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FEDERAL REGISTER

Vol. 77 Monday,
No. 112 June 11, 2012

Pages 34179–34780

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

5 CFR Chapter LXXXIII

5 Part 9301

RIN 3460–AA00

Freedom of Information Act and Privacy Act Procedures

AGENCY: Special Inspector General for Afghanistan Reconstruction.

ACTION: Final rule.

SUMMARY: The Special Inspector General for Afghanistan Reconstruction is issuing a final rule, revising its regulations establishing procedures for the public to obtain information from the Special Inspector General for Afghanistan Reconstruction under the Freedom of Information Act (FOIA) and the Privacy Act of 1974. These procedures will facilitate public interaction with SIGAR.

DATES: This final rule is effective June 11, 2012.

FOR FURTHER INFORMATION CONTACT: Kate Gastner, Public Information Manager, at (703) 545–5993, email: *mary.k.gastner.civ@mail.mil*.

SUPPLEMENTARY INFORMATION:

I. Background

On January 28, 2008, the President signed into law the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), which created the Special Inspector General for Afghanistan Reconstruction (SIGAR). In order to establish procedures to facilitate public interaction with SIGAR, the agency is issuing final regulations under the FOIA and the Privacy Act.

II. The Final Rule

This final rule establishes procedures for SIGAR necessary to implement the FOIA (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). The provisions of this subpart shall apply to all components of SIGAR.

The FOIA provides for the disclosure of agency records and information to the public, unless that information is exempted under delineated statutory exemptions under the FOIA. The Privacy Act serves to safeguard public interest in informational privacy by delineating the duties and responsibilities of federal agencies that collect, store, and disseminate personal information about individuals. The procedures established here are intended to ensure that SIGAR fully satisfies its responsibility to the public to disclose agency information while simultaneously safeguarding individual privacy.

The Privacy Act serves to balance the Government's need to maintain information about individuals with the rights of individuals to be protected against unwarranted invasions of their privacy stemming from federal agencies' collection, maintenance, use, and disclosure of personal information about them. Agencies are required to issue regulations outlining the agency's rules and procedures for implementation of the Privacy Act and its provisions within the agency. This includes procedures on how individuals may request access to information about themselves, request amendment or correction of those records, and request an accounting of disclosures of their records by SIGAR.

III. Procedural Requirements

These regulations establish procedures under the FOIA and the Privacy Act to facilitate the interaction of the public with SIGAR. SIGAR's policy of disclosure follows the Presidential Memorandum of January 21, 2009, ''Transparency and Openness,'' 74 FR 4685, and the Attorney General's March 19, 2009 FOIA policy guidance, advising Federal agencies to apply a presumption of disclosure in FOIA decision making. This Final Rule parallels the procedures currently used by other agencies to implement the FOIA and the Privacy Act. SIGAR has determined that good cause exists to publish these regulations as a final rule. These rules establish procedures to facilitate SIGAR's interactions with the public and the public's right to gain access to information about SIGAR and about themselves that SIGAR maintains. The absence of Privacy Act regulations could impair the confidentiality and privacy rights of those who submit sensitive information to SIGAR as well as the ability of SIGAR to use that information to carry out its statutory mission. SIGAR has determined that this rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply. It has been determined that this rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

Analysis of Public Comments and Final Rule

SIGAR received two comment letters in response to the Interim final rule for SIGAR's FOIA and Privacy Act Regulations (77 FR 15555, March 16, 2012), one from the federal FOIA ombudsman, and one from a nonprofit research and advocacy organization. The commenters raised several issues regarding the interim final rule, generally seeking clarification of procedures and the expansion of online disclosures.

Regarding section 9301.1, the federal FOIA ombudsman requested SIGAR add language clarifying the intersection between FOIA and the Privacy Act. SIGAR believes this clarification is useful to the public and SIGAR will adopt the suggested language proposed by the ombudsman.

Regarding section 9301.4, the federal FOIA ombudsman requested SIGAR clarify language regarding types of information withheld in response to a FOIA request, suggesting SIGAR provide a description of its records rather than track the statutory language of the FOIA exemptions. SIGAR will eliminate the sentence describing types of information withheld to eliminate confusion. Regarding Attorney General Holder's FOIA Memorandum, SIGAR's regulations reflect the essence of the memo to make discretionary releases under FOIA. SIGAR is mindful of its obligation under the memorandum.

Regarding section 9301.6(b), the federal FOIA ombudsman suggested that the FOIA does not require requesters to indicate that his or her request is a

''FOIA Request'' or a ''Request for Records.'' SIGAR agrees this is not included in the statue, however indicating the type of request, but labeling the request ''FOIA request,'' moves the request through SIGAR's mail system expeditiously. Moreover, the use of ''should'' indicates that the language is directory, not mandatory. Accordingly, SIGAR does not concur with the comments for subsection (b).

Regarding section 9301.6(c)(i), the federal FOIA ombudsman requested SIGAR clarifying that when SIGAR grants a request and provides appeal rights, the requester may appeal the adequacy of the search. SIGAR will add the language ''to grant the request, either in-full or in-part'' to clarify.

Regarding section 9301.6(c)(ii), the federal FOIA ombudsman requested SIGAR provide the requester with a brief description of the information SIGAR is withholding if it is possible without revealing exempt information. They also suggest SIGAR specifically address the new requirements in 5 U.S.C. 552 (b) that agencies shall (1) indicate, if technically feasible, the amount of information deleted and the exemption under which the deletion is made at the place in the record where the deletion is made, and (2) indicate the exemption under which a deletion is made on the released portion of the record, unless including that indication would harm an interest protected by the exemption.

SIGAR agrees with the recommendation and will include the language in this section a requirement for providing brief description of withheld information when possible. SIGAR will also include the language above in subsection c(ii).

They also suggest SIGAR includes that in its acknowledgment letters, SIGAR will provide an individualized tracking number and an estimated date of completion. That suggestion is accordance with FOIA, 5 U.S.C. 552(a)(7)(A) and (B)(ii). They also suggest including a brief description of the subject of the request in the acknowledgment letter. This would help requesters as well as the agency keep track of multiple pending requests. SIGAR agrees with this comment and will add language regarding tracking numbers, estimated dates of completion, and descriptions of records to 9301.6c.

They also suggest adding a new subpart to this section to address SIGAR's referral and consultation procedures. In regard to referrals, SIGAR include in its procedures that it will notify requesters in writing of a referral, including the name of the agency to which the request has been referred and the part of the request that has been referred, and provide the requester with a point of contact within the receiving agency to whom the requester can speak regarding the referral. SIGAR will add a new subsection c(iii) to address SIGAR's referral and consultation procedures.

Regarding section 9301.6(d)(1), the federal FOIA ombudsman requested that SIGAR use the word ''should'' instead of ''shall'' in the last sentence of this section. SIGAR agrees with the suggested change.

Regarding section 9301.6(d)(2), the federal FOIA ombudsman requested SIGAR revise the first sentence of this section by deleting the word ''ordinarily.'' SIGAR agrees and will remove.

They also suggests that SIGAR add a new subpart to this section to include language in accordance with the 2007 amendments to FOIA (5 U.S.C. 552 (h)(3)) that SIGAR will work with the Office of Government Information Services (OGIS) to resolve disputes between FOIA requesters and SIGAR as a non-exclusive alternative to litigation. OGIS suggests that SIGAR, in its final appeal determinations, alert FOIA requesters to OGIS's services, as recommended by the Department of Justice's Office of Information Policy. Specifically, they suggest the following language:

> A response to an appeal will advise the requester that the 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. A requester may contact OGIS in any of the following ways: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740, Email: *ogis@nara.gov*, Telephone: 202–741–5770, Facsimile: 202–741–5769, Toll-free: 1–877–684–6448.

The nonprofit research and advocacy organization also requested that SIGAR's regulations include notifying requests of the services offered by the Office of Government Information Services (OGIS, including mediation as an alternative to litigation. SIGAR agrees with the suggested section and proposed language. SIGAR will amend its regulations and add subpart 9301.6c(3) for Mediation.

Regarding section 9301.7, the federal FOIA ombudsman requested adding several terms, including fee category and fee waiver, to the list of definitions.

> Fee category means one of the three categories that agencies place requesters in for the purpose of determining whether a requester will be charged fees for search, review and duplication.
>
> Fee waiver means the waiver or reduction of processing fees if a requester can demonstrate that certain statutory standards are satisfied.

SIGAR agrees with the suggested additions. Regarding section 9301.8, the federal FOIA ombudsman requested SIGAR rework the language to reflect statutory language found in 5 U.S.C. 552(a)(6)(A)(I) to describe the tolling process for agencies. SIGAR will remove the unclear language, but the intent of the language in this section was not to incorporate 5 U.S.C. 552 (a)(6)(A)(ii)(I).

They also suggested SIGAR provide requesters with an estimated amount of fees, including a breakdown of the fees for search, review and/or duplication. SIGAR will add language reflecting the concerns above.

Regarding section 9301.10, the federal FOIA ombudsman requested SIGAR insert a time frame associated with deciding if multiple requests should be aggregated. SIGAR will include language regarding time frames.

Regarding section 9301.11, the federal FOIA ombudsman requested SIGAR add a new subpart to this section to include the waiver of fees generally ''as a matter of administrative discretion.'' SIGAR will include the language suggested.

The nonprofit research and advocacy organization requested that SIGAR adopt a policy to (a) proactively disclose information to the greatest extent possible and (b) post online responses to all FOIA requests, excluding those made jointly under the Privacy Act.

SIGAR agrees and will add language to 9301.4 to include proactive disclosure. SIGAR is currently researching how the agency can implement more online posting of FOIA responses.

List of Subjects in 5 CFR Part 9301

Administrative practice and procedure, Freedom of information, Privacy.

Accordingly, the interim rule amending 5 CFR Chapter LXXXIII part 9301 which was published at 77 FR 15555 on March 16, 2012, is adopted as a final rule with the following change:

TITLE 5—ADMINISTRATIVE PERSONNEL

CHAPTER LXXXIII—SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

■ 1. Part 9301 is revised to read as follows:

PART 9301—DISCLOSURE OF RECORDS AND INFORMATION

Sec.

Subpart A—Freedom of Information Act

Production or Disclosure of Materials or Information

9301.1 In general.
9301.2 Authority and functions.
9301.3 Organization.
9301.4 Availability of records.
9301.5 Accessing records without request.
9301.6 Requesting records.
9301.7 Definitions.
9301.8 Fees in general.
9301.9 Fees for categories of requesters.
9301.10 Other charges.
9301.11 Payment and waiver.

Subpart B—Privacy Act

9301.12 Purpose and scope.
9301.13 Rules for determining if an individual is the subject of a record.
9301.14 Requests for access.
9301.15 Access to the accounting of disclosures from records.
9301.16 Requests for copies of records.
9301.17 Requests to amend records.
9301.18 Request for review.
9301.19 Schedule of fees.

Subpart A—Freedom of Information Act

Authority: 5 U.S.C. 552; Pub. L. No. 110–175, 121 Stat. 2524 (2007); 5 U.S.C. 301 and 552; Exec. Order 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; Exec. Order No. 13392, 70 FR 75373–75377, 3 CFR, 2006 Comp., pp. 216–200.

Procedures for Disclosure of Records Under the Freedom of Information Act

§ 9301.1 In general.

This information is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. This subpart should be read in conjunction with the FOIA.

§ 9301.2 Authority and functions.

Section 1229 of the National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181, established the Special Inspector General for Afghanistan Reconstruction (SIGAR). SIGAR's mission under Sections 1229 and 842 of Public Law 110–181, is to provide independent oversight of the treatment, handling, and expenditure of funds appropriated or otherwise made available for the reconstruction of Afghanistan; detect and deter fraud, waste, and abuse of U.S. funds; and promote actions to increase program economy, efficiency, and effectiveness.

§ 9301.3 Organization.

SIGAR maintains its headquarters in Arlington, Virginia, and field offices in Kabul and elsewhere in Afghanistan.

Procedures

§ 9301.4 Availability of records.

SIGAR's publicly accessible records are available through SIGAR's Electronic Reading Room on its Web site. SIGAR also provides records to individual requesters in response to FOIA requests. SIGAR generally withholds predecisional, deliberative documents, investigatory materials and sensitive policy documents under 5 U.S.C. 552(b).

§ 9301.5 Accessing records without request.

Certain SIGAR records, including the agency's Quarterly Report, audit reports, testimony, oversight plans, press releases and other public issuances, are available electronically from SIGAR's homepage at *http://www.sigar.mil*. SIGAR encourages requesters to visit its Web site before making a request for records under § 9301.6.

§ 9301.6 Requesting records.

(a) *Written requests required.* For records not available as described under § 9301.5, requesters wishing to obtain information from SIGAR should submit a written request to SIGAR's FOIA Officer. Requests should be addressed to FOIA Officer, Office of the Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202. As there may be delays in mail delivery, it is advisable to send the request via facsimile to (703) 601–3804 or by email to *sigar.pentagon.gen-coun.mbx.foia@mail.mil.*

(b) *Contents of requests.* Requests should be as specific as possible and should reasonably specify the records sought so that the records can be located with a reasonable amount of effort. The request should identify the desired record or describe it, and include information such as the date, title or name, author, recipient, and subject matter of the record, where possible. The request should also include a statement of the requester's willingness to pay fees, or request a fee waiver. The words ''FOIA REQUEST'' or ''REQUEST FOR RECORDS'' should be clearly marked on the cover letter, letter, and/or envelope.

(c) *Response to requests*—(1) *Processing.* The FOIA Officer shall determine within 20 days (except Saturdays, Sundays, and federal holidays) after receiving a request for records, whether it is appropriate to grant or deny the request. The 20-day period may be tolled once if the FOIA Officer requests information from the requestor or if additional time is necessary to clarify issues with the requestor regarding a fee assessment.

(i) *Request granted.* If the FOIA Officer decides to grant the request, the FOIA Officer shall promptly provide the requester written notice of the decision. The FOIA Officer shall include with the notice both the requested records and a copy of the decision. The notice shall also describe the procedure for filing an appeal.

(ii) *Request denied.* If the FOIA Officer denies the request, in full or part, the FOIA Officer shall provide the requester written notice of the denial together with the approximate number of pages of information withheld and the exemption under which the information was withheld. The notice shall also describe the procedure for filing an appeal.

(2)(i) *Expedited processing.* At the time a requester submits an initial request for records the requester may ask the FOIA Officer in writing to expedite processing of the request. The request for expedited processing must be accompanied by a written statement, which shall state that it is true and correct to the best of the requester's knowledge and belief, explaining why expedited processing is warranted. The FOIA Officer shall generally grant requests for expedited processing of requests for records, and appeals of denials under paragraph (d)(2) of this section, whenever the FOIA Officer determines that:

(A) Failure to obtain the requested records on an expedited basis could reasonably pose a threat to a person's life or physical safety; or

(B) With respect to a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public about Government activity that is the specific subject of the FOIA request.

(ii) The FOIA Officer shall ordinarily decide within ten calendar days after receiving a request for expedited processing whether to grant it and shall notify the requester of the decision. If the FOIA Officer grants a request for expedited processing, the FOIA Officer shall process the request as soon as practicable. If the FOIA Officer denies a request for expedited processing, SIGAR shall act expeditiously on any appeal of that denial.

(3) Extension for unusual circumstances—(i) In general. If the FOIA Officer determines that unusual circumstances exist, the FOIA Officer may extend for no more than ten days (except Saturdays, Sundays and Federal holidays) the time limits described in paragraph (c)(1) of this section by providing written notice of the

extension to the requester. The FOIA Officer shall include with the notice a brief statement of the reason for the extension and the date the FOIA Officer expects to make the determination.

(ii) *Additional procedures.* The FOIA Officer shall provide written notice to the requester if the FOIA Officer decides that the determination cannot be made within the time limit described in paragraph (c)(3)(i) of this section. The notice shall afford the requester an opportunity to limit the scope of the request to the extent necessary for the FOIA Officer to process it within that time limit or an opportunity to arrange a longer period for processing the request.

(d) *Appeals*—(1) *Initiating appeals.* Requesters not satisfied with the FOIA Officer's written decision may request SIGAR's FOIA Appellate Authority to review the decision. Appeals must be delivered in writing within 60 days of the date of the decision and shall be addressed to the FOIA Appellate Authority, Office of Privacy, Records & Disclosure, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202. As there may be delays in mail delivery, it is advisable to FAX appeals to (703) 601–3804 or email to *sigar.pentagon.gen-coun.mbx.foia@mail.mil.* An appeal shall include a statement specifying the records that are the subject of the appeal and explaining why the Appellate Authority should grant the appeal.

(2) *Appeal decisions.* The Appellate Authority shall ordinarily decide the appeal within 20 days (except Saturdays, Sundays and federal holidays) from the date it receives the appeal. If the Appellate Authority denies the appeal in full or part, the Appellate Authority shall promptly notify the requester in writing of the Appellate Authority's decision and the provisions for judicial review. If the Appellate Authority grants the appeal, the FOIA Officer shall notify the requester in writing and shall make available to the requester copies of the releasable records once the requester pays any fees that SIGAR assesses under §§ 9301.8 through 9301.10.

Costs

§ 9301.7 Definitions.

For purposes of this subpart:

(a) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers the requester's or other person's commercial, trade, or profit interests.

(b) *Direct costs* means those costs incurred in searching for and duplicating (and, in the case of commercial use requests, reviewing) documents to respond to a FOIA request. Direct costs include, for example, salaries of employees who perform the work and costs of conducting large-scale computer searches.

(c) *Duplicate* means to copy records to respond to a FOIA request. Copies can take the form of paper, audio-visual materials, or electronic records, among others.

(d) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, that operates a program or programs of scholarly research.

(e) *Non-commercial scientific institution* means an institution that is not operated on a commercial basis and that operates solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(f) *Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

(g) *Review* means to examine a record to determine whether any portion of the record may be withheld and to process a record for disclosure, including by redacting it.

(h) *Search for* means look for and retrieve records covered by a FOIA request, including by looking page-by-page or line-by-line to identify responsive material within individual records.

§ 9301.8 Fees in general.

SIGAR shall charge reasonable fees that recoup the full allowable direct costs it incurs in responding to FOIA requests. SIGAR may assess charges for time spent searching for records even if SIGAR is unable to locate the records or if the records are located and determined to be exempt from disclosure. In general, SIGAR shall apply the following fee schedule, subject to §§ 9301.9 through 9301.11:

(a) *Manual searches.* Time devoted to manual searches shall be charged on the basis of the salary of the employee(s) conducting the search (basic hourly rate(s) of pay for the employee).

(b) *Electronic searches.* Fees shall reflect the direct cost of conducting the search. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for and printing records responsive to the FOIA request and operator/programmer salary attributable to the search.

(c) *Record reviews.* Time devoted to reviewing records shall be charged on the same basis as under paragraph (a) of this section, but shall only be applicable to the initial review of records located in response to commercial use requests.

(d) *Duplication.* Fees for copying paper records or for printing electronic records shall be assessed at a rate of $.10 per page. For other types of copies such as disks or audio visual tapes, SIGAR shall charge the direct cost of producing the document(s). If duplication charges are expected to exceed $25, the FOIA Officer shall notify the requester, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. If a requester wishes to limit costs, the FOIA Officer shall provide the requester an opportunity to reformulate the request in order to reduce costs. If the requester reformulates a request, it shall be considered a new request and the 20-day period described in § 9301.6(c)(1) shall be deemed to begin when the FOIA Officer receives the revised request.

(e) *Advance payments required.* (1) The FOIA Officer may require a requester to make an advance deposit of up to the amount of the entire anticipated fee before the FOIA Officer begins to process the request if:

(i) The FOIA Officer estimates that the fee will exceed $250; or

(2) The requester has previously failed to pay a fee in a timely fashion.

(ii) When the FOIA Officer requires a requester to make an advance payment, the 20-day period described in § 9301.6(c)(1) shall begin when the FOIA Officer receives the payment.

(f) *No assessment of fee.* SIGAR shall not charge a fee to any requester if:

(1) The cost of collecting the fee would be equal to or greater than the fee itself; or

(2) SIGAR fails to comply with any time limit under the FOIA for responding to a request for records where no unusual or exceptional circumstances apply.

§ 9301.9 Fees for categories of requesters.

SIGAR shall assess fees for certain categories of requesters as follows:

(a) *Commercial use requesters.* In responding to commercial use requests, SIGAR shall assess fees that recover the full direct costs of searching for, reviewing and duplicating records.

(b) *Educational institutions.* SIGAR shall provide records to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To qualify for inclusion in this fee category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scholarly research, not an individual goal.

(c) *Representatives of the news media.* SIGAR shall provide records to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages.

(d) *All other requesters.* SIGAR shall charge requesters who do not fall within paragraphs (a) through (c) of this section fees that recover the full direct cost of searching for and duplicating records, excluding charges for the first 100 pages of reproduction and the first two hours of search time.

§ 9301.10 Other charges.

SIGAR may apply other charges, including the following:

(a) *Special charges.* SIGAR shall recover the full cost of providing special services, such as sending records by an overnight delivery service, to the extent that SIGAR elects to provide them.

(b) *Interest charges.* SIGAR may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the FOIA Officer sent the billing. Interest shall be charged at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing.

(c) *Aggregating requests.* When the FOIA Officer reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of avoiding fees, the FOIA Officer shall aggregate those requests and charge accordingly.

§ 9301.11 Payment and waiver.

(a) *Remittances.* Payment shall be made in the form of check or money order made payable to the Treasury of the United States. At the time the FOIA Officer notifies a requestor of the applicable fees, the Officer shall inform the requestor of where to send the payment.

(b) *Waiver.* SIGAR may waive all or part of any fee provided for in §§ 9301.8 through 9301.9 when the FOIA Officer deems that disclosure of the information is in the general public's interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. Requesters may request a waiver in their initial FOIA request letter. Requests for a fee waiver should explain how the information requested contributes to the public's understanding of the operations or activities of the government. In determining whether a fee should be waived, the FOIA Officer may consider whether:

(1) The subject matter specifically concerns identifiable operations or activities of the government;

(2) The information is already in the public domain;

(3) Disclosure of the information would contribute to the understanding of the public-at-large as opposed to a narrow segment of the population;

(4) Disclosure of the information would significantly enhance the public's understanding of the subject matter;

(5) Disclosure of the information would further a commercial interest of the requester; and

(6) The public's interest is greater than any commercial interest of the requester.

Subpart B—Privacy Act

Authority: Privacy Act of 1974, Pub. L. No. 93–579, 88 Stat. 1896, codified at 5 U.S.C. 552a(f) (agency rules).

§ 9301.12 Purpose and scope.

The purpose of this subpart is to provide certain safeguards for an individual against the invasion of his or her personal privacy by SIGAR. This subpart is promulgated pursuant to the requirements applicable to all federal agencies contained in 5 U.S.C. 552a(f).

§ 9301.13 Rules for determining if an individual is the subject of a record.

(a) Individuals desiring to know if a specific system of records maintained by SIGAR contains a record pertaining to them should address their inquiries to the Privacy Officer, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202. As there may be delays in mail delivery, it is advisable to send the request via facsimile to (703) 601–3804 or by email to *sigar.pentagon.gen-coun.mbx.privacy@mail.mil.* The written inquiry should contain a specific reference to the system of records maintained by the SIGAR listed in the SIGAR Notice of Systems of Records, or it should describe the type of record in sufficient detail reasonably to identify the system of records. Notice of SIGAR systems of records subject to the Privacy Act will be published in the **Federal Register**, posted on the SIGAR public facing Web site, and copies of the notices will be available upon request to the Privacy Officer when so published. A compilation of such notices will also be made and published by the Office of the Federal Register, in accordance with 5 U.S.C. 552a(f).

(b) At a minimum, the request should contain sufficient identifying information to allow SIGAR to determine if there is a record pertaining to the individual making the request in a particular system of records. In instances when the requester's identification is insufficient to ensure disclosure to the individual to whom the information pertains in view of the sensitivity of the information, SIGAR reserves the right to solicit from the person requesting access to a record additional identifying information.

(c) Ordinarily the person requesting will be informed whether the named system of records contains a record pertaining to such person within 10 days of such a request (excluding Saturdays, Sundays and legal Federal holidays). Such a response will also contain or reference the procedures which must be followed by the individual making the request in order to gain access to the record.

(d) Whenever a response cannot be made within the 10 days, the Privacy Officer will inform the person making the request the reasons for the delay and the date on which a response may be anticipated.

§ 9301.14 Requests for access.

(a) *Requirement for written requests.* An individual desiring to gain access to a record pertaining to him or her in a system of records maintained by SIGAR must submit his or her request in writing in accordance with the procedures set forth in paragraph (b) of this section. Individuals employed by the SIGAR may make their requests on a regularly scheduled workday (Monday through Friday, excluding legal Federal holidays) between the hours of 9:00 a.m. and 5:30 p.m. Such requests for access by individuals employed by SIGAR need not be made in writing.

(b) *Procedures*—(1) *Content of the request.* The request for access to a record in a system of records shall be addressed to the Privacy Officer at the address cited above, and shall name the system of records or contain a concise description of such system of records. The request should state that the request is pursuant to the Privacy Act of 1974. In the absence of such a statement, if the request is for a record pertaining to the person requesting access which is maintained by SIGAR in a system of records, the request will be considered under both the Privacy Act of 1974 and the Freedom of Information Act, depending on which would allow

greater access to the records requested. The request should contain necessary information to verify the identity of the person requesting access (see paragraph (b)(2)(vi) of this section). In addition, such person should include any other information which may assist in the rapid identification of the record for which access is being requested (e.g., maiden name, dates of employment, etc.) as well as any other identifying information contained in and required by the SIGAR Notice of Systems of Records.

(i) If the request for access follows a prior request under § 9301.1, the same identifying information need not be included in the request for access if a reference is made to that prior correspondence or a copy of the SIGAR response to that request is attached. If the individual specifically desires a copy of the record, the request should so specify under § 9301.4.

(ii) [Reserved]

(2) *SIGAR action on request.* A request for access will ordinarily be answered within 10 days, except when the Privacy Officer determines otherwise, in which case the person making the request will be informed of the reasons for the delay and an estimated date by which the request will be answered. When the request can be answered within 10 days, it shall include the following:

(i) A statement that there is a record as requested or a statement that there is not a record in the systems of records maintained by SIGAR;

(ii) A statement as to whether access will be granted only by providing a copy of the record through the mail; or the address of the location and the date and time at which the record may be examined. In the event the person requesting access is unable to meet the specified date and time, alternative arrangements may be made with the Privacy Officer;

(iii) A statement, when appropriate, that examination in person will be the sole means of granting access only when the Privacy Officer has determined that it would not unduly impede the right of access of the person making the request.

(iv) The amount of fees charged, if any (see §§ 9301.6 and 9301.7). (Fees are applicable only to requests for copies);

(v) The name, title, and telephone number of the SIGAR official having operational control over the record; and

(vi) The documentation required by SIGAR to verify the identity of the person making the request. At a minimum, SIGAR verification standards include the following:

(A) *Current or former SIGAR Employees.* Current or former SIGAR employees requesting access to a record pertaining to them in a system of records maintained by SIGAR may, in addition to the other requirements of this section, and at the sole discretion of the official having operational control over the record, have his or her identity verified by visual observation. If the current or former SIGAR employee cannot be so identified by the official having operational control over the records, identification documentation will be required. The employee's common access card, annuitant identification, driver licenses, or the ''employee copy'' of any official personnel document in the record are examples of acceptable identification validation.

(B) *Other than current or former SIGAR employees.* Individuals other than current or former SIGAR employees requesting access to a record pertaining to them in a system of records maintained by SIGAR must produce identification documentation of the type described in paragraph (b)(2)(vi)(A) of this section, prior to being granted access. The extent of the identification documentation required will depend on the type of record for which access is requested. In most cases, identification verification will be accomplished by the presentation of two forms of identification. Any additional requirements will be specified in the system of records notices published by SIGAR pursuant to 5 U.S.C. 552a(e)(4).

(C) *Access granted by mail.* For records to be made accessible by mail, the Privacy Officer shall, to the extent possible, establish identity by a comparison of signatures in situations where the data in the record is not so sensitive that unauthorized access could cause harm or embarrassment to the individual to whom they pertain. No identification documentation will be required for the disclosure to a person making a request of information under the FOIA, 5 U.S.C. 552. When, in the opinion of the Privacy Officer the granting of access through the mail could reasonably be expected to result in harm or embarrassment if disclosed to a person other than the individual to whom the record pertains, a notarized statement of identity or some similar assurance of identity will be required.

(D) *Unavailability of identification documentation.* If an individual is unable to produce adequate identification documentation the individual will be required to sign a statement asserting identity and acknowledging that knowingly or willfully seeking or obtaining access to records about another person under false pretenses may result in a fine of up to $5,000. In addition, depending upon the sensitivity of the records to which access is sought, the official having operational control over the records may require such further reasonable assurances as may be considered appropriate; e.g., statements of other individuals who can attest to the identity of the person making the request.

(E) *Access by the parent of a minor, or by a legal guardian.* A parent of a minor, upon presenting suitable personal identification, may act on behalf of the minor to gain access to any record pertaining to the minor maintained by SIGAR in a system of records. A legal guardian may similarly act on behalf of an individual declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, upon the presentation of the documents authorizing the legal guardian to so act, and upon suitable personal identification of the guardian.

(F) Granting access when accompanied by another individual. When an individual requesting access to his or her record in a system of records maintained by SIGAR wishes to be accompanied by another individual during the course of the examination of the record, the individual making the request shall submit to the official having operational control of the record, a signed statement authorizing that person access to the record.

(G) *Granting access to individuals other than the subject of the record.* SIGAR will not disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, pursuant to the Privacy Act of 1974.

(H) *Denial of access for inadequate identification documentation.* If the official having operation control over the records in a system of records maintained by SIGAR determines that an individual seeking access has not provided sufficient identification documentation to permit access, the official shall consult with the Privacy Officer prior to finally denying the individual access.

(vii) *Medical records.* The records in a system of records which are medical records shall be disclosed to the individual to whom they pertain in such manner and following such procedures as the Privacy Officer shall direct. When SIGAR in consultation with a physician, determines that the disclosure of medical information could have an adverse effect upon the individual to

whom it pertains, SIGAR may transmit such information to a physician named by the individual.

(viii) *Exceptions.* Nothing in this section shall be construed to entitle an individual the right to access to any information compiled in reasonable anticipation of litigation.

§ 9301.15 Access to the accounting of disclosures from records.

Rules governing the granting of access to the accounting of disclosures are the same as those for granting access to the records (including verification of identity) outlined in § 9301.14.

§ 9301.16 Requests for copies of records.

Rules governing requests for copies of records are the same as those for the granting of access to the records (including verification of identity) outlined in § 9301.14. (See also § 9301.19 for rules regarding fees.)

§ 9301.17 Requests to amend records.

(a) *Requirement for written requests.* Individuals desiring to amend a record that pertains to them in a system of records maintained by SIGAR must submit their request in writing in accordance with the procedures set forth herein unless this requirement is waived by the official having responsibility for the system of records. Records not subject to the Privacy Act of 1974 will not be amended in accordance with these provisions. However, individuals who believe that such records are inaccurate may bring this to the attention of SIGAR.

(b) *Procedures.* (1)(i) The request to amend a record in a system of records shall be addressed to the Privacy Officer. Included in the request shall be the name of the system and a brief description of the record proposed for amendment. In the event the request to amend the record is the result of the individual's having gained access to the record in accordance with the provisions concerning access to records as set forth in this paragraph, copies of previous correspondence between the individual and SIGAR will serve in lieu of a separate description of the record.

(ii) When the individual's identity has been previously verified pursuant to § 9301.14(b)(2)(vi), further verification of identity is not required as long as the communication does not suggest that a need for verification has reappeared. If the individual's identity has not been previously verified, SIGAR may require identification validation as described in § 9301.14(b)(2)(vi). Individuals desiring assistance in the preparation of a request to amend a record should contact the Privacy Officer at the address cited above.

(iii) The exact portion of the record the individual seeks to have amended should be clearly indicated. If possible, the desired proposed alternative language should also be set forth, or at a minimum, the facts which the individual believes are not accurate, relevant, timely, or complete should be set forth with such particularity as to permit SIGAR to understand the basis for the request and to make an appropriate amendment to the record.

(iv) The request should also set forth the reasons why the individual believes his record is not accurate, relevant, timely, or complete. In order to avoid the retention by SIGAR of personal information merely to permit verification of records, the burden of persuading SIGAR to amend a record will be upon the individual. The individual must furnish sufficient facts or credible documentation to persuade the official in charge of the system of the inaccuracy, irrelevancy, untimeliness, or incompleteness of the record.

(2) *SIGAR action on the request.* To the extent possible, a decision upon a request to amend a record will be made within 10 days, excluding Saturdays, Sundays and legal Federal holidays. In the event a decision cannot be made within this time frame, the individual making the request will be informed within 10 days of the expected date for a decision. The decision upon a request for amendment will include the following:

(i) The decision of SIGAR whether to grant in whole, or deny any part of the request to amend the record.

(ii) The reasons for the determination for any portion of the request which is denied.

(iii) The name and address of the official with whom an appeal of the denial may be lodged.

(iv) The name and address of the official designated to assist, as necessary, and upon request of, the individual making the request in the preparation of the appeal.

(v) A description of the review of the appeal within SIGAR (see § 9301.18).

(vi) A description of any other procedures which may be required of the individual in order to process the appeal.

§ 9301.18 Request for review.

(a) Individuals wishing to request a review of the decision by SIGAR with regard to an initial request to amend a record in accordance with the provisions of § 9301.17, should submit the request for review in writing and, to the extent possible, include the information specified in § 9301.17(a). Individuals desiring assistance in the preparation of their request for review should contact the Privacy Officer at the address provided herein.

(b) The request for review should contain a brief description of the record involved or in lieu thereof, copies of the correspondence from SIGAR in which the request to amend was denied, and also should state the reasons why the individual believes that the disputed information should be amended. The request for review should make reference to the information furnished by the individual in support of his claim and the reasons, as required by § 9301.17, set forth by SIGAR in its decision denying the amendment. In order to avoid the unnecessary retention of personal information, SIGAR reserves the right to dispose of the material concerning the request to amend a record if no request for review in accordance with this section is received by SIGAR within 180 days of the mailing by SIGAR of its decision upon an initial request. A request for review received after the 180 day period may, at the discretion of the Privacy Officer, be treated as an initial request to amend a record.

(c) The request for review should be addressed to the Appellate Authority, Office of the Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202. As there may be delays in mail delivery, it is advisable to send the request via facsimile to (703) 601–3804 or by email to *sigar.pentagon.gen-coun.mbx.privacy@mail.mil.*

(d) Final determinations on requests for reviews within SIGAR will be made by the Appellate Authority. Additional information may be requested by the Appellate Authority from the person requesting a review if necessary to make a determination.

(e) The Appellate Authority will inform the person making the request in writing of the decision on the request for review within 30 days (excluding Saturdays, Sundays and legal Federal holidays) from the date of receipt by SIGAR of the individual's request for review, unless the Appellate Authority extends the 30 day period for good cause. The extension and the reasons therefore will be sent by SIGAR to the individual within the initial 30 day period. Included in the notice of a decision being reviewed, if the decision does not grant in full the request for review, will be a description of the steps the individual may take to obtain judicial review of such a decision, and a statement that the individual may file a concise statement with SIGAR setting forth the individual's reasons for his disagreement with the decision upon

the request for review. The SIGAR Privacy Officer has the authority to determine the ''conciseness'' of the statement, taking into account the scope of the disagreement and the complexity of the issues. Upon the filing of a proper concise statement by the individual, any subsequent disclosure of the information in dispute will have the information in dispute clearly noted and a copy of the concise statement furnished, setting forth its reasons for not making the requested changes, if SIGAR chooses to file such a statement. A copy of the individual's statement, and if it chooses, SIGAR's statement, will be sent to any prior transferee of the disputed information who is listed on the accounting required by 5 U.S.C. 552a(c).

§ 9301.19 Schedule of fees.

(a) *Prohibitions against charging fees.* Individuals will not be charged for:

(1) The search and review of the record;

(2) Any copies of the record produced as a necessary part of the process of making the record available for access; or

(3) Any copies of the requested record when it has been determined that access can only be accomplished by providing a copy of the record through the mail.

(b) *Waiver.* The Privacy Officer may, at no charge, provide copies of a record if it is determined that the production of the copies is in the interest of the Government.

(c) *Fee schedule and method of payment.* Fees will be charged as provided below except as provided in paragraphs (a) and (b) of this section.

(1) Duplication of records. Records will be duplicated at a rate of $.10 per page for copying of 4 pages or more. There is no charge for copying fewer pages.

(2) Where it is anticipated that the fees chargeable under this section will amount to more than $25, the person making the request shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed $25, an advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the person requesting to consult with the Privacy Officer in order to reformulate the request in a manner which will reduce the fees, yet still meet the needs of individuals making the request.

(3) Fees must be paid in full prior to issuance of requested copies. In the event the person requesting is in arrears for previous requests copies will not be provided for any subsequent request until the arrears have been paid in full.

(4) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed or delivered to the Privacy Officer, Office of the Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202.

(5) A receipt for fees paid will be given upon request.

Dated: June 6, 2012.

Steven J. Trent,

Acting Inspector General, Special Inspector General for Afghanistan Reconstruction.

[FR Doc. 2012–14135 Filed 6–8–12; 8:45 am]

BILLING CODE 3710–L9–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 614

[Docket No. NRCS–2011–0017]

RIN 0578–AA59

Appeal Procedures

AGENCY: Natural Resources Conservation Service.

ACTION: Final rule.

SUMMARY: The Natural Resources Conservation Service (NRCS), United States Department of Agriculture (USDA) issues this final rule amending NRCS' informal appeal procedures as required by Title II of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (the 1994 Act). This final rule amends regulations promulgated by the interim final rule published on May 16, 2006, and also includes new language to address comments and make procedural and structural changes in relation to 6 years of implementation.

DATES: *Effective Date:* This rule is effective on June 11, 2012.

FOR FURTHER INFORMATION CONTACT: Ed Nilson, Appeals and Equitable Relief Specialist, Compliance Division, Department of Agriculture, Natural Resources Conservation Service, 5601 Sunnyside Avenue, Room 1–1104–A, Beltsville, Maryland 20705. Telephone: (301) 504–1673; Email: *ed.nilson@wdc.usda.gov*.

Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Regulatory Certifications

Executive Order 12866

This final rule has been determined to not be significant under Executive Order 12866 and will not be reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this final rule because this action will not have a significant economic impact on small entities.

Environmental Analysis

The environmental impacts of this final rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., and NRCS has concluded that promulgation of this final rule is categorically excluded from NEPA's requirement from an environmental impact analysis under USDA regulations, 7 CFR 1b.3(a)(1). Actions implemented under this final rule fall in the category of policy development, planning, and implementation which relates to routine activities and similar administrative functions, and no circumstances exist that would require preparation of an environmental assessment or environmental impact statement.

Civil Rights Impact Analysis

A review of the NRCS Appeal Procedures final rule has been directed towards the identification of actual or potential civil rights issues. The review reveals no factors indicating the NRCS Appeal Procedures would have a disproportionate adverse civil rights impact for producers who are minorities, women, or persons with disabilities.

Outreach and communication strategies are in place to ensure all program participants will be provided the same information to allow them to make informed decisions regarding the use of their lands that will affect their participation in USDA programs. The NRCS Appeal Procedures provisions apply to all persons equally regardless of race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, or disability, or because all or part of an individual's income is derived from any public assistance program.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to the Paperwork Act.

Executive Order 13132

This final rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. NRCS has determined this final rule conforms with the Federalism principles set forth in the Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities on the various levels of government.

Executive Order 13175

Executive Order 13175 requires agencies to consult and collaborate with Indian Tribes if policies or actions have substantial direct effects on Tribes. NRCS has determined that this regulation does not have a substantial direct effect on Indian Tribes since these regulatory provisions do not impose unreimbursed compliance costs or preempt Tribal law. As a result, consultation is not required.

Unfunded Mandates Reform Act of 1995

This action does not compel the expenditure of $100 million or more in any one year (adjusted for inflation) by any State, local, or Tribal governments, or anyone in the private sector. Therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Title III, section 304, requires that for each proposed major regulation with a primary purpose to regulate issues of human health, human safety, or the environment, USDA is to publish an analysis of the risks addressed by the regulation and the costs and benefits of the regulation. NRCS has determined this final rule is not a proposed major regulation; therefore, a risk assessment does not apply to this final rule.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

This final rule is neither major nor significant; therefore, it is not subject to the SBREFA 60-day requirement. Accordingly, this final rule is effective with publication in the **Federal Register**.

Federal Assistance Programs

This final rule has a potential impact on all programs listed in the Catalog of Federal Domestic Assistance in the Agency Program Index under the Farm Service Agency (FSA) and NRCS. Other assistance programs are also affected.

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which require government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. This final rule requires that a program participant must make a written request for an appeal for a program administered by NRCS.

Background and Purpose

On May 16, 2006, the Chief of NRCS published an Appeal Procedures interim final rule (71 FR 28239). Section 275 of the 1994 Act, 7 U.S.C. 6995, requires USDA agencies to hold informal hearings, at the request of a participant, for the decisions they render. NRCS interprets the ''informal hearing'' requirement to require the agency to provide opportunity for an informal appeal at the agency level. This final rule amends the interim final rule published May 16, 2006 (71 FR 28239), in response to comments received from the public and during implementation.

NRCS' goal in promulgating the informal appeal procedures is to facilitate, at the agency level, the resolution of disputes arising from adverse technical determinations and program decisions. NRCS' informal appeal process establishes several means through which participants can obtain a review by NRCS personnel who have detailed knowledge of agricultural conservation operations as well as expertise in farm and ranch management. After a decision rendered by NRCS becomes final, participants may pursue the appeals processes set forth at 7 CFR parts 11, 614, and 780, as appropriate.

Public Comment

NRCS received 13 responses with a total of 64 comments from the public in response to the request for comments in the 2006 interim final rule. Of the 13 responses, one response was received from an individual, two responses were from Federal Government employees, eight responses were from state government employees, and two responses were received from non-profit organizations. In addition, NRCS received an additional 18 responses or suggestions from agency personnel and program participants since the 2006 rule was published.

NRCS received 82 comments on the following sections of the 2006 rule: Rule in general—1 comment; 7 CFR 614.2, Definitions—6 comments; 7 CFR 614.4, Decisions not subject to informal appeal procedures—5 comments; 7 CFR 614.6, Agency records and decision notices—2 comments; 7 CFR 614.7, Preliminary technical determinations—11 comments; 7 CFR 614.8, Final technical determinations—10 comments; 7 CFR 614.9, Program decisions—1 comment; 7 CFR 614.10, Appeals before the Farm Service Agency county committee—2 comments; 7 CFR 614.11, Mediation—38 comments; 7 CFR 614.12, Transcripts—1 comment; 7 CFR 614.13, Appealability review—2 comments; 7 CFR 614.14, Computation of time—1 comment; 7 CFR 614.15, Implementation of final agency decisions and 7 CFR 614.16, Participation of third parties in NRCS proceedings—1 comment. A majority of the responses received regarded mediation, with the majority of these comments coming from the eight-state governmental responses.

Section by Section Analysis

NRCS received one comment commending the agency for including helpful clarification and better organizing the rule, and one comment from an individual that was not relevant to this rulemaking regarding agri-business mediators. NRCS is making changes to the substance of the existing informal appeals regulation in order to address the comments received since the 2006 rulemaking, as well as to improve the informal appeals process. The following text describes the changes made to each section of the rule.

Section 614.1—General

This section remains unchanged and explains the scope and purpose of the agency's informal appeal regulation. No comments were received on this section.

Section 614.2—Definitions

NRCS received a total of six comments on this section. One comment suggested NRCS clarify who may accept an appeal request and the date an appeal request is considered filed within the definition of ''appeal.'' NRCS finds merit in this comment and has amended the current definition to reflect that an appeal request is perfected and considered filed when the appropriate accepting official receives

the participant's request within the 30 days from the date that the participant receives the adverse decision. The term ''agency record'' has also been amended to refine this definition and help improve the agency's decisionmaking and documentation process.

NRCS also added several definitions in response to three comments received during rule implementation. Specifically, definitions have been added for the terms ''adverse decision'' and ''agency exhibit'' to provide a more precise definition on these terms.

In response to two comments regarding confusion as to the difference between technical determinations and program decisions, NRCS agrees there is some confusion and has amended the terms ''Preliminary technical determination,'' ''Final technical determination,'' and ''Program decision.'' The new definitions limit preliminary and final technical determinations to those decisions issued pursuant to the Highly Erodible Land and Wetland Conservation (HELC/WC) provisions solely. ''Program decision'' is to be issued to include any type of decision for programs other than those issued pursuant to HELC/WC provisions.

Section 614.3—Applicability of Appeal Procedures

No comments were received on this section. This section sets forth the types of decisions that are appealable. In addition, since promulgation of the 2006 interim rule, new programs have been authorized under Title XII of the Food Security Act of 1985, as amended, and some programs have been repealed. This section amends the current regulation by updating the listing of programs to which these informal appeals apply. NRCS amends this section to ensure the person requesting an appeal is the USDA program participant affected by the adverse decision by adding subparagraph (c)(2) to 7 CFR 614.3(c).

Section 614.4—Decisions Not Subject to Appeal

This section provides information on issues that are not considered to be appealable under this final rule. NRCS received a total of five comments.

One commenter stated that denial of appeal rights to the National Appeals Division (NAD) when NRCS denies a participant's request for equitable relief is not in accordance with the statutory construction. NRCS agrees a denial of equitable relief is one example of an agency adverse decision which is subject to NAD's jurisdiction pursuant to 7 U.S.C. 6991(1). This is addressed in section 614.9(e) of the final rule which states that NRCS will provide notice of appeal rights to NAD on program decisions when equitable relief is denied by the Chief or the State Conservationist.

Four other comments received over the implementation period are regarding the interpretation of what constitutes a decision adverse to the individual participant. NRCS is therefore amending these appeal procedures to clarify specifically those issues that cannot be challenged through the appeals process.

NRCS amends this section to clarify that decisions made by the Office of the General Counsel concerning real property title standards issued by the Attorney General are not appealable to NAD.

Section 614.5—Reservation of Authority

No comments were received on this section. Under this section, the Chief of NRCS or the FSA Administrator as the Vice President of the Commodity Credit Corporation (CCC), and the Secretary reserve the authority to determine, at any time, any question arising under programs within their respective authority or from reversing or modifying any program decision or technical determination made by NRCS or the CCC.

Section 614.6—Agency Records and Decision Notices

This section sets forth the agency's policy that all decisions under this part must be based upon an agency record. A total of two comments were received. The agency record is an administrative record comprised of all the documentation, including reports, maps, photographs, correspondence, surveys, etc., reviewed when making his or her decision. In determining which documents are included in the agency record, the decisionmaker will include all documents relevant to the adverse decision. The agency is responsible for compiling the agency record and maintaining it for each decision that has been issued. A copy of the agency record is available to the participant upon request. The completeness of the agency record, as well as the consideration of all relevant facts, is critical to an effective appeal process. Consequently, development of the agency record is being emphasized in this rulemaking.

This section also sets forth agency policy on decision notices including content, deadlines, and methods of delivery. Specifically, NRCS policy requires that an adverse program decision or technical determination must: (1) Be in writing, (2) set forth its factual basis, and (3) explain its application of relevant statue, regulations, and policy. NRCS must send written notice of its decision to the participant via certified mail, return receipt requested, or any other type of delivery notification mailing or delivery including hand delivery, within 10 working days of rendering a technical determination or program decision. This conforms to section 6994 of the 1994 Act, which requires that the Secretary provide written notice of an adverse decision and notice of appeal rights no later than 10 working days after the decision is made.

Two commenters provided that NRCS may not limit the applicability or availability of the NAD formal appeals procedures as implied in the regulation at 7 CFR 614.6(b)(3). NRCS has removed the ''if applicable'' from this provision.

Section 614.7—Preliminary Technical Determinations

NRCS received a total of 11 comments on this section, with 2 comments on the preliminary technical determinations more applicable to the actual definition of a preliminary technical determination. NRCS addresses these comments by amending the regulation at 7 CFR 614.7(a) by adding a statement that these types of determination are limited to those rendered under the HELC/WC provisions. Currently, technical determinations include any matter of a technical nature for any type of program regardless of the statutory authority. These comments suggested that it is confusing to include technical determinations for decisions other than those issued under the HELC/WC provisions. NRCS agrees and is changing the regulations to eliminate this confusion. Preliminary technical determinations will include only those initial written technical determinations provided to a USDA program participant authorized under HELC/WC provisions.

Two additional comments were received concerning the option for mediation provided at 7 CFR 614.7(a)(2) regarding the responsibility for notifying the participant of remaining appeals options following mediation of the preliminary technical determination. The rule currently allows a program participant who has been issued a preliminary technical determination to request either mediation or reconsideration with a field visit. If mediation has been selected as the first option, and there is still time remaining to request a field visit, the participant may request this preliminary technical review option. If the participant comes to a mediated agreement during this

period, then the rule at 7 CFR 614.11(d) requires waiver of all further appeal rights as to that determination or portion of that determination. If mediation is unsuccessful, and time for any further preliminary appeal options has expired, NRCS will issue a final technical determination that is appealable to either NAD under 7 CFR part 11, or to the FSA county committee as provided at 7 CFR 614.8 and 614.10. Therefore, no changes will be made to this section.

