Program Manager will send the request and attached study plan to any contributor(s) of the tissue specimen sample. The contributor(s) of the sample may submit comments on the proposed research activity to the Director, Office of Protected Resources within 30 days of the date that the request was sent to the contributor(s).

(5) The USFWS Representative of the NMMTB Collaborating Agencies will be chair of review committees for requests involving species managed by the DOI. The MMHSRP Program Manager will be chair of all other review committees.

(6) Each committee chair will provide recommendations on the request and an evaluation of the study plan to the

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Director, Office of Protected Resources, NMFS.

(7) The Director, Office of Protected Resources, NMFS, will make the final decision on release of the samples based on the advice provided by the review committee, comments received from any contributor(s) of the sample within the time provided in paragraph (a)(4) of this section, and determination that the proposed use of the banked tissue specimen is consistent with the goals of the MMHSRP and the NMMTB. The Director will send a written decision to the applicant and send copies to all review committee members. If the samples are released, the response will indicate whether the samples have been homogenized and, if not, the homogenization schedule.

(8) The applicant will bear all shipping and homogenization costs related to use of any specimens from the NMMTB.

(9) The applicant will dispose of the tissue specimen sample consistent with the provisions of the applicant's scientific research permit after the research is completed, unless the requester submits another request and receives approval pursuant to this section. The request must be submitted within three months after the original project has been completed.

(b) [Reserved]

[69 FR 41979, July 13, 2004]

§§ 216.48–216.49 [Reserved]

Subpart E—Designated Ports

§ 216.50 Importation at designated ports.

(a) Any marine mammal or marine mammal product which is subject to the jurisdiction of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce and is intended for importation into the United States shall be subject to the provisions of 50 CFR part 14.

(b) For the information of importers, designated ports of entry for the United States are:

- New York, N.Y.
- Miami, Fla.
- Chicago, Ill.
- San Francisco, Calif.
- Los Angeles, Calif.
- New Orleans, La.
- Seattle, Wash.
- Honolulu, Hi.

(c) Additionally, marine mammals or marine mammal products which are entered into Alaska, Hawaii, Puerto Rico, Guam, American Samoa or the Virgin Islands and which are not to be forwarded or transhipped within the United States may be imported through the following ports:

- Alaska—Juneau, Anchorage, Fairbanks
- Hawaii—Honolulu
- Puerto Rico—San Juan
- Guam—Honolulu, Hi.
- American Samoa—Honolulu, Hi.
- Virgin Islands—San Juan, P.R.

(d) Importers are advised to see 50 CFR part 14 for importation requirements and information.

[39 FR 1852, Jan. 15, 1974. Redesignated at 59 FR 50376, Oct. 3, 1994]

Subpart F—Pribilof Islands, Taking for Subsistence Purposes

§ 216.71 Allowable take of fur seals.

Pribilovians may take fur seals on the Pribilof Islands if such taking is

- (a) For subsistence uses, and
- (b) Not accomplished in a wasteful manner.

[51 FR 24840, July 9, 1986. Redesignated at 61 FR 11750, Mar. 22, 1996]

§ 216.72 Restrictions on taking.

(a) The harvests of seals on St. Paul and St. George Islands shall be treated independently for the purposes of this section. Any suspension, termination, or extension of the harvest is applicable only to the island for which it is issued.

(b) By April 1 of every third year, beginning April 1994, the Assistant Administrator will publish in the FEDERAL REGISTER a summary of the preceding 3 years of harvesting and a discussion of the number of seals expected to be taken annually over the next 3

years to satisfy the subsistence requirements of each island. This discussion will include an assessment of factors and conditions on St. Paul and St. George Islands that influence the need by Pribilof Aleuts to take seals for subsistence uses and an assessment of any changes to those conditions indicating that the number of seals that may be taken for subsistence each year should be made higher or lower. Following a 30-day public comment period, a final notification of the expected annual harvest levels for the next 3 years will be published.

(c)(1) No fur seal may be taken on the Pribilof Islands before June 23 of each year.

(2) No fur seal may be taken except by experienced sealers using the traditional harvesting methods, including stunning followed immediately by exsanguination. The harvesting method shall include organized drives of subadult males to killing fields unless it is determined by the NMFS representatives, in consultation with the Pribilovians conducting the harvest, that alternative methods will not result in increased disturbance to the rookery or the increased accidental take of female seals.

(3) Any taking of adult fur seals or pups, or the intentional taking of subadult female fur seals is prohibited.

(4) Only subadult male fur seals 124.5 centimeters or less in length may be taken.

(5) Seals with tags and/or entangling debris may only be taken if so directed by NMFS scientists.

(d) The scheduling of the harvest is at the discretion of the Pribilovians, but must be such as to minimize stress to the harvested seals. The Pribilovians must give adequate advance notice of their harvest schedules to the NMFS representatives to allow for necessary monitoring activities. Scheduling must be consistent with the following restrictions:

(1) *St. Paul Island*—Seals may only be harvested from the following haulout areas: Zapadni, English Bay, Northeast Point, Polovina, Lukanin, Kitovi, and Reef. No haulout area may be harvested more than once per week.

(2) *St. George Island*—Seals may only be harvested from the following

haulout areas: Northeast and Zapadni. Neither haulout area may be harvested more than twice per week.

(e)(1) The Assistant Administrator is required to suspend the take provided for in §215.31 when:

(i) He determines, after reasonable notice by NMFS representatives to the Pribilovians on the island, that the subsistence needs of the Pribilovians on the island have been satisfied;

or

(ii) He determines that the harvest is otherwise being conducted in a wasteful manner; or

(iii) The lower end of the range of the estimated subsistence level provided in the notice issued under paragraph (b) of this section is reached.

(2) A suspension based on a determination under paragraph (e)(1)(ii) of this section may be lifted by the Assistant Administrator if he finds that the conditions which led to the determination that the harvest was being conducted in a wasteful manner have been remedied.

(3) A suspension issued in accordance with paragraph (e)(1)(iii) of this section may not exceed 48 hours in duration and shall be followed immediately by a review of the harvest data to determine if a finding under paragraph (e)(1)(i) of this section is warranted. If a the harvest is not suspended under paragraph (e)(1)(i) of this section, the Assistant Administrator must provide a revised estimate of the number of seals required to satisfy the Pribilovians' subsistence needs.

(f) The Assistant Administrator shall terminate the take provided for in §215.31 on August 8 of each year or when it is determined under paragraph (e)(1)(i) of this section that the subsistence needs of the Pribilovians on the island have been satisfied, whichever occurs first.

[51 FR 24840, July 9, 1986, as amended at 57 FR 33902, July 31, 1992; 59 FR 35474, July 12, 1994. Redesignated at 61 FR 11750, Mar. 22, 1996]

§ 216.73 Disposition of fur seal parts.

Except for transfers to other Alaskan Natives for barter or sharing for personal or family consumption, no part of a fur seal taken for subsistence uses may be sold or otherwise transferred to

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any person unless it is a nonedible by-product which:

(a) Has been transformed into an article of handicraft, or

(b) Is being sent by an Alaskan Native directly, or through a registered agent, to a tannery registered under 50 CFR 216.23(c) for the purpose of processing, and will be returned directly to the Alaskan Native for conversion into an article of handicraft, or

(c) Is being sold or transferred to an Alaskan Native, or to an agent registered under 50 CFR 216.23(c) for resale or transfer to an Alaskan Native, who will convert the seal part into a handicraft.

[51 FR 24840, July 9, 1986. Redesignated at 61 FR 11750, Mar. 22, 1996]

§216.74 Cooperation with Federal officials.

Pribilovians who engage in the harvest of seals are required to cooperate with scientists engaged in fur seal research on the Pribilof Islands who may need assistance in recording tag or other data and collecting tissue or other fur seal samples for research purposes. In addition, Pribilovians who take fur seals for subsistence uses must, consistent with 5 CFR 1320.7(k)(3), cooperate with the NMFS representatives on the Pribilof Islands who are responsible for compiling the following information on a daily basis:

(a) The number of seals taken each day in the subsistence harvest,

(b) The extent of the utilization of fur seals taken, and

(c) Other information determined by the Assistant Administrator to be necessary for determining the subsistence needs of the Pribilovians or for making determinations under §215.32(e).

[51 FR 24840, July 9, 1986. Redesignated at 61 FR 11750, Mar. 22, 1996]

Subpart G—Pribilof Islands Administration

§216.81 Visits to fur seal rookeries.

From June 1 to October 15 of each year, no person, except those authorized by a representative of the National Marine Fisheries Service, or accompanied by an authorized employee of the National Marine Fisheries Service,

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shall approach any fur seal rookery or hauling grounds nor pass beyond any posted sign forbidding passage.

[41 FR 49488, Nov. 9, 1976. Redesignated at 61 FR 11750, Mar. 22, 1996]

§216.82 Dogs prohibited.

In order to prevent molestation of fur seal herds, the landing of any dogs at Pribilof Islands is prohibited.

[41 FR 49488, Nov. 9, 1976. Redesignated at 61 FR 11750, Mar. 22, 1996]

§216.83 Importation of birds or mammals.

No mammals or birds, except household cats, canaries and parakeets, shall be imported to the Pribilof Islands without the permission of an authorized representative of the National Marine Fisheries Service.

[41 FR 49488, Nov. 9, 1976. Redesignated at 61 FR 11750, Mar. 22, 1996]

§216.84 [Reserved]

§216.85 Walrus and Otter Islands.

By Executive Order 1044, dated February 27, 1909, Walrus and Otter Islands were set aside as bird reservations. All persons are prohibited to land on these islands except those authorized by the appropriate representative of the National Marine Fisheries Service.

[41 FR 49488, Nov. 9, 1976. Redesignated at 61 FR 11750, Mar. 22, 1996]

§216.86 Local regulations.

Local regulations will be published from time to time and will be brought to the attention of local residents and persons assigned to duty on the Islands by posting in public places and brought to the attention of tourists by personal notice.

[41 FR 49488, Nov. 9, 1976. Redesignated at 61 FR 11750, Mar. 22, 1996]

§216.87 Wildlife research.

(a) Wildlife research, other than research on North Pacific fur seals, including specimen collection, may be permitted on the Pribilof Islands subject to the following conditions:

(1) Any person or agency, seeking to conduct such research shall first obtain any Federal or State of Alaska permit

required for the type of research involved.

(2) Any person seeking to conduct such research shall obtain prior approval of the Director, Pribilof Islands Program, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, 1700 Westlake Avenue North, Seattle, WA 98109, by filing with the Director an application which shall include:

(i) Copies of the required Federal and State of Alaska permits; and

(ii) A resume of the intended research program.

(3) All approved research shall be subject to all regulations and administrative procedures in effect on the Pribilof Islands, and such research shall not commence until approval from the Director is received.

(4) Any approved research program shall be subject to such terms and conditions as the Director, Pribilof Islands Program deems appropriate.

(5) Permission to utilize the Pribilof Islands to conduct an approved research program may be revoked by the Director, Pribilof Islands Program at any time for noncompliance with any terms and conditions, or for violations of any regulation or administrative procedure in effect on the Pribilof Islands.

[43 FR 5521, Feb. 9, 1978. Redesignated at 61 FR 11750, Mar. 22, 1996]

Subpart H—Dolphin Safe Tuna Labeling

AUTHORITY: 16 U.S.C. 1385.

§ 216.90 Purposes.

This subpart governs the requirements for using the official mark described in § 216.95 or an alternative mark that refers to dolphins, porpoises, or marine mammals, to label tuna or tuna products offered for sale in or exported from the United States using the term dolphin-safe or suggesting the tuna were harvested in a manner not injurious to dolphins.

[69 FR 55307, Sept. 13, 2004]

§ 216.91 Dolphin-safe labeling standards.

(a) It is a violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) for any producer, importer, exporter, distributor, or seller of any tuna products that are exported from or offered for sale in the United States to include on the label of those products the term “dolphin-safe” or any other term or symbol that claims or suggests that the tuna contained in the products were harvested using a method of fishing that is not harmful to dolphins if the products contain tuna harvested:

(1) *ETP large purse seine vessel*. In the ETP by a purse seine vessel of greater than 400 st (362.8 mt) carrying capacity unless:

(i) the documentation requirements for dolphin-safe tuna under § 216.92 and 216.93 are met;

(ii) No dolphins were killed or seriously injured during the sets in which the tuna were caught; and

(iii) None of the tuna were caught on a trip using a purse seine net intentionally deployed on or to encircle dolphins, provided that this paragraph (a)(1)(iii) will not apply if the Assistant Administrator publishes a notification in the FEDERAL REGISTER announcing a finding under 16 U.S.C. 1385(g)(2) that the intentional deployment of purse seine nets on or encirclement of dolphins is not having a significant adverse impact on any depleted stock.

(2) *Non-ETP purse seine vessel*. Outside the ETP by a vessel using a purse seine net:

(i) In a fishery in which the Assistant Administrator has determined that a regular and significant association occurs between dolphins and tuna (similar to the association between dolphins and tuna in the ETP), unless such products are accompanied by a written statement, executed by the Captain of the vessel and an observer participating in a national or international program acceptable to the Assistant Administrator, certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular trip on which the tuna were caught and no dolphins were killed or seriously injured in the sets in which the tuna were caught; or

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(ii) In any other fishery unless the products are accompanied by a written statement executed by the Captain of the vessel certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular trip on which the tuna was harvested;

(3) *Driftnet*. By a vessel engaged in large-scale driftnet fishing; or

(4) *Other fisheries*. By a vessel in a fishery other than one described in paragraphs (a)(1) through (a)(3) of this section that is identified by the Assistant Administrator as having a regular and significant mortality or serious injury of dolphins, unless such product is accompanied by a written statement, executed by the Captain of the vessel and an observer participating in a national or international program acceptable to the Assistant Administrator, that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught, provided that the Assistant Administrator determines that such an observer statement is necessary.

(b) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to willingly and knowingly use a label referred to in this section in a campaign or effort to mislead or deceive consumers about the level of protection afforded dolphins under the IDCP.

(c) A tuna product that is labeled with the official mark, described in §216.95, may not be labeled with any other label or mark that refers to dolphins, porpoises, or marine mammals.

[69 FR 55307, Sept. 13, 2004]

§216.92 Dolphin-safe requirements for tuna harvested in the ETP by large purse seine vessels.

(a) *U.S. vessels*. Tuna products that contain tuna harvested by U.S. flag purse seine vessels of greater than 400 st (362.8 mt) carrying capacity in the ETP may be labeled dolphin-safe only if the following requirements are met:

(1) Tuna Tracking Forms containing a complete record of all the fishing activities on the trip, certified by the vessel Captain and the observer, are submitted to the Administrator, Southwest Region, at the end of the

fishing trip during which the tuna was harvested;

(2) The tuna is delivered for processing to a U.S. tuna processor in a plant located in one of the 50 states, Puerto Rico, or American Samoa that is in compliance with the tuna tracking and verification requirements of §216.93; and

(3) The tuna or tuna products meet the dolphin-safe labeling standards under §216.91.

(b) *Imported tuna*. (1) Yellowfin tuna or tuna products harvested in the ETP by vessels of greater than 400 st (362.8 mt) carrying capacity and presented for import into the United States may be labeled dolphin-safe only if the yellowfin tuna was harvested by a U.S. vessel fishing in compliance with the requirements of the IDCP and applicable U.S. law, or by a vessel belonging to a nation that has obtained an affirmative finding under §216.24(f)(8).

(2) Tuna or tuna products, other than yellowfin tuna, harvested in the ETP by purse seine vessels of greater than 400 st (362.8 mt) carrying capacity and presented for import into the United States may be labeled dolphin-safe only if:

(i) The tuna was harvested by a U.S. vessel fishing in compliance with the requirements of the IDCP and applicable U.S. law, or by a vessel belonging to a nation that is a Party to the Agreement on the IDCP or has applied to become a Party and is adhering to all the requirements of the Agreement on the IDCP Tuna Tracking and Verification Plan;

(ii) The tuna or tuna products are accompanied by a properly completed FCO; and

(iii) The tuna or tuna products are accompanied by valid documentation signed by a representative of the appropriate IDCP member nation, containing the harvesting vessel names and tuna tracking form numbers represented in the shipment, and certifying that:

(A) There was an IDCP approved observer on board the vessel(s) during the entire trip(s); and

(B) The tuna contained in the shipment were caught according to the dolphin-safe labeling standards of §216.91.

[69 FR 55307, Sept. 13, 2004]

§ 216.93 Tracking and verification program.

The Administrator, Southwest Region, has established a national tracking and verification program to accurately document the dolphin-safe condition of tuna, under the standards set forth in §§ 216.91 and 216.92. The tracking program includes procedures and reports for use when importing tuna into the United States and during U.S. purse seine fishing, processing, and marketing in the United States and abroad. Verification of tracking system operations is attained through the establishment of audit and document review requirements. The tracking program is consistent with the international tuna tracking and verification program adopted by the Parties to the Agreement on the IDCP.

(a) *Tuna tracking forms.* Whenever a U.S. flag tuna purse seine vessel of greater than 400 st (362.8 mt) carrying capacity fishes in the ETP, IDCP approved Tuna Tracking Forms (TTFs), bearing a unique number assigned to that trip, are used by the observer to record every set made during that trip. One TTF is used to record dolphin-safe sets and a second TTF is used to record non-dolphin-safe sets. The information entered on the TTFs following each set includes the date, well number, weights by species composition, estimated tons loaded, and additional notes, if any. The observer and the vessel engineer initial the entry as soon as possible following each set, and the vessel captain and observer review and sign both TTFs at the end of the fishing trip certifying that the information on the forms is accurate. TTFs are confidential official documents of the IDCP, consistent with Article XVIII of the Agreement on the IDCP, and the Agreement on the IDCP Rules of Confidentiality.

(b) *Dolphin-Safe Certification.* Upon request, the Office of the Administrator, Southwest Region, will provide written certification that tuna harvested by U.S. purse seine vessels greater than 400 st (362.8 mt) carrying capacity is dolphin-safe, but only if NMFS' review of the TTFs for the subject trip shows that the tuna for which the certification is requested is dolphin-safe

under the requirements of the Agreement on the IDCP and U.S. law.

(c) *Tracking fishing operations.* (1) During ETP fishing trips by purse seine vessels greater than 400 st (362.8 mt) carrying capacity, tuna caught in sets designated as dolphin-safe by the vessel observer must be stored separately from tuna caught in non-dolphin-safe sets from the time of capture through unloading. Vessel personnel will decide into which wells tuna will be loaded. The observer will initially designate whether each set is dolphin-safe or not, based on his/her observation of the set. The observer will initially identify a vessel fish well as dolphin-safe if the first tuna loaded into the well during a trip was captured in a set in which no dolphin died or was seriously injured. The observer will initially identify a vessel fish well as non-dolphin-safe if the first tuna loaded into the well during a trip was captured in a set in which a dolphin died or was seriously injured. Any tuna loaded into a well previously designated non-dolphin-safe is considered non-dolphin-safe tuna. The observer will change the designation of a dolphin-safe well to non-dolphin-safe if any tuna are loaded into the well that were captured in a set in which a dolphin died or was seriously injured.

(2) The captain, managing owner, or vessel agent of a U.S. purse seine vessel greater than 400 st (362.8 mt) returning to port from a trip, any part of which included fishing in the ETP, must provide at least 48 hours notice of the vessel's intended place of landing, arrival time, and schedule of unloading to the Administrator, Southwest Region.

(3) If the trip terminates when the vessel enters port to unload part or all of its catch, new TTFs will be assigned to the new trip, and any information concerning tuna retained on the vessel will be recorded as the first entry on the TTFs for the new trip. If the trip is not terminated following a partial unloading, the vessel will retain the original TTFs and submit a copy of those TTFs to the Administrator, Southwest Region, within 5 working days. In either case, the species and amount unloaded will be noted on the respective originals.

(4) Tuna offloaded to trucks, storage facilities, or carrier vessels must be loaded or stored in such a way as to maintain and safeguard the identification of the dolphin-safe or non-dolphin-safe designation of the tuna as it left the fishing vessel.

(5)(i) When ETP caught tuna is offloaded from a U.S. purse seine vessel greater than 400 st (362.8 mt) directly to a U.S. canner within the 50 states, Puerto Rico, or American Samoa, or in any port and subsequently loaded aboard a carrier vessel for transport to a U.S. processing location, a NMFS representative may meet the U.S. purse seine vessel to receive the TTFs from the vessel observer and to monitor the handling of dolphin-safe and non-dolphin-safe tuna.

(ii) If a NMFS representative does not meet the vessel in port at the time of arrival, the captain of the vessel or the vessel's managing office must assure delivery of the TTFs to the Administrator, Southwest Region, from that location within 5 working days of the end of the trip. Alternatively, if the captain approves and notifies the Administrator, Southwest Region, the captain may entrust the observer to deliver the signed TTFs to the local office of the IATTC.

(iii) When ETP caught tuna is offloaded from a U.S. purse seine vessel greater than 400 st (362.8 mt) carrying capacity directly to a processing facility located outside the jurisdiction of the United States in a country that is a Party to the Agreement on the IDCP, the national authority in whose area of jurisdiction the tuna is to be processed will assume the responsibility for tracking and verification of the tuna offloaded. If a representative of the national authority meets the vessel in port, that representative will receive the original TTFs and assume the responsibility for providing copies of the TTFs to the Administrator, Southwest Region. If a representative of the national authority does not meet the vessel, the fishing vessel captain or the vessel's managing office must assure delivery of the completed TTFs in accordance with paragraphs (ii) and (v) of this section.

(iv) When ETP caught tuna is offloaded from a U.S. purse seine vessel

greater than 400 st (362.8 mt) carrying capacity in a country that is not a Party to the Agreement on the IDCP, the tuna becomes the tracking and verification responsibility of the national authority of the processing facility when it is unloaded from the fishing vessel. The captain or the vessel's managing office must assure delivery of the completed TTFs in accordance with paragraphs (ii) and (v) of this section.

(v) TTFs are confidential documents of the IDCP. Vessel captains and managing offices may not provide copies of TTFs to any representatives of private organizations or non-member states.

(d) *Tracking cannery operations.* (1) Whenever a U.S. tuna canning company in the 50 states, Puerto Rico, or American Samoa receives a domestic or imported shipment of ETP caught tuna for processing, a NMFS representative may be present to monitor delivery and verify that dolphin-safe and non-dolphin-safe tuna are clearly identified and remain segregated. Such inspections may be scheduled or unscheduled, and canners must allow the NMFS representative access to all areas and records.

(2) Tuna processors must submit a report to the Administrator, Southwest Region, of all tuna received at their processing facilities in each calendar month whether or not the tuna is actually canned or stored during that month. Monthly cannery receipt reports must be submitted electronically or by mail before the last day of the month following the month being reported. Monthly reports must contain the following information:

(i) *Domestic receipts:* dolphin-safe status, species, condition (round, loin, dressed, gilled and gutted, other), weight in short tons to the fourth decimal, ocean area of capture (ETP, western Pacific, Indian, eastern and western Atlantic, other), catcher vessel, trip dates, carrier name, unloading dates, and location of unloading.

(ii) *Import receipts:* In addition to the information required in paragraph (d)(2)(i) of this section, a copy of the FCO for each imported receipt must be provided.

(3) Tuna processors must report on a monthly basis the amounts of ETP-

caught tuna that were immediately utilized upon receipt or removed from cold storage. This report may be submitted in conjunction with the monthly report required in paragraph (d)(2) of this section. This report must contain:

(i) The date of removal from cold storage or disposition;

(ii) Storage container or lot identifier number(s) and dolphin-safe or non-dolphin-safe designation of each container or lot; and

(iii) Details of the disposition of fish (for example, canning, sale, rejection, etc.).

(4) During canning activities, non-dolphin-safe tuna may not be mixed in any manner or at any time during processing with any dolphin-safe tuna or tuna products and may not share the same storage containers, cookers, conveyers, tables, or other canning and labeling machinery.

(e) *Tracking imports.* All tuna products, except fresh tuna, that are imported into the United States must be accompanied by a properly certified FCO as required by § 216.24(f)(2). For tuna tracking purposes, copies of FCOs and associated certifications must be submitted by the importer of record to the Administrator, Southwest Region, within 30 days of the shipment's entry into the commerce of the United States as required by § 216.24(f)(3)(ii).

(f) *Verification requirements—(1) Record maintenance.* Any exporter, transshipper, importer, processor, or wholesaler/distributor of any tuna or tuna products must maintain records related to that tuna for at least 2 years. These records include, but are not limited to: FCOs and required certifications, any reports required in paragraphs (a), (b) and (d) of this section, invoices, other import documents, and trip reports.

(2) *Record submission.* Within 30 days of receiving a shipment of tuna or tuna products, any exporter, transshipper, importer, processor, wholesaler/dis-

tributor of tuna or tuna products must submit to the Administrator, Southwest Region, all corresponding FCOs and required certifications for those tuna or tuna products.

(3) *Audits and spot checks.* Upon request of the Administrator, Southwest Region, any exporter, transshipper, importer, processor, or wholesaler/distributor of tuna or tuna products must provide the Administrator, Southwest Region, timely access to all pertinent records and facilities to allow for audits and spot-checks on caught, landed, stored, and processed tuna.

(g) *Confidentiality of proprietary information.* Information submitted to the Assistant Administrator under this section will be treated as confidential in accordance with NOAA Administrative Order 216-100 "Protection of Confidential Fisheries Statistics."

[69 FR 55307, Sept. 13, 2004, as amended at 70 FR 19009, Apr. 12, 2005]

§ 216.94 False statements or endorsements.

Any person who knowingly and willfully makes a false statement or false endorsement required by § 216.92 is liable for a civil penalty not to exceed \$100,000, that may be assessed in an action brought in any appropriate District Court of the United States on behalf of the Secretary.

[61 FR 27794, June 3, 1996. Redesignated at 69 FR 55307, Sept. 13, 2004]

§ 216.95 Official mark for "Dolphin-safe" tuna products.

(a) This is the "official mark" (see figure 1) designated by the United States Department of Commerce that may be used to label tuna products that meet the "dolphin-safe" standards set forth in the Dolphin Protection Consumer Information Act, 16 U.S.C. 1385, and implementing regulations at §§ 216.91 through 216.94:

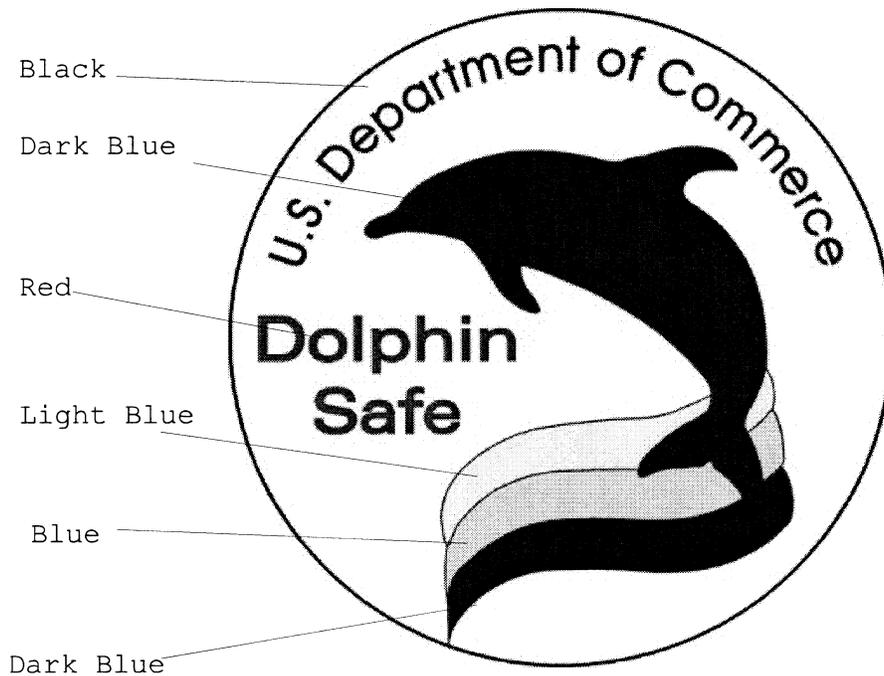


Figure 1.

(b) *Location and size of the official mark.* The official mark on labels must allow the consumer to identify the official mark and be similar in design and scale to figure 1. A full color version of the official mark is available at <http://swr.ucsd.edu/dsl.htm>.

[65 FR 34410, May 30, 2000. Redesignated at 69 FR 55307, Sept. 13, 2004]

Subpart I—General Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities

SOURCE: 61 FR 15887, Apr. 10, 1996, unless otherwise noted.

§216.101 Purpose.

The regulations in this subpart implement section 101(a)(5) (A) through

(D) of the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1371(a)(5), which provides a mechanism for allowing, 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 geographic region.

§216.102 Scope.

The taking of small numbers of marine mammals under section 101(a)(5) (A) through (D) of the Marine Mammal Protection Act may be allowed only if the National Marine Fisheries Service:

(a) Finds, based on the best scientific evidence available, that the total taking by the specified activity during the specified time period will have a negligible impact on species or stock of

marine mammal(s) and will not have an unmitigable adverse impact on the availability of those species or stocks of marine mammals intended for subsistence uses;

(b) Prescribes either regulations under §216.106, or requirements and conditions contained within an incidental harassment authorization issued under §216.107, setting forth permissible methods of taking and other means of effecting the least practicable adverse impact on the species or stock of marine mammal and its habitat and on the availability of the species or stock of marine mammal for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance; and

(c) Prescribes either regulations or requirements and conditions contained within an incidental harassment authorization, as appropriate, pertaining to the monitoring and reporting of such taking. The specific regulations governing certain specified activities are contained in subsequent subparts of this part.

§ 216.103 Definitions.

In addition to definitions contained in the MMPA, and in §216.3, and unless the context otherwise requires, in subsequent subparts to this part:

Arctic waters means the marine and estuarine waters north of 60° N. lat.

Citizens of the United States and *U.S. citizens* mean individual U.S. citizens or any corporation or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13). U.S. Federal, state and local government agencies shall also constitute citizens of the United States for purposes of this part.

Incidental harassment, incidental taking and *incidental, but not intentional, taking* all mean an accidental taking. This does not mean that the taking is unexpected, but rather it includes those takings that are infrequent, unavoidable or accidental. (A complete definition of “take” is contained in §216.3).

Negligible impact is 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.

Small numbers means a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock.

Specified activity means any activity, other than commercial fishing, that takes place in a specified geographical region and potentially involves the taking of small numbers of marine mammals.

Specified geographical region means an area within which a specified activity is conducted and that has certain biogeographic characteristics.

Unmitigable adverse impact means 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.

§ 216.104 Submission of requests.

(a) In order for the National Marine Fisheries Service to consider authorizing the taking by U.S. citizens of small numbers of marine mammals incidental to a specified activity (other than commercial fishing), or to make a finding that an incidental take is unlikely to occur, a written request must be submitted to the Assistant Administrator. All requests must include the following information for their activity:

(1) A detailed description of the specific activity or class of activities that can be expected to result in incidental taking of marine mammals;

(2) The date(s) and duration of such activity and the specific geographical region where it will occur;

(3) The species and numbers of marine mammals likely to be found within the activity area;

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(4) A description of the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks of marine mammals likely to be affected by such activities;

(5) The type of incidental taking authorization that is being requested (i.e., takes by harassment only; takes by harassment, injury and/or death) and the method of incidental taking;

(6) By age, sex, and reproductive condition (if possible), the number of marine mammals (by species) that may be taken by each type of taking identified in paragraph (a)(5) of this section, and the number of times such takings by each type of taking are likely to occur;

(7) The anticipated impact of the activity upon the species or stock of marine mammal;

(8) The anticipated impact of the activity on the availability of the species or stocks of marine mammals for subsistence uses;

(9) The anticipated impact of the activity upon the habitat of the marine mammal populations, and the likelihood of restoration of the affected habitat;

(10) The anticipated impact of the loss or modification of the habitat on the marine mammal populations involved;

(11) The availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat, and on their availability for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance;

(12) Where the proposed activity would take place in or near a traditional Arctic subsistence hunting area and/or may affect the availability of a species or stock of marine mammal for Arctic subsistence uses, the applicant must submit either a plan of cooperation or information that identifies what measures have been taken and/or will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses. A plan must include the following:

(i) A statement that the applicant has notified and provided the affected

subsistence community with a draft plan of cooperation;

(ii) A schedule for meeting with the affected subsistence communities to discuss proposed activities and to resolve potential conflicts regarding any aspects of either the operation or the plan of cooperation;

(iii) A description of what measures the applicant has taken and/or will take to ensure that proposed activities will not interfere with subsistence whaling or sealing; and

(iv) What plans the applicant has to continue to meet with the affected communities, both prior to and while conducting the activity, to resolve conflicts and to notify the communities of any changes in the operation;

(13) The suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species, the level of taking or impacts on populations of marine mammals that are expected to be present while conducting activities and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity. Monitoring plans should include a description of the survey techniques that would be used to determine the movement and activity of marine mammals near the activity site(s) including migration and other habitat uses, such as feeding. Guidelines for developing a site-specific monitoring plan may be obtained by writing to the Director, Office of Protected Resources; and

(14) Suggested means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing such incidental taking and evaluating its effects.

(b)(1) The Assistant Administrator shall determine the adequacy and completeness of a request and, if determined to be adequate and complete, will begin the public review process by publishing in the FEDERAL REGISTER either:

(i) A proposed incidental harassment authorization; or

(ii) A notice of receipt of a request for the implementation or reimplementation of regulations governing the incidental taking.

(2) Through notice in the FEDERAL REGISTER, newspapers of general circulation, and appropriate electronic media in the coastal areas that may be affected by such activity, NMFS will invite information, suggestions, and comments for a period not to exceed 30 days from the date of publication in the FEDERAL REGISTER. All information and suggestions will be considered by the National Marine Fisheries Service in developing, if appropriate, the most effective regulations governing the issuance of letters of authorization or conditions governing the issuance of an incidental harassment authorization.

(3) Applications that are determined to be incomplete or inappropriate for the type of taking requested, will be returned to the applicant with an explanation of why the application is being returned.

(c) The Assistant Administrator shall evaluate each request to determine, based upon the best available scientific evidence, whether the taking by the specified activity within the specified geographic region will have a negligible impact on the species or stock and, where appropriate, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses. If the Assistant Administrator finds that the mitigating measures would render the impact of the specified activity negligible when it would not otherwise satisfy that requirement, the Assistant Administrator may make a finding of negligible impact subject to such mitigating measures being successfully implemented. Any preliminary findings of "negligible impact" and "no unmitigable adverse impact" shall be proposed for public comment along with either the proposed incidental harassment authorization or the proposed regulations for the specific activity.

(d) If, subsequent to the public review period, the Assistant Administrator finds that the taking by the specified activity would have more than a negligible impact on the species or stock of marine mammal or would have an unmitigable adverse impact on the availability of such species or stock for subsistence uses, the Assistant Admin-

istrator shall publish in the FEDERAL REGISTER the negative finding along with the basis for denying the request.

§ 216.105 Specific regulations.

(a) For all petitions for regulations under this paragraph, applicants must provide the information requested in § 216.104(a) on their activity as a whole, which includes, but is not necessarily limited to, an assessment of total impacts by all persons conducting the activity.

(b) For allowed activities that may result in incidental takings of small numbers of marine mammals by harassment, serious injury, death or a combination thereof, specific regulations shall be established for each allowed activity that set forth:

(1) Permissible methods of taking;

(2) Means of effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting, including requirements for the independent peer-review of proposed monitoring plans where the proposed activity may affect the availability of a species or stock for taking for subsistence uses.

(c) Regulations will be established based on the best available information. As new information is developed, through monitoring, reporting, or research, the regulations may be modified, in whole or in part, after notice and opportunity for public review.

§ 216.106 Letter of Authorization.

(a) A Letter of Authorization, which may be issued only to U.S. citizens, is required to conduct activities pursuant to any regulations established under § 216.105. Requests for Letters of Authorization shall be submitted to the Director, Office of Protected Resources. The information to be submitted in a request for an authorization will be specified in the appropriate subpart to this part or may be obtained by writing to the above named person.

(b) Issuance of a Letter of Authorization will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations.

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(c) Letters of Authorization will specify the period of validity and any additional terms and conditions appropriate for the specific request.

(d) Notice of issuance of all Letters of Authorization will be published in the FEDERAL REGISTER within 30 days of issuance.

(e) Letters of Authorization shall be withdrawn or suspended, either on an individual or class basis, as appropriate, if, after notice and opportunity for public comment, the Assistant Administrator determines that:

(1) The regulations prescribed are not being substantially complied with; or

(2) The taking allowed is having, or may have, more than a negligible impact on the species or stock or, where relevant, an unmitigable adverse impact on the availability of the species or stock for subsistence uses.

(f) The requirement for notice and opportunity for public review in §216.106(e) shall not apply if the Assistant Administrator determines that an emergency exists that poses a significant risk to the wellbeing of the species or stocks of marine mammals concerned.

(g) A violation of any of the terms and conditions of a Letter of Authorization or of the specific regulations shall subject the Holder and/or any individual who is operating under the authority of the Holder's Letter of Authorization to penalties provided in the MMPA.

§216.107 Incidental harassment authorization for Arctic waters.

(a) Except for activities that have the potential to result in serious injury or mortality, which must be authorized under §216.105, incidental harassment authorizations may be issued, following a 30-day public review period, to allowed activities that may result in only the incidental harassment of a small number of marine mammals. Each such incidental harassment authorization shall set forth:

(1) Permissible methods of taking by harassment;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting, including requirements for the independent peer-review of proposed monitoring plans where the proposed activity may affect the availability of a species or stock for taking for subsistence uses.

(b) Issuance of an incidental harassment authorization will be based on a determination that the number of marine mammals taken by harassment will be small, will have a negligible impact on the species or stock of marine mammal(s), and will not have an unmitigable adverse impact on the availability of species or stocks for taking for subsistence uses.

(c) An incidental harassment authorization will be either issued or denied within 45 days after the close of the public review period.

(d) Notice of issuance or denial of an incidental harassment authorization will be published in the FEDERAL REGISTER within 30 days of issuance of a determination.

(e) Incidental harassment authorizations will be valid for a period of time not to exceed 1 year but may be renewed for additional periods of time not to exceed 1 year for each reauthorization.

(f) An incidental harassment authorization shall be modified, withdrawn, or suspended if, after notice and opportunity for public comment, the Assistant Administrator determines that:

(1) The conditions and requirements prescribed in the authorization are not being substantially complied with; or

(2) The authorized taking, either individually or in combination with other authorizations, is having, or may have, more than a negligible impact on the species or stock or, where relevant, an unmitigable adverse impact on the availability of the species or stock for subsistence uses.

(g) The requirement for notice and opportunity for public review in paragraph (f) of this section shall not apply if the Assistant Administrator determines that an emergency exists that poses a significant risk to the wellbeing of the species or stocks of marine mammals concerned.

(h) A violation of any of the terms and conditions of an incidental harassment authorization shall subject the

holder and/or any individual who is operating under the authority of the holder's incidental harassment authorization to penalties provided in the MMPA.

§ 216.108 Requirements for monitoring and reporting under incidental harassment authorizations for Arctic waters.

(a) Holders of an incidental harassment authorization in Arctic waters and their employees, agents, and designees must cooperate with the National Marine Fisheries Service and other designated Federal, state, or local agencies to monitor the impacts of their activity on marine mammals. Unless stated otherwise within an incidental harassment authorization, the holder of an incidental harassment authorization effective in Arctic waters must notify the Alaska Regional Director, National Marine Fisheries Service, of any activities that may involve a take by incidental harassment in Arctic waters at least 14 calendar days prior to commencement of the activity.

(b) Holders of incidental harassment authorizations effective in Arctic waters may be required by their authorization to designate at least one qualified biological observer or another appropriately experienced individual to observe and record the effects of activities on marine mammals. The number of observers required for monitoring the impact of the activity on marine mammals will be specified in the incidental harassment authorization. If observers are required as a condition of the authorization, the observer(s) must be approved in advance by the National Marine Fisheries Service.

(c) The monitoring program must, if appropriate, document the effects (including acoustical) on marine mammals and document or estimate the actual level of take. The requirements for monitoring plans, as specified in the incidental harassment authorization, may vary depending on the activity, the location, and the time.

(d) Where the proposed activity may affect the availability of a species or stock of marine mammal for taking for subsistence purposes, proposed monitoring plans or other research pro-

posals must be independently peer-reviewed prior to issuance of an incidental harassment authorization under this subpart. In order to complete the peer-review process within the time frames mandated by the MMPA for an incidental harassment authorization, a proposed monitoring plan submitted under this paragraph must be submitted to the Assistant Administrator no later than the date of submission of the application for an incidental harassment authorization. Upon receipt of a complete monitoring plan, and at its discretion, the National Marine Fisheries Service will either submit the plan to members of a peer review panel for review or within 60 days of receipt of the proposed monitoring plan, schedule a workshop to review the plan. The applicant must submit a final monitoring plan to the Assistant Administrator prior to the issuance of an incidental harassment authorization.

(e) At its discretion, the National Marine Fisheries Service may place an observer aboard vessels, platforms, aircraft, etc., to monitor the impact of activities on marine mammals.

(f)(1) As specified in the incidental harassment authorization, the holder of an incidental harassment authorization for Arctic waters must submit reports to the Assistant Administrator within 90 days of completion of any individual components of the activity (if any), within 90 days of completion of the activity, but no later than 120 days prior to expiration of the incidental harassment authorization, whichever is earlier. This report must include the following information:

(i) Dates and type(s) of activity;

(ii) Dates and location(s) of any activities related to monitoring the effects on marine mammals; and

(iii) Results of the monitoring activities, including an estimate of the actual level and type of take, species name and numbers of each species observed, direction of movement of species, and any observed changes or modifications in behavior.

(2) Monitoring reports will be reviewed by the Assistant Administrator and, if determined to be incomplete or inaccurate, will be returned to the

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holder of the authorization with an explanation of why the report is being returned. If the authorization holder disagrees with the findings of the Assistant Administrator, the holder may request an independent peer review of the report. Failure to submit a complete and accurate report may result in a delay in processing future authorization requests.

(g) Results of any behavioral, feeding, or population studies, that are conducted supplemental to the monitoring program, should be made available to the National Marine Fisheries Service before applying for an incidental harassment authorization for the following year.

Subpart J—Taking Marine Mammals Incidental to Coastal Commercial Fireworks Displays at Monterey Bay National Marine Sanctuary, CA

SOURCE: 71 FR 40932, July 19, 2006, unless otherwise noted.

EFFECTIVE DATE NOTE: At 71 FR 40932, July 19, 2006, Subpart J consisting of §§216.110 through 216.119 were added, effective July 4, 2006 through July 3, 2011.

§216.110 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by the MBNMS.

(b) The incidental take, by Level B harassment only, of marine mammals under the activity identified in this section is limited to the following species: California sea lions (*Zalophus californianus*) and Pacific harbor seals (*Phoca vitulina*).

§216.111 Effective dates.

Regulations in this subpart are effective from July 4, 2006, through July 3, 2011.

§216.112 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 216.117, the Holder of the Letter of Authorization (i.e. the Superintendent of

MBNMS) may incidentally, but not intentionally, take marine mammals by Level B harassment only, within the area described in §216.110(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in §216.110(a) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The taking of marine mammals is authorized for the species listed in §216.110(b) and is limited to the Level B Harassment of no more than 6,170 California sea lions and 1,065 harbor seals annually.

§216.113 Prohibitions.

Notwithstanding takings contemplated in §216.110 and authorized by a Letter of Authorization issued under §§216.106 and 216.117, no person in connection with the activities described in §216.110 may:

(a) Take any marine mammal not specified in §216.110(b);

(b) Take any marine mammal specified in §216.110(b) other than by incidental, unintentional Level B harassment;

(c) Take a marine mammal specified in §216.110(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §§216.106 and 216.117.

§216.114 Mitigation.

(a) The activity identified in §216.110(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in §216.110(a), all the mitigation measures contained in the Letter of Authorization issued under §§216.106 and 216.117 must be implemented, including but not limited to:

(1) Limiting the location of the authorized fireworks displays to the four specifically prescribed areas at Half

Moon Bay, the Santa Cruz/Soquel area, the northeastern Monterey Peninsula, and Cambria (Santa Rosa Creek);

(2) Limiting the total frequency of authorized fireworks displays to no more than 20 total displays per year and the average frequency to no more than one fireworks display every two months in each of the four conditional display areas;

(3) Limiting the duration of authorized individual fireworks displays to no longer than 30 minutes each, with the exception of two longer shows not to exceed 1 hour;

(4) Prohibiting fireworks displays at MBNMS between March 1 and June 30 of any year; and

(5) Implementing the following special conditions for fireworks when authorizing fireworks displays at the MBNMS:

(i) Delay of aerial "salute" effects until five minutes after the commencement of any fireworks display.

(ii) Removal of all plastic labels and wrappings from pyrotechnic devices prior to use.

(iii) Required recovery of all fireworks related debris from the launch site and affected beaches on the evening of the display and again on the morning after.

(b) The mitigation measures that the individuals conducting the fireworks are responsible for shall be included as a requirement in any Authorization the MBNMS issues to the individuals.

§216.115 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to §§216.106 and 216.117 for activities described in §216.110(a) is required to cooperate with the National Marine Fisheries Service (NMFS), and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. The Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, National Marine Fisheries Service, or designee, by telephone (301-713-2289), within 48 hours if the authorized activity identified in §216.110(a) is thought to have resulted in the mortality or injury of any marine mammals, or in any take of ma-

rine mammals not identified in §216.110(b).

(b) The Holder of the Letter of Authorization must conduct all monitoring and/or research required under the Letter of Authorization including, but not limited to:

(1) A one-time comprehensive pinniped census at the City of Monterey Fourth of July Celebration in 2007;

(2) A one-time acoustic measurement of the Monterey Fourth of July Celebration in 2007;

(3) Counts of pinnipeds in the impact area prior to all displays at all locations; and

(4) Reporting to NMFS of all marine mammal injury or mortality encountered during debris cleanup the morning after every fireworks display authorized by the Sanctuary.

(c) Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must submit a draft annual monitoring report to the Director, Office of Protected Resources, NMFS, no later than 60 days after the conclusion of each calendar year. This report must contain:

(1) An estimate of the number of marine mammals disturbed by the authorized activities,

(2) Results of the monitoring required in §216.115 (b) and (c) and any additional information required by the Letter of Authorization. A final annual monitoring report must be submitted to the NMFS within 30 days after receiving comments from NMFS on the draft report. If no comments are received from NMFS, the draft report will be considered to be the final annual monitoring report.

(d) A draft comprehensive monitoring report on all marine mammal monitoring and research conducted during the period of these regulations must be submitted to the Director, Office of Protected Resources, NMFS at least 120 days prior to expiration of these regulations or 120 days after the expiration of these regulations if renewal of the regulations will not be requested. A final comprehensive monitoring report must be submitted to the NMFS within 30 days after receiving comments from NMFS on the draft report. If no comments are received from

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NMFS, the draft report will be considered to be the final comprehensive monitoring report.

§216.116 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by §216.103) conducting the activity identified in §216.110(a) must apply for and obtain either an initial Letter of Authorization in accordance with §§216.117 or a renewal under §216.118.

§216.117 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, subject to annual renewal pursuant to the conditions in §216.118.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (i.e., mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

(d) The U.S. Citizen, i.e., the MBNMS, operating under an LOA must clearly describe in any Sanctuary Authorizations issued to the individuals conducting fireworks displays, any requirements of the LOA for which the individuals conducting fireworks are responsible.

§216.118 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under §216.106 and §216.117 for the activity identified in §216.110(a) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under §216.116 will be undertaken and that there will not be a sub-

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stantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under §216.115(b), and the Letter of Authorization issued under §216.117, which has been reviewed and accepted by NMFS; and

(3) A determination by the NMFS that the mitigation, monitoring and reporting measures required under §216.114 and the Letter of Authorization issued under §§216.106 and 216.117, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§216.106 and 216.118 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the FEDERAL REGISTER.

§216.119 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§216.106 and 216.117 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §216.118, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.110(b), a Letter of Authorization issued pursuant to §§ 216.106 and 216.117 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

Subpart K—Taking of Marine Mammals Incidental to Space Vehicle and Test Flight Activities

SOURCE: 69 FR 5727, Feb. 6, 2004, unless otherwise noted.

EFFECTIVE DATE NOTE: At 69 FR 5727, Feb. 6, 2004, subpart K, consisting of §§ 216.120 through 216.128 were added, effective Feb. 6, 2004, through Feb. 6, 2009.

§ 216.120 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in:

(1) Launching up to 30 space and missiles vehicles each year from Vandenberg Air Force Base, for a total of up to 150 missiles and rockets over the 5-year period of these regulations,

(2) Launching up to 20 rockets each year from Vandenberg Air Force Base, for a total of up to 100 rocket launches over the 5-year period of these regulations,

(3) Aircraft flight test operations, and

(4) Helicopter operations from Vandenberg Air Force Base.

(b) The incidental take of marine mammals on Vandenberg Air Force Base and in waters off southern California, under the activity identified in paragraph (a) of this section, is limited to the following species: Harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), northern elephant seals (*Mirounga angustirostris*), and northern fur seals (*Callorhinus ursinus*).

§ 216.121 Effective dates.

Regulations in this subpart are effective from February 6, 2004, through February 6, 2009.

§ 216.122 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to § 216.106, the 30th Space Wing, U.S. Air Force, its contractors, and clients, may incidentally, but not intentionally, take marine mammals by harassment, within the area described in § 216.120, provided all terms, conditions, and requirements of these regulations and such Letter(s) of Authorization are complied with.

(b) [Reserved]

§ 216.123 Prohibitions.

No person in connection with the activities described in § 216.120 shall:

(a) Take any marine mammal not specified in § 216.120(b);

(b) Take any marine mammal specified in § 216.120(b) other than by incidental, unintentional harassment;

(c) Take a marine mammal specified in § 216.120(b) if such take results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under § 216.106.

§ 216.124 Mitigation.

(a) The activity identified in § 216.120(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.120, the following mitigation measures must be utilized:

(1) All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries (*e.g.*, Point Sal, Purisima Point, Rocky Point), except in emergencies or for real-time security incidents (*e.g.*, search-and-rescue, fire-fighting) which may require approaching pinniped rookeries closer than 1,000 ft (305 m).

(2) For missile and rocket launches, holders of Letters of Authorization must avoid, whenever possible,

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launches during the harbor seal pupping season of March through June, unless constrained by factors including, but not limited to, human safety, national security, or for space vehicle launch trajectory necessary to meet mission objectives.

(3) VAFB must avoid, whenever possible, launches which are predicted to produce a sonic boom on the Northern Channel Islands during harbor seal, elephant seal, and California sea lion pupping seasons, March through June.

(4) If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and appropriate changes must be made through modification to a Letter of Authorization, prior to conducting the next launch under that Letter of Authorization.

(5) Additional mitigation measures as contained in a Letter of authorization.

(b) [Reserved]

§216.125 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to §216.106 for activities described in §216.120(a) are required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Southwest Region, National Marine Fisheries Service, by letter or telephone, at least 2 weeks prior to activities possibly involving the taking of marine mammals.

(b) Holders of Letters of Authorization must designate qualified on-site individuals, approved in advance by the National Marine Fisheries Service, as specified in the Letter of Authorization, to:

(1) Conduct observations on harbor seal, elephant seal, and sea lion activity in the vicinity of the rookery nearest the launch platform or, in the absence of pinnipeds at that location, at another nearby haulout, for at least 72 hours prior to any planned launch occurring during the harbor seal pupping

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season (1 March through 30 June) and continue for a period of time not less than 48 hours subsequent to launching,

(2) For launches during the harbor seal pupping season (March through June), conduct follow-up surveys within 2 weeks of the launch to ensure that there were no adverse effects on any marine mammals.

(3) Monitor haul-out sites on the Northern Channel Islands, if it is determined by modeling that a sonic boom of greater than 1 psf could occur in those areas (this determination will be made in consultation with the National Marine Fisheries Service),

(4) Investigate the potential for spontaneous abortion, disruption of effective female-neonate bonding, and other reproductive dysfunction,

(5) Supplement observations on Vandenberg and on the Northern Channel Islands with video-recording of mother-pup seal responses for daylight launches during the pupping season,

(6) Conduct acoustic measurements of those launch vehicles that have not had sound pressure level measurements made previously, and

(7) Include multiple surveys each day that record the species, number of animals, general behavior, presence of pups, age class, gender and reaction to launch noise, sonic booms or other natural or human caused disturbances, in addition to recording environmental conditions such as tide, wind speed, air temperature, and swell.

(c) Holders of Letters of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) The Holder of the Letter of Authorization must submit a report to the Southwest Administrator, National Marine Fisheries Service within 90 days after each launch. This report must contain the following information:

(1) Date(s) and time(s) of the launch,
(2) Design of the monitoring program, and

(3) Results of the monitoring programs, including, but not necessarily limited to:

(i) Numbers of pinnipeds present on the haulout prior to commencement of the launch,

(ii) Numbers of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have entered the water as a result of launch noise,

(iii) The length of time(s) pinnipeds remained off the haulout or rookery,

(iv) The numbers of pinniped adults or pups that may have been injured or killed as a result of the launch, and

(v) Behavioral modifications by pinnipeds that were likely the result of launch noise or the sonic boom.

(e) An annual report must be submitted at the time of renewal of the LOA.

(f) A final report must be submitted at least 180 days prior to expiration of these regulations. This report will:

(1) Summarize the activities undertaken and the results reported in all previous reports,

(2) Assess the impacts at each of the major rookeries,

(3) Assess the cumulative impact on pinnipeds and other marine mammals from Vandenberg activities, and

(4) State the date(s), location(s), and findings of any research activities related to monitoring the effects on launch noise and sonic booms on marine mammal populations.

§ 216.126 Applications for Letters of Authorization.

(a) To incidentally take harbor seals and other marine mammals pursuant to these regulations, either the U.S. citizen conducting the activity or the 30th Space Wing on behalf of the U.S. citizen conducting the activity, must apply for and obtain a Letter of Authorization in accordance with § 216.106.

(b) The application must be submitted to the National Marine Fisheries Service at least 30 days before the activity is scheduled to begin.

(c) Applications for Letters of Authorization and for renewals of Letters of Authorization must include the following:

(1) Name of the U.S. citizen requesting the authorization,

(2) A description of the activity, the dates of the activity, and the specific location of the activity, and

(3) Plans to monitor the behavior and effects of the activity on marine mammals.

(d) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of seals and sea lions.

§ 216.127 Renewal of Letters of Authorization.

A Letter of Authorization issued under § 216.126 for the activity identified in § 216.120(a) will be renewed annually upon:

(a) Timely receipt of the reports required under § 216.125(d), if determined by the Assistant Administrator to be acceptable; and

(b) A determination that the mitigation measures required under § 216.124 and the Letter of Authorization have been undertaken.

§ 216.128 Modifications of Letters of Authorization.

(a) In addition to complying with the provisions of § 216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to a Letter of Authorization subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.120 (b), a Letter of Authorization may be substantively modified without prior notice and opportunity for public comment. A notice will be published in the FEDERAL REGISTER subsequent to the action.

Subparts L–M [Reserved]

Subpart N—Taking of Marine Mammals Incidental to Missile Launch Operations from San Nicolas Island, CA

SOURCE: 68 FR 52138, Sept. 2, 2003, unless otherwise noted.

EFFECTIVE DATE NOTE: At 68 FR 52138, Sept. 2, 2003, Subpart N, consisting of §§ 216.151 through 216.158 were added, effective Oct. 2, 2003, through Oct. 2, 2008.

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§216.151 Specified activity, geographical region, and incidental take levels.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in target missile launch activities at the Naval Air Warfare Center Weapons Division facilities on San Nicolas Island, California.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), and California sea lions (*Zalophus californianus*).

(c) This Authorization is valid only for activities associated with the launching of a total of 40 Vandal (or similar sized) vehicles from Alpha Launch Complex and smaller missiles and targets from Building 807 on San Nicolas Island, California.

§216.152 Effective dates.

Regulations in this subpart are effective from October 2, 2003 through October 2, 2008.

§216.153 Permissible methods of taking; mitigation.

(a) Under a Letter of Authorization issued pursuant to §216.106, the U.S. Navy may incidentally, but not intentionally, take those marine mammal species specified in §216.151(b) by Level B harassment, in the course of conducting target missile launch activities within the area described in §216.151(a), provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activity specified in §216.151 must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitat. When conducting these activities, the following mitigation measures must be utilized:

(1) The holder of the Letter of Authorization must prohibit personnel from entering pinniped haul-out sites below the missile's predicted flight path for 2 hours prior to planned missile launches.

(2) The holder of the Letter of Authorization must avoid launch activities during harbor seal pupping season (February to April), when operationally practicable.

(3) The holder of this Authorization must limit launch activities during other pinniped pupping seasons, when operationally practicable.

(4) The holder of the Letter of Authorization must not launch Vandal target missiles from the Alpha Complex at low elevation (less than 1,000 feet (304.8 m) on launch azimuths that pass close to pinniped haul-out sites).

(5) The holder of the Letter of Authorization must avoid, where practicable, launching multiple target missiles in quick succession over haul-out sites, especially when young pups are present.

(6) The holder of the Letter of Authorization must limit launch activities during nighttime hours when operationally practicable.

(7) Aircraft and helicopter flight paths must maintain a minimum altitude of 1,000 feet (304.8 m) from pinniped haul-outs.

(8) If injurious or lethal take is discovered during monitoring conducted under §216.155, the holder of the Letter of Authorization must contact the Regional Administrator, Southwest Region, National Marine Fisheries Service, or his/her designee, at (562) 980-4023 within 48 hours and, in cooperation with the National Marine Fisheries Service, launch procedure, mitigation measures, and monitoring methods must be reviewed and appropriate changes made prior to the next launch.

(9) If post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed and appropriate changes must be made prior to conducting the next missile launch.

§216.154 Prohibitions.

Notwithstanding takings authorized by §216.151(b) and by a Letter of Authorization issued under §216.106, the following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional.

(b) The violation of, or failure to comply with, the terms, conditions,

and requirements of this part or a Letter of Authorization issued under §216.106.

(c) The incidental taking of any marine mammal of a species not specified, or in a manner not authorized, in this subpart.

§216.155 Requirements for monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals.

(b) The National Marine Fisheries Service must be notified immediately of any changes or deletions to any portions of the proposed monitoring plan submitted in accordance with the Letter of Authorization.

(c) The holder of the Letter of Authorization must designate biologically trained, on-site observer(s), approved in advance by the National Marine Fisheries Service, to record the effects of the launch activities and the resulting noise on pinnipeds.

(d) The holder of the Letter of Authorization must implement the following monitoring measures:

(1) *Visual Land-Based Monitoring.* (i) Prior to each missile launch, an observer(s) will place 3 autonomous digital video cameras overlooking chosen haul-out sites located varying distances from the missile launch site. Each video camera will be set to record a focal subgroup within the larger haul-out aggregation for a maximum of 4 hours or as permitted by the videotape capacity.

(ii) Systematic visual observations, by observers described in paragraph (c) of this section, on pinniped presence and activity will be conducted and recorded in a field logbook a minimum of 2 hours prior to the estimated launch time and for at least 1 hour immediately following the launch of all launch vehicles.

(iii) Documentation, both via autonomous video camera and human observer, will consist of:

(A) Numbers and sexes of each age class in focal subgroups;

(B) Description and timing of launch activities or other disruptive event(s);

(C) Movements of pinnipeds, including number and proportion moving, direction and distance moved, and pace of movement;

(D) Description of reactions;

(E) Minimum distances between interacting and reacting pinnipeds;

(F) Study location;

(G) Local time;

(H) Substratum type;

(I) Substratum slope;

(J) Weather condition;

(K) Horizontal visibility; and

(L) Tide state.

(2) *Acoustic Monitoring.* (i) During all target missile launches, calibrated recordings of the levels and characteristics of the received launch sounds will be obtained from 3 different locations of varying distances from the target missile's flight path. To the extent practicable, these acoustic recording locations will correspond with the haul-out sites where video and human observer monitoring is done.

(ii) Acoustic recordings will be supplemented by the use of radar and telemetry systems to obtain the trajectory of target missiles in three dimensions.

(iii) Acoustic equipment used to record launch sounds will be suitable for collecting a wide range of parameters, including the magnitude, characteristics, and duration of each target missile.

(e) The holder of the Letter of Authorization must implement the following reporting requirements:

(1) For each target missile launch, the lead contractor or lead observer for the holder of the Letter of Authorization must provide a status report on the information required under §216.155(d)(1)(iii) to the National Marine Fisheries Service, Southwest Regional Office, unless other arrangements for monitoring are agreed in writing.

(2) An initial report must be submitted to the Office of Protected Resources, and the Southwest Regional Office at least 60 days prior to the expiration of each annual Letter of Authorization. This report must contain the following information:

(i) Timing and nature of launch operations;

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(ii) Summary of pinniped behavioral observations;

(iii) Estimate of the amount and nature of all takes by harassment or by other means.

(3) A draft comprehensive technical report will be submitted to the Office of Protected Resources and Southwest Regional Office, National Marine Fisheries Service, 180 days prior to the expiration of these regulations and providing full documentation of the methods, results, and interpretation of all monitoring tasks for launches to date plus preliminary information for missile launches during the first 6 months of the final Letter of Authorization.

(4) A revised final technical report, including all monitoring results during the entire period of the Letter of Authorization, will be due 90 days after the end of the period of effectiveness of these regulations.

(5) Both the 60-day and draft comprehensive technical reports will be subject to review and comment by the National Marine Fisheries Service. Any recommendations made by the National Marine Fisheries Service must be addressed in the final comprehensive report prior to acceptance by the National Marine Fisheries Service.

(f) Activities related to the monitoring described in paragraph (d) of this section, or in the Letter of Authorization issued under §216.106, may be conducted without the need for a separate scientific research permit.

(g) In coordination and compliance with appropriate Navy regulations, at its discretion, the National Marine Fisheries Service may place an observer on San Nicolas Island for any activity involved in marine mammal monitoring either prior to, during, or after a missile launch in order to monitor the impact on marine mammals.

§216.156 Letter of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time specified in the Letter of Authorization but may not exceed the period of validity of this subpart.

(b) A Letter of Authorization with a period of validity less than the period of validity of this subpart may be renewed subject to renewal conditions in §216.157.

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(c) A Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Specified geographic area for taking;

(3) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking and its habitat; and

(4) Requirements for monitoring and reporting incidental takes.

(d) Issuance of a Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity will be small, and that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(e) Notice of issuance or denial of a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

§216.157 Renewal of a Letter of Authorization.

(a) A Letter of Authorization issued under §216.106 and §216.156 for the activity specified in §216.151 will be renewed annually upon:

(1) Notification to the National Marine Fisheries Service that the activity described in the application for a Letter of Authorization submitted under §216.156 will be undertaken and that there will not be a substantial modification to the described work, mitigation, or monitoring undertaken during the upcoming season;

(2) Timely receipt of the monitoring reports required under §216.155, and acceptance by the National Marine Fisheries Service;

(3) A determination by the National Marine Fisheries Service that the mitigation, monitoring, and reporting measures required under §§216.153 and 216.155 and the Letter of Authorization were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization; and

(4) A determination that the number of marine mammals taken by the activity continues to be small and that the level of taking will be consistent with the findings made for the total

taking allowable under these regulations.

(b) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

§ 216.158 Modifications to the Letter of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.151(b), the Letter of Authorization issued pursuant to § 216.106 may be substantively modified without prior notice and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER subsequent to the action.

Subpart O—Taking of Marine Mammals Incidental to Shock Testing the USS MESA VERDE (LPD 19) by Detonation of Conventional Explosives in the Offshore Waters of the U.S. Atlantic Coast

SOURCE: 73 FR 43136, July 24, 2007, unless otherwise noted.

EFFECTIVE DATE NOTE: At 73 FR 43136, July 24, 2008, subpart O, consisting of §§ 216.161 through 216.166 was added, effective July 18, 2008 through July 18, 2013.

§ 216.161 Specified activity and incidental take levels by species.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by persons engaged in the detonation of up to four 4,536 kg (10,000 lb) conventional explosive charges within the waters of the U.S. Atlantic Coast offshore Mayport, FL, for the purpose of conducting one full ship-

shock trial (FSST) of the USS MESA VERDE (LPD 19) during the time period between July 23 and September 20, 2008, and May 1 and September 20, 2009 through 2013.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: Minke whale (*Balaenoptera acutorostrata*), dwarf sperm whale (*Kogia simus*); pygmy sperm whale (*K. breviceps*); pilot whale (*Globicephala macrorhynchus*); Atlantic spotted dolphin (*Stenella frontalis*); spinner dolphin (*S. longirostris*); bottlenose dolphin (*Tursiops truncatus*); Risso's dolphin (*Grampus griseus*); rough-toothed dolphin (*Steno bredanensis*); common dolphin (*Delphinus delphis*), false killer whale (*Pseudorca crassidens*); Cuvier's beaked whale (*Ziphius cavirostris*), Blainville's beaked whale (*Mesoplodon densirostris*); Gervais' beaked whale (*M. europaeus*); and True's beaked whale (*M. mirus*).

(c) The incidental take of marine mammals identified in paragraph (b) of this section is limited to a total, across all species, of no more than 1 mortality or serious injury, 2 takings by Level A harassment (injuries), and 282 takings by Level B behavioral harassment (through temporary threshold shift). The incidental taking of any species listed as threatened or endangered under the Endangered Species Act is prohibited.

§ 216.162 Effective dates.

Regulations in this subpart are effective July 18, 2008 through July 18, 2013.

§ 216.163 Mitigation.

(a) Under a Letter of Authorization issued pursuant to § 216.106, the U.S. Navy may incidentally, but not intentionally, take marine mammals in the course of the activity described in § 216.161(a) provided all requirements of these regulations and such Letter of Authorization are met.

(b) The activity identified in paragraph § 216.161(a) of this section must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitat. When detonating explosives, the following mitigation measures must be implemented:

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(1) Except as provided under the following paragraph (2), if any marine mammals are visually detected within the designated 3.5 nm (6.5 km) Safety Range surrounding the USS MESA VERDE, detonation must be delayed until the marine mammals are positively resighted outside the Safety Range either due to the animal(s) swimming out of the Safety Range or due to the Safety Range moving beyond the mammal's last verified location.

(2) If a North Atlantic right whale or other marine mammal listed under the Endangered Species Act (ESA) is seen within the Safety Range, detonation must not occur until the animal is positively resighted outside the Safety Range and at least one additional aerial monitoring of the Safety Range shows that no other right whales or other ESA-listed marine mammals are present;

(3) If the sea state exceeds 3 on the Beaufort scale (i.e., whitecaps on 33 to 50 percent of surface; 2 ft (0.6 m) to 3 ft (0.9 m) waves), the visibility is equal to or less than 3 nm (5.6 km), or the aircraft ceiling (i.e., vertical visibility) is equal to or less than 1,000 ft (305 m), detonation must not occur until conditions improve sufficiently for aerial surveillance to be undertaken.

(4) A detonation must not be conducted earlier than 3 hours after sunrise or later than 3 hours prior to sunset to ensure adequate daylight for conducting the pre-detonation and post-detonation monitoring requirements in §216.165;

(5) If post-detonation surveys determine that an injury or lethal take of a marine mammal has occurred,

(i) the Director, Office of Protected Resources, National Marine Fisheries Service must be notified within 24 hours of the taking determination,

(ii) the FSST procedures and monitoring methods must be reviewed in coordination with the National Marine Fisheries Service, and

(iii) appropriate changes to avoid future injury or mortality must be made prior to conducting the next detonation.

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§216.164 Prohibitions.

No person in connection with the activities described in §216.161(a) shall:

(a) Take any marine mammal not specified in §216.161(b);

(b) Take any marine mammal specified in §216.161(b) other than by incidental, unintentional Level A or Level B harassment or mortality;

(c) Take a marine mammal specified in §216.161(b) if such taking results in more than a negligible impact on the species or stocks or marine mammals;

(d) Violate, or failure to comply with, the requirements of a Letter of Authorization issued under §216.106.

§216.165 Requirements for monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, or state or local agency with regulatory authority for monitoring the impacts of the activity on marine mammals. The holder must notify the Director, Office of Protected Resources, National Marine Fisheries Service at least 2 weeks prior to activities involving the detonation of explosives in order to satisfy paragraph (f) of this section.

(b) The holder of the Letter of Authorization must designate at least 6 experienced on-site marine mammal observers (MMOs) onboard the USS MESA VERDE, 2 experienced MMOs onboard the survey aircraft and 2 experienced MMOs onboard the Navy support vessel each of whom has been approved in advance by NMFS, to monitor the Safety Range for presence of marine mammals and to record the effects of explosives detonation on marine mammals that inhabit the Navy's Jacksonville/Charleston Operating Area offshore of Mayport, Florida.

(c)(1) Prior to each detonation for the FSST, an area will be located which has been determined by an aerial survey to contain the lowest marine mammal abundance relative to other areas within the area off Mayport, FL.

(2) The test area must be monitored by aerial and shipboard monitoring for the following periods of time:

(i) 48-72 hours prior to a scheduled detonation (aircraft only),

(ii) on the day of detonation,

(iii) immediately after each detonation and continuing for at least 3 hours subsequent to each detonation (or until sighting conditions become unsuitable for visual observations),

(iv) for at least 2 days after each detonation, unless weather and/or sea conditions preclude surveillance, in which case post-test survey dates must be extended, and

(v) for a period of 7 days after the last detonation for a minimum of 3 hours per day at the detonation site and down-current from the site.

(3) Monitoring shall include, but is not limited to, aerial and vessel surveillance sufficient to ensure that no marine mammals are within the designated Safety Range prior to or at the time of detonation.

(d) Under the direction of an attending U.S.-licensed veterinarian (an attending U.S. licensed veterinarian is one who has graduated from a veterinary school accredited by the American Veterinary Medical Association Council on Education, has a certificate by the American Veterinary Graduates Association's Education Commission for Foreign Veterinary Graduates, or has received equivalent formal education, as determined by the NMFS Assistant Administrator), an examination and recovery of any dead or injured marine mammals will be conducted in accordance with protocols and best practices of the NOAA Health and Stranding Response Program. Necropsies will be performed and tissue samples taken from any dead animals. After completion of the necropsy, animals not retained for shoreside examination will be tagged and returned to the sea.

(e) Activities related to the monitoring described in paragraphs (c) and (d) of this section, including the retention of marine mammals, may be conducted without a separate scientific research permit. The use of retained marine mammals for scientific research other than shoreside examination must be authorized pursuant to Subpart D of this part.

(f) Subject to relevant Navy regulations, the National Marine Fisheries Service at its discretion may place an observer on any ship or aircraft involved in marine mammal monitoring

either prior to, during, or after explosives detonation.

(g) A final report must be submitted to the Director, Office of Protected Resources, no later than 120 days after completion of the USS MESA VERDE (LPD 19) shock trial. This report must contain the following information:

(1) Date and time of all detonations conducted under the Letter of Authorization.

(2) A detailed description of all pre-detonation and post-detonation activities related to mitigating and monitoring the effects of explosives detonation on marine mammals.

(3) Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation and an estimate of the number, by species, of marine mammals in the Safety Range at the time of detonation based on post-test aerial monitoring and current density estimates.

(4) Results of coordination with coastal marine mammal/sea turtle stranding networks.

§216.166 Modifications to the Letter of Authorization.

(a) Except as provided in paragraph

(b) of this section, no substantive modification, including withdrawal or suspension, to a Letter of Authorization issued pursuant to §216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §216.151(b), the Letter of Authorization may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER subsequent to the action.

Subpart P [Reserved]

Subpart Q—Taking of Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA sonar) Sonar

SOURCE: 72 FR 46890, Aug. 21, 2007, unless otherwise noted.

EFFECTIVE DATE NOTE: At 72 FR 46890, Aug. 21, 2007, subpart Q, consisting of §§216.180 through 216.191 were added, effective Aug. 16, 2007 through Aug. 15, 2012.

§216.180 Specified activity.

Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by the U.S. Navy, Department of Defense, while engaged in the operation of no more than four SURTASS LFA sonar systems conducting active sonar operations, in areas specified in paragraph (a) of this section. The authorized activities, as specified in a Letter of Authorization issued under §§216.106 and 216.188, include the transmission of low frequency sounds from the SURTASS LFA sonar and the transmission of high frequency sounds from the mitigation sonar described in §216.185 during training, testing, and routine military operations of SURTASS LFA sonar.

(a) With the exception of those areas specified in §216.183(d), the incidental taking by harassment may be authorized in the areas (biomes, provinces, and subprovinces) described in Longhurst (1998), as specified in a Letter of Authorization.

(b) The incidental take, by Level A and Level B harassment, of marine mammals from the activity identified in this section is limited to the following species and species groups:

(1) Mysticete whales—blue (*Balaenoptera musculus*), fin (*Balaenoptera physalus*), minke (*Balaenoptera acutorostrata*), Bryde's (*Balaenoptera edeni*), sei (*Balaenoptera borealis*), humpback (*Megaptera novaeangliae*), North Atlantic right (*Eubalaena glacialis*), North Pacific right (*Eubalaena japonica*) southern right (*Eubalaena australis*), pygmy right (*Caperea marginata*), bowhead (*Balaena*

mysticetus), and gray (*Eschrichtius robustus*) whales.

(2) Odontocete whales—harbor porpoise (*Phocoena phocoena*), spectacled porpoise (*Phocoena dioptrica*), beluga (*Dephinapterus leucas*), *Stenella spp.*, Risso's dolphin (*Grampus griseus*), rough-toothed dolphin (*Steno bredanensis*), Fraser's dolphin (*Lagenodelphis hosei*), northern right-whale dolphin (*Lissodelphis borealis*), southern right whale dolphin (*Lissodelphis peronii*), short-beaked common dolphin (*Delphinus delphis*), long-beaked common dolphin (*Delphinus capensis*), very long-beaked common dolphin (*Delphinus tropicalis*), *Lagenorhynchus spp.*, *Cephalorhynchus spp.*, bottlenose dolphin (*Tursiops truncatus*), Dall's porpoise (*Phocoenoides dalli*), melon-headed whale (*Peponocephala spp.*), beaked whales (*Berardius spp.*, *Hyperoodon spp.*, *Mesoplodon spp.*, Cuvier's beaked whale (*Ziphius cavirostris*), Shepard's beaked whale (*Tasmacetus shepherdi*), Longman's beaked whale (*Indopacetus pacificus*), killer whale (*Orcinus orca*), false killer whale (*Pseudorca crassidens*), pygmy killer whale (*Feresa attenuata*), sperm whale (*Physeter macrocephalus*), dwarf and pygmy sperm whales (*Kogia simus* and *K. breviceps*), and short-finned and long-finned pilot whales (*Globicephala macrorhynchus* and *G. melas*).

(3) Pinnipeds—hooded seal (*Cystophora cristata*), harbor seal (*Phoca vitulina*), spotted seal (*P. largha*), ribbon seal (*P. fasciata*), gray seal (*Halichoerus grypus*), elephant seal (*Mirounga angustirostris* and *M. leonina*), Hawaiian monk seal (*Monachus schauinslandi*), Mediterranean monk seal (*Monachus monachus*), northern fur seal (*Callorhinus ursinus*), southern fur seal (*Arctocephalus spp.*), harp seal (*Phoca groenlandica*), Galapagos sea lion (*Zalophus californianus wolfebaeki*), Japanese sea lion (*Zalophus californianus japonicus*), Steller sea lion (*Eumetopias jubatus*), California sea lion (*Zalophus californianus*), Australian sea lion (*Neophoca cinerea*), New Zealand sea lion (*Phocartos hookeri*), and South American sea lion (*Otaria flavescens*).

§ 216.181 Effective dates.

Regulations in this subpart are effective from August 16, 2007 through August 15, 2012.

§ 216.182 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.188, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by Level A and Level B harassment within the areas described in § 216.180(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in § 216.180 must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

§ 216.183 Prohibitions.

No person in connection with the activities described in § 216.180 shall:

(a) Take any marine mammal not specified in § 216.180(b);

(b) Take any marine mammal specified in § 216.180(b) other than by incidental, unintentional Level A and Level B harassment;

(c) Take a marine mammal specified in § 216.180(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of the regulations in this subpart or any Letter of Authorization issued under §§ 216.106 and 216.188.

§ 216.184 Mitigation.

The activity identified in § 216.180(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.180, the mitigation measures described in this section and in any Letter of Authorization issued under §§ 216.106 and 216.188 must be implemented.

(a) Through monitoring described under § 216.185, the Holder of a Letter of Authorization must act to ensure, to

the greatest extent practicable, that no marine mammal is subjected to a sound pressure level of 180 dB or greater.

(b) If a marine mammal is detected within or about to enter the mitigation zone (the area subjected to sound pressure levels of 180 dB or greater plus the 1 km (0.54 nm) buffer zone extending beyond the 180-dB zone), SURTASS LFA sonar transmissions will be immediately delayed or suspended. Transmissions will not resume earlier than 15 minutes after:

(1) All marine mammals have left the area of the mitigation and buffer zones; and

(2) There is no further detection of any marine mammal within the mitigation and buffer zones as determined by the visual and/or passive or active acoustic monitoring described in § 216.185.

(c) The high-frequency marine mammal monitoring sonar (HF/M3) described in § 216.185 will be ramped-up slowly to operating levels over a period of no less than 5 minutes:

(1) At least 30 minutes prior to any SURTASS LFA sonar transmissions;

(2) Prior to any SURTASS LFA sonar calibrations or testings that are not part of regular SURTASS LFA sonar transmissions described in paragraph (c)(1) of this section; and

(3) Anytime after the HF/M3 source has been powered down for more than 2 minutes.

(d) The HF/M3 sound pressure level will not be increased once a marine mammal is detected; ramp-up may resume once marine mammals are no longer detected.

(e) The Holder of a Letter of Authorization will not operate the SURTASS LFA sonar, such that:

(1) the SURTASS LFA sonar sound field exceeds 180 dB (re 1 microPa(rms)) at a distance less than 12 nautical miles (nm) (22 kilometers (km)) from any coastline, including offshore islands;

(2) the SURTASS LFA sonar sound field exceeds 180 db (re 1 microPa(rms)) at a distance of 1 km (0.5 nm) seaward of the outer perimeter of any offshore biologically important area designated in 216.184(f) during the biologically important period specified.

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(f) The following areas have been designated by NMFS as Offshore Biologically Important Areas (OBIA)s for marine mammals (by season if appropriate):

Name of area	Location of area	Months of importance
(1) 200-m isobath North American East Coast	From 28° N. to 50° N., west of 40° W	Year-round.
(2) Antarctic Convergence Zone	30° E. to 80° E. to 45°; 80° E. to 150° E. to 55°; S. 150° E. to 50° W. to 60° S.; 50° W. to 30° E. to 50° S.	October 1–March 31.
(3) Costa Rica Dome	Centered at 9° N. and 88° W	Year-round.
(4) Hawaiian Islands Humpback Whale National Marine Sanctuary-Penguin Bank.	Centered at 21° N. and 157° 30' W	November 1 through May 1.
(5) Cordell Bank National Marine Sanctuary	Boundaries in accordance with 15 CFR 922.110.	Year-round.
(6) Gulf of the Farallones National Marine Sanctuary.	Boundaries in accordance with 15 CFR 922.80	Year-round.
(7) Monterey Bay National Marine Sanctuary	Boundaries in accordance with 15 CFR 922.30	Year-round.
(8) Olympic Coast National Marine Sanctuary	Boundaries within 23 nm of the coast from 47°07' N. to 48°30' N. latitude.	December January, March and May.
(9) Flower Garden Banks National Marine Sanctuary.	Boundaries in accordance with 15 CFR 922.120.	Year-round.
(10) The Gully	44°13' N., 59°06' W. to 43°47' N.; 58°35' W. to 43°35' N.; 58°35' W. to 43°35' N.; 59°08' W. to 44°06' N.; 59°20' W.	Year-round.

§216.185 Requirements for monitoring.

(a) In order to mitigate the taking of marine mammals by SURTASS LFA sonar to the greatest extent practicable, the Holder of a Letter of Authorization issued pursuant to §§216.106 and 216.188 must:

- (1) Conduct visual monitoring from the ship's bridge during all daylight hours (30 minutes before sunrise until 30 minutes after sunset);
- (2) Use low frequency passive SURTASS sonar to listen for vocalizing marine mammals; and
- (3) Use the HF/M3 (high frequency) sonar developed to locate and track marine mammals in relation to the SURTASS LFA sonar vessel and the sound field produced by the SURTASS LFA sonar source array.

(b) Monitoring under paragraph (a) of this section must:

- (1) Commence at least 30 minutes before the first SURTASS LFA sonar transmission;
- (2) Continue between transmission pings; and
- (3) Continue either for at least 15 minutes after completion of the SURTASS LFA sonar transmission exercise, or, if marine mammals are exhibiting unusual changes in behavioral patterns, for a period of time until behavior patterns return to normal or

conditions prevent continued observations;

(c) Holders of Letters of Authorization for activities described in §216.180 are required to cooperate with the National Marine Fisheries Service and any other federal agency for monitoring the impacts of the activity on marine mammals.

(d) Holders of Letters of Authorization must designate qualified on-site individuals to conduct the mitigation, monitoring and reporting activities specified in the Letter of Authorization.

(e) Holders of Letters of Authorization must conduct all monitoring required under the Letter of Authorization.

§216.186 Requirements for reporting.

(a) The Holder of the Letter of Authorization must submit quarterly mission reports to the Director, Office of Protected Resources, NMFS, no later than 30 days after the end of each quarter beginning on the date of effectiveness of a Letter of Authorization or as specified in the appropriate Letter of Authorization. Each quarterly mission report will include all active-mode missions completed during that quarter. At a minimum, each classified mission report must contain the following information:

(1) Dates, times, and location of each vessel during each mission;

(2) Information on sonar transmissions during each mission;

(3) Results of the marine mammal monitoring program specified in the Letter of Authorization; and

(4) Estimates of the percentages of marine mammal species and stocks affected (both for the quarter and cumulatively for the year) covered by the Letter of Authorization.

(b) The Holder of a Letter of Authorization must submit an annual report to the Director, Office of Protected Resources, NMFS, no later than 45 days after the expiration of a Letter of Authorization. This report must contain all the information required by the Letter of Authorization.

(c) A final comprehensive report must be submitted to the Director, Office of Protected Resources, NMFS at least 240 days prior to expiration of these regulations. In addition to containing all the information required by any final year Letter of Authorization, this report must contain an unclassified analysis of new passive sonar technologies and an assessment of whether such a system is feasible as an alternative to SURTASS LFA sonar.

§216.187 Applications for Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the U.S. Navy authority conducting the activity identified in §216.180 must apply for and obtain a Letter of Authorization in accordance with §216.106.

(b) The application for a Letter of Authorization must be submitted to the Director, Office of Protected Resources, NMFS, at least 60 days before the date that either the vessel is scheduled to begin conducting SURTASS LFA sonar operations or the previous Letter of Authorization is scheduled to expire.

(c) All applications for a Letter of Authorization must include the following information:

(1) The date(s), duration, and the area(s) where the vessel's activity will occur;

(2) The species and/or stock(s) of marine mammals likely to be found within each area;

(3) The type of incidental taking authorization requested (i.e., take by Level A and/or Level B harassment);

(4) The estimated percentage of marine mammal species/stocks potentially affected in each area for the 12-month period of effectiveness of the Letter of Authorization; and

(5) The means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and the level of taking or impacts on marine mammal populations.

(d) The National Marine Fisheries Service will review an application for a Letter of Authorization in accordance with §216.104(b) and, if adequate and complete, issue a Letter of Authorization.

§216.188 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked will be valid for a period of time not to exceed one year, but may be renewed annually subject to annual renewal conditions in §216.189.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Authorized geographic areas for incidental takings;

(3) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking, their habitat, and the availability of the species for subsistence uses; and

(4) Requirements for monitoring and reporting incidental takes.

(c) Issuance of each Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity specified in §216.180 as a whole will have no more than a negligible impact on the species or stocks of affected marine mammal(s), and that the total taking will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.

(d) Notice of issuance or denial of an application for a Letter of Authorization will be published in the FEDERAL

§216.189

REGISTER within 30 days of a determination.

§216.189 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued for the activity identified in §216.180 may be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under §216.187 will be undertaken and that there will not be a substantial modification to the described activity, mitigation or monitoring undertaken during the upcoming season;

(2) Notification to NMFS of the information identified in §216.187(c), including the planned geographic area(s), and anticipated duration of each SURTASS LFA sonar operation;

(3) Timely receipt of the monitoring reports required under §216.185, which have been reviewed by NMFS and determined to be acceptable;

(4) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§216.184 and 216.185 and the previous Letter of Authorization were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization; and

(5) A determination by NMFS that the number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the species or stock of affected marine mammal(s), and that the total taking will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.

(b) If a request for a renewal of a Letter of Authorization indicates that a substantial modification to the described work, mitigation or monitoring will occur, or if NMFS proposes a substantial modification to the Letter of Authorization, NMFS will provide a period of 30 days for public review and comment on the proposed modification. Amending the areas for upcoming SURTASS LFA sonar operations is not considered a substantial modification to the Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the FEDERAL REG-

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ISTER within 30 days of a determination.

§216.190 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantial modification (including withdrawal or suspension) to a Letter of Authorization subject to the provisions of this subpart shall be made by NMFS until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization, without modification, except for the period of validity and a listing of planned operating areas, or for moving the authorized SURTASS LFA sonar system from one ship to another, is not considered a substantial modification.

(b) If the National Marine Fisheries Service determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §216.180(b), a Letter of Authorization may be substantially modified without prior notice and opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days of the action.

§216.191 Designation of Offshore Biologically Important Marine Mammal Areas.

(a) Offshore biologically important areas for marine mammals may be nominated under this paragraph by the National Marine Fisheries Service or by members of the public.

(b) Proponents must petition NMFS by requesting an area be added to the list of offshore biologically important areas in §216.184(f) and submitting the following information:

(1) Geographic region proposed for consideration (including geographic boundaries);

(2) A list of marine mammal species or stocks within the proposed geographic region;

(3) Whether the proposal is for year-round designation or seasonal, and if seasonal, months of years for proposed designation;

(4) Detailed information on the biology of marine mammals within the area, including estimated population

size, distribution, density, status, and the principal biological activity during the proposed period of designation sufficient for NMFS to make a preliminary determination that the area is biologically important for marine mammals; and

(5) Detailed information on the area with regard to its importance for feeding, breeding, or migration for those species of marine mammals that have the potential to be affected by low frequency sounds;

(c) Areas within 12 nm (22 km) of any coastline, including offshore islands, or within non-operating areas for SURTASS LFA sonar are not eligible for consideration.

(d) If a petition does not contain sufficient information for the National Marine Fisheries Service to proceed, NMFS will determine whether the nominated area warrants further study. If so, NMFS will begin a scientific review of the area.

(e)(1) If through a petition or independently, NMFS makes a preliminary determination that an offshore area is biologically important for marine mammals and is not located within a previously designated area, NMFS will publish a FEDERAL REGISTER notice proposing to add the area to §216.184(f) and solicit public comment.

(2) The National Marine Fisheries Service will publish its final determination in the FEDERAL REGISTER.

Subpart R—Taking of Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Facilities in the U.S. Beaufort Sea

SOURCE: 71 FR 11322, Mar. 7, 2006, unless otherwise noted.

EFFECTIVE DATE NOTE: At 71 FR 11322, Mar. 7, 2006, subpart R, consisting of §§216.200 through 216.210 were added, effective Apr. 6, 2006 through Apr. 6, 2011.

§ 216.200 Specified activity and specified geographical region.

Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by U.S. citizens engaged in oil and gas develop-

ment activities in areas within state and/or Federal waters in the U.S. Beaufort Sea specified in paragraph (a) of this section. The authorized activities as specified in a Letter of Authorization issued under §§216.106 and 216.208 include, but may not be limited to, site construction, including ice road and pipeline construction, vessel and helicopter activity; and oil production activities, including ice road construction, and vessel and helicopter activity, but excluding seismic operations.

(a)(1) Northstar Oil and Gas Development; and

(2) [Reserved]

(b) The incidental take by Level A harassment, Level B harassment or mortality of marine mammals under the activity identified in this section is limited to the following species: bowhead whale (*Balaena mysticetus*), gray whale (*Eschrichtius robustus*), beluga whale (*Delphinapterus leucas*), ringed seal (*Phoca hispida*), spotted seal (*Phoca largha*) and bearded seal (*Erignathus barbatus*).

§ 216.201 Effective dates.

Regulations in this subpart are effective from April 6, 2006 through April 6, 2011.

§ 216.202 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 216.208, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by Level A and Level B harassment and mortality within the area described in §216.200(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in §216.200 must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals, their habitat, and on the availability of marine mammals for subsistence uses.

§ 216.203 Prohibitions.

Notwithstanding takings contemplated in §216.200 and authorized by a Letter of Authorization issued under

§ 216.204

§§ 216.106 and 216.208, no person in connection with the activities described in § 216.200 shall:

- (a) Take any marine mammal not specified in § 216.200(b);
- (b) Take any marine mammal specified in § 216.200(b) other than by incidental, unintentional Level A or Level B harassment or mortality;
- (c) Take a marine mammal specified in § 216.200(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or
- (d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under § 216.106.

§ 216.204 Mitigation.

The activity identified in § 216.200(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.200, the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 216.208 must be utilized.

§ 216.205 Measures to ensure availability of species for subsistence uses.

When applying for a Letter of Authorization pursuant to § 216.207, or a renewal of a Letter of Authorization pursuant to § 216.209, the applicant must submit a Plan of Cooperation that identifies what measures have been taken and/or will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses. A plan must include the following:

- (a) A statement that the applicant has notified and met with the affected subsistence communities to discuss proposed activities and to resolve potential conflicts regarding timing and methods of operation;
- (b) A description of what measures the applicant has taken and/or will take to ensure that oil development activities will not interfere with subsistence whaling or sealing;
- (c) What plans the applicant has to continue to meet with the affected

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communities to notify the communities of any changes in operation.

§ 216.206 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to §§ 216.106 and 216.208 for activities described in § 216.200 are required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Alaska Region, National Marine Fisheries Service, or his/her designee, by letter or telephone, at least 2 weeks prior to initiating new activities potentially involving the taking of marine mammals.

(b) Holders of Letters of Authorization must designate qualified on-site individuals, approved in advance by the National Marine Fisheries Service, to conduct the mitigation, monitoring and reporting activities specified in the Letter of Authorization issued pursuant to § 216.106 and § 216.208.

(c) Holders of Letters of Authorization must conduct all monitoring and/or research required under the Letter of Authorization.

(d) Unless specified otherwise in the Letter of Authorization, the Holder of that Letter of Authorization must submit an annual report to the Director, Office of Protected Resources, National Marine Fisheries Service, no later than March 31 of the year following the conclusion of the previous open water monitoring season. This report must contain all information required by the Letter of Authorization.

(e) A final annual comprehensive report must be submitted within the time period specified in the governing Letter of Authorization.

(f) A final comprehensive report on all marine mammal monitoring and research conducted during the period of these regulations must be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service at least 240 days prior to expiration of these regulations or 240 days

after the expiration of these regulations if renewal of the regulations will not be requested.

§ 216.207 Applications for Letters of Authorization.

(a) To incidentally take bowhead whales and other marine mammals pursuant to these regulations, the U.S. citizen (see definition at § 216.103) conducting the activity identified in § 216.200 must apply for and obtain either an initial Letter of Authorization in accordance with §§ 216.106 and 216.208, or a renewal under § 216.209.

(b) The application for an initial Letter of Authorization must be submitted to the National Marine Fisheries Service at least 180 days before the activity is scheduled to begin.

(c) Applications for initial Letters of Authorization must include all information items identified in § 216.104(a).

(d) NMFS will review an application for an initial Letter of Authorization in accordance with § 216.104(b) and, if adequate and complete, will publish a notice of receipt of a request for incidental taking and a proposed amendment to § 216.200(a). In conjunction with amending § 216.200(a), the National Marine Fisheries Service will provide for public comment on the application for an initial Letter of Authorization.

(e) Upon receipt of a complete application for an initial Letter of Authorization, and at its discretion, the National Marine Fisheries Service may submit the monitoring plan to members of a peer review panel for review and/or schedule a workshop to review the plan. Unless specified in the Letter of Authorization, the applicant must submit a final monitoring plan to the Assistant Administrator prior to the issuance of an initial Letter of Authorization.

§ 216.208 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 216.209.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting, including any requirements for the independent peer-review of proposed monitoring plans.

(c) Issuance and renewal of each Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity will be small, that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the species or stock of affected marine mammal(s), and will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.

(d) Notice of issuance or denial of a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

§ 216.209 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 216.208 for the activity identified in § 216.200 will be renewed annually upon:

(1) Notification to the National Marine Fisheries Service that the activity described in the application submitted under § 216.207 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season;

(2) Timely receipt of the monitoring reports required under § 216.205, and the Letter of Authorization issued under § 216.208, which have been reviewed and accepted by the National Marine Fisheries Service, and of the Plan of Cooperation required under § 216.205; and

(3) A determination by the National Marine Fisheries Service that the mitigation, monitoring and reporting measures required under § 216.204 and the Letter of Authorization issued under §§ 216.106 and 216.208, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 216.208 indicates that a

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substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the National Marine Fisheries Service will provide the public a minimum of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data that indicates that the determinations made in this document are in need of reconsideration,

(2) The Plan of Cooperation, and

(3) The proposed monitoring plan.

(c) A notice of issuance or denial of a Renewal of a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

§216.210 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by the National Marine Fisheries Service, issued pursuant to §§216.106 and 216.208 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §216.209, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §216.200(b), a Letter of Authorization issued pursuant to §§216.106 and 216.208 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

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Subpart S—Taking of Marine Mammals Incidental to Explosive Severance Activities Conducted During Offshore Structure Removal Operations on the Outer Continental Shelf in the U.S. Gulf of Mexico

SOURCE: 73 FR 34889, June 19, 2008, unless otherwise noted.

EFFECTIVE DATE NOTE: At 73 FR 34889, June 19, 2008, subpart S, consisting of §§216.211 through 216.219 were added, effective July 21, 2008 through July 19, 2013.

§216.211 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by U.S. citizens engaged in explosive severance activities conducted during offshore oil and gas structure removal activities in areas within state and Federal waters in the U.S. Gulf of Mexico adjacent to the coasts of Texas, Mississippi, Louisiana, Alabama, and Florida. The incidental, but not intentional, taking of marine mammals by U.S. citizens holding a Letter of Authorization issued pursuant to §216.218 is permitted during the course of severing pilings, well conductors, and related supporting structures, and other activities related to the removal of the oil and gas structure.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to a total of 5 bottlenose dolphin, one Atlantic spotted dolphin, and one pantropical spotted dolphin by Level A harassment over the period of validity of these regulations; and Level B harassment of the following species annually: 227 bottlenose dolphins, 65 Atlantic spotted dolphins, 77 pantropical spotted dolphins, 27 Clymene dolphins, 12 rough-toothed dolphins, 14 striped dolphins, 15 melon-headed whales, 10 pilot whales, 5 spinner dolphins, 3 Risso's dolphins, and 2 sperm whales.

§216.212 Effective dates.

Regulations in this subpart are effective from July 21, 2008 until July 19, 2013.

§216.213 Permissible methods of taking.

The Holder of a Letter of Authorization issued pursuant to §216.218, may incidentally, but not intentionally, take marine mammals by harassment within the area described in §216.211(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

§216.214 Prohibitions.

No person in connection with the activities described in §216.211(a) shall:

(a) Take any marine mammal not specified in §216.211(b);

(b) Take any marine mammal specified in §216.211(b) in a manner or amount greater than described therein;

(c) Take any marine mammal specified in §216.211(b) if NMFS determines that the taking of marine mammals incidental to the activities described in §216.211(a) is having more than a negligible impact on the species or stocks of marine mammals;

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued pursuant to §§216.106 and 216.218;

(e) Take any marine mammal in violation of these regulations by using a charge with a weight greater than 500 lbs (227 kg);

(f) Take any marine mammal when conditions preclude conducting mitigation and monitoring requirements of these regulations or a Letter of Authorization.

§216.215 Definitions, terms, and criteria**(a) Definitions.**

(1) *Below-mud-line or BML* means that the explosives are detonated below the water-mud interface, either inside or outside a pipe, other structure or cable.

(2) *Above-mud-line or AML* means that the explosives are detonated in the water column above the water-mud interface, either inside or outside a pipe, other structure or cable.

(3) *Multiple charge detonation* means any explosive configuration where more than one charge is required in a single detonation event.

(4) *Scenario* means an alpha-numeric designation provided to describe charge size, activity location, and target design employed in order to determine the appropriate marine mammal mitigation/monitoring measures.

(b) Terms

(1) *Impact zone (required for all scenarios)* means the area around a decommissioning target measured by the horizontal radius, in which a marine mammal could be affected by the pressure or acoustic energy released during the detonation of an explosive-severance charge.

(2) *Predetonation survey (required for all scenarios)* means any marine mammal monitoring survey (e.g., surface, aerial, or acoustic) conducted prior to the detonation of any explosive severance tool.

(3) *Postdetonation survey (required for all scenarios)* means any marine mammal monitoring survey (e.g., surface, aerial, or post-post-detonation aerial) conducted after the detonation event occurs.

(4) *Waiting period (required for all scenarios)* means the amount of time detonation operations must hold before the requisite monitoring survey(s) can be repeated.

(5) *Company observer (for scenarios A1-A4 only)* means trained company observers authorized to perform marine mammal detection surveys only for "very-small" blasting scenarios A1-A4.

(6) *NMFS observer (for scenarios B1-E4)* means observers trained and approved by an instructor with experience as a NMFS Platform Removal Observer Program trainer. NMFS observers are required to perform marine mammal detection surveys for all detonation scenarios with the exception of scenarios A1-A4. Two NMFS observers will be assigned to each operation for detection survey duties, except mitigation-scenarios C2, C4, D2, D4, E2, and E4 require a minimum of three NMFS observers for the simultaneous surface, aerial, and acoustic surveys.

(c) Criteria

(1) *Blasting category parameters and associated severance scenarios.* To determine the appropriate marine mammal mitigation and monitoring requirements in §§216.218 and 216.219, holders

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of Letters of Authorization for activities described in §216.211(a) of this subpart must determine, from Table 1 in §216.217(b)(1), the appropriate explosive severance mitigation/monitoring scenario to follow for the blasting category, species-delineation zone, and charge configuration for their activity.

(2) [Reserved]

§216.216 Mitigation.

(a) The activity identified in §216.211(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in §216.211(a), all mitigation measures contained in this subpart and in the Letter of Authorization issued pursuant to §§216.106 and 216.218 must be implemented. When using explosives, the following mitigation measures must be carried out:

(1)(i) If marine mammals are observed within (or about to enter) the marine mammal impact zone identified in Table 1 in §216.217(b)(1) column 5 for the relevant charge range and configuration (i.e., BML or AML) for the activity, detonation must be delayed until the marine mammal(s) are outside that zone;

(ii) Pre-detonation surveys shall not begin prior to sunrise and detonations shall not occur if the post-detonation survey cannot be concluded prior to sunset;

(iii) Whenever weather or sea conditions preclude adequate aerial, shipboard or subsurface marine mammal monitoring as determined by the trained observer, detonations must be delayed until conditions improve sufficiently for marine mammal monitoring to be undertaken or resumed;

(iv) Whenever the weather or sea conditions prevent implementation of the aerial survey monitoring required under §216.217(c)(2), the aerial survey must be repeated prior to detonation of charges; and

(v) Multiple charge detonations must be staggered at an interval of 0.9 sec (900 msec) between blasts.

(2) [Reserved]

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(b) If a marine mammal is found seriously injured, or dead, the explosive severance activity will immediately cease and the holder of the Letter of Authorization, designee or the designated lead observer will contact the Minerals Management Service and the Regional Administrator, National Marine Fisheries Service' Southeast Regional Office, or designee at the earliest opportunity. Procedures and monitoring methods will be reviewed and, if necessary, appropriate changes made to the mitigation and monitoring measures prior to conducting the next detonation to avoid future injury or mortality takings.

(c) Any mitigation measures proposed to be contained in a Letter of Authorization that are not specified in this subpart, or not considered an emergency requirement under §216.219(d), will first be subject to notice and comment through publication in the FEDERAL REGISTER, as provided in §216.219(c).

§216.217 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued for activities described in §216.211(a) are required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency with regulatory authority over the offshore oil-and-gas activities for the purpose of monitoring the impacts of the activity on marine mammals.

(b)(1) Table 1 summarizes the required mitigation and monitoring survey modes, duration and zones for all blasting scenarios of marine mammal impact zones for implementation of surface and aerial monitoring requirements depending upon charge weight and severance scenario.

(2) Holders of Letters of Authorization must fully comply with the relevant mitigation and monitoring program for the explosive-severance activity described in subparagraph (c) of this paragraph that corresponds to the holder of the Letter of Authorization's blast scenario shown in Table 1.

TABLE 1. BLAST CATEGORIES, MITIGATION SCENARIOS, SURVEY AND TIME REQUIREMENTS FOR ALL EXPLOSIVE SEVERANCE SCENARIOS.1

Blasting Category	Configuration (Charge w/ placement)	Species Deletion Zone	Mitigation Scenario	Impact Zone Radius	Pre Det Surface Survey (min)	Pre Det Aerial Survey (min)	Pre Det Acoustic Survey (min)	Post Det Surface Survey (min)	Post Det Aerial Survey (min)	Post Post Det Aerial Survey (Yes/No)	Waiting Period (min)
Very-Small	BML	Shelf (<200 m)	A1	261 m	60	N/A	N/A	30	N/A	No	30
	(0-10 lb)	Slope (>200 m)	A2	(856 ft)	90	N/A	N/A	30	N/A	No	30
	AML	Shelf (<200 m)	A3	293 m	60	N/A	N/A	30	N/A	No	30
	(0-5 lb)	Slope (>200 m)	A4	(961 ft)	90	N/A	N/A	30	N/A	No	30
Small	BML	Shelf (<200 m)	B1	373 m	90	30	N/A	N/A	30	No	30
	(>10-20 lb)	Shelf (>200 m)	B2	(1,224 ft)	90	30	N/A	N/A	30	No	30
	AML	Shelf (<200 m)	B3	522 m	90	30	N/A	N/A	30	No	30
	(>5-20 lb)	Slope (>200 m)	B4	(1,714 ft)	90	30	N/A	N/A	30	No	30
Standard	BML	Shelf (<200 m)	C1	631 m	90	30	N/A	N/A	30	No	30
	(>20-80 lb)	Slope (>200 m)	C2	(2,069 ft)	90	30	120	N/A	30	No	30
	AML	Shelf (<200 m)	C3	829 m	90	45	N/A	N/A	30	No	30
	(>20-80 lb)	Slope (>200 m)	C4	(2,721 ft)	90	60	150	N/A	30	Yes	45
Large	BML	Shelf (<200 m)	D1	941 m	120	45	N/A	N/A	30	No	30
	(>80-200 lb)	Slope (>200 m)	D2	(3,086 ft)	120	60	180	N/A	30	Yes	45
	AML	Shelf (<200 m)	D3	1,126 m	120	60	N/A	N/A	30	No	30
	(>80-200 lb)	Slope (>200 m)	D4	(3,693 ft)	150	60	210	N/A	30	Yes	45
Specialty	BML	Shelf (<200 m)	E1	1,500 m	150	90	N/A	N/A	45	No	45
	(>200-500 lb)	Slope (>200 m)	E2	(4,916 ft)	180	90	270	N/A	45	Yes	45
	AML	Shelf (<200 m)	E3	1,528 m	150	90	N/A	N/A	45	No	45
	(>200-500 lb)	Slope (>200 m)	E4	(5,012 ft)	180	90	270	N/A	45	Yes	45

1 Severance of subsea structures that do not penetrate the sea surface will follow the mitigation scenario for above mudline (AML) detonations even if charges are placed below mudline.

(c) Holders of Letters of Authorization must ensure that the following monitoring programs are conducted as appropriate for the required monitoring scenario.

(1) *Surface monitoring survey.* A surface monitoring survey must be conducted for the length of time that corresponds to the relevant explosive severance scenario. Surface monitoring surveys are to be conducted from the highest vantage point and/or other location(s) that provide the best, clear view of the entire impact zone. These vantage points may be on the structure being removed or proximal surface vessels (i.e., crewboats, derrick barges, etc.). Surface surveys are restricted to daylight hours only, and the monitoring will cease if the designated lead observer determines that weather or marine conditions are not adequate for visual observations.

(2) *Aerial monitoring survey.* Aerial surveys are required for all explosive severance scenarios except monitoring scenarios A1–A4. Aerial monitoring surveys are to be conducted from helicopters running standard low-altitude search patterns over the extent of the impact zone that corresponds to the appropriate explosive severance scenario. Aerial surveys will be restricted to daylight hours only (defined as “legal sunrise” to “legal sunset”), and cannot begin until the requisite surface monitoring survey has been completed. Aerial surveys will cease if the designated lead observer determines that weather or marine conditions are not adequate for visual observations, or when the pilot/removal supervisor determines that helicopter operations must be suspended.

(3) *Acoustic monitoring survey.*

(i) Acoustic monitoring surveys are required to be conducted on all Standard, Large, and Specialty blasting scenarios conducted at slope (≤ 200 m (656 ft)) locations (i.e., scenarios C2, C4, D2, D4, E2, and E4).

(ii) Persons conducting acoustic surveys will be required to comply with NMFS-approved passive acoustic monitoring protocols and use approved devices and technicians.

(iii) Acoustic surveys will be run concurrent with requisite pre-detonation surveys, beginning with the surface ob-

servations and concluding at the finish of the aerial surveys when the detonation(s) is allowed to proceed.

(4) Post-detonation surface monitoring survey. A 30-minute post-detonation surface survey must be conducted by the trained company observer for scenarios A1 – A4 immediately upon conclusion of the detonation.

(5) Post-detonation aerial monitoring survey. For scenarios B1–D4, a 30-minute aerial survey must be conducted immediately upon conclusion of the detonation. For scenarios E1–E4, a 45-minute aerial survey must be conducted immediately upon conclusion of the detonation.

(6) Post-post-detonation aerial monitoring survey. Post-post-detonation aerial monitoring surveys must be conducted for scenarios C4, D2, D4, E2 and E4 within 2–7 days after detonation activities conclude, by either helicopter or fixed-wing aircraft. Observations are to start at the removal site and proceed leeward and outward of wind and current movement. Any distressed, shocked, injured or dead marine mammals will be noted in the survey report, and if possible, tracked and collected after notifying the National Marine Fisheries Service within the time requirements stated in §216.217(f).

(7) If unforeseen conditions or events occur during an explosive severance operation that may necessitate additional monitoring not specified in this paragraph, the designated NMFS lead observer will contact the appropriate National Marine Fisheries Service and Minerals Management Service personnel as detailed in the Letter of Authorization for additional guidance.

(d) Holders of Letters of Authorization must conduct all monitoring and research required under the Letter of Authorization. Any monitoring or research measures proposed to be contained in a Letter of Authorization that are not specified in this subpart or not considered an emergency requirement under §216.218(d), will first be subject to public notice and comment through publication in the FEDERAL REGISTER, as provided by §216.219(c).

(e) *Reporting* (1) A report summarizing the results of structure removal

activities, mitigation measures, monitoring efforts, and other information as required by a Letter of Authorization, must be submitted to the Director, Office of Protected Resources, within 30 days of completion of the removal activity.

(2) The National Marine Fisheries Service will accept the NMFS observer report as the activity report required by subparagraph (1) of this paragraph if all requirements for reporting contained in the Letter of Authorization are provided to the NMFS observer before the NMFS observer's report is submitted to the PROP Manager.

(3) If a marine mammal is found shocked, injured, or dead, the Holder of the Letter of Authorization, or designee, must report the incident to the National Marine Fisheries Service Southeast Regional Office, at the earliest opportunity.

§216.218 Letters of Authorization.

(a) To incidentally take marine mammal species listed in §216.211(b) pursuant to these regulations, each company or contractor responsible for the removal of the structure or an industry-related seafloor obstruction in the area specified in §216.211(a) must apply for and obtain either a Letter of Authorization in accordance with §216.106 or a renewal under §216.219(a).

(b) An application for a Letter of Authorization must be submitted to the National Marine Fisheries Service at least 30 days before the explosive removal activity is scheduled to begin.

(c) Issuance of a Letter of Authorization and renewal of a Letter of Authorization under §216.219(a) will be based on a determination by the National Marine Fisheries Service that the number of each species or stock of cetaceans taken annually by the activity will be small and that the total taking over the 5-year period will have a negligible impact on the species or stock of affected marine mammal(s).

(d) A Letter of Authorization may be renewed annually, subject to conditions in §216.219(a).

(e) A Letter of Authorization for activities in this subpart will not be valid after the effective period of this subpart.

(f) A copy of the Letter of Authorization must be in the possession of the persons conducting the activity specified in §216.211(a) that may involve incidental takings of marine mammals.

(g) Notice of issuance or denial of a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

§216.219 Renewal and modifications of Letters of Authorization.

(a) A Letter of Authorization issued for the activity identified in §216.211(a) will be renewed annually upon:

(1) Receipt of an application for renewal of a Letter of Authorization under §216.218.

(2) Timely receipt of the report(s) required under §216.217(f), which have been reviewed by the Assistant Administrator and determined to be acceptable; and

(3) A determination that the required mitigation, monitoring and reporting measures have been undertaken.

(b) Notice of issuance of a renewal of the Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of issuance.

(c) In addition to complying with the provisions of §216.106, except as provided in paragraph (d) of this section, no substantive modification, including a request for a variance in the mitigation or monitoring requirements in this subpart or a withdrawal or suspension of the Letter of Authorization issued pursuant to §216.106 and subject to the provisions of this subpart, shall be made until after notice and an opportunity for public comment. For purposes of this paragraph, renewal of a Letter of Authorization under §216.219, without modification other than an effective date change, is not considered a substantive modification.

(d) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §216.211(b), a Letter of Authorization issued pursuant to §§216.106 and 216.118, or renewed pursuant to this paragraph may be modified without prior notice and opportunity for public comment. A notice will be published in the FEDERAL REGISTER subsequent to the action.

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Subpart T [Reserved]

Subpart U—Taking of Marine Mammals Incidental to Rocket Launches from the Kodiak Launch Complex, Kodiak Island, AK

SOURCE: 71 FR 4308, Jan. 26, 2006, unless otherwise noted.

EFFECTIVE DATE NOTE: At 71 FR 4308, Jan. 26, 2006, subpart U, consisting of §§216.230 through 216.237 were added, effective Feb. 27, 2006 through Feb. 28, 2011.

§216.230 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in rocket launch activities (up to nine launches per year) at the Kodiak Launch Complex on Kodiak Island, Alaska.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to Steller sea lions (*Eumetopius jubatus*) and Pacific harbor seals (*Phoca vitulina richardsi*).

§216.231 Effective dates.

Regulations in this subpart are effective from February 27, 2006 through February 28, 2011.

§216.232 Permissible methods of taking.

(a) Under a Letter of Authorization issued pursuant to §216.106, the Alaska Aerospace Development Corporation and its contractors, may incidentally, but not intentionally, take Steller sea lions by Level B harassment, take adult Pacific harbor seals by Level B harassment, and take harbor seal pups by Level B or Level A harassment or mortality, in the course of conducting missile launch activities within the area described in §216.230(a), provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activities identified in §216.230(a) must be conducted in a manner that minimizes, to the greatest ex-

tent practicable, adverse impacts on marine mammals and their habitat.

§216.233 Prohibitions.

The following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional.

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §216.106.

(c) The incidental taking of any marine mammal of a species not specified, or in a manner not authorized, in this subpart.

§216.234 Mitigation, monitoring and reporting.

(a) No more than five launches may occur between May 15 and June 30 within the 5-year period, and no more than 15 launches may occur between June 15 and September 30 within the 5-year period.

(b) The holder of the Letter of Authorization must implement the following measures for all launches occurring from June through October:

(1) Conduct five replicate fixed-wing aerial surveys of all hauled out Steller sea lions and harbor seals at Ugak Island, each flown at low tide (weather permitting), using a minimum flight altitude of 500 feet (152 meters) above sea level, with an approach no closer than 0.25 mi (0.40 km) to the haulout, and conducted a day prior to, directly following, and for three consecutive days after a launch.

(2) At least one biologist observer will accompany the pilot during all aerial surveys.

(3) Data gathered during aerial surveys will be gathered visually and through the use of a camera with a zoom lens.

(4) A real-time video record of Steller sea lion reactions to launch noise will be made using a video camera system placed upon the Ugak Island haulout before a scheduled launch and then retrieved after the launch.

(5) Sound intensities and frequencies of rocket motor noise will be recorded before, during, and after a launch by a sound level monitor mounted upon the

Ugak Island haulout and set to high-light sounds greater than 70 dBA. Monitors will be installed one day or more before a launch and retrieved within one day post-launch.

(c) A trial effort to obtain real-time video records of harbor seals hauled out at the eastern end of the northern side of the island and their reactions to launch noise will be made as soon as practicable. A brief report summarizing the efficacy of this monitoring effort should be included in the standard monitoring reports for that launch and year. If valuable data may be gathered using this method, real-time video records of harbor seals reactions to launch noise will be made before launches scheduled between May 15 and June 30, and between June 30 and September 30 if the equipment is not being used to record Steller sea lions, and then retrieved after the launches.

(d) Security flights immediately associated with rocket launches may not approach closer than 0.25 mile (0.4 km) to occupied pinniped haulout sites on Ugak Island or fly lower than 1000 ft (305 m) when the plane is closer than 0.5 miles (0.8 km) from occupied pinniped sites on Ugak Island unless indications of human presence or activity warrant closer inspection of the area to assure that national security interests are protected in accordance with the law.

(e) When pinnipeds are present at haulouts during security overflights associated with rocket launches, and when practicable, a member of the flight crew will note and record whether pinnipeds appeared to flush as a result of the overflight and estimate a number.

(f) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. The holder must notify the NMFS Alaska Assistant Regional Administrator for Protected Resources and to the NMFS Division of Permits, Conservation, and Education, Office of Protected Resources at least 2 weeks prior to commencing monitoring activities.

(g) Activities related to the monitoring described in paragraph (a) of

this section or in the Letter of Authorization may be conducted without a separate scientific research permit.

(h) In coordination and compliance with the Alaska Aerospace Development Corporation, the National Marine Fisheries Service may place an observer on Kodiak or Ugak Islands for any marine mammal monitoring activity prior to, during, or after a missile launch to monitor impacts on marine mammals, provided observers are not within the calculated danger zone of the rocket's flight path during a launch.

(i) The holder of the Letter of Authorization must comply with any other applicable state or federal permits, regulations, and environmental monitoring agreements set up with other agencies.

(j) The National Marine Fisheries Service must be informed immediately of any proposed changes or deletions to any portions of the monitoring requirements.

(k) The holder of the Letter of Authorization must implement the following reporting requirements:

(1) If indications of injurious or lethal take are recorded, the NMFS Alaska Assistant Regional Administrator for Protected Resources and the NMFS Division of Permits, Conservation, and Education, Office of Protected Resources, or their designees, will be contacted within 48 hours. In consultation with the National Marine Fisheries Service, launch procedure, mitigation measures, and monitoring methods must be reviewed and appropriate changes made prior to the next launch.

(2) Data from monitoring activities will be reported to the National Marine Fisheries Service within 90 days following cessation of field activities for each launch. After the trial effort to videotape harbor seals at the eastern end of the north side of Ugak island, a summary of the effectiveness of the videotaping will be included in the associated launch report.

(3) An interim technical report must be submitted to the NMFS Alaska Assistant Regional Administrator for Protected Resources and to the NMFS Division of Permits, Conservation, and

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Education, Office of Protected Resources at least 60 days prior to the expiration of each annual Letter of Authorization. This report must contain the following information:

(i) Timing and nature of launch operations and monitoring flights;

(ii) A summary of marine mammal behavioral observations in relation to recorded acoustic stimuli and other known visual or audio stimuli;

(iii) An estimate of the amount and nature of all takes.

(iv) A copy of all videotapes containing sea lion and harbor seal footage, and selected illustrative 35 mm or digital pictures, cross-referenced to the appropriate launches and acoustic measurements.

(4) A draft comprehensive technical report will be submitted to the NMFS Alaska Assistant Regional Administrator for Protected Resources and to the NMFS Division of Permits, Conservation, and Education, Office of Protected Resources, 180 days prior to the expiration of these regulations with full documentation of the methods, results, and interpretation of all monitoring tasks for launches during all expired Letters of Authorization, plus preliminary information for launches during the first 6 months of the final Letter of Authorization.

(5) A revised final comprehensive technical report, including all monitoring results during the entire period of the Letter of Authorization, will be due 90 days after the end of the period of effectiveness of these regulations.

(6) The interim and draft comprehensive technical reports will be subject to review and comment by the National Marine Fisheries Service. Any recommendations made by the National Marine Fisheries Service must be addressed in the final comprehensive technical report prior to acceptance by the National Marine Fisheries Service.

§216.235 Letter of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time specified in the Letter of Authorization, but a Letter of Authorization may not be valid beyond the effective period of the regulations.

(b) A Letter of Authorization will set forth:

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(1) Species of marine mammals authorized to be taken;

(2) Permissible methods of incidental taking;

(3) Specified geographical region;

(4) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking and its habitat; and

(5) Requirements for monitoring and reporting incidental takes.

(c) Issuance of a Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity will be small, and that the total taking by the activity as a whole will have no more than a negligible impact on the affected species or stocks of marine mammal(s).

(d) Notice of issuance or denial of a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

§216.236 Renewal of a Letter of Authorization.

(a) A Letter of Authorization for the activity identified in §216.230(a) will be renewed upon:

(1) Notification to the National Marine Fisheries Service that the activity described in the application for a Letter of Authorization submitted under §216.235 will be undertaken and that there will not be a substantial modification to the described activity, mitigation or monitoring undertaken during the upcoming season;

(2) Timely receipt of and acceptance by the National Marine Fisheries Service of the monitoring reports required under §216.234;

(3) A determination by the National Marine Fisheries Service that the mitigation, monitoring and reporting measures required under §§216.232 and 216.234 and the Letter of Authorization were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization; and

(4) A determination that the number of marine mammals taken by the activity will be small and that the total taking by the activity will have no more than a negligible impact on the affected species or stocks of marine mammal(s), and that the level of taking will be consistent with the findings

made for the total taking allowable under these regulations.

(b) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

§ 216.237 Modifications to a Letter of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to a Letter of Authorization issued pursuant to the provisions of this subpart shall be made by the National Marine Fisheries Service until after notification and an opportunity for public comment has been provided. A renewal of a Letter of Authorization under § 216.236 without modification is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.230(b), a Letter of Authorization may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days of the action.

Subpart V [Reserved]

Subpart W—Taking Marine Mammals Incidental to Conducting Precision Strike Weapon Missions in the Gulf of Mexico

SOURCE: 71 FR 67822, Nov. 24, 2006, unless otherwise noted.

EFFECTIVE DATE NOTE: At 71 FR 67822, Nov. 24, 2006, subpart W, consisting of §§ 216.250 through 216.259 were added, effective Dec. 26, 2006 through Dec. 27, 2011.

§ 216.250 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by U.S. citizens engaged in U.S. Air Force Precision Strike Weapon missions within the Eglin Air Force Base Gulf Test and

Training Range within the northern Gulf of Mexico. The authorized activities as specified in a Letter of Authorization issued under §§ 216.106 and 216.257 include, but are not limited to, activities associated with (1) the Joint Air-to-Surface Stand-off Missile (JASSM) exercise for a maximum of two live shots (single) and 4 inert shots (single) annually and (2) the small-diameter bomb (SDB) exercise for a maximum of six live shots a year, with two of the shots occurring simultaneously and a maximum of 12 inert shots, with up to two occurring simultaneously.

(b) The incidental take by Level A harassment, Level B harassment, or mortality of marine mammals under the activity identified in this section is limited to the following species: Atlantic bottlenose dolphins (*Tursiops truncatus*), Atlantic spotted dolphins (*Stenella frontalis*), dwarf sperm whales (*Kogia simus*) and pygmy sperm whale (*Kogia breviceps*).

§ 216.251 Effective dates.

Regulations in this subpart are effective from December 26, 2006 until December 27, 2011.

§ 216.252 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.257, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by Level A and Level B harassment, including lethal take within the area described in § 216.250(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The taking of marine mammals under a Letter of Authorization is limited to the species listed in § 216.250(b) and is limited to a total of 1 mortality, 2 takes by Level A harassment, and 53 takes by Level B harassment annually.

§ 216.253 Prohibitions.

Notwithstanding takings contemplated in § 216.250 and authorized by a Letter of Authorization issued under §§ 216.106 and 216.257, no person in connection with the activities described in § 216.250 shall:

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(a) Take any marine mammal not specified in §216.250(b);

(b) Take any marine mammal specified in §216.250(b) other than by incidental, unintentional Level A or Level B harassment or mortality;

(c) Take a marine mammal specified in §216.250(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §§216.106 and 216.257.

§216.254 Mitigation.

The activity identified in §216.250(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammal species and stocks and their habitats. When conducting operations identified in §216.250(a) under a Letter of Authorization, the following mitigation measures must be implemented:

(a)(1) For the JASSM, the holder of the Letter of Authorization must establish and monitor a safety zone for marine mammals with a radius of 2.0 nm (3.7 km) from the center of the detonation and a buffer zone with a radius of 1.0 nm (1.85 km) radius from the outer edge of the safety zone.

(2) For the SDB, the holder of the Letter of Authorization must establish and monitor a safety for marine mammals with a radius of no less than 5 nm (9.3 km) for single bombs and 10 nm (18.5 km) for double bombs and a buffer zone from the outer edge of the safety zone with a radius of at least 2.5 nm (4.6 km) for single bombs and 5 nm (18.5 km) for double bombs.

(b) Prior to a JASSM or SDB launch:

(1) If any marine mammals are observed within the designated safety zone prescribed in condition (a)(1) above, or within the buffer zone prescribed in condition (a)(2) above and it/they are on a course that will put them within the safety zone prior to an JASSM or SDB launch, the launch must be delayed until all marine mammals are no longer within the designated safety zone.

(2) If any marine mammals are detected in the buffer zone and subse-

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quently cannot be reacquired, the mission launch will not continue until the next verified location is outside of the safety zone and the animal is moving away from the mission area.

(3) If weather and/or sea conditions preclude adequate aerial surveillance for detecting marine mammals, detonation must be delayed until adequate sea conditions exist for aerial surveillance to be undertaken. Adequate sea conditions means the sea state does not exceed Beaufort sea state 3.5 (i.e., whitecaps on 33 to 50 percent of surface; 0.6 m (2 ft) to 0.9 m (3 ft) waves), the visibility is 5.6 km (3 nm) or greater, and the ceiling is 305 m (1,000 ft) or greater.

(4) To ensure adequate daylight for pre- and post-detonation monitoring, mission launches may not take place earlier than 2 hours after sunrise, and detonations may not take place later than 2 hours prior to sunset, or whenever darkness or weather conditions will preclude completion of the post-test survey effort described in §216.255.

(5) If post-detonation surveys determine that a serious injury or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed with the National Marine Fisheries Service and appropriate changes must be made prior to conducting the next mission detonation.

(6) Mission launches must be delayed if aerial or vessel monitoring programs described under §216.255 cannot be carried out fully.

§216.255 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to §§216.106 and 216.257 for activities described in §216.250(a) is required to conduct the monitoring and reporting measures specified in this section and any additional monitoring measures contained in the Letter of Authorization.

(b) The Holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency authorized to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the

Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, National Marine Fisheries Service, or designee, by letter or telephone (301-713-2289), at least 2 weeks prior to any modification to the activity identified in §216.250(a) that has the potential to result in the mortality or Level A or Level B harassment of marine mammals that was not identified and addressed previously.

(c) The Holder of this Authorization must:

(1) Designate qualified on-site marine mammal observers to record the effects of mission launches on marine mammals that inhabit the northern Gulf of Mexico;

(2) Have on-site marine mammal observers approved in advance by the National Marine Fisheries Service to conduct the mitigation, monitoring and reporting activities specified in these regulations and in the Letter of Authorization issued pursuant to §216.106 and §216.257.

(3) Conduct aerial surveys to reduce impacts on protected species. The aerial survey/monitoring team will consist of two experienced marine mammal observers, approved in advance by the Southeast Region, National Marine Fisheries Service. The aircraft will also have a data recorder who would be responsible for relaying the location, the species if possible, the direction of movement, and the number of animals sighted.

(4) Conduct shipboard monitoring to reduce impacts to protected species. Trained marine mammal observers will conduct monitoring from the highest point possible on each mission or support vessel(s). The observer on the vessel must be equipped with optical equipment with sufficient magnification (e.g., 25X power "Big-Eye" binoculars). The marine mammal observation platform must be of sufficient height to provide observers a platform to see a major portion of the safety zone.

(d) The aerial and shipboard monitoring teams will maintain proper lines of communication to avoid communication deficiencies. The observers from the aerial team and operations vessel will have direct communication

with the lead scientist aboard the operations vessel.

(e) Pre-mission Monitoring: Approximately 5 hours prior to the mission, or at daybreak, the appropriate vessel(s) would be on-site in the primary test site near the location of the earliest planned mission point. Observers onboard the vessel will assess the suitability of the test site, based on visual observation of marine mammals and overall environmental conditions (visibility, sea state, etc.). This information will be relayed to the lead scientist.

(f) Three Hours Prior to Mission:

(1) Approximately three hours prior to the mission launch, aerial monitoring will commence within the test site to evaluate the test site for environmental suitability. Evaluation of the entire test site would take approximately 1 to 1.5 hours. The aerial monitoring team will begin monitoring the safety zone and buffer zone around the target area.

(2) Shipboard observers will monitor the safety and buffer zone, and the lead scientist will enter all marine mammal sightings, including the time of sighting and the direction of travel, into a marine animal tracking and sighting database.

(g) One to 1.5 Hours Prior to Mission Launch:

(1) Depending upon the mission, aerial and shipboard viewers will be instructed to leave the area and remain outside the safety area. The aerial team will report all marine animals spotted and their directions of travel to the lead scientist onboard the vessel.

(2) The shipboard monitoring team will continue searching the buffer zone for protected species as it leaves the safety zone. The surface vessels will continue to monitor from outside of the safety area until after impact.

(h) Post-mission monitoring:

(1) The vessels will move into the safety zone from outside the safety zone and continue monitoring for at least two hours, concentrating on the area down current of the test site.

(2) The Holder of the Letter of Authorization will closely coordinate mission launches with marine animal

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stranding networks. Coordination shall include:

(i) Pre-activity notification of a PSW exercise; and

(ii) Post-event surveying of the Eglin AFB shore-line in the vicinity of the PSW exercise.

(3) The monitoring team will document any dead or injured marine mammals and, if practicable, recover and examine any dead animals.

(i) Activities related to the monitoring described in this section may include retention of marine mammals without the need for a separate scientific research permit.

(j) The Holder of the Letter of Authorization must conduct any marine mammal research required under the Letter of Authorization.

(k) *Reporting.* (1) Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must submit an annual report to the Director, Office of Protected Resources, National Marine Fisheries Service, no later than 30 days prior to the date of expiration of the Letter of Authorization. This report must contain all information required by these regulations and the Letter of Authorization.

(2) The final comprehensive report on all marine mammal monitoring and research conducted during the period of these regulations must be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service at least 240 days prior to expiration of these regulations or 240 days after the expiration of these regulations if new regulations will not be requested.

§216.256 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined at §216.103) conducting the activity identified in §216.250(a) must apply for and obtain either an initial Letter of Authorization in accordance with §§216.106 and 216.257 or a renewal under §216.258.

§216.257 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time specified in the Letter

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of Authorization, but may not to exceed the period of validity of this subpart, and must be renewed annually subject to annual renewal conditions in §216.258.

(b) A Letter of Authorization with a period of validity less than the period of this subpart may be renewed subject to renewal conditions in §216.258.

(c) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting incidental takes.

(d) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the species or stock of affected marine mammals.

(e) Except for the initial Letter of Authorization, notice of issuance or denial of subsequent Letters of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

§216.258 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under §216.106 and §216.257 for the activity identified in §216.250(a) will be renewed annually upon:

(1) Notification to the National Marine Fisheries Service that the activity described in the application submitted under §216.256 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring report required under §216.255(k), and the Letter of Authorization, which has been reviewed and accepted by the National Marine Fisheries Service; and

(3) A determination by the National Marine Fisheries Service that the mitigation, monitoring and reporting measures required under §216.254, §216.255, and the Letter of Authorization issued under §§216.106 and 216.257, were undertaken and will be undertaken during

the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§216.106 and 216.258 indicates that a substantial modification to the described work, mitigation, monitoring or research undertaken during the upcoming season will occur, the National Marine Fisheries Service will provide the public a period of 30 days for review and seek comment on:

(1) New cited information and data that indicates that the determinations made for promulgating these regulations are in need of reconsideration, and

(2) Proposed changes to the mitigation, monitoring and research requirements contained in these regulations or in the current Letter of Authorization.

§216.259 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to a Letter of Authorization issued pursuant to §§216.106 shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §216.258, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §216.250(b), a Letter of Authorization issued pursuant to §§216.106 and 216.257 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

PARTS 217–220 [RESERVED]

PART 221—PRESCRIPTIONS IN FERC HYDROPOWER LICENSES

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AUTHORITY: 16 U.S.C. 797(e), 811, 823d.

SOURCE: 70 FR 69840, Nov. 17, 2005, unless otherwise noted.

Subpart A—General Provisions

§ 221.1 What is the purpose of this part, and to what license proceedings does it apply?

(a) *Hearing process.* (1) The regulations in subparts A and B of this part contain rules of practice and procedure applicable to hearings on disputed issues of material fact with respect to mandatory prescriptions that the De-

partment of Commerce, acting through the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) may develop for inclusion in a hydropower license issued by the Federal Energy Regulatory Commission (FERC) under subchapter I of the Federal Power Act (FPA), 16 U.S.C. 791 *et seq.* The authority to develop these prescriptions is granted by FPA section 18, 16 U.S.C. 811, which authorizes the Secretary of Commerce to prescribe fishways.

(2) The hearing process under this part does not apply to recommendations that the Department of Commerce may submit to FERC under FPA section 10(a) or (j), 16 U.S.C. 803(a), (j).

(3) The FPA also grants the Department of Agriculture and Interior the authority to develop mandatory conditions, and the Department of the Interior the authority to develop mandatory prescriptions, for inclusion in a hydropower license. Where the Department of Commerce and either or both of these other Departments develop conditions or prescriptions to be included in the same hydropower license and where the Departments agree to consolidate the hearings under § 221.23:

(i) A hearing conducted under this part will also address disputed issues of material fact with respect to any condition or prescription developed by one of the other Departments; or

(ii) A hearing requested under this part will be conducted by one of the other Departments, pursuant to 7 CFR 1.601 *et seq.* or 43 CFR 45.1 *et seq.*, as applicable.

(4) The regulations in subparts A and B of this part will be construed and applied to each hearing process to achieve a just and speedy determination, consistent with adequate consideration of the issues involved and the provisions of § 221.60(a).

(b) *Alternatives process.* The regulations in subparts A and C of this part contain rules of procedure applicable to the submission and consideration of alternative prescriptions under FPA section 33, 16 U.S.C. 823d. That section allows any party to the license proceeding to propose an alternative to a fishway prescribed by NMFS under section 18.

(c) *Reservation of authority.* Where NMFS notifies FERC that it is reserving its authority to develop one or more prescriptions during the term of the license, the hearing and alternatives processes under this part for such prescriptions will be available if and when NMFS exercises its reserved authority. NMFS will consult with FERC and notify the license parties regarding how to initiate the hearing process and alternatives process at that time.

(d) *Applicability.* (1) This part applies to any hydropower license proceeding for which the license has not been issued as of November 17, 2005 and for which one or more preliminary prescriptions or prescriptions have been or are filed with FERC.

(2) If NMFS has already filed one or more preliminary prescriptions or prescriptions as of November 17, 2005, the special applicability provisions of § 221.4 also apply.

§ 221.2 What terms are used in this part?

As used in this part:

ALJ means an administrative law judge appointed under 5 U.S.C. 3105 and assigned to preside over the hearing process under subpart B of this part.

Alternative means a prescription that a license party other than NMFS or another Department develops as an alternative to a preliminary prescription from NMFS or another Department, under FPA sec. 33, 16 U.S.C. 823d.

Condition means a condition under FPA sec. 4(e), 16 U.S.C. 797(e), for the adequate protection and utilization of a reservation.

Day means a calendar day.

Department means the Department of Agriculture, Department of Commerce, or Department of the Interior.

Department of Commerce's designated ALJ office means the ALJ office that is assigned to preside over the hearings process for NMFS.

Discovery means a prehearing process for obtaining facts or information to assist a party in preparing or presenting its case.

Ex parte communication means an oral or written communication to the ALJ that is made without providing all par-

ties reasonable notice and an opportunity to participate.

FERC means the Federal Energy Regulatory Commission.

FPA means the Federal Power Act, 16 U.S.C. 791 *et seq.*

Intervention means a process by which a person who did not request a hearing under § 221.21 can participate as a party to the hearing under § 221.22.

License party means a party to the license proceeding, as that term is defined at 18 CFR 385.102(c).

License proceeding means a proceeding before FERC for issuance of a license for a hydroelectric facility under 18 CFR parts 4 or 5.

Material fact means a fact that, if proved, may affect a Department's decision whether to affirm, modify, or withdraw any condition or prescription.

NEPA document means an environmental assessment or environmental impact statement issued to comply with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

NMFS means the National Marine Fisheries Service, a constituent agency of the Department of Commerce, acting by and through the Assistant Administrator for Fisheries or one of NMFS's six Regional Administrators, as appropriate.

Office of Habitat Conservation means the NMFS Office of Habitat Conservation. Address: Chief, Habitat Protection Division, Office of Habitat Conservation, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Telephone 301-713-4300. Facsimile number 301-713-4305.

Party means, with respect to NMFS's hearing process under subpart B of this part:

(1) A license party that has filed a timely request for a hearing under:

(i) Section 221.21; or

(ii) Either 7 CFR 1.621 or 43 CFR 45.21, with respect to a hearing process consolidated under § 221.23;

(2) A license party that has filed a timely notice of intervention and response under:

(i) Section 221.22; or

(ii) Either 7 CFR 1.622 or 43 CFR 45.22, with respect to a hearing process consolidated under § 221.23;

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(3) NMFS, if it has filed a preliminary prescription; and

(4) Any other Department that has filed a preliminary condition or prescription, with respect to a hearing process consolidated under § 221.23.

Person means an individual; a partnership, corporation, association, or other legal entity; an unincorporated organization; and any federal, state, tribal, county, district, territorial, or local government or agency.

Preliminary condition or prescription means a preliminary condition or prescription filed by a Department with FERC under 18 CFR 4.34(b), 4.34(i), or 5.22(a) for potential inclusion in a hydropower license.

Prescription means a fishway prescribed under FPA sec. 18, 16 U.S.C. 811, to provide for the safe, timely, and effective passage of fish.

Representative means a person who:

(1) Is authorized by a party to represent the party in a hearing process under this subpart; and

(2) Has filed an appearance under § 221.10.

Secretary means the Secretary of Commerce or his or her designee.

Senior Department employee has the same meaning as the term “senior employee” in 5 CFR 2637.211(a).

You refers to a party other than a Department.

§ 221.3 How are time periods computed?

(a) *General*. Time periods are computed as follows:

(1) The day of the act or event from which the period begins to run is not included.

(2) The last day of the period is included.

(i) If that day is a Saturday, Sunday, or federal holiday, the period is extended to the next business day.

(ii) The last day of the period ends at 5 p.m. at the place where the filing or other action is due.

(3) If the period is less than 7 days, any Saturday, Sunday, or federal holiday that falls within the period is not included.

(b) *Extensions of time*. (1) No extension of time can be granted to file a request for a hearing under § 221.21, a notice of intervention and response under

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§ 221.22, an answer under § 221.24, or any document under subpart C of this part.

(2) An extension of time to file any other document under subpart B of this part may be granted only upon a showing of good cause.

(i) To request an extension of time, a party must file a motion under § 221.35 stating how much additional time is needed and the reasons for the request.

(ii) The party must file the motion before the applicable time period expires, unless the party demonstrates extraordinary circumstances that justify a delay in filing.

(iii) The ALJ may grant the extension only if:

(A) It would not unduly prejudice other parties; and

(B) It would not delay the decision under § 221.60.

§ 221.4 What deadlines apply to pending applications?

(a) *Applicability*. (1) This section applies to any case in which NMFS has filed a preliminary prescription or prescription with FERC before November 17, 2005 and FERC has not issued a license as of that date.

(2) The deadlines in this section will apply in such a case, in lieu of any inconsistent deadline in other sections of this part.

(b) *Hearing process*. (1) Any request for a hearing under § 221.21 must be filed with the Office of Habitat Conservation by December 19, 2005.

(2) Any notice of intervention and response under § 221.22 must be filed by January 3, 2006.

(3) Upon receipt of a hearing request under paragraph (b)(1) of this section, NMFS must do the following by March 17, 2006:

(i) Comply with the requirements of § 221.23;

(ii) Determine jointly with any other Department that has received a hearing request, after consultation with FERC, a time frame for the hearing process and a corresponding deadline for NMFS to file an answer under § 221.24; and

(iii) Issue a notice to each party specifying the time frame for the hearing process, including the deadline for NMFS to file an answer.

(c) *Alternatives process.* (1) Any alternative under § 221.71 must be filed with the Office of Habitat Conservation by December 19, 2005.

(2) Upon receipt of an alternative under paragraph (c)(1) of this section, if no hearing request is filed under paragraph (b)(1) of this section, NMFS must do the following by February 15, 2006:

(i) Determine jointly with any other Department that has received a related alternative, after consultation with FERC, a time frame for the filing of a modified prescription under § 221.72(b); and

(ii) Issue a notice to the license party that has submitted the alternative, specifying the time frame for the filing of a modified prescription.

(3) Upon receipt of an alternative under paragraph (c)(1) of this section, if a hearing request is also filed under paragraph (b)(1) of this section, NMFS will follow the provisions of paragraph (b)(3) of this section.

Subpart B—Hearing Process

REPRESENTATIVES

§ 221.10 Who may represent a party, and what requirements apply to a representative?

(a) *Individuals.* A party who is an individual may either represent himself or herself in the hearing process under this subpart or authorize an attorney to represent him or her.

(b) *Organizations.* A party that is an organization or other entity may authorize one of the following to represent it:

(1) An attorney;

(2) A partner, if the entity is a partnership;

(3) An officer or full-time employee, if the entity is a corporation, association, or unincorporated organization;

(4) A receiver, administrator, executor, or similar fiduciary, if the entity is a receivership, trust, or estate; or

(5) An elected or appointed official or an employee, if the entity is a federal, state, tribal, county, district, territorial, or local government or component.

(c) *Appearance.* A representative must file a notice of appearance. The notice must:

(1) Meet the form and content requirements for documents under § 221.11;

(2) Include the name and address of the person on whose behalf the appearance is made;

(3) If the representative is an attorney, include a statement that he or she is a member in good standing of the bar of the highest court of a state, the District of Columbia, or any territory or commonwealth of the United States (identifying which one); and

(4) If the representative is not an attorney, include a statement explaining his or her authority to represent the entity.

(d) *Disqualification.* The ALJ may disqualify any representative for misconduct or other good cause.

DOCUMENT FILING AND SERVICE

§ 221.11 What are the form and content requirements for documents under this subpart?

(a) *Form.* Each document filed in a case under this subpart must:

(1) Measure 8½ by 11 inches, except that a table, chart, diagram, or other attachment may be larger if folded to 8½ by 11 inches and attached to the document;

(2) Be printed on just one side of the page;

(3) Be clearly typewritten, printed, or otherwise reproduced by a process that yields legible and permanent copies;

(4) Use 10 point font size or larger;

(5) Be double-spaced except for footnotes and long quotations, which may be single-spaced;

(6) Have margins of at least 1 inch; and

(7) Be bound on the left side, if bound.

(b) *Caption.* Each document filed under this subpart must begin with a caption that sets forth:

(1) The name of the case under this subpart and the docket number, if one has been assigned;

(2) The name and docket number of the license proceeding to which the case under this subpart relates; and

(3) A descriptive title for the document, indicating the party for whom it is filed and the nature of the document.

(c) *Signature.* The original of each document filed under this subpart must

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be signed by the representative of the person for whom the document is filed. The signature constitutes a certification by the representative that he or she has read the document; that to the best of his or her knowledge, information, and belief, the statements made in the document are true; and that the document is not being filed for the purpose of causing delay.

(d) *Contact information.* Below the representative's signature, the document must provide the representative's name, mailing address, street address (if different), telephone number, facsimile number (if any), and electronic mail address (if any).

§ 221.12 Where and how must documents be filed?

(a) *Place of filing.* Any documents relating to a case under this subpart must be filed with the appropriate office, as follows:

(1) Before NMFS refers a case for docketing under § 221.25, any documents must be filed with the Office of Habitat Conservation. The Office of Habitat Conservation's address, telephone number, and facsimile number are set forth in § 221.2.

(2) NMFS will notify the parties of the date on which it refers a case for docketing under § 221.25. After that date, any documents must be filed with:

(i) The Department of Commerce's designated ALJ office. The name, address, telephone number, and facsimile number of the Department of Commerce's designated ALJ office will be provided in the referral notice from NMFS; or

(ii) The hearings component of or used by another Department, if that Department will be conducting the hearing under § 221.25. The name, address, telephone number, and facsimile number of the appropriate hearings component will be provided in the referral notice from NMFS.

(b) *Method of filing.* (1) A document must be filed with the appropriate office under paragraph (a) of this section using one of the following methods:

(i) By hand delivery of the original document;

(ii) By sending the original document by express mail or courier service for delivery on the next business day; or

(iii) By sending the document by facsimile if:

(A) The document is 20 pages or less, including all attachments;

(B) The sending facsimile machine confirms that the transmission was successful; and

(C) The original of the document is sent by regular mail on the same day.

(2) Parties are encouraged, but not required to supplement any original document by providing the appropriate office with an electronic copy of the document on compact disc.

(c) *Date of filing.* A document under this subpart is considered filed on the date it is received. However, any document received after 5 p.m. at the place where the filing is due is considered filed on the next regular business day.

(d) *Nonconforming documents.* If any document submitted for filing under this subpart does not comply with the requirements of this subpart or any applicable order, it may be rejected. If the defect is minor, the party may be notified of the defect and given a chance to correct it.

§ 221.13 What are the requirements for service of documents?

(a) *Filed documents.* Any document related to a case under this subpart must be served at the same time the document is delivered or sent for filing. Copies must be served as follows:

(1) A complete copy of any request for a hearing under § 221.21 must be served on FERC and each license party, using one of the methods of service in paragraph (c) of this section.

(2) A complete copy of any notice of intervention and response under § 221.22 must be:

(i) Served on FERC, the license applicant, any person who has filed a request for hearing under § 221.21, and NMFS, using one of the methods of service in paragraph (c) of this section; and

(ii) Sent to any other license party using regular mail.

(3) A complete copy of any other filed document must be served on each party, using one of the methods of service in paragraph (c) of this section.

(b) *Documents issued by the ALJ.* A complete copy of any notice, order, decision, or other document issued by the ALJ under this subpart must be served on each party, using one of the methods of service in paragraph (c) of this section.

(c) *Method of service.* Service must be accomplished by one of the following methods:

- (1) By hand delivery of the document;
- (2) By sending the document by express mail or courier service for delivery on the next business day;
- (3) By sending the document by facsimile if:

- (i) The document is 20 pages or less, including all attachments;

- (ii) The sending facsimile machine confirms that the transmission was successful; and

- (iii) The document is sent by regular mail on the same day; or

- (4) By sending the document, including all attachments, by electronic mail if:

- (i) A copy of the document is sent by regular mail on the same day; and

- (ii) The party acknowledges receipt of the document by close of the next business day.

(d) *Acknowledgment of service.* Any party who receives a document under this subpart by electronic mail must promptly send a reply electronic mail message acknowledging receipt.

(e) *Certificate of service.* A certificate of service must be attached to each document filed under this subpart. The certificate must be signed by the party's representative and include the following information:

- (1) The name, address, and other contact information of each party's representative on whom the document was served;

- (2) The means of service, including information indicating compliance with paragraph (c)(3) or (c)(4) of this section, if applicable; and

- (3) The date of service.

INITIATION OF HEARING PROCESS

§ 221.20 What supporting information must NMFS provide with its preliminary prescriptions?

(a) *Supporting information.* (1) When NMFS files a preliminary prescription with FERC, it must include a rationale

for the prescription and an index to NMFS's administrative record that identifies all documents relied upon.

(2) If any of the documents relied upon are not already in the license proceeding record, NMFS must:

- (i) File them with FERC at the time it files the preliminary prescription; and

- (ii) Provide copies to the license applicant.

(b) *Service.* NMFS will serve a copy of its preliminary prescription on each license party.

§ 221.21 How do I request a hearing?

(a) *General.* To request a hearing on disputed issues of material fact with respect to any prescription filed by NMFS, you must:

- (1) Be a license party; and

- (2) File with the Office of Habitat Conservation a written request for a hearing within 30 days after the deadline for the Departments to file preliminary prescriptions with FERC.

(b) *Content.* Your hearing request must contain:

- (1) A numbered list of the factual issues that you allege are in dispute, each stated in a single, concise sentence; and

- (2) The following information with respect to each issue:

- (i) The specific factual statements made or relied upon by [the bureau] under § 221.20(a) that you dispute;

- (ii) The basis for your opinion that those factual statements are unfounded or erroneous;

- (iii) The basis for your opinion that any factual dispute is material; and

- (iv) With respect to any scientific studies, literature, and other documented information supporting your opinions under paragraphs (b)(2)(ii) and (b)(2)(iii) of this section, specific citations to the information relied upon. If any such document is not already in the license proceeding record, you must provide a copy with the request.

(c) *Witnesses and exhibits.* Your hearing request must also list the witnesses and exhibits that you intend to present at the hearing, other than solely for impeachment purposes.

- (1) For each witness listed, you must provide:

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(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony.

(2) For each exhibit listed, you must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided under paragraph (b)(2) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

§ 221.22 How do I file a notice of intervention and response?

(a) *General.* (1) To intervene as a party to the hearing process, you must:

(i) Be a license party; and

(ii) File with the Office of Habitat Conservation a notice of intervention and a written response to any request for a hearing within 15 days after the date of service of the request for a hearing.

(2) A license party filing a notice of intervention and response may not raise issues of material fact beyond those raised in the hearing request.

(b) *Content.* In your notice of intervention and response you must explain your position with respect to the issues of material fact raised in the hearing request under § 221.21(b).

(1) If you agree with the information provided by NMFS under § 221.20(a) or by the requester under § 221.21(b), your response may refer to NMFS's explanation or the requester's hearing request for support.

(2) If you wish to rely on additional information or analysis, your response must provide the same level of detail with respect to the additional information or analysis as required under § 221.21(b).

(c) *Witnesses and exhibits.* Your response and notice must also list the witnesses and exhibits that you intend to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, you must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony; and

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(2) For each exhibit listed, you must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided under paragraph (b) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

§ 221.23 When will hearing requests be consolidated?

(a) *Initial Department coordination.* If NMFS has received a copy of a hearing request, it must contact the other Departments within 10 days after the deadline for filing hearing requests under § 221.21 and determine:

(1) Whether any of the other Departments has also filed a preliminary condition or prescription relating to the license with FERC; and

(2) If so, whether the other Departments have also received a hearing request with respect to the preliminary condition or prescription.

(b) *Decision on consolidation.* Within 25 days after the deadline for filing hearing requests under § 221.21, if NMFS has received a hearing request, NMFS must:

(1) Consult with any other Department that has also received a hearing request; and

(2) Decide jointly with the other Department:

(i) Whether to consolidate the cases for hearing under paragraphs (c)(3)(ii) through (c)(3)(iv) of this section; and

(ii) If so, which Department will conduct the hearing on their behalf.

(c) *Criteria.* Cases will or may be consolidated as follows:

(1) All hearing requests with respect to any prescriptions from NMFS will be consolidated for hearing.

(2) Any or all of the following may be consolidated for hearing if NMFS determines that there are common issues of material fact or that consolidation is otherwise appropriate:

(i) Two or more hearing requests with respect to prescriptions from NMFS and the Department of the Interior; or

(ii) Two or more hearing requests with respect to any condition from another Department and any prescription from NMFS.

§ 221.24 How will NMFS respond to any hearing requests?

(a) *General.* NMFS will determine whether to file an answer to any hearing request under § 221.21.

(b) *Content.* If NMFS files an answer:

(1) For each of the numbered factual issues listed under § 221.21(b)(1), the answer must explain NMFS's position with respect to the issues of material fact raised by the requester, including one or more of the following statements as appropriate:

(i) That NMFS is willing to stipulate to the facts as alleged by the requester;

(ii) That NMFS believes the issue listed by the requester is not a factual issue, explaining the basis for such belief;

(iii) That NMFS believes the issue listed by the requester is not material, explaining the basis for such belief; or

(iv) That NMFS agrees that the issue is factual, material, and in dispute.

(2) The answer must also indicate whether the hearing request will be consolidated with one or more other hearing requests under § 221.23 and, if so:

(i) Identify any other hearing request that will be consolidated with this hearing request; and

(ii) State which Department will conduct the hearing and provide contact information for the appropriate Department hearings component.

(c) *Witnesses and exhibits.* NMFS's answer must also list the witnesses and exhibits that it intends to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, NMFS must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony.

(2) For each exhibit listed, NMFS must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided under paragraph (b)(1) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

(e) *Notice in lieu of answer.* If NMFS elects not to file an answer to a hearing request:

(1) NMFS is deemed to agree that the issues listed by the requester are factual, material, and in dispute;

(2) NMFS may file a list of witnesses and exhibits with respect to the request only as provided in § 221.42(b); and

(3) NMFS must file a notice containing the information required by paragraph (b)(2) of this section, if the hearing request will be consolidated with one or more other hearing requests under § 221.23.

§ 221.25 What will NMFS do with any hearing requests?

(a) *Case referral.* Within 50 days after the deadline in § 221.21(a), NMFS will refer the case for a hearing as follows:

(1) If the hearing is to be conducted by NMFS, NMFS will refer the case to the Department of Commerce's designated ALJ office.

(2) If the hearing is to be conducted by another Department, NMFS will refer the case to the hearings component used by that Department.

(b) *Content.* The case referral will consist of the following:

(1) A copy of any preliminary prescription under § 221.20;

(2) The original of any hearing request under § 221.21;

(3) The original of any notice of intervention and response under § 221.22;

(4) The original of any answer under § 221.24; and

(5) An original referral notice under paragraph (c) of this section.

(c) *Notice.* At the time NMFS refers the case for a hearing, it must provide a referral notice that contains the following information:

(1) The name, address, telephone number, and facsimile number of the Department hearings component that will conduct the hearing;

(2) The name, address, and other contact information for the representative of each party to the hearing process;

(3) An identification of any other hearing request that will be consolidated with this hearing request; and

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(4) The date on which NMFS is referring the case for docketing.

(d) *Delivery and service.* (1) NMFS must refer the case to the appropriate Department hearings component by one of the methods identified in § 221.12(b)(1)(i) through (b)(1)(ii).

(2) NMFS must serve a copy of the referral notice on FERC and each party to the hearing by one of the methods identified in § 221.13(c)(1) and (c)(2).

§ 221.26 What regulations apply to a case referred for a hearing?

(a) If NMFS refers the case to the Department of Commerce's designated ALJ office, the regulations in this subpart will continue to apply to the hearing process.

(b) If NMFS refers the case to the United States Department of Agriculture's Office of Administrative Law Judges, the regulations at 7 CFR 1.601 *et seq.* will apply from that point on.

(c) If NMFS refers the case to the Department of the Interior's Office of Hearings and Appeals, the regulations at 43 CFR 45.1 *et seq.* will apply from that point on.

GENERAL PROVISIONS RELATED TO HEARINGS

§ 221.30 What will the Department of Commerce's designated ALJ office do with a case referral?

Within 5 days after issuance of the referral notice under § 221.25(c), 7 CFR 1.625(c), or 43 CFR 45.25(c):

(a) The Department of Commerce's designated ALJ office must:

(1) Docket the case;

(2) Assign an ALJ to preside over the hearing process and issue a decision; and

(3) Issue a docketing notice that informs the parties of the docket number and the ALJ assigned to the case; and

(b) The ALJ must issue a notice setting the time, place, and method for conducting an initial prehearing conference under § 221.40. This notice may be combined with the docketing notice under paragraph (a)(3) of this section.

§ 221.31 What are the powers of the ALJ?

The ALJ will have all powers necessary to conduct a fair, orderly, expeditious, and impartial hearing process,

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consistent with the requirements of § 221.60(a), including the powers to:

(a) Administer oaths and affirmations;

(b) Issue subpoenas to the extent authorized by law;

(c) Rule on motions;

(d) Authorize discovery as provided for in this subpart;

(e) Hold hearings and conferences;

(f) Regulate the course of hearings;

(g) Call and question witnesses;

(h) Exclude any person from a hearing or conference for misconduct or other good cause;

(i) Issue a decision consistent with § 221.60(b) regarding any disputed issues of material fact relating to any Department's condition or prescription that has been referred to the ALJ for hearing; and

(j) Take any other action authorized by law.

§ 221.32 What happens if the ALJ becomes unavailable?

(a) If the ALJ becomes unavailable or otherwise unable to perform the duties described in § 221.31, the Department of Commerce's designated ALJ office shall designate a successor.

(b) If a hearing has commenced and the ALJ cannot proceed with it, a successor ALJ may do so. At the request of a party, the successor ALJ may recall any witness whose testimony is material and disputed, and who is available to testify again without undue burden. The successor ALJ may, within his or her discretion, recall any other witness.

§ 221.33 Under what circumstances may the ALJ be disqualified?

(a) The ALJ may withdraw from a case at any time the ALJ deems himself or herself disqualified.

(b) At any time before issuance of the ALJ's decision, any party may move that the ALJ disqualify himself or herself for personal bias or other valid cause.

(1) The party must file the motion promptly after discovering facts or other reasons allegedly constituting cause for disqualification.

(2) The party must file with the motion an affidavit or declaration setting

forth the facts or other reasons in detail.

(c) The ALJ must rule upon the motion, stating the grounds for the ruling.

(1) If the ALJ concludes that the motion is timely and meritorious, he or she must disqualify himself or herself and withdraw from the case.

(2) If the ALJ does not disqualify himself or herself and withdraw from the case, the ALJ must continue with the hearing process and issue a decision.

§ 221.34 What is the law governing ex parte communications?

(a) Ex parte communications with the ALJ or his or her staff are prohibited in accordance with 5 U.S.C. 554(d).

(b) This section does not prohibit ex parte inquiries concerning case status or procedural requirements, unless the inquiry involves an area of controversy in the hearing process.

§ 221.35 What are the requirements for motions?

(a) *General.* Any party may apply for an order or ruling on any matter related to the hearing process by presenting a motion to the ALJ. A motion may be presented any time after the Department of Commerce's designated ALJ office issues a docketing notice under § 221.30.

(1) A motion made at a hearing may be stated orally on the record, unless the ALJ directs that it be reduced to writing.

(2) Any other motion must:

- (i) Be in writing;
- (ii) Comply with the requirements of this subpart with respect to form, content, filing, and service; and
- (iii) Not exceed 10 pages.

(b) *Content.* (1) Each motion must state clearly and concisely:

- (i) Its purpose and the relief sought;
- (ii) The facts constituting the grounds for the relief sought; and
- (iii) Any applicable statutory or regulatory authority.

(2) A proposed order must accompany the motion.

(c) *Response.* Except as otherwise required by this part or by order of the ALJ, any other party may file a response to a written motion within 10

days after service of the motion. When a party presents a motion at a hearing, any other party may present a response orally on the record.

(d) *Reply.* Unless the ALJ orders otherwise, no reply to a response may be filed.

(e) *Effect of filing.* Unless the ALJ orders otherwise, the filing of a motion does not stay the hearing process.

(f) *Ruling.* The ALJ will rule on the motion as soon as practicable, either orally on the record or in writing. He or she may summarily deny any dilatory, repetitive, or frivolous motion.

PREHEARING CONFERENCES AND
DISCOVERY

§ 221.40 What are the requirements for prehearing conferences?

(a) *Initial prehearing conference.* The ALJ will conduct an initial prehearing conference with the parties at the time specified in the docketing notice under § 221.30, on or about the 20th day after issuance of the referral notice under § 221.25(c).

(1) The initial prehearing conference will be used:

(i) To identify, narrow, and clarify the disputed issues of material fact and exclude issues that do not qualify for review as factual, material, and disputed;

(ii) To consider the parties' motions for discovery under § 221.41 and to set a deadline for the completion of discovery;

(iii) To discuss the evidence on which each party intends to rely at the hearing;

(iv) To set the deadline for submission of written testimony under § 221.52; and

(v) To set the date, time, and place of the hearing.

(2) The initial prehearing conference may also be used:

(i) To discuss limiting and grouping witnesses to avoid duplication;

(ii) To discuss stipulations of fact and of the content and authenticity of documents;

(iii) To consider requests that the ALJ take official notice of public records or other matters;

(iv) To discuss the submission of written testimony, briefs, or other documents in electronic form; and

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(v) To consider any other matters that may aid in the disposition of the case.

(b) *Other conferences.* The ALJ may in his or her discretion direct the parties to attend one or more other prehearing conferences, if consistent with the need to complete the hearing process within 90 days. Any party may by motion request a conference.

(c) *Notice.* The ALJ must give the parties reasonable notice of the time and place of any conference. A conference will ordinarily be held by telephone, unless the ALJ orders otherwise.

(d) *Preparation.* (1) Each party's representative must be fully prepared for a discussion of all issues properly before the conference, both procedural and substantive. The representative must be authorized to commit the party that he or she represents respecting those issues.

(2) Before the date set for the initial prehearing conference, the parties' representatives must make a good faith effort:

(i) To meet in person, by telephone, or by other appropriate means; and

(ii) To reach agreement on discovery and the schedule of remaining steps in the hearing process.

(e) *Failure to attend.* Unless the ALJ orders otherwise, a party that fails to attend or participate in a conference, after being served with reasonable notice of its time and place, waives all objections to any agreements reached in the conference and to any consequent orders or rulings.

(f) *Scope.* During a conference, the ALJ may dispose of any procedural matters related to the case.

(g) *Order.* Within 2 days after the conclusion of each conference, the ALJ must issue an order that recites any agreements reached at the conference and any rulings made by the ALJ during or as a result of the conference.

§ 221.41 How may parties obtain discovery of information needed for the case?

(a) *General.* By agreement of the parties or with the permission of the ALJ, a party may obtain discovery of information to assist the party in preparing

or presenting its case. Available methods of discovery are:

(1) Written interrogatories;

(2) Depositions as provided in paragraph (h) of this section; and

(3) Requests for production of designated documents or tangible things or for entry on designated land for inspection or other purposes.

(b) *Criteria.* Discovery may occur only as agreed to by the parties or as authorized by the ALJ in a written order or during a prehearing conference. The ALJ may authorize discovery only if the party requesting discovery demonstrates:

(1) That the discovery will not unreasonably delay the hearing process;

(2) That the information sought:

(i) Will be admissible at the hearing or appears reasonably calculated to lead to the discovery of admissible evidence;

(ii) Is not already in the license proceeding record or otherwise obtainable by the party;

(iii) Is not cumulative or repetitious; and

(iv) Is not privileged or protected from disclosure by applicable law;

(3) That the scope of the discovery is not unduly burdensome;

(4) That the method to be used is the least burdensome method available;

(5) That any trade secrets or proprietary information can be adequately safeguarded; and

(6) That the standards for discovery under paragraphs (f) through (h) of this section have been met, if applicable.

(c) *Motions.* A party may initiate discovery:

(1) Pursuant to an agreement of the parties; or

(2) By filing a motion that:

(i) Briefly describes the proposed method(s), purpose, and scope of the discovery;

(ii) Explains how the discovery meets the criteria in paragraphs (b)(1) through (b)(6) of this section; and

(iii) Attaches a copy of any proposed discovery request (written interrogatories, notice of deposition, or request for production of designated documents or tangible things or for entry on designated land).

(d) *Timing of motions.* A party must file any discovery motion under paragraph (c)(2) of this section within 7 days after issuance of the referral notice under § 221.25(c).

(e) *Objections.* (1) A party must file any objections to a discovery motion or to specific portions of a proposed discovery request within 7 days after service of the motion.

(2) An objection must explain how, in the objecting party's view, the discovery sought does not meet the criteria in paragraphs (b)(1) through (b)(6) of this section.

(f) *Materials prepared for hearing.* A party generally may not obtain discovery of documents and tangible things otherwise discoverable under paragraph (b) of this section if they were prepared in anticipation of or for the hearing by or for another party's representative (including the party's attorney, expert, or consultant).

(1) If a party wants to discover such materials, it must show:

(i) That it has substantial need of the materials in preparing its own case; and

(ii) That the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

(2) In ordering discovery of such materials when the required showing has been made, the ALJ must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney.

(g) *Experts.* Unless restricted by the ALJ, a party may discover any facts known or opinions held by an expert concerning any relevant matters that are not privileged. Such discovery will be permitted only if:

(1) The expert is expected to be a witness at the hearing; or

(2) The expert is relied on by another expert who is expected to be a witness at the hearing, and the party shows:

(i) That it has a compelling need for the information; and

(ii) That it cannot practicably obtain the information by other means.

(h) *Limitations on depositions.* (1) A party may depose a witness only if the party shows that the witness:

(i) Will be unable to attend the hearing because of age, illness, or other incapacity; or

(ii) Is unwilling to attend the hearing voluntarily, and the party is unable to compel the witness's attendance at the hearing by subpoena.

(2) Paragraph (h)(1)(ii) of this section does not apply to any person employed by or under contract with the party seeking the deposition.

(3) A party may depose a senior Department employee only if the party shows:

(i) That the employee's testimony is necessary in order to provide significant, unprivileged information that is not available from any other source or by less burdensome means; and

(ii) That the deposition would not significantly interfere with the employee's ability to perform his or her government duties.

(i) *Completion of discovery.* All discovery must be completed within 25 days after the initial prehearing conference, unless the ALJ sets a different deadline.

§ 221.42 When must a party supplement or amend information it has previously provided?

(a) *Discovery.* A party must promptly supplement or amend any prior response to a discovery request if it learns that the response:

(1) Was incomplete or incorrect when made; or

(2) Though complete and correct when made, is now incomplete or incorrect in any material respect.

(b) *Witnesses and exhibits.* (1) Within 5 days after the date set for completion of discovery, each party must file an updated version of the list of witnesses and exhibits required under §§ 221.21(c), 221.22(c), or 221.24(c).

(2) If a party wishes to include any new witness or exhibit on its updated list, it must provide an explanation of why it was not feasible for the party to include the witness or exhibit on its list under §§ 221.21(c), 221.22(c), or 221.24(c).

(c) *Failure to disclose.* (1) A party that fails to disclose information required under §§ 221.21(c), 221.22(c), or 221.24(c), or paragraphs (a) or (b) of this section, will not be permitted to introduce as

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evidence at the hearing testimony from a witness or other information that it failed to disclose.

(2) Paragraph (c)(1) of this section does not apply if the failure to disclose was substantially justified or is harmless.

(3) Before or during the hearing, a party may object to the admission of evidence under paragraph (c)(1) of this section.

(4) The ALJ will consider the following in determining whether to exclude evidence under paragraphs (c)(1) through (c)(3) of this section:

(i) The prejudice to the objecting party;

(ii) The ability of the objecting party to cure any prejudice;

(iii) The extent to which presentation of the evidence would disrupt the orderly and efficient hearing of the case;

(iv) The importance of the evidence; and

(v) The reason for the failure to disclose, including any bad faith or willfulness regarding the failure.

§ 221.43 What are the requirements for written interrogatories?

(a) *Motion*. Except upon agreement of the parties, a party wishing to propound interrogatories must file a motion under § 221.41(c).

(b) *ALJ order*. During or promptly after the initial prehearing conference, the ALJ will issue an order under § 221.41(b) with respect to any discovery motion requesting the use of written interrogatories. The order will:

(1) Grant the motion and approve the use of some or all of the proposed interrogatories; or

(2) Deny the motion.

(c) *Answers to interrogatories*. Except upon agreement of the parties, the party to whom the proposed interrogatories are directed must file its answers to any interrogatories approved by the ALJ within 15 days after issuance of the order under paragraph (b) of this section.

(1) Each approved interrogatory must be answered separately and fully in writing.

(2) The party or its representative must sign the answers to interrogatories under oath or affirmation.

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(d) *Access to records*. A party's answer to an interrogatory is sufficient when:

(1) The information may be obtained from an examination of records, or from a compilation, abstract, or summary based on such records;

(2) The burden of obtaining the information from the records is substantially the same for all parties;

(3) The answering party specifically identifies the individual records from which the requesting party may obtain the information and where the records are located; and

(4) The answering party provides the requesting party with reasonable opportunity to examine the records and make a copy, compilation, abstract, or summary.

§ 221.44 What are the requirements for depositions?

(a) *Motion and notice*. Except upon agreement of the parties, a party wishing to take a deposition must file a motion under § 221.41(c). Any notice of deposition filed with the motion must state:

(1) The time and place that the deposition is to be taken;

(2) The name and address of the person before whom the deposition is to be taken;

(3) The name and address of the witness whose deposition is to be taken; and

(4) Any documents or materials that the witness is to produce.

(b) *ALJ order*. During or promptly after the initial prehearing conference, the ALJ will issue an order under § 221.41(b) with respect to any discovery motion requesting the taking of a deposition. The order will:

(1) Grant the motion and approve the taking of the deposition, subject to any conditions or restrictions the ALJ may impose; or

(2) Deny the motion.

(c) *Arrangements*. If the parties agree to or the ALJ approves the taking of the deposition, the party requesting the deposition must make appropriate arrangements for necessary facilities and personnel.

(1) The deposition will be taken at the time and place agreed to by the parties or indicated in the ALJ's order.

(2) The deposition may be taken before any disinterested person authorized to administer oaths in the place where the deposition is to be taken.

(3) Any party that objects to the taking of a deposition because of the disqualification of the person before whom it is to be taken must do so:

(i) Before the deposition begins; or

(ii) As soon as the disqualification becomes known or could have been discovered with reasonable diligence.

(4) A deposition may be taken by telephone conference call, if agreed to by the parties or approved in the ALJ's order.

(d) *Testimony.* Each witness deposed must be placed under oath or affirmation, and the other parties must be given an opportunity for cross-examination.

(e) *Representation of witness.* The witness being deposed may have counsel or another representative present during the deposition.

(f) *Recording and transcript.* Except as provided in paragraph (g) of this section, the deposition must be stenographically recorded and transcribed at the expense of the party that requested the deposition.

(1) Any other party may obtain a copy of the transcript at its own expense.

(2) Unless waived by the deponent, the deponent will have 3 days after receiving the transcript to read and sign it.

(3) The person before whom the deposition was taken must certify the transcript following receipt of the signed transcript from the deponent or expiration of the 3-day review period, whichever occurs first.

(g) *Video recording.* The testimony at a deposition may be recorded on videotape, subject to any conditions or restrictions that the parties may agree to or the ALJ may impose, at the expense of the party requesting the recording.

(1) The video recording may be in conjunction with an oral examination by telephone conference held under paragraph (c)(3) of this section.

(2) After the deposition has been taken, the person recording the deposition must:

(i) Provide a copy of the videotape to any party that requests it, at the requesting party's expense; and

(ii) Attach to the videotape a statement identifying the case and the deponent and certifying the authenticity of the video recording.

(h) *Use of deposition.* A deposition may be used at the hearing as provided in § 221.53.

§ 221.45 What are the requirements for requests for documents or tangible things or entry on land?

(a) *Motion.* Except upon agreement of the parties, a party wishing to request the production of designated documents or tangible things or entry on designated land must file a motion under § 221.41(c). A request may include any of the following that are in the possession, custody, or control of another party:

(1) The production of designated documents for inspection and copying, other than documents that are already in the license proceeding record;

(2) The production of designated tangible things for inspection, copying, testing, or sampling; or

(3) Entry on designated land or other property for inspection and measuring, surveying, photographing, testing, or sampling either the property or any designated object or operation on the property.

(b) *ALJ order.* During or promptly after the initial prehearing conference, the ALJ will issue an order under § 221.41(b) with respect to any discovery motion requesting the production of documents or tangible things or entry on land for inspection, copying, or other purposes. The order will:

(1) Grant the motion and approve the use of some or all of the proposed requests; or

(2) Deny the motion.

(c) *Compliance with order.* Except upon agreement of the parties, the party to whom any approved request for production is directed must permit the approved inspection and other activities within 15 days after issuance of the order under paragraph (a) of this section.

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§ 221.46 What sanctions may the ALJ impose for failure to comply with discovery?

(a) Upon motion of a party, the ALJ may impose sanctions under paragraph (b) of this section if any party:

(1) Fails to comply with an order approving discovery; or

(2) Fails to supplement or amend a response to discovery under § 221.42(a).

(b) The ALJ may impose one or more of the following sanctions:

(1) Infer that the information, testimony, document, or other evidence withheld would have been adverse to the party;

(2) Order that, for the purposes of the hearing, designated facts are established;

(3) Order that the party not introduce into evidence, or otherwise rely on to support its case, any information, testimony, document, or other evidence:

(i) That the party improperly withheld; or

(ii) That the party obtained from another party in discovery;

(4) Allow another party to use secondary evidence to show what the information, testimony, document, or other evidence withheld would have shown; or

(5) Take other appropriate action to remedy the party's failure to comply.

§ 221.47 What are the requirements for subpoenas and witness fees?

(a) *Request for subpoena.* (1) Except as provided in paragraph (a)(2) of this section, any party may file a motion requesting the ALJ to issue a subpoena to the extent authorized by law for the attendance of a person, the giving of testimony, or the production of documents or other relevant evidence during discovery or for the hearing.

(2) A party may subpoena a senior Department employee only if the party shows:

(i) That the employee's testimony is necessary in order to provide significant, unprivileged information that is not available from any other source or by less burdensome means; and

(ii) That the employee's attendance would not significantly interfere with the ability to perform his or her government duties.

(b) *Service.* (1) A subpoena may be served by any person who is not a party and is 18 years of age or older.

(2) Service must be made by hand delivering a copy of the subpoena to the person named therein.

(3) The person serving the subpoena must:

(i) Prepare a certificate of service setting forth:

(A) The date, time, and manner of service; or

(B) The reason for any failure of service; and

(ii) Swear to or affirm the certificate, attach it to a copy of the subpoena, and return it to the party on whose behalf the subpoena was served.

(c) *Witness fees.* (1) A party who subpoenas a witness who is not a party must pay him or her the same fees and mileage expenses that are paid witnesses in the district courts of the United States.

(2) A witness who is not a party and who attends a deposition or hearing at the request of any party without having been subpoenaed to do so is entitled to the same fees and mileage expenses as if he or she had been subpoenaed. However, this paragraph does not apply to federal employees who are called as witnesses by a Department.

(d) *Motion to quash.* (1) A person to whom a subpoena is directed may request by motion that the ALJ quash or modify the subpoena.

(2) The motion must be filed:

(i) Within 5 days after service of the subpoena; or

(ii) At or before the time specified in the subpoena for compliance, if that is less than 5 days after service of the subpoena.

(3) The ALJ may quash or modify the subpoena if it:

(i) Is unreasonable;

(ii) Requires evidence during discovery that is not discoverable; or

(iii) Requires evidence during a hearing that is privileged or irrelevant.

(e) *Enforcement.* For good cause shown, the ALJ may apply to the appropriate United States District Court for the issuance of an order compelling the appearance and testimony of a witness or the production of evidence as set forth in a subpoena that has been duly issued and served.

HEARING, BRIEFING, AND DECISION

§ 221.50 When and where will the hearing be held?

(a) Except as provided in paragraph (b) of this section, the hearing will be held at the time and place set at the initial prehearing conference under § 221.40, generally within 15 days after the date set for completion of discovery.

(b) On motion by a party or on the ALJ's initiative, the ALJ may change the date, time, or place of the hearing if he or she finds:

- (1) That there is good cause for the change; and
- (2) That the change will not unduly prejudice the parties and witnesses.

§ 221.51 What are the parties' rights during the hearing?

Consistent with the provisions of this subpart, each party has the following rights during the hearing, as necessary to assure full and accurate disclosure of the facts:

- (a) To present direct and rebuttal evidence;
- (b) To make objections, motions, and arguments; and
- (c) To cross-examine witnesses and to conduct re-direct and re-cross examination as permitted by the ALJ.

§ 221.52 What are the requirements for presenting testimony?

(a) *Written direct testimony.* Unless otherwise ordered by the ALJ, all direct hearing testimony must be prepared and submitted in written form.

- (1) Prepared written testimony must:
 - (i) Have line numbers inserted in the left-hand margin of each page;
 - (ii) Be authenticated by an affidavit or declaration of the witness;
 - (iii) Be filed within 5 days after the date set for completion of discovery, unless the ALJ sets a different deadline; and
 - (iv) Be offered as an exhibit during the hearing.

(2) Any witness submitting written testimony must be available for cross-examination at the hearing.

(b) *Oral testimony.* Oral examination of a witness in a hearing, including on cross-examination or redirect, must be conducted under oath and in the pres-

ence of the ALJ, with an opportunity for all parties to question the witness.

(c) *Telephonic testimony.* The ALJ may by order allow a witness to testify by telephonic conference call.

(1) The arrangements for the call must let each party listen to and speak to the witness and each other within the hearing of the ALJ.

(2) The ALJ will ensure the full identification of each speaker so the reporter can create a proper record.

(3) The ALJ may issue a subpoena under § 221.47 directing a witness to testify by telephonic conference call.

§ 221.53 How may a party use a deposition in the hearing?

(a) *In general.* Subject to the provisions of this section, a party may use in the hearing any part or all of a deposition taken under § 221.44 against any party who:

- (1) Was present or represented at the taking of the deposition; or
- (2) Had reasonable notice of the taking of the deposition.

(b) *Admissibility.* (1) No part of a deposition will be included in the hearing record, unless received in evidence by the ALJ.

(2) The ALJ will exclude from evidence any question and response to which an objection:

- (i) Was noted at the taking of the deposition; and
- (ii) Would have been sustained if the witness had been personally present and testifying at a hearing.

(3) If a party offers only part of a deposition in evidence:

- (i) An adverse party may require the party to introduce any other part that ought in fairness to be considered with the part introduced; and
- (ii) Any other party may introduce any other parts.

(c) *Videotaped deposition.* If the deposition was recorded on videotape and is admitted into evidence, relevant portions will be played during the hearing and transcribed into the record by the reporter.

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§ 221.54 What are the requirements for exhibits, official notice, and stipulations?

(a) *General.* (1) Except as provided in paragraphs (b) through (e) of this section, any material offered in evidence, other than oral testimony, must be offered in the form of an exhibit.

(2) Each exhibit offered by a party must be marked for identification.

(3) Any party who seeks to have an exhibit admitted into evidence must provide:

(i) The original of the exhibit to the reporter, unless the ALJ permits the substitution of a copy; and

(ii) A copy of the exhibit to the ALJ.

(b) *Material not offered.* If a document offered as an exhibit contains material not offered as evidence:

(1) The party offering the exhibit must:

(i) Designate the matter offered as evidence;

(ii) Segregate and exclude the material not offered in evidence, to the extent practicable; and

(iii) Provide copies of the entire document to the other parties appearing at the hearing.

(2) The ALJ must give the other parties an opportunity to inspect the entire document and offer in evidence any other portions of the document.

(c) *Official notice.* (1) At the request of any party at the hearing, the ALJ may take official notice of any matter of which the courts of the United States may take judicial notice, including the public records of NMFS and any other Department party.

(2) The ALJ must give the other parties appearing at the hearing an opportunity to show the contrary of an officially noticed fact.

(3) Any party requesting official notice of a fact after the conclusion of the hearing must show good cause for its failure to request official notice during the hearing.

(d) *Stipulations.* (1) The parties may stipulate to any relevant facts or to the authenticity of any relevant documents.

(2) If received in evidence at the hearing, a stipulation is binding on the stipulating parties.

(3) A stipulation may be written or made orally at the hearing.

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§ 221.55 What evidence is admissible at the hearing?

(a) *General.* (1) Subject to the provisions of § 221.42(b), the ALJ may admit any written, oral, documentary, or demonstrative evidence that is:

(i) Relevant, reliable, and probative; and

(ii) Not privileged or unduly repetitious or cumulative.

(2) The ALJ may exclude evidence if its probative value is substantially outweighed by the risk of undue prejudice, confusion of the issues, or delay.

(3) Hearsay evidence is admissible. The ALJ may consider the fact that evidence is hearsay when determining its probative value.

(4) The Federal Rules of Evidence do not directly apply to the hearing, but may be used as guidance by the ALJ and the parties in interpreting and applying the provisions of this section.

(b) *Objections.* Any party objecting to the admission or exclusion of evidence shall concisely state the grounds. A ruling on every objection must appear in the record.

§ 221.56 What are the requirements for transcription of the hearing?

(a) *Transcript and reporter's fees.* The hearing will be transcribed verbatim.

(1) The Department of Commerce's designated ALJ office will secure the services of a reporter and pay the reporter's fees to provide an original transcript to the Department of Commerce's designated ALJ office on an expedited basis.

(2) Each party must pay the reporter for any copies of the transcript obtained by that party.

(b) *Transcript Corrections.* (1) Any party may file a motion proposing corrections to the transcript. The motion must be filed within 5 days after receipt of the transcript, unless the ALJ sets a different deadline.

(2) Unless a party files a timely motion under paragraph (b)(1) of this section, the transcript will be presumed to be correct and complete, except for obvious typographical errors.

(3) As soon as practicable after the close of the hearing and after consideration of any motions filed under paragraph (b)(1) of this section, the ALJ

will issue an order making any corrections to the transcript that the ALJ finds are warranted.

§ 221.57 What is the standard of proof?

The standard of proof is a preponderance of the evidence.

§ 221.58 When will the hearing record close?

(a) The hearing record will close when the ALJ closes the hearing, unless he or she directs otherwise.

(b) Evidence may not be added after the hearing record is closed, but the transcript may be corrected under § 221.56(b).

§ 221.59 What are the requirements for post-hearing briefs?

(a) *General.* (1) Each party may file a post-hearing brief within 10 days after the close of the hearing, unless the ALJ sets a different deadline.

(2) A party may file a reply brief only if requested by the ALJ. The deadline for filing a reply brief, if any, will be set by the ALJ.

(3) The ALJ may limit the length of the briefs to be filed under this section.

(b) *Content.* (1) An initial brief must include:

- (i) A concise statement of the case;
- (ii) A separate section containing proposed findings regarding the issues of material fact, with supporting citations to the hearing record;
- (iii) Arguments in support of the party's position; and
- (iv) Any other matter required by the ALJ.

(2) A reply brief, if requested by the ALJ, must be limited to any issues identified by the ALJ.

(c) *Form.* (1) An exhibit admitted in evidence or marked for identification in the record may not be reproduced in the brief.

(i) Such an exhibit may be reproduced, within reasonable limits, in an appendix to the brief.

(ii) Any pertinent analysis of an exhibit may be included in a brief.

(2) If a brief exceeds 20 pages, it must contain:

(i) A table of contents and of points made, with page references; and

(ii) An alphabetical list of citations to legal authority, with page references.

§ 221.60 What are the requirements for the ALJ's decision?

(a) *Timing.* The ALJ must issue a decision within the shorter of the following time periods:

(1) 30 days after the close of the hearing under § 221.58; or

(2) 90 days after issuance of the referral notice under § 221.25(c), 7 CFR 1.625(c), or 43 CFR 45.25(c).

(b) *Content.* (1) The decision must contain:

(i) Findings of fact on all disputed issues of material fact;

(ii) Conclusions of law necessary to make the findings of fact (such as rulings on materiality and on the admissibility of evidence); and

(iii) Reasons for the findings and conclusions.

(2) The ALJ may adopt any of the findings of fact proposed by one or more of the parties.

(3) The decision will not contain conclusions as to whether any preliminary condition or prescription should be adopted, modified, or rejected, or whether any proposed alternative should be adopted or rejected.

(c) *Service.* Promptly after issuing his or her decision, the ALJ must:

(1) Serve the decision on each party to the hearing; and

(2) Forward a copy of the decision to FERC, along with the complete hearing record, for inclusion in the license proceeding record.

(d) *Finality.* The ALJ's decision under this section will be final, with respect to the disputed issues of material fact, for NMFS and any other Department involved in the hearing. To the extent the ALJ's decision forms the basis for any condition or prescription subsequently included in the license, it may be subject to judicial review under 16 U.S.C. 825l(b).

Subpart C—Alternatives Process

§ 221.70 How must documents be filed and served under this subpart?

(a) *Filing.* (1) A document under this subpart must be filed using one of the methods set forth in § 221.12(b).

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(2) A document is considered filed on the date it is received. However, any document received after 5 p.m. at the place where the filing is due is considered filed on the next regular business day.

(b) *Service.* (1) Any document filed under this subpart must be served at the same time the document is delivered or sent for filing. A complete copy of the document must be served on each license party and FERC, using:

(i) One of the methods of service in § 221.13(c); or

(ii) Regular mail.

(2) The provisions of § 221.13(d) and (e) regarding acknowledgment and certificate of service apply to service under this subpart.

§ 221.71 How do I propose an alternative?

(a) *General.* To propose an alternative, you must:

(1) Be a license party; and

(2) File a written proposal with the Office of Habitat Conservation within 30 days after the deadline for NMFS to file preliminary prescriptions with FERC.

(b) *Content.* Your proposal must include:

(1) A description of the alternative, in an equivalent level of detail to NMFS's preliminary prescription;

(2) An explanation of how the alternative will be no less protective than the fishway prescribed by NMFS;

(3) An explanation of how the alternative, as compared to the preliminary prescription, will:

(i) Cost significantly less to implement; or

(ii) Result in improved operation of the project works for electricity production;

(4) An explanation of how the alternative will affect:

(i) Energy supply, distribution, cost, and use;

(ii) Flood control;

(iii) Navigation;

(iv) Water supply;

(v) Air quality; and

(vi) Other aspects of environmental quality; and

(5) Specific citations to any scientific studies, literature, and other documented information relied on to sup-

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port your proposal, including any assumptions you are making (*e.g.*, regarding the cost of energy or the rate of inflation). If any such document is not already in the license proceeding record, you must provide a copy with the proposal.

§ 221.72 What will NMFS do with a proposed alternative?

If any license party proposes an alternative to a preliminary prescription under § 221.71(a)(1), NMFS must do the following within 60 days after the deadline for filing comments to FERC's NEPA document under 18 CFR 5.25(c):

(a) Analyze the alternative under § 221.73; and

(b) File with FERC:

(1) Any prescription that NMFS adopts as its modified prescription; and

(2) Its analysis of the modified prescription and any proposed alternatives under § 221.73(c).

§ 221.73 How will NMFS analyze a proposed alternative and formulate its modified prescription?

(a) In deciding whether to adopt a proposed alternative, NMFS must consider evidence and supporting material provided by any license party or otherwise available to NMFS including:

(1) Any evidence on the implementation costs or operational impacts for electricity production of the proposed alternative;

(2) Any comments received on NMFS's preliminary prescription;

(3) Any ALJ decision on disputed issues of material fact issued under § 221.60 with respect to the preliminary prescription;

(4) Comments received on any draft or final NEPA documents; and

(5) The license party's proposal under § 221.71.

(b) NMFS must adopt a proposed alternative if NMFS determines, based on substantial evidence provided by any license party or otherwise available to NMFS, that the alternative will be no less protective than NMFS's preliminary prescription and will, as compared to NMFS's preliminary prescription:

(1) Cost significantly less to implement; or

(2) Result in improved operation of the project works for electricity production.

(c) When NMFS files with FERC the prescription that NMFS adopts as its modified prescription under §§221.72(b), it must also file:

(1) A written statement explaining:

(i) The basis for the adopted prescription; and

(ii) If NMFS is not adopting any alternative, its reasons for not doing so; and

(2) Any study, data, and other factual information relied on that is not already part of the licensing proceeding record.

(d) The written statement under paragraph (c)(1) of this section must demonstrate that NMFS gave equal consideration to the effects of the prescription adopted and any alternative prescription not adopted on:

(1) Energy supply, distribution, cost, and use;

(2) Flood control;

(3) Navigation;

(4) Water supply;

(5) Air quality; and

(6) Preservation of other aspects of environmental quality.

§ 221.74 Has OMB approved the information collection provisions of this subpart?

Yes. This rule contains provisions that would collect information from the public. It therefore requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA). According to the PRA, a Federal 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 that indicates OMB approval. OMB has reviewed the information collection in this rule and approved it under OMB control number 1094-0001.

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

Subpart A—Introduction and General Provisions

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222.401 Observer requirement.

222.402 Annual determination of fisheries to be observed; notice and comment.

222.403 Duration of selection; effective date.

222.404 Observer program sampling.

AUTHORITY: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*

Section 222.403 also issued under 16 U.S.C. 1361 *et seq.*

SOURCE: 64 FR 14054, Mar. 23, 1999, unless otherwise noted.

Subpart A—Introduction and General Provisions

§ 222.101 Purpose and scope of regulations.

(a) The regulations of parts 222, 223, and 224 of this chapter implement the Endangered Species Act (Act), and govern the taking, possession, transportation, sale, purchase, barter, exportation, importation of, and other requirements pertaining to wildlife and

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plants under the jurisdiction of the Secretary of Commerce and determined to be threatened or endangered pursuant to section 4(a) of the Act. These regulations are implemented by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce. This part pertains to general provisions and definitions. Specifically, parts 223 and 224 pertain to provisions to threatened species and endangered species, respectively. Part 226 enumerates designated critical habitat for endangered and threatened species. Certain of the endangered and threatened marine species enumerated in §§ 224.102 and 223.102 are included in Appendix I or II to the Convention on International Trade of Endangered Species of Wild Fauna and Flora. The importation, exportation, and re-exportation of such species are subject to additional regulations set forth at 50 CFR part 23, chapter I.

(b) For rules and procedures relating to species determined to be threatened or endangered under the jurisdiction of the Secretary of the Interior, see 50 CFR parts 10 through 17. For rules and procedures relating to the general implementation of the Act jointly by the Departments of the Interior and Commerce and for certain species under the joint jurisdiction of both the Secretaries of the Interior and Commerce, see 50 CFR Chapter IV. Marine mammals listed as endangered or threatened and subject to these regulations may also be subject to additional requirements pursuant to the Marine Mammal Protection Act (for regulations implementing that act, see 50 CFR part 216).

(c) No statute or regulation of any state shall be construed to relieve a person from the restrictions, conditions, and requirements contained in parts 222, 223, and 224 of this chapter. In addition, nothing in parts 222, 223, and 224 of this chapter, including any permit issued pursuant thereto, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of any state or of the United States, including any applicable health, quarantine, agricultural, or customs laws or regulations, or any

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other National Marine Fisheries Service enforced statutes or regulations.

§ 222.102 Definitions.

Accelerator funnel means a device used to accelerate the flow of water through a shrimp trawl net.

Act means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Adequately covered means, with respect to species listed pursuant to section 4 of the Act, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the Act for the species covered by the plan and, with respect to unlisted species, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the Act that would otherwise apply if the unlisted species covered by the plan were actually listed. For the Services to cover a species under a conservation plan, it must be listed on the section 10(a)(1)(B) permit.

Alaska Regional Administrator means the Regional Administrator for the Alaska Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Alaska Regional Administrator should be addressed: Alaska Regional Administrator, F/AK, Alaska Regional Office, National Marine Fisheries Service, NOAA, P.O. Box 21668 Juneau, AK 99802-1668.

Approved turtle excluder device (TED) means a device designed to be installed in a trawl net forward of the cod end for the purpose of excluding sea turtles from the net, as described in 50 CFR 223.207.

Assistant Administrator means the Assistant Administrator for Fisheries of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or his authorized representative. Mail sent to the Assistant Administrator should be addressed: Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, 1315 East-West Highway, Silver Spring, MD 20910.

Atlantic Area means all waters of the Atlantic Ocean south of 36°33'00.8" N.

lat. (the line of the North Carolina/Virginia border) and adjacent seas, other than waters of the Gulf Area, and all waters shoreward thereof (including ports).

Atlantic Shrimp Fishery—Sea Turtle Conservation Area (Atlantic SFSTCA) means the inshore and offshore waters extending to 10 nautical miles (18.5 km) offshore along the coast of the States of Georgia and South Carolina from the Georgia-Florida border (defined as the line along 30°42'45.6" N. lat.) to the North Carolina-South Carolina border (defined as the line extending in a direction of 135°34'55" from true north from the North Carolina-South Carolina land boundary, as marked by the border station on Bird Island at 33°51'07.9" N. lat., 078°32'32.6" W. long.).

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(2) Any special agent or enforcement officer of the National Marine Fisheries Service;

(3) Any officer designated by the head of a Federal or state agency that has entered into an agreement with the Secretary or the Commandant of the Coast Guard to enforce the provisions of the Act; or

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Bait shrimp means a shrimp trawler that fishes for and retains its shrimp catch alive for the purpose of selling it for use as bait.

Beam trawl means a trawl with a rigid frame surrounding the mouth that is towed from a vessel by means of one or more cables or ropes.

Certificate of exemption means any document so designated by the National Marine Fisheries Service and signed by an authorized official of the National Marine Fisheries Service, including any document which modifies, amends, extends or renews any certificate of exemption.

Chain mat means a device designed to be installed in a scallop dredge forward of the sweep, as described in 50 CFR 223.206, for the purpose of excluding sea turtles from the dredge.

Changed circumstances means changes in circumstances affecting a species or

geographic area covered by a conservation plan that can reasonably be anticipated by plan developers and NMFS and that can be planned for (e.g., the listing of new species, or a fire or other natural catastrophic event in areas prone to such events).

Commercial activity means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: Provided, however, that it does not include the exhibition of commodities by museums or similar cultural or historical organizations.

Conservation plan means the plan required by section 10(a)(2)(A) of the Act that an applicant must submit when applying for an incidental take permit. Conservation plans also are known as "habitat conservation plans" or "HCPs."

Conserved habitat areas means areas explicitly designated for habitat restoration, acquisition, protection, or other conservation purposes under a conservation plan.

Cooperative Agreement means an agreement between a state(s) and the National Marine Fisheries Service, NOAA, Department of Commerce, which establishes and maintains an active and adequate program for the conservation of resident species listed as endangered or threatened pursuant to section 6(c)(1) of the Endangered Species Act.

Dredge or dredge gear, with respect to the fishery operating under the Atlantic Sea Scallop Fishery Management Plan, means gear consisting of a mouth frame attached to a holding bag constructed of metal rings, or any other modification to this design, that can be or is used in the harvest of sea scallops.

Fishing, or to fish, means:

(1) The catching, taking, or harvesting of fish or wildlife;

(2) The attempted catching, taking, or harvesting of fish or wildlife;

(3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish or wildlife; or

(4) Any operations on any waters in support of, or in preparation for, any

activity described in paragraphs (1) through (3) of this definition.

Footrope means a weighted rope or cable attached to the lower lip (bottom edge) of the mouth of a trawl net along the forward-most webbing.

Footrope length means the distance between the points at which the ends of the footrope are attached to the trawl net, measured along the forward-most webbing.

Foreign commerce includes, among other things, any transaction between persons within one foreign country, or between persons in two or more foreign countries, or between a person within the United States and a person in one or more foreign countries, or between persons within the United States, where the fish or wildlife in question are moving in any country or countries outside the United States.

Four-seam, straight-wing trawl means a design of shrimp trawl in which the main body of the trawl is formed from a top panel, a bottom panel, and two side panels of webbing. The upper and lower edges of the side panels of webbing are parallel over the entire length.

Four-seam, tapered-wing trawl means a design of shrimp trawl in which the main body of the trawl is formed from a top panel, a bottom panel, and two side panels of webbing. The upper and lower edges of the side panels of webbing converge toward the rear of the trawl.

Gillnet means a panel of netting, suspended vertically in the water by floats along the top and weights along the bottom, to entangle fish that attempt to pass through it.

Gulf Area means all waters of the Gulf of Mexico west of 81° W. long. (the line at which the Gulf Area meets the Atlantic Area) and all waters shoreward thereof (including ports).

Gulf Shrimp Fishery-Sea Turtle Conservation Area (Gulf SFSTCA) means the offshore waters extending to 10 nautical miles (18.5 km) offshore along the coast of the States of Texas and Louisiana from the South Pass of the Mississippi River (west of 89°08.5' W. long.) to the U.S.-Mexican border.

Habitat restoration activity means an activity that has the sole objective of restoring natural aquatic or riparian habitat conditions or processes.

Harm in the definition of “take” in the Act means an act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including, breeding, spawning, rearing, migrating, feeding or sheltering.

Headrope means a rope that is attached to the upper lip (top edge) of the mouth of a trawl net along the forward-most webbing.

Headrope length means the distance between the points at which the ends of the headrope are attached to the trawl net, measured along the forward-most webbing.

Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the tariff laws of the United States.

Inshore means marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80.

Modified pound net leader means a pound net leader that is affixed to or resting on the sea floor and made of a lower portion of mesh and an upper portion of only vertical lines such that: The mesh size is equal to or less than 8 inches (20.3 cm) stretched mesh; at any particular point along the leader the height of the mesh from the seafloor to the top of the mesh must be no more than one-third the depth of the water at mean lower low water directly above that particular point; the mesh is held in place by vertical lines that extend from the top of the mesh up to a top line, which is a line that forms the uppermost part of the pound net leader; the vertical lines are equal to or greater than $\frac{5}{16}$ inch (0.8 cm) in diameter and strung vertically at a minimum of every 2 feet (61 cm); and the vertical lines are hard lay lines

with a level of stiffness equivalent to the stiffness of a $\frac{5}{16}$ inch (0.8 cm) diameter line composed of polyester wrapped around a blend of polypropylene and polyethylene and containing approximately 42 visible twists of strands per foot of line.

Northeast Regional Administrator means the Regional Administrator for the Northeast Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Northeast Regional Administrator should be addressed: Northeast Regional Administrator, F/NE, Northeast Regional Office, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930-2298.

Northwest Regional Administrator means the Regional Administrator for the Northwest Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Northwest Regional Administrator should be addressed: Northwest Regional Administrator, F/NW, Northwest Regional Office, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE, Seattle, WA 98115-0070.

Office of Enforcement means the national fisheries enforcement office of the National Marine Fisheries Service. Mail sent to the Office of Enforcement should be addressed: Office of Enforcement, F/EN, National Marine Fisheries Service, NOAA, 8484 Suite 415, Georgia Ave., Silver Spring, MD 20910.

Office of Protected Resources means the national program office of the endangered species and marine mammal programs of the National Marine Fisheries Service. Mail sent to the Office of Protected Resources should be addressed: Office of Protected Resources, F/PR, National Marine Fisheries Service, NOAA, 1315 East West Highway, Silver Spring, MD 20910.

Offshore means marine and tidal waters seaward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration

(Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80.

Operating conservation program means those conservation management activities which are expressly agreed upon and described in a Conservation Plan or its Implementing Agreement. These activities are to be undertaken for the affected species when implementing an approved Conservation Plan, including measures to respond to changed circumstances.

Permit means any document so designated by the National Marine Fisheries Service and signed by an authorized official of the National Marine Fisheries Service, including any document which modifies, amends, extends, or renews any permit.

Person means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal government of any state or political subdivision thereof or of any foreign government.

Possession means the detention and control, or the manual or ideal custody of anything that may be the subject of property, for one's use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one's place and name. Possession includes the act or state of possessing and that condition of facts under which persons can exercise their power over a corporeal thing at their pleasure to the exclusion of all other persons. Possession includes constructive possession that which means not an actual but an assumed existence one claims to hold by virtue of some title, without having actual custody.

Pound net leader means a long straight net that directs the fish offshore towards the pound, an enclosure that captures the fish. Some pound net leaders are all mesh, while others have stringers and mesh. Stringers are vertical lines in a pound net leader that are spaced a certain distance apart and are not crossed by horizontal lines to form mesh. An offshore pound net leader refers to a leader with the inland end set greater than 10 horizontal feet (3 m) from the mean low

water line. A nearshore pound net leader refers to a leader with the inland end set 10 horizontal feet (3 m) or less from the mean low water line.

Pound Net Regulated Area I means Virginia waters of the mainstem Chesapeake Bay, south of 37°19.0' N. lat. and west of 76°13.0' W. long., and all waters south of 37°13.0' N. lat. to the Chesapeake Bay Bridge Tunnel (extending from approximately 37°05' N. lat., 75°59' W. long. to 36°55' N. lat., 76°08' W. long.) at the mouth of the Chesapeake Bay, and the portion of the James River downstream of the Hampton Roads Bridge Tunnel (I-64; approximately 36°59.55' N. lat., 76°18.64' W. long.) and the York River downstream of the Coleman Memorial Bridge (Route 17; approximately 37°14.55' N. lat., 76°30.40' W. long.)

Pound Net Regulated Area II means Virginia waters of the Chesapeake Bay outside of Pound Net Regulated Area I defined above, extending to the Maryland-Virginia State line (approximately 37°55' N. lat., 75°55' W. long.), the Great Wicomico River downstream of the Jessie Dupont Memorial Highway Bridge (Route 200; approximately 37°50.84' N. lat., 76°22.09' W. long.), the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3; approximately 37°37.44' N. lat., 76°25.40' W. long.), and the Piankatank River downstream of the Route 3 Bridge (approximately 37°30.62' N. lat., 76°25.19' W. long.) to the COLREGS line at the mouth of the Chesapeake Bay.

Pre-Act endangered species part means any sperm whale oil, including derivatives and products thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

Properly implemented conservation plan means any conservation plan, implementing agreement, or permit whose commitments and provisions have been or are being fully implemented by the permittee.

Pusher-head trawl (chopsticks) means a trawl that is spread by two poles sus-

pended from the bow of the trawler in an inverted "V" configuration.

Resident species means, for purposes of entering into cooperative agreements with any state pursuant to section 6(c) of the Act, a species that exists in the wild in that state during any part of its life.

Right whale means, as used in § 224.103(c), any whale that is a member of the western North Atlantic population of the northern right whale species (*Eubalaena glacialis*).

Roller trawl means a variety of beam trawl that is used, usually by small vessels, for fishing over uneven or vegetated sea bottoms.

Scrimshaw product means any art form which involves the substantial etching or engraving of designs upon, or the substantial carving of figures, patterns, or designs from any bone or tooth of any marine mammal of the order Cetacea. For purposes of this part, polishing or the adding of minor superficial markings does not constitute substantial etching, engraving, or carving.

Secretary means the Secretary of Commerce or an authorized representative.

Shrimp means any species of marine shrimp (Order Crustacea) found in the Atlantic Area or the Gulf Area, including, but not limited to:

- (1) Brown shrimp (*Penaeus aztecus*).
- (2) White shrimp (*Penaeus setiferus*).
- (3) Pink shrimp (*Penaeus duorarum*).
- (4) Rock shrimp (*Sicyonia brevirostris*).
- (5) Royal red shrimp (*Hymenopenaeus robustus*).
- (6) Seabob shrimp (*Xiphopenaeus kroyeri*).

Shrimp trawler means any vessel that is equipped with one or more trawl nets and that is capable of, or used for, fishing for shrimp, or whose on-board or landed catch of shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

Skimmer trawl means a trawl that is fished along the side of the vessel and is held open by a rigid frame and a lead weight. On its outboard side, the trawl is held open by one side of the frame extending downward and, on its inboard side, by a lead weight attached by cable or rope to the bow of the vessel.

Southeast Regional Administrator means the Regional Administrator for the Southeast Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Southeast Regional Administrator should be addressed: Southeast Regional Administrator, F/SE, Southeast Regional Office, National Marine Fisheries Service, NOAA, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432.

Southwest Regional Administrator means the Regional Administrator for the Southwest Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Southwest Regional Administrator should be addressed: Southwest Regional Administrator, F/SW, Southwest Regional Office, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802-4213.

Stretched mesh size means the distance between the centers of the two opposite knots in the same mesh when pulled taut.

Summer flounder means the species *Paralichthys dentatus*.

Summer flounder fishery-sea turtle protection area means all offshore waters, bounded on the north by a line along 37°05' N. lat. (Cape Charles, VA) and bounded on the south by a line extending in a direction of 135°34'55" from true north from the North Carolina-South Carolina land boundary, as marked by the border station on Bird Island at 33°51'07.9" N. lat., 078°32'32.6" W. long. (the North Carolina-South Carolina border).

Summer flounder trawler means any vessel that is equipped with one or more bottom trawl nets and that is capable of, or used for, fishing for flounder or whose on-board or landed catch of flounder is more than 100 lb (45.4 kg).

Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect.

Taper, in reference to the webbing used in trawls, means the angle of a

cut used to shape the webbing, expressed as the ratio between the cuts that reduce the width of the webbing by cutting into the panel of webbing through one row of twine (bar cuts) and the cuts that extend the length of the panel of webbing by cutting straight aft through two adjoining rows of twine (point cuts). For example, sequentially cutting through the lengths of twine on opposite sides of a mesh, leaving an uncut edge of twines all lying in the same line, produces a relatively strong taper called "all-bars"; making a sequence of 4-bar cuts followed by 1-point cut produces a more gradual taper called "4 bars to 1 point" or "4b1p"; similarly, making a sequence of 2-bar cuts followed by 1-point cut produces a still more gradual taper called "2b1p"; and making a sequence of cuts straight aft does not reduce the width of the panel and is called a "straight" or "all-points" cut.

Taut means a condition in which there is no slack in the net webbing.

Test net, or *try net*, means a net pulled for brief periods of time just before, or during, deployment of the primary net(s) in order to test for shrimp concentrations or determine fishing conditions (e.g., presence or absence of bottom debris, jellyfish, bycatch, seagrasses, etc.).

Tongue means any piece of webbing along the top, center, leading edge of a trawl, whether lying behind or ahead of the headrope, to which a towing bridle can be attached for purposes of pulling the trawl net and/or adjusting the shape of the trawl.

Transportation means to ship, convey, carry or transport by any means whatever, and deliver or receive for such shipment, conveyance, carriage, or transportation.

Triple-wing trawl means a trawl with a tongue on the top, center, leading edge of the trawl and an additional tongue along the bottom, center, leading edge of the trawl.

Two-seam trawl means a design of shrimp trawl in which the main body of the trawl is formed from a top and a bottom panel of webbing that are directly attached to each other down the sides of the trawl.

Underway with respect to a vessel, means that the vessel is not at anchor, or made fast to the shore, or aground.

Unforeseen circumstances means changes in circumstances affecting a species or geographic area covered by a conservation plan that could not reasonably have been anticipated by plan developers and NMFS at the time of the conservation plan's negotiation and development, and that result in a substantial and adverse change in the status of the covered species.

Vessel means a vehicle used, or capable of being used, as a means of transportation on water which includes every description of watercraft, including nondisplacement craft and seaplanes.

Vessel restricted in her ability to maneuver has the meaning specified for this term at 33 U.S.C. 2003(g).

Wildlife means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

Wing net (butterfly trawl) means a trawl that is fished along the side of the vessel and that is held open by a four-sided, rigid frame attached to the outrigger of the vessel.

[64 FR 14054, Mar. 23, 1999, as amended at 64 FR 60731, Nov. 8, 1999; 67 FR 13101, Mar. 21, 2002; 67 FR 41203, June 17, 2002; 67 FR 71899, Dec. 3, 2002; 68 FR 8467, Feb. 21, 2003; 68 FR 17562, Apr. 10, 2003; 69 FR 25011, May 5, 2004; 70 FR 1832, Jan. 11, 2005; 71 FR 36032, June 23, 2006; 71 FR 50372, Aug. 25, 2006]

§ 222.103 Federal/state cooperation in the conservation of endangered and threatened species.

(a) *Application for and renewal of cooperative agreements.* (1) The Assistant Administrator may enter into a Cooperative Agreement with any state that establishes and maintains an active and adequate program for the conservation of resident species listed as endangered or threatened. In order for a state program to be deemed an adequate and active program, the Assistant Administrator must find, and annually recon-

firm that the criteria of either sections 6(c)(1) (A) through (E) or sections 6(c)(1) (i) and (ii) of the Act have been satisfied.

(2) Following receipt of an application by a state for a Cooperative Agreement with a copy of a proposed state program, and a determination by the Assistant Administrator that the state program is adequate and active, the Assistant Administrator shall enter into an Agreement with the state.

(3) The Cooperative Agreement, as well as the Assistant Administrator's finding upon which it is based, must be reconfirmed annually to ensure that it reflects new laws, species lists, rules or regulations, and programs and to demonstrate that it is still adequate and active.

(b) *Allocation and availability of funds.* (1) The Assistant Administrator shall allocate funds, appropriated for the purpose of carrying out section 6 of the Act, to various states using the following as the basis for the determination:

(i) The international commitments of the United States to protect endangered or threatened species;

(ii) The readiness of a state to proceed with a conservation program consistent with the objectives and purposes of the Act;

(iii) The number of federally listed endangered and threatened species within a state;

(iv) The potential for restoring endangered and threatened species within a state; and

(v) The relative urgency to initiate a program to restore and protect an endangered or threatened species in terms of survival of the species.

(2) Funds allocated to a state are available for obligation during the fiscal year for which they are allocated and until the close of the succeeding fiscal year. Obligation of allocated funds occurs when an award or contract is signed by the Assistant Administrator.

(c) *Financial assistance and payments.* (1) A state must enter into a Cooperative Agreement before financial assistance is approved by the Assistant Administrator for endangered or threatened species projects. Specifically, the Agreement must contain the actions

that are to be taken by the Assistant Administrator and/or by the state, the benefits to listed species expected to be derived from these actions, and the estimated cost of these actions.

(2) Subsequent to such Agreement, the Assistant Administrator may further agree with a state to provide financial assistance in the development and implementation of acceptable projects for the conservation of endangered and threatened species. Documents to provide financial assistance will consist of an application for Federal assistance and an award or a contract. The availability of Federal funds shall be contingent upon the continued existence of the Cooperative Agreement and compliance with all applicable Federal regulations for grant administration and cost accounting principles.

(3)(i) The payment of the Federal share of costs incurred when conducting activities included under a contract or award shall not exceed 75 percent of the program costs as stated in the agreement. However, the Federal share may be increased to 90 percent when two or more states having a common interest in one or more endangered or threatened resident species, the conservation of which may be enhanced by cooperation of such states, jointly enter into an agreement with the Assistant Administrator.

(ii) The state share of program costs may be in the form of cash or in-kind contributions, including real property, subject to applicable Federal regulations.

(4) Payments of funds, including payment of such preliminary costs and expenses as may be incurred in connection with projects, shall not be made unless all necessary or required documents are first submitted to and approved by the Assistant Administrator. Payments shall only be made for expenditures reported and certified by the state agency. Payments shall be made only to the state office or official designated by the state agency and authorized under the laws of the state to receive public funds for the state.

Subpart B—Certificates of Exemption for Pre-Act Endangered Species Parts

§ 222.201 General requirements.

(a) The Assistant Administrator may exempt any pre-Act endangered species part from the prohibitions of sections 9(a)(1)(A), 9(a)(1)(E), or 9(a)(1)(F) of the Act.

(1) No person shall engage in any activities identified in such sections of the Act that involve any pre-Act endangered species part without a valid Certificate of Exemption issued pursuant to this subpart B.

(2) No person may export, deliver, receive, carry, transport or ship in interstate or foreign commerce in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any pre-Act finished scrimshaw product unless that person has been issued a valid Certificate of Exemption and the product or the raw material for such product was held by such certificate holder on October 13, 1982.

(3) Any person engaged in activities otherwise prohibited under the Act or regulations shall bear the burden of proving that the exemption or certificate is applicable, was granted, and was valid and in force at the time of the otherwise prohibited activity.

(b) Certificates of Exemption issued under this subpart are no longer available to new applicants. However, the Assistant Administrator may renew or modify existing Certificates of Exemptions as authorized by the provisions set forth in this subpart.

(c) Any person granted a Certificate of Exemption, including a renewal, under this subpart, upon a sale of any exempted pre-Act endangered species part, must provide the purchaser in writing with a description (including full identification number) of the part sold and must inform the purchaser in writing of the purchaser's obligation under paragraph (b) of this section, including the address given in the certificate to which the purchaser's report is to be sent.

(d) Any purchaser of pre-Act endangered species parts included in a valid Certificate of Exemption, unless an ultimate user, within 30 days after the

receipt of such parts, must submit a written report to the address given in the certificate. The report must specify the quantity of such parts or products received, the name and address of the seller, a copy of the invoice or other document showing the serial numbers, weight, and descriptions of the parts or products received, the date on which such parts or products were received, and the intended use of such parts by the purchaser. The term "ultimate user", for purposes of this paragraph, means any person who acquired such endangered species part or product for his or her own consumption or for other personal use (including gifts) and not for resale.

§ 222.202 Certificate renewal.

(a) Any person to whom a Certificate of Exemption has been issued by the National Marine Fisheries Service may apply to the Assistant Administrator for renewal of such certificate. Any person holding a valid Certificate of Exemption which was renewed after October 13, 1982, and was in effect on March 31, 1988, may apply to the Secretary for one renewal for a period not to exceed 5 years.

(b) The sufficiency of the application shall be determined by the Assistant Administrator in accordance with the requirements of paragraph (c) of this section. At least 15 days should be allowed for processing. When an application for a renewal has been received and deemed sufficient, the Assistant Administrator shall issue a Certificate of Renewal to the applicant as soon as practicable.

(c) The following information will be used as the basis for determining whether an application for renewal of a Certificate of Exemption is complete:

(1) Title: Application for Renewal of Certificate of Exemption.

(2) The date of application.

(3) The identity of the applicant, including complete name, original Certificate of Exemption number, current address, and telephone number. If the applicant is a corporation, partnership, or association, set forth the details.

(4) The period of time for which a renewal of the Certificate of Exemption is requested. However, no renewal of Certificate of Exemption, or right

claimed thereunder, shall be effective after the close of the 5-year period beginning on the date of the expiration of the previous renewal of the certificate of exemption.

(5)(i) A complete and detailed updated inventory of all pre-Act endangered species parts for which the applicant seeks exemption. Each item on the inventory must be identified by the following information: A unique serial number; the weight of the item to the nearest whole gram; and a detailed description sufficient to permit ready identification of the item. Small lots, not exceeding five pounds (2,270 grams), of scraps or raw material, which may include or consist of one or more whole raw whale teeth, may be identified by a single serial number and total weight. All finished scrimshaw items subsequently made from a given lot of scrap may be identified by the lot serial number plus additional digits to signify the piece number of the individual finished item. Identification numbers will be in the following format: 00-000000-0000. The first two digits will be the last two digits of the appropriate certificate of exemption number; the next six digits, the serial number of the individual piece or lot of scrap or raw material; and the last four digits, where applicable, the piece number of an item made from a lot of scrap or raw material. The serial numbers for each certificate holder's inventory must begin with 000001, and piece numbers, where applicable, must begin with 0001 for each separate lot.

(ii) Identification numbers may be affixed to inventory items by any means, including, but not limited to, etching the number into the item, attaching a label or tag bearing the number to the item, or sealing the item in a plastic bag, wrapper or other container bearing the number. The number must remain affixed to the item until the item is sold to an ultimate user, as defined in § 222.201(d).

(iii) No renewals will be issued for scrimshaw products in excess of any quantities declared in the original application for a Certificate of Exemption.

(6) A Certification in the following language: I hereby certify that the foregoing information is complete,

true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a renewal of my Certificate of Exemption under the Endangered Species Act, as amended, and the Department of Commerce regulations issued thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to the penalties under the Act.

(7) Signature of the applicant.

(d) Upon receipt of an incomplete or improperly executed application for renewal, the applicant shall be notified of the deficiency in the application for renewal. If the application for renewal is not corrected and received by the Assistant Administrator within 30 days following the date of receipt of notification, the application for renewal shall be considered abandoned.

§ 222.203 Modification, amendment, suspension, and revocation of certificates.

(a) When circumstances have changed so that an applicant or certificate holder desires to have any material, term, or condition of the application or certificate modified, the applicant or certificate holder must submit in writing full justification and supporting information in conformance with the provisions of this part.

(b) All certificates are issued subject to the condition that the Assistant Administrator reserves the right to amend the provisions of a Certificate of Exemption for just cause at any time. Such amendments take effect on the date of notification, unless otherwise specified.

(c) Any violation of the applicable provisions of parts 222, 223, or 224 of this chapter, or of the Act, or of a condition of the certificate may subject the certificate holder to penalties provided in the Act and to suspension, revocation, or modification of the Certificate of Exemption, as provided in subpart D of 15 CFR part 904.

§ 222.204 Administration of certificates.

(a) The Certificate of Exemption covers the business or activity specified in the Certificate of Exemption at the address described therein. No Certificate

of Exemption is required to cover a separate warehouse facility used by the certificate holder solely for storage of pre-Act endangered species parts, if the records required by this subpart are maintained at the address specified in the Certificate of Exemption served by the warehouse or storage facility.

(b) Certificates of Exemption issued under this subpart are not transferable. However, in the event of the lease, sale, or other transfer of the operations or activity authorized by the Certificate of Exemption, the successor is not required to obtain a new Certificate of Exemption prior to commencing such operations or activity. In such case, the successor will be treated as a purchaser and must comply with the record and reporting requirements set forth in § 222.201(d).

(c) The Certificate of Exemption holder must notify the Assistant Administrator, in writing, of any change in address, in trade name of the business, or in activity specified in the certificate. The Assistant Administrator must be notified within 10 days of a change of address, and within 30 days of a change in trade name. The certificate with the change of address or in trade name must be endorsed by the Assistant Administrator, who shall provide an amended certificate to the person to whom it was issued. A certificate holder who seeks amendment of a certificate may continue all authorized activities while awaiting action by the Assistant Administrator.

(d) A Certificate of Exemption issued under this subpart confers no right or privilege to conduct a business or an activity contrary to state or other law. Similarly, compliance with the provisions of any state or other law affords no immunity under any Federal laws or regulations of any other Federal agency.

(e) Any person authorized to enforce the Act may enter the premises of any Certificate of Exemption holder or of any purchaser during business hours, including places of storage, for the purpose of inspecting or of examining any records or documents and any endangered species parts.

(f) The records pertaining to pre-Act endangered species parts prescribed by this subpart shall be in permanent

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form and shall be retained at the address shown on the Certificate of Exemption or at the principal address of a purchaser in the manner prescribed by this subpart.

(g)(1) Holders of Certificates of Exemption must maintain records of all pre-Act endangered species parts they receive, sell, transfer, distribute or dispose of otherwise. Purchasers of pre-Act endangered species parts, unless ultimate users, as defined in §222.201(d), must similarly maintain records of all such parts or products they receive.

(2) Such records referred to in paragraph (g)(1) of this section may consist of invoices or other commercial records, which must be filed in an orderly manner separate from other commercial records maintained and be readily available for inspection. Such records must show the name and address of the purchaser, seller, or other transferor; show the type, quantity, and identity of the part or product; show the date of such sale or transfer; and be retained, in accordance with the requirements of this subpart, for a period of not less than 3 years following the date of sale or transfer. Each pre-Act endangered species part will be identified by its number on the updated inventory required to renew a Certificate of Exemption.

(i) Each Certificate of Exemption holder must submit a quarterly report (to the address given in the certificate) containing all record information required by paragraph (g)(2) of this section, on all transfers of pre-Act endangered species parts made in the previous calendar quarter, or such other record information the Assistant Administrator may specify from time to time.

(ii) Quarterly reports are due on January 15, April 15, July 15, and October 15.

(3) The Assistant Administrator may authorize the record information to be submitted in a manner other than that prescribed in paragraph (g)(2) of this section when the record holder demonstrates that an alternate method of reporting is reasonably necessary and will not hinder the effective administration or enforcement of this subpart.

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§ 222.205 Import and export requirements.

(a) Any fish and wildlife subject to the jurisdiction of the National Marine Fisheries Service and is intended for importation into or exportation from the United States, shall not be imported or exported except at a port(s) designated by the Secretary of the Interior. Shellfish and fishery products that are neither endangered nor threatened species and that are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes are excluded from this requirement. The Secretary of the Interior may permit the importation or exportation at non-designated ports in the interest of the health or safety of the species for other reasons if the Secretary deems it appropriate and consistent with the purpose of facilitating enforcement of the Act and reducing the costs thereof. Importers and exporters are advised to see 50 CFR part 14 for importation and exportation requirements and information.

(b) No pre-Act endangered species part shall be imported into the United States. A Certificate of Exemption issued in accordance with the provisions of this subpart confers no right or privilege to import into the United States any such part.

(c)(1) Any person exporting from the United States any pre-Act endangered species part must possess a valid Certificate of Exemption issued in accordance with the provisions of this subpart. In addition, the exporter must provide to the Assistant Administrator, in writing, not less than 10 days prior to shipment, the following information: The name and address of the foreign consignee, the intended port of exportation, and a complete description of the parts to be exported. No shipment may be made until these requirements are met by the exporter.

(2) The exporter must send a copy of the Certificate of Exemption, and any endorsements thereto, to the District Director of Customs at the port of exportation, which must precede or accompany the shipment in order to permit the appropriate inspection prior to

lading. Upon receipt, the District Director may order such inspection, as deemed necessary; the District will clear the merchandise for export, prior to the lading of the merchandise. If they are satisfied that the shipment is proper and complies with the information contained in the certificate and any endorsement thereto. The certificate, and any endorsements, will be forwarded to the Chief of the Office of Enforcement for NMFS.

(3) No pre-Act endangered species part in compliance with the requirements of this subpart may be exported except at a port or ports designated by the Secretary of the Interior, pursuant to § 222.103.

(4) Notwithstanding any provision of this subpart, it shall not be required that the Assistant Administrator authorizes the transportation in interstate or foreign commerce of pre-Act endangered species parts.

EFFECTIVE DATE NOTE: At 64 FR 14054, Mar. 23, 1999, part 222 was revised, effective Mar. 23, 1999, with the exception of § 222.205, paragraphs (c)(1) and (2), which contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

Subpart C—General Permit Procedures

§ 222.301 General requirements.

(a)(1) The regulations in this subpart C provide uniform rules and procedures for application, issuance, renewal, conditions, and general administration of permits issuable pursuant to parts 222, 223, and 224 of this chapter. While this section provides generic rules and procedures applicable to all permits, other sections may provide more specific rules and procedures with respect to certain types of permits. In such cases, the requirements in all applicable sections must be satisfied.

(2) Notwithstanding paragraph (a)(1) of this section, the Assistant Administrator may approve variations from the requirements of parts 222, 223, and 224 of this chapter when the Assistant Administrator finds that an emergency exists and that the proposed variations will not hinder effective administration of those parts and will not be un-

lawful. Other sections within parts 222, 223, and 224 of this chapter may allow for a waiver or variation of specific requirements for emergency situations, upon certain conditions. In such cases, those conditions must be satisfied in order for the waiver or variation to be lawful.

(b) No person shall take, import, export or engage in any other prohibited activity involving any species of fish or wildlife under the jurisdiction of the Secretary of Commerce that has been determined to be endangered under the Act, or that has been determined to be threatened and for which the prohibitions of section 9(a)(1) of the Act have been applied by regulation, without a valid permit issued pursuant to these regulations. The permit shall entitle the person to whom it is issued to engage in the activity specified in the permit, subject to the limitations of the Act and the regulations in parts 222, 223, and 224 of this chapter, for the period stated on the permit, unless sooner modified, suspended or revoked.

(c) Each person intending to engage in an activity for which a permit is required by parts 222, 223, and 224 of this chapter or by the Act shall, before commencing such activity, obtain a valid permit authorizing such activity. Any person who desires to obtain permit privileges authorized by parts 222, 223, and 224 of this chapter must apply for such permit in accordance with the requirements of these sections. If the information required for each specific, permitted activity is included, one application may be accepted for all permits required, and a single permit may be issued.

(d)(1) Any permit issued under these regulations must be in the possession of the person to whom it is issued (or of an agent of such person) while any animal subject to the permit is in the possession of such person or agent. Specifically, a person or his/her agent must be in possession of a permit during the time of the authorized taking, importation, exportation, or of any other act and during the period of any transit incident to such taking, importation, exportation, or to any other act.

(2) A duplicate copy of the issued permit must be physically attached to the

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tank, container, package, enclosure, or other means of containment, in which the animal is placed for purposes of storage, transit, supervision, or care.

(e) The authorizations on the face of a permit setting forth specific times, dates, places, methods of taking, numbers and kinds of fish or wildlife, location of activity, authorize certain circumscribed transactions, or otherwise permit a specifically limited matter, are to be strictly construed and shall not be interpreted to permit similar or related matters outside the scope of strict construction.

(f) Permits shall not be altered, erased, or mutilated, and any permit which has been altered, erased, or mutilated shall immediately become invalid.

(g) Any permit issued under parts 222, 223, and 224 of this chapter shall be displayed for inspection, upon request, to an authorized officer, or to any other person relying upon its existence.

(h) Permittees may be required to file reports of the activities conducted under the permit. Any such reports shall be filed not later than March 31 for the preceding calendar year ending December 31, or any portion thereof, during which a permit was in force, unless the regulations of parts 222, 223, or 224 of this chapter or the provisions of the permit set forth other reporting requirements.

(i) From the date of issuance of the permit, the permittee shall maintain complete and accurate records of any taking, possession, transportation, sale, purchase, barter, exportation, or importation of fish or wildlife pursuant to such permit. Such records shall be kept current and shall include the names and addresses of persons with whom any fish or wildlife has been purchased, sold, bartered, or otherwise transferred, and the date of such transaction, and such other information as may be required or appropriate. Such records, unless otherwise specified, shall be entered in books, legibly written in the English language. Such records shall be retained for 5 years from the date of issuance of the permit.

(j) Any person holding a permit pursuant to parts 222, 223, and 224 of this chapter shall allow the Assistant Administrator to enter the permit hold-

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er's premises at any reasonable hour to inspect any fish or wildlife held or to inspect, audit, or copy any permits, books, or records required to be kept by these regulations or by the Act. Such person shall display any permit issued pursuant to these regulations or to the Act upon request by an authorized officer or by any other person relying on its existence.

§ 222.302 Procedure for obtaining permits.

(a) Applications must be submitted to the Assistant Administrator, by letter containing all necessary information, attachments, certification, and signature, as specified by the regulations in parts 222, 223, and 224 of this chapter, or by the Act. In no case, other than for emergencies pursuant to § 222.301(a)(2), will applications be accepted either orally or by telephone.

(b) Applications must be received by the Assistant Administrator at least 90 calendar days prior to the date on which the applicant desires to have the permit made effective, unless otherwise specified in the regulations or guidelines pertaining to a particular permit. The National Marine Fisheries Service will attempt to process applications deemed sufficient in the shortest possible time, but does not guarantee that the permit will be issued 90 days after notice of receipt of the application is published in the FEDERAL REGISTER.

(c)(1) Upon receipt of an insufficiently or improperly executed application, the applicant shall be notified of the deficiency in the application. If the applicant fails to supply the deficient information or otherwise fails to correct the deficiency within 60 days following the date of notification, the application shall be considered abandoned.

(2) The sufficiency of the application shall be determined by the Assistant Administrator in accordance with the requirements of this part. The Assistant Administrator, however, may waive any requirement for information or require any elaboration or further information deemed necessary.

§ 222.303 Issuance of permits.

(a)(1) No permit may be issued prior to the receipt of a written application unless an emergency pursuant to § 222.301(a)(2) exists, and a written variation from the requirements is recorded by the National Marine Fisheries Service.

(2) No representation of an employee or agent of the United States shall be construed as a permit unless it meets the requirements of a permit defined in § 222.102.

(3) Each permit shall bear a serial number. Upon renewal, such a number may be reassigned to the permittee to whom issued so long as the permittee maintains continuity of renewal.

(b) When an application for a permit received by the Assistant Administrator is deemed sufficient, the Assistant Administrator shall, as soon as practicable, publish a notice in the FEDERAL REGISTER. Information received by the Assistant Administrator as a part of the application shall be available to the public as a matter of public record at every stage of the proceeding. An interested party, within 30 days after the date of publication of such notice, may submit to the Assistant Administrator written data, views, or arguments with respect to the taking, importation, or to other action proposed in the application, and may request a hearing in connection with the action to be taken thereon.

(c) If a request for a hearing is made within the 30-day period referred to in paragraph (b) of this section, or if the Assistant Administrator determines that a hearing would otherwise be advisable, the Assistant Administrator may, within 60 days after the date of publication of the notice referred to in paragraph (b) of this section, afford to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the FEDERAL REGISTER not less than 15 days in advance of such hearing. Any interested person may appear at the hearing in person or through a representative and may submit any relevant material, data, views, comments,

arguments, or exhibits. A summary record of the hearing shall be kept.

(d) Except as provided in subpart D to 15 CFR part 904, as soon as practicable but not later than 30 days after the close of the hearing. If no hearing is held, as soon as practicable but not later than 30 days from the publication of the notice in the FEDERAL REGISTER, the Assistant Administrator shall issue or deny issuance of the permit. Notice of the decision of the Assistant Administrator shall be published in the FEDERAL REGISTER within 10 days after the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(e)(1) The Assistant Administrator shall issue the permit unless:

(i) Denial of the permit has been made pursuant to subpart D to 15 CFR part 904;

(ii) The applicant has failed to disclose material or information required, or has made false statements as to any material fact, in connection with the application;

(iii) The applicant has failed to demonstrate a valid justification for the permit or a showing of responsibility;

(iv) The authorization requested potentially threatens a fish or wildlife population; or

(v) The Assistant Administrator finds through further inquiry or investigation, or otherwise, that the applicant is not qualified.

(2) The applicant shall be notified in writing of the denial of any permit request, and the reasons thereof. If authorized in the notice of denial, the applicant may submit further information or reasons why the permit should not be denied. Such further information shall not be considered a new application. The final action by the Assistant Administrator shall be considered the final administrative decision of the Department of Commerce.

(f) If a permit is issued under § 222.308, the Assistant Administrator shall publish notice thereof in the FEDERAL REGISTER, including the Assistant Administrator's finding that such permit—

(1) Was applied for in good faith;

(2) Will not operate to the disadvantage of such endangered species; and

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(3) Will be consistent with the purposes and policy set forth in section 2 of the Act.

(g) The Assistant Administrator may waive the 30-day period in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published by the Assistant Administrator in the FEDERAL REGISTER within 10 days following the issuance of the permit.

§ 222.304 Renewal of permits.

When the permit is renewable and a permittee intends to continue the activity described in the permit during any portion of the year ensuing its expiration, the permittee shall, unless otherwise notified in writing by the Assistant Administrator, file a request for permit renewal, together with a certified statement, verifying that the information in the original application is still currently correct. If the information is incorrect the permittee shall file a statement of all changes in the original application, accompanied by any required fee at least 30 days prior to the expiration of the permit. Any person holding a valid renewable permit, who has complied with the foregoing provision of this section, may continue such activities as were authorized by the expired permit until the renewal application is acted upon.

§ 222.305 Rights of succession and transfer of permits.

(a)(1) Except as otherwise provided in this section, permits issued pursuant to parts 222, 223, and 224 of this chapter are not transferable or assignable. In the event that a permit authorizes certain business activities in connection with a business or commercial enterprise, which is then subject to any subsequent lease, sale or transfer, the successor to that enterprise must obtain a permit prior to continuing the permitted activity, with the exceptions provided in paragraphs (a)(2) and (a)(3) of this section.

(2) Certain persons, other than the permittee, are granted the right to carry on a permitted activity for the remainder of the term of a current permit, provided that they furnish the

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permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity. Such persons are the following:

(i) The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee, and

(ii) The receiver or trustee in bankruptcy or a court designated assignee for the benefit of creditors.

(3) Incidental take permits issued under § 222.307, and enhancement permits issued under § 222.308, as part of a Safe Harbor Agreement with Assurances or Candidate Conservation Agreement with Assurances, may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee, or in the case of a deceased permittee, the deceased permittee's legal representative and the proposed transferee, provided NMFS determines in writing that:

(i) The proposed transferee meets all of the qualifications under parts 222, 223, or 224 (as applicable) for holding a permit;

(ii) The proposed transferee has provided adequate written assurances that it will provide sufficient funding for the conservation plan or other agreement or plan associated with the permit and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(iii) The proposed transferee has provided such other information as NMFS determines is relevant to process the transfer.

(b) Except as otherwise stated on the face of the permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for purposes authorized by the permit, may carry out the activity authorized by the permit.

[64 FR 14054, Mar. 23, 1999, as amended at 67 FR 57973, Sept. 13, 2002]

EFFECTIVE DATE NOTE: At 64 FR 14054, Mar. 23, 1999, part 222 was revised, effective Mar. 23, 1999, with the exception of § 222.305, paragraph (a), which contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 222.306 Modification, amendment, suspension, cancellation, and revocation of permits.

(a) When circumstances have changed so that an applicant or a permittee desires to have any term or condition of the application or permit modified, the applicant or permittee must submit in writing full justification and supporting information in conformance with the provisions of this part and the part under which the permit has been issued or requested. Such applications for modification are subject to the same issuance criteria as original applications.

(b) Notwithstanding the requirements of paragraph (a) of this section, a permittee may change the mailing address or trade name under which business is conducted without obtaining a new permit or being subject to the same issuance criteria as original permits. The permittee must notify the Assistant Administrator, in writing within 30 days, of any change in address or of any change in the trade name for the business or activity specified in the permit. The permit with the change of address or in trade name must be endorsed by the Assistant Administrator, who shall provide an amended permit to the person to whom it was issued.

(c) All permits are issued subject to the condition that the National Marine Fisheries Service reserves the right to amend the provisions of a permit for just cause at any time during its term. Such amendments take effect on the date of notification, unless otherwise specified.

(d) When any permittee discontinues the permitted activity, the permittee shall, within 30 days thereof, mail the permit and a request for cancellation to the issuing officer, and the permit shall be deemed void upon receipt. No refund of any part of an amount paid as a permit fee shall be made when the operations of the permittee are, for any reason, discontinued during the tenure of an issued permit.

(e) Any violation of the applicable provisions of parts 222, 223, or 224 of this chapter, or of the Act, or of a term or condition of the permit may subject the permittee to both the penalties provided in the Act and suspension,

revocation, or amendment of the permit, as provided in subpart D to 15 CFR part 904.

§ 222.307 Permits for incidental taking of species.

(a) *Scope.* (1) The Assistant Administrator may issue permits to take endangered and threatened species incidentally to an otherwise lawful activity under section 10(a)(1)(B) of the Act. The regulations in this section apply to all endangered species, and those threatened species for which the prohibitions of section 9(a)(1) of the Act, under the jurisdiction of the Secretary of Commerce, apply.

(2) If the applicant represents an individual or a single entity, such as a corporation, the Assistant Administrator will issue an individual incidental take permit. If the applicant represents a group or organization whose members conduct the same or a similar activity in the same geographical area with similar impacts on listed species for which a permit is required, the Assistant Administrator will issue a general incidental take permit. To be covered by a general incidental take permit, each individual conducting the activity must have a certificate of inclusion issued under paragraph (f) of this section.

(b) *Permit application procedures.* Applications should be sent to the Assistant Administrator. The Assistant Administrator shall determine the sufficiency of the application in accordance with the requirements of this section. At least 120 days should be allowed for processing. Each application must be signed and dated and must include the following:

- (1) The type of application, either:
 - (i) Application for an Individual Incidental Take Permit under the Act; or
 - (ii) Application for a General Incidental Take Permit under the Act;
- (2) The name, address, and telephone number of the applicant. If the applicant is a partnership or a corporate entity or is representing a group or an organization, the applicable details;
- (3) The species or stocks, by common and scientific name, and a description of the status, distribution, seasonal distribution, habitat needs, feeding

habits and other biological requirements of the affected species or stocks;

(4) A detailed description of the proposed activity, including the anticipated dates, duration, and specific location. If the request is for a general incidental take permit, an estimate of the total level of activity expected to be conducted;

(5) A conservation plan, based on the best scientific and commercial data available, which specifies the following:

(i) The anticipated impact (i.e., amount, extent, and type of anticipated taking) of the proposed activity on the species or stocks;

(ii) The anticipated impact of the proposed activity on the habitat of the species or stocks and the likelihood of restoration of the affected habitat;

(iii) The steps (specialized equipment, methods of conducting activities, or other means) that will be taken to monitor, minimize, and mitigate such impacts, and the funding available to implement such measures;

(iv) The alternative actions to such taking that were considered and the reasons why those alternatives are not being used; and

(v) A list of all sources of data used in preparation of the plan, including reference reports, environmental assessments and impact statements, and personal communications with recognized experts on the species or activity who may have access to data not published in current literature.

(c) *Issuance criteria.* (1) In determining whether to issue a permit, the Assistant Administrator will consider the following:

(i) The status of the affected species or stocks;

(ii) The potential severity of direct, indirect, and cumulative impacts on the species or stocks and habitat as a result of the proposed activity;

(iii) The availability of effective monitoring techniques;

(iv) The use of the best available technology for minimizing or mitigating impacts; and

(v) The views of the public, scientists, and other interested parties knowledgeable of the species or stocks or other matters related to the application.

(2) To issue the permit, the Assistant Administrator must find that—

(i) The taking will be incidental;

(ii) The applicant will, to the maximum extent practicable, monitor, minimize, and mitigate the impacts of such taking;

(iii) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;

(iv) The applicant has amended the conservation plan to include any measures (not originally proposed by the applicant) that the Assistant Administrator determines are necessary or appropriate; and

(v) There are adequate assurances that the conservation plan will be funded and implemented, including any measures required by the Assistant Administrator.

(d) *Permit conditions.* In addition to the general conditions set forth in this part, every permit issued under this section will contain such terms and conditions as the Assistant Administrator deems necessary and appropriate, including, but not limited to the following:

(1) Reporting requirements or rights of inspection for determining whether the terms and conditions are being complied with;

(2) The species and number of animals covered;

(3) The authorized method of taking;

(4) The procedures to be used to handle or dispose of any animals taken; and

(5) The payment of an adequate fee to the National Marine Fisheries Service to process the application.

(e) *Duration of permits.* The duration of permits issued under this section will be such as to provide adequate assurances to the permit holder to commit funding necessary for the activities authorized by the permit, including conservation activities. In determining the duration of a permit, the Assistant Administrator will consider the duration of the proposed activities, as well as the possible positive and negative effects on listed species associated with issuing a permit of the proposed duration, including the extent to which the conservation plan is likely to enhance the habitat of the endangered species

or to increase the long-term survivability of the species.

(f) *Certificates of inclusion.* (1) Any individual who wishes to conduct an activity covered by a general incidental take permit must apply to the Assistant Administrator for a Certificate of Inclusion. Each application must be signed and dated and must include the following:

(i) The general incidental take permit under which the applicant wants coverage;

(ii) The name, address, and telephone number of the applicant. If the applicant is a partnership or a corporate entity, the applicable details;

(iii) A description of the activity the applicant seeks to have covered under the general incidental take permit, including the anticipated dates, duration, and specific location; and

(iv) A signed certification that the applicant has read and understands the general incidental take permit and the conservation plan, will comply with their terms and conditions, and will fund and implement applicable measures of the conservation plan.

(2) To issue a Certificate of Inclusion, the Assistant Administrator must find that:

(i) The applicant will be engaged in the activity covered by the general permit, and

(ii) The applicant has made adequate assurances that the applicable measures of the conservation plan will be funded and implemented.

(g) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (g) apply only to incidental take permits issued in accordance with paragraph (c) of this section where the conservation plan is being properly implemented, and apply only with respect to species adequately covered by the conservation plan. These assurances cannot be provided to Federal agencies. This rule does not apply to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998, remain in effect, and those permits will not be revised as a result of this rulemaking.

(1) *Changed circumstances provided for in the plan.* If additional conservation

and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan's operating conservation program, the permittee will implement the measures specified in the plan.

(2) *Changed circumstances not provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the plan's operating conservation program, NMFS will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.

(3) *Unforeseen circumstances.* (i) In negotiating unforeseen circumstances, NMFS will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(ii) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, NMFS may require additional measures of the permittee where the conservation plan is being properly implemented. However, such additional measures are limited to modifications within any conserved habitat areas or to the conservation plan's operating conservation program for the affected species. The original terms of the conservation plan will be maintained to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of the permittee.

(iii) NMFS has the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available.

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These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. NMFS will consider, but not be limited to, the following factors:

- (A) Size of the current range of the affected species;
- (B) Percentage of range adversely affected by the conservation plan;
- (C) Percentage of range conserved by the conservation plan;
- (D) Ecological significance of that portion of the range affected by the conservation plan;
- (E) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and
- (F) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(h) Nothing in this rule will be construed to limit or constrain the Assistant Administrator, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at his or her own expense to protect or conserve a species included in a conservation plan.

§ 222.308 Permits for scientific purposes or for the enhancement of propagation or survival of species.

(a) *Scope.* The Assistant Administrator may issue permits for scientific purposes or for the enhancement of the propagation or survival of the affected endangered or threatened species in accordance with the regulations in parts 222, 223, and 224 of this chapter and under such terms and conditions as the Assistant Administrator may prescribe, authorizing the taking, importation, or other acts otherwise prohibited by section 9 of the Act. Within the jurisdiction of a State, more restrictive state laws or regulations in regard to endangered species shall prevail in regard to taking. Proof of compliance with applicable state laws will be required before a permit will be issued.

(b) *Application procedures.* Any person desiring to obtain such a permit may make application therefor to the Assistant Administrator. Permits for marine mammals shall be issued in ac-

cordance with the provisions of part 216, subpart D of this chapter. Permits relating to sea turtles may involve the Fish and Wildlife Service, in which case the applicant shall follow the procedures set out in § 222.309. The following information will be used as the basis for determining whether an application is complete and whether a permit for scientific purposes or for enhancement of propagation or survival of the affected species should be issued by the Assistant Administrator. An application for a permit shall provide the following information and such other information that the Assistant Administrator may require:

- (1) Title, as applicable, either—
 - (i) Application for permit for scientific purposes under the Act; or
 - (ii) Application for permit for the enhancement of the propagation or survival of the endangered species Under the Act.
- (2) The date of the application.
- (3) The identity of the applicant including complete name, address, and telephone number. If the applicant is a partnership or a corporate entity, set forth the details. If the endangered species is to be utilized by a person other than the applicant, set forth the name of that person and such other information as would be required if such person were an applicant.
- (4) A description of the purpose of the proposed acts, including the following:
 - (i) A detailed justification of the need for the endangered species, including a discussion of possible alternatives, whether or not under the control of the applicant; and
 - (ii) A detailed description of how the species will be used.
- (5) A detailed description of the project, or program, in which the endangered species is to be used, including the following:
 - (i) The period of time over which the project or program will be conducted;
 - (ii) A list of the names and addresses of the sponsors or cooperating institutions and the scientists involved;
 - (iii) A copy of the formal research proposal or contract if one has been prepared;
 - (iv) A statement of whether the proposed project or program has broader

significance than the individual researcher's goals. For example, does the proposed project or program respond directly or indirectly to recommendation of any national or international scientific body charged with research or management of the endangered species? If so, how?; and

(v) A description of the arrangements, if any, for the disposition of any dead specimen or its skeleton or other remains in a museum or other institutional collection for the continued benefit to science.

(6) A description of the endangered species which is the subject of the application, including the following:

(i) A list of each species and the number of each, including the common and scientific name, the subspecies (if applicable), population group, and range;

(ii) A physical description of each animal, including the age, size, and sex;

(iii) A list of the probable dates of capture or other taking, importation, exportation, and other acts which require a permit for each animal and the location of capture or other taking, importation, exportation, and other acts which require a permit, as specifically as possible;

(iv) A description of the status of the stock of each species related insofar as possible to the location or area of taking;

(v) A description of the manner of taking for each animal, including the gear to be used;

(vi) The name and qualifications of the persons or entity which will capture or otherwise take the animals; and

(vii) If the capture or other taking is to be done by a contractor, a statement as to whether a qualified member of your staff (include name(s) and qualifications) will supervise or observe the capture or other taking. Accompanying such statement shall be a copy of the proposed contract or a letter from the contractor indicating agreement to capture or otherwise take the animals, should a permit be granted.

(7) A description of the manner of transportation for any live animal taken, imported, exported, or shipped in interstate commerce, including the following:

(i) Mode of transportation;

(ii) Name of transportation company;

(iii) Length of time in transit for the transfer of the animal(s) from the capture site to the holding facility;

(iv) Length of time in transit for any planned future move or transfer of the animals;

(v) The qualifications of the common carrier or agent used for transportation of the animals;

(vi) A description of the pen, tank, container, cage, cradle, or other devices used to hold the animal at both the capture site and during transportation;

(vii) Special care before and during transportation, such as salves, antibiotics, moisture; and

(viii) A statement as to whether the animals will be accompanied by a veterinarian or by another similarly qualified person, and the qualifications of such person.

(8) Describe the contemplated care and maintenance of any live animals sought, including a complete description of the facilities where any such animals will be maintained including:

(i) The dimensions of the pools or other holding facilities and the number, sex, and age of animals by species to be held in each;

(ii) The water supply, amount, and quality;

(iii) The diet, amount and type, for all animals;

(iv) Sanitation practices used;

(v) Qualifications and experience of the staff;

(vi) A written certification from a licensed veterinarian or from a recognized expert who are knowledgeable on the species (or related species) or group covered in the application. The certificate shall verify that the veterinarian has personally reviewed the amendments for transporting and maintaining the animal(s) and that, in the veterinarian's opinion, they are adequate to provide for the well-being of the animal; and

(vii) The availability in the future of a consulting expert or veterinarian meeting paragraph requirements of (b)(8)(vi) in this section.

(9) A statement of willingness to participate in a cooperative breeding program and maintain or contribute data to a stud book.

(10) A statement of how the applicant's proposed project or program will enhance or benefit the wild population.

(11) For the 5 years preceding the date of application, the applicant shall provide a detailed description of all mortalities involving species under the control of or utilized by the applicant and are either presently listed as endangered species or are taxonomically related within the Order to the species which is the subject of this application, including:

(i) A list of all endangered species and related species that are the subject of this application that have been captured, transported, maintained, or utilized by the applicant for scientific purposes or for the enhancement of propagation or survival of the affected species, and/or of related species that are captured, transported, maintained, or utilized by the applicant for scientific purposes or for enhancement of propagation or survival of the affected species;

(ii) The numbers of mortalities among such animals by species, by date, by location of capture, i.e., from which population, and the location of such mortalities;

(iii) The cause(s) of any such mortality; and

(iv) The steps which have been taken by applicant to avoid or decrease any such mortality.

(12) A certification in the following language: I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Endangered Species Act, as amended, and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Act.

(13) The applicant and/or an officer thereof must sign the application.

(14) Assistance in completing this application may be obtained by writing Chief, Endangered Species Division, Office of Protected Resources, NMFS,

1315 East-West Highway, Silver Spring, MD 20910 or calling the Office of Protected Resources at 301-713-1401. Allow at least 90 days for processing.

(c) *Issuance criteria.* In determining whether to issue a permit for scientific purposes or to enhance the propagation or survival of the affected endangered species, the Assistant Administrator shall specifically consider, among other application criteria, the following:

(1) Whether the permit was applied for in good faith;

(2) Whether the permit, if granted and exercised, will not operate to the disadvantage of the endangered species;

(3) Whether the permit would be consistent with the purposes and policy set forth in section 2 of the Act;

(4) Whether the permit would further a bona fide and necessary or desirable scientific purpose or enhance the propagation or survival of the endangered species, taking into account the benefits anticipated to be derived on behalf of the endangered species;

(5) The status of the population of the requested species and the effect of the proposed action on the population, both direct and indirect;

(6) If a live animal is to be taken, transported, or held in captivity, the applicant's qualifications for the proper care and maintenance of the species and the adequacy of the applicant's facilities;

(7) Whether alternative non-endangered species or population stocks can and should be used;

(8) Whether the animal was born in captivity or was (or will be) taken from the wild;

(9) Provision for disposition of the species if and when the applicant's project or program terminates;

(10) How the applicant's needs, program, and facilities compare and relate to proposed and ongoing projects and programs;

(11) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application; and

(12) Opinions or views of scientists or other persons or organizations knowledgeable about the species which is the

subject of the application or of other matters germane to the application.

(d) *Terms and conditions.* Permits applied for under this section shall contain terms and conditions as the Assistant Administrator may deem appropriate, including but not limited to the following:

- (1) The number and kind of species covered;
- (2) The location and manner of taking;
- (3) Port of entry or export;
- (4) The methods of transportation, care, and maintenance to be used with live species;
- (5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the permit;
- (6) The transferability or assignability of the permit;
- (7) The sale or other disposition of the species, its progeny, or the species product; and
- (8) A reasonable fee covering the costs of issuance of such permit, including reasonable inspections and an appropriate apportionment of overhead and administrative expenses of the Department of Commerce. All such fees will be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the service.

§ 222.309 Permits for listed species of sea turtles involving the Fish and Wildlife Service.

(a) This section establishes specific procedures for issuance of the following permits: scientific purposes or to enhance the propagation or survival of endangered or threatened species of sea turtles; zoological exhibition or educational purposes for threatened species of sea turtles; and permits that requires coordination with the Fish and Wildlife Service. The National Marine Fisheries Service maintains jurisdiction for such species in the marine environment. The Fish and Wildlife Service maintains jurisdiction for such species of sea turtles in the land environment.

(b) For permits relating to any activity in the marine environment exclusively, permit applicants and permit-

tees must comply with the regulations in parts 222, 223, and 224 of this chapter.

(c) For permits relating to any activity in the land environment exclusively, permit applicants must submit applications to the Wildlife Permit Office (WPO) of the U.S. Fish and Wildlife Service in accordance with either 50 CFR 17.22(a), if the species is endangered, or 50 CFR 17.32(a), if the species is threatened.

(d) For permits relating to any activity in both the land and marine environments, applicants must submit applications to the WPO. WPO will forward the application to NMFS for review and processing of those activities under its jurisdiction. Based on this review and processing, WPO will issue either a permit or a letter of denial in accordance with its own regulations.

(e) For permits relating to any activity in a marine environment and that also requires a permit under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (TIAS 8249, July 1, 1975) (50 CFR part 23), applicants must submit applications to the WPO. WPO will forward the application to NMFS for review and processing, after which WPO will issue a combination ESA/CITES permit or a letter of denial.

§ 222.310 Permit authority for designated agents and employees of specified Federal and state agencies.

(a) This section constitutes a programmatic permit, pursuant to 16 U.S.C. 1539(a)(1)(A), that authorizes activities by agents and employees of Federal and state agencies, as described in paragraph (b) of this section, to aid stranded endangered sea turtles, and to salvage, collect data from, and dispose of, dead carcasses of endangered sea turtles in the marine environment. For purposes of this section, 'stranded' means endangered sea turtles, in the marine environment, that are alive but sick, injured, or entangled.

(b) If any member of any endangered species of sea turtle is found stranded or dead in the marine environment, any agent or employee of the National Marine Fisheries Service, the Fish and Wildlife Service, the U.S. Coast Guard,

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or any other Federal land or water management agency, or any agent or employee of a state agency responsible for fish and wildlife who is designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take such endangered sea turtles if such taking is necessary to aid a stranded sea turtle, or dispose of or salvage a dead sea turtle, or collect data from a dead sea turtle which may be useful for scientific and educational purposes. Live turtles will be handled as described in § 223.206(d)(1). Whenever possible, live sea turtles shall be returned to their aquatic environment as soon as possible. The following data collection activities for live turtles while they are in the marine environment are allowed:

(1) Turtles may be flipper and passive integrated transponder (PIT) tagged, prior to release. Flipper tags would be applied to the trailing edge of either the front or rear flippers with standard tagging applicators after the tagging area has been cleaned with alcohol or iodine solution. PIT tags would be inserted according to best practice, approved scientific protocols, after cleaning the insertion site with alcohol or iodine solution. Before application of flipper tags or insertion of PIT tags, all flippers and the neck/shoulder area will be examined and scanned for the presence of any pre-existing flipper or PIT tags.

(2) Turtles may also be weighed, measured, and photographed prior to release.

(3) When handling turtles exhibiting fibropapilloma, all equipment (tagging equipment, tape measures, etc.) that comes in contact with the turtle shall be cleaned with a mild bleach solution.

(c) Every action shall be reported in writing to the Assistant Administrator, or authorized representative, via the agency or institution designated by the state to record such events. Reports shall contain the following information:

(1) Name and position of the official or employee involved;

(2) Description of the sea turtle(s) involved including species and condition of the animal;

(3) When applicable, description of entangling gear, its location on the

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turtle, and the amount of gear left on the turtle at release;

(4) Method, date and location of disposal of the sea turtle(s), including, if applicable, where the sea turtle(s) has been retained in captivity; and

(5) Such other information as the Assistant Administrator, or authorized representative, may require.

[70 FR 42509, July 25, 2005]

Subpart D—Observer Requirement

SOURCE: 72 FR 43185, Aug. 3, 2007, unless otherwise noted.

§ 222.401 Observer requirement.

Any United States fishing vessel, either commercial or recreational, which operates within the territorial seas or exclusive economic zone of the United States or on the high seas, or any fishing vessel that is otherwise subject to the jurisdiction of the United States, operating in a fishery that is identified through the annual determination process specified in § 222.402 must carry aboard a NMFS-approved observer upon request by the NMFS Assistant Administrator, in consultation with NMFS Regional Administrators and Science Center Directors, as appropriate. NMFS and/or interested cooperating entities will pay direct costs for the observer. Owners and operators must comply with observer safety requirements specified at 50 CFR 600.725 and 50 CFR 600.746 and the terms and conditions specified in the written notification.

§ 222.402 Annual determination of fisheries to be observed; notice and comment.

(a) The Assistant Administrator, in consultation with Regional Administrators and Science Center Directors, will make an annual determination identifying which fisheries the agency intends to observe. This determination will be based on the extent to which:

(1) The fishery operates in the same waters and at the same time as sea turtles are present;

(2) The fishery operates at the same time or prior to elevated sea turtle strandings; or

(3) The fishery uses a gear or technique that is known or likely to result in incidental take of sea turtles based on documented or reported takes in the same or similar fisheries; and

(4) NMFS intends to monitor the fishery and anticipates that it will have the funds to do so.

(b) The Assistant Administrator shall publish the proposed determination and any final determination in the FEDERAL REGISTER. Public comment will be sought at the time of publication of the proposed determination. In addition, a written notification of the final determination will be sent to the address specified for the vessel in either the NMFS or state fishing permit application, or to the address specified for registration or documentation purposes, or such notification will be otherwise served on the owners or operator of the vessel. Additionally, NMFS will notify state agencies and provide notification through publication in local newspapers, radio broadcasts, and any other means as appropriate. The proposed and any final determinations will include, to the extent practicable, information on fishing sector, targeted gear type, target fishery, temporal and geographic scope of coverage, or other information, as appropriate.

(c) Fisheries listed on the most recent annual Marine Mammal Protection Act List of Fisheries in any given year, in accordance with 16 U.S.C. 1387, will serve as the comprehensive set of commercial fisheries to be considered for inclusion in the annual determination. Recreational fisheries may also be included in the annual determination.

(d) Publication of the proposed and final determinations should be coordinated to the extent possible with the annual Marine Mammal Protection Act List of Fisheries process as specified at 50 CFR 229.8.

(e) Inclusion of a fishery in a proposed or final determination does not constitute a conclusion by NMFS that those participating in the fishery are illegally taking sea turtles.

§ 222.403 Duration of selection; effective date.

(a) Fisheries included in the final annual determination in a given year will

remain eligible for observer coverage under this rule for five years, without need for NMFS to include the fishery in the intervening proposed annual determinations, to enable the design of an appropriate sampling program and to ensure collection of scientific data. If NMFS wishes to continue observations beyond the fifth year, NMFS must include the fishery in the proposed annual determination and seek comment, prior to the expiration of the fifth year.

(b) A 30-day delay in effective date for implementing observer coverage will follow the annual notification, except for those fisheries that were included in a previous determination within the preceding five years or where the AA has determined that there is good cause pursuant to the Administrative Procedure Act to make the rule effective without a 30-day delay.

§ 222.404 Observer program sampling.

(a) During the program design, NMFS would be guided by the following standards in the distribution and placement of observers among fisheries and vessels in a particular fishery:

(1) The requirements to obtain the best available scientific information;

(2) The requirement that assignment of observers is fair and equitable among fisheries and among vessels in a fishery;

(3) The requirement that no individual person or vessel, or group of persons or vessels, be subject to inappropriate, excessive observer coverage; and

(4) The need to minimize costs and avoid duplication, where practicable.

(b) Consistent with 16 U.S.C. 1881(b), vessels where the facilities for accommodating an observer or carrying out observer functions are so inadequate or unsafe (due to size or quality of equipment, for example) that the health or safety of the observer or the safe operation of the vessel would be jeopardized, would not be required to take observers under this rule.

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

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AUTHORITY: 16 U.S.C. 1531 1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

SOURCE: 43 FR 32809, July 28, 1978, unless otherwise noted. Redesignated at 64 FR 14068, Mar. 23, 1999.

Subpart A—General Provisions

§ 223.101 Purpose and scope.

(a) The regulations contained in this part identify the species under the jurisdiction of the Secretary of Commerce that have been determined to be threatened species pursuant to section 4(a) of the Act, and provide for the conservation of such species by establishing rules and procedures to governing activities involving the species.

(b) The regulations contained in this part apply only to the threatened species enumerated in § 223.102.

(c) The provisions of this part are in addition to, and not in lieu of, other regulations of parts 222 through 226 of this chapter which prescribe additional restrictions or conditions governing threatened species.

[64 FR 14068, Mar. 23, 1999]

§ 223.102 Enumeration of threatened marine and anadromous species.

The species determined by the Secretary of Commerce to be threatened pursuant to section 4(a) of the Act, as well as species listed under the Endangered Species Conservation Act of 1969 by the Secretary of the Interior and currently under the jurisdiction of the Secretary of Commerce, are listed in the table below. The table lists the common and scientific names of threatened species, the locations where they are listed, and the FEDERAL REGISTER citations for the listings and critical habitat designations.

Species ¹		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
(a) <i>Marine Mammals</i>				
(1) Guadalupe fur seal	<i>Arctocephalus townsendi</i>	Wherever found U.S.A. (Farallon Islands of CA) south to Mexico (Islas Revillagigedo)	50 FR 51252; Dec 16, 1985	NA
(2) Steller sea lion	<i>Eumetopias jubatus</i>	Eastern population, which consists of all Steller sea lions from breeding colonies located east of 144° W. longitude	55 FR 13488; Apr 10, 1990 55 FR 50006; Dec 4, 1990 62 FR 30772; Jun 5, 1997	58 FR 45278; Aug 27, 1993 64 FR 14067; Mar 23, 1999

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Species ¹		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
(b) <i>Sea Turtles</i> (1) Green turtle ²	<i>Chelonia mydas</i>	Wherever found, except where listed as endangered under §224.101(c); circumglobal in tropical and temperate seas and oceans	43 FR 32808; Jul 28, 1978	63 FR 46701; Sep 2, 1998 64 FR 14067; Mar 23, 1999
(2) Loggerhead turtle ²	<i>Caretta caretta</i>	Wherever found; circumglobal in tropical and temperate seas and oceans	43 FR 32808; Jul 28, 1978	NA
(3) Olive ridley turtle ²	<i>Lepidochelys olivacea</i>	Wherever found, except where listed as endangered under §224.101(c); circumglobal in tropical and temperate seas.	43 FR 32808; Jul 28, 1978	NA
(c) <i>Fishes</i> (1) Green sturgeon - southern DPS	<i>Acipenser medirostris</i>	U.S.A., CA. The southern DPS includes all spawning populations of green sturgeon south of the Eel River (exclusive), principally including the Sacramento River green sturgeon spawning population.	71 FR 17757; April 7, 2006; 71 FR 19241; April 13, 2006	
(2) Gulf sturgeon	<i>Acipenser oxyrinchus desotoi</i>	Wherever found.	56 FR 49653; Sep 30, 1991	68 FR 13370; Mar 19, 2003
(3) Ozette Lake sockeye	<i>Oncorhynchus nerka</i>	U.S.A.- WA, including all naturally spawned populations of sockeye salmon in Ozette Lake and streams and tributaries flowing into Ozette Lake, Washington, as well as two artificial propagation programs: the Umbrella Creek and Big River sockeye hatchery programs.	64 FR 14528; Mar 25, 1999 70 FR 37160; Jun 28, 2005	70 FR 52630; Sep 2, 2005
(4) Central Valley spring-run Chinook	<i>Oncorhynchus tshawytscha</i>	U.S.A.- CA, including all naturally spawned populations of spring-run Chinook salmon in the Sacramento River and its tributaries in California, including the Feather River, as well as the Feather River Hatchery spring-run Chinook program.	64 FR 50394; Sep 16, 1999 70 FR 37160; Jun 28, 2005	70 FR 52488; Sep 2, 2005
(5) California Coastal Chinook	<i>Oncorhynchus tshawytscha</i>	U.S.A.-CA, including all naturally spawned populations of Chinook salmon from rivers and streams south of the Klamath River to the Russian River, California, as well as seven artificial propagation programs: the Humboldt Fish Action Council (Freshwater Creek), Yager Creek, Redwood Creek, Hollow Tree, Van Arsdale Fish Station, Mattole Salmon Group, and Mad River Hatchery fall-run Chinook hatchery programs.	64 FR 50394; Sep 16, 1999 70 FR 37160; Jun 28, 2005	70 FR 52488; Sep 2, 2005

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Species ¹		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
(6) Upper Willamette River Chinook	<i>Oncorhynchus tshawytscha</i>	U.S.A.- OR, including all naturally spawned populations of spring-run Chinook salmon in the Clackamas River and in the Willamette River, and its tributaries, above Willamette Falls, Oregon, as well as seven artificial propagation programs: the McKenzie River Hatchery (Oregon Department of Fish and Wildlife (ODFW) stock #24), Marion Forks/North Fork Santiam River (ODFW stock #21), South Santiam Hatchery (ODFW stock #23) in the South Fork Santiam River, South Santiam Hatchery in the Calapooia River, South Santiam Hatchery in the Mollala River, Willamette Hatchery (ODFW stock # 22), and Clackamas hatchery (ODFW stock #19) spring-run Chinook hatchery programs.	64 FR 14308; Mar. 24 1999 70 FR 37160; Jun 28, 2005	70 FR 52630; Sep 2, 2005
(7) Lower Columbia River Chinook	<i>Oncorhynchus tshawytscha</i>	U.S.A.- OR, WA, including all naturally spawned populations of Chinook salmon from the Columbia River and its tributaries from its mouth at the Pacific Ocean upstream to a transitional point between Washington and Oregon east of the Hood River and the White Salmon River, and includes the Willamette River to Willamette Falls, Oregon, exclusive of spring-run Chinook salmon in the Clackamas River, as well as seventeen artificial propagation programs: the Sea Resources Tule Chinook Program, Big Creek Tule Chinook Program, Astoria High School (STEP) Tule Chinook Program, Warrenton High School (STEP) Tule Chinook Program, Elochoman River Tule Chinook Program, Cowlitz Tule Chinook Program, North Fork Toutle Tule Chinook Program, Kalama Tule Chinook Program, Washougal River Tule Chinook Program, Spring Creek NFH Tule Chinook Program, Cowlitz spring Chinook Program in the Upper Cowlitz River and the Cispus River, Friends of the Cowlitz spring Chinook Program, Kalama River spring Chinook Program, Lewis River spring Chinook Program, Fish First spring Chinook Program, and the Sandy River Hatchery (ODFW stock #11) Chinook hatchery programs.	64 FR 14308; Mar. 24, 1999 70 FR 37160; Jun 28, 2005	70 FR 52630; Sep 2, 2005

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Species ¹		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
(8) Puget Sound Chinook	<i>Oncorhynchus tshawytscha</i>	U.S.A.- WA, including all naturally spawned populations of Chinook salmon from rivers and streams flowing into Puget Sound including the Straits of Juan De Fuca from the Elwha River, eastward, including rivers and streams flowing into Hood Canal, South Sound, North Sound and the Strait of Georgia in Washington, as well as twenty-six artificial propagation programs: the Kendal Creek Hatchery, Marblemount Hatchery (fall, spring yearlings, spring subyearlings, and summer run), Harvey Creek Hatchery, Whitehorse Springs Pond, Wallace River Hatchery (yearlings and subyearlings), Tulalip Bay, Issaquah Hatchery, Soos Creek Hatchery, Icy Creek Hatchery, Keta Creek Hatchery, White River Hatchery, White Acclimation Pond, Hupp Springs Hatchery, Voights Creek Hatchery, Diru Creek, Clear Creek, Kalama Creek, George Adams Hatchery, Rick's Pond Hatchery, Hamma Hamma Hatchery, Dungeness/Hurd Creek Hatchery, Elwha Channel Hatchery Chinook hatchery programs.	64 FR 14308; Mar. 24, 1999 70 FR 37160; Jun 28, 2005	70 FR 52630; Sep 2, 2005
(9) Snake River fall-run Chinook	<i>Oncorhynchus tshawytscha</i>	U.S.A.- OR, WA, ID, including all naturally spawned populations of fall-run Chinook salmon in the mainstem Snake River below Hells Canyon Dam, and in the Tucannon River, Grande Ronde River, Imnaha River, Salmon River, and Clearwater River, as well as four artificial propagation programs: the Lyons Ferry Hatchery, Fall Chinook Acclimation Ponds Program, Nez Perce Tribal Hatchery, and Oxbow Hatchery fall-run Chinook hatchery programs.	57 FR 14653; Apr 22, 1992 57 FR 23458; Jun 3, 1992 70 FR 37160; Jun 28, 2005	58 FR 68543; Dec 28, 1993

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Species ¹		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
(10) Snake River spring/summer-run Chinook	<i>Oncorhynchus tshawytscha</i>	U.S.A.- OR, WA, ID, including all naturally spawned populations of spring/summer-run Chinook salmon in the mainstem Snake River and the Tucannon River, Grande Ronde River, Imnaha River, and Salmon River subbasins, as well as fifteen artificial propagation programs: the Tucannon River conventional Hatchery, Tucannon River Captive Broodstock Program, Lostine River, Catherine Creek, Lookingglass Hatchery, Upper Grande Ronde, Imnaha River, Big Sheep Creek, McCall Hatchery, Johnson Creek Artificial Propagation Enhancement, Lemhi River Captive Rearing Experiment, Pahsimeroi Hatchery, East Fork Captive Rearing Experiment, West Fork Yankee Fork Captive Rearing Experiment, and the Sawtooth Hatchery spring/summer-run Chinook hatchery programs.	57 FR 14653; Apr 22, 1992 57 FR 23458; Jun 3, 1992 70 FR 37160; Jun 28, 2005	58 FR 68543; Dec 28, 1993 64 FR 57399; Oct 25, 1999
(11) Southern Oregon/Northern California Coast coho	<i>Oncorhynchus kisutch</i>	U.S.A.- CA, OR, including all naturally spawned populations of coho salmon in coastal streams between Cape Blanco, Oregon, and Punta Gorda, California, as well three artificial propagation programs: the Cole Rivers Hatchery (ODFW stock # 52), Trinity River Hatchery, and Iron Gate Hatchery coho hatchery programs.	62 FR 24588; May 6, 1997 70 FR 37160; Jun 28, 2005	64 FR 24049; May 5, 1999

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Species ¹		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
(12) Lower Columbia River coho	<i>Oncorhynchus kisutch</i>	U.S.A.- OR, WA, including all naturally spawned populations of coho salmon in the Columbia River and its tributaries in Washington and Oregon, from the mouth of the Columbia up to and including the Big White Salmon and Hood Rivers, and includes the Willamette River to Willamette Falls, Oregon, as well as twenty-five artificial propagation programs: the Grays River, Sea Resources Hatchery, Peterson Coho Project, Big Creek Hatchery, Astoria High School (STEP) Coho Program, Warrenton High School (STEP) Coho Program, Elochoman Type-S Coho Program, Elochoman Type-N Coho Program, Cathlamet High School FFA Type-N Coho Program, Cowlitz Type-N Coho Program in the Upper and Lower Cowlitz Rivers, Cowlitz Game and Anglers Coho Program, Friends of the Cowlitz Coho Program, North Fork Toutle River Hatchery, Kalama River Type-N Coho Program, Kalama River Type-S Coho Program, Lewis River Type-N Coho Program, Lewis River Type-S Coho Program, Fish First Wild Coho Program, Fish First Type-N Coho Program, Syverson Project Type-N Coho Program, Eagle Creek National Fish Hatchery, Sandy Hatchery, and the Bonneville/Cascade/Oxbow complex coho hatchery programs.	70 FR 37160; Jun 28, 2005	NA
(13) Columbia River chum	<i>Oncorhynchus keta</i>	U.S.A.- OR, WA, including all naturally spawned populations of chum salmon in the Columbia River and its tributaries in Washington and Oregon, as well as three artificial propagation programs: the Chinook River (Sea Resources Hatchery), Grays River, and Washougal River/Duncan Creek chum hatchery programs.	64 FR 14508; Mar. 25, 1999 70 FR 37160; Jun 28, 2005	70 FR 52630; Sep 2, 2005

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Species ¹		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
(14) Hood Canal summer-run chum	<i>Oncorhynchus keta</i>	U.S.A.- WA, including all naturally spawned populations of summer-run chum salmon in Hood Canal and its tributaries as well as populations in Olympic Peninsula rivers between Hood Canal and Dungeness Bay, Washington, as well as eight artificial propagation programs: the Quilcene NFH, Hamma Hamma Fish Hatchery, Lilliwaup Creek Fish Hatchery, Union River/Tahuya, Big Beef Creek Fish Hatchery, Salmon Creek Fish Hatchery, Chimacum Creek Fish Hatchery, and the Jimmycomelately Creek Fish Hatchery summer-run chum hatchery programs.	64 FR 14508; Mar. 25, 1999 70 FR 37160; Jun 28, 2005	70 FR 52630; Sep 2, 2005
(15) South-Central California Coast Steelhead	<i>Oncorhynchus mykiss</i>	U.S.A.- CA, including all naturally spawned populations of steelhead (and their progeny) in streams from the Pajaro River (inclusive), located in Santa Cruz County, California, to (but not including) the Santa Maria River.	62 FR 43937; Aug 18, 1997 71 FR 834; Jan 5, 2006	70 FR 52488; Sep 2, 2005
(16) Central California Coast Steelhead	<i>Oncorhynchus mykiss</i>	U.S.A.- CA, including all naturally spawned populations of steelhead (and their progeny) in streams from the Russian River to Aptos Creek, Santa Cruz County, Californian (inclusive), and the drainages of San Francisco and San Pablo Bays eastward to the Napa River (inclusive), Napa County, California. Excludes the Sacramento-San Joaquin River Basin of the Central Valley of California.	62 FR 43937; Aug 18, 1997 71 FR 834; Jan 5, 2006	70 FR 52488; Sep 2, 2005
(17) California Central Valley Steelhead	<i>Oncorhynchus mykiss</i>	U.S.A.- CA, including all naturally spawned populations of steelhead (and their progeny) in the Sacramento and San Joaquin Rivers and their tributaries, excluding steelhead from San Francisco and San Pablo Bays and their tributaries.	63 FR 13347; Mar. 19, 1998 71 FR 834; Jan 5, 2006	70 FR 52488; Sep 2, 2005
(18) Northern California Steelhead	<i>Oncorhynchus mykiss</i>	U.S.A.- CA, including all naturally spawned populations of steelhead (and their progeny) in California coastal river basins from Redwood Creek in Humboldt County, California, to the Gualala River, inclusive, in Mendocino County, California.	65 FR 36074; June 7, 2000 71 FR 834; Jan 5, 2006	70 FR 52488; Sep 2, 2005
(19) Upper Willamette River Steelhead	<i>Oncorhynchus mykiss</i>	U.S.A.- OR, including all naturally spawned populations of winter-run steelhead in the Willamette River, Oregon, and its tributaries upstream from Willamette Falls to the Calapooia River, inclusive.	62 FR 43937; Aug 18, 1997 71 FR 834; Jan 5, 2006	70 FR 52630; Sep 2, 2005

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Species ¹		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
(20) Lower Columbia River Steelhead	<i>Oncorhynchus mykiss</i>	U.S.A.- OR, WA, including all naturally spawned populations of steelhead (and their progeny) in streams and tributaries to the Columbia River between the Cowlitz and Wind Rivers, Washington, inclusive, and the Willamette and Hood Rivers, Oregon, inclusive. Excluded are steelhead in the upper Willamette River Basin above Willamette Falls, Oregon, and from the Little and Big White Salmon Rivers, Washington.	63 FR 13347; Mar 19, 1998 71 FR 834; Jan 5, 2006	70 FR 52630; Sep 2, 2005
(21) Middle Columbia River Steelhead	<i>Oncorhynchus mykiss</i>	U.S.A.- OR, WA, including all naturally spawned populations of steelhead in streams from above the Wind River, Washington, and the Hood River, Oregon (exclusive), upstream to, and including, the Yakima River, Washington. Excluded are steelhead from the Snake River Basin.	57 FR 14517; Mar 25, 1999 71 FR 834; Jan 5, 2006	70 FR 52630; Sep 2, 2005
(22) Snake River Basin Steelhead	<i>Oncorhynchus mykiss</i>	U.S.A.- OR, WA, ID, including all naturally spawned populations of steelhead (and their progeny) in streams in the Snake River Basin of southeast Washington, northeast Oregon, and Idaho.	62 FR 43937; Aug 18, 1997 71 FR 834; Jan 5, 2006	70 FR 52630; Sep 2, 2005
(23) Puget Sound Steelhead	<i>Oncorhynchus mykiss</i>	U.S.A., WA, Distinct Population Segment including all naturally spawned anadromous <i>O. mykiss</i> (steelhead) populations, from streams in the river basins of the Strait of Juan de Fuca, Puget Sound, and Hood Canal, Washington, bounded to the west by the Elwha River (inclusive) and to the north by the Nooksack River and Dakota Creek (inclusive), as well as the Green River natural and Hamma Hamma winter-run steelhead hatchery stocks.	72 FR 26722; May 11, 2007	NA
(24) Oregon Coast Coho	<i>Oncorhynchus kisutch</i>	U.S.A., OR, all naturally spawned populations of coho salmon in Oregon coastal streams south of the Columbia River and north of Cape Blanco, including the Cow Creek (ODFW stock #37) coho hatchery program	73 FR 7816; Feb 11, 2008	73 FR 7816; Feb 11, 2008.
(d) Marine Invertebrates				
(1) Elkhorn coral	<i>Acropora palmata</i>	Wherever found. Includes United States Florida, Puerto Rico, U.S. Virgin Islands, Navassa; and wider Caribbean Belize, Colombia, Costa Rica, Guatemala, Honduras, Mexico, Nicaragua, Panama, Venezuela and all the islands of the West Indies.	71 FR 26852, May 9, 2006	NA

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Species ¹		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
(2) Staghorn coral	<i>Acropora cervicornis</i>	Wherever found. Includes United States Florida, Puerto Rico, U.S. Virgin Islands, Navassa; and wider Caribbean Belize, Colombia, Costa Rica, Guatemala, Honduras, Mexico, Nicaragua, Panama, Venezuela and all the islands of the West Indies.	71 FR 26852, May 9, 2006	NA
(e) Marine Plants				
(1) Johnson's seagrass	<i>Halophila johnsonii</i>	Wherever found. U.S.A. - Southeastern FL between Sebastian Inlet and north Biscayne Bay.	63 FR 49035; Sep 14, 1998	65 FR 17786; Apr 5, 2000

¹ Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

² Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

[71 FR 26861, May 9, 2006, as amended at 71 FR 31965, June 2, 2006; 71 FR 38270, July 6, 2006; 72 FR 26734, May 11, 2007; 73 FR 7843, Feb. 11, 2008]

Subpart B—Restrictions Applicable to Threatened Marine and Anadromous Species

§ 223.201 Guadalupe fur seal.

(a) *Prohibitions.* The prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to the Guadalupe fur seal except as provided in paragraph (b) of this section.

(b) *Exceptions.* (1) The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under paragraph (a) of this section in accordance with the subject to the provisions of part 222 subpart C—General Permit Procedures.

(2) Any Federal, State or local government official, employee, or designated agent may, in the course of official duties, take a stranded Guadalupe fur seal without a permit if such taking:

- (i) Is accomplished in a humane manner;
- (ii) Is for the protection or welfare of the animal, is for the protection of the public health or welfare, or is for the salvage or disposal of a dead specimen;
- (iii) Includes steps designed to ensure the return of the animal to its natural habitat, if feasible; and

(iv) Is reported within 30 days to the Regional Administrator, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.

(3) Any animal or specimen taken under paragraph (b)(2) of this section may only be retained, disposed of, or salvaged in accordance with directions from the Director, Southwest Region.

[50 FR 51258, Dec. 16, 1985. Redesignated and amended at 64 FR 14068, Mar. 23, 1999]

§ 223.202 Steller sea lion.

(a) *General prohibitions.* The prohibitions of section 9 of the Act (16 U.S.C. 1538) and the following regulatory provisions shall apply to the eastern population of Steller sea lions:

(1) *No discharge of firearms.* Except as provided in paragraph (b) of this section, no person subject to the jurisdiction of the United States may discharge a firearm at or within 100 yards (91.4 meters) of a Steller sea lion. A firearm is any weapon, such as a pistol or rifle, capable of firing a missile using an explosive charge as a propellant.

(2) *No approach in buffer areas.* Except as provided in paragraph (b) of this section:

(i) No owner or operator of a vessel may allow the vessel to approach within 3 nautical miles (5.5 kilometers) of a Steller sea lion rookery site listed in paragraph (a)(3) of this section;

(ii) No person may approach on land not privately owned within one-half statutory miles (0.8 kilometers) or within sight of a Steller sea lion rookery site listed in paragraph (a)(3) of this section, whichever is greater, except on Marmot Island; and

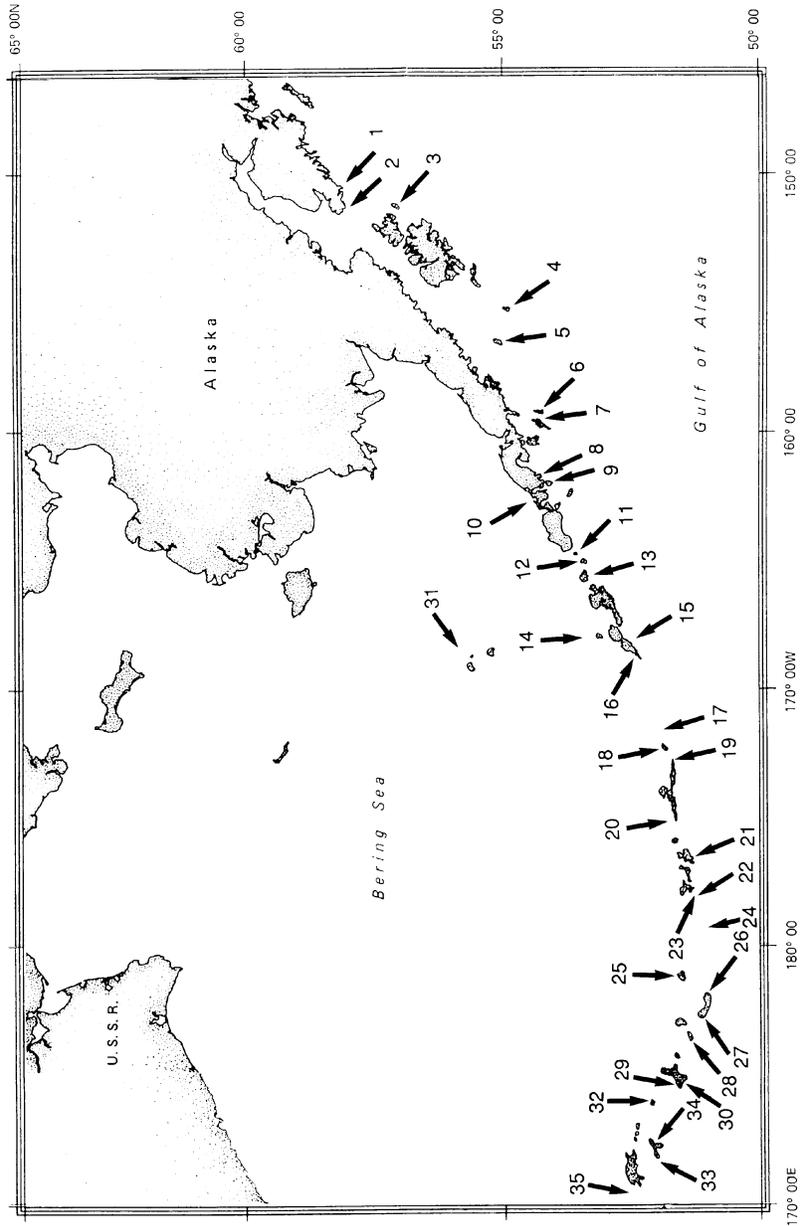
(iii) No person may approach on land not privately owned within one and one-half statutory miles (2.4 kilometers) or within sight of the eastern shore of Marmot Island, including the Steller sea lion rookery site listed in paragraph (a)(3) of this section, whichever is greater.

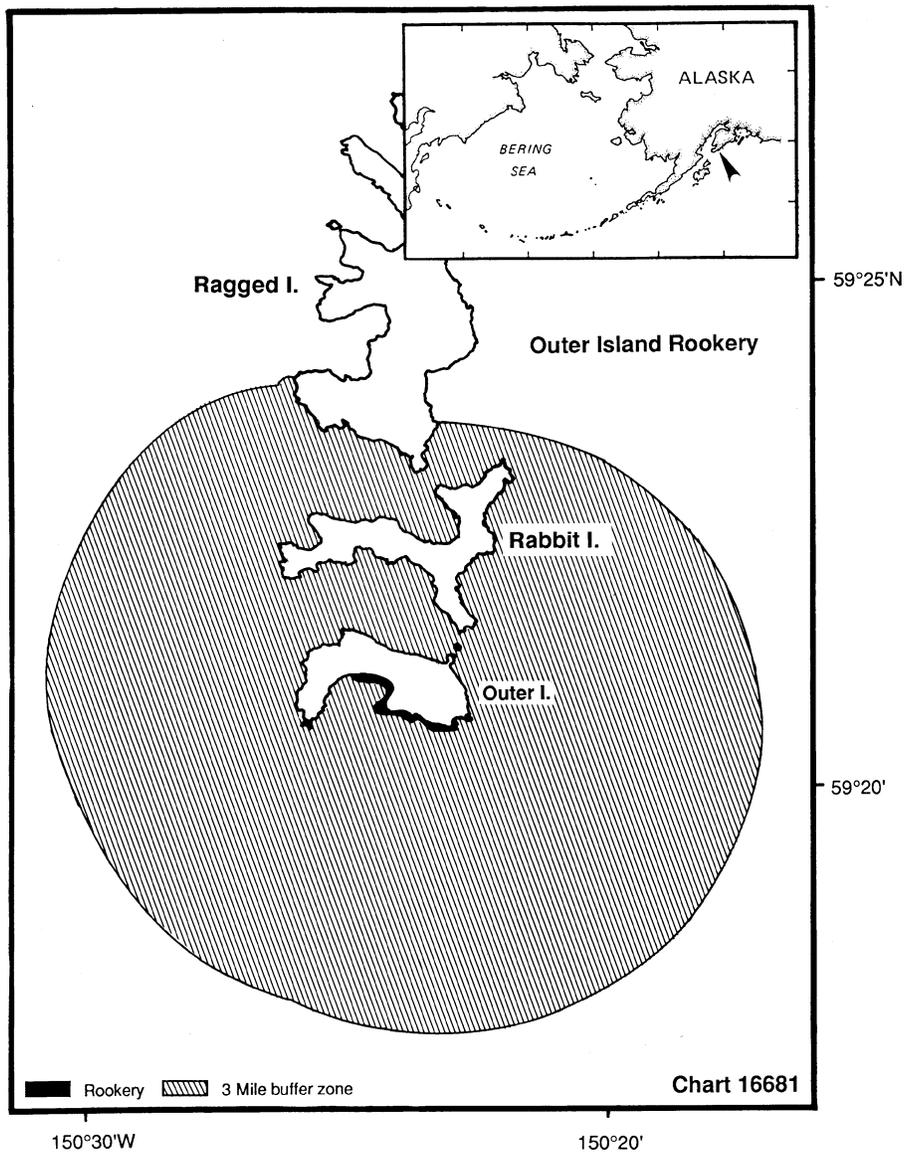
(3) *Listed sea lion rookery sites.* Listed Steller sea lion rookery sites consist of the rookeries in the Aleutian Islands and the Gulf of Alaska listed in Table 1.

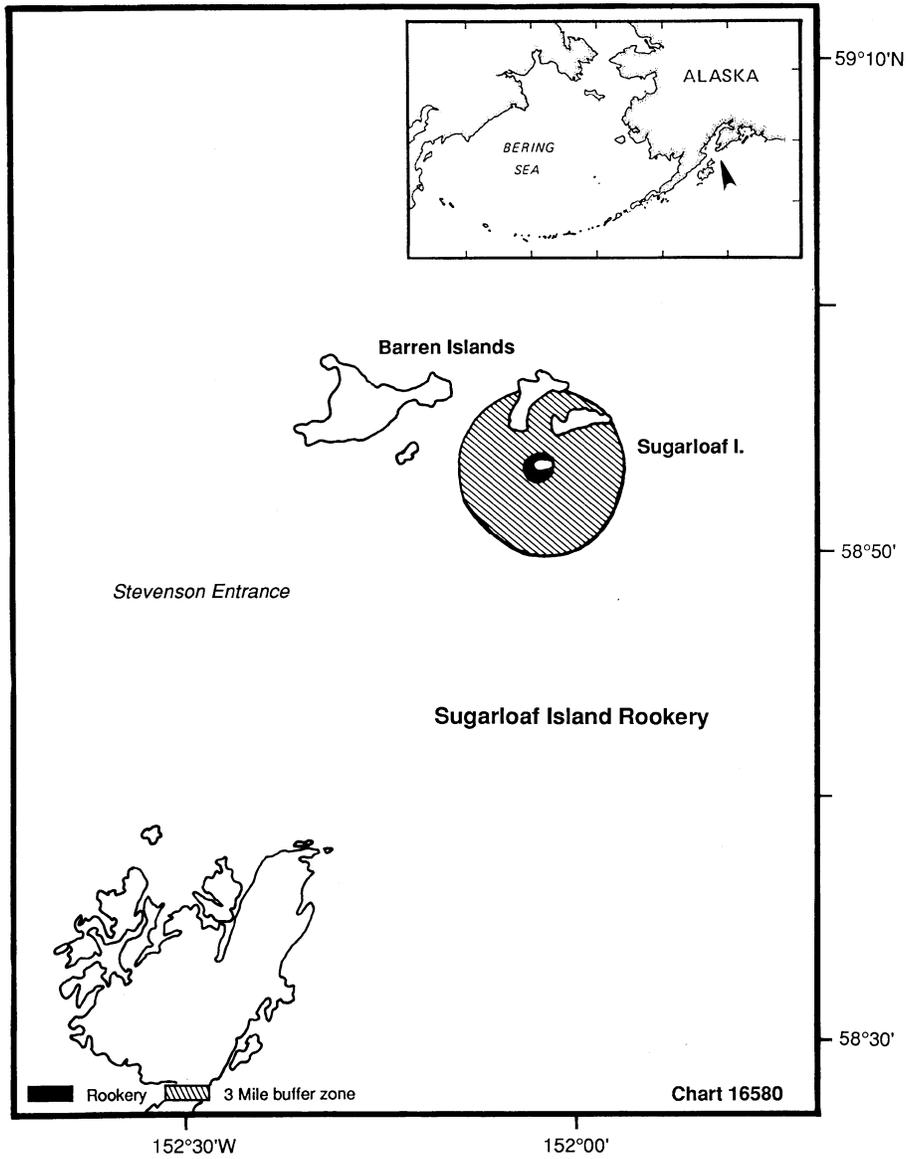
TABLE 1 TO § 223.202—LISTED STELLER SEA LION ROOKERY SITES ¹

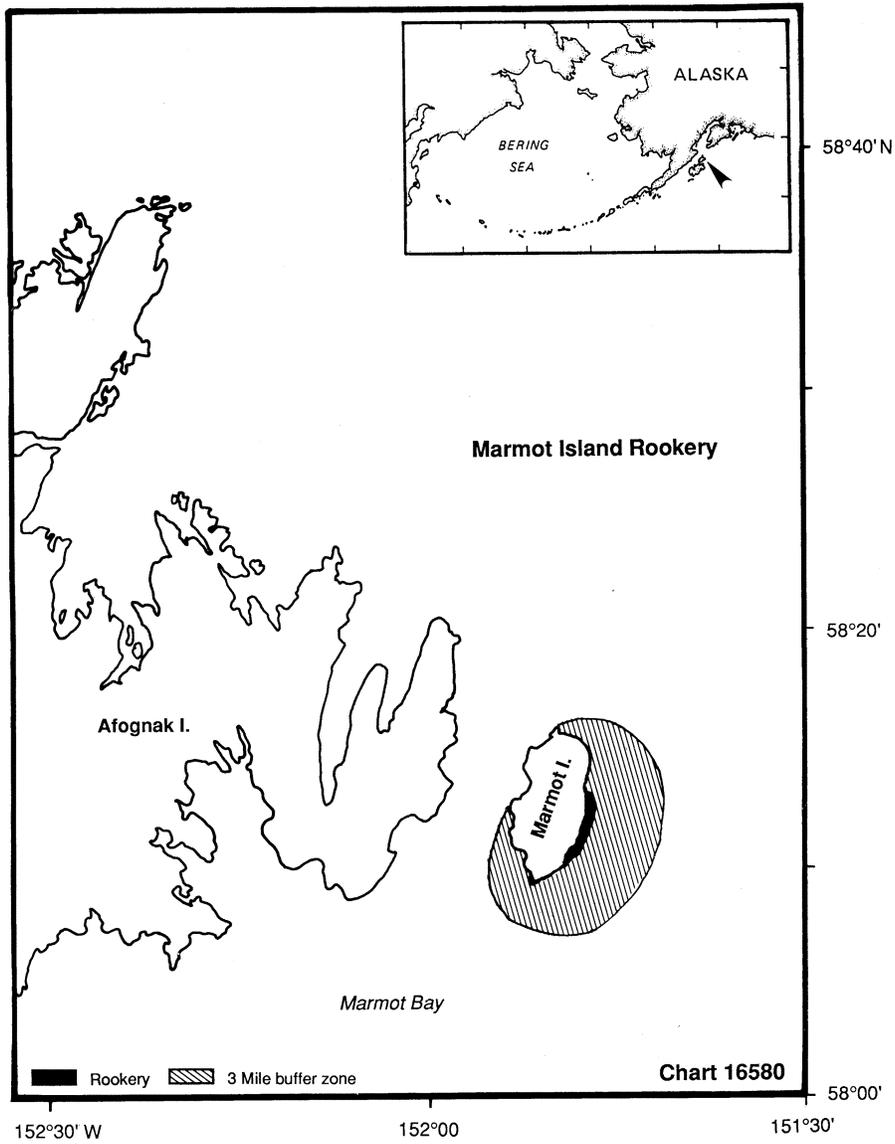
Island	From		To		NOAA chart	Notes
	Lat.	Long.	Lat.	Long.		
1. Outer I.	59°20.5 N	150°23.0 W	59°21.0 N	150°24.5 W	16681	S quadrant.
2. Sugarloaf I.	58°53.0 N	152°02.0 W			16580	Whole island.
3. Marmot I.	58°14.5 N	151°47.5 W	58°10.0 N	151°51.0 W	16580	SE quadrant.
4. Chirikof I.	55°46.5 N	155°39.5 W	55°46.5 N	155°43.0 W	16580	S quadrant.
5. Chowiet I.	56°00.5 N	156°41.5 W	56°00.5 N	156°42.0 W	16013	S quadrant.
6. Atkins I.	55°03.5 N	159°18.5 W			16540	Whole island.
7. Chernabura I.	54°47.5 N	159°31.0 W	54°45.5 N	159°33.5 W	16540	SE corner.
8. Pinnacle Rock	54°46.0 N	161°46.0 W			16540	Whole island.
9. Clubbing Rks (N)	54°43.0 N	162°26.5 W			16540	Whole island.
Clubbing Rks (S)	54°42.0 N	162°26.5 W			16540	Whole island.
10. Sea Lion Rks	55°28.0 N	163°12.0 W			16520	Whole island.
11. Ugamak I.	54°14.0 N	164°48.0 W	54°13.0 N	164°48.0 W	16520	E end of island.
12. Akun I.	54°18.0 N	165°32.5 W	54°18.0 N	165°31.5 W	16547	Billings Head Bight.
13. Akutan I.	54°03.5 N	166°00.0 W	54°05.5 N	166°05.0 W	16520	SW corner, Cape Morgan.
14. Bogoslof I.	53°56.0 N	168°02.0 W			16500	Whole island.
15. Ogchul I.	53°00.0 N	168°24.0 W			16500	Whole island.
16. Adugak I.	52°55.0 N	169°10.5 W			16500	Whole island.
17. Yunaska I.	52°42.0 N	170°38.5 W	52°41.0 N	170°34.5 W	16500	NE end.
18. Seguam I.	52°21.0 N	172°35.0 W	52°21.0 N	172°33.0 W	16480	N coast, Saddleridge Pt.
19. Agligadak I.	52°06.5 N	172°54.0 W			16480	Whole island.
20. Kasatochi I.	52°10.0 N	175°31.5 W	52°10.5 N	175°29.0 W	16480	N half of island.
21. Adak I.	51°36.5 N	176°59.0 W	51°38.0 N	176°59.5 W	16460	SW Point, Lake Point.
22. Gramp rock	51°29.0 N	178°20.5 W			16460	Whole island.
23. Tag I.	51°33.5 N	178°34.5 W			16460	Whole island.
24. Ulak I.	51°20.0 N	178°57.0 W	51°18.5 N	178°59.5 W	16460	SE corner, Hasgox Pt.
25. Semisopchnoi	51°58.5 N	179°45.5 E	51°57.0 N	179°46.0 E	16440	E quadrant, Pochnoi Pt.
Semisopchnoi	52°01.5 N	179°37.5 E	52°01.5 N	179°39.0 E	16440	N quadrant, Petrel Pt.
26. Amchitka I.	51°22.5 N	179°28.0 E	51°21.5 N	179°25.0 E	16440	East Cape.
27. Amchitka I.	51°32.5 N	178°49.5 E			16440	Column Rocks.
28. Ayugadak Pt.	51°45.5 N	178°24.5 E			16440	SE coast of Rat Island.
29. Kiska I.	51°57.5 N	177°21.0 E	51°56.5 N	177°20.0 E	16440	W central, Lief Cove.
30. Kiska I.	51°52.5 N	177°13.0 E	51°53.5 N	177°12.0 E	16440	Cape St. Stephen.
31. Walrus I.	57°11.0 N	169°56.0 W			16380	Whole island.
32. Buldir I.	52°20.5 N	175°57.0 E	52°23.5 N	175°51.0 E	16420	Se point to NW point.
33. Agattu I.	52°24.0 N	173°21.5 E			16420	Gillion Point.
34. Agattu I.	52°23.5 N	173°43.5 E	52°22.0 N	173°41.0 E	16420	Cape Sabak.
35. Attu I.	52°54.5 N	172°28.5 E	52°57.5 N	172°31.5 E	16681	S Quadrant.

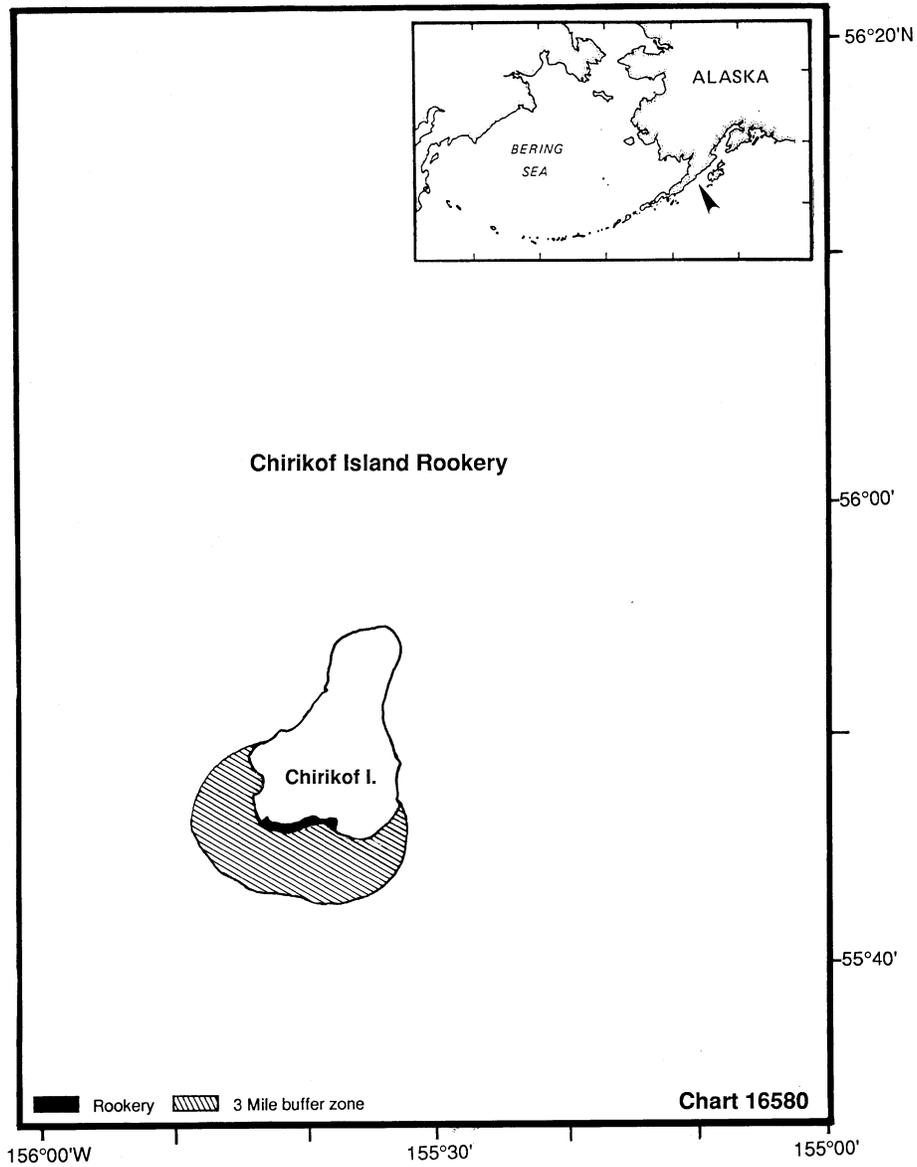
¹ Each site extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower low water to the second set of coordinates; or, if only one set of geographic coordinates is listed, the site extends around the entire shoreline of the island at mean lower low water.