NRCS received one comment on 7 CFR 614.7(a)(2) contending the requirement that a participant request mediation through the designated NRCS official as provided in 7 CFR 614.11(a) is burdensome. This comment will be addressed in 7 CFR 614.11(a) rather than in 7 CFR 614.7(a)(2).

Five other comments requested clarification of whether a field visit is the only option, or if another location for review of the preliminary technical determination is available. Currently, the regulation has been interpreted in a limiting manner that the review must be completed in the field because of the actual wording in the rule. NRCS has reviewed the original basis for this review and reconsideration, and finds that the goal of review and reconsideration as stated in the 2006 rule at 71 FR 28241 is to ''improve the accuracy of technical determinations and sufficiency of the administrative record upon which the technical determination is based.'' Further, a field visit is useful to develop additional information that was not previously known to NRCS or the participant or to accept what has been found. Therefore, NRCS has determined the field visit to the actual site on the farm is not required to have a successful reconsideration, and is amending 7 CFR 614.7(a)(1) to include either a field visit or office visit are options available to the participant. Regardless of how the reconsideration is conducted, the main purpose is to ''afford an adequate informal appeal process at the agency level where such expertise resides [and] is essential to effective program administration.'' (See 71 FR 28239, 28243 (May 16, 2006).)

NRCS is also providing additional clarification of 7 CFR 614.7(b) by separating the four major actions needed to complete preliminary technical determination reconsideration.

One commenter stated that NRCS has no authority to require waiver of statutory rights to the informal review as is currently provided at 7 CFR 614.7(d). This provision does not require any participant to waive his or her rights to an informal review. Rather, the regulation allows participants to immediately proceed to their informal appeal rights of the FSA county committee under 7 CFR 614.8(b)(1) or exercise their formal appeal rights to NAD under 7 CFR 614.8(b)(2). The provision is one of ''expedited finality'' and has been provided for participants who want a final technical determination so that they may begin required actions as determined by NRCS (e.g., wetland restoration) or to proceed with another type of action requiring a final HELC/WC determination, such as a Farm Credit loan.

Section 614.8—Final Technical Determinations

This section sets forth the informal appeal procedures available when preliminary technical determinations become final. NRCS received a total of 10 comments on this section, with one comment claiming that NRCS precluded a participant's rights to appeal to NAD and 9 comments claiming that the process with technical determinations and program decisions is confusing. NRCS agrees and is amending 7 CFR 614.7 and 614.8 to be limited to appeals of HELC/WC technical determinations and 7 CFR 614.9 limited to programs administered by NRCS to reduce any further confusion.

Section 614.9—Program Decisions

NRCS received one comment recommending that NRCS clarify the difference between an appeal of a technical determination and an appeal of a program decision. This section sets forth the informal appeals procedures available for program decisions. Currently, program decisions are decisions issued for conservation programs administered by NRCS that relate to the administration of a conservation program. Unlike HELC/WC technical determinations, program decisions are issued as ''final decisions'' meaning they may be appealed directly to NAD, or if the program decision is made under a Title XII program, additionally, but before NAD, to the FSA county committee.

NRCS agrees and has made changes to this section, as well as in 7 CFR 614.7 and 614.8.

Section 614.10—Appeals Before the Farm Service Agency County Committee

This section provides that any adverse decision issued under a Title XII program may be appealed to the FSA county committee. NRCS received two comments on this section. NRCS received one comment concerning whether a participant must exercise the informal appeal before the FSA county committee prior to requesting a formal appeal from NAD. As provided in the preamble to the 2006 interim final rule (71 FR 28239, 28242), and pursuant to 7 U.S.C. 6995 and 7 CFR part 780, a participant may seek an optional informal review by an FSA county committee of an NRCS final technical determination or program decision made for a conservation program authorized under Title XII. A participant may also choose to forego the FSA county committee appeal option and appeal directly to NAD under 7 CFR part 11.

The other commenter recommended the rule should better explain the FSA county committee's jurisdictional limitations. The authorizing statute, 7 U.S.C. 6932(d)(2)(A), provides that the county committee must provide a method for obtaining review of NRCS adverse technical and program decisions. Both NRCS and FSA appeal procedures explain the requirements that the FSA county committee must adhere to when hearing informal appeals of NRCS adverse decisions. Both agencies have issued further instructions in the applicable policy manual or handbook. NRCS does not believe an amendment to this section is necessary.

Section 614.11—Mediation

NRCS received 38 comments on 7 CFR 614.11, as follows: 7 CFR 614.11(a)—5 comments; 7 CFR 614.11(c)—7 comments; 7 CFR 614.11(e)—10 comments; and 7 CFR 614.11(g)—16 comments.

Five of the comments suggested that participants should be able to request mediation from the mediation service provider rather than through the designated NRCS official as provided in 7 CFR 614.11(a). NRCS agrees and is changing this to the official designated in the decision notice.

Five commenters suggested that NRCS adopt the language in the NAD Rule at 7 CFR 11.5(c)(1) with regard to stays of time on an appeal for mediation in 7 CFR 614.11(c). NRCS agrees and is changing the rule in this section to reflect that a request for mediation stops the running of the 30-day timeframe for requesting an appeal. Two comments suggested that NRCS amend the amount of time allowed for mediation of technical determinations when a field review might be required. NRCS agrees a field visit might require additional time, and this is addressed by allowing the parties to agree to an extension of the 30-day timeframe.

Ten comments were received on 7 CFR 614.10(e) stating a concern that there is no clear guidance on finalizing

the mediation settlement agreement where the NRCS representative did not have authority to bind NRCS. The comments provided that NRCS should vest their representative with authority to bind the agency in mediation or have the person that can make those decisions present at the mediation or in contact by telephone. The commenters believed that otherwise, due process was being denied. NRCS believes the current rule provides sufficient safeguards, and no changes will be made to this paragraph.

NRCS received a total of 16 comments on 7 CFR 614.11(g). Of the 16, 8 did not agree with use of any materials other than the mediation agreement in administrative or judicial proceedings. Six comments were concerned about the use of notes or summary reports by one party or the other in the absence of both parties during or after the mediation session with parties not named in the agreement to mediate, and two comments were received concerning whether parties to mediation may participate in further administrative or judicial proceedings.

The commenters suggest that the use of notes or summaries developed during mediation should not be allowed because there is a risk of distorting or taking those notes and summaries out of context. The commenters suggested that NRCS amend this section to include the following: ''during mediation, if any party needs to contact an advisor not present, the party will secure the consent of the other party(s) before communicating with that person not present.'' NRCS does not agree, as the agency must have the ability to contact officials not present at the mediation, and making such contact does not affect the confidentiality of the mediation process.

Except where the rule provides for NRCS to discuss settlement issues with another USDA official should the NRCS representative not have authority to decide an issue, NRCS finds the rule provides the appropriate confidentiality of the parties in the mediation process. In addition, 5 U.S.C. 574 limits both the disclosure and admissibility of such notes or summaries. Therefore, NRCS declines to amend the final rule.

Regarding the comments on whether any of the mediation participants can testify about or furnish documents of the mediation in administrative or judicial proceedings, NRCS is amending this section to clarify confidentiality expectations as they pertain to further administrative or judicial proceedings. It is noted, however, 5 U.S.C. 574 contains the limitations (with exceptions) to such testimony or provision of documents.

Section 614.12—Transcripts

This provision was added in the 2006 interim final rule. One comment suggested that banning recordings of the proceedings by the participant is wrong and does not comport with the NAD rules. NRCS disagrees with this comment. The State Conservationist's hearing is an informal appeal hearing, not a formal administrative hearing held by NAD. In order to maintain the informal atmosphere and to encourage full participation by both the participant and NRCS, the recording of an informal proceeding is a disincentive to open communication and resolution of the appeal.

Section 614.13—Appealability Review

This section was added in the 2006 interim final rule that would allow the State Conservationist to make decisions regarding Appealability. Two comments were received. NRCS is amending this section to provide that if the agency decides the decision at issue is not appealable, then NRCS must provide review rights to the participant under the NAD rules at 7 CFR 11.6(a).

Section 614.14—Computation of Time

This section was added in the 2006 interim final rule. NRCS received one comment regarding time remaining after mediation to request further appeal action. This comment was more adequately addressed under 7 CFR 614.11.

Section 614.15—Implementation of Final NAD Determinations

This section was added in the 2006 interim final rule. NRCS received one comment stating that NRCS cannot delay implementation of a NAD determination beyond the 30 days specified in the statute. NRCS' comments on this section in the preamble were not intended to delay implementation of a final administrative decision. As provided in the rule, NRCS will implement all final NAD administrative determinations within 30 days after the decision becomes final. NRCS is amending this section to add new requirements on implementation of NAD final administrative appeal decisions as provided in section 14009 of the Food Conservation and Energy Act of 2008 (Farm Bill). This amendment to the appeals reporting requires the agency to provide a biannual report to the Chairman of the Senate Committee on Agriculture, Nutrition and Forestry and the Chairman of the House Committee on Agriculture on the status of implementing final NAD determinations along with reasons why a decision has not been implemented. The agency must publish these reports on the agency's Web site and keep the site updated with actions taken on any determinations not implemented within the required timeframe.

Section 614.16—Participation of Third Parties in NRCS Proceedings

This is a new section added in the 2006 interim final rule. The only comment received pertains to a correction of a typographical error that repeats the word party in the first sentence. NRCS will correct the error in this final rule.

Section 614.17—Judicial Review

This section was added in the 2006 interim final rule. No comments were received on this section and no changes have been made.

List of Subjects in 7 CFR Part 614

Administrative practice and procedure, Agriculture, Agriculture commodities, Alternative Dispute Resolution, Appeal, Conservation programs, Contracts, Decisions, Determinations, Easements, Farmers, Farmland, Mediation, Soil conservation.

■ For the reasons stated in the preamble, 7 CFR part 614 is revised to read as follows:

PART 614—NRCS APPEAL PROCEDURES

Sec.

614.1 General.
614.2 Definitions.
614.3 Decisions subject to informal appeal procedures.
614.4 Decisions not subject to informal appeal procedures.
614.5 Reservation of authority.
614.6 Agency records and decision notices.
614.7 Preliminary technical determinations.
614.8 Final technical determinations.
614.9 Program decisions.
614.10 Appeals before the Farm Service Agency county committee.
614.11 Mediation.
614.12 Transcripts.
614.13 Appealability review.
614.14 Computation of time.
614.15 Implementation of final NAD decisions.
614.16 Participation of third parties in NRCS proceedings.
614.17 Judicial review.

Authority: 5 U.S.C. 301; 7 U.S.C. 6932 and 6995; and 16 U.S.C. 3822(a).

§ 614.1 General.

This part sets forth the informal appeal procedures under which a participant may appeal adverse

technical determinations or program decisions made by officials of the Natural Resources Conservation Service (NRCS), an agency under the Department of Agriculture (USDA). These regulations reflect NRCS policy to resolve at the agency level, to the greatest extent possible, disputes arising from adverse technical determinations and program decisions made by NRCS. Once a decision is rendered final by NRCS, participants may appeal to the National Appeals Division (NAD) as provided for under 7 CFR part 11, or to the Farm Service Agency (FSA) county committee pursuant to 7 CFR part 780 for decisions rendered under Title XII of the Food Security Act of 1985, as amended, 16 U.S.C. 3801 et seq. (Title XII).

§ 614.2 Definitions.

The following definitions are applicable for the purposes of this part:

Adverse decision means the final technical determination or the program decision issued by NRCS that is adverse to the individual participant and not a matter of general applicability.

Agency means NRCS and its employees.

Agency exhibit means those documents or materials that are used during the hearing to further explain, differentiate, or distinguish a point, concept, or criteria in an appeal but that were not those materials or documents that the agency relied upon in making the adverse decision. Agency exhibits are labeled alphabetically A, B, C, etc., with total pages in each exhibit numbered.

Agency record means all documents and materials, including documents submitted by the participant and those generated by NRCS, which the agency relies upon and bases its program decision or technical determination. The agency record will include all documents relevant to the adverse decision. NRCS maintains the agency record and will, upon request or appeal, make available a copy of the agency record for a specific adverse decision to the participant(s) involved in the dispute. Agency record documents are labeled numerically 1, 2, 3, etc., in the lower right hand of the document.

Appeal means a written request by a participant asking for review (including mediation) of an adverse NRCS technical determination or program decision under this part. An appeal must set out the reason(s) for appeal and include any supporting documentation. An appeal is considered filed when the participant's request has been received by the accepting official as indicated in the adverse decision notice.

Chief means the Chief of NRCS or his or her designee.

Commodity Credit Corporation means a wholly owned government corporation within USDA.

Conservation district means any district or unit of State or local government developed under State law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a conservation district, soil and water conservation district, natural resource district, conservation committee, or similar name.

County committee means a FSA county or area committee established in accordance with section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)).

Designated conservationist means the NRCS official, usually the district conservationist, whom the State Conservationist designates to be responsible for the program or compliance requirement to which this part is applicable.

Final technical determination means a preliminary technical determination issued under the Highly Erodible Land and Wetland Conservation (HELC/WC) provisions found in 7 CFR part 12 that have become final, and thus, appealable under sections 8 or 10 of this final rule.

Hearing means an informal appeal proceeding, either before the NRCS State Conservationist or the FSA county committee that affords a participant opportunity to present testimony and documentary evidence to show why an adverse program decision is in error and why the adverse decision should be reversed.

Mediation means a process in which a neutral third party, the mediator, meets with the disputing parties, usually the participant and the agency. Through mediation, the parties have the opportunity to work together with the assistance of the mediator to: Improve communications, understand the relevant issues, develop and explore alternatives, and reach a mutually satisfactory resolution.

Mediator means a neutral third party who serves as an impartial facilitator between two or more parties to assist them in resolving a dispute. The mediator does not take sides or render decisions on the merits of the dispute. The mediator assists the parties in identifying areas of agreement and encourages the parties to explore potential options toward resolution.

Participant means any individual or entity who has applied for, or whose right to participate in or receive, a payment or other benefit in accordance with any program administered by NRCS to which the regulations in this part apply and is affected by a decision of NRCS. The term does not include those individuals or entities excluded in the definition of participant published at 7 CFR 11.1.

Preliminary technical determination means the initial written decision by NRCS for a technical matter under HELC/WC which has not become final under this part.

Program decision means a written decision by NRCS concerning eligibility for program benefits, program administration, or program implementation and based upon applicable regulations and program instructions and not a technical determination made solely for the HELC/WC provisions. Program decisions may include technical matters relative to the specific conservation program. These are final decisions upon receipt by the program participant.

Qualified mediator means a mediator who is accredited under State law in those States that have a mediation program certified by USDA pursuant to 7 CFR part 785, or in those States that do not have a mediation program certified by USDA, an individual who has attended a minimum of 40 hours of core mediator knowledge and skills training and, to remain in a qualified mediator status, completes a minimum of 20 hours of additional training or education during each 2-year period. Such training or education must be approved by USDA, an accredited college or university, or one of the following organizations: State Bar, a State mediation association, a State approved mediation program, or a society of dispute resolution professionals.

Reconsideration means a subsequent consideration of a preliminary technical determination by the designated conservationist or the State Conservationist.

Secretary means the Secretary of Agriculture.

State Conservationist means the NRCS official, or his or her designee, in charge of NRCS operations within a State.

Title XII means Title XII of the Food Security Act of 1985, as amended, 16 U.S.C. 3801 et seq.

Verbatim transcript means the official, written record of proceedings of a hearing on a decision appealable under this part.

§ 614.3 Decisions subject to informal appeal procedures.

(a) This part applies to NRCS adverse program decisions and technical determinations made with respect to:

(1) Conservation programs and regulatory requirements authorized under Title XII, including:

(i) Conservation Security Program;

(ii) Conservation Stewardship Program;

(iii) Conservation Reserve Program and the Conservation Reserve Enhancement Program;

(iv) Environmental Quality Incentives Program, including the following:

(A) Agricultural Water Enhancement Program,

(B) Conservation Activity Plans,

(C) Colorado River Basin Salinity Control,

(D) Conservation Innovation Grants,

(E) Ground and Surface Water Conservation Program,

(F) Klamath Basin Program, and

(G) Organic Program Initiative;

(v) Farm and Ranch Land Protection Program;

(vi) Grassland Reserve Program;

(vii) Highly Erodible Land Conservation;

(viii) Wetland Conservation;

(ix) Wetlands Reserve Program and Wetlands Reserve Enhancement Program; and

(x) Wildlife Habitat Incentive Program.

(2) Non-Title XII conservation programs or provisions, including:

(i) Agriculture Management Assistance Program;

(ii) Emergency Watershed Protection Program including Flood Plain Easements;

(iii) Great Lakes Restoration Initiative;

(iv) Healthy Forest Reserve Program;

(v) Water Bank Program;

(vi) Watershed Protection and Flood Prevention Program; and

(3) Any other program to which this part is made applicable.

(b) With respect to matters identified in paragraph (a) of this section, participants may appeal adverse decisions concerning:

(1) Denial of participation in a program;

(2) Compliance with program requirements;

(3) Issuance of payments or other program benefits to a participant in a program;

(4) Technical determinations made under Title XII HELC/WC provisions;

(5) Technical determinations or program decisions that affect a participant's eligibility for USDA program benefits;

(6) The failure of an NRCS official issue a technical determination or program decision subject to this part (''failure to act''); and

(7) Incorrect application of general policies, statutory or regulatory requirements.

(c)(1) Only a participant directly affected by a program decision or a technical determination made by NRCS may invoke the informal appeal procedures contained in this part.

(2) In order for the appeal request to be effective, the participant must personally make a written request for appeal that is signed by the participant identified in paragraph (c)(1) no later than 30 days after receipt of the adverse decision.

(d) Appeals of adverse final technical determinations and program decisions subject to this part are also covered by the NAD rules of procedure, set forth at 7 CFR part 11, and by the FSA county committee appeals process, set forth at 7 CFR parts 11 and 780 for informal appeals of Title XII decisions.

§ 614.4 Decisions not subject to informal appeal procedures.

(a) Decisions that are not appealable under this part include:

(1) Any general program provision, program policy, or any statutory or regulatory requirement that is applicable to all similarly situated participants, such as:

(i) Program application ranking criteria;

(ii) Program application screening criteria;

(iii) Published soil surveys; or

(iv) Conservation practice technical standards included in the local field office technical guide or the electronic FOTG (eFOTG).

(2) Mathematical or scientific formulas established under a statute or program regulation and a program decision or technical determination based solely on the application of those formulas;

(3) Decisions made pursuant to statutory provisions or implementing regulations that expressly make agency program decisions or technical determinations final;

(4) Decisions that are based on technical information provided by another Federal or State agency, e.g., lists of endangered and threatened species;

(5) Corrections by NRCS of errors in data entered on program contracts, easement documents, loan agreements, and other program documents; or

(6) Decisions issued by the Office of the General Counsel, in the exercise of authority delegated to it by the Attorney General, concerning the application of real property title standards issued by the Attorney General.

(b) Complaints involving discrimination in program delivery are not appealable under this part and are handled under the existing USDA civil rights rules and regulations.

(c) Appeals related to contractual issues that are subject to the jurisdiction of the Civilian Board of Contract Appeals are not appealable under the procedures within this part.

(d) Where NRCS is unable to fund an application for program participation due to a lack of funds. The agency may not deny appeal of the underlying computations used to rank and prioritize the application.

§ 614.5 Reservation of authority.

The Secretary of Agriculture, Chief of NRCS, if applicable, or designee, reserves the right to make a determination at any time on any question arising under the programs covered under this regulation within their respective authority, including reversing or modifying in writing, with sufficient reason given therefore, any program decision or technical determination made by an NRCS official.

§ 614.6 Agency records and decision notices.

(a) All NRCS decisions under this part are based upon an agency record. NRCS will supplement the agency record, as appropriate, during the informal appeals process.

(b) NRCS notifies participants of the agency's preliminary and final technical determinations and program decisions through decision notices. By certified mail, return receipt requested, NRCS will send to the participant a decision notice within 10 working days of rendering a technical determination or program decision. In lieu of certified mail, NRCS may hand deliver notices to participants with written acknowledgment of delivery by the participant. Each decision notice contains the following:

(1) The factual basis for the technical determination or program;

(2) The regulatory, statutory, or policy basis for the technical determination or program decision; and

(3) Information regarding any informal appeal rights available under this part; the process for requesting such appeal; and the procedure for requesting further review before the FSA county committee pursuant to 7 CFR part 780 or NAD pursuant to 7 CFR part 11.

§ 614.7 Preliminary technical determinations.

(a) A preliminary technical determination is limited to those

determinations made pursuant to the HELC/WC provisions (16 U.S.C. 3801, et seq.) and becomes final 30 days after the participant receives the decision, unless the participant files an appeal with the appropriate NRCS official as indicated in the decision notice requesting:

(1) Reconsideration with a field visit, office visit, or other designated location meeting site in accordance with paragraphs (b) and (c) of this section; or

(2) Mediation as set forth in § 614.11.

(b)(1) If the participant requests reconsideration with a field visit, office visit, or other location visit, the designated conservationist, participant, and at the option of the conservation district, a district representative will make a field or office visit for the purpose of gathering additional information and discussing the facts relating to the preliminary technical determination. The participant may also provide any additional documentation to the designated conservationist.

(2) Within 15 days of the field or office visit, the designated conservationist, based upon the agency record as supplemented by the field visit and any participant submissions, will reconsider his or her preliminary technical determination.

(3) If the reconsidered determination is no longer adverse to the participant, the designated conservationist will issue the reconsidered determination as a final technical determination.

(4) If the preliminary technical determination remains adverse, then the designated conservationist will forward the revised decision and agency record to the State Conservationist for a final determination pursuant to paragraph (c) of this section, unless further appeal is waived in writing by the participant in accordance with paragraph (d) of this section.

(c) The State Conservationist will issue a final technical determination to the participant as soon as is practicable after receiving the reconsideration and agency record from the designated conservationist. The technical determination issued by the State Conservationist becomes a final NRCS technical determination upon receipt by the participant. Receipt triggers the running of the 30-day timeframe to appeal to NAD, or if applicable, to the FSA county committee.

(d) In order to address application needs or resource issues on the ground immediately (expedited finality), a participant may waive, in writing to the State Conservationist, the reconsideration rights stated in paragraph (a) of this section so that a preliminary technical decision becomes final before the expiration of the 30-day appeal period.

§ 614.8 Final technical determinations.

(a) Preliminary HELC/WC technical determinations become final and appealable:

(1) Thirty days after receipt of the preliminary technical decision by the participant unless the determination is appealed in a timely manner as provided for in this regulation.

(2) Thirty calendar days after the beginning of a mediation session if a mutual agreement has not been reached by the parties; or

(3) Upon receipt by the participant of the final technical determination issued on reconsideration as provided in § 614.7(c).

(b) The participant may appeal the final technical determination issued under the HELC/WC provisions to:

(1) The FSA county committee pursuant to 7 CFR part 780; or

(2) NAD pursuant to 7 CFR part 11.

§ 614.9 Program decisions.

(a) Program decisions are final upon receipt of the program decision notice by the participant. Program decisions include all decisions issued by NRCS for programs that NRCS administers separate from the HELC/WC provisions. The participant has the following options for appeal of the program decision:

(1) An informal hearing before NRCS as provided for in paragraph (b) through paragraph (d) of this section;

(2) Mediation as provided for in § 614.11;

(3) An informal hearing before the FSA county committee pursuant to 7 CFR part 780 if the program decision is made under Title XII; or

(4) A hearing before NAD pursuant to 7 CFR part 11.

(b) A program participant must file an appeal request for a hearing with the appropriate State Conservationist as indicated in the decision notice within 30 calendar days from the date the participant received the program decision.

(c) The State Conservationist may accept a hearing request that is untimely filed under paragraph (b) of this section if the State Conservationist determines that circumstances warrant such an action.

(d) The State Conservationist will hold a hearing no later than 30 days from the date the appeal request was received. The State Conservationist will issue a written final decision no later than 30 days from the close of the hearing.

(e) NRCS will provide notice of the right to appeal to NAD on program decisions when equitable relief is denied by the Chief or the State Conservationist.

§ 614.10 Appeals before the Farm Service Agency county committee.

(a) In accordance with 7 CFR part 780, a participant may appeal a final technical determination or a program decision to the FSA county committee for those decisions made under Title XII.

(b) When the FSA county committee hearing the appeal requests review the technical determination by the applicable State Conservationist prior to issuing their decision, the State Conservationist will:

(1) Designate an appropriate NRCS official to gather any additional information necessary for review of the technical determination;

(2) Obtain additional oral and documentary evidence from any party with personal or expert knowledge about the facts under review; and

(3) Conduct a field visit to review and obtain additional information concerning the technical determination.

(c) After the actions set forth in paragraphs (b)(1) through (3) of this section are completed, provide the FSA county committee with a written technical determination in the form required by § 614.6(b)(1) through (2) as well as a copy of the agency record.

§ 614.11 Mediation.

(a) A participant who wishes to pursue mediation must file a request for mediation under this part with the official designated in the decision notice no later than 30 days after the date on which the decision notice was received. Participants in mediation are normally required to pay fees established by the mediation program.

(b) A dispute will be meditated by a qualified mediator as defined at § 614.2(n).

(c) The parties will have 30 days from the date of the first mediation session to reach a settlement agreement. This date can be extended upon agreement of the parties. The mediator will notify the State Conservationist whether the parties have reached an agreement.

(d) Settlement agreement reached during, or as a result of, the mediation process must be in writing, signed by all parties to the mediation, and comply with the statutory and regulatory provisions and policies governing the program. In addition, the participant must waive all appeal and judicial rights as to the issues resolved by the settlement agreement.

(e) At the outset of mediation, the parties must agree to mediate in good

faith. NRCS demonstrates good faith in the mediation process by, among other things:

(1) Designating an NRCS representative in the mediation;

(2) Making pertinent records available for review and discussion during the mediation; and

(3) To the extent the NRCS representative does not have authority to bind the agency, directing the NRCS representative to forward, in a timely manner, any written agreement proposed in mediation to the appropriate NRCS official for consideration.

(f) *Mediator impartiality.* (1) No person may serve as mediator in an adverse program dispute who has previously served as an advocate or representative for any party in the mediation.

(2) No person serving as mediator in an adverse program dispute may thereafter serve as an advocate for a participant in any other proceeding arising from or related to the mediated dispute including, without limitation, representation of a mediation participant before an administrative appeals entity of USDA or any other Federal agency.

(g) *Confidentiality.* Mediation is a confidential process except for those limited exceptions permitted by the Administrative Dispute Resolution Act at 5 U.S.C. 574. As a condition of participation, the participants and any interested parties joining the mediation must agree to the confidentiality of the mediation process. The mediator will not testify in administrative or judicial proceedings concerning the issues discussed in mediation, nor submit any report or record of the mediation discussions, other than the mediation agreement or the mediation report, except as required by law.

§ 614.12 Transcripts.

(a) No recordings will be made of any informal hearing conducted under § 614.9. In order to obtain an official record of a hearing, a participant may obtain a verbatim transcript as provided in paragraph (b) of this section.

(b) Any party to an informal hearing appeal under § 614.9 may request that a verbatim transcript is made of the hearing proceedings and that such transcript is made the official record of the hearing. The party requesting a verbatim transcript must pay for the transcription service and provide a copy of the transcript to NRCS at no charge.

§ 614.13 Appealability review.

If NRCS states that a decision is not adverse to the individual participant, and thus, no right to appeal exists, NRCS will notify the participant that he may seek review of that determination from the NAD Director.

§ 614.14 Computation of time.

(a) The word ''days'' as used in this final rule means calendar days, unless specifically stated otherwise.

(b) Deadlines for any action under this part, including deadlines for filing and decisions which fall on a Saturday, Sunday, Federal holiday, or other day on which the relevant NRCS office is closed during normal business hours, will be extended to close of business the next working day.

§ 614.15 Implementation of final NAD determinations.

(a) No later than 30 days after a NAD determination becomes a final administrative decision of USDA, NRCS will implement the determination.

(b) Biannually, NRCS must file a report on the status of implementation of final administrative determinations in accordance with section 14009 of the 2008 Farm Bill.

§ 614.16 Participation of third parties in NRCS proceedings.

When an appeal is filed under this part, NRCS will notify any third party whose interests may be affected of the right to participate as an appellant in the appeal. If the third party declines to participate, then NRCS' decision will be binding as to that third party as if the party had participated. If a formal hearing is conducted by NAD, third party issues will be decided by NAD.

§ 614.17 Judicial review.

A participant must receive a final determination from NAD pursuant to 7 CFR part 11 prior to seeking judicial review in any U.S. District Court of competent jurisdiction.

Signed this 29th day of May 2012, in Washington, DC.

Dave White,

Vice President, Commodity Credit Corporation, and Chief, Natural Resources Conservation Service.

[FR Doc. 2012–14098 Filed 6–8–12; 8:45 am]

BILLING CODE 3410–16–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 71 and 73

RIN 3150–AG41

[NRC–1999–0005]

Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations that govern packaging and transportation of radioactive material and physical protection of plants and materials. Specifically, the amendments require licensees to provide advance notification to participating Federally-recognized Tribal governments regarding shipments of irradiated reactor fuel and certain nuclear wastes for any shipment that passes within or across their reservations. The rule extends to Tribal officials, his or her designee, and Tribal law enforcement personnel relief from fingerprinting requirements required for access to Safeguards Information (SGI). The participating Tribal government is required to protect the shipment information as SGI.

DATES: *Effective Date:* This final rule is effective on August 10, 2012.

Compliance Date: Compliance with the Tribal advance notification provisions of Title 10 of the *Code of Federal Regulations* (10 CFR) 71.97(c)(3) and 73.37(f) is required on June 11, 2013.

ADDRESSES: Please refer to Docket ID NRC–1999–0005 when contacting the NRC about the availability of information for this final rule. You may access information and comment submittals related to this final rule, which the NRC possesses and are publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–1999–0005.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at

1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–8126; email: *Merri.Horn@nrc.gov*.

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I. Background

Current NRC regulations in 10 CFR require licensees to inform State governors, or the governor's designee, of certain shipments of irradiated reactor fuel and certain nuclear waste passing through or across the boundary of their States. Section 73.37, ''Requirements for physical protection of irradiated reactor fuel in transit,'' requires licensees to provide advance notifications for shipments of irradiated reactor fuel in excess of 100 grams in net weight of irradiated fuel, exclusive of cladding or other structural or packaging material, which has a total external radiation dose rate in excess of 100 rems per hour at a distance of 3 feet from any accessible surface without intervening shielding. Section 71.97, ''Advance notification of shipment of irradiated reactor fuel and nuclear waste,'' requires licensees to provide advance notice for (1) shipments of irradiated reactor fuel in quantities less than that subject to § 73.37; and (2) certain licensed material that is required to be transported in Type B packaging and is being transported to a disposal facility or a collection point for transport to a disposal facility. The advance notification provisions apply if the quantity of licensed material in a single package exceeds the least of the following: (1) 3000 times the A_1 value of the radionuclides as specified in Appendix A, Table A–1 of 10 CFR Part 71, ''Packaging and Transportation of Radioactive Material,'' for special form radioactive material; (2) 3000 times the A_2 value of the radionuclides as specified in Appendix A, Table A–1 of 10 CFR Part 71, for normal form radioactive material; or (3) 1000 Terabequerel (TBq) (27,000 curies). Certain information provided for shipments of irradiated reactor fuel is considered to be SGI under the NRC regulations and must be protected under the requirements in § 73.21, ''Protection of Safeguards Information: Performance requirements,'' and § 73.22, ''Protection of Safeguards Information: Specific requirements.''

The NRC first developed these advance notification regulations in 1982 to comply with the NRC Authorization Act for Fiscal Year 1980. The NRC Authorization Act for Fiscal Year 1980 was enacted to deal with concerns expressed by States about their abilities to fulfill their responsibilities to protect public health and safety while waste shipments pass through their jurisdictions. Neither the Atomic Energy Act of 1954, as amended (AEA), nor the notification regulations required licensees to notify Native American Tribes of this type of shipment passing through their Tribal reservations. Tribal officials requested similar notification in the 1990s.

On December 21, 1999 (64 FR 71331), the NRC published an Advance Notice of Proposed Rulemaking (ANPR) to solicit stakeholder input on a possible rulemaking that would consider requiring advance notification to Native American Tribes of transportation of certain types of nuclear waste. Information was sought on minimizing the burden to licensees, identifying the location of Tribal reservations in relationship to shipment routes, and the sharing and protecting of SGI. A total of 44 comment letters were received. Thirty-six of the letters received were from Tribes and Tribal organizations; four letters were received from private citizens; and letters were received from a licensee, an industry association, a State agency, and a Federal agency. Virtually all the commenters favored providing advance notification to Tribal governments with some disagreement on the details of the implementation. Most commenters were in favor of providing Tribal governments the same advance notification that State governments receive regarding high-level radioactive waste shipments. Commenters encouraged the NRC to provide advance notification through more up-to-date means of communication, e.g., via the Internet. Tribal representatives and others encouraged the NRC to communicate directly with Tribal governments during the rulemaking process as well as when implementing procedures for advance notification. The comments received in response to the ANPR were taken into account during the development of this rule.

On November 6, 2000, President Clinton issued Executive Order (E.O.) 13175, ''Consultation and Coordination with Indian Tribal Governments.'' The E.O. 13175 emphasized the importance of respecting the sovereignty of Tribal governments and working with them on a government-to-government basis.[1] On November 5, 2009, President Obama expressed his commitment to E.O. 13175 at the White House Tribal Nations Conference and Interactive Discussion with Tribal Leaders. During the conference, the President signed an Executive Memorandum on Tribal consultation for the heads of Executive Departments and Agencies, directing Cabinet agencies to take steps to develop regular and meaningful consultation with Tribal governments regarding the implementation of E.O. 13175. While the Executive Memorandum does not directly apply to independent agencies, the NRC has adopted agency practices that are consistent with the principles of consultation and cooperation with Indian Tribal governments articulated in President Clinton's April 29, 1994, guidance and E.O. 13175. The NRC's practice is to conduct its activities in a manner that respects the rights of sovereign Tribal governments, and involves consultation and cooperation

[1] These ideas were previously emphasized in a Presidential Memorandum dated April 29, 1994, entitled ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951; May 4, 1994) and Executive Orders 12875 and 12866.

with Federally-recognized Tribes on a government-to-government basis.

II. Discussion

A. What action is the NRC taking?

The NRC is amending its regulations to require licensees to provide to participating Tribal officials, or their designees, advance notice of shipments of irradiated reactor fuel under § 73.37 and other nuclear wastes listed in § 71.97 before crossing the border of Tribal reservations. For the purposes of these regulatory provisions, ''Tribal official'' is defined as the highest ranking individual that represents Tribal leadership, such as the Chief, President, or Tribal Council leadership of an Indian Tribe. This action would only affect commercial shipments being made by the NRC and Agreement State licensees. This action does not include shipments that are not subject to NRC regulation, including many shipments made by the U.S. Department of Energy (DOE) or the U.S. Department of Defense (DOD).

B. What is the purpose of the final rule?

The purpose of the final rule is to recognize Tribal sovereignty by informing Tribes that choose to receive advance notification of shipments of irradiated reactor fuel and other nuclear wastes passing across their reservations and to recognize Tribal governments' interest in being informed of activities occurring on Tribal reservations.

C. Whom would this action affect?

The final rule would apply to any NRC licensee that ships irradiated reactor fuel. The final rule also affects any licensee that ships other nuclear wastes listed in § 71.97, namely, certain licensed material that is: (a) Required to be transported in Type B packaging; (b) being transported to or across a State boundary enroute to a disposal facility or to a collection point for transport to a disposal facility; and (c) the quantity of licensed material in a single package exceeds the least of the following: (1) 3000 times the A_1 value of the radionuclides as specified in Appendix A, Table A–1 of 10 CFR Part 71, for special form radioactive material; (2) 3000 times the A_2 value of the radionuclides as specified in Appendix A, Table A–1 of 10 CFR Part 71, for normal form radioactive material; or (3) 1000 TBq (27,000 curies).

Finally, the rule affects any Tribe that chooses to receive the advance notifications of shipments passing within or across its Tribal reservation.

D. Would all Tribes receive advance notifications?

No. Given the information protection requirements involved, the NRC believes that Tribes should have the option to decide whether to receive advance notifications of shipments that pass across their Tribal reservations. If a Tribe opts to receive the advance notifications, the Tribe is obligated to protect the schedule and itineraries of the shipments under the SGI requirements in §§ 73.21 and 73.22. If a Tribe opts not to receive the advance notifications, the Tribe has no information protection obligations relating to the shipments. For the purposes of the advance notifications, an ''Indian tribe'' is defined as an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994. There are currently 565 Federally-recognized Tribes.

E. How and when would Tribes be given the option to receive advance notifications?

The NRC staff will contact each Federally-recognized Tribe to provide them information on the rule. As part of the information, the Tribe will be asked if they would like to receive advance notifications of irradiated reactor fuel and other nuclear wastes listed in § 71.97 before crossing the border of the Tribal reservation. The Tribe can then notify the NRC as to whether it would like to receive the advance notifications and certify that the SGI information will be appropriately protected. Tribes will be able to change their decision to receive or not receive the advance notifications by informing the NRC at any time. Information will be available on the NRC Web site on how a Tribe can change its decision. In addition, the NRC plans to contact all Federally-recognized Tribes every 5 years to give Tribes an opportunity to change their status in regards to receiving notifications.

F. Does a Tribe's decision to receive advance notification affect whether shipments pass through that Tribe's reservation?

No. This rulemaking would only give the Tribe a voluntary opportunity to receive advance notification of shipments that cross their reservation. A Tribe's decision to receive or not receive advance notifications does not bear upon shipment routes, which are reviewed and approved subject to different NRC requirements.

G. How would licensees determine who the Tribal contacts are?

The NRC will maintain a list of Tribal contacts as is done for State governmental contacts. The NRC will work with the Tribes to complete and maintain the list. The Tribal official will designate who is intended to represent the Tribe. The NRC staff currently intends to annually publish a list of Tribal contacts in the **Federal Register** and post the list on the Web site maintained by the NRC's Office of Federal and State Materials and Environmental Management Programs. The NRC also plans to have a map on the Web site that shows the location of the Tribal reservations. The Web site associated with the map will also provide the necessary contact information for the Tribe.

H. How would advance notifications be made to Tribal officials?

The methods permitted for communication of advance notifications are detailed in § 71.97(c), ''Procedures for submitting advance notification.'' Notifications are made in writing. The written notifications could be sent by mail or courier. The SGI may not be transmitted by unprotected telecommunication circuits. Requirements for the transmittal of SGI are contained in § 73.22(f), ''External transmission of documents and material.''

I. Would Tribes be required to protect the advance notifications?

Tribes are required to protect some of the information contained in the advance notification as SGI as specified by §§ 73.21 and 73.22. Only individuals that have a ''need-to-know'' the information and have undergone both a Federal Bureau of Investigation criminal history records check and a background check for determination of trustworthiness and reliability or have been relieved from these checks under § 73.57, ''Requirements for criminal history records checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information,'' or § 73.59, ''Relief from fingerprinting, identification and criminal history records checks and other elements of background checks for designated categories of individuals,'' may be provided access to the SGI. Basic protection requirements include storing unattended SGI in a locked security storage container. Access to the lock information, such as a combination, must be strictly controlled to prevent disclosure to an individual not authorized to access SGI.

Documents containing SGI must be destroyed by burning, shredding, or any other method that precludes reconstruction by means available to the public at large. The specific requirements for the protection of SGI are located in § 73.22. Failure to comply with these regulatory requirements could result in civil enforcement action, including civil monetary penalties, and Federal criminal prosecution.

J. Would Tribal officials need to be fingerprinted and undergo a background investigation for access to SGI?

Section 149 of the AEA requires fingerprinting and submission of fingerprints to the Attorney General for identification and criminal history records check for any individual permitted access to SGI, unless the Commission, by rule, has relieved that individual from the fingerprinting, identification, and criminal history records check requirements. The Commission may relieve individuals from these regulatory requirements ''if the Commission finds that such action is consistent with its obligations to promote the common defense and security and protect the health and safety of the public,'' 42 U.S.C. 149(b). As allowed by Section 149 of the AEA, the NRC enacted § 73.59 to relieve specific categories of individuals from fingerprinting and criminal history records checks prior to receiving SGI. The categories of individuals covered by this regulation include the governor of a State or his or her designated State employee representative; Federal, State, or local law enforcement personnel; and representatives of foreign government organizations that are involved in planning for, or responding to, nuclear or radiological emergencies or security incidents whom the Commission approves for access to SGI.

The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Indian tribes exercise inherent sovereign powers over their members and territory. The United States recognizes the right of Indian tribes to self-government and supports Tribal sovereignty and self-determination. As a result, the NRC has determined that exempting Tribal officials, Tribal official designees, or Tribal law enforcement personnel is analogous to exempting the State governor, State governor designees, or State law enforcement personnel from the fingerprinting and background check requirements. Furthermore, some Tribes have emergency response responsibilities similar to States. Revising the regulations permits the Commission and licensees to more efficiently provide SGI relating to advance notification of shipments to Tribes who determine this information enables them to be more effective in their day-to-day efforts to ensure the protection of nuclear materials and respond to emergencies within their territories. Therefore, the Commission has determined that the rule helps the Commission fulfill its obligations to promote the common defense and security and to protect the health and safety of the public.

The Tribal official, Tribal official designee and Tribal law enforcement personnel are considered trustworthy and reliable to receive SGI by virtue of their occupational status which is subject to direct oversight by Tribal Government authorities in their day-to-day job functions. Under the final rule, if the Tribe decides to participate in the advance notification of shipment program, the Tribal official, Tribal official designee, or Tribal law enforcement personnel who need-to-know this SGI information to perform their job function, may have access to SGI information regarding advance notification of shipments affecting their territories without undergoing fingerprinting or a criminal history check. In addition, the NRC has extended the relief to cover other types of SGI. Revising the regulations permits the Commission to more efficiently provide SGI to Tribes when it is determined that the Tribe has a need-to-know. The NRC believes that exempting Tribal officials, Tribal official designees, or Tribal law enforcement personnel from the fingerprinting requirement is analogous to exempting the State governor, State governor designees, or State law enforcement personnel from the fingerprinting and background check requirements. Providing the relief also recognizes the right of Indian tribes to self-government and supports Tribal sovereignty and self-determination. Relief from the fingerprinting requirement cannot be provided by Commission order, it can only be provided by rule. By including the relief in this rulemaking for all types of SGI, a future rulemaking will not need to be conducted, thus saving NRC resources. Tribal officials will still need to have an established need-to-know before they would be given access to any other types of SGI. This rulemaking establishes need-to-know for the advance notifications for irradiated reactor fuel and nuclear waste shipments that pass within or across the boundary of a Tribal reservation.

The final rule adds Tribal official, his or her designee, and Tribal law enforcement personnel to the list of categories of individuals that are granted relief from the fingerprinting, identification and criminal history records checks, and other elements of background checks. All individuals granted access to SGI are required to abide by the requirements in §§ 73.21 through 73.23 for proper management and protection of SGI.

K. When do these actions become effective?

The final rule will be effective 60 days after publication in the **Federal Register**. However, licensees will not need to comply with the Tribal advance notification provisions in 10 CFR 71.97 and 73.37(f) for 1 year after the rule is published in the **Federal Register**. This date was inserted into the regulatory text. This provides time for the NRC to work with the Tribes and develop the list of Tribal contacts, develop a map showing the location of Tribal reservations, provide training on protection of SGI to the Tribes, and provide time for licensees to develop procedures and conduct training on the new requirements.

III. Summary and Analysis of Public Comments on the Proposed Rule

The proposed rule was published on December 6, 2010 (75 FR 75641), for a 75-day public comment period that ended on February 22, 2011. The NRC received comments from 10 entities. The commenters on the proposed rule included Tribes, a Tribal organization, individuals, companies, and a Federal agency. Copies of the public comments are available in the NRC's PDR, 11555 Rockville Pike, Rockville, Maryland 20852 or at *http://www.regulations.gov* under Docket ID NRC–1999–0005.

In general, most of the commenters expressed support for the rulemaking. There were no comments received in opposition to the rule. Many of the comments received were related to implementation. The Commission specifically requested input on two subjects: (1) The best method for informing Tribes of the obligations of possessing SGI; and (2) whether the relief from fingerprinting should be applied generally to access other types of SGI. A discussion of the comments and the NRC's responses follow.

Comment 1: In the proposed rule, the NRC specifically invited comment on the best method for informing Tribes of the obligations of possessing SGI. Two commenters addressed this topic

directly, and two other commenters addressed the training aspect. One commenter noted that when working with Indian tribes, there is no ''one size fits all'' approach. The commenter noted that once this rule is final, it will be important first to identify Tribes that would likely be impacted by shipments from NRC licensees to inform them of the rule change and their ability to receive advance notifications. The commenter stated that once the interested Tribes are identified, the NRC should convene a meeting (or training course) for the interested Tribes to inform them of their options for participating, the obligations of possessing SGI should the Tribe choose to receive the advance notifications, and to develop a range of options to inform the Tribes. Another commenter indicated that the NRC should carefully consider the methods used to inform the Tribal governments of their responsibility in possessing SGI, as failure to comply with these requirements could result in civil or criminal liability. The commenter noted that the mechanisms should be reasonable, effective, and based on further research. The commenter suggested that the NRC should first determine whether this material is the type that would lend itself to Webinars or short-term orientation training. The commenter suggested that after selecting a mechanism by which to disseminate the material, the NRC should attempt to gain insight into the Tribal governments' perspectives on the material by conducting surveys to determine if the material is comprehensible, or alternatively, whether it contains complex legal provisions and unclear obligations. The commenter noted that both parties should anticipate the appropriate costs and the time commitments involved with such training. Another commenter noted that training is likely to be the biggest expense. The commenter noted that Tribes should be afforded opportunities for training regarding the obligations for possessing SGI, and the NRC should consider developing both distant learning opportunities and a training of trainers program to share with Tribal leaders and Tribal law enforcement agencies. One commenter noted that effective security training is as important as the decision to share the information itself. The commenter suggested that the NRC use Web-based mechanisms as well as more traditional methods of communication, such as information packets and training courses. The commenter pointed out that the NRC should customize its outreach to each Tribal government based on the Tribal government's capacity and level of engagement. The commenter pointed out that the NRC's outreach effort could be incorporated into existing procedures where an NRC staff member contacts individual Tribes. The commenter indicated that the NRC should offer each participating Tribe training options. Participating Tribes could choose from a range of training options, including technologically advanced options, like Webinars, and more traditional options such as training packets and training courses. The commenter noted that Tribes are willing to make a good-faith effort to carry out their obligations regarding SGI possession and that while training courses may require more resources, the nature of the responsibility involved justifies such attention to training.

Response: The NRC agrees that there is no one-size-fits-all approach that will work. The NRC is considering several different mechanisms to inform the Tribes of the Agency's SGI protection requirements. Initially, the NRC plans to contact by letter all 565 Federally-recognized Tribes when the final rule is published in the **Federal Register**. This initial contact will include a copy of the final rule and information on the protection of SGI, as well as a request to inform the NRC if the Tribe wants to receive the advance notifications. For those Tribes that express interest, more detailed training will be available by Webinar, meetings, training classes, compact disk, etc. Decisions on the best mechanism to provide the training will depend on such things as the number of Tribes that will need the training, locations of the Tribes, and the Tribe's preference.

Comment 2: In the proposed rule, the NRC specifically invited comment on whether the relief from fingerprinting should be applied generally to access other types of SGI. Only one commenter addressed this topic. The commenter felt that the relief from fingerprinting should be expanded and should be applied generally to other types of SGI based on the presumption that the established information protection procedures employed are presumed to meet the general performance requirement.

Response: The NRC has decided to expand the relief to all types of SGI. The SGI includes security-related information such as security plans, alarm information, lock combinations, information related to response forces, adversary characteristics, and other types of information listed in §§ 73.22 and 73.23. The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Indian tribes exercise inherent sovereign powers over their members and territory. The United States recognizes the right of Indian tribes to self-government and supports Tribal sovereignty and self-determination. As a result, the NRC has determined that exempting Tribal officials, Tribal official designees, or Tribal law enforcement personnel is analogous to exempting the State governor, State governor designees, or State law enforcement personnel from the fingerprinting and background check requirements. Furthermore, some Tribes have emergency response responsibilities similar to those of States. Revising the regulation permits the Commission to more efficiently provide SGI to Tribes when it is determined that the Tribe has a need-to-know. Need-to-know is determined on a case-by-case basis. Factors in the decision can include a determination that the information enables the Tribe to be more effective in its day-to-day efforts to ensure the protection of nuclear materials and respond to emergencies within its territories. Therefore, the Commission has determined that the rule helps the Commission fulfill its obligations to promote the common defense and security and to protect the health and safety of the public. Individuals would still need to have an established need-to-know before they would be given access to any other types of SGI. This rulemaking establishes need-to-know for the advance notifications for irradiated reactor fuel and nuclear waste shipments that pass within or across the boundary of a Tribal reservation.