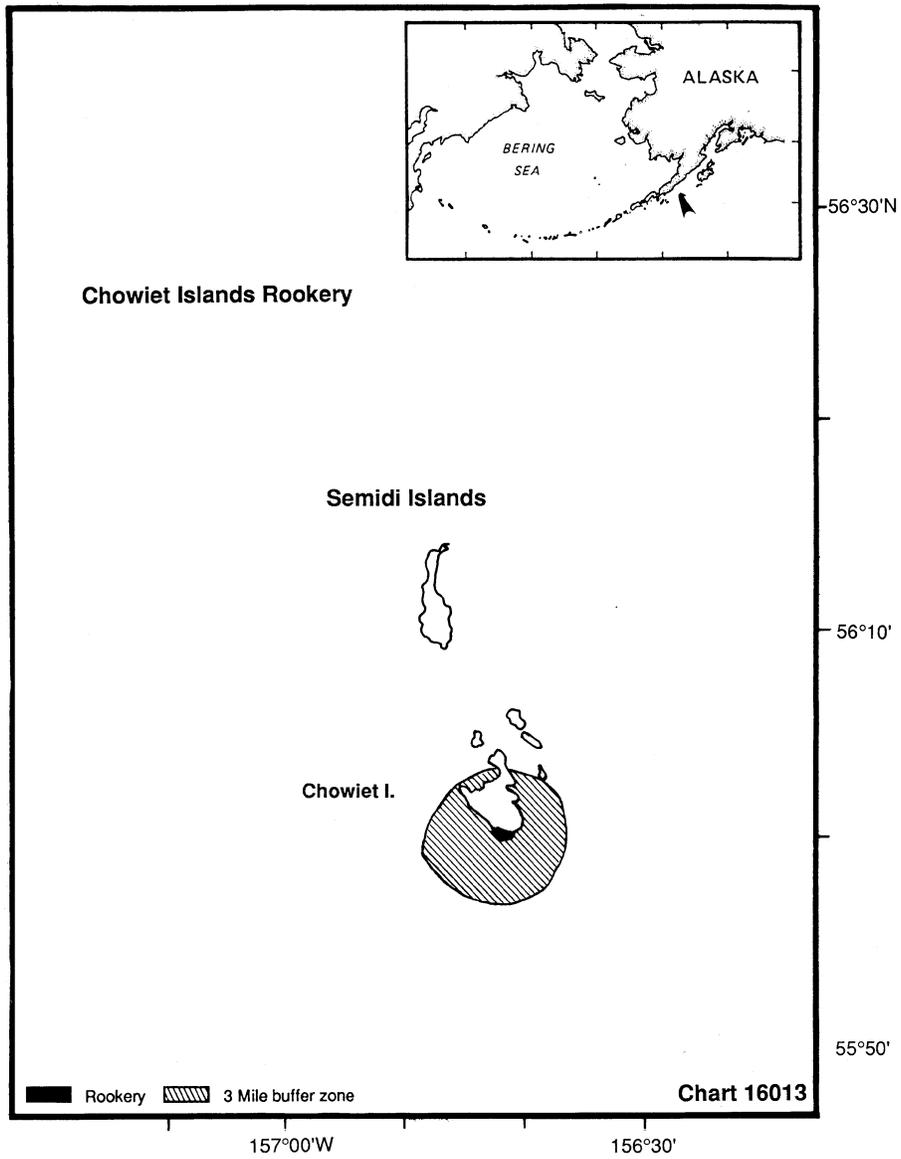


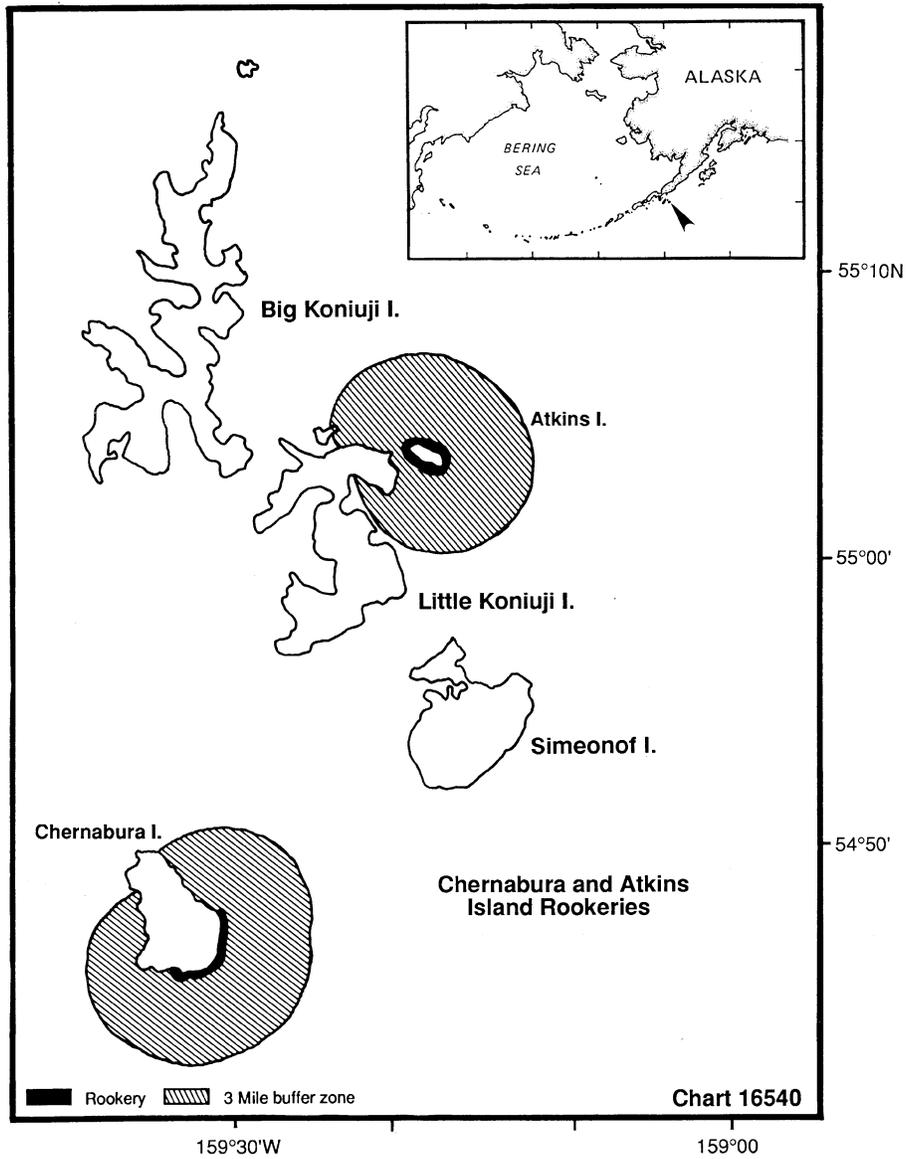


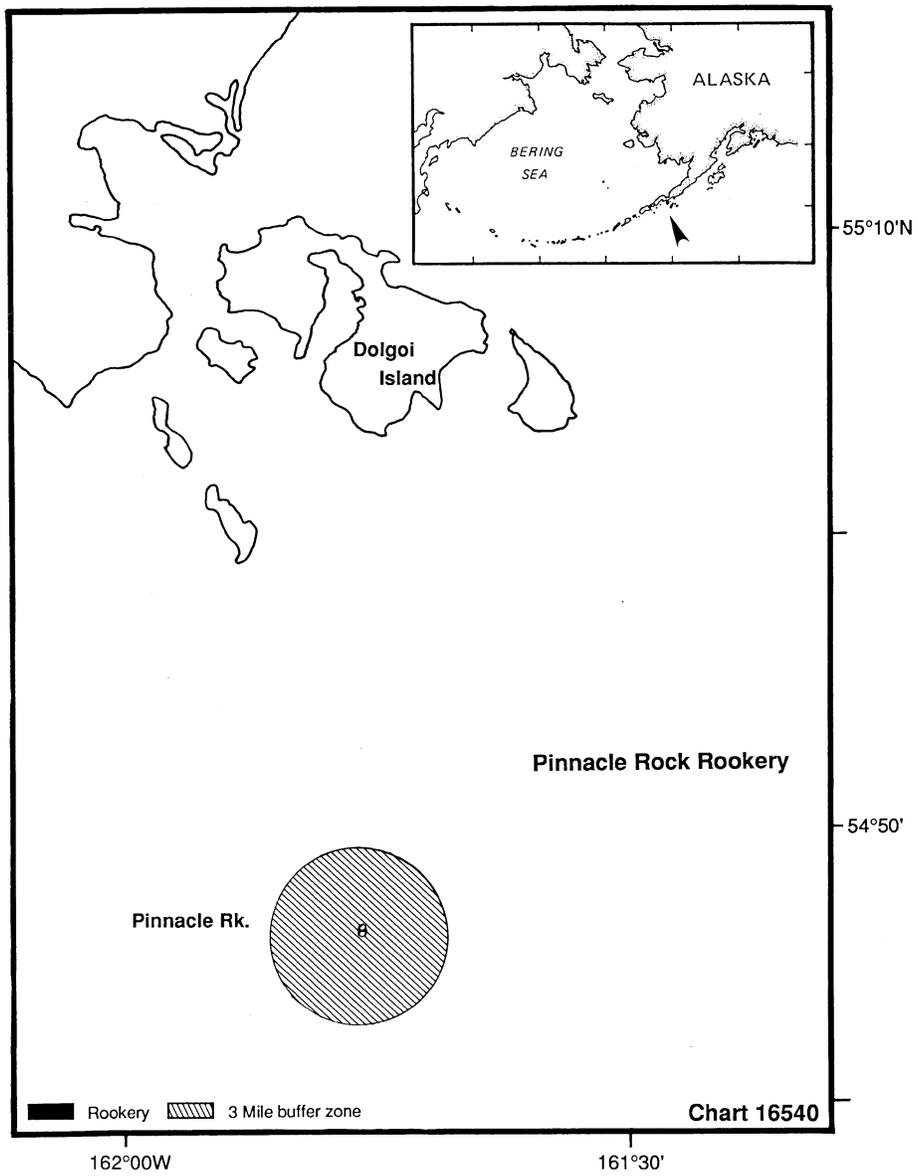


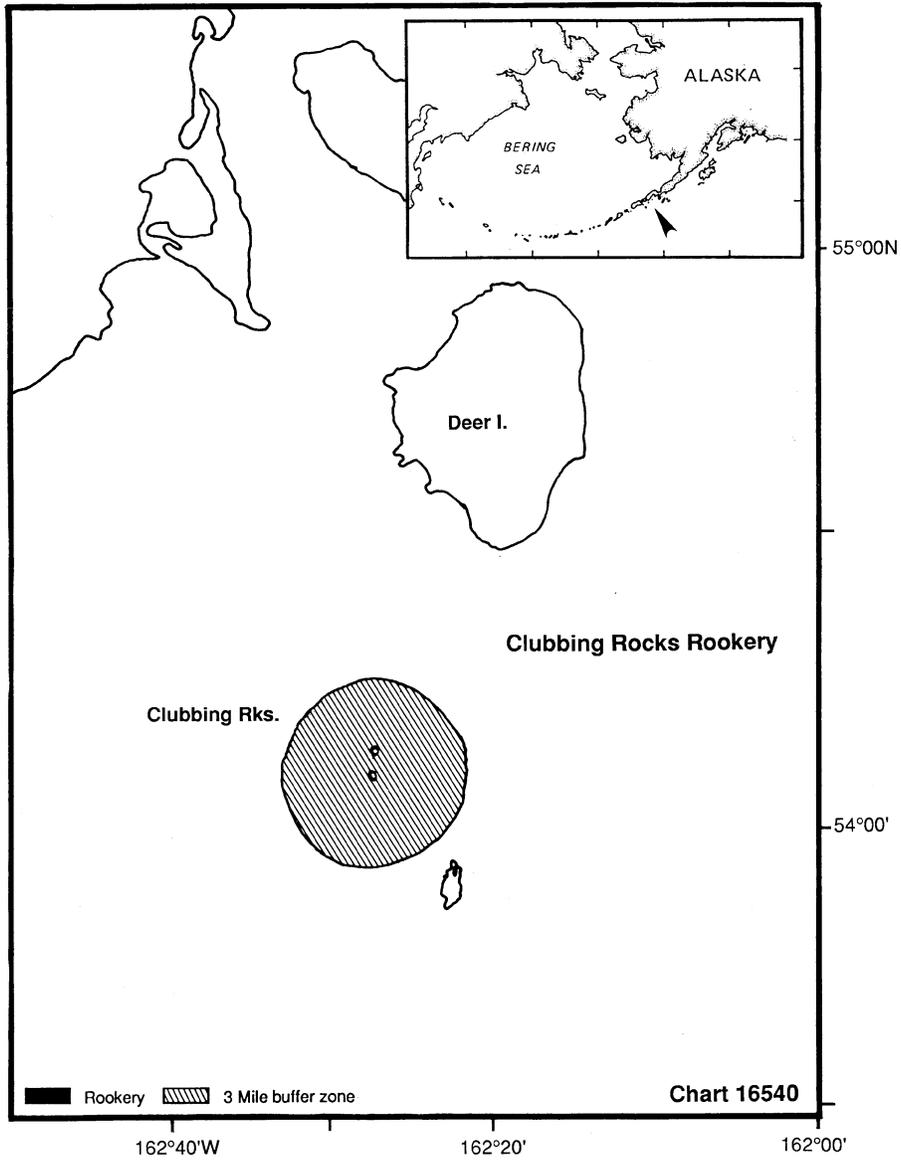


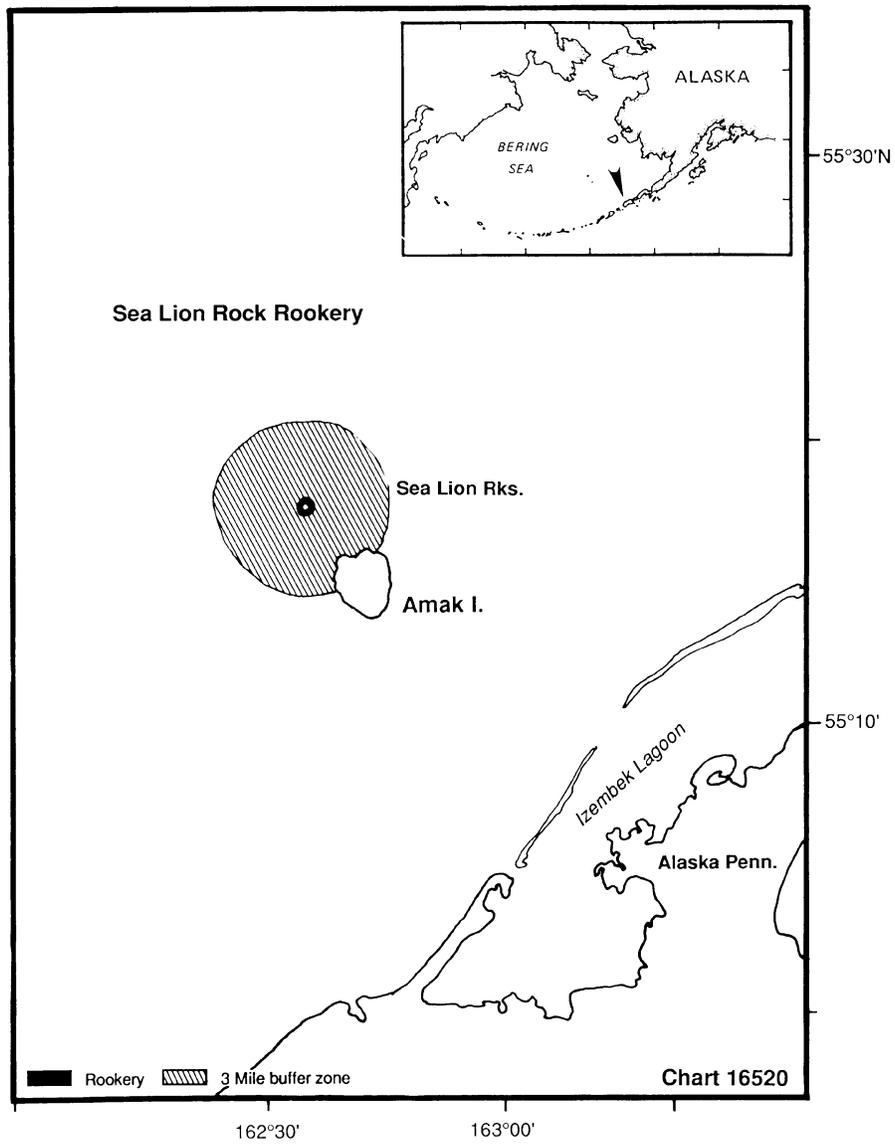


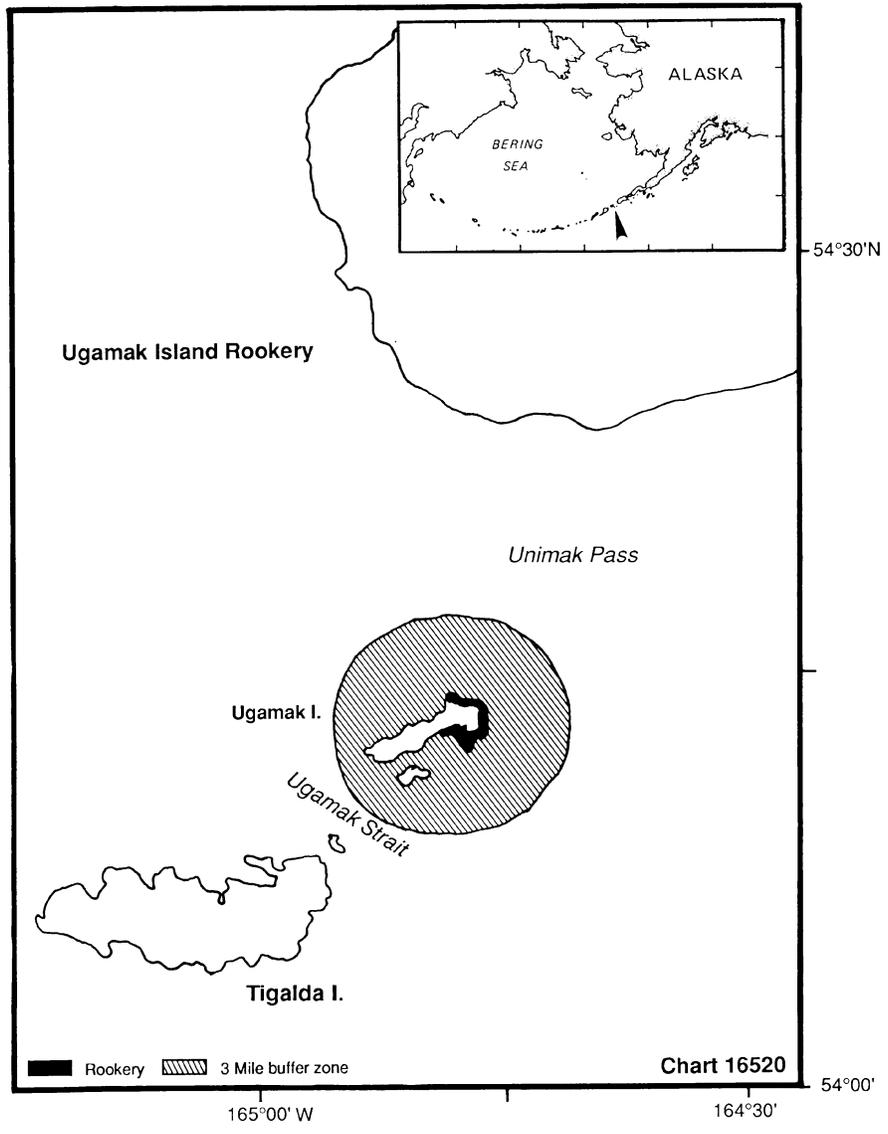


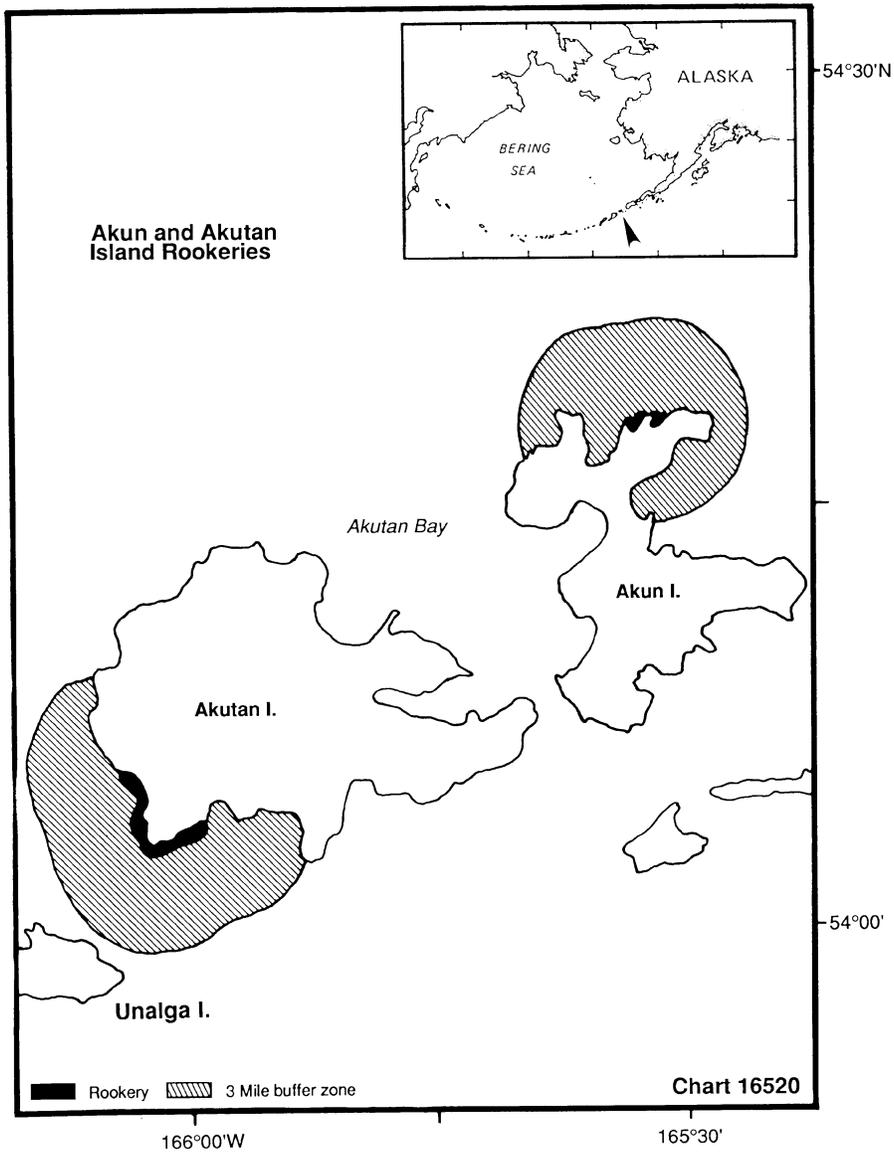


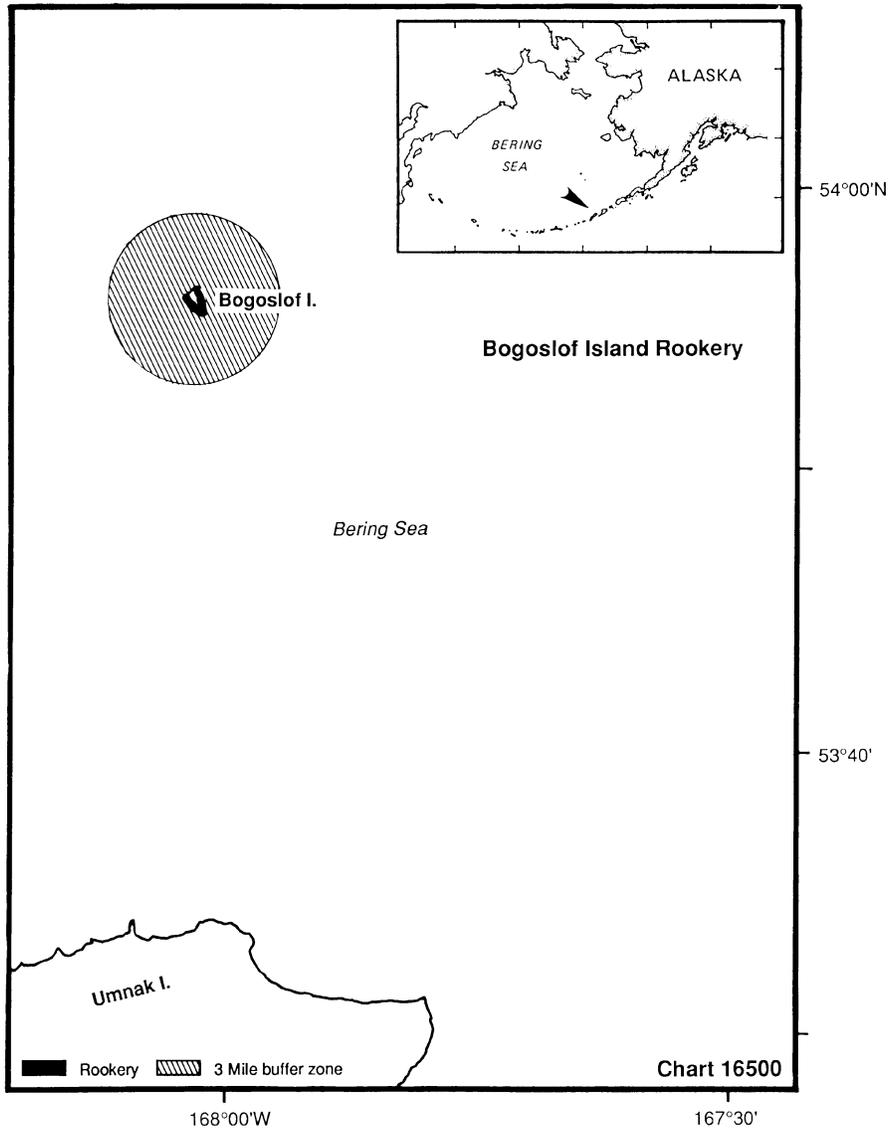


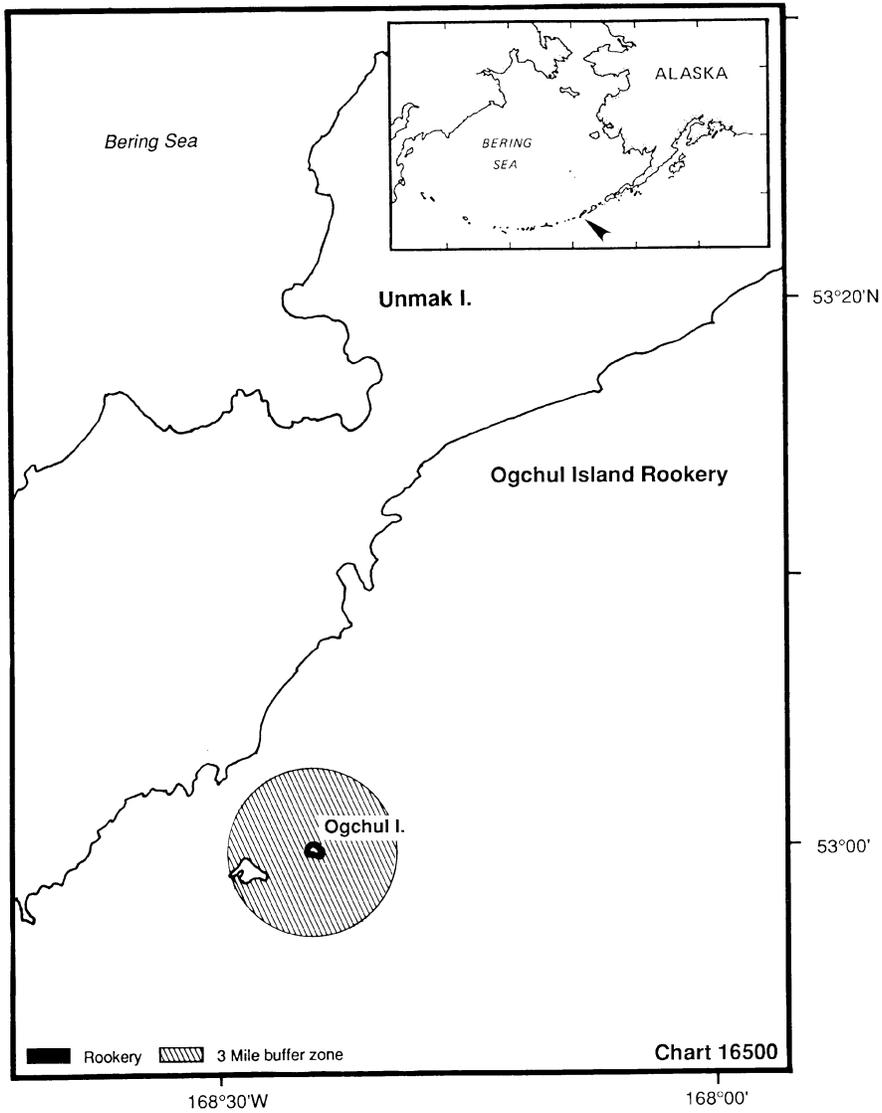


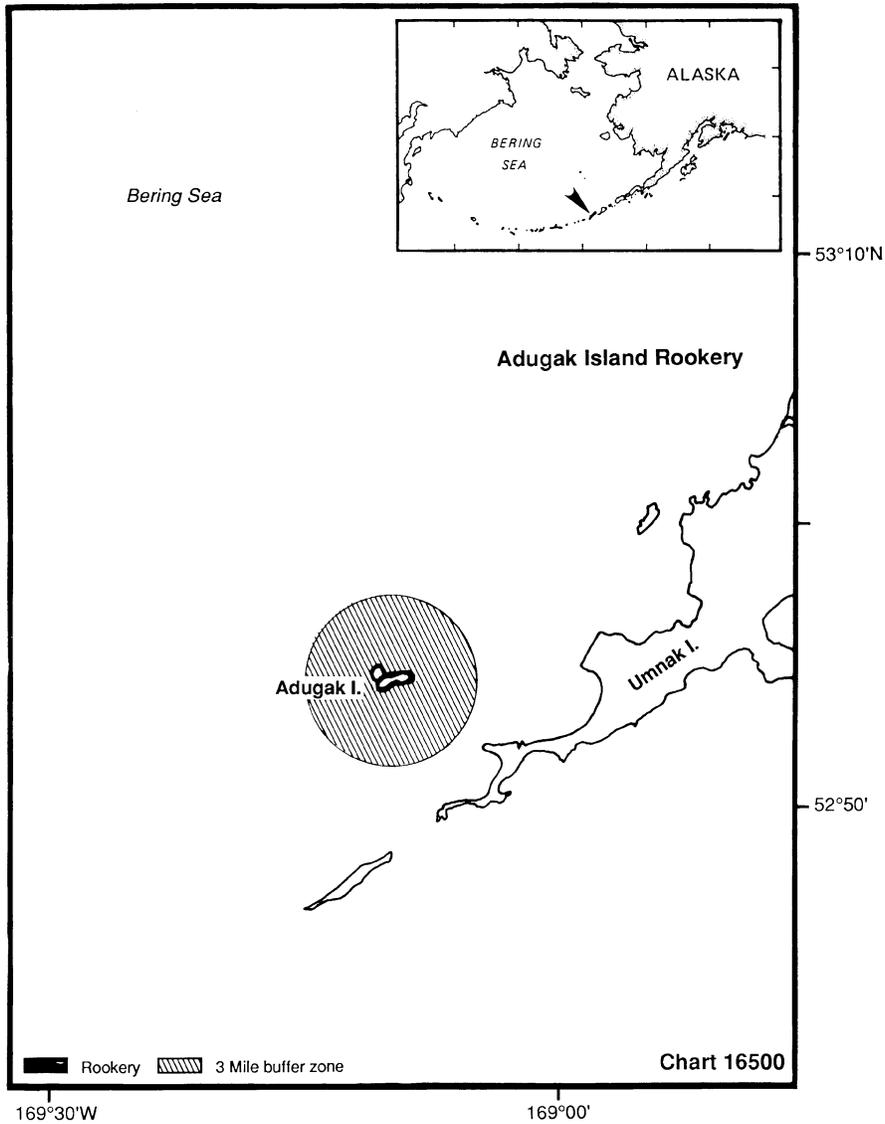


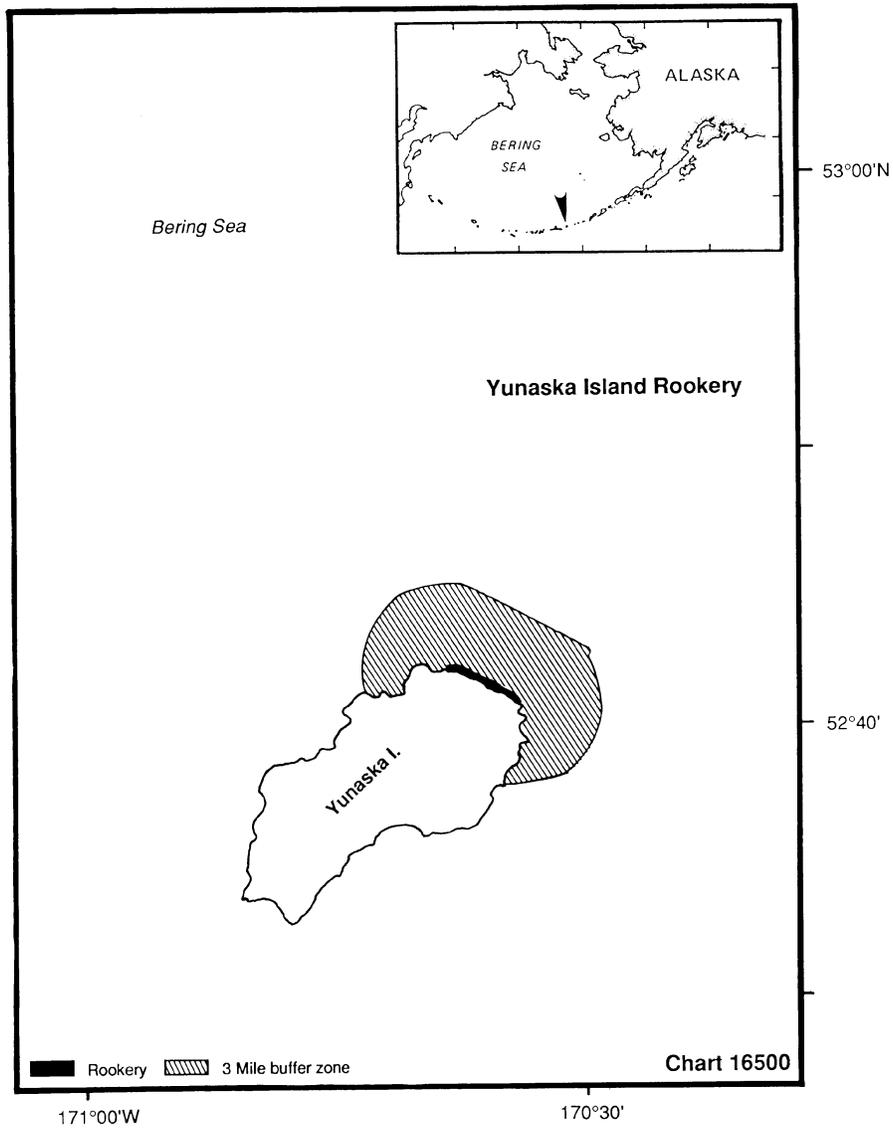


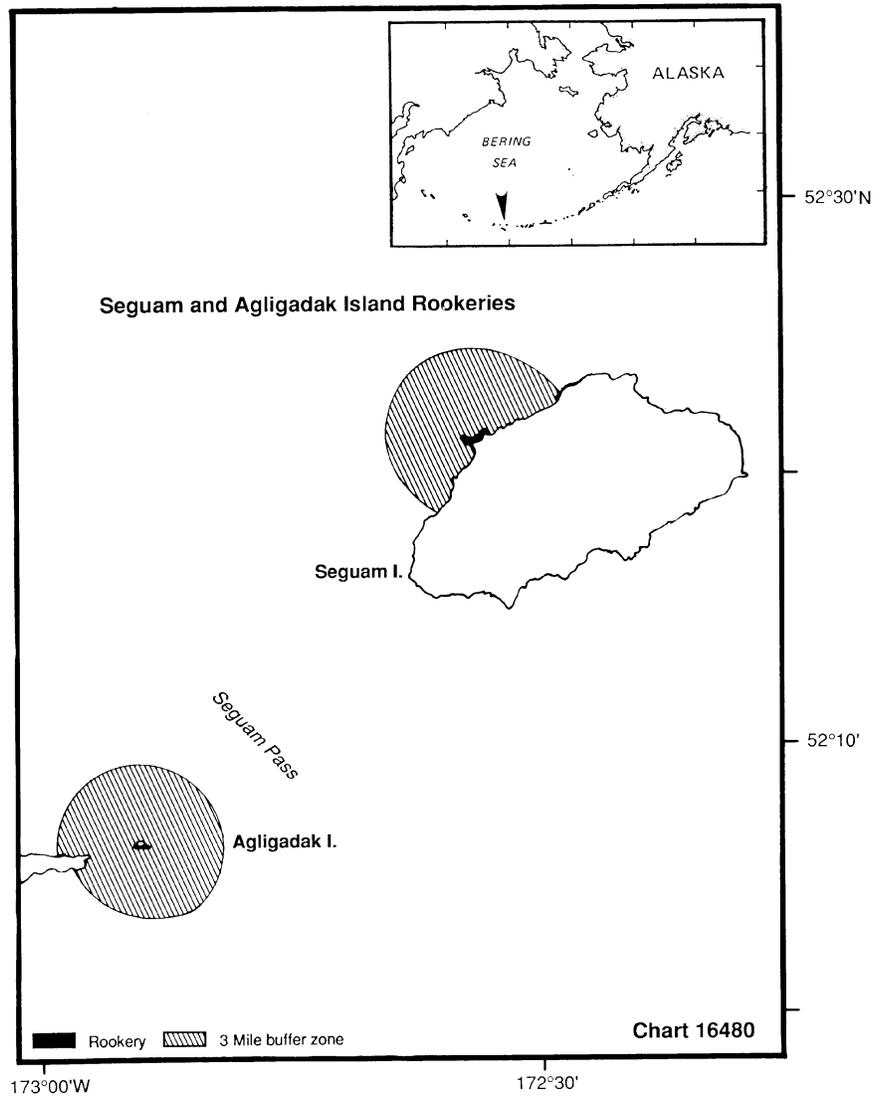


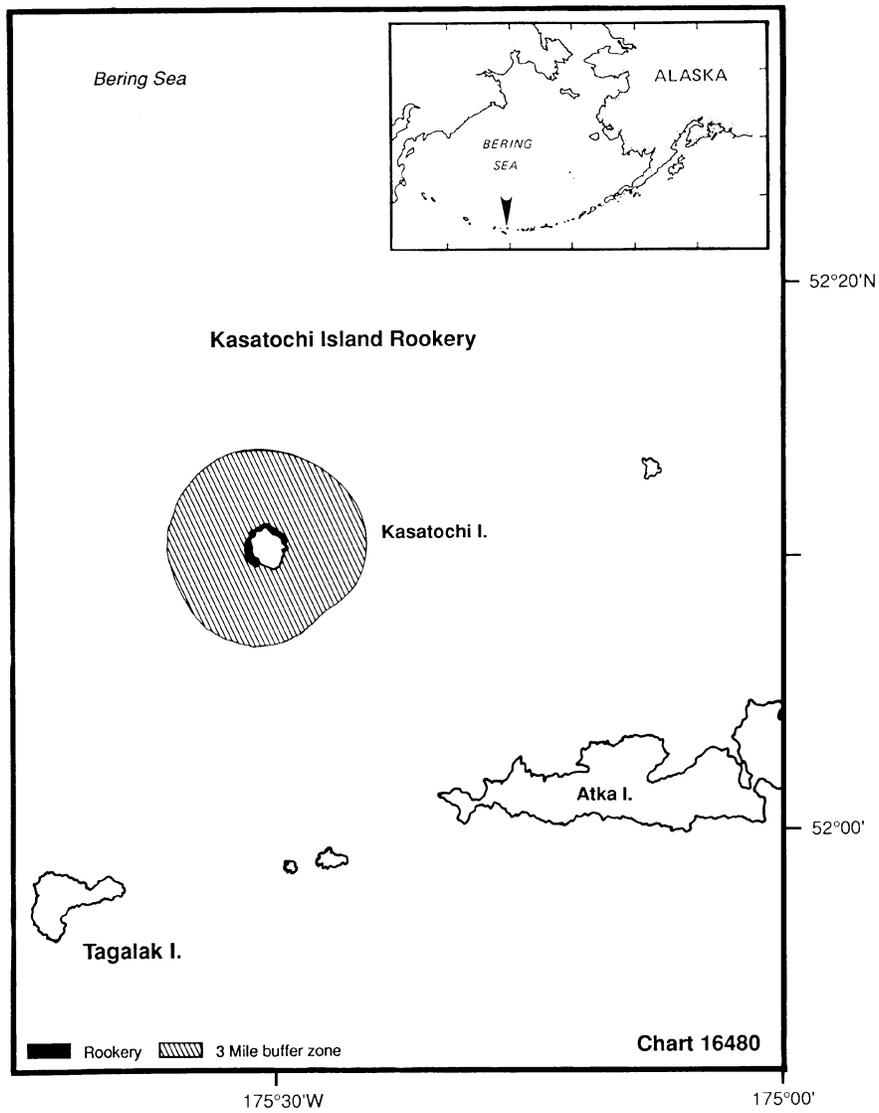


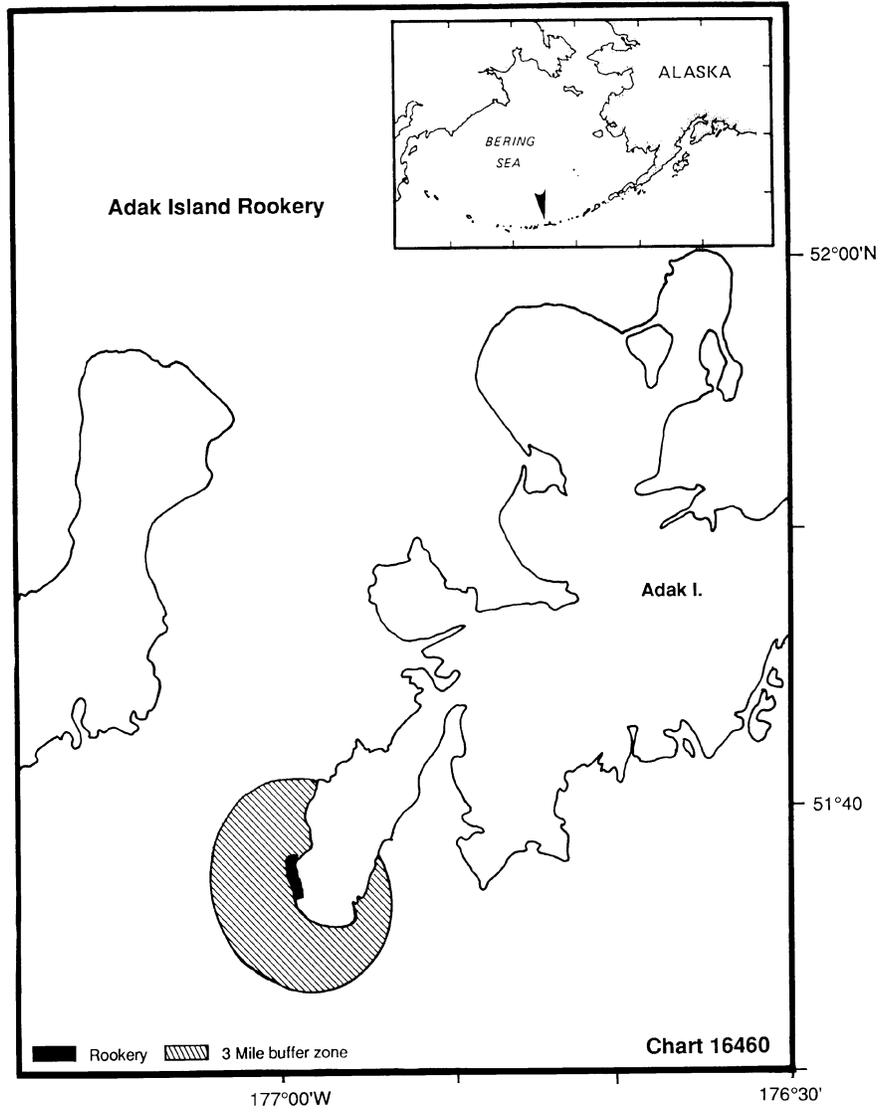


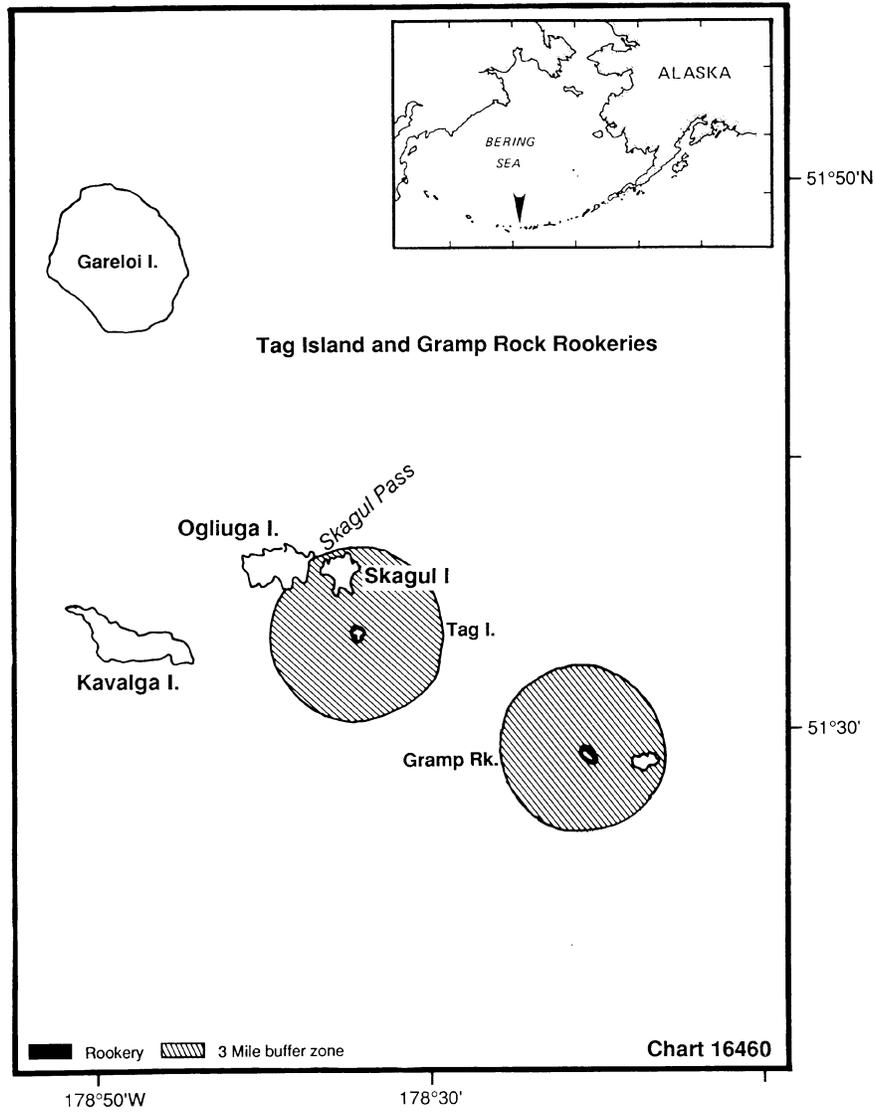


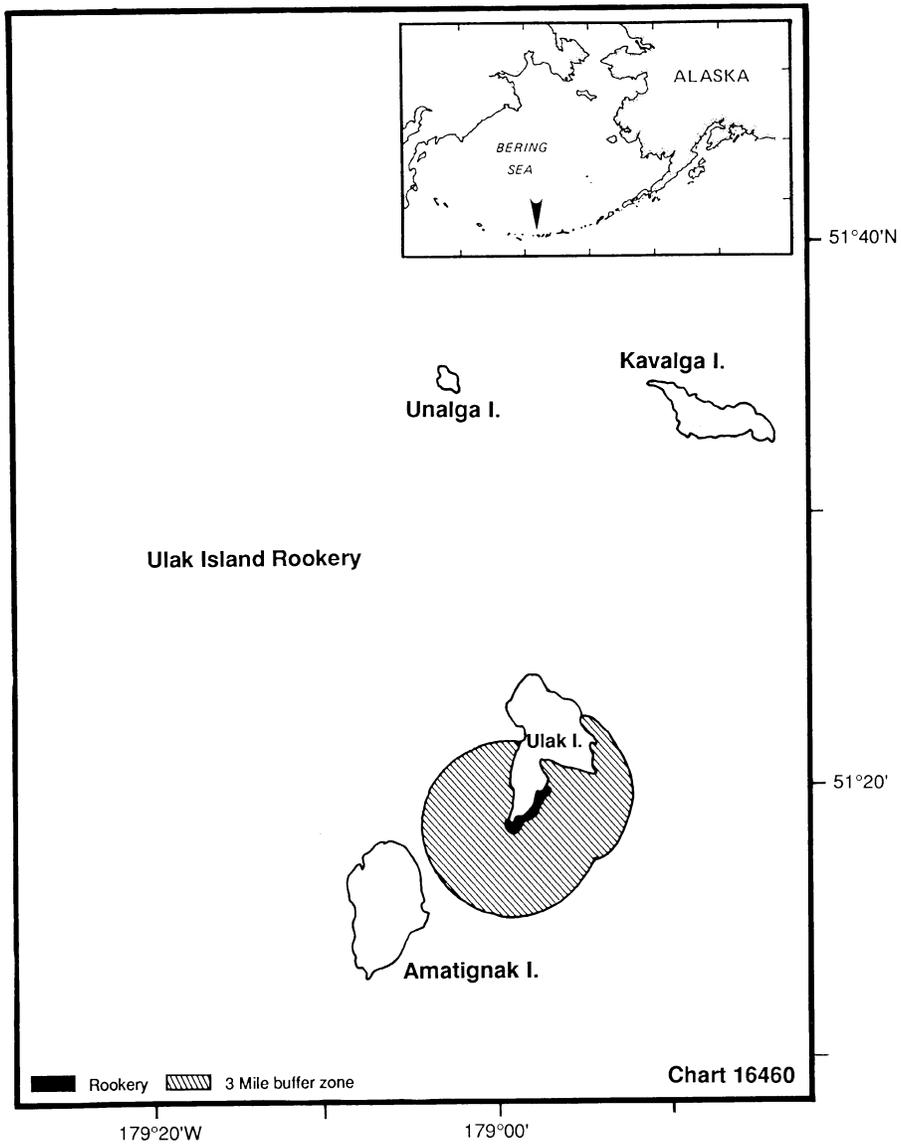


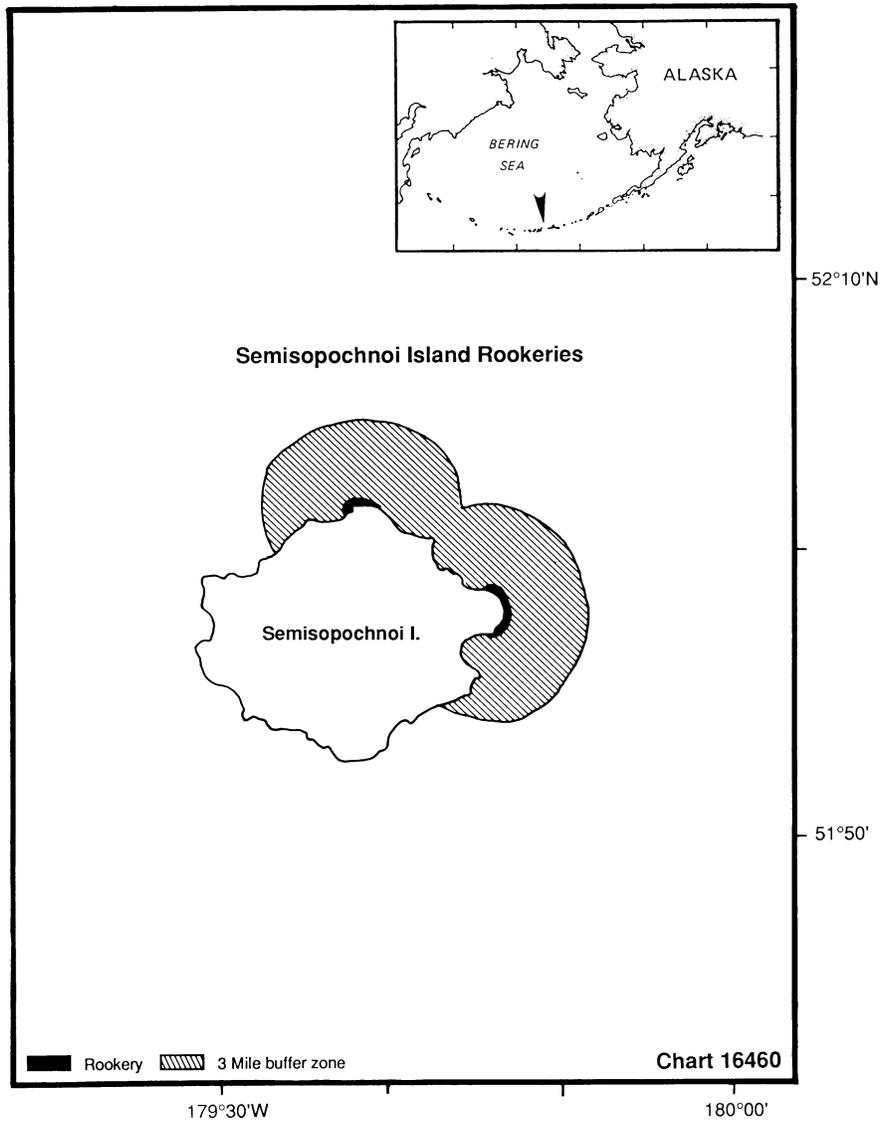


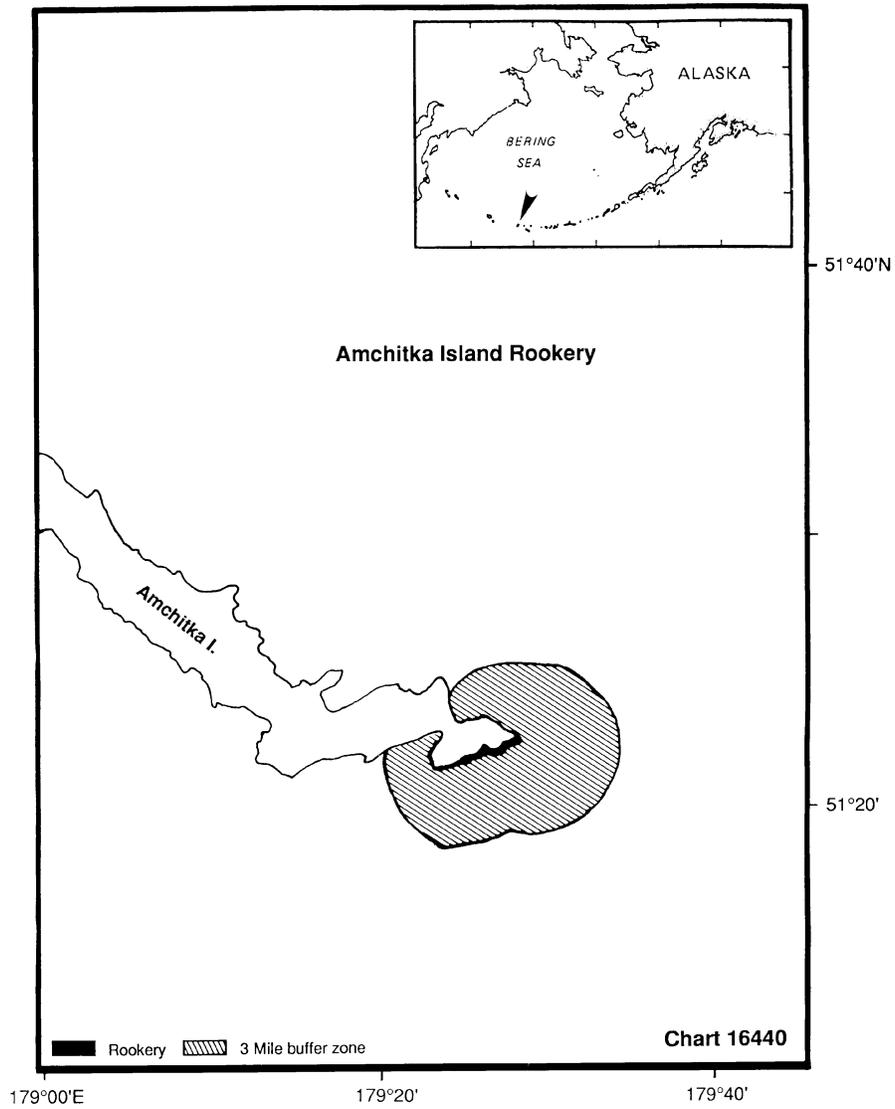


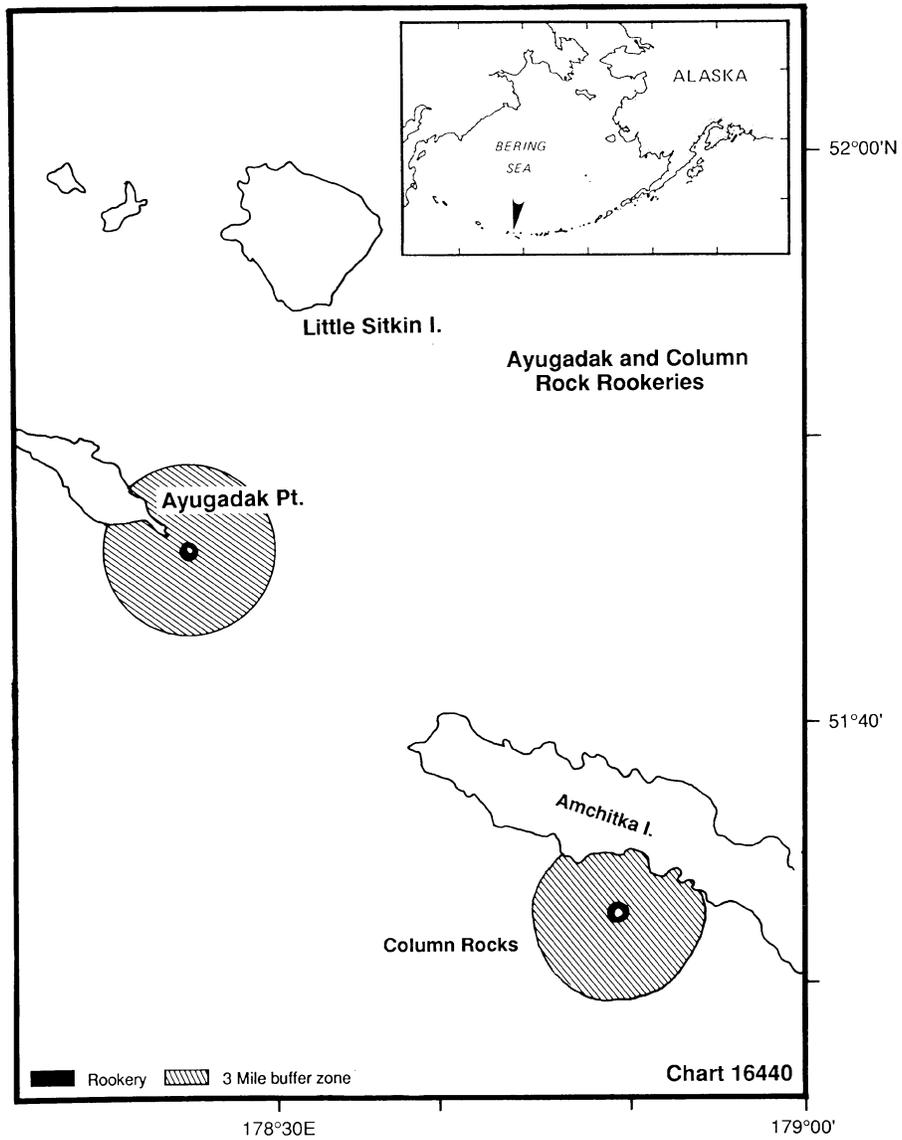


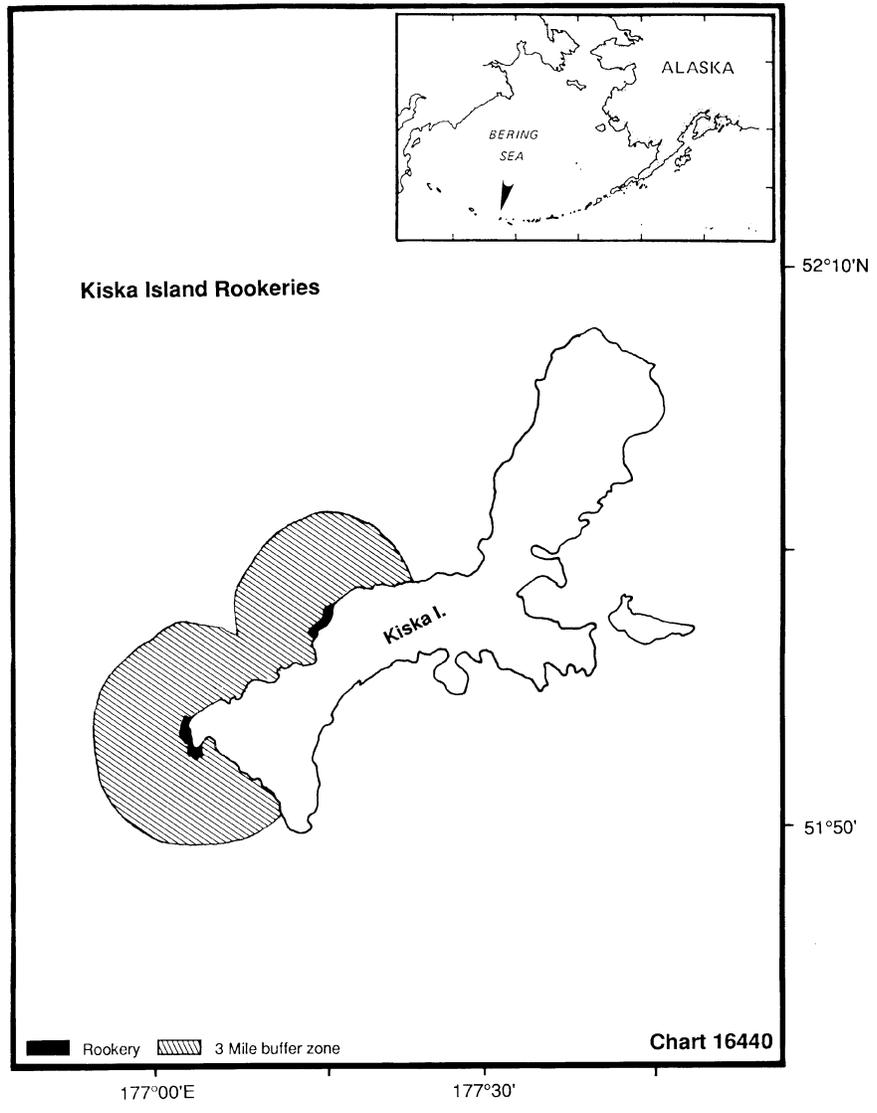


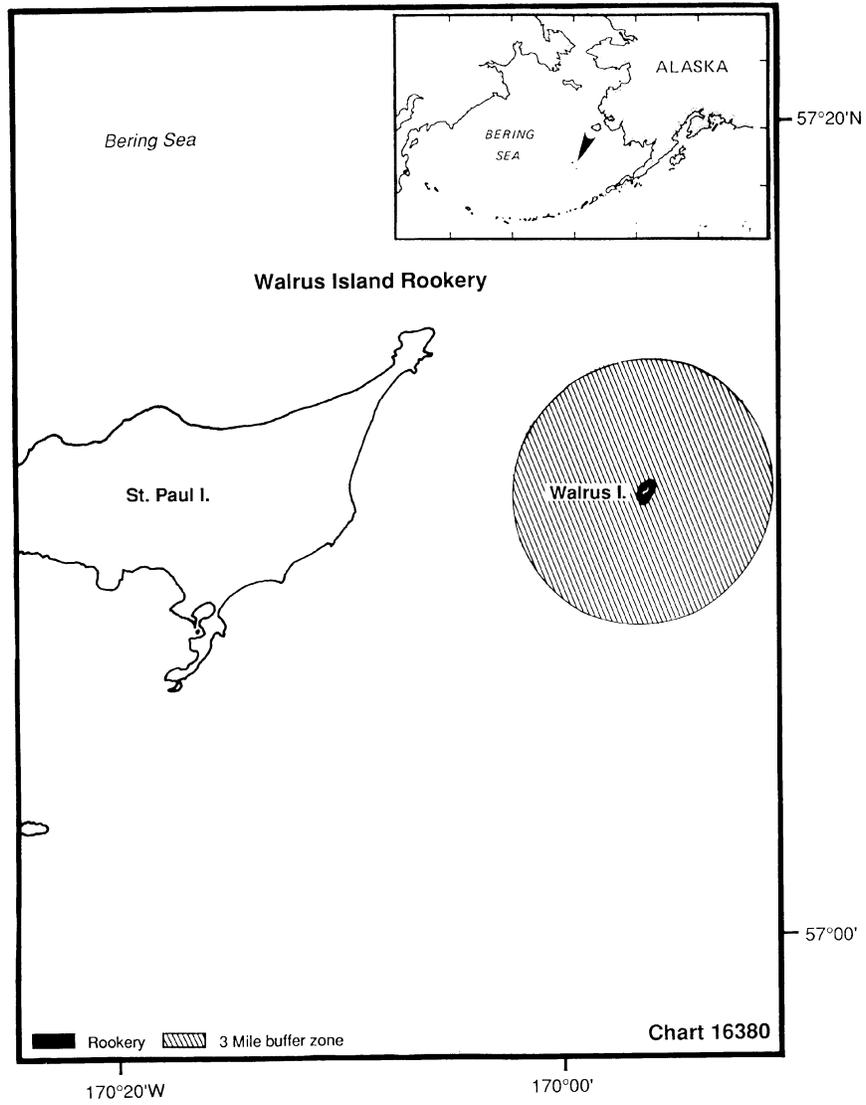


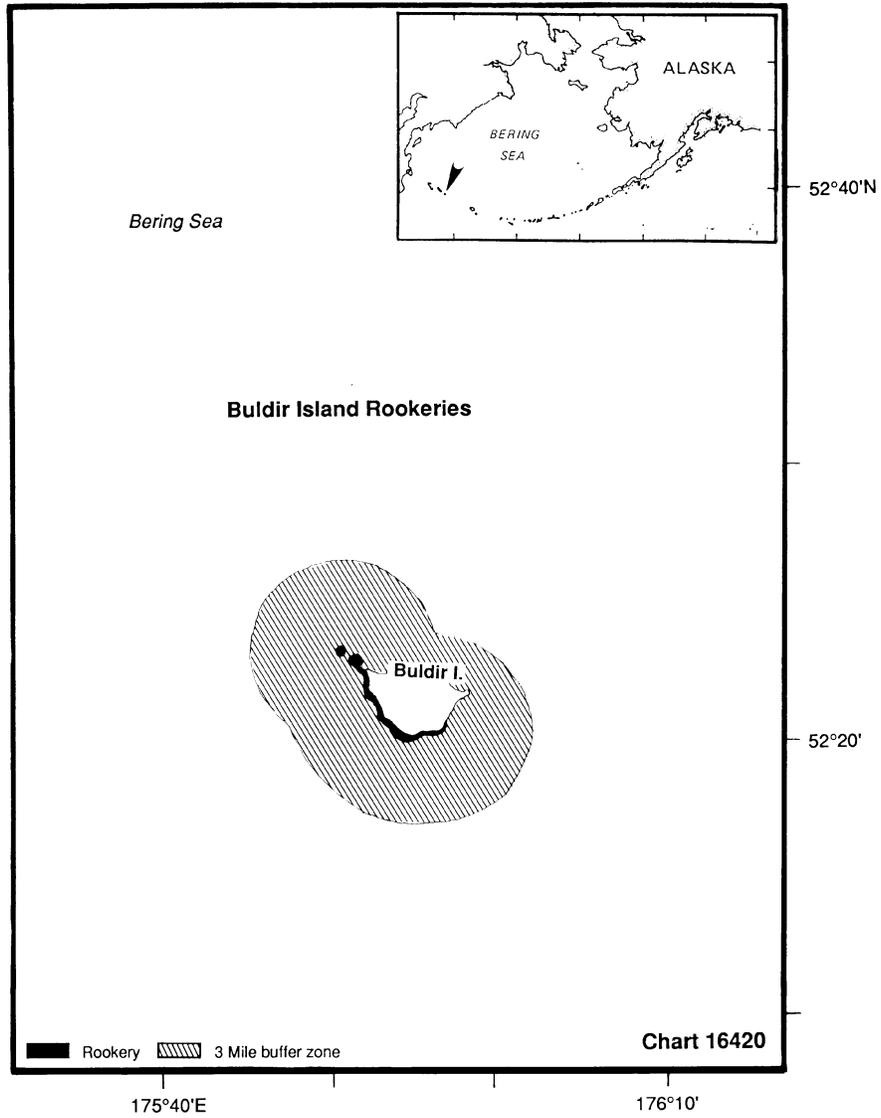


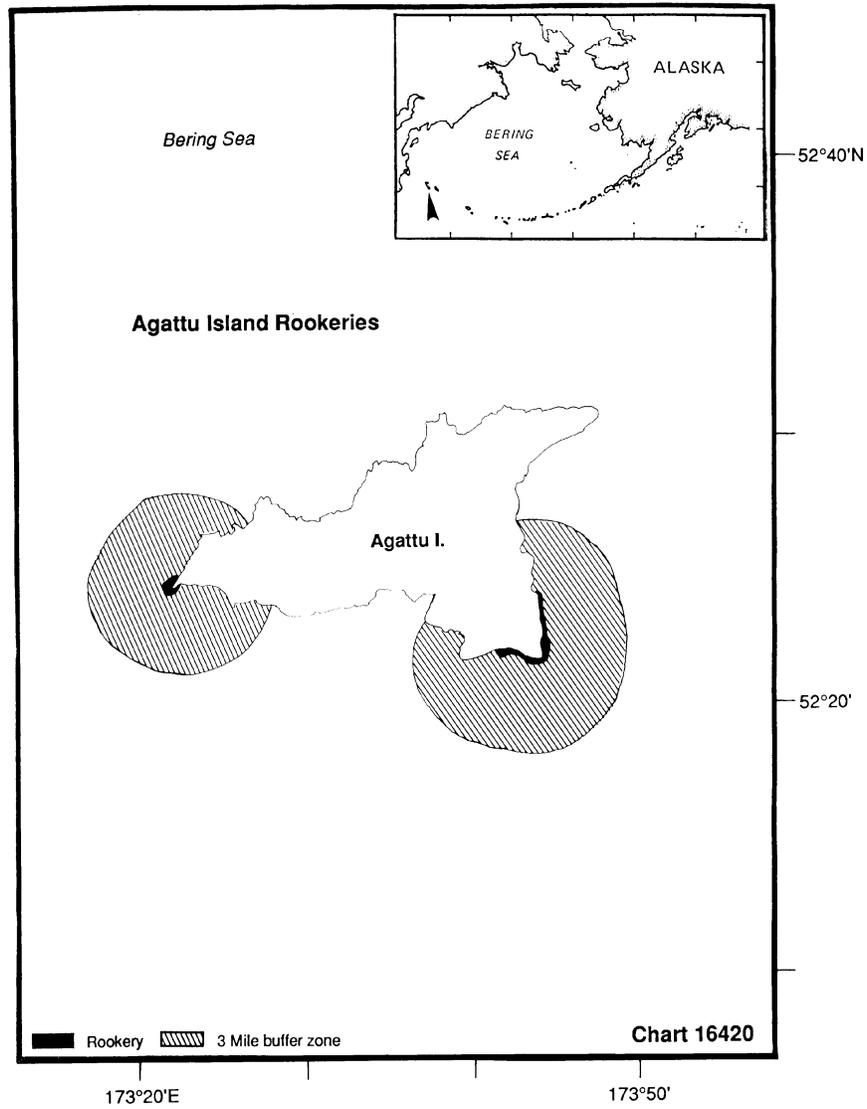


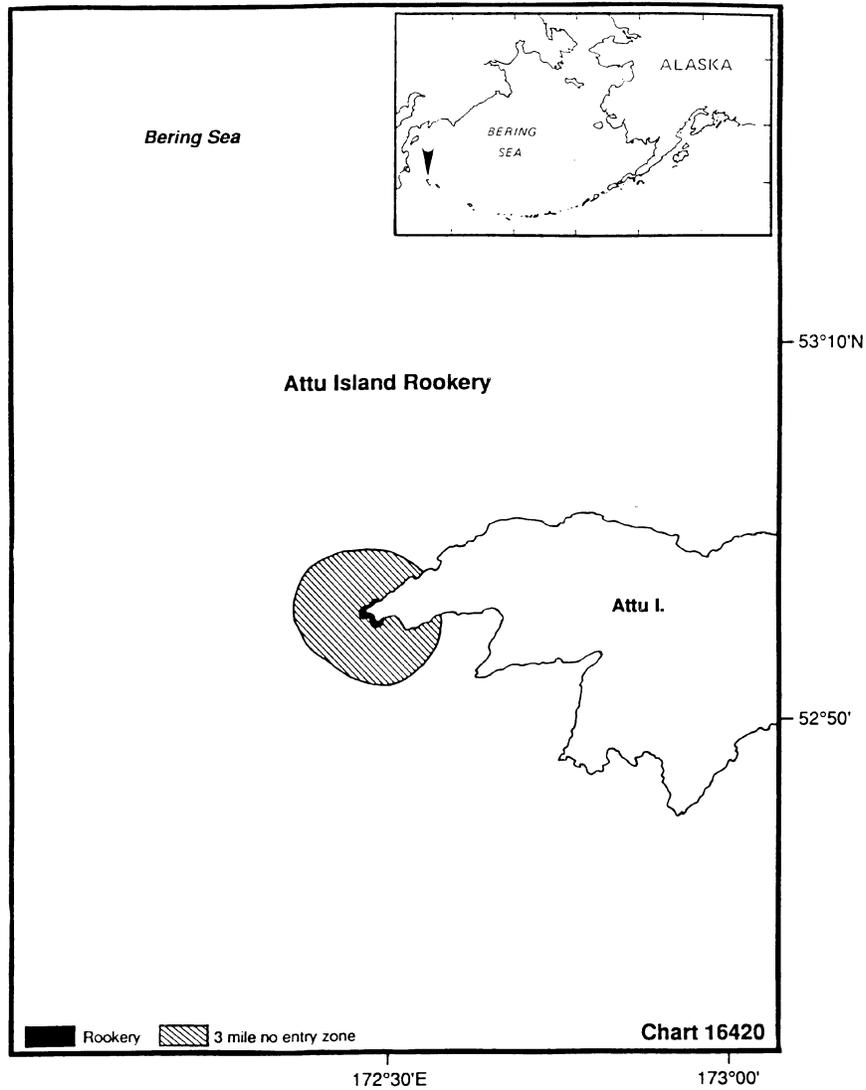












(4) *Commercial Fishing Operations.* The incidental mortality and serious injury of endangered and threatened Steller sea lions in commercial fisheries can be authorized in compliance with sections 101(a)(5) and 118 of the Marine Mammal Protection Act.

(b) *Exceptions—(1) Permits.* The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited under paragraph (a) of this section in accordance with and subject to the provisions of part 222, subpart C—General Permit Procedures.

(2) *Official activities.* The taking of Steller sea lions must be reported within 30 days to the Regional Administrator, Alaska Region. Paragraph (a) of this section does not prohibit or restrict a Federal, state or local government official, or his or her designee, who is acting in the course of official duties from:

(i) Taking a Steller sea lion in a humane manner, if the taking is for the protection or welfare of the animal, the protection of the public health and welfare, or the nonlethal removal of nuisance animals; or

(ii) Entering the buffer areas to perform activities that are necessary for national defense, or the performance of other legitimate governmental activities.

(3) *Subsistence takings by Alaska natives.* Paragraph (a) of this section does not apply to the taking of Steller sea lions for subsistence purposes under section 10(e) of the Act.

(4) *Emergency situations.* Paragraph (a)(2) of this section does not apply to an emergency situation in which compliance with that provision presents a threat to the health, safety, or life of a person or presents a significant threat to the vessel or property.

(5) *Exemptions.* Paragraph (a)(2) of this section does not apply to any activity authorized by a prior written exemption from the Director, Alaska Region, National Marine Fisheries Service. Concurrently with the issuance of any exemption, the Assistant Administrator will publish notice of the exemption in the FEDERAL REGISTER. An exemption may be granted only if the activity will not have a significant adverse affect on Steller sea lions, the activity has been conducted historically or traditionally in the buffer zones, and there is no readily available and acceptable alternative to or site for the activity.

(6) *Navigational transit.* Paragraph (a)(2) of this section does not prohibit a vessel in transit from passing through a strait, narrows, or passageway listed in this paragraph if the vessel proceeds in continuous transit and maintains a minimum of 1 nautical mile from the rookery site. The listing of a strait, narrows, or passageway does not indicate that the area is safe for naviga-

tion. The listed straits, narrows, or passageways include the following:

Rookery	Straits, narrows, or pass
Akutan Island	Akutan Pass between Cape Morgan and Unalga Island.
Clubbing Rocks.	Between Clubbing Rocks and Cherni Island.
Outer Island ...	Wildcat Pass between Rabbit and Ragged Islands.

(c) *Penalties.* (1) Any person who violates this section or the Act is subject to the penalties specified in section 11 of the Act, and any other penalties provided by law.

(2) Any vessel used in violation of this section or the Endangered Species Act is subject to forfeiture under section 11(e)(4)(B) of the Act.

[55 FR 49210, Nov. 26, 1990, as amended at 56 FR 42542, Aug. 28, 1991; 56 FR 58184, Nov. 18, 1991; 58 FR 16371, Mar. 26, 1993; 58 FR 53139, 53141, Oct. 14, 1993; 58 FR 58594, Nov. 2, 1993; 62 FR 24355, May 5, 1997. Redesignated and amended at 64 FR 14068-14069, Mar. 23, 1999]

§ 223.203 Anadromous fish.

Available guidance documents cited in the regulatory text are listed in Appendix A to this section.

(a) *Prohibitions.* The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to anadromous fish with an intact adipose fin that are part of the threatened species of salmonids listed in § 223.102(a).

(b) *Limits on the prohibitions.* The limits to the prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a) are described in the following paragraphs (b)(1) through (b)(13):

(1) The exceptions of section 10 of the ESA (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, including regulations in part 222 of this chapter implementing such exceptions, also apply to the threatened species of salmonids listed in § 223.102(a).

(2) The prohibitions of paragraph (a) of this section relating to Oregon Coast coho salmon, listed in § 223.102(a)(24), do not apply to activities specified in an application for a permit for scientific

purposes or to enhance the conservation or survival of the species, provided that the application has been received by the Assistant Administrator for Fisheries, NOAA (AA), no later than June 10, 2008. The prohibitions of this section apply to these activities upon the Assistant Administrator's rejection of the application as insufficient, upon issuance or denial of a permit, or March 31, 2009, whichever occurs earliest.

(3) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a) do not apply to any employee or designee of NMFS, the United States Fish and Wildlife Service, any Federal land management agency, the Idaho Department of Fish and Game (IDFG), Washington Department of Fish and Wildlife (WDFW), the Oregon Department of Fish and Wildlife (ODFW), California Department of Fish and Game (CDFG), or of any other governmental entity that has co-management authority for the listed salmonids, when the employee or designee, acting in the course of his or her official duties, takes a threatened salmonid without a permit if such action is necessary to:

- (i) Aid a sick, injured, or stranded salmonid,
- (ii) Dispose of a dead salmonid, or
- (iii) Salvage a dead salmonid which may be useful for scientific study.
- (iv) Each agency acting under this limit on the take prohibitions of paragraph (a) of this section is to report to NMFS the numbers of fish handled and their status, on an annual basis. A designee of the listed entities is any individual the Federal or state fishery agency or other co-manager has authorized in writing to perform the listed functions.

(4) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a) do not apply to fishery harvest activities provided that:

- (i) Fisheries are managed in accordance with a NMFS-approved Fishery Management and Evaluation Plan (FMEP) and implemented in accordance with a letter of concurrence from NMFS. NMFS will approve an FMEP only if it clearly defines its intended

scope and area of impact and sets forth the management objectives and performance indicators for the plan. The plan must adequately address the following criteria:

(A) Define populations within affected listed ESUs, taking into account spatial and temporal distribution, genetic and phenotypic diversity, and other appropriate identifiably unique biological and life history traits. Populations may be aggregated for management purposes when dictated by information scarcity, if consistent with survival and recovery of the listed ESU. In identifying management units, the plan shall describe the reasons for using such units in lieu of population units, describe how the management units are defined, given biological and life history traits, so as to maximize consideration of the important biological diversity contained within the listed ESU, respond to the scale and complexity of the ESU, and help ensure consistent treatment of listed salmonids across a diverse geographic and jurisdictional range.

(B) Utilize the concepts of “viable” and “critical” salmonid population thresholds, consistent with the concepts contained in the technical document entitled “Viable Salmonid Populations (NMFS, 2000b).” The VSP paper provides a framework for identifying the biological requirements of listed salmonids, assessing the effects of management and conservation actions, and ensuring that such actions provide for the survival and recovery of listed species. Proposed management actions must recognize the significant differences in risk associated with viable and critical population threshold states and respond accordingly to minimize the long-term risks to population persistence. Harvest actions impacting populations that are functioning at or above the viable threshold must be designed to maintain the population or management unit at or above that level. For populations shown with a high degree of confidence to be above critical levels but not yet at viable levels, harvest management must not appreciably slow the population's achievement of viable function. Harvest actions impacting populations

that are functioning at or below critical threshold must not be allowed to appreciably increase genetic and demographic risks facing the population and must be designed to permit the population's achievement of viable function, unless the plan demonstrates that the likelihood of survival and recovery of the entire ESU in the wild would not be appreciably reduced by greater risks to that individual population.

(C) Set escapement objectives or maximum exploitation rates for each management unit or population based on its status and on a harvest program that assures that those rates or objectives are not exceeded. Maximum exploitation rates must not appreciably reduce the likelihood of survival and recovery of the ESU. Management of fisheries where artificially propagated fish predominate must not compromise the management objectives for commingled naturally spawned populations.

(D) Display a biologically based rationale demonstrating that the harvest management strategy will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild, over the entire period of time the proposed harvest management strategy affects the population, including effects reasonably certain to occur after the proposed actions cease.

(E) Include effective monitoring and evaluation programs to assess compliance, effectiveness, and parameter validation. At a minimum, harvest monitoring programs must collect catch and effort data, information on escapements, and information on biological characteristics, such as age, fecundity, size and sex data, and migration timing.

(F) Provide for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data show are needed.

(G) Provide for effective enforcement and education. Coordination among involved jurisdictions is an important element in ensuring regulatory effectiveness and coverage.

(H) Include restrictions on resident and anadromous species fisheries that minimize any take of listed species, in-

cluding time, size, gear, and area restrictions.

(I) Be consistent with plans and conditions established within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

(ii) The state monitors the amount of take of listed salmonids occurring in its fisheries and provides to NMFS on a regular basis, as defined in NMFS' letter of concurrence for the FMEP, a report summarizing this information, as well as the implementation and effectiveness of the FMEP. The state shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the FMEP.

(iii) The state confers with NMFS on its fishing regulation changes affecting listed ESUs to ensure consistency with the approved FMEP. Prior to approving a new or amended FMEP, NMFS will publish notification in the FEDERAL REGISTER announcing its availability for public review and comment. Such an announcement will provide for a comment period on the draft FMEP of not less than 30 days.

(iv) NMFS provides written concurrence of the FMEP which specifies the implementation and reporting requirements. NMFS' approval of a plan shall be a written approval by NMFS Southwest or Northwest Regional Administrator, as appropriate. On a regular basis, NMFS will evaluate the effectiveness of the program in protecting and achieving a level of salmonid productivity commensurate with conservation of the listed salmonids. If it is not, NMFS will identify ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit for activities associated with that FMEP. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that the prohibitions would then apply to those fishery harvest activities. A template for developing FMEPs is available from NMFS

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Northwest Region's website (www.nwr.noaa.gov).

(v) The prohibitions of paragraph (a) of this section relating to threatened species of steelhead listed in § 223.102 (a)(5) through (a)(9), (a)(14), and (a)(15) do not apply to fisheries managed solely by the states of Oregon, Washington, Idaho, and California until January 8, 2001.

(5) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a) do not apply to activity associated with artificial propagation programs provided that:

(i) A state or Federal Hatchery and Genetics Management Plan (HGMP) has been approved by NMFS as meeting the following criteria:

(A) The HGMP has clearly stated goals, performance objectives, and performance indicators that indicate the purpose of the program, its intended results, and measurements of its performance in meeting those results. Goals shall address whether the program is intended to meet conservation objectives, contribute to the ultimate sustainability of natural spawning populations, and/or intended to augment tribal, recreational, or commercial fisheries. Objectives should enumerate the results desired from the program that will be used to measure the program's success or failure.

(B) The HGMP utilizes the concepts of viable and critical salmonid population threshold, consistent with the concepts contained in the technical document entitled "Viable Salmonid Populations" (NMFS, 2000b). Listed salmonids may be purposefully taken for broodstock purposes only if the donor population is currently at or above the viable threshold and the collection will not impair its function; if the donor population is not currently viable but the sole objective of the current collection program is to enhance the propagation or survival of the listed ESU; or if the donor population is shown with a high degree of confidence to be above critical threshold although not yet functioning at viable levels, and the collection will not appreciably slow the attainment of viable status for that population.

(C) Taking into account health, abundances, and trends in the donor population, broodstock collection programs reflect appropriate priorities. The primary purpose of broodstock collection programs of listed species is to reestablish indigenous salmonid populations for conservation purposes. Such programs include restoration of similar, at-risk populations within the same ESU, and reintroduction of at-risk populations to underseeded habitat. After the species' conservation needs are met and when consistent with survival and recovery of the ESU, broodstock collection programs may be authorized by NMFS such for secondary purposes, as to sustain tribal, recreational, and commercial fisheries.

(D) The HGMP includes protocols to address fish health, broodstock collection, broodstock spawning, rearing and release of juveniles, deposition of hatchery adults, and catastrophic risk management.

(E) The HGMP evaluates, minimizes, and accounts for the propagation program's genetic and ecological effects on natural populations, including disease transfer, competition, predation, and genetic introgression caused by the straying of hatchery fish.

(F) The HGMP describes interrelationships and interdependencies with fisheries management. The combination of artificial propagation programs and harvest management must be designed to provide as many benefits and as few biological risks as possible for the listed species. For programs whose purpose is to sustain fisheries, HGMPs must not compromise the ability of FMEPs or other management plans to conserve listed salmonids.

(G) Adequate artificial propagation facilities exist to properly rear progeny of naturally spawned broodstock, to maintain population health and diversity, and to avoid hatchery-influenced selection or domestication.

(H) Adequate monitoring and evaluation exist to detect and evaluate the success of the hatchery program and any risks potentially impairing the recovery of the listed ESU.

(I) The HGMP provides for evaluating monitoring data and making any revisions of assumptions, management

strategies, or objectives that data show are needed;

(J) NMFS provides written concurrence of the HGMP which specifies the implementation and reporting requirements. For Federally operated or funded hatcheries, the ESA section 7 consultation will achieve this purpose.

(K) The HGMP is consistent with plans and conditions set within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

(ii) The state monitors the amount of take of listed salmonids occurring in its hatchery program and provides to NMFS on a regular basis a report summarizing this information, and the implementation and effectiveness of the HGMP as defined in NMFS' letter of concurrence. The state shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the HGMP.

(iii) The state confers with NMFS on a regular basis regarding intended collections of listed broodstock to ensure congruity with the approved HGMP.

(iv) Prior to final approval of an HGMP, NMFS will publish notification in the FEDERAL REGISTER announcing its availability for public review and comment for a period of at least 30 days.

(v) NMFS' approval of a plan shall be a written approval by NMFS Southwest or Northwest Regional Administrator, as appropriate.

(vi) On a regular basis, NMFS will evaluate the effectiveness of the HGMP in protecting and achieving a level of salmonid productivity commensurate with the conservation of the listed salmonids. If the HGMP is not effective, the NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit on activities associated with that program. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that take

prohibitions, like all other activity not within a limit, would then apply to that program. A template for developing HGMPs is available from NMFS Northwest Region's website (www.nwr.noaa.gov).

(6) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a) do not apply to actions undertaken in compliance with a resource management plan developed jointly by the States of Washington, Oregon and/or Idaho and the Tribes (joint plan) within the continuing jurisdiction of *United States v. Washington* or *United States v. Oregon*, the on-going Federal court proceedings to enforce and implement reserved treaty fishing rights, provided that:

(i) The Secretary has determined pursuant to 50 CFR 223.209 and the government-to-government processes therein that implementing and enforcing the joint tribal/state plan will not appreciably reduce the likelihood of survival and recovery of affected threatened ESUs.

(ii) The joint plan will be implemented and enforced within the parameters set forth in *United States v. Washington* or *United States v. Oregon*.

(iii) In making that determination for a joint plan, the Secretary has taken comment on how any fishery management plan addresses the criteria in § 223.203(b)(4), or on how any hatchery and genetic management plan addresses the criteria in § 223.203(b)(5).

(iv) The Secretary shall publish notice in the FEDERAL REGISTER of any determination whether or not a joint plan, will appreciably reduce the likelihood of survival and recovery of affected threatened ESUs, together with a discussion of the biological analysis underlying that determination.

(v) On a regular basis, NMFS will evaluate the effectiveness of the joint plan in protecting and achieving a level of salmonid productivity commensurate with conservation of the listed salmonids. If the plan is not effective, then NMFS will identify to the jurisdiction ways in which the joint plan needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to

the new information, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit on activities associated with that joint plan. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that take prohibitions would then apply to that joint plan as to all other activity not within a limit.

(7) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a) do not apply to scientific research activities provided that:

(i) Scientific research activities involving purposeful take is conducted by employees or contractors of the ODFW, WDFW (Agencies), IDFG, or CDFG (Agencies), or as a part of a monitoring and research program overseen by or coordinated with that Agency.

(ii) The Agencies provide for NMFS' review and approval a list of all scientific research activities involving direct take planned for the coming year, including an estimate of the total direct take that is anticipated, a description of the study design, including a justification for taking the species and a description of the techniques to be used, and a point of contact.

(iii) The Agencies annually provide to NMFS the results of scientific research activities directed at threatened salmonids, including a report of the direct take resulting from the studies and a summary of the results of such studies.

(iv) Scientific research activities that may incidentally take threatened salmonids are either conducted by agency personnel, or are in accord with a permit issued by the Agency.

(v) The Agencies provide NMFS annually, for its review and approval, a report listing all scientific research activities it conducts or permits that may incidentally take threatened salmonids during the coming year. Such reports shall also contain the amount of incidental take of threatened salmonids occurring in the previous year's scientific research activities and a summary of the results of such research.

(vi) Electrofishing in any body of water known or suspected to contain threatened salmonids is conducted in accordance with NMFS "Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act" (NMFS, 2000a).

(vii) NMFS' approval of a research program shall be a written approval by NMFS Northwest or Southwest Regional Administrator.

(8) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a) do not apply to habitat restoration activities, as defined in paragraph (b)(8)(iv) of this section, provided that the activity is part of a watershed conservation plan, and:

(i) The watershed conservation plan has been certified by the State of Washington, Oregon, Idaho, or California (State) to be consistent with the state's watershed conservation plan guidelines.

(ii) The State's watershed conservation plan guidelines have been found by NMFS to provide for plans that:

(A) Take into account the potential severity of direct, indirect, and cumulative impacts of proposed activities in light of the status of affected species and populations.

(B) Will not reduce the likelihood of either survival or recovery of listed species in the wild.

(C) Ensure that any taking will be incidental.

(D) Minimize and mitigate any adverse impacts.

(E) Provide for effective monitoring and adaptive management.

(F) Use the best available science and technology, including watershed analysis.

(G) Provide for public and scientific review and input.

(H) Include any measures that NMFS determines are necessary or appropriate.

(I) Include provisions that clearly identify those activities that are part of plan implementation.

(J) Control risk to listed species by ensuring funding and implementation of the above plan components.

(iii) NMFS will periodically review state certifications of Watershed Conservation Plans to ensure adherence to

approved watershed conservation plan guidelines.

(iv) "Habitat restoration activity" is defined as an activity whose primary purpose is to restore natural aquatic or riparian habitat conditions or processes. "Primary purpose" means the activity would not be undertaken but for its restoration purpose.

(v) Prior to approving watershed conservation plan guidelines under paragraph (b)(8)(ii) of this section, NMFS will publish notification in the FEDERAL REGISTER announcing the availability of the proposed guidelines for public review and comment. Such an announcement will provide for a comment period on the draft guidelines of no less than 30 days.

(9) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a) do not apply to the physical diversion of water from a stream or lake, provided that:

(i) NMFS' engineering staff or any resource agency or tribe NMFS designates (authorized officer) has agreed in writing that the diversion facility is screened, maintained, and operated in compliance with Juvenile Fish Screen Criteria, National Marine Fisheries Service, Northwest Region, Revised February 16, 1995, with Addendum of May 9, 1996, or in California with NMFS' Southwest Region "Fish Screening Criteria for Anadromous Salmonids, January 1997" or with any subsequent revision.

(ii) The owner or manager of the diversion allows any NMFS engineer or authorized officer access to the diversion facility for purposes of inspection and determination of continued compliance with the criteria.

(iii) On a case by case basis, NMFS or an Authorized Officer will review and approve a juvenile fish screen design and construction plan and schedule that the water diverter proposes for screen installation. The plan and schedule will describe interim operation measures to avoid take of threatened salmonids. NMFS may require a commitment of compensatory mitigation if implementation of the plan and schedule is terminated prior to completion. If the plan and schedule are not met, or if a schedule modification is

made that is not approved by NMFS or Authorized Officer, or if the screen installation deviates from the approved design, the water diversion will be subject to take prohibitions and mitigation.

(iv) This limit on the prohibitions of paragraph (a) of this section does not encompass any impacts of reduced flows resulting from the diversion or impacts caused during installation of the diversion device. These impacts are subject to the prohibition on take of listed salmonids.

(10) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a) do not apply to routine road maintenance activities provided that:

(i) The activity results from routine road maintenance activity conducted by ODOT employees or agents that complies with ODOT's Transportation Maintenance Management System Water Quality and Habitat Guide (July, 1999); or by employees or agents of a state, county, city or port that complies with a program substantially similar to that contained in the ODOT Guide that is determined to meet or exceed the protections provided by the ODOT Guide; or by employees or agents of a state, county, city or port that complies with a routine road maintenance program that meets proper functioning habitat conditions as described further in subparagraph (ii) following. NMFS' approval of state, city, county, or port programs that are equivalent to the ODOT program, or of any amendments, shall be a written approval by NMFS Northwest or Southwest Regional Administrator, whichever is appropriate. Any jurisdiction desiring its routine road maintenance activities to be within this limit must first commit in writing to apply management practices that result in protections equivalent to or better than those provided by the ODOT Guide, detailing how it will assure adequate training, tracking, and reporting, and describing in detail any dust abatement practices it requests to be covered.

(ii) NMFS finds the routine road maintenance activities of any state, city, county, or port to be consistent with the conservation of listed

salmonids' habitat when it contributes, as does the ODOT Guide, to the attainment and maintenance of properly functioning condition (PFC). NMFS defines PFC as the sustained presence of natural habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Periodically, NMFS will evaluate an approved program for its effectiveness in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than one year, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit so that take prohibitions would then apply to the program as to all other activity not within a limit. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

(iii) Prior to implementing any changes to a program within this limit the jurisdiction provides NMFS a copy of the proposed change for review and approval as within this limit.

(iv) Prior to approving any state, city, county, or port program as within this limit, or approving any substantive change in a program within this limit, NMFS will publish notification in the FEDERAL REGISTER announcing the availability of the program or the draft changes for public re-

view and comment. Such an announcement will provide for a comment period of not less than 30 days.

(v) Pesticide and herbicide spraying is not included within this limit, even if in accord with the ODOT guidance.

(11) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a) do not apply to activities within the City of Portland, Oregon Parks and Recreation Department's (PP&R) Pest Management Program (March 1997), including its Waterways Pest Management Policy updated December 1, 1999, provided that:

(i) Use of only the following chemicals is included within this limit on the take prohibitions: Round Up, Rodeo, Garlon 3A, Surfactant LI-700, Napropamide, Cutrine Plus, and Aquashade.

(ii) Any chemical use is initiated in accord with the priorities and decision processes of the Department's Pest Management Policy, including the Waterways Pest Management Policy, updated December 1, 1999.

(iii) Any chemical use within a 25 ft. (7.5 m) buffer complies with the buffer application constraints contained in PP&R's Waterways Pest Management Policy (update December 1, 1999).

(iv) Prior to implementing any changes to this limit, the PP&R provides NMFS with a copy of the proposed change for review and approval as within this limit.

(v) Prior to approving any substantive change in a program within this limit, NMFS will publish notification in the FEDERAL REGISTER announcing the availability of the program or the draft changes for public review and comment. Such an announcement will provide for a comment period of no less than 30 days.

(vi) NMFS' approval of amendments shall be a written approval by NMFS Northwest Regional Administrator.

(vii) NMFS finds the PP&R Pest Management Program activities to be consistent with the conservation of listed salmonids' habitat by contributing to the attainment and maintenance of properly functioning condition (PFC). NMFS defines PFC as the sustained presence of a watershed's natural habitat-forming processes that

are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Periodically, NMFS will evaluate the effectiveness of an approved program in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than 1 year, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit so that take prohibitions would then apply to the program as to all other activity not within a limit. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

(12) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a) do not apply to municipal, residential, commercial, and industrial (MRCI) development (including redevelopment) activities provided that:

(i) Such development occurs pursuant to city, county, or regional government ordinances or plans that NMFS has determined are adequately protective of listed species; or within the jurisdiction of the Metro regional government in Oregon and pursuant to ordinances that Metro has found comply with its Urban Growth Management Functional Plan (Functional Plan) following a determination by NMFS that the Functional Plan is adequately pro-

TECTIVE. NMFS approval or determinations about any MRCI development ordinances or plans, including the Functional Plan, shall be a written approval by NMFS Northwest or Southwest Regional Administrator, whichever is appropriate. NMFS will apply the following 12 evaluation considerations when reviewing MRCI development ordinances or plans to assess whether they adequately conserve listed salmonids by maintaining and restoring properly functioning habitat conditions:

(A) MRCI development ordinance or plan ensures that development will avoid inappropriate areas such as unstable slopes, wetlands, areas of high habitat value, and similarly constrained sites.

(B) MRCI development ordinance or plan adequately avoids stormwater discharge impacts to water quality and quantity or to the hydrograph of the watershed, including peak and base flows of perennial streams.

(C) MRCI development ordinance or plan provides adequately protective riparian area management requirements to attain or maintain PFC around all rivers, estuaries, streams, lakes, deep-water habitats, and intermittent streams. Compensatory mitigation is provided, where necessary, to offset unavoidable damage to PFC due to MRCI development impacts to riparian management areas.

(D) MRCI development ordinance or plan avoids stream crossings by roads, utilities, and other linear development wherever possible, and, where crossings must be provided, minimize impacts through choice of mode, sizing, and placement.

(E) MRCI development ordinance or plan adequately protects historical stream meander patterns and channel migration zones and avoids hardening of stream banks and shorelines.

(F) MRCI development ordinance or plan adequately protects wetlands and wetland functions, including isolated wetlands.

(G) MRCI development ordinance or plan adequately preserves the hydrologic capacity of permanent and intermittent streams to pass peak flows.

(H) MRCI development ordinance or plan includes adequate provisions for

landscaping with native vegetation to reduce need for watering and application of herbicides, pesticides, and fertilizer.

(I) MRCI development ordinance or plan includes adequate provisions to prevent erosion and sediment run-off during construction.

(J) MRCI development ordinance or plan ensures that water supply demands can be met without impacting flows needed for threatened salmonids either directly or through groundwater withdrawals and that any new water diversions are positioned and screened in a way that prevents injury or death of salmonids.

(K) MRCI development ordinance or plan provides necessary enforcement, funding, reporting, and implementation mechanisms and formal plan evaluations at intervals that do not exceed 5 years.

(L) MRCI development ordinance and plan complies with all other state and Federal environmental and natural resource laws and permits.

(ii) The city, county or regional government provides NMFS with annual reports regarding implementation and effectiveness of the ordinances, including: any water quality monitoring information the jurisdiction has available; aerial photography (or some other graphic display) of each MRCI development or MRCI expansion area at sufficient detail to demonstrate the width and vegetation condition of riparian set-backs; information to demonstrate the success of stormwater management and other conservation measures; and a summary of any flood damage, maintenance problems, or other issues.

(iii) NMFS finds the MRCI development activity to be consistent with the conservation of listed salmonids' habitat when it contributes to the attainment and maintenance of PFC. NMFS defines PFC as the sustained presence of a watershed's habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Periodi-

cally, NMFS will evaluate an approved program for its effectiveness in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than 1 year, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit so that take prohibitions would then apply to the program as to all other activity not within a limit. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

(iv) Prior to approving any city, county, or regional government ordinances or plans as within this limit, or approving any substantive change in an ordinance or plan within this limit, NMFS will publish notification in the FEDERAL REGISTER announcing the availability of the ordinance or plan or the draft changes for public review and comment. Such an announcement will provide for a comment period of no less than 30 days.

(13) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a) do not apply to non-Federal forest management activities conducted in the State of Washington provided that:

(i) The action is in compliance with forest practice regulations adopted and implemented by the Washington Forest Practices Board that NMFS has found are at least as protective of habitat functions as are the regulatory elements of the Forests and Fish Report dated April 29, 1999, and submitted to

the Forest Practices Board by a consortium of landowners, tribes, and state and Federal agencies.

(ii) All non-regulatory elements of the Forests and Fish Report are being implemented.

(iii) Actions involving use of herbicides, pesticides, or fungicides are not included within this limit.

(iv) Actions taken under alternative plans are included in this limit provided that the Washington Department of Natural Resources (WDNR) finds that the alternate plans protect physical and biological processes at least as well as the state forest practices rules and provided that NMFS, or any resource agency or tribe NMFS designates, has the opportunity to review the plan at every stage of the development and implementation. A plan may be excluded from this limit if, after such review, WDNR determines that the plan is not likely to adequately protect listed salmon.

(v) Prior to determining that regulations adopted by the Forest Practice Board are at least as protective as the elements of the Forests and Fish Report, NMFS will publish notification in the FEDERAL REGISTER announcing the availability of the Report and regulations for public review and comment.

(vi) NMFS finds the activities to be consistent with the conservation of listed salmonids' habitat by contributing to the attainment and maintenance of PFC. NMFS defines PFC as the sustained presence of a watershed's natural habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Programs must meet this biological standard in order for NMFS to find they qualify for a habitat-related limit. NMFS uses the best available science to make these determinations. NMFS may review and revise previous findings as new scientific information becomes available. NMFS will evaluate the effectiveness of the program in maintaining and achieving habitat function that pro-

vides for conservation of the listed salmonids. If the program is not adequate, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If Washington does not make changes to respond adequately to the new information, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit on activities associated with the program. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) take prohibitions.

(vii) NMFS approval of regulations shall be a written approval by NMFS Northwest Regional Administrator.

(c) *Affirmative Defense.* In connection with any action alleging a violation of the prohibitions of paragraph (a) of this section with respect to the threatened species of salmonids listed in § 223.102(a), any person claiming the benefit of any limit listed in paragraph (b) of this section or § 223.204(a) shall have a defense where the person can demonstrate that the limit is applicable and was in force, and that the person fully complied with the limit at the time of the alleged violation. This defense is an affirmative defense that must be raised, pleaded, and proven by the proponent. If proven, this defense will be an absolute defense to liability under section 9(a)(1)(G) of the ESA with respect to the alleged violation.

(d) *Severability.* The provisions of this section and the various applications thereof are distinct and severable from one another. If any provision or the application thereof to any person or circumstances is stayed or determined to be invalid, such stay or invalidity shall not affect other provisions, or the application of such provisions to other persons or circumstances, which can be given effect without the stayed or invalid provision or application.

§ 223.204

APPENDIX A TO § 223.203—LIST OF GUIDANCE DOCUMENTS

The following is a list of documents cited in the regulatory text. Copies of these documents may be obtained upon request from the Northwest or Southwest Regional Administrators (see Table 1 in § 600.502 of this title).

- 1. Oregon Department of Transportation (ODOT) Maintenance Management System Water Quality and Habitat Guide (July, 1999).
2. Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act.
3. Fish Screening Criteria for Anadromous Salmonids, National Marine Fisheries Service, Southwest Region, 1997.
4. Viable Salmonid Populations and the Recovery of Evolutionarily Significant Units. (June 2000).

[65 FR 42475, July 10, 2000, as amended at 67 FR 1129, Jan. 9, 2002; 67 FR 68725, Nov. 12, 2002; 70 FR 37202, 37203, June 28, 2005; 71 FR 5180, Feb. 1, 2006; 73 FR 7843, Feb. 11, 2008]

EFFECTIVE DATE NOTE: At 73 FR 55455, Sept. 25, 2008, § 223.203 was amended by revising (a), (b) introductory text, and (b)(2), effective Oct. 27, 2008. For the convenience of the user, the revised text is set forth as follows:

§ 223.203 Anadromous fish.

* * * * *

(a) Prohibitions. The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to fish with an intact adipose fin that are part of the threatened species of salmonids listed in § 223.102(c)(3) through (c)(24).

(b) Limits on the prohibitions. The limits to the prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(c)(3) through (c)(24) are described in the following paragraphs (b)(1) through (b)(13):

* * * * *

(2) The prohibitions of paragraph (a) of this section relating to threatened Puget Sound steelhead listed in § 223.102(c)(23) do not apply to:

(i) Activities specified in an application for a permit for scientific purposes or to enhance the conservation or survival of the species, provided that the application has been received by the Assistant Administrator for Fisheries, NOAA (AA), no later than November 14, 2008. The prohibitions of this section apply to these activities upon the AA's rejection of the application as insufficient, upon issuance or denial of a per-

mit, or June 1, 2009, whichever occurs earliest, or

(ii) Steelhead harvested in tribal or recreational fisheries prior to June 1, 2009, so long as the harvest is authorized by the State of Washington or a tribe with jurisdiction over steelhead harvest. If NMFS does not receive a fishery management plan for Puget Sound steelhead by November 14, 2008, subsequent take by harvest will be subject to the take prohibitions.

* * * * *

§ 223.204 Tribal plans.

(a) Limits on the prohibitions. The prohibitions of § 223.203(a) of this subpart relating to threatened species of salmonids listed in § 223.102 do not apply to any activity undertaken by a tribe, tribal member, tribal permittee, tribal employee, or tribal agent in compliance with a Tribal resource management plan (Tribal Plan), provided that the Secretary determines that implementation of such Tribal Plan will not appreciably reduce the likelihood of survival and recovery of the listed salmonids. In making that determination the Secretary shall use the best available biological data (including any tribal data and analysis) to determine the Tribal Plan's impact on the biological requirements of the species, and will assess the effect of the Tribal Plan on survival and recovery, consistent with legally enforceable tribal rights and with the Secretary's trust responsibilities to tribes.

(b) Consideration of a Tribal Plan. (1) A Tribal Plan may include but is not limited to plans that address fishery harvest, artificial production, research, or water or land management, and may be developed by one tribe or jointly with other tribes. The Secretary will consult on a government-to-government basis with any tribe that so requests and will provide to the maximum extent practicable technical assistance in examining impacts on listed salmonids and other salmonids as tribes develop Tribal resource management plans that meet the management responsibilities and needs of the tribes. A Tribal Plan must specify the procedures by which the tribe will enforce its provisions.

(2) Where there exists a Federal court proceeding with continuing jurisdiction over the subject matter of a Tribal

Plan, the plan may be developed and implemented within the ongoing Federal Court proceeding. In such circumstances, compliance with the Tribal Plan's terms shall be determined within that Federal Court proceeding.

(3) The Secretary shall seek comment from the public on the Secretary's pending determination whether or not implementation of a Tribal Plan will appreciably reduce the likelihood of survival and recovery of the listed salmonids.

(4) The Secretary shall publish notification in the FEDERAL REGISTER of any determination regarding a Tribal Plan and the basis for that determination.

[65 FR 42485, July 10, 2000. Redesignated at 70 FR 37203, June 28, 2005]

§ 223.205 Sea turtles.

(a) The prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to threatened species of sea turtle, except as provided in § 223.206.

(b) Except as provided in § 223.206, it is unlawful for any person subject to the jurisdiction of the United States to do any of the following:

(1) Own, operate, or be on board a vessel, except if that vessel is in compliance with all applicable provisions of § 223.206(d);

(2) Fish for, catch, take, harvest, or possess, fish or wildlife while on board a vessel, except if that vessel is in compliance with all applicable provisions of § 223.206(d);

(3) Fish for, catch, take, harvest, or possess, fish or wildlife contrary to any notice of tow-time or other restriction specified in, or issued under, § 223.206(d)(3) or (d)(4);

(4) Possess fish or wildlife taken in violation of paragraph (b) of this section;

(5) Fail to follow any of the sea turtle handling and resuscitation requirements specified in § 223.206(d)(1);

(6) Possess a sea turtle in any manner contrary to the handling and resuscitation requirements of § 223.206(d)(1);

(7) Fail to comply immediately, in the manner specified at § 600.730 (b) through (d) of this Title, with instructions and signals specified therein issued by an authorized officer, includ-

ing instructions and signals to haul back a net for inspection;

(8) Refuse to allow an authorized officer to board a vessel, or to enter an area where fish or wildlife may be found, for the purpose of conducting a boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;

(9) Destroy, stave, damage, or dispose of in any manner, fish or wildlife, gear, cargo, or any other matter after a communication or signal from an authorized officer, or upon the approach of such an officer or of an enforcement vessel or aircraft, before the officer has an opportunity to inspect same, or in contravention of directions from the officer;

(10) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere with an authorized officer in the conduct of any boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;

(11) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person committed an act prohibited by this section;

(12) Resist a lawful arrest for an act prohibited by this section;

(13) Make a false statement, oral or written, to an authorized officer or to the agency concerning the fishing for, catching, taking, harvesting, landing, purchasing, selling, or transferring fish or wildlife, or concerning any other matter subject to investigation under this section by such officer, or required to be submitted under this part 223;

(14) Sell, barter, trade or offer to sell, barter, or trade, a TED that is not an approved TED;

(15) Fail to comply with the restrictions set forth in § 223.206(d)(10) regarding pound net leaders;

(16) Fail to comply with the restrictions set forth in § 223.206(d)(11) regarding sea scallop dredges; or

(17) Attempt to do, solicit another to do, or cause to be done, any of the foregoing.

(c) In connection with any action alleging a violation of this section, any person claiming the benefit of any exemption, exception, or permit under

this subpart B has the burden of proving that the exemption, exception, or permit is applicable, was granted, and was valid and in force at the time of the alleged violation. Further, any person claiming that a modification made to a TED that is the subject of such an action complies with the requirements of § 223.207 (c) or (d) has the burden of proving such claim.

[64 FR 14069, Mar. 23, 1999, as amended at 67 FR 41203, June 17, 2002; 69 FR 25012, May 5, 2004; 71 FR 50372, Aug. 25, 2006]

§ 223.206 Exceptions to prohibitions relating to sea turtles.

(a) *Permits*—(1) *Scientific research, education, zoological exhibition, or species enhancement permits.* The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under § 223.205(a) for scientific or educational purposes, for zoological exhibition, or to enhance the propagation or survival of threatened species of sea turtles, in accordance with and subject to the conditions of part 222, subpart C—General Permit Procedures.

(2) *Incidental-take permits.* The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited under § 223.205(a) in accordance with section 10(a)(1)(B) of the Act (16 U.S.C. 1539(a)(1)(B)), and in accordance with, and subject to, the implementing regulations in part 222 of this chapter. Such permits may be issued for the incidental taking of threatened and endangered species of sea turtles.

(b) *Exception for injured, dead, or stranded specimens.* If any member of any threatened species of sea turtle is found injured, dead, or stranded, any agent or employee of the National Marine Fisheries Service, the Fish and Wildlife Service, the U.S. Coast Guard, or any other Federal land or water management agency, or any agent or employee of a state agency responsible for fish and wildlife who is designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take such specimens without a permit if such taking is necessary to aid a sick, injured, or stranded specimen or dispose of a dead specimen or salvage a dead specimen

which may be useful for scientific study. Whenever possible, live specimens shall be returned to their aquatic environment as soon as possible. Every action shall be reported in writing to the Assistant Administrator within 30 days, and reports of further occurrence shall be made as deemed appropriate by the Assistant Administrator until the specimen is either returned to its environment or disposed of. Reports shall be mailed by registered or certified mail, return receipt requested, to the Assistant Administrator and shall contain the following information:

- (1) Name and position of the official or employee involved;
- (2) Description of the specimen(s) involved;
- (3) Date and location of disposal;
- (4) Circumstances requiring the action;
- (5) Method of disposal;
- (6) Disposition of the specimen(s), including, where the specimen(s) has been retained in captivity, a description of the place and means of confinement, and the measures taken for its maintenance and care; and
- (7) Such other information as the Assistant Administrator may require.

(c) *Exception for research or conservation.* Any employee or agent of the National Marine Fisheries Service, the Fish and Wildlife Service, or a state fish and wildlife agency operating a conservation program pursuant to the terms of a Cooperative Agreement with the National Marine Fisheries Service or the Fish and Wildlife Service in accordance with section 6(c) of the Act, designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take any threatened species to carry out scientific research or conservation programs. All such takings shall be reported within 30 days of the taking to the Assistant Administrator who may request additional reports of the taking and research at the Assistant Administrator's discretion.

(d) *Exception for incidental taking.* The prohibitions against taking in § 223.205(a) do not apply to the incidental take of any member of a threatened species of sea turtle (i.e., a take not directed towards such member)

during fishing or scientific research activities, to the extent that those involved are in compliance with all applicable requirements of paragraphs (d)(1) through (d)(11) of this section, or in compliance with the terms and conditions of an incidental take permit issued pursuant to paragraph (a)(2) of this section.

(1) *Handling and resuscitation requirements.* (i) Any specimen taken incidentally during the course of fishing or scientific research activities must be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water according to the following procedures:

(A) Sea turtles that are actively moving or determined to be dead as described in paragraph (d)(1)(i)(C) of this section must be released over the stern of the boat. In addition, they must be released only when fishing or scientific collection gear is not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels.

(B) Resuscitation must be attempted on sea turtles that are comatose, or inactive, as determined in paragraph (d)(1) of this section, by:

(1) Placing the turtle on its bottom shell (plastron) so that the turtle is right side up and elevating its hindquarters at least 6 inches (15.2 cm) for a period of 4 up to 24 hours. The amount of the elevation depends on the size of the turtle; greater elevations are needed for larger turtles. Periodically, rock the turtle gently left to right and right to left by holding the outer edge of the shell (carapace) and lifting one side about 3 inches (7.6 cm) then alternate to the other side. Gently touch the eye and pinch the tail (reflex test) periodically to see if there is a response.

(2) Sea turtles being resuscitated must be shaded and kept damp or moist but under no circumstance be placed into a container holding water. A water-soaked towel placed over the head, carapace, and flippers is the most effective method in keeping a turtle moist.

(3) Sea turtles that revive and become active must be released over the stern of the boat only when fishing or scientific collection gear is not in use,

when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels. Sea turtles that fail to respond to the reflex test or fail to move within 4 hours (up to 24, if possible) must be returned to the water in the same manner as that for actively moving turtles.

(C) A turtle is determined to be dead if the muscles are stiff (rigor mortis) and/or the flesh has begun to rot; otherwise the turtle is determined to be comatose or inactive and resuscitation attempts are necessary.

(ii) In addition to the provisions of paragraph (d)(1)(i) of this section, a person aboard a vessel in the Atlantic, including the Caribbean Sea and the Gulf of Mexico, that has pelagic or bottom longline gear on board and that has been issued, or is required to have, a limited access permit for highly migratory species under §635.4 of this title, must comply with the handling and release requirements specified in §635.21 of this title.

(iii) Any specimen taken incidentally during the course of fishing or scientific research activities must not be consumed, sold, landed, offloaded, transshipped, or kept below deck.

(2) *Gear requirements for trawlers—(i) TED requirement for shrimp trawlers.* Any shrimp trawler that is in the Atlantic Area or Gulf Area must have an approved TED installed in each net that is rigged for fishing. A net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to any trawl door or board, or to any tow rope, cable, pole or extension, either on board or attached in any manner to the shrimp trawler. Exceptions to the TED requirement for shrimp trawlers are provided in paragraph (d)(2)(ii) of this section.

(ii) *Exemptions from the TED requirement—(A) Alternative tow-time restrictions.* A shrimp trawler is exempt from the TED requirements of paragraph (d)(2)(i) of this section if it complies with the alternative tow-time restrictions in paragraph (d)(3)(i) of this section and if it:

(1) Has on board no power or mechanical-advantage trawl retrieval system (i.e., any device used to haul any part of the net aboard);

(2) Is a bait shrimper that retains all live shrimp on board with a circulating seawater system, if it does not possess more than 32 lb. (14.5 kg) of dead shrimp on board, if it has a valid original state bait-shrimp license, and if the state license allows the licensed vessel to participate in the bait shrimp fishery exclusively;

(3) Has only a pusher-head trawl, skimmer trawl, or wing net rigged for fishing;

(4) Is in an area during a period for which tow-time restrictions apply under paragraphs (d)(3)(ii) or (iii) of this section, if it complies with all applicable provisions imposed under those paragraphs; or

(5) Is using a single test net (try net) with a headrope length of 12 ft (3.6 m) or less and with a footrope length of 15 ft (4.6 m) or less, if it is pulled immediately in front of another net or is not connected to another net in any way, if no more than one test net is used at a time, and if it is not towed as a primary net, in which case the exemption under this paragraph (d)(2)(ii)(A) applies to the test net.

(B) *Exempted gear or activities.* The following fishing gear or activities are exempted from the TED requirements of paragraph (d)(2)(i) of this section:

(1) A beam or roller trawl, if the frame is outfitted with rigid vertical bars, and if none of the spaces between the bars, or between the bars and the frame, exceeds 4 inches (10.2 cm); and

(2) A shrimp trawler fishing for, or possessing, royal red shrimp, if royal red shrimp constitutes at least 90 percent (by weight) of all shrimp either found on board, or offloaded from that shrimp trawler.

(iii) *Gear requirement—summer flounder trawlers—(A) TED requirement.* (1) Any summer flounder trawler in the summer flounder fishery-sea turtle protection area must have an approved TED installed in each net that is rigged for fishing. A net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to any trawl door or board, or to any tow rope, cable, pole or extension, either on board or attached in any manner to the summer flounder trawler. Exceptions to the TED requirement for summer flounder trawlers are provided

in paragraph (d)(2)(iii)(B) of this section.

(2) Any approved hard TED or special hard TED installed in a summer flounder trawl must be installed in a TED extension. The TED extension is a cylindrical piece of webbing distinct from the main trawl's body, wings, codend, and any other net extension(s). The TED extension must be constructed of webbing no larger than 3.5 inch (8.9 cm) stretched mesh. The TED extension must extend at least 24 inches (61.0 cm) but not more than 36 inches (91.4 cm) forward of the leading edge of the TED and aft of the trailing edge of the grid.

(B) *Exemptions from the TED requirement.* Any summer flounder trawler north of 35°46.1' N. lat. (Oregon Inlet, NC) from January 15 through March 15 annually is exempt from the TED requirement of paragraph (d)(2)(iii)(A) of this section, unless the Assistant Administrator determines that TED use is necessary to protect sea turtles or ensure compliance, pursuant to the procedures of paragraph (d)(4) of this section.

(C) *Monitoring.* Summer flounder trawlers must carry onboard a NMFS-approved observer if requested by the Southeast Regional Administrator or the Northeast Regional Administrator. A written notification will be sent to the address specified for the vessel in either the NMFS or state fishing permit application, or to the address specified for registration or documentation purposes, or upon written notification otherwise served on the owner or operator of the vessel. Owners and operators must comply with the terms and conditions specified in such written notification. All NMFS-approved observers will report any violations of this section, or other applicable regulations and laws. Information collected by observers may be used for enforcement purposes.

(D) *Additional sea turtle conservation measures.* The Assistant Administrator may impose other such restrictions upon summer flounder trawlers as the Assistant Administrator deems necessary or appropriate to protect sea turtles and ensure compliance, pursuant to the procedures of paragraph (d)(4) of this section. Such measures may include, but are not limited to, a

requirement to use TEDs in areas other than summer flounder fishery-sea turtle protection area, a requirement to use limited tow-times, and closure of the fishery.

(3) *Tow-time restrictions*—(i) *Duration of tows*. If tow-time restrictions are utilized pursuant to paragraph (d)(2)(ii), (d)(3)(ii), or (d)(3)(iii) of this section, a shrimp trawler must limit tow times. The tow time is measured from the time that the trawl door enters the water until it is removed from the water. For a trawl that is not attached to a door, the tow time is measured from the time the codend enters the water until it is removed from the water. Tow times may not exceed:

(A) 55 minutes from April 1 through October 31; and

(B) 75 minutes from November 1 through March 31.

(ii) *Alternative—special environmental conditions*. The Assistant Administrator may allow compliance with tow-time restrictions, as an alternative to the TED requirement of paragraph (d)(2)(i) of this section, if the Assistant Administrator determines that the presence of algae, seaweed, debris or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable.

(iii) *Substitute—ineffectiveness of TEDs*. The Assistant Administrator may require compliance with tow-time restrictions, as a substitute for the TED requirement of paragraph (d)(2)(i) of this section, if the Assistant Administrator determines that TEDs are ineffective in protecting sea turtles.

(iv) *Notice; applicability; conditions*. The Assistant Administrator will publish notification concerning any tow-time restriction imposed under paragraph (d)(3)(ii) or (iii) of this section in the FEDERAL REGISTER and will announce it in summary form on channel 16 of the marine VHF radio. A notification of tow-time restrictions will include findings in support of these restrictions as an alternative to, or as substitute for, the TED requirements. The notification will specify the effective dates, the geographic area where tow-time restrictions apply, and any applicable conditions or restrictions that the Assistant Administrator determines are necessary or appropriate

to protect sea turtles and ensure compliance, including, but not limited to, a requirement to carry observers, to register vessels in accordance with procedures at paragraph (d)(5) of this section, or for all shrimp trawlers in the area to synchronize their tow times so that all trawl gear remains out of the water during certain times. A notification withdrawing tow-time restrictions will include findings in support of that action.

(v) *Procedures*. The Assistant Administrator will consult with the appropriate fishery officials (state or Federal) where the affected shrimp fishery is located in issuing a notification concerning tow-time restrictions. An emergency notification can be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each if the Assistant Administrator finds that the conditions necessitating the imposition of tow-time restrictions continue to exist. The Assistant Administrator may invite comments on such an action, and may withdraw or modify the action by following procedures similar to those for implementation. The Assistant Administrator will implement any permanent tow-time restriction through rule-making.

(4) *Limitations on incidental takings during fishing activities*—(i) *Limitations*. The exemption for incidental takings of sea turtles in paragraph (d) of this section does not authorize incidental takings during fishing activities if the takings:

(A) Would violate the restrictions, terms, or conditions of an incidental take statement or biological opinion;

(B) Would violate the restrictions, terms, or conditions of an incidental take permit; or

(C) May be likely to jeopardize the continued existence of a species listed under the Act.

(ii) *Determination; restrictions on fishing activities*. The Assistant Administrator may issue a determination that incidental takings during fishing activities are unauthorized. Pursuant thereto, the Assistant Administrator may restrict fishing activities in order to conserve a species listed under the Act, including, but not limited to, restrictions on the fishing activities of

vessels subject to paragraph (d)(2) of this section. The Assistant Administrator will take such action if the Assistant Administrator determines that restrictions are necessary to avoid unauthorized takings that may be likely to jeopardize the continued existence of a listed species. The Assistant Administrator may withdraw or modify a determination concerning unauthorized takings or any restriction on fishing activities if the Assistant Administrator determines that such action is warranted.

(iii) *Notice; applicability; conditions.* The Assistant Administrator will publish a notification of a determination concerning unauthorized takings or a notification concerning the restriction of fishing activities in the FEDERAL REGISTER. The Assistant Administrator will provide as much advance notice as possible, consistent with the requirements of the Act, and will announce the notification in summary form on channel 16 of the marine VHF radio. Notification of a determination concerning unauthorized takings will include findings in support of that determination; specify the fishery, including the target species and gear used by the fishery, the area, and the times, for which incidental takings are not authorized; and include such other conditions and restrictions as the Assistant Administrator determines are necessary or appropriate to protect sea turtles and ensure compliance. Notification of restriction of fishing activities will include findings in support of the restriction, will specify the time and area where the restriction is applicable, and will specify any applicable conditions or restrictions that the Assistant Administrator determines are necessary or appropriate to protect sea turtles and ensure compliance. Such conditions and restrictions may include, but are not limited to, limitations on the types of fishing gear that may be used, tow-time restrictions, alteration or extension of the periods of time during which particular tow-time requirements apply, requirements to use TEDs, registration of vessels in accordance with procedures at paragraph (d)(5) of this section, and requirements to provide observers. Notification of withdrawal or modification will in-

clude findings in support of that action.

(iv) *Procedures.* The Assistant Administrator will consult with the appropriate fisheries officials (state or Federal) where the fishing activities are located in issuing notification of a determination concerning unauthorized takings or notification concerning the restriction of fishing activities. An emergency notification will be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each, except that emergency placement of observers will be effective for a period of up to 180 days and may be renewed for an additional period of 60 days. The Assistant Administrator may invite comments on such action, and may withdraw or modify the action by following procedures similar to those for implementation. The Assistant Administrator will implement any permanent determination or restriction through rulemaking.

(5)-(6) [Reserved]

(7) Restrictions applicable to gillnet fisheries in North Carolina. No person may fish with gillnet fishing gear which has a stretched mesh size larger than 4 ¼ inches (10.8 cm), annually from September 1 through December 15, in the inshore waters of Pamlico Sound, North Carolina, and all contiguous tidal waters, bounded on the north by 35°46.3' N. lat., on the south by 35°00' N. lat., and on the west by 76°30' W. long.

(8) *Restrictions applicable to large mesh gillnet fisheries in the mid-Atlantic region.* No person may fish with or possess on board a boat, any gillnet with a stretched mesh size 7-inches (17.8 cm) or larger, unless such gillnets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck or the rail, and all buoys larger than 6-inches (15.2 cm) in diameter, high flyers, and anchors are disconnected. This restriction applies in the Atlantic Exclusive Economic Zone (as defined in 50 CFR 600.10) during the following time periods and in the following area:

(i) Waters north of 33° 51.0' N. (North Carolina/South Carolina border at the coast) and south of 35° 46.0' N. (Oregon Inlet) at any time;

(ii) Waters north of 35° 46.0' N. (Oregon Inlet) and south of 3° 22.5' N. (Currituck Beach Light, NC) from March 16 through January 14;

(iii) Waters north of 36° 22.5' N. (Currituck Beach Light, NC) and south of 37° 34.6' N. (Wachapreague Inlet, VA) from April 1 through January 14; and

(iv) Waters north of 37° 34.6' N. (Wachapreague Inlet, VA) and south of 37° 56.0' N. (Chincoteague, VA) from April 16 through January 14.

(9) *Restrictions applicable to Pacific pelagic longline vessels.* In addition to the general prohibitions specified in § 600.725 of Chapter VI, it is unlawful for any person who is not operating under a western Pacific longline permit under § 660.21 to do any of the following on the high seas of the Pacific Ocean east of 150° W. long. and north of the equator (0° N. lat.):

(i) Direct fishing effort toward the harvest of swordfish (*Xiphias gladius*) using longline gear.

(ii) Possess a light stick on board a longline vessel. A light stick as used in this paragraph is any type of light emitting device, including any fluorescent *glow bead*, chemical, or electrically powered light that is affixed underwater to the longline gear.

(iii) An operator of a longline vessel subject to this section may land or possess no more than 10 swordfish from a fishing trip where any part of the trip included fishing east of 150° W. long. and north of the equator (0° N. lat.).

(iv) Fail to employ basket-style longline gear such that the mainline is deployed slack when fishing.

(v) When a conventional monofilament longline is deployed by a vessel, no fewer than 15 branch lines may be set between any two floats. Vessel operators using basket-style longline gear must set a minimum of 10 branch lines between any 2 floats.

(vi) Longline gear must be deployed such that the deepest point of the main longline between any two floats, i.e., the deepest point in each sag of the main line, is at a depth greater than 100 m (328.1 ft or 54.6 fm) below the sea surface.

(10) *Restrictions applicable to pound nets in Virginia*—(i) *Offshore pound net leaders in Pound Net Regulated Area I.* During the time period of May 6

through July 15 each year, any offshore pound net leader in Pound Net Regulated Area I must meet the definition of a modified pound net leader. Any offshore pound net leader in Pound Net Regulated Area I that does not meet the definition of a modified pound net leader must be removed from the water prior to May 6 and may not be reset until July 16.

(ii) *Nearshore pound net leaders in Pound Net Regulated Area I and all pound net leaders in Pound Net Regulated Area II.* During the time period of May 6 to July 15 each year, any nearshore pound net leader in Pound Net Regulated Area I and any pound net leader in Pound Net Regulated Area II must have only mesh size less than 12 inches (30.5 cm) stretched mesh and may not employ stringers. Any nearshore pound net leader in Pound Net Regulated Area I or any pound net leader in Pound Net Regulated Area II with stretched mesh measuring 12 inches (30.5 cm) or greater, or with stringers, must be removed from the water prior to May 6 and may not be reset until July 16. A pound net leader is exempt from these measures only if it meets the definition of a modified pound net leader.

(iii) *Protocol for measuring mesh size.* This protocol applies to measuring mesh size in leaders described in 50 CFR 223.206(d)(10)(i) and 223.206(d)(10)(ii). Mesh sizes are measured by a wedge-shaped gauge having a taper of 0.79 in. (2 cm) in 3.15 in. (8 cm) and a thickness of 0.09 in. (2.3 mm) inserted into the meshes under a pressure or pull of 11.02 lb. (5 kg). The mesh size is the average of the measurement of any series of 20 consecutive meshes. The mesh in the leader is measured at or near the horizontal and vertical center of a leader panel.

(iv) *Reporting requirement.* At any time during the year, if a sea turtle is taken live and uninjured in a pound net operation, the operator of the vessel must report the incident to the NMFS Northeast Regional Office, (978) 281-9328 or fax (978) 281-9394, within 24 hours of returning from the trip in which the incidental take was discovered. The report shall include a description of the sea turtles condition at the time of release and the measures

taken as required in paragraph (d)(1) of this section. At any time during the year, if a sea turtle is taken in a pound net operation, and is determined to be injured, or if a turtle is captured dead, the operator of the vessel shall immediately notify NMFS Northeast Regional Office and the appropriate rehabilitation or stranding network, as determined by NMFS Northeast Regional Office.

(v) *Monitoring.* Owners or operators of pound net fishing operations must allow access to the pound net gear so it may be observed by a NMFS-approved observer if requested by the Northeast Regional Administrator. All NMFS-approved observers will report any violations of this section, or other applicable regulations and laws. Information collected by observers may be used for law enforcement purposes.

(vi) *Expedited modification of restrictions and effective dates.* From May 6 to July 15 of each year, if NMFS receives information that one sea turtle is entangled alive or that one sea turtle is entangled dead, and NMFS determines that the entanglement contributed to its death, in pound net leaders that are in compliance with the restrictions described in paragraph (d)(10)(ii) of this section, NMFS may issue a final rule modifying the restrictions on pound net leaders as necessary to protect threatened sea turtles. Such modifications may include, but are not limited to, reducing the maximum allowable mesh size of pound net leaders and prohibiting the use of pound net leaders regardless of mesh size. In addition, if information indicates that a significant level of sea turtle entanglements, impingements or strandings will likely continue beyond July 15, NMFS may issue a final rule extending the effective date of the restrictions, including any additional restrictions imposed under this paragraph (d)(10)(vi), for an additional 15 days, but not beyond July 30, to protect threatened sea turtles.

(11) *Restrictions applicable to sea scallop dredges in the mid-Atlantic*—(i) Gear Modification. During the time period of May 1 through November 30, any vessel with a sea scallop dredge and required to have a Federal Atlantic sea scallop fishery permit, regardless of dredge size or vessel permit category, that en-

ters waters south of 41°9.0' N. latitude, from the shoreline to the outer boundary of the Exclusive Economic Zone must have on each dredge a chain mat described as follows. The chain mat must be composed of horizontal (“tickler”) chains and vertical (up-and-down) chains that are configured such that the openings formed by the intersecting chains have no more than 4 sides. The length of each side of the openings formed by the intersecting chains, including the sweep, must be less than or equal to 14 inches (35.5 cm). The chains must be connected to each other with a shackle or link at each intersection point. The measurement must be taken along the chain, with the chain held taut, and include one shackle or link at the intersection point and all links in the chain up to, but excluding, the shackle or link at the other intersection point.

(ii) Any vessel that enters the waters described in paragraph (d)(11)(i) of this section and that is required to have a Federal Atlantic sea scallop fishery permit must have the chain mat configuration installed on all dredges for the duration of the trip.

(iii) Vessels subject to the requirements in paragraphs (d)(11)(i) and (d)(11)(ii) of this section transiting waters south of 41°9.0' N. latitude, from the shoreline to the outer boundary of the Exclusive Economic Zone, will be exempted from the chain-mat requirements provided the dredge gear is stowed in accordance with § 648.23(b) and there are no scallops on-board.

[64 FR 14070, Mar. 23, 1999, as amended at 64 FR 55863, Oct. 15, 1999; 66 FR 1603, Jan. 9, 2001; 66 FR 44551, Aug. 24, 2001; 66 FR 50354, Oct. 3, 2001; 66 FR 52362, Oct. 15, 2001; 66 FR 67496, Dec. 31, 2001; 67 FR 13101, Mar. 21, 2002; 67 FR 41203, June 17, 2002; 67 FR 56934, Sept. 6, 2002; 67 FR 71899, Dec. 3, 2002; 67 FR 78392, Dec. 24, 2002; 68 FR 8467, Feb. 21, 2003; 68 FR 41945, July 16, 2003; 68 FR 69967, Dec. 16, 2003; 69 FR 11545, Mar. 11, 2004; 69 FR 25012, May 5, 2004; 69 FR 18453, Apr. 7, 2004; 69 FR 40753, July 6, 2004; 71 FR 24796, Apr. 26, 2006; 71 FR 36033, June 23, 2006; 71 FR 50372, Aug. 25, 2006; 71 FR 66468, Nov. 15, 2006; 72 FR 5641, Feb. 7, 2007; 72 FR 43186, Aug. 3, 2007; 73 FR 19000, Apr. 8, 2008]

EFFECTIVE DATE NOTES: 1. At 64 FR 14070, Mar. 23, 1999, newly redesignated § 223.206 was

revised. Paragraph (d)(5) contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

2. At 67 FR 41203, June 17, 2002, § 223.206 was amended by adding paragraph (d)(2)(v). Paragraph (d)(2)(v)(C) contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 223.207 Approved TEDs.

Any netting, webbing, or mesh that may be measured to determine compliance with this section is subject to measurement, regardless of whether it is wet or dry. Any such measurement will be of the stretched mesh size.

(a) *Hard TEDs.* Hard TEDs are TEDs with rigid deflector grids and are categorized as “hooped hard TEDs” and “single-grid hard TEDs” such as the Matagorda and Georgia TED (Figures 3 & 4 to this part). Hard TEDs complying with the following generic design criteria are approved TEDs:

(1) *Construction materials*—(i) *Single-grid and inshore hooped hard TED.* A single-grid hard TED or an inshore hooped hard TED must be constructed of one or a combination of the following materials, with minimum dimensions as follows:

(A) Solid steel rod with a minimum outside diameter of 1/4 inch (0.64 cm);

(B) Fiberglass or aluminum rod with a minimum outside diameter of 1/2 inch (1.27 cm); or

(C) Steel or aluminum tubing with a minimum outside diameter of 1/2 inch (1.27 cm) and a minimum wall thickness of 1/8 inch (0.32 cm) (also known as schedule 40 tubing).

(ii) *Offshore hooped hard TED.* An offshore hooped hard TED must be constructed of aluminum, with minimum dimensions as follows:

(A) Solid rod with a minimum outside diameter of 5/8 inch (1.59 cm); or

(B) Tubing with a minimum outside diameter of 1 inch (2.54 cm) and a minimum wall thickness of 1/8 inch (0.32 cm).

(2) *Method of attachment.* A hard TED must be sewn into the trawl around the entire circumference of the TED with heavy twine.

(3) *Angle of deflector bars.* (i) The angle of the deflector bars must be be-

tween 30° and 55° from the normal, horizontal flow through the interior of the trawl, except as provided in paragraph (a)(3)(ii) of this section.

(ii) For any shrimp trawler fishing in the Gulf SFSTCA or the Atlantic SFSTCA, a hard TED with the position of the escape opening at the bottom of the net when the net is in its deployed position, the angle of the deflector bars from the normal, horizontal flow through the interior of the trawl, at any point, must not exceed 55°, and the angle of the bottom-most 4 inches (10.2 cm) of each deflector bar, measured along the bars, must not exceed 45° (Figures 14a and 14b to this part).

(4) *Space between bars.* The space between deflector bars and the deflector bars and the TED frame must not exceed 4 inches (10.2 cm).

(5) *Direction of bars.* The deflector bars must run from top to bottom of the TED, as the TED is positioned in the net, except that up to four of the bottom bars and two of the top bars, including the frame, may run from side to side of the TED. The deflector bars must be permanently attached to the TED frame or to the horizontal bars, if used, at both ends.

(6) *Position of the escape opening.* The escape opening must be made by removing a rectangular section of webbing from the trawl, except for a TED with an escape opening size described at paragraph (a)(7)(ii)(A) for which the escape opening may alternatively be made by making a horizontal cut along the same plane as the TED. The escape opening must be centered on and immediately forward of the frame at either the top or bottom of the net when the net is in the deployed position. The escape opening must be at the top of the net when the slope of the deflector bars from forward to aft is upward, and must be at the bottom when such slope is downward. The passage from the mouth of the trawl through the escape opening must be completely clear of any obstruction or modification, other than those specified in paragraph (d) of this section.

(7) *Size of escape opening*—(i) *Hooped hard TEDs*—(A) *Escape opening for inshore hooped hard TED.* The inshore hooped hard TED escape opening must have a horizontal measurement of no

less than 35 inches (89 cm) wide and a forward measurement of no less than 27 inches (69 cm). A hinged door frame may be used to partially cover the escape opening as provided in paragraph (d)(7) of this section. Alternatively, a webbing flap may be used as provided in paragraph (d)(3)(i) of this section. The resultant opening with a webbing flap must be a minimum width of 35 inches (89 cm) and a minimum height of 20 inches (51 cm), with each measurement taken simultaneously. This opening may only be used in inshore waters, except it may not be used in the inshore waters of Georgia and South Carolina.

(B) *Escape opening for offshore hooped hard TED.* The offshore hooped hard TED escape opening must have a horizontal measurement of no less than 40 inches (102 cm) wide and a forward measurement of no less than 35 inches (89 cm). A hinged door frame may be used to partially cover the escape opening as provided in paragraph (d)(7) of this section. Alternatively, a webbing flap may be used as provided in paragraph (d)(3)(ii) of this section. The resultant escape opening with a webbing flap must have a stretched mesh circumference of no less than 142 inches (361 cm).

(ii) *Single-grid hard TEDs.* On a single-grid hard TED, the horizontal cut(s) for the escape opening may not be narrower than the outside width of the TED frame minus 4 inches (10.2 cm) on both sides of the grid, when measured as a straight line width. Fore-and-aft cuts to remove a rectangular piece of webbing must be made from the ends of the horizontal cuts along a single row of meshes along each side. The overall size of the escape opening must match one of the following specifications:

(A) *44-inch inshore opening.* The escape opening must have a minimum width of 44 inches (112 cm) and a minimum height of 20 inches (51 cm) with each measurement taken separately. A webbing flap, as described in paragraph (d)(3)(i) of this section, may be used with this escape hole, so long as this minimum opening size is achieved. This opening may only be used in inshore waters, except it may not be used in the inshore waters of Georgia and South Carolina.

(B) *The 71-inch offshore opening:* The two forward cuts of the escape opening must not be less than 26 inches (66 cm) long from the points of the cut immediately forward of the TED frame. The resultant length of the leading edge of the escape opening cut must be no less than 71 inches (181 cm) with a resultant circumference of the opening being 142 inches (361 cm) (Figure 12 to this part). A webbing flap, as described in paragraph (d)(3)(ii) of this section, may be used with this escape hole, so long as this minimum opening size is achieved. Either this opening or the one described in paragraph (a)(7)(ii)(C) of this section must be used in all offshore waters and in all inshore waters in Georgia and South Carolina, but may also be used in other inshore waters.

(C) *Double cover offshore opening.* The two forward cuts of the escape opening must not be less than 20 inches (51 cm) long from the points of the cut immediately forward of the TED frame. The resultant length of the leading edge of the escape opening cut must be no less than 56 inches (142 cm) (Figure 16 to this part illustrates the dimensions of these cuts). A webbing flap, as described in paragraph (d)(3)(iii) of this section, may be used with this escape hole. Either this opening or the one described in paragraph (a)(7)(ii)(B) of this section must be used in all offshore waters but also in all inshore waters in Georgia and South Carolina, and may be used in other inshore waters.

(8) *Size of hoop or grid—(i) Hooped hard TED—(A) Inshore hooped hard TED.* The front hoop on an inshore hooped hard TED must have an inside horizontal measurement of at least 35 inches (89 cm) and an inside vertical measurement of at least 30 inches (76 cm). The minimum clearance between the deflector bars and the forward edge of the escape opening must be at least 20 inches (51 cm).

(B) *Offshore hooped hard TED.* The front hoop on an offshore hooped hard TED must have an inside horizontal measurement of at least 40 inches (102 cm) and an inside vertical measurement of at least 30 inches (76 cm). The minimum clearance between the deflector bars and the forward edge of the escape opening must be at least 23 1/4 inches (59 cm).

(ii) *Single-grid hard TED.* A single-grid hard TED must have a minimum outside horizontal and vertical measurement of 32 inches (81 cm). The required outside measurements must be at the mid-point of the deflector grid.

(9) *Flotation.* Floats must be attached to the top one-half of all hard TEDs with bottom escape openings. The floats may be attached either outside or inside the net, but not to a flap. Floats attached inside the net must be behind the rear surface of the TED. Floats must be attached with heavy twine or rope. Floats must be constructed of aluminum, hard plastic, expanded polyvinyl chloride, or expanded ethylene vinyl acetate unless otherwise specified. The requirements of this paragraph may be satisfied by compliance with either the dimension requirements of paragraph (a)(9)(i) of this section, or the buoyancy requirements of paragraph (a)(9)(ii) of this section, or the buoyancy-dimension requirements of paragraph (a)(9)(iii) of this section. If roller gear is used pursuant to paragraph (d)(5) of this section, the roller gear must be included in the circumference measurement of the TED or the total weight of the TED.

(i) *Float dimension requirements.* (A) For hard TEDs with a circumference of 120 inches (304.8 cm) or more, a minimum of either one round, aluminum or hard plastic float, no smaller than 9.8 inches (25.0 cm) in diameter, or two expanded polyvinyl chloride or expanded ethylene vinyl acetate floats, each no smaller than 6.75 inches (17.2 cm) in diameter by 8.75 inches (22.2 cm) in length, must be attached.

(B) For hard TEDs with a circumference of less than 120 inches (304.8 cm), a minimum of either one round, aluminum or hard plastic float, no smaller than 9.8 inches (25.0 cm) in diameter, or one expanded polyvinyl chloride or expanded ethylene vinyl acetate float, no smaller than 6.75 inches (17.2 cm) in diameter by 8.75 inches (22.2 cm) in length, must be attached.

(ii) *Float buoyancy requirements.* Floats of any size and in any combination must be attached such that the combined buoyancy of the floats, as marked on the floats, equals or exceeds the weight of the hard TED, as marked on the TED. The buoyancy of the floats

and the weight of the TED must be clearly marked on the floats and the TED as follows:

(A) *Float buoyancy markings.* Markings on floats must be made in clearly legible raised or recessed lettering by the original manufacturer. The marking must identify the buoyancy of the float in water, expressed in grams or kilograms, and must include the metric unit of measure. The marking may additionally include the buoyancy in English units. The marking must identify the nominal buoyancy for the manufactured float.

(B) *TED weight markings.* The marking must be made by the original TED manufacturer and must be permanent and clearly legible. The marking must identify the in-air, dry weight of the TED, expressed in grams or kilograms, and must include the metric unit of measure. The marking may additionally include the weight in English units. The marked weight must represent the actual weight of the individual TED as manufactured. Previously manufactured TEDs may be marked upon return to the original manufacturer. Where a TED is comprised of multiple detachable components, the weight of each component must be separately marked.

(iii) *Buoyancy-dimension requirements.* Floats of any size and in any combination, provided that they are marked pursuant to paragraph (a)(9)(ii)(A) of this section, must be attached such that the combined buoyancy of the floats equals or exceeds the following values:

(A) For floats constructed of aluminum or hard plastic, regardless of the size of the TED grid, the combined buoyancy must equal or exceed 14 lb (6.4 kg);

(B) For floats constructed of expanded polyvinyl chloride or expanded ethylene vinyl acetate, where the circumference of the TED is 120 inches (304.8 cm) or more, the combined buoyancy must equal or exceed 20 lb (9.1 kg); or

(C) For floats constructed of expanded polyvinyl chloride or expanded ethylene vinyl acetate, where the circumference of the TED is less than 120

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inches (304.8 cm), the combined buoyancy must equal or exceed 10 lb (4.5 kg).

(b) *Special Hard TEDs*. Special hard TEDs are hard TEDs which do not meet all of the design and construction criteria of the generic standards specified in paragraph (a) of this section. The following special hard TEDs are approved TEDs:

(1) *Flounder TED*. (Figure 10 to this part). The Flounder TED is approved for use only in the Atlantic summer flounder bottom trawl fishery. The Flounder TED is not an approved TED for use by shrimp trawlers. The Flounder TED must be constructed of at least 1 1/4 inch (3.2 cm) outside diameter aluminum or steel pipe with a wall thickness of at least 1/8 inch (0.3 cm). It must have a rectangular frame with outside dimensions which can be no less than 51 inches (129.5 cm) in length and 32 inches (81.3 cm) in width. It must have at least five vertical deflector bars, with bar spacings of no more than 4 inches (10.2 cm). The vertical bars must be connected to the top of the frame and to a single horizontal bar near the bottom. The horizontal bar must be connected at both ends to the sides of the frame and parallel to the bottom bar of the frame. There must be a space no larger than 10 inches (25.4 cm) between the horizontal bar and the bottom bar of the frame. One or more additional vertical bars running from the bottom bar to the horizontal bar must divide the opening at the bottom into two or more rectangles, each with a maximum height of 10 inches (25.4 cm) and a maximum width of 14 1/2 inches (36.8 cm). This TED must comply with paragraph (a)(2) of this section. The angle of the deflector bars must be between 30 and 55 from the normal, horizontal flow through the interior of the trawl. The entire width of the escape opening from the trawl must be centered on and immediately forward of the frame at the top of the net when the net is in its deployed position. The escape opening must be at the top of the net and the slope of the deflector bars from forward to aft is upward. The escape opening must be cut horizontally along the same plane as the TED, and may not be cut in a fore-and-aft direction. The cut

in the trawl webbing for the escape opening cannot be narrower than the outside width of the grid minus 4 inches (10.2 cm) on both sides of the grid, when measured as a straight line width. The resulting escape opening in the net webbing must measure at least 35 inches (88.9 cm) in horizontal taut length and, simultaneously, 12 inches (30.5 cm) in vertical taut height. The vertical measurement must be taken at the midpoint of the horizontal measurement. This TED may not be configured with a bottom escape opening. Installation of an accelerator funnel is not permitted with this TED.

(2) *Weedless TED*. The weedless TED must meet all the requirements of paragraph (a) of this section for single-grid hard TEDs, with the exception of paragraphs (a)(1) and (a)(5) of this section. The weedless TED must be constructed of at least 1-1/4 inch (3.2 cm) outside diameter aluminum with a wall thickness of at least 1/8 inch (0.3 cm). The deflector bars must run from top to bottom of the TED, as the TED is positioned in the net. The ends of the deflector bars on the side of the frame opposite to the escape opening must be permanently attached to the frame. The ends of the deflector bars nearest the escape opening are not attached to the frame and must lie entirely forward of the leading edge of the outer frame. The ends of the unattached deflector bars must be no more than 4 inches (10.2 cm) from the frame and may not extend past the frame. A horizontal brace bar to reinforce the deflector bars, constructed of the same size or larger pipe as the deflector bars, must be permanently attached to the frame and the rear face of each of the deflector bars at a position anywhere between the vertical mid-point of the frame and the unattached ends of the deflector bars. The horizontal brace bar may be offset behind the deflector bars, using spacer bars, not to exceed 5 inches (12.7 cm) in length and constructed of the same size or larger pipe as the deflector bars. See Figure 15.

(c) *Soft TEDs*. Soft TEDs are TEDs with deflector panels made from polypropylene or polyethylene netting. The following soft TEDs are approved TEDs:

(1) *Parker TED*. The Parker TED is a soft TED, consisting of a single triangular panel, composed of webbing of two different mesh sizes, that forms a complete barrier inside a trawl and that angles toward an escape opening in the top of the trawl.

(i) *Excluder Panel*. (Figure 5 to this part) The excluder panel of the Parker TED must be constructed of a single triangular piece of 8-inch (20.3 cm) stretched mesh webbing and two trapezoidal pieces of 4-inch (10.2-cm) stretched mesh webbing. The webbing must consist of number 48 (3-mm thick) or larger polypropylene or polyethylene webbing that is heat-set knotted or braided. The leading edge of the 8-inch (20.3-cm) mesh panel must be 36 meshes wide. The 8-inch (20.3-cm) mesh panel must be tapered on each side with all-bar cuts to converge on an apex, such that the length of each side is 36 bars. The leading edges of the 4-inch (10.2-cm) mesh panels must be 8 meshes wide. The edges of the 4-inch (10.2-cm) mesh panels must be cut with all-bar cuts running parallel to each other, such that the length of the inner edge is 72 bars and the length of the outer edge is 89 bars and the resulting fore-and-aft edge is 8 meshes deep. The two 4-inch (10.2-cm) mesh panels must be sewn to the 8-inch (20.3-cm) mesh panel to create a single triangular excluder panel. The 72-bar edge of each 4-inch (10.2-cm) mesh panel must be securely joined with twine to one of the 36-bar edges of the 8-inch (20.3-cm) mesh panel, tied with knots at each knot of the 4-inch (10.2-cm) webbing and at least two wraps of twine around each bar of 4-inch (10.2-cm) mesh and the adjoining bar of the 8-inch (20.3-cm) mesh. The adjoining fore-and-aft edges of the two 4-inch (10.2-cm) mesh panels must be sewn together evenly.

(ii) *Limitations on which trawls may have a Parker TED installed*. The Parker TED must not be installed or used in a two-seam trawl with a tongue, nor in a triple-wing trawl (a trawl with a tongue along the headrope and a second tongue along the footrope). The Parker TED may be installed and used in any other trawl if the taper of the body panels of the trawl does not exceed 4b1p and if it can be properly in-

stalled in compliance with paragraph (c)(1)(iii) of this section.

(iii) *Panel installation—(A) Leading edge attachment*. The leading edge of the excluder panel must be attached to the inside of the bottom of the trawl across a straight row of meshes. For a two-seam trawl or a four-seam, tapered-wing trawl, the row of meshes for attachment to the trawl must run the entire width of the bottom body panel, from seam to seam. For a four-seam, straight-wing trawl, the row of meshes for attachment to the trawl must run the entire width of the bottom body panel and half the height of each wing panel of the trawl. Every mesh of the leading edge of the excluder panel must be evenly sewn to this row of meshes; meshes may not be laced to the trawl. The row of meshes for attachment to the trawl must contain the following number of meshes, depending on the stretched mesh size used in the trawl:

(1) For a mesh size of 2¼ inches (5.7 cm), 152–168 meshes;

(2) For a mesh size of 2⅝ inches (5.4 cm), 161–178 meshes;

(3) For a mesh size of 2 inches (5.1 cm), 171–189 meshes;

(4) For a mesh size of 1⅞ inches (4.8 cm), 182–202 meshes;

(5) For a mesh size of 1¾ inches (4.4 cm), 196–216 meshes;

(6) For a mesh size of 1⅝ inches (4.1 cm), 211–233 meshes;

(7) For a mesh size of 1½ inches (3.8 cm), 228–252 meshes;

(8) For a mesh size of 1⅜ inches (3.5 cm), 249–275 meshes; and

(9) For a mesh size of 1¼ inches (3.2 cm), 274–302 meshes.

(B) *Apex attachment*. The apex of the triangular excluder panel must be attached to the inside of the top body panel of the trawl at the centerline of the trawl. The distance, measured aft along the centerline of the top body panel from the same row of meshes for attachment of the excluder panel to the bottom body panel of the trawl, to the apex attachment point must contain the following number of meshes, depending on the stretched mesh size used in the trawl:

(1) For a mesh size of 2¼ inches (5.7 cm), 78–83 meshes;

(2) For a mesh size of 2⅝ inches (5.4 cm), 83–88 meshes;

(3) For a mesh size of 2 inches (5.1 cm), 87-93 meshes;

(4) For a mesh size of 1 $\frac{7}{8}$ inches (4.8 cm), 93-99 meshes;

(5) For a mesh size of 1 $\frac{3}{4}$ inches (4.4 cm), 100-106 meshes;

(6) For a mesh size of 1 $\frac{5}{8}$ inches (4.1 cm), 107-114 meshes;

(7) For a mesh size of 1 $\frac{1}{2}$ inches (3.8 cm), 114-124 meshes;

(8) For a mesh size of 1 $\frac{3}{8}$ inches (3.5 cm), 127-135 meshes; and

(9) For a mesh size of 1 $\frac{1}{4}$ inches (3.2 cm), 137-146 meshes.

(C) *Side attachment.* The sides of the excluder panel must be attached evenly to the inside of the trawl from the outside attachment points of the excluder panel's leading edge to the apex of the excluder panel. Each side must be sewn with the same sewing sequence, and, if the sides of the excluder panel cross rows of bars in the trawl, the crossings must be distributed evenly over the length of the side attachment.

(iv) *Escape opening.* The escape opening for the Parker soft TED must match one of the following specifications:

(A) *Inshore opening.* This opening is the minimum size opening that may be used in inshore waters, except it may not be used in the inshore waters of Georgia and South Carolina, in which a larger minimum opening is required. A slit at least 56 inches (1.4 m) in taut length must be cut along the centerline of the top body panel of the trawl net immediately forward of the apex of the panel webbing. The slit must not be covered or closed in any manner. The edges and end points of the slit must not be reinforced in any way; for example, by attaching additional rope or webbing or by changing the orientation of the webbing.

(B) *Offshore opening.* A horizontal cut extending from the attachment of one side of the deflector panel to the trawl to the attachment of the other side of the deflector panel to the trawl must be made in a single row of meshes across the top of the trawl and measure at least 96 inches (244 cm) in taut width. All trawl webbing above the deflector panel between the 96-inch (244-cm) cut and edges of the deflector panel must be removed. A rectangular flap of nylon webbing not larger than 2-

inch (5.1-cm) stretched mesh may be sewn to the forward edge of the escape opening. The width of the flap must not be larger than the width of the forward edge of the escape opening. The flap must not extend more than 12 inches (30.4 cm) beyond the rear point of the escape opening. The sides of the flap may be attached to the top of the trawl but must not be attached farther aft than the row of meshes through the rear point of the escape opening. One row of steel chain not larger than $\frac{3}{16}$ inch (4.76 mm) may be sewn evenly to the back edge of the flap. The stretched length of the chain must not exceed 96 inches (244 cm). A Parker TED using the escape opening described in this paragraph meets the requirements of § 223.206(d)(2)(iv)(B). This opening or one that is larger must be used in all offshore waters and in the inshore waters of Georgia and South Carolina. It also may be used in other inshore waters.

(2) [Reserved]

(d) *Allowable modifications to hard TEDs and special hard TEDs.* Unless otherwise prohibited in paragraph (b) of this section, only the following modifications may be made to an approved hard TED or an approved special hard TED:

(1) *Floats.* In addition to floats required pursuant to paragraph (a)(9) of this section, floats may be attached to the top one-half of the TED, either outside or inside the net, but not to a flap. Floats attached inside the net must be behind the rear surface at the top of the TED.

(2) *Accelerator funnel.* An accelerator funnel may be installed in the trawl, if it is made of net webbing material with a stretched mesh size of not greater than 1 $\frac{5}{8}$ inches (4 cm), if it is inserted in the net immediately forward of the TED, and if its rear edge does not extend past the bars of the TED. The trailing edge of the accelerator funnel may be attached to the TED on the side opposite the escape opening if not more than one-third of the circumference of the funnel is attached, and if the inside horizontal opening as described above is maintained. In a bottom opening TED only the top one-third of the circumference of the funnel may be attached to the TED. In a

top opening TED only the bottom one-third of the circumference of the funnel may be attached to the TED.

(i) In inshore waters, other than the inshore waters of Georgia and South Carolina in which a larger opening is required, the inside horizontal opening of the accelerator funnel must be at least 44 inches (112 cm).

(ii) In offshore waters and the inshore waters of Georgia and South Carolina, the inside horizontal opening of the accelerator funnel must be at least 71 inches (180 cm).

(3) *Webbing flap.* A webbing flap may be used to cover the escape opening under the following conditions: No device holds it closed or otherwise restricts the opening; it is constructed of webbing with a stretched mesh size no larger than 1-5/8 inches (4 cm); it lies on the outside of the trawl; it is attached along its entire forward edge forward of the escape opening; it is not attached on the sides beyond the row of meshes that lies 6 inches (15 cm) behind the posterior edge of the grid; the sides of the flap are sewn on the same row of meshes fore and aft; and the flap does not overlap the escape hole cut by more than 5 inches (13 cm) on either side.

(i) *44-inch inshore TED flap.* This flap may not extend more than 24 inches (61 cm) beyond the posterior edge of the grid.

(ii) *71-inch offshore TED Flap.* The flap must be a 133-inch (338-cm) by 52-inch (132-cm) piece of webbing. The 133-inch (338-cm) edge of the flap is attached to the forward edge of the opening (71-inch (180-cm) edge). The flap may extend no more than 24 inches (61 cm) behind the posterior edge of the grid (Figure 12 to this part illustrates this flap).

(iii) *Double cover flap offshore TED flap.* This flap must be composed of two equal size rectangular panels of webbing. Each panel must be no less than 58 inches (147 cm) wide and may overlap each other no more than 15 inches (38 cm). The panels may only be sewn together along the leading edge of the cut. The trailing edge of each panel must not extend more than 24 inches (61 cm) past the posterior edge of the grid (Figure 16 to this part). Each panel may be sewn down the entire length of

the outside edge of each panel. Chafing webbing described in paragraph (d)(4) of this section may not be used with this type of flap.

(A) *Edge lines.* Optional edge lines can be used in conjunction with this flap. The line must be made of polyethylene with a maximum diameter of 3/8 inches (.95 cm). A single length of line must be used for each flap panel. The line must be sewn evenly to the unattached, inside edges and trailing edges, of each flap panel. When edge lines are installed, the outside edge of each flap panel must be attached along the entire length of the flap panel.

(B) [Reserved]

(4) *Chafing webbing.* A single piece of nylon webbing, with a twine size no smaller than size 36 (2.46 mm in diameter), may be attached outside of the escape opening webbing flap to prevent chafing on bottom opening TEDs. This webbing may be attached along its leading edge only. This webbing may not extend beyond the trailing edge or sides of the existing escape opening webbing flap, and it must not interfere or otherwise restrict the turtle escape opening.

(5) *Roller gear.* Roller gear may be attached to the bottom of a TED to prevent chafing on the bottom of the TED and the trawl net. When a webbing flap is used in conjunction with roller gear, the webbing flap must be of a length such that no part of the webbing flap can touch or come in contact with any part of the roller gear assembly or the means of attachment of the roller gear assembly to the TED, when the trawl net is in its normal, horizontal position. Roller gear must be constructed according to one of the following design criteria:

(i) A single roller consisting of hard plastic shall be mounted on an axle rod, so that the roller can roll freely about the axle. The maximum diameter of the roller shall be 6 inches (15.24 cm), and the maximum width of the axle rod shall be 12 inches (30.4 cm). The axle rod must be attached to the TED by two support rods. The maximum clearance between the roller and the TED shall not exceed 1 inch (2.5 cm) at the center of the roller. The support rods and axle rod must be

made from solid steel or solid aluminum rod no larger than ½ inch (1.28 cm) in diameter. The attachment of the support rods to the TED shall be such that there are no protrusions (lips, sharp edges, burrs, etc.) on the front face of the grid. The axle rod and support rods must lie entirely behind the plane of the face of the TED grid.

(ii) A single roller consisting of hard plastic tubing shall be tightly tied to the back face of the TED grid with rope or heavy twine passed through the center of the roller tubing. The roller shall lie flush against the TED. The maximum outside diameter of the roller shall be 3½ inches (8.0 cm), the minimum outside diameter of the roller shall be 2 inches (5.1 cm), and the maximum length of the roller shall be 12 inches (30.4 cm). The roller must lie entirely behind the plane of the face of the grid.

(6) *Water deflector fin for hooped hard TEDs.* On a hooped hard TED, a water deflector fin may be welded to the forward edge of the escape opening. The fin must be constructed of a flat aluminum bar, up to 3/8 inch (0.95 cm) thick and up to 4 inches (10.2 cm) deep. The fin may be as wide as the width of the escape opening, minus 1 inch (2.5 cm). The fin must project aft into the TED with an angle between 5° and 45° from the normal, horizontal plane of the trawl. On an inshore hooped hard TED, the clearance between the deflector bars and the posterior edge of the deflector fin must be at least 20 inches (51 cm). On an offshore hooped hard TED, the clearance between the deflector bars and the posterior edge of the deflector fin must be at least 23-1/4 inches (59 cm).

(7) *Hinged door frame for hooped hard TEDs.* A hinged door frame may be attached to the forward edge of the escape opening on a hooped hard TED. The door frame must be constructed of materials specified at paragraphs (a)(1)(i) or (a)(1)(ii) of this section for inshore and offshore hooped hard TEDs, respectively. The door frame may be covered with a single panel of mesh webbing that is taut and securely attached with twine to the perimeter of the door frame, with a mesh size not greater than that used for the TED extension webbing. The door frame must

be at least as wide as the TED escape opening. The door frame may be a maximum of 24 inches (61 cm) long. The door frame must be connected to the forward edge of the escape opening by a hinge device that allows the door to open outwards freely. The posterior edge of the door frame, in the closed position, must lie at least 12 inches (30 cm) forward of the posterior edge of the escape opening. A water deflector fin may be welded to the posterior edge of the hinged door frame. The fin must be constructed of a flat aluminum bar, up to 3/8 inch (0.95 cm) thick and up to four inches (10.2 cm) deep. The fin may be as wide as the width of the escape opening, minus one inch (2.5 cm). The fin must project aft into the TED with an angle between 5° and 45° from the normal, horizontal plane of the trawl, when the door is in the closed position. The clearance between the posterior edge of the escape opening and the posterior edge of the door frame or the posterior edge of the water deflector fin, if installed, must be no less than 12 inches (30 cm), when the door is in the closed position. Two stopper ropes or a hinge limiter may be used to limit the maximum opening height of the hinged door frame, as long as they do not obstruct the escape opening in any way or restrict the free movement of the door to its fully open position. When the door is in its fully open position, the minimum clearance between any part of the deflector bars and any part of the door, including a water deflector fin if installed, must be at least 20 inches (51 cm) for an inshore hooped hard TED and at least 23 1/4 inches (59 cm) for an offshore hooped hard TED. The hinged door frame may not be used in combination with a webbing flap specified at paragraph (d)(3) of this section or with a water deflection fin specified at paragraph (d)(6) of this section.

(e) *Revision of generic design criteria, and approval of TEDs, of allowable modifications of hard TEDs, and of special hard TEDs.* (1) The Assistant Administrator may revise the generic design criteria for hard TEDs set forth in paragraph (a) of this section, may approve special hard TEDs in addition to those listed in paragraph (b) of this section, may approve allowable modifications to hard TEDs in addition to

those authorized in paragraph (d) of this section, or may approve other TEDs, by regulatory amendment, if, according to a NMFS-approved scientific protocol, the TED demonstrates a sea turtle exclusion rate of 97 percent or greater (or an equivalent exclusion rate). Two such protocols have been published by NMFS (52 FR 24262, June 29, 1987; and 55 FR 41092, October 9, 1990) and will be used only for testing relating to hard TED designs. Testing under any protocol must be conducted under the supervision of the Assistant Administrator, and shall be subject to all such conditions and restrictions as the Assistant Administrator deems appropriate. Any person wishing to participate in such testing should contact the Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Dr., Miami, FL 33149-1003.

(2) Upon application, the Assistant Administrator may issue permits, subject to such conditions and restrictions as the Assistant Administrator deems

appropriate, authorizing public or private experimentation aimed at improving shrimp retention efficiency of existing approved TEDs and at developing additional TEDs, or conducting fishery research, that would otherwise be subject to §223.206(d)(2). Applications should be made to the Southeast Regional Administrator (see §222.102 definition of "Southeast Regional Administrator").

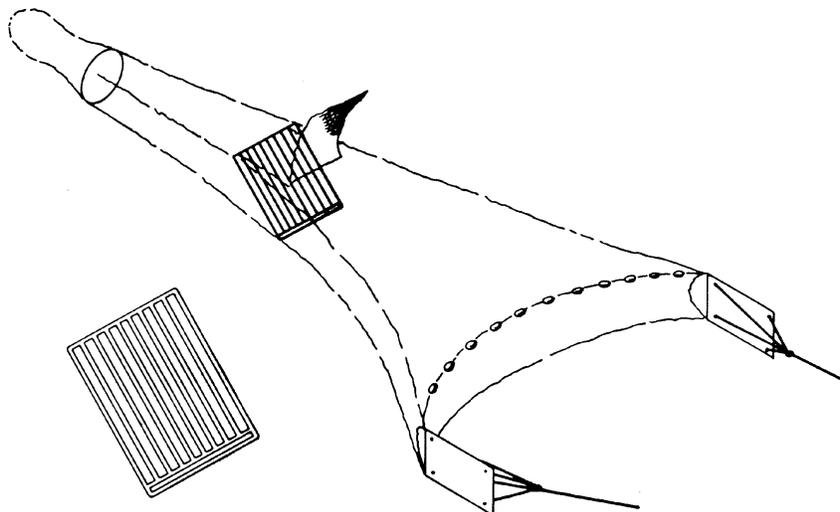
[64 FR 14073, Mar. 23, 1999, as amended at 64 FR 55438, Oct. 13, 1999; 66 FR 1603, Jan. 9, 2001; 66 FR 24288, May 14, 2001; 68 FR 8467, Feb. 21, 2003; 68 FR 51514, Aug. 27, 2003; 68 FR 54934, Sept. 19, 2003; 69 FR 31037, June 2, 2004]

EFFECTIVE DATE NOTE: At 64 FR 14073, Mar. 23, 1999, §223.207 was added. Paragraphs (a)(9)(ii) (A) and (B) contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 223.209 [Reserved]

FIGURES 1-2 TO PART 223 [RESERVED]

FIGURE 3 TO PART 223—MATAGORDA TED

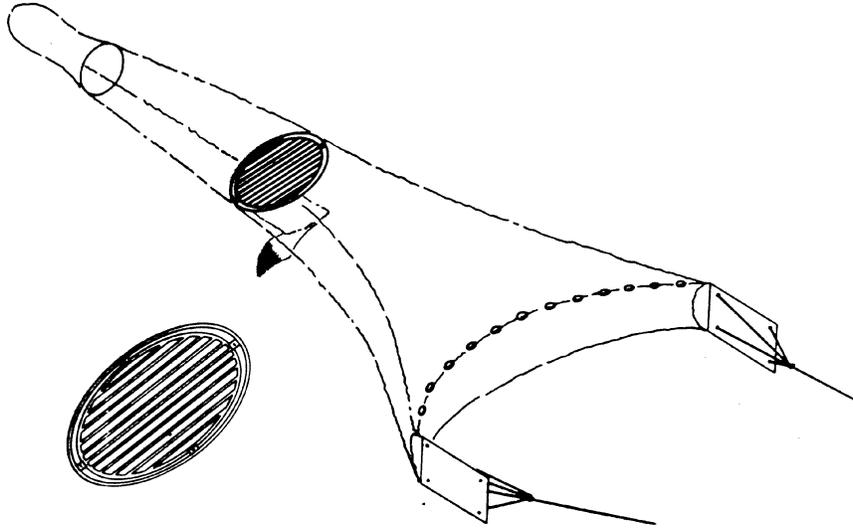


[52 FR 24260, June 29, 1987. Redesignated at 57 FR 40868, Sept. 8, 1992]

Pt. 223, Fig. 4

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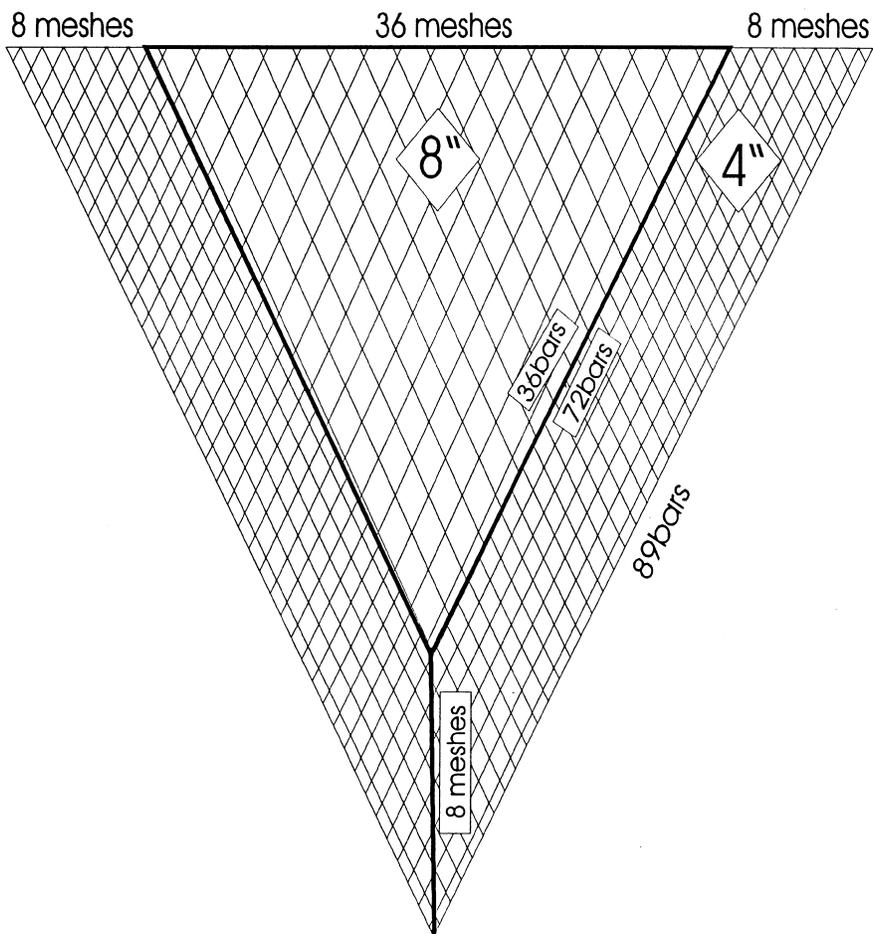
FIGURE 4 TO PART 223—GEORGIA TED



[52 FR 24261, June 29, 1987. Redesignated at 57 FR 40868, Sept. 8, 1992]

FIGURE 5 TO PART 223—NET DIAGRAM FOR THE EXCLUDER PANEL OF THE PARKER SOFT TED

Parker Soft TED

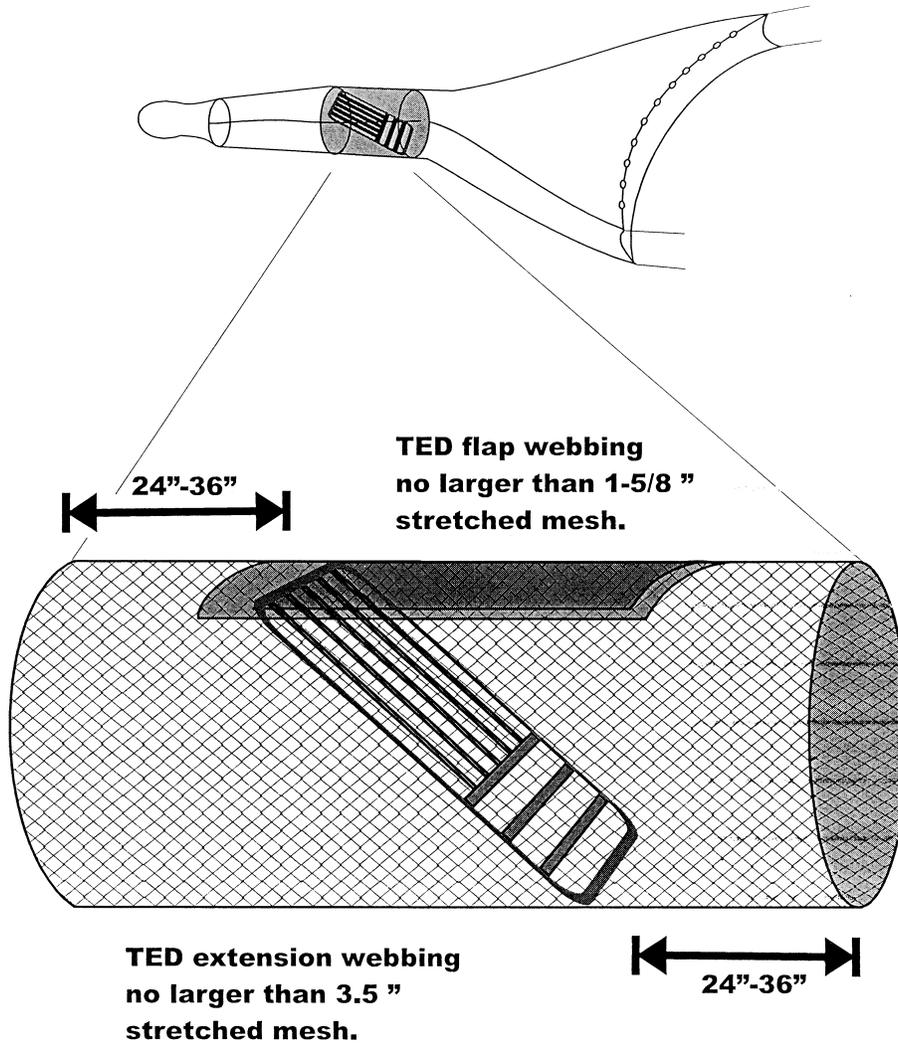


The side panels are composed from 4-inch stretched mesh polyethylene or polypropylene webbing with No.48 twine size (3mm).

The main panel is composed of 8-inch stretched mesh polyethylene or polypropylene webbing with No.48 twine size (3mm).

[63 FR 17958, Apr. 13, 1998]

FIGURE 6 TO PART 223—TED EXTENSION IN SUMMER FLOUNDER TRAWL

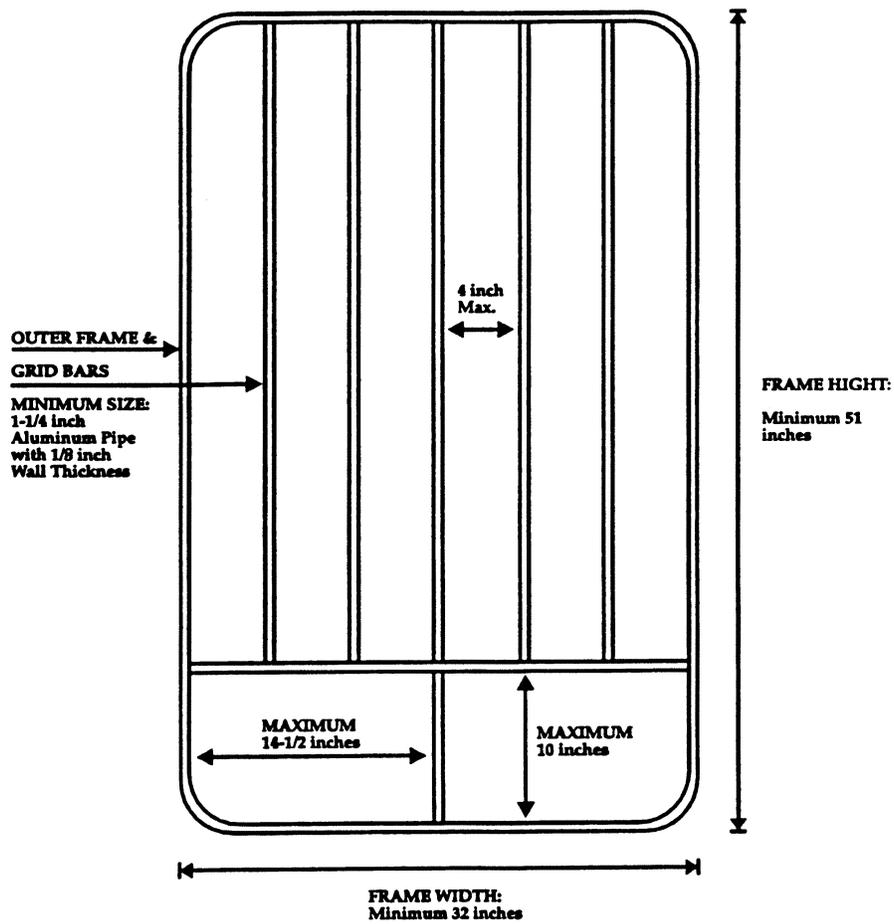


[64 FR 55864, Oct. 15, 1999]

FIGURES 7-9b TO PART 223 [RESERVED]

FIGURE 10 TO PART 223—FLOUNDER TED

FLOUNDER TED



[58 FR 54069, Oct. 20, 1993]

FIGURE 11 TO PART 223 [RESERVED]

FIGURE 12 TO PART 223—ESCAPE OPENING & COVER DIMENSIONS FOR 71-INCH TED

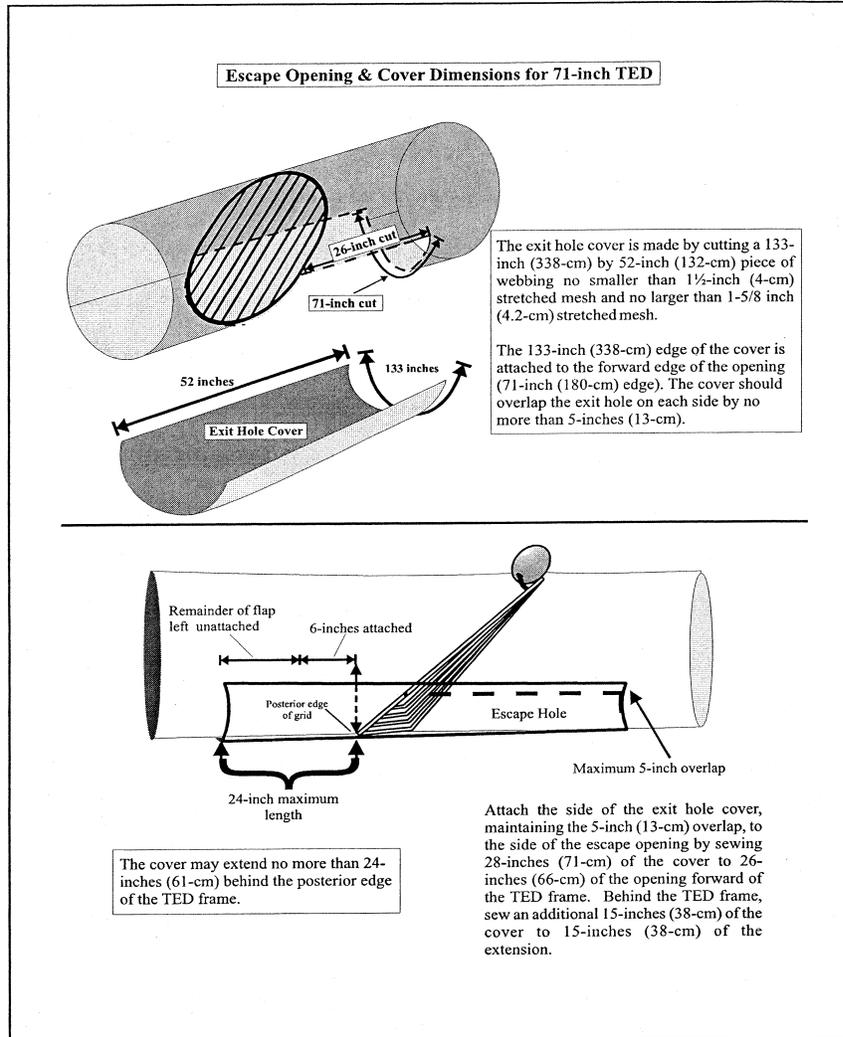
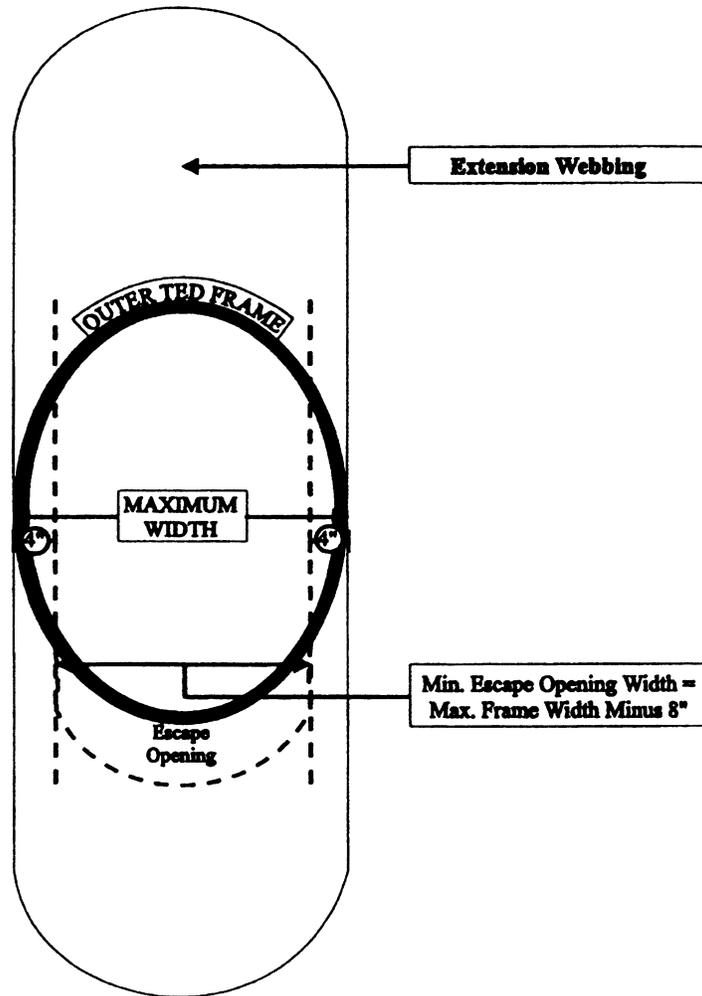


Figure 12 to Part 223

[68 FR 8469, Feb. 21, 2003]

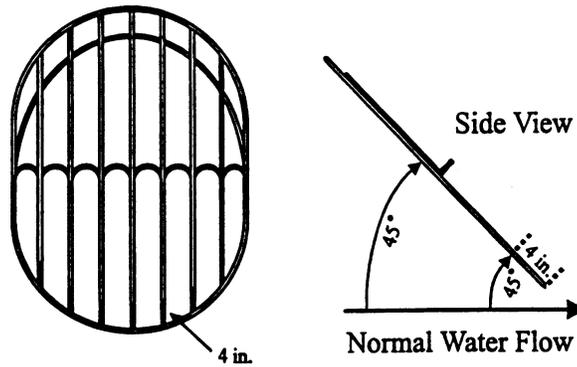
FIGURE 13 TO PART 223—SINGLE GRID HARD TED ESCAPE OPENING



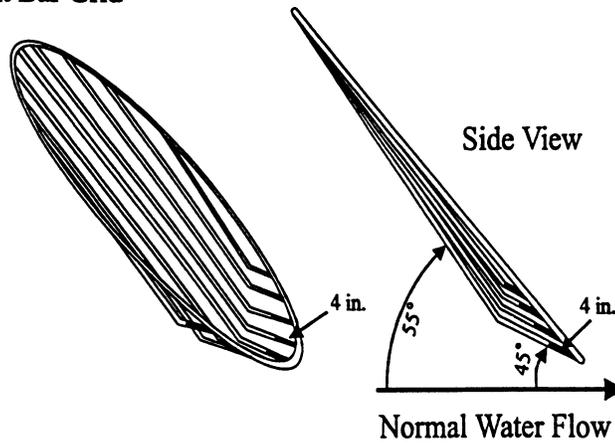
[60 FR 15520, Mar. 24, 1995]

FIGURES 14a AND 14b TO PART 223—MAXIMUM ANGLE OF DEFLECTOR BARS WITH STRAIGHT BARS ATTACHED TO THE BOTTOM OF THE FRAME AND MAXIMUM ANGLE OF DEFLECTOR BARS WITH BENT BARS ATTACHED TO THE BOTTOM OF THE FRAME

Straight Bar Grid



Bent Bar Grid



[61 FR 66946, Dec. 19, 1996]

FIGURE 15 TO PART 223—WEEDLESS TED BRACE BAR DESCRIPTION

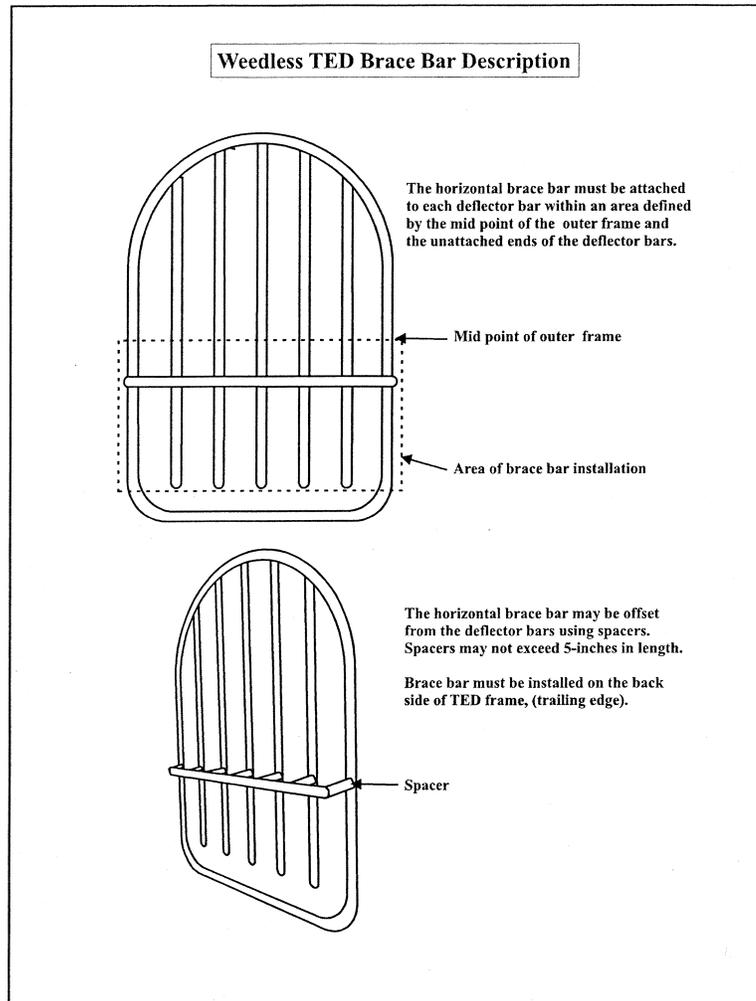
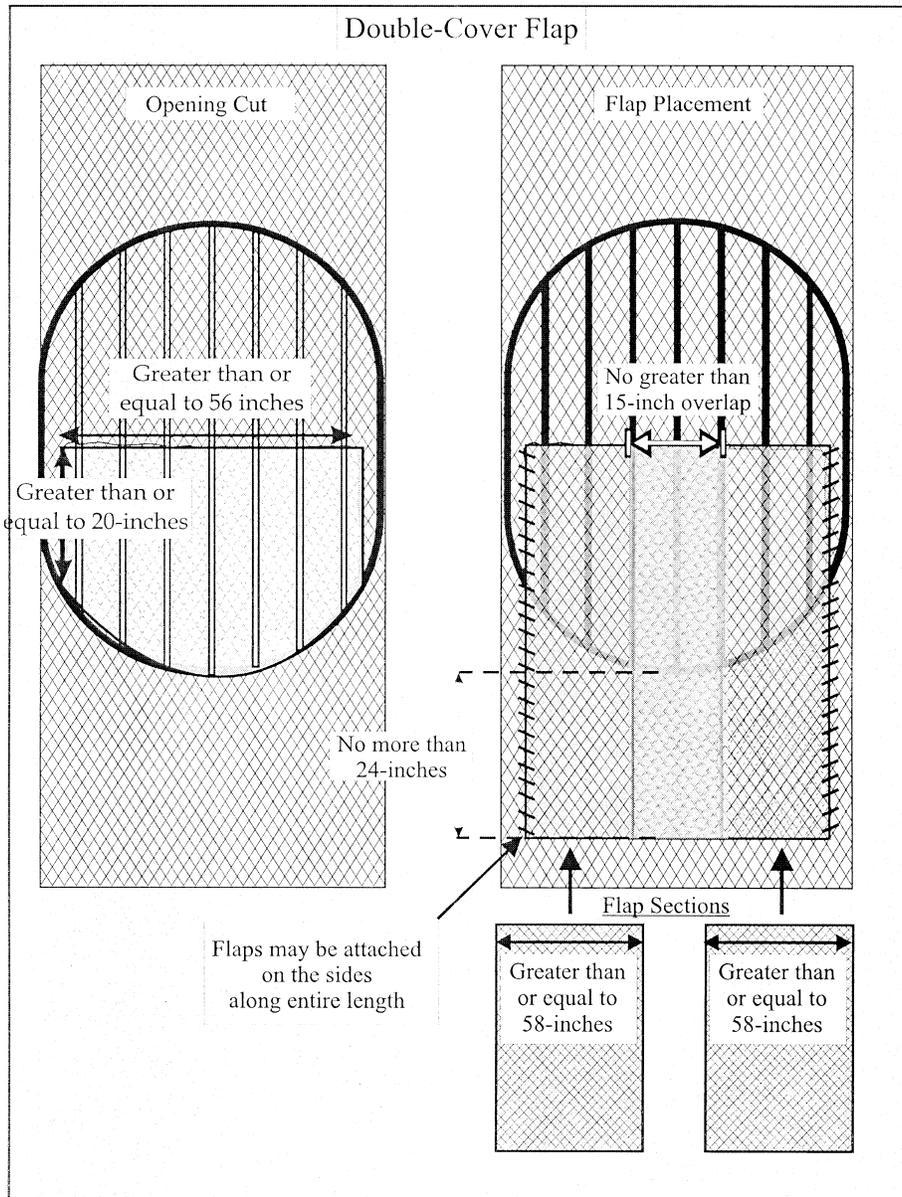


Figure 15 to Part 223

[68 FR 8469, Feb. 21, 2003]

FIGURE 16 TO PART 223—ESCAPE OPENING AND FLAP DIMENSIONS FOR THE DOUBLE COVER FLAP TED



[69 FR 31037, June 2, 2004]

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

§ 224.101 Enumeration of endangered marine and anadromous species.

- Sec.
- 224.101 Enumeration of endangered marine and anadromous species.
- 224.102 Permits for endangered marine and anadromous species.
- 224.103 Special prohibitions for endangered marine mammals.
- 224.104 Special requirements for fishing activities to protect endangered sea turtles.

AUTHORITY: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

SOURCE: 64 FR 14066, Mar. 23, 1999, unless otherwise noted.

The marine and anadromous species determined by the Secretary of Commerce to be endangered pursuant to section 4(a) of the Act, as well as species listed under the Endangered Species Conservation Act of 1969 by the Secretary of the Interior and currently under the jurisdiction of the Secretary of Commerce, are the following:

(a) *Marine and anadromous fish.* The following table lists the common and scientific names of endangered species, the locations where they are listed, and the citations for the listings and critical habitat designations.

Species ¹		Where listed	Citation(s) for listing determination(s)	Citation for critical habitat designation
Common name	Scientific name			
Shortnose sturgeon.	<i>Acipenser brevirostrum.</i>	Everywhere	32 FR 4001, Mar. 11, 1967.	NA.
Smalltooth sawfish	<i>Pristis pectinata ...</i>	U.S.A.	68 FR 15674, Apr. 1, 2003.	NA.
Totoaba	<i>Cynoscion macdonaldi.</i>	Everywhere	44 FR 29480, May 21, 1979.	NA.
Atlantic salmon	<i>Salmon salar</i>	U.S.A., ME, Gulf of Maine population, which includes all naturally reproducing populations and those river-specific hatchery populations cultured from them.	65 FR 69459, Nov. 17, 2000.	NA.
Snake River sockeye.	<i>Oncorhynchus nerka.</i>	U.S.A., ID, including all anadromous and residual sockeye salmon from the Snake River Basin, Idaho, as well as artificially propagated sockeye salmon from the Redfish Lake captive propagation program.	56 FR 58619, Nov. 20, 1991. June 28, 2005.	58 FR 68543, Dec. 28, 1993.
Sacramento River winter-run Chinook.	<i>Oncorhynchus tshawytscha.</i>	U.S.A., CA, including all naturally spawned populations of winter-run Chinook salmon in the Sacramento River and its tributaries in California, as well as two artificial propagation programs: winter-run Chinook from the Livingston Stone National Fish Hatchery (NFH), and winter run Chinook in a captive broodstock program maintained at Livingston Stone NFH and the University of California Bodega Marine Laboratory.	52 FR 6041; Feb. 27, 1987, 55 FR 49623; Nov. 30, 1990. 59 FR 440; Jan. 1, 1994. June 28, 2005.	58 FR 33212, June 16, 1993.
Upper Columbia spring-run Chinook.	<i>Oncorhynchus tshawytscha.</i>	U.S.A., WA, including all naturally spawned populations of Chinook salmon in all river reaches accessible to Chinook salmon in Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam in Washington (excluding the Okanogan River), the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to Chief Joseph Dam in Washington, as well as six artificial propagation programs: the Twisp River, Chewuch River, Methow Composite, Winthrop NFH, Chiwawa River, and White River spring-run Chinook hatchery programs.	64 FR 14308, Mar. 24, 1999. June 28, 2005.	NA. [vacated 9/29/03; 68 FR 55900].

Species ¹		Where listed	Citation(s) for listing determination(s)	Citation for critical habitat designation
Common name	Scientific name			
Central California Coast coho.	<i>Oncorhynchus kisutch</i> .	U.S.A., CA, including all naturally spawned populations of coho salmon from Punta Gorda in northern California south to and including the San Lorenzo River in central California, as well as populations in tributaries to San Francisco Bay, excluding the Sacramento-San Joaquin River system, as well four artificial propagation programs: the Don Clausen Fish Hatchery Captive Broodstock Program, Scott Creek/King Fisher Flats Conservation Program, Scott Creek Captive Broodstock Program, and the Noyo River Fish Station egg-take Program coho hatchery programs.	61 FR 56138, Oct. 31, 1996. June 28, 2005.	64 FR 24049, May 5, 1999.
Southern California Steelhead.	<i>Oncorhynchus mykiss</i> .	U.S.A., CA, Distinct Population Segment including all naturally spawned anadromous <i>O. mykiss</i> (steelhead) populations below natural and manmade impassable barriers in streams from the Santa Maria River, San Luis Obispo County, California, (inclusive) to the U.S.-Mexico Border.	62 FR 43937, Aug. 18, 1997. Jan. 5, 2006	70 FR 52488, Sept. 2, 2005.

¹ Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

(b) *Marine mammals*. Blue whale (*Balaenoptera musculus*); Bowhead whale (*Balaena mysticetus*); Caribbean monk seal (*Monachus tropicalis*); Chinese river dolphin (*Lipotes vexillifer*); Cochito (*Phocoena sinus*); Fin or finback whale (*Balaenoptera physalus*); Hawaiian monk seal (*Monachus schauinslandi*); Humpback whale (*Megaptera novaeangliae*); Indus River dolphin (*Platanista minor*); Mediterranean monk seal (*Monachus monachus*); North Atlantic right whale (*Eubalaena glacialis*); North Pacific right whale (*Eubalaena japonica*); Southern right whale (*Eubalaena australis*); Saimaa seal (*Phoca hispida saimensis*); Sei whale (*Balaenoptera borealis*); Sperm whale (*Physeter catodon*); Western North Pacific (Korean) gray whale (*Eschrichtius robustus*); Steller sea lion, western population, (*Eumetopias jubatus*), which consists of Steller sea lions from breeding colonies located west of 144° W. longitude.

(c) *Sea turtles*. Green turtle (*Chelonia mydas*) breeding colony populations in Florida and on the Pacific coast of Mexico; Hawksbill turtle (*Eretmochelys imbricata*); Kemp's ridley turtle (*Lepidochelys kempii*); Leatherback turtle (*Dermochelys coriacea*); Olive ridley turtle (*Lepidochelys olivacea*) breeding colony population on the Pacific coast of Mexico.

NOTE TO §224.101(c): Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

(d) *Marine invertebrates*. White abalone (*Haliotis sorenseni*).

[64 FR 14066, Mar. 23, 1999, as amended 64 FR 14328, Mar. 24, 1999; 65 FR 20918, Apr. 19, 2000; 65 FR 69481, Nov. 17, 2000; 66 FR 29055, May 29, 2001; 67 FR 21598, May 1, 2002; 68 FR 15680, Apr. 1, 2003; 70 FR 37203, June 28, 2005; 70 FR 69912, Nov. 18, 2005; 71 FR 861, Jan. 5, 2006; 73 FR 12030, Mar. 6, 2008]

§ 224.102 Permits for endangered marine and anadromous species.

No person shall take, import, export, or engage in any activity prohibited by section 9 of the Act involving any marine species that has been determined to be endangered under the Endangered Species Conservation Act of 1969 or the Act, and that is under the jurisdiction of the Secretary, without a valid permit issued pursuant to part 222, subpart C of this chapter.

§ 224.103 Special prohibitions for endangered marine mammals.

(a) *Approaching humpback whales in Hawaii*. Except as provided in part 222, subpart C, of this chapter (General Permit Procedures), it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to

commit, or to cause to be committed, within 200 nautical miles (370.4 km) of the Islands of Hawaii, any of the following acts with respect to humpback whales (*Megaptera novaeangliae*):

(1) Operate any aircraft within 1,000 feet (300 m) of any humpback whale;

(2) Approach, by any means, within 100 yard (90 m) of any humpback whale;

(3) Cause a vessel or other object to approach within 100 yd (90 m) of a humpback whale; or

(4) Disrupt the normal behavior or prior activity of a whale by any other act or omission. A disruption of normal behavior may be manifested by, among other actions on the part of the whale, a rapid change in direction or speed; escape tactics such as prolonged diving, underwater course changes, underwater exhalation, or evasive swimming patterns; interruptions of breeding, nursing, or resting activities, attempts by a whale to shield a calf from a vessel or human observer by tail swishing or by other protective movement; or the abandonment of a previously frequented area.

(b) *Approaching humpback whales in Alaska*—(1) *Prohibitions*. Except as provided under paragraph (b)(2) of this section, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed, within 200 nautical miles (370.4 km) of Alaska, or within inland waters of the state, any of the acts in paragraphs (b)(1)(i) through (b)(1)(iii) of this section with respect to humpback whales (*Megaptera novaeangliae*):

(i) Approach, by any means, including by interception (i.e., placing a vessel in the path of an oncoming humpback whale so that the whale surfaces within 100 yards (91.4 m) of the vessel), within 100 yards (91.4 m) of any humpback whale;

(ii) Cause a vessel or other object to approach within 100 yards (91.4 m) of a humpback whale; or

(iii) Disrupt the normal behavior or prior activity of a whale by any other act or omission, as described in paragraph (a)(4) of this section.

(2) *Exceptions*. The following exceptions apply to this paragraph (b), but any person who claims the applica-

bility of an exception has the burden of proving that the exception applies:

(i) Paragraph (b)(1) of this section does not apply if an approach is authorized by the National Marine Fisheries Service through a permit issued under part 222, subpart C, of this chapter (General Permit Procedures) or through a similar authorization.

(ii) Paragraph (b)(1) of this section does not apply to the extent that a vessel is restricted in her ability to maneuver and, because of the restriction, cannot comply with paragraph (b)(1) of this section.

(iii) Paragraph (b)(1) of this section does not apply to commercial fishing vessels lawfully engaged in actively setting, retrieving or closely tending commercial fishing gear. For purposes of this paragraph (b), commercial fishing means taking or harvesting fish or fishery resources to sell, barter, or trade. Commercial fishing does not include commercial passenger fishing operations (i.e. charter operations or sport fishing activities).

(iv) Paragraph (b)(1) of this section does not apply to state, local, or Federal government vessels operating in the course of official duty.

(v) Paragraph (b)(1) of this section does not affect the rights of Alaska Natives under 16 U.S.C. 1539(e).

(vi) These regulations shall not take precedence over any more restrictive conflicting Federal regulation pertaining to humpback whales, including the regulations at 36 CFR 13.65 that pertain specifically to the waters of Glacier Bay National Park and Preserve.

(3) *General measures*. Notwithstanding the prohibitions and exceptions in paragraphs (b)(1) and (2) of this section, to avoid collisions with humpback whales, vessels must operate at a slow, safe speed when near a humpback whale. “Safe speed” has the same meaning as the term is defined in 33 U.S.C. 2006 and the International Regulations for Preventing Collisions at Sea 1972 (see 33 U.S.C. 1602), with respect to avoiding collisions with humpback whales.

(c) *Approaching right whales*—(1) *Prohibitions*. Except as provided under paragraph (c)(3) of this section, it is unlawful for any person subject to the

§ 224.104

jurisdiction of the United States to commit, attempt to commit, to solicit another to commit, or cause to be committed any of the following acts:

(i) Approach (including by interception) within 500 yards (460 m) of a right whale by vessel, aircraft, or any other means;

(ii) Fail to undertake required right whale avoidance measures specified under paragraph (c)(2) of this section.

(2) *Right whale avoidance measures.* Except as provided under paragraph (c)(3) of this section, the following avoidance measures must be taken if within 500 yards (460 m) of a right whale:

(i) If underway, a vessel must steer a course away from the right whale and immediately leave the area at a slow safe speed.

(ii) An aircraft must take a course away from the right whale and immediately leave the area at a constant airspeed.

(3) *Exceptions.* The following exceptions apply to this section, but any person who claims the applicability of an exception has the burden of proving that the exception applies:

(i) Paragraphs (c)(1) and (c)(2) of this section do not apply if a right whale approach is authorized by the National Marine Fisheries Service through a permit issued under part 222, subpart C, of this chapter (General Permit Procedures) or through a similar authorization.

(ii) Paragraphs (c)(1) and (c)(2) of this section do not apply where compliance would create an imminent and serious threat to a person, vessel, or aircraft.

(iii) Paragraphs (c)(1) and (c)(2) of this section do not apply when approaching to investigate a right whale entanglement or injury, or to assist in the disentanglement or rescue of a right whale, provided that permission is received from the National Marine Fisheries Service or designee prior to the approach.

(iv) Paragraphs (c)(1) and (c)(2) of this section do not apply to an aircraft unless the aircraft is conducting whale watch activities.

(v) Paragraph (c)(2) of this section does not apply to the extent that a vessel is restricted in her ability to maneuver and, because of the restriction,

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cannot comply with paragraph (c)(2) of this section.

(d) *Special prohibitions relating to endangered Steller sea lion protection.* The regulatory provisions set forth in part 223 of this chapter, which govern threatened Steller sea lions, shall also apply to the western population of Steller sea lions, which consists of all Steller sea lions from breeding colonies located west of 144° W. long.

[64 FR 14066, Mar. 23, 1999, as amended at 66 FR 29509, May 31, 2001; 69 FR 69537, Nov. 30, 2004; 70 FR 1832, Jan. 11, 2005]

§ 224.104 Special requirements for fishing activities to protect endangered sea turtles.

(a) Shrimp fishermen in the southeastern United States and the Gulf of Mexico who comply with rules for threatened sea turtles specified in § 223.206 of this chapter will not be subject to civil penalties under the Act for incidental captures of endangered sea turtles by shrimp trawl gear.

(b) Summer flounder fishermen in the Summer flounder fishery-sea turtle protection area who comply with rules for threatened sea turtles specified in § 223.206 of this chapter will not be subject to civil penalties under the Act for incidental captures of endangered sea turtles by summer flounder gear.

(c) Special prohibitions relating to sea turtles are provided at § 223.206(d).

[64 FR 14066, Mar. 23, 1999, as amended at 66 FR 44552, Aug. 24, 2001; 66 FR 67496, Dec. 31, 2001; 68 FR 8471, Feb. 21, 2003; 69 FR 18453, Apr. 7, 2004; 72 FR 31757, June 8, 2007]

PART 225 [RESERVED]

PART 226—DESIGNATED CRITICAL HABITAT

Sec.

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226.202 Critical habitat for Steller sea lions.

226.203 Critical habitat for northern right whales.

226.204 Critical habitat for Sacramento winter-run chinook salmon.

226.205 Critical habitat for Snake River sockeye salmon, Snake River fall chinook salmon, and Snake River spring/summer chinook salmon.

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AUTHORITY: 16 U.S.C. 1533.

§ 226.101 Purpose and scope.

The regulations contained in this part identify those habitats designated

by the Secretary of Commerce as critical under section 4 of the Act, for endangered and threatened species under the jurisdiction of the Secretary of Commerce. Those species are enumerated at § 223.102 of this chapter, if threatened and at § 224.101 of this chapter, if endangered. For regulations pertaining to the designation of critical habitat, see part 424 of this title, and for regulations pertaining to prohibitions against the adverse modification or destruction of critical habitat, see part 402 of this title. Maps and charts identifying designated critical habitat that are not provided in this section may be obtained upon request to the Office of Protected Resources (see § 222.102, definition of "Office of Protected Resources").

[64 FR 14067, Mar. 23, 1999]

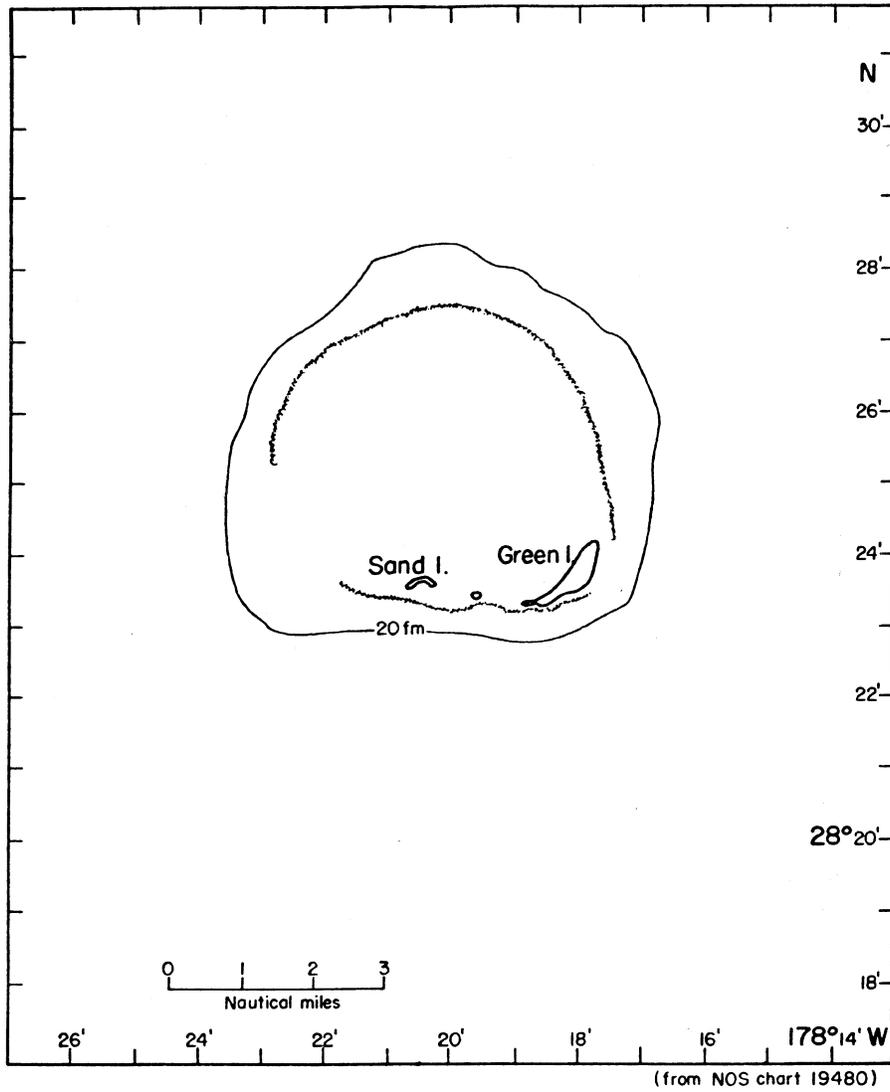
§ 226.201 Critical habitat for Hawaiian monk seals.

HAWAIIAN MONK SEAL

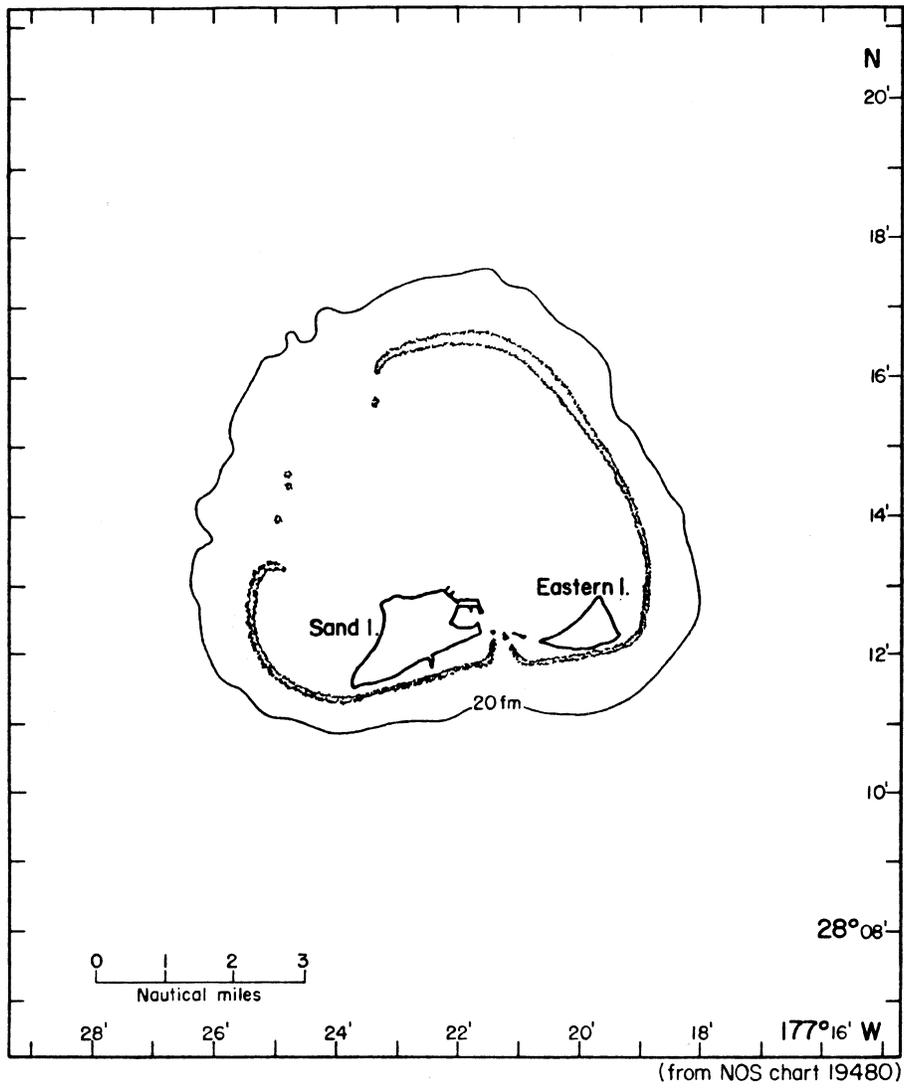
(*Monachus schauinslandi*)

All beach areas, sand spits and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and ocean waters out to a depth of 20 fathoms around the following:

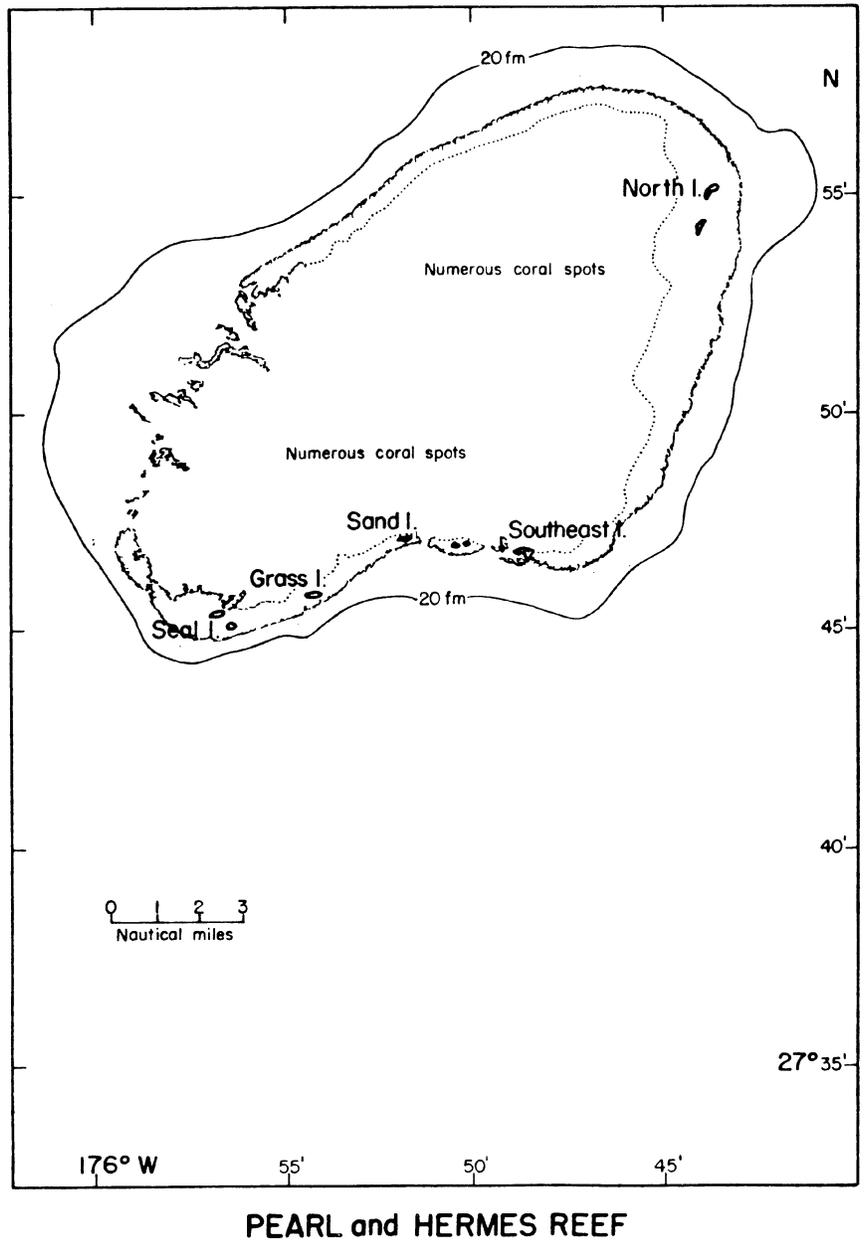
- Kure Atoll (28°24' N, 178°20' W)
- Midway Islands, except Sand Island and its harbor (28°14' N, 177°22' W)
- Pearl and Hermes Reef (27°55' N, 175° W)
- Lisianski Island (26°46' N, 173°58' W)
- Laysan Island (25°46' N, 171°44' W)
- Maro Reef (25°25' N, 170°35' W)
- Gardner Pinnacles (25°00' N, 168°00' W)
- French Frigate Shoals (23°45' N, 166°00' W)
- Necker Island (23°34' N, 164°42' W)
- Nihoa Island (23°03.5' N, 161°55.5' W).

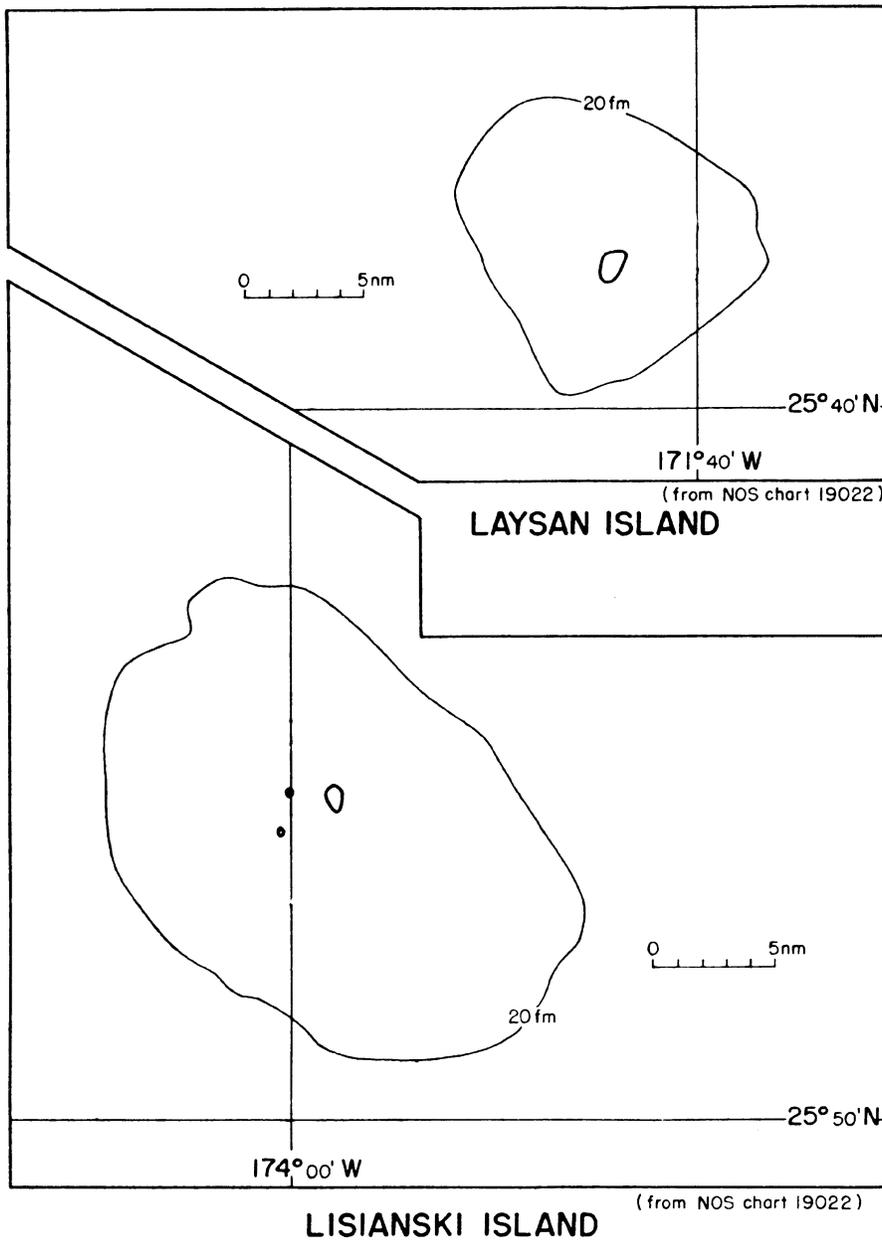


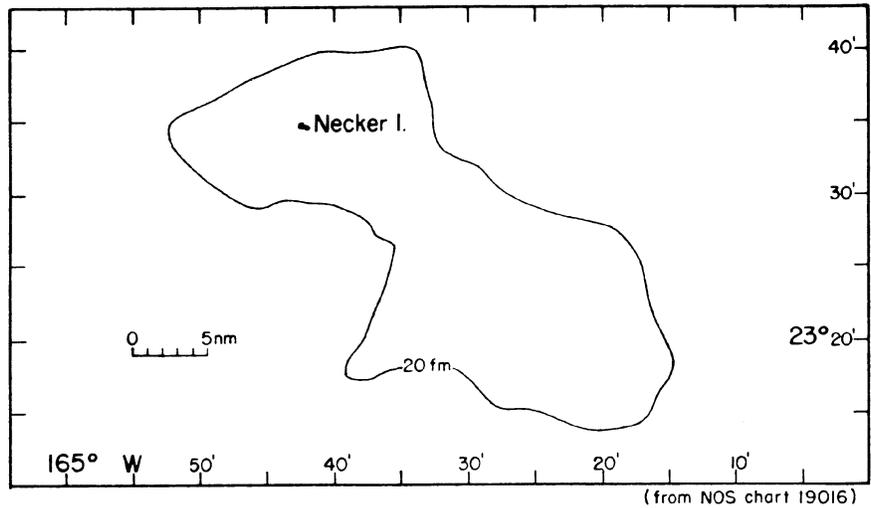
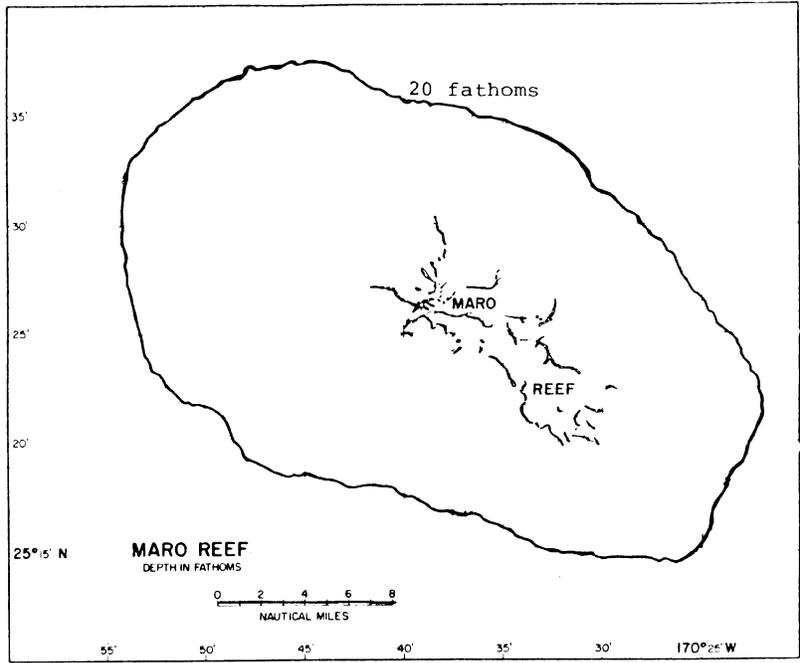
KURE ATOLL



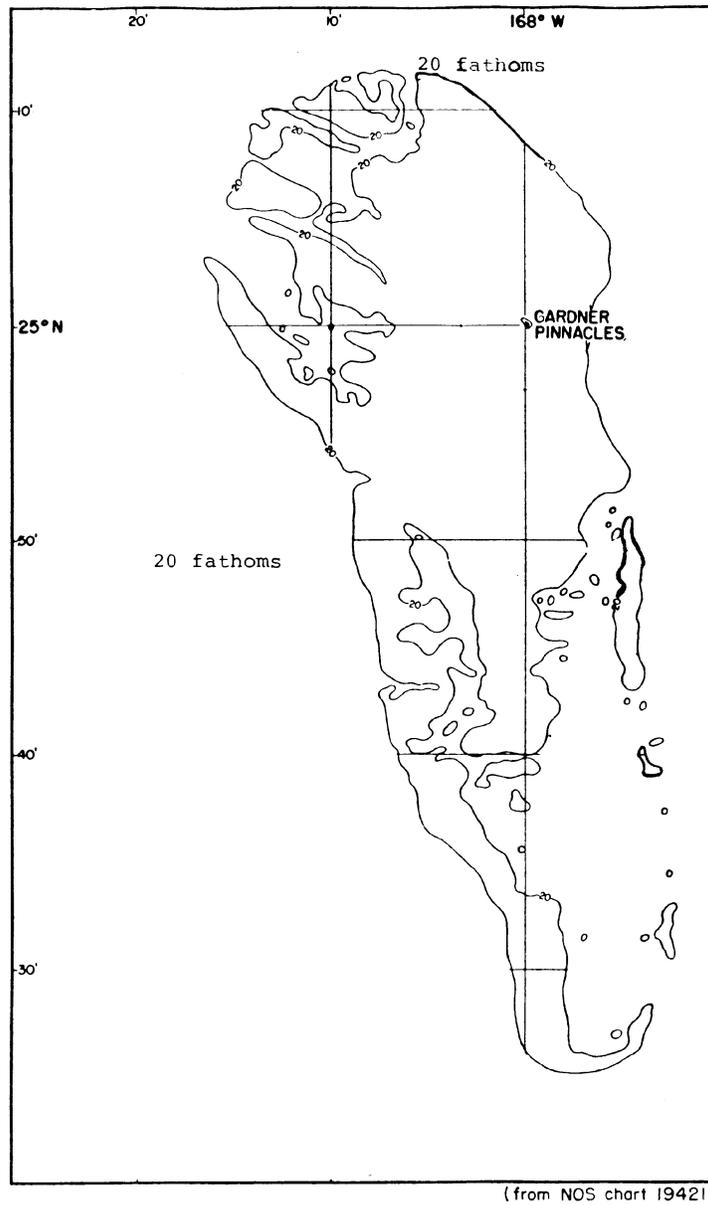
MIDWAY ISLANDS



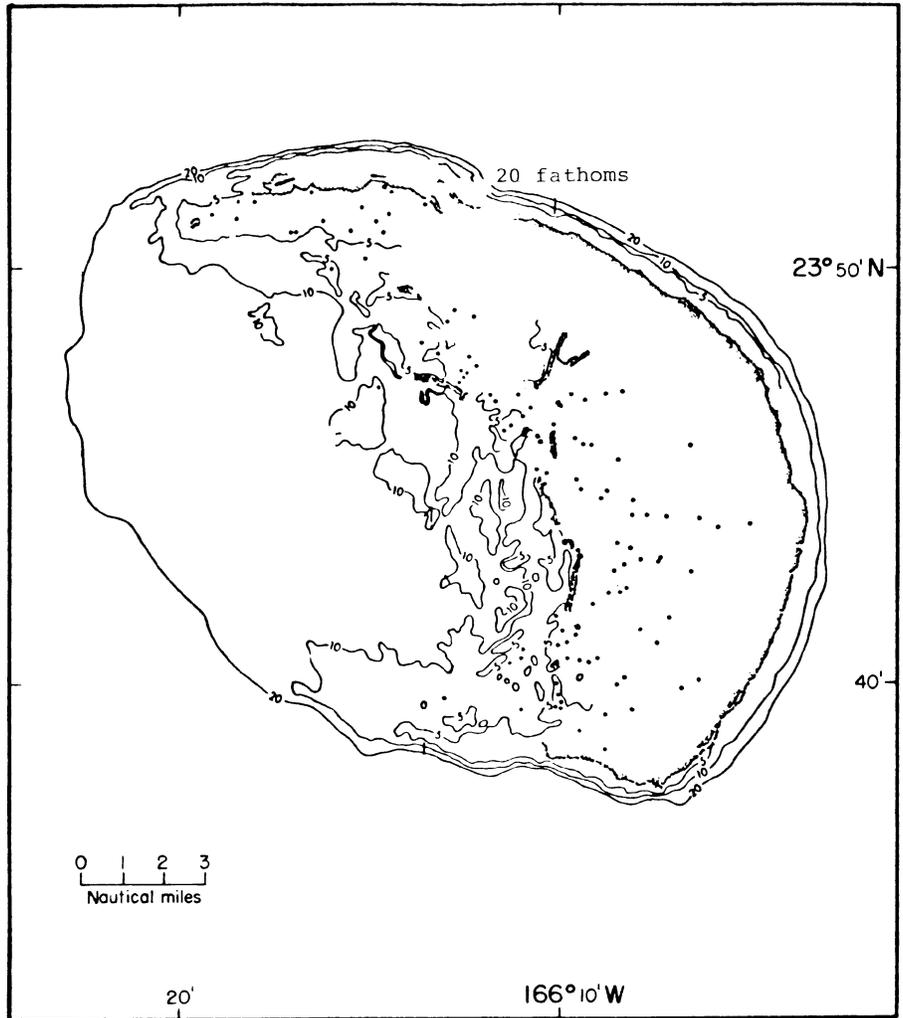




NECKER ISLAND

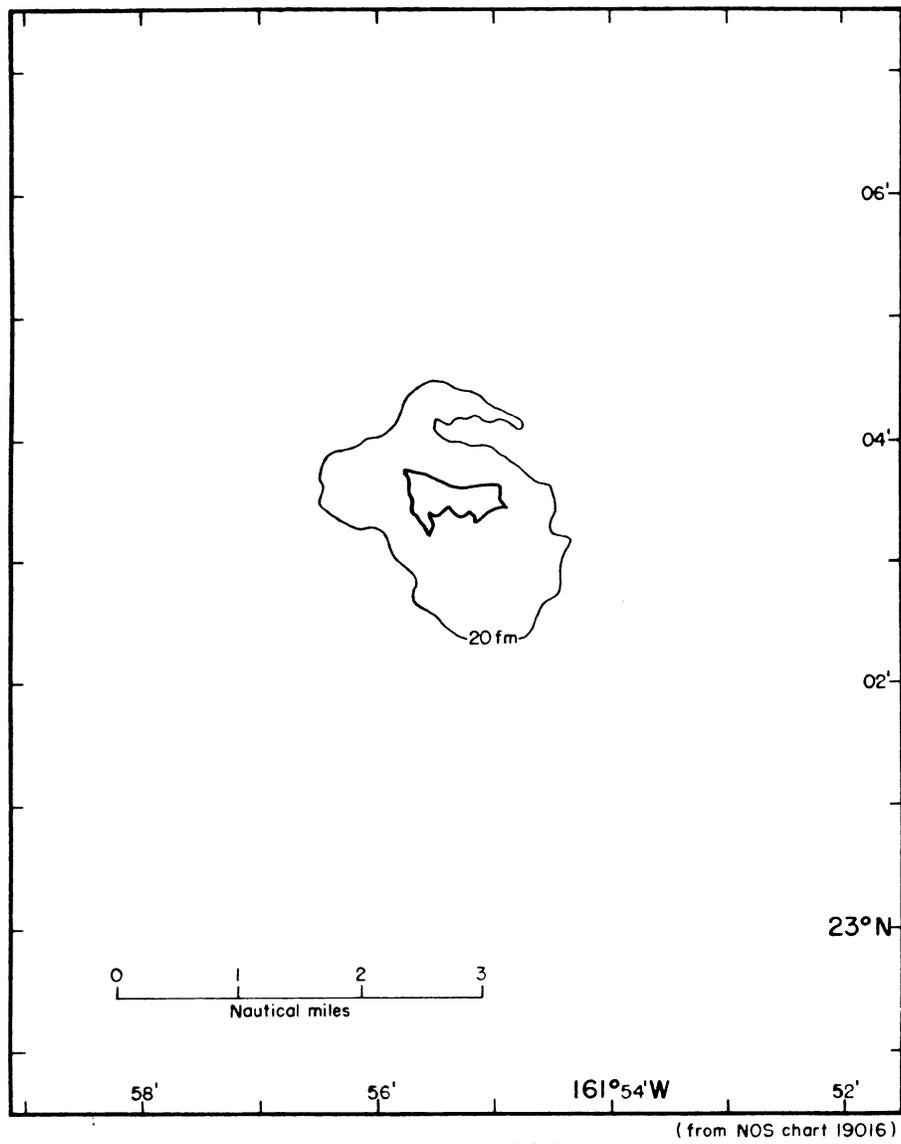


GARDNER PINNACLES



(from U.S.F.W.S.)

FRENCH FRIGATE SHOALS



NIHOA ISLAND

[53 FR 18990, May 26, 1988. Redesignated at 64 FR 14067, Mar. 23, 1999]

§ 226.202 Critical habitat for Steller sea lions.

STELLER SEA LION (*Eumetopias jubatus*)

(a) *Alaska rookeries, haulouts, and associated areas.* In Alaska, all major Steller sea lion rookeries identified in Table 1 and major haulouts identified in Table 2 and associated terrestrial, air, and aquatic zones. Critical habitat includes a terrestrial zone that extends 3,000 feet (0.9 km) landward from the baseline or base point of each major rookery and major haulout in Alaska. Critical habitat includes an air zone that extends 3,000 feet (0.9 km) above the terrestrial zone of each major rookery and major haulout in Alaska, measured vertically from sea level. Critical habitat includes an aquatic zone that extends 3,000 feet (0.9 km) seaward in State and Federally managed waters from the baseline or basepoint of each major rookery and major haulout in Alaska that is east of 144° W. longitude. Critical habitat includes an aquatic zone that extends 20 nm (37 km) seaward in State and Federally managed waters from the baseline or basepoint of each major rookery and major haulout in Alaska that is west of 144° W. longitude.

(b) *California and Oregon rookeries and associated areas.* In California and Oregon, all major Steller sea lion rookeries identified in Table 1 and associated air and aquatic zones. Critical habitat includes an air zone that extends 3,000 feet (0.9 km) above areas historically occupied by sea lions at each major rookery in California and Oregon, measured vertically from sea level. Critical habitat includes an aquatic zone that extends 3,000 feet (0.9 km) seaward in State and Federally managed waters from the baseline or basepoint of each major rookery in California and Oregon.

(c) *Three special aquatic foraging areas in Alaska.* Three special aquatic foraging areas in Alaska, including the Shelikof Strait area, the Bogoslof area, and the Seguam Pass area.

(1) Critical habitat includes the Shelikof Strait area in the Gulf of Alaska and consists of the area between the Alaska Peninsula and Tugidak, Sitkinak, Aiaktulik, Kodiak, Raspberry, Afognak and Shuyak Is-

lands (connected by the shortest lines); bounded on the west by a line connecting Cape Kumlik (56°38′/157°27′W) and the southwestern tip of Tugidak Island (56°24′N/154°41′W) and bounded in the east by a line connecting Cape Douglas (58°51′N/153°15′W) and the northernmost tip of Shuyak Island (58°37′N/152°22′W).

(2) Critical habitat includes the Bogoslof area in the Bering Sea shelf and consists of the area between 170°00′W and 164°00′W, south of straight lines connecting 55°00′N/170°00′W and 55°00′N/168°00′W; 55°30′N/168°00′W and 55°30′N/166°00′W; 56°00′N/166°00′W and 56°00′N/164°00′W and north of the Aleutian Islands and straight lines between the islands connecting the following coordinates in the order listed:

- 52°49.2′N/169°40.4′W
- 52°49.8′N/169°06.3′W
- 53°23.8′N/167°50.1′W
- 53°18.7′N/167°51.4′W
- 53°59.0′N/166°17.2′W
- 54°02.9′N/166°03.0′W
- 54°07.7′N/165°40.6′W
- 54°08.9′N/165°38.8′W
- 54°11.9′N/165°23.3′W
- 54°23.9′N/164°44.0′W

(3) Critical habitat includes the Seguam Pass area and consists of the area between 52°00′N and 53°00′N and between 173°30′W and 172°30′W.

[58 FR 45278, Aug. 27, 1993. Redesignated and amended at 64 FR 14067, Mar. 23, 1999]

§ 226.203 Critical habitat for northern right whales.

(a) *Great South Channel.* The area bounded by 41°40′ N/69°45′ W; 41°00′ N/69°05′ W; 41°38′ N/68°13′ W; and 42°10′ N/68°31′ W.

(b) *Cape Cod Bay, Massachusetts.* The area bounded by 42°04.8′ N/70°10′ W; 42°12′ N/70°15′ W; 42°12′ N/70°30′ W; 41°46.8′ N/70°30′ W and on the south and east by the interior shore line of Cape Cod, Massachusetts.

(c) *Southeastern United States.* The coastal waters between 31°15′ N and 30°15′ N from the coast out 15 nautical miles; and the coastal waters between 30°15′ N and 28°00′ N from the coast out 5 nautical miles (Figure 8 to part 226).

[59 FR 28805, June 3, 1994. Redesignated and amended at 64 FR 14067, Mar. 23, 1999; 68 FR 17562, Apr. 10, 2003; 70 FR 1832, Jan. 11, 2005; 71 FR 38293, July 6, 2006; 73 FR 19011, Apr. 8, 2008]

§ 226.204 Critical habitat for Sacramento winter-run chinook salmon.

The following waterways, bottom and water of the waterways and adjacent riparian zones: The Sacramento River from Keswick Dam, Shasta County (River Mile 302) to Chipps Island (River Mile 0) at the westward margin of the Sacramento-San Joaquin Delta, all waters from Chipps Island westward to Carquinez Bridge, including Honker Bay, Grizzly Bay, Suisun Bay, and Carquinez Strait, all waters of San Pablo Bay westward of the Carquinez Bridge, and all waters of San Francisco Bay (north of the San Francisco/Oakland Bay Bridge) from San Pablo Bay to the Golden Gate Bridge.

[58 FR 33218, June 16, 1993. Redesignated and amended at 64 FR 14067, Mar. 23, 1999]

§ 226.205 Critical habitat for Snake River sockeye salmon, Snake River fall chinook salmon, and Snake River spring/summer chinook salmon.

The following areas consisting of the water, waterway bottom, and adjacent riparian zone of specified lakes and river reaches in hydrologic units presently or historically accessible to listed Snake River salmon (except reaches above impassable natural falls, and Dworshak and Hells Canyon Dams). Adjacent riparian zones are defined as those areas within a horizontal distance of 300 feet (91.4 m) from the normal line of high water of a stream channel (600 feet or 182.8 m, when both sides of the stream channel are included) or from the shoreline of a standing body of water. The complete text delineating critical habitat for each species follows. Hydrologic units (table 3) are those defined by the Department of the Interior (DOI), U.S. Geological Survey (USGS) publication, "Hydrologic Unit Maps, United States Geological Survey Water Supply Paper 2294, 1987", and the following DOI, USGS, 1:500,000 scale hydrologic unit map: State of Oregon, 1974; State of Washington, 1974; State of Idaho, 1974, which are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the

USGS publication and maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Endangered Species Branch, Environmental and Technical Services Division, 911 NE, 11th Avenue, room 620, Portland, OR 97232, NMFS, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(a) *Snake River Sockeye Salmon (Oncorhynchus nerka)*. The Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) and including all Columbia River estuarine areas and river reaches upstream to the confluence of the Columbia and Snake Rivers; all Snake River reaches from the confluence of the Columbia River upstream to the confluence of the Salmon River; all Salmon River reaches from the confluence of the Snake River upstream to Alturas Lake Creek; Stanley, Redfish, Yellow Belly, Pettit, and Alturas Lakes (including their inlet and outlet creeks); Alturas Lake Creek, and that portion of Valley Creek between Stanley Lake Creek and the Salmon River. Critical habitat is comprised of all river lakes and reaches presently or historically accessible (except reaches above impassable natural falls, and Dworshak and Hells Canyon Dams) to Snake River sockeye salmon in the following hydrologic units: Lower Salmon, Lower Snake, Lower Snake-Asotin, Lower Snake-Tucannon, Middle Salmon-Chamberlain, Middle Salmon-Panther, and Upper Salmon. Critical habitat borders on or passes through the following counties in Oregon: Clatsop, Columbia, Gillium, Hood River, Morrow, Multnomah, Sherman, Umatilla, Wallowa, Wasco; the following counties in Washington: Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, Walla, Whitman; and the following counties in Idaho: Blaine,

Custer, Idaho, Lemhi, Lewis, Nez Perce.

(b) *Snake River Spring/Summer Chinook Salmon (Oncorhynchus tshawytscha)*. Geographic Boundaries. Critical habitat is designated to include the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) and including all Columbia River estuarine areas and river reaches proceeding upstream to the confluence of the Columbia and Snake Rivers; all Snake River reaches from the confluence of the Columbia River upstream to Hells Canyon Dam. Critical habitat also includes river reaches presently or historically accessible (except reaches above impassable natural falls (including Napias Creek Falls) and Dworshak and Hells Canyon Dams) to Snake River spring/summer chinook salmon in the following hydrologic units: Hells Canyon, Imnaha, Lemhi, Little Salmon, Lower Grande Ronde, Lower Middle Fork Salmon, Lower Salmon, Lower Snake-Asotin, Lower Snake-Tucannon, Middle Salmon-Chamberlain, Middle Salmon-Panther, Pahsimeroi, South Fork Salmon, Upper Middle Fork Salmon, Upper Grande Ronde, Upper Salmon, Wallowa. Critical habitat borders on or passes through the following counties in Oregon: Baker, Clatsop, Columbia, Gillium, Hood River, Morrow, Multnomah, Sherman, Umatilla, Union, Wallowa, Wasco; the following counties in Washington: Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, Walla, Whitman; and the following counties in Idaho: Adams, Blaine, Custer, Idaho, Lemhi, Lewis, Nez Perce, Valley.

(c) *Snake River Fall Chinook Salmon (Oncorhynchus tshawytscha)*. The Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) and including all Columbia River estuarine areas and river reaches proceeding upstream to the confluence of the Columbia and Snake Rivers; the Snake River, all river reaches from the confluence of the Columbia River, upstream to Hells

Canyon Dam; the Palouse River from its confluence with the Snake River upstream to Palouse Falls; the Clearwater River from its confluence with the Snake River upstream to its confluence with Lolo Creek; the North Fork Clearwater River from its confluence with the Clearwater River upstream to Dworshak Dam. Critical habitat also includes river reaches presently or historically accessible (except reaches above impassable natural falls, and Dworshak and Hells Canyon Dams) to Snake River fall chinook salmon in the following hydrologic units: Clearwater, Hells Canyon, Imnaha, Lower Grande Ronde, Lower North Fork Clearwater, Lower Salmon, Lower Snake, Lower Snake-Asotin, Lower Snake-Tucannon, and Palouse. Critical habitat borders on or passes through the following counties in Oregon: Baker, Clatsop, Columbia, Gillium, Hood River, Morrow, Multnomah, Sherman, Umatilla, Wallowa, Wasco; the following counties in Washington: Adams, Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Lincoln, Pacific, Skamania, Spokane, Wahkiakum, Walla, Whitman; and the following counties in Idaho: Adams, Benewah, Clearwater, Idaho, Latah, Lewis, Nez Perce, Shoshone, Valley.

[58 FR 68551, Dec. 28, 1993, as amended at 63 FR 1393, Jan. 9, 1998. Redesignated and amended at 64 FR 14067, Mar. 23, 1999; 64 FR 57403, Oct. 25, 1999; 69 FR 18803, Apr. 9, 2004]

§ 226.206 Critical habitat for the Southern Resident killer whale (*Orcinus orca*).

Critical habitat is designated for the Southern Resident killer whale as described in this section. The textual descriptions of critical habitat in this section are the definitive source for determining the critical habitat boundaries. The overview map is provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(a) *Critical Habitat Boundaries*. Critical habitat includes three specific marine areas of Puget Sound, Washington, within the following counties: Clallam, Jefferson, King, Kitsap, Island, Mason, Pierce, San Juan, Skagit, Snohomish,

Thurston, and Whatcom. Critical habitat includes all waters relative to a contiguous shoreline delimited by the line at a depth of 20 feet (6.1 m) relative to extreme high water in each of the following areas:

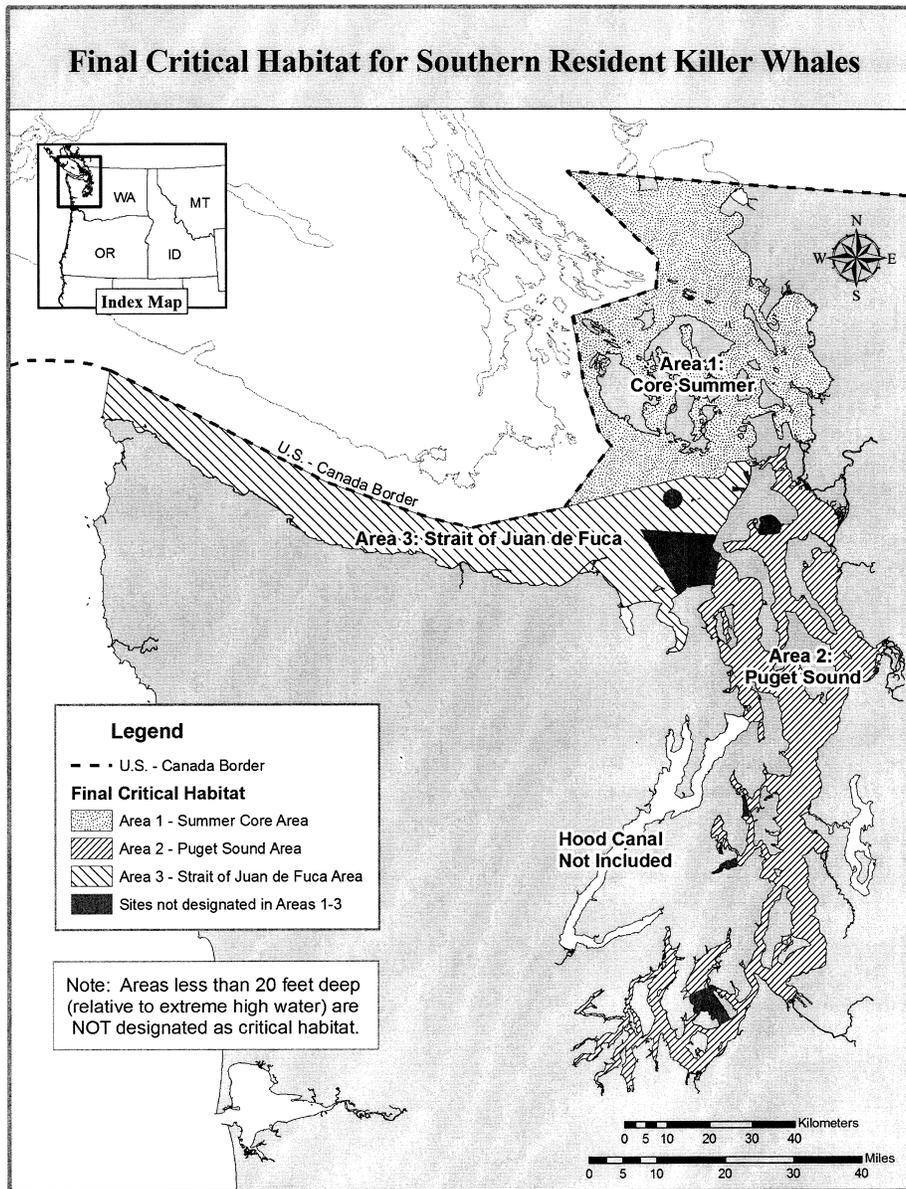
(1) *Summer Core Area*: All U.S. marine waters in Whatcom and San Juan counties; and all marine waters in Skagit County west and north of the Deception Pass Bridge (Highway 20) (48°24' 25" N./122°38'35" W.).

(2) *Puget Sound Area*: All marine waters in Island County east and south of the Deception Pass Bridge (Highway 20) (48°24' 25" N./122°38'35" W.), and east of a line connecting the Point Wilson Lighthouse (48°8'39" N./122°45'12" W.) and a point on Whidbey Island located at 48°12'30" N./122°44'26" W.; all marine waters in Skagit County east of the Deception Pass Bridge (Highway 20) (48°24' 25" N./122°38'35" W.); all marine waters of Jefferson County east of a line connecting the Point Wilson Lighthouse (48°8'39" N./122°45'12" W.) and a point on Whidbey Island located at latitude 48°12'30" N./122°44'26" W., and north of

the Hood Canal Bridge (Highway 104) (47°51'36" N./122°37'23" W.); all marine waters in eastern Kitsap County east of the Hood Canal Bridge (Highway 104) (47°51'36" N./122°37'23" W.); all marine waters (excluding Hood Canal) in Mason County; and all marine waters in King, Pierce, Snohomish, and Thurston counties.

(3) *Strait of Juan de Fuca Area*: All U.S. marine waters in Clallam County east of a line connecting Cape Flattery, Washington (48°23'10" N./124°43'32" W.), Tatoosh Island, Washington (48°23'30" N./124°44'12" W.), and Bonilla Point, British Columbia (48°35'30" N./124°43'00" W.); all marine waters in Jefferson and Island counties west of the Deception Pass Bridge (Highway 20) (48°24' 25" N./122°38'35" W.), and west of a line connecting the Point Wilson Lighthouse (48°8'39" N./122°45'12" W.) and a point on Whidbey Island located at 48°12'30" N./122°44'26" W.

(b) An overview map of final critical habitat for the Southern Resident killer whale follows.



(c) *Primary Constituent Elements.* The primary constituent elements essential for conservation of the Southern Resident killer whale are:

(1) Water quality to support growth and development;

(2) Prey species of sufficient quantity, quality, and availability to support individual growth, reproduction, and development, as well as overall population growth; and

(3) Passage conditions to allow for migration, resting, and foraging.

(d) *Sites owned or controlled by the Department of Defense.* Critical habitat does not include the following areas owned or controlled by the Department of Defense, or designated for its use, in the State of Washington, including shoreline, nearshore areas around structures such as docks and piers, and marine areas:

- (1) Naval Undersea Warfare Center, Keyport;
- (2) Naval Ordnance Center, Port Hadlock (Indian Island);
- (3) Naval Fuel Depot, Manchester;
- (4) Naval Air Station, Whidbey Island;
- (5) Naval Station, Everett;
- (6) Naval Hospital Bremerton;
- (7) Fort Lewis (Army);
- (8) Pier 23 (Army);
- (9) Puget Sound Naval Ship Yard;
- (10) Strait of Juan de Fuca naval air-to-surface weapon range, restricted area;
- (11) Strait of Juan de Fuca and Whidbey Island naval restricted areas;
- (12) Admiralty Inlet naval restricted area;
- (13) Port Gardner Naval Base restricted area;
- (14) Port Orchard Passage naval restricted area;
- (15) Sinclair Inlet naval restricted area;
- (16) Carr Inlet naval restricted area;
- (17) Port Townsend/Indian Island/Walan Point naval restricted area; and
- (18) Crescent Harbor Explosive Ordnance Units Training Area.

[71 FR 69068, Nov. 29, 2006]

§ 226.207 Critical habitat for leatherback turtle.

LEATHERBACK SEA TURTLE (*dermochelys coriacea*)

The waters adjacent to Sandy Point, St. Croix, U.S. Virgin Islands, up to and inclusive of the waters from the hundred fathom curve shoreward to the level of mean high tide with boundaries at 17°42'12" North and 64°50'00" West.

[44 FR 17711, Mar. 23, 1979. Redesignated and amended at 64 FR 14067, Mar. 23, 1999]

§ 226.208 Critical habitat for green turtle.

(a) Culebra Island, Puerto Rico—Waters surrounding the island of Culebra from the mean high water line seaward to 3 nautical miles (5.6 km). These waters include Culebra's outlying Keys including Cayo Norte, Cayo Ballena, Cayos Geniqui, Isla Culebrita, Arrecife Culebrita, Cayo de Luis Peña, Las Hermanas, El Mono, Cayo Lobo, Cayo Lobito, Cayo Botijuela, Alcarraza, Los Gemelos, and Piedra Steven.

(b) [Reserved]

[63 FR 46701, Sept. 2, 1998. Redesignated and amended at 64 FR 14067, Mar. 23, 1999]

§ 226.209 Critical habitat for hawksbill turtle.

(a) Mona and Monito Islands, Puerto Rico—Waters surrounding the islands of Mona and Monito, from the mean high water line seaward to 3 nautical miles (5.6 km).

(b) [Reserved]

[63 FR 46701, Sept. 2, 1998. Redesignated and amended at 64 FR 14067, Mar. 23, 1999]

§ 226.210 Central California Coast Coho Salmon (*Oncorhynchus kisutch*), Southern Oregon/Northern California Coasts Coho Salmon (*Oncorhynchus kisutch*).

Critical habitat is designated to include all river reaches accessible to listed coho within the range of the ESUs listed, except for reaches on Indian lands defined in Tables 5 and 6 to this part. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches in hydrologic units and counties identified in Tables 5 and 6 to this part for all of the coho ESUs listed in this section. Accessible reaches are those within the historical range of the ESUs that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years) and specific dams within the historical range of each ESU identified in Tables 5 and 6 to this part. Hydrologic units are those defined by the Department of the Interior (DOI), U.S. Geological Survey (USGS) publication, "Hydrologic Unit Maps," Water Supply Paper 2294, 1987,

§ 226.211

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and the following DOI, USGS, 1:500,000 scale hydrologic unit maps: State of Oregon, 1974 and State of California, 1978 which are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the USGS publication and maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Protected Resources Division, 525 NE Oregon Street—Suite 500, Portland, OR 97232–2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(a) *Central California Coast Coho Salmon (Oncorhynchus kisutch)*. Critical habitat is designated to include all river reaches accessible to listed coho salmon from Punta Gorda in northern California south to the San Lorenzo River in central California, including Arroyo Corte Madera Del Presidio and Corte Madera Creek, tributaries to San Francisco Bay. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches (including off-channel habitats) in hydrologic units and counties identified in Table 5 of this part. Accessible reaches are those within the historical range of the ESU that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above specific dams identified in Table 5 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(b) *Southern Oregon/Northern California Coasts Coho Salmon*

(*Oncorhynchus kisutch*). Critical habitat is designated to include all river reaches accessible to listed coho salmon between Cape Blanco, Oregon, and Punta Gorda, California. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches (including off-channel habitats) in hydrologic units and counties identified in Table 6 of this part. Accessible reaches are those within the historical range of the ESU that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above specific dams identified in Table 6 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

[64 FR 24061, May 5, 1999, as amended at 69 FR 18803, Apr. 9, 2004]

§ 226.211 Critical habitat for Seven Evolutionarily Significant Units (ESUs) of Salmon (*Oncorhynchus spp.*) in California.

Critical habitat is designated in the following California counties for the following ESUs as described in paragraph (a) of this section, and as further described in paragraphs (b) through (e) of this section. The textual descriptions of critical habitat for each ESU are included in paragraphs (f) through (l) of this section, and these descriptions are the definitive source for determining the critical habitat boundaries. General location maps are provided at the end of each ESU description (paragraphs (f) through (l) of this section) and are provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(a) Critical habitat is designated for the following ESUs in the following California counties:

ESU	State—counties
(1) California Coastal Chinook	CA—Humboldt, Trinity, Mendocino, Sonoma, Lake, Napa, Glenn, Colusa, and Tehama.
(2) Northern California Steelhead	CA—Humboldt, Trinity, Mendocino, Sonoma, Lake, Glenn, Colusa, and Tehama.
(3) Central California Coast Steelhead	CA—Lake, Mendocino, Sonoma, Napa, Marin, San Francisco, San Mateo, Santa Clara, Santa Cruz, Alameda, Contra Costa, and San Joaquin.
(4) South-Central Coast Steelhead	CA—Monterey, San Benito, Santa Clara, Santa Cruz, San Luis Obispo.

ESU	State—counties
(5) Southern California Steelhead	CA—San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange and San Diego.
(6) Central Valley spring-run Chinook	CA—Tehama, Butte, Glenn, Shasta, Yolo, Sacramento, Solano, Colusa, Yuba, Sutter, Trinity, Alameda, San Joaquin, and Contra Costa.
(7) Central Valley Steelhead	CA—Tehama, Butte, Glenn, Shasta, Yolo, Sacramento, Solano, Yuba, Sutter, Placer, Calaveras, San Joaquin, Stanislaus, Tuolumne, Merced, Alameda, Contra Costa.

(b) *Critical habitat boundaries.* Critical habitat includes the stream channels within the designated stream reaches, and includes a lateral extent as defined by the ordinary high-water line (33 CFR 329.11). In areas where the ordinary high-water line has not been defined, the lateral extent will be defined by the bankfull elevation. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain and is reached at a discharge which generally has a recurrence interval of 1 to 2 years on the annual flood series. Critical habitat in estuaries (e.g. San Francisco-San Pablo-Suisun Bay, Humboldt Bay, and Morro Bay) is defined by the perimeter of the water body as displayed on standard 1:24,000 scale topographic maps or the elevation of extreme high water, whichever is greater.

(c) *Primary constituent elements.* Within these areas, the primary constituent elements essential for the conservation of these ESUs are those sites and habitat components that support one or more life stages, including:

(1) Freshwater spawning sites with water quantity and quality conditions and substrate supporting spawning, incubation and larval development;

(2) Freshwater rearing sites with:

(i) Water quantity and floodplain connectivity to form and maintain physical habitat conditions and support juvenile growth and mobility;

(ii) Water quality and forage supporting juvenile development; and

(iii) Natural cover such as shade, submerged and overhanging large wood, log jams and beaver dams, aquatic vegetation, large rocks and boulders, side channels, and undercut banks.

(3) Freshwater migration corridors free of obstruction and excessive predation with water quantity and quality conditions and natural cover such as submerged and overhanging large

wood, aquatic vegetation, large rocks and boulders, side channels, and undercut banks supporting juvenile and adult mobility and survival.

(4) Estuarine areas free of obstruction and excessive predation with:

(i) Water quality, water quantity, and salinity conditions supporting juvenile and adult physiological transitions between fresh- and saltwater;

(ii) Natural cover such as submerged and overhanging large wood, aquatic vegetation, large rocks and boulders, side channels; and

(iii) Juvenile and adult forage, including aquatic invertebrates and fishes, supporting growth and maturation.

(d) *Exclusion of Indian lands.* Critical habitat does not include occupied habitat areas on Indian lands. The Indian lands specifically excluded from critical habitat are those defined in the Secretarial Order, including:

(1) Lands held in trust by the United States for the benefit of any Indian tribe;

(2) Land held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation;

(3) Fee lands, either within or outside the reservation boundaries, owned by the tribal government; and

(4) Fee lands within the reservation boundaries owned by individual Indians.

(e) *Land owned or controlled by the Department of Defense.* Additionally, critical habitat does not include the following areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a):

(1) Camp Pendleton Marine Corps Base;

(2) Vandenberg Air Force Base;

(3) Camp San Luis Obispo;
 (4) Camp Roberts; and
 (5) Mare Island Army Reserve Center.
 (f) *California Coastal Chinook Salmon* (*Oncorhynchus tshawytscha*). Critical habitat is designated to include the areas defined in the following CALWATER Hydrologic units:

(1) Redwood Creek Hydrologic Unit 1107—(i) *Orick Hydrologic Sub-area 110710*. Outlet(s) = Redwood Creek (Lat -41.2923, Long -124.0917) upstream to endpoint(s) in: Boyes Creek (41.3639, -123.9845); Bridge Creek (41.137, -124.0012); Brown Creek (41.3986, -124.0012); Emerald (Harry Weir) (41.2142, -123.9812); Godwood Creek (41.3889, -124.0312); Larry Dam Creek (41.3359, -124.003); Little Lost Man Creek (41.2944, -124.0014); Lost Man Creek (41.3133, -123.9854); May Creek (41.3547, -123.999); McArthur Creek (41.2705, -124.041); North Fork Lost Man Creek (41.3374, -123.9935); Prairie Creek (41.4239, -124.0367); Tom McDonald (41.1628, -124.0419).

(ii) *Beaver Hydrologic Sub-area 110720*. Outlet(s) = Redwood Creek (Lat 41.1367, Long -123.9309) upstream to endpoint(s): Lacks Creek (41.0334, -123.8124); Minor Creek (40.9706, -123.7899).

(iii) *Lake Prairie Hydrologic Sub-area 110730*. Outlet(s) = Redwood Creek (Lat 40.9070, Long -123.8170) upstream to endpoint(s) in: Redwood Creek (40.7432, -123.7206).

(2) Trinidad Hydrologic Unit 1108—(i) *Big Lagoon Hydrologic Sub-area 110810*. Outlet(s) = Maple Creek (Lat 41.1555, Long -124.1380) upstream to endpoint(s) in: North Fork Maple Creek (41.1317, -124.0824); Maple Creek (41.1239, -124.1041).

(ii) *Little River Hydrologic Sub-area 110820*. Outlet(s) = Little River (41.0277, -124.1112) upstream to endpoint(s) in: South Fork Little River (40.9908, -124.0412); Little River (41.0529, -123.9727); Railroad Creek (41.0464, -124.0475); Lower South Fork Little River (41.0077, -124.0078); Upper South Fork Little River (41.0131, -123.9853).

(3) Mad River Hydrologic Unit 1109—(i) *Blue Lake Hydrologic Sub-area 110910*. Outlet(s) = Mad River (Lat 40.9139, Long -124.0642) upstream to endpoint(s) in: Lindsay Creek (40.983, -124.0326); Mill Creek (40.9008, -124.0086); North

Fork Mad River (40.8687, -123.9649); Squaw Creek (40.9426, -124.0202); Warren Creek (40.8901, -124.0402).

(ii) *North Fork Mad River 110920*. Outlet(s) = North Fork Mad River (Lat 40.8687, Long -123.9649) upstream to endpoint(s) in: Sullivan Gulch (40.8646, -123.9553); North Fork Mad River (40.8837, -123.9436).

(iii) *Butler Valley 110930*. Outlet(s) = Mad River (Lat 40.8449, Long -123.9807) upstream to endpoint(s) in: Black Creek (40.7547, -123.9016); Black Dog Creek (40.8334, -123.9805); Canon Creek (40.8362, -123.9028); Dry Creek (40.8218, -123.9751); Mad River (40.7007, -123.8642); Maple Creek (40.7928, -123.8742); Unnamed (40.8186, -123.9769).

(4) Eureka Plain Hydrologic Unit 1110—(i) *Eureka Plain Hydrologic Sub-area 111000*. Outlet(s) = Mad River (Lat 40.9560, Long -124.1278); Jacoby Creek (40.8436, -124.0834); Freshwater Creek (40.8088, -124.1442); Elk River (40.7568, -124.1948); Salmon Creek (40.6868, -124.2194) upstream to endpoint(s) in: Bridge Creek (40.6958, -124.0795); Dunlap Gulch (40.7101, -124.1155); Freshwater Creek (40.7389, -123.9944); Gannon Slough (40.8628, -124.0818); Jacoby Creek (40.7944, -124.0093); Little Freshwater Creek (40.7485, -124.0652); North Branch of the North Fork Elk River (40.6878, -124.0131); North Fork Elk River (40.6756, -124.0153); Ryan Creek (40.7835, -124.1198); Salmon Creek (40.6438, -124.1319); South Branch of the North Fork Elk River (40.6691, -124.0244); South Fork Elk River (40.6626, -124.061); South Fork Freshwater Creek (40.7097, -124.0277).

(ii) [Reserved]

(5) Eel River Hydrologic Unit 1111—(i) *Ferndale Hydrologic Sub-area 111111*. Outlet(s) = Eel River (Lat 40.6282, Long -124.2838) upstream to endpoint(s) in: Atwell Creek (40.472, -124.1449); Howe Creek (40.4748, -124.1827); Price Creek (40.5028, -124.2035); Strongs Creek (40.5986, -124.1222); Van Duzen River (40.5337, -124.1262).

(ii) *Scotia Hydrologic Sub-area 111112*. Outlet(s) = Eel River (Lat 40.4918, Long -124.0998) upstream to endpoint(s) in: Bear Creek (40.391, -124.0156); Chadd Creek (40.3921, -123.9542); Jordan Creek (40.4324, -124.0428); Monument Creek (40.4676, -124.1133).

(iii) *Larabee Creek Hydrologic Sub-area 111113*. Outlet(s) = Larabee Creek (40.4090, Long -123.9334) upstream to endpoint(s) in: Carson Creek (40.4189, -123.8881); Larabee Creek (40.3950, -123.8138).

(iv) *Hydesville Hydrologic Sub-area 111121*. Outlet(s) = Van Duzen River (Lat 40.5337, Long -124.1262) upstream to endpoint(s) in: Cummings Creek (40.5258, -123.9896); Fielder Creek (40.5289, -124.0201); Hely Creek (40.5042, -123.9703); Yager Creek (40.5583, -124.0577).

(v) *Yager Creek Hydrologic Sub-area 111123*. Outlet(s) = Yager Creek (Lat 40.5583, Long -124.0577) upstream to endpoint(s) in: Corner Creek (40.6189, -123.9994); Fish Creek (40.6392, -124.0032); Lawrence Creek (40.6394, -123.9935); Middle Fork Yager Creek (40.5799, -123.9015); North Fork Yager Creek (40.6044, -123.9084); Owl Creek (40.5557, -123.9362); Shaw Creek (40.6245, -123.9518); Yager Creek (40.5673, -123.9403).

(vi) *Weott Hydrologic Sub-area 111131*. Outlet(s) = South Fork Eel River (Lat 40.3500, Long -123.9305) upstream to endpoint(s) in: Bridge Creek (40.2929, -123.8569); Bull Creek (40.3148, -124.0343); Canoe Creek (40.2909, -123.922); Cow Creek (40.3583, -123.9626); Cuneo Creek (40.3377, -124.0385); Elk Creek (40.2837, -123.8365); Fish Creek (40.2316, -123.7915); Harper Creek (40.354, -123.9895); Mill Creek (40.3509, -124.0236); Salmon Creek (40.2214, -123.9059); South Fork Salmon River (40.1769, -123.8929); Squaw Creek (40.3401, -123.9997); Tostin Creek (40.1722, -123.8796).

(vii) *Benbow Hydrologic Sub-area 111132*. Outlet(s) = South Fork Eel River (Lat 40.1932, Long -123.7692) upstream to endpoint(s) in: Anderson Creek (39.9337, -123.8933); Bear Pen Creek (39.9125, -123.8108); Bear Wallow Creek (39.7296, -123.7172); Bond Creek (39.7856, -123.6937); Butler Creek (39.7439, -123.692); China Creek (40.1035, -123.9493); Connick Creek (40.0911, -123.8187); Cox Creek (40.0288, -123.8542); Cummings Creek (39.8431, -123.5752); Dean Creek (40.1383, -123.7625); Dinner Creek (40.0915, -123.937); East Branch South Fork Eel River (39.9433, -123.6278); Elk Creek (39.7986, -123.5981); Fish Creek (40.0565, -123.7768); Foster Creek (39.8455, -123.6185); Grapewine

Creek (39.7991, -123.5186); Hartsook Creek (40.012, -123.7888); Hollow Tree Creek (39.7316, -123.6918); Huckleberry Creek (39.7315, -123.7253); Indian Creek (39.9464, -123.8993); Jones Creek (39.9977, -123.8378); Leggett Creek (40.1374, -123.8312); Little Sproul Creel (40.0897, -123.8585); Low Gap Creek (39.993, -123.767); McCoy Creek (39.9598, -123.7542); Michael's Creek (39.7642, -123.7175); Miller Creek (40.1215, -123.916); Moody Creek (39.9531, -123.8819); Mud Creek (39.8232, -123.6107); Piercy Creek (39.9706, -123.8189); Pollock Creek (40.0822, -123.9184); Rattlesnake Creek (39.7974, -123.5426); Redwood Creek (39.7721, -123.7651); Redwood Creek (40.0974, -123.9104); Seely Creek (40.1494, -123.8825); Somerville Creek (40.0896, -123.8913); South Fork Redwood Creek (39.7663, -123.7579); Spoul Creek (40.0125, -123.8585); Standley Creek (39.9479, -123.8083); Tom Long Creek (40.0315, -123.6891); Twin Rocks Creek (39.8269, -123.5543); Warden Creek (40.0625, -123.8546); West Fork Sproul Creek (40.0386, -123.9015); Wildcat Creek (39.9049, -123.7739); Wilson Creek (39.841, -123.6452); Unnamed Tributary (40.1136, -123.9359).

(viii) *Laytonville Hydrologic Sub-area 111133*. Outlet(s) = South Fork Eel River (Lat 39.7665, Long -123.6484) upstream to endpoint(s) in: Bear Creek (39.6413, -123.5797); Cahto Creek (39.6624, -123.5453); Dutch Charlie Creek (39.6892, -123.6818); Grub Creek (39.7777, -123.5809); Jack of Hearts Creek (39.7244, -123.6802); Kenny Creek (39.6733, -123.6082); Mud Creek (39.6561, -123.592); Redwood Creek (39.6738, -123.6631); Rock Creek (39.6931, -123.6204); South Fork Eel River (39.6271, -123.5389); Streeter Creek (39.7328, -123.5542); Ten Mile Creek (39.6651, -123.451).

(ix) *Sequoia Hydrologic Sub-area 111141*. Outlet(s) = Eel River (Lat 40.3557, Long -123.9191); South Fork Eel River (40.3558, -123.9194) upstream to endpoint(s) in: Brock Creek (40.2411, -123.7248); Dobbyn Creek (40.2216, -123.6029); Hoover Creek (40.2312, -123.5792); Line Gulch (40.1655, -123.4831); North Fork Dobbyn Creek (40.2669, -123.5467); South Fork Dobbyn Creek (40.1723, -123.5112); South Fork Eel River (40.35, -123.9305); Unnamed Tributary (40.3137, -123.8333); Unnamed Tributary (40.2715, -123.549).

(x) *Spy Rock Hydrologic Sub-area 111142*. Outlet(s) = Eel River (Lat 40.1736, Long -123.6043) upstream to endpoint(s) in: Bell Springs Creek (39.9399, -123.5144); Burger Creek (39.6943, -123.413); Chamise Creek (40.0563, -123.5479); Jewett Creek (40.1195, -123.6027); Kekawaka Creek (40.0686, -123.4087); Woodman Creek (39.7639, -123.4338).

(xi) *North Fork Eel River Hydrologic Sub-area 111150*. Outlet(s) = North Fork Eel River (Lat 39.9567, Long -123.4375) upstream to endpoint(s) in: North Fork Eel River (39.9370, -123.3758).

(xii) *Outlet Creek Hydrologic Sub-area 111161*. Outlet(s) = Outlet Creek (Lat 39.6263, Long -123.3453) upstream to endpoint(s) in: Baechtel Creek (39.3688, -123.4028); Berry Creek (39.4272, -123.2951); Bloody Run (39.5864, -123.3545); Broadus Creek (39.3907, -123.4163); Davis Creek (39.3701, -123.3007); Dutch Henry Creek (39.5788, -123.4543); Haehl Creek (39.3795, -123.3393); Long Valley Creek (39.6091, -123.4577); Ryan Creek (39.4803, -123.3642); Upp Creek (39.4276, -123.3578); Upp Creek (39.4276, -123.3578); Willits Creek (39.4315, -123.3794).

(xiii) *Tomki Creek Hydrologic Sub-area 111162*. Outlet(s) = Eel River (Lat 39.7138, Long -123.3531) upstream to endpoint(s) in: Cave Creek (39.3925, -123.2318); Long Branch Creek (39.4074, -123.1897); Rocktree Creek (39.4533, -123.3079); Salmon Creek (39.4461, -123.2104); Scott Creek (39.456, -123.2297); String Creek (39.4855, -123.2891); Tomki Creek (39.549, -123.3613); Wheelbarrow Creek (39.5029, -123.3287).

(xiv) *Lake Pillsbury Hydrologic Sub-area 111163*. Outlet(s) = Eel River (Lat 39.3860, Long -123.1163) upstream to endpoint(s) in: Eel River (39.4078, -122.958).

(xv) *Eden Valley Hydrologic Sub-area 111171*. Outlet(s) = Middle Fork Eel River (Lat 39.8146, Long -123.1332) upstream to endpoint(s) in: Middle Fork Eel River (39.8145, -123.1333).

(xvi) *Round Valley Hydrologic Sub-area 111172*. Outlet(s) = Mill Creek (Lat 39.7396, Long -123.1420); Williams Creek (39.8145, -123.1333) upstream to endpoint(s) in: Mill Creek (39.8456, -123.2822); Murphy Creek (39.8804, -123.1636); Poor Mans Creek (39.8179, -123.1833); Short Creek (39.8645,

-123.2242); Turner Creek (39.7238, -123.2191); Williams Creek (39.8596, -123.1341).

(6) *Cape Mendocino Hydrologic Unit 1112*—(i) *Capetown Hydrologic Sub-area 111220*. Outlet(s) = Bear River (Lat 40.4744, Long -124.3881) upstream to endpoint(s) in: Bear River (40.3591, -124.0536); South Fork Bear River (40.4271, -124.2873).

(ii) *Mattole River Hydrologic Sub-area 111230*. Outlet(s) = Mattole River (Lat 40.2942, Long -124.3536) upstream to endpoint(s) in: Bear Creek (40.1262, -124.0631); Blue Slide Creek (40.1286, -123.9579); Bridge Creek (40.0503, -123.9885); Conklin Creek (40.3169, -124.229); Dry Creek (40.2389, -124.0621); East Fork Honeydew Creek (40.1633, -124.0916); East Fork of the North Fork Mattole River (40.3489, -124.2244); Eubanks Creek (40.0893, -123.9743); Gilham Creek (40.2162, -124.0309); Grindstone Creek (40.1875, -124.0041); Honeydew Creek (40.1942, -124.1363); Mattole Canyon (40.1833, -123.9666); Mattole River (39.9735, -123.9548); McGinnis Creek (40.3013, -124.2146); McKee Creek (40.0674, -123.9608); Mill Creek (40.0169, -123.9656); North Fork Mattole River (40.3729, -124.2461); North Fork Bear Creek (40.1422, -124.0945); Oil Creek (40.3008, -124.1253); Rattlesnake Creek (40.2919, -124.1051); South Fork Bear Creek (40.0334, -124.0232); Squaw Creek (40.219, -124.1921); Thompson Creek (39.9969, -123.9638); Unnamed (40.1522, -124.0989); Upper North Fork Mattole River (40.2907, -124.1115); Westlund Creek (40.2333, -124.0336); Woods creek (40.2235, -124.1574); Yew Creek (40.0019, -123.9743).

(7) *Mendocino Coast Hydrologic Unit 1113*—(i) *Wages Creek Hydrologic Sub-area 111312*. Outlet(s) = Wages Creek (Lat 39.6513, Long -123.7851) upstream to endpoint(s) in: Wages Creek (39.6393, -123.7146).

(ii) *Ten Mile River Hydrologic Sub-area 111313*. Outlet(s) = Ten Mile River (Lat 39.5529, Long -123.7658) upstream to endpoint(s) in: Middle Fork Ten Mile River (39.5397, -123.5523); Little North Fork Ten Mile River (39.6188, -123.7258); Ten Mile River (39.5721, -123.7098); South Fork Ten Mile River (39.4927, -123.6067); North Fork Ten Mile River (39.5804, -123.5735).

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(iii) Noyo River Hydrologic Sub-area 111320. Outlet(s) = Noyo River (Lat 39.4274, Long -123.8096) upstream to endpoint(s) in: North Fork Noyo River (39.4541, -123.5331); Noyo River (39.431, 123.494); South Fork Noyo River (39.3549, -123.6136).

(iv) *Big River Hydrologic Sub-area 111330*. Outlet(s) = Big River (Lat 39.3030, Long -123.7957) upstream to endpoint(s) in: Big River (39.3095, -123.4454).

(v) *Albion River Hydrologic Sub-area 111340*. Outlet(s) = Albion River (Lat 39.2253, Long -123.7679) upstream to endpoint(s) in: Albion River (39.2644, -123.6072).

(vi) *Garcia River Hydrologic Sub-area 111370*. Outlet(s) = Garcia River (Lat 38.9455, Long -123.7257) upstream to endpoint(s) in: Garcia River (38.9160, -123.4900).

(8) Russian River Hydrologic Unit 1114—(i) *Guerneville Hydrologic Sub-area 111411*. Outlet(s) = Russian River (Lat 38.4507, Long -123.1289) upstream to endpoint(s) in: Austin Creek (38.5099,

-123.0681); Mark West Creek (38.4961, -122.8489).

(ii) *Austin Creek Hydrologic Sub-area 111412*. Outlet(s) = Austin Creek (Lat 38.5099, Long -123.0681) upstream to endpoint(s) in: Austin Creek (38.5326, -123.0844).

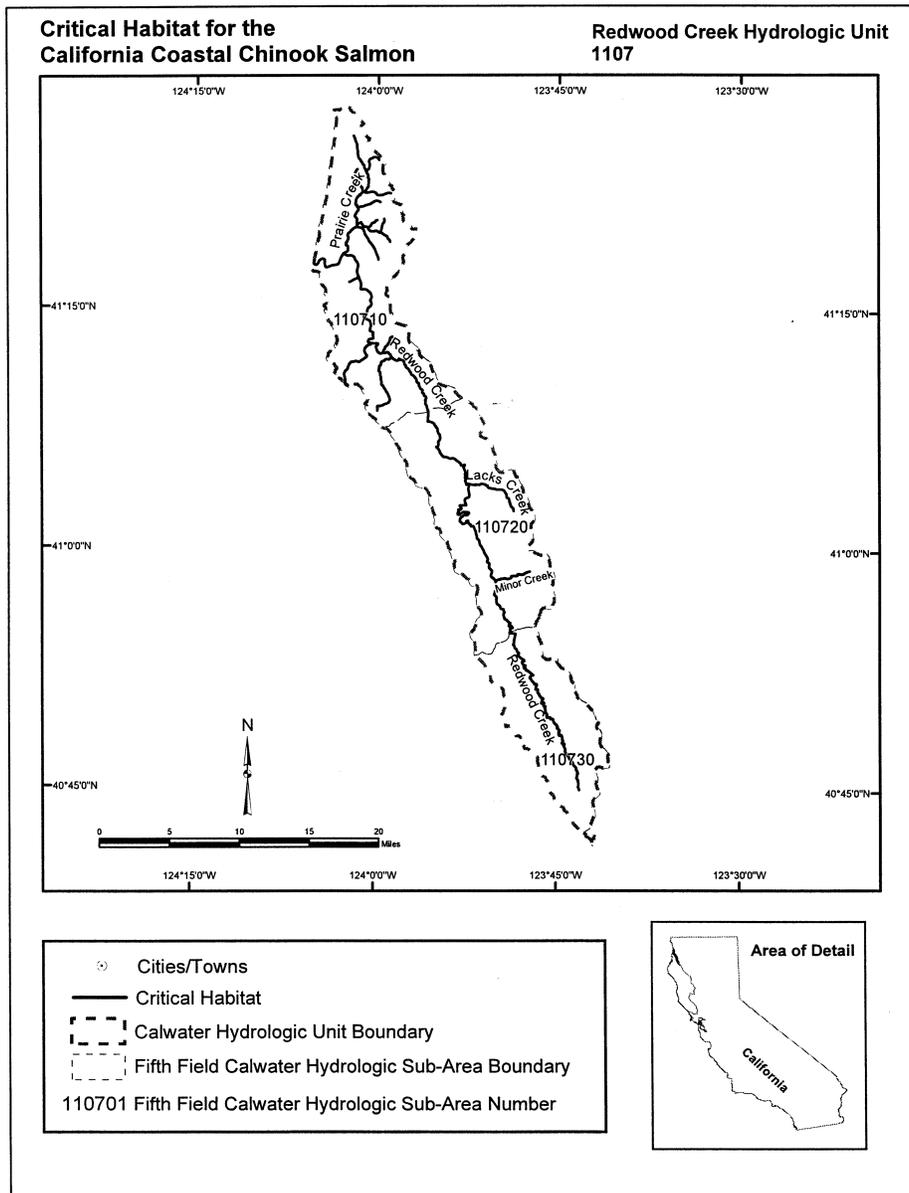
(iii) *Warm Springs Hydrologic Sub-area 111424*. Outlet(s) = Dry Creek (Lat 38.5861, Long -122.8573) upstream to endpoint(s) in: Dry Creek (38.7179, -123.0075).

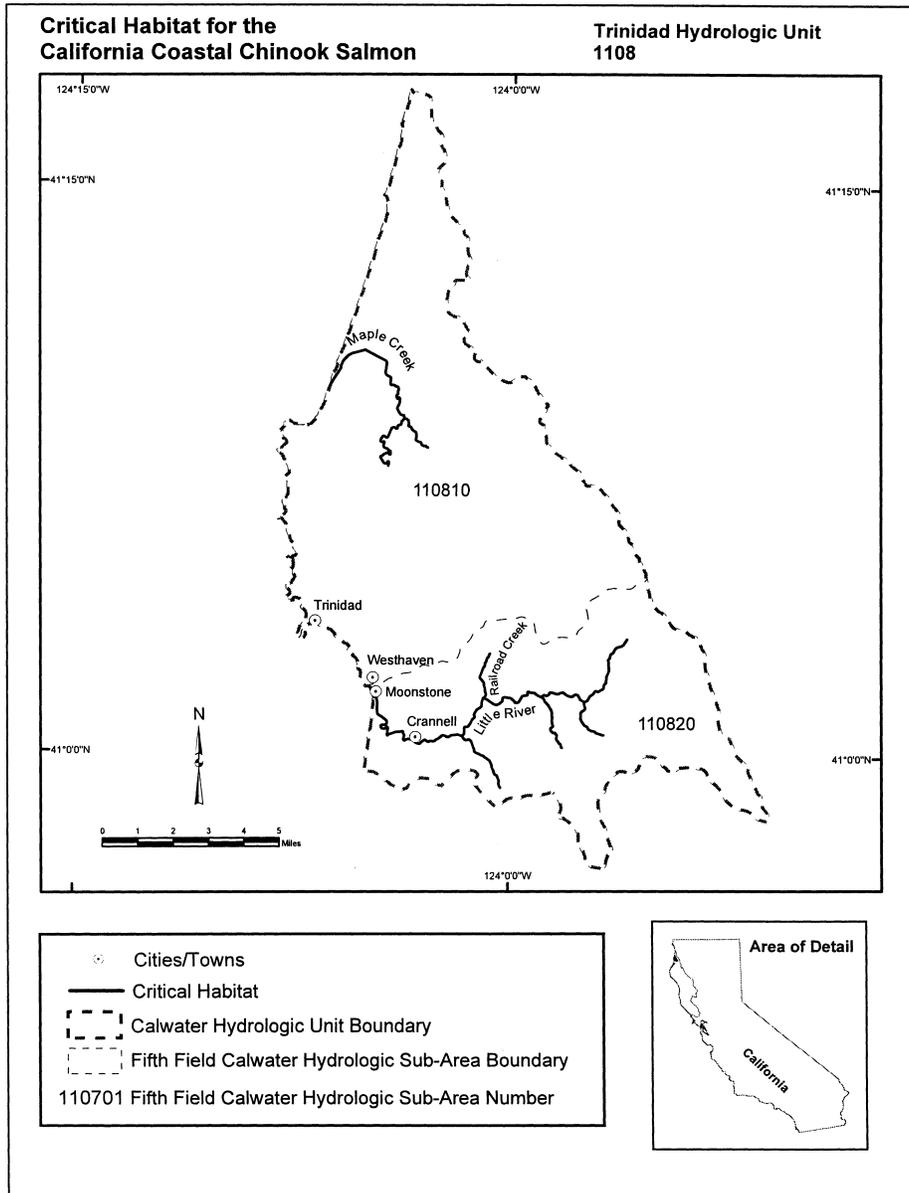
(iv) *Geyserville Hydrologic Sub-area 111425*. Outlet(s) = Russian River (Lat 38.6132, Long -122.8321) upstream.

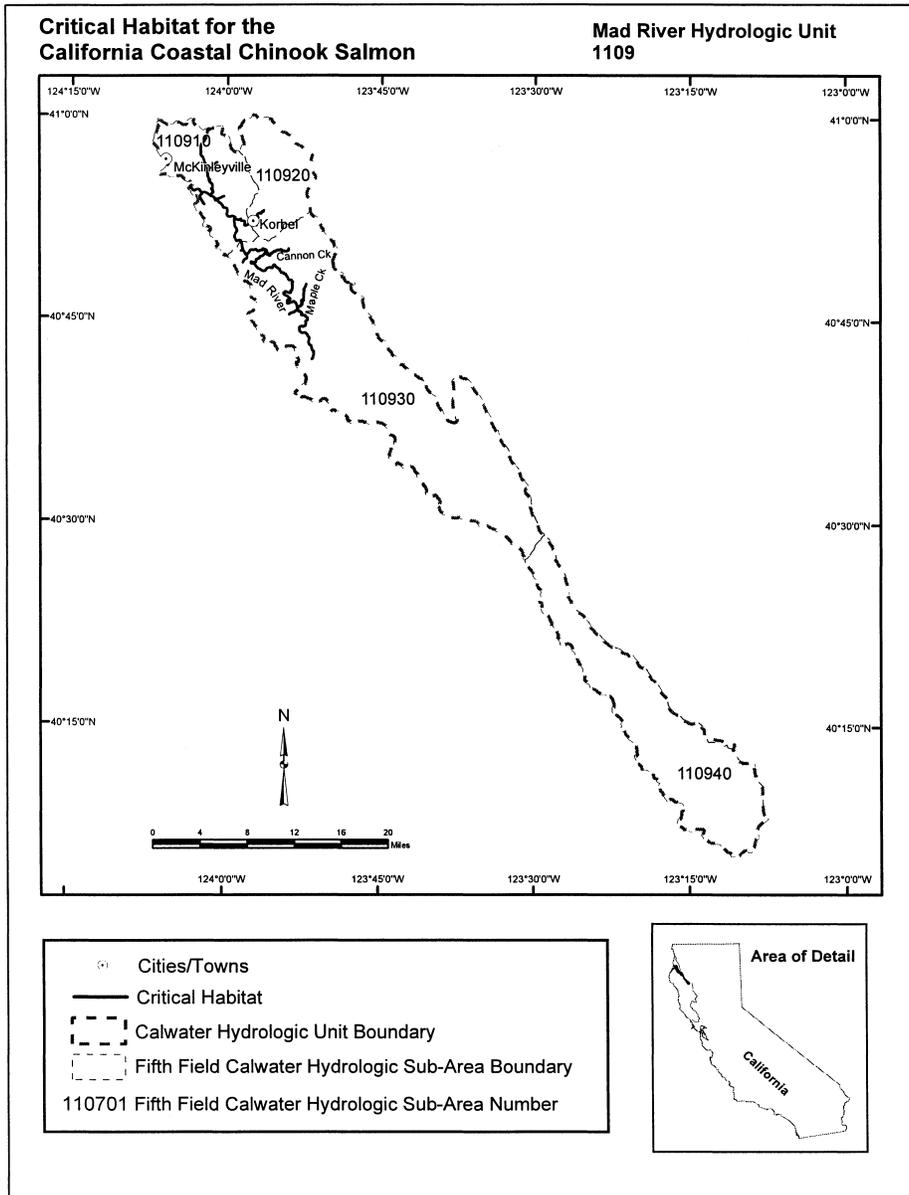
(v) *Ukiah Hydrologic Sub-area 111431*. Outlet(s) = Russian River (Lat 38.8828, Long -123.0557) upstream to endpoint(s) in: Feliz Creek (38.9941, -123.1779).

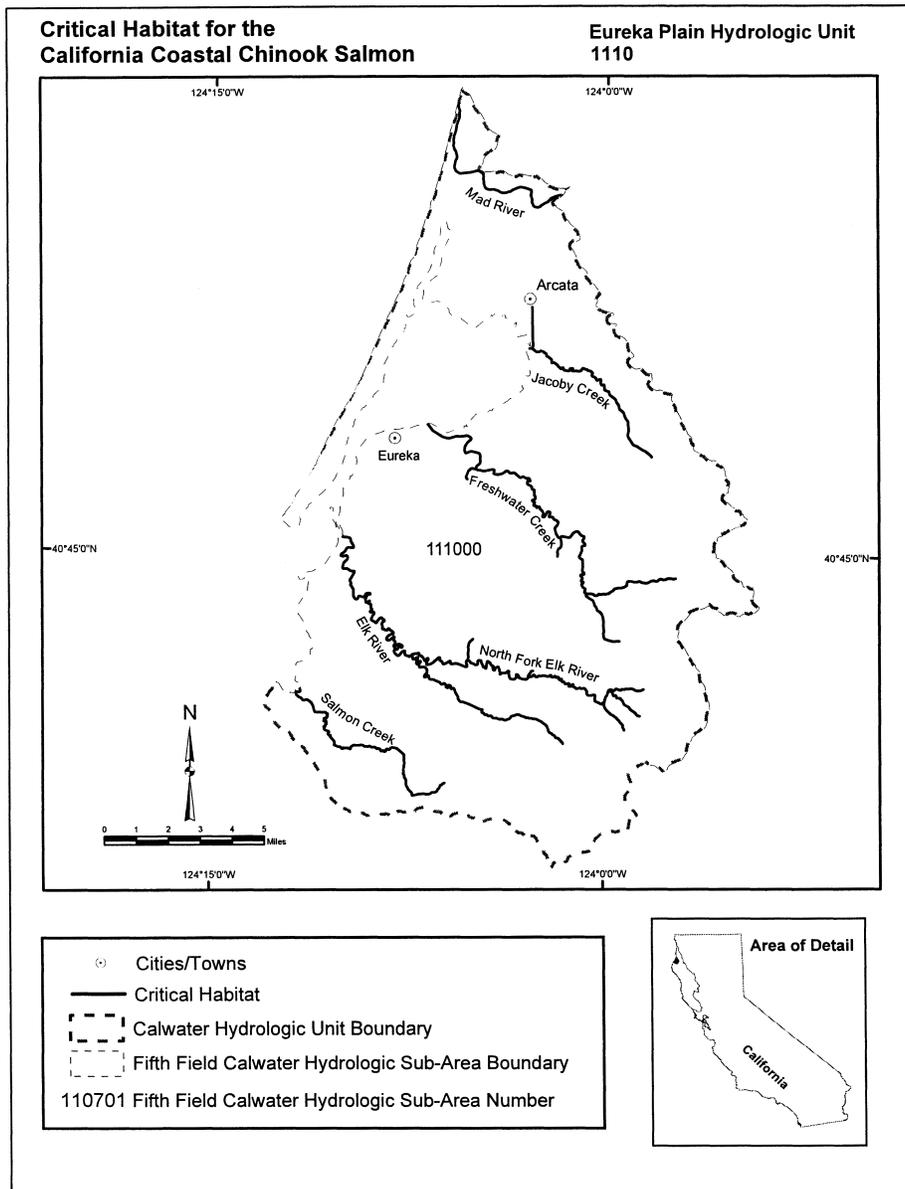
(vi) *Forsythe Creek Hydrologic Sub-area 111433*. Outlet(s) = Russian River (Lat 39.2257, Long -123.2012) upstream to endpoint(s) in: Forsythe Creek (39.2780, -123.2608); Russian River (39.3599, -123.2326).

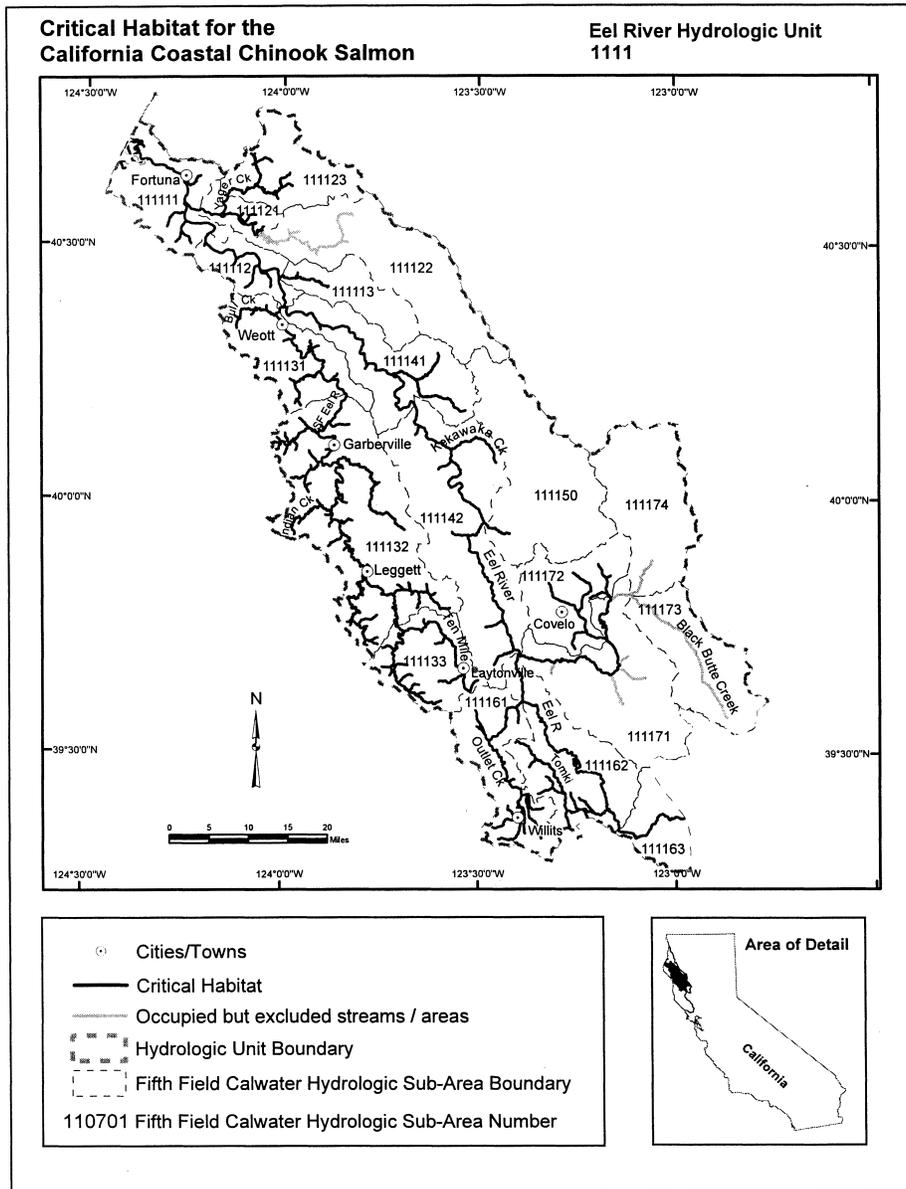
(9) Maps of critical habitat for the California Coast chinook salmon ESU follow:

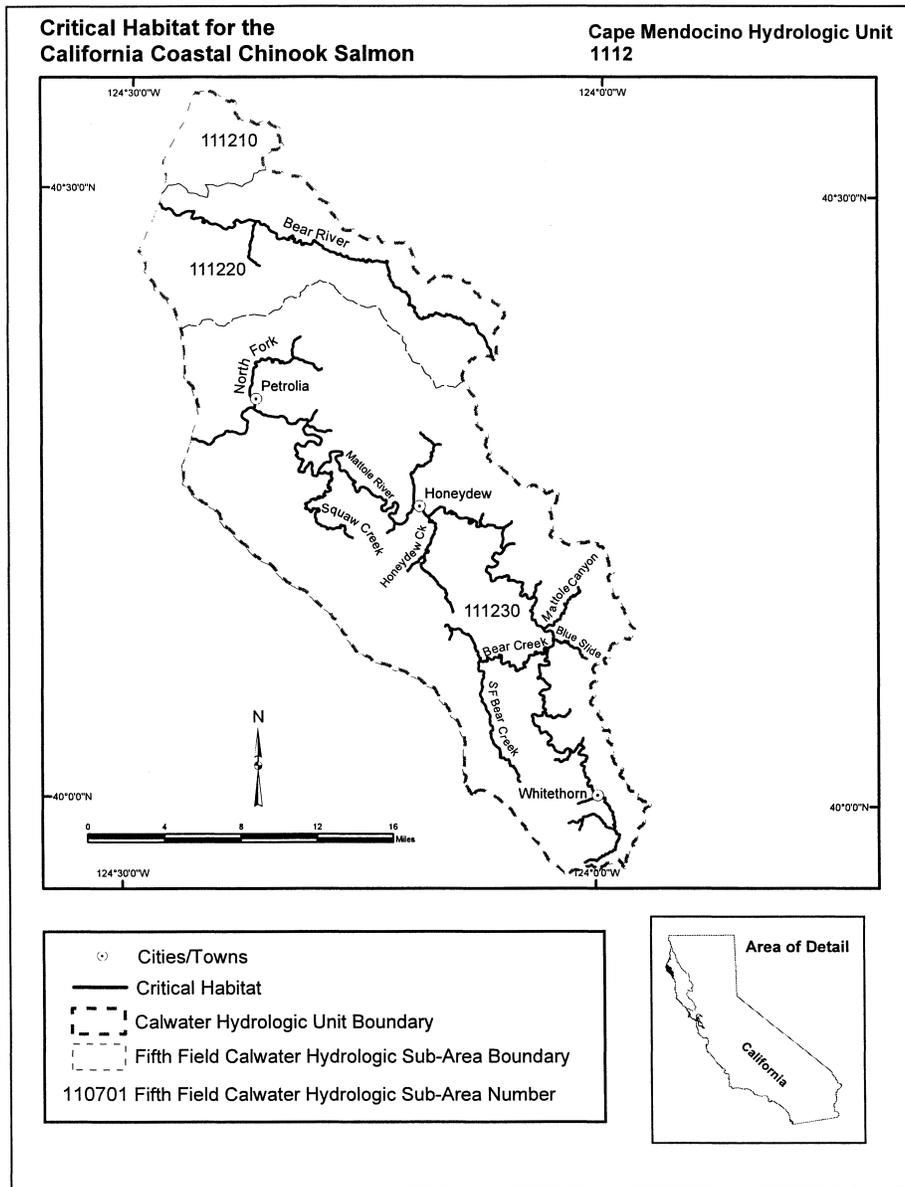


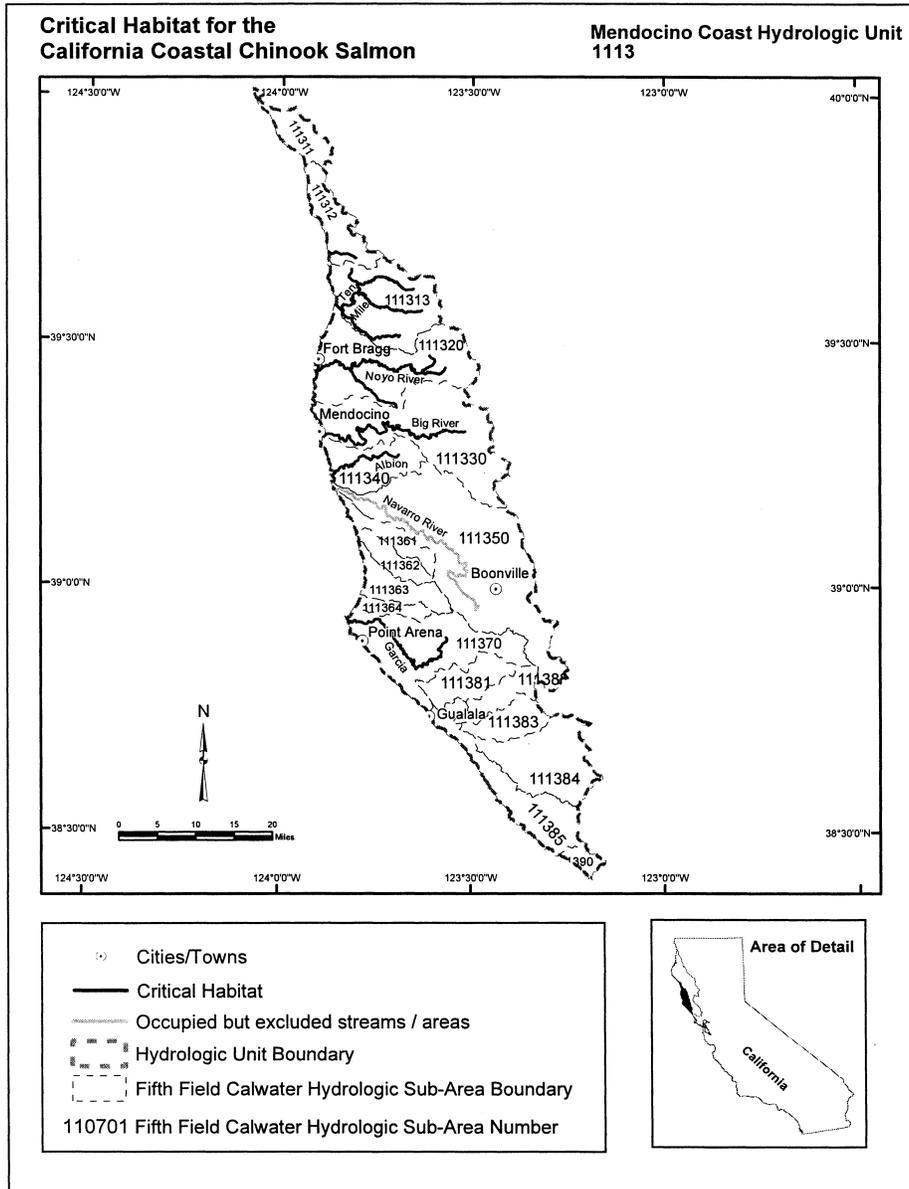


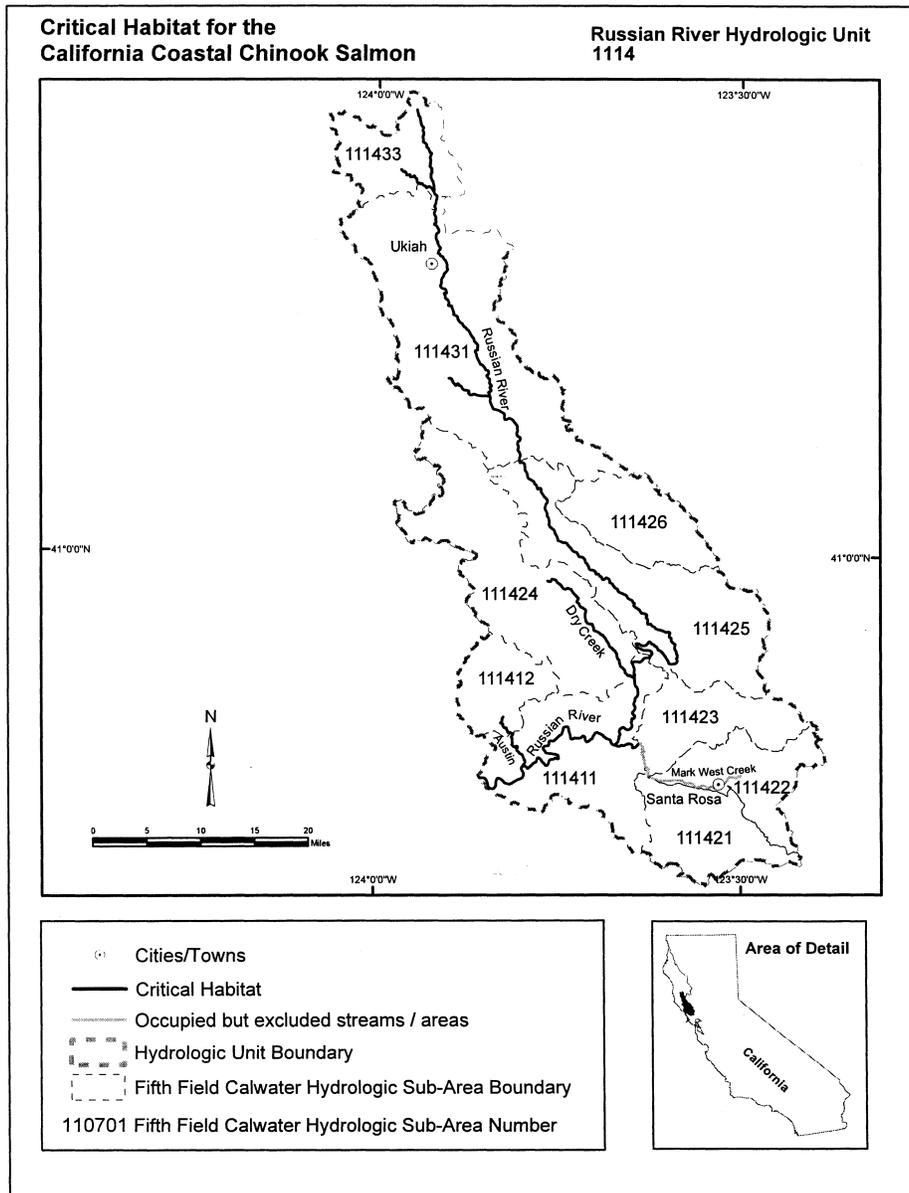












(g) *Northern California Steelhead (O. mykiss)*. Critical habitat is designated to include the areas defined in the following CALWATER Hydrologic units:

(1) Redwood Creek Hydrologic Unit 1107—(i) *Orick Hydrologic Sub-area 110710*. Outlet(s) = Boat Creek (Lat 41.4059, Long -124.0675); Home Creek (41.4027, -124.0683); Redwood Creek (41.2923, -124.0917); Squashan Creek (41.3889, -124.0703) upstream to end-point(s) in: Boat Creek (41.4110,

–124.0583); Bond Creek (41.2326, –124.0262); Boyes Creek (41.3701, –124.9891); Bridge Creek (41.1694, –123.9964); Brown Creek (41.3986, –124.0012); Cloquet Creek (41.2466, –123.9884); Cole Creek (41.2209, –123.9931); Copper Creek (41.1516, –123.9258); Dolason Creek (41.1969, –123.9667); Elam Creek (41.2613, –124.0321); Emerald Creek (41.2164, –123.9808); Forty Four Creek (41.2187, –124.0195); Gans South Creek (41.2678, –124.0071); Godwood Creek (41.3787, –124.0354); Hayes Creek (41.2890, –124.0164); Home Creek (41.3951, –124.0386); Larry Dam Creek (41.3441, –123.9966); Little Lost Man Creek (41.3078, –124.0084); Lost Man Creek (41.3187, –123.9892); May Creek (41.3521, –124.0164); McArthur Creek (41.2702, –124.0427); Miller Creek (41.2305, –124.0046); North Fork Lost Man Creek (41.3405, –123.9859); Oscar Larson Creek (41.2559, –123.9943); Prairie Creek (41.4440, –124.0411); Skunk Cabbage Creek (41.3211, –124.0802); Slide Creek (41.1736, –123.9450); Squashan Creek (41.3739, –124.0440); Streelow Creek (41.3622, –124.0472); Tom McDonald Creek (41.1933, –124.0164); Unnamed Tributary (41.3619, –123.9967); Unnamed Tributary (41.3424, –124.0572).

(ii) *Beaver Hydrologic Sub-area 110720*. Outlet(s) = Redwood Creek (Lat 41.1367, Long –123.9309) upstream to endpoint(s) in: Beaver Creek (41.0208, –123.8608); Captain Creek (40.9199, –123.7944); Cashmere Creek (41.0132, –123.8862); Coyote Creek (41.1251, –123.8926); Devils Creek (41.1224, –123.9384); Garcia Creek (41.0180, –123.8923); Garrett Creek (41.0904, –123.8712); Karen Court Creek (41.0368, –123.8953); Lacks Creek (41.0306, –123.8096); Loin Creek (40.9465, –123.8454); Lupton Creek (40.9058, –123.8286); Mill Creek (41.0045, –123.8525); Minor Creek (40.9706, –123.7899); Molasses Creek (40.9986, –123.8490); Moon Creek (40.9807, –123.8368); Panther Creek (41.0732, –123.9275); Pilchuck Creek (41.9986, –123.8710); Roaring Gulch (41.0319, –123.8674); Santa Fe Creek (40.9368, –123.8397); Sweathouse Creek (40.9332, –123.8131); Toss-Up Creek (40.9845, –123.8656); Unnamed Tributary (41.1270, –123.8967); Wiregrass Creek (40.9652, –123.8553).

(iii) *Lake Prairie Hydrologic Sub-area 110730*. Outlet(s) = Redwood Creek (Lat 40.9070, Long –123.8170) upstream to

endpoint(s) in: Bradford Creek (40.7812, –123.7215); Cut-Off Meander (40.8507, –123.7729); Emmy Lou Creek (40.8655, –123.7771); Gunrack Creek (40.8391, –123.7650); High Prairie Creek (40.8191, –123.7723); Jena Creek (40.8742, –123.8065); Lake Prairie Creek (40.7984, –123.7558); Lupton Creek (40.9058, –123.8286); Minon Creek (40.8140, –123.7372); Noisy Creek (40.8613, –123.8044); Pardee Creek (40.7779, –123.7416); Redwood Creek (40.7432, –123.7206); Simion Creek (40.8241, –123.7560); Six Rivers Creek (40.8352, –123.7842); Smokehouse Creek (40.7405, –123.7278); Snowcamp Creek (40.7415, –123.7296); Squirrel Trail Creek (40.8692, –123.7844); Twin Lakes Creek (40.7369, –123.7214); Panther Creek (40.8019, –123.7094); Windy Creek (40.8866, –123.7956).

(2) *Trinidad Hydrologic Unit 1108*—(i) *Big Lagoon Hydrologic Sub-area 110810*. Outlet(s) = Maple Creek (Lat 41.1555, Long –124.1380); McDonald Creek (41.2521, –124.0919) upstream to endpoint(s) in: Beach Creek (41.0716, –124.0239); Clear Creek (41.1031, –124.0030); Diamond Creek (41.1571, –124.0926); Maple Creek (41.0836, –123.9790); McDonald Creek (41.1850, –124.0773); M-Line Creek (41.0752, –124.0787); North Fork Maple Creek (41.1254, –124.0539); North Fork McDonald Creek (41.2107, –124.0664); Pitcher Creek (41.1518, –124.0874); South Fork Maple Creek (41.1003, –124.1119); Tom Creek (41.1773, –124.0966); Unnamed Tributary (41.1004, –124.0155); Unnamed Tributary (41.0780, –124.0676); Unnamed Tributary (41.1168, –124.0886); Unnamed Tributary (41.0864, –124.0899); Unnamed Tributary (41.1132, –124.0827); Unnamed Tributary (41.0749, –124.0889); Unnamed Tributary (41.1052, –124.0675); Unnamed Tributary (41.0714, –124.0611); Unnamed Tributary (41.0948, –124.0016).

(ii) *Little River Hydrologic Sub-area 110820*. Outlet(s) = Little River (Lat 41.0277, Long –124.1112) upstream to endpoint(s) in: Freeman Creek (41.0242, –124.0582); Little River (40.9999, –123.9232); Lower South Fork Little River (41.0077, –124.0079); Railroad Creek (41.0468, –124.0466); South Fork Little River (40.9899, –124.0394); Unnamed Tributary (41.0356, –123.9958); Unnamed Tributary (41.0407, –124.0598); Unnamed Tributary (41.0068, –123.9830);

Unnamed Tributary (41.0402, -124.0111); Unnamed Tributary (41.0402, -124.0189); Unnamed Tributary (41.0303, -124.0366); Unnamed Tributary (41.0575, -123.9710); Unnamed Tributary (41.0068, -123.9830); Upper South Fork Little River (41.0146, -123.9826).

(3) Mad River Hydrologic Unit 1109—(i) *Blue Lake Hydrologic Sub-area 110910*. Outlet(s) = Mad River (Lat 40.9139, Long -124.0642); Strawberry Creek (40.9964, -124.1155); Widow White Creek (40.9635, -124.1253) upstream to endpoint(s) in: Boundary Creek (40.8395, -123.9920); Grassy Creek (40.9314, -124.0188); Hall Creek (40.9162, -124.0141); Kelly Creek (40.8656, -124.0260); Leggit Creek (40.8808, -124.0269); Lindsay Creek (40.9838, -124.0283); Mather Creek (40.9796, -124.0526); Mill Creek (40.9296, -124.1037); Mill Creek (40.9162, -124.0141); Mill Creek (40.8521, -123.9617); North Fork Mad River (40.8687, -123.9649); Norton Creek (40.9572, -124.1003); Palmer Creek (40.8633, -124.0193); Puter Creek (40.8474, -123.9966); Quarry Creek (40.8526, -124.0098); Squaw Creek (40.9426, -124.0202); Strawberry Creek (40.9761, -124.0630); Unnamed Tributary (40.9624, -124.0179); Unnamed Tributary (40.9549, -124.0554); Unnamed Tributary (40.9672, -124.0218); Warren Creek (40.8860, -124.0351); Widow White Creek (40.9522, -124.0784).

(ii) *North Fork Mad River Hydrologic Sub-area 110920*. Outlet(s) = North Fork Mad River (Lat 40.8687, Long -123.9649) upstream to endpoint(s) in: Bald Mountain Creek (40.8922, -123.9097); Canyon Creek (40.9598, -123.9269); Denman Creek (40.9293, -123.9429); East Fork North Fork (40.9702, -123.9449); Gosinta Creek (40.9169, -123.9420); Hutchery Creek (40.8730, -123.9503); Jackson Creek (40.9388, -123.9462); Krueger Creek (40.9487, -123.9571); Long Prairie Creek (40.9294, -123.8842); Mule Creek (40.9416, -123.9309); North Fork Mad River (40.9918, -123.9610); Pine Creek (40.9274, -123.9096); Pollock Creek (40.9081, -123.9071); Sullivan Gulch (40.8646, -123.9553); Tyson Creek (40.9559, -123.9738); Unnamed Tributary (40.9645, -123.9338); Unnamed Tributary (40.9879, -123.9511); Unnamed Tributary (40.9906, -123.9540); Unnamed Tributary (40.9866, -123.9788); Unnamed Tributary (40.9927, -123.9736).