Relief from the fingerprinting requirement cannot be provided by Commission order; it can only be provided by rule. By including the relief in this rulemaking, a future rulemaking will not need to be conducted. As noted elsewhere in the Statement of Considerations, the Tribal official would have to certify that the Tribe has the necessary protection measures in place and that they will protect the SGI in accordance with the requirements in 10 CFR Part 73 (§§ 73.21 through 73.23).

Comment 3: Most of the commenters expressed support for the rulemaking. One commenter noted that the transportation of nuclear waste shipments has always been of concern to Tribal government officials and community members as the potential long-term effects of a transportation accident and possible contamination of Tribal ecosystems poses a high risk to

cultural continuity. One commenter noted that the rule is meaningful because it will increase the Tribal government's ability to perform its responsibilities in protecting public health and safety, as well as recognize Tribal sovereignty. Another commenter expressed support because the NRC's approach acknowledges that sovereign Tribal nations require the same information provided to the States in order to protect health and the environment. The commenter noted that the Tribe's all-hazard Fire Department can be more prepared for very unlikely incidents involving nuclear waste if the Tribe is informed of the shipments. One commenter commends the NRC for its understanding of the unique legal relationship between the Federal government and Tribal governments as the basis for amending the regulations, and for adhering to the principles of consultation and cooperation articulated in E.O. 13175. Commenters noted that Tribal governments exercise regulatory jurisdiction over a broad range of activities on their lands and that Tribal government officials, just like State officials, are charged with protection of the public and have a need-to-know the type and amount of hazardous materials that traverse through their jurisdictions. Commenters noted that notification to Tribal authorities will acknowledge the rights and sovereignty of Tribal governments as well as the responsibility that tribes have for the welfare and safety of natives and non-natives within their jurisdictional boundaries. Commenters noted that notification to Tribal governments will allow Tribal law enforcement and other officials to prepare for safety and security of shipments as well as develop emergency preparedness plans in the event of a transportation accident. One commenter noted that the rule acknowledges a Tribe's sovereign right to be notified of these risks in order to protect the health and safety of its citizens. Several Tribes indicated that they wanted to receive the advance notifications.

Response: The NRC acknowledges the support for the rule. No additional response is necessary.

Comment 4: There were several questions related to the notifications and how enforcement would occur. One commenter wanted to know: (1) How licensees will know if their shipment will pass through Tribal lands subject to the notification requirements; (2) whether the licensee would be in violation if it notified a Tribe that had originally requested notifications but had recently decided not to receive the advance notifications; and (3) whether a licensee would be in violation for failing to notify a Tribe that had recently decided to receive the notifications.

Response: The NRC will maintain a list of those Tribes that want to receive the notifications. The list will be published annually in the **Federal Register** and posted on the NRC Web site. The NRC plans to place a map on the Web site that will denote the location of the Tribal reservations of those Tribes that decide to participate and receive the advance notifications. A licensee will need to check the map to see if the route traverses any of the reservations in order to determine whether it will need to contact any Tribes. A licensee would be in violation if it provided safeguards information to a Tribe that was not participating in the advance notification program. A licensee would also be in violation if it did not provide information to a Tribe that should receive notifications. If the map had not been updated before the notifications were or were not provided, the licensee would not be in violation, as it would have had no method of knowing. The NRC will update the list and map promptly upon receiving notification from a Tribe of any change in the decision to receive advance notifications.

Comment 5: Several commenters expressed support for the provision that allows flexibility for the Tribe to decide if it wants to receive the advance notifications or not, particularly as there is a resource requirement for safeguarding the information. One commenter noted that this option should be explained clearly to the Tribal governments. Another commenter noted that accommodations should be made to assist the Tribes in implementing this rule. These accommodations would include assistance with implementing personnel safeguard protocols. One commenter noted that the provision presents implementation challenges. The commenter suggested that the NRC should contact the Tribes at preestablished times, perhaps once a year, to confirm whether the Tribe would like to continue receiving notifications. The commenter noted that if a Tribe decides to opt out that licensees should be notified and the change reflected in the annual **Federal Register** notice. The commenter also noted that if a Tribe decides to receive the advance notifications, the NRC should establish a clear procedure for notifying licensees and scheduling training on the protection of the information. The commenter noted that Tribal boundaries should be clearly defined and conveyed to both the licensee and the participating Tribe.

Response: The NRC plans to initially contact the Tribes when the final rule is published in the **Federal Register**. This initial contact will include a copy of the final rule and information on the protection of SGI, as well as a request to inform the NRC if the Tribe wants to receive the advance notifications (possibly by utilizing a prepaid, self-addressed postcard). Once a year, the NRC will contact those Tribes that choose to receive the notifications. The NRC outreach will include a request to update any contact information and ask if the Tribe wishes to continue to receive the advance notifications. Every 5 years, the NRC plans to contact all of the Federally-recognized Tribes to inform them of the option to receive the advance notifications and the associated responsibilities that accompany those notifications. The NRC will also contact non-participating Tribes when a newly approved route crosses the Tribal reservation. The NRC's Web site will also contain detailed instruction on how a Tribe can choose to opt in or opt out. The list of participating Tribes will be published in the **Federal Register** once a year and will be posted on the NRC's Web site. Additionally, a map will be posted on the NRC's Web site that shows the location of the Tribal reservations and the routes that surround them. The Web site will also have Tribal contact information. As soon as the NRC receives information from a Tribe on the Tribe's decision to participate and receive the advance notifications or the decision to stop receiving the advance notifications, the NRC will promptly update the information on the NRC's Web site. Information addressing training concerns is detailed in the response to Comment 1.

Comment 6: The NRC received several questions related to route approvals. One commenter wanted to know: (1) For future route approval requests, whether the Tribes will be identified similar to counties and be listed under individual states or treated similar to states; (2) for future route surveys, how the jurisdictions will be determined as not all counties and Tribes are marked along interstate and secondary routes; (3) whether the Tribal emergency response contacts will be listed; and (4) whether current approved routes will need to be resurveyed and amended to show each Tribe. Another commenter noted that the NRC must clearly outline procedures for route changes and enforcement. G1

Response: The Tribes will be identified and listed separately as is done for the States. The licensee should provide the 24-hour contact information

that is available for the Tribe's local law enforcement agency in each county along the route. The route plan must be segmented by counties and Tribal reservations for each state. The NRC will have a map on its Web site that denotes the locations of the Tribal reservations. The Tribal emergency contacts will be listed. The currently approved routes will not be resurveyed, but will be amended if a Tribe along the route opts to be notified.

Comment 7: One commenter noted that a letter, post-marked 7 days prior to the 7-day window of transport, is sufficient to constitute notice. The commenter noted that it is unclear what constitutes sufficient notice if the designated Tribal point of contact cannot be reached for schedule changes as schedule changes are typically made via telephone. The commenter indicated that the rule should be clearer about what constitutes notice in these cases and the options for recourse if notice is not provided. The commenter also noted that the rule needs to be explicit on email notification as this is not addressed in the proposed rule.

Response: If the Tribal contact cannot be reached for a schedule change, the licensee can leave a non-SGI voice mail message. Email notification of schedule changes is not prohibited under the rule. Note that if the notification contains SGI, the email must meet the requirements of § 73.22(f).

Comment 8: One commenter noted that the Tribe's law enforcement agency has in place measures to protect SGI and can conduct proper planning, training, and coordination in support of State, local, and railroad police departments once a notification system is in place. The commenter also expressed support for the NRC's requirement to manage this information as SGI on a ''need-to-know'' basis.

Response: No response is necessary.

Comment 9: One commenter noted that the best method for notification is a phone call to a previously designated individual. The commenter noted that this prevents the creation of an unnecessary paper trail or computer access that may be compromised, and assures the information is provided to the correct individual.

Response: The rule requires that the notification be conducted in writing because it contains SGI, and SGI cannot be transmitted using non-secure devices. Any Tribe deciding to receive the advance notifications would not be required to retain the notification; the Tribe could destroy the notice upon receipt, as long as the destruction is conducted in accordance with § 73.22(i). The notifications of schedule changes may be made by phone, as they typically do not contain SGI.

Comment 10: One commenter did not support additional background investigations for the Tribal Chairman or Tribal Vice Chairman because they are elected officials and have already undergone this procedure prior to taking office. The commenter noted that the Tribe is a sovereign nation and the Tribal leaders are analogous to a State Governor who has been exempted from these additional requirements.

Response: The rule relieves the Tribal official or their designee from the fingerprinting requirement as is done for a governor or the governor's designee. The rule defines the Tribal official as the highest ranking individual that represents Tribal leadership such as the Chief, President, or Tribal Council leadership of an Indian tribe.

Comment 11: One commenter noted that the proposed rule did not contain any discussion about how the rule would be enforced by the NRC on its licensees. The commenter wanted to know: (1) How the NRC will be informed that the licensees have, in fact, notified Tribes of the shipments; and (2) whether there are penalties for non-compliance with the advance notification requirements. The commenter noted that enforcement needs to be addressed before moving forward and that the NRC needs to inform licensees of their obligation to provide the advance notification to the Tribes impacted by their shipments. Two commenters urged the NRC to implement effective oversight mechanisms to ensure compliance by licensees. One of the commenters noted that this should include specific remedies for failure to provide adequate notification.

Response: The licensee is not required to inform the NRC when they have provided the advance notifications to the States and Tribes. The licensee is subject to NRC inspection. As part of routine inspections, the NRC would check records to see if the required notifications have been made. If the required notifications have not been made, the licensee would be subject to a notice of violation. Depending on the severity, the violation could result in a civil penalty.

Comment 12: One commenter stated that the rule should establish a consultation process that provides for timely input from Tribal governments on route planning and disaster preparedness to ensure greater communication and strategic cooperation. The commenter indicated that it is vital that the NRC make every effort to respect the sovereign jurisdiction of Tribal nations and coordinate with them on matters that affect the health and safety of their citizenry.

Response: The NRC is not directly involved in developing the routes and would therefore not engage in a consultation with the Tribes or with the States through which a route crosses. The NRC does verify contact information after a route is submitted to the NRC. The NRC does not currently plan any consultation with the Tribes on disaster preparedness related to this rulemaking, since the rule is limited to notification requirements. However, the NRC periodically conducts emergency exercises during which the agency coordinates with the Tribes located within the emergency planning zones of NRC facilities. In the unlikely case of an accident and release of radioactive material from a waste shipment, the Federal response would include coordination with the affected Tribes.

Comment 13: One commenter requested notification of traditional and currently adjudicated homelands (which would include South Dakota, North Dakota, Minnesota, Nebraska, Wyoming, Montana, Kansas, and Wisconsin). Another commenter requested that Tribal boundaries should be clearly defined and conveyed to both the licensee and the participating Tribe.

Response: For implementation purposes for this rule, the NRC decided to require licensees to give advance notification to participating Federally-recognized Tribes when a shipment of irradiated reactor fuel and other radioactive wastes crosses the external boundary of the Tribal reservation. This definition provides a clearly defined area that can be used by the licensee to evaluate their routes and provide notification to the interested Tribal governments. The NRC expects to provide information (e.g., a map) on the NRC's Web site to delineate the locations of Tribal reservations and Tribal contact information to aid the licensee compliance with the regulatory requirements.

The licensee will not be required to provide advance notification to participating Tribal governments for traditional and currently adjudicated homelands outside the external boundary of a Tribal reservation. These are not clearly defined areas, and some cases are currently under dispute. For areas outside the external Tribal reservation boundaries, the current regulations require that the licensee provide notice to the applicable State government.

Comment 14: One commenter noted that DOE has for more than 27 years

recognized the need to include Tribes as necessary parties for radioactive waste management and transportation activities including emergency management planning components. The DOE indicated that it has provided advance notice of DOE shipments to Tribal officials for a number of years and has not experienced any resulting security problems or concerns. The DOE noted that the NRC's proposed amendments are consistent with DOE's current practice regarding advance notification of DOE shipments. The DOE noted that it supports the NRC's proposal to amend its regulations so that NRC licensees would be required to provide notification to Tribes. The DOE noted that the proposed amendments respect Tribal sovereignty, do not pose an increased threat to security, and can enhance safety. The DOE further indicated that advance notification helps ensure the preparedness of law enforcement and emergency response personnel along a shipping route, and the DOE believes that providing advance notification to States and Tribes enhances the safety of its shipments.

Response: No response is necessary.

Comment 15: One commenter asked if the rule changes will impact emergency response and first responder protocols for the licensee.

Response: The rule should not impact emergency response and the first responder protocols.

Comment 16: One commenter suggested that the NRC should create a system that continually seeks to update any outdated technology, policies, or procedures and that performs an annual review of the system's effect on both the Tribal governments, as well as licensees, to determine whether the regulation is costing either party unexpected financial loss.

Response: The NRC does not plan to conduct such reviews on the rule's ongoing impact. However, a regulatory analysis of the rule that provides an estimated cost to States and Tribes was completed as part of the rulemaking process. Tribes have the option to opt out and not participate in receiving the advance notifications. If a Tribe felt that receiving the notifications would have too great of a financial impact, the Tribe could decide not to receive the notifications.

Comment 17: One commenter stated that the NRC used plain language effectively and that the rule is clear.

Response: No response is necessary.

Comment 18: One commenter noted that the regulatory analysis is accurate and supports the rule. One commenter noted that the cost and burden to the NRC or its licensees in implementation of a rule change should not be a consideration in amending the regulation. The commenter noted that as an agency of the Federal Government, the NRC has a responsibility to protect Tribal lands and peoples. The commenter noted that licensees must be cognizant of the risks that their activities could pose to every segment of the population, and licensees have an ongoing duty to ensure the safety and security of Tribal communities. The commenter stated that because of the high-risk nature of the licensees' products and activities, notification to appropriate Tribal government officials should be part of the licensees' standard business process.

Response: The NRC prepares a regulatory analysis to support most rulemakings. The analysis lays out both the costs and benefits of the rule so that the NRC can make an informed decision.

Comment 19: One commenter noted that it is not clear whether the proposed rule change encompasses all current and potential Federal spent nuclear fuel and high-level radioactive waste campaigns. The commenter stated that the origin and destination of these materials is relevant because the fiduciary duty to Tribes is borne by all Federal entities responsible for these shipments, including the DOE and DOD. The commenter stated that all similar spent nuclear fuel and high-level radioactive materials shipments and potential impacts need to be addressed by the NRC, and appropriate Federal agencies. Another commenter requested that the rule include shipments from the DOE and DOD. Another commenter noted that it is unclear whether nuclear waste shipments going to a Federal repository or interim storage facility would be subject to this rule. The commenter believed that once waste leaves a commercial nuclear power plant for Federal disposal, the shipments are considered to be DOE shipments. The Commenter noted that the language must be clarified to ensure that any shipment originating from an NRC-licensed facility (i.e., all commercial power plants) would be covered by the rule provisions, even if the DOE takes possession of the material and it becomes a DOE shipment.

Response: Under the AEA and the Energy Reorganization Act of 1974, as amended, the NRC has authority over shipments of NRC-licensed material. The DOE and DOD may transport DOE and DOD titled spent nuclear fuel and high-level radioactive waste shipments outside of the NRC's regulatory authority. These DOE and DOD spent nuclear fuel and high-level radioactive waste shipments are not licensed by the NRC for transportation. In some circumstances Congress mandated that the DOE follow the NRC notifications of State and local governments prior to transportation of spent nuclear fuel or high-level radioactive waste for disposal at a repository or for monitored retrievable storage. The mandate does not include Native Tribes; however, the DOE has a policy in place to provide notification to Federally-recognized Tribes in advance of any shipments of spent nuclear fuel or high-level radioactive material.

Comment 20: One commenter noted that certain Tribes have designated their lands as nuclear-free zones. In order to more fully achieve the NRC's stated goal of respecting Tribal sovereignty, the commenter encouraged the NRC and its licensees to establish alternative transportation routes that do not involve these territories.

Response: Although the NRC does approve the routes proposed by the licensee, the licensee is responsible for designating the routes for nuclear waste shipments for which advance notification will be required under this rule. With respect to these shipments, regulations of the U.S. Department of Transportation in 49 CFR Part 397, Subpart D, ''Routing of Class 7 (Radioactive) Materials,'' and Subpart E, ''Preemption Procedures,'' govern a carrier's selection of the highway route. These regulations also contain the procedures which must be followed by a State or Indian tribe to designate a highway route over which these shipments may or may not be transported. See also the Federal hazardous material transportation law at 49 U.S.C. 5112 and 5125(c).

In particular, 49 CFR Part 397, Subpart D sets forth the standards for the States and Indian tribes to follow when designating specific highway routes for transportation of Class 7 (radioactive) materials. In particular, 49 CFR 397.103, ''Requirements for State routing designations,'' requires the routing agency to select routes to minimize radiological risk and consult with affected local jurisdictions and other affected States to ensure consideration of all impacts and continuity of designated routes. A list of State-designated preferred routes is available upon request to Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance (MC–EC), 1200 New Jersey Ave. SE., Washington, DC 20590–0001.

Comment 21: One commenter noted that the Tribes' resources and experience vary with regard to

navigating government-to-government relations of this nature. The commenter indicated that the NRC needs to make a good-faith effort in these inaugural stages as some Tribes are able to assist the NRC with advanced tools, such as digital mapping of their areas, while others are struggling with funding for even older, more established projects.

Response: The NRC is aware that the Tribes' resources and experience vary which is why all Tribes will be initially contacted by letter. The NRC will offer different methods for conducting training on protection of SGI so that Tribes can select the appropriate method to fulfill their needs.

Comment 22: One commenter noted that there is no provision in the rule concerning feedback or review and that feedback on training, notification processes, and general implementation issues would be very valuable to successful execution of the rule. The commenter noted that feedback would also help facilitate dialogue with the Tribal governments over other issues in nuclear transportation. The commenter noted that the proposed rule may benefit from an institutionalized review procedure, particularly in the initial years.

Response: Although the NRC does not have an institutionalized review procedure, it does request feedback when it conducts training and outreach efforts during public meetings.

Comment 23: One commenter encouraged the NRC to coordinate with other government agencies that regularly work with sovereign Tribal governments, and particularly with the DOE. The commenter encouraged the NRC to make use of the methods and contacts that the DOE currently employs in its regular communication with Tribal governments as such coordination would likely reduce the labor required to maintain an accurate list of Tribal government contacts. The commenter also noted that out of respect for the sovereignty of Tribes and Tribal governments, coordination with other government agencies and consistent communication procedures would also reduce the administrative burden on the Tribes themselves.

Response: The NRC does coordinate with other Federal agencies on a case-by-case basis. For example, the NRC worked with the Bureau of Indian Affairs (BIA) and the National Council of American Indians in developing the list of Federally-recognized Tribes contacted about this rule and for other activities, including the creation of an NRC database encompassing all 565 Federally-recognized Tribes. The NRC frequently coordinates with DOE in areas of mutual interest, including DOE's Tribal outreach.

Comment 24: One commenter suggested that the NRC work with the DOE and other agencies to develop a central database of Tribal information that can be easily accessed by licensees. The commenter noted that accurate information about the recognized geographical boundaries of Tribes is of utmost importance to successful implementation of the rule. The commenter stated that the NRC should work with the DOE and BIA to create and regularly update a map of Tribal jurisdictions. The commenter noted that the map could be made available to licensees on the NRC's Web site. The commenter indicated that the NRC should also coordinate with other agencies to acquire information on cultural holidays or events that could result in a particular Tribal government being closed and not receiving its necessary notification.

Response: The NRC is currently developing and will maintain a United States map that shows the Tribal reservations, using a State-by-State presentation, and the contacts for those Tribes that choose to receive the notifications. The NRC will coordinate with DOE and BIA as appropriate. Additionally, the NRC has already developed a calendar of Tribal days of significance for internal use and will consider adding the information to the NRC's Web site.

Comment 25: One commenter noted that a primary concern about this rule is that the additional dissemination of nuclear waste transportation information could threaten information security. The commenter believes that the rule adequately safeguards against this concern by making the advance notification voluntary, ensuring security in a manner commensurate with State procedures, and providing clear equipment and training requirements. The commenter stressed that Tribal governments are just as invested in preventing harmful uses of nuclear waste as State governments and that the rule not only recognizes Tribal sovereignty, but also their stake in this decision-making process.

Response: The NRC agrees with the commenter that the rule provides adequate protection of the information contained in the advance notifications.

IV. Discussion of Final Amendments by Section

Section 71.4 Definitions

The definition for *Indian tribe* is based on the term as defined in E.O. 13175. The definition of *Tribal official* describes the highest ranking individual that represents Tribal leadership, such as the Chief, President, or Tribal Council leadership.

Section 71.97 Advance Notification of Shipment of Irradiated Reactor Fuel and Nuclear Waste

Current paragraph (a) is renumbered as paragraph (a)(1) and revised to reflect shipments within or across the State boundary instead of through or across. This change is made for consistency of rule language. Paragraph (a)(2) is added to require licensees to provide advance notification to Tribal officials or their designee of the shipment of licensed material within or across the boundary of the Tribe's reservation.

Paragraph (c) is revised to require notifications to be made to the office of each appropriate Tribal official or his or her designee. Paragraph (c) is also revised to indicate how the list of Tribal officials will be made available.

Paragraph (d) is revised to include arrival at Tribal reservation boundaries.

Paragraph (e) is revised to require that revision notices be provided to Tribal officials or their designee if schedule information previously provided will not be met.

Paragraph (f) is revised to require that cancellation notices be provided to each Tribal official or his or her designee that had previously been notified of an advance shipment.

Section 73.2 Definitions

The definition for *Indian tribe* is based on the terms as defined in E.O. 13175. The definition for *Tribal official* is added to describe the highest ranking individual that represents Tribal leadership, such as the Chief, President, or Tribal Council leadership.

Section 73.21 Protection of Safeguards Information: Performance Requirements

Paragraph (a)(2) is revised to include Tribal law enforcement agencies in the list of agencies whose information protection procedures are presumed to meet the general performance requirements for the protection of SGI.

Section 73.37 Requirements for Physical Protection of Irradiated Reactor Fuel in Transit

Paragraph (f) is revised to require that advance notification of irradiated fuel shipments be provided to participating Tribes if a shipment crosses Tribal reservation boundaries.

Paragraph (g) is revised to add Tribal officials and Tribal employees to the list of individuals that must protect schedule information against

unauthorized disclosure as specified in §§ 73.21 and 73.22.

Section 73.59 Relief From Fingerprinting, Identification and Criminal History Records Checks and Other Elements of Background Checks for Designated Categories of Individuals

New paragraph (l) is added to include Tribal official, Tribal official's designee, and Tribal law enforcement personnel to the categories of individuals that are relieved from the requirement for fingerprinting, identification and criminal records checks, and other elements of background checks.

V. Civil and Criminal Penalties

For the purposes of Sections 223 and 234 of the AEA, the Commission is amending 10 CFR Parts 71 and 73 under one or more of Sections 161b, 161i, or 161o of the AEA. Violations of the rule could result in civil enforcement action, including civil monetary penalties, and Federal criminal prosecution.

VI. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this final rule is a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among the Agreement States and the NRC requirements. The NRC staff analyzed the final rule in accordance with the procedure established within Part III, ''Categorization Process for NRC Program Elements,'' of Handbook 5.9 to Management Directive 5.9, ''Adequacy and Compatibility of Agreement State Programs'' (a copy of which may be viewed at *http://www.nrc.gov/reading-rm/doc-collections/management-directives/*).

The NRC program elements (including regulations) are placed into four compatibility categories (see the Compatibility Table in this section). In addition, the NRC program elements can also be identified as having particular health and safety significance or as being reserved solely to the NRC. Compatibility Category A are those program elements that are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner to provide uniformity in the regulation of agreement material on a nationwide basis. Compatibility Category B are those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. Compatibility Category C are those program elements that do not meet the criteria of Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. An Agreement State should adopt the essential objectives of the Category C program elements. Compatibility Category D are those program elements that do not meet any of the criteria of Category A, B, or C, and, thus, do not need to be adopted by Agreement States for purposes of compatibility.

Health and Safety (H&S) are program elements that are not required for compatibility but are identified as having a particular health and safety role (i.e., adequacy) in the regulation of agreement material within the State. Although not required for compatibility, the State should adopt program elements in the H&S category based on those of the NRC that embody the essential objectives of the NRC program elements because of particular health and safety considerations.

Compatibility Category NRC are those program elements that address areas of regulation that cannot be relinquished to Agreement States under the AEA, or provisions of 10 CFR. These program elements are not adopted by Agreement States. The following table lists the parts and sections that are being revised and their corresponding compatibility categorization under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs.''

COMPATIBILITY TABLE FOR FINAL RULE

Section	Change	Subject	Compatibility	
			Existing	New
10 CFR Part 71				
71.4	New	Definition Indian tribe		B
71.4	New	Definition Tribal official		B
71.97	Amend	Advance notification of shipment of irradiated reactor fuel and nuclear waste	B	B
10 CFR Part 73				
73.2	New	Definition Indian tribe		NRC
73.2	New	Definition Tribal official		NRC
73.21	Amend	Protection of Safeguards Information: Performance Requirements	NRC	NRC
73.37	Amend	Requirements for physical protection of irradiated reactor fuel in transit	NRC	NRC
73.59	Amend	Relief from fingerprinting, identification and criminal history records checks and other elements of background checks for designated categories of individuals.	NRC	NRC

VII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies, unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is requiring that advance notification be provided to participating Tribal governments for shipments of irradiated reactor fuel and other nuclear wastes listed in § 71.97 that pass within or across Tribal reservations. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

VIII. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

IX. Paperwork Reduction Act Statement

This final rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget (OMB), approval numbers 3150–0008 and 3150–0002.

The burden to the public for these information collections is estimated to average 0.422 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Information Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS.RESOURCE@NRC.GOV;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0151), Office of Management and Budget, Washington, DC 20503. You may also email comments to *Chad_S_Whiteman@omb.eop.gov* or comment by telephone at 202–395–4718.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

X. Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC's PDR, One White Flint North, 11555 Rockville Pike, Room O–1F21, Rockville, MD 20852 and can be found at *http://www.regulations.gov* by searching on Docket ID NRC–1999–0005.

XI. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. The amendments will apply to reactor licensees and a few licensees who possess large sources of byproduct materials. The majority, if not all, of these licensees are not ''small entities'' under either the Regulatory Flexibility Act or the NRC's size standards (10 CFR 2.810).

XII. Backfit Analysis

The NRC has determined that the backfit rule, which is found in the regulations at 10 CFR 50.109, 70.76, 72.62, 76.76, and in 10 CFR Part 52, does not apply to this final rule because this amendment would not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required.

XIII. Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects

10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR parts 71 and 73.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

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

Authority: Atomic Energy Act secs. 53, 57, 62, 63, 81, 161, 182, 183, 223, 234, 1701 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2273, 2282, 2297f); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act sec. 180 (42 U.S.C. 10175); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005). Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

■ 2. In § 71.4, new definitions for *Indian tribe* and *Tribal official* are added in alphabetical order to read as follows:

§ 71.4 Definitions.

* * * * *

Indian tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

* * * * *

Tribal official means the highest ranking individual that represents Tribal leadership, such as the Chief, President, or Tribal Council leadership.

* * * * *

■ 3. In § 71.97, paragraphs (a), (c)(1), (c)(3), (d)(4), (e), and (f)(1) are revised to read as follows:

§ 71.97 Advance notification of shipment of irradiated reactor fuel and nuclear waste.

(a)(1) As specified in paragraphs (b), (c), and (d) of this section, each licensee shall provide advance notification to the governor of a State, or the governor's designee, of the shipment of licensed material, within or across the boundary of the State, before the transport, or delivery to a carrier, for transport, of licensed material outside the confines of the licensee's plant or other place of use or storage.

(2) As specified in paragraphs (b), (c), and (d) of this section, after June 11, 2013, each licensee shall provide advance notification to the Tribal official of participating Tribes referenced in paragraph (c)(3)(iii) of this section, or the official's designee, of the shipment of licensed material, within or across the boundary of the Tribe's reservation, before the transport, or delivery to a carrier, for transport, of licensed material outside the confines of the licensee's plant or other place of use or storage.

* * * * *

(c) *Procedures for submitting advance notification.* (1) The notification must be made in writing to:

(i) The office of each appropriate governor or governor's designee;

(ii) The office of each appropriate Tribal official or Tribal official's designee; and

(iii) The Director, Division of Security Policy, Office of Nuclear Security and Incident Response.

* * * * *

(3) A notification delivered by any other means than mail must reach the office of the governor or of the governor's designee or the Tribal official or Tribal official's designee at least 4 days before the beginning of the 7-day period during which departure of the shipment is estimated to occur.

(i) A list of the names and mailing addresses of the governors' designees receiving advance notification of transportation of nuclear waste was published in the **Federal Register** on June 30, 1995 (60 FR 34306).

(ii) The list of governor's designees and Tribal official's designees of participating Tribes will be published annually in the **Federal Register** on or about June 30th to reflect any changes in information.

(iii) A list of the names and mailing addresses of the governors' designees and Tribal officials' designees of participating Tribes is available on request from the Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

* * * * *

(d) * * *

(4) The 7-day period during which arrival of the shipment at State boundaries or Tribal reservation boundaries is estimated to occur;

* * * * *

(e) *Revision notice.* A licensee who finds that schedule information previously furnished to a governor or governor's designee or a Tribal official or Tribal official's designee, in accordance with this section, will not be met, shall telephone a responsible individual in the office of the governor of the State or of the governor's designee or the Tribal official or the Tribal official's designee and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain a record of the name of the individual contacted for 3 years.

(f) *Cancellation notice.* (1) Each licensee who cancels an irradiated reactor fuel or nuclear waste shipment for which advance notification has been sent shall send a cancellation notice to the governor of each State or to the governor's designee previously notified, each Tribal official or to the Tribal official's designee previously notified, and to the Director, Division of Security Policy, Office of Nuclear Security and Incident Response.

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

■ 4. The authority citation for part 73 is revised to read as follows:

Authority: Atomic Energy Act secs. 53, 147, 161, 223, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2273, 2282, 2297(f), 2210(e)); Energy Reorganization Act sec. 201, 204 (42 U.S.C. 5841, 5844); Government Paperwork Elimination Act sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

Section 73.1 also issued under Nuclear Waste Policy Act secs. 135, 141 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

■ 5. In § 73.2, new definitions for *Indian tribe* and *Tribal official* are added in alphabetical order to read as follows:

§ 73.2 Definitions.

* * * * *

Indian tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

* * * * *

Tribal official means the highest ranking individual that represents Tribal leadership, such as the Chief, President, or Tribal Council leadership.

* * * * *

■ 6. In § 73.21, paragraph (a)(2) is revised to read as follows:

§ 73.21 Protection of Safeguards Information: Performance Requirements.

(a) * * *

(2) Information protection procedures employed by Federal, State, Tribal, and local law enforcement agencies are presumed to meet the general performance requirement in paragraph (a)(1) of this section.

* * * * *

■ 7. In § 73.37, paragraphs (f) and (g) are revised to read as follows:

§ 73.37 Requirements for physical protection of irradiated reactor fuel in transit.

* * * * *

(f) A licensee subject to this section shall notify the governor or the governor's designee prior to the transport of spent fuel within or across a State. After June 11, 2013, a licensee subject to this section shall notify the Tribal official or Tribal official's designee of each participating Tribe referenced in § 71.97(c)(3) of this chapter prior to the transport of spent fuel within or across the Tribal reservation. The licensee shall comply with the following criteria in regard to a notification:

(1) The notification must be in writing and sent to the office of each appropriate governor or the governor's designee and each appropriate Tribal official or the Tribal official's designee. A notification delivered by mail must be postmarked at least 7 days before transport of a shipment within or across the State or Tribal reservation. A notification delivered by messenger must reach the office of the governor or the governor's designee and any Tribal official or Tribal official's designee at least 4 days before transport of a shipment within or across the State or Tribal reservation. A list of the mailing addresses of governors and governors' designees and Tribal officials and Tribal officials' designees is available upon request from the Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

(2) The notification must include the following information:

(i) The name, address, and telephone number of the shipper, carrier, and receiver.

(ii) A description of the shipment as specified by the Department of Transportation in 49 CFR 172.202 and 172.203(d).

(iii) A listing of the routes to be used within the State or Tribal reservation.

(iv) A statement that the information described in paragraph (f)(3) of this section is required by the NRC regulations to be protected in accordance with the requirements of §§ 73.21 and 73.22.

(3) The licensee shall provide the following information on a separate enclosure to the written notification:

(i) The estimated date and time of departure from the point of origin of the shipment.

(ii) The estimated date and time of entry into the governor's State or Tribal reservation.

(iii) For the case of a single shipment whose schedule is not related to the schedule of any subsequent shipment, a statement that schedule information must be protected in accordance with the provisions of §§ 73.21 and 73.22 until at least 10 days after the shipment has entered or originated within the State or Tribal reservation.

(iv) For the case of a shipment in a series of shipments whose schedules are related, a statement that schedule information must be protected in accordance with the provisions of §§ 73.21 and 73.22 until 10 days after the last shipment in the series has entered or originated within the State or Tribal reservation and an estimate of the date on which the last shipment in the series will enter or originate within the State or Tribal reservation.

(4) A licensee shall notify by telephone or other means a responsible individual in the office of the governor or in the office of the governor's designee and the office of the Tribal official or in the office of the Tribal official's designee of any schedule change that differs by more than 6 hours from the schedule information previously furnished in accordance with paragraph (f)(3) of this section, and shall inform that individual of the number of hours of advance or delay relative to the written schedule information previously furnished.

(g) State officials, State employees, Tribal officials, Tribal employees, and other individuals, whether or not licensees of the Commission, who receive schedule information of the kind specified in paragraph (f)(3) of this section shall protect that information against unauthorized disclosure as specified in §§ 73.21 and 73.22.

■ 8. In § 73.59, new paragraph (l) is added to read as follows:

§ 73.59 Relief from fingerprinting, identification and criminal history records checks and other elements of background checks for designated categories of individuals.

* * * * *

(l) Tribal official or the Tribal official's designated representative, and Tribal law enforcement personnel.

Dated at Rockville, Maryland, this 5th day of June 2012.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2012–14082 Filed 6–8–12; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0565; Directorate Identifier 2012–NE–16–AD; Amendment 39–17075; AD 2012–10–52]

RIN 2120–AA64

Airworthiness Directives; Hartzell Engine Technologies Turbochargers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Cessna 206, 207, and 210 airplanes with Hartzell Engine Technologies (HET) turbochargers, part numbers (P/Ns) 406610–0005 and 406610–9005, installed. This emergency AD was sent previously to all known U.S. owners and operators of these airplanes. This AD requires removing the affected turbochargers from service before further flight. This AD was prompted by a report of an HET turbocharger causing an engine in-flight power rollback. We are issuing this AD to prevent turbocharger bearing seizure, failed turbocharger components, and damage to the airplane.

DATES: This AD is effective June 26, 2012 to all persons except those persons to whom it was made immediately effective by Emergency AD 2012–10–52, issued on May 14, 2012, which contained the requirements of this amendment.

The Director of the Federal Register approved the incorporation by reference of a certain publication identified in the AD as of June 26, 2012.

We must receive comments on this AD by July 26, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this AD, contact Hartzell Engine Technologies, LLC, 2900 Selma Highway, Montgomery, AL 36108, phone: 334–386–5400; fax: 334–386–5450; internet: *http://www.hartzellenginetech.com/service_bulletins.html#turbos.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Christopher Richards, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 E. Devon Ave., Des Plaines, IL 60018; phone: 847–294–7156; fax: 847–294–7834; email: *christopher.j.richards@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On May 14, 2012, we issued Emergency AD 2012–10–52, which requires removing HET turbochargers, P/Ns 406610–0005 and 406610–9005, before further flight. This action was prompted by a report of an HET turbocharger causing an engine in-flight power rollback. Upon investigation, the turbocharger was found to have incorrectly located oil passages in the center housing, causing insufficient oil flow to the bearings. This condition, if not corrected, could result in turbocharger bearing seizure, failure of the turbocharger turbine shaft or wheel, and damage to the airplane.

Relevant Service Information

We reviewed Hartzell Engine Technologies Alert Service Bulletin (ASB) No. 047, dated May 8, 2012. The ASB indentifies the part numbers and serial numbers of affected turbochargers and describes procedures for removing them from service.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other turbochargers of the same design. We are evaluating whether the affected population needs to expand to include supplemental type certificate and parts manufacturer approval installations and may take further action.

AD Requirements

This AD requires removing the affected turbochargers from service before further flight.

Minor Clarification

In the previously sent emergency AD, applicability paragraph (c)(2) inadvertently stated ''Turbochargers with P/N 406610–0005 or P/N 406610–9005 overhauled or repaired on or later than January 1, 2012, with the same turbocharger center housing P/N and date code H–0112.'' That paragraph in this AD is clarified to state ''Turbochargers with P/N 406610–0005 or P/N 406610–9005 overhauled or repaired on or later than January 1, 2012, with turbocharger center housing P/N 409836–0005 and date code H–0112.'' Applicability paragraph (c)(3) of the previously sent emergency AD, referenced this same turbocharger center housing P/N, which also needs to be referenced in paragraph (c)(2).

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the affected turbochargers need to be removed from service before further flight. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2012–0565 and Directorate Identifier 2012–NE–16–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects 80 airplanes of U.S. registry with affected turbochargers installed. We also estimate that it will take about 4 work-hours to remove a turbocharger from service. The average labor rate is $85 per work-hour. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $27,200.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–10–52 Hartzell Engine Technologies: Amendment 39–17075; Docket No. FAA–2012–0565; Directorate Identifier 2012–NE–16–AD.

(a) Effective Date

This AD is effective June 26, 2012 to all persons except those persons to whom it was made immediately effective by Emergency AD 2012–10–52 issued on May 14, 2012, which contained the requirements of this amendment.

(b) Affected ADs

None.

(c) Applicability

This emergency AD applies to the following Hartzell Engine Technologies (HET) turbochargers:

(1) Turbocharger HET part number (P/N) 406610–0005 or P/N 406610–9005 with serial numbers listed in Table 1 of HET Alert Service Bulletin No. 047, dated May 8, 2012.

(2) Turbochargers with P/N 406610–0005 or P/N 406610–9005 overhauled or repaired on or later than January 1, 2012, with turbocharger center housing P/N 409836–0005 and date code H–0112.

(3) Turbocharger center housings P/N 409836–0005 sold as piece parts which are in field/distributor inventory with date code H–0112.

These turbochargers are installed on, but not limited to, Cessna 206, 207, and 210 airplanes with Continental Motors, Inc TSIO–520–C, –G, –H, –M, and –R reciprocating engines installed.

(d) Unsafe Condition

This AD was prompted by a report of an HET turbocharger causing an engine in-flight power rollback. Upon investigation, the turbocharger was found to have incorrectly located oil passages in the center housing, causing insufficient oil flow to the bearings. This condition, if not corrected, could result in turbocharger bearing seizure, failure of the turbocharger turbine shaft or wheel, and damage to the airplane. We are issuing this AD to prevent turbocharger bearing seizure, failed turbocharger components, and damage to the airplane.

(e) Compliance

Before further flight, remove from service the turbochargers identified in paragraph (c) of this emergency AD, unless already done.

(f) Special Flight Permit

Special flight permits are prohibited.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Chicago Aircraft Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(h) Related Information

For more information about this AD, contact Christopher Richards, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 E. Devon Ave., Des Plaines, IL 60018; phone: 847–294–7156; fax: 847–294–7834; email: *christopher.j.richards@faa.gov.*

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information on the date specified. You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise.

(2) Hartzell Engine Technologies Alert Service Bulletin No. 047, dated May 8, 2012.

(3) For service information identified in this AD, contact Hartzell Engine Technologies, LLC, 2900 Selma Highway, Montgomery, AL 36108, phone: 334–386–5400; fax: 334–386–5450; internet: *http://www.hartzellenginetech.com/service_bulletins.html#turbos.*

(4) You may review copies of the service information at the FAA, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr_locations.html.*

Issued in Burlington, Massachusetts, on May 30, 2012.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–13855 Filed 6–8–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0445; Airspace Docket No. 12–ASO–27]

Amendment of Class D and Class E Airspace; Leesburg, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends Class D and Class E airspace at Leesburg, FL, changing the airport's name to Leesburg International Airport. The FAAs Aeronautical Products office requested the change to reflect the airport's current name.

DATES: Effective date 0901 UTC, July 26, 2012. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class D and Class E airspace at Leesburg, FL. Leesburg Regional Airport has been renamed Leesburg International Airport to be in concert with the FAAs aeronautical database. Accordingly, since this is an administrative change, and does not affect the boundaries, altitudes, or operating requirements of the airspace, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The Class D airspace, Class E surface airspace, and Class E airspace extending upward from 700 feet or more above the surface of the earth designations are published in Paragraph 5000, 6004, and 6005, respectively, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A. Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace for the Leesburg, FL, Class D and E airspace area.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Final Rule

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ASO FL D Leesburg, FL [Amended]

Leesburg International Airport, FL
(Lat. 28°49′23″ N., long. 81°48′31″ W.)

That airspace extending upward from the surface to but not including 1,600 feet MSL within a 4.1-mile radius of Leesburg International Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E airspace designated as an extension to a Class D surface area.

* * * * *

ASO FL E4 Leesburg, FL [Amended]

Leesburg International Airport, FL
(Lat. 28°49′23″ N., long. 81°48′31″ W.)
Leesburg NDB
(Lat. 28°49′06″ N., long. 81°48′26″ W.)

That airspace extending upward from the surface within 2.4 miles each side of the Leesburg NDB 111° bearing, extending from the 4.1-mile radius to 7 miles southeast of the NDB. This class E4 airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

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

* * * * *

ASO FL E5 Leesburg, FL [Amended]

Leesburg International Airport, FL
(Lat. 28°49′23″ N., long. 81°48′31Prime; W.)
Leesburg NDB
(Lat. 28°49′06″ N., long. 81°48′26″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Leesburg International Airport, and within 4 miles southwest and 8 miles northeast of the 111° bearing from the Leesburg NDB extending from the 6.6-mile radius to 16 miles southeast of the airport.

Issued in College Park, Georgia, on May 29, 2012.

Michael D. Wagner,

Acting Manager, Operations Support Group, Eastern service center, Air Traffic Organization.

[FR Doc. 2012–13841 Filed 6–8–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0240; Airspace Docket No. 12–ASO–15]

Amendment of Class E Airspace; Tallahassee, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E Airspace in the Tallahassee, FL area. Tallahassee Commercial Airport has been abandoned and controlled airspace is no longer needed. Airspace reconfiguration is necessary for the continued safety and management of instrument flight rules (IFR) operations within the Tallahassee, FL airspace area.

DATES: Effective 0901 UTC, July 26, 2012. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On April 10, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace in the Tallahassee, FL area (77 FR 21508). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface in the Tallahassee, FL area. Tallahassee Commercial Airport has been abandoned and controlled airspace serving the airport removed. Airspace reconfiguration is necessary for the continued safety and management of IFR operations within the Tallahassee, FL, airspace area.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace in the Tallahassee, FL area.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

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

* * * * *

ASO FL E5 Tallahassee, FL [Amended]

Tallahassee Regional Airport
(Lat. 30°23′48″ N., long. 84°21′02″ W.)
Quincy Municipal Airport
(Lat. 30°35′53″ N., long. 84°33′27″ W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of the Tallahassee Regional Airport and within a 6.3-mile radius of Quincy Municipal Airport.

Issued in College Park, Georgia, on May 30, 2012.

Michael D. Wagner,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–13839 Filed 6–8–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0503; Airspace Docket No. 11–ASO–19]

Amendment of Class E Airspace; Orlando, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E Airspace at Orlando, FL, as new Standard Instrument Approach Procedures have been developed at Orlando Executive Airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System. This action also makes a minor adjustment to the geographic coordinates of Orlando Executive Airport, Orlando International Airport, and Kissimmee Municipal Airport.

DATES: Effective 0901 UTC, July 26, 2012. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On March 22, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Orlando, FL (77 FR 16783). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, the FAA found that the geographic coordinates for the 3 airports under this designation needed to be adjusted. This action makes that adjustment. Class E airspace designations are published in paragraphs 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E surface area airspace and Class E airspace extending upward from 700 feet above the surface at Orlando, FL, to provide the controlled airspace required to accommodate the new Area Navigation Global Positioning System, Standard Instrument Approach Procedures developed for Orland Executive Airport. This action is necessary for the safety and management of IFR operations at the airport. This action also adjusts the geographic coordinates of Orlando Executive Airport, Orlando International Airport, and Kissimmee Municipal Airport to be in concert with the FAAs aeronautical database.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Orlando Executive Airport, Orlando, FL.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

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

* * * * *

ASO FL E5 Orlando, FL [Amended]

Orlando Executive Airport, FL
(Lat. 28°32′44″ N., long. 81°19′59″ W.)
Orlando VORTAC
(Lat. 28°32′34″ N., long. 81°20′06″ W.)
Orlando International Airport
(Lat. 28°25′46″ N., long. 81°18′32″ W.)
Kissimmee Municipal Airport
(Lat. 28°17′23″ N., long. 81°26′14″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Orlando Executive Airport, and within 3.1-miles each side of Orlando VORTAC 067° radial extending from the 7-mile radius to 9.5-miles northeast of the VORTAC, and within a 7-mile radius of Orlando International Airport, and within 3 miles each side of Orlando VORTAC 176° radial extending from the 7-mile radius to 19 miles

south of the VORTAC, and within a 7-mile radius of Kissimmee Municipal Airport.

Issued in College Park, Georgia, on May 30, 2012.

Michael D. Wagner,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–13840 Filed 6–8–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0130; Airspace Docket No. 12–AWA–2]

RIN 2120–AA66

Modification of Multiple Compulsory Reporting Points; Continental United States, Alaska and Hawaii

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends seventeen Domestic, Alaskan, and Hawaiian compulsory reporting points previously updated in the FAA aeronautical database without accompanying regulatory action being taken. The FAA is taking this action to correct the compulsory reporting point information contained in part 71 to ensure it matches the information contained in the FAA's aeronautical database and to ensure the safety and efficiency of the National Airspace System (NAS).

DATES: Effective date 0901 UTC June 11, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

After a recent review of aeronautical data, the National Flight Data Center (NFDC) identified seventeen compulsory reporting points published in FAA Order 7400.9V, Airspace Designations and Reporting Points, that did not match the geographic position information contained in the FAA's aeronautical database for the reporting points. When these compulsory reporting points were updated in the aeronautical database, the corresponding part 71 amendment actions were not also accomplished, in error. The reporting points include fourteen Domestic reporting points, one Alaskan low altitude reporting point, and two Hawaiian reporting points. To overcome any confusion or flight safety issues associated with conflicting compulsory reporting point information published, the FAA is amending the seventeen part 71 reporting points identified by NFDC. Accordingly, since this is an administrative correction to update compulsory reporting point information currently contained in the FAA's aeronautical database, notice and public procedures under Title 5 U.S.C. 553(b) are unnecessary.

The Rule

The FAA amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the geographic position information for fourteen Domestic reporting points, one Alaskan low altitude reporting point, and two Hawaiian reporting points. Specifically, the FAA amends the ALASK, BOGGY, CROAK, DOLPH, HEMLO, HERIN, HOBEE, IDAHO, SEDAR, TITON, TROUT, UTAHS, VERMO, and VIPER Domestic reporting points; the CORVA Alaskan low altitude reporting point; and the BATES and FISHE Hawaiian reporting points in part 71.

Domestic Low Altitude Reporting Points, Other Domestic Reporting Points designated at all altitudes, Alaskan Low Altitude Reporting Points, and Hawaiian Reporting Points are listed in paragraph 7001, 7003, 7004, and 7006, respectively of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends existing Domestic, Alaskan, and Hawaiian Reporting Points contained in the NAS.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with 311a, FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures.'' This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, signed August 9, 2011, and effective September 15, 2011, is amended as follows:

Paragraph 7001 Domestic low altitude reporting points.

* * * * *

TITON: [Amended]

Lat. 46°42′43″ N., long. 120°44′31″ W. (INT Yakima, WA, 304° and Ellensburg, WA, 212° radials).

* * * * *

Paragraph 7003 Other domestic reporting points.

* * * * *

ALASK: [Amended]

Lat. 16°50′13″ N., long. 66°32′15″ W. (INT Ponce, PR, 181° and St Croix, VI, 243° radials).

* * * * *

BOGGY: [Amended]

Lat. 28°15′02″ N., long. 91°27′45″ W.

* * * * *

CROAK: [Amended]

Lat. 36°56′19″ N., long. 73°00′00″ W. (INT Norfolk, VA, 088° and Sea Isle, NJ, 146° radials).

* * * * *

DOLPH: [Amended]

Lat. 28°15′09″ N., long. 90°03′12″ W.

* * * * *

HEMLO: [Amended]

Lat. 43°18′09″ N., long. 126°40′50″ W.

HERIN: [Amended]

Lat. 42°00′10″ N., long. 67°47′26″ W.

HOBEE: [Amended]

Lat. 29°13′21″ N., long. 79°09′05″ W. (INT Carolina Beach, NC, NDB 192° bearing and Orlando, FL, VORTAC 070° radial).

IDAHO: [Amended]

Lat. 19°15′38″ N., long. 67°38′22″ W.

* * * * *

SEDAR: [Amended]

Lat. 45°30′26″ N., long. 126°43′03″ W.

* * * * *

TROUT: [Amended]

Lat. 30°23′01″ N., long. 76°59′59″ W.

UTAHS: [Amended]

Lat. 19°41′26″ N., long. 67°17′12″ W.

VERMO: [Amended]

Lat. 20°07′34″ N., long. 66°12′55″ W.

VIPER: [Amended]

Lat. 28°14′55″ N., long. 88°53′08″ W. (INT Leeville, FL, 130° and Pickens, FL, NDB 215° radials).

Paragraph 7004 Alaskan low altitude reporting points.

* * * * *

CORVA: [Amended]

Lat. 60°16′56″ N., long. 145°14′51″ W.

* * * * *

Paragraph 7006 Hawaiian reporting points.

BATES: [Amended]

Lat. 20°00′31″ N., long. 153°33′04″ W.

* * * * *

FISHE: [Amended]

Lat. 21°46′38″ N., long. 155°32′08″ W. (INT Molokai, HI, 067° and Upolu Point, HI, 010° radials).

* * * * *

Issued in Washington, DC, June 4, 2012.

Paul Gallant

Acting Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2012–13993 Filed 6–8–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. FDA–2007–F–0390] (Formerly 2007F–0115)

Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a carbon dioxide laser for etching information on the surface of fresh, intact citrus fruit. This action is in response to a petition filed by Durand-Wayland, Inc.

DATES: This rule is effective June 11, 2012. Submit either electronic or written objections and requests for a hearing by July 11, 2012. See section VIII of this document for information on the filing of objections.

ADDRESSES: You may submit either electronic or written objections and requests for a hearing, identified by Docket No. FDA–2007–F–0390, by any of the following methods:

Electronic Submissions

Submit electronic objections in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written objections in the following ways:

- *FAX:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2007–F–0390 for this rulemaking. All objections received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting objections, see section VIII. Objections in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or objections received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Celeste Johnston, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1282.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of April 11, 2007 (72 FR 18263), FDA announced that a food additive petition (FAP 7M4768) had been filed by Durand-Wayland, Inc., c/o Hyman, Phelps & McNamara, P.C., 700 13th St. NW., suite 1200, Washington, DC 20005–5929. The petition proposed that the food additive regulations in part 179 (21 CFR part 179) be amended to provide for the safe use of a carbon dioxide laser for etching information on food, excluding meat and poultry. The intended technical effect of the carbon dioxide laser is to etch information, such as the price look-up code printed on an adhesive label placed on the surface of individual, fresh produce items sold at retail, directly onto the surface of food. The carbon dioxide laser therefore obviates the need for an adhesive label.

In a letter dated April 27, 2007, Hyman, Phelps & McNamara, P.C., informed FDA that Sunkist Growers, Inc., 14130 Riverside Dr., Sherman Oaks, CA 91423–2313, had joined Durand-Wayland, Inc., as co-petitioner of FAP 7M4768. The letter explained that Hyman, Phelps & McNamara would represent both petitioners with regard to FAP 7M4768.

Subsequent to the filing of the petition, the petitioners amended the petition by requesting a response to the proposed use of the carbon dioxide laser for etching information on the skin of fresh, intact citrus fruit not intended for commercial juice production, while the other requests in the petition remained

under review. The petitioners submitted a letter dated September 1, 2011, requesting withdrawal of all remaining uses of the petition other than to etch information on the skin of fresh, intact citrus fruit not intended for commercial juice production. On December 29, 2011, the petitioners communicated to FDA that, generally, citrus fruit intended solely for commercial juice production would not be laser etched, and that laser-etched citrus fruit would generally be intended for sale in the fresh market. However, certain circumstances (e.g., a cancelled order, expired shelf-life) could arise that would preclude laser-etched citrus fruit from being sold into the fresh market. In such circumstances, laser-etched citrus fruit could be sold for commercial juice production. To allow for this possibility, the petitioners requested that the proposed use not be limited to fruit not intended for nor used in commercial juice production. The petitioners assert that this use should be allowed because they contend there is no material difference between etched and non-etched citrus fruit. This final rule is a complete response to the petition.

II. Evaluation of Safety

A source of radiation used to treat food meets the definition of ''food additive'' under section 201(s) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 321(s)). While a source of radiation such as a carbon dioxide laser is not added to the food literally, the source is used to treat food and can affect the characteristics of the food.

Under section 409(c)(3)(A) of the FD&C Act (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is ''safe'' for that use. FDA's food additive regulations in 21 CFR 170.3(i) define ''safe'' as ''a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.''

To fairly evaluate the safety of the carbon dioxide laser used to etch information on the skin of fresh, intact citrus fruit, the Agency must identify the various effects that may result from etching the fruit and assess whether any of these effects pose a public health concern. In doing so, FDA has determined that the two primary areas of possible public health concern are the potential chemical effects and the potential microbiological risk from etching the food. Each of these areas is discussed in detail within this document.

III. Evaluation of the Safety of the Petitioned Use of a Carbon Dioxide Laser

A. Background on Carbon Dioxide Laser Etching System

The low energy carbon dioxide laser that is the subject of this petition emits an infrared pulsed light with a wavelength of 10.6 micrometers (μm). The infrared energy produced by the carbon dioxide laser is non-ionizing and falls within the infrared energy spectrum that is commonly used for food processing, such as cooking, toasting, and grilling. The carbon dioxide laser beam is integrated with a dot-matrix type printer head that etches information by removing the pigmented top layer from the surface of food and revealing a contrasting sublayer. The etching penetrates the food to an average depth of 50 μm, which is about the first two to three epidermal cell layers of the food's surface.

To limit the etching depth (i.e., how far the laser penetrates the fruit) and the total surface area of the fruit that is etched, the petitioners have specified the maximum energy per laser etched area to be 9.8×10^{-3} joules per square centimeter (J/cm^2) and a maximum total surface area of fruit etched by the laser to be 0.122 cm^2. The petitioners have also proposed a limit on the total energy to which the citrus fruit is exposed from the use of the carbon dioxide laser to be 1.5×10^{-3} J. Studies that evaluated the chemical and microbiological effects of the carbon dioxide laser on fresh produce, which are discussed in section III.B and III.C of this document, were consistent with these limits. To ensure that the use of the carbon dioxide laser for etching information on citrus fruit is safe, FDA is specifying these limits as conditions of safe use in the resulting regulation.

B. Potential for Chemical Effects in Food

One of the issues considered by FDA in evaluating the safety of a carbon dioxide laser used to etch information on the skin of fresh, intact citrus fruit is the potential formation of chemical products in the fruit generated by the laser etching process. To determine whether the use of a food additive is safe, FDA typically considers the chemical identity and amount of the additive that will be ingested compared to what is known regarding its toxicity. In the case of substances added directly to food, the Agency estimates the amount of the additive that will be ingested from the proposed use levels of the additive in particular foods and the consumption patterns of those foods. Information about the chemical structure of an additive, an assessment of the likely consumption of the additive, and information regarding the toxicity of the additive, forms the basis for evaluating its safety. Similarly, for the petitioned use of the carbon dioxide laser for etching the skin of fresh, intact citrus fruit, the Agency considered the potential exposure to new chemical substances that may be generated in the laser-etched fruit in evaluating its toxicological safety.

To demonstrate the safety of the laser etching process, the petitioners provided a study that compared the chemical effects in tomatoes, potatoes, and apples exposed to the carbon dioxide laser etching system to those cooked with infrared heat. The study included chemical analyses that showed that use of the carbon dioxide laser to etch information on foods does not generate any new chemical substances that are not also typically generated by conventional cooking. Although this study was not conducted specifically on citrus fruit, the results are relevant for evaluating the potential chemical effects in fruits and vegetables exposed to laser etching in general, and therefore, support a determination that the proposed use of a laser to etch the skin of fresh, intact citrus fruit is safe.

Furthermore, the dietary exposure to any substances generated in the citrus fruit by the laser etching process is expected to be negligible due to the insignificant amount of substances formed, the very small portion of the surface area of the citrus fruit that is etched (0.122 cm^2), and the fact that the skin of citrus fruit is normally not consumed (Refs. 1 and 2). Based on this information, FDA concludes that any chemical effects generated by the laser etching process leading to the formation of products in the fruit are of no toxicological concern (Ref. 3).

C. Potential for Microbiological Risk in Food

The petitioners submitted data from a controlled study that evaluated whether the petitioned use of the carbon dioxide laser for etching information on the skin of fresh, intact citrus fruit increased the microbiological risk from changes to the surface of laser-etched fruit compared to fruit that had not been laser etched. The study assessed the ability of *Salmonella* bacteria to infiltrate, survive, or grow on the surface of fresh Valencia oranges in the area that was etched by the carbon dioxide laser under the proposed conditions of use. *Salmonella* bacteria were inoculated on the surface of oranges under typical conditions of commercial storage of fresh oranges. The study utilized *Salmonella* because

it is a human pathogen commonly associated with fresh produce contamination. Valencia oranges were used in the study because they are a fresh citrus fruit and, compared to other types of citrus fruit, have a higher hydrogen-ion concentration (pH) that is more advantageous for *Salmonella* growth.

According to the study's results, the recovery of viable *Salmonella* bacteria from the oranges after etching by the carbon dioxide laser and subsequent storage for 29 days was comparable to the recovery of *Salmonella* from control oranges that were not etched by the carbon dioxide laser. The amount of viable *Salmonella* bacteria decreased with storage time and followed a similar pattern of decline over the duration of storage under all treatment conditions. The study also evaluated the presence of viable *Salmonella* in the juice portion of inoculated and etched oranges. *Salmonella* was not detected in the juice portion of any sound, decay-free oranges that had been etched by the laser.

FDA evaluated the results of the study and concluded that *Salmonella* bacteria present on orange surfaces prior to etching by the carbon dioxide laser, and that contaminate orange surfaces after laser etching, do not infiltrate, survive, or grow during subsequent storage to a level that presents a potential public health hazard significantly greater than the survival or growth of *Salmonella* bacteria on oranges that are not etched by the carbon dioxide laser (Ref. 4).

As stated earlier, on December 29, 2011, the petitioners requested that the proposed use not be limited to citrus fruit not intended for nor used in commercial juice production because certain circumstances, such as a cancelled order or expired shelf-life, may arise that would preclude citrus fruit that is already laser etched from being sold in the fresh market, but such fruit could still be sold for commercial juice production. In these circumstances, the preferred alternative would be to use the laser-etched citrus fruit for commercial juice production. FDA concludes that no additional safety data or analysis is necessary because the evidence submitted by the petitioners has established that there is no material difference between etched and non-etched citrus fruit. Specifically, the *Salmonella* study results provided by the petitioners demonstrated the microbiological similarities between the untreated and laser-etched oranges, and the results from the same study showed no detection of *Salmonella* in the juice portion of laser-etched oranges. In addition, juice processors are required to comply with the Hazard Analysis and Critical Control Point regulation for juice (part 120 (21 CFR part 120)) (the juice HACCP regulation). Specifically, § 120.24(a) (21 CFR 120.24(a)) requires juice processors to include in their HACCP plans control measures that will consistently produce, at a minimum, a 5-log reduction in the pertinent microorganism, which is the most resistant microorganism of public health significance that is likely to occur in the juice. Juice processors must achieve the 5-log reduction through treatments applied directly to the juice, except that citrus juice processors may use treatments applied to the surface of the fruit, provided that the 5-log reduction process begins after culling and cleaning as defined in § 120.3(a) and (f), and the reduction is accomplished within a single production facility (§ 120.24(b)). FDA concludes that laser-etched citrus fruit, which has been otherwise cleaned and culled in accordance with the requirements of part 120, can be eligible to be used to make citrus juice where treatments applied only to the surface of the fruits are used to achieve the 5-log pathogen reduction control measure. In addition, § 120.11(b) requires the juice processor to validate that the HACCP plan, including any processes used to achieve the 5-log pathogen reduction requirements of § 120.24, is adequate to control food hazards that are reasonably likely to occur. If validation reveals that the HACCP plan is no longer adequate to achieve the 5-log pathogen reduction and otherwise meet the requirements of part 120, the juice processor must modify the HACCP plan immediately. Based on the data submitted by the petitioners demonstrating that there is no material difference between etched and non-etched citrus fruit, and the additional controls for the growth of pertinent microorganisms provided by the juice HACCP regulation, FDA has no safety concerns regarding the possible use of laser-etched citrus fruit for commercial juice production, and this use is not excluded from the scope of the final rule.

IV. Conclusion

Based on the data and studies submitted in the petition and other relevant information in the Agency's files, FDA concludes that the proposed use of a carbon dioxide laser for etching information on the surface of fresh, intact citrus fruit is safe under the conditions proposed in this petition. Therefore, the food additive regulations should be amended as set forth in this document.

V. Public Disclosure

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 171.1(h), the Agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VI. Environmental Impact

The Agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 7M4768 (72 FR 18263). No new information or comments have been received that would affect the Agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

VII. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Objections

Any person who will be adversely affected by this regulation may file with the Division of Dockets Management (see **ADDRESSES**) either electronic or written objections by (see **DATES**). Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. It is only necessary to send one set of documents. Identify documents with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management

between 9 a.m. and 4 p.m., Monday through Friday.

IX. Section 301(ll) of the Federal Food, Drug, and Cosmetic Act

FDA's review of this petition was limited to section 409 of the FD&C Act. This final rule is not a statement regarding compliance with other sections of the FD&C Act. For example, the Food and Drug Administration Amendments Act of 2007, which was signed into law on September 27, 2007, amended the FD&C Act to, among other things, add section 301(ll) of the FD&C Act (21 U.S.C. 331(ll)). Section 301(ll) of the FD&C Act prohibits the introduction or delivery for introduction into interstate commerce of any food that contains a drug approved under section 505 of the FD&C Act (21 U.S.C. 355), a biological product licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), or a drug or biological product for which substantial clinical investigations have been instituted and their existence has been made public, unless one of the exceptions in section 301(ll)(1) to (ll)(4) of the FD&C Act applies. In its review of this petition, FDA did not consider whether section 301(ll) of the FD&C Act or any of its exemptions apply to the laser-etching source. Accordingly, this final rule should not be construed to be a statement that a food that has been laser etched, if introduced or delivered for introduction into interstate commerce, would not violate section 301(ll) of the FD&C Act. Furthermore, this language is included in all food additive final rules and therefore should not be construed to be a statement of the likelihood that section 301(ll) of the FD&C Act applies.

X. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from Lee, Chemistry Review Group, Division of Petition Review, to Johnston, Regulatory Group II, Division of Petition Review, May 16, 2007.
2. Memorandum from Lee, Chemistry Review Group, Division of Petition Review, to Johnston, Regulatory Group II, Division of Petition Review, November 19, 2008.
3. Memorandum from Khan, Toxicology Team, Division of Petition Review, to Johnston, Regulatory Group II, Division of Petition Review, April 20, 2010.
4. Memorandum from Losikoff, Division of Seafood Safety, and Mahovic, Produce Safety Staff, to Johnston, Regulatory Group II, Division of Petition Review, August 15, 2011.

List of Subjects in 21 CFR Part 179

Food additives, Food labeling, Food packaging, Radiation protection, Reporting and recordkeeping requirements, Signs and symbols.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 179 is amended as follows:

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOOD

1. The authority citation for 21 CFR part 179 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 343, 348, 373, 374.

■ 2. Section 179.43 is added to subpart B to read as follows:

§ 179.43 Carbon dioxide laser for etching food.

Carbon dioxide laser light may be safely used for etching information on the surface of food under the following conditions:

(a) The radiation source consists of a carbon dioxide laser designed to emit pulsed infrared radiation with a wavelength of 10.6 micrometers such that the maximum energy output of the laser does not exceed 9.8×10^{-3} joules per square centimeter (J/cm^2);

(b) The carbon dioxide laser shall be used only for etching information on the skin of fresh, intact citrus fruit, providing the fruit has been adequately washed and waxed prior to laser etching, and the etched area is immediately rewaxed after treatment; and

(c) The maximum total energy to which the etched citrus fruit is exposed from the use of the carbon dioxide laser shall not exceed 1.5×10^{-3} J, and the maximum total etched surface area of the citrus fruit shall not exceed 0.122 cm^2.

Dated: June 5, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–14035 Filed 6–8–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0197]

RIN 1625–AA08

Special Local Regulations for Marine Events, Swim Event; Lake Gaston, Littleton, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will establish a Special Local Regulation for ''The Crossing'' swim event to be held on the waters of Lake Gaston, adjacent to the Eaton Ferry Bridge in Littleton, North Carolina. This Special Local Regulation is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on Lake Gaston under the Eaton Ferry Bridge and within 100 yards west of the bridge during the swim event.

DATES: This rule is effective from 7:30 a.m. to Noon on August 11, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0197]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email BOSN3 Joseph M. Edge, U.S. Coast Guard Sector North Carolina; telephone 252–247–4525, email *Joseph.M.Edge@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The regulatory history for this action includes both a Notice of proposed

rulemaking and Temporary final rule published in the **Federal Register** on May 24, 2011 and July 7, 2011 respectively. On April 3, 2012, we published a notice of proposed rulemaking (NPRM) entitled ''Special local regulations for marine events, Swim Event, Lake Gaston; Littleton, NC'' in the **Federal Register** (77 FR 19954). We received no comments on the proposed rule. No public meeting was requested, and none was held.

B. Basis and Purpose

On August 11, 2012 from 7:30 a.m. to Noon, the Organization to Support the Arts, Infrastructure, and Learning on Lake Gaston, also known as O'SAIL, will sponsor ''The Crossing'' on the waters of Lake Gaston, adjacent to Littleton, North Carolina. The swim event will consist of approximately 350 swimmers entering Lake Gaston at the Morning Star Marina on the south bank of Lake Gaston, west of the Eaton Ferry Bridge, and swimming north along the western side of Eaton Ferry Bridge to the Waterview Restaurant. A fleet of spectator vessels is expected to gather near the event site to view the competition. To provide for the safety of participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during this event.

In an effort to enhance safety of event participants the channel in the vicinity of Eaton Ferry Bridge will remain closed during the event on August 11, 2012 from 7:30 a.m. to Noon. The Coast Guard will temporarily restrict access to this section of Lake Gaston during the event.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing special local regulations on the specified navigable waters listed in this regulation.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Although this regulation will restrict access to the area, the effect of this rule will not be significant because the regulated area will be in effect for a limited time, from 7:30 a.m. to 12 p.m. (Noon), on August 11, 2012. The Coast Guard will provide advance notification via maritime advisories so mariners can adjust their plans accordingly. The regulated area will apply only to the section of Lake Gaston in the immediate vicinity of Eaton Ferry Bridge. Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of recreational vessels intending to transit the specified portion of Lake Gaston from 7:30 a.m. to Noon on August 11, 2012.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will only be in effect for four and one-half hours from 7:30 a.m. to Noon. The regulated area applies only to the section of Lake Gaston in the vicinity of Eaton Ferry Bridge. Vessel traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the swim course. The Patrol Commander will allow non-participating vessels to transit the event area once all swimmers are safely clear of navigation channels and vessel traffic areas. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. This special local regulation is necessary to provide for the safety of the general public and event participants from potential hazards associated with movement of vessels near the event area. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U. S. C. 1233.

■ 2. Add a temporary § 100.35–T05–0197 to read as follows:

§ 100.35–T05–0197 Lake Gaston, Enterprise, NC.

(a) *Regulated area.* The following location is a regulated area: All waters of Lake Gaston directly under the Eaton Ferry Bridge, latitude 36°31′06″ North, longitude 077°57′37″ West, and within 100 yards of the western side of the bridge at Littleton, North Carolina. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U. S. Coast Guard who has been designated by the Commander, Coast Guard Sector North Carolina.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector North Carolina with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* means all vessels participating in the ''The Crossing'' swim event under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector North Carolina.

(4) *Spectator* means all persons and vessels not registered with the event sponsor as participants or official patrol.

(c) *Special local regulations.* (1) The Coast Guard Patrol Commander will control the movement of all vessels in the vicinity of the regulated area. When hailed or signaled by an official patrol vessel, a vessel approaching the regulated area shall immediately comply with the directions given. Failure to do so may result in termination of voyage and citation for failure to comply.

(2) The Coast Guard Patrol Commander may terminate the event, or the operation of any support vessel participating in the event, at any time it is deemed necessary for the protection of life or property. The Coast Guard may be assisted in the patrol and enforcement of the regulated area by other Federal, State, and local agencies.

(3) Vessel traffic, not involved with the event, may be allowed to transit the regulated area with the permission of the Patrol Commander. Vessels that desire passage through the regulated area shall contact the Coast Guard Patrol Commander on VHF–FM marine band radio for direction. Only participants and official patrol vessels are allowed to enter the regulated area.

(4) All Coast Guard vessels enforcing the regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22 (157.1 MHz). The Coast Guard will issue marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) *Enforcement period.* This section will be enforced from 7:30 a.m. to (Noon) 12 p.m. on August 11, 2012.

Dated: May 30, 2012.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2012–14127 Filed 6–8–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AN64

Clothing Allowance; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; correcting amendment.

SUMMARY: The Department of Veterans Affairs (VA) published a final rule on November 16, 2011, amending its adjudication regulations governing eligibility for clothing allowances. VA has since determined that certain language added to the final rule could be construed to impose a restriction that VA did not intend. This document corrects that error.

DATES: This correction is effective June 11, 2012.

FOR FURTHER INFORMATION CONTACT: Tom Kniffen, Chief, Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–9725. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On February 2, 2011, VA published a proposed rule (76 FR 5733) to revise 38 CFR 3.810 to clarify the circumstances under which a veteran may be entitled to more than one clothing allowance. Proposed paragraph (a)(2)(ii) explained that a veteran who uses more than one prosthetic or orthopedic appliance or medication would be eligible for a clothing allowance for each such appliance or medication if each appliance or medication ''[a]ffects a distinct article of clothing or outergarment.''

On November 16, 2011, VA published the final rule (76 FR 70883). In the final rule, VA stated that it was revising proposed paragraph (a)(2)(ii) in order to ''clarify that the references to garments or clothing in this regulation are to types of garments, such as shirts, rather than to individual garments, such as a specific shirt'' and to make clear that ''more than one clothing allowance is payable when more than one type of article of clothing or outergarment is affected.'' The final rule revised paragraph (a)(2)(ii) to state that a veteran who uses more than one appliance or medication would be eligible for a clothing allowance for each such appliance or medication if each appliance or medication ''[a]ffects more than one type of article of clothing or outergarment.''

VA has determined that the language of the final rule could be construed to mean that each individual appliance or medication used by a veteran must affect more than one type of article of clothing or outergarment in order to qualify for a clothing allowance. As explained in the final-rule notice, however, VA did not intend to impose such a requirement, but intended only to clarify that each appliance or medication must affect a distinct type of article of clothing or outergarment, such as shirts, in order to qualify for a clothing allowance. Requiring each appliance or medication to affect more than one type of article of clothing or outergarment would impose an unintended restriction on eligibility for the clothing allowance and would create significant inconsistencies in VA's clothing-allowance regulation. To correct this inadvertent error, VA is amending 38 CFR 3.810(a)(2)(ii) by replacing the words ''more than one type'' with the words ''a distinct type''. This change will make clear that an appliance or medication only needs to affect a distinct type of clothing or outergarment in order to qualify for a clothing allowance. This change does not alter the intended meaning of the regulation as explained in the proposed rule and the final rule notice, but would eliminate the potential for confusion or misinterpretation created by the ambiguous language included in the final rule.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), VA has determined that notice and prior opportunity for comment on this correcting amendment are unnecessary and contrary to public interest. As stated above, this correction is needed to accurately reflect the intent of the final rule and codified regulation and ensure that the inadvertent error does not adversely affect claimants. We previously provided public notice in the **Federal Register** and considered public comments on the proposed rule. See 76 FR 5733 and 76 FR 70883. VA's intent and interpretation of § 3.810(a)(2)(ii) has not changed. This correction merely ensures clarity of VA's intent and interpretation regarding the eligibility for a clothing allowance. For these reasons, VA has also determined pursuant to 5 U.S.C. 553(d) that there is good cause to make this change effective on the date of its publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: June 6, 2012.

Robert C. McFetridge,

Direc tor, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is corrected by making the following correcting amendment:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.810(a)(2)(ii) by removing ''more than one type'' and adding, in its place, ''a distinct type''.

[FR Doc. 2012–14108 Filed 6–8–12; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0080; FRL–9683–3]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval of revisions to the Indiana State Implementation Plan (SIP) submitted by the Indiana Department of Environmental Management (IDEM) on January 14, 2011, and March 10, 2011, addressing regional haze for the first implementation period that ends 2018. This action is being taken in accordance with the requirements of the Clean Air Act (CAA) and EPA's rules for states to prevent and remedy future and existing anthropogenic impairment of visibility in mandatory Class I areas through a regional haze program. As part of this action, EPA is also approving limits for the Alcoa facility that EPA finds satisfy the requirements for best available retrofit technology (BART).

DATES: This final rule is effective on July 11, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2011–0080. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some

information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Charles Hatten, Environmental Engineer, at (312) 886–6031 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov*.

SUPPLEMENTARY INFORMATION: This supplementary information section is arranged as follows:

I. Synopsis of Proposed Rule
II. Public Comments and EPA's Responses
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. Synopsis of Proposed Rule

Indiana submitted a plan to address regional haze on January 14, 2011, and supplemented it on March 10, 2011. This plan was intended to address the requirements in CAA section 169A, and EPA's Regional Haze Rule as codified at 40 CFR 51.308. This rule was promulgated on July 1, 1999 (64 FR 35713). Further significant provisions were promulgated on July 6, 2005, providing further guidance on provisions related to BART.

EPA proposed a limited approval of Indiana's submittal on January 26, 2012 (77 FR 3975). That action described the nature of the regional haze problem and the statutory and regulatory background for EPA's review of Indiana's regional haze plan. The proposal provided a lengthy delineation of the requirements that Indiana intended to meet, including requirements for mandating BART, consultation with other states in establishing goals representing reasonable further progress in mitigating anthropogenic visibility impairment, and adoption of limitations as necessary to implement a long term strategy (LTS) for reducing visibility impairment. Indiana's control strategy addresses the regional haze rule for the first implementation period that ends 2018.

Of particular interest were EPA's findings regarding BART. Using modeling performed by the Lake Michigan Air Directors Consortium (LADCO), Indiana identified one non-electric generating unit (non-EGU) source, Alcoa in Warrick County, as having sufficient impact to warrant being subject to a requirement representing BART.

Indiana developed source-specific limits to mandate BART for Alcoa to comply with EPA's regional haze rule. These limits are adopted into regulation 326 of the Indiana Administrative Code (IAC), Article 26, Rule 2, of which include sulfur dioxide (SO_2), nitrogen oxide (NO_X), and particulate matter (PM) emission limits applicable to the Alcoa facility in Warrick County. In the proposed rulemaking, EPA proposed to conclude that the emission reductions from 326 IAC 26–2 would suffice to address the BART requirement for non-EGUs.

II. Public Comments and EPA's Responses

The publication of EPA's proposed rule on January 26, 2012 (77 FR 3975) initiated a 30-day public comment period that ended on February 27, 2012. During the public comment period on the proposed rulemaking on the Indiana regional haze plan we received comments from the United States Forest Service (FS) and the United States National Park Service (NPS). These comments and EPA's responses are addressed in detail below.

Comment #1: FS continues to disagree with the alternative BART scenario for the Alcoa facility. FS believes that emission reductions that could be used for reasonable progress purposes should not be creditable for alternative measures/BART purposes. FS further comments that requiring emission controls for Boilers 2 and 3, which are subject to BART, would be more appropriate for reasonable progress purposes instead of taking credit for emission reductions from Boiler 1, which is not subject to BART.

Response #1: As stated in 40 CFR 51.308(e)(2)(iv), the pertinent requirement is that the emission reductions of the alternative measure be ''surplus to reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP.'' This point is explained in the preamble of the BART guidelines. 70 FR 39143. Therefore, EPA finds the reductions at Boiler 1 to be a creditable part of Indiana's alternative BART limits in lieu of full BART control of boilers 2 and 3 and the potlines.

The BART guidelines state that ''(2) The EPA does not believe that anything in the CAA or relevant case law prohibits a State from considering emissions reductions required to meet other CAA requirements when determining whether source by source BART controls are necessary to make reasonable progress.'' This rule further states, ''(3) * * * in lieu of BART programs be based on emissions reductions 'surplus to reductions resulting from measures adopted to meet requirements as of the baseline date of the SIP.' The baseline date for regional haze SIPs is 2002 * * *'' 70 FR 39143.

Comment #2: For the Alcoa facility, FS comments that there is no technical reason that the controls for Boilers 2 and 3 cannot achieve 92 percent or greater efficiency with wet Flue Gas Desulfurization (FGD) to meet BART.

Response #2: EPA agrees with FS that wet FGD emission control technology commonly achieves a 92 percent or higher emission reduction. Alcoa used the 92 percent reduction level for the BART analysis for Boilers 2 and 3. However, Indiana is applying flexibility authorized in the regional haze rule to require less control of Boilers 2 and 3 than the control equipment can achieve, requiring 90 percent control of these Boilers, while requiring additional, compensating control of Boiler 1, which still results in an overall improvement in visibility.

Comment #3: FS comments that the increase in the sulfur content of coke for the BART-subject potlines (#2–#6), actually results in increased SO_2 emissions with no control technology or alternative to offset the increase. The FS accepts that low sulfur coke may not be available after 2013, but asserts that if increased emissions from the facility occur, then Alcoa should look for an alternative to either control emissions from the potlines or offset those emissions if control technologies are too expensive.

Response #3: The FS comment appears to reflect a misunderstanding of the situation. Indiana's plan describes a BART determination that reflects an increase in sulfur content of coke used in the potlines, but Indiana's submittal does not actually increase the SO_2 emission limits that apply to these units. EPA did not agree with Indiana's rationale for determining BART to reflect an increase in potline emissions, but EPA's proposed, and now final, approval of Indiana's BART determination for the potlines is based on the fact that the actual SO_2 limits in

Indiana's plan do not allow the SO_2 emissions increase that the FS asserts to be allowed by Indiana's plan.

Comment #4: FS comments that ''Indiana continues to disagree with the need for a factor analysis of additional NO_X control technologies.'' FS notes Indiana's comparison of its proposed BART limits against new source performance standards (NSPS) limits, but finds that this comparison does not address BART requirements in lieu of conducting a full analysis of all feasible control technologies.

Response #4: Alcoa in fact did conduct a five factor BART analysis, as required by the Indiana BART rule and the BART guidelines. Alcoa identified low NO_X burners (LNB), LNB combined with over-fire air, selective catalytic reduction (SCR) and selective non-catalytic reduction (SNCR) systems as feasible technologies to control NO_X from boilers. Alcoa concluded that SCR and SNCR were not cost effective. Indiana reached the same conclusions regarding these controls, and EPA agrees. Indiana set limits that are significantly tighter than the NSPS, and notes the state did not conduct a complete and adequate analysis of BART for the Alcoa facility.

Comment #5: NPS believes that EPA should apply its economic incentive policy to Indiana's regional haze SIP in accordance with policy stated in a letter to Wisconsin regarding Wisconsin's regional haze SIP. NPS provides what it considers to be quotes from EPA's letter that advise Wisconsin not to take credit for various reductions that are or will be required by other regulatory requirements.

Response #5: EPA's letter to Wisconsin does not include the statements that NPS attributes to EPA. EPA finds the reductions that Indiana takes credit for to be fully creditable. The primary applicability of the economic incentive policy to the Wisconsin plan related to the question of whether the baseline emissions of a subsequently shutdown boiler should be included in determining a limit on the combined emissions of multiple boilers. This situation does not apply in Indiana, and so the actual comments in EPA's letter to Wisconsin are not germane to Indiana.

III. What action is EPA taking?

EPA is finalizing the limited approval of Indiana's regional haze plan submitted by IDEM on January 11, 2011, and March 10, 2011, addressing regional haze for the first implementation period. The revisions seek to address CAA and regional haze rule requirements for states to remedy any existing anthropogenic and prevent future impairment of visibility at Class I areas.

Indiana's plan satisfies a number of elements of the regional haze requirements. Most notably, EPA concludes that Indiana has satisfied the requirements for BART in 40 CFR 51.308(e) for non-EGUs and for PM from EGUs. Indiana's plan identifies the Class I areas that the state's emissions affect. Indiana demonstrates that the state has consulted with other states as appropriate in establishing reasonable progress goals and identifying the reductions need in Indiana to meet those goals. For these reasons, and for the SIP strengthening effect of Indiana's plan, EPA is granting limited approval of Indiana's plan.

In conjunction with the above actions, EPA is approving regulation 326 IAC 26–2 for incorporation into the state implementation plan. These limits on Alcoa's emissions of SO_2, NO_X, and PM are state enforceable and, with this SIP approval, are now Federally enforceable. It should be noted that rule 326 IAC 26–2 contains an erroneous citation, citing limits in 326 IAC 7–4–10(a)(4) rather than 326 IAC 7–4–10(a)(3). EPA nevertheless approves the rule for several reasons: (1) The pertinent limits are already an approved part of Indiana's SIP and are therefore already enforceable; (2) the State's intent is clear; and (3) Indiana intends to correct this reference.

IV. Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 10, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition

for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: May 29, 2012.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. Section 52.770 is amended by adding a new entry at the end of the table in paragraph (c) for ''Article 26. Regional Haze'' and by adding a new entry in alphabetical order in the table in paragraph (e) for ''Regional Haze Plan'' to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
*	*	*	*	*
Article 26. Regional Haze				
Rule 2. Best Available Retrofit Technology Emission Limitations				
26–2–1	Applicability	3/09/2011	6/11/2012, [Insert page number where the document begins].	
26–2–2	Alcoa emission limitations and compliance methods.	3/09/2011	6/11/2012, [Insert page number where the document begins].	

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
*	*	*	*
Regional Haze Plan	01/14/2011 and 03/10/2011	6/11/2012, [Insert page number where the document begins].	
*	*	*	*

[FR Doc. 2012–13955 Filed 6–8–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2008–0476; FRL 9682–2]

RIN 2060–AR56

Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards for Several Counties in Illinois, Indiana, and Wisconsin; Corrections to Inadvertent Errors in Prior Designations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule completes the initial air quality designations for the 2008 primary and secondary national ambient air quality standards (NAAQS) for ozone. On April 30, 2012, the EPA promulgated the initial ozone air quality designations for all areas in the United States except for 12 counties in Illinois, Indiana and Wisconsin, which the EPA was still evaluating. This action designates those counties. The EPA is designating all or parts of 11 counties as the Chicago-Naperville, IL-IN-WI nonattainment area. The EPA is designating the remaining county and parts of counties as unclassifiable/attainment. The Chicago-Naperville, IL-IN-WI nonattainment area is being classified by operation of law as a Marginal area according to the severity of its air quality problem. This rule also corrects inadvertent errors in the regulatory text regarding the designation of three areas in the ozone designation rule signed on April 30, 2012.

DATES: The effective date of this rule is July 20, 2012.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2008–0476. All documents in the docket are listed in the index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in the docket or in hard copy at the Docket, EPA/DC, EPA West,

Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566–1742.

In addition, the EPA has established a Web site for this rulemaking at: *http://www.epa.gov/ozonedesignations.* The Web site includes the EPA's final state and tribal designations, as well as state initial recommendation letters, the EPA modification letters, technical support documents, responses to comments and other related technical information.

FOR FURTHER INFORMATION CONTACT: Carla Oldham, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–04, Research Triangle Park, NC 27711, phone number (919) 541–3347 or by email at: *oldham.carla@epa.gov.*

Regional Office contact: Edward Doty, phone number (312) 886–6057 or by email at: *doty.edward@epa.gov.*

SUPPLEMENTARY INFORMATION: The public may inspect the rule and state-specific technical support information at the following location:

Regional office	Affected states
John Mooney, Chief, Air Programs Branch, EPA Region 5, 77 West Jackson Street, Chicago, IL 60604, (312) 886–6043.	Illinois, Indiana, and Wisconsin.

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I. Preamble Glossary of Terms and Acronyms

The following are abbreviations of terms used in the preamble.

APA Administrative Procedure Act
CAA Clean Air Act
CFR Code of Federal Regulations
D.C. District of Columbia
EPA Environmental Protection Agency
FR **Federal Register**
NAAQS National Ambient Air Quality Standards
NO_X Nitrogen Oxides
NTTAA National Technology Transfer and Advancement Act
PPM Parts per million
RFA Regulatory Flexibility Act
UMRA Unfunded Mandate Reform Act of 1995
TAR Tribal Authority Rule
U.S. United States
U.S.C. United States Code
VCS Voluntary Consensus Standards
VOC Volatile Organic Compounds

II. What is the purpose of this action?

The purpose of this action is to promulgate initial air quality designations for 12 counties in Illinois, Indiana and Wisconsin for the 2008 primary and secondary NAAQS for ozone, in accordance with the requirements of Clean Air Act (CAA) section 107(d). Whenever the EPA establishes a new or revised NAAQS, section 107(d) requires the EPA to designate all areas of the country as to whether the areas are meeting or not meeting the new or revised NAAQS. In an action signed on April 30, 2012, the EPA designated all other areas of the country for the 2008 ozone NAAQS (77 FR 30088; May 21, 2012). At that time, the EPA did not designate 12 counties in Illinois, Indiana and Wisconsin because the EPA was still evaluating them for inclusion in the Chicago-Naperville, IL-IN-WI nonattainment area. The EPA has now completed that evaluation. The EPA is designating eight of the counties and parts of three of the counties as the Chicago-Naperville, IL-IN-WI nonattainment area. The EPA is designating the remaining county and parts of counties as unclassifiable/attainment. The Chicago-Naperville, IL-IN-WI nonattainment area is also being classified by operation of law as a Marginal area according to the severity of its air quality problem. The designation for each of these 12 counties is provided in the tables at the end of this notice (amendments to 40 CFR 81.314, 315, and 350). For areas designated as nonattainment, the tables include the area's classification.

State areas designated as nonattainment are subject to planning and emission reduction requirements as specified in the CAA. Requirements vary according to an area's classification. The EPA will be proposing shortly an implementation rule to assist states in the development of state implementation plans for attaining the ozone standards.

This rule also corrects inadvertent errors in the regulatory text regarding the designation of three areas in the ozone designation rule signed on April 30, 2012. The affected areas are the Kentucky portion of the Cincinnati, OH-KY-IN nonattainment area, the partial Kenton County, KY unclassifiable/attainment area, and Crittenden County, AR.

III. What is ozone and how is it formed?

Ground-level ozone, O_3, is a gas that is formed by the reaction of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) in the atmosphere in the presence of sunlight. These precursor emissions are emitted by many types of pollution sources, including power plants and industrial emissions sources, on-road and off-road motor vehicles and engines, and smaller sources, collectively referred to as area sources. Ozone is predominately a summertime air pollutant. However, high ozone concentrations have also been observed in cold months, where a few high elevation areas in the Western U.S. have experienced high levels of local VOC and NO_X emissions that have formed ozone when snow is on the ground and temperatures are near or below freezing. Ozone and ozone precursors can be transported to an area from sources in nearby areas or from

sources located hundreds of miles away. For purposes of determining ozone nonattainment area boundaries, the CAA requires the EPA to include areas that contribute to nearby violations of the NAAQS.

IV. What are the 2008 ozone NAAQS and the health and welfare concerns they address?

On March 12, 2008, the EPA revised both the primary and secondary NAAQS for ozone to a level of 0.075 parts per million (ppm) (annual fourth-highest daily maximum 8-hour average concentration, averaged over 3 years) to provide increased protection of public health and the environment.[1] The 2008 ozone NAAQS retain the same general form and averaging time as the 0.08 ppm NAAQS set in 1997, but are set at a more protective level.

Ozone exposure has been associated with increased susceptibility to respiratory infections, medication use by asthmatics, doctor visits, and emergency department visits and hospital admissions for individuals with respiratory disease. Ozone exposure may also contribute to premature death, especially in people with heart and lung disease. The secondary ozone standard was revised to protect against adverse welfare effects including impacts to sensitive vegetation and forested ecosystems.

V. What are the CAA requirements for air quality designations?

When the EPA promulgates a new or revised NAAQS, the EPA is required to designate areas as nonattainment, attainment, or unclassifiable, pursuant to section 107(d)(1) of the CAA. The CAA requires the EPA to complete the initial area designation process within 2 years of promulgating the NAAQS. However, if the Administrator has insufficient information to make these designations within that time frame, the EPA has the authority to extend the deadline for designation decisions by up to 1 additional year.

By not later than 1 year after the promulgation of a new or revised NAAQS, each state governor is required to recommend air quality designations, including the appropriate boundaries for areas, to the EPA. The EPA reviews those state recommendations and is authorized to make any modifications the Administrator deems necessary. The statute does not define the term ''necessary,'' but the EPA interprets this to authorize the Administrator to modify designations that did not meet the statutory requirements or were otherwise inconsistent with the facts or analysis deemed appropriate by the EPA. If the EPA intends to make any modifications to a state's initial recommendation, the EPA is required to notify the state of any such intended modifications to its recommendation not less than 120 days prior to the EPA's promulgation of the final designation. These notifications are commonly known as the ''120-day letters.'' If the state does not agree with the EPA's intended modification, it then has an opportunity to respond to the EPA to demonstrate why it believes the modification proposed by the EPA is inappropriate. Even if a state fails to provide any recommendation for an area, in whole or in part, the EPA still must promulgate a designation that the Administrator deems appropriate.

Section 107(d)(1)(A)(i) of the CAA defines a nonattainment area as, ''any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant.'' If an area meets either prong of this definition, then the EPA is obligated to designate the area as ''nonattainment.'' Section 107(d)(1)(A)(iii) provides that any area that the EPA cannot designate on the basis of available information as meeting or not meeting the standards should be designated as ''unclassifiable.'' Historically for ozone, the EPA designates the remaining areas that do not meet the definition of a nonattainment area or an unclassifiable area as ''unclassifiable/attainment'' indicating that the areas either have attaining air quality monitoring data or that air quality information is not available because the areas are not monitored, and the EPA has not determined that the areas contribute to a violation in a nearby area.

The EPA believes that section 107(d) provides the agency with discretion to determine how best to interpret the terms ''contributes to'' and ''nearby'' in the definition of a nonattainment area for a new or revised NAAQS, given considerations such as the nature of a specific pollutant, the types of sources that may contribute to violations, the form of the standards for the pollutant, and other relevant information. In particular, the EPA believes that the statute does not require the agency to establish bright line tests or thresholds for what constitutes ''contribution'' or ''nearby'' for purposes of designations.[2] Similarly, the EPA believes that the statute permits the EPA to determine the most appropriate application of the term ''area'' for a particular NAAQS.

Section 301(d) of the CAA authorizes the EPA to approve eligible Indian tribes to implement provisions of the CAA on Indian reservations and other areas within the tribes' jurisdiction. The Tribal Authority Rule (TAR) (40 CFR Part 49), which implements section 301(d) of the CAA, sets forth the criteria and process for tribes to apply to the EPA for eligibility to administer CAA programs. The designations process contained in section 107(d) of the CAA is included among those provisions determined to be appropriate by the EPA for treatment of tribes in the same manner as states. Under the TAR, tribes generally are not subject to the same submission schedules imposed by the CAA on states. As authorized by the TAR, tribes may seek eligibility to submit designation recommendations to the EPA.

VI. What is the chronology for the initial air quality designation rules and what guidance did the EPA provide?

As discussed above, in 2008 the EPA revised both the primary and secondary NAAQS for ozone. On December 4, 2008, the EPA issued guidance for states and tribal agencies to use in developing area designation recommendations for the 2008 ozone NAAQS. (*See* memorandum from Robert J. Meyers, Principal Deputy Assistant Administrator, to Regional Administrators, Regions I–X, titled, ''Area Designations for the 2008 Revised Ozone National Ambient Air Quality Standards.'') The guidance provided the anticipated timeline for designations and identified important factors that the EPA recommended states and tribes consider in making their recommendations. These factors include air quality data, emissions data, traffic and commuting patterns, growth rates and patterns, meteorology, geography/topography, and jurisdictional boundaries. In the guidance, the EPA asked that states and tribes submit their designation recommendations, including appropriate area boundaries, to the EPA by March 12, 2009. Later in the process, the EPA issued two new guidance memoranda related to designating areas of Indian county.[3]

[1] *See* 73 FR 16436; March 27, 2008. For a detailed explanation of the calculation of the 3-year 8-hour average, *see* 40 CFR part 50, Appendix I.

[2] This view was confirmed in *Catawba County* v. *EPA,* 571 F.3d 20 (D.C. Cir. 2009).

[3] *See* December 20, 2011, memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Directors, Regions I–X, titled, ''Policy for Establishing Separate Air Quality Designations for Areas of Indian Country,'' and December 20, 2011, memorandum from Stephen D. Page, Director,

Continued

(There are no areas of Indian country affected by this action.)

Under the initial schedule, the EPA intended to complete the initial designations for the 2008 ozone NAAQS on a 2-year schedule, by March 12, 2010. On September 16, 2009, the EPA announced that it would initiate a rulemaking to reconsider the 2008 ozone NAAQS for various reasons, including the fact that the 0.075 ppm level fell outside of the range recommended by the Clean Air Scientific Advisory Committee, the independent group of scientists that provides advice to the EPA Administrator on the technical bases for the EPA's NAAQS. The EPA signed the proposed reconsideration on January 6, 2010 (75 FR 2938; January 19, 2010). Because of the significant uncertainty the ozone NAAQS reconsideration created regarding the continued applicability of the 2008 NAAQS, the EPA determined there was insufficient information to designate areas within 2 years of promulgation of the NAAQS. Therefore, the EPA used its authority under CAA section 107(d)(1)(B) to extend the deadline for designating areas by 1 year, until March 12, 2011 (75 FR 2936; January 19, 2010). The EPA has not taken final action on the proposed reconsideration; thus, the current NAAQS for ozone remains at 0.075 ppm, as established in 2008.

After the March 12, 2011, designation deadline passed, WildEarth Guardians and Elizabeth Crowe (WildEarth Guardians) filed a lawsuit seeking to compel the EPA to take action to designate areas for the 2008 ozone NAAQS. *WildEarth Guardians and Elizabeth Crowe* v. *Jackson* (D. Ariz. 11–CV–01661). The EPA and WildEarth Guardians settled the case by entering into a consent decree that requires the EPA Administrator to sign a final rule designating areas for the 2008 ozone NAAQS by May 31, 2012.

On September 22, 2011, the EPA issued a memorandum to clarify for state and local agencies the status of the 2008 ozone NAAQS and to outline plans for moving forward to implement them. The EPA indicated that it would proceed with initial area designations for the 2008 NAAQS, and planned to use the recommendations states made in 2009 as updated by the most current, certified air quality data from 2008–2010. While the EPA did not request that states submit updated designation recommendations, the EPA provided the opportunity for states to do so. Several states chose to update their recommendations, and some requested that the EPA base designations for their areas on certified air quality data from 2009–2011, and committed to certify the 2011 data earlier than the May 1 deadline for annual air monitoring certification under 40 CFR 58.15(a)(2) so that the EPA would have sufficient time to consider the data in making decisions on designations and nonattainment area boundaries. The states of Illinois, Indiana, and Wisconsin did not submit updated designation recommendations.

On or about December 9, 2011, the EPA sent letters to Governors and Tribal leaders notifying them of the EPA's preliminary response to their designation recommendations and to inform them of the EPA's approach for completing the designations for the 2008 ozone NAAQS. The EPA requested that states submit any additional information that they wanted the EPA to consider by February 29, 2011, including any certified 2011 air quality monitoring data. Two days prior to those letters, on December 7, 2011, Illinois sent a letter to the EPA submitting the state's 2011 certified air quality monitoring data for consideration in the designation process. The data, when considered with data from the two previous years (2009 and 2010), indicated a violation of the 2008 ozone NAAQS at a monitor in Lake County, Illinois (which is in the Chicago-Naperville-Michigan City, IL-IN-WI consolidated statistical area). Given the timing of Illinois' submission of the certified data, the EPA was not able to consider the information in the December 9, 2011, letters. After reviewing the 2011 air quality data and assessing contributions to nonattainment from nearby areas, the EPA sent letters on January 31, 2012, notifying Illinois, Indiana, and Wisconsin that it intended to designate certain counties (or parts thereof), identified in those letters, as nonattainment for the 2008 ozone NAAQS. On April 30, 2012, the EPA Administrator signed a final rule designating almost all areas in the United States, including Indian country. At that time, the EPA did not designate the Illinois, Indiana, and Wisconsin counties identified in the January 31, 2011, notification letters because the necessary 120-day period had not yet elapsed following the January letters notifying the states that the EPA intended to modify the states' recommendations.

Although not required by section 107(d) of the CAA, the EPA also provided an opportunity for members of the public to comment on the EPA's 120-day response letters to states and tribes. For the notification letters sent on or about December 9, 2011, the EPA announced a 30-day public comment period in the **Federal Register** on December 20, 2011 (76 FR 78872). The comment period was subsequently extended until February 3, 2012 (77 FR 2677; January 19, 2012). On February 14, 2012 (77 FR 8211), the EPA reopened the public comment period for the limited purpose of inviting comment on the EPA's revised responses to Illinois, Indiana, and Wisconsin. State and tribal recommendations and the EPA's 120-day response letters were posted on EPA's Web site at *http://www.epa.gov/ozonedesignations* and are available in the docket for the designations action. Comments from the states, tribes and the public, and EPA's responses to significant comments, are also in the docket.