(iii) *Butler Valley Hydrologic Sub-area 110930*. Outlet(s) = Mad River (Lat 40.8449, Long -123.9807) upstream to endpoint(s) in: Bear Creek (40.5468, -123.6728); Black Creek (40.7521, -123.9080); Black Dog Creek (40.8334, -123.9805); Blue Slide Creek (40.7333, -123.9225); Boulder Creek (40.7634, -123.8667); Bug Creek (40.6587, -123.7356); Cannon Creek (40.8535, -123.8850); Coyote Creek (40.6147, -123.6488); Devil Creek (40.8032, -123.9175); Dry Creek (40.8218, -123.9751); East Creek (40.5403, -123.5579); Maple Creek (40.7933, -123.8353); Pilot Creek (40.5950, -123.5888); Simpson Creek (40.8138, -123.9156); Unnamed Tributary (40.7306, -123.9019); Unnamed Tributary (40.7739, -123.9255); Unnamed Tributary (40.7744, -123.9137); Unnamed Tributary (40.8029, -123.8716); Unnamed Tributary (40.8038, -123.8691); Unnamed Tributary (40.8363, -123.9025).

(4) Eureka Plain Hydrologic Unit 1110—(i) *Eureka Plain Hydrologic Sub-area 111000*. Outlet(s) = Elk River (Lat 40.7568, Long -124.1948); Freshwater Creek (40.8088, -124.1442); Jacoby Creek (40.8436, -124.0834); Mad River (40.9560, -124.1278); Rocky Gulch (40.8309, -124.0813); Salmon Creek (40.6868, -124.2194); Washington Gulch (40.8317, -124.0805) upstream to endpoint(s) in: Bridge Creek (40.6958, -124.0805); Browns Gulch (40.7038, -124.1074); Clapp Gulch (40.6967, -124.1684); Cloney Gulch (40.7826, -124.0347); Doe Creek (40.6964, -124.0201); Dunlap Gulch (40.7076, -124.1182); Falls Gulch (40.7655, -124.0261); Fay Slough (40.8033, -124.0574); Freshwater Creek (40.7385, -124.0035); Golf Course Creek (40.8406, -124.0402); Graham Gulch (40.7540, -124.0228); Guptil Gulch (40.7530, -124.1202); Henderson Gulch (40.7357, -124.1394); Jacoby Creek (40.7949, -124.0096); Lake Creek (40.6848, -124.0831); Line Creek (40.6578, -124.0460); Little Freshwater Creek (40.7371, -124.0649); Little North Fork Elk River (40.6972, -124.0100); Little South Fork Elk River (40.6555, -124.0877); Martin Slough (40.7679, -124.1578); McCready Gulch (40.7824, -124.0441); McWinney Creek (40.6968, -124.0616); Morrison Gulch (40.8169, -124.0430); North Branch of the North Fork Elk River (40.6879, -124.0130); North Fork Elk River (40.6794-123.9834); Railroad Gulch

(40.6955, -124.1545); Rocky Gulch (40.8170, -124.0613); Ryan Creek (40.7352, -124.0996); Salmon Creek (40.6399, -124.1128); South Branch of the North Fork Elk River (40.6700, -124.0251); South Fork Elk River (40.6437, -124.0388); South Fork Freshwater Creek (40.7110, -124.0367); Swain Slough (40.7524, -124.1825); Tom Gulch (40.6794, -124.1452); Unnamed Tributary (40.7850, -124.0561); Unnamed Tributary (40.7496, -124.1651); Unnamed Tributary (40.7785, -124.1081); Unnamed Tributary (40.7667, -124.1054); Unnamed Tributary (40.7559, -124.0870); Unnamed Tributary (40.7952, -124.0568); Unnamed Tributary (40.7408, -124.1118); Unnamed Tributary (40.7186, -124.1385); Unnamed Tributary (40.7224, -124.1038); Unnamed Tributary (40.8210, -124.0111); Unnamed Tributary (40.8106, -124.0083); Unnamed Tributary (40.7554, -124.1379); Unnamed Tributary (40.7457, -124.1138); Washington Gulch (40.8205, -124.0549).

(ii) [Reserved]

(5) Eel River Hydrologic Unit 1111—(i) *Ferndale Hydrologic Sub-area 111111*. Outlet(s) = Eel River (Lat 40.6275, Long -124.2520) upstream to endpoint(s) in: Atwell Creek (40.4824, -124.1498); Dean Creek (40.4847, -124.1217); Horse Creek (40.5198, -124.1702); Howe Creek (40.4654, -124.1916); Nanning Creek (40.4914, -124.0652); North Fork Strongs Creek (40.6077, -124.1047); Price Creek (40.5101, -124.2731); Rohner Creek (40.6151, -124.1408); Strongs Creek (40.5999, -124.0985); Sweet Creek (40.4900, -124.2007); Van Duzen River (40.5337, -124.1262).

(ii) *Scotia Hydrologic Sub-area 111112*. Outlet(s) = Eel River (Lat 40.4918, Long -124.0988) upstream to endpoint(s) in: Bear Creek (40.3942, -124.0262); Bridge Creek (40.4278, -123.9317); Chadd Creek (40.3919, -123.9540); Darnell Creek (40.4533, -123.9808); Dinner Creek (40.4406, -124.0855); Greenlow Creek (40.4315, -124.0231); Jordan Creek (40.4171, -124.0517); Kiler Creek (40.4465, -124.0952); Monument Creek (40.4371, -124.1165); Shively Creek (40.4454, -123.9539); South Fork Bear Creek (40.3856, -124.0182); Stitz Creek (40.4649, -124.0531); Twin Creek (40.4419, -124.0714); Unnamed Tributary (40.3933, -123.9984); Weber Creek (40.3767, -123.9094).

(iii) *Larabee Creek Hydrologic Sub-area 111113*. Outlet(s) = Larabee Creek (Lat 40.4090, Long -123.9334) upstream to endpoint(s) in: Arnold Creek (40.4006, -123.8583); Balcom Creek (40.4030, -123.8986); Bosworth Creek (40.3584, -123.7089); Boulder Flat Creek (40.3530, -123.6381); Burr Creek (40.4250, -123.7767); Carson Creek (40.4181, -123.8879); Chris Creek (40.4146, -123.9235); Cooper Creek (40.3123, -123.6463); Dauphiny Creek (40.4049, -123.8893); Frost Creek (40.3765, -123.7357); Hayfield Creek (40.3350, -123.6535); Knack Creek (40.3788, -123.7385); Larabee Creek (40.2807, -123.6445); Martin Creek (40.3730, -123.7060); Maxwell Creek (40.3959, -123.8049); McMahon Creek (40.3269, -123.6363); Mill Creek (40.3849, -123.7440); Mountain Creek (40.2955, -123.6378); Scott Creek (40.4020, -123.8738); Smith Creek (40.4194, -123.8568); Thurman Creek (40.3506, -123.6669); Unnamed Tributary (40.3842, -123.8062); Unnamed Tributary (40.3982, -123.7862); Unnamed Tributary (40.3806, -123.7564); Unnamed Tributary (40.3661, -123.7398); Unnamed Tributary (40.3524, -123.7330).

(iv) *Hydesville Hydrologic Sub-area 111121*. Outlet(s) = Van Duzen River (Lat 40.5337, Long -124.1262) upstream to endpoint(s) in: Cuddeback Creek (40.5421, -124.0263); Cummings Creek (40.5282, -123.9770); Fiedler Creek (40.5351, -124.0106); Hely Creek (40.5165, -123.9531); Yager Creek (40.5583, -124.0577); Unnamed Tributary (40.5718, -124.0946).

(v) *Bridgeville Hydrologic Sub-area 111122*. Outlet(s) = Van Duzen River (Lat 40.4942, Long -123.9720) upstream to endpoint(s) in: Bear Creek (40.3455, -123.5763); Blanket Creek (40.3635, -123.5710); Browns Creek (40.4958, -123.8103); Butte Creek (40.4119, -123.7047); Dairy Creek (40.4174, -123.5981); Fish Creek (40.4525, -123.8434); Grizzly Creek (40.5193, -123.8470); Little Larabee Creek (40.4708, -123.7395); Little Van Duzen River (40.3021, -123.5540); North Fork Van Duzen (40.4881, -123.6411); Panther Creek (40.3921, -123.5866); Root Creek (40.4490, -123.9018); Stevens Creek (40.5062, -123.9073); Thompson Creek (40.4222, -123.6084); Van Duzen River (40.4820, -123.6629); Unnamed Tributary (40.3074, -123.5834).

(vi) *Yager Creek Hydrologic Sub-area 111123*. Outlet(s) = Yager Creek (Lat 40.5583, Long -124.0577) upstream to endpoint(s) in: Bell Creek (40.6809, -123.9685); Blanten Creek (40.5839, -124.0165); Booths Run (40.6584, -123.9428); Corner Creek (40.6179, -124.0010); Fish Creek (40.6390, -124.0024); Lawrence Creek (40.6986, -123.9314); Middle Fork Yager Creek (40.5782, -123.9243); North Fork Yager Creek (40.6056, -123.9080); Shaw Creek (40.6231, -123.9509); South Fork Yager Creek (40.5451, -123.9409); Unnamed Tributary (40.5892, -123.9663); Yager Creek (40.5673, -123.9403).

(vii) *Weott Hydrologic Sub-area 111131*. Outlet(s) = South Fork Eel River (Lat 40.3500, Long -123.9305) upstream to endpoint(s) in: Albee Creek (40.3592, -124.0088); Bull Creek (40.3587, -123.9624); Burns Creek (40.3194, -124.0420); Butte Creek (40.1982, -123.8387); Canoe Creek (40.2669, -123.9556); Coon Creek (40.2702, -123.9013); Cow Creek (40.2664, -123.9838); Cuneo Creek (40.3401, -124.0494); Decker Creek (40.3312, -123.9501); Elk Creek (40.2609, -123.7957); Fish Creek (40.2459, -123.7729); Harper Creek (40.3591, -123.9930); Mill Creek (40.3568, -124.0333); Mowry Creek (40.2937, -123.8895); North Fork Cuneo Creek (40.3443, -124.0488); Ohman Creek (40.1924, -123.7648); Panther Creek (40.2775, -124.0289); Preacher Gulch (40.2944, -124.0047); Salmon Creek (40.2145, -123.8926); Slide Creek (40.3011, -124.0390); South Fork Salmon Creek (40.1769, -123.8929); Squaw Creek (40.3167, -123.9988); Unnamed Tributary (40.3065, -124.0074); Unnamed Tributary (40.2831, -124.0359).

(viii) *Benbow Hydrologic Sub-area 111132*. Outlet(s) = South Fork Eel River (Lat 40.1929, Long -123.7692) upstream to endpoint(s) in: Anderson Creek (39.9325, -123.8928); Bear Creek (39.7885, -123.7620); Bear Pen Creek (39.9201, -123.7986); Bear Wallow Creek (39.7270, -123.7140); Big Dan Creek (39.8430, -123.6992); Bond Creek (39.7778, -123.7060); Bridges Creek (39.9087, -123.7142); Buck Mountain Creek (40.0944, -123.7423); Butler Creek (39.7423, -123.6987); Cedar Creek (39.8834, -123.6216); China Creek (40.1035, -123.9493); Connick Creek (40.0912, -123.8154); Cox Creek (40.0310, -123.8398); Cruso Cabin Creek (39.9281, -123.5842); Durphy Creek (40.0205, -123.8271); East

Branch South Fork Eel River (39.9359, -123.6204); Elkhorn Creek (39.9272, -123.6279); Fish Creek (40.0390, -123.7630); Hartsook Creek (40.0081, -123.8113); Hollow Tree Creek (39.7250, -123.6924); Huckleberry Creek (39.7292, -123.7275); Indian Creek (39.9556, -123.9172); Islam John Creek (39.8062, -123.7363); Jones Creek (39.9958, -123.8374); Leggett Creek (40.1470, -123.8375); Little Sproul Creek (40.0890, -123.8577); Lost Man Creek (39.7983, -123.7287); Low Gap Creek (39.8029, -123.6803); Low Gap Creek (39.9933, -123.7601); McCoy Creek (39.9572, -123.7369); Michael's Creek (39.7665, -123.7035); Middle Creek (39.8052, -123.7691); Milk Ranch Creek (40.0102, -123.7514); Mill Creek (39.8673, -123.7605); Miller Creek (40.1319, -123.9302); Moody Creek (39.9471, -123.8827); Mule Creek (39.8169, -123.7745); North Fork Cedar Creek (39.8864, -123.6363); North Fork McCoy Creek (39.9723, -123.7496); Piercy Creek (39.9597, -123.8442); Pollock Creek (40.0802, -123.9341); Red Mountain Creek (39.9363, -123.7203); Redwood Creek (39.7723, -123.7648); Redwood Creek (40.0974, -123.9104); Rock Creek (39.8962, -123.7065); Sebbas Creek (39.9934, -123.8903); Somerville Creek (40.1006, -123.8884); South Fork Mule Creek (39.8174, -123.7788); South Fork Redwood Creek (39.7662, -123.7579); Sproul Creek (40.0226, -123.8649); Squaw Creek (40.0760, -123.7257); Standly Creek (39.9327, -123.8309); Tom Long Creek (40.0175, -123.6551); Waldron Creek (39.7469, -123.7465); Walter's Creek (39.7921, -123.7250); Warden Creek (40.0629, -123.8551); West Fork Sproul Creek (40.0587, -123.9170); Wildcat Creek (39.8956, -123.7820); Unnamed Tributary (39.9927, -123.8807).

(ix) *Laytonville Hydrologic Sub-area 111133*. Outlet(s) = South Fork Eel River (Lat 39.7665, Long -123.6484) upstream to endpoint(s) in: Bear Creek (39.6418, -123.5853); Big Rick Creek (39.7117, -123.5512); Cahto Creek (39.6527, -123.5579); Dark Canyon Creek (39.7333, -123.6614); Dutch Charlie Creek (39.6843, -123.7023); Elder Creek (39.7234, -123.6192); Fox Creek (39.7441, -123.6142); Grub Creek (39.7777, -123.5809); Jack of Hearts Creek (39.7136, -123.6896); Kenny Creek (39.6838, -123.5929); Little Case Creek (39.6892, -123.5441); Mill Creek (39.6839, -123.5118); Mud Creek (39.6713,

–123.5741); Mud Springs Creek (39.6929, –123.5629); Redwood Creek (39.6545, –123.6753); Rock Creek (39.6922, –123.6090); Section Four Creek (39.6137, –123.5297); South Fork Eel River (39.6242, –123.5468); Streeter Creek (39.7340, –123.5606); Ten Mile Creek (39.6652, –123.4486); Unnamed Tributary (39.7004, –123.5678).

(x) *Sequoia Hydrologic Sub-area 111141*. Outlet(s) = Eel River (Lat 40.3557, Long –123.9191) upstream to endpoint(s) in: Beatty Creek (40.3198, –123.7500); Brock Creek (40.2410, –123.7246); Cameron Creek (40.3313, –123.7707); Dobbyn Creek (40.2216, –123.6029); Kapple Creek (40.3531, –123.8585); Line Gulch Creek (40.1640, –123.4783); Mud Creek (40.2078, –123.5143); North Fork Dobbyn Creek (40.2669, –123.5467); Sonoma Creek (40.2974, –123.7953); South Fork Dobbyn Creek (40.1723, –123.5112); South Fork Eel River (40.3500, –123.9305); South Fork Thompson Creek (40.3447, –123.8334); Thompson Creek (40.3552, –123.8417); Unnamed Tributary (40.2745, –123.5487).

(xi) *Spy Rock Hydrologic Sub-area 111142*. Outlet(s) = Eel River (Lat 40.1736, Long –123.6043) upstream to endpoint(s) in: Bear Pen Canyon (39.6943, –123.4359); Bell Springs Creek (39.9457, –123.5313); Blue Rock Creek (39.8937, –123.5018); Burger Creek (39.6693, –123.4034); Chamise Creek (40.0035, –123.5945); Gill Creek (39.7879, –123.3465); Iron Creek (39.7993, –123.4747); Jewett Creek (40.1122, –123.6171); Kekawaka Creek (40.0686, –123.4087); Rock Creek (39.9347, –123.5187); Shell Rock Creek (39.8414, –123.4614); Unnamed Tributary (39.7579, –123.4709); White Rock Creek (39.7646, –123.4684); Woodman Creek (39.7612, –123.4364).

(xii) *Outlet Creek Hydrologic Sub-area 111161*. Outlet(s) = Outlet Creek (Lat 39.6265, Long –123.3449) upstream to endpoint(s) in: Baechtel Creek (39.3623, –123.4143); Berry Creek (39.4271, –123.2777); Bloody Run Creek (39.5864, –123.3545); Broaddus Creek (39.3869, –123.4282); Cherry Creek (39.6043, –123.4073); Conklin Creek (39.3756, –123.2570); Davis Creek (39.3354, –123.2945); Haehl Creek (39.3735, –123.3172); Long Valley Creek (39.6246, –123.4651); Mill Creek (39.4196, –123.3919); Outlet Creek (39.4526, –123.3338); Ryan Creek (39.4804, –123.3644); Unnamed

Tributary (39.4956, –123.3591); Unnamed Tributary (39.4322, –123.3848); Unnamed Tributary (39.5793, –123.4546); Unnamed Tributary (39.3703, –123.3419); Upp Creek (39.4479, –123.3825); Willts Creek (39.4686, –123.4299).

(xiii) *Tomki Creek Hydrologic Sub-area 111162*. Outlet(s) = Eel River (Lat 39.7138, Long –123.3532) upstream to endpoint(s) in: Cave Creek (39.3842, –123.2148); Dean Creek (39.6924, –123.3727); Garcia Creek (39.5153, –123.1512); Little Cave Creek (39.3915, –123.2462); Little Creek (39.4146, –123.2595); Long Branch Creek (39.4074, –123.1897); Rocktree Creek (39.4534, –123.3053); Salmon Creek (39.4367, –123.1939); Scott Creek (39.4492, –123.2286); String Creek (39.4658, –123.3206); Tarter Creek (39.4715, –123.2976); Thomas Creek (39.4768, –123.1230); Tomki Creek (39.5483, –123.3687); Whitney Creek (39.4399, –123.1084); Wheelbarrow Creek (39.5012, –123.3304).

(xiv) *Eden Valley Hydrologic Sub-area 111171*. Outlet(s) = Middle Fork Eel River (Lat 39.7138, Long –123.3532) upstream to endpoint(s) in: Crocker Creek (39.5559, –123.0409); Eden Creek (39.5992, –123.1746); Elk Creek (39.5371, –123.0101); Hayshed Creek (39.7082, –123.0967); Salt Creek (39.6765, –123.2740); Sportsmans Creek (39.5373, –123.0247); Sulper Springs (39.5536, –123.0365); Thatcher Creek (39.6686, –123.0639).

(xv) *Round Valley Hydrologic Sub-area 111172*. Outlet(s) = Mill Creek (Lat 39.7396, Long –123.1420); Williams Creek (39.8145, –123.1333) upstream to endpoint(s) in: Cold Creek (39.8714, –123.2991); Grist Creek (39.7640, –123.2883); Mill Creek (39.8481, –123.2896); Murphy Creek (39.8885, –123.1612); Short Creek (39.8703, –123.2352); Town Creek (39.7991, –123.2889); Turner Creek (39.7218, –123.2175); Williams Creek (39.8903, –123.1212); Unnamed Tributary (39.7428, –123.2757); Unnamed Tributary (39.7493, –123.2584).

(xvi) *Black Butte River Hydrologic Sub-area 111173*. Outlet(s) = Black Butte River (Lat 39.8239, Long –123.0880) upstream to endpoint(s) in: Black Butte River (39.5946, –122.8579); Buckhorn Creek (39.6563, –122.9225); Cold Creek (39.6960, –122.9063); Estell Creek (39.5966, –122.8224); Spanish Creek (39.6287, –122.8331).

- (xvii) *Wilderness Hydrologic Sub-area 111174*. Outlet(s) = Middle Fork Eel River (Lat 39.8240, Long -123.0877) upstream to endpoint(s) in: Beaver Creek (39.9352, -122.9943); Fossil Creek (39.9447, -123.0403); Middle Fork Eel River (40.0780, -123.0442); North Fork Middle Fork Eel River (40.0727, -123.1364); Palm of Gileade Creek (40.0229, -123.0647); Pothole Creek (39.9347, -123.0440).
- (6) Cape Mendocino Hydrologic Unit 1112—(i) *Oil Creek Hydrologic Sub-area 111210*. Outlet(s) = Guthrie Creek (Lat 40.5407, Long -124.3626); Oil Creek (40.5195, -124.3767) upstream to endpoint(s) in: Guthrie Creek (40.5320, -124.3128); Oil Creek (40.5061, -124.2875); Unnamed Tributary (40.4946, -124.3091); Unnamed Tributary (40.4982, -124.3549); Unnamed Tributary (40.5141, -124.3573); Unnamed Tributary (40.4992, -124.3070).
- (ii) *Capetown Hydrologic Sub-area 111220*. Outlet(s) = Bear River (Lat 40.4744, Long -124.3881); Davis Creek (40.3850, -124.3691); Singley Creek (40.4311, -124.4034) upstream to endpoint(s) in: Antone Creek (40.4281, -124.2114); Bear River (40.3591, -124.0536); Beer Bottle Gulch (40.3949, -124.1410); Bonanza Gulch (40.4777, -124.2966); Brushy Creek (40.4102, -124.1050); Davis Creek (40.3945, -124.2912); Harmonica Creek (40.3775, -124.0735); Hollister Creek (40.4109, -124.2891); Nelson Creek (40.3536, -124.1154); Peaked Creek (40.4123, -124.1897); Pullen Creek (40.4057, -124.0814); Singley Creek (40.4177, -124.3305); South Fork Bear River (40.4047, -124.2631); Unnamed Tributary (40.4271, -124.3107); Unnamed Tributary (40.4814, -124.2741); Unnamed Tributary (40.3633, -124.0651); Unnamed Tributary (40.3785, -124.0599); Unnamed Tributary (40.4179, -124.2391); Unnamed Tributary (40.4040, -124.0923); Unnamed Tributary (40.3996, -124.3175); Unnamed Tributary (40.4045, -124.0745); Unnamed Tributary (40.4668, -124.2364); Unnamed Tributary (40.4389, -124.2350); Unnamed Tributary (40.4516, -124.2238); Unnamed Tributary (40.4136, -124.1594); Unnamed Tributary (40.4350, -124.1504); Unnamed Tributary (40.4394, -124.3745); West Side Creek (40.4751, -124.2432).
- (iii) *Mattole River Hydrologic Sub-area 111230*. Outlet(s) = Big Creek (Lat 40.1567, Long -124.2114); Big Flat Creek (40.1275, -124.1764); Buck Creek (40.1086, -124.1218); Cooskie Creek (40.2192, -124.3105); Fourmile Creek (40.2561, -124.3578); Gitchell Creek (40.0938, -124.1023); Horse Mountain Creek (40.0685, -124.0822); Kinsey Creek (40.1717, -124.2310); Mattole River (40.2942, -124.3536); McNutt Gulch (40.3541, -124.3619); Oat Creek (40.1785, -124.2445); Randall Creek (40.2004, -124.2831); Shipman Creek (40.1175, -124.1449); Spanish Creek (40.1835, -124.2569); Telegraph Creek (40.0473, -124.0798); Whale Gulch (39.9623, -123.9785) upstream to endpoint(s) in: Anderson Creek (40.0329, -123.9674); Baker Creek (40.0143, -123.9048); Bear Creek (40.1262, -124.0631); Bear Creek (40.2819, -124.3336); Bear Trap Creek (40.2157, -124.1422); Big Creek (40.1742, -124.1924); Big Finley Creek (40.0910, -124.0179); Big Flat Creek (40.1444, -124.1636); Blue Slide Creek (40.1562, -123.9283); Box Canyon Creek (40.1078, -123.9854); Bridge Creek (40.0447, -124.0118); Buck Creek (40.1166, -124.1142); Conklin Creek (40.3197, -124.2055); Cooskie Creek (40.2286, -124.2986); Devils Creek (40.3432, -124.1365); Dry Creek (40.2646, -124.0660); East Branch North Fork Mattole River (40.3333, -124.1490); East Fork Honeydew Creek (40.1625, -124.0929); Eubank Creek (40.0997, -123.9661); Fire Creek (40.1533, -123.9509); Fourmile Creek (40.2604, -124.3079); Fourmile Creek (40.1767, -124.0759); French Creek (40.1384, -124.0072); Gibson Creek (40.0304, -123.9279); Gilham Creek (40.2078, -124.0085); Gitchell Creek (40.1086, -124.0947); Green Ridge Creek (40.3254, -124.1258); Grindstone Creek (40.2019, -123.9890); Harris Creek (40.0381, -123.9304); Harrow Creek (40.1612, -124.0292); Helen Barnum Creek (40.0036, -123.9101); Honeydew Creek (40.1747, -124.1410); Horse Mountain Creek (40.0769, -124.0729); Indian Creek (40.2772, -124.2759); Jewett Creek (40.1465, -124.0414); Kinsey Creek (40.1765, -124.2220); Lost Man Creek (39.9754, -123.9179); Mattole Canyon (40.2021, -123.9570); Mattole River (39.9714, -123.9623); McGinnis Creek (40.3186, -124.1801); McKee Creek (40.0864, -123.9480); McNutt Gulch (40.3458, -124.3418); Middle Creek (40.2591, -124.0366); Mill Creek (40.0158, -123.9693); Mill Creek (40.3305, -124.2598); Mill Creek (40.2839, -124.2946); Noonung Creek (40.0616, -124.0050); North Fork

Mattole River (40.3866, -124.1867); North Fork Bear Creek (40.1494, -124.1060); North Fork Fourmile Creek (40.2019, -124.0722); Oat Creek (40.1884, -124.2296); Oil Creek (40.3214, -124.1601); Painter Creek (40.0844, -123.9639); Prichett Creek (40.2892, -124.1704); Randall Creek (40.2092, -124.2668); Rattlesnake Creek (40.3250, -124.0981); Shipman Creek (40.1250, -124.1384); Sholes Creek (40.1603, -124.0619); South Branch West Fork Bridge Creek (40.0326, -123.9853); South Fork Bear Creek (40.0176, -124.0016); Spanish Creek (40.1965, -124.2429); Squaw Creek (40.1934, -124.2002); Stanley Creek (40.0273, -123.9166); Sulphur Creek (40.3647, -124.1586); Telegraph Creek (40.0439, -124.0640); Thompson Creek (39.9913, -123.9707); Unnamed Tributary (40.3475, -124.1606); Unnamed Tributary (40.3522, -124.1533); Unnamed Tributary (40.0891, -123.9839); Unnamed Tributary (40.2223, -124.0172); Unnamed Tributary (40.1733, -123.9515); Unnamed Tributary (40.2899, -124.0955); Unnamed Tributary (40.2853, -124.3227); Unnamed Tributary (39.9969, -123.9071); Upper East Fork Honeydew Creek (40.1759, -124.1182); Upper North Fork Mattole River (40.2907, -124.1115); Vanauken Creek (40.0674, -123.9422); West Fork Bridge Creek (40.0343, -123.9990); West Fork Honeydew Creek (40.1870, -124.1614); Westlund Creek (40.2440, -124.0036); Whale Gulch (39.9747, -123.9812); Woods Creek (40.2119, -124.1611); Yew Creek (40.0018, -123.9762).

(7) Mendocino Coast Hydrologic Unit 1113—(i) *Usal Creek Hydrologic Sub-area 111311*. Outlet(s) = Jackass Creek (Lat 39.8806, Long -123.9155); Usal Creek (39.8316, -123.8507) upstream to endpoint(s) in: Bear Creek (39.8898, -123.8344); Jackass Creek (39.8901, -123.8928); Julius Creek (39.8542, -123.7937); Little Bear Creek (39.8629, -123.8400); North Fork Jackass Creek (39.9095, -123.9101); North Fork Julius Creek (39.8581, -123.8045); Soldier Creek (39.8679, -123.8162); South Fork Usal Creek (39.8356, -123.7865); Unnamed Tributary (39.8890, -123.8480); Usal Creek (39.8957, -123.8797); Waterfall Gulch (39.8787, -123.8680).

(ii) *Wages Creek Hydrologic Sub-area 111312*. Outlet(s) = Cottaneva Creek (Lat 39.7360, Long -123.8293); DeHaven Creek (39.6592, -123.7863); Hardy Creek (39.7107, -123.8082); Howard Creek

(39.6778, -123.7915); Juan Creek (39.7028, -123.8042); Wages Creek (39.6513, -123.7851) upstream to endpoint(s) in: Cottaneva Creek (39.7825, -123.8210); DeHaven Creek (39.6687, -123.7060); Dunn Creek (39.8103, -123.8320); Hardy Creek (39.7221, -123.7822); Howard Creek (39.6808, -123.7463); Juan Creek (39.7107, -123.7472); Kimball Gulch (39.7559, -123.7828); Little Juan Creek (39.7003, -123.7609); Middle Fork Cottaneva Creek (39.7738, -123.8058); North Fork Cottaneva Creek (39.8011, -123.8047); North Fork DeHaven Creek (39.6660, -123.7382); North Fork Wages Creek (39.6457, -123.7066); Rider Gulch (39.6348, -123.7621); Rockport Creek (39.7346, -123.8021); Slaughterhouse Gulch (39.7594, -123.7914); South Fork Cottaneva Creek (39.7447, -123.7773); South Fork Wages Creek (39.6297, -123.6862); Wages Creek (39.6297, -123.6862).

(iii) *Ten Mile River Hydrologic Sub-area 111313*. Outlet(s) = Abalobadiah Creek (Lat 39.5654, Long -123.7672); Chadbourne Gulch (39.6133, -123.7822); Ten Mile River (39.5529, -123.7658); Seaside Creek (39.5592, -123.7655) upstream to endpoint(s) in: Abalobadiah Creek (39.5878, -123.7503); Bald Hill Creek (39.6278, -123.6461); Barlow Gulch (39.6046, -123.7384); Bear Pen Creek (39.5824, -123.6402); Booth Gulch (39.5567, -123.5918); Buckhorn Creek (39.6093, -123.6980); Campbell Creek (39.5053, -123.6610); Cavanaugh Gulch (39.6107, -123.6776); Chadbourne Gulch (39.6190, -123.7682); Clark Fork (39.5280, -123.5134); Curchman Creek (39.4789, -123.6398); Gulch 11 (39.4687, -123.5816); Gulch 19 (39.5939, -123.5781); Little Bear Haven Creek (39.5655, -123.6147); Little North Fork (39.6264, -123.7350); Mill Creek (39.5392, -123.7068); North Fork Ten Mile River (39.5870, -123.5480); O'Conner Gulch (39.6042, -123.6632); Patsy Creek (39.5714, -123.5669); Redwood Creek (39.5142, -123.5620); Seaside Creek (39.5612, -123.7501); Smith Creek (39.5251, -123.6499); South Fork Bear Haven Creek (39.5688, -123.6527); South Fork Ten Mile River (39.5083, -123.5395); Ten Mile River (39.5721, -123.7098); Unnamed Tributary (39.5180, -123.5948); Unnamed Tributary (39.5146, -123.6183); Unnamed Tributary (39.5898, -123.7657); Unnamed Tributary (39.5813, -123.7526); Unnamed Tributary (39.5936, -123.6034).

(iv) *Noyo River Hydrologic Sub-area 111320*. Outlet(s) = Digger Creek (Lat 39.4088, Long -123.8164); Hare Creek (39.4171, -123.8128); Jug Handle Creek (39.3767, -123.8176); Mill Creek (39.4894, -123.7967); Mitchell Creek (39.3923, -123.8165); Noyo River (39.4274, -123.8096); Pudding Creek (39.4588, -123.8089); Virgin Creek (39.4714, -123.8045) upstream to endpoint(s) in: Bear Gulch (39.3881, -123.6614); Brandon Gulch (39.4191, -123.6645); Bunker Gulch (39.3969, -123.7153); Burbeck Creek (39.4354, -123.4235); Covington Gulch (39.4099, -123.7546); Dewarren Creek (39.4974, -123.5535); Digger Creek (39.3932, -123.7820); Duffy Gulch (39.4469, -123.6023); Gulch Creek (39.4441, -123.4684); Gulch Seven (39.4523, -123.5183); Hare Creek (39.3781, -123.6922); Hayworth Creek (39.4857, -123.4769); Hayshed Creek (39.4200, -123.7391); Jug Handle Creek (39.3647, -123.7523); Kass Creek (39.4262, -123.6807); Little North Fork (39.4532, -123.6636); Little Valley Creek (39.5026, -123.7277); Marble Gulch (39.4423, -123.5479); McMullen Creek (39.4383, -123.4488); Middle Fork North Fork (39.4924, -123.5231); Mill Creek (39.4813, -123.7600); Mitchell Creek (39.3813, -123.7734); North Fork Hayworth Creek (39.4891, -123.5026); North Fork Noyo River (39.4765, -123.5535); North Fork Noyo (39.4765, -123.5535); North Fork South Fork Noyo River (39.3971, -123.6108); Noyo River (39.4242, -123.4356); Olds Creek (39.3964, -123.4448); Parlin Creek (39.3700, -123.6111); Pudding Creek (39.4591, -123.6516); Redwood Creek (39.4660, -123.4571); South Fork Hare Creek (39.3785, -123.7384); South Fork Noyo River (39.3620, -123.6188); Unnamed Tributary (39.4113, -123.5621); Unnamed Tributary (39.3918, -123.6425); Unnamed Tributary (39.4168, -123.4578); Unnamed Tributary (39.4656, -123.7467); Unnamed Tributary (39.4931, -123.7371); Unnamed Tributary (39.4922, -123.7381); Unnamed Tributary (39.4939, -123.7184); Unnamed Tributary (39.4158, -123.6428); Unnamed Tributary (39.4002, -123.7347); Unnamed Tributary (39.3831, -123.6177); Unnamed Tributary (39.4926, -123.4764); Virgin Creek (39.4621, -123.7855); Unnamed Tributary (39.4650, -123.7463).

(v) *Big River Hydrologic Sub-area 111330*. Outlet(s) = Big River (Lat 39.3030, Long -123.7957); Casper Creek

(39.3617, -123.8169); Doyle Creek (39.3603, -123.8187); Jack Peters Creek (39.3193, -123.8006); Russian Gulch (39.3288, -123.8050) upstream to endpoint(s) in: Berry Gulch (39.3585, -123.6930); Big River (39.3166, -123.3733); Casper Creek (39.3462, -123.7556); Chamberlain Creek (39.4007, -123.5317); Daugherty Creek (39.1700, -123.3699); Doyle Creek (39.3517, -123.8007); East Branch Little North Fork Big River (39.3372, -123.6410); East Branch North Fork Big River (39.3354, -123.4652); Gates Creek (39.2083, -123.3944); Jack Peters Gulch (39.3225, -123.7850); James Creek (39.3922, -123.4747); Johnson Creek (39.1963, -123.3927); Johnson Creek (39.2556, -123.4485); Laguna Creek (39.2910, -123.6334); Little North Fork Big River (39.3497, -123.6242); Marten Creek (39.3290, -123.4279); Mettick Creek (39.2591, -123.5193); Middle Fork North Fork Casper Creek (39.3575, -123.7170); North Fork Big River (39.3762, -123.4591); North Fork Casper Creek (39.3610, -123.7356); North Fork James Creek (39.3980, -123.4939); North Fork Ramone Creek (39.2760, -123.4846); Pig Pen Gulch (39.3226, -123.4609); Pruitt Creek (39.2592, -123.3812); Ramone Creek (39.2714, -123.4415); Rice Creek (39.2809, -123.3963); Russell Brook (39.2863, -123.4461); Russian Gulch (39.3237, -123.7650); Snuffins Creek (39.1836, -123.3854); Soda Creek (39.2230, -123.4239); South Fork Big River (39.2317, -123.3687); South Fork Casper Creek (39.3493, -123.7216); Two Log Creek (39.3484, -123.5781); Unnamed Tributary (39.3897, -123.5556); Unnamed Tributary (39.3637, -123.5464); Unnamed Tributary (39.3776, -123.5274); Unnamed Tributary (39.4029, -123.5771); Valentine Creek (39.2694, -123.3957); Water Gulch (39.3607, -123.5891).

(vi) *Albion River Hydrologic Sub-area 111340*. Outlet(s) = Albion River (Lat 39.2253, Long -123.7679); Big Salmon Creek (39.2150, -123.7660); Buckhorn Creek (39.2593, -123.7839); Dark Gulch (39.2397, -123.7740); Little Salmon Creek (39.2150, -123.7660); Little River (39.2734, -123.7914) upstream to endpoint(s) in: Albion River (39.2613, -123.5766); Big Salmon Creek (39.2070, -123.6514); Buckhorn Creek (39.2513, -123.7595); Dark Gulch (39.2379, -123.7592); Duck Pond Gulch (39.2456, -123.6960); East Railroad Gulch (39.2604, -123.6381);

Hazel Gulch (39.2141, -123.6418); Kaison Gulch (39.2733, -123.6803); Little North Fork South Fork Albion River (39.2350, -123.6431); Little River (39.2683, -123.7190); Little Salmon Creek (39.2168, -123.7515); Marsh Creek (39.2325, -123.5596); Nordon Gulch (39.2489, -123.6503); North Fork Albion River (39.2854, -123.5752); Pleasant Valley Gulch (39.2379, -123.6965); Railroad Gulch (39.2182, -123.6932); Soda Springs Creek (39.2943, -123.5944); South Fork Albion River (39.2474, -123.6107); Tom Bell Creek (39.2805, -123.6519); Unnamed Tributary (39.2279, -123.6972); Unnamed Tributary (39.2194, -123.7100); Unnamed Tributary (39.2744, -123.5889); Unnamed Tributary (39.2254, -123.6733).

(vii) *Navarro River Hydrologic Sub-area 111350*. Outlet(s) = Navarro River (Lat 39.1921, Long -123.7611) upstream to endpoint(s) in: Alder Creek (38.9830, -123.3946); Anderson Creek (38.9644, -123.2907); Bailey Creek (39.1733, -123.4804); Barton Gulch (39.1804, -123.6783); Bear Creek (39.1425, -123.4326); Bear Wallow Creek (39.0053, -123.4075); Beasley Creek (38.9366, -123.3265); Bottom Creek (39.2117, -123.4607); Camp 16 Gulch (39.1937, -123.6095); Camp Creek (38.9310, -123.3527); Cold Spring Creek (39.0376, -123.5027); Con Creek (39.0374, -123.3816); Cook Creek (39.1879, -123.5109); Cune Creek (39.1622, -123.6014); Dago Creek (39.0731, -123.5068); Dead Horse Gulch (39.1576, -123.6124); Dutch Henry Creek (39.2112, -123.5794); Floodgate Creek (39.1291, -123.5365); Fluem Gulch (39.1615, -123.6695); Flynn Creek (39.2099, -123.6032); German Creek (38.9452, -123.4269); Gut Creek (39.0803, -123.3312); Ham Canyon (39.0164, -123.4265); Horse Creek (39.0144, -123.4960); Hungry Hollow Creek (39.1327, -123.4488); Indian Creek (39.0708, -123.3301); Jimmy Creek (39.0117, -123.2888); John Smith Creek (39.2275, -123.5366); Little North Fork Navarro River (39.1941, -123.4553); Low Gap Creek (39.1590, -123.3783); Navarro River (39.0537, -123.4409); Marsh Gulch (39.1692, -123.7049); McCarvey Creek (39.1589, -123.4048); Mill Creek (39.1270, -123.4315); Minnie Creek (38.9751, -123.4529); Murray Gulch (39.1755, -123.6966); Mustard Gulch (39.1673, -123.6393); North Branch (39.2069, -123.5361); North Fork Indian Creek (39.1213, -123.3345); North Fork Navarro

River (39.1708, -123.5606); Parkinson Gulch (39.0768, -123.4070); Perry Gulch (39.1342, -123.5707); Rancheria Creek (38.8626, -123.2417); Ray Gulch (39.1792, -123.6494); Robinson Creek (38.9845, -123.3513); Rose Creek (39.1358, -123.3672); Shingle Mill Creek (39.1671, -123.4223); Soda Creek (39.0238, -123.3149); Soda Creek (39.1531, -123.3734); South Branch (39.1409, -123.3196); Spooner Creek (39.2221, -123.4811); Tramway Gulch (39.1481, -123.5958); Yale Creek (38.8882, -123.2785).

(viii) *Greenwood Creek Hydrologic Sub-area 111361*. Outlet(s) = Greenwood Creek (Lat 39.1262, Long -123.7181) upstream to endpoint(s) in: Greenwood Creek (39.0894, -123.5924).

(ix) *Elk Creek Hydrologic Sub-area 111362*. Outlet(s) = Elk Creek (Lat 39.1024, Long -123.7080) upstream to endpoint(s) in: Elk Creek (39.0657, -123.6245).

(x) *Alder Creek Hydrologic Sub-area 111363*. Outlet(s) = Alder Creek (Lat 39.0044, Long -123.6969); Mallo Pass Creek (39.0341, -123.6896) upstream to endpoint(s) in: Alder Creek (38.9961, -123.6471); Mallo Pass Creek (39.0287, -123.6373).

(xi) *Brush Creek Hydrologic Sub-area 111364*. Outlet(s) = Brush Creek (Lat 38.9760, Long -123.7120) upstream to endpoint(s) in: Brush Creek (38.9730, -123.5563); Mill Creek (38.9678, -123.6515); Unnamed Tributary (38.9724, -123.6571).

(xii) *Garcia River Hydrologic Sub-area 111370*. Outlet(s) = Garcia River (Lat 38.9550, Long -123.7338); Point Arena Creek (38.9141, -123.7103); Schooner Gulch (38.8667, -123.6550) upstream to endpoint(s) in: Blue Water Hole Creek (38.9378, -123.5023); Flemming Creek (38.8384, -123.5361); Garcia River (38.8965, -123.3681); Hathaway Creek (38.9287, -123.7011); Inman Creek (38.8804, -123.4370); Larmour Creek (38.9419, -123.4469); Mill Creek (38.9078, -123.3143); North Fork Garcia River (38.9233, -123.5339); North Fork Schooner Gulch (38.8758, -123.6281); Pardaloe Creek (38.8895, -123.3423); Point Arena Creek (38.9069, -123.6838); Redwood Creek (38.9241, -123.3343); Rolling Brook (38.8965, -123.5716); Schooner Gulch (38.8677, -123.6198); South Fork Garcia River (38.8450, -123.5420); Stansbury Creek (38.9422, -123.4720); Signal Creek (38.8639, -123.4414); Unnamed Tributary

(38.8758, -123.5692); Unnamed Tributary (38.8818, -123.5723); Whitlow Creek (38.9141, -123.4624).

(xiii) *North Fork Gualala River Hydrologic Sub-area 111381*. Outlet(s) = North Fork Gualala River (Lat 38.7784, Long -123.4992) upstream to endpoint(s) in: Bear Creek (38.8347, -123.3842); Billings Creek (38.8652, -123.3496); Doty Creek (38.8495, -123.5131); Dry Creek (38.8416, -123.4455); Little North Fork Gualala River (38.8295, -123.5570); McGann Gulch (38.8026, -123.4458); North Fork Gualala River (38.8479, -123.4113); Robinson Creek (38.8416, -123.3725); Robinson Creek (38.8386, -123.4991); Stewart Creek (38.8109, -123.4157); Unnamed Tributary (38.8487, -123.3820).

(xiv) *Rockpile Creek Hydrologic Sub-area 111382*. Outlet(s) = Rockpile Creek (Lat 38.7507, Long -123.4706) upstream to endpoint(s) in: Rockpile Creek (38.7966, -123.3872).

(xv) *Buckeye Creek Hydrologic Sub-area 111383*. Outlet(s) = Buckeye Creek (Lat 38.7403, Long -123.4580) upstream to endpoint(s) in: Buckeye Creek (38.7400, -123.2697); Flat Ridge Creek (38.7616, -123.2400); Franchini Creek (38.7500, -123.3708); North Fork Buckeye (38.7991, -123.3166).

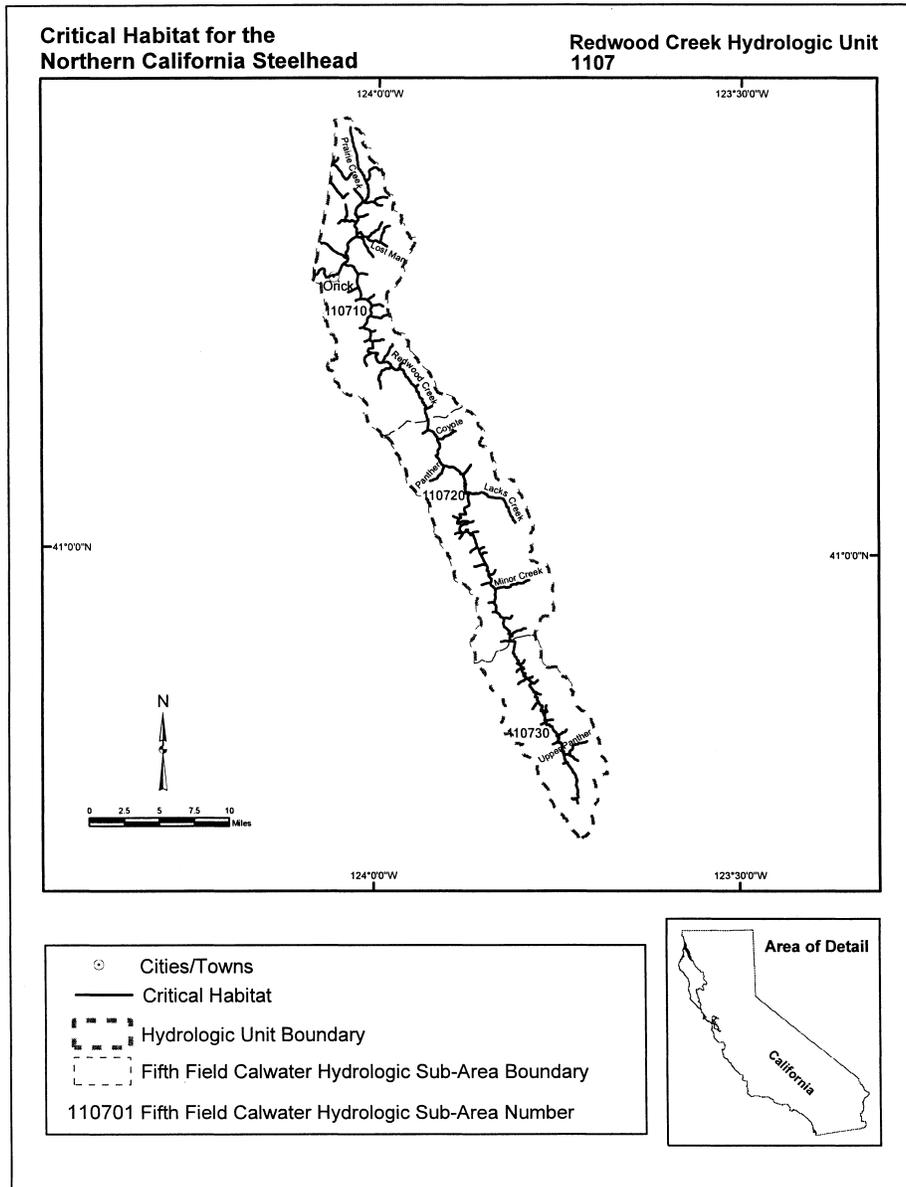
(xvi) *Wheatfield Fork Hydrologic Sub-area 111384*. Outlet(s) = Wheatfield Fork Gualala River (Lat 38.7018, Long -123.4168) upstream to endpoint(s) in: Danfield Creek (38.6369, -123.1431); Fuller Creek (38.7109, -123.3256); Haupt Creek (38.6220, -123.2551); House Creek

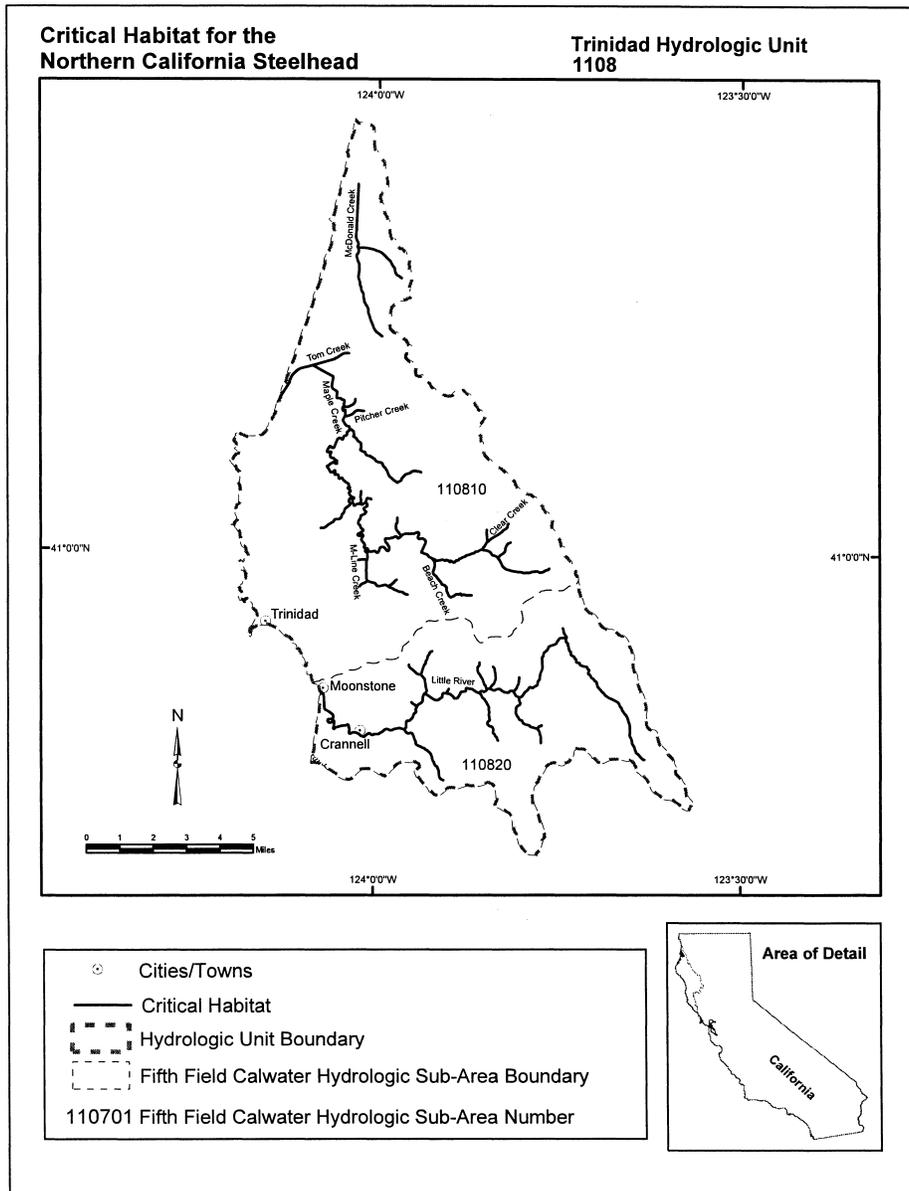
(38.6545, -123.1184); North Fork Fuller Creek (38.7252, -123.2968); Pepperwood Creek (38.6205, -123.1665); South Fork Fuller Creek (38.6973, -123.2860); Tombs Creek (38.6989, -123.1616); Unnamed Tributary (38.7175, -123.2744); Wheatfield Fork Gualala River (38.7497, -123.2215).

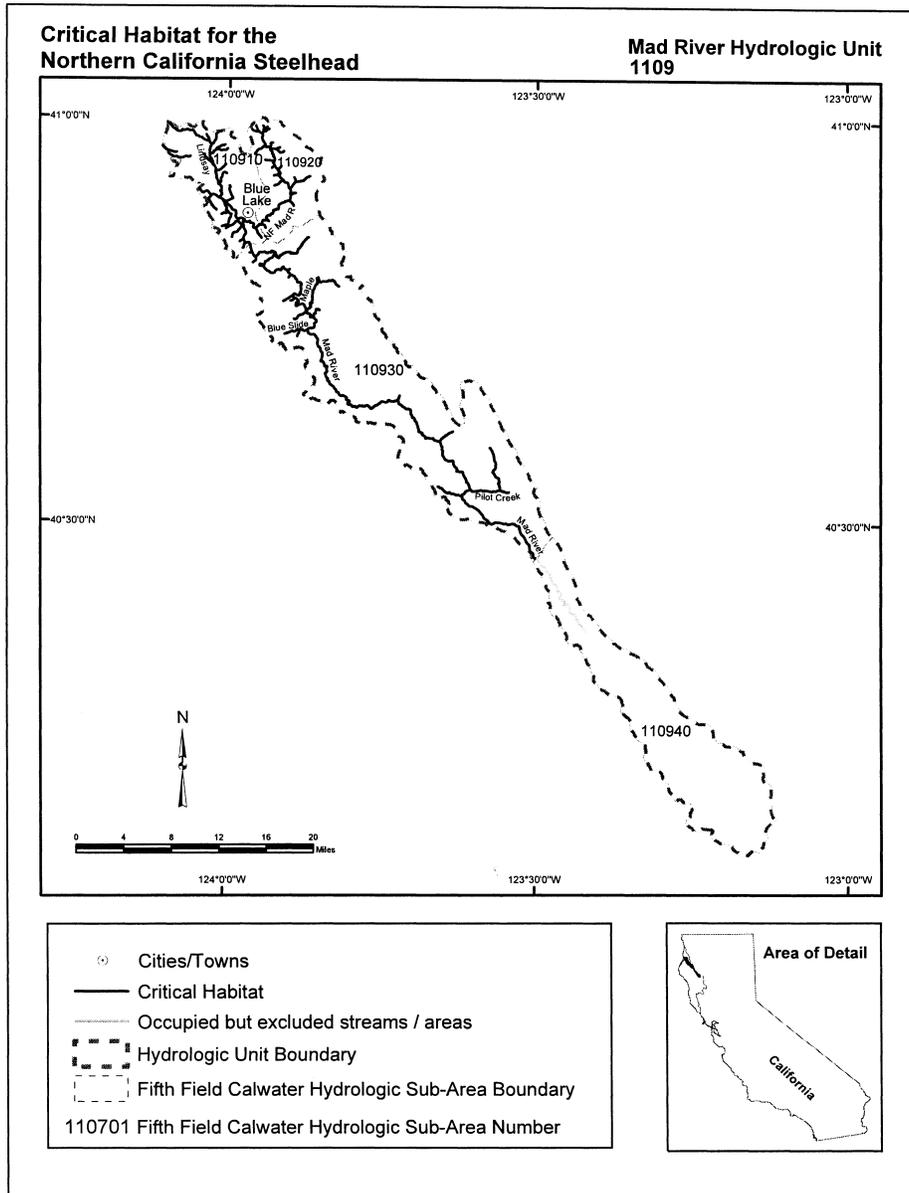
(xvii) *Gualala Hydrologic Sub-area 111385*. Outlet(s) = Fort Ross Creek (Lat 38.5119, Long -123.2436); Gualala River (38.7687, -123.5334); Kolmer Gulch (38.5238, -123.2646) upstream to endpoint(s) in: Big Pepperwood Creek (38.7951, -123.4638); Carson Creek (38.5653, -123.1906); Fort Ross Creek (38.5174, -123.2363); Groshong Gulch (38.7814, -123.4904); Gualala River (38.7780, -123.4991); Kolmer Gulch (38.5369, -123.2247); Little Pepperwood (38.7738, -123.4427); Marshall Creek (38.5647, -123.2058); McKenzie Creek (38.5895, -123.1730); Palmer Canyon Creek (38.6002, -123.2167); South Fork Gualala River (38.5646, -123.1689); Sproule Creek (38.6122, -123.2739); Turner Canyon (38.5294, -123.1672); Unknown Tributary (38.5634, -123.2003).

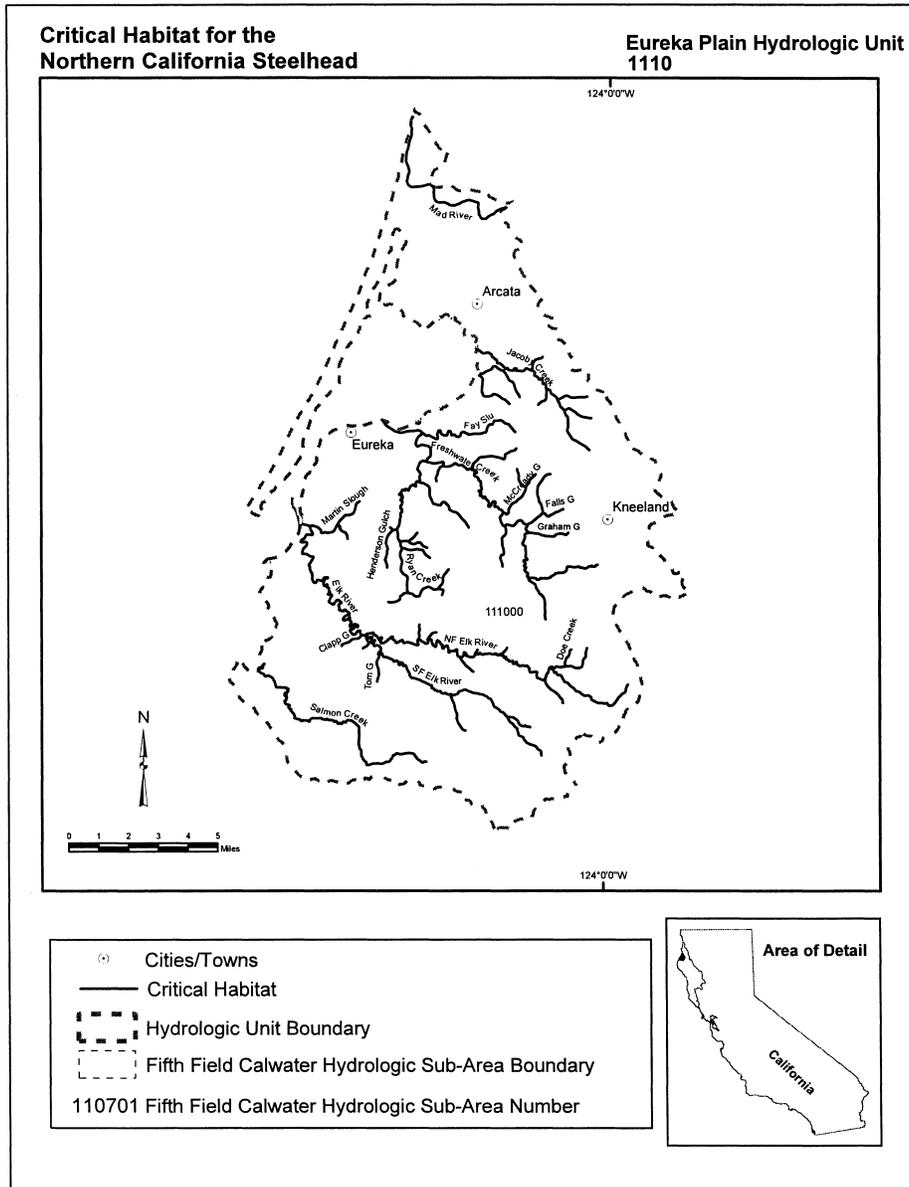
(xviii) *Russian Gulch Hydrologic Sub-area 111390*. Outlet(s) = Russian Gulch Creek (Lat 38.4669, Long -123.1569) upstream to endpoint(s) in: Russian Gulch Creek (38.4956, -123.1535); West Branch Russian Gulch Creek (38.4968, -123.1631).

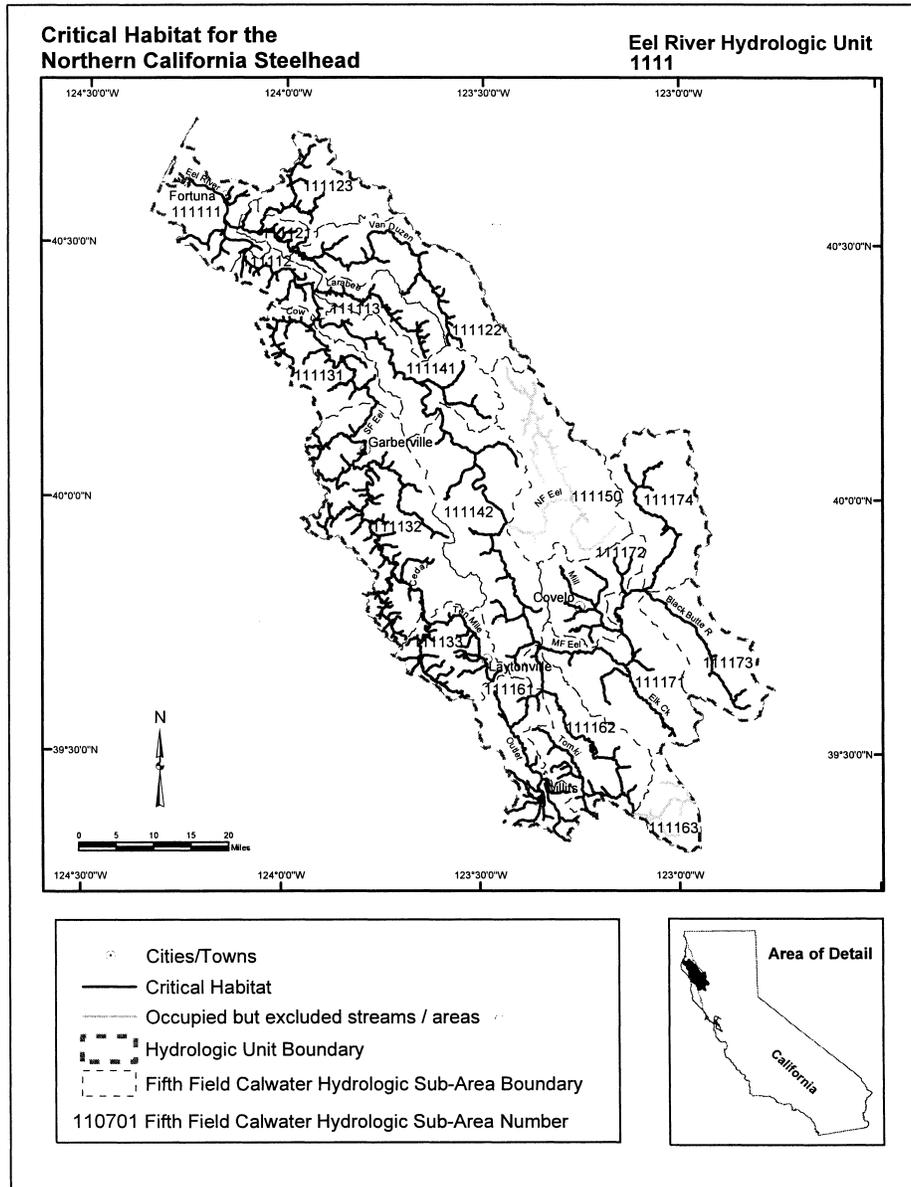
(8) Maps of critical habitat for the Northern California Steelhead ESU follow:

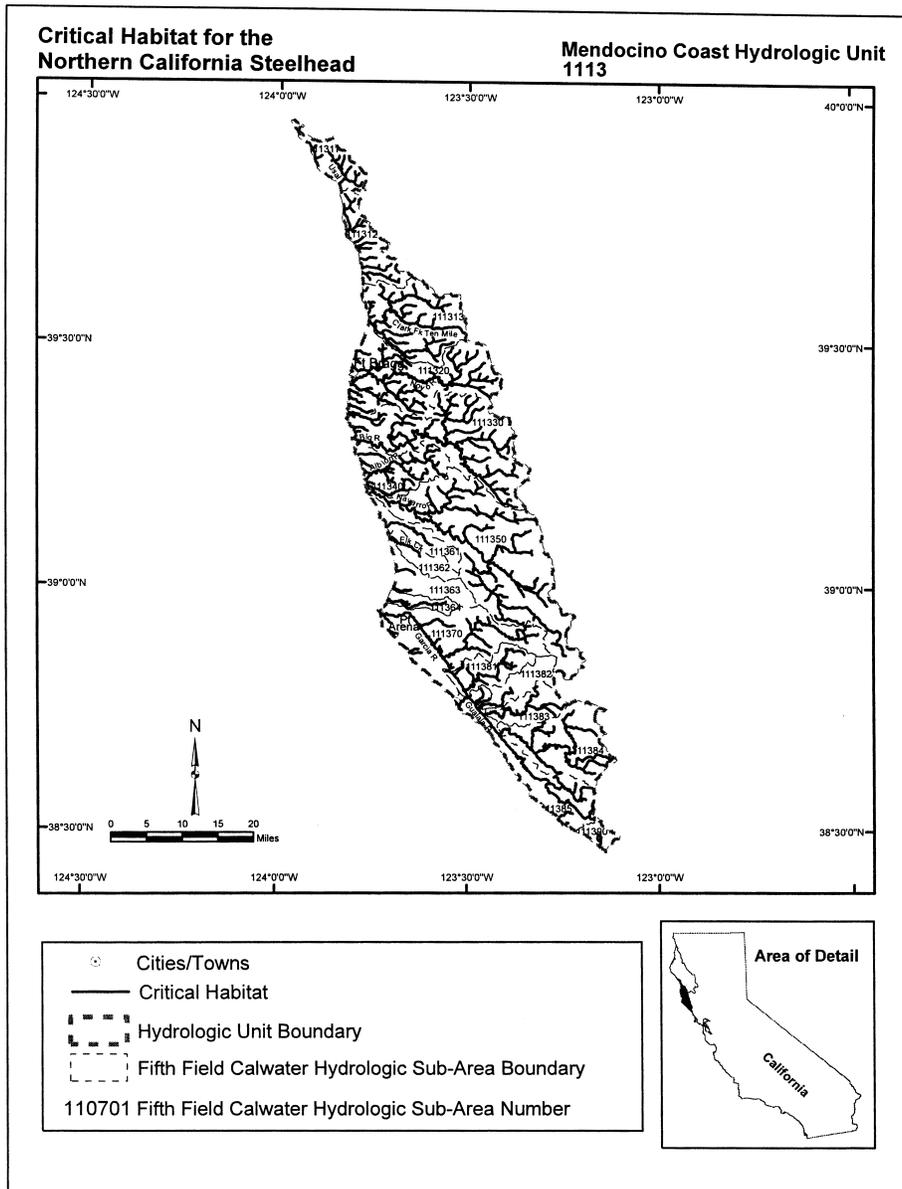












(h) *Central California Coast Steelhead* (*O. mykiss*). Critical habitat is designated to include the areas defined in the following CALWATER Hydrologic Units:

(1) Russian River Hydrologic Unit 1114—(i) *Guerneville Hydrologic Sub-area 111411*. Outlet(s) = Russian River (Lat 38.4507, Long -123.1289) upstream to endpoint(s) in: Atascadero Creek (38.3473, -122.8626); Austin Creek

(38.5098, -123.0680); Baumert Springs (38.4195, -122.9658); Dutch Bill Creek (38.4132, -122.9508); Duvoul Creek (38.4527, -122.9525); Fife Creek (38.5584, -122.9922); Freezeout Creek (38.4405, -123.0360); Green Valley Creek, (38.4445, -122.9185); Grub Creek (38.4411, -122.9636); Hobson Creek (38.5334, -122.9401); Hulbert Creek (38.5548, -123.0362); Jenner Gulch (38.4869, -123.0996); Kidd Creek (38.5029, -123.0935); Lancel Creek (38.4247, -122.9322); Mark West Creek (38.4961, -122.8489); Mays Canyon (38.4800, -122.9715); North Fork Lancel Creek (38.4447, -122.9444); Pocket Canyon (38.4650, -122.9267); Porter Creek (38.5435, -122.9332); Purrington Creek (38.4083, -122.9307); Sheep House Creek (38.4820, -123.0921); Smith Creek (38.4622, -122.9585); Unnamed Tributary (38.4560, -123.0246); Unnamed Tributary (38.3976, -122.8994); Unnamed Tributary (38.3772, -122.8938); Willow Creek (38.4249, -123.0022).

(ii) *Austin Creek Hydrologic Sub-area 111412*. Outlet(s) = Austin Creek (Lat 38.5098, Long -123.0680) upstream to endpoint(s) in: Austin Creek (38.6262, -123.1347); Bear Pen Creek (38.5939, -123.1644); Big Oat Creek (38.5615, -123.1299); Black Rock Creek (38.5586, -123.0730); Blue Jay Creek (38.5618, -123.1399); Conshea Creek (38.5830, -123.0824); Devil Creek (38.6163, -123.0425); East Austin Creek (38.6349, -123.1238); Gilliam Creek (38.5803, -123.0152); Gray Creek (38.6132, -123.0107); Thompson Creek (38.5747, -123.0300); Pole Mountain Creek (38.5122, -123.1168); Red Slide Creek (38.6039, -123.1141); Saint Elmo Creek (38.5130, -123.1125); Schoolhouse Creek (38.5595, -123.0175); Spring Creek (38.5041, -123.1364); Sulphur Creek (38.6187, -123.0553); Ward Creek (38.5720, -123.1547).

(iii) *Mark West Hydrologic Sub-area 111423*. Outlet(s) = Mark West Creek (Lat 38.4962, Long -122.8492) upstream to endpoint(s) in: Humbug Creek (38.5412, -122.6249); Laguna de Santa Rosa (38.4526, -122.8347); Mark West Creek (38.5187, -122.5995); Pool Creek (38.5486, -122.7641); Fruit Creek (38.5313, -122.7615); Windsor Creek (38.5484, -122.8101).

(iv) *Warm Springs Hydrologic Sub-area 111424*. Outlet(s) = Dry Creek (Lat

38.5862, Long -122.8577) upstream to endpoint(s) in: Angel Creek (38.6101, -122.9833); Crane Creek (38.6434, -122.9451); Dry Creek (38.7181, -123.0091); Dutcher Creek (38.7223, -122.9770); Felta Creek (38.5679, -122.9379); Foss Creek (38.6244, -122.8754); Grape Creek (38.6593, -122.9707); Mill Creek (38.5976, -122.9914); North Slough Creek (38.6392, -122.8888); Palmer Creek (38.5770, -122.9904); Pena Creek (38.6384, -123.0743); Redwood Log Creek (38.6705, -123.0725); Salt Creek (38.5543, -122.9133); Wallace Creek (38.6260, -122.9651); Wine Creek (38.6662, -122.9682); Woods Creek (38.6069, -123.0272).

(v) *Geyserville Hydrologic Sub-area 111425*. Outlet(s) = Russian River (Lat 38.6132, Long -122.8321) upstream to endpoint(s) in: Ash Creek (38.8556, -123.0082); Bear Creek (38.7253, -122.7038); Bidwell Creek (38.6229, -122.6320); Big Sulphur Creek (38.8279, -122.9914); Bluegum Creek (38.6988, -122.7596); Briggs Creek (38.6845, -122.6811); Coon Creek (38.7105, -122.6957); Crocker Creek (38.7771, -122.9595); Edwards Creek (38.8592, -123.0758); Foote Creek (38.6433, -122.6797); Foss Creek (38.6373, -122.8753); Franz Creek (38.5726, -122.6343); Gill Creek (38.7552, -122.8840); Gird Creek (38.7055, -122.8311); Ingalls Creek (38.7344, -122.7192); Kellog Creek (38.6753, -122.6422); Little Briggs Creek (38.7082, -122.7014); Maacama Creek (38.6743, -122.7431); McDonnell Creek (38.7354, -122.7338); Mill Creek (38.7009, -122.6490); Miller Creek (38.7211, -122.8608); Oat Valley Creek (38.8461, -123.0712); Redwood Creek (38.6342, -122.6720); Sausal Creek (38.6924, -122.7930); South Fork Gill Creek (38.7420, -122.8760); Unnamed Tributary (38.7329, -122.8601); Yellowjacket Creek (38.6666, -122.6308).

(vi) *Sulphur Creek Hydrologic Sub-area 111426*. Outlet(s) = Big Sulphur Creek (Lat 38.8279, Long -122.9914) upstream to endpoint(s) in: Alder Creek (38.8503, -122.8953); Anna Belcher Creek (38.7537, -122.7586); Big Sulphur Creek (38.8243, -122.8774); Frasier Creek (38.8439, -122.9341); Humming Bird Creek (38.8460, -122.8596); Little Sulphur Creek (38.7469, -122.7425); Lovers Gulch (38.7396, -122.8275); North Branch Little Sulphur Creek (38.7783, -122.8119); Squaw Creek (38.8199, -122.7945).

(vii) *Ukiah Hydrologic Sub-area 111431*. Outlet(s) = Russian River (Lat 38.8828, Long -123.0557) upstream to endpoint(s) in: Pieta Creek (38.8622, -122.9329).

(viii) *Forsythe Creek Hydrologic Sub-area 111433*. Outlet(s) = West Branch Russian River (Lat 39.2257, Long -123.2012) upstream to endpoint(s) in: Bakers Creek (39.2859, -123.2432); Eldridge Creek (39.2250, -123.3309); Forsythe Creek (39.2976, -123.2963); Jack Smith Creek (39.2754, -123.3421); Mariposa Creek (39.3472, -123.2625); Mill Creek (39.2969, -123.3360); Salt Hollow Creek (39.2585, -123.1881); Seward Creek (39.2606, -123.2646); West Branch Russian River (39.3642, -123.2334).

(2) Bodega Hydrologic Unit 1115—(i) *Salmon Creek Hydrologic Sub-area 111510*. Outlet(s) = Salmon Creek (Lat 38.3554, Long -123.0675) upstream to endpoint(s) in: Coleman Valley Creek (38.3956, -123.0097); Faye Creek (38.3749, -123.0000); Finley Creek (38.3707, -123.0258); Salmon Creek (38.3877, -122.9318); Tannery Creek (38.3660, -122.9808).

(ii) *Estero Americano Hydrologic Sub-area 111530*. Outlet(s) = Estero Americano (Lat 38.2939, Long -123.0011) upstream to endpoint(s) in: Estero Americano (38.3117, -122.9748); Ebabias Creek (38.3345, -122.9759).

(3) Marin Coastal Hydrologic Unit 2201—(i) *Walker Creek Hydrologic Sub-area 220112*. Outlet(s) = Walker Creek (Lat 38.2213, Long -122.9228); Millerton Gulch (38.1055, -122.8416) upstream to endpoint(s) in: Chileno Creek (38.2145, -122.8579); Frink Canyon (38.1761, -122.8405); Millerton Gulch (38.1376, -122.8052); Verde Canyon (38.1630, -122.8116); Unnamed Tributary (38.1224, -122.8095); Walker Creek (38.1617, -122.7815).

(ii) *Lagunitas Creek Hydrologic Sub-area 220113*. Outlet(s) = Lagunitas Creek (Lat 38.0827, Long -122.8274) upstream to endpoint(s) in: Cheda Creek (38.0483, -122.7329); Devil's Gulch (38.0393, -122.7128); Giacomini Creek (38.0075, -122.7386); Horse Camp Gulch (38.0078, -122.7624); Lagunitas Creek (37.9974, -122.7045); Olema Creek (37.9719, -122.7125); Quarry Gulch (38.0345, -122.7639); San Geronimo Creek (38.0131, -122.6499); Unnamed Tributary (37.9893, -122.7328); Unnamed Tributary (37.9976, -122.7553).

(iii) *Point Reyes Hydrologic Sub-area 220120*. Outlet(s) = Creamery Bay Creek (Lat 38.0779, Long -122.9572); East Schooner Creek (38.0913, -122.9293); Home Ranch (38.0705, -122.9119); Laguna Creek (38.0235, -122.8732); Muddy Hollow Creek (38.0329, -122.8842) upstream to endpoint(s) in: Creamery Bay Creek (38.0809, -122.9561); East Schooner Creek (38.0928, -122.9159); Home Ranch Creek (38.0784, -122.9038); Laguna Creek (38.0436, -122.8559); Muddy Hollow Creek (38.0549, -122.8666).

(iv) *Bolinas Hydrologic Sub-area 220130*. Outlet(s) = Easkoot Creek (Lat 37.9026, Long -122.6474); McKinnon Gulch (37.9126, -122.6639); Morse Gulch (37.9189, -122.6710); Pine Gulch Creek (37.9218, -122.6882); Redwood Creek (37.8595, -122.5787); Stinson Gulch (37.9068, -122.6517); Wilkins Creek (37.9343, -122.6967) upstream to endpoint(s) in: Easkoot Creek (37.8987, -122.6370); Kent Canyon (37.8866, -122.5800); McKinnon Gulch (37.9197, -122.6564); Morse Gulch (37.9240, -122.6618); Pine Gulch Creek (37.9557, -122.7197); Redwood Creek (37.9006, -122.5787); Stinson Gulch (37.9141, -122.6426); Wilkins Creek (37.9450, -122.6910).

(4) San Mateo Hydrologic Unit 2202—(i) *San Mateo Coastal Hydrologic Sub-area 220221*. Outlet(s) = Denniston Creek (37.5033, -122.4869); Frenchmans Creek (37.4804, -122.4518); San Pedro Creek (37.5964, -122.5057) upstream to endpoint(s) in: Denniston Creek (37.5184, -122.4896); Frenchmans Creek (37.5170, -122.4332); Middle Fork San Pedro Creek (37.5758, -122.4591); North Fork San Pedro Creek (37.5996, -122.4635).

(ii) *Half Moon Bay Hydrologic Sub-area 220222*. Outlet(s) = Pilarcitos Creek (Lat 37.4758, Long -122.4493) upstream to endpoint(s) in: Apanolio Creek (37.5202, -122.4158); Arroyo Leon Creek (37.4560, -122.3442); Mills Creek (37.4629, -122.3721); Pilarcitos Creek (37.5259, -122.3980); Unnamed Tributary (37.4705, -122.3616).

(iii) *Tunitas Creek Hydrologic Sub-area 220223*. Outlet(s) = Lobitos Creek (Lat 37.3762, Long -122.4093); Tunitas Creek (37.3567, -122.3999) upstream to endpoint(s) in: East Fork Tunitas Creek (37.3981, -122.3404); Lobitos Creek (37.4246, -122.3586); Tunitas Creek (37.4086, -122.3502).

(iv) *San Gregorio Creek Hydrologic Sub-area 220230*. Outlet(s) = San Gregorio Creek (Lat 37.3215, Long -122.4030) upstream to endpoint(s) in: Alpine Creek (37.3062, -122.2003); Bogess Creek (37.3740, -122.3010); El Corte Madera Creek (37.3650, -122.3307); Harrington Creek (37.3811, -122.2936); La Honda Creek (37.3680, -122.2655); Langley Creek (37.3302, -122.2420); Mindego Creek (37.3204, -122.2239); San Gregorio Creek (37.3099, -122.2779); Woodruff Creek (37.3415, -122.2495).

(v) *Pescadero Creek Hydrologic Sub-area 220240*. Outlet(s) = Pescadero Creek (Lat 37.2669, Long -122.4122); Pomponio Creek (37.2979, -122.4061) upstream to endpoint(s) in: Bradley Creek (37.2819, -122.3802); Butano Creek (37.2419, -122.3165); Evans Creek (37.2659, -122.2163); Honsinger Creek (37.2828, -122.3316); Little Boulder Creek (37.2145, -122.1964); Little Butano Creek (37.2040, -122.3492); Oil Creek (37.2572, -122.1325); Pescadero Creek (37.2320, -122.1553); Lambert Creek (37.3014, -122.1789); Peters Creek (37.2883, -122.1694); Pomponio Creek (37.3030, -122.3805); Slate Creek (37.2530, -122.1935); Tarwater Creek (37.2731, -122.2387); Waterman Creek (37.2455, -122.1568).

(5) Bay Bridge Hydrologic Unit T 2203—(i) *San Rafael Hydrologic Sub-area 220320*. Outlet(s) = Arroyo Corte Madera del Presidio (Lat 37.8917, Long -122.5254); Corte Madera Creek (37.9425, -122.5059) upstream to endpoint(s) in: Arroyo Corte Madera del Presidio (37.9298, -122.5723); Cascade Creek (37.9867, -122.6287); Cascade Creek (37.9157, -122.5655); Larkspur Creek (37.9305, -122.5514); Old Mill Creek (37.9176, -122.5746); Ross Creek (37.9558, -122.5752); San Anselmo Creek (37.9825, -122.6420); Sleepy Hollow Creek (38.0074, -122.5794); Tamalpais Creek (37.9481, -122.5674).

(ii) [Reserved]

(6) Santa Clara Hydrologic Unit 2205—(i) *Coyote Creek Hydrologic Sub-area 220530*. Outlet(s) = Coyote Creek (Lat 37.4629, Long -121.9894; 37.2275, -121.7514) upstream to endpoint(s) in: Arroyo Aguague (37.3907, -121.7836); Coyote Creek (37.2778, -121.8033; 37.1677, -121.6301); Upper Penitencia Creek (37.3969, -121.7577).

(ii) *Guadalupe River—San Jose Hydrologic Sub-area 220540*. Outlet(s) = Coyote

Creek (Lat 37.2778, Long -121.8033) upstream to endpoint(s) in: Coyote Creek (37.2275, -121.7514).

(iii) *Palo Alto Hydrologic Sub-area 220550*. Outlet(s) = Guadalupe River (Lat 37.4614, Long -122.0240); San Francisquito Creek (37.4658, -122.1152); Stevens Creek (37.4456, -122.0641) upstream to endpoint(s) in: Bear Creek (37.4164, -122.2690); Corte Madera Creek (37.4073, -122.2378); Guadalupe River (37.3499, -121.9094); Los Trancos (37.3293, -122.1786); McGarvey Gulch (37.4416, -122.2955); Squealer Gulch (37.4335, -122.2880); Stevens Creek (37.2990, -122.0778); West Union Creek (37.4528, -122.3020).

(7) San Pablo Hydrologic Unit 2206—

(i) *Petaluma River Hydrologic Sub-area 220630*. Outlet(s) = Petaluma River (Lat 38.1111, Long -122.4944) upstream to endpoint(s) in: Adobe Creek (38.2940, -122.5834); Lichau Creek (38.2848, -122.6654); Lynch Creek (38.2748, -122.6194); Petaluma River (38.3010, -122.7149); Schultz Slough (38.1892, -122.5953); San Antonio Creek (38.2049, -122.7408); Unnamed Tributary (38.3105, -122.6146); Willow Brook (38.3165, -122.6113).

(ii) *Sonoma Creek Hydrologic Sub-area 220640*. Outlet(s) = Sonoma Creek (Lat 38.1525, Long -122.4050) upstream to endpoint(s) in: Agua Caliente Creek (38.3368, -122.4518); Asbury Creek (38.3401, -122.5590); Bear Creek (38.4656, -122.5253); Calabazas Creek (38.4033, -122.4803); Carriger Creek (38.3031, -122.5336); Graham Creek (38.3474, -122.5607); Hooker Creek (38.3809, -122.4562); Mill Creek (38.3395, -122.5454); Nathanson Creek (38.3350, -122.4290); Rodgers Creek (38.2924, -122.5543); Schell Creek (38.2554, -122.4510); Sonoma Creek (38.4507, -122.4819); Stuart Creek (38.3936, -122.4708); Yulupa Creek (38.3986, -122.5934).

(iii) *Napa River Hydrologic Sub-area 220650*. Outlet(s) = Napa River (Lat 38.0786, Long -122.2468) upstream to endpoint(s) in: Bale Slough (38.4806, -122.4578); Bear Canyon Creek (38.4512, -122.4415); Bell Canyon Creek (38.5551, -122.4827); Brown's Valley Creek (38.3251, -122.3686); Canon Creek (38.5368, -122.4854); Carneros Creek (38.3108, -122.3914); Conn Creek (38.4843, -122.3824); Cyrus Creek (38.5776, -122.6032); Diamond Mountain Creek

(38.5645, -122.5903); Dry Creek (38.4334, -122.4791); Dutch Henery Creek (38.6080, -122.5253); Garnett Creek (38.6236, -122.5860); Huichica Creek (38.2811, -122.3936); Jericho Canyon Creek (38.6219, -122.5933); Miliken Creek (38.3773, -122.2280); Mill Creek (38.5299, -122.5513); Murphy Creek (38.3155, -122.2111); Napa Creek (38.3047, -122.3134); Napa River (38.6638, -122.6201); Pickle Canyon Creek (38.3672, -122.4071); Rector Creek (38.4410, -122.3451); Redwood Creek (38.3765, -122.4466); Ritchie Creek (38.5369, -122.5652); Sarco Creek (38.3567, -122.2071); Soda Creek (38.4156, -122.2953); Spencer Creek (38.2729, -122.1909); Sulphur Creek (38.4895, -122.5088); Suscol Creek (38.2522, -122.2157); Tulucay Creek (38.2929, -122.2389); Unnamed Tributary (38.4248, -122.4935); Unnamed Tributary (38.4839, -122.5161); York Creek (38.5128, -122.5023).

(8) Big Basin Hydrologic Unit 3304—

(i) *Davenport Hydrologic Sub-area 330411*. Outlet(s) = Baldwin Creek (Lat 36.9669, -122.1232); Davenport Landing Creek (37.0231, -122.2153); Laguna Creek (36.9824, -122.1560); Liddell Creek (37.0001, -122.1816); Majors Creek (36.9762, -122.1423); Molino Creek (37.0368, -122.2292); San Vicente Creek (37.0093, -122.1940); Scott Creek (37.0404, -122.2307); Waddell Creek (37.0935, -122.2762); Wilder Creek (36.9535, -122.0775) upstream to endpoint(s) in: Baldwin Creek (37.0126, -122.1006); Bettencourt Creek (37.1081, -122.2386); Big Creek (37.0832, -122.2175); Davenport Landing Creek (37.0475, -122.1920); East Branch Waddell Creek (37.1482, -122.2531); East Fork Liddell Creek (37.0204, -122.1521); Henry Creek (37.1695, -122.2751); Laguna Creek (37.0185, -122.1287); Little Creek (37.0688, -122.2097); Majors Creek (36.9815, -122.1374); Middle Fork East Fork Liddell Creek (37.0194, -122.1608); Mill Creek (37.1034, -122.2218); Mill Creek (37.0235, -122.2218); Molino Creek (37.0384, -122.2125); Peasley Gulch (36.9824, -122.0861); Queseria Creek (37.0521, -122.2042); San Vicente Creek (37.0417, -122.1741); Scott Creek (37.1338, -122.2306); West Branch Waddell Creek (37.1697, -122.2642); West Fork Liddell Creek (37.0117, -122.1763); Unnamed

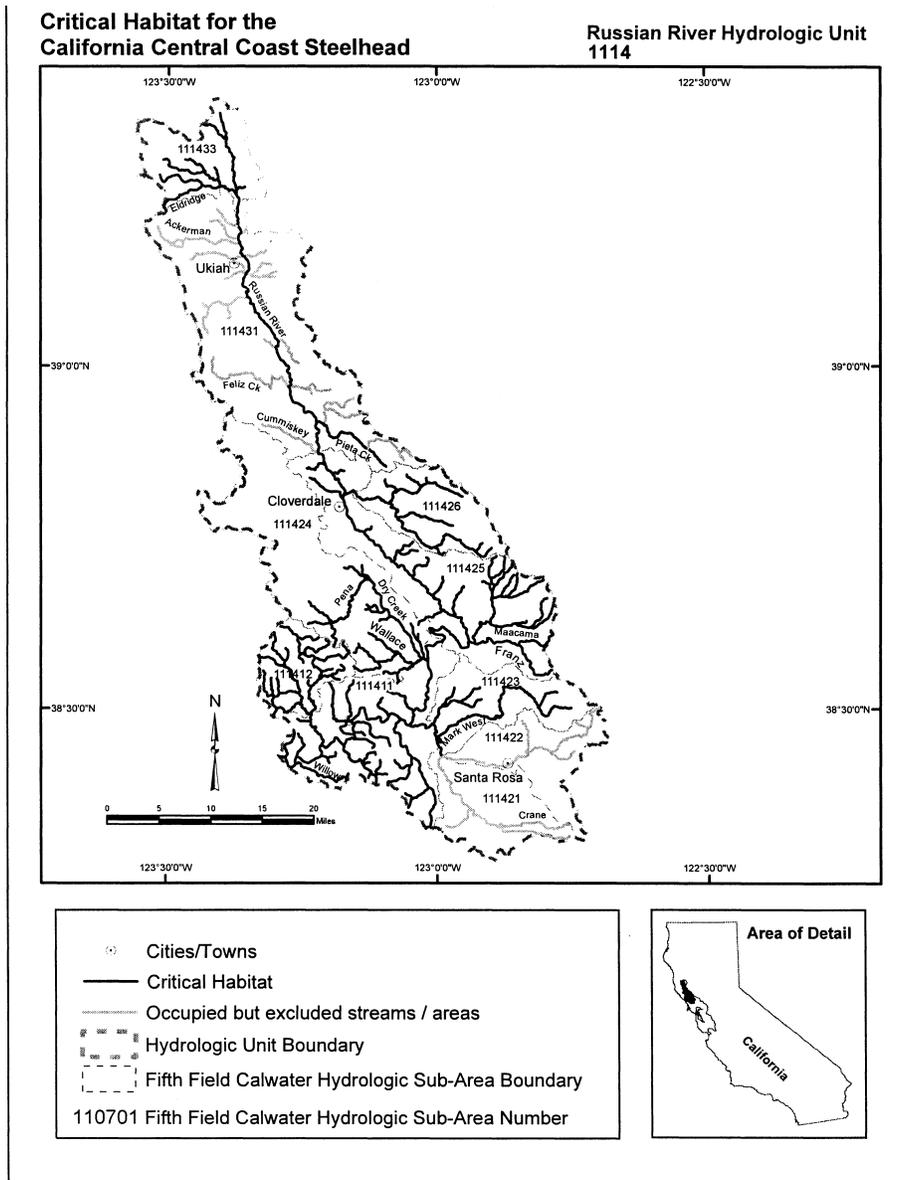
Tributary (37.0103, -122.0701); Wilder Creek (37.0107, -122.0770).

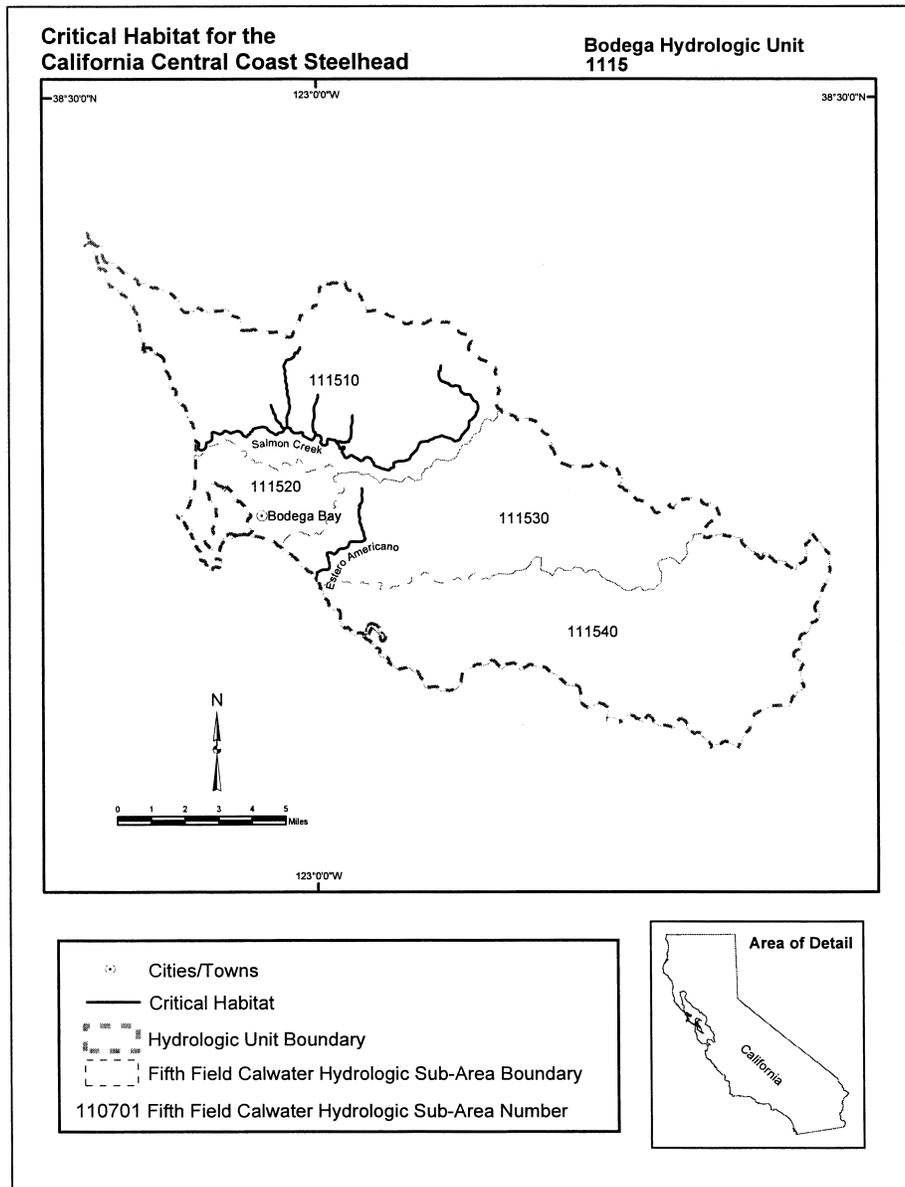
(ii) *San Lorenzo Hydrologic Sub-area 330412*. Outlet(s) = Arana Gulch Creek (Lat 36.9676, Long -122.0028); San Lorenzo River (36.9641, -122.0125) upstream to endpoint(s) in: Arana Gulch Creek (37.0270, -121.9739); Bean Creek (37.0956, -122.0022); Bear Creek (37.1711, -122.0750); Boulder Creek (37.1952, -122.1892); Bracken Brae Creek (37.1441, -122.1459); Branciforte Creek (37.0701, -121.9749); Crystal Creek (37.0333, -121.9825); Carbonera Creek (37.0286, -122.0202); Central Branch Arana Gulch Creek (37.0170, -121.9874); Deer Creek (37.2215, -122.0799); Fall Creek (37.0705, -122.1063); Gold Gulch Creek (37.0427, -122.1018); Granite Creek (37.0490, -121.9979); Hare Creek (37.1544, -122.1690); Jameson Creek (37.1485, -122.1904); Kings Creek (37.2262, -122.1059); Lompico Creek (37.1250, -122.0496); Mackenzie Creek (37.0866, -122.0176); Mountain Charlie Creek (37.1385, -121.9914); Newell Creek (37.1019, -122.0724); San Lorenzo River (37.2276, -122.1384); Two Bar Creek (37.1833, -122.0929); Unnamed Tributary (37.2106, -122.0952); Unnamed Tributary (37.2032, -122.0699); Zayante Creek (37.1062, -122.0224).

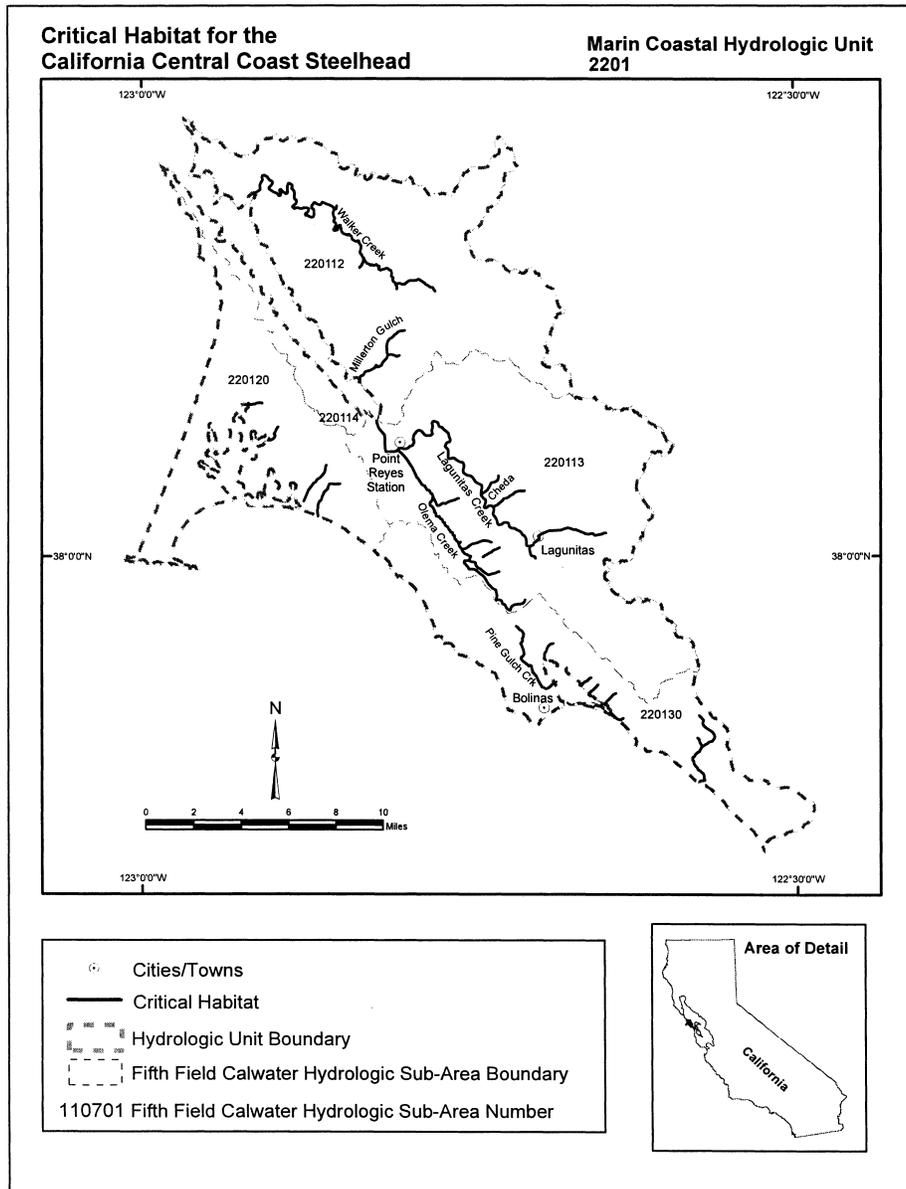
(iii) *Aptos-Soquel Hydrologic Sub-area 330413*. Outlet(s) = Aptos Creek (Lat 36.9692, Long -121.9065); Soquel Creek (36.9720, -121.9526) upstream to endpoint(s) in: Amaya Creek (37.0930, -121.9297); Aptos Creek (37.0545, -121.8568); Bates Creek (37.0099, -121.9353); Bridge Creek (37.0464, -121.8969); East Branch Soquel Creek (37.0690, -121.8297); Hester Creek (37.0967, -121.9458); Hinckley Creek (37.0671, -121.9069); Moores Gulch (37.0573, -121.9579); Valencia Creek (37.0323, -121.8493); West Branch Soquel Creek (37.1095, -121.9606).

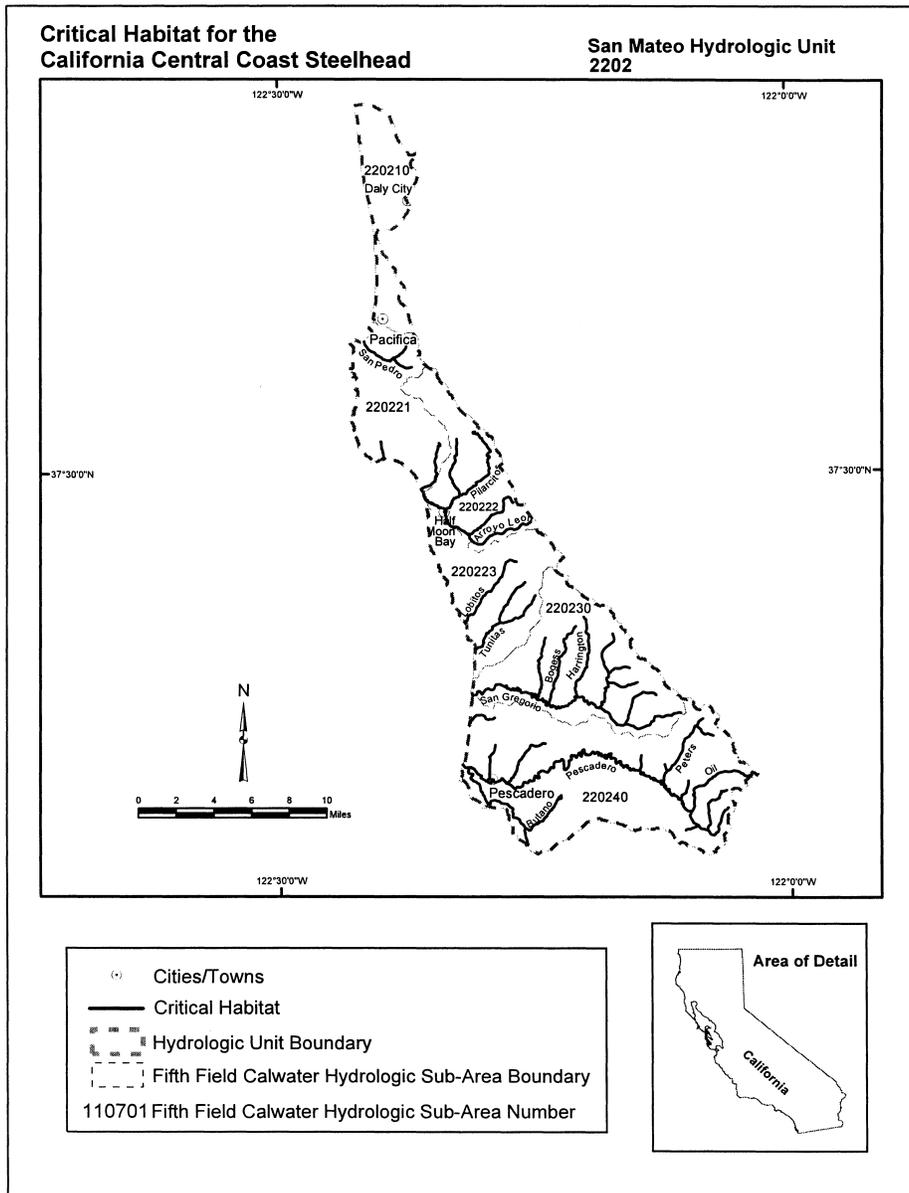
(iv) *Ano Nuevo Hydrologic Sub-area 330420*. Outlet(s) = Ano Nuevo Creek (Lat 37.1163, Long -122.3060); Gazos Creek (37.1646, -122.3625); Whitehouse Creek (37.1457, -122.3469) upstream to endpoint(s) in: Ano Nuevo Creek (37.1269, -122.3039); Bear Gulch (37.1965, -122.2773); Gazos Creek (37.2088, -122.2868); Old Womans Creek (37.1829, -122.3033); Whitehouse Creek (37.1775, -122.2900).

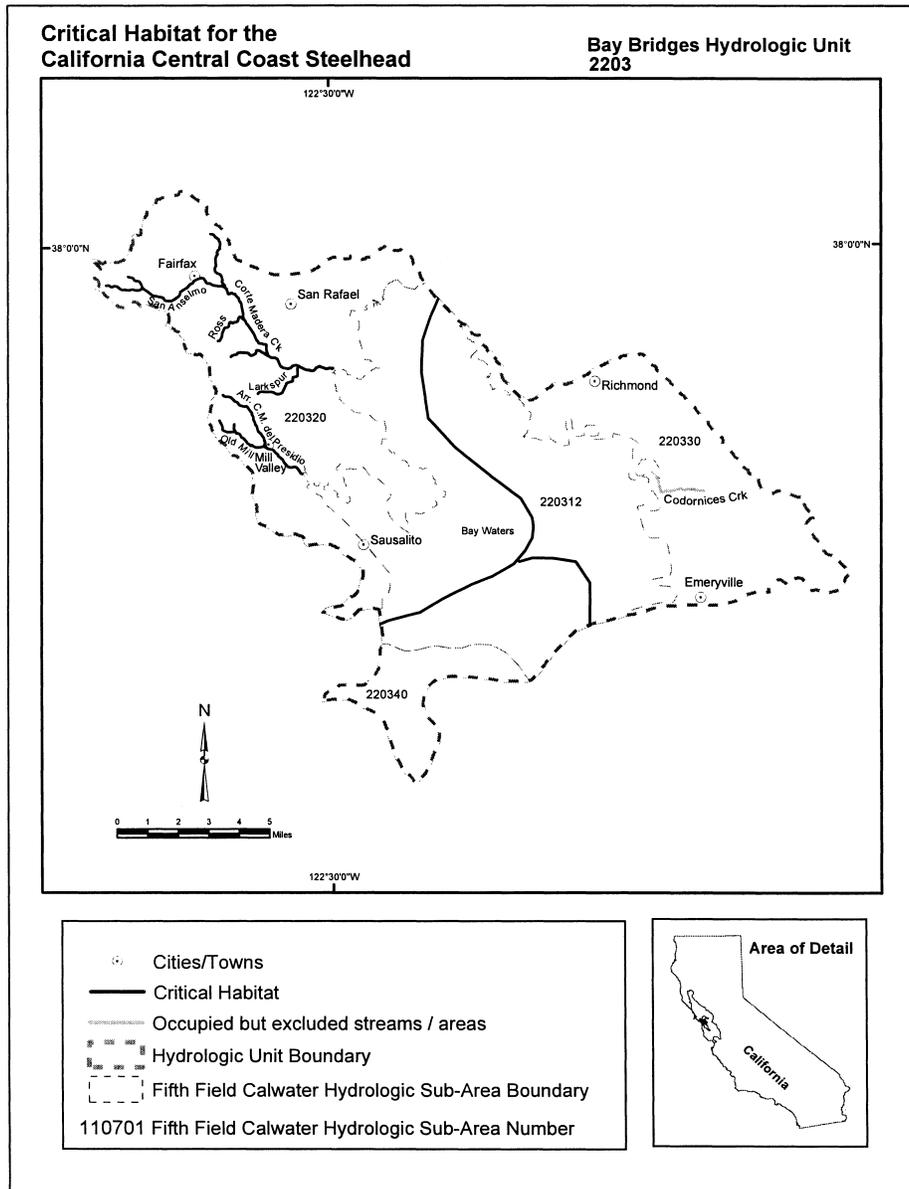
(9) Maps of critical habitat for the Central California Coast Steelhead ESU follow:

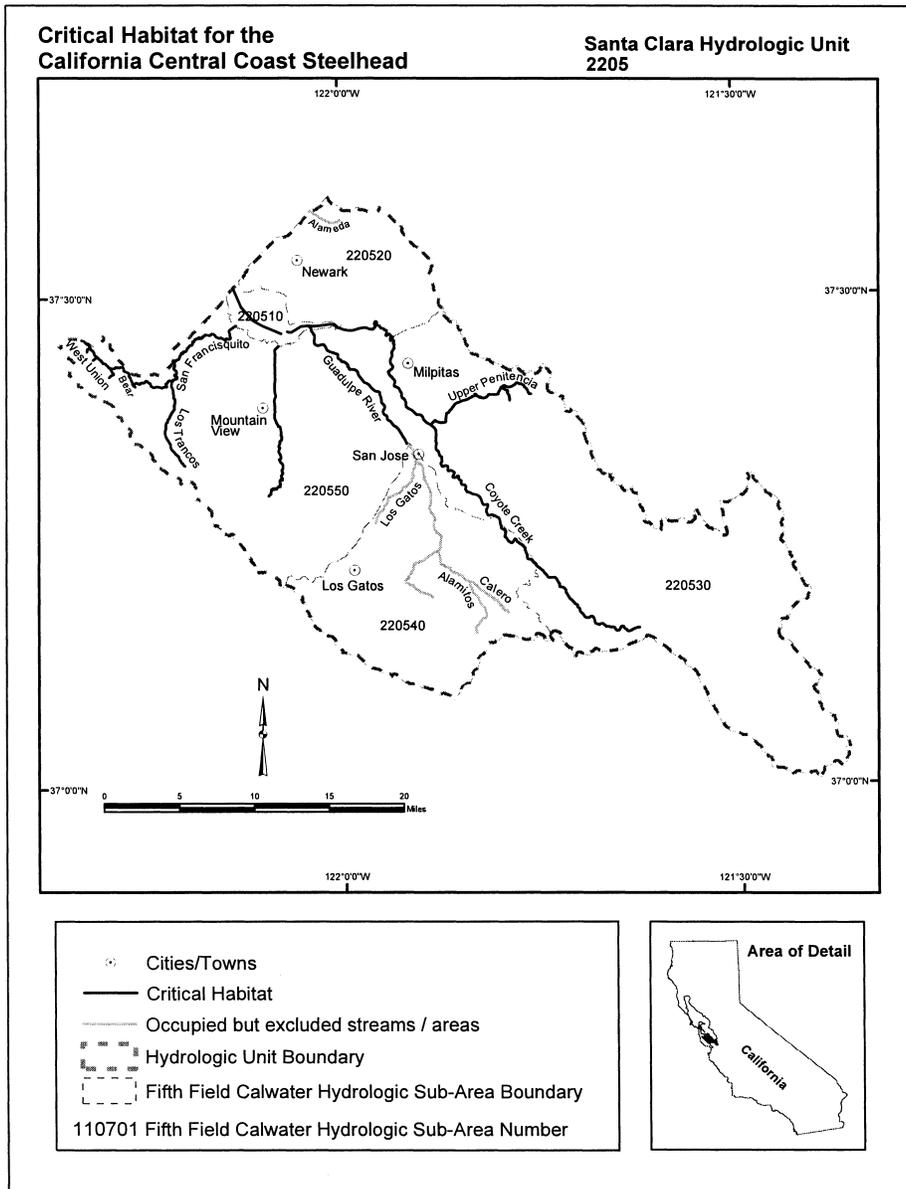


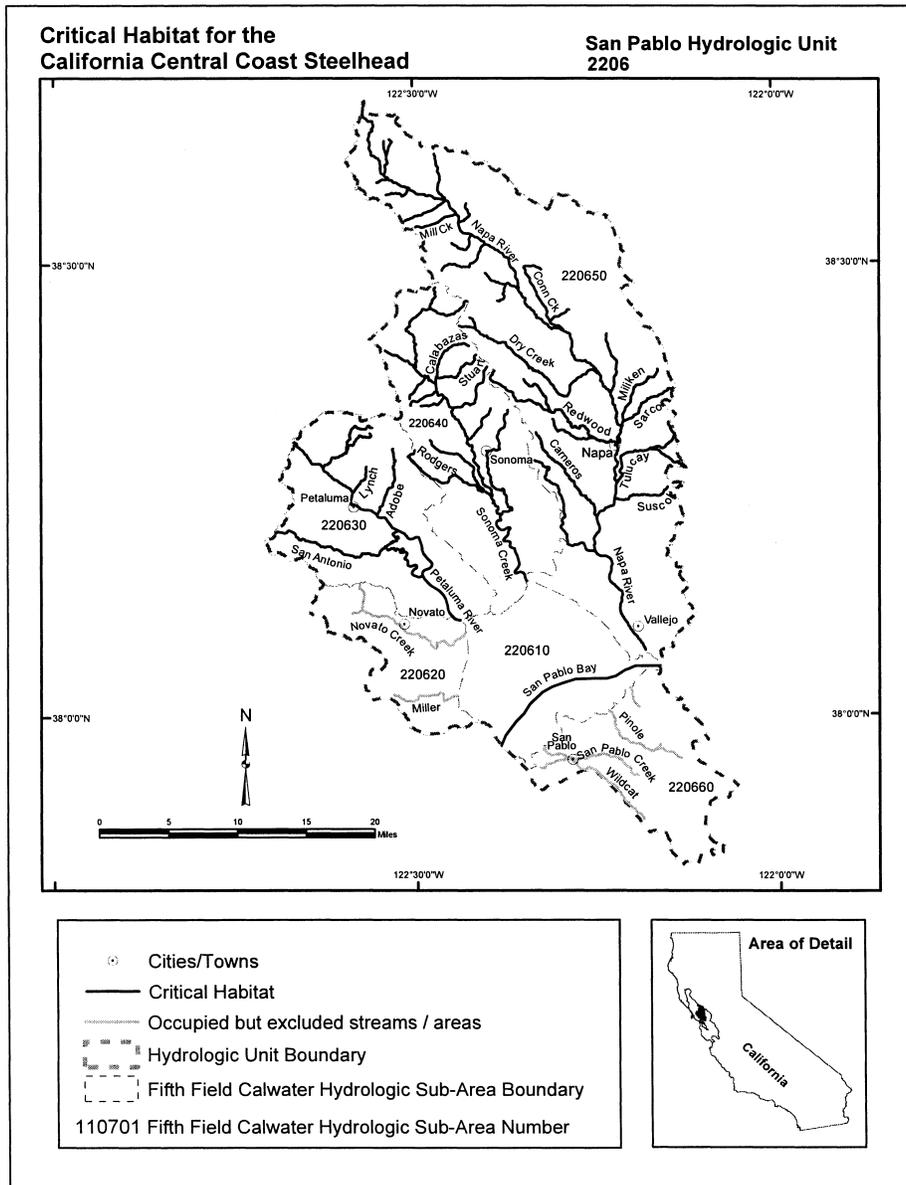


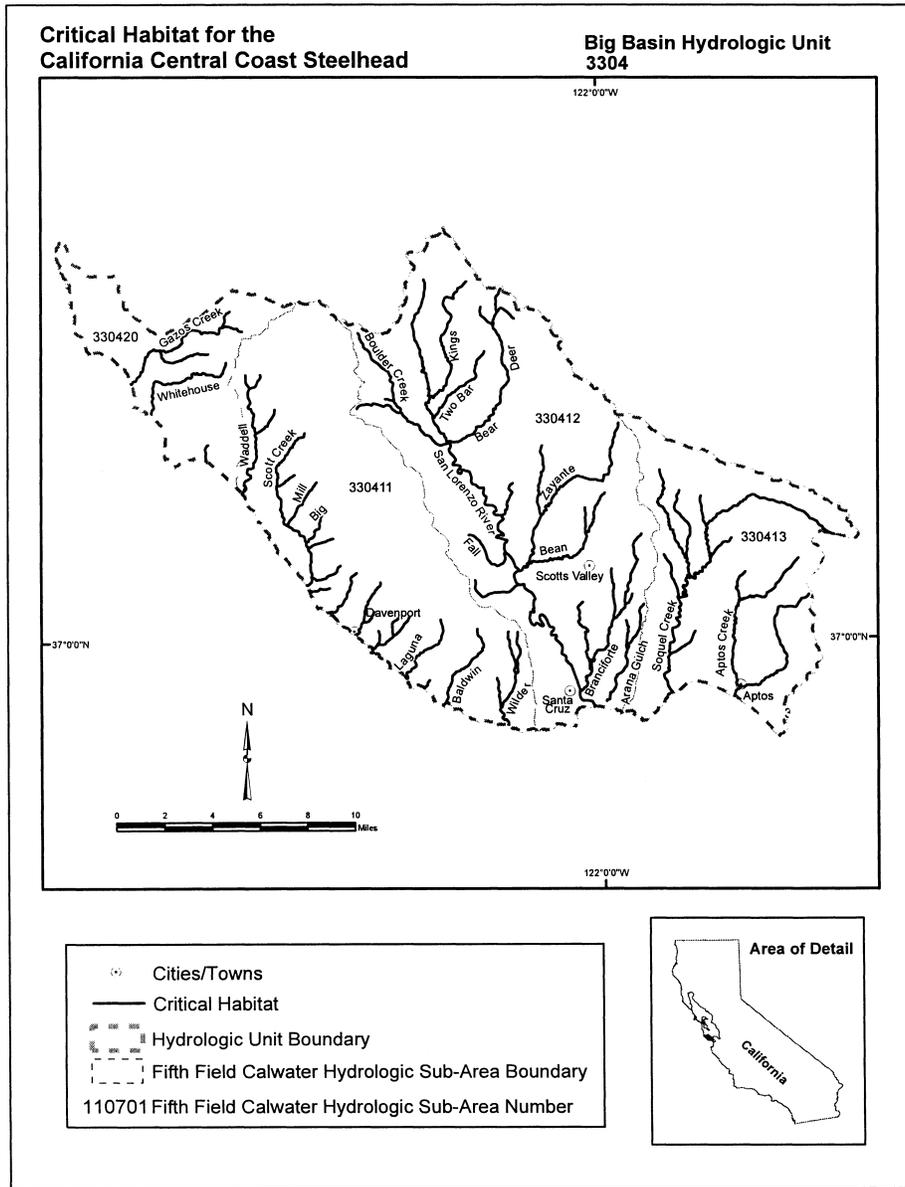












(i) *South-Central California Coast Steelhead (O. mykiss)*. Critical habitat is designated to include the areas defined in the following CALWATER Hydrologic Units:

(1) Pajaro River Hydrologic Unit 3305—(i) *Watsonville Hydrologic Sub-area 330510*. Outlet(s) = Pajaro River (Lat 36.8506, Long -121.8101) upstream to endpoint(s) in: Banks Canyon Creek (36.9958, -121.7264); Browns Creek

(37.0255, -121.7754); Casserly Creek (36.9902, -121.7359); Corralitos Creek (37.0666, -121.8359); Gaffey Creek (36.9905, -121.7132); Gamecock Canyon (37.0362, -121.7587); Green Valley Creek (37.0073, -121.7256); Ramsey Gulch (37.0447, -121.7755); Redwood Canyon (37.0342, -121.7975); Salsipuedes Creek (36.9350, -121.7426); Shingle Mill Gulch (37.0446, -121.7971).

(ii) *Santa Cruz Mountains Hydrologic Sub-area 330520*. Outlet(s) = Pajaro River (Lat 36.9010, Long -121.5861); Bodfish Creek (37.0041, -121.6667); Pescadero Creek (36.9125, -121.5882); Tar Creek (36.9304, -121.5520); Uvas Creek (37.0146, -121.6314) upstream to endpoint(s) in: Blackhawk Canyon (37.0168, -121.6912); Bodfish Creek (36.9985, -121.6859); Little Arthur Creek (37.0299, -121.6874); Pescadero Creek (36.9826, -121.6274); Tar Creek (36.9558, -121.6009); Uvas Creek (37.0660, -121.6912).

(iii) *South Santa Clara Valley Hydrologic Sub-area 330530*. Outlet(s) = San Benito River (Lat 36.8961, Long -121.5625); Pajaro River (36.9222, -121.5388) upstream to endpoint(s) in: Arroyo Dos Picachos (36.8866, -121.3184); Bodfish Creek (37.0080, -121.6652); Bodfish Creek (37.0041, -121.6667); Carnadero Creek (36.9603, -121.5328); Llagas Creek (37.1159, -121.6938); Miller Canal (36.9698, -121.4814); Pacheco Creek (37.0055, -121.3598); San Felipe Lake (36.9835, -121.4604); Tar Creek (36.9304, -121.5520); Tequisquita Slough (36.9170, -121.3887); Uvas Creek (37.0146, -121.6314).

(iv) *Pacheco-Santa Ana Creek Hydrologic Sub-area 330540*. Outlet(s) = Arroyo Dos Picachos (Lat 36.8866, Long -121.3184); Pacheco Creek (37.0055, -121.3598) upstream to endpoint(s) in: Arroyo Dos Picachos (36.8912, -121.2305); Cedar Creek (37.0922, -121.3641); North Fork Pacheco Creek (37.0514, -121.2911); Pacheco Creek (37.0445, -121.2662); South Fork Pacheco Creek (37.0227, -121.2603).

(v) *San Benito River Hydrologic Sub-area 330550*. Outlet(s) = San Benito River (Lat 36.7838, Long -121.3731) upstream to endpoint(s) in: Bird Creek (36.7604, -121.4506); Pescadero Creek (36.7202, -121.4187); San Benito River (36.3324, -120.6316); Sawmill Creek (36.3593, -120.6284).

(2) Carmel River Hydrologic Unit 3307—(i) *Carmel River Hydrologic Sub-area 330700*. Outlet(s) = Carmel River (Lat 36.5362, Long -121.9285) upstream to endpoint(s) in: Aqua Mojo Creek (36.4711, -121.5407); Big Creek (36.3935, -121.5419); Blue Creek (36.2796, -121.6530); Boronda Creek (36.3542, -121.6091); Bruce Fork (36.3221, -121.6385); Cachagua Creek (36.3909, -121.5950); Carmel River (36.2837, -121.6203); Danish Creek (36.3730, -121.7590); Hitchcock Canyon Creek (36.4470, -121.7597); James Creek (36.3235, -121.5804); Las Garzas Creek (36.4607, -121.7944); Millers Fork (36.2961, -121.5697); Pinch Creek (36.3236, -121.5574); Pine Creek (36.3827, -121.7727); Potrero Creek (36.4801, -121.8258); Rana Creek (36.4877, -121.5840); Rattlesnake Creek (36.3442, -121.7080); Robertson Canyon Creek (36.4776, -121.8048); Robertson Creek (36.3658, -121.5165); San Clemente Creek (36.4227, -121.8115); Tularcitos Creek (36.4369, -121.5163); Ventana Mesa Creek (36.2977, -121.7116).

(ii) [Reserved]

(3) Santa Lucia Hydrologic Unit 3308—(i) *Santa Lucia Hydrologic Sub-area 330800*. Outlet(s) = Alder Creek (Lat 35.8578, Long -121.4165); Big Creek (36.0696, -121.6005); Big Sur River (36.2815, -121.8593); Bixby Creek (36.3713, -121.9029); Garrapata Creek (36.4176, -121.9157); Limekiln Creek (36.0084, -121.5196); Little Sur River (36.3350, -121.8934); Malpaso Creek (36.4814, -121.9384); Mill Creek (35.9825, -121.4917); Partington Creek (36.1753, -121.6973); Plaskett Creek (35.9195, -121.4717); Prewitt Creek (35.9353, -121.4760); Rocky Creek (36.3798, -121.9028); Salmon Creek (35.3558, -121.3634); San Jose Creek (36.5259, -121.9253); Vicente Creek (36.0442, -121.5855); Villa Creek (35.8495, -121.4087); Willow Creek (35.8935, -121.4619) upstream to endpoint(s) in: Alder Creek (35.8685, -121.3974); Big Creek (36.0830, -121.5884); Big Sur River (36.2490, -121.7269); Bixby Creek (36.3715, -121.8440); Devil's Canyon Creek (36.0773, -121.5695); Garrapata Creek (36.4042, -121.8594); Joshua Creek (36.4182, -121.9000); Limekiln Creek (36.0154, -121.5146); Little Sur River (36.3312, -121.7557); Malpaso Creek (36.4681, -121.8800); Mill Creek (35.9907, -121.4632); North Fork Big Sur River (36.2178, -121.5948); Partington Creek (36.1929, -121.6825); Plaskett Creek

(35.9228, -121.4493); Prewitt Creek (35.9419, -121.4598); Redwood Creek (36.2825, -121.6745); Rocky Creek (36.3805, -121.8440); San Jose Creek (36.4662, -121.8118); South Fork Little Sur River (36.3026, -121.8093); Vicente Creek (36.0463, -121.5780); Villa Creek (35.8525, -121.3973); Wildcat Canyon Creek (36.4124, -121.8680); Williams Canyon Creek (36.4466, -121.8526); Willow Creek (35.9050, -121.3851).

(ii) [Reserved]

(4) Salinas River Hydrologic Unit 3309–(i) *Neponset Hydrologic Sub-area 330911*. Outlet(s) = Salinas River (Lat 36.7498, Long -121.8055); upstream to endpoint(s) in: Gabilan Creek (36.6923, -121.6300); Old Salinas River (36.7728, -121.7884); Tembladero Slough (36.6865, -121.6409).

(ii) *Chualar Hydrologic Sub-area 330920*. Outlet(s) = Gabilan Creek (Lat 36.6923, Long -121.6300) upstream.

(iii) *Soledad Hydrologic Sub-area 330930*. Outlet(s) = Salinas River (Lat 36.4878, Long -121.4688) upstream to endpoint(s) in: Arroyo Seco River (36.2644, -121.3812); Reliz Creek (36.2438, -121.2881).

(iv) *Upper Salinas Valley Hydrologic Sub-area 330940*. Outlet(s) = Salinas River (Lat 36.3183, Long -121.1837) upstream.

(v) *Arroyo Seco Hydrologic Sub-area 330960*. Outlet(s) = Arroyo Seco River (Lat 36.2644, Long -121.3812); Reliz Creek (36.2438, -121.2881); Vasqueros Creek (36.2648, -121.3368) upstream to endpoint(s) in: Arroyo Seco River (36.2041, -121.5002); Calaboose Creek (36.2942, -121.5082); Church Creek (36.2762, -121.5877); Horse Creek (36.2046, -121.3931); Paloma Creek (36.3195, -121.4894); Piney Creek (36.3023, -121.5629); Reliz Creek (36.1935, -121.2777); Rocky Creek (36.2676, -121.5225); Santa Lucia Creek (36.1999, -121.4785); Tassajara Creek (36.2679, -121.6149); Vaqueros Creek (36.2479, -121.3369); Willow Creek (36.2059, -121.5642).

(vi) *Gabilan Range Hydrologic Sub-area 330970*. Outlet(s) = Gabilan Creek (Lat 36.7800, -121.5836) upstream to endpoint(s) in: Gabilan Creek (36.7335, -121.4939).

(vii) *Paso Robles Hydrologic Sub-area 330981*. Outlet(s) = Salinas River (Lat

35.9241, Long -120.8650) upstream to endpoint(s) in:

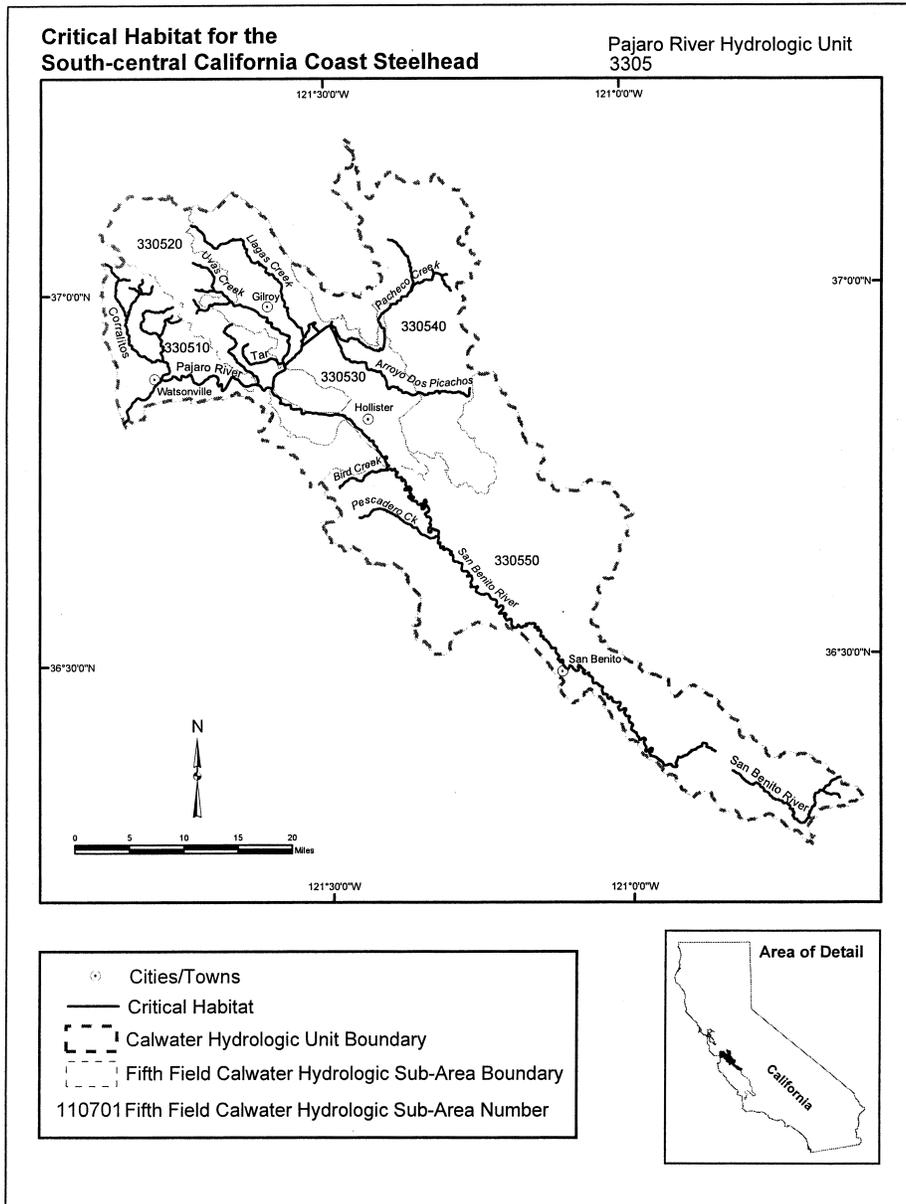
Atascadero Creek (35.4468, -120.7010); Graves Creek (35.4838, -120.7631); Jack Creek (35.5815, -120.8560); Nacimiento River (35.7610, -120.8853); Paso Robles Creek (35.5636, -120.8455); Salinas River (35.3886, -120.5582); San Antonio River (35.7991, -120.8849); San Marcos Creek (35.6734, -120.8140); Santa Margarita Creek (35.3923, -120.6619); Santa Rita Creek (35.5262, -120.8396); Sheepcamp Creek (35.6145, -120.7795); Summit Creek (35.6441, -120.8046); Tassajara Creek (35.3895, -120.6926); Trout Creek (35.3394, -120.5881); Willow Creek (35.6107, -120.7720).

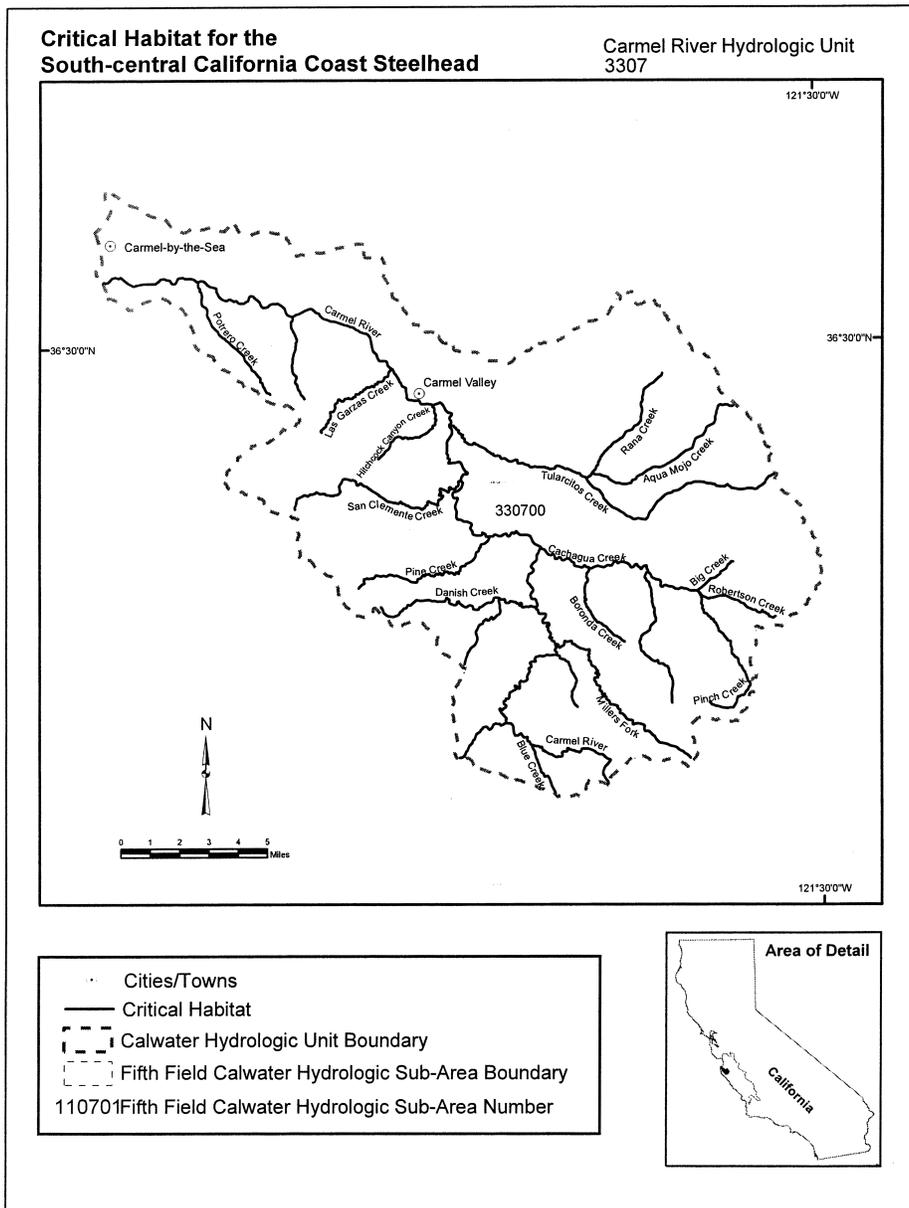
(5) Estero Bay Hydrologic Unit 3310–(i) *San Carpoforo Hydrologic Sub-area 331011*. Outlet(s) = San Carpoforo Creek (Lat 35.7646, Long -121.3247) upstream to endpoint(s) in: Dutra Creek (35.8197, -121.3273); Estrada Creek (35.7710, -121.2661); San Carpoforo Creek (35.8202, -121.2745); Unnamed Tributary (35.7503, -121.2703); Wagner Creek (35.8166, -121.2387).

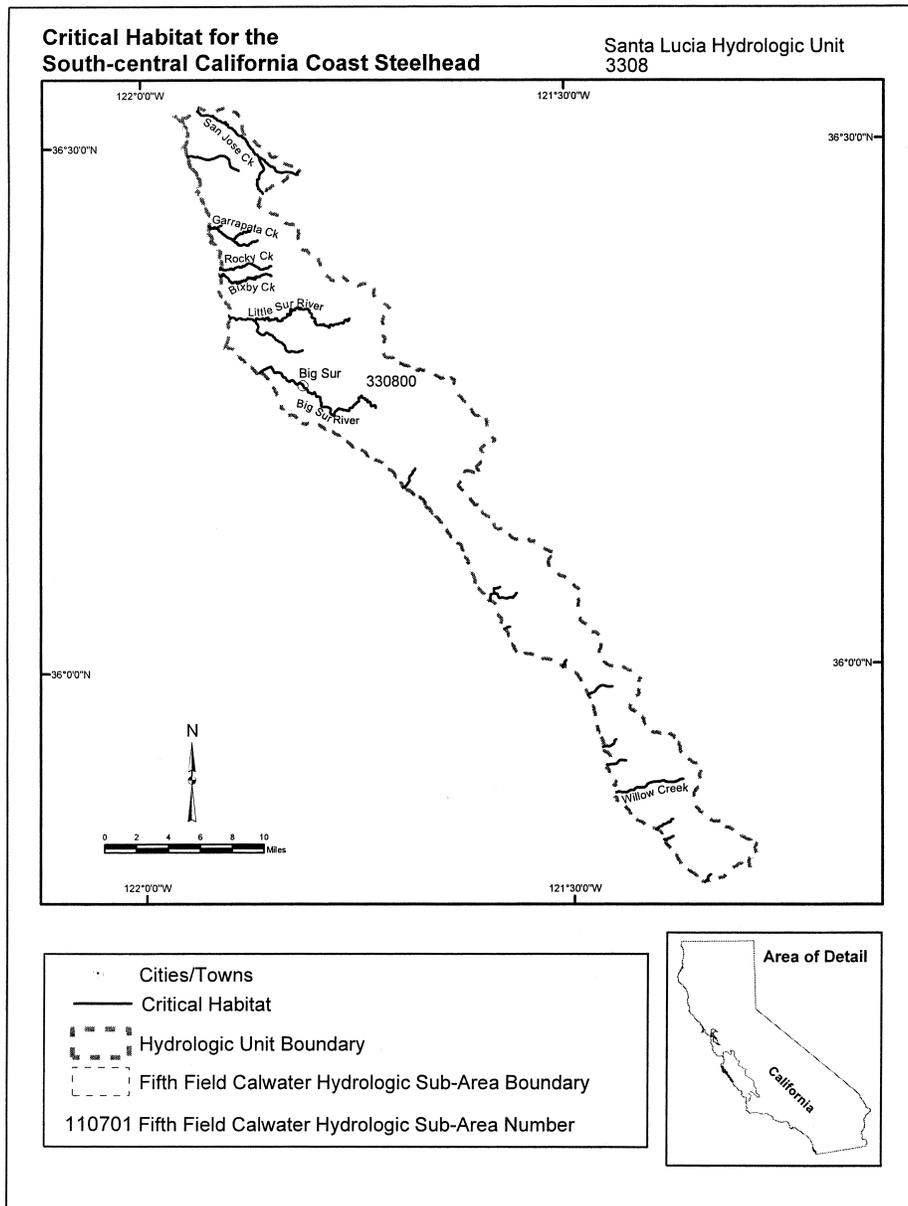
(ii) *Arroyo De La Cruz Hydrologic Sub-area 331012*. Outlet(s) = Arroyo De La Cruz (Lat 35.7097, Long -121.3080) upstream to endpoint(s) in: Arroyo De La Cruz (35.6986, -121.1722); Burnett Creek (35.7520, -121.1920); Green Canyon Creek (35.7375, -121.2314); Marmolejo Creek (35.6774, -121.1082); Spanish Cabin Creek (35.7234, -121.1497); Unnamed Tributary (35.7291, -121.1977); West Fork Burnett Creek (35.7516, -121.2075).

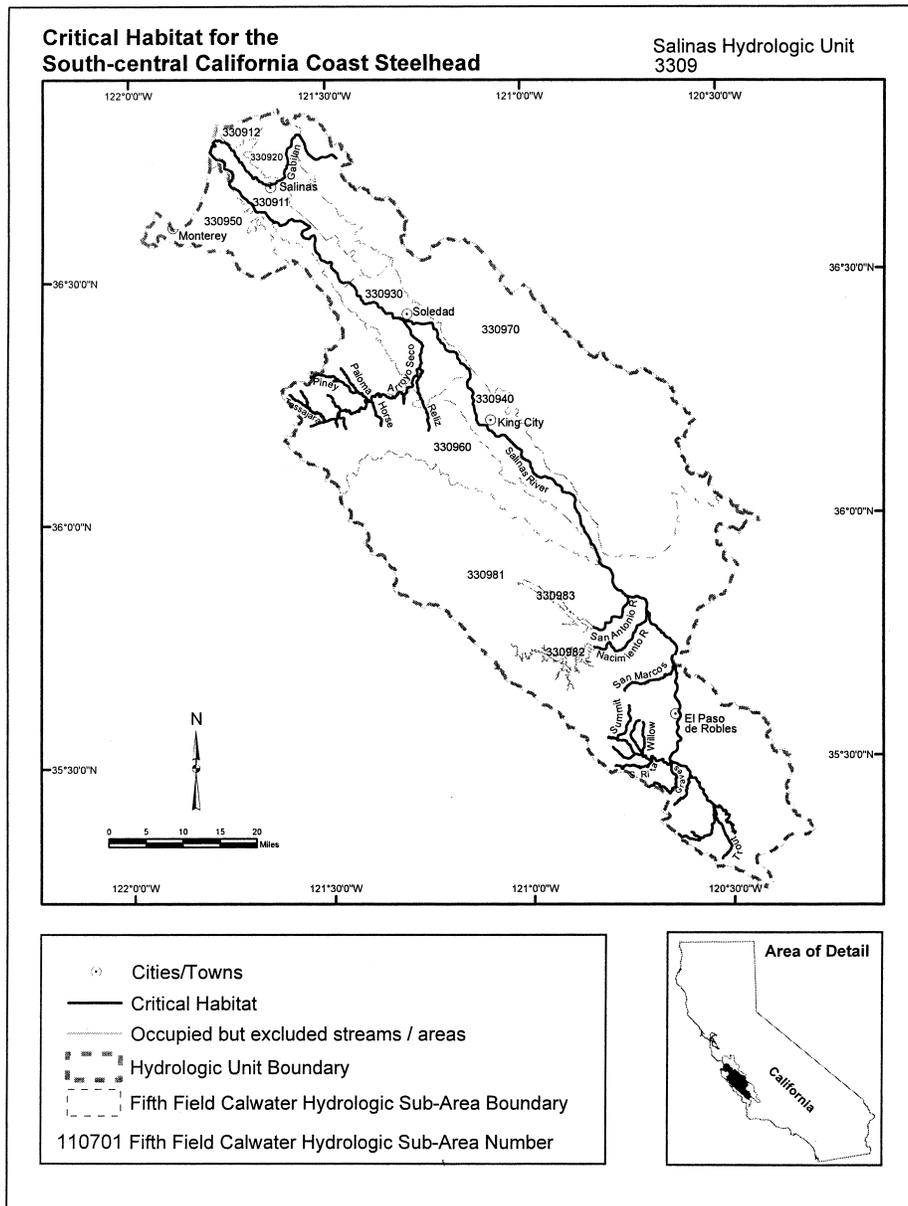
(iii) *San Simeon Hydrologic Sub-area 331013*. Outlet(s) = Arroyo del Corral (Lat 35.6838, Long -121.2875); Arroyo del Puerto (35.6432, -121.1889); Little Pico Creek (35.6336, -121.1639); Oak Knoll Creek (35.6512, -121.2197); Pico Creek (35.6155, -121.1495); San Simeon Creek (35.5950, -121.1272) upstream to endpoint(s) in: Arroyo Laguna (35.6895, -121.2337); Arroyo del Corral (35.6885, -121.2537); Arroyo del Puerto (35.6773, -121.1713); Little Pico Creek (35.6890, -121.1375); Oak Knoll Creek (35.6718, -121.2010); North Fork Pico Creek (35.6886, -121.0861); San Simeon Creek (35.6228, -121.0561); South Fork Pico Creek (35.6640, -121.0685); Steiner Creek (35.6032, -121.0640); Unnamed Tributary (35.6482, -121.1067); Unnamed Tributary (35.6616, -121.0639); Unnamed Tributary (35.6741, -121.0981); Unnamed Tributary

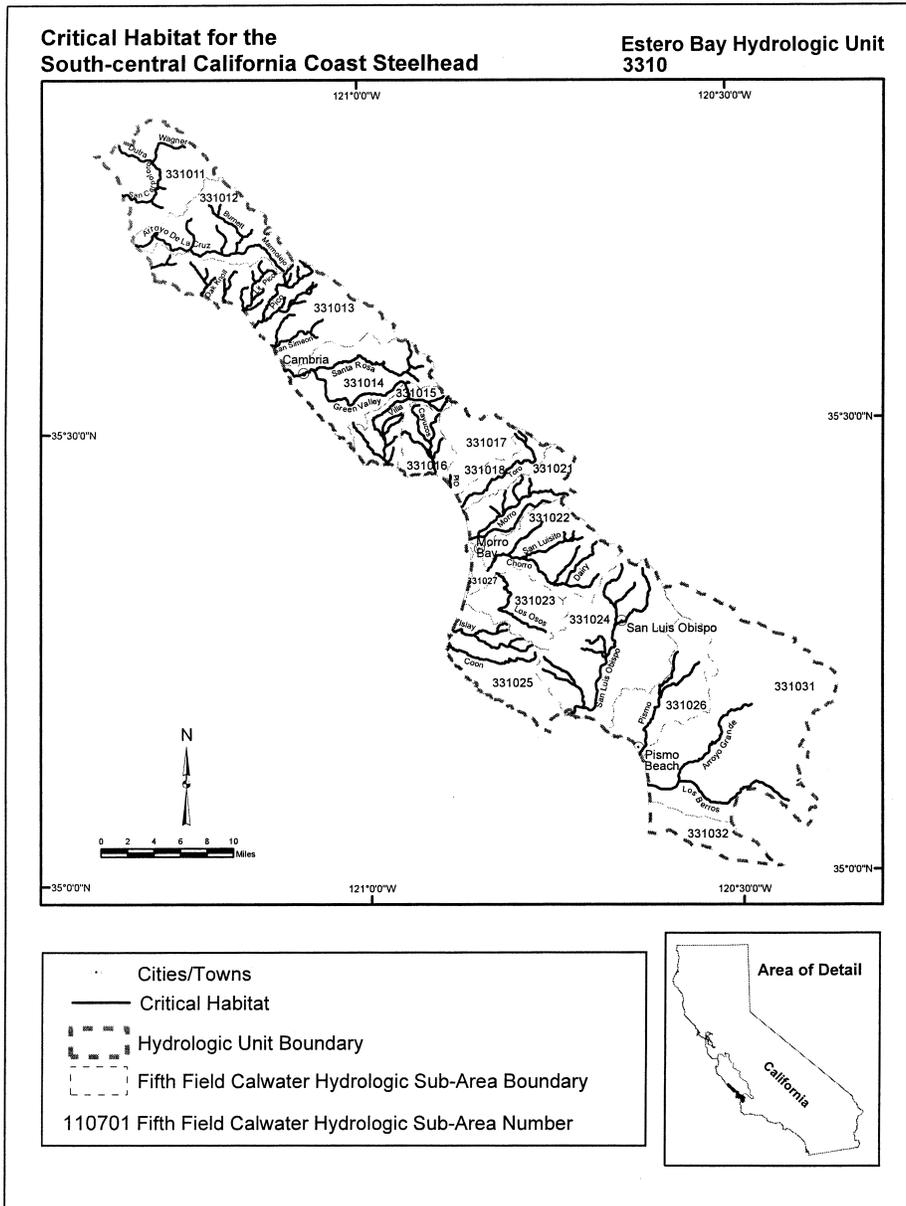
- (35.6777, -121.1503); Unnamed Tributary (35.6604, -121.1571); Unnamed Tributary (35.6579, -121.1356); Unnamed Tributary (35.6744, -121.1187); Unnamed Tributary (35.6460, -121.1373); Unnamed Tributary (35.6839, -121.0955); Unnamed Tributary (35.6431, -121.0795); Unnamed Tributary (35.6820, -121.2130); Unnamed Tributary (35.6977, -121.2613); Unnamed Tributary (35.6702, -121.1884); Unnamed Tributary (35.6817, -121.0885); Van Gordon Creek (35.6286, -121.0942).
- (iv) *Santa Rosa Hydrologic Sub-area 331014*. Outlet(s) = Santa Rosa Creek (Lat 35.5685, Long -121.1113) upstream to endpoint(s) in: Green Valley Creek (35.5511, -120.9471); Perry Creek (35.5323-121.0491); Santa Rosa Creek (35.5525, -120.9278); Unnamed Tributary (35.5965, -120.9413); Unnamed Tributary (35.5684, -120.9211); Unnamed Tributary (35.5746, -120.9746).
- (v) *Villa Hydrologic Sub-area 331015*. Outlet(s) = Villa Creek (Lat 35.4601, Long -120.9704) upstream to endpoint(s) in: Unnamed Tributary (35.4798, -120.9630); Unnamed Tributary (35.5080, -121.0171); Unnamed Tributary (35.5348, -120.8878); Unnamed Tributary (35.5510, -120.9406); Unnamed Tributary (35.5151, -120.9497); Unnamed Tributary (35.4917, -120.9584); Unnamed Tributary (35.5173, -120.9516); Villa Creek (35.5352, -120.8942).
- (vi) *Cayucos Hydrologic Sub-area 331016*. Outlet(s) = Cayucos Creek (Lat 35.4491, Long -120.9079) upstream to endpoint(s) in: Cayucos Creek (35.5257, -120.9271); Unnamed Tributary (35.5157, -120.9005); Unnamed Tributary (35.4943, -120.9513); Unnamed Tributary (35.4887, -120.8968).
- (vii) *Old Hydrologic Sub-area 331017*. Outlet(s) = Old Creek (Lat 35.4345, Long -120.8868) upstream to endpoint(s) in: Old Creek (35.4480, -120.8871).
- (viii) *Toro Hydrologic Sub-area 331018*. Outlet(s) = Toro Creek (Lat 35.4126, Long -120.8739) upstream to endpoint(s) in: Toro Creek (35.4945, -120.7934); Unnamed Tributary (35.4917, -120.7983).
- (ix) *Morro Hydrologic Sub-area 331021*. Outlet(s) = Morro Creek (Lat 35.3762, Long -120.8642) upstream to endpoint(s) in: East Fork Morro Creek (35.4218, -120.7282); Little Morro Creek (35.4155, -120.7532); Morro Creek (35.4291, -120.7515); Unnamed Tributary (35.4292, -120.8122); Unnamed Tributary (35.4458, -120.7906); Unnamed Tributary (35.4122, -120.8335); Unnamed Tributary (35.4420, -120.7796).
- (x) *Chorro Hydrologic Sub-area 331022*. Outlet(s) = Chorro Creek (Lat 35.3413, Long -120.8388) upstream to endpoint(s) in: Chorro Creek (35.3340, -120.6897); Dairy Creek (35.3699, -120.6911); Pennington Creek (35.3655, -120.7144); San Bernardo Creek (35.3935, -120.7638); San Luisito (35.3755, -120.7100); Unnamed Tributary (35.3821, -120.7217); Unnamed Tributary (35.3815, -120.7350).
- (xi) *Los Osos Hydrologic Sub-area 331023*. Outlet(s) = Los Osos Creek (Lat 35.3379, Long -120.8273) upstream to endpoint(s) in: Los Osos Creek (35.2718, -120.7627).
- (xii) *San Luis Obispo Creek Hydrologic Sub-area 331024*. Outlet(s) = San Luis Obispo Creek (Lat 35.1822, Long -120.7303) upstream to endpoint(s) in: Brizziolari Creek (35.3236, -120.6411); Fromm Creek (35.2525, -120.7144); Prefumo Creek (35.2615, -120.7081); San Luis Obispo Creek (35.3393, -120.6301); See Canyon Creek (35.2306, -120.7675); Stenner Creek (35.3447, -120.6584); Unnamed Tributary (35.2443, -120.7655).
- (xiii) *Point San Luis Hydrologic Sub-area 331025*. Outlet(s) = Coon Creek (Lat 35.2590, Long -120.8951); Islay Creek (35.2753, -120.8884) upstream to endpoint(s) in: Coon Creek (35.2493, -120.7774); Islay Creek (35.2574, -120.7810); Unnamed Tributary (35.2753, -120.8146); Unnamed Tributary (35.2809, -120.8147); Unnamed Tributary (35.2648, -120.7936).
- (xiv) *Pismo Hydrologic Sub-area 331026*. Outlet(s) = Pismo Creek (Lat 35.1336, Long -120.6408) upstream to endpoint(s) in: East Corral de Piedra Creek (35.2343, -120.5571); Pismo Creek (35.1969, -120.6107); Unnamed Tributary (35.2462, -120.5856).
- (xv) *Oceano Hydrologic Sub-area 331031*. Outlet(s) = Arroyo Grande Creek (Lat 35.1011, Long -120.6308) upstream to endpoint(s) in: Arroyo Grande Creek (35.1868, -120.4881); Los Berros Creek (35.0791, -120.4423).
- (6) Maps of critical habitat for the South-Central Coast Steelhead ESU follow:











(j) *Southern California Steelhead* (*O. mykiss*). Critical habitat is designated to include the areas defined in the following CALWATER Hydrologic Units:

(1) Santa Maria River Hydrologic Unit 3312—(i) *Santa Maria Hydrologic Sub-area 331210*. Outlet(s) = Santa Maria River (Lat 34.9710, Long -120.6504) upstream to endpoint(s) in:

Cuyama River (34.9058, -120.3026); Santa Maria River (34.9042, -120.3077); Sisquoc River (34.8941, -120.3063).

(ii) *Sisquoc Hydrologic Sub-area 331220*. Outlet(s) = Sisquoc River (Lat 34.8941, Long -120.3063) upstream to endpoint(s) in: Abel Canyon (34.8662, -119.8354); Davey Brown Creek (34.7541, -119.9650); Fish Creek (34.7531, -119.9100); Foresters Leap (34.8112, -119.7545); La Brea Creek (34.8804, -120.1316); Horse Creek (34.8372, -120.0171); Judell Creek (34.7613, -119.6496); Manzana Creek (34.7082, -119.8324); North Fork La Brea Creek (34.9681, -120.0112); Sisquoc River (34.7087, -119.6409); South Fork La Brea Creek (34.9543, -119.9793); South Fork Sisquoc River (34.7300, -119.7877); Unnamed Tributary (34.9342, -120.0589); Unnamed Tributary (34.9510, -120.0140); Unnamed Tributary (34.9687, -120.1419); Unnamed Tributary (34.9626, -120.1500); Unnamed Tributary (34.9672, -120.1194); Unnamed Tributary (34.9682, -120.0990); Unnamed Tributary (34.9973, -120.0662); Unnamed Tributary (34.9922, -120.0294); Unnamed Tributary (35.0158, -120.0337); Unnamed Tributary (34.9464, -120.0309); Unnamed Tributary (34.7544, -119.9476); Unnamed Tributary (34.7466, -119.9047); Unnamed Tributary (34.7646, -119.8673); Unnamed Tributary (34.8726, -119.9525); Unnamed Tributary (34.8884, -119.9325); Unnamed Tributary (34.8659, -119.8982); Unnamed Tributary (34.8677, -119.8513); Unnamed Tributary (34.8608, -119.8541); Unnamed Tributary (34.8784, -119.8458); Unnamed Tributary (34.8615, -119.8159); Unnamed Tributary (34.8694, -119.8229); Unnamed Tributary (34.7931, -119.8485); Unnamed Tributary (34.7846, -119.8337); Unnamed Tributary (34.7872, -119.7684); Unnamed Tributary (34.7866, -119.7552); Unnamed Tributary (34.8129, -119.7714); Unnamed Tributary (34.7760, -119.7448); Unnamed Tributary (34.7579, -119.7999); Unnamed Tributary (34.7510, -119.7921); Unnamed Tributary (34.7769, -119.7149); Unnamed Tributary (34.7617, -119.6878); Unnamed Tributary (34.7680, -119.6503); Unnamed Tributary (34.7738, -119.6493); Unnamed Tributary (34.7332, -119.6286); Unnamed Tributary (34.7519, -119.6209); Unnamed Tributary (34.7188, -119.6673); Water Canyon (34.8754, -119.9324).

(2) *Santa Ynez Hydrologic Unit 3314*—(i) *Mouth of Santa Ynez Hydrologic Sub-area 331410*. Outlet(s) = Santa Ynez River (Lat 34.6930, Long -120.6033) up-

stream to endpoint(s) in: San Miguelito Creek (34.6309, -120.4631).

(ii) *Santa Ynez, Salsipuedes Hydrologic Sub-area 331420*. Outlet(s) = Santa Ynez River (Lat 34.6335, Long -120.4126) upstream to endpoint(s) in: El Callejon Creek (34.5475, -120.2701); El Jaro Creek (34.5327, -120.2861); Llanito Creek (34.5499, -120.2762); Salsipuedes Creek (34.5711, -120.4076).

(iii) *Santa Ynez, Zaca Hydrologic Sub-area 331430*. Outlet(s) = Santa Ynez River (Lat 34.6172, Long -120.2352) upstream.

(iv) *Santa Ynez to Bradbury Hydrologic Sub-area 331440*. Outlet(s) = Santa Ynez River (Lat 34.5847, Long -120.1445) upstream to endpoint(s) in: Alisal Creek (34.5465, -120.1358); Hilton Creek (34.5839, -119.9855); Quiota Creek (34.5370, -120.0321); San Lucas Creek (34.5558, -120.0119); Santa Ynez River (34.5829, -119.9805); Unnamed Tributary (34.5646, -120.0043).

(3) *South Coast Hydrologic Unit 3315*—(i) *Arroyo Hondo Hydrologic Sub-area 331510*. Outlet(s) = Alegria Creek (Lat 34.4688, Long -120.2720); Arroyo Hondo Creek (34.4735, -120.1415); Cojo Creek (34.4531, -120.4165); Dos Pueblos Creek (34.4407, -119.9646); El Capitan Creek (34.4577, -120.0225); Gato Creek (34.4497, -119.9885); Gaviota Creek (34.4706, -120.2267); Jalama Creek (34.5119, -120.5023); Refugio Creek (34.4627, -120.0696); Sacate Creek (34.4708, -120.2942); San Augustine Creek (34.4588, -120.3542); San Onofre Creek (34.4699, -120.1872); Santa Anita Creek (34.4669, -120.3066); Tecolote Creek (34.4306, -119.9173) upstream to endpoint(s) in: Alegria Creek (34.4713, -120.2714); Arroyo Hondo Creek (34.5112, -120.1704); Cojo Creek (34.4840, -120.4106); Dos Pueblos Creek (34.5230, -119.9249); El Capitan Creek (34.5238, -119.9806); Escondido Creek (34.5663, -120.4643); Gato Creek (34.5203, -119.9758); Gaviota Creek (34.5176, -120.2179); Jalama Creek (34.5031, -120.3615); La Olla (34.4836, -120.4071); Refugio Creek (34.5109, -120.0508); Sacate Creek (34.4984, -120.2993); San Augustine Creek (34.4598, -120.3561); San Onofre Creek (34.4853, -120.1890); Santa Anita Creek (34.4742, -120.3085); Tecolote Creek (34.5133, -119.9058); Unnamed Tributary (34.5527, -120.4548); Unnamed Tributary (34.4972, -120.3026).

(ii) *UCSB Slough Hydrologic Sub-area 331531*. Outlet(s) = San Pedro Creek (Lat 34.4179, Long -119.8295); Tecolito Creek (34.4179, -119.8295) upstream to endpoint(s) in: Atascadero Creek (34.4345, -119.7755); Carneros Creek (34.4674, -119.8584); Cieneguitas Creek (34.4690, -119.7565); Glen Annie Creek (34.4985, -119.8666); Maria Ygnacio Creek (34.4900, -119.7830); San Antonio Creek (34.4553, -119.7826); San Pedro Creek (34.4774, -119.8359); San Jose Creek (34.4919, -119.8032); Tecolito Creek (34.4478, -119.8763); Unnamed Tributary (34.4774, -119.8846).

(iii) *Mission Hydrologic Sub-area 331532*. Outlet(s) = Arroyo Burro Creek (Lat 34.4023, Long -119.7430); Mission Creek (34.4124, -119.6876); Sycamore Creek (34.4166, -119.6668) upstream to endpoint(s) in: Arroyo Burro Creek (34.4620, -119.7461); Mission Creek (34.4482, -119.7089); Rattlesnake Creek (34.4633, -119.6902); San Roque Creek (34.4530, -119.7323); Sycamore Creek (34.4609, -119.6841).

(iv) *San Ysidro Hydrologic Sub-area 331533*. Outlet(s) = Montecito Creek (Lat 34.4167, Long -119.6344); Romero Creek (34.4186, -119.6208); San Ysidro Creek (34.4191, -119.6254); upstream to endpoint(s) in: Cold Springs Creek (34.4794, -119.6604); Montecito Creek (34.4594, -119.6542); Romero Creek (34.4452, -119.5924); San Ysidro Creek (34.4686, -119.6229); Unnamed Tributary (34.4753, -119.6437).

(v) *Carpinteria Hydrologic Sub-area 331534*. Outlet(s) = Arroyo Paredon (Lat 34.4146, Long -119.5561); Carpinteria Lagoon (Carpenteria Creek) (34.3904, -119.5204); Rincon Lagoon (Rincon Creek) (34.3733, -119.4769) upstream to endpoint(s) in: Arroyo Paredon (34.4371, -119.5481); Carpinteria Creek (34.4429, -119.4964); El Dorado Creek (34.4682, -119.4809); Gobernador Creek (34.4249, -119.4746); Rincon Lagoon (Rincon Creek) (34.3757, -119.4777); Steer Creek (34.4687, -119.4596); Unnamed Tributary (34.4481, -119.5112).

(4) *Ventura River Hydrologic Unit 4402*—(i) *Ventura Hydrologic Sub-area 440210*. Outlet(s) = Ventura Estuary (Ventura River) (Lat 34.2742, Long -119.3077) upstream to endpoint(s) in: Canada Larga (34.3675, -119.2377); Hammond Canyon (34.3903, -119.2230); Sulphur Canyon (34.3727, -119.2362);

Unnamed Tributary (34.3344, -119.2426); Unnamed Tributary (34.3901, -119.2747).

(ii) *Ventura Hydrologic Sub-area 440220*. Outlet(s) = Ventura River (Lat 34.3517, Long -119.3069) upstream to endpoint(s) in: Coyote Creek (34.3735, -119.3337); Matilija Creek (34.4846, -119.3086); North Fork Matilija Creek (34.5129, -119.2737); San Antonio Creek (34.4224, -119.2644); Ventura River (34.4852, -119.3001).

(iii) *Lions Hydrologic Sub-area 440231*. Outlet(s) = Lion Creek (Lat 34.4222, Long -119.2644) upstream to endpoint(s) in: Lion Creek (34.4331, -119.2004).

(iv) *Thatcher Hydrologic Sub-area 440232*. Outlet(s) = San Antonio Creek (Lat 34.4224, Long -119.2644) upstream to endpoint(s) in: San Antonio Creek (34.4370, -119.2417).

(5) *Santa Clara Calleguas Hydrologic Unit 4403*—(i) *Mouth of Santa Clara Hydrologic Sub-area 440310*. Outlet(s) = Santa Clara River (Lat 34.2348, Long -119.2568) upstream.

(ii) *Santa Clara, Santa Paula Hydrologic Sub-area 440321*. Outlet(s) = Santa Clara River (Lat 34.2731, Long -119.1474) upstream to endpoint(s) in: Santa Paula Creek (34.4500, -119.0563).

(iii) *Sisar Hydrologic Sub-area 440322*. Outlet(s) = Sisar Creek (Lat 34.4271, Long -119.0908) upstream to endpoint(s) in: Sisar Creek (34.4615, -119.1312).

(iv) *Sespe, Santa Clara Hydrologic Sub-area 440331*. Outlet(s) = Santa Clara River (Lat 34.3513, Long -119.0397) upstream to endpoint(s) in: Sespe Creek (34.4509, -118.9258).

(v) *Sespe Hydrologic Sub-area 440332*. Outlet(s) = Sespe Creek (Lat 34.4509, Long -118.9258) upstream to endpoint(s) in: Abadi Creek (34.6099, -119.4223); Alder Creek (34.5691, -118.9528); Bear Creek (34.5314, -119.1041); Chorro Grande Creek (34.6285, -119.3245); Fourfork Creek (34.4735, -118.8893); Howard Creek (34.5459, -119.2154); Lady Bug Creek (34.5724, -119.3173); Lion Creek (34.5047, -119.1101); Little Sespe Creek (34.4598, -118.8938); Munson Creek (34.6152, -119.2963); Park Creek (34.5537, -119.0028); Piedra Blanca Creek (34.6109, -119.1838); Pine Canyon Creek (34.4488, -118.9661); Portrero John Creek (34.6010, -119.2695); Red Reef Creek (34.5344, -119.0441); Rose Valley Creek (34.5195, -119.1756); Sespe Creek (34.6295, -119.4412); Timber Creek (34.5184,

-119.0698); Trout Creek (34.5869, -119.1360); Tule Creek (34.5614, -119.2986); Unnamed Tributary (34.5125, -118.9311); Unnamed Tributary (34.5537, -119.0088); Unnamed Tributary (34.5537, -119.0048); Unnamed Tributary (34.5757, -119.3051); Unnamed Tributary (34.5988, -119.2736); Unnamed Tributary (34.5691, -119.3428); West Fork Sespe Creek (34.5106, -119.0502).

(vi) *Santa Clara, Hopper Canyon, Piru Hydrologic Sub-area 440341*. Outlet(s) = Santa Clara River (Lat 34.3860, Long -118.8711) upstream to endpoint(s) in: Hopper Creek (34.4263, -118.8309); Piru Creek (34.4613, -118.7537); Santa Clara River (34.3996, -118.7837).

(6) Santa Monica Bay Hydrologic Unit 4404—(i) *Topanga Hydrologic Sub-area 440411*. Outlet(s) = Topanga Creek (Lat 34.0397, Long -118.5831) upstream to endpoint(s) in: Topanga Creek (34.0838, -118.5980).

(ii) *Malibu Hydrologic Sub-area 440421*. Outlet(s) = Malibu Creek (Lat 34.0322, Long -118.6796) upstream to endpoint(s) in: Malibu Creek (34.0648, -118.6987).

(iii) *Arroyo Sequit Hydrologic Sub-area 440444*. Outlet(s) = Arroyo Sequit (Lat 34.0445, Long -118.9338) upstream to endpoint(s) in: Arroyo Sequit (34.0839,

-118.9186); West Fork Arroyo Sequit (34.0909, -118.9235).

(7) Calleguas Hydrologic Unit 4408—(i) *Calleguas Estuary Hydrologic Sub-area 440813*. Outlet(s) = Mugu Lagoon (Calleguas Creek) (Lat 34.1093, Long -119.0917) upstream to endpoint(s) in: Mugu Lagoon (Calleguas Creek) (Lat 34.1125, Long -119.0816).

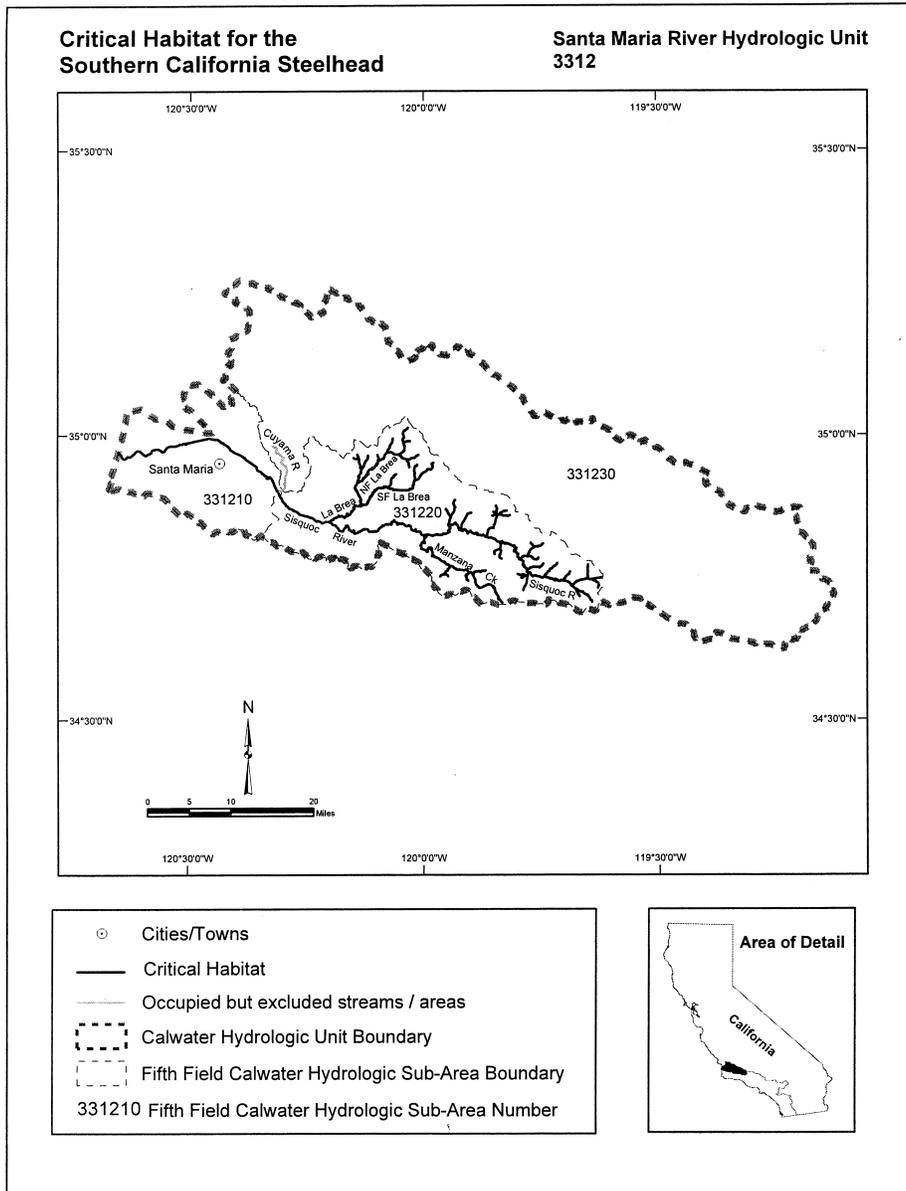
(ii) [Reserved]

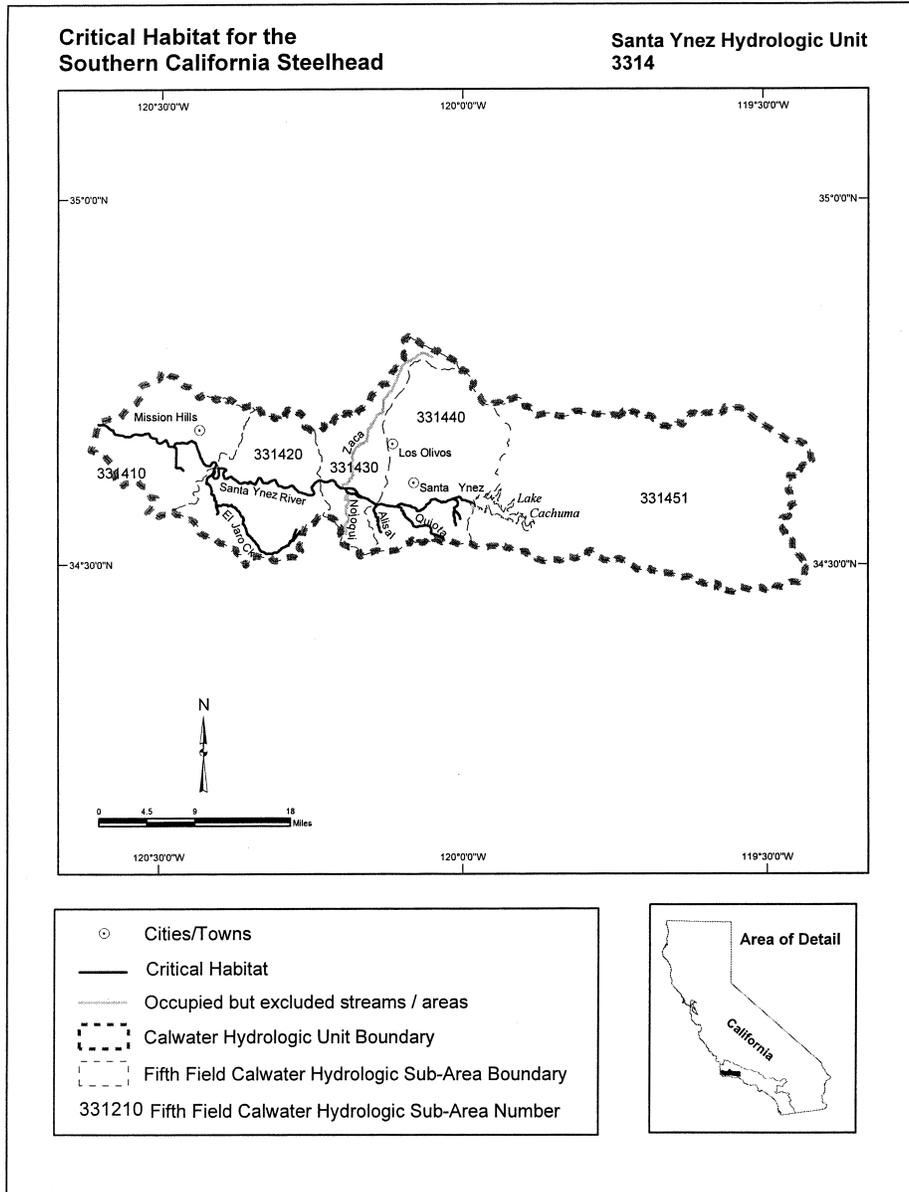
(8) San Juan Hydrologic Unit 4901—(i) *Middle Trabuco Hydrologic Sub-area 490123*. Outlet(s) = Trabuco Creek (Lat 33.5165, Long -117.6727) upstream to endpoint(s) in: Trabuco Creek (33.5264, -117.6700).

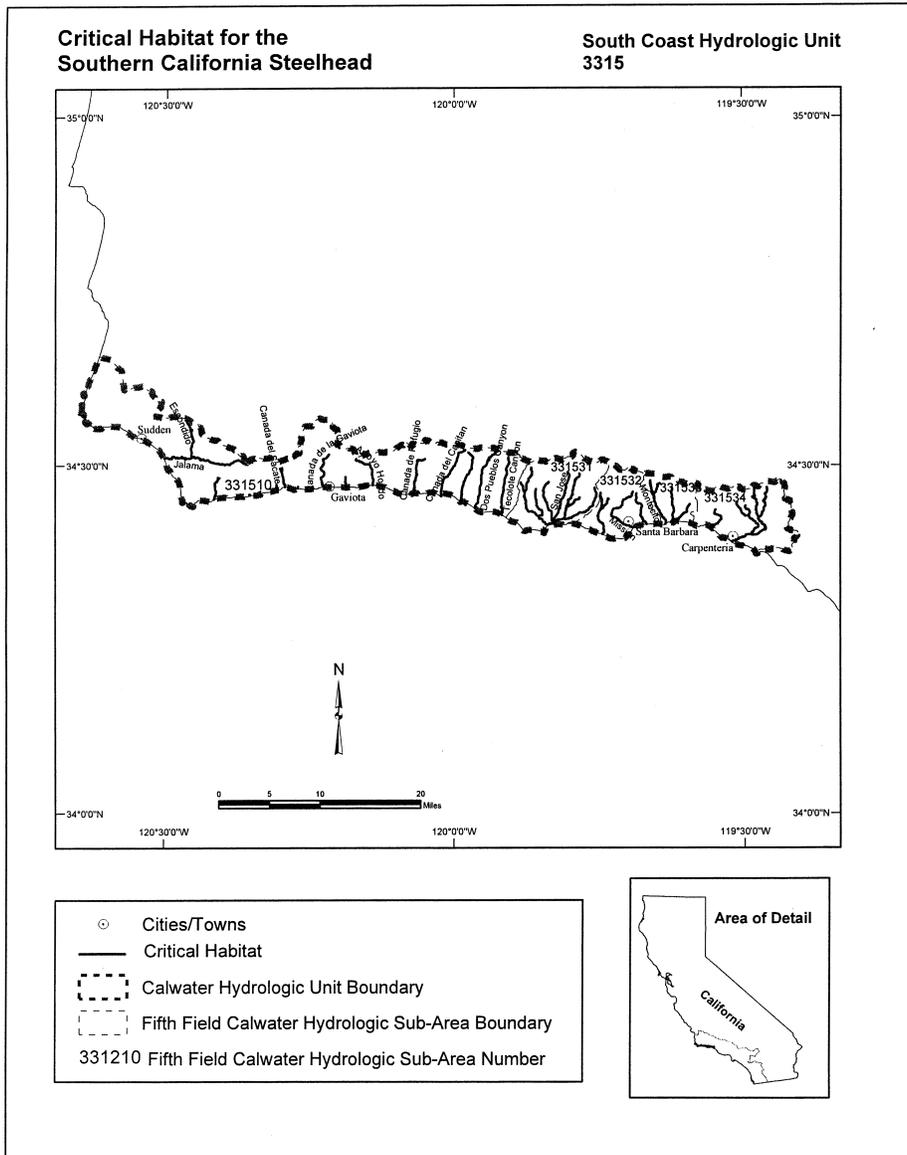
(ii) *Lower San Juan Hydrologic Sub-area 490127*. Outlet(s) = San Juan Creek (Lat 33.4621, Long -117.6842) upstream to endpoint(s) in: San Juan Creek (33.4929, -117.6610); Trabuco Creek (33.5165, -117.6727).

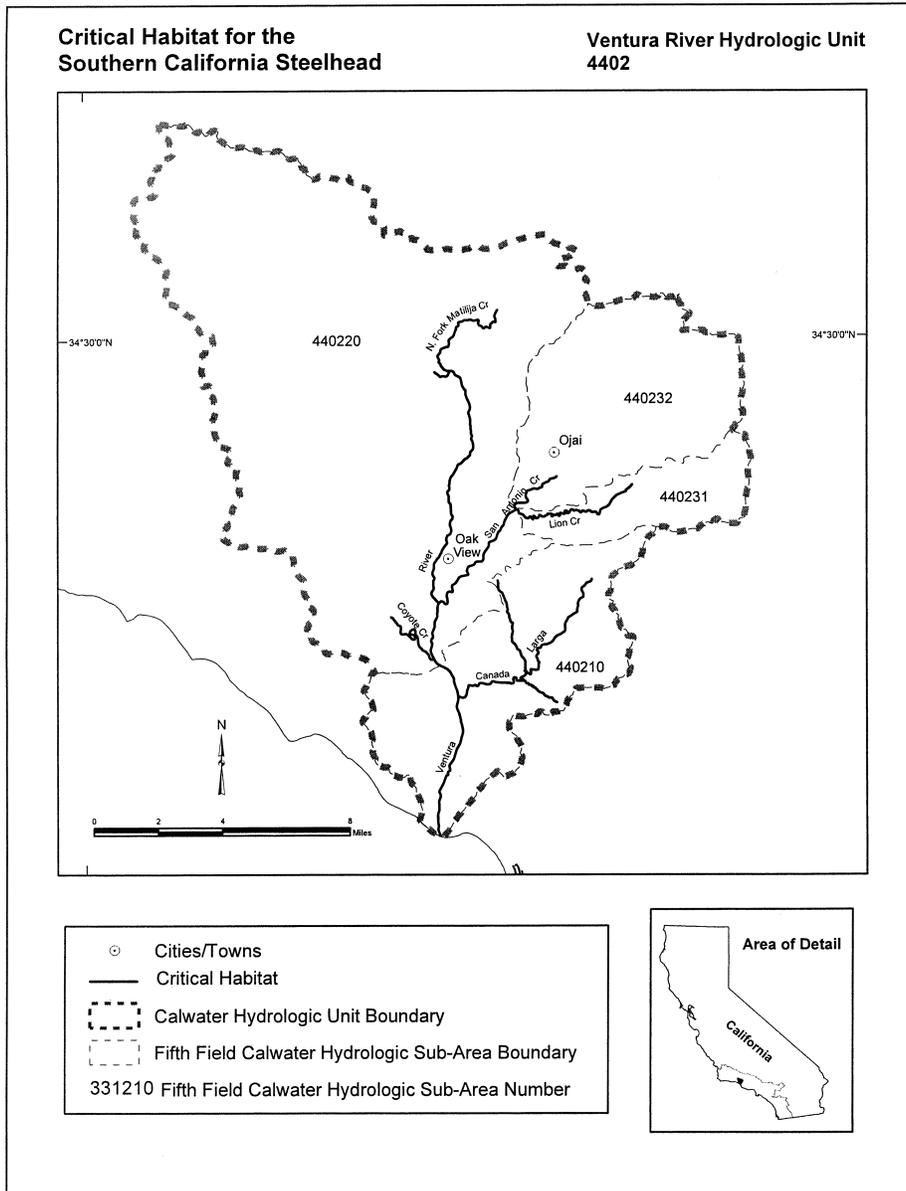
(iii) *San Mateo Hydrologic Sub-area 490140*. Outlet(s) = San Mateo Creek (Lat 33.3851, Long -117.5933) upstream to endpoint(s) in: San Mateo Creek (33.4779, -117.4386); San Mateo Canyon (33.4957, -117.4522).

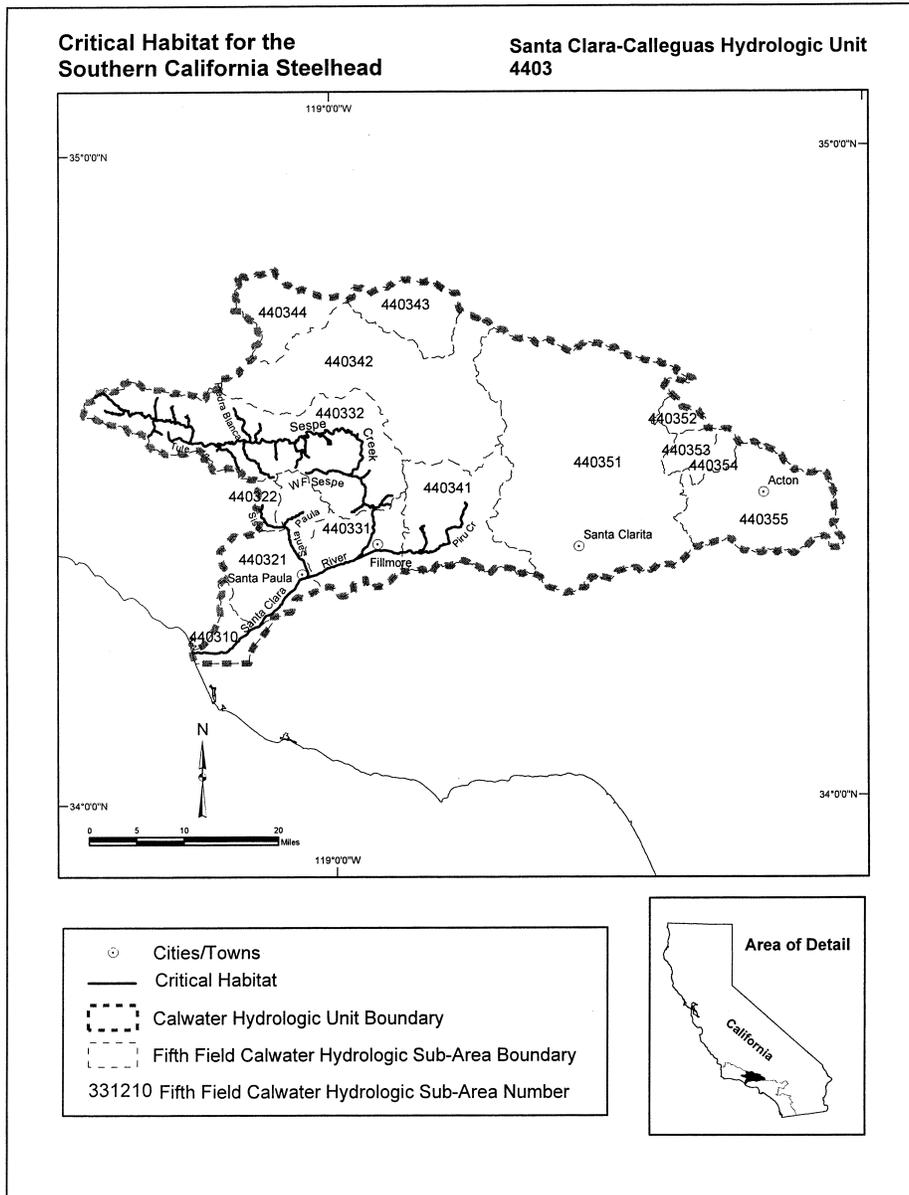
(9) Maps of critical habitat for the Southern California Steelhead ESU follow:

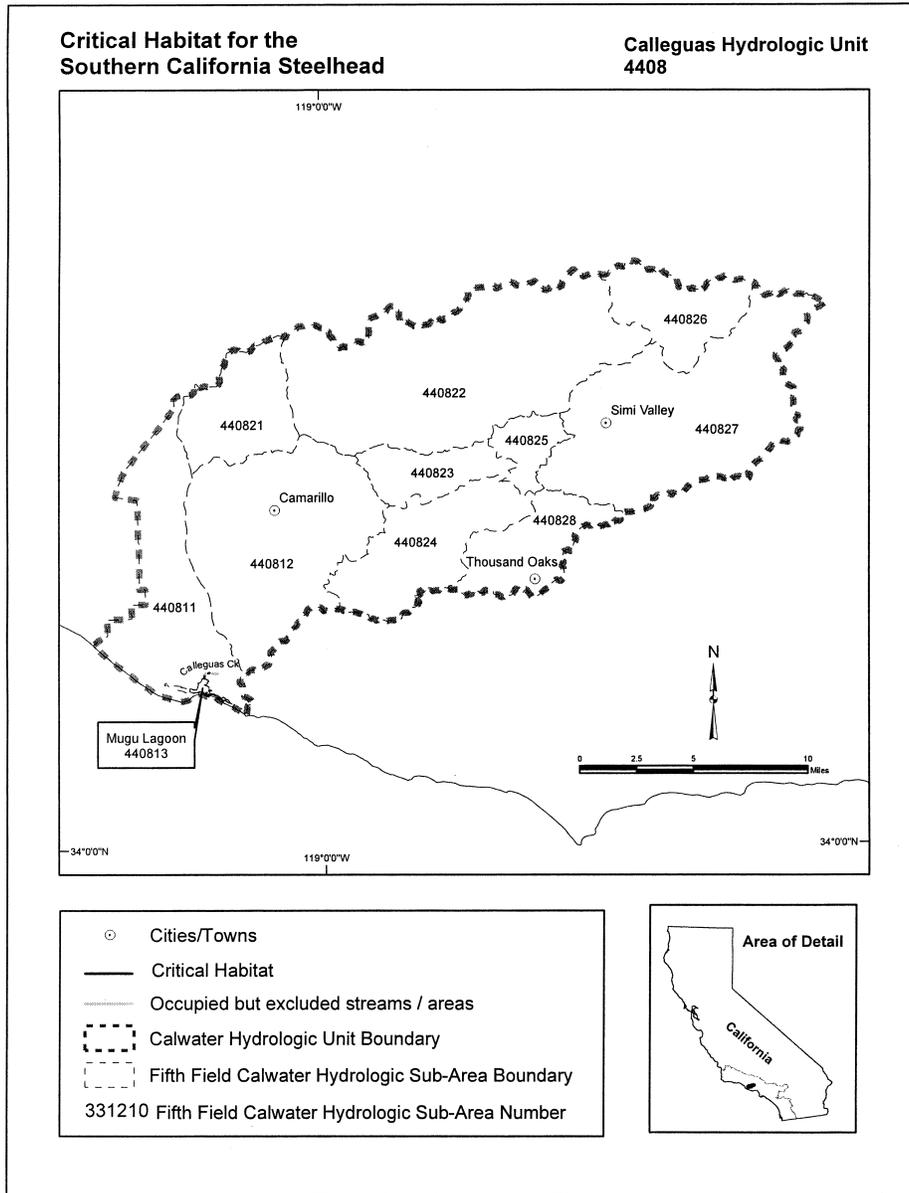


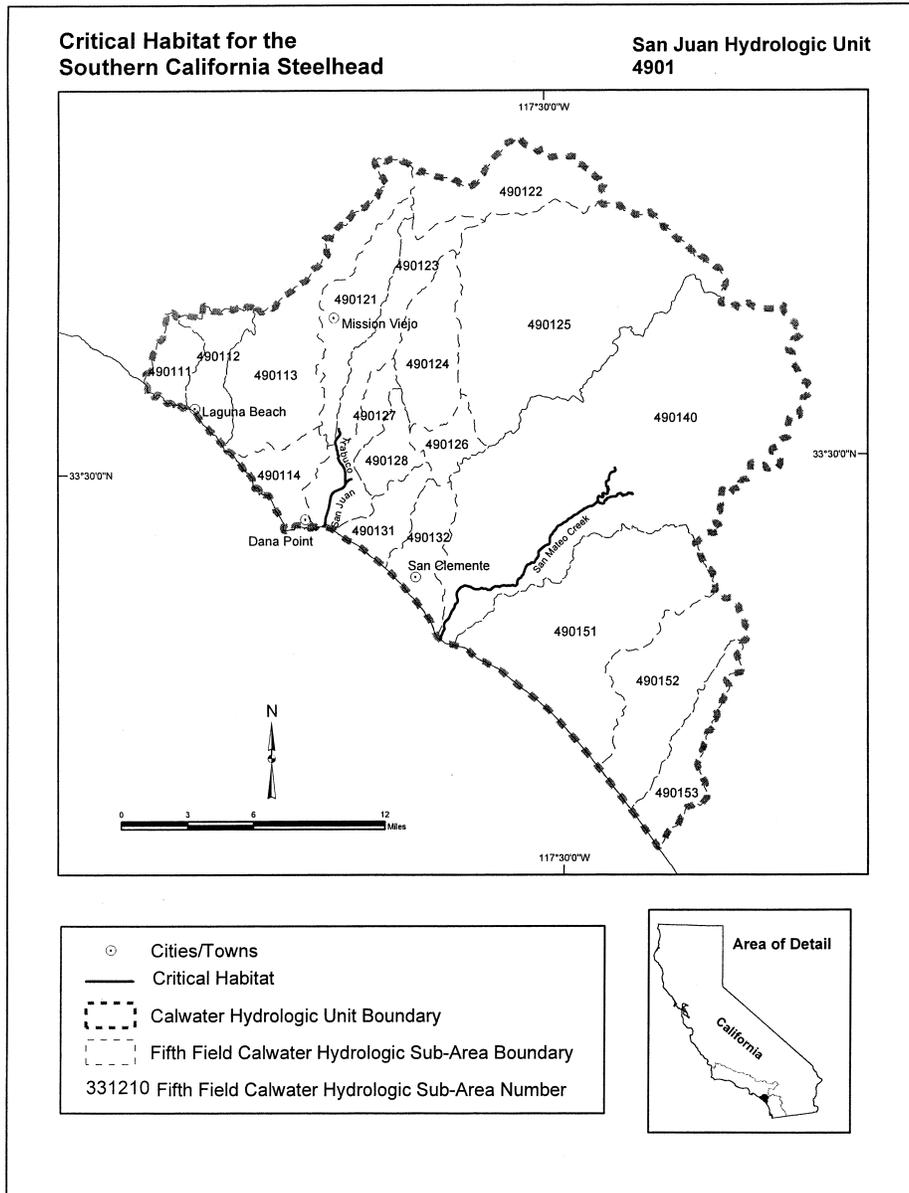












(k) *Central Valley Spring Run Chinook Salmon (O. tshawytscha)*. Critical habitat is designated to include the areas defined in the following CALWATER Hydrologic Units:

(1) Tehama Hydrologic Unit 5504—(i) *Lower Stony Creek Hydrologic Sub-area 550410*. Outlet(s) = Glenn-Colusa Canal (Lat 39.6762, Long -122.0151); Stony Creek (39.7122, -122.0072) upstream to endpoint(s) in: Glenn-Colusa Canal

(39.7122, -122.0072); Stony Creek (39.8178, -122.3253).

(ii) *Red Bluff Hydrologic Sub-area 550420*. Outlet(s) = Sacramento River (Lat 39.6998, Long -121.9419) upstream to endpoint(s) in: Antelope Creek (40.2023, -122.1275); Big Chico Creek (39.7757, -121.7525); Blue Tent Creek (40.2284, -122.2551); Burch Creek (39.8526, -122.1502); Butler Slough (40.1579, -122.1320); Coyote Creek (40.0929, -122.1621); Craig Creek (40.1617, -122.1350); Deer Creek (40.0144, -121.9481); Dibble Creek (40.2003, -122.2420); Dye Creek (40.0904, -122.0767); Elder Creek (40.0526, -122.1717); Jewet Creek (39.8913, -122.1005); Kusal Slough (39.7577, -121.9699); Lindo Channel (39.7623, -121.7923); McClure Creek (40.0074, -122.1729); Mill Creek (40.0550, -122.0317); Mud Creek (39.7931, -121.8865); New Creek (40.1873, -122.1350); Oat Creek (40.0847, -122.1658); Pine Creek (39.8760, -121.9777); Red Bank Creek (40.1391, -122.2157); Reeds Creek (40.1687, -122.2377); Rice Creek (39.8495, -122.1626); Rock Creek (39.8189, -121.9124); Salt Creek (40.1869, -122.1845); Singer Creek (39.9200, -121.9612); Thomes Creek (39.8822, -122.5527); Toomes Creek (39.9808, -122.0642); Unnamed Tributary (39.8532, -122.1627); Unnamed Tributary (40.1682, -122.1459); Unnamed Tributary (40.1867, -122.1353).

(2) Whitmore Hydrologic Unit 5507—

(i) *Inks Creek Hydrologic Sub-area 550711*. Outlet(s) = Inks Creek (Lat 40.3305, Long -122.1520) upstream to endpoint(s) in: Inks Creek 40.3418, -122.1332).

(ii) *Battle Creek Hydrologic Sub-area 550712*. Outlet(s) = Battle Creek (Lat 40.4083, Long -122.1102) upstream to endpoint(s) in: Battle Creek (40.4228, -121.9975); North Fork Battle Creek (40.4746, -121.8436); South Fork Battle Creek (40.3549, -121.6861).

(iii) *Inwood Hydrologic Sub-area 550722*. Outlet(s) = Bear Creek (Lat 40.4352, Long -122.2039) upstream to endpoint(s) in: Bear Creek (40.4859, -122.1529); Dry Creek (40.4574, -122.1993).

(3) Redding Hydrologic Unit 5508—(i) *Enterprise Flat Hydrologic Sub-area 550810*. Outlet(s) = Sacramento River (Lat 40.2526, Long -122.1707) upstream to endpoint(s) in: Anderson Creek (40.3910, -122.1984); Ash Creek (40.4451, -122.1815); Battle Creek (40.4083, -122.1102); Churn Creek (40.5431,

-122.3395); Clear Creek (40.5158, -122.5256); Cow Creek (40.5438, -122.1318); Olney Creek (40.5262, -122.3783); Paynes Creek (40.2810, -122.1587); Stillwater Creek (40.4789, -122.2597).

(ii) *Lower Cottonwood Hydrologic Sub-area 550820*. Outlet(s) = Cottonwood Creek (Lat 40.3777, Long -122.1991) upstream to endpoint(s) in: Cottonwood Creek (40.3943, -122.5254); Middle Fork Cottonwood Creek (40.3314, -122.6663); South Fork Cottonwood Creek (40.1578, -122.5809).

(4) Eastern Tehama Hydrologic Unit 5509—(i) *Big Chico Creek Hydrologic Sub-area 550914*. Outlet(s) = Big Chico Creek (Lat 39.7757, Long -121.7525) upstream to endpoint(s) in: Big Chico Creek (39.8873, -121.6979).

(ii) *Deer Creek Hydrologic Sub-area 550920*. Outlet(s) = Deer Creek (Lat 40.0144, Long -121.9481) upstream to endpoint(s) in: Deer Creek (40.2019, -121.5130).

(iii) *Upper Mill Creek Hydrologic Sub-area 550942*. Outlet(s) = Mill Creek (Lat 40.0550, Long -122.0317) upstream to endpoint(s) in: Mill Creek (40.3997, -121.5131).

(iv) *Antelope Creek Hydrologic Sub-area 550963*. Outlet(s) = Antelope Creek (Lat 40.2023, Long -122.1272) upstream to endpoint(s) in: Antelope Creek (40.2416, -121.8630); North Fork Antelope Creek (40.2691, -121.8226); South Fork Antelope Creek (40.2309, -121.8325).

(5) Sacramento Delta Hydrologic Unit 5510—(i) *Sacramento Delta Hydrologic Sub-area 551000*. Outlet(s) = Sacramento River (Lat 38.0612, Long -121.7948) upstream to endpoint(s) in: Cache Slough (38.3086, -121.7633); Delta Cross Channel (38.2433, -121.4964); Elk Slough (38.4140, -121.5212); Elkhorn Slough (38.2898, -121.6271); Georgiana Slough (38.2401, -121.5172); Miners Slough (38.2864, -121.6051); Prospect Slough (38.1477, -121.6641); Sevenmile Slough (38.1171, -121.6298); Steamboat Slough (38.3052, -121.5737); Sutter Slough (38.3321, -121.5838); Threemile Slough (38.1155, -121.6835); Yolo Bypass (38.5800, -121.5838).

(ii) [Reserved]

(6) Valley-Putah-Cache Hydrologic Unit 5511—(i) *Lower Putah Creek Hydrologic Sub-area 551120*. Outlet(s) = Yolo Bypass (Lat 38.5800, Long -121.5838) upstream to endpoint(s) in: Sacramento

Bypass (38.6057, -121.5563); Yolo Bypass (38.7627, -121.6325).

(ii) [Reserved]

(7) Marysville Hydrologic Unit 5515—(i) *Lower Yuba River Hydrologic Sub-area 551510*. Outlet(s) = Bear River (Lat 38.9398, Long -121.5790) upstream to endpoint(s) in: Bear River (38.9783, -121.5166).

(ii) *Lower Yuba River Hydrologic Sub-area 551530*. Outlet(s) = Yuba River (Lat 39.1270, Long -121.5981) upstream to endpoint(s) in: Yuba River (39.2203, -121.3314).

(iii) *Lower Feather River Hydrologic Sub-area 551540*. Outlet(s) = Feather River (Lat 39.1270, Long -121.5981) upstream to endpoint(s) in: Feather River (39.5203, -121.5475).

(8) Yuba River Hydrologic Unit 5517—(i) *Browns Valley Hydrologic Sub-Area 551712*. Outlet(s) = Dry Creek (Lat 39.2207, Long -121.4088); Yuba River (39.2203, -121.3314) upstream to endpoint(s) in: Dry Creek (39.3201, -121.3117); Yuba River (39.2305, -121.2813).

(ii) *Englebright Hydrologic Sub-area 551714*. Outlet(s) = Yuba River (Lat 39.2305, Long -121.2813) upstream to endpoint(s) in: Yuba River (39.2388, -121.2698).

(9) Valley-American Hydrologic Unit 5519—(i) *Lower American Hydrologic Sub-area 551921*. Outlet(s) = American River (Lat 38.5971, Long -121.5088) upstream to endpoint(s) in: American River (38.5669, -121.3827).

(ii) *Pleasant Grove Hydrologic Sub-area 551922*. Outlet(s) = Sacramento River (Lat 38.5965, Long -121.5086) upstream to endpoint(s) in: Feather River (39.1270, -121.5981).

(10) Colusa Basin Hydrologic Unit 5520—(i) *Sycamore-Sutter Hydrologic Sub-area 552010*. Outlet(s) = Sacramento River (Lat 38.7604, Long -121.6767) up-

stream to endpoint(s) in: Tisdale Bypass (39.0261, -121.7456).

(ii) *Sutter Bypass Hydrologic Sub-area 552030*. Outlet(s) = Sacramento River (Lat 38.7849, Long -121.6219) upstream to endpoint(s) in: Butte Creek (39.1987, -121.9285); Butte Slough (39.1987, -121.9285); Nelson Slough (38.8901, -121.6352); Sacramento Slough (38.7843, -121.6544); Sutter Bypass (39.1417, -121.8196; 39.1484, -121.8386); Tisdale Bypass (39.0261, -121.7456); Unnamed Tributary (39.1586, -121.8747).

(iii) *Butte Basin Hydrologic Sub-area 552040*. Outlet(s) = Butte Creek (Lat 39.1990, Long -121.9286); Sacramento River (39.4141, -122.0087) upstream to endpoint(s) in: Butte creek (39.7095, -121.7506); Colusa Bypass (39.2276, -121.9402); Unnamed Tributary (39.6762, -122.0151).

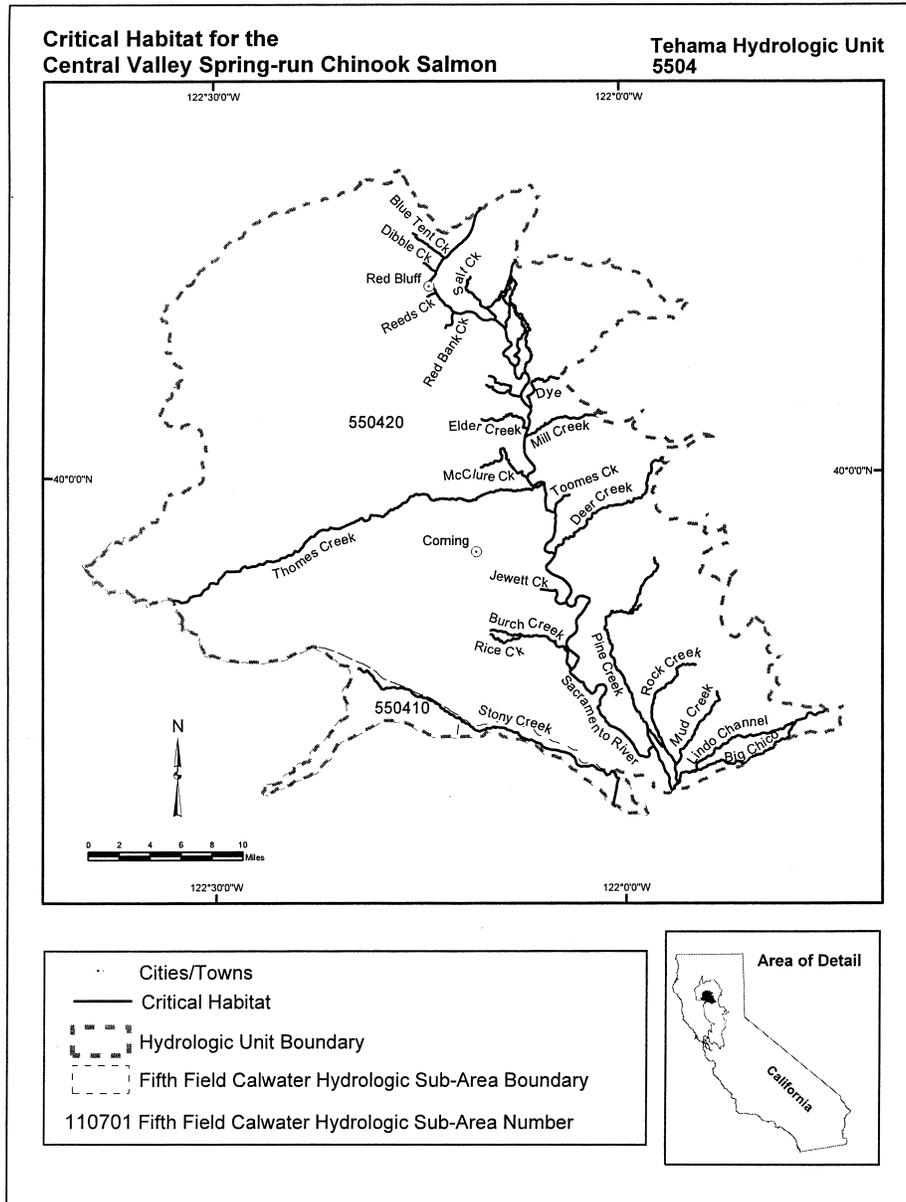
(11) Butte Creek Hydrologic Unit 5521—*Upper Little Chico Hydrologic Sub-area 552130*. Outlet(s) = Butte Creek (Lat 39.7096, -121.7504) upstream to endpoint(s) in: Butte Creek (39.8665, -121.6344).

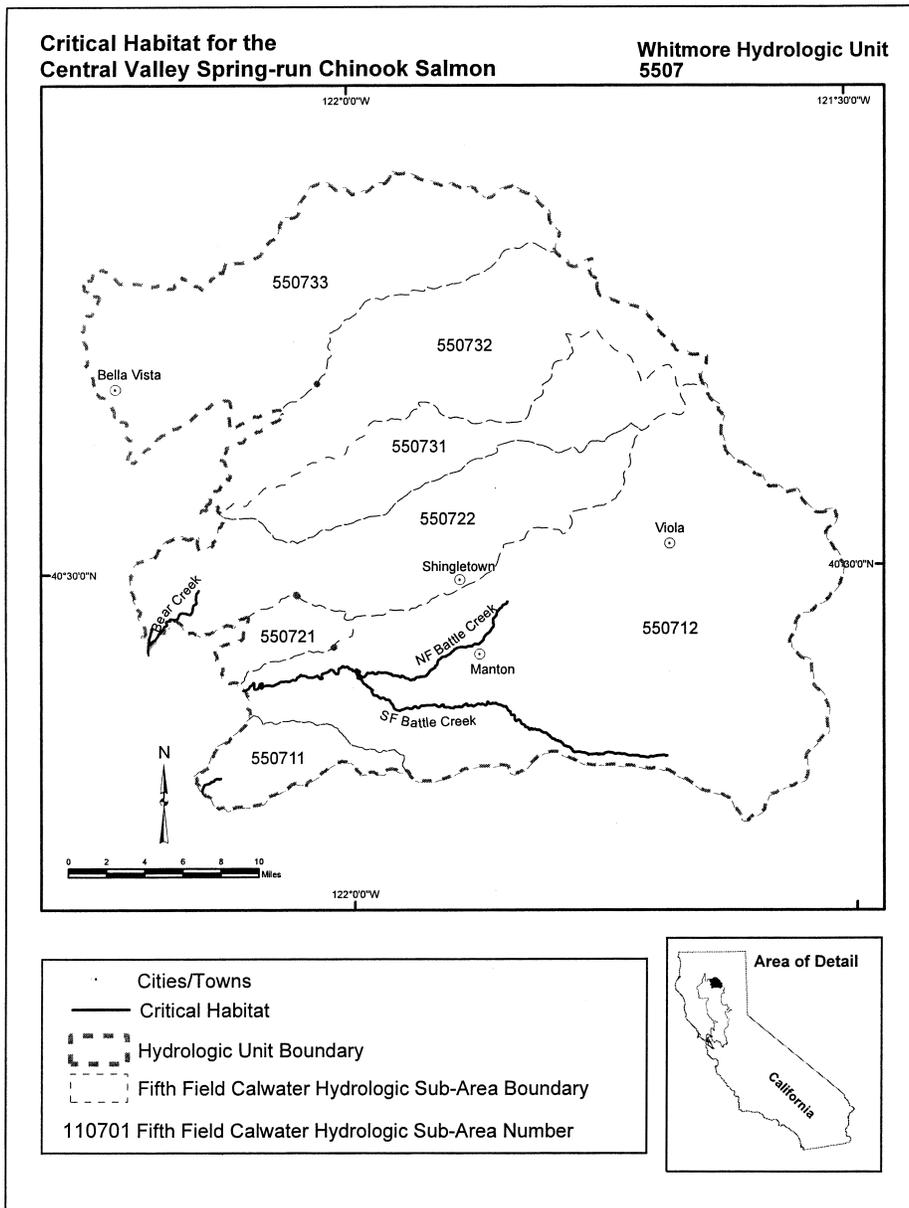
(12) Shasta Bally Hydrologic Unit 5524—(i) *Platina Hydrologic Sub-area 552436*. Outlet(s) = Middle Fork Cottonwood Creek (Lat 40.3314, -122.6663) upstream to endpoint(s) in: Beegum Creek (40.3066, -122.9205); Middle Fork Cottonwood Creek (40.3655, -122.7451).

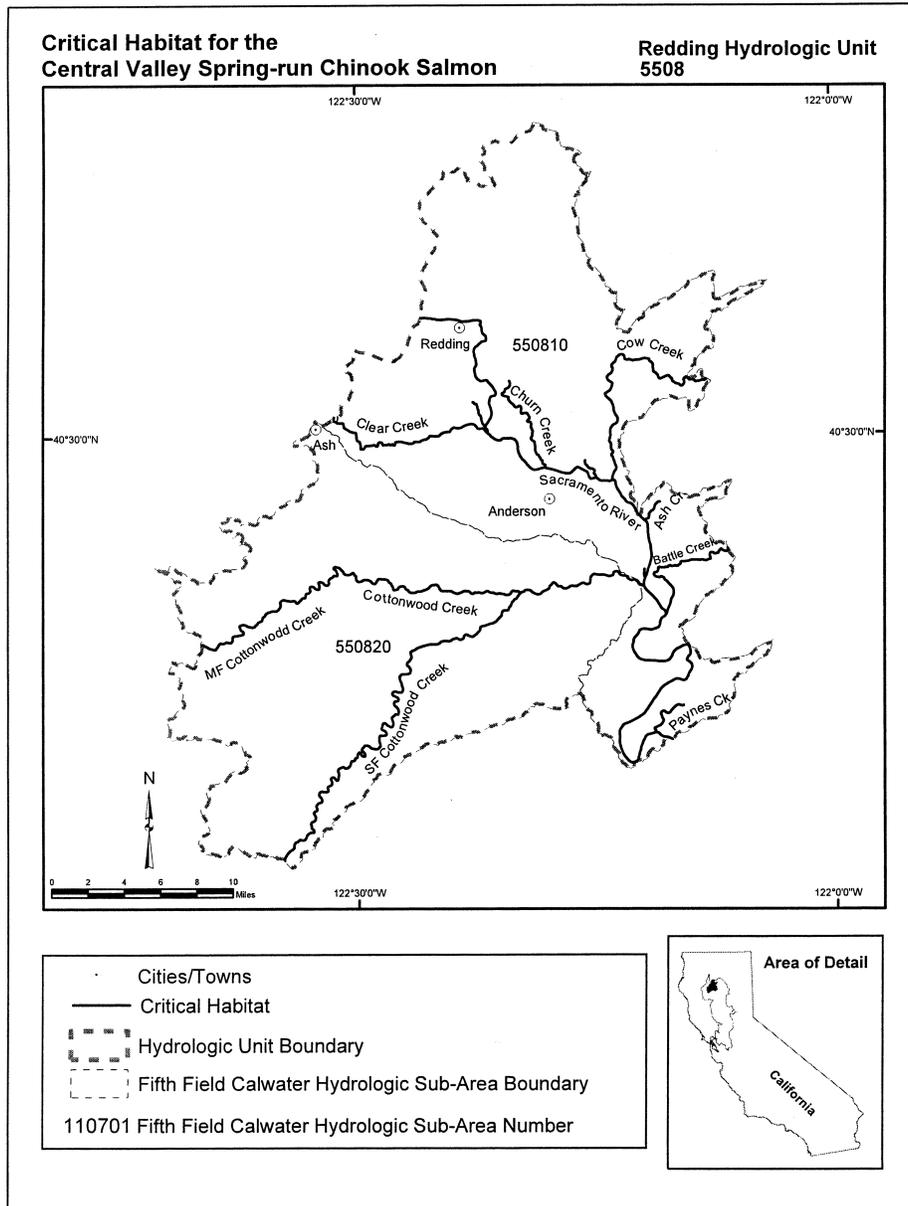
(ii) *Spring Creek Hydrologic Sub-area 552440*. Outlet(s) = Sacramento River (Lat 40.5943, Long -122.4343) upstream to endpoint(s) in: Sacramento River (40.6116, -122.4462)

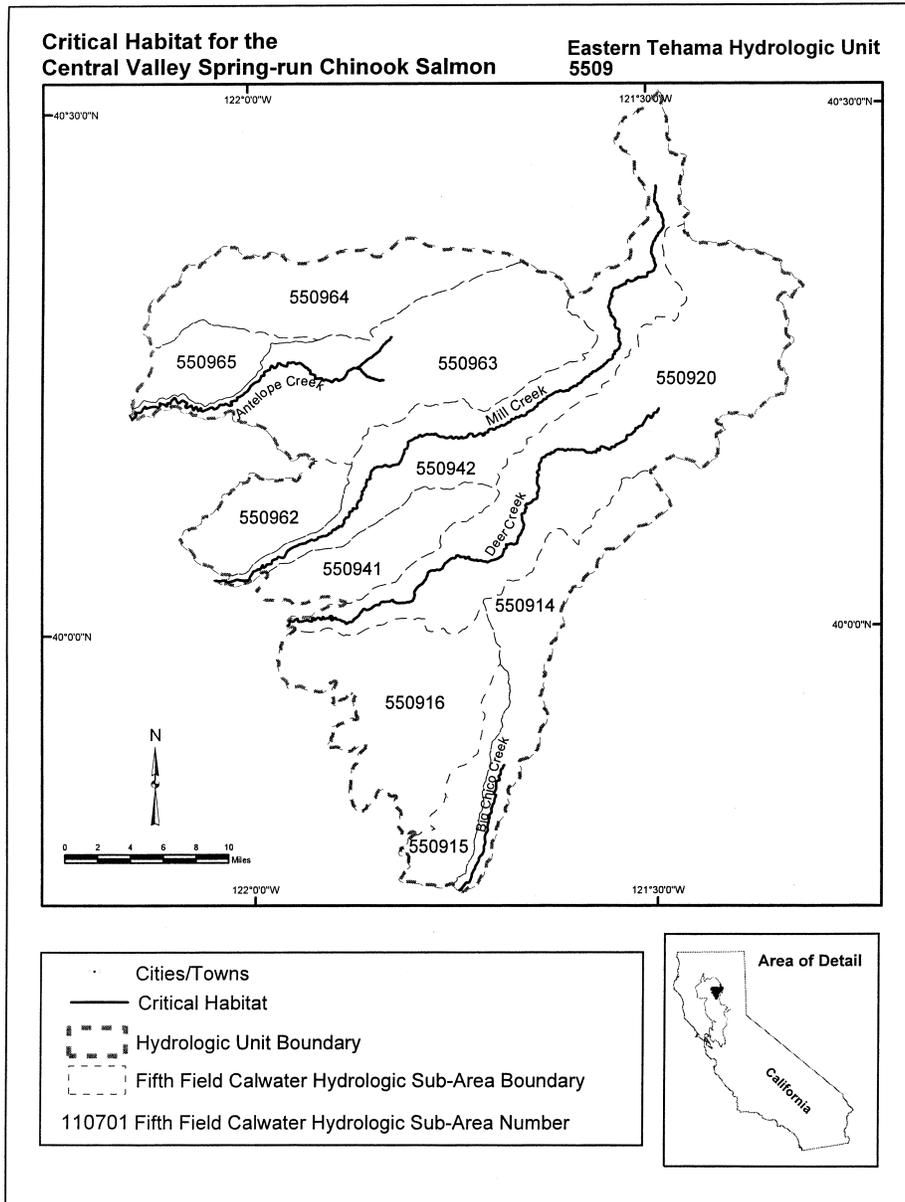
(iii) *Kanaka Peak Hydrologic Sub-area 552462*. Outlet(s) = Clear Creek (Lat 40.5158, Long -122.5256) upstream to endpoint(s) in: Clear Creek (40.5992, -122.5394).

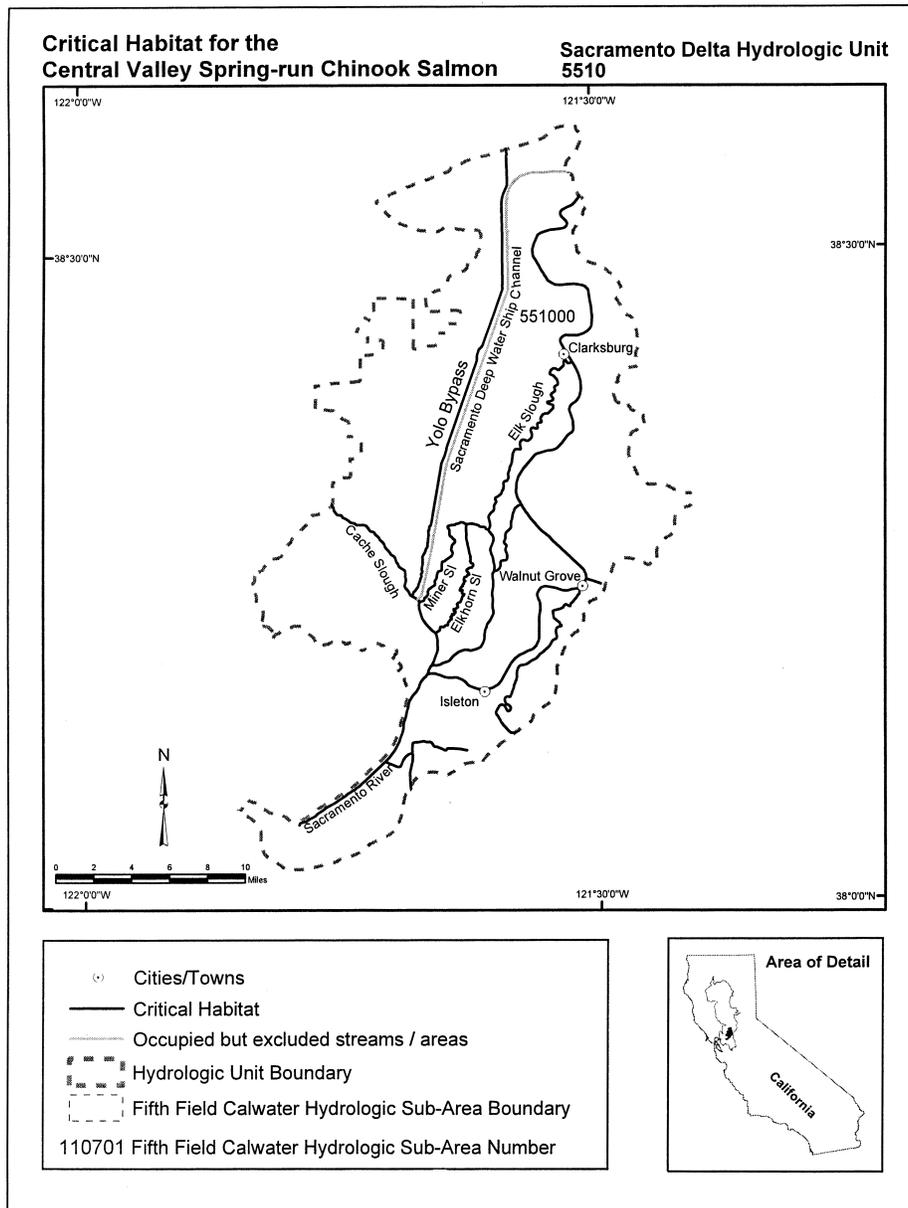
(13) Maps of critical habitat for the Central Valley Spring Run Chinook ESU follow:

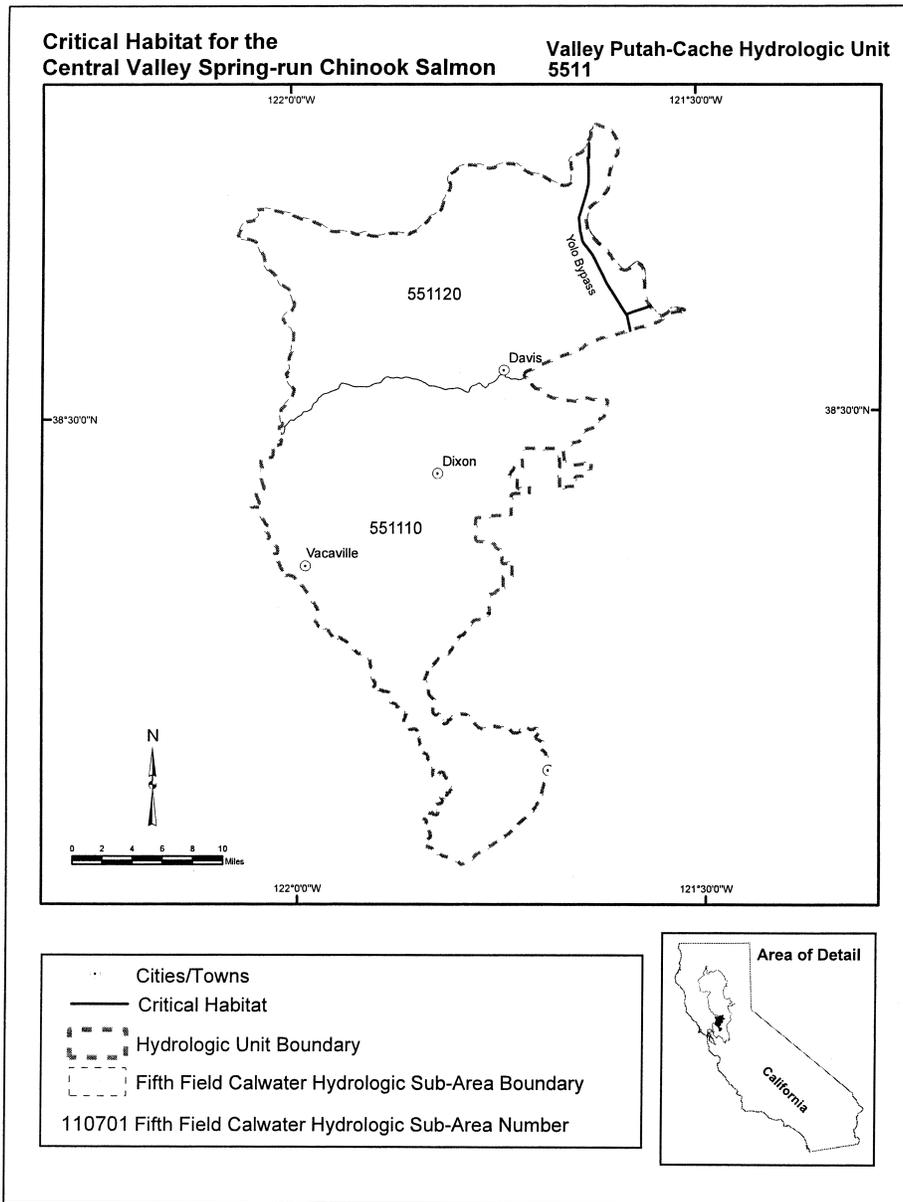


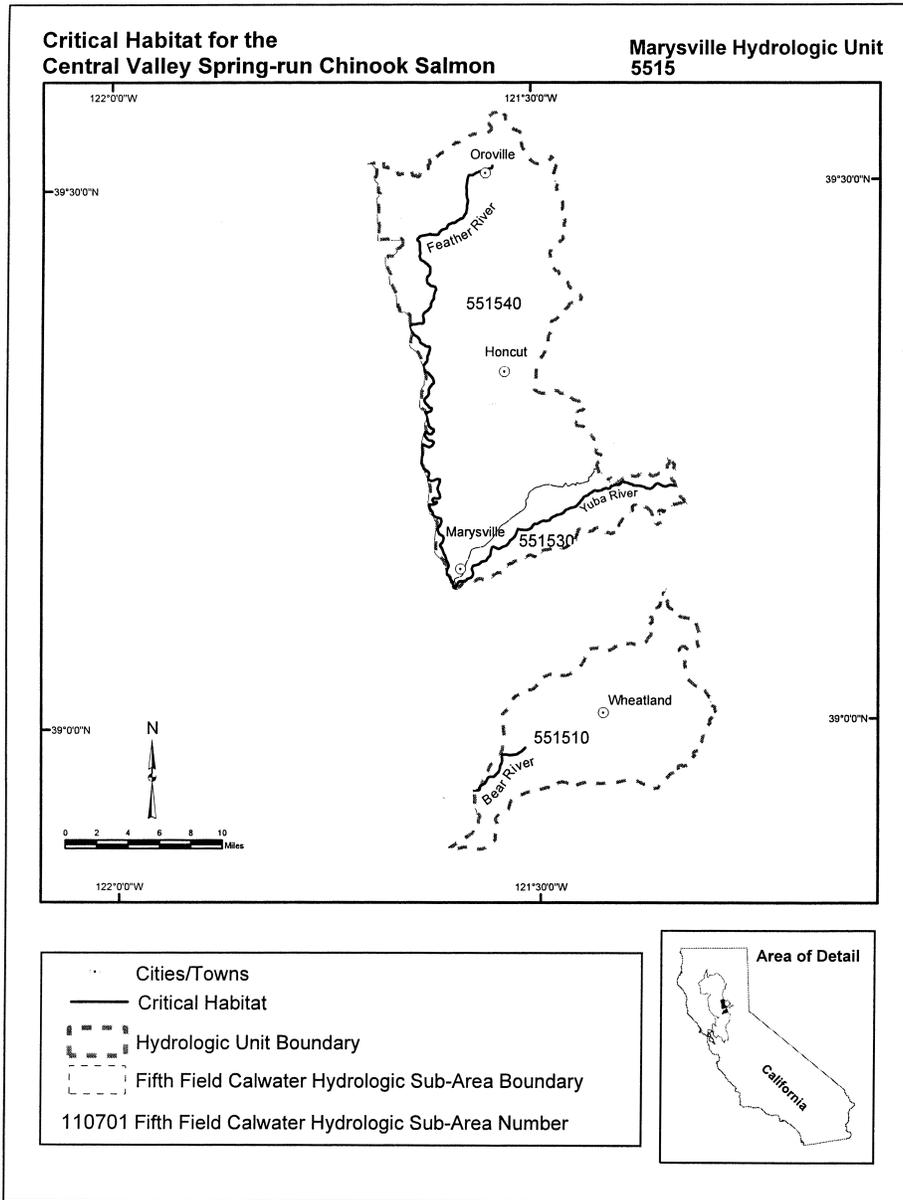


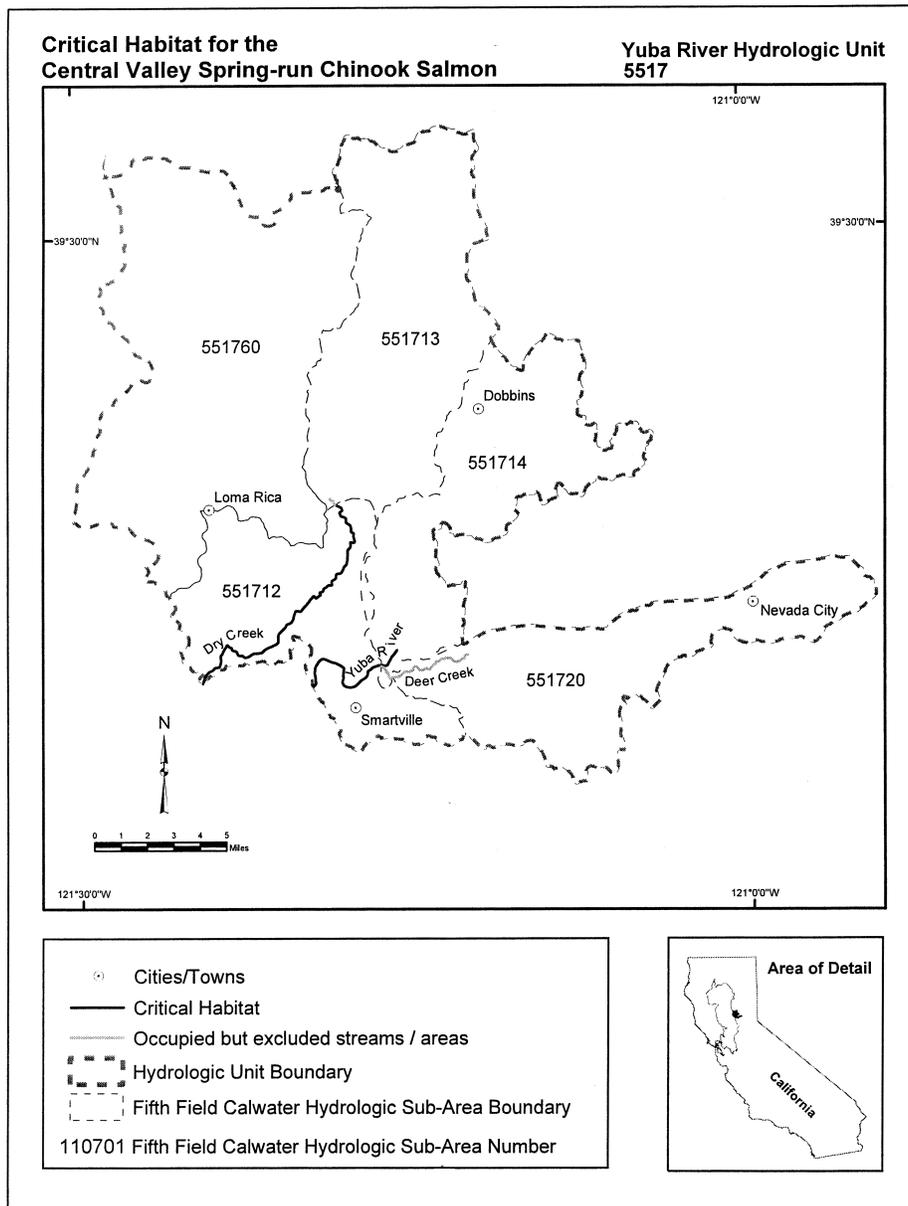


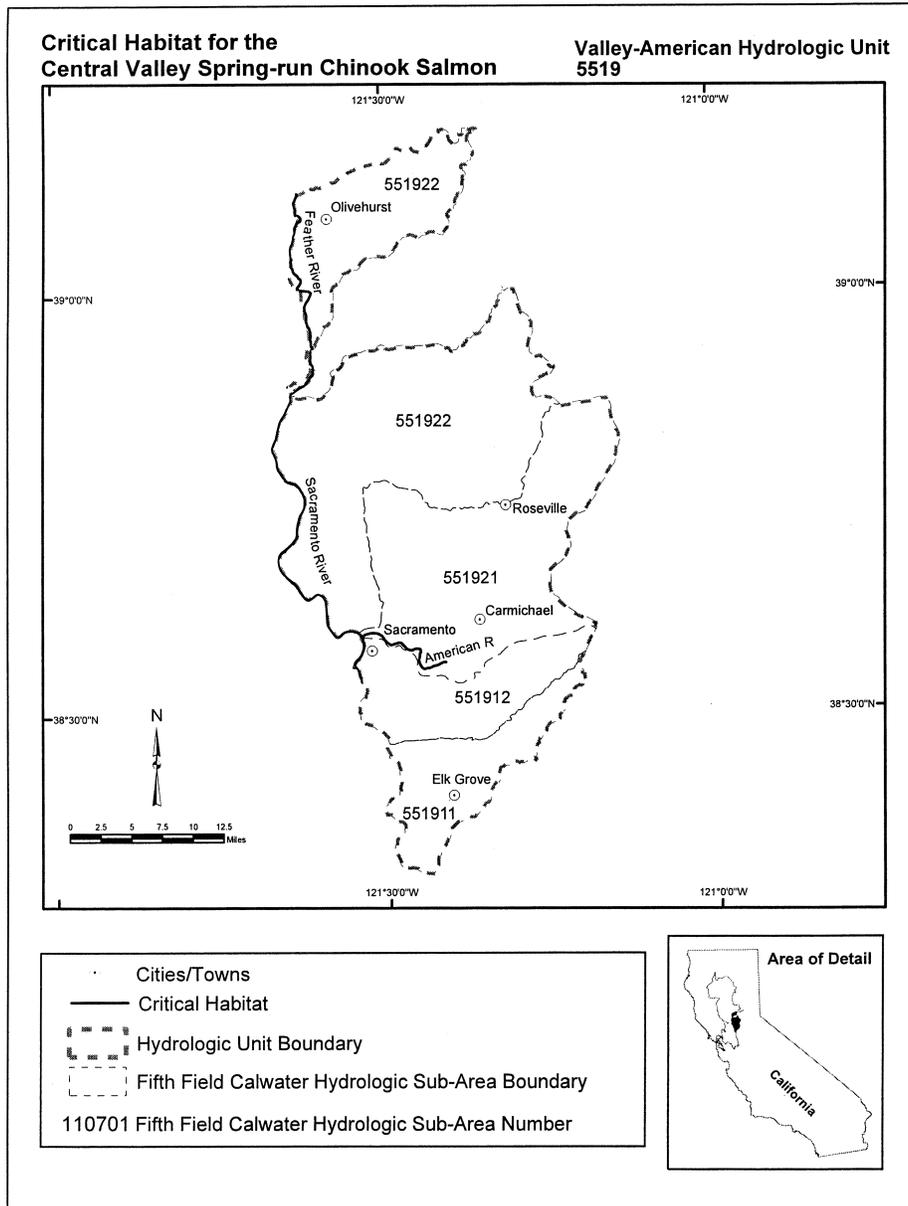


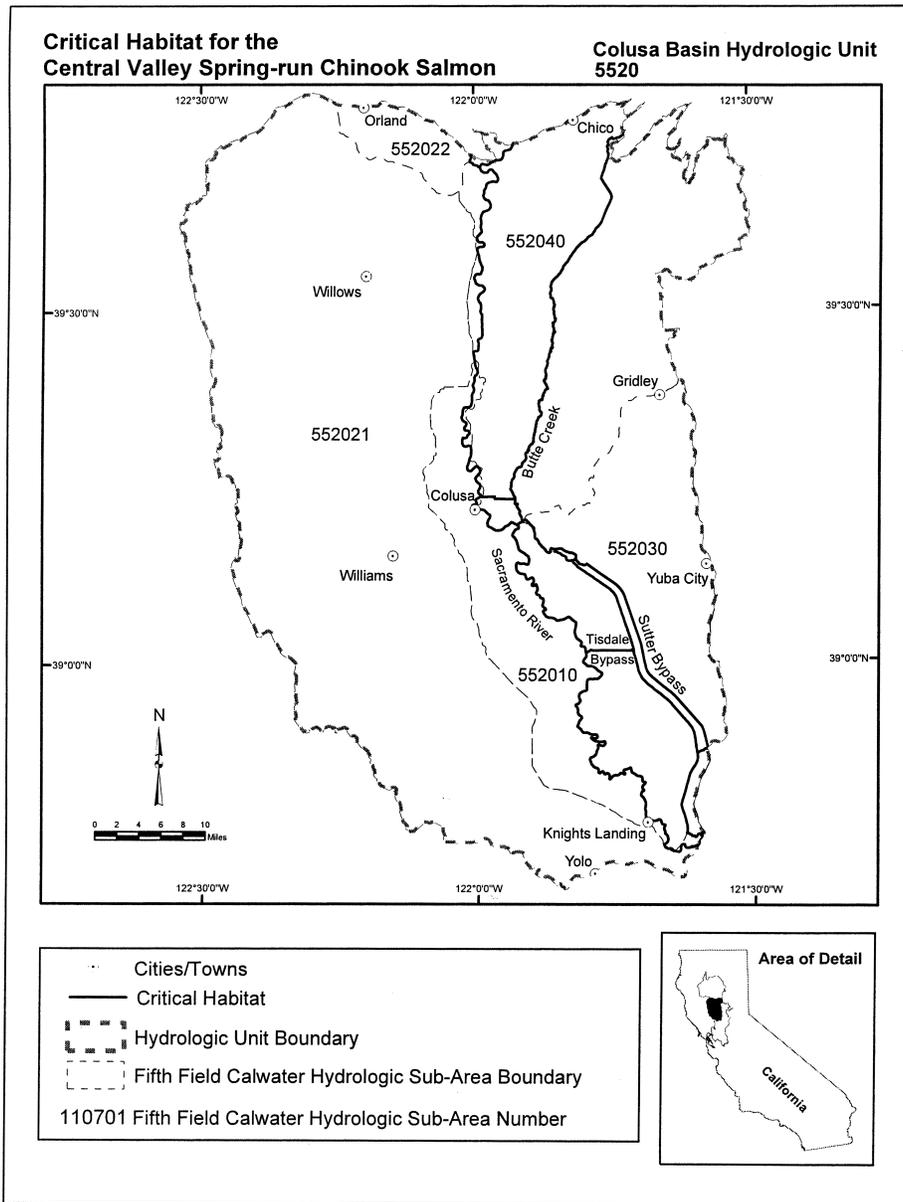


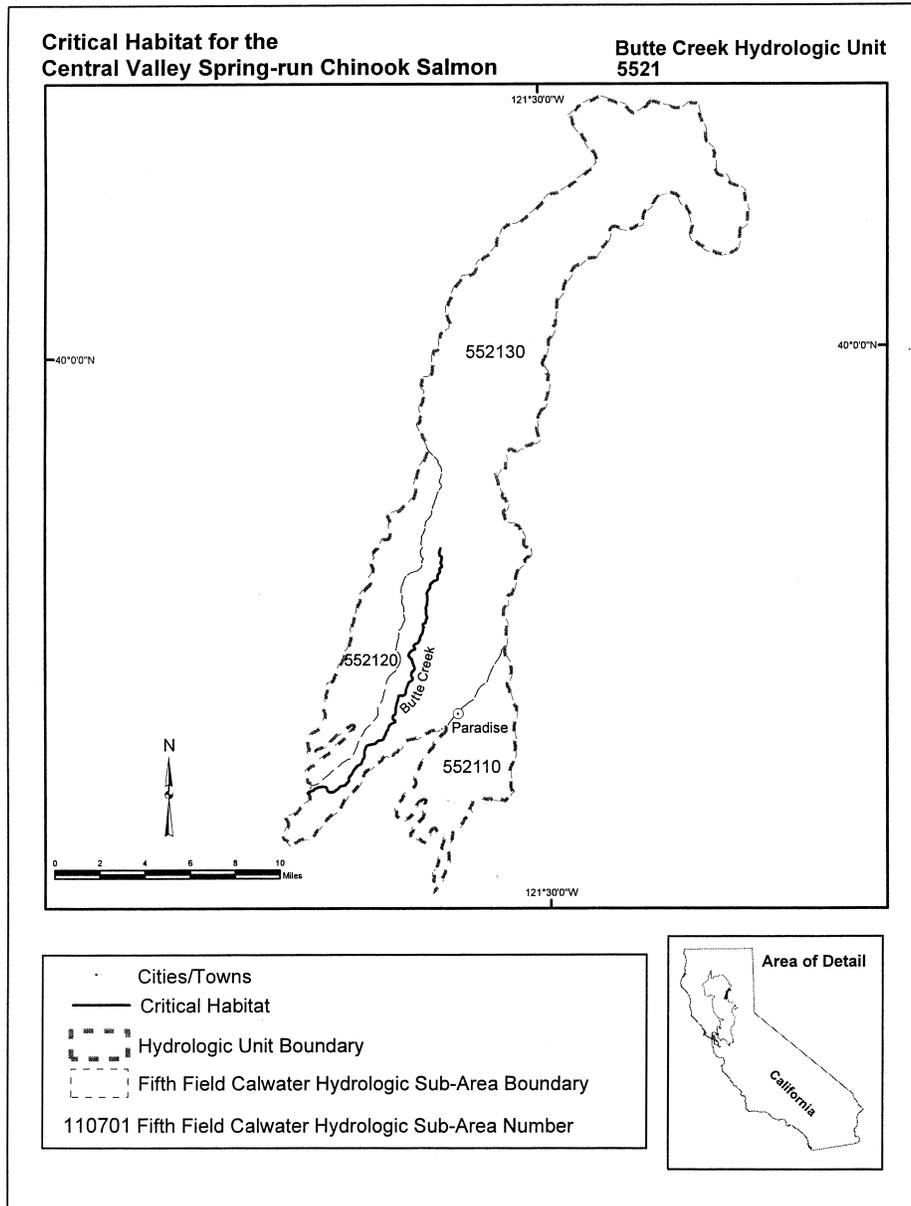


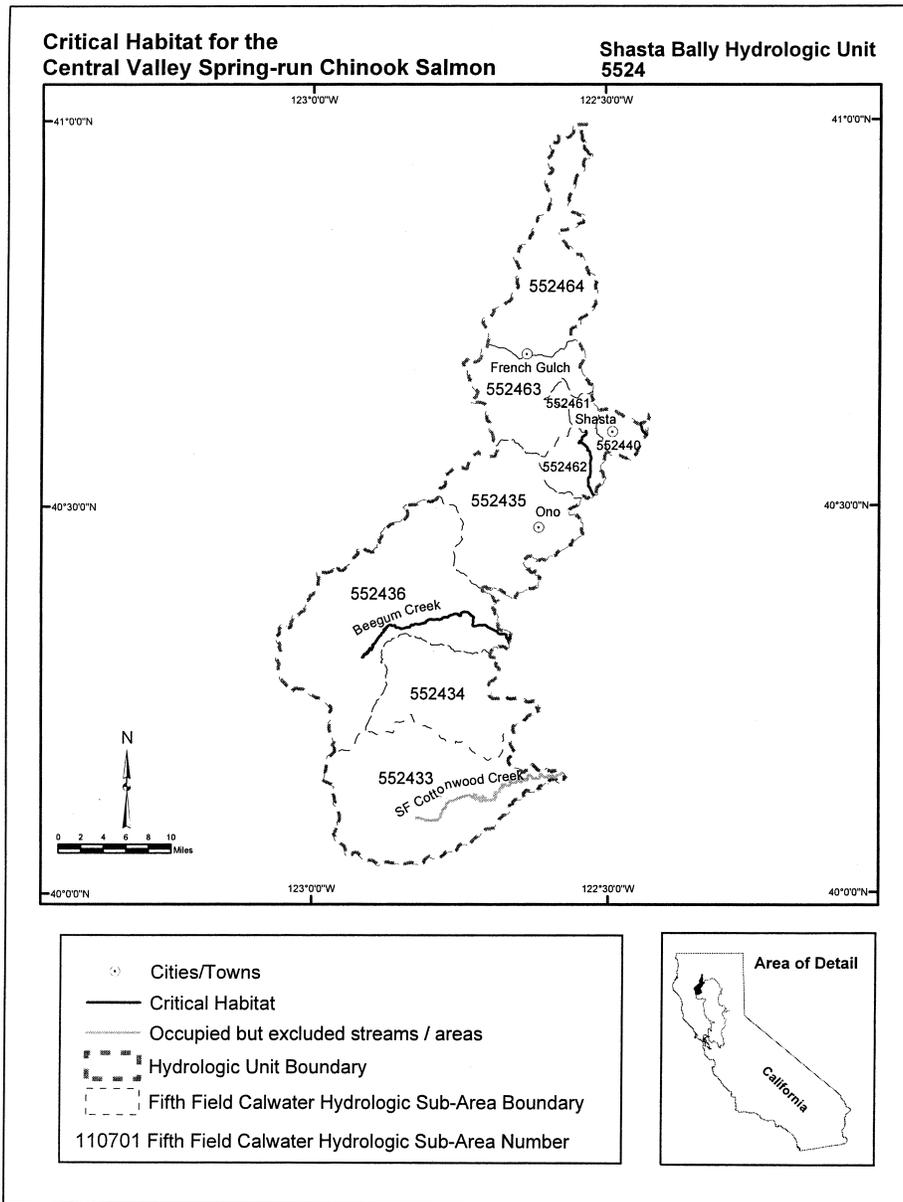












(1) *Central Valley steelhead (O. mykiss)*. Critical habitat is designated to include the areas defined in the following CALWATER Hydrologic Units:

(1) Tehama Hydrologic Unit 5504—(i) *Lower Stony Creek Hydrologic Sub-area 550410*. Outlet(s) = Stony Creek (Lat 39.6760, Long -121.9732) upstream to

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endpoint(s) in: Stony Creek (39.8199, -122.3391).

(ii) Red Bluff Hydrologic Sub-area 550420. Outlet(s) = Sacramento River (Lat 39.6998, Long -121.9419) upstream to endpoint(s) in: Antelope Creek (40.2023, -122.1272); Big Chico Creek (39.7757, -121.7525); Blue Tent Creek (40.2166, -122.2362); Burch Creek (39.8495, -122.1615); Butler Slough (40.1579, -122.1320); Craig Creek (40.1617, -122.1350); Deer Creek (40.0144, -121.9481); Dibble Creek (40.2002, -122.2421); Dye Creek (40.0910, -122.0719); Elder Creek (40.0438, -122.2133); Lindo Channel (39.7623, -121.7923); McClure Creek (40.0074, -122.1723); Mill Creek (40.0550, -122.0317); Mud Creek (39.7985, -121.8803); New Creek (40.1873, -122.1350); Oat Creek (40.0769, -122.2168); Red Bank Creek (40.1421, -122.2399); Rice Creek (39.8495, -122.1615); Rock Creek (39.8034, -121.9403); Salt Creek (40.1572, -122.1646); Thomes Creek (39.8822, -122.5527); Unnamed Tributary (40.1867, -122.1353); Unnamed Tributary (40.1682, -122.1459); Unnamed Tributary (40.1143, -122.1259); Unnamed Tributary (40.0151, -122.1148); Unnamed Tributary (40.0403, -122.1009); Unnamed Tributary (40.0514, -122.0851); Unnamed Tributary (40.0530, -122.0769).

(2) Whitmore Hydrologic Unit 5507—(i) *Inks Creek Hydrologic Sub-area 550711*. Outlet(s) = Inks Creek (Lat 40.3305, Long -122.1520) upstream to endpoint(s) in: Inks Creek (40.3418, -122.1332).

(ii) *Battle Creek Hydrologic Sub-area 550712*. Outlet(s) = Battle Creek (Lat 40.4083, Long -122.1102) upstream to endpoint(s) in: Baldwin Creek (40.4369, -121.9885); Battle Creek (40.4228, -121.9975); Brush Creek (40.4913, -121.8664); Millseat Creek (40.4808, -121.8526); Morgan Creek (40.3654, -121.9132); North Fork Battle Creek (40.4877, -121.8185); Panther Creek (40.3897, -121.6106); South Ditch (40.3997, -121.9223); Ripley Creek (40.4099, -121.8683); Soap Creek (40.3904, -121.7569); South Fork Battle Creek (40.3531, -121.6682); Unnamed Tributary (40.3567, -121.8293); Unnamed Tributary (40.4592, -121.8671).

(iii) *Ash Creek Hydrologic Sub-area 550721*. Outlet(s) = Ash Creek (Lat 40.4401, Long -122.1375) upstream to endpoint(s) in: Ash Creek (40.4628, -122.0066).

(iv) *Inwood Hydrologic Sub-area 550722*. Outlet(s) = Ash Creek (Lat 40.4628, Long -122.0066); Bear Creek (40.4352, -122.2039) upstream to endpoint(s) in: Ash Creek (40.4859, -121.8993); Bear Creek (40.5368, -121.9560); North Fork Bear Creek (40.5736, -121.8683).

(v) *South Cow Creek Hydrologic Sub-area 550731*. Outlet(s) = South Cow Creek (Lat 40.5438, Long -122.1318) upstream to endpoint(s) in: South Cow Creek (40.6023, -121.8623).

(vi) *Old Cow Creek Hydrologic Sub-area 550732*. Outlet(s) = Clover Creek (Lat 40.5788, Long -122.1252); Old Cow Creek (40.5442, -122.1317) upstream to endpoint(s) in: Clover Creek (40.6305, -122.0304); Old Cow Creek (40.6295, -122.9619).

(vii) *Little Cow Creek Hydrologic Sub-area 550733*. Outlet(s) = Little Cow Creek (Lat 40.6148, -122.2271); Oak Run Creek (40.6171, -122.1225) upstream to endpoint(s) in: Little Cow Creek (40.7114, -122.0850); Oak Run Creek (40.6379, -122.0856).

(3) Redding Hydrologic Unit 5508—(i) *Enterprise Flat Hydrologic Sub-area 550810*. Outlet(s) = Sacramento River (Lat 40.2526, Long -122.1707) upstream to endpoint(s) in: Ash Creek (40.4401, -122.1375); Battle Creek (40.4083, -122.1102); Bear Creek (40.4360, -122.2036); Calaboose Creek (40.5742, -122.4142); Canyon Creek (40.5532, -122.3814); Churn Creek (40.5986, -122.3418); Clear Creek (40.5158, -122.5256); Clover Creek (40.5788, -122.1252); Cottonwood Creek (40.3777, -122.1991); Cow Creek (40.5437, -122.1318); East Fork Stillwater Creek (40.6495, -122.2934); Inks Creek (40.3305, -122.1520); Jenny Creek (40.5734, -122.4338); Little Cow Creek (40.6148, -122.2271); Oak Run (40.6171, -122.1225); Old Cow Creek (40.5442, -122.1317); Olney Creek (40.5439, -122.4687); Oregon Gulch (40.5463, -122.3866); Paynes Creek (40.3024, -122.1012); Stillwater Creek (40.6495, -122.2934); Sulphur Creek (40.6164, -122.4077).

(ii) *Lower Cottonwood Hydrologic Sub-area 550820*. Outlet(s) = Cottonwood Creek (Lat 40.3777, Long -122.1991) upstream to endpoint(s) in: Cold Fork Cottonwood Creek (40.2060, -122.6608); Cottonwood Creek (40.3943, -122.5254); Middle Fork Cottonwood Creek (40.3314, -122.6663); North Fork Cottonwood

Creek (40.4539, -122.5610); South Fork Cottonwood Creek (40.1578, -122.5809).

(4) Eastern Tehama Hydrologic Unit 5509—(i) *Big Chico Creek Hydrologic Sub-area 550914*. Outlet(s) = Big Chico Creek (Lat 39.7757, Long -121.7525) upstream to endpoint(s) in: Big Chico Creek (39.8898, -121.6952).

(ii) *Deer Creek Hydrologic Sub-area 550920*. Outlet(s) = Deer Creek (Lat 40.0142, Long -121.9476) upstream to endpoint(s) in: Deer Creek (40.2025, -121.5130).

(iii) *Upper Mill Creek Hydrologic Sub-area 550942*. Outlet(s) = Mill Creek (Lat 40.0550, Long -122.0317) upstream to endpoint(s) in: Mill Creek (40.3766, -121.5098); Rocky Gulch Creek (40.2888, -121.5997).

(iv) *Dye Creek Hydrologic Sub-area 550962*. Outlet(s) = Dye Creek (Lat 40.0910, Long -122.0719) upstream to endpoint(s) in: Dye Creek (40.0996, -121.9612).

(v) *Antelope Creek Hydrologic Sub-area 550963*. Outlet(s) = Antelope Creek (Lat 40.2023, Long -122.1272) upstream to endpoint(s) in: Antelope Creek (40.2416, -121.8630); Middle Fork Antelope Creek (40.2673, -121.7744); North Fork Antelope Creek (40.2807, -121.7645); South Fork Antelope Creek (40.2521, -121.7575).

(5) Sacramento Delta Hydrologic Unit 5510—*Sacramento Delta Hydrologic Sub-area 551000*. Outlet(s) = Sacramento River (Lat 38.0653, Long -121.8418) upstream to endpoint(s) in: Cache Slough (38.2984, -121.7490); Elk Slough (38.4140, -121.5212); Elkhorn Slough (38.2898, -121.6271); Georgiana Slough (38.2401, -121.5172); Horseshoe Bend (38.1078, -121.7117); Lindsey Slough (38.2592, -121.7580); Miners Slough (38.2864, -121.6051); Prospect Slough (38.2830, -121.6641); Putah Creek (38.5155, -121.5885); Sevenmile Slough (38.1171, -121.6298); Streamboat Slough (38.3052, -121.5737); Sutter Slough (38.3321, -121.5838); Threemile Slough (38.1155, -121.6835); Ulatis Creek (38.2961, -121.7835); Unnamed Tributary (38.2937, -121.7803); Unnamed Tributary (38.2937, -121.7804); Yolo Bypass (38.5800, -121.5838).

(6) Valley-Putah-Cache Hydrologic Unit 5511—*Lower Putah Creek Hydrologic Sub-area 551120*. Outlet(s) = Sacramento Bypass (Lat 38.6057, Long -121.5563); Yolo Bypass (38.5800,

-121.5838) upstream to endpoint(s) in: Sacramento Bypass (38.5969, -121.5888); Yolo Bypass (38.7627, -121.6325).

(7) American River Hydrologic Unit 5514—*Auburn Hydrologic Sub-area 551422*. Outlet(s) = Auburn Ravine (Lat 38.8921, Long -121.2181); Coon Creek (38.9891, -121.2556); Doty Creek (38.9401, -121.2434) upstream to endpoint(s) in: Auburn Ravine (38.8888, -121.1151); Coon Creek (38.9659, -121.1781); Doty Creek (38.9105, -121.1244).

(8) Marysville Hydrologic Unit 5515—(i) *Lower Bear River Hydrologic Sub-area 551510*. Outlet(s) = Bear River (Lat 39.9398, Long -121.5790) upstream to endpoint(s) in: Bear River (39.0421, -121.3319).

(ii) *Lower Yuba River Hydrologic Sub-area 551530*. Outlet(s) = Yuba River (Lat 39.1270, Long -121.5981) upstream to endpoint(s) in: Yuba River (39.2203, -121.3314).

(iii) *Lower Feather River Hydrologic Sub-area 551540*. Outlet(s) = Feather River (Lat 39.1264, Long -121.5984) upstream to endpoint(s) in: Feather River (39.5205, -121.5475).

(9) Yuba River Hydrologic Unit 5517—(i) *Browns Valley Hydrologic Sub-area 551712*. Outlet(s) = Dry Creek (Lat 39.2215, Long -1121.4082); Yuba River (39.2203, -1121.3314) upstream to endpoint(s) in: Dry Creek (39.3232, Long -1121.3155); Yuba River (39.2305, -1121.2813).

(ii) *Englebright Hydrologic Sub-area 551714*. Outlet(s) = Yuba River (Lat 39.2305, Long -1121.2813) upstream to endpoint(s) in: Yuba River (39.2399, -1121.2689).

(10) Valley American Hydrologic Unit 5519—(i) *Lower American Hydrologic Sub-area 551921*. Outlet(s) = American River (Lat 38.5971, -1121.5088) upstream to endpoint(s) in: American River (38.6373, -1121.2202); Dry Creek (38.7554, -1121.2676); Miner's Ravine (38.8429, -1121.1178); Natomas East Main Canal (38.6646, -1121.4770); Secret Ravine (38.8541, -1121.1223).

(ii) *Pleasant Grove Hydrologic Sub-area 551922*. Outlet(s) = Sacramento River (Lat 38.6026, Long -1121.5155) upstream to endpoint(s) in: Auburn Ravine (38.8913, -1121.2424); Coon Creek (38.9883, -1121.2609); Doty Creek (38.9392, -1121.2475); Feather River (39.1264, -1121.5984).

(11) Colusa Basin Hydrologic Unit 5520—(i) *Sycamore-Sutter Hydrologic Sub-area 552010*. Outlet(s) = Sacramento River (Lat 38.7604, Long -1121.6767) upstream to endpoint(s) in: Tisdale Bypass (39.0261, -1121.7456).

(ii) *Sutter Bypass Hydrologic Sub-area 552030*. Outlet(s) = Sacramento River (Lat 38.7851, Long -1121.6238) upstream to endpoint(s) in: Butte Creek (39.1990, -1121.9286); Butte Slough (39.1987, -1121.9285); Nelson Slough (38.8956, -1121.6180); Sacramento Slough (38.7844, -1121.6544); Sutter Bypass (39.1586, -1121.8747).

(iii) *Butte Basin Hydrologic Sub-area 552040*. Outlet(s) = Butte Creek (Lat 39.1990, Long -1121.9286); Sacramento River (39.4141, -1122.0087) upstream to endpoint(s) in: Butte Creek (39.7096, -1121.7504); Colusa Bypass (39.2276, -1121.9402); Little Chico Creek (39.7380, -1121.7490); Little Dry Creek (39.6781, -1121.6580).

(12) Butte Creek Hydrologic Unit 5521—(i) *Upper Dry Creek Hydrologic Sub-area 552110*. Outlet(s) = Little Dry Creek (Lat 39.6781, -1121.6580) upstream to endpoint(s) in: Little Dry Creek (39.7424, -1121.6213).

(ii) *Upper Butte Creek Hydrologic Sub-area 552120*. Outlet(s) = Little Chico Creek (Lat 39.7380, Long -1121.7490) upstream to endpoint(s) in: Little Chico Creek (39.8680, -1121.6660).

(iii) *Upper Little Chico Hydrologic Sub-area 552130*. Outlet(s) = Butte Creek (Lat 39.7096, Long -1121.7504) upstream to endpoint(s) in: Butte Creek (39.8215, -1121.6468); Little Butte Creek (39.8159, -1121.5819).

(13) Ball Mountain Hydrologic Unit 5523—*Thomes Creek Hydrologic Sub-area 552310*. Outlet(s) = Thomes Creek (39.8822, -1122.5527) upstream to endpoint(s) in: Doll Creek (39.8941, -1122.9209); Fish Creek (40.0176, -1122.8142); Snake Creek (39.9945, -1122.7788); Thomes Creek (39.9455, -1122.8491); Willow Creek (39.8941, -1122.9209).

(14) Shasta Bally Hydrologic Unit 5524—(i) *South Fork Hydrologic Sub-area 552433*. Outlet(s) = Cold Fork Cottonwood Creek (Lat 40.2060, Long -1122.6608); South Fork Cottonwood Creek (40.1578, -1122.5809) upstream to endpoint(s) in: Cold Fork Cottonwood

Creek (40.1881, -1122.8690); South Fork Cottonwood Creek (40.1232, -1122.8761).

(ii) *Platina Hydrologic Sub-area 552436*. Outlet(s) = Middle Fork Cottonwood Creek (Lat 40.3314, Long -1122.6663) upstream to endpoint(s) in: Beegum Creek (40.3149, -1122.9776); Middle Fork Cottonwood Creek (40.3512, -1122.9629).

(iii) *Spring Creek Hydrologic Sub-area 552440*. Outlet(s) = Sacramento River (Lat 40.5943, Long -1122.4343) upstream to endpoint(s) in: Middle Creek (40.5904, -1121.4825); Rock Creek (40.6155, -1122.4702); Sacramento River (40.6116, -1122.4462); Salt Creek (40.5830, -1122.4586); Unnamed Tributary (40.5734, -1122.4844).

(iv) *Kanaka Peak Hydrologic Sub-area 552462*. Outlet(s) = Clear Creek (Lat 40.5158, Long -1122.5256) upstream to endpoint(s) in: Clear Creek (40.5998, 122.5399).

(15) North Valley Floor Hydrologic Unit 5531—(i) *Lower Mokelumne Hydrologic Sub-area 553120*. Outlet(s) = Mokelumne River (Lat 38.2104, Long -1121.3804) upstream to endpoint(s) in: Mokelumne River (38.2263, -1121.0241); Murphy Creek (38.2491, -1121.0119).

(ii) *Lower Calaveras Hydrologic Sub-area 553130*. Outlet(s) = Calaveras River (Lat 37.9836, Long -1121.3110); Mormon Slough (37.9456, -121.2907) upstream to endpoint(s) in: Calaveras River (38.1025, -1120.8503); Mormon Slough (38.0532, -1121.0102); Stockton Diverting Canal (37.9594, -1121.2024).

(16) Upper Calaveras Hydrologic Unit 5533—*New Hogan Reservoir Hydrologic Sub-area 553310*. Outlet(s) = Calaveras River (Lat 38.1025, Long -1120.8503) upstream to endpoint(s) in: Calaveras River (38.1502, -1120.8143).

(17) Stanislaus River Hydrologic Unit 5534—*Table Mountain Hydrologic Sub-area 553410*. Outlet(s) = Stanislaus River (Lat 37.8355, Long -1120.6513) upstream to endpoint(s) in: Stanislaus River (37.8631, -1120.6298).

(18) San Joaquin Valley Floor Hydrologic Unit 5535—(i) *Riverbank Hydrologic Sub-area 553530*. Outlet(s) = Stanislaus River (Lat 37.6648, Long -1121.2414) upstream to endpoint(s) in: Stanislaus River (37.8355, -1120.6513).

(ii) *Turlock Hydrologic Sub-area 553550*. Outlet(s) = Tuolumne River (Lat 37.6059, Long -1121.1739) upstream to

endpoint(s) in: Tuolumne River (37.6401, -1120.6526).

(iii) *Montpelier Hydrologic Sub-area 553560*. Outlet(s) = Tuolumne River (Lat 37.6401, Long -1120.6526) upstream to endpoint(s) in: Tuolumne River (37.6721, -1120.4445).

(iv) *El Nido-Stevinson Hydrologic Sub-area 553570*. Outlet(s) = Merced River (Lat 37.3505, Long -1120.9619) upstream to endpoint(s) in: Merced River (37.3620, -1120.8507).

(v) *Merced Hydrologic Sub-area 553580*. Outlet(s) = Merced River (Lat 37.3620, Long -1120.8507) upstream to endpoint(s) in: Merced River (37.4982, -1120.4612).

(vi) *Fahr Creek Hydrologic Sub-area 553590*. Outlet(s) = Merced River (Lat 37.4982, Long -1120.4612) upstream to endpoint(s) in: Merced River (37.5081, -1120.3581).

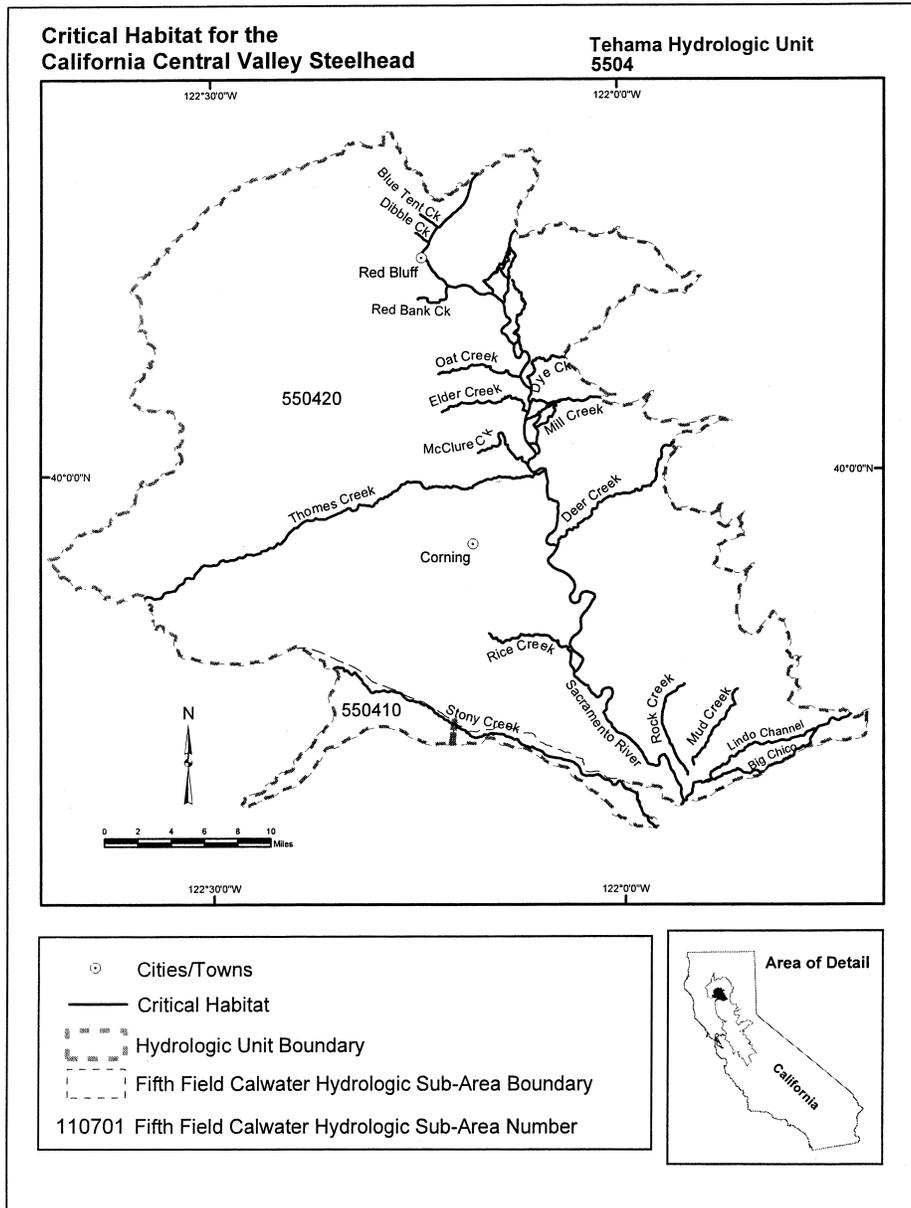
(19) Delta-Mendota Canal Hydrologic Unit 5541—(i) *Patterson Hydrologic Sub-area 554110*. Outlet(s) = San Joaquin River (Lat 37.6763, Long -1121.2653) upstream to endpoint(s) in: San Joaquin River (37.3491, -1120.9759).

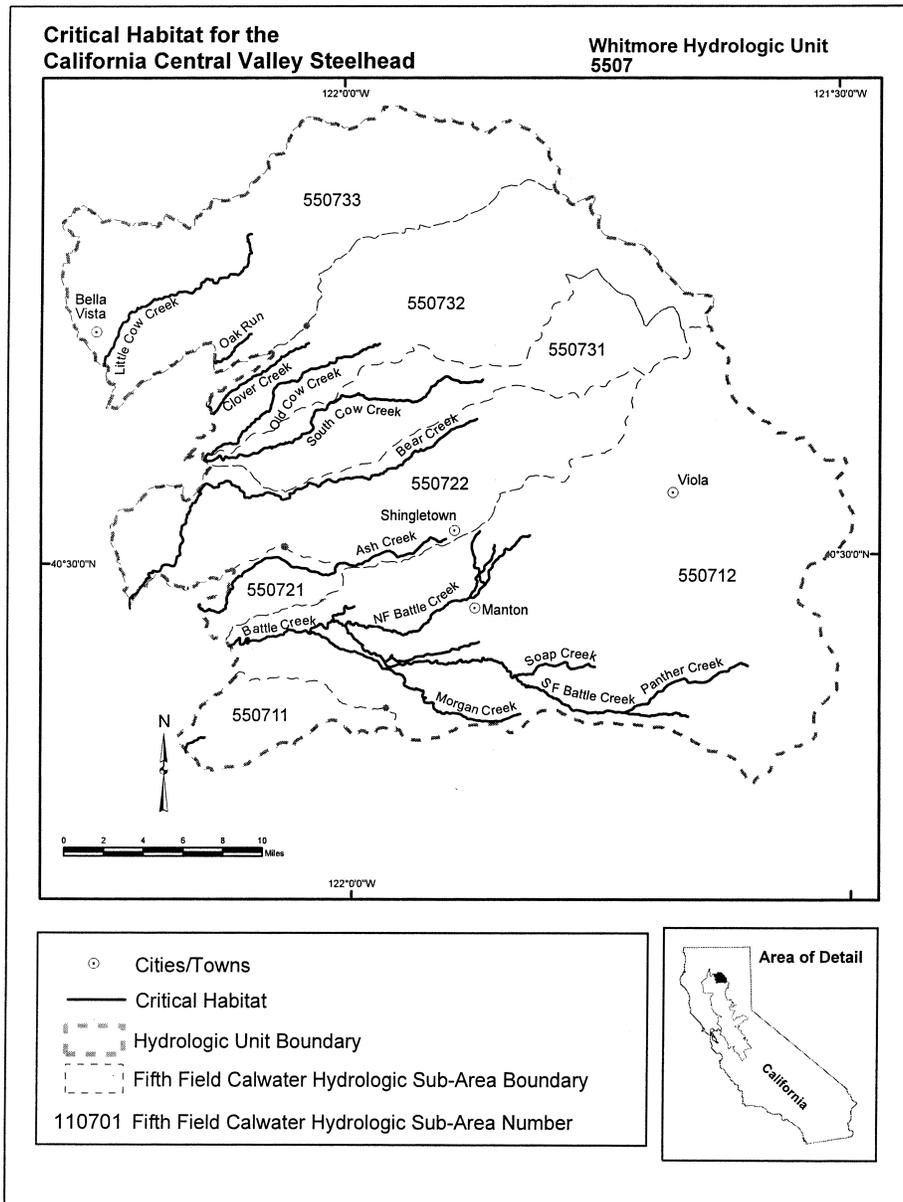
(ii) *Los Banos Hydrologic Sub-area 554120*. Outlet(s) = Merced River (Lat 37.3490, Long -1120.9756) upstream to endpoint(s) in: Merced River (37.3505, -1120.9619).

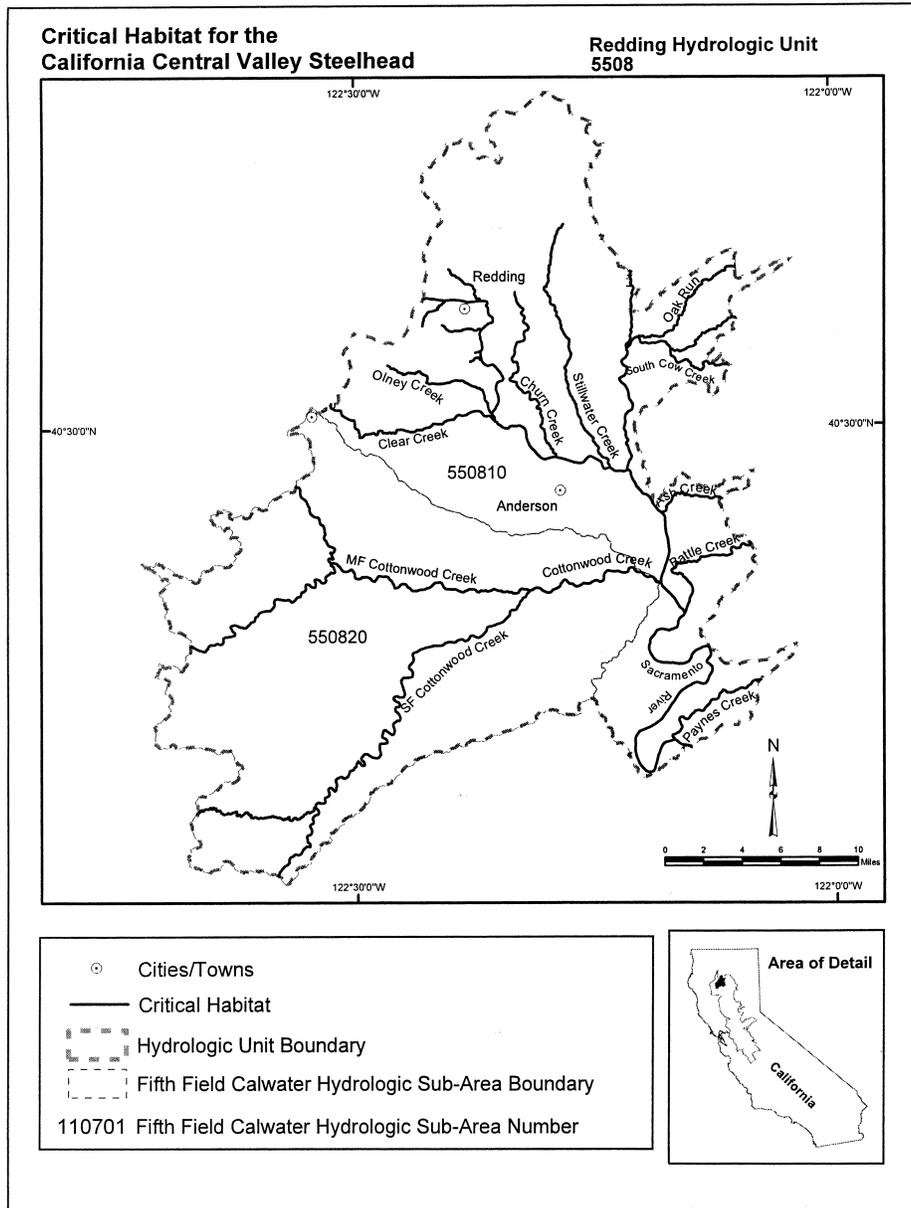
(20) North Diablo Range Hydrologic Unit 5543—*North Diablo Range Hydrologic Sub-area 554300*. Outlet(s) = San Joaquin River (Lat 38.0247, Long -1121.8218) upstream to endpoint(s) in: San Joaquin River (38.0246, -1121.7471).

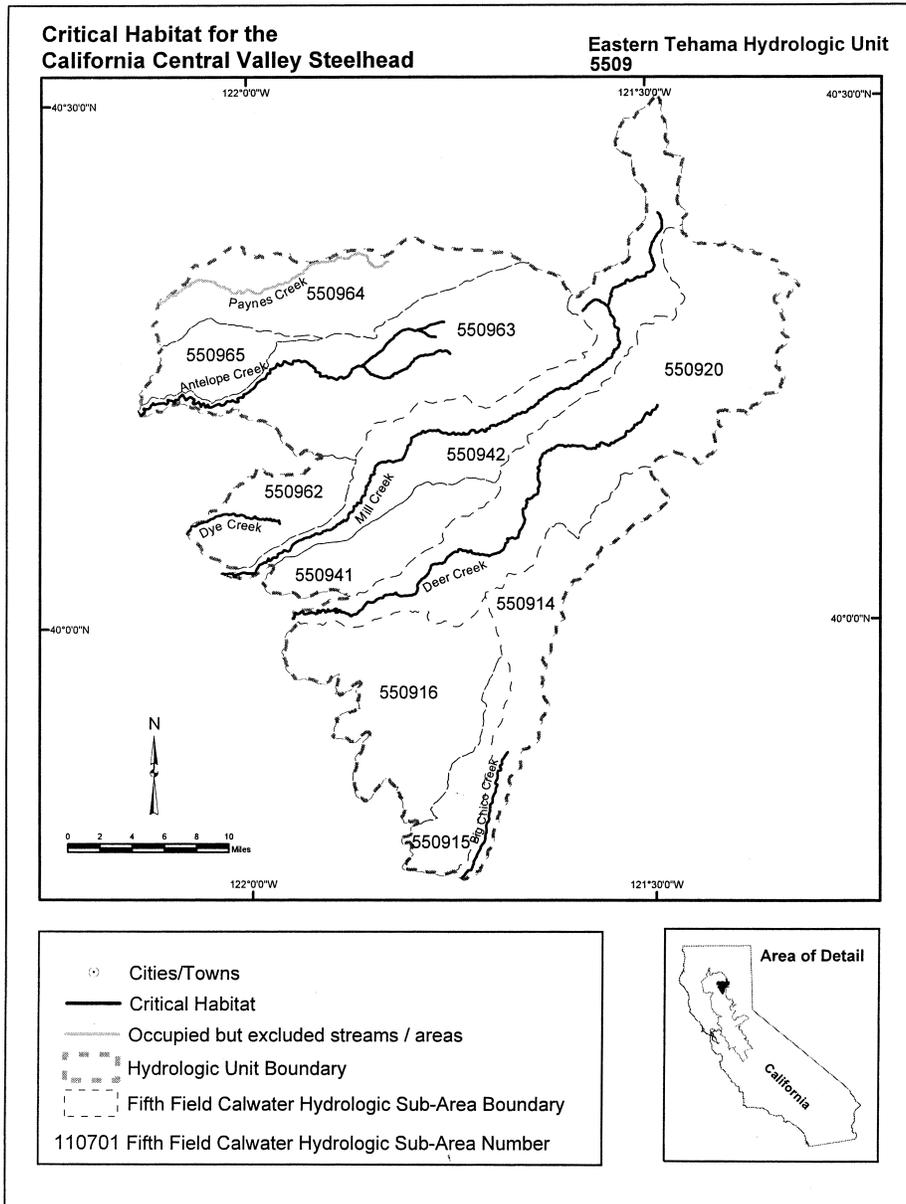
(21) San Joaquin Delta Hydrologic Unit 5544—*San Joaquin Delta Hydrologic Sub-area 554400*. Outlet(s) = San Joaquin River (Lat 38.0246, Long -1121.7471) upstream to endpoint(s) in: Big Break (38.0160, -1121.6849); Bishop Cut (38.0870, -1121.4158); Calaveras River (37.9836, -1121.3110); Cosumnes River (38.2538, -1121.4074); Disappointment Slough (38.0439, -1121.4201); Dutch Slough (38.0088, -1121.6281); Empire Cut (37.9714, -1121.4762); False River (38.0479, -1121.6232); Frank's Tract (38.0220, -1121.5997); Frank's Tract (38.0300, -1121.5830); Holland Cut (37.9939, -1121.5757); Honker Cut (38.0680, -1121.4589); Kellogg Creek (37.9158, -1121.6051); Latham Slough (37.9716, -1121.5122); Middle River (37.8216, -1121.3747); Mokelumne River (38.2104, -1121.3804); Mormon Slough (37.9456, -121.2907); Mosher Creek (38.0327, -1121.3650); North Mokelumne River (38.2274, -1121.4918); Old River (37.8086, -1121.3274); Orwood Slough (37.9409, -1121.5332); Paradise Cut (37.7605, -1121.3085); Pixley Slough (38.0443, -1121.3868); Potato Slough (38.0440, -1121.4997); Rock Slough (37.9754, -1121.5795); Sand Mound Slough (38.0220, -1121.5997); Stockton Deep Water Channel (37.9957, -1121.4201); Turner Cut (37.9972, -1121.4434); Unnamed Tributary (38.1165, -1121.4976); Victoria Canal (37.8891, -1121.4895); White Slough (38.0818, -1121.4156); Woodward Canal (37.9037, -1121.4973).