VII. What air quality data has the EPA used to designate these areas for the 2008 ozone NAAQS?

The EPA based the designations in this action on the most recent 3 years of certified air quality monitoring data available at the end of January 2012 when the EPA notified Illinois, Indiana, and Wisconsin of its revised responses to their designation recommendations. Thus, the EPA considered ozone monitoring data for the 2009–2011 period for Illinois and for the 2008–2010 period for Indiana and Wisconsin.

Under 40 CFR 58.16, states are required to report all monitored ozone air quality data and associated quality assurance data within 90 days after the end of each quarterly reporting period, and under 40 CFR 58.15(a)(2) states are required to submit annual summary reports and a data certification letter to the EPA by May 1 for ozone air quality data collected in the previous calendar year. States generally had not completed these requirements for calendar year 2011 ozone air quality data when the EPA notified states of our intended designations on December 9, 2011. For purposes of the designations promulgated on April 30, 2012, several states recommended that the EPA consider monitoring data from 2009–2011 in making final decisions and certified their 2011 data early for this purpose. In the letters to these states, the EPA indicated it would need the certified data by February 29, 2012, in order to have sufficient time to consider it in making final decisions. On December 7, 2011, Illinois sent a letter to the EPA submitting the state's 2011 certified air quality data for consideration in the designations.

Office of Air Quality Planning and Standards, to Regional Air Directors, Regions I–X, titled, ''Guidance to Regions for Working with Tribes during the National Ambient Air Quality Standards (NAAQS) Designations Process.''

Although there was not sufficient time for the EPA to consider the 2011 data from Illinois in the December 9, 2011, letters, the EPA subsequently considered the data and sent letters to Illinois, Indiana, and Wisconsin on January 31, 2012, revising the intended designation for 12 counties in the Chicago-Naperville, IL-IN-WI area. Indiana and Wisconsin did not request that the EPA consider their 2011 monitoring data or early certify such data.

VIII. What are the ozone air quality classifications?

In accordance with CAA section 181(a)(1), each area designated as nonattainment for the 2008 ozone NAAQS is classified by operation of law at the same time as the area is designated by the EPA. Under Subpart 2 of part D of Title I of the CAA, state planning and emissions control requirements for ozone are determined, in part, by a nonattainment area's classification. The ozone nonattainment areas are classified based on the severity of their ozone levels (as determined based on the area's ''design value,'' which represents air quality in the area for the most recent 3 years).[4] The possible classifications are Marginal, Moderate, Serious, Severe, and Extreme. Nonattainment areas with a ''lower'' classification have ozone levels that are closer to the standard than areas with a ''higher'' classification. Areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. The EPA established the air quality thresholds that define the classification categories in a rule titled, ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications Approach, Attainment Deadlines and Revocation of the 1997 Ozone Standards for Transportation Conformity Purposes'' (77 FR 30160; May 21, 2012). Based on those thresholds, the Chicago-Naperville, IL-IN-WI area is classified as a Marginal area.

IX. Can states request that areas within 5 percent of the upper or lower limit of a classification threshold be reclassified?

As discussed in the April 30, 2012, final rule, states may request that an area be reclassified to a higher or lower classification pursuant to section 181(a)(4), within 90 days of promulgation of the designation, if the area would have been classified in another category if the design value in the area were 5 percent greater or 5 percent less than the level on which such classification was based. The Chicago-Naperville, IL-IN-WI nonattainment area is being designated as a Marginal area, which is the lowest classification category. Therefore, the only possible reclassification would be to a higher classification. Marginal areas with an air quality design value of 0.082 ppm or more are eligible to request reclassification to a higher classification under section 181(a)(4). Because the 2009–2011 design value for the Chicago-Naperville, IL-IN-WI nonattainment area is 0.076 ppm, the nonattainment area is not eligible to be reclassified under that provision. However, the EPA notes that under section 181(b)(3), the EPA must grant any state request to reclassify an area into a higher classification.

X. Where can I find information forming the basis for this rule and exchanges between the EPA, states and tribes related to this rule?

Information providing the basis for this action is provided in the docket for this rulemaking, Docket ID NO. EPA–HQ–OAR–2008–0476. The applicable EPA guidance memoranda and copies of correspondence regarding this process between the EPA and the states, tribes and other parties are available for review at the EPA Docket Center listed above in the addresses section of this document, and on the EPA's ozone designation Web site at *http://www.epa.gov/ozonedesignations.* State-specific information is available from the EPA Regional Office.

XI. What are the corrections to inadvertent errors in the designations for three areas in the April 30, 2012 designations rule?

This rule also corrects inadvertent errors in the regulatory text for two areas in Kentucky and one area in Arkansas in the ozone designation rule signed on April 30, 2012 (77 FR 30088; May 21, 2012). The affected areas are the Cincinnati, OH-KY-IN nonattainment area (specifically related to Boone and Campbell counties), the partial Kenton County, KY unclassifiable/attainment area, and Crittenden County, AR. These corrections are set forth in the regulatory text at the end of this notice.

The Technical Support Document for the Cincinnati, OH-KY-IN nonattainment area, which is part of the record for the April 30, 2012, designations rule, states, ''All of the census tracts in Boone, Campbell, and Kenton Counties are included in the nonattainment area for the 2008 8-hour ozone NAAQS, excluding census tracts 706.01 and 706.04 in Boone County, 637.01 and 637.02 in Kenton County, and 520.01 and 520.02 in Campbell County.'' In the regulatory text for the Cincinnati, OH-KY-IN nonattainment area, 2000 Census tracts 706.01 and 706.04 in Boone County, KY and 2000 Census tracts 520.01 and 520.02 in Campbell County, KY were inadvertently listed as being part of the nonattainment area. These 2000 Census tracts were also correctly listed in the regulatory text as designated unclassifiable/attainment. The EPA is removing the erroneous duplicative listings under the Cincinnati, OH-KY-IN nonattainment area. For the partial Kenton County unclassifiable/attainment area, this action corrects a typographical error that incorrectly numbered one of the component 2000 Census tracts as 637.04 rather than 637.02.

The Technical Support Document for the Memphis, TN-MS-AR nonattainment area, which is part of the record for the April 30, 2012, designations rule, states, ''Based on the assessment of the factors described above, the EPA is designating the following counties as nonattainment for the Memphis, TN-MS-AR area because they are either violating the 2008 ozone NAAQS or contributing to a violation in a nearby area: Crittenden County, Arkansas, and Shelby County, Tennessee in their entireties and the portion of DeSoto County that is included in the Memphis MPO boundary.'' In the regulatory text for the April 30, 2012, designations rule, Crittenden County, AR was correctly listed as part of the Memphis, TN-MS-AR nonattainment area. However, the county was also inadvertently listed as an unclassifiable/attainment area. The EPA is correcting that error by removing the duplicative entry for Crittenden County, AR as an unclassifiable/attainment area.

XII. Statutory and Executive Order Reviews

Upon promulgation of a new or revised NAAQS, the CAA requires the EPA to designate areas as attaining or not attaining the NAAQS. The CAA then specifies requirements for areas based on whether such areas are attaining or not attaining the NAAQS. In this final rule, the EPA assigns designations to areas as required.

[4] The air quality design value for the 8-hour ozone NAAQS is the 3-year average of the annual 4th highest daily maximum 8-hour average ozone concentration. *See* 40 CFR part 50, Appendix I.

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

This action responds to the CAA requirement to promulgate air quality designations after promulgation of a new or revised NAAQS. This type of action is exempt from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This rule responds to the CAA requirement to promulgate air quality designations after promulgation of a new or revised NAAQS. This requirement is prescribed in the CAA section 107. The present final rule does not establish any new information collection requirements.

C. Regulatory Flexibility Act

This final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice-and-comment requirements as provided under CAA section 107(d)(2)(B).

D. Unfunded Mandates Reform Act

This action contains no federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. It does not create any additional requirements beyond those of the CAA and ozone NAAQS (40 CFR 50.15). The CAA establishes the process whereby states take primary responsibility in developing plans to meet the ozone NAAQS.

E. Executive Order 13132: Federalism

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the process whereby states take primary responsibility in developing plans to meet the ozone NAAQS. This rule will not modify the relationship of the states and the EPA for purposes of developing programs to implement the ozone NAAQS. Thus, Executive Order 13132 does not apply to this rule.

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

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) the EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or the EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

The EPA has concluded that this action does not have tribal implications. The EPA is not designating any areas of Indian country in this final rule.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA of 1995, Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs the EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, the EPA did not consider the use of any VCS.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the U.S.

The CAA requires that the EPA designate as nonattainment ''any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant.'' By designating as nonattainment all areas where available information indicates a violation of the ozone NAAQS or a contribution to a nearby violation, this action protects all those residing, working, attending school, or otherwise present in those areas regardless of minority or economic status.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the U.S. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective July 20, 2012.

L. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

This rule designating the final few areas for the 2008 ozone NAAQS is ''nationally applicable'' within the meaning of section 307(b)(1). This rule, along with a rule signed on April 30, 2012, establishes designations for areas across the U.S. for the 2008 ozone NAAQS. At the core of this rulemaking is the EPA's interpretation of the definition of nonattainment under section 107(d)(1) of the CAA, and its application of that interpretation to areas across the country.

Thus, any petitions for review of final designations must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: May 31, 2012.

Lisa P. Jackson,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 81, is amended as follows:

PART 81—DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

§ 81.304 [Amended]

■ 2. In section 81.304, the table entitled ''Arkansas—2008 8-Hour Ozone NAAQS (Primary and Secondary)'' is amended by removing the entry for Crittenden County before the entry for Cross County.

■ 3. In section 81.314, the table entitled ''Illinois—2008 8-Hour Ozone NAAQS (Primary and Secondary)'' is amended as follows:

■ a. By adding a new entry for ''Chicago-Naperville, IL-IN-WI'' before the entry for ''St. Louis-St. Charles-Farmington, MO-IL'';

■ b. By adding a new entry for ''Grundy County (remainder)'' before the entry for ''Hamilton County''; and

■ c. By adding a new entry for ''Kendall County (remainder)'' before the entry for ''Knox County''.

The additions read as follows:

§ 81.314 Illinois.

* * * * *

ILLINOIS—2008 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Chicago–Naperville, IL-N-WI: [2]		Nonattainment		Marginal.
Cook County				
DuPage County				
Grundy County (part)				
Aux Sable Township				
Goose Lake Township				
Kane County				
Kendall County (part)				
Oswego Township				
Lake County				
McHenry County				
Will County				
* * *	*	*	*	*
Grundy County (remainder) [3]		Unclassifiable/Attainment.		
* * *	*	*	*	*
Kendall County (remainder)		Unclassifiable/Attainment.		
* * *	*	*	*	*

[1] This date is July 20, 2012, unless otherwise noted.

[2] Excludes Indian country located in each area, unless otherwise noted.

[3] Includes any Indian country in each county or area, unless otherwise specified.

* * * * *

■ 4. In section 81.315, the table entitled ''Indiana—2008 8-Hour Ozone NAAQS (Primary and Secondary)'' is amended as follows:

■ a. By adding a new entry for ''Chicago-Naperville, IL-IN-WI'' before the entry for ''Cincinnati, OH-K-IN''; and

■ b. By adding a new entry for ''Jasper County'' before the entry for ''Jay County''.

The additions read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—2008 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Chicago–Naperville, IL-IN-WI: [2]		Nonattainment		Marginal.
Lake County				
Porter County				
* * *	*	*	*	*
Jasper County [3]		Unclassifiable/Attainment.		
* * *	*	*	*	*

[1] This date is July 20, 2012, unless otherwise noted.
[2] Excludes Indian country located in each area, unless otherwise noted.
[3] Includes any Indian country in each county or area, unless otherwise specified.

* * * * *

§ 81.318 [Amended]

■ 5. In section 81.318, the table entitled ''Kentucky—2008 8-Hour Ozone NAAQS (Primary and Secondary)'' is amended as follows:

■ a. By removing the 2000 Census tracts ''706.01'' and ''706.04'' under the entry for ''Boone County (part)'' under the entry for ''Cincinnati, OH-KY-IN''; and

■ b. By removing the 2000 Census tracts ''520.01'' and ''520.02'' under the entry for ''Campbell County (part)'' under the entry for ''Cincinnati, OH-KY-IN''; and

■ c. By revising 2000 Census tract ''637.04'' to read as ''637.02'' under the entry for ''Kenton County (part)'' under ''Rest of State''.

■ 6. In section 81.350, the table entitled ''Wisconsin—2008 8-Hour Ozone NAAQS (Primary and Secondary)'' is amended as follows:

■ a. By adding a new entry for ''Chicago-Naperville, IL-IN-WI'' before the entry for ''Sheboygan County, WI''; and

■ b. By adding a new entry for ''Kenosha County (remainder)'' before the entry for ''Kewaunee County''.

The additions read as follows:

§ 81.350 Wisconsin.

* * * * *

WISCONSIN—2008 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Chicago-Naperville, IL-IN-WI: [2]		Nonattainment		Marginal.
Kenosha County (part)				
Pleasant Prairie Township				
Somers Township				
* * *	*	*	*	*
Kenosha County (remainder) [3]		Unclassifiable/Attainment.		
* * *	*	*	*	*

[1] This date is July 20, 2012, unless otherwise noted.
[2] Excludes Indian country located in each area, unless otherwise noted.
[3] Includes any Indian country in each county or area, unless otherwise specified.

* * * * *

[FR Doc. 2012–14097 Filed 6–8–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R10–RCRA–2011–0973; FRL–9684–6]

Idaho: Final Authorization of State Hazardous Waste Management Program; Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Idaho applied to EPA for final authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act, as amended (RCRA). On February 29, 2012, EPA published a proposed rule to authorize the changes and opened a public comment period under Docket ID No. EPA–R10–RCRA–2011–0973. The comment period closed on March 30, 2012. EPA received two comments on the proposed rule. EPA's responses are included in the section B of this final rule labeled ''What Were the Comments on EPA's Proposed Rule.'' EPA has decided that the revisions to the Idaho hazardous waste management program satisfy all the requirements necessary to qualify for final authorization and EPA is authorizing these revisions to Idaho's authorized hazardous waste management program in this final rule.

DATES: Final authorization for the revisions to the hazardous waste management program in Idaho shall be effective at 1 p.m. EST on July 11, 2012.

ADDRESSES: *Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Region 10 Library, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101. The EPA Region 10 Library is open from 9:00 a.m. to noon, and 1:00 to 4:00 p.m. Monday through Friday, excluding legal holidays. The EPA Region 10 Library telephone number is (206) 553–1289.

FOR FURTHER INFORMATION CONTACT: Nina Kocourek, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop AWT–122, Seattle, Washington 98101, email: *kocourek.nina@epa.gov,* phone number (206) 553–6502.

SUPPLEMENTARY INFORMATION:

A. Why are revisions to State programs necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize their changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations codified in Title 40 of the Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

Idaho's hazardous waste management program received final authorization effective on April 9, 1990 (55 FR 11015, March 29, 1990). Subsequently, EPA authorized revisions to the State's program effective June 5, 1992 (57 FR 11580, April 6, 1992), August 10, 1992 (57 FR 24757, June 11, 1992), June 11, 1995 (60 FR 18549, April 12, 1995), January 19, 1999 (63 FR 56086, October 21, 1998), July 1, 2002 (67 FR 44069, July 1, 2002), March 10, 2004 (69 FR 11322, March 10, 2004), July 22, 2005 (70 FR 42273, July 22, 2005), February 26, 2007 (72 FR 8283, February 26, 2007), and December 23, 2008 (73 FR 78647, December 23, 2008).

This final rule addresses a program revision application that Idaho submitted to EPA in October 2011, in accordance with 40 CFR 271.21, seeking authorization of changes to the State program. On February 29, 2012, EPA published a proposed (77 FR 12228) stating the Agency's intent to grant final authorization for revisions to Idaho's hazardous waste management program. The public comment period on this proposed rule ended on March 30, 2012.

B. What were the comments on EPA's proposed rule?

EPA received two comments during the public comment period which ended March 30, 2012. One commenter questioned whether Idaho's failure to object to the U.S. Department of Energy (DOE)'s decision concerning replacement capability for the disposal of remote-handled low-level radioactive waste ((LLW) generated at the Idaho National Laboratory (INL) rendered the Idaho hazardous waste program ineligible for RCRA authorization. The commenter was particularly concerned that the DOE based its decision, a Finding of No Significant Impact (FONSI), for the Remote-Handled Low-Level Radioactive Waste Onsite Disposal (RHLLWOD) on an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) rather than on a more detailed Environmental Impact Statement (EIS). EPA does not agree with the commenter. The RHLLWOD will not be used for hazardous waste or mixed waste. Mixed waste is defined at 42 U.S.C. 1004(41) as waste that contains both hazardous waste and source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq. EPA's RCRA regulations at 40 CFR 261.4(a)(4) expressly exclude source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954 from the definition of solid waste. A waste that is not a solid waste cannot be a hazardous waste subject to Subtitle C regulation under RCRA. Consequently, the RHLLWOD, which only handles source, special nuclear or byproduct material and does not handle solid waste, hazardous waste, or mixed waste, is not subject to RCRA or to the Idaho authorized hazardous waste program.

The second commenter, on behalf of the Shoshone-Bannock Tribes, questioned whether Idaho, in implementing its authorized hazardous waste program, was appropriately regulating phosphate (mineral processing) plants within the state. In response to this commenter's concerns, EPA reviewed its own work in regulating mineral processing facilities and revisited Idaho's implementation of the authorized program under the State Review Framework. The State Review Framework is designed to ensure that EPA conducts oversight of state and EPA direct implementation of compliance and enforcement programs to ensure programs are carried out in a nationally consistent manner.

Regulation of mineral processing wastes is an area in which national consistency has been challenging for EPA given the complexity of the processes and wastes in this sector. EPA began to place emphasis on the sector in the fall of 2000. In November 2000, EPA issued an enforcement alert to the regulated community giving notice that some mineral processing facilities might be failing to properly identify and manage hazardous waste regulated under RCRA. In 2003, EPA proposed the sector as an enforcement priority for fiscal years (FYs) 2005 through 2007, (December 10, 2003, 68 FR 68893).

EPA collaborated extensively with states in the development of a strategic plan establishing mineral processing as a strategic initiative and finalized the

national strategy to include mineral processing. Mineral processing was proposed as an enforcement and compliance priority on February 9, 2007, at 72 FR 6239, for FYs 2008 through 2010 (finalized as a priority on October 12, 2007, 72 FR 58084) and on January 4, 2010 (75 FR 146). On February 22, 2010, EPA finalized the proposal as a National Enforcement Initiative—Reducing Pollution from Mineral Processing Operations—for FYs 2011 through 2013.

From 2004 to 2007, as EPA explained in an enforcement update (*October 2007, FY08–FY10 Compliance and Enforcement National Priority: Mineral Processing and Mining*), EPA completed numerous inspections of phosphoric acid and mineral processing facilities. Additional inspections took place from 2007 to 2010. EPA's enforcement work is ongoing and states, including Idaho, have actively supported the national initiative and EPA's work in moving the initiative forward.

With respect to Idaho's authorized hazardous waste program, EPA's findings in the 2010 State Review Framework Final Report (SRF) show the state to have an active and responsive program. Data reviewed by EPA at the time of the SRF showed over 200 regulatory inspections conducted under the authorized program and penalties assessed totaling $172,600. EPA found that Idaho continued to place a high priority on compliance monitoring and enforcement at permitted treatment, storage and disposal facilities.

As to the phosphate plants in Idaho about which the commenter expressed concerns, the State has conducted inspections on a near annual basis since the year 2000. On several occasions those inspections led to enforcement actions. The State has also been involved in EPA lead inspections at these facilities and has conducted compliance assistance visits as part of the state's effort to support the EPA national initiative. The implementation of the state's authorized program and the support of the EPA national initiative for mineral processing facilities indicate that Idaho has been compliant with the parameters of the authorized program for mineral processing facilities and has complied with the memorandum of agreement (MOA) between EPA and the state for the authorized program.

EPA appreciates the concerns expressed by the commenter on behalf of the Shoshone-Bannock Tribes concerning Idaho's implementation of its authorized program in regulating phosphate mining and process plants in the state. While EPA does not agree with the conclusions drawn by the commenter, EPA takes the concerns raised seriously and construes those concerns as appropriate for addressing under the EPA national initiative for this sector. EPA does not think an assessment of Idaho's authorized program by the EPA Office of the Inspector General (OIG) is necessary at this time given the ongoing national initiative. EPA has an obligation to continue to evaluate the state authorized program for compliance with the regulations authorizing the state's program and will continue to carry out that obligation.

C. What decisions has EPA made in this final rule concerning authorization?

EPA has made a final determination that Idaho's revisions to its authorized hazardous waste management program meet all of the statutory and regulatory requirements established by RCRA for authorization. Therefore, EPA is authorizing the revised State of Idaho hazardous waste management program for all delegable Federal hazardous waste regulations codified by Idaho as of July 1, 2010, as described in the Attorney General's Statement in the October 2011 revision authorization application, and as discussed in section E of this rule. Idaho's authorized program will be responsible for carrying out the aspects of the RCRA program described in its revised program application subject to the limitations of RCRA, including the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA, and which are not less stringent than existing requirements, take effect in authorized States before the States are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Idaho, including issuing permits, until the State is granted authorization to do so.

D. What will be the effect of this action?

The effect of this action is that a facility in Idaho subject to RCRA will have to comply with the authorized State program requirements in lieu of the corresponding Federal requirements in order to comply with RCRA. Additionally, such persons will have to comply with any applicable Federal requirements, such as, for example, HSWA regulations issued by EPA for which the State has not received authorization, and RCRA requirements that are not supplanted by authorized State-issued requirements. Idaho continues to have enforcement responsibilities under its State hazardous waste management program for violations of this program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, 42 U.S.C. 6927, 6928, 6934 and 6973, and any other applicable statutory and regulatory provisions, which includes, among others, the authority to:

- Conduct inspections; require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements; suspend, terminate, modify or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This final action approving these revisions will not impose additional requirements on the regulated community because the regulations for which Idaho will be authorized are already effective under State law and are not changed by the act of authorization.

E. What rules are we authorizing with this action?

On October 25, 2011, Idaho submitted a program revision application requesting authorization for all delegable Federal hazardous waste regulations codified as of July 1, 2010, and these are the rules EPA authorizes through this final action. Idaho incorporated the delegable federal regulations by reference in the following provisions of the Idaho Administrative Procedures Act (IDAPA): 58.01.05.001 through 58.01.05.010; 58.01.05.011 with the exception of the 4th sentence; 58.01.05.012; 58.01.05.013; 58.01.05.015 through 58.01.05.018; 58.01.05.356.01; and 58.01.05.998. This authorization revision includes the following federal rules for which Idaho is being authorized for the first time: Exclusion of Oil-Bearing Secondary Materials Processed in a Gasification System to Produce Synthesis Gas (73 FR 57, January 2, 2008); NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Amendments (73 FR 18970, April 8, 2008); F019 Exemption for Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes (73 FR 31756, June 4, 2008); Revisions to the Definition of Solid Waste (73 FR 64668, October 30, 2008); Academic Laboratories Generator Standards, Alternative Standards for Hazardous Waste Determination and Accumulation (73 FR 72912, December 1, 2008); Expansion of RCRA Comparable Fuel Exclusion (73 FR 77954, December 19, 2008); OECD Requirements; Hazardous Waste Technical Corrections and

Clarifications (75 FR 12989, March 18, 2010); and Withdrawal of the Emission Comparable Fuel Exclusion (75 FR 33712, June 15, 2010). The federal regulation for the Export of Shipments of Spent Lead-Acid Batteries (75 FR 1236, January 8, 2010), which the State adopted, is not being authorized as part of this action. EPA does not authorize states to administer the Federal government's export functions in any section of the RCRA hazardous waste regulations. See additional details about the Federal government's import and export functions in this final rule in section F labeled ''Where Are the Revised State Rules Different From the Federal Rules?''

F. Where are the revised State rules different from the Federal rules?

Under RCRA 3009, EPA may not authorize State rules that are less stringent than the Federal program. Any State rules that are less stringent do not supplant the Federal regulations. State rules that are broader in scope than the Federal program requirements are not authorized. State rules that are equivalent to, and State rules that are more stringent than, the Federal program may be authorized, in which case they are enforceable by EPA. This section discusses certain rules where EPA has made the finding that the State program is more stringent and will be authorized and discusses certain portions of the Federal program that are not delegable to the State because of the Federal government's special role in foreign policy matters.

EPA does not authorize States to administer Federal import and export functions in any section of the RCRA hazardous waste regulations. Even though States do not receive authorization to administer the Federal government's import and export functions, found in 40 CFR part 262, subparts E, F and H, State programs are still required to adopt the Federal import and export provisions to maintain their equivalency with the Federal program. The State amended its import and export rules to include the Federal rule on Organization for Economic Cooperation and Development (OECD) Requirements; Export Shipments of Spend Lead-Acid Batteries (75 FR 1236, January 8, 2010). The State's rule is found at IDAPA 58.01.05.006. EPA will continue to implement those requirements directly through the RCRA regulations.

EPA has found that the State's Emergency Notification Requirements, (IDAPA 58.01.05.006.02), are more stringent than the Federal program. This is because the State's regulations require that the State Communications Center be contacted along with the Federal Center. EPA has found that the State's statutory requirement requiring hazardous waste generators and commercial hazardous waste disposal facilities to file annual hazardous waste generation reports, Idaho Code section 39–4411(4) and 39–4411(5), to be more stringent than the Federal program. EPA will authorize and enforce these more stringent provisions.

G. Who handles permits after the authorization takes effect?

Idaho will continue to issue permits for all the provisions for which it is authorized and administer the permits it issues. If EPA issued permits prior to authorizing Idaho for these revisions, these permits would continue in force until the effective date of the State's issuance or denial of a State hazardous waste permit, at which time EPA would modify the existing EPA permit to expire at an earlier date, terminate the existing EPA permit for cause, or allow the existing EPA permit to otherwise expire by its terms, except for those facilities located in Indian Country. EPA will not issue new permits or new portions of permits for provisions for which Idaho is authorized after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Idaho is not yet authorized.

H. What is codification and is EPA codifying Idaho's hazardous waste program as authorized in this final rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste management program into the Code of Federal Regulations (CFR). This is done by referencing the authorized State rules in 40 CFR part 272. EPA is reserving the amendment of 40 CFR part 272, subpart N for codification of Idaho's program at a later date.

I. How does this action affect Indian country (18 U.S.C. 1151) in Idaho?

Idaho is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. Indian country includes:

1. All lands within the exterior boundaries of Indian reservations within or abutting the State of Idaho;

2. Any land held in trust by the U.S. for an Indian tribe; and

3. Any other land, whether on or off an Indian reservation, that qualifies as Indian country.

Therefore, this action has no effect on Indian country. EPA retains jurisdiction over ''Indian Country'' as defined in 18 U.S.C. 1151 and will continue to implement and administer the RCRA program on these lands.

J. Statutory and Executive Order Reviews

This final rule revises the State of Idaho's authorized hazardous waste management program pursuant to section 3006 of RCRA and imposes no requirements other than those currently imposed by State law. This final rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866 and 13563

This action authorizes revisions to the federally approved hazardous waste program in Idaho. This type of action is exempt from review under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), and Executive Order 13563 (76 FR 3821, January 21, 2011).

2. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). This final rule does not establish or modify any information or recordkeeping requirements for the regulated community.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601 et seq., generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business, as codified in the Small Business Size Regulations at 13 CFR part 121; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has

determined that this action will not have a significant impact on small entities because the final rule will only have the effect of authorizing pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law. After considering the economic impacts of this action, I certify that this action will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small government entities.

5. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule authorizes pre-existing State rules. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed action from State and local officials but did not receive any comments from State or local officials.

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

This action does not have tribal implications, as specified in Executive order 13175, because EPA retains its authority over Indian Country and does not authorize the state to implement its authorized program in Indian Country within the state's boundaries. Thus, EPA has determined that Executive Order 13175 does not apply to this final rule. EPA specifically solicited comment on the proposed rule from tribal officials and received one comment on behalf of the Shoshone-Bannock Tribes. That comment is discussed in section B of this preamble.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to EO 13045 because it approves a State program and is authorizing pre-existing State rules.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

9. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action authorizes pre-existing State rules which are equivalent to, and no less stringent than existing federal requirements.

11. Congressional Review Act

Congressional Review Act (CRA), 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective July 11, 2012.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority

This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: May 31, 2012.

Dennis J. McLerran,

Regional Administrator, EPA Region 10.

[FR Doc. 2012–14132 Filed 6–8–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–278; FCC 12–21]

Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (''FCC'' or ''Commission'') revises its rules to: require prior express written consent for all autodialed or prerecorded telemarketing calls to wireless numbers and for prerecorded calls to residential lines and, accordingly, eliminate the established business relationship exemption for such calls to residential lines while maintaining flexibility in the form of consent needed for purely informational calls; require all prerecorded telemarketing calls to allow consumers to opt out of future prerecorded telemarketing calls using an interactive, automated opt-out mechanism; and limit permissible abandoned calls on a per-calling campaign basis, in order to discourage intrusive calling campaigns. The Commision also exempts from its telemarketing requirements prerecorded calls to residential lines made by health care-related entities governed by the Health Insurance Portability and Accountability Act of 1996. Taken together, today's actions offer consumers greater protection from intrusive telemarketing calls and protect consumers from unwanted autodialed or prerecorded telemarketing calls to wireless numbers and from unwanted prerecorded telemarketing calls to residential lines, also known as ''telemarketing robocalls,'' and maximize consistency with the analogous Telemarketing Sales Rule (''TSR'') of the Federal Trade Commission (''FTC''), as contemplated by the Do-Not-Call Implementation Act (''DNCIA'') in a way that reduces industry confusion about telemarketers' obligations and does not increase compliance burdens for most telemarketers.

DATES: Effective July 11, 2012, except revised 47 CFR 64.1200(a)(2), 64.1200(a)(3), and 64.1200(a)(7), and 47 CFR 64.1200(b)(3), which contain modified information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a separate document in the **Federal Register** announcing the effective dates of those amendments.

FOR FURTHER INFORMATION CONTACT: Karen Johnson Consumer and Governmental Affairs Bureau, at 202–418–7706 or *karen.johnson@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, at (202) 418–2918, or via email at *Cathy.Williams@fcc.gov* and *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 12–21, adopted on February 15, 2012 and released on February 15, 2012. The full text of document FCC 12–21 is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, facsimile (202) 488–5563, or via email at *fcc@bcpiweb.com.* The complete text is also available on the Commission's Web site at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0215/FCC-12-21A1.pdf.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau 202–418–0530 (voice), 202–418–0432 (TTY).

Congression Review Act

The Commission will send a copy of document FCC 12–21 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction of 1995 Analysis

Document FCC 12–21 contains modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements contained in document FCC 12–21 as required by the PRA of 1995, Public Law 104–13 in a separate notice that will be published in the **Federal Register**. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how it might further reduce the information collection burden for small business concerns.

The rules adopted herein establish recordkeeping requirements for a large variety of businesses, including small business entities. First, the seller must secure a written agreement between itself and the consumer showing that the consumer agrees to receive, from the seller, autodialed or prerecorded telemarketing calls to a wireless number and/or prerecorded calls to a residential line. The prior express written consent requirement applies to autodialed or prerecorded telemarketing calls to wireless numbers and prerecorded calls to residential lines only. Limiting the written consent requirement to telemarketing calls significantly reduces the compliance burden for all entities, including small entities. The Commission allows the seller the flexibility to determine the type of written agreement that it will secure from the consumer. The Commission does not require a particular form or format for this written agreement or its retention. In adopting the written consent requirement for autodialed or prerecorded telemarketing calls to wireless numbers and prerecorded telemarketing calls to residential lines, the Commission also concluded that consent obtained pursuant to the E–SIGN Act, Electronic Signatures in Global and National Commerce Act 15 U.S.C. 7001 (2000), will satisfy the requirement of its revised rule, including permission obtained via an email, Web site form, text message, telephone keypress, or voice recording. Accepting consent pursuant to the E–SIGN Act relieves all businesses, including small entities, from the economic impact of generating and retaining a paper document to evidence their compliance. The E–SIGN Act also provides additional flexibility in obtaining electronic consent producing minimal additional recordkeeping efforts. To the extent that the calling parties previously relied on an established business relationship in lieu of express consent, the Commission notes that it stated that such telemarketers had to be prepared to provide clear and convincing evidence of the existence of such a relationship. Hence, a record of written consent will replace the previously required record of an established business relationship. Because of these factors, any additional recording keeping costs should be minimal. Second, telemarketers and sellers, including small business

entities, that initiate telemarketing calls using prerecorded messages, must provide an automated, interactive opt-out feature at the outset of such a call. This rule obligates telemarketers and sellers to retain records of providing this feature and to retain records of consumers opting out of receiving these autodialed or prerecorded telemarketing messages. Such records should demonstrate the telemarketer's and seller's compliance with the provision and utilization of the automated, interactive opt-out feature. The Commission allows the telemarketers and sellers the flexibility to determine how to implement the mechanism. The Commission does not require a particular form or format evidencing this mechanism or its implementation. Third, the FCC revises its abandoned call requirement to require the permissible three percent abandoned call rate to be calculated for every telemarketing calling campaign. There is no additional recordkeeping burden for this revision because the FCC's rule already requires that the seller or telemarketer maintain records establishing compliance with the abandoned call rules. Moreover, all of these revised rules are consistent with analogous requirements under the FTC's TSR, with which many telemarketers must already comply; therefore, the additional burden of complying with the FCC's new requirements is substantially mitigated. The Commission identified alternatives to the rules adopted in document FCC 12–21, but it rejects these alternatives because they are more costly to small businesses. Finally, to the extent that there are compliance costs resulting from the Commission's action, it finds that the implementation periods it adopts here—30 days from publication of OMB approval for the abandoned call rule, 90 days from publication of OMB approval for the automated, interactive opt-out requirement, and one year from publication of OMB approval for the written consent requirement and phase-out of the EBR exemption—should allow covered entities time to find cost-efficient ways to comply with these changes, to the extent they have not already made such changes to comply with the FTC's rules.

Synopsis

Discussion

1. Based on substantial record support and evidence of continued consumer frustration with unwanted telemarketing robocalls, and in furtherance of the statutory goal of maximizing consistency with the FTC's telemarketing rules, the Commission adopts the consumer protection measures proposed in the *2010 TCPA NPRM,* published at 75 FR 13471, March 22, 2010. First, the Commission requires prior express written consent for autodialed or prerecorded telemarketing calls to wireless numbers and for prerecorded telemarketing calls to residential lines. Second, the Commission eliminates the ''established business relationship'' exemption as it previously applied to prerecorded telemarketing calls to residential lines. Third, the Commission requires telemarketers to implement an automated, interactive opt-out mechanism for autodialed or prerecorded telemarketing calls to wireless numbers and for prerecorded telemarketing calls to residential lines, which would allow a consumer to opt out of receiving additional calls immediately during a telemarketing robocall. Fourth, the Commission requires that the permissible three percent call abandonment rate be calculated for each calling campaign, so that telemarketers cannot shift more abandoned calls to certain campaigns, as is possible if calculation is made across multiple calling campaigns. Finally, the Commission adopts an exemption to its implementing rules under the Telephone Consumer Protection Act (''TCPA'') for prerecorded health care-related calls to residential lines, which are already regulated by the federal Health Insurance Portability and Accountability Act.

2. At the outset, the Commission notes that the benefits to consumers of increased protection from unwanted telemarketing robocalls are significant. By enacting the TCPA and its prohibitions on unwanted calls, Congress has already made an assessment that the benefits of protecting consumer privacy are substantial. Congress, through enactment of a second law—the DNCIA—has further determined that there are substantial benefits to consistency in telemarketing regulations by the FCC and the FTC. The FCC further finds that the significant ongoing consumer frustration reflected in its complaint data and the positive consumer response to the FTC's proceeding confirm the need to strengthen its current rules in some respects, and narrow them in others where other legal protections are in place. Moreover, with the exception of the limited group of entities that are outside the FTC's jurisdiction, the FCC expects that many telemarketers affected by the changes in this Report and Order have already incurred the cost of implementing a written consent requirement, have already given up reliance on the EBR as a basis for making prerecorded telemarketing calls to residential lines without prior express consent, have implemented an automated, interactive opt-out mechanism, and are calculating the call abandonment rate on a per-campaign basis. As a result, the Commission finds that increased consumer protection from unwanted telemarketing robocalls will provide substantial benefits to consumers without substantial implementation costs. While these benefits may not be easily quantifiable, nothing in the record persuades the Commission that the costs of complying with its revised rules outweigh the benefits.

A. Autodialed and Prerecorded Message Calls

1. Prior Express Written Consent Requirement

3. Based on substantial record support, the volume of consumer complaints the Commission continues to receive concerning unwanted, telemarketing robocalls, and the statutory goal of harmonizing the FCC rules with those of the FTC, the FCC requires prior express written consent for all telephone calls using an automatic telephone dialing system or a prerecorded voice to deliver a telemarketing message to wireless numbers and for prerecorded telemarketing calls to residential lines.

4. As an initial matter, the Commission notes that the TCPA is silent on the issue of what form of express consent—oral, written, or some other kind—is required for calls that use an automatic telephone dialing system or prerecorded voice to deliver a telemarketing message. Thus, the Commission has discretion to determine, consistent with Congressional intent, the form of express consent required. The vast majority of commenters support harmonizing the FCC's rules with those of the FTC by adopting a written consent requirement for autodialed or prerecorded telemarketing calls to wireless numbers and prerecorded telemarketing calls to residential lines. For example, Bank of America asserts that the Commission should harmonize its regulations with those of the FTC. Similarly, the National Cable & Telecommunications Association urges that a written consent requirement should apply to telemarketing calls. The National Council of Higher Education

Loan Programs and the Educational Finance Council also supports a written consent requirement for telemarketing calls. While a few commenters argue that the Commission should require written consent for *all* autodialed or prerecorded calls (*i.e.,* not simply those delivering marketing messages), it concludes that requiring prior express written consent for all such calls would unnecessarily restrict consumer access to information communicated through purely informational calls. For instance, bank account balance, credit card fraud alert, package delivery, and school closing information are types of information calls that the Commission do not want to unnecessarily impede. The FCC takes this action to maximize consistency with the FTC's TSR, as contemplated in the DNCIA, and avoid unnecessarily impeding consumer access to desired information.

5. Since the TCPA's enactment and the adoption of implementing rules, the Commission has continued to receive thousands of complaints regarding unwanted telemarketing robocalls. Furthermore, in its TSR proceeding, the FTC noted that it received over 13,000 comments opposing its proposal to, among other things, adopt an established business relationship (EBR) exemption for prerecorded telemarketing calls. In deciding to amend its rules to require prior written consent for prerecorded telemarketing calls, the FTC also considered its enforcement experience that resulted in multi-million dollar settlements where telemarketers, among other things, failed to secure the appropriate consent for telemarketing calls. In light of the FCC's record and the record amassed by the FTC in its TSR proceeding, the Commission finds that, notwithstanding current consent requirements and other TCPA safeguards, consumers continue to experience frustration in receiving unwanted telemarketing robocalls.

6. The Commission also finds that a written consent requirement would advance Congress' objective under the DNCIA to harmonize the Commission's rules with those of the FTC. As stated previously, the DNCIA provides that ''the Federal Communications Commission shall consult and coordinate with the Federal Trade Commission to *maximize consistency* with the telemarketing rule promulgated by the Federal Trade Commission.'' Eliminating the differences between the FCC's rules and those of the FTC where warranted will ''maximize consistency'' with the FTC's consent requirements.

7. Among the findings Congress made when adopting the TCPA were that: (1) The use of the telephone to market goods and services to the home and to other businesses has become pervasive due to the increased use of cost-effective telemarketing techniques; (2) telephone subscribers considered automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy; and (3) individuals' privacy rights, public safety interests, and commercial freedoms of speech and trade must be balanced in a way that protects the privacy of individuals yet permits legitimate telemarketing practices. While current regulations provide a measure of consumer protection from unwanted and unexpected calls, the complaint data, as noted above, show that the proliferation of intrusive, annoying telemarketing calls continues to trouble consumers. The Commission concludes that requiring prior express written consent for telemarketing calls utilizing autodialed or prerecorded technologies will further reduce the opportunities for telemarketers to place unwanted or unexpected calls to consumers. The Commission believes that requiring prior written consent will better protect consumer privacy because such consent requires conspicuous action by the consumer—providing permission in writing—to authorize autodialed or prerecorded telemarketing calls, and will reduce the chance of consumer confusion in responding orally to a telemarketer's consent request.

8. The Commission further finds that the unique protections for wireless consumers contained in the TCPA supports requiring prior written consent for telemarketing robocalls. Because section 227(b)(1)(A) of the Act specifically protects wireless users, among others, from autodialed or prerecorded calls to which they have not consented, the Commission must ensure that its rules address privacy issues for wireless consumers. In addition, the Commission notes that the substantial increase in the number of consumers who use wireless phone service, sometimes as their only phone service, means that autodialed and prerecorded calls are increasingly intrusive in the wireless context, especially where the consumer pays for the incoming call. Further, the costs of receiving autodialed or prerecorded telemarketing calls to wireless numbers often rest with the wireless subscriber, even in cases where the amount of time consumed by the calls is deducted from a bucket of minutes. Given these factors, the Commission believes that it is essential to require prior express written consent for autodialed or prerecorded telemarketing calls to wireless numbers. One commenter, USAA, appears to suggest that oral consent is sufficient to permit any autodialed or prerecorded calls to wireless numbers.

It argues that its customers may orally provide their wireless phone number as a point of contact and therefore those customers expect *marketing* and service calls. The Commission disagrees. Consumers who provide a wireless phone number for a limited purpose—for service calls only—do not necessarily expect to receive telemarketing calls that go beyond the limited purpose for which oral consent regarding service calls may have been granted. Moreover, as use of wireless numbers continues to increase, the Commission believes that increased protection from unwanted telemarketing robocalls is warranted.

9. The Commission further concludes that harmonizing its prior consent requirement with that of the FTC will reduce the potential for industry and consumer confusion surrounding a telemarketer's obligations because similarly situated entities will no longer be subject to different requirements depending upon whether the entity is subject to the FTC's or the FCC's jurisdiction. The Commission also finds that requiring prior written consent will enhance the FCC's enforcement efforts and better protect both consumers and industry from erroneous claims that consent was or was not provided, given that, unlike oral consent, the existence of a paper or electronic record can be more readily verified and may provide unambiguous proof of consent.

10. *Calls Not Subject to Written Consent Requirement.* While the Commission adopts rules to protect consumers from unwanted telemarketing robocalls, it leaves undisturbed the regulatory framework for certain categories of calls. Specifically, consistent with section 227(b)(2)(C) of the Act and its implementing rules and orders, the Commission does not require prior written consent for calls made to a wireless customer by his or her wireless carrier if the customer is not charged. One commenter requests that the Commission clarify that wireless carriers may send free autodialed or prerecorded calls, including text messages, without prior written consent, if the calls are intended to inform wireless customers about new products that may suit their needs more effectively, so long as the customer has not expressly opted out of receiving such communications. As noted above, the Commission addressed this issue in the *1992 TCPA Order,* published at 57

FR 48333, October 23, 1992, by concluding that Congress did not intend to prohibit autodialed or prerecorded message calls by a wireless carrier to its customer when the customer is not charged. The Commission based its conclusion on the fact that neither the TCPA nor its legislative history indicates that Congress intended to impede communications between common carriers and their customers regarding the delivery of customer services by barring calls to wireless consumers for which the consumer is not charged. Nothing in the record or the Commission's analysis of consumer complaints provides it a reason to alter its finding.

11. Moreover, while the Commission revises its consent rules to require prior written consent for autodialed or prerecorded *telemarketing* calls to wireless numbers and prerecorded *telemarketing* calls to residential lines, it maintains the existing consent rules for *non-telemarketing, informational* calls, such as those by or on behalf of tax-exempt non-profit organizations, calls for political purposes, and calls for other noncommercial purposes, including those that deliver purely informational messages such as school closings. The FCC's rules for these calls will continue to permit oral consent if made to wireless consumers and other specified recipients, and will continue to require no prior consent if made to residential wireline consumers. Commenters support distinguishing telemarketing calls from non-telemarketing, informational calls. For instance, the National Cable & Telecommunications Association has urged that a written consent requirement should apply only to telemarketing calls and notes that its members make informational, non-telemarketing calls to wireless phones that should not be subject to a written consent requirement. The National Council of Higher Education Loan Programs and the Educational Finance Council also seek clarification that the written consent requirement will be limited to telemarketing calls. Additionally, the Commission notes that many commenters expressed concern about obtaining written consent for certain types of autodialed or prerecorded calls, including debt collection calls, airline notification calls, bank account fraud alerts, school and university notifications, research or survey calls, and wireless usage notifications. Again, such calls, to the extent that they do not contain telemarketing messages, would not require any consent when made to residential wireline consumers, but require either written or oral consent if made to wireless consumers and other specified recipients.

12. While the Commission observes the increasing pervasiveness of telemarketing, it also acknowledges that wireless services offer access to information that consumers find highly desirable and thus do not want to discourage purely informational messages. As was roundly noted in the comments, wireless use has expanded tremendously since passage of the TCPA in 1991. The Commission believes that requiring prior express written consent for all robocalls to wireless numbers would serve as a disincentive to the provision of services on which consumers have come to rely. Moreover, in adopting these rules today, the FCC employs the flexibility Congress afforded to address new and existing technologies and thereby limit the prior express written consent requirement to autodialed or prerecorded telemarketing calls to wireless numbers and prerecorded telemarketing calls to residential lines. In addition, the Commission notes that section 227(b)(1)(A) of the Act and its implementing rules continue to require some form of prior express consent for autodialed or prerecorded non-telemarketing calls to wireless numbers. The Commission also maintains the requirement of prior express consent for autodialed or prerecorded non-telemarketing calls to wireless numbers that are not subject to any exemptions under section 227(b)(2) of the Act. The FCC leaves it to the caller to determine, when making an autodialed or prerecorded *non-telemarketing* call to a wireless number, whether to rely on oral or written consent in complying with the statutory consent requirement.

13. Some commenters also express concern that written consent for autodialed or prerecorded calls to wireless numbers and for prerecorded calls to residential lines that offer certain home loan modifications and refinancing would frustrate their compliance with the American Recovery and Reinvestment Act, also known as the Recovery Act, which established certain outreach requirements designed to prevent foreclosure. These commenters assert that the calls may be interpreted as telephone solicitations because certain fees or charges to the consumer may be involved. These commenters note that calls and messages made pursuant to the Recovery Act also include non-telemarketing information regarding the status of the consumer's loan and repayment options, among other things. In the *2003 TCPA Order,* published at 68 FR 44144, July 25, 2003, the Commission articulated a standard in evaluating ''dual-purpose'' robocalls. The Commission asserted that in evaluating dual-purpose calls, it would determine whether the call includes an advertisement. The Commission provided that if the call, notwithstanding its free offer or other information, is intended to offer property, goods, or services for sale either during the call, or in the future, that call is an advertisement.

14. The Commission believes that the intent of calls made pursuant to the Recovery Act, when the call is made by the consumer's loan servicer, is to fulfill a statutory requirement rather than offer a service for sale. Similarly, the Commission, in analyzing telephone solicitation, states that the application of the prerecorded message rule should turn, not on the caller's characterization of the call, but on the purpose of the message. Again, the Commission believes that the predominant purpose of a ''Recovery Act'' call, when it is made by the consumer's loan servicer, is compliance with the Recovery Act. In this instance, the FCC finds that the home loan modification and refinance calls placed pursuant to the Recovery Act generally are not solicitation calls and do not include or introduce an unsolicited advertisement, when those calls are made by the consumer's loan servicer, because the primary motivation of the calling party is to comply with that statute's outreach requirements. The FCC notes, however, that should such calls be challenged as TCPA violations because the primary motivation appears to be sending a telephone solicitation or unsolicited advertisement rather than complying with the Recovery Act, the Commission will consider the facts on a case-by-case basis. Further, if a ''Recovery Act'' robocall is made to a wireless number, prior express consent, which may be either oral or written, is specifically required pursuant to the Act.

15. *Content and Form of Consent.* With respect to written consent, the Commission has indicated that the term ''signed'' may include an electronic or digital form of signature, to the extent such form of signature is recognized as a valid signature under applicable federal or state contract law. Under the FTC's rules, prior express consent to receive prerecorded telemarketing calls must be in writing. The FTC's rules require that the written agreement must be signed by the consumer and be sufficient to show that he or she: (1) Received ''clear and conspicuous disclosure'' of the consequences of

providing the requested consent, *i.e.,* that the consumer will receive future calls that deliver prerecorded messages by or on behalf of a specific seller; and (2) having received this information, agrees unambiguously to receive such calls at a telephone number the consumer designates. In addition, the written agreement must be obtained ''without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service.'' The FTC has determined that written agreements obtained in compliance with the E–SIGN Act will satisfy the requirements of its rule, such as, for example, agreements obtained via an email, Web site form, text message, telephone keypress, or voice recording. Finally, under the TSR, the seller bears the burden of proving that a clear and conspicuous disclosure was provided, and that an unambiguous consent was obtained.