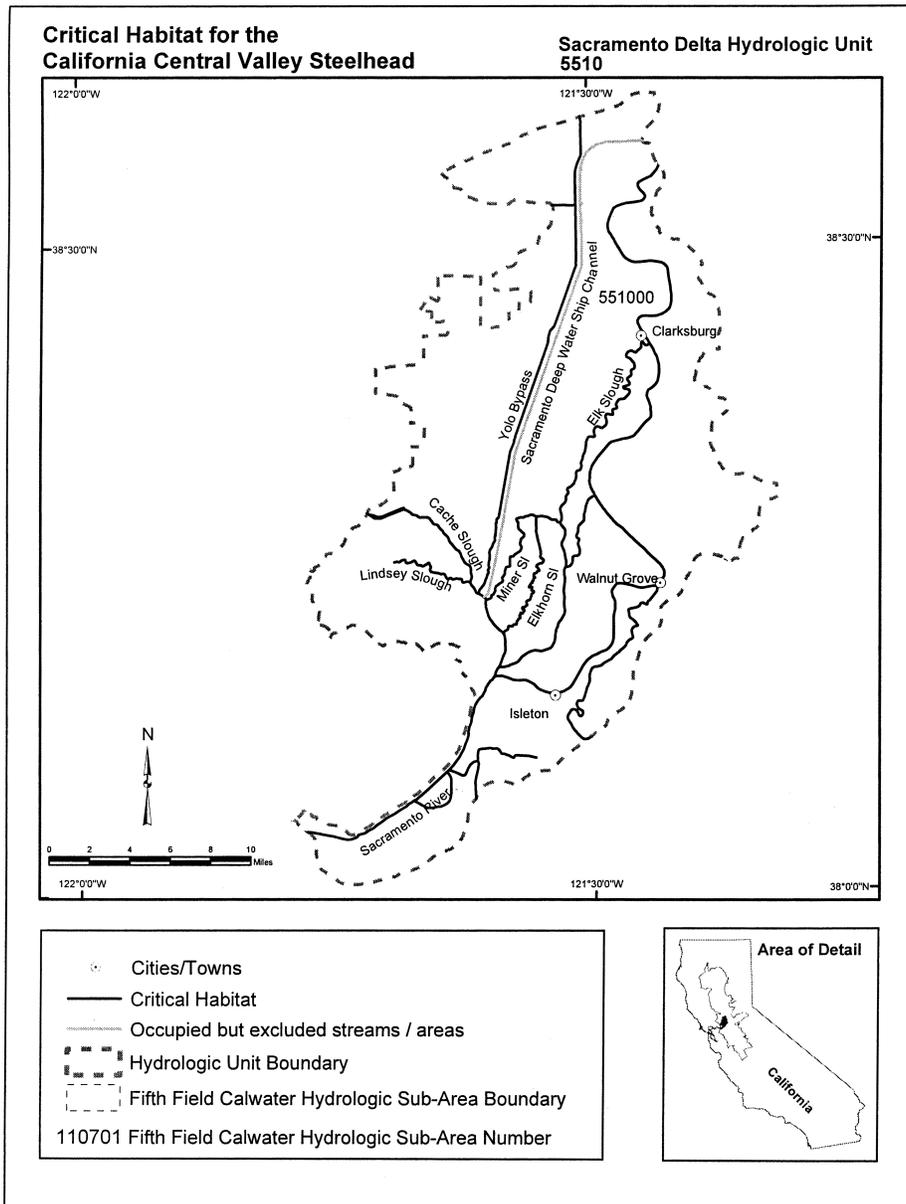
(22) Maps of critical habitat for the Central Valley Steelhead ESU follow:

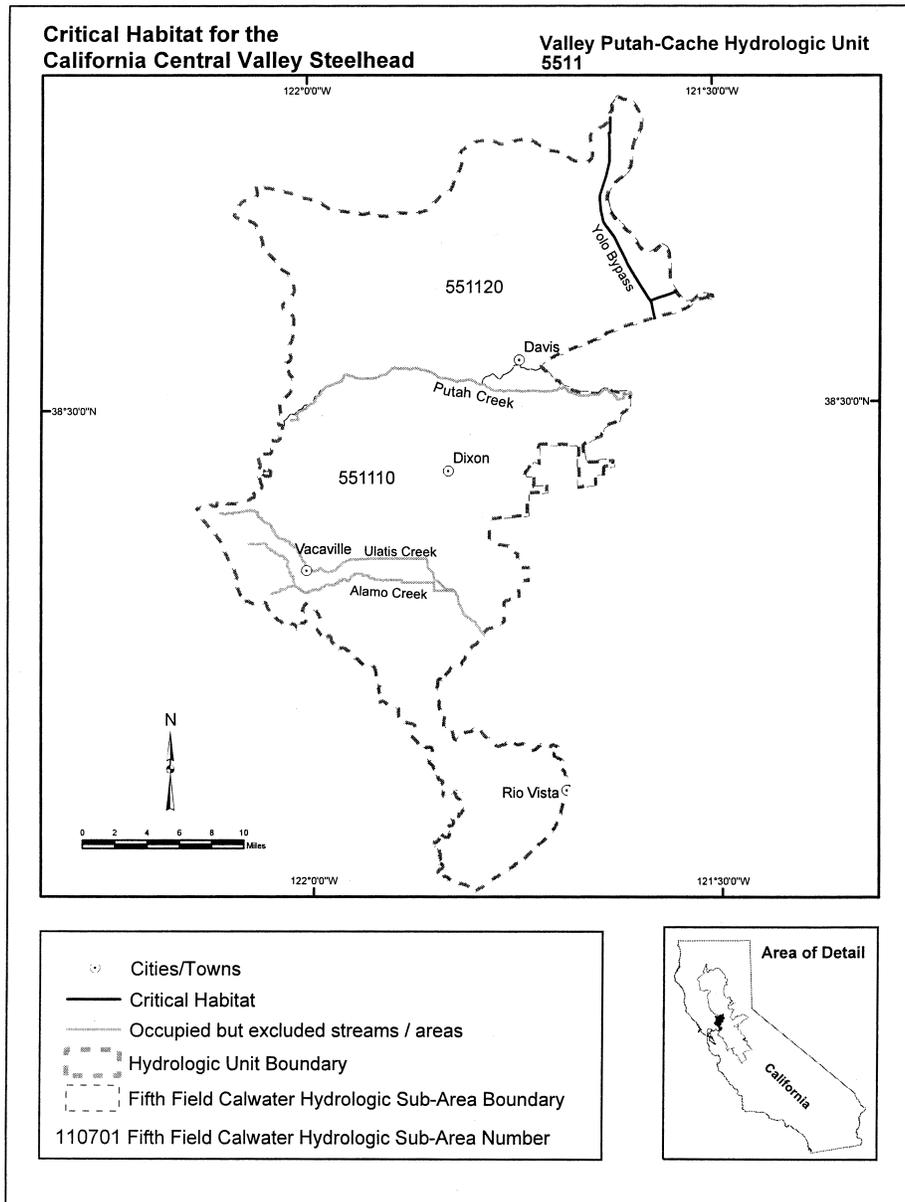


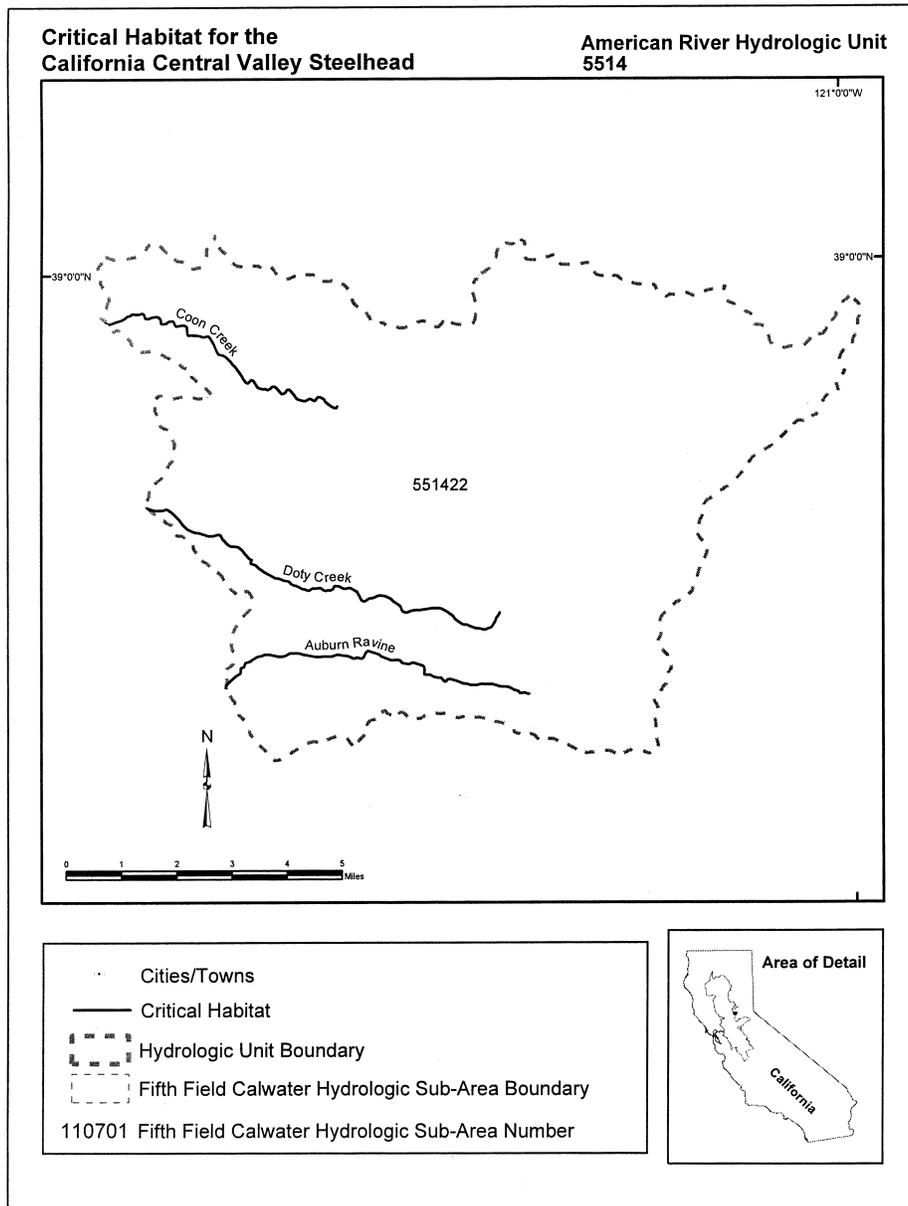


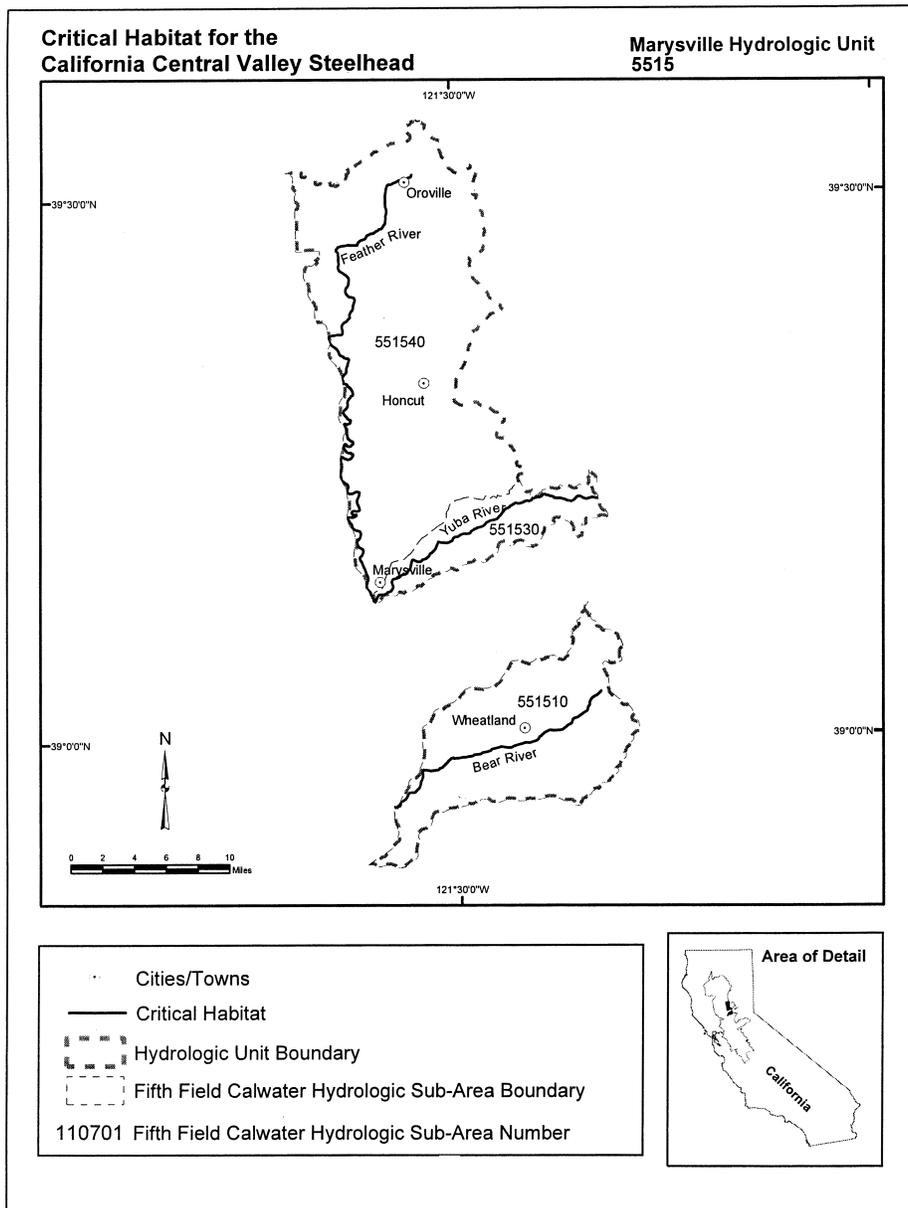


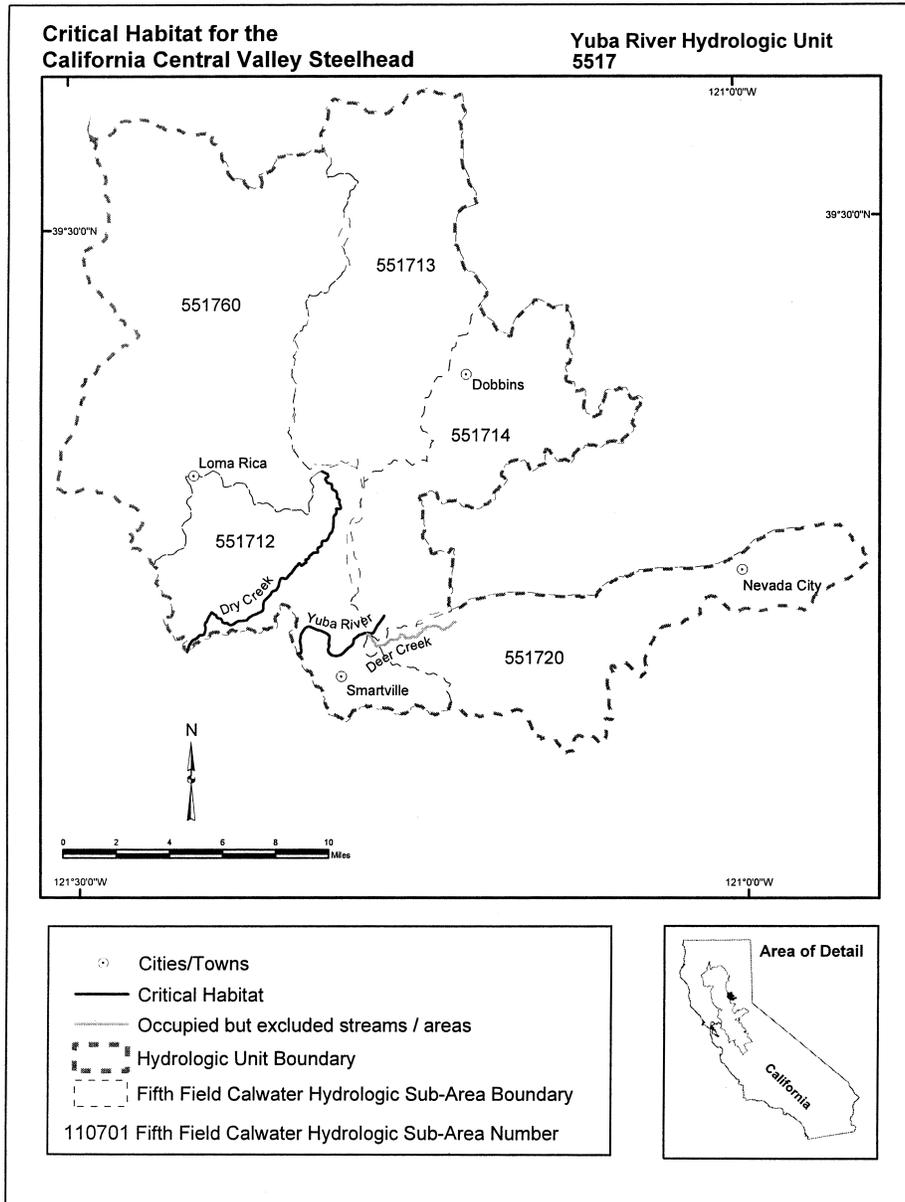


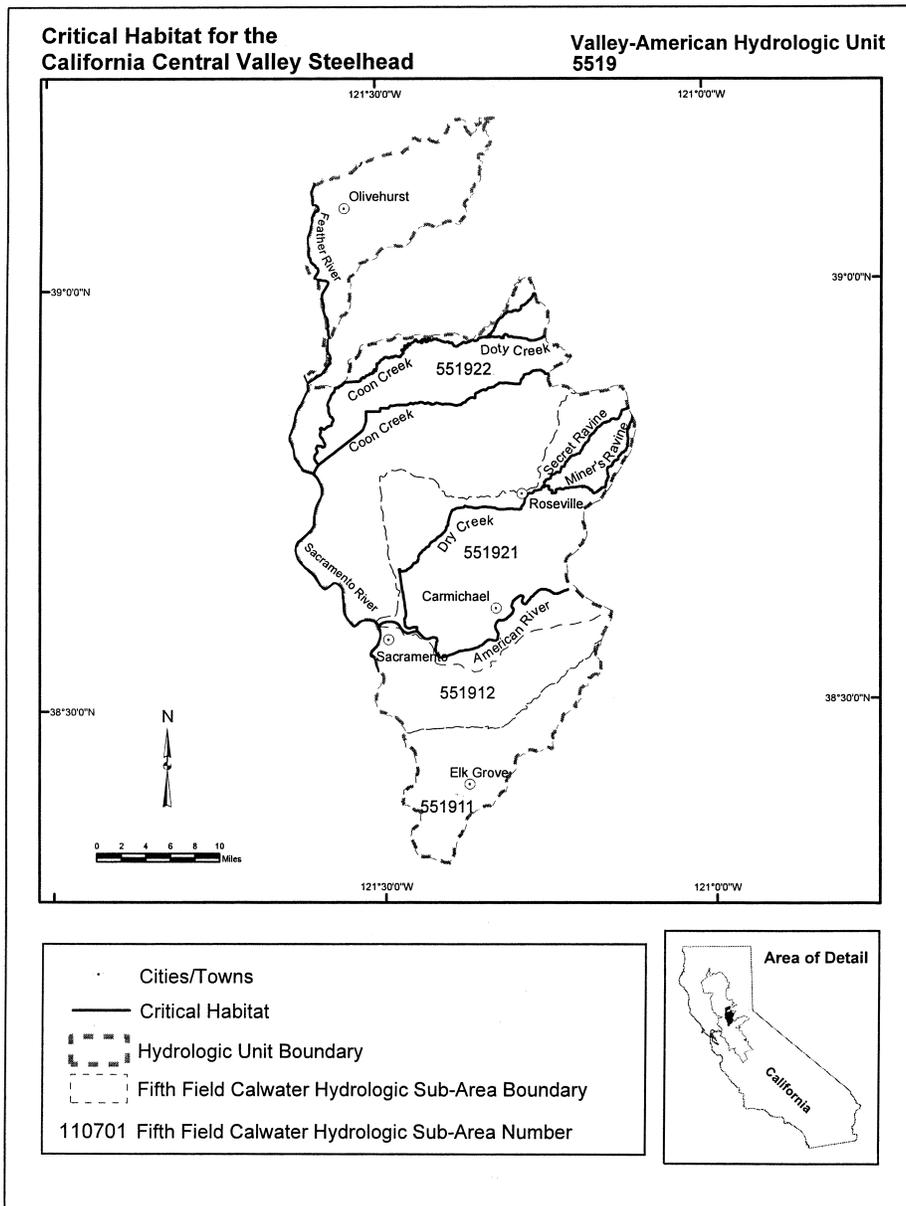


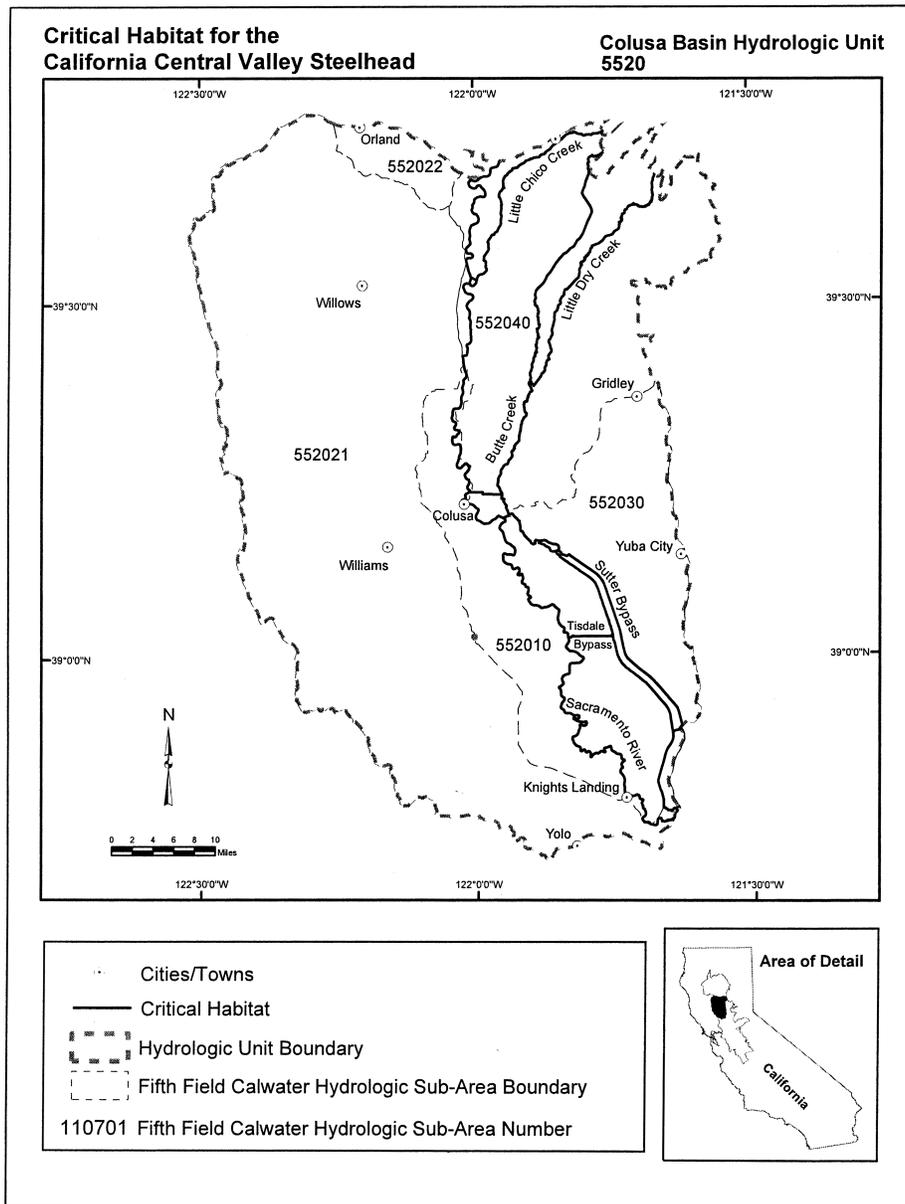


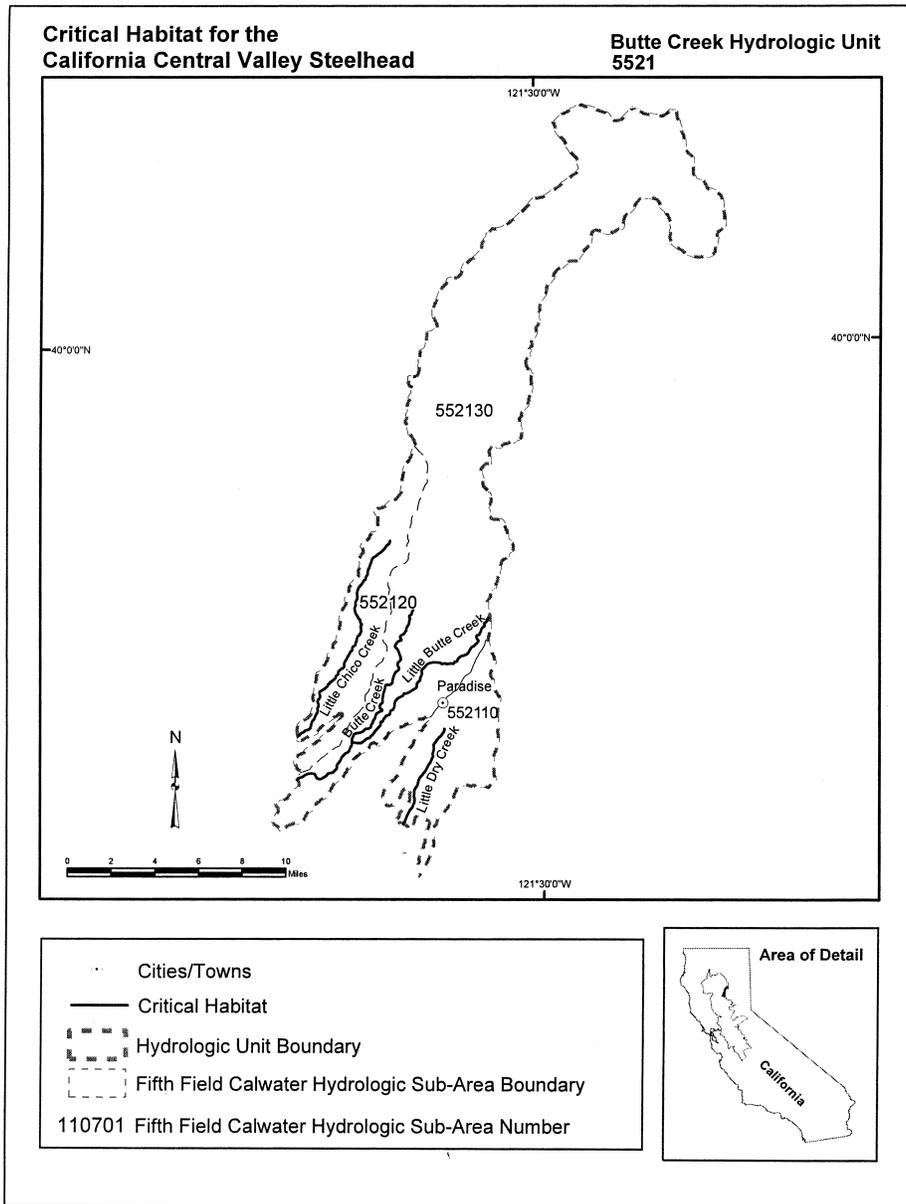


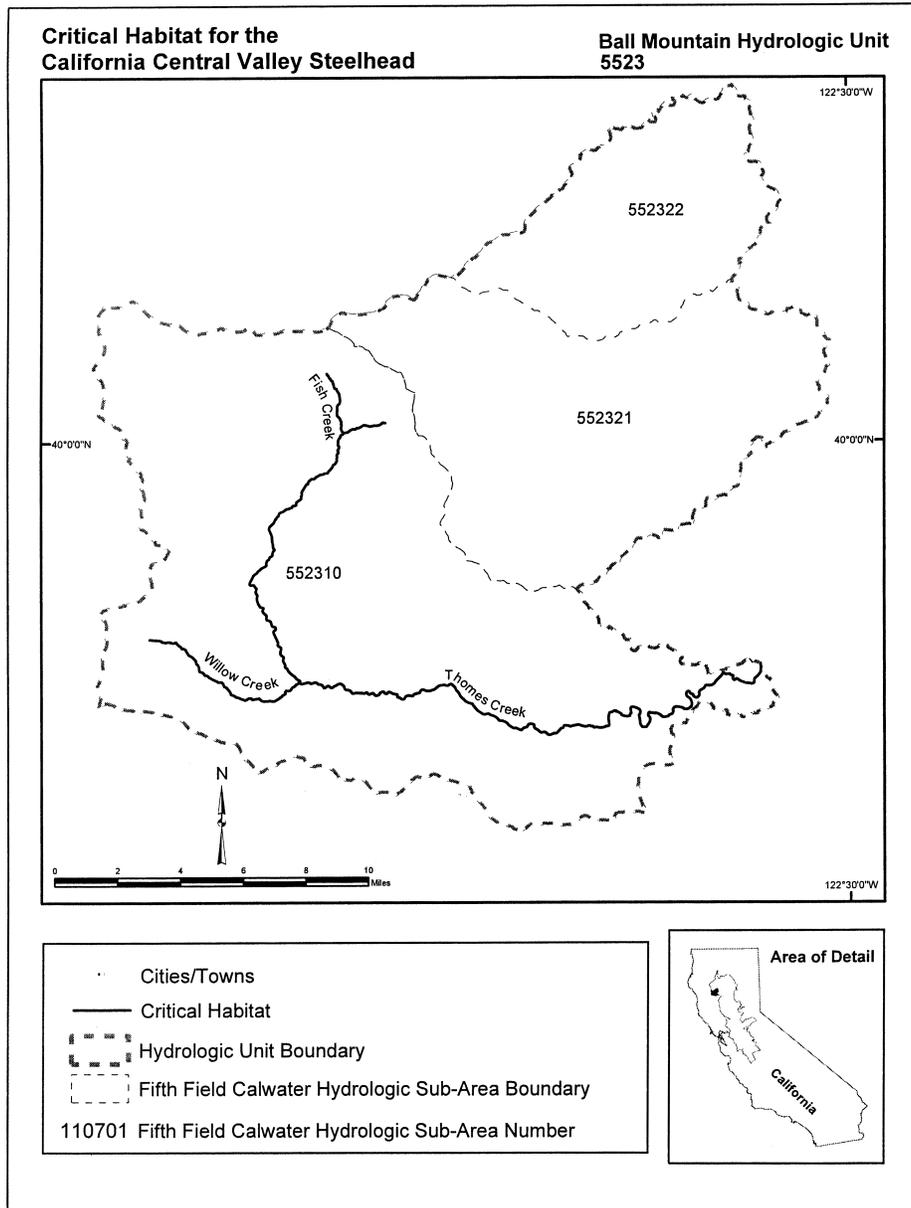


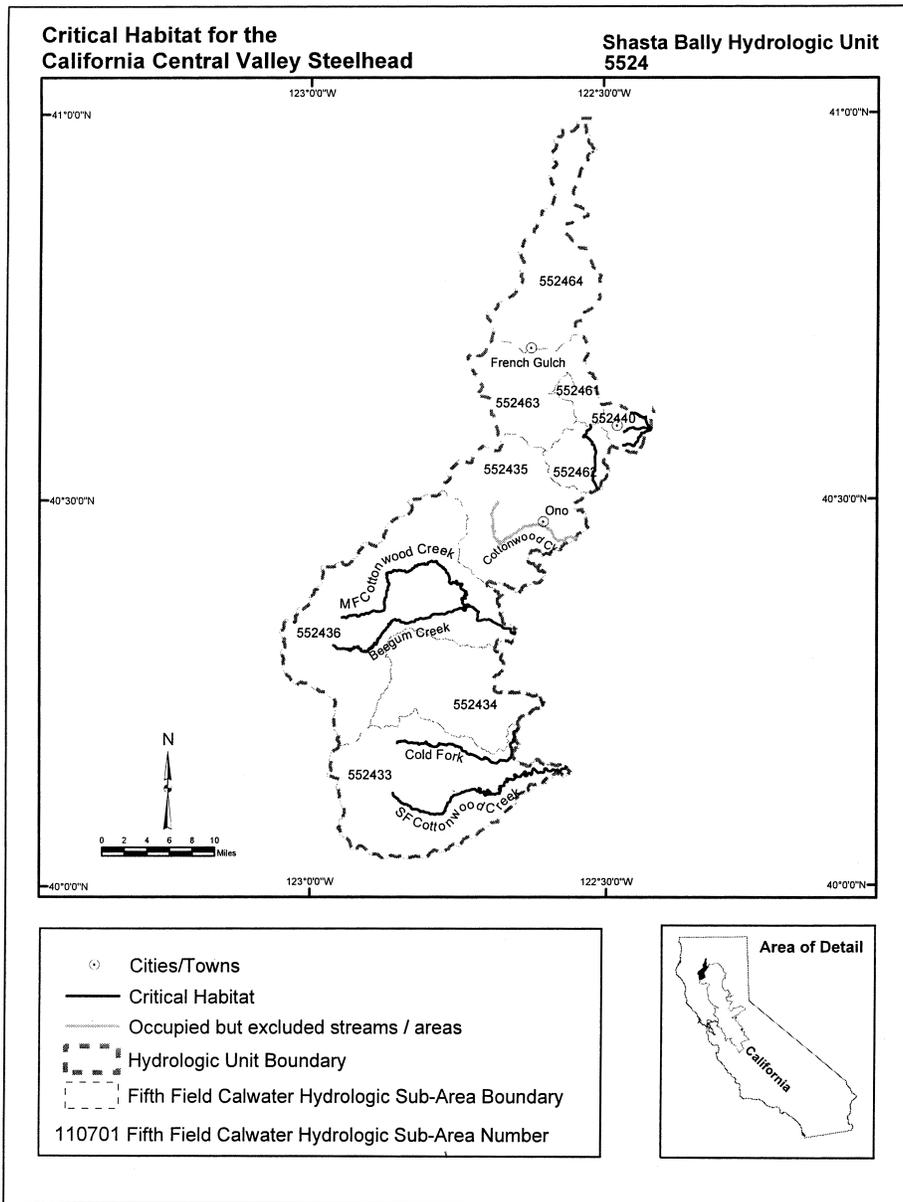


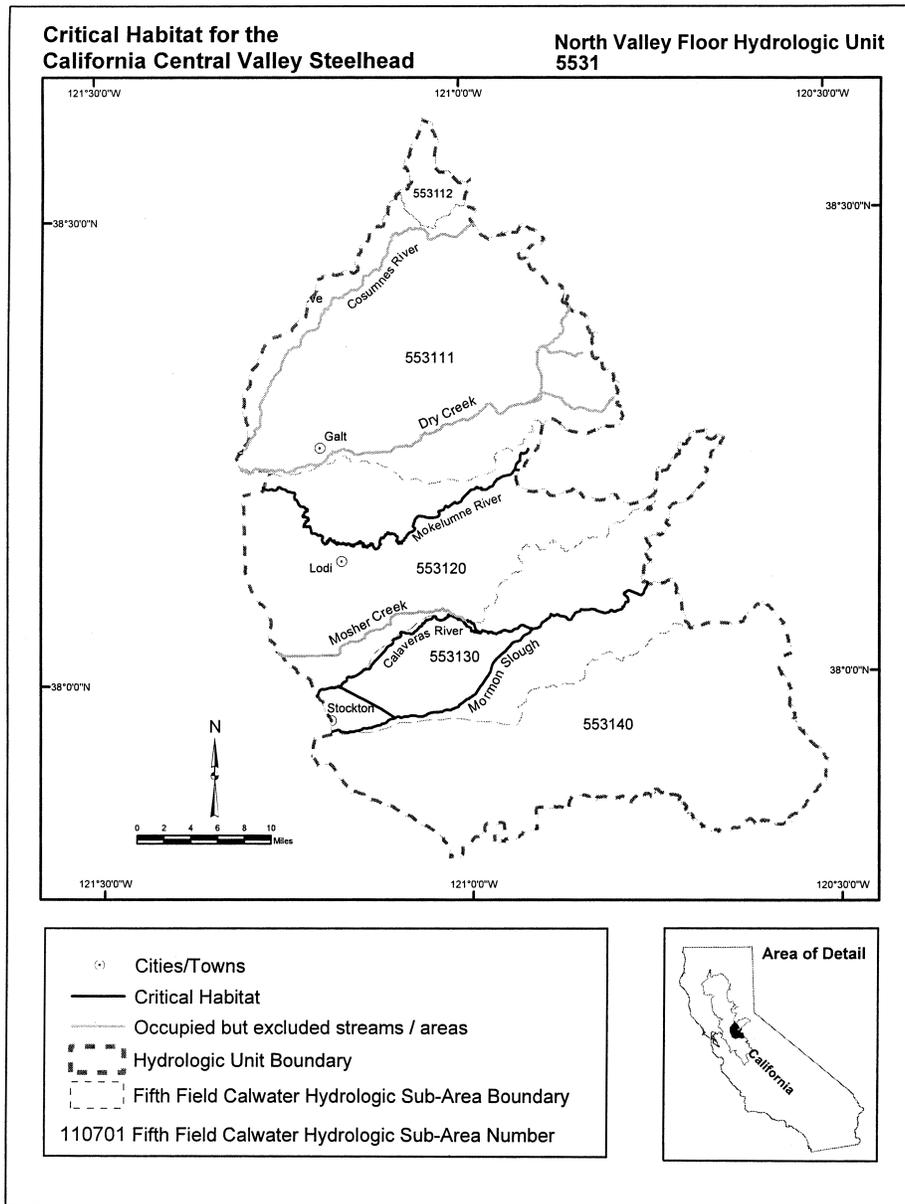


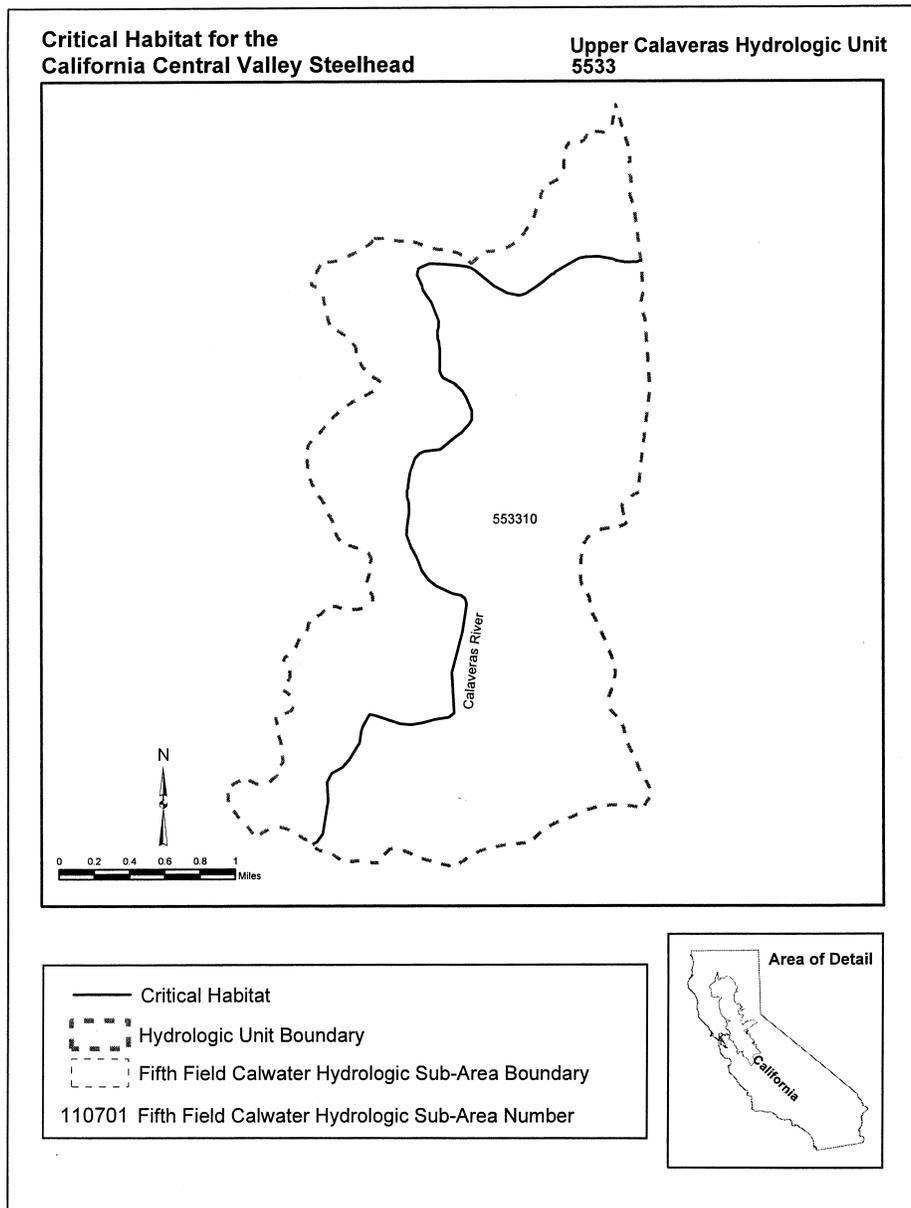


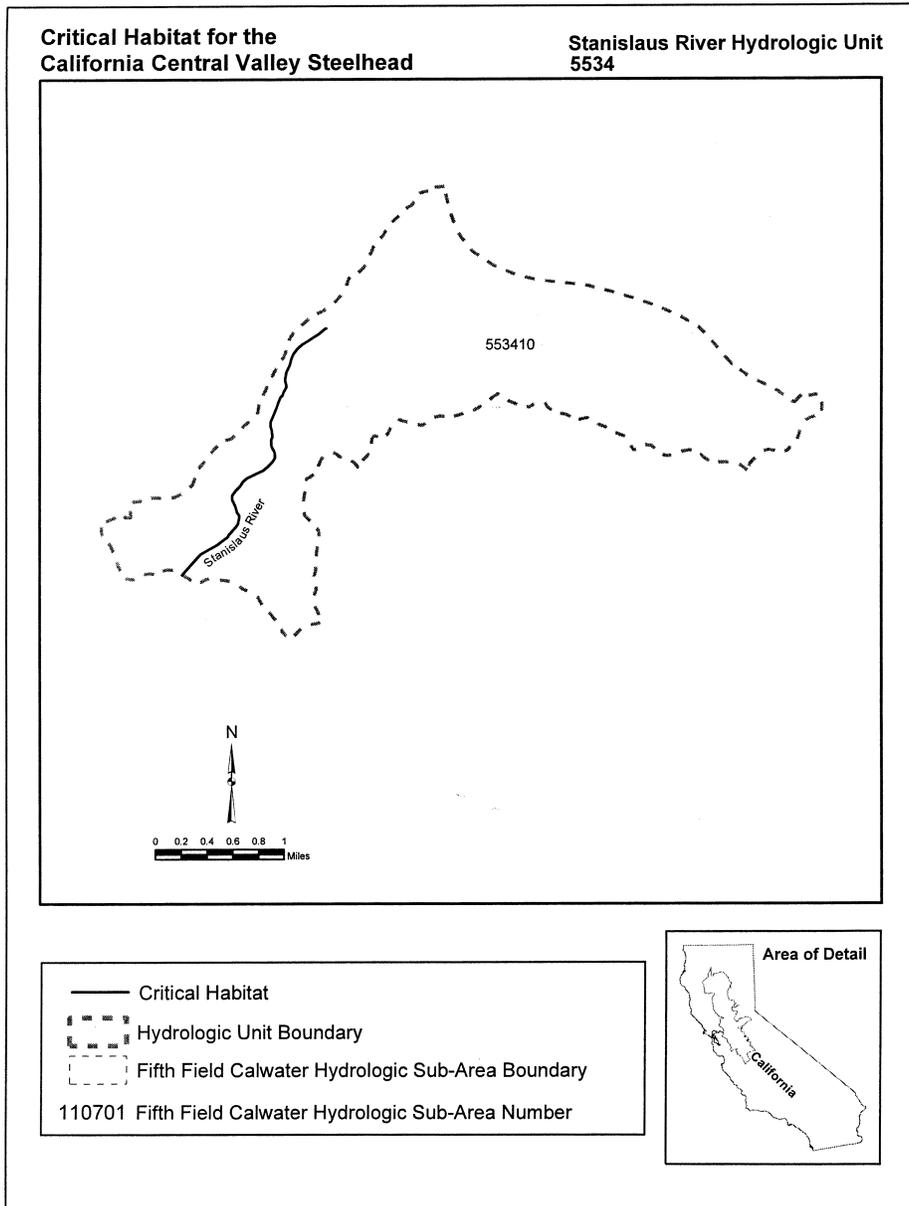


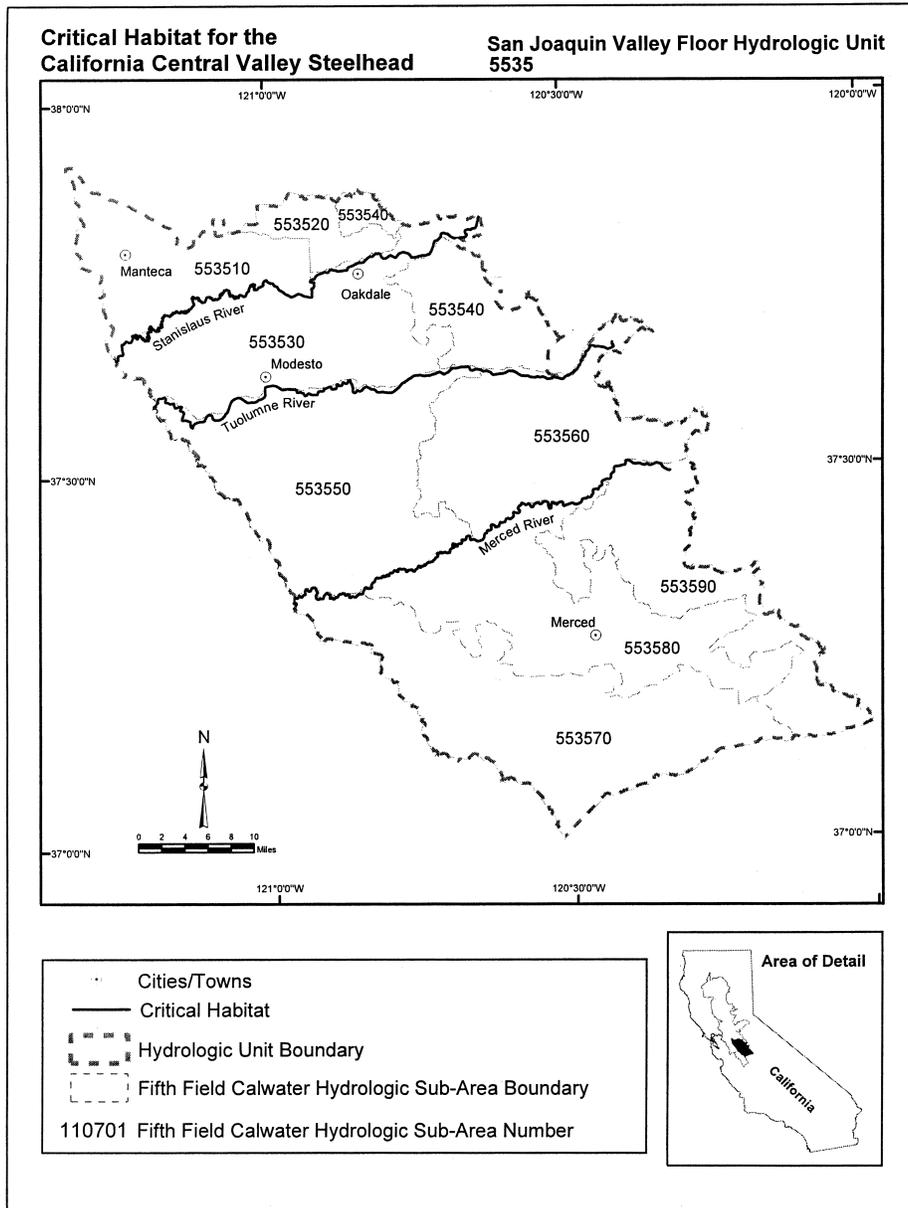


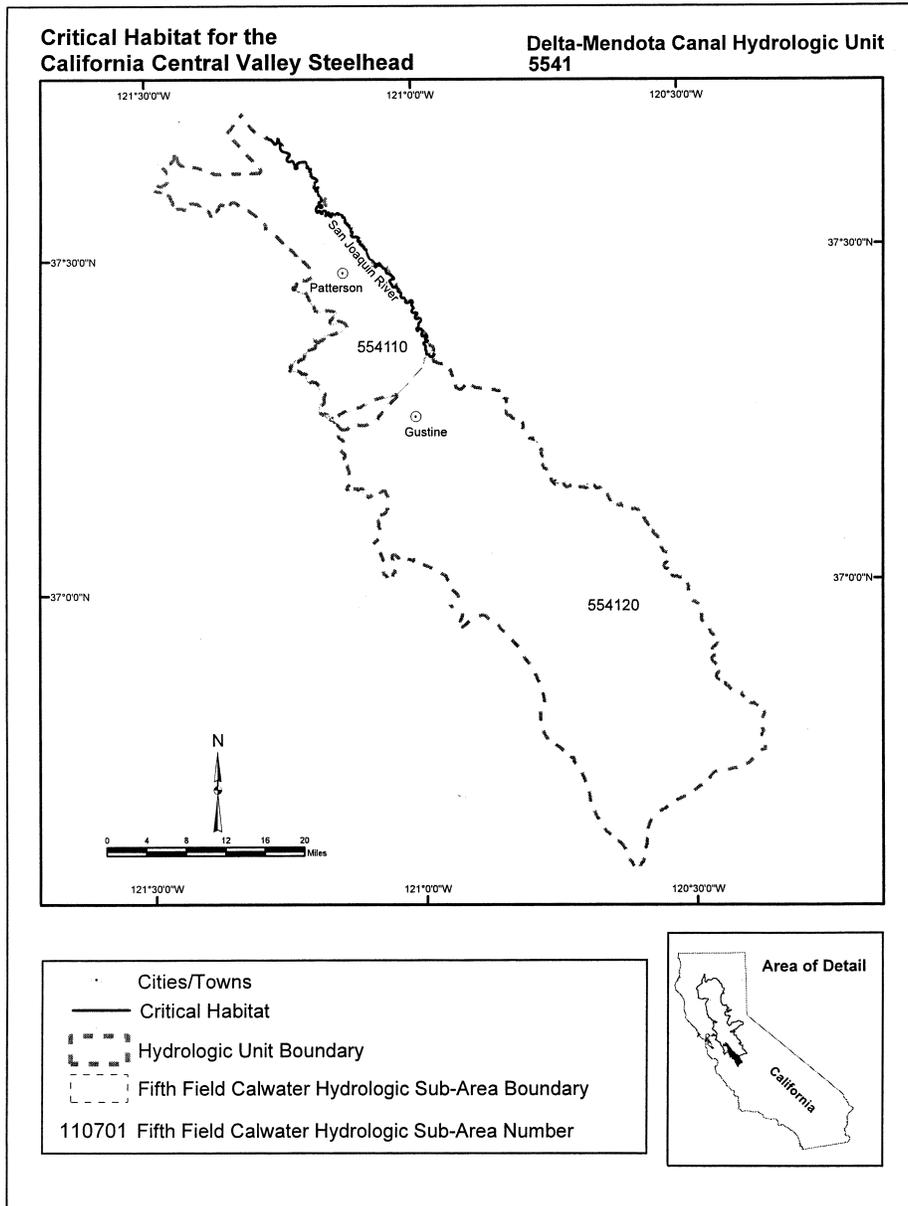


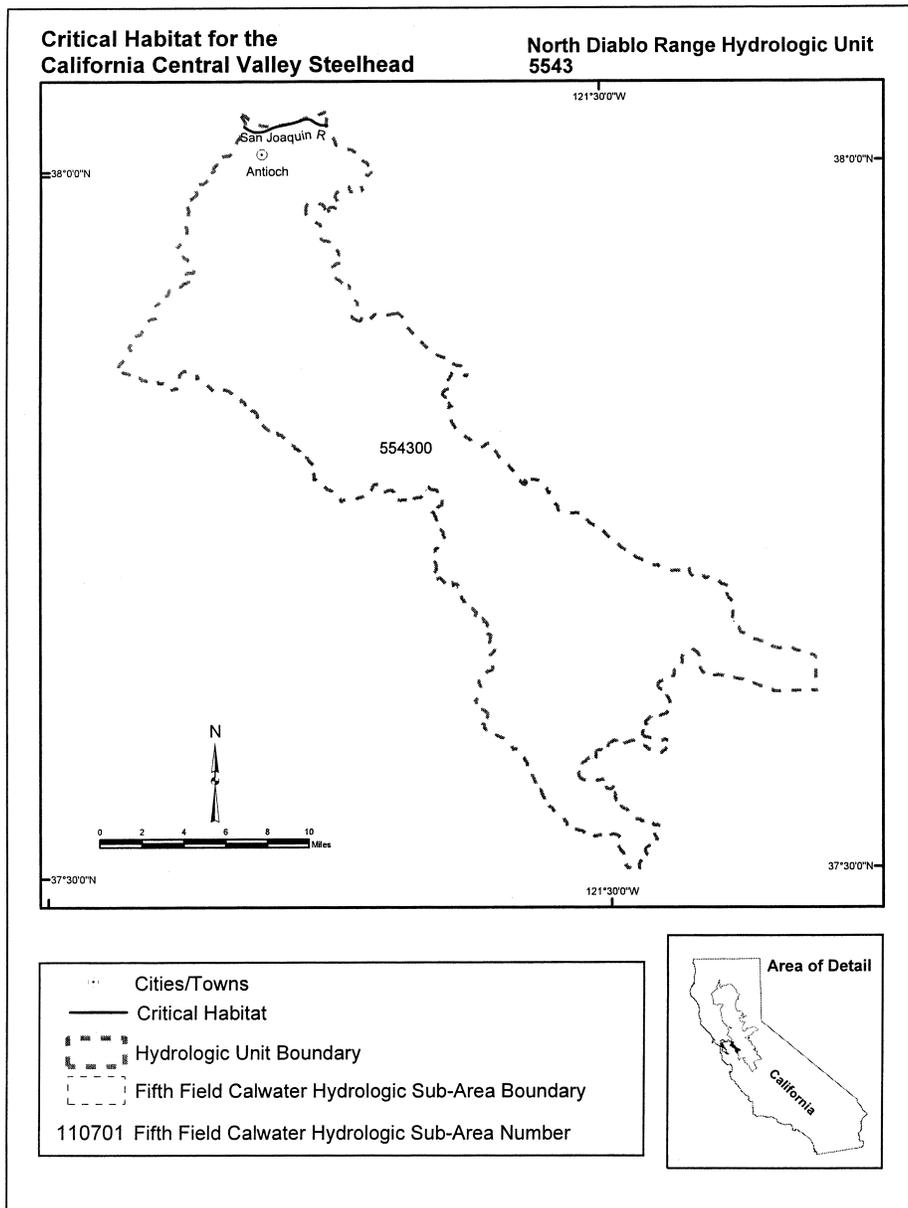


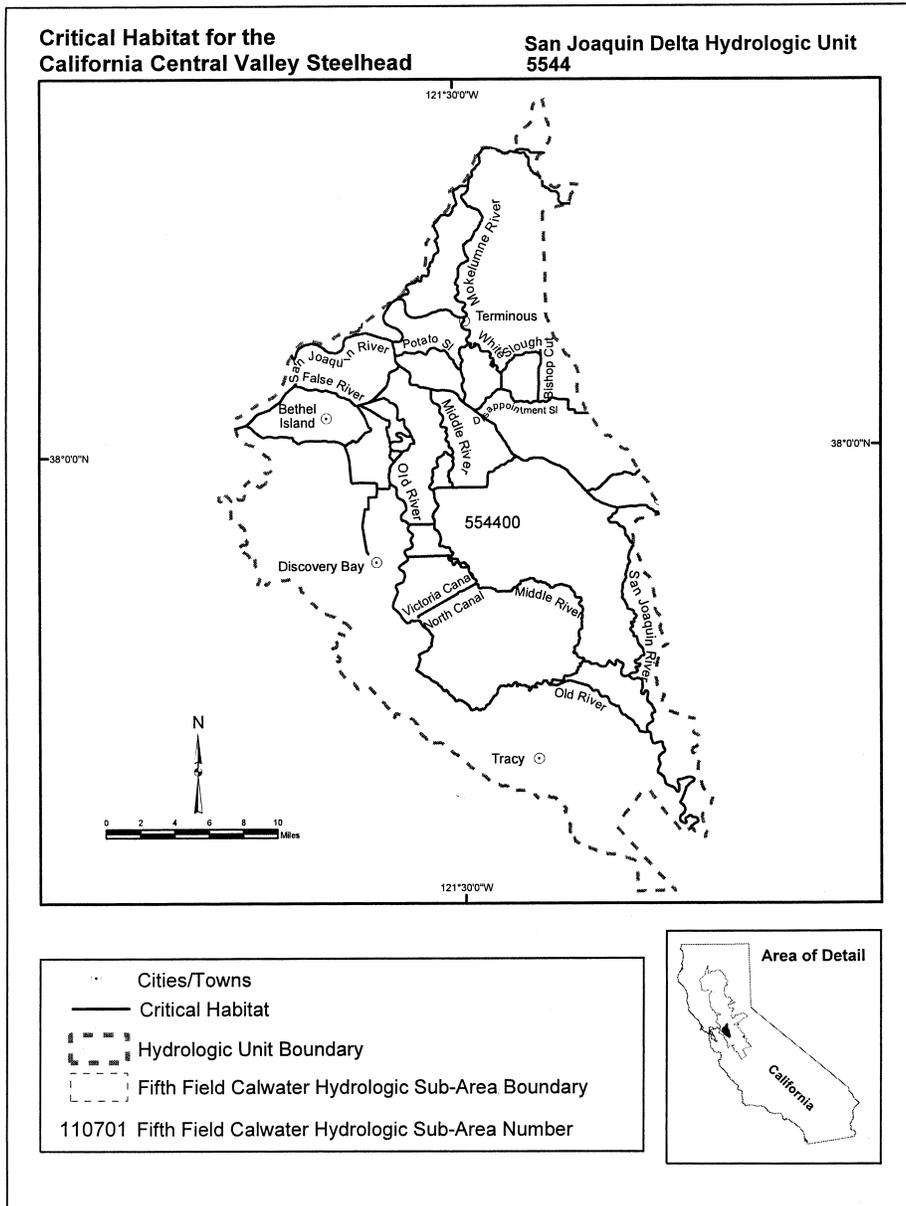












[70 FR 52536, Sept. 2, 2005]

§ 226.212 Critical habitat for 13 Evolutionarily Significant Units (ESUs) of salmon and steelhead (*Oncorhynchus* spp.) in Washington, Oregon and Idaho.

Critical habitat is designated in the following states and counties for the following ESUs as described in paragraph (a) of this section, and as further described in paragraphs (b) through (g) of this section. The textual descriptions of critical habitat for each ESU

are included in paragraphs (i) through (u) of this section, and these descriptions are the definitive source for determining the critical habitat boundaries. General location maps are provided at the end of each ESU description (paragraphs (i) through (u) of this section) and are provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(a) Critical habitat is designated for the following ESUs in the following states and counties:

ESU	State—Counties
(1) Puget Sound chinook salmon	WA—Clallam, Jefferson, King, Mason, Pierce, Skagit, Snohomish, Thurston, and Whatcom.
(2) Lower Columbia River chinook salmon	(i) OR—Clackamas, Clatsop, Columbia, Hood River, and Multnomah. (ii) WA—Clark, Cowlitz, Klickitat, Lewis, Pacific, Skamania, and Wahkiakum.
(3) Upper Willamette River chinook salmon	(i) OR—Benton, Clackamas, Clatsop, Columbia, Lane, Linn, Marion, Multnomah, Polk, and Yamhill. (ii) WA—Clark, Cowlitz, Pacific, and Wahkiakum.
(4) Upper Columbia River spring-run chinook salmon	(i) OR—Clatsop, Columbia, Gilliam, Hood River, Morrow, Multnomah, Sherman, Umatilla, and Wasco. (ii) WA—Benton, Chelan, Clark, Cowlitz, Douglas, Franklin, Grant, Kittitas, Klickitat, Okanogan, Pacific, Skamania, Wahkiakum, Walla Walla, and Yakima.
(5) Hood Canal summer-run chum salmon	WA—Clallam, Jefferson, Kitsap, and Mason.
(6) Columbia River chum salmon	(i) OR—Clatsop, Columbia, Hood River, and Multnomah. (ii) WA—Clark, Cowlitz, Klickitat, Lewis, Pacific, Skamania, and Wahkiakum.
(7) Ozette Lake sockeye salmon	WA—Clallam.
(8) Upper Columbia River steelhead	(i) OR—Clatsop, Columbia, Gilliam, Hood River, Morrow, Multnomah, Umatilla, and Wasco. (ii) WA—Adams, Benton, Chelan, Clark, Cowlitz, Douglas, Franklin, Grant, Kittitas, Klickitat, Okanogan, Pacific, Skamania, Wahkiakum, Walla Walla, and Yakima.
(9) Snake River Basin steelhead	(i) ID—Adams, Blaine, Clearwater, Custer, Idaho, Latah, Lemhi, Lewis, Nez Perce, and Valley. (ii) OR—Clatsop, Columbia, Gilliam, Hood River, Morrow, Multnomah, Sherman, Umatilla, Union, Wallowa, and Wasco. (iii) WA—Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Pacific, Skamania, Walla Walla, Wahkiakum, and Whitman.
(10) Middle Columbia River steelhead	(i) OR—Clatsop, Columbia, Crook, Gilliam, Grant, Hood River, Jefferson, Morrow, Multnomah, Sherman, Umatilla, Union, Wallowa, Wasco, and Wheeler. (ii) WA—Benton, Clark, Cowlitz, Columbia, Franklin, King, Kittitas, Klickitat, Lewis, Pacific, Pierce, Skamania, Wahkiakum, Walla Walla, and Yakima.
(11) Lower Columbia River steelhead	(i) OR—Clackamas, Clatsop, Columbia, Hood River, Marion, and Multnomah. (ii) WA—Clark, Cowlitz, Klickitat, Lewis, Pacific, Skamania, and Wahkiakum.
(12) Upper Willamette River steelhead	(i) OR—Benton, Clackamas, Clatsop, Columbia, Linn, Marion, Multnomah, Polk, Tillamook, Washington, and Yamhill. (ii) WA—Clark, Cowlitz, Pacific, and Wahkiakum.
(13) Oregon Coast coho salmon	OR—Benton, Clatsop, Columbia, Coos, Curry, Douglas, Lane, Oregon Lincoln, Polk, Tillamook, Washington, and Yamhill.

(b) *Critical habitat boundaries.* Critical habitat includes the stream channels within the designated stream reaches, and includes a lateral extent as defined

by the ordinary high-water line (33 CFR 319.11). In areas where ordinary high-water line has not been defined, the lateral extent will be defined by

the bankfull elevation. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain and is reached at a discharge which generally has a recurrence interval of 1 to 2 years on the annual flood series. Critical habitat in lake areas is defined by the perimeter of the water body as displayed on standard 1:24,000 scale topographic maps or the elevation of ordinary high water, whichever is greater. In estuarine and nearshore marine areas critical habitat includes areas contiguous with the shoreline from the line of extreme high water out to a depth no greater than 30 meters relative to mean lower low water.

(c) *Primary constituent elements.* Within these areas, the primary constituent elements essential for the conservation of these ESUs are those sites and habitat components that support one or more life stages, including:

(1) Freshwater spawning sites with water quantity and quality conditions and substrate supporting spawning, incubation and larval development;

(2) Freshwater rearing sites with:

(i) Water quantity and floodplain connectivity to form and maintain physical habitat conditions and support juvenile growth and mobility;

(ii) Water quality and forage supporting juvenile development; and

(iii) Natural cover such as shade, submerged and overhanging large wood, log jams and beaver dams, aquatic vegetation, large rocks and boulders, side channels, and undercut banks.

(3) Freshwater migration corridors free of obstruction and excessive predation with water quantity and quality conditions and natural cover such as submerged and overhanging large wood, aquatic vegetation, large rocks and boulders, side channels, and undercut banks supporting juvenile and adult mobility and survival;

(4) Estuarine areas free of obstruction and excessive predation with:

(i) Water quality, water quantity, and salinity conditions supporting juvenile and adult physiological transitions between fresh- and saltwater;

(ii) Natural cover such as submerged and overhanging large wood, aquatic vegetation, large rocks and boulders, side channels; and

(iii) Juvenile and adult forage, including aquatic invertebrates and fishes, supporting growth and maturation.

(5) Nearshore marine areas free of obstruction and excessive predation with:

(i) Water quality and quantity conditions and forage, including aquatic invertebrates and fishes, supporting growth and maturation; and

(ii) Natural cover such as submerged and overhanging large wood, aquatic vegetation, large rocks and boulders, and side channels.

(6) Offshore marine areas with water quality conditions and forage, including aquatic invertebrates and fishes, supporting growth and maturation.

(d) *Exclusion of Indian lands.* Critical habitat does not include habitat areas on Indian lands. The Indian lands specifically excluded from critical habitat are those defined in the Secretarial Order, including:

(1) Lands held in trust by the United States for the benefit of any Indian tribe;

(2) Land held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation;

(3) Fee lands, either within or outside the reservation boundaries, owned by the tribal government; and

(4) Fee lands within the reservation boundaries owned by individual Indians.

(e) *Land owned or controlled by the Department of Defense.* Critical habitat does not include any areas subject to an approved Integrated Natural Resource Management Plan or associated with Department of Defense easements or right-of-ways. In areas within Navy security zones identified at 33 CFR 334 that are outside the areas described above, critical habitat is only designated within a narrow nearshore zone from the line of extreme high tide down to the line of mean lower low water. The specific sites addressed include:

(1) Naval Submarine Base, Bangor;

(2) Naval Undersea Warfare Center, Keyport;

(3) Naval Ordnance Center, Port Hadlock (Indian Island);

(4) Naval Radio Station, Jim Creek;

(5) Naval Fuel Depot, Manchester;

- (6) Naval Air Station Whidbey Island;
- (7) Naval Air Station, Everett;
- (8) Bremerton Naval Hospital;
- (9) Fort Lewis (Army);
- (10) Pier 23 (Army);
- (11) Yakima Training Center (Army);
- (12) Puget Sound Naval Shipyard;
- (13) Naval Submarine Base Bangor security zone;
- (14) Strait of Juan de Fuca naval air-to-surface weapon range, restricted area;
- (15) Hood Canal and Dabob Bay naval non-explosive torpedo testing area;
- (16) Strait of Juan de Fuca and Whidbey Island naval restricted areas;
- (17) Admiralty Inlet naval restricted area;
- (18) Port Gardner Naval Base restricted area;
- (19) Hood Canal naval restricted areas;
- (20) Port Orchard Passage naval restricted area;
- (21) Sinclair Inlet naval restricted areas;
- (22) Carr Inlet naval restricted areas;
- (23) Dabob Bay/Whitney Point naval restricted area; and
- (24) Port Townsend/Indian Island/Walan Point naval restricted area.

(f) *Land subject to the Washington Department of Natural Resources Habitat Conservation Plan.* Critical habitat is excluded on lands covered by the incidental take permit issued by NMFS under section 10(a)(1)(B) of the ESA to the Washington Department of Natural Resources.

(g) *Land subject to the Green Diamond Company Habitat Conservation Plan.* Critical habitat is excluded on lands covered by the incidental take permit issued by NMFS under section 10(a)(1)(B) of the ESA to the Green Diamond Resources Company (formerly Simpson Timber Company).

(h) *Land subject to the West Fork Timber Company Habitat Conservation Plan.* Critical habitat is excluded on lands covered by the incidental take permit issued by NMFS under section 10(a)(1)(B) of the ESA to the West Fork Timber Company (formerly Murray Pacific Corporation).

(i) *Puget Sound Chinook Salmon (Oncorhynchus tshawytscha).* Critical habitat is designated to include the

areas defined in the following sub-basins:

(1) Nooksack Subbasin 17110004—(i) *Upper North Fork Nooksack River Watershed 1711000401.* Outlet(s) = North Fork Nooksack River (Lat 48.9055, Long -121.9886) upstream to endpoint(s) in: Boyd Creek (48.8998, -121.8640); Canyon Creek (48.9366, -121.9451); Cascade Creek (48.8996, -121.8621); Cornell Creek (48.8882, -121.9594); Deadhorse Creek (48.9024, -121.8359); Gallop Creek (48.8849, -121.9447); Glacier Creek (48.8197, -121.8931); Hedrick Creek (48.8953, -121.9705); Thompson Creek (48.8837, -121.9028); Wells Creek (48.8940, -121.7976).

(ii) *Middle Fork Nooksack River Watershed 1711000402.* Outlet(s) = Middle Fork Nooksack River (Lat 48.8342, Long -122.1540) upstream to endpoint(s) in: Canyon Creek (48.8374, -122.1198); Clearwater Creek (48.7841, -122.0293); Middle Fork Nooksack River (48.7249, -121.8999); Porter Creek (48.7951, -122.1098); Sister Creek (48.7492, -121.9736); Unnamed (48.7809, -122.1157); Unnamed (48.7860, -122.1214); Warm Creek (48.7559, -121.9741).

(iii) *South Fork Nooksack River Watershed 1711000403.* Outlet(s) = South Fork Nooksack River (Lat 48.8095, Long -122.2026) upstream to endpoint(s) in: Black Slough (48.7715, -122.1931); Cavanaugh Creek (48.6446, -122.1094); Deer Creek (48.6041, -122.0912); Edfro Creek (48.6607, -122.1206); Fobes Creek (48.6230, -122.1139); Hard Scrabble Falls Creek (48.7601, -122.2273); Howard Creek (48.6118, -121.9639); Hutchinson Creek (48.7056, -122.1663); Jones Creek (48.7186, -122.2130); McCarty Creek (48.7275, -122.2188); Plumbago Creek (48.6088, -122.0949); Pond Creek (48.6958, -122.1651); Skookum Creek (48.6871, -122.1029); South Fork Nooksack River (48.6133, -121.9000); Standard Creek (48.7444, -122.2191); Sygitowicz Creek (48.7722, -122.2269); Unnamed (48.6048, -121.9143); Unnamed (48.6213, -122.1039); Unnamed (48.7174, -122.1815); Unnamed (48.7231, -122.1968); Unnamed (48.7843, -122.2188).

(iv) *Lower North Fork Nooksack River Watershed 1711000404.* Outlet(s) = Nooksack River (Lat 48.8711, Long -122.3227) upstream to endpoint(s) in: Anderson Creek (48.8088, -122.3410); Boulder Creek (48.9314, -122.0258); Coal

Creek (48.8889, -122.1506); Kendall Creek (48.9251, -122.1455); Kenney Creek (48.8510, -122.1368); Macaulay Creek (48.8353, -122.2345); Maple Creek (48.9262, -122.0751); Mitchell Creek (48.8313, -122.2174); North Fork Nooksack River (48.9055, -121.9886); Racehorse Creek (48.8819, -122.1272); Smith Creek (48.8439, -122.2544); Unnamed (48.8103, -122.1855); Unnamed (48.9002, -122.1205); Unnamed (48.9040, -122.0875); Unnamed (48.9131, -122.0127); Unnamed (48.9158, -122.0091); Unnamed (48.9162, -122.0615); Unnamed (48.9200, -122.0463); Wildcat Creek (48.9058, -121.9995); Deer Creek (48.8439, -122.4839).

(v) *Nooksack River Watershed 1711000405*. Outlet(s) = Lummi River (Lat 48.8010, Long -122.6582); Nooksack River (48.7737, -122.5986); Silver Creek (48.7786, -122.5635); Slater Slough (48.7759, -122.6029); Unnamed (48.7776, -122.5708); Unnamed (48.7786, -122.5677); Unnamed (48.7973, -122.6717); Unnamed (48.8033, -122.6771) upstream to endpoint(s) in: Fishtrap Creek (49.0025, -122.4053); Fourmile Creek (48.8890, -122.4213); Lummi River (48.8198, -122.6049); Nooksack River (48.8711, -122.3227); Pepin Creek (49.0024, -122.4724); Slater Slough (48.7778, -122.6041); Tenmile Creek (48.8457, -122.3661); Unnamed (48.8191, -122.5705); Unnamed (48.8453, -122.6071); Unnamed (48.8548, -122.4749); Unnamed (48.9609, -122.5312); Unnamed (48.9634, -122.3928); Unnamed (49.0024, -122.4730); Unnamed (49.0025, -122.5218).

(2) Upper Skagit Subbasin 17110005—
(i) *Skagit River/Gorge Lake Watershed 1711000504*. Outlet(s) = Skagit River (Lat 48.6725, Long -121.2633) upstream to endpoint(s) in: Goodell Creek (48.6890, -121.2718); Skagit River (48.6763, -121.2404).

(ii) *Skagit River/Diobsud Creek Watershed 1711000505*. Outlet(s) = Skagit River (Lat 48.5218, Long -121.4315) upstream to endpoint(s) in: Bacon Creek (48.6456, -121.4244); Diobsud Creek (48.5761, -121.4309); Falls Creek (48.6334, -121.4258); Skagit River (48.6725, -121.2633).

(iii) *Cascade River Watershed 1711000506*. Outlet(s) = Cascade River (Lat 48.5218, Long -121.4315) upstream to endpoint(s) in: Found Creek (48.4816, -121.2437); Kindy Creek (48.4613, -121.2094); Marble Creek (48.5398,

-121.2612); North Fork Cascade River (48.4660, -121.1641); South Fork Cascade River (48.4592, -121.1494).

(iv) *Skagit River/Illabot Creek Watershed 1711000507*. Outlet(s) = Skagit River (Lat 48.5333, Long -121.7370) upstream to endpoint(s) in: Illabot Creek (48.4498, -121.4551); Jackman Creek (48.5294, -121.6957); Skagit River (48.5218, -121.4315); Unnamed (48.5013, -121.6598).

(3) Sauk Subbasin 17110006—(i) *Upper Sauk River Watershed 1711000601*. Outlet(s) = Sauk River (Lat 48.1731, Long -121.4714) upstream to endpoint(s) in: Camp Creek (48.1559, -121.2909); North Fork Sauk River (48.0962, -121.3710); Owl Creek (48.1623, -121.2948); South Fork Sauk River (48.0670, -121.4088); Swift Creek (48.1011, -121.3975); Unnamed (48.1653, -121.3288); White Chuck River (48.1528, -121.2645).

(ii) *Upper Suiattle River Watershed 1711000602*. Outlet(s) = Suiattle River (Lat 48.2586, Long -121.2237) upstream to endpoint(s) in: Downey Creek (48.2828, -121.2083); Milk Creek (48.2207, -121.1634); Suiattle River (48.2211, -121.1609); Sulphur Creek (48.2560, -121.1773); Unnamed (48.2338, -121.1792).

(iii) *Lower Suiattle River Watershed 1711000603*. Outlet(s) = Suiattle River (Lat 48.3384, Long -121.5482) upstream to endpoint(s) in: Big Creek (48.3435, -121.4416); Buck Creek (48.2753, -121.3268); Circle Creek (48.2555, -121.3395); Lime Creek (48.2445, -121.2933); Straight Creek (48.2594, -121.4009); Suiattle River (48.2586, -121.2237); Tenas Creek (48.3371, -121.4304).

(iv) *Lower Sauk River Watershed 1711000604*. Outlet(s) = Sauk River (Lat 48.4821, Long -121.6060) upstream to endpoint(s) in: Dan Creek (48.2702, -121.5473); Sauk River (48.1731, -121.4714); Unnamed (48.2247, -121.5826); Unnamed (48.3187, -121.5480).

(4) Lower Skagit Subbasin 17110007—
(i) *Middle Skagit River/Finney Creek Watershed 1711000701*. Outlet(s) = Skagit River (Lat 48.4891, Long -122.2178) upstream to endpoint(s) in: Alder Creek (48.5280, -121.9498); Day Creek (48.4689, -122.0216); Finney Creek (48.4655, -121.6858); Grandy Creek (48.5510, -121.8621); Hansen Creek (48.5600, -122.2069); Jims Slough (48.5274, -122.0227); Jones Creek (48.5418, -122.0494); Mannser Creek (48.5260,

-122.0430); Muddy Creek (48.5278, -122.0007); Pressentin Creek (48.5099, -121.8449); Skagit River (48.5333, -121.7370); Sorenson Creek (48.4875, -122.1029); Unnamed (48.4887, -122.0747); Unnamed (48.5312, -122.0149); Wiseman Creek (48.5160, -122.1286).

(ii) *Lower Skagit River/Nookachamps Creek Watershed 1711000702*. Outlet(s) = Browns Slough (Lat 48.3305, Long -122.4194); Freshwater Slough (48.3109, -122.3883); Hall Slough (48.3394, -122.4426); Isohis Slough (48.2975, -122.3711); North Fork Skagit River (48.3625, -122.4689); South Fork Skagit River (48.2920, -122.3670); Unnamed (48.3085, -122.3868); Unnamed (48.3831, -122.4842) upstream to endpoint(s) in: Britt Slough (48.3935, -122.3571); Browns Slough (48.3411, -122.4127); East Fork Nookachamps Creek (48.4044, -122.1790); Hall Slough (48.3437, -122.4376); Mundt Creek (48.4249, -122.2007); Skagit River (48.4891, -122.2178); Unnamed (48.3703, -122.3081); Unnamed (48.3827, -122.1893); Unnamed (48.3924, -122.4822); Walker Creek (48.3778, -122.1899).

(5) Stillaguamish Subbasin 17110008—(i) *North Fork Stillaguamish River Watershed 1711000801*. Outlet(s) = North Fork Stillaguamish River (Lat 48.2037, Long -122.1256) upstream to endpoint(s) in: Ashton Creek (48.2545, -121.6708); Boulder River (48.2624, -121.8090); Deer Creek (48.2835, -121.9255); French Creek (48.2534, -121.7856); Furland Creek (48.2624, -121.6749); Grant Creek (48.2873, -122.0118); North Fork Stillaguamish River (48.3041, -121.6360); Rollins Creek (48.2908, -121.8441); Squire Creek (48.2389, -121.6374); Unnamed (48.2393, -121.6285); Unnamed (48.2739, -121.9948).

(ii) *South Fork Stillaguamish River Watershed 1711000802*. Outlet(s) = South Fork Stillaguamish River (Lat 48.2037, Long -122.1256) upstream to endpoint(s) in: Jim Creek (48.2230, -121.9483); North Fork Canyon Creek (48.1697, -121.8194); Siberia Creek (48.1731, -122.0377); South Fork Canyon Creek (48.1540, -121.7840); South Fork Stillaguamish River (48.0454, -121.4819); Unnamed (48.1463, -122.0162).

(iii) *Lower Stillaguamish River Watershed 1711000803*. Outlet(s) = Stillaguamish River (Lat 48.2385, Long -122.3749); Unnamed (48.1983, -122.3579) upstream to endpoint(s) in: Armstrong Creek (48.2189, -122.1347); Pilchuck

Creek (48.2983, -122.1672); Stillaguamish River (48.2037, -122.1256).

(6) Skykomish Subbasin 17110009—(i) *Tye and Beckler River Watershed 1711000901*. Outlet(s) = South Fork Skykomish River (Lat 47.7147, Long -121.3393) upstream to endpoint(s) in: East Fork Foss River (47.6522, -121.2792); Rapid River (47.8131, -121.2470) Tye River (47.7172, -121.2254) Unnamed (47.8241, -121.2979); West Fork Foss River (47.6444, -121.2972).

(ii) *Skykomish River Forks Watershed 1711000902*. Outlet(s) = North Fork Skykomish River (Lat 47.8133, Long -121.5782) upstream to endpoint(s) in: Bridal Veil Creek (47.7987, -121.5597); Lewis Creek (47.8223, -121.5160); Miller River (47.7018, -121.3950); Money Creek (47.7208, -121.4062); North Fork Skykomish River (47.9183, -121.3073); South Fork Skykomish River (47.7147, -121.3393); Unnamed (47.7321, -121.4176); Unnamed (47.8002, -121.5548).

(iii) *Skykomish River/Wallace River Watershed 1711000903*. Outlet(s) = Skykomish River (Lat 47.8602, Long -121.8190) upstream to endpoint(s) in: Deer Creek (47.8191, -121.5805); Olney Creek (47.8796, -121.7163); Proctor Creek (47.8216, -121.6460); Skykomish River (47.8133, -121.5782); Unnamed (47.8507, -121.8010); Wagleys Creek (47.8674, -121.7972); Wallace River (47.8736, -121.6491).

(iv) *Sultan River Watershed 1711000904*. Outlet(s) = Sultan River (Lat 47.8602, Long -121.8190) upstream to endpoint(s) in: Sultan River (47.9598, -121.7951).

(v) *Skykomish River/Woods Creek Watershed 1711000905*. Outlet(s) = Skykomish River (Lat 47.8303, Long -122.0451) upstream to endpoint(s) in: Elwell Creek (47.8038, -121.8524); Skykomish River (47.8602, -121.8190); Unnamed (47.8890, -121.8637); West Fork Woods Creek (47.9627, -121.9707); Woods Creek (47.8953, -121.8742); Youngs Creek (47.8081, -121.8332).

(7) Snoqualmie Subbasin 17110010—(i) *Middle Fork Snoqualmie River Watershed 1711001003*. Outlet(s) = Snoqualmie River (Lat 47.6407, Long -121.9261) upstream to endpoint(s) in: Canyon Creek (47.5837, -121.9623); Deep Creek (47.4764, -121.8905); Griffin Creek (47.6164, -121.9014); Lake Creek (47.5036, -121.9035); Patterson Creek (47.6276, -121.9855); Raging River (47.4795,

–121.8691); Snoqualmie River (47.5415, –121.8362); Tokul Creek (47.5563, –121.8285).

(ii) *Lower Snoqualmie River Watershed 1711001004*. Outlet(s) = Snoqualmie River (Lat 47.8303, Long –122.0451) upstream to endpoint(s) in: Cherry Creek (47.7465, –121.8953); Margaret Creek (47.7547, –121.8933); North Fork Tolt River (47.7060, –121.7957); Snoqualmie River (47.6407, –121.9261); South Fork Tolt River (47.6969, –121.7861); Tuck Creek (47.7442, –122.0032); Unnamed (47.6806, –121.9730); Unnamed (47.6822, –121.9770); Unnamed (47.7420, –122.0084); Unnamed (47.7522, –121.9745); Unnamed (47.7581, –121.9586).

(8) Snohomish Subbasin 17110011—(i) *Pilchuck River Watershed 1711001101*. Outlet(s) = Pilchuck River (Lat 47.9013, Long –122.0917) upstream to endpoint(s) in: Pilchuck River (48.0052, –121.7718).

(ii) *Snohomish River Watershed 1711001102*. Outlet(s) = Quilceda Creek (Lat 48.0556, Long –122.1908); Skykomish River (48.0173, –122.1877); Steamboat Slough (48.0365, –122.1814); Union Slough (48.0299, –122.1794); Unnamed (48.0412, –122.1723) upstream to endpoint(s) in: Allen Creek (48.0767, –122.1404); Quilceda Creek (48.1124, –122.1540); Skykomish River (47.8303, –122.0451); Unnamed (47.9545, –122.1969); Unnamed (47.9777, –122.1632); Unnamed (48.0019, –122.1283); Unnamed (48.0055, –122.1303); Unnamed (48.1330, –122.1472).

(9) Lake Washington Subbasin 17110012—(i) *Cedar River Watershed 1711001201*. Outlet(s) = Cedar River (Lat 47.5003, Long –122.2146) upstream to endpoint(s) in: Cedar River (47.4192, –121.7805); Rock Creek (47.3673, –122.0132); Unnamed (47.4092, –122.0358); Webster Creek (47.3857, –121.9845).

(ii) *Lake Washington Watershed 1711001203*. Outlet(s) = Lake Washington (Lat 47.6654, Long –122.3960) upstream to endpoint(s) in: Cedar River (47.5003, –122.2146); Sammamish River (47.7543, –122.2465).

(10) Duwamish Subbasin 17110013—(i) *Upper Green River Watershed 1711001301*. Outlet(s) = Green River (Lat 47.2234, Long –121.6081) upstream to endpoint(s) in: Friday Creek (47.2204, –121.4559); Intake Creek (47.2058, –121.4049); McCain Creek (47.2093, –121.5292); Sawmill Creek (47.2086, –121.4675); Smay Creek (47.2508, –121.5872); Snow Creek (47.2607,

–121.4046); Sunday Creek (47.2587, –121.3659); Tacoma Creek (47.1875, –121.3630); Unnamed (47.2129, –121.4579).

(ii) *Middle Green River Watershed 1711001302*. Outlet(s) = Green River (Lat 47.2911, Long –121.9714) upstream to endpoint(s) in: Bear Creek (47.2774, –121.7990); Cougar Creek (47.2439, –121.6442); Eagle Creek (47.3051, –121.7219); Gale Creek (47.2644, –121.7085); Green River (47.2234, –121.6081); Piling Creek (47.2820, –121.7553); Sylvester Creek (47.2457, –121.6537); Unnamed (47.2360, –121.6333).

(iii) *Lower Green River Watershed 1711001303*. Outlet(s) = Duwamish River (Lat 47.5113, Long –122.2951) upstream to endpoint(s) in: Big Soos Creek (47.4191, –122.1599); Burns Creek (47.2779, –122.1087); Covington Creek (47.3341, –122.0399); Crisp Creek (47.2897, –122.0590); Green River (47.2911, –121.9714); Jenkins Creek (47.3791, –122.0899); Little Soos Creek (47.4031, –122.1235); Mill Creek (47.3263, –122.2455); Newaukum Creek (47.2303, –121.9518); Unnamed (47.2765, –121.9730); Unnamed (47.2891, –122.1557); Unnamed (47.3007, –122.1774); Unnamed (47.3250, –122.1961); Unnamed (47.3464, –122.2397); Unnamed (47.3751, –122.2648); Unnamed (47.4046, –122.2134); Unnamed (47.4525, –122.2354); Unnamed (47.4618, –122.2315); Unnamed (47.4619, –122.2554); Unnamed (47.4876, –122.2781).

(11) Puyallup Subbasin 17110014—(i) *Upper White River Watershed 1711001401*. Outlet(s) = White River (Lat 47.1588, Long –121.6587) upstream to endpoint(s) in: Greenwater River (47.1204, –121.5055); Huckleberry Creek (47.0612, –121.6033); Pinochle Creek (47.0478, –121.7043); Unnamed (46.9935, –121.5295); West Fork White River (47.0483, –121.6916); Wrong Creek (47.0403, –121.6999).

(ii) *Lower White River Watershed 1711001402*. Outlet(s) = White River (Lat 47.2001, Long –122.2579) upstream to endpoint(s) in: Boise Creek (47.1958, –121.9467); Camp Creek (47.1430, –121.7012); Clearwater River (47.0852, –121.7823); Unnamed (47.1509, –121.7236); Unnamed (47.2247, –122.1072); Unnamed (47.2307, –122.1079); Unnamed (47.2383, –122.2234); Unnamed (47.2498, –122.2346); White River (47.1588, –121.6587).

(iii) *Carbon River Watershed 1711001403*. Outlet(s) = Carbon River (Lat 47.1308, Long –122.2315) upstream

to endpoint(s) in: Carbon River (46.9965, -121.9198); South Fork South Prairie Creek (47.1203, -121.9963); Voight Creek (47.0751, -122.1285); Wilkeson Creek (47.0972, -122.0245).

(iv) *Upper Puyallup River Watershed 1711001404*. Outlet(s) = Puyallup River (Lat 47.1308, Long -122.2315) upstream to endpoint(s) in: Deer Creek (46.8547, -121.9680); Kapowsin Creek (46.9854, -122.2008); Kellog Creek (46.9164, -122.0652); Mowich River (46.9209, -121.9739); Rushingwater Creek (46.8971, -121.9439); Unnamed (46.8867, -122.0194); Unnamed (46.8899, -121.9657).

(v) *Lower Puyallup River Watershed 1711001405*. Outlet(s) = Hylebos Creek (Lat 47.2611, Long -122.3591); Puyallup River (47.2501, -122.4131) upstream to endpoint(s) in: Canyonfalls Creek (47.1421, -122.2186); Clarks Creek (47.1757, -122.3168); Clear Creek (47.2187, -122.3727); Fennel Creek (47.1495, -122.1849); Puyallup River (47.1308, -122.2315); Unnamed (47.1779, -122.1992); Unnamed (47.1799, -122.3066); Unnamed (47.1928, -122.3371); Unnamed (47.2723, -122.3216); West Hylebos Creek (47.2736, -122.3289).

(12) Nisqually Subbasin 17110015—(i) *Mashel/Ohop Watershed 1711001502*. Outlet(s) = Nisqually River (Lat 46.8646, Long -122.4776) upstream to endpoint(s) in: Little Mashel River (46.8504, -122.2724); Lynch Creek (46.8760, -122.2625); Mashel River (46.8431, -122.1205); Nisqually River (46.8303, -122.3225); Ohop Creek (46.9264, -122.2603); Powell Creek (46.8528, -122.4505); Tanwax Creek (46.8630, -122.4549); Twentyfive Mile Creek (46.9274, -122.2558).

(ii) *Lowland Watershed 1711001503*. Outlet(s) = McAllister Creek (Lat 47.1120, Long -122.7215); Nisqually River (47.1110, -122.7026); Unnamed (47.0071, -122.6556); Yelm Creek (46.9712, -122.6263) upstream to endpoint(s) in: Horn Creek (46.9042, -122.4776); McAllister Creek (47.0299, -122.7236); Nisqually River (46.8646, -122.4776); Unnamed (46.9108, -122.5032); Unnamed (47.0001, -122.6510); Unnamed (47.0055, -122.6520); Yelm Creek (46.9629, -122.6194). Excluded is that segment of the Nisqually River from Lat 47.0703, Long -122.7017, to Lat 46.9668, Long -122.5640.

(13) Skokomish Subbasin 17110017—*Skokomish River Watershed 1711001701*. Outlet(s) = Skokomish River (Lat 47.3543, Long -123.1122); Unnamed (47.3420, -123.1092); Unnamed (47.3471, -123.1275); Unnamed (47.3509, -123.1101) upstream to endpoint(s) in: Brown Creek (47.4238, -123.3052); Fir Creek (47.3363, -123.3016); McTaggart Creek (47.3749, -123.2318); North Fork Skokomish River (47.5197, -123.3329); Purdy Canyon (47.3021, -123.1803); Unnamed (47.3048, -123.1528); Unnamed (47.3077, -123.2012); Unnamed (47.3146, -123.1353); Unnamed (47.3209, -123.2212); Unnamed (47.3222, -123.3060); Unnamed (47.3237, -123.1467); Unnamed (47.3250, -123.1250); Vance Creek (47.3300, -123.3137); Weaver Creek (47.3097, -123.2384).

(14) Hood Canal Subbasin 17110018—(i) *Hamma Hamma River Watershed 1711001803*. Outlet(s) = Hamma Hamma River (Lat 47.5471, Long -123.0440) upstream to endpoint(s) in: Hamma Hamma River (47.5590, -123.0632); North Fork John Creek (47.5442, -123.0696)

(ii) *Duckabush River Watershed 1711001804*. Outlet(s) = Duckabush River (Lat 47.6502, Long -122.9348) upstream to endpoint(s) in: Duckabush River (47.6825, -123.0675).

(iii) *Dosewallips River Watershed 1711001805*. Outlet(s) = Dosewallips River (Lat 47.6881, Long -122.8945); Unnamed (47.6857, -122.8967) upstream to endpoint(s) in: Dosewallips River (47.7289, -123.1111); Rocky Brook (47.7212, -122.9405); Unnamed (47.6886, -122.8977).

(15) Dungeness/Elwha 17110020—(i) *Dungeness River Watershed 1711002003*. Outlet(s) = Dungeness River (Lat 48.1506, Long -123.1311); Unnamed (48.1537, -123.1267) upstream to endpoint(s) in: Dungeness River (47.9386, -123.0885); Gray Wolf River (47.9168, -123.2409); Matriotti Creek (48.1368, -123.1428); Unnamed (48.1514, -123.1216).

(ii) *Elwha River Watershed 1711002007*. Outlet(s) = Elwha River (Lat 48.1466, Long -123.5671); Unnamed (48.1483, -123.5599) upstream to endpoint(s) in: Elwha River (48.0927, -123.5614).

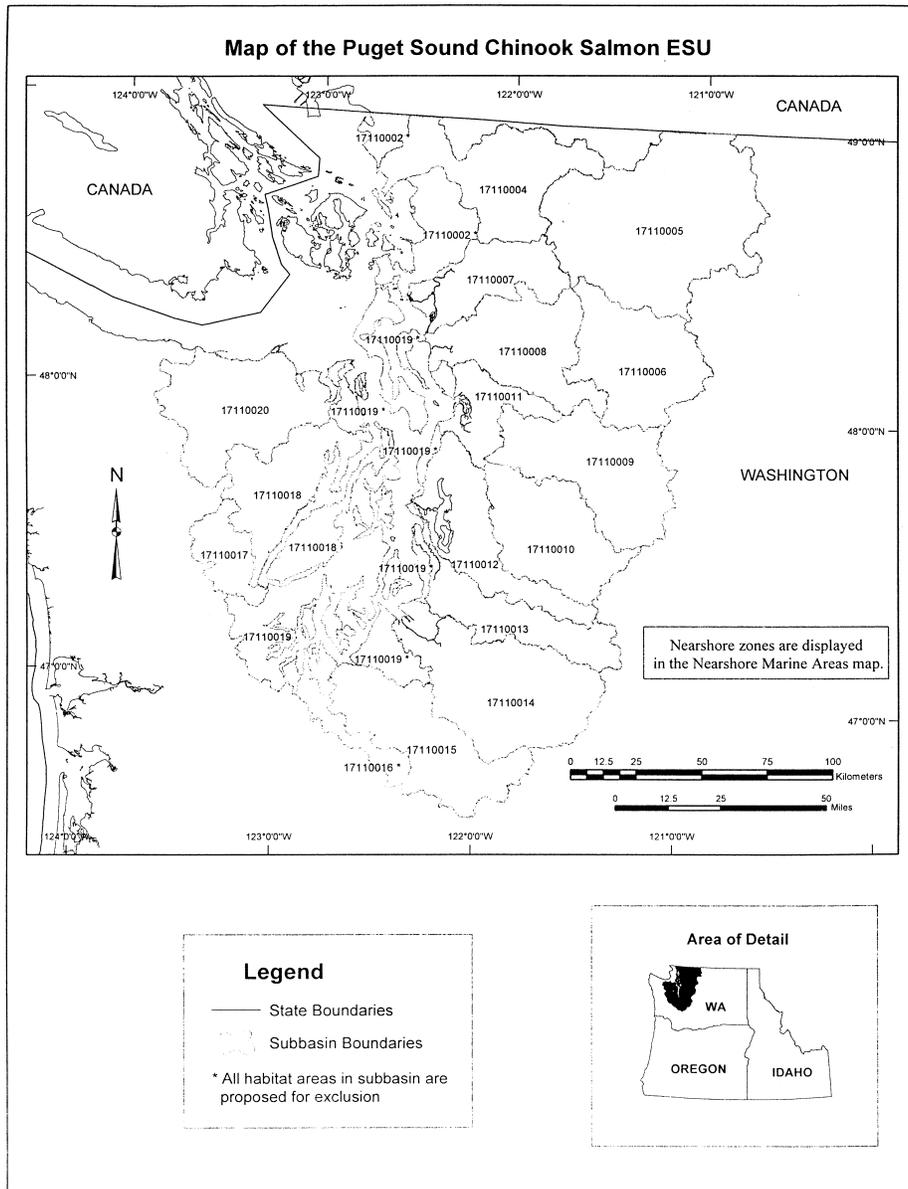
§ 226.212

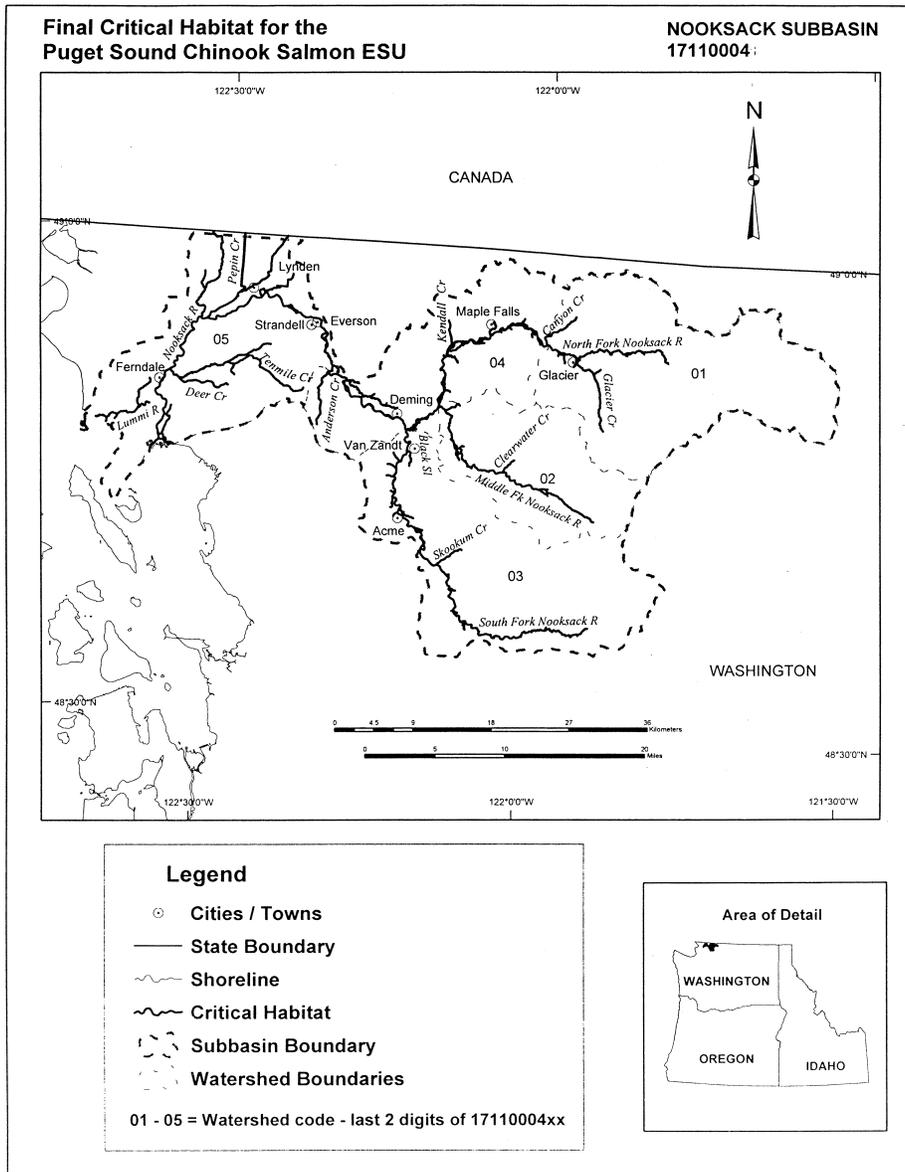
50 CFR Ch. II (10–1–08 Edition)

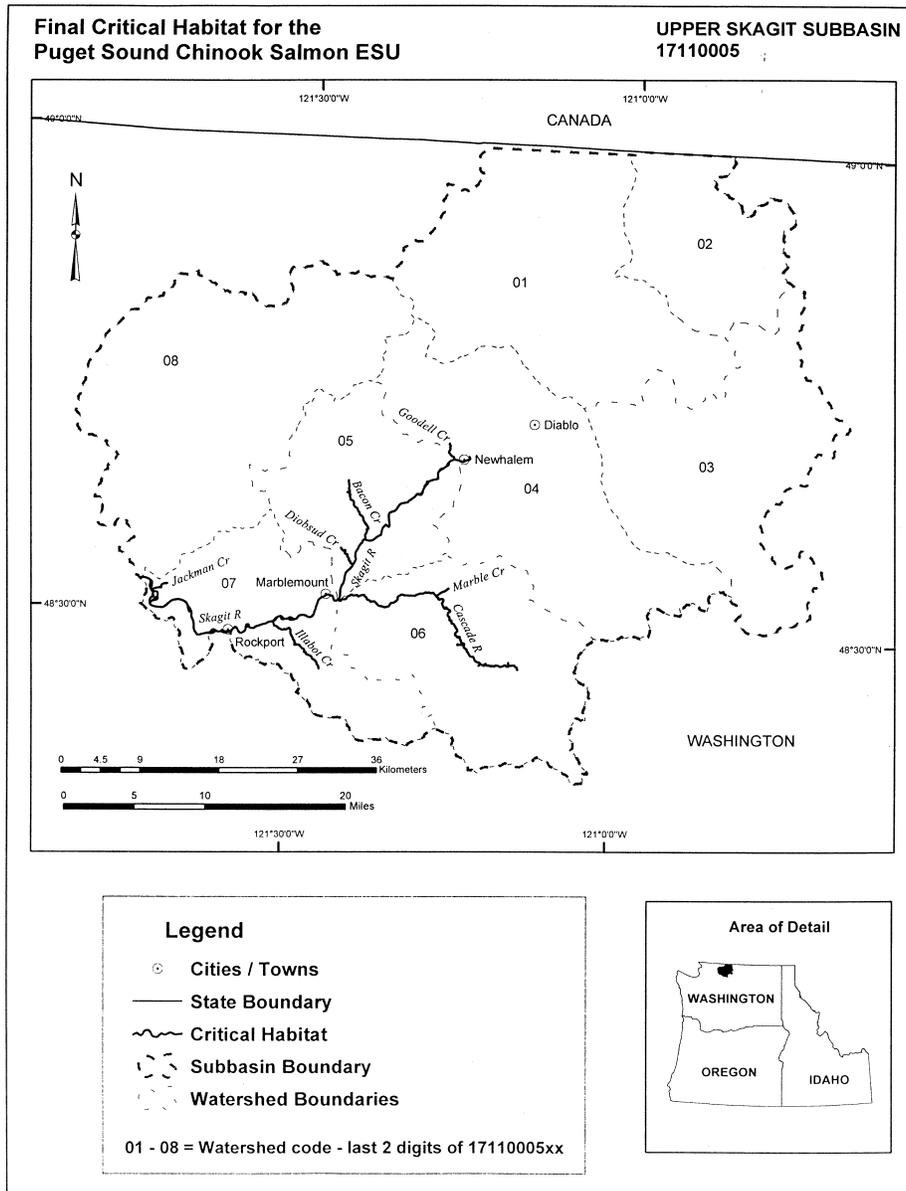
(16) Nearshore Marine Areas—Except as provided in paragraph (e) of this section, critical habitat includes all nearshore marine areas (including areas adjacent to islands) of the Strait of Georgia (south of the international border), Puget Sound, Hood Canal, and the

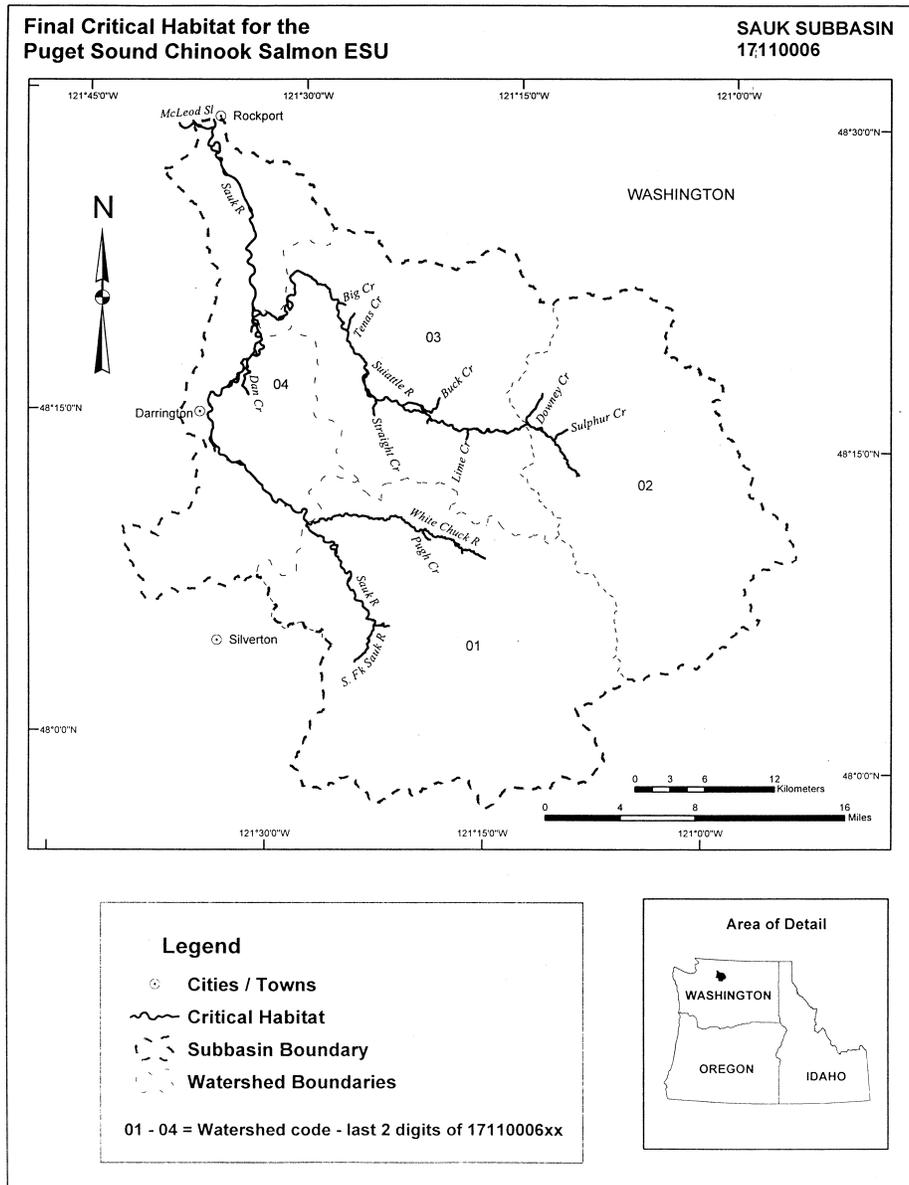
Strait of Juan de Fuca (to the western end of the Elwha River delta) from the line of extreme high tide out to a depth of 30 meters.

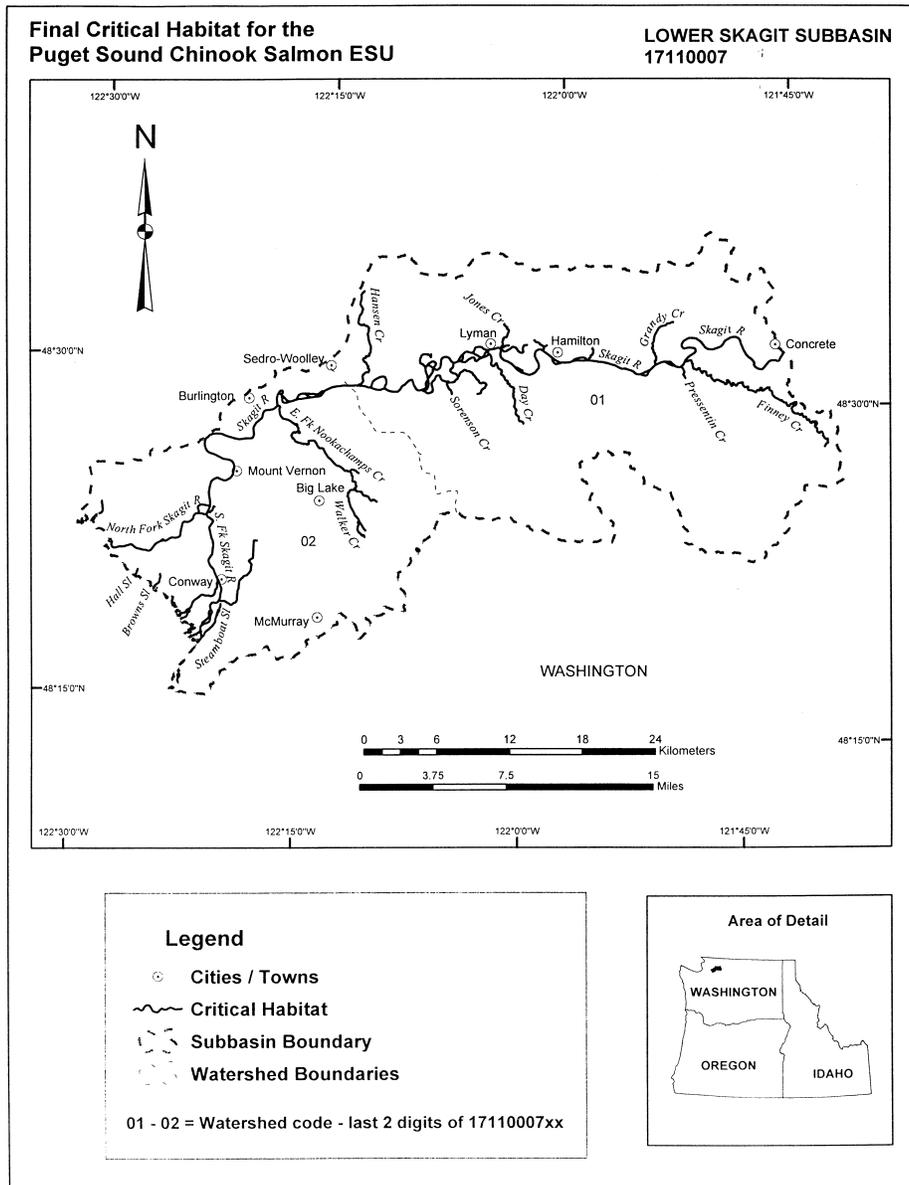
(17) Maps of critical habitat for the Puget Sound chinook salmon ESU follow:

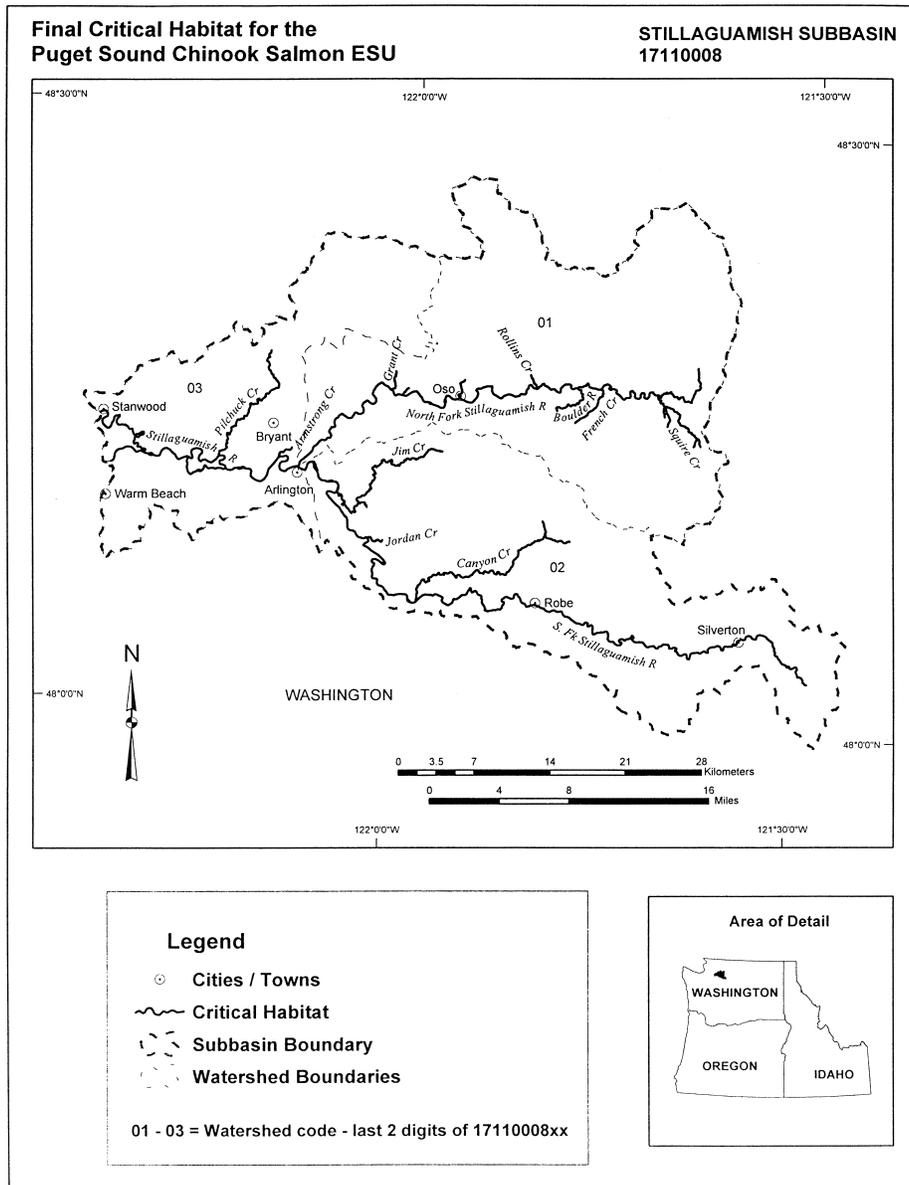


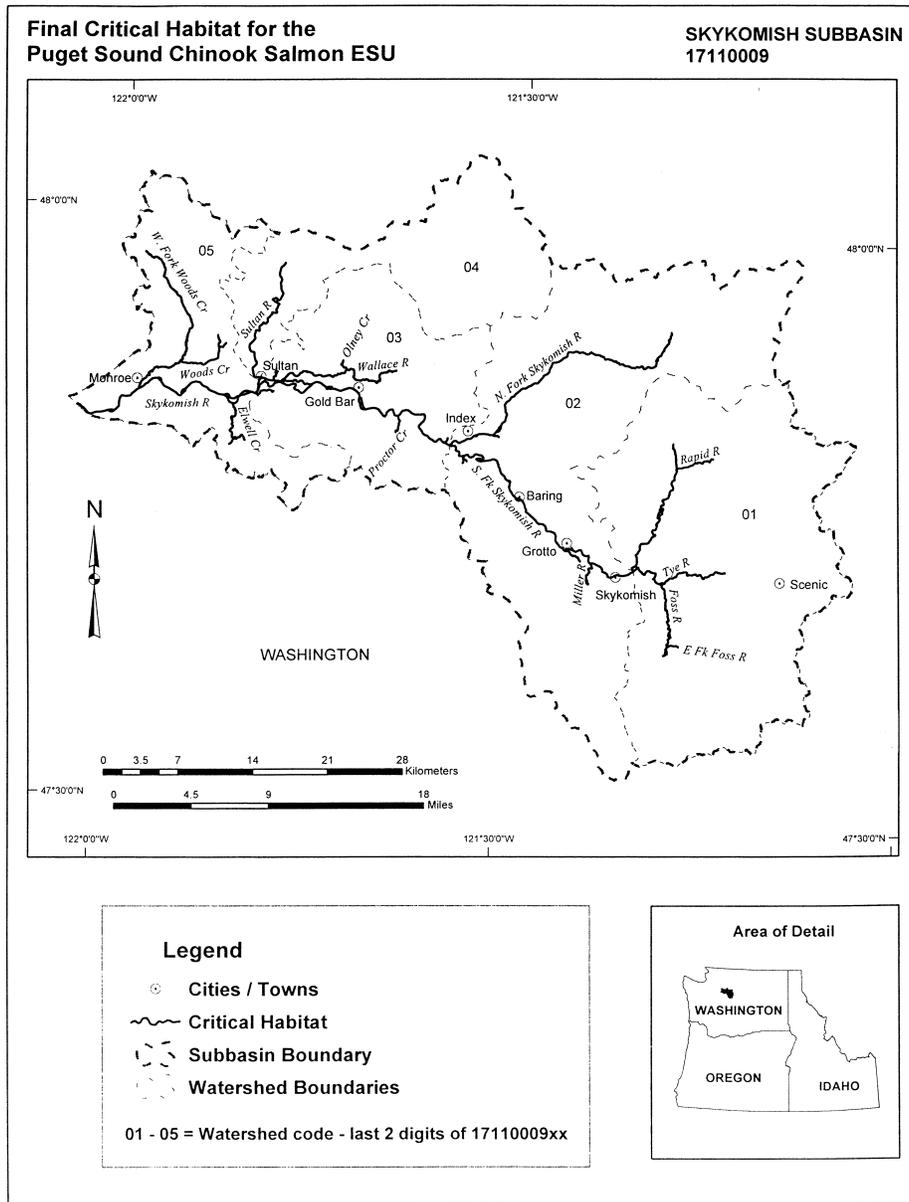


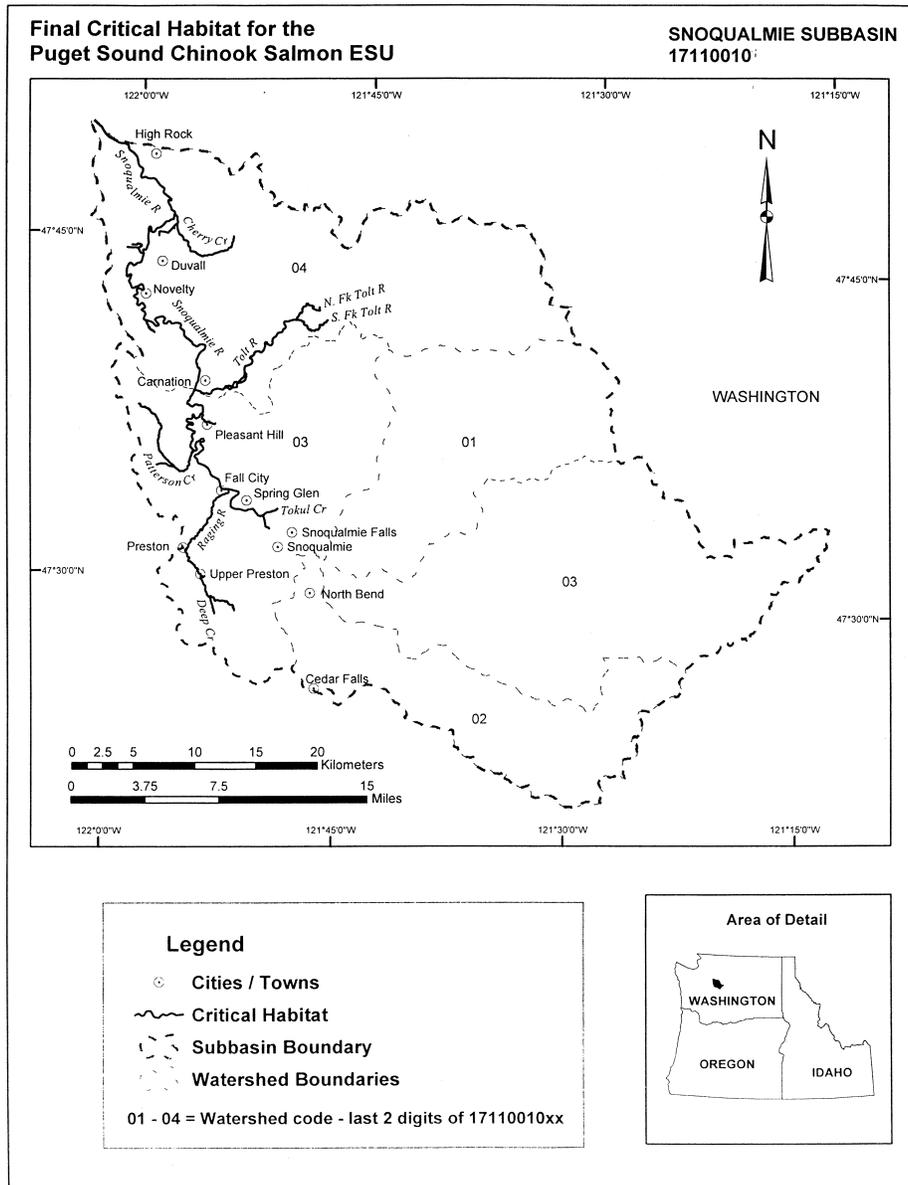


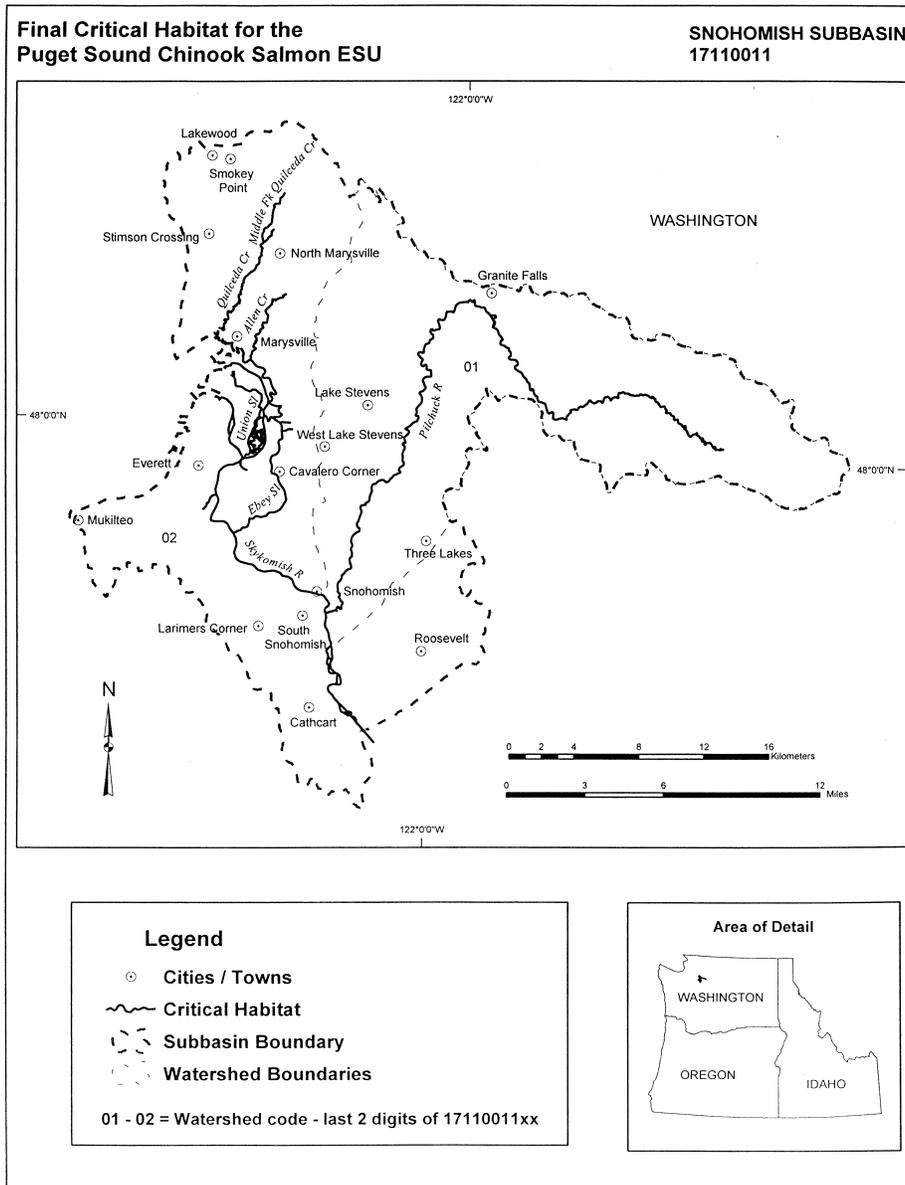


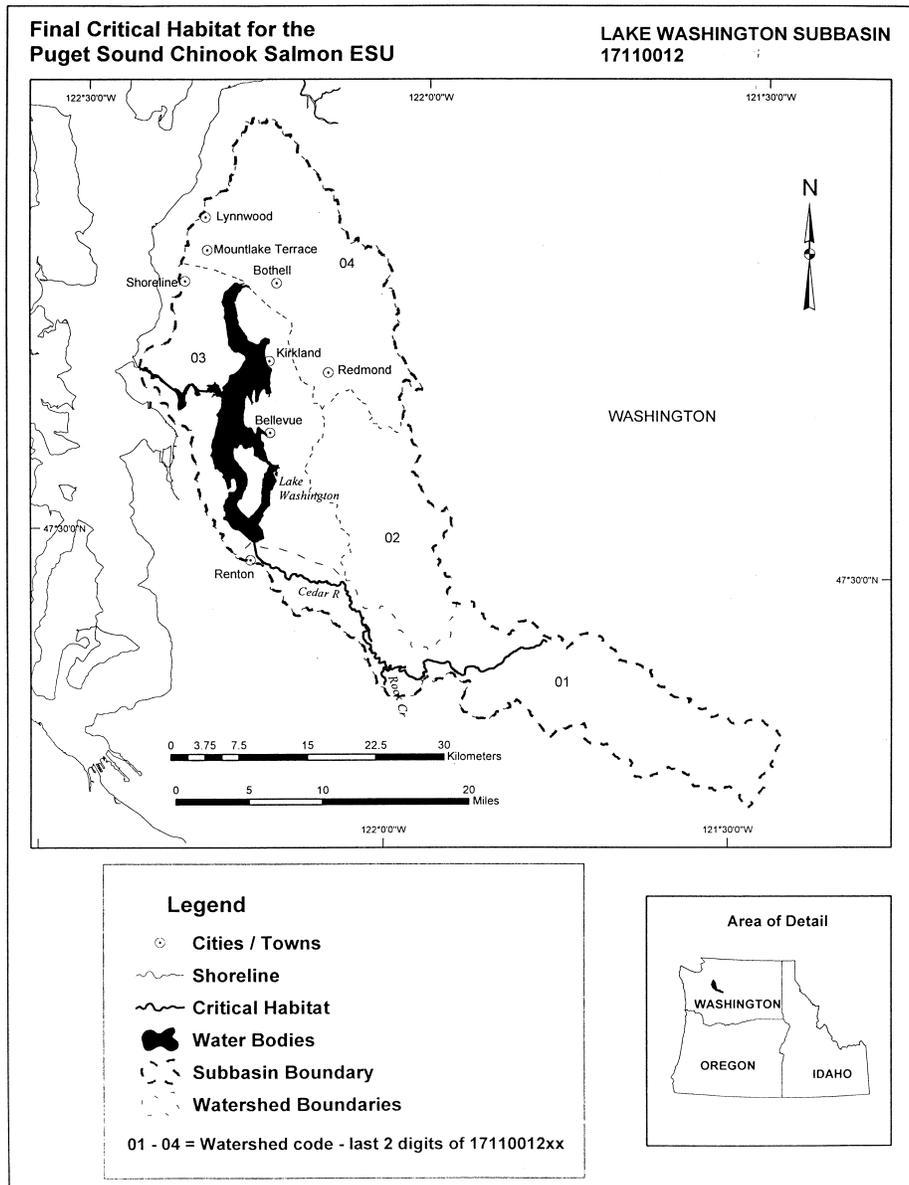


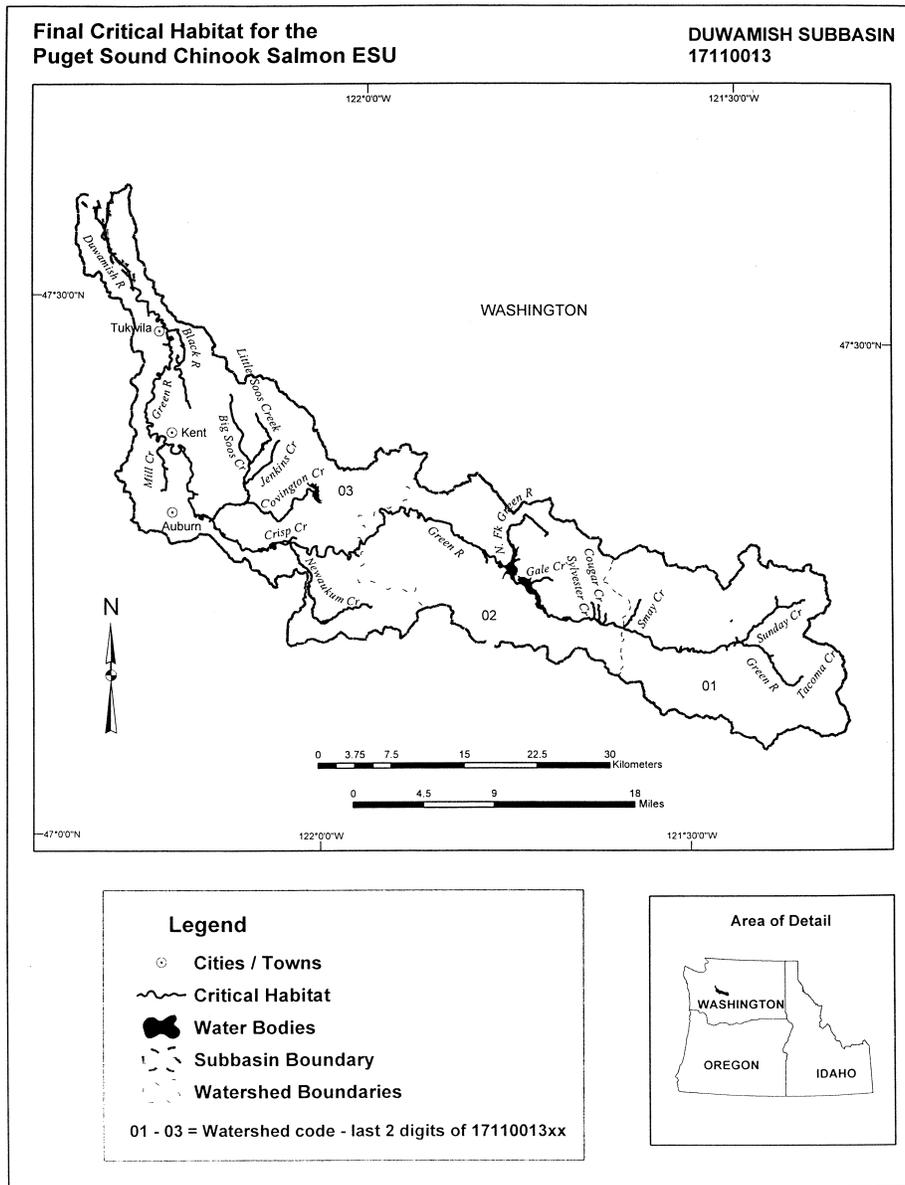


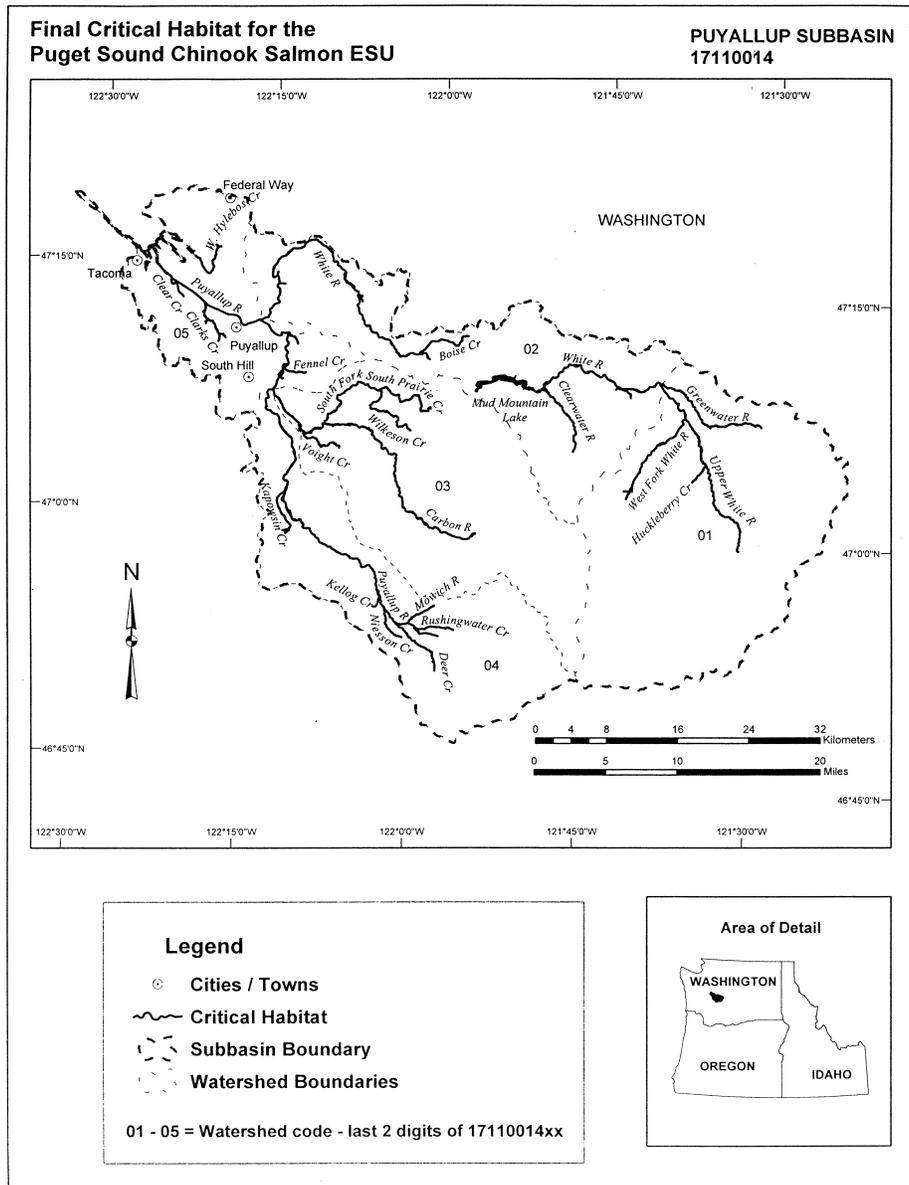


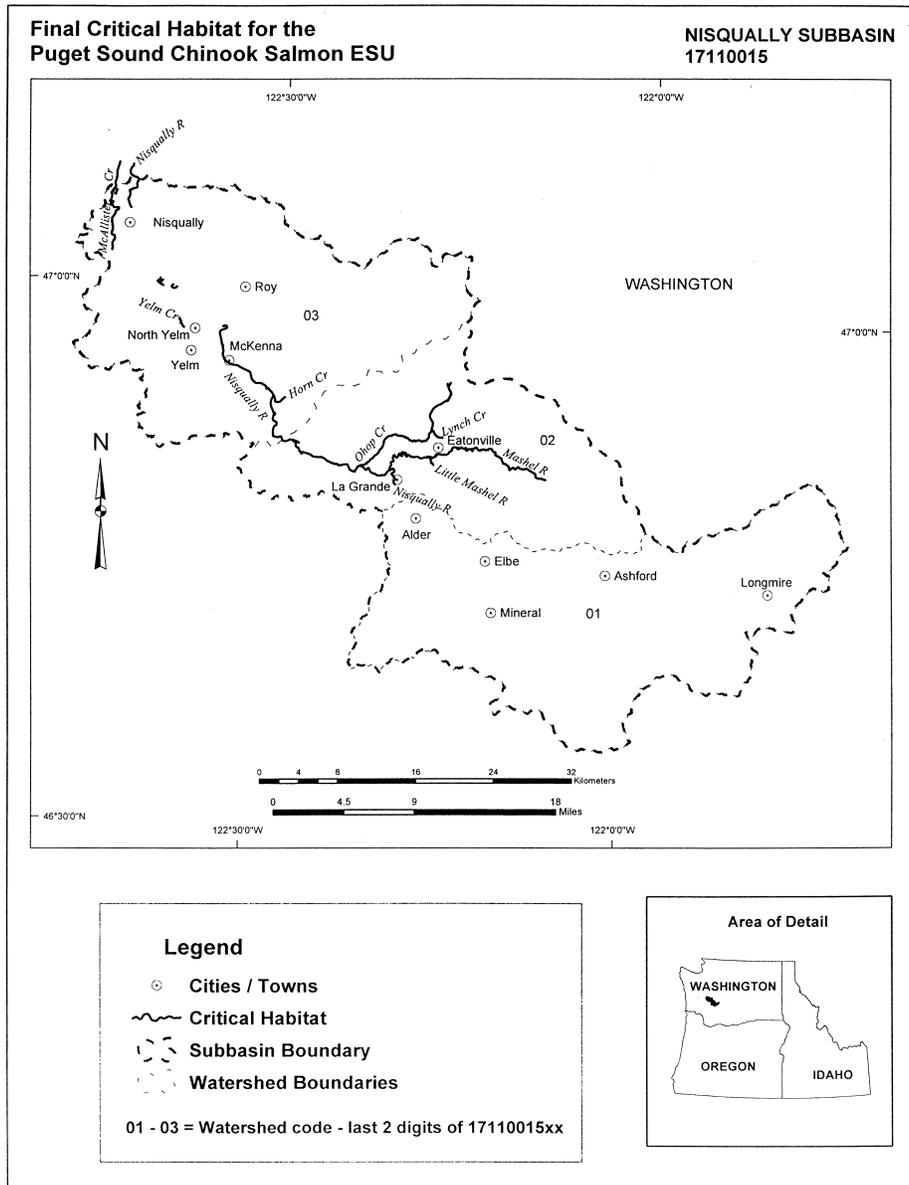


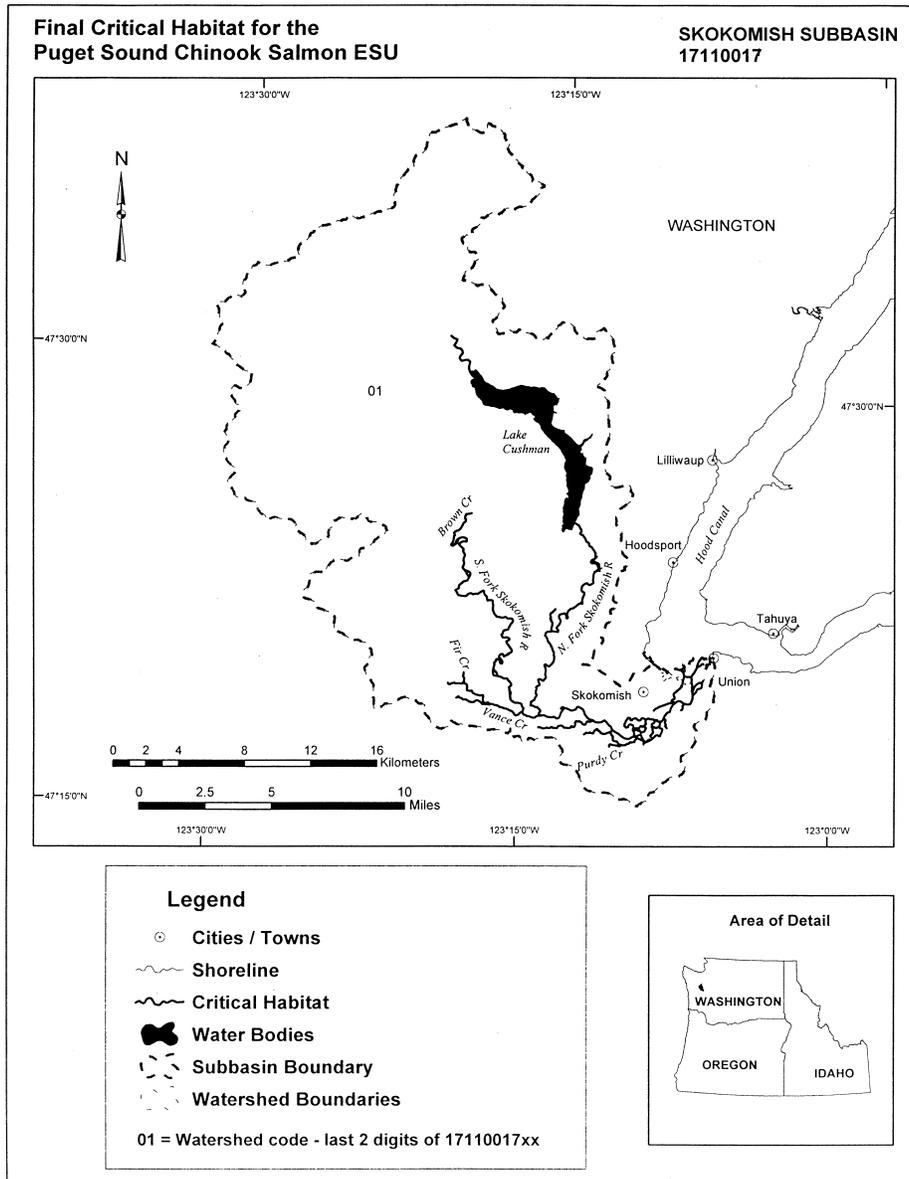


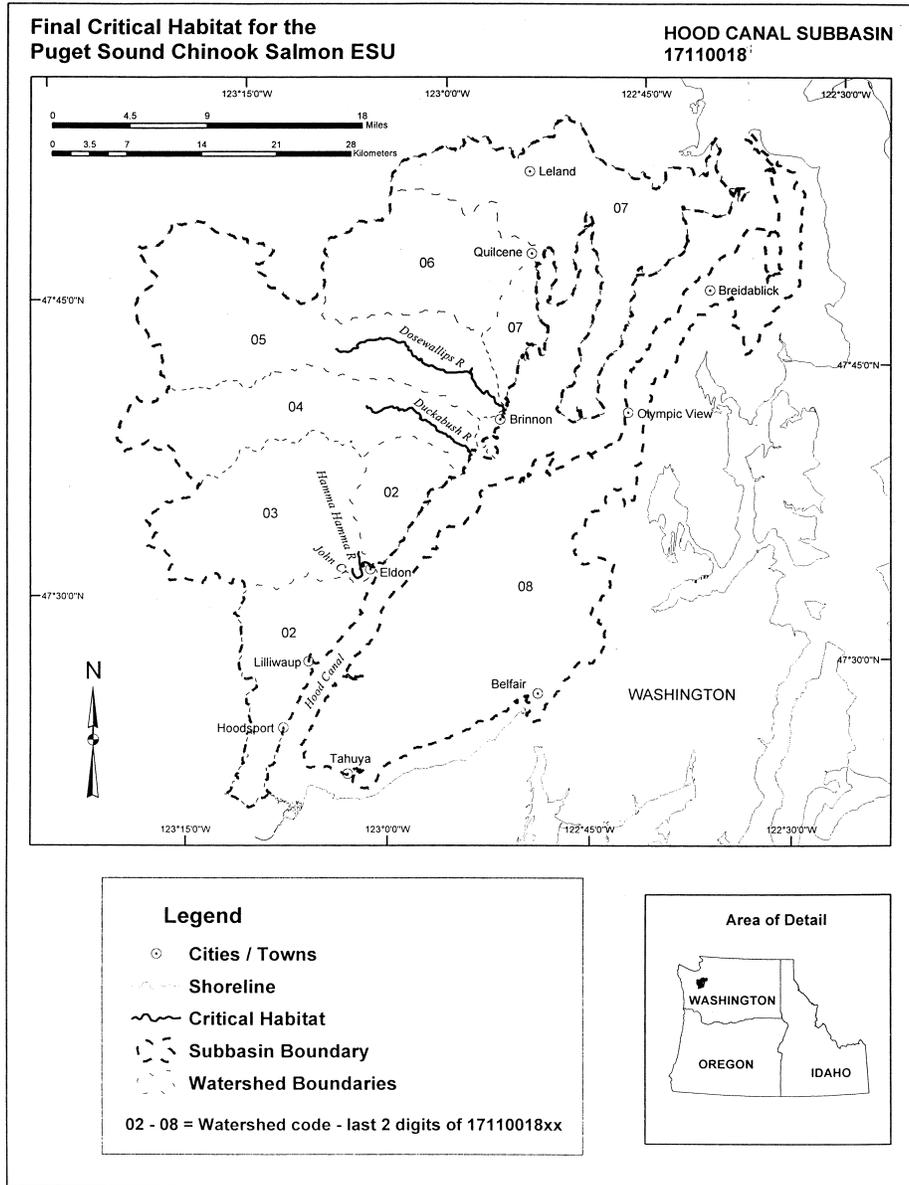


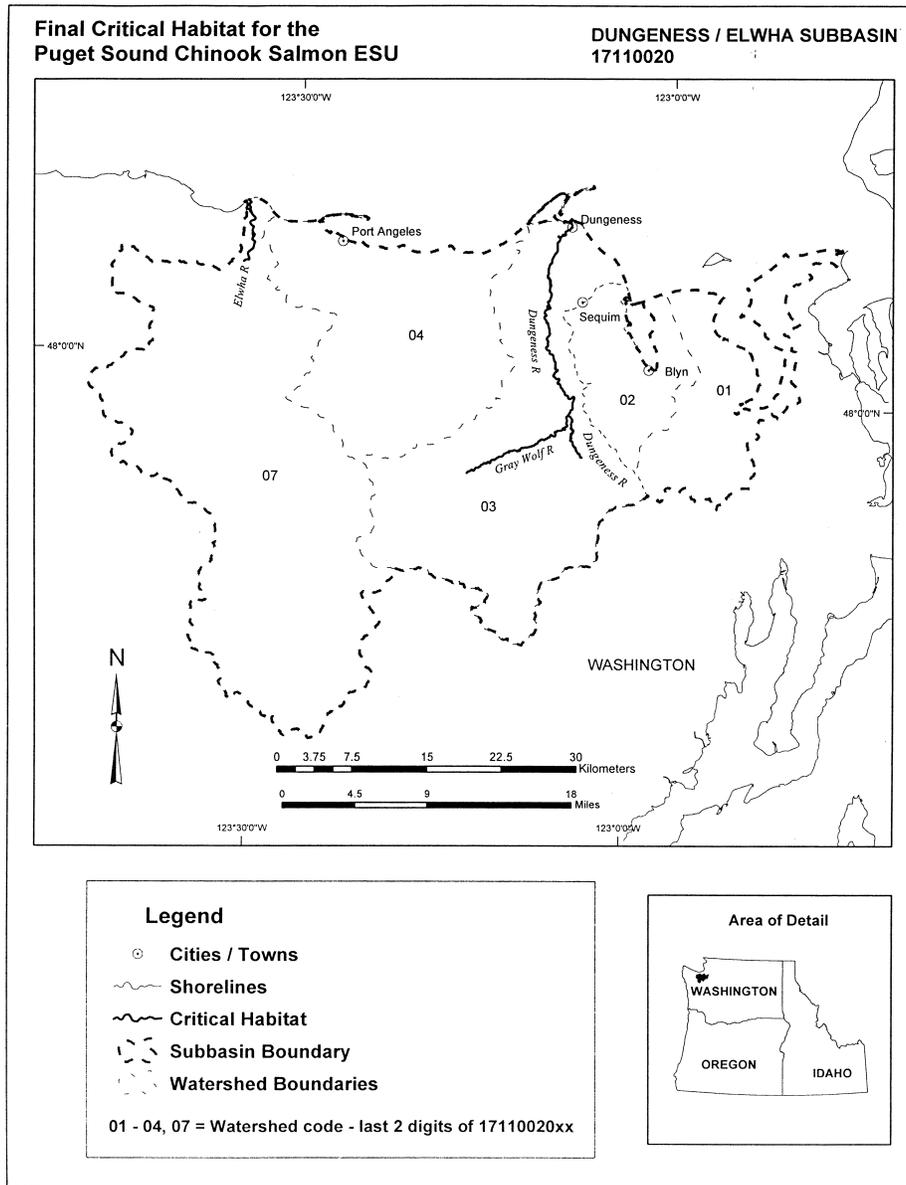


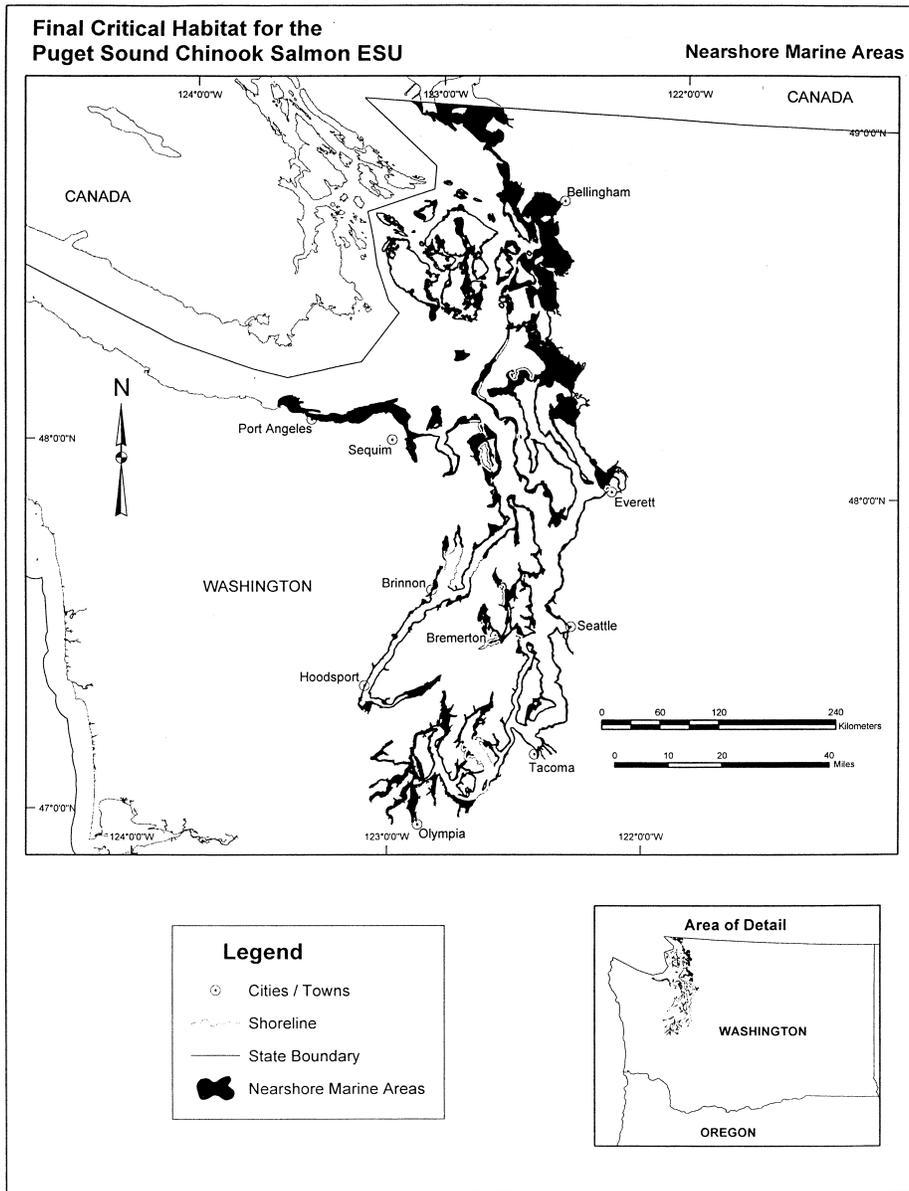












(j) *Lower Columbia River Chinook Salmon (Oncorhynchus tshawytscha)*. Critical habitat is designated to include the areas defined in the following subbasins:

(1) Middle Columbia/Hood Subbasin 17070105—(i) *East Fork Hood River Watershed 1707010506*. Outlet(s) = Hood River (Lat 45.6050, Long -121.6323) upstream to endpoint(s) in: Dog River (45.4655, -121.5656); East Fork Hood River

(45.4665, -121.5669); Pinnacle Creek (45.4595, -121.6568); Tony Creek (45.5435, -121.6411).

(ii) *West Fork Hood River Watershed 1707010507*. Outlet(s) = West Fork Hood River (Lat 45.6050, Long -121.6323) upstream to endpoint(s) in: Divers Creek (45.5457, -121.7447); Elk Creek (45.4277, -121.7889); Indian Creek (45.5375, -121.7857); Jones Creek (45.4629, -121.7942); Lake Branch (45.5083, -121.8485); McGee Creek (45.4179, -121.7675); No Name Creek (45.5347, -121.7929); Red Hill Creek (45.4720, -121.7705); Unnamed (45.5502, -121.7014).

(iii) *Hood River Watershed 1707010508*. Outlet(s) = Hood River (Lat 45.7205, Long -121.5055) upstream to endpoint(s) in: Hood River (45.6050, -121.6323).

(iv) *White Salmon River Watershed 1707010509*. Outlet(s) = White Salmon River (Lat 45.7226, Long -121.5214) upstream to endpoint(s) in: White Salmon River (45.7677, -121.5374).

(v) *Wind River Watershed 1707010511*. Outlet(s) = Wind River (Lat 45.7037, Long -121.7946) upstream to endpoint(s) in: Bear Creek (45.7620, -121.8293); Big Hollow Creek (45.9399, -121.9996); Dry Creek (45.9296, -121.9721); Falls Creek (45.9105, -121.9222); Little Wind River (45.7392, -121.7772); Ninemile Creek (45.8929, -121.9526); Paradise Creek (45.9527, -121.9408); Trapper Creek (45.8887, -122.0065); Trout Creek (45.8021, -121.9313); Wind River (45.9732, -121.9031).

(vi) *Middle Columbia/Grays Creek Watershed 1707010512*. Outlet(s) = Columbia River (Lat 45.7044, Long -121.7980) upstream to endpoint(s) in: Columbia River (45.7205, -121.5056).

(vii) *Middle Columbia/Eagle Creek Watershed 1707010513*. Outlet(s) = Columbia River (Lat 45.6447, Long -121.9395) upstream to endpoint(s) in: Camp Creek (45.6676, -121.8167); Carson Creek (45.7206, -121.8184); Columbia River (45.7044, -121.7980); Dry Creek (45.6717, -121.8732); Eagle Creek (45.6365, -121.9171); East Fork Herman Creek (45.6538, -121.8122); Herman Creek (45.6749, -121.8477); Rock Creek (45.6958, -121.8915); Unnamed (45.6654, -121.8164); Unnamed (45.6674, -121.8487); Unnamed (45.6689, -121.8444); Unnamed (45.6762, -121.9350); Unnamed (45.6902, -121.9034); Unnamed (45.6948, -121.9424).

(2) Lower Columbia/Sandy Subbasin 17080001—(i) *Salmon River Watershed 1708000101*. Outlet(s) = Salmon River (Lat 45.3768, Long -122.0293) upstream to endpoint(s) in: Cheeney Creek (45.3104, -121.9561); Copper Creek (45.2508, -121.9053); Salmon River (45.2511, -121.9025); South Fork Salmon River (45.2606, -121.9474); Unnamed (45.3434, -121.9920).

(ii) *Zigzag River Watershed 1708000102*. Outlet(s) = Zigzag River (Lat 45.3489, Long -121.9442) upstream to endpoint(s) in: Henry Creek (45.3328, -121.9110); Still Creek (45.2755, -121.8413); Unnamed (45.3019, -121.8202); Zigzag River (45.3092, -121.8642).

(iii) *Upper Sandy River Watershed 1708000103*. Outlet(s) = Sandy River (Lat 45.3489, Long -121.9442) upstream to endpoint(s) in: Clear Creek (45.3712, -121.9246); Clear Fork Sandy River (45.3994, -121.8525); Horseshoe Creek (45.3707, -121.8936); Lost Creek (45.3709, -121.8150); Sandy River (45.3899, -121.8620).

(iv) *Middle Sandy River Watershed 1708000104*. Outlet(s) = Sandy River (Lat 45.4464, Long -122.2459) upstream to endpoint(s) in: Alder Creek (45.3776, -122.0994); Bear Creek (45.3368, -121.9265); Cedar Creek (45.4087, -122.2617); North Boulder Creek (45.3822, -122.0168); Sandy River (45.3489, -121.9442).

(v) *Bull Run River Watershed 1708000105*. Outlet(s) = Bull Run River (Lat 45.4464, Long -122.2459) upstream to endpoint(s) in: Bull Run River (45.4455, -122.1561); Little Sandy Creek (45.4235, -122.1975).

(vi) *Washougal River (1708000106)*. Outlet(s) = Washougal River (Lat 45.5795, Long -122.4022) upstream(s) to endpoint(s) in: Cougar Creek (45.6265, -122.2987); Dougan Creek (45.6770, -122.1522); Lacamas Creek (45.5972, -122.3933); Little Washougal River (45.6315, -122.3767); Washougal River (45.6729, -122.1524); West Fork Washougal River (45.6205, -122.2149).

(vii) *Columbia Gorge Tributaries Watershed 1708000107*. Outlet(s) = Columbia River (Lat 45.5735, Long -122.3945) upstream to endpoint(s) in: Bridal Veil Creek (45.5542, -122.1793); Columbia River (45.6447, -121.9395); Coopey Creek (45.5656, -122.1671); Government Cove (45.5948, -122.0630); Hamilton Creek

(45.6414, -121.9764); Hardy Creek (45.6354, -121.9987); Horsetail Creek (45.5883, -122.0675); Latourell Creek (45.5388, -122.2173); McCord Creek (45.6115, -121.9929); Moffett Creek (45.6185, -121.9662); Multnomah Creek (45.5761, -122.1143); Oneonta Creek (45.5821, -122.0718); Tanner Creek (45.6264, -121.9522); Turnaft Creek (45.6101, -122.0284); Unnamed (45.5421, -122.2624); Unnamed (45.5488, -122.3504); Unnamed (45.6025, -122.0443); Unnamed (45.6055, -122.0392); Unnamed (45.6083, -122.0329); Unnamed (45.6118, -122.0216); Unnamed (45.6124, -122.0172); Unnamed (45.6133, -122.0055); Wahkeena Creek (45.5755, -122.1266); Young Creek (45.5480, -122.1997).

(viii) *Lower Sandy River Watershed 1708000108*. Outlet(s) = Sandy River (Lat 45.5680, Long -122.4023) upstream to endpoint(s) in: Beaver Creek (45.5258, -122.3822); Gordon Creek (45.4915, -122.2423); Sandy River (45.4464, -122.2459); Trout Creek (45.4844, -122.2785); Unnamed (45.5542, -122.3768); Unnamed (45.5600, -122.3650).

(3) Lewis Subbasin 17080002—(i) *East Fork Lewis River Watershed 1708000205*. Outlet(s) = East Fork Lewis River (Lat 45.8664, Long -122.7189) upstream to endpoint(s) in: East Fork Lewis River (45.8395, -122.4463).

(ii) *Lower Lewis River Watershed 1708000206*. Outlet(s) = Lewis River (Lat 45.8519, Long -122.7806) upstream to endpoint(s) in: Cedar Creek (45.9049, -122.3684); Chelatchie Creek (45.9169, -122.4130); Johnson Creek (45.9385, -122.6261); Lewis River (45.9570, -122.5550); Pup Creek (45.9391, -122.5440); Unnamed (45.8882, -122.7412); Unnamed (45.9153, -122.4362).

(4) Lower Columbia/Clatskanie Subbasin 17080003—(i) *Kalama River Watershed 1708000301*. Outlet(s) = Burris Creek (45.8926, -122.7892); Kalama River (46.0340, -122.8695) upstream to endpoint(s) in: Arnold Creek (46.0463, -122.5938); Burris Creek (45.9391, -122.7780); Elk Creek (46.0891, -122.5117); Gobar Creek (46.0963, -122.6042); Hatchery Creek (46.0459, -122.8027); Kalama River (46.1109, -122.3579); Little Kalama River (45.9970, -122.6939); North Fork Kalama River (46.1328, -122.4118); Wild Horse Creek (46.0626, -122.6367).

(ii) *Clatskanie River Watershed 1708000303*. Outlet(s) = Clatskanie River

(Lat 46.1398, Long -123.2303) upstream to endpoint(s) in: Clatskanie River (46.0435, -123.0829); Merrill Creek (46.0916, -123.1727); Perkins Creek (46.0826, -123.1678).

(iii) *Skamokawa/Elochoman Watershed 1708000305*. Outlet(s) = Elochoman River (Lat 46.2269, Long -123.4040); Skamokawa Creek (46.2677, -123.4562); Unnamed (46.2243, -123.3975) upstream to endpoint(s) in: Beaver Creek (46.2256, -123.3071); Elochoman River (46.3503, -123.2428); Falk Creek (46.2954, -123.4413); Left Fork Skamokawa Creek (46.3249, -123.4538); McDonald Creek (46.3398, -123.4116); Standard Creek (46.3292, -123.3999); West Fork Elochoman River (46.3211, -123.2605); West Fork Skamokawa Creek (46.2871, -123.4654); Wilson Creek (46.2970, -123.3434).

(iv) *Plympton Creek Watershed 1708000306*. Outlet(s) = Westport Slough (Lat 46.1434, Long -123.3816) upstream to endpoint(s) in: Plympton Creek (46.1261, -123.3842); Westport Slough (46.1195, -123.2797).

(5) Upper Cowlitz Subbasin 17080004—(i) *Headwaters Cowlitz River 1708000401*. Outlet(s) = Cowlitz River (Lat 46.6580, Lat -121.6032) upstream to endpoint(s) in: Clear Fork Cowlitz River (46.6858, -121.5668); Muddy Fork Cowlitz River (46.6994, -121.6169); Ohanapecosh River (46.6883, -121.5809).

(ii) *Upper Cowlitz River Watershed 1708000402*. Outlet(s) = Cowlitz River (Lat 46.5763, Long -121.7051) upstream to endpoint(s) in: Cowlitz River (46.6580, -121.6032).

(iii) *Cowlitz Valley Frontal Watershed 1708000403*. Outlet(s) = Cowlitz River (Lat 46.4765, Long -122.0952) upstream to endpoint(s) in: Cowlitz River (46.5763, -121.7051); Silver Creek (46.5576, -121.9178).

(iv) *Upper Cispus River Watershed 1708000404*. Outlet(s) = Cispus River (Lat 46.4449, Long -121.7954) upstream to endpoint(s) in: Cispus River (46.3410, -121.6709); East Canyon Creek (46.3454, -121.7031); North Fork Cispus River (46.4355, -121.654).

(v) *Lower Cispus River Watershed 1708000405*. Outlet(s) = Cispus River (Lat 46.4765, Long -122.0952) upstream to endpoint(s) in: Cispus River (46.4449, -121.7954); McCoy Creek (46.3892,

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-121.8190); Yellowjacket Creek (46.3871, -121.8335).

(6) Cowlitz Subbasin 17080005—(i) *Riffe Reservoir Watershed 1708000502*. Outlet(s) = Cowlitz River (Lat 46.5033, Long -122.5870) upstream to endpoint(s) in: Cowlitz River (46.4765, -122.0952).

(ii) *Jackson Prairie Watershed 1708000503*. Outlet(s) = Cowlitz River (Lat 46.3678, Long -122.9337) upstream to endpoint(s) in: Bear Creek (46.4215, -122.9224); Blue Creek (46.4885, -122.7253); Cowlitz River (46.5033, -122.5870); Lacamas Creek (46.5118, -122.8113); Mill Creek (46.4701, -122.8557); Mill Creek (46.5176, -122.6209); Otter Creek (46.4800, -122.6996); Salmon Creek (46.4237, -122.8400); Skook Creek (46.5035, -122.7556).

(iii) *North Fork Toutle River Watershed 1708000504*. Outlet(s) = North Fork Toutle River (Lat 46.3669, Long -122.5859) upstream to endpoint(s) in: North Fork Toutle River (46.3718, -122.5847).

(iv) *Green River Watershed 1708000505*. Outlet(s) = Green River (Lat 46.3718, Long -122.5847) upstream to endpoint(s) in: Cascade Creek (46.3924, -122.3530); Devils Creek (46.3875, -122.5113); Elk Creek (46.3929, -122.3224); Green River (46.3857, -122.1815); Miners Creek (46.3871, -122.2091); Shultz Creek (46.3744, -122.2987); Unnamed (46.3796, -122.3632).

(v) *South Fork Toutle River Watershed 1708000506*. Outlet(s) = South Fork Toutle River (Lat 46.3282, Long -122.7215) upstream to endpoint(s) in: Johnson Creek (46.3100, -122.6338); South Fork Toutle River (46.2306, -122.4439); Studebaker Creek (46.3044, -122.6777).

(vi) *East Willapa Watershed 1708000507*. Outlet(s) = Cowlitz River (Lat 46.2660, Long -122.9154) upstream to endpoint(s) in: Arkansas Creek (46.3275, -123.0123); Baxter Creek (46.3034, -122.9709); Brim Creek (46.4263, -123.0139); Campbell Creek (46.3756, -123.0401); Cowlitz River (46.3678, -122.9337); Delameter Creek (46.2495, -122.9916); Hemlock Creek (46.2585, -122.7269); Hill Creek (46.3724, -122.9211); King Creek (46.5076, -122.9885); Monahan Creek (46.2954, -123.0286); North Fork Toutle River (46.3669, -122.5859); Olequa Creek (46.5174, -122.9042); Stillwater Creek (46.3851, -123.0478); Sucker Creek

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(46.2628, -122.8116); Unnamed (46.5074, -122.9585); Unnamed (46.5405, -122.9090); Wyant Creek (46.3424, -122.6302).

(vii) *Coweeman Watershed 1708000508*. Outlet(s) = Cowlitz River (Lat 46.0977, Long -122.9141); Owl Creek (46.0771, -122.8676) upstream to endpoint(s) in: Baird Creek (46.1704, -122.6119); Coweeman River (46.1505, -122.5792); Cowlitz River (46.2660, -122.9154); Leckler Creek (46.2092, -122.9206); Mulholland Creek (46.1932, -122.6992); North Fork Goble Creek (46.1209, -122.7689); Ostrander Creek (46.2095, -122.8623); Owl Creek (46.0914, -122.8692); Salmon Creek (46.2547, -122.8839); South Fork Ostrander Creek (46.1910, -122.8600); Unnamed (46.0838, -122.7264).

(7) Lower Columbia Subbasin 17080006—(i) *Big Creek Watershed 1708000602*. Outlet(s) = Bear Creek (Lat 46.1719, Long -123.6642); Big Creek (46.1847, -123.5943); Blind Slough (46.2011, -123.5822); John Day River (46.1820, -123.7392) upstream to endpoint(s) in: Bear Creek (46.1181, -123.6388); Big Creek (46.1475, -123.5819); Gnat Creek (46.1614, -123.4813); John Day River (46.1763, -123.7474).

(ii) *Grays Bay Watershed 1708000603*. Outlet(s) = Crooked Creek (Lat 46.2962, Long -123.6795); Deep River (46.3035, -123.7092); Grays River (46.3035, -123.6867); Sisson Creek (46.3011, -123.7237); Unnamed (46.3042, -123.6870) upstream to endpoint(s) in: Crooked Creek (46.3033, -123.6222); East Fork Grays River (46.4425, -123.4081); Fossil Creek (46.3628, -123.5530); Grays River (46.4910, -123.4334); Hull Creek (46.3725, -123.5866); Johnson Canyon (46.3699, -123.6659); Klints Creek (46.3562, -123.5675); Malone Creek (46.3280, -123.6545); Mitchell Creek (46.4512, -123.4371) South Fork Grays River (46.3813, -123.4581); Sweigiler Creek (46.4195, -123.5375); Unnamed (46.3283, -123.7376); Unnamed (46.3651, -123.6839); Unnamed (46.4701, -123.4515); West Fork Grays River (46.4195, -123.5530).

(8) Clackamas Subbasin 17090011—(i) *Lower Clackamas River Watershed 1709001106*. Outlet(s) = Clackamas River (Lat 45.3719, Long -122.6071) upstream to endpoint(s) in: Clackamas River (45.2440, -122.2798); Clear Creek (45.3568, -122.4781); Deep Creek (45.3916, -122.4028); Richardson Creek (45.3971,

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-122.4712); Rock Creek (45.4128, -122.5043).

(ii) [Reserved]

(9) Lower Willamette Subbasin 17090012—(i) *Johnson Creek Watershed 1709001201*. Outlet(s) = Willamette River (Lat 45.4423, Long -122.6453) upstream to endpoint(s) in: Crystal Springs Creek (45.4770, -122.6403); Kellogg Creek (45.4344, -122.6314); Tryon Creek (45.4239, -122.6595); Unnamed (45.4002, -122.6423); Willamette River (45.3719, -122.6071).

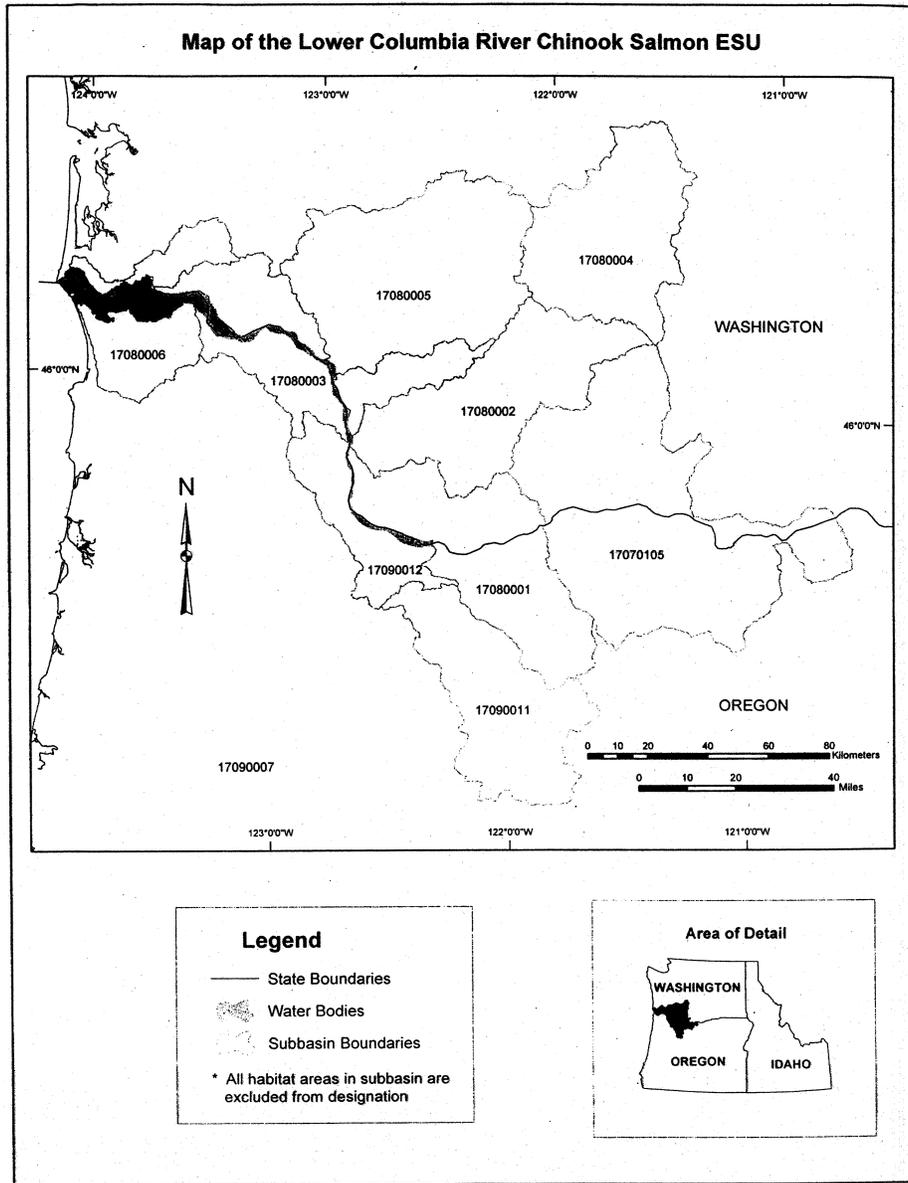
(ii) *Scappoose Creek Watershed 1709001202*. Outlet(s) = Multnomah Channel (Lat 45.8577, Long -122.7919) upstream to endpoint(s) in: Cunningham Slough (45.8250, -122.8069); Multnomah

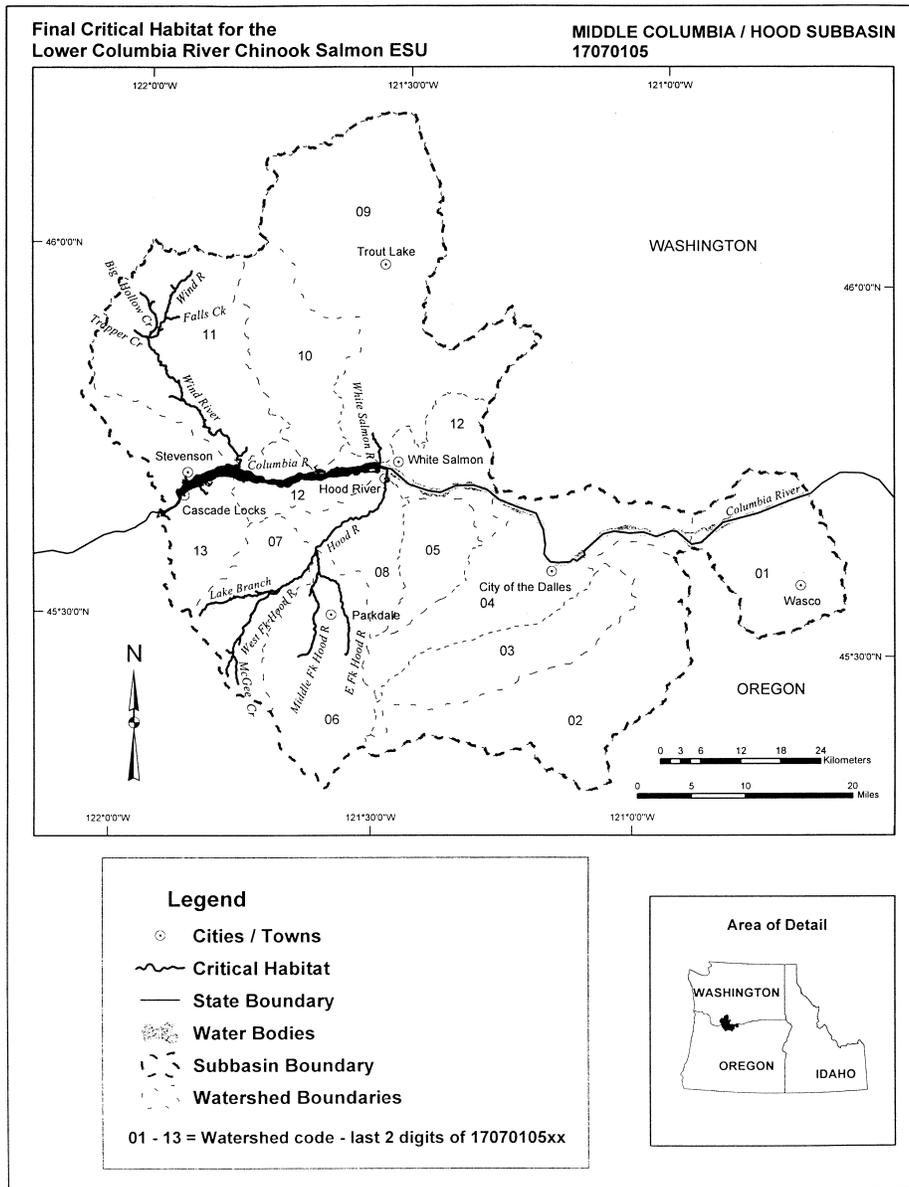
Channel (45.6188, -122.7921); North Scappoose Creek (45.8014, -122.9340).

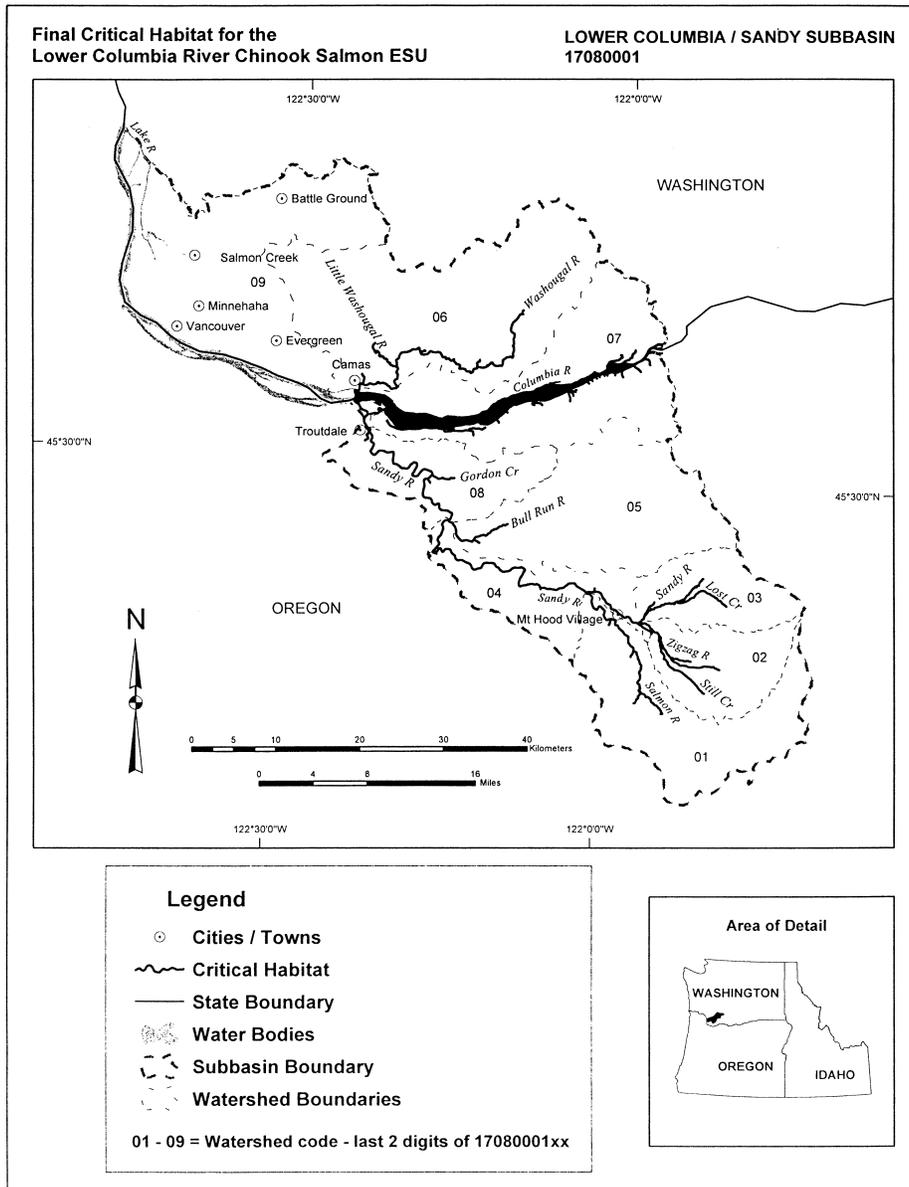
(iii) *Columbia Slough/Willamette River Watershed 1709001203*. Outlet(s) = Willamette River (Lat 45.6530, Long -122.7646) upstream to endpoint(s) in: Bybee/Smith Lakes (45.6189, -122.7333); Columbia Slough (45.5979, -122.7137); Willamette River (45.4423, -122.6453).

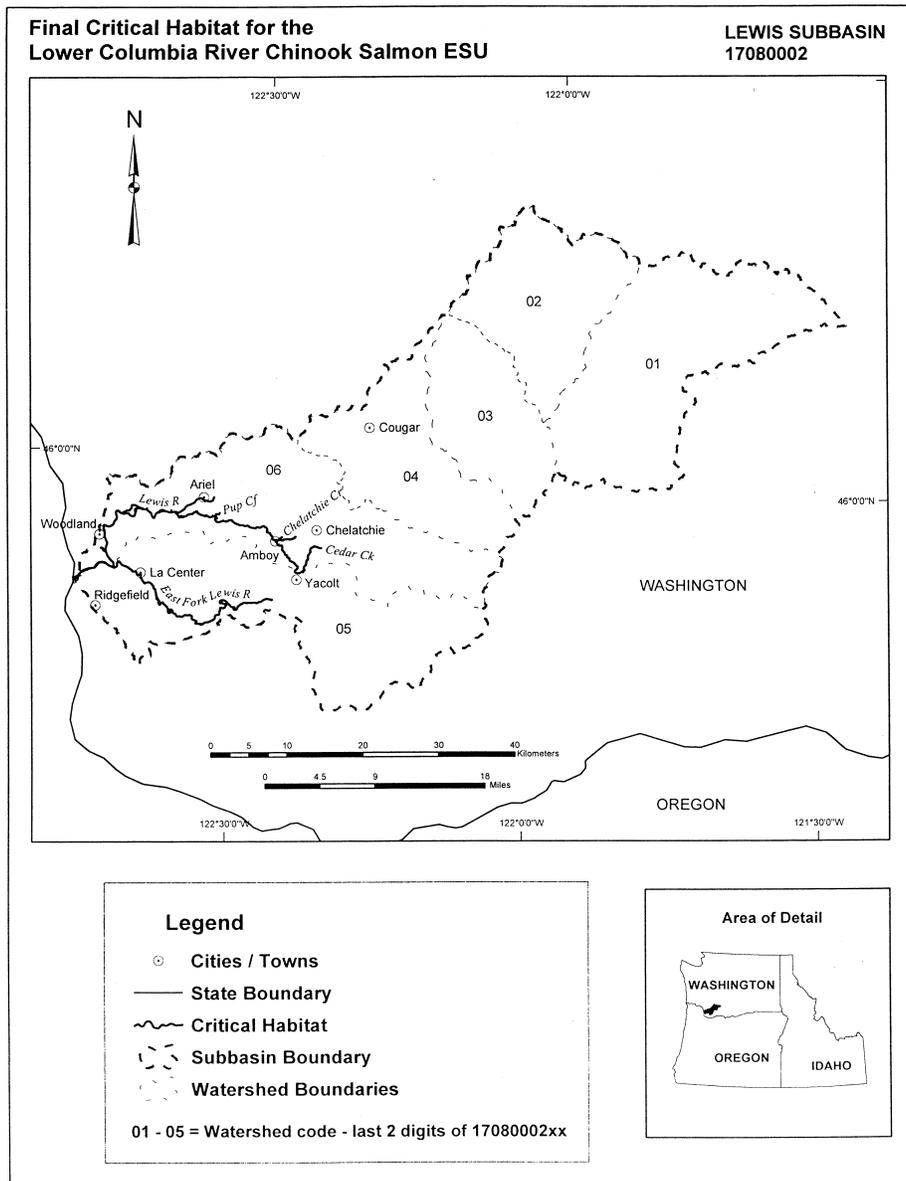
(10) Lower Columbia River Corridor—Lower Columbia River Corridor. Outlet(s) = Columbia River (Lat 46.2485, Long -124.0782) upstream to endpoint(s) in: Columbia River (45.5709, -122.4021).

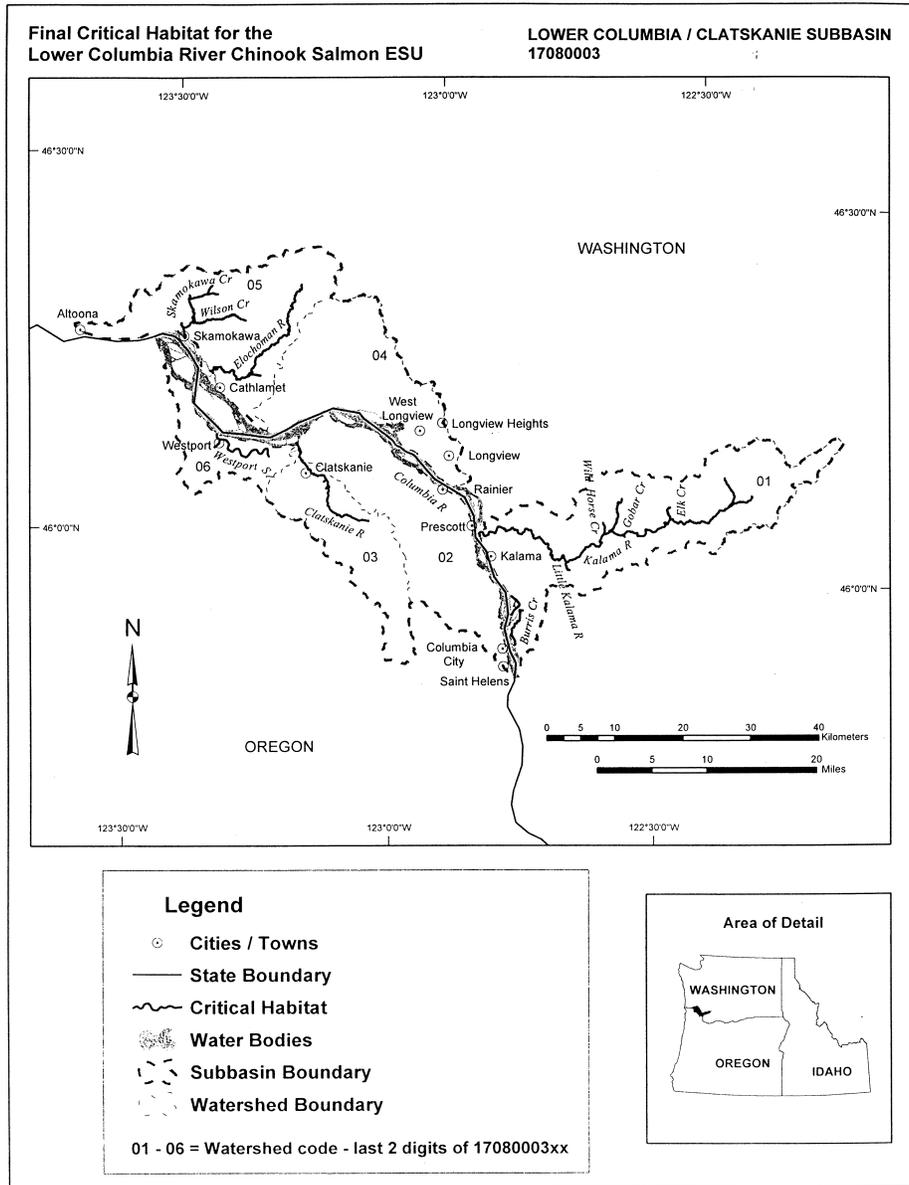
(11) Maps of critical habitat for the Lower Columbia River chinook salmon ESU follow:

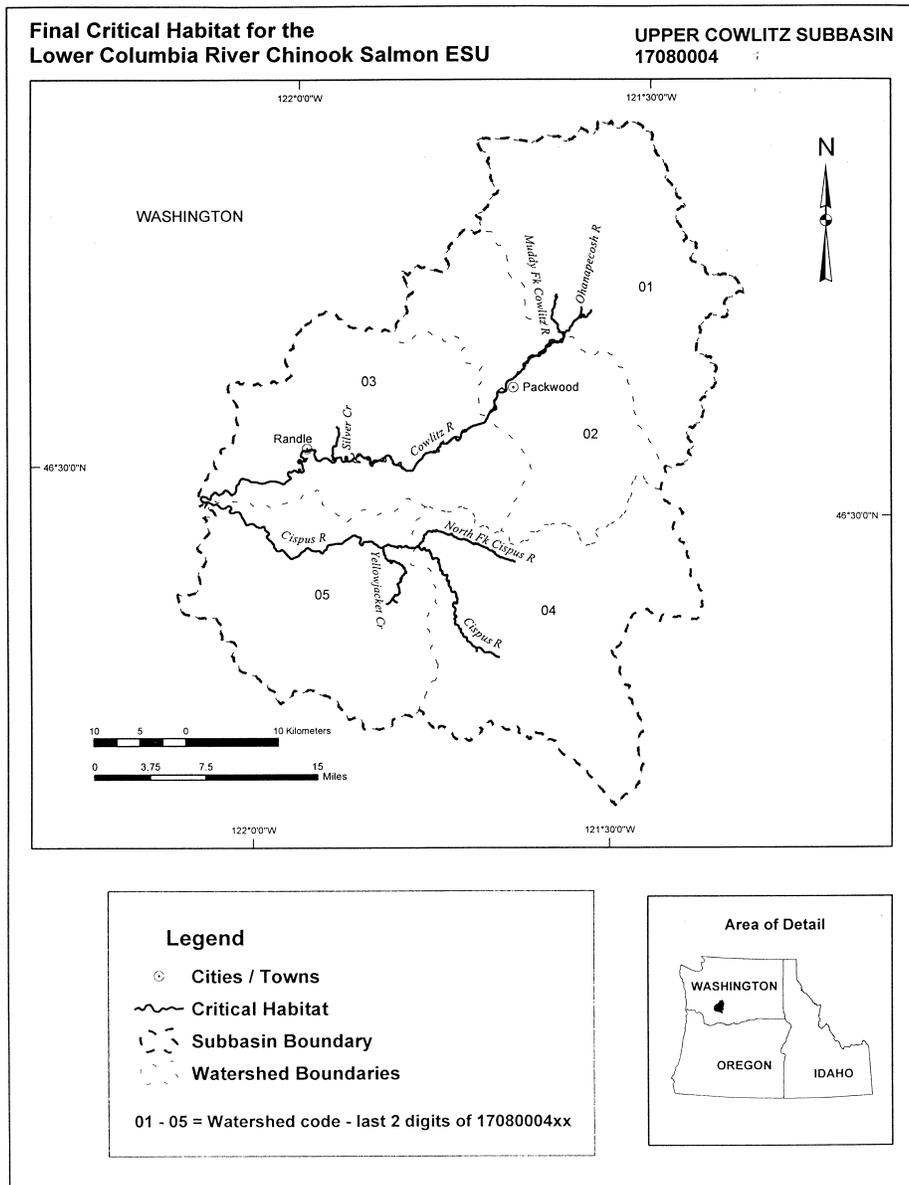


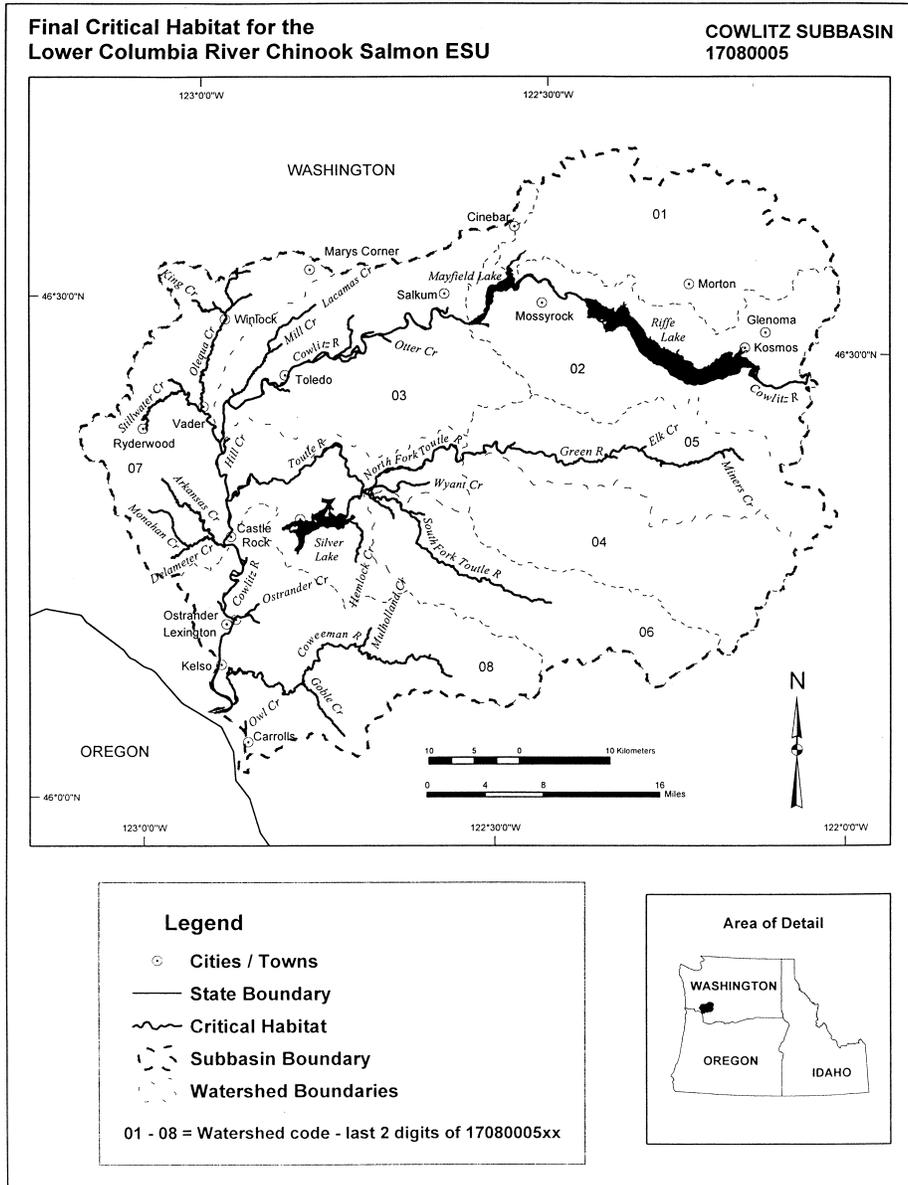


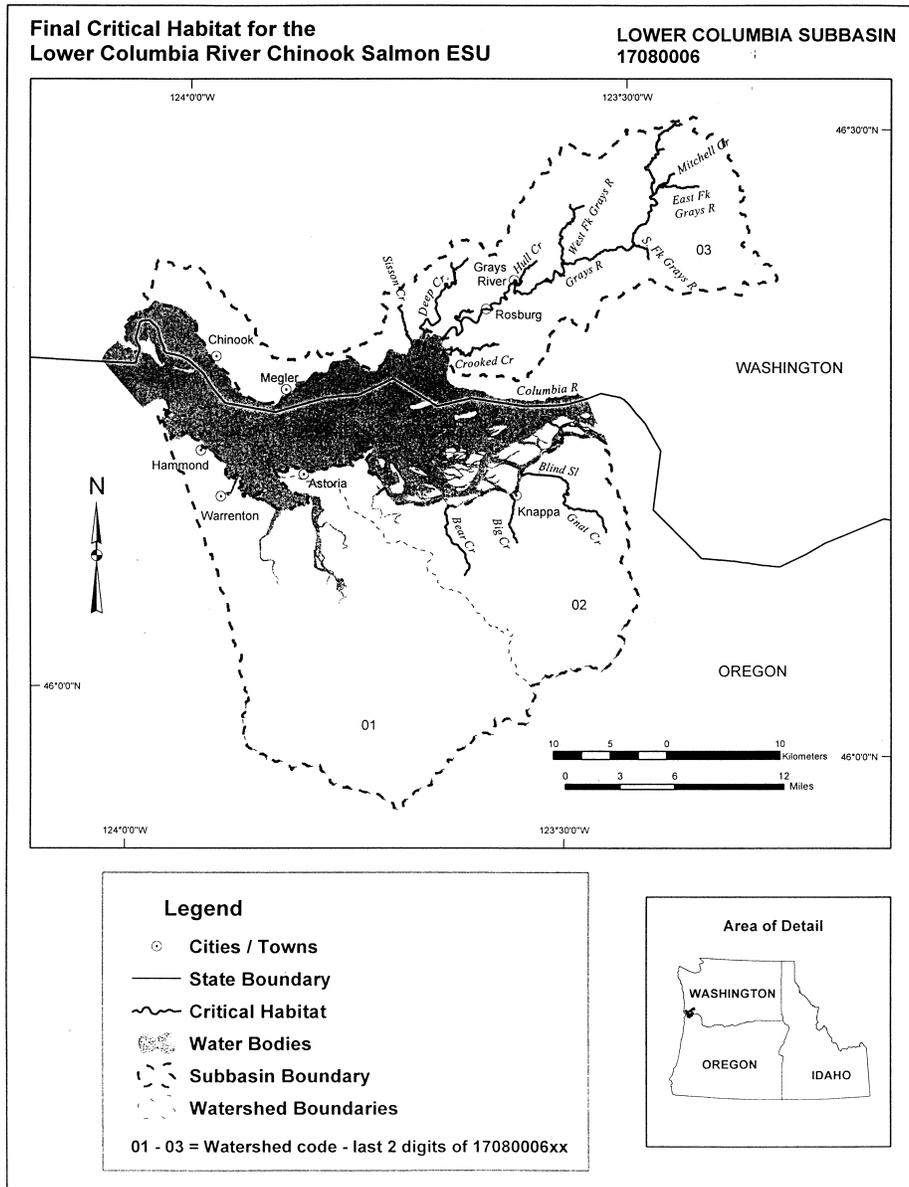


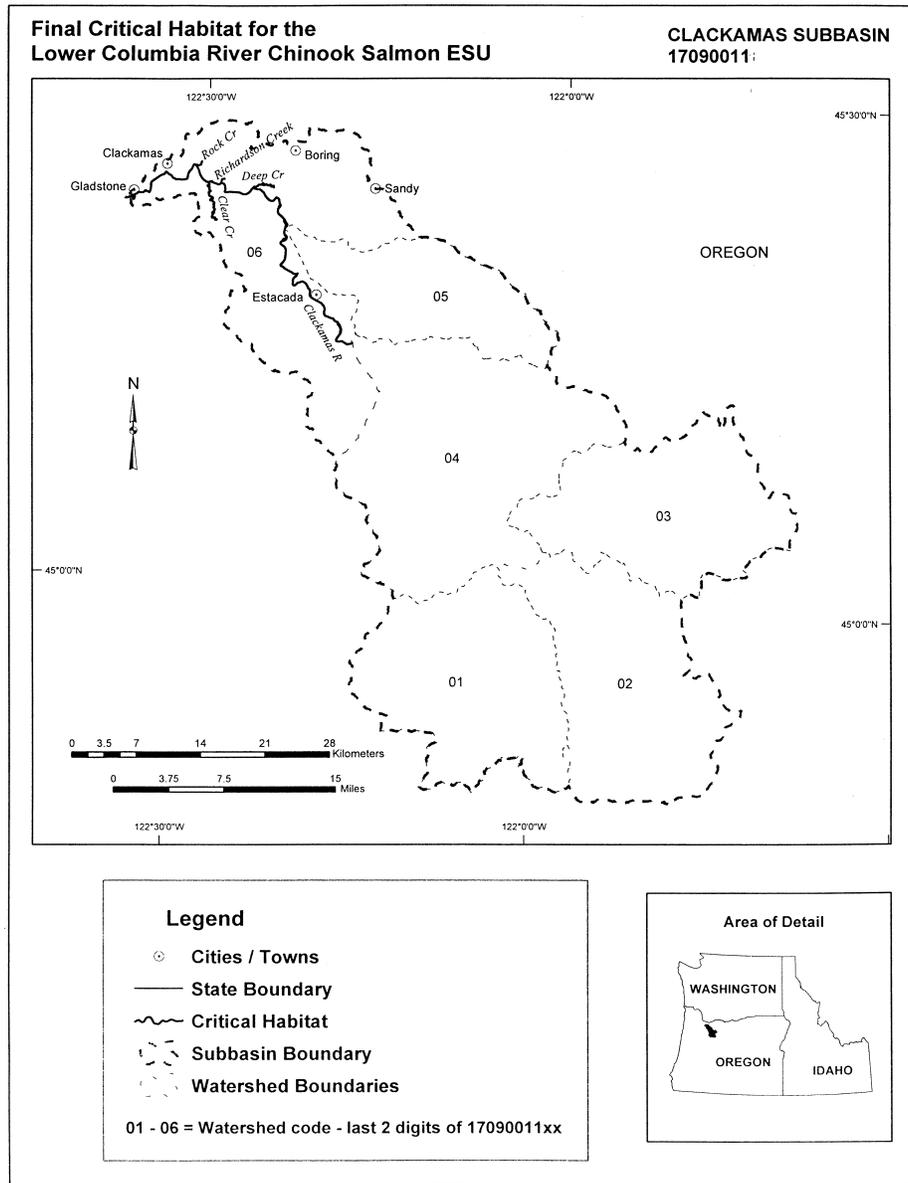


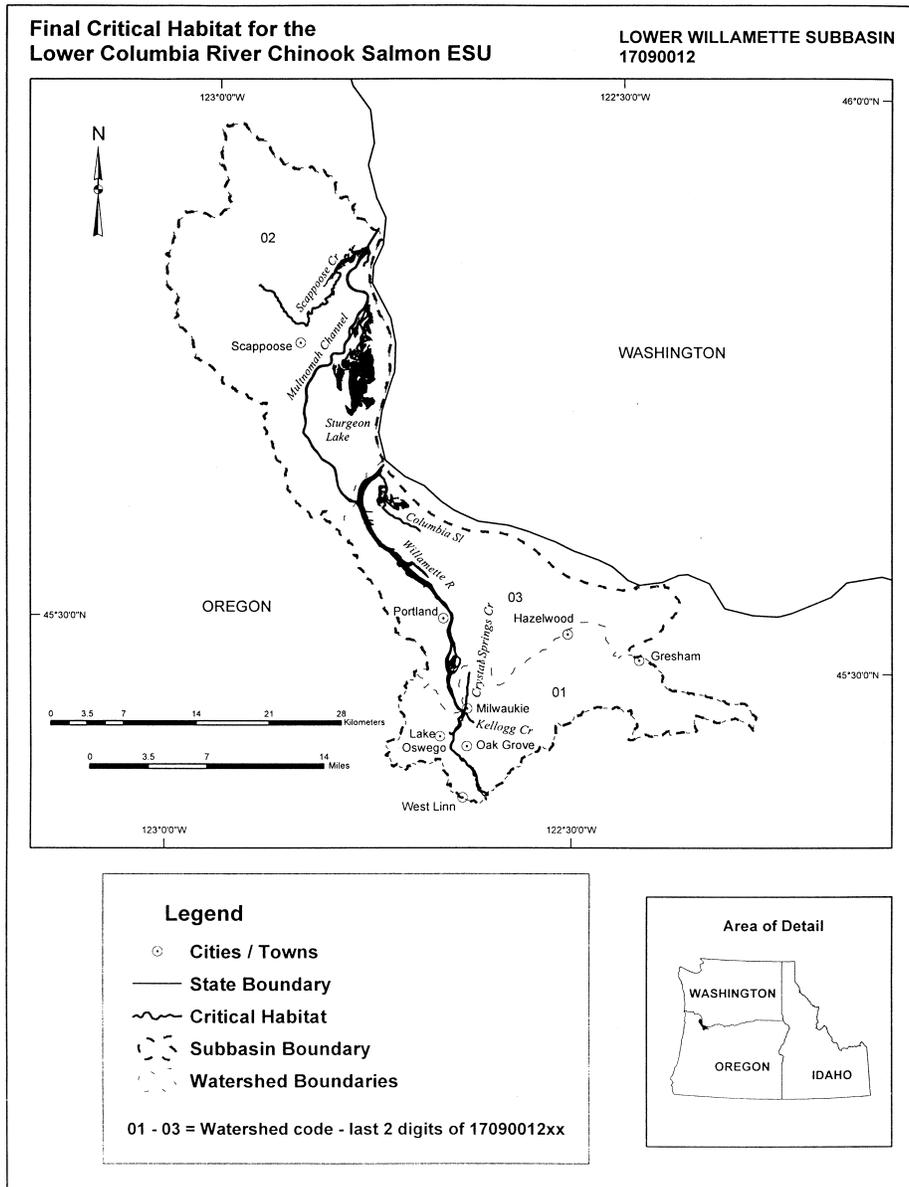


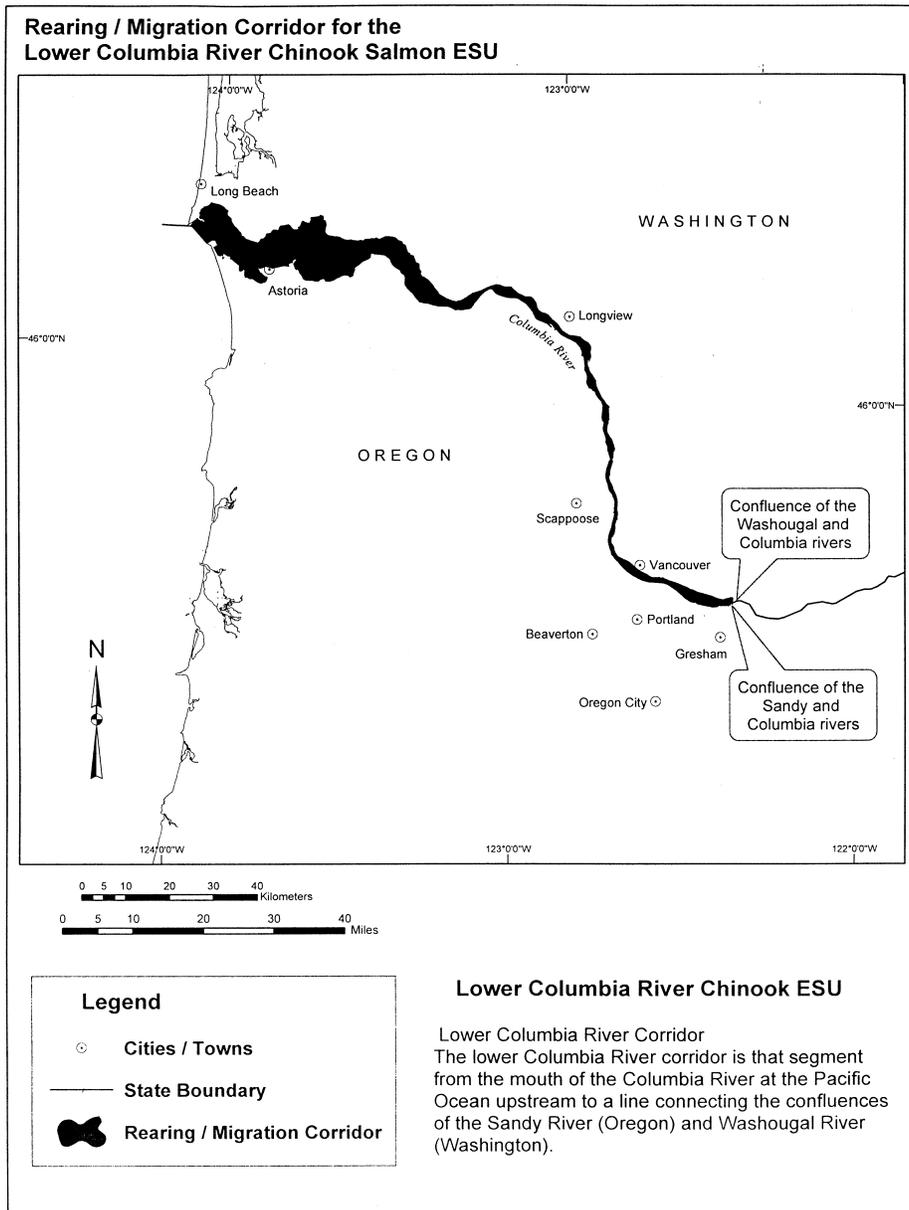












(k) *Upper Willamette River Chinook Salmon (Oncorhynchus tshawytscha)*. Critical habitat is to include the areas defined in the following subbasins:

(1) Middle Fork Willamette Subbasin 17090001—(i) *Upper Middle Fork Willamette River Watershed 1709000101*. Outlet(s) = Middle Fork Willamette River (Lat 43.4961, Long -122.3989) upstream to

endpoint(s) in: Echo Creek (43.4670, -122.3172); Found Creek (43.5048, -122.2831); Middle Fork Willamette River (43.4801, -122.2534); Noisy Creek (43.5083, -122.3016); Simpson Creek (43.5031, -122.3801); Skunk Creek (43.5069, -122.2866); Staley Creek (43.4527, -122.3650); Swift Creek (43.5438, -122.2431); Tumblebug Creek (43.4740, -122.2549); Unnamed (43.4967, -122.2645); Unnamed (43.4986, -122.2686); Unnamed (43.5020, -122.2764).

(ii) *Hills Creek Watershed 1709000102*. Outlet(s) = Hills Creek (Lat 43.7071, Long -122.4195) upstream to endpoint(s) in: Hills Creek (43.6718, -122.3502).

(iii) *Salt Creek/Willamette River Watershed 1709000103*. Outlet(s) = Salt Creek (Lat 43.7261, Long -122.4381) upstream to endpoint(s) in: Coyote Creek (43.6682, -122.2378); Eagle Creek (43.6795, -122.2293); Salt Creek (43.6204, -122.1413); South Fork Salt Creek (43.6518, -122.2261).

(iv) *Hills Creek Reservoir Watershed 1709000105*. Outlet(s) = Middle Fork Willamette River (Lat 43.7589, Long -122.5242) upstream to endpoint(s) in: Big Willow Creek (43.6341, -122.4139); Buck Creek (43.5945, -122.4272); Bull Creek (43.6598, -122.4014); Coal Creek (43.4882, -122.4246); Coffeepot Creek (43.6182, -122.4160); Gold Creek (43.5860, -122.4768); Indian Creek (43.5034, -122.4638); Larison Creek (43.6851, -122.4760); Middle Fork Willamette River (43.4961, -122.3989); Packard Creek (43.6516, -122.4904); Snake Creek (43.5388, -122.4554); Snow Creek (43.6061, -122.4585); Windfall Creek (43.5984, -122.4638).

(v) *North Fork of Middle Fork Willamette River Watershed 1709000106*. Outlet(s) = North Fork Middle Fork Willamette River (Lat 43.7589, Long -122.5242) upstream to endpoint(s) in: Cayuse Creek (43.8651, -122.1856); Chalk Creek (43.8750, -122.4044); Christy Creek (43.9079, -122.3796); Fisher Creek (43.8699, -122.1551); North Fork Middle Fork Willamette River (43.8671, -122.0711).

(vi) *Middle Fork Willamette/Lookout Point Watershed 1709000107*. Outlet(s) = Middle Fork Willamette River (Lat 43.9495, Long -122.8471) upstream to endpoint(s) in: Anthony Creek (43.8799, -122.8498); Bannister Creek (43.8743, -122.6538); Buckhead Creek (43.7753, -122.5253); Burnt Bridge Creek (43.7900,

-122.5334); Carr Creek (43.8558, -122.8177); Deception Creek (43.7551, -122.5541); East Fork Minnow Creek (43.8902, -122.7342); Goodman Creek (43.8309, -122.6940); Gosage Creek (43.8446, -122.8129); Guiley Creek (43.8419, -122.7962); Hazel Creek (43.8637, -122.6891); Lost Creek (43.8427, -122.7781); Middle Creek (43.8624, -122.8323); Middle Fork Willamette River (43.7589, -122.5242); Minnow Creek (43.8872, -122.7458); North Creek (43.8247, -122.6236); Rolling Riffle Creek (43.8750, -122.7052); School Creek (43.8604, -122.6099); South Creek (43.8230, -122.6216); Unnamed (43.8329, -122.6775); Unnamed (43.8427, -122.6643); Unnamed (43.8433, -122.6950).

(vii) *Little Fall Creek Watershed 1709000108*. Outlet(s) = Little Fall Creek (Lat 43.9577, Long -122.8166) upstream to endpoint(s) in: Little Fall Creek (44.0579, -122.5440); Norton Creek (44.0006, -122.7044); Sturdy Creek (44.0196, -122.6475).

(viii) *Fall Creek Watershed 1709000109*. Outlet(s) = Fall Creek (Lat 43.9707, Long -122.8677) upstream to endpoint(s) in: Alder Creek (44.0000, -122.4993); Fall Creek (43.9922, -122.3758); Gold Creek (43.9772, -122.4051); Logan Creek (43.9447, -122.4504); Nelson Creek (43.9285, -122.6850); Portland Creek (43.9331, -122.4655); Sunshine Creek (43.9943, -122.4672); Winberry Creek (43.9142, -122.6890).

(ix) *Lower Middle Fork Willamette River Watershed 1709000110*. Outlet(s) = Middle Fork Willamette River (Lat 44.0226, Long -123.0169) upstream to endpoint(s) in: Hills Creek (43.9945, -122.8651); Middle Fork Willamette River (43.9495, -122.8471); Mill Race (44.0407, -123.0004); Pudding Creek (44.0173, -122.9501); Rattlesnake Creek (43.9352, -122.8608); Wallace Creek (44.0074, -122.8984).

(2) Upper Willamette Subbasin 17090003—(i) *Muddy Creek Watershed 1709000302*. Outlet(s) = Willamette River (Lat 44.6400, Long -123.1096) upstream to endpoint(s) in: Willamette River (44.0226, -123.0169).

(ii) *Calapooia River Watershed 1709000303*. Outlet(s) = Calapooia River (Lat 44.5088, Long -123.1101) upstream to endpoint(s) in: Calapooia River (44.2354, -122.4128).

(iii) *Oak Creek Watershed 1709000304*. Outlet(s) = Willamette River (Lat 44.7504, Long -123.1421) upstream to endpoint(s) in: Calapooia River (44.5088, -123.1101); Willamette River (44.6400, -123.1096).

(iv) *Marys River Watershed 1709000305*. Outlet(s) = Marys River (Lat 44.5566, Long -123.2597) upstream to endpoint(s) in: Beaver Creek (44.4554, -123.3748); Marys River (44.5373, -123.3762); Oak Creek (44.5636, -123.2932).

(v) *Luckiamute River Watershed 1709000306*. Outlet(s) = Luckiamute River (Lat 44.7561, Long -123.1468) upstream to endpoint(s) in: Soap Creek (44.7317, -123.2151); Unnamed (44.7661, -123.2011).

(3) McKenzie Subbasin 17090004—(i) *Upper McKenzie River Watershed 1709000401*. Outlet(s) = McKenzie River (Lat 44.1721, Long -122.2058) upstream to endpoint(s) in: Deer Creek (44.2677, -122.0712); Frissell Creek (44.2288, -122.0699); Lost Creek (44.1729, -122.0401); McKenzie River (44.3109, -122.0199); Scott Creek (44.1981, -122.0195); Smith River (44.2824, -122.0506).

(ii) *Horse Creek Watershed 1709000402*. Outlet(s) = West Fork Horse Creek (Lat 44.1721, Long -122.2058) upstream to endpoint(s) in: Cedar Swamp Creek (44.1563, -122.1132); Horse Creek (44.0602, -122.0087); King Creek (44.1635, -122.1693); Separation Creek (44.1274, -122.0077).

(iii) *South Fork McKenzie River Watershed 1709000403*. Outlet(s) = South Fork McKenzie River (Lat 44.1595, Long -122.2946) upstream to endpoint(s) in: Augusta Creek (43.9562, -122.1632); Cougar Creek (44.1397, -122.2437); East Fork South Fork McKenzie (44.0850, -122.0997); Elk Creek (43.9455, -122.0384); French Pete Creek (44.0402, -122.1854); Hardy Creek (44.0345, -122.2047); Rebel Creek (44.0167, -122.1505); Roaring River (43.9479, -122.0811); South Fork McKenzie River (43.9533, -121.9995).

(iv) *McKenzie River/Quartz Creek Watershed 1709000405*. Outlet(s) = McKenzie River (Lat 44.1112, Long -122.4209) upstream to endpoint(s) in: Cone Creek (44.1528, -122.3649); McKenzie River (44.1721, -122.2058); Quartz Creek (44.0188, -122.3015); Wycoff Creek (44.0846, -122.3143).

(v) *Lower McKenzie River Watershed 1709000407*. Outlet(s) = McKenzie River

(Lat 44.1255, Long -123.1059) upstream to endpoint(s) in: Boulder Creek (44.0601, -122.7825); Camp Creek (44.0896, -122.8544); Deer Creek (44.0895, -122.4234); Ennis Creek (44.0804, -122.3754); Finn Creek (44.1471, -122.5972); Forest Creek (44.0861, -122.7153); Haagen Creek (44.0880, -122.7126); Hatchery Creek (44.1449, -122.6056); Holden Creek (44.1056, -122.7061); Indian Creek (44.1526, -122.5816); Lane Creek (44.0928, -122.7323); Marten Creek (44.1075, -122.5046); McKenzie River (44.1112, -122.4209); North Fork Gate Creek (44.1718, -122.5248); Osborn Creek (44.0565, -122.7880); Ritchie Creek (44.1028, -122.6567); South Fork Gate Creek (44.1667, -122.4980); Taylor Creek (44.0783, -122.7481); Toms Creek (44.1316, -122.5586); Unnamed (44.0646, -122.9399); Walterville Canal (44.0765, -122.7537).

(4) North Santiam Subbasin 17090005—(i) *Middle North Santiam River Watershed 1709000504*. Outlet(s) = North Santiam River (Lat 44.7852, Long -122.6079) upstream to endpoint(s) in: Mad Creek (44.7453, -122.3898); North Santiam River (44.7510, -122.2821); Rock Creek (44.7077, -122.4171); Snake Creek (44.7477, -122.4905).

(ii) *Little North Santiam River Watershed 1709000505*. Outlet(s) = Little North Santiam River (Lat 44.7852, Long -122.6079) upstream to endpoint(s) in: Elkhorn Creek (44.8134, -122.3561); Little North Santiam River (44.8390, -122.3364); Little Sinker Creek (44.8191, -122.4111); Sinker Creek (44.8166, -122.4174).

(iii) *Lower North Santiam River Watershed 1709000506*. Outlet(s) = Santiam River (Lat 44.7504, Long -123.1421) upstream to endpoint(s) in: Bear Branch (44.7559, -122.7974); Cold Creek (44.7522, -122.8848); Morgan Creek (44.7500, -123.0376); North Santiam River (44.7852, -122.6079); Salem Ditch (44.8000, -122.8120); Smallman Creek (44.7300, -122.9098); Stout Creek (44.7930, -122.6177); Trask Creek (44.7725, -122.6152); Unnamed (44.7672, -123.0517); Valentine Creek (44.8013, -122.7176).

(5) South Santiam Subbasin 17090006—(i) *Hamilton Creek/South Santiam River Watershed 1709000601*. Outlet(s) = South Santiam River (Lat 44.6869, Long -123.0052) upstream to endpoint(s) in: Hamilton Creek (44.5037,

-122.7667); McDowell Creek (44.4580, -122.7128); Mill Creek (44.6750, -122.9721); Noble Creek (44.4519, -122.7976); South Santiam River (44.4163, -122.6693); Spring Branch (44.6821, -122.9811); Unnamed (44.6703, -122.9870); Unnamed (44.6801, -122.9786).

(ii) *Crabtree Creek Watershed 1709000602*. Outlet(s) = Crabtree Creek (Lat 44.6756, Long -122.9557) upstream to endpoint(s) in: Bald Peter Creek (44.5682, -122.5825); Beaver Creek (44.6271, -122.8504); Crabtree Creek (44.6058, -122.5405); Roaring River (44.6251, -122.7283); South Fork Crabtree Creek (44.5741, -122.5744).

(iii) *Thomas Creek Watershed 1709000603*. Outlet(s) = Thomas Creek (Lat 44.6778, Long -122.9654) upstream to endpoint(s) in: Jordan Creek (44.7531, -122.6595); Mill Creek (44.7055, -122.7842); Neal Creek (44.7101, -122.6912); South Fork Neal Creek (44.7033, -122.7078); Thomas Creek (44.6776, -122.4650).

(iv) *South Santiam River Watershed 1709000606*. Outlet(s) = South Santiam River (Lat 44.3977, Long -122.4491) upstream to endpoint(s) in: Falls Creek (44.4007, -122.3828); South Santiam River (44.3980, -122.2610).

(v) *South Santiam River/Foster Reservoir Watershed 1709000607*. Outlet(s) = South Santiam River (Lat 44.4163, Long -122.6693) upstream to endpoint(s) in: Middle Santiam River (44.4498, -122.5479); South Santiam River (44.3977, -122.4491).

(vi) *Wiley Creek Watershed 1709000608*. Outlet(s) = Wiley Creek (Lat 44.4140, Long -122.6752) upstream to endpoint(s) in: Little Wiley Creek (44.3673, -122.5916); Wiley Creek (44.3488, -122.5900).

(6) Middle Willamette Subbasin 17090007—(i) *Mill Creek/Willamette River Watershed 1709000701*. Outlet(s) = Mill Creek (Lat 44.9520, Long -123.0381) upstream to endpoint(s) in: Mill Creek (44.8255, -122.8226).

(ii) *Rickreall Creek Watershed 1709000702*. Outlet(s) = Willamette River (Lat 44.9288, Long -123.1124) upstream to endpoint(s) in: Willamette River (44.7504, -123.1421).

(iii) *Willamette River/Chehalem Creek Watershed 1709000703*. Outlet(s) = Willamette River (Lat 45.2552, Long -122.8806) upstream to endpoint(s) in: Willamette River (44.9288, -123.1124).

(iv) *Abernethy Creek Watershed 1709000704*. Outlet(s) = Willamette River (Lat 45.3719, Long -122.6071) upstream to endpoint(s) in: Willamette River (45.2552, -122.8806).

(7) Molalla/Pudding Subbasin 17090009—(i) *Butte Creek/Pudding River Watershed 1709000902*. Outlet(s) = Pudding River (Lat 45.1907, Long -122.7527) upstream to endpoint(s) in: Pudding River (45.0740, -122.8525).

(ii) *Senecal Creek/Mill Creek Watershed 1709000904*. Outlet(s) = Pudding River (Lat 45.2843, Long -122.7149) upstream to endpoint(s) in: Pudding River (45.1907, -122.7527).

(iii) *Upper Molalla River Watershed 1709000905*. Outlet(s) = Molalla River (Lat 45.1196, Long -122.5342) upstream to endpoint(s) in: Molalla River (44.9124, -122.3228); North Fork Molalla River (45.0872, -122.3849); Table Rock Fork Molalla River (44.9876, -122.2741).

(iv) *Lower Molalla River Watershed 1709000906*. Outlet(s) = Molalla River (Lat 45.2979, Long -122.7141) upstream to endpoint(s) in: Gribble Creek (45.2146, -122.6988); Milk Creek (45.2278, -122.5670); Molalla River (45.1196, -122.5342).

(8) Clackamas Subbasin 17090011—(i) *Collawash River Watershed 1709001101*. Outlet(s) = Collawash River (Lat 45.0321, Long -122.0600) upstream to endpoint(s) in: Blister Creek (44.9594, -122.1590); Collawash River (44.9507, -122.0350); Hot Springs Fk Collawash River (44.9385, -122.1721); Nohorn Creek (44.9442, -122.1957).

(ii) *Upper Clackamas River 1709001102*. Outlet(s) = Clackamas River (Lat 45.0321, Long -122.0600) upstream to endpoint(s) in: Cabin Creek (45.0087, -121.8958); Clackamas River (44.8966, -121.8800); Cub Creek (44.8969, -121.8876); Granite Creek (45.0184, -121.9885); Hunter Creek (44.9086, -121.8929); Last Creek (44.9715, -121.8547); Lowe Creek (44.9487, -121.8983); Pot Creek (45.0149, -121.9084); Unnamed (44.9469, -121.8691); Wall Creek (44.9555, -121.8843).

(iii) *Oak Grove Fork Clackamas River Watershed 1709001103*. Outlet(s) = Oak Grove Fork Clackamas River (Lat 45.0746, Long -122.0520) upstream to endpoint(s) in: Oak Grove Fork Clackamas River (45.0822, -121.9859).

(iv) *Middle Clackamas River Watershed 1709001104*. Outlet(s) = Clackamas River

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(Lat 45.2440, Long -122.2798) upstream to endpoint(s) in: Clackamas River (45.0321, -122.0600); Fish Creek (45.0962, -122.1683); North Fork Clackamas River (45.2361, -122.2186); Roaring River (45.1773, -122.0650); South Fork Clackamas River (45.1939, -122.2257); Tag Creek (45.0607, -122.0512); Tar Creek (45.0494, -122.0570).

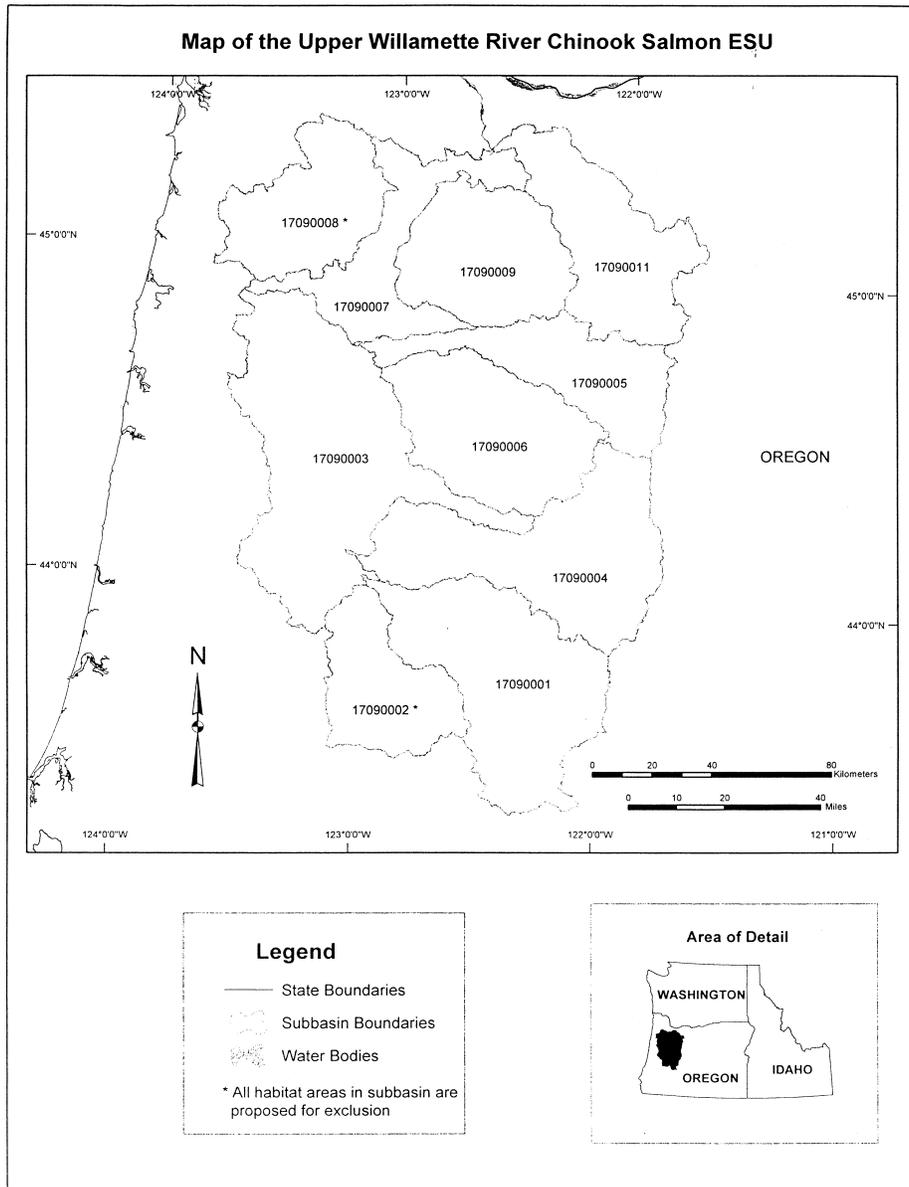
(v) *Lower Clackamas River Watershed 1709001106*. Outlet(s) = Clackamas River (Lat 45.3719, Long -122.6071) upstream to endpoint(s) in: Clackamas River

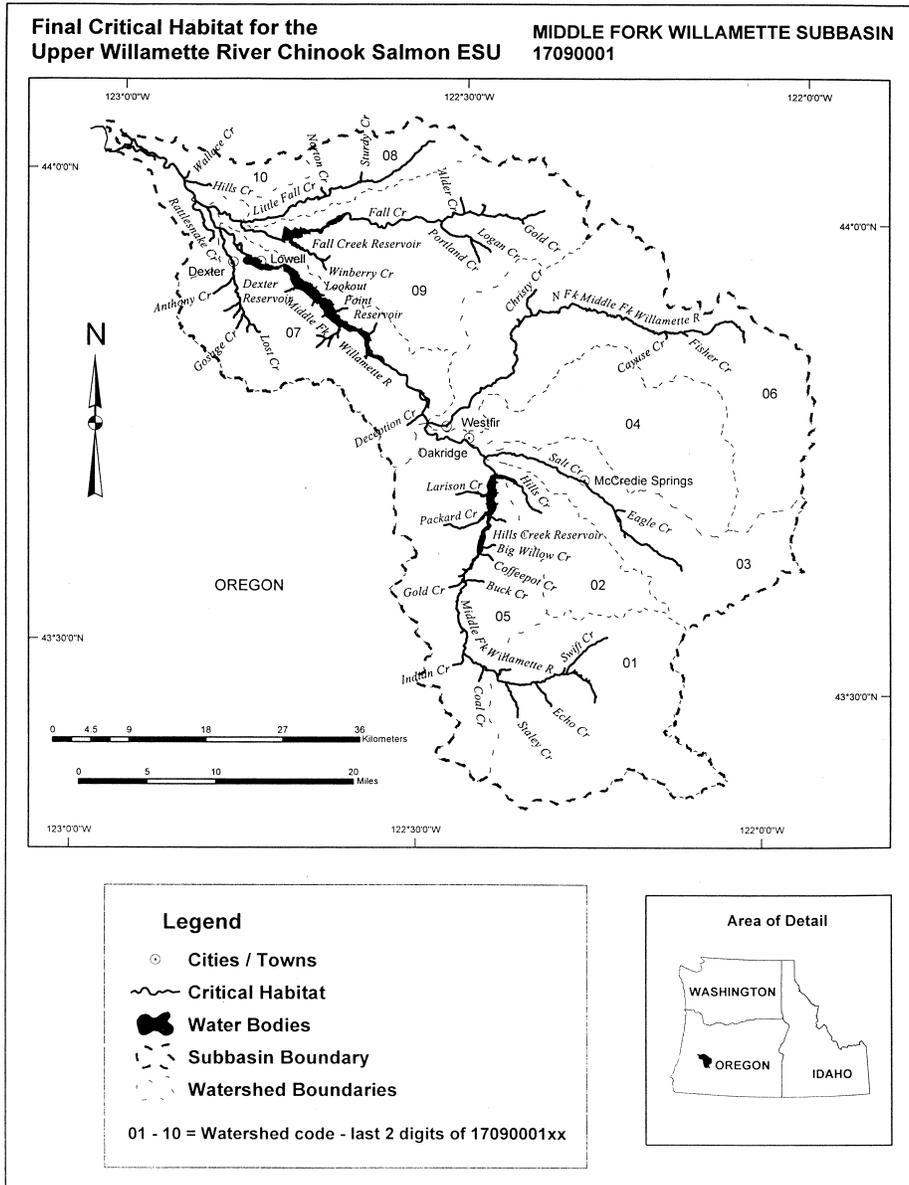
50 CFR Ch. II (10-1-08 Edition)

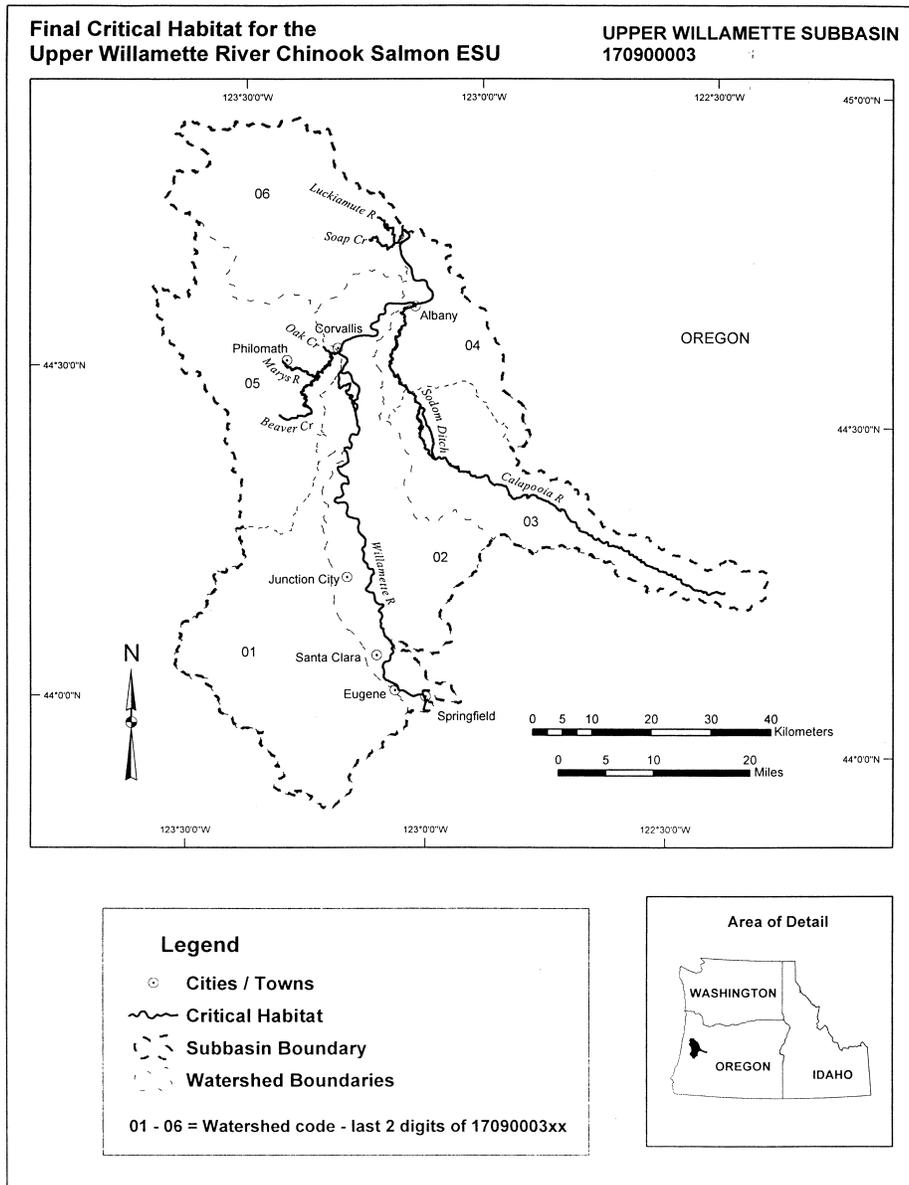
(45.2440, -122.2798); Clear Creek (45.3568, -122.4781); Deep Creek (45.3937, -122.4095); Richardson Creek (45.3971, -122.4712).

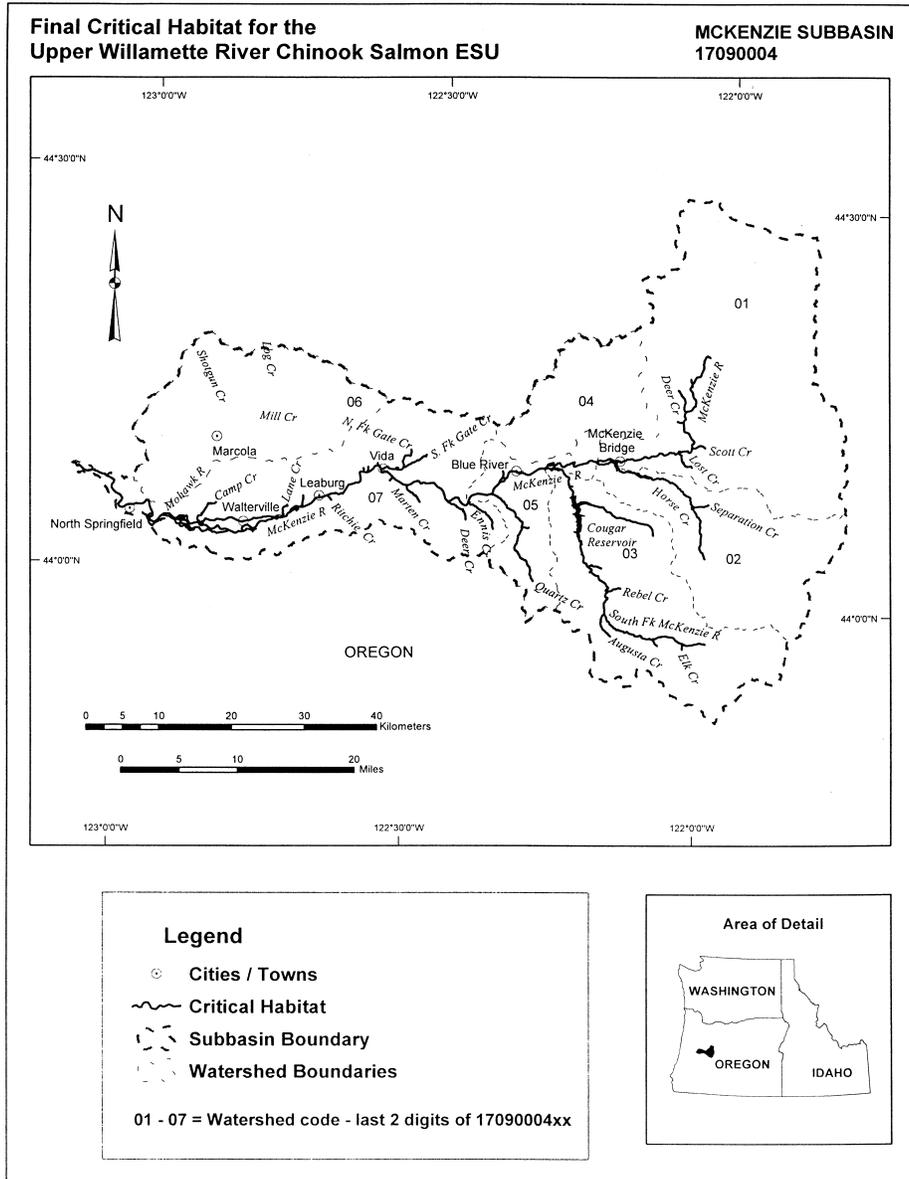
(9) Lower Willamette/Columbia River Corridor—*Lower Willamette/Columbia River Corridor*. Outlet(s) = Columbia River (Lat 46.2485, Long -124.0782) upstream to endpoint(s) in: Willamette River (45.3719, -122.6071).

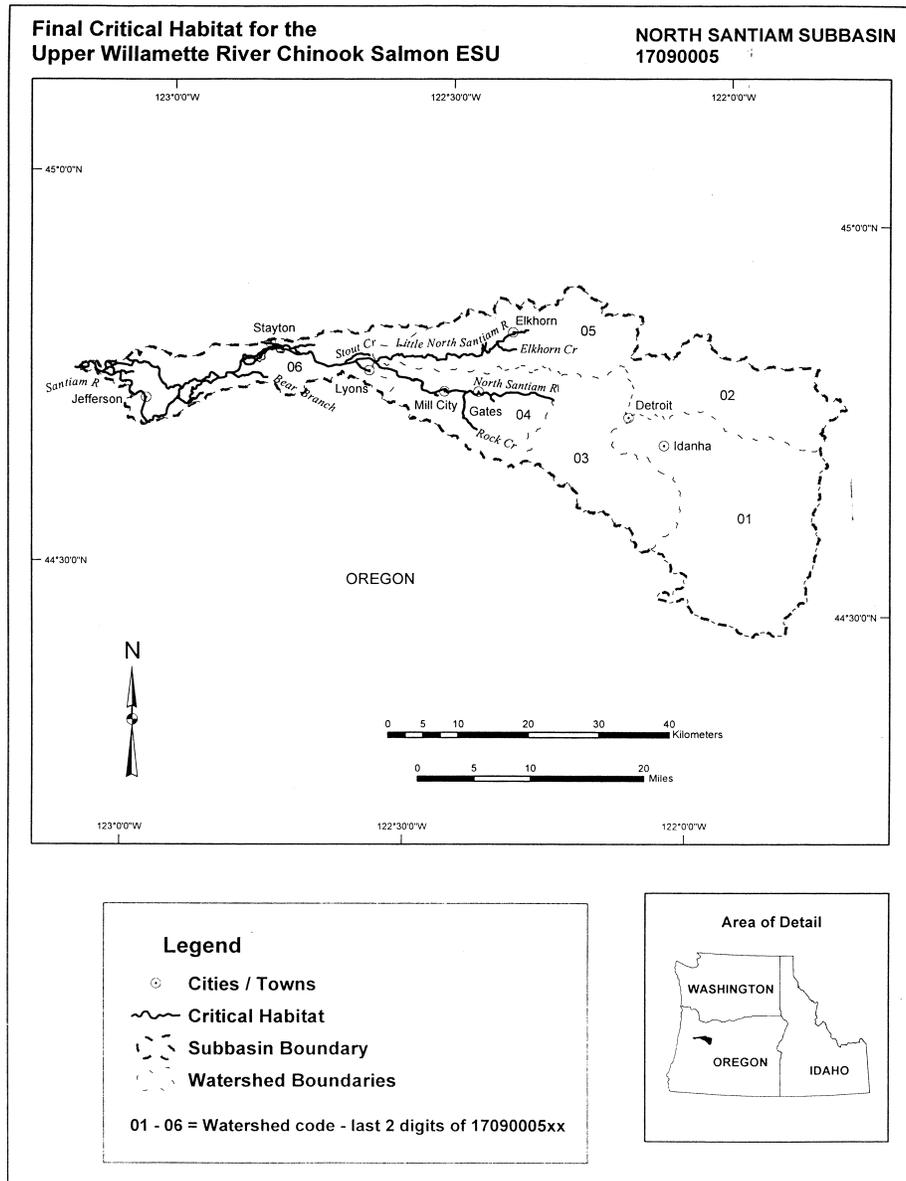
(10) Maps of critical habitat for the Upper Willamette River chinook salmon ESU follow:

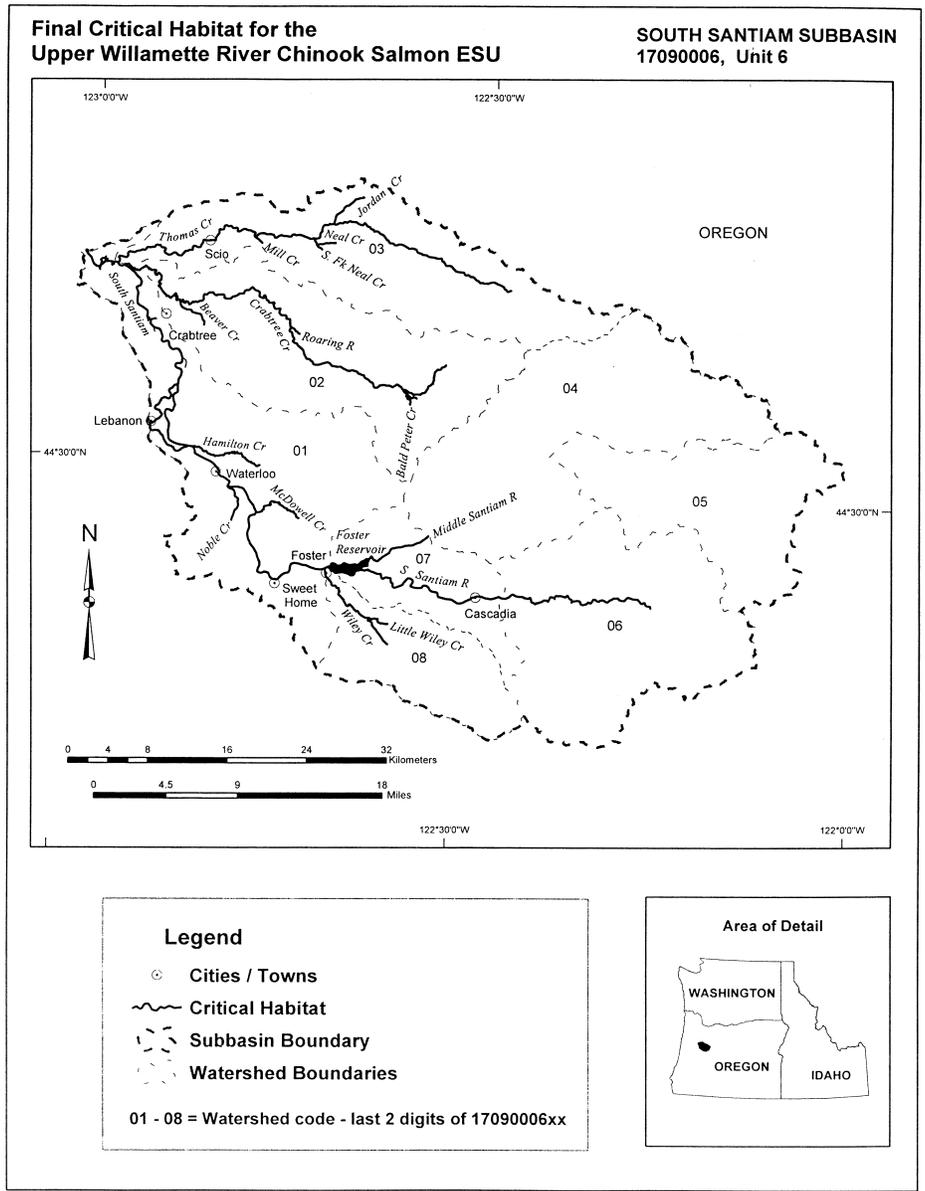


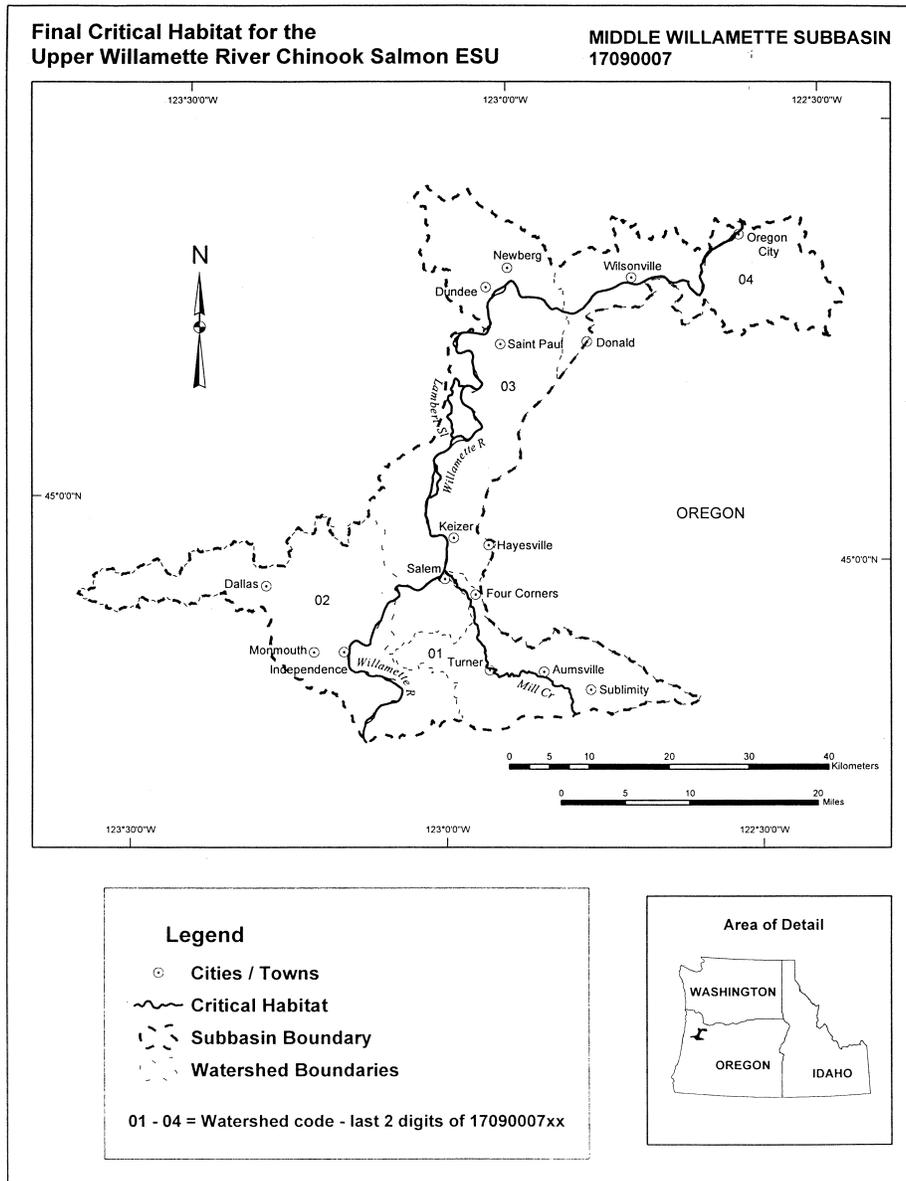


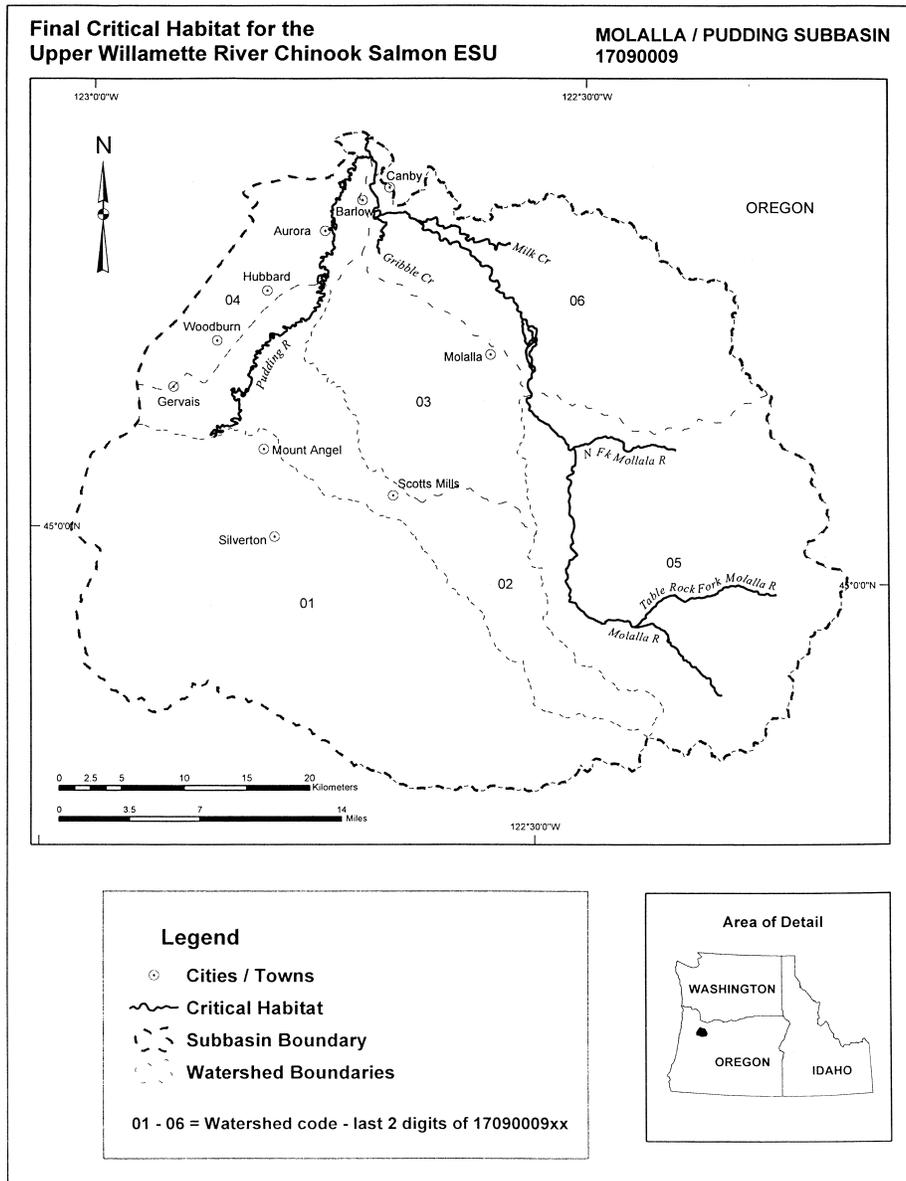


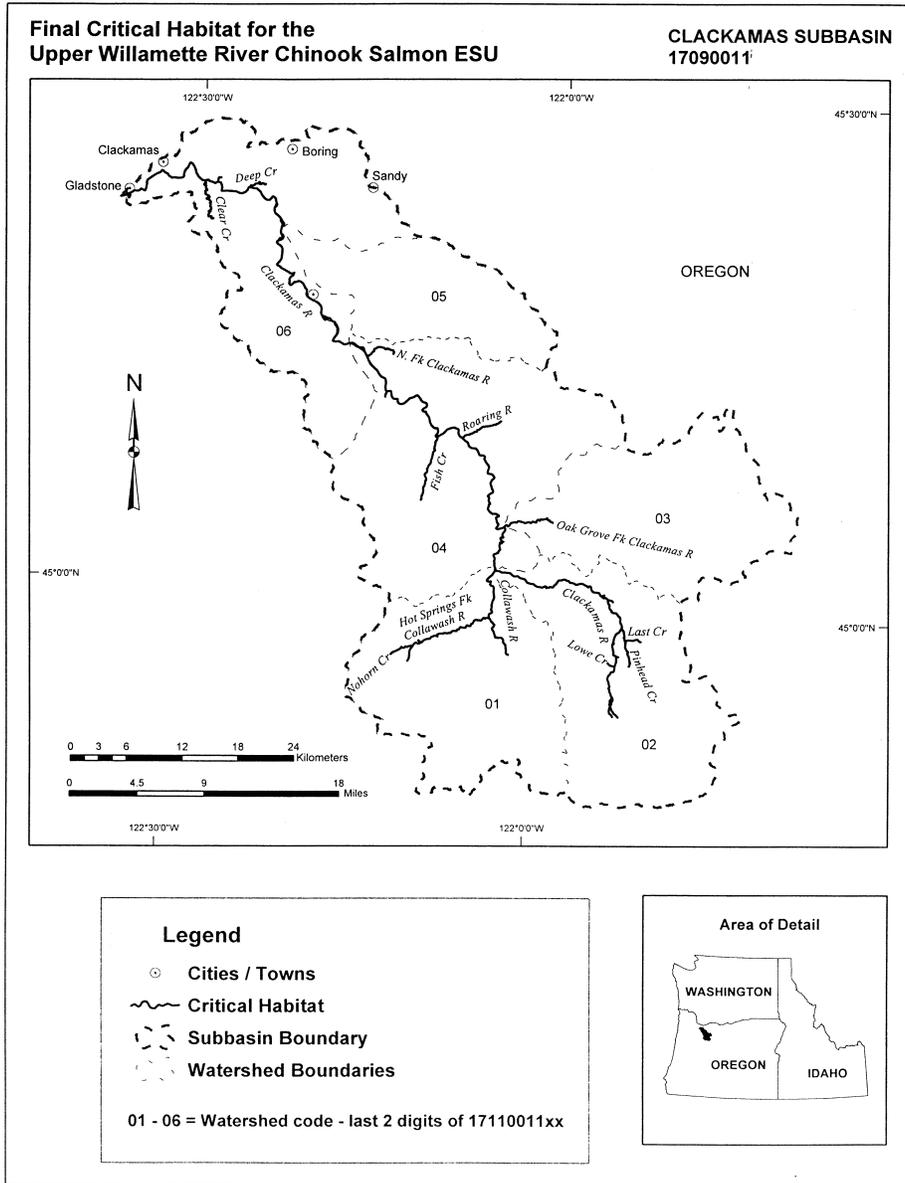


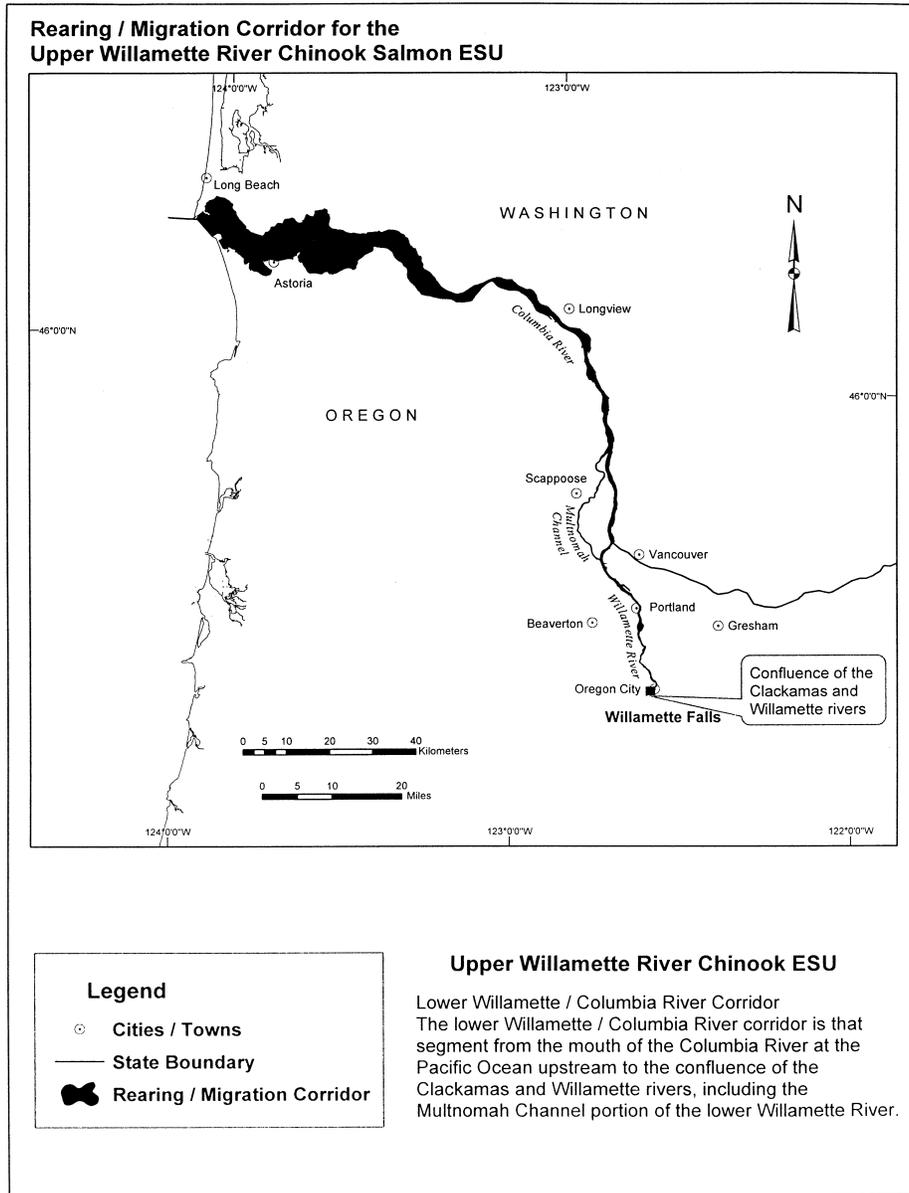












(1) *Upper Columbia River Spring Chinook Salmon* (*Oncorhynchus tshawytscha*). Critical habitat is to include the areas defined in the following subbasins:

(1) Chief Joseph Subbasin 17020005—*Upper Columbia/Swamp Creek Watershed 1702000505*. Outlet(s) = Columbia River (Lat 47.8077, Long -119.9754) upstream to endpoint(s) in: Columbia River (48.0502, -119.8942).

(2) Methow Subbasin 17020008—(i) *Lost River Watershed 1702000801*. Outlet(s) = Lost River Gorge (Lat 48.6501, Long -120.5103) upstream to endpoint(s) in: Eureka Creek (48.7020, -120.4986); Lost River Gorge (48.7324, -120.4475).

(ii) *Upper Methow River Watershed 1702000802*. Outlet(s) = Methow River (Lat 48.6015, Long -120.4376) upstream to endpoint(s) in: Early Winters Creek (48.5999, -120.5840); Methow River (48.6417, -120.6150); Rattlesnake Creek (48.6523, -120.5733); Robinson Creek (48.6680, -120.5394); South Fork Trout Creek (48.6448, -120.6030).

(iii) *Upper Chewuch River Watershed 1702000803*. Outlet(s) = Chewuch River (Lat 48.7501, Long -120.1356) upstream to endpoint(s) in: Andrews Creek (48.7855, -120.1087); Chewuch River (48.8614, -120.0288); Dog Creek (48.8218, -120.0151); Lake Creek (48.8258, -120.1996); Thirtymile Creek (48.8109, -120.0199).

(iv) *Lower Chewuch River Watershed 1702000804*. Outlet(s) = Chewuch River (Lat 48.4751, Long -120.1790) upstream to endpoint(s) in: Boulder Creek (48.5797, -120.1538); Chewuch River (48.7501, -120.1356); Cub Creek (48.5513, -120.1899); Eightmile Creek (48.6071, -120.1775); Lake Creek (48.4926, -120.1629); Twentymile Creek (48.7029, -120.1117).

(v) *Twisp River Watershed 1702000805*. Outlet(s) = Twisp River (Lat 48.3682, Long -120.1176) upstream to endpoint(s) in: Buttermilk Creek (48.3528, -120.3239); Eagle Creek (48.3584, -120.3914); North Creek (48.4587, -120.5595); Poorman Creek (48.3674, -120.1997); South Creek (48.4330, -120.5431); Twisp River (48.4615, -120.5764); War Creek (48.3649, -120.4030).

(vi) *Middle Methow River Watershed 1702000806*. Outlet(s) = Methow River (Lat 48.2495, Long -120.1156) upstream to endpoint(s) in: Bear Creek (48.4527, -120.1423); Goat Creek (48.5888, -120.3705); Little Boulder Creek (48.5700, -120.3797); Methow River (48.6015, -120.4376); Wolf Creek (48.4776, -120.2840); Unnamed (48.4896, -120.2116).

(vii) *Lower Methow River Watershed 1702000807*. Outlet(s) = Methow River (Lat 48.0502, Long -119.8942) upstream to endpoint(s) in: Methow River (48.2495, -120.1156).

(3) Upper Columbia/Entiat Subbasin 17020010—(i) *Entiat River Watershed 1702001001*. Outlet(s) = Entiat River (Lat 47.6585, Long -120.2194) upstream to endpoint(s) in: Entiat River (47.9855, -120.5749); Hornet Creek (47.7714, -120.4403); Mad River (47.7804, -120.4403); Tillicum Creek (47.7295, -120.4304).

(ii) *Lake Entiat Watershed 1702001002*. Outlet(s) = Columbia River (Lat 47.3438, Long -120.0929) upstream to endpoint(s) in: Columbia River (47.8077, -119.9754).

(4) Wenatchee Subbasin 17020011—(i) *White River Watershed 1702001101*. Outlet(s) = White River (Lat 47.8088, Long -120.7159) upstream to endpoint(s) in: Little Wenatchee River (47.8526, -120.9541); Napeequa River (47.9285, -120.8829); Panther Creek (47.9355, -120.9482); White River (47.9535, -120.9380).

(ii) *Chiwawa River Watershed 1702001102*. Outlet(s) = Chiwawa River (Lat 47.7880, Long -120.6589) upstream to endpoint(s) in: Alder Creek (47.8483, -120.6587); Chikamin Creek (47.9785, -120.7194); Chiwawa River (48.1048, -120.8773); Goose Creek (47.8392, -120.6461); Minnow Creek (47.9137, -120.7182); Phelps Creek (48.0794, -120.8400); Unnamed (48.0366, -120.7615).

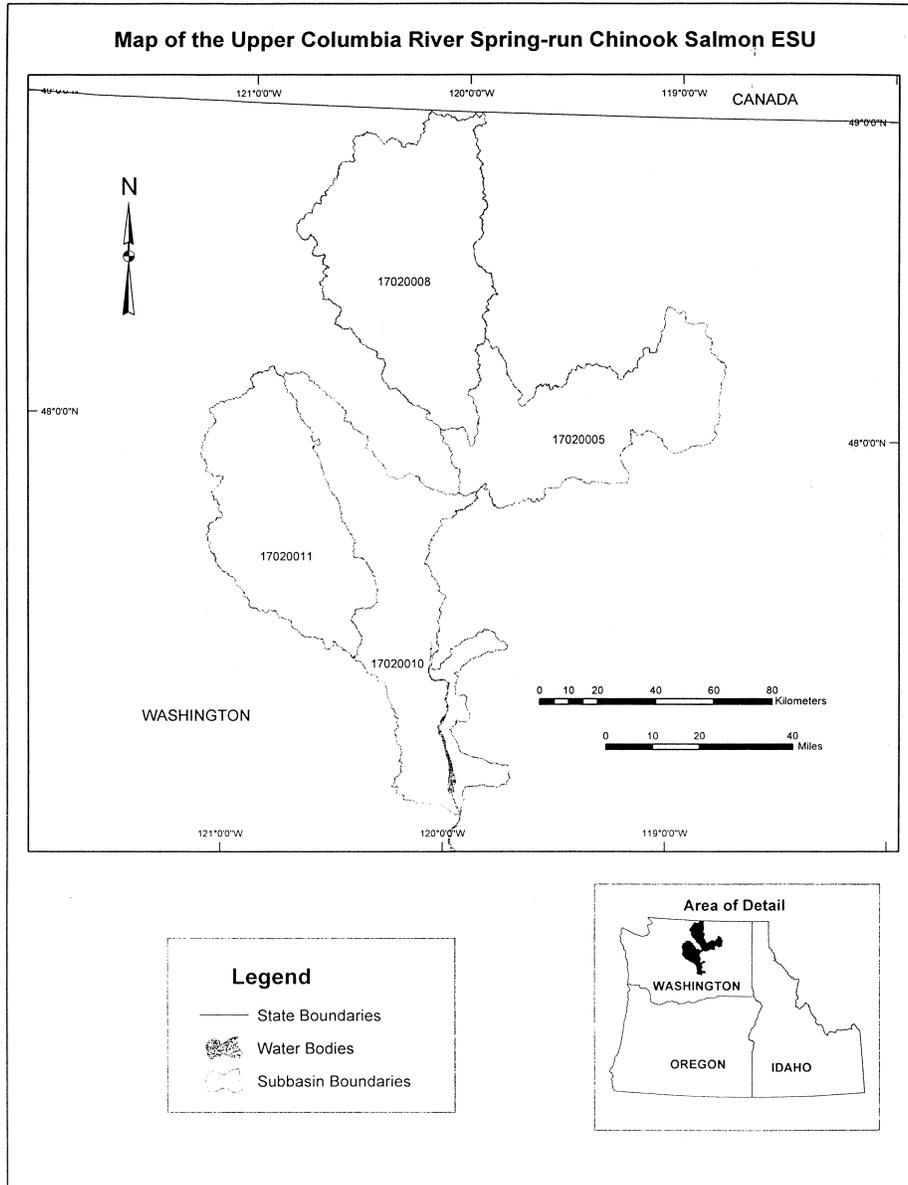
(iii) *Nason/Tumwater Watershed 1702001103*. Outlet(s) = Wenatchee River (Lat 47.5801, Long -120.6660) upstream to endpoint(s) in: Chiwaukum Creek (47.7039, -120.7791); Nason Creek (47.7769, -120.9103); Skinney Creek (47.6894, -120.7351).

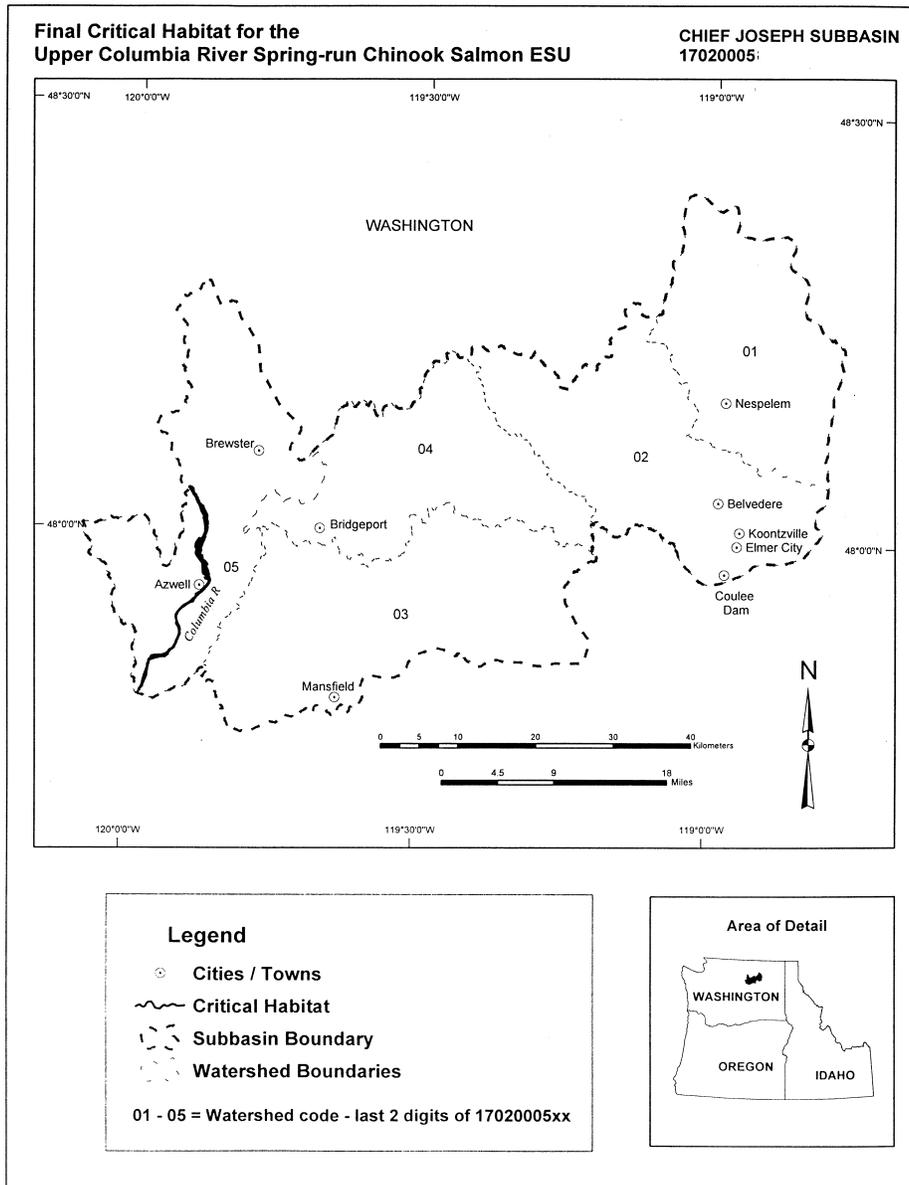
(iv) *Icicle/Chumstick Watershed 1702001104*. Outlet(s) = Wenatchee River (Lat 47.5575, Long -120.5729) upstream to endpoint(s) in: Wenatchee River (47.5801, -120.6660).

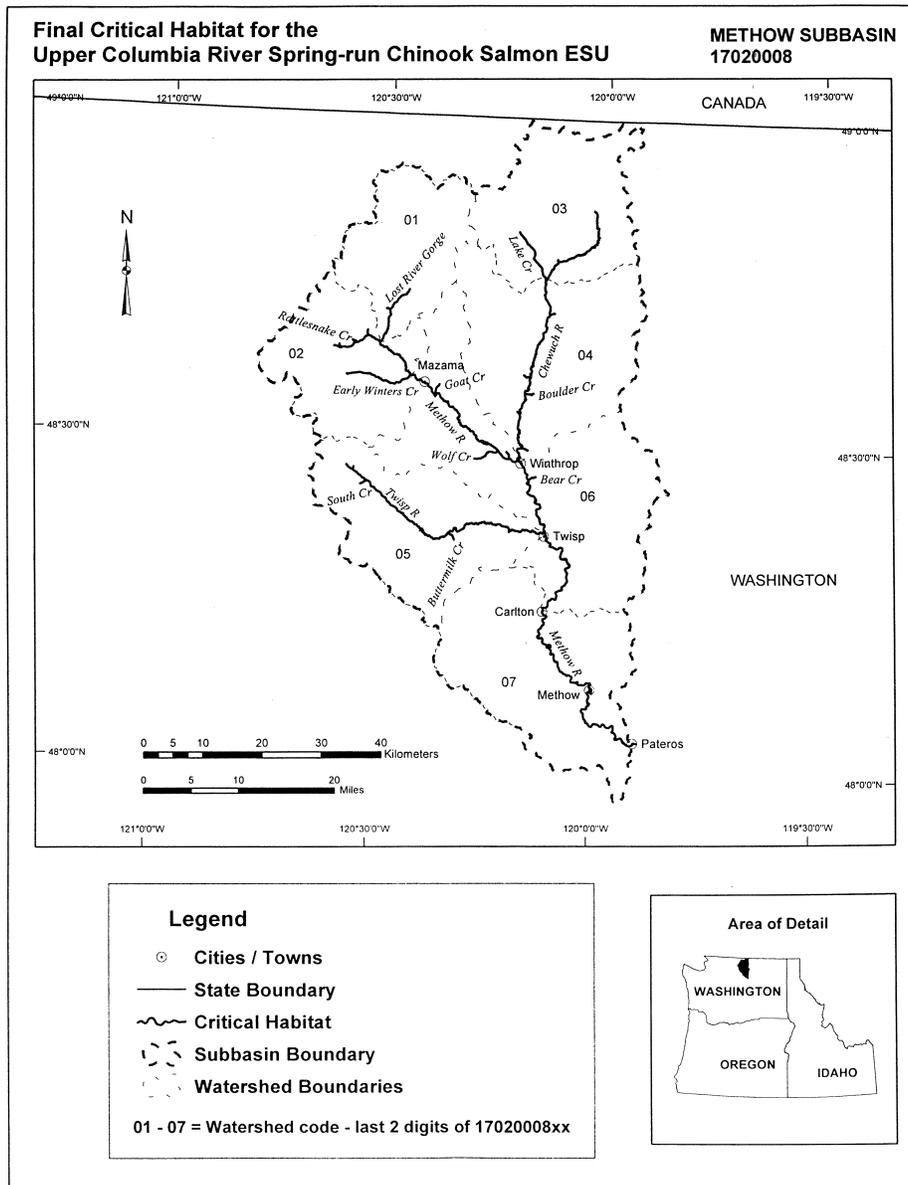
(v) *Lower Wenatchee River Watershed 1702001105*. Outlet(s) = Wenatchee River (Lat 47.4553, Long -120.3185) upstream to endpoint(s) in: Wenatchee River (47.5575, -120.5729).

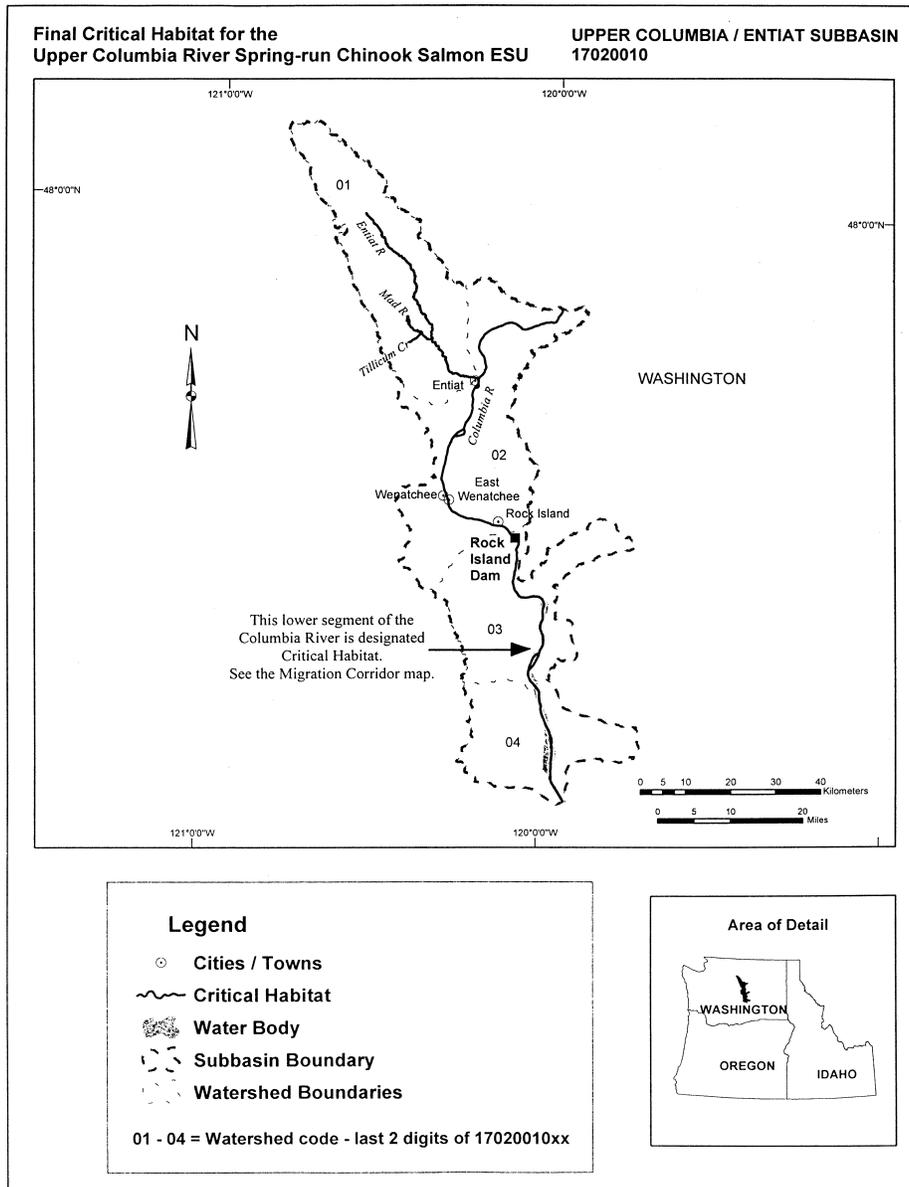
(5) Columbia River Corridor—*Columbia River Corridor*. Outlet(s) = Columbia River (Lat 46.2485, Long -124.0782) upstream to endpoint(s) in: Columbia River (47.3438, -120.0929).

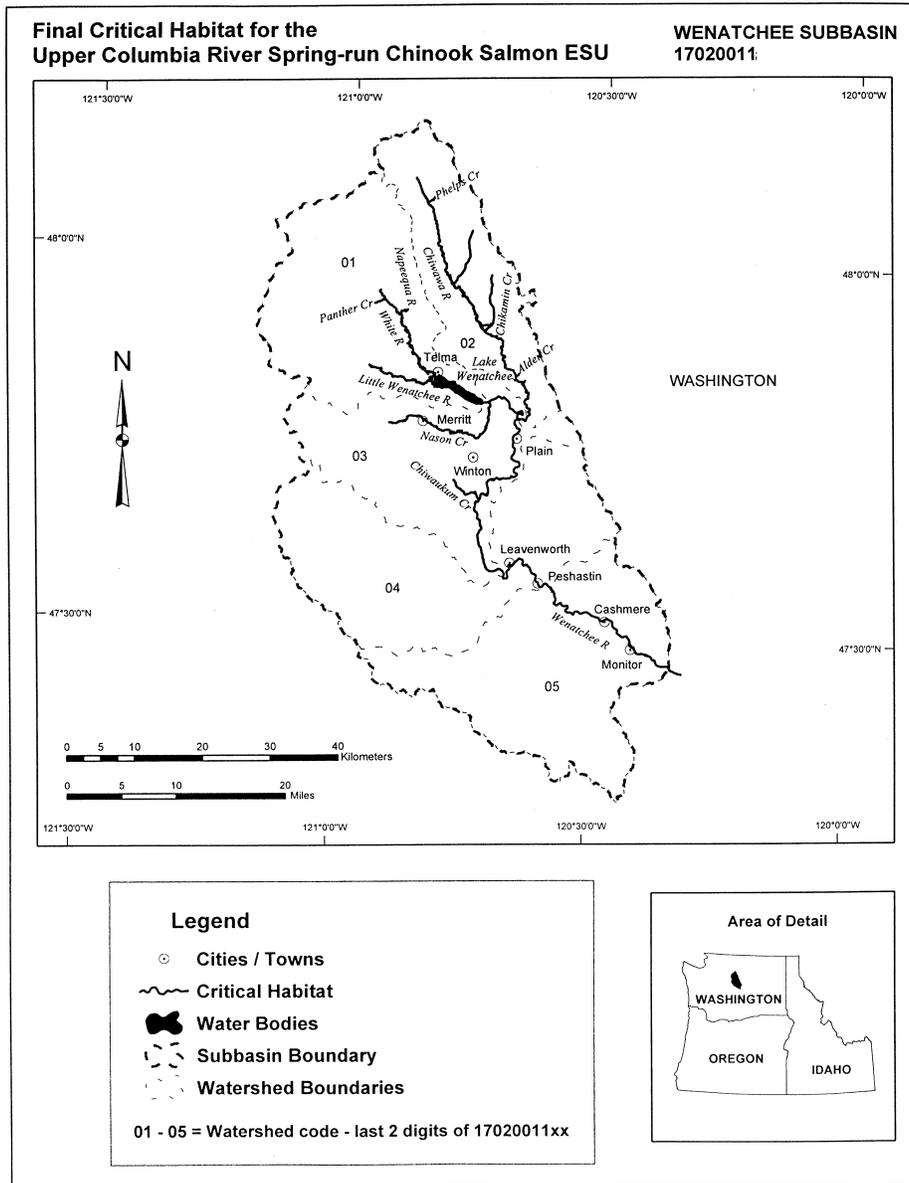
(6) Maps of critical habitat for the Upper Columbia River Spring-run chinook salmon ESU follow:

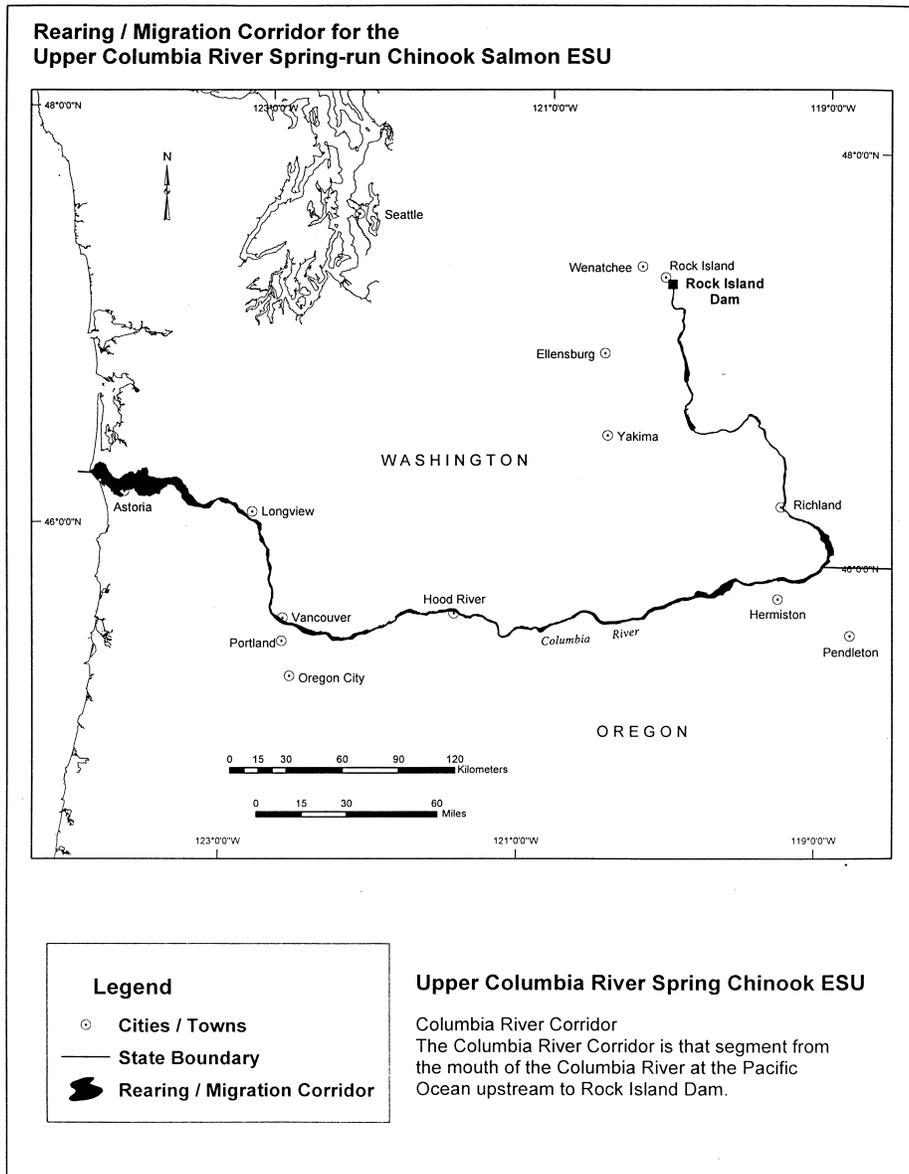












(m) Hood Canal Summer-run Chum Salmon (*Oncorhynchus keta*). Critical habitat is designated to include the areas defined in the following sub-basins:

(1) Skokomoish Subbasin 17110017—Skokomish River 1711001701. Outlet(s) =

Skokomish River (Lat 47.3543, Long -123.1122), Unnamed (47.3420, -123.1092), Unnamed (47.3471, -123.1275), Unnamed (47.3509, -123.1101) upstream to endpoint(s) in: Mussel Sheel Creek (47.3039, -123.1590); Skokomish (47.3199, -123.2198); Unnamed (47.3209, -123.2211).

(2) Hood Canal Subbasin 17110018—(i) *Lower West Hood Canal Frontal Watershed 1711001802*. Outlet(s)= Eagle Creek (Lat 47.4849, Long -123.0766); Finch Creek (47.4067, -123.1377); Fulton Creek (47.6183, -122.9736); Jorsted Creek (47.5263, -123.0489); Lilliwaup Creek (47.4689, -123.1136); Unnamed (47.4576, -123.1117) upstream to endpoint(s) in: Eagle Creek (47.4905, -123.0830); Finch Creek (47.4076, -123.1586); Fulton Creek (47.6275, -122.9805); Jorsted Creek (47.5246, -123.0649); Lilliwaup Creek (47.4704, -123.1166); Unnamed (47.4585, -123.1186).

(ii) *Hamma Hamma River Watershed 1711001803*. Outlet(s) = Hamma Hamma River (Lat 47.5471, Long -123.0440) upstream to endpoint(s) in: Hamma Hamma River (47.5547, -123.0623); John Creek (47.5369, -123.0619).

(iii) *Duckabush River Watershed 1711001804*. Outlet(s) = Duckabush River (Lat 47.6502, Long -122.9348) upstream to endpoint(s) in: Duckabush River (47.6654, -122.9728).

(iv) *Dosewallips River Watershed 1711001805*. Outlet(s) = Dosewallips River (Lat 47.6880, Long -122.8949) upstream to endpoint(s) in: Dosewallips River (47.7157, -122.9396).

(v) *Big Quilcene River Watershed 1711001806*. Outlet(s) = Big Quilcene River (Lat 47.8188, Long -122.8605) upstream to endpoint(s) in: Big Quilcene River (47.8102, -122.9119).

(vi) *Upper West Hood Canal Frontal Watershed 1711001807*. Outlet(s) = Little Quilcene River (Lat 47.8266; Long -122.8608) upstream to endpoint(s) in: Little Quilcene River (47.8374, -122.8854).

(vii) *West Kitsap Watershed 1711001808*. Outlet(s) = Anderson Creek (Lat 47.5670, Long -122.9664); Big Beef Creek (47.6521, -122.7823); Dewatto River (47.4538, -123.0474); Little Anderson Creek (47.6653, -122.7554); Tahuya River (47.3767, -123.0355); Union River (47.4484, -122.8368); Unnamed (47.3767, -123.0372); Unnamed (47.4537, -123.0474) upstream to endpoint(s) in: Anderson Creek (47.5596, -122.9354); Bear Creek (47.4980, -122.8074); Big Beef Creek (47.6385,

-122.7868); Dewatto River (47.4937, -122.9914); East Fork Union River (47.5056, -122.7897); Hazel Creek (47.5170, -122.7945); Little Anderson Creek (47.6606, -122.7543); North East Fork Union River (47.4954, -122.7819); Tahuya River (47.4510, -122.9597); Union River (47.5273, -122.7846); Unnamed (47.4492, -122.9229); Unnamed (47.4527, -122.8294); Unnamed (47.4553, -122.8301); Unnamed (47.4594, -122.8396); Unnamed (47.4700, -122.8300); Unnamed (47.4852, -122.8313); Unnamed (47.4966, -122.8393); Unnamed (47.4971, -122.8315); Unnamed (47.6600, -122.7559); Unnamed (47.6642, -122.7534).

(3) Puget Sound Subbasin 17110019—*Port Ludlow/Chimacum Creek Watershed 1711001908*. Outlet(s) = Chimacum Creek (Lat 48.0507, Long -122.7832) upstream to endpoint(s) in: Chimacum Creek (47.9743, -122.7764).

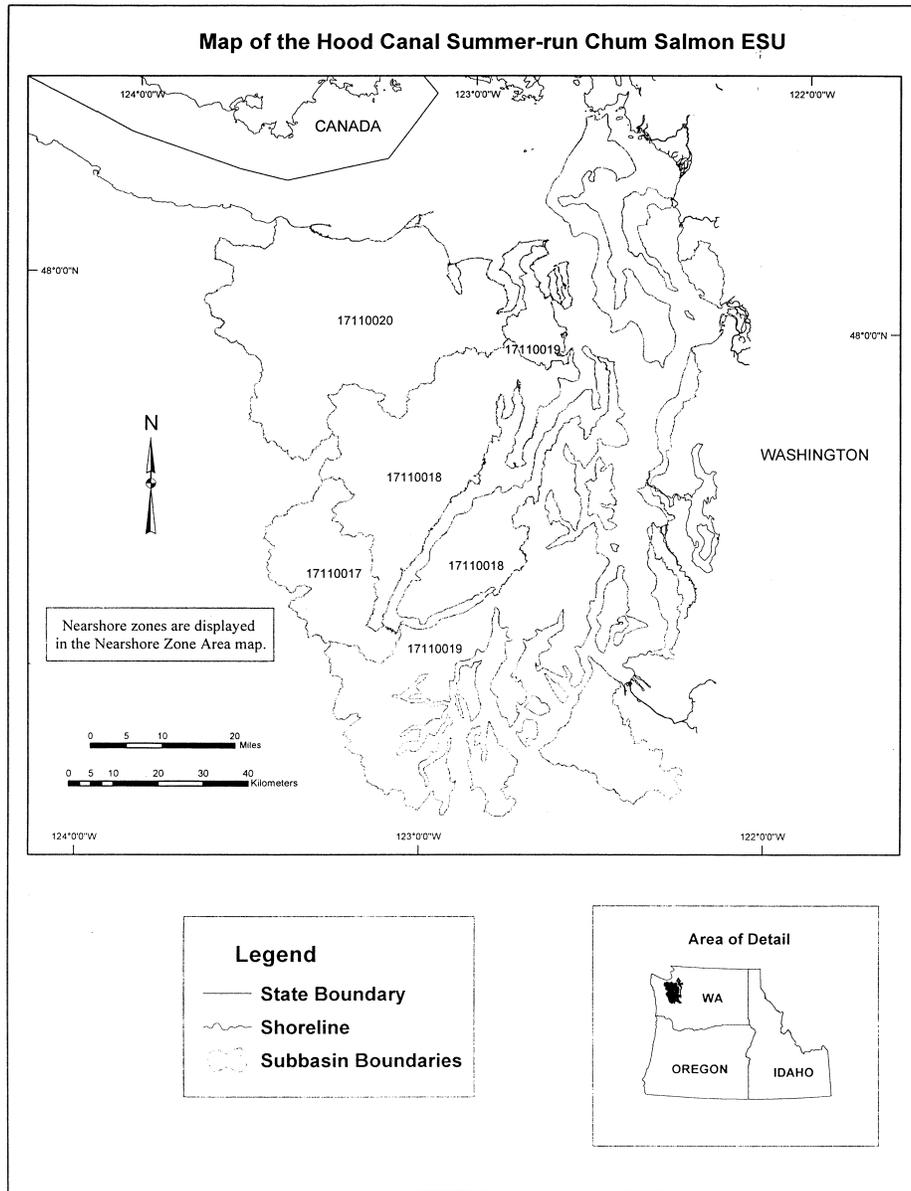
(4) Dungeness/Elwha Subbasin 17110020—(i) *Discovery Bay Watershed 1711002001*. Outlet(s) = Salmon Creek (Lat 47.9895, Long -122.8879); Snow Creek (47.9900, -122.8834) upstream to endpoint(s) in: Salmon Creek (47.9775, -122.9191); Snow Creek (47.9638, -122.8827).

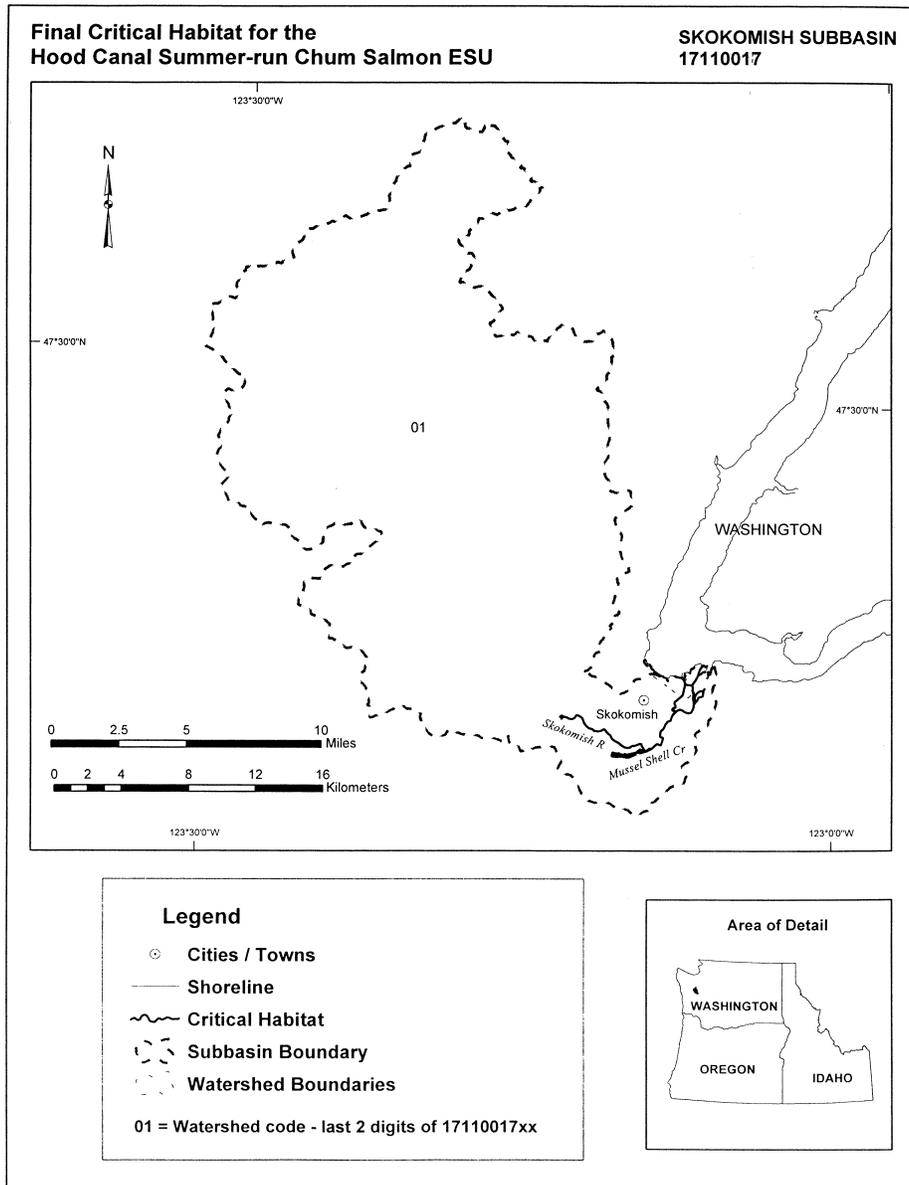
(ii) *Sequim Bay Watershed 1711002002*. Outlet(s) = Jimmycomelately Creek (Lat 48.0235, Long -123.0039) upstream to endpoint(s) in: Jimmycomelately Creek (48.0125, -123.0026).

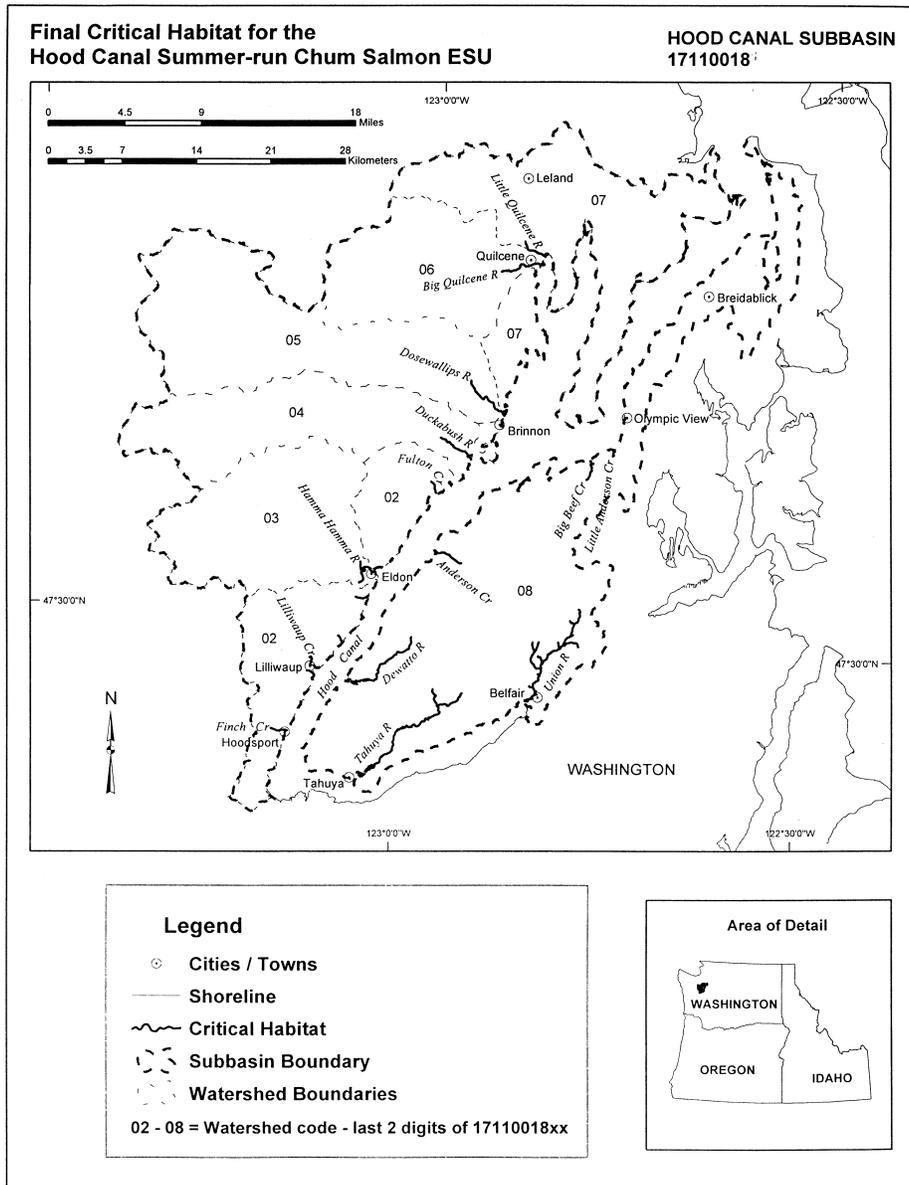
(iii) *Dungeness River Watershed 1711002003*. Outlet(s) = Dungeness River (Lat 48.1506, Long -123.1311); Unnamed (48.1537, -123.1267) upstream to endpoint(s) in: Dungeness River (48.0258, -123.1358); Matriotti Creek (48.1369, -123.1488); Unnamed (48.1167, -123.1403); Unnamed (48.1514, -123.1216).

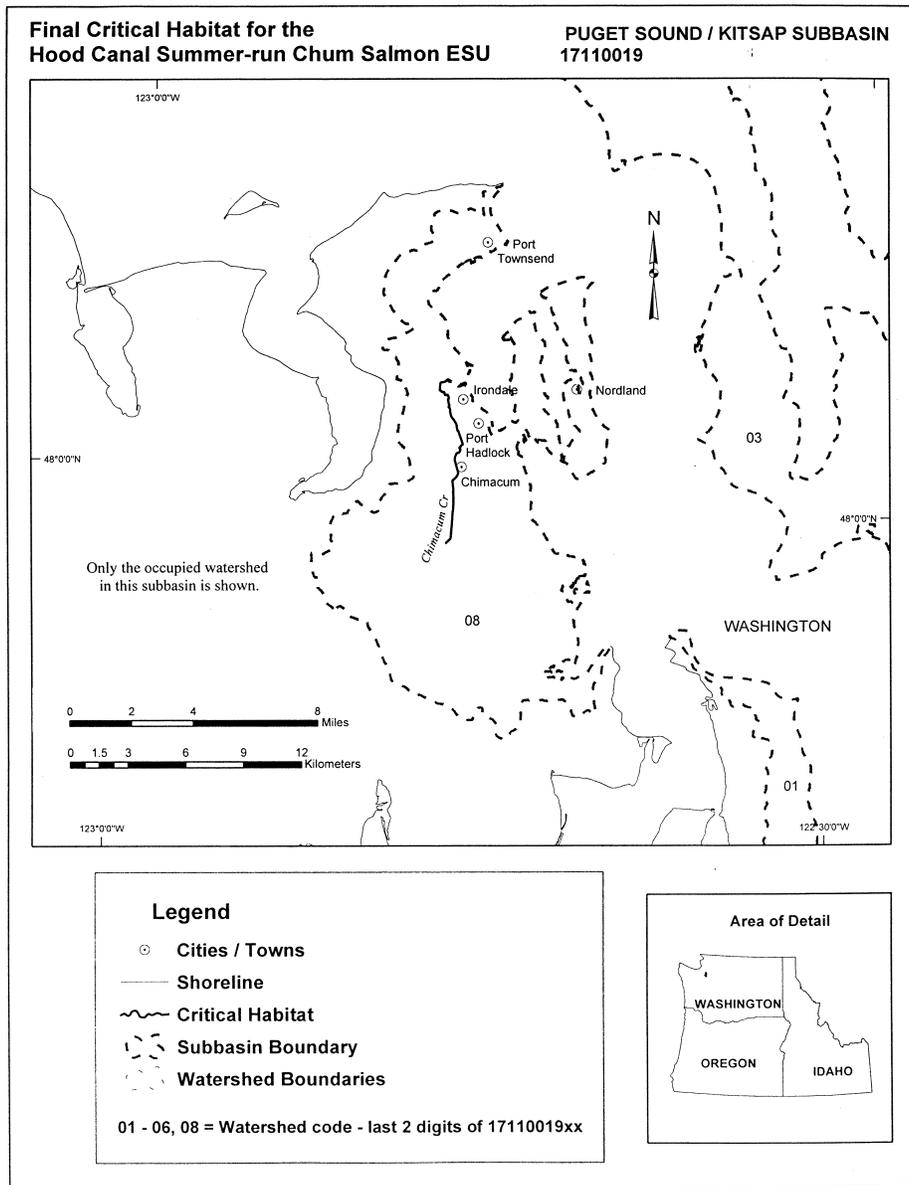
(5) Nearshore Marine Areas—Except as provided in paragraph (e) of this section, critical habitat includes all nearshore marine areas (including areas adjacent to islands) of Hood Canal and the Strait of Juan de Fuca (to Dungeness Bay) from the line of extreme high tide out to a depth of 30 meters.

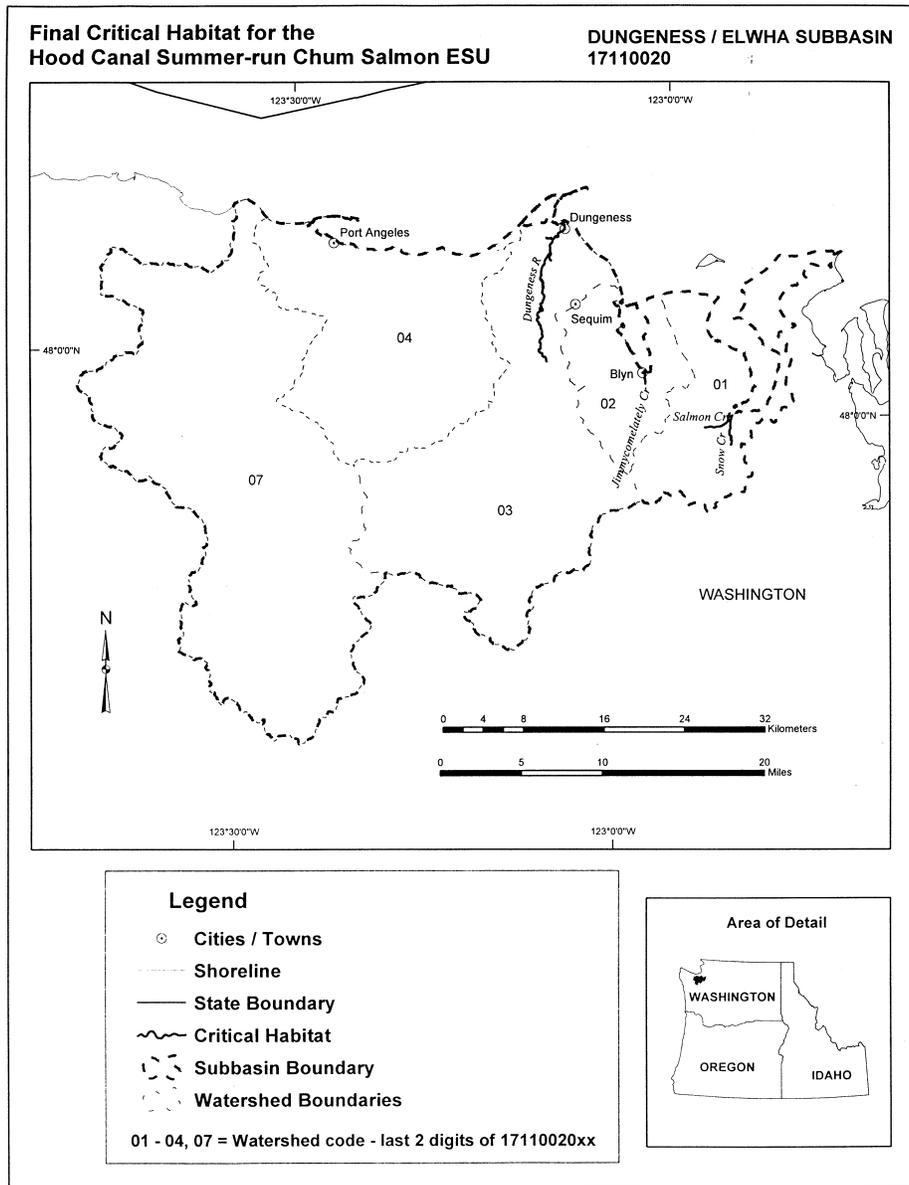
(6) Maps of critical habitat for the Hood Canal summer-run chum salmon ESU follow:

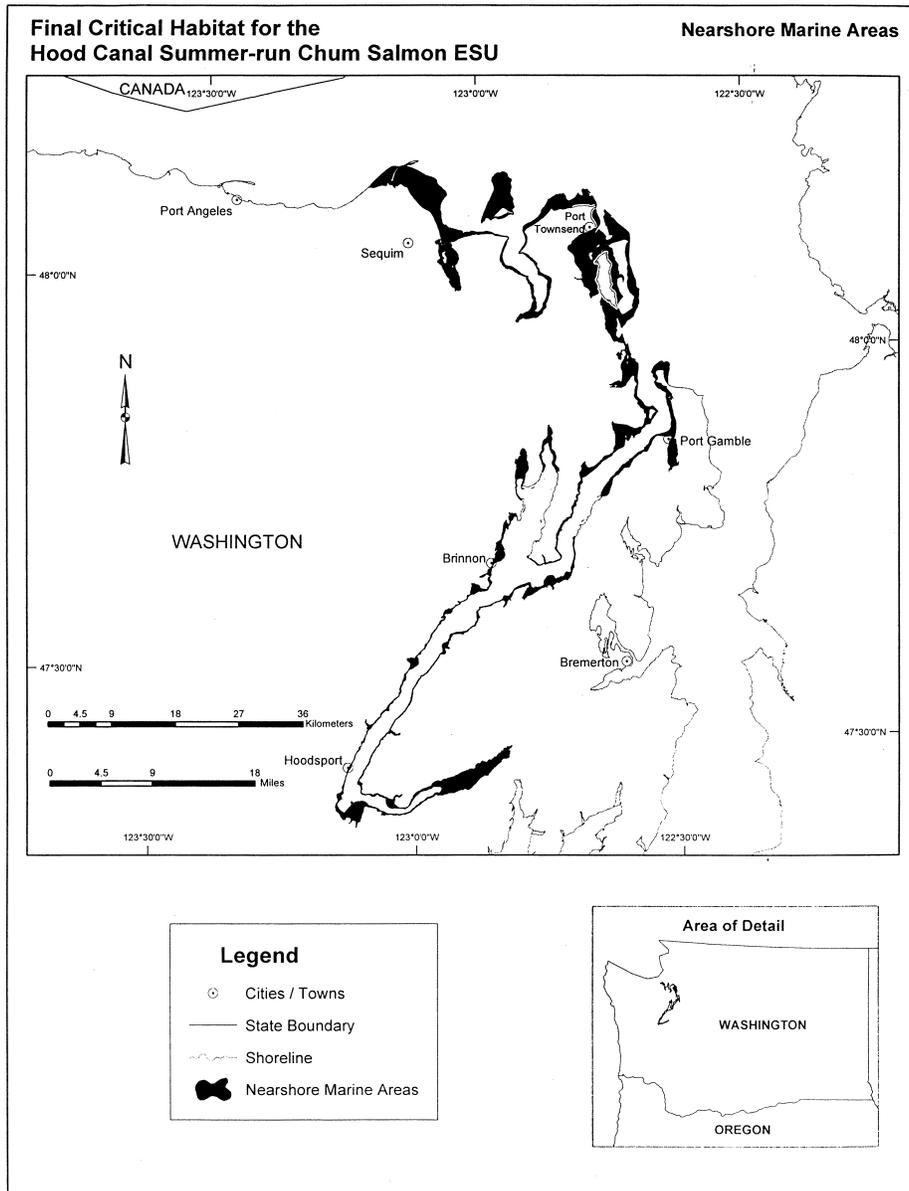












(n) *Columbia River Chum Salmon* (*Oncorhynchus keta*). Critical habitat is designated to include the areas defined in the following subbasins:

(1) Middle Columbia/Hood Subbasin 17070105—(i) *White Salmon River Water-*

shed 1707010509. Outlet(s) = White Salmon River (Lat 45.7267, Long -121.5209) upstream to endpoint(s) in: White Salmon River (45.7677, -121.5374).

(ii) *Middle Columbia/Grays Creek Watershed* 1707010512. Outlet(s) = Columbia

River (Lat 45.7074, Long -121.7965) upstream to endpoint(s) in: Columbia River (45.7267, -121.5209).

(iii) *Middle Columbia/Eagle Creek 1707010513*. Outlet(s) = Columbia River (Lat 45.6453, Long -121.9395) upstream to endpoint(s) in: Columbia River (45.7074, -121.7965).

(2) Lower Columbia/Sandy Subbasin 17080001—(i) *Washougal River Watershed 1708000106*. Outlet(s) = Unnamed (Lat 45.5812, Long -122.4077); Washougal River (45.5795, -122.4023) upstream to endpoint(s) in: Lacamas Creek (45.5972, -122.3933); Little Washougal River (45.6210, -122.3750); Unnamed (45.5861, -122.4083); Washougal River (45.6232, -122.2738).

(ii) *Columbia Gorge Tributaries Watershed 1708000107*. Outlet(s) = Columbia River (Lat 45.5709, Long -122.4020) upstream to endpoint(s) in: Columbia River (45.6453, -121.9395); Duncan Creek (45.6136, -122.0539); Gibbons Creek (45.5710, -122.3147); Greenleaf Creek (45.6548, -121.9569); Hamilton Creek (45.6535, -121.9879); Hardy Creek (45.6354, -121.9987); Indian Mary Creek (45.6066, -122.0716); Lawton Creek (45.5746, -122.2501); Unnamed (45.5673, -122.3033); Unnamed (45.6017, -122.1106); Unnamed (45.6017, -122.1087); Unnamed (45.6483, -121.9725); Unnamed (45.6509, -121.9502); Walton Creek (45.5757, -122.2618).

(iii) *Salmon Creek Watershed 1708000109*. Outlet(s) = Lake River (Lat 45.8437, Long -122.7800); Love Creek (45.5976, -122.5443); Unnamed (45.5867, -122.5015); Unnamed (45.5919, -122.5241); Unnamed (45.5952, -122.5366) upstream to endpoint(s) in: Love Creek (45.5981, -122.5444); Salmon Creek (45.7089, -122.6480); Unnamed (45.5873, -122.5015); Unnamed (45.5924, -122.5242); Unnamed (45.5955, -122.5360).

(3) Lewis Subbasin 17080002—(i) *East Fork Lewis River Watershed 1708000205*. Outlet(s) = East Fork Lewis River (Lat 45.8664, Long -122.7189); Gee Creek (45.8462, -122.7803) upstream to endpoint(s) in: Brezee Creek (45.8622, -122.6667); East Fork Lewis River (45.8395, -122.4463); Gee Creek (45.8264, -122.7458); Lockwood Creek (45.8578, -122.6259); Mason Creek (45.8410, -122.5919); McCormick Creek (45.8521, -122.6907); Riley Creek (45.8663, -122.6349); Unnamed (45.8076, -122.5878); Unnamed (45.8076, -122.6286); Unnamed

(45.8090, -122.6089); Unnamed (45.8111, -122.5860); Unnamed (45.8149, -122.5654); Unnamed (45.8201, -122.5991); Unnamed (45.8241, -122.6380); Unnamed (45.8280, -122.6431); Unnamed (45.8292, -122.6040); Unnamed (45.8389, -122.6456); Unnamed (45.8439, -122.6478); Unnamed (45.8439, -122.6605).

(ii) *Lower Lewis River Watershed 1708000206*. Outlet(s) = Lewis River (Lat 45.8519, Long -122.7806) upstream to endpoint(s) in: Cedar Creek (45.9383, -122.5818); Colvin Creek (45.9400, -122.6081); Houghton Creek (45.9395, -122.6478); Johnson Creek (45.9385, -122.6261); Lewis River (45.9570, -122.5550); Ross Creek (45.9340, -122.7076).

(4) Lower Columbia/Clatskanie Subbasin 17080003—(i) *Kalama River Watershed 1708000301*. Outlet(s) = Kalama River (Lat 46.0340, Long -122.8696) upstream to endpoint(s) in: Kalama River (46.0449, -122.8034).

(ii) *Germany/Abernathy Watershed 1708000304*. Outlet(s) = Abernathy Creek (Lat 46.1908, Long -123.1661); Germany Creek (46.1895, -123.1244); Mill Creek (46.1888, -123.1745) upstream to endpoint(s) in: Abernathy Creek (46.2263, -123.1467); Germany Creek (46.2221, -123.1353); Mill Creek (46.1932, -123.1834).

(iii) *Skamokawa/Elochoman Watershed 1708000305*. Outlet(s) = Elochoman River (Lat 46.2269, Long -123.4039); Jim Crow Creek (46.2662, -123.5511); Skamokawa Creek (46.2677, -123.4562); Unnamed (46.2243, -123.3975) upstream to endpoint(s) in: Beaver Creek (46.2262, -123.3239); Brooks Slough (46.2502, -123.4094); Clear Creek (46.2611, -123.2996); Duck Creek (46.2517, -123.3159); Eggman Creek (46.3248, -123.4951); Elochoman River (46.2615, -123.2965); Indian Jack Slough (46.2371, -123.3955); Jim Crow Creek (46.2891, -123.5553); Kelly Creek (46.3109, -123.4797); Left Fork Skamokawa Creek (46.3331, -123.4610); Quarry Creek (46.3292, -123.4241); Skamokawa Creek (46.3277, -123.4236); Unnamed (46.2338, -123.3282); Unnamed (46.3293, -123.4534); West Fork Skamokawa Creek (46.3119, -123.4889); West Valley Creek (46.2981, -123.4698); Wilson Creek (46.3006, -123.3787).

(5) Lower Cowlitz Subbasin 17080005—(i) *Jackson Prairie Watershed 1708000503*. Outlet(s) = Cowlitz River (Lat 46.3678,

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Long -122.9337) upstream to endpoint(s) in: Bear Creek (46.4544, -122.9187); Blue Creek (46.4885, -122.7253); Coon Creek (46.4272, -122.9109); Cowlitz River (46.5033, -122.5871); Lacamas Creek (46.5564, -122.6878); Mill Creek (46.5025, -122.8017); Salmon Creek (46.4130, -122.8165); Skook Creek (46.4708, -122.7594); Unnamed (46.4191, -122.8205); Unnamed (46.4205, -122.8662); Unnamed (46.4280, -122.8380); Unnamed (46.4707, -122.7713); Unnamed (46.4885, -122.8068); Unnamed (46.5076, -122.6675); Unnamed (46.5311, -122.8194); Unnamed (46.5432, -122.7466).

(ii) *South Fork Toutle River Watershed 1708000506*. Outlet(s) = South Fork Toutle River (Lat 46.3282, Long -122.7215) upstream to endpoint(s) in: Johnson Creek (46.3102, -122.6444); South Fork Toutle River (46.2817, -122.6420).

(iii) *East Willapa Watershed 1708000507*. Outlet(s) = Cowlitz River (Lat 46.2660, Long -122.9154) upstream to endpoint(s) in: Arkansas Creek (46.3032, -122.9801); Cowlitz River (46.3678, -122.9337); Delameter Creek (46.2598, -122.9679); Hill Creek (46.3704, -122.9267); McMurphy Creek (46.4082, -122.9520); Monahan Creek (46.2636, -122.9727); North Fork Toutle River (46.3669, -122.5859); Olequa Creek (46.4324, -122.9688); Unnamed (46.2606, -122.9551); Unnamed (46.2642, -122.9291); Unnamed (46.2689, -122.9589); Unnamed (46.2880, -122.9051); Unnamed (46.2892, -122.9626); Unnamed (46.3294, -122.9085); Unnamed (46.3371, -122.8922); Unnamed (46.3491, -122.7052); Unnamed (46.3571, -122.7684); Unnamed (46.3587, -122.7478); Unnamed (46.3683, -122.7503); Unnamed (46.3814, -122.6091); Wyant Creek (46.3314, -122.6768).

(iv) *Coweeman Watershed 1708000508*. Outlet(s) = Cowlitz River (Lat 46.0977, Long -122.9141); Owl Creek (46.0768, -122.8679) upstream to endpoint(s) in: Baird Creek (46.1789, -122.5822); Butler Creek (46.1491, -122.5170); Cowlitz River (46.2660, -122.9154); Goble Creek (46.1074, -122.7068); Leckler Creek (46.2164, -122.9325); Mulholland Creek (46.2004, -122.6484); Nineteen Creek (46.1593, -122.6095); North Fork Goble Creek (46.1208, -122.7691); Owl Creek (46.0914, -122.8692); Salmon Creek (46.2547,

-122.8839); Sandy Bend Creek (46.2318, -122.9143); Skipper Creek (46.1625, -122.5915); Turner Creek (46.1167, -122.8150); Unnamed (46.0719, -122.8607); Unnamed (46.0767, -122.8604); Unnamed (46.0897, -122.7355); Unnamed (46.1295, -122.8993); Unnamed (46.1369, -122.8034); Unnamed (46.1441, -122.5816); Unnamed (46.1478, -122.8649); Unnamed (46.1516, -122.8749); Unnamed (46.1558, -122.7803); Unnamed (46.1727, -122.7716); Unnamed (46.1753, -122.7657); Unnamed (46.1940, -122.7068); Unnamed (46.2021, -122.6941); Unnamed (46.2416, -122.8869).

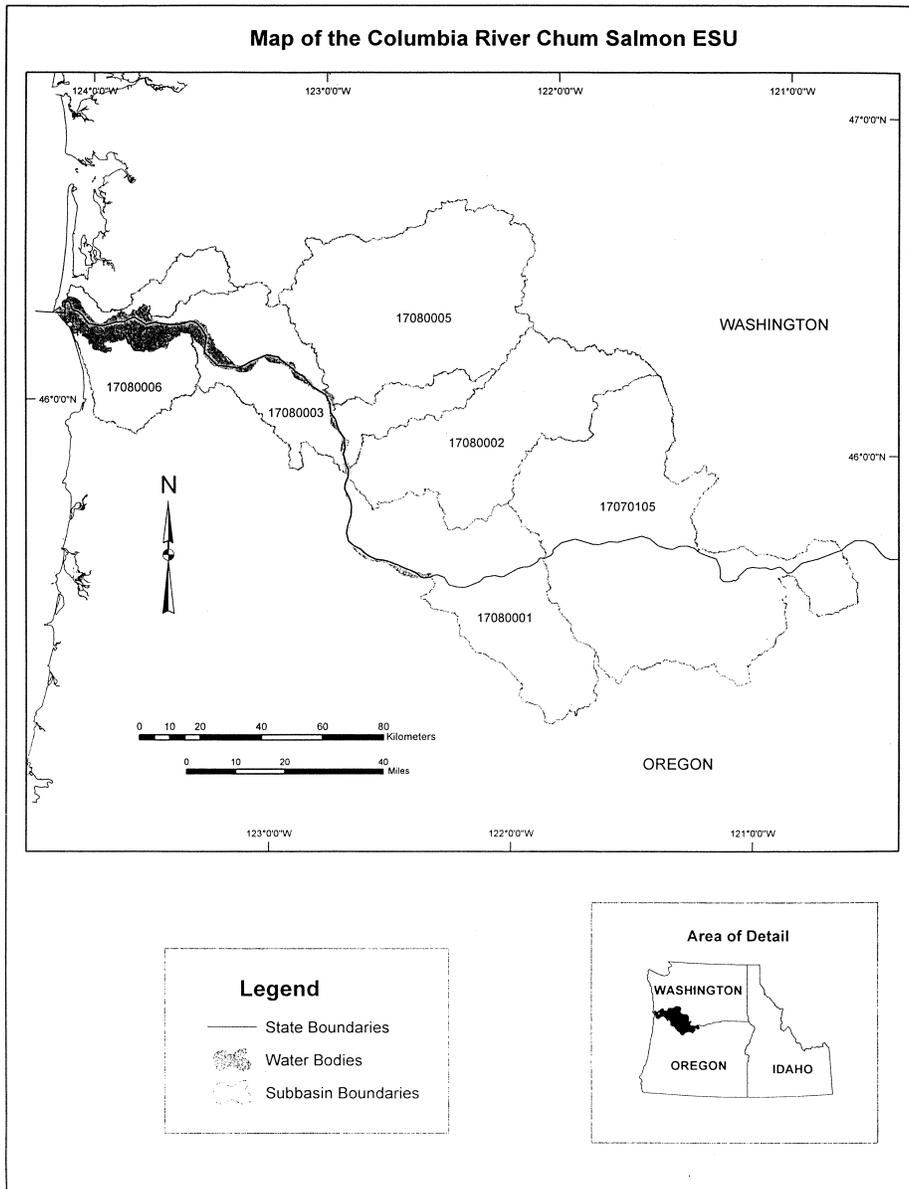
(6) Lower Columbia Subbasin 17080006—(i) *Big Creek Watershed 1708000602*. Outlet(s) = Big Creek (Lat 46.1848, Long -123.5943) upstream to endpoint(s) in: Big Creek (46.1476, -123.5820); Little Creek (46.1510, -123.6007).

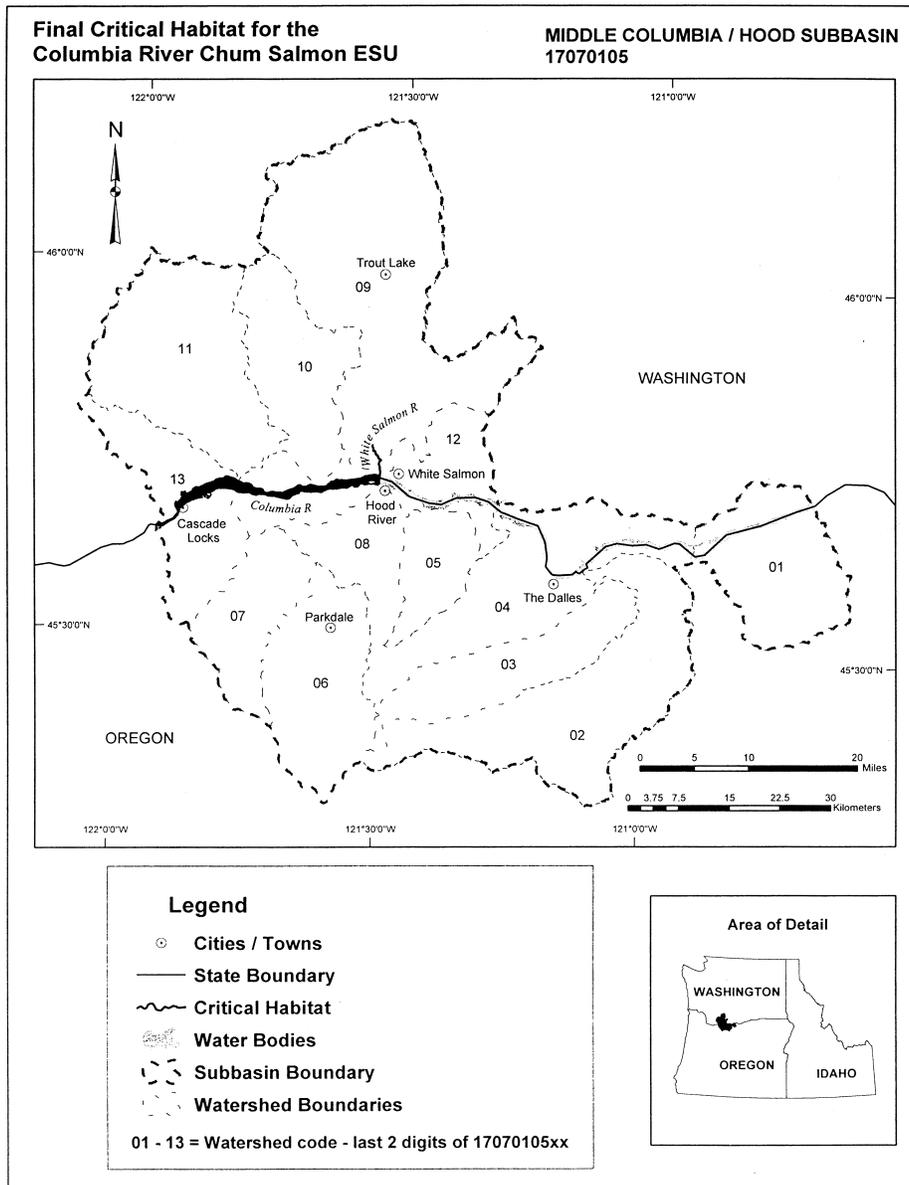
(ii) *Grays Bay Watershed 1708000603*. Outlet(s) = Deep River (Lat 46.3035, Long -123.7092); Grays River (46.3035, -123.6867); Unnamed (46.2419, -123.8842); Unnamed (46.3026, -123.9702) upstream to endpoint(s) in: Alder Creek (46.4279, -123.4621); Blaney Creek (46.3957, -123.4607); Campbell Creek (46.3435, -123.7087); Chinook River (46.2685, -123.9233); Deep River (46.3480, -123.6865); East Fork Grays River (46.4424, -123.4120); Fossil Creek (46.3612, -123.5217); Grays River (46.4628, -123.4602); Johnson Creek (46.4544, -123.4732); Kessel Creek (46.3336, -123.5850); King Creek (46.3444, -123.5774); Lassila Creek (46.3343, -123.7108); Mitchell Creek (46.4512, -123.4269); South Fork Grays River (46.3836, -123.4592); Thadbar Creek (46.3331, -123.6092); Unnamed (46.2502, -123.8833); Unnamed (46.2847, -123.9402); Unnamed (46.2901, -123.9368); Unnamed (46.3605, -123.5228); Unnamed (46.3838, -123.5454); Unnamed (46.4328, -123.4444); West Fork Grays River (46.3942, -123.5611).

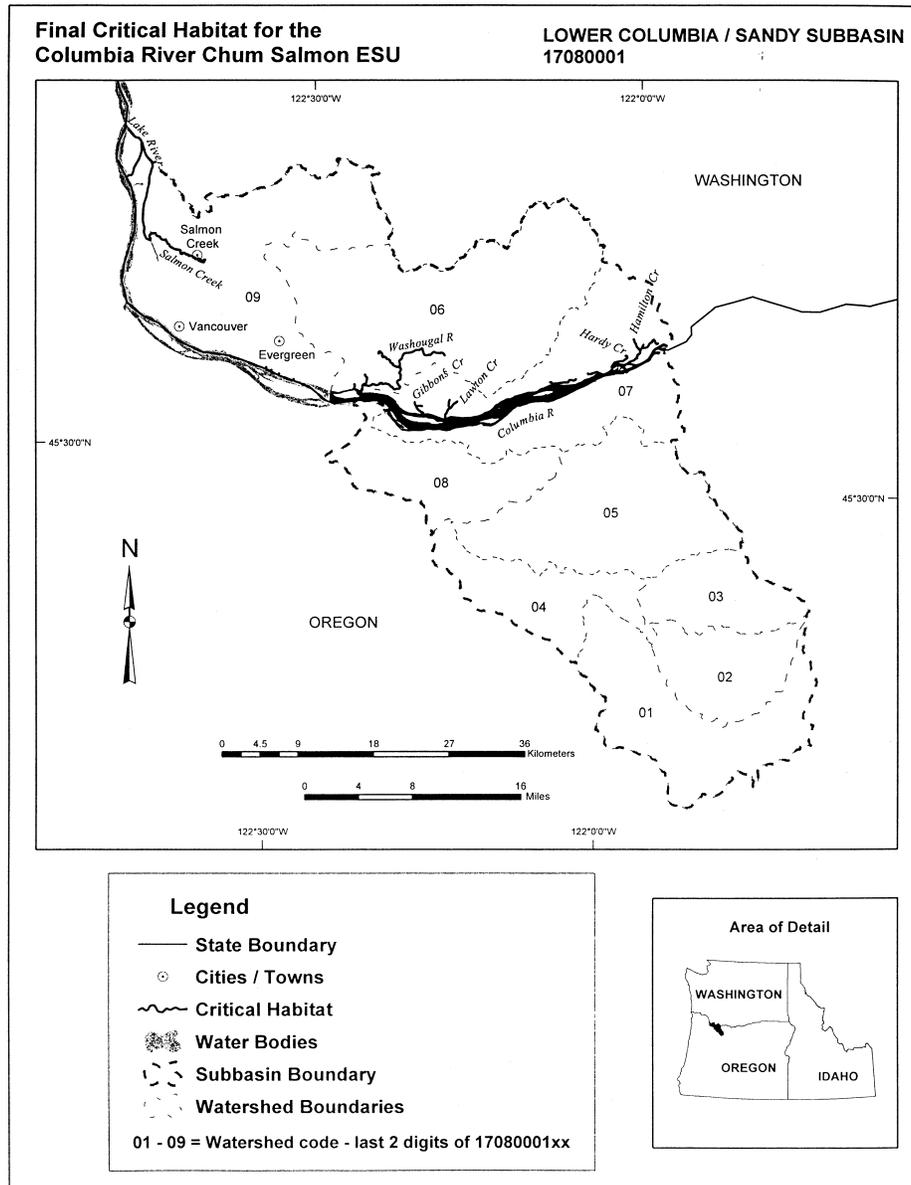
(7) Lower Columbia River Corridor—*Lower Columbia River Corridor*

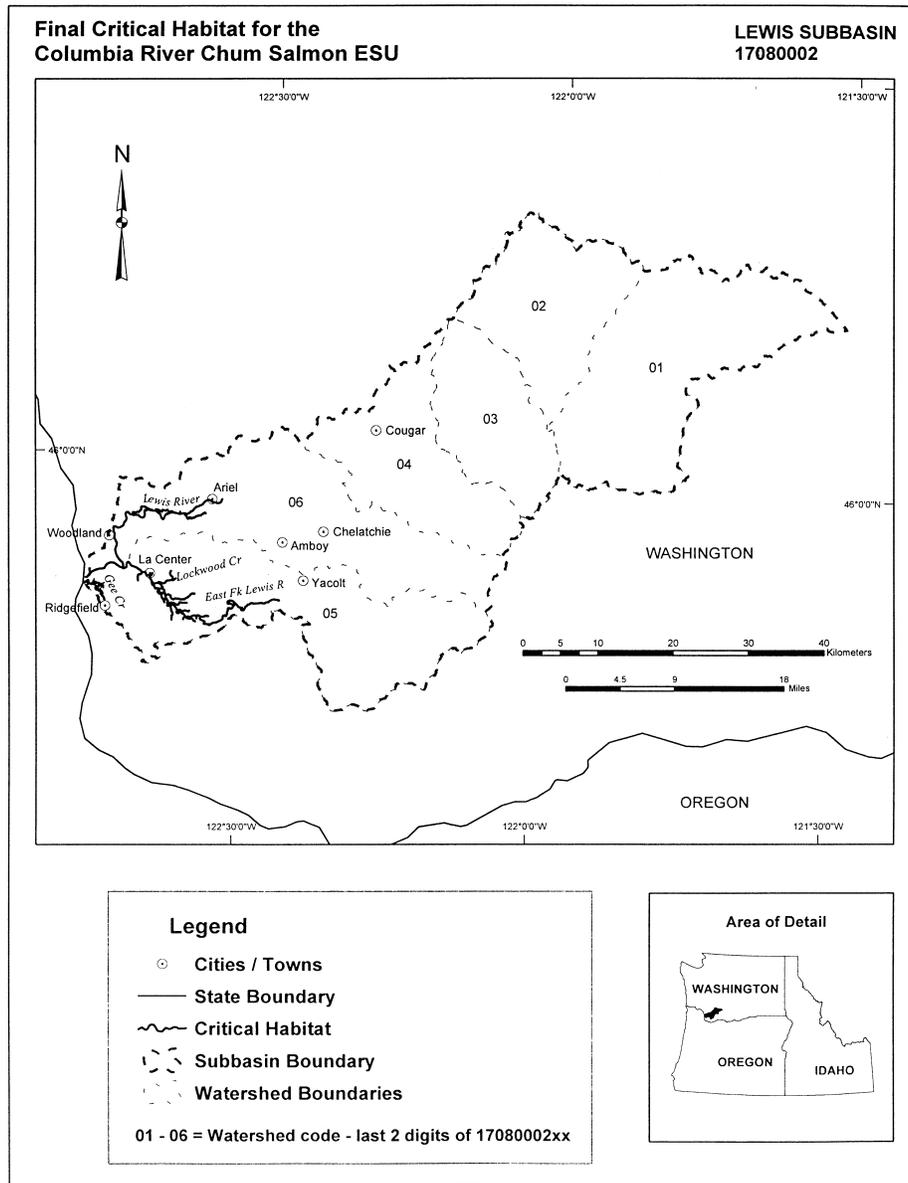
Outlet(s) = Columbia River (Lat 46.2485, Long -124.0782) upstream to endpoint(s) in: Columbia River (45.5709, -122.4020).