16. Consistent with the FTC's TSR, the Commission concludes that a consumer's written consent to receive telemarketing robocalls must be signed and be sufficient to show that the consumer: (1) Received ''clear and conspicuous disclosure'' of the consequences of providing the requested consent, *i.e.,* that the consumer will receive future calls that deliver prerecorded messages by or on behalf of a specific seller; and (2) having received this information, agrees unambiguously to receive such calls at a telephone number the consumer designates. In addition, the written agreement must be obtained ''without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service.'' Finally, should any question about the consent arise, the seller will bear the burden of demonstrating that a clear and conspicuous disclosure was provided and that unambiguous consent was obtained.

17. *Electronic Consent.* In the *2010 TCPA NPRM,* the Commission proposed to allow sellers or telemarketers to obtain prior express written consent using any medium or format permitted by the E–SIGN Act, as the FTC permits in the TSR. The FTC specifically found that consent obtained via an email, Web site form, text message, telephone keypress, or voice recording are in compliance with the E–SIGN Act and would satisfy the written consent requirement in the amended TSR. Consistent with the FTC, the Commission now similarly concludes that consent obtained in compliance with the E–SIGN Act will satisfy the requirements of its revised rule, including permission obtained via an email, Web site form, text message, telephone keypress, or voice recording. Allowing documentation of consent under the E–SIGN Act will minimize the costs and burdens of acquiring prior express written consent for autodialed or prerecorded telemarketing calls while protecting the privacy interests of consumers. Because it greatly minimizes the burdens of acquiring written consent, commenters generally support using electronic signatures consistent with the E–SIGN Act. The Commission concludes that the E–SIGN Act significantly facilitates its written consent requirement, while minimizing any additional costs associated with implementing the requirement.

2. Established Business Relationship Exemption

18. The Commission next considers whether to retain the exemption to the prior consent requirement for prerecorded telemarketing calls made to consumers with whom the caller has an established business relationship (EBR). In making the determination here, the Commission is again mindful of the statutory goal of maximizing consistency with the FTC's regulations in this area. As described below, the Commission eliminates the established business relationship exemption for prerecorded telemarketing calls to residential lines.

19. *The FCC's Rules.* In the *1992 TCPA Order,* the Commission allowed, without the need for additional consent, prerecorded telemarketing calls to residential lines when the caller has an established business relationship with the consumer. The Commission concluded, based on the record and legislative history, that a solicitation to someone with whom a prior business relationship exists does not adversely affect consumer privacy interests because a consumer with an established business relationship implicitly consents to the call. Such a solicitation, the Commission reasoned, can be deemed to be invited or permitted by the consumer. In addition, the Commission relied on the legislative history, which suggests that Congress did not intend that the TCPA unduly interfere with ongoing business relationships. The Commission later codified in its rules the EBR exemption for telemarketing calls to residential lines.

20. *The FTC's Approach.* The FTC has recently taken a different view of whether an established business relationship alone should allow prerecorded telemarketing calls when there is no prior express consent. In its 2008 amendment to the TSR, the FTC terminated its previously announced policy of forbearing from bringing enforcement actions against sellers and telemarketers who, in accordance with a safe harbor that was proposed in November 2004, made calls that deliver prerecorded messages to consumers with whom the seller has an EBR. In reaching this conclusion, the FTC was persuaded by the number of comments opposing its safe harbor rule, lack of consumer confidence in industry assurances to self-regulate and not abuse consumers, consumer privacy concerns, and the difficulty in stopping unwanted calls.

21. At the outset, the Commission notes that there is no statutory barrier to eliminating the established business relationship exemption for prerecorded telemarketing calls. Section 227 of the Act grants the Commission authority to create exemptions to the restrictions on prerecorded calls to residential lines but does not require that the Commission recognize an EBR exemption in this context. Hence, the statute gives the Commission authority to establish—or not establish—an EBR exemption for prerecorded telemarketing calls. While, as noted above, the Commission previously interpreted the statute to permit an EBR exemption and did adopt one, additional experience, the record before it, and evidence of ongoing consumer frustration lead us to conclude that the exemption has adversely affected consumer privacy rights.

22. Based on the record in this proceeding and the volume of complaints filed by consumers that have an established business relationship with the caller, and consistent with the FTC's findings, the Commission concludes that the public interest would be served by eliminating the established business relationship exemption for telemarketing calls. As such, telemarketing calls to residential lines will require prior written consent, even where the caller and called party have an EBR.

23. In general, consumer groups and individual commenters in this proceeding support eliminating the established business relationship exemption. For example, some commenters assert that a reasonable consumer would consider prerecorded telemarketing messages even where an EBR exists to be coercive or abusive of the consumer's right to privacy. Another commenter contends that businesses falsely claim to have an EBR when none exists, or improperly expand the scope of their business relationships with customers to permit calls. One

commenter objects to the notion that consumers welcome or expect prerecorded messages from companies with which they conduct business. Two other commenters argue that telemarketing calls should not be ''deemed invited'' by virtue of an EBR and assert that prerecorded telemarketing calls are intrusive whether or not the caller has a preexisting relationship with the recipient. Business groups and industries, however, support retention of the exemption because, they assert, communication between businesses and their customers would be significantly impeded without it. Another commenter reiterates the Commission's 1992 determination that the exemption does not adversely affect the consumer's privacy interests. The Commission disagrees with commenters advocating retention of the EBR for the reasons described below.

24. The FCC's complaint data shows that thousands of consumers remain unhappy with prerecorded telemarketing messages even when they have an established business relationship with the caller. The Commission finds these complaints to be a clear indication that many consumers do not consider prerecorded calls made pursuant to an established business relationship either invited or expected. Consistent with its data, the FTC has found ''compelling evidence that consumer aversion to artificial or prerecorded message telemarketing—regardless of whether an established business relationship exists—has not diminished since enactment of the TCPA, which, in no small measure, was prompted by consumer outrage about the use of artificial or prerecorded messages.'' More than 13,000 comments opposing an EBR exemption were received on the issues presented in the FTC's proceeding, and, the FTC concluded, such opposition to artificial or prerecorded telemarketing messages could not be ignored. The FTC subsequently decided to discontinue its recognition of an EBR exemption for prerecorded telemarketing calls.

25. Complaints about EBR-based calls demonstrate that, in many cases, a prior business relationship does not necessarily result in a consumer's willingness to receive prerecorded telemarketing calls and often adversely affects consumer privacy rights. The Commission emphasizes that its decision to eliminate the established business relationship exemption is consistent with the FTC's findings rejecting an EBR exemption and the DNCIA's requirement that the FCC ''maximize consistency'' with the FTC's approach in this area. In doing so, the FCC ensures that all telemarketers subject to federal law are given clear and consistent guidance regarding the circumstances under which prior express consent must be obtained from consumers before making prerecorded telemarketing calls. The Commission believes that its decision here strikes an appropriate balance between preserving ongoing business relationships and protecting consumer privacy, as intended by Congress. Since the enactment of the TCPA and the FCC's creation of an established business relationship exemption, methods for efficiently obtaining electronic consent have been developed and have been legally recognized by the E–SIGN Act. These newer consent options have significantly facilitated business relationships while, at the same time, allowing consumers to affirmatively choose whether they wish to receive prerecorded telemarketing calls before such calls invade their privacy.

26. While commenters' assertions that eliminating the EBR exemption will impede business communications suggest that there are compliance costs associated with this new rule, commenters do not, however, quantify any such costs. In light of the fact that the FTC's rules have been in place for more than two years, the Commission believes that compliance costs, if substantial, should be known. Commenters have failed to put forward evidence of such costs, however. Nevertheless, elimination of the EBR will require telemarketers to secure consent from consumers in some cases where they would not have obtained consent under the current rules. As with the other changes the Commission adopts in document FCC 12–21, many telemarketers are already required to market without benefit of the EBR for entities under FTC jurisdiction, and given the absence of record evidence on the incremental cost of complying with these changes, the Commission lacks a basis for finding that the costs outweigh the substantial consumer benefits. For those entities that currently rely on the EBR exemption, the Commission notes that its rules require ''clear and convincing evidence'' that an EBR exists. Although commenters opposing elimination of the EBR exemption have not provided information on compliance costs, the Commission notes that the incremental cost resulting from its action is offset to some degree by the costs that these entities already incur to retain ''clear and convincing evidence.'' The Commission believes that any additional cost incurred by having to obtain written consent is further lowered by the option of using electronic measures consistent with E–SIGN.

3. Opt-Out Mechanism

27. The FCC next considers whether to require an automated opt-out mechanism that would allow consumers to bar unwanted prerecorded telemarketing calls. The FTC has recently required such an automated opt-out mechanism, and the FCC now considers how it can maximize consistency with the FTC's approach. The FCC adopts an automated, interactive opt-out requirement for autodialed or prerecorded telemarketing calls to wireless numbers and prerecorded telemarketing calls to residential lines.

28. *The FCC's Rules.* Under the FCC's existing rules, a consumer who does not wish to receive further prerecorded telemarketing calls can ''opt out'' of receiving such calls by dialing a telephone number (required to be provided in the prerecorded message) to register his or her do-not-call request. Specifically, the FCC's rules require that, at the beginning of all artificial or prerecorded message calls, the message identify the entity responsible for initiating the call (including the legal name under which the entity is registered to operate), and during or after the message, provide a telephone number that consumers can call during regular business hours to make a company-specific do-not-call request.

29. *The FTC's Rule.* The FTC's TSR, as amended in 2008, requires, with limited exception, that any artificial or prerecorded message call that could be answered by the consumer in person provide an interactive opt-out mechanism that is announced at the outset of the message and is available throughout the duration of the call. The opt-out mechanism, when invoked, must automatically add the consumer's number to the seller's do-not-call list and immediately disconnect the call. Where a call could be answered by the consumer's answering machine or voicemail service, the message must also include a toll-free number that enables the consumer to subsequently call back and connect directly to an automated opt-out mechanism.

30. Based on the record, the FCC revises its rules to require any artificial or prerecorded message call that could be answered by the consumer in person provide an interactive opt-out mechanism that is announced at the outset of the message and is available throughout the duration of the call. In addition, the opt-out mechanism, when

invoked, must automatically add the consumer's number to the seller's do-not-call list and immediately disconnect the call. Where a call could be answered by the consumer's answering machine or voicemail service, the message must also include a toll-free number that enables the consumer to subsequently call back and connect directly to an automated opt-out mechanism. The Commission adopts these rules to enable consumers to control their exposure to, and continued participation in, prerecorded telemarketing calls and to harmonize its opt-out rules with the FTC's TSR, consistent with the Congressional intent expressed by the DNCIA. The Commission notes that the TCPA does not require implementation of a particular opt-out mechanism. Rather, the TCPA provides that the Commission shall prescribe technical and procedural standards for systems that are used to transmit any prerecorded voice message via telephone and provides two elements that the Commission must include in its standards.

31. The Commission believes that the automated, interactive opt-out mechanism adopted will empower consumers to revoke consent if they previously agreed to receive autodialed or prerecorded telemarketing calls and stop receipt of unwanted autodialed or prerecorded telemarketing calls to which they never consented. The record developed in the FTC proceeding includes an industry analysis showing, among other things, that consumers are four times more likely to opt out of a prerecorded call that has an automated, interactive opt-out mechanism as opposed to opting out of a prerecorded call that provides a toll-free number for the consumer to call during business hours. This analysis suggests that consumers are reluctant to use toll-free numbers to end unwanted telemarketing calls. The majority of commenters in this proceeding who address this issue support an automated, interactive opt-out mechanism for telemarketing calls. For instance, the National Consumer Law Center states that the Commission's current opt-out mechanism, which requires a separate call to the telemarketer, is far less useful or protective of a consumer's privacy, and thus advocates adopting the more consumer-friendly automated, interactive opt-out mechanism. While a few commenters assert that the Commission should apply the automated, interactive opt-out requirement to non-telemarketing and telemarketing calls alike, the Commission declines to do so at this time because the record does not reveal a level of consumer frustration with non-telemarketing calls that is equal to that for telemarketing calls. The Commission therefore limits the automated, interactive opt-out requirement that it adopts in this Report and Order to autodialed or prerecorded telemarketing calls.

32. The Commission emphasizes that an entity placing an otherwise unlawful autodialed or prerecorded call cannot shield itself from liability simply by complying with the FCC's opt-out and identification rules. Furthermore, the revised rules the Commission adopts in this Order do not alter the current technical and procedural standards as applied to non-telemarketing, informational calls. The Commission maintains its identification and contact information requirements in § 64.1200(b) of the Commission's rules. The Commission also takes this opportunity to stress that the identification and contact information must be valid, verifiable, and actionable.

B. Abandoned Calls/Predictive Dialers

33. The Commission next decides whether to adopt rules that are consistent with the FTC's method for determining whether a telemarketer's ''abandoned'' call rate is within the lawful numerical limits for such calls. Based on the record, the Commission modifies its abandoned call rule to require that the three percent call abandonment rate be calculated for each calling campaign.

34. *The FCC's Rules.* Predictive dialers initiate phone calls while telemarketers are talking to other consumers and frequently disconnect those connected calls when a telemarketer is otherwise occupied and unavailable to take the next call, resulting in a hang-up or dead-air call. Under the Commission's rules, an outbound telephone call is deemed ''abandoned'' if a person answers the telephone and the caller does not connect the call to a sales representative within two seconds of the called person's completed greeting. The Commission's existing rules restrict the percentage of live telemarketing calls that a telemarketer may drop (or abandon) as a result of predictive dialers. Specifically, a seller or telemarketer would not be liable for violating the two-second restriction if, among other things, it employs technology that ensures abandonment of no more than three percent of all calls answered by the called person (rather than by an answering machine). The Commission's existing call abandonment rule measures the abandonment rate over a 30-day period, but contains no ''per-calling-campaign'' limitation.

35. *The FTC's Rule.* As does the FCC's rule, the FTC's TSR deems an outbound telephone call to be ''abandoned'' if the called person answers the telephone and the caller does not connect the call to a sales representative within two seconds of the called person's completed greeting. Under the TSR, a seller or telemarketer is not liable for violating the prohibition on call abandonment if, among other things, the seller or telemarketer employs technology that ensures abandonment of no more than three percent of all calls answered by a person (rather than by an answering machine) for the duration of a *single calling campaign,* if the campaign is less than 30 days, or separately over each successive 30-day period or portion thereof during which the calling campaign continues.

36. The Commission revises its rules to match the FTC's and require assessment of the call abandonment rate to occur during a single calling campaign over a 30-day period, and if the single calling campaign exceeds a 30-day period, the Commission requires that the abandonment rate be calculated each successive 30-day period or portion thereof during which the calling campaign continues. The revised requirement will deprive telemarketers of the opportunity to average abandoned calls across multiple calling campaigns, which can result in targeting abandoned calls to less desirable consumers, a form of robocall ''redlining.''

37. Several commenters support the proposed rules, and several oppose them. Michigan PSC, NASUCA, and SmartReply generally support the proposed rule and favor harmonization of the Commission's rule with the FTC's rule. Bank of America (BofA) opposes the per-calling campaign measurement because, BofA asserts, it does not engage in the kind of rate manipulation the proposed rule attempts to address. The Newspaper Association of American opposes the per-campaign modification to the Commission's existing rule because it claims that the rule would adversely impact smaller organizations that utilize shorter calling lists. Roylance opposes the proposed rule and instead argues that a per-day measurement should be used to ensure a reduction in the abandoned call rate and that a per-telephone number limitation, without regard to the number of telemarketers or campaigns, should be imposed to ensure that the consumer does not receive more than a certain number of abandoned calls to a certain telephone number. Although BofA

claims that it has not calculated the abandoned call rate based upon multiple calling campaigns, no commenter in this proceeding provided industry data regarding the occurrence of averaging over multiple calling campaigns. The Commission notes, however, that the Connecticut Attorney General supported the FTC's per-calling campaign limitation, as did several consumer commenters.

38. The Commission declines to adopt a ''per-day'' assessment of the abandonment rate instead of the 30-day assessment, as urged by some commenters. In changing its per-day, per-calling campaign assessment to a 30-day, per-calling campaign assessment, the FTC noted that the biggest problem with the per-day calculation is adjusting for the unexpected spikes in answered and abandoned calls. As the FCC has previously noted, a rate measured over a longer period of time will allow for reasonable variations in telemarketing calling campaigns such as calling times, number of operators available, number of telephone lines used by the call centers, and similar factors. This allowance alleviates some of the difficulties experienced by small businesses that use a smaller calling list. Thus, the Commission finds it necessary to maintain the 30-day time period for measurement of abandoned calls. The Commission also declines to adopt a ''per-telephone number'' assessment of the abandoned call rate instead of the 30-day assessment as noted above by one commenter. The cost of implementing a per-telephone number limitation would outweigh the benefit of the extra measure of protection against abandoned calls.

39. In addition, the FCC will apply the term ''campaign'' as defined by the FTC. In the *2008 TSR,* published at 73 FR 51164, August 29, 2008, the FTC defines ''campaign'' as ''the offer of the same good or service for the same seller.'' So long as a telemarketer is offering the same good or service for the same seller, the FCC will regard the offer as part of a single campaign, irrespective of whether telemarketing scripts used to convey the offer use or contain different wording.

C. Exemption for Health Care-Related Calls Subject to HIPAA

40. The Commission next considers whether prerecorded calls subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) should be exempt from its TCPA consent, identification, time-of-day, opt-out, and abandoned call rules. Once again, as contemplated by the DNCIA, the FCC considers the FTC's approach to this issue so that the FCC can ''maximize consistency'' with the FTC's TSR. The HIPAA statute strives to improve portability and continuity of health insurance coverage in the group and individual markets, to combat waste, fraud, and abuse in health insurance and health care delivery, to promote the use of medical savings accounts, to improve access to long-term care services and coverage, and to simplify the administration of health insurance, among other purposes. HIPAA also gives individuals important controls over whether and how their protected information is used and disclosed for marketing purposes. With limited exceptions, HIPAA requires an individual's written authorization before his or her protected health information can be used or disclosed for marketing purposes. In view of the privacy protections afforded under HIPAA, the FCC exempts from its consent, identification, time-of-day, opt-out, and abandoned call requirements all prerecorded health care-related calls to residential lines that are subject to HIPAA.

41. *The FCC's Statutory Authority.* The Act provides that the Commission may establish exemptions from the prohibitions on prerecorded voice calls to residential lines. Specifically, section 227(b)(2)(B) of the TCPA provides, in relevant part, that two types of calls may be exempted: ''(i) calls that are not made for a commercial purpose, *and* (ii) such classes or categories of calls made for commercial purposes as the Commission determines (I) will not adversely affect the privacy rights that this section is intended to protect; *and* (II) do not include the transmission of any unsolicited advertisement.''

42. *The FTC's Approach.* In its 2008 amendment to the TSR, the FTC exempted health care-related prerecorded message calls subject to HIPAA from its restrictions on such calls, basing its determination on six primary considerations. First, the FTC found that delivery of health care-related prerecorded calls subject to HIPAA is already regulated extensively at the federal level. Second, it found that coverage of such calls by the TSR could frustrate the Congressional intent embodied in HIPAA, as well as other federal statutes governing health care-related programs. Third, the FTC found that the number of health care providers who might call a patient is inherently quite limited—as is the scope of the resulting potential privacy infringement—in sharp contrast to the virtually limitless number of businesses potentially conducting commercial telemarketing campaigns. Fourth, the FTC found that there is no incentive, and no likely medical basis, for providers who place health care-related prerecorded calls to attempt to boost sales through an ever-increasing frequency or volume of calls. Fifth, the FTC concluded that the existing record did not show that ''the reasonable consumer'' would consider prerecorded health care calls coercive or abusive. Finally, FTC enforcement experience did not suggest that health care-related calls have been the focus of the type of privacy abuses the exemption was intended to remedy. For these reasons, the FTC determined, pursuant to both its authority under the Telemarketing Act and its authority under the FTC Act, that health care-related prerecorded message calls subject to HIPAA should be exempt from the TSR because application of the TSR to such calls ''is not necessary to prevent the unfair or deceptive act or practice [that harms consumer privacy] to which the [TSR] relates.''

43. For the reasons discussed herein and consistent with the FTC's action, the FCC exempts from its consent, identification, time-of-day, opt-out, and abandoned call requirements applicable to prerecorded calls all health care-related calls to residential lines subject to HIPAA. Establishing this exemption advances the statutory goal of maximizing consistency with the FTC's rules, and the FCC's record affirmatively supports adopting the FTC's approach. Therefore, pursuant to section 227(b)(2)(B) of the Act, which allows the Commission to establish an exemption for specified prerecorded calls that are commercial in nature if such calls will not adversely affect consumer privacy rights and do not include an unsolicited advertisement, the Commission finds that prerecorded calls to residential lines that are subject to HIPAA should be exempted from the consent, identification, time-of-day, opt-out, and abandoned call requirements under its TCPA rules. Furthermore, the Commission agrees with commenters that assert these calls serve a public interest purpose: to ensure continued consumer access to health care-related information.

44. As has the FTC, the FCC finds that HIPAA's existing protections, which it describes below, already safeguard consumer privacy, and the FCC therefore does not need to subject these calls to its consent, identification, opt-out, and abandoned call rules. The FCC notes at the outset that HIPAA regulations cover all communications regarding protected health information and all means of communication

regarding such information. The Department of Health and Human Services (HHS) explains that HIPAA protects individually identifiable health information held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. In addition to limiting the use or disclosure of health information for treatment, payment, or health care operations or otherwise permitted or required disclosures, HIPAA restricts the use of this information for marketing. Unless the covered entity secures the individual's written authorization, HIPAA allows marketing only if the communication imparts information about a product or service that is included in a health care benefits plan offered by the covered entity, gives information concerning treatment, or describes goods or services for case management or care coordination. It is also noteworthy that HIPAA applies its regulations not only to certain uses or disclosures by the covered entity, but also extends HIPAA obligations, without exception, to third parties to which covered entities disclose protected health information. Violations of HIPAA are subject to civil penalties and criminal penalties, including possible imprisonment.

45. All health care industry commenters support a consent exemption for health care-related prerecorded calls subject to HIPAA. Among those opposing the exemption, one commenter states without elaboration that an exemption should not be established for health care-related prerecorded marketing calls. Although it is unclear from the comment, this commenter may not understand that restrictions imposed by HIPAA would restrain any such marketing calls. A second commenter opposes a HIPAA exemption but misjudges the effect of an exemption, not acknowledging that without an exemption, calls permitted by HIPAA would be prohibited by the FCC's existing rules and not acknowledging that HIPAA provides rigorous privacy protections and penalties.

46. In the FTC's TSR proceeding, concern was raised, in relevant part, whether immunization reminders, health screening reminders, medical supply renewal requests, and generic drug migration recommendations would constitute inducements to purchase goods or services. In the FCC's proceeding, one commenter argues that a call ''pushing'' flu vaccines would be illegal under the TCPA. Without reaching the merits of this argument, the Commission does believe that an exemption for prerecorded health care-related calls to residential lines is warranted when such calls are subject to HIPAA. With respect to the privacy concerns that the TCPA was intended to protect, the Commission believes that prerecorded health care-related calls to residential lines, when subject to HIPAA, do not tread heavily upon the consumer privacy interests because these calls are placed by the consumer's health care provider to the consumer and concern the consumers' health. Moreover, the exemption the Commission adopts in document FCC 12–21 does not leave the consumer without protection. The protections provided by HIPAA safeguard privacy concerns. Under the second prong of the TCPA exemption provision, which requires that such calls not include an unsolicited advertisement, the Commission finds the calls at issue here are intended to communicate health care-related information rather than to offer property, goods, or services and conclude that such calls are not unsolicited advertisements. Therefore, such calls would satisfy the TCPA standard for an exemption as provided in the Act and the FCC's implementing rules.

47. Third, a commenter anticipates abuse of the HIPAA marketing definition and suggests that robocalling a neighborhood to alert persons that the calling entity will provide immunizations would be allowed under HIPAA. HHS enforcement measures of HIPAA discourage abuse because these measures include civil and criminal penalties. Lastly, one commenter that opposes the HIPAA exemption questions the Commission's authority to adopt such an exemption. Because the Commission concludes that prerecorded, health care-related calls, subject to HIPAA, to residential lines do not constitute an unsolicited advertisement and will not adversely affect the privacy rights that the Act was intended to protect, the Act allows the Commission to establish an exemption for such calls, and it does so in this Report and Order.

48. In sum, based on the record and the HIPAA requirements, the FCC agrees with the FTC approach under the TSR and is persuaded that the HIPAA privacy regulations are rigorous and reflect a statutory mission to protect privacy rights. HHS enforcement measures of HIPAA discourage abuse because these measures include civil and criminal penalties. The FCC therefore adopts an exemption from its TCPA rules for prerecorded health care-related calls to residential lines that are subject to HIPAA. In those instances where the prerecorded health care-related call is not covered by HIPAA, as determined by HHS, restrictions imposed by the TCPA and the FCC's implementing rules will apply as the facts warrant.

D. Implementation

49. Finally, the Commission addresses the timing and cost of implementing the rules it adopts in document FCC 12–21. The Commission seeks to ensure that the consumer protection measures it adopts are timely implemented so that consumers can realize the benefits, while allowing a reasonable time for affected parties to implement necessary changes in a way that makes sense for their business models. Each of the FCC's implementation periods is consistent with the implementation periods adopted by the FTC. Specifically, the FCC establishes a twelve-month period for implementation of the requirement that prior express consent be in writing for telemarketers employing autodialed or prerecorded calls or messages to wireless numbers and prerecorded calls or messages to residential lines. This twelve-month period will commence upon publication of OMB approval of the FCC's written consent rules in the **Federal Register**. In connection with the implementation of the written consent requirement for telemarketing robocalls, the FCC will phase out the established business relationship exemption over the same twelve-month period that follows publication of OMB approval of its written consent rule in the **Federal Register**. To reiterate, the FCC allows telemarketers twelve months from publication of OMB approval of its written consent rules to cease utilization of the established business relationship as evidence of consumer consent to receive prerecorded telemarketing calls. Second, the FCC establishes a 90-day implementation period for the automated, interactive opt-out mechanism for telemarketing calls, again commencing upon publication of OMB approval of its opt-out rules in the **Federal Register**. Finally, the FCC establishes a 30-day implementation period for the revised abandoned call rule, also commencing upon publication of OMB approval of its abandoned calls rule in the **Federal Register**.

50. Based on its review of the record and the considerations noted above, the Commission adopts implementation timetable as described herein. Although industry commenters focused their remarks on the time that would be needed for implementing a prior express written consent requirement for non-telemarketing calls, they did not address implementation where the proposed consent requirement was limited to

telemarketing calls. The Commission finds that establishing a twelve-month implementation period for the written consent requirement is appropriate because, as noted in the FTC proceeding, it will take time for businesses to redesign Web sites, revise telemarketing scripts, and prepare and print new credit card and loyalty program applications and response cards to obtain consent from new customers, as well as to use up existing supplies of these materials and create new record-keeping systems and procedures to store and access the new consents they obtain.

51. One commenter in this proceeding supports the use of consent obtained under the Commission's existing rules to authorize continued autodialed or prerecorded calls for a limited period of time. Because allowing telemarketers to rely on such consent pending the effective date of its new written consent requirement would ease the operational and technical transition for autodialed or prerecorded voice telemarketing calls, the Commission finds that it would serve the public interest to permit continued use of existing consents for an interim period. For example, in cases where a telemarketer has not obtained prior written consent under the FCC's existing rules, the Commission will allow such telemarketer to make prerecorded voice telemarketing calls until the effective date of its written consent requirement, so long as the telemarketer has obtained another form of prior express consent. Once the Commission's written consent rules become effective, however, an entity will no longer be able to rely on non-written forms of express consent to make autodialed or prerecorded voice telemarketing calls, and thus could be liable for making such calls absent prior written consent.

52. With respect to the 90-day implementation period for the automated, interactive opt-out mechanism for telemarketing calls, there is no indication in the FCC's record that implementing the proposed opt-out mechanism would be especially burdensome or pose extraordinary technical issues. Moreover, the FTC observed in its proceeding, that industry comments uniformly represent that interactive technology is affordable and widely available. In addition, the FCC believes that the implementation circumstances associated with its revised abandonment rate measurement rules merit a 30-day allotment of time for compliance. None of the commenters on the proposed abandoned call rule requested any delay to give affected entities sufficient time to comply. Having received no input regarding the implementation period needed to implement the abandoned call rule, the Commission believes the appropriate time for implementation of this revised rule is also 30 days after publication of OMB approval of this rule in the **Federal Register**.

53. In the *2010 TCPA NPRM,* the Commission asked for comment on the incremental costs of implementing its proposals to require written consent. With one exception (elimination of the EBR, which the Commission address above), industry commenters do not substantially oppose the proposals the Commission adopt today. As described above, neither telemarketers nor sellers oppose the written consent requirement for telemarketing robocalls—the Commission would have expected such opposition if compliance costs were material. Many, perhaps the vast majority, of telemarketers already have processes in place to comply with this requirement. Hence, with the exception of the limited group of entities that are outside the FTC's jurisdiction, the FCC expects that many telemarketers affected by the changes in this Report and Order have already incurred the cost of implementing a written consent requirement, have already given up reliance on the EBR as a basis for making robocalls without prior express consent, have implemented an automated opt-out mechanism, and are calculating the call abandonment rate on a per-campaign basis. Because there is little record opposition to these changes, other than elimination of the EBR, and because many affected entities should already have processes in place to comply with the changes and of the availability of electronic means to obtain written consent, the Commission finds no reason to conclude that the consumer benefits that will result from these changes are outweighed by the associated costs.

Final Regulatory Flexibility Analysis

54. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*2010 TCPA NPRM*) released by the Federal Communications Commission (Commission) on January 22, 2010. The Commission sought written public comments on the proposals contained in the *2010 TCPA NPRM,* including comments on the IRFA. None of the comments filed in this proceeding were specifically identified as comments addressing the IRFA; however, comments that address the impact of the proposed rules and policies on small entities are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

E. Need for, and Objectives of, the Order

55. The DNCIA provides that ''the Federal Communications Commission shall consult and coordinate with the Federal Trade Commission to maximize consistency with the rule promulgated by the Federal Trade Commission.'' The FCC notes that the Federal Trade Commission amended its Telemarketing Sales Rule (TSR) in 2008 to require, among other things, that telemarketers secure the consumer's express written agreement to receive prerecorded telemarketing messages, provide an automated, interactive opt-out mechanism, terminate its safe harbor provision allowing prerecorded telemarketing calls to consumers with whom the telemarketer enjoyed an established business relationship, and limit abandoned calls on a 30-day, per campaign period. This Commission has determined to harmonize its rules with the FTC's TSR to protect consumers from unwanted autodialed or prerecorded telemarketing calls, also known as ''robocalls.'' Despite establishing a National Do-Not-Call Registry and adopting other consumer protection rules, the Commission observes that consumers continue to receive unwanted robocalls. The continued receipt of unwanted robocalls demonstrates a need for the actions taken in this Order. Abuses in telemarketing have motivated the Commission to the objective of bringing an end to consumers receiving unwanted robocalls, encountering difficult or ineffective opt-out procedures, and receiving dead-air calls. In adopting these rules, the Commission fulfills another objective in document FCC 12–21 by acting upon Congress's directive in the DNCIA.

56. In document FCC 12–21, the Commission adopts measures under the Telephone Consumer Protection Act (TCPA) to help consumers protect their privacy from unwanted telemarketing calls. Specifically, to summarize the rules adopted, the Commission revises its rules to require prior express written consent for all autodialed or prerecorded telemarketing calls to wireless numbers and prerecorded telemarketing calls residential lines and to eliminate the established business relationship exemption for prerecorded calls to residential lines while providing more flexibility for purely informational calls. The Commission revises its rules to require an automated, interactive opt-out feature at the outset of any autodialed or prerecorded telemarketing

call that could be answered by the consumer in person and is available throughout the duration of the autodialed or prerecorded telemarketing call. In addition, if the called party elects to opt out, the calling party's mechanism must automatically add the consumer's number to the seller's do-not-call list and immediately disconnect the call. The revised rules will also require provision of a toll-free number that enables the consumer to call back and connect directly to an automated opt-out mechanism if the telemarketing call could be answered by an answering machine or voicemail service. Next, document FCC 12–21 revises the Commission's abandoned call rule whereby measurement of abandoned calls will occur over a 30-day period for the duration of a single calling campaign to discourage certain targeted calling campaigns. A campaign consists of the offer of the same good or service for the same seller.

57. Finally, for health care-related entities governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Commission establishes an exemption from its TCPA rules. The Commission adopts these new rules to further protect consumers from unwanted autodialed or prerecorded telemarketing calls, also known as ''robocalls,'' and establish consistency with the Federal Trade Commission's Telemarketing Sales Rule (TSR), as required by statute.

58. The Commission believes the rules it adopts in document FCC 12–21 strike an appropriate balance between maximizing consumer privacy protections and avoiding imposing undue burdens on telemarketers. Document FCC 12–21 avoids imposing undue burdens of (1) requiring written consent for informational calls, (2) requiring handwritten consent agreements and handwritten signatures to fulfill the written consent requirement for telemarketing calls, and (3) requiring immediate implementation of the rules adopted herein on large and small telemarketers. For example, a community bank will not have to secure prior express written consent to provide a fraud alert notification to its customer's wireless number. In this instance, prior express oral consent to receive notifications satisfies the Commission's rules. Similarly, while the Commission adopts a prior express written consent requirement for prerecorded or autodialed telemarketing calls to wireless numbers and for prerecorded calls to residential lines, it also allows documentation and signature requirements recognized by the Electronic Signatures in Global and National Commerce Act (E–SIGN Act) satisfies the FCC's rules and avoids the undue burden associated with generating hardcopy documentation to evidence written consent. In 2000, Congress enacted the E–SIGN Act to ''facilitate the use of electronic records and signatures in interstate or foreign commerce'' by granting legal effect, validity, and enforceability to electronic signatures, contracts, or other records relating to transactions in or affecting interstate or foreign commerce. Finally, the Commission eases the burden on telemarketers by deferring the effective date of the rules adopted. By adopting the rules in document FCC 12–21, the Commission maximizes the consistency between its rules and the FTC's TSR, as contemplated in the DNCIA.

F. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

59. There were no comments filed in direct response to the IRFA. Some commenters, however, raised issues and questions about the impact the proposed rules and policies would have on small entities.

60. *Prior Express Written Consent Requirement.* Commenters expressed a variety of concerns regarding adoption of a prior express written consent requirement for autodialed or prerecorded non-telemarketing calls. American Financial Services Association (AFSA), Bank of American (BofA) and Cross-Industry Group are concerned that requiring written consent to authorize autodialed or prerecorded calls delivering account or loan application or modification information and other informational calls would be too costly for small financial institutions. AFSA argues that the Commission should limit the prior express written consent requirement to telemarketing calls only, or alternatively that account and loan modification calls be exempt from the prior express written consent requirement. Bank of America appears to object to a prior express written consent requirement for account-servicing and loan application calls made to wireless numbers. It cautions that such a requirement would be disadvantageous to individual and small business customers seeking credit approval if Bank of America is unable to communicate with them on their wireless numbers to secure needed information. Cross-Industry Group opposes written consent for autodialed or prerecorded, non-telemarketing calls to wireless services because requiring written consent unnecessarily impedes efficient communication between businesses and consumers. The Commission limits its prior express written consent requirement to telemarketing calls; therefore, the actions it takes impose no new burdens on entities placing autodialed or prerecorded non-telemarketing calls, including home loan modification calls placed pursuant to the American Recovery and Reinvestment Act.

61. The Commission reiterates that it requires prior express written consent for autodialed or prerecorded telemarketing calls to wireless numbers and for prerecorded telemarketing calls to residential lines only. Prior express consent is not required for purely informational calls, *i.e.* non-telemarketing. As stated earlier, several commenters expressed concerns about the consent requirement for autodialed or prerecorded non-telemarketing calls. Below you will find a summary of those concerns.

62. Research organizations expressed a concern opposing written consent for autodialed or prerecorded calls that deliver research or survey messages. For instance, Marketing Research Association (MRA) states that small businesses conducting research studies that include cell phone users in their samples would face increased costs if a written consent standard is adopted. The Commission does not require prior express written consent for autodialed or prerecorded informational, non-telemarketing calls to wireless numbers or for informational, non-telemarketing prerecorded calls to residential lines.

63. Similarly, charitable organizations contend that they would be negatively impacted if they had to secure prior express written consent for fundraising calls using autodialed or prerecorded messages. MDS Communications, Inc. asserts that a prior express written consent requirement for calls to cell phones using autodialed or prerecorded messages will have a material, detrimental effect on non-profit organizations that utilize telephone fundraising. Again, the Commission does not require prior express written consent for autodialed or prerecorded informational, non-telemarketing calls to wireless numbers or for prerecorded informational, non-telemarketing calls to residential lines.

64. Likewise, Portfolio Recovery Associates (PRA) predicts that numerous entities, including school boards, non-profit organizations, political candidates, debt collectors, small businesses, and large established companies would be unnecessarily and adversely affected if the written consent requirement is applied to all autodialed and prerecorded calls to mobile telephones, including purely

informational calls. The Commission's actions do not require prior express written consent for informational, non-telemarketing calls to wireless numbers.

65. The last comment to address potential burdens on small businesses arising from the consent rules concerns electronic documentation obtained pursuant to the E-SIGN Act. Mark Schwartz states that it is incorrect for the Commission to reason that the burden of requiring a small business to obtain an existing customer's written or electronic consent to send intrastate prerecorded sales calls to that customer is lessened by the E-SIGN Act. He argues that the E-SIGN Act (1) was written for interstate and foreign commerce only and (2) burdens small businesses with determining which technological methods are compliant with the E-SIGN Act. Congress enacted the E-SIGN Act to ''facilitate the use of electronic records and signatures in interstate or foreign commerce'' by granting legal effect, validity, and enforceability to electronic signatures, contracts, or other records relating to transactions in or affecting interstate or foreign commerce. The Commission believes that by allowing E-SIGN measures to secure written consent, it relieves all businesses, including small businesses, from the burden of securing paper documents from consumers to evidence prior express written consent. Although the E-SIGN Act may be directed to interstate and foreign commerce, the Commission concludes that the measures to affect an electronic signature described in the E-SIGN Act should be allowed here because these measures would significantly facilitate its written consent requirement. With regard to any uncertainty concerning what satisfies the prior express consent requirement, the Commission concludes that consent obtained in compliance with the E-SIGN Act will satisfy the requirements of its revised rule, including permission obtained via an email, Web site form, text message, telephone keypress, or voice recording.

66. *Abandoned Calls.* Predictive dialers initiate phone calls while telemarketers are talking to other consumers and these dialers frequently disconnect those calls when a telemarketer is unavailable to take the next call. In attempting to ''predict'' the average time it takes for a consumer to answer the phone and when a telemarketer will be free to take the next call, predictive dialers may either ''hang-up'' on consumers or keep the consumer on hold until connecting the call to a sales representative, resulting in what has been referred to as ''dead air.'' Dead-air calls are abandoned calls. The Commission's existing rules limit the percentage of abandoned calls that a telemarketer may incur to three percent (3%) over a thirty day period.

67. Newspaper Association of America (NAA) states that the ''per campaign'' limitation adopted in this Order has a negative impact on smaller businesses, including newspapers. A campaign consists of the offer of the same good or service for the same seller. NAA believes that small community newspapers would be hampered the most because their telemarketing calling list is less than 5,000. It contends that when calling a small list the algorithm used by predictive dialers is not as precise and results in more abandoned calls. NAA favors the existing abandoned call rule. NAA's concern is not significant because the FTC has already implemented this same abandoned call requirement and the burden, if any, is significantly mitigated by the FTC's action.

G. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

68. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

69. The Commission's rules on telephone solicitation and the use of autodialers and artificial or prerecorded messages apply to a wide range of entities, including all entities that call residential telephone lines and/or telephone numbers assigned to wireless numbers to advertise. In the IRFA, the Commission concluded that determining the precise number of small entities that will be subject to the rules is not readily feasible and invited comment on such number. None of the commenting parties provided the requested information. Based on the absence of available date in this proceeding, the Commission, like the FTC, believes that determining the precise number of small entities to which the rules adopted herein will apply is not currently feasible.

70. Because its action affects the myriad of businesses throughout the nation that use telemarketing to advertise, the Commission offers these following categories of businesses which it believes will be impacted by rules it adopts in document FCC 12–21. For example the types of business impacted by its rules include, but are not limited to, commercial banks, mortgage brokers, pharmacies, freight airlines, and utility companies that elect to use automated or prerecorded telemarketing calls or health care-related calls.

71. *Commercial Banks.* SBA defines a commercial bank as a small business if its total assets do not exceed $175 million. This industry comprises establishments primarily engaged in accepting demand and other deposits and making commercial, industrial, and consumer loans. Commercial banks and branches of foreign banks are included in this industry. U.S. Census data for 2007 indicate that, in this industry, there were 6,490 commercial banks that operated for the entire year. Of these, 6,490, 6135 operated with annual receipts of $100,000,000 or less; 189 operated with annual receipts of $100,000,000 to $249,999,999; and 166 operated with annual receipts of more than $250,000,000. Based on this data, it is impossible to state precisely how many commercial banks operated with annual receipts of $175 million or less, but since the data do specifically indicate that 6,135 of 6,490 banks operated with less than $100,000,000 in annual receipts, the Commission concludes that a substantial majority of commercial banks are small under the SBA standard.

72. *Mortgage Brokers.* SBA defines a mortgage broker as a small business if its annual receipts do not exceed $7 million. Census data for 2007 indicate that in 2007, 17,702 mortgage broker firms operated for the entire year. Of these, 17,363 operated with annual receipts of $5 million or less; 177 operated with annual receipts of between $5 million and $9,999,999; and 132 operated with annual receipts of $10 million or more. While the exact number that operated with annual receipts of $7 million or less cannot be stated precisely, the available data clearly show that a substantial majority of brokerage firms were small by the SBA standard.

73. *Pharmacies and Drug Stores.* Likewise, pharmacies and drug stores which do not exceed $25.5 million in annual receipts are considered small businesses. U.S. Census data show that

17,217 firms operated in this category during that entire year. Of these 7,217 firms, 14,136 received annual receipts of $5 million or less; 2,311 received annual receipts of between $5 million and $9,999,999; and 770 received annual receipts of $10 million or more. Based on this data, the Commission cannot state precisely how many businesses earned $7.0 million or less in annual receipts. The Commission concludes, however, that a substantial majority of businesses in this category are small under the SBA standard.

74. *Freight Airlines.* This U.S. industry comprises establishments primarily engaged in providing air transportation of cargo without transporting passengers over regular routes and on regular schedules. Establishments in this industry operate flights even if partially loaded. Establishments primarily engaged in providing scheduled air transportation of mail on a contract basis are included in this industry. For freight airlines, the SBA developed a small business size standard for such companies stating that those companies having 1500 or fewer employees are small. U.S. Census data for 2007 indicate that there were 221 businesses in this category that operated for the entire year. Of these 221, 220 operated with 999 employees or less, and one (1) operated with more than 1000 employees. Based on this data, the Commission concludes that a substantial majority of the freight airlines in this category are small under the SBA standard.

75. *Utility Companies.* The SBA also developed a small business size standard for utility companies. For electric utility companies, the small business size standard is any electric utility that it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours. U.S. Census does not provide megawatt hours information and does not provide a specific number of small utility companies.

76. *Telemarketing Bureaus and Other Contact Centers.* This U.S. industry comprises establishments primarily engaged in operating call centers that initiate or receive communications for others—via telephone, facsimile, email, or other communication modes—for purposes such as (1) promoting clients, products or services, (2) taking orders for clients, (3) soliciting contributions for a client; and (4) providing information or assistance regarding a client's products or services. These establishments do not own the product or provide the services they are representing on behalf of clients. The SBA has determined that ''Telemarketing Bureaus and other Contact Centers'' with $7 million or less in annual receipts qualify as small businesses. U.S. Census data for 2007 indicate that 2,100 businesses in this category operated throughout that year. Of those 2,100 businesses, 1,764 operated with annual receipts of less than $5 million; 145 operated with annual receipts between $5 million and $9,999,999; and 191 operated with annual receipts of $10 million or more. Based on this data, it is not possible to state precisely how many businesses in this category operated with annual receipts of $7 million or less. The Commission concludes, however, that a substantial majority of businesses in this category are small under the SBA standard.

H. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

77. The rules adopted herein establish recordkeeping requirements for a large variety of businesses, including small business entities. First, the seller must secure a written agreement between itself and the consumer showing that the consumer agrees to receive autodialed or prerecorded telemarketing calls from the seller. The Commission allows the seller the flexibility to determine the type of written agreement that it will secure from the consumer. The Commission does not require a particular form or format for this written agreement or its retention. The E–SIGN Act also provides additional flexibility in obtaining electronic consent producing minimal additional recordkeeping efforts. To the extent that the calling parties rely on an established business relationship, the Commission notes that it previously stated that telemarketers that claim their prerecorded messages are delivered pursuant to an established business relationship must be prepared to provide clear and convincing evidence of the existence of such a relationship. Because of these factors, any additional recordkeeping costs should be minimal.

78. Second, telemarketers and sellers, including small business entities, that initiate telemarketing calls using autodialed or prerecorded messages, must provide an automated, interactive opt-out feature at the outset of such a call. This rule obligates telemarketers and sellers to retain records of providing this feature and to retain records of consumers opting out of receiving these autodialed or prerecorded telemarketing messages. Such records should demonstrate the telemarketer's and seller's compliance with the provision and utilization of the automated, interactive opt-out feature. The Commission allows the telemarketers and sellers the flexibility to determine how to implement the mechanism. The Commission does not require a particular form or format evidencing this mechanism or its implementation.

79. Thirdly, the Commission revises its abandoned call requirement. There is no additional recordkeeping burden for this revision because the Commission's rule already requires that the seller or telemarketer maintain records establishing compliance with the abandoned call rules.

I. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

80. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.'' As indicated above, various groups will be subject to the Commission's new rules, and some of these entities are classified as small entities.

81. *Prior Express Written Consent Requirement.* At the outset, the Commission notes that the adopted rules differ from the proposed rules. In the proposed rules, the Commission considered adopting prior express written consent for all autodialed or prerecorded calls to wireless numbers and for all prerecorded calls to residential lines. Here, the Commission adopts prior express written consent for autodialed or prerecorded telemarketing calls to wireless numbers and for prerecorded telemarketing calls to residential lines only. Limiting the written consent requirement to telemarketing calls significantly reduces the compliance burden for all entities, including small entities. In adopting the written consent requirement for autodialed or prerecorded telemarketing calls to wireless numbers and for prerecorded telemarketing calls to residential lines, the Commission also concluded that consent obtained

pursuant to the E-SIGN Act will satisfy the requirement of its revised rule, including permission obtained via an email, Web site form, text message, telephone keypress, or voice recording. Accepting consent pursuant to the E-SIGN Act relieves all businesses, including small entities, from the economic impact of generating and retaining a paper document to evidence their compliance.

82. *Elimination of Established Business Relationship Exemption.* In document FCC 12–21, the Commission amends its rules to eliminate the established business relationship (EBR) exemption for prerecorded telemarketing calls. Eliminating the established business relationship exemption will be a burden to the calling telemarketer because the calling party will not be able to rely on the EBR as its form of prior express consent. That burden is mitigated because the prior express written consent requirement can be fulfilled using electronic measures including those described in the E-SIGN Act. Securing written consent using electronic measures relieves the calling parties from the task of securing handwritten documentation and handwritten signatures. This reasoning applies equally to small entities. Moreover, with the increasing use of cell phones, the burden of eliminating the established business relationship exemption on telemarketers is further diminished because the EBR never applied to robocalls to cell phones. In addition, because the FTC's TSR already imposes a prior express written consent requirement for telemarketing calls and does not recognize an EBR, many entities have already implemented steps to fulfill this requirement, thereby reducing the burden associated with the rule the Commission adopts in document FCC 12–21.

83. *Opt-Out Mechanism.* The opt-out provisions in document FCC 12–21 do not impose significant economic impact on small businesses. The Commission did not receive any comments stating that this rule would cause a significant economic impact on small businesses.

84. *Abandoned Call.* One business concern, the Newspaper Association of America, suggests that the abandoned call rule adopted will present an adverse economic impact on small businesses. The Commission disagrees. Neither NAA nor its membership will be burdened by the abandoned call rule adopted in document FCC 12–21 because these entities are already subject to the FTC's abandoned call provision in the TSR. The abandoned call provision adopted in this Order is identical to the FTC's TSR abandoned call provision. Document FCC 12–21 also rejects an alternate proposal to measure the abandoned calls on a per-campaign, per day basis. Measuring the abandoned call rate on a per-campaign, per-day basis, instead of a per-campaign, 30-day basis, would pose a significant economic burden on all businesses, including small businesses.

The Commission identified alternatives to the rules adopted in document FCC 12–21, but it rejects these alternatives because they are more costly to small businesses.

Ordering Clauses

Pursuant to the authority contained in sections 1–4, 222, 227, and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 151–154, 222, 227, and the Do-Not-Call Implementation Act, Public Law 108–10, 117 Stat. 557, that document FCC 12–21 in CG Docket No. 02–278 IS ADOPTED, and that part 64 of the Commission's rules, 47 CFR 64.1200, is amended. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of document FCC 12–21, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers, Radio, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—[AMENDED]

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

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

Subpart L—Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising

■ 2. In § 64.1200, revise paragraphs (a), (b), (c), and (f) to read as follows:

§ 64.1200 Delivery restrictions.

(a) No person or entity may:

(1) Except as provided in paragraph (a)(2) of this section, initiate any telephone call (other than a call made for emergency purposes or is made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice;

(i) To any emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency;

(ii) To the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

(iii) To any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

(iv) A person will not be liable for violating the prohibition in paragraph (a)(1)(iii) of this section when the call is placed to a wireless number that has been ported from wireline service and such call is a voice call; not knowingly made to a wireless number; and made within 15 days of the porting of the number from wireline to wireless service, provided the number is not already on the national do-not-call registry or caller's company-specific do-not-call list.

(2) Initiate, or cause to be initiated, any telephone call that includes or introduces an advertisement or constitutes telemarketing, using an automatic telephone dialing system or an artificial or prerecorded voice, to any of the lines or telephone numbers described in paragraphs (a)(1)(i) through (iii) of this section, other than a call made with the prior express written consent of the called party or the prior express consent of the called party when the call is made by or on behalf of a tax-exempt nonprofit organization, or a call that delivers a ''health care'' message made by, or on behalf of, a ''covered entity'' or its ''business associate,'' as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.

(3) Initiate any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express written consent of the called party, unless the call;

(i) Is made for emergency purposes;

(ii) Is not made for a commercial purpose;

(iii) Is made for a commercial purpose but does not include or introduce an advertisement or constitute telemarketing;

(iv) Is made by or on behalf of a tax-exempt nonprofit organization; or

(v) Delivers a ''health care'' message made by, or on behalf of, a ''covered entity'' or its ''business associate,'' as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.

(4) Use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine, unless—

(i) The unsolicited advertisement is from a sender with an established business relationship, as defined in paragraph (f)(6) of this section, with the recipient; and

(ii) The sender obtained the number of the telephone facsimile machine through—

(A) The voluntary communication of such number by the recipient directly to the sender, within the context of such established business relationship; or

(B) A directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution. If a sender obtains the facsimile number from the recipient's own directory, advertisement, or Internet site, it will be presumed that the number was voluntarily made available for public distribution, unless such materials explicitly note that unsolicited advertisements are not accepted at the specified facsimile number. If a sender obtains the facsimile number from other sources, the sender must take reasonable steps to verify that the recipient agreed to make the number available for public distribution.

(C) This clause shall not apply in the case of an unsolicited advertisement that is sent based on an established business relationship with the recipient that was in existence before July 9, 2005 if the sender also possessed the facsimile machine number of the recipient before July 9, 2005. There shall be a rebuttable presumption that if a valid established business relationship was formed prior to July 9, 2005, the sender possessed the facsimile number prior to such date as well; and

(iii) The advertisement contains a notice that informs the recipient of the ability and means to avoid future unsolicited advertisements. A notice contained in an advertisement complies with the requirements under this paragraph only if—

(A) The notice is clear and conspicuous and on the first page of the advertisement;

(B) The notice states that the recipient may make a request to the sender of the advertisement not to send any future advertisements to a telephone facsimile machine or machines and that failure to comply, within 30 days, with such a request meeting the requirements under paragraph (a)(4)(v) of this section is unlawful;

(C) The notice sets forth the requirements for an opt-out request under paragraph (a)(4)(v) of this section;

(D) The notice includes—

(*1*) A domestic contact telephone number and facsimile machine number for the recipient to transmit such a request to the sender; and

(*2*) If neither the required telephone number nor facsimile machine number is a toll-free number, a separate cost-free mechanism including a Web site address or email address, for a recipient to transmit a request pursuant to such notice to the sender of the advertisement. A local telephone number also shall constitute a cost-free mechanism so long as recipients are local and will not incur any long distance or other separate charges for calls made to such number; and

(E) The telephone and facsimile numbers and cost-free mechanism identified in the notice must permit an individual or business to make an opt-out request 24 hours a day, 7 days a week.

(iv) A facsimile advertisement that is sent to a recipient that has provided prior express invitation or permission to the sender must include an opt-out notice that complies with the requirements in paragraph (a)(4)(iii) of this section.

(v) A request not to send future unsolicited advertisements to a telephone facsimile machine complies with the requirements under this subparagraph only if—

(A) The request identifies the telephone number or numbers of the telephone facsimile machine or machines to which the request relates;

(B) The request is made to the telephone number, facsimile number, Web site address or email address identified in the sender's facsimile advertisement; and

(C) The person making the request has not, subsequent to such request, provided express invitation or permission to the sender, in writing or otherwise, to send such advertisements to such person at such telephone facsimile machine.

(vi) A sender that receives a request not to send future unsolicited advertisements that complies with paragraph (a)(4)(v) of this section must honor that request within the shortest reasonable time from the date of such request, not to exceed 30 days, and is prohibited from sending unsolicited advertisements to the recipient unless the recipient subsequently provides prior express invitation or permission to the sender. The recipient's opt-out request terminates the established business relationship exemption for purposes of sending future unsolicited advertisements. If such requests are recorded or maintained by a party other than the sender on whose behalf the unsolicited advertisement is sent, the sender will be liable for any failures to honor the opt-out request.

(vii) A facsimile broadcaster will be liable for violations of paragraph (a)(4) of this section, including the inclusion of opt-out notices on unsolicited advertisements, if it demonstrates a high degree of involvement in, or actual notice of, the unlawful activity and fails to take steps to prevent such facsimile transmissions.

(5) Use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.

(6) Disconnect an unanswered telemarketing call prior to at least 15 seconds or four (4) rings.

(7) Abandon more than three percent of all telemarketing calls that are answered live by a person, as measured over a 30-day period for a single calling campaign. If a single calling campaign exceeds a 30-day period, the abandonment rate shall be calculated separately for each successive 30-day period or portion thereof that such calling campaign continues. A call is ''abandoned'' if it is not connected to a live sales representative within two (2) seconds of the called person's completed greeting.

(i) Whenever a live sales representative is not available to speak with the person answering the call, within two (2) seconds after the called person's completed greeting, the telemarketer or the seller must provide:

(A) A prerecorded identification and opt-out message that is limited to disclosing that the call was for ''telemarketing purposes'' and states the name of the business, entity, or individual on whose behalf the call was placed, and a telephone number for such business, entity, or individual that permits the called person to make a do-not-call request during regular business hours for the duration of the telemarketing campaign; provided, that, such telephone number may not be a 900 number or any other number for which charges exceed local or long distance transmission charges, and

(B) An automated, interactive voice- and/or key press-activated opt-out mechanism that enables the called person to make a do-not-call request prior to terminating the call, including brief explanatory instructions on how to use such mechanism. When the called person elects to opt-out using such

mechanism, the mechanism must automatically record the called person's number to the seller's do-not-call list and immediately terminate the call.

(ii) A call for telemarketing purposes that delivers an artificial or prerecorded voice message to a residential telephone line or to any of the lines or telephone numbers described in paragraphs (a)(1)(i) through (iii) of this section after the subscriber to such line has granted prior express written consent for the call to be made shall not be considered an abandoned call if the message begins within two (2) seconds of the called person's completed greeting.

(iii) The seller or telemarketer must maintain records establishing compliance with paragraph (a)(7) of this section.

(iv) Calls made by or on behalf of tax-exempt nonprofit organizations are not covered by this paragraph (a)(7).

(8) Use any technology to dial any telephone number for the purpose of determining whether the line is a facsimile or voice line.

(b) All artificial or prerecorded voice telephone messages shall:

(1) At the beginning of the message, state clearly the identity of the business, individual, or other entity that is responsible for initiating the call. If a business is responsible for initiating the call, the name under which the entity is registered to conduct business with the State Corporation Commission (or comparable regulatory authority) must be stated;

(2) During or after the message, state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such business, other entity, or individual. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges. For telemarketing messages to residential telephone subscribers, such telephone number must permit any individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign; and

(3) In every case where the artificial or prerecorded voice telephone message includes or introduces an advertisement or constitutes telemarketing and is delivered to a residential telephone line or any of the lines or telephone numbers described in paragraphs (a)(1)(i) through (iii), provide an automated, interactive voice- and/or key press-activated opt-out mechanism for the called person to make a do-not-call request, including brief explanatory instructions on how to use such mechanism, within two (2) seconds of providing the identification information required in paragraph (b)(1) of this section. When the called person elects to opt out using such mechanism, the mechanism, must automatically record the called person's number to the seller's do-not-call list and immediately terminate the call. When the artificial or prerecorded voice telephone message is left on an answering machine or a voice mail service, such message must also provide a toll free number that enables the called person to call back at a later time and connect directly to the automated, interactive voice- and/or key press-activated opt-out mechanism and automatically record the called person's number to the seller's do-not-call list.

(c) No person or entity shall initiate any telephone solicitation to:

(1) Any residential telephone subscriber before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), or

(2) A residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the Federal Government. Such do-not-call registrations must be honored indefinitely, or until the registration is cancelled by the consumer or the telephone number is removed by the database administrator. Any person or entity making telephone solicitations (or on whose behalf telephone solicitations are made) will not be liable for violating this requirement if:

(i) It can demonstrate that the violation is the result of error and that as part of its routine business practice, it meets the following standards:

(A) Written procedures. It has established and implemented written procedures to comply with the national do-not-call rules;

(B) Training of personnel. It has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;

(C) Recording. It has maintained and recorded a list of telephone numbers that the seller may not contact;

(D) Accessing the national do-not-call database. It uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintains records documenting this process.

Note to paragraph (c)(2)(i)(D): The requirement in paragraph 64.1200(c)(2)(i)(D) for persons or entities to employ a version of the national do-not-call registry obtained from the administrator no more than 31 days prior to the date any call is made is effective January 1, 2005. Until January 1, 2005, persons or entities must continue to employ a version of the registry obtained from the administrator of the registry no more than three months prior to the date any call is made.

(E) Purchasing the national do-not-call database. It uses a process to ensure that it does not sell, rent, lease, purchase or use the national do-not-call database, or any part thereof, for any purpose except compliance with this section and any such state or federal law to prevent telephone solicitations to telephone numbers registered on the national database. It purchases access to the relevant do-not-call data from the administrator of the national database and does not participate in any arrangement to share the cost of accessing the national database, including any arrangement with telemarketers who may not divide the costs to access the national database among various client sellers; or

(ii) It has obtained the subscriber's prior express invitation or permission. Such permission must be evidenced by a signed, written agreement between the consumer and seller which states that the consumer agrees to be contacted by this seller and includes the telephone number to which the calls may be placed; or

(iii) The telemarketer making the call has a personal relationship with the recipient of the call.

* * * * *

(f) As used in this section:

(1) The term *advertisement* means any material advertising the commercial availability or quality of any property, goods, or services.

(2) The terms *automatic telephone dialing system* and *autodialer* mean equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.

(3) The term *clear and conspicuous* means a notice that would be apparent to the reasonable consumer, separate and distinguishable from the advertising copy or other disclosures. With respect to facsimiles and for purposes of paragraph (a)(4)(iii)(A) of this section, the notice must be placed at either the top or bottom of the facsimile.

(4) The term *emergency purposes* means calls made necessary in any situation affecting the health and safety of consumers.

(5) The term *established business relationship* for purposes of telephone

solicitations means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

(i) The subscriber's seller-specific do-not-call request, as set forth in paragraph (d)(3) of this section, terminates an established business relationship for purposes of telemarketing and telephone solicitation even if the subscriber continues to do business with the seller.

(ii) The subscriber's established business relationship with a particular business entity does not extend to affiliated entities unless the subscriber would reasonably expect them to be included given the nature and type of goods or services offered by the affiliate and the identity of the affiliate.

(6) The term *established business relationship* for purposes of paragraph (a)(4) of this section on the sending of facsimile advertisements means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a business or residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the business or residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.

(7) The term *facsimile broadcaster* means a person or entity that transmits messages to telephone facsimile machines on behalf of another person or entity for a fee.

(8) The term *prior express written consent* means an agreement, in writing, bearing the signature of the person called that clearly authorizes the seller to deliver or cause to be delivered to the person called advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice, and the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered.

(i) The written agreement shall include a clear and conspicuous disclosure informing the person signing that:

(A) By executing the agreement, such person authorizes the seller to deliver or cause to be delivered to the signatory telemarketing calls using an automatic telephone dialing system or an artificial or prerecorded voice; and

(B) The person is not required to sign the agreement (directly or indirectly), or agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

(ii) The term ''signature'' shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

(9) The term *seller* means the person or entity on whose behalf a telephone call or message is initiated for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(10) The term *sender* for purposes of paragraph (a)(4) of this section means the person or entity on whose behalf a facsimile unsolicited advertisement is sent or whose goods or services are advertised or promoted in the unsolicited advertisement.

(11) The term *telemarketer* means the person or entity that initiates a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(12) The term *telemarketing* means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(13) The term *telephone facsimile machine* means equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(14) The term *telephone solicitation* means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message:

(i) To any person with that person's prior express invitation or permission;

(ii) To any person with whom the caller has an established business relationship; or

(iii) By or on behalf of a tax-exempt nonprofit organization.

(15) The term *unsolicited advertisement* means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission, in writing or otherwise.

(16) The term *personal relationship* means any family member, friend, or acquaintance of the telemarketer making the call.

* * * * *

[FR Doc. 2012–13862 Filed 6–8–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 386

[Docket No. FMCSA–2003–14794]

Notice of Final Revision to Guidance for the Use of Binding Arbitration Under the Administrative Dispute Resolution Act of 1996

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final revision to guidance.

SUMMARY: Under existing guidance, FMCSA must use a form of arbitration known as ''Night Baseball'' for its civil penalty forfeiture proceedings in which the only issues remaining to be resolved are the amount of the civil penalty owed and/or the length of time in which to pay it. On March 21, 2011, FMCSA proposed to revise the Guidance to eliminate the ''Night Baseball'' format, and to replace it with a format in which the Arbitrator determines the final civil penalty and the amount of time in which to pay it. The Arbitrator would no longer be bound by the closest suggested penalty submission of the parties. The Notice provided the public with 30 days to comment on the proposal. The Agency received no comments and is therefore revising the Guidance by eliminating the ''Night Baseball'' format. The Agency is also revising the Guidance to incorporate typographical and other minor changes.

DATES: The revised Guidance is effective June 11, 2012. It will apply to all cases in which an order assigning a matter to binding arbitration is issued from June 11, 2012 forward.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Adjudications

Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 385–2351. Office hours are from 8:30 a.m. until 5:00 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: On March 4, 2004, FMCSA published in the **Federal Register** (69 FR 10288) its Guidance for the use of binding arbitration as an alternative dispute resolution technique in Agency civil penalty forfeiture proceedings in which the only issues remaining to be resolved are the amount of the civil penalty owed and/or the length of time in which to pay it. Under the Guidance's ''Night Baseball'' format, telephonic hearings were held, during which each party presented to the Arbitrator evidence supporting the penalty it considered appropriate for the case without divulging its proposed penalty. Following the hearing, each party provided the Arbitrator and the opposing party with a sealed envelope containing the amount of the total proposed civil penalty for the case and, if desired, a proposed payment plan. Before opening the envelopes, the Arbitrator issued to the parties an initial written determination of the total civil penalty and payment plan. The Arbitrator then opened the envelopes and selected the proposed civil penalty and payment plan that was closer to his or her determination. The final penalty amount and payment plan were distributed to the parties in a final written decision.

On March 21, 2011, FMCSA published in the **Federal Register** its proposal to eliminate the ''Night Baseball'' format from the Guidance (76 FR 15359). Several years of experience with this format have revealed that final civil penalties are rarely identical to the Arbitrator's determination, and occasionally not close at all. In addition, the ''Night Baseball'' format requires each party to persuade the Arbitrator to accept the wisdom of its position without being able to reveal the civil penalty it is proposing. The Agency sought comment on a new procedure, in which the Arbitrator would determine the amount of the civil penalty following a hearing. The comment period has closed, and FMCSA received no comments. Accordingly, FMCSA is eliminating ''Night Baseball'' from all proceedings assigned for binding arbitration from this day forward. Following the presentation of evidence by the parties, the Arbitrator will determine the amount of the civil penalty and the payment plan. The maximum civil penalty will be the penalty set forth in the Notice of Claim; there will be a minimum civil penalty in only those cases in which there is a statutory minimum.

The Agency is also revising the Guidance to incorporate typographical corrections and other minor changes, changes necessary to resolve inconsistencies, and changes needed to describe actual practice. For example, although the Chief Safety Officer is the FMCSA Assistant Administrator, the Agency is changing ''Chief Safety Officer'' to ''Assistant Administrator'' because that is the term used to describe the decisionmaker in 49 CFR part 386, which includes binding arbitration as one of the options for a Reply to a Notice of Claim.

The Guidance contains ''Questions and Answers on FMCSA's Use of Binding Arbitration,'' set forth as Issues and Responses. The Responses to Issues 2 and 9 in the 2004 Guidance were inconsistent with each other. The Response to Issue 2 said that ''[t]he decision to arbitrate is strictly that of the parties'' and that ''arbitration must be a completely voluntary process.'' On the other hand, the Response to Issue 9 said that if a carrier opted for binding arbitration, the Field Administrator had the burden to demonstrate why the matter should not be so assigned, and the Chief Safety Officer would decide whether the matter should be arbitrated.

In *In the Matter of New Metro Trucking Corp.,* Docket No. FMCSA–2009–0376, Order on Binding Arbitration, May 23, 2011, the Assistant Administrator found that the language in the Response to Issue 9 trumped the language in the Response to Issue 2, thereby limiting the Field Administrator's discretion in objecting to binding arbitration. The Assistant Administrator found that, based on the Guidance as it was then written, the Field Administrator could prevent binding arbitration in only those cases in which binding arbitration had been determined to be inappropriate, as described in the Response to Issue 1: maximum civil penalty cases issued pursuant to section 222 of the Motor Carrier Safety Improvement Act of 1999, or any cases that deal with an interpretation of the regulations or with important policy issues.

Therefore, the Response to Issue 9 effectively removed the voluntariness set forth in the Response to Issue 2. Under the Response to Issue 9, the Chief Safety Officer could assign a matter for binding arbitration if the Field Administrator did not meet his burden, even if the Field Administrator did not wish the matter to be arbitrated. Accordingly, the Agency is eliminating the inconsistency, merging both Responses into Issue 2, and deleting the previous Issue 9 and its Response. Under the Guidance that becomes effective today, the Field Administrator's objection will not be limited. To make meaningful the Response to Issue 2 that the decision to arbitrate is strictly that of the parties, the Agency is permitting the Field Administrator to prevent binding arbitration by objecting to it for any reason. This change is consistent with the Administrative Dispute Resolution Act of 1996 (ADRA) (Pub. L. 104–320, 110 Stat. 3870, October 19, 1996) (now codified at 5 U.S.C. 571–584), which authorizes the use of arbitration ''whenever all parties consent.'' 5 U.S.C. 575(a)(1).

Finally, the statements in the previous Responses to Issues 2 and 9, concerning the issuance of a Notification of Arbitration, were not accurate. Those two Responses, which stated that if the Chief Safety Officer determined that a case was appropriate for binding arbitration, he or she would notify the parties by issuing a Notification of Arbitration, did not mirror actual practice. The previous Response to Issue 9 provided that the Notification would require each party to return the Notification form indicating agreement or objection. In actual practice, the Chief Safety Officer did not issue a Notification of Arbitration to the parties. As a result, the Agency is eliminating the Notification of Arbitration in the revised Response to Issue 2 to mirror actual practice. If, in its Reply to a Notice of Claim, a respondent requests binding arbitration, the Field Administrator may consent or object. If the Field Administrator objects, the matter will not be referred to binding arbitration; if the Field Administrator consents, the Assistant Administrator will decide whether the case is to be referred to binding arbitration. The Assistant Administrator will inform the parties of his or her decision in an Order on Binding Arbitration.

Issued on: May 31, 2012.

Anne S. Ferro,

Administrator.

The revised Guidance reads as follows:

Guidance for the Use of Binding Arbitration Under the Administrative Dispute Resolution Act of 1996

Dated: June 11, 2012.

Binding Arbitration

In binding arbitration, the parties agree to use a mutually selected decisionmaker to hear their dispute and resolve it by rendering a decision or award that is binding on the parties. Like litigation, binding arbitration is an adversarial adjudicative process designed to resolve the specific issues submitted by the parties. Binding arbitration differs significantly from litigation, however, in that it does not require conformity with the legal rules of evidence, and the proceeding is conducted in a private rather than a public forum. Binding arbitration awards typically are enforceable by courts, absent defects in the arbitration procedure. The grounds for appeal from arbitration awards, pursuant to the Federal Arbitration Act, 9 U.S.C. § 1–16, are generally limited to fraud or misconduct in the proceedings. *See* 9 U.S.C. § 10.

The process for reaching the final award will be as follows: Each party will present evidence it considers appropriate for the case as a whole. Evidence will be presented in accordance with the procedures established by the parties within the Arbitration Agreement. No evidence shall be offered or accepted concerning whether the violation(s) occurred, because the parties concede the violations as a condition of arbitration. Following the hearing, the arbitrator will determine, in writing, the total civil penalty and, if necessary, a payment plan.

As discussed later in this Guidance, the civil penalty amount may not be set lower than the statutory minimum for any violation, if there is a statutory minimum, or higher than the amount proposed in the Notice of Claim. Because the ADRA requires the parties to agree on a maximum award, FMCSA provides that the maximum award be set at the amount proposed in the Notice of Claim.

Statutory Considerations for Not Using Arbitration

The ADRA states that Agencies shall consider not using any form of alternative dispute resolution (ADR), including binding arbitration, if:

(1) A definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

(2) The matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the agency;

(3) Maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

(4) The matter significantly affects persons or organizations who are not parties to the proceeding;

(5) A full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record; or

(6) The agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the agency's fulfilling that requirement. *See* 5 U.S.C. § 572(b).

Accordingly, unless the Assistant Administrator determines that the use of binding arbitration will be in the best interests of the government, a case will not be submitted to binding arbitration under the circumstances set forth above.

Other Statutory Considerations

The ADRA includes a number of provisions relating to arbitration. FMCSA's use of binding arbitration will be modeled on these provisions.

Authorization of Arbitration

1. The decision to arbitrate must be voluntary on the part of all parties to the arbitration (*See* 5 U.S.C. § 575(a)(1).)

2. An agreement to arbitrate must be in writing. It must set forth the subject matter submitted to the arbitrator, and must specify the maximum award that may be granted by the arbitrator. (*See* 5 U.S.C. § 575(a)(2).)

3. FMCSA shall not require anyone to consent to arbitration as a condition of entering into a contract or obtaining any other benefit. (*See* 5 U.S.C. § 575(a)(3).)

4. The Field Administrator who offers to use arbitration has the authority to enter into a settlement concerning the matter after the Assistant Administrator has consented to the use of arbitration. (*See* 5 U.S.C. § 575(b)(1) and (2).)

Enforcement of Arbitration Agreements (5 U.S.C. § 576)

Arbitration agreements are enforceable pursuant to 9 U.S.C. § 4.

Arbitrators (5 U.S.C. § 577)

1. The parties to an arbitration are entitled to participate in selecting an arbitrator. (*See* 5 U.S.C. § 577(a).)

2. An arbitrator shall not have an official, financial, or personal conflict of interest with respect to the issue in controversy, unless that interest is fully disclosed in writing and all parties agree that he/she may serve as the arbitrator. (*See* 5 U.S.C. §§ 573 and 577(b).)

Authority of the Arbitrator (5 U.S.C. § 578)

1. An arbitrator may regulate the course and conduct of the arbitration hearing. (*See* 5 U.S.C. § 578(1).)

2. An arbitrator may administer oaths and affirmations. (*See* 5 U.S.C. § 578(2).)

3. An arbitrator may compel the attendance of witnesses and the production of evidence only to the same extent the agency involved is otherwise authorized by law to do so. (*See* 5 U.S.C. § 578(3).)

4. An arbitrator may make awards. (*See* 5 U.S.C. § 578(4).)

Arbitration Proceedings (5 U.S.C. § 579)

1. The arbitrator shall set the time and place for the arbitration hearing and shall notify the parties of same at least five days before the hearing is to take place. (*See* 5 U.S.C. § 579(a).)

2. Parties are entitled to a record of the arbitration hearing. Any party wishing a record shall: (1) Make the arrangements for it; (2) notify the arbitrator and other parties that a record is being prepared; (3) supply copies to the arbitrator and the other parties; and (4) pay all costs, unless the parties have agreed to share the costs or the arbitrator determines that the costs shall be apportioned. (*See* 5 U.S.C. § 579(b)(1)–(4).)

3. At any arbitration hearing, parties are entitled to be heard, to present evidence, and to cross-examine witnesses. The arbitrator may, with the consent of the parties, conduct the hearing by telephone, television, computer, or other electronic means, if each party has the opportunity to participate. (*See* 5 U.S.C. § 579(c)(1) and (2).)

4. The arbitrator may receive any oral or documentary evidence. The arbitrator, however, may exclude any evidence that is irrelevant, immaterial, unduly repetitious, or privileged. (*See* 5 U.S.C. § 579(c)(4).)

5. The arbitrator shall interpret and apply any relevant statutes, regulations, legal precedents, and policy directives. (*See* 5 U.S.C. § 579(c)(5).)

6. No party shall have any unauthorized *ex parte* communication

with the arbitrator relevant to the merits of the proceeding, unless the parties agree otherwise. If a party violates this provision, the arbitrator shall ensure that a memorandum of the communication is included in the record, and that an opportunity for rebuttal is allowed. The arbitrator may require the party who engages in an unauthorized *ex parte* communication to show cause why the issue in controversy should not be resolved against that party for the improper conduct. (*See* 5 U.S.C. § 579(d).)

Arbitration Awards

1. An arbitration award shall include a brief informal discussion of the factual and legal bases for the award. Formal findings of fact and conclusions of law are not required. (*See* 5 U.S.C. § 580(a)(1).)

2. A final award is binding on the parties and may be enforced pursuant to 9 U.S.C. 9–13. (*See* 5 U.S.C. § 580(c).)

3. An arbitration award may not serve as an estoppel in any other proceeding and may not be used as precedent in any factually unrelated proceeding. (*See* 5 U.S.C. § 580(d).)

Judicial Review

1. Any action for review of an arbitration award must be made pursuant to sections 9 through 13 of title 9, U.S. Code. (*See* 5 U.S.C. § 581(a).) A court may vacate an award where the award was procured by corruption, fraud, or undue means; where there was arbitrator partiality, corruption, misconduct, or misbehavior; or where an arbitrator has exceeded his or her powers or so imperfectly executed the these powers that a mutual, final, and definitive award was not made. (*See* 9 U.S.C. § 10(a).)

2. A decision by an agency to use or not to use arbitration shall be committed to the discretion of the agency and shall not be subject to judicial review, except that if the agency uses arbitration, a court may vacate the award under section 10 of title 9, U.S. Code (*see* 5 U.S.C. § 581(b), if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

Questions and Answers on FMCSA's Use of Binding Arbitration

Issue 1: For what types of cases will FMCSA be willing to use binding arbitration?

Response: FMCSA is generally willing to use binding arbitration for the resolution of cases in which the only questions are the amount of the civil penalty and/or the length of time permitted to pay it. FMCSA is generally willing to arbitrate the length of time in which to pay a civil penalty, but not the civil penalty amount, in: (1) maximum civil penalty cases issued pursuant to section 222 of the Motor Carrier Safety Improvement Act of 1999, Pub. L. 106–159, 113 Stat. 1748 (December 9, 1999), 49 U.S.C. 521 note; (2) cases in which the statutorily mandated minimum amount has been assessed; or (3) any cases that deal with an interpretation of the regulations or with important policy issues.

Issue 2: How and by whom will the decision to arbitrate be made?

Response: The decision to arbitrate is that of the parties. As with any other form of ADR, arbitration must be a voluntary process. As a result, if either party objects for any reason, the matter will not be referred to binding arbitration. Even if both parties consent to binding arbitration, however, the Assistant Administrator may decline to refer the amount of the civil penalty to arbitration if he or she determines that it is one of the cases set forth in the Response to Issue 1, above, that FMCSA will not agree to arbitrate. The Assistant Administrator will issue an Order on Binding Arbitration indicating that a matter will or will not be referred to binding arbitration.

In accordance with 49 CFR 386.14(b)(3), a respondent may seek binding arbitration as part of its reply to a Notice of Claim. The Field Administrator in the service center in which the case resides will consent or object to the request for binding arbitration. If the Field Administrator objects, the matter will not be referred to binding arbitration; if the Field Administrator consents, the Assistant Administrator will decide whether the case will be referred to binding arbitration. Referral is contingent upon the respondent's admission of liability that the violation or violations occurred as charged.

Issue 3: Who will have authority to authorize arbitration?

Response: The Assistant Administrator will decide which cases are appropriate for ADR. Again, this class of cases will include only those that involve a monetary dispute and/or the time in which to pay a civil penalty, and do not fall within the category of cases excluded under Response 1, above. The Assistant Administrator has the discretion to delegate this authority to the FMCSA Adjudications Counsel.

Issue 4: Who has the authority to enter into settlement for FMCSA? May this authority be delegated?

Response: The Field Administrator has the authority to settle a case for FMCSA. This authority may be delegated to the Enforcement Program Manager.

Issue 5: How will a cap on the award be established?

Response: The maximum arbitration award will be set at the civil penalty amount assessed in the Notice of Claim, or amended Notice of Claim, if one is issued.

Issue 6: Is there a limitation on the length of time for a payment plan, if the arbitrator orders a payment plan?

Response: The maximum period that the Arbitrator may permit for a payment plan is 60 months from the date of the issuance of the Award.

Issue 7: Who will negotiate the rules and selection of the arbitrator?

Response: The parties must mutually agree upon the arbitrator and will have several options from which to choose, including: (1) Civilian Board of Contract Appeals Judges or representatives from other government agencies who have been trained in arbitration; (2) Uncompensated Neutrals from local communities; and (3) Compensated Neutrals from outside the government, whose costs are to be shared by agreement of the parties. For FMCSA, the decision regarding selection of the arbitrator will be that of the Field Administrator. The parties will establish the procedural rules that will govern any binding arbitration, with input from the selected arbitrator, and include the rules in the Arbitration Agreement.

Issue 8: Who will draft the Arbitration Agreement?

Response: The parties will draft the Arbitration Agreement, with substantive input from the selected arbitrator. A sample Arbitration Agreement is included in Appendix A.

Issue 9: How can FMCSA encourage the efficiency of the arbitration process?

Response: Only single arbitrators (rather than panels of arbitrators) will handle these cases. To ensure maximum efficiency of the arbitration process, subject to the consent and cooperation of the carrier, FMCSA will encourage:

A. The resolution of the controversy by means of document review or by arbitration via telephone conference in appropriate cases, with the consent of the carrier.

B. The arbitrator to establish reasonable deadlines for any hearing and rendering of an award. These timeframes will be incorporated into the Arbitration Agreement.

Issue 10: What is the arbitrator's role?

Response: Consistent with the ADRA, the arbitrator will have the authority to:

- Regulate the course and conduct of arbitration hearings;
- Administer oaths;
- Compel attendance of witnesses and production of evidence, to the

extent that the agency is authorized to do so by law;

• Issue awards.

The parties, as part of their Arbitration Agreement, may include any specific additional powers they wish the arbitrator to have and provide the arbitrator broad discretion in terms of efficient case management.

Issue 11: Will FMCSA permit the use of a panel of arbitrators in some circumstances?

Response: Because of the costs of a panel of arbitrators and the lack of complexity in these cases, FMCSA will not agree to a panel of arbitrators.

Issue 12: What selection criteria will be considered in choosing an arbitrator?

Response: The primary criteria for selecting an arbitrator will be: (1) Overall reputation of the arbitrator in terms of competence, integrity, and impartiality; (2) availability of the arbitrator during the period most convenient for the parties; (3) relative cost; (4) the absence of any actual or potential conflict of interest; and (5) geographic proximity of the proposed arbitrator to the parties and to witnesses if the Arbitration Agreement calls for an in-person hearing.

Issue 13: Will FMCSA agree to allow non-attorneys to represent a party, or for a party to appear *pro se* at the arbitration?

Response: Yes. The Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings, 49 CFR part 386, are designed to be readily accessible to small business enterprises and other entities. Carriers often respond to notices of claim without assistance of any counsel. Before approving any Arbitration Agreement entered into by an unrepresented carrier, the arbitrator shall require such carrier to execute a statement acknowledging the risks and limitations inherent in any arbitration.

Issue 14: What should an Arbitration Agreement include?

Response: The Agreement should include the following:

1. The names of the parties.
2. The issues being submitted to binding arbitration.
3. The maximum award that the arbitrator may direct.
4. Any other conditions limiting the range of possible outcomes, including, but not limited to, any statutory minimum for violations, such as the statutory minimum for violations of the Hazardous Materials Regulations, as set forth at 49 U.S.C. § 5123(a).
5. The scope of the arbitration. This will limit time and cost and give the arbitrator power to be a ''case manager.'' A sample case management provision might read:

''The Arbitrator is expected to assume control of the process and to schedule all events as expeditiously as possible, to ensure that an award is issued no later than ____ days from the date of this Agreement. The penalty will be due to FMCSA thirty (30) days after service of the Arbitration Award by the Arbitrator unless a payment plan is ordered by the Arbitrator.''

6. References to all provisions of the 49 CFR 386 rules regarding discovery and the conduct of hearings that the parties may wish to apply to the arbitration process.
7. The name of the arbitrator, the amount of compensation (if any) and how it will be paid. (Note: No Agreement shall provide for deposits in an escrow account to pay for expenses of the proceeding in advance of expenses being incurred.)
8. The date the arbitration will begin.
9. The types of remedies available.
10. A confidentiality provision referring to the ADRA and stating that neither the Arbitration Agreement nor the arbitration award will be considered confidential.
11. The bases for appeal.
12. A statement that the arbitration hearing is open only to parties, their representatives, and the arbitrator and that the hearing is not a public forum.
13. A statement that the arbitrator's decision will be issued in writing, and will state the factual and legal bases for, and the amount of, the penalty awarded by the arbitrator.
14. A statement that the carrier will have thirty (30) days from the date of service of the award to pay the amount awarded unless the arbitrator orders a payment plan.
15. A statement that the arbitration award is final and has the same force and effect as any final agency order and that the failure to pay the determined award triggers the same Agency remedies as would the failure to pay a civil penalty award entered by the Assistant Administrator.

A Sample Arbitration Agreement is included in Appendix A.

Issue 15: How will FMCSA pay the arbitrator?

Response: The ADRA allows an agency to use, with or without reimbursement, the services and facilities of other Federal agencies, State, local and tribal governments, public and private organizations and agencies, and individuals, with the consent of such agencies, organizations, and individuals, and without regard to the provisions of 31 U.S.C. § 1342 (regarding the acceptance of voluntary services). *See* 5 U.S.C. § 583. In addition, the ADRA permits selection of all ADR neutrals, including arbitrators, to be done non-competitively. *See* 41 U.S.C. § 253(c)(3). FMCSA and the carrier must agree on the selection of the arbitrator.

FMCSA uses three categories of potential arbitrators: (1) Judges from the United States Civilian Board of Contract Appeals (CBCA) or representatives from other government agencies who have been trained in arbitration; (2) Uncompensated Neutrals from local communities; and (3) Compensated Neutrals from outside the government, whose costs are to be shared by agreement of the parties. If the parties cannot agree on the no-cost option of either a CBCA judge or an Uncompensated Neutral, the parties must agree in advance to share any arbitrator fees and costs, the costs of any transcripts, or other costs, all of which will be paid after the award is issued. FMCSA will not escrow funds or pay in advance for any such costs.

Issue 16: Is FMCSA willing to use ''administered arbitration?''

Response: No. Because of the cost implications, FMCSA will not agree to ''administered arbitration,'' which is arbitration administered by an outside ADR organization.

Issue 17: What must the arbitration award include?

Response: The arbitration award need not be in the form of formal findings of fact and conclusions of law, but must be in writing and at least provide in summary form the monetary amount of the award, if any, and the factual and legal basis for the arbitrator's decision. The award will be subject to the amount set forth in the Notice of Claim as the maximum, to statutory minimums, if any, and to any other limitations agreed upon by the parties.

Arbitration awards are not confidential documents. Awards shall be entered into the FMCSA docket in regulations.gov for the case. Additionally, awards will be posted on FMCSA's Chief Counsel Web site.

Issue 18: Will FMCSA allow arbitration on the documents only, without a hearing?

Response: While the parties to the arbitration are entitled to be heard, to present evidence, and to cross-examine witnesses appearing at a hearing, FMCSA encourages arbitration on the documents only without a hearing. This would have the advantage of saving time and money, and avoiding scheduling conflicts. The Arbitration Agreement, however, should allow the parties to request a hearing either in-person or through telephonic, video-

conference, or computer-based means. The Arbitration Agreement should also allow the arbitrator discretion to call for an in-person hearing should the arbitrator determine that credibility may be a factor in the proceeding. The arbitrator may also conduct, with the consent of the parties, all or part of a hearing by telephone, video conferencing, or computer, so long as each party has an equal opportunity to participate.

Issue 19: May an arbitration award be used as a precedent in any other proceeding?

Response: No. The arbitration award may not be used as precedent consistent with 5 U.S.C. § 580(d). Nonetheless, by entering into arbitration, the carrier has admitted, or the Assistant Administrator has found that the carrier has admitted, violating the regulation(s) as charged in the Notice of Claim. These violation(s) may be considered in future enforcement actions by FMCSA.

Appendix A

Sample Agreement to Submit to Binding Arbitration

Section One—Parties and Controversy

The Federal Motor Carrier Safety Administration and _____ (''Carrier'') (collectively the ''Parties'') voluntarily agree to submit the following controversy arising from violations of the Federal Motor Carrier Safety Regulations, the Hazardous Materials Regulations, and/or the Federal Motor Carrier Commercial Regulations to binding arbitration: (briefly describe the controversy).

Section Two—Assignment of Arbitrator

We agree upon _____ as the Arbitrator.

Section Three—Issues of Arbitration

We agree that the Arbitration shall be limited to the following issues of fact and law: (Set forth each issue with specificity including the question of whether a payment plan is appropriate).

Section Four—Costs of Arbitration

____ We agree to pay the Arbitrator a fee of $ ____ (''the Fee'') for services as an arbitrator. The Fee is based on the issues specified in Section Three above.

We agree to reimburse the Arbitrator for all reasonable out-of-pocket expenses that the Arbitrator may incur for the arbitration. These expenses include, but are not limited to: Travel, lodging, and meals (consistent with Federal *per diem* standards), long-distance charges, printing and copying, postage and courier fees. There is no cost if the parties choose a Civilian Board of Contract Appeals Judge or an Uncompensated Neutral as the arbitrator.

Section Five—Minimum and Maximum Award

We agree that the maximum award shall be (the amount demanded in the Notice of Claim). This amount is a total of the penalties for each of the individual violations as follows:

We also agree that the minimum award for violations will be those set forth in the statute or regulations.

Section Six—Management of the Proceeding

We further agree that the arbitration proceeding will be conducted in accordance with procedures established in 49 CFR part 386 for hearings. Additional rules and procedures for the arbitration may be negotiated and agreed upon by the Arbitrator and the Parties at any time during the arbitration process.

We further agree that we will faithfully observe this Agreement and the applicable procedural rules and we will abide by any award rendered by the Arbitrator.

_____ (''Carrier'') will pay to the Field Administrator the award determined by the Arbitrator.

We agree that the Arbitrator will assume control of the process and will schedule all events as expeditiously as possible, to ensure that an award is issued no later than ____ days from the date of this Agreement. The penalty, if any, will be due to FMCSA 30 days after service of the Arbitration Award by the Arbitrator unless the Arbitrator orders a payment plan.

Consistent with the Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings, 49 CFR part 386, Carriers may be represented by a representative of their choice, including non-lawyers. Representatives and FMCSA counsel shall be responsive to the direction provided by the Arbitrator.

We understand that neither party shall initiate or participate in *ex parte* communication with the Arbitrator relevant to the merits of the proceeding, unless the parties agree. If a party or its representative engages in an unauthorized *ex parte* communication, the Arbitrator may resolve the case against the offending party. Before taking that action, however, the Arbitrator must allow the offending party to show cause why the issue in controversy should not be resolved against it for improper conduct.

Section Seven—Arbitrator's Award

We agree that the Arbitrator's decision will be issued in writing and will state the legal and factual bases and amount of the penalty awarded by the Arbitrator. We further agree that the arbitration award is final and has the same force and effect as any final agency order. We understand that there is no appeal to the Assistant Administrator of the Arbitrator's award. Thus, failure to pay the determined award triggers the same Agency remedies as would the failure to pay a civil penalty award entered by the Assistant Administrator.

Section Eight—Confidentiality of the Proceeding

We agree that the arbitration proceeding is not a public forum and will be restricted to the Parties, their representatives, and the Arbitrator. We acknowledge and agree that 5 U.S.C. 574 controls the confidentiality of the proceeding, and that neither the Arbitration Agreement nor the arbitration award may be considered confidential.

Section Nine—Judicial Review

____ The award shall be reviewable only under provisions of 5 U.S.C. § 581 and 9 U.S.C. §§ 9–13.

Section Ten—Governing Law

____ This Agreement is entered into consistent with 5 U.S.C. § 571 *et seq.,* and we agree that Federal law shall govern this Arbitration. The Arbitrator shall apply relevant statutory and regulatory requirements, legal precedents, and policy directives.

[FR Doc. 2012–14087 Filed 6–8–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 101202599–2122–02]

RIN 0648–BA52

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 24

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 24 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared by the South Atlantic Fishery Management Council (Council). This final rule establishes red grouper commercial and recreational sector annual catch limits (ACLs); establishes red grouper sector accountability measures (AMs); and removes the combined gag, black grouper, and red grouper commercial quota, and commercial and recreational sector ACLs and AMs. The intent of this final rule is to specify ACLs and AMs for red grouper while maintaining catch levels consistent with achieving optimum yield (OY) for the red grouper resource. Additionally, Amendment 24 implements a rebuilding plan for red grouper in the South Atlantic.

DATES: This rule is effective July 11, 2012.

ADDRESSES: Electronic copies of Amendment 24, which includes an environmental assessment, an initial regulatory flexibility analysis (IRFA), and a regulatory impact review, may be

obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/pdfs/SGAmend24_121411.pdf.*

FOR FURTHER INFORMATION CONTACT: Rick DeVictor, telephone: 727–824–5305, or email: *rick.devictor@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On February 27, 2012, NMFS published a notice of availability for Amendment 24 and requested public comment (77 FR 11477). On March 30, 2012, NMFS published a proposed rule for Amendment 24 and requested public comment (77 FR 19169). The proposed rule and Amendment 24 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

This final rule removes the gag, black grouper, and red grouper combined commercial and recreational ACLs and AMs, and specifies the ACLs and AMs for red grouper. This final rule implements in-season commercial and recreational sector AMs for red grouper, as well as post-season overage adjustments. In addition to the actions contained in this final rule, specific to red grouper, Amendment 24 implements a 10-year rebuilding plan, specifies the maximum sustainable yield (MSY) and OY values, revises the definition of minimum stock size threshold (MSST) to be 75 percent of the spawning stock biomass when fishing at the MSY level, specifies commercial and recreational allocations, and establishes a recreational sector annual catch target (ACT). The intent of Amendment 24 and this final rule is to specify ACLs and AMs for red grouper while maintaining catch levels consistent with achieving OY for the red grouper resource.

Comments and Responses

A total of nine comments were received on Amendment 24 and the proposed rule. One commenter submitted identical comments on Amendment 24 and the proposed rule. One Federal agency stated that they had no comment on Amendment 24. NMFS received one comment of general support and six individual comments opposing one or more of the actions contained in Amendment 24 and the proposed rule. Specific comments related to the actions contained in Amendment 24 and the proposed rule, as well as NMFS' respective responses, are summarized below.

Comment 1: The restrictions on red grouper harvest in Amendment 24 are not necessary because a 4-month closure for shallow-water groupers is currently in place. In addition, the Magnuson-Stevens Act requirement that the Council prepare and implement a plan amendment to rebuild red grouper should not apply because the 4-month closure, implemented through Amendment 16 to the FMP (74 FR 30964, June 29, 2009), was not considered in the Southeast Data, Assessment, and Review (SEDAR) SEDAR 19 stock assessment.

Response: The most recent South Atlantic red grouper stock assessment, SEDAR 19, was completed in 2010 and used data available through 2008. Therefore, SEDAR 19 did not consider impacts of the 4-month prohibition on the harvest, landing, and possession of shallow-water groupers (gag, black grouper, red grouper, scamp, red hind, rock hind, coney, yellowfin grouper, yellowmouth grouper, and tiger grouper) implemented in 2009 through Amendment 16 to the FMP (74 FR 30964, June 29, 2009). However, SEDAR 19 determined that red grouper was overfished and undergoing overfishing, and NMFS notified the Council of the red grouper stock status on June 9, 2010. The Council is required by the Magnuson-Stevens Act to implement a rebuilding plan within 2 years after notification of an overfished stock.

NMFS and the Council must schedule stock assessments several years in advance to allow time for the needed data to be compiled for use by stock assessment scientists. The effect of the 4-month closure and other recent measures implemented to improve the status of red grouper will be evaluated in the next stock assessment, scheduled to begin in 2013.

The Council and NMFS are also required to establish ACLs and AMs based on the best scientific information available. Commercial and recreational aggregate ACLs and AMs for black grouper, gag, and red grouper were established through Amendment 17B to the FMP (75 FR 82280, December 30, 2010). The aggregate ACLs currently in place were computed using landings data for black grouper and red grouper prior to the availability of stock assessments (SEDAR 19) for these two species. This final rule will remove the gag, black grouper, and red grouper aggregate commercial and recreational ACLs and AMs, and implement red grouper ACLs based upon the best scientific information available, which includes SEDAR 19 and the acceptable biological catch (ABC) recommendation from the Council's Scientific and Statistical Committee (SSC). NMFS notes that gag individual ACLs and AMs were previously established through Amendment 16 to the FMP (74 FR 30964, June 29, 2009) and black grouper ACLs and AMs were implemented through the Comprehensive ACL Amendment (77 FR 15916, March 16, 2012) and will remain in effect. The commercial and recreational ACLs and AMs implemented through Amendment 24 are expected to ensure red grouper overfishing does not occur and the stock rebuilds to target levels within the 10-year rebuilding timeframe.

Comment 2: Red grouper allocations should be reexamined using landings through 2010 or 2011. All recreational landings information used for sector allocations should be recalculated using the Marine Recreational Information Program (MRIP) instead of the Marine Recreational Fisheries Statistics Survey (MRFSS). Additionally, NMFS should allocate red grouper as 50 percent for the commercial sector and 50 percent for the recreational sector until the Southeast Fisheries Science Center (SEFSC) and SEDAR complete a new full benchmark assessment utilizing MRIP.

Response: The Council concluded that sector-specific ACLs and AMs are important components of red grouper management because the scientific and management uncertainty are different for each sector. To divide the red grouper stock ACL into sector ACLs, the Council had to make allocation decisions. The Council decided to establish sector allocations by balancing long-term catch history with recent catch history. Accordingly, the Council determined the allocation using 50 percent of average landings from 1986–2008 and 50 percent of average landings from 2006–2008. This resulted in an allocation of red grouper in the South Atlantic as 44 percent for the commercial sector and 56 percent for the recreational sector. The commercial sector landed the majority of red grouper in the early time period (1987–1992) and the for-hire component of the recreational sector landed the majority of fish in more recent years (2006–2008). The Council concluded that this approach was a fair and equitable method to allocate fishery resources and had the additional benefit of using a mathematically transparent formula. The Snapper-Grouper Advisory Panel and the majority of comments received during scoping meetings and

public hearings supported the Council's allocation decision.

Landings data from SEDAR 19 were used to determine allocations. SEDAR 19 was completed in 2010, and the most recent year of data used in the stock assessment was 2008. The Council was notified of the red grouper stock status on June 9, 2010, and submitted Amendment 24 to NMFS on December 14, 2011, to meet the 2-year Magnuson-Stevens Act deadline to implement a rebuilding plan. The incorporation of 2010 and 2011 landings data would have delayed the implementation of Amendment 24 past the 2-year deadline.

When the Council determined the appropriate sector allocations and approved Amendment 24 in December 2011, the new MRIP estimates had not yet been released. The MRIP data were not available until January of 2012. If MRIP data indicate that an allocation adjustment is necessary, the Council may take action in a future amendment to revise sector allocations. Further, the red grouper standard SEDAR assessment is scheduled to begin in 2013. During the stock assessment process, SEDAR participants will review the MRIP data for its application in the assessment.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of the species within Amendment 24 and is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law.