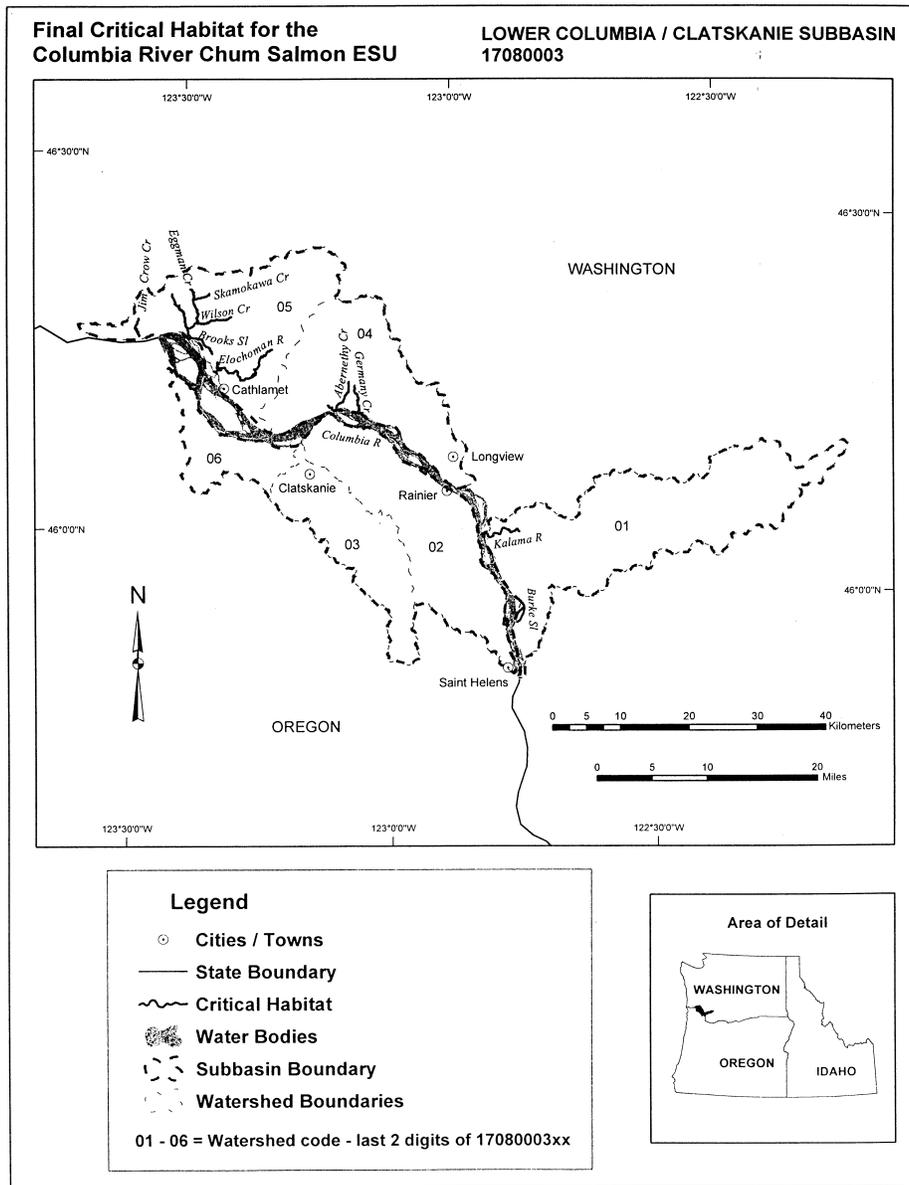
(8) Maps of critical habitat for the Columbia River chum salmon ESU follow:

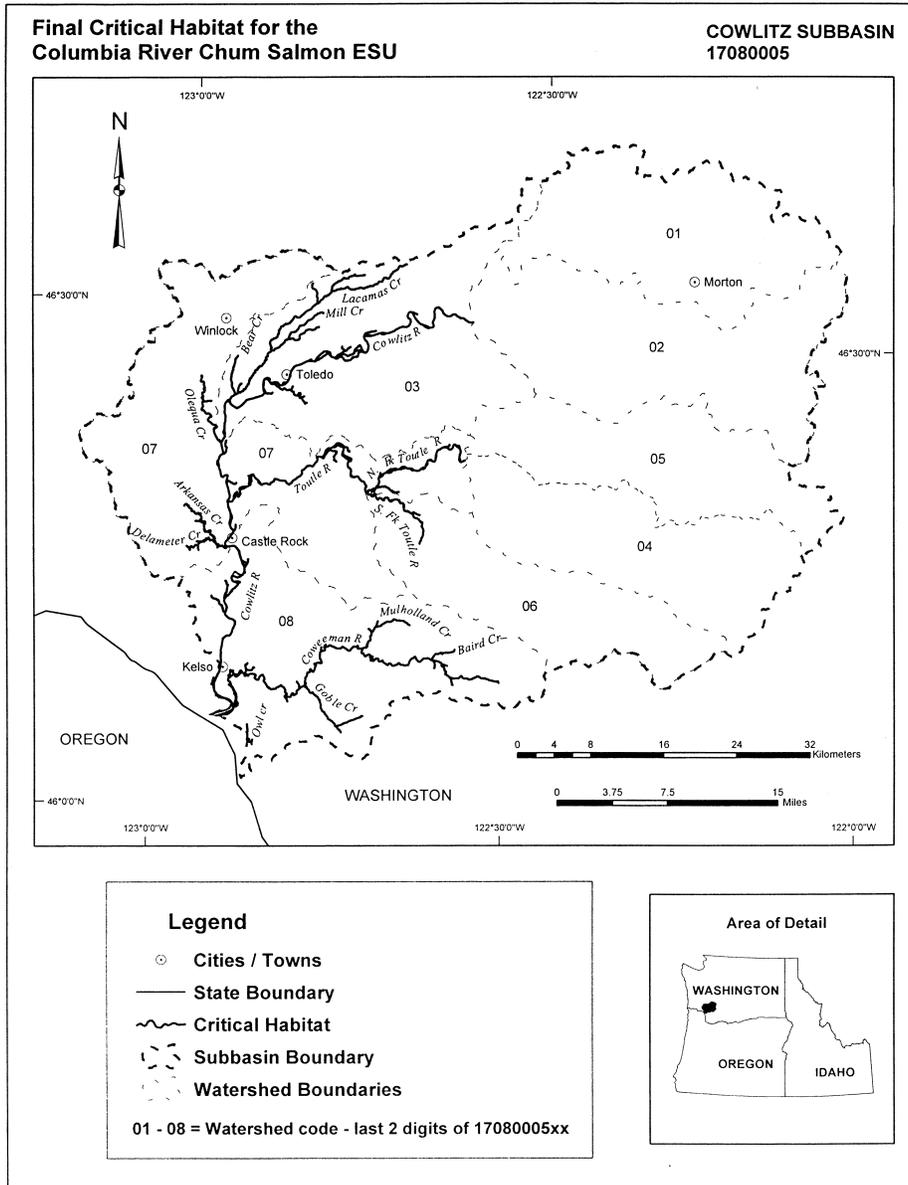


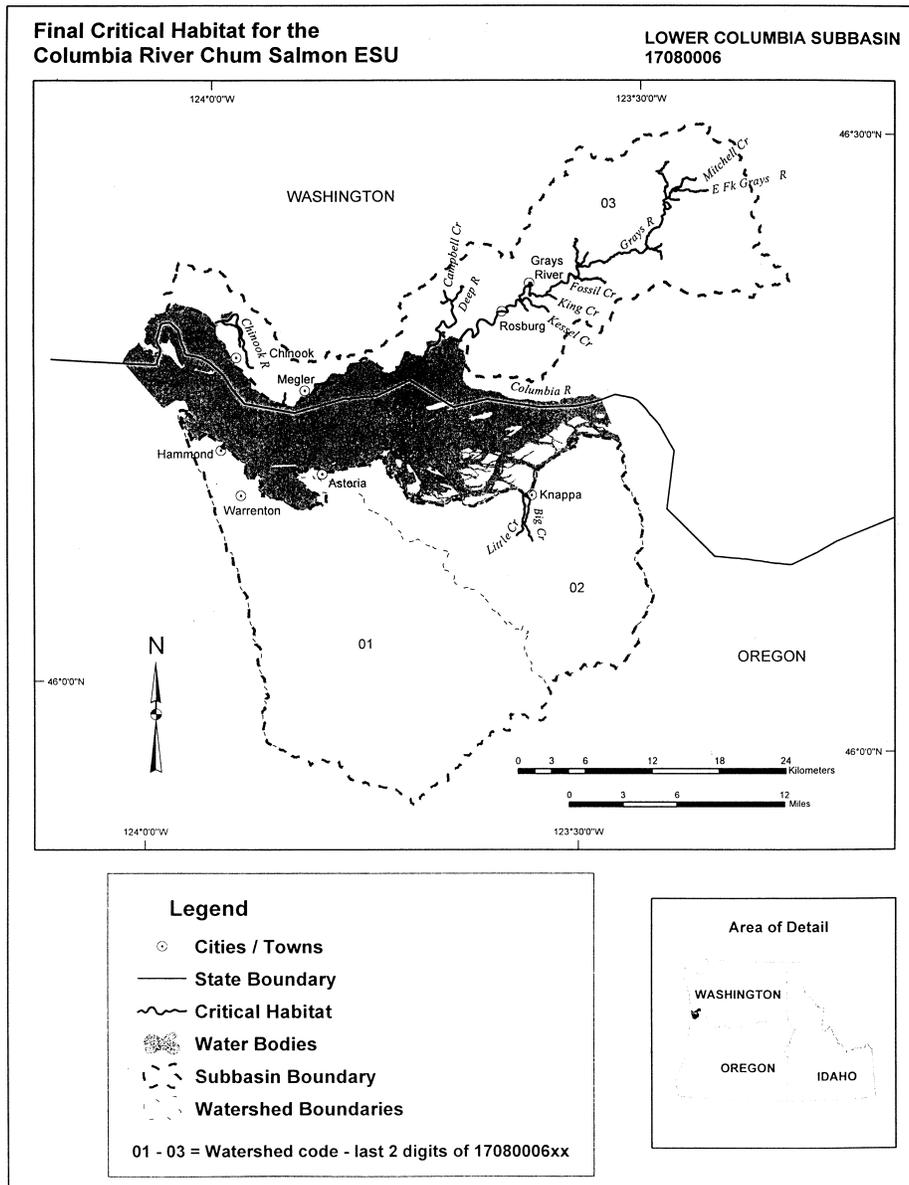


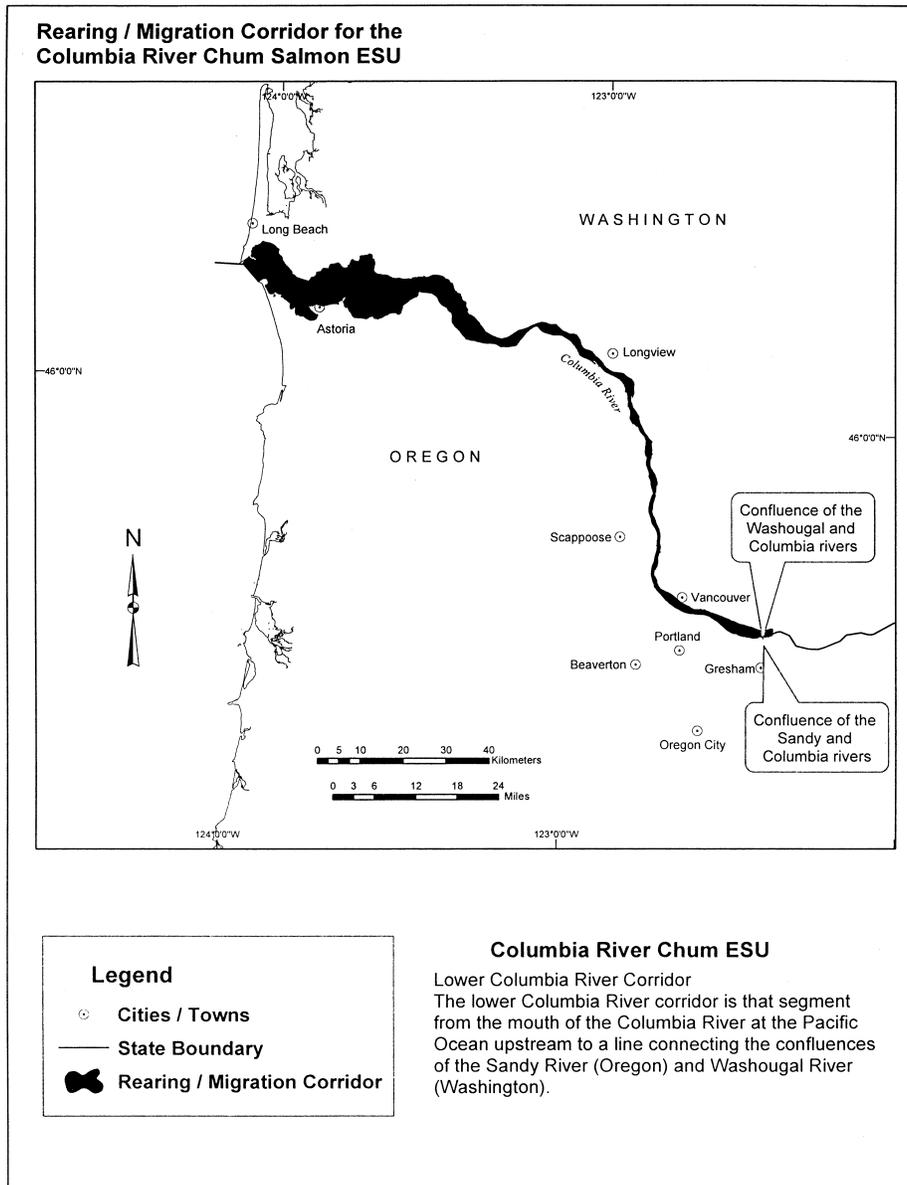












(o) Ozette Lake Sockeye Salmon (Oncorhynchus nerka). Critical habitat is designated to include the areas defined in the following subbasin:

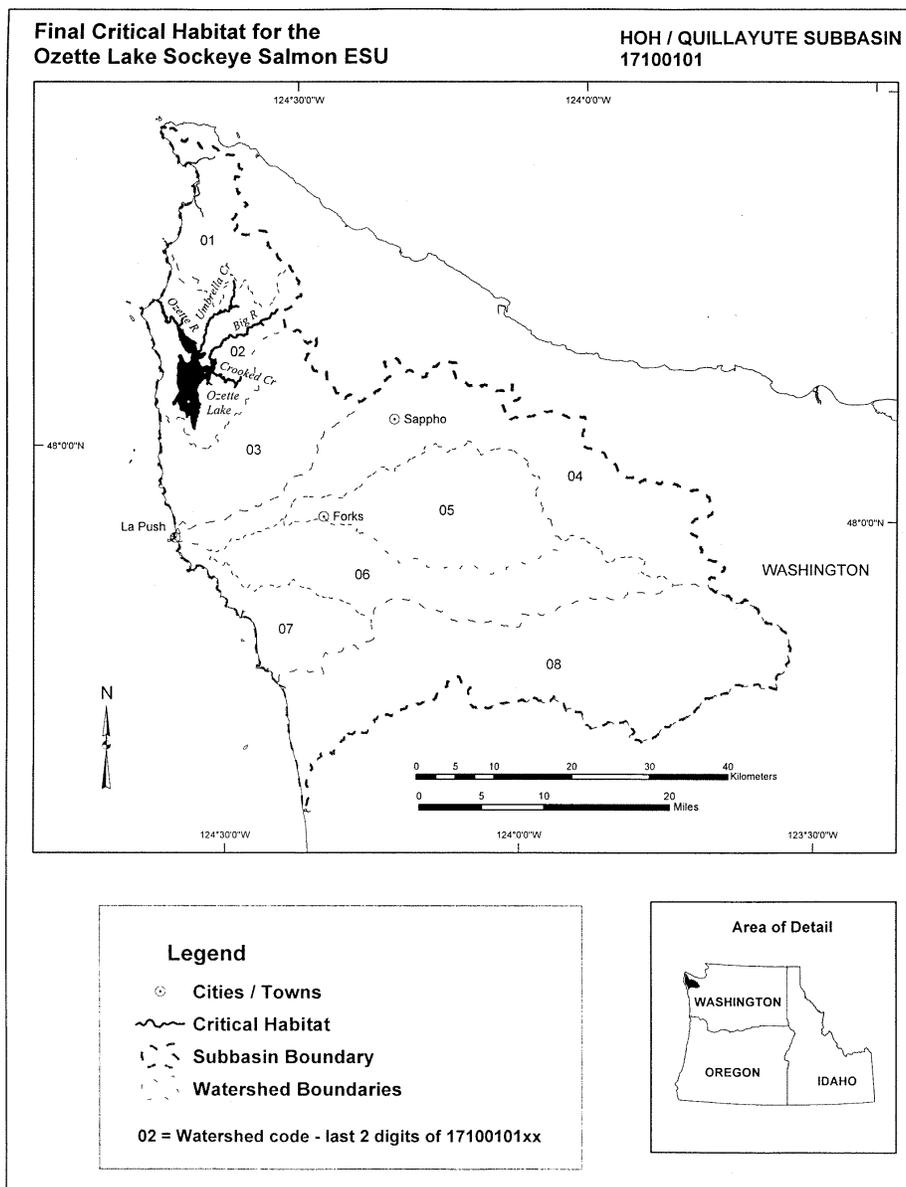
(1) Hoh/Quillayute Subbasin 17100101—(i) Ozette Lake Watershed

1710010102. Outlet(s) = Ozette River (Lat 48.1818, Long -124.7076) upstream to endpoints in: Big River (48.1844, -124.4987); Coal Creek (48.1631, -124.6612); East Branch Umbrella Creek (48.1835, -124.5659); North Fork Crooked Creek

(48.1020, -124.5507); Ozette River (48.0370, -124.6218); South Fork Crooked Creek (48.0897, -124.5597); Umbrella Creek (48.2127, -124.5787); Unnamed (48.1771, -124.5967); Unnamed (48.1740, -124.6005); Unnamed (48.1649, -124.5208).

(ii) [Reserved]

(2) A map of critical habitat for the Ozette Lake sockeye salmon ESU follows:



(p) *Upper Columbia River Steelhead (Oncorhynchus mykiss)*. Critical habitat is designated to include the areas defined in the following subbasins:

(1) Chief Joseph Subbasin 17020005—*Upper Columbia/Swamp Creek Watershed 1702000505*. Outlet(s) = Columbia River (Lat 47.8077, Long -119.9754) upstream to endpoint(s) in: Columbia River (48.0828, -119.7062).

(2) Okanogan Subbasin 17020006—(i) *Upper Okanogan River Watershed 1702000601*. Outlet(s) = Okanogan River (Lat 48.7350, Long -119.4280) upstream to endpoint(s) in: Antoine Creek (48.7474, -119.3655); Ninemile Creek (48.9755, -119.3834); Okanogan River (49.0002, -119.4409); Similkameen River (48.9345, -119.4411); Tomasket Creek (48.9502, -119.3618); Whitestone Creek (48.7773, -119.4170).

(ii) *Okanogan River/Bonaparte Creek Watershed 1702000602*. Outlet(s) = Okanogan River (Lat 48.5612, Long -119.4863) upstream to endpoint(s) in: Aeneas Creek (48.6629, -119.4953); Bonaparte Creek (48.6824, -119.3947); Okanogan River (48.7350, -119.4280); Tunk Creek (48.5644, -119.4718).

(iii) *Salmon Creek Watershed 1702000603*. Outlet(s) = Salmon Creek (Lat 48.3593, Long -119.5805) upstream to endpoint(s) in: Salmon Creek (48.5374, -119.7465).

(iv) *Okanogan River/Omak Creek Watershed 1702000604*. Outlet(s) = Okanogan River (Lat 48.3593, Long -119.5805) upstream to endpoint(s) in: Okanogan River (48.5612, -119.4863); Omak Creek (48.3698, -119.4365); Unnamed (48.3802, -119.4915).

(v) *Lower Okanogan River Watershed 1702000605*. Outlet(s) = Okanogan River (Lat 48.0976, Long -119.7352) upstream to endpoint(s) in: Chiliwist Creek (48.2643, -119.7304); Loup Loup Creek (48.3080, -119.7128); Okanogan River (48.3593, -119.5805).

(3) Similkameen Subbasin 17020007—*Lower Similkameen River Watershed 1702000704*. Outlet(s) = Similkameen River (Lat 48.9345, Long -119.4411) upstream to endpoint(s) in: Similkameen River (48.9657, -119.5009).

(4) Methow Subbasin 17020008—(i) *Lost River Watershed 1702000801*. Outlet(s) = Lost River Gorge (Lat 48.6501, Long -120.5103) upstream to endpoint(s) in: Lost River Gorge (48.7324, -120.4475).

(ii) *Upper Methow River Watershed 1702000802*. Outlet(s) = Methow River (Lat 48.6015, Long -120.4376) upstream to endpoint(s) in: Early Winters Creek (48.5889, -120.4711); Methow River (48.6597, -120.5368).

(iii) *Upper Chewuch River Watershed 1702000803*. Outlet(s) = Chewuch River (Lat 48.7501, Long -120.1356) upstream to endpoint(s) in: Andrews Creek (48.7855, -120.1087); Chewuch River (48.8614, -120.0288); Lake Creek (48.8258, -120.1996).

(iv) *Lower Chewuch River Watershed 1702000804*. Outlet(s) = Chewuch River (Lat 48.4751, Long -120.1790) upstream to endpoint(s) in: Boulder Creek (48.5804, -120.1521); Chewuch River (48.7501, -120.1356); Eightmile Creek (48.6167, -120.1975); Twentymile Creek (48.7025, -120.1087).

(v) *Twisp River Watershed 1702000805*. Outlet(s) = Twisp River (Lat 48.3682, Long -120.1176) upstream to endpoint(s) in: Buttermilk Creek (48.3414, -120.3034); Eagle Creek (48.3579, -120.3953); Little Bridge Creek (48.4289, -120.3552); South Creek (48.4329, -120.5434); Twisp River (48.4545, -120.5621); War Creek (48.3626, -120.4106).

(vi) *Middle Methow River Watershed 1702000806*. Outlet(s) = Methow River (Lat 48.2495, Long -120.1156) upstream to endpoint(s) in: Goat Creek (48.6101, -120.3692); Hancock Creek (48.5338, -120.3310); Little Boulder Creek (48.5569, -120.3847); Methow River (48.6015, -120.4376); North Fork Beaver Creek (48.4340, -120.0228); Wolf Creek (48.4777, -120.2844).

(vii) *Lower Methow River Watershed 1702000807*. Outlet(s) = Methow River (Lat 48.0502, Long -119.8942) upstream to endpoint(s) in: Black Canyon Creek (48.0721, -120.0168); Foggy Dew Creek (48.1869, -120.2344); Gold Creek (48.2113, -120.2021); Libby Creek (48.2548, -120.1653); Methow River (48.2495, -120.1156); South Fork Gold Creek (48.1468, -120.1650).

(5) Upper Columbia/Entiat Subbasin 17020010—(i) *Entiat River Watershed 1702001001*. Outlet(s) = Entiat River (Lat 47.6585, Long -120.2194) upstream to endpoint(s) in: Entiat River (47.9855, -120.5749); Mad River (47.8254, -120.5301); Potato Creek (47.7944, -120.3889); Roaring Creek (47.6795, -120.4163); Stormy Creek (47.8246, -120.4125); Tamarack

Creek (47.6699, -120.4041); Tillicum Creek (47.7295, -120.4303).

(ii) *Lake Entiat Watershed 1702001002*. Outlet(s) = Columbia River (Lat 47.3539, Long -120.1105) upstream to endpoint(s) in: Columbia River (47.8077, -119.9754).

(iii) *Columbia River/Lynch Coulee Watershed 1702001003*. Outlet(s) = Columbia River (Lat 47.0494, Long -120.0241) upstream to endpoint(s) in: Brushy Creek (47.1316, -120.1493); Colockum Creek (47.2919, -120.1592); Columbia River (47.3539, -120.1105); Lynch Coulee (47.2320, -119.9943); Quilomene Creek (47.1105, -120.0379); Tarpiscan Creek (47.2264, -120.0922); Tekison Creek (47.1816, -120.0206).

(iv) *Columbia River/Sand Hollow Watershed 1702001004*. Outlet(s) = Columbia River (Lat 46.8159, Long -119.9255) upstream to endpoint(s) in: Columbia River (47.0494, -120.0241); Sand Hollow (46.9296, -119.9365); Whiskey Dick Creek (47.0302, -120.0331).

(6) Wenatchee Subbasin 17020011—(i) *White River Watershed 1702001101*. Outlet(s) = White River (Lat 47.8088, Long -120.7159) upstream to endpoint(s) in: Little Wenatchee River (47.8526, -120.9541); Napeequa River (47.9359, -120.8712); Panther Creek (47.9375, -120.9408); White River (47.9535, -120.9380).

(ii) *Chiwawa River Watershed 1702001102*. Outlet(s) = Chiwawa River (Lat 47.7880, Long -120.6589) upstream to endpoint(s) in: Alder Creek (47.8565, -120.6564); Alpine Creek (48.0823, -120.8683); Buck Creek (48.1045, -120.8815); Chikamin Creek (47.9111, -120.7165); Chiwawa River (48.1140, -120.8775); Clear Creek (47.8016, -120.6210); James Creek (48.0748, -120.8598); Phelps Creek (48.0743, -120.8484); Unnamed (47.9727, -120.7878).

(iii) *Nason/Tumwater Watershed 1702001103*. Outlet(s) = Wenatchee River (Lat 47.5801, Long -120.6660) upstream to endpoint(s) in: Beaver Creek (47.7649, -120.6553); Chiwaukum Creek (47.7038, -120.7788); Coulter Creek (47.7594, -120.7969); Gill Creek (47.7716, -120.8237); Kahler Creek (47.7691, -120.7558); Mill Creek (47.7744, -121.0117); Nason Creek (47.7825, -121.0464); Roaring Creek

(47.7572, -120.8203); Skinny Creek (47.7247, -120.7370).

(iv) *Icicle/Chumstick Watershed 1702001104*. Outlet(s) = Wenatchee River (Lat 47.5575, Long -120.5729) upstream to endpoint(s) in: Chumstick Creek (47.6785, -120.6385); Derby Canyon (47.6036, -120.5623); Eagle Creek (47.6342, -120.6261); Icicle Creek (47.6460, -120.9833); Wenatchee River (47.5801, -120.6660).

(v) *Lower Wenatchee River Watershed 1702001105*. Outlet(s) = Wenatchee River (Lat 47.4553, Long -120.3185) upstream to endpoint(s) in: Brender Creek (47.5214, -120.4844); Ingalls Creek (47.4612, -120.6776); King Canyon (47.3522, -120.4423); Mill Creek (47.5139, -120.6724); Mission Creek (47.3289, -120.4771); Peshastin Creek (47.4380, -120.6590); Sand Creek (47.4321, -120.5307); Wenatchee River (47.5575, -120.5729).

(7) Lower Crab Subbasin 17020015—*Lower Crab Creek Watershed 1702001509*. Outlet(s) = Lower Crab Creek (Lat 46.8159, Long -119.9255) upstream to endpoint(s) in: Hayes Creek (46.8821, -119.2703); Lower Crab Creek (46.9028, -119.2785); Unnamed (46.8157, -119.4326); Unnamed (46.8243, -119.4429); Unnamed (46.8353, -119.3750); Unnamed (46.8658, -119.3757); Unnamed (46.8770, -119.5863).

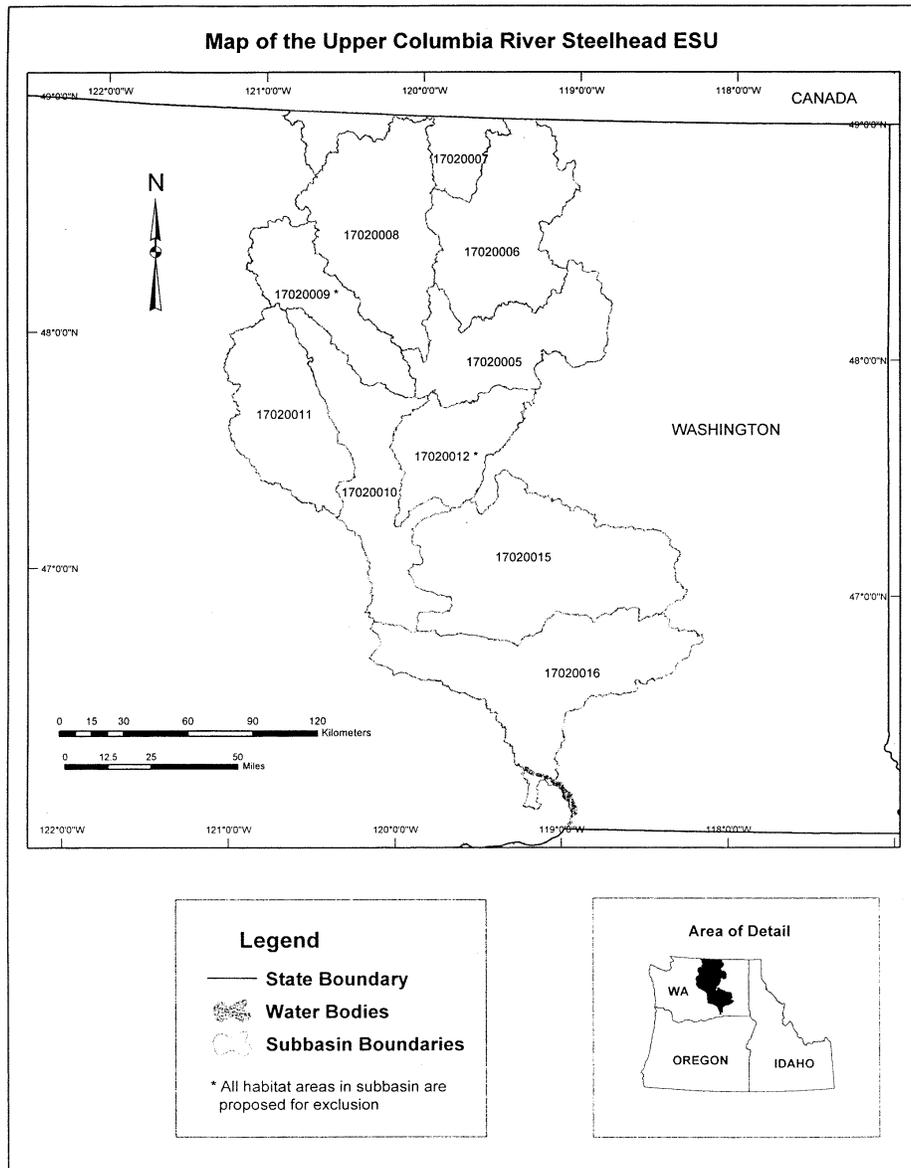
(8) Upper Columbia/Priest Rapids Subbasin 17020016—(i) *Yakima River/Hanson Creek Watershed 1702001604*. Outlet(s) = Columbia River (Lat 46.7159, Long -119.5294) upstream to endpoint(s) in: Columbia River (46.8159, -119.9255).

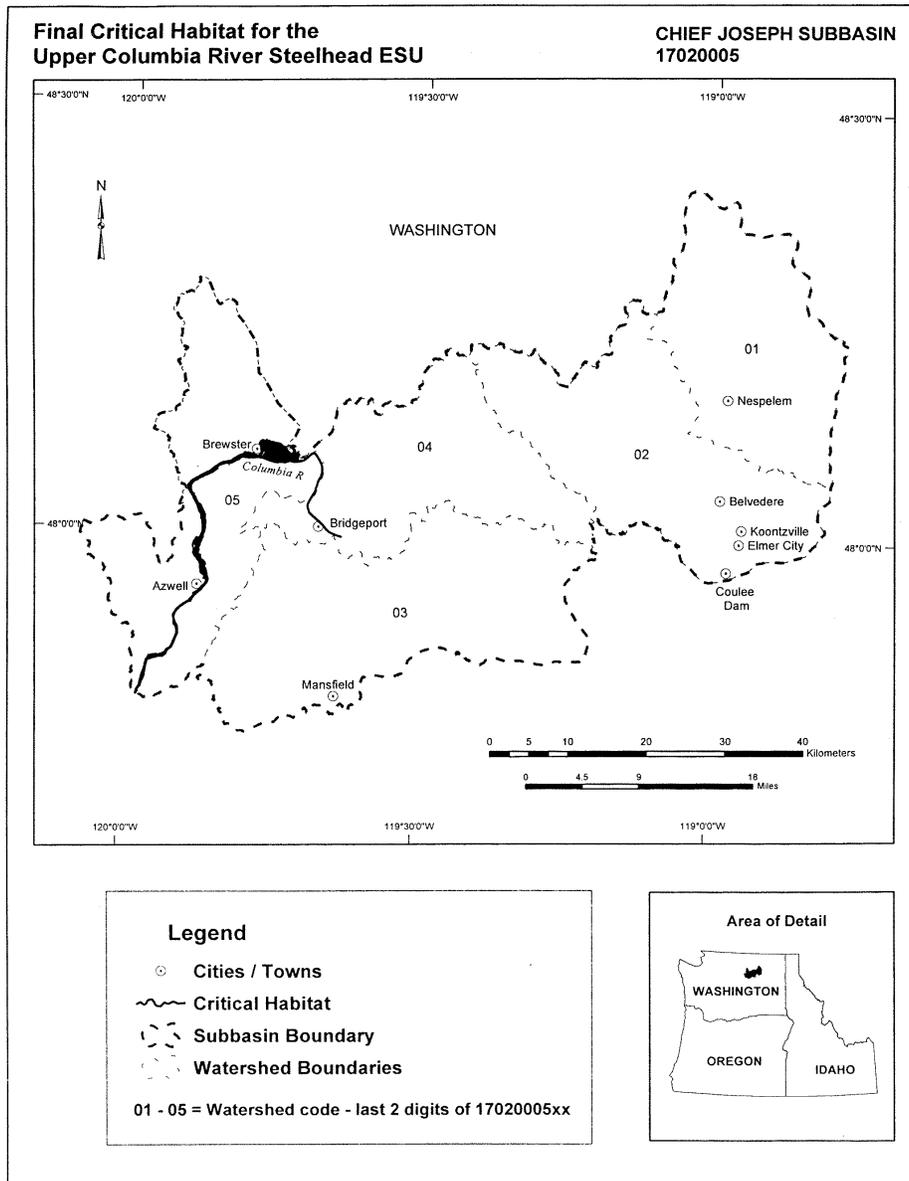
(ii) *Middle Columbia/Priest Rapids Watershed 1702001605*. Outlet(s) = Columbia River (Lat 46.5091, Long -119.2661) upstream to endpoint(s) in: Columbia River (46.7159, -119.5294).

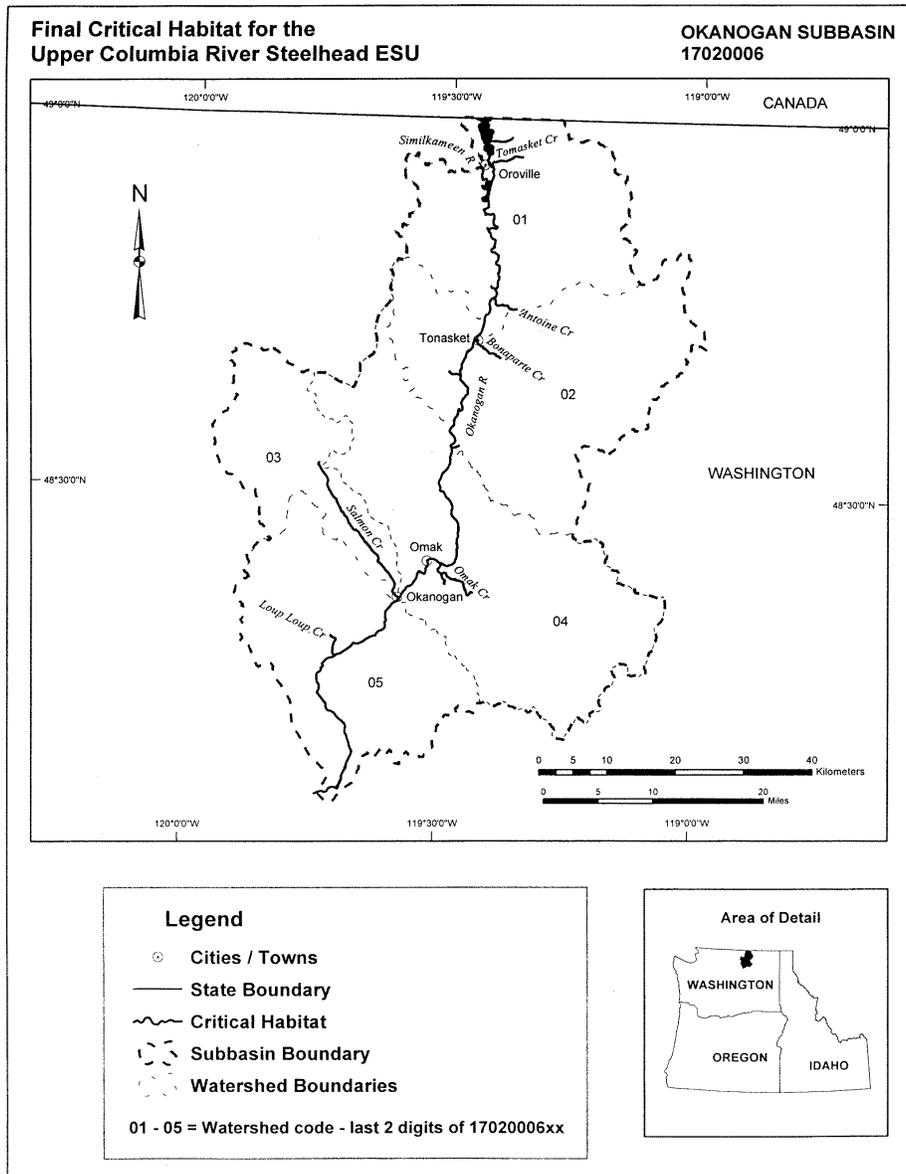
(iii) *Columbia River/Zintel Canyon Watershed 1702001606*. Outlet(s) = Columbia River (Lat 46.2534, Long -119.2268) upstream to endpoint(s) in: Columbia River (46.5091, -119.2661).

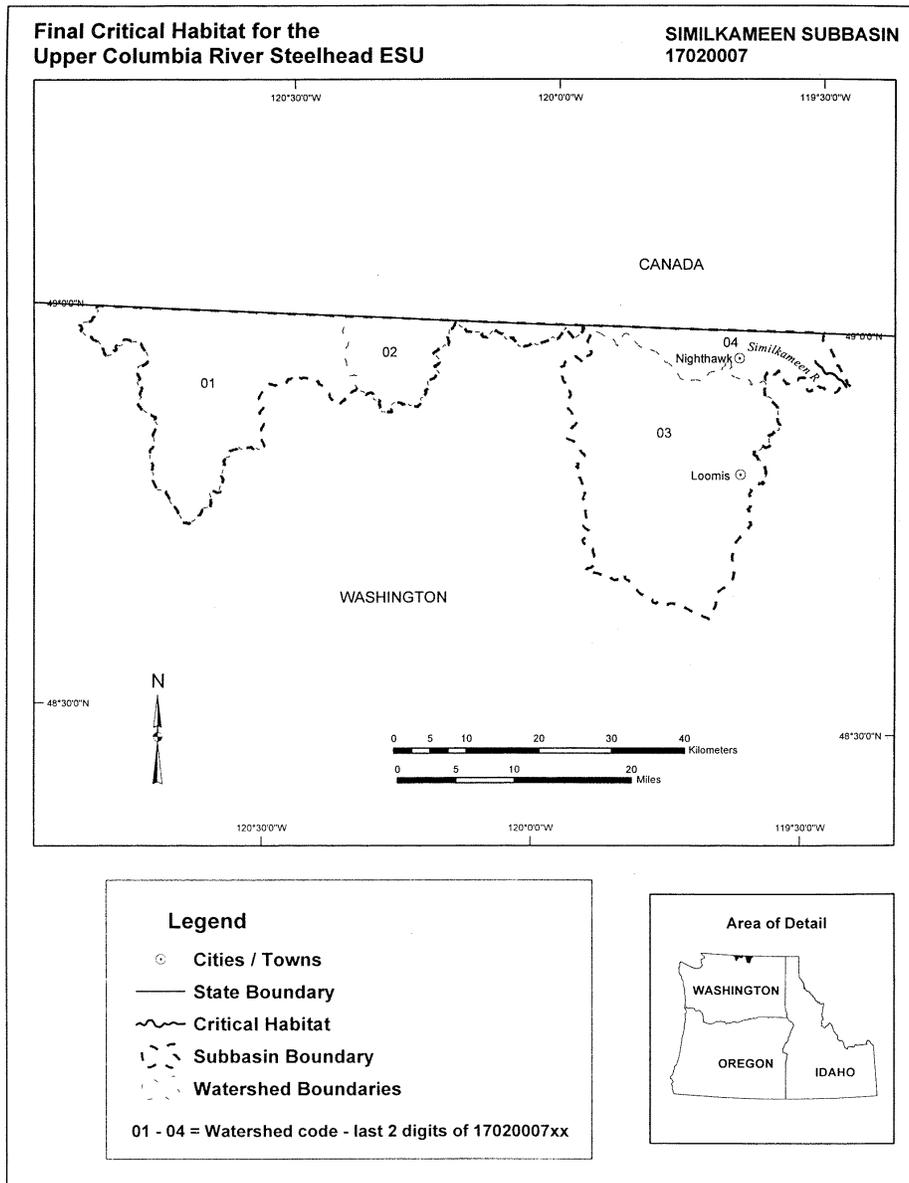
(9) Columbia River Corridor—*Columbia River Corridor*. Outlet(s) = Columbia River (Lat 46.2485, Long -124.0782) upstream to endpoint(s) in: Columbia River (46.2534, -119.2268).

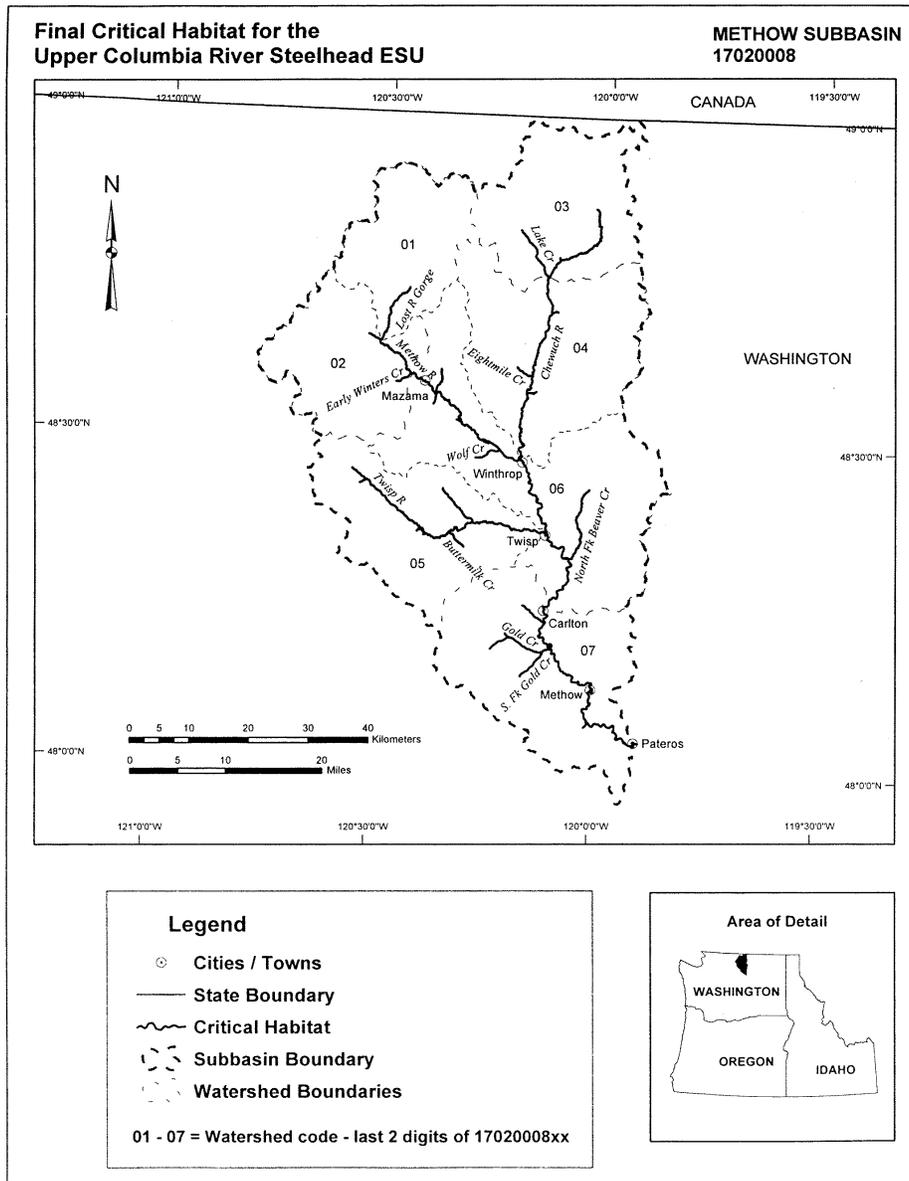
(10) Maps of critical habitat for the Upper Columbia River Steelhead ESU follow:

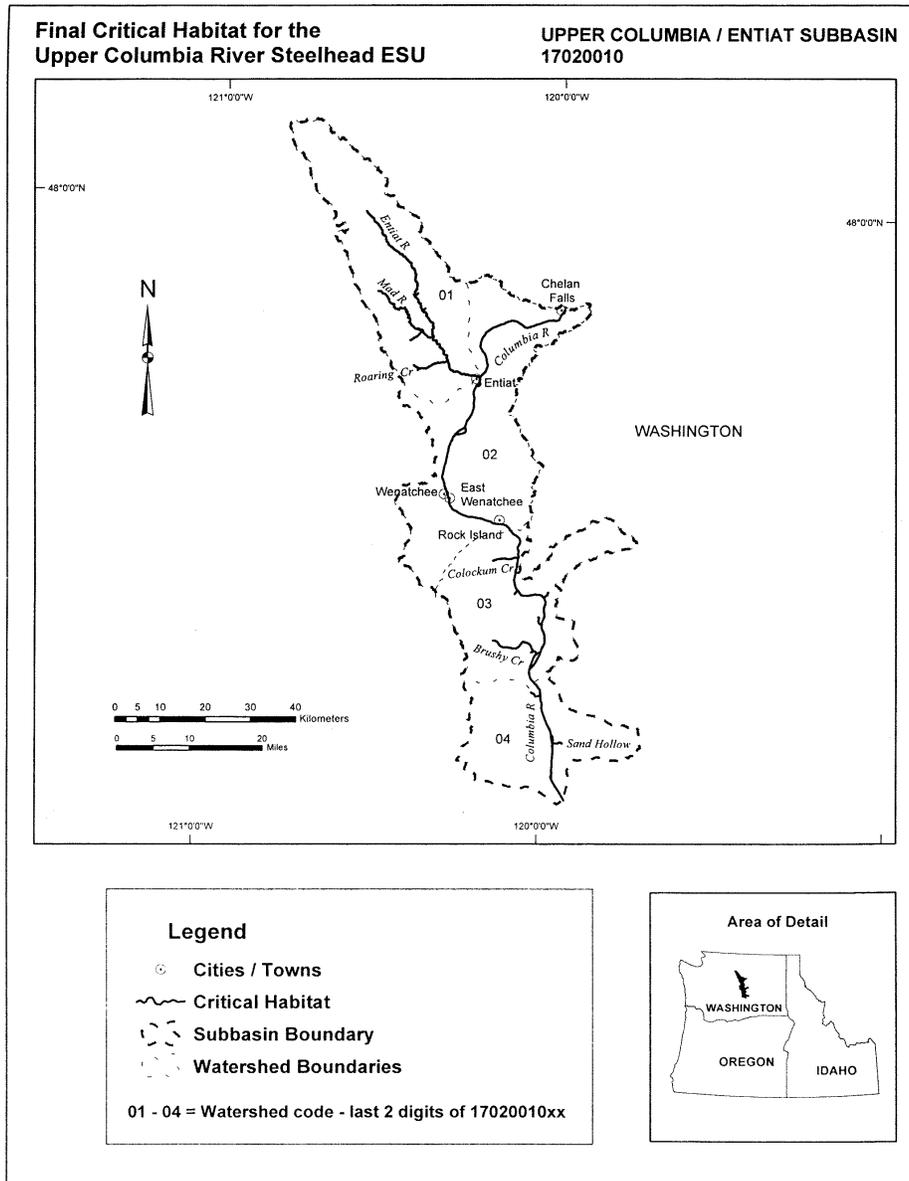


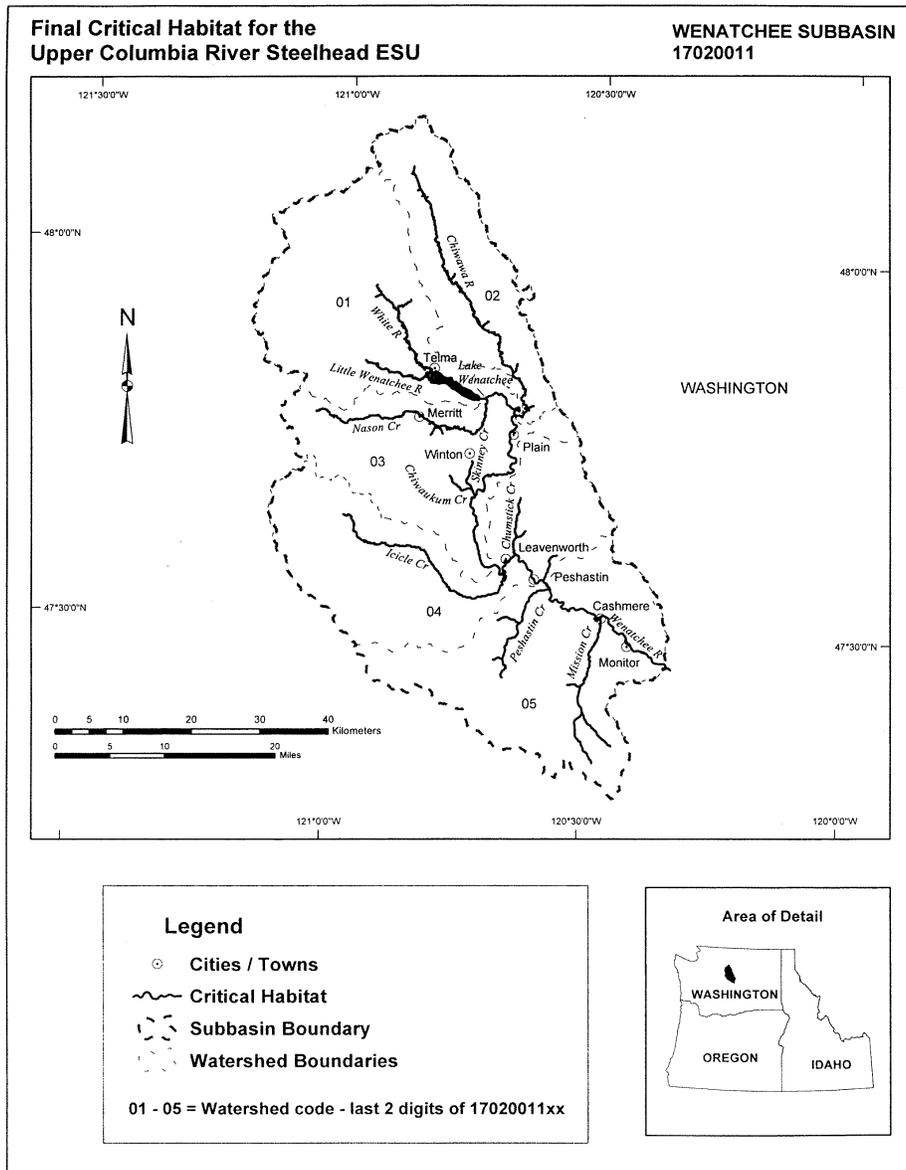


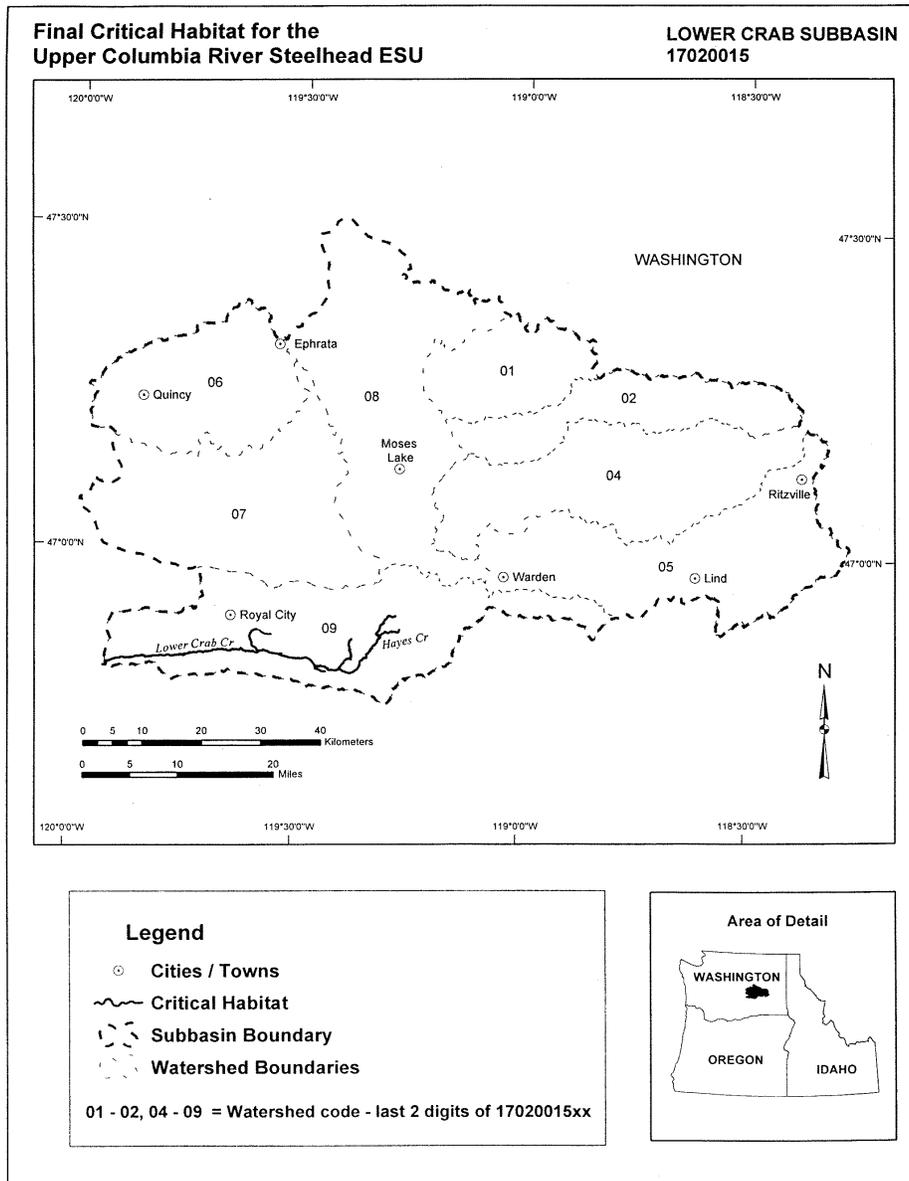


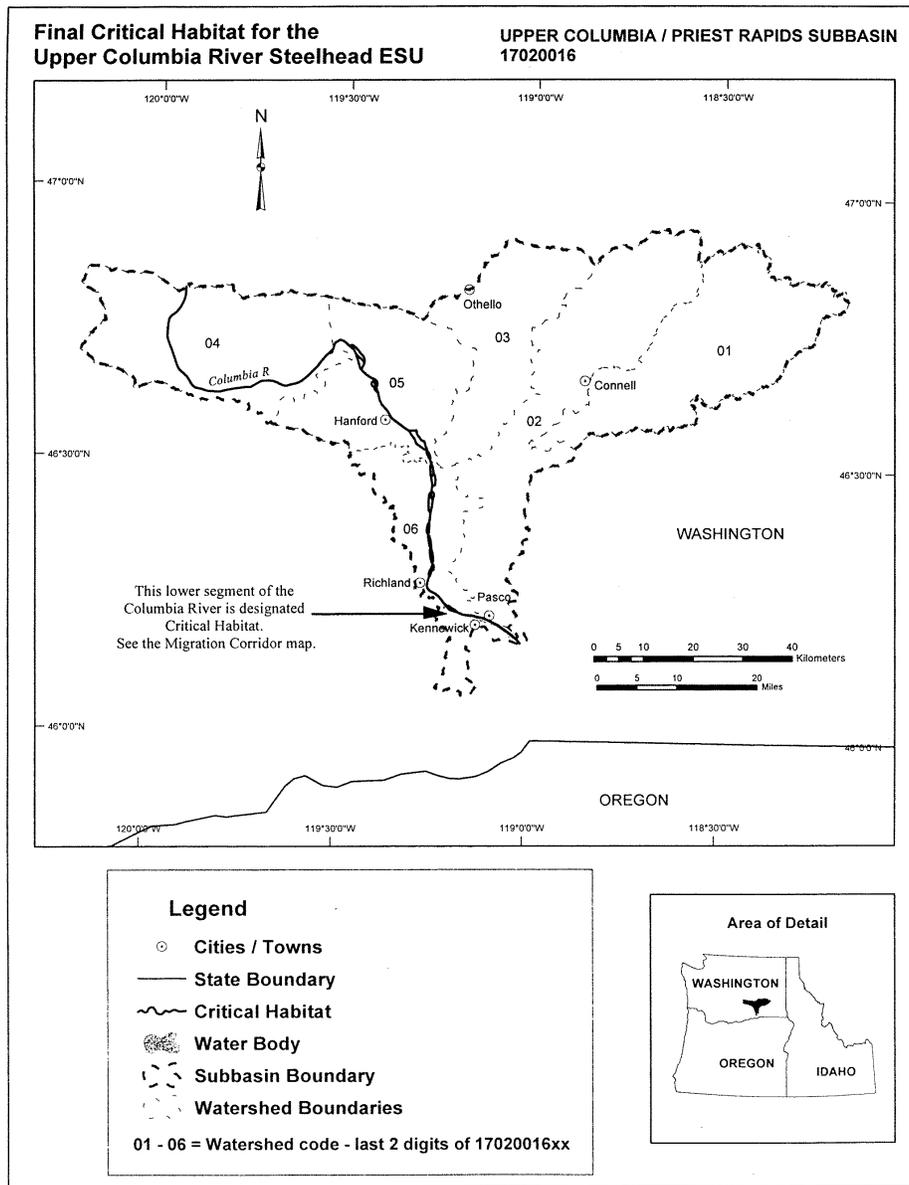


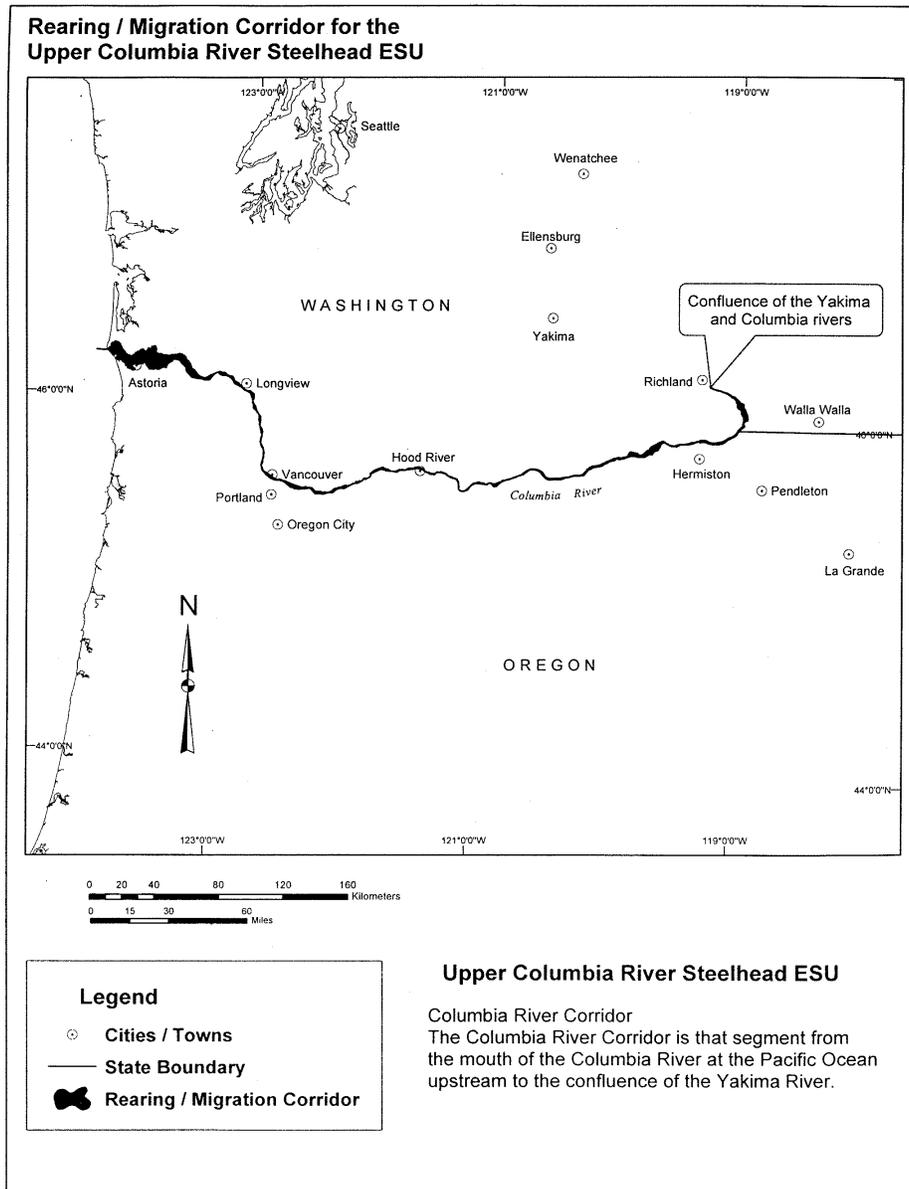












- (q) Snake River Basin Steelhead 1706010101. Outlet(s) = Snake River (Lat 45.467, Long -116.554) upstream to end-point(s) in: Battle Creek (45.307, -116.697); Bernard Creek (45.387, -116.569); Brush Creek (45.275, -116.657); Bull Creek (45.329, -116.673); Deep Creek
- (i) Snake River/Granite Creek Watershed
- (l) Hells Canyon Subbasin 17060101—

(45.237, -116.674); Devils Farm Creek (45.301, -116.611); Granite Creek (45.277, -116.630); Hells Canyon (45.254, -116.698); Lightning Creek (45.440, -116.500); Little Granite Creek (45.335, -116.636); North Fork Battle Creek (45.316, -116.687); Rattlesnake Creek (45.457, -116.610); Rough Creek (45.397, -116.638); Rush Creek (45.468, -116.596); Saddle Creek (45.375, -116.721); Sheep Creek (45.406, -116.523); Sluice Creek (45.445, -116.622); Snake River (45.243, -116.700); Stud Creek (45.267, -116.693); Three Creek (45.353, -116.610); Unnamed (45.468, -116.610); Unnamed (45.4787, -116.4799); Wild Sheep Creek (45.326, -116.676).

(ii) *Snake River/Getta Creek Watershed 1706010102*. Outlet(s) = Snake River (Lat 45.747, Long -116.543) upstream to endpoint(s) in: Big Canyon Creek (45.689, -116.467); Corral Creek (45.588, -116.433); Cove Creek (45.553, -116.574); Durham Creek (45.595, -116.472); Getta Creek (45.736, -116.421); Highrange Creek (45.738, -116.518); Indian Creek (45.744, -116.449); Jones Creek (45.703, -116.526); Kirby Creek (45.575, -116.454); Kirkwood Creek (45.548, -116.457); Klopton Creek (45.627, -116.434); Kurry Creek (45.656, -116.426); Lookout Creek (45.713, -116.542); Lost Valley Creek (45.550, -116.482); Pleasant Valley Creek (45.647, -116.492); Salt Creek (45.576, -116.554); SCreek (45.491, -116.574); Snake River (45.468, -116.554); Somers Creek (45.645, -116.553); Temperance Creek (45.537, -116.571); Tryon Creek (45.694, -116.540); Two Corral Creek (45.561, -116.526); Unnamed (45.5817, -116.5098); West Creek (45.664, -116.453); West Fork West Creek (45.669, -116.463).

(iii) *Snake River/Divide Creek Watershed 1706010104*. Outlet(s) = Snake River (Lat 45.857 Long -116.794) upstream to endpoint(s) in: Divide Creek (45.859, -116.741); Dry Creek (45.842, -116.598); Snake River (45.747, -116.543); Unnamed (45.7599, -116.6456); Wolf Creek (45.776, -116.567).

(2) *Imnaha River Subbasin 17060102—*
 (i) *Upper Imnaha River Watershed 1706010201*. Outlet(s) = Imnaha River (Lat 45.232, Long -116.844) upstream to endpoint(s) in: Crazyman Creek (45.190, -116.811); Dry Creek (45.123, -116.867); Gumboot Creek (45.147, -116.968); Mahogany Creek (45.201, -116.905); North Fork Dry Creek (45.143, -116.850); North Fork Gumboot Creek (45.184, -116.928);

North Fork Imnaha River (45.118, -117.129); Skookum Creek (45.117, -116.938); South Fork Imnaha River (45.111, -117.230); Unnamed (45.188, -116.923); Unnamed (45.208, -116.890).

(ii) *Middle Imnaha River Watershed 1706010202*. Outlet(s) = Imnaha River (Lat 45.557, Long -116.834) upstream to endpoint(s) in: Freezeout Creek (45.352, -116.761); Grouse Creek (45.179, -116.976); Imnaha River (45.232, -116.844); Morgan Creek (45.261, -116.948); Rich Creek (45.243, -116.869); Road Creek (45.279, -116.932); Shadow Canyon (45.295, -116.860); Summit Creek (45.228, -116.793); Unnamed (45.203, -116.978); Unnamed (45.203, -116.943); Unnamed (45.250, -116.923).

(iii) *Big Sheep Creek Watershed 1706010203*. Outlet(s) = Big Sheep Creek (Lat 45.520, Long -116.859) upstream to endpoint(s) in: Big Sheep Creek (45.171, -117.086); Carrol Creek (45.240, -117.063); Griffith Creek (45.273, -117.061); Lick Creek (45.133, -117.056); Marr Creek (45.299, -116.949); North Fork Carrol Creek (45.295, -116.993); South Fork Squaw Creek (45.354, -116.872); Tye Creek (45.188, -116.991); Unnamed (45.164, -117.023); Unnamed (45.239, -117.045); Unnamed (45.297, -116.940).

(iv) *Little Sheep Creek Watershed 1706010204*. Outlet(s) = Big Sheep Creek (Lat 45.557, Long -116.834) upstream to endpoint(s) in: Bear Gulch (45.379, -116.955); Big Sheep Creek (45.520, -116.859); Camp Creek (45.544, -116.959); Canal Creek (45.256, -117.103); Devils Gulch (45.428, -116.962); Downey Gulch (45.405, -116.958); Ferguson Creek (45.267, -117.106); Lightning Creek (45.475, -117.020); Little Sheep Creek (45.236, -117.083); McCully Creek (45.295, -117.107); Redmont Creek (45.250, -117.099); South Fork Lightning Creek (45.473, -117.019); Summit Creek (45.390, -116.930); Threebuck Creek (45.395, -117.012); Trail Creek (45.563, -116.898).

(v) *Lower Imnaha River Watershed 1706010205*. Outlet(s) = Imnaha River (Lat 45.817, Long -116.764) upstream to endpoint(s) in: Corral Creek (45.708, -116.815); Cottonwood Creek (45.659, -116.865); Cow Creek (45.573, -116.628); Dodson Fork (45.725, -116.821); East Fork Fence Creek (45.652, -116.855); Fence Creek (45.655, -116.875); Horse Creek (45.421, -116.725); Imnaha River (45.557, -116.834); Lightning Creek

(45.447, -116.682); Prong (45.589, -116.592); Pumpkin Creek (45.517, -116.758); Sleepy Creek (45.604, -116.666); Stubblefield Fork (45.711, -116.815); Tulley Creek (45.743, -116.766).

(3) Lower Snake/Asotin Subbasin 17060103—(i) *Snake River/Rogersburg Watershed 1706010301*. Outlet(s) = Snake River (Lat 46.080, Long -116.978) upstream to endpoint(s) in: Cache Creek (45.976, -116.928); Cave Gulch (46.023, -116.840); Cook Creek (45.901, -116.865); Corral Creek (46.055, -116.875); Cottonwood Creek (45.944, -116.860); Garden Creek (45.972, -116.903); Snake River (45.857, -116.794).

(ii) *Asotin River Watershed 1706010302*. Outlet(s) = Asotin Creek (Lat 46.345, Long -117.053) upstream to endpoint(s) in: Ayers Gulch (46.278, -117.094); Charley Creek (46.271, -117.460); Coombs Canyon (46.128, -117.276); George Creek (46.144, -117.303); Hefflefinger Gulch (46.151, -117.231); Huber Gulch (46.155, -117.188); Kelly Creek (46.251, -117.114); Lick Creek (46.260, -117.358); Middle Branch North Fork Asotin Creek (46.195, -117.439); Nims Gulch (46.178, -117.121); North Fork Asotin Creek (46.207, -117.478); Pintler Creek (46.194, -117.153); South Fork Asotin Creek (46.174, -117.341); South Fork North Fork Asotin Creek (46.192, -117.425).

(iii) *Snake River/Captain John Creek Watershed 1706010303*. Outlet(s) = Snake River (Lat 46.428, Long -117.038) upstream to endpoint(s) in: Captain John Creek (46.145, -116.821); Couse Creek (46.157, -117.032); Edeburn Gulch (46.142, -117.008); Mill Creek (46.157, -117.078); Redbird Creek (46.220, -116.898); Snake River (46.080, -116.978); South Fork Captain John Creek (46.123, -116.864); Tammany Creek (46.362, -117.052); Tenmile Canyon (46.284, -116.976); Tenmile Creek (46.123, -117.086); Unnamed (46.119, -117.100); Unnamed (46.124, -117.111).

(4) Upper Grande Ronde River Subbasin 17060104—(i) *Upper Grande Ronde River Watershed 1706010401*. Outlet(s) = Grande Ronde River (Lat 45.264, Long -118.376) upstream to endpoint(s) in: Chicken Creek (44.987, -118.378); Clear Creek (45.014, -118.329); Dry Creek (45.052, -118.380); East Fork Grande Ronde River (45.060, -118.237); East Sheep Creek (44.987, -118.425); Fly Creek (45.125, -118.596); Grande Ronde River (44.998, -118.273); Limber Jim Creek

(45.107, -118.270); Little Clear Creek (45.038, -118.300); Little Fly Creek (45.062, -118.504); Lookout Creek (45.065, -118.543); Muir Creek (45.066, -118.297); North Fork Limber Jim Creek (45.125, -118.308); Sheep Creek (45.016, -118.507); South Fork Limber Jim Creek (45.088, -118.304); Squaw Creek (45.103, -118.554); Umapine Creek (45.116, -118.571); Unnamed (45.042, -118.269); Unnamed (45.045, -118.417); West Chicken Creek (45.025, -118.404); Winter Canyon (45.215, -118.361).

(ii) *Meadow Creek Watershed 1706010402*. Outlet(s) = Meadow Creek (Lat 45.264, Long -118.376) upstream to endpoint(s) in: Battle Creek (45.216, -118.507); Bear Creek (45.210, -118.577); Burnt Corral Creek (45.159, -118.524); Dark Canyon (45.382, -118.394); East Burnt Corral Creek (45.173, -118.498); Ensign Creek (45.361, -118.554); Little Dark Canyon (45.322, -118.418); Marley Creek (45.177, -118.476); McCoy Creek (45.322, -118.628); McIntyre Creek (45.345, -118.459); Meadow Creek (45.286, -118.716); Peet Creek (45.233, -118.611); Smith Creek (45.295, -118.594); Sullivan Gulch (45.200, -118.515); Syrup Creek (45.296, -118.543); Tybow Canyon (45.214, -118.467); Unnamed (45.206, -118.552); Unnamed (45.275, -118.695); Unnamed (45.295, -118.718); Unnamed (45.330, -118.551); Waucup Creek (45.243, -118.660).

(iii) *Grande Ronde River/Beaver Creek Watershed 1706010403*. Outlet(s) = Grande Ronde River (Lat 45.347, Long -118.221) upstream to endpoint(s) in: Bear Creek (45.283, -118.270); Beaver Creek (45.146, -118.206); Dry Beaver Creek (45.168, -118.316); East Fork Rock Creek (45.166, -118.111); Grande Ronde River (45.264, -118.376); Graves Creek (45.245, -118.161); Hoodoo Creek (45.154, -118.259); Jordan Creek (45.162, -118.187); Little Beaver Creek (45.185, -118.333); Little Whiskey Creek (45.209, -118.178); Rock Creek (45.172, -118.139); Sheep Creek (45.281, -118.130); South Fork Spring Creek (45.346, -118.363); Spring Creek (45.396, -118.372); Unnamed (45.167, -118.144); Unnamed (45.227, -118.262); Unnamed (45.231, -118.279); Unnamed (45.232, -118.091); Unnamed (45.240, -118.257); Watermelon Creek (45.195, -118.277); Whiskey Creek (45.198, -118.181).

(iv) *Grande Ronde River/Five Points Creek Watershed 1706010404*. Outlet(s) = Grande Ronde River (Lat 45.408, Long -117.930) upstream to endpoint(s) in: California Gulch (45.406, -118.335); Conley Creek (45.406, -118.084); Dobbins Ditch (45.377, -118.017); Dry Creek (45.426, -118.379); Fiddlers Hell (45.443, -118.145); Five Points Creek (45.482, -118.143); Grande Ronde River (45.347, -118.221); Little John Day Creek (45.430, -118.192); Middle Fork Five Points Creek (45.485, -118.129); Mt Emily Creek (45.465, -118.125); Pelican Creek (45.438, -118.318); Tie Creek (45.420, -118.129); Unnamed (45.385, -118.043); Unnamed (45.423, -118.243).

(v) *Catherine Creek Watershed 1706010405*. Outlet(s) = Catherine Creek (Lat 45.219, Long -117.915) upstream to endpoint(s) in: Buck Creek (45.132, -117.606); Camp Creek (45.100, -117.596); Collins Creek (45.100, -117.531); Corral Creek (45.113, -117.575); Little Catherine Creek (45.148, -117.716); Middle Fork Catherine Creek (45.155, -117.567); Milk Creek (45.092, -117.717); North Fork Catherine Creek (45.221, -117.610); Pole Creek (45.123, -117.544); Prong Creek (45.096, -117.565); SPass Creek (45.115, -117.528); Scout Creek (45.105, -117.644); South Fork Catherine Creek (45.116, -117.503); Unnamed (45.104, -117.685).

(vi) *Ladd Creek Watershed 1706010406*. Outlet(s) = Ladd Creek (Lat 45.282, Long -117.936) upstream to endpoint(s) in: Catherine Creek (45.219, -117.915); Ladd Creek (45.215, -118.024); Little Creek (45.210, -117.784); Mill Creek (45.263, -118.083); Unnamed (45.259, -118.039).

(vii) *Grande Ronde River/Mill Creek Watershed 1706010407*. Outlet(s) = Grande Ronde River (Lat 45.408, Long -117.930) upstream to endpoint(s) in: Catherine Creek (45.282, -117.936); McAlister Slough (45.315, -117.973); Mill Creek (45.278, -117.728); Unnamed (45.297, -117.806).

(viii) *Phillips Creek/Willow Creek Watershed 1706010408*. Outlet(s) = Willow Creek (Lat 45.492, Long -117.931) upstream to endpoint(s) in: Dry Creek (45.640, -118.114); End Creek (45.4622, -118.0316); Finley Creek (45.625, -118.099); Fir Creek (45.5171, -118.0568); Little Dry Creek (45.5348, -118.0393); McDonald Creek (45.5348, -118.0393); Mill Creek (45.568, -118.025); Slide Creek

(45.422, -118.028); Smith Creek (45.5256, -118.0537); Unnamed (45.525, -118.014).

(ix) *Grande Ronde River/Indian Creek Watershed 1706010409*. Outlet(s) = Grande Ronde River (Lat 45.560, Long -117.910) upstream to endpoint(s) in: Camp Creek (45.386, -117.720); Clark Creek (45.409, -117.728); East Fork Indian Creek (45.363, -117.737); Grande Ronde River (45.408, -117.930); Indian Creek (45.332, -117.717); Little Indian Creek (45.375, -117.785); Middle Fork Clark Creek (45.462, -117.764); North Fork Clark Creek (45.502, -117.733); North Fork Indian Creek (45.419, -117.787); Unnamed (45.375, -117.739); Unnamed (45.476, -117.757).

(x) *Lookingglass Creek Watershed 1706010410*. Outlet(s) = Lookingglass Creek (Lat 45.707, Long -117.841) upstream to endpoint(s) in: Buzzard Creek (45.845, -117.939); Eagle Creek (45.723, -118.005); Jarboe Creek (45.776, -117.855); Little Lookingglass Creek (45.848, -117.901); Lookingglass Creek (45.777, -118.070); Mottet Creek (45.827, -117.958); Unnamed (45.835, -117.869); Unnamed (45.844, -117.893).

(xi) *Grande Ronde River/Cabin Creek Watershed 1706010411*. Outlet(s) = Grande Ronde River (Lat 45.726, Long -117.784) upstream to endpoint(s) in: Buck Creek (45.662, -117.919); Duncan Canyon (45.654, -117.776); East Phillips Creek (45.669, -118.066); Gordon Creek (45.665, -118.001); Grande Ronde River (45.560, -117.910); Little Phillips Creek (45.668, -118.036); North Fork Cabin Creek (45.721, -117.929); Pedro Creek (45.676, -118.051); Phillips Creek (45.666, -118.089); Rysdam Canyon (45.633, -117.812); South Fork Cabin Creek (45.698, -117.963); Unnamed (45.661, -117.930); Unnamed (45.672, -117.941); Unnamed (45.682, -117.974); Unnamed (45.695, -117.927); Unnamed (45.707, -117.916).

(5) Wallowa River Subbasin 17060105—

(i) *Upper Wallowa River Watershed 1706010501*. Outlet(s) = Wallowa River (Lat 45.427, Long -117.310) upstream to endpoint(s) in: Hurricane Creek (45.337, -117.291); Little Hurricane Creek (45.407, -117.276); Prairie Creek (45.394, -117.189); Spring Creek (45.406, -117.287); Trout Creek (45.455, -117.281); Unnamed (45.387, -117.215); Unnamed (45.392, -117.214); Unnamed (45.411, -117.264); Unnamed (45.412, -117.156); Unnamed

(45.424, -117.313); Wallowa River (45.335, -117.222).

(ii) *Lostine River Watershed 1706010502*. Outlet(s) = Lostine River (Lat 45.552, Long -117.489) upstream to endpoint(s) in: Lostine River (45.245, -117.375); Silver Creek (45.394, -117.420).

(iii) *Middle Wallowa River Watershed 1706010503*. Outlet(s) = Wallowa River (Lat 45.584, Long -117.540) upstream to endpoint(s) in: Middle Fork Whisky Creek (45.590, -117.342); North Fork Whisky Creek (45.614, -117.331); Parsnip Creek (45.533, -117.419); South Fork Whisky Creek (45.590, -117.413); Straight Whisky Creek (45.622, -117.396); Wallowa River (45.427, -117.310); Whisky Creek (45.608, -117.397).

(iv) *Bear Creek Watershed 1706010504*. Outlet(s) = Bear Creek (Lat 45.584, Long -117.540) upstream to endpoint(s) in: Bear Creek (45.347, -117.500); Doc Creek (45.449, -117.572); Fox Creek (45.447, -117.562); Goat Creek (45.413, -117.519); Little Bear Creek (45.456, -117.500).

(v) *Minam River Watershed 1706010505*. Outlet(s) = Minam River (Lat 45.621, Long -117.720) upstream to endpoint(s) in: Cougar Creek (45.517, -117.672); Elk Creek (45.157, -117.480); Little Minam River (45.338, -117.643); Minam River (45.149, -117.392); Murphy Creek (45.414, -117.644); North Minam River (45.275, -117.520); Patrick Creek (45.426, -117.645); Squaw Creek (45.576, -117.706); Trout Creek (45.471, -117.652).

(vi) *Lower Wallowa River Watershed 1706010506*. Outlet(s) = Wallowa River (Lat 45.726, Long -117.784) upstream to endpoint(s) in: Deer Creek (45.452, -117.606); Dry Creek (45.650, -117.439); Fisher Creek (45.666, -117.750); Howard Creek (45.735, -117.695); Reagin Gulch (45.670, -117.559); Rock Creek (45.679, -117.620); Sage Creek (45.486, -117.590); Tamarack Canyon (45.656, -117.518); Unnamed (45.618, -117.629); Unnamed (45.654, -117.442); Unnamed (45.678, -117.556); Wallowa River (45.584, -117.540); Water Canyon (45.589, -117.614); Wise Creek (45.671, -117.705).

(6) Lower Grande Ronde Subbasin 17060106—(i) *Grande Ronde River/Rondoua Watershed 1706010601*. Outlet(s) = Grande Ronde River (Lat 45.896, Long -117.493) upstream to endpoint(s) in: Alder Creek (45.844, -117.750); Bear

Creek (45.885, -117.752); Clear Creek (45.775, -117.714); Deep Creek (45.817, -117.651); East Grossman Creek (45.819, -117.625); Elbow Creek (45.927, -117.630); Grande Ronde River (45.726, -117.784); Grossman Creek (45.732, -117.614); Meadow Creek (45.825, -117.760); Sheep Creek (45.756, -117.797); Sickfoot Creek (45.842, -117.567); Unnamed (45.746, -117.656).

(ii) *Grande Ronde River/Mud Creek Watershed 1706010602*. Outlet(s) = Grande Ronde River (Lat 45.946, Long -117.450) upstream to endpoint(s) in: Bishop Creek (45.747, -117.555); Bobcat Creek (45.853, -117.370); Buck Creek (45.758, -117.298); Burnt Creek (45.769, -117.283); Courtney Creek (45.857, -117.314); Grande Ronde River (45.896, -117.493); Little Courtney Canyon (45.903, -117.385); McAllister Creek (45.683, -117.361); McCubbin Creek (45.700, -117.294); Mud Creek (45.633, -117.291); Unnamed (45.867, -117.329); Shamrock Creek (45.828, -117.335); Simmons Draw (45.730, -117.514); Sled Creek (45.730, -117.278); Teepee Creek (45.694, -117.349); Tope Creek (45.634, -117.330); Unnamed (45.710, -117.283); Unnamed (45.856, -117.312); Wallupa Creek (45.765, -117.528); Wildcat Creek (45.732, -117.489).

(iii) *Wenaha River Watershed 1706010603*. Outlet(s) = Wenaha River (Lat 45.946, Long -117.450) upstream to endpoint(s) in: Beaver Creek (46.002, -117.815); Crooked Creek (46.046, -117.624); First Creek (46.071, -117.519); Melton Creek (46.060, -117.566); Milk Creek (45.973, -117.902); North Fork Wenaha River (46.064, -117.912); Rock Creek (45.999, -117.766); Second Creek (46.065, -117.595); Slick Ear Creek (45.983, -117.784); South Fork Wenaha River (45.872, -117.897); Third Creek (46.089, -117.627); Weller Creek (45.989, -117.648); West Fork Butte Creek (46.064, -117.759).

(iv) *Chesnimnus Creek Watershed 1706010604*. Outlet(s) = Chesnimnus Creek (Lat 45.715, Long -117.155) upstream to endpoint(s) in: Alder Creek (45.702, -116.997); Billy Creek (45.815, -117.032); Butte Creek (45.641, -117.096); Chesnimnus Creek (45.718, -116.906); Deadman Gulch (45.659, -117.049); Devils Run Creek (45.775, -116.882); Doe Creek (45.751, -117.029); Dry Salmon Creek (45.663, -117.051); East Fork Peavine Creek (45.830, -117.061); Gooseberry

Creek (45.681, -117.110); McCarty Gulch (45.749, -117.064); Peavine Creek (45.795, -117.084); Pine Creek (45.673, -117.029); Poison Creek (45.791, -116.979); Salmon Creek (45.662, -117.038); South Fork Chesnimnus Creek (45.743, -116.861); Sterling Gulch (45.712, -117.000); Summit Creek (45.794, -116.947); Telephone Gulch (45.767, -117.076); TNT Gulch (45.754, -116.919); Unnamed (45.694, -117.013); Unnamed (45.709, -116.878); Unnamed (45.724, -116.867); Unnamed (45.742, -117.090); Unnamed (45.825, -117.004); Unnamed (45.838, -117.009); Unnamed (45.846, -117.029); West Fork Peavine Creek (45.805, -117.100).

(v) *Upper Joseph Creek Watershed 1706010605*. Outlet(s) = Joseph Creek (Lat 45.823, Long -117.231) upstream to endpoint(s) in: Alford Gulch (45.729, -117.165); Cougar Creek (45.806, -117.150); Crow Creek (45.536, -117.115); Davis Creek (45.658, -117.257); Elk Creek (45.598, -117.167); Gould Gulch (45.657, -117.181); Little Elk Creek (45.694, -117.199); Sumac Creek (45.753, -117.148); Swamp Creek (45.543, -117.218); Unnamed (45.597, -117.141).

(vi) *Lower Joseph Creek Watershed 1706010606*. Outlet(s) = Joseph Creek (Lat 46.053, Long -117.005) upstream to endpoint(s) in: Basin Creek (45.910, -117.057); Broady Creek (45.882, -117.076); Cottonwood Creek (45.832, -116.950); Horse Creek (45.945, -116.962); Joseph Creek (45.823, -117.231); Peavine Creek (45.879, -117.162); Rush Creek (45.899, -117.150); Tamarack Creek (45.964, -117.127); Unnamed (45.826, -116.957); West Fork Broady Creek (45.862, -117.102).

(vii) *Lower Grande Ronde River/Menatchee Creek Watershed 1706010607*. Outlet(s) = Grande Ronde River (Lat 46.080, Long -116.978) upstream to endpoint(s) in: Bear Creek (45.973, -117.455); Buford Creek (45.975, -117.276); Cottonwood Creek (46.071, -117.301); Cougar Creek (46.049, -117.327); Deer Creek (45.992, -117.191); East Bear Creek (45.960, -117.307); Grande Ronde River (45.946, -117.450); Grouse Creek (46.031, -117.460); Menatchee Creek (46.018, -117.371); Rattlesnake Creek (46.079, -117.204); Shumaker Creek (46.049, -117.117); West Bear Creek (45.951, -117.337); West Branch Rattlesnake Creek (46.086, -117.258).

(7) Lower Snake/Tucannon Subbasin 17060107—(i) *Alpowa Creek Watershed 1706010701*. Outlet(s) = Alpowa Creek (Lat 46.422, Long -117.203) upstream to endpoint(s) in: Kidwell Gulch (46.338, -117.480); Page Creek (46.402, -117.210); Pow Wah Kee Creek (46.389, -117.288).

(ii) *Snake River/Steptoe Canyon Watershed 1706010702*. Outlet(s) = Snake River (Lat 46.660, Long -117.433) upstream to endpoint(s) in: Offield Canyon (46.648, -117.420); Snake River (46.428, -117.038); Steptoe Canyon (46.455, -117.192); Truax Canyon (46.565, -117.348); Wawawai Canyon (46.636, -117.375).

(iii) *Deadman Creek Watershed 1706010703*. Outlet(s) = Deadman Creek (Lat 46.626, Long -117.799) upstream to endpoint(s) in: Deadman Gulch (46.574, -117.565); Lynn Gulch (46.628, -117.597); North Deadman Creek (46.578, -117.457); North Meadow Creek (46.517, -117.489); South Meadow Creek (46.507, -117.508).

(iv) *Upper Tucannon River Watershed 1706010706*. Outlet(s) = Tucannon River (Lat 46.509, Long -117.995) upstream to endpoint(s) in: Cummings Creek (46.235, -117.610); Little Tucannon River (46.221, -117.758); Meadow Creek (46.163, -117.728); Panjab Creek (46.171, -117.709); Sheep Creek (46.196, -117.623); Tucannon River (46.168, -117.559); Tualum Creek (46.315, -117.585).

(v) *Lower Tucannon River Watershed 1706010707*. Outlet(s) = Tucannon River (Lat 46.558, Long -118.174) upstream to endpoint(s) in: Kellogg Creek (46.430, -118.067); Smith Hollow (46.463, -118.017); Tucannon River (46.509, -117.995).

(vi) *Snake River/Penawawa Creek Watershed 1706010708*. Outlet(s) = Snake River (Lat 46.589, Long -118.215) upstream to endpoint(s) in: Almota Creek (46.706, -117.363); Little Almota Creek (46.715, -117.465); Penawawa Creek (46.728, -117.625); Snake River (46.660, -117.433); Unnamed (46.698, -117.381).

(8) Upper Salmon Subbasin 17060201—(i) *Salmon River/Challis Watershed 1706020101*. Outlet(s) = Salmon River (Lat 44.692, Long -114.049) upstream to endpoint(s) in: Challis Creek (44.563, -114.246); Salmon River (44.470, -114.192).

(ii) *Salmon River/Bayhorse Creek Watershed 1706020104*. Outlet(s) = Salmon River (Lat 44.470, Long -114.192) upstream to endpoint(s) in: Bayhorse Creek (44.395, -114.308); Salmon River (44.268, -114.326).

(iii) *East Fork Salmon River/McDonald Creek Watershed 1706020105*. Outlet(s) = East Fork Salmon River (Lat 44.268, Long -114.326) upstream to endpoint(s) in: Big Lake Creek (44.165, -114.394); East Fork Salmon River (44.147, -114.378); McDonald Creek (44.091, -114.318); Pine Creek (44.136, -114.367).

(iv) *Herd Creek Watershed 1706020108*. Outlet(s) = Herd Creek (Lat 44.154, Long -114.300) upstream to endpoint(s) in: East Fork Herd Creek (44.037, -114.203); East Pass Creek (44.009, -114.369); Lake Creek (44.103, -114.194); Taylor Creek (44.067, -114.317); West Fork Herd Creek (44.032, -114.248).

(v) *East Fork Salmon River/Big Boulder Creek Watershed 1706020109*. Outlet(s) = East Fork Salmon River (Lat 44.147, Long -114.378) upstream to endpoint(s) in: Big Boulder Creek (44.131, -114.518); East Fork Salmon River (44.039, -114.461); Little Boulder Creek (44.065, -114.542).

(vi) *Upper East Fork Salmon River Watershed 1706020110*. Outlet(s) = East Fork Salmon River (Lat 44.039, Long -114.461) upstream to endpoint(s) in: Bowery Creek (44.0316, -114.4587); South Fork East Fork Salmon River (43.902, -114.562); West Fork East Fork Salmon River (43.929, -114.575); West Pass Creek (43.922, -114.446).

(vii) *Germania Creek Watershed 1706020111*. Outlet(s) = Germania Creek (Lat 44.039, Long -114.461) upstream to endpoint(s) in: Germania Creek (44.003, -114.532).

(viii) *Salmon River/Kinnikinic Creek Watershed 1706020112*. Outlet(s) = Salmon River (Lat 44.268, Long -114.326) upstream to endpoint(s) in: Kinnikinic Creek (44.2667, -114.4026); Salmon River (44.249, -114.454).

(ix) *Salmon River/Slate Creek Watershed 1706020113*. Outlet(s) = Salmon River (Lat 44.249, Long -114.454) upstream to endpoint(s) in: Holman Creek (44.250, -114.529); Salmon River (44.254, -114.675); Silver Rule Creek (44.198, -114.588); Slate Creek (44.168, -114.626); Thompson Creek (44.318, -114.588).

(x) *Warm Springs Creek Watershed 1706020114*. Outlet(s) = Warm Springs Creek (Lat 44.254, Long -114.675) upstream to endpoint(s) in: Warm Springs Creek (44.151, -114.718).

(xi) *Salmon River/Big Casino Creek Watershed 1706020115*. Outlet(s) = Salmon

River (Lat 44.254, Long -114.675) upstream to endpoint(s) in: Big Casino Creek (44.216, -114.830); Little Casino Creek (44.224, -114.861); Lower Harden Creek (44.274, -114.778); Nip Tuck Creek (44.234, -114.929); Salmon River (44.169, -114.898); Upper Harden Creek (44.272, -114.791).

(xii) *Salmon River/Fisher Creek Watershed 1706020117*. Outlet(s) = Salmon River (Lat 44.169, Long -114.898) upstream to endpoint(s) in: Decker Creek (44.072, -114.879); Gold Creek (44.114, -114.846); Huckleberry Creek (44.061, -114.875); Salmon River (44.032, -114.836); Williams Creek (44.096, -114.852).

(xiii) *Salmon River/Fourth of July Creek Watershed 1706020118*. Outlet(s) = Salmon River (Lat 44.032, Long -114.836) upstream to endpoint(s) in: Champion Creek (44.019, -114.825); Fourth of July Creek (44.035, -114.784); Hell Roaring Creek (44.0268, -114.9252); Salmon River (44.004, -114.836); Unnamed (44.017, -114.879).

(xiv) *Upper Salmon River Watershed 1706020119*. Outlet(s) = Salmon River (Lat 44.004, Long -114.836) upstream to endpoint(s) in: Beaver Creek (43.919, -114.813); Camp Creek (43.876, -114.738); Frenchman Creek (43.822, -114.792); Pole Creek (43.940, -114.686); Salmon River (43.837, -114.759); Smiley Creek (43.829, -114.823); Twin Creek (43.935, -114.723); Unnamed (43.843, -114.742); Unnamed (43.990, -114.803).

(xv) *Alturas Lake Creek Watershed 1706020120*. Outlet(s) = Alturas Lake Creek (Lat 44.004, Long -114.836) upstream to endpoint(s) in: Alpine Creek (43.905, -114.923); Alturas Lake Creek (43.895, -114.910); Cabin Creek (43.937, -114.856); Pettit Lake Creek (43.961, -114.916); Unnamed (43.952, -114.858); Vat Creek (43.967, -114.871); Yellowbelly Creek (43.995, -114.847).

(xvi) *Redfish Lake Creek Watershed 1706020121*. Outlet(s) = Redfish Lake Creek (Lat 44.169, Long -114.898) upstream to endpoint(s) in: Fishhook Creek (44.137, -114.966); Redfish Lake Creek (44.097, -114.959).

(xvii) *Valley Creek/Iron Creek Watershed 1706020122*. Outlet(s) = Valley Creek (Lat 44.225, Long -114.927) upstream to endpoint(s) in: Crooked Creek (44.214, -115.034); Goat Creek (44.179, -115.008); Iron Creek (44.191, -115.025); Job Creek (44.242, -115.027);

Meadow Creek (44.190, -114.961); Park Creek (44.281, -115.036); Stanley Creek (44.276, -114.938); Valley Creek (44.291, -115.018).

(xviii) *Upper Valley Creek Watershed 1706020123*. Outlet(s) = Valley Creek (Lat 44.291, Long -115.018); Stanley Lake Creek (44.2535, -115.0040) upstream to endpoint(s) in: East Fork Valley Creek (44.347, -114.999); Elk Creek (44.227, -115.145); Hanna Creek (44.314, -115.041); Meadow Creek (44.291, -115.119); Stanley Lake Creek (44.248, -115.045); Trap Creek (44.311, -115.121); Valley Creek (44.392, -114.980).

(xix) *Basin Creek Watershed 1706020124*. Outlet(s) = Basin Creek (Lat 44.264, Long -114.817) upstream to endpoint(s) in: Basin Creek (44.361, -114.902); East Basin Creek (44.314, -114.823).

(xx) *Yankee Fork/Jordan Creek Watershed 1706020125*. Outlet(s) = Yankee Fork (Lat 44.270, Long -114.734) upstream to endpoint(s) in: Eightmile Creek (44.448, -114.639); Fivemile Creek (44.355, -114.615); Jordan Creek (44.457, -114.752); Ramey Creek (44.355, -114.641); Sevenmile Creek (44.423, -114.608); Sixmile Creek (44.394, -114.585); Yankee Fork (44.426, -114.619).

(xxi) *West Fork Yankee Fork Watershed 1706020126*. Outlet(s) = West Fork Yankee Fork (Lat 44.351, Long -114.727) upstream to endpoint(s) in: Cabin Creek (44.428, -114.881); Deadwood Creek (44.356, -114.834); Lightning Creek (44.466, -114.787); Sawmill Creek (44.341, -114.765); West Fork Yankee Fork (44.386, -114.919).

(xxii) *Upper Yankee Fork Watershed 1706020127*. Outlet(s) = Yankee Fork (Lat 44.426, Long -114.619) upstream to endpoint(s) in: Elevenmile Creek (44.436, -114.544); McKay Creek (44.475, -114.491); Ninemile Creek (44.439, -114.590); Tenmile Creek (44.484, -114.646); Twelvemile Creek (44.497, -114.614); Yankee Fork (44.510, -114.588).

(xxiii) *Squaw Creek Watershed 1706020128*. Outlet(s) = Squaw Creek (Lat 44.249, Long -114.454) upstream to endpoint(s) in: Cash Creek (44.353, -114.473); Cinnabar Creek (44.359, -114.503); Squaw Creek (44.420, -114.489).

(xxiv) *Garden Creek Watershed 1706020129*. Outlet(s) = Garden Creek (Lat 44.511, Long -114.203) upstream to endpoint(s) in: Garden Creek (44.468, -114.325).

(xxv) *Challis Creek/Mill Creek Watershed 1706020130*. Outlet(s) = Challis Creek (Lat 44.563, Long -114.246) upstream to endpoint(s) in: Challis Creek (44.573, -114.309); Darling Creek (44.572, -114.252).

(xxvi) *Morgan Creek Watershed 1706020132*. Outlet(s) = Morgan Creek (Lat 44.612, Long -114.168) upstream to endpoint(s) in: Blowfly Creek (44.714, -114.326); Corral Creek (44.8045, -114.2239); Lick Creek (44.7371, -114.2948); Morgan Creek (44.8029, -114.2561); Van Horn Creek (44.7614, -114.2680); West Fork Morgan Creek (44.710, -114.335).

(9) Pahsimeroi Subbasin 17060202—(i) *Lower Pahsimeroi River Watershed 1706020201*. Outlet(s) = Pahsimeroi River (Lat 44.692, Long -114.049) upstream to endpoint(s) in: Pahsimeroi River (44.559, -113.900); Patterson Creek (44.561, -113.897).

(ii) *Patterson Creek Watershed 1706020203*. Outlet(s) = Patterson Creek (Lat 44.534, Long -113.837) upstream to endpoint(s) in: Patterson Creek (44.566, -113.670).

(10) Middle Salmon-Panther Subbasin 17060203—(i) *Salmon River/Colson Creek Watershed 1706020301*. Outlet(s) = Salmon River (Lat 45.297, Long -114.591) upstream to endpoint(s) in: Colson Creek (45.307, -114.531); Owl Creek (45.340, -114.462); Salmon River (45.316, -114.405).

(ii) *Owl Creek Watershed 1706020302*. Outlet(s) = Owl Creek (Lat 45.340, Long -114.462) upstream to endpoint(s) in: East Fork Owl Creek (45.367, -114.430); Owl Creek (45.382, -114.469).

(iii) *Salmon River/Pine Creek Watershed 1706020303*. Outlet(s) = Salmon River (Lat 45.316, Long -114.405) upstream to endpoint(s) in: Boulder Creek (45.385, -114.297); Pine Creek (45.307, -114.186); Salmon River (45.399, -114.168); Spring Creek (45.421, -114.278); Squaw Creek (45.449, -114.215).

(iv) *Indian Creek Watershed 1706020304*. Outlet(s) = Indian Creek (Lat 45.400, Long -114.167) upstream to endpoint(s) in: Indian Creek (45.523, -114.151); McConn Creek (45.519, -114.185); West Fork Indian Creek (45.481, -114.168).

(v) *Salmon River/Moose Creek Watershed 1706020305*. Outlet(s) = Salmon River (Lat 45.399, Long -114.168) upstream to endpoint(s) in: Dump Creek (45.369, -114.035); Fourth of July Creek

(45.417, -113.857); Little Fourth of July Creek (45.396, -113.912); Moose Creek (45.346, -114.080); Salmon River (45.320, -113.909); Wagonhammer Creek (45.395, -113.945).

(vi) *North Fork Salmon River Watershed 1706020306*. Outlet(s) = North Fork Salmon River (Lat 45.405, Long -113.994) upstream to endpoint(s) in: Anderson Creek (45.577, -113.918); Dahlenega Creek (45.559, -113.845); Ditch Creek (45.534, -113.994); Hughes Creek (45.541, -114.069); Hull Creek (45.471, -114.016); Moose Creek (45.674, -113.951); Pierce Creek (45.640, -113.937); Sheep Creek (45.502, -113.889); Smithy Creek (45.575, -113.889); Threemile Creek (45.577, -113.866); Twin Creek (45.591, -114.081).

(vii) *Salmon River/Tower Creek Watershed 1706020307*. Outlet(s) = Salmon River (Lat 45.320, Long -113.909) upstream to endpoint(s) in: Salmon River (45.250, -113.899); Tower Creek (45.367, -113.857); Wallace Creek (45.2645, -113.9035).

(viii) *Carmen Creek Watershed 1706020308*. Outlet(s) = Carmen Creek (Lat 45.250, Long -113.899) upstream to endpoint(s) in: Carmen Creek (45.316, -113.800); Freeman Creek (45.269, -113.752).

(ix) *Salmon River/Jesse Creek Watershed 1706020309*. Outlet(s) = Salmon River (Lat 45.250, Long -113.899) upstream to endpoint(s) in: Salmon River (45.109, -113.901); Unnamed (45.180, -113.930).

(x) *Salmon River/Williams Creek Watershed 1706020310*. Outlet(s) = Salmon River (Lat 45.109, Long -113.901) upstream to endpoint(s) in: Salmon River (45.011, -113.932); Williams Creek (45.081, -113.935).

(xi) *Salmon River/Twelvemile Creek Watershed 1706020311*. Outlet(s) = Salmon River (Lat 45.011, Long -113.932) upstream to endpoint(s) in: Lake Creek (45.015, -113.959); Salmon River (44.896, -113.963); Twelvemile Creek (45.011, -113.927).

(xii) *Salmon River/Cow Creek Watershed 1706020312*. Outlet(s) = Salmon River (Lat 44.896, Long -113.963) upstream to endpoint(s) in: Cow Creek (44.730, -113.940); McKim Creek (44.810, -114.008); Poison Creek (44.876, -113.934); Salmon River (44.692, -114.049); Warm Spring Creek (44.913, -113.914).

(xiii) *Hat Creek Watershed 1706020313*. Outlet(s) = Hat Creek (Lat 44.795, Long -114.001) upstream to endpoint(s) in: Hat Creek (44.785, -114.040).

(xiv) *Iron Creek Watershed 1706020314*. Outlet(s) = Iron Creek (Lat 44.887, Long -113.968) upstream to endpoint(s) in: Iron Creek (44.921, -114.124).

(xv) *Upper Panther Creek Watershed 1706020315*. Outlet(s) = Panther Creek (Lat 45.022, Long -114.313) upstream to endpoint(s) in: Cabin Creek (44.957, -114.365); Opal Creek (44.901, -114.307); Panther Creek (44.887, -114.305); Porphyry Creek (45.034, -114.388).

(xvi) *Moyer Creek Watershed 1706020316*. Outlet(s) = Moyer Creek (Lat 45.024, Long -114.311) upstream to endpoint(s) in: Moyer Creek (44.949, -114.265); South Fork Moyer Creek (44.944, -114.305).

(xvii) *Panther Creek/Woodtick Creek Watershed 1706020317*. Outlet(s) = Panther Creek (Lat 45.079, Long -114.251) upstream to endpoint(s) in: Copper Creek (45.060, -114.258); Fawn Creek (45.073, -114.247); Musgrove Creek (45.054, -114.368); Panther Creek (45.022, -114.313); Woodtick Creek (45.008, -114.235).

(xviii) *Deep Creek Watershed 1706020318*. Outlet(s) = Deep Creek (Lat 45.126, Long -114.215) upstream to endpoint(s) in: Deep Creek (45.108, -114.179).

(xix) *Panther Creek/Spring Creek Watershed 1706020320*. Outlet(s) = Panther Creek (45.176, Long -114.314) upstream to endpoint(s) in: Little Deer Creek (45.156, -114.298); Panther Creek (45.079, -114.251); Spring Creek (45.088, -114.223).

(xx) *Big Deer Creek Watershed 1706020321*. Outlet(s) = Big Deer Creek (Lat 45.1763, Long -114.3138) upstream to endpoint(s) in: Big Deer Creek (45.1695, -114.3256).

(xxi) *Panther Creek/Trail Creek Watershed 1706020322*. Outlet(s) = Panther Creek (Lat 45.316, Long -114.405) upstream to endpoint(s) in: Beaver Creek (45.2816, -114.2744); Garden Creek (45.2959, -114.4293); Trail Creek (45.2318, -114.2663); Panther Creek (45.176, -114.314).

(xxii) *Clear Creek Watershed 1706020323*. Outlet(s) = Clear Creek (Lat 45.295, Long -114.351) upstream to endpoint(s) in: Clear Creek (45.210, -114.485).

(11) Lemhi Subbasin 17060204—(i) *Lemhi River/Bohannon Creek Watershed 1706020401*. Outlet(s) = Lemhi River (Lat 45.188, Long -113.889) upstream to endpoint(s) in: Bohannon Creek (45.189, -113.692); Lemhi River (45.098, -113.720).

(ii) *Lemhi River/Whimpey Creek Watershed 1706020402*. Outlet(s) = Lemhi River (Lat 45.098, Long -113.720) upstream to endpoint(s) in: Lemhi River (45.032, -113.662); Wimpey Creek (45.131, -113.678); Withington Creek (45.058, -113.750).

(iii) *Lemhi River/Kenney Creek Watershed 1706020403*. Outlet(s) = Lemhi River (Lat 45.032, Long -113.662) upstream to endpoint(s) in: Kenney Creek (45.087, -113.551); Lemhi River (44.940, -113.639).

(iv) *Lemhi River/McDevitt Creek Watershed 1706020405*. Outlet(s) = Lemhi River (Lat 44.940, Long -113.639) upstream to endpoint(s) in: Lemhi River (44.870, -113.626).

(v) *Lemhi River/Yearian Creek Watershed 1706020406*. Outlet(s) = Lemhi River (Lat 44.867, Long -113.626) upstream to endpoint(s) in: Lemhi River (44.778, -113.535).

(vi) *Peterson Creek Watershed 1706020407*. Outlet(s) = Lemhi River (Lat 44.778, Long -113.535) upstream to endpoint(s) in: Lemhi River (44.739, -113.459).

(vii) *Big Eight Mile Creek Watershed 1706020408*. Outlet(s) = Lemhi River (Lat 44.739, Long -113.459) upstream to endpoint(s) in: Lemhi River (44.692, -113.366).

(viii) *Canyon Creek Watershed 1706020409*. Outlet(s) = Lemhi River (Lat 44.692, Long -113.366) upstream to endpoint(s) in: Lemhi River (44.682, -113.355).

(ix) *Texas Creek Watershed 1706020412*. Outlet(s) = Texas Creek (Lat 44.6822, Long -113.3545) upstream to endpoint(s) in: Purcell Creek (44.5726, -113.3459), Texas Creek (44.5348, -113.3018).

(x) *Hayden Creek Watershed 1706020414*. Outlet(s) = Hayden Creek (Lat 44.870, Long -113.626) upstream to endpoint(s) in: Bear Valley Creek (44.796, -113.790); East Fork Hayden Creek (44.708, -113.661); Hayden Creek (44.726, -113.769); Kadletz Creek (44.761, -113.767); West Fork Hayden Creek (44.706, -113.768); Wright Creek (44.759, -113.794).

(12) Upper Middle Fork Salmon Subbasin 17060205—(i) *Lower Loon Creek Watershed 1706020501*. Outlet(s) = Loon Creek (Lat 44.808, Long -114.811) upstream to endpoint(s) in: Cabin Creek (44.742, -114.708); Loon Creek (44.552, -114.849).

(ii) *Warm Springs Watershed 1706020502*. Outlet(s) = Warm Spring Creek (Lat 44.653, Long -114.736) upstream to endpoint(s) in: Trapper Creek (44.504, -114.617); Warm Spring Creek (44.609, -114.481).

(iii) *Upper Loon Creek Watershed 1706020503*. Outlet(s) = Loon Creek (Lat 44.552, Long -114.849) upstream to endpoint(s) in: Cottonwood Creek (44.593, -114.679); East Fork Mayfield Creek (44.494, -114.700); Loon Creek (44.469, -114.923); Pioneer Creek (44.466, -114.873); South Fork Cottonwood Creek (44.563, -114.780); Trail Creek (44.506, -114.959); West Fork Mayfield Creek (44.473, -114.730).

(iv) *Little Loon Creek Watershed 1706020504*. Outlet(s) = Little Loon Creek (Lat 44.731, Long -114.940) upstream to endpoint(s) in: Little Loon Creek (44.615, -114.963).

(v) *Rapid River Watershed 1706020505*. Outlet(s) = Rapid River (Lat 44.680, Long -115.152) upstream to endpoint(s) in: Float Creek (44.546, -115.148); North Fork Sheep Creek (44.656, -114.997); Rapid River (44.551, -115.007); South Fork Sheep Creek (44.628, -114.988); Vanity Creek (44.500, -115.072).

(vi) *Marsh Creek Watershed 1706020506*. Outlet(s) = Marsh Creek (Lat 44.449, Long -115.230) upstream to endpoint(s) in: Asher Creek (44.374, -115.126); Banner Creek (44.291, -115.187); Bear Creek (44.490, -115.098); Beaver Creek (44.494, -114.964); Camp Creek (44.384, -115.144); Cape Horn Creek (44.333, -115.287); Knapp Creek (44.424, -114.915); Marsh Creek (44.329, -115.091); Swamp Creek (44.300, -115.175); Winnemucca Creek (44.479, -114.972).

(vii) *Middle Fork Salmon River/Soldier Creek Watershed 1706020507*. Outlet(s) = Middle Fork Salmon River (Lat 44.680, Long -115.152) upstream to endpoint(s) in: Boundary Creek (44.507, -115.328); Dagger Creek (44.498, -115.307); Elkhorn Creek (44.582, -115.369); Greyhound Creek (44.626, -115.158); Middle Fork Salmon River (44.449, -115.230); Soldier Creek (44.528, -115.201).

(viii) *Bear Valley Creek Watershed 1706020508*. Outlet(s) = Bear Valley Creek (Lat 44.449, Long -115.230) upstream to endpoint(s) in: Ayers Creek (44.454, -115.330); Bear Valley Creek (44.236, -115.499); Bearskin Creek (44.331, -115.528); Cache Creek (44.286, -115.409); Cold Creek (44.371, -115.317); Cook Creek (44.389, -115.438); East Fork Elk Creek (44.481, -115.359); Fir Creek (44.354, -115.296); Little Beaver Creek (44.415, -115.504); Little East Fork Elk Creek (44.479, -115.407); Mace Creek (44.289, -115.443); North Fork Elk Creek (44.527, -115.458); Poker Creek (44.444, -115.345); Pole Creek (44.361, -115.366); Porter Creek (44.466, -115.529); Sack Creek (44.320, -115.351); Sheep Trail Creek (44.360, -115.451); West Fork Elk Creek (44.485, -115.499); Wyoming Creek (44.362, -115.335).

(ix) *Sulphur Creek Watershed 1706020509*. Outlet(s) = Sulphur Creek (Lat 44.555, Long -115.297) upstream to endpoint(s) in: Blue Moon Creek (44.572, -115.364); Full Moon Creek (44.535, -115.400); Honeymoon Creek (44.605, -115.399); North Fork Sulphur Creek (44.583, -115.467); Sulphur Creek (44.510, -115.518).

(x) *Pistol Creek Watershed 1706020510*. Outlet(s) = Pistol Creek (Lat 44.724, Long -115.149) upstream to endpoint(s) in: Little Pistol Creek (44.721, -115.404); Luger Creek (44.636, -115.386); Pistol Creek (44.644, -115.442).

(xi) *Indian Creek Watershed 1706020511*. Outlet(s) = Indian Creek (Lat 44.770, Long -115.089) upstream to endpoint(s) in: Big Chief Creek (44.817, -115.368); Indian Creek (44.803, -115.383); Little Indian Creek (44.879, -115.226).

(xii) *Upper Marble Creek Watershed 1706020512*. Outlet(s) = Marble Creek (Lat 44.797, Long -114.971) upstream to endpoint(s) in: Big Cottonwood Creek (44.879, -115.206); Canyon Creek (44.822, -114.943); Cornish Creek (44.933, -115.127); Dynamite Creek (44.871, -115.207); Marble Creek (44.983, -115.079); Trail Creek (44.917, -114.930).

(xiii) *Middle Fork Salmon River/Lower Marble Creek Watershed 1706020513*. Outlet(s) = Middle Fork Salmon River (Lat 44.808, Long -114.811) upstream to endpoint(s) in: Marble Creek (44.797, -114.971); Middle Fork Salmon River (44.680, -115.152).

(13) Lower Middle Fork Salmon Subbasin 17060206—(i) *Lower Middle Fork Salmon River Watershed 1706020601*. Outlet(s) = Middle Fork Salmon River (Lat 45.297, Long -114.591) upstream to endpoint(s) in: Middle Fork Salmon River (45.095, -114.732); Roaring Creek (45.186, -114.574); Stoddard Creek (45.244, -114.702).

(ii) *Wilson Creek Watershed 1706020602*. Outlet(s) = Wilson Creek (Lat 45.033, Long -114.723) upstream to endpoint(s) in: Wilson Creek (45.032, -114.659).

(iii) *Middle Fork Salmon River/Brush Creek Watershed 1706020603*. Outlet(s) = Middle Fork Salmon River (Lat 45.095, Long -114.732) upstream to endpoint(s) in: Brush Creek (44.955, -114.733); Middle Fork Salmon River (44.958, -114.747).

(iv) *Yellow Jacket Creek Watershed 1706020604*. Outlet(s) = Yellowjacket Creek (Lat 44.892, Long -114.644) upstream to endpoint(s) in: Beagle Creek (44.993, -114.466); Hoodoo Creek (44.993, -114.568); Lake Creek (44.967, -114.603); Little Jacket Creek (44.931, -114.505); Meadow Creek (44.984, -114.481); Shovel Creek (45.006, -114.463); Trail Creek (44.939, -114.461); Yellowjacket Creek (45.050, -114.480).

(v) *Silver Creek Watershed 1706020605*. Outlet(s) = Silver Creek (Lat 44.830, Long -114.501) upstream to endpoint(s) in: Silver Creek (44.856, -114.458).

(vi) *Upper Camas Creek Watershed 1706020606*. Outlet(s) = Camas Creek (Lat 44.830, Long -114.501) upstream to endpoint(s) in: Castle Creek (44.825, -114.415); Fly Creek (44.703, -114.509); Furnace Creek (44.767, -114.421); J Fell Creek (44.669, -114.459); South Fork Camas Creek (44.731, -114.553); Spider Creek (44.688, -114.495); White Goat Creek (44.731, -114.460).

(vii) *West Fork Camas Creek Watershed 1706020607*. Outlet(s) = West Fork Camas Creek (Lat 44.831, Long -114.504) upstream to endpoint(s) in: Flume Creek (44.806, -114.526); Martindale Creek (44.822, -114.560); West Fork Camas Creek (44.795, -114.595).

(viii) *Lower Camas Creek Watershed 1706020608*. Outlet(s) = Camas Creek (Lat 44.892, Long -114.722) upstream to endpoint(s) in: Camas Creek (44.830, -114.501); Duck Creek (44.852, -114.521); Woodtick Creek (44.870, -114.636).

(ix) *Middle Fork Salmon River/Sheep Creek Watershed 1706020609*. Outlet(s) =

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Middle Fork Salmon River (Lat 44.955, Long -114.733) upstream to endpoint(s) in: Middle Fork Salmon River (44.808, -114.811); Sheep Creek (44.923, -114.873).

(x) *Rush Creek Watershed 1706020610*. Outlet(s) = Rush Creek (Lat 45.105, Long -114.861) upstream to endpoint(s) in: Rush Creek (44.958, -114.992); South Fork Rush Creek (45.013, -114.972); Two Point Creek (45.027, -114.947).

(xi) *Monumental Creek Watershed 1706020611*. Outlet(s) = Monumental Creek (Lat 45.160, Long -115.129) upstream to endpoint(s) in: Monumental Creek (44.952, -115.179); Snowslide Creek (45.055, -115.266); West Fork Monumental Creek (45.011, -115.244).

(xii) *Big Creek/Little Marble Creek Watershed 1706020612*. Outlet(s) = Big Creek (Lat 45.163, Long -115.128) upstream to endpoint(s) in: Big Creek (45.153, -115.297); Little Marble Creek (45.062, -115.276).

(xiii) *Upper Big Creek Watershed 1706020613*. Outlet(s) = Big Creek (Lat 45.153, Long -115.297) upstream to endpoint(s) in: Big Creek (45.075, -115.342); Jacobs Ladder Creek (45.063, -115.322); Middle Fork Smith Creek (45.166, -115.411); Smith Creek (45.170, -115.380); Unnamed (45.129, -115.422).

(xiv) *Beaver Creek Watershed 1706020614*. Outlet(s) = Beaver Creek (Lat 45.163, Long -115.242) upstream to endpoint(s) in: Beaver Creek (45.242, -115.314); Coin Creek (45.218, -115.328); HCreek (45.266, -115.270).

(xv) *Big Ramey Creek Watershed 1706020615*. Outlet(s) = Big Ramey Creek (Lat 45.177, Long -115.159) upstream to endpoint(s) in: Big Ramey Creek (45.279, -115.243).

(xvi) *Big Creek/Crooked Creek Watershed 1706020616*. Outlet(s) = Big Creek (Lat 45.127, Long -114.935) upstream to endpoint(s) in: Big Creek (45.163, -115.128); Cave Creek (45.219, -114.916); Coxey Creek (45.181, -115.022); East Fork Crooked Creek (45.250, -114.975); Fawn Creek (45.125, -115.032); West Fork Crooked Creek (45.251, -115.117).

(xvii) *Lower Big Creek Watershed 1706020617*. Outlet(s) = Big Creek (Lat 45.095, Long -114.732) upstream to endpoint(s) in: Big Creek (45.127, -114.935); Cabin Creek (45.195, -114.837); Canyon Creek (45.087, -114.997); Cliff Creek (45.127, -114.857); Cougar Creek (45.138,

-114.813); Pioneer Creek (45.066, -114.842).

(14) Middle Salmon-Chamberlain Subbasin 17060207—(i) *Salmon River/Fall Creek Watershed 1706020701*. Outlet(s) = Salmon River (Lat 45.426, Long -116.025) upstream to endpoint(s) in: Carey Creek (45.4242, -115.9343); Fall Creek (45.4153, -115.9755); Salmon River (45.455, -115.941).

(ii) *Wind River Watershed 1706020702*. Outlet(s) = Wind River (Lat 45.4553, Long -115.941) upstream to endpoint(s) in: Wind River (45.4657, -115.9394).

(iii) *Salmon River/California Creek Watershed 1706020703*. Outlet(s) = Salmon River (Lat 45.455, Long -115.941) upstream to endpoint(s) in: Bear Creek (45.435, -115.852); Bull Creek (45.482, -115.716); California Creek (45.341, -115.850); Cottontail Creek (45.388, -115.752); Maxwell Creek (45.392, -115.841); Salmon River (45.434, -115.666).

(iv) *Sheep Creek Watershed 1706020704*. Outlet(s) = Sheep Creek (Lat 45.468, Long -115.810) upstream to endpoint(s) in: East Fork Sheep Creek (45.546, -115.769); Meadow Creek (45.544, -115.792); Plummer Creek (45.531, -115.807); Porcupine Creek (45.506, -115.817); Sheep Creek (45.591, -115.705).

(v) *Crooked Creek Watershed 1706020705*. Outlet(s) = Crooked Creek (Lat 45.434, Long -115.666) upstream to endpoint(s) in: Arlington Creek (45.491, -115.678); Crooked Creek (45.515, -115.554); Lake Creek (45.616, -115.686).

(vi) *Salmon River/Rabbit Creek Watershed 1706020706*. Outlet(s) = Salmon River (Lat 45.434, Long -115.666) upstream to endpoint(s) in: Indian Creek (45.409, -115.608); Rabbit Creek (45.416, -115.667); Salmon River (45.378, -115.512).

(vii) *Salmon River/Trout Creek Watershed 1706020708*. Outlet(s) = Salmon River (Lat 45.378, Long -115.512) upstream to endpoint(s) in: Big Blowout Creek (45.468, -115.432); Big Elkhorn Creek (45.521, -115.331); Fivemile Creek (45.391, -115.452); Jersey Creek (45.494, -115.531); Little Fivemile Creek (45.416, -115.425); Little Mallard Creek (45.538, -115.317); Rhett Creek (45.483, -115.410); Richardson Creek (45.499, -115.265); Salmon River (45.567, -115.191); Trout Creek (45.396, -115.315).

(viii) *Bargamin Creek Watershed 1706020709*. Outlet(s) = Bargamin Creek (Lat 45.567, Long -115.191) upstream to

endpoint(s) in: Bargamin Creek (45.706, -115.046); Cache Creek (45.691, -115.180); Porcupine Creek (45.725, -115.128); Prospector Creek (45.688, -115.153); Rainey Creek (45.617, -115.210); Salt Creek (45.643, -115.189).

(ix) *Salmon River/Rattlesnake Creek Watershed 1706020710*. Outlet(s) = Salmon River (Lat 45.567, Long -115.191) upstream to endpoint(s) in: Rattlesnake Creek (45.560, -115.143); Salmon River (45.511, -115.041).

(x) *Sabe Creek Watershed 1706020711*. Outlet(s) = Sabe Creek (Lat 45.507, Long -115.024) upstream to endpoint(s) in: Center Creek (45.573, -115.040); Hamilton Creek (45.544, -114.826).

(xi) *Salmon River/Hot Springs Creek Watershed 1706020712*. Outlet(s) = Salmon River (Lat 45.511, Long -115.041) upstream to endpoint(s) in: Big Harrington Creek (45.498, -114.895); Hot Springs Creek (45.465, -115.135); Salmon River (45.454, -114.931).

(xii) *Salmon River/Disappointment Creek Watershed 1706020713*. Outlet(s) = Salmon River (Lat 45.454, Long -114.931) upstream to endpoint(s) in: Salmon River (45.395, -114.732).

(xiii) *Horse Creek Watershed 1706020714*. Outlet(s) = Horse Creek (Lat 45.395, Long -114.732) upstream to endpoint(s) in: East Fork Reynolds Creek (45.541, -114.493); Horse Creek (45.498, -114.421); Reynolds Creek (45.555, -114.558); West Horse Creek (45.494, -114.754).

(xiv) *Salmon River/Kitchen Creek Watershed 1706020715*. Outlet(s) = Salmon River (Lat 45.395, Long -114.732) upstream to endpoint(s) in: Corn Creek (45.370, -114.681); Kitchen Creek (45.295, -114.752); Salmon River (45.297, -114.591).

(xv) *Cottonwood Creek Watershed 1706020716*. Outlet(s) = Cottonwood Creek (Lat 45.394, Long -114.802) upstream to endpoint(s) in: Cottonwood Creek (45.354, -114.823).

(xvi) *Lower Chamberlain/McCalla Creek Watershed 1706020717*. Outlet(s) = Chamberlain Creek (Lat 45.454, Long -114.931) upstream to endpoint(s) in: McCalla Creek (45.321, -115.115); Unnamed (45.433, -114.935); Whimstick Creek (45.241, -115.053).

(xvii) *Upper Chamberlain Creek Watershed 1706020718*. Outlet(s) = Chamberlain Creek (Lat 45.414, Long -114.981) upstream to endpoint(s) in: Flossie

Creek (45.384, -115.248); Lodgepole Creek (45.305, -115.254); Moose Creek (45.283, -115.292); South Fork Chamberlain Creek (45.288, -115.342).

(xviii) *Warren Creek Watershed 1706020719*. Outlet(s) = Warren Creek (Lat 45.397, Long -115.592) upstream to endpoint(s) in: Richardson Creek (45.372, -115.625); Slaughter Creek (45.269, -115.648); Steamboat Creek (45.259, -115.722); Warren Creek (45.248, -115.653).

(15) South Fork Salmon Subbasin 17060208—(i) *Lower South Fork Salmon River Watershed 1706020801*. Outlet(s) = South Fork Salmon River (Lat 45.378, Long -115.512) upstream to endpoint(s) in: Big Buck Creek (45.253, -115.554); Pony Creek (45.209, -115.663); Porphyry Creek (45.255, -115.462); Smith Creek (45.265, -115.550); South Fork Salmon River (45.156, -115.585).

(ii) *South Fork Salmon River/Sheep Creek Watershed 1706020802*. Outlet(s) = South Fork Salmon River (Lat 45.156, Long -115.585) upstream to endpoint(s) in: Bear Creek (45.124, -115.643); Contux Creek (45.155, -115.620); Deer Creek (45.162, -115.606); Elk Creek (45.149, -115.506); Sheep Creek (45.039, -115.583); South Fork Salmon River (45.025, -115.706).

(iii) *Lower East Fork South Fork Salmon River Watershed 1706020803*. Outlet(s) = East Fork South Fork Salmon River (Lat 45.015, Long -115.713) upstream to endpoint(s) in: Caton Creek (44.900, -115.584); East Fork South Fork Salmon River (44.963, -115.501); Loosum Creek (44.918, -115.529); Parks Creek (44.969, -115.530).

(iv) *Upper East Fork South Fork Salmon River Watershed 1706020804*. Outlet(s) = East Fork South Fork Salmon River (Lat 44.963, Long -115.501) upstream to endpoint(s) in: East Fork South Fork Salmon River (44.934, -115.336); Profile Creek (45.035, -115.409); Quartz Creek (45.048, -115.496); Salt Creek (44.962, -115.329); Sugar Creek (44.975, -115.245); Tamarack Creek (44.995, -115.318).

(v) *Lower Johnson Creek Watershed 1706020805*. Outlet(s) = Johnson Creek (Lat 44.963, Long -115.501) upstream to endpoint(s) in: Johnson Creek (44.803, -115.518); Riordan Creek (44.898, -115.472); Trapper Creek (44.829, -115.508).

(vi) *Burntlog Creek Watershed 1706020806*. Outlet(s) = Burntlog Creek (Lat 44.803, Long -115.518) upstream to endpoint(s) in: Burntlog Creek (44.718, -115.419).

(vii) *Upper Johnson Creek Watershed 1706020807*. Outlet(s) = Johnson Creek (Lat 44.803, Long -115.518) upstream to endpoint(s) in: Boulder Creek (44.565, -115.595); Johnson Creek (44.550, -115.590); Landmark Creek (44.630, -115.574); Rock Creek (44.600, -115.592); SCreek (44.609, -115.413); Whiskey Creek (44.563, -115.486).

(viii) *Upper South Fork Salmon River Watershed 1706020808*. Outlet(s) = South Fork Salmon River (Lat 44.652, Long -115.703) upstream to endpoint(s) in: Bear Creek (44.607, -115.600); Camp Creek (44.605, -115.633); Curtis Creek (44.593, -115.752); Lodgepole Creek (44.576, -115.610); Mormon Creek (44.499, -115.654); Rice Creek (44.510, -115.644); South Fork Salmon River (44.480, -115.688); Tyndall Creek (44.568, -115.736).

(ix) *South Fork Salmon River/Cabin Creek Watershed 1706020809*. Outlet(s) = South Fork Salmon River (Lat 44.759, Long -115.684) upstream to endpoint(s) in: Cabin Creek (44.713, -115.638); Dollar Creek (44.759, -115.751); North Fork Dollar Creek (44.755, -115.745); Six-Bit Creek (44.684, -115.724); South Fork Salmon River (44.652, -115.703); Two-bit Creek (44.655, -115.747); Warm Lake Creek (44.653, -115.662).

(x) *South Fork Salmon River/Blackmare Creek Watershed 1706020810*. Outlet(s) = South Fork Salmon River (Lat 44.898, Long -115.715) upstream to endpoint(s) in: Blackmare Creek (44.809, -115.795); Camp Creek (44.889, -115.691); Cougar Creek (44.823, -115.804); Phoebe Creek (44.910, -115.705); South Fork Salmon River (44.759, -115.684).

(xi) [Reserved]

(xii) *Buckhorn Creek Watershed 1706020811*. Outlet(s) = Buckhorn Creek (Lat 44.922, Long -115.736) upstream to endpoint(s) in: Buckhorn Creek (44.881, -115.856); Little Buckhorn Creek (44.902, -115.756); West Fork Buckhorn Creek (44.909, -115.832).

(xiii) *South Fork Salmon River/Fitsum Creek Watershed 1706020812*. Outlet(s) = South Fork Salmon River (Lat 45.025, Long -115.706) upstream to endpoint(s) in: Fitsum Creek (44.996, -115.784);

North Fork Fitsum Creek (44.992, -115.870); South Fork Fitsum Creek (44.981, -115.768); South Fork Salmon River (44.898, -115.715).

(xiv) *Lower Secesh River Watershed 1706020813*. Outlet(s) = Secesh River (Lat 45.025, Long -115.706) upstream to endpoint(s) in: Cly Creek (45.031, -115.911); Hum Creek (45.070, -115.903); Lick Creek (45.049, -115.906); Secesh River (45.183, -115.821); Split Creek (45.109, -115.805); Zena Creek (45.057, -115.732).

(xv) *Middle Secesh River Watershed 1706020814*. Outlet(s) = Secesh River (Lat 45.183, Long -115.821) upstream to endpoint(s) in: Grouse Creek (45.289, -115.835); Secesh River (45.257, -115.895); Victor Creek (45.186, -115.831).

(xiv) *Upper Secesh River Watershed 1706020815*. Outlet(s) = Secesh River (Lat 45.257, Long -115.895) upstream to endpoint(s) in: Lake Creek (45.374, -115.867); Threemile Creek (45.334, -115.891).

(16) Lower Salmon Subbasin 17060209—(i) *Salmon River/China Creek Watershed 1706020901*. Outlet(s) = Salmon River (Lat 45.857, Long -116.794) upstream to endpoint(s) in: China Creek (46.004, -116.817); Flynn Creek (45.911, -116.714); Salmon River (45.999, -116.695); Wapshilla Creek (45.945, -116.766).

(ii) *Eagle Creek Watershed 1706020902*. Outlet(s) = Eagle Creek (Lat 45.997, Long -116.700) upstream to endpoint(s) in: Eagle Creek (46.057, -116.814).

(iii) *Deer Creek Watershed 1706020903*. Outlet(s) = Deer Creek (Lat 45.999, Long -116.695) upstream to endpoint(s) in: Deer Creek (46.051, -116.702).

(iv) *Salmon River/Cottonwood Creek Watershed 1706020904*. Outlet(s) = Salmon River (Lat 45.999, Long -116.695) upstream to endpoint(s) in: Billy Creek (45.990, -116.643); Cottonwood Creek (45.932, -116.598); Maloney Creek (46.068, -116.625); Salmon River (46.038, -116.625); West Fork Maloney Creek (46.061, -116.632).

(v) *Salmon River/Deep Creek Watershed 1706020905*. Outlet(s) = Salmon River (Lat 46.038, Long -116.625) upstream to endpoint(s) in: Burnt Creek (45.966, -116.548); Deep Creek (46.005, -116.547); Round Spring Creek (45.972, -116.501); Salmon River (45.911, -116.410); Telcher Creek (45.978, -116.443).

(vi) *Rock Creek Watershed 1706020906*. Outlet(s) = Rock Creek (Lat 45.905, Long -116.396) upstream to endpoint(s) in: Grave Creek (45.978, -116.359); Johns Creek (45.930, -116.245); Rock Creek (45.919, -116.245).

(vii) *Salmon River/Hammer Creek Watershed 1706020907*. Outlet(s) = Salmon River (Lat 45.911, Long -116.410) upstream to endpoint(s) in: Salmon River (45.752, -116.322).

(viii) *White Bird Creek Watershed 1706020908*. White Bird Creek (Lat 45.752, Long -116.322) upstream to endpoint(s) in: Asbestos Creek (45.722, -116.050); Cabin Creek (45.842, -116.110); Chapman Creek (45.841, -116.216); Cold Springs Creek (45.716, -116.037); Fish Creek (45.865, -116.084); Jungle Creek (45.739, -116.063); Little White Bird Creek (45.740, -116.087); North Fork White Bird Creek (45.797, -116.089); Pinnacle Creek (45.779, -116.086); South Fork White Bird Creek (45.772, -116.028); Twin Cabins Creek (45.782, -116.048); Unnamed (45.809, -116.086); Unnamed (45.841, -116.114); Unnamed (45.858, -116.105).

(ix) *Salmon River/McKinzie Creek Watershed 1706020909*. Outlet(s) = Salmon River (Lat 45.752, Long -116.322) upstream to endpoint(s) in: Deer Creek (45.706, -116.332); McKinzie Creek (45.676, -116.260); Salmon River (45.640, -116.284); Sotin Creek (45.725, -116.341).

(x) *Skookumchuck Creek Watershed 1706020910*. Outlet(s) = Skookumchuck Creek (Lat 45.700, Long -116.317) upstream to endpoint(s) in: North Fork Skookumchuck Creek (45.728, -116.114); South Fork Skookumchuck Creek (45.711, -116.197).

(xi) *Slate Creek Watershed 1706020911*. Outlet(s) = Slate Creek (Lat 45.640, Long -116.284) upstream to endpoint(s) in: Deadhorse Creek (45.603, -116.093); Little Slate Creek (45.587, -116.075); North Fork Slate Creek (45.671, -116.095); Slate Creek (45.634, -116.000); Slide Creek (45.662, -116.146); Unnamed (45.5959, -116.1061); Waterspout Creek (45.631, -116.115).

(xii) *Salmon River/John Day Creek Watershed 1706020912*. Outlet(s) = Salmon River (Lat 45.640, Long -116.284) upstream to endpoint(s) in: China Creek (45.547, -116.310); Cow Creek (45.539, -116.330); East Fork John Day Creek (45.575, -116.221); Fiddle Creek (45.495, -116.269); John Day Creek (45.564,

-116.220); Race Creek (45.437, -116.316); South Fork Race Creek (45.440, -116.403); West Fork Race Creek (45.464, -116.352).

(xiii) *Salmon River/Lake Creek Watershed 1706020913*. Outlet(s) = Salmon River (Lat 45.437, Long -116.316) upstream to endpoint(s) in: Allison Creek (45.507, -116.156); Berg Creek (45.426, -116.244); Lake Creek (45.294, -116.219); Salmon River (45.418, -116.162); West Fork Allison Creek (45.457, -116.184); West Fork Lake Creek (45.370, -116.241).

(xiv) *Salmon River/Van Creek Watershed 1706020914*. Outlet(s) = Salmon River (Lat 45.418, Long -116.162) upstream to endpoint(s) in: Robbins Creek (45.430, -116.026); Salmon River (45.426, -116.025); Van Creek (45.431, -116.138).

(xv) *French Creek Watershed 1706020915*. Outlet(s) = French Creek (Lat 45.425, Long -116.030) upstream to endpoint(s) in: French Creek (45.375, -116.040).

(xvi) *Partridge Creek Watershed 1706020916*. Outlet(s) = Elkhorn Creek (Lat 45.4043, Long -116.0941); Partridge Creek (45.408, -116.126) upstream to endpoint(s) in: Elkhorn Creek (45.369, -116.092); Partridge Creek (45.369, -116.146).

(17) Little Salmon Subbasin 17060210—(i) *Lower Little Salmon River Watershed 1706021001*. Outlet(s) = Little Salmon River (Lat 45.417, Long -116.313) upstream to endpoint(s) in: Denny Creek (45.306, -116.359); Elk Creek (45.218, -116.311); Hat Creek (45.313, -116.354); Little Salmon River (45.204, -116.310); Lockwood Creek (45.254, -116.366); North Fork Squaw Creek (45.4234, -116.4320); Papoose Creek (45.4078, -116.3920); Rattlesnake Creek (45.268, -116.339); Sheep Creek (45.344, -116.336); South Fork Squaw Creek (45.4093, -116.4356).

(ii) *Little Salmon River/Hard Creek Watershed 1706021002*. Outlet(s) = Little Salmon River (Lat 45.204, Long -116.310) upstream to endpoint(s) in: Bascum Canyon (45.145, -116.248); Hard Creek (45.125, -116.239); Little Salmon River (45.123, -116.298); Trail Creek (45.164, -116.338).

(iii) *Hazard Creek Watershed 1706021003*. Outlet(s) = Hazard Creek (Lat 45.183, Long -116.283) upstream to

endpoint(s) in: Hazard Creek (45.201, -116.248).

(iv) *Boulder Creek Watershed 1706021006*. Outlet(s) = Boulder Creek (Lat 45.204, Long -116.310) upstream to endpoint(s) in: Ant Basin Creek (45.128, -116.447); Boulder Creek (45.103, -116.479); Bull Horn Creek (45.159, -116.407); Pollock Creek (45.168, -116.395); Pony Creek (45.190, -116.374); Squirrel Creek (45.198, -116.368); Star Creek (45.152, -116.418); Unnamed (45.095, -116.461); Unnamed (45.116, -116.455); Yellow Jacket Creek (45.141, -116.426).

(v) *Rapid River Watershed 1706021007*. Outlet(s) = Rapid River (Lat 45.375, Long -116.355) upstream to endpoint(s) in: Granite Fork Lake Fork Rapid River (45.179, -116.526); Paradise Creek (45.223, -116.550); Rapid River (45.157, -116.489); Shingle Creek (45.369, -116.409); West Fork Rapid River (45.306, -116.425).

(18) Upper Selway Subbasin 17060301—(i) *Selway River/Pettibone Creek Watershed 1706030101*. Outlet(s) = Selway River (Lat 46.122, Long -114.935) upstream to endpoint(s) in: Ditch Creek (46.022, -114.900); Elk Creek (45.987, -114.872); Pettibone Creek (46.105, -114.745); Selway River (45.962, -114.828).

(ii) *Bear Creek Watershed 1706030102*. Outlet(s) = Bear Creek (Lat 46.019, Long -114.844) upstream to endpoint(s) in: Bear Creek (46.104, -114.588); Brushy Fork Creek (45.978, -114.602); Cub Creek (46.021, -114.662); Granite Creek (46.102, -114.619); Paradise Creek (46.036, -114.710); Wahoo Creek (46.104, -114.633).

(iii) *Selway River/Gardner Creek Watershed 1706030103*. Outlet(s) = Selway River (Lat 45.962, Long -114.828) upstream to endpoint(s) in: Bad Luck Creek (45.899, -114.752); Crooked Creek (45.865, -114.764); Gardner Creek (45.937, -114.772); Magruder Creek (45.702, -114.795); North Star Creek (45.950, -114.806); Selway River (45.707, -114.719); Sheep Creek (45.821, -114.741); Snake Creek (45.855, -114.728).

(iv) *White Cap Creek Watershed 1706030104*. Outlet(s) = White Cap Creek (Lat 45.860, Long -114.744) upstream to endpoint(s) in: Barefoot Creek (45.886, -114.639); Canyon Creek (45.878, -114.422); Cedar Creek (45.895, -114.668); Cooper Creek (45.861, -114.557); Elk Creek (45.928, -114.574); Fox Creek

(45.898, -114.597); Granite Creek (45.931, -114.506); Lookout Creek (45.959, -114.626); Paloma Creek (45.918, -114.592); Peach Creek (45.868, -114.607); South Fork Lookout Creek (45.929, -114.649); Unnamed (45.855, -114.557); White Cap Creek (45.947, -114.534).

(v) *Indian Creek Watershed 1706030105*. Outlet(s) = Indian Creek (Lat 45.792, Long -114.764) upstream to endpoint(s) in: Indian Creek (45.786, -114.581); Jack Creek (45.789, -114.681); Saddle Gulch (45.766, -114.641); Schofield Creek (45.818, -114.586).

(vi) *Upper Selway River Watershed 1706030106*. Outlet(s) = Selway River (Lat 45.707, Long -114.719) upstream to endpoint(s) in: Cayuse Creek (45.752, -114.572); Deep Creek (45.703, -114.517); French Creek (45.609, -114.561); Gabe Creek (45.714, -114.666); Hells Half Acre Creek (45.689, -114.708); Lazy Creek (45.670, -114.553); Line Creek (45.590, -114.585); Mist Creek (45.561, -114.629); Pete Creek (45.720, -114.557); Selway River (45.502, -114.702); Slow Gulch Creek (45.678, -114.520); Storm Creek (45.641, -114.596); Surprise Creek (45.533, -114.672); Swet Creek (45.516, -114.804); Three Lakes Creek (45.620, -114.803); Unnamed (45.569, -114.642); Vance Creek (45.681, -114.594); Wilkerson Creek (45.561, -114.601).

(vii) *Little Clearwater River Watershed 1706030107*. Outlet(s) = Little Clearwater River (Lat 45.754, Long -114.775) upstream to endpoint(s) in: Burnt Knob Creek (45.697, -114.950); FCreek (45.644, -114.847); Little Clearwater River (45.740, -114.949); Lonely Creek (45.727, -114.865); Salamander Creek (45.655, -114.883); Short Creek (45.759, -114.859); Throng Creek (45.736, -114.904).

(viii) *Running Creek Watershed 1706030108*. Outlet(s) = Running Creek (Lat 45.919, Long -114.832) upstream to endpoint(s) in: Eagle Creek (45.844, -114.886); Lynx Creek (45.794, -114.993); Running Creek (45.910, -115.027); South Fork Running Creek (45.820, -115.024).

(ix) *Goat Creek Watershed 1706030109*. Outlet(s) = Goat Creek (Lat 45.962, Long -114.828) upstream to endpoint(s) in: Goat Creek (45.940, -115.038).

(19) Lower Selway Subbasin 17060302—(i) *Selway River/Goddard Creek Watershed 1706030201*. Outlet(s) = Selway River (Lat 46.140, Long -115.599) upstream to endpoint(s) in: Boyd Creek

(46.092, -115.431); Glover Creek (46.082, -115.361); Goddard Creek (46.059, -115.610); Johnson Creek (46.139, -115.514); Rackliff Creek (46.110, -115.494); Selway River (46.046, -115.295).

(ii) *Gedney Creek Watershed 1706030202*. Outlet(s) = Gedney Creek (Lat 46.056, Long -115.313) upstream to endpoint(s) in: Gedney Creek (46.111, -115.268).

(iii) *Selway River/Three Links Creek Watershed 1706030203*. Outlet(s) = Selway River (Lat 46.046, Long -115.295) upstream to endpoint(s) in: Mink Creek (46.041, -115.087); Otter Creek (46.042, -115.216); Pinchot Creek (46.120, -115.108); Selway River (46.098, -115.071); Three Links Creek (46.143, -115.093).

(iv) *Upper Three Links Creek Watershed 1706030204*. Outlet(s) = Three Links Creek (Lat 46.143, Long -115.093) upstream to endpoint(s) in: Three Links Creek (46.155, -115.100).

(v) *Rhoda Creek Watershed 1706030205*. Outlet(s) = Rhoda Creek (Lat 46.234, Long -114.960) upstream to endpoint(s) in: Lizard Creek (46.220, -115.136); Rhoda Creek (46.252, -115.164); Wounded Doe Creek (46.299, -115.078).

(vi) *North Fork Moose Creek Watershed 1706030207*. Outlet(s) = North Fork Moose Creek (Lat 46.165, Long -114.897) upstream to endpoint(s) in: North Fork Moose Creek (46.305, -114.853); West Moose Creek (46.322, -114.970).

(vii) *East Fork Moose Creek/Trout Creek Watershed 1706030208*. Outlet(s) = Selway River (Lat 46.098, Long -115.071) upstream to endpoint(s) in: Double Creek (46.230, -114.837); East Fork Moose Creek (46.204, -114.722); Elbow Creek (46.200, -114.716); Fitting Creek (46.231, -114.861); Maple Creek (46.218, -114.785); Monument Creek (46.189, -114.728); Selway River (46.122, -114.935); Trout Creek (46.141, -114.861).

(viii) *Upper East Fork Moose Creek Watershed 1706030209*. Outlet(s) = East Fork Moose Creek (Lat 46.204, Long -114.722) upstream to endpoint(s) in: Cedar Creek (46.291, -114.708); East Fork Moose Creek (46.253, -114.700).

(ix) *Marten Creek Watershed 1706030210*. Outlet(s) = Marten Creek (Lat 46.099, Long -115.052) upstream to endpoint(s) in: Marten Creek (45.988, -115.029).

(x) *Upper Meadow Creek Watershed 1706030211*. Outlet(s) = Meadow Creek (Lat 45.88043738, Long -115.1034371) up-

stream to endpoint(s) in: Butter Creek (45.804, -115.149); Meadow Creek (45.698, -115.217); Three Prong Creek (45.790, -115.062).

(xi) *Middle Meadow Creek Watershed 1706030212*. Outlet(s) = Meadow Creek (Lat 45.88157325, Long -115.2178401) upstream to endpoint(s) in: East Fork Meadow Creek (45.868, -115.067); Meadow Creek (45.880, -115.103); Sable Creek (45.853, -115.219); Schwar Creek (45.905, -115.108); Simmons Creek (45.856, -115.247).

(xii) *Lower Meadow Creek Watershed 1706030213*. Outlet(s) = Meadow Creek (Lat 46.04563958, Long -115.2953459) upstream to endpoint(s) in: Buck Lake Creek (45.992, -115.084); Butte Creek (45.878, -115.248); Fivemile Creek (45.953, -115.310); Little Boulder Creek (45.935, -115.293); Meadow Creek (45.882, -115.218).

(xiii) *O'Hara Creek Watershed 1706030214*. Outlet(s) = OHara Creek (Lat 46.08603027, Long -115.5170987) upstream to endpoint(s) in: East Fork OHara Creek (45.995, -115.521); West Fork O'Hara Creek (45.995, -115.543).

(20) Lochsa Subbasin 17060303—(i) *Lower Lochsa River Watershed 1706030301*. Outlet(s) = Lochsa River (Lat 46.14004554, Long -115.5986467) upstream to endpoint(s) in: Canyon Creek (46.227, -115.580); Coolwater Creek (46.215, -115.464); Deadman Creek (46.262, -115.517); East Fork Deadman Creek (46.275, -115.505); Fire Creek (46.203, -115.411); Kerr Creek (46.162, -115.579); Lochsa River (46.338, -115.314); Nut Creek (46.180, -115.601); Pete King Creek (46.182, -115.697); Placer Creek (46.196, -115.631); South Fork Canyon Creek (46.211, -115.556); Split Creek (46.207, -115.364); Walde Creek (46.193, -115.662).

(ii) *Fish Creek Watershed 1706030302*. Outlet(s) = Fish Creek (Lat 46.33337703, Long -115.3449332) upstream to endpoint(s) in: Alder Creek (46.319, -115.460); Ceanothus Creek (46.341, -115.470); Fish Creek (46.341, -115.575); Frenchman Creek (46.330, -115.544); Gass Creek (46.390, -115.511); Ham Creek (46.391, -115.365); Hungry Creek (46.377, -115.542); Myrtle Creek (46.343, -115.569); Poker Creek (46.346, -115.447); Willow Creek (46.396, -115.369).

(iii) *Lochsa River/Stanley Creek Watershed 1706030303*. Outlet(s) = Lochsa River (Lat 46.33815653, Long

–115.3141495) upstream to endpoint(s) in: Bald Mountain Creek (46.406, –115.254); Dutch Creek (46.377, –115.211); Eagle Mountain Creek (46.428, –115.130); Indian Grave Creek (46.472, –115.103); Indian Meadow Creek (46.450, –115.060); Lochsa River (46.466, –114.985); Lost Creek (46.432, –115.116); Sherman Creek (46.352, –115.320); Stanley Creek (46.387, –115.144); Unnamed (46.453, –115.028); Unnamed (46.460, –115.006); Unnamed (46.502, –115.050); Weir Creek (46.490, –115.035).

(iv) *Lochsa River/Squaw Creek Watershed 1706030304*. Outlet(s) = Lochsa River (Lat 46.4656626, Long –114.9848623) upstream to endpoint(s) in: Badger Creek (46.535, –114.833); Bear Mtn. Creek (46.471, –114.962); Cliff Creek (46.482, –114.708); Colgate Creek (46.455, –114.914); Doe Creek (46.534, –114.914); East Fork Papoose Creek (46.555, –114.743); Jay Creek (46.513, –114.739); Lochsa River (46.508, –114.681); Postoffice Creek (46.529, –114.948); Squaw Creek (46.567, –114.859); Unnamed (46.463, –114.923); Wendover Creek (46.521, –114.788); West Fork Papoose Creek (46.576, –114.758); West Fork Postoffice Creek (46.493, –114.985); West Fork Squaw Creek (46.545, –114.884).

(v) *Lower Crooked Fork Watershed 1706030305*. Outlet(s) = Crooked Fork Lochsa River (Lat 46.50828495, Long –114.680785) upstream to endpoint(s) in: Crooked Fork Lochsa River (46.578, –114.612).

(vi) *Upper Crooked Fork Watershed 1706030306*. Outlet(s) = Crooked Fork Lochsa River (Lat 46.57831788, Long –114.6115072) upstream to endpoint(s) in: Boulder Creek (46.636, –114.703); Crooked Fork Lochsa River (46.653, –114.670); Haskell Creek (46.605, –114.596); Shotgun Creek (46.601, –114.667).

(vii) *Brushy Fork Watershed 1706030307*. Outlet(s) = Brushy Fork (Lat 46.57831788, Long –114.6115072) upstream to endpoint(s) in: Brushy Fork (46.619, –114.450); Pack Creek (46.580, –114.588); Spruce Creek (46.609, –114.433).

(viii) *Lower White Sands Creek Watershed 1706030308*. Outlet(s) = White Sands Creek (Lat 46.50828495, Long –114.680785) upstream to endpoint(s) in: Beaver Creek (46.509, –114.619); Cabin Creek (46.518, –114.641); Walton Creek (46.500, –114.673); White Sands Creek (46.433, –114.540).

(ix) *Storm Creek Watershed 1706030309*. Outlet(s) = Storm Creek (Lat 46.46307502, Long –114.5482819) upstream to endpoint(s) in: Maud Creek (46.495, –114.511); Storm Creek (46.540, –114.424).

(x) *Upper White Sands Creek Watershed 1706030310*. Outlet(s) = White Sands Creek (Lat 46.4330966, Long –114.5395027) upstream to endpoint(s) in: Big FCreek (46.401, –114.475); Big SCreek (46.407, –114.534); Colt Creek (46.403, –114.726); White Sands Creek (46.422, –114.462).

(xi) *Warm Springs Creek Watershed 1706030311*. Outlet(s) = Warm Springs Creek (Lat 46.4733796, Long –114.8872254) upstream to endpoint(s) in: Cooperation Creek (46.453, –114.866); Warm Springs Creek (46.426, –114.868).

(xii) *Fish Lake Creek Watershed 1706030312*. Outlet(s) = Fish Lake Creek (Lat 46.46336343, Long –114.9957028) upstream to endpoint(s) in: Fish Lake Creek (46.405, –115.000); Heslip Creek (46.393, –115.027); Sponge Creek (46.384, –115.048).

(xiii) *Boulder Creek Watershed 1706030313*. Outlet(s) = Boulder Creek (Lat 46.33815653, Long –115.3141495) upstream to endpoint(s) in: Boulder Creek (46.320, –115.199).

(xiv) *Old Man Creek Watershed 1706030314*. Outlet(s) = Old Man Creek (Lat 46.2524595, Long –115.3988563) upstream to endpoint(s) in: Old Man Creek (46.256, –115.343).

(21) Middle Fork Clearwater Subbasin 17060304—(i) *Middle Fork Clearwater River/Maggie Creek Watershed 1706030401*. Outlet(s) = Middle Fork Clearwater River (Lat 46.1459, Long –115.9797) upstream to endpoint(s) in: Maggie Creek (46.195, –115.801); Middle Fork Clearwater River (46.140, –115.599).

(ii) *Clear Creek Watershed 1706030402*. Outlet(s) = Clear Creek (Lat 46.1349, Long –115.9515) upstream to endpoint(s) in: Browns Spring Creek (46.067, –115.658); Clear Creek (46.056, –115.659); Kay Creek (46.005, –115.725); Middle Fork Clear Creek (46.030, –115.739); Pine Knob Creek (46.093, –115.702); South Fork Clear Creek (45.941, –115.769); West Fork Clear Creek (46.013, –115.821).

(22) South Fork Clearwater Subbasin 17060305—(i) *Lower South Fork Clearwater River Watershed 1706030501*. Outlet(s) = South Fork Clearwater River (Lat 46.1459, Long –115.9797) upstream to endpoint(s) in: Butcher Creek (45.945,

-116.064); Castle Creek (45.834, -115.966); Earthquake Creek (45.853, -116.005); Green Creek (45.957, -115.937); Lightning Creek (45.936, -115.946); Mill Creek (45.934, -116.010); Rabbit Creek (46.028, -115.877); Sally Ann Creek (46.019, -115.893); Schwartz Creek (45.914, -116.000); South Fork Clearwater River (45.830, -115.931); Wall Creek (45.998, -115.926).

(ii) *South Fork Clearwater River/Meadow Creek Watershed 1706030502*. Outlet(s) = South Fork Clearwater River (Lat 45.8299, Long -115.9312) upstream to endpoint(s) in: Covert Creek (45.890, -115.933); North Meadow Creek (45.923, -115.890); South Fork Clearwater River (45.824, -115.889); Storm Creek (45.952, -115.848); Whitman Creek (45.914, -115.919).

(iii) *South Fork Clearwater River/Peasley Creek Watershed 1706030503*. Outlet(s) = South Fork Clearwater River (Lat 45.8239, Long -115.8892) upstream to endpoint(s) in: South Fork Clearwater River (45.795, -115.763).

(iv) *South Fork Clearwater River/Leggett Creek Watershed 1706030504*. Outlet(s) = South Fork Clearwater River (Lat 45.7952, Long -115.7628) upstream to endpoint(s) in: Allison Creek (45.832, -115.588); Buckhorn Creek (45.807, -115.658); Fall Creek (45.833, -115.696); Leggett Creek (45.862, -115.685); Maurice Creek (45.856, -115.514); Moose Creek (45.835, -115.578); Rabbit Creek (45.822, -115.603); Santiam Creek (45.811, -115.624); South Fork Clearwater River (45.808, -115.474); Twentymile Creek (45.791, -115.765); Whiskey Creek (45.869, -115.544).

(v) *Newsome Creek Watershed 1706030505*. Outlet(s) = Newsome Creek (Lat 45.8284, Long -115.6147) upstream to endpoint(s) in: Baldy Creek (45.944, -115.681); Bear Creek (45.887, -115.580); Beaver Creek (45.943, -115.568); Haysfork Creek (45.953, -115.678); Mule Creek (45.985, -115.606); Newsome Creek (45.972, -115.654); Nuggett Creek (45.897, -115.600); Pilot Creek (45.939, -115.716); Sawmill Creek (45.904, -115.701); Sing Lee Creek (45.898, -115.677); West Fork Newsome Creek (45.880, -115.661).

(vi) *American River Watershed 1706030506*. Outlet(s) = American River (Lat 45.8082, Long -115.4740) upstream to endpoint(s) in: American River (45.996, -115.445); Big Elk Creek (45.902,

-115.513); Box Sing Creek (45.850, -115.386); Buffalo Gulch (45.873, -115.522); East Fork American River (45.905, -115.381); Flint Creek (45.913, -115.423); Kirks Fork American River (45.842, -115.385); Lick Creek (45.945, -115.477); Little Elk Creek (45.894, -115.476); Monroe Creek (45.871, -115.495); Unnamed (45.884, -115.510); West Fork American River (45.934, -115.510); West Fork Big Elk Creek (45.883, -115.515).

(vii) *Red River Watershed 1706030507*. Outlet(s) = Red River (Lat 45.8082, Long -115.4740) upstream to endpoint(s) in: Bridge Creek (45.814, -115.163); Campbell Creek (45.792, -115.486); Dawson Creek (45.728, -115.393); Deadwood Creek (45.794, -115.471); Ditch Creek (45.7941, -115.2923); Jungle Creek (45.710, -115.286); Little Campbell Creek (45.801, -115.478); Little Moose Creek (45.710, -115.399); Moose Butte Creek (45.695, -115.365); Otterson Creek (45.803, -115.222); Red Horse Creek (45.822, -115.355); Red River (45.788, -115.174); Siegel Creek (45.800, -115.323); Soda Creek (45.741, -115.257); South Fork Red River (45.646, -115.407); Trail Creek (45.784, -115.265); Trapper Creek (45.672, -115.311); Unnamed (45.788, -115.199); West Fork Red River (45.662, -115.447).

(viii) *Crooked River Watershed 1706030508*. Outlet(s) = Crooked River (Lat 45.8241, Long -115.5291) upstream to endpoint(s) in: American Creek (45.7159, -115.9679); East Fork Crooked River (45.655, -115.562); East Fork Relief Creek (45.7363, -115.4511); Fivemile Creek (45.721, -115.568); Quartz Creek (45.702, -115.536); Relief Creek (45.712, -115.472); Silver Creek (45.713, -115.535); Trout Creek (45.6876, -115.9463); West Fork Crooked River (45.666, -115.596).

(ix) *Ten Mile Creek Watershed 1706030509*. Outlet(s) = Tenmile Creek (Lat 45.8064, Long -115.6833) upstream to endpoint(s) in: Mackey Creek (45.754, -115.683); Morgan Creek (45.731, -115.672); Sixmile Creek (45.762, -115.641); Tenmile Creek (45.694, -115.694); Williams Creek (45.703, -115.636).

(x) *John's Creek Watershed 1706030510*. Outlet(s) = Johns Creek (Lat 45.8239, Long -115.8892) upstream to endpoint(s) in: American Creek (45.750, -115.961); Frank Brown Creek (45.708, -115.785); Gospel Creek (45.637, -115.915); Johns Creek (45.665, -115.827); Trout Creek

(45.750, -115.909); West Fork Gospel Creek (45.657, -115.949).

(xi) *Mill Creek Watershed 1706030511*. Outlet(s) = Mill Creek (Lat 45.8299, Long -115.9312) upstream to endpoint(s) in: Adams Creek (45.6556, -116.0408); Camp Creek (45.6613, -115.9820); Corral Creek (45.6719, -115.9779); Hunt Creek (45.6768, -115.9640); Mill Creek (45.641, -116.008); Unnamed (45.6964, -115.9641).

(xii) *Cottonwood Creek Watershed 1706030513*. Outlet(s) = Cottonwood Creek (Lat 46.0810, Long -115.9764) upstream to endpoint(s) in: Cottonwood Creek (46.0503, -116.1109); Red Rock Creek (46.0807, -116.1579).

(23) Clearwater Subbasin 17060306—(i) *Lower Clearwater River Watershed 1706030601*. Outlet(s) = Clearwater River (Lat 46.4281, Long -117.0380) upstream to endpoint(s) in: Clearwater River (46.447, -116.837).

(ii) *Clearwater River/Lower Potlatch River Watershed 1706030602*. Outlet(s) = Clearwater River (Lat 46.4467, Long -116.8366) upstream to endpoint(s) in: Catholic Creek (46.489, -116.841); Clearwater River (46.474, -116.765); Howard Gulch (46.4976, -116.7791); Little Potlatch Creek (46.6322, -116.8320); Potlatch River (46.523, -116.728).

(iii) *Potlatch River/Middle Potlatch Creek Watershed 1706030603*. Outlet(s) = Potlatch River (Lat 46.5231, Long -116.7284) upstream to endpoint(s) in: Middle Potlatch Creek (46.669, -116.796); Potlatch River (46.583, -116.700).

(iv) *Lower Big Bear Creek Watershed 1706030604*. Outlet(s) = Big Bear Creek (Lat 46.6180, Long -116.6439) upstream to endpoint(s) in: Big Bear Creek (46.7145, -116.6632); Little Bear Creek (46.7360, -116.7010); West Fork Little Bear Creek (46.7413, -116.7789).

(v) *Upper Big Bear Creek 1706030605*. Outlet(s) = Big Bear Creek (Lat 46.7145, Long -116.6632) upstream to endpoint(s) in: East Fork Big Bear Creek (46.8141, -116.5984).

(vi) *Potlatch River/Pine Creek Watershed 1706030606*. Outlet(s) = Potlatch River (Lat 46.5830, Long -116.6998) upstream to endpoint(s) in: Boulder Creek (46.711, -116.450); Leopold Creek (46.6547, -116.4407); Pine Creek (46.706, -116.554); Potlatch River (46.699, -116.504).

(vii) *Upper Potlatch River Watershed 1706030607*. Outlet(s) = Potlatch River (Lat 46.6987, Long -116.5036) upstream

to endpoint(s) in: Corral Creek (46.8012, -116.4746); East Fork Potlatch River (46.876, -116.247); Feather Creek (46.938, -116.411); Head Creek (46.942, -116.366); Little Boulder Creek (46.768, -116.414); Nat Brown Creek (46.911, -116.375); Pasture Creek (46.940, -116.371); Porcupine Creek (46.937, -116.379); Potlatch River (46.941, -116.359); Ruby Creek (46.7992, -116.3037); Unnamed (46.8938, -116.3617); Unnamed (46.922, -116.449); West Fork Potlatch River (46.931, -116.458).

(viii) *Clearwater River/Bedrock Creek Watershed 1706030608*. Outlet(s) = Clearwater River (Lat 46.4741, Long -116.7652) upstream to endpoint(s) in: Bedrock Creek (46.5738, -116.5000); Clearwater River (46.516, -116.590); Louse Creek (46.5380, -116.4411); Pine Creek (46.579, -116.615).

(ix) *Clearwater River/Jack's Creek Watershed 1706030609*. Outlet(s) = Clearwater River (Lat 46.5159, Long -116.5903) upstream to endpoint(s) in: Clearwater River (46.498, -116.433); Jacks Creek (46.435, -116.462).

(x) *Big Canyon Creek Watershed 1706030610*. Outlet(s) = Big Canyon Creek (Lat 46.4984, Long -116.4326) upstream to endpoint(s) in: Big Canyon Creek (46.2680, -116.5396); Cold Springs Creek (46.2500, -116.5210); Posthole Canyon (46.318, -116.450); Sixmile Canyon (46.372, -116.441); Unnamed (46.3801, -116.3750).

(xi) *Little Canyon Creek Watershed 1706030611*. Outlet(s) = Little Canyon Creek (Lat 46.4681, Long -116.4172) upstream to endpoint(s) in: Little Canyon Creek (46.295, -116.279).

(xii) *Clearwater River/Lower Orofino Creek Watershed 1706030612*. Outlet(s) = Clearwater River (Lat 46.4984, Long -116.4326) upstream to endpoint(s) in: Clearwater River (46.476, -116.254); Orofino Creek (46.485, -116.196); Whiskey Creek (46.5214, -116.1753).

(xiii) *Jim Ford Creek Watershed 1706030614*. Outlet(s) = Jim Ford Creek (Lat 46.4394, Long -116.2115) upstream to endpoint(s) in: Jim Ford Creek (46.3957, -115.9570).

(xiv) *Lower Lolo Creek Watershed 1706030615*. Outlet(s) = Lolo Creek (Lat 46.3718, Long -116.1697) upstream to endpoint(s) in: Big Creek (46.392, -116.118); Lolo Creek (46.284, -115.882); Schmidt Creek (46.3617, -116.0426).

(xv) *Middle Lolo Creek Watershed 1706030616*. Outlet(s) = Lolo Creek (Lat 46.2844, Long -115.8818) upstream to endpoint(s) in: Crocker Creek (46.254, -115.859); Lolo Creek (46.381, -115.708); Mud Creek (46.274, -115.759); Nevada Creek (46.322, -115.735); Pete Charlie Creek (46.289, -115.823); Yakus Creek (46.238, -115.763).

(xvi) *Musselshell Creek Watershed 1706030617*. Outlet(s) = Jim Brown Creek (Lat 46.3098, Long -115.7531) upstream to endpoint(s) in: Gold Creek (46.376, -115.735); Jim Brown Creek (46.357, -115.790); Musselshell Creek (46.394, -115.744).

(xvii) *Upper Lolo Creek Watershed 1706030618*. Outlet(s) = Lolo Creek (Lat 46.3815, Long -115.7078) upstream to endpoint(s) in: Camp Creek (46.416, -115.624); Lolo Creek (46.425, -115.648); Max Creek (46.384, -115.679); Relaskon Creek (46.394, -115.647); Siberia Creek (46.384, -115.707); Yoosa Creek (46.408, -115.589).

(xviii) *Eldorado Creek Watershed 1706030619*. Outlet(s) = Eldorado Creek (Lat 46.2947, Long -115.7500) upstream to endpoint(s) in: Cedar Creek (46.298, -115.711); Dollar Creek (46.301, -115.640); Eldorado Creek (46.300, -115.645); Four Bit Creek (46.294, -115.644).

(xix) *Clearwater River/Fivemile Creek Watershed 1706030620*. Outlet(s) = Clearwater River (Lat 46.4759, Long -116.2543) upstream to endpoint(s) in: Clearwater River (46.350, -116.154); Fivemile Creek (46.3473, -116.1859).

(xx) *Clearwater River/Sixmile Creek Watershed 1706030621*. Outlet(s) = Clearwater River (Lat 46.3500, Long -116.1541) upstream to endpoint(s) in: Clearwater River (46.257, -116.067); Sixmile Creek (46.269, -116.213).

(xxi) *Clearwater River/Tom Taha Creek Watershed 1706030622*. Outlet(s) = Clearwater River (Lat 46.2565, Long -116.067) upstream to endpoint(s) in: Clearwater River (46.146, -115.980); Tom Taha Creek (46.244, -115.993).

(xxii) *Lower Lawyer Creek Watershed 1706030623*. Outlet(s) = Lawyer Creek

(Lat 46.2257, Long -116.0116) upstream to endpoint(s) in: Lawyer Creek (46.155, -116.190), Sevenmile Creek (46.1498, -116.0838).

(xxiii) *Middle Lawyer Creek Watershed 1706030624*. Outlet(s) = Lawyer Creek (Lat 46.1546, Long -116.1899) upstream to endpoint(s) in: Lawyer Creek (46.188, -116.380).

(xxiv) *Cottonwood Creek Watershed 1706030627*. Outlet(s) = Cottonwood Creek (Lat 46.5023, Long -116.7127) upstream to endpoint(s) in: Cottonwood Creek (46.387, -116.622), Coyote Creek (46.4622, -116.6377), Magpie Creek (46.4814, -116.6643).

(xxv) *Upper Lapwai Creek Watershed 1706030628*. Outlet(s) = Lapwai Creek (Lat 46.3674, Long -116.7352) upstream to endpoint(s) in: Lapwai Creek (46.2961, -116.5955); Unnamed (46.3346, -116.5794).

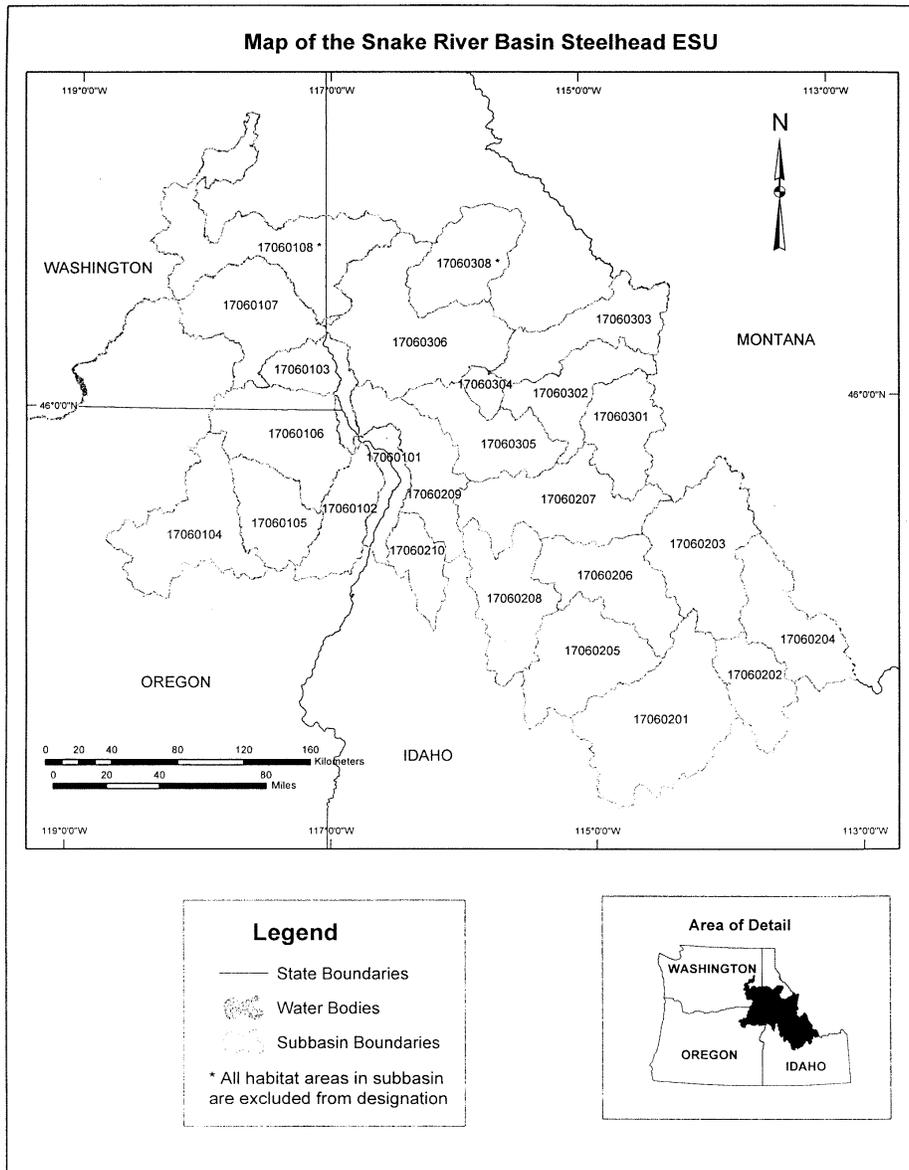
(xxvi) *Mission Creek Watershed 1706030629*. Outlet(s) = Mission Creek (Lat 46.3674, Long -116.73525) upstream to endpoint(s) in: Mission Creek (46.2724, -116.6949); Rock Creek (46.3048, -116.6250).

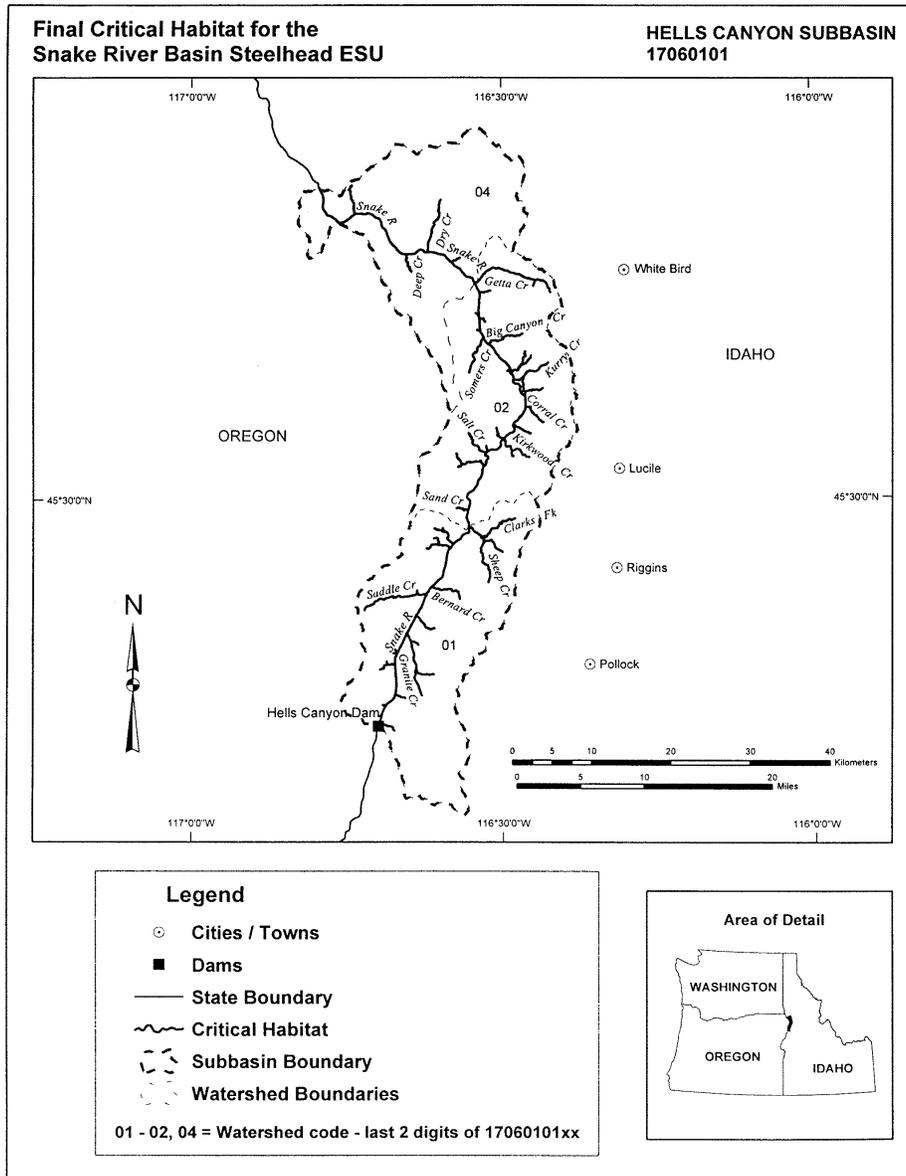
(xxvii) *Upper Sweetwater Creek Watershed 1706030630*. Outlet(s) = Webb Creek (Lat 46.3310, Long -116.8369) upstream to endpoint(s) in: Sweetwater Creek (46.2751, -116.8513); Webb Creek (46.2338, -116.7500).

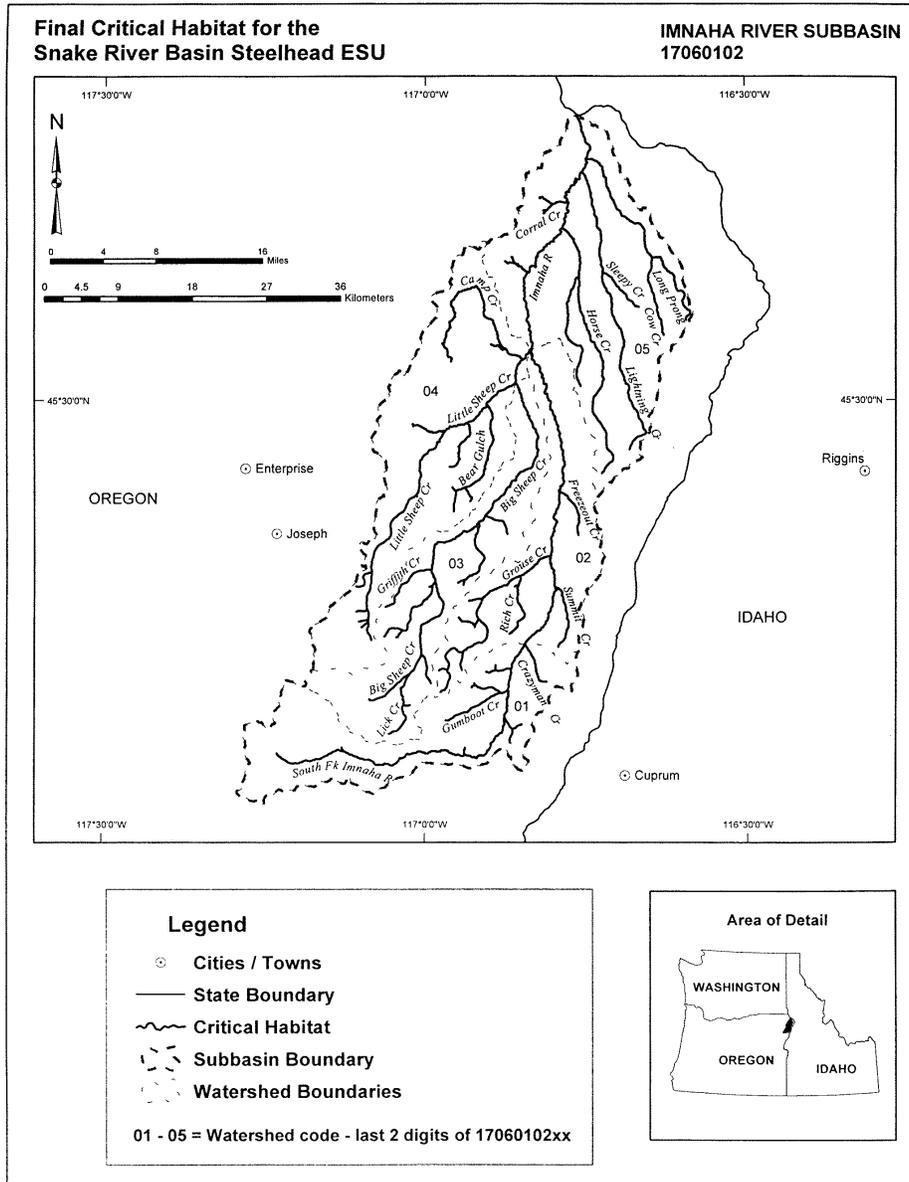
(xxviii) *Lower Sweetwater Creek Watershed 1706030631*. Outlet(s) = Lapwai Creek (Lat 46.4512, Long -116.8182) upstream to endpoint(s) in: Lapwai Creek (46.364, -116.750); Sweetwater Creek (46.331, -116.837); Tom Beall Creek (46.4240, -116.7822).

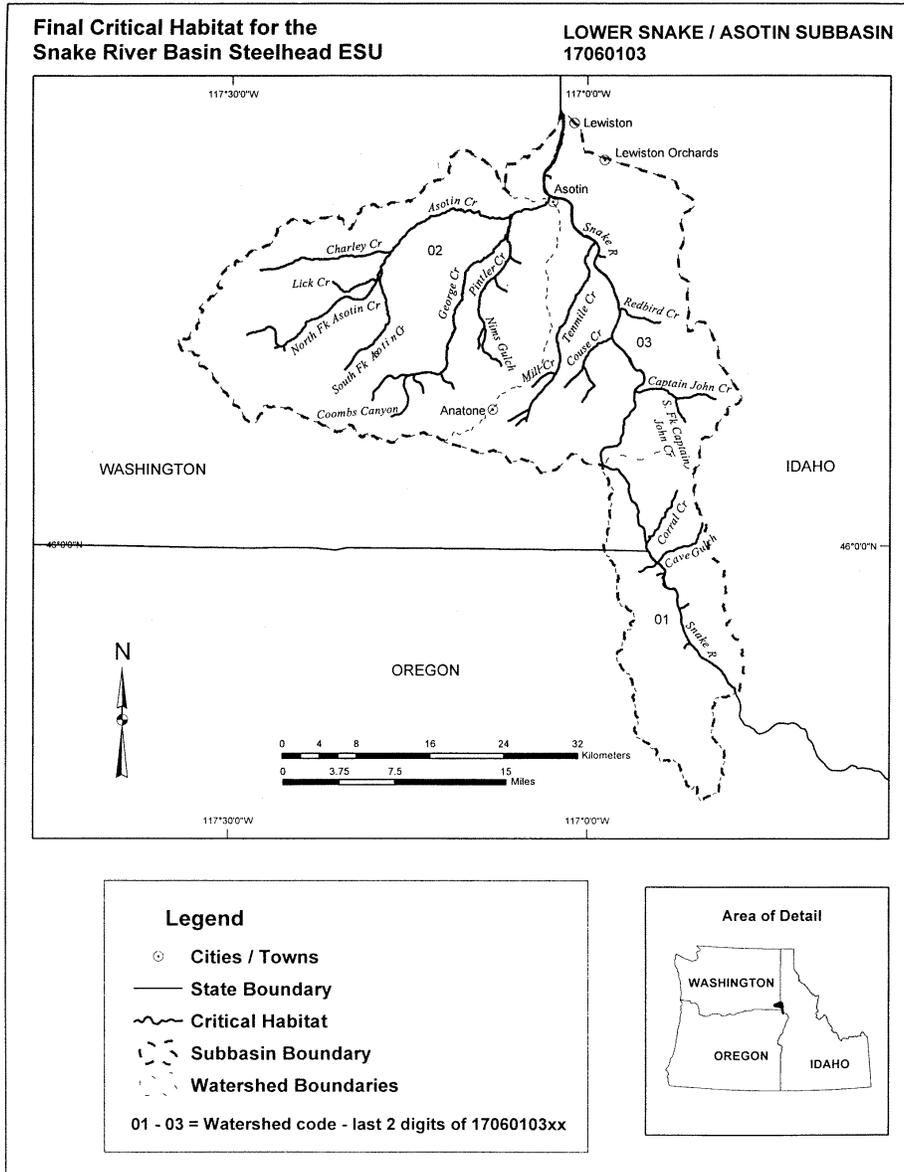
(24) *Lower Snake/Columbia River Corridor—Lower Snake/Columbia River Corridor*. Outlet(s) = Columbia River mouth (Lat 46.2485, Long -124.0782) upstream to endpoint at the confluence of the Palouse River (46.589, -117.215).

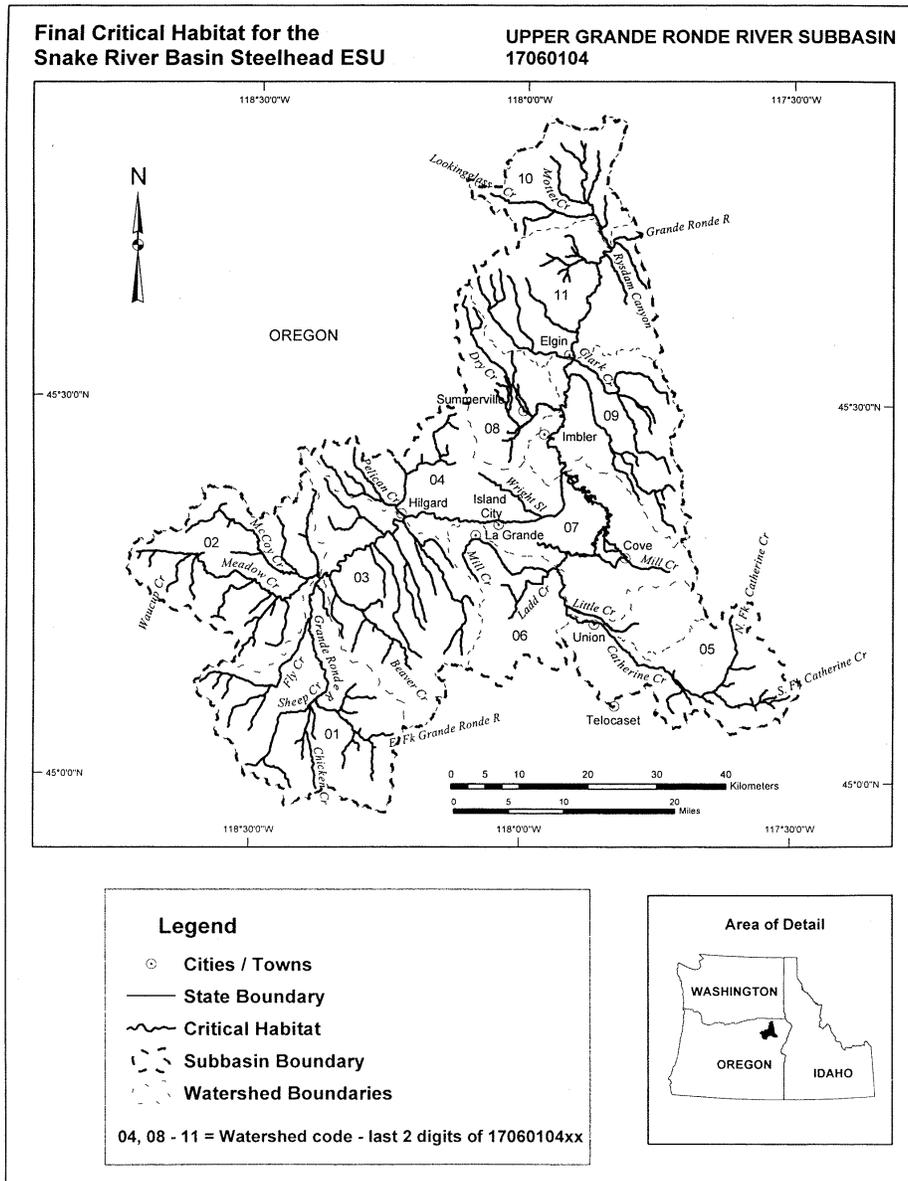
(25) Maps of critical habitat for the Snake River Basin Steelhead ESU follow:

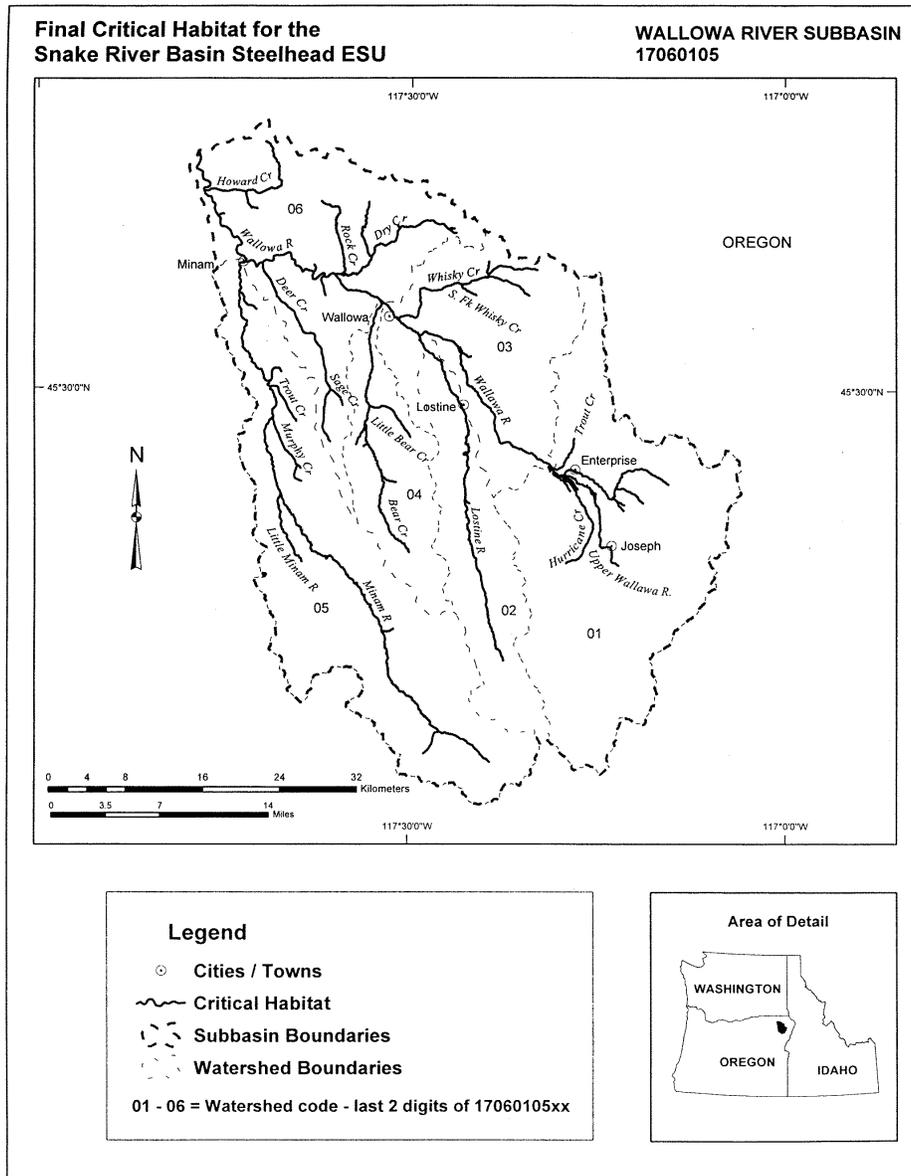


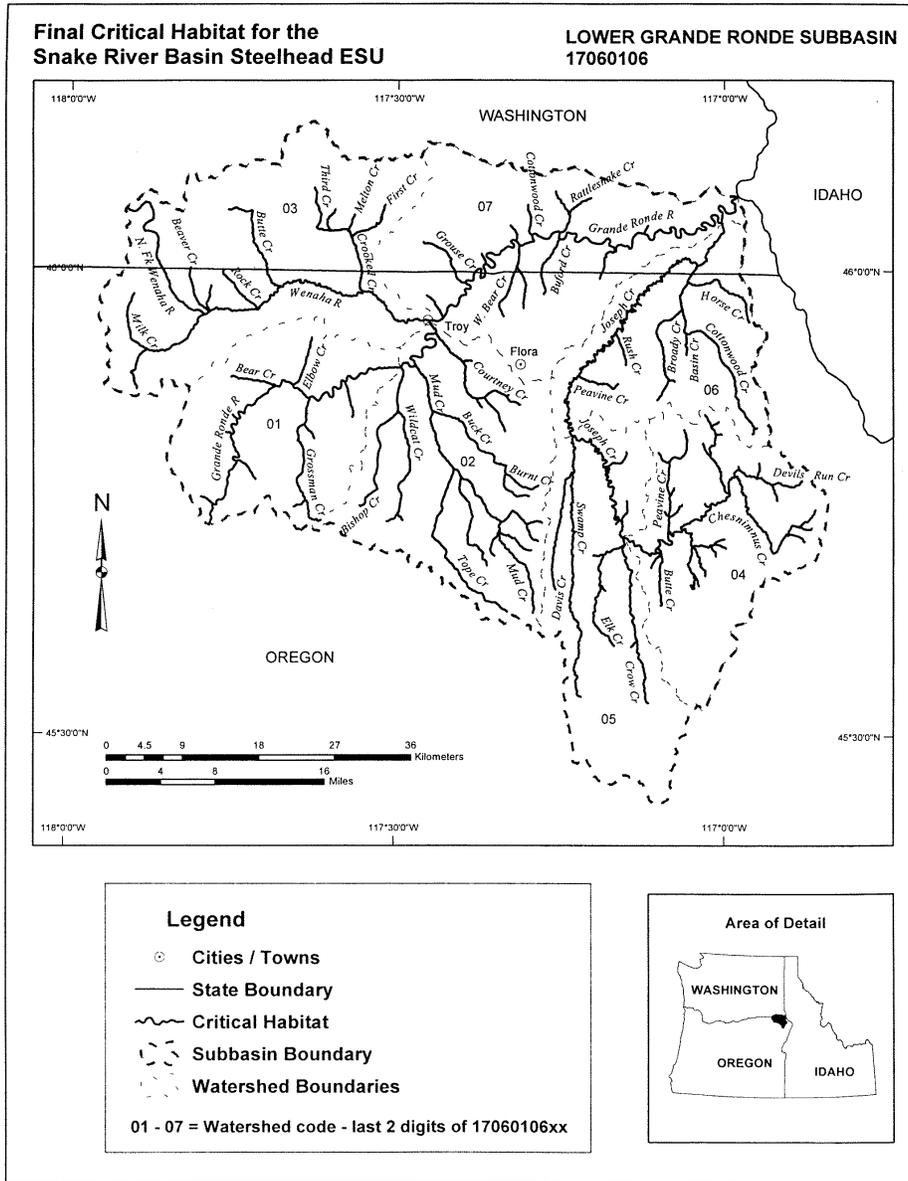


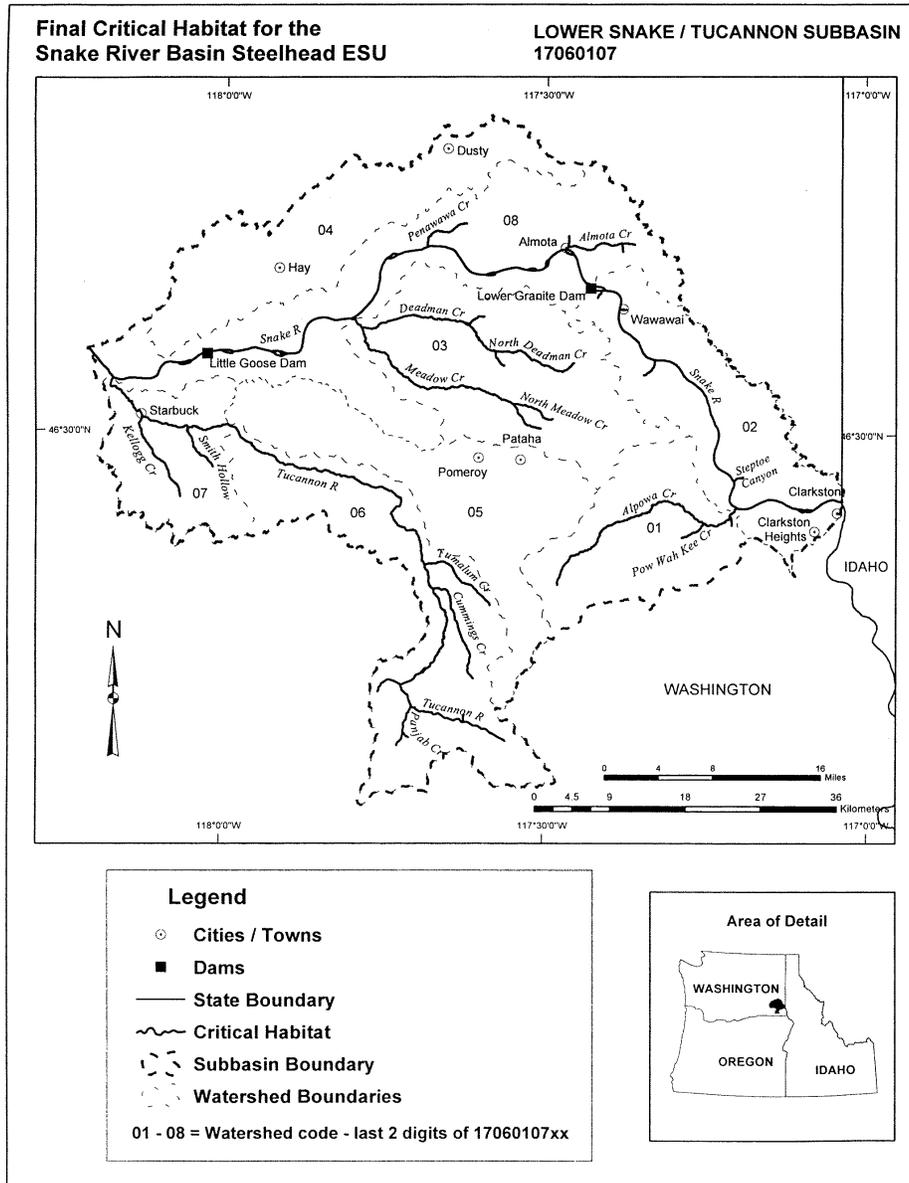


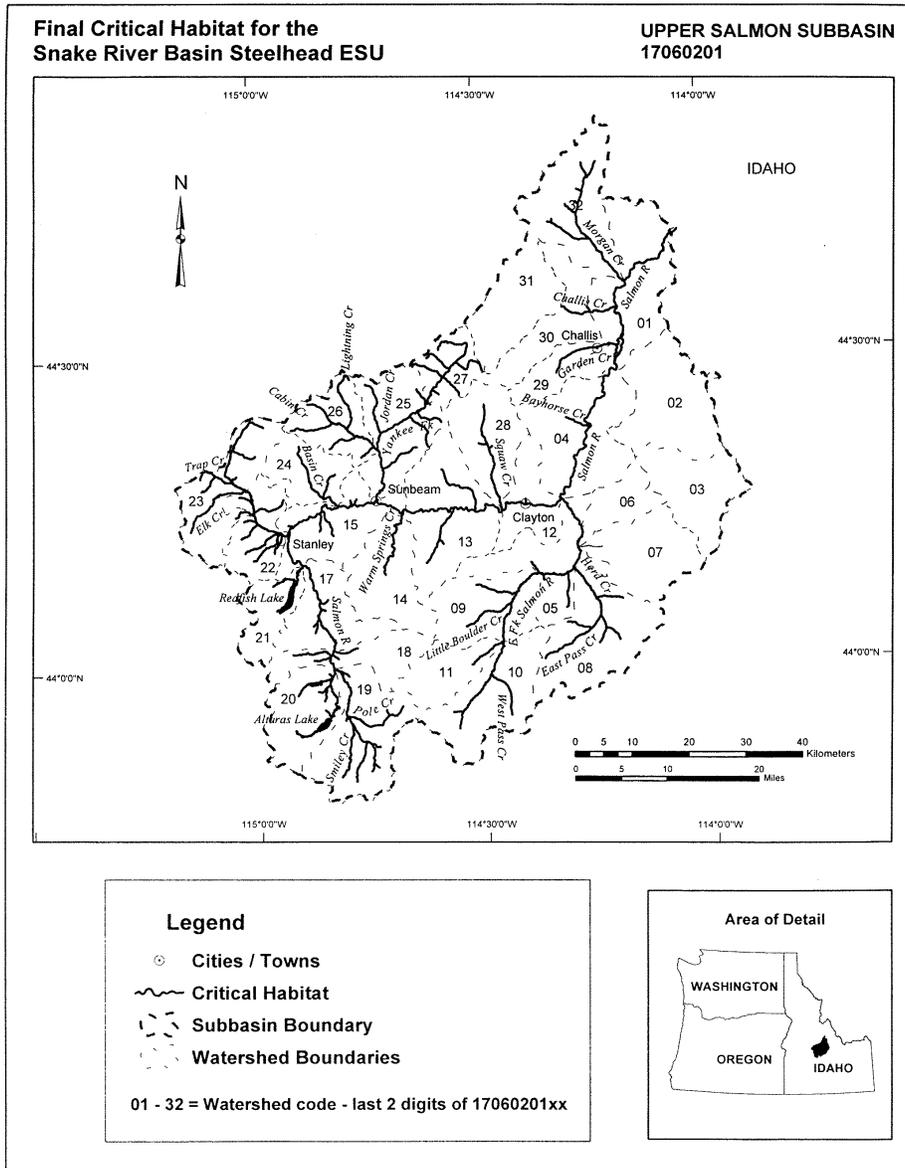


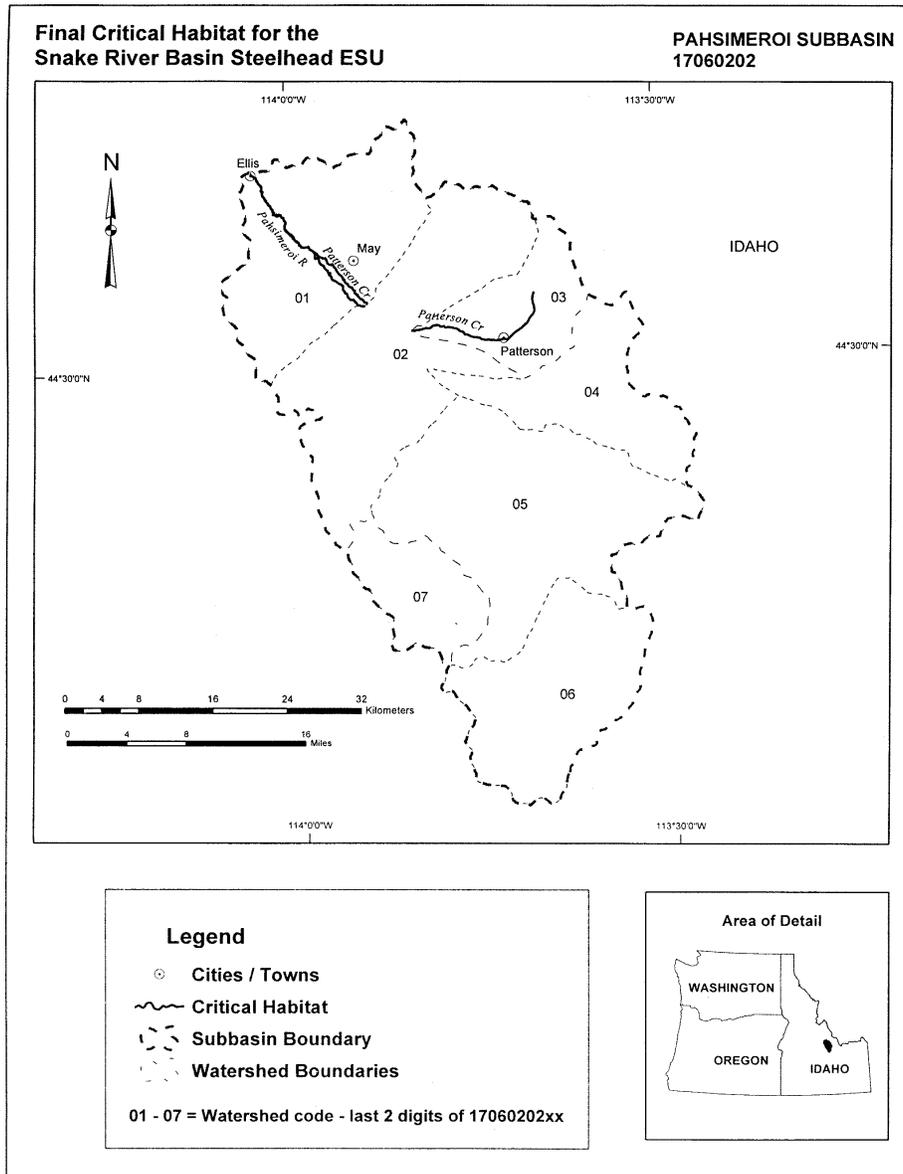


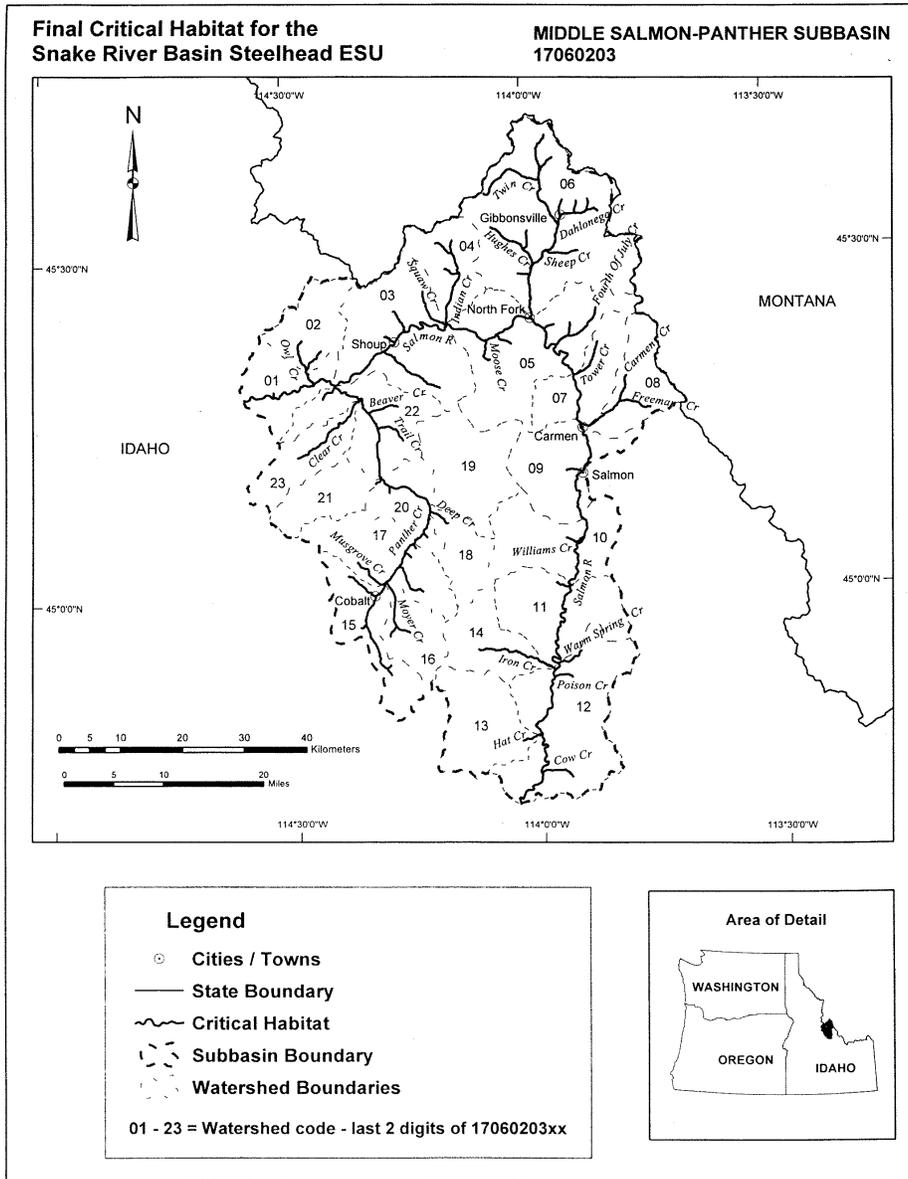


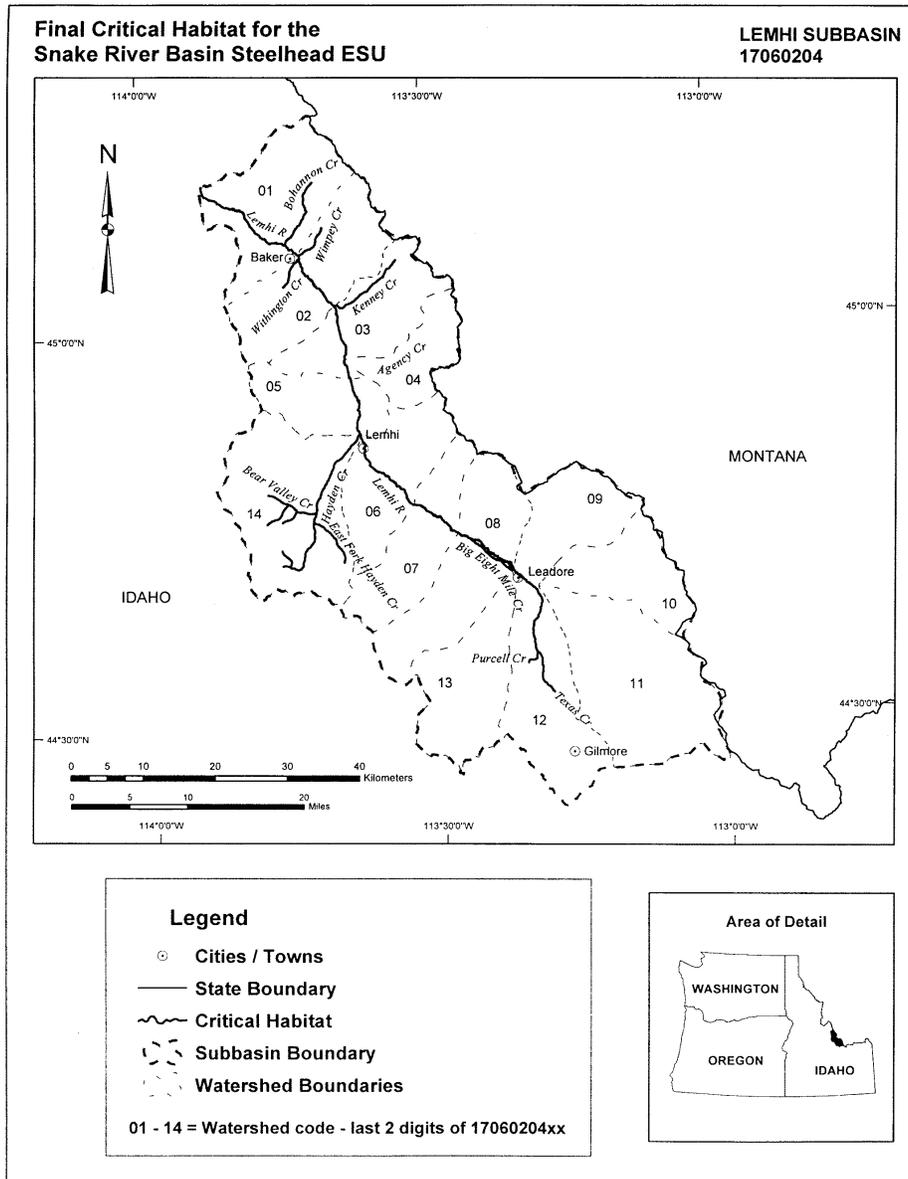


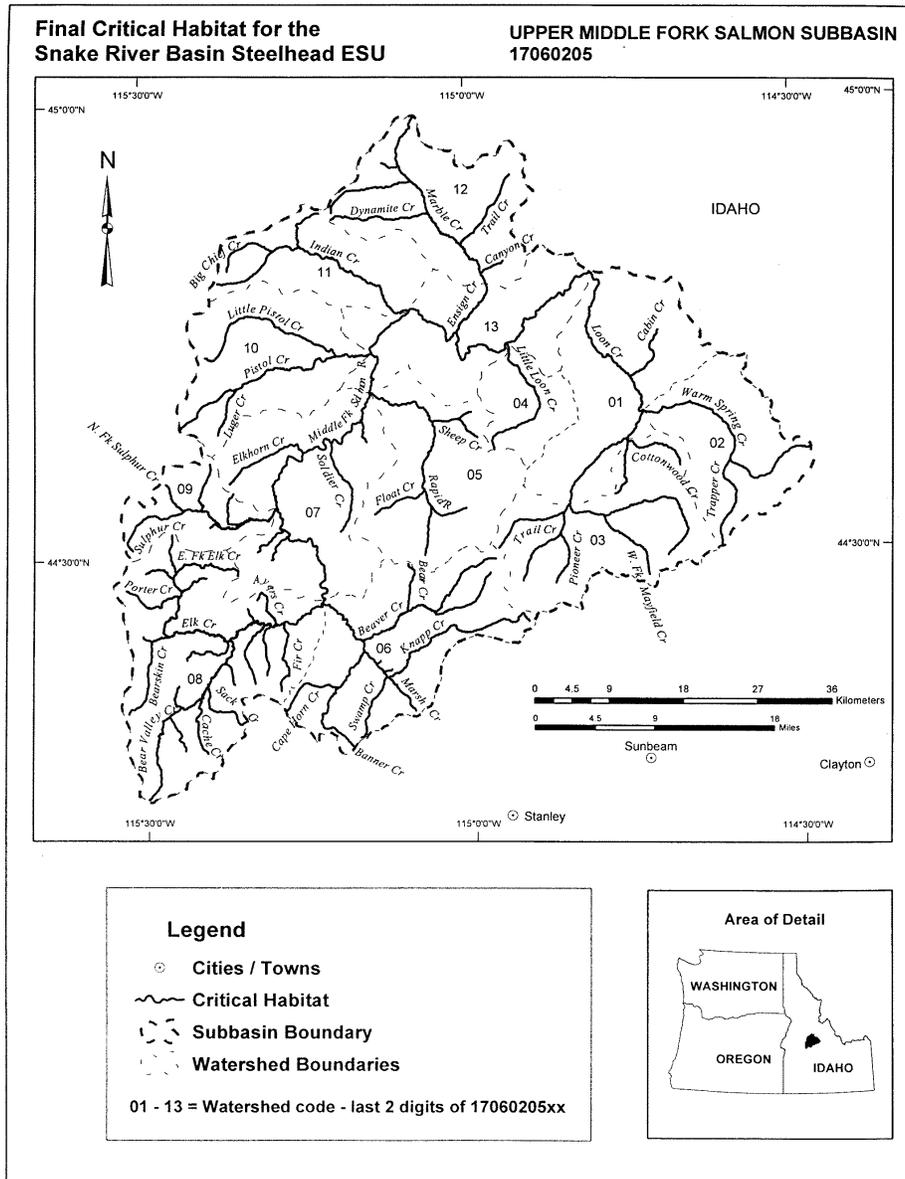


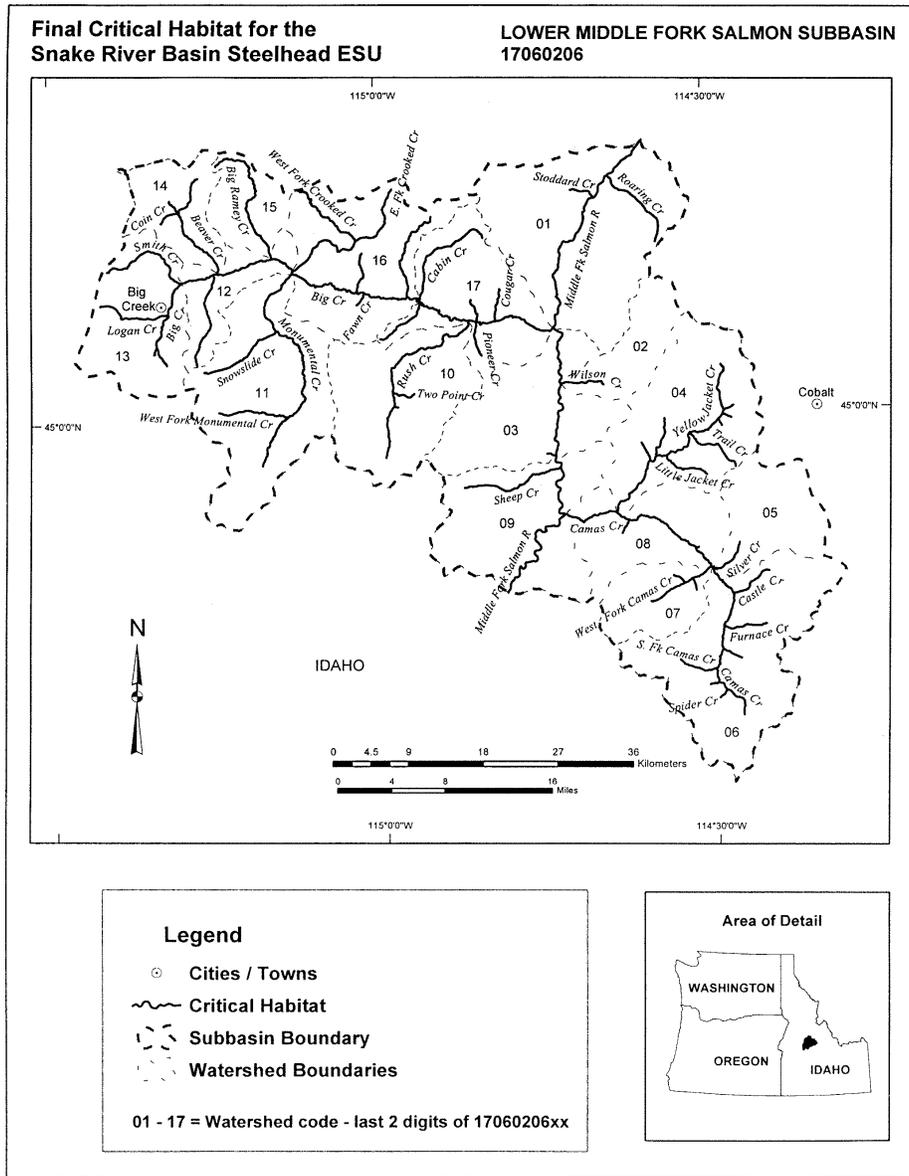


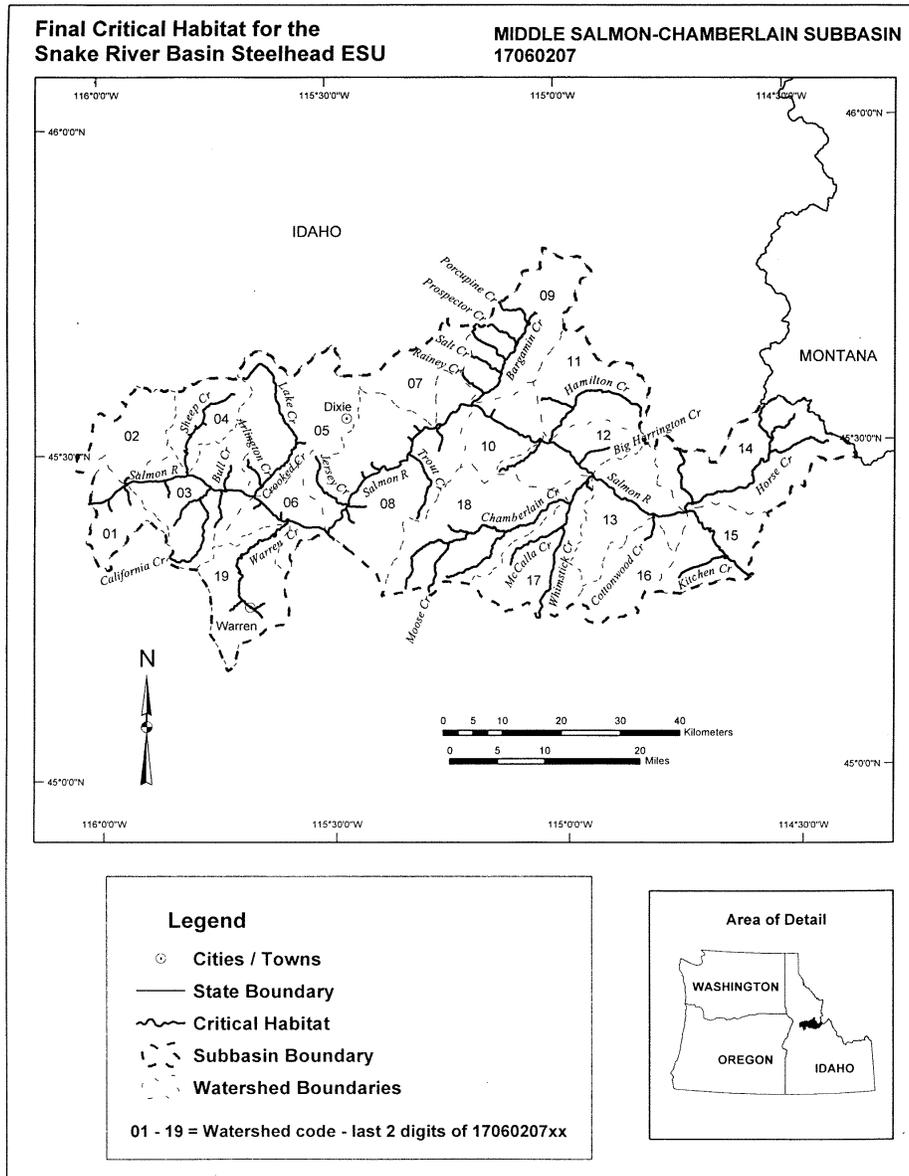


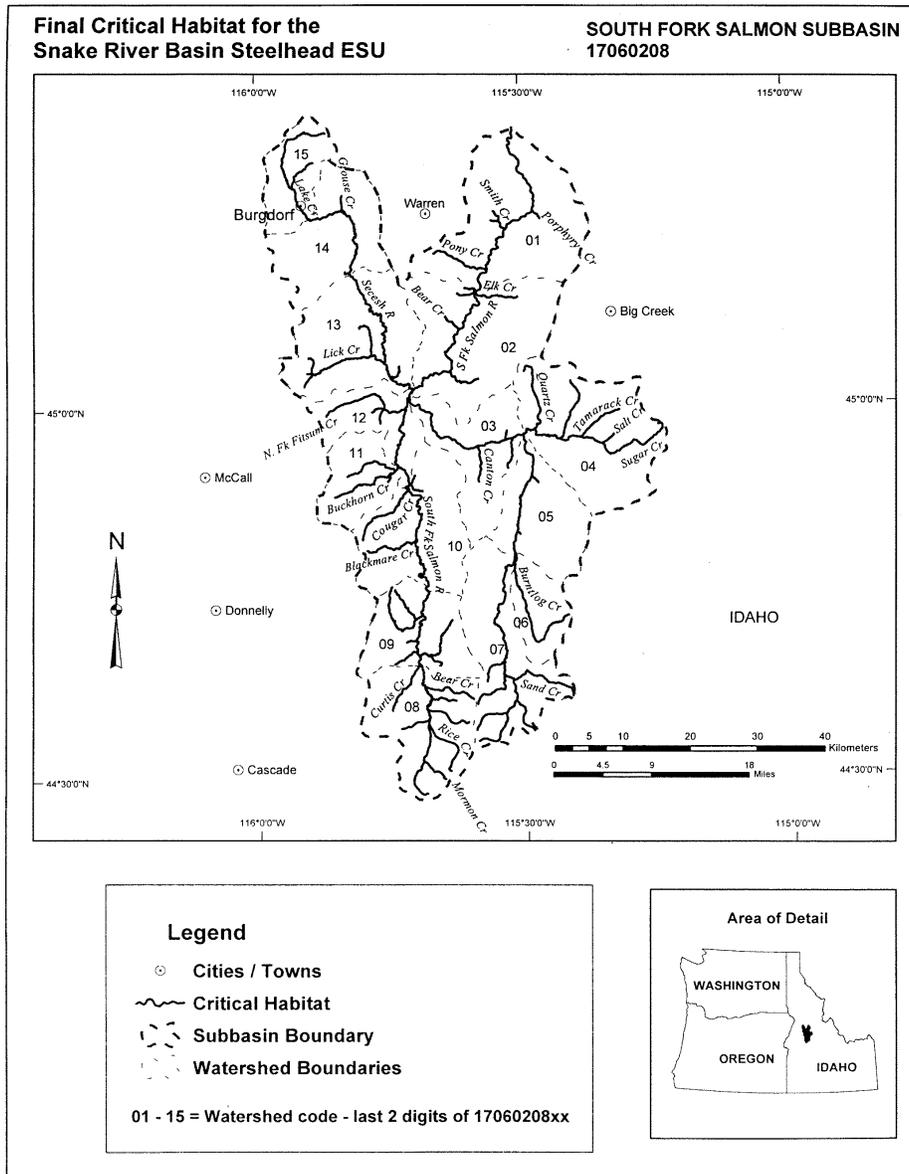


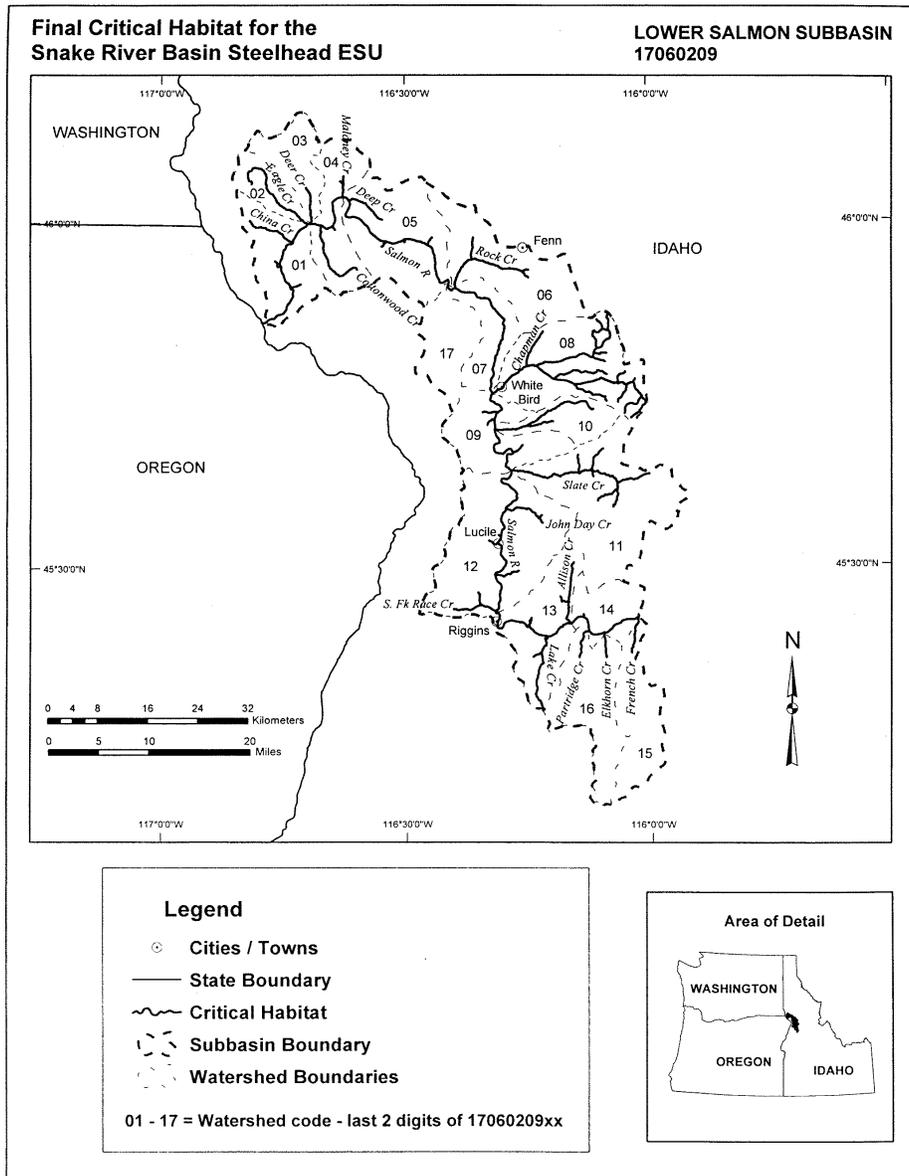


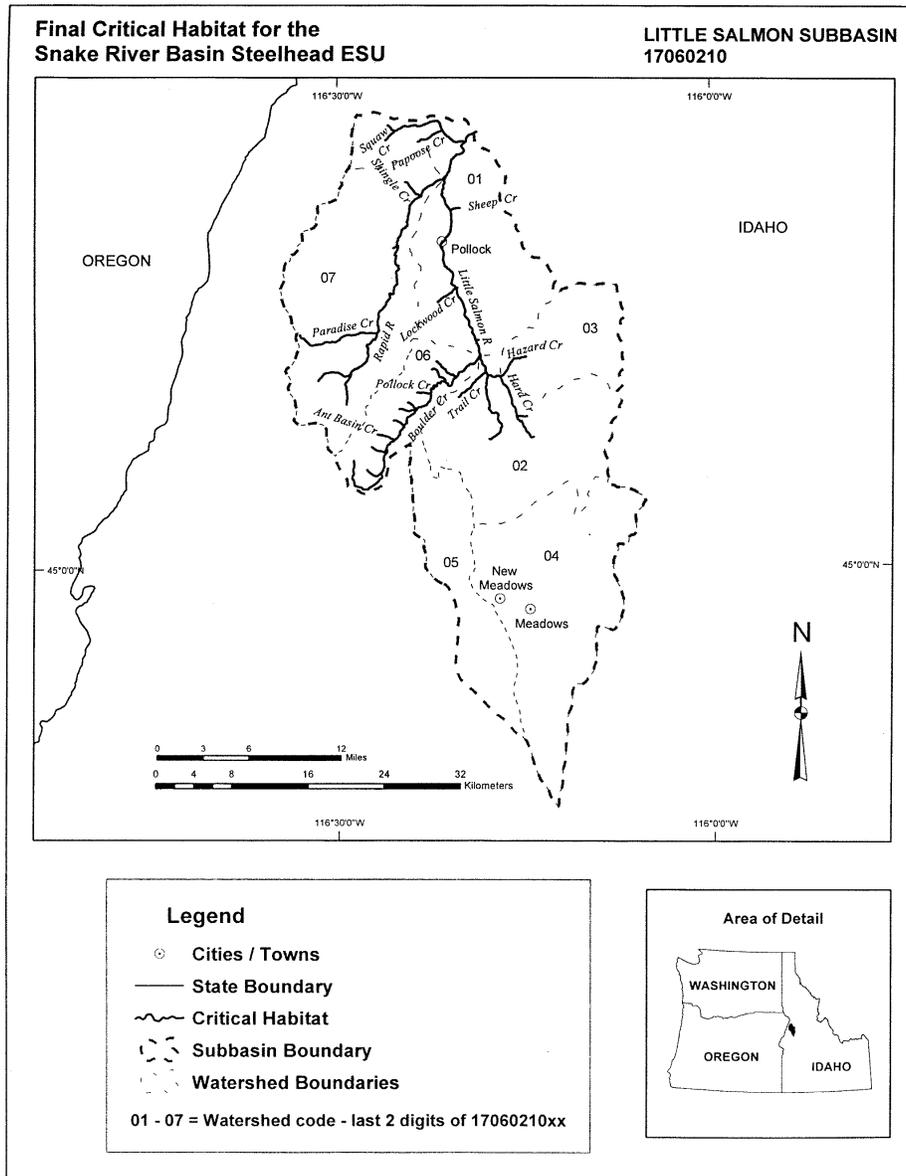


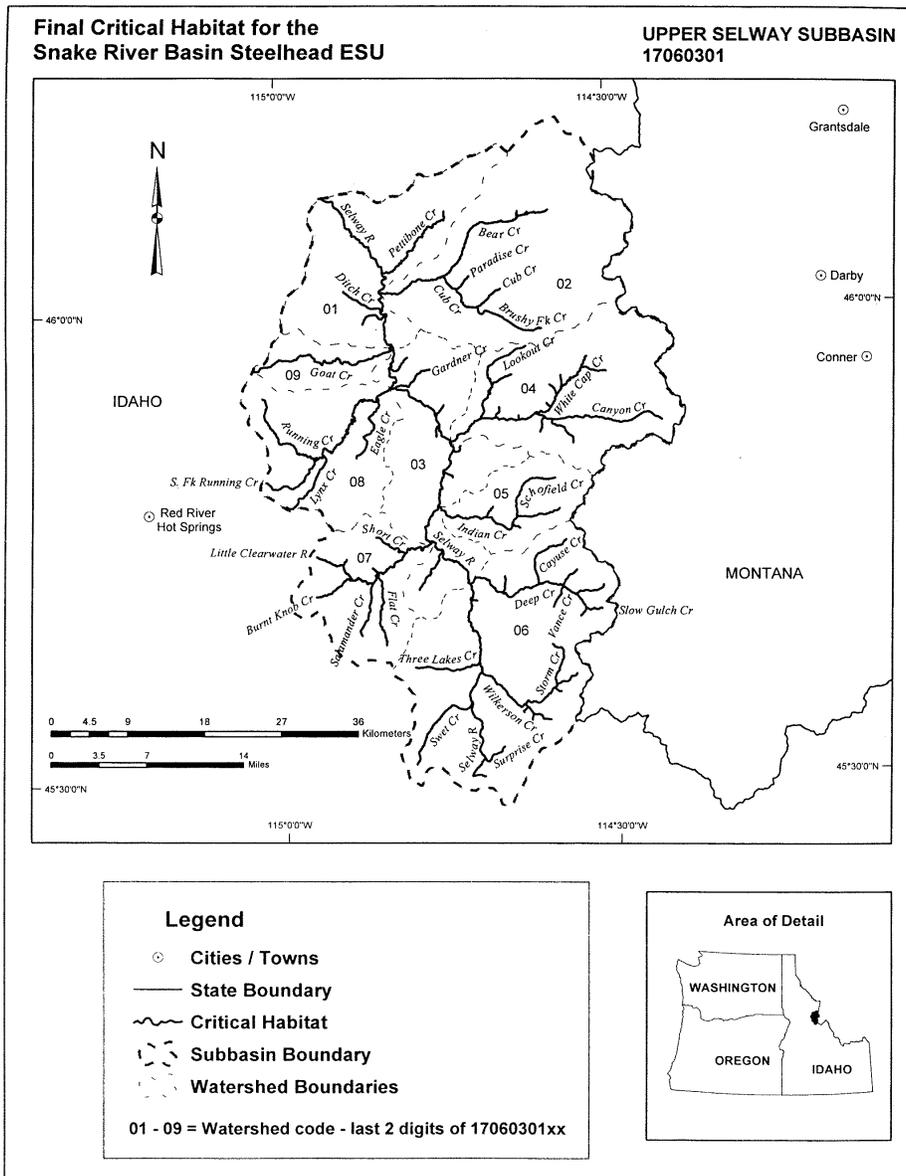


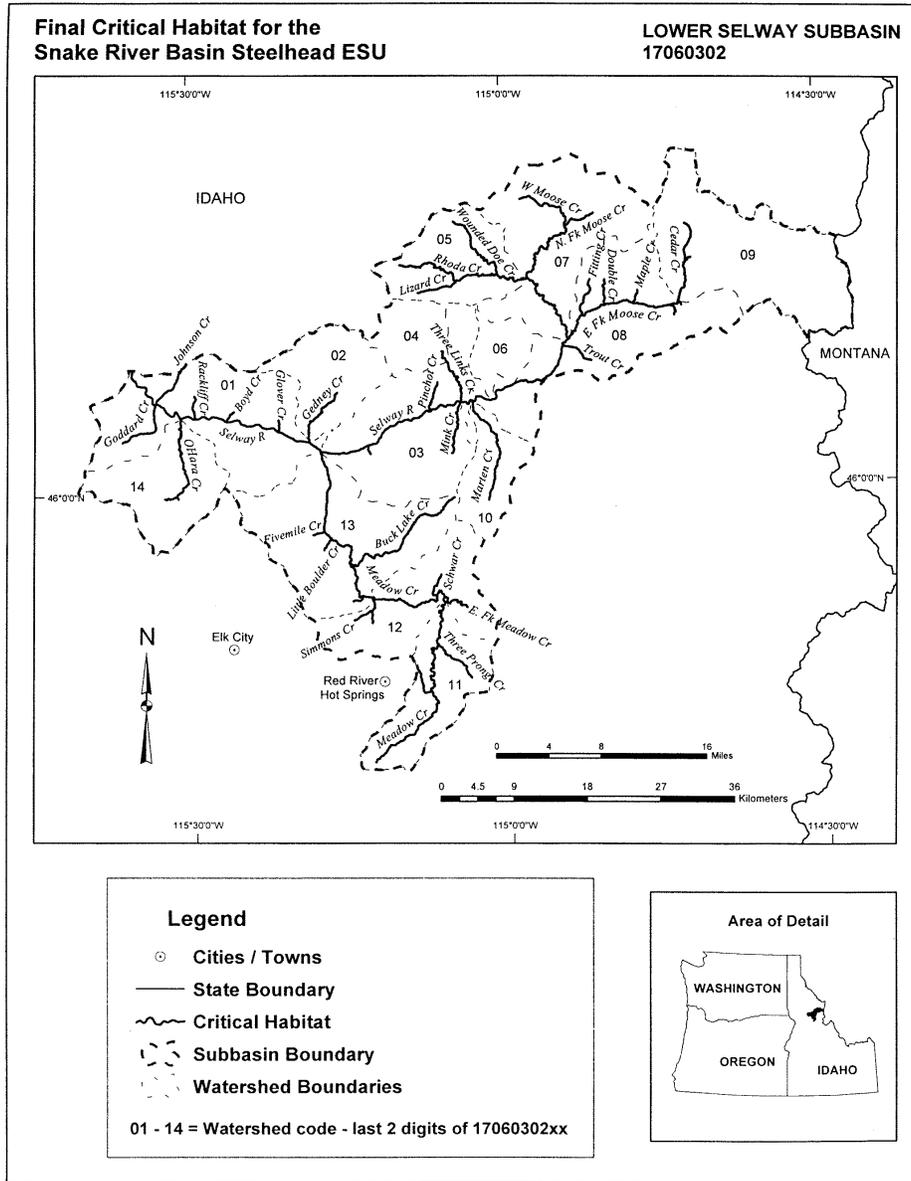


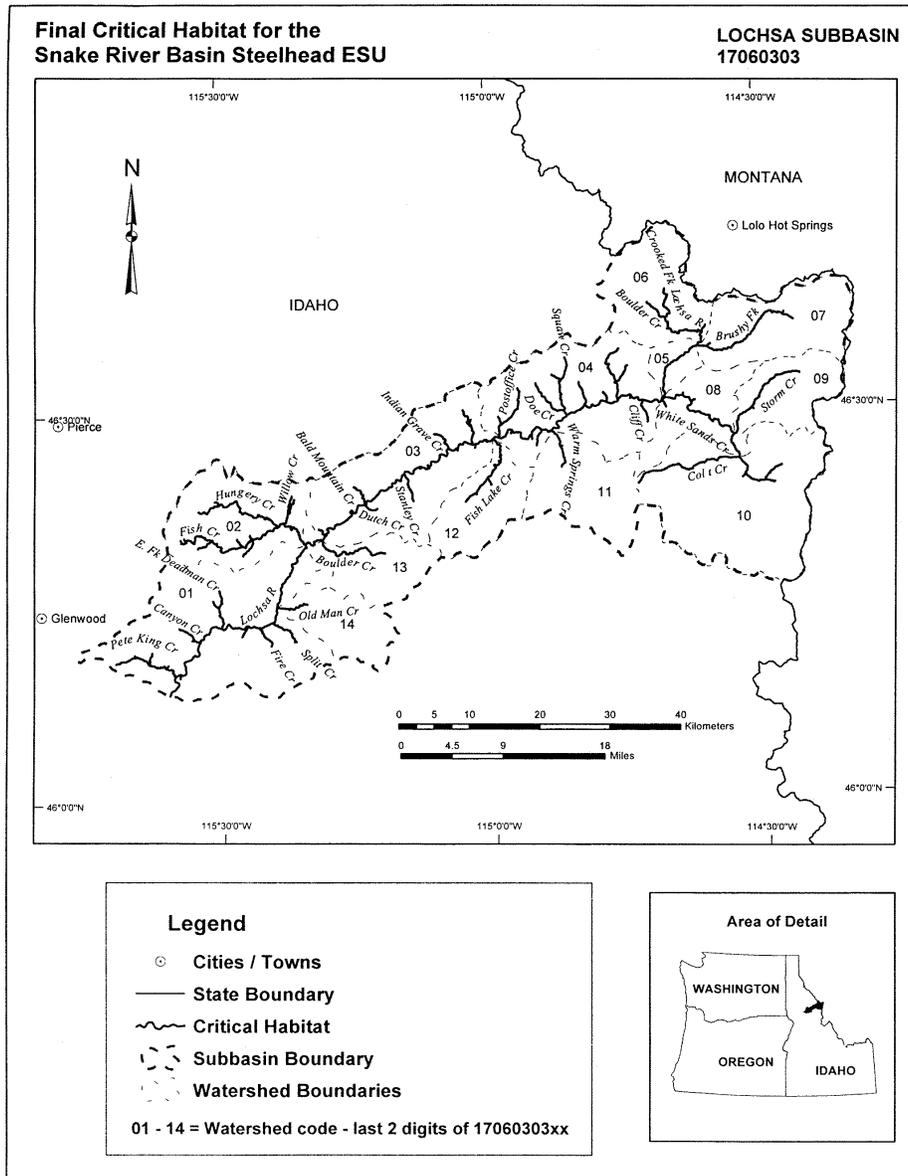


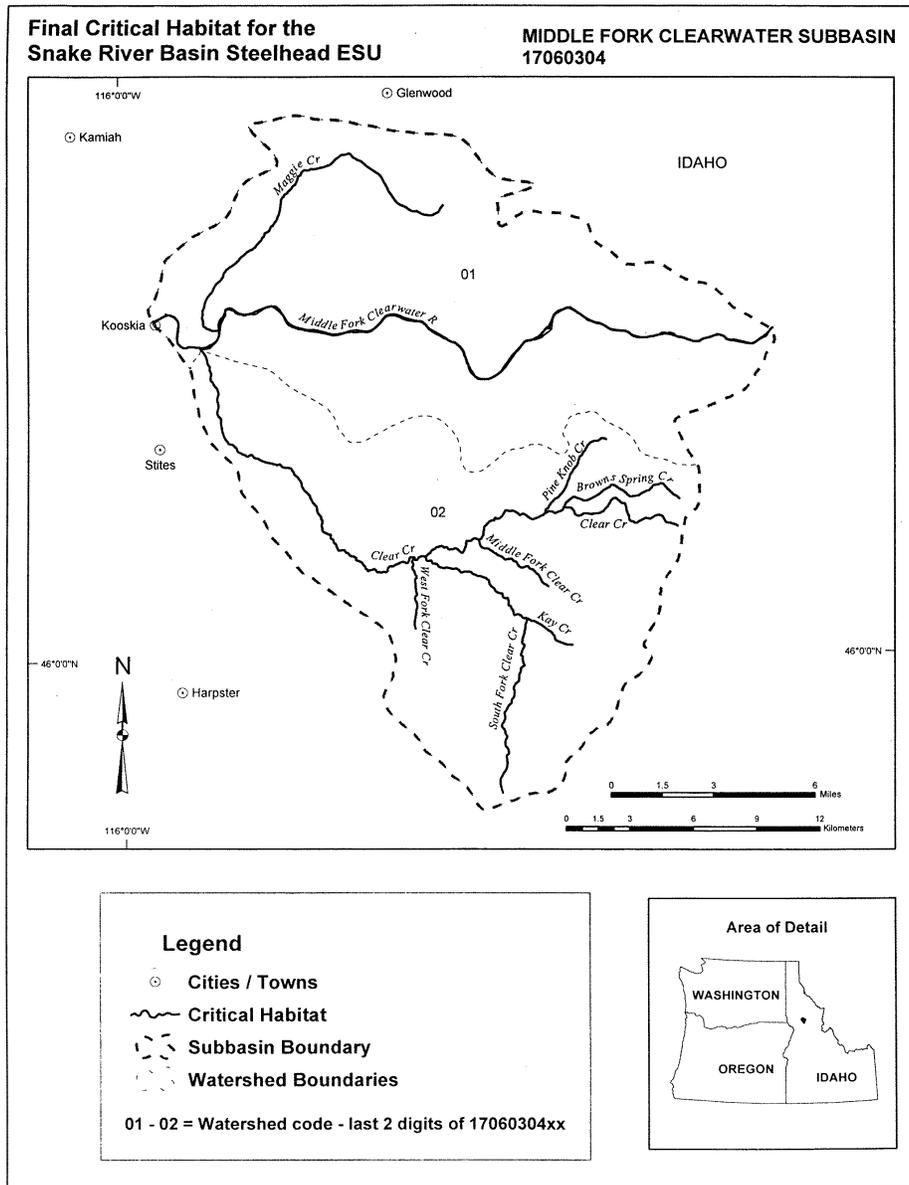


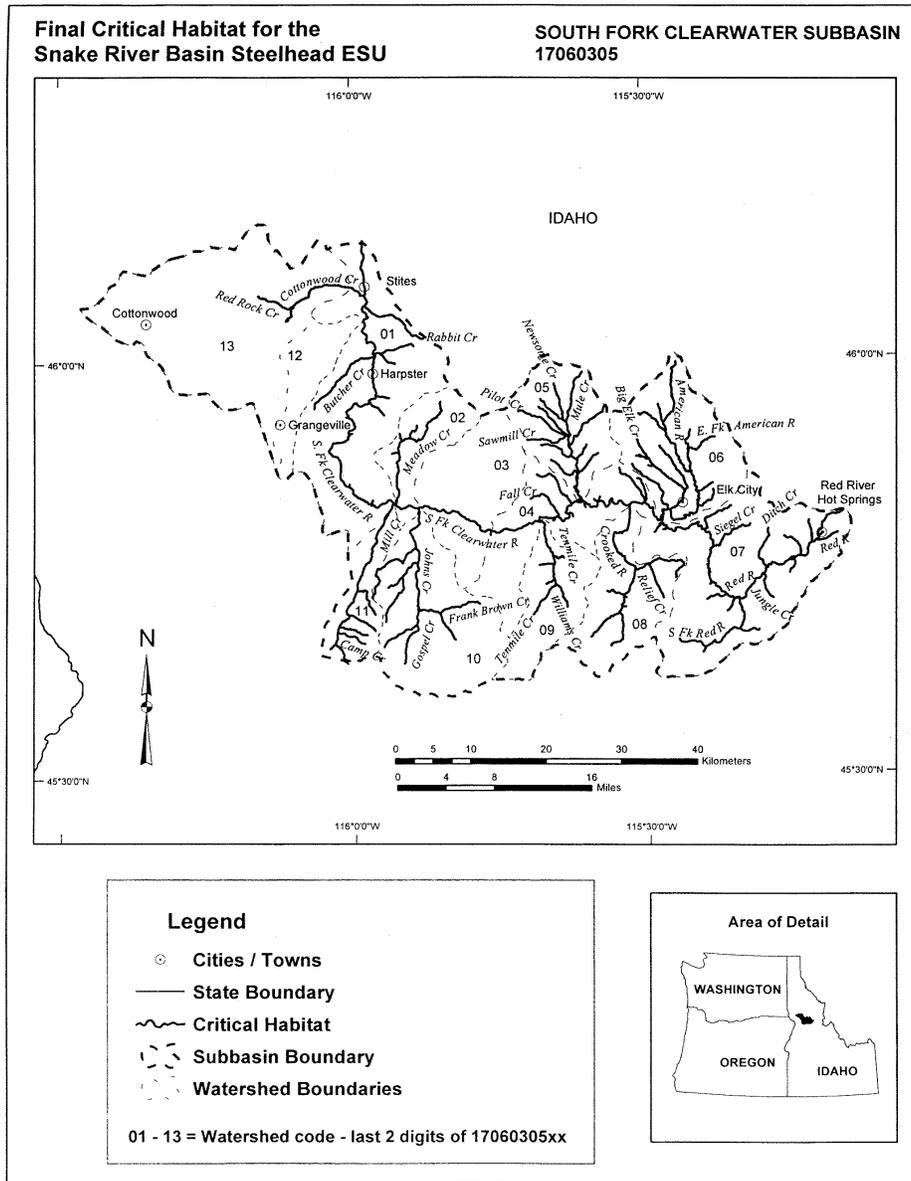


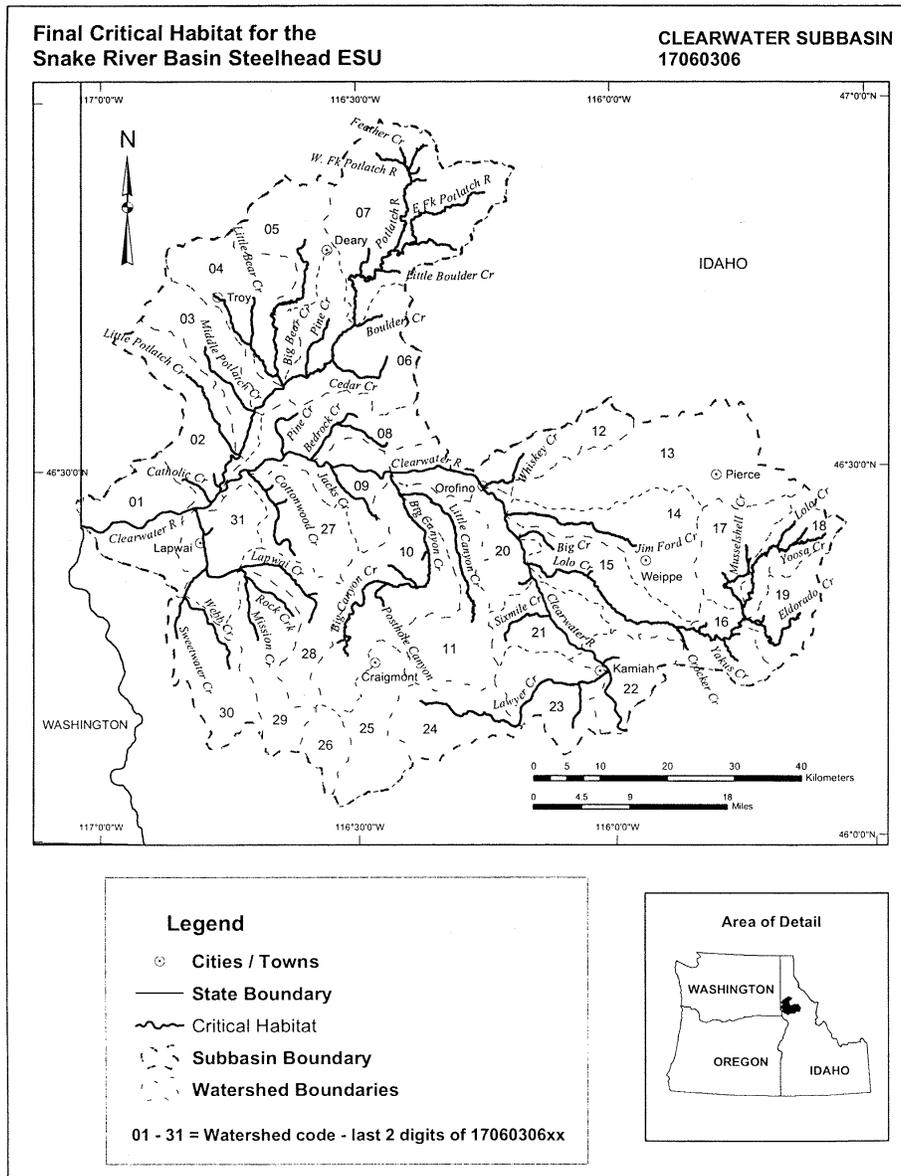


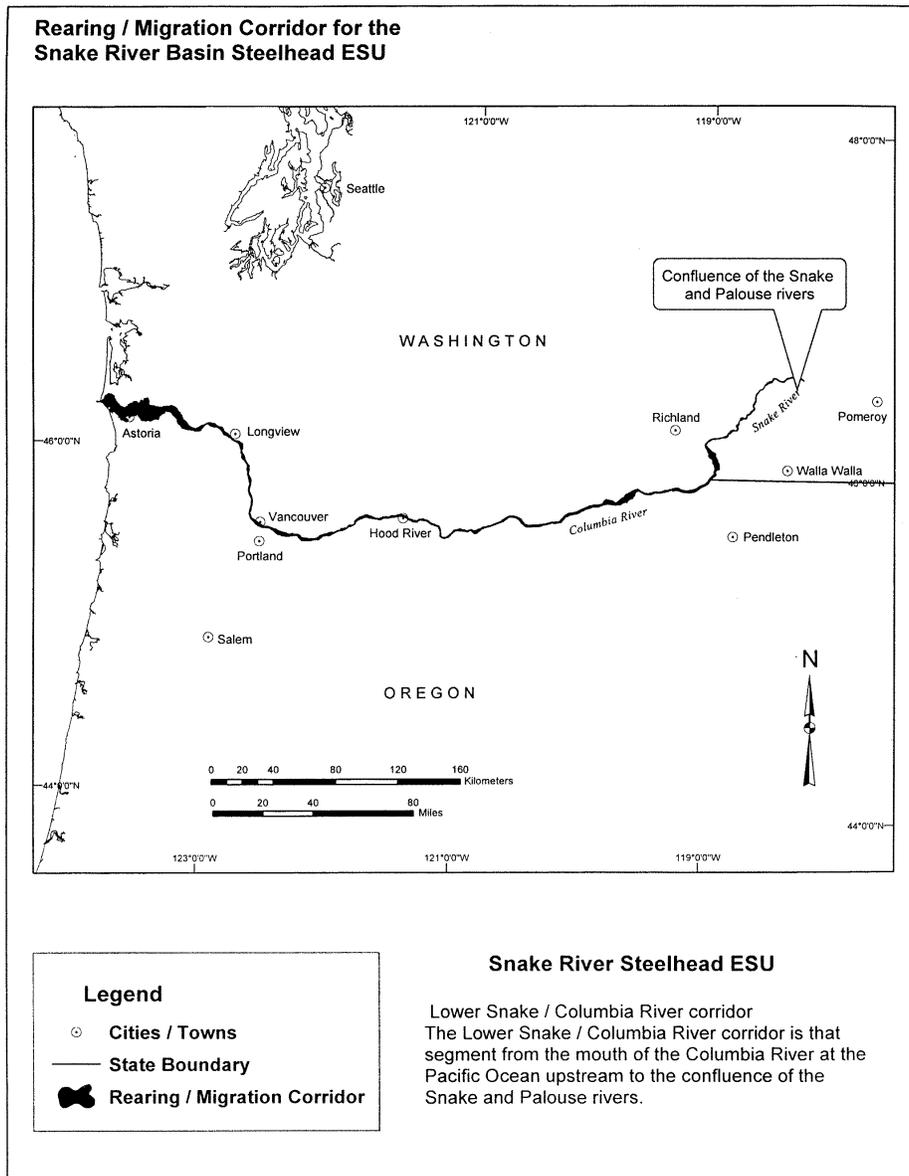












(r) *Middle Columbia River Steelhead* (*Oncorhynchus mykiss*). Critical habitat is designated to include the areas defined in the following subbasins:

- (1) Upper Yakima Subbasin 17030001—
- (i) *Upper Yakima River Watershed*

1703000101. Outlet(s) = Yakima River (Lat 47.1770, Long -120.9964) upstream to endpoint(s) in: Big Creek (47.1951, -121.1181); Cabin Creek (47.2140, -121.2400); Cle Elum River (47.2457, -121.0729); Kachess River (47.2645,

-121.2062); Little Creek (47.2002, -121.0842); Peterson Creek (47.1765, -121.0592); Tucker Creek (47.2202, -121.1639); Yakima River (47.3219, -121.3371).

(ii) *Teanaway River Watershed 1703000102*. Outlet(s) = Yakima River (Lat 47.1673, Long -120.8338) upstream to endpoint(s) in: Bear Creek (47.3684, -120.7902); DeRoux Creek (47.4202, -120.9477); Dickey Creek (47.2880, -120.8322); Indian Creek (47.3216, -120.8145); Jack Creek (47.3414, -120.8130); Jungle Creek (47.3453, -120.8951); Mason Creek (47.2528, -120.7889); Middle Creek (47.2973, -120.8204); Middle Fork Teanaway River (47.3750, -120.9800); Standup Creek (47.3764, -120.8362); Tillman Creek (47.1698, -120.9798); Unnamed (47.2809, -120.8995); West Fork Teanaway River (47.3040, -121.0179); Yakima River (47.1770, -120.9964).

(iii) *Middle Upper Yakima River Watershed 1703000103*. Outlet(s) = Yakima River (Lat 46.8987, Long -120.5035) upstream to endpoint(s) in: Badger Creek (46.9305, -120.4805); Coleman Creek (46.9636, -120.4764); Cooke Creek (46.9738, -120.4381); Dry Creek (47.0366, -120.6122); First Creek (47.2082, -120.6732); Iron Creek (47.3495, -120.7032); Manastash Creek (46.9657, -120.7347); Naneum Creek (46.9561, -120.4987); North Fork Taneum Creek (47.1224, -121.0396); Reecer Creek (47.0066, -120.5817); South Fork Taneum Creek (47.0962, -120.9713); Swauk Creek (47.3274, -120.6586); Unnamed (46.9799, -120.5407); Unnamed (47.0000, -120.5524); Unnamed (47.0193, -120.5676); Williams Creek (47.2638, -120.6513); Wilson Creek (46.9931, -120.5497); Yakima River (47.1673, -120.8338).

(iv) *Umtanum/Wenas Watershed 1703000104*. Outlet(s) = Yakima River (Lat 46.6309, Long -120.5130) upstream to endpoint(s) in: Burbank Creek (46.7663, -120.4238); Lmuma Creek (46.8224, -120.4510); Umtanum Creek (46.8928, -120.6130); Wenas Creek (46.7087, -120.5179); Yakima River (46.8987, -120.5035).

(2) Naches Subbasin 17030002—(i) *Little Naches River Watershed 1703000201*. Outlet(s) = Little Naches River (Lat 46.9854, Long -121.0915) upstream to endpoint(s) in: American River (46.9008, -121.4194); Barton Creek (46.8645, -121.2869); Bear Creek (47.0793,

-121.2415); Blowout Creek (47.0946, -121.3046); Crow Creek (47.0147, -121.3241); Goat Creek (46.9193, -121.2269); Kettle Creek (46.9360, -121.3262); Mathew Creek (47.0829, -121.1944); Miner Creek (46.9542, -121.3074); Morse Creek (46.9053, -121.4131); North Fork Little Naches River (47.0958, -121.3141); Parker Creek (46.9589, -121.2900); Pinus Creek (46.9682, -121.2766); Quartz Creek (47.0382, -121.1128); Scab Creek (46.8969, -121.2459); South Fork Little Naches River (47.0574, -121.2760); Sunrise Creek (46.9041, -121.2448); Survey Creek (46.9435, -121.3296); Timber Creek (46.9113, -121.3822); Union Creek (46.9366, -121.3596); Unnamed (46.8705, -121.2809); Unnamed (46.8741, -121.2956); Unnamed (46.8872, -121.2811); Unnamed (46.8911, -121.2816); Unnamed (46.9033, -121.4162); Unnamed (46.9128, -121.2286); Unnamed (46.9132, -121.4058); Unnamed (46.9158, -121.3710); Unnamed (46.9224, -121.2200); Unnamed (46.9283, -121.3484); Unnamed (46.9302, -121.2103); Unnamed (46.9339, -121.1970); Unnamed (46.9360, -121.3482); Unnamed (46.9384, -121.3200); Unnamed (46.9390, -121.1898); Unnamed (46.9396, -121.3404); Unnamed (46.9431, -121.3088); Unnamed (46.9507, -121.2894); Unnamed (47.0774, -121.3092); Wash Creek (46.9639, -121.2810).

(ii) *Naches River/Rattlesnake Creek Watershed 1703000202*. Outlet(s) = Naches River (Lat 46.7467, Long -120.7858) upstream to endpoint(s) in: Glass Creek (46.8697, -121.0974); Gold Creek (46.9219, -121.0464); Hindoo Creek (46.7862, -121.1689); Little Rattlesnake Creek (46.7550, -121.0543); Lost Creek (46.9200, -121.0568); Naches River (46.9854, -121.0915); North Fork Rattlesnake Creek (46.8340, -121.1439); Rattlesnake Creek (46.7316, -121.2339); Rock Creek (46.8847, -120.9718).

(iii) *Naches River/Tieton River Watershed 1703000203*. Outlet(s) = Naches River (Lat 46.6309, Long -120.5130) upstream to endpoint(s) in: Naches River (46.7467, -120.7858); Oak Creek (46.7295, -120.9348); South Fork Cowiche Creek (46.6595, -120.7601); Tieton River (46.6567, -121.1287); Unnamed (46.6446, -120.5923); Wildcat Creek (46.6715, -121.1520).

(3) Lower Yakima Subbasin 17030003—(i) *Ahtanum Creek Watershed 1703000301*. Outlet(s) = Ahtanum Creek (Lat 46.5283, Long -120.4732) upstream to

endpoint(s) in: Foundation Creek (46.5349, -121.0134); Middle Fork Ahtanum Creek (46.5075, -121.0225); Nasty Creek (46.5718, -120.9721); North Fork Ahtanum Creek (46.5217, -121.0917); South Fork Ahtanum Creek (46.4917, -120.9590); Unnamed (46.5811, -120.6390).

(ii) *Upper Lower Yakima River Watershed 1703000302*. Outlet(s) = Yakima River (Lat 46.5283, Long -120.4732) upstream to endpoint(s) in: Unnamed (46.5460, -120.4383); Yakima River (46.6309, -120.5130).

(iii) *Upper Toppenish Creek Watershed 1703000303*. Outlet(s) = Toppenish Creek (Lat 46.3767, Long -120.6172) upstream to endpoint(s) in: Agency Creek (46.3619, -120.9646); Branch Creek (46.2958, -120.9969); North Fork Simcoe Creek (46.4548, -120.9307); North Fork Toppenish Creek (46.3217, -120.9985); Old Maid Canyon (46.4210, -120.9349); South Fork Toppenish Creek (46.2422, -121.0885); Toppenish Creek (46.3180, -121.1387); Unnamed (46.3758, -120.9336); Unnamed (46.4555, -120.8436); Wahtum Creek (46.3942, -120.9146); Willy Dick Canyon (46.2952, -120.9021).

(iv) *Lower Toppenish Creek Watershed 1703000304*. Outlet(s) = Yakima River (Lat 46.3246, Long -120.1671) upstream to endpoint(s) in: Toppenish Creek (46.3767, -120.6172); Unnamed (46.3224, -120.4464); Unnamed (46.3363, -120.5891); Unnamed (46.3364, -120.2288); Unnamed (46.3679, -120.2801); Unnamed (46.4107, -120.5582); Unnamed (46.4379, -120.4258); Yakima River (46.5283, -120.4732).

(v) *Satus Creek Watershed 1703000305*. Outlet(s) = Satus Creek (Lat 46.2893, Long -120.1972) upstream to endpoint(s) in: Bull Creek (46.0314, -120.5147); Kusshi Creek (46.0994, -120.6094); Logy Creek (46.1357, -120.6389); Mule Dry Creek (46.0959, -120.3186); North Fork Dry Creek (46.1779, -120.7669); Satus Creek (46.0185, -120.7268); Unnamed (46.0883, -120.5278); Wilson Charley Canyon (46.0419, -120.6479).

(vi) *Yakima River/Spring Creek Watershed 1703000306*. Outlet(s) = Yakima River (Lat 46.3361, Long -119.4817) upstream to endpoint(s) in: Corral Creek (46.2971, -119.5302); Satus Creek (46.2893, -120.1972); Snipes Creek (46.2419, -119.6802); Spring Creek (46.2359, -119.6952); Unnamed (46.2169, -120.0189); Unnamed (46.2426, -120.0993); Unnamed

(46.2598, -120.1322); Unnamed (46.2514, -120.0190); Yakima River (46.3246, -120.1671).

(vii) *Yakima River/Cold Creek Watershed 1703000307*. Outlet(s) = Yakima River (Lat 46.2534, Long -119.2268) upstream to endpoint(s) in: Yakima River (46.3361, -119.4817).

(4) Middle Columbia/Lake Wallula Subbasin 17070101—(i) *Upper Lake Wallula Watershed 1707010101*. Outlet(s) = Columbia River (Lat 46.0594, Long -118.9445) upstream to endpoint(s) in: Columbia River (46.1776, -119.0183).

(ii) *Lower Lake Wallula Watershed 1707010102*. Outlet(s) = Columbia River (Lat 45.9376, Long -119.2969) upstream to endpoint(s) in: Columbia River (46.0594, -118.9445).

(iii) *Glade Creek Watershed 1707010105*. Outlet(s) = Glade Creek (Lat 45.8895, Long -119.6809) upstream to endpoint(s) in: Glade Creek (45.8978, -119.6962).

(iv) *Upper Lake Umatilla Watershed 1707010106*. Outlet(s) = Columbia River (Lat 45.8895, Long -119.6809) upstream to endpoint(s) in: Columbia River (45.9376, -119.2969).

(v) *Middle Lake Umatilla Watershed 1707010109*. Outlet(s) = Columbia River (Lat 45.8318, Long -119.9069) upstream to endpoint(s) in: Columbia River (45.8895, -119.6809).

(vi) *Alder Creek Watershed 1707010110*. Outlet(s) = Alder Creek (Lat 45.8298, Long -119.9277) upstream to endpoint(s) in: Alder Creek (45.8668, -119.9224).

(vii) *Pine Creek Watershed 1707010111*. Outlet(s) = Pine Creek (Lat 45.7843, Long -120.0823) upstream to endpoint(s) in: Pine Creek (45.8234, -120.1396).

(viii) *Wood Gulch Watershed 1707010112*. Outlet(s) = Wood Creek (Lat 45.7443, Long -120.1930) upstream to endpoint(s) in: Big Horn Canyon (45.8322, -120.2467); Wood Gulch (45.8386, -120.3006).

(ix) *Rock Creek Watershed 1707010113*. Outlet(s) = Rock Creek (Lat 45.6995, Long -120.4597) upstream to endpoint(s) in: Rock Creek (45.8835, -120.5557); Squaw Creek (45.8399, -120.4935).

(x) *Lower Lake Umatilla Watershed 1707010114*. Outlet(s) = Columbia River (Lat 45.7168, Long -120.6927) upstream to endpoint(s) in: Chapman Creek (45.7293, -120.3148); Columbia River (45.8318, -119.9069).

(5) Walla Walla Subbasin 17070102—(i) *Upper Walla Walla River Watershed 1707010201*. Outlet(s) = Walla Walla River (Lat 45.9104, Long -118.3696) upstream to endpoint(s) in: Bear Creek (45.8528, -118.0991); Big Meadow Canyon (45.900, -118.1116); Burnt Cabin Gulch (45.8056, -118.0593); Couse Creek (45.8035, -118.2032); Elbow Creek (45.7999, -118.1462); Kees Canyon (45.8262, -118.0927); Little Meadow Canyon (45.9094, -118.1333); North Fork Walla Walla River (45.9342, -118.0169); Reser Creek (45.8840, -117.9950); Rodgers Gulch (45.8513, -118.0839); Skipthorton Creek (45.8892, -118.0255); South Fork Walla Walla River (45.9512, -117.9647); Swede Canyon (45.8506, -118.0640); Table Creek (45.8540, -118.0546); Unnamed (45.8026, -118.1412); Unnamed (45.8547, -117.9915); Unnamed (45.8787-118.0387); Unnamed (45.8868, -117.9629); Unnamed (45.9095, -117.9621).

(ii) *Mill Creek Watershed 1707010202*. Outlet(s) = Mill Creek (Lat 46.0391, Long -118.4779) upstream to endpoint(s) in: Blue Creek (46.0188, -118.0519); Broken Creek (45.9745, -117.9899); Cold Creek (46.0540, -118.4097); Deadman Creek (46.0421, -117.9503); Doan Creek (46.0437, -118.4353); Green Fork (46.0298, -117.9389); Henry Canyon (45.9554, -118.1104); Low Creek (45.9649, -117.9980); Mill Creek (46.0112, -117.9406); North Fork Mill Creek (46.0322, -117.9937); Paradise Creek (46.0005, -117.9900); Tiger Creek (45.9588, -118.0253); Unnamed (46.0253, -117.9320); Unnamed (46.0383, -117.9463); Webb Creek (45.9800, -118.0875).

(iii) *Upper Touchet River Watershed 1707010203*. Outlet(s) = Touchet River (Lat 46.3196, Long -117.9841) upstream to endpoint(s) in: Burnt Fork (46.0838, -117.9311); Coates Creek (46.1585, -117.8431); Green Fork (46.0737, -117.9712); Griffin Fork (46.1100, -117.9336); Ireland Gulch (46.1894, -117.8070); Jim Creek (46.2156, -117.7959); Lewis Creek (46.1855, -117.7791); North Fork Touchet River (46.0938, -117.8460); North Patit Creek (46.3418, -117.7538); Robinson Fork (46.1200, -117.9006); Rodgers Gulch (46.2813, -117.8411); Spangler Creek (46.1156, -117.7934); Unnamed (46.1049, -117.9351); Unnamed (46.1061, -117.9544); Unnamed (46.1206, -117.9386); Unnamed (46.1334, -117.9512); Unnamed (46.1604, -117.9018); Unnamed (46.2900,

-117.7339); Weidman Gulch (46.2359, -117.8067); West Patit Creek (46.2940, -117.7164); Whitney Creek (46.1348, -117.8491); Wolf Fork (46.1035, -117.8797).

(iv) *Middle Touchet River Watershed 1707010204*. Outlet(s) = Touchet River (Lat 46.2952, Long -118.3320) upstream to endpoint(s) in: North Fork Coppei Creek (46.1384, -118.0181); South Fork Coppei Creek (46.1302, -118.0608); Touchet River (46.3196, -117.9841); Whiskey Creek (46.2438, -118.0785).

(v) *Lower Touchet River Watershed 1707010207*. Outlet(s) = Touchet River (Lat 46.0340, Long -118.6828) upstream to endpoint(s) in: Touchet River (46.2952, -118.3320).

(vi) *Cottonwood Creek Watershed 1707010208*. Outlet(s) = Walla Walla River (Lat 46.0391, Long -118.4779) upstream to endpoint(s) in: Birch Creek (45.9489, -118.2541); Caldwell Creek (46.0493, -118.3022); East Little Walla Walla River (46.0009, -118.4069); Garrison Creek (46.0753, -118.2726); Middle Fork Cottonwood Creek (45.9566, -118.1776); North Fork Cottonwood Creek (45.9738, -118.1533); Reser Creek (46.0370, -118.3085); Russell Creek (46.0424, -118.2488); South Fork Cottonwood Creek (45.9252, -118.1798); Stone Creek (46.0618, -118.3081); Unnamed (45.9525, -118.2513); Unnamed (46.0022, -118.4070); Walla Walla River (45.9104, -118.3696); Yellowhawk Creek (46.0753, -118.2726).

(vii) *Dry Creek Watershed 1707010210*. Outlet(s) = Dry Creek (Lat 46.0507, Long -118.5932) upstream to endpoint(s) in: Dry Creek (46.0725, -118.0268); Mud Creek (46.1414, -118.1313); South Fork Dry Creek (46.0751, -118.0514); Unnamed (46.1122, -118.1141).

(viii) *Lower Walla Walla River Watershed 1707010211*. Outlet(s) = Walla Walla River (Lat 46.0594, Long -118.9445) upstream to endpoint(s) in: Walla Walla River (46.0391, -118.4779).

(6) Umatilla Subbasin 17070103—(i) *Upper Umatilla River Watershed 1707010301*. Outlet(s) = Umatilla River (Lat 45.7024, Long -118.3593) upstream to endpoint(s) in: Bear Creek (45.7595, -118.1942); Bobsled Creek (45.7268, -118.2503); Buck Creek (45.7081, -118.1059); East Fork Coyote Creek (45.7553, -118.1263); Johnson Creek #4 (45.7239, -118.0797); Lake Creek #2 (45.7040, -118.1297); Lick Creek (45.7400, -118.1880); North Fork Umatilla River

(45.7193, -118.0244); Rock Creek (45.7629, -118.2377); Ryan Creek (45.6362, -118.2963); Shimmiehorn Creek (45.6184, -118.1908); South Fork Umatilla River (45.6292, -118.2424); Spring Creek #2 (45.6288, -118.1525); Swamp Creek (45.6978, -118.1356); Thomas Creek (45.6546, -118.1435); Unnamed (45.6548, -118.1371); Unnamed (45.6737, -118.1616); Unnamed (45.6938, -118.3036); Unnamed (45.7060, -118.2123); Unnamed (45.7200, -118.3092); Unnamed (45.7241, -118.3197); Unnamed (45.7281, -118.1604); Unnamed (45.7282, -118.3372); Unnamed (45.7419, -118.1586); West Fork Coyote Creek (45.7713, -118.1513); Woodward Creek (45.7484, -118.0760).

(ii) *Meacham Creek Watershed 1707010302*. Outlet(s) = Meacham Creek (Lat 45.7024, Long -118.3593) upstream to endpoint(s) in: Bear Creek #3 (45.4882, -118.1993); Beaver Creek (45.4940, -118.4411); Boston Canyon (45.6594, -118.3344); Butcher Creek (45.4558, -118.3737); Camp Creek (45.5895, -118.2800); Duncan Canyon (45.5674, -118.3244); East Meacham Creek (45.4570, -118.2212); Hoskins Creek (45.5188, -118.2059); Line Creek (45.6303, -118.3291); Meacham Creek (45.4364, -118.3963); North Fork Meacham Creek (45.5767, -118.1721); Owsley Creek (45.4349, -118.2434); Pot Creek (45.5036, -118.1438); Sheep Creek (45.5121, -118.3945); Twomile Creek (45.5085, -118.4579); Unnamed (45.4540, -118.2192); Unnamed (45.5585, -118.2064); Unnamed (45.6019, -118.2971); Unnamed (45.6774, -118.3415).

(iii) *Umatilla River/Mission Creek Watershed 1707010303*. Outlet(s) = Umatilla River (Lat 45.6559, Long -118.8804) upstream to endpoint(s) in: Bachelor Canyon (45.6368, -118.3890); Buckaroo Creek (45.6062, -118.5000); Coonskin Creek (45.6556, -118.5239); Cottonwood Creek (45.6122, -118.5704); Little Squaw Creek (45.5969, -118.4095); Mission Creek (45.6256, -118.6133); Moonshine Creek (45.6166, -118.5392); Patawa Creek (45.6424, -118.7125); Red Elk Canyon (45.6773, -118.4431); Saddle Hollow (45.7067, -118.3968); South Patawa Creek (45.6250, -118.6919); Squaw Creek (45.5584, -118.4389); Stage Gulch (45.6533, -118.4481); Thorn Hollow Creek (45.6957, -118.4530); Umatilla River (45.7024, -118.3593); Unnamed (45.5649, -118.4221); Unnamed (45.6092, -118.7603); Unnamed (45.6100, -118.4046); Unnamed (45.6571,

-118.7473); Unnamed (45.6599, -118.4641); Unnamed (45.6599, -118.4711); Unnamed (45.6676, -118.6176); Unnamed (45.6688, -118.5575); Unnamed (45.6745, -118.5859).

(iv) *McKay Creek Watershed 1707010305*. Outlet(s) = McKay Creek (Lat 45.6685, Long -118.8400) upstream to endpoint(s) in: McKay Creek (45.6077, -118.7917).

(v) *Birch Creek Watershed 1707010306*. Outlet(s) = Birch Creek (Lat 45.6559, Long -118.8804) upstream to endpoint(s) in: Bear Creek (45.2730, -118.8939); Bridge Creek (45.3603, -118.9039); California Gulch (45.3950, -118.8149); Dark Canyon (45.3119, -118.7572); East Birch Creek (45.3676, -118.6085); Johnson Creek #2 (45.3931, -118.7518); Little Pearson Creek (45.3852, -118.7415); Merle Gulch (45.3450, -118.8136); Owings Creek (45.3864, -118.9600); Pearson Creek (45.2901, -118.7985); South Canyon #2 (45.3444, -118.6949); Unnamed (45.2703, -118.7624); Unnamed (45.3016, -118.7705); Unnamed (45.3232, -118.7264); Unnamed (45.3470, -118.7984); Unnamed (45.3476, -118.6703); Unnamed (45.3511, -118.6328); Unnamed (45.4628, -118.7491); West Birch Creek (45.2973, -118.8341); Willow Spring Canyon (45.3426, -118.9833).

(vi) *Umatilla River/Alkali Canyon Watershed 1707010307*. Outlet(s) = Umatilla River (Lat 45.7831, Long -119.2372) upstream to endpoint(s) in: Umatilla River (45.6559, -118.8804).

(vii) *Lower Umatilla River Watershed 1707010313*. Outlet(s) = Umatilla River (Lat 45.9247, Long -119.3575) upstream to endpoint(s) in: Umatilla River (45.7831, -119.2372); Unnamed (45.8202, -119.3305).

(7) Middle Columbia/Hood Subbasin 17070105—(i) *Upper Middle Columbia/Hood Watershed 1707010501*. Outlet(s) = Columbia River (Lat 45.6426, Long -120.9142) upstream to endpoint(s) in: Columbia River (45.7168, -120.6927); Frank Fulton Canyon (45.6244, -120.8258); Spanish Hollow Creek (45.6469, -120.8069); Unnamed (45.6404, -120.8654).

(ii) *Fifteenmile Creek Watershed 1707010502*. Outlet(s) = Fifteenmile Creek (Lat 45.6197, Long -121.1265) upstream to endpoint(s) in: Cedar Creek (45.3713, -121.4153); Dry Creek (45.4918, -121.0479); Fifteenmile Creek (45.3658, -121.4390); Ramsey Creek (45.3979, -121.4454); Unnamed (45.3768, -121.4410).

- (iii) *Fivemile Creek Watershed 1707010503*. Outlet(s) = Eightmile Creek (Lat 45.6064, Long -121.0854) upstream to endpoint(s) in: Eightmile Creek (45.3944, -121.4983); Middle Fork Fivemile Creek (45.4502, -121.4324); South Fork Fivemile Creek (45.4622, -121.3641).
- (iv) *Middle Columbia/Mill Creek Watershed 1707010504*. Outlet(s) = Columbia River (Lat 45.6920, Long -121.2937) upstream to endpoint(s) in: Brown Creek (45.5911, -121.2729); Chenoweth Creek (45.6119, -121.2658); Columbia River (45.6426, -120.9142); North Fork Mill Creek (45.4999, -121.4537); South Fork Mill Creek (45.5187, -121.3367); Threemile Creek (45.5598, -121.1747).
- (v) *Mosier Creek Watershed 1707010505*. Outlet(s) = Mosier Creek (Lat 45.6950, Long -121.3996) upstream to endpoint(s) in: Mosier Creek (45.6826, -121.3896); Rock Creek (45.6649, -121.4352).
- (vi) *White Salmon River Watershed 1707010509*. Outlet(s) = White Salmon River (Lat 45.7267, Long -121.5209) upstream to endpoint(s) in: Unnamed (45.7395, -121.5500); White Salmon River (45.7676, -121.5374).
- (vii) *Middle Columbia/Grays Creek Watershed 1707010512*. Outlet(s) = Columbia River (Lat 45.7070, Long -121.7943) upstream to endpoint(s) in: Catherine Creek (45.7448, -121.4206); Columbia River (45.6920, -121.2937); Dog Creek (45.7200, -121.6804); East Fork Major Creek (45.8005, -121.3449); Hanson Creek (45.7472, -121.3143); Jewett Creek (45.7524, -121.4704); Rowena Creek (45.6940, -121.3122); Unnamed (45.7238, -121.7227); Unnamed (45.7248, -121.7322); Unnamed (45.7303, -121.3095); Unnamed (45.7316, -121.3094); Unnamed (45.7445, -121.3309); Unnamed (45.7486, -121.3203); Unnamed (45.7530, -121.4697); Unnamed (45.7632, -121.4795); Unnamed (45.7954, -121.3863); Unnamed (45.8003, -121.4062); West Fork Major Creek (45.8117, -121.3929).
- (8) Klickitat Subbasin 17070106—(i) *Upper Klickitat River Watershed 1707010601*. Outlet(s) = Klickitat River (Lat 46.1263, Long -121.2881) upstream to endpoint(s) in: Cedar Creek (46.2122, -121.2042); Coyote Creek (46.4640, -121.1839); Cuitin Creek (46.4602, -121.1662); Diamond Fork (46.4794, -121.2284); Huckleberry Creek (46.4273, -121.3720); Klickitat River (46.4439, -121.3756); McCreedy Creek (46.3319, -121.2529); Piscoe Creek (46.3708, -121.1436); Surveyors Creek (46.2181, -121.1838); Unnamed (46.4476, -121.2575); Unnamed (46.4585, -121.2565); West Fork Klickitat River (46.2757, -121.3267).
- (ii) *Middle Klickitat River Watershed 1707010602*. Outlet(s) = Klickitat River (Lat 45.9858, Long -121.1233) upstream to endpoint(s) in: Bear Creek (46.0770, -121.2262); Klickitat River (46.1263, -121.2881); Outlet Creek (46.0178, -121.1740); Summit Creek (46.0035, -121.0918); Trout Creek (46.1166, -121.1968); White Creek (46.1084, -121.0730).
- (iii) *Little Klickitat River Watershed 1707010603*. Outlet(s) = Little Klickitat River (Lat 45.8452, Long -121.0625) upstream to endpoint(s) in: Blockhouse Creek (45.8188, -120.9813); Butler Creek (45.9287, -120.7005); Canyon Creek (45.8833, -121.0504); East Prong Little Klickitat River (45.9279, -120.6832); Mill Creek (45.8374, -121.0001); Unnamed (45.8162, -120.9288); West Prong Little Klickitat River (45.9251, -120.7202).
- (iv) *Lower Klickitat River Watershed 1707010604*. Outlet(s) = Klickitat River (Lat 45.6920, Long -121.2937) upstream to endpoint(s) in: Dead Canyon (45.9473, -121.1734); Dillacort Canyon (45.7349, -121.1904); Klickitat River (45.9858, -121.1233); Logging Camp Canyon (45.7872, -121.2260); Snyder Canyon (45.8431, -121.2152); Swale Creek (45.7218, -121.0475); Wheeler Canyon (45.7946, -121.1615).
- (9) Upper John Day Subbasin 17070201—(i) *Middle South Fork John Day Watershed 1707020103*. Outlet(s) = South Fork John Day River (Lat 44.1918, Long -119.5261) upstream to endpoint(s) in: Blue Creek (44.2183, -119.3679); Corral Creek (44.1688, -119.3573); North Fork Deer Creek (44.2034, -119.3009); South Fork Deer Creek (44.1550, -119.3457); South Fork John Day River (44.1822, -119.5243); Unnamed (44.1824, -119.4210); Vester Creek (44.1794, -119.3872).
- (ii) *Murderers Creek Watershed 1707020104*. Outlet(s) = Murderers Creek (Lat 44.3146, Long -119.5383) upstream to endpoint(s) in: Bark Cabin Creek (44.2481, -119.3967); Basin Creek (44.2700, -119.1711); Cabin Creek (44.3420, -119.4403); Charlie Mack Creek (44.2708, -119.2344); Crazy Creek (44.2421, -119.4282); Dans Creek (44.2500,

–119.2774); Duncan Creek (44.3219, –119.3555); Lemon Creek (44.2528, –119.2500); Miner Creek (44.3237, –119.2416); Orange Creek (44.2524, –119.2613); Oregon Mine Creek (44.2816, –119.2945); South Fork Murderers Creek (44.2318, –119.3221); Sugar Creek (44.2914, –119.2326); Tennessee Creek (44.3041, –119.3029); Thorn Creek (44.3113, –119.3157); Todd Creek (44.3291, –119.3976); Unnamed (44.3133, –119.3533); Unnamed (44.3250, –119.3476); White Creek (44.2747, –119.1866).

(iii) *Lower South Fork John Day Watershed 1707020105*. Outlet(s) = South Fork John Day River (Lat 44.4740, Long –119.5344) upstream to endpoint(s) in: Cougar Gulch (44.2279, –119.4898); Frazier Creek (44.2200, –119.5745); Jackass Creek (44.3564, –119.4958); North Fork Wind Creek (44.3019, –119.6632); Payten Creek (44.3692, –119.6185); Smoky Creek (44.3893, –119.4791); South Fork Black Canyon Creek (44.3789, –119.7293); South Fork John Day River (44.1918, –119.5261); South Fork Wind Creek (44.2169, –119.6192); South Prong Creek (44.3093, –119.6558); Squaw Creek (44.3000, –119.6143); Unnamed (44.2306, –119.6095); Unnamed (44.2358, –119.6013); Unnamed (44.3052, –119.6332); Wind Creek (44.2793, –119.6515).

(iv) *Upper John Day River Watershed 1707020106*. Outlet(s) = John Day River (Lat 44.4534, Long –118.6711) upstream to endpoint(s) in: Bogue Gulch (44.3697, –118.5200); Call Creek (44.2973, –118.5169); Crescent Creek (44.2721, –118.5473); Dads Creek (44.5140, –118.6463); Dans Creek (44.4989, –118.5920); Deardorff Creek (44.3665, –118.4596); Eureka Gulch (44.4801, –118.5912); Graham Creek (44.3611, –118.6084); Isham Creek (44.4649, –118.5626); Jeff Davis Creek (44.4813, –118.6370); John Day River (44.2503, –118.5256); Mossy Gulch (44.4641, –118.5211); North Reynolds Creek (44.4525, –118.4886); Rail Creek #2 (44.3413, –118.5017); Reynolds Creek (44.4185, –118.4507); Roberts Creek (44.3060, –118.5815); Thompson Creek (44.3581, –118.5395); Unnamed (44.2710, –118.5412).

(v) *Canyon Creek Watershed 1707020107*. Outlet(s) = Canyon Creek (Lat 44.4225, Long –118.9584) upstream to endpoint(s) in: Berry Creek (44.3084, –118.8791); Brookling Creek (44.3042, –118.8363); Canyon Creek (44.2368, –118.7775); Crazy

Creek #2 (44.2165, –118.7751); East Brookling Creek (44.3029, –118.8082); East Fork Canyon Creek (44.2865, –118.7939); Middle Fork Canyon Creek (44.2885, –118.7500); Skin Shin Creek (44.3036, –118.8488); Tamarack Creek #2 (44.2965, –118.8611); Unnamed (44.2500, –118.8298); Unnamed (44.2717, –118.7500); Unnamed (44.2814, –118.7620); Vance Creek (44.2929, –118.9989); Wall Creek (44.2543, –118.8308).

(vi) *Strawberry Creek Watershed 1707020108*. Outlet(s) = John Day River (Lat 44.4225, Long –118.9584) upstream to endpoint(s) in: Bear Creek (44.5434, –118.7508); Dixie Creek (44.5814, –118.7257); Dog Creek (44.3635, –118.8890); Grub Creek (44.5189, –118.8050); Hall Creek (44.5479, –118.7894); Indian Creek #3 (44.3092, –118.7438); John Day River (44.4534, –118.6711); Little Pine Creek (44.3771, –118.9103); Onion Creek (44.3151, –118.6972); Overholt Creek (44.3385, –118.7196); Pine Creek (44.3468, –118.8345); Slide Creek (44.2988, –118.6583); Standard Creek (44.5648, –118.6468); Strawberry Creek (44.3128, –118.6772); West Fork Little Indian Creek (44.3632, –118.7918).

(vii) *Beech Creek Watershed 1707020109*. Outlet(s) = Beech Creek (Lat 44.4116, Long –119.1151) upstream to endpoint(s) in: Bear Creek (44.5268, –119.1002); Beech Creek (44.5682, –119.1170); Clear Creek (44.5522, –118.9942); Cottonwood Creek (44.5758, –119.0694); East Fork Beech Creek (44.5248, –118.9023); Ennis Creek (44.5409, –119.0207); Hog Creek (44.5484, –119.0379); Little Beech Creek (44.4676, –118.9733); McClellan Creek #2 (44.5570, –118.9490); Tinker Creek (44.5550, –118.8892); Unnamed (44.5349, –119.0827).

(viii) *Laycock Creek Watershed 1707020110*. Outlet(s) = John Day River (Lat 44.4155, Long –119.2230) upstream to endpoint(s) in: Birch Creek #2 (44.4353, –119.2148); East Fork Dry Creek (44.4896, –119.1817); Fall Creek #2 (44.3551, –119.0420); Hanscombe Creek (44.3040, –119.0513); Harper Creek (44.3485, –119.1259); Ingle Creek (44.3154, –119.1153); John Day River (44.4225, –118.9584); Laycock Creek (44.3118, –119.0842); McClellan Creek (44.3510, –119.2004); Moon Creek (44.3483, –119.2389); Riley Creek (44.3450, –119.1664).

(ix) *Fields Creek Watershed 1707020111*. Outlet(s) = John Day River (Lat 44.4740,

Long -119.5344) upstream to endpoint(s) in: Belshaw Creek (44.5460, -119.2025); Bridge Creek (44.4062, -119.4180); Buck Cabin Creek (44.3412, -119.3313); Cummings Creek (44.5043, -119.3250); Fields Creek (44.3260, -119.2828); Flat Creek (44.3930, -119.4386); John Day River (44.4155, -119.2230); Marks Creek (44.5162, -119.3886); Wickiup Creek (44.3713, -119.3239); Widows Creek (44.3752, -119.3819); Wiley Creek (44.4752, -119.3784).

(x) *Upper Middle John Day Watershed 1707020112*. Outlet(s) = John Day River (Lat 44.5289, Long -119.6320) upstream to endpoint(s) in: Back Creek (44.4164, -119.6858); Battle Creek (44.4658, -119.5863); Cottonwood Creek (44.3863, -119.7376); Cougar Creek (44.4031, -119.7056); East Fork Cottonwood Creek (44.3846, -119.6177); Ferris Creek (44.5446, -119.5250); Franks Creek (44.5067, -119.4903); John Day River (44.4740, -119.5344); Rattlesnake Creek (44.4673, -119.6953); Unnamed (44.3827, -119.6479); Unnamed (44.3961, -119.7403); Unnamed (44.4082, -119.6916).

(xi) *Mountain Creek Watershed 1707020113*. Outlet(s) = Mountain Creek (Lat 44.5214, Long -119.7138) upstream to endpoint(s) in: Badger Creek (44.4491, -120.1186); Fopiano Creek (44.5899, -119.9429); Fort Creek (44.4656, -119.9253); Fry Creek (44.4647, -119.9940); Keeton Creek (44.4632, -120.0195); Mac Creek (44.4739, -119.9359); Milk Creek (44.4649, -120.1526); Unnamed (44.4700, -119.9427); Unnamed (44.4703, -120.0328); Unnamed (44.4703, -120.0597); Unnamed (44.4827, -119.8970); Willow Creek (44.6027, -119.8746).

(xii) *Rock Creek Watershed 1707020114*. Outlet(s) = Rock Creek (Lat 44.5289, Long -119.6320) upstream to endpoint(s) in: Baldy Creek (44.3906, -119.7651); Bear Creek (44.3676, -119.8401); Fir Tree Creek (44.3902, -119.7893); First Creek (44.4086, -119.8120); Fred Creek (44.4602, -119.8549); Little Windy Creek (44.3751, -119.7595); Pine Hollow #2 (44.5007, -119.8559); Rock Creek (44.3509, -119.7636); Second Creek (44.3984, -119.8075); Unnamed (44.4000, -119.8501); Unnamed (44.4232, -119.7271); West Fork Birch Creek (44.4365, -119.7500).

(xiii) *John Day River/Johnson Creek Watershed 1707020115*. Outlet(s) = John Day River (Lat 44.7554, Long -119.6382) upstream to endpoint(s) in: Buckhorn

Creek (44.6137, -119.7382); Burnt Corral Creek (44.6987, -119.5733); Frank Creek (44.6262, -119.7177); Indian Creek (44.5925, -119.7636); John Day River (44.5289, -119.6320); Johnny Creek (44.6126, -119.5534); Johnson Creek (44.6766, -119.7363).

(10) North Fork John Day Subbasin 17070202—(i) *Upper North Fork John Day River Watershed 1707020201*. Outlet(s) = North Fork John Day River (Lat 44.8661, Long -118.5605) upstream to endpoint(s) in: Baldy Creek (44.8687, -118.3172); Bear Gulch (44.8978, -118.5400); Bull Creek (44.8790, -118.2753); Crane Creek (44.8715, -118.3539); Crawfish Creek (44.9424, -118.2608); Cunningham Creek (44.9172, -118.2478); Davis Creek (44.9645, -118.4156); First Gulch (44.8831, -118.5588); Hoodoo Creek (44.9763, -118.3673); Long Meadow Creek (44.9490, -118.2932); McCarty Gulch (44.9131, -118.5114); Middle Trail Creek (44.9513, -118.3185); North Fork John Day River (44.8691, -118.2392); North Trail Creek (44.9675, -118.3219); South Trail Creek (44.9434, -118.2930); Trout Creek (44.9666, -118.4656); Unnamed (44.8576, -118.3169); Unnamed (44.8845, -118.3421); Unnamed (44.9221, -118.5000); Unnamed (44.9405, -118.4093); Unnamed (44.9471, -118.4797); Wagner Gulch (44.9390, -118.5148).

(ii) *Granite Creek Watershed 1707020202*. Outlet(s) = Granite Creek (Lat 44.8661, Long -118.5605) upstream to endpoint(s) in: Beaver Creek (44.7425, -118.3940); Boulder Creek (44.8368, -118.3631); Boundary Creek (44.8106, -118.3420); Bull Run Creek (44.7534, -118.3154); Corral Creek #2 (44.8186, -118.3565); Deep Creek #2 (44.8017, -118.3200); East Ten Cent Creek (44.8584, -118.4253); Granite Creek (44.8578, -118.3736); Lake Creek (44.7875, -118.5929); Lick Creek (44.8503, -118.5065); Lightning Creek (44.7256, -118.5011); Lost Creek (44.7620, -118.5822); North Fork Ruby Creek (44.7898, -118.5073); Olive Creek (44.7191, -118.4677); Rabbit Creek (44.7819, -118.5616); Ruby Creek (44.7797, -118.5237); South Fork Beaver Creek (44.7432, -118.4272); Squaw Creek #5 (44.8552, -118.4705); Unnamed (44.8427, -118.4233); West Fork Clear Creek (44.7490, -118.5440); West Ten Cent Creek (44.8709, -118.4377); Wolesy Creek (44.7687, -118.5540).

(iii) *North Fork John Day River/Big Creek Watershed 1707020203*. Outlet(s) = North Fork John Day River (Lat 44.9976, Long -118.9444) upstream to endpoint(s) in: Backout Creek (44.8560, -118.6289); Basin Creek (44.9081, -118.6671); Big Creek (45.0115, -118.6041); Bismark Creek (44.9548, -118.7020); Corral Creek (44.9592, -118.6368); Cougar Creek (44.9288, -118.6653); Meadow Creek (44.9856, -118.4664); North Fork John Day River (44.8661, -118.5605); Oregon Gulch (44.8694, -118.6119); Oriental Creek (45.0000, -118.7255); Otter Creek (44.9634, -118.7567); Paradise Creek (44.9168, -118.5850); Raspberry Creek (44.9638, -118.7356); Ryder Creek (44.9341, -118.5943); Silver Creek (44.9077, -118.5580); Simpson Creek (44.9383, -118.6794); South Fork Meadow Creek (44.9303, -118.5481); South Martin Creek (44.9479, -118.5281); Trough Creek (44.9960, -118.8499); Unnamed (44.8594, -118.6432); Unnamed (44.9073, -118.5690); Unnamed (45.0031, -118.7060); Unnamed (45.0267, -118.7635); Unnamed (45.0413, -118.8089); White Creek (45.0000, -118.5617); Winom Creek (44.9822, -118.6766).

(iv) *Desolation Creek Watershed 1707020204*. Outlet(s) = Desolation Creek (Lat 44.9977, Long -118.9352) upstream to endpoint(s) in: Battle Creek (44.8895, -118.7010); Beeman Creek (44.8230, -118.7498); Bruin Creek (44.8936, -118.7600); Howard Creek (44.8513, -118.7004); Junkens Creek (44.8482, -118.7994); Kelsay Creek (44.9203, -118.6899); Little Kelsay Creek (44.9127, -118.7124); North Fork Desolation Creek (44.7791, -118.6231); Park Creek (44.9109, -118.7839); Peep Creek (44.9488, -118.8069); South Fork Desolation Creek (44.7890, -118.6732); Sponge Creek (44.8577, -118.7165); Starveout Creek (44.8994, -118.8220); Unnamed (44.8709, -118.7130); Unnamed (44.9058, -118.7689); Unnamed (44.9163, -118.8384); Unnamed (44.9203, -118.8315); Unnamed (44.9521, -118.8141); Unnamed (44.9735, -118.8707).

(v) *Upper Camas Creek Watershed 1707020205*. Outlet(s) = Camas Creek (Lat 45.1576, Long -118.8411) upstream to endpoint(s) in: Bear Wallow Creek (45.2501, -118.7502); Bowman Creek (45.2281, -118.7028); Butcherknife Creek (45.1495, -118.6913); Camas Creek (45.1751, -118.5548); Dry Camas Creek (45.1582, -118.5846); Frazier Creek

(45.1196, -118.6152); Hidaway Creek (45.0807, -118.5788); Lane Creek (45.2429, -118.7749); Line Creek (45.1067, -118.6562); North Fork Cable Creek (45.0535, -118.6569); Rancheria Creek (45.2144, -118.6552); Salsbury Creek (45.2022, -118.6206); South Fork Cable Creek (45.0077, -118.6942); Unnamed (45.0508, -118.6536); Unnamed (45.0579, -118.6705); Unnamed (45.0636, -118.6198); Unnamed (45.0638, -118.5908); Unnamed (45.0823, -118.6579); Unnamed (45.1369, -118.6771); Unnamed (45.1513, -118.5966); Unnamed (45.1854, -118.6842); Unnamed (45.1891, -118.6110); Unnamed (45.2429, -118.7575); Warm Spring Creek (45.1386, -118.6561).

(vi) *Lower Camas Creek Watershed 1707020206*. Outlet(s) = Camas Creek (Lat 45.0101, Long -118.9950) upstream to endpoint(s) in: Bridge Creek (45.0395, -118.8633); Camas Creek (45.1576, -118.8411); Cooper Creek (45.2133, -118.9881); Deerlick Creek (45.1489, -119.0229); Dry Fivemile Creek (45.1313, -119.0898); Fivemile Creek (45.1804, -119.2259); Middle Fork Wilkins Creek (45.1193, -119.0439); North Fork Owens Creek (45.1872, -118.9705); Owens Creek (45.2562, -118.8305); Silver Creek (45.1066, -119.1268); Snipe Creek (45.2502, -118.9707); South Fork Wilkins Creek (45.1078, -119.0312); Sugarbowl Creek (45.1986, -119.0999); Taylor Creek (45.1482, -119.1820); Tribble Creek (45.1713, -119.1617); Unnamed (45.0797, -118.7878); Unnamed (45.1198, -118.8514); Unnamed (45.1993, -118.9062); Unnamed (45.2000, -118.8236); Unnamed (45.2141, -118.8079); Unnamed (45.1773, -119.0753); Unnamed (45.2062, -119.0717); Wilkins Creek (45.1239, -119.0094).

(vii) *North Fork John Day River/Potamus Creek Watershed 1707020207*. Outlet(s) = North Fork John Day River (Lat 44.8832, Long -119.4090) upstream to endpoint(s) in: Buckaroo Creek (45.0245, -119.1187); Butcher Bill Creek (45.1290, -119.3197); Cabin Creek (44.9650, -119.3628); Deep Creek (45.0977, -119.2021); Deerhorn Creek (45.0513, -119.0542); Ditch Creek (45.1584, -119.3153); East Fork Meadow Brook Creek (44.9634, -118.9575); Ellis Creek (45.1197, -119.2167); Graves Creek (44.9927, -119.3171); Hinton Creek (44.9650, -119.0025); Hunter Creek (45.0114, -119.0896); Jericho Creek (45.0361, -119.0829); Little Potamus Creek (45.0462, -119.2579); Mallory Creek

(45.1030, -119.3112); Martin Creek (-119.1756); Murphy Creek (44.6062, 45.1217, -119.3538); Matlock Creek (-119.1114); Smith Creek (44.6627, 45.0762, -119.1837); No Name Creek (-119.0808); Squaw Creek #3 (44.5715, 45.0730, -119.1459); North Fork John Day River (44.9976, -118.9444); Pole Creek (45.1666, -119.2533); Rush Creek (45.0498, -119.1219); Skull Creek (44.9726, -119.2035); Smith Creek (44.9443, -118.9687); Stalder Creek (45.0655, -119.2844); Stony Creek (45.0424, -119.1489); West Fork Meadow Brook (44.9428, -119.0319); Wickiup Creek (45.0256, -119.2776); Wilson Creek (45.1372, -119.2673).

(viii) *Wall Creek Watershed 1707020208*. Outlet(s) = Big Wall Creek (Lat 44.8832, Long -119.4090) upstream to endpoint(s) in: Alder Creek (45.1049, -119.4170); Bacon Creek (45.0137, -119.4800); Bear Creek (45.0551, -119.4170); Big Wall Creek (44.9369, -119.6055); Bull Prairie Creek (44.9753, -119.6604); Colvin Creek (44.9835, -119.6911); East Fork Alder Creek (45.1028, -119.3929); East Fork Indian Creek (44.9009, -119.4918); Happy Jack Creek (44.8997, -119.5730); Hog Creek (45.0507, -119.4821); Indian Creek (44.8810, -119.5260); Johnson Creek (45.0097, -119.6282); Little Bear Creek (45.0433, -119.4084); Little Wall Creek (45.0271, -119.5235); Little Wilson Creek (44.8979, -119.5531); Lovlett Creek (44.9675, -119.5105); Skookum Creek (45.0894, -119.4725); South Fork Big Wall Creek (44.9315, -119.6167); Swale Creek (45.1162, -119.3836); Three Trough Creek (44.9927, -119.5318); Two Spring Creek (45.0251, -119.3938); Unnamed (44.9000, -119.6213); Unnamed (44.9830, -119.7364); Unnamed (44.9883, -119.7248); Unnamed (45.0922, -119.4374); Unnamed (45.1079, -119.4359); Willow Spring Creek (44.9467, -119.5921); Wilson Creek (44.9861, -119.6623).

(ix) *Cottonwood Creek Watershed 1707020209*. Outlet(s) = Cottonwood Creek (Lat 44.8141, Long -119.4183) upstream to endpoint(s) in: Beck Creek (44.5795, -119.2664); Board Creek (44.5841, -119.3763); Boulder Creek (44.5876, -119.3006); Camp Creek #3 (44.6606, -119.3283); Cougar Creek #2 (44.6230, -119.4133); Day Creek (44.5946, -119.0235); Donaldson Creek (44.5919, -119.3480); Dunning Creek (44.6416, -119.0628); Fox Creek (44.6163, -119.0078); Indian Creek #3 (44.6794, -119.2196); McHaley Creek (44.5845, -119.2234); Mill Creek (44.6080, -119.0878); Mine Creek (44.5938,

-119.1756); Murphy Creek (44.6062, -119.1114); Smith Creek (44.6627, -119.0808); Squaw Creek #3 (44.5715, -119.4069); Unnamed (44.6176, -119.0806).

(x) *Lower North Fork John Day River Watershed 1707020210*. Outlet(s) = North Fork John Day River (Lat 44.7554, Long -119.6382) upstream to endpoint(s) in: East Fork Deer Creek (44.7033, -119.2753); Gilmore Creek (44.6744, -119.4875); North Fork John Day River (44.8832, -119.4090); Rudio Creek (44.6254, -119.5026); Straight Creek (44.6759, -119.4687); West Fork Deer Creek (44.6985, -119.3372).

(11) Middle Fork John Day Subbasin 17070203—(i) *Upper Middle Fork John Day River Watershed 1707020301*. Outlet(s) = Middle Fork John Day River (Lat 44.5946, Long -118.5163) upstream to endpoint(s) in: Bridge Creek (44.5326, -118.5746); Clear Creek (44.4692, -118.4615); Crawford Creek (44.6381, -118.3887); Dry Fork Clear Creek (44.5339, -118.4484); Fly Creek (44.6108, -118.3810); Idaho Creek (44.6113, -118.3856); Middle Fork John Day River (44.5847, -118.4286); Mill Creek (44.6106, -118.4809); North Fork Bridge Creek (44.5479, -118.5663); North Fork Summit Creek (44.5878, -118.3560); Squaw Creek (44.5303, -118.4089); Summit Creek (44.5831, -118.3585).

(ii) *Camp Creek Watershed 1707020302*. Outlet(s) = Middle Fork John Day River (Lat 44.6934, Long -118.7947) upstream to endpoint(s) in: Badger Creek (44.7102, -118.6738); Balance Creek (44.6756, -118.7661); Beaver Creek (44.6918, -118.6467); Bennett Creek (44.6095, -118.6432); Big Boulder Creek (44.7332, -118.6889); Blue Gulch (44.6952, -118.5220); Butte Creek (44.5913, -118.6481); Camp Creek (44.5692, -118.8041); Caribou Creek (44.6581, -118.5543); Charlie Creek (44.5829, -118.8277); Cottonwood Creek (44.6616, -118.8919); Cougar Creek (44.6014, -118.8261); Coxie Creek (44.5596, -118.8457); Coyote Creek (44.7040, -118.7436); Davis Creek (44.5720, -118.6026); Deerhorn Creek (44.5984, -118.5879); Dry Creek (44.6722, -118.6962); Eagle Creek (44.5715, -118.8269); Granite Boulder Creek (44.6860, -118.6039); Lemon Creek (44.6933, -118.6169); Lick Creek (44.6102, -118.7504); Little Boulder Creek (44.6661, -118.5807); Little Butte Creek (44.6093, -118.6188); Middle Fork

John Day River (44.5946, -118.5163); Myrtle Creek (44.7336, -118.7187); Placer Gulch (44.5670, -118.5593); Ragged Creek (44.6366, -118.7048); Ruby Creek (44.6050, -118.6897); Sulphur Creek (44.6119, -118.6672); Sunshine Creek (44.6424, -118.7437); Tincup Creek (44.6489, -118.6320); Trail Creek (44.6249, -118.8469); Unnamed (44.5535, -118.8139); Unnamed (44.5697, -118.5975); Unnamed (44.6041, -118.6051); Unnamed (44.6471, -118.6869); Unnamed (44.6559, -118.5777); Vincent Creek (44.6663, -118.5345); Vinegar Creek (44.6861, -118.5378); West Fork Lick Creek (44.6021, -118.7891); Whiskey Creek (44.6776, -118.8659); Windlass Creek (44.6653, -118.6030); Wray Creek (44.6978, -118.6588).

(iii) *Big Creek Watershed 1707020303*. Outlet(s) = Middle Fork John Day River (Lat 44.8363, Long -119.0306) upstream to endpoint(s) in: Barnes Creek (44.8911, -118.9974); Bear Creek (44.7068, -118.8742); Big Creek (44.7726, -118.6831); Deadwood Creek (44.7645, -118.7499); Deep Creek (44.7448, -118.7591); East Fork Big Creek (44.7923, -118.7783); Elk Creek (44.7167, -118.7721); Granite Creek (44.8893, -119.0103); Huckleberry Creek (44.8045, -118.8605); Indian Creek (44.8037, -118.7498); Lick Creek (44.8302, -118.9613); Little Indian Creek (44.8743, -118.8862); Lost Creek (44.7906, -118.7970); Middle Fork John Day River (44.6934, -118.7947); Mosquito Creek (44.7504, -118.8021); North Fork Elk Creek (44.7281, -118.7624); Onion Gulch (44.7622, -118.7846); Pizer Creek (44.7805, -118.8102); Slide Creek (44.6950, -118.9124); Swamp Gulch (44.7606, -118.7641); Unnamed (44.8249, -118.8718); Unnamed (44.8594, -118.9018).

(iv) *Long Creek Watershed 1707020304*. Outlet(s) = Long Creek (Lat 44.8878, Long -119.2338) upstream to endpoint(s) in: Basin Creek (44.7458, -119.2452); Everett Creek (44.7106, -119.1063); Jonas Creek (44.6307, -118.9118); Long Creek (44.6076, -118.9402); Pass Creek (44.7681, -119.0414); Paul Creek (44.7243, -119.1304); Pine Creek (44.8125, -119.0859); South Fork Long Creek (44.6360, -118.9756).

(v) *Lower Middle Fork John Day River Watershed 1707020305*. Outlet(s) = Middle Fork John Day River (Lat 44.9168, Long -119.3004) upstream to endpoint(s) in: Middle Fork John Day River (44.8363, -119.0306).

(12) Lower John Day Subbasin 17070204—(i) *Lower John Day River/Kahler Creek 1707020401*. Outlet(s) = John Day River (Lat 44.8080, Long -119.9585) upstream to endpoint(s) in: Alder Creek (44.9575, -119.8621); Camp Creek (44.9005, -119.9505); East Bologna Canyon (44.8484, -119.5842); Henry Creek (44.9609, -119.7683); Horseshoe Creek (44.7076, -119.9465); John Day River (44.7554, -119.6382); Kahler Creek (44.9109, -119.7030); Lake Creek (44.9012, -119.9806); Left Hand Creek (44.7693, -119.7613); Parrish Creek (44.7207, -119.8369); Tamarack Butte #2 (44.6867, -119.7898); Tamarack Creek (44.9107, -119.7026); Unnamed (44.9334, -119.9164); Unnamed (44.9385, -119.9088); Unnamed (44.9451, -119.8932); Unnamed (44.9491, -119.8696); Unnamed (44.9546, -119.8739); Unnamed (44.9557, -119.7561); West Bologna Canyon (44.8338, -119.6422); Wheeler Creek (44.9483, -119.8447); William Creek (44.7458, -119.9027).

(ii) *Lower John Day River/Service Creek Watershed 1707020402*. Outlet(s) = John Day River (Lat 44.7368, Long -120.3054) upstream to endpoint(s) in: Big Service Creek (44.9286, -120.0428); Girds Creek (44.6681, -120.1234); John Day River (44.8080, -119.9585); Rowe Creek (44.8043, -120.1751); Service Creek (44.8951, -120.0892); Shoofly Creek (44.6510, -120.0207).

(iii) *Bridge Creek Watershed 1707020403*. Outlet(s) = Bridge Creek (Lat 44.7368, Long -120.3054) upstream to endpoint(s) in: Bear Creek (44.5585, -120.4198); Bridge Creek (44.4721, -120.2009); Carroll Creek (44.5460, -120.3322); Dodds Creek (44.5329, -120.3867); Gable Creek (44.5186, -120.2384); Johnson Creek #2 (44.5193, -120.0949); Slide Creek (44.4956, -120.3023); Thompson Creek (44.5270, -120.2489); West Branch Bridge Creek (44.4911, -120.3098).

(iv) *Lower John Day River/Muddy Creek Watershed 1707020404*. Outlet(s) = John Day River (Lat 44.9062, Long -120.4460) upstream to endpoint(s) in: Cherry Creek (44.6344, -120.4543); Clubfoot Hollow (44.8865, -120.1929); Cove Creek (44.9299, -120.3791); Dry Creek (44.6771, -120.5367); John Day River (44.7368, -120.3054); Little Muddy Creek (44.7371, -120.5575); Muddy Creek (44.7491, -120.5071); Pine Creek (44.8931, -120.1797); Robinson Canyon (44.8807,

-120.2678); Steers Canyon (44.9247, -120.2013).

(v) *Lower John Day River/Clarno Watershed 1707020405*. Outlet(s) = John Day River (Lat 45.1626, Long -120.4681) upstream to endpoint(s) in: Pine Creek (44.9062, -120.4460); Sorefoot Creek (44.9428, -120.5481).

(vi) *Butte Creek Watershed 1707020406*. Outlet(s) = Butte Creek (Lat 45.0574, Long -120.4831) upstream to endpoint(s) in: Butte Creek (44.9266, -120.1142); Cottonwood Creek (44.9816, -120.2136); Deep Creek (45.0166, -120.4165); Hunt Canyon (45.1050, -120.2838); Straw Fork (44.9536, -120.1024); Unnamed (45.0952, -120.2928); West Fork Butte Creek (44.9883, -120.3332).

(vii) *Pine Hollow Watershed 1707020407*. Outlet(s) = Pine Hollow (Lat 45.1531, Long -120.4757) upstream to endpoint(s) in: Big Pine Hollow (44.9968, -120.7342); Brush Canyon (45.0255, -120.6329); Eakin Canyon (45.1608, -120.5863); Hannafin Canyon (45.1522, -120.6158); Long Hollow Creek (44.9922, -120.5565); West Little Pine Hollow (44.9921, -120.7324).

(viii) *Thirtymile Creek Watershed 1707020408*. Outlet(s) = Thirtymile Creek (Lat 45.1626, Long -120.4681) upstream to endpoint(s) in: Condon Canyon (45.1870, -120.1829); Dry Fork Thirtymile Creek (45.1858, -120.1338); East Fork Thirtymile Creek (45.1575, -120.0556); Lost Valley Creek (45.1062, -119.9916); Patill Canyon (45.1252, -120.1870); Thirtymile Creek (44.9852, -120.0375); Unnamed (44.9753, -120.0469); Wehrli Canyon (45.1539, -120.2137).

(ix) *Lower John Day River/Ferry Canyon Watershed 1707020409*. Outlet(s) = John Day River (Lat 45.3801, Long -120.5117) upstream to endpoint(s) in: Ferry Canyon (45.3424, -120.4388); Jackknife Creek (45.2490, -120.6106); John Day River (45.1626, -120.4681); Lamberson Canyon (45.3099, -120.4147); Little Ferry Canyon (45.3827, -120.5913).

(x) *Lower John Day River/Scott Canyon Watershed 1707020410*. Outlet(s) = John Day River (Lat 45.5769, Long -120.4041) upstream to endpoint(s) in: Cottonwood Canyon (45.4143, -120.4490); Cottonwood Canyon (45.4898, -120.5118); Dry Fork Hay Creek (45.3093, -120.1612); John Day River (45.3801, -120.5117); Scott Canyon (45.4124, -120.1957); Unnamed (45.3407, -120.2299).

(xi) *Upper Rock Creek Watershed 1707020411*. Outlet(s) = Rock Creek (Lat 45.2190, Long -119.9597) upstream to endpoint(s) in: Allen Canyon (45.1092, -119.5976); Allen Spring Canyon (45.0471, -119.6468); Board Creek (45.1120, -119.5390); Brown Creek (45.0365, -119.8296); Buckhorn Creek (45.0272, -119.9186); Chapin Creek (45.0538, -119.6727); Davidson Canyon (45.0515, -119.5952); Hahn Canyon (45.1491, -119.8320); Harris Canyon (45.0762, -119.5856); Hollywood Creek (45.0964, -119.5174); Indian Creek (45.0481, -119.6476); John Z Canyon (45.0829, -119.6058); Juniper Creek (45.0504, -119.7730); Middle Fork Rock Creek (45.0818, -119.7404); Rock Creek (45.0361, -119.5989); Stahl Canyon (45.0071, -119.8683); Tree Root Canyon (45.0626, -119.6314); Tupper Creek (45.0903, -119.4999); Unnamed (45.0293, -119.5907); Unnamed (45.0698, -119.5329); Unnamed (45.0714, -119.5227); West Fork Juniper Creek (45.0192, -119.7786).

(xii) *Lower Rock Creek Watershed 1707020412*. Outlet(s) = Rock Creek (Lat 45.5769, Long -120.4041) upstream to endpoint(s) in: Dry Creek (45.3238, -119.9709); Rock Creek (45.2190, -119.9597); Sixmile Canyon (45.2448, -120.0283); South Fork Rock Creek (45.2770, -120.1232).

(xiii) *Grass Valley Canyon Watershed 1707020413*. Outlet(s) = Grass Valley Canyon (Lat 45.5974, Long -120.4232) upstream to endpoint(s) in: Grass Valley Canyon (45.4071, -120.7226); Hay Canyon (45.5104, -120.6085); Rosebush Creek (45.3395, -120.7159).

(xiv) *Lower John Day River/McDonald Ferry Watershed 1707020414*. Outlet(s) = John Day River (Lat 45.7389, Long -120.6520) upstream to endpoint(s) in: John Day River (45.5769, -120.4041).

(13) Lower Deschutes Subbasin 17070306—(i) *Upper Deschutes River Watershed 1707030603*. Outlet(s) = Deschutes River (Lat 44.8579, Long -121.0668) upstream to endpoint(s) in: Deschutes River (44.7243, -121.2465); Shitike Creek (44.7655, -121.5835); Unnamed (44.7934, -121.3715).

(ii) *Mill Creek Watershed 1707030604*. Outlet(s) = Mill Creek (Lat 44.8792, Long -121.3711) upstream to endpoint(s) in: Boulder Creek (44.8261, -121.4924); Mill Creek (44.8343, -121.6737); Unnamed (44.8330, -121.6756).

(iii) *Beaver Creek Watershed 1707030605*. Outlet(s) = Beaver Creek (Lat 44.8730, Long -121.3405) upstream to endpoint(s) in: Beaver Butte Creek (45.0786, -121.5746); Beaver Creek (45.1306, -121.6468); Indian Creek (45.0835, -121.5113).

(iv) *Warm Springs River Watershed 1707030606*. Outlet(s) = Warm Springs River (Lat 44.8579, Long -121.0668) upstream to endpoint(s) in: Badger Creek #2 (44.9352, -121.5569); South Fork Warm Springs River (44.9268, -121.6995); Warm Springs River (44.9812, -121.7976).

(v) *Middle Deschutes River Watershed 1707030607*. Outlet(s) = Deschutes River (Lat 45.2642, Long -121.0232) upstream to endpoint(s) in: Cove Creek (44.9673, -121.0430); Deschutes River (44.8579, -121.0668); Eagle Creek (44.9999, -121.1688); Nena Creek (45.1030, -121.1653); Oak Creek (44.9336, -121.0981); Paquet Gulch (45.0676, -121.2911); Skookum Creek (44.9171, -121.1251); Stag Canyon (45.1249, -121.0563); Unnamed (45.0186, -121.0464); Unnamed (45.0930, -121.1511); Wapinitia Creek (45.1177, -121.3025).

(vi) *Bakeoven Creek Watershed 1707030608*. Outlet(s) = Bakeoven Creek (Lat 45.1748, Long -121.0728) upstream to endpoint(s) in: Bakeoven Creek (45.1261, -120.9398); Booten Creek (45.1434, -121.0131); Cottonwood Creek (45.0036, -120.8720); Deep Creek (44.9723, -120.9480); Robin Creek (45.1209, -120.9652); Trail Hollow Creek (45.1481, -121.0423).

(vii) *Buck Hollow Creek Watershed 1707030611*. Outlet(s) = Buck Hollow Creek (Lat 45.2642, Long -121.0232) upstream to endpoint(s) in: Buck Hollow Creek (45.0663, -120.7095); Finnegan Creek (45.2231, -120.8472); Macken Canyon (45.1093, -120.7011); Thorn Hollow (45.0450, -120.7386).

(viii) *Lower Deschutes River Watershed 1707030612*. Outlet(s) = Deschutes River (Lat 45.6426, Long -120.9142) upstream to endpoint(s) in: Bull Run Canyon (45.4480, -120.8655); Deschutes River (45.2642, -121.0232); Fall Canyon (45.5222, -120.8538); Ferry Canyon (45.3854,

-120.9373); Jones Canyon (45.3011, -120.9404); Macks Canyon (45.3659, -120.8524); Oak Canyon (45.3460, -120.9960); Sixteen Canyon (45.4050, -120.8529).

(14) Trout Subbasin 17070307—(i) *Upper Trout Creek Watershed 1707030701*. Outlet(s) = Trout Creek (Lat 44.8229, Long -120.9193) upstream to endpoint(s) in: Amity Creek (44.6447, -120.5854); Auger Creek (44.5539, -120.5381); Beaver Creek (44.6390, -120.7034); Big Log Creek (44.5436, -120.6997); Big Whetstone Creek (44.6761, -120.7645); Board Hollow (44.6064, -120.7405); Cartwright Creek (44.5404, -120.6535); Clover Creek (44.6523, -120.7358); Dutchman Creek (44.5320, -120.6704); Foley Creek (44.5861, -120.6801); Little Trout Creek (44.7816, -120.7237); Opal Creek (44.5792, -120.5446); Potlid Creek (44.5366, -120.6207); Trout Creek (44.5286, -120.5805); Tub Springs Canyon (44.8155, -120.7888); Unnamed (44.5428, -120.5848); Unnamed (44.6043, -120.7403); Unnamed (44.6510, -120.7337).

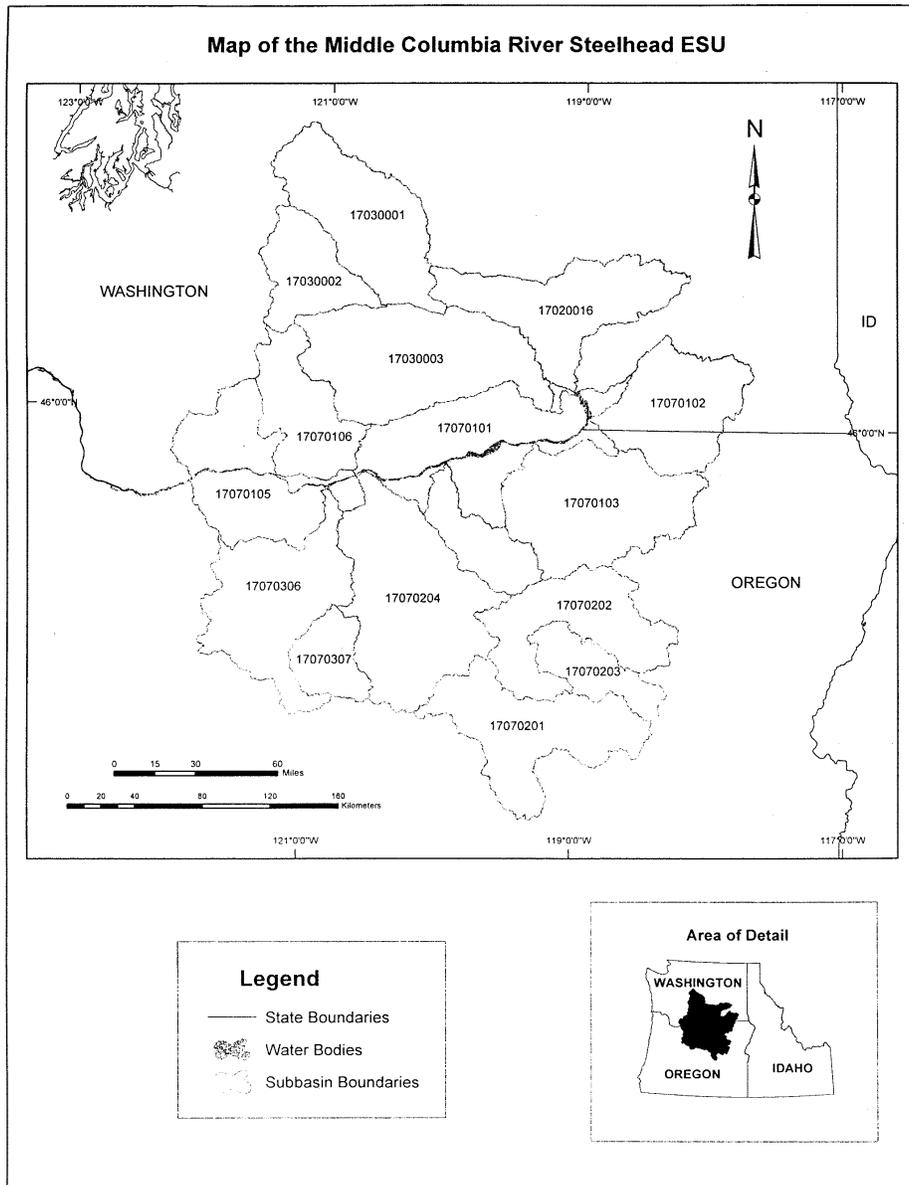
(ii) *Antelope Creek Watershed 1707030702*. Antelope Creek (Lat 44.8229, Long -120.9193) upstream to endpoint(s) in: Antelope Creek (44.8564, -120.8574); Boot Creek (44.9086, -120.8864); Pole Creek (44.9023, -120.9108); Ward Creek (44.9513, -120.8341).

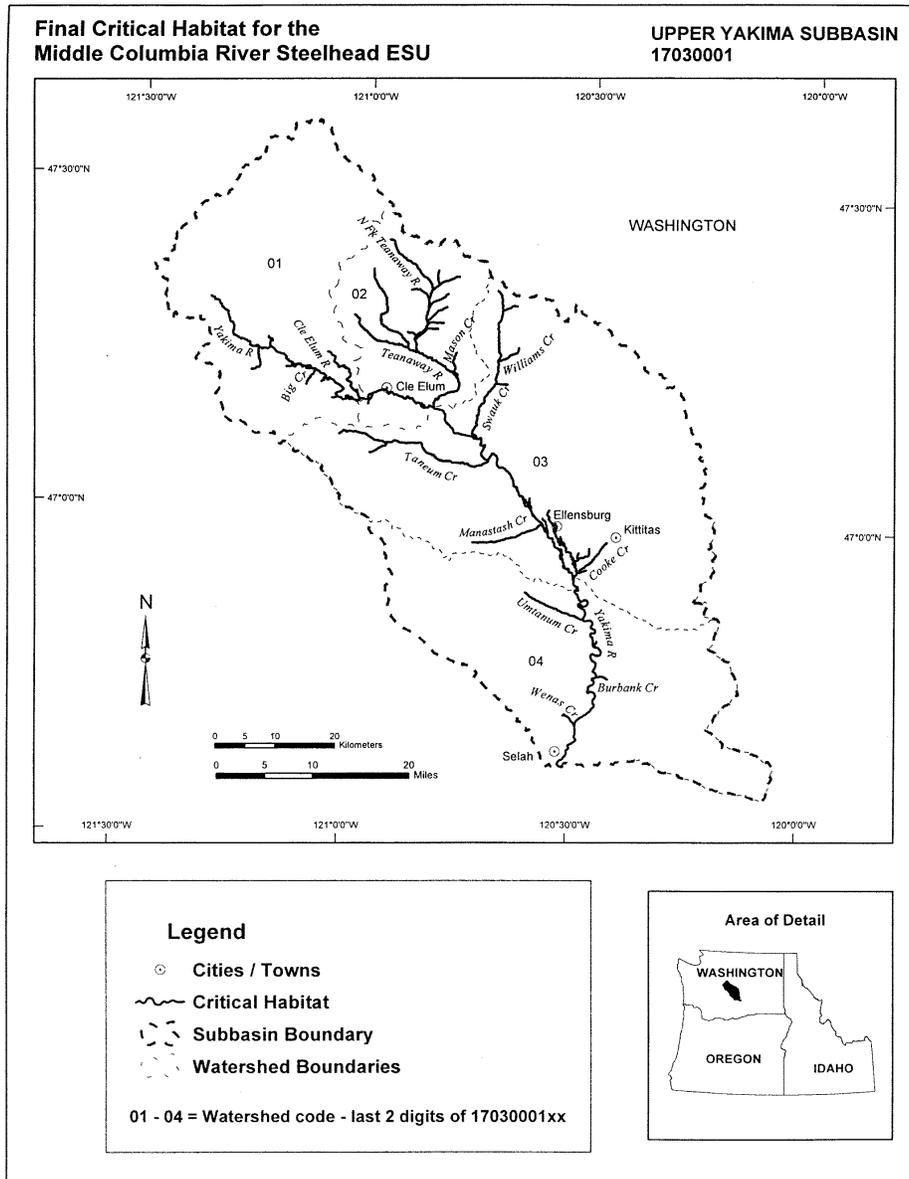
(iii) *Lower Trout Creek Watershed 1707030705*. Outlet(s) = Trout Creek (Lat 44.8214, Long -121.0876) upstream to endpoint(s) in: Brocher Creek (44.8357, -121.0330); Hay Creek (44.7824, -120.9652); Trout Creek (44.8229, -120.9193).

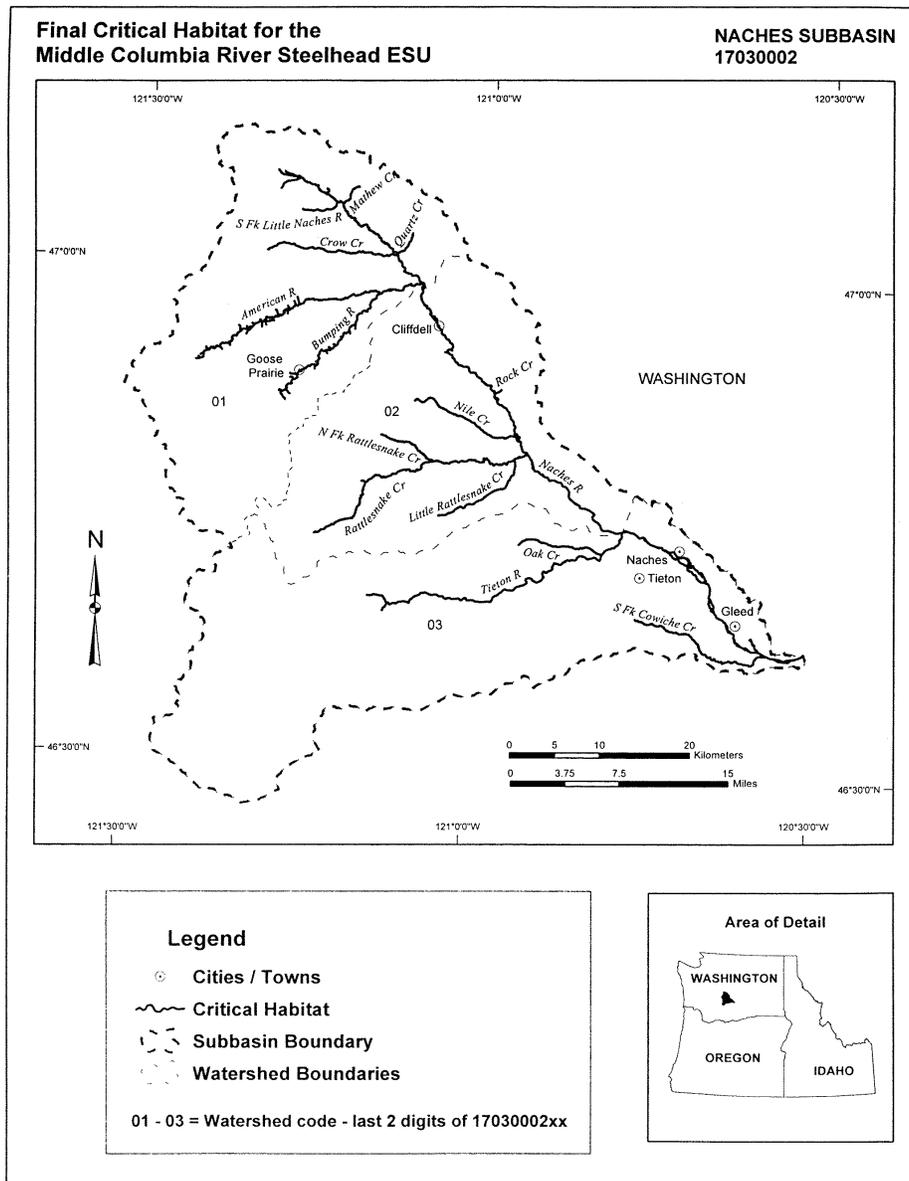
(15) Upper Columbia/Priest Rapids Subbasin 17020016—*Columbia River/Zintel Canyon Watershed 1702001606*. Outlet(s) = Columbia River (Lat 46.1776, Long -119.0183) upstream to endpoint(s) in: Columbia River (46.2534, -119.2268).

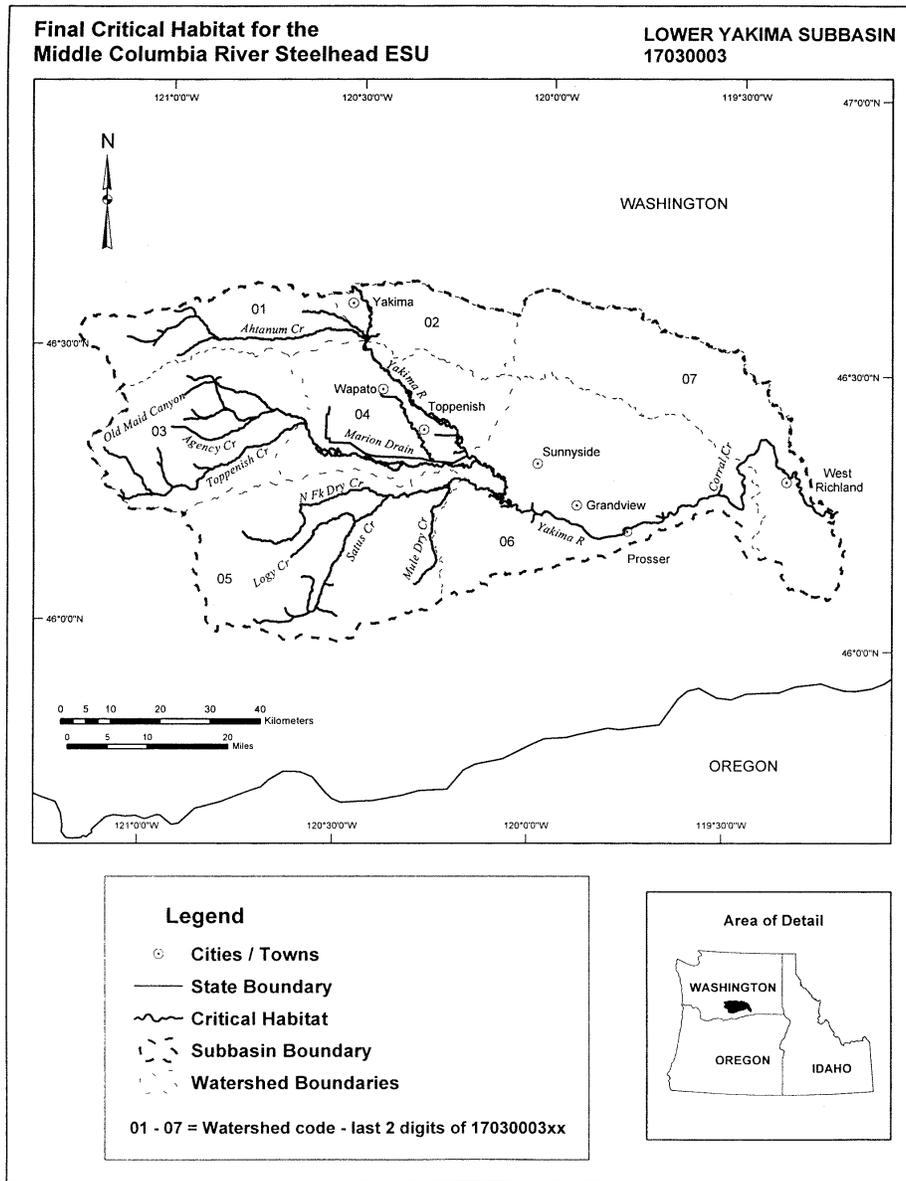
(16) Columbia River Corridor—*Columbia River Corridor* Outlet(s) = Columbia River (Lat 46.2485, Long -124.0782) upstream to endpoint(s) in: Columbia River (45.7070, -121.7943).

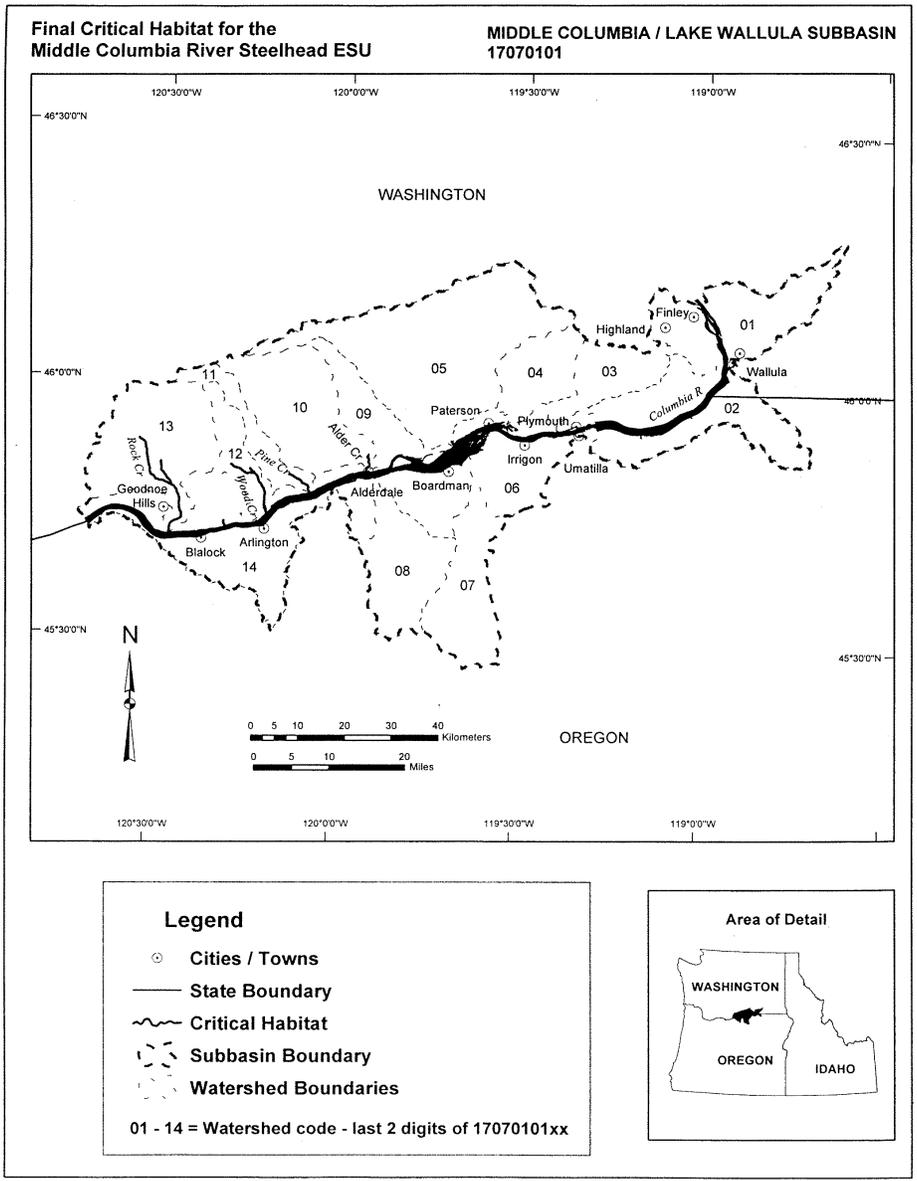
(17) Maps of critical habitat for the Middle Columbia River Steelhead ESU follow:

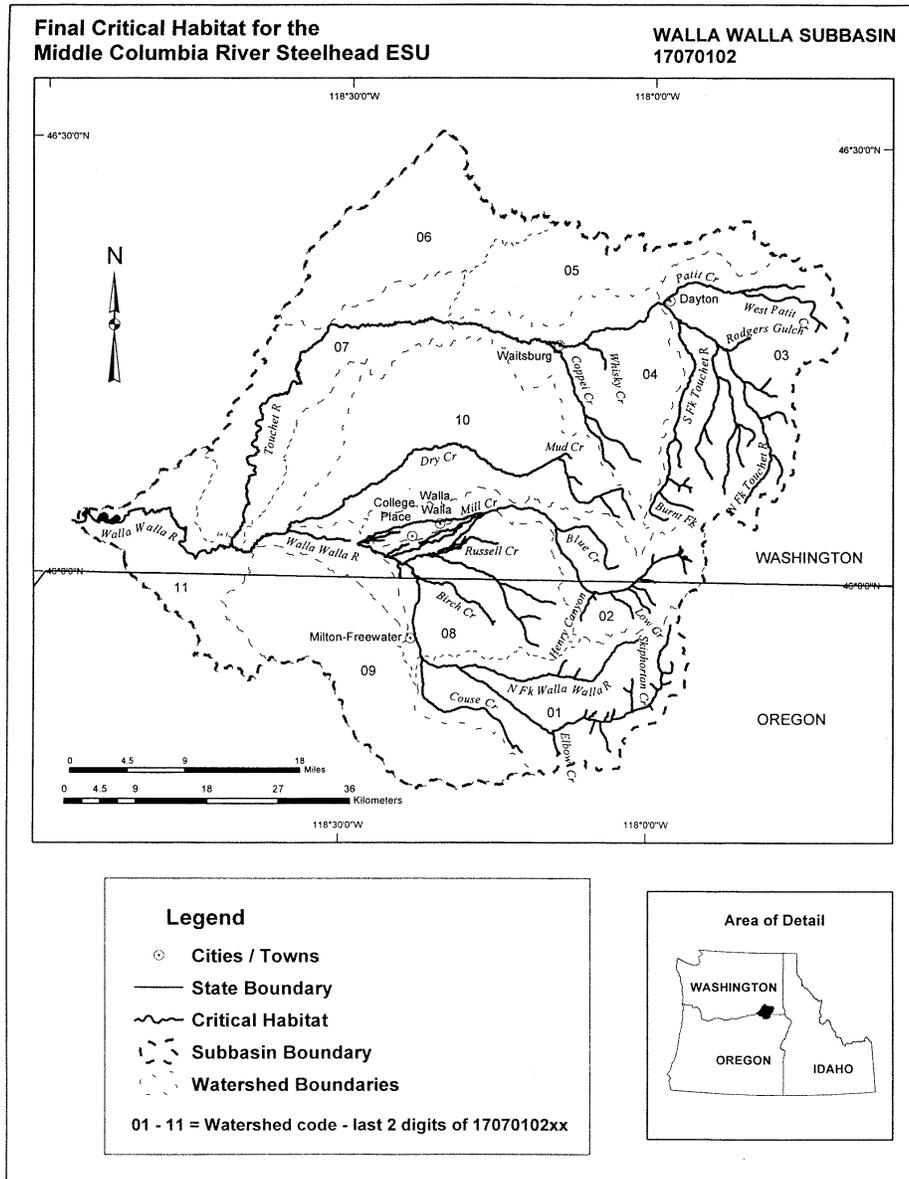


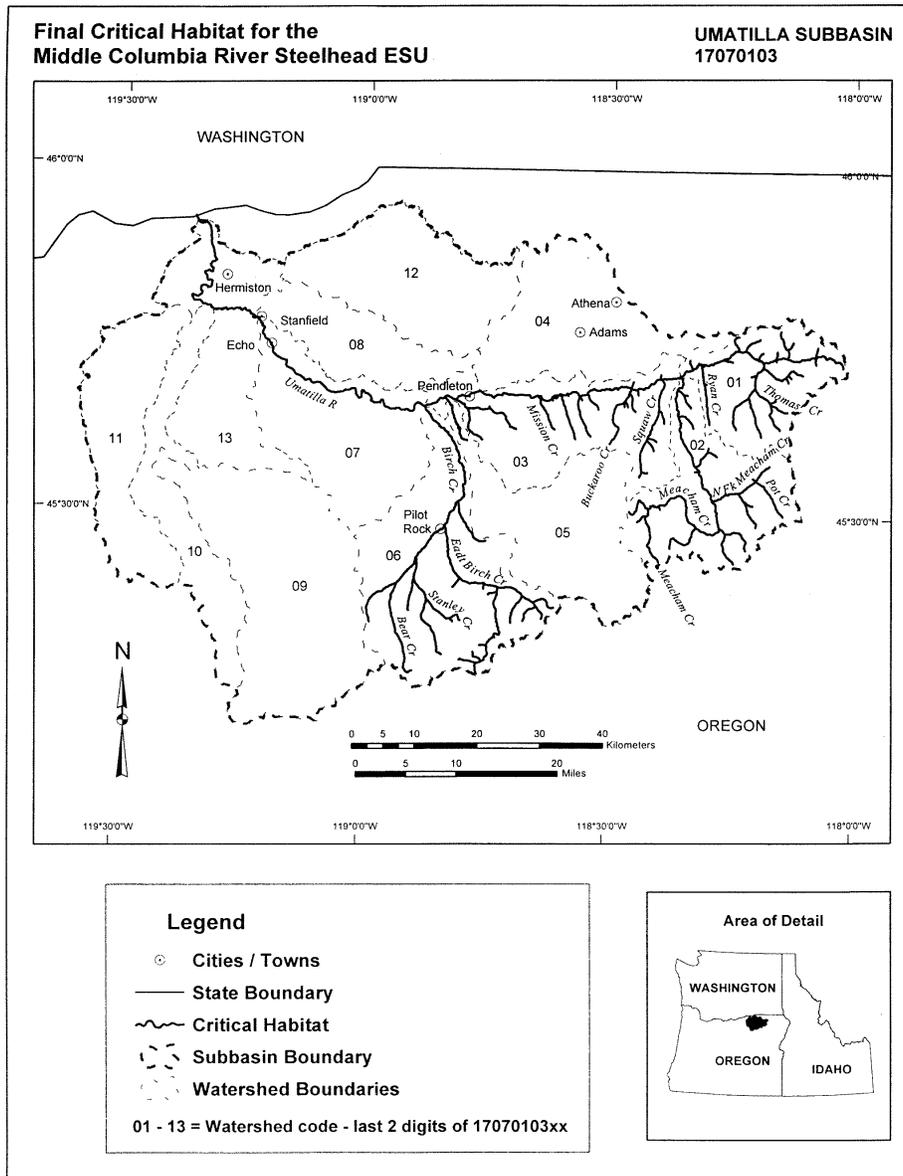


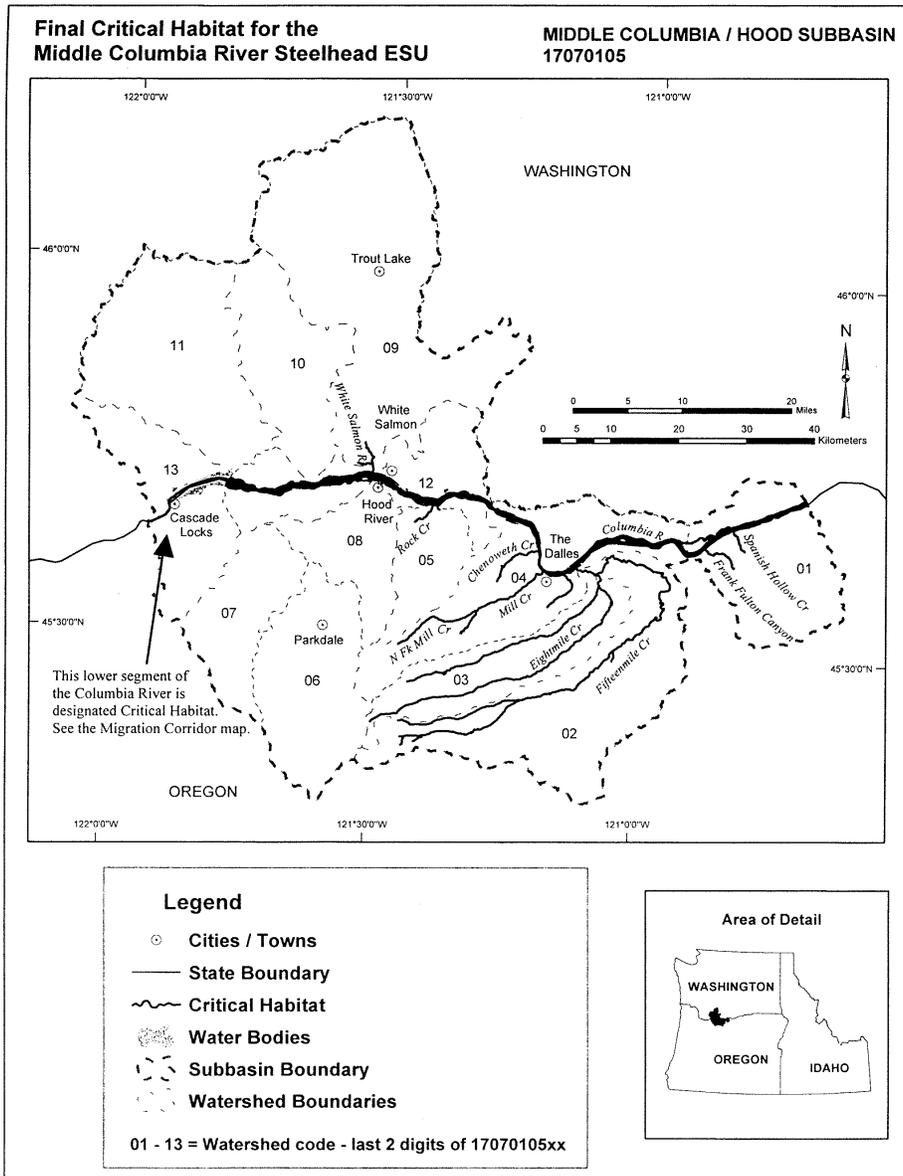


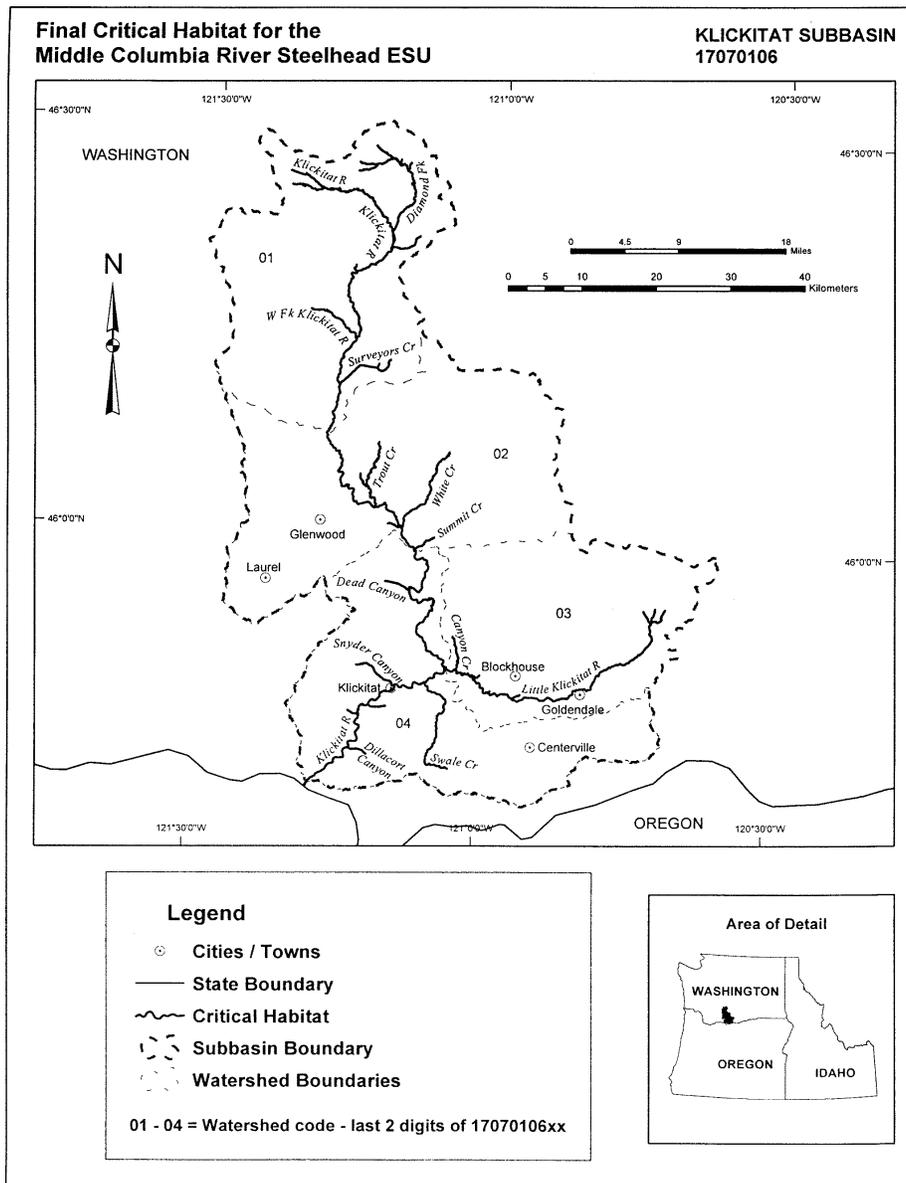


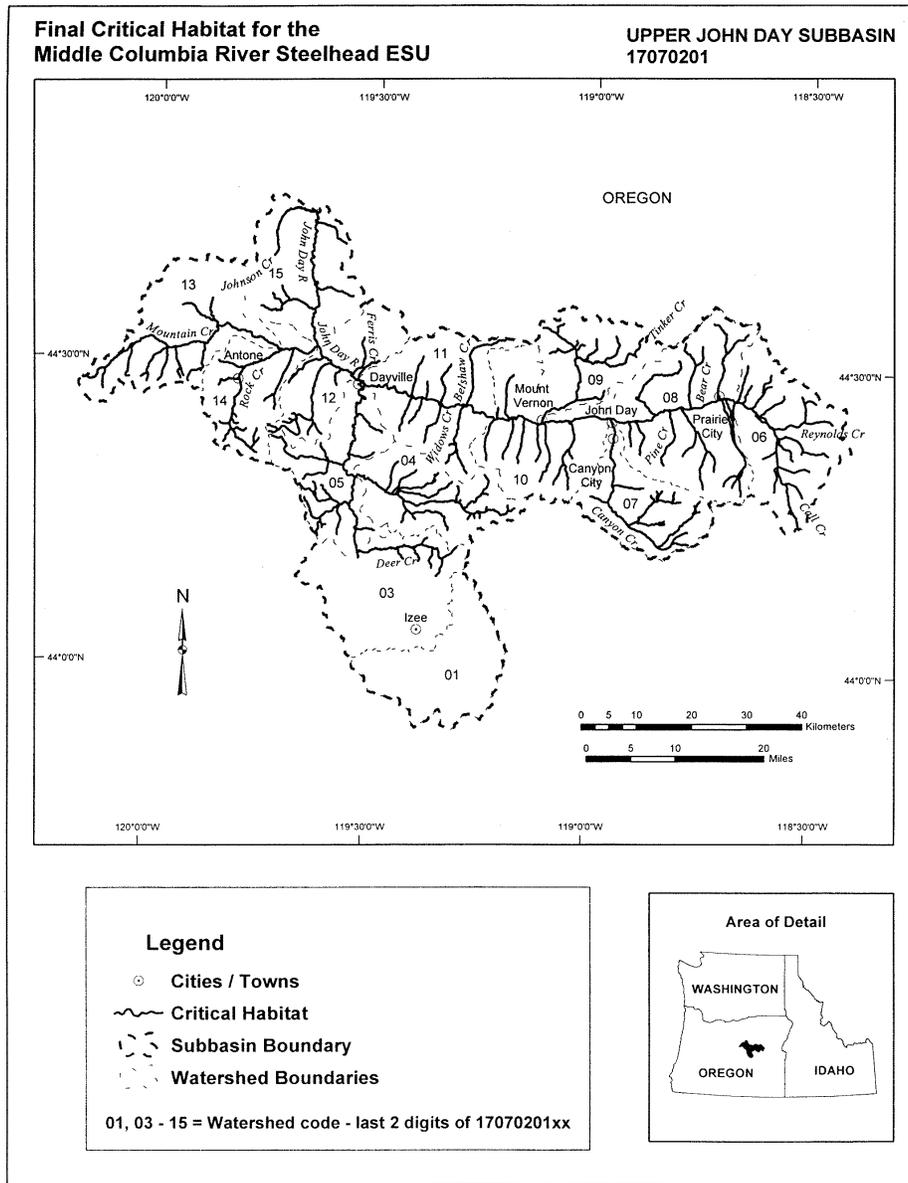


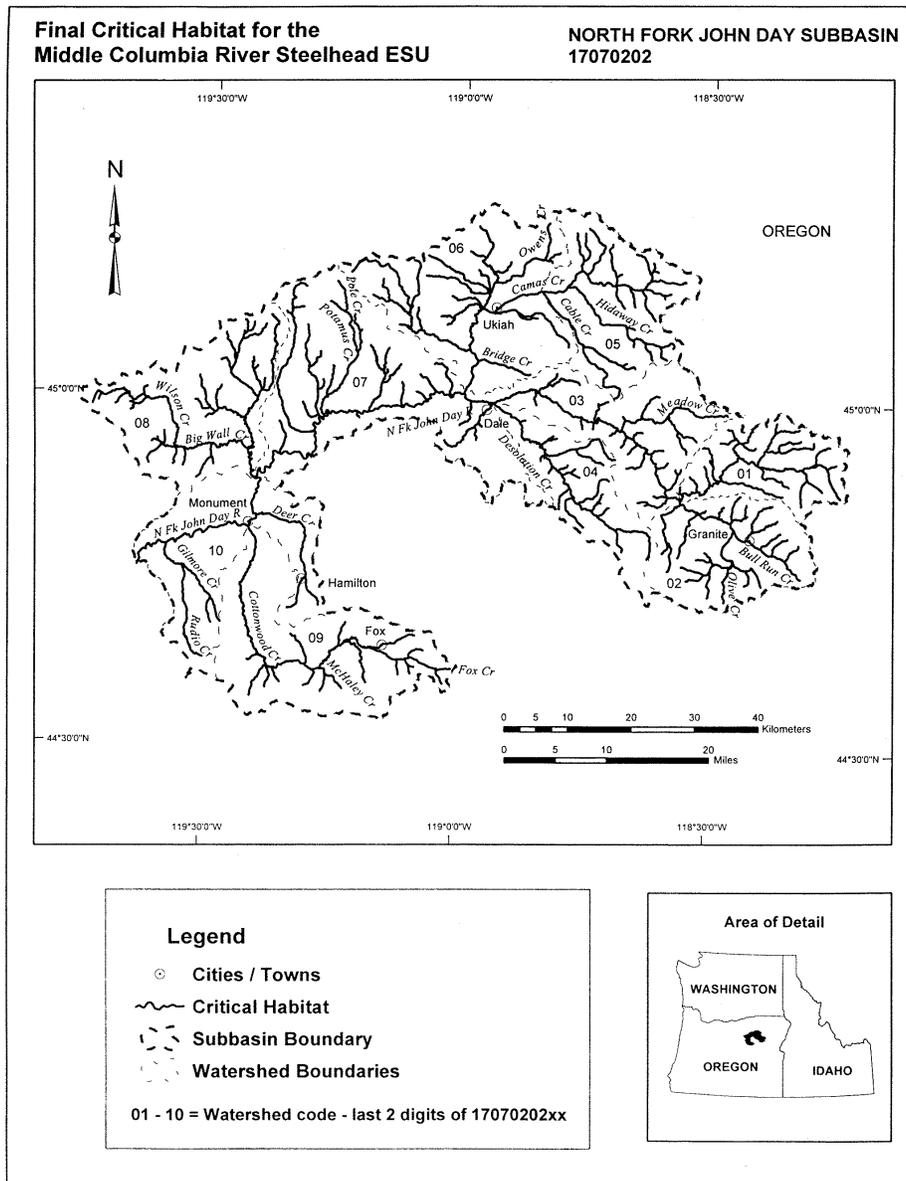


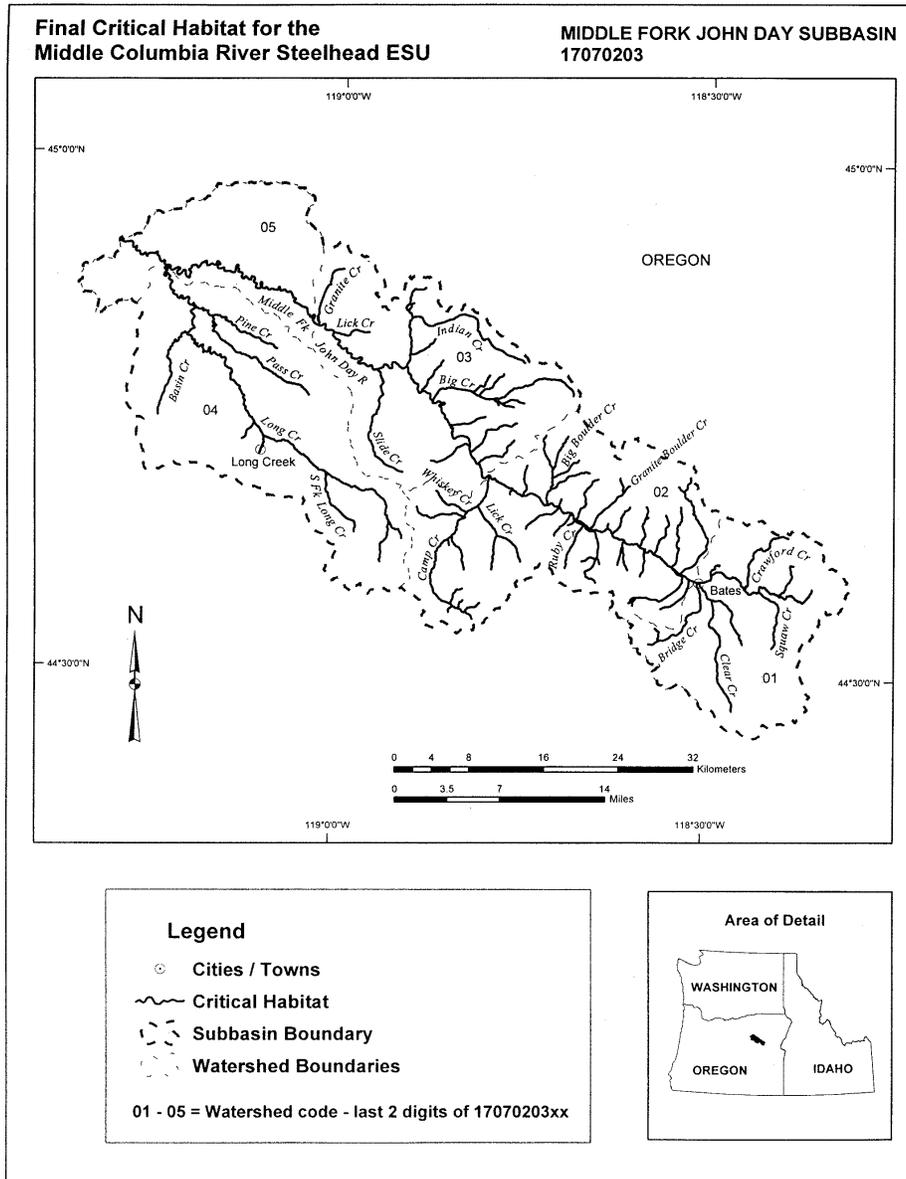


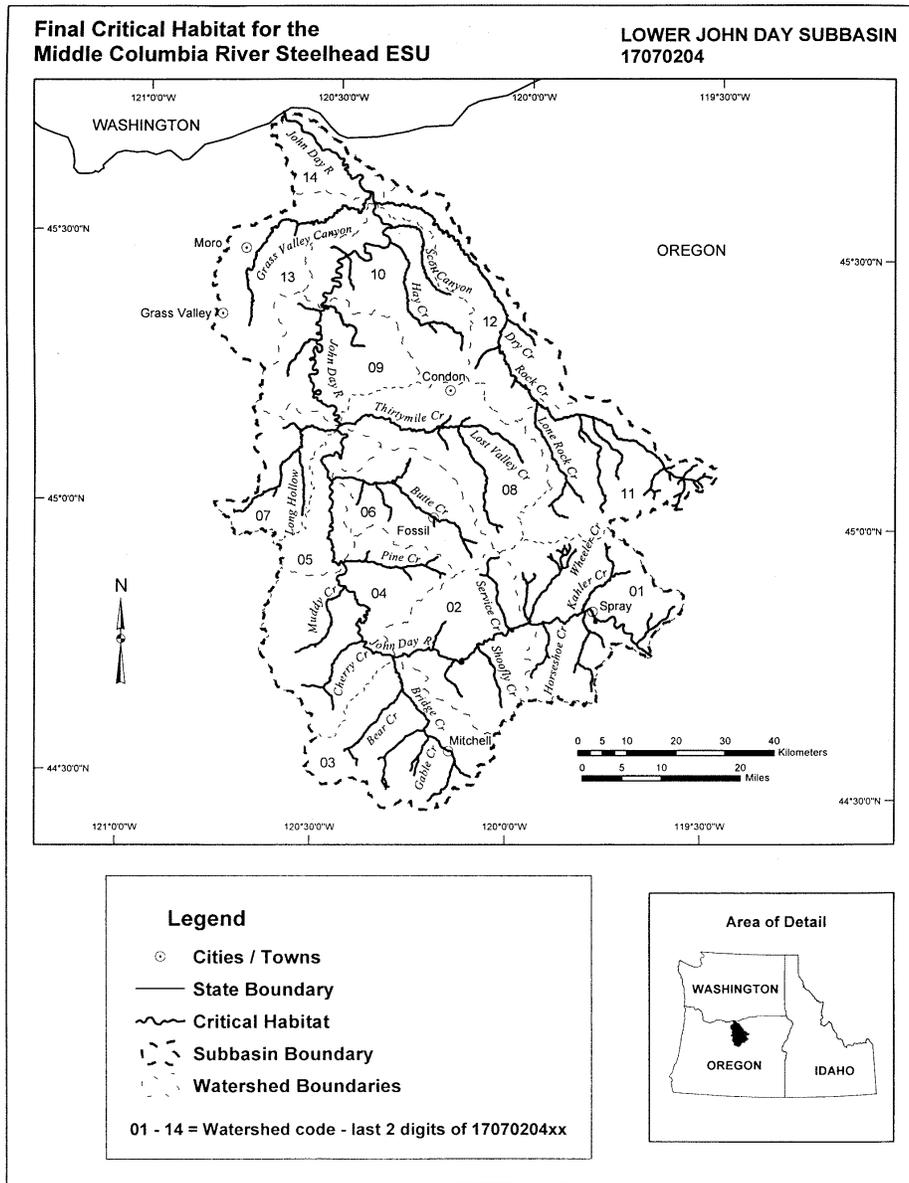


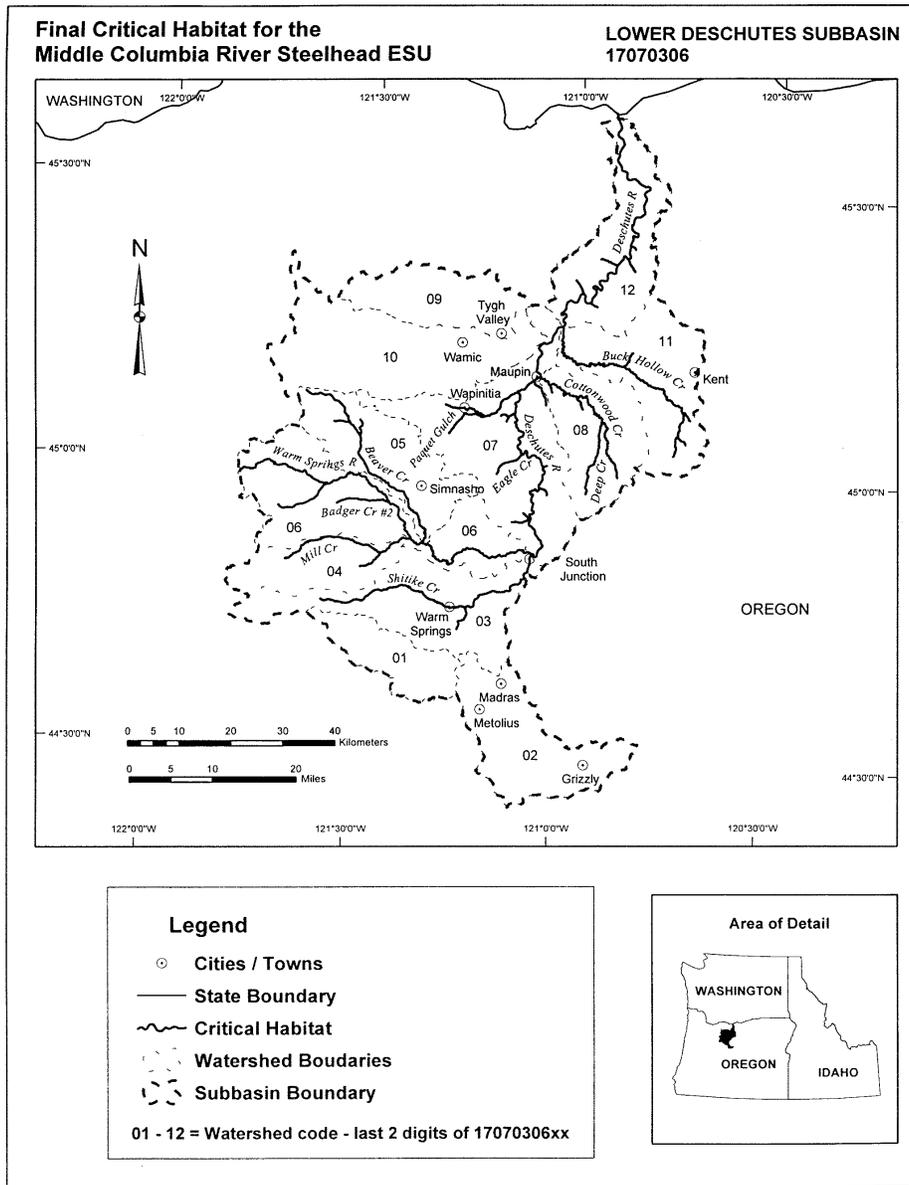


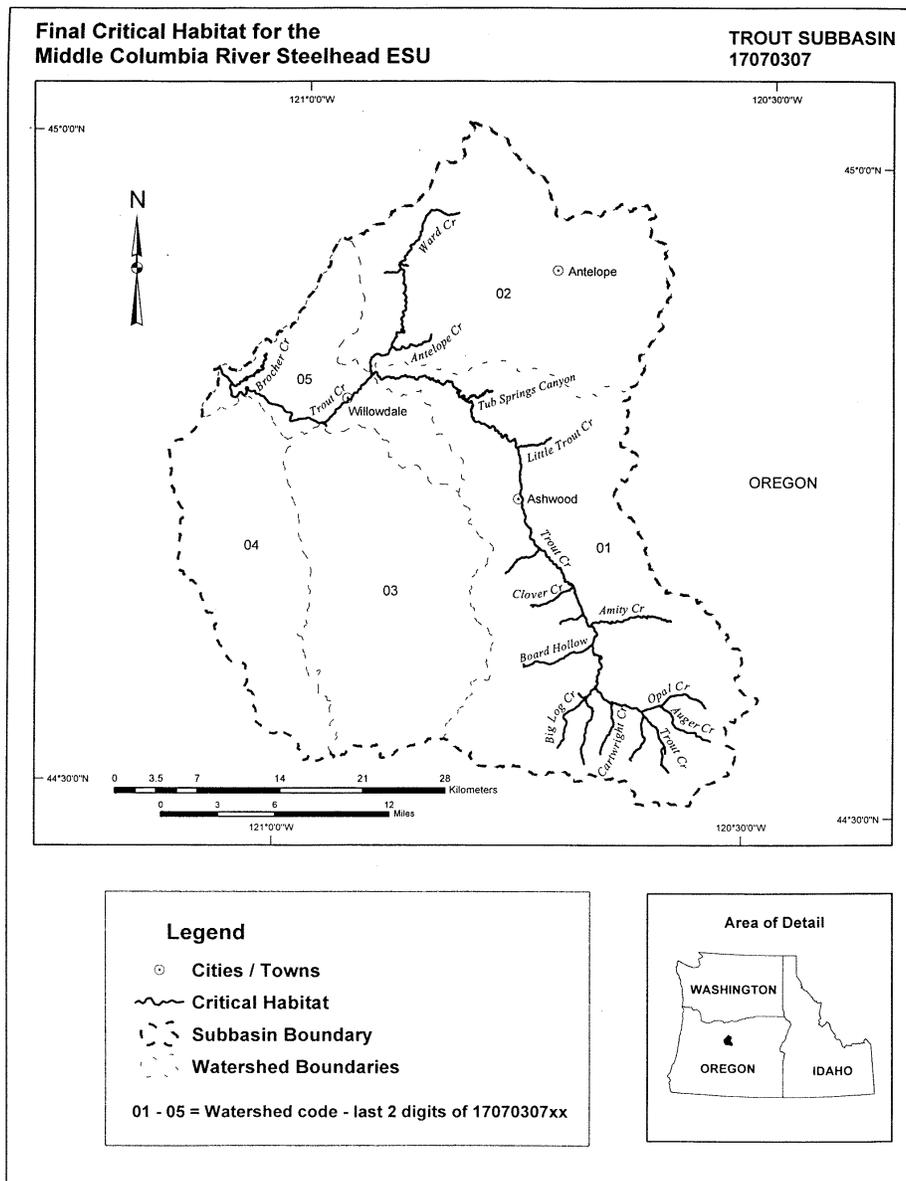


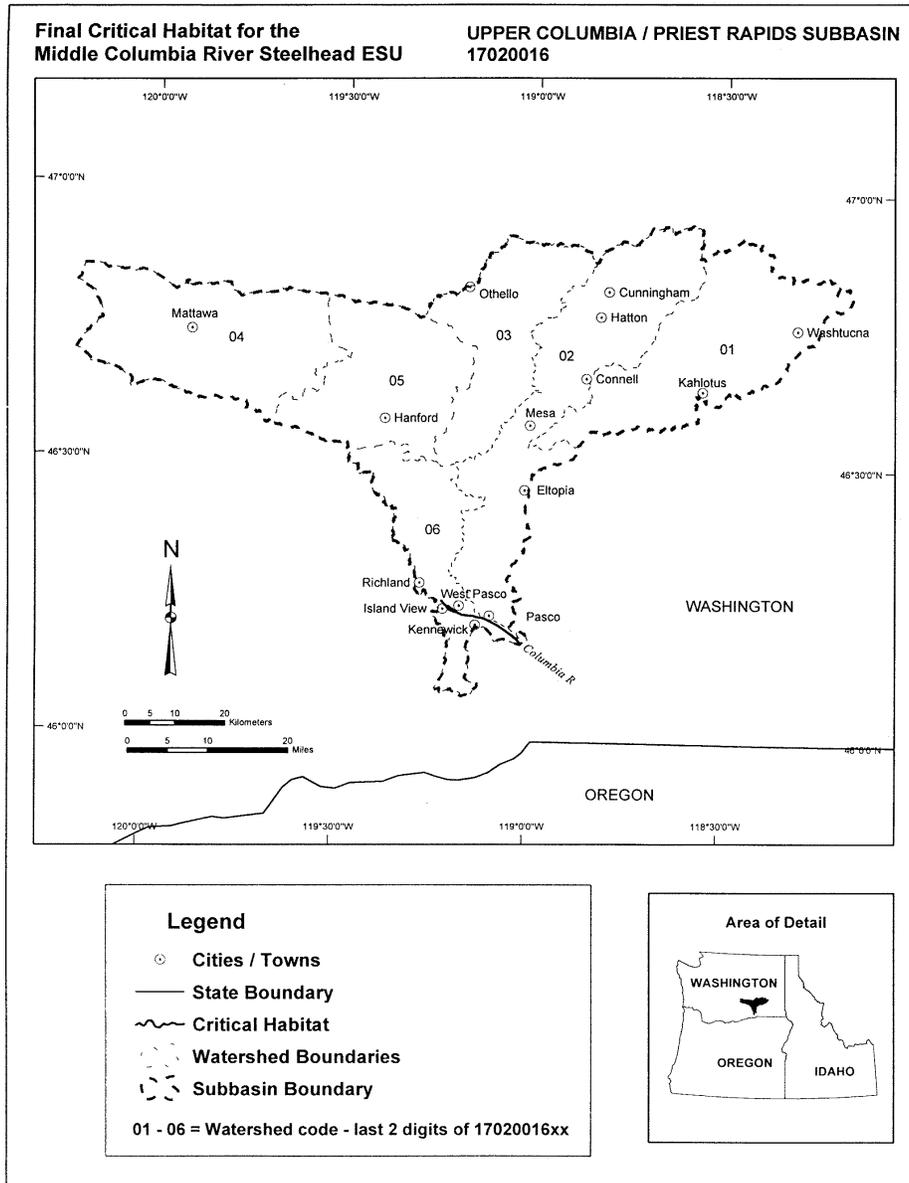


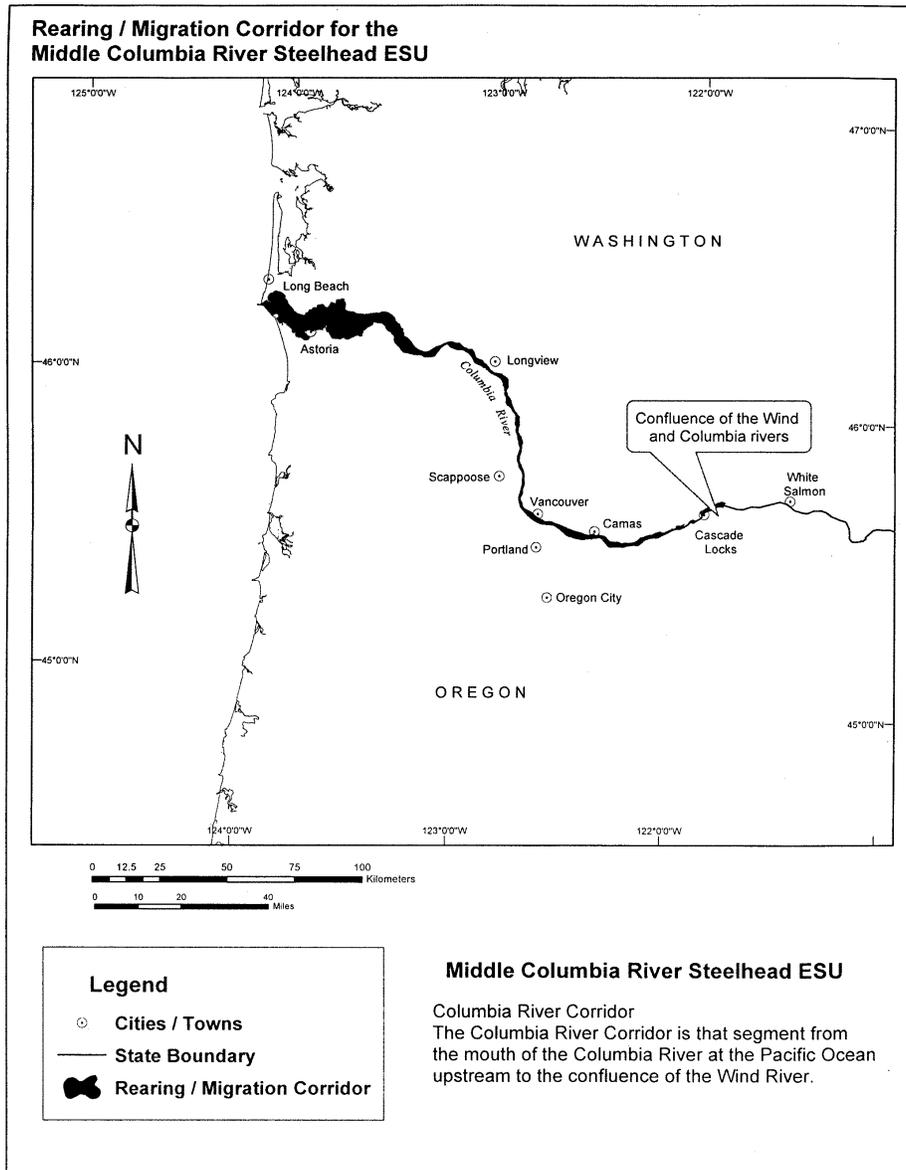












(s) Lower Columbia River Steelhead (*Oncorhynchus mykiss*). Critical habitat is designated to include the areas defined in the following subbasins:

(1) Middle Columbia/Hood Subbasin 17070105—(i) East Fork Hood River Watershed 1707010506. Outlet(s) = Hood River

(Lat 45.6050, Long -121.6323) upstream to endpoint(s) in: Baldwin Creek (45.5618, -121.5585); Bear Creek (45.4894, -121.6516); Cat Creek (45.4708, -121.5591); Clark Creek (45.3335, -121.6420); Coe Branch (45.4342, -121.6673); Cold Spring Creek (45.4020, -121.5873); Culvert Creek

(45.3770, -121.5660); Dog River (45.4404, -121.5623); East Fork Hood River (45.3172, -121.6390); Eliot Branch, Middle Fork Hood River (45.4534, -121.6362); Emil Creek (45.5223, -121.5886); Evans Creek (45.4872, -121.5894); Graham Creek (45.5463, -121.5639); Meadows Creek (45.3195, -121.6279); Newton Creek (45.3370, -121.6261); Pinnacle Creek (45.4595, -121.6568); Pocket Creek (45.3025, -121.5969); Polallie Creek (45.4132, -121.5826); Tony Creek (45.5254, -121.6584); Unnamed (45.3470, -121.5843); Unnamed (45.4661, -121.5627); Unnamed (45.5208, -121.6198); Unnamed (45.5445, -121.5738).

(ii) *West Fork Hood River Watershed 1707010507*. Outlet(s) = West Fork Hood River (Lat 45.6050, Long -121.6323) upstream to endpoint(s) in: Divers Creek (45.5457, -121.7447); Elk Creek (45.4294, -121.7884); Green Point Creek (45.5915, -121.6981); Indian Creek (45.5375, -121.7857); Jones Creek (45.4673, -121.8020); Lake Branch (45.5083, -121.8485); McGee Creek (45.4120, -121.7598); No Name Creek (45.5347, -121.7929); Red Hill Creek (45.4720, -121.7705); Unnamed (45.5502, -121.7014).

(iii) *Hood River Watershed 1707010508*. Outlet(s) = Hood River (Lat 45.7237, Long -121.5049) upstream to endpoint(s) in: Hood River (45.6050, -121.6323); Lenz Creek (45.6291, -121.5220); Neal Creek (45.5787, -121.4875); West Fork Neal Creek (45.5751, -121.5215); Whiskey Creek (45.6827, -121.5064).

(iv) *Wind River Watershed 1707010511*. Outlet(s) = Wind River (Lat 45.7067, Long -121.7929) upstream to endpoint(s) in: Bear Creek (45.7619, -121.8295); Big Hollow Creek (45.9408, -122.0075); Bourbon Creek (45.9246, -121.9982); Brush Creek (45.7720, -121.7528); Cedar Creek (45.8388, -121.7956); Compass Creek (45.8372, -122.0633); Crater Creek (45.8637, -122.0639); Dry Creek (45.9551, -121.9924); East Fork Trout Creek (45.8503, -122.0096); Eightmile Creek (45.8616, -121.8966); Falls Creek (45.9107, -121.9151); Hollis Creek (45.8524, -121.9304); Jimmy Creek (45.7886, -121.8409); Layout Creek (45.8096, -122.0475); Little Wind River (45.7763, -121.7222); Martha Creek (45.7846, -121.9482); Mouse Creek (45.8415, -121.8428); Ninemile Creek (45.8942, -121.9023); Oldman Creek (45.9856, -121.9369); Panther Creek (45.8605,

-121.8422); Pass Creek (45.8555, -122.0133); Planting Creek (45.8071, -122.0010); Proverbial Creek (45.9816, -121.9654); Tenmile Creek (45.8760, -121.8694); Trapper Creek (45.9113, -122.0470); Trout Creek (45.8679, -122.0477); Unnamed (45.7862, -121.9097); Unnamed (45.8008, -121.9881); Unnamed (45.8025, -121.9678); Unnamed (45.8142, -122.0204); Unnamed (45.8149, -122.0532); Unnamed (45.8161, -121.8437); Unnamed (45.8206, -121.8111); Unnamed (45.8218, -121.9470); Unnamed (45.8242, -122.0295); Unnamed (45.8427, -121.9180); Unnamed (45.8509, -121.9190); Unnamed (45.8529, -122.0406); Unnamed (45.8551, -122.0638); Unnamed (45.8610, -121.9635); Unnamed (45.8637, -122.0625); Unnamed (45.8640, -121.9764); Unnamed (45.8682, -121.9714); Unnamed (45.8940, -122.0348); Unnamed (45.8965, -122.0035); Unnamed (45.9652, -121.9517); Unnamed (45.9798, -121.8873); Unnamed (45.9844, -121.9171); Wind River (45.9964, -121.9000).

(v) *Middle Columbia/Grays Creek Watershed 1707010512*. Outlet(s) = Columbia River (Lat 45.7070, Long -121.7943) upstream to endpoint(s) in: Columbia River (45.7237, -121.5049).

(vi) *Middle Columbia/Eagle Creek Watershed 1707010513*. Outlet(s) = Columbia River (Lat 45.6453, Long -121.9395) upstream to endpoint(s) in: Columbia River (45.7070, -121.7943).

(2) Lower Columbia/Sandy Subbasin 17080001—(i) *Salmon River Watershed 17080001*. Outlet(s) = Salmon River (Lat 45.3768, Long -122.0293) upstream to endpoint(s) in: Bighorn Creek (45.2582, -121.9204); Boulder Creek (45.3027, -122.0209); Cheeney Creek (45.2919, -121.9710); Copper Creek (45.2454, -121.9051); Mack Hall Creek (45.2391, -121.9508); Salmon River (45.2511, -121.9025); South Fork Salmon River (45.2500, -121.9770); Unnamed (45.2576, -121.9068); Unnamed (45.2600, -121.9093); Unnamed (45.2633, -121.9153); Unnamed (45.2646, -121.9175); Unnamed (45.2708, -121.9246); Unnamed (45.2946, -121.9388); Unnamed (45.3161, -121.9565); Unnamed (45.3225, -121.9609); Unnamed (45.3254, -121.9582); Unnamed (45.3277, -121.9635); Unnamed (45.3336, -121.9538); Unnamed (45.3383, -121.9768); Unnamed (45.3398, -121.9954).

(ii) *Zigzag River Watershed 1708000102*. Outlet(s) = Zigzag River (Lat 45.3489, Long -121.9442) upstream to endpoint(s)

in: Camp Creek (45.3070, -121.7921); Cool Creek (45.2867, -121.8849); Devil Canyon (45.3186, -121.8587); Henry Creek (45.3241, -121.8869); Lady Creek (45.3199, -121.8225); Little Zigzag Canyon (45.3138, -121.8035); Still Creek (45.3167, -121.7228); Unnamed (45.2647, -121.8342); Unnamed (45.2706, -121.8194); Unnamed (45.2793, -121.8529); Unnamed (45.2801, -121.8537); Wind Creek (45.2961, -121.8515); Zigzag River (45.3270, -121.7786).

(iii) *Upper Sandy River Watershed 1708000103*. Outlet(s) = Sandy River (Lat 45.3489, Long -121.9442) upstream to endpoint(s) in: Cast Creek (45.3794, -121.8538); Clear Creek (45.3998, -121.8936); Clear Fork (45.4256, -121.8006); Horseshoe Creek (45.3664, -121.8680); Little Clear Creek (45.3854, -121.9190); Lost Creek (45.3670, -121.8091); Muddy Fork (45.3920, -121.7577); Sandy River (45.3719, -121.7560); Unnamed (45.3813, -121.8954); Unnamed (45.3904, -121.7979); Unnamed (45.4090, -121.8056); Unnamed (45.4164, -121.8342).

(iv) *Middle Sandy River Watershed 1708000104*. Outlet(s) = Sandy River (Lat 45.4464, Long -122.2459) upstream to endpoint(s) in: Alder Creek (45.3459, -122.0875); Bear Creek #2 (45.3368, -121.9265); Cedar Creek (45.4046, -122.2513); Hackett Creek (45.3525, -121.9504); North Boulder Creek (45.3900, -122.0037); Sandy River (45.3489, -121.9442); Unnamed (45.3469, -122.0673); Unnamed (45.3699, -122.0764); Unnamed (45.3808, -122.0325); Unnamed (45.3864, -122.0355); Whisky Creek (45.3744, -122.1202).

(v) *Washougal River Watershed 1708000106*. Outlet(s) = Unnamed (Lat 45.5812, Long -122.4077); Washougal River (45.5795, -122.4023) upstream to endpoint(s) in: Bear Creek (45.7732, -122.1468); Bluebird Creek (45.7486, -122.1717); Cougar Creek (45.6514, -122.2677); Dougan Creek (45.7080, -122.1817); East Fork Little Washougal River (45.6722, -122.2827); Grouse Creek (45.7574, -122.1352); Hagen Creek (45.7154, -122.2518); Jackson Creek (45.6755, -122.2530); Jones Creek (45.6913, -122.2870); Lacamas Creek (45.5972, -122.3933); Little Washougal River (45.7006, -122.3212); Lookout Creek (45.7806, -122.1006); Meander Creek (45.7708, -122.0848); Prospector Creek (45.7590, -122.0890); Silver Creek (45.7343,

-122.1694); Stebbins Creek (45.7285, -122.0683); Texas Creek (45.6946, -122.1873); Timber Creek (45.7236, -122.1001); Unnamed (45.5873, -122.4121); Unnamed (45.6002, -122.3312); Unnamed (45.6132, -122.3238); Unnamed (45.6177, -122.2425); Unnamed (45.6206, -122.3449); Unnamed (45.6213, -122.2807); Unnamed (45.6243, -122.2283); Unnamed (45.6251, -122.3419); Unnamed (45.6279, -122.2549); Unnamed (45.6297, -122.2463); Unnamed (45.6321, -122.2753); Unnamed (45.6328, -122.2574); Unnamed (45.6382, -122.2915); Unnamed (45.6477, -122.3665); Unnamed (45.6487, -122.3336); Unnamed (45.6507, -122.1562); Unnamed (45.6531, -122.2739); Unnamed (45.6594, -122.2062); Unnamed (45.6622, -122.3015); Unnamed (45.6625, -122.3446); Unnamed (45.6675, -122.3415); Unnamed (45.6694, -122.1553); Unnamed (45.6703, -122.3399); Unnamed (45.6721, -122.1725); Unnamed (45.6749, -122.3370); Unnamed (45.6798, -122.2905); Unnamed (45.6835, -122.3336); Unnamed (45.6836, -122.1146); Unnamed (45.6871, -122.2996); Unnamed (45.6934, -122.1063); Unnamed (45.6949, -122.3305); Unnamed (45.6959, -122.3149); Unnamed (45.6965, -122.0837); Unnamed (45.7074, -122.1566); Unnamed (45.7080, -122.2600); Unnamed (45.7092, -122.2510); Unnamed (45.7179, -122.0744); Unnamed (45.7201, -122.1360); Unnamed (45.7249, -122.1067); Unnamed (45.7285, -122.1965); Unnamed (45.7303, -122.1126); Unnamed (45.7458, -122.1328); Unnamed (45.7476, -122.0518); Unnamed (45.7482, -122.1594); Unnamed (45.7624, -122.1308); Unnamed (45.7841, -122.1211); Washougal River (45.7798, -122.1403); West Fork Washougal River (45.7382, -122.2173); Wildboy Creek (45.6712, -122.2172); Winkler Creek (45.6377, -122.2588).

(vi) *Columbia Gorge Tributaries Watershed 1708000107*. Outlet(s) = Columbia River (Lat 45.5710, Long -122.4021) upstream to endpoint(s) in: Columbia River (45.6453, -121.9395).

(vii) *Lower Sandy River Watershed 1708000108*. Outlet(s) = Sandy River (Lat 45.5679, Long -122.4023) upstream to endpoint(s) in: Beaver Creek (45.4959, -122.3643); Big Creek (45.5068, -122.2966); Buck Creek (45.4985, -122.2671); Gordon Creek (45.5021, -122.1805); Kelly Creek (45.5134, -122.3953); Sandy River (45.4464, -122.2459); Smith Creek (45.5136, -122.3339); Trout Creek (45.4819, -122.2769); Unnamed (45.4889, -122.3513);

Unnamed (45.5557, -122.3715); Unnamed (45.5600, -122.3650).

(3) Lewis Subbasin 17080002—(i) *East Fork Lewis River Watershed 1708000205*. Outlet(s) = Allen Creek (Lat 45.8641, Long -122.7499); East Fork Lewis River (45.8664, -122.7189); Gee Creek (45.8462, -122.7803) upstream to endpoint(s) in: Allen Creek (45.8279, -122.6968); Anaconda Creek (45.8208, -122.2652); Basket Creek (45.8327, -122.4579); Big Tree Creek (45.8572, -122.3728); Brezee Creek (45.8625, -122.6637); Cedar Creek (45.7226, -122.3290); Cold Creek (45.7493, -122.3252); Copper Creek (45.8177, -122.2637); Coyote Creek (45.7554, -122.2641); East Fork Lewis River (45.8380, -122.0948); Gee Creek (45.7920, -122.6679); Green Fork (45.8462, -122.1274); Grouse Creek (45.7214, -122.2709); King Creek (45.7802, -122.2552); Little Creek (45.8417, -122.1779); Lockwood Creek (45.8986, -122.5953); Mason Creek (45.8661, -122.5430); McCormick Creek (45.8521, -122.6907); McKinley Creek (45.8026, -122.1797); Niccolls Creek (45.8148, -122.3093); Poison Gulch (45.7898, -122.1617); Riley Creek (45.8936, -122.6175); Rock Creek (45.7375, -122.2571); Roger Creek (45.8183, -122.3426); Slide Creek (45.8477, -122.2090); Unnamed (45.7212, -122.3389); Unnamed (45.7623, -122.2727); Unnamed (45.7697, -122.3157); Unnamed (45.7726, -122.6651); Unnamed (45.7770, -122.3539); Unnamed (45.7802, -122.6068); Unnamed (45.7858, -122.3283); Unnamed (45.7916, -122.3780); Unnamed (45.7919, -122.2780); Unnamed (45.7961, -122.1312); Unnamed (45.7980, -122.5650); Unnamed (45.8033, -122.6667); Unnamed (45.8038, -122.3545); Unnamed (45.8075, -122.1120); Unnamed (45.8076, -122.6285); Unnamed (45.8079, -122.2942); Unnamed (45.8146, -122.4818); Unnamed (45.8147, -122.3144); Unnamed (45.8149, -122.5653); Unnamed (45.8172, -122.5742); Unnamed (45.8207, -122.4916); Unnamed (45.8230, -122.7069); Unnamed (45.8242, -122.6390); Unnamed (45.8292, -122.6040); Unnamed (45.8306, -122.3769); Unnamed (45.8353, -122.4842); Unnamed (45.8363, -122.1252); Unnamed (45.8368, -122.6498); Unnamed (45.8381, -122.4685); Unnamed (45.8427, -122.3708); Unnamed (45.8432, -122.1480); Unnamed (45.8434, -122.2292); Unnamed (45.8439, -122.6478); Unnamed (45.8471, -122.7486); Unnamed (45.8475, -122.6486); Unnamed (45.8484, -122.4401); Unnamed (45.8498, -122.7300);

Unnamed (45.8502, -122.5228); Unnamed (45.8513, -122.1323); Unnamed (45.8537, -122.5973); Unnamed (45.8600, -122.6112); Unnamed (45.8604, -122.3831); Unnamed (45.8606, -122.3981); Unnamed (45.8662, -122.5772); Unnamed (45.8667, -122.5744); Unnamed (45.8689, -122.4227); Unnamed (45.8698, -122.6777); Unnamed (45.8756, -122.4795); Unnamed (45.8813, -122.4772); Unnamed (45.8899, -122.6256); Unnamed (45.8986, -122.5742); Unnamed (45.8988, -122.6123); Unnamed (45.9055, -122.5187); Yacolt Creek (45.8761, -122.4220).

(ii) *Lower Lewis River Watershed 1708000206*. Outlet(s) = Lewis River (Lat 45.8519, Long -122.7806) upstream to endpoint(s) in: Bitter Creek (45.9133, -122.4593); Brush Creek (45.9280, -122.4674); Cedar Creek (45.9019, -122.3655); Chelatchie Creek (45.9357, -122.3784); Colvin Creek (45.9400, -122.6081); Houghton Creek (45.9559, -122.6348); John Creek (45.9291, -122.4964); Johnson Creek (45.9536, -122.6183); Lewis River (45.9570, -122.5550); Pup Creek (45.9486, -122.5245); Robinson Creek (45.9362, -122.7243); Ross Creek (45.9536, -122.7043); Staples Creek (45.9423, -122.6665); Unnamed (45.8696, -122.7658); Unnamed (45.8878, -122.3688); Unnamed (45.8928, -122.4209); Unnamed (45.8940, -122.4371); Unnamed (45.9001, -122.7226); Unnamed (45.9136, -122.6836); Unnamed (45.9141, -122.5565); Unnamed (45.9172, -122.3591); Unnamed (45.9202, -122.5339); Unnamed (45.9203, -122.4557); Unnamed (45.9245, -122.3731); Unnamed (45.9258, -122.5964); Unnamed (45.9294, -122.6225); Unnamed (45.9396, -122.4097); Unnamed (45.9417, -122.7035); Unnamed (45.9436, -122.6417); Unnamed (45.9438, -122.6190); Unnamed (45.9446, -122.6437); Unnamed (45.9457, -122.3926); Unnamed (45.9474, -122.6695); Unnamed (45.9549, -122.6967).

(4) Lower Columbia/Clatskanie Subbasin 17080003—*Kalama River Watershed 1708000301*. Outlet(s) = Burris Creek (Lat 45.8926, Long -122.7892); Bybee Creek (45.9667, -122.8150); Kalama River (46.0340, -122.8695); Mill Creek (45.9579, -122.8030); Schoolhouse Creek (45.9785, -122.8282); Unnamed (46.0001, -122.8438); Unnamed (46.0075, -122.8455) upstream to endpoint(s) in: Arnold Creek (46.0206, -122.5638); Bear Creek (46.0951, -122.5772); Burris Creek (45.9506, -122.7428); Bush Creek (46.0828, -122.4611); Bybee Creek (45.9695,

-122.8135); Canyon Creek (45.9540, -122.7925); Cedar Creek (46.0333, -122.8110); Dee Creek (45.9953, -122.6525); Elk Creek (46.1154, -122.4796); Hatchery Creek (46.0673, -122.7548); Indian Creek (46.0516, -122.7502); Jacks Creek (46.0400, -122.5014); Kalama River (46.1109, -122.3579); Knowlton Creek (46.0245, -122.6454); Langdon Creek (46.1137, -122.4364); Little Kalama River (45.9745, -122.6604); Lost Creek (46.0692, -122.5292); Mill Creek (45.9741, -122.7756); North Fork Elk Creek (46.1086, -122.5284); North Fork Kalama River (46.1550, -122.4007); Schoolhouse Creek (45.9810, -122.8217); Spencer Creek (46.0253, -122.8285); Summers Creek (46.0357, -122.6529); Unnamed (45.9034, -122.7792); Unnamed (45.9423, -122.7761); Unnamed (45.9683, -122.7751); Unnamed (45.9772, -122.6534); Unnamed (45.9820, -122.7123); Unnamed (45.9830, -122.8249); Unnamed (45.9957, -122.6742); Unnamed (46.0023, -122.8001); Unnamed (46.0034, -122.8330); Unnamed (46.0059, -122.7350); Unnamed (46.0064, -122.7377); Unnamed (46.0238, -122.5834); Unnamed (46.0257, -122.5913); Unnamed (46.0389, -122.6305); Unnamed (46.0437, -122.5713); Unnamed (46.0440, -122.8548); Unnamed (46.0462, -122.5097); Unnamed (46.0473, -122.7668); Unnamed (46.0611, -122.5514); Unnamed (46.0618, -122.4290); Unnamed (46.0634, -122.5630); Unnamed (46.0645, -122.3953); Unnamed (46.0861, -122.6708); Unnamed (46.0882, -122.5729); Unnamed (46.0982, -122.4887); Unnamed (46.0986, -122.6384); Unnamed (46.0998, -122.6089); Unnamed (46.1031, -122.3851); Unnamed (46.1076, -122.5965); Unnamed (46.1086, -122.4399); Unnamed (46.1088, -122.3440); Unnamed (46.1124, -122.6411); Unnamed (46.1153, -122.5646); Unnamed (46.1159, -122.5728); Unnamed (46.1169, -122.3397); Unnamed (46.1242, -122.5932); Unnamed (46.1244, -122.4255); Unnamed (46.1355, -122.4413); Unnamed (46.1451, -122.4279); Unnamed (46.1543, -122.4131); Unnamed (46.1559, -122.4254); Wild Horse Creek (46.1018, -122.6755); Wolf Creek (46.0523, -122.4334).

(5) Upper Cowlitz Subbasin 17080004—
(i) *Headwaters Cowlitz River Watershed 1708000401*. Outlet(s) = Cowlitz River (Lat 46.6580, Long -121.6032) upstream to endpoint(s) in: Clear Fork Cowlitz River (46.6846, -121.5668); Muddy Fork Cowlitz River (46.6973, -121.6177); Ohanapecosh River (46.6909, -121.5809); Purcell Creek (46.6722, -121.5877).

(ii) *Upper Cowlitz River Watershed 1708000402*. Outlet(s) = Cowlitz River (Lat 46.5742, Long -121.7059) upstream to endpoint(s) in: Butter Creek (46.6451, -121.6749); Coal Creek (46.6438, -121.6108); Cowlitz River (46.6580, -121.6032); Hall Creek (46.6044, -121.6609); Johnson Creek (46.5546, -121.6373); Lake Creek (46.6227, -121.6093); Skate Creek (46.6850, -121.8052); Unnamed (46.6930, -121.8024).

(iii) *Cowlitz Valley Frontal Watershed 1708000403*. Outlet(s) = Cowlitz River (Lat 46.4765, Long -122.0952) upstream to endpoint(s) in: Burton Creek (46.5423, -121.7505); Cowlitz River (46.5742, -121.7059); Davis Creek (46.5410, -121.8084); Kilborn Creek (46.5081, -121.8007); Oliver Creek (46.5450, -121.9928); Peters Creek (46.5386, -121.9830); Siler Creek (46.4931, -121.9085); Silver Creek (46.5909, -121.9253); Smith Creek (46.5620, -121.6923); Unnamed (46.4913, -122.0820); Unnamed (46.5657, -122.0489); Willame Creek (46.5805, -121.7319).

(iv) *Upper Cispus River Watershed 1708000404*. Outlet(s) = Cispus River (Lat 46.4449, Long -121.7954) upstream to endpoint(s) in: Cispus River (46.3450, -121.6833); East Canyon Creek (46.3472, -121.7028); North Fork Cispus River (46.4362, -121.6479); Timonium Creek (46.4318, -121.6548); Twin Creek (46.3748, -121.7297); Yozoo Creek (46.4363, -121.6637).

(v) *Lower Cispus River Watershed 1708000405*. Outlet(s) = Cispus River (Lat 46.4765, Long -122.0952) upstream to endpoint(s) in: Ames Creek (46.4654, -121.9233); Camp Creek (46.4513, -121.8301); Cispus River (46.4449, -121.7954); Covell Creek (46.4331, -121.8516); Crystal Creek (46.4454, -122.0234); Greenhorn Creek (46.4217, -121.9042); Iron Creek (46.3887, -121.9702); McCoy Creek (46.3891, -121.8190); Quartz Creek (46.4250, -122.0519); Unnamed (46.4633, -121.9548); Woods Creek (46.4741, -121.9473); Yellowjacket Creek (46.3869, -121.8342).

(6) Cowlitz Subbasin 17080005—(i) *Riffe Reservoir Watershed 1708000502*. Outlet(s) = Cowlitz River (Lat 46.5033, Long -122.5870) upstream to endpoint(s) in: Cowlitz River (46.4765, -122.0952).

(ii) *Jackson Prairie Watershed 1708000503*. Outlet(s) = Cowlitz River (Lat 46.3678, Long -122.9337) upstream to endpoint(s) in: Bear Creek (46.4538,

–122.9192); Blue Creek (46.4885, –122.7253); Brights Creek (46.5015, –122.6247); Cedar Creek (46.4110, –122.7316); Coon Creek (46.4371, –122.9065); Cougar Creek (46.3937, –122.7945); Cowlitz River (46.5033, –122.5870); Foster Creek (46.4073, –122.8897); Hopkey Creek (46.4587, –122.5533); Jones Creek (46.5125, –122.6825); Lacamas Creek (46.5246, –122.7923); Little Salmon Creek (46.4402, –122.7458); Mill Creek (46.5024, –122.8013); Mill Creek (46.5175, –122.6209); Otter Creek (46.4801, –122.7000); Pin Creek (46.4133, –122.8321); Rapid Creek (46.4320, –122.5465); Skook Creek (46.5031, –122.7561); Unnamed (46.3838, –122.7243); Unnamed (46.3841, –122.8789); Unnamed (46.3849, –122.7043); Unnamed (46.3857, –122.9224); Unnamed (46.3881, –122.6949); Unnamed (46.3900, –122.7368); Unnamed (46.3998, –122.8974); Unnamed (46.4001, –122.7437); Unnamed (46.4015, –122.7327); Unnamed (46.4097, –122.5887); Unnamed (46.4102, –122.6787); Unnamed (46.4106, –122.7075); Unnamed (46.4115, –122.9091); Unnamed (46.4117, –122.7554); Unnamed (46.4143, –122.7823); Unnamed (46.4174, –122.6365); Unnamed (46.4241, –122.8170); Unnamed (46.4269, –122.6124); Unnamed (46.4291, –122.6418); Unnamed (46.4293, –122.8354); Unnamed (46.4412, –122.5192); Unnamed (46.4454, –122.8662); Unnamed (46.4496, –122.5281); Unnamed (46.4514, –122.8699); Unnamed (46.4703, –122.7959); Unnamed (46.4708, –122.7713); Unnamed (46.4729, –122.6850); Unnamed (46.4886, –122.8067); Unnamed (46.5172, –122.6534); Unnamed (46.5312, –122.8196).

(iii) *North Fork Toutle River Watershed 1708000504*. Outlet(s) = North Fork Toutle River (Lat 46.3669, Long –122.5859) upstream to endpoint(s) in: Alder Creek (46.2813, –122.4964); Bear Creek (46.3085, –122.3504); Coldwater Creek (46.2884, –122.2675); Cow Creek (46.3287, –122.4616); Hoffstadt Creek (46.3211, –122.3324); Maratta Creek (46.2925, –122.2845); Unnamed (46.3050, –122.5416); Unnamed (46.3346, –122.5460); Unnamed (46.3394, –122.3314).

(iv) *Green River Watershed 1708000505*. Outlet(s) = Green River (Lat 46.3718, Long –122.5847) upstream to endpoint(s) in: Beaver Creek (46.4056, –122.5671); Cascade Creek (46.3924, –122.3529); Devils Creek (46.4017, –122.4089); Elk Creek (46.4178, –122.2477); Green River (46.3857, –122.1815); Jim Creek (46.3885, –122.5256); Miners Creek (46.3483, –122.1932); Shultz

Creek (46.3684, –122.2848); Tradedollar Creek (46.3769, –122.2411); Unnamed (46.3271, –122.2978); Unnamed (46.3467, –122.2092); Unnamed (46.3602, –122.3257); Unnamed (46.3655, –122.4774); Unnamed (46.3683, –122.3454); Unnamed (46.3695, –122.4132); Unnamed (46.3697, –122.4705); Unnamed (46.3707, –122.5175); Unnamed (46.3734, –122.3883); Unnamed (46.3817, –122.2348); Unnamed (46.3844, –122.4335); Unnamed (46.3876, –122.4870); Unnamed (46.3931, –122.3726); Unnamed (46.4023, –122.5543); Unnamed (46.4060, –122.5415); Unnamed (46.4087, –122.5061); Unnamed (46.4106, –122.4300); Unnamed (46.4143, –122.4463); Unnamed (46.4173, –122.2910); Unnamed (46.4196, –122.2850); Unnamed (46.4226, –122.3029); Unnamed (46.4285, –122.2662).

(v) *South Fork Toutle River Watershed 1708000506*. Outlet(s) = South Fork Toutle River (Lat 46.3282, Long –122.7215) upstream to endpoint(s) in: Bear Creek (46.2219, –122.4620); Big Wolf Creek (46.2259, –122.5662); Disappointment Creek (46.2138, –122.3080); Eighteen Creek (46.2453, –122.5989); Harrington Creek (46.2508, –122.4126); Johnson Creek (46.3047, –122.5923); Sheep Canyon (46.2066, –122.2672); South Fork Toutle River (46.2137, –122.2347); Studebaker Creek (46.2825, –122.6805); Thirteen Creek (46.2374, –122.6230); Trouble Creek (46.1999, –122.3774); Twenty Creek (46.2508, –122.5738); Unnamed (46.1858, –122.2983); Unnamed (46.1953, –122.2881); Unnamed (46.2068, –122.3301); Unnamed (46.2075, –122.3267); Unnamed (46.2082, –122.2591); Unnamed (46.2107, –122.4301); Unnamed (46.2115, –122.2786); Unnamed (46.2117, –122.2378); Unnamed (46.2121, –122.5188); Unnamed (46.2157, –122.3467); Unnamed (46.2215, –122.5318); Unnamed (46.2234, –122.3265); Unnamed (46.2265, –122.3906); Unnamed (46.2271, –122.3367); Unnamed (46.2277, –122.3719); Unnamed (46.2309, –122.3828); Unnamed (46.2357, –122.4802); Unnamed (46.2365, –122.4402); Unnamed (46.2424, –122.4860); Unnamed (46.2444, –122.5427); Unnamed (46.2457, –122.6283); Unnamed (46.2523, –122.5147); Unnamed (46.2587, –122.5333); Unnamed (46.2591, –122.5240); Unnamed (46.2608, –122.5493); Unnamed (46.2618, –122.5705); Unnamed (46.2693, –122.5763); Unnamed (46.2707, –122.6094); Unnamed (46.2932, –122.5890); Unnamed (46.2969, –122.6718); Unnamed (46.2976, –122.6129); Unnamed (46.3035, –122.5952); Unnamed (46.3128,

-122.7032); Unnamed (46.3217, -122.6473); Whitten Creek (46.2328, -122.4944).

(vi) *East Willapa Watershed 1708000507*.

Outlet(s) = Cowlitz River (Lat 46.2660, Long -122.9154) upstream to endpoint(s) in: Arkansas Creek (46.3345, -123.0567); Baxter Creek (46.3367, -122.9841); Brim Creek (46.4446, -123.0395); Campbell Creek (46.3436, -123.0700); Cline Creek (46.3397, -122.8550); Cowlitz River (46.3678, -122.9337); Delameter Creek (46.2705, -123.0143); Ferrier Creek (46.4646, -122.9374); Hemlock Creek (46.2586, -122.7270); Hill Creek (46.3861, -122.8864); King Creek (46.5304, -123.0203); McMurphy Creek (46.4113, -122.9469); Monahan Creek (46.3041, -123.0614); North Fork Brim Creek (46.4627, -123.0222); North Fork Toutle River (46.3669, -122.5859); Owens Creek (46.3994, -123.0457); Rock Creek (46.3479, -122.8144); Rock Creek (46.3531, -122.9368); Snow Creek (46.4486, -122.9805); Stankey Creek (46.3259, -122.8266); Stillwater Creek (46.3583, -123.1144); Sucker Creek (46.2600, -122.7684); Tucker Creek (46.2565, -123.0162); Unnamed (46.2413, -122.9887); Unnamed (46.2480, -123.0169); Unnamed (46.2480, -122.7759); Unnamed (46.2517, -123.0173); Unnamed (46.2606, -122.9549); Unnamed (46.2629, -123.0188); Unnamed (46.2663, -122.9804); Unnamed (46.2709, -122.7687); Unnamed (46.2711, -122.8159); Unnamed (46.2840, -122.8128); Unnamed (46.2878, -123.0286); Unnamed (46.2883, -122.9051); Unnamed (46.2892, -122.9625); Unnamed (46.2900, -122.8124); Unnamed (46.3030, -123.0645); Unnamed (46.3092, -122.9826); Unnamed (46.3160, -122.7783); Unnamed (46.3161, -123.0123); Unnamed (46.3173, -122.8950); Unnamed (46.3229, -122.8152); Unnamed (46.3245, -122.8609); Unnamed (46.3248, -123.0292); Unnamed (46.3252, -122.9238); Unnamed (46.3294, -122.9084); Unnamed (46.3309, -123.0046); Unnamed (46.3316, -122.8257); Unnamed (46.3346, -123.0167); Unnamed (46.3378, -122.9398); Unnamed (46.3393, -122.9402); Unnamed (46.3415, -122.9208); Unnamed (46.3456, -122.6405); Unnamed (46.3472, -122.9457); Unnamed (46.3488, -123.0519); Unnamed (46.3510, -123.0079); Unnamed (46.3511, -122.7678); Unnamed (46.3584, -122.7902); Unnamed (46.3585, -123.0369); Unnamed (46.3586, -122.7477); Unnamed (46.3599, -123.0992); Unnamed (46.3623, -122.6910); Unnamed (46.3665, -122.6334); Unnamed (46.3667, -122.8953); Unnamed

(46.3683, -122.8930); Unnamed (46.3683, -122.7502); Unnamed (46.3718, -122.6202); Unnamed (46.3720, -123.0933); Unnamed (46.3748, -122.6167); Unnamed (46.3818, -122.8822); Unnamed (46.3824, -122.6090); Unnamed (46.3942, -122.9794); Unnamed (46.4015, -123.0272); Unnamed (46.4045, -123.0194); Unnamed (46.4177, -122.9611); Unnamed (46.4200, -123.0403); Unnamed (46.4286, -123.0467); Unnamed (46.4362, -123.0451); Unnamed (46.4379, -122.9985); Unnamed (46.4571, -122.9604); Unnamed (46.4606, -123.0166); Unnamed (46.4724, -122.9989); Unnamed (46.4907, -122.9352); Unnamed (46.5074, -122.8877); Unnamed (46.5089, -122.9291); Unnamed (46.5228, -122.8539); Unnamed (46.5336, -122.9793); Unnamed (46.5371, -122.8214); Unnamed (46.5439, -122.8538); Whittle Creek (46.3122, -122.9501); Wyant Creek (46.3381, -122.6117).

(vii) *Coweeman River Watershed 1708000508*. Outlet(s) = Cowlitz River

(Lat 46.0977, Long -122.9141); Owl Creek (46.0771, -122.8676) upstream to endpoint(s) in: Baird Creek (46.1942, -122.5483); Coweeman River (46.1505, -122.5172); Cowlitz River (46.2660, -122.9154); Goble Creek (46.1103, -122.6789); Hill Creek (46.1784, -122.5990); Leckler Creek (46.2317, -122.9470); Little Baird Creek (46.1905, -122.5709); Martin Creek (46.1394, -122.5519); Mulholland Creek (46.2013, -122.6450); Nineteen Creek (46.1437, -122.6146); North Fork Goble Creek (46.1363, -122.6769); Nye Creek (46.1219, -122.8040); O'Neil Creek (46.1760, -122.5422); Ostrander Creek (46.2103, -122.7623); Owl Creek (46.0913, -122.8644); Salmon Creek (46.2547, -122.8839); Sandy Bend Creek (46.2319, -122.9140); Skipper Creek (46.1639, -122.5887); South Fork Ostrander Creek (46.1875, -122.8240); Turner Creek (46.1167, -122.8149); Unnamed (46.0719, -122.8607); Unnamed (46.0767, -122.8605); Unnamed (46.0824, -122.7200); Unnamed (46.0843, -122.7195); Unnamed (46.1185, -122.7253); Unnamed (46.1289, -122.8968); Unnamed (46.1390, -122.5709); Unnamed (46.1430, -122.8125); Unnamed (46.1433, -122.8084); Unnamed (46.1478, -122.8649); Unnamed (46.1546, -122.6376); Unnamed (46.1562, -122.7808); Unnamed (46.1579, -122.6476); Unnamed (46.1582, -122.5332); Unnamed (46.1605, -122.6681); Unnamed (46.1620, -122.5885); Unnamed (46.1671, -122.6284); Unnamed (46.1688, -122.9215); Unnamed (46.1724, -122.6118); Unnamed

(46.1735, -122.8282); Unnamed (46.1750, -122.8428); Unnamed (46.1750, -122.7557); Unnamed (46.1797, -122.7746); Unnamed (46.1803, -122.7801); Unnamed (46.1811, -122.7631); Unnamed (46.1814, -122.7656); Unnamed (46.1840, -122.8191); Unnamed (46.1955, -122.9082); Unnamed (46.1966, -122.5542); Unnamed (46.1971, -122.7118); Unnamed (46.2014, -122.8241); Unnamed (46.2021, -122.6941); Unnamed (46.2027, -122.5593); Unnamed (46.2172, -122.9516); Unnamed (46.2192, -122.6663); Unnamed (46.2199, -122.8375); Unnamed (46.2208, -122.8887); Unnamed (46.2231, -122.9509); Unnamed (46.2257, -122.7667); Unnamed (46.2261, -122.8023); Unnamed (46.2379, -122.8859); Unnamed (46.2430, -122.8842).

(7) Clackamas Subbasin 17090011—(i) *Collawash River Watershed 1709001101*. Outlet(s) = Collawash River (Lat 45.0321, Long -122.0600) upstream to endpoint(s) in: Blister Creek (44.9594, -122.1590); Dickey Creek (44.9335, -122.0469); East Fork Collawash River (44.8789, -121.9850); Elk Lake Creek (44.8886, -122.0128); Fan Creek (44.9926, -122.0735); Farm Creek (44.9620, -122.0604); Hot Springs Fork Collawash River (44.9005, -122.1616); Hugh Creek (44.9226, -122.1978); Pansy Creek (44.9463, -122.1420); Skin Creek (44.9477, -122.2015); Thunder Creek (44.9740, -122.1230).

(ii) *Upper Clackamas River Watershed 1709001102*. Outlet(s) = Clackamas River (Lat 45.0321, Long -122.0600) upstream to endpoint(s) in: Berry Creek (44.8291, -121.9176); Cabin Creek (45.0087, -121.8958); Clackamas River (44.8723, -121.8470); Cub Creek (44.8288, -121.8863); Fawn Creek (44.9089, -121.9226); Hunter Creek (44.8926, -121.9285); Kansas Creek (44.9820, -121.8999); Last Creek (44.9759, -121.8424); Lost Creek (45.0180, -121.9070); Lowe Creek (44.9636, -121.9457); Pinhead Creek (44.9421, -121.8359); Pot Creek (45.0201, -121.9014); Rhododendron Creek (44.9358, -121.9154); Sisi Creek (44.9110, -121.8875); Unnamed (44.8286, -121.9225); Unnamed (44.8343, -121.8778); Unnamed (44.8944, -121.9028); Unnamed (44.9355, -121.8735); Unnamed (44.9661, -121.8894); Unnamed (44.9687, -121.8920); Unnamed (45.0000, -121.8910).

(iii) *Oak Grove Fork Clackamas River Watershed 1709001103*. Outlet(s) = Oak Grove Fork Clackamas River (Lat 45.0746, Long -122.0520) upstream to endpoint(s) in: Oak Grove Fork

Clackamas River (45.0823, -121.9861); Pint Creek (45.0834, -122.0355).

(iv) *Middle Clackamas River Watershed 1709001104*. Outlet(s) = Clackamas River (Lat 45.2440, Long -122.2798) upstream to endpoint(s) in: Big Creek (45.0694, -122.0848); Calico Creek (45.0682, -122.1627); Clackamas River (45.0321, -122.0600); Cripple Creek (45.1149, -122.0618); Fish Creek (45.0634, -122.1597); Mag Creek (45.0587, -122.0488); North Fork Clackamas River (45.2371, -122.2181); Pick Creek (45.0738, -122.1994); Pup Creek (45.1451, -122.1055); Roaring River (45.1773, -122.0650); Sandstone Creek (45.0862, -122.0845); Second Creek (45.1081, -122.1601); South Fork Clackamas River (45.1912, -122.2261); Tag Creek (45.0605, -122.0475); Tar Creek (45.0494, -122.0569); Third Creek (45.0977, -122.1649); Trout Creek (45.0379, -122.0720); Wash Creek (45.0473, -122.1893); Whale Creek (45.1102, -122.0849).

(v) *Eagle Creek Watershed 1709001105*. Outlet(s) = Eagle Creek (Lat 45.3535, Long -122.3823) upstream to endpoint(s) in: Bear Creek (45.3369, -122.2331); Currin Creek (45.3369, -122.3555); Delph Creek (45.2587, -122.2098); Eagle Creek (45.2766, -122.1998); Little Eagle Creek (45.3003, -122.1682); North Fork Eagle Creek (45.3142, -122.1135); Trout Creek (45.3305, -122.1187).

(vi) *Lower Clackamas River 1709001106*. Outlet(s) = Clackamas River (Lat 45.3719, Long -122.6071) upstream to endpoint(s) in: Bargfeld Creek (45.3195, -122.4398); Clackamas River (45.2440, -122.2798); Clear Creek (45.2022, -122.3121); Deep Creek (45.3421, -122.2799); Foster Creek (45.3512, -122.4082); Goose Creek (45.3621, -122.3549); Little Clear Creek (45.2803, -122.4055); Mosier Creek (45.2683, -122.4516); North Fork Deep Creek (45.4271, -122.3094); Richardson Creek (45.4097, -122.4484); Rock Creek (45.4157, -122.5013); Tickle Creek (45.3932, -122.2775); Unnamed (45.3502, -122.4861); Unnamed (45.3626, -122.2858); Unnamed (45.3816, -122.3721); Unnamed (45.4057, -122.3223); Unnamed (45.4102, -122.2987); Wade Creek (45.2922, -122.3237).

(8) Lower Willamette Subbasin 17090012—(i) *Johnson Creek Watershed 1709001201*. Outlet(s) = Willamette River (Lat 45.4423, Long -122.6453) upstream to endpoint(s) in: Crystal Springs

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Creek (45.4811, -122.6381); Crystal Springs Lake (45.4799, -122.6361); Johnson Creek (45.4610, -122.3432); Kellogg Creek (45.4083, -122.5925); Kelly Creek (45.4661, -122.4655); Mount Scott Creek (45.4306, -122.5556); Oswego Creek (45.4105, -122.6666); Phillips Creek (45.4328, -122.5763); Tryon Creek (45.4472, -122.6863); Unnamed (45.4793, -122.4165); Willamette River (45.3719, -122.6071).

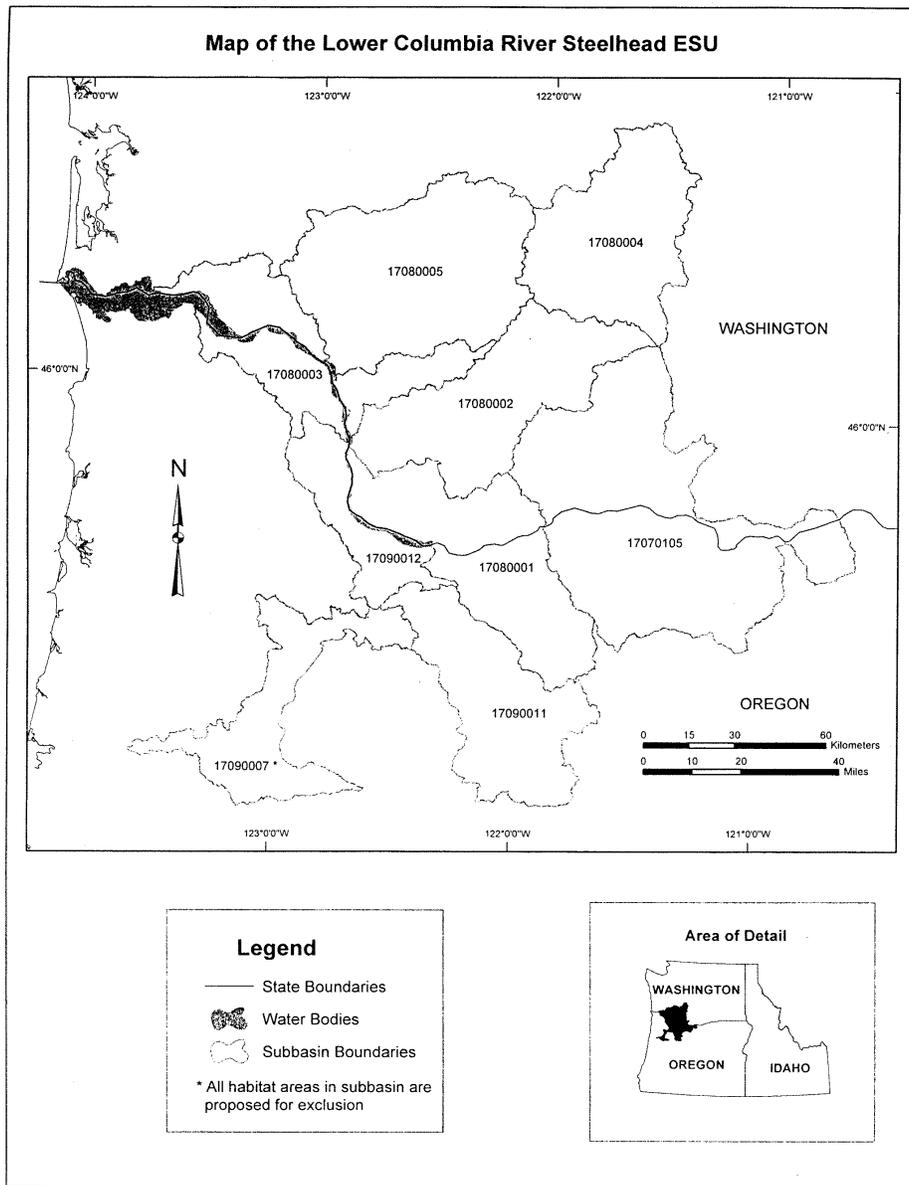
(ii) *Scappoose Creek Watershed 1709001202*. Outlet(s) = Multnomah Channel (Lat 45.8577, Long -122.7919) upstream to endpoint(s) in: Multnomah Channel (45.6188, -122.7921).

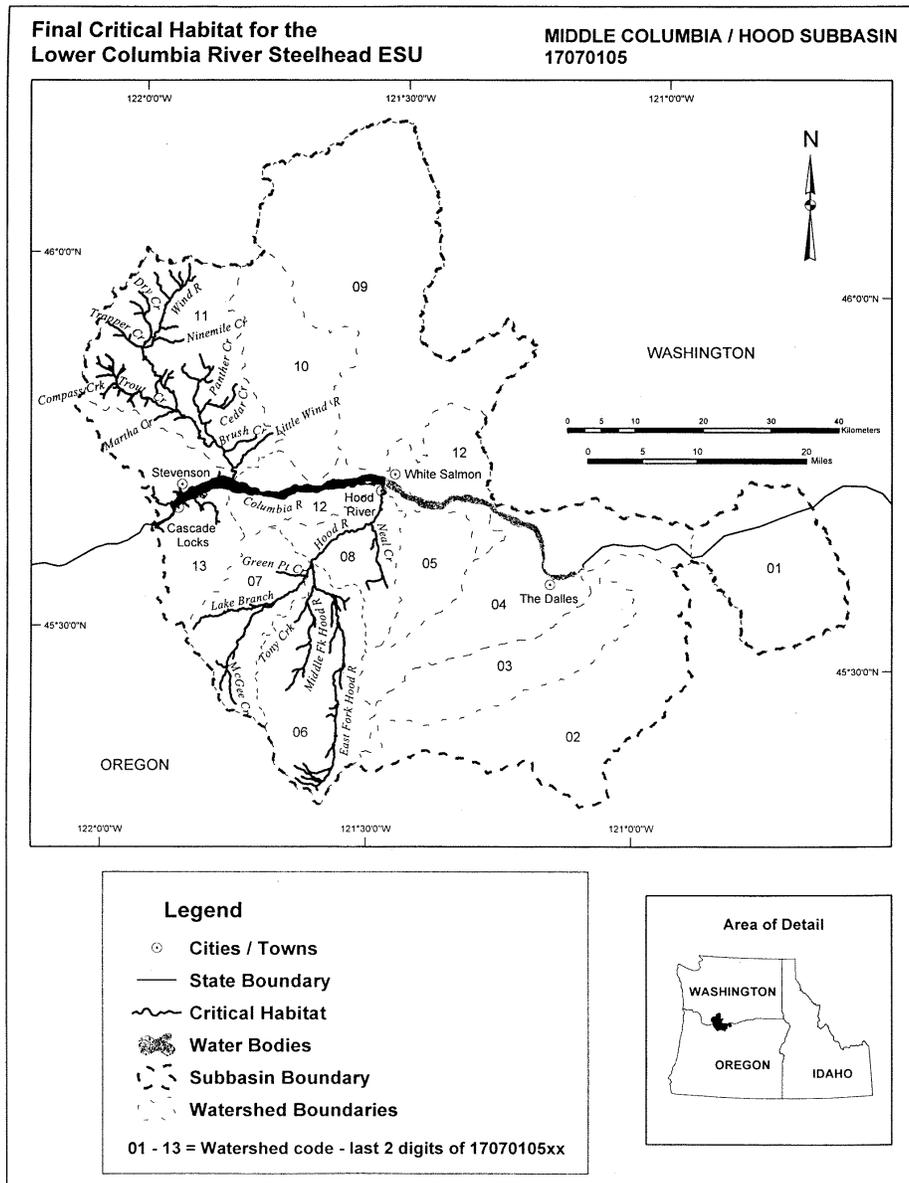
(iii) *Columbia Slough/Willamette River Watershed 1709001203*. Outlet(s) = Wil-

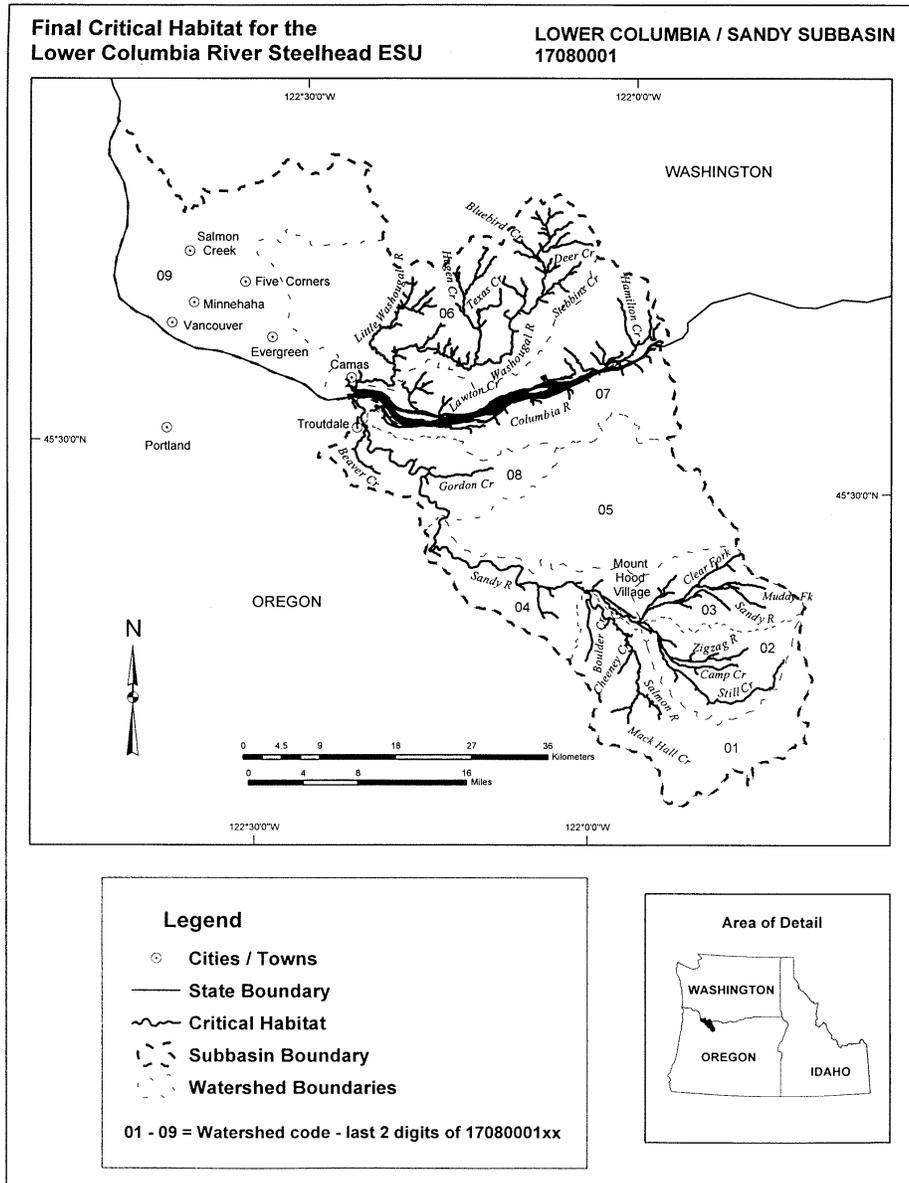
lamette River (Lat 45.6530, Long -122.7646) upstream to endpoint(s) in: Bybee Lake (45.6266, -122.7523); Bybee/Smith Lakes (45.6105, -122.7285); Columbia Slough #1 (45.6078, -122.7447); Swan Island Basin (45.5652, -122.7120); Unnamed (45.6253, -122.7568); Willamette River (45.4423, -122.6453).

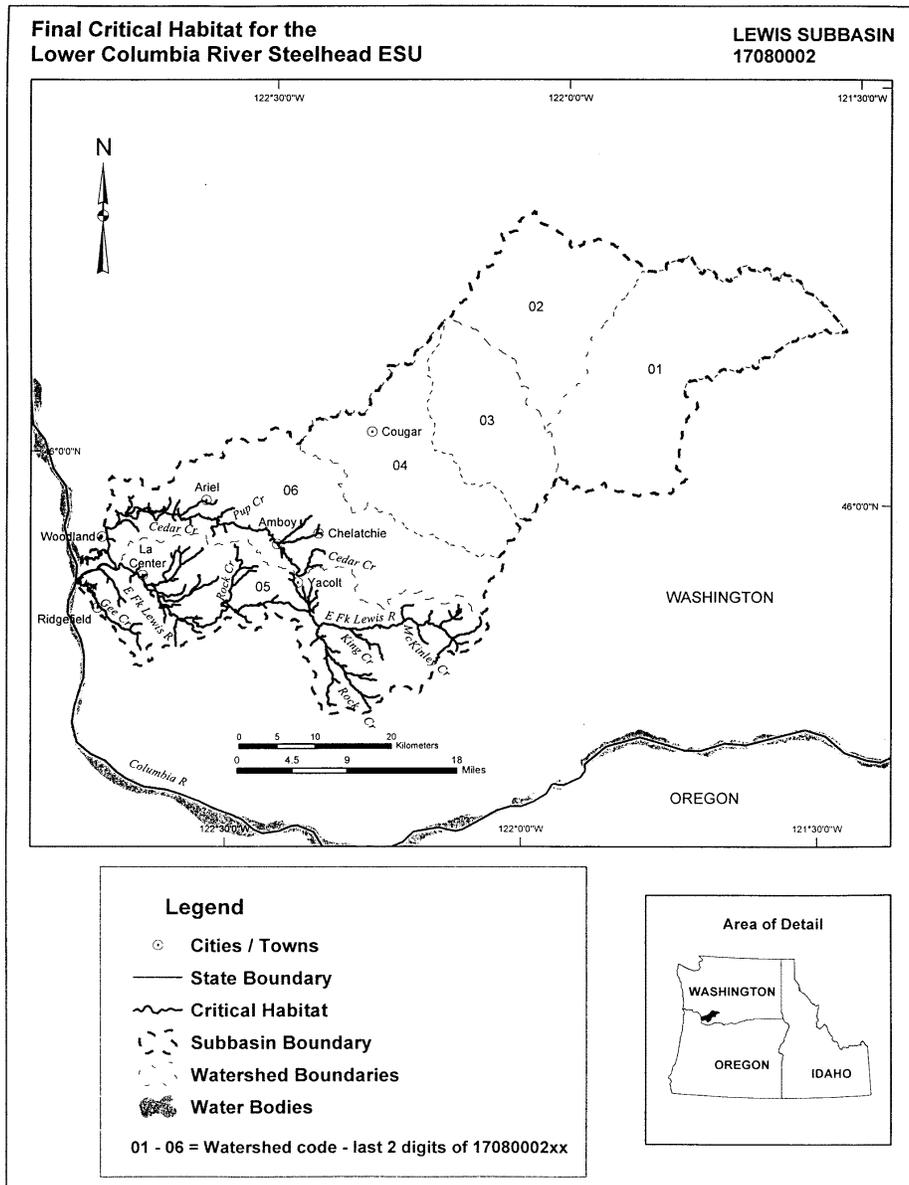
(9) Lower Columbia River Corridor—*Lower Columbia River Corridor* Outlet(s) = Columbia River (Lat 46.2485, Long -124.0782) upstream to endpoint(s) in: Columbia River (45.5710, -122.4021).

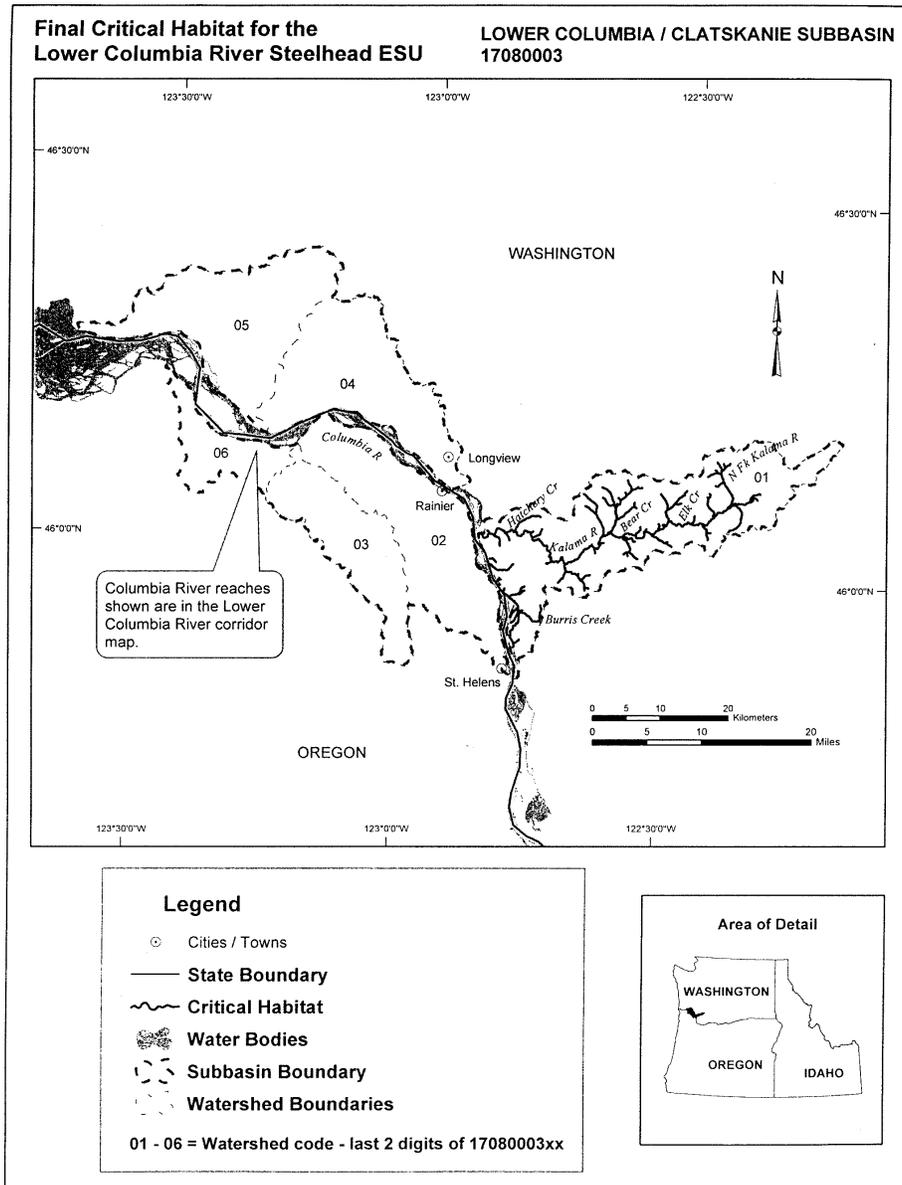
(10) Maps of critical habitat for the Lower Columbia River Steelhead ESU follow:

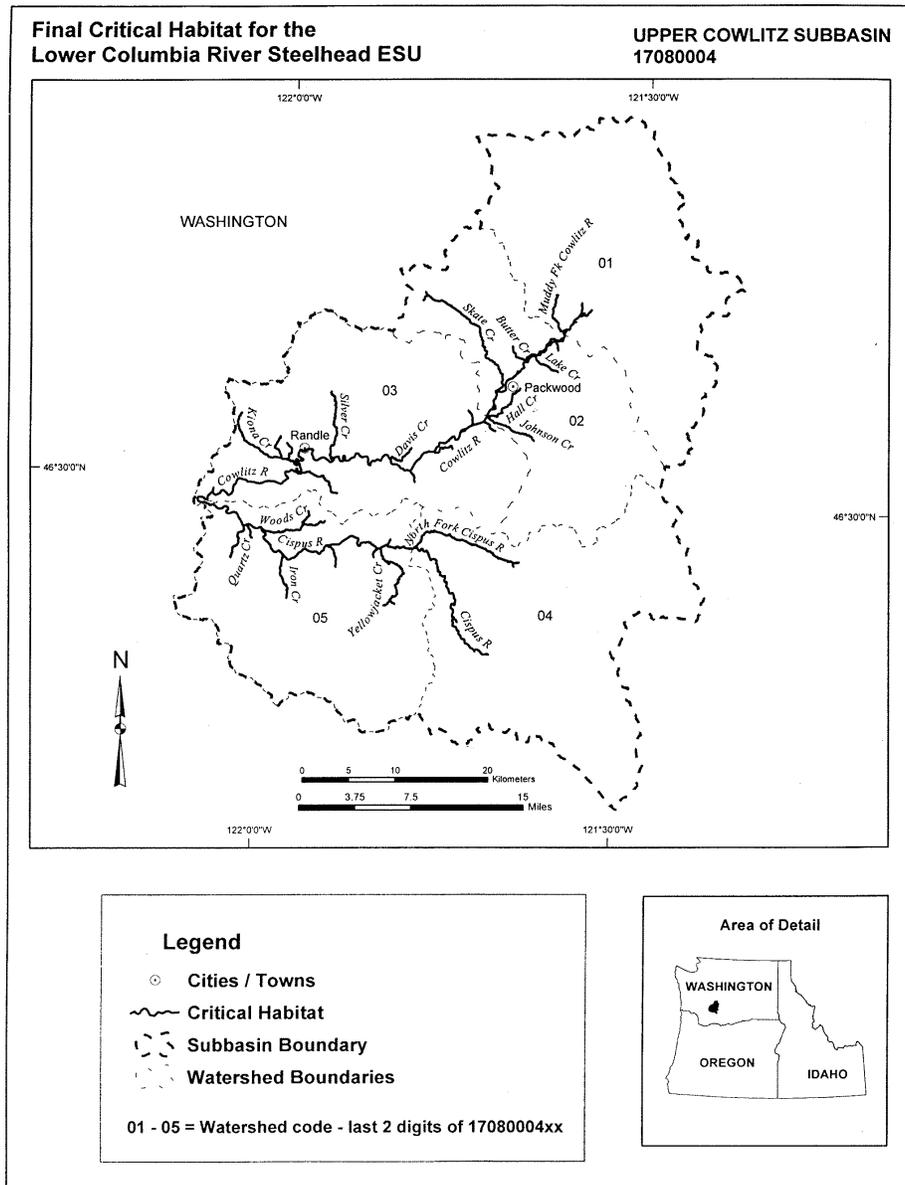


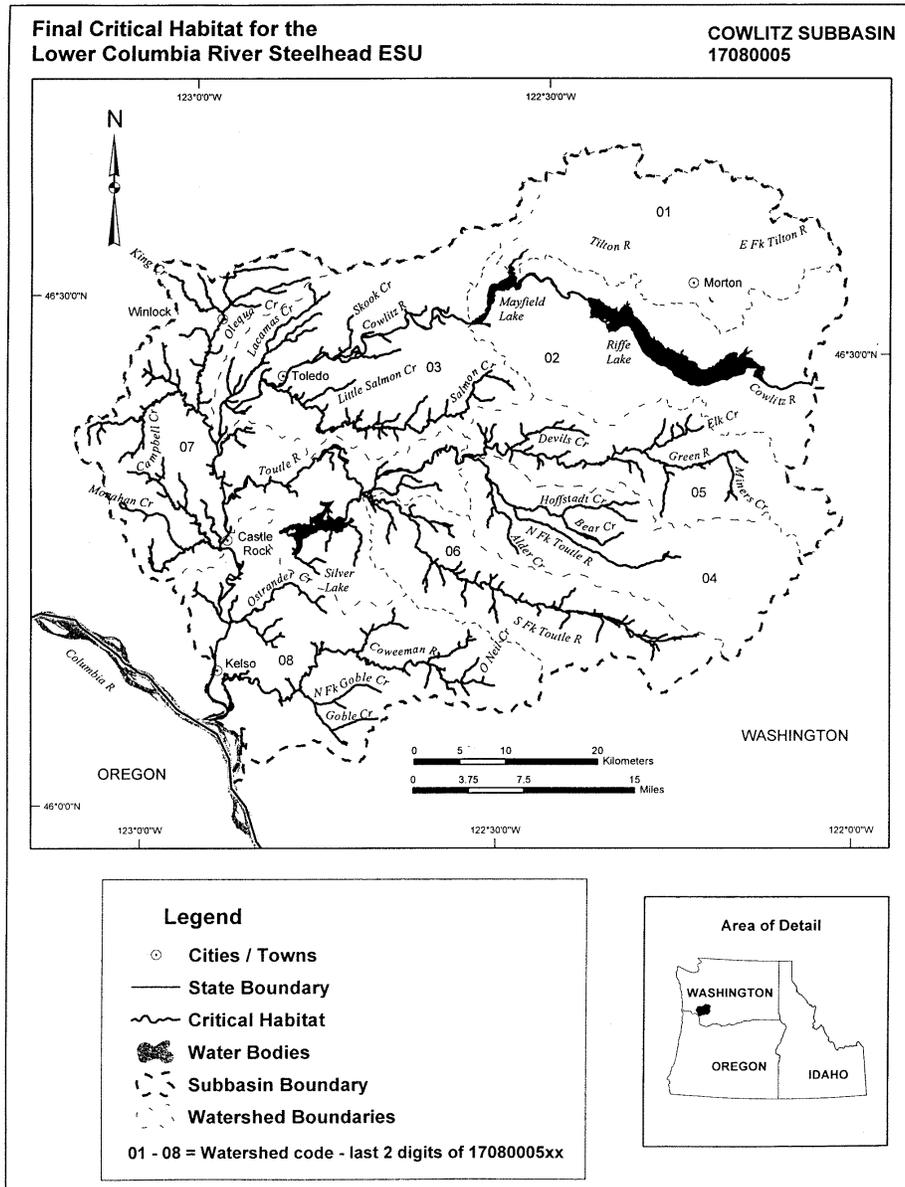


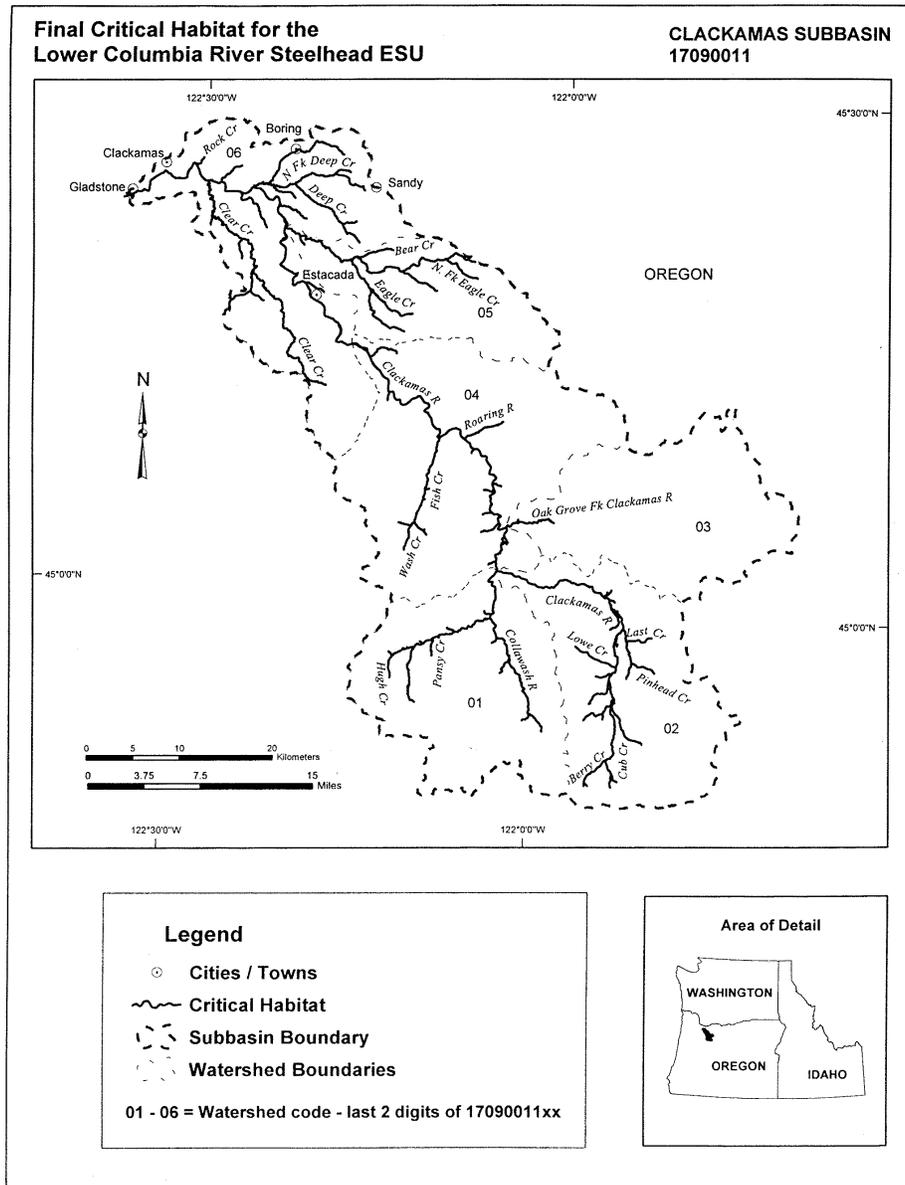


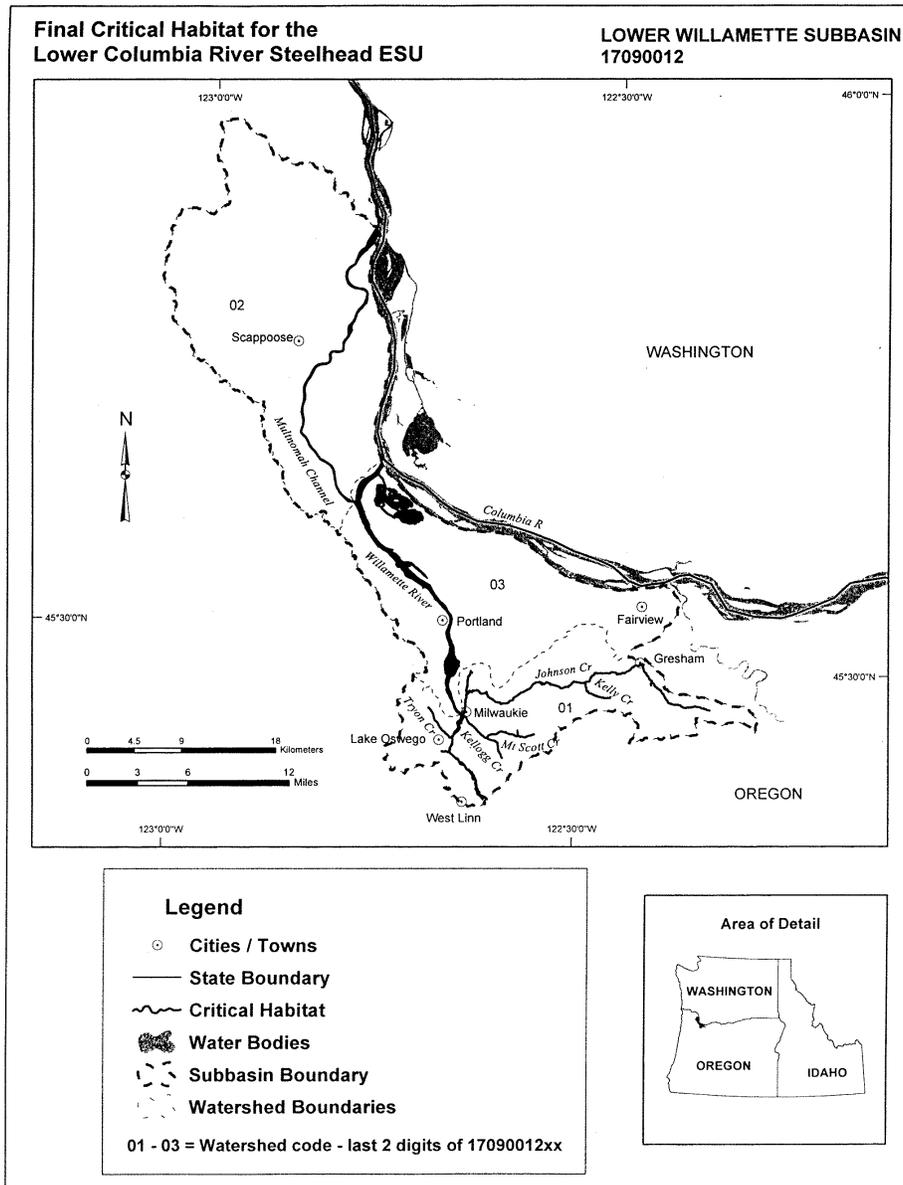


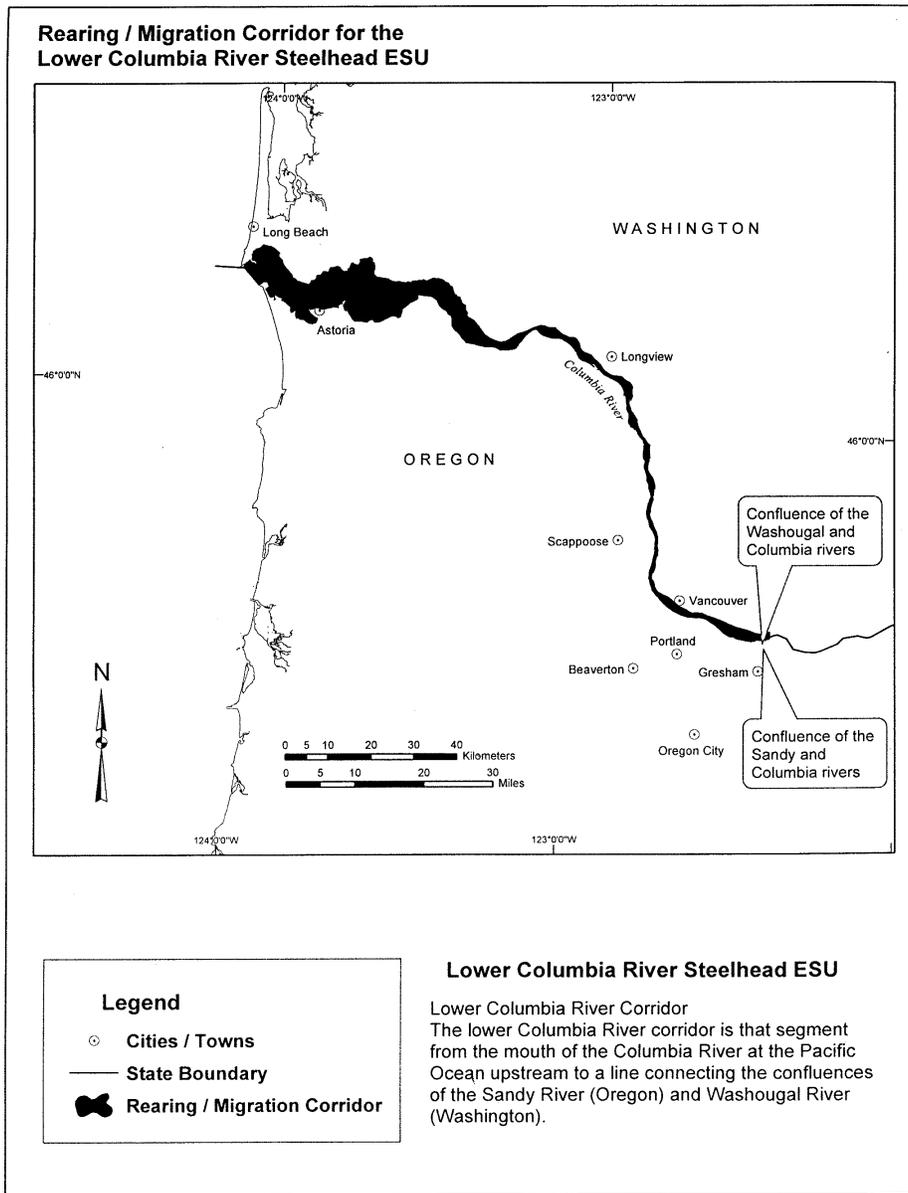












(t) *Upper Willamette River Steelhead* (*Oncorhynchus mykiss*). Critical habitat is designated to include the areas defined in the following subbasins:

(1) Upper Willamette Subbasin 17090003—(i) *Calapooia River Watershed*

1709000303. Outlet(s) = Calapooia River (Lat 44.5088, Long -123.1101) upstream to endpoint(s) in: Bigs Creek (44.2883, -122.6133); Butte Creek (44.4684, -123.0488); Calapooia River (44.2361, -122.3664); Hands Creek (44.2559,

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-122.5127); King Creek (44.2458, -122.4452); McKinley Creek (44.2569, -122.5621); North Fork Calapooia River (44.2497, -122.4094); Potts Creek (44.2581, -122.4756); Spoon Creek (44.4379, -123.0877); United States Creek (44.2244, -122.3825).

(ii) *Oak Creek Watershed 1709000304*. Outlet(s) = Willamette River (Lat 44.7504, Long -123.1421) upstream to endpoint(s) in: Calapooia River (44.5088, -123.1101); Cox Creek (44.6417, -123.0680); Periwinkle Creek (44.6250, -123.0814); Truax Creek (44.6560, -123.0598).

(iii) *Luckiamute River Watershed 1709000306*. Outlet(s) = Luckiamute River (Lat 44.7561, Long -123.1468) upstream to endpoint(s) in: Bonner Creek (44.6735, -123.4849); Burgett Creek (44.6367, -123.4574); Clayton Creek (44.7749, -123.4870); Cooper Creek (44.8417, -123.3246); Grant Creek (44.8389, -123.4098); Little Luckiamute River (44.8673, -123.4375); Luckiamute River (44.7970, -123.5270); Maxfield Creek (44.6849, -123.3427); McTimmonds Creek (44.7622, -123.4125); North Fork Pedee Creek (44.7866, -123.4511); Plunkett Creek (44.6522, -123.4241); Price Creek (44.6677, -123.3732); Sheythe Creek (44.7683, -123.5027); Soap Creek (44.6943, -123.2488); South Fork Pedee Creek (44.7798, -123.4667); Teal Creek (44.8329, -123.4582); Unnamed (44.7562, -123.5293); Unnamed (44.7734, -123.2027); Unnamed (44.7902, -123.6211); Vincent Creek (44.6380, -123.4327); Waymire Creek (44.8725, -123.4128); Woods Creek (44.6564, -123.3905).

(2) North Santiam Subbasin 17090005—(i) *Middle North Santiam River Watershed 1709000504*. Outlet(s) = North Santiam River (Lat 44.7852, Long -122.6079) upstream to endpoint(s) in: Little Rock Creek (44.7330, -122.3927); Mad Creek (44.7373, -122.3735); North Santiam River (44.7512, -122.2825); Rock Creek (44.7011, -122.4080); Snake Creek (44.7365, -122.4870).

(ii) *Little North Santiam River Watershed 1709000505*. Outlet(s) = Little North Santiam River (Lat 44.7852, Long -122.6079) upstream to endpoint(s) in: Cedar Creek (44.8439, -122.2682); Elkhorn Creek (44.8139, -122.3451); Evans Creek (44.8412, -122.3601); Fish Creek (44.8282, -122.3915); Little North Santiam River (44.8534, -122.2887); Little Sinker Creek

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(44.8235, -122.4163); Sinker Creek (44.8211, -122.4210).

(iii) *Lower North Santiam River Watershed 1709000506*. Outlet(s) = Santiam River (Lat 44.7504, Long -123.1421) upstream to endpoint(s) in: Bear Branch (44.7602, -122.7942); Chehulpum Creek (44.7554, -122.9898); Cold Creek (44.7537, -122.8812); Morgan Creek (44.7495, -123.0443); North Santiam River (44.7852, -122.6079); Salem Ditch (44.8000, -122.8120); Santiam River (44.6869, -123.0052); Smallman Creek (44.7293, -122.9139); Stout Creek (44.8089, -122.5994); Trask Creek (44.7725, -122.6152); Unnamed (44.7972, -122.7328); Valentine Creek (44.7999, -122.7311).

(3) South Santiam Subbasin 17090006—(i) *Hamilton Creek/South Santiam River Watershed 1709000601*. Outlet(s) = South Santiam River (Lat 44.6869, Long -123.0052) upstream to endpoint(s) in: Albany—Santiam Canal (44.5512, -122.9032); Hamilton Creek (44.5392, -122.7018); Johnson Creek (44.4548, -122.7080); McDowell Creek (44.4640, -122.6803); Mill Creek (44.6628, -122.9575); Morgan Creek (44.4557, -122.7058); Noble Creek (44.4513, -122.7974); South Santiam River (44.4163, -122.6693).

(ii) *Crabtree Creek Watershed 1709000602*. Outlet(s) = Crabtree Creek (Lat 44.6756, Long -122.9557) upstream to endpoint(s) in: Bald Barney Creek (44.5469, -122.5959); Bald Peter Creek (44.5325, -122.6024); Beaver Creek (44.6337, -122.8537); Camp Creek (44.5628, -122.5768); Crabtree Creek (44.6208, -122.5055); Cruiser Creek (44.5543, -122.5831); Green Mountain Creek (44.5777, -122.6258); Roaring River (44.6281, -122.7148); Rock Creek (44.5883, -122.6000); South Fork Crabtree Creek (44.5648, -122.5441); White Rock Creek (44.6050, -122.5209).

(iii) *Thomas Creek Watershed 1709000603*. Outlet(s) = Thomas Creek (Lat 44.6778, Long -122.9654) upstream to endpoint(s) in: Criminal Creek (44.7122, -122.5709); Ella Creek (44.6815, -122.5228); Hortense Creek (44.6756, -122.5017); Jordan Creek (44.7527, -122.6519); Mill Creek (44.7060, -122.7849); Neal Creek (44.6923, -122.6484); South Fork Neal Creek (44.7016, -122.7049); Thomas Creek (44.6776, -122.4650); West Fork Ella Creek (44.6805, -122.5288).

(iv) *South Santiam River Watershed 1709000606*. Outlet(s) = South Santiam River (Lat 44.3977, Long -122.4473) upstream to endpoint(s) in: Canyon Creek (44.3074, -122.3300); Falls Creek (44.4007, -122.3828); Harter Creek (44.4166, -122.2605); Keith Creek (44.4093, -122.2847); Moose Creek (44.4388, -122.3671); Owl Creek (44.2999, -122.3686); Shuttle Camp Creek (44.4336, -122.2597); Soda Fork South Santiam River (44.4410, -122.2466); South Santiam River (44.3980, -122.2610); Trout Creek (44.3993, -122.3464); Two Girls Creek (44.3248, -122.3346).

(v) *South Santiam River/Foster Reservoir Watershed 1709000607*. Outlet(s) = South Santiam River (Lat 44.4163, Long -122.6693) upstream to endpoint(s) in: Lewis Creek (44.4387, -122.6223); Middle Santiam River (44.4498, -122.5479); South Santiam River (44.3977, -122.4473).

(vi) *Wiley Creek Watershed 1709000608*. Outlet(s) = Wiley Creek (Lat 44.4140, Long -122.6752) upstream to endpoint(s) in: Farmers Creek (44.3383, -122.5812); Jackson Creek (44.3669, -122.6344); Little Wiley Creek (44.3633, -122.5228); Unnamed (44.3001, -122.4579); Unnamed (44.3121, -122.5197); Unnamed (44.3455, -122.5934); Unnamed (44.3565, -122.6051); Wiley Creek (44.2981, -122.4318).

(4) Middle Willamette Subbasin 17090007—(i) *Mill Creek/Willamette River Watershed 1709000701*. Outlet(s) = Mill Creek (Lat 44.9520, Long -123.0381) upstream to endpoint(s) in: Mill Creek (44.8268, -122.8249).

(ii) *Rickreall Creek Watershed 1709000702*. Outlet(s) = Willamette River (Lat 44.9288, Long -123.1124) upstream to endpoint(s) in: Willamette River (44.7504, -123.1421).

(iii) *Willamette River/Chehalem Creek Watershed 1709000703*. Outlet(s) = Willamette River (Lat 45.2552, Long -122.8806) upstream to endpoint(s) in: Willamette River (44.9288, -123.1124).

(iv) *Abernethy Creek Watershed 1709000704*. Outlet(s) = Willamette River (Lat 45.3540, Long -122.6186) upstream to endpoint(s) in: Willamette River (45.2552, -122.8806).

(5) Yamhill Subbasin 17090008—(i) *Upper South Yamhill River Watershed 1709000801*. Outlet(s) = South Yamhill River (Lat 45.0784, Long -123.4753) upstream to endpoint(s) in: Agency Creek

(45.1799, -123.6976); Cedar Creek (45.0892, -123.6969); Cockerham Creek (45.0584, -123.5077); Cosper Creek (45.1497, -123.6178); Cow Creek (45.0410, -123.6165); Crooked Creek (45.0964, -123.6611); Doane Creek (45.0449, -123.4929); Ead Creek (45.1214, -123.6969); Elmer Creek (45.0794, -123.6714); Gold Creek (45.0108, -123.5496); Jackass Creek (45.0589, -123.6495); Joe Creek (45.1216, -123.6216); Joe Day Creek (45.0285, -123.6660); Kitten Creek (45.1110, -123.7266); Klees Creek (45.0784, -123.5496); Lady Creek (45.0404, -123.5269); Little Rowell Creek (45.0235, -123.5792); Mule Tail Creek (45.0190, -123.5547); Pierce Creek (45.1152, -123.7203); Rock Creek (45.0130, -123.6344); Rogue River (45.0613, -123.6550); Rowell Creek (45.0187, -123.5699); Unnamed (45.0318, -123.5421); Unnamed (45.0390, -123.4620); Unnamed (45.0431, -123.5541); Unnamed (45.0438, -123.4721); Unnamed (45.0493, -123.6044); Unnamed (45.0599, -123.4661); Unnamed (45.0945, -123.6110); Unnamed (45.0994, -123.6276); Unnamed (45.1151, -123.6566); Unnamed (45.1164, -123.6717); Unnamed (45.1412, -123.6705); West Fork Agency Creek (45.1575, -123.7032); Wind River (45.1367, -123.6392); Yoncalla Creek (45.1345, -123.6614).

(ii) *Mill Creek/South Yamhill River Watershed 1709000803*. Outlet(s) = Mill Creek (Lat 45.0908, Long -123.4434) upstream to endpoint(s) in: Mill Creek (45.0048, -123.4184).

(iii) *Lower South Yamhill River Watershed 1709000804*. Outlet(s) = South Yamhill River (Lat 45.1616, Long -123.2190) upstream to endpoint(s) in: South Yamhill River (45.0784, -123.4753).

(iv) *Yamhill River Watershed 1709000807*. Outlet(s) = Yamhill River (Lat 45.2301, Long -122.9950) upstream to endpoint(s) in: South Yamhill River (45.1616, -123.2190).

(6) Molalla/Pudding Subbasin 17090009—(i) *Abiqua Creek/Pudding River Watershed 1709000901*. Outlet(s) = Pudding River (Lat 45.0740, Long -122.8525) upstream to endpoint(s) in: Abiqua Creek (44.9264, -122.5666); Little Abiqua Creek (44.9252, -122.6204); Little Pudding River (45.0435, -122.8965); Powers Creek (44.9552, -122.6796); Pudding (44.9998, -122.8412); Silver Creek (44.8981, -122.6799).

(ii) *Butte Creek/Pudding River Watershed 1709000902*. Outlet(s) = Pudding

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River (Lat 45.1907, Long -122.7527) upstream to endpoint(s) in: Pudding River (45.0740, -122.8525).

(iii) *Rock Creek/Pudding River Watershed 1709000903*. Outlet(s) = Rock Creek (Lat 45.1907, Long -122.7527) upstream to endpoint(s) in: Rock Creek (45.0876, -122.5916).

(iv) *Senecal Creek/Mill Creek Watershed 1709000904*. Outlet(s) = Pudding River (Lat 45.2843, Long -122.7149) upstream to endpoint(s) in: Pudding River (45.1907, -122.7527).

(v) *Upper Molalla River Watershed 1709000905*. Outlet(s) = Molalla River (Lat 45.1196, Long -122.5342) upstream to endpoint(s) in: Camp Creek (44.9630, -122.2928); Cedar Creek (45.0957, -122.5257); Copper Creek (44.8877, -122.3704); Cougar Creek (45.0421, -122.3145); Dead Horse Canyon Creek (45.0852, -122.3146); Gawley Creek (44.9320, -122.4304); Lost Creek (44.9913, -122.2444); Lukens Creek (45.0498, -122.2421); Molalla River (44.9124, -122.3228); North Fork Molalla River (45.0131, -122.2986); Pine Creek (45.0153, -122.4560); Table Rock Fork Molalla River (44.9731, -122.2629); Trout Creek (45.0577, -122.4657).

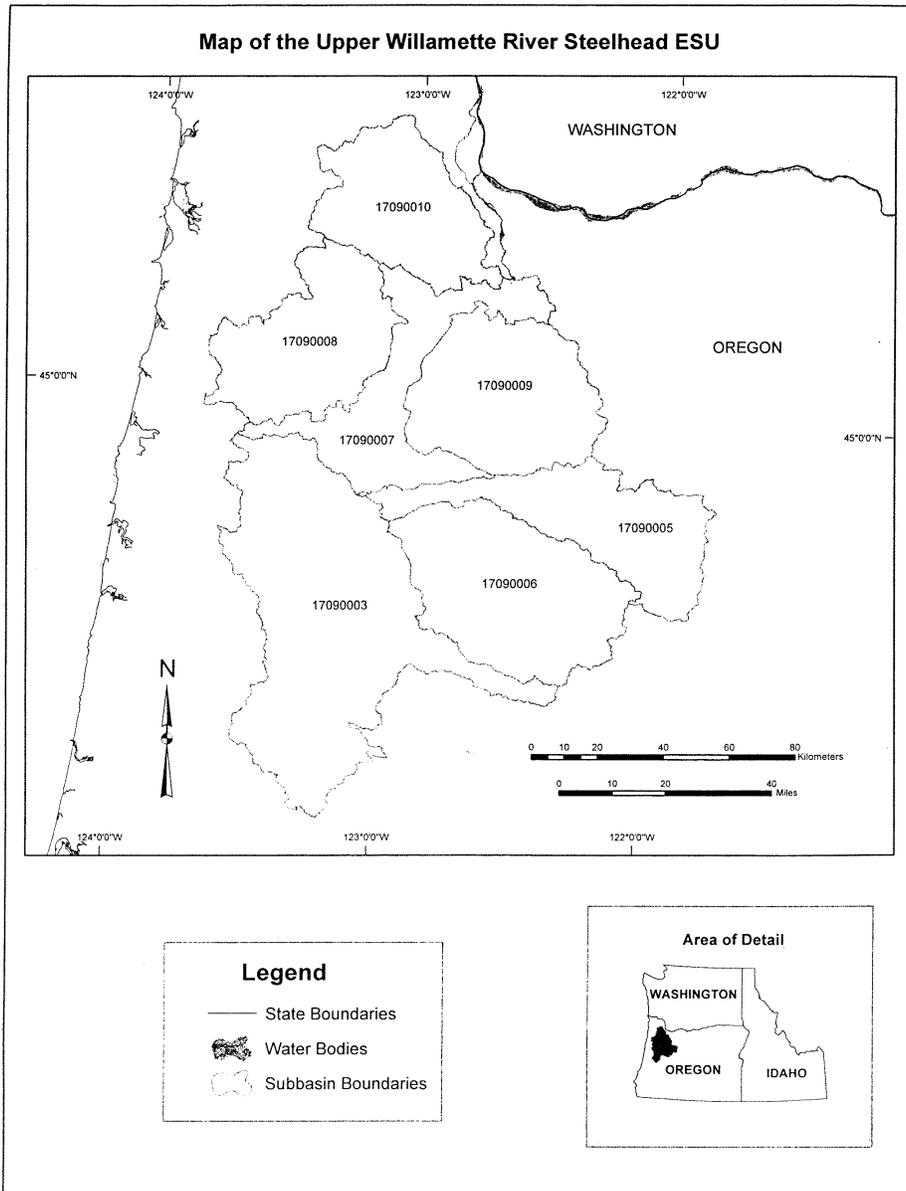
(vi) *Lower Molalla River Watershed 1709000906*. Outlet(s) = Molalla River (Lat 45.2979, Long -122.7141) upstream

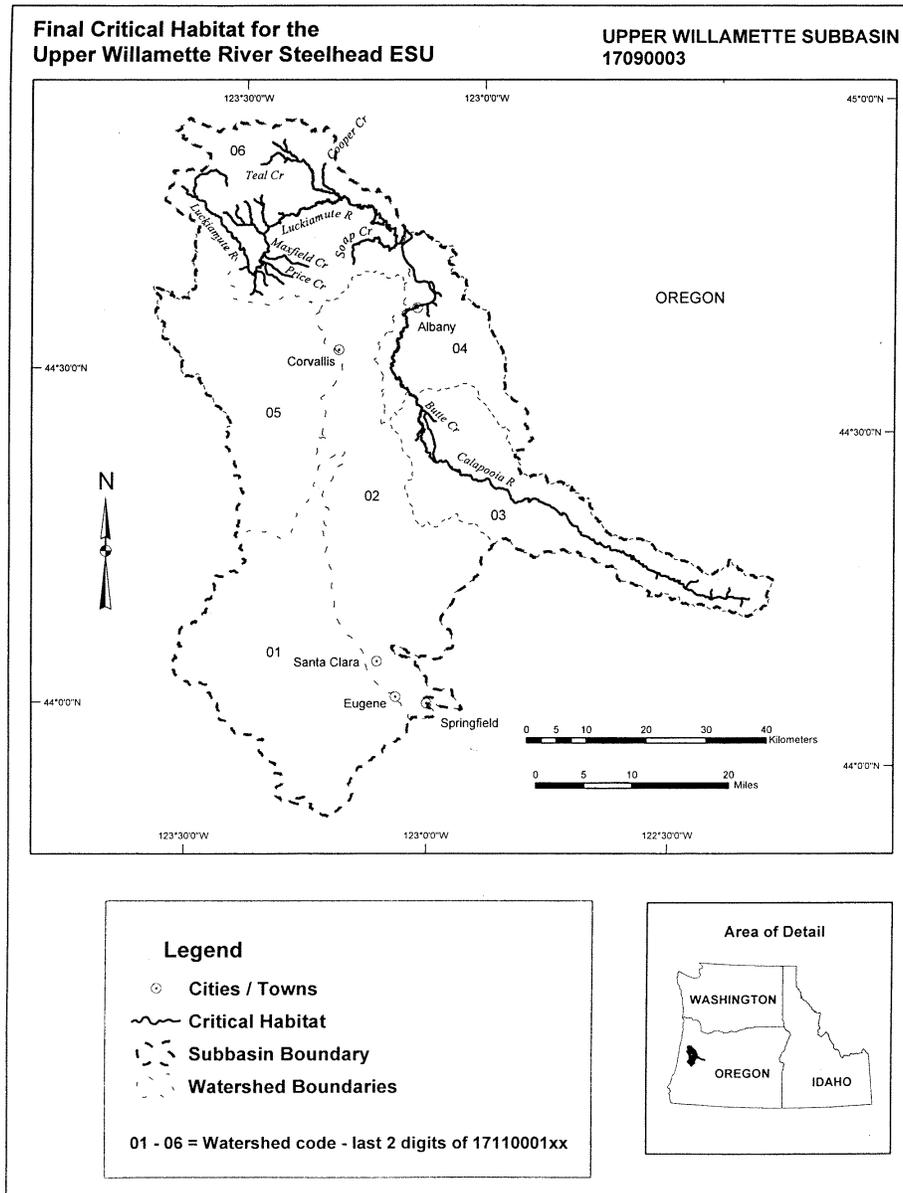
to endpoint(s) in: Buckner Creek (45.2382, -122.5399); Canyon Creek (45.1317, -122.3858); Cedar Creek (45.2037, -122.5327); Gribble Creek (45.2004, -122.6867); Jackson Creek (45.1822, -122.3898); Milk Creek (45.2036, -122.3761); Molalla River (45.1196, -122.5342); Woodcock Creek (45.1508, -122.5075).

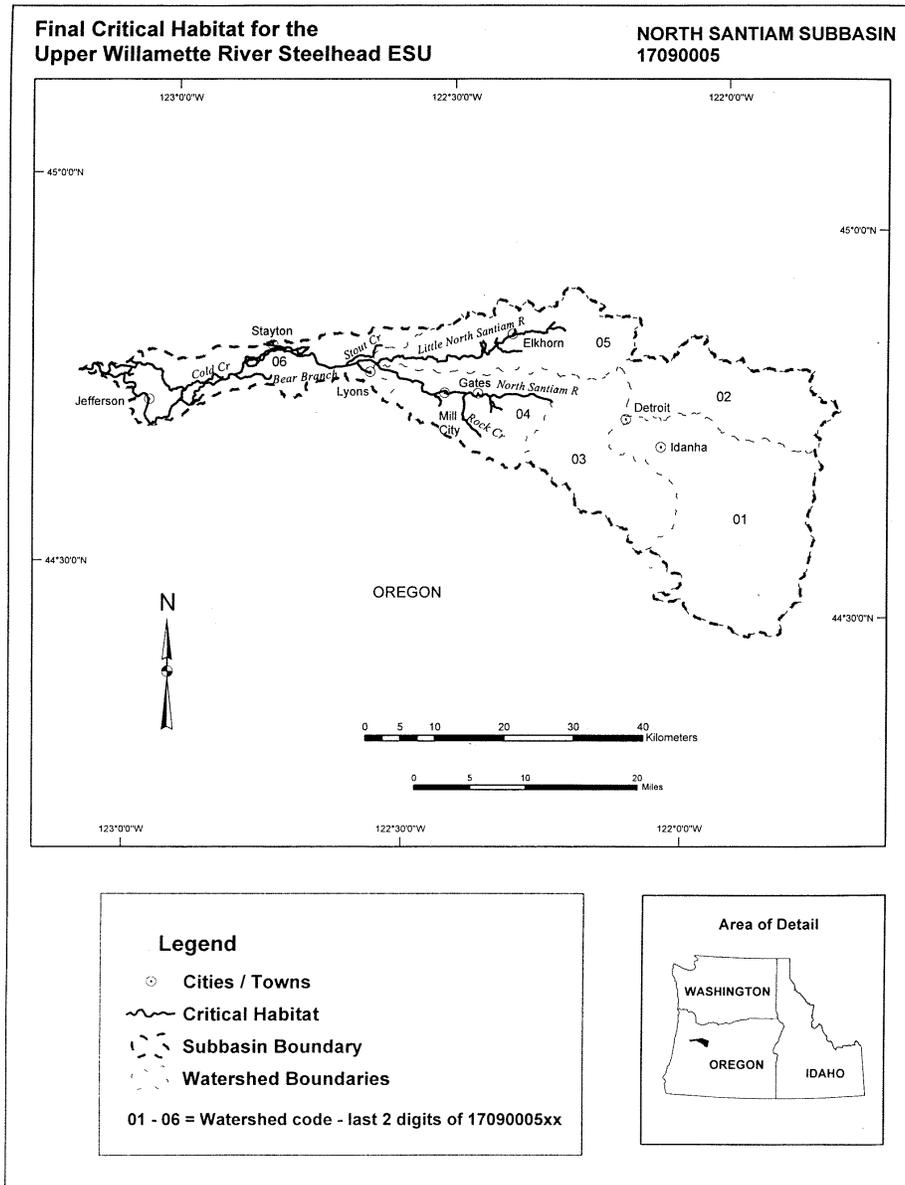
(7) Tualatin Subbasin 17090010—*Gales Creek Watershed 1709001002*. Outlet(s) = Tualatin River (Lat 45.5019, Long -122.9946) upstream to endpoint(s) in: Bateman Creek (45.6350, -123.2966); Beaver Creek (45.6902, -123.2889); Clear Creek (45.5705, -123.2567); Gales Creek (45.6428, -123.3576); Iler Creek (45.5900, -123.2582); North Fork Gales Creek (45.6680, -123.3394); Roaring Creek (45.5620, -123.2574); Roderick Creek (45.5382, -123.2013); South Fork Gales Creek (45.6059, -123.2978); Tualatin River (45.4917, -123.1012).

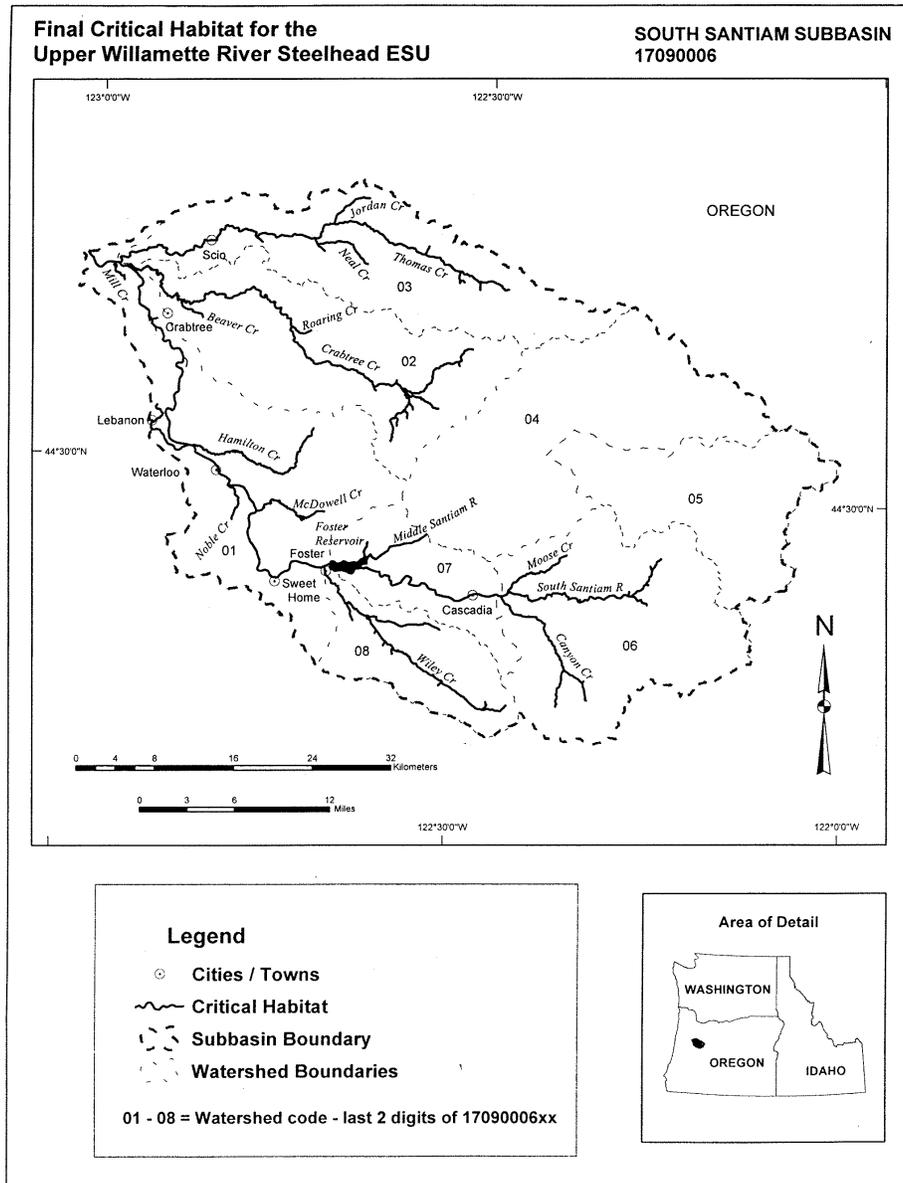
(8) Lower Willamette/Columbia River Corridor—*Lower Willamette/Columbia River Corridor*. Outlet(s) = Columbia River (Lat 46.2485, Long -124.0782) upstream to endpoint(s) in: Willamette River (45.3540, -122.6186).

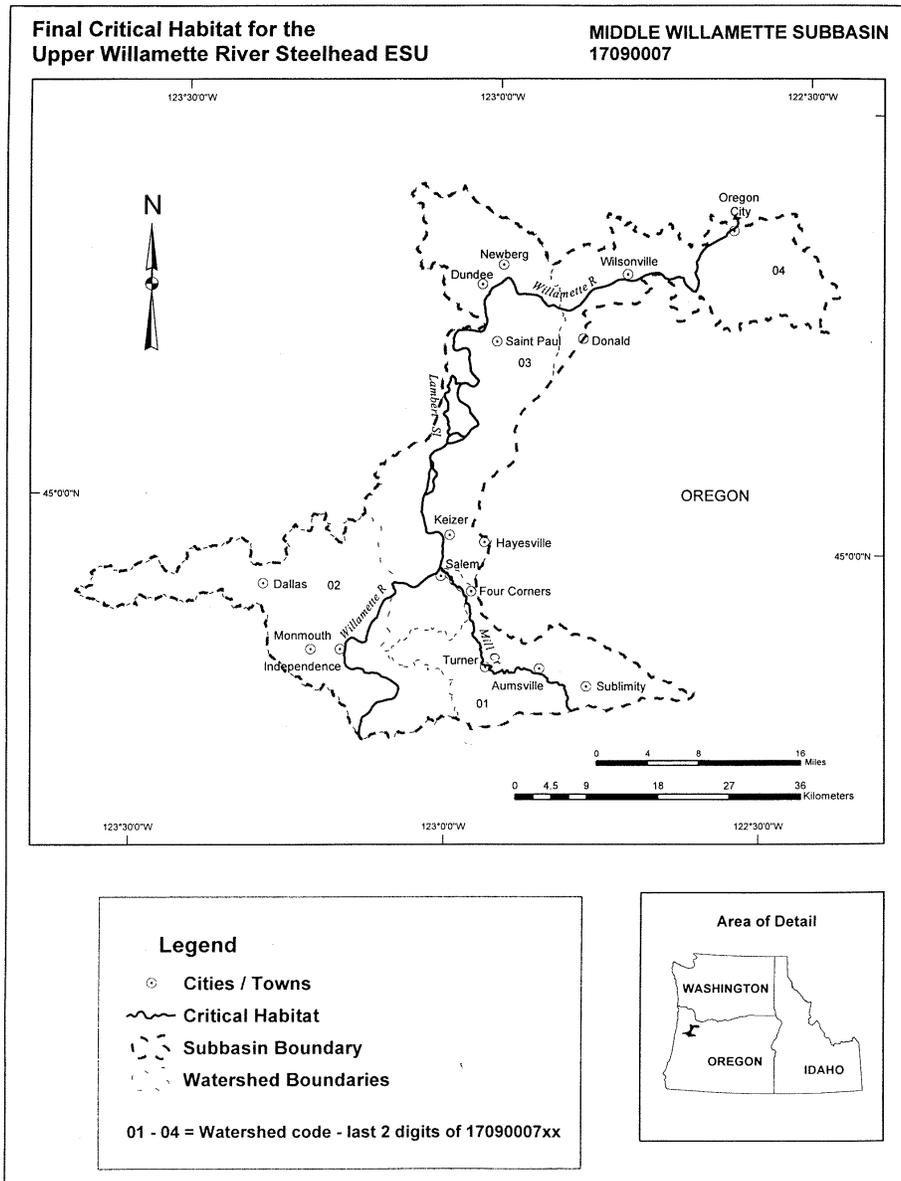
(9) Maps of critical habitat for the Upper Willamette River Steelhead ESU follow:

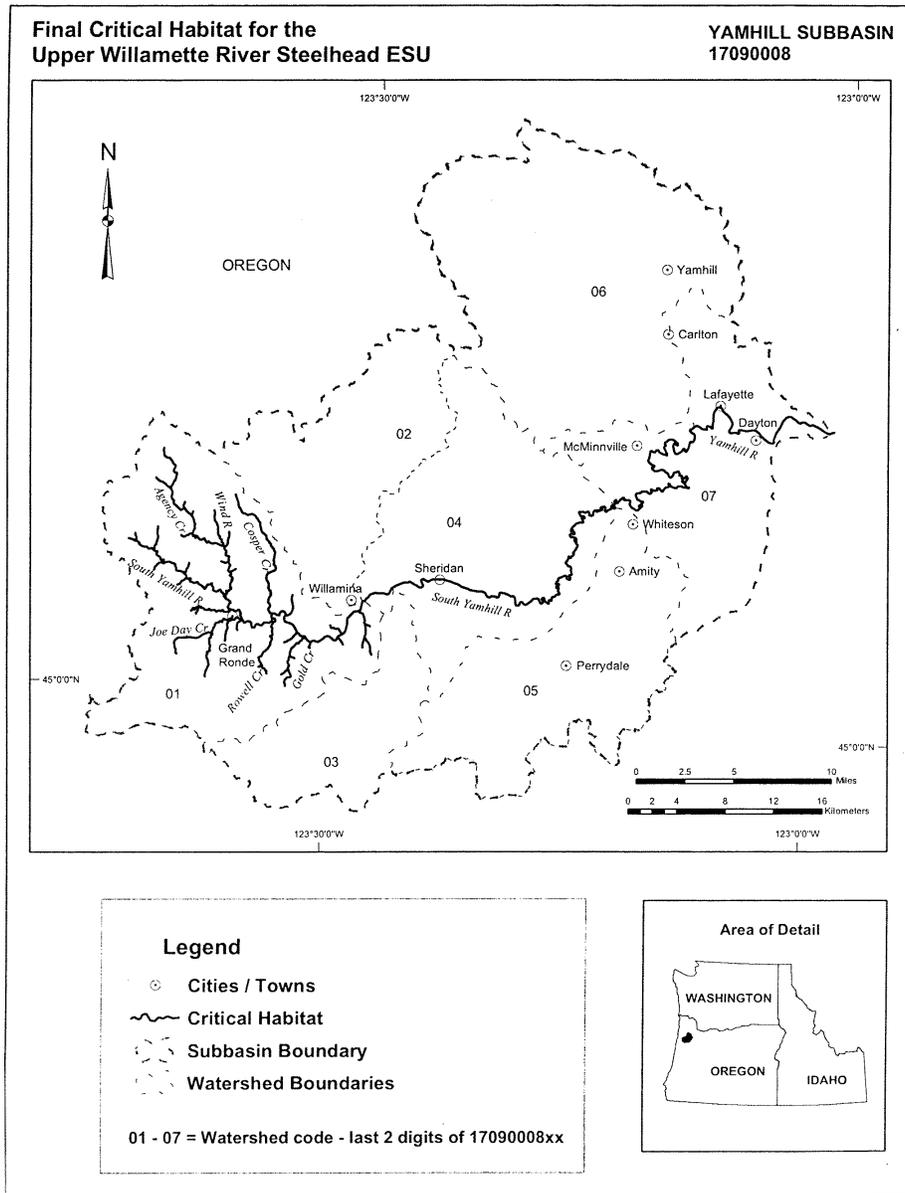


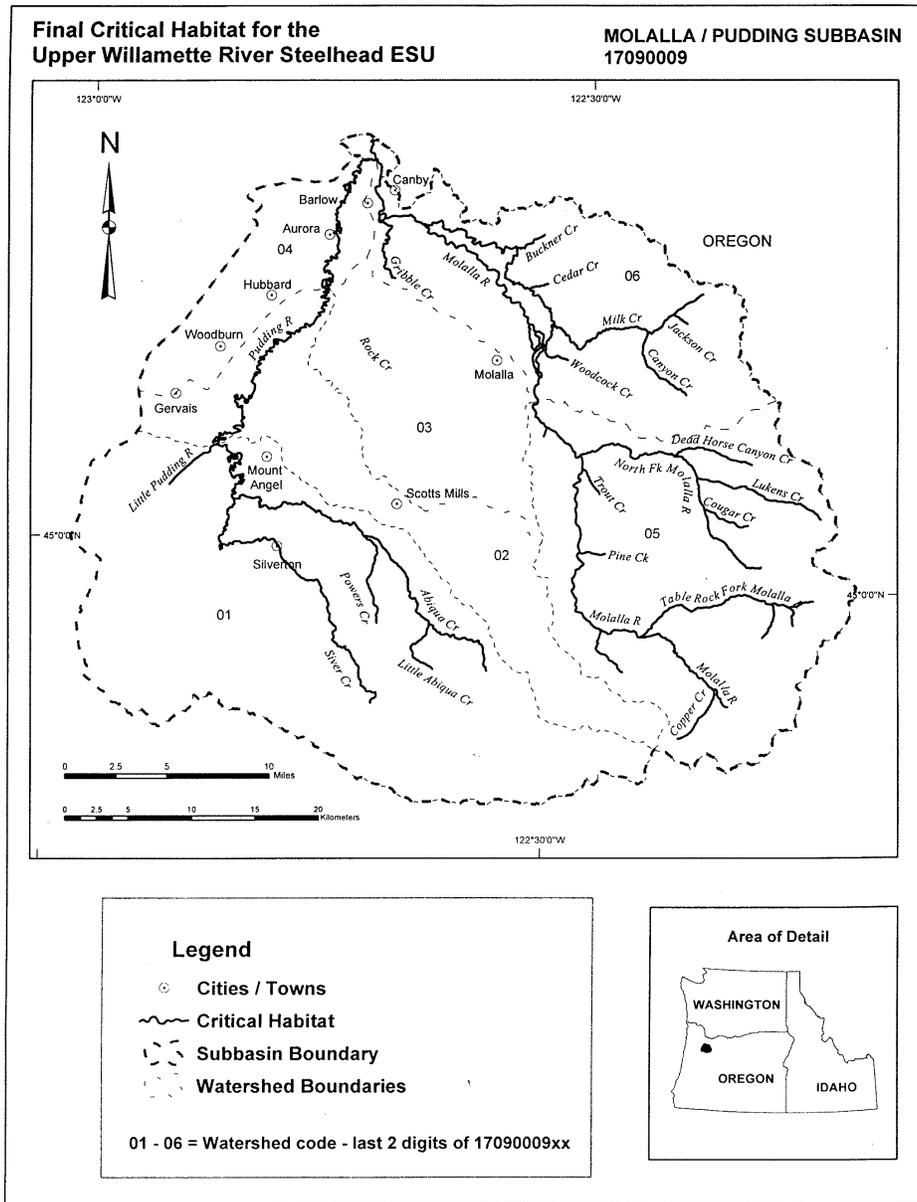


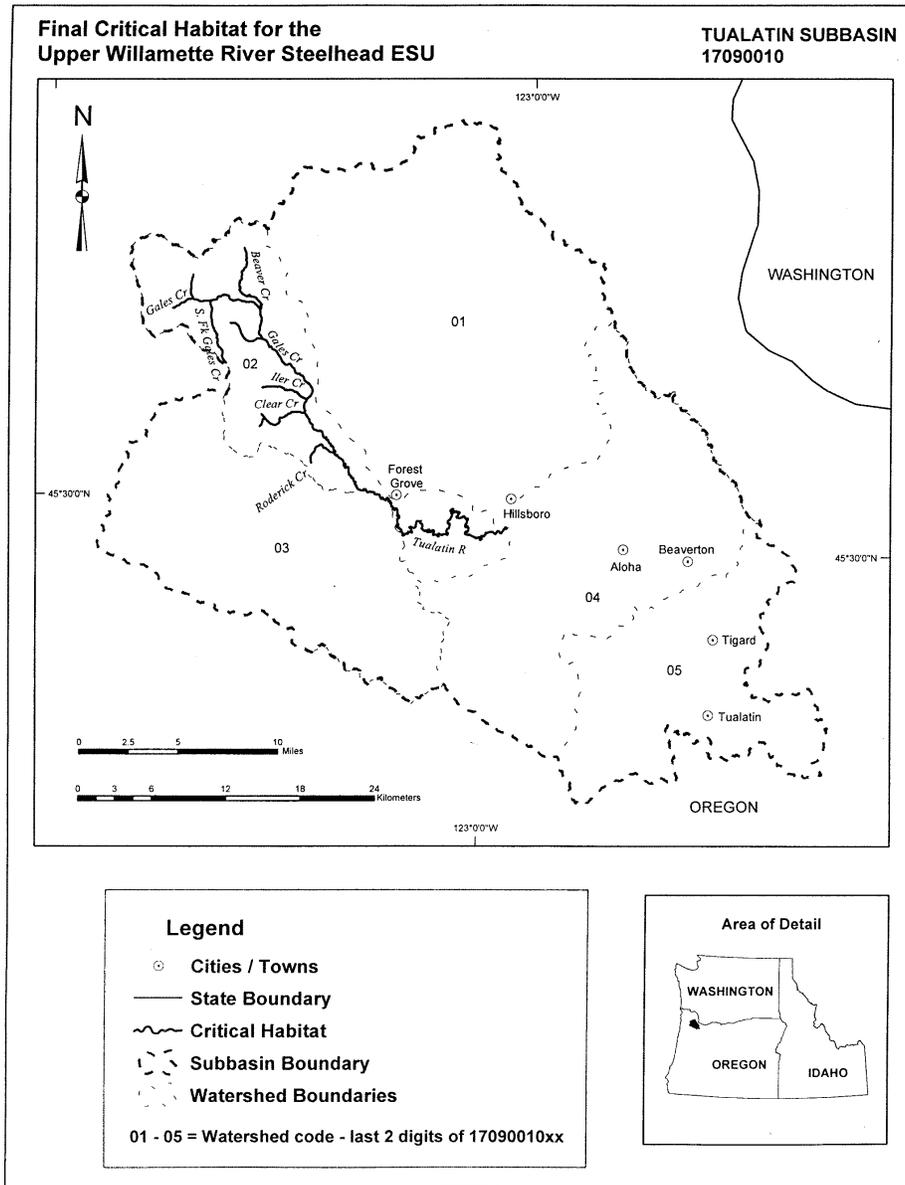


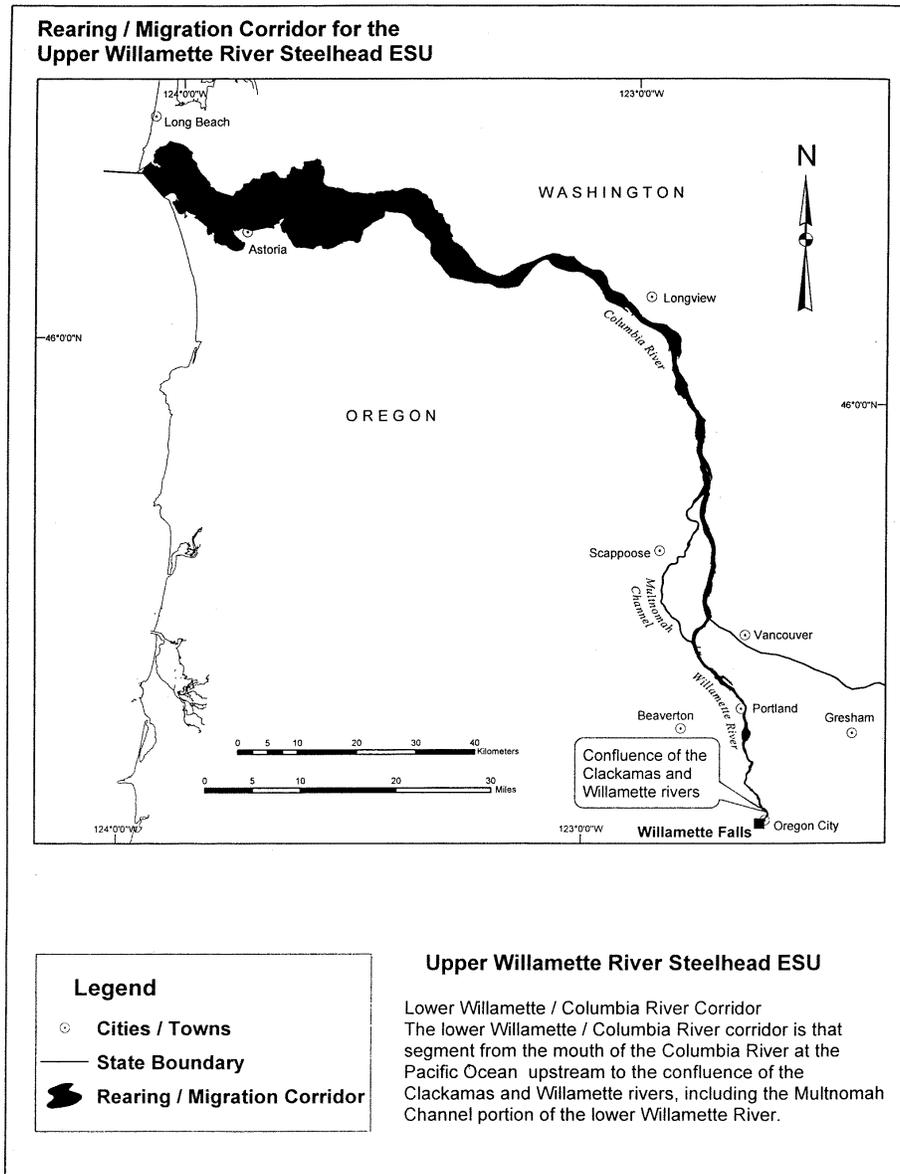












(u) Oregon Coast Coho Salmon (*Oncorhynchus kisutch*). Critical habitat is designated to include the areas defined in the following subbasins:

(1) Necanicum Subbasin 17100201—*Necanicum River Watershed 1710020101*. Outlet(s) = Arch Cape Creek (Lat

45.8035, Long - 123.9656); Asbury Creek (45.815, -123.9624); Ecola Creek (45.8959, -123.9649); Necanicum River (46.0113, -123.9264); Short Sand Creek (45.7595, -123.9641) upstream to end-point(s) in: Arch Cape Creek (45.8044, -123.9404); Asbury Creek

(45.8150, – 123.9584); Beerman Creek to endpoint(s) in: Bear Creek
 (45.9557, – 123.8749); Bergsvik Creek (45.7781, – 123.4252); Bear Creek
 (45.8704, – 123.7650); Brandis Creek (45.8556, – 123.2205); Beaver Creek
 (45.8894, – 123.8529); Charlie Creek (45.7624, – 123.2073); Beaver Creek Trib A
 (45.9164, – 123.7606); Circle Creek (45.8071, – 123.2143); Beaver Creek Trib B
 (45.9248, – 123.9436); Circle Creek Trib A (45.7711, – 123.2318); Carlson Creek
 (45.9335, – 123.9457); North Fork Ecola (45.7173, – 123.3425); Castor Creek
 Creek (45.8705, – 123.9070); West Fork (45.7103, – 123.2698); Cedar Creek
 Ecola Creek (45.8565, – 123.9424); Grindy (45.8528, – 123.2928); Clear Creek, Lower
 Creek (45.9179, – 123.7390); Hawley Creek North Fork (45.8229, – 123.3111); Clear
 (45.9259, – 123.8864); Joe Creek Creek (45.8239, – 123.3531); Coal Creek
 (45.8747, – 123.7503); Johnson Creek Trib B (45.8149, – 123.1174); Coal Creek
 (45.8885, – 123.8816); Klootchie Creek (45.7978, – 123.1293); Coon Creek
 (45.9450, – 123.8413); Klootchie Creek (45.8211, – 123.1446); Dell Creek
 Trib A (45.9250, – 123.8447); Lindsley (45.7919, – 123.1559); Derby Creek
 Creek (45.9198, – 123.8339); Little Hum- (45.7225, – 123.3857); Dog Creek
 bug Creek (45.9235, – 123.7653); Little Joe (45.8957, – 123.0741); Elk Creek
 Creek (45.8781, – 123.7852); Little Muddy (45.8256, – 123.1290); Fall Creek
 Creek (45.9551, – 123.9559); Mail Creek (45.8626, – 123.3247); Ginger Creek
 (45.8887, – 123.8655); Meyer Creek (45.8520, – 123.3511); Ivy Creek
 (45.9279, – 123.9135); Mill Creek (45.8938, – 123.3160); Jim George Creek
 (46.0245, – 123.8905); Mill Creek Trib 1 (45.8009, – 123.1041); Kenusky Creek
 (46.0142, – 123.8967); Neacoxie Creek (45.8859, – 123.0422); Kist Creek
 (46.0245, – 123.9157); Neawanna Creek (45.7826, – 123.2507); Lousignont Creek
 (45.9810, – 123.8809); Necanicum River (45.7424, – 123.3722); Lousignont Creek,
 (45.9197, – 123.7106); North Fork North Fork (45.7463, – 123.3576); Martin
 Necanicum River (45.9308, – 123.7986); Creek (45.8474, – 123.4025); Maynard
 North Fork Necanicum River Trib A Creek (45.8556, – 123.3038); Military
 (45.9398, – 123.8109); South Fork Creek (45.8233, – 123.4812); Nehalem
 Necanicum River (45.8760, – 123.8122); River (45.7269, – 123.4159); Nehalem
 Shangrila Creek (45.9706, – 123.8778); River, East Fork (45.8324, – 123.0502);
 Short Sand Creek (45.7763, – 123.9406); Olson Creek (45.8129, – 123.3853); Pebble
 Thompson Creek (46.0108, – 123.8951); Creek (45.7661, – 123.1357); Pebble Creek,
 Tolovana Creek (45.8581, – 123.9370); West Fork (45.7664, – 123.1899); Robinson
 Unnamed (45.8648, – 123.9371); Unnamed Creek (45.7363, – 123.2512); Rock Creek
 (45.8821, – 123.9318); Unnamed (45.8135, – 123.5201); Rock Creek, North
 (45.8881, – 123.7436); Unnamed Fork (45.8616, – 123.4560); Rock Creek,
 (45.8883, – 123.9366); Unnamed South Fork (45.7598, – 123.4249); Rock
 (45.8906, – 123.7460); Unnamed Creek Trib C (45.7957, – 123.4882); South
 (45.8912, – 123.9433); Unnamed Fork Rock Creek Trib A
 (45.8950, – 123.8715); Unnamed (45.7753, – 123.4586); South Fork
 (45.9026, – 123.9540); Unnamed Nehalem River (45.7073, – 123.4017);
 (45.9046, – 123.9578); Unnamed Selder Creek (45.8975, – 123.3806); South
 (45.9050, – 123.9585); Unnamed Fork Clear Creek (45.8141, – 123.3484);
 (45.9143, – 123.8656); Unnamed South Prong Clear Creek
 (45.9161, – 123.9000); Unnamed (45.7832, – 123.2975); Step Creek
 (45.9210, – 123.8668); Unnamed (45.6824, – 123.3348); Swamp Creek
 (45.9273, – 123.8499); Unnamed (45.8217, – 123.2004); Unnamed
 (45.9292, – 123.8900); Unnamed (45.7270, – 123.3419); Unnamed
 (45.9443, – 123.9038); Unnamed (45.8095, – 123.0908); Unnamed
 (45.9850, – 123.8999); Unnamed (45.7558, – 123.2630); Unnamed
 (46.0018, – 123.8998); Volmer Creek (45.7938, – 123.3847); Unnamed
 (45.9049, – 123.9139); Warner Creek (45.7943, – 123.4059); Unnamed
 (45.8887, – 123.7801); Williamson Creek (45.8197, – 123.0679); Unnamed
 (45.9522, – 123.9060). (45.8477, – 123.0734); Unnamed
 (2) Nehalem Subbasin 17100202—(i) (45.8817, – 123.1266); Unnamed
 Upper Nehalem River Watershed (45.8890, – 123.3817); Unnamed
 1710020201. Outlet(s) = Nehalem River (45.9019, – 123.1346); Weed Creek
 (Lat 45.9019, Long – 123.1442) upstream (45.8707, – 123.4049); Wolf Creek, South

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Fork (45.7989, -123.4028); Wolf Creek (45.7768, -123.3556).

(ii) *Middle Nehalem River Watershed 1710020202*. Outlet(s) = Nehalem River (Lat 45.9838, Long -123.4214) upstream to endpoint(s) in: Adams Creek (46.0263, -123.2869); Archibald Creek (45.9218, -123.0829); Beaver Creek (46.0554, -123.2985); Boxler Creek (46.0486, -123.3521); Calvin Creek (45.9514, -123.2976); Cedar Creek (45.9752, -123.1143); Cook Creek (45.9212, -123.1087); Cow Creek (46.0500, -123.4326); Crooked Creek (45.9043, -123.2689); Deep Creek (45.9461, -123.3719); Deep Creek Trib A (45.9127, -123.3794); Deep Creek Trib B (45.9314, -123.3809); Deer Creek (45.9033, -123.3142); Eastman Creek (46.0100, -123.2262); Fall Creek (45.9438, -123.2012); Fishhawk Creek (46.0596, -123.3857); Fishhawk Creek, North Fork (46.0907, -123.3675); Fishhawk Creek, Trib C (46.0808, -123.3692); Ford Creek (46.0570, -123.2872); Gus Creek (45.9828, -123.1453); Johnson Creek (46.0021, -123.2133); Lane Creek (45.9448, -123.3253); Little Deer Creek (45.9378, -123.2780); Lousignont Creek (46.0342, -123.4186); Lundgren Creek (46.0240, -123.2092); McCoon Creek (46.0665, -123.3043); Messing Creek (46.0339, -123.2260); Nehalem River (45.9019, -123.1442); Northrup Creek (46.0672, -123.4377); Oak Ranch Creek (45.9085, -123.0834); Sager Creek (45.9388, -123.4020); Unnamed (45.9039, -123.2044); Unnamed (45.9067, -123.0595); Unnamed (45.9488, -123.2220); Unnamed (45.9629, -123.3845); Unnamed (45.9999, -123.1732); Unnamed (46.0088, -123.4508); Unnamed (46.0208, -123.4588); Unnamed (46.0236, -123.2381); Unnamed (46.0308, -123.3135); Unnamed (46.0325, -123.4650); Unnamed (46.0390, -123.3648); Unnamed (46.0776, -123.3274); Unnamed (46.0792, -123.3409); Unnamed (46.0345, -123.2956); Warner Creek (46.0312, -123.3817); Wrong Way Creek (46.0789, -123.3142).

(iii) *Lower Nehalem River Watershed 1710020203*. Outlet(s) = Nehalem River (Lat 45.7507, Long -123.6530) upstream to endpoint(s) in: Alder Creek (45.9069, -123.5907); Beaver Creek (45.8949, -123.6764); Big Creek (45.8655, -123.6476); Bull Heifer Creek (45.9908, -123.5322); Buster Creek (45.9306, -123.4165); Cedar Creek (45.8931, -123.6029); Cow Creek (45.8587, -123.5206); Crawford Creek (45.9699, -123.4725); Cronin Creek, Middle Fork (45.7719, -123.5747); Cronin Creek, North Fork (45.7795, -123.6064); Cronin Creek, South Fork (45.7456, -123.5596); Destruction Creek (45.8750, -123.6571); East Humbug Creek (45.9454, -123.6358); Fishhawk Creek (45.9666, -123.5895); Fishhawk Creek (46.0224, -123.5374); George Creek (45.8461, -123.6226); George Creek (45.9118, -123.5766); Gilmore Creek (45.9609, -123.5372); Hamilton Creek (46.0034, -123.5881); Klines Creek (45.8703, -123.4908); Larsen Creek (45.8757, -123.5847); Little Fishhawk Creek (45.9256, -123.5501); Little Rock Creek (45.8886, -123.4558); McClure Creek (45.8560, -123.6227); Moores Creek (45.8801, -123.5178); Nehalem River (45.9838, -123.4214); Quartz Creek (45.8414, -123.5184); Spruce Run Creek (45.8103, -123.6028); Squaw Creek (45.9814, -123.4529); Stanley Creek (45.8861, -123.4352); Strum Creek (45.9321, -123.4275); Trailover Creek (46.0129, -123.4976); Unnamed (45.8083, -123.6280); Unnamed (45.8682, -123.6168); Unnamed (45.9078, -123.6630); Unnamed (45.9207, -123.4534); Unnamed (45.9405, -123.6338); Unnamed (45.9725, -123.5544); West Humbug Creek (45.9402, -123.6726); Walker Creek (45.9266, -123.4423); Walker Creek (46.0391, -123.5142); West Brook (45.9757, -123.4638).

(iv) *Salmonberry River Watershed 1710020204*. Outlet(s) = Salmonberry River (Lat 45.7507, Long -123.6530) upstream to endpoint(s) in: Pennoyer Creek (45.7190, -123.4366); Salmonberry River (45.7248, -123.4436); Salmonberry River, North Fork (45.7181, -123.5204); Wolf Creek (45.6956, -123.4485).

(v) *North Fork of Nehalem River Watershed 1710020205*. Outlet(s) = Nehalem River, North Fork (Lat 45.7317, Long -123.8765) upstream to endpoint(s) in: Acey Creek (45.7823, -123.8292); Anderson Creek (45.7643, -123.9073); Big Rackheap Creek (45.7546, -123.8145); Boykin Creek (45.8030, -123.8595); Buchanan Creek (45.8270, -123.7901); Coal

Creek (45.7897, –123.8676); Coal Creek, West Fork (45.7753, –123.8871); Cougar Creek (45.8064, –123.8090); Fall Creek (45.7842, –123.8547); Fall Creek (45.8226, –123.7054); Gods Valley Creek (45.7689, –123.7793); Grassy Lake Creek (45.7988, –123.8193); Gravel Creek (45.7361, –123.8126); Henderson Creek (45.7932, –123.8548); Jack Horner Creek (45.8531, –123.7837); Lost Creek (45.7909, –123.7195); Nehalem River, Little North Fork (45.9101, –123.6972); Nehalem River, North Fork (45.8623, –123.7463); Nehalem River, North Fork, Trib R (45.8287, –123.6625); Nehalem River, North Fork, Trib T (45.8492, –123.6796); Rackheap Creek (45.7677, –123.8008); Sally Creek (45.8294, –123.7468); Soapstone Creek (45.8498, –123.7469); Soapstone Creek, Trib A (45.8591, –123.7616); Sweetthorn Creek (45.7699, –123.6616); Unnamed (45.7457, –123.8490); Unnamed (45.7716, –123.7691); Unnamed (45.7730, –123.7789); Unnamed (45.7736, –123.7607); Unnamed (45.7738, –123.7534); Unnamed (45.7780, –123.7434); Unnamed (45.7784, –123.7742); Unnamed (45.7794, –123.7315); Unnamed (45.7824, –123.7396); Unnamed (45.7833, –123.7680); Unnamed (45.7841, –123.7299); Unnamed (45.7858, –123.7660); Unnamed (45.7898, –123.7424); Unnamed (45.7946, –123.7365); Unnamed (45.7966, –123.7953); Unnamed (45.8008, –123.7349); Unnamed (45.8193, –123.7436); Unnamed (45.8322, –123.7789); Unnamed (45.8359, –123.7766); Unnamed (45.8569, –123.7235); Unnamed (45.8629, –123.7347); Unnamed (45.8662, –123.7444); Unnamed (45.8962, –123.7189).

(vi) *Lower Nehalem River/Cook Creek Watershed 1710020206*. Outlet(s) = Nehalem River (Lat 45.6577, Long –123.9355) upstream to endpoint(s) in: Alder Creek (45.7286, –123.9091); Anderson Creek (45.6711, –123.7470); Bastard Creek (45.7667, –123.6943); Bob's Creek (45.7444, –123.9038); Cook Creek (45.6939, –123.6146); Cook Creek, East Fork (45.6705, –123.6440); Daniels Creek (45.6716, –123.8606); Dry Creek (45.6449, –123.8507); Dry Creek (45.6985, –123.7422); East Foley Creek (45.6621, –123.8068); Fall Creek (45.7489, –123.7778); Foley Creek (45.6436, –123.8933); Gallagher Slough (45.7140, –123.8657); Hanson Creek (45.6611, –123.7179); Harliss Creek (45.6851, –123.7249); Helloff Creek (45.7545, –123.7603); Hoevett Creek (45.6894, –123.6276); Jetty Creek (45.6615, –123.9103); Lost Creek (45.7216, –123.7164); Neahkahnie Creek (45.7197, –123.9247); Nehalem River (45.7507, –123.6530); Peterson Creek (45.6975, –123.8098); Piatt Canyon (45.6844, –123.6983); Roy Creek (45.7174, –123.8038); Snark Creek (45.7559, –123.6713); Unnamed (45.6336, –123.8549); Unnamed (45.6454, –123.8663); Unnamed (45.6483, –123.8605); Unnamed (45.6814, –123.8786); Unnamed (45.7231, –123.9016).

(3) Wilson/Trask/Nestucca Subbasin 17100203—(i) *Little Nestucca River Watershed 1710020301*. Outlet(s) = Little Nestucca River (Lat 45.1827, Long –123.9543) upstream to endpoint(s) in: Austin Creek (45.1080, –123.8748); Austin Creek, West Fork (45.1074, –123.8894); Baxter Creek (45.1149, –123.7705); Bear Creek (45.1310, –123.8500); Bowers Creek (45.1393, –123.9198); Cedar Creek (45.0971, –123.8094); Fall Creek (45.1474, –123.8767); Hiack Creek (45.0759, –123.8042); Kautz Creek (45.0776, –123.8317); Kellow Creek (45.1271, –123.9072); Little Nestucca River (45.0730, –123.7825); Little Nestucca River, South Fork (45.0754, –123.8393); Louie Creek (45.1277, –123.7869); McKnight Creek (45.1124, –123.8363); Small Creek (45.1151, –123.8227); Sourgrass Creek (45.0917, –123.7623); Sourgrass Creek, Trib A (45.1109, –123.7664); Squaw Creek (45.1169, –123.8938); Stillwell Creek (45.0919, –123.8141); Unnamed (45.1169, –123.7974).

(ii) *Nestucca River Watershed 1710020302*. Outlet(s) = Nestucca Bay (Lat 45.1607, Long –123.9678) upstream to endpoint(s) in: Alder Creek (45.1436, –123.7998); Alder Creek (45.2436, –123.7364); Bays Creek (45.3197, –123.7240); Bear Creek (45.3188, –123.6022); Bear Creek (45.3345, –123.7898); Beulah Creek (45.2074, –123.6747); Bible Creek (45.2331, –123.5868); Boulder Creek (45.2530, –123.7525); Buck Creek (45.1455, –123.7734); Cedar Creek

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(45.3288, -123.4531);	Clarence	Creek	(45.3824, -123.7210);	Joe	Creek
(45.2649, -123.6395);	Clear	Creek	(45.3754, -123.8257);	Killam	Creek
(45.1725, -123.8660);	Crazy	Creek	(45.4087, -123.7276);	Mills	Creek
(45.1636, -123.7595);	Dahl	Fork	(45.3461, -123.7915);	Munson	Creek
(45.2306, -123.7076);	East Beaver	Creek	(45.3626, -123.7681);	Simmons	Creek
(45.3579, -123.6877);	East	Creek	(45.3605, -123.7364);	Sutton	Creek
(45.3134, -123.6348);	Elk	Creek	(45.4049, -123.8568);	Tillamook	River
(45.3134, -123.5645);	Elk Creek, Trib A		(45.3595, -123.9115);	Tomlinson	Creek
(45.2926, -123.5381);	Elk Creek, Trib B		(45.4587, -123.8868);		Unnamed
(45.2981, -123.5471);	Fan	Creek	(45.3660, -123.8313);		Unnamed
(45.2975, -123.4994);	Farmer	Creek	(45.3602, -123.8466);		Unnamed
(45.2593, -123.9074);	Foland	Creek	(45.3654, -123.9050);		Unnamed
(45.2508, -123.7890);	Foland Creek, West		(45.3987, -123.7105);		Unnamed
Fork (45.2519, -123.8025);	George	Creek	(45.4083, -123.8160);		Unnamed
(45.2329, -123.8291);	Ginger	Creek	(45.4478, -123.8670);		Unnamed
(45.3283, -123.4680);	Hartney	Creek	(45.3950, -123.7348).		
(45.2192, -123.8632);	Horn	Creek	(iv) <i>Trask River Watershed 1710020304.</i>		
(45.2556, -123.9212);	Lawrence	Creek	Outlet(s) = Trask River (Lat 45.4682,		
(45.1861, -123.7852);	Limestone	Creek	Long -123.8802) upstream to end-		
(45.2472, -123.7169);	Mina	Creek	point(s) in:	Bales	Creek
(45.2444, -123.6197);	Moon	Creek	(45.3712, -123.5786);	Bark Shanty	Creek
(45.3293, -123.6762);	North Beaver	Creek	(45.4232, -123.5550);	Bear	Creek
(45.3497, -123.8961);	Nestucca	River	(45.4192, -123.7408);	Bill	Creek
(45.3093, -123.4077);	Niagara	Creek	(45.3713, -123.6386);	Blue Bus	Creek
(45.1898, -123.6637);	Pheasant	Creek	(45.4148, -123.5949);	Boundry	Creek
(45.2121, -123.6366);	Pollard	Creek	(45.3493, -123.5470);	Clear Creek #1	
(45.1951, -123.7958);	Powder	Creek	(45.4638, -123.5571);	Clear Creek #2	
(45.2305, -123.6974);	Saling	Creek	(45.5025, -123.4683);	Cruiser	Creek
(45.2691, -123.8474);	Sanders	Creek	(45.4201, -123.4753);	Dougherty	Slough
(45.2254, -123.8959);	Slick Rock	Creek	(45.4684, -123.7888);	East Fork of South	
(45.2683, -123.6106);	Swab	Creek	Fork Trask River (45.3563, -123.4752);		
(45.2889, -123.7656);	Testament	Creek	Edwards Creek (45.3832, -123.6676);	Elk-	
(45.2513, -123.5488);	Three	Rivers	horn Creek, Trib C (45.4080, -123.4440);		
(45.1785, -123.7557);	Tiger	Creek	Elkhorn Creek (45.3928, -123.4709);	Gold	
(45.3405, -123.8029);	Tiger Creek, Trib A		Creek (45.4326, -123.7218);	Green	Creek
(45.3346, -123.8547);	Tony	Creek	(45.4510, -123.7361);	Hatchery	Creek
(45.2575, -123.7735);	Turpy	Creek	(45.4485, -123.6623);	Headquarters	Camp
(45.2537, -123.7620);		Unnamed	Creek (45.3317, -123.5072);	Hoquarten	
(45.1924, -123.8202);		Unnamed	Slough (45.4597, -123.8480);	Joyce	Creek
(45.2290, -123.9398);		Unnamed	(45.3881, -123.6386);	Michael	Creek
(45.3018, -123.4636);		Unnamed	(45.4799, -123.5119);	Mill	Creek
(45.3102, -123.6628);		Unnamed	(45.4100, -123.7450);	Miller	Creek
(45.3148, -123.6616);		Unnamed	(45.3582, -123.5666);	Pigeon	Creek
(45.3158, -123.8679);		Unnamed	(45.3910, -123.5656);	Rawe	Creek
(45.3292, -123.8872);	Walker	Creek	(45.4395, -123.6351);	Rock	Creek
(45.2914, -123.4207);	West Beaver	Creek	(45.3515, -123.5074);	Samson	Creek
(45.3109, -123.8840);	West	Creek	(45.4662, -123.6439);	Scotch	Creek
(45.2899, -123.8514);	Wildcat	Creek	(45.4015, -123.5873);	Steampot	Creek
(45.3164, -123.8187);	Wolfe	Creek	(45.3875, -123.5425);	Stretch	Creek
(45.3113, -123.7658);	Woods	Creek	(45.3483, -123.5382);	Summit	Creek
(45.1691, -123.8070).			(45.3481, -123.6054);	Summit	Creek,
(iii) <i>Tillamook River Watershed</i>			South Fork (45.3473, -123.6145);	Trask	
<i>1710020303.</i>			River, North Fork, Middle Fork		
Outlet(s) = Tillamook River			(45.4472, -123.3945);	Trask	River, North
(Lat 45.4682, Long -123.8802) upstream			Fork, North Fork (45.5275, -123.4177);		
to endpoint(s) in:	Bear	Creek	Trask	River,	South
(45.4213, -123.8885);	Beaver	Creek	Trask	River,	South
(45.4032, -123.8861);	Bewley	Creek	(45.3538, -123.6445);	Trib	A
(45.3637, -123.8965);	Esther	Creek	(45.3766, -123.5191);	Trib	B
(45.4464, -123.9017);	Fawcett	Creek	(45.3776, -123.4988);		Unnamed

(45.3639, – 123.6054); Unnamed
 (45.4105, – 123.7741); Unnamed
 (45.4201, – 123.6320); Unnamed
 (45.4220, – 123.7654).

(v) *Wilson River Watershed 1710020305*.
 Outlet(s) = Wilson River (Lat 45.4816,
 Long –123.8708) upstream to end-
 point(s) in: Beaver Creek
 (45.4894, – 123.7933); Ben Smith Creek
 (45.5772, – 123.5072); Cedar Creek
 (45.5869, – 123.6228); Cedar Creek, North
 Fork (45.6066, – 123.6151); Deo Creek
 (45.6000, – 123.3716); Drift Creek
 (45.6466, – 123.3944); Elk Creek
 (45.6550, – 123.4620); Elk Creek, West
 Fork (45.6208, – 123.4717); Elliott Creek
 (45.5997, – 123.3925); Fall Creek
 (45.4936, – 123.5616); Fox Creek
 (45.5102, – 123.5869); Hatchery Creek
 (45.4835, – 123.7074); Hughey Creek
 (45.4540, – 123.7526); Idiot Creek
 (45.6252, – 123.4296); Jones Creek
 (45.6028, – 123.5702); Jordan Creek
 (45.5610, – 123.4557); Jordan Creek, South
 Fork (45.5099, – 123.5279); Kansas Creek
 (45.4861, – 123.6434); Morris Creek
 (45.6457, – 123.5409); Tuffy Creek
 (45.5787, – 123.4702); Unnamed
 (45.4809, – 123.8362); Unnamed
 (45.5758, – 123.5226); Unnamed
 (45.5942, – 123.4259); Unnamed
 (45.6002, – 123.5939); Unnamed
 (45.6151, – 123.4385); White Creek
 (45.5181, – 123.7223); Wilson River, Dev-
 il's Lake Fork (45.6008, – 123.3301); Wil-
 son River, North Fork
 (45.6679, – 123.5138); Wilson River, North
 Fork, Little (45.5283, – 123.6771); Wilson
 River, North Fork, West Fork
 (45.6330, – 123.5879); Wilson River, North
 Fork, West Fork, North Fork
 (45.6495, – 123.5779); Wilson River, South
 Fork (45.5567, – 123.3965); Wolf Creek
 (45.5683, – 123.6129).

(vi) *Kilchis River Watershed 1710020306*.
 Outlet(s) = Kilchis River (Lat 45.4927,
 Long –123.8615) upstream to end-
 point(s) in: Clear Creek
 (45.5000, – 123.7647); Coal Creek
 (45.5004, – 123.8085); Company Creek
 (45.5892, – 123.7370); French Creek
 (45.6318, – 123.6926); Kilchis River, Little
 South Fork (45.5668, – 123.7178); Kilchis
 River, North Fork (45.6044, – 123.6504);
 Kilchis River, South Fork
 (45.5875, – 123.6944); Mapes Creek
 (45.5229, – 123.8382); Murphy Creek
 (45.5320, – 123.8341); Myrtle Creek
 (45.5296, – 123.8156); Sam Downs Creek

(45.5533, – 123.7144); Schroeder Creek
 (45.6469, – 123.7064); Unnamed
 (45.5625, – 123.7593).

(vii) *Miami River Watershed 1710020307*.
 Outlet(s) = Miami River (Lat 45.5597,
 Long –123.8904) upstream to end-
 point(s) in: Diamond Creek
 (45.6158, – 123.8184); Hobson Creek
 (45.5738, – 123.8970); Illingsworth Creek
 (45.5547, – 123.8693); Miami River
 (45.6362, – 123.7533); Miami River, Trib S
 (45.6182, – 123.8004); Miami River, Trib T
 (45.6546, – 123.7463); Minich Creek
 (45.5869, – 123.8936); Moss Creek
 (45.5628, – 123.8319); Peterson Creek
 (45.6123, – 123.8996); Prouty Creek
 (45.6304, – 123.8435); Stuart Creek
 (45.6042, – 123.8442); Unnamed
 (45.6317, – 123.7906); Unnamed
 (45.6341, – 123.7900); Waldron Creek
 (45.5856, – 123.8483).

(viii) *Tillamook Bay Watershed 1710020308*. Outlet(s) = Tillamook Bay
 (Lat 45.5600, Long –123.9366) upstream
 to endpoint(s) in: Douthy Creek
 (45.5277, – 123.8570); Electric Creek
 (45.5579, – 123.8925); Hall Slough
 (45.4736, – 123.8637); Jacoby Creek
 (45.5297, – 123.8665); Kilchis River
 (45.4927, – 123.8615); Larson Creek
 (45.5366, – 123.8849); Miami River
 (45.5597, – 123.8904); Patterson Creek
 (45.5359, – 123.8732); Tillamook Bay
 (45.4682, – 123.8802); Vaughn Creek
 (45.5170, – 123.8516); Wilson River
 (45.4816, – 123.8708).

(ix) *Spring Creek/Sand Lake/Neskowin Creek Frontal Watershed 1710020309*. Out-
 let(s) = Crescent Lake
 (45.6360, – 123.9405); Neskowin Creek
 (45.1001, – 123.9859); Netarts Bay
 (45.4339, – 123.9512); Rover Creek
 (45.3290, – 123.9670); Sand Creek
 (45.2748, – 123.9589); Watesco Creek
 (45.5892, – 123.9477) upstream to end-
 point(s) in: Andy Creek
 (45.2905, – 123.8744); Butte Creek
 (45.1159, – 123.9360); Crescent Lake
 (45.6320, – 123.9376); Davis Creek
 (45.3220, – 123.9254); Fall Creek
 (45.0669, – 123.9679); Hawk Creek
 (45.1104, – 123.9436); Jackson Creek
 (45.3568, – 123.9611); Jewel Creek
 (45.2865, – 123.8905); Jim Creek
 (45.0896, – 123.9224); Lewis Creek
 (45.0835, – 123.8979); Meadow Creek
 (45.0823, – 123.9824); Neskowin Creek
 (45.0574, – 123.8812); Prospect Creek
 (45.0858, – 123.9321); Reneke Creek

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(45.2594, -123.9434);	Rover Creek	(44.6715, -123.6907);	Unnamed
(45.3284, -123.9438);	Sand Creek	(44.6881, -123.6089);	Unnamed
(45.3448, -123.9156);	Sloan Creek	(44.6908, -123.7298);	Wakefield Creek
(45.0718, -123.8998);	Watesco Creek	(44.6336, -123.6963);	Yaquina River
(45.5909, -123.9353);	Whiskey Creek	(44.6894, -123.5907);	Young Creek
(45.3839, -123.9193).		(44.6372, -123.6027).	
(4) Siletz/Yaquina Subbasin 17100204-		(ii) <i>Big Elk Creek Watershed 1710020402.</i>	
(i) <i>Upper Yaquina River Watershed 1710020401.</i> Outlet(s) = Yaquina River (Lat 44.6219, Long -123.8741) upstream to endpoint(s) in: Bales Creek (44.6893, -123.7503); Bales Creek, East Fork (44.6927, -123.7363); Bales Creek, East Fork, Trib A (44.6827, -123.7257); Bales Creek (44.6610, -123.8749); Bones Creek (44.6647, -123.6762); Bryant Creek (44.6746, -123.7139); Buckhorn Creek (44.6676, -123.6677); Buttermilk Creek (44.6338, -123.6827); Buttermilk Creek, Trib A (44.6518, -123.7173); Carlisle Creek (44.6451, -123.8847); Cline Creek (44.6084, -123.6844); Cook Creek (44.6909, -123.8583); Crystal Creek (44.6500, -123.8132); Davis Creek (44.6500, -123.6587); Eddy Creek (44.6388, -123.7951); Felton Creek (44.6626, -123.6502); Haxel Creek (44.6781, -123.8046); Hayes Creek (44.6749, -123.7749); Humphrey Creek (44.6697, -123.6329); Klamath Creek (44.6927, -123.8431); Little Elk Creek (44.6234, -123.6628); Little Elk Creek, Trib A (44.6196, -123.7583); Little Yaquina River (44.6822, -123.6123); Lytle Creek (44.6440, -123.5979); Miller Creek (44.6055, -123.7030); Oglesby Creek (44.6421, -123.7271); Oglesby Creek, Trib A (44.6368, -123.7100); Peterson Creek (44.6559, -123.7868); Randall Creek (44.6721, -123.6570); Salmon Creek (44.6087, -123.7379); Simpson Creek (44.6775, -123.8780); Sloop Creek (44.6654, -123.8595); Spilde Creek (44.6636, -123.5856); Stony Creek (44.6753, -123.7020); Thornton Creek (44.6923, -123.8208); Trapp Creek (44.6455, -123.8307); Twentythree Creek (44.6887, -123.8751); Unnamed (44.6074, -123.6738); Unnamed (44.6076, -123.7067); Unnamed (44.6077, -123.6633); Unnamed (44.6123, -123.6646); Unnamed (44.6188, -123.7237); Unnamed (44.6202, -123.7201); Unnamed (44.6367, -123.7444); Unnamed (44.6415, -123.6237); Unnamed (44.6472, -123.7793); Unnamed (44.6493, -123.6789); Unnamed (44.6707, -123.7908);		Outlet(s) = Elk Creek (Lat 44.6219, Long -123.8741) upstream to endpoint(s) in: Adams Creek (44.5206, -123.6349); Baker Creek (44.5230, -123.6346); Bear Creek (44.5966, -123.8299); Beaver Creek (44.6040, -123.7999); Beaverdam Creek (44.5083, -123.6337); Bevens Creek (44.5635, -123.7371); Bull Creek (44.5408, -123.8162); Bull Creek (44.5431, -123.8142); Bull Creek, Trib A (44.5359, -123.8276); Cougar Creek (44.5070, -123.6482); Cougar Creek (44.5861, -123.7563); Deer Creek (44.6020, -123.7667); Devils Well Creek (44.6324, -123.8438); Dixon Creek (44.6041, -123.8659); Elk Creek (44.5075, -123.6022); Feagles Creek (44.4880, -123.7180); Feagles Creek, Trib B (44.5079, -123.6909); Feagles Creek, West Fork (44.5083, -123.7117); Grant Creek (44.5010, -123.7363); Harve Creek (44.5725, -123.8025); Jackass Creek (44.5443, -123.7790); Johnson Creek (44.5466, -123.6336); Lake Creek (44.5587, -123.6826); Leverage Creek (44.5536, -123.6343); Little Creek (44.5548, -123.6980); Little Wolf Creek (44.5590, -123.7165); Peterson Creek (44.5576, -123.6450); Rail Creek (44.5135, -123.6639); Spout Creek (44.5824, -123.6561); Sugarbowl Creek (44.5301, -123.5995); Unnamed (44.5048, -123.7566); Unnamed (44.5085, -123.6309); Unnamed (44.5108, -123.6249); Unnamed (44.5144, -123.6554); Unnamed (44.5204, -123.6148); Unnamed (44.5231, -123.6714); Unnamed (44.5256, -123.6804); Unnamed (44.5325, -123.7244); Unnamed (44.5332, -123.7211); Unnamed (44.5361, -123.7139); Unnamed (44.5370, -123.7643); Unnamed (44.5376, -123.6176); Unnamed (44.5410, -123.8213); Unnamed (44.5504, -123.8290); Unnamed (44.5530, -123.8282); Unnamed (44.5618, -123.8431); Unnamed (44.5687, -123.8563); Unnamed (44.5718, -123.7256); Unnamed (44.5734, -123.6696); Unnamed (44.5737, -123.6566);	

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(44.5771, – 123.7027); Unnamed
 (44.5821, – 123.8123); Unnamed
 (44.5840, – 123.6678); Unnamed
 (44.5906, – 123.7871); Unnamed
 (44.5990, – 123.7808); Unnamed
 (44.5865, – 123.8521); Wolf Creek
 (44.5873, – 123.6939); Wolf Creek, Trib A
 (44.5862, – 123.7188); Wolf Creek, Trib B
 (44.5847, – 123.7062).

(iii) *Lower Yaquina River Watershed 1710020403*. Outlet(s) = Yaquina River (Lat 44.6098, Long –124.0818) upstream to endpoint(s) in: Abbey Creek (44.6330, – 123.8881); Babcock Creek (44.5873, – 123.9221); Beaver Creek (44.6717, – 123.9799); Blue Creek (44.6141, – 123.9936); Boone Slough, Trib A (44.6134, – 123.9769); Depot Creek, Little (44.6935, – 123.9482); Depot Creek, Trib A (44.6837, – 123.9420); Drake Creek (44.6974, – 123.9690); East Fork Mill Creek (44.5691, – 123.8834); Flesher Slough (44.5668, – 123.9803); King Slough (44.5944, – 124.0323); Little Beaver Creek (44.6531, – 123.9728); McCaffery Slough (44.5659, – 124.0180); Mill Creek (44.5550, – 123.9064); Mill Creek, Trib A (44.5828, – 123.8750); Montgomery Creek (44.5796, – 123.9286); Nute Slough (44.6075, – 123.9660); Olalla Creek (44.6810, – 123.8972); Olalla Creek, Trib A (44.6511, – 123.9034); Parker Slough (44.5889, – 124.0119); Unnamed (44.5471, – 123.9557); Unnamed (44.5485, – 123.9308); Unnamed (44.5520, – 123.9433); Unnamed (44.5528, – 123.9695); Unnamed (44.5552, – 123.9294); Unnamed (44.5619, – 123.9348); Unnamed (44.5662, – 123.8905); Unnamed (44.5827, – 123.9456); Unnamed (44.5877, – 123.8850); Unnamed (44.6444, – 123.9059); Unnamed (44.6457, – 123.9996); Unnamed (44.6530, – 123.9914); Unnamed (44.6581, – 123.8947); Unnamed (44.6727 – 123.8942); Unnamed (44.6831, – 123.9940); West Olalla Creek (44.6812, – 123.9299); West Olalla Creek, Trib A (44.6649, – 123.9204); Wessel Creek (44.6988, – 123.9863); Wright Creek (44.5506, – 123.9250); Wright Creek, Trib A (44.5658, – 123.9422); Yaquina River (44.6219, – 123.8741).

(iv) *Middle Siletz River Watershed 1710020405*. Outlet(s) = Siletz River (Lat 44.7375, Long –123.7917) upstream to endpoint(s) in: Buck Creek, East Fork (44.8410, – 123.7970); Buck Creek, South

Fork (44.8233, – 123.8095); Buck Creek, West Fork (44.8352, – 123.8084); Cerine Creek (44.7478, – 123.7198); Deer Creek (44.8245, – 123.7268); Deer Creek, Trib A (44.8178, – 123.7397); Elk Creek (44.8704, – 123.7668); Fourth of July Creek (44.8203, – 123.6810); Gunn Creek (44.7816, – 123.7679); Holman River (44.8412, – 123.7707); Mill Creek, North Fork (44.7769, – 123.7361); Mill Creek, South Fork (44.7554, – 123.7276); Palmer Creek (44.7936, – 123.8344); Siletz River (44.8629, – 123.7323); Sunshine Creek (44.7977, – 123.6963); Unnamed (44.7691, – 123.7851); Unnamed (44.7747, – 123.7740); Unnamed (44.7749, – 123.7662); Unnamed (44.8118, – 123.6926); Unnamed (44.8188, – 123.6995); Unnamed (44.8312, – 123.6983); Unnamed (44.8583, – 123.7573); Whiskey Creek (44.8123, – 123.6937).

(v) *Rock Creek/Siletz River Watershed 1710020406*. Outlet(s) = Rock Creek (Lat 44.7375, Long –123.7917) upstream to endpoint(s) in: Beaver Creek (44.7288, – 123.6773); Big Rock Creek (44.7636, – 123.6969); Brush Creek (44.6829, – 123.6582); Cedar Creek (44.7366, – 123.6586); Fisher Creek (44.7149, – 123.6359); Little Rock Creek (44.7164, – 123.6155); Little Steere Creek (44.7219, – 123.6368); Rock Creek, Trib A (44.7414, – 123.7508); Steere Creek (44.7336, – 123.6313); Unnamed (44.7175, – 123.6496); William Creek (44.7391, – 123.7277).

(vi) *Lower Siletz River Watershed 1710020407*. Outlet(s) = Siletz Bay (Lat 44.9269, Long –124.0218) upstream to endpoint(s) in: Anderson Creek (44.9311, – 123.9508); Bear Creek (44.8682, – 123.8891); Bentilla Creek (44.7745, – 123.8555); Butterfield Creek (44.8587, – 123.9993); Cedar Creek (44.8653, – 123.8488); Cedar Creek, Trib D (44.8606, – 123.8696); Coon Creek (44.7959, – 123.8468); Dewey Creek (44.7255, – 123.9724); Drift Creek (44.9385, – 123.8211); Erickson Creek (44.9629, – 123.9490); Euchre Creek (44.8023, – 123.8687); Fowler Creek (44.9271, – 123.8440); Gordey Creek (44.9114, – 123.9724); Hough Creek (44.8052, – 123.8991); Jaybird Creek (44.7640, – 123.9733); Long Prairie Creek (44.6970, – 123.7499); Long Tom Creek (44.7037, – 123.8533); Mann Creek (44.6987, – 123.8025); Mill Creek

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(44.6949, -123.8967);	Miller Creek	(44.9903, -123.8158);	Sulphur Creek
(44.7487, -123.9733);	North Creek	(45.0403, -123.8216);	Telephone Creek
(44.9279, -123.8908);	North Roy Creek	(45.0467, -123.9348);	Toketa Creek
(44.7916, -123.9897);	Ojalla Creek	(45.0482, -123.9088);	Trout Creek
(44.7489, -123.9427);	Quarry Creek	(44.9693, -123.8337);	Unnamed
(44.8989, -123.9360);	Reed Creek	(44.9912, -123.8789);	Unnamed
(44.8020, -123.8835);	Reed Creek	(45.0370, -123.7333);	Unnamed
(44.8475, -123.9267);	Roots Creek	(45.0433, -123.7650);	Widow Creek
(44.8300, -123.9351);	South Roy Creek	(45.0373, -123.8530);	Widow Creek, West Fork
(44.7773, -123.9847);	Sam Creek	(45.0320, -123.8643);	Willis Creek
(44.7086, -123.7312);	Sampson Creek	(45.0059, -123.9391).	
(44.9089, -123.8173);	Savage Creek	(viii) <i>Devils Lake/Moolack Frontal Watershed 1710020409</i> . Outlet(s) = Big Creek	
(44.8021, -123.8608);	Scare Creek	(Lat 44.6590, Long -124.0571);	Coal Creek
(44.8246, -123.9954);	Schooner Creek, North Fork	(44.9661, -123.8793);	Schooner Creek, South Fork
(44.9401, -123.8689);	Scott Creek	(44.9684, -124.0172);	Fogarty Creek
(44.7414, -123.8268);	Sijota Creek	(44.8395, -124.0520);	Moolack Creek
(44.8883, -124.0257);	Siletz River	(44.7033, -124.0622);	North Depoe Bay Creek
(44.7375, -123.7917);	Skunk Creek	(44.8098, -124.0617);	Schoolhouse Creek
(44.8780, -123.9073);	Smith Creek	(44.8734, -124.0401);	Spencer Creek
(44.9294, -123.8056);	Stemple Creek	(44.7292, -124.0582);	Wade Creek
(44.8405, -123.9492);	Tangerman Creek	(44.7159, -124.0600)	upstream to endpoint(s) in:
(44.7278, -123.8944);	Thayer Creek	(44.6558, -124.0427);	Coal Creek
(44.7023, -123.8256);	Thompson Creek	(44.7047, -124.0099);	Devils Lake
(44.7520, -123.8893);	Unnamed	(44.9997, -123.9773);	Fogarty Creek
(44.7003, -123.7669);	Unnamed	(44.8563, -124.0153);	Jeffries Creek
(44.8904, -123.8034);	Unnamed	(44.6425, -124.0315);	Moolack Creek
(44.8927, -123.8400);	Unnamed	(44.6931, -124.0150);	North Depoe Bay Creek
(44.7034, -123.7754);	Unnamed	(44.8157, -124.0510);	Rock Creek
(44.7145, -123.8423);	Unnamed	(44.9869, -123.9317);	South Depoe Bay Creek
(44.7410, -123.8800);	Unnamed	(44.7939, -124.0126);	Salmon Creek
(44.7925, -123.9212);	Unnamed	(44.8460, -124.0164);	Schoolhouse Creek
(44.8396, -123.8896);	Unnamed	(44.8634, -124.0151);	South Fork Spencer Creek
(44.9035, -123.8635);	Unnamed	(44.7323, -123.9974);	Spencer Creek, North Fork
(44.9240, -123.7913);	West Fork Mill Creek	(44.7453, -124.0276);	Unnamed
(44.7119, -123.9703);	Wildcat Creek	(44.8290, -124.0318);	Unnamed
(44.8915, -123.8842).		(44.9544, -123.9867);	Unnamed
(vii) <i>Salmon River/Siletz/Yaquina Bay Watershed 1710020408</i> . Outlet(s) = Salmon River		(44.9666, -123.9731);	Unnamed
(Lat 45.0474, Long -124.0031)		(44.9774, -123.9706);	Wade Creek
upstream to endpoint(s) in:		(44.7166, -124.0057).	
Alder Brook		(5) <i>Alsea Subbasin 17100205—(i) Upper Alsea River Watershed 1710020501</i> . Outlet(s) = Alsea River, South Fork	
(45.0318, -123.8428);	Bear Creek	(Lat 44.3767, Long -123.6024)	upstream to endpoint(s) in:
(44.9785, -123.8580);	Boulder Creek	(44.4573, -123.5188);	Alsea River, South Fork
(45.0428, -123.7817);	Calkins Creek	(44.3261, -123.4891);	Baker Creek
(45.0508, -123.9615);	Crowley Creek	(44.4329, -123.5522);	Banton Creek
(45.0540, -123.9819);	Curl Creek	(44.3317, -123.6020);	Brown Creek
(45.0150, -123.9198);	Deer Creek	(44.3151, -123.6250);	Bummer Creek
(45.0196, -123.8091);	Frazer Creek	(44.3020, -123.5765);	Cabin Creek
(45.0096, -123.9576);	Gardner Creek	(44.4431, -123.5328);	Crooked Creek
(45.0352, -123.9024);	Indian Creek	(44.4579, -123.5099);	Dubuque Creek
(45.0495, -123.8010);	Little Salmon River	(44.3436, -123.5527);	Ernest Creek
(45.0546, -123.7473);	McMullen Creek	(44.4234, -123.5275);	Hayden Creek
(44.9829, -123.8682);	Panther Creek	(44.4062, -123.5815);	Honey Grove Creek
(45.0208, -123.8878);	Panther Creek, North Fork	(44.3874, -123.5078);	North Fork Alsea River
(45.0305, -123.8910);	Prairie Creek	(44.4527, -123.6102);	Parker Creek
(45.0535, -123.8129);	Rowdy Creek		
(45.0182, -123.9751);	Salmon River		
(45.0269, -123.7224);	Slick Rock Creek		

(44.4702, – 123.5978);	Peak	Creek	(44.2262, – 123.7982);	Unnamed
(44.3358, – 123.4933);	Record	Creek	(44.2290, – 123.8559);	Unnamed
(44.3254, – 123.6331);	Seeley	Creek	(44.2327, – 123.8344);	Unnamed
(44.4051, – 123.5177);	Swamp	Creek	(44.2356, – 123.8178);	Unnamed
(44.3007, – 123.6108);	Tobe	Creek	(44.2447, – 123.6460);	Unnamed
(44.3273, – 123.5719);	Trout	Creek	(44.2500, – 123.8074);	Unnamed
(44.3684, – 123.5163);		Unnamed	(44.2511, – 123.9011);	Unnamed
(44.3108, – 123.6225);		Unnamed	(44.2551, – 123.8733);	Unnamed
(44.3698, – 123.5670);		Unnamed	(44.2614, – 123.8652);	Unnamed
(44.4574, – 123.5001);		Unnamed	(44.2625, – 123.8635);	Unnamed
(44.3708, – 123.5740);		Unnamed	(44.2694, – 123.8180);	Unnamed
(44.3713, – 123.5656);		Unnamed	(44.2695, – 123.7429);	Unnamed
(44.3788, – 123.5528);		Unnamed	(44.2696, – 123.8497);	Unnamed
(44.4270, – 123.5492);		Unnamed	(44.2752, – 123.7616);	Unnamed
(44.4518, – 123.6236);	Yew	Creek	(44.2760, – 123.7121);	Unnamed
(44.4581, – 123.5373);	Zahn	Creek	(44.2775, – 123.8895);	Unnamed
(44.4381, – 123.5425).			(44.2802, – 123.7097);	Unnamed
(ii) <i>Five Rivers/Lobster Creek Watershed 1710020502</i> . Outlet(s) = Five Rivers				
(Lat 44.3584, Long –123.8279) upstream				
to endpoint(s) in:				
(44.2947, – 123.8105);	Alder	Creek	(44.2895, – 123.9083);	Unnamed
(44.2824, – 123.9123);	Bear	Creek	(44.2940, – 123.7358);	Unnamed
(44.3588, – 123.7930);	Bear	Creek	(44.2954, – 123.7602);	Unnamed
(44.2589, – 123.6647);	Bear	Creek	(44.2995, – 123.7760);	Unnamed
(44.3184, – 123.6602);	Briar	Creek	(44.3024, – 123.9064);	Unnamed
(44.2428, – 123.8989);	Buck	Creek	(44.3066, – 123.8838);	Unnamed
(44.2685, – 123.7552);	Camp	Creek	(44.3070, – 123.8280);	Unnamed
(44.3193, – 123.9073);	Cascade	Creek	(44.3129, – 123.7763);	Unnamed
North Fork (44.3299, – 123.8932);				
Creek (44.2732, – 123.7753);				
(44.3061, – 123.8140);	Cherry	Creek	(44.3214, – 123.8161);	Unnamed
(44.2881, – 123.6484);	Coal	Creek	(44.3237, – 123.9020);	Unnamed
(44.2777, – 123.6445);	Cedar	Creek	(44.3252, – 123.7382);	Unnamed
(44.2723, – 123.8678);	Cherry	Creek	(44.3289, – 123.8354);	Unnamed
(44.2458, – 123.8750);	Coal	Creek	(44.3336, – 123.7431);	Unnamed
(44.2955, – 123.7927);	Cook	Creek	(44.3346, – 123.7721);	Wilkinson Creek
(44.3154, – 123.7986);	Cougar	Creek	(44.3296, – 123.7249);	Wilson Creek
(44.3432, – 123.7969);	Crab	Creek	(44.3085, – 123.8990).	
(44.2764, – 123.7890);	Crazy	Creek	(iii) <i>Drift Creek Watershed 1710020503</i> .	
(44.2080, – 123.8025);	Crooked	Creek	Outlet(s) = Drift Creek (Lat 44.4157,	
(44.2286, – 123.8751);	Elk	Creek	Long –124.0043) upstream to end-	
(44.2255, – 123.8143);	Fendall	Creek	point(s) in:	
(44.2777, – 123.7326);	Five	Rivers	Boulder	Creek
(44.2961, – 123.6266);	Green	River	Bush	Creek
(44.2552, – 123.5897);	Green	River, East	(44.5315, – 123.8631);	Cape Horn Creek
(44.2326, – 123.6060);	Fork (44.2255, – 123.8143);	Jasper	(44.5153, – 123.7844);	Cedar Creek
(44.2237, – 123.6195);	Little Lobster	Creek	(44.4742, – 123.9699);	Cougar Creek
(44.2411, – 123.7631);	Lobster	Creek, East	(44.4405, – 123.9144);	Deer Creek
(44.2822, – 123.6781);	Lobster	Creek, South	(44.5514, – 123.8778);	Drift Creek
(44.2925, – 123.6591);	Fork (44.2326, – 123.6060);	Lobster	(44.4688, – 123.7859);	Ellen Creek
(44.3398, – 123.7613);	Creek (44.2237, – 123.6195);	Lord	(44.4415, – 123.9413);	Flynn Creek
(44.2482, – 123.7440);	Martha	Creek	(44.5498, – 123.8520);	Gold Creek
(44.2346, – 123.7849);	Meadow	Creek	(44.4778, – 123.8802);	Gopher Creek
(44.2576, – 123.7971);	Phillips	Creek	(44.5217, – 123.7787);	Horse Creek
(44.2589, – 123.7627);	Preacher	Creek	(44.5347, – 123.9072);	Lyndon Creek
(44.3274, – 123.8407);	Prindel	Creek	(44.4395, – 123.9801);	Needle Branch
(44.2845, – 123.7007);	Ryan	Creek	(44.5154, – 123.8537);	Nettle Creek
(44.2129, – 123.7919);	Summers	Creek	(44.4940, – 123.7845);	Slickrock Creek
	Swamp	Creek	(44.4757, – 123.9007);	Trout Creek
		Unnamed	(44.4965, – 123.9113);	Trout Creek, East
		Unnamed	Fork (44.4705, – 123.9290);	Unnamed
		Unnamed	(44.4995, – 123.8488);	Unnamed

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(44.4386, -123.9200);	Unnamed	(44.4477, -124.0130);	Sudan Creek
(44.4409, -123.8738);	Unnamed	(44.3817, -123.9717);	Sulmon Creek
(44.4832, -123.9570);	Unnamed	(44.3285, -123.7008);	Sulmon Creek,
(44.4868, -123.9340);	Unnamed	North Fork (44.3421, -123.6374);	Sulmon
(44.4872, -123.9518);	Unnamed	Creek, South Fork (44.3339, -123.6709);	
(44.4875, -123.9460);	Unnamed	Swede Fork (44.3852, -124.0295);	
(44.4911, -123.9227);	Unnamed	Unnamed (44.3319, -123.9318);	Unnamed
(44.5187, -123.7996);	Unnamed	(44.3356, -123.9464);	Unnamed
(44.5260, -123.7848);	Unnamed	(44.3393, -123.9360);	Unnamed
(44.5263, -123.8868);	Unnamed	(44.3413, -123.9294);	Unnamed
(44.5326, -123.8453);	Unnamed	(44.3490, -123.9058);	Unnamed
(44.5387, -123.8440);	Unnamed	(44.3548, -123.6574);	Unnamed
(44.5488, -123.8694);	Unnamed	(44.3592, -123.6363);	Unnamed
(44.4624, -123.8216).		(44.3597, -123.9042);	Unnamed
(iv) <i>Lower Alsea River Watershed</i>		(44.3598, -123.6563);	Unnamed
<i>1710020504</i> . Outlet(s) = Alsea River (Lat		(44.3598, -123.6562);	Unnamed
44.4165, Long -124.0829) upstream to		(44.3600, -123.6514);	Unnamed
endpoint(s) in:	Alsea River	(44.3656, -123.9085);	Unnamed
(44.3767, -123.6024);	Arnold Creek	(44.3680, -123.9629);	Unnamed
(44.3922, -123.9503);	Barclay Creek	(44.3794, -123.8268);	Unnamed
(44.4055, -123.8659);	Bear Creek	(44.3800, -123.9134);	Unnamed
(44.3729, -123.9623);	Bear Creek	(44.3814, -123.7650);	Unnamed
(44.3843, -123.7704);	Beaty Creek	(44.3822, -124.0555);	Unnamed
(44.4044, -123.6043);	Benner Creek	(44.3823, -124.0451);	Unnamed
(44.3543, -123.7447);	Brush Creek	(44.3989, -123.6050);	Unnamed
(44.3826, -123.8537);	Bull Run Creek	(44.4051, -124.0527);	Unnamed
(44.4745, -123.7439);	Canal Creek	(44.4166, -123.8149);	Unnamed
(44.3322, -123.9460);	Canal Creek, East	(44.4537, -123.7247);	Walker Creek
Fork (44.3454, -123.9161);	Carns Canyon	(44.4583, -124.0271);	Weist Creek
(44.4027, -123.7550);	Cedar Creek	(44.3967, -124.0256);	West Creek
(44.3875, -123.7946);	Cove Creek	(44.3588, -123.9493).	
(44.4403, -123.7107);	Cow Creek	(v) <i>Beaver Creek/Waldport Bay Water-</i>	
(44.3620, -123.7510);	Darkey Creek	<i>shed 1710020505</i> . Outlet(s) = Beaver	
(44.3910, -123.9927);	Digger Creek	Creek (Lat 44.5233, Long -124.0734);	
(44.3906, -123.6890);	Fall Creek	Deer Creek (44.5076, -124.0807);	Thiel
(44.4527, -123.6864);	Fall Creek	Creek (44.5646, -124.0709) upstream to	
(44.4661, -123.6933);	George Creek	endpoint(s) in: Beaver Creek, North	
(44.3556, -123.8603);	Grass Creek	Fork, Trib G (44.5369, -123.9195);	Beaver
(44.3577, -123.8798);	Hatchery Creek	Creek, South Fork (44.4816, -123.9853);	
(44.3952, -123.7269);	Hatchery Creek	Beaver Creek, South Fork, Trib A	
(44.4121, -123.8734);	Hoover Creek	(44.4644, -124.0332);	Bowers Creek
(44.3618, -123.8583);	Lake Creek	(44.5312, -124.0117);	Bunnel Creek
(44.3345, -123.8725);	Lint Creek	(44.5178, -124.0265);	Deer Creek
(44.3850, -124.0490);	Maltby Creek	(44.5057, -124.0721);	Elkhorn Creek
(44.3833, -123.6770);	Meadow Fork	(44.5013, -123.9572);	Elkhorn Creek
(44.3764, -123.8879);	Mill Creek	(44.4976, -123.9685);	Lewis Creek
(44.4046, -123.6436);	Minotti Creek	(44.5326, -123.9532);	North Fork Beaver
(44.3750, -123.7718);	Nye Creek	Creek (44.5149, -123.8988);	Oliver Creek
(44.4326, -123.7648);	Oxstable Creek	(44.4660, -124.0471);	Peterson Creek
(44.3912, -123.9603);	Phillips Creek	(44.5419, -123.9738);	Pumphouse Creek
(44.3803, -123.7780);	Red Creek	(44.5278, -124.0569);	Simpson Creek
(44.3722, -123.9162);	Risley Creek	(44.5255, -124.0390);	Thiel Creek
(44.4097, -123.9380);	Schoolhouse Creek	(44.5408, -124.0254);	Tracy Creek
(44.3897, -123.6545);	Scott Creek, East	(44.5411, -124.0500);	Unnamed
Fork (44.4252, -123.7897);	Scott Creek,	(44.4956, -123.9751);	Unnamed
West Fork (44.4212, -123.8225);	Skinner	(44.5189, -124.0638);	Unnamed
Creek (44.3585, -123.9374);	Skunk Creek	(44.5225, -123.9313);	Unnamed
(44.3998, -123.6912);	Slide Creek	(44.5256, -123.9399);	Unnamed
(44.3986, -123.8419);	Starr Creek	(44.5435, -124.0221);	Unnamed

(44.5461, – 124.0311); Unnamed Trib A (44.1601, – 124.0231); Bob Creek
 (44.5472, – 124.0591); Unnamed (44.2346, – 124.0235); Cape Creek
 (44.5482, – 124.0249); Unnamed (44.1351, – 124.0174); Cape Creek, North
 (44.5519, – 124.0279); Unnamed Fork (44.1458, – 124.0489); Cummins
 (44.5592, – 124.0531); Worth Creek Creek (44.2557, – 124.0104); Fryingpan
 (44.5013, – 124.0207). Creek (44.1723, – 124.0401); Levage Creek
 (vi) *Yachats River Watershed* (44.0745, – 124.0588); Little Cummins
 1710020506. Outlet(s) = Yachats River Creek (44.2614, – 124.0851); McKinney
 (Lat 44.3081, Long –124.1070) upstream Creek (44.2187, – 123.9985); Mercer Creek
 to endpoint(s) in: Axtell Creek (44.0712, – 124.0796); Mill Creek
 (44.3084, – 123.9915); Beamer Creek (44.2106, – 124.0747); Quarry Creek
 (44.3142, – 124.0124); Bend Creek (44.0881, – 124.1124); Rath Creek
 (44.2826, – 124.0077); Carson Creek (44.0747, – 124.0901); Rock Creek
 (44.3160, – 124.0030); Dawson Creek (44.1882, – 124.0310); Tenmile Creek
 (44.2892, – 124.0133); Depew Creek (44.2143, – 123.9351); Tenmile Creek,
 (44.3395, – 123.9631); Earley Creek South Fork (44.2095, – 123.9607);
 (44.3510, – 123.9885); Fish Creek Unnamed (44.1771, – 124.0908); Unnamed
 (44.3259, – 123.9592); Glines Creek (44.0606, – 124.0805); Unnamed
 (44.3436, – 123.9756); Grass Creek (44.0624, – 124.0552); Unnamed
 (44.2673, – 123.9109); Helms Creek (44.0658, – 124.0802); Unnamed
 (44.2777, – 123.9954); Keller Creek (44.0690, – 124.0490); Unnamed
 (44.2601, – 123.9485); Little Beamer Creek (44.0748, – 124.0478); Unnamed
 (44.2993, – 124.0213); Reedy Creek (44.0814, – 124.0464); Unnamed
 (44.3083, – 124.0460); South Beamer Creek (44.0958, – 124.0559); Unnamed
 (44.2852, – 124.0325); Stump Creek (44.1283, – 124.0242); Unnamed
 (44.2566, – 123.9624); Unnamed (44.1352, – 124.0941); Unnamed
 (44.2596, – 123.9279); Unnamed (44.1712, – 124.0558); Unnamed
 (44.2657, – 123.9585); Unnamed (44.1715, – 124.0636); Unnamed
 (44.2660, – 123.9183); Unnamed (44.2011, – 123.9634); Unnamed
 (44.2684, – 123.9711); Unnamed (44.2048, – 123.9971); Unnamed
 (44.2837, – 123.9268); Unnamed (44.2146, – 124.0358); Unnamed
 (44.2956, – 123.9316); Unnamed (44.2185, – 124.0270); Unnamed
 (44.3005, – 123.9324); Unnamed (44.2209, – 123.9368); Wapiti Creek
 (44.3163, – 123.9428); Unnamed (44.1216, – 124.0448); Wildcat Creek
 (44.3186, – 123.9568); Unnamed (44.2339, – 123.9632).
 (44.3259, – 123.9578); Unnamed
 (44.3431, – 123.9711); West Fork
 Williamson Creek (44.3230, – 124.0008);
 Williamson Creek (44.3300, – 124.0026);
 Yachats River (44.2468, – 123.9329);
 Yachats River, North Fork
 (44.3467, – 123.9972); Yachats River,
 School Fork (44.3145, – 123.9341).
 (vii) *Cummins Creek/Tenmile Creek/
 Mercer Lake Frontal Watershed*
 1710020507. Outlet(s) = Berry Creek (Lat
 44.0949, Long –124.1221); Big Creek
 (44.1767, – 124.1148); Bob Creek
 (44.2448, – 124.1118); Cape Creek
 (44.1336, – 124.1211); Cummins Creek
 (44.2660, – 124.1075); Rock Creek
 (44.1833, – 124.1149); Sutton Creek
 (44.0605, – 124.1269); Tenmile Creek
 (44.2245, – 124.1083) upstream to end-
 point(s) in: Bailey Creek
 (44.1037, – 124.0530); Berry Creek
 (44.0998, – 124.0885); Big Creek
 (44.1866, – 123.9781); Big Creek, South
 Fork (44.1692, – 123.9688); Big Creek,

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(43.9230, -123.5342);	Cabin Creek	(43.8159, -123.1604);	Unnamed
(43.8970, -123.6754);	Camp Creek	(43.7796, -123.2019);	Unnamed
(43.9154, -123.4904);	Canyon Creek	(43.7810, -123.2818);	Unnamed
(43.9780, -123.6096);	Clay Creek	(43.8278, -123.2610);	Unnamed
(43.8766, -123.5721);	Collins Creek	(43.8519, -123.2773);	Unnamed
(43.8913, -123.6047);	Conger Creek	(43.8559, -123.5520);	Unnamed
(43.8968, -123.4524);	Doe Creek	(43.8670, -123.6022);	Unnamed
(43.8957, -123.3558);	Doe Hollow Creek	(43.8876, -123.5194);	Unnamed
(43.8487, -123.4603);	Dogwood Creek	(43.8902, -123.5609);	Unnamed
(43.8958, -123.3811);	Douglas Creek	(43.8963, -123.4171);	Unnamed
(43.8705, -123.2836);	Edris Creek	(43.8968, -123.4731);	Unnamed
(43.9224, -123.5531);	Esmond Creek	(43.8992, -123.4033);	Unnamed
(43.8618, -123.5772);	Esmond Creek, Trib	(43.9006, -123.4637);	Unnamed
1 (43.9303, -123.6518);	Esmond Creek,	(43.9030, -123.6434);	Unnamed
Trib A (43.8815, -123.6646);	Farman	(43.9492, -123.6924);	Unnamed
Creek (43.8761, -123.2562);	Fawn Creek	(43.9519, -123.6886);	Unnamed
(43.8743, -123.2992);	Fawn Creek	(43.9784, -123.6815);	Unnamed
(43.9436, -123.6088);	Fryingpan Creek	(43.9656, -123.7145);	Whittaker Creek
(43.8329, -123.4241);	Fryingpan Creek	(43.9490, -123.7004);	Whittaker Creek,
(43.8422, -123.4318);	Gardner Creek	Trib B (43.9545, -123.7121).	
(43.8024, -123.2582);	Haight Creek	(ii) <i>Wolf Creek Watershed 1710020602.</i>	
(43.8406, -123.4862);	Haskins Creek	Outlet(s) = Wolf Creek (Lat 43.9548,	
(43.8785, -123.5851);	Hawley Creek	Long -123.6205) upstream to end-	
(43.8599, -123.1558);	Hawley Creek,	point(s) in: Bill Lewis Creek	
North Fork (43.8717, -123.1751);	Holland	(43.9357, -123.5708);	Cabin Creek
Creek (43.8775, -123.4156);	Jeans Creek	(43.9226, -123.4081);	Eames Creek
(43.8616, -123.4714);	Johnson Creek	(43.9790, -123.4352);	Eames Creek, Trib C
(43.8822, -123.5332);	Kelly Creek	(43.9506, -123.4371);	Elkhorn Creek
(43.8338, -123.1739);	Kline Creek	(43.9513, -123.3934);	Fish Creek
(43.9034, -123.6635);	Leopold Creek	(43.9238, -123.3872);	Gall Creek
(43.9199, -123.6890);	Leopold Creek, Trib	(43.9865, -123.5187);	Gall Creek, Trib 1
A (43.9283, -123.6630);	Letz Creek, Trib B	(43.9850, -123.5285);	Grenshaw Creek
(43.7900, -123.3248);	Lick Creek	(43.9676, -123.4645);	Lick Creek
(43.8366, -123.2695);	Little Siuslaw Creek	(43.9407, -123.5796);	Oat Creek, Trib A
(43.8048, -123.3412);	Lucas Creek	(43.9566, -123.5052);	Oat Creek, Trib C
(43.8202, -123.2233);	Luyne Creek	(43.9618, -123.4902);	Oat Creek
(43.9155, -123.5068);	Luyne Creek, Trib A	(43.9780, -123.4761);	Panther Creek
(43.9179, -123.5208);	Michaels Creek	(43.9529, -123.3744);	Pittenger Creek
(43.8624, -123.5417);	Mill Creek	(43.9713, -123.5434);	Saleratus Creek
(43.9028, -123.6228);	Norris Creek	(43.9796, -123.5675);	Saleratus Creek,
(43.8434, -123.2006);	North Creek	Trib A (43.9776, -123.5797);	Swamp Creek
(43.9223, -123.5752);	North Fork Siuslaw	(43.9777, -123.4197);	Swing Log Creek
River (43.8513, -123.2302);	Oxbow Creek	(43.9351, -123.3339);	Unnamed
(43.8384, -123.5433);	Oxbow Creek, Trib C	(43.9035, -123.3358);	Unnamed
(43.8492, -123.5465);	Pheasant Creek	(43.9343, -123.3648);	Unnamed
(43.9120, -123.4247);	Pheasant Creek,	(43.9617, -123.4507);	Unnamed
Trib 2 (43.9115, -123.4411);	Pugh Creek	(43.9668, -123.6041);	Unnamed
(43.9480, -123.5940);	Russell Creek	(43.9693, -123.4846);	Van Curen Creek
(43.8813, -123.3425);	Russell Creek, Trib	(43.9364, -123.5520);	Wolf Creek
A (43.8619, -123.3498);	Sandy Creek	(43.9101, -123.3234).	
(43.7684, -123.2441);	Sandy Creek, Trib B	(iii) <i>Wildcat Creek Watershed</i>	
(43.7826, -123.2538);	Shaw Creek	<i>1710020603.</i> Outlet(s) = Wildcat Creek	
(43.8817, -123.3289);	Siuslaw River, East	(Lat 44.0033, Long -123.6545) upstream	
Trib (43.8723, -123.5378);	Siuslaw River,	to endpoint(s) in: Bulmer Creek	
North Fork, Upper Trib		(44.0099, -123.5206);	Cattle Creek
(43.8483, -123.2275);	Smith Creek	(44.0099, -123.5475);	Fish Creek
(43.8045, -123.3665);	South Fork Siuslaw	(44.0470, -123.5383);	Fowler Creek
River (43.7831, -123.1569);	Trail Creek	(43.9877, -123.5918);	Haynes Creek
(43.9142, -123.6241);	Tucker Creek	(44.1000, -123.5578);	Kirk Creek

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(44.0282, – 123.6270);	Knapp Creek	(44.1176, – 123.5846);	Unnamed
(44.1006, – 123.5801);	Miller Creek	(44.1355, – 123.5473);	Unnamed
(44.0767, – 123.6034);	Pataha Creek	(44.1355, – 123.6125);	Unnamed
(43.9914, – 123.5361);	Potato Patch Creek	(44.1382, – 123.5539);	Unnamed
(43.9936, – 123.5812);	Salt Creek	(44.1464, – 123.5843);	Unnamed
(44.0386, – 123.5021);	Shady Creek	(44.1659, – 123.5658);	Unnamed
(44.0647, – 123.5838);	Shultz Creek	(44.1725, – 123.5981);	Unnamed
(44.0220, – 123.6320);	Unnamed	(44.1750, – 123.5914);	Unnamed
(43.9890, – 123.5468);	Unnamed	(44.1770, – 123.5697);	Unnamed
(44.0210, – 123.4805);	Unnamed	(44.1782, – 123.5419);	Unnamed
(44.0233, – 123.4996);	Unnamed	(44.1798, – 123.5834);	Unnamed
(44.0242, – 123.4796);	Unnamed	(44.1847, – 123.5862);	Unnamed
(44.0253, – 123.4963);	Unnamed	(44.2042, – 123.5700);	Unnamed
(44.0283, – 123.5311);	Unnamed	(44.2143, – 123.5873);	Unnamed
(44.0305, – 123.5275);	Unnamed	(44.2258, – 123.4493);	Unnamed
(44.0479, – 123.6199);	Unnamed	(44.2269, – 123.5478);	Unnamed
(44.0604, – 123.5624);	Unnamed	(44.2328, – 123.5285);	Unnamed
(44.0674, – 123.6075);	Unnamed	(44.2403, – 123.5358);	Unnamed
(44.0720, – 123.5590);	Unnamed	(44.2431, – 123.5105);	Unnamed
(44.0839, – 123.5777);	Unnamed	(44.2437, – 123.5739);	Unnamed
(44.0858, – 123.5787);	Unnamed	(44.2461, – 123.5180);	Unnamed
(44.0860, – 123.5741);	Unnamed	(44.2484, – 123.5501);	Unnamed
(44.0865, – 123.5935);	Unnamed	(44.2500, – 123.5691);	Unnamed
(44.0945, – 123.5838);	Unnamed	(44.2573, – 123.4736);	Unnamed
(44.0959, – 123.5902);	Walker Creek	(44.2670, – 123.4840);	Wheeler Creek
(44.0469, – 123.6312);	Walker Creek, Trib C (44.0418, – 123.6048);	(44.1232, – 123.6778).	
(43.9892, – 123.4308);	Wildcat Creek, Trib ZH (43.9924, – 123.4975);	(v) <i>Deadwood Creek Watershed 1710020605.</i> Outlet(s) = Deadwood Creek (Lat 44.0949, Long – 123.7594) upstream to endpoint(s) in: Alpha Creek (44.1679, – 123.6951); Bear Creek (44.1685, – 123.6627); Bear Creek, South Fork (44.1467, – 123.6743); Buck Creek (44.2003, – 123.6683); Deadwood Creek, West Fork (44.1946, – 123.8023); Deer Creek (44.1655, – 123.7229); Failor Creek (44.1597, – 123.8003); Fawn Creek (44.2356, – 123.7244); Karlstrom Creek (44.1776, – 123.7133); Misery Creek (44.1758, – 123.7950); North Fork Panther Creek (44.2346, – 123.7362); Panther Creek (44.2273, – 123.7558); Raleigh Creek (44.1354, – 123.6926); Rock Creek (44.1812, – 123.6683); Schwartz Creek (44.1306, – 123.7258); Unnamed (44.2011, – 123.7273); Unnamed (44.1806, – 123.7693); Unnamed (44.1845, – 123.6824); Unnamed (44.1918, – 123.7521); Unnamed (44.1968, – 123.7664); Unnamed (44.2094, – 123.6674); Unnamed (44.2149, – 123.7639); Unnamed (44.2451, – 123.6705); Unnamed (44.2487, – 123.7137); Unnamed (44.2500, – 123.6933).	
(44.0418, – 123.6048);	Wildcat Creek, Trib ZI (44.0055, – 123.4681).	(vi) <i>Indian Creek/Lake Creek Watershed 1710020606.</i> Outlet(s) = Indian Creek (Lat 44.0808, Long – 123.7891) upstream	
(iv) <i>Lake Creek Watershed 1710020604.</i> Outlet(s) = Lake Creek (Lat 44.0556, Long – 123.7968) upstream to endpoint(s) in: Chappell Creek (44.1158, – 123.6921); Conrad Creek (44.1883, – 123.4918); Druggs Creek (44.1996, – 123.5926); Fish Creek (44.1679, – 123.5149); Green Creek (44.1389, – 123.7930); Greenleaf Creek (44.1766, – 123.6391); Hula Creek (44.1202, – 123.7087); Johnson Creek (44.1037, – 123.7327); Lake Creek (44.2618, – 123.5148); Lamb Creek (44.1401, – 123.5991); Leaver Creek (44.0754, – 123.6285); Leibo Canyon (44.2439, – 123.4648); Little Lake Creek (44.1655, – 123.6004); McVey Creek (44.0889, – 123.6875); Nelson Creek (44.1229, – 123.5558); North Fork Fish Creek (44.1535, – 123.5437); Pontius Creek (44.1911, – 123.5909); Pope Creek (44.2118, – 123.5319); Post Creek (44.1828, – 123.5259); Stakely Canyon (44.2153, – 123.4690); Steinhauer Creek (44.1276, – 123.6594); Swamp Creek (44.2150, – 123.5687); Swartz Creek (44.2304, – 123.4461); Target Canyon (44.2318, – 123.4557); Unnamed (44.1048, – 123.6540); Unnamed			

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to endpoint(s) in:	Creomo Creek	(44.0135, -124.0609);	Unnamed
(44.1424, -123.8144);	Elk Creek	(44.0166, -124.0371);	Unnamed
(44.1253, -123.8821);	Gibson Creek	(44.0194, -124.0631);	Unnamed
(44.1548, -123.8132);	Herman Creek	(44.0211, -124.0663);	Unnamed
(44.2089, -123.8220);	Indian Creek	(44.0258, -124.0594);	Unnamed
(44.2086, -123.9171);	Indian Creek, North Fork	(44.0304, -124.0129);	Unnamed
(44.2204, -123.9016);	Indian Creek, West Fork	(44.0327, -124.0670);	Unnamed
(44.2014, -123.9075);	Long Creek	(44.0337, -124.0070);	Unnamed
(44.1395, -123.8800);	Maria Creek	(44.0342, -124.0056);	Unnamed
(44.1954, -123.9219);	Pyle Creek	(44.0370, -124.0391);	Unnamed
(44.1792, -123.8623);	Rogers Creek	(44.0419, -124.0013);	Unnamed
(44.1851, -123.9397);	Smoot Creek	(44.0441, -124.0321);	Unnamed
(44.1562, -123.8449);	Taylor Creek	(44.0579, -124.0077);	Unnamed
(44.1864, -123.8115);	Unnamed	(44.0886, -124.0192);	Unnamed
(44.1643, -123.8993);	Unnamed	(44.0892, -123.9925);	Unnamed
(44.1727, -123.8154);	Unnamed	(44.0941, -123.9131);	Unnamed
(44.1795, -123.9180);	Unnamed	(44.0976, -124.0033);	Unnamed
(44.1868, -123.9002);	Unnamed	(44.1046, -123.9032);	Unnamed
(44.1905, -123.8633);	Unnamed	(44.1476, -123.8959);	Unnamed
(44.1967, -123.8872);	Unnamed	(44.1586, -123.9150);	West Branch North Fork Siuslaw River
(44.2088, -123.8381);	Unnamed	(44.1616, -123.9616);	Wilhelm Creek
(44.2146, -123.8528);	Unnamed	(44.1408, -123.9774).	
(44.2176, -123.8462);	Unnamed	(viii) <i>Lower Siuslaw River Watershed 1710020608</i> .	
(44.2267, -123.8912);	Velvet Creek	Outlet(s) = Siuslaw River	
(44.1295, -123.8087).		(Lat 44.0160, Long -124.1327) upstream to endpoint(s) in:	
(vii) <i>North Fork Siuslaw River Watershed 1710020607</i> .		Barber Creek	
Outlet(s) = North Fork Siuslaw River		Beech Creek	
(Lat 43.9719, Long -124.0783) upstream to endpoint(s) in:		Berkshire Creek	
Billie Creek (44.0971, -124.0362);	Cata-	Bernhardt Creek	
ract Creek (44.0854, -123.9497);	Cedar	Brush Creek	
Creek (44.1534, -123.9045);	Condon	Brush Creek, East Fork	
Creek (44.1138, -123.9984);	Coon	Creek (44.0414, -123.7782);	Cedar Creek
(44.0864, -124.0318);	Deer	Creek (43.9696, -123.9304);	Cleveland Creek
(44.1297, -123.9475);	Drew	Creek (44.0773, -123.8343);	Demming Creek
(44.1239, -123.9801);	Drew	Creek (43.9643, -124.0313);	Dinner Creek
(44.1113, -123.9854);	Elma	Creek (44.0108, -123.8069);	Divide Creek
(44.1803, -123.9434);	Hanson	Creek (44.0516, -123.9421);	Duncan Inlet
(44.0776, -123.9328);	Haring	Creek (44.0081, -123.9921);	Hadsall Creek
(44.0307, -124.0462);	Lawrence	Creek (43.9846, -123.8221);	Hadsall Creek, Trib D
(44.1710, -123.9504);	Lindsley	Creek (43.9868, -123.8500);	Hadsall Creek, Trib E
(44.0389, -124.0591);	McLeod	Creek (43.9812, -123.8359);	Hanson Creek
(44.1050, -123.8805);	Morris	Creek (44.0364, -123.9628);	Hoffman Creek
(44.0711, -124.0308);	Porter	Creek (43.9808, -123.9412);	Hollenbeck Creek
(44.1490, -123.9641);	Russell	Creek (44.0321, -123.8672);	Hood Creek
(44.0680, -123.9848);	Sam	Creek (43.9996, -123.7995);	Karnowsky Creek
(44.1751, -123.9527);	Slover	Creek (43.9847, -123.9658);	Knowles Creek
(44.0213, -124.0531);	South Russell	Creek (43.9492, -123.7315);	Knowles Creek, Trib L
(44.0515, -123.9840);	Taylor	Creek (43.9717, -123.7830);	Lawson Creek, Trib B
(44.1279, -123.9052);	Uncle	Creek (43.9612, -123.9659);	Meadow Creek
(44.1080, -124.0174);	Unnamed	Creek (44.0311, -123.6490);	Munsell Creek
(43.9900, -124.0784);	Unnamed	Creek (44.0277, -124.0788);	Old Man Creek
(43.9907, -124.0759);	Unnamed	Creek (44.0543, -123.8022);	Pat Creek
(43.9953, -124.0514);	Unnamed	Creek (44.0659, -123.7245);	Patterson Creek
(43.9958, -124.0623);	Unnamed	Creek (43.9984, -124.0234);	Rice Creek
(43.9999, -124.0694);	Unnamed	Creek (44.0075, -123.8519);	Rock Creek
(44.0018, -124.0596);	Unnamed	Creek (44.0169, -123.6512);	South Fork Waite Creek
(44.0050, -124.0556);	Unnamed	Creek (43.9929, -123.7105);	San Antone Creek
(44.0106, -124.0650);	Unnamed	Creek (44.0564, -123.6515);	Shoemaker Creek
	Unnamed	Creek (44.0669, -123.8977);	Shutte Creek

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(43.9939, – 124.0339);	Siuslaw River	(43.9198, – 123.9293);	Bear Creek Trib
(44.0033, – 123.6545);	Skunk Hollow	(43.9030, – 123.9881);	Bear Creek, South
(43.9830, – 124.0626);	Smith Creek	Fork (43.9017, – 123.9555);	Bell Creek
(44.0393, – 123.6674);	Spencer Creek	(43.8541, – 123.9718);	Billy Moore Creek
(44.0676, – 123.8809);	Sulphur Creek	(43.8876, – 123.9604);	Carle Creek
(43.9822, – 123.8015);	Sweet Creek	(43.9015, – 124.0210);	Carter Creek
(43.9463, – 123.9016);	Sweet Creek, Trib A	(43.9457, – 124.0123);	Dismal Swamp
(44.0047, – 123.8907);	Sweet Creek, Trib D	(43.8098, – 124.0871);	Elbow Lake Creek
(43.9860, – 123.8811);	Thompson Creek	(43.7886, – 124.1490);	Fiddle Creek
(44.0974, – 123.8615);	Turner Creek	(43.9132, – 123.9164);	Fivemile Creek
(44.0096, – 123.7607);	Unnamed	(43.8297, – 123.9776);	Grant Creek
(43.9301, – 124.0434);	Unnamed	(43.9373, – 124.0278);	Harry Creek
(43.9596, – 124.0337);	Unnamed	(43.8544, – 124.0220);	Henderson Canyon
(43.9303, – 124.0487);	Unnamed	(43.8648, – 123.9654);	Henderson Creek
(43.9340, – 124.0529);	Unnamed	(43.9427, – 123.9704);	John Sims Creek
(43.9367, – 124.0632);	Unnamed	(43.8262, – 124.0792);	King Creek
(43.9374, – 124.0442);	Unnamed	(43.8804, – 124.0300);	Lane Creek
(43.9481, – 124.0530);	Unnamed	(43.8437, – 124.0765);	Leitel Creek
(43.9501, – 124.0622);	Unnamed	(43.8181, – 124.0200);	Mallard Creek
(43.9507, – 124.0533);	Unnamed	(43.7775, – 124.0852);	Maple Creek
(43.9571, – 124.0658);	Unnamed	(43.9314, – 123.9316);	Maple Creek, North
(43.9576, – 124.0491);	Unnamed	Prong (43.9483, – 123.9510);	Miles Canyon
(43.9587, – 124.0988);	Unnamed	(43.8643, – 124.0097);	Miller Creek
(43.9601, – 124.0927);	Unnamed	(43.9265, – 124.0663);	Mills Creek
(43.9615, – 124.0527);	Unnamed	(43.8966, – 124.0397);	Morris Creek
(43.9618, – 124.0875);	Unnamed	(43.8625, – 123.9541);	Perkins Creek
(43.9624, – 123.7499);	Unnamed	(43.8257, – 124.0448);	Rider Creek
(43.9662, – 123.7639);	Unnamed	(43.9210, – 123.9700);	Roache Creek
(43.9664, – 123.9252);	Unnamed	(43.9087, – 124.0049);	Schrum Creek
(43.9718, – 124.0389);	Unnamed	(43.9194, – 124.0492);	Schultz Creek
(43.9720, – 124.0075);	Unnamed	(43.9245, – 123.9371);	Stokes Creek
(43.9751, – 124.0090);	Unnamed	(43.9161, – 123.9984);	Tenmile Creek
(43.9784, – 124.0191);	Unnamed	(43.9419, – 123.9447);	Unnamed
(43.9796, – 123.9150);	Unnamed	(43.8928, – 124.0461);	Unnamed
(43.9852, – 123.9802);	Unnamed	(43.7726, – 124.1021);	Unnamed
(43.9878, – 123.9845);	Unnamed	(43.7741, – 124.1313);	Unnamed
(43.9915, – 123.9732);	Unnamed	(43.7756, – 124.1363);	Unnamed
(43.9938, – 123.9930);	Unnamed	(43.7824, – 124.1342);	Unnamed
(43.9942, – 123.8547);	Unnamed	(43.7829, – 124.0852);	Unnamed
(43.9943, – 123.9891);	Unnamed	(43.7837, – 124.0812);	Unnamed
(43.9954, – 124.1185);	Unnamed	(43.7849, – 124.0734);	Unnamed
(43.9956, – 123.7074);	Unnamed	(43.7862, – 124.0711);	Unnamed
(43.9995, – 123.9825);	Unnamed	(43.7865, – 124.1107);	Unnamed
(44.0023, – 123.7317);	Unnamed	(43.7892, – 124.1163);	Unnamed
(44.0210, – 123.7874);	Unnamed	(43.7897, – 124.0608);	Unnamed
(44.0240, – 123.8989);	Unnamed	(43.7946, – 124.0477);	Unnamed
(44.0366, – 123.7363);	Unnamed	(43.7964, – 124.0643);	Unnamed
(44.0506, – 123.9068);	Waite Creek	(43.8015, – 124.0450);	Unnamed
(43.9886, – 123.7220);	Walker Creek	(43.8078, – 124.0340);	Unnamed
(44.0566, – 123.9129);	Wilson Creek	(43.8095, – 124.1362);	Unnamed
(44.0716, – 123.8792).		(43.8112, – 124.0608);	Unnamed
(7) Siltcoos Subbasin 17100207—(i)		(43.8152, – 124.0981);	Unnamed
<i>Waohink River/Siltcoos River/Tahkenitch</i>		(43.8153, – 124.1314);	Unnamed
<i>Lake Frontal Watershed 1710020701.</i> Out-		(43.8172, – 124.0752);	Unnamed
let(s) = Siltcoos River (Lat 43.8766,		(43.8231, – 124.0853);	Unnamed
Long – 124.1548); Tahkenitch Creek		(43.8321, – 124.0128);	Unnamed
(43.8013, – 124.1689) upstream to end-		(43.8322, – 124.0069);	Unnamed
point(s) in:	Alder Creek	(43.8323, – 124.1016);	Unnamed
(43.8967, – 124.0114);	Bear Creek	(43.8330, – 124.0217);	Unnamed

(43.8361, -124.1209);	Unnamed	(iii) <i>Rock Creek/North Umpqua River Watershed 1710030110</i> . Outlet(s) = Rock
(43.8400, -123.9802);	Unnamed	Creek (Lat 43.3322, Long -123.0025) up-
(43.8407, -124.1051);	Unnamed	stream to endpoint(s) in: Conley Creek
(43.8489, -124.0634);	Unnamed	(43.3594, -122.9663); Harrington Creek
(43.8500, -123.9852);	Unnamed	(43.4151, -122.9550); Kelly Creek
(43.8504, -124.1248);	Unnamed	(43.3592, -122.9912); McComas Creek
(43.8504, -124.0024);	Unnamed	(43.3536, -122.9923); Miller Creek
(43.8507, -124.0511);	Unnamed	(43.3864, -122.9371); Rock Creek
(43.8589, -124.1231);	Unnamed	(43.4247, -122.9055); Rock Creek, East
(43.8596, -124.0438);	Unnamed	Fork (43.3807, -122.8270); Rock Creek,
(43.8605, -124.1211);	Unnamed	East Fork, North Fork
(43.8669, -124.0717);	Unnamed	(43.4147, -122.8512); Shoup Creek
(43.8670, -124.0327);	Unnamed	(43.3882, -122.9674); Unnamed
(43.8707, -124.0689);	Unnamed	(43.3507, -122.9741); Woodstock Creek
(43.8802, -124.0605);	Unnamed	(43.3905, -122.9258).
(43.8862, -124.0570);	Unnamed	(iv) <i>Little River Watershed 1710030111</i> .
(43.8913, -123.9380);	Unnamed	Outlet(s) = Little River (Lat 43.2978,
(43.8919, -124.0771);	Unnamed	Long -123.1012) upstream to end-
(43.8976, -124.0725);	Unnamed	point(s) in: Buck Peak Creek
(43.9032, -124.0651);	Unnamed	(43.1762, -123.0479); Buckhorn Creek
(43.9045, -124.0548);	Unnamed	(43.2592, -123.1072); Cavitt Creek
(43.9057, -124.0606);	Unnamed	(43.1464, -122.9758); Copperhead Creek
(43.9065, -124.0656);	Unnamed	(43.1626, -123.0595); Emile Creek
(43.9105, -124.0453);	Unnamed	(43.2544, -122.8849); Evarts Creek
(43.9106, -124.0203);	Unnamed	(43.2087, -123.0133); Jim Creek
(43.9202, -124.0786);	Unnamed	(43.2257, -123.0592); Little River
(43.9209, -124.0734);	Unnamed	(43.2065, -122.8231); McKay Creek
(43.9237, -124.0155);	Unnamed	(43.2092, -123.0356); Tuttle Creek
(43.9249, -124.0074);	Unnamed	(43.1440, -122.9813); White Rock Creek
(43.9274, -124.0759);	Unnamed	(43.1540, -123.0379); Wolf Creek
(43.9275, -124.0308);	Unnamed	(43.2179, -122.9461).
(43.9360, -124.0892);	Unnamed	(v) <i>Lower North Umpqua River Water-</i>
(43.9365, -124.0297);	Unnamed	<i>shed 1710030112</i> . Outlet(s) = North Ump-
(43.9424, -124.0981);	Unnamed	qua River (Lat 43.2682, Long -123.4448)
(43.9438, -124.0929);	Unnamed	upstream to endpoint(s) in: Bradley
(43.9453, -124.0752);	Unnamed	Creek (43.3350, -123.1025); Clover Creek
(43.9518, -123.9953).	Unnamed	(43.2490, -123.2604); Cooper Creek
(8) North Fork Umpqua Subbasin		(43.3420, -123.1650); Cooper Creek
17100301—(i) <i>Boulder Creek Watershed</i>		(43.3797, -123.2807); Dixon Creek
<i>1710030106</i> . Outlet(s) = Boulder Creek		(43.2770, -123.2911); French Creek
(Lat 43.3036, Long -122.5272) upstream		(43.3349, -123.0801); Huntley Creek
to endpoint(s) in: Boulder Creek (Lat		(43.3363, -123.1340); North Umpqua River
43.3138, Long -122.5247)		(43.3322, -123.0025); Oak Creek
(ii) <i>Middle North Umpqua Watershed</i>		(43.2839, -123.2063); Short Creek
<i>1710030107</i> . Outlet(s) = North Umpqua		(43.3204, -123.3315); Sutherlin Creek
River (Lat 43.3322, Long -123.0025) up-		(43.3677, -123.2114); Unnamed
stream to endpoint(s) in: Calf Creek		(43.3285, -123.2016).
(43.2852, -122.6229); Copeland Creek		(9) South Fork Umpqua Subbasin
(43.2853, -122.5325); Deception Creek		17100302—(i) <i>Jackson Creek Watershed</i>
(43.2766, -122.5850); Dry Creek		<i>1710030202</i> . Outlet(s) = Jackson Creek
(43.2967, -122.6016); Honey Creek		(Lat 42.9695, Long -122.8795) upstream
(43.3181, -122.9414); Limpy Creek		to endpoint(s) in: Beaver Creek (Lat
(43.3020, -122.6795); North Umpqua River		42.9084, Long -122.7924); Jackson Creek
(43.3027, -122.4938); Panther Creek		(Lat 42.9965, Long -122.6459); Ralph
(43.3019, -122.6801); Steamboat Creek		Creek (Lat 42.9744, Long -122.6976);
(43.3491, -122.7281); Susan Creek		Squaw Creek (Lat 42.9684, Long
(43.3044, -122.9058); Williams Creek		-122.6913); Tallow Creek (Lat 42.98814,
(43.3431, -122.7724).		Long -122.6965); Whiskey Creek (Lat

42.9593, Long -122.7262); Winters Creek (Lat 42.9380, Long -122.8271).

(ii) *Middle South Umpqua River Watershed 1710030203*. Outlet(s) = South Umpqua River (Lat 42.9272, Long -122.9504) upstream to endpoint(s) in: Boulder Creek (43.1056, -122.7379); Budd Creek (43.0506, -122.8185); Deadman Creek (43.0049, -122.8967); Dompier Creek (42.9553, -122.9166); Dumont Creek (43.0719, -122.8224); Francis Creek (43.0202, -122.8231); South Umpqua River (43.0481, -122.6998); Sam Creek (43.0037, -122.8412); Slick Creek (43.0986, -122.7867).

(iii) *Elk Creek/South Umpqua Watershed 1710030204*. Outlet(s) = Elk Creek (Lat 42.9272, Long -122.9504) upstream to endpoint(s) in: Brownie Creek (Lat 42.8304, Long -122.8746); Callahan Creek (Lat 42.8778, Long -122.9609); Camp Creek (Lat 42.8667, Long -122.8958); Dixon Creek (Lat 42.8931, Long -122.9152); Drew Creek (Lat 42.8682, Long -122.9358); Flat Creek (Lat 42.8294, Long -122.8250); Joe Hall Creek (Lat 42.8756, Long -122.8202); Tom Creek (Lat 42.8389, Long -122.8959).

(iv) *South Umpqua River Watershed 1710030205*. Outlet(s) = South Umpqua River (Lat 42.9476, Long -123.3368) upstream to endpoint(s) in: Alder Creek (42.9109, -123.2991); Canyon Creek (42.8798, -123.2410); Canyon Creek, West Fork (42.8757, -123.2734); Canyon Creek, West Fork, Trib A (42.8834, -123.2947); Coffee Creek (42.9416, -122.9993); Comer Brook (42.9082, -123.2908); Days Creek (43.0539, -123.0012); Days Creek, Trib 1 (43.0351, -123.0532); Doe Hollow (42.9805, -123.0812); Fate Creek (42.9943, -123.1028); Green Gulch (43.0040, -123.1276); Hatchet Creek (42.9251, -122.9757); Jordan Creek (42.9224, -123.3086); Lavadoure Creek (42.9545, -123.1049); Lick Creek (42.9213, -123.0261); May Creek (43.0153, -123.0725); Morgan Creek (42.9635, -123.2409); O'Shea Creek (42.9256, -123.2486); Perdue Creek (43.0038, -123.1192); Poole Creek (42.9321, -123.1106); Poole Creek, East Fork (42.9147, -123.0956); South Umpqua River (42.9272, -122.9504); Shively Creek (42.8888, -123.1635); Shively Creek, East Fork (42.8793, -123.1194); Small Creek (42.9631, -123.2519); St. John Creek (42.9598, -123.0514); Stinger Gulch Creek

(42.9950, -123.1851); Stouts Creek, East Fork (42.9090, -123.0424); Stouts Creek, West Fork (42.8531, -123.0167); Sweat Creek (42.9293, -123.1899); Wood Creek (43.0048, -123.1486).

(v) *Middle Cow Creek Watershed 1710030207*. Outlet(s) = Cow Creek (Lat 42.8114, Long -123.5947) upstream to endpoint(s) in: Bear Creek (42.8045, -123.3635); Booth Gulch (42.7804, -123.2282); Bull Run Creek (42.7555, -123.2366); Clear Creek (42.8218, -123.2610); Cow Creek (42.8487, -123.1780); Dads Creek (42.7650, -123.5401); East Fork Whitehorse Creek (42.7925, -123.1448); Fortune Branch (42.8051, -123.2971); Hogum Creek (42.7574, -123.1853); Lawson Creek (42.7896, -123.3752); Little Bull Run Creek (42.7532, -123.2479); McCullough Creek (42.7951, -123.4421); Mynatt Creek (42.8034, -123.2828); Panther Creek (42.7409, -123.4990); Perkins Creek (42.7331, -123.4997); Quines Creek (42.7278, -123.2396); Rattlesnake Creek (42.7106, -123.4774); Rifle Creek (42.7575, -123.6260); Section Creek (42.7300, -123.4373); Skull Creek (42.7527, -123.5779); Starveout Creek (42.7541, -123.1953); Stevens Creek (42.7255, -123.4835); Susan Creek (42.8035, -123.5762); Swamp Creek (42.7616, -123.3518); Tennessee Gulch (42.7265, -123.2591); Totten Creek (42.7448, -123.4610); Unnamed (42.7964, -123.4200); Unnamed (42.8101, -123.3150); Whitehorse Creek (42.7772, -123.1532); Wildcat Creek (42.7738, -123.2378); Windy Creek (42.8221, -123.3296); Wood Creek (42.8141, -123.4111); Woodford Creek (42.7458, -123.3180).

(vi) *West Fork Cow Creek Watershed 1710030208*. Outlet(s) = West Fork Cow Creek (Lat 42.8118, Long -123.6006) upstream to endpoint(s) in: Bear Creek (42.7662, -123.6741); Bobby Creek (42.8199, -123.7196); Elk Valley Creek (42.8681, -123.7133); Elk Valley Creek, East Fork (42.8698, -123.6812); Goat Trail Creek (42.8002, -123.6828); Gold Mountain Creek (42.8639, -123.7787); No Sweat Creek (42.8024, -123.7081); Panther Creek (42.8596, -123.7506); Slaughter Pen Creek (42.8224, -123.6565); Sweat Creek (42.8018, -123.6995); Walker Creek (42.8228, -123.7614); Wallace Creek (42.8311, -123.7696); West Fork Cow Creek (42.8329, -123.7733).

- (vii) *Lower Cow Creek Watershed 1710030209*. Outlet(s) = Cow Creek (Lat 42.9476, Long -123.3368) upstream to endpoint(s) in:
- | | | | |
|-----------------------|--------------------------|--|---|
| (42.9052, -123.3385); | Ash Creek | (43.1089, -123.1929); | Frozen Creek, Left Fork |
| (42.8607, -123.5494); | Boulder Creek | (43.1157, -123.2306); | Harrison Young Brook |
| (42.8526, -123.4369); | Brush Creek | (43.0610, -123.2850); | Lally Creek |
| (42.8093, -123.4979); | Buck Creek | (43.0890, -123.0597); | Lee Creek |
| (42.9347, -123.5163); | Buck Creek | (43.1333, -123.1477); | Letitia Creek |
| (42.8751, -123.5374); | Cattle Creek | (43.0710, -123.0907); | Little Lick |
| (42.8457, -123.5038); | Cedar Gulch | (43.0492, -123.2234); | Long Wiley Creek |
| (42.8929, -123.4366); | Cedar Gulch | (43.0584, -123.1067); | Louis Creek |
| (42.8114, -123.5947); | Council Creek | (43.1165, -123.0783); | North Myrtle Creek |
| (42.8553, -123.6123); | Cow Creek | (43.1486, -123.1219); | Riser Creek |
| (42.9333, -123.5057); | Darby Creek | (43.1276, -123.0703); | Rock Creek |
| (42.8596, -123.4598); | Doe Creek | (43.0729, -123.2620); | South Myrtle Creek |
| (42.9035, -123.5175); | Gravel Creek | (43.0850, -123.0103); | School Hollow |
| (42.8957, -123.4749); | Iron Mountain Creek | (43.0563, -123.1753); | Short Wiley Creek |
| (42.9517, -123.4009); | Island Creek | (43.0589, -123.1158); | Slide Creek |
| (42.8902, -123.5655); | Jerry Creek | (43.1110, -123.1078); | Unnamed |
| (42.8080, -123.4763); | Little Dads Creek | (43.1138, -123.1721); | Weaver Creek |
| (42.8298, -123.3870); | Martin Creek | (43.1102, -123.0576). | |
| (42.8417, -123.4492); | Middle Creek, South Fork | (x) <i>Ollala Creek/Lookingglass Watershed 1710030212</i> . Outlet(s) = Lookingglass Creek (Lat 43.1172, Long -123.4273) upstream to endpoint(s) in: | |
| (42.8275, -123.4610); | Panther Creek | Archambeau Creek (43.2070, -123.5329); | |
| (42.9094, -123.3797); | Peavine Creek | Bear Creek (43.1233, -123.6382); | Berry Creek (43.0404, -123.5543); |
| (42.9462, -123.4830); | Russell Creek | Bushnell Creek (43.0183, -123.5289); | Byron Creek, East Fork (43.0192, -123.4939); |
| (42.9221, -123.3613); | Salt Creek | Byron Creek, North Fork (43.0326, -123.4792); | Coarse Gold Creek (43.0291, -123.5742); |
| (42.8489, -123.4765); | Shoestring Creek | Flournoy Creek (43.2227, -123.5560); | Little Muley Creek (43.0950, -123.6247); |
| (42.9236, -123.5482); | Smith Creek | Lookingglass Creek (43.1597, -123.6015); | McNabb Creek (43.0545, -123.4984); |
| (42.9114, -123.5695); | Smith Creek | Muns Creek (43.0880, -123.6333); | Olalla Creek (42.9695, -123.5914); |
| (42.8769, -123.5853); | Table Creek | Perron Creek (43.0960, -123.4904); | Porter Creek (43.1381, -123.5569); |
| (42.8891, -123.4080). | Union Creek | Tenmile Creek (43.0640, -123.6189); | Tenmile Creek (43.1482, -123.6537); |
| | Unnamed | Tenmile Creek, North Fork (43.1260, -123.6069); | Thompson Creek (42.9860, -123.5140); |
| | | Willingham Creek (42.9600, -123.5814). | |
| | | (xi) <i>Lower South Umpqua River Watershed 1710030213</i> . Outlet(s) = South Umpqua River (Lat 43.2682, Long -123.4448) upstream to endpoint(s) in: | |
| | | Callahan Creek (43.2291, -123.5355); | Damotta Brook (43.2030, -123.2987); |
| | | Deer Creek, North Fork (43.2166, -123.1437); | Deer Creek, South Fork (43.1875, -123.1722); |
| | | Deer Creek, South Fork, Trib 1 (43.1576, -123.2393); | Deer Creek, South Fork, Middle Fork (43.1625, -123.1413); |
| | | Doerner Creek (43.2370, -123.5153); | Elgarose Creek (43.2747, -123.5105); |
| | | Marsters Creek (43.1584, -123.4489); | Melton Creek (43.1294, -123.2173); |
| | | Roberts Creek (43.1124, -123.2831); | South Umpqua River (43.1172, -123.4273); |
- (viii) *Middle South Umpqua River Watershed 1710030210*. Outlet(s) = South Umpqua River (Lat 43.1172, Long -123.4273) upstream to endpoint(s) in:
- | | | | | | | | | | | | | | |
|-----------------------------------|-------------------------------------|-----------------------------------|---|----------------------------------|----------------------------------|----------------------------------|------------------------------------|----------------------------------|--|--|-----------------------------------|--------------------------------------|---|
| Adams Creek (43.0724, -123.4776); | Barrett Creek (43.0145, -123.4451); | Clark Brook (43.0980, -123.2897); | East Willis Creek (43.0151, -123.3845); | Judd Creek (42.9852, -123.4060); | Kent Creek (43.0490, -123.4792); | Lane Creek (42.9704, -123.4001); | Porter Creek (43.0444, -123.4597); | Rice Creek (43.0181, -123.4779); | Richardson Creek (43.0766, -123.2881); | South Umpqua River (42.9476, -123.3368); | Squaw Creek (43.0815, -123.4688); | Van Dine Creek (43.0326, -123.3473); | West Willis Creek (43.0172, -123.4355). |
|-----------------------------------|-------------------------------------|-----------------------------------|---|----------------------------------|----------------------------------|----------------------------------|------------------------------------|----------------------------------|--|--|-----------------------------------|--------------------------------------|---|
- (ix) *Myrtle Creek Watershed 1710030211*. Outlet(s) = North Myrtle Creek (Lat 43.0231, Long -123.2951) upstream to endpoint(s) in:
- | | | | | | |
|--|--------------------------------|------------------------------------|---------------------------------------|------------------------------------|--------------|
| Ben Branch Creek (43.0544, -123.1618); | Big Lick (43.0778, -123.2175); | Bilger Creek (43.1118, -123.2372); | Buck Fork Creek (43.1415, -123.0831); | Cedar Hollow (43.0096, -123.2297); | Frozen Creek |
|--|--------------------------------|------------------------------------|---------------------------------------|------------------------------------|--------------|

Stockel Creek (43.2205, –123.4392); Tucker Creek (43.1238, –123.2378); Unnamed (43.2184, –123.1709); Willow Creek (43.2543, –123.5143).

(10) Umpqua Subbasin 17100303(i) *Upper Umpqua River Watershed 1710030301*. Outlet(s) = Umpqua River (Lat 43.6329, Long –123.5662) upstream to endpoint(s) in: Bear Creek (43.3202, –123.6118); Bear Creek (43.5436, –123.4481); Bottle Creek (43.4060, –123.5043); Brads Creek (43.5852, –123.4651); Camp Creek (43.2969, –123.5361); Case Knife Creek (43.4288, –123.6665); Cedar Creek (43.5360, –123.5969); Cougar Creek (43.3524, –123.6166); Doe Creek (43.5311, –123.4259); Fitzpatrick Creek (43.5819, –123.6308); Gallagher Canyon (43.4708, –123.4394); Heddin Creek (43.5909, –123.6466); Hubbard Creek (43.2526, –123.5544); Leonard Creek (43.4448, –123.5402); Little Canyon Creek (43.4554, –123.4560); Little Wolf Creek (43.4232, –123.6633); Little Wolf Creek, Trib D (43.4052, –123.6477); Lost Creek (43.4355, –123.4902); Martin Creek (43.5539, –123.4633); McGee Creek (43.5125, –123.5632); Mehl Creek (43.5491, –123.6541); Mill Creek (43.3178, –123.5095); Miner Creek (43.4518, –123.6764); Panther Canyon (43.5541, –123.3484); Porter Creek (43.4348, –123.5530); Rader Creek (43.5203, –123.6517); Rader Creek, Trib A (43.4912, –123.5726); Umpqua River (43.2682, –123.4448); Unnamed (43.5781, –123.6170); Unnamed (43.5630, –123.6080); Unnamed (43.4011, –123.6474); Unnamed (43.4119, –123.6172); Unnamed (43.4212, –123.6398); Unnamed (43.4640, –123.6734); Unnamed (43.4940, –123.6166); Unnamed (43.5765, –123.4710); Waggoner Creek (43.5282, –123.6072); Whiskey Camp Creek (43.4587, –123.6755); Williams Creek (43.5952, –123.5222); Wolf Creek (43.4707, –123.6655).

(ii) *Calapooya Creek Watershed 1710030302*. Outlet(s) = Calapooya Creek (Lat 43.3658, Long –123.4674) upstream to endpoint(s) in: Bachelor Creek (43.5480, –123.2062); Banks Creek (43.3631, –123.1755); Beaty Creek (43.4406, –123.0392); Boyd Creek (43.4957, –123.1573); Brome Creek (43.4016, –123.0490); Burke Creek (43.3987, –123.4463); Buzzard Roost Creek

(43.4584, –123.0990); Cabin Creek (43.5421, –123.3294); Calapooya Creek, North Fork (43.4867, –123.0280); Coon Creek (43.4218, –123.4349); Coon Creek (43.5245, –123.0429); Dodge Canyon Creek (43.4362, –123.4420); Driver Valley Creek (43.4327, –123.1960); Field Creek (43.4043, –123.0917); Gassy Creek (43.3862, –123.1133); Gilbreath Creek (43.4218, –123.0931); Gossett Creek (43.4970, –123.1045); Haney Creek (43.4763, –123.1086); Hinkle Creek (43.4230, –123.0382); Hog Creek (43.4767, –123.2516); Jeffers Creek (43.4522, –123.1047); Long Valley Creek (43.4474, –123.1460); Middle Fork South Fork Calapooya Creek (43.4772, –122.9952); Markam Creek (43.3751, –123.1479); Marsh Creek (43.5223, –123.3348); Mill Creek (43.4927, –123.1315); Norton Creek (43.5046, –123.3736); Pine Tree Creek (43.4179, –123.0688); Pollock Creek (43.5326, –123.2685); Salt Creek (43.5161, –123.2504); Salt Lick Creek (43.4510, –123.1168); Slide Creek (43.3926, –123.0919); Timothy Creek (43.4862, –123.0896); Unnamed (43.4469, –123.4268); Unnamed (43.4481, –123.4283); Unnamed (43.4483, –123.4134); Unnamed (43.4658, –122.9899); Unnamed (43.4707, –122.9896); Unnamed (43.4908, –123.0703); Unnamed (43.5173, –123.0564); Wheeler Canyon (43.4840, –123.3631); White Creek (43.4637, –123.0451); Williams Creek (43.4703, –123.4096).

(iii) *Elk Creek Watershed 1710030303*. Outlet(s) = Elk Creek (Lat 43.6329, Long –123.5662) upstream to endpoint(s) in: Adams Creek (43.5860, –123.2202); Allen Creek (43.6375, –123.3731); Andrews Creek (43.5837, –123.3920); Asker Creek (43.6290, –123.2668); Bear Creek (43.6195, –123.3703); Bear Creek (43.7119, –123.1757); Bennet Creek (43.6158, –123.1558); Big Tom Folley Creek (43.7293, –123.4053); Big Tom Folley Creek, North Fork (43.7393, –123.4917); Big Tom Folley Creek, Trib A (43.7231, –123.4465); Billy Creek, East Fork (43.5880, –123.3263); Billy Creek, South Fork (43.5725, –123.3603); Blue Hole Creek (43.5677, –123.4405); Brush Creek (43.5662, –123.4140); Buck Creek (43.6981, –123.1818); Cowan Creek (43.5915, –123.2615); Cox Creek

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(43.6356, -123.1794);	Curtis Creek	(43.6885, -123.6966);	Umpqua River
(43.6839, -123.1734);	Dodge Canyon	(43.6329, -123.5662);	Unnamed
(43.6225, -123.2509);	Elk Creek	(43.6011, -123.7084);	Unnamed
(43.5097, -123.1620);	Ellenburg Creek	(43.5998, -123.6803);	Unnamed
(43.7378, -123.3296);	Fitch Creek	(43.6143, -123.6674);	Unnamed
(43.6986, -123.3152);	Five Point Canyon	(43.6453, -123.7619);	Unnamed
(43.5707, -123.3526);	Flagler Creek	(43.6461, -123.8064);	Unnamed
(43.5729, -123.3382);	Green Creek	(43.6923, -123.7534);	Unnamed
(43.6851, -123.4688);	Green Ridge Creek	(43.7068, -123.6109);	Unnamed
(43.5920, -123.3958);	Halo Creek	(43.7084, -123.7156);	Unnamed
(43.5990, -123.2658);	Hancock Creek	(43.7098, -123.6300);	Unnamed
(43.6314, -123.5188);	Hanlon Creek	(43.7274, -123.6026);	Weatherly Creek
(43.6190, -123.2785);	Hardscrabble Creek	(43.7205, -123.6680);	Wells Creek
(43.7111, -123.3517);	Huntington Creek	(43.6859, -123.7946).	
(43.5882, -123.2808);	Jack Creek	(v) <i>Upper Smith River Watershed</i>	
(43.7071, -123.3819);	Johnny Creek	1710030306. Outlet(s) = Smith River (Lat	
(43.7083, -123.3972);	Johnson Creek	43.7968, Long -123.7565) upstream to	
(43.6830, -123.2715);	Lancaster Creek	endpoint(s) in:	Amberson Creek
(43.6442, -123.4361);	Lane Creek	(43.7787, -123.4944);	Argue Creek
(43.5483, -123.1221);	Lees Creek	(43.7656, -123.6959);	Beaver Creek
(43.6610, -123.1888);	Little Sand Creek	(43.7865, -123.6949);	Beaver Creek
(43.7655, -123.2778);	Little Tom Folley Creek	(43.8081, -123.4041);	Big Creek
(43.6959, -123.5393);	McClintock Creek	(43.7372, -123.7112);	Blackwell Creek
(43.6664, -123.2703);	Parker Creek	(43.8145, -123.7460);	Blind Creek
(43.6823, -123.4178);	Pass Creek	(43.7518, -123.6551);	Bum Creek
(43.7527, -123.1528);	Pheasant Creek	(43.8044, -123.5802);	Carpenter Creek
(43.7758, -123.2099);	Rock Creek	(43.7947, -123.7258);	Clabber Creek
(43.7759, -123.2730);	Saddle Butte Creek	(43.7919, -123.5878);	Clearwater Creek
(43.7214, -123.5219);	Salt Creek	(43.8138, -123.7375);	Cleghorn Creek
(43.6796, -123.2213);	Sand Creek	(43.7508, -123.4997);	Clevenger Creek
(43.7709, -123.2912);	Shingle Mill Creek	(43.7826, -123.4087);	Coldwater Creek
(43.5314, -123.1308);	Simpson Creek	(43.8316, -123.7232);	Deer Creek
(43.6629, -123.2553);	Smith Creek	(43.8109, -123.5362);	Devils Club Creek
(43.6851, -123.3179);	Squaw Creek	(43.7916, -123.6148);	Elk Creek
(43.6010, -123.4284);	Taylor Creek	(43.8004, -123.4347);	Halfway Creek
(43.7642, -123.2712);	Thief Creek	(43.7412, -123.5112);	Hall Creek
(43.6527, -123.1459);	Thistleburn Creek	(43.7732, -123.3836);	Haney Creek
(43.6313, -123.4332);	Unnamed	(43.8355, -123.5006);	Hardenbrook Creek
(43.5851, -123.3101);	Walker Creek	(43.7943, -123.5660);	Hefty Creek
(43.5922, -123.1707);	Ward Creek	(43.7881, -123.3954);	Herb Creek
(43.7486, -123.2023);	Wehmeyer Creek	(43.8661, -123.6782);	Jeff Creek
(43.6823, -123.2404);	Wilson Creek	(43.8079, -123.6033);	Marsh Creek
(43.5699, -123.2681);	Wise Creek	(43.7831, -123.6185);	Mosetown Creek
(43.6679, -123.2772);	Yoncalla Creek	(43.7326, -123.6613);	Mosetown Creek,
(43.5563, -123.2833).		East Fork (43.7185, -123.6433);	North
(iv) <i>Middle Umpqua River Watershed</i>		Sister Creek (43.8492, -123.5771);	Panther
1710030304. Outlet(s) = Umpqua River		Creek (43.8295, -123.4464);	Pearl
(Lat 43.6556, Long -123.8752) upstream		Creek (43.8263, -123.5350);	Peterson
to endpoint(s) in:	Burchard Creek	Creek (43.7575, -123.3947);	Plank Creek
(43.6680, -123.7520);	Butler Creek	(43.7635, -123.3980);	Redford Creek
(43.6325, -123.6867);	Cedar Creek	(43.7878, -123.3520);	Rock Creek
(43.7027, -123.6451);	House Creek	(43.7733, -123.6222);	Russell Creek
(43.7107, -123.6378);	Little Mill Creek	(43.8538, -123.6971);	South Sister Creek
(43.6729, -123.8252);	Little Paradise Creek	(43.8366, -123.5611);	Salmonberry Creek
(43.6981, -123.5630);	Paradise Creek	(43.8085, -123.4482);	Scare Creek
(43.7301, -123.5738);	Patterson Creek	(43.7631, -123.7260);	Sleezer Creek
(43.7076, -123.6977);	Purdy Creek	(43.7535, -123.3711);	Slideout Creek
(43.6895, -123.7712);	Sawyer Creek	(43.7831, -123.5685);	Smith River, Little
(43.6027, -123.6717);	Scott Creek	South Fork (43.7392, -123.4583);	Smith

River, South Fork (43.7345, –123.3843);
 Smith River (43.7529, –123.3310); Spring
 Creek (43.7570, –123.3276); Summit
 Creek (43.7985, –123.3487); Sweden Creek
 (43.8618, –123.6468); Tip Davis Creek
 (43.7739, –123.3301); Twin Sister Creek
 (43.8348, –123.7168); Unnamed
 (43.7234, –123.6308); Unnamed
 (43.7397, –123.6984); Unnamed
 (43.7433, –123.4673); Unnamed
 (43.7492, –123.6911); Unnamed
 (43.7495, –123.5832); Unnamed
 (43.7527, –123.5210); Unnamed
 (43.7533, –123.7046); Unnamed
 (43.7541, –123.4805); Unnamed
 (43.7708, –123.4819); Unnamed
 (43.7726, –123.5039); Unnamed
 (43.7748, –123.6044); Unnamed
 (43.7775, –123.6927); Unnamed
 (43.7830, –123.5900); Unnamed
 (43.7921, –123.6335); Unnamed
 (43.7955, –123.7013); Unnamed
 (43.7993, –123.6171); Unnamed
 (43.8020, –123.6739); Unnamed
 (43.8034, –123.6959); Unnamed
 (43.8133, –123.5893); Unnamed
 (43.8197, –123.4827); Unnamed
 (43.8263, –123.5810); Unnamed
 (43.8360, –123.6951); Unnamed
 (43.8519, –123.5910); Unnamed
 (43.8535, –123.6357); Unnamed
 (43.8541, –123.6155); Unnamed
 (43.8585, –123.6867); Upper Johnson
 Creek (43.7509, –123.5426); West Fork
 Halfway Creek (43.7421, –123.6119); Yel-
 low Creek (43.8193, –123.5545).

(vi) *Lower Smith River Watershed*
 1710030307. Outlet(s) = Smith River (Lat
 43.7115, Long –124.0807) upstream to
 endpoint(s) in: Bear Creek
 (43.8087, –123.8202); Beaver Creek
 (43.8983, –123.7559); Black Creek
 (43.7544, –123.9967); Brainard Creek
 (43.7448, –124.0105); Buck Creek
 (43.7719, –123.7823); Cassady Creek
 (43.7578, –123.9744); Cedar Creek
 (43.8541, –123.8562); Chapman Creek
 (43.8181, –123.9380); Coon Creek
 (43.8495, –123.7857); Crane Creek
 (43.8592, –123.7739); Edmonds Creek
 (43.8257, –123.9000); Eslick Creek
 (43.8153, –123.9894); Eslick Creek, East
 Fork (43.8082, –123.9583); Franz Creek
 (43.7542, –124.1006); Frarey Creek
 (43.7683, –124.0615); Georgia Creek
 (43.8373, –123.8911); Gold Creek
 (43.9002, –123.7470); Harlan Creek
 (43.8635, –123.9319); Holden Creek
 (43.7901, –124.0178); Hudson Slough
 (43.7725, –124.0736); Johnson Creek
 (43.8291, –123.9582); Johnson Creek
 (43.8480, –123.8209); Joyce Creek
 (43.7892, –124.0356); Joyce Creek, West
 Fork (43.7708, –124.0457); Kentucky
 Creek (43.9313, –123.8153); Middle Fork
 of North Fork Smith River
 (43.8780, –123.7687); Moore Creek
 (43.8523, –123.8931); Moore Creek
 (43.8661, –123.7558); Murphy Creek
 (43.7449, –123.9527); Noel Creek
 (43.7989, –124.0109); Otter Creek
 (43.7216, –123.9626); Otter Creek, North
 Fork (43.7348, –123.9597); Paxton Creek
 (43.8847, –123.9004); Peach Creek
 (43.8963, –123.8599); Perkins Creek
 (43.7362, –123.9151); Railroad Creek
 (43.8086, –123.8998); Smith River, West
 Fork (43.9102, –123.7073); Smith River
 (43.7968, –123.7565); Spencer Creek
 (43.8429, –123.8321); Spencer Creek, West
 Fork (43.8321, –123.8685); Sulphur Creek
 (43.8512, –123.9422); Unnamed
 (43.7031, –123.7463); Unnamed
 (43.7106, –123.7666); Unnamed
 (43.7203, –123.7601); Unnamed
 (43.7267, –123.7396); Unnamed
 (43.7286, –123.7798); Unnamed
 (43.7322, –124.0585); Unnamed
 (43.7325, –123.7337); Unnamed
 (43.7470, –123.7416); Unnamed
 (43.7470, –123.7711); Unnamed
 (43.7569, –124.0844); Unnamed
 (43.7606, –124.0853); Unnamed
 (43.7623, –124.0753); Unnamed
 (43.7669, –124.0766); Unnamed
 (43.7734, –124.0674); Unnamed
 (43.7855, –124.0076); Unnamed
 (43.7877, –123.9936); Unnamed
 (43.8129, –123.9743); Unnamed
 (43.8212, –123.8777); Unnamed
 (43.8258, –123.8192); Unnamed
 (43.8375, –123.9631); Unnamed
 (43.8424, –123.7925); Unnamed
 (43.8437, –123.7989); Unnamed
 (43.8601, –123.7630); Unnamed
 (43.8603, –123.8155); Unnamed
 (43.8655, –123.8489); Unnamed
 (43.8661, –123.9136); Unnamed
 (43.8688, –123.7994); Unnamed
 (43.8831, –123.8534); Unnamed
 (43.8883, –123.7157); Unnamed
 (43.8906, –123.7759); Unnamed
 (43.8916, –123.8765); Unnamed
 (43.8922, –123.8144); Unnamed
 (43.8953, –123.8772); Unnamed
 (43.8980, –123.7865); Unnamed
 (43.8997, –123.7993); Unnamed
 (43.8998, –123.7197); Unnamed

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(43.9015, -123.8386);	Unnamed	(43.3021, -123.8370);	Hog Ranch Creek
(43.9015, -123.8949);	Unnamed	(43.2754, -123.8125);	Lake Creek
(43.9023, -123.8241);	Unnamed	(43.2971, -123.6354);	Little Cow Creek
(43.9048, -123.8316);	Unnamed	(43.1886, -123.6133);	Lost Creek
(43.9075, -123.7208);	Unnamed	(43.2325, -123.5769);	Lost Creek, Trib A
(43.9079, -123.8263);	Vincent Creek	(43.2224, -123.5961);	Mink Creek
(43.7035, -123.7882);	Wassen Creek	(43.3068, -123.8515);	Panther Creek
(43.7419, -123.8905);	West Branch North Fork Smith River (43.9113, -123.8958).	(43.2593, -123.6401);	Shotgun Creek
		(43.2920, -123.7623);	Susan Creek
		(43.2720, -123.7654);	Tioga Creek
(vii) <i>Lower Umpqua River Watershed 1710030308</i> . Outlet(s) = Umpqua River (Lat 43.6696, Long -124.2025) upstream to endpoint(s) in:		(43.2110, -123.7786);	Unnamed
(43.6310, -124.0483);	Alder Creek	(43.2209, -123.7789);	Unnamed
(43.7053, -123.9529);	Bear Creek	(43.2305, -123.8360);	Unnamed
(43.7157, -124.0059);	Butler Creek	(43.2364, -123.7818);	Unnamed
(43.6320, -123.9307);	Charlotte Creek	(43.2548, -123.8569);	Unnamed
(43.6214, -123.9740);	Dean Creek	(43.2713, -123.8320);	Unnamed
(43.6369, -124.0595);	Dry Creek	(43.2902, -123.6662);	Unnamed
(43.6850, -123.8659);	Franklin Creek	(43.3168, -123.6491);	Unnamed
(43.6711, -124.0161);	Hakki Creek	(43.3692, -123.8320);	Unnamed
(43.6611, -123.9404);	Indian Charlie Creek	(43.3698, -123.8321);	Unnamed
(43.6711, -123.9760);	Johnson Creek	(43.3806, -123.8327);	Unnamed
(43.6909, -124.0294);	Koepke Slough	(43.3846, -123.8058);	Unnamed
(43.6423, -123.9046);	Little Franklin Creek (43.6853, -123.8863);	(43.3887, -123.7927);	Unnamed
(43.6528, -124.0140);	Luder Creek	(43.3651, -123.7073);	Wilson Creek
(43.6620, -124.0289);	Miller Creek	(43.2083, -123.6691).	
(43.7083, -124.1289);	Oar Creek	(ii) <i>Millicoma River Watershed 1710030402</i> . Outlet(s) = West Fork Millicoma River (Lat 43.4242, Long -124.0288) upstream to endpoint(s) in:	
(43.6253, -124.0112);	Providence Creek	Bealah Creek (43.4271, -123.8445);	Buck Creek (43.5659, -123.9765);
(43.6556, -123.8752);	Scholfield Creek	Umpqua River	Cougar Creek
(43.6359, -123.9572);	Umpqua River	Umpqua River	Crane Creek
(43.6805, -124.1146);	Umpqua River	Umpqua River	Dagget Creek
(43.6904, -124.0506);	Umpqua River	Umpqua River	Darius Creek
(43.6940, -124.0340);	Umpqua River	Umpqua River	Deer Creek
(43.7069, -123.9824);	Umpqua River	Umpqua River	Deer Creek, Trib A
(43.7242, -123.9369);	Umpqua River	Umpqua River	Deer Creek, Trib B
(43.6557, -124.1247);	Umpqua River	Umpqua River	Deviels Elbow Creek
Fork (43.6346, -124.0897).	Umpqua River	Umpqua River	East Fork
(11) Coos Subbasin 17100304—(i) <i>South Fork Coos Watershed 1710030401</i> . Outlet(s) = South Fork Coos (Lat 43.3905, Long -123.9634) upstream to endpoint(s) in:		Millicoma River (43.4204, -123.8330);	Elk Creek (43.5441, -123.9175);
(43.2728, -123.8472);	Beaver Slide Creek	(43.5441, -123.9175);	Fish Creek
(43.3751, -123.7065);	Bottom Creek	(43.6015, -123.8968);	Fox Creek
North Fork (43.3896, -123.7264);	Bottom Creek, North Fork	(43.4189, -123.9459);	Glenn Creek
Creek (43.2476, -123.8023);	Burnt Creek	(43.4799, -123.9325);	Hidden Creek
(43.2567, -123.7834);	Cedar Creek	(43.5646, -123.9235);	Hodges Creek
(43.3388, -123.6303);	Cedar Creek, Trib E	(43.4348, -123.9889);	Joes Creek
(43.3423, -123.6749);	Cedar Creek, Trib F	(43.5838, -123.9787);	Kelly Creek
(43.3330, -123.6523);	Coal Creek	(43.5948, -123.9036);	Knife Creek
(43.3426, -123.8685);	Eight River Creek	(43.6163, -123.9310);	Little Matson Creek
(43.2638, -123.8568);	Fall Creek	(43.4375, -123.8890);	Marlow Creek
(43.2535, -123.7106);	Fall Creek	(43.4779, -123.9815);	Matson Creek
(43.4106, -123.7512);	Fivemile Creek	(43.4489, -123.9191);	Otter Creek
(43.2341, -123.6307);	Gods Thumb Creek	(43.5935, -123.9729);	Panther Creek
(43.3440, -123.7013);	Gooseberry Creek	(43.5619, -123.9038);	Rainy Creek
(43.2452, -123.7081);	Hatcher Creek	(43.4293, -124.0400);	Rodine Creek
		(43.4434, -123.9789);	Schumacher Creek
		(43.4842, -124.0380);	Totten Creek
		(43.4869, -124.0457);	Trout Creek
		(43.5398, -123.9814);	Unnamed

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(43.4686, – 124.0143);	Unnamed	(43.2700, – 124.2109);	Haywood Creek
(43.5156, – 123.9366);	Unnamed	(43.3067, – 124.3419);	Hendrickson Creek
(43.5396, – 123.9373);	Unnamed	(43.3907, – 124.0594);	Isthmus Slough
(43.5450, – 123.9305);	West Fork	(43.2622, – 124.2049);	Joe Ney Slough
Millicoma River (43.5617, – 123.8788).		(43.3382, – 124.2958);	John B Creek
(iii) <i>Lakeside Frontal Watershed</i>		(43.2607, – 124.2814);	Johnson Creek
1710030403. Outlet(s) = Tenmile Creek		(43.4043, – 124.1389);	Kentuck Creek
(43.5618, – 124.2308) upstream to end-		(43.4556, – 124.0894);	Larson Creek
point(s) in:	Adams Creek	(43.4930, – 124.0764);	Laxstrom Gulch
(43.5382, – 124.1081);	Alder Creek	(43.3372, – 124.1350);	Lillian Creek
(43.6012, – 124.0272);	Alder Gulch	(43.3550, – 124.1330);	Mart Davis Creek
(43.5892, – 124.0665);	Benson Creek	(43.3911, – 124.0927);	Matson Creek
(43.5813, – 124.0086);	Big Creek	(43.3011, – 124.1161);	McKnight Creek
(43.6085, – 124.0128);	Blacks Creek	(43.3841, – 123.9991);	Mettman Creek
(43.6365, – 124.1188);	Clear Creek	(43.4574, – 124.1293);	Millicoma River
(43.6040, – 124.1871);	Hatchery Creek	(43.4242, – 124.0288);	Monkey Ranch
(43.5275, – 124.0761);	Johnson Creek	Gulch (43.3392, – 124.1458);	Morgan Creek
(43.5410, – 124.0018);	Murphy Creek	(43.3460, – 124.0318);	North Slough
(43.6243, – 124.0534);	Noble Creek	(43.5032, – 124.1408);	Noble Creek
(43.5897, – 124.0347);	Parker Creek	(43.2387, – 124.1665);	Packard Creek
(43.6471, – 124.1246);	Roberts Creek	(43.4058, – 124.0211);	Palouse Creek
(43.5557, – 124.0264);	Saunders Creek	(43.5123, – 124.0667);	Panther Creek
(43.5417, – 124.2136);	Shutter Creek	(43.2733, – 124.1222);	Pony Slough
(43.5252, – 124.1398);	Swamp Creek	(43.4078, – 124.2307);	Rogers Creek
(43.5550, – 124.1948);	Unnamed	(43.3831, – 124.0370);	Ross Slough
(43.5203, – 124.0294);	Unnamed	(43.3027, – 124.1781);	Salmon Creek
(43.6302, – 124.1460);	Unnamed	(43.3618, – 123.9816);	Seaman Creek
(43.6353, – 124.1411);	Unnamed	(43.3634, – 124.0111);	Seelander Creek
(43.6369, – 124.1515);	Unnamed	(43.2872, – 124.1176);	Shinglehouse
(43.6466, – 124.1511);	Unnamed	Slough (43.3154, – 124.2225);	Smith Creek
(43.5081, – 124.0382);	Unnamed	(43.3579, – 124.1051);	Snedden Creek
(43.6353, – 124.16770);	Wilkins Creek	(43.3372, – 124.2177);	Southport Slough
(43.6304, – 124.0819);	Winter Creek	(43.2981, – 124.2194);	Stock Slough
(43.6533, – 124.1333).		(43.3277, – 124.1195);	Storey Creek
(iv) <i>Coos Bay Watershed 1710030404.</i>		(43.3238, – 124.2969);	Sullivan Creek
Outlet(s) = Big Creek (Lat 43.3326, Long		(43.4718, – 124.0872);	Talbott Creek
– 124.3739); Coos Bay (43.3544, – 124.3384)		(43.2839, – 124.2954);	Theodore Johnson
upstream to endpoint(s) in: Bear Creek		Creek (43.2756, – 124.3457);	Unnamed
(43.5048, – 124.1059);	Bessey Creek	(43.5200, – 124.1812);	Unnamed
(43.3844, – 124.0253);	Big Creek	(43.2274, – 124.3236);	Unnamed
(43.2834, – 124.3374);	Big Creek	(43.2607, – 124.2984);	Unnamed
(43.3980, – 123.9396);	Big Creek, Trib A	(43.2772, – 124.3246);	Unnamed
(43.2999, – 124.3711);	Big Creek, Trib B	(43.2776, – 124.3148);	Unnamed
(43.2854, – 124.3570);	Blossom Gulch	(43.2832, – 124.1532);	Unnamed
(43.3598, – 124.2410);	Boatman Gulch	(43.2888, – 124.1962);	Unnamed
(43.3445, – 124.2483);	Boone Creek	(43.2893, – 124.3406);	Unnamed
(43.2864, – 124.1762);	Cardwell Creek	(43.2894, – 124.2034);	Unnamed
(43.2793, – 124.1277);	Catching Creek	(43.2914, – 124.2917);	Unnamed
(43.2513, – 124.1586);	Coalbank Creek	(43.2942, – 124.1027);	Unnamed
(43.3154, – 124.2503);	Coos Bay	(43.2984, – 124.2847);	Unnamed
(43.3566, – 124.1592);	Daniels Creek	(43.3001, – 124.3022);	Unnamed
(43.3038, – 124.0725);	Davis Creek	(43.3034, – 124.2001);	Unnamed
(43.2610, – 124.2633);	Day Creek	(43.3051, – 124.2031);	Unnamed
(43.3129, – 124.2888);	Deton Creek	(43.3062, – 124.2030);	Unnamed
(43.4249, – 124.0771);	Echo Creek	(43.3066, – 124.3674);	Unnamed
(43.3797, – 124.1529);	Elliot Creek	(43.3094, – 124.1947);	Unnamed
(43.3037, – 124.2670);	Farley Creek	(43.3129, – 124.1208);	Unnamed
(43.3146, – 124.3415);	Ferry Creek	(43.3149, – 124.1347);	Unnamed
(43.2628, – 124.1728);	Goat Creek	(43.3149, – 124.1358);	Unnamed

(43.3149, -124.1358);	Unnamed	(ii) <i>Middle Main Coquille Watershed</i>
(43.3169, -124.0638);	Unnamed	1710030503. Outlet(s) = South Fork
(43.3224, -124.2390);	Unnamed	Coquille River (Lat 43.0805, Long
(43.3356, -124.1542);	Unnamed	-124.1405) upstream to endpoint(s) in:
(43.3356, -124.1526);	Unnamed	Baker Creek (42.8913, -124.1297); Beaver
(43.3357, -124.1510);	Unnamed	Creek (42.9429, -124.0783); Catching
(43.3357, -124.1534);	Unnamed	Creek, Middle Fork (42.9913, -124.2331);
(43.3368, -124.1509);	Unnamed	Catching Creek, South Fork
(43.3430, -124.2352);	Unnamed	(42.9587, -124.2348); Coquille River,
(43.3571, -124.2372);	Unnamed	South Fork (42.8778, -124.0743); Cove
(43.3643, -124.0474);	Unnamed	Creek (43.0437, -124.2088); Dement Creek
(43.3741, -124.0577);	Unnamed	(42.9422, -124.2086); Gettys Creek
(43.4126, -124.0599);	Unnamed	(43.0028, -124.1988); Grants Creek
(43.4203, -123.9824);	Unnamed	(42.9730, -124.1041); Horse Hollow
(43.4314, -124.0998);	Unnamed	(43.0382, -124.1984); Knight Creek
(43.4516, -124.1023);	Unnamed	(43.0022, -124.2663); Koontz Creek
(43.4521, -124.1110);	Unnamed	(43.0111, -124.2505); Long Tom Creek
(43.5345, -124.1946);	Vogel Creek	(42.9342, -124.0992); Matheny Creek
(43.3511, -124.1206);	Wasson Creek	(43.0495, -124.1892); Mill Creek
(43.2688, -124.3368);	Willanch Creek	(42.9777, -124.1663); Rhoda Creek
(43.4233, -124.1061);	Willanch Creek,	(43.0007, -124.1032); Roberts Creek
Trib A (43.4032, -124.1169);	Wilson Creek	(42.9748, -124.2385); Rowland Creek
(43.2652, -124.1281);	Winchester Creek	(42.9045, -124.1845); Russell Creek
(43.2145, -124.3116);	Winchester Creek,	(42.9495, -124.1611); Unnamed
Trib E (43.2463, -124.3067);	Woodruff	(42.9684, -124.1033); Ward Creek
Creek (43.4206, -123.9746);	Wren Smith	(43.0429, -); 124.2358); Warner Creek
Creek (43.3131, -124.0649).		(43.0196, -124.1187); Wildcat Creek
(12) Coquille Subbasin 17100305—(i)		(43.0277, -124.2225); Wolf Creek
<i>Middle Fork Coquille Watershed</i>		(43.0136, -124.2318); Woodward Creek
1710030502. Outlet(s) = Middle Fork		(42.9023, -124.0658).
Coquille River (Lat 43.0340, Long		(iii) <i>East Fork Coquille Watershed</i>
-124.1161) upstream to endpoint(s) in:		1710030504. Outlet(s) = East Fork
Anderson Creek (43.0087, -123.9445);	Axe	Coquille River (Lat 43.1065, Long
Creek (43.0516, -123.9468);	Bear Creek	-124.0761) upstream to endpoint(s) in:
(43.0657, -123.9284);	Belieu Creek	Bills Creek (43.1709, -123.9244); China
(43.0293, -123.9470);	Big Creek	Creek (43.1736, -123.9086); East Fork
(43.0991, -123.8983);	Brownson Creek	Coquille River (43.1476, -123.8936); Elk
(43.0879, -123.9583);	Endicott Creek	Creek (43.1312, -123.9621); Hantz Creek
(43.0401, -124.0710);	Fall Creek	(43.1832, -123.9713); South Fork Elk
(43.0514, -123.9910);	Indian Creek	Creek (43.1212, -123.9200); Steel Creek
(43.0203, -124.0842);	Little Rock Creek	(43.1810, -123.9354); Unnamed
(42.9913, -123.8335);	McMullen Creek	(43.0908, -124.0361); Unnamed
(43.0220, -124.0366);	Middle Fork	(43.0925, -124.0495); Unnamed
Coquille River (42.9701, -123.7621);	Myrtle	(43.0976, -123.9705); Unnamed
Creek (42.9642, -124.0170);	Rasler	(43.1006, -124.0052); Unnamed
Creek (42.9518, -123.9643);	Rock Creek	(43.1071, -123.9163); Unnamed
(42.9200, -123.9073);	Rock Creek	(43.1655, -123.9078); Unnamed
(43.0029, -123.8440);	Salmon Creek	(43.1725, -123.9881); Weekly Creek
(43.0075, -124.0273);	Sandy Creek	(43.0944, -124.0271); Yankee Run
(43.0796, -123.8517);	Sandy Creek, Trib F	(43.1517, -124.0483); Yankee Run, Trib C
(43.0526, -123.8736);	Sheilds Creek	(43.1626, -124.0162).
(42.9184, -123.9219);	Slater Creek	(iv) <i>North Fork Coquille Watershed</i>
(42.9358, -123.7958);	Slide Creek	1710030505. Outlet(s) = North Fork
(42.9957, -123.9040);	Smith Creek	Coquille River (Lat 43.0805, Long
(43.0566, -124.0337);	Swamp Creek	-124.1405) upstream to endpoint(s) in:
(43.0934, -123.9000);	Unnamed	Alder Creek (43.2771, -123.9207); Blair
(43.0016, -123.9550);	Unnamed	Creek (43.1944, -124.1121); Cherry Creek,
(43.0681, -123.9812);	Unnamed	North Fork (43.2192, -123.9124); Cherry
(43.0810, -123.9892).		Creek, South Fork (43.2154, -123.9353);

Coak Creek (43.2270, – 124.0324); Coquille River, Little North Fork (43.2988, – 123.9410); Coquille River, North Fork (43.2974, – 123.8791); Coquille River, North Fork, Trib E (43.1881, – 124.0764); Coquille River, North Fork, Trib I (43.2932, – 123.8920); Coquille River, North Fork, Trib Y (43.3428, – 123.9678); Evans Creek (43.2868, – 124.0561); Fruin Creek (43.3016, – 123.9198); Garage Creek (43.1508, – 124.1020); Giles Creek (43.3129, – 124.0337); Honcho Creek (43.2628, – 123.8954); Hudson Creek (43.2755, – 123.9604); Jerusalem Creek (43.1844, – 124.0539); Johns Creek (43.0760, – 124.0498); Little Cherry Creek (43.2007, – 123.9594); Llewellyn Creek (43.1034, 124.1063); Llewellyn Creek, Trib A (43.0969, – 124.0995); Lost Creek (43.1768, – 124.1047); Lost Creek (43.2451, – 123.9745); Mast Creek (43.2264, – 124.0207); Middle Creek (43.2332, – 123.8726); Moon Creek (43.2902, – 123.9493); Moon Creek, Trib A (43.2976, – 123.9837); Moon Creek, Trib A-1 (43.2944, – 123.9753); Neely Creek (43.2960, – 124.0380); Park Creek (43.2508, – 123.8661); Park Creek, Trib B (43.2702, – 123.8782); Schoolhouse Creek (43.1637, – 124.0949); Steele Creek (43.2203, – 124.1018); Steinnon Creek (43.2534, – 124.1076); Unnamed (43.1305, – 124.0759); Unnamed (43.2047, – 124.0314); Unnamed (43.2127, – 124.1101); Unnamed (43.2165, – 123.9144); Unnamed (43.2439, – 123.9275); Unnamed (43.2444, – 124.0868); Unnamed (43.2530, – 124.0848); Unnamed (43.2582, – 124.0794); Unnamed (43.2584, – 123.8846); Unnamed (43.2625, – 124.0474); Unnamed (43.2655, – 123.9269); Unnamed (43.2676, – 124.0367); Vaughns Creek (43.2378, – 123.9106); Whitley Creek (43.2899, – 124.0115); Wimer Creek (43.1303, – 124.0640); Wood Creek (43.1392, – 124.1274); Wood Creek, North Fork (43.1454, – 124.1211).

(v) *Lower Coquille Watershed 1710030506*. Outlet(s) = Coquille River (Lat 43.1237, Long – 124.4261) upstream to endpoint(s) in: Alder Creek (43.1385, – 124.2697); Bear Creek (43.0411, – 124.2893); Beaver Creek (43.2249, – 124.1923); Beaver Creek (43.2525, – 124.2456); Beaver Slough, Trib A (43.2154, – 124.2731); Bill Creek (43.0256, – 124.3126); Budd Creek (43.2011, – 124.1921); Calloway Creek (43.2060, – 124.1684); Cawfield Creek (43.1839, – 124.1372); China Creek (43.2170, – 124.2076); Cold Creek (43.2038, – 124.1419); Coquille River (43.0805, – 124.1405); Coquille River, Trib A (43.2032, – 124.2930); Cunningham Creek (43.2349, – 124.1378); Dutch John Ravine (43.1744, – 124.1781); Dye Creek (43.2274, – 124.1569); Fahys Creek (43.1676, – 124.3861); Fat Elk Creek (43.1373, – 124.2560); Ferry Creek (43.1150, – 124.3831); Fishtrap Creek (43.0841, – 124.2544); Glen Aiken Creek (43.1482, – 124.1497); Grady Creek (43.1032, – 124.1381); Gray Creek (43.1222, – 124.1286); Hall Creek (43.0583, – 124.2516); Hall Creek, Trib A (43.0842, – 124.1745); Harlin Creek (43.1326, – 124.1633); Hatchet Slough, Trib A (43.1638, – 124.3065); Hatchet Slough (43.1879, – 124.3003); Lampa Creek (43.0531, – 124.2665); Little Bear Creek (43.0407, – 124.2783); Little Fishtrap Creek (43.1201, – 124.2290); Lowe Creek (43.1401, – 124.3232); Mack Creek (43.0604, – 124.3306); Monroe Creek (43.0705, – 124.2905); Offield Creek (43.1587, – 124.3273); Pulaski Creek (43.1398, – 124.2184); Randleman Creek (43.0818, – 124.3039); Rich Creek (43.0576, – 124.2067); Rink Creek (43.1764, – 124.1369); Rock Robinson Creek (43.0860, – 124.2306); Rollan Creek (43.1266, – 124.2563); Sevenmile Creek (43.2157, – 124.3350); Sevenmile Creek, Trib A (43.1853, – 124.3187); Sevenmile Creek, Trib C (43.2081, – 124.3340); Unnamed (43.1084, – 124.2727); Unnamed (43.1731, – 124.1852); Unnamed (43.1924, – 124.1378); Unnamed (43.1997, – 124.3346); Unnamed (43.2281, – 124.2190); Unnamed (43.2424, – 124.2737); Waddington Creek (43.1105, – 124.2915).

(13) Sixes Subbasin 17100306'(i) *Sixes River Watershed 1710030603*. Outlet(s) = Sixes River (Lat 42.8543, Long – 124.5427) upstream to endpoint(s) in: Beaver Creek (42.7867, – 124.4373); Carlton Creek (42.8594, – 124.2382); Cold Creek (42.7824, – 124.2070); Crystal Creek (42.8404, – 124.4501); Dry Creek (42.7673, – 124.3726); Edson Creek (42.8253, – 124.3782); Hays Creek (42.8455, – 124.1796); Little Dry Creek (42.8002, – 124.3838); Murphy Canyon (42.8516, – 124.1541); Sixes River

National Marine Fisheries Service/NOAA, Commerce

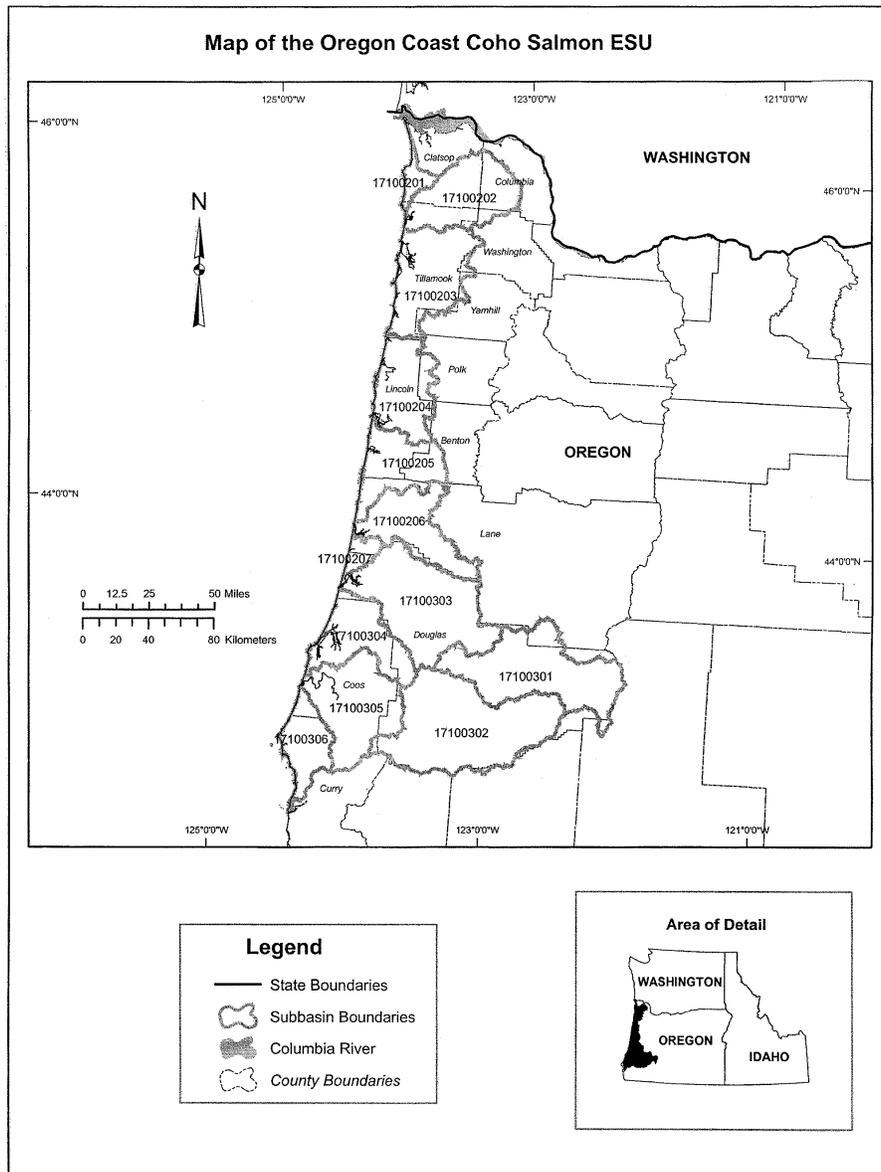
§ 226.212

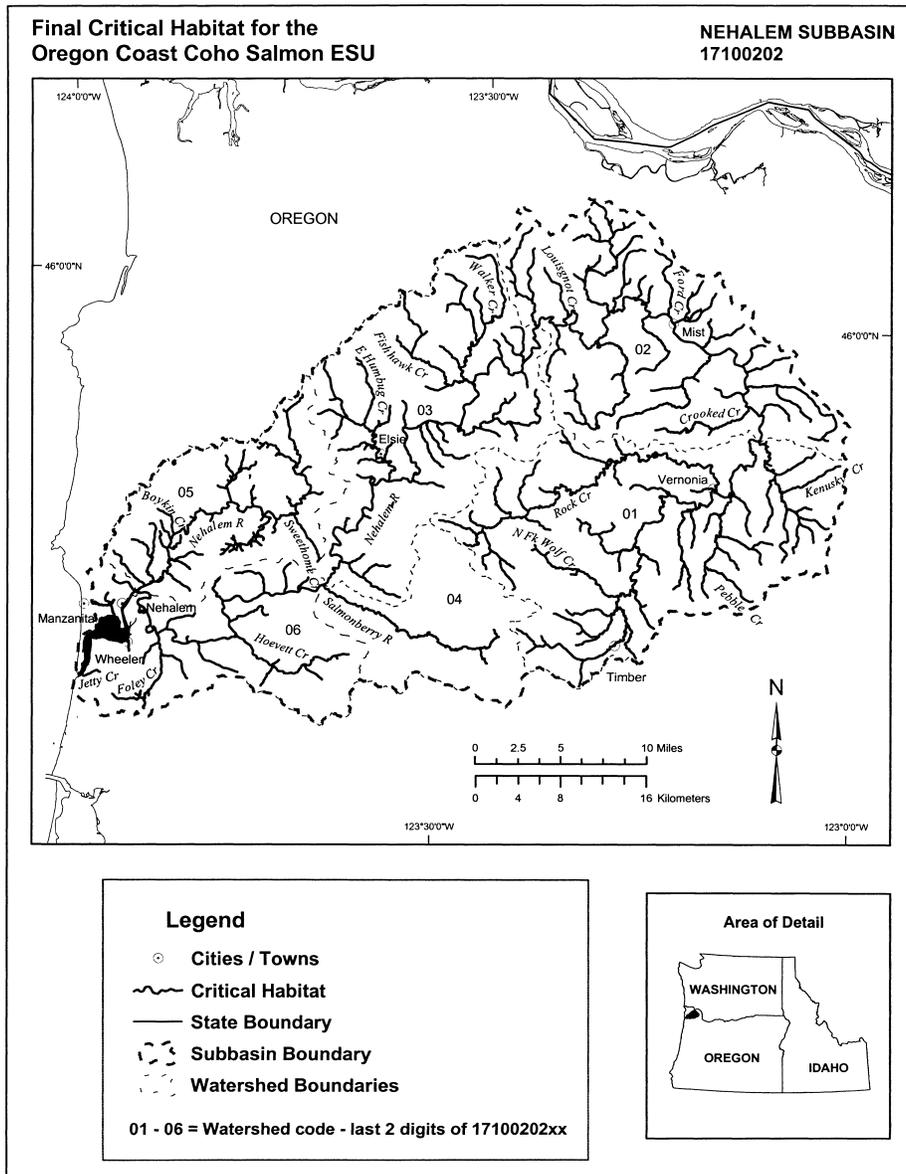
(42.8232, -124.1704); Sixes River, Middle Fork (42.7651, -124.1782); Sixes River, North Fork (42.8878, -124.2320); South Fork Sixes River (42.8028, -124.3022); Sugar Creek (42.8217, -124.2035); Unnamed (42.8189, -124.3567); Unnamed (42.7952, -124.3918); Unnamed (42.8276, -124.4629).

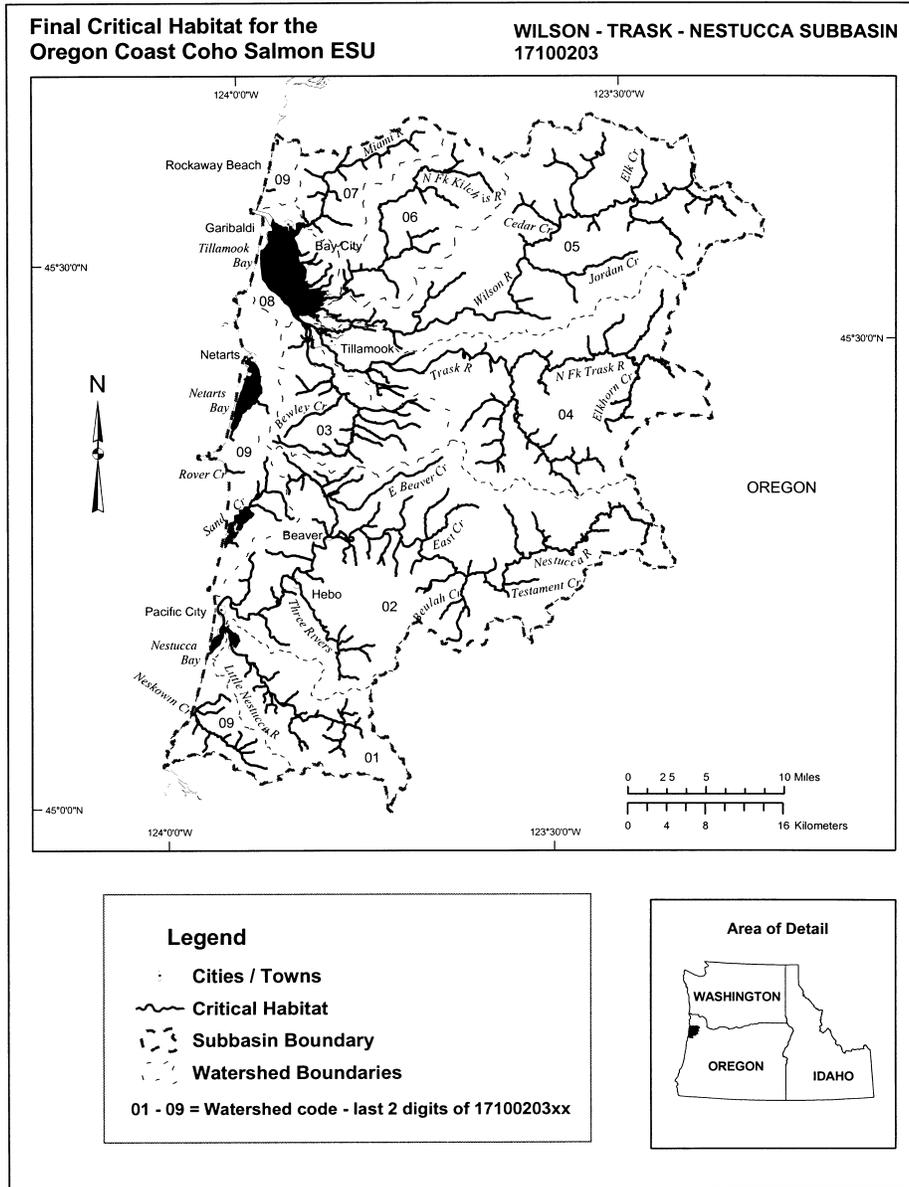
(ii) *New River Frontal Watershed 1710030604*. Outlet(s) = New River (Lat 43.0007, Long -124.4557); Twomile Creek (43.0440, -124.4415) upstream to endpoint(s) in: Bethel Creek (42.9519, -124.3954); Boulder Creek (42.8574, -124.5050); Butte Creek (42.9458, -124.4096); Conner Creek (42.9814, -124.4215); Davis Creek (42.9657, -124.3968); Floras Creek (42.9127, -124.3963); Fourmile Creek (42.9887, -124.3077); Fourmile Creek, South Fork (42.9642, -124.3734); Langlois Creek (42.9238, -124.4570); Little Creek (43.0030, -124.3562); Long Creek (42.9828, -124.3770); Lower Twomile

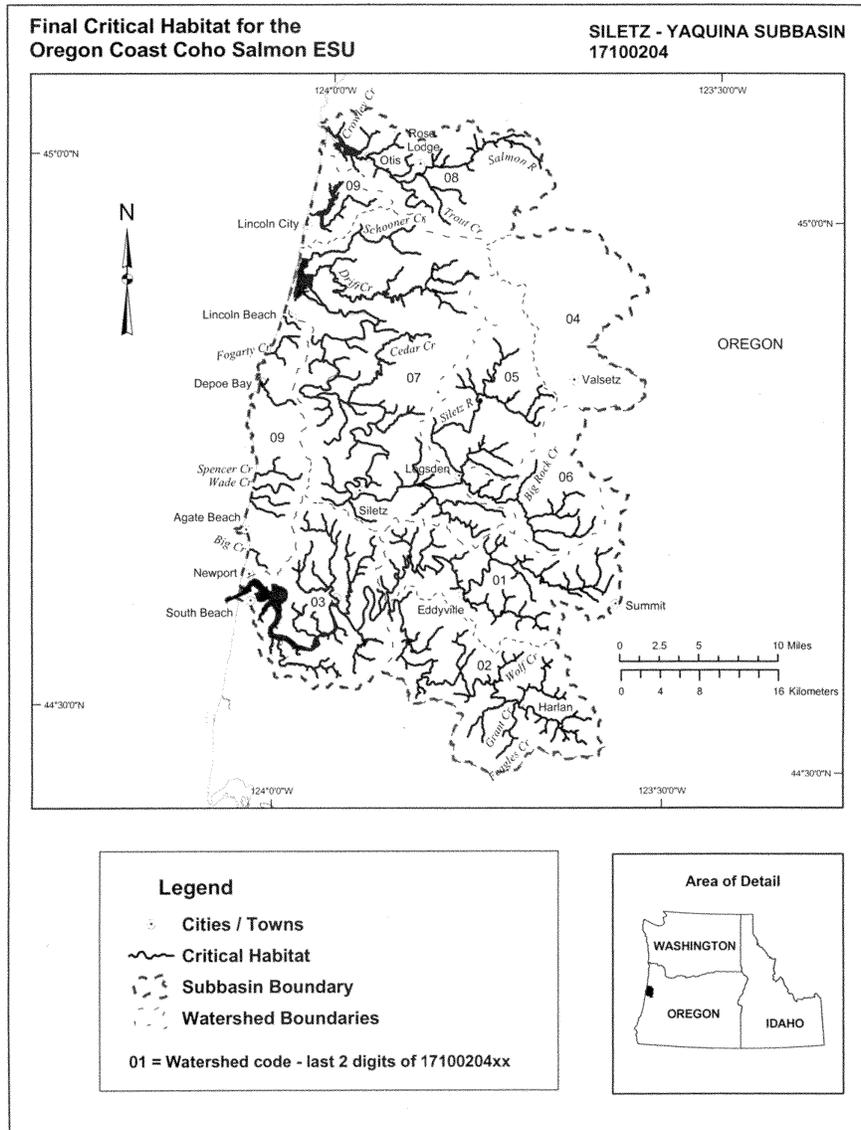
Creek (43.0223, -124.4080); Morton Creek (42.9437, -124.4234); New River (42.8563, -124.4602); North Fourmile Creek (42.9900, -124.3176); Redibough Creek (43.0251, -124.3659); South Twomile Creek (43.0047, -124.3672); Spring Creek (43.0183, -124.4299); Twomile Creek (43.0100, -124.3291); Unnamed (43.0209, -124.3386); Unnamed (43.0350, -124.3506); Unnamed (43.0378, -124.3481); Unnamed (43.0409, -124.3544); Unnamed (42.8714, -124.4586); Unnamed (42.9029, -124.4222); Unnamed (42.9031, -124.4581); Unnamed (42.9294, -124.4421); Unnamed (42.9347, -124.4559); Unnamed (42.9737, -124.3363); Unnamed (42.9800, -124.3432); Unnamed (43.0058, -124.4066); Willow Creek (42.8880, -124.4505).

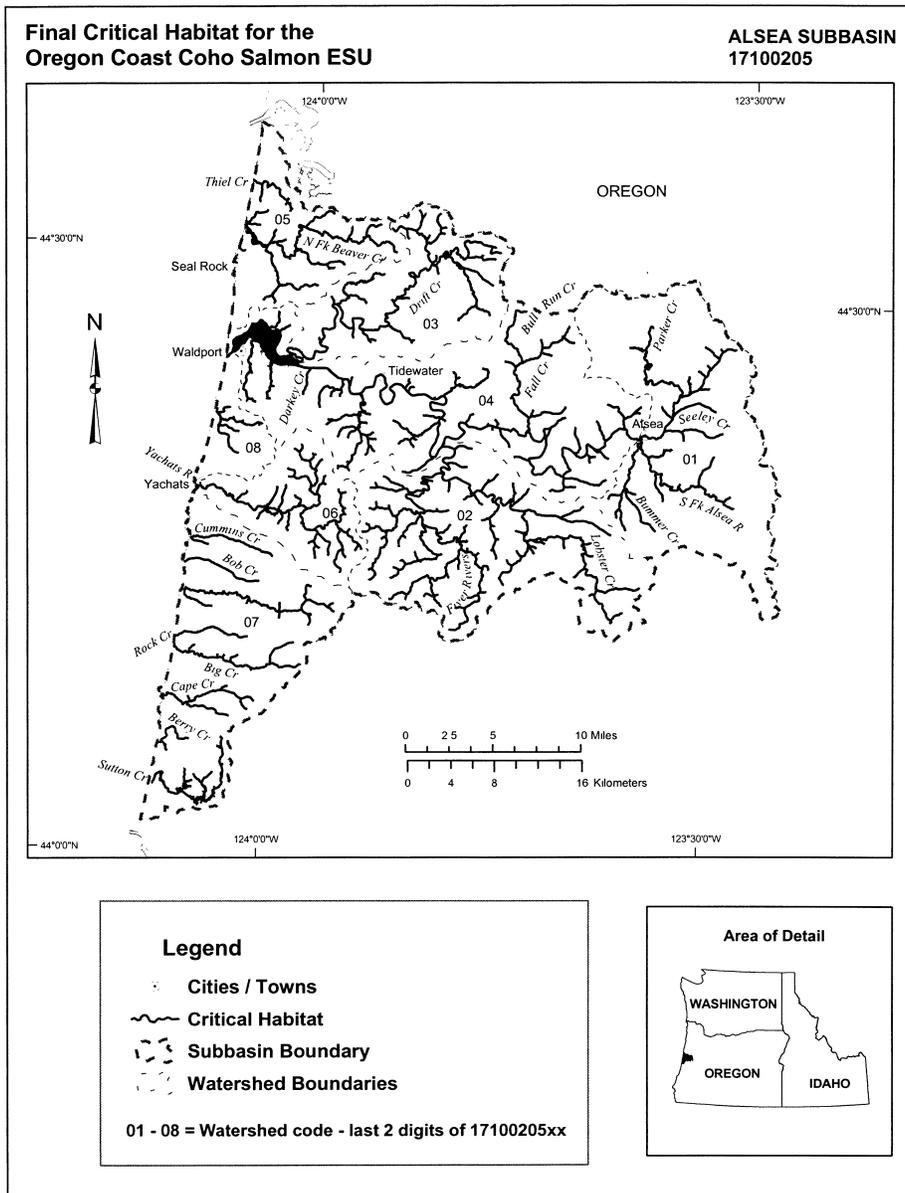
(14) Maps of critical habitat for the Oregon Coast coho salmon ESU follow:

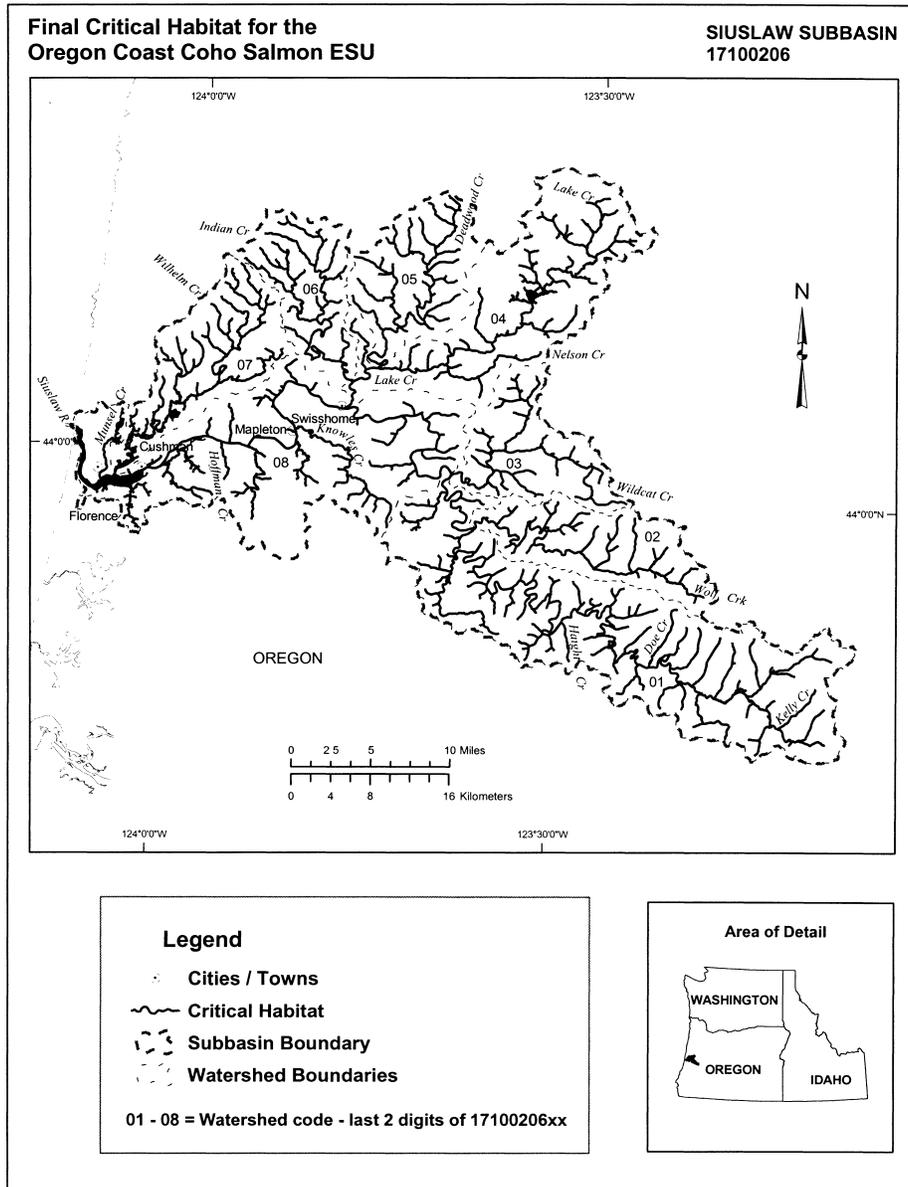


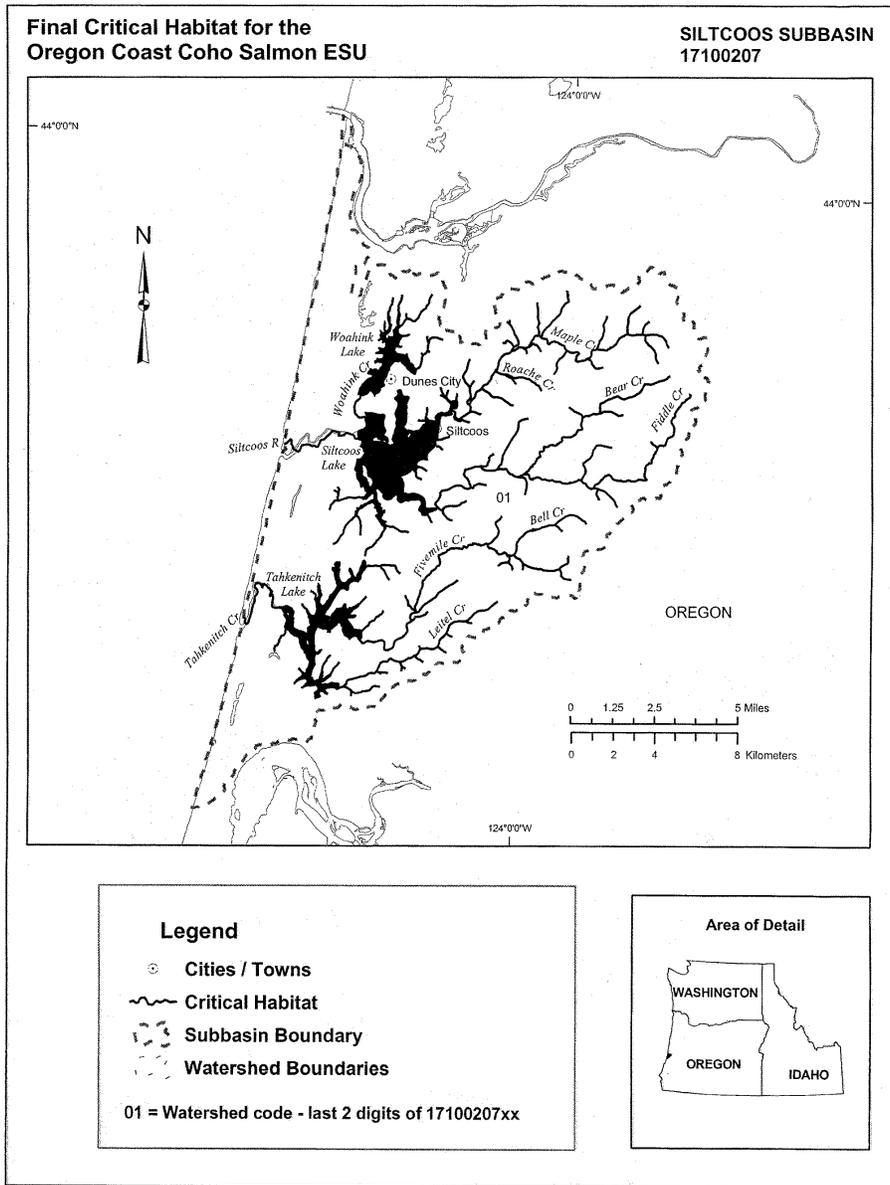


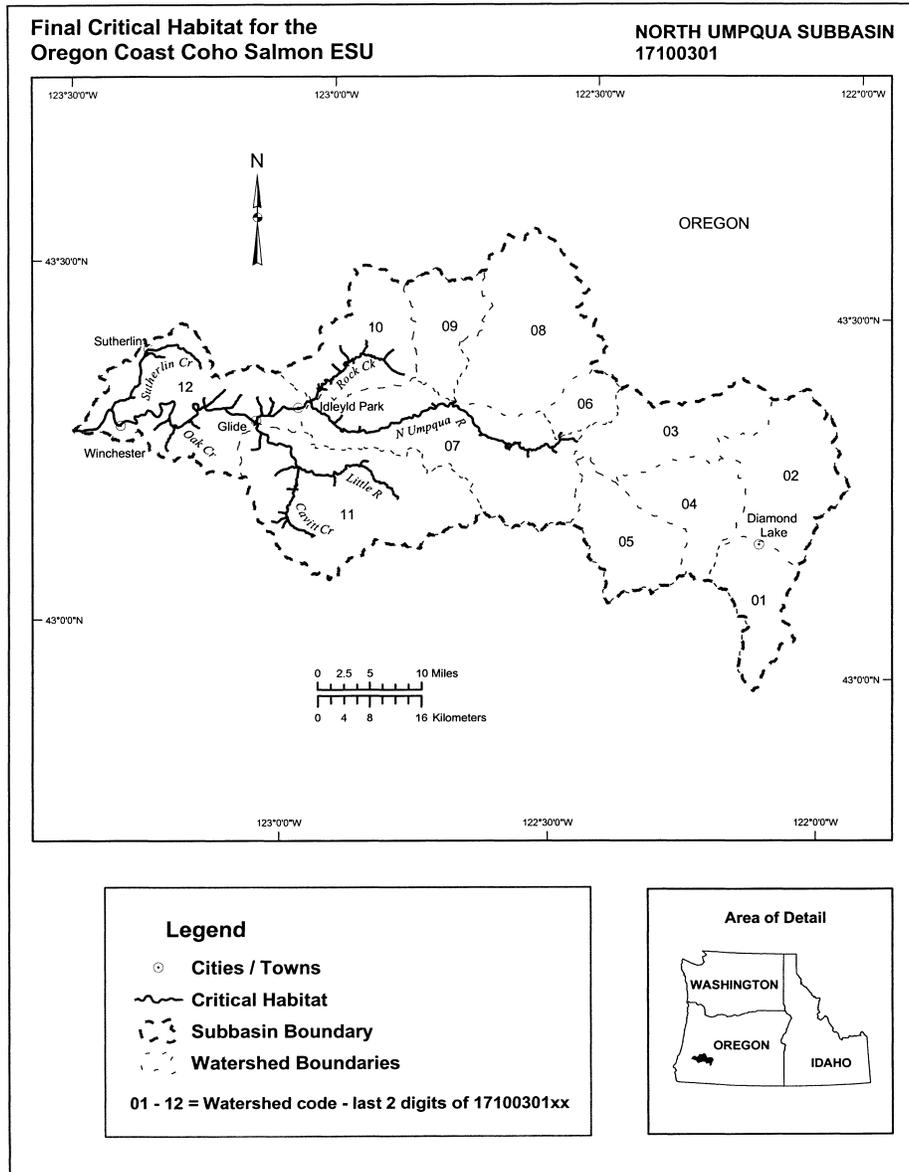


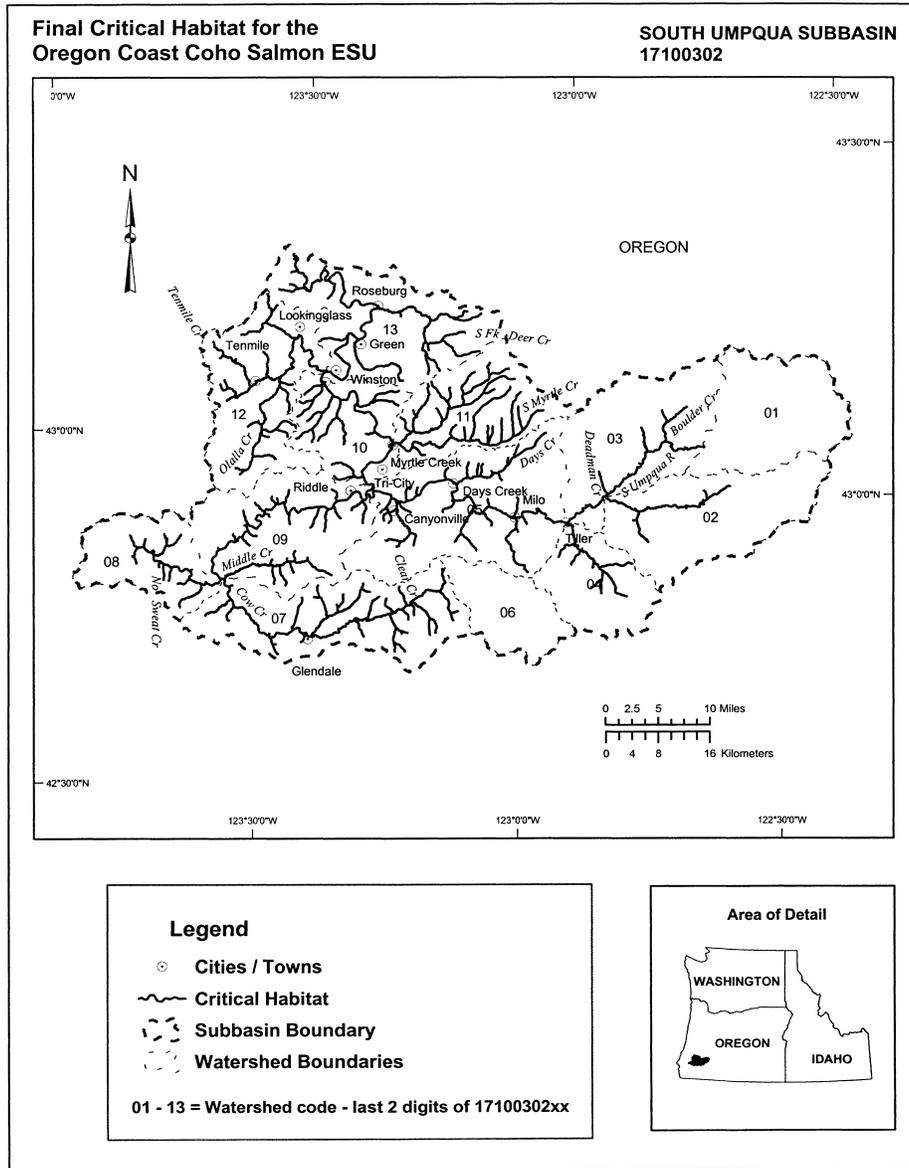


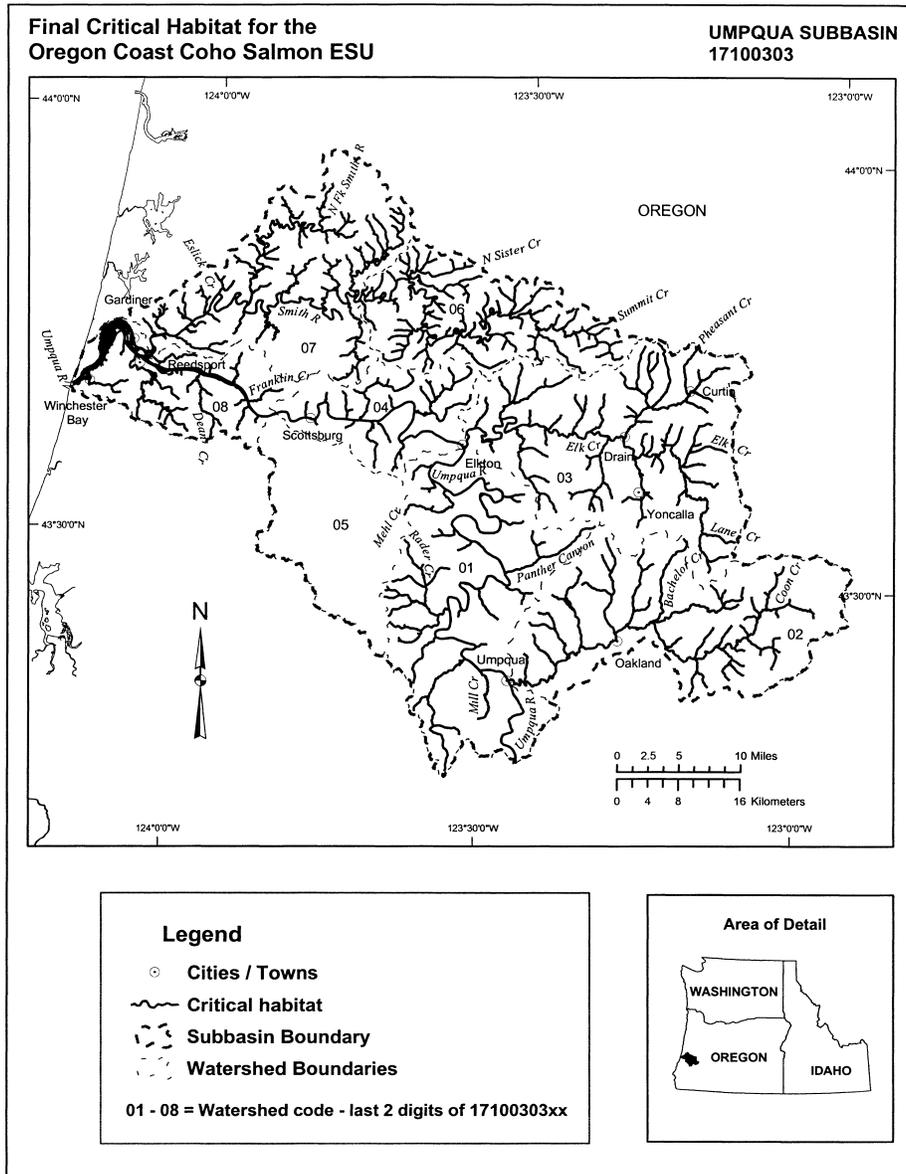


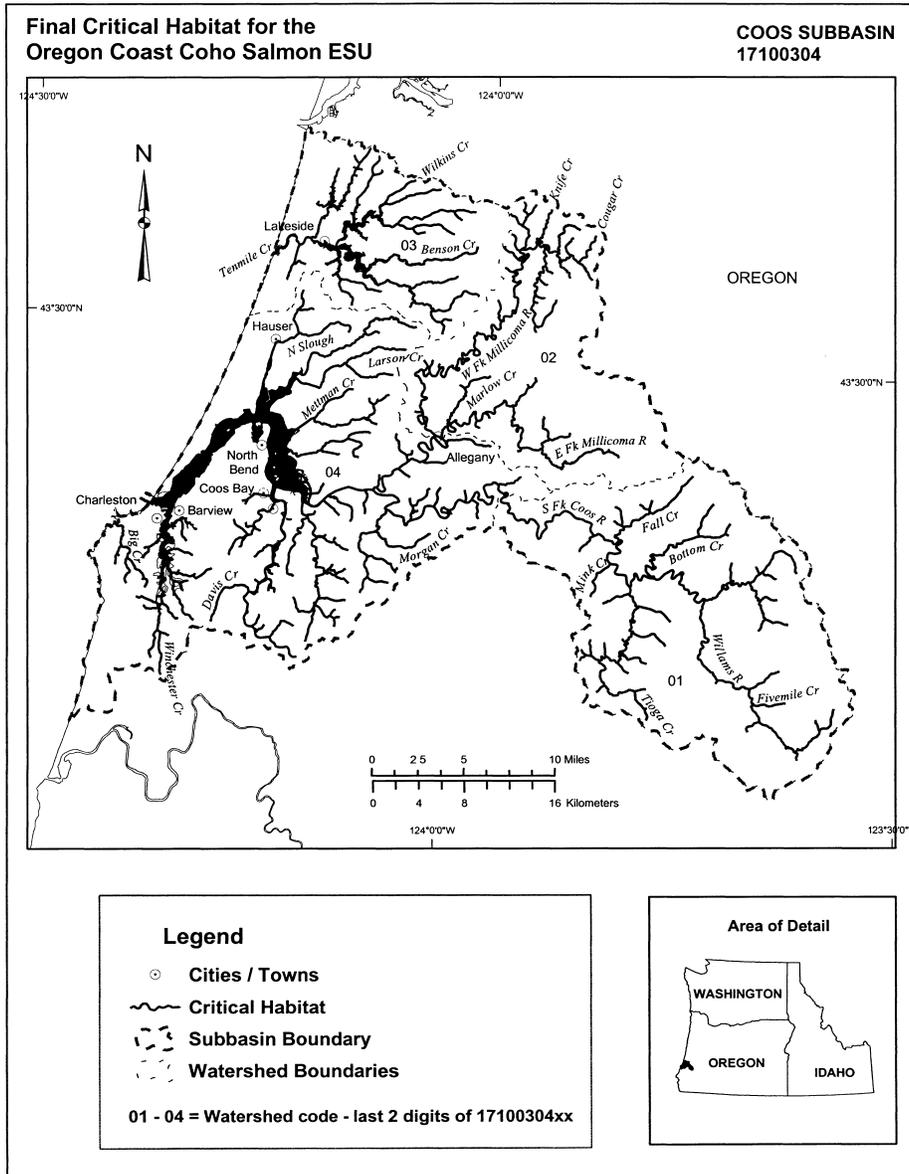


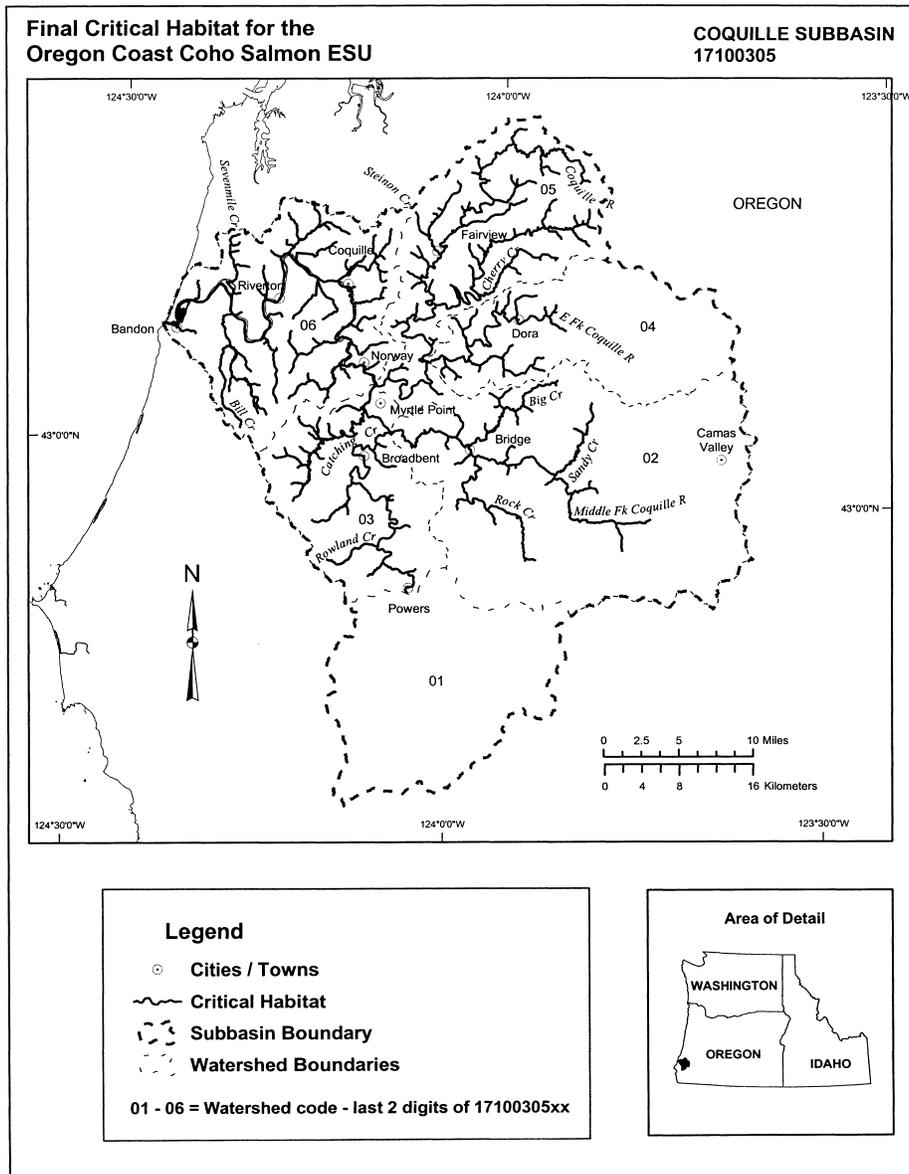


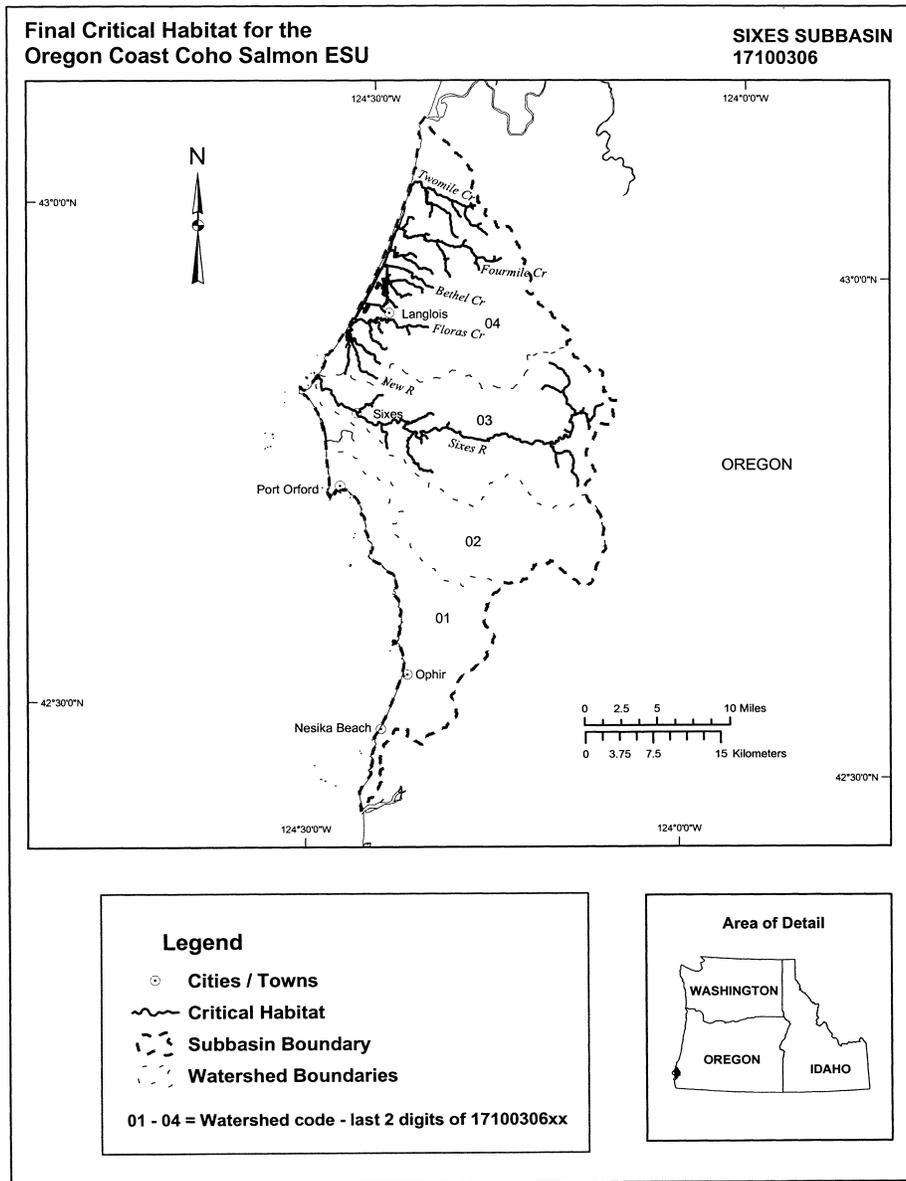












[70 FR 52684, Sept. 2, 2005, as amended at 73 FR 7844, Feb. 11, 2008]

§ 226.213 Critical habitat for Johnson's seagrass.

Critical habitat is designated to include substrate and water in the fol-

lowing ten portions of the Indian River Lagoon and Biscayne Bay within the current range of Johnson's seagrass.

§ 226.213

50 CFR Ch. II (10-1-08 Edition)

(a) A portion of the Indian River, Florida, north of Sebastian Inlet Channel, defined by the following coordinates:

Northwest corner: 27°51'15.03"N, 80°27'55.49"W
Northeast corner: 27°51'16.57"N, 80°27'53.05"W
Southwest corner: 27°51'08.85"N, 80°27'50.48"W
Southeast corner: 27°51'11.58"N, 80°27'47.35"W

(b) A portion of the Indian River, Florida, south of the Sebastian Inlet Channel, defined by the following coordinates:

Northwest corner: 27°51'01.32"N, 80°27'46.10"W
Northeast corner: 27°51'02.69"N, 80°27'45.27"W
Southwest corner: 27°50'59.08"N, 80°27'41.84"W
Southeast corner: 27°51'01.07"N, 80°27'40.50"W

(c) A portion of the Indian River Lagoon in the vicinity of the Fort Pierce Inlet. This site is located on the north side of the entrance channel just west of a small mangrove vegetated island where the main entrance channel bifurcates to the north. The area is defined by the following coordinates:

Northwest corner: 27°28'06.00"N, 80°18'48.89"W
Northeast corner: 27°28'04.43"N, 80°18'42.25"W
Southwest corner: 27°28'02.86"N, 80°18'49.06"W
Southeast corner: 27°28'01.46"N, 80°18'42.42"W

(d) A portion of the Indian River Lagoon, Florida, north of the St. Lucie Inlet, from South Nettles Island to the Florida Oceanographic Institute, defined by the following coordinates and excluding the Federally-marked navigation channel of the Intracoastal Waterway (ICW):

Northwest corner: 27°16'44.04"N, 80°14'00.00"W
Northeast corner: 27°16'44.04"N, 80°12'51.33"W
Southwest corner: 27°12'49.70"N, 80°11'46.80"W
Southeast corner: 27°12'49.70"N, 80°11'02.50"W

(e) Hobe Sound beginning at State Road 708 (27°03'49.90"N, 80°07'20.57"W) and extending south to 27°00'00.00"N, 80°05'32.54"W and excluding the federally-marked navigation channel of the ICW.

(f) Jupiter Inlet at a site located just west of the entrance to Zeek's Marina on the south side of Jupiter Inlet and defined by the following coordinates (note a south central point was included to better define the shape of the southern boundary):

Northwest corner: 26°56'43.34"N, 80°04'47.84"W
Northeast corner: 26°56'40.93"N, 80°04'42.61"W
Southwest corner: 26°56'40.73"N, 80°04'48.65"W
South central point: 26°56'38.11"N, 80°04'45.83"W
Southeast corner: 26°56'38.31"N, 80°04'42.41"W

(g) A portion of Lake Worth, Florida, just north of Bingham Island defined by the following coordinates and excluding the Federally-marked navigation channel of the ICW:

Northwest corner: 26°40'44.00"N, 80°02'39.00"W
Northeast corner: 26°40'40.00"N, 80°02'34.00"W
Southwest corner: 26°40'32.00"N, 80°02'44.00"W
Southeast corner: 26°40'33.00"N, 80°02'35.00"W

(h) A portion of Lake Worth Lagoon, Florida, located just north of the Boynton Inlet, on the west side of the ICW, defined by the following coordinates and excluding the Federally-marked navigation channel of the ICW:

Northwest corner: 26°33'28.00"N, 80°02'54.00"W
Northeast corner: 26°33'30.00"N, 80°03'04.00"W
Southwest corner: 26°32'50.00"N, 80°03'11.00"W
Southeast corner: 26°32'50.00"N, 80°02'58.00"W

(i) A portion of northeast Lake Wyman, Boca Raton, Florida, defined by the following coordinates and excluding the Federally-marked navigation channel of the ICW:

Northwest corner: 26°22'27.00"N, 80°04'23.00"W
Northeast corner: 26°22'27.00"N, 80°04'18.00"W
Southwest corner: 26°22'05.00"N, 80°04'16.00"W
Southeast corner: 26°22'05.00"N, 80°04'18.00"W

(j) A portion of Northern Biscayne Bay, Florida, defined by the following: The northern boundary of Biscayne Bay Aquatic Preserve, NE 163rd Street, and including all parts of the Biscayne Bay Aquatics Preserve as defined in 18-18.002 of the Florida Administrative Code (F.A.C.) excluding the Oleta River, Miami River and Little River beyond their mouths, the federally-marked navigation channel of the ICW, and all existing federally authorized navigation channels, basins, and berths at the Port of Miami to the currently documented southernmost range of Johnson's seagrass, Central Key Biscayne (25°45'N).

Figure 1

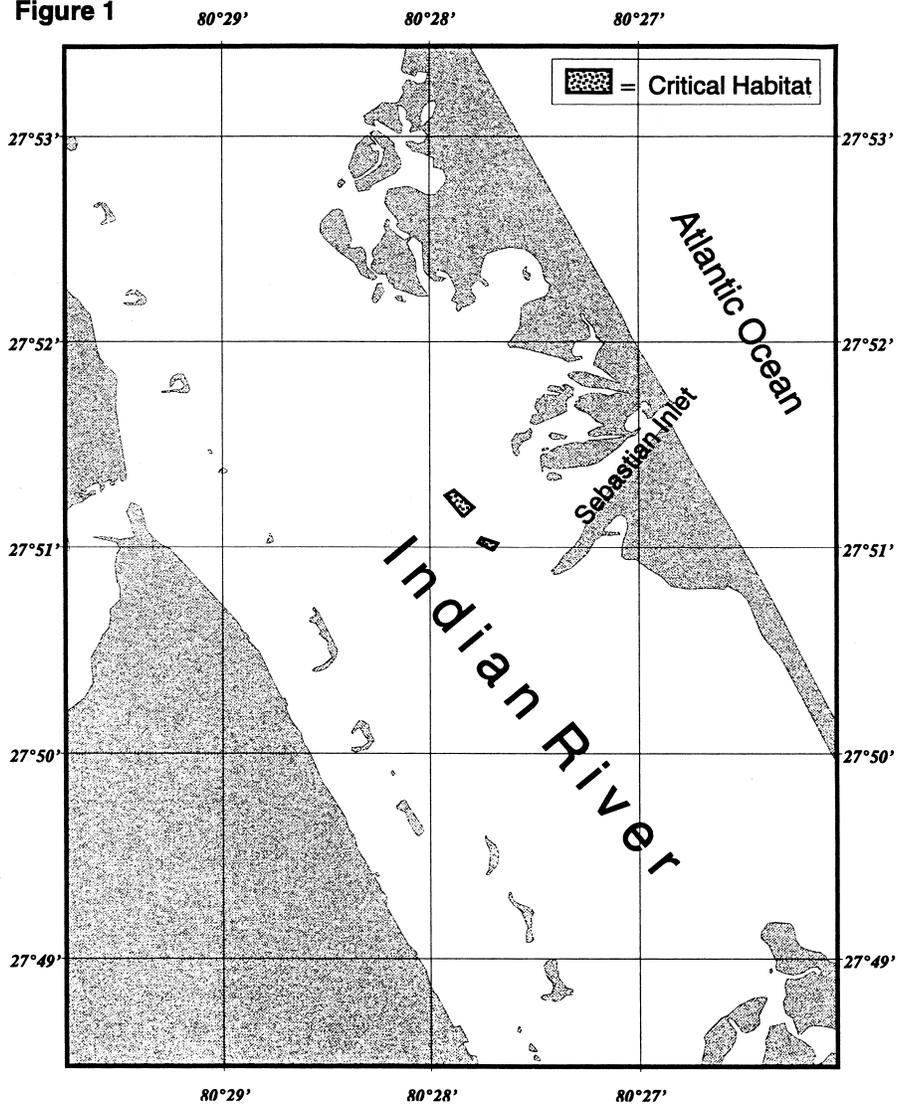


Figure 2

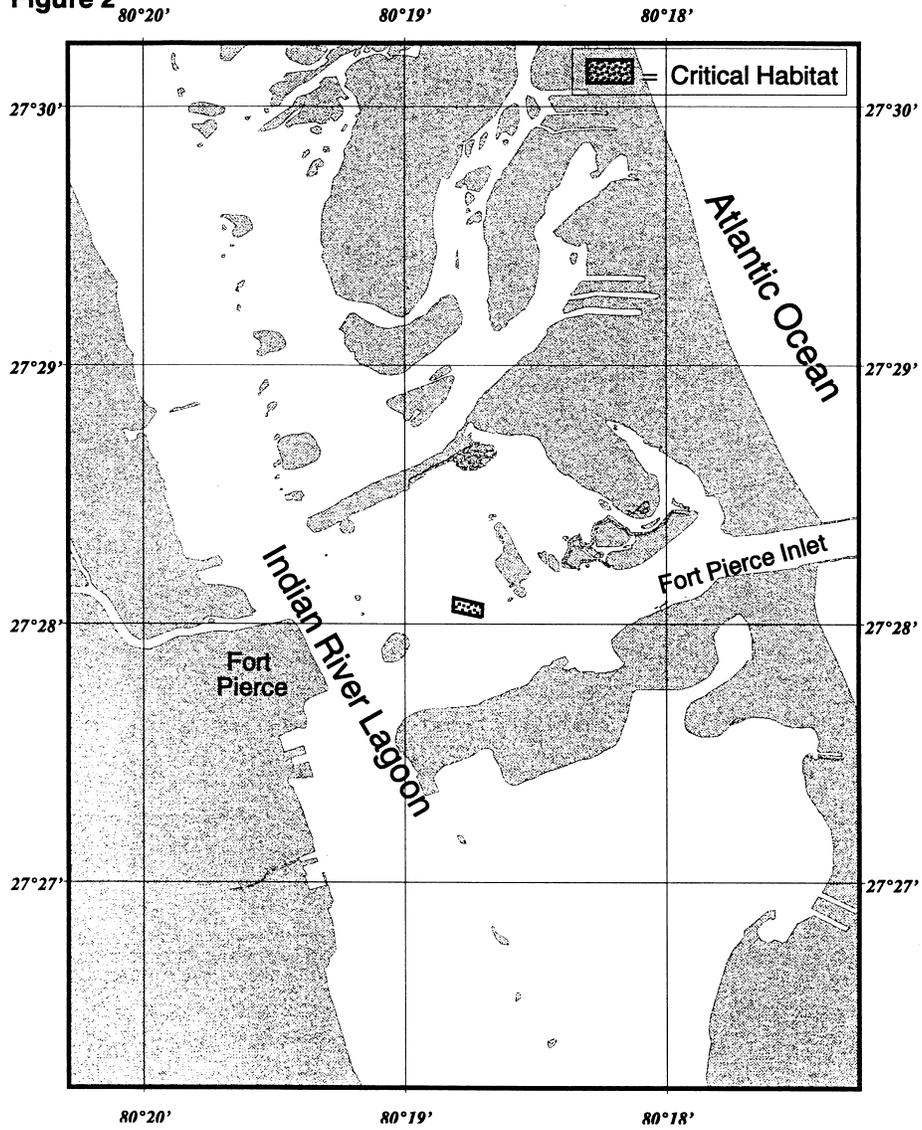


Figure 3

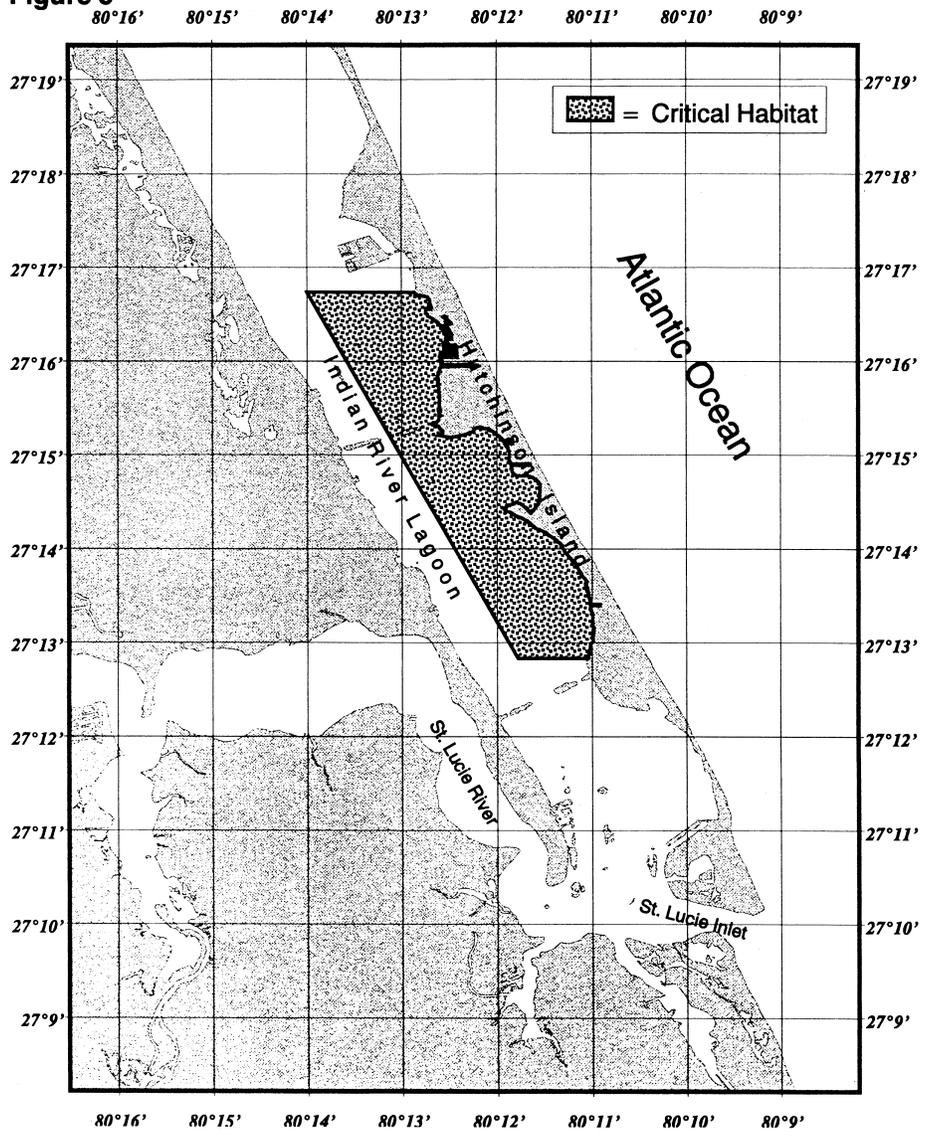


Figure 4

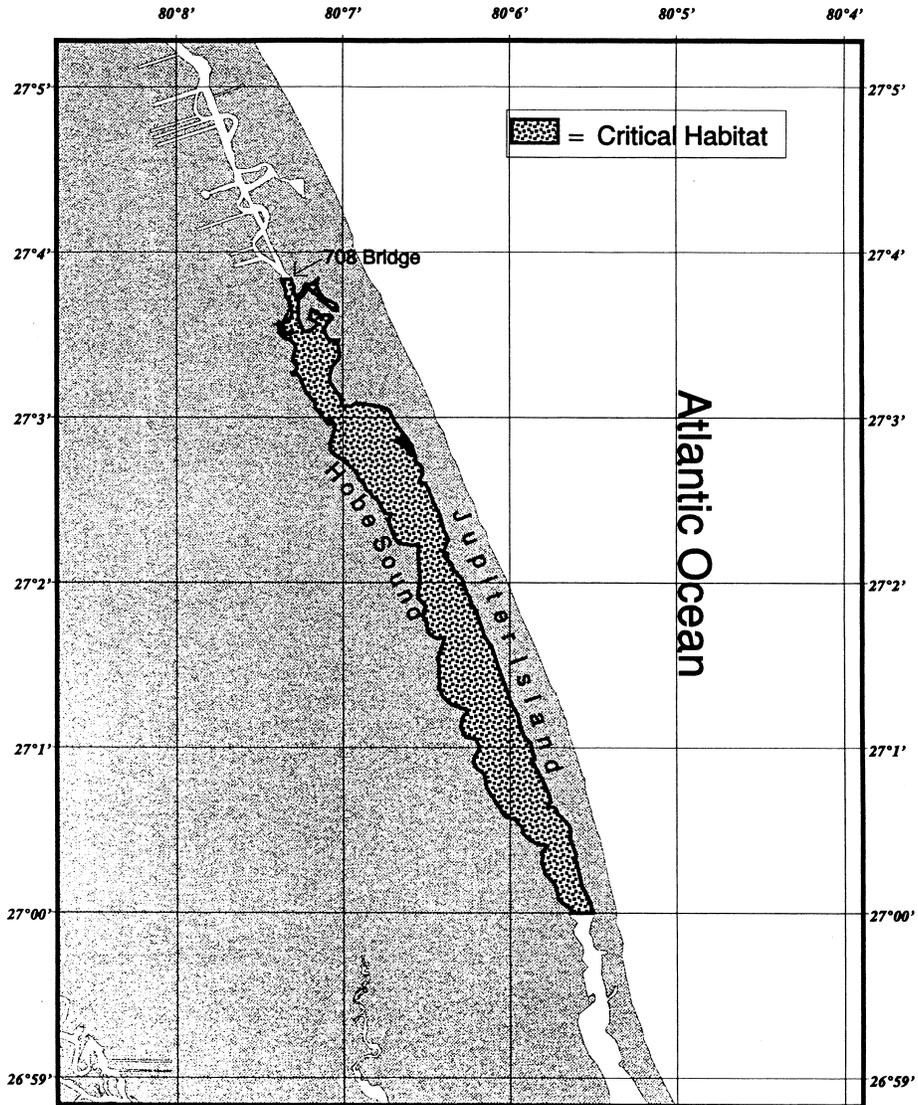


Figure 5

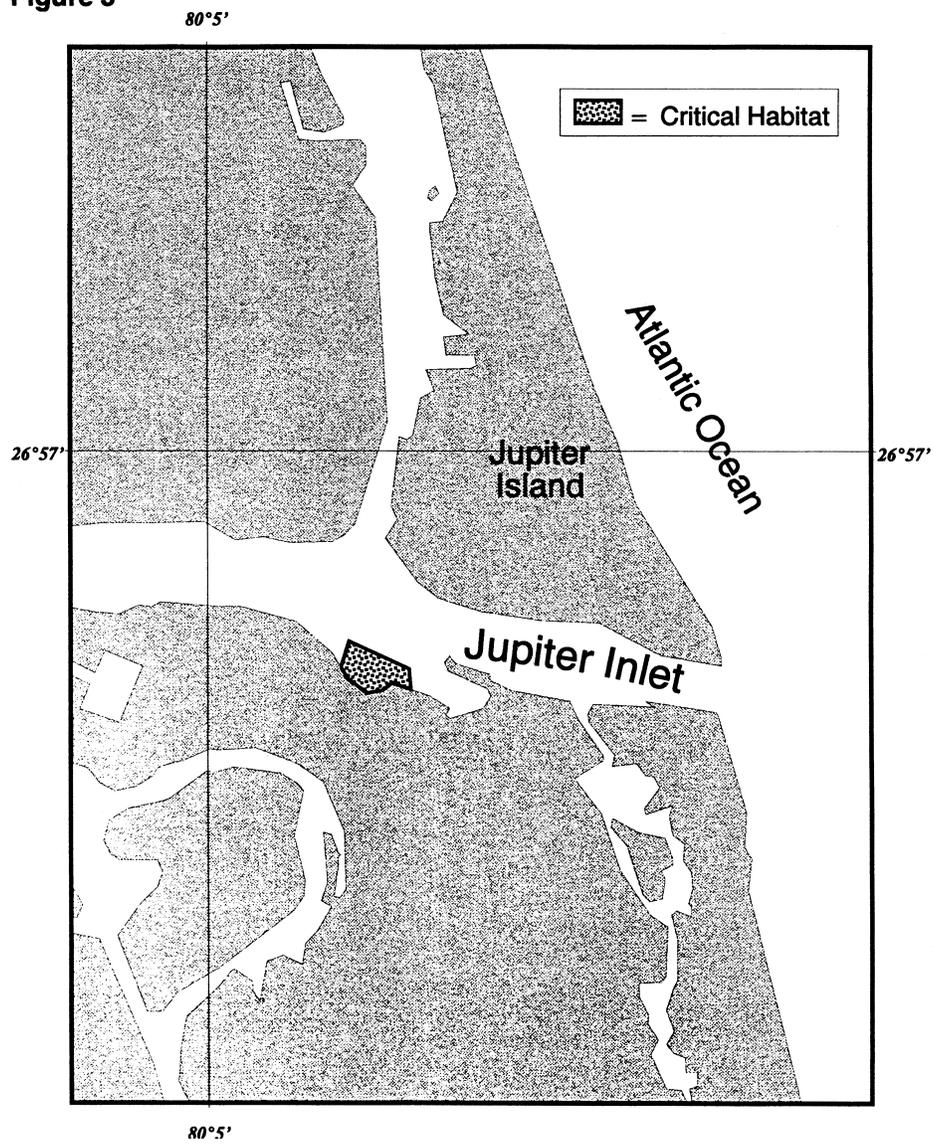


Figure 6

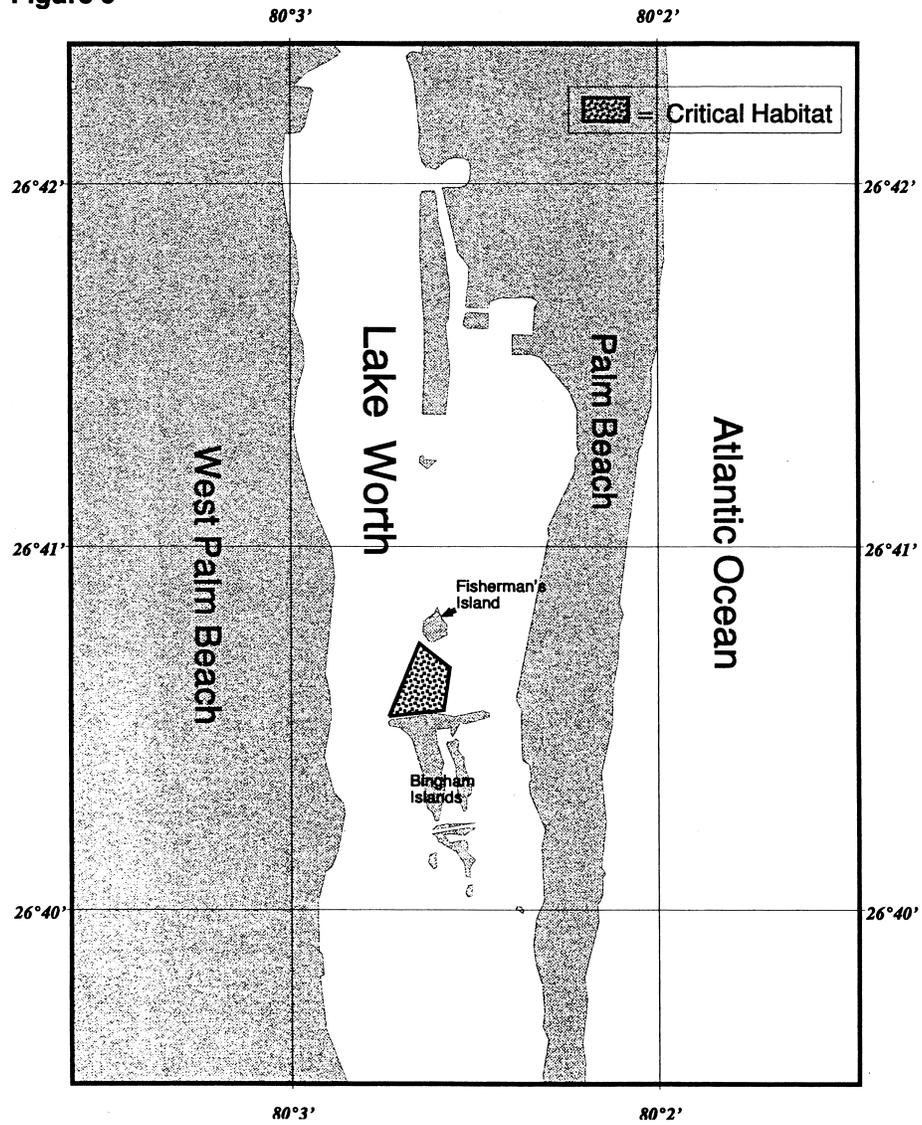


Figure 7

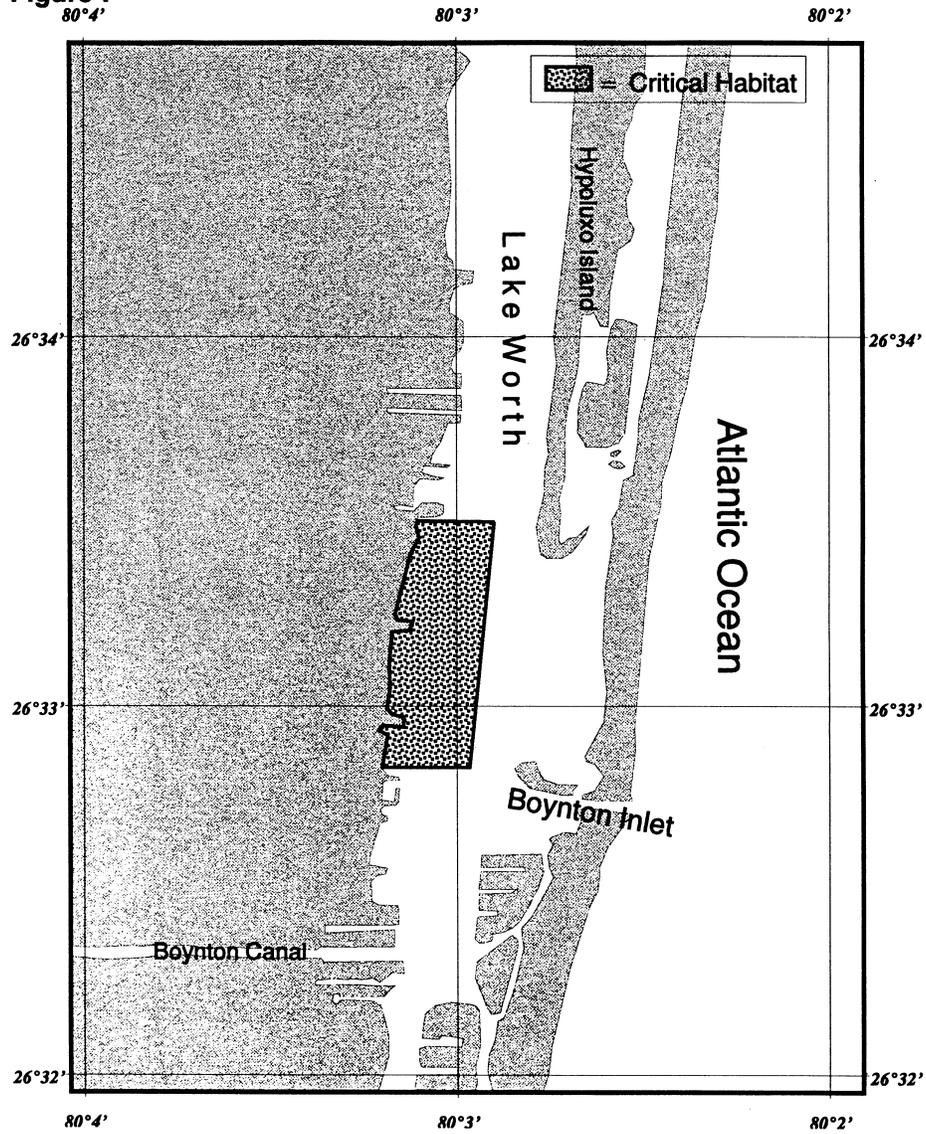


Figure 8

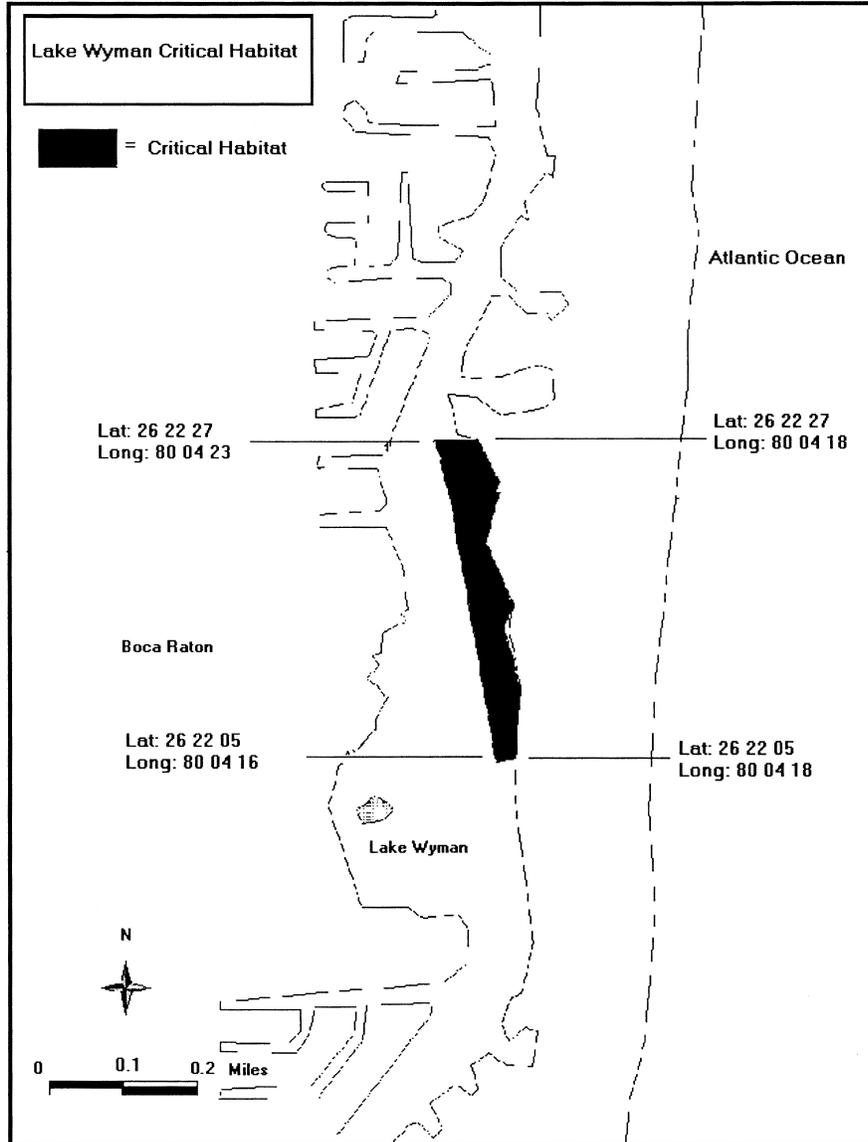
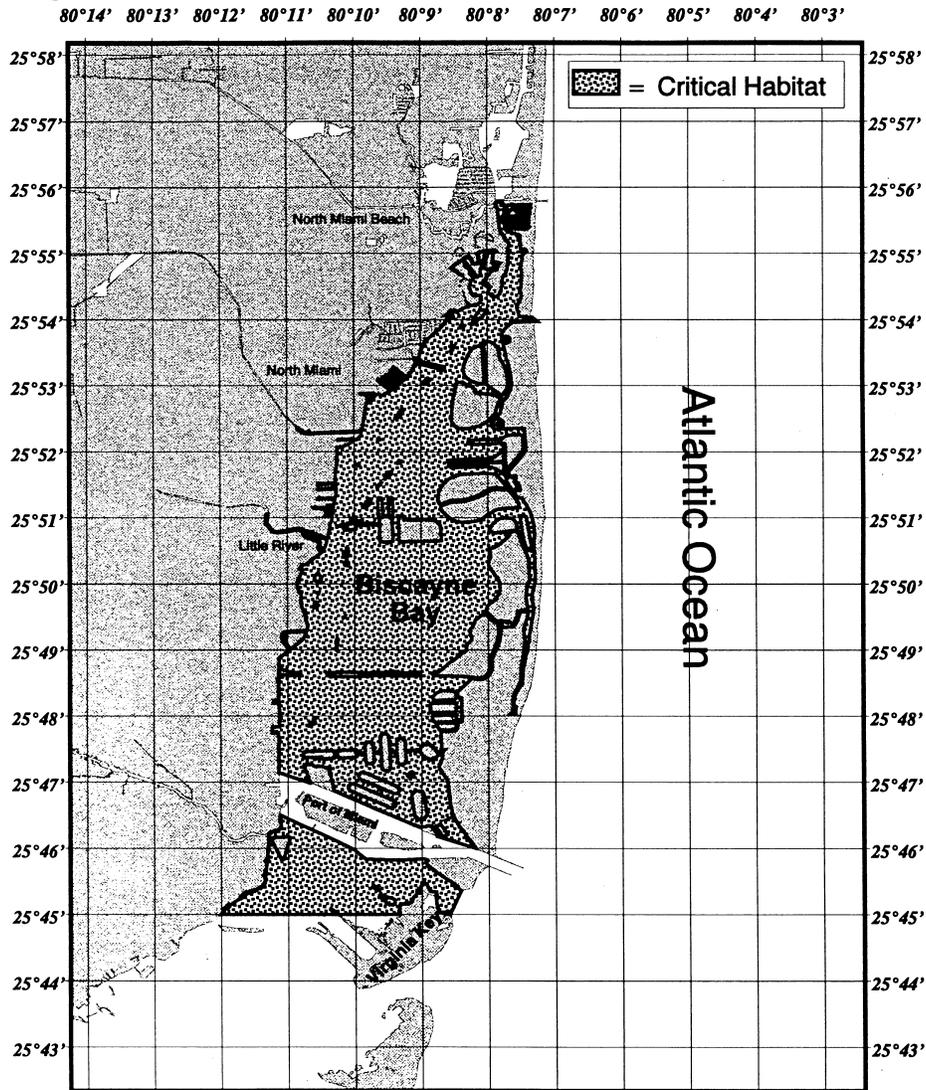


Figure 9



[65 FR 17795, Apr. 5, 2000]

§ 226.214 Critical habitat for Gulf sturgeon.

Gulf sturgeon is under the joint jurisdiction of the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS). The FWS will maintain primary responsibility

for recovery actions and NMFS will assist in and continue to fund recovery actions pertaining to estuarine and marine habitats. In riverine units, the FWS will be responsible for all consultations regarding Gulf sturgeon and critical habitat. In estuarine units, we

will divide responsibility based on the action agency involved. The FWS will consult with the Department of Transportation, the Environmental Protection Agency, the U.S. Coast Guard, and the Federal Emergency Management Agency. NMFS will consult with the Department of Defense, U.S. Army Corps of Engineers, Minerals Management Service and any other Federal agencies not mentioned here explicitly. In marine units, NMFS will be responsible for all consultations regarding Gulf sturgeon and critical habitat. Any Federal projects that extend into the jurisdiction of both the Services will be consulted on by the FWS with internal coordination with NMFS. Each agency will conduct its own intra-agency consultations as necessary.

The primary constituent elements essential for the conservation of Gulf sturgeon are those habitat components that support feeding, resting, and sheltering, reproduction, migration, and physical features necessary for maintaining the natural processes that support these habitat components. The primary constituent elements include: abundant prey items within riverine habitats for larval and juvenile life stages, and within estuarine and marine habitats and substrates for juvenile, subadult, and adult life stages; riverine spawning sites with substrates suitable for egg deposition and development, such as limestone outcrops and cut limestone banks, bedrock, large gravel or cobble beds, marl, soapstone or hard clay; riverine aggregation areas, also referred to as resting, holding, and staging areas, used by adult, subadult, and/or juveniles, generally, but not always, located in holes below normal riverbed depths, believed necessary for minimizing energy expenditures during fresh water residency and possibly for osmoregulatory functions; a flow regime (*i.e.*, the magnitude, frequency, duration, seasonality, and rate-of-change of fresh water discharge over time) necessary for normal behavior, growth, and survival of all life stages in the riverine environment, including migration, breeding site selection, courtship, egg fertilization, resting, and staging; and necessary for maintaining spawning sites in suitable condition for egg attachment, eggs

sheltering, resting, and larvae staging; water quality, including temperature, salinity, pH, hardness, turbidity, oxygen content, and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages; sediment quality, including texture and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages; and safe and unobstructed migratory pathways necessary for passage within and between riverine, estuarine, and marine habitats (*e.g.* a river unobstructed by any permanent structure, or a dammed river that still allows for passage).

The river reaches within Units 1 to 7 as critical habitat lie within the ordinary high water line. As defined in 33 CFR 329.11, the ordinary high water line on non-tidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

The downstream limit of the riverine units is the mouth of each river. The mouth is defined as rkm 0 (rmi 0). Although the interface of fresh and saltwater, referred to as the saltwater wedge, occurs within the lower-most reach of a river, for ease in delineating critical habitat units, we are defining the boundary between the riverine and estuarine units as rkm 0 (rmi 0).

Regulatory jurisdiction in coastal areas extends to the line on the shore reached by the plane of the mean (average) high water (MHW) (33 CFR 329.12(a)(2)). All bays and estuaries within Units 8 to 14, therefore, lie below the MHW lines. Where precise determination of the actual location becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years. Less precise methods, such as observation of the "apparent shoreline" which is determined by reference to physical markings, lines of vegetation, may be used only where an estimate is needed

of the line reached by the mean high water.

The term 72 COLREGS is defined as demarcation lines which delineate those waters upon which mariners shall comply with the International Regulations for Preventing Collisions at Sea, 1972 and those waters upon which mariners shall comply with the Inland Navigation Rules (33 CFR 80.01). The waters inside of these lines are Inland Rules waters and the waters outside the lines are COLREGS waters. These lines are defined in 33 CFR part 80, and have been used for identification purposes to delineate boundary lines of the estuarine and marine habitat Units 8, 9, 11, and 12.

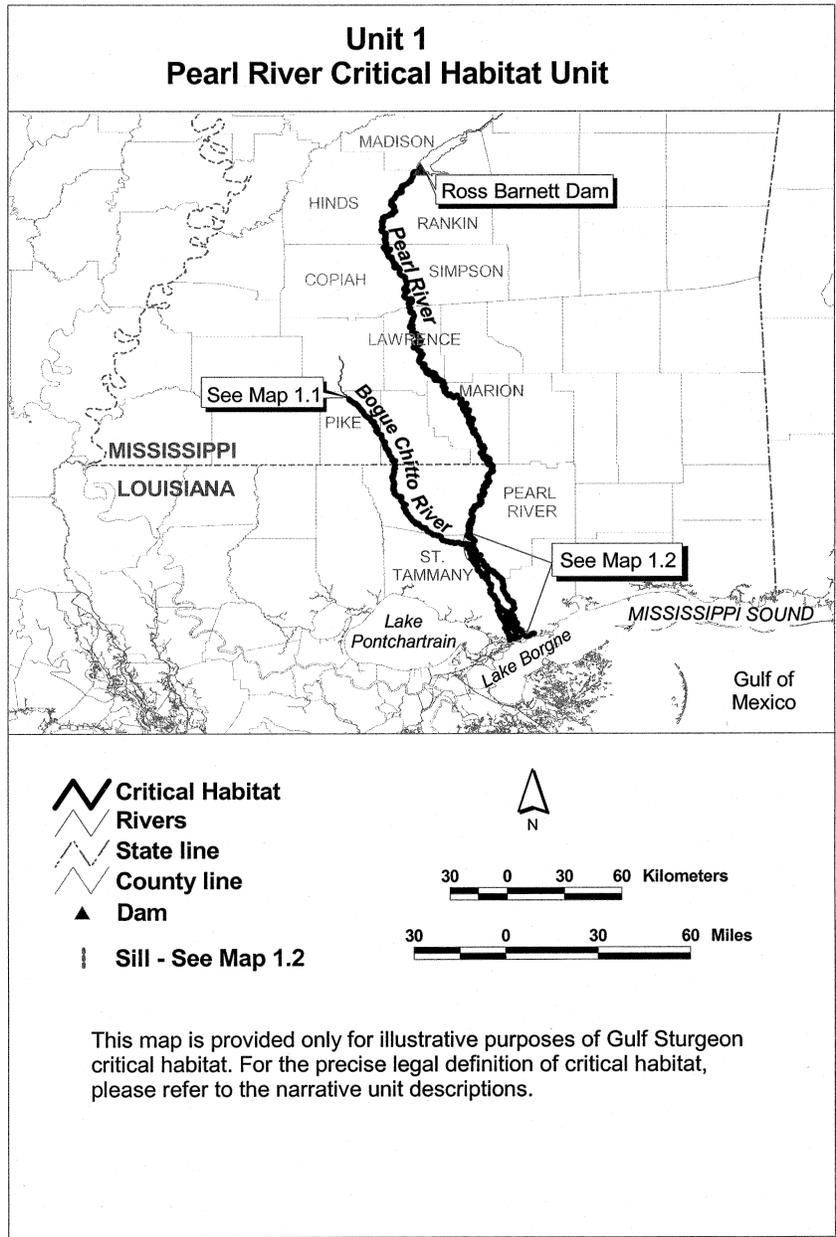
Critical habitat does not include existing developed sites such as dams, piers, marinas, bridges, boat ramps, exposed oil and gas pipelines, oil rigs, and similar structures or designated public swimming areas.

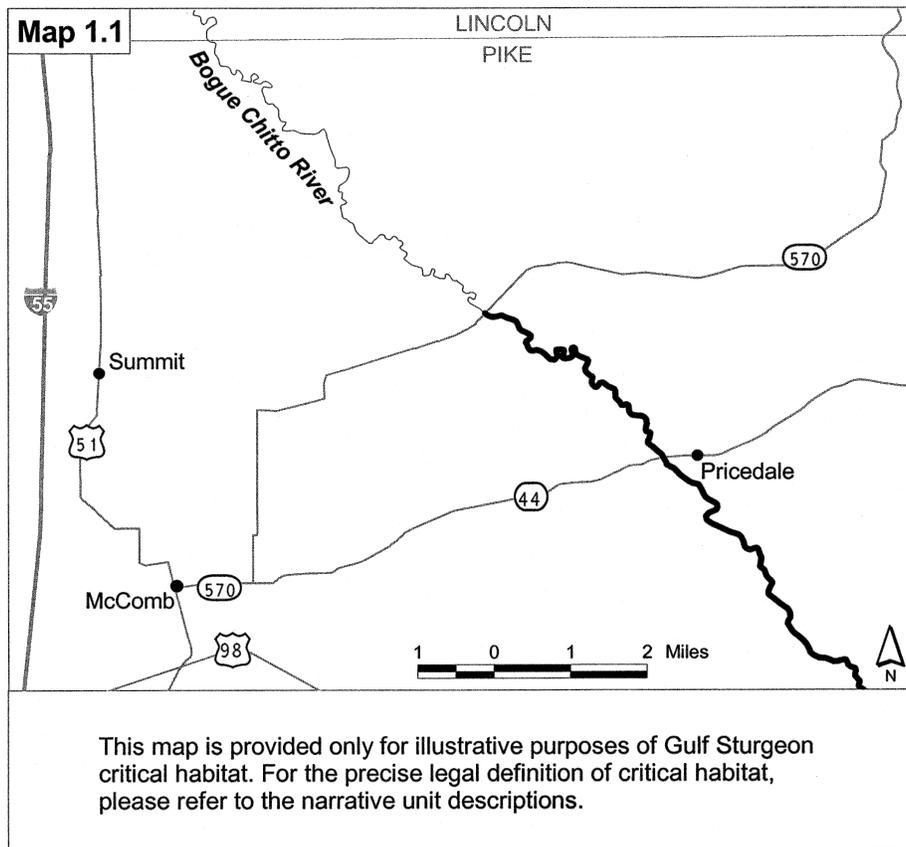
Critical habitat units are depicted for Louisiana, Mississippi, Alabama and Florida on the maps below. The textual unit descriptions below are definitive sources for determining the critical habitat boundaries. General location maps by unit are provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

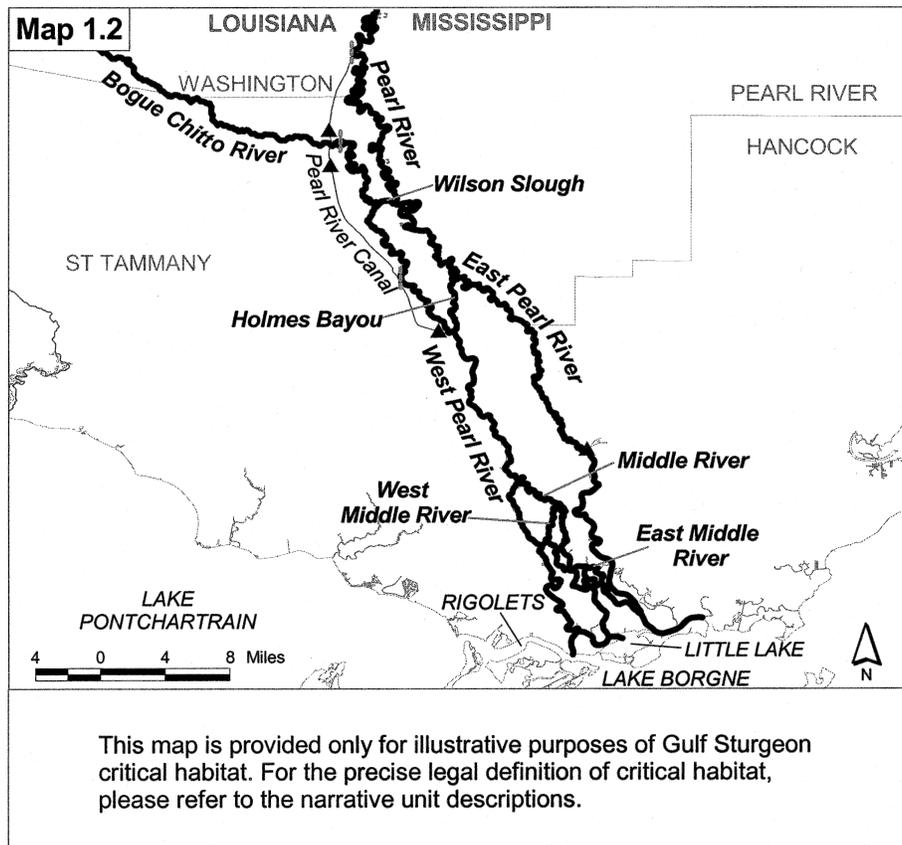
(a) *Unit 1: Pearl River System in St. Tammany and Washington Parishes in Louisiana and Walthall, Hancock, Pearl River, Marion, Lawrence, Simpson, Copiah, Hinds, Rankin, and Pike Counties in Mississippi.*

(1) Unit 1 includes the Pearl River main stem from the spillway of the Ross Barnett Dam, Hinds and Rankin Counties, Mississippi, downstream to where the main stem river drainage discharges at its mouth joining Lake Borgne, Little Lake, or The Rigolets in Hancock County, Mississippi, and St. Tammany Parish, Louisiana. It includes the main stems of the East Pearl River, West Pearl River, West Middle River, Holmes Bayou, Wilson Slough, downstream to where these main stem river drainages discharge at the mouths of Lake Borgne, Little Lake, or The Rigolets. Unit 1 also includes the Bogue Chitto River main stem, a tributary of the Pearl River, from Mississippi State Highway 570, Pike County, Mississippi, downstream to its confluence with the West Pearl River, St. Tammany Parish, Louisiana. The lateral extent of Unit 1 is the ordinary high water line on each bank of the associated rivers and shorelines.

(2) Maps of Unit 1 follow:







(b) *Unit 2: Pascagoula River System in Forrest, Perry, Greene, George, Jackson, Clarke, Jones, and Wayne Counties, Mississippi.*

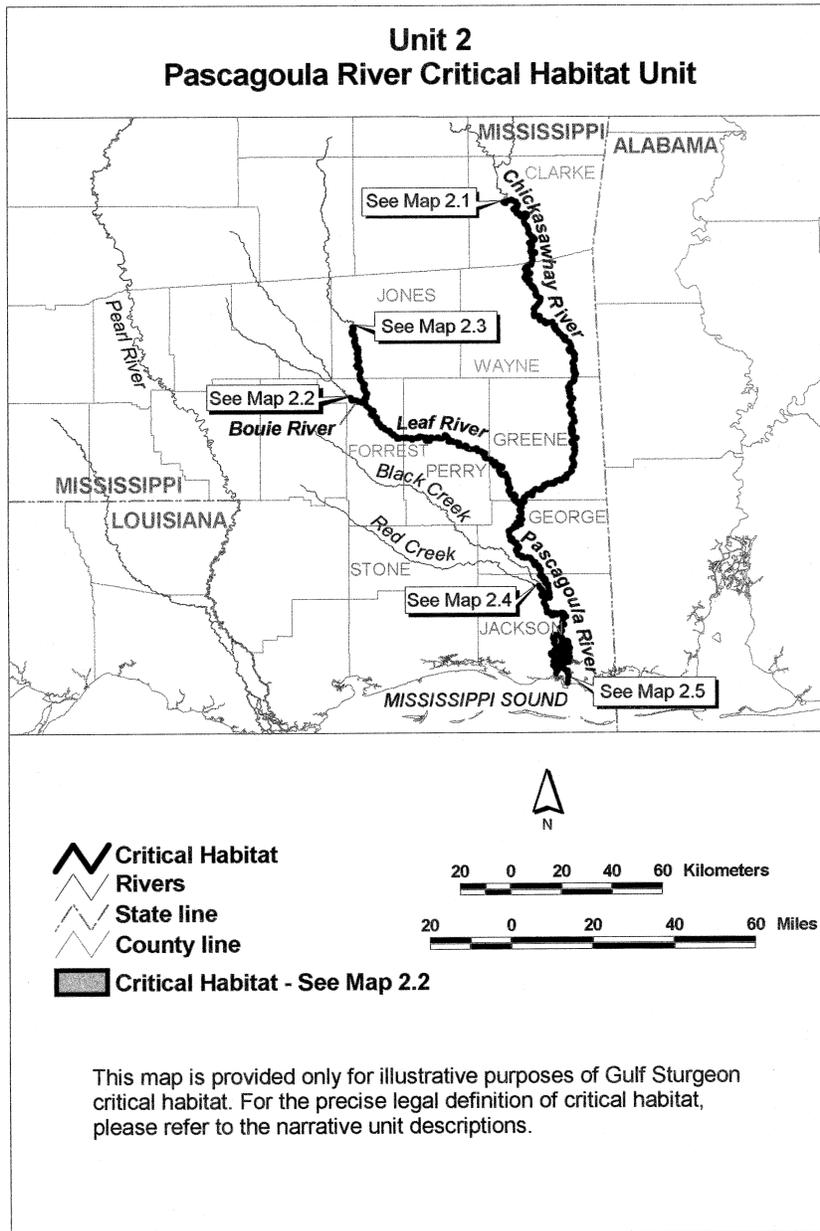
(1) Unit 2 includes all of the Pascagoula River main stem and its distributaries, portions of the Bouie, Leaf, and Chickasawhay tributaries, and all of the Big Black Creek tributary. It includes the Bouie River main stem beginning on the southern-most road crossing of Interstate 59, Forrest County, Mississippi, downstream to its confluence with the Leaf River, Forrest County, Mississippi. The Leaf River main stem beginning from Mississippi State Highway 588, Jones County, Mississippi, downstream to its confluence with the Chickasawhay River, George County, Mississippi is included. The

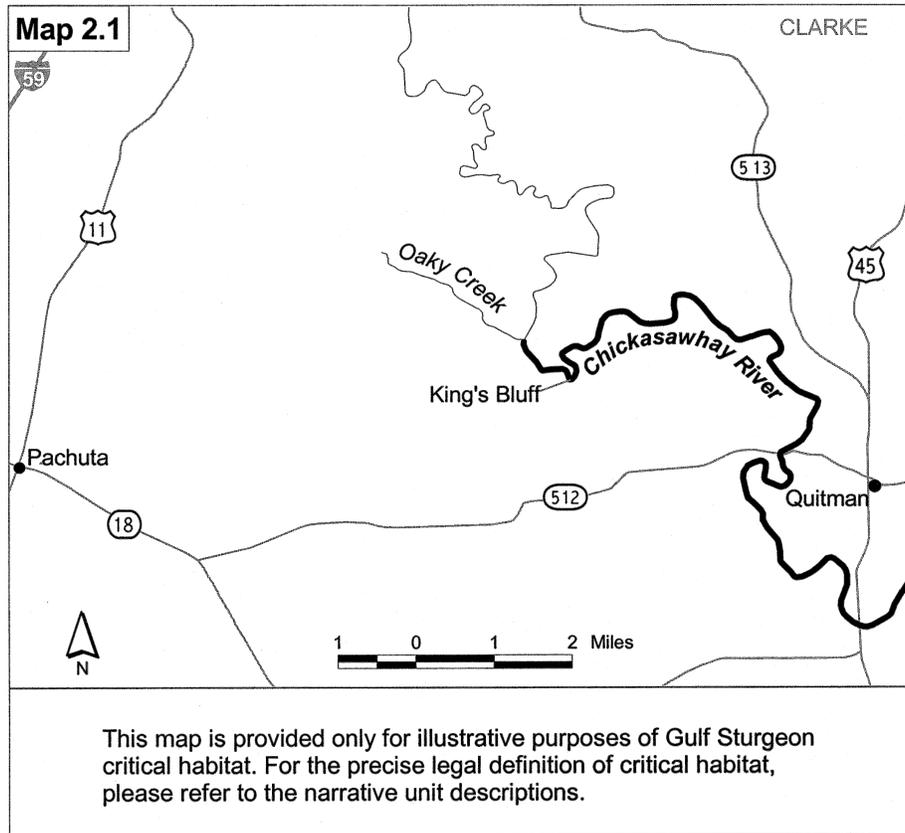
main stem of the Chickasawhay River from the mouth of Oaky Creek, Clarke County, Mississippi, downstream to its confluence with the Leaf River, George County, Mississippi is included. Unit 2 also includes Big Black Creek main stem from its confluence with Black and Red Creeks, Jackson County, Mississippi, to its confluence with the Pascagoula River, Jackson County, Mississippi. All of the main stem of the Pascagoula River from its confluence with the Leaf and Chickasawhay Rivers, George County, Mississippi, to the discharge of the East and West Pascagoula Rivers into Pascagoula Bay, Jackson County, Mississippi, is included. The lateral extent of Unit 2 is the ordinary high water line on each

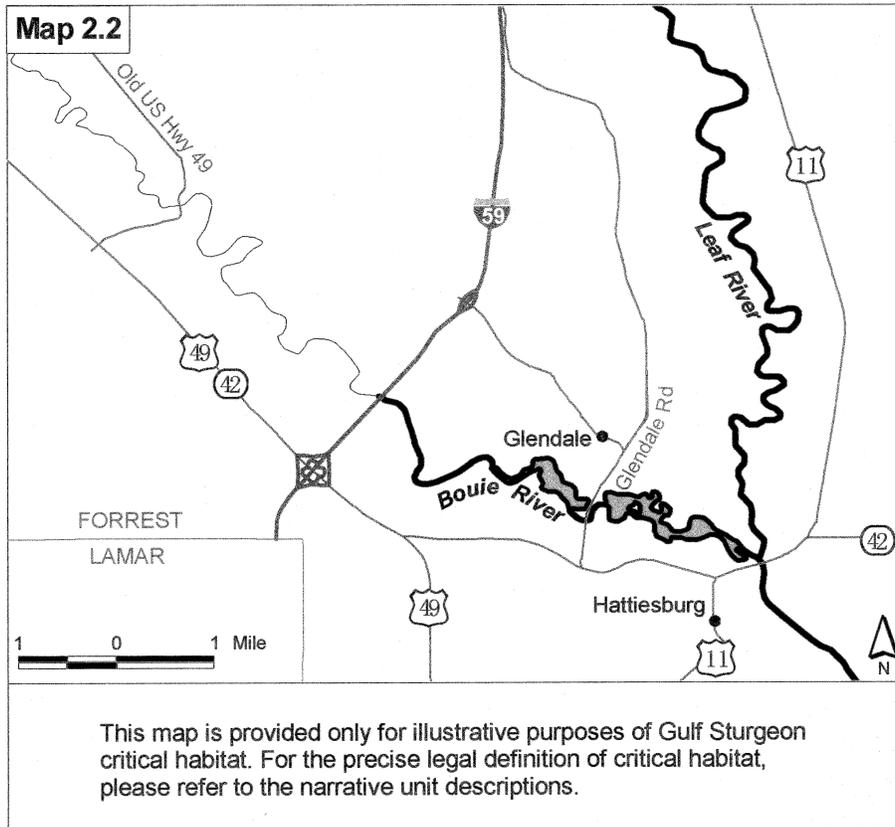
bank of the associated rivers and shorelines.

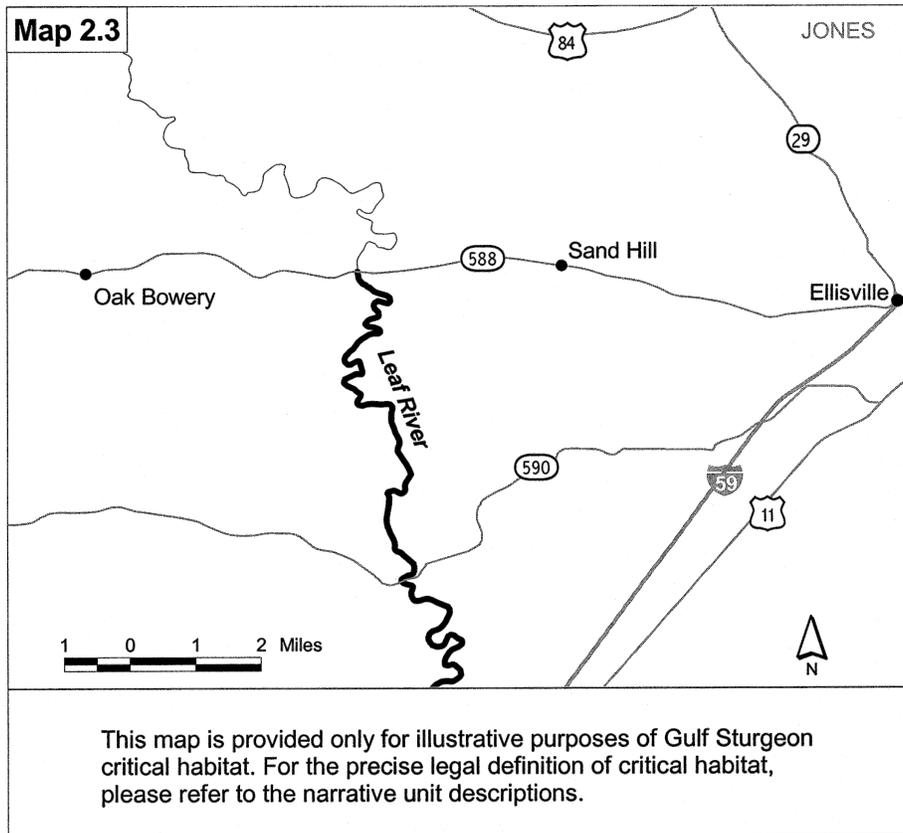
(2) Major shipping channels in this unit are excluded under section 4(b)(2) of the Act.

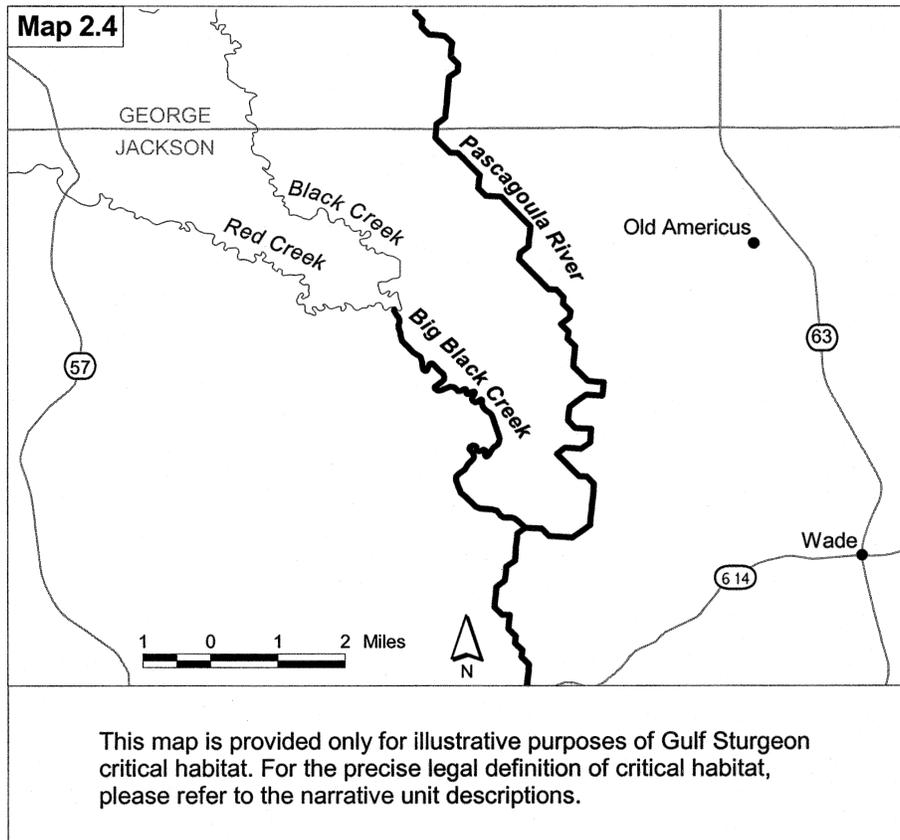
(3) Maps of Unit 2 follow:

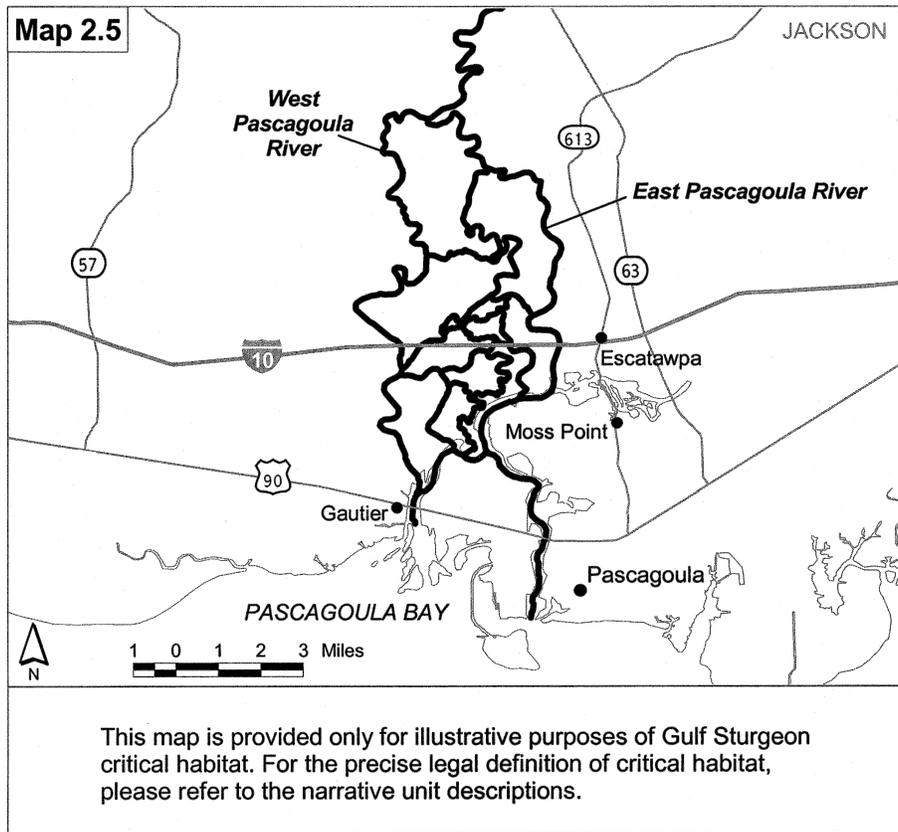










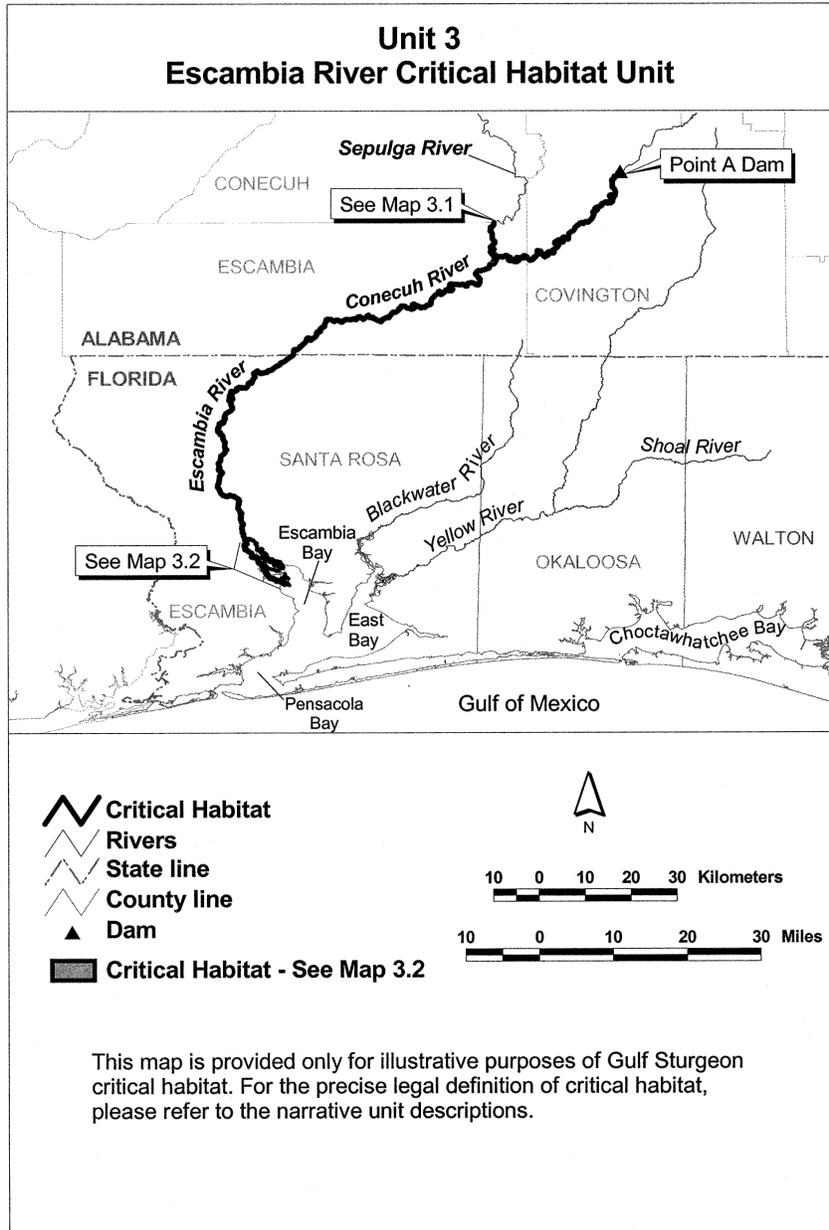


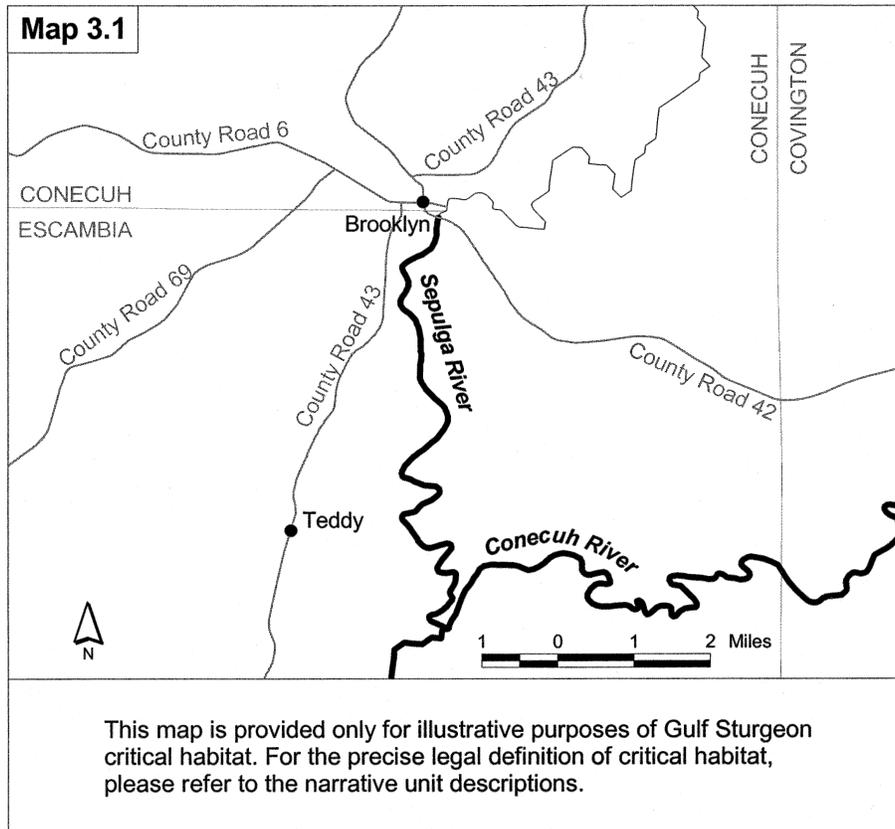
(c) *Unit 3: Escambia River System in Santa Rosa and Escambia Counties, Florida and Escambia, Conecuh, and Covington Counties, Alabama.*

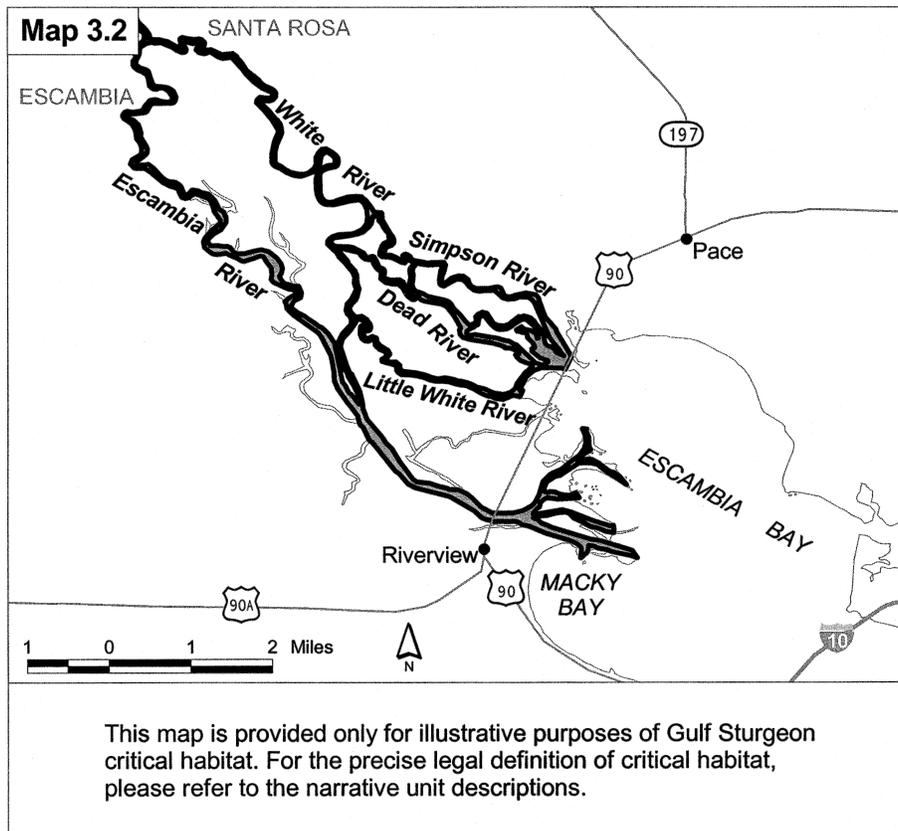
(1) Unit 3 includes the Conecuh River main stem beginning just downstream of the spillway of Point A Dam, Covington County, Alabama, downstream to the Florida State line, where its name changes to the Escambia River, Escambia County, Alabama, and Escambia and Santa Rosa Counties, Florida. It includes the entire main stem of the Escambia River downstream to its discharge into Escambia Bay and Macky Bay, Escambia and

Santa Rosa Counties, Florida. All of the distributaries of the Escambia River including White River, Little White River, Simpson River, and Dead River, Santa Rosa County, Florida are included. The Sepulga River main stem from Alabama County Road 42, Conecuh and Escambia Counties, Alabama, downstream to its confluence with the Conecuh River, Escambia County, Alabama, is also included. The lateral extent of Unit 3 is the ordinary high water line on each bank of the associated lakes, rivers, and shorelines.

(2) Maps of Unit 3 follow:





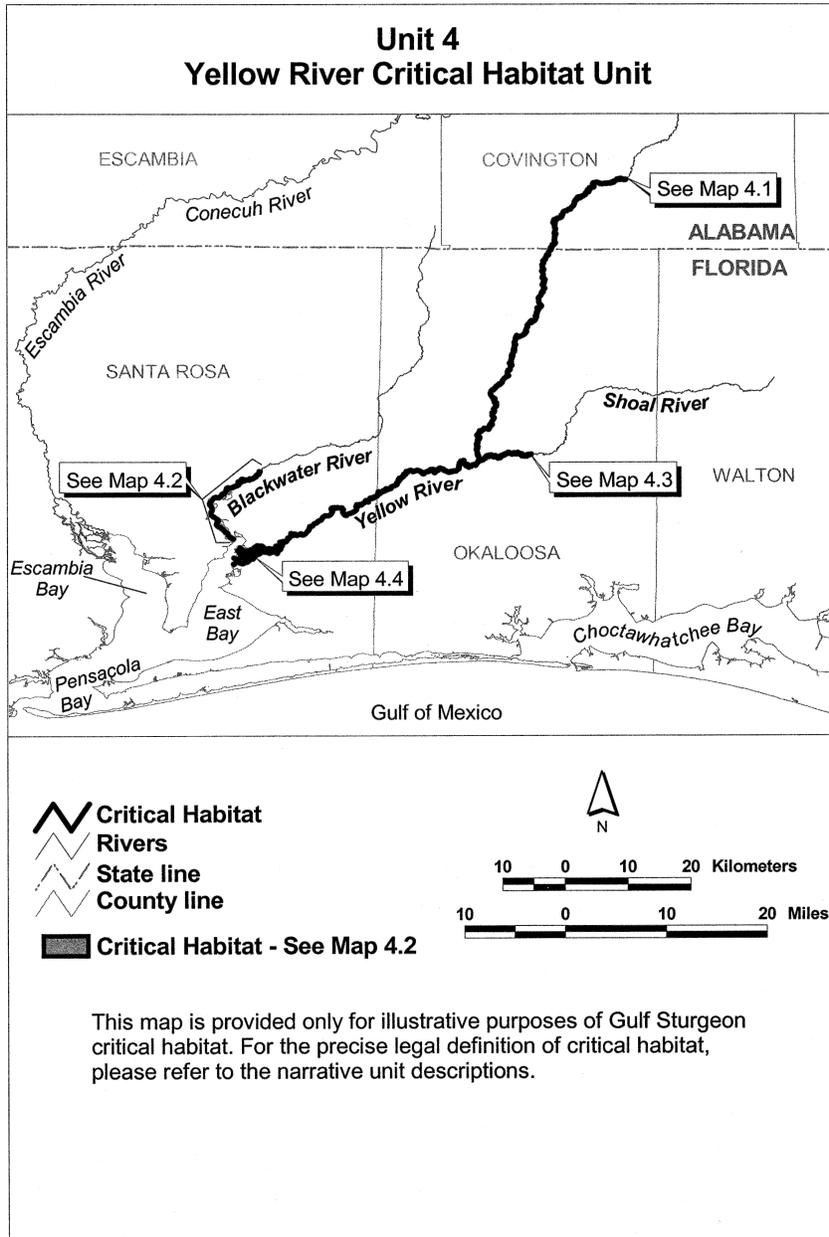


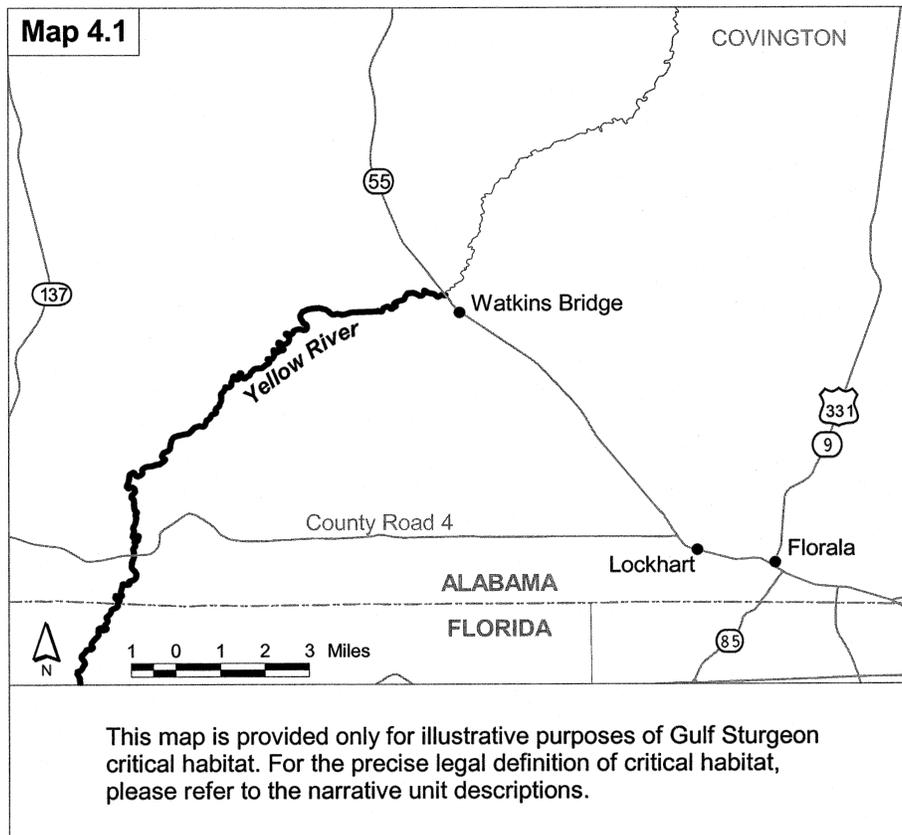
(d) *Unit 4: Yellow River System in Santa Rosa and Okaloosa Counties, Florida and Covington County, Alabama.*

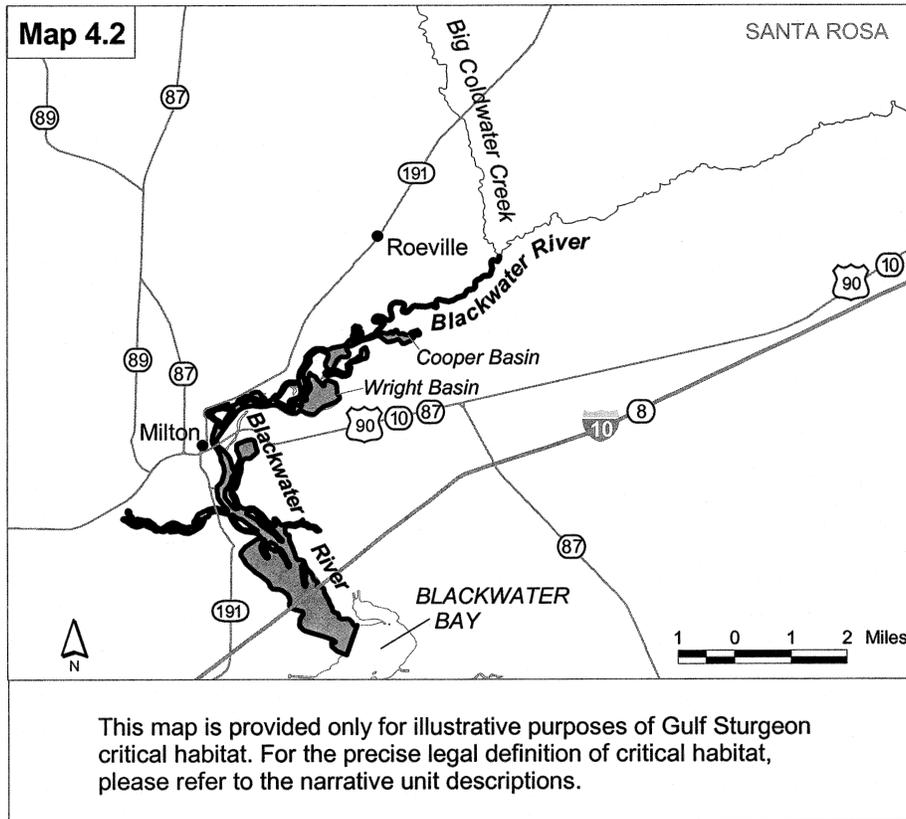
(1) Unit 4 includes the Yellow River main stem from Alabama State Highway 55, Covington County, Alabama, downstream to its discharge at Blackwater Bay, Santa Rosa County, Florida. All Yellow River distributaries (including Weaver River and Skim Lake) discharging into Blackwater Bay are included. The Shoal River main stem, a Yellow River tributary, from Florida Highway 85, Okaloosa County,

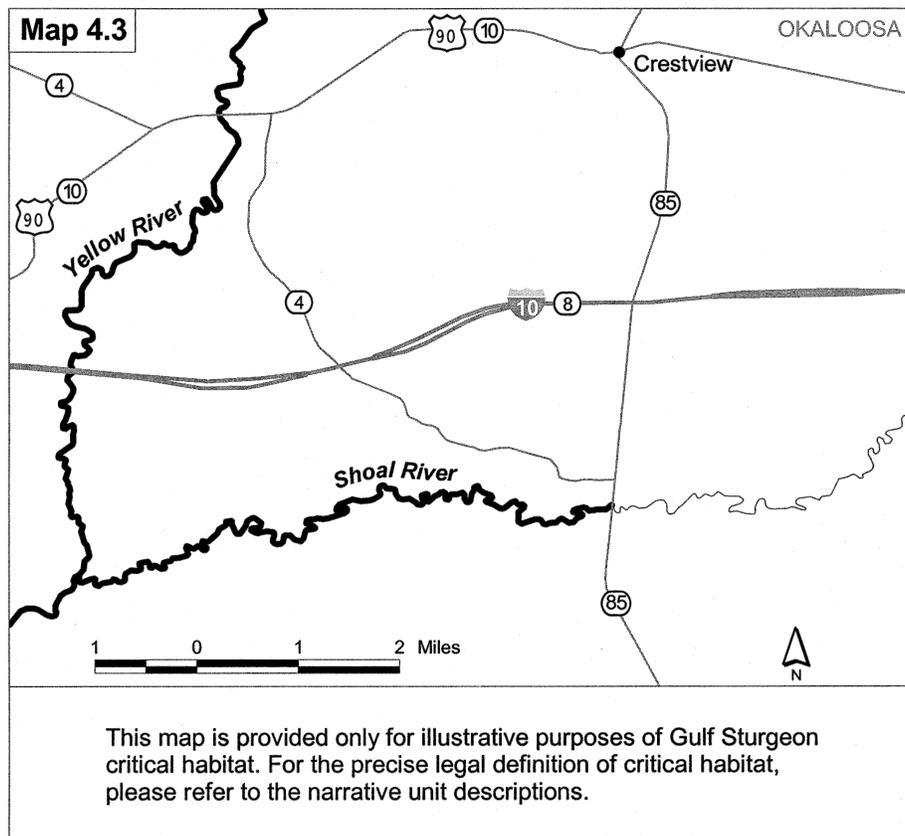
Florida, to its confluence with the Yellow River, is included. The Blackwater River from its confluence with Big Coldwater Creek, Santa Rosa County, Florida, downstream to its discharge into Blackwater Bay is included. Wright Basin and Cooper Basin, Santa Rosa County, on the Blackwater River are included. The lateral extent of Unit 4 is the ordinary high water line on each bank of the associated lakes, rivers, and shorelines.

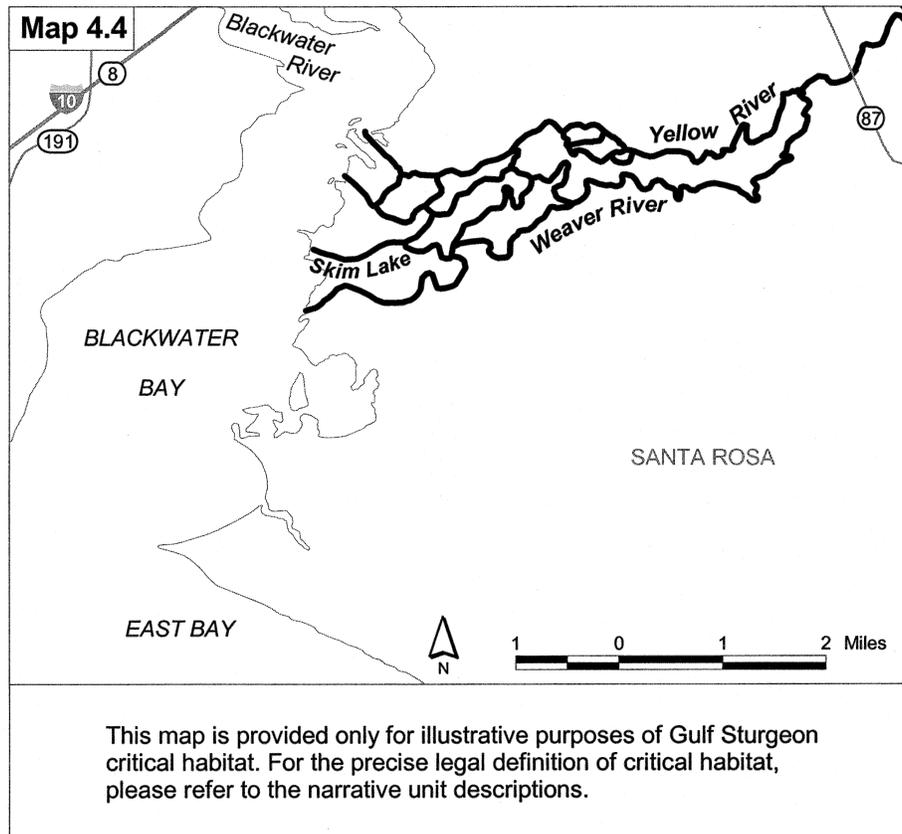
(2) Maps of Unit 4 follow:









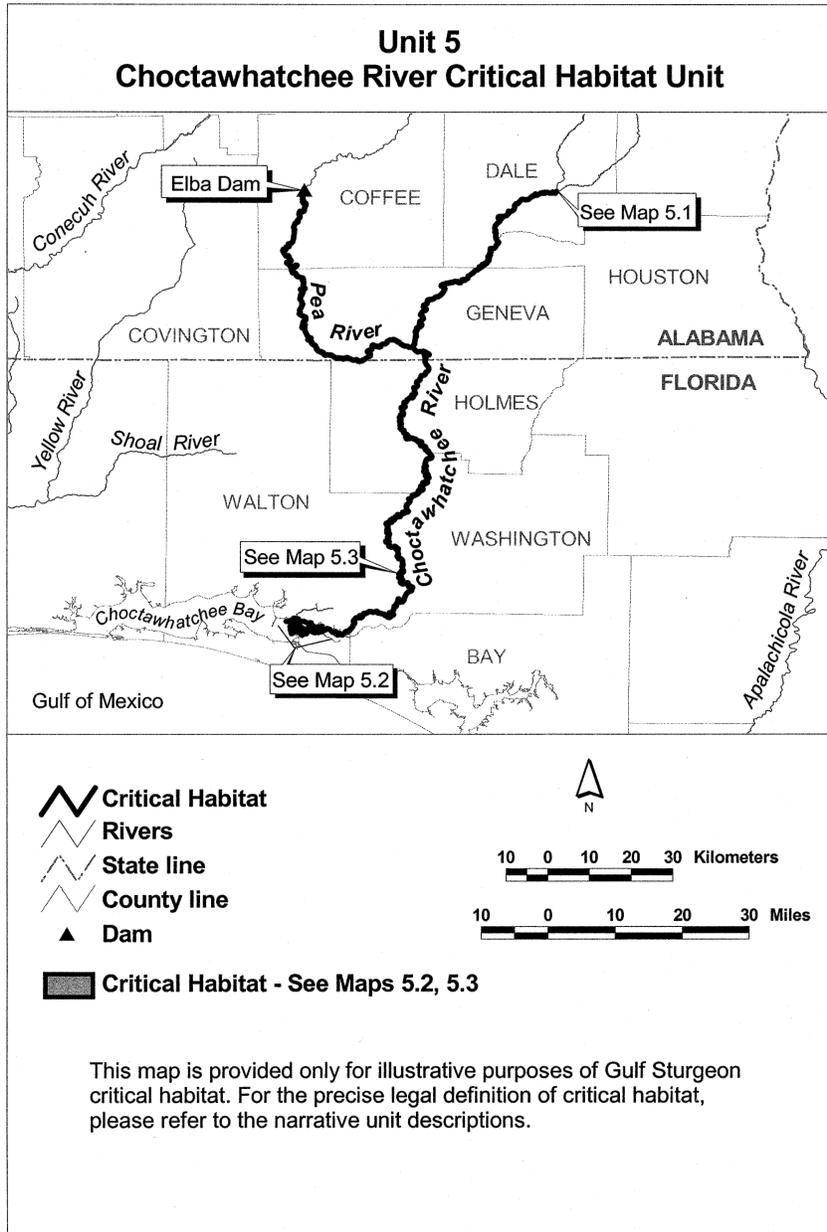


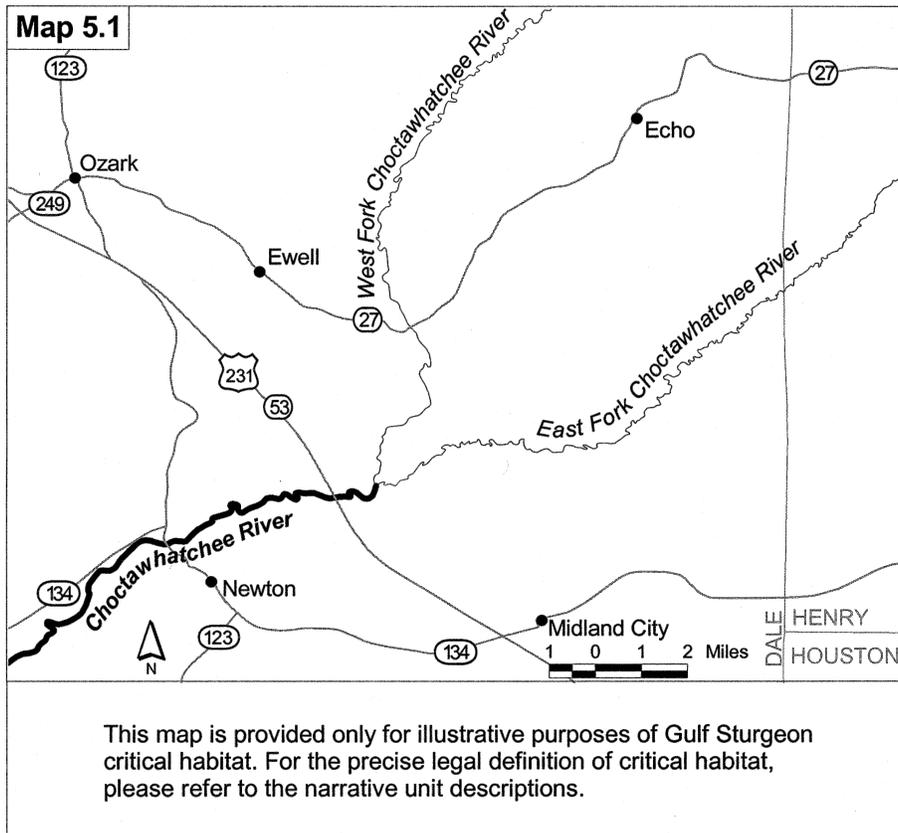
(e) *Unit 5: Choctawhatchee River System in Holmes, Washington, and Walton Counties, Florida and Dale, Coffee, Geneva, and Houston Counties, Alabama.*

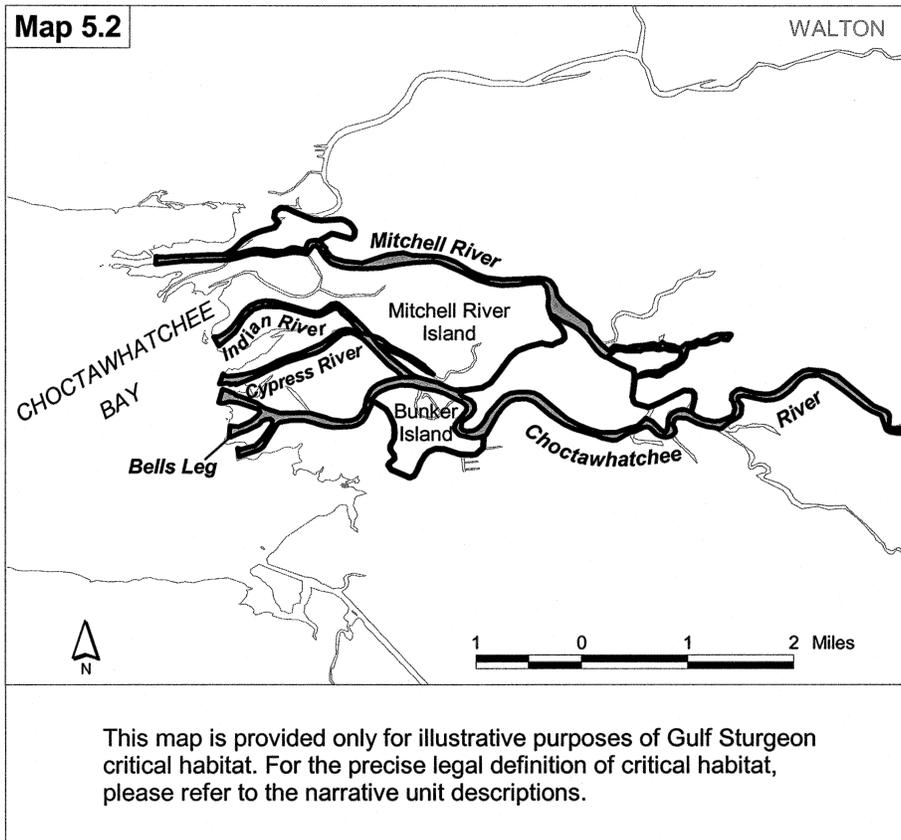
(1) Unit 5 includes the Choctawhatchee River main stem from its confluence with the west and east fork of the Choctawhatchee River, Dale County, Alabama, downstream to its discharge at Choctawhatchee Bay, Walton County, Florida. The distributaries discharging into Choctawhatchee Bay known as Mitchell River, Indian River, Cypress River, and Bells Leg are included. The Boynton Cutoff, Washington County, Florida, which joins the

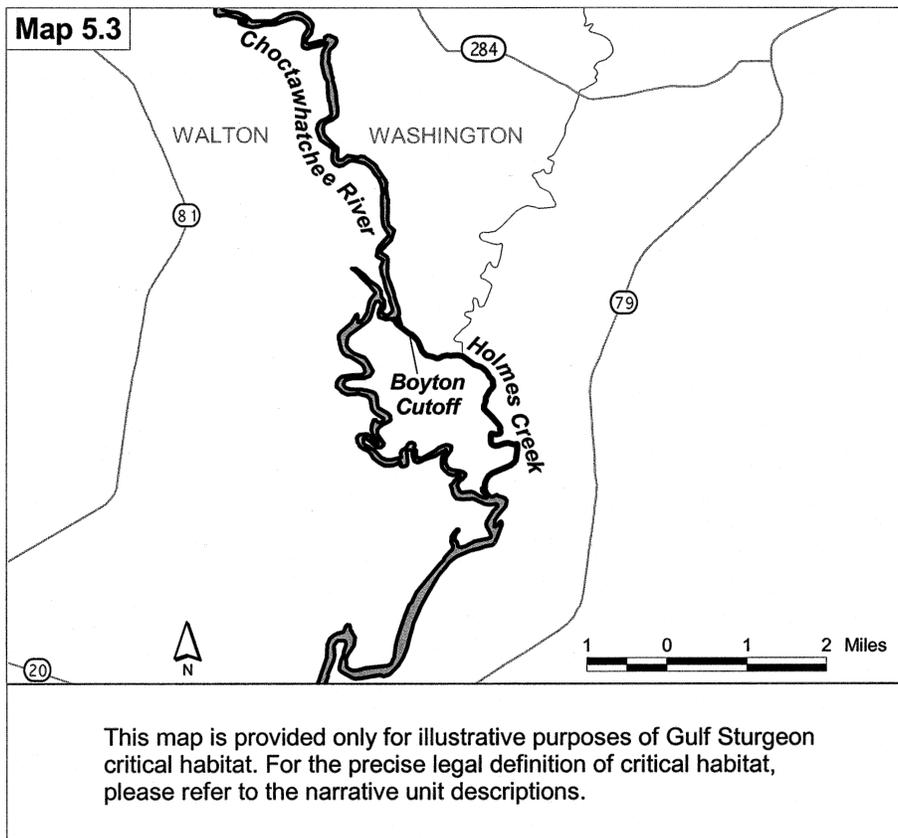
Choctawhatchee River main stem, and Holmes Creek, Washington County, Florida, are included. The section of Holmes Creek from Boynton Cutoff to the mouth of Holmes Creek, Washington County, Florida, is included. The Pea River main stem, a Choctawhatchee River tributary, from the Elba Dam, Coffee County, Alabama, to its confluence with the Choctawhatchee River, Geneva County, Alabama, is included. The lateral extent of Unit 5 is the ordinary high water line on each bank of the associated rivers and shorelines.

(2) Maps of Unit 5 follow:







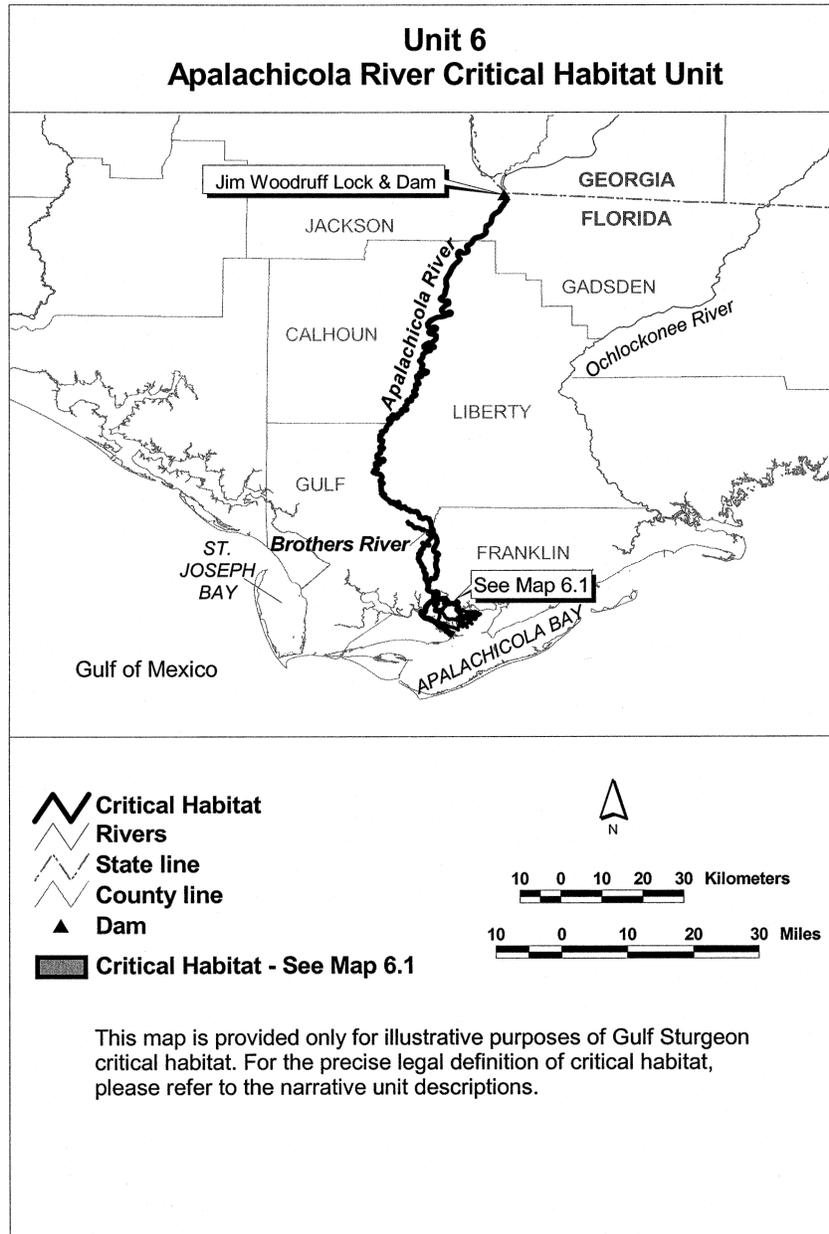


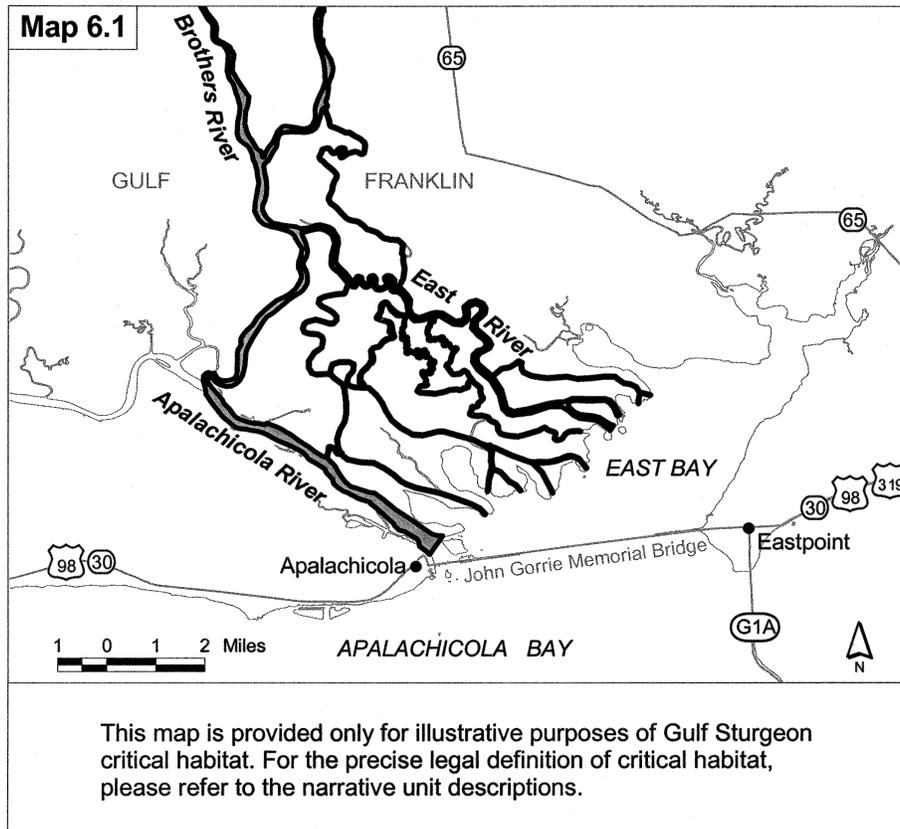
(f) *Unit 6: Apalachicola River System in Franklin, Gulf, Liberty, Calhoun, Jackson, and Gadsden Counties, Florida.*

(1) Unit 6 includes the Apalachicola River mainstem, beginning from the Jim Woodruff Lock and Dam, Gadsden and Jackson Counties, Florida, downstream to its discharge at East Bay or Apalachicola Bay, Franklin County, Florida. All Apalachicola River distributaries, including the East River, Little St. Marks River, St.

Marks River, Franklin County, Florida, to their discharge into East Bay and/or Apalachicola Bay are included. The entire main stem of the Brothers River, Franklin and Gulf Counties, Florida, a tributary of the Apalachicola River, is included. The lateral extent of Unit 6 is the ordinary high water line on each bank of the associated rivers and shorelines.

(2) Maps of Unit 6 follow:



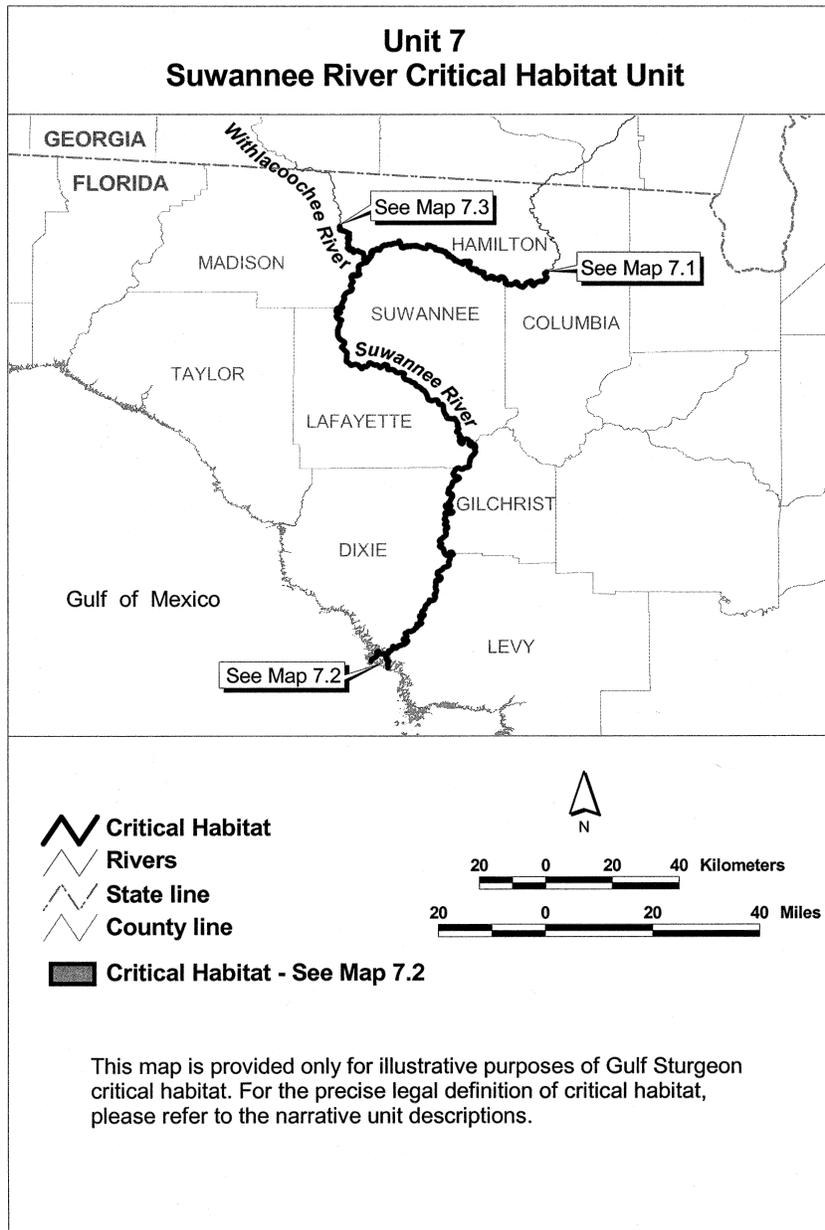


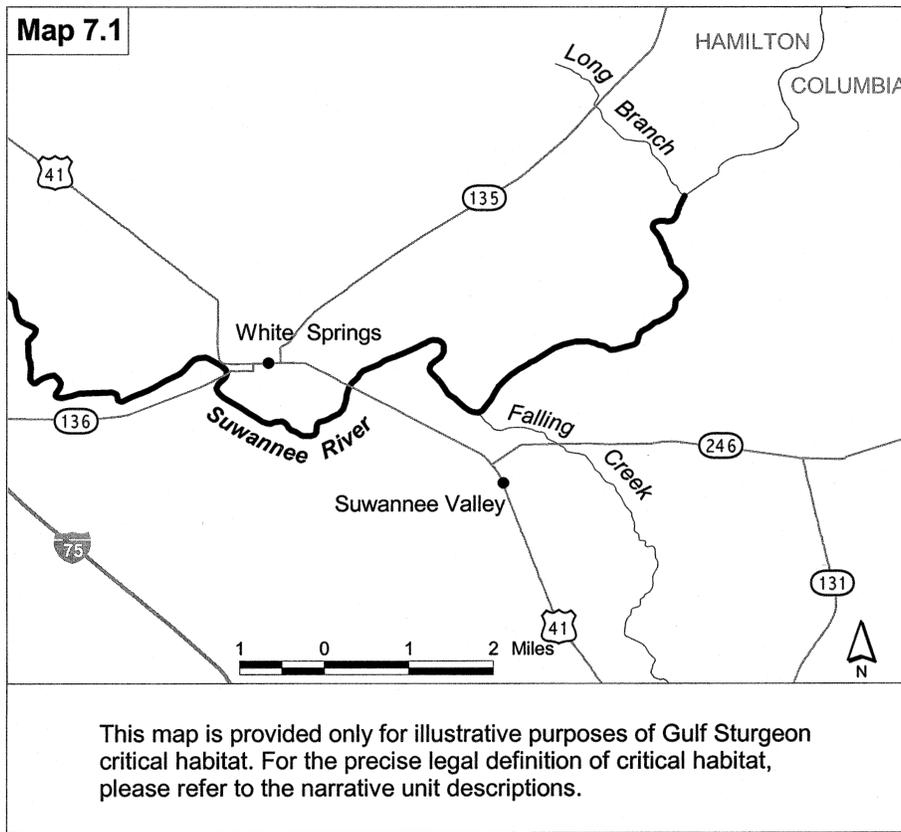
(g) *Unit 7: Suwannee River System in Hamilton, Suwannee, Madison, Lafayette, Gilchrist, Levy, Dixie, and Columbia Counties, Florida.*

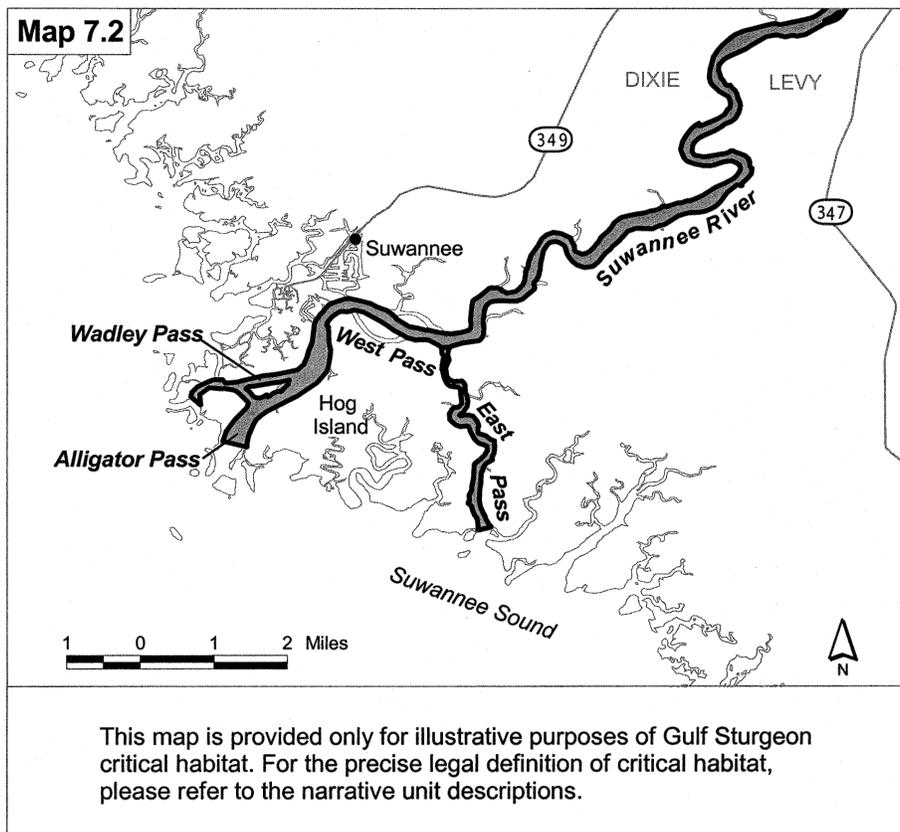
(1) Unit 7 includes the Suwannee River main stem, beginning from its confluence with Long Branch Creek, Hamilton County, Florida, downstream to the mouth of the Suwannee River. It includes all the Suwannee River distributaries, including the East Pass, West Pass, Wadley Pass, and Alligator

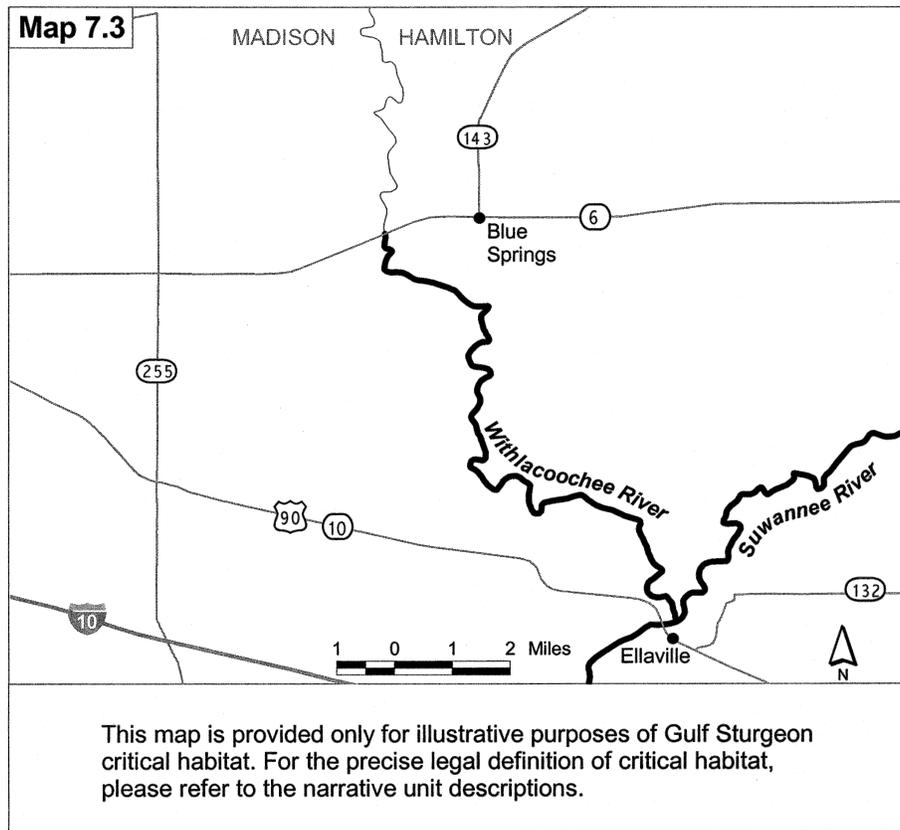
Pass, Dixie and Levy Counties, Florida, to their discharge into the Suwannee Sound or the Gulf of Mexico. The Withlacoochee River main stem from Florida State Road 6, Madison and Hamilton Counties, Florida, to its confluence with the Suwannee River is included. The lateral extent of Unit 7 is the ordinary high water line on each bank of the associated rivers and shorelines.

(2) Maps of Unit 7 follow:









(h) *Unit 8: Lake Pontchartrain, Lake St. Catherine, The Rigolets, Little Lake, Lake Borgne, and Mississippi Sound in Jefferson, Orleans, St. Tammany, and St. Bernard Parish, Louisiana, Hancock, Jackson, and Harrison Counties in Mississippi, and in Mobile County, Alabama.*

(1) Unit 8 encompasses Lake Pontchartrain east of the Lake Pontchartrain Causeway, all of Little Lake, The Rigolets, Lake St. Catherine, Lake Borgne, including Heron Bay, and the Mississippi Sound. Critical habitat follows the shorelines around the perimeters of each included lake. The Mississippi Sound includes adjacent open bays including Pascagoula Bay, Point aux Chenes Bay, Grand Bay, Sandy Bay, and barrier island passes, including Ship Island Pass, Dog Keys Pass, Horn Island Pass, and Petit Bois Pass.

The northern boundary of the Mississippi Sound is the shorelines of the mainland between Heron Bay Point, MS and Point aux Pins, AL. Designated critical habitat excludes St. Louis Bay, north of the railroad bridge across its mouth; Biloxi Bay, north of the U.S. Highway 90 bridge; and Back Bay of Biloxi. The southern boundary follows along the broken shoreline of Lake Borgne created by low swampy islands from Malheureux Point to Isle au Pitre. From the northeast point of Isle au Pitre, the boundary continues in a straight north-northeast line to the point 1 nm (1.9 km) seaward of the western most extremity of Cat Island (30°13'N, 89°10'W). The southern boundary continues 1 nm (1.9 km) offshore of the barrier islands and offshore of the 72 COLREGS lines at barrier island

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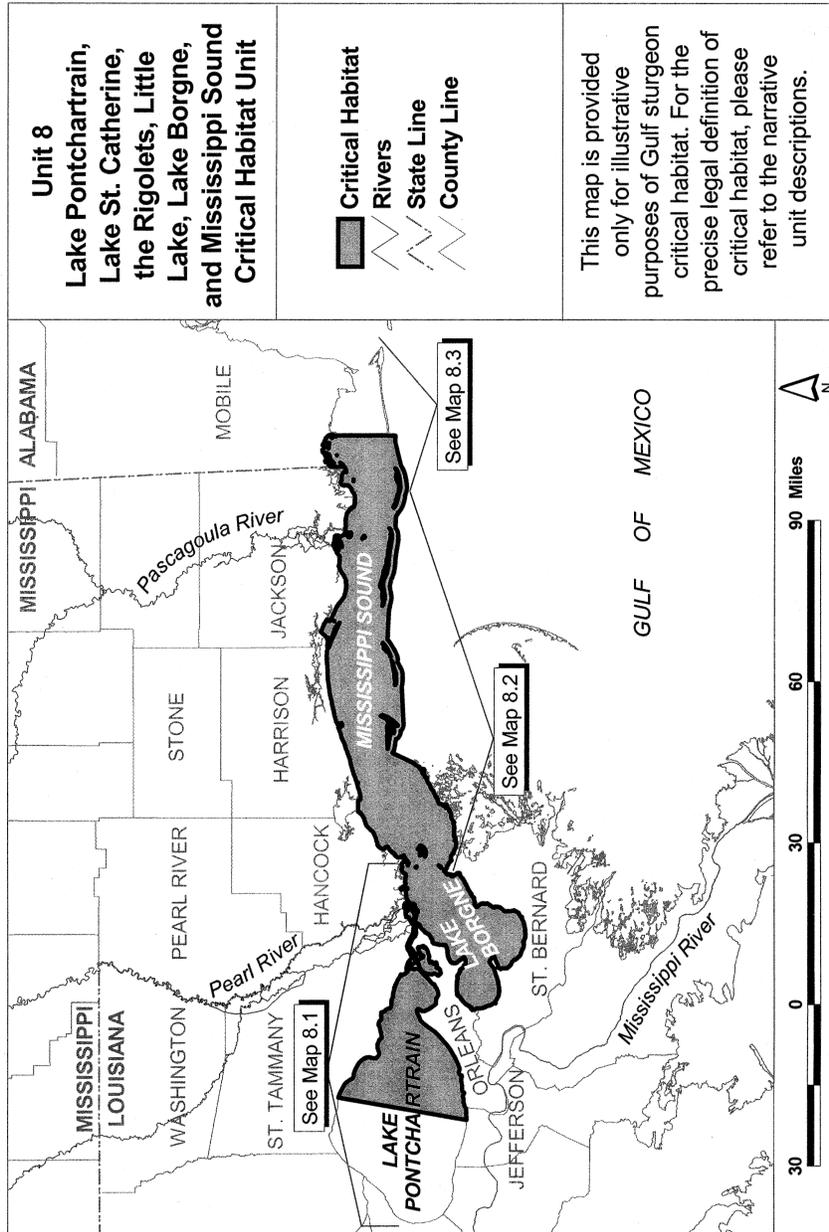
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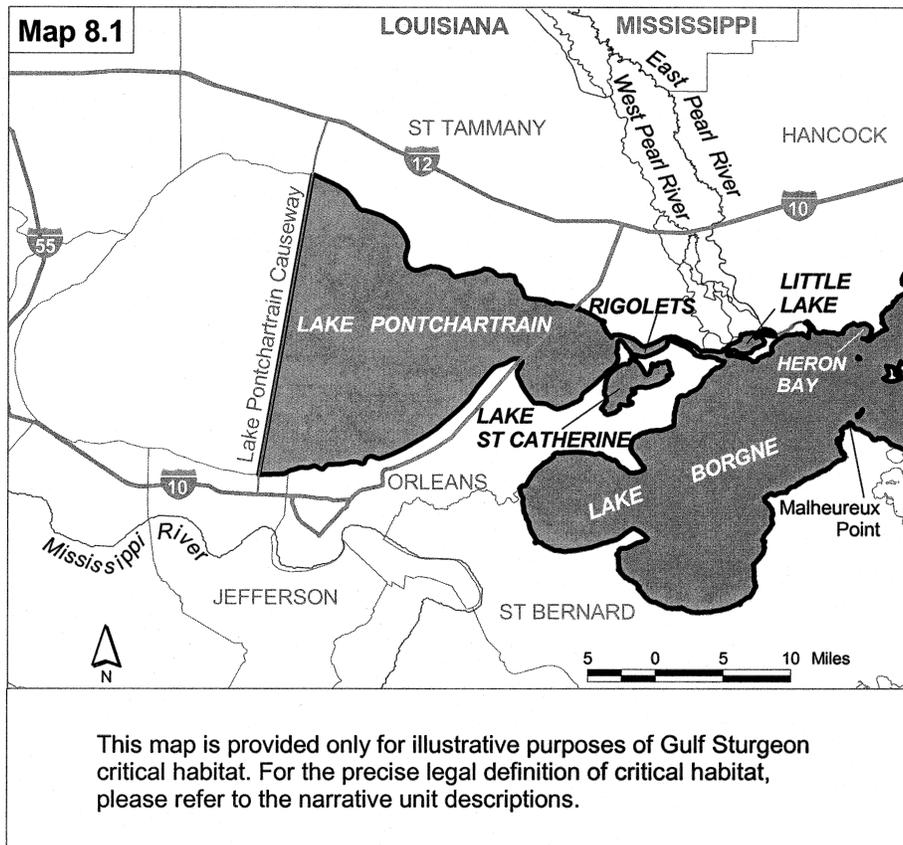
passes (defined at 33 CFR 80.815 (c)), (d) and (e) to the eastern boundary. Between Cat Island and Ship Island there is no 72 COLREGS line. We therefore, have defined that section of the southern boundary as 1 nm (1.9 km) offshore of a straight line drawn from the southern tip of Cat Island to the western tip of Ship Island. The eastern boundary is the line of longitude 88°18.8"W from its intersection with the shore (Point aux Pins) to its intersec-

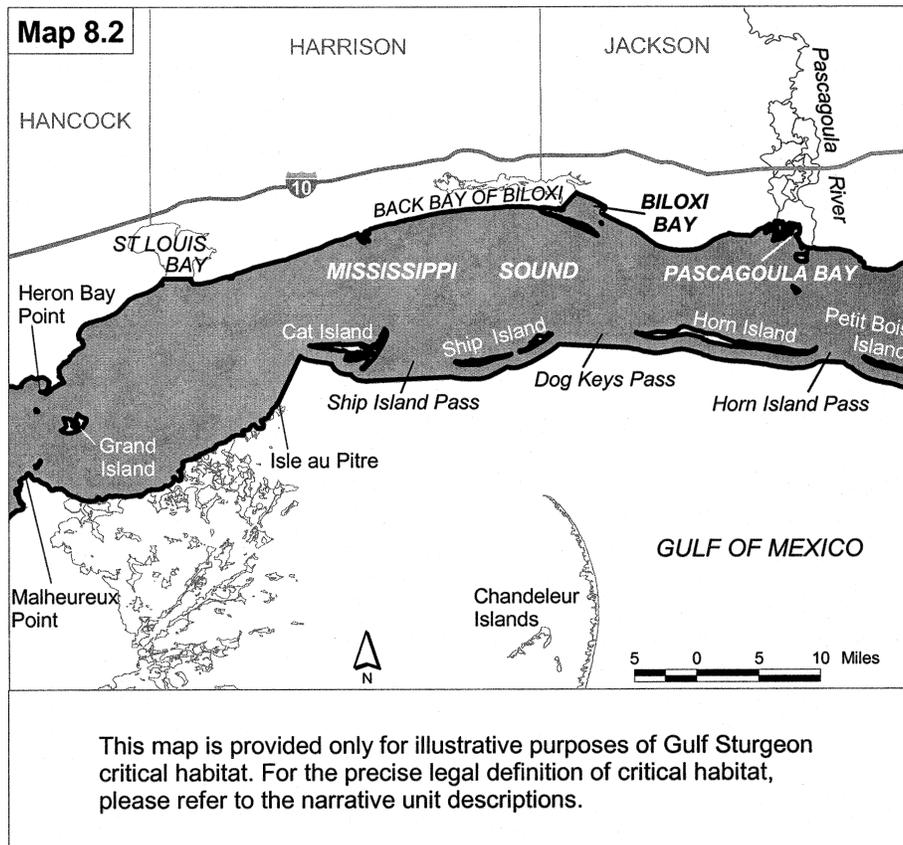
tion with the southern boundary. The lateral extent of Unit 8 is the MHW line on each shoreline of the included water bodies or the entrance to rivers, bayous, and creeks.

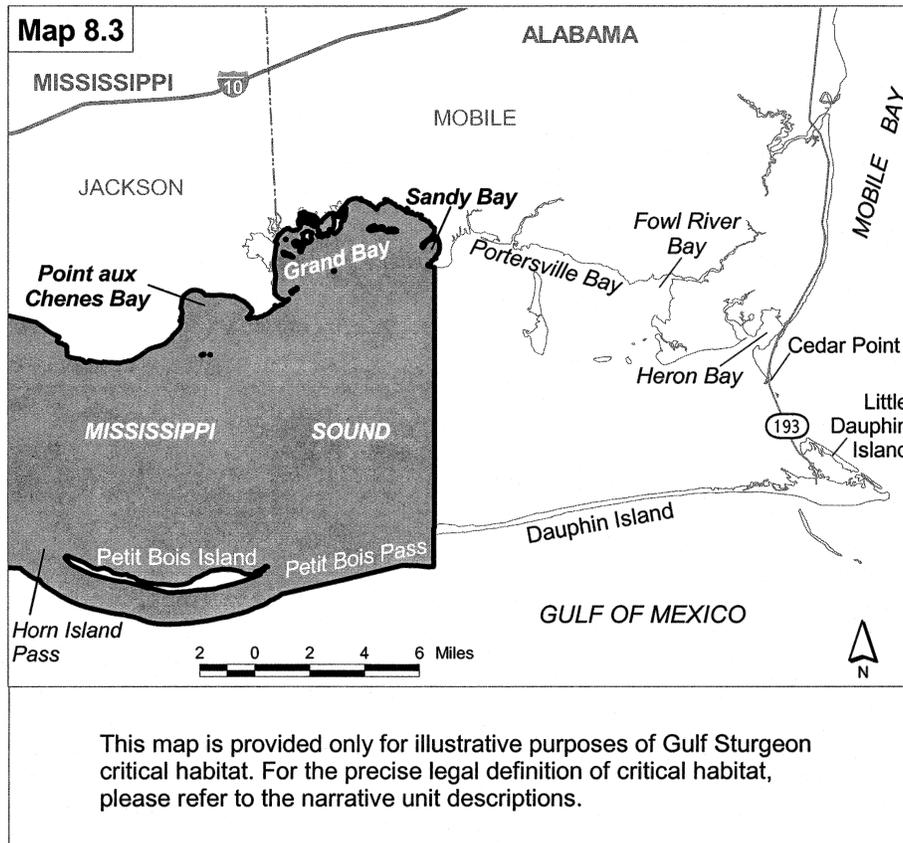
(2) Major shipping channels in this unit, as identified on standard navigation charts and marked by buoys, are excluded under section 4(b)(2) of the Act.

(3) Maps of Unit 8 follow:









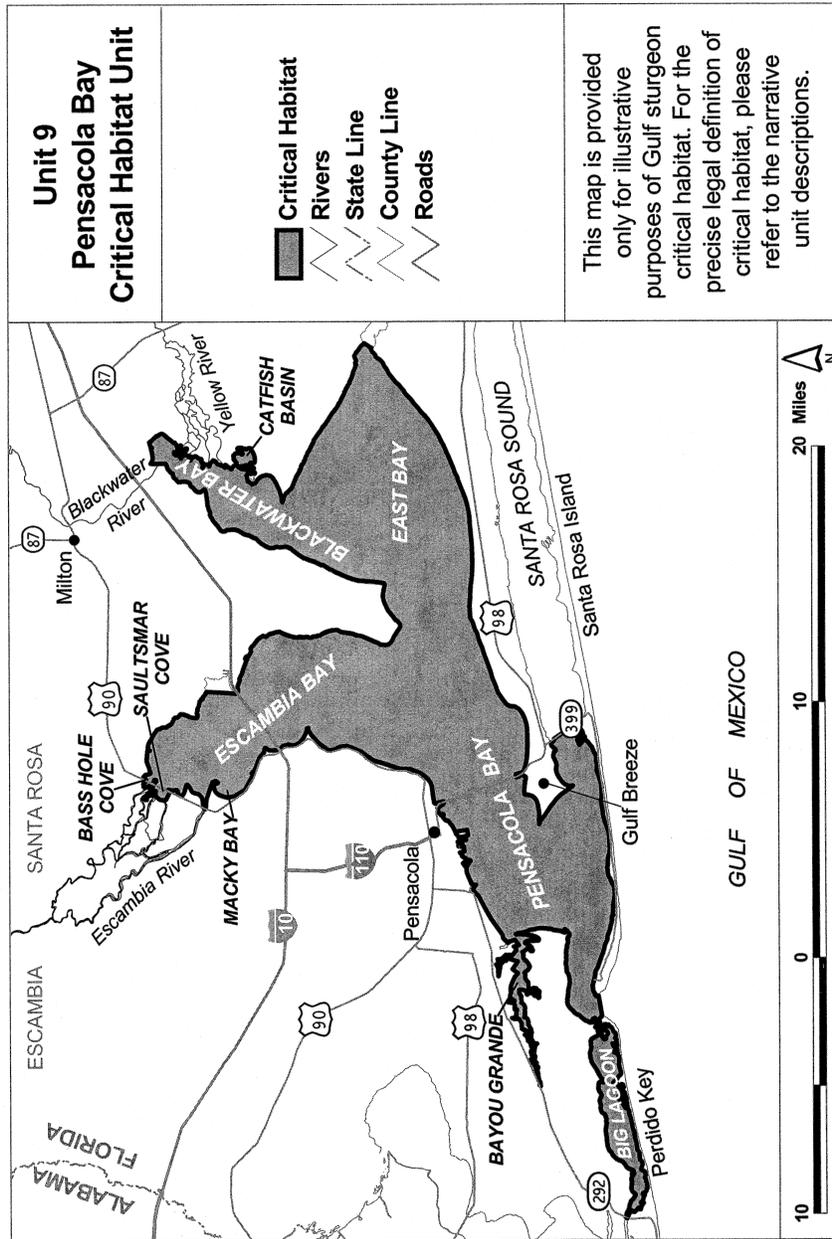
(i) *Unit 9: Pensacola Bay System in Escambia and Santa Rosa Counties, Florida.*

(1) Unit 9 includes Pensacola Bay and its adjacent main bays and coves. These include Big Lagoon, Escambia Bay, East Bay, Blackwater Bay, Bayou Grande, Macky Bay, Saultsmar Cove, Bass Hole Cove, and Catfish Basin. All other bays, bayous, creeks, and rivers are excluded at their mouths. The western boundary is the Florida State Highway 292 Bridge crossing Big Lagoon to Perdido Key. The southern

boundary is the 72 COLREGS line between Perdido Key and Santa Rosa Island (defined at 33 CFR 80.810(g)). The eastern boundary is the Florida State Highway 399 Bridge at Gulf Breeze, FL. The lateral extent of Unit 9 is the MHW line on each included bay's shoreline.

(2) Major shipping channels in this unit, as identified on standard navigation charts and marked by buoys, are excluded under section 4(b)(2) of the Act.

(3) A Map of Unit 9 follows:



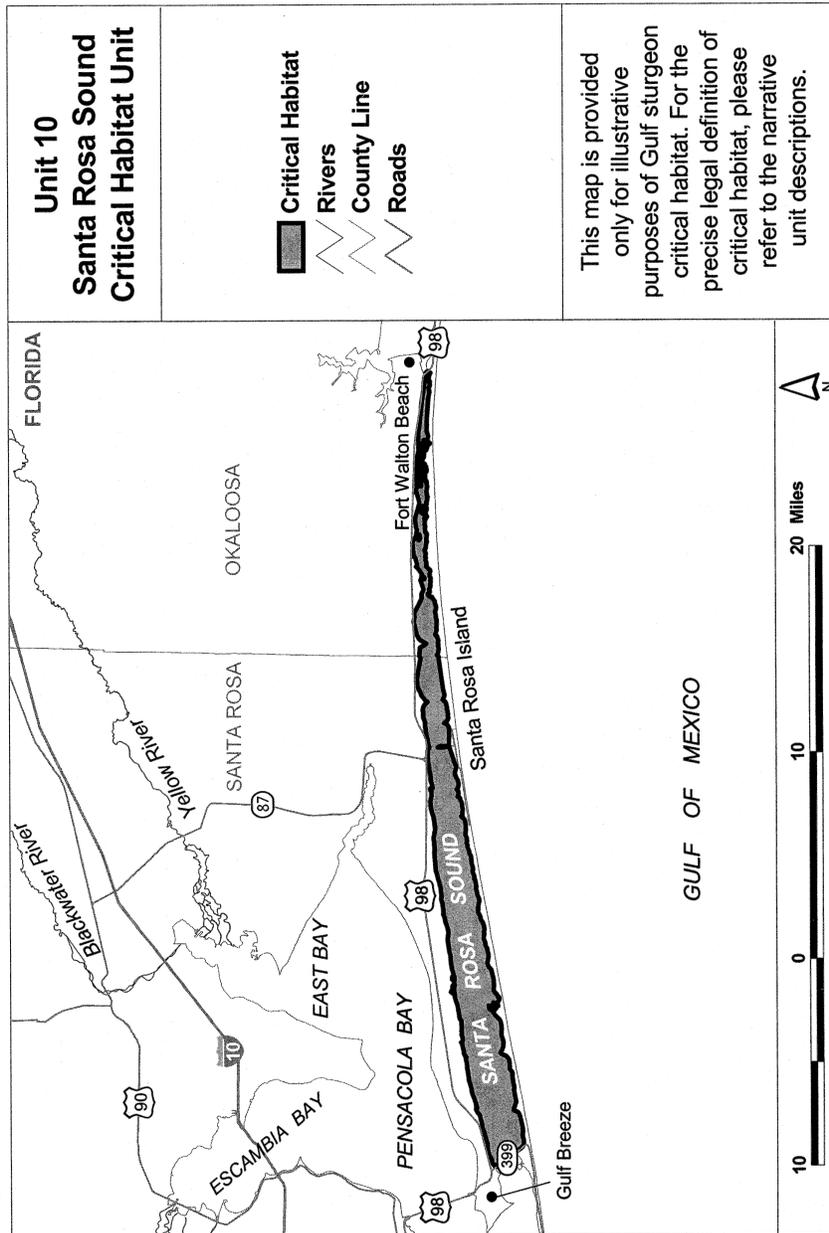
(j) Unit 10: Santa Rosa Sound in Escambia, Santa Rosa, and Okaloosa Counties, Florida.

(1) Unit 10 includes the Santa Rosa Sound, bounded on the west by the Florida State Highway 399 bridge in Gulf Breeze, FL. The eastern boundary

is the U.S. Highway 98 bridge in Fort Walton Beach, FL. The northern and southern boundaries of Unit 10 are formed by the shorelines to the MHW

line or by the entrance to rivers, bayous, and creeks.

(2) A Map of Unit 10 follows:



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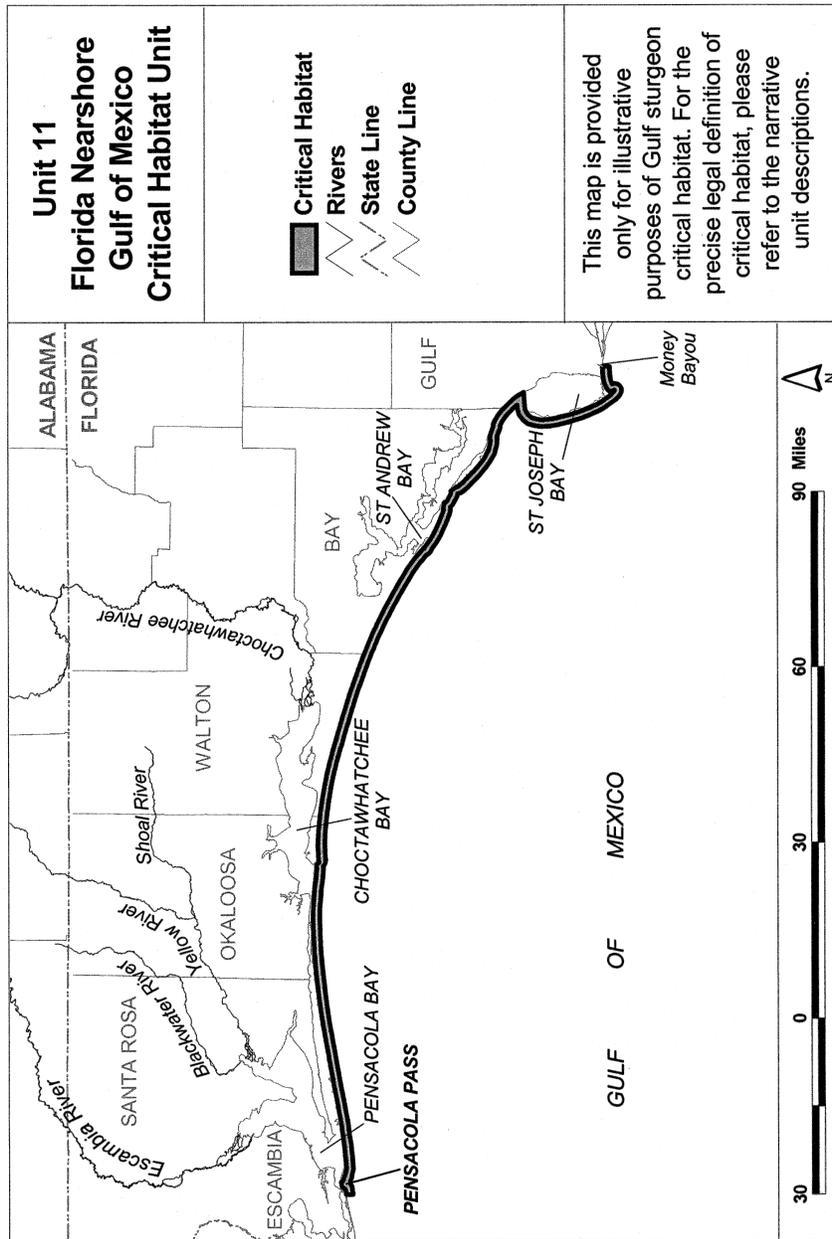
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(k) *Unit 11: Florida Nearshore Gulf of Mexico Unit in Escambia, Santa Rosa, Okaloosa, Walton, Bay, and Gulf Counties, Florida.*

(1) Unit 11 includes a portion of the Gulf of Mexico as defined by the following boundaries. The western boundary is the line of longitude 87°20.0'W (approximately 1 nm (1.9 km) west of Pensacola Pass) from its intersection with the shore to its intersection with the southern boundary. The northern

boundary is the MHW of the mainland shoreline and the 72 COLREGS lines at passes as defined at 30 CFR 80.810 (a–g). The southern boundary is 1 nm (1.9 km) offshore of the northern boundary. The eastern boundary is the line of longitude 85°17.0'W from its intersection with the shore (near Money Bayou between Cape San Blas and Indian Peninsula) to its intersection with the southern boundary.

(2) A Map of Unit 11 follows:

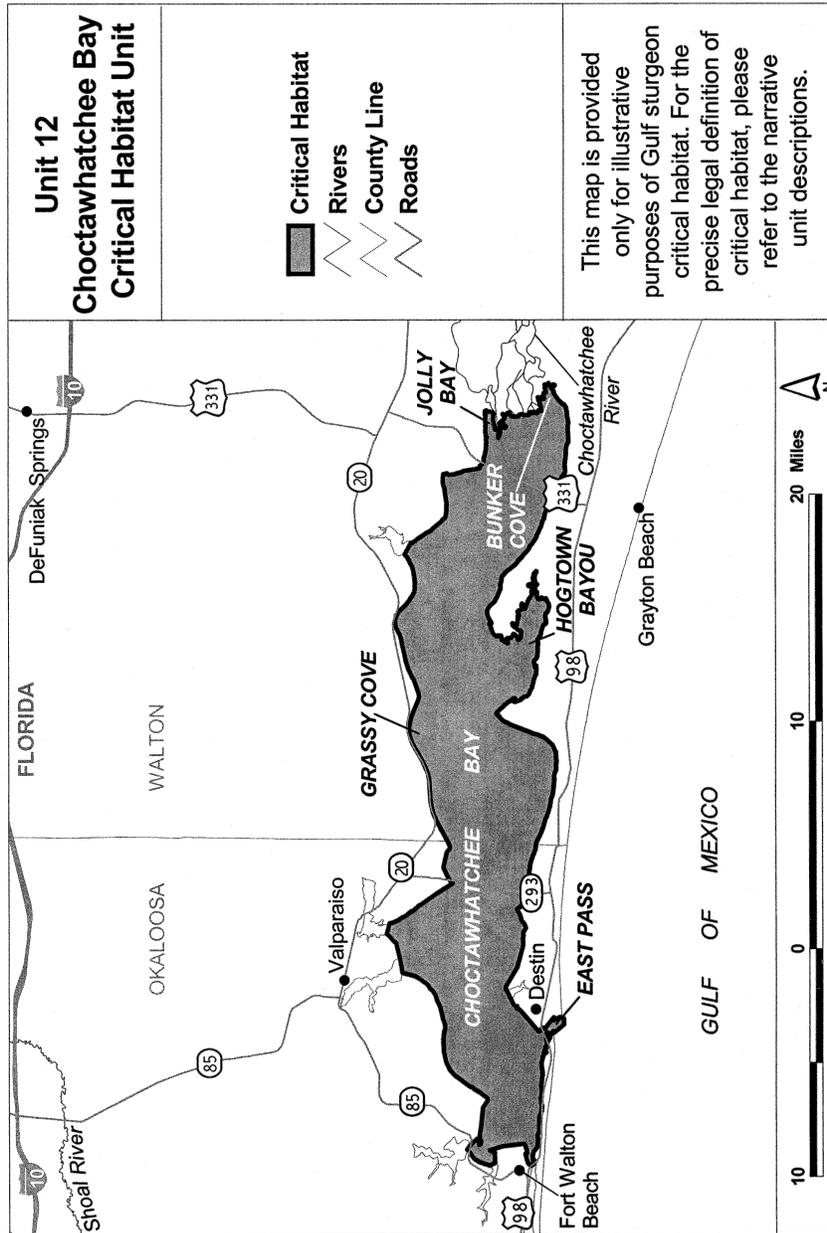


(1) Unit 12: Choctawhatchee Bay in Okaloosa and Walton Counties, Florida.
 (1) Unit 12 includes the main body of Choctawhatchee Bay, Hogtown Bayou,

Jolly Bay, Bunker Cove, and Grassy Cove. All other bayous, creeks, rivers are excluded at their mouths/entrances. The western boundary is the

U.S. Highway 98 bridge at Fort Walton Beach, FL. The southern boundary is the 72 COLREGS line across East (Destin) Pass as defined at 33 CFR

80.810(f). The lateral extent of Unit 12 is the MHW line on each shoreline of the included water bodies.
 (2) A Map of Unit 12 follows:



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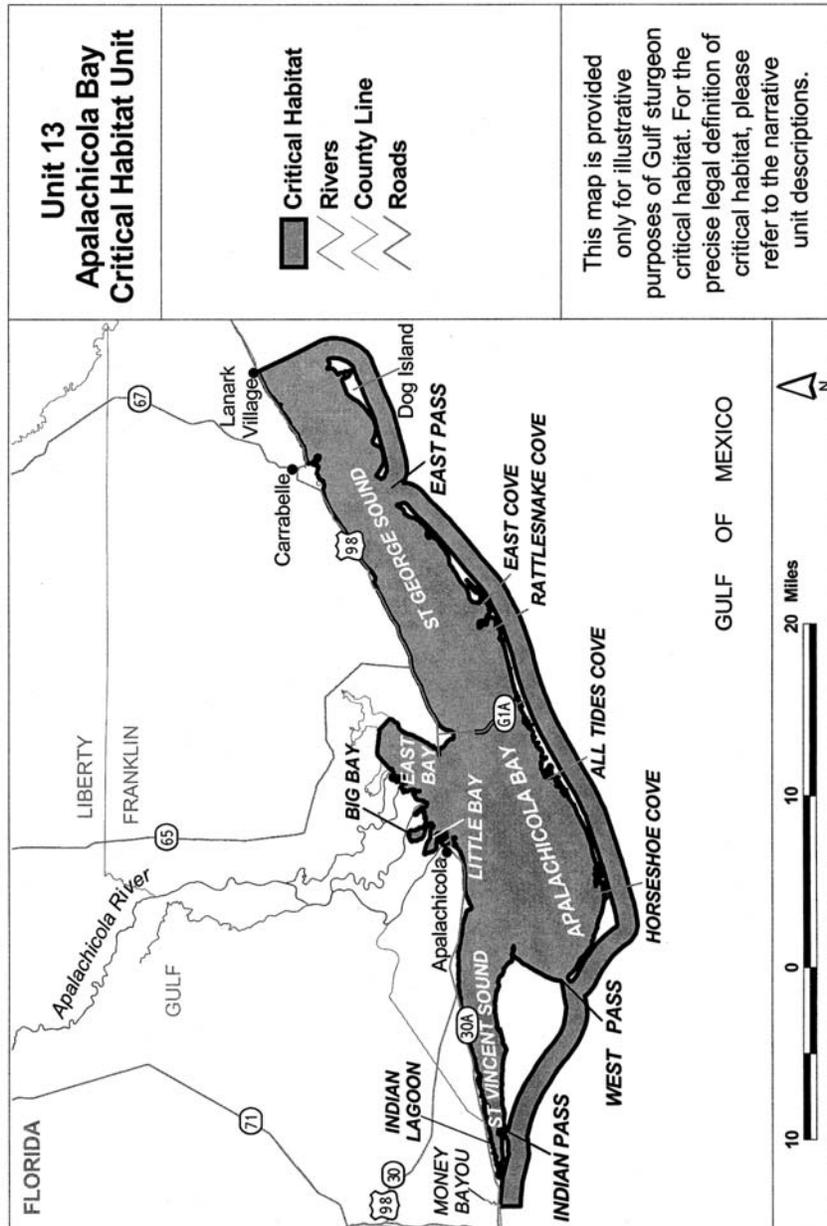
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(m) *Unit 13: Apalachicola Bay in Gulf and Franklin County, Florida.*

(1) Unit 13 includes the main body of Apalachicola Bay and its adjacent sounds, bays, and the nearshore waters of the Gulf of Mexico. These consist of St. Vincent Sound, including Indian Lagoon; Apalachicola Bay including Horseshoe Cove and All Tides Cove; East Bay including Little Bay and Big Bay; and St George Sound, including Rattlesnake Cove and East Cove. Barrier Island passes (Indian Pass, West Pass, and East Pass) are also included. Sike's cut is excluded from the lighted buoys on the Gulf of Mexico side to the day boards on the bay side. The southern boundary includes water extending into the Gulf of Mexico 1 nm (1.9 km) from the MHW line of the barrier is-

lands and from 72 COLREGS lines between the barrier islands (defined at 33 CFR 80.805 (e-h)). The western boundary is the line of longitude 85°17.0'W from its intersection with the shore (near Money Bayou between Cape San Blas and Indian Peninsula) to its intersection with the southern boundary. The eastern boundary is formed by a straight line drawn from the shoreline of Lanark Village at 29°53.1'N, 84°35.0'W to a point that is 1 nm (1.9 km) offshore from the northeastern extremity of Dog Island at 29°49.6'N, 84°33.2'W. The lateral extent of Unit 13 is the MHW line on each shoreline of the included water bodies or the entrance of excluded rivers, bayous, and creeks.

(2) A Map of Unit 13 follows:



(n) Unit 14: Suwannee Sound in Dixie and Levy Counties, Florida.
 (l) Unit 14 includes Suwannee Sound and a portion of adjacent Gulf of Mex-

ico waters extending 9 nm from shore (16.7 km) out to the State territorial water boundary. Its northern boundary is formed by a straight line from the

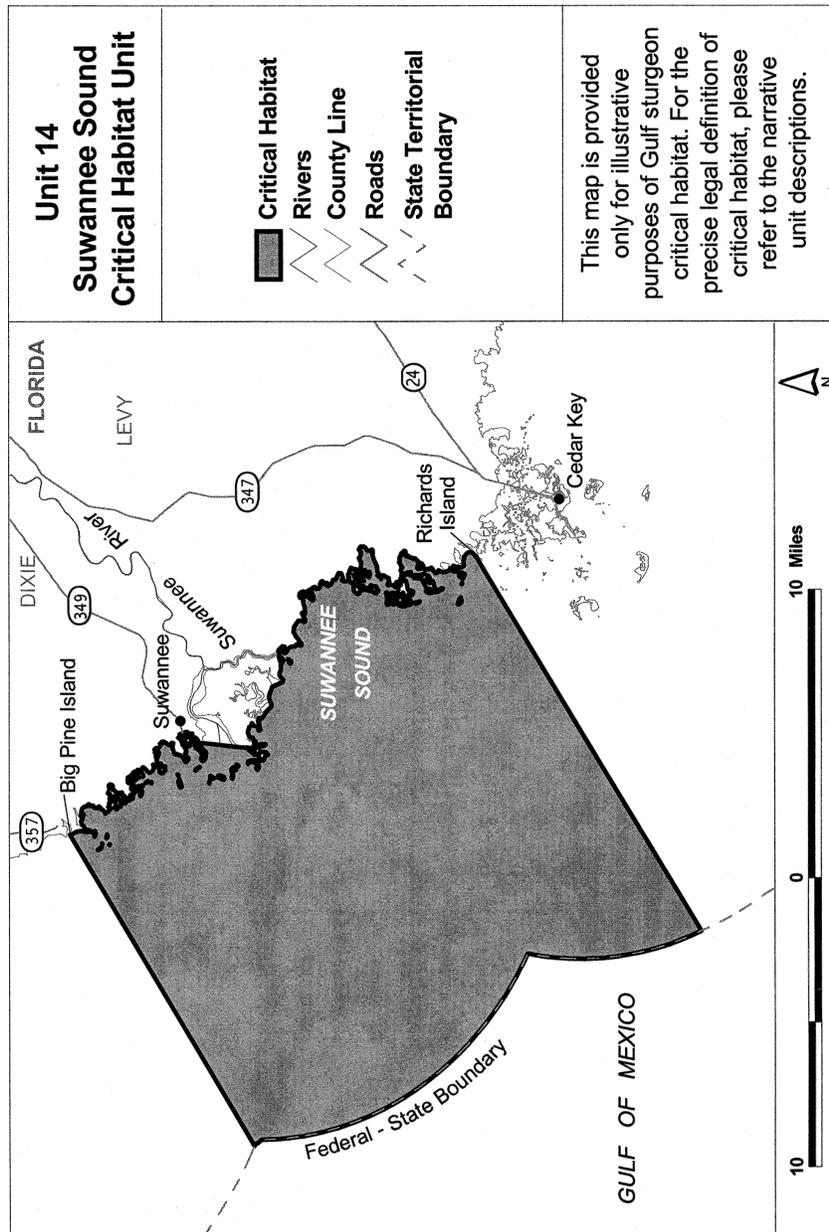
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northern tip of Big Pine Island (at approximately 29°23'N, 83°12'W) to the Federal-State boundary at 29°17'N, 83°21'W. The southern boundary is formed by a straight line from the southern tip of Richards Island (at approximately 83°04'W, 29°11'N) to the Federal-State boundary at 83°15'W,

29°04'N. The lateral extent of Unit 14 is the MHW line along the shorelines and the mouths of the Suwannee River (East and West Pass), its distributaries, and other rivers, creeks, or water bodies.

(2) A Map of Unit 14 follows:



[68 FR 13454, Mar. 19, 2003]

National Marine Fisheries Service/NOAA, Commerce

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§ 226.215 **Critical habitat for the North Pacific Right Whale** (*Eubalaena japonica*).

(a) *Primary Constituent Elements.* The primary constituent elements of the North Pacific right whale are the copepods *Calanus marshallae*, *Neocalanus cristatus*, and *N. plumchris*, and the euphausiid *Thysanoessa raschii*, in areas of the North Pacific Ocean in which North Pacific right whales are known or believed to feed, as described in paragraphs (b) and (c) of this section.

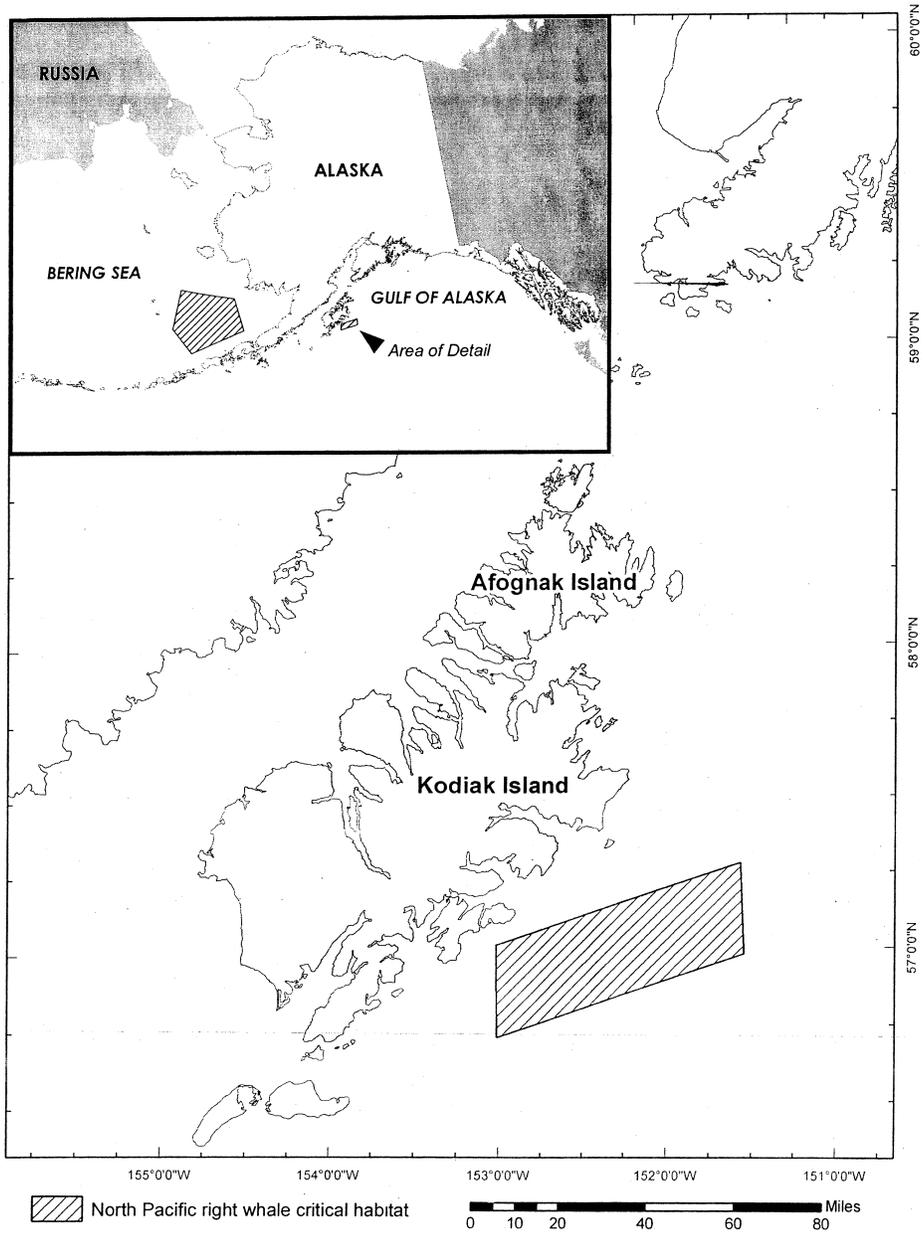
(b) *Bering Sea.* An area described by a series of straight lines connecting the following coordinates in the order listed:

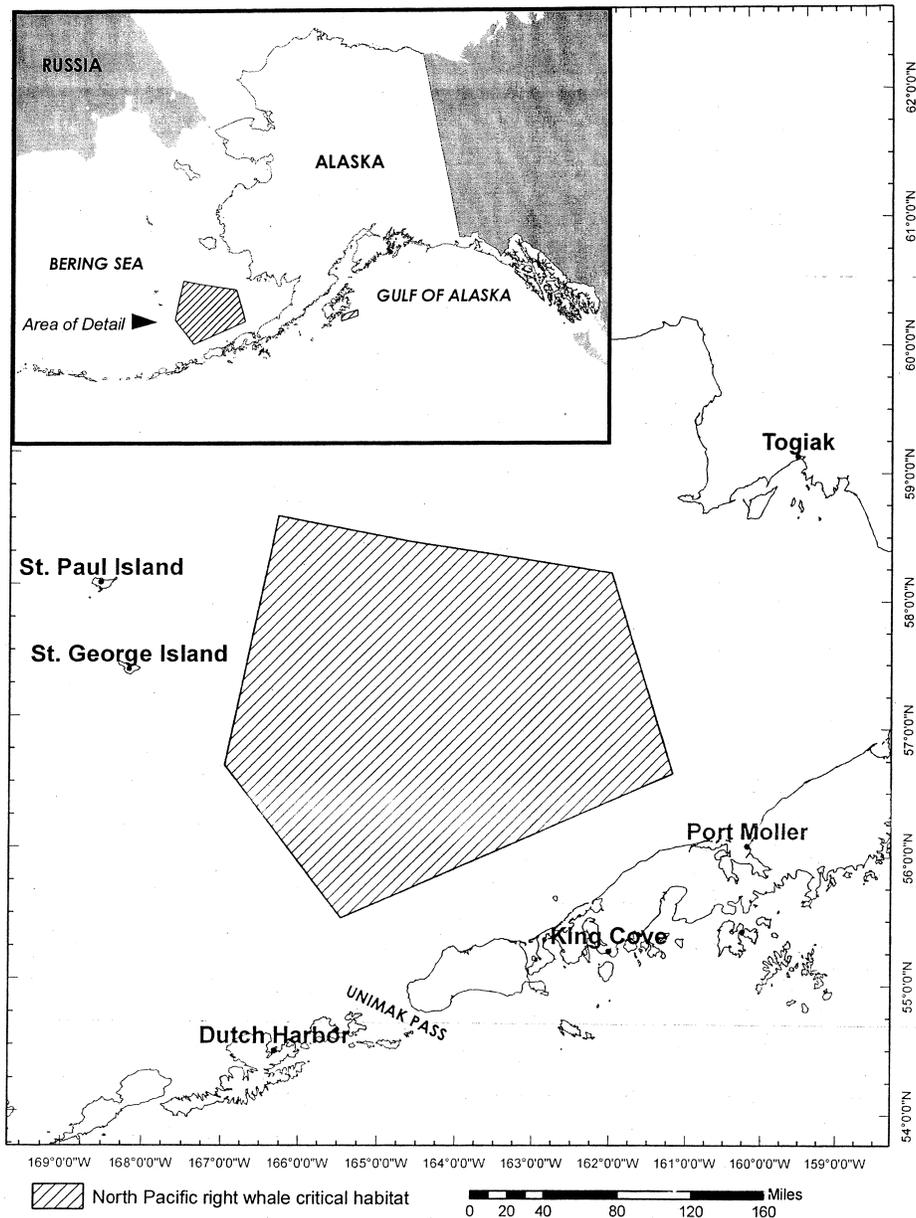
58° 00' N/168° 00' W
58° 00' N/163° 00' W
56° 30' N/161° 45' W
55° 00' N/166° 00' W
56° 00' N/168° 00' W
58 °00' N/168° 00' W.

(c) Gulf of Alaska. An area described by a series of straight lines connecting the following coordinates in the order listed:

57° 03' N/153° 00' W
57° 18' N/151° 30' W
57° 00' N/ 151° 30' W
56° 45' N/153° 00' W
57° 03' N/153° 00' W.

(d) Maps of critical habitat for the North Pacific right whale follow:





[73 FR 19011, Apr. 8, 2008]

TABLE 1 TO PART 226—MAJOR STELLAR SEA LION ROOKERY SITES

Major Steller sea lion rookery sites are identified in the following table. Where two sets of coordinates are given, the baseline extends in a clockwise direction from the

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first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

State/region/site	Boundaries to—			
	Latitude	Longitude	Latitude	Longitude
Alaska:				
Western Aleutians:				
Agattu I.:				
Cape Sabak ¹ ..	52 23.5N	173 43.5E	52 22.0N	173 41.0E
Gillon Point ¹ ...	52 24.0N	173 21.5E		
Attu I. ¹	52 54.5N	172 28.5E	52 57.5N	172 31.5E
Buldir I. ¹	52 20.5N	175 57.0E	52 23.5N	172 51.0E
Central Aleutians:				
Adak I. ¹	51 36.5N	176 59.0W	51 38.0N	176 59.5W
Agligadak I. ¹	52 06.5N	172 54.0W		
Amchitka I.: ¹				
Column Rock ¹	51 32.5N	178 49.5E		
East Cape ¹	51 22.5N	179 28.0E	51 21.5N	179 25.0E
Ayugadak I. ¹	51 45.5N	178 24.5E		
Gramp Rock ¹	51 29.0N	178 20.5W		
Kasatochi I. ¹	52 10.0N	175 31.5W	52 10.5N	175 29.0W
Kiska I.:				
Lief Cove ¹	51 57.5N	177 21.0E	51 56.5N	177 20.0E
Cape St. Stephen ¹	51 52.5N	177 13.0E	51 53.5N	177 12.0E
Seguam I./Saddleridge ¹	52 21.0N	172 35.0W	52 21.0N	172 33.0W
Semisopchnoi I.:				
Pochnoi Pt ¹	51 58.5N	179 45.5E	51 57.0N	179 46.0E
Petrel Pt ¹	52 01.5N	179 37.5E	52 01.5E	179 39.0E
Tag I. ¹	51 33.5N	178 34.5W		
Ulak I. ¹	51 20.0N	178 57.0W	51 18.5N	178 59.5W
Yunaska I. ¹	52 42.0N	170 38.5W	52 41.0N	170 34.5W
Eastern Aleutian:				
Adugak I. ¹	52 55.0N	169 10.5W		
Akun I./Billings Head ¹ ...	54 18.0N	165 32.5W	54 18.0N	165 31.5W
Akutan I./Cape Morgan ¹	54 03.5N	166 00.0W	54 05.5N	166 05.0W
Bogoslof I. ^{1,2}	53 56.0N	168 02.0W		
Ogchul I. ¹	53 00.0N	168 24.0W		
Sea Lion Rocks (Amak) ¹	55 28.0N	163 12.0W		
Ugamak I. ¹	54 14.0N	164 48.0W	54 13.0N	164 48.0W
Bering Sea:				
Walrus I. ¹	57 11.0N	169 56.0W		
Western Gulf of Alaska:				
Atkins I. ¹	55 03.5N	159 18.5W		
Chernabura I. ¹	54 47.5N	159 31.0W	54 45.5N	159 33.5W
Clubbing Rocks (N) ¹	54 43.0N	162 26.5W		
Clubbing Rocks (S) ¹	54 42.0N	162 26.5W		
Pinnacle Rock ¹	54 46.0N	161 46.0W		
Central Gulf of Alaska:				
Chirikof I. ¹	55 46.5N	155 39.5W	55 46.5N	155 43.0W
Chowiet I. ¹	56 00.5N	156 41.5W	56 00.5N	156 42.0W
Marmot I. ¹	58 14.5N	151 47.5W	58 10.0N	151 51.0W
Outer I. ¹	59 20.5N	150 23.0W	59 21.0N	150 24.5W
Sugarloaf I. ¹	58 53.0N	152 02.0W		
Eastern Gulf of Alaska:				
Seal Rocks ¹	60 10.0N	146 50.0W		
Fish I. ¹	59 53.0N	147 20.5W		
Southeast Alaska:				
Forrester I.	54 51.0N	133 32.0W	54 52.5N	133 35.5W
Hazy I.	55 52.0N	134 34.0W	55 51.5N	134 35.0W
White Sisters	57 38.0N	136 15.5W		
Oregon:				
Rogue Reef: Pyramid Rock	42 26.4N	124 28.1W		
Orford Reef:				
Long Brown Rock	42 47.3N	124 36.2W		
Seal Rock	42 47.1N	124 35.4W		
California:				
Ano Nuevo I.	37 06.3N	122 20.3W		
Southeast Farallon I.	37 41.3N	123 00.1W		
Sugarloaf I. & Cape Mendocino ..	40 26.0N	124 24.0W		

¹ Includes an associated 20 NM aquatic zone.

² Associated 20 NM aquatic zone lies entirely within one of the three special foraging areas.

[58 FR 45278, Aug. 27, 1993]

TABLE 2 TO PART 226—MAJOR STELLAR SEA LION HAULOUT SITES IN ALASKA

Major Steller sea lion haulout sites in Alaska are identified in the following table. Where two sets of coordinates are given, the baseline extends in a clockwise direction from the first set of geographic coordinates

along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the basepoint.

State/region/site	Boundaries to—			
	Latitude	Longitude	Latitude	Longitude
Alaska:				
Western Aleutians:				
Alaid I. 1	52 45.0N	173 56.5E	52 46.5N	173 51.5E
Attu/Chirikof Pt. 1	52 30.0N	173 26.7E		
Shemya I. 1	52 44.0N	174 09.0E		
Central Aleutians:				
Amatignak I. 1	51 13.0N	179 08.0E		
Amlia I:				
East 1	52 05.0N	172 58.5W	52 06.0N	172 57.0W
Sviech. Harbor 1	52 02.0N	173 23.0W		
Amukta I. & Rocks 1	52 31.5N	171 16.5W	52 26.5N	171 16.5W
Anagaksik I. 1	51 51.0N	175 53.5W		
Atka I. 1	52 23.5N	174 17.0W	52 24.5N	174 07.5W
Bobrof I. 1	51 54.0N	177 27.0W		
Chagulak I. 1	52 34.0N	171 10.5W		
Chuginadak I. 1	52 46.5N	169 44.5W	52 46.5N	169 42.0W
Great Sitkin I. 1	52 06.0N	176 10.5W	52 07.0N	176 08.5W
Kagamil I. 1	53 02.5N	169 41.0W		
Kanaga I:				
North Cape 1	51 56.5N	177 09.0W		
Ship Rock 1	51 47.0N	177 22.5W		
Kavalga I. 1	51 34.5N	178 51.5W	51 34.5N	178 49.5W
Kiska I./Sirius Pt. 1	52 08.5N	177 36.5E		
Kiska I./Sobaka & Vega 1	51 50.0N	177 20.0E	51 48.5N	177 20.5E
Little Sitkin I. 1	51 59.5N	178 30.0E		
Little Tanaga I. 1	51 50.5N	176 13.0W	51 49.0N	176 13.0W
Sagigik I. 1	52 00.5N	173 08.0W		
Sequam I:				
South 1	52 19.5N	172 18.0W	52 15.0N	172 37.0W
Finch Pt. 1	52 23.5N	172 25.5W	52 23.5N	172 24.0W
Segula I. 1	52 00.0N	178 06.5E	52 03.5N	178 09.0E
Tanaga I. 1	51 55.0N	177 58.5W	51 55.0N	177 57.0W
Tanadak I. (Amlia) 1	52 04.5N	172 57.0W		
Tanadak I. (Kiska) 1	51 57.0N	177 47.0E		
Ugidak I. 1	51 35.0N	178 30.5W		
Uliaga I. 1	53 04.0N	169 47.0W	53 05.0N	169 46.0W
Unalga & Dinkum Rocks 1	51 34.0N	179 04.0W	51 34.5N	179 03.0W
Eastern Aleutians:				
Akutan I./Reef-Lava 1	54 10.5N	166 04.5W	54 07.5N	166 06.5W
Amak I. 1	55 24.0N	163 07.0W	55 26.0N	163 10.0W
Cape Sedanka & Island 1	53 50.5N	166 05.0W		
Emerald I. 1	53 17.5N	167 51.5W		
Old Man Rocks 1	53 52.0N	166 05.0W		
Polivnoi Rock 1	53 16.0N	167 58.0W		
Tanginak I. 1	54 13.0N	165 19.5W		
Tigalda I. 1	54 08.5N	164 58.5W		
Umnak I./Cape Aslik 1	53 25.0N	168 24.5W		
Bering Sea:				
Cape Newenham 1	58 39.0N	162 10.5W		
Hall I. 1	60 37.0N	173 00.0W		
Round I. 1	58 36.0N	159 58.0W		
St. Paul I:				
Northeast Point 1	57 15.0N	170 06.5W		
Sea Lion Rock 1	57 06.0N	170 17.5W		
St. George I:				
S Rookery 1	56 33.5N	169 40.0W		

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State/region/site	Boundaries to—			
	Latitude	Longitude	Latitude	Longitude
Dalnoi Point ¹ ..	56 36.0N	169 46.0W.		
St. Lawrence I:				
S Punuk I. ¹	64 04.0N	168 51.0W.		
SW Cape ¹	63 18.0N	171 26.0W.		
Western Gulf of Alaska:				
Bird I. ¹	54 40.5N	163 18.0W.		
Castle Rock ¹	55 17.0N	159 30.0W.		
Caton I. ¹	54 23.5N	162 25.5W.		
Jude I. ¹	55 16.0N	161 06.0W.		
Lighthouse Rocks ¹	55 47.5N	157 24.0W.		
Nagai I. ¹	54 52.5N	160 14.0W	54 56.0N	160 15.0W
Nagai Rocks ¹	55 50.0N	155 46.0W.		
Sea Lion Rocks (Unga) ¹	55 04.5N	160 31.0W.		
South Rock ¹	54 18.0N	162 43.5W.		
Spitz I. ¹	55 47.0N	158 54.0W.		
The Whaleback ¹	55 16.5N	160 06.0W.		
Central Gulf of Alaska:				
Cape Barnabas ¹	57 10.0N	152 55.0W	57 07.5N	152 55.0W
Cape Chiniak ¹	57 35.0N	152 09.0W	57 37.5N	152 09.0W
Cape Gull ^{1,2}	58 13.5N	154 09.5W	58 12.5N	154 10.5W
Cape Ikolik ^{1,2}	57 17.0N	154 47.5W.		
Cape Kuliak ^{1,2}	58 08.0N	154 12.5W.		
Cape Sitkinak ¹	56 32.0N	153 52.0W.		
Cape Ugat ^{1,2}	57 52.0N	153 51.0W.		
Gore Point ¹	59 12.0N	150 58.0W.		
Gull Point ¹	57 21.5N	152 36.5W	57 24.5N	152 39.0W
Latax Rocks ¹	58 42.0N	152 28.5W	58 40.5N	152 30.0W
Long I. ¹	57 45.5N	152 16.0W.		
Nagahut Rocks ¹	59 06.0N	151 46.0W.		
Puale Bay ^{1,2}	57 41.0N	155 23.0W.		
Sea Lion Rocks (Marmot) ¹	58 21.0N	151 48.5W.		
Sea Otter I. ¹	58 31.5N	152 13.0W.		
Shakun Rock ^{1,2}	58 33.0N	153 41.5W.		
Sud I. ¹	58 54.0N	152 12.5W.		
Sutwik I. ¹	56 32.0N	157 14.0W	56 32.0N	157 20.0W
Takli I. ^{1,2}	58 03.0N	154 27.5W	58 03.0N	154 30.0W
Two-headed I. ¹	56 54.5N	153 33.0W	56 53.5N	153 35.5W
Ugak I. ¹	57 23.0N	152 15.5W	57 22.0N	152 19.0W
Ushagat I. ¹	58 55.0N	152 22.0W.		
Eastern Gulf of Alaska:				
Cape Fairweather	58 47.5N	137 56.3W.		
Cape St. Elias ¹	59 48.0N	144 36.0W.		
Chiswell Islands ¹	59 36.0N	149 34.0W.		
Graves Rock	58 14.5N	136 45.5W.		
Hook Point ¹	60 20.0N	146 15.5W.		
Middleton I. ¹	59 26.5N	146 20.0W.		
Perry I. ¹	60 39.5N	147 56.0W.		
Point Eleanor ¹	60 35.0N	147 34.0W.		
Point Elrington ¹	59 56.0N	148 13.5W.		
Seal Rocks ¹	60 10.0N	146 50.0W.		
The Needle ¹	60 07.0N	147 37.0W.		
Southeast Alaska:				
Benjamin I.	58 33.5N	134 54.5W.		
Biali Rock	56 43.0N	135 20.5W.		
Biorka I.	56 50.0N	135 34.0W.		
Cape Addington	55 26.5N	133 49.5W.		
Cape Cross	57 55.0N	136 34.0W.		
Cape Ommaney	56 10.5N	134 42.5W.		
Coronation I.	55 56.0N	134 17.0W.		
Gran Point	59 08.0N	135 14.5W.		
Lull Point	57 18.5N	134 48.5W.		
Sunset I.	57 30.5N	133 35.0W.		
Timbered I.	55 42.0N	133 48.0W.		

¹ Includes an associated 20 NM aquatic zone.² Associated 20 nm aquatic zone lies entirely within one of the three special foraging areas.

[58 F.R. 45279, Aug. 27, 1993, as amended at 59 F.R. 30716, June 15, 1994]

TABLE 3 TO PART 226—HYDROLOGIC UNITS CONTAINING CRITICAL HABITAT FOR SNAKE RIVER SOCKEYE SALMON AND SNAKE RIVER SPRING/SUMMER AND FALL CHINOOK SALMON

Hydrologic unit name	Hydrologic unit number		
	Sockeye salmon	Spring/summer chinook salmon	Fall chinook salmon
Hells Canyon		17060101	17060101
Imnaha		17060102	17060102
Lower Snake—Asotin	17060103	17060103	17060103
Upper Grande Ronde		17060104	
Wallowa		17060105	
Lower Grande Ronde		17060106	17060106
Lower Snake—Tucannon	17060107	17060107	17060107
Palouse			17060108
Lower Snake	17060110	17060110	17060110
Upper Salmon	17060201	17060201	
Pahsimeroi		17060202	
Middle Salmon—Panther	17060203	17060203	
Lemhi		17060204	
Upper Middle Fork Salmon		17060205	
Lower Middle Fork Salmon		17060206	
Middle Salmon—Chamberlain	17060207	17060207	
South Fork Salmon		17060208	
Lower Salmon	17060209	17060209	17060209
Little Salmon		17060210	
Clearwater			17060306
Lower North Fork Clearwater			17060308

¹ Hydrologic units and names taken from DOI, USGS 1:500,000 scale hydrologic unit maps (available from USGS); State of Oregon, 1974; State of Washington, 1974; State of Idaho, 1974.

[58 FR 68552, Dec. 28, 1993]

TABLE 4 [RESERVED]

TABLE 5 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR CENTRAL CALIFORNIA COAST COHO SALMON, TRIBAL LANDS WITHIN THE RANGE OF THE ESU, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

Hydrologic unit name	Hydrologic unit No.	Counties and tribal lands contained in hydrologic unit and within the range of ESU ^{1,2}	Dams (reservoirs)
San Lorenzo-Soquel ..	18060001	Santa Cruz (CA), San Mateo (CA)	Newell Dam (Loch Lomond).
San Francisco Coastal South.	18050006	San Mateo (CA).	
San Pablo Bay	18050002	Marin (CA), Napa (CA)	Phoenix Dam (Phoenix Lake).
Tomales-Drake Bays ..	18050005	Marin (CA), Sonoma (CA)	Peters Dam (Kent Lake); Seeger Dam (Nicasio Reservoir).
Bodega Bay	18010111	Marin (CA), Sonoma (CA).	
Russian	18010110	Sonoma (CA), Mendocino (CA)— <i>Cloverdale Rancheria; Coyote Valley Rancheria; Dry Creek Rancheria; Guidiville Rancheria; Hopland Rancheria; Lytton Rancheria; Pinoleville Rancheria; Stewarts Point Rancheria.</i>	Warm Springs Dam (Lake Sonoma); Coyote Dam (Lake Mendocino).
Gualala-Salmon	18010109	Sonoma (CA), Mendocino (CA).	
Big-Navarro-Garcia	18010108	Mendocino (CA)— <i>Manchester/Point Arena Rancheria.</i>	

¹ Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

² Tribal lands are specifically excluded from critical habitat for this ESU.

[64 FR 24061, May 5, 1999]

TABLE 6 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR SOUTHERN OREGON/NORTHERN CALIFORNIA COASTS COHO SALMON, TRIBAL LANDS WITHIN THE RANGE OF THE ESU, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

Hydrologic unit name	Hydrologic unit No.	Counties and tribal lands contained in hydrologic unit and within the range of ESU ^{1,2}	Dams (reservoirs)
Mattole	18010107	Humboldt (CA), Mendocino (CA).	
South Fork Eel	18010106	Mendocino (CA), Humboldt (CA)— <i>Laytonville Rancheria; Sherwood Valley Rancheria.</i>	
Lower Eel	18010105	Mendocino (CA), Humboldt (CA), Trinity (CA).	
Middle Fork Eel	18010104	Mendocino (CA), Trinity (CA), Glenn (CA), Lake (CA)— <i>Round Valley Reservation.</i>	
Upper Eel	18010103	Mendocino (CA), Glenn (CA), Lake (CA) ...	Scott Dam (Lake Pillsbury).
Mad-Redwood	18010102	Humboldt (CA), Trinity (CA)— <i>Big Lagoon Rancheria; Blue Lake Rancheria.</i>	
Smith	18010101	Del Norte (CA), Curry (OR)— <i>Elk Valley Rancheria; Smith River Rancheria.</i>	
South Fork Trinity	18010212	Humboldt (CA), Trinity (CA).	
Trinity	18010211	Humboldt (CA), Trinity (CA)— <i>Hoopa Valley Reservation.</i>	Lewiston Dam (Lewiston Reservoir).
Salmon	18010210	Siskiyou (CA).	
Lower Klamath	18010209	Del Norte (CA), Humboldt (CA), Siskiyou (CA)— <i>Karuk Reservation; Resighini Rancheria; Yurok Reservation.</i>	
Scott	18010208	Siskiyou (CA)— <i>Quartz Valley Reservation.</i>	Dwinnell Dam (Dwinnell Reservoir).
Shasta	18010207	Siskiyou (CA)	Irongate Dam (Irongate Reservoir).
Upper Klamath	18010206	Siskiyou (CA), Jackson (OR)	
Chetco	17100312	Curry (OR), Del Norte (CA).	
Illinois	17100311	Curry (OR), Josephine (OR), Del Norte (CA).	Selmac Lake Dam (Lake Selmac).
Lower Rogue	17100310	Curry (OR), Josephine (OR), Jackson (OR).	
Applegate	17100309	Josephine (OR), Jackson (OR), Siskiyou (CA).	Applegate Dam (Applegate Reservoir).
Middle Rogue	17100308	Josephine (OR), Jackson (OR)	Emigrant Lake Dam (Emigrant Lake).
Upper Rogue	17100307	Jackson (OR), Klamath (OR), Douglas (OR).	Agate Lake Dam (Agate Lake); Fish Lake Dam (Fish Lake); Willow Lake Dam (Willow Lake); Lost Creek Dam (Lost Creek Reservoir).
Sixes	17100306	Curry (OR).	

¹ Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.
² Tribal lands are specifically excluded from critical habitat for this ESU.

[64 FR 24061, May 5, 1999]

PART 228—NOTICE AND HEARING ON SECTION 103(d) REGULATIONS

Sec.

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AUTHORITY: 16 U.S.C. 1361 *et seq.*

SOURCE: 65 FR 39560, June 27, 2000, unless otherwise noted.

§ 228.1 Basis and purpose.

(a) Sections 101(a)(2), 101(a)(3)(A), and 101(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(2), 1371(a)(3)(A), and 1371(b)) and these regulations authorize the Assistant Administrator of the National Marine Fisheries Service, to:

(1) Impose regulations governing the taking of marine mammals incidental to commercial fishing operations;

(2) Waive the moratorium and to adopt regulations with respect to the taking and importing of animals from each species of marine mammals under the Assistant Administrator's jurisdiction;

(3) Prescribe regulations governing the taking of depleted marine mammals by any Indian, Aleut or Eskimo, respectively. In prescribing regulations to carry out the provisions of said sections, the Act refers the Assistant Administrator to section 103 (16 U.S.C. 1373). In accordance with section 103(d), regulations must be made on the record after opportunity for an agency hearing on such regulations and, in the case of a waiver, on the determination by the Assistant Administrator to waive the moratorium pursuant to section 101(a)(3)(A) of the Act (16 U.S.C. 1371(a)(3)(A)).

(b) The purpose of this part is to establish rules of practice and procedure for all hearings conducted pursuant to section 103(d) of the Act.

§ 228.2 Definitions.

(a) *Party* means, for the purposes of this subpart:

(1) The Assistant Administrator or the Assistant Administrator's representative;

(2) A person who has notified the Assistant Administrator by specified dates of his or her intent to participate in the hearing pursuant to §§ 228.5 and 228.14(b).

(b) *Witness* means, for the purpose of this part, any person who submits written direct testimony on the proposed regulations. A person may be both a party and a witness.

§ 228.3 Scope of regulations.

The procedural regulations in this part govern the practice and procedure in hearings held under section 103(d) of

the Act. These hearings will be governed by the provisions of 5 U.S.C. 556 and section 557 of the Administrative Procedure Act. The regulations shall be construed to secure the just, speedy and inexpensive determination of all issues raised with respect to any waiver or regulation proposed pursuant to section 103(d) of the Act with full protection for the rights of all persons affected thereby.

§ 228.4 Notice of hearing.

(a) A notice of hearing on any proposed regulations shall be published in the FEDERAL REGISTER, together with the Assistant Administrator's proposed determination to waive the moratorium pursuant to section 101(a)(3)(A) of the Act (16 U.S.C. 1371(a)(3)(A)), where applicable.

(b) The notice shall state:

(1) The nature of the hearing;

(2) The place and date of the hearing. The date shall not be less than 60 days after publication of notice of the hearing;

(3) The legal authority under which the hearing is to be held;

(4) The proposed regulations and waiver, where applicable, and a summary of the statements required by section 103(d) of the Act (16 U.S.C. 1373(d));

(5) Issues of fact which may be involved in the hearing;

(6) If a draft Environmental Impact Statement is required, the date of publication of the draft and the place(s) where the draft and comments thereon may be viewed and copied;

(7) Any written advice received from the Marine Mammal Commission;

(8) The place(s) where records and submitted direct testimony will be kept for public inspection;

(9) The final date for filing with the Assistant Administrator a notice of intent to participate in the hearing pursuant to § 228.5;

(10) The final date for submission of direct testimony on the proposed regulations and waiver, if applicable, and the number of copies required;

(11) The docket number assigned to the case which shall be used in all subsequent proceedings; and

(12) The place and date of the pre-hearing conference.

§ 228.5

§ 228.5 Notification by interested persons.

Any person desiring to participate as a party shall notify the Assistant Administrator, by certified mail, on or before the date specified in the notice.

§ 228.6 Presiding officer.

(a) Upon publication of the notice of hearing pursuant to § 228.4, the Assistant Administrator shall appoint a presiding officer pursuant to 5 U.S.C. 3105. No individual who has any conflict of interest, financial or otherwise, shall serve as presiding officer in such proceeding.

(b) The presiding officer, in any proceeding under this subpart, shall have power to:

(1) Change the time and place of the hearing and adjourn the hearing;

(2) Evaluate direct testimony submitted pursuant to these regulations, make a preliminary determination of the issues, conduct a prehearing conference to determine the issues for the hearing agenda, and cause to be published in the FEDERAL REGISTER a final hearing agenda;

(3) Rule upon motions, requests and admissibility of direct testimony;

(4) Administer oaths and affirmations, question witnesses and direct witnesses to testify;

(5) Modify or waive any rule (after notice) when determining that no party will be prejudiced;

(6) Receive written comments and hear oral arguments;

(7) Render a recommended decision; and

(8) Do all acts and take all measures, including regulation of media coverage, for the maintenance of order at and the efficient conduct of the proceeding.

(c) In case of the absence of the original presiding officer or the original presiding officer's inability to act, the powers and duties to be performed by the original presiding officer under this subpart in connection with a proceeding may, without abatement of the proceeding, be assigned to any other presiding officer unless otherwise ordered by the Assistant Administrator.

(d) The presiding officer may upon the presiding officer's own motion withdraw as presiding officer in a pro-

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ceeding if the presiding officer deems himself or herself to be disqualified.

(e) A presiding officer may be requested to withdraw at any time prior to the recommended decision. Upon the filing by an interested person in good faith of a timely and sufficient affidavit alleging the presiding officer's personal bias, malice, conflict of interest or other basis which might result in prejudice to a party, the hearing shall recess. The Assistant Administrator shall immediately determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as the Assistant Administrator may deem appropriate in the circumstances.

§ 228.7 Direct testimony submitted as written documents.

(a) Unless otherwise specified, all direct testimony, including accompanying exhibits, must be submitted to the presiding officer in writing no later than the dates specified in the notice of the hearing (§ 228.4), the final hearing agenda (§ 228.12), or within 15 days after the conclusion of the prehearing conference (§ 228.14) as the case may be. All direct testimony shall be in affidavit form and exhibits constituting part of such testimony, referred to in the affidavit and made a part thereof, must be attached to the affidavit. Direct testimony submitted with exhibits must state the issue to which the exhibit relates; if no such statement is made, the presiding officer shall determine the relevance of the exhibit to the issues published in the FEDERAL REGISTER.

(b) The direct testimony submitted shall contain:

(1) A concise statement of the witness' interest in the proceeding and his position regarding the issues presented. If the direct testimony is presented by a witness who is not a party, the witness shall state the witness' relationship to the party; and

(2) Facts that are relevant and material.

(c) The direct testimony may propose issues of fact not defined in the notice of the hearing and the reason(s) why such issues should be considered at the hearing.

(d) Ten copies of all direct testimony must be submitted unless the notice of the hearing specifies otherwise.

(e) Upon receipt, direct testimony shall be assigned a number and stamped with that number and the docket number.

(f) Contemporaneous with the publication of the notice of hearing, the Assistant Administrator's direct testimony in support of the proposed regulations and waiver, where applicable, shall be available for public inspection as specified in the notice of hearing. The Assistant Administrator may submit additional direct testimony during the time periods allowed for submission of such testimony by witnesses.

§ 228.8 Mailing address.

Unless otherwise specified in the notice of hearing, all direct testimony shall be addressed to the Presiding Officer, c/o Assistant Administrator, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. All affidavits and exhibits shall be clearly marked with the docket number of the proceedings.

§ 228.9 Inspection and copying of documents.

Any document in a file pertaining to any hearing authorized by this subpart or any document forming part of the record of such a hearing may be inspected and/or copied in the Office of the Assistant Administrator, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910—unless the file is in the care and custody of the presiding officer, in which case the presiding officer shall notify the parties as to where and when the record may be inspected.

§ 228.10 Ex parte communications.

(a) After notice of a hearing is published in the FEDERAL REGISTER, all communications, whether oral or written, involving any substantive or procedural issue and directed either to the presiding officer or to the Assistant Administrator, Deputy Assistant Administrator, or Chief of the Marine Mammal Division, National Marine Fisheries Service, without reference to these rules of procedure, shall be deemed ex parte communications and

are not to be considered part of the record for decision.

(b) A record of oral conversations shall be made by the persons who are contacted. All communications shall be available for public viewing at the place(s) specified in the notice of hearing.

(c) The presiding officer shall not consult any person or party on any fact in issue or on the merits of the matter unless notice and opportunity is given for all parties to participate.

§ 228.11 Prehearing conference.

(a) After an examination of all the direct testimony submitted pursuant to § 228.7, the presiding officer shall make a preliminary determination of issues of fact which may be addressed at the hearing.

(b) The presiding officer's preliminary determination shall be made available at the place or places provided in the notice of the hearing (§ 228.4(b)(8)) at least 5 days before the prehearing conference.

(c) The purpose of the prehearing conference shall be to enable the presiding officer to determine, on the basis of the direct testimony submitted and prehearing discussions:

(1) Whether the presiding officer's preliminary determination of issues of fact for the hearing has omitted any significant issues;

(2) What facts are not in dispute;

(3) Which witnesses may appear at the hearing; and

(4) The nature of the interest of each party and which parties' interests are adverse.

(d) Only parties may participate in the hearing conference and a party may appear in person or be represented by counsel.

(e) Parties who do not appear at the prehearing conference shall be bound by the conference's determinations.

§ 228.12 Final agenda of the hearing.

(a) After the prehearing conference, the presiding officer shall prepare a final agenda which shall be published in the FEDERAL REGISTER within 10 days after the conclusion of the conference. A copy of the final agenda shall be mailed to all parties.

(b) The final agenda shall list:

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(1) All the issues which the hearing shall address, the order in which those issues shall be presented, and the direct testimony submitted which bears on the issues; and

(2) A final date for submission of direct testimony on issues of fact not included in the notice of hearing if such issues are presented. The final agenda may also specify a final date for submission of direct testimony to rebut testimony previously submitted during the time specified in the notice of the hearing.

(c) The presiding officer shall publish with the final agenda a list of witnesses who may appear at the hearing, a list of parties, the nature of the interest of each party, and which parties' interests are adverse on the issues presented.

§ 228.13 Determination to cancel the hearing.

(a) If the presiding officer concludes that no issues of fact are presented by the direct testimony submitted, the presiding officer shall publish such conclusion and notice in the FEDERAL REGISTER that a hearing shall not be held and shall also publish a date for filing written comments on the proposed regulations. Written comments may include proposed findings and conclusions, arguments or briefs.

(b) A person need not be a party to submit any written comments.

(c) Promptly after expiration of the period for receiving written comments, the presiding officer shall make a recommended decision based on the record, which in this case shall consist of the direct testimony and written comments submitted. He shall transfer to the Assistant Administrator his recommended decision, the record and a certificate stating that the record contains all the written direct testimony and comments submitted. The Assistant Administrator shall then make a final decision in accordance with these regulations (§ 228.21).

§ 228.14 Rebuttal testimony and new issues of fact in final agenda.

(a) Direct testimony to rebut testimony offered during the time period specified in the notice of hearing may be submitted pursuant to these regula-

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tions within fifteen days after the conclusion of the prehearing conference unless the presiding officer otherwise specifies in the final agenda.

(b) If the final agenda presents issues not included in the notice of the hearing published pursuant to § 228.4:

(1) Any person interested in participating at the hearing on such issues presented shall notify the Assistant Administrator by certified mail of an intent to participate not later than 10 days after publication of the final agenda. Such person may present direct testimony or cross-examine witnesses only on such issues presented unless that person previously notified the Assistant Administrator pursuant to § 228.5; and

(2) Additional written direct testimony concerning such issues may be submitted within the time provided in the final agenda. Such direct testimony will comply with the requirements of § 228.7.

§ 228.15 Waiver of right to participate.

Persons who fail to notify the Assistant Administrator pursuant to §§ 228.5 and 228.14 shall be deemed to have waived their right to participate as parties in any part of the hearing.

§ 228.16 Conduct of the hearing.

(a) The hearing shall be held at the time and place fixed in the notice of the hearing, unless the presiding officer changes the time or place. If a change occurs, the presiding officer shall publish the change in the FEDERAL REGISTER and shall expeditiously notify all parties by telephone or by mail: Provided, that if that change in time or place of hearing is made less than 5 days before the date previously fixed for the hearing, the presiding officer shall also announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) The presiding officer shall, at the commencement of the hearing, introduce into the record: the notice of hearing as published in the FEDERAL REGISTER; all subsequent documents published in the FEDERAL REGISTER; the draft Environmental Impact Statement if it is required and the comments thereon and agency responses to the comments; and a list of all parties.

Direct testimony shall then be received with respect to the matters specified in the final agenda in such order as the presiding officer shall announce. With respect to direct testimony submitted as rebuttal testimony or in response to new issues presented by the prehearing conference, the presiding officer shall determine the relevancy of such testimony.

(c) The hearing shall be publicly conducted and reported verbatim by an official reporter.

(d) If a party objects to the admission or rejection of any direct testimony or to any other ruling of the presiding officer during the hearing, he or she shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the presiding officer. The transcript shall not include argument or debate thereon except as ordered by the presiding officer. The ruling by the presiding officer on any objection shall be a part of the transcript and shall be subject to review at the same time and in the same manner as the Assistant Administrator's final decision. Only objections made before the presiding officer may subsequently be relied upon in the proceedings.

(e) All motions and requests shall be addressed to, and ruled on by, the presiding officer, if made prior to his certification of the transcript or by the Assistant Administrator if made thereafter.

§ 228.17 Direct testimony.

(a) Only direct testimony submitted by affidavit as provided in these regulations and introduced at the hearing by a witness shall be considered part of the record. Such direct testimony shall not be read into evidence but shall become a part of the record subject to exclusion of irrelevant and immaterial parts thereof;

(b) The witness introducing direct testimony shall:

(1) State his or her name, address and occupation;

(2) State qualifications for introducing the direct testimony. If an expert, the witness shall briefly state the scientific or technical training which qualifies the witness as an expert;

(3) Identify the direct testimony previously submitted in accordance with these regulations; and

(4) Submit to appropriate cross and direct examination. Cross-examination shall be by a party whose interests are adverse on the issue presented, to the witness', if the witness is a party, or to the interests of the party who presented the witness.

(c) A party shall be deemed to have waived the right to introduce direct testimony if such party fails to present a witness to introduce the direct testimony.

(d) Official notice may be taken of such matters as are judicially noticed by the courts of the United States: Provided, that parties shall be given adequate notice, by the presiding officer, at the hearing, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

§ 228.18 Cross-examination.

(a) The presiding officer may:

(1) Require the cross-examiner to outline the intended scope of the cross-examination;

(2) Prohibit parties from cross-examining witnesses unless the presiding officer has determined that the cross-examiner has an adverse interest on the facts at issue to the party-witness or the party presenting the witness. For the purposes of this subsection, the Assistant Administrator's or his or her representative's interest shall be considered adverse to all parties;

(3) Limit the number of times any party or parties having a common interest may cross-examine an "adverse" witness on the same matter; and

(4) Exclude cross-examination questions that are immaterial, irrelevant or unduly repetitious.

(b) Any party shall be given an opportunity to appear, either in person or through an authorized counsel or representative, to cross-examine witnesses. Before cross-examining a witness, the party or counsel shall state his or her name, address and occupation. If counsel cross-examines the witness, counsel shall state for the record the authority to act as counsel. Cross-examiners shall be assumed to be familiar with the direct testimony.

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(c) Any party or party's counsel who fails to appear at the hearing to cross-examine an "adverse" witness shall be deemed to have waived the right to cross-examine that witness.

(d) Scientific, technical or commercial publications may only be utilized for the limited purposes of impeaching witnesses under cross-examination unless previously submitted and introduced in accordance with these regulations.

§ 228.19 Oral and written arguments.

(a) The presiding officer may, in his or her discretion, provide for oral argument at the end of the hearing. Such argument, when permitted, may be limited by the presiding officer to the extent necessary for the expeditious disposition of the proceeding.

(b) The presiding officer shall announce at the hearing a reasonable period of time within which any interested person may file with the presiding officer any written comments on the proposed regulations and waiver, including proposed findings and conclusions and written arguments or briefs, which are based upon the record and citing where practicable the relevant page or pages of the transcript. If a party filing a brief desires the presiding officer to reconsider any objection made by such party to a ruling of the presiding officer, the party shall specifically identify such rulings by reference to the pertinent pages of the transcript and shall state their arguments thereon as a part of the brief.

(c) Oral or written arguments shall be limited to issues arising from direct testimony on the record.

§ 228.20 Recommended decision, certification of the transcript and submission of comments on the recommended decision.

(a) Promptly after expiration of the period for receiving written briefs, the presiding officer shall make a recommended decision based on the record and transmit the decision to the Assistant Administrator. The recommended decision shall include:

- (1) A statement containing a description of the history of the proceedings;
- (2) Findings on the issues of fact with the reasons therefor; and

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(3) Rulings on issues of law.

(b) The presiding officer shall also transmit to the Assistant Administrator the transcript of the hearing, the original and all copies of the direct testimony, and written comments. The presiding officer shall attach to the original transcript of the hearing a certificate stating that, to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as are specified.

(c) Immediately after receipt of the recommended decision, the Assistant Administrator shall give notice thereof in the FEDERAL REGISTER, send copies of the recommended decision to all parties, and provide opportunity for the submission of comments. The recommended decision may be reviewed and/or copied in the office of the Assistant Administrator, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

(d) Within 20 days after the notice of receipt of the recommended decision has been published in the FEDERAL REGISTER, any interested person may file with the Assistant Administrator any written comments on the recommended decision. All comments, including recommendations from or consultation with the Marine Mammal Commission, must be submitted during the 20-day period to the Assistant Administrator at the previously mentioned address.

§ 228.21 Assistant Administrator's decision.

(a) Upon receipt of the recommended decision and transcript and after the 20-day period for receiving written comments on the recommended decision has passed, the Assistant Administrator shall make a final decision on the proposed regulations and waiver, where applicable. The Assistant Administrator's decision may affirm, modify, or set aside, in whole or in part, the recommended findings, conclusions and decision of the presiding officer. The Assistant Administrator may also remand the hearing record to the presiding officer for a fuller development of the record.

(b) The Assistant Administrator's decision shall include:

(1) A statement containing a description of the history of the proceeding;

(2) Findings on the issues of fact with the reasons therefor; and

(3) Rulings on issues of law.

(4) The Assistant Administrator's decision shall be published in the FEDERAL REGISTER. If the waiver is approved, the final adopted regulations shall be promulgated with the decision.

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

Subpart A—General Provisions

Sec.

229.1 Purpose and scope.

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FIGURE 1 TO PART 229—DRIFT GILLNET PINGER CONFIGURATION AND EXTENDER REQUIREMENTS

AUTHORITY: 16 U.S.C. 1361 *et seq.*; § 229.32(f) also issued under 16 U.S.C. 1531 *et seq.*

SOURCE: 60 FR 45100, Aug. 30, 1995, unless otherwise noted.

Subpart A—General Provisions

§ 229.1 Purpose and scope.

(a) The regulations in this part implement sections 101(a)(5)(E) and 118 of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1371(a)(5)(E) and 1387) that provide for exceptions for the taking of marine mammals incidental to certain commercial fishing operations from the Act's general moratorium on the taking of marine mammals.

(b) Section 118 of the Act, rather than sections 103 and 104, governs the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States, other than vessels fishing for yellowfin tuna in the eastern tropical Pacific Ocean purse seine fishery, and vessels that have valid fishing permits issued in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)).

(c) The regulations of Subpart B also govern the incidental taking by commercial fishers of marine mammals from species or stocks designated under the Act as depleted on the basis of their listing as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

(d) The regulations of this part do not apply to the incidental taking of California sea otters or to Northwest treaty Indian tribal members exercising treaty fishing rights.

(e) Authorizations under subpart A of this part are exemptions only from the taking prohibitions under the Act and not those under the Endangered Species Act of 1973. To be exempt from the taking prohibitions under the Endangered Species Act, specific authorization under subpart B of this part is required.

(f) Authorizations under this part do not apply to the intentional lethal taking of marine mammals in the course of commercial fishing operations except as provided for under §§ 229.4(k) and 229.5(f).

(g) The purposes of the regulations in this part are to:

(1) Reduce the incidental mortality or serious injury of marine mammals

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occurring in the course of commercial fishing operations below the potential biological removal level for a particular stock, and

(2) Reduce the incidental mortality or serious injury of marine mammals occurring in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate by the statutory deadline of April 30, 2001.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9086, Feb. 24, 1999]

§ 229.2 Definitions.

In addition to the definitions contained in the Act and §216.3 of this chapter, and unless otherwise defined in this chapter, the terms in this chapter have the following meaning:

Act or *MMPA* means the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

American lobster or lobster means *Homarus americanus*.

Anchored gillnet means any gillnet gear, including an anchored float gillnet, sink gillnet or stab net, that is set anywhere in the water column and which is anchored, secured, or weighted to the bottom of the sea. Also called a set gillnet.

Assistant Administrator means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration.

Authorization Certificate means a document issued by the Assistant Administrator, or designee, under the authority of section 118 of the Act that authorizes the incidental, but not intentional, taking of marine mammals in Category I or II fisheries.

Bitter end means the end of a line that detaches from a weak link.

Bottom portion of the line means, for buoy lines, the portion of the line in the water column that is closest to the fishing gear.

Breaking strength means the highest tensile force which an object can withstand before breaking.

Bridle means the lines connecting a gillnet to an anchor or buoy line.

Buoy line means a line connecting fishing gear in the water to a buoy at the surface of the water.

Category I fishery means a commercial fishery determined by the Assis-

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tant Administrator to have frequent incidental mortality and serious injury of marine mammals. A commercial fishery that frequently causes mortality or serious injury of marine mammals is one that is by itself responsible for the annual removal of 50 percent or more of any stock's potential biological removal level.

Category II fishery means a commercial fishery determined by the Assistant Administrator to have occasional incidental mortality and serious injury of marine mammals. A commercial fishery that occasionally causes mortality or serious injury of marine mammals is one that, collectively with other fisheries, is responsible for the annual removal of more than 10 percent of any marine mammal stock's potential biological removal level and that is by itself responsible for the annual removal of between 1 and 50 percent, exclusive, of any stock's potential biological removal level. In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the incidental serious injury or mortality is "occasional" by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator. Eligible commercial fisheries not specifically identified in the list of fisheries are deemed to be Category II fisheries until the next list of fisheries is published.

Category III fishery means a commercial fishery determined by the Assistant Administrator to have a remote likelihood of, or no known incidental mortality and serious injury of marine mammals. A commercial fishery that has a remote likelihood of causing incidental mortality and serious injury of marine mammals is one that collectively with other fisheries is responsible for the annual removal of:

(1) Ten percent or less of any marine mammal stock's potential biological removal level, or

(2) More than 10 percent of any marine mammal stock's potential biological removal level, yet that fishery by itself is responsible for the annual removal of 1 percent or less of that stock's potential biological removal level. In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the incidental serious injury or mortality is "remote" by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area or at the discretion of the Assistant Administrator.

Commercial fishing operation means the catching, taking, or harvesting of fish from the marine environment (or other areas where marine mammals occur) that results in the sale or barter of all or part of the fish harvested. The term includes licensed commercial passenger fishing vessel (as defined in §216.3 of this chapter) activities and aquaculture activities.

Depleted species means any species or population that has been designated as depleted under the Act and is listed in §216.15 of this chapter or part 18, subpart E of this title, or any endangered or threatened species of marine mammal.

Driftnet, drift gillnet, or drift entanglement gear means a gillnet or gillnets that is/are unattached to the ocean bottom and not anchored, secured or weighted to the bottom, regardless of whether attached to a vessel.

Fisher or fisherman means the vessel owner or operator, or the owner or operator of gear in a nonvessel fishery.

Fishery has the same meaning as in section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802).

Fishing or to fish means any commercial fishing operation activity that involves:

- (1) The catching, taking, or harvesting of fish;
- (2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1), (2), or (3) of this definition.

Fishing trip means any time spent away from port actively engaged in commercial fishing operations. The end of a fishing trip will be the time of a fishing vessel's return to port or the return of a fisher from tending gear in a nonvessel fishery.

Fishing vessel or vessel means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type normally used for, fishing.

Float-line means the rope at the top of a gillnet from which the mesh portion of the net is hung.

Gillnet means fishing gear consisting of a wall of webbing (meshes) or nets, designed or configured so that the webbing (meshes) or nets are placed in the water column, usually held approximately vertically, and are designed to capture fish by entanglement, gilling, or wedging. The term "gillnet" includes gillnets of all types, including but not limited to sink gillnets, other anchored gillnets (e.g., anchored float gillnets, stab, and set nets), and drift gillnets. Gillnets may or may not be attached to a vessel.

Groundline, with reference to trap/pot gear, means a line connecting traps in a trap trawl, and, with reference to gillnet gear, means a line connecting a gillnet or gillnet bridle to an anchor or buoy line.

Incidental means, with respect to an act, a non-intentional or accidental act that results from, but is not the purpose of, carrying out an otherwise lawful action.

Injury means a wound or other physical harm. Signs of injury to a marine mammal include, but are not limited to, visible blood flow, loss of or damage to an appendage or jaw, inability to use one or more appendages, asymmetry in the shape of the body or body position, noticeable swelling or hemorrhage, laceration, puncture or rupture of eyeball, listless appearance or inability to defend itself, inability to swim or dive upon release from fishing gear, or signs

of equilibrium imbalance. Any animal that ingests fishing gear, or any animal that is released with fishing gear entangling, trailing or perforating any part of the body will be considered injured regardless of the absence of any wound or other evidence of an injury.

Insignificance threshold means the upper limit of annual incidental mortality and serious injury of marine mammal stocks by commercial fisheries that can be considered insignificant levels approaching a zero mortality and serious injury rate. An insignificance threshold is estimated as 10 percent of the Potential Biological Removal level for a stock of marine mammals. If certain parameters (e.g., maximum net productivity rate or the recovery factor in the calculation of the stock's potential biological removal level) can be estimated or otherwise modified from default values, the Assistant Administrator may use a modification of the number calculated from the simple formula for the insignificance threshold. The Assistant Administrator may also use a modification of the simple formula when information is insufficient to estimate the level of mortality and serious injury that would have an insignificant effect on the affected population stock and provide a rationale for using the modification.

Interaction means coming in contact with fishing gear or catch. An interaction may be characterized by a marine mammal entangled, hooked, or otherwise trapped in fishing gear, regardless of whether injury or mortality occurs, or situations where marine mammals are preying on catch. Catch means fish or shellfish that has been hooked, entangled, snagged, trapped or otherwise captured by commercial fishing gear.

Large mesh gillnet means a gillnet constructed with a mesh size of 7 inches (17.78 cm) to 18 inches (45.72 cm).

Lead-line means the rope, weighted or otherwise, to which the bottom edge of a gillnet is attached.

List of Fisheries means the most recent final list of commercial fisheries published in the FEDERAL REGISTER by the Assistant Administrator, categorized according to the likelihood of incidental mortality and serious injury

of marine mammals during commercial fishing operations.

Mesh size means the distance between inside knot to inside knot. Mesh size is measured as described in § 648.80(f)(1) of this title.

Mid-Atlantic coastal waters means waters bounded by the line defined by the following points: The southern shoreline of Long Island, New York at 72°30'W, then due south to 33°51'N lat., thence west to the North Carolina/South Carolina border.

Minimum population estimate means an estimate of the number of animals in a stock that:

(1) Is based on the best available scientific information on abundance, incorporating the precision and variability associated with such information; and

(2) Provides reasonable assurance that the stock size is equal to or greater than the estimate.

Mudhole means waters off New Jersey bounded as follows: From the point 40°30' N. latitude where it intersects with the shoreline of New Jersey east to its intersection with 73°20' W. longitude, then south to its intersection with 40°05' N. latitude, then west to its intersection with the shoreline of New Jersey.

Negligible impact has the same meaning as in § 216.103 of this chapter.

Net productivity rate means the annual per capita rate of increase in a stock resulting from additions due to reproduction, less losses due to mortality.

Neutrally buoyant line means, for both groundlines and buoy lines, line that has a specific gravity greater than or equal to 1.030, and, for groundlines only, does not float at any point in the water column (See also *Sinking line*).

Night means any time between one half hour before sunset and one half hour after sunrise.

NMFS means the National Marine Fisheries Service.

Nonvessel fishery means a commercial fishing operation that uses fixed or other gear without a vessel, such as gear used in set gillnet, trap, beach seine, weir, ranch, and pen fisheries.

Observer means an individual authorized by NMFS, or a designated contractor, to record information on marine mammal interactions, fishing operations, marine mammal life history information, and other scientific data, and collect biological specimens during commercial fishing activities.

Operator, with respect to any vessel, means the master, captain, or other individual in charge of that vessel.

Potential biological removal level means 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. The potential biological removal level is the product of the following factors:

- (1) The minimum population estimate of the stock;
- (2) One-half the maximum theoretical or estimated net productivity rate of the stock at a small population size; and
- (3) A recovery factor of between 0.1 and 1.0.

Qualified individual means an individual ascertained by NMFS to be reasonably able, though training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS.

Regional Fishery Management Council means a regional fishery management council established under section 302 of the Magnuson Fishery Conservation and Management Act.

Reliable report means a credible right whale sighting report based upon which a DAM zone would be triggered.

Seine means a net that fishes vertically in the water, is pulled by hand or by power, and captures fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh size, webbing diameter, or method in which it is used. In some regions, the net is typically con-

structed with a capture bag in the center of the net which concentrates the fish as the net is closed.

Serious injury means any injury that will likely result in mortality.

Sink gillnet or *stab net* means any gillnet, anchored or otherwise, that is designed to be, or is fished on or near the bottom in the lower third of the water column.

Sinking line means, for both groundlines and buoy lines, line that has a specific gravity greater than or equal to 1.030, and, for groundlines only, does not float at any point in the water column (See also *Neutrally buoyant line*).

Small mesh gillnet means a gillnet constructed with a mesh size of greater than 5 inches (12.7 cm) to less than 7 inches (17.78 cm).

Southern Mid-Atlantic waters means all state and Federal waters off the States of Delaware, Maryland, Virginia, and North Carolina, bounded on the north by a line extending eastward from the northern shoreline of Delaware at 38°47' N. latitude (the latitude that corresponds with Cape Henlopen, DE), east to its intersection with 72°30' W. longitude, south to the 33°51' N. latitude (the latitude that corresponds with the North Carolina/South Carolina border), and then west to its intersection with the shoreline of the North Carolina/South Carolina border.

Spotter plane means a plane that is deployed for the purpose of locating schools of target fish for a fishing vessel that intends to set fishing gear on them.

Stowed means traps/pots and gillnets that are unavailable for immediate use and further, all gillnets are stored in accordance with the following:

- (1) All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck, rail, or drum, and all buoys larger than 6 inches (15.24 cm) in diameter, high flyers, and anchors are disconnected; and

- (2) Any other method of stowage authorized in writing by the Regional Administrator and subsequently published in the FEDERAL REGISTER.

Strategic stock means a marine mammal stock:

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(1) For which the level of direct human-caused mortality exceeds the potential biological removal level;

(2) Which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 within the foreseeable future;

(3) Which is listed as a threatened species or endangered species under the Endangered Species Act of 1973; or

(4) Which is designated as depleted under the Marine Mammal Protection Act of 1972, as amended.

Sunrise means the time of sunrise as determined for the date and location in The Nautical Almanac, prepared by the U.S. Naval Observatory.

Sunset means the time of sunset as determined for the date and location in The Nautical Almanac, prepared by the U.S. Naval Observatory.

Take Reduction Plan means a plan developed to reduce the incidental mortality and serious injury of marine mammals during commercial fishing operations in accordance with section 118 of the Marine Mammal Protection Act of 1972, as amended.

Take Reduction Team means a team established to recommend methods of reducing the incidental mortality and serious injury of marine mammals due to commercial fishing operations, in accordance with section 118 of the Marine Mammal Protection Act of 1972, as amended.

Tended gear or tend means fishing gear that is physically attached to a vessel in a way that is capable of harvesting fish, or to fish with gear attached to the vessel.

Tie-down refers to twine used between the floatline and the lead line as a way to create a pocket or bag of netting to trap fish alive.

Tie loops means the loops on a gillnet panel used to connect net panels to the buoy line, groundline, bridle or each other.

Trap/Pot means any structure or other device, other than a net or longline, that is placed, or designed to be placed, on the ocean bottom and is designed for or is capable of, catching species including but not limited to lobster, crab (red, Jonah, rock, and blue), hagfish, finfish (black sea bass,

scup, tautog, cod, haddock, pollock, redfish (ocean perch), and white hake), conch/whelk, and shrimp.

Trap/pot trawl means two or more trap/pots attached to a single groundline.

Up and down line means the line that connects the float-line and lead-line at the end of each gillnet net panel.

U.S. waters means both state and Federal waters to the outer boundaries of the U.S. exclusive economic zone along the east coast of the United States from the Canadian/U.S. border southward to a line extending eastward from the southernmost tip of Florida on the Florida shore.

Vessel owner or operator means the owner or operator of:

(1) A fishing vessel that engages in a commercial fishing operation; or

(2) Fixed or other commercial fishing gear that is used in a nonvessel fishery.

Vessel of the United States has the same meaning as in section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802).

Waters off New Jersey means all state and Federal waters off New Jersey, bounded on the north by a line extending eastward from the southern shoreline of Long Island, NY at 40°40' N. latitude, on the south by a line extending eastward from the northern shoreline of Delaware at 38°47' N. latitude (the latitude that corresponds with Cape Henlopen, DE), and on the east by the 72°30' W. longitude. This area includes the Mudhole.

Weak link means a breakable component of gear that will part when subject to a certain tension load.

[60 FR 45100, Aug. 30, 1995, as amended at 62 FR 39183, July 22, 1997; 63 FR 66487, Dec. 2, 1998; 64 FR 7551, Feb. 16, 1999; 64 FR 9086, Feb. 24, 1999; 65 FR 80377, Dec. 21, 2000; 67 FR 1141, Jan. 9, 2002; 67 FR 1313, Jan. 10, 2002; 69 FR 6584, Feb. 11, 2004; 69 FR 43345, July 20, 2004; 71 FR 24796, Apr. 26, 2006; 72 FR 34642, June 25, 2007; 72 FR 57180, Oct. 5, 2007]

EFFECTIVE DATE NOTE: At 73 FR 51241, Sept. 2, 2008, §229.2 was amended by removing the definition “Neutrally buoyant line” and revising the definition of “Sinking line”, effective Oct. 2, 2008. For the convenience of the user, the revised text is set forth as follows:

§ 229.2 Definitions.

* * * * *

Sinking line means, for both groundlines and buoy lines, line that has a specific gravity greater than or equal to 1.030, and, for groundlines only, does not float at any point in the water column.

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§ 229.3 Prohibitions.

(a) It is prohibited to take any marine mammal incidental to commercial fishing operations except as otherwise provided in part 216 of this chapter or in this part 229.

(b) It is prohibited to assault, harm, harass (including sexually harass), oppose, impede, intimidate, impair, or in any way influence or interfere with an observer, or attempt the same. This prohibition includes, but is not limited to, any action that interferes with an observer's responsibilities, or that creates an intimidating, hostile, or offensive environment.

(c) It is prohibited to provide false information when registering for an Authorization Certificate, applying for renewal of the Authorization Certificate, reporting the injury or mortality of any marine mammal, or providing information to any observer.

(d) It is prohibited to tamper with or destroy observer equipment in any way.

(e) It is prohibited to retain any marine mammal incidentally taken in commercial fishing operations unless authorized by NMFS personnel, by designated contractors or an official observer, or by a scientific research permit that is in the possession of the vessel operator.

(f) It is prohibited to intentionally lethally take any marine mammal in the course of commercial fishing operations unless imminently necessary in self-defense or to save the life of a person in immediate danger, and such taking is reported in accordance with the requirements of § 229.6.

(g) It is prohibited to violate any regulation in this part or any provision of section 118 of the Act.

(h) It is prohibited to fish with or possess trap/pot gear in the areas and during the times specified in § 229.32

(c)(2) through (c)(9) unless the trap/pot gear complies with the marking requirements, closures, modifications, and restrictions specified in § 229.32(b)(2)(ii), (b)(2)(iii), and (c)(1) through (c)(9), or unless the gear is stowed as specified in § 229.2.

(i) It is prohibited to fish with or possess anchored gillnet gear in the areas and during the times specified in § 229.32(d)(2) through (d)(7) unless that gillnet gear complies with the marking requirements, closures, modifications, and restrictions specified in § 229.32(b)(2)(ii), (b)(2)(iii), and (d)(1) through (d)(7), or unless the gear is stowed as specified in § 229.2.

(j) It is prohibited to fish with or possess drift gillnet gear in the areas and during the times specified in § 229.32(e)(1) through (e)(6) unless the drift gillnet gear complies with the marking requirements, closures, modifications, and restrictions specified in § 229.32(b)(2)(ii), (b)(2)(iii), and (e)(1) through (e)(6), or unless the gear is stowed as specified in § 229.2.

(k) It is prohibited to fish with or possess gillnet gear in the areas and during the times specified in § 229.32(f)(1) and (g)(1) unless the gillnet gear complies with the marking requirements, closures, modifications, and restrictions specified in § 229.32(b)(2)(ii), (b)(2)(iii), (f)(2)(ii), (f)(2)(iv), (f)(2)(v), and (g)(3), or for (g)(3) unless the gear is stowed as specified in § 229.2.

(l) It is prohibited to fish with or possess shark gillnet gear (i.e. gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh) in the areas and during the times specified in § 229.32(f)(1), (g)(1) and (h)(1) unless the gear complies with the marking requirements, closures, modifications, and restrictions specified in § 229.32(b)(2)(i), (b)(2)(iii), (f)(2)(ii), (f)(2)(iii), (f)(2)(v), (g)(2), and (h)(2), or for the gear marking requirements for (h)(2) unless the gear is stowed as specified in § 229.2.

(m) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies, from the areas and for the times specified in § 229.33 (a)(1) through (a)(6), except with the

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use of pingers as provided in § 229.33 (d)(1) through (d)(4). This prohibition does not apply to the use of a single pelagic gillnet (as described and used as set forth in § 648.81(f)(2)(ii) of this title).

(n) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any gillnet gear from the areas and for the times as specified in § 229.34 (b)(1) (ii) or (iii) or (b)(2)(ii).

(o) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any large mesh or small mesh gillnet gear from the areas and for the times specified in § 229.34 (c)(1) through (c)(4) unless the gear complies with the specified gear restrictions set forth in those provisions.

(p) Beginning on January 1, 1999, it is prohibited to fish with, set, or haul back sink gillnets or gillnet gear, or leave such gear in closed areas where pingers are required, as specified under § 229.33 (c)(1) through (c)(4), unless a person on board the vessel during fishing operations possesses a valid pinger certification training certificate issued by NMFS.

(q) Beginning on January 1, 2000, it is prohibited to fish with, set, haul back, or possess any large mesh or small mesh gillnet gear in Mid-Atlantic waters in the areas and during the times specified under § 229.34(d), unless the gear is properly tagged in compliance with that provision and unless a net tag certificate is on board the vessel. It is prohibited to refuse to produce a net tag certificate or net tags upon the request of an authorized officer.

(r) *Net tag requirement.* Beginning on January 1, 2000, all gillnets fished, hauled, possessed, or deployed during the times and areas specified below must have one tag per net, with one tag secured to every other bridle of every net and with one tag secured to every other bridle of every net within a string of nets. This applies to small mesh and large mesh gillnet gear in New Jersey waters from January 1 through April 30 or in southern Mid-Atlantic waters from February 1 through April 30. The owner or operator of fishing vessels must indicate to NMFS the number of gillnet tags that they are requesting up to the maximum number of

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nets allowed in those paragraphs and must include a check for the cost of the tags. Vessel owners and operators will be given notice with instructions informing them of the costs associated with this tagging requirement and directions for obtaining tags. Tag numbers will be unique for each vessel and recorded on a certificate. The vessel operator must produce the certificate and all net tags upon request by an authorized officer.

(s) It is prohibited to fish with, or possess on board a vessel unless stowed, or fail to remove, any gillnet gear from the areas specified in § 229.35(c) unless the gear complies with the specified restrictions set forth in § 229.35(d).

[60 FR 45100, Aug. 30, 1995, as amended at 62 FR 39184, July 22, 1997; 63 FR 66487, Dec. 2, 1998; 64 FR 7552, Feb. 16, 1999; 64 FR 9086, Feb. 24, 1999; 65 FR 80377, Dec. 21, 2000; 67 FR 1313, Jan. 10, 2002; 67 FR 59477, Sept. 23, 2002; 71 FR 24796, Apr. 26, 2006; 72 FR 57180, Oct. 5, 2007]

§ 229.4 Requirements for Category I and II fisheries.

(a) *General.* (1) For a vessel owner or crew members to lawfully incidentally take marine mammals in the course of a commercial fishing operation in a Category I or II fishery, the owner or authorized representative of a fishing vessel or nonvessel fishing gear must have in possession a valid Certificate of Authorization. The owner of a fishing vessel or nonvessel fishing gear is responsible for obtaining a Certificate of Authorization.

(2) The granting and administration of Authorization Certificates under this part will be integrated and coordinated with existing fishery license, registration, or permit systems and related programs wherever possible. These programs may include, but are not limited to, state or interjurisdictional fisheries programs. If the administration of Authorization Certificates is integrated into a program, NMFS will publish a notice in the FEDERAL REGISTER announcing the integrated program and summarizing how an owner or authorized representative of a fishing vessel or non-fishing gear may register under that program or how

registration will be achieved if no action is required on the part of the affected fisher. NMFS will make additional efforts to contact participants in the affected fishery via other appropriate means of notification.

(b) *Registration.* (1) The owner of a vessel, or for nonvessel gear fisheries, the owner of gear, who participates in a Category I or II fishery is required to be registered for a Certificate of Authorization.

(2) Unless a notice is published in the FEDERAL REGISTER announcing an integrated registration program, the owner of a vessel, or for nonvessel fishery, the owner of the gear must register for and receive an Authorization Certificate. To register, owners must submit the following information using the format specified by NMFS:

(i) Name, address, and phone number of owner.

(ii) Name, address, and phone number of operator, if different from owner, unless the name of the operator is not known or has not been established at the time the registration is submitted.

(iii) For a vessel fishery, vessel name, length, home port; U.S. Coast Guard documentation number or state registration number, and if applicable; state commercial vessel license number and for a nonvessel fishery, a description of the gear and state commercial license number, if applicable.

(iv) A list of all Category I and II fisheries in which the fisher may actively engage during the calendar year.

(v) A certification signed and dated by the owner of an authorized representative of the owner as follows: "I hereby certify that I am the owner of the vessel, that I have reviewed all information contained on this document, and that it is true and complete to the best of my knowledge."

(vi) A check or money order made payable to NMFS in the amount specified in the notice of the final List of Fisheries must accompany each registration submitted to NMFS. The amount of this fee will be based on recovering the administrative costs incurred in granting an authorization. The Assistant Administrator may waive the fee requirement for good cause upon the recommendation of the Regional Director.

(3) If a notice is published in the FEDERAL REGISTER announcing an integrated registration program, the owner of a vessel, or for nonvessel fishery, the owner of the gear may register by following the directions provided in that notice. If a person receives a registration to which he or she is not entitled or if the registration contains incorrect, inaccurate or incomplete information, the person shall notify NMFS within 10 days following receipt. If a fisher participating in a Category I or II fishery who expects to receive automatic registration does not receive that registration within the time specified in the notice announcing the integrated registration program, the person shall notify NMFS as directed in the notice or may apply for registration by submitting the information required under paragraph (b)(1)(i) through (b)(1)(vi) of this section.

(c) *Address.* Unless the granting and administration of authorizations under this part 229 is integrated and coordinated with existing fishery licenses, registrations, or related programs pursuant to paragraph (a) of this section, requests for registration forms and completed registration and renewal forms should be sent to the NMFS Regional Offices as follows:

(1) Alaska Region, NMFS, P.O. Box 21668, 709 West 9th Street, Juneau, AK 99802; telephone: 907-586-7235;

(2) Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; telephone: 206-526-4353;

(3) Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; telephone: 562-980-4001;

(4) Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930; telephone: 978-281-9254; or

(5) Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702; telephone: 727-570-5312.

(d) *Issuance.* (1) For integrated fisheries, an Authorization Certificate or other proof of registration will be issued annually to each fisher registered for that fishery.

(2) For all other fisheries (i.e., non-integrated fisheries), NMFS will issue an Authorization Certificate and, if necessary, a decal to an owner or authorized representative who:

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(i) Submits a completed registration form and the required fee.

(ii) Has complied with the requirements of this section and §§ 229.6 and 229.7

(iii) Has submitted updated registration or renewal registration which includes a statement (yes/no) whether any marine mammals were killed or injured during the current or previous calendar year.

(3) If a person receives a renewed Authorization Certificate or a decal to which he or she is not entitled, the person shall notify NMFS within 10 days following receipt.

(e) *Authorization Certificate and decal requirements.* (1) If a decal has been issued under the conditions specified in paragraph (e)(2) of this section, the decal must be attached to the vessel on the port side of the cabin or, in the absence of a cabin, on the forward port side of the hull, and must be free of obstruction and in good condition. The decal must be attached to the Authorization Certificate for nonvessel fisheries.

(2) The Authorization Certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or, in the case of nonvessel fisheries, the Authorization Certificate with decal attached, or copy must be in the possession of the person in charge of the fishing operation. The Authorization Certificate, or copy, must be made available upon request to any state or Federal enforcement agent authorized to enforce the Act, any designated agent of NMFS, or any contractor providing observer services to NMFS.

(3) Authorization Certificates and decals are not transferable. In the event of the sale or change in ownership of the vessel, the Authorization Certificate is void and the new owner must register for an Authorization Certificate and decal.

(4) An Authorization Certificate holder must notify the issuing office in writing:

(i) If the vessel or nonvessel fishing gear will engage in any Category I or II fishery not listed on the initial registration form at least 30 days prior to engaging in that fishery; and,

(ii) If there are any changes in the mailing address or vessel ownership within 30 days of such change.

(f) *Reporting.* Any Authorization Certificate holders must comply with the reporting requirements specified under § 229.6.

(g) *Disposition of marine mammals.* Any marine mammal incidentally taken must be immediately returned to the sea with a minimum of further injury, unless directed otherwise by NMFS personnel, a designated contractor or an official observer, or authorized otherwise by a scientific research permit that is in the possession of the operator.

(h) *Monitoring.* Authorization Certificate holders must comply with the observer or other monitoring requirements specified under § 229.7.

(i) *Deterrence.* When necessary to deter a marine mammal from damaging fishing gear, catch, or other private property, or from endangering personal safety, vessel owners and crew members engaged in a Category I or II fishery must comply with all deterrence provisions set forth in the Act and all guidelines and prohibitions published thereunder.

(j) *Self defense.* When imminently necessary in self-defense or to save the life of a person in immediate danger, a marine mammal may be lethally taken if such taking is reported to NMFS in accordance with the requirements of § 229.6.

(k) *Take reduction plans and emergency regulations.* Authorization Certificate holders must comply with any applicable take reduction plans and emergency regulations.

(l) *Expiration.* Authorization Certificates expire at the end of each calendar year.

[60 FR 45100, Aug. 30, 1995, as amended at 62 FR 46, Jan. 2, 1997; 64 FR 9086, Feb. 24, 1999]

§ 229.5 Requirements for Category III fisheries.

(a) *General.* Vessel owners and crew members of such vessels engaged only in Category III fisheries may incidentally take marine mammals without registering for or receiving an Authorization Certificate.

(b) *Reporting.* Vessel owners engaged in a Category III fishery must comply

with the reporting requirements specified in § 229.6.

(c) *Disposition of marine mammals.* Any marine mammal incidentally taken must be immediately returned to the sea with a minimum of further injury unless directed otherwise by NMFS personnel, a designated contractor, or an official observer, or authorized otherwise by a scientific research permit in the possession of the operator.

(d) *Monitoring.* Vessel owners engaged in a Category III fishery must comply with the observer requirements specified under § 229.7(d).

(e) *Deterrence.* When necessary to deter a marine mammal from damaging fishing gear, catch, or other private property, or from endangering personal safety, vessel owners and crew members engaged in commercial fishing operations must comply with all deterrence provisions set forth in the Act and all guidelines and prohibitions published thereunder.

(f) *Self-defense.* When imminently necessary in self-defense or to save the life of a person in immediate danger, a marine mammal may be lethally taken if such taking is reported to NMFS in accordance with the requirements of § 229.6.

(g) *Emergency regulations.* Vessel owners engaged in a Category III fishery must comply with any applicable emergency regulations.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9087, Feb. 24, 1999]

§ 229.6 Reporting requirements.

(a) Vessel owners or operators engaged in any commercial fishery must report all incidental mortality and injury of marine mammals in the course of commercial fishing operations to the Assistant Administrator, or appropriate Regional Office, by mail or other means, such as fax or overnight mail specified by the Assistant Administrator. Reports must be sent within 48 hours after the end of each fishing trip during which the incidental mortality or injury occurred, or, for nonvessel fisheries, within 48 hours of an occurrence of an incidental mortality or injury. Reports must be submitted on a standard postage-paid form as provided by the Assistant Administrator. The

vessel owner or operator must provide the following information on this form:

(1) The vessel name, and Federal, state, or tribal registration numbers of the registered vessel;

(2) The name and address of the vessel owner or operator;

(3) The name and description of the fishery, including gear type and target species; and

(4) The species and number of each marine mammal incidentally killed or injured, and the date, time, and approximate geographic location of such occurrence. A description of the animal(s) killed or injured must be provided if the species is unknown.

(b) Participants in nonvessel fisheries must provide all of the information in paragraphs (a)(1) through (a)(4) of this section except, instead of providing the vessel name and vessel registration number, participants in nonvessel fisheries must provide the gear permit number.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9087, Feb. 24, 1999]

§ 229.7 Monitoring of incidental mortalities and serious injuries.

(a) *Purpose.* The Assistant Administrator will establish a program to monitor incidental mortality and serious injury of marine mammals during the course of commercial fishing operations in order to:

(1) Obtain statistically reliable estimates of incidental mortality and serious injury;

(2) Determine the reliability of reports of incidental mortality and injury under § 229.6; and

(3) Identify changes in fishing methods or technology that may increase or decrease incidental mortality and serious injury.

(b) *Observer program.* Pursuant to paragraph (a) of this section, the Assistant Administrator may observe Category I and II vessels as necessary. Observers may, among other tasks:

(1) Record incidental mortality and injury, and bycatch of other nontarget species;

(2) Record numbers of marine mammals sighted; and

(3) Perform other scientific investigations, which may include, but are not limited to, sampling and

photographing incidental mortalities and serious injuries.

(c) *Observer requirements for participants in Category I and II fisheries.* (1) If requested by NMFS or by a designated contractor providing observer services to NMFS, a vessel owner/operator must take aboard an observer to accompany the vessel on fishing trips.

(2) After being notified by NMFS, or by a designated contractor providing observer services to NMFS, that the vessel is required to carry an observer, the vessel owner/operator must comply with the notification by providing information requested within the specified time on scheduled or anticipated fishing trips.

(3) NMFS, or a designated contractor providing observer services to NMFS, may waive the observer requirement based on a finding that the facilities for housing the observer or for carrying out observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized.

(4) The vessel owner/operator and crew must cooperate with the observer in the performance of the observer's duties including:

(i) Providing, at no cost to the observer, the United States government, or the designated observer provider, food, toilet, bathing, sleeping accommodations, and other amenities that are equivalent to those provided to the crew, unless other arrangements are approved in advance by the Regional Administrator;

(ii) Allowing for the embarking and debarking of the observer as specified by NMFS personnel or designated contractors. The operator of a vessel must ensure that transfers of observers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours if feasible, as weather and sea conditions allow, and with the agreement of the observer involved;

(iii) Allowing the observer access to all areas of the vessel necessary to conduct observer duties;

(iv) Allowing the observer access to communications equipment and navigation equipment, when available on the vessel, as necessary to perform observer duties;

(v) Providing true vessel locations by latitude and longitude, accurate to the minute, or by loran coordinates, upon request by the observer;

(vi) Sampling, retaining, and storing of marine mammal specimens, other protected species specimens, or target or non-target catch specimens, upon request by NMFS personnel, designated contractors, or the observer, if adequate facilities are available and if feasible;

(vii) Notifying the observer in a timely fashion of when all commercial fishing operations are to begin and end;

(viii) Not impairing or in any way interfering with the research or observations being carried out; and

(ix) Complying with other guidelines or regulations that NMFS may develop to ensure the effective deployment and use of observers.

(5) Marine mammals or other specimens identified in paragraph (c)(4)(vi) of this section, which are readily accessible to crew members, must be brought on board the vessel and retained for the purposes of scientific research if feasible and requested by NMFS personnel, designated contractors, or the observer. Specimens so collected and retained must, upon request by NMFS personnel, designated contractors, or the observer, be retained in cold storage on board the vessel, if feasible, until removed at the request of NMFS personnel, designated contractors, or the observer, retrieved by authorized personnel of NMFS, or released by the observer for return to the ocean. These biological specimens may be transported on board the vessel during the fishing trip and back to port under this authorization.

(d) *Observer requirements for participants in Category III fisheries.* (1) The Assistant Administrator may place observers on Category III vessels if the Assistant Administrator:

(i) Believes that the incidental mortality and serious injury of marine mammals from such fishery may be contributing to the immediate and significant adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); and

(ii) Has complied with § 229.9(a)(3)(i) and (ii); or

(iii) Has the consent of the vessel owner.

(2) If an observer is placed on a Category III vessel, the vessel owner and/or operator must comply with the requirements of § 229.7(c).

(e) *Alternative observer program.* The Assistant Administrator may establish an alternative observer program to provide statistically reliable information on the species and number of marine mammals incidentally taken in the course of commercial fishing operations. The alternative observer program may include direct observation of fishing activities from vessels, airplanes, or points on shore.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9087, Feb. 24, 1999]

§ 229.8 Publication of List of Fisheries.

(a) The Assistant Administrator will publish in the FEDERAL REGISTER a proposed revised List of Fisheries on or about July 1 of each year for the purpose of receiving public comment. Each year, on or about October 1, the Assistant Administrator will publish a final revised List of Fisheries, which will become effective January 1 of the next calendar year.

(b) The proposed and final revised List of Fisheries will:

(1) Categorize each commercial fishery based on the definitions of Category I, II, and III fisheries set forth in § 229.2; and

(2) List the marine mammals that have been incidentally injured or killed by commercial fishing operations and the estimated number of vessels or persons involved in each commercial fishery.

(c) The Assistant Administrator may publish a revised List of Fisheries at other times, after notification and opportunity for public comment.

(d) The revised final List of Fisheries will become effective no sooner than 30 days after publication in the FEDERAL REGISTER.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9087, Feb. 24, 1999]

§ 229.9 Emergency regulations.

(a) If the Assistant Administrator finds that the incidental mortality or serious injury of marine mammals from commercial fisheries is having, or is likely to have, an immediate and significant adverse impact on a stock or species, the Assistant Administrator will:

(1) In the case of a stock or species for which a take reduction plan is in effect—

(i) Prescribe emergency regulations that, consistent with such plan to the maximum extent practicable, reduce incidental mortality and serious injury in that fishery; and

(ii) Approve and implement on an expedited basis, any amendments to such plan that are recommended by the Take Reduction Team to address such adverse impact;

(2) In the case of a stock or species for which a take reduction plan is being developed—

(i) Prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery; and

(ii) Approve and implement, on an expedited basis, such plan, which will provide methods to address such adverse impact if still necessary;

(3) In the case of a stock or species for which a take reduction plan does not exist and is not being developed, or in the case of a Category III fishery that the Assistant Administrator believes may be contributing to such adverse impact,

(i) Prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery, to the extent necessary to mitigate such adverse impact;

(ii) Immediately review the stock assessment for such stock or species and the classification of such commercial fishery under this section to determine if a take reduction team should be established and if recategorization of the fishery is warranted; and

(iii) Where necessary to address such adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act (16 U.S.C. 1531 *et seq.*), place observers on vessels in a Category III fishery if the Assistant Administrator has reason to believe such

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vessels may be causing the incidental mortality and serious injury to marine mammals from such stock.

(b) Prior to taking any action under § 229.9(a)(1) through (3), the Assistant Administrator will consult with the Marine Mammal Commission, all appropriate Regional Fishery Management Councils, state fishery managers, and the appropriate take reduction team, if established.

(c) Any emergency regulations issued under this section:

(1) Shall be published in the FEDERAL REGISTER and will remain in effect for no more than 180 days or until the end of the applicable commercial fishing season, whichever is earlier, except as provided in paragraph (d) of this section; and

(2) May be terminated by notification in the FEDERAL REGISTER at an earlier date if the Assistant Administrator determines that the reasons for the emergency regulations no longer exist.

(d) If the Assistant Administrator finds that incidental mortality and serious injury of marine mammals in a commercial fishery is continuing to have an immediate and significant adverse impact on a stock or species, the Assistant Administrator may extend the emergency regulations for an additional period of not more than 90 days or until reasons for the emergency regulations no longer exist, whichever is earlier.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9087, Feb. 24, 1999]

§ 229.10 Penalties.

(a) Except as provided for in paragraphs (b) and (c) of this section, any person who violates any regulation under this part or any provision of section 118 of the MMPA shall be subject to all penalties set forth in the Act.

(b) The owner or master of a vessel that fails to comply with a take reduction plan shall be subject to the penalties of sections 105 and 107 of the Act, and may be subject to the penalties of section 106 of the Act.

(c) The owner of a vessel engaged in a Category I or II fishery who fails to ensure that a decal, or other physical evidence of such authorization issued by NMFS, is displayed on the vessel or is in possession of the operator of the

vessel shall be subject to a penalty of not more than \$100.

(d) Failure to comply with take reduction plans or emergency regulations issued under this part may result in suspension or revocation of an Authorization Certificate, and failure to comply with a take reduction plan or emergency regulation is also subject to the penalties of sections 105 and 107 of the Act, and may be subject to the penalties of section 106 of the Act.

(e) For fishers operating in Category I or II fisheries, failure to report all incidental injuries and mortalities within 48 hours of the end of each fishing trip, or failure to comply with requirements to carry an observer, will subject such persons to the penalties of sections 105 and 107 and may subject them to the penalties of section 106 of the Act, which will result in suspension, revocation, or denial of an Authorization Certificate until such requirements have been fulfilled.

(f) For fishers operating in Category III fisheries, failure to report all incidental injuries and mortalities within 48 hours of the end of each fishing trip will subject such persons to the penalties of sections 105 and 107, and may subject them to section 106, of the Act.

(g) *Suspension, revocation or denial of Authorization Certificates.* (1) Until the Authorization Certificate holder complies with the regulations under this part, the Assistant Administrator shall suspend or revoke an Authorization Certificate or deny an annual renewal of an Authorization Certificate in accordance with the provisions in 15 CFR part 904 if the Authorization Certificate holder fails to report all incidental mortality and injury of marine mammals as required under § 229.6; or fails to take aboard an observer if requested by NMFS or its designated contractors.

(2) The Assistant Administrator may suspend or revoke an Authorization Certificate or deny an annual renewal of an Authorization Certificate in accordance with the provisions in 15 CFR part 904 if the Authorization Certificate holder fails to comply with any applicable take reduction plan, take reduction regulations, or emergency regulations developed under this subpart or subparts B and C of this part or

if the Authorization Certificate holder fails to comply with other requirements of these regulations;

(3) A suspended Authorization Certificate may be reinstated at any time at the discretion of the Assistant Administrator provided the Assistant Administrator has determined that the reasons for the suspension no longer apply or corrective actions have been taken.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9088, Feb. 24, 1999]

§ 229.11 Confidential fisheries data.

(a) Proprietary information collected under this part is confidential and includes information, the unauthorized disclosure of which could be prejudicial or harmful, such as information or data that are identifiable with an individual fisher. Proprietary information obtained under part 229 will not be disclosed, in accordance with NOAA Administrative Order 216-100, except:

(1) To Federal employees whose duties require access to such information;

(2) To state employees under an agreement with NMFS that prevents public disclosure of the identity or business of any person;

(3) When required by court order; or

(4) In the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring.

(5) To other individuals or organizations authorized by the Assistant Administrator to analyze this information, so long as the confidentiality of individual fishers is not revealed.

(b) Information will be made available to the public in aggregate, summary, or other such form that does not disclose the identity or business of any person in accordance with NOAA Administrative Order 216-100. Aggregate or summary form means data structured so that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9088, Feb. 24, 1999]

§ 229.12 Consultation with the Secretary of the Interior.

The Assistant Administrator will consult with the Secretary of the Interior prior to taking actions or making determinations under this part that affect or relate to species or population stocks of marine mammals for which the Secretary of the Interior is responsible under the Act.

Subpart B—Takes of Endangered and Threatened Marine Mammals

§ 229.20 Issuance of permits.

(a) *Determinations.* During a period of up to 3 consecutive years, NMFS will allow the incidental, but not the intentional, taking by persons using vessels of the United States or foreign vessels that have valid fishing permits issued by the Assistant Administrator in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)), while engaging in commercial fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered species or threatened species under the Endangered Species Act of 1973 if the Assistant Administrator determines that:

(1) The incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock;

(2) A recovery plan has been developed or is being developed for such species or stock pursuant to the Endangered Species Act of 1973; and

(3) Where required under regulations in subpart A of this part:

(i) A monitoring program has been established under § 229.7;

(ii) Vessels engaged in such fisheries are registered in accordance with § 229.4; and

(iii) A take reduction plan has been developed or is being developed for such species or stock in accordance with regulations at subpart C of this part.

(b) *Procedures for making determinations.* In making any of the determinations listed in paragraph (a) of this section, the Assistant Administrator will

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publish an announcement in the FEDERAL REGISTER of fisheries having takes of marine mammals listed under the Endangered Species Act, including a summary of available information regarding the fisheries interactions with listed species. Any interested party may, within 45 days of such publication, submit to the Assistant Administrator written data or views with respect to the listed fisheries. As soon as practicable after the end of the 45 days following publication, NMFS will publish in the FEDERAL REGISTER a list of the fisheries for which the determinations listed in paragraph (a) of this section have been made. This publication will set forth a summary of the information used to make the determinations.

(c) *Issuance of authorization.* The Assistant Administrator will issue appropriate permits for vessels in fisheries that are required to register under § 229.4 and for which determinations under the procedures of paragraph (b) of this section can be made.

(d) *Category III fisheries.* Vessel owners engaged only in Category III fisheries for which determinations are made under the procedures of paragraph (b) of this section will not be subject to the penalties of this Act for the incidental taking of marine mammals to which this subpart applies, as long as the vessel owner or operator of such vessel reports any incidental mortality or injury of such marine mammals in accordance with the requirements of § 229.6.

(e) *Emergency authority.* During the course of the commercial fishing season, if the Assistant Administrator determines that the level of incidental mortality or serious injury from commercial fisheries for which such a determination was made under this section has resulted or is likely to result in an impact that is more than negligible on the endangered or threatened species or stock, the Assistant Administrator will use the emergency authority of § 229.9 to protect such species or stock, and may modify any permit granted under this paragraph as necessary.

(f) *Suspension, revocation, modification and amendment.* The Assistant Administrator may, pursuant to the provi-

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sions of 15 CFR part 904, suspend or revoke a permit granted under this section if the Assistant Administrator determines that the conditions or limitations set forth in such permit are not being complied with. The Assistant Administrator may amend or modify, after notification and opportunity for public comment, the list of fisheries published in accordance with paragraph (b) of this section whenever the Assistant Administrator determines there has been a significant change in the information or conditions used to determine such a list.

(g) *Southern sea otters.* This subpart does not apply to the taking of Southern (California) sea otters.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9088, Feb. 24, 1999]

Subpart C—Take Reduction Plan Regulations and Emergency Regulations

§ 229.30 Basis.

Section 118(f)(9) of the Act authorizes the Director, NMFS, to impose regulations governing commercial fishing operations, when necessary, to implement a take reduction plan in order to protect or restore a marine mammal stock or species covered by such a plan.

[64 FR 9088, Feb. 24, 1999]

§ 229.31 Pacific Offshore Cetacean Take Reduction Plan.

(a) *Purpose and scope.* The purpose of this section is to implement the Pacific Offshore Cetacean Take Reduction Plan. Paragraphs (b) through (d) of this section apply to all U.S. drift gillnet fishing vessels operating in waters seaward of the coast of California or Oregon, including adjacent high seas waters. For purposes of this section, the fishing season is defined as beginning May 1 and ending on January 31 of the following year.

(b) *Extenders.* An *extender* is a line that attaches a buoy (float) to a drift gillnet's floatline. The floatline is attached to the top of the drift gillnet. All extenders (buoy lines) must be at least 6 fathoms (36 ft; 10.9 m) in length during all sets. Accordingly, all floatlines must be fished at a minimum

of 36 feet (10.9 m) below the surface of the water.

(c) *Pingers*. (1) For the purposes of this paragraph (c), a pinger is an acoustic deterrent device which, when immersed in water, broadcasts a 10 kHz (± 2 kHz) sound at 132 dB (± 4 dB) re 1 micropascal at 1 m, lasting 300 milliseconds (± 15 milliseconds), and repeating every 4 seconds ($\pm .2$ seconds); and remains operational to a water depth of at least 100 fathoms (600 ft or 182.88 m).

(2) While at sea, operators of drift gillnet vessels with gillnets onboard must carry enough pingers on the vessel to meet the requirements set forth under paragraphs (c)(3) through(6) of this section.

(3) *Floatline*. Pingers shall be attached within 30 ft (9.14 m) of the floatline and spaced no more than 300 ft (91.44 m) apart.

(4) *Leadline*. Pingers shall be attached within 36 ft (10.97 m) of the leadline and spaced no more than 300 ft (91.44 m) apart.

(5) *Staggered Configuration*. Pingers attached within 30 ft (9.14 m) of the floatline and within 36 ft (10.97 m) of the leadline shall be staggered such that the horizontal distance between them is no more than 150 ft (45.5 m).

(6) Any materials used to weight pingers must not change its specifications set forth under paragraph (c)(1) of this section.

(7) The pingers must be operational and functioning at all times during deployment.

(8) If requested, NMFS may authorize the use of pingers with specifications or pinger configurations differing from those set forth in paragraphs (c)(1) and (c)(3) of this section for limited, experimental purposes within a single fishing season.

(d) *Skipper education workshops*. After notification from NMFS, vessel operators must attend a skipper education workshop before commencing fishing each fishing season. For the 1997/1998 fishing season, all vessel operators must have attended one skipper education workshop by October 30, 1997. NMFS may waive the requirement to

attend these workshops by notice to all vessel operators.

[62 FR 51813, Oct. 3, 1997, as amended at 63 FR 27861, May 21, 1998; 64 FR 3432, Jan. 22, 1999]

§ 229.32 Atlantic large whale take reduction plan regulations.

(a)(1) *Purpose and scope*. The purpose of this section is to implement the Atlantic Large Whale Take Reduction Plan to reduce incidental mortality and serious injury of fin, humpback, and right whales in specific Category I and Category II commercial fisheries from Maine through Florida. The measures identified in the Atlantic Large Whale Take Reduction Plan are also intended to benefit minke whales, which are not designated as a strategic stock, but are known to be taken incidentally in gillnet and trap/pot fisheries. The gear types affected by this plan include gillnets (e.g., anchored, drift, and shark) and traps/pots.

(2) *Regulated waters*. The regulations in this section apply to all U.S. waters in the Atlantic except for the areas exempted in paragraph (a)(3) of this section.

(3) *Exempted waters*. (i) The regulations in this section do not apply to waters landward of the first bridge over any embayment, harbor, or inlet in Massachusetts.

(ii) The regulations in this section do not apply to waters landward of the 72 COLREGS demarcation lines (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80 with the exception of the COLREGS lines for Casco Bay (Maine), Portsmouth Harbor (New Hampshire), Gardiners Bay and Long Island Sound (New York), and the state of Massachusetts.

(iii) *Other exempted waters*. The regulations in this section do not apply to waters landward of the following lines:

Maine

A line connecting the following points (Quoddy Narrows/U.S.-Canada border to Odiornes Pt., Portsmouth, New Hampshire):

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44°49.67' N. lat., 66°57.77' W. long. (R N "2", Quoddy Narrows)
 44°48.64' N. lat., 66°56.43' W. long. (G "1" Whistle, West Quoddy Head)
 44°47.36' N. lat., 66°59.25' W. long. (R N "2", Morton Ledge)
 44°45.51' N. lat., 67°02.87' W. long. (R "28M" Whistle, Baileys Mistake)
 44°37.70' N. lat., 67°09.75' W. long. (Obstruction, Southeast of Cutler)
 44°27.77' N. lat., 67°32.86' W. long. (Freeman Rock, East of Great Wass Island)
 44°25.74' N. lat., 67°38.39' W. long. (R "2SR" Bell, Seahorse Rock, West of Great Wass Island)
 44°21.66' N. lat., 67°51.78' W. long. (R N "2", Petit Manan Island)
 44°19.08' N. lat., 68°02.05' W. long. (R "2S" Bell, Schoodic Island)
 44°13.55' N. lat., 68°10.71' W. long. (R "8BI" Whistle, Baker Island)
 44°08.36' N. lat., 68°14.75' W. long. (Southern Point, Great Duck Island)
 43°59.36' N. lat., 68°37.95' W. long. (R "2" Bell, Roaring Bull Ledge, Isle Au Haut)
 43°59.83' N. lat., 68°50.06' W. long. (R "2A" Bell, Old Horse Ledge)
 43°56.72' N. lat., 69°04.89' W. long. (G "5TB" Bell, Two Bush Channel)
 43°50.28' N. lat., 69°18.86' W. long. (R "2 OM" Whistle, Old Man Ledge)
 43°48.96' N. lat., 69°31.15' W. long. (GR C "PL", Pemaquid Ledge)
 43°43.64' N. lat., 69°37.58' W. long. (R "2BR" Bell, Bantam Rock)
 43°41.44' N. lat., 69°45.27' W. long. (R "20ML" Bell, Mile Ledge)
 43°36.04' N. lat., 70°03.98' W. long. (RG N "BS", Bulwark Shoal)
 43°31.94' N. lat., 70°08.68' W. long. (G "1", East Hue and Cry)
 43°27.63' N. lat., 70°17.48' W. long. (RW "WI" Whistle, Wood Island)
 43°20.23' N. lat., 70°23.64' W. long. (RW "CP" Whistle, Cape Porpoise)
 43°04.06' N. lat., 70°36.70' W. long. (R N "2MR", Murray Rock)
 43°02.93' N. lat., 70°41.47' W. long. (R "2KR" Whistle, Kittery Point)
 43°02.55' N. lat., 70°43.33' W. long. (Odiornes Pt., Portsmouth, New Hampshire)

New Hampshire

A line from 42°53.691' N. lat., 70°48.516' W. long. to 42°53.516' N. lat., 70°48.748' W. long. (Hampton Harbor)

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A line from 42°59.986' N. lat., 70°44.654' W. long. to 42°59.956' N., 70°44.737' W. long. (Rye Harbor)

Rhode Island

A line from 41°22.441' N. lat., 71°30.781' W. long. to 41°22.447' N. lat., 71°30.893' W. long. (Pt. Judith Pond Inlet)
 A line from 41°21.310' N. lat., 71°38.300' W. long. to 41°21.300' N. lat., 71°38.330' W. long. (Ninigret Pond Inlet)
 A line from 41°19.875' N. lat., 71°43.061' W. long. to 41°19.879' N. lat., 71°43.115' W. long. (Quonochontaug Pond Inlet)
 A line from 41°19.660' N. lat., 71°45.750' W. long. to 41°19.660' N. lat., 71°45.780' W. long. (Weekapaug Pond Inlet)

New York

A line that follows the territorial sea baseline through Block Island Sound (Watch Hill Point, RI, to Montauk Point, NY)

South Carolina

A line from 32°34.717' N. lat., 80°08.565' W. long. to 32°34.686' N. lat., 80°08.642' W. long. (Captain Sams Inlet)

(4) *Sinking and/or neutrally buoyant groundline exemption.* The fisheries regulated under this section are exempt from the requirement to have groundlines composed of sinking and/or neutrally buoyant line if their groundline is at a depth equal to or greater than 280 fathoms (1,680 ft or 512.1 m) (as shown on NOAA charts 13200 (Georges Bank and Nantucket Shoals, 1:400,000), 12300 (NY Approaches—Nantucket Shoals to Five Fathom Bank, 1:400,000), 12200 (Cape May to Cape Hatteras, 1:419,706), 11520 (Cape Hatteras to Charleston, 1:432,720), 11480 (Charleston Light to Cape Canaveral, 1:449,659) and 11460 (Cape Canaveral to Key West, 1:466,940)).

(5) *Net panel weak link and anchoring exemption.* The anchored gillnet fisheries regulated under this section are exempt from the requirement to install weak links in the net panel and anchor each end of the net string if the floatline is at a depth equal to or greater than 280 fathoms (1,680 ft or 512.1 m) (as shown on NOAA charts 13200 (Georges Bank and Nantucket Shoals, 1:400,000), 12300 (NY Approaches—Nantucket Shoals to Five Fathom Bank, 1:400,000),

12200 (Cape May to Cape Hatteras, 1:419,706), 11520 (Cape Hatteras to Charleston, 1:432,720), 11480 (Charleston Light to Cape Canaveral, 1:449,659) and 11460 (Cape Canaveral to Key West, 1:466,940)).

(b) *Gear marking requirements.* (1) Specified gear consists of trap/pot gear and gillnet gear set in specified areas.

(2) *Specified areas.* The following areas are specified for gear marking purposes: Northern Inshore State Trap/Pot Waters, Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Northern Nearshore Trap/Pot Waters Area, Great South Channel Restricted Trap/Pot Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, Southern Nearshore Trap/Pot Waters Area, Offshore Trap/Pot Waters Area, Other Northeast Gillnet Waters Area, Mid/South Atlantic Gillnet Waters Area, Other Southeast Gillnet Waters Area, Southeast U.S. Restricted Area, and Southeast U.S. Monitoring Area.

(i) *Requirements for Shark Gillnet Gear in the Southeast U.S. Restricted Area S, Southeast U.S. Monitoring Area and Other Southeast Gillnet Waters—(A) Color code.* Shark gillnet gear (i.e., gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh) in the Southeast U.S. Restricted Area S, Southeast U.S. Monitoring Area, and Other Southeast Gillnet Waters must be marked with the appropriate color code to designate gear types and areas as follows:

(1) *Gear type code.* Shark gillnet gear must be marked with a green marking.

(2) *Area code.* Shark gillnet gear set in the Southeast U.S. Restricted Area S, Southeast U.S. Monitoring Area, and Other Southeast Gillnet Waters must be marked with a blue marking.

(B) *Markings.* All specified gear in specified areas must be marked with two color codes, one designating the gear type, the other indicating the area where the gear is set. Each color of the two-color code must be permanently marked on or along the line or lines specified below under paragraphs (b)(2)(i)(C) and (D) of this section. Each color mark of the color codes must be clearly visible when the gear is hauled or removed from the water. Each mark

must be at least 4 inches (10.2 cm) long. The two color marks must be placed within 6 inches (15.2 cm) of each other. If the color of the rope is the same as or similar to a color code, a white mark may be substituted for that color code. In marking or affixing the color code, the line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic, or heat-shrink tubing, or other material; or a thin line may be woven into or through the line; or the line may be marked as approved in writing by the Assistant Administrator. A brochure illustrating the techniques for marking gear is available from the Regional Administrator, NMFS, Northeast Region upon request.

(C) *Buoy line markings.* All buoy lines greater than 4 feet (1.22 m) long must be marked within 2 feet (0.6 m) of the top of the buoy line (closest to the surface) and midway along the length of the buoy line.

(D) *Net panel markings.* Each gillnet net panel must be marked along both the floatline and the leadline at least once every 100 yards (91.4 m), unless otherwise required by the Assistant Administrator under paragraph (i) of this section.

(ii) *Requirements for other specified areas.* Any person who owns or fishes with specified gear in the other specified areas must mark that gear in accordance with paragraphs (b)(2)(ii)(A), (b)(2)(ii)(B), and (b)(2)(iii) of this section, unless otherwise required by the Assistant Administrator under paragraph (i) of this section.

(A) *Color code.* Specified gear must be marked with the appropriate colors to designate gear-types and areas as follows:

(1) *Trap/pot gear* in the Northern Inshore State Trap/Pot Waters Area, the Cape Cod Bay Restricted Area, the Stellwagen Bank/Jeffreys Ledge Restricted Area, the Great South Channel Restricted Trap/Pot Area where it overlaps with Lobster Management Area (LMA) 2 and the Outer Cape LMA (as defined in the American Lobster Fishery regulations in 50 CFR 697.18), and the Northern Nearshore Trap/Pot Waters Area must be marked with a red marking.

(2) Trap/pot gear in the Southern Nearshore Trap/Pot Waters Area must be marked with an orange marking.

(3) Trap/pot gear in the Great South Channel Restricted Trap/Pot Area where it overlaps with LMA 3/Overlap and LMA 3 (as defined in the American Lobster Fishery regulations in 50 CFR 697.18), and the Offshore Trap/Pot Waters Area must be marked with a black marking.

(4) Anchored and drift gillnet gear in the Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, and Other Northeast Gillnet Waters Area must be marked with a green marking.

(5) Anchored and drift gillnet gear in the Mid/South Atlantic Gillnet Waters Area must be marked with a blue marking.

(6) Gillnet gear (except gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh) in the Southeast U.S. Restricted Area S and Other Southeast Gillnet Waters must be marked with a yellow marking.

(B) *Markings.* All specified gear in specified areas must be marked with one color code described in paragraph (b)(2)(ii)(A) of this section (which indicates the gear type and general area where the gear is set). Each color code must be permanently affixed on or along the line or lines. Each color code must be clearly visible when the gear is hauled or removed from the water. Each mark must be at least 4 inches (10.2 cm) long and be placed midway on the buoy line in the water column. If the color of the rope is the same as or similar to a color code, a white mark may be substituted for that color code. In marking or affixing the color code, the line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic, or heat-shrink tubing, or other material; or a thin line may be woven into or through the line; or the line may be marked as approved in writing by the Assistant Administrator. A brochure illustrating the techniques for marking gear is available from the Regional Administrator, NMFS, Northeast Region upon request.

(iii) *Requirements for all specified areas—(A) Surface buoy markings.* Trap/pot and gillnet gear regulated under this section must mark all surface buoys to identify the vessel or fishery with one of the following: The owner's motorboat registration number, the owner's U.S. vessel documentation number, the federal commercial fishing permit number, or whatever positive identification marking is required by the vessel's home-port state. When marking of surface buoys is not already required by state or federal regulations, the letters and numbers used to mark the gear to identify the vessel or fishery must be at least 1 inch (2.5 cm) in height in block letters or arabic numbers in a color that contrasts with the background color of the buoy. A brochure illustrating the techniques for marking gear is available upon from the Regional Administrator, NMFS, Northeast Region upon request.

(3) *Changes to requirements.* If the Assistant Administrator revises the gear marking requirements in accordance with paragraph (i) of this section, the gear must be marked in compliance with those requirements.

(c) *Restrictions applicable to trap/pot gear in regulated waters—(1) Universal trap/pot gear requirements.* In addition to the area-specific measures listed in paragraphs (c)(2) through (c)(9) of this section, all trap/pot gear in regulated waters, including the Northern Inshore State Trap/Pot Waters Area, must comply with the universal gear requirements listed here.¹ The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(i) *No buoy line floating at the surface.* No person or vessel may fish with trap/pot gear that has any portion of the buoy line floating at the surface at any time when the buoy line is directly connected to the gear at the ocean bottom. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, floating line may be used between these objects.

¹Fishermen are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are considered to be less of an entanglement threat and are thus preferable to knots.

(ii) *No wet storage of gear.* Trap/pot gear must be hauled out of the water at least once every 30 days.

(2) *Cape Cod Bay Restricted Area—(i) Area.* The Cape Cod Bay restricted area consists of the Cape Cod Bay right whale critical habitat area specified under 50 CFR 226.203(b) unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section.

(ii) *Area-specific gear or vessel requirements during the winter restricted period.* No person or vessel may fish with or possess trap/pot gear in the Cape Cod Bay Restricted Area during the winter restricted period unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below for the winter restricted period, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) *Winter restricted period.* The winter restricted period for the Cape Cod Bay Restricted Area is from January 1 through May 15 of each year unless the Assistant Administrator changes this period in accordance with paragraph (i) of this section.

(B) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The breaking strength of the weak links must not exceed 500 lb (226.8 kg).

(2) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Adminis-

trator, NMFS, Northeast Region upon request.

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(C) *Single traps and multiple-trap trawls.* Single traps and three-trap trawls are prohibited. All traps must be set in either a two-trap string or in a trawl of four or more traps. A two-trap string must have no more than one buoy line.

(D) *Buoy lines.* All buoy lines must be composed of sinking and/or neutrally buoyant line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(E) *Groundlines.* All groundlines must be comprised entirely of sinking and/or neutrally buoyant line. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(iii) *Area-specific gear or vessel requirements for the other restricted period.* No person or vessel may fish with or possess trap/pot gear in the Cape Cod Bay Restricted Area during the other restricted period unless that gear complies with the gear marking requirements specified in paragraph (b) of this section and the universal trap/pot gear requirements specified in paragraph (c)(1) of this section as well as the area-specific requirements listed below for the other restricted period, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) *Other restricted period.* The other restricted period for the Cape Cod Bay Restricted Area is from May 16 through December 31 of each year unless the Assistant Administrator revises this period in accordance with paragraph (i) of this section.

(B) *Gear and vessel requirements—(1) State-water portion.* No person or vessel may fish with or possess trap/pot gear in the state-water portion of the Cape Cod Bay Restricted Area during the other restricted period unless that gear complies with the requirements for the

Northern Inshore State Trap/Pot Waters Area listed in paragraph (c)(6) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(2) *Federal-water portion.* No person or vessel may fish with or possess trap/pot gear in the Federal-water portion of the Cape Cod Bay Restricted Area during the other restricted period unless that gear complies with the requirements for the Northern Nearshore Trap/Pot Waters Area in paragraph (c)(7) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(3) *Great South Channel Restricted Trap/Pot Area—(i) Area.* The Great South Channel Restricted Trap/Pot Area consists of the Great South Channel right whale critical habitat area specified under 50 CFR 226.203(a) unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section.

(ii) *Closure during the spring restricted period.* The spring restricted period for the Great South Channel Restricted Trap/Pot Area is from April 1 through June 30 of each year unless the Assistant Administrator revises this period in accordance with paragraph (i) of this section. During the spring restricted period, no person or vessel may fish with, set, or possess trap/pot gear in this Area unless the Assistant Administrator specifies gear modifications or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2.

(iii) *Area-specific gear or vessel requirements for the other restricted period.* The other restricted period for the Great South Channel Restricted Trap/Pot Area is July 1 through March 31, unless the Assistant Administrator revises this period in accordance with paragraph (i) of this section. During the other restricted period, no person or vessel may fish with or possess trap/pot gear in the Great South Channel Restricted Trap/Pot Area unless that gear complies with the gear marking re-

quirements specified in paragraph (b) of this section, and the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess trap/pot gear in the Great South Channel Restricted Trap/Pot Area unless that gear complies with the requirements listed for Northern Nearshore Trap/Pot Waters Area in paragraph (c)(7) of this section where the Great South Channel Restricted Trap/Pot Area overlaps with Lobster Management Area (LMA) 2 and the Outer Cape LMA (as defined in the American Lobster Fishery regulations in 50 CFR 697.18); the requirements listed for Offshore Trap/Pot Waters in paragraph (c)(5) of this section where the Great South Channel Restricted Trap/Pot Area overlaps with LMA 2/3 Overlap and LMA 3 (as defined in the American Lobster Fishery regulations in 50 CFR 697.18); or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(4) *Stellwagen Bank/Jeffreys Ledge Restricted Area—(i) Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as right whale critical habitat under 50 CFR 226.203(b), that lie south of 43°15' N. lat. and west of 70°00' W. long. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the requirements listed for the Northern Nearshore Trap/Pot Waters Area specified in paragraph (c)(7) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(5) *Offshore Trap/Pot² Waters Area*—(i) *Area.* The Offshore Trap/Pot Waters Area includes all Federal waters of the EEZ Offshore Management Area 3 (including the area known as the Area $\frac{2}{3}$ Overlap and Area $\frac{1}{3}$ Overlap as defined in the American Lobster Fishery regulations at 50 CFR 697.18, with the exception of the Great South Channel Restricted Trap/Pot Area), and extending south along the 100-fathom (600-ft or 182.9-m) depth contour from 35°30' N. lat. south to 27°51' N. lat., and east to the eastern edge of the EEZ. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area from the U.S./Canada border south to a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat., and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved

in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links may not exceed 1,500 lb (680.4 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Groundlines.* On or before October 6, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area bounded on the north by a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, and bounded on the south by a line at 32°00' N. lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements specified in paragraphs (c)(5)(i)(A) and (c)(5)(i)(B) of this section, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(iv) *Seasonal area-specific gear or vessel requirements.* From November 15 to April 15, no person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area from 32°00' N. lat. south to 29°00' N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this

²Fishermen using red crab trap/pot gear should refer to §229.32(c)(9) for the restrictions applicable to red crab trap/pot fishery.

section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(5)(ii)(A) and (c)(5)(ii)(B) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(v) *Seasonal area-specific gear or vessel requirements.* From December 1 to March 31, no person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area from 29°00' N. lat. south to 27°51' N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(5)(ii)(A) and (c)(5)(ii)(B) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise this period and these requirements in accordance with paragraph (i) of this section.

(vi) [Reserved]

(6) *Northern Inshore State Trap/Pot Waters Area*—(i) *Area.* The Northern Inshore State Trap/Pot Waters Area includes the state waters of Rhode Island, Massachusetts, New Hampshire, and Maine, with the exception of Cape Cod Bay Restricted Area and those waters exempted under paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Northern Inshore State Trap/Pot Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (ex-

cept traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links may not exceed 600 lb (272.2 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Groundlines.* On or before October 6, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line unless exempted for this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(C) [Reserved]

(7) *Northern Nearshore Trap/Pot Waters Area*—(i) *Area.* The Northern Nearshore Trap/Pot Waters Area includes all Federal waters of EEZ Nearshore Management Area 1, Area 2, and the Outer Cape Lobster Management Area (as defined in the American Lobster Fishery regulations at 50 CFR 697.18), with the exception of the Great South Channel Restricted Trap/Pot Area, Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area and those waters exempted under paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel

may fish with or possess trap/pot gear in the Northern Nearshore Trap/Pot Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links must not exceed 600 lb (272.2 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Single traps and multiple-trap trawls.* Single traps are prohibited. All traps must be set in trawls of two or more traps. All trawls up to and including five traps must have no more than one buoy line.

(C) *Groundlines.* On or before October 6, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment

of buoys, toggles, or other flotation devices to groundlines is prohibited.

(D) [Reserved]

(8) *Southern Nearshore³ Trap/Pot Waters Area*—(i) *Area.* The Southern Nearshore Trap/Pot Waters Area includes all state and Federal waters which fall within EEZ Nearshore Management Area 4, EEZ Nearshore Management Area 5, and EEZ Nearshore Management Area 6 (as defined in the American Lobster Fishery regulations in 50 CFR 697.18), and inside the 100-fathom (600-ft or 182.9-m) depth contour line from 35°30' N lat. south to 27°51' N lat. and extending inshore to the shoreline or exemption line, with the exception of those waters exempted under paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that is east of a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat., unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed here, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: swivels, plastic weak links,

³Fishermen using red crab trap/pot gear should refer to §229.32(c)(9) for the restrictions applicable to red crab trap/pot fishery.

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rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links may not exceed 600 lb (272.2 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Groundlines.* On or before October 6, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area bounded on the north by a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, and bounded on the south by 32°00' N. lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements in paragraph (c)(1) of this section, requirements specified in paragraphs (c)(8)(ii)(A) and (c)(8)(ii)(B) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(iv) *Seasonal area-specific gear or vessel requirements.* From November 15 to April 15, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area from 32°00' N. lat. south to 29°00' N. lat. and east to the eastern edge of the EEZ, unless

that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(8)(ii)(A) and (c)(8)(ii)(B) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(v) *Seasonal area-specific gear or vessel requirements.* From December 1 to March 31, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area from 29°00' N. lat. south to 27°51' N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(8)(ii)(A) and (c)(8)(ii)(B) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise this period and these requirements in accordance with paragraph (i) of this section.

(vi) [Reserved]

(9) *Restrictions applicable to the red crab trap/pot fishery—(i) Area.* The red crab trap/pot fishery is regulated in the waters identified in paragraphs (c)(5)(i) and (c)(8)(i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(9)(i) of this section that overlaps an area from the U.S./Canada border south to a straight line from 41° 18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat., and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator revises

these requirements in accordance with paragraph (i) of this section.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links may not exceed 2,000 lb (907.2 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Groundlines.* On or before October 6, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(9)(i) of this section that overlaps an area bounded on the north by a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, and bounded on the south by a line at 32°00' N. lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section,

the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraphs (c)(9)(ii)(A) and (c)(9)(ii)(B) of this section, or unless the gear is stowed as specified in §229.2. The Assistant Administrator revises these requirements in accordance with paragraph (i) of this section.

(iv) *Seasonal area-specific gear or vessel requirements.* From November 15 to April 15, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(9)(i) of this section that overlaps an area from 32°00' N. lat. south to 29°00' N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(9)(ii)(A) and (c)(9)(ii)(B) of this section, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(v) *Seasonal area-specific gear or vessel requirements.* From December 1 to March 31, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(9)(i) of this section that overlaps an area from 29°00' N. lat. south to 27°51' N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(9)(ii)(A) and (c)(9)(ii)(B) of this section, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(vi) [Reserved]

(d) *Restrictions applicable to anchored gillnet gear—(1) Universal anchored gillnet gear requirements.* In addition to the area-specific measures listed in paragraphs (d)(2) through (d)(7) of this section, all anchored gillnet gear in

regulated waters must comply with the universal gear requirements listed here.⁴ The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(i) *No buoy line floating at the surface.* No person or vessel may fish with anchored gillnet gear that has any portion of the buoy line floating at the surface at any time when the buoy line is directly connected to the gear at the ocean bottom. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, sinking and/or neutrally buoyant line must be used between these objects.

(ii) *No wet storage of gear.* Anchored gillnet gear must be hauled out of the water at least once every 30 days.

(2) *Cape Cod Bay Restricted Area—(i) Area.* The Cape Cod Bay Restricted Area consists of the Cape Cod Bay right whale critical habitat area specified under 50 CFR 226.203(b), unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section.

(ii) *Closure during the winter restricted period—(A) Winter restricted period.* The winter restricted period for this area is from January 1 through May 15 of each year, unless the Assistant Administrator revises that period in accordance with paragraph (i) of this section.

(B) *Closure.* During the winter restricted period, no person or vessel may fish with or possess anchored gillnet gear in the Cape Cod Bay Restricted Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the FEDERAL REGISTER if NMFS determines that right whales have left the

restricted area and are unlikely to return for the remainder of the season.

(iii) *Area-specific gear or vessel requirements for the other restricted period—(A) Other restricted period.* The other restricted period for the Cape Cod Bay Restricted Area is from May 16 through December 31 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) *Area-specific gear or vessel requirements.* No person or vessel may fish with or possess anchored gillnet gear in the Cape Cod Bay Restricted Area during the other restricted period unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(3) *Great South Channel Restricted Gillnet Area—(i) Area.* The Great South Channel Restricted Gillnet Area consists of the area bounded by lines connecting the following four points: 41°02.2' N. lat./69°02' W. long., 41°43.5' N. lat./69°36.3' W. long., 42°10' N. lat./68°31' W. long., and 41°38' N. lat./68°13' W. long. This area includes most of the Great South Channel right whale critical habitat area specified under 50 CFR 226.203(a), with the exception of the sliver along the western boundary described in paragraph (d)(4)(i) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Closure during the spring restricted period—(A) Spring restricted period.* The spring restricted period for the Great South Channel Restricted Gillnet Area is from April 1 through June 30 of each year unless the Assistant Administrator revises that period in accordance with paragraph (i) of this section.

(B) *Closure.* During the spring restricted period, no person or vessel may set, fish with or possess anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless the

⁴Fishermen are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are considered to be less of an entanglement threat and are thus preferable to knots.

Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2.

(iii) *Area-specific gear or vessel requirements for the other restricted period*—(A) *Other restricted period.* The other restricted period for the Great South Channel Restricted Gillnet Area is from July 1 through March 31 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) *Area-specific gear or vessel requirements.* During the other restricted period, no person or vessel may fish with or possess anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(4) *Great South Channel Sliver Restricted Area*—(i) *Area.* The Great South Channel Sliver Restricted Area consists of the area bounded by lines connecting the following points: 41°02.2' N. lat./69°02' W. long., 41°43.5' N. lat./69°36.3' W. long., 41°40' N. lat./69°45' W. long., and 41°00' N. lat./69°05' W. long. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess anchored gillnet gear in the Great South Channel Sliver Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters

Area, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(5) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as right whale critical habitat under 50 CFR 226.203(b), that lie south of 43°15' N. lat. and west of 70°00' W. long., and those waters exempted under paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess anchored gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(6) *Other Northeast Gillnet Waters Area*—(i) *Area.* The Other Northeast Gillnet Waters Area consists of all U.S. waters from the U.S./Canada border to Long Island, NY, at 72°30' W. long. south to 36°33.03' N. lat. and east to the eastern edge of the EEZ, with the exception of the Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, and exempted waters listed in paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess anchored gillnet gear in the Other Northeast Gillnet Waters Area that overlaps an area from the U.S./Canada border south

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to a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links must not exceed 1,100 lb (499.0 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Net panel weak links.* The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string must contain weak links that meet one of the following two configurations:

(1) *Configuration 1.* (i) The weak link must be chosen from the following list approved by NMFS: Plastic weak links

or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline or as the up and down line, or if no up and down line is present, then individual weak links are not required on the floatline or up and down line. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request; and

(ii) One weak link must be placed in the center of each of the up and down lines at both ends of the net panel; and

(iii) One weak link must be placed as close as possible to each end of the net panels on the floatline; and

(iv) For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline; or

(v) For net panels greater than 50 fathoms (300 ft or 91.4 m) in length, one weak link must be placed at least every 25 fathoms (150 ft or 45.7 m) along the floatline.

(2) *Configuration 2.* (i) The weak link must be chosen from the following list approved by NMFS: Plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline or as the up and down line, or if no up and down line is present, then individual weak links are not required on the floatline or up and down line. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request; and

(ii) One weak link must be placed in the center of each of the up and down lines at both ends of the net panel; and

(iii) One weak link must be placed between the floatline tie loops between net panels; and

(iv) One weak link must be placed where the floatline tie loops attaches to the bridle, buoy line, or groundline at the end of a net string; and

(v) For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline; or

(vi) For net panels greater than 50 fathoms (300 ft or 91.4 m) in length, one weak link must be placed at least

every 25 fathoms (150 ft or 45.7 m) along the floatline.

(C) *Anchoring systems.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor. Dead weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Northeast Region upon request.

(D) *Groundlines.* On or before October 6, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess anchored gillnet gear in the Other Northeast Gillnet Waters Area that is south of a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraphs (d)(6)(ii)(A) through (d)(6)(ii)(D) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(7) *Mid/South Atlantic Gillnet Waters—*
 (i) *Area.* The Mid/South Atlantic Gillnet Waters consists of all U.S. waters bounded on the north from Long Island, NY, at 72°30' W. long. south to 36°33.03' N. lat. and east to the eastern edge of the EEZ, and bounded on the south by 32°00' N. lat., and east to the eastern edge of the EEZ. The Assistant Administrator may change that area in accordance with paragraph (i) of this section. When the Mid/South Atlantic Gillnet Waters Area overlaps the

Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2), then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) applies.

(ii) *Area-specific gear or vessel requirements.* From September 1 through May 31, no person or vessel may fish with or possess anchored gillnet gear in the Mid/South Atlantic Gillnet Waters unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the following area-specific requirements, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2), then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) applies.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links must not exceed 1,100 lb (499.0 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the

line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Net panel weak links.* The weak link requirements apply to all variations in panel size. All net panels must contain weak links that meet the following specifications:

(1) The breaking strength for each of the weak links must not exceed 1,100 lb (499.0 kg).

(2) The weak link must be chosen from the following list approved by NMFS: Plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline then individual weak links are not required. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(3) Weak links must be placed in the center of the floatline of each gillnet net panel up to and including 50 fathoms (300 ft or 91.4 m) in length, or at least every 25 fathoms (150 ft or 45.7 m) along the floatline for longer panels.

(C) *Additional anchoring system and net panel weak link requirements.* All gillnets must return to port with the vessel unless the gear meets the following specifications:

(1) *Anchoring systems.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor. Dead weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) *Net panel weak links.* Net panel weak links must meet the specifications in this paragraph. The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string must contain weak links that meet one of the following two configurations

found in paragraph (d)(6)(ii)(B)(1) or (d)(6)(ii)(B)(2) of this section.

(3) *Additional provision for North Carolina.* All gillnets set 300 yards (274.3 m) or less from the shoreline in North Carolina must meet the anchoring system and net panel weak link requirements in paragraphs (d)(7)(ii)(C)(1) and (d)(7)(ii)(C)(2) of this section, or the following:

(i) The entire net string must be less than 300 yards (274.3 m) from shore.

(ii) The breaking strength of each weak link must not exceed 600 lb (272.2 kg). The weak link requirements apply to all variations in panel size.

(iii) All net panels in a string must contain weak links that meet one of the following two configuration specifications found in paragraph (d)(6)(ii)(B)(1) or (d)(6)(ii)(B)(2) of this section.

(iv) Regardless of the number of net panels, all anchored gillnets must be secured at the offshore end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having a holding capacity equal to or greater than an 8-lb (3.6-kg) Danforth-style anchor, and at the inshore end of the net string with a dead weight equal to or greater than 31 lb (14.1 kg).

(D) *Groundlines.* On or before October 6, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line unless exempted from this requirement under paragraph (a)(4). The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(8) [Reserved]

(e) *Restrictions applicable to drift gillnet gear—(1) Cape Cod Bay Restricted Area—(i) Area.* The Cape Cod Bay Restricted Area consists of the Cape Cod Bay right whale critical habitat area specified under 50 CFR 226.203(b), unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section.

(ii) *Closure during the winter restricted period—(A) Winter restricted period.* The winter restricted period for this area is from January 1 through May 15 of each year, unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) *Closure*. During the winter restricted period, no person or vessel may fish with or possess drift gillnet gear in the Cape Cod Bay Restricted Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the FEDERAL REGISTER if NMFS determines that right whales have left the restricted area and are unlikely to return for the remainder of the season.

(iii) *Area-specific gear or vessel requirements for the other restricted period*—(A) *Other restricted period*. The other restricted period for the Cape Cod Bay Restricted Area is from May 16 through December 31 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) *Area specific gear or vessel requirements*. During the other restricted period, no person or vessel may fish with or possess drift gillnet gear in the Cape Cod Bay Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Cape Cod Bay Restricted Area during the other restricted period unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Cape Cod Bay Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(2) *Great South Channel Restricted Gillnet Area*—(i) *Area*. The Great South Channel Restricted Gillnet Area consists of the area bounded by lines connecting the following four points: 41°02.2' N. lat./69°02' W. long., 41°43.5' N. lat./69°36.3' W. long., 42°10' N. lat./68°31' W. long., and 41°38' N. lat./68°13' W.

long. This area includes most of the Great South Channel right whale critical habitat area specified under 50 CFR 226.203(a), with the exception of the sliver along the western boundary described in paragraph (e)(3)(i) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Closure during the spring restricted period*—(A) *Spring restricted period*. The spring restricted period for the Great South Channel Restricted Gillnet Area is from April 1 through June 30 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) *Closure*. During the spring restricted period, no person or vessel may set, fish with or possess drift gillnet gear in the Great South Channel Restricted Gillnet Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2.

(iii) *Area-specific gear or vessel requirements for the other restricted period*—(A) *Other restricted period*. The other restricted period for the Great South Channel Restricted Gillnet Area is from July 1 through March 31 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) *Area-specific gear or vessel requirements*. During the other restricted period, no person or vessel may fish with or possess drift gillnet gear in the Great South Channel Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Great South Channel Restricted Gillnet Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Great South Channel Restricted Gillnet Area must be removed from the water and stowed on board the vessel

before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(3) *Great South Channel Sliver Restricted Area*—(i) *Area*. The Great South Channel Sliver Restricted Area consists of the area bounded by lines connecting the following points: 41°02.2' N. lat./69°02' W. long., 41°43.5' N. lat./69°36.3' W. long., 41°40' N. lat./69°45' W. long., and 41°00' N. lat./69°05' W. long. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements*. No person or vessel may fish with or possess drift gillnet gear in the Great South Channel Sliver Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Great South Channel Sliver Restricted Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Great South Channel Sliver Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(4) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area*. The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as right whale critical habitat under 50 CFR 226.203(b), that lie south of 43°15' N. lat. and west of 70°00' W. long. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements*. No person or vessel may fish with or possess drift gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with

or possess drift gillnet gear at night in the Stellwagen Bank/Jeffreys Ledge Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Stellwagen Bank/Jeffreys Ledge Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(5) *Other Northeast Gillnet Waters Area*—(i) *Area*. The Other Northeast Gillnet Waters Area consists of all U.S. waters from the U.S./Canada border to Long Island, NY, at 72°30' W. long. south to 36°33.03' N. lat. and east to the eastern edge of the EEZ, with the exception of the Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, and exempted waters listed in paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements*. No person or vessel may fish with or possess drift gillnet gear in the Other Northeast Gillnet Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Other Northeast Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Other Northeast Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(iii) *Seasonal area-specific gear or vessel requirements*. From September 1 to May 31, no person or vessel may fish with or possess drift gillnet gear in the Other Northeast Gillnet Waters Area that is south of a straight line from

41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in §§229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Other Northeast Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Other Northeast Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(6) *Mid/South Atlantic Gillnet Waters Area*—(i) *Area*. The Mid/South Atlantic Gillnet Waters consists of all U.S. waters bounded on the north from Long Island, NY at 72°30' W. long. south to 36°33.03' N. lat. and east to the eastern edge of the EEZ, and bounded on the south by 32°00' N. lat., and east to the eastern edge of the EEZ. The Assistant Administrator may change that area in accordance with paragraph (i) of this section. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2), then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) applies.

(ii) *Area-specific gear or vessel requirements*. From September 1 through May 31, no person or vessel may fish with or possess drift gillnet gear at night in the Mid/South Atlantic Gillnet Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. During that time, no person may fish with or possess drift gillnet gear at night in the Mid/South Atlantic Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Mid/South Atlantic Gillnet Waters Area must be removed from the water and stowed on board the vessel

before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2), then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) applies.

(7) [Reserved]

(f) *Restrictions applicable to the Southeast U.S. Restricted Area*—(1) *Area*. The Southeast U.S. Restricted Area consists of the area bounded by straight lines connecting the following points in the order stated from south to north, unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section:

Point	N. lat.	W. long.
SERA1	27°51'	(¹)
SERA2	27°51'	80°00'
SERA3	32°00'	80°00'
SERA4	32°36'	78°52'
SERA5	32°51'	78°36'
SERA6	33°15'	78°24'
SERA7	33°27'	78°04'
SERA8	(²)	78°33.9'

¹ Florida shoreline.
² South Carolina shoreline.

(i) *Southeast U.S. Restricted Area N*. The Southeast U.S. Restricted Area N consists of the Southeast U.S. Restricted Area from 29°00' N. lat. northward.

(ii) *Southeast U.S. Restricted Area S*. The Southeast U.S. Restricted Area S consists of the Southeast U.S. Restricted Area southward of 29°00' N. lat.

(2) *Restricted periods, closure, and exemptions*—(i) *Restricted periods*. The restricted period for the Southeast U.S. Restricted Area N is from November 15 through April 15, and the restricted period for the Southeast U.S. Restricted Area S is from December 1 through March 31, unless the Assistant Administrator revises the restricted period in accordance with paragraph (i) of this section.

(ii) *Closure for gillnets*. (A) Except as provided under paragraph (f)(2)(v) of this section, fishing with or possessing gillnet in the Southeast U.S. Restricted Area N during the restricted period is prohibited.

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(B) Except as provided under paragraph (f)(2)(iii) of this section and (f)(2)(iv) of this section, fishing with gillnet in the Southeast U.S. Restricted Area S during the restricted period is prohibited.

(iii) *Exemption for Southeastern U.S. Atlantic shark gillnet fishery.* Fishing with gillnet for sharks with webbing of 5 inches (12.7 cm) or greater stretched mesh is exempt from the restrictions under paragraph (f)(2)(ii)(B) if:

(A) The gillnet is deployed so that it encloses an area of water;

(B) A valid commercial directed shark limited access permit has been issued to the vessel in accordance with 50 CFR 635.4(e) and is on board;

(C) No net is set at night or when visibility is less than 500 yards (1,500 ft, 460 m);

(D) The gillnet is removed from the water before night or immediately if visibility decreases below 500 yards (1,500 ft, 460 m);

(E) Each set is made under the observation of a spotter plane;

(F) No gillnet is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale;

(G) The gillnet is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear;

(H) The gear complies with the gear marking requirements specified in paragraph (b) of this section; and

(I) The operator of the vessel calls the Southeast Fisheries Science Center Panama City Laboratory in Panama City, FL, not less than 48 hours prior to departing on any fishing trip in order to arrange for observer coverage. If the Panama City Laboratory requests that an observer be taken on board a vessel during a fishing trip at any time from December 1 through March 31 south of 29°00' N. lat., no person may fish with such gillnet aboard that vessel in the Southeast U.S. Restricted Area S unless an observer is on board that vessel during the trip.

(iv) *Exemption for Spanish Mackerel component of the Southeast Atlantic gillnet fishery.* Fishing with gillnet for Spanish mackerel is exempt from the restrictions under paragraph (f)(2)(ii)(B) from December 1 through

December 31, and from March 1 through March 31 if:

(A) Gillnet mesh size is between 3.5 inches (8.9 cm) and 4 7/8 inches (12.4 cm) stretched mesh;

(B) A valid commercial vessel permit for Spanish mackerel has been issued to the vessel in accordance with 50 CFR 622.4(a)(2)(iv) and is on board;

(C) No person may fish with, set, place in the water, or have on board a vessel a gillnet with a float line longer than 800 yards (2,400 ft, 732 m);

(D) No person may fish with, set, or place in the water more than one gillnet at any time;

(E) No more than two gillnets, including any net in use, may be possessed at any one time; provided, however, that if two gillnets, including any net in use, are possessed at any one time, they must have stretched mesh sizes (as allowed under the regulations) that differ by at least .25 inch (.64 cm);

(F) No person may soak a gillnet for more than 1 hour. The soak period begins when the first mesh is placed in the water and ends either when the first mesh is retrieved back on board the vessel or the gathering of the gillnet is begun to facilitate retrieval on board the vessel, whichever occurs first; providing that, once the first mesh is retrieved or the gathering is begun, the retrieval is continuous until the gillnet is completely removed from the water;

(G) No net is set at night or when visibility is less than 500 yards (1,500 ft, 460 m);

(H) The gillnet is removed from the water before night or immediately if visibility decreases below 500 yards (1,500 ft, 460 m);

(I) No net is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale;

(J) The gillnet is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear; and

(K) The gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of

this section, and the area-specific requirements for anchored gillnets specified in paragraphs (d)(7)(ii)(A) through (d)(7)(ii)(D) of this section for the Mid/South Atlantic Gillnet Waters.

(v) *Exemption for vessels in transit with gillnet aboard.* Possession of gillnet aboard a vessel in transit is exempt from the restrictions under paragraph (f)(2)(ii)(A) of this section if: All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck, rail, or drum; and all buoys, high flyers, and anchors are disconnected from all gillnets. No fish may be possessed aboard such a vessel in transit.

(vi) [Reserved]

(g) *Restrictions applicable to the Other Southeast Gillnet Waters Area—(1) Area.* The Other Southeast Gillnet Waters Area consists of the area from 32°00' N. lat. (near Savannah, GA) south to 27°51' N. lat. for the Southeast Atlantic gillnet fishery, and from 32°00' N. lat. south to 26°46.50' N. lat. (near West Palm Beach, FL) for the Southeastern U.S. Atlantic shark gillnet fishery, and extending from 80°00' W. long. east to the eastern edge of the EEZ, for both the Southeast Atlantic gillnet and Southeastern U.S. Atlantic gillnet fisheries unless the Assistant Administrator changes this area in accordance with paragraph (i) of this section.

(2) *Restrictions for Southeastern U.S. Atlantic shark gillnet fishery.* No person or vessel may fish with or possess gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh in the Other Southeast Gillnet Waters Area north of 29°00' N. lat. (near New Smyrna Beach, FL) from November 15 through April 15 and south of 29°00' N. lat. from December 1 through March 31 unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, and the set restrictions listed below, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(i) *Set restrictions.* All gillnets must comply with the following set restrictions:

(A) No net is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale; and

(B) If a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear, the gear is removed immediately from the water.

(3) *Restrictions for Southeast Atlantic gillnet fishery.* No person or vessel may fish with or possess gillnet gear in the Other Southeast Gillnet Waters Area, except as provided in paragraph (g)(2) of this section, north of 29°00' N. lat. from November 15 through April 15 and south of 29°00' N. lat. from December 1 through March 31 unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements for anchored gillnets specified in paragraphs (d)(7)(ii)(A) through (d)(7)(ii)(D) of this section for the Mid/South Atlantic Gillnet Waters, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(4) [Reserved]

(h) *Restrictions applicable to the Southeast U.S. Monitoring Area—(1) Area.* The Southeast U.S. Monitoring Area consists of the area from 27°51' N. lat. (near Sebastian Inlet, FL) south to 26°46.50' N. lat. (near West Palm Beach, FL), extending from the shoreline or exemption line out to 80°00' W. long., unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section.

(2) *Restrictions for Southeastern U.S. Atlantic shark gillnet fishery.* No person or vessel may fish with or possess gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh in the Southeast U.S. Monitoring Area from December 1 through March 31 unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in §229.2, and the person or vessel satisfies the vessel monitoring system and observer requirements listed below. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(i) *Vessel monitoring systems.* No person or vessel may fish with or possess gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh in the Southeast U.S. Monitoring Area during the restricted period unless the operator of the vessel is in compliance with the vessel monitoring system (VMS) requirements found in 50 CFR 635.69.

(ii) *At-sea observer coverage.* When selected, vessels are required to take observers on a mandatory basis in compliance with the requirements for at-sea observer coverage found in 50 CFR 229.7. Any vessel that fails to carry an observer once selected is prohibited from fishing pursuant to 50 CFR part 635.

(iii) [Reserved]

(i) *Other provisions.* In addition to any other emergency authority under the Marine Mammal Protection Act, the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, or other appropriate authority, the Assistant Administrator may take action under this section in the following situations:

(1) *Entanglements in critical habitat or restricted areas.* If a serious injury or mortality of a right whale occurs in the Cape Cod Bay Restricted Area from January 1 through May 15, in the Great South Channel Restricted Area from April 1 through June 30, the Southeast U.S. Restricted Area N from November 15 to April 15, or the Southeast U.S. Restricted Area S from December 1 through March 31 as the result of an entanglement by trap/pot or gillnet gear allowed to be used in those areas and times, the Assistant Administrator shall close that area to that gear type (i.e., trap/pot or gillnet) for the rest of that time period and for that same time period in each subsequent year, unless the Assistant Administrator revises the restricted period in accordance with paragraph (i)(2) of this section or unless other measures are implemented under paragraph (i)(2) of this section.

(2) *Other special measures.* The Assistant Administrator may revise the requirements of this section through a publication in the FEDERAL REGISTER if:

(i) NMFS verifies that certain gear characteristics are both operationally effective and reduce serious injuries and mortalities of endangered whales;

(ii) New gear technology is developed and determined to be appropriate;

(iii) Revised breaking strengths are determined to be appropriate;

(iv) New marking systems are developed and determined to be appropriate;

(v) NMFS determines that right whales are remaining longer than expected in a closed area or have left earlier than expected;

(vi) NMFS determines that the boundaries of a closed area are not appropriate;

(vii) Gear testing operations are considered appropriate; or

(viii) Similar situations occur.

(3) *Seasonal Area Management (SAM) Program.* Until October 6, 2008, in addition to existing requirements for vessels deploying anchored gillnet or trap/pot gear in the Other Northeast Gillnet Waters, Northern Inshore State Trap/Pot Waters, Trap/Pot Waters, Offshore Trap/Pot Waters, Great South Channel Restricted Gillnet Area (July 1 through July 31), Great South Channel Sliver Restricted Area (May 1 through July 31), Great South Channel Restricted Trap/Pot Area (July 1 through July 31), and Stellwagen Bank/Jeffreys Ledge Restricted Area (anchored gillnet and trap/pot area) found at § 229.32 (b)–(d), a vessel may fish in the SAM Areas as described in paragraphs (i)(3)(i)(A) and (i)(3)(ii)(A) of this section, which overlay the previously mentioned areas, provided the gear or vessel complies with the requirements specified in paragraphs (i)(3)(i)(B) and (i)(3)(ii)(B) of this section during the times specified in those paragraphs. These requirements are in addition to requirements found in § 229.32 (b)–(d). The requirements in (i)(3)(i)(B) and (i)(3)(ii)(B) of this section supercede requirements found at § 229.32 (b)–(d) when the former are more restrictive than the latter. For example, the closures applicable to trap/pot and gillnet gear in the Great South Channel found in paragraphs (c)(3)(ii) and (d)(3)(ii) of this section are more restrictive than the gear modifications described in this section and, therefore, supercede them. A copy of a chart depicting these areas is available

upon request from the Regional Administrator, NMFS, Northeast Region, 1 Blackburn Drive, Gloucester, MA 01930.

(i) *SAM West—(A) Area.* SAM West consists of all waters bounded by straight lines connecting the following points in the order stated:

SAM WEST		
Point	N. lat.	W. long
1W	42°30'	70°30'
2W	42°30'	69°24'
3W	41°48.9'	69°24'
4W	41°40'	69°45'
5W	41°40'	69°57'
and along the eastern shoreline of Cape Cod to		
6W	42°04.8'	70°10'
7W	42°12'	70°15'
8W	42°12'	70°30'

(B) *Gear or vessel requirements.* Unless otherwise authorized by the Assistant Administrator, in accordance with paragraph (i)(2) of this section, from March 1 through April 30, no person or vessel may fish with or possess anchored gillnet or trap/pot gear in SAM West unless that gear complies with the following gear modifications, or unless the gear is stowed as specified in § 229.2.

(1) *Anchored gillnet gear—(i) Groundlines.* All groundlines must be made entirely of sinking and/or neutrally buoyant line. Floating groundlines are prohibited. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(ii) *Buoy lines.* All buoy lines must be composed of sinking line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(iii) *Buoy line weak links.* All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible that has a maximum breaking strength of 1,100 lb (499.0 kg). The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a

buoy stick, or other materials or devices approved in writing by the Assistant Administrator. Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(iv) *Net panel weak links.* The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string must contain weak links that meet one of the following two configuration specifications found in paragraph (d)(6)(ii)(B)(1) or (d)(6)(ii)(B)(2) of this section.

(v) *Anchoring systems.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor. Dead weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) *Trap/pot gear—(i) Groundlines.* All groundlines must be made entirely of sinking and/or neutrally buoyant line. Floating groundlines are prohibited. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(ii) *Buoy lines.* All buoy lines must be composed of sinking line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(iii) *Northern Inshore State Trap/Pot Waters, Northern Nearshore Trap/Pot Waters Areas, Stellwagen Bank/Jeffreys Ledge Restricted Area, and Great South Channel Restricted Trap/Pot Area (that overlaps with LMA 2 and Outer Cape LMA only) buoy line weak links.* All buoys, flotation devices, and/or weights (except traps/pots, anchors, and

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leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device, and/or weight as operationally feasible that has a maximum breaking strength of up to 600 lb (272.2 kg). The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(iv) *Offshore Trap/Pot Waters Area and Great South Channel Restricted Trap/Pot Area (that overlaps with LMA 2/3 Overlap and LMA 3 only) buoy line weak links.* All buoys, flotation devices, and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device, and/or weight as operationally feasible that has a maximum breaking strength of up to 1,500 lb (680.4 kg). The weak link must be chosen from the following list approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

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(ii) *SAM East—(A) Area.* SAM East consists of all waters bounded by straight lines connecting the following points in the order stated:

SAM EAST		
Point	N. Lat.	W. Long.
1E	42°30'	69°45'
2E	42°30'	67°27'
3E	42°09'	67°08.4'
4E	41°00'	69°05'
5E	41°40'	69°45'

(B) *Gear or vessel requirements.* Unless otherwise authorized by the Assistant Administrator, in accordance with paragraph (i)(2) of this section, from May 1 through July 31, no person or vessel may fish with or possess anchored gillnet or trap/pot gear in SAM East unless that gear complies with the gear modifications found in paragraphs (i)(3)(i)(B)(1) and (i)(3)(i)(B)(2) of this section, or unless the gear is stowed as specified in § 229.2.

[72 FR 57181, Oct. 5, 2007]

EFFECTIVE DATE NOTES: 1. At 72 FR 57181, Oct. 5, 2007, § 229.32 was revised, however paragraphs (c)(5)(ii)(B), (c)(6)(ii)(B), (c)(7)(ii)(C), (c)(8)(ii)(B), (c)(9)(ii)(B), (d)(6)(ii)(D), and (d)(7)(ii)(D) are not effective until Oct. 5, 2008.

2. At 73 FR 19171, Apr. 9, 2008, § 229.32 was corrected in paragraphs (c)(5)(ii)(B), (6)(ii)(B), (7)(ii)(C), (8)(ii)(B), (9)(ii)(B), (d)(6)(ii)(D), (7)(ii)(D) and (i)(3) by amending “October 6, 2008” to read “October 5, 2008” effective October 5, 2008.

3. At 73 FR 51241, Sept. 2, 2008, § 229.2 was amended by revising (a)(4), (c)(2)(ii)(D), (c)(2)(ii)(E), the first sentence of (c)(5)(ii)(B), (c)(6)(ii)(B), (c)(7)(ii)(C), (c)(8)(ii)(B), (c)(9)(ii)(B), (d)(6)(ii)(D), (d)(7)(ii)(D), (i)(3)(i)(B)(1)(i), (i)(3)(i)(B)(2)(i) and the second sentence of (d)(1)(i), effective Oct. 2, 2008. For the convenience of the user, the revised text is set forth as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

(a) * * *

(4) *Sinking groundline exemption.* The fisheries regulated under this section are exempt from the requirement to have groundlines composed of sinking line if their groundline is at a depth equal to or greater than 280 fathoms (1,680 ft or 512.1 m) (as shown on NOAA charts 13200 (Georges Bank and Nantucket Shoals, 1:400,000), 12300 (NY Approaches - Nantucket Shoals to Five Fathom Bank, 1:400,000), 12200 (Cape May to Cape Hatteras, 1:419,706), 11520 (Cape Hatteras to Charleston, 1:432,720), 11480 (Charleston Light

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to Cape Canaveral, 1:449,659) and 11460(Cape Canaveral to Key West, 1:466,940)).

quirement under paragraph (a)(4) of this section. * * *

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- (c) * * *
(2) * * *
(ii) * * *

- (d) * * *
(1) * * *

(D) Buoy lines. All buoy lines must be composed of sinking line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(i) * * * If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, sinking line must be used between these objects.

(E) Groundlines. All groundlines must be composed entirely of sinking line. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

* * * * *

- (6) * * *
(ii) * * *

* * * * *

(D) Groundlines. On or before October 5, 2008, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. * * *

- (5) * * *
(ii) * * *

(B) Groundlines. On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. * * *

* * * * *

- (7) * * *
(ii) * * *

* * * * *

(D) Groundlines. On or before October 5, 2008, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. * * *

- (6) * * *
(ii) * * *

(B) Groundlines. On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. * * *

* * * * *

- (i) * * *
(3) * * *
(i) * * *
(B) * * *

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(1) Anchored gillnet gear—(i) Groundlines. All groundlines must be made entirely of sinking line. * * *

- (7) * * *
(ii) * * *

(C) Groundlines. On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. * * *

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(2) Trap/pot gear—(i) Groundlines. All groundlines must be made entirely of sinking line. * * *

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§ 229.33 Harbor Porpoise Take Reduction Plan Implementing Regulations—Gulf of Maine.

- (8) * * *
(ii) * * *

(B) Groundlines. On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. * * *

(a) Restrictions—(1) Northeast Closure Area. From August 15 through September 13 of each fishing year, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies, from Northeast Closure Area. This prohibition does not apply to a single pelagic gillnet (as described and used as set forth in §648.81(f)(2)(ii) of this title). The Northeast Closure Area is the area bounded by straight

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- (9) * * *
(ii) * * *

(B) Groundlines. On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted from this re-

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lines connecting the following points in the order stated:

NORTHEAST CLOSURE AREA		
Point	N. Lat.	W. Long.
NE1	(1)	68°55.0'
NE2	43°29.6'	68°55.0'
NE3	44°04.4'	67°48.7'
NE4	44°06.9'	67°52.8'
NE5	44°31.2'	67°02.7'
NE6	(1)	67°02.7'

¹ Maine shoreline.

(2) *Mid-coast Closure Area.* From September 15 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies. This prohibition does not apply to a single pelagic gillnet (as described and used as set forth in §648.81(f)(2)(ii) of this title). The Mid-Coast Closure Area is the area bounded by straight lines connecting the following points in the order stated:

MID-COAST CLOSURE AREA		
Point	N. Lat.	W. Long.
MC1	42°30'	(1)
MC2	42°30'	70°15'
MC3	42°40'	70°15'
MC4	42°40'	70°00'
MC5	43°00'	70°00'
MC6	43°00'	69°30'
MC7	43°30'	69°30'
MC8	43°30'	69°00'
MC9	(2)	69°00'

¹ Massachusetts shoreline.

² Maine shoreline.

(3) *Massachusetts Bay Closure Area.* From December 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Massachusetts Bay Closure Area, except with the use of pingers as provided in paragraph (d)(2) of this section. This prohibition does not apply to a single pelagic gillnet (as described in §648.81(f)(2)(ii) of this title). The Massachusetts Bay Closure Area is the area bounded by straight lines connecting the following points in the order stated:

MASSACHUSETTS BAY CLOSURE AREA		
Point	N. Lat.	W. Long.
MB1	42°30'	(1)

MASSACHUSETTS BAY CLOSURE AREA—
Continued

Point	N. Lat.	W. Long.
MB2	42°30'	70°30'
MB3	42°12'	70°30'
MB4	42°12'	70°00'
MB5	(2)	70°00'
MB6	42°00'	(2)
MC7	42°00'	(1)

¹ Massachusetts shoreline.

² Cape Cod shoreline.

(4) *Cape Cod South Closure Area.* From December 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from Cape Cod South Closure Area, except with the use of pingers as provided in paragraph (d)(3) of this section. This prohibition does not apply to a single pelagic gillnet (as described in §648.81(f)(2)(ii) of this title). The Cape Cod South Closure Area is the area bounded by straight lines connecting the following points in the order stated:

CAPE COD SOUTH CLOSURE AREA		
Point	N. Lat.	W. Long.
CCS1	(1)	71°45'
CCS2	40°40'	71°45'
CCS3	40°40'	70°30'
CCS4	(2)	70°30'

¹ Rhode Island shoreline.

² Massachusetts shoreline.

(5) *Offshore Closure Area.* From November 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from Offshore Closure Area, except for the use of pingers as provided in §229.33(d)(4). This prohibition does not apply to a single pelagic gillnet (as described in §648.81(f)(2)(ii) of this title). The Offshore Closure Area is the area bounded by straight lines connecting the following points in the order stated:

OFFSHORE CLOSURE AREA		
Point	N. Lat.	W. Long.
OFS1	42°50'	69°30'
OFS2	43°10'	69°10'
OFS3	43°10'	67°40'
OFS4	42°10'	67°40'

OFFSHORE CLOSURE AREA—Continued

Point	N. Lat.	W. Long.
OFS5	42°10'	69°30'
OFS6	42°50'	69°30'

(6) *Cashes Ledge Closure Area.* For the month of February of each fishing year, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Cashes Ledge Closure Area. This prohibition does not apply to a single pelagic gillnet (as described in §648.81(f)(2)(ii) of this title). The Cashes Ledge Closure Area is the area bounded by straight lines connecting the following points in the order stated:

CASHES LEDGE CLOSURE AREA

Point	N. Lat.	W. Long.
CL1	42°30'	69°00'
CL2	42°30'	68°30'
CL3	43°00'	68°30'
CL4	43°00'	69°00'
CL5	42°30'	69°00'

(b) *Pingers*—(1) *Pinger specifications.* For the purposes of this subpart, a pinger is an acoustic deterrent device which, when immersed in water, broadcasts a 10 kHz (± 2 kHz) sound at 132 dB (± 4 dB) re 1 micropascal at 1 m, lasting 300 milliseconds (± 15 milliseconds), and repeating every 4 seconds (± 2 seconds).

(2) *Pinger attachment.* An operating and functional pinger must be attached at the end of each string of the gillnets and at the bridle of every net within a string of nets.

(c) *Pinger training and certification.* Beginning on January 1, 1999, the operator of a vessel may not fish with, set or haul back sink gillnets or gillnet gear, or allow such gear to be in closed areas where pingers are required as specified under paragraph (b) of this section, unless the operator has satisfactorily completed the pinger certification training program and possesses on board the vessel a valid pinger training certificate issued by NMFS. Notice will be given announcing the times and locations of pinger certification training programs.

(d) *Use of pingers in closed areas*—(1) Vessels, subject to the restrictions and regulations specified in paragraph

(a)(2) of this section, may fish in the Mid-coast Closure Area from September 15 through May 31 of each fishing year, provided that pingers are used in accordance with the requirements of paragraphs (b) (1) and (2) of this section.

(2) Vessels, subject to the restrictions and regulations specified in paragraph (a)(3) of this section, may fish in the Massachusetts Bay Closure Area from December 1 through the last day of February and from April 1 through May 31 of each fishing year, provided that pingers are used in accordance with the requirements of paragraphs (b) (1) and (2) of this section.

(3) Vessels, subject to the restrictions and regulations specified in paragraph (a)(4) of this section, may fish in the Cape Cod South Closure Area from December 1 through the last day of February and from April 1 through May 31 of each fishing year, provided that pingers are used in accordance with the requirements of paragraphs (b) (1) and (2) of this section.

(4) Vessels, subject to the restrictions and regulations specified in paragraph (a)(5) of this section, may fish in the Offshore Closure Area from November 1 through May 31 of each fishing year, with the exception of the Cashes Ledge Closure Area. From February 1 through the end of February, the area within the Offshore Closure Area defined as “Cashes Ledge” is closed to all fishing with sink gillnets. Vessels subject to the restrictions and regulation specified in paragraph (a)(5) of this section may fish in the Offshore Closure Area outside the Cashes Ledge Area from February 1 through the end of February provided that pingers are used in accordance with the requirements of paragraphs (b) (1) and (2) of this section.

(e) *Other special measures.* The Assistant Administrator may revise the requirements of this section through notification published in the FEDERAL REGISTER if:

(1) After plan implementation, NMFS determines that pinger operating effectiveness in the commercial fishery is inadequate to reduce bycatch to the PBR level with the current plan.

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(2) NMFS determines that the boundary or timing of a closed area is inappropriate, or that gear modifications (including pingers) are not reducing bycatch to below the PBR level.

[63 FR 66487, Dec. 2, 1998; 63 FR 71042, Dec. 23, 1998]

§ 229.34 Harbor Porpoise Take Reduction Plan—Mid-Atlantic.

(a)(1) Regulated waters. The regulations in this section apply to all waters in the Mid-Atlantic bounded on the east by 72°30' W. longitude and on the south by the North Carolina/South Carolina border (33°51' N. latitude), except for the areas exempted in paragraph (a)(2) of this section.

(2) Exempted waters. All waters landward of the first bridge over any embayment, harbor, or inlet will be exempted. The regulations in this section do not apply to waters landward of the following lines:

New York

- 40°45.70' N 72°45.15' W TO 40°45.72' N 72°45.30' W (Moriches Bay Inlet)
40°37.32' N 73°18.40' W TO 40°38.00' N 73°18.56' W (Fire Island Inlet)
40°34.40' N 73°34.55' W TO 40°35.08' N 73°35.22' W (Jones Inlet)

New Jersey/Delaware

- 39°45.90' N 74°05.90' W TO 39°45.15' N 74°06.20' W (Barnegat Inlet)
39°30.70' N 74°16.70' W TO 39°26.30' N 74°19.75' W (Beach Haven to Brigantine Inlet)
38°56.20' N 74°51.70' W TO 38°56.20' N 74°51.90' W (Cape May Inlet)

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80. (Delaware Bay)

Maryland/Virginia

- 38°19.48' N 75°05.10' W TO 38°19.35' N 75°05.25' W (Ocean City Inlet)
37°52' N 75°24.30' W TO 37°11.90' N 75°48.30' W (Chincoteague to Ship Shoal Inlet)
37°11.10' N 75°49.30' W TO 37°10.65' N 75°49.60' W (Little Inlet)
37°07.00' N 75°53.75' W TO 37°05.30' N 75°56' W (Smith Island Inlet)

North Carolina

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Colli-

sions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80.

(b) Closures—(1) New Jersey waters. From April 1 through April 20, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any large mesh gillnet gear from the waters off New Jersey.

(2) Mudhole. From February 15 through March 15, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any large mesh or small mesh gillnet gear from the waters off New Jersey known as the Mudhole.

(3) Southern Mid-Atlantic waters. From February 15 through March 15, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any large mesh gillnet gear from the southern Mid-Atlantic waters.

(c) Gear requirements and limitations—(1) Waters off New Jersey—large mesh gear requirements and limitations. From January 1 through April 30 of each year, no person may fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any large mesh gillnet gear in waters off New Jersey, unless the gear complies with the specified gear characteristics. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in waters off New Jersey with large mesh gillnet gear on board, unless the gear complies with the specified gear characteristics or unless the gear is stowed. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

- (i) Floatline length. The floatline is no longer than 4,800 ft (1,463.0 m), and, if the gear is used in the Mudhole, the floatline is no longer than 3,900 ft (1,188.7 m).
(ii) Twine size. The twine is at least 0.04 inches (0.090 cm) in diameter.
(iii) Size of nets. Individual nets or net panels are not more than 300 ft (91.44 m, or 50 fathoms), in length.
(iv) Number of nets. The total number of individual nets or net panels for a vessel, including all nets on board the

vessel, hauled by the vessel or deployed by the vessel, does not exceed 80.

(v) *Tie-down system.* The gillnet is equipped with tie-downs spaced not more than 15 ft (4.6 m) apart along the floatline, and each tie-down is not more than 48 inches (18.90 cm) in length from the point where it connects to the floatline to the point where it connects to the lead line.

(vi) *Tagging requirements.* Beginning January 1, 2000, the gillnet is equipped with one tag per net, with one tag secured to each bridle of every net within a string of nets.

(2) *Waters off New Jersey—small mesh gillnet gear requirements and limitations.* From January 1 through April 30 of each year, no person may fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any small mesh gillnet gear in waters off New Jersey, unless the gear complies with the specified gear characteristics. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in waters off New Jersey with small mesh gillnet gear on board, unless the gear complies with the specified gear characteristics or unless the gear is stowed. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(i) *Floatline length.* The floatline is less than 3,000 ft (914.4 m).

(ii) *Twine size.* The twine is at least 0.031 inches (0.081 cm) in diameter.

(iii) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(iv) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(v) *Tie-down system.* Tie-downs are prohibited.

(vi) *Tagging requirements.* Beginning January 1, 2000, the gillnet is equipped with one tag per net, with one tag secured to each bridle of every net within a string of nets.

(3) *Southern Mid-Atlantic waters—large mesh gear requirements and limitations.* From February 1 through April 30 of each year, no person may fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any

large mesh gillnet gear in Southern Mid-Atlantic waters, unless the gear complies with the specified gear characteristics. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in Southern Mid-Atlantic waters with large mesh sink gillnet gear on board, unless the gear complies with the specified gear characteristics or unless the gear is stowed. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(i) *Floatline length.* The floatline is no longer than 3,900 ft (1,188.7 m).

(ii) *Twine size.* The twine is at least 0.04 inches (0.090 cm) in diameter.

(iii) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(iv) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 80.

(v) *Tie-down system.* The gillnet is equipped with tie-downs spaced not more than 15 ft (4.6 m) apart along the floatline, and each tie-down is not more than 48 inches (18.90 cm) in length from the point where it connects to the floatline to the point where it connects to the lead line.

(vi) *Tagging requirements.* Beginning January 1, 2000, the gillnet is equipped with one tag per net, with one tag secured to each bridle of every net within a string of nets.

(4) *Southern Mid-Atlantic waters—small mesh gillnet gear requirements and limitations.* From February 1 through April 30 of each year, no person may fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any small mesh gillnet gear in waters off New Jersey, unless the gear complies with the specified gear characteristics. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in Southern Mid-Atlantic waters with small mesh gillnet gear on board, unless the gear complies with the specified gear characteristics or unless the gear is stowed. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

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(i) *Floatline length.* The floatline is no longer than 2118 ft (645.6 m).

(ii) *Twine size.* The twine is at least 0.03 inches (0.080 cm) in diameter.

(iii) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(iv) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(v) *Tie-down system.* Tie-downs are prohibited.

(vi) *Tagging requirements.* Beginning January 1, 2000, the gillnet is equipped with one tag per net, with one tag secured to each bridle of every net within a string of nets.

(d) *Other special measures.* The Assistant Administrator may revise the requirements of this section through notification published in the FEDERAL REGISTER if:

(1) After plan implementation, NMFS determines that pinger operating effectiveness in the commercial fishery is inadequate to reduce bycatch to the PBR level with the current plan.

(2) NMFS determines that the boundary or timing of a closed area is inappropriate, or that gear modifications (including pingers) are not reducing bycatch to below the PBR level.

[63 FR 66489, Dec. 2, 1998, as amended at 66 FR 2338, Jan. 11, 2001]

§ 229.35 Bottlenose Dolphin Take Reduction Plan.

(a) *Purpose and scope.* The purpose of this section is to implement the Bottlenose Dolphin Take Reduction Plan to reduce incidental mortality and serious injury of the western North Atlantic coastal bottlenose dolphin stock in specific Category I and Category II commercial fisheries from New Jersey through Florida. Specific Category I and II commercial fisheries within the scope of the BDTRP are identified and updated in the annual List of Fisheries. Gear restricted by this section includes small, medium, and large mesh gillnets. The geographic scope of the BDTRP is all tidal and marine waters within 6.5 nautical miles (12 km) of shore from the New York-New Jersey border southward to Cape Hatteras, North Carolina, and

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within 14.6 nautical miles (27 km) of shore from Cape Hatteras southward to, and including, the east coast of Florida down to the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico (as described in § 600.105 of this title).

(b) *Definitions.* In addition to the definitions contained in the Act, § 216.3 and § 229.2 of this chapter, the terms defined in this section shall have the following definitions, even if a contrary definition exists in the Act, § 216.3, or § 229.2:

Beach means landward of and including the mean low water line.

Beach/water interface means the mean low water line.

Large mesh gillnet means a gillnet constructed with a mesh size greater than or equal to 7-inches (17.8 cm) stretched mesh.

Medium mesh gillnet means a gillnet constructed with a mesh size of greater than 5-inches (12.7 cm) to less than 7-inches (17.8 cm) stretched mesh.

New Jersey, Delaware, and Maryland State waters means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 40° 30' N. (New York/New Jersey border at the coast) and on the south by 38° 01.6' N. (Maryland/Virginia border at the coast).

Night means any time between one hour after sunset and one hour prior to sunrise.

Northern North Carolina State waters means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 36° 33' N. (Virginia/North Carolina border at the coast) and on the south by 34° 35.4' N. (Cape Lookout, North Carolina).

Northern Virginia State waters means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 38° 01.6' N. (Virginia/Maryland border at the coast) and on the south by 37° 07.23' N. (Cape Charles Light on Smith Island in the Chesapeake Bay mouth).

Small mesh gillnet means a gillnet constructed with a mesh size of less than or equal to 5-inches (12.7 cm) stretched mesh.

South Carolina, Georgia, and Florida waters means the area consisting of all marine and tidal waters, within 14.6 nautical miles (27 km) of shore, between 33° 52' N. (North Carolina/South Carolina border at the coast) and the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico (as described in § 600.105 of this title).

Southern North Carolina State waters means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 34° 35.4' N. (Cape Lookout, North Carolina) and on the south by 33° 52' N. (North Carolina/South Carolina border at the coast).

Southern Virginia State waters means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 37° 07.23' N. (Cape Charles Light on Smith Island in the Chesapeake Bay mouth) and on the south by 36° 33' N. (Virginia/North Carolina border at the coast).

(c) *Regulated waters*. The regulations in this section apply to New Jersey, Delaware, and Maryland State waters; Northern North Carolina State waters; Northern Virginia State waters; South Carolina, Georgia, and Florida waters; Southern North Carolina State waters; and Southern Virginia State waters as defined in § 229.35(b), except for the waters identified in § 229.34(a)(2), with the following modification and addition. From Chincoteague to Ship Shoal Inlet in Virginia (37° 52' N. 75° 24.30' W. to 37° 11.90' N. 75° 48.30' W) and South Carolina, Georgia, and Florida waters, those waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80 are excluded from the regulations.

(d) *Regional management measures*—(1) *New Jersey, Delaware, and Maryland State waters*—(i) *Medium and large mesh*. From June 1 through October 31, in New Jersey, Delaware, and Maryland State waters, no person may fish with any medium or large mesh anchored gillnet gear at night unless such person

remains within 0.5 nautical mile (0.93 km) of the closest portion of each gillnet and removes all such gear from the water and stows it on board the vessel before the vessel returns to port.

(ii) [Reserved]

(2) *Virginia state waters*—(i) *Medium and large mesh*. From June 1 through October 31, in Southern Virginia State waters and Northern Virginia State waters, no person may fish with any medium or large mesh anchored gillnet gear at night unless such person remains within 0.5 nautical mile (0.93 km) of the closest portion of each gillnet and removes all such gear from the water and stows it on board the vessel before the vessel returns to port.

(ii) [Reserved]

(3) *Southern Virginia State waters*—(i) *Large mesh gillnets*. From November 1 through December 31, in Southern Virginia State waters, no person may fish with, possess on board a vessel unless stowed, or fail to remove from the water, any large mesh gillnet gear at night.

(ii) [Reserved]

(4) *Northern North Carolina State waters*—(i) *Small mesh gillnets*. From May 1 through October 31, in Northern North Carolina State waters, no person may fish with any small mesh gillnet gear longer than 1,000 feet (304.8 m).

(ii) *Medium mesh gillnets*. From November 1 through April 30 of the following year, in Northern North Carolina State waters, no person may fish with any medium mesh gillnet at night. This provision expires on May 26, 2009.

(iii) *Large mesh gillnets*. (A) From April 15 through December 15, in Northern North Carolina State waters, no person may fish with any large mesh gillnet.

(B) From December 16 through April 14 of the following year, in Northern North Carolina State waters, no person may fish with any large mesh gillnet without tie-downs at night.

(5) *Southern North Carolina State waters*—(i) *Medium mesh gillnets*. From November 1 through April 30 of the following year, in Southern North Carolina State waters, no person may fish with any medium mesh gillnet at night. This provision expires on May 26, 2009.

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(ii) *Large mesh gillnets.* (A) From April 15 through December 15, in Southern North Carolina State waters, no person may fish with any large mesh gillnet.

(B) From December 16 through April 14 of the following year, in Southern North Carolina State waters, no person may fish, possess on board unless stowed, or fail to remove from the water, any large mesh gillnet at night.

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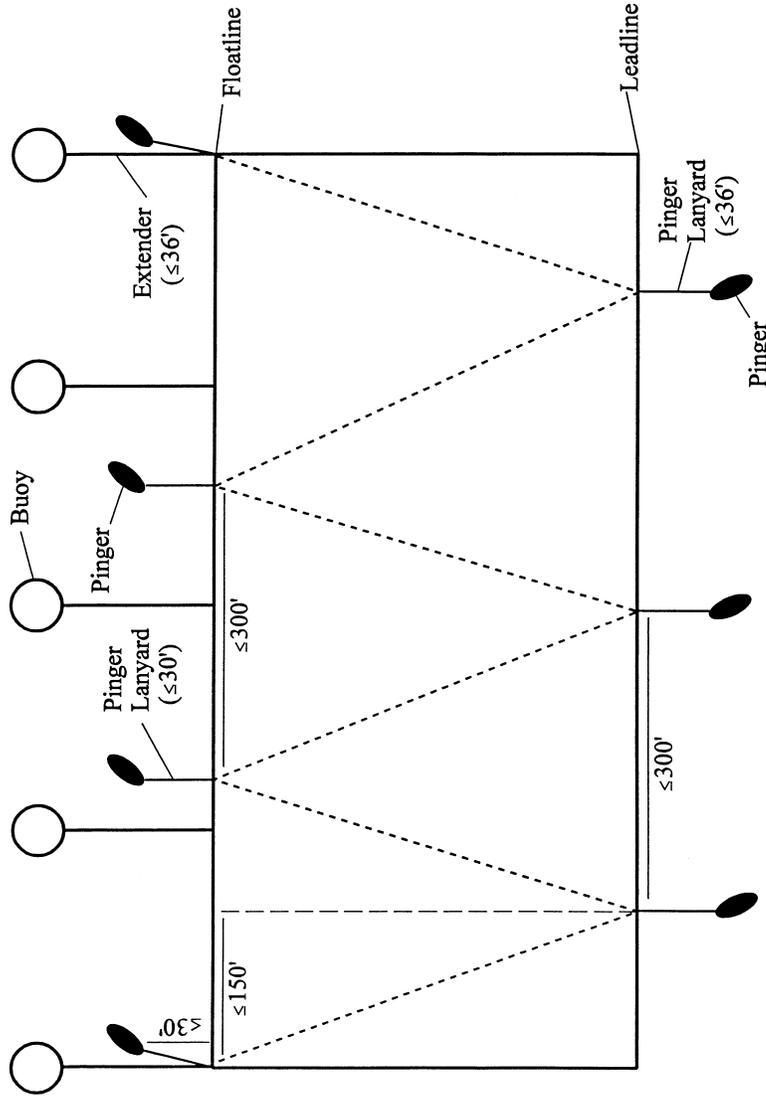
(6) *South Carolina, Georgia, and Florida waters—(i) Gillnets.* Year-round, in South Carolina, Georgia, and Florida waters, no person may fish with any gillnet gear unless such person remains within 0.25 nautical miles (0.46 km) of the closest portion of the gillnet. Gear shall be removed from the water and stowed on board the vessel before the vessel returns to port.

(ii) [Reserved]

[71 FR 24796, Apr. 26, 2006]

FIGURE 1 TO PART 229—DRIFT GILLNET PINGER CONFIGURATION AND EXTENDER REQUIREMENTS

Figure 1. Drift Gillnet Pinger Configuration and Extender Requirements



[64 FR 3434, Jan. 22, 1999]

SUBCHAPTER D—WHALING

PART 230—WHALING PROVISIONS

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230.4 Aboriginal subsistence whaling.
230.5 Licenses for aboriginal subsistence whaling.
230.6 Quotas and other restrictions.
230.7 Salvage of stinkers.
230.8 Reporting by whaling captains.

AUTHORITY: 16 U.S.C. 916 *et seq.*

SOURCE: 61 FR 29631, June 11, 1996, unless otherwise noted.

§ 230.1 Purpose and scope.

The purpose of the regulations in this part is to implement the Whaling Convention Act (16 U.S.C. 916 *et seq.*) by prohibiting whaling except for aboriginal subsistence whaling allowed by the International Whaling Commission. Provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*) and the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) also pertain to human interactions with whales. Rules elsewhere in this chapter govern such topics as scientific research permits, and incidental take and harassment of marine mammals.

§ 230.2 Definitions.

Aboriginal subsistence whaling means whaling authorized by paragraph 13 of the Schedule annexed to and constituting a part of the Convention.

Assistant Administrator means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration.

Authorized officer means:

- (1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;
- (2) Any special agent or enforcement officer of the National Marine Fisheries Service;
- (3) Any officer designated by the head of a Federal or state agency that has entered into an agreement with the Secretary of Commerce or the Commandant of the Coast Guard to enforce the provisions of the Whaling Convention Act; or

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Calf means any whale less than 1 year old or having milk in its stomach.

Commission means the International Whaling Commission established by article III of the Convention.

Convention means the International Convention for the Regulation of Whaling signed at Washington on December 2, 1946.

Cooperative agreement means a written agreement between the National Oceanic and Atmospheric Administration and a Native American whaling organization for the cooperative management of aboriginal subsistence whaling operations.

Landing means bringing a whale or any parts thereof onto the ice or land in the course of whaling operations.

Native American whaling organization means an entity recognized by the National Oceanic and Atmospheric Administration as representing and governing Native American whalers for the purposes of cooperative management of aboriginal subsistence whaling.

Regulations of the Commission means the regulations in the Schedule annexed to and constituting a part of the Convention, as modified, revised, or amended by the Commission from time to time.

Stinker means a dead, unclaimed whale found upon a beach, stranded in shallow water, or floating at sea.

Strike means hitting a whale with a harpoon, lance, or explosive device.

Wasteful manner means a method of whaling that is not likely to result in the landing of a struck whale or that does not include all reasonable efforts to retrieve the whale.

Whale products means any unprocessed part of a whale and blubber, meat, bones, whale oil, sperm oil, spermaceti, meal, and baleen.

Whaling means the scouting for, hunting, striking, killing, flensing, or landing of a whale, and the processing of whales or whale products.

Whaling captain or captain means any Native American who is authorized by a Native American whaling organization to be in charge of a vessel and whaling crew.

Whaling crew means those Native Americans under the control of a captain.

Whaling village means any U.S. village recognized by the Commission as having a cultural and/or subsistence need for whaling.

§ 230.3 General prohibitions.

(a) No person shall engage in whaling in a manner that violates the Convention, any regulation of the Commission, or this part.

(b) No person shall engage in whaling without first having obtained a license or scientific research permit issued by the Assistant Administrator.

(c) No person shall ship, transport, purchase, sell, offer for sale, import, export, or possess any whale or whale products taken or processed in violation of the Convention, any regulation of the Commission, or this part, except as specified in § 230.4(f).

(d) No person shall fail to make, keep, submit, or furnish any record or report required of him/her by the Convention, any regulation of the Commission, or this part.

(e) No person shall refuse to permit any authorized officer to enforce the Convention, any regulation of the Commission, or this part.

§ 230.4 Aboriginal subsistence whaling.

(a) No person shall engage in aboriginal subsistence whaling, except a whaling captain licensed pursuant to § 230.5 or a member of a whaling crew under the control of a licensed captain.

(b) No whaling captain shall engage in whaling that is not in accordance with the regulations of the Commission, this part, and the relevant cooperative agreement.

(c) No whaling captain shall engage in whaling for any calf or any whale accompanied by a calf.

(d) No whaling captain shall engage in whaling without an adequate crew or without adequate supplies and equipment.

(e) No person may receive money for participation in aboriginal subsistence whaling.

(f) No person may sell or offer for sale whale products from whales taken in an aboriginal subsistence hunt, except that authentic articles of Native handicrafts may be sold or offered for sale.

(g) No whaling captain shall continue to whale after:

(1) The quota set for his/her village by the relevant Native American whaling organization is reached;

(2) The license under which he/she is whaling is suspended as provided in § 230.5(b); or

(3) The whaling season for that species has been closed pursuant to § 230.6.

(h) No whaling captain shall claim domicile in more than one whaling village.

(i) No person may salvage a stinker without complying with the provisions of § 230.7.

(j) No whaling captain shall engage in whaling with a harpoon, lance, or explosive dart that does not bear a permanent distinctive mark identifying the captain as the owner thereof.

(k) No whaling captain shall engage in whaling in a wasteful manner.

§ 230.5 Licenses for aboriginal subsistence whaling.

(a) A license is hereby issued to whaling captains identified by the relevant Native American whaling organization.

(b) The Assistant Administrator may suspend the license of any whaling captain who fails to comply with the regulations in this part.

§ 230.6 Quotas and other restrictions.

(a) Quotas for aboriginal subsistence whaling shall be set in accordance with the regulations of the Commission. Quotas shall be allocated to each whaling village or captain by the appropriate Native American whaling organization. The Assistant Administrator shall publish in the FEDERAL REGISTER, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the Commission. These quotas and restrictions shall also be incorporated in the relevant cooperative agreements.

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(b) The relevant Native American whaling organization shall monitor the whale hunt and keep tally of the number of whales landed and struck. When a quota is reached, the organization shall declare the whaling season closed, and there shall be no further whaling under that quota during the calendar year. If the organization fails to close the whaling season after the quota has been reached, the Assistant Administrator may close it by filing notification in the FEDERAL REGISTER.

§ 230.7 Salvage of stinkers.

(a) Any person salvaging a stinker shall submit to the Assistant Administrator or his/her representative an oral or written report describing the circumstances of the salvage within 12 hours of such salvage. He/she shall provide promptly to the Assistant Administrator or his/her representative each harpoon, lance, or explosive dart found in or attached to the stinker. The device shall be returned to the owner thereof promptly, unless it is retained as evidence of a possible violation.

(b) There shall be a rebuttable presumption that a stinker has been struck by the captain whose mark appears on the harpoon, lance, or explosive dart found in or attached thereto, and, if no strike has been reported by such captain, such strike shall be deemed to have occurred at the time of recovery of the device.

§ 230.8 Reporting by whaling captains.

(a) The relevant Native American whaling organization shall require each whaling captain licensed pursuant to

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§ 230.5 to provide a written statement of his/her name and village of domicile and a description of the distinctive marking to be placed on each harpoon, lance, and explosive dart.

(b) Each whaling captain shall provide to the relevant Native American whaling organization an oral or written report of whaling activities including but not limited to the striking, attempted striking, or landing of a whale and, where possible, specimens from landed whales. The Assistant Administrator is authorized to provide technological assistance to facilitate prompt reporting and collection of specimens from landed whales, including but not limited to ovaries, ear plugs, and baleen plates. The report shall include at least the following information:

(1) The number, dates, and locations of each strike, attempted strike, or landing.

(2) The length (taken as the straight-line measurement from the tip of the upper jaw to the notch between the tail flukes) and the sex of the whales landed.

(3) The length and sex of a fetus, if present in a landed whale.

(4) An explanation of circumstances associated with the striking or attempted striking of any whale not landed.

(c) If the relevant Native American whaling organization fails to provide the National Marine Fisheries Service the required reports, the Assistant Administrator may require the reports to be submitted by the whaling captains directly to the National Marine Fisheries Service.

SUBCHAPTER E—TRANSPORTATION AND LABELING OF FISH OR WILDLIFE [RESERVED]

SUBCHAPTER F—AID TO FISHERIES

PART 253—FISHERIES ASSISTANCE PROGRAMS

Subpart A—General

Sec.

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Subpart B—Fisheries Obligation Guarantee Program

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AUTHORITY: 46 U.S.C. 1271–1279 and 16 U.S.C. 4101 *et seq.*

SOURCE: 61 FR 19172, May 1, 1996, unless otherwise noted.

Subpart A—General

§ 253.1 Purpose.

(a) The regulations in this part pertain to fisheries assistance programs. Subpart B of these rules governs the Fisheries Obligation Guarantee Program, which guarantees the repayment of certain long-term fisheries and aquacultural debts. This allows those debts to be placed in the same private investment market that buys U.S. Treasury securities, where interest rates are lower and maturities are longer. The Program does all credit work and holds and services all credit collateral. The Program's guarantee fee makes it self-supporting.

(b) Subpart C implements Title III of Public Law 99-659 (16 U.S.C. 4100 *et seq.*), which has two objectives:

(1) To promote and encourage State activities in support of the management of interjurisdictional fishery resources identified in interstate or Federal fishery management plans; and

(2) To promote and encourage management of interjurisdictional fishery resources throughout their range.

(3) The scope of this part includes guidance on making financial assistance awards to States or Interstate Commissions to undertake projects in support of management of interjurisdictional fishery resources in both the exclusive economic zone (EEZ) and State waters, and to encourage States to enter into enforcement agreements with either the Department of Commerce or the Department of the Interior.

Subpart B—Fisheries Obligation Guarantee Program

§ 253.10 Definitions.

The terms used in this subpart have the following meanings:

Act means Title XI of the Merchant Marine Act, 1936, as amended.

Actual cost means project cost (less a 10-percent salvage value), depreciated (excluding land) on a straightline basis at 1-year intervals over the project property's useful life including architectural, engineering, inspection, delivery, outfitting, and interest costs, as well as the cost of any consulting contract the Division requires.

Applicant means the one applying for a guarantee (the prospective notemaker).

Application means an application for a guarantee.

Application fee means 0.5 percent of the dollar amount of an application.

Aquacultural facility means land, land structures, water structures, water craft built in the U.S., and equipment for hatching, caring for, or growing fish under controlled circumstances and for its unloading, receiving, holding, processing, or distribution for commercial purposes.

CCF means Capital Construction Fund.

Citizen means a citizen or national of the U.S. who is otherwise also a citizen for the purpose of documenting a vessel in the coastwise trade under section 2 of the Shipping Act, 1916, as amended.

Contributory project means any project that contributes to developing the U.S. fishing industry by: Causing any vessel to catch less overutilized species than before; applying new technology; improving safety or fuel efficiency; making project property more efficient, productive, or competitive; potentially increasing fisheries exports; helping develop an underutilized fishery; or enhancing financial stability, financial performance, growth, productivity, or any other business attribute.

Demand means a noteholder's request that the guarantor pay a guaranteed note's full principal and interest balance.

Division means the Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

Dual Use CCF means a CCF agreement whose qualified vessel is project property and whose deposits are pledged to repayment of the U.S. note.

Facility means a fisheries facility or aquacultural facility.

Financing means the first permanent debt placed on project property for financing its project cost.

Fish means all forms of aquatic animal and plant life, except marine mammals and birds.

Fishery facility means land, land structures, water craft that do not fish, and equipment used for transporting, unloading, receiving, holding, processing, or distributing fish for commercial purposes (including any fishery facility for passenger fishing).

Fishing means catching wild fish for commercial purposes (including passenger fishing).

Guarantee means the guarantor's contractual promise, backed by the full faith and credit of the United States, to repay a guaranteed note if a notemaker fails to repay it as agreed.

Guarantee fee means 1 percent of a guaranteed note's average annual unpaid principal balance.

Guaranteed note means a promissory note from a notemaker to a noteholder whose repayment the guarantor guarantees.

Guarantor means the U.S., acting, under the Act, by and through the Secretary of Commerce.

Industry means the fisheries and/or aquacultural industry.

Noteholder means a guaranteed note payee.

Notemaker means a guaranteed note payor.

Passenger fishing means carrying in vessels for commercial purposes passengers who catch fish.

Program means the Fisheries Obligation Guarantee Program.

Project means the construction of new project property or the refurbishing or purchase of used project property including architectural, engineering, inspection, delivery, outfitting, and interest costs, as well as the cost of any consulting contract the Division requires.

Project property means the vessel or facility involved in a project whose actual cost is eligible under the Act for guarantee and controls the dollar amount of a guaranteed note.

Property means the project property and all other property pledged as security for a U.S. note.

Qualified means acceptable, in the Division's credit risk judgment, and otherwise meeting the Division's requirements for guarantee.

Refinancing means newer debt that either replaces older debt or reimburses applicants for previous expenditures.

Refinancing/assumption fee means 0.25 percent of the principal amount of a guaranteed note to be refinanced or assumed.

Refurbishing means any reconstruction, reconditioning, or other improvement of used project property involving more than routine repair or maintenance.

Security documents mean all collateral securing the U.S. note's repayment and all other assurances, undertakings, and contractual arrangements associated with the U.S. note.

Underutilized fishery means:

(1) For a vessel, any fish species harvested below its sustainable yield.

(2) For a fisheries facility, any facility using that species or any for which aggregate facilities are inadequate to best use harvests of that or any other species.

U.S. means the United States of America and, for citizenship purposes, includes the Commonwealth of Puerto Rico; American Samoa; the U.S. Virgin Islands; Guam; the Republic of the Marshall Islands; the Federated States of Micronesia; the Commonwealth of the Northern Mariana Islands; any other commonwealth, territory, or possession of the United States; or any political subdivision of any of them.

U.S. note means a promissory note payable by the notemaker to the guarantor.

Useful life means the period during which project property will, as determined by the Division, remain economically productive.

Vessel means any vessel documented under U.S. law and used for fishing.

Wise use means the wise use of fisheries resources and their development, advancement, management, conservation, and protection.

§ 253.11 Guarantee policy.

(a) A guarantee financing or refinancing up to 80 percent of a project's actual cost shall be available to any qualified citizen otherwise eligible under the Act and these rules, except:

(1) *Vessel construction*. The Program will not finance this project cost. The Program will only refinance this project cost for an existing vessel whose previous construction cost has already been financed (or otherwise paid). Refinancing this project cost for a vessel that already exists is not inconsistent with wise use, but financing it may be.

(2) *Vessel refurbishing that materially increases an existing vessel's harvesting capacity*. The Program will not finance this project cost. The Program will only refinance this project cost for a vessel whose previous refurbishing cost has already been financed (or otherwise paid). Refinancing this project cost is not inconsistent with wise use, but financing it may be.

(3) *Purchasing a used vessel or used fishery facility*. The Program will neither finance nor refinance this project

cost (except for a used vessel or fishery facility that the Program purchased and is reselling), unless the used vessel or fishery facility will be refurbished in the United States and will be a contributory project or it will be used in an underutilized fishery.

(b) Every project, other than those specified in paragraphs (a) (1) and (2) of this section, is consistent with wise use and every project, other than those specifically precluded in paragraphs (a) (1) and (2) of this section, may be financed, as well as refinanced.

§ 253.12 Guaranteed note, U.S. note, and security documents.

(a) *Guaranteed note*—(1) *Principal*. This may not exceed 80 percent of actual cost, but may, in the Division's credit judgment, be less.

(2) *Maturity*. This may not exceed 25 years, but shall not exceed the project property's useful life and may, in the Division's credit judgment, be less.

(3) *Interest rate*. This may not exceed the amount the Division deems reasonable.

(4) *Prepayment penalty*. The Division will allow a reasonable prepayment penalty, but the guarantor will not guarantee a notemaker's payment of it.

(5) *Form*. This will be the simple promissory note (with the guarantee attached) the Division prescribes, promising only to pay principal, interest, and prepayment penalty.

(6) *Sole security*. The guaranteed note and the guarantee will be the noteholder's sole security.

(b) *U.S. note and security documents*—(1) *Form*. The U.S. note and security documents will be in the form the Division prescribes.

(2) *U.S. note*. This exists to evidence the notemaker's actual and contingent liability to the guarantor (contingent if the guarantor does not pay the guaranteed note (including any portion of it), on the notemaker's behalf or if the guarantor does not advance any other amounts or incur any other expenses on the notemaker's behalf to protect the U.S. or accommodate the notemaker; actual if, and to the same monetary extent that, the guarantor does). Payment of the guaranteed note

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by anyone but the guarantor will amortize the original principal balance (and interest accruing on it) of the U.S. note to the same extent that it amortizes the guaranteed note. The U.S. note will, among other things, contain provisions for adding to its principal balance all amounts the Program advances, or expenses it incurs, to protect the U.S. or accommodate the notemaker.

(3) *Security documents.* The Division will, at a minimum, require a pledge of all project property (or adequate substitute collateral). The Division will require such other security as it deems the circumstances of each notemaker and project require to protect the U.S. All security documents will secure the U.S. note. The security documents will, among other things, contain provisions for adding to the U.S. note all Program advances, expenditures, and expenses required to protect the U.S. or accommodate the notemaker.

(4) *Recourse.* Significant Program reliance, as a secondary means of repayment, on the net worths of parties other than the notemaker will ordinarily require recourse against those net worths. Recourse may be by a repayment guarantee or irrevocable letter of credit. Ordinarily, the Division will require recourse against: All major shareholders of a closely-held corporate notemaker, the parent corporation of a subsidiary corporate notemaker without substantial pledged assets other than the project property, and all major limited partners. The Division may also require recourse against others it deems necessary to protect the U.S. The principal parties in interest, who ultimately stand most to benefit from the project, should ordinarily be held financially accountable for the project's performance. Where otherwise appropriate recourse is unavailable, the conservatively projected net liquidating value of the notemaker's assets pledged to the Program must, in the Division's credit judgment, substantially exceed all projected Program exposure.

(c) *Dual-use CCF.* For a vessel, the Division may require annually depositing some portion of the project property's net income into a dual-use CCF. A dual-use CCF provides the normal CCF

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tax-deferral benefits, but also both gives the Program control of CCF withdrawals and recourse against CCF deposits and ensures an emergency refurbishing reserve (tax-deferred) for project property.

§ 253.13 Ability and experience requirements.

A notemaker and the majority of its principals must generally have the ability, experience, resources, character, reputation, and other qualifications the Division deems necessary for successfully operating the project property and protecting the U.S. The Program will ordinarily not provide guarantees: For venture capital purposes; to a notemaker whose principals are all from outside the industry; or for a notemaker the majority of whose principals cannot document successful industry ability and experience of a duration, degree, and nature consistent with protecting the U.S.

§ 253.14 Economic and financial requirements.

(a) *Income and expense projections.* The Division's conservative income and expense projections for the project property's operation must prospectively indicate net earnings that can service all debt, properly maintain the project property, and protect the U.S. against the industry's cyclical economics and other risks of loss.

(b) *Working capital.* The Division's conservative assessment of an applicant's financial condition must indicate initial working capital prospectively sufficient to provide for the project property to achieve net earnings projections, fund all foreseeable contingencies, and protect the U.S. At the Division's discretion, some portion of projected working capital needs may be met by something other than current assets minus current liabilities (i.e., by a line or letter of credit, non-current assets readily capable of generating working capital, a guarantor with sufficient financial resources, etc.).

(c) *Audited financial statements.* These will ordinarily be required for any notemaker with large or financially extensive operations whose financial condition the Division believes it cannot

otherwise assess with reasonable certainty.

(d) *Consultant services.* Infrequently, expert consulting services may be necessary to help the Division assess a project's economic, technical, or financial feasibility. The Division will select and employ the necessary consultant, but require the applicant to reimburse the Division. A subsequently approved application will not be closed until the applicant reimburses the Division. This cost may, at the Division's discretion, be included in a guaranteed note's amount. For a declined application, the Division may reimburse itself from the remaining 25 percent of the application fee.

§ 253.15 Miscellaneous.

(a) *Applicant.* Only the legal title holder of project property (or the lessee of an appropriate long-term financing lease) may apply for a guarantee. Applicants must submit an "Application for Fisheries Obligation Program Guarantee" to the appropriate NMFS Regional Financial Services Branch to be considered for a guaranteed loan.

(b) *Investigation and approval.* The Division shall do a due diligence investigation of every application it accepts and determine if, in the Division's sole judgment, the application is eligible and qualified. Applications the Division deems ineligible or unqualified will be declined. The Division will approve eligible and qualified applications based on the applicability of the information obtained during the application and investigation process to the programmatic goals and financial requirements of the program and under terms and conditions that, in the Division's sole discretion, protect the U.S. The Division will state these terms and conditions in its approval in principal letter.

(c) *Insurance.* All property and other risks shall be continuously insured during the term of the U.S. note. Insurers must be acceptable to the Division. Insurance must be in such forms and amounts and against such risks as the Division deems necessary to protect the U.S. Insurance must be endorsed to include the requirements the U.S., as respects its interest only, deems necessary to protect the U.S. (e.g., the

Program will ordinarily be an additional insured as well as the sole loss payee for the amount of its interest; cancellation will require 20 days' advance written notice; vessel seaworthiness will be admitted, and the Program will be adequately protected against other insureds' breaches of policy warranties, negligence, omission, etc.)

(d) *Property inspections.* The Division will require adequate condition and valuation inspection of all property as the basis for assessing the property's worth and suitability for guarantee. The Division may also require these at specified periods during guarantee life. These must be conducted by competent and impartial inspectors acceptable to the Division. Inspection cost will be at an applicant's expense. Those occurring before application approval may be included in actual cost.

(e) *Guarantee terms and conditions.* The Division's approval in principle letter shall specify the terms and conditions of the guarantor's willingness to guarantee. These shall be incorporated in closing documents that the Division prepares. Terms and conditions are at the Division's sole discretion. An applicant's nonacceptance will result in disqualification for guarantee.

(f) *Noteholder.* The Division will, as a gratuitous service, request parties interested in investing in guaranteed notes to submit offers to fund each prospective guaranteed note. The Division and the applicant will, by mutual consent, choose the responsive bidder, which ordinarily will be the prospective noteholder whose bid represents the lowest net effective annual cost of capital. Until the Division has closed the guarantee, arrangements between an applicant and a prospective noteholder are a matter of private contract between them, and the Program is not responsible to either for non-performance by the other.

(g) *Closing—(1) Approval in principle letters.* Every closing will be in strict accordance with a final approval in principle letter.

(2) *Contracts.* The guaranteed note, U.S. note, and security documents will ordinarily be on standard Program forms that may not be altered without Divisional approval. The Division will

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ordinarily prepare all contracts, except certain pledges involving real property, which will be prepared by each notemaker's attorney at the direction and approval of the Division's attorney.

(3) *Closing schedules.* The Division will ordinarily close guarantee transactions with minimal services from applicants' attorneys, except where real property pledges or other matters appropriate for private counsel are involved. Real property services required from an applicant's attorney may include: Title search, mortgage and other document preparation, execution and recording, escrow and disbursement, and a legal opinion and other assurances. An applicant's attorney's expense, and that of any other private contractor required, is for applicant's account. Attorneys and other contractors must be satisfactory to the Division. The Division will attempt to meet reasonable closing schedules, but will not be liable for adverse interest-rate fluctuations, loss of commitments, or other consequences of being unable to meet an applicant's and a prospective noteholder's closing schedule. These parties should work closely with the Division to ensure a closing schedule the Division can meet.

§ 253.16 Fees.

(a) *Application fee.* The Division will not accept an application without the application fee. Fifty percent of the application fee is fully earned at application acceptance, and is not refundable. The rest is fully earned when the Division issues an approval in principal letter, and it is refundable only if the Division declines an application or an applicant requests refund before the Division issues an approval in principal letter.

(b) *Guarantee fee.* Each guarantee fee will be due in advance and will be based on the guaranteed note's repayment provisions for the prospective year. The first annual guarantee fee is due at guarantee closing. Each subsequent one is due and payable on the guarantee closing's anniversary date. Each is fully earned when due, and shall not subsequently be refunded for any reason.

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(c) *Refinancing or assumption fee.* This fee applies only to refinancing or assuming existing guaranteed notes. It is due upon application for refinancing or assuming a guaranteed note. It is fully earned when due and shall be non-refundable. The Division may waive a refinancing or assumption fee's payment when the refinancing or assumption's primary purpose is to protect the U.S.

(d) *Where payable.* Fees are payable by check made payable to "NMFS/FSFF." Other than those collected at application or closing, fees are payable by mailing checks to: U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, P.O. Box 73004, Chicago, Ill. 60673. To ensure proper crediting, each check must include the official case number the Division assigns to each guarantee.

§ 253.17 Demand and payment.

Every demand must be delivered in writing to the Division. Each must include the noteholder's certified record of the date and amount of each payment made on the guaranteed note and the manner of its application. Should the Division not acknowledge receipt of a timely demand, the noteholder must possess evidence of the demand's timely delivery.

§ 253.18 Program operating guidelines.

The Division may issue Program operating guidelines, as the need arises, governing national Program policy and administrative issues not addressed by these rules.

§ 253.19 Default and liquidation.

Upon default of the security documents, the Division shall take such remedial action (including, where appropriate, liquidation) as it deems best able to protect the U.S.' interest.

Subpart C—Interjurisdictional Fisheries

§ 253.20 Definitions.

The terms used in this subpart have the following meanings:

Act means the Interjurisdictional Fisheries Act of 1986, Public Law 99-659 (Title III).

Adopt means to implement an interstate fishery management plan by State action or regulation.

Commercial fishery failure means a serious disruption of a fishery resource affecting present or future productivity due to natural or undetermined causes. It does not include either:

(1) The inability to harvest or sell raw fish or manufactured and processed fishery merchandise; or

(2) Compensation for economic loss suffered by any segment of the fishing industry as the result of a resource disaster.

Enforcement agreement means a written agreement, signed and dated, between a state agency and either the Secretary of the Interior or Secretary of Commerce, or both, to enforce Federal and state laws pertaining to the protection of interjurisdictional fishery resources.

Federal fishery management plan means a plan developed and approved under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Fisheries management means all activities concerned with conservation, restoration, enhancement, or utilization of fisheries resources, including research, data collection and analysis, monitoring, assessment, information dissemination, regulation, and enforcement.

Fishery resource means finfish, mollusks, and crustaceans, and any form of marine or Great Lakes animal or plant life, including habitat, other than marine mammals and birds.

Interjurisdictional fishery resource means:

(1) A fishery resource for which a fishery occurs in waters under the jurisdiction of one or more states and the U.S. Exclusive Economic Zone; or

(2) A fishery resource for which an interstate or a Federal fishery management plan exists; or

(3) A fishery resource which migrates between the waters under the jurisdiction of two or more States bordering on the Great Lakes.

Interstate Commission means a commission or other administrative body established by an interstate compact.

Interstate compact means a compact that has been entered into by two or more states, established for purposes of conserving and managing fishery resources throughout their range, and consented to and approved by Congress.

Interstate Fisheries Research Program means research conducted by two or more state agencies under a formal interstate agreement.

Interstate fishery management plan means a plan for managing a fishery resource developed and adopted by the member states of an Interstate Marine Fisheries Commission, and contains information regarding the status of the fishery resource and fisheries, and recommends actions to be taken by the States to conserve and manage the fishery resource.

Landed means the first point of off-loading fishery resources.

NMFS Regional Director means the Director of any one of the five National Marine Fisheries Service regions.

Project means an undertaking or a proposal for research in support of management of an interjurisdictional fishery resource or an interstate fishery management plan.

Research means work or investigative study, designed to acquire knowledge of fisheries resources and their habitat.

Secretary means the Secretary of Commerce or his/her designee.

State means each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, or the Commonwealth of the Northern Mariana Islands.

State Agency means any department, agency, commission, or official of a state authorized under the laws of the State to regulate commercial fisheries or enforce laws relating to commercial fisheries.

Value means the monetary worth of fishery resources used in developing the apportionment formula, which is equal to the price paid at the first point of landing.

Volume means the weight of the fishery resource as landed, at the first point of landing.

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§ 253.21 Apportionment.

(a) Apportionment formula. The amount of funds apportioned to each state is to be determined by the Secretary as the ratio which the equally weighted average of the volume and value of fishery resources harvested by domestic commercial fishermen and landed within such state during the 3 most recent calendar years for which data satisfactory to the Secretary are available bears to the total equally weighted average of the volume and value of all fishery resources harvested by domestic commercial fishermen and landed within all of the states during those calendar years.

(1) The equally weighted average value is determined by the following formula:

$$\frac{\text{Volume of X State}}{\text{Volume of all States}} = \text{A percent}$$

$$\frac{\text{Value of X State}}{\text{Value of all States}} = \text{B percent}$$

$$\frac{[\text{A}\% + \text{B}\%]}{2} = \text{State percentage used to determine state's share of the total available funds}$$

(2) Upon appropriation of funds by Congress, the Secretary will take the following actions:

- (i) Determine each state's share according to the apportionment formula.
- (ii) Certify the funds to the respective NMFS Regional Director.
- (iii) Instruct NMFS Regional Directors to promptly notify states of funds' availability.

(b) No state, under the apportionment formula in paragraph (a) of this section, that has a ratio of one-third of 1 percent or higher may receive an apportionment for any fiscal year that is less than 1 percent of the total amount of funds available for that fiscal year.

(c) If a State's ratio under the apportionment formula in paragraph (b) of this section is less than one-third of 1 percent, that state may receive funding if the state:

- (1) Is signatory to an interstate fishery compact;
- (2) Has entered into an enforcement agreement with the Secretary and/or the Secretary of the Interior for a fish-

ery that is managed under an interstate fishery management plan;

(3) Borders one or more of the Great Lakes;

(4) Has entered into an interstate cooperative fishery management agreement and has in effect an interstate fisheries management plan or an interstate fisheries research program; or

(5) Has adopted a Federal fishery management plan for an interjurisdictional fishery resource.

(d) Any state that has a ratio of less than one-third of 1 percent and meets any of the requirements set forth in paragraphs (c) (1) through (5) of this section may receive an apportionment for any fiscal year that is not less than 0.5 percent of the total amount of funds available for apportionment for such fiscal year.

(e) No state may receive an apportionment under this section for any fiscal year that is more than 6 percent of the total amount of funds available for apportionment for such fiscal year.

(f) Unused apportionments. Any part of an apportionment for any fiscal year to any state:

- (1) That is not obligated during that year;
- (2) With respect to which the state notifies the Secretary that it does not wish to receive that part; or
- (3) That is returned to the Secretary by the state, may not be considered to be appropriated to that state and must be added to such funds as are appropriated for the next fiscal year. Any notification or return of funds by a state referred to in this section is irrevocable.

§ 253.22 State projects.

(a) General—(1) Designation of state agency. The Governor of each state shall notify the Secretary of which agency of the state government is authorized under its laws to regulate commercial fisheries and is, therefore, designated receive financial assistance awards. An official of such agency shall certify which official(s) is authorized in accordance with state law to commit the state to participation under the Act, to sign project documents, and to receive payments.

(2) States that choose to submit proposals in any fiscal year must so notify

the NMFS Regional Director before the end of the third quarter of that fiscal year.

(3) Any state may, through its state agency, submit to the NMFS Regional Director a completed NOAA Grants and Cooperative Agreement Application Package with its proposal for a project, which may be multiyear. Proposals must describe the full scope of work, specifications, and cost estimates for such project.

(4) States may submit a proposal for a project through, and request payment to be made to, an Interstate Fisheries Commission. Any payment so made shall be charged against the apportionment of the appropriate state(s). Submitting a project through one of the Commissions does not remove the matching funds requirement for any state, as provided in paragraph (c) of this section.

(b) *Evaluation of projects.* The Secretary, before approving any proposal for a project, will evaluate the proposal as to its applicability, in accordance with 16 U.S.C. 4104(a)(2).

(c) *State matching requirements.* The Federal share of the costs of any project conducted under this subpart, including a project submitted through an Interstate Commission, cannot exceed 75 percent of the total estimated cost of the project, unless:

(1) The state has adopted an interstate fishery management plan for the fishery resource to which the project applies; or

(2) The state has adopted fishery regulations that the Secretary has determined are consistent with any Federal fishery management plan for the species to which the project applies, in which case the Federal share cannot exceed 90 percent of the total estimated cost of the project.

(d) *Financial assistance award.* If the Secretary approves or disapproves a proposal for a project, he or she will promptly give written notification, including, if disapproved, a detailed explanation of the reason(s) for the disapproval.

(e) *Restrictions.* (1) The total cost of all items included for engineering, planning, inspection, and unforeseen contingencies in connection with any works to be constructed as part of such

a proposed project shall not exceed 10 percent of the total cost of such works, and shall be paid by the state as a part of its contribution to the total cost of the project.

(2) The expenditure of funds under this subpart may be applied only to projects for which a proposal has been evaluated under paragraph (b) of this section and approved by the Secretary, except that up to \$25,000 each fiscal year may be awarded to a state out of the state's regular apportionment to carry out an "enforcement agreement." An enforcement agreement does not require state matching funds.

(f) *Prosecution of work.* All work must be performed in accordance with applicable state laws or regulations, except when such laws or regulations are in conflict with Federal laws or regulations such that the Federal law or regulation prevails.

§ 253.23 Other funds.

(a) *Funds for disaster assistance.* (1) The Secretary shall retain sole authority in distributing any disaster assistance funds made available under section 308(b) of the Act. The Secretary may distribute these funds after he or she has made a thorough evaluation of the scientific information submitted, and has determined that a commercial fishery failure of a fishery resource arising from natural or undetermined causes has occurred. Funds may only be used to restore the resource affected by the disaster, and only by existing methods and technology. Any fishery resource used in computing the states' amount under the apportionment formula in § 253.21(a) will qualify for funding under this section. The Federal share of the cost of any activity conducted under the disaster provision of the Act shall be limited to 75 percent of the total cost.

(2) In addition, pursuant to section 308(d) of the Act, the Secretary is authorized to award grants to persons engaged in commercial fisheries, for uninsured losses determined by the Secretary to have been suffered as a direct result of a fishery resource disaster.

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Funds may be distributed by the Secretary only after notice and opportunity for public comment of the appropriate limitations, terms, and conditions for awarding assistance under this section. Assistance provided under this section is limited to 75 percent of an uninsured loss to the extent that such losses have not been compensated by other Federal or State programs.

(b) *Funds for interstate commissions.* Funds authorized to support the efforts of the three chartered Interstate Marine Fisheries Commissions to develop and maintain interstate fishery management plans for interjurisdictional fisheries will be divided equally among the Commissions.

§ 253.24 Administrative requirements.

Federal assistance awards made as a result of this Act are subject to all Federal laws, Executive Orders, Office of Management and Budget Circulars as incorporated by the award; Department of Commerce and NOAA regulations; policies and procedures applicable to Federal financial assistance awards; and terms and conditions of the awards.

PART 259—CAPITAL CONSTRUCTION FUND

JOINT TAX REGULATIONS

Sec.

259.1 Execution of agreements and deposits made in a Capital Construction Fund.

CAPITAL CONSTRUCTION FUND AGREEMENT

259.30 Application for Interim Capital Construction Fund Agreement (“Interim CCF Agreement”).

259.31 Acquisition, construction, or reconstruction.

259.32 Conditional fisheries.

259.33 Constructive deposits and withdrawals; ratification of withdrawals (as qualified) made without first having obtained Secretary’s consent; first tax year for which Interim CCF Agreement is effective.

259.34 Minimum and maximum deposits; maximum time to deposit.

259.35 Annual deposit and withdrawal reports required.

259.36 CCF accounts.

259.37 Conditional consents to withdrawal qualification.

259.38 Miscellaneous.

AUTHORITY: 46 U.S.C. 1177.

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JOINT TAX REGULATIONS

§ 259.1 Execution of agreements and deposits made in a Capital Construction Fund.

In the case of a taxable year of a taxpayer beginning after December 31, 1969, and before January 1, 1972, the rules governing the execution of agreements and deposits under such agreements shall be as follows:

(a) A capital construction fund agreement executed and entered into by the taxpayer on or prior to the due date, with extensions, for the filing of his Federal income tax return for such taxable year or years will be deemed to be effective on the date of the execution of such agreement or as of the close of business of the last regular business day of each such taxable year or years to which such deposit relates, whichever day is earlier.

(b) Notwithstanding the provisions of paragraph (a) of this section, where:

(1) For taxable years beginning after December 31, 1969, and prior to January 1, 1971, an application for a capital construction fund agreement is filed by a taxpayer prior to January 1, 1972, and a capital construction fund agreement is executed and entered into by the taxpayer prior to March 1, 1972, and

(2) For taxable years beginning after December 31, 1970, and prior to January 1, 1972, an application for a capital construction fund agreement is filed by a taxpayer prior to January 1, 1973, and a capital construction fund agreement is executed and entered into by the taxpayer prior to March 1, 1973 (or, if earlier, 60 days after the publication of final joint regulations under section 607 of the Merchant Marine Act, 1936, as amended); then such a capital construction fund agreement will be deemed to be effective as of the close of business of the last regular business day of each such taxable year or years to which such deposit related.

(c)(1) Deposits made in a capital construction fund pursuant to such an agreement within 60 days after the date of execution of the agreement, or on or prior to the due date, with extensions, for the filing of his Federal income tax return for such taxable year or years, whichever date shall be later, shall be deemed to have been made on

the date of the actual deposit or as of the close of business of the last regular business day of each such taxable year or years to which such deposit relates, whichever day is earlier.

(2) Notwithstanding paragraph (c)(1) of this section, for taxable years beginning after December 31, 1970, and ending prior to January 1, 1972, deposits made later than the last date permitted under paragraph (c)(1) of this section but on or before January 9, 1973, in a capital construction fund pursuant to an agreement with the Secretary of Commerce, acting by and through the Administrator of the National Oceanic and Atmospheric Administration, shall be deemed to have been made on the date of the actual deposit or as of the close of business of the last regular business day of such taxable year, whichever is earlier.

(d) Nothing in this section shall alter the rules and regulations governing the timing of deposits with respect to existing capital and special reserve funds or with respect to the treatment of deposits for any taxable year or years other than a taxable year or years beginning after December 31, 1969, and before January 1, 1972.¹

[37 FR 25025, Nov. 25, 1972, as amended at 38 FR 8163, Mar. 29, 1973]

CAPITAL CONSTRUCTION FUND
AGREEMENT

SOURCE: Sections 259.30 to 259.38 appear at 39 FR 33675, Sept. 19, 1974, unless otherwise noted.

§ 259.30 Application for Interim Capital Construction Fund Agreement ("Interim CCF Agreement").

(a) *General qualifications.* To be eligible to enter into an Interim CCF Agreement an applicant must:

(1) Be a citizen of the United States (citizenship requirements are those for documenting vessels in the coastwise trade within the meaning of section 2 of the Shipping Act, 1916, as amended);

¹The phrase "existing capital and special reserve funds" does not refer to the Capital Construction Fund program but rather to funds established with the Maritime Administration prior to the amendment of the Merchant Marine Act, 1936, which authorized the Capital Construction Fund program.

(2) Own or lease one or more eligible vessels (as defined in section 607(k)(1) of the Act) operating in the foreign or domestic commerce of the United States.

(3) Have an acceptable program for the acquisition, construction, or reconstruction of one or more qualified vessels (as defined in section 607(k)(2) of the Act). Qualified vessels must be for commercial operation in the fisheries of the United States. If the qualified vessel is 5 net tons or over, it must be documented in the fisheries of the United States. Dual documentation in both the fisheries and the coastwise trade of the United States is permissible. Any vessel which will carry fishing parties for hire must be inspected and certified (under 46 CFR part 176) by the U.S. Coast Guard as qualified to carry more than six passengers or demonstrate to the Secretary's satisfaction that the carrying of fishing parties for hire will constitute its primary activity. The program must be a firm representation of the applicant's actual intentions. Vague or contingent objectives will not be acceptable.

(b) *Content of application.* Applicants seeking an Interim CCF Agreement may make application by letter providing the following information:

(1) Proof of U.S. citizenship;

(2) The first taxable year for which the Interim CCF Agreement is to apply (see § 259.33 for the latest time at which applications for an Interim CCF Agreement relating to a previous taxable year may be received);

(3) The following information regarding each "eligible vessel" which is to be incorporated in Schedule A of the Interim CCF Agreement for purposes of making deposits into a CCF pursuant to section 607 of the Act:

(i) Name of vessel,

(ii) Official number, or, in the case of vessels under 5 net tons, the State registration number where required,

(iii) Type of vessel (i.e., catching vessel, processing vessel, transporting vessel, charter vessel, barge, passenger carrying fishing vessel, etc.),

(iv) General characteristic (i.e., net tonnage, fish-carrying capacity, age, length, type of fishing gear, number of

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passengers carried or in the case of vessels operating in the foreign or domestic commerce the various uses of the vessel, etc.),

(v) Whether owned or leased and, if leased, the name of the owner, and a copy of the lease,

(vi) Date and place of construction,

(vii) If reconstructed, date of redelivery and place of reconstruction,

(viii) Trade (or trades) in which vessel is documented and date last documented,

(ix) If a fishing vessel, the fishery of operation (which in this section means each species or group of species—each species must be specifically identified by acceptable common names—of fish, shellfish, or other living marine resources which each vessel catches, processes, or transports or will catch, process, or transport for commercial purposes such as marketing or processing the catch),

(x) If a fishing vessel, the area of operation (which for fishing vessels means the general geographic areas in which each vessel will catch, process, or transport, or charter for each species or group of species of fish, shellfish, or other living marine resources).

(4) The specific objectives to be achieved by the accumulation of assets in a Capital Construction Fund (to be incorporated in Schedule B of the Interim CCF Agreement) including:

(i) Number of vessels,

(ii) Type of vessel (i.e., catching, processing, transporting, or passenger carrying fishing vessel),

(iii) General characteristics (i.e., net tonnage, fish-carrying capacity, age, length, type of fishing gear, number of passengers carried),

(iv) Cost of projects,

(v) Amount of indebtedness to be paid for vessels to be constructed, acquired, or reconstructed (all notes, mortgages, or other evidences of the indebtedness must be submitted as soon as available, together with sufficient additional evidence to establish that full proceeds of the indebtedness to be paid from a CCF under an Interim CCF Agreement, were used solely for the purpose of the construction, acquisition, or reconstruction of Schedule B vessels),

(vi) Date of construction, acquisition, or reconstruction,

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(vii) Fishery of operation (which in this section means each species or group of species—each species must be specifically identified by acceptable common name—of fish, shellfish, or other living marine resources),

(viii) Area of operation (which in this section means the general geographic areas in which each vessel will operate for each species or group of species of fish, shellfish, or other living marine resources).

(c) *Filing.* The application must be signed and submitted in duplicate to the Regional Office of the National Marine Fisheries Service's Financial Assistance Division corresponding to the region in which the party conducts its business. As a general rule, the Interim CCF Agreement must be executed and entered into by the taxpayer on or prior to the due date, with extensions, for the filing of the Federal tax return in order to be effective for the tax year to which that return relates. It is manifestly in the Applicant's best interest to file at least 45 days in advance of such date.

[39 FR 33675, Sept. 19, 1974, as amended at 42 FR 65185, Dec. 30, 1978]

§ 259.31 Acquisition, construction, or reconstruction.

(a) *Acquisition.* No vessel having previously been operated in a fishery of the United States prior to its acquisition by the party seeking CCF withdrawal therefor shall be a qualified vessel for the purpose of acquisition, except in the cases specified in paragraphs (a)(1) and (2) of this section:

(1) A vessel not more than 5 years old, at the time of its acquisition by the party seeking CCF withdrawal therefor may be a qualified vessel for the purpose of acquisition, but only if each acquisition in this category becomes a Schedule A vessel and there exists for each acquisition in this category (on a one-for-one basis) an additional Schedule B construction or reconstruction. The sole consideration for permitting an acquisition in this category is that it will enable the party (but the Secretary will not attempt to predetermine such an ability) to accelerate accomplishment of the additional Schedule B construction or

reconstruction. Should this consideration materially fail, the Secretary shall, at his discretion, disqualify previously qualified withdrawals in this category, seek liquidated damages as provided for in paragraph (a)(4) of this section and/or terminate the Interim CCF Agreement.

(2) A vessel more than 5 years old, but not more than 25 years old (special showing required if more than 25 years old, see paragraph (b) of this section), at the time of acquisition by the party seeking CCF withdrawal therefor may be a qualified vessel for the purpose of acquisition, but only if that same vessel becomes a Schedule A vessel and (in addition to being a Schedule B vessel for the purpose of its acquisition) becomes a Schedule B vessel for the purpose of that same vessel's reconstruction to be accomplished ordinarily within 7 years from the date of acquisition. The sole consideration for permitting an acquisition in this category is that it will enable a party (but the Secretary will not attempt to predetermine such an ability) to accelerate accomplishment of the Schedule B reconstruction of the vessel so acquired. Should this consideration materially fail, the same penalty prescribed in paragraph (a)(1) of this section applies.

(3) Reserved for minimum deposits under this section.

(4) Reserved for liquidated damages.

(b) *Reconstruction.* No reconstruction project costing less than \$100,000 shall qualify a vessel for reconstruction, unless the reconstruction project costs, or will cost, 20 percent or more of the reconstructed vessel's acquisition cost (in its unreconstructed state) to the party seeking CCF withdrawal therefor. If the reconstruction project meets the \$100,000 test, then the 20 percent test does not apply. Conversely, if the reconstruction project does not meet the \$100,000 test, then the 20 percent test applies.

(1) Reconstruction may include rebuilding, replacing, reconditioning, converting and/or improving any portion of a vessel. A reconstruction project must, however, substantially prolong the useful life of the reconstructed vessel, increase its value, or adapt it to a different commercial use in the fishing trade or industry.

(2) All, or the major portion (ordinarily, not less than 80 percent), of a reconstruction project's actual cost must (for the purpose of meeting the above dollar or percentage tests) be classifiable as a capital expenditure for Internal Revenue Service (IRS) purposes. That otherwise allowable (i.e., for the purpose of meeting the above dollar or percentage tests) portion of a reconstruction project's actual cost which is not classifiable as a capital expenditure shall, however, be excluded from the amount qualified for withdrawal as a result of the reconstruction project.

(3) No vessel more than 25 years old at the time of withdrawal or request for withdrawal shall be a qualified vessel for the purpose of reconstruction unless a special showing is made, to the Secretary's discretionary satisfaction, that the type and degree of reconstruction intended will result in an efficient and productive vessel with an economically useful life at least 10 years beyond the date reconstruction is completed.

(c) *Time permitted for construction or reconstruction.* Construction or reconstruction must be completed within 18 months from the date construction or reconstruction first commences, unless otherwise consented to by the Secretary.

(d) *Energy saving improvements.* An improvement made to a vessel to conserve energy shall, regardless of cost, be treated as a reconstruction for the purpose of qualifying a CCF withdrawal for such expenditure and shall be exempted from having to meet conditional fishery requirements for reconstruction as set forth in § 259.32 and from all qualifying tests for reconstruction set forth in paragraph (b) of this section with the following exceptions:

(1) An energy saving improvement shall be required to meet both conditional fishery requirements and the qualifying tests for reconstruction if it serves the dual purpose of saving energy and meeting the reconstruction requirement of paragraph (a) of this section for qualifying a withdrawal for the acquisition of a used vessel.

(2) That portion of the actual cost of an energy saving improvement which is

to be paid for from the CCF must be classifiable and treated as a capital expenditure for Internal Revenue Service purposes.

(e) *Safety projects.* The acquisition and installation of safety equipment for a qualified vessel and vessel modifications whose central purpose is materially increasing the safety of a qualified vessel or the acquisition and installation of equipment required by law or regulation that materially increases the safety of a qualified vessel shall, regardless of cost, be treated as reconstruction for the purpose of qualifying a CCF withdrawal for such expenditure, shall be exempt from having to meet conditional fishery requirements for reconstruction as set forth in § 259.32, and shall be exempt from all qualifying tests for reconstruction set forth in paragraph (b) of this section, with the following exceptions:

(1) A safety improvement shall be required to meet both conditional fishery requirements and all qualifying tests for reconstruction if it serves the dual purpose of safety and meeting the reconstruction requirement of paragraph (a) of this section for qualifying a withdrawal for the acquisition of a used vessel;

(2) That portion of the actual cost of a safety improvement that is to be paid for from the CCF must be classifiable and treated as a capital expenditure for Internal Revenue Service purposes;

(3) Safety improvement projects whose clear and central purpose is restricted to complying with the requirements of the Commercial Fishing Industry Vessel Safety Act of 1988 (Public Law 100–424 Sec. 1, 102 stat. 1585 (1988) (codified in scattered sections of 46 U.S.C.)) shall, without further documentation, be considered to fall within this paragraph (e). Satisfactory documentation will be required for all other projects proposed to be considered as falling within this paragraph (e). Projects not required by law or regulation whose central purpose clearly involves something other than an improvement that materially increases the safety of a vessel will not be considered to fall within this paragraph (e).

[39 FR 33675, Sept. 19, 1974, as amended at 46 FR 54563, Nov. 3, 1981; 62 FR 331, Jan. 3, 1997]

§ 259.32 Conditional fisheries.

(a) The Secretary may from time-to-time establish certain fisheries in which CCF benefits will be restricted. The regulatory mechanism for so doing is part 251 of this chapter. Each fishery so restricted is termed a “conditional fishery”. Subpart A of part 251 of this chapter establishes the procedure to be used by the Secretary in proposing and adopting a fishery as a conditional fishery. Subpart B of part 251 of this chapter enumerates each fishery actually adopted as a conditional fishery (part 251 of this chapter should be referred to for details). The purpose of this § 259.32 is to establish the effect of conditional fishery adoption upon Interim CCF Agreements.

(b) If a written request for an otherwise permissible action under an Interim CCF Agreement is submitted prior to the date upon which conditional fishery adoption occurs, then the Secretary will act, in an otherwise normal manner, upon so much of the action then applied for as is then permissible without regard to the subsequent adoption of a conditional fishery (even, if that adoption occurs before the Secretary gives his consent or issues an Interim CCF Agreement or amendment thereto, all as the case may be). Nevertheless, the conditions as set forth in paragraph (d) of this section shall apply.

(c) If a written request for an otherwise permissible action under an Interim CCF Agreement, or an application for an Interim CCF Agreement, is submitted after the date upon which conditional fishery adoption occurs, then the Secretary will act, in an otherwise normal manner, upon so much of the action then applied for as is then permissible without regard to the previous adoption of a conditional fishery provided, however, that this paragraph shall apply only to construction or reconstruction for which a binding contract has been reduced to writing prior to the date upon which conditional fishery adoption occurred. Nevertheless, the conditions as set forth in paragraph (d) of this section shall apply.

(d) Conditional fishery adoption shall have no effect whatsoever upon a

Schedule B objective whose qualification for withdrawal (which may be in an amount equal to the total cost over time of a Schedule B objective, i.e., a series of withdrawals) has been, prior to the date of conditional fishery adoption, either consented to by the Secretary or requested in accordance with paragraph (b) or (c) of this section. This extends to past, present, and future withdrawals in an amount representing up to 100 percent of the cost of a Schedule B objective. Commencement of any project in these categories shall, however, be started not later than 6 months from the date of conditional fishery adoption and shall be completed within 24 months from the date of conditional fishery adoption, unless for good and sufficient cause shown the Secretary, at his discretion, consents to a longer period for either project commencement or completion. Consent to the qualification of withdrawal for any project in these categories not commenced or completed within the periods allowed shall be revoked at the end of the periods allowed.

(e) Conditional fishery adoption shall have no effect whatsoever upon Schedule B objectives which will not result in significantly increasing harvesting capacity in a fishery adopted as a conditional fishery.

(1) Construction of a new vessel (vessel "Y") for operation in an adopted conditional fishery shall be deemed to significantly increase harvesting capacity in that fishery unless the party causing the "Y" vessel to be constructed causes (within 1 year after the delivery of vessel "Y") to be permanently removed from all fishing, or placed permanently in a fishery not then adopted as a conditional fishery, under such conditions as the Secretary may deem necessary or desirable, a vessel (vessel "Z") which has during the previous 18 months operated substantially in the same fishery as the "Y" vessel and which has a fishing capacity substantially equivalent to the "Y" vessel. Failure to remove a vessel could subject all withdrawals to be treated as nonqualified and may be cause for termination of the CCF. What constitutes substantially equivalent fishing capacity shall be a matter for

the Secretary's discretion. Ordinarily, in exercising his discretion about what does or does not constitute substantially equivalent fishing capacity, the Secretary will take into consideration (i) the average size of vessels constructed for the adopted conditional fishery in question at the time vessel "Z" was constructed (or, if constructed for a different fishery, the average size of vessels in the adopted conditional fishery at the time vessel "Z" entered it), (ii) the average size of vessels constructed for the adopted conditional fishery at the time vessel "Y" was or will be constructed, and (iii) such other factors as the Secretary may deem material and equitable, including the length of time the party had owned or leased vessel "Z" and the length of time the vessel has operated in the conditional fishery. The Secretary will consider these factors, and exercise his discretion, in such a way as to encourage use of this program by established fishermen who have owned or leased for substantial periods vessels which need to be replaced, even though a "Z" vessel may have been constructed at a time which dictated a lesser fishing capacity than dictated for a "Y" vessel at the time of its construction.

(2) Acquisition and/or reconstruction of a used vessel for operation in an adopted conditional fishery shall be deemed to significantly increase harvesting capacity in that fishery unless the vessel to be acquired and/or reconstructed had during the previous 3 years operated substantially in the same fishery as the adopted conditional fishery in which it will operate after acquisition and/or reconstruction. If less than 3 years, then acquisition and/or reconstruction of a used vessel for operation in an adopted conditional fishery shall be deemed to significantly increase harvesting capacity in that fishery unless there occurs vessel removal or permanent placement elsewhere under the same conditions specified for construction in paragraph (e)(1) of this section.

(3) Construction of a new vessel or the acquisition and/or reconstruction of a used vessel for operation in an adopted conditional fishery shall not be deemed to significantly increase the harvesting capacity where the vessel

constructed, acquired and/or reconstructed replaces another vessel which was lost or destroyed and which had, immediately prior to the loss or destruction, operated in the same fishery as the adopted conditional fishery, provided, however, that the fishing capacity of the replacement vessel has a fishing capacity substantially equivalent to the vessel lost or destroyed and that the construction, acquisition and/or reconstruction is completed within 2 years after the close of the taxable year in which the loss or destruction occurred. The Secretary may, at his discretion, and for good and sufficient cause shown, extend the replacement period, provided that the request for extension of time to replace is timely filed with the Secretary.

(f) Conditional fishery adoption shall have the following effect on all Schedule B objectives (whether for acquisition, construction, or reconstruction) which the Secretary deems to significantly increase harvesting capacity in that fishery, excluding those circumstances specifically exempted by paragraphs (b) through (e) of this section (which shall be governed by the provisions of paragraphs (b) through (e) of this section).

(1) The Secretary may nevertheless consent to the qualification of withdrawal, but only up to an amount not exceeding the total of eligible ceilings actually deposited during tax years other than the taxable year in which conditional fishery adoption occurs plus a pro-rata portion of eligible ceilings generated in the tax year in which conditional fishery adoption occurs. Pro-rata shall be according to the number of months or any part thereof in a party's tax year which elapse before the adoption of the conditional fishery occurs. For example, if a party's tax year runs from January 1, 1974, to December 31, 1974, and conditional fishery adoption occurs on August 15, 1974, (i.e., during the 8th month of the party's tax year), then the pro-rata portion for that year is eight-twelfths of the total eligible ceilings generated during that year.

(2) Qualified withdrawals in excess of the amount specified in paragraph (f)(1) of this section shall not, during the continuance of the adopted conditional

fishery, be consented to. Parties at this point shall have the following option:

(i) Make, with the Secretary's consent, a nonqualified withdrawal of the excess and discontinue the future deposit of eligible ceilings (which may effect termination of the Interim CCF Agreement).

(ii) Reserve the excess, as well as the future deposit of eligible ceilings, for a Schedule B objective not then involving an adopted conditional fishery. If amendment of an Interim CCF Agreement is necessary in order to include a Schedule B objective not then involving an adopted conditional fishery, the party may, with the Secretary's consent, make the necessary amendment.

(iii) Reserve the excess, as well as the future deposit of eligible ceilings, for a Schedule B objective involving a then adopted conditional fishery in anticipation that the then adopted conditional fishery will eventually be disadopted, in which case all deposits of eligible ceilings will once again be eligible for the Secretary's consent as qualified withdrawals. If the adoption of a conditional fishery continues for a substantial length of time and there is no foreseeable prospect of disadoption, then the Secretary, in his discretion, may require paragraph (f)(2)(i) or (ii) of this section to be effected.

(g) The Secretary shall neither enter into a new Interim CCF Agreement, nor permit amendment of an existing one, which involves a Schedule B objective in a then adopted conditional fishery unless paragraph (b), (c) or (d) of this § 259.32 applies or unless the Schedule B objective is expressly conditioned upon acquisition construction, or reconstruction of the type permitted under paragraph (e) of this § 259.32. Such an express condition would not survive beyond the time at which conditional fishery status is removed.

§ 259.33 Constructive deposits and withdrawals; ratification of withdrawals (as qualified) made without first having obtained Secretary's consent; first tax year for which Interim CCF Agreement is effective.

(a) *Periods controlling permissibility.* For the purpose of this § 259.33, the period between the beginning and the end of a party's tax year is designated "Period (aa)"; the period between the

end of a party's tax year and the party's tax due date for that tax year is designated "Period (bb)"; the period between the party's tax due date and the date on which ends the party's last extension (if any) of that tax due date is designated "Period (cc)".

(b) *Constructive deposits and withdrawals (before Interim CCF Agreement effectiveness date)*. Constructive deposits and withdrawals shall be permissible only during the Period (aa) during which a written application for an interim CCF Agreement is submitted to the Secretary and so much of the next succeeding Period (aa), if any, which occurs before the Secretary executes the Interim CCF Agreement previously applied for. All otherwise qualified expenditures of eligible ceilings during Period (aa) may be consented to by the Secretary as constructive deposits and withdrawals: *Provided*, The applicant's application for an Interim CCF Agreement and for consent to constructive deposit and withdrawal qualification (together with sufficient supporting data to enable the Secretary's execution or issuance of consent) is submitted to the Secretary either before the end of Period (bb) or, if extension was requested and received, before the end of Period (cc). If, however, the Secretary receives the completed application in proper form so close to the latest permissible period that the Interim CCF Agreement cannot be executed and/or the consent given before the end of Period (bb) or Period (cc), whichever applies, then the burden is entirely upon the applicant to negotiate with the Internal Revenue Service (IRS) for such relief as may be available (e.g., filing an amended tax return, if appropriate). The Secretary will nevertheless execute the Interim CCF Agreement and issue his consent however long past the applicant's Period (bb) or Period (cc), whichever applies, the Secretary's administrative workload requires. Should IRS relief be, for any reason, unavailable, the Secretary shall regard the same as merely due to the applicant's having failed to apply in a more timely fashion.

(c) *Constructive deposits (after Interim CCF Agreement effectiveness date)*. The Secretary shall not permit constructive deposits or withdrawals after the

effective date of an Interim CCF Agreement. Eligible ceilings must, after the effective date of an interim CCF Agreement, be physically deposited in money or kind in scheduled depositories before the last date eligible ceilings for any Period (aa) of any party become ineligible for deposit (the last date being Period (bb) or Period (cc), whichever applies).

(d) *Ratification of withdrawals (as qualified) made without first having obtained Secretary's consent*. The Secretary may ratify as qualified any withdrawal made without first having obtained the Secretary's consent therefor, provided the withdrawal was such as would have resulted in the Secretary's consent had it been requested before withdrawal, and provided further that the party's request for consent (together with sufficient supporting data to enable issuance of the Secretary's consent) is submitted to the Secretary either before the end of Period (bb) or, if extension was requested and received, before the end of Period (cc).

(1) If, however, the Secretary receives the request in proper form so close to the latest permissible period that the consent cannot be given before expiration of Period (bb) or Period (cc), whichever applies, then the burden is entirely upon the party to negotiate with IRS for such relief as may be available (e.g., filing an amended tax return, if appropriate). The Secretary will nevertheless issue his consent however long past the party's Period (bb) or Period (cc), whichever applies, the Secretary's administrative workload requires. Should IRS relief be, for any reason, unavailable, the Secretary shall regard the same as merely due to the party's having failed to apply in a more timely fashion.

(2) All parties shall be counseled that it is manifestly in their best interest to request the Secretary's consent 45 days in advance of the expected date of withdrawal. Withdrawals made without the Secretary's consent, in reliance on obtaining the Secretary's consent, are made purely at a party's own risk. Should any withdrawal made without the Secretary's consent prove, for any reason, to be one to which the Secretary will not or cannot consent by

ratification, then the result will be either, or both, at the Secretary's discretion, an unqualified withdrawal or an involuntary termination of the Interim CCF Agreement.

(3) Should the withdrawal made without having first obtained the Secretary's consent be made in pursuance of a project not then an eligible Schedule B objective, then the Secretary may entertain an application to amend the Interim CCF Agreement's Schedule B objectives as the prerequisite to consenting by ratification to the withdrawal, all under the same time constraints and conditions as otherwise specified herein.

(4) Any withdrawals made, after the effective date of an Interim CCF Agreement, without the Secretary's consent are automatically non-qualified withdrawals unless the Secretary subsequently consents to them by ratification as otherwise specified herein.

(5) Redeposit of that portion of the ceiling withdrawn without the Secretary's consent, and for which such consent is not subsequently given (either by ratification or otherwise), shall not be permitted. If such a non-qualified withdrawal adversely affects the Interim CCF Agreement's general status in any wise deemed by the Secretary, at his discretion, to be significant and material, the Secretary may involuntarily terminate the Interim CCF Agreement.

(e) *First tax year for which Interim CCF Agreement is effective.* An Agreement, to be effective for any party's Period (aa), must be executed and entered into by the party, and submitted to the Secretary, before the end of Period (bb) or Period (cc), whichever applies, for such Period (aa). If executed and entered into by the party, and/or received by the Secretary, after the end of Period (bb) or Period (cc), whichever applies, then the Agreement will be first effective for the next succeeding Period (aa).

(1) If, however, the Secretary receives an Agreement executed and entered into by the party in proper form so close to the latest permissible period that the Secretary cannot execute the Agreement before expiration of Period (bb) or Period (cc), whichever applies, then the burden is entirely upon the

party to negotiate with IRS for such relief as may be available (e.g., filing an amended tax return, if appropriate). The Secretary will nevertheless execute the Agreement however long past the party's Period (bb) or Period (cc), whichever applies, the Secretary's administrative workload requires. Should IRS relief be, for any reason, unavailable, the Secretary shall regard the same as merely due to the party's having failed to apply in a more timely manner.

(2) All parties shall be counseled that it is manifestly in their best interest to enter into and execute an Agreement, and submit the same to the Secretary, at least 45 days in advance of the Period (bb) or Period (cc), whichever applies, for the Period (aa) for which the Agreement is first intended to be effective.

§ 259.34 Minimum and maximum deposits; maximum time to deposit.

(a) *Minimum annual deposit.* The minimum annual (based on each party's taxable year) deposit required by the Secretary in order to maintain an Interim CCF Agreement shall be an amount equal to 2 percent of the total anticipated cost of all Schedule B objectives unless such 2 percent exceeds during any tax year 50 percent of a party's Schedule A taxable income, in which case the minimum deposit for that year shall be 50 percent of the party's Schedule A taxable income.

(1) Minimum annual deposit compliance shall be audited at the end of each party's taxable year unless any one or more of the Schedule B objectives is scheduled for commencement more than 3 taxable years in advance of the taxable year in which the agreement is effected, in which case minimum annual deposit compliance shall be audited at the end of each 3 year taxable period. In any taxable year, a Party may apply any eligible amount in excess of the 2 percent minimum annual deposit toward meeting the party's minimum annual deposit requirement in past or future years: *Provided, however,* At the end of each 3 year period, the aggregate amount in the fund must be in compliance with 2 percent minimum annual deposit rule (unless the

50 percent of taxable income situation applies).

(2) The Secretary may, at his discretion and for good and sufficient cause shown, consent to minimum annual deposits in any given tax year or combination of tax years in an amount lower than prescribed herein: *Provided*, The party demonstrates to the Secretary's satisfaction the availability of sufficient funds from any combination of sources to accomplish Schedule B objectives at the time they are scheduled for accomplishment.

(b) *Maximum deposits*. Other than the maximum annual ceilings established by the Act, the Secretary shall not establish a maximum annual ceiling: *Provided, however*, That deposits can no longer be made once a party has deposited 100 percent of the anticipated cost of all Schedule B objectives, unless the Interim CCF Agreement is then amended to establish additional Schedule B objectives.

(c) *Maximum time to deposit*. Ten years shall ordinarily be the maximum time the Secretary shall permit in which to accumulate deposits prior to commencement of any given Schedule B objective. A time longer than 10 years, either by original scheduling or by subsequent extension through amendment, may, however, be permitted at the Secretary's discretion and for good and sufficient cause shown.

§ 259.35 Annual deposit and withdrawal reports required.

(a) The Secretary will require from each Interim CCF Agreement holder (Party) the following annual deposit and withdrawal reports. Failure to submit such reports may be cause for involuntary termination of CCF Agreements.

(1) A preliminary deposit and withdrawal report at the end of each calendar year, which must be submitted not later than 45 days after the close of the calendar year. The report must give the amounts withdrawn from and deposited into the party's CCF during the subject year, and be in letter form showing the agreement holder's name, FVCCF identification number, and taxpayer identification number. Each report must bear certification that the deposit and withdrawal information

given includes all deposit and withdrawal activity for the year and the account reported. Negative reports must be submitted in those cases where there is no deposit and/or withdrawal activity. If the party's tax year is the same as the calendar year, and if the final deposit and withdrawal report required under paragraph (a)(2) of this section is submitted before the due date for this preliminary report, then this report is not required.

(2) A final deposit and withdrawal report at the end of the tax year, which shall be submitted not later than 30 days after expiration of the due date, with extensions (if any), for filing the party's Federal income tax return. The report must be made on a form prescribed by the Secretary using a separate form for each FVCCF depository. Each report must bear certification that the deposit and withdrawal information given includes all deposit and withdrawal activity for the year and account reported. Negative reports must be submitted in those cases where there is no deposit and/or withdrawal activity.

(b) Failure to submit the required annual deposit and withdrawal reports shall be cause after due notice for either, or both, disqualification of withdrawals or involuntary termination of the Interim CCF Agreement, at the Secretary's discretion.

(c) Additionally, the Secretary shall require from each Interim CCF Agreement holder, not later than 30 days after expiration of the party's tax due date, with extensions (if any), a copy of the party's Federal Income Tax Return filed with IRS for the preceding tax year. Failure to submit shall after due notice be cause for the same adverse action specified in the paragraph above.

[39 FR 33675, Sept. 19, 1974, as amended at 48 FR 57302, Dec. 29, 1983; 53 FR 35203, Sept. 12, 1988]

§ 259.36 CCF accounts.

(a) *General*: Each CCF account in each scheduled depository shall have an account number, which must be reflected on the reports required by § 259.35. All CCF accounts shall be reserved only for CCF transactions. There shall be no intermingling of CCF

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and non-CCF transactions and there shall be no pooling of 2 or more CCF accounts without prior consent of the Secretary. Safe deposit boxes, safes, or the like shall not be eligible CCF depositories without the Secretary's consent and then only under such conditions as the Secretary, in his discretion, prescribes.

(b) *Assignment:* The use of Fund assets for transactions in the nature of a countervailing balance, compensating balance, pledge, assignment, or similar security arrangement shall constitute a material breach of the Agreement unless prior written consent of the Secretary is obtained.

(c) *Depositories:* (1) Section 607(c) of the Act provides that amounts in a CCF must be kept in the depository or depositories specified in the Agreements and be subject to such trustee or other fiduciary requirements as the Secretary may specify.

(2) Unless otherwise specified in the Agreement, the party may select the type or types of accounts in which the assets of the Fund may be deposited.

(3) Non-cash deposits or investments of the Fund should be placed in control of a trustee under the following conditions:

(i) The trustee should be specified in the Agreement;

(ii) The trust instrument should provide that all investment restrictions stated in section 607(c) of the Act will be observed;

(iii) The trust instrument should provide that the trustee will give consideration to the party's withdrawal requirements under the Agreement when investing the Fund;

(iv) The trustee must agree to be bound by all rules and regulations which have been or will be promulgated governing the investment or management of the Fund.

§ 259.37 Conditional consents to withdrawal qualification.

The Secretary may conditionally consent to the qualification of withdrawal, such consent being conditional upon the timely submission to the Secretary of such further proofs, assurances, and advices as the Secretary, in his discretion, may require. Failure of a party to comply with the conditions

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of such a consent within a reasonable time and after due notice shall, at the Secretary's discretion, be cause for either, or both, nonqualification of withdrawal or involuntary Interim CCF Agreement termination.

§ 259.38 Miscellaneous.

(a) Wherever the Secretary prescribes time constraints herein for the submission of any CCF transactions, the post-mark date shall control if mailed or, if personally delivered, the actual date of submission. All required materials may be submitted to any Financial Assistance Division office of the National Marine Fisheries Service.

(b) All CCF information received by the Secretary shall be held strictly confidential, except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the identity of any fundholder.

(c) While recognizing that precise regulations are necessary in order to treat similarly situated parties similarly, the Secretary also realizes that precision in regulations can often cause inequitable effects to result from unavoidable, unintended, or minor discrepancies between the regulations and the circumstances they attempt to govern. The Secretary will, consequently, at his discretion, as a matter of privilege and not as a matter of right, attempt to afford relief to parties where literal application of the purely procedural, as opposed to substantive, aspects of these regulations would otherwise work an inequitable hardship. This privilege will be sparingly granted and no party should before the fact attempt to act in reliance on its being granted after the fact.

(d) These §§ 259.30 through 259.38 are applicable absolutely to all Interim CCF Agreements first entered into (or the amendment of all then existing Interim CCF Agreements, which amendment is first entered into) on or after the date these §§ 259.30 through 259.38 are adopted. These §§ 259.30 through 259.38 are applicable to all Interim CCF Agreements entered into before the date these §§ 259.30 through 259.38 are adopted, with the following exceptions only:

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(1) The vessel age limitations imposed by §259.31 shall not apply to already scheduled Schedule B objectives.

(2) The minimum deposits imposed by §259.34 shall not apply to any party's tax year before that party's tax year next following the one in which these §§259.30 through 259.38 are adopted.

(e) These §§259.30 through 259.38 are specifically incorporated in all past, present, and future Interim CCF Agreements by reference thereto made in Whereas Clause number 2 of all such Interim CCF Agreements.

SUBCHAPTER G—PROCESSED FISHERY PRODUCTS, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

PART 260—INSPECTION AND CERTIFICATION

Subpart A—Inspection and Certification of Establishments and Fishery Products for Human Consumption

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AUTHORITY: Sec. 6, 70 Stat. 1122, 16 U.S.C. 742e; secs. 203, 205, 60 Stat. 1087, 1090 as amended; 7 U.S.C. 1622, 1624; Reorganization Plan No. 4 of 1970 (84 Stat. 2090).

SOURCE: 31 FR 16052, Dec. 15, 1966, unless otherwise noted.

Subpart A—Inspection and Certification of Establishments and Fishery Products for Human Consumption

§ 260.1 Administration of regulations.

The Secretary of Commerce is charged with the administration of the regulations in this part except that he may delegate any or all of such functions to any officer or employee of the National Marine Fisheries Service of the Department in his discretion.¹

[36 FR 21037, Nov. 3, 1971]

DEFINITIONS

§ 260.6 Terms defined.

Words in the regulations in this part in the singular form shall be deemed to import the plural and vice versa, as the case may demand. For the purposes of the regulations in this part, unless the context otherwise requires, the fol-

¹All functions of the Department of Agriculture which pertain to fish, shellfish, and any products thereof, now performed under the authority of title II of the Act of August 14, 1946, popularly known as the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627) including but not limited to the development and promulgation of grade standards, the inspection and certification, and improvement of transportation facilities and rates for fish and shellfish and any products thereof, were transferred to the Department of the Interior by the Director of the Budget (23 FR 2304) pursuant to section 6(a) of the Act of Aug. 8, 1956, popularly known as the Fish and Wildlife Act of 1956 (16 U.S.C. 742e). Reorganization Plan No. 4 of 1970 (84 Stat. 2090) transferred, among other things, such functions from the U.S. Department of the Interior to the U.S. Department of Commerce.

lowing terms shall have the following meanings:

Acceptance number. "Acceptance number" means the number in a sampling plan that indicates the maximum number of deviants permitted in a sample of a lot that meets a specific requirement.

Act. "Act" means the applicable provisions of the Agricultural Marketing Act of 1946 (60 Stat. 1087 et seq., as amended; 7 U.S.C. 1621 et seq.).

Applicant. "Applicant" means any interested party who requests inspection service under the regulations in this part.

Case. "Case" means the number of containers (cased or uncased) which, by the particular industry are ordinarily packed in a shipping container.

Certificate of loading. "Certificate of loading" means a statement, either written or printed, issued pursuant to the regulations in this part, relative to check-loading of a processed product subsequent to inspection thereof.

Certificate of sampling. "Certificate of sampling" means a statement, either written or printed issued pursuant to the regulations in this part, identifying officially drawn samples and may include a description of condition of containers and the condition under which the processed product is stored.

Class. "Class" means a grade or rank of quality.

Condition. "Condition" means the degree of soundness of the product which may affect its merchantability and includes, but is not limited to those factors which are subject to change as a result of age, improper preparation and processing, improper packaging, improper storage, or improper handling.

Department. "Department" means the U.S. Department of Commerce.

Deviant. "Deviant" means a sample unit affected by one or more deviations or a sample unit that varies in a specifically defined manner from the requirements of a standard, specification, or other inspection document.

Deviation. "Deviation" means any specifically defined variation from a particular requirement.

Director. "Director" means the Director of the National Marine Fisheries Service.

Establishment. “Establishment” means any premises, buildings, structures, facilities, and equipment (including vehicles) used in the processing, handling, transporting, and storage of fish and fishery products.

Inspection certificate. “Inspection certificate” means a statement, either written or printed, issued pursuant to the regulations in this part, setting forth in addition to appropriate descriptive information relative to a processed product, and the container thereof, the quality and condition, or any part thereof, of the product and may include a description of the conditions under which the product is stored.

Inspection service. “Inspection service” means:

(1) The sampling pursuant to the regulations in this part;

(2) The determination pursuant to the regulations in this part of:

(i) Essential characteristics such as style, type, size, or identity of any processed product which differentiates between major groups of the same kind;

(ii) The class, quality, and condition of any processed product, including the condition of the container thereof by the examination of appropriate samples;

(3) The issuance of any certificate of sampling, inspection certificates, or certificates of loading of a processed product, or any report relative to any of the foregoing; or

(4) Performance by an inspector of any related services such as to observe the preparation of the product from its raw state through each step in the entire process; or observe conditions under which the product is being harvested, prepared, handled, stored, processed, packed, preserved, transported, or held; or observe sanitation as a prerequisite to the inspection of the processed product, either on a contract basis or periodic basis; or checkload the inspected processed product in connection with the marketing of the product, or any other type of service of a consultative or advisory nature related herewith.

Inspector. “Inspector” means any employee of the Department authorized by the Secretary or any other person

licensed by the Secretary to investigate, sample, inspect, and certify in accordance with the regulations in this part to any interested party the class, quality and condition of processed products covered in this part and to perform related duties in connection with the inspection service.

Interested party. “Interested party” means any person who has a financial interest in the commodity involved.

Licensed sampler. “Licensed sampler” means any person who is authorized by the Secretary to draw samples of processed products for inspection service, to inspect for identification and condition of containers in a lot, and may, when authorized by the Secretary, perform related services under the act and the regulations in this part.

Lot. “Lot” has the following meanings:

(1) For the purpose of charging fees and issuing certificates, “Lot” means any number of containers of the same size and type which contain a processed product of the same type and style located in the same or adjacent warehouses and which are available for inspection at any one time: *Provided, That:*

(i) Processed products in separate piles which differ from each other as to grade or other factors may be deemed to be separate lots;

(ii) Containers in a pile bearing an identification mark different from other containers of such processed product in that pile, if determined to be of lower grade or deficient in other factors, may be deemed to be a separate lot; and

(iii) If the applicant requests more than one inspection certificate covering different portions of such processed product, the quantity of the product covered by each certificate shall be deemed to be a separate lot.

(2) For the purpose of sampling and determining the grade or compliance with a specification, “Lot” means each pile of containers of the same size and type containing a processed product of the same type and style which is separated from other piles in the same warehouse, but containers in the same pile bearing an identification mark different from other containers in that

pile may be deemed to be a separate lot.

Official establishment. “Official establishment” means any establishment which has been approved by National Marine Fisheries Service, and utilizes inspection service on a contract basis.

Officially drawn sample. “Officially drawn sample” means any sample that has been selected from a particular lot by an inspector, licensed sampler, or by any other person authorized by the Secretary pursuant to the regulations in this part.

Person. “Person” means any individual, partnership, association, business trust, corporation, any organized group of persons (whether incorporated or not), the United States (including, but not limited to, any corporate agencies thereof), any State, county, or municipal government, any common carrier, and any authorized agent of any of the foregoing.

Plant. “Plant” means the premises, buildings, structures, and equipment (including, but not being limited to, machines, utensils, and fixtures) employed or used with respect to the manufacture or production of processed products.

Processed product. “Processed product” means any fishery product or other food product covered under the regulations in this part which has been preserved by any recognized commercial process, including, but not limited to, canning, freezing, dehydrating, drying, the addition of chemical substances, or by fermentation.

Quality. “Quality” means the inherent properties of any processed product which determine the relative degree of excellence of such product, and includes the effects of preparation and processing, and may or may not include the effects of packing media, or added ingredients.

Rejection number. “Rejection number” means the number in a sampling plan that indicates the minimum number of deviants in a sample that will cause a lot to fail a specific requirement.

Sample. “Sample” means any number of sample units to be used for inspection.

Sample unit. “Sample unit” means a container and/or its entire contents, a

portion of the contents of a container or other unit of commodity, or a composite mixture of a product to be used for inspection.

Sampling. “Sampling” means the act of selecting samples of processed products for the purpose of inspection under the regulations in this part.

Secretary. “Secretary” means the Secretary of the Department or any other officer or employee of the Department authorized to exercise the powers and to perform the duties of the Secretary in respect to the matters covered by the regulations in this part.

Shipping container. “Shipping container” means an individual container designed for shipping a number of packages or cans ordinarily packed in a container for shipping or designed for packing unpackaged processed products for shipping.

Unofficially drawn sample. “Unofficially drawn sample” means any sample that has been selected by any person other than an inspector or licensed sampler, or by any other person not authorized by the Director pursuant to the regulations in this part.

Wholesome. “Wholesome” means the minimum basis of acceptability for human food purposes, of any fish or fishery product as defined in section 402 of the Federal Food, Drug, and Cosmetic Act, as amended.

[31 FR 16052, Dec. 15, 1966, as amended at 36 FR 21037, Nov. 3, 1971]

§ 260.7 Designation of official certificates, memoranda, marks, other identifications, and devices for purposes of the Agricultural Marketing Act.

Subsection 203(h) of the Agricultural Marketing Act of 1946 provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks or other identifications and devices for making such marks or identifications, issued or authorized under section 203 of said act, and certain misrepresentations concerning the inspection or grading of agricultural products under said section. For the purposes of said subsection and the provisions in this part, the terms listed below shall have the respective meanings specified:

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Official certificate. “Official certificate” means any form of certification, either written or printed, including those defined in § 260.6, used under this part to certify with respect to the inspection, class, grade, quality, size, quantity, or condition of products (including the compliance of products with applicable specifications).

Official device. “Official device” means a stamping appliance, branding device, stencil, printed label, or any other mechanically or manually operated tool that is approved by the Director for the purpose of applying any official mark or other identification to any product or the packaging material thereof.

Official identification. “Official identification” means any United States (U.S.) standard designation of class, grade, quality, size, quantity, or condition specified in this part or any symbol, stamp, label, or seal indicating that the product has been graded or inspected and/or indicating the class, grade, quality, size, quantity, or condition of the product approved by the Director and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product.

Official mark. “Official mark” means the grade mark, inspection mark, combined form of inspection and grade mark, and any other mark, or any variations in such marks, including those prescribed in § 260.86, approved by the Secretary and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product, stating that the product was graded or inspected or both, or indicating the appropriate U.S. Grade or condition of the product, or for the purpose of maintaining the identity of products graded or inspected or both under this part.

Official memorandum. “Official memorandum” means any initial record of findings made by an authorized person in the process of grading, inspecting, or sampling pursuant to this part, any processing or plant-operation report made by an authorized person in connection with grading, inspecting, or sampling under this part, and any report made by an authorized person of services performed pursuant to this part.

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INSPECTION SERVICE

§ 260.12 Where inspection service is offered.

Inspection service may be furnished wherever an inspector or licensed sampler is available and the facilities and conditions are satisfactory for the conduct of such service.

§ 260.13 Who may obtain inspection service.

An application for inspection service may be made by any interested party, including, but not limited to, the United States and any instrumentality or agency thereof, any State, county, municipality, or common carrier, and any authorized agent in behalf of the foregoing.

§ 260.14 How to make application.

An application for inspection service may be made to the officer of inspection or to any inspector, at or nearest the place where the service is desired. An up-to-date list of the Inspection Field Offices of the Department may be obtained upon request to the Director. Satisfactory proof that the applicant is an interested party shall be furnished.

§ 260.15 Information required in connection with application.

Application for inspection service shall be made in the English language and may be made orally (in person or by telephone), in writing, or by telegraph. If an application for inspection service is made orally, such application shall be confirmed promptly in writing. In connection with each application for inspection service, there shall be furnished such information as may be necessary to perform an inspection on the processed product for which application for inspection is made, including but not limited to, the name of the product, name and address of the packer or plant where such product was packed, the location of the product, its lot or car number, codes or other identification marks, the number of containers, the type and size of the containers, the interest of the applicant in the product, whether the lot has been inspected previously to the application by any Federal agency and the purpose for which inspection is desired.

§ 260.16 Filing of application.

An application for inspection service shall be regarded as filed only when made in accordance with the regulations in this part.

§ 260.17 Record of filing time.

A record showing the date and hour when each application for inspection or for an appeal inspection is received shall be maintained.

§ 260.18 When application may be rejected.

An application for inspection service may be rejected by the Secretary (a) for noncompliance by the applicant with the regulations in this part, (b) for nonpayment for previous inspection services rendered, (c) when the product is not properly identifiable by code or other marks, or (d) when it appears that to perform the inspection service would not be to the best interests of the Government. Such applicant shall be promptly notified of the reason for such rejection.

§ 260.19 When application may be withdrawn.

An application for inspection service may be withdrawn by the applicant at any time before the inspection is performed: *Provided*, That, the applicant shall pay at the hourly rate prescribed in § 260.70 for the time incurred by the inspector in connection with such application, any travel expenses, telephone, telegraph or other expenses which have been incurred by the inspection service in connection with such application.

[31 FR 16052, Dec. 15, 1966, as amended at 36 FR 18738, Sept. 21, 1971]

§ 260.20 Disposition of inspected sample.

Any sample of a processed product that has been used for inspection may be returned to the applicant, at his request and expense; otherwise it shall be destroyed, or disposed of to a charitable institution.

§ 260.21 Basis of inspection and grade or compliance determination.

(a) Inspection service shall be performed on the basis of the appropriate

U.S. standards for grades of processed products, Federal, Military, Veterans Administration or other government agency specifications, written contract specification, or any written specification or instruction which is approved by the Secretary.

(b) Unless otherwise approved by the Director compliance with such grade standards, specifications, or instructions shall be determined by evaluating the product, or sample, in accordance with the requirements of such standards, specifications, or instructions: *Provided*, That when inspection for quality is based on any U.S. grade standard which contains a scoring system the grade to be assigned to a lot is the grade indicated by the average of the total scores of the sample units: *Provided further*, That:

(1) Such sample complies with the applicable standards of quality promulgated under the Federal Food, Drug, and Cosmetic Act;

(2) Such sample complies with the product description;

(3) Such sample meets the indicated grade with respect to factors of quality which are not rated by score points; and

(4) With respect to those factors of quality which are rated by score points, each of the following requirements is met:

(i) None of the sample units falls more than one grade below the indicated grade because of any quality factor to which a limiting rule applies;

(ii) None of the sample units falls more than 4 score points below the minimum total score for the indicated grade; and

(iii) The number of sample units classed as deviants does not exceed the applicable acceptance number indicated in the sampling plans contained in § 260.61. A "deviant," as used in this paragraph, means a sample unit that falls into the next grade below the indicated grade but does not score more than 4 points below the minimum total score for the indicated grade.

(5) If any of the provisions contained in paragraphs (b)(3) and (4) of this section are not met the grade is determined by considering such provisions in connection with succeeding lower

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grades until the grade of the lot, if assignable, is established.

§ 260.22 Order of inspection service.

Inspection service shall be performed, insofar as practicable, in the order in which applications therefor are made except that precedence may be given to any such applications which are made by the United States (including, but not being limited to, any instrumentality or agency thereof) and to any application for an appeal inspection.

§ 260.23 Postponing inspection service.

If the inspector determines that it is not possible to accurately ascertain the quality or condition of a processed product immediately after processing because the product has not reached equilibrium in color, or drained weight, or for any other substantial reason, he may postpone inspection service for such period as may be necessary.

§ 260.24 Financial interest of inspector.

No inspector shall inspect any processed product in which he is directly or indirectly financially interested.

§ 260.25 Forms of certificates.

Inspection certificates, certificates of sampling or loading, and other memoranda concerning inspection service shall be issued on forms approved by the Secretary.

§ 260.26 Issuance of certificates.

(a) An inspection certificate may be issued only by an inspector: *Provided*, That, another employee of the inspection service may sign any such certificate covering any processed product inspected by an inspector when given power of attorney by such inspector and authorized by the Secretary, to affix the inspector's signature to an inspection certificate which has been prepared in accordance with the facts set forth in the notes, made by the inspector, in connection with the inspection.

(b) A certificate of loading shall be issued and signed by the inspector or licensed sampler authorized to check the loading of a specific lot of processed products: *Provided*, That, another

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employee of the inspection service may sign such certificate of loading covering any processed product checkloaded by an inspector or licensed sampler when given power of attorney by such inspector or licensed sampler and authorized by the Secretary to affix the inspector's or licensed sampler's signature to a certificate of loading which has been prepared in accordance with the facts set forth in the notes made by the inspector or licensed sampler in connection with the checkloading of a specific lot of processed products.

§ 260.27 Issuance of corrected certificates.

A corrected inspection certificate may be issued by the inspector who issued the original certificate after distribution of a certificate if errors, such as incorrect dates, code marks, grade statements, lot or car numbers, container sizes, net or drained weights, quantities, or errors in any other pertinent information require the issuance of a corrected certificate. Whenever a corrected certificate is issued, such certificate shall supersede the inspection certificate which was issued in error and the superseded certificate shall become null and void after the issuance of the corrected certificate.

§ 260.28 Issuance of an inspection report in lieu of an inspection certificate.

A letter report in lieu of an inspection certificate may be issued by an inspector when such action appears to be more suitable than an inspection certificate: *Provided*, That, the issuance of such report is approved by the Secretary.

§ 260.29 Disposition of inspection certificates.

The original of any inspection certificate, issued under the regulations in this part, and not to exceed four copies thereof, if requested prior to issuance, shall be delivered or mailed promptly to the applicant, or person designated by the applicant. All other copies shall

be filed in such manner as the Secretary may designate. Additional copies of any such certificates may be supplied to any interested party as provided in § 260.78.

§ 260.30 Report of inspection results prior to issuance of formal report.

Upon request of any interested party, the results of an inspection may be telegraphed or telephoned to him, or to any other person designated by him, at his expense.

APPEAL INSPECTION

§ 260.36 When appeal inspection may be requested.

An application for an appeal inspection may be made by any interested party who is dissatisfied with the results of an inspection as stated in an inspection certificate, if the lot of processed products can be positively identified by the inspection service as the lot from which officially drawn samples were previously inspected. Such application shall be made within thirty (30) days following the day on which the previous inspection was performed, except upon approval by the Secretary the time within which an application for appeal inspection may be made, may be extended.

§ 260.37 Where to file for an appeal inspection and information required.

(a) Application for an appeal inspection may be filed with:

(1) The inspector who issued the inspection certificate on which the appeal covering the processed product is requested; or

(2) The inspector in charge of the office of inspection at or nearest the place where the processed product is located.

(b) The application for appeal inspection shall state the location of the lot of processed products and the reasons for the appeal; and date and serial number of the certificate covering inspection of the processed product on which the appeal is requested, and such application may be accompanied by a copy of the previous inspection certificate and any other information that may facilitate inspection. Such application may be made orally (in person

or by telephone), in writing, or by telegraph. If made orally, written confirmation shall be made promptly.

§ 260.38 When an application for an appeal inspection may be withdrawn.

An application for appeal inspection may be withdrawn by the applicant at any time before the appeal inspection is performed: *Provided*, That the applicant shall pay at the hourly rate prescribed in § 260.70, for the time incurred by the inspector in connection with such application, any travel expenses, telephone, telegraph, or other expenses which have been incurred by the inspection service in connection with such application.

[31 FR 16052, Dec. 15, 1966, as amended at 36 FR 18738, Sept. 21, 1971]

§ 260.39 When appeal inspection may be refused.

An application for an appeal inspection may be refused if:

(a) The reasons for the appeal inspection are frivolous or not substantial;

(b) The quality or condition of the processed product has undergone a material change since the inspection covering the processed product on which the appeal inspection is requested;

(c) The lot in question is not, or cannot be made accessible for the selection of officially drawn samples;

(d) The lot relative to which appeal inspection is requested cannot be positively identified by the inspector as the lot from which officially drawn samples were previously inspected; or

(e) There is noncompliance with the regulations in this part. Such applicant shall be notified promptly of the reason for such refusal.

§ 260.40 Who shall perform appeal inspection.

An appeal inspection shall be performed by an inspector or inspectors (other than the one from whose inspection the appeal is requested) authorized for this purpose by the Secretary and, whenever practical, such appeal inspection shall be conducted jointly by two such inspectors: *Provided*, That the inspector who made the inspection on which the appeal is requested may be authorized to draw the samples when

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another inspector or licensed sampler is not available in the area where the product is located.

§ 260.41 Appeal inspection certificate.

After an appeal inspection has been completed, an appeal inspection certificate shall be issued showing the results of such appeal inspection; and such certificate shall supersede the inspection certificate previously issued for the processed product involved. Each appeal inspection certificate shall clearly identify the number and date of the inspection certificate which it supersedes. The superseded certificate shall become null and void upon the issuance of the appeal inspection certificate and shall no longer represent the quality or condition of the processed product described therein. The inspector or inspectors issuing an appeal inspection certificate shall forward notice of such issuance to such persons as he considers necessary to prevent misuse of the superseded certificate if the original and all copies of such superseded certificate have not previously been delivered to the inspector or inspectors issuing the appeal inspection certificate. The provisions in the regulations in this part concerning forms of certificates, issuance of certificates, and disposition of certificates shall apply to appeal inspection certificates, except that copies of such appeal inspection certificates shall be furnished all interested parties who received copies of the superseded certificate.

LICENSING OF SAMPLERS AND
INSPECTORS

§ 260.47 Who may become licensed sampler.

Any person deemed to have the necessary qualifications may be licensed as a licensed sampler to draw samples for the purpose of inspection under the regulations in this part. Such a license shall bear the printed signature of the Secretary, and shall be countersigned by an authorized employee of the Department. Licensed samplers shall have no authority to inspect processed products under the regulations in this part except as to identification and condition of the containers in a lot. A licensed sampler shall perform his duties

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pursuant to the regulations in this part as directed by the Director.

§ 260.48 Application to become a licensed sampler.

Application to become a licensed sampler shall be made to the Secretary on forms furnished for that purpose. Each such application shall be signed by the applicant in his own handwriting, and the information contained therein shall be certified by him to be true, complete, and correct to the best of his knowledge and belief, and the application shall contain or be accompanied by:

(a) A statement showing his present and previous occupations, together with names of all employers for whom he has worked, with periods of service, during the 10 years previous to the date of his application;

(b) A statement that, in his capacity as a licensed sampler, he will not draw samples from any lot of processed products with respect to which he or his employer is an interested party;

(c) A statement that he agrees to comply with all terms and conditions of the regulations in this part relating to duties of licensed samplers; and

(d) Such other information as may be requested.

§ 260.49 Inspectors.

Inspections will ordinarily be performed by employees under the Secretary who are employed as Federal Government employees for that purpose. However, any person employed under any joint Federal-State inspection service arrangement may be licensed, if otherwise qualified, by the Secretary to make inspections in accordance with this part on such processed products as may be specified in his license. Such license shall be issued only in a case where the Secretary is satisfied that the particular person is qualified to perform adequately the inspection service for which such person is to be licensed. Each such license shall bear the printed signature of the Secretary and shall be countersigned by an authorized employee of the Department. An inspector shall perform his duties pursuant to the regulations in this part as directed by the Director.

§ 260.50 Suspension or revocation of license of licensed sampler or licensed inspector.

Pending final action by the Secretary, the Director may, whenever he deems such action necessary, suspend the license of any licensed sampler, or licensed inspector, issued pursuant to the regulations in this part, by giving notice of such suspension to the respective licensee, accompanied by a statement of the reasons therefor. Within 7 days after the receipt of the aforesaid notice and statement of reasons by such licensee, he may file an appeal, in writing, with the Secretary supported by any argument or evidence that he may wish to offer as to why his license should not be suspended or revoked. After the expiration of the aforesaid 7 day period and consideration of such argument and evidence, the Secretary shall take such action as he deems appropriate with respect to such suspension or revocation.

§ 260.51 Surrender of license.

Upon termination of his services as a licensed sampler or licensed inspector, or suspension or revocation of his license, such licensee shall surrender his license immediately to the office of inspection serving the area in which he is located. These same provisions shall apply in a case of an expired license.

SAMPLING

§ 260.57 How samples are drawn by inspectors or licensed samplers.

An inspector or a licensed sampler shall select samples, upon request, from designated lots of processed products which are so placed as to permit thorough and proper sampling in accordance with the regulations in this part. Such person shall, unless otherwise directed by the Secretary, select sample units of such products at random, and from various locations in each lot in such manner and number, not inconsistent with the regulations in this part, as to secure a representative sample of the lot. Samples drawn for inspection shall be furnished by the applicant at no cost to the Department.

§ 260.58 Accessibility for sampling.

Each applicant shall cause the processed products for which inspection is requested to be made accessible for proper sampling. Failure to make any lot accessible for proper sampling shall be sufficient cause for postponing inspection service until such time as such lot is made accessible for proper sampling.

§ 260.59 How officially drawn samples are to be identified.

Officially drawn samples shall be marked by the inspector or licensed sampler so such samples can be properly identified for inspection.

§ 260.60 How samples are to be shipped.

Unless otherwise directed by the Secretary, samples which are to be shipped to any office of inspection shall be forwarded to the office of inspection serving the area in which the processed products from which the samples were drawn is located. Such samples shall be shipped in a manner to avoid, if possible, any material change in the quality or condition of the sample of the processed product. All transportation charges in connection with such shipments of samples shall be at the expense of the applicant and wherever practicable, such charges shall be prepaid by him.

§ 260.61 Sampling plans and procedures for determining lot compliance.

(a) Except as otherwise provided for in this section in connection with in-plant inspection and unless otherwise approved by the Secretary, samples shall be selected from each lot in the exact number of sample units indicated for the lot size in the applicable single sampling plan or, at the discretion of the inspection service, any comparable multiple sampling plan: *Provided*, That at the discretion of the inspection service the number of sample units selected may be increased to the exact number of sample units indicated for any one of the larger sample sizes provided for in the appropriate plans.

(b) Under the single sampling plans with respect to any specified requirement:

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(1) If the number of deviants (as defined in connection with the specific requirements) in the sample does not exceed the acceptance number prescribed for the sample size the lot meets the requirement;

(2) If the number of deviants (as defined in connection with the specific requirement) in the sample exceeds the acceptance number prescribed for the sample size the lot fails the requirement.

(c) Under the multiple sampling plans inspection commences with the smallest sample size indicated under the appropriate plan and with respect to any specified requirement:

(1) If the number of deviants (as defined in connection with the specific requirement) in the sample being considered does not exceed the acceptance number prescribed for that sample size the lot meets the requirement;

(2) If the number of deviants (as defined in connection with the specific requirement) in the sample being considered equals or exceeds the rejection number prescribed for that sample size the lot fails the requirement; or

(3) If the number of deviants (as defined in connection with the specific requirement) in the sample being considered falls between the acceptance and rejection numbers of the plan, additional sample units are added to the sample so that the sample thus cumulated equals the next larger cumulative sample size in the plan. It may then be determined that the lot meets or fails the specific requirement by considering the cumulative sample and applying the procedures outlined in paragraphs (c)(1) and (2) of this section or by considering successively larger samples cumulated in the same manner until the lot meets or fails the specific requirement.

(d) If in the conduct of any type of in-plant inspection the sample is exam-

ined before the lot size is known and the number of sample units exceeds the prescribed sample size for such lot but does not equal any of the prescribed larger sample sizes the lot may be deemed to meet or fail a specific requirement in accordance with the following procedure:

(1) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample does not exceed the acceptance number of the next smaller sample size the lot meets the requirements;

(2) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample equals the acceptance number prescribed for the next larger sample size additional sample units shall be selected to increase the sample to the next larger prescribed sample size;

(3) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample exceeds the acceptance number prescribed for the next larger sample size the lot fails the requirement.

(e) In the event that the lot compliance determination provisions of a standard or specification are based on the number of specified deviations instead of deviants the procedures set forth in this section may be applied by substituting the word "deviation" for the word "deviant" wherever it appears.

(f) Sampling plans referred to in this section are those contained in Tables I, II, III, IV, V, and VI which follow or any other plans which are applicable. For processed products not included in these tables, the minimum sample size shall be the exact number of sample units prescribed in the table, container group, and lot size that, as determined by the inspector, most closely resembles the product, type, container size and amount of product to be samples.

TABLE I—CANNED OR SIMILARLY PROCESSED FISHERY PRODUCTS, AND PRODUCTS THEREOF CONTAINING UNITS OF SUCH SIZE AND CHARACTER AS TO BE READILY SEPARABLE

Container size group	Lot size (number of containers)										
	3,600 or less	3,601–14,400	14,401–48,000	48,001–96,000 96,001–156,000	156,001–228,000	228,001–300,000	300,001–420,000	Over 420,000			
GROUP 1 Any type of container of less volume than that of a No. 300 size can (300x407)											
GROUP 2 Any type of container of a volume equal to or exceeding that of a No. 300 size can, but not exceeding that of a No. 3 cylinder size can (404x700)	2,400 or less	2,401–12,000	12,001–24,000	24,001–48,000 48,001–72,000	72,001–108,000	108,001–168,000	168,001–240,000	Over 240,000			
GROUP 3 Any type of container of a volume exceeding that of a No. 3 cylinder size can, but not exceeding that of a No. 12 size can (603x812)	1,200 or less	1,201–7,200	7,201–15,000	15,001–24,000	24,001–36,000	36,001–60,000	60,001–84,000	84,001–120,000	Over 120,000		
GROUP 4 Any type of container of a volume exceeding that of a No. 12 size can, but not exceeding that of a 5-gallon container	200 or less	201–800	801–1,600	1,601–2,400	2,401–3,600	3,601–8,000	8,001–16,000	16,001–28,000 Over 28,000			
GROUP 5 Any type of container of a volume exceeding that of a 5-gallon container	25 or less	26–80	81–200	201–400	401–800	801–1,200	1,201–2,000	2,001–3,200	Over 3,200		

GROUP 5 Any type of container over 100 pounds net weight	25 or less	26-80	81-200	201-400	401-800	801-1,200	1,201-2,000	2,001-3,200	Over 3,200
Sample size (number of sample units) ²	3	6	13	21	29	38	48	60	72
Acceptance number	0	1	2	3	4	5	6	7	8

¹ For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.
² The sample units for the various container size groups are as follows: Groups 1, 2, and 3—1 container and its entire contents. Groups 4, and 5—approximately 3 pounds of product. When determined by the inspector that a 3-pound sample unit is inadequate, a larger sample unit or 1 or more containers and their entire contents may be substituted for 1 or more sample units of 3 pounds.

TABLE III—CANNED, FROZEN, OR OTHERWISE PROCESSED FISHERY AND RELATED PRODUCTS, AND PRODUCTS THEREOF OF A COMMINGLED, FLUID, OR HOMOGENEOUS STATE

Container size group ¹	Lot size (number of containers)										
	5,400 or less	21,601-62,400	62,401-112,000	112,001-174,000	174,001-240,000	240,001-360,000	360,001-480,000	480,001-600,000	600,001-720,000	720,001-840,000	840,001-960,000
GROUP 1 Any type of container of 12 ounces or less	5,401-21,600	21,601-62,400	62,401-112,000	112,001-174,000	174,001-240,000	240,001-360,000	360,001-480,000	480,001-600,000	600,001-720,000	720,001-840,000	840,001-960,000
GROUP 2 Any type of container over 12 ounces but not over 60 ounces	3,601-14,400	14,401-48,000	48,001-96,000	96,001-156,000	156,001-228,000	228,001-300,000	300,001-420,000	420,001-540,000	540,001-660,000	660,001-780,000	780,001-900,000
GROUP 3 Any type of container over 60 ounces but not over 160 ounces	1,801-8,400	8,401-18,000	18,001-60,000	36,001-60,000	60,001-96,000	96,001-132,000	132,001-168,000	168,001-204,000	204,001-240,000	240,001-276,000	276,001-312,000
GROUP 4 Any type of container over 160 ounces but not over 10 gallons or 100 pounds whichever is applicable	201-800	801-1,600	1,601-3,200	3,201-8,000	8,001-16,000	16,001-24,000	24,001-32,000	32,001-40,000	40,001-48,000	48,001-56,000	56,001-64,000
GROUP 5 Any type of container over 10 gallons or 100 pounds whichever is applicable	26-80	81-200	201-400	401-800	801-1,200	1,201-2,000	2,001-3,200	3,201-4,000	4,001-4,800	4,801-5,600	5,601-6,400

TABLE III—CANNED, FROZEN, OR OTHERWISE PROCESSED FISHERY AND RELATED PRODUCTS, AND PRODUCTS THEREOF OF A COMMINUTED, FLUID, OR HOMOGENEOUS STATE—Continued

Container size group ¹	Lot size (number of containers)								
	Single sampling plans ²								
Sample size (number of sample units) ³	3	6	13	21	29	38	48	60	72
Acceptance number	0	1	2	3	4	5	6	7	8

¹ Ounces pertain to either fluid ounces of volume or avoirdupois ounces of net weight whichever is applicable for the product involved.
² For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.
³ The sample units for the various container size groups are as follows: Groups 1, 2, and 3—1 container and its entire contents. A smaller sample unit may be substituted in group 3 at the inspector's discretion. Groups 4, 5, and 6—approximately 16 ounces of product. When determined by the inspector that a 16-ounce sample unit is inadequate, a larger sample unit may be substituted.

TABLE IV—DEHYDRATED FISHERY AND RELATED PRODUCTS

Container size group	Lot size (number of containers)								
GROUP 1 Any type of container of 1 pound or less net weight	1,800 or less	1,801–8,400	8,401–18,000	18,001–36,000	36,001–60,000	60,001–96,000	96,001–132,000	132,001–168,000	Over 168,000
GROUP 2 Any type of container over 1 pound but not over 6 pounds net weight	900 or less	901–3,600	3,601–10,800	10,801–18,000	18,001–36,000	36,001–60,000	60,001–84,000	84,001–120,000	Over 120,000
GROUP 3 Any type of container over 6 pounds but not over 20 pounds net weight	200 or less	201–800	801–1,600	1,601–3,200	3,201–8,000	8,001–16,000	16,001–24,000	24,001–32,000	Over 32,000
GROUP 4 Any type of container over 20 pounds but not over 100 pounds net weight ..	48 or less	49–400	401–1,200	1,201–2,000	2,001–2,800	2,801–6,000	6,001–9,600	9,601–15,000	Over 15,000

GROUP 5 Any type of container over 100 pounds net weight	Single sampling plans ¹									
	16 or less	17-80	81-200	201-400	401-800	801-1,200	1,201-2,000	2,001-3,200	Over 3,200	
Sample size (number of sample units) ² ...	3	6	13	21	29	38	48	60	72	
Acceptance number ...	0	1	2	3	4	5	6	7	8	

¹ For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.
² The sample units for the various container size groups are as follows: Group 1—1 container and its entire contents, Groups 2, 3, 4, and 5—1 container and its entire contents or a smaller sample unit when determined by the inspector to be adequate.

TABLE V—SINGLE SAMPLING PLANS FOR USE IN INCREASING SAMPLE SIZE BEYOND 72 SAMPLE UNITS

Sample size, <i>n</i>	84	96	108	120	132	144	156	168	180	192	204	216	230	244	258	272	286	300	314	328	342	356	370	384	400
Acceptance numbers, <i>c</i>	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33

TABLE VI—MULTIPLE SAMPLING PLANS COMPARABLE TO THE INDICATED SINGLE SAMPLING PLANS

MULTIPLE SAMPLING PLANS ¹, P₀.6/7

Indicated single sampling plan: Single sample size, <i>n</i>	6			13			21			29			38			48			60			72																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																	
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Acceptance numbers, <i>c</i>	1			2			2			3			3			4			4			5			6			7			8																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																								
Cumulative sample sizes, <i>n</i> _c , and acceptance numbers, <i>c</i> , and rejection numbers, <i>r</i> , for multiple sampling.	4	0	2	8	0	3	10	0	3	12	0	4	14	0	4	16	0	4	18	0	4	20	0	5	24	0	5	28	1	6	32	1	7	36	2	8	40	2	8	44	3	9	48	3	9	52	4	10	56	4	10	60	5	10	64	5	10	68	6	10	72	6	10	76	6	10	80	7	10	84	7	10	88	7	10	92	8	10	96	8	10	100	8	10	104	8	10	108	8	10	112	8	10	116	8	10	120	8	10	124	8	10	128	8	10	132	8	10	136	8	10	140	8	10	144	8	10	148	8	10	152	8	10	156	8	10	160	8	10	164	8	10	168	8	10	172	8	10	176	8	10	180	8	10	184	8	10	188	8	10	192	8	10	196	8	10	200	8	10	204	8	10	208	8	10	212	8	10	216	8	10	220	8	10	224	8	10	228	8	10	232	8	10	236	8	10	240	8	10	244	8	10	248	8	10	252	8	10	256	8	10	260	8	10	264	8	10	268	8	10	272	8	10	276	8	10	280	8	10	284	8	10	288	8	10	292	8	10	296	8	10	300	8	10	304	8	10	308	8	10	312	8	10	316	8	10	320	8	10	324	8	10	328	8	10	332	8	10	336	8	10	340	8	10	344	8	10	348	8	10	352	8	10	356	8	10	360	8	10	364	8	10	368	8	10	372	8	10	376	8	10	380	8	10	384	8	10	388	8	10	392	8	10	396	8	10	400	8	10	404	8	10	408	8	10	412	8	10	416	8	10	420	8	10	424	8	10	428	8	10	432	8	10	436	8	10	440	8	10	444	8	10	448	8	10	452	8	10	456	8	10	460	8	10	464	8	10	468	8	10	472	8	10	476	8	10	480	8	10	484	8	10	488	8	10	492	8	10	496	8	10	500	8	10	504	8	10	508	8	10	512	8	10	516	8	10	520	8	10	524	8	10	528	8	10	532	8	10	536	8	10	540	8	10	544	8	10	548	8	10	552	8	10	556	8	10	560	8	10	564	8	10	568	8	10	572	8	10	576	8	10	580	8	10	584	8	10	588	8	10	592	8	10	596	8	10	600	8	10	604	8	10	608	8	10	612	8	10	616	8	10	620	8	10	624	8	10	628	8	10	632	8	10	636	8	10	640	8	10	644	8	10	648	8	10	652	8	10	656	8	10	660	8	10	664	8	10	668	8	10	672	8	10	676	8	10	680	8	10	684	8	10	688	8	10	692	8	10	696	8	10	700	8	10	704	8	10	708	8	10	712	8	10	716	8	10	720	8	10	724	8	10	728	8	10	732	8	10	736	8	10	740	8	10	744	8	10	748	8	10	752	8	10	756	8	10	760	8	10	764	8	10	768	8	10	772	8	10	776	8	10	780	8	10	784	8	10	788	8	10	792	8	10	796	8	10	800	8	10	804	8	10	808	8	10	812	8	10	816	8	10	820	8	10	824	8	10	828	8	10	832	8	10	836	8	10	840	8	10	844	8	10	848	8	10	852	8	10	856	8	10	860	8	10	864	8	10	868	8	10	872	8	10	876	8	10	880	8	10	884	8	10	888	8	10	892	8	10	896	8	10	900	8	10	904	8	10	908	8	10	912	8	10	916	8	10	920	8	10	924	8	10	928	8	10	932	8	10	936	8	10	940	8	10	944	8	10	948	8	10	952	8	10	956	8	10	960	8	10	964	8	10	968	8	10	972	8	10	976	8	10	980	8	10	984	8	10	988	8	10	992	8	10	996	8	10	1000	8	10

¹ These multiple sampling plans may be used in lieu of the single sampling plans listed at the heading of each column.

§ 260.62

§ 260.62 Issuance of certificate of sampling.

Each inspector and each licensed sampler shall prepare and sign a certificate of sampling to cover the samples drawn by the respective person, except that an inspector who inspects the samples which he has drawn need not prepare a certificate of sampling. One copy of each certificate of sampling prepared shall be retained by the inspector or licensed sampler (as the case may be) and the original and all other copies thereof shall be disposed of in accordance with the instructions of the Secretary.

§ 260.63 Identification of lots sampled.

Each lot from which officially drawn samples are selected shall be marked in such manner as may be prescribed by the Secretary, if such lots do not otherwise possess suitable identification.

FEES AND CHARGES

§ 260.69 Payment fees and charges.

Fees and charges for any inspection service shall be paid by the interested party making the application for such service, in accordance with the applicable provisions of the regulations in this part, and, if so required by the person in charge of the office of inspection serving the area where the services are to be performed, an advance of funds prior to rendering inspection service in an amount suitable to the Secretary, or a surety bond suitable to the Secretary, may be required as a guarantee of payment for the services rendered. All fees and charges for any inspection service, performed pursuant to the regulations in this part shall be paid by check, draft, or money order made payable to the National Marine Fisheries Service. Such check, draft, or money order shall be remitted to the appropriate regional or area office serving the geographical area in which the services are performed, within ten (10) days from the date of billing, unless otherwise specified in a contract between the applicant and the Secretary, in which latter event the contract provisions shall apply.

[36 FR 21033, Nov. 3, 1971]

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§ 260.70 Schedule of fees.

(a) Unless otherwise provided in a written agreement between the applicant and the Secretary, the fees to be charged and collected for any inspection service performed under the regulations in this part at the request of the United States, or any other agency or instrumentality thereof, will be published as a notice in the FEDERAL REGISTER and will be in accordance with § 260.81.

(b) Fees are reviewed annually to ascertain that the hourly fees charged are adequate to recover the costs of the services rendered.

(1) The TYPE I (Contract Inspection) hourly fee is determined by dividing the estimated annual costs by the estimated annual billable hours.

(2) The TYPE II (Lot Inspection) hourly fee is determined by adding a factor of 50 percent to the TYPE I fee, to cover additional costs (down-time, etc.) associated with conducting lot inspection services.

(3) The TYPE III (Miscellaneous and Consulting) hourly fee is determined by adding a factor of 25 percent to the TYPE I fee, to cover the additional costs (down-time, etc.) associated with conducting miscellaneous inspection services.

[48 FR 24901, June 3, 1983]

§ 260.71 [Reserved]

§ 260.72 Fees for inspection service performed under cooperative agreement.

The fees to be charged and collected for any inspection or similar service performed under cooperative agreement shall be those provided for by such agreement.

§ 260.73 Disposition of fees for inspections made under cooperative agreement.

Fees for inspection under a cooperative agreement with any State or person shall be disposed of in accordance with the terms of such agreement. Such portion of the fees collected under a cooperative agreement as may be due the United States shall be remitted in accordance with § 260.69.

§ 260.74 Fee for appeal inspection.

The fee to be charged for an appeal inspection shall be at the rates prescribed in this part for other inspection services: *Provided*, That, if the result of any appeal inspection made for any applicant, other than the United States or any agency or instrumentality thereof, discloses that a material error was made in the inspection on which the appeal is made, no inspection fee shall be assessed.

§ 260.76 [Reserved]**§ 260.77 Fees for score sheets.**

If the applicant for inspection service requests score sheets showing in detail the inspection of each container or sample inspected and listed thereon, such score sheets may be furnished by the inspector in charge of the office of inspection serving the area where the inspection was performed; and such applicant shall be charged at the rate of \$2.75 for each 12 sampled units, or fraction thereof, inspected and listed on such score sheets.

§ 260.78 Fees for additional copies of inspection certificates.

Additional copies of any inspection certificate other than those provided for in §260.29, may be supplied to any interested party upon payment of a fee of \$2.75 for each set of five (5) or fewer copies.

§ 260.79 Travel and other expenses.

Charges may be made to cover the cost of travel and other expenses incurred in connection with the performance of any inspection service, including appeal inspections: *Provided*, That, if charges for sampling or inspection are based on an hourly rate, an additional hourly charge may be made for travel time including time spent waiting for transportation as well as time spent traveling, but not to exceed 8 hours of travel time for any one person for any one day: *And provided further*, That, if travel is by common carrier, no hourly charge may be made for travel time outside the employee's official work hours.

§ 260.80 Charges for inspection service on a contract basis.

Irrespective of fees and charges prescribed in the foregoing sections, the Secretary may enter into a written memorandum of understanding or contract, whichever may be appropriate, with any administrative agency charged with the administration of a marketing order effective pursuant to the Agricultural Marketing Agreement Act of 1937, as revised (16 U.S.C. 661 et seq.) for the making of inspections pursuant to said agreement or order on such basis as will reimburse the National Marine Fisheries Service of the Department for the full cost of rendering such inspection service as may be determined by the Secretary. Likewise, the Secretary may enter into a written memorandum of understanding or contract, whichever may be appropriate, with an administrative agency charged with the administration of a similar program operated pursuant to the laws of any State.

[36 FR 21038, Nov. 3, 1971]

§ 260.81 Readjustment and increase in hourly rates of fees.

(a) When Federal Pay Act increases occur, the hourly rates for inspection fees will automatically be increased on the effective date of the pay act by an amount equal to the increase received by the average GS grade level of fishery product inspectors receiving such pay increases.

(b) The hourly rates of fees to be charged for inspection services will be subject to review and reevaluation for possible readjustment not less than every 3 years: *Provided*, That, the hourly rates of fees to be charged for inspection services will be immediately reevaluated as to need for readjustment with each Federal Pay Act increase.

[35 FR 15925, Oct. 9, 1970]

MISCELLANEOUS

§ 260.84 Policies and procedures.

The policies and procedures pertaining to any of the inspection services are contained within the NMFS Fishery Products Inspection Manual.

§ 260.86

The policies and procedures are available from the Secretary to any interested party by writing to Document Approval and Supply Services Branch, Inspection Services Division, P.O. Drawer 1207, 3207 Frederic St., Pascagoula, MS 39568-1207.

[61 FR 9369, Mar. 8, 1996]

§ 260.86 Approved identification.

(a) *Grade marks:* The approved grade mark or identification may be used on containers, labels, or otherwise indicated for any processed product that:

(1) Has been packed under inspection as provided in this part to assure compliance with the requirements for wholesomeness established for the raw product and of sanitation established for the preparation and processing operations, and (2) has been certified by an inspector as meeting the requirements of such grade, quality or classification.

The grade marks approved for use shall be similar in form and design to the examples of Figures 1 to 5 of this section.

Shield using red, white, and blue background or other colors appropriate for label.

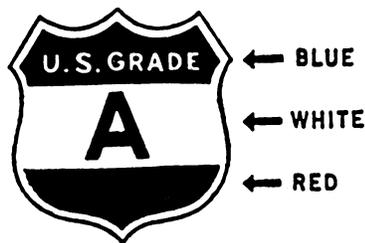


FIGURE 1

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Shield with plain background.



FIGURE 2

U.S. GRADE A

FIGURE 3

U.S.
GRADE
B

FIGURE 4

U.S.
GRADE
C

FIGURE 5

(b) *Inspection marks:* The approved inspection marks may be used on containers, labels, or otherwise indicated for any processed product that:

(1) Has been packed under inspection as provided in this part to assure compliance with the requirements for wholesomeness established for the raw product and of sanitation established for the preparation and processing operations, and (2) has been certified by

an inspector as meeting the requirements of such quality or grade classification as may be approved by the Secretary.

The inspection marks approved for use shall be similar in form and design to the examples in Figures 6, 7, and 8 of this section.

Statement enclosed within a circle.



FIGURE 6

Statement without the use of the circle.

PACKED UNDER
FEDERAL
INSPECTION
U.S. DEPARTMENT
OF COMMERCE

FIGURE 7

Statement without the use of the circle.

PACKED BY

UNDER FEDERAL INSPECTION
U.S. DEPT. OF COMMERCE

FIGURE 8

(c) *Combined grade and inspection marks:* The grade marks set forth in paragraph (a) of this section, and the

inspection marks, Figures 7 and 8, set forth in paragraph (b) of this section, may be combined into a consolidated grade and inspection mark for use on processed products that have been packed under inspection as provided in this part.

(d) *Products not eligible for approved identification:* Processed products which have not been packed under inspection as provided in this part shall not be identified by approved grade or inspection marks, but such products may be inspected on a lot inspection basis as provided in this part and identified by an authorized representative of the Department by stamping the shipping cases and inspection certificate(s) covering such lot(s) as appropriate, with marks similar in form and design to the examples in Figures 9 and 10 of this section.



FIGURE 9



FIGURE 10

(e) *Removal of labels bearing inspection marks:* At the time a lot of fishery products is found to be mislabeled and the labels on the packages are not removed within ten (10) consecutive calendar days, the following procedure shall be applicable:

(1) The processor, under the supervision of the inspector, shall clearly and conspicuously mark all master cases in the lot by means of a "rejected by USDC Inspector" stamp provided by the Department.

(2) The processor shall be held accountable to the Department for all mislabeled products until the products are properly labeled.

(3) Clearance for the release of the re-labeled products shall be obtained by the processor from the inspector.

(f) Users of inspection services having an inventory of labels which bear official approved identification marks stating "U.S. Department of the Interior" or otherwise referencing the Interior Department, will be permitted to use such marks until December 31, 1971, except that upon written request the Director, National Marine Fisheries Service, may extend such period for the use of specific labels.

[36 FR 4609, Mar. 10, 1971]

§ 260.88 Political activity.

All inspectors and licensed samplers are forbidden, during the period of their respective appointments or li-

censes, to take an active part in political management or in political campaigns. Political activities in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate, or any measure to be voted upon, are prohibited. This applies to all appointees or licensees, including, but not limited to, temporary and cooperative employees and employees on leave of absence with or without pay. Willful violation of this section will constitute grounds for dismissal in the case of appointees and revocation of licenses in the case of licensees.

§ 260.90 Compliance with other laws.

None of the requirements in the regulations in this part shall excuse failure to comply with any Federal, State, county, or municipal laws applicable to the operation of food processing establishments and to processed food products.

§ 260.91 Identification.

Each inspector and licensed sampler shall have in his possession at all times and present upon request, while on duty, the means of identification furnished by the Department to such person.

§ 260.93 Debarment and suspension.

(a) *Debarment.* Any person may be debarred from using or benefiting from the inspection service provided under the regulations of this subchapter or under the terms of any inspection contract, and such debarment may apply to one or more plants under his control, if such person engages in one or more of the following acts or activities:

(1) Misrepresenting, misstating, or withholding any material or relevant facts or information in conjunction with any application or request for an inspection contract, inspection service, inspection appeal, lot inspection, or other service provided for under the regulations of this subchapter.

(2) Using on a processed product any label which displays any official identification, official device, or official mark, when the label is not currently approved for use by the Director or his delegate.

(3) Using on a processed product any label which displays the words "Packed Under Federal Inspection, U.S. Department of Commerce", or which displays any official mark, official device, or official identification, or which displays a facsimile of the foregoing, when such product has not been inspected under the regulations of this subchapter.

(4) Making any statement or reference to the U.S. Grade of any processed product or any inspection service provided under the regulations of this subchapter on the label or in the advertising of any processed product, when such product has not been inspected under the regulations of this subchapter.

(5) Making, using, issuing or attempting to issue or use in conjunction with the sale, shipment, transfer or advertisement of a processed product any certificate of loading, certificate of sampling, inspection certificate, official device, official identification, official mark, official document, or score sheet which has not been issued, approved, or authorized for use with such product by an inspector.

(6) Using any of the terms "United States", "Officially graded", "Officially inspected", "Government inspected", "Federally inspected", "Officially sampled", or words of similar import or meanings, or using any official device, official identification, or official mark on the label, on the shipping container, or in the advertising of any processed product, when such product has not been inspected under the regulations of this subchapter.

(7) Using, attempting to use, altering or reproducing any certificate, certificate form, design, insignia, mark, shield, device, or figure which simulates in whole or in part any official mark, official device, official identification, certificate of loading, certificate of sampling, inspection certificate or other official certificate issued pursuant to the regulations of this subchapter.

(8) Assaulting, harassing, interfering, obstructing or attempting to interfere or obstruct any inspector or sampler in the performance of his duties under the regulations of this subchapter.

(9) Violating any one or more of the terms of any inspection contract or the

provisions of the regulations of this subchapter.

(10) Engaging in acts or activities which destroy or interfere with the purposes of the inspection program or which have the effect of undermining the integrity of the inspection program.

(b) *Temporary suspension.* (1) Whenever the Director has reasonable cause to believe that any person has engaged in any act or activity described in paragraph (a) of this section, and in such act or activity, in the judgment of the Director, would cause serious and irreparable injury to the inspection program and services provided under the regulations of this subchapter, the Director may, without a hearing, temporarily suspend, either before or after the institution of a debarment hearing, the inspection service provided under the regulations of this subchapter or under any inspection contract for one or more plants under the control of such person. Notice of suspension shall be served by registered or certified mail, return receipt requested, and the notice shall specifically state those acts or activities of such person which are the bases for the suspension. The suspension shall become effective five (5) days after receipt of the notice.

(2) Once a person has received a notice of a temporary suspension, a debarment hearing will be set for 30 days after the effective date of the suspension. Within 60 days after the completion of the debarment hearing, the Hearing Examiner shall determine, based upon evidence of record, whether the temporary suspension shall be continued or terminated. A temporary suspension shall be terminated by the Hearing Examiner if he determines that the acts or activities, which were the bases for the suspension, did not occur or will not cause serious and irreparable injury to the inspection program and services provided under the regulations of this subchapter. This determination of the Hearing Examiner on the continuation or termination of the temporary suspension shall be final and there shall be no appeal of this determination. The initial decision by the Hearing Examiner on the debarment shall be made in accordance with

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paragraph (b)(1), *Decisions*, of this section.

(3) After a debarment hearing has been instituted against any person by a suspension, such suspension will remain in effect until a final decision is rendered on the debarment in accordance with the regulations of this section or the temporary suspension is terminated by the Hearing Examiner.

(4) When a debarment hearing has been instituted against any person not under suspension, the Director may, in accordance with the regulations of this paragraph (b) temporarily suspend such person, and the suspension will remain in effect until a final decision on the debarment is rendered in accordance with the regulations of this section or the temporary suspension is terminated by the Hearing Examiner.

(c) *Hearing Examiner.* All hearing shall be held before a Hearing Examiner appointed by the Secretary or the Director.

(d) *Hearing.* If one or more of the acts or activities described in paragraph (a) of this section have occurred, the Director may institute a hearing to determine the length of time during which the person shall be debarred and those plants to which the debarment shall apply. No person may be debarred unless there is a hearing, as prescribed in this section, and it has been determined by the Hearing Examiner, based on evidence of record, that the one or more of the activities described in paragraph (a) of this section have occurred. Any debarment or suspension must be instituted within two (2) years of the time when such acts or activities described in paragraph (a) of this section have occurred.

(e) *Notice of hearing.* The Director shall notify such person of the debarment hearing by registered or certified mail, return receipt requested. The notice shall set forth the time and place of the hearing, the specific acts or activities which are the basis for the debarment hearing, the time period of debarment being sought, and those plants to which the debarment shall apply. Except for the debarment hearing provided for in paragraph (b) of this section the hearing will be set for a time not longer than 120 days after receipt of the notice of hearing.

(f) *Time and place of hearing.* The hearing shall be held at a time and place fixed by the Director: *Provided, however,* The Hearing Examiner may, upon a proper showing of inconvenience, change the time and place of the hearing. Motions for change of time or place of the hearing must be mailed to or served upon the Hearing Examiner no later than 10 days before the hearing.

(g) *Right to counsel.* In all proceedings under this section, all persons and the Department of Commerce shall have the right to be represented by counsel, in accordance with the rules and regulations set forth in title 43, Code of Federal Regulations, part 1.

(h) *Form, execution, and service of documents.* (1) All papers to be filed under the regulations in this section shall be clear and legible; and shall be dated, signed in ink, contain the docket description and title of the proceeding, if any, and the address of the signatory. Five copies of all papers are required to be filed. Documents filed shall be executed by:

- (i) The person or persons filing same,
- (ii) by an authorized officer thereof if it be a corporation or,
- (iii) by an attorney or other person having authority with respect thereto.

(2) All documents, when filed, shall show that service has been made upon all parties to the proceeding. Such service shall be made by delivering one copy to each party in person or by mailing by first-class mail, properly addressed with postage prepaid. When a party has appeared by attorney or other representative, service on such attorney or other representative will be deemed service upon the party. The date of service of document shall be the day when the matter served is deposited in the U.S. mail, shown by the postmark thereon, or is delivered in person, as the case may be.

(3) A person is deemed to have appeared in a hearing by the filing with the Director a written notice of his appearance or his authority in writing to appear on behalf of one of the persons to the hearing.

(4) The original of every document filed under this section and required to

be served upon all parties to a proceeding shall be accompanied by a certificate of service signed by the party making service, stating that such service has been made upon each party to the proceeding. Certificates of service may be in substantially the following form:

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by: (1) Mailing postage prepaid, (2) delivering in person, a copy to each party.

Dated at _____ this _____ day of _____, 19 _____

Signature _____

(i) *Procedures and evidence.* (1) All parties to a hearing shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the Hearing Examiner at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this section, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary.

(j) *Duties of Hearing Examiner.* The Hearing Examiner shall have the authority and duty to:

(1) Take or cause depositions to be taken.

(2) Regulate the course of the hearings.

(3) Prescribe the order in which evidence shall be presented.

(4) Dispose of procedural requests or similar matters.

(5) Hear and initially rule upon all motions and petitions before him.

(6) Administer oaths and affirmations.

(7) Rule upon offers of proof and receive competent, relevant, material, reliable, and probative evidence.

(8) Control the admission of irrelevant, immaterial, incompetent, unreliable, repetitious, or cumulative evidence.

(9) Hear oral arguments if the Hearing Examiner determined such requirement is necessary.

(10) Fix the time for filing briefs, motions, and other documents to be filed in connection with hearings.

(11) Issue the initial decision and dispose of any other pertinent matters that normally and properly arise in the course of proceedings.

(12) Do all other things necessary for an orderly and impartial hearing.

(k) *The record.* (1) The Director will designate an official reporter for all hearings. The official transcript of testimony taken, together with any exhibits and briefs filed therewith, shall be filed with the Director. Transcripts of testimony will be available in any proceeding under the regulations of this section, at rates fixed by the contract between the United States of America and the reporter. If the reporter is an employee of the Department of Commerce, the rate will be fixed by the Director.

(2) The transcript of testimony and exhibits, together with all briefs, papers, and all rulings by the Hearing Examiner shall constitute the record. The initial decision will be predicated on the same record, as will be final decision.

(l) *Decisions.* (1) The Hearing Examiner shall render the initial decision in all debarment proceedings before him. The same Hearing Examiner who presides at the hearing shall render the initial decision except when such Examiner becomes unavailable to the Department of Commerce. In such case, another Hearing Examiner will be designated by the Secretary or Director to render the initial decision. Briefs, or other documents, to be submitted after the hearing must be received not later than twenty (20) days after the hearing, unless otherwise extended by the Hearing Examiner upon motion by a party. The initial decision shall be made within sixty (60) days after the receipt of all briefs. If no appeals from the initial decision is served upon the Director within ten (10) days of the date of the initial decision, it will become the final decision on the 20th day following the date of the initial decision. If an appeal is received, the appeal will be transmitted to the Secretary who will render the final decision after considering the record and the appeal.

(2) All initial and final decisions shall include a statement of findings and conclusions, as well as the reasons or bases therefore, upon the material

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issues presented. A copy of each decision shall be served on the parties to the proceeding, and furnished to interested persons upon request.

(3) It shall be the duty of the Hearing Examiner, and the Secretary where there is an appeal, to determine whether the person has engaged in one or more of the acts or activities described in paragraph (a) of this section, and, if there is a finding that the person has engaged in such acts or activities, the length of time the person shall be debarred, and the plants to which the debarment shall apply.

[31 FR 16052, Dec. 15, 1966, as amended at 36 FR 18738, Sept. 21, 1971]

REQUIREMENTS FOR PLANTS OPERATING UNDER CONTINUOUS INSPECTION ON A CONTRACT BASIS¹

§ 260.96 Application for fishery products inspection service on a contract basis at official establishments.

Any person desiring to process and pack products in an establishment under fishery products inspection service on a contract basis, must receive approval of such buildings and facilities as an official establishment prior to the inauguration of such service. An application for inspection service to be rendered in an establishment shall be approved according to the following procedure:

(a) Initial survey: When application has been filed for inspection service as aforesaid, NMFS inspector(s) shall examine the buildings, premises, and facilities according to the requirements of the fishery products inspection service and shall specify any additional facilities required for the service.

(b) Final survey and establishment approval: Prior to the inauguration of the fishery products inspection service, a final survey of the buildings, premises, and facilities shall be made to verify that the buildings are constructed and facilities are in accord-

¹Compliance with the above requirements does not excuse failure to comply with all applicable sanitary rules and regulations of city, county, State, Federal, or other agencies having jurisdiction over such establishments and operations.

ance with the approved drawings and the regulations in this part.

(c) Drawings and specifications of new construction or proposed alterations of existing official establishments shall be furnished to the Director in advance of actual construction for prior approval with regard to compliance with requirements for facilities.

[36 FR 21039, Nov. 3, 1971]

§ 260.97 Conditions for providing fishery products inspection service at official establishments.

(a) The determination as to the inspection effort required to adequately provide inspection service at any establishment will be made by NMFS. The man-hours required may vary at different official establishments due to factors such as, but not limited to, size and complexity of operations, volume and variety of products produced, and adequacy of control systems and cooperation. The inspection effort requirement may be reevaluated when the contracting party or NMFS deems there is sufficient change in production, equipment and change of quality control input to warrant reevaluation. Inspectors will not be available to perform any of employee or management duties, however, they will be available for consultation purposes. NMFS reserves the right to reassign inspectors as it deems necessary.

(b) NMFS shall not be held responsible:

(1) For damages occurring through any act of commission or omission on the part of its inspectors when engaged in performing services; or

(2) For production errors, such as processing temperatures, length of process, or misbranding of products; or

(3) For failure to supply enough inspection effort during any period of service.

(c) The contracting party will:

(1) Use only wholesome raw material which has been handled or stored under sanitary conditions and is suitable for processings; maintain the official establishment(s), designated on the contract in such sanitary condition and to employ such methods of handling raw

materials for processing as may be necessary to conform to the sanitary requirements prescribed or approved by NMFS;

(2) Adequately code each primary container and master case of products sold or otherwise distributed from a manufacturing, processing, packing, or repackaging activity to enable positive lot identification to facilitate, where necessary, the segregation of specific food lots that may have become contaminated or otherwise unfit for their intended use;

(3) Not permit any labels on which reference is made to Federal inspection, to be used on any product which is not packed under fishery products inspection service nor permit any labels on which reference is made to any U.S. Grade to be used on any product which has not been officially certified as meeting the requirements of such grade; nor supply labels bearing reference to Federal inspection to another establishment unless the products to which such labels are to be applied have been packed under Federal inspection at an official establishment;

(4) Not affix any label on which reference is made to Federal inspection to any container of processed foods, produced in any designated official establishment, with respect to which the grade of such product is not certified because of adulteration due to the presence of contaminants in excess of limits established in accordance with the regulations or guidelines issued pursuant to the Food, Drug, and Cosmetic Act, as amended;

(5) Not, with respect to any product for which U.S. Grade Standards are in effect, affix any label on which reference is made to Federal inspection to any container of processed food which is substandard: *Provided*, That such label may be affixed to any container of such substandard quality product if such label bears a statement to indicate the substandard quality;

(6) Not, with respect to any product for which U.S. Grade Standard are not in effect, affix any label on which reference is made to the Federal inspection to containers of processed foods, except with the approval of NMFS;

(7) Furnish such reports of processing, packaging, grading, laboratory

analyses, and output of products inspected, processed, and packaged at the designated official establishment(s) as may be requested by NMFS, subject to the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1942;

(8) Make available for use by inspectors, adequate office space in the designated official establishment(s) and furnish suitable desks, office equipment, and files for the proper care and storage of inspection records;

(9) Make laboratory facilities and necessary equipment available for the use of inspectors to inspect samples of processed foods and/or components thereof;

(10) Furnish and provide laundry service, as required by NMFS, for coats, trousers, smocks, and towels used by inspectors during performance of duty in official establishment(s);

(11) Furnish stenographic and clerical assistance as may be necessary in the typing of certificates and reports and the handling of official correspondence, as well as furnish the labor incident to the drawing and grading of samples and other work required to facilitate adequate inspection procedures whenever necessary;

(12) Submit to NMFS, three (3) copies of new product specifications in a manner prescribed by NMFS, and three (3) end-product samples for evaluation and/or laboratory analysis on all products for approval, for which U.S. Grade Standards are not available, when inspection is to be applied to such products. If requested of NMFS, such new specifications and end-product samples shall be considered confidential;

(13) Submit, as required by NMFS, for approval, proofs prior to printing and thereafter four (4) copies of any finished label which may or may not bear official identification marks, when such products are packed under Federal inspection on a contract basis;

(14) Not make deceptive, fraudulent, or unauthorized use in advertising, or otherwise, of the fishery products inspection service, the inspection certificates or reports issued, or the containers on which official identification marks are embossed or otherwise identified, in connection with the sale of any processed products;

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(15) Submit to NMFS, four (4) copies of each label which may or may not bear official identification marks, when such labels are to be withdrawn from inspection or when approved labels are disapproved for further use under inspection;

(16) Notify NMFS in advance of the proposed use of any labels which require obliteration of any official identification marks, and all reference to the inspection service on approved labels which have been withdrawn or disapproved for use;

(17) Accord representatives of NMFS at all reasonable times free and immediate access to establishment(s) and official establishment(s) under applicant's control for the purpose of checking codes, coded products, coding devices, coding procedures, official identification marks obliteration, and use of withdrawn or disapproved labels.

(d) Termination of inspection services:

(1) The fishery products inspection service, including the issuance of inspection reports, shall be rendered from the date of the commencement specified in the contract and continue until suspended or terminated:

(i) By mutual consent;

(ii) by either party giving the other party sixty (60) days' written notice specifying the date of suspension or termination;

(iii) by one (1) day's written notice by NMFS in the event the applicant fails to honor any invoice within ten (10) days after date of receipt of such invoice covering the full costs of the inspection service provided, or in the event the applicant fails to maintain its designated plants in a sanitary condition or to use wholesome raw materials for processing as required by NMFS, or in the event the applicant fails to comply with any provisions of the regulations contained in this part;

(iv) by automatic termination in case of bankruptcy, closing out of business, or change in controlling ownership.

(2) In case the contracting party wishes to terminate the fishery products inspection service under the terms of paragraph (d)(1)(i) or (ii) of this section, either the service must be continued until all unused containers, labels, and advertising material on hand or in

possession of his supplier bearing official identification marks, or reference to fishery products inspection service have been used, or said containers, labels, and advertising material must be destroyed, or official identification marks, and all other reference to the fishery products inspection service on said containers, labels, advertising material must be obliterated, or assurance satisfactory to NMFS must be furnished that such containers, labels, and advertising material will not be used in violation of any of the provisions of the regulations in the part.

(3) In case the fishery products inspection service is terminated for cause by NMFS under the terms of paragraph (d)(1)(iii) of this section, or in case of automatic termination under terms of paragraph (d)(1)(iv) of this section, the contracting party must destroy all unused containers, labels, and advertising material on hand bearing official identification marks, or reference to fishery products inspection service, or must obliterate official identification marks, and all reference to the fishery products inspection service on said containers, labels and advertising material.

After termination of the fishery products inspection service, NMFS may, at such time or times as it may determine to be necessary, during regular business hours, enter the establishment(s) or other facilities in order to ascertain that the containers, labels, and advertising material have been altered or disposed of in the manner provided herein, to the satisfaction of NMFS.

[36 FR 21039, Nov. 3, 1971]

§ 260.98 Premises.

The premises about an official establishment shall be free from conditions which may result in the contamination of food including, but not limited to, the following:

(a) Strong offensive odors;

(b) Improperly stored equipment, litter, waste, refuse, and uncut weeds or grass within the immediate vicinity of the buildings or structures that may constitute an attractant, breeding place, or harborage for rodents, insects, and other pests;

(c) Excessively dusty roads, yards, or parking lots that may constitute a

source of contamination in areas where food is exposed;

(d) Inadequately drained areas that may contribute contamination to food products through seepage or foot-borne filth and by providing a breeding place for insects or micro-organisms;

If the grounds of an official establishment are bordered by grounds not under the official establishment operator's control of the kind described in paragraphs (b) through (d) of this section, care must be exercised in the official establishment by inspection, extermination, or other means to effect exclusion of pests, dirt, and other filth that may be a source of food contamination.

[36 FR 21040, Nov. 3, 1971]

§ 260.99 Buildings and structures.

The buildings and structures shall be properly constructed and maintained in a sanitary condition, including, but not limited to the following requirements:

(a) *Lighting.* There shall be sufficient light (1) consistent with the use to which the particular portion of the building is devoted, and (2) to provide for efficient cleaning. Belts and tables on which picking, sorting, or trimming operations are carried on shall be provided with sufficient nonglaring light to insure adequacy of the respective operation. Light bulbs, fixtures, skylights, or other glass suspended over exposed food in any step of preparation shall be of the safety type or otherwise protected to prevent food contamination in case of breakage.

(b) *Ventilation.* There shall be sufficient ventilation in each room and compartment thereof to prevent excessive condensation of moisture and to insure sanitary and suitable processing and operating conditions. If such ventilation does not prevent excessive condensation, the Director may require that suitable facilities be provided to prevent the condensate from coming in contact with equipment used in processing operations and with any ingredient used in the manufacture or production of a processed product.

(c) *Drains and gutters.* All drains and gutters shall be properly installed with approved traps and vents. The drainage and plumbing system must permit the

quick runoff of all water from official establishment buildings, and surface water around buildings and on the premises; and all such water shall be disposed of in such a manner as to prevent a nuisance or health hazard. Tanks or other equipment whose drains are connected to the waste system must have such screens and vacuum breaking devices affixed so as to prevent the entrance of waste water, material, and the entrance of vermin to the processing tanks or equipment.

(d) *Water supply.* There shall be ample supply of both hot and cold water; and the water shall be of safe and sanitary quality with adequate facilities for its (1) distribution throughout buildings, and (2) protection against contamination and pollution.

Sea water of safe suitable and sanitary quality may be used in the processing of various fishery products when approved by NMFS prior to use.

(e) *Construction.* Roofs shall be weathertight. The walls, ceilings, partitions, posts, doors, and other parts of all buildings and structures shall be of such materials, construction, and finish as to permit their efficient and thorough cleaning. The floors shall be constructed of tile, cement, or other equally impervious material, shall have good surface drainage, and shall be free from openings or rough surfaces which would interfere with maintaining the floors in a clean condition.

(f) *Processing rooms.* Each room and each compartment in which any processed products are handled, processed, or stored (1) shall be so designed and constructed as to insure processing and operating conditions of a clean and orderly character; (2) shall be free from objectional odors and vapors; and (3) shall be maintained in a clean and sanitary condition.

(g) *Prevention of animals and insects in official establishment(s).* Dogs, cats, birds, and other animals (including, but not being limited to rodents and insects) shall be excluded from the rooms from which processed products are being prepared, handled, or stored and from any rooms from which ingredients (including, but not being limited to salt, sugar, spices, flour, batter, breadings, and fishery products) are handled and stored. Screens, or other

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devices, adequate to prevent the passage of insects shall, where practical, be provided for all outside doors and openings. The use of chemical compounds such as cleaning agents, insecticides, bactericides, or rodent poisons shall not be permitted except under such precautions and restrictions as will prevent any possibility of their contamination of the processed product. The use of such compounds shall be limited to those circumstances and conditions as approved by NMFS.

(h) *Inspector's office.* Furnished suitable and adequate office space, including, but not being limited to, light, heat, and janitor service shall be provided rent free in official establishments for use for official purposes by the inspector and NMFS representatives. The room or rooms designated for this purpose shall meet with the approval of NMFS and shall be conveniently located, properly ventilated, and provided with lockers or cabinets suitable for the protection and storage of inspection equipment and supplies and with facilities suitable for inspectors to change clothing.

(i) Adequate parking space, conveniently located, for private or official vehicles used in connection with providing inspection services shall be provided.

[36 FR 21040, Nov. 3, 1971]

§ 260.100 Facilities.

Each official establishment shall be equipped with adequate sanitary facilities and accommodations, including, but not being limited to, the following:

(a) Containers approved for use as containers for processed products shall not be used for any other purpose.

(b) No product or material not intended for human food or which creates an objectionable condition shall be processed, handled, or stored in any room, compartment, or place where any fishery product is manufactured, processed, handled, or stored.

(c) Suitable facilities for cleaning and sanitizing equipment (e.g., brooms, brushes, mops, clean cloths, hose, nozzles, soaps, detergent, sprayers) shall be provided at convenient locations throughout the plant.

[36 FR 21040, Nov. 3, 1971]

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§ 260.101 Lavatory accommodations.

Modern lavatory accommodations, and properly located facilities for cleaning and sanitizing utensils and hands, shall be provided.

(a) Adequate lavatory and toilet accommodations, including, but not being limited to, running hot water (135 °F. or more) and cold water, soap, and single service towels, shall be provided. Such accommodations shall be in or near toilet and locker rooms and also at such other places as may be essential to the cleanliness of all personnel handling products.

(b) Sufficient containers with covers shall be provided for used towels and other wastes.

(c) An adequate number of hand washing facilities serving areas where edible products are prepared shall be operated by other than hand-operated controls, or shall be of a continuous flow type which provides an adequate flow of water for washing hands.

(d) Durable signs shall be posted conspicuously in each toilet room and locker room directing employees to wash hands before returning to work.

(e) Toilet facilities shall be provided according to the following formula:

Number of persons	Toilet bowls required
1 to 15, inclusive	1
16 to 35, inclusive	2
36 to 55, inclusive	3
56 to 80, inclusive	4
For each additional 30 persons in excess of 80	1

¹Urinals may be substituted for toilet bowls but only to the extent of one-third of the total number of bowls required.

All toilet equipment shall be kept operative, in good repair, and in a sanitary condition.

[36 FR 21041, Nov. 3, 1971]

§ 260.102 Equipment.

All equipment used for receiving, washing, segregating, picking, processing, packaging, or storing any processed products or any ingredients used in the manufacture or production thereof, shall be of such design, material, and construction as will:

(a) Enable the examination, segregation, preparation, packaging, and other processing operations applicable to

processed products, in an efficient, clean, and sanitary manner, and

(b) Permit easy access to all parts to insure thorough cleaning and effective bactericidal treatment. Insofar as is practicable, all such equipment shall be made of smooth impermeable corrosion-resistant material that will not adversely affect the processed product by chemical action or physical contact. Such equipment shall be kept in good repair and sanitary condition. Such equipment shall be cleaned and sanitized at a frequency as is necessary or required in accordance with Good Manufacturing Practice Regulations, 21 CFR part 128.

[36 FR 21041, Nov. 3, 1971]

§ 260.103 Operations and operating procedures shall be in accordance with an effective sanitation program.

(a) All operators in the receiving, transporting, holding, segregating, preparing, processing, packaging, and storing of processed products and ingredients, used as aforesaid, shall be strictly in accord with clean and sanitary methods and shall be conducted as rapidly as possible and at temperatures that will inhibit and retard the growth of bacterial and other micro-organisms and prevent any deterioration or contamination of such processed products or ingredients thereof. Mechanical adjustments or practices which may cause contamination of foods by oil, dust, paint, scale, fumes, grinding materials, decomposed food, filth, chemicals, or other foreign materials shall not be conducted during any manufacturing or processing operation.

(b) All processed products, raw materials, ingredients, and components thereof shall be subject to inspection during each manufacturing or processing operation. To assure a safe, wholesome finished product, changes in processing methods and procedures as may be required by the Director shall be effectuated as soon as practicable. All processed products which are not manufactured or prepared in accordance with the requirements contained in § 260.96 to § 260.104 or are unwholesome or otherwise not fit for human food shall be removed and segregated

prior to any further processing operation.

(c) Official establishments operating under Federal inspection should have an effective quality control program as appropriate for the nature of the products and processing operations.

(d) All ingredients used in the manufacture or processing of any processed product shall be wholesome and fit for human food.

(e) The methods and procedures employed in the receiving, segregating, handling, transporting, and processing of ingredients in official establishment(s) shall be adequate to result in a satisfactory processed product. Such methods and procedures include, but are not limited to, the following requirements:

(1) Containers, utensils, pans, and buckets used for the storage or transporting of partially processed food ingredients shall not be nested unless re-washed and sanitized before each use;

(2) Containers which are used for holding partially processed food ingredients shall not be stacked in such manner as to permit contamination of the partially processed food ingredients;

(3) Packages or containers for processed products shall be clean when being filled with such products; and all reasonable precautions shall be taken to avoid soiling or contaminating the surface of any package or container liner which is, or will be, in direct contact with such products.

(f) Retention tags: (1) Any equipment such as, but not limited to, conveyors, tillers, sorters, choppers, and containers which fail to meet appropriate and adequate sanitation requirements will be identified by the inspector in an appropriate and conspicuous manner with the word "RETAINED." Following such identification, the equipment shall not be used until the discrepancy has been resolved, the equipment reinspected and approved by the inspector and the "RETAINED" identification removed by the inspector.

(2) Lot(s) of processed products that may be considered to be mislabeled and/or unwholesome by reason of contaminants or which may otherwise be in such condition as to require further evaluation or testing to determine that

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the product properly labeled and/or wholesome will be identified by the inspector in an appropriate and conspicuous manner with the word "RETAINED." Such lot(s) of product shall be held for reinspection or testing. Final disposition of the lot(s) shall be determined by NMFS and the removal of the "RETAINED" identification shall be performed by the inspector.

[36 FR 21041, Nov. 3, 1971]

§ 260.104 Personnel.

The establishment management shall be responsible for taking all precautions to assure the following:

(a) *Disease control.* No person affected by disease in a communicable form, or while a carrier of such disease, or while affected with boils, sores, infected wounds, or other abnormal sources of microbiological contamination, shall work in a food plant in any capacity in which there is a reasonable possibility of food ingredients becoming contaminated by such person, or of disease being transmitted by such person to other individuals.

(b) *Cleanliness.* All persons, while working in direct contact with food preparation, food ingredients, or surfaces coming into contact therewith shall:

(1) Wear clean outer garments, maintain a high degree of personal cleanliness, and conform to hygienic practices while on duty, to the extent necessary to prevent contamination of food products.

(2) Wash and sanitize their hands thoroughly to prevent contamination by undesirable microorganisms before starting work, after each absence from the work station, and at any other time when the hands may have become soiled or contaminated.

(3) Remove all insecure jewelry and, when food is being manipulated by hand, remove from hands any jewelry that cannot be adequately sanitized.

(4) If gloves are used in food handling, maintain them in an intact, clean, and sanitary condition. Such gloves shall be of an impermeable material except where their usage would be inappropriate or incompatible with the work involved.

(5) Wear hair nets, caps, masks, or other effective hair restraints. Other

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persons that may incidentally enter the processing areas shall comply with this requirement.

(6) Not store clothing or other personal belongings, eat food, drink beverages, chew gum, or use tobacco in any form in areas where food or food ingredients are exposed or in areas used for washing equipment or utensils.

(7) Take any other necessary precautions to prevent contamination of foods with microorganisms or foreign substances including, but not limited to perspiration, hair, cosmetics, tobacco, chemicals, and medicants.

(c) *Education and training.* Personnel responsible for identifying sanitation failures or food contamination should have a background of education or experience, or a combination thereof, to provide a level of competency necessary for production of clean wholesome food. Food handlers and supervisors should receive appropriate training in proper food-handling techniques and food-protection principles and should be cognizant of the danger of poor personal hygiene and unsanitary practices, and other vectors of contamination.

[36 FR 21041, Nov. 3, 1971]

LABELING REQUIREMENTS

§§ 260.200-260.201 [Reserved]

PART 261—UNITED STATES STANDARDS FOR GRADES

Sec.

261.101 Standard description.

261.102 Publication and removal of U.S. Grade Standards.

261.103 Basis for determination of a U.S. Standard for Grades.

AUTHORITY: 7 U.S.C. 1621-1630.

SOURCE: 61 FR 9369, Mar. 8, 1996, unless otherwise noted.

§ 261.101 Standard description.

A U.S. Standard for Grades authorized under this part is a standard for a fish or fishery product that has been developed and adopted by the voluntary seafood inspection program pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) and

other authorities delegated to the U.S. Department of Commerce.

§ 261.102 Publication and removal of U.S. Grade Standards.

(a) The voluntary U.S. Standards for Grades adopted pursuant to this part shall be issued as Program policies and contained within the NMFS Fishery Products Inspection Manual. Compliance with voluntary standards issued as Program policies within the manual shall satisfy the requirements of this part. Compliance with a voluntary standard issued as a Program policy does not relieve any party from the responsibility to comply with the provisions of the Federal Food, Drug, and Cosmetic Act; or other Federal laws and regulations.

(b) Notification of an application for a new grade standard shall be published in the FEDERAL REGISTER. If adopted, the grade standard shall be issued as a Program policy and contained in the NMFS Fishery Products Inspection Manual.

(c) Recision and revision of a U.S. Standard for Grades will be made a Program policy amendment and contained in the NMFS Fishery Products Inspection Manual.

(d) The NMFS Fishery Products Inspection Manual is available to interested parties.

§ 261.103 Basis for determination of a U.S. Standard for Grades.

(a) To address the inherently distinct and dissimilar attributes found in the fishery product groups, each standard for grades should have a different scope and product description, product forms, sample sizes, definition of defects, etc. The Secretary will make the final determination regarding the content of a U.S. Standard for Grades.

(b) A proposal for a new or revised U.S. grade standard may include the following:

(1) *Scope and product description*, which describes the products that are eligible for grading using the standard (e.g., fish portion, fish fillet).

(2) *Product forms*, which describe the types, styles and market forms covered by the standard (e.g., skin-off, tail-on, headless).

(3) *Grade and inspection marks*, which describe the grades and inspection mark criteria for each grade category (e.g., Grade A ≤ 15 points).

(4) *Grade determination*, which describes the means by which the grade is determined (i.e., the factors rated by score points and those that are not). Standards may contain defect grouping limiting rules that contain additional provisions that must be met.

(5) *Sampling*, which describes the method of sampling and sample unit sizes (e.g., 10 portions, 8 ounces, etc.).

(6) *Procedures* that describe the process used to determine the product grade (e.g., label declarations, sensory evaluation).

(7) *Definitions of defects*, which outline the defects associated with the products covered by the standard, defines them, and describes the method of counting or measuring the defects. This section may provide associated defect points or reference a defect table (e.g., bruises, blood spots, bones, black spots, coating defects, 1-inch squares, percent by weight, ratios).

(8) *Defect point assessment*, which describes how to assess points and provides any special guidance that may be necessary to the particular standard (e.g., defect points for certain categories are added together and divided by the weight of the sample unit; the number of instances are counted to determine if it is slight, moderate, or excessive defect).

(9) *Tolerances for lot certification*, which provide the sections from Title 50 CFR that regulate lot certification.

(10) *Hygiene*, which specifies the sections of applicable Federal regulations regulating the safe, wholesome production of food for human consumption.

(11) *Methods of analysis*, which describe the methods of analysis that will be used in the evaluation of the products covered by the standard for grades (e.g., net weight, deglazing, debreading).

(12) *Defect table*, which is the table of defects and associated points to be assessed for each defect.

SUBCHAPTER H—FISH AND SEAFOOD PROMOTION

PART 270—SPECIES-SPECIFIC SEAFOOD MARKETING COUNCILS

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AUTHORITY: 16 U.S.C. 4001-4017

SOURCE: 72 FR 18111, Apr. 11, 2007, unless otherwise noted.

§ 270.1 Scope.

This part 270 describes matters pertaining to the establishment, representation, organization, practices, procedures, and termination of Seafood Marketing Councils.

§ 270.2 Definitions.

The following terms and definitions are in addition to or amplify those contained in the Fish and Seafood Promotion Act of 1986:

Act means the Fish and Seafood Promotion Act of 1986 (Public Law 99-659) and any subsequent amendments.

Consumer education means actions undertaken to inform consumers of matters related to the consumption of fish and fish products.

Council means a Seafood Marketing Council for one or more species of fish and fish products of that species established under section 210 of the Act (16 U.S.C. 4009).

Expenditure means monetary or material worth of fishery products. Expenditure is determined at the point a receiver obtains product from a harvester or an importer obtains product from a foreign supplier. Value may be expressed in monetary units (the price a receiver pays to a harvester or an importer pays to a foreign supplier).

Fiscal year means any 12-month period as NMFS may determine for each Council.

Fish means finfish, mollusks, crustaceans, and all other forms of aquatic animal life used for human consumption; the term does not include marine mammals and seabirds.

Harvester means any person in the business of catching or growing fish for purposes of sale in domestic or foreign markets.

Importer means any person in the business of importing fish or fish products from another country into the United States and its territories, as defined by the Act, for commercial purposes, or who acts as an agent, broker, or consignee for any person or nation that produces, processes or markets fish or fish products outside of the United States for sale or for other commercial purposes in the United States.

Marketer means any person in the business of selling fish or fish products in the wholesale, export, retail, or restaurant trade, but whose primary business function is not the processing or packaging of fish or fish products in preparation for sale.

Marketing and promotion means any activity aimed at encouraging the consumption of fish or fish products or expanding or maintaining commercial markets for fish or fish products.

Member means any person serving on any Council.

Participant means a member of a sector or business identified in an application for a Council charter as being subject to the referendum or assessment process.

Person means any individual, group of individuals, association, proprietorship, partnership, corporation, cooperative, or any private entity of the U.S. fishing industry organized or existing

under the laws of the United States or any state, commonwealth, territory or possession of the United States who meets the eligibility requirements as defined in a proposed charter to vote in a referendum.

Processor means any person in the business of preparing or packaging fish or fish products (including fish of the processor's own harvesting) for sale in domestic or foreign markets.

Receiver means any person who owns fish processing vessels and any person in the business of acquiring (taking title to) fish directly from harvesters.

Research means any type of research designed to advance the image, desirability, usage, marketability, production, quality and safety of fish and fish products.

Secretary means the Secretary of Commerce, or the Secretary's designee.

Sector means

- (1) The sector consisting of harvesters;
- (2) The sector consisting of importers;
- (3) The sector consisting of marketers;
- (4) The sector consisting of processors;
- (5) The sector consisting of receivers; or
- (6) The consumer sector consisting of persons professionally engaged in the dissemination of information pertaining to the nutritional benefits and preparation of fish and fish products;

Sector participant means any individual, group of individuals, association, proprietorship, partnership, corporation, cooperative, or any private entity of the U.S. fishing industry organized or existing under the laws of the United States or any state, commonwealth, territory or possession of the United States who meets the eligibility requirements as defined in a proposed charter to vote in a referendum.

Species means a fundamental category of taxonomic classification, ranking after genus, and consisting of animals that possess common characteristic(s) distinguishing them from other similar groups.

Value means monetary or material worth of fishery products. Value is the difference between what a receiver is willing to pay for a product provided

by a harvester and its market price or an importer is willing to pay for a product from a foreign supplier and its market price. Value may be expressed in monetary units representing consumer surplus or producer surplus.

§ 270.3 Submission of application.

(a) Persons who meet the minimum requirements for sector participants as described in the proposed charter may file an application with NMFS for a charter for a Seafood Marketing Council for one or more species of fish and fish products of that species. One signed original and two copies of the completed application package must be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. Applications should not be bound.

(b) The application consists of four parts:

- (1) A document requesting NMFS to establish a Council;
- (2) A proposed charter under which the proposed Council will operate;
- (3) A list of eligible referendum participants; and
- (4) Analytical documentation addressing requirements of applicable law.

(c) *Content of application*—(1) *Application or requesting document*. The application or requesting document submitted by the applicants to NMFS requesting that the Council be established, to the extent practicable, must include the signatures or corporate certifications, of no less than three sector participants representing each sector identified in accordance with paragraph (c)(2)(v) of this section and who, according to the available data, collectively accounted for, in the 12-month period immediately preceding the month in which the application was filed, not less than 10 percent of the value of the fish or fish products specified in the charter that were handled during such period in each sector by those who meet the eligibility requirements to vote in the referendum as defined by the application. The application must also include a statement that, if established, the Council will have sufficient resources (e.g., cash, donated office space, services, supplies,

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etc.) available for initial administrative expenditures pending collection of assessments.

(2) *Proposed charter.* A proposed charter must contain, at a minimum, the following information:

(i) The name of the Council and a provision proclaiming its establishment;

(ii) A declaration of the purposes and objectives of the Council;

(iii) A description of the species of fish and fish products, including the scientific and common name(s), for which the Council will implement marketing and promotion plans under the Act. (The American Fisheries Society's "List of Common and Scientific Names of Fishes from the United States and Canada" (latest edition) or where available, an appropriate volume of its "List of Common and Scientific Names of Aquatic Invertebrates of the United States and Canada" (latest edition) should be used as the authority for all scientific and common names.);

(iv) A description of the geographic area (state(s)) within the United States covered by the Council;

(v) The identification of each sector and the number and terms of representatives for each sector that will be voting members on the Council. (The number of Council members should be manageable, while ensuring equitable geographic representation. The term for members will be 3 years. Initially, to ensure continuity, half of the members' terms will be 2 years and half will be 3 years. Reappointments are permissible.);

(vi) The identification of those sectors (which must include a sector consisting of harvesters, a sector consisting of receivers, and, if subject to assessment, a sector consisting of importers), eligible to vote in the referendum to establish the Council;

(vii) For each sector described under paragraph (c)(2)(v) of this section, a threshold level specifying the minimum requirements, as measured by income, volume of sales, or other relevant factors, that a person engaging in business in the sector must meet in order to participate in a referendum;

(viii) A description of the rationale and procedures for determining assessment rates as provided in § 270.18, based

on a fixed amount per unit of weight or measure, or on a percentage of value of the product handled;

(ix) The proposed rate or rates that will be imposed by the Council on receivers and, if subject to assessment, importers during its first year of operation;

(x) The maximum amount by which an assessment rate for any period may be raised above the rate applicable for the immediately preceding period;

(xi) The maximum rate or rates that can be imposed by a Council on receivers or importers during the operation of the Council;

(xii) The maximum limit on the amount any one sector participant may be required to pay under an assessment for any period;

(xiii) The procedures for providing refunds to sector participants subject to assessment who request the same in accordance with the time limits specified § 270.22;

(xiv) A provision setting forth the voting procedures by which votes may be cast by proxy;

(xv) A provision that the Council will have voting members representing the harvesting, receiving and, if subject to assessment, importing sectors;

(xvi) A provision setting forth the definition of a quorum for making decisions on Council business and the procedures for selecting a chairperson of the Council;

(xvii) A provision that members of the Council will serve without compensation, but will be reimbursed for reasonable expenses incurred in performing their duties as members of the Council;

(xviii) A provision containing a requirement for submission to NMFS the criteria and supporting data for evaluating the annual and/or multi-year performance of proposed marketing plans and the Council's performance;

(xix) A provision containing a requirement for submission of documentation as requested by NMFS for purposes of evaluating performance of proposed marketing plans and the Council's related performance;

(xx) Where adequate funds are not available, a provision containing the

minimum number of participants needed for sustained operations that cannot receive assessment refunds;

(xxi) A provision acknowledging that NMFS will have the right to participate in Council meetings;

(xxii) A provision that the Council will conduct its activities in accordance with applicable NMFS requirements and that NMFS has final approval authority over proposed marketing plans and Council actions;

(xxiii) A provision containing a requirement for the Council to arrange for a complete audit report to be conducted by an independent public accountant and submitted to NMFS at the end of each fiscal year;

(xxiv) A provision containing a requirement for the Council to conduct a market assessment based on economic, market, social and demographic, and biological information as deemed necessary by NMFS; and

(xxv) A provision containing a requirement for the Council to update the list of referendum participants on an annual basis.

(3) *List of referendum participants.* The list of referendum participants, to the extent practicable, must identify the business name and address of all sector participants that the applicants believe meet the requirements for eligibility to vote in the referendum on the adoption of the proposed charter.

(i) The list should include all sectors in which a sector participant meets the eligibility requirements to vote in a referendum. If a sector participant has more than one place of business located within the geographic area of the Council, all such places should be listed and the primary place of business should be designated. The agency will provide appropriate information in its possession of a non-proprietary nature to assist the applicants in developing the list of sector participants.

(ii) [Reserved]

(4) *Analytical documentation.* The applicant must address the requirements of the Act, implementing regulations, and other applicable law, i.e., E.O. 12866, Regulatory Flexibility Act, National Environmental Policy Act, and other law as NMFS determines appropriate.

§ 270.4 Review of application.

Within 180 days of receipt of the application to establish a Council, NMFS will:

(a) Determine if the application is complete and complies with all of the requirements set out in §270.3 and complies with all provisions of the Act and other applicable laws.

(b) Identify, to the extent practicable, those sector participants who meet the requirements for eligibility to participate in the referendum to establish the Council. NMFS may require additional information from the applicants or proposed participants in order to verify eligibility. NMFS may add names to or delete names from the list of sector participants believed eligible by the applicants until the time of the referendum based on additional information received.

(c) If NMFS finds minor deficiencies in an application that can be corrected within the 180-day review period, NMFS will advise the applicants in writing of what must be submitted by a specific date to correct the minor deficiencies.

(d) If NMFS makes a final negative determination, on an application, NMFS will advise the applicant in writing of the reason for the determination. The applicant may submit another application at any time thereafter. NMFS then has 180 days from receipt of the new application to render a final determination on its acceptability.

§ 270.5 Conduct of referendum.

(a) Upon making affirmative determinations under §270.4, NMFS, within 90 days after the date of the last affirmative determination, will conduct a referendum on the adoption of the proposed charter.

(b) NMFS will estimate the cost of conducting the referendum, notify the applicants, and request that applicants post a bond or provide other applicable security, such as a cashier's check, to cover costs of the referendum.

(c) NMFS will initially pay all costs of a referendum to establish a Council. Within two years after establishment, the Council must reimburse NMFS for the total actual costs of the referendum from assessments collected by

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the Council. If a referendum fails to result in establishment of a Council, NMFS will immediately recover all expenses incurred for conducting the referendum from the bond or security posted by applicants. In either case, such expenses will not include salaries of government employees or other administrative overhead, but will be limited to those additional direct costs incurred in connection with conducting the referendum.

(d) No less than 30 days prior to holding a referendum, NMFS will:

(1) Publish in the FEDERAL REGISTER the text of the proposed charter and the most complete list available of sector participants eligible to vote in the referendum; and

(2) Provide for public comment, including the opportunity for a public meeting.

§ 270.6 Sector participants eligible to vote.

(a) Any participant who meets the minimum requirements as measured by income, volume of sales or other relevant factors specified in the approved charter may vote in a referendum.

(b) Only one vote may be cast by each participant who is eligible to vote, regardless of the number of individuals that make up such "participant" and how many sectors the participant is engaged in. The vote may be made by any responsible officer, owner, or employee representing a participant.

§ 270.7 Results of referendum.

(a) *Favorable vote to establish a Council.* NMFS will, by order of publication in the FEDERAL REGISTER, establish the Council and approve an acceptable proposed charter, if the referendum votes which are cast in favor of the proposed charter constitute a majority of the sector participants voting in each and every sector. Further, according to the best available data, the majority must collectively account for, in the 12-month period immediately preceding the month in which the proposed charter was filed, at least 66 percent of the value of the fish and fish products described in the proposed charter handled during such period in each sector by those who meet the eligibility require-

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ments to vote in the referendum as defined by the applicants.

(b) *Unfavorable vote to establish a Council.* If a referendum fails to pass in any sector of the proposed Council, NMFS will not establish the Council or approve the proposed charter. NMFS will immediately recover the cost of conducting the referendum according to § 270.5(c).

(c) *Notification of referendum results.* NMFS will notify the applicants of the results of the referendum and publish the results of the referendum in the FEDERAL REGISTER.

§ 270.8 Nomination and appointment of Council members.

(a) Within 30 days after a Council is established, NMFS will solicit nominations for Council members from the sectors represented on the Council in accordance with the approved charter. If the harvesters and receivers represented on the Council are engaged in business in two or more states, but within the geographic area of the Council, the nominations made under this section must, to the extent practicable, result in equitable representation for those states. Nominees must be knowledgeable and experienced with regard to the activities of, or have been actively engaged in the business of, the sector that such person will represent on the Council. Therefore, a resume will be required for each nominee.

(b) In accordance with 16 U.S.C. 4009(f), NMFS will, within 60 days after the end of the 30-day period, appoint the members of the Council from among the nominees.

§ 270.9 Terms, vacancies, and removal of Council members.

(a) A Council term is for 3 years, except for initial appointments to a newly established Council where:

(1) Half of the Council member terms will be 2 years; and

(2) Half of the Council member terms will be 3 years.

(b) A vacancy on a Council will be filled, within 60 days after the vacancy occurs, in the same manner in which the original appointment was made. A member appointed to fill a vacancy occurring before the expiration of the

term for which the member's predecessor was appointed will be appointed only for the remainder of such term.

(c) Any person appointed under the Act who consistently fails or refuses to perform his or her duties properly and/or participates in acts of dishonesty or willful misconduct with respect to responsibilities under the Act will be removed from the Council by NMFS if two-thirds of the members of the Council recommend action. All requests from a Council to NMFS for removal of a Council member must be in writing and accompanied by a statement of the reasons upon which the recommendation is based.

§ 270.10 Responsibilities of a Council.

(a) Each Council will:

(1) Implement all terms of its approved charter;

(2) Prepare and submit to NMFS, for review and approval under § 270.11(a)(1), a marketing and promotion plan and amendments to the plan which contain descriptions of the projected consumer education, research, and other marketing and promotion activities of the Council;

(3) Implement and administer an approved marketing and promotion plan and amendments to the plan;

(4) Determine the assessment to be made under § 270.18 and administer the collection of such assessments to finance Council expenses described in paragraph (b) of this section;

(5) Receive, investigate and report to NMFS accounts of violations of rules or orders relating to assessments collected under § 270.20, or quality standard requirements established under § 270.15;

(6) Prepare and submit to NMFS, for review and approval a budget (on a fiscal year basis) of the anticipated expenses and disbursements of the Council, including

(i) All administrative and contractual expenses;

(ii) The probable costs of consumer education, research, and other marketing and promotion plans or projects;

(iii) The costs of the collection of assessments; and

(iv) The expense of repayment of the costs of each referendum conducted in regard to the Council.

(7) Comply with NMFS requirements, and prepare and submit to NMFS for review, evaluation, and verification of results and analysis an annual market assessment and related analytical documentation that is based on economic, market, social, demographic, and biological information as deemed necessary by NMFS;

(8) Maintain books and records, prepare and submit to NMFS reports in accordance with respect to the receipt and disbursement of funds entrusted to it, and submit to NMFS a completed audit report conducted by an independent auditor at the end of each fiscal year;

(9) Reimburse NMFS for the expenses incurred for the conduct of the referendum to establish the Council or any subsequent referendum to terminate the Council that fails;

(10) Prepare and submit to NMFS report or proposals as the Council determines appropriate to further the purposes of the Act.

(b) Funds collected by a Council under § 270.17 will be used by the Council for—

(1) Research, consumer education, and other marketing and promotion activities regarding the quality and marketing of fish and fish projects;

(2) Other expenses, as described in § 270.10(a)(1);

(3) Such other expenses for the administration, maintenance, and functioning of the Council as may be authorized by NMFS; and

(4) Any reserve fund established under paragraph (e)(4) of this section and any administrative expenses incurred by NMFS specified as reimbursable under this Part.

(c) Marketing and promotion plans and amendments to such plans prepared by a Council under paragraph(a)(2) of this section will be designed to increase the general demand for fish and fish products described in accordance with § 270.3(c)(2)(iii) by encouraging, expanding, and improving the marketing, promotion and utilization of such fish and fish products, in domestic or foreign markets, or both, through consumer education, research,

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and other marketing and promotion activities.

(d) Consumer education and other marketing and promotion activities carried out by a Council under a marketing and promotion plan and amendments to a plan may not contain references to any private brand or trade name and will avoid the use of deceptive acts or practices in promoting fish or fish products or with respect to the quality, value, or use of any competing product or group of products.

(e) *Authority of a Council.* A Council may:

- (1) Sue and be sued;
- (2) Enter into contracts;
- (3) Employ and determine the salary of an executive director who may, with the approval of the Council employ and determine the salary of such additional staff as may be necessary;
- (4) Establish a reserve fund from monies collected and received under § 270.17 to permit an effective and sustained program of research, consumer education, and other marketing and promotion activities regarding the quality and marketing of fish and fish products in years when production and assessment income may be reduced, but the total reserve fund may not exceed the amount budgeted for the current fiscal year of operation.

(f) Amendment of a charter. A Council may submit to NMFS amendments to the text of the Council's charter. Any proposed amendments to a charter will be approved or disapproved in the same manner as the original charter was approved under § 270.4 and § 270.5 with the exception of § 270.4(b).

§ 270.11 Responsibilities of NMFS.

(a) In addition to the duties prescribed under 16 U.S.C. 4009, NMFS will:

- (1) Participate in Council meetings and review, for consistency with the provisions of 50 CFR part 270 and other applicable law, and approve or disapprove, marketing and promotion plans and budgets within 60 days after their submission by a Council;
- (2) Immediately notify a Council in writing of the disapproval of a marketing and promotion plan or budget, together with reasons for such disapproval;

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(3) Issue orders and amendments to such orders that are necessary to implement quality standards under § 270.15;

(4) Promulgate regulations necessary to carry out the purposes of this chapter;

(5) Enforce the provisions of the Act;

(6) Make all appointments to Councils in accordance with § 270.8 and the approved Council charter;

(7) Approve the criteria and time frames under which a Council's performance will be evaluated; and

(8) Implement the provisions of 16 U.S.C. 4001 *et seq.* in accordance with the available financial and management resources NMFS determines can be utilized.

(b) NMFS may provide, on a reimbursable or other basis, such administrative or technical assistance as a Council may request for purposes of the initial organization and subsequent operation of the Council. However, a Council is responsible for the cost of preparing and submitting information (e.g., reports, evaluation data, etc.) requested by NMFS.

§ 270.12 Notice of Council meetings.

The Council will give NMFS the same notice of its meetings as it gives to its members. NMFS will have the right to participate in all Council meetings.

§ 270.13 Books, records and reports.

(a) The Council must submit to NMFS the following documents according to the schedule approved in the Council's charter:

(1) A marketing assessment and promotion plan;

(2) A financial report with respect to the receipt and disbursement of funds;

(3) An audit report conducted by an independent public accountant; and

(4) Other reports or data NMFS determines necessary to evaluate the Council's performance and verify the results of the market assessment and promotion plan..

(b) All Council records, reports, and data must be maintained by the Council for a minimum of 3 years, even if the Council is terminated.

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§ 270.14 Update of sector participant data.

The Council will submit to NMFS at the end of each fiscal year an updated list of sector participants who meet the minimum requirements for eligibility to participate in a referendum as stated in the approved charter.

§ 270.15 Quality standards.

(a) Each Council may develop and submit to NMFS for approval or, upon the request of a Council, NMFS will develop quality standards for the species of fish or fish products described in the approved charter. Any quality standard developed under this paragraph must be consistent with the purposes of the Act.

(b) A quality standard developed under paragraph (a) of this section may be adopted by a Council by a majority of its members following a referendum conducted by the Council among sector participants of the concerned sector(s). In order for a quality standard to be brought before Council members for adoption, the majority of the sector participants of the concerned sector(s) must vote in favor of the standard. Further, according to the best available data, the majority must collectively account for, in the 12-month period immediately preceding the month in which the referendum is held, not less than 66 percent of the value of the fish or fish products described in the charter that were handled during such period in that sector by those who meet the eligibility requirements to vote in the referendum as defined by the petitioners.

(c) The Council must submit a plan to conduct the referendum on the quality standards to NMFS for approval at least 60 days in advance of such referendum date. The plan must consist of the following:

- (1) Date(s) for conducting the referendum;
- (2) Method (by mail or in person);
- (3) Copy of the proposed notification to sector participants informing them of the referendum;
- (4) List of sector participants eligible to vote;
- (5) Name of individuals responsible for conducting the referendum;

(6) Copy of proposed ballot package to be used in the referendum; and

(7) Date(s) and location of ballot counting.

(d) An official observer appointed by NMFS will be allowed to be present at the ballot counting and any other phase of the referendum process, and may take whatever steps NMFS deems appropriate to verify the validity of the process and results of the referendum.

(e) Quality standards developed under this section of the regulations must, at a minimum, meet Food and Drug Administration (FDA) minimum requirements for fish and fish products for human consumption.

(f) Quality standards must be consistent with applicable standards of the U.S. Department of Commerce (National Oceanic and Atmospheric Administration) or other recognized Federal standards and/or specifications for fish and fish products.

(g) No quality standard adopted by a Council may be used in the advertising or promotion of fish or fish products as being inspected by the United States Government unless the standard requires sector participants to be in the U.S. Department of Commerce voluntary seafood inspection program.

(h) The intent of quality standards must not be to discriminate against importers who are not members of the Council.

(i) Quality standards must not be developed for the purpose of creating non-tariff barriers. Such standards must be compatible with U.S. obligations under the General Agreement on Tariffs and Trade, or under other international standards deemed acceptable by NMFS.

(j) The procedures applicable to the adoption and the operation of quality standards developed under this subchapter also apply to subsequent amendments or the termination of such standards.

(k) With respect to a quality standard adopted under this section, the Council must develop and file with NMFS an official identifier in the form of a symbol, stamp, label or seal that will be used to indicate that a fish or fish product meets the quality standard at the time the official identifier is

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affixed to the fish or fish product, or is affixed to or printed on the packaging material of the fish or fish product. The use of such identifier is governed by § 270.15.

§ 270.16 Deposit of funds.

All funds collected or received by a Council under this section must be deposited in an appropriate account in the name of the Council specified in its charter. Funds eligible to be collected or received by a Council must be limited to those authorized under the Act.

(a) Pending disbursement, under an approved marketing plan and budget, funds collected through assessments authorized by the Act must be deposited in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States Government.

(b) The Council may, however, pending disbursement of these funds, invest in risk-free, short-term, interest-bearing instruments.

(1) *Risk-free.* All investments must be insured or fully collateralized with Federal Government securities. In the absence of collateral, accounts established at financial institutions should, in aggregate, total less than \$100,000 to assure both principal and interest are federally insured in full.

(2) *Short-term.* Generally, all investments should be for a relatively short time period (one year or less) to assure that the principal is maintained and readily convertible to cash.

(3) *Collateralization.* Investments exceeding the \$100,000 insurance coverage level must be fully collateralized by the financial institution.

(i) Collateral must be pledged at face value and must be pledged prior to sending funds to the institution.

(ii) Government securities are acceptable collateral. Declining balance, mortgage backed securities such as Government National Mortgage Association (GNMA) and Federal National Mortgage Association (FNMA) are not acceptable collateral.

(iii) If an account has been established, collateral may be held at the local Federal Reserve Bank. Otherwise,

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another depository must hold the collateral.

§ 270.17 Authority to impose assessments.

A Council will impose and administer the collection of the assessments that are necessary to pay for all expenses incurred by the Council in carrying out its functions under 50 CFR part 270.

§ 270.18 Method of imposing assessments.

Assessments will be imposed on sector participants in the receiving sector or the importing sector or both as specified in an approved Council charter. Assessment rates will be based on value that may be expressed in monetary units or units of weight or volume.

(a) An assessment on sector participants in the receiving sector will be in the form of a percentage of the value or a fixed amount per unit of weight or volume of the fish described in the charter when purchased by such receivers from fish harvesters.

(b) An assessment on sector participants who own fish processing vessels and harvest the fish described in the charter will be in the form of a percentage of the value or on a fixed amount per unit of weight or volume of the fish described in the charter that is no less than the value if such fish had been purchased by a receiver other than the owner of the harvesting vessel.

(c) An assessment on sector participants in the importing sector will be in the form of a percentage of the value that an importer pays to a foreign supplier, as determined for the purposes of the customs laws, or a fixed amount per unit of weight or volume, of the fish or fish products described in the charter when entered or withdrawn from warehouse for consumption, in the customs territory of the United States by such sector participants.

(d) A Council may not impose an assessment on any person that was not eligible to vote in the referendum establishing the Council by reason of failure to meet the requirements specified under unless that person, after the date on which the referendum is held, meets the requirements of section.

(e) Any person may make voluntary payments or in-kind contributions to a Council for purposes of assisting the Council in carrying out its functions.

§ 270.19 Notice of assessment.

(a) The Council must serve each person subject to assessment with notice that the assessment is due. The notice of assessment must contain:

(1) A specific reference to the provisions of the Act, regulations, charter and referendum that authorize the assessment;

(2) The amount of the assessment;

(3) The period of time covered by the assessment;

(4) The date the assessment is due and payable, which will not be earlier than 30 days from the date of the notice;

(5) The form(s) of payment; and

(6) To whom and where the payment must be made.

(b) The notice must advise such person of his or her right to seek review of the assessment by filing a written petition of objection with NMFS at any time during the time period to which the assessment applies, including the right to request a hearing on the petition. The notice must state that the petition of objection must be filed in accordance with the procedures in § 270.21.

(c) The notice must also advise such persons of his or her right to a refund of the assessment as provided in § 270.22. The notice must state that a refund may be requested for not less than 90 days from such collection, and provide that the Council will make the refund within 60 days after the request for the refund is requested.

§ 270.20 Payment of assessments.

Persons subject to an assessment would be required to pay the assessment on or before the date due, unless they have demanded a refund or filed a petition of objection with NMFS under § 270.21. However, persons who have demanded a refund under § 270.22 or filed a petition of objection under § 270.21 may submit proof of these actions in lieu of payment. In the case of a petition of objection, NMFS will inform the Council and the petitioner of its find-

ing at which time petitioner must pay the revised assessment if applicable.

§ 270.21 Petition of objection.

(a) *Filing a petition.* Any person issued a notice of assessment under § 270.19 may request that NMFS modify or take other appropriate action regarding the assessment or promotion plan by filing a written petition of objection with NMFS. Petitions of objection may be filed:

(1) Only if the petitioner determines one or more of the following criteria is not in accordance with the law:

(i) The assessment;

(ii) The plan upon which the assessment is based; or

(iii) Any obligation imposed on the petitioner under the plan.

(2) Only during the time period to which the assessment applies.

(b) *Contents of the petition of objection.* A petition must be addressed to Assistant Administrator for Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, and must contain the following:

(1) The petitioner's correct name, address, and principal place of business. If the petitioner is a corporation, this must be stated, together with the date and state of incorporation, and the names, addresses, and respective positions of its officers; if a partnership, the date and place of formation and the name and address of each partner;

(2) The grounds upon which the petition of objection is based, including the specific terms or provisions of the assessment, the marketing and promotion plan, or obligation imposed by the plan, to which the petitioner objects;

(3) A full statement of the facts upon which the petition is based, set forth clearly and concisely, accompanied by any supporting documentation;

(4) The specific relief requested; and

(5) A statement as to whether or not the petitioner requests a hearing.

(c) *Notice to Council.* NMFS will promptly furnish the appropriate Council with a copy of the petition of objection.

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(d) *Opportunity for informal hearing.* (1) Any person filing a petition of objection may request an informal hearing on the petition. The hearing request must be submitted with the petition of objection.

(2) If a request for hearing is timely filed, or if NMFS determines that a hearing is advisable, NMFS will so notify the petitioner and the Council. NMFS will establish the applicable procedures, and designate who will be responsible for conducting a hearing. The petitioner, the Council, and any other interested party, may appear at the hearing in person or through a representative, and may submit any relevant materials, data, comments, arguments, or exhibits. NMFS may consolidate two or more hearing requests into a single proceeding.

(3) *Final decision.* Following the hearing, or if no hearing is held, as soon as practicable, NMFS will decide the matter and serve written notice of the decision on the petitioner and the Council. NMFS's decision will be based on a consideration of all relevant documentation and other evidence submitted, and will constitute the final administrative decision and order of the agency. NMFS will have the discretion to waive collection of a contested assessment or revise, modify, or alter the assessment amount based on a Council method of assessment.

§ 270.22 Refunds.

(a) Notwithstanding any other provision of the Act, any person who pays an assessment under the Act may demand and must promptly receive from the Council a refund of such assessment. A demand for refund must be made in accordance with procedures in the approved charter and within such time as will be prescribed by the Council and approved by NMFS. Procedures to provide such a refund must be established before any such assessment may be collected. Such procedures must allow any person to request a refund 90 days or more from such collection, and provide that such refund must be made within 60 days after demand for such refund is made.

(b) Once a refund has been requested by a sector participant and paid by the Council, that sector participant may

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no longer participate in a referendum or other business of the Council during the remainder of the assessment rate period. Future assessments will only be sent to such a sector participant at the request of the sector participant. If assessments are paid during a future assessment rate period and no refund is requested, that sector participant may again participate in a referendum or other business of the Council.

§ 270.23 Dissolution of Councils.

(a) *Petition for termination.* (1) A petition to terminate a Council may be filed with NMFS by no less than three sector participants in any one sector. Any petition filed under this subsection must be accompanied by a written document explaining the reasons for such petition.

(2) If NMFS determines that a petition filed under paragraph (a)(1) of this section is accompanied by the signatures, or corporate certifications, of no less than three sector participants in the sector referred to in paragraph (a)(1) of this section who collectively accounted for, in the 12-month period immediately preceding the month in which the petition was filed, not less than 20 percent of the value of the fish or fish products described in §270.3(c)(2)(iii) that were handled by that sector during the period, NMFS within 90 days after the determination, will conduct a referendum for termination of the Council among all sector participants in that sector.

(3) Not less than 30 days prior to holding a referendum, NMFS will publish an announcement in the FEDERAL REGISTER of the referendum, including an explanation of the reasons for the petition for termination filed under paragraph (a)(1) of this section and any other relevant information NMFS considers appropriate.

(4) If the referendum votes which are cast in favor of terminating the Council constitute a majority of the sector participants voting and the majority, in the period in paragraph (a)(2) of this section, collectively accounted for not less than 66 percent of the value of such fish and fish products that were handled during such period by the sector in paragraph (a)(1) of this section,

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NMFS will by order of publication terminate the Council effective as of a date by which the affairs of the Council may be concluded on an orderly basis.

(5) NMFS initially will pay all costs of a referendum conducted in §270.23. Prior to conducting such a referendum, NMFS will require petitioners to post a bond or other security acceptable to NMFS in an amount which NMFS determines to be sufficient to pay any expenses incurred for the conduct of the referendum.

(6) If a referendum conducted under §270.23 fails to result in the termination of the Council, NMFS will immediately recover the amount of the bond posted by the petitioners under §270.23(a)(5).

(7) If a referendum conducted under this subsection results in the termination of the Council, NMFS will recover the expenses incurred for the

conduct of the referendum from the account established by the Council. If the amount remaining in such account is insufficient for NMFS to recover all expenses incurred for the conduct of the referendum, NMFS will recover the balance of the expenses from the petitioners that posted a bond under paragraph (a)(5) of this section.

(b) *Payment of remaining funds.* If a Council is terminated under section §270.23(a)(4), NMFS, after recovering all expenses incurred for the conduct of the referendum under paragraph (a) of this section, will take such action as is necessary and practicable to ensure that moneys remaining in the account established by the Council under §270.17 are paid on a prorated basis to the sector participants from whom those moneys were collected under §270.20.

SUBCHAPTER I-J [RESERVED]

SUBCHAPTER K—CONTINENTAL SHELF

PART 296—FISHERMEN'S CONTINGENCY FUND

- Sec.
- 296.1 Purpose.
 - 296.2 Definitions.
 - 296.3 Fishermen's contingency fund.
 - 296.4 Claims eligible for compensation.
 - 296.5 Instructions for filing claims.
 - 296.6 NMFS processing of claims.
 - 296.7 Burden of proof and presumption of causation.
 - 296.8 Amount of award.
 - 296.9 Initial determination.
 - 296.10 Agency review.
 - 296.11 Final determination.
 - 296.12 Payment of costs.
 - 296.13 Payment of award for claim.
 - 296.14 Subrogation.
 - 296.15 Judicial review.

AUTHORITY: Pub. L. 97-212 (43 U.S.C. 1841 et seq.).

SOURCE: 47 FR 49600, Nov. 1, 1982, unless otherwise noted.

§ 296.1 Purpose.

These regulations implement title IV of the Outer Continental Shelf Lands Act Amendments of 1978, as amended (title IV). Title IV establishes a Fishermen's Contingency Fund to compensate commercial fishermen for damage or loss caused by obstructions associated with oil and gas activities on the Outer Continental Shelf.

§ 296.2 Definitions.

Area affected by Outer Continental Shelf activities means the area within a 3-mile radius of any casualty site which:

(1) Includes any portion of a leased block, pipeline, easement, right of way, or other OCS oil and gas exploration, development, or production activity; or

(2) Is otherwise associated (as determined by the Chief, Financial Services Division) with OCS oil and gas activities, such as, for example, expired lease areas, relinquished rights-of-way or easements, and areas used extensively by surface vessels supporting OCS oil and gas activities (areas landward of the OCS are included when such areas meet this criterion).

Chief, FSD means Chief, Financial Services Division, National Marine

Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910; telephone: (301) 713-2396.

Citizen of the United States means any person who is a United States citizen, any State, or any corporation, partnership, or association organized under the laws of any state which meets the requirements for documenting vessels in the U.S. coastwise trade.

Commercial fisherman means any citizen of the United States who owns, operates, or is employed on a commercial fishing vessel.

Commercial fishing vessel means any marine craft which is documented under the laws of the United States or, if under five net tons, registered under the laws of any State, and used for commercial fishing or activities directly related to commercial fishing.

Easement means a right of use or easement granted under 30 CFR 250.18.

Fish means all forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

Fishing gear means any commercial fishing vessel, and any equipment of such vessel.

Fund means the Fishermen's Contingency Fund established by title IV of the Outer Continental Shelf Lands Act Amendments of 1978.

Holder means the owner of record of each lease, prelease exploratory drilling permit, easement, or right-of-way or any agent or assignee of an owner.

Lease means any authority under section 8 or section 6 of the OCS Lands Act to develop and produce or explore for oil or gas.

Negligence or fault includes, but is not limited to, failure to:

(1) Remain outside of any navigation safety zone established around oil and gas rigs and platforms by any responsible Federal agency;

(2) Avoid obstructions recorded on nautical charts or in the Notice to Mariners or marked by a buoy or other surface marker (casualties occurring within a one-quarter mile radius of obstructions so recorded or marked are presumed to involve negligence or fault of the claimant);

(3) Abide by established rules of the road;

(4) Use proper care; or

(5) Use due care and diligence to mitigate the damage or loss.

Outer Continental Shelf means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in 43 U.S.C. section 1301, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control. Generally, but not in all cases, this includes all submerged lands lying seaward of the territorial sea (3 miles from a State's coastline, or 9 miles from the coast of Texas or Florida).

Person means an individual, partnership, corporation, association, public or private organization, government, or other entity.

Resulting Economic Loss means the gross income, as estimated by the Chief, FSD, that a claimant will lose because of not being able to fish, or having to reduce fishing effort, during the period before the damaged or lost fishing gear concerned is repaired or replaced and available for use. This period must be reasonable. This period begins on the date of the casualty and stops on the date the damage could reasonably have been remedied by repair or replacement.

Right-of-way means any right-of-way granted under section 5(e) of the OCS Lands Act or under 43 CFR 3340.0-5.

Secretary means the Secretary of Commerce or his designee.

[47 FR 49600, Nov. 1, 1982, as amended at 61 FR 6322, Feb. 20, 1996]

§ 296.3 Fishermen's contingency fund.

(a) *General.* There is established in the Treasury of the United States the Fishermen's Contingency Fund. The Fund is available without fiscal year limitation as a revolving fund to carry out the purposes of title IV of the Outer Continental Shelf Lands Act Amendments of 1978, as amended.

(b) *Payments into the fund.* Each Holder of an exploration permit, lease, easement, or rights-of-way for the construction of a pipeline, or a prelease exploration drilling permit issued or maintained under the Outer Continental Shelf Lands Act, in effect on or after June 30, 1982, shall pay assess-

ments to the Fund. All pipeline right-of-way and easements are to be included for assessment except those constructed and operated lines within the confines of a single lease or group of contiguous leases under unitized operation or single operator. Payments will not be required for geological or geophysical permits, other than prelease exploratory drilling permits issued under section 11 of the Outer Continental Shelf Lands Act (43 U.S.C. 1340).

(1) *Assessments to maintain the fund.* When the total amount in the Fund is less than the Chief, FSD, determines is needed to pay Fund claims and expenses, the Chief, FSD, will notify the Secretary of the Interior that additional assessments are needed.

(2) *Billing and collections.* The Secretary of the Interior will calculate the amounts to be paid by each Holder and shall notify each Holder of the dollar amount and the time and place for all payments. Each assessment shall be paid to the Secretary of the Interior no later than 45 days after the Secretary of the Interior sends notice of the assessment.

(3) *Annual assessment limits.* No Holder shall be required to pay in excess of \$5,000 for any lease, permit, easement or right-of-way in any calendar year.

(c) *Moneys recovered through subrogation.* Any moneys recovered by the Secretary through the subrogation of a claimant's rights shall be deposited into the Fund.

(d) *Investments of the fund.* Excess sums in the Fund will be invested in obligations of, or guaranteed by, the United States. Revenue from such investments shall be deposited in the Fund.

(e) *Litigation.* The Fund may sue and be sued in its own name.

§ 296.4 Claims eligible for compensation.

(a) *Claimants.* Damage or loss eligible for Fund compensation must be suffered by a commercial fisherman.

(b) *Damage or loss of fishing gear.* Damage or loss is eligible for Fund compensation if it was caused by materials, equipment, tools, containers, or other items associated with OCS oil and gas exploration, development, or production activities. Damage or loss

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may be eligible for compensation even though it did not occur in OCS waters if the item causing the damage or loss was associated with oil and gas exploration, development, or production activities in OCS waters.

(c) *Exceptions.* Damage or loss is not eligible for Fund compensation:

(1) If the damage or loss was caused by the negligence or fault of the claimant;

(2) If the damage or loss occurred prior to September 18, 1978;

(3) To the extent that damage or loss exceeds the replacement value of the fishing gear involved;

(4) For any portion of the damage or loss which can be compensated by insurance;

(5) If the claim is not filed within 90 calendar days of the date the claimant or the claimant's agent first became aware of the damage or loss (or such longer period as the Secretary may allow under unusual and extenuating circumstances); or

(6) If the damage or loss was caused by an obstruction unrelated to OCS oil and gas exploration, development, or production activities.

[47 FR 49600, Nov. 1, 1982, as amended at 50 FR 13796, Apr. 8, 1985; 61 FR 6322, Feb. 20, 1996]

§ 296.5 Instructions for filing claims.

(a) *Fifteen-day report required to gain presumption of causation*—(1) *General.* Damages or losses are presumed to be qualified for compensation if certain requirements are satisfied. One requirement is that a report must be made to NMFS within fifteen (15) days after the date on which the vessel first returns to a port after discovering the damage or loss. Filing of a fifteen-day report must be followed up by filing a detailed claim.

(2) *When and how to file a fifteen-day report.* To qualify for the presumption of causation, a fifteen-day report must be made to NMFS within fifteen days after the date on which the vessel first returns to a port after discovering the damage or loss. Satisfaction of the fifteen-day requirement is determined by the postmark, if the report is mailed; by the date of a call, if the report is telephoned or radiotelephoned; or, by the date of appearance, if the report is

made in person. The fifteen-day report must be made to the Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910; telephone: (301) 713-2396.

(3) *Contents of fifteen-day report.* Each fifteen-day report must include the following information:

(i) The claimant's name and address;

(ii) The name of the commercial fishing vessel involved;

(iii) The location of the obstruction which caused the damage or loss;

(iv) A description of the nature of the damage or loss;

(v) The date such damage or loss was discovered;

(vi) If the fifteen-day report is made after the vessel returns to port, the date on which the vessel first returned to port after discovering the damage.

(b) *Form of claim.* Claims must be in writing. Claims may be submitted on NOAA form 88-164. This form may be obtained from any NMFS regional office or from the Chief, FSD. Although claimants are not required to use this claim form, it will probably be to their benefit to do so.

(c) *Who must file and when and where to file claims.* All claimants (including those who filed 15-day reports to gain the presumption of causation) must submit a claim application to the Chief, Financial Services Division, within 90 calendar days of the date the claimant or the claimant's agent first became aware of the damage or loss. The Chief, FSD, may allow a longer period for filing claims if, in his discretion, unusual and extenuating circumstances justify a longer period. The term "filed" means delivered in person, or mailed (as determined by the date of the postmark) to the Chief, Financial Services Division, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Washington, DC 20235. The Chief, FSD, suggests that mailed claims be sent by registered or certified mail, return receipt requested, so the claimant will have a record that the claim was received by the Chief, FSD.

(d) *Aggregating claims.* If more than one commercial fisherman suffers loss or damage from the same incident (for example, when several members of the

crew lost income due to loss of fishing time), all claims should be submitted on their behalf by the owner or operator of the commercial fishing vessel involved.

(e) *Contents of claim.* Each claim must be signed by the claimant and must accurately and completely provide the following information:

(1) The name, mailing address, telephone number, citizenship, and occupational status (for example, vessel owner, operator, or crew member) of each claimant;

(2) The name and Coast Guard documentation number or State registration number of the commercial fishing vessel involved in the damage or loss;

(3) The home port, type, and size of the vessel involved in the casualty;

(4) A full statement of the circumstances of the damage or loss including:

(i) The date when the casualty was first discovered by the claimant,

(ii) The water depth (if known) and visibility at the time and location where the casualty occurred,

(iii) The direction, speed, and activities of the claimant's vessel immediately before, during, and after the casualty (including a full description of both the deployment of any fishing gear which is the subject of the claim and all attempts at retrieval of the gear),

(iv) The names and addresses of all witnesses to the casualty,

(v) The location where the casualty occurred in Loran C coordinates or the next most accurate method of position fixing available to the claimant,

(vi) A description of the item or obstruction (if sighted or recovered) which caused the casualty, and whether or not any surface markers were attached to or near the obstruction. Submit any available photographs of the item or obstruction. State reasons for believing the obstruction is associated with OCS oil and gas activities.

(5) The amount claimed for property damage or loss and a full statement of the type and extent of damage or loss including:

(i) An inventory of all components of fishing gear damaged or lost,

(ii) The date, place, and cost of acquisition of all fishing gear damaged or

lost and proof of its purchase (sales receipts, affidavits, or other evidence),

(iii) One estimate from a commercial fishing gear repair or supply company of the present replacement or repair (whichever applies) cost of the damaged or lost fishing gear. If the gear will be repaired by the claimant himself, a detailed estimate by the claimant identifying the repair cost.

(6) The amount claimed for economic loss and the basis for that amount with supporting documentation, as follows:

(i) Trip tickets for the three vessel trips immediately before the trip during which the casualty was discovered and for the vessel trip immediately following the trip during which the casualty occurred.

(ii) A statement of the amount of time involved on each of the vessel trips above (or if the casualty involves fixed gear, a statement of the number of gear units deployed on each of these trips).

(iii) A statement of the amount of time lost from fishing because of the damage or loss and a full explanation of why this time period is reasonable.

(iv) Documentation of the date replacement gear was ordered and received or the date gear repair began and ended. This documentation may consist of purchase orders, bills of lading, or statements from sellers or repairers.

(7) The amount claimed for other consequential loss or costs (including fees for claim preparation, etc.) with suitable documentation of the amounts claimed (such as invoices, receipts, etc.).

[47 FR 49600, Nov. 1, 1982, as amended at 50 FR 13796, Apr. 8, 1985; 53 FR 24645, June 29, 1988; 61 FR 6322, Feb. 20, 1996]

§ 296.6 NMFS processing of claims.

(a) *Action by NMFS.* Upon receipt of a claim, the Chief, FSD, will:

(1) Send an abstract of the claim to the Secretary of the Interior;

(2) Send the reported location of any obstruction which was not recovered and retained to the National Ocean Survey, which will inform the Defense Mapping Agency Hydrographic/Topographic Center.

(b) *Actions by the Interior Department.* Upon receipt of an abstract of a claim,

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the Interior Department will immediately:

(1) Plot the casualty site, and advise NMFS whether the site is in an area affected by OCS activities;

(2) make reasonable efforts to notify all persons known to have engaged in activities associated with OCS energy activity in the vicinity where the damage or loss occurred.

(c) *Responses to notice of claim.* (1) Each person notified by the Interior Department will, within thirty days after receipt of the notice, advise the Chief, FSD, and the Interior Department whether he admits or denies responsibility for the damages claimed.

(2) Each person notified by the Interior Department who fails to give timely and proper advice of admission or denial of responsibility shall be presumed to deny responsibility for the damages claimed.

(3) If any person admits responsibility, the Chief, FSD, will initiate action to recover from that party any sums paid or to be paid for the claimed damages.

(4) Any person referred to in this section, including lessees or permittees or their contractors or subcontractors, may submit evidence about any claim to the Chief, FSD.

(d) *Failure to meet filing requirements.* The Chief, FSD, may reject any claim that does not meet the filing requirements. The Chief, FSD, will give a claimant whose claim is rejected written notice of the reasons for rejection within 30 days after the date on which the claim was filed. If the claimant does not refile an acceptable claim within 30 days after the date of this written notice, the claimant is not eligible for Fund compensation unless there are extenuating circumstances.

(e) *Proceedings*—(1) *Location.* Any required proceeding will be conducted within such United States judicial district as may be mutually agreeable to the claimant and the Assistant Administrator, NMFS, or his designee, or if no agreement can be reached, within the United States judicial district in which the claimant's home port is located.

(2) *Powers.* For purposes of any proceeding, the Assistant Administrator, NMFS, or his designee, shall have the

power to administer oaths and subpoena witnesses and the production of books, records, and other evidence relative to the issues involved.

(3) *Amendments to claims.* A claimant may amend the claim at any time before the Chief, FSD, issues an initial determination.

(4) *Criminal penalty for fraudulent claims.* Any person who files a fraudulent claim is subject to prosecution under 18 U.S.C. sections 287 and 1001, each of which, upon conviction, imposes a penalty of not more than a \$10,000 fine and 5 years' imprisonment, or both.

[47 FR 49600, Nov. 1, 1982, as amended at 61 FR 6322, Feb. 20, 1996]

§ 296.7 Burden of proof and presumption of causation.

(a) *Burden of proof.* The claimant has the burden to establish, by a preponderance of the evidence, all facts necessary to qualify his claim, including:

(1) The identity or nature of the item which caused the damage or loss; and

(2) That the item is associated with oil and gas exploration, development, or production activities on the Outer Continental Shelf.

(b) *Presumption of causation.* Notwithstanding the above, damages or losses are presumed to be caused by items associated with oil and gas exploration, development, or production activities on the OCS if the claimant establishes that:

(1) The claimant's commercial fishing vessel was being used for commercial fishing and was located in an area affected by OCS oil and gas exploration, development, or production activities;

(2) A report on the location of the obstruction which caused such damage or loss, and the nature of such damage or loss, was made within fifteen days after the date on which the vessel first returned to a port after discovering such damage;

(3) There was no record on the most recent nautical charts issued by the National Ocean Survey, NOAA, or in any weekly Notice to Mariners issued by the Defense Mapping Agency Hydrographic/Topographic Center, in effect at least 15 days before the date the

damage or loss occurred, then an obstruction existed in the immediate vicinity where the damage or loss occurred. In the case of damages caused by a pipeline, the presumption will be available regardless of whether the pipeline was recorded on charts or in the Notice to Mariners; and

(4) There was no proper surface marker or lighted buoy attached, or closely anchored, to such obstruction.

(c) *Geographic exclusion from presumption of causation.* Damage or loss occurring within a one-quarter mile radius of obstructions recorded on charts or in a Notice to Mariners, or properly marked, is presumed to involve the recorded or marked obstruction.

§ 296.8 Amount of award.

(a) *Actual damages.* The award for damaged fishing gear will be the lesser of the gear's repair cost or replacement cost. The award for lost fishing gear will be the gear's replacement cost.

(b) *Consequential damages.* An award may also include compensation for any damage or loss (except personal injury) that is incurred as a consequence of the fishing gear damage or loss.

(c) *Resulting economic loss.* An award may also include 50 percent of the resulting economic loss from damage to or loss of fishing vessels and gear.

(d) *Attorney, CPA, consultant fees.* An award may also include compensation for reasonable fees paid by the claimant to an attorney, CPA, or other consultant for the preparation or prosecution of a claim.

(e) *Negligence of claimant.* (1) An award will be reduced to the extent that the loss or damage was caused by the negligence or fault of the claimant. (For example, a claimant who sustained \$10,000 in damages and whose negligence or fault was found to be responsible for 40% of the damage would receive \$6,000 in compensation. If the same claimant were responsible for 99% of the negligence or fault that caused the damage, the claimant would receive \$100 in compensation).

(2) Negligence of the owner or operator of the fishing vessel or gear will reduce crewmember awards to the same extent that it reduces an award to the vessel's owner or operator.

(f) *Insurance proceeds.* An award will be reduced by the amount the claimant has, or reasonably would have, received under a commercial policy of full hull and machinery and protection and indemnity insurance, whether or not such insurance was in effect at the time the casualty occurred.

[47 FR 49600, Nov. 1, 1982, as amended at 50 FR 13796, Apr. 8, 1985]

§ 296.9 Initial determination.

The Chief, FSD will make an initial determination on a claim within 60 days after the day on which the claim is accepted for filing. The initial determination will state:

(a) If the claim is disapproved, the reason for disapproval, or

(b) If the claim is approved, the amount of compensation and the basis on which the amount was determined.

§ 296.10 Agency review.

(a) Within 30 days after the Chief, FSD, issues an initial determination, the claimant, or any other interested person who submitted evidence relating to the initial determination, may ask the Assistant Administrator, NMFS, or his designee, for a review of the initial determination.

(b) The petitioner may submit written or oral evidence within 30 days of filing the petition for review.

§ 296.11 Final determination.

(a) If a petition for review of an initial determination is filed within 30 days after the date the Chief, FSD, issues an initial determination, the Assistant Administrator, NMFS, or his designee will conduct a review of the initial determination, and will issue a final determination no later than 60 days after receipt of the request for review of the initial determination.

(b) If a petition for review of an initial determination is not filed within 30 days after the day on which the Chief, FSD, issues an initial determination, the initial determination will become a final determination.

§ 296.12 Payment of costs.

(a) *By person denying responsibility for damage.* Any person who is notified by the Interior Department and fails to

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respond or denies responsibility for the damages claimed will pay the costs of the proceedings if such person is subsequently found to be responsible for the damage claimed.

(b) *By the claimant.* Any claimant who files a claim will pay the cost of the proceedings if such person is subsequently found to be responsible for the damage claimed.

(c) *By person denying responsibility for damage and the claimant.* If more than one party is found to have responsibility for the damage claimed, then the cost of the proceedings will be apportioned between them.

§ 296.13 Payment of award for claim.

(a) Upon an initial determination, the Chief, Financial Services Division, shall immediately disburse the claim awarded if the claimant signed as part of his/her application a statement agreeing to repay all or any part of the award if the award should for any reason be subsequently reduced.

(b) [Reserved]

[61 FR 6322, Feb. 20, 1996]

§ 296.14 Subrogation.

(a) The claim application will contain a subrogation statement signed by

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the claimant as a condition of payment of the claim which:

(1) Assigns to the Fund the claimant's rights against third parties; and

(2) Provides that the claimant will assist the Fund in any reasonable way to pursue those rights.

(b) Collection of subrogated rights. If a reasonable chance of successful collection exists, NMFS will refer any subrogated rights to the Justice Department for collection.

(c) Any moneys recovered through subrogation shall be deposited into the Fund.

[47 FR 49600, Nov. 1, 1982, as amended at 61 FR 6323, Feb. 20, 1996]

§ 296.15 Judicial review.

Any claimant or other person who is aggrieved by a final determination may, no later than 30 days after the determination, seek judicial review of the determination in the United States District Court for such judicial district as may be mutually agreeable to the parties concerned or, if no agreement can be reached, in the United States District Court for the judicial district in which the claimant's home port is located.