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

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the IRFA, a summary of the significant economic issues raised by public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. The FRFA follows.

No public comments specific to the IRFA were received and, therefore, no public comments are addressed in this FRFA. No changes to the final rule were made in response to public comments.

NMFS agrees that the Council's choice of preferred alternatives would best achieve the Council's objectives while minimizing, to the extent practicable, the adverse effects on fishers, support industries, and associated communities. The preamble to the final rule provides a statement and need for, and the objectives of this rule, and is not repeated here.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. This rule would not introduce any changes to current reporting, recordkeeping, and other compliance requirements.

NMFS expects the rule to directly affect commercial fishers and for-hire operators. The Small Business Administration established size criteria for all major industry sectors in the U.S. including fish harvesters and for-hire operations. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all of its affiliated operations worldwide. For for-hire vessels, other qualifiers apply and the annual receipts threshold is $7.0 million (NAICS code 713990, recreational industries).

From 2005–2009, an annual average of 892 vessels with valid permits to operate in the commercial snapper-grouper fishery landed snapper-grouper, generating dockside revenues of approximately $13.817 million (2009 dollars). Each vessel, therefore, generated an annual average of approximately $15,500 in gross revenues from snapper-grouper during the period of 2005–2009. Gross dockside revenues by area were distributed as follows: $4.196 million in North Carolina, $3.612 million in South Carolina, $3.219 million in Georgia/East Florida, and $2.790 million in the west coast of Florida. Vessels that operate in the snapper-grouper fishery may also operate in other fisheries, the revenues of which cannot be determined with available data and are not reflected in these totals.

Based on average revenue information, all commercial vessels affected by this final rule can be considered to be small entities.

The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. From 2005–2009, an annual average of 2,018 vessels had valid Federal permits to operate in the snapper-grouper for-hire sector, of which 82 vessels are estimated to have operated as headboats. The charterboat annual average gross revenue is estimated to range from approximately $62,000–$84,000 for Florida vessels, $73,000–$89,000 for North Carolina vessels, $68,000–$83,000 for Georgia vessels, and $32,000–$39,000 for South Carolina vessels. For headboats, the corresponding annual average gross revenue estimates are $170,000–$362,000 for Florida vessels, and $149,000–$317,000 for vessels in the other states.

Based on these average revenue figures, all for-hire operations that would be affected by this final rule can be considered small entities.

NMFS expects this final rule to directly affect all federally permitted commercial vessels and for-hire vessels that operate in the South Atlantic snapper-grouper fishery. All directly affected entities have been determined, for the purpose of this analysis, to be small entities. Therefore, NMFS determines that the final rule would affect a substantial number of small entities.

NMFS considers all entities expected to be affected by the rule as small entities, so the issue of disproportional effects on small versus large entities does not arise in the present case.

Modifying the rebuilding strategy, ABC, and ACL would result in an increase in cumulative commercial vessel profits of $990,000 over the first 7 years of the rebuilding schedule with an additional $310,000 generated in years 8 through 10, assuming a discount rate of 7 percent to determine current year (2012) dollars. The corresponding effects on the for-hire vessels would also be an increase in cumulative profits but the magnitude cannot be estimated based on available information. These increases in commercial vessel and for-hire vessel profits are mainly a result of increases in the ACL over time.

To the extent that the action for allocating the ACL between the commercial and recreational sectors would maintain the baseline landings distribution of red grouper between the two sectors, NMFS expects no profit changes to the commercial or for-hire vessels to occur as a direct result of this action.

The preferred alternative of revising the ACL/OY would provide the largest ACL/OY for red grouper, which would increase the profits of the commercial and for-hire vessels. Eliminating the aggregate black grouper, red grouper, and gag quota would tend to ensure that profit increases from the largest ACL/OY alternative for red grouper are realized.

Within Amendment 24, establishing a recreational ACT would have no impacts on the profits of for-hire vessels in the short term, because this measure would not be used to trigger the application of AMs. Should this recreational ACT be used in the future to trigger AMs, then it may be expected to reduce the profits of for-hire vessels. The magnitude of such reduction cannot be estimated with available information.

Implementing in-season and post-season AMs for the commercial sector are expected to limit the increases in the short-term profits of commercial vessels as a result of ACL increases, especially since the most recent landings information suggests that the series of ACLs would likely be exceeded in the near future. However, in the absence of these AMs, regulations could become more restrictive over time, resulting in adversely affecting the long-term profitability of the industry.

Implementing in-season and post-season AMs for the recreational sector may be expected to limit increases in short-term profits of for-hire vessels as a result of ACL increases. However, the 2010 recreational harvest of red grouper was well below the proposed ACL for the recreational sector, suggesting that the proposed AM has a low probability of being triggered in the near future (more current data was not available at the time this analysis was conducted). In effect, the AM for the recreational sector may be expected to have a low likelihood of affecting the profits of for-hire vessels in the near future. Over the long-term, however, these AMs could apply and short-term profits of for-hire vessels may be adversely affected. However, the absence of these AMs could lead to more restrictive regulations that would reduce the long-term profitability of this sector.

Redefining MSY and MSST and establishing a rebuilding schedule for red grouper would not alter the current harvest or use of the resource, and thus would not affect the profitability of small entities.

Defining a rebuilding schedule maximizing the time to rebuild the stock to biomass at MSY would add flexibility in designing management measures that would have the least short-term effects on the profitability of small entities.

The Council considered several alternatives for each action in this final rule. In summary, the Council concluded that their preferred alternatives best meet the purpose and need of Amendment 24 to implement measures expected to prevent overfishing and achieve OY while minimizing, to the extent practicable, adverse social and economic effects. The preferred alternatives also best meet the objectives of the Snapper-Grouper FMP, while complying with the requirements of the Magnuson-Stevens Act and other applicable laws. The following discusses all alternatives to the preferred alternatives and their effects relative to the preferred alternatives.

Six alternatives, including the preferred alternative, were considered for the rebuilding strategy and ABC. The first alternative, the no action alternative, would not establish a rebuilding strategy for red grouper. Within a rebuilding strategy, the specification of targets and limits, such as ABCs, is a crucial component of any management program involving natural resources. Without the designation of these components, as analyzed in the no action alternative, the regulations may not be sufficient to prevent overfishing and rebuild the stock. More restrictive regulations could eventually be imposed, which would substantially reduce industry profits. The second alternative would define a rebuilding strategy that sets ABC equal to the yield at $F_{REBUILD}$, which is a fishing mortality rate that would have a 70 percent probability of rebuilding success to biomass at MSY in 10 years. This alternative has the highest ABC, which could potentially result in the highest ACL. Therefore, this alternative would provide the best profitability scenario for the commercial and for-hire vessels over the entire rebuilding timeframe. However, it would allow a higher fishing mortality rate than the preferred alternative and result in greater uncertainty that the stock could rebuild within the allowable timeframe. Both this alternative and the preferred alternative would maintain catches at a similar level to what they have been in recent years, but the preferred alternative has a greater probability of rebuilding the stock within the 10-year timeframe. The third alternative would define a rebuilding strategy that sets ABC equal to the yield at 65 percent of F_{MSY} (fishing mortality at maximum sustainable yield). This alternative would provide for a lower ABC, and a potentially lower ACL, than the preferred alternative. Thus, this alternative would potentially result in lower profits to small entities than the preferred alternative.

The fourth alternative would define a rebuilding strategy that sets ABC equal to the yield at $F_{REBUILD-7}$, which is a fishing mortality rate that would have a 70 percent probability of rebuilding success to biomass at MSY in 7 years. The fifth alternative would define a rebuilding strategy that sets ABC equal to the yield at $F_{REBUILD-8}$, which is a fishing mortality rate that would have a 70 percent probability of rebuilding success to biomass at MSY in 8 years. Each of these alternatives would likely result in lower profits to small entities than the preferred alternative, because they would require more restrictive management measures.

Two alternatives were considered for sector allocation. Under the no action alternative, which would not establish sector allocation, the recreational and commercial sectors would be managed under a combined ACL. The corresponding AMs would also apply to both sectors regardless of which sector lands the majority of fish. Under the second alternative, five sub-alternatives including the preferred sub-alternative were considered. The first sub-alternative would establish a 52 percent commercial and 48 percent recreational allocation; the second sub-alternative, 54 percent commercial and 46 percent recreational allocation; the third sub-alternative, 49 percent commercial and 51 percent recreational allocation; and, the fourth sub-alternative, 41 percent commercial and 59 percent recreational allocation.

All of these alternatives, including the preferred alternative, would base the allocation ratio solely on a sector distribution of landings. No economic valuation was considered due to the absence of sufficient information. In terms of effects on the profits of small entities, the general nature of the various allocation alternatives is to favor one sector over another. The higher the allocation to one sector, the higher would be the profit potential to that sector and the lower would be the profit potential to the other sector. Among the alternatives, the preferred alternative was found to have neutral effects on profits on both the commercial and for-hire vessels, because the resulting allocation would be the same as the historical sector distribution of landings. This historical distribution is the one used as a baseline against which each alternative is compared.

Six alternatives, including the three preferred alternatives, were considered for ACL and OY. The three preferred alternatives are not mutually exclusive but are rather complementary to one another. The first alternative, the no action alternative, would not establish a specific ACL for red grouper. This alternative would not allow for specific management actions to address the overfished/overfishing status of the red grouper stock. The second alternative would specify an ACL for red grouper equal to OY and OY equal to 90 percent of ABC. This alternative would result in lower profit potential to small entities than the preferred alternative. The third alternative would specify an ACL for red grouper equal to OY and OY equal to 80 percent of ABC. This alternative would result in lower profit potential to small entities than the preferred alternative.

Three alternatives, including the preferred alternative, were considered for the commercial sector ACT. The first

and second alternatives would set the commercial ACT equal to 90 percent and 80 percent of the commercial ACL, respectively. If ACTs were used to trigger AM applications, these two alternatives would result in lower profits to small entities than the preferred alternative. This rule implements the preferred alternative of not establishing a commercial ACT (no action alternative) because the current method to track commercial harvests is adequate to determine whether the commercial ACL is met or projected to be met.

Four alternatives, including the preferred alternative, were considered for the recreational ACT. ACTs would have economic effects only if they are used to trigger AMs. Amendment 24 specifies that ACTs would not be used to trigger AMs. The following discussion, however, assumes ACTs are used to trigger AMs so that the different economic implications of the alternatives can be described. The first alternative, the no action alternative, would not specify a recreational ACT for red grouper. This alternative would not allow consideration of management uncertainty which is deemed high in the recreational sector. Without consideration of management uncertainty, the probability of exceeding the ACL would be relatively high, increasing the probability of implementing more stringent management measures. The second and third alternatives would specify a recreational ACT equal to 85 percent and 75 percent of the recreational ACL, respectively. The second alternative would likely result in a smaller reduction on the short-term profits of small entities than the preferred alternative because it would provide for higher ACT levels. The third alternative would likely result in the same reduction on the short-term profits of small entities as the preferred alternative because both would result in the same ACTs.

Three alternatives, including the two preferred alternatives, were considered for the commercial AM. The two preferred alternatives are not mutually exclusive but rather complementary to each other. The only alternative to the preferred alternatives is the no action alternative, which would not specify a commercial AM for red grouper. This alternative would retain the current commercial AM specified for the group of species consisting of red grouper, black grouper, and gag. This particular AM could be either more or less restrictive than the preferred AM alternatives specified for red grouper, but it would not allow for the implementation of management measures that would specifically address the overfished and undergoing overfishing condition of the red grouper stock. In addition, the current AM for the aggregate species of red grouper, black grouper, and gag does not provide for post-season AMs. The lack of post-season AMs under the no action alternative would result in higher short-term profits to small entities than the preferred alternative. However, it is expected that the long-term profit environment would be better under the preferred alternatives because they would provide for higher ACLs over time, and therefore higher profits on a more sustainable basis. It should also be noted that a separate commercial sector ACL/AM for black grouper was implemented through the Comprehensive ACL Amendment (final rule published on March 16, 2012, 77 FR 15916), negating the need for the aggregate species ACL/AM.

Four alternatives were considered for the recreational AM. The first alternative is the no action alternative, which would not set a specific recreational AM for red grouper. This alternative would retain the current recreational AM specified for the group of species consisting of red grouper, black grouper, and gag. This particular AM could be either more or less restrictive than the preferred AM alternatives specified for red grouper, but it would not allow for the implementation of management measures that would specifically address the overfished/overfishing condition of the red grouper stock. It should also be noted that a separate recreational sector ACL/AM for black grouper was implemented through the Comprehensive ACL Amendment, negating the need for the aggregate species ACL/AM.

The second alternative would specify a recreational sector AM trigger and includes five sub-alternatives, including the preferred sub-alternative. The first sub-alternative would not specify a recreational sector AM trigger. This sub-alternative would likely result in higher profits to small entities than the preferred sub-alternative. However, it would not address the overfished/overfishing condition of red grouper. The second sub-alternative specifies that AM would be triggered if the mean recreational landings for the past 3 years exceed the recreational ACL. The profit environment for small entities under this sub-alternative may be lower or higher than that of the preferred sub-alternative, depending on whether the trend in landings is upward or downward.

The third sub-alternative specifies that the AM would be triggered if the modified mean (highest and lowest landings dropped) landings for the past 5 years exceed the recreational sector ACL. This sub-alternative would have the same effects on profitability as the second sub-alternative, although the magnitude may be lower. The fourth sub-alternative specifies that the AM would be triggered if the lower bound of the 90 percent confidence interval estimate of the MRFSS landings' population mean plus headboat landings is greater than the recreational ACL. This sub-alternative is likely to produce the same effects on profitability as the first sub-alternative, but the magnitude could be lower or higher.

The third alternative for a recreational sector AM would specify a recreational sector in-season AM and includes two sub-alternatives, of which one is the preferred sub-alternative. The only sub-alternative to the preferred alternative is the no action alternative which would not specify a recreational in-season AM. This alternative would result in higher short-term profits to small entities, but it would not constrain recreational fishing pressure and thus would not aid in addressing the overfished/overfishing condition for red grouper. In the presence of a post-season AM, this alternative would tend to reduce future profits of small entities because of ACL reductions.

The fourth alternative for a recreational sector AM would specify a recreational sector post-season AM if the current fishing year's recreational sector ACL is exceeded, and includes seven sub-alternatives, of which one is the preferred sub-alternative. The first sub-alternative would not specify a recreational sector post-season AM. This sub-alternative would result in higher short-term profits to small entities than the preferred alternative, although the expectation is for long-term profitability to be better under the preferred sub-alternative. The second sub-alternative would compare the recreational sector ACL with the 2011 landings only for the purpose of triggering any 2011 post-season AMs and with the mean of the 2011 and 2012 landings for the purpose of triggering any 2012 post-season AMs. For 2013 and beyond, the most recent three-year running would be used for the purpose of triggering post-season AMs. This sub-alternative may or may not have the same sort of effects on profitability as the preferred alternative, depending on the specific AM measure that would be implemented.

The third sub-alternative specifies monitoring the following year's landings for persistence in increased landings,

with the Regional Administrator (RA) taking management actions as necessary. This sub-alternative would likely result in the lower adverse effects on short-term profits than the preferred alternative, although the actual effects would depend on the type of restrictions that would be imposed by the RA. The fourth sub-alternative specifies monitoring the following year's landings for persistence in increased landings, with the RA publishing a notice in the **Federal Register** to reduce the recreational fishing season as necessary. This sub-alternative would likely result in less adverse effects on short term profits than the preferred sub-alternative to the extent that the post-season AM may not be imposed depending on how persistent the upward trend in landings would be. If a post-season AM were necessary, this sub-alternative could still result in higher profits than the preferred alternative because it would set a specific red grouper recreational season closure date, allowing for-hire vessels to make the necessary changes in their operations.

The fifth sub-alternative specifies monitoring the following year's landings for persistence in increased landings, with the RA publishing a notice in the **Federal Register** to reduce the recreational bag limit as necessary to prevent harvest from exceeding the recreational ACL. This sub-alternative would likely result in less adverse effects on short term profits than the preferred sub-alternative to the extent that post-season AMs may not be imposed depending on how persistent the upward trend in landings would be. If a post-season AM were necessary, this sub-alternative could still result in higher profits than the preferred alternative since it would allow for-hire vessels to operate year round, although at lower bag limits. The sixth sub-alternative specifies that the RA publish a notice in the **Federal Register** to reduce the following year's recreational fishing season to ensure landings do not exceed the following fishing season's recreational ACL. There is a good possibility that this sub-alternative would result in the same fishing season length as the preferred alternative, assuming no significant changes in effort would occur in the following fishing year. It is possible that other measures, like a bag limit reduction, may be employed under the preferred alternative to effect a longer season that would provide more fishing opportunities. Whichever of these two sub-alternatives can provide more fishing opportunities may be considered better than the other from the standpoint of profits to small entities.

Two alternatives, including the preferred alternative, were considered for redefining MSY. The first alternative, the no action alternative, would retain the definition of MSY which would not reflect the conclusions of the latest stock assessment. This alternative, like the preferred alternative, would not directly affect the profitability of small entities.

Five alternatives, including the preferred alternative, were considered for redefining MSST. The first alternative, the no action alternative, would retain the definition of MSST as equal to natural mortality times the biomass at MSY. The second alternative would set MSST equal to 50 percent of biomass at MSY. The third alternative would set MSST equal to 85 percent of biomass at MSY. The fourth alternative would set MSST as the minimum stock size at which rebuilding to MSY would be expected to occur within 10 years at the maximum fishing mortality threshold level. All these alternatives, like the preferred alternative, would not directly affect the profitability of small entities.

Five alternatives, including the preferred alternative, were considered for the rebuilding schedule. The first alternative, the no action alternative, would not implement a rebuilding schedule. This alternative would not comply with the Magnuson-Stevens Act requirement to rebuild an overfished red grouper stock. The second, third, and fourth alternatives would establish a rebuilding period of 3 years (shortest), 7 years, and 8 years, respectively. These other alternatives would provide for a shorter rebuilding timeframe than the preferred alternative, and thus may be expected to restrict the flexibility in designing management measures that would minimize the economic effects on the profits of small entities.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all vessel permit holders in the South Atlantic snapper-grouper fishery.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 5, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

§ 622.42 [Amended]

■ 2. In § 622.42, paragraph (e)(8) is removed.

■ 3. In § 622.43, paragraph (a)(5)(iii) is revised to read as follows:

§ 622.43 Closures.

(a) * * *

(5) * * *

(iii) For gag, when the appropriate commercial quota is reached, the provisions of paragraphs (a)(5)(i) and (ii) of this section apply to gag and all other SASWG.

* * * * *

■ 4. In § 622.49, paragraph (b)(4) is revised to read as follows:

§ 622.49 Annual catch limits (ACLs) and accountability measures (AMs).

* * * * *

(b) * * *

(4) *Red grouper*—(i) *Commercial sector.* (A) If commercial landings for red grouper, as estimated by the SRD, reach or are projected to reach the applicable ACL in paragraph (b)(4)(i)(C) of this section, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of red grouper is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(B) If commercial landings exceed the ACL, the AA will file a notification with the Office of the Federal Register, at or

near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(C) The applicable commercial ACLs, in round weight, are 284,680 lb (129,129 kg) for 2012, 315,920 lb (143,299 kg) for 2013, and 343,200 lb (155,673 kg) for 2014 and subsequent fishing years.

(ii) *Recreational sector.* (A) If recreational landings for red grouper, as estimated by the SRD, are projected to reach the applicable ACL in paragraph (b)(4)(ii)(C) of this section, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit is zero. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(B) If recreational landings for red grouper, as estimated by the SRD, exceed the applicable ACL, the AA will file a notification with the Office of the Federal Register, to reduce the recreational ACL the following fishing year by the amount of the overage in the prior fishing year.

(C) The applicable recreational ACLs, in round weight, are 362,320 lb (164,346 kg) for 2012, 402,080 lb (182,380 kg) for 2013, and 436,800 lb (198,129 kg) for 2014 and subsequent fishing years.

(iii) Without regard to overfished status, if the combined commercial and recreational sector ACL (total ACL), as estimated by the SRD, is exceeded in a fishing year, then during the following fishing year, an automatic increase will not be applied to the commercial and recreational sector ACLs. The SRD will evaluate the landings data to determine whether or not an increase in the respective sector ACLs will be applied. The applicable combined commercial and recreational sector ACLs, in round weight are 647,000 lb (293,474 kg) for 2012, 718,000 lb (325,679 kg) for 2013, and 780,000 lb (353,802 kg) for 2014 and subsequent fishing years.

(A) Following an overage of the total ACL, if there is no overage the following fishing year, the SRD will evaluate the landings data to determine whether or not an increase in the respective sector ACLs will be applied.

(B) [Reserved]

* * * * *

[FR Doc. 2012–14137 Filed 6–8–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 110909578–2120–02]

RIN 0648–BB45

Western Pacific Pelagic Fisheries; Modification of American Samoa Large Vessel Prohibited Area

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

ACTION: Final rule.

SUMMARY: This final rule modifies certain boundaries of the large fishing vessel prohibited area around Tutuila, the Manua Islands, and Rose Atoll in American Samoa to align with the boundaries of the Rose Atoll Marine National Monument. This rule simplifies enforcement and administration of the management areas.

DATES: This rule is effective July 11, 2012.

ADDRESSES: The Western Pacific Fishery Management Council (Council) prepared a regulatory amendment that provides background information on this final rule. The regulatory amendment, identified as NOAA–NMFS–2011–0226, includes an environmental assessment and regulatory impact review, and is available from *www.regulations.gov* or the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, *www.wpcouncil.org.*

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

SUPPLEMENTARY INFORMATION: A mix of small troll and longline vessels and larger longline and purse seine vessels target tunas and related fish in the U.S. Exclusive Economic Zone (EEZ) around American Samoa. In 2002, concerns about potential catch competition and gear conflicts between small and large vessels led to the implementation of two large vessel prohibited areas (LVPA), one around Swain's Island and one around Tutuila, the Manua Islands, and Rose Atoll (67 FR 4369, January 30, 2002).

In 2009, Presidential Proclamation 8337 created the Rose Atoll Marine National Monument (74 FR 1577, January 12, 2009). The monument includes Rose Atoll and surrounding waters to a distance approximately 50 nm around the atoll. The Proclamation prohibits commercial fishing in monument waters.

The monument and the LVPA around Tutuila, the Manua Islands, and Rose Atoll overlap, but the boundaries do not align. This rule aligns some of the boundaries to simplify administration and enforcement of the two areas. This rule modifies the LVPA boundaries, as follows:

(a) Move the existing northernmost LVPA boundary southward to align with the northern boundary of the monument;

(b) Move the eastern LVPA boundary eastward to align with the eastern boundary of the monument; and

(c) Move a portion of the southern LVPA boundary southward to align with the southern boundary of the monument.

The western and most of the southern boundaries of the existing LVPA remain unchanged. Fig. 1 shows the revised boundaries of the LVPA.

Comments and Responses

On April 20, 2012, NMFS published a proposed rule and request for public comment (77 FR 23654). The comment period for the proposed rule ended on May 11, 2012. NMFS received no public comments.

Changes From the Proposed Rule

There are no changes in this final rule.

Classification

The Administrator, Pacific Islands Region, NMFS, determined that this action is necessary for the conservation and management of the large vessel pelagic fisheries around American Samoa, and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

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

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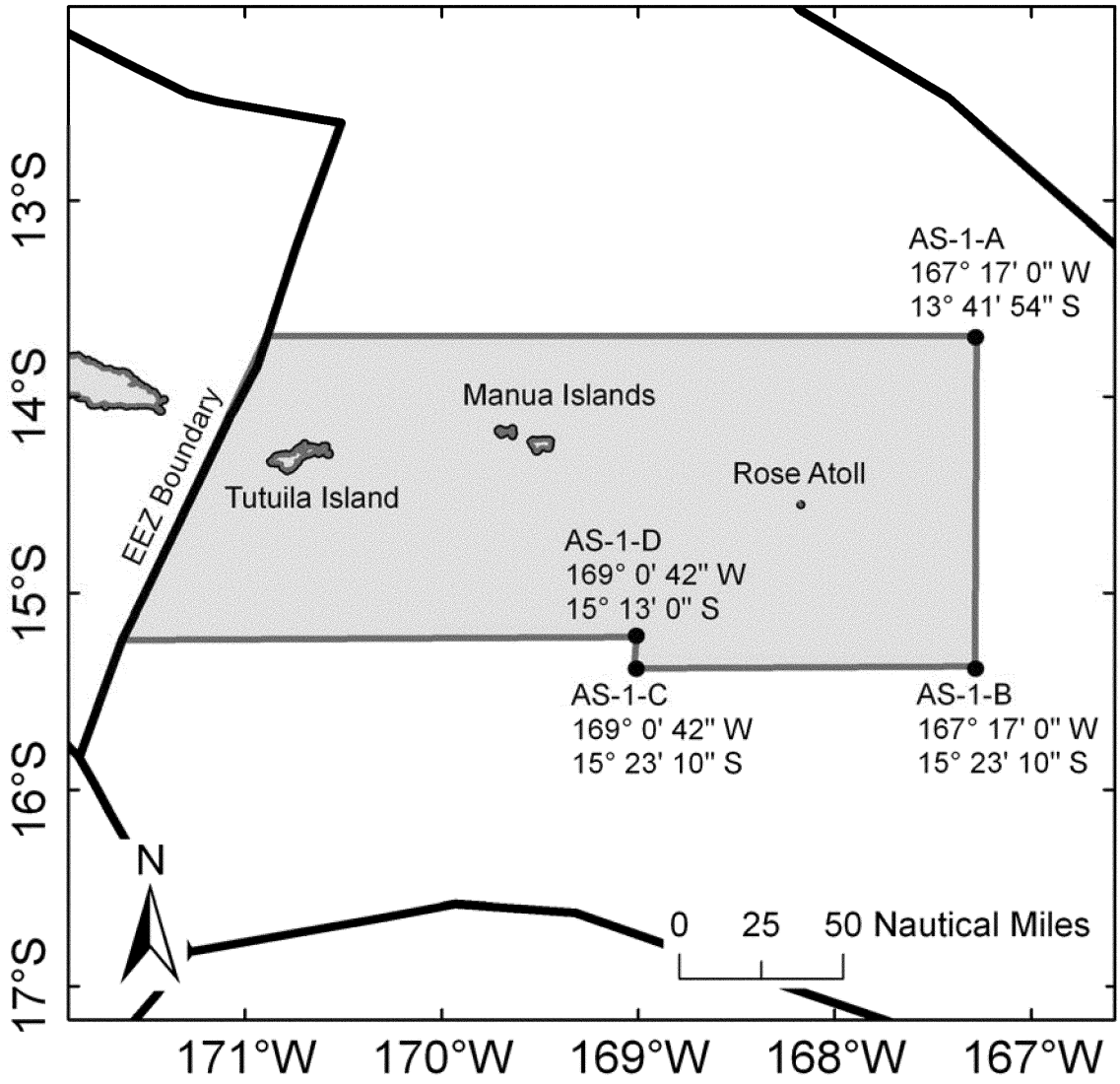

Figure 1. Modified large vessel prohibited area around Tutuila, the Manua Islands, and Rose Atoll.

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List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Fishing, Longline, Marine national monuments, Prohibited area management, Purse seine, Rose Atoll.

Dated: June 5, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR chapter VI is amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for part 665 continues to read as follows:

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

■ 2. In § 665.806(b)(1), revise the paragraph and table to read as follows:

§ 665.806 Prohibited area management.

* * * * *

(b) * * *

(1) *Tutuila Island, Manua Islands, and Rose Atoll (AS–1).* The large vessel prohibited area around Tutuila Island, the Manua Islands, and Rose Atoll consists of the waters of the EEZ around American Samoa enclosed by straight lines connecting the following coordinates:

Point	S. lat.	W. long.
AS–1–A	13°41′54″	167°17′
AS–1–B	15°23′10″	167°17′

Point	S. lat.	W. long.
AS–1–C	15°23′10″	169°00′42″
AS–1–D	15°13′	169°00′42″
and from point AS–1–A westward along latitude 13°41′54″ S. until intersecting the U.S. EEZ boundary with Samoa, and from point AS–1–D westward along latitude 15°13′ S. until intersecting the U.S. EEZ boundary with Samoa.		

* * * * *

[FR Doc. 2012–14146 Filed 6–8–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111213751–2102–02]

RIN 0648–XC061

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Aleutian District of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the 2012 allocation of Pacific ocean perch in this area allocated to vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 6, 2012, through 2400 hrs, A.l.t., December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

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

The allocation of Pacific ocean perch, in the Western Aleutian District, allocated as a directed fishing allowance to vessels participating in the BSAI trawl limited access fishery was established as 149 metric tons (mt) by the final 2012 and 2013 harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District by vessels participating in the BSAI trawl limited access fishery.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of the Pacific ocean perch fishery in the Western Aleutian District by vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of June 5, 2012. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: June 6, 2012.

Carrie Selberg,

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

[FR Doc. 2012–14111 Filed 6–6–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 112
Monday, June 11, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1282

RIN 2590–AA49

2012–2014 Enterprise Housing Goals

AGENCY: Federal Housing Finance Agency.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing and seeking comments on a proposed rule that would amend FHFA's existing housing goals regulation to establish housing goals for 2012, 2013 and 2014 for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises). The benchmark levels established by this regulation for 2013 would continue in effect for 2014, unless FHFA determines that the 2014 benchmark levels should be adjusted based on its market assessment for 2014. In addition, FHFA seeks comments on whether the housing goals regulation should be amended to address the possibility that an Enterprise would receive credit under the housing goals for the purchase of a multifamily mortgage that was intended to facilitate the conversion of the property securing the mortgage from affordable rents to market rate rents.

DATES: Written comments must be received on or before July 26, 2012.

ADDRESSES: You may submit your comments, identified by regulatory information number (RIN) 2590–AA49, by any of the following methods:

- *Email:* Comments to Alfred M. Pollard, General Counsel, may be sent by email to *RegComments@fhfa.gov.* Please include ''RIN 2590–AA49'' in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the Agency. Please include ''RIN 2590–AA49'' in the subject line of the message.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA49, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. The package should be logged in at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA49, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Paul Manchester, Principal Economist, (202) 649–3115; Jay Schultz, Senior Economist, (202) 649–3117, Office of Housing and Regulatory Policy; Kevin Sheehan, Assistant General Counsel, (202) 649–3086; Lyn Abrams, Assistant General Counsel, (202) 649–3059; or Sharon Like, Managing Associate General Counsel, (202) 649–3057, Office of General Counsel. These are not toll-free numbers. The mailing address for each contact is: Office of General Counsel, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed rule, and will revise the language of the proposed rule as appropriate after taking all comments into consideration. Copies of all comments will be posted without change, including any personal information you provide, such as your name, address, and phone number, on the FHFA Internet Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

II. Background

A. Statutory and Regulatory Background

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), as amended by the Housing and Economic Recovery Act of 2008 (HERA), requires FHFA to establish annual housing goals for mortgages purchased by Fannie Mae and Freddie Mac.[1] FHFA established housing goals for the Enterprises for 2010 and 2011 through a final rule published on September 14, 2010.[2]

The housing goals established by FHFA include four goals and one subgoal for single-family, owner-occupied housing and one goal and one subgoal for multifamily housing. The single-family housing goals target purchase money mortgages for low-income families, families that reside in low-income areas, and very low-income families, and refinancing mortgages for low-income families.[3] The multifamily special affordable housing goal targets multifamily housing affordable to low-income families, and the multifamily special affordable housing subgoal targets multifamily housing affordable to very low-income families.[4]

B. Conservatorship

On September 6, 2008, the Director of FHFA appointed FHFA as conservator of the Enterprises to maintain the Enterprises in a safe and sound financial condition and to help assure performance of their public mission. The Enterprises remain under conservatorship at this time.

Although the Enterprises' substantial market presence has been key to restoring market stability, neither company is capable of serving the mortgage market today without the ongoing financial support provided by the U.S. Department of the Treasury (Treasury) under their respective Senior Preferred Stock Purchase Agreements (Agreements). FHFA has projected a range of substantial cumulative draws in Treasury support under the Agreements through 2014. While reliance on the Treasury Department will continue until legislation produces a final resolution to

[1] *See* 12 U.S.C. 4561 *et seq.*
[2] *See* 75 FR 55892.
[3] *See* 12 CFR 1282.12.
[4] *See* 12 CFR 1282.13.

the Enterprises' future, FHFA is monitoring the activities of the Enterprises to: (a) Minimize losses on the mortgages already on their books; (b) ensure profitability in the new book of business without deterring market participation or hindering market recovery; and (c) limit their risk exposure by avoiding new products and lines of business.

While the Enterprises are in conservatorship, all Enterprise activities, including those in support of affordable housing, must be consistent with the requirements of conservatorship under the Safety and Soundness Act, as amended by HERA. If FHFA determines that the Enterprise housing goals cannot be achieved consistent with the goals and requirements of conservatorship or in light of market conditions, FHFA, as conservator for each Enterprise, may take additional action, including suspension of the Enterprise housing goals until they can be achieved and in a manner consistent with the conservatorships. In the meantime, FHFA is proposing to continue with the existing structure of the housing goals, including the market-based approach that was adopted for 2010 and 2011, with new benchmark levels in place through 2014.

C. Prospective and Market-Based Approach

The current housing goals regulation sets forth single-family housing goals for 2010–2011 that include: (1) An assessment of Enterprise performance, as compared to the actual share of the market that meets the criteria for each goal; and (2) a benchmark level to measure Enterprise performance. For the single-family housing goals, an Enterprise has met a goal if it achieves the benchmark level for that goal, even if the actual market size for the year is higher than the benchmark level. An Enterprise has failed to meet a goal if its annual performance falls below both the benchmark level and the actual share of the market that meets the criteria for a particular goal for that year. FHFA determined that this approach is appropriate in light of recent market turmoil, especially while the Enterprises are operating in conservatorship, and in light of the difficulty of making projections accurately even in more stable economic environments. For those reasons too, and because the correspondence between available market data and the Enterprises' actual goals-qualifying activity is not exact, FHFA reserves some flexibility in determining whether an Enterprise has substantially complied with one or more goals.

III. Summary of Proposed Rule

The proposed rule would establish new benchmarks for the single-family housing goals for 2012, 2013 and 2014. The proposed rule would also establish new levels for the multifamily housing goals for those years. FHFA also seeks comments on whether the housing goals regulation should be amended to address the possibility that an Enterprise would receive credit under the housing goals for the purchase of a multifamily mortgage that was intended to facilitate the conversion of the property securing the mortgage from affordable rents to market rate rents.

IV. Single-Family Housing Goals

A. Analysis of Factors for Single-Family Housing Goals

Section 1332(e)(2) of the Safety and Soundness Act, as amended by HERA, requires FHFA to consider the following seven factors in setting the single-family housing goals:

(1) National housing needs;

(2) Economic, housing, and demographic conditions, including expected market developments;

(3) The performance and effort of the Enterprises toward achieving the housing goals under this section in previous years;

(4) The ability of the Enterprise to lead the industry in making mortgage credit available;

(5) Such other reliable mortgage data as may be available;

(6) The size of the purchase money conventional mortgage market, or refinance conventional mortgage market, as applicable, serving each of the types of families described, relative to the size of the overall purchase money mortgage market or the overall refinance mortgage market, respectively; and

(7) The need to maintain the sound financial condition of the Enterprises.[5]

FHFA's consideration of the size of the market for each housing goal includes consideration of the percentage of goals-qualifying mortgages under each housing goal, as calculated based on Home Mortgage Disclosure Act (HMDA) data for the three most recent years for which data is available.[6]

FHFA's analysis of each statutory factor is set forth below.

1. National Housing Needs

The recent single-family housing market has been characterized by falling homeownership rates, high vacancy rates, weak sales, lower home prices, high foreclosure rates, and stricter underwriting. These trends are likely to continue in the near term. In many instances, they have had differing impacts for homeowners and home seekers of different ethnicities. Despite demand spurred by the ''First Time'' and ''Move Up Home Buyer'' tax credits in 2009 and 2010, the seasonally adjusted overall U.S. homeownership rate declined to 65.5 percent in the first quarter of 2012, after peaking at 69.1 percent in 2004. The homeownership rate for non-Hispanic whites declined from a peak of 76 percent in 2004 to 73.5 percent in the first quarter of 2012. For black households, the decline was more pronounced, going from a peak of 49.1 percent in 2004 to 43.1 percent in the first quarter of 2012. The homeownership rate for Hispanic households also had a noticeable decline, going from a peak of 49.7 percent in 2006 and 2007 to 46.3 percent in the first quarter of 2012.[7]

The homeowner vacancy rate—the proportion of housing inventory for homeowners that is vacant and for sale—dropped slightly to 2.2 percent in the first quarter of 2012, from a record high of 2.9 percent in 2008. But the vacancy rate may not fully capture the inventory of distressed and at-risk homes that have not yet completed the foreclosure process, but will add to the housing supply.[8] By one estimate, nearly 900,000 excess vacant homes are either for sale, for rent, or being held off the market.[9]

First-time homebuyers have experienced lower-priced housing. According to the 2011 National Association of Realtors (NAR) survey of homebuyers and sellers, the median age for first-time homebuyers was 31 years, and the median income was $62,400. The typical first-time homebuyer purchased a $155,000 home, up from $152,000 in the 2010 survey. Fifty-four percent of entry-level buyers financed their purchase with a Federal Housing Administration (FHA) loan, and 6

[5] 12 U.S.C. 4562(e)(2).

[6] *See* 12 U.S.C. 4562(e)(2)(A).

[7] *See* U.S. Census Bureau, ''Housing Vacancies and Homeownership (CPS/HVS)'' (Table 16), available at *http://www.census.gov/hhes/www/housing/hvs/historic/index.html.*

[8] *See generally,* Daniel Indiviglio, ''The 'Shadow' Foreclosure Inventory,'' The Atlantic (Sept. 23, 2009), available at *http://www.theatlantic.com/business/archive/2009/09/the-shadow-foreclosure-inventory/27093/.*

[9] *See* Mark Zandi, Moody's Analytics, ''To Shore Up the Recovery, Help Housing,'' p. 3 (May 25, 2011) (Special Report), available at *http://www.economy.com/mark-zandi/documents/To-Shore-Up-the-Recovery-Help-Housing.pdf.*

percent used the Veterans Administration (VA) loan program.[10]

For 2011, NAR reported that existing home sales were up by 1.7 percent from 2010. New home sales for 2011, as reported by the Census Bureau, were down by 6.2 percent from 2010. A composite index of housing affordability for November 2011 showed that families earning the median income had 194.5 percent of the income needed to purchase a median-priced existing single-family home, which is very high by historical standards.[11]

HMDA data for 2010, the most recent year for which such data are available, indicated that in comparison with 2009, applications for conventional home purchase loans from black borrowers fell by 31 percent, and for Hispanic borrowers by 34 percent. Applications from white borrowers fell by 23 percent.

Denial rates for black and Hispanic applicants, however, decreased from 2008 to 2010. For black applicants, the denial rate dropped from 36.1 percent in 2008 to 32.3 percent in 2009 and to 30.9 percent in 2010, while the denial rate for Hispanics dropped from 31.1 percent in 2008 to 25.6 percent in 2009 and to 22.9 percent in 2010.[12]

Low housing prices hurt existing homeowners as the number of foreclosures and underwater mortgages—where a homeowner owes more than the value of the home—remained at elevated levels. Although the number of homes with foreclosure filings fell 34 percent relative to 2010, 1.9 million homes were foreclosed on in 2011.[13] Foreclosure figures likely would have been higher in 2011 had it not been for processing slowdowns as a result of concerns about foreclosure practices and documentation. Some housing analysts project higher foreclosure rates in 2012, with a downward trend beginning in 2013. As of the fourth quarter of 2011, the share of underwater mortgages was at a near-record high of 22.8 percent, and roughly 5.0 percent of mortgaged homes had less than 5 percent equity.[14] The concentration of underwater borrowers is even higher for non-Enterprise loans. In a January 2012 FHFA letter to Congress, FHFA estimated that less than 10 percent of borrowers with Enterprise loans have negative equity in their homes (9.9 percent in June 2011), whereas loans backing private label securities were more than three times more likely to have negative equity (35.5 percent in June 2011).[15]

According to the Mortgage Bankers Association (MBA), single-family mortgage activity totaled $901 billion in the first three quarters of 2011, compared to $1,110 billion in the first three quarters of 2010. Total originations in 2010 were $1,572 billion, with 70 percent of the total being refinancings.[16]

One result of the mortgage crisis is that the mortgage market now has stricter and less flexible lending standards. According to the Board of Governors of the Federal Reserve System's Senior Loan Officer Opinion Survey, underwriting standards tightened beginning in late 2006 and have not significantly eased since that time.[17] In the near term, underwriting standards can be expected to continue to be rigorous. In addition, high vacancy rates, foreclosures and unemployment may continue to dampen the housing recovery.

FHFA has considered the above data in assessing national housing needs as required by the Safety and Soundness Act. FHFA has concluded that it is not necessary to adjust the benchmark levels based specifically on this factor.

2. Economic, Housing and Demographic Conditions

The current turmoil in the housing and mortgage markets affects the ability of the Enterprises to meet the housing goals. The market conditions include: (1) Tightened credit underwriting practices; (2) the financial condition of private mortgage insurance (MI) companies; (3) the increased role of FHA in the marketplace; (4) high unemployment; (5) the state of the refinance market; and (6) shifting demographic conditions. These developments have contributed to a decrease in the overall share of single-family loans likely to qualify for Enterprise housing goals credit.

Tightened credit underwriting practices. Continuing rigorous credit underwriting standards in the mortgage market have resulted in fewer goal-qualifying loans and a lower percentage of goal-qualifying loans in the market. Underwriting standards in the mortgage market generally, and at Fannie Mae and Freddie Mac in particular, have tightened considerably since 2008 in response to declining market conditions and early payment defaults, among other factors. Such standards can be expected to remain in place.[18]

Financial condition of private MI companies. Substantial ratings downgrades for MI companies followed the recent financial crisis. Most MI companies continue to face difficulties in returning to profitability. One consequence of these difficulties is more stringent MI underwriting standards, which result in fewer goal-qualifying loans and a lower percentage of goal-qualifying loans in the overall market. These standards include restrictions on borrowers having multiple risk factors such as a high loan-to-value (LTV) ratio, a lower credit score, and limited documentation. These developments limit the ability of mortgage insurers to write new business and may reduce the overall mortgage lending volume, particularly for higher-LTV mortgages, which are more likely to count for purposes of the housing goals. Post-conservatorship loan-level pricing adjustments by the Enterprises may also have a similar impact.

Increased role of FHA in the marketplace. The composition of the affordable conventional mortgage market is also influenced by FHA's market share. FHA loans generally are pooled into mortgage-backed securities (MBS) guaranteed by the Government National Mortgage Association (GNMA). Enterprise purchases of mortgages insured by FHA and mortgages guaranteed by VA generally do not receive housing goals credit. As a result, a higher FHA share of the market generally results in a smaller proportion of affordable loans among loans that can be counted for purposes of the housing goals. FHA's share of the market rose significantly during 2008 through 2010, reaching a share of the home purchase mortgage market in excess of 35 percent

[10] *See* National Association of Realtors, ''NAR Profile of Home Buyers and Sellers 2011'' (November 2011), available at *http://www.realtor.org/topics/homebuyers_sellers_profile/hbs_pdf_2011.*

[11] *See* National Association of Realtors, ''Housing Affordability Index,'' available at *http://www.realtor.org/research/research/housinginx.*

[12] *See* Board of Governors of the Federal Reserve, ''The 2009 HMDA Data: The Mortgage Market in a Time of Low Interest Rates and Economic Distress,'' Federal Reserve Bulletin, available at *http://www.federalreserve.gov/pubs/bulletin/2010/pdf/2009_HMDA_final.pdf* and ''The Mortgage Market in 2010: Highlights from the Data Reported under the Home Mortgage Disclosure Act,'' available at *http://www.federalreserve.gov/pubs/bulletin/2011/pdf/2010_HMDA_final.pdf.*

[13] *See* ''2011 Year-End Foreclosure Report: Foreclosures on the Retreat (January 9, 2012), available at *http://www.realtytrac.com/content/foreclosure-market-report/2011-year-end-foreclosure-market-report-6984.*

[14] *See* CoreLogic ''Q42011 Negative Equity Report,'' available at: *http://www.corelogic.com/about-us/researchtrends/asset_upload_file780_1.pdf.*

[15] *See http://www.fhfa.gov/webfiles/23056/PrincipalForgivenessltr12312.pdf.*

[16] *See http://www.mbaa.org/ResearchandForecasts/ForecastsandCommentary.*

[17] Board of Governors of the Federal Reserve System, *Senior Loan Officer Opinion Survey* (November 7, 2011).

[18] *See generally* The Joint Center for Housing Studies of Harvard University, ''The State of the Nation's Housing, 2010,'' available at *http://www.jchs.harvard.edu/research/publications/state-nations-housing-2010.*

in 2010, as measured by HMDA data. FHA announced last year an annual MI premium increase of 25 basis points, effective April 18, 2011.[19]

High unemployment. In addition to being an indicator of the health of the economy in general, labor market conditions affect the housing market more directly because buying a house is considered a large investment and a long-term commitment that requires stable employment. Nonfarm payroll employment increased by 115,000 in April 2012. The unemployment rate has steadily fallen from 9.1 percent in August 2011 to 8.1 percent in April 2012.[20] NeighborWorks, a national network of community-based organizations actively involved in foreclosure mitigation counseling, estimated that the two leading causes of mortgage default rates were a reduction in income (37 percent of defaults) and loss of income (21 percent of defaults).[21] To the extent that high unemployment rates impact lower-income wage earners more than higher-income wage earners, there could be fewer mortgage originations for goal-qualifying borrowers and, therefore, fewer such mortgages available for purchase by the Enterprises.

State of the refinance market. The size of the refinance mortgage market has an impact on the share of affordable refinance mortgages. Historically, refinance mortgage volume increases when the refinancing of mortgages is motivated by low interest rates, *i.e.,* ''rate and term refinances,'' and this increased volume is dominated by higher-income borrowers. As a result, in periods of low interest rates, the share of lower-income borrowers will decrease. Likewise, refinancings that occurred when interest rates were high tended to have a higher proportion of lower-income homeowners who were consolidating their debts or who were drawing equity out of their homes for other uses. While there are fewer mortgage refinancings for both lower-income and higher-income borrowers during high interest rate periods, the decrease is larger for higher-income borrowers.

While mortgage interest rates are expected to rise later in 2012 to 2014, there is reason to expect that the refinance patterns observed in the past may not occur. In the current economic environment, lower-income homeowners tend to have less equity—or negative equity—in their homes because the prices of lower-valued homes have fallen more than the prices of higher-valued homes.[22] At the same time, lenders have tightened underwriting requirements, requiring higher down payments and higher credit scores. As a result, fewer lower-income homeowners may be able to refinance in 2012 and 2013. In addition, programs established in the wake of the financial crisis have affected refinancings. The Home Affordable Refinance Program (HARP), which became effective in March 2009 and was expanded in 2011, is an effort to enhance the opportunity for owners to refinance. Homeowners whose mortgages are owned or guaranteed by Fannie Mae or Freddie Mac and who are current on their mortgages have the opportunity to reduce their monthly mortgage payments to take advantage of historically low mortgage interest rates. An essential element of this program is the permission to carry forward into the new loan any existing MI from prior mortgages or, if no MI existed, none would be required for the refinanced mortgage. Even under favorable interest rate conditions, however, refinancings may not mirror previous years.

Shifting demographic conditions. In establishing the 2012–2014 housing goals, FHFA analyzed demographic characteristics and trends for their possible effect on housing demand. In the long term, housing demand is likely to increase as a result of population growth, immigration, and formation of new households by the generation born between 1981 and 2000.[23] However, the impact of long-term demographic conditions on short-term goals performance would be minimal.

Homeownership rates for owner-occupied units vary depending on demographic characteristics of households such as income, age, race, and type of household, as well as on the location and type of home. Generally, families are more likely than individuals to be homeowners, and homeowners generally tend to have higher incomes than renters.

The financial crisis has had broad effects across demographic categories. Homeownership rates peaked in the first quarter of 2005 for families with incomes greater than or equal to the median family income and families with incomes below the median family income, and then started falling.[24] More specifically, the homeownership rate for families with incomes above the area median family income dropped from 84.5 percent in the first quarter of 2005 to 80.3 percent in the first quarter of 2012. The homeownership rate for families with incomes below the area median family income dropped from 53 percent to 50.4 percent over the corresponding period.

As discussed previously, the financial crisis took a significant toll on minority homeownership, with their homeownership rates trending sharply downwards. Recent times have also seen depressed immigration rates and headship rates among young as well as middle-aged households.[25] Moody's Analytics has observed that with many young people living with their parents for longer periods, there is pent-up new household formation that should occur in the next year or two.[26] Meanwhile, aging baby boomers have been projected to increase the number of households over the age of 65 by 35 percent from 2010 to 2020.[27]

FHFA has considered the above data in assessing economic, housing and demographic conditions as required by the Safety and Soundness Act. FHFA has concluded that it is not necessary to adjust the benchmark levels based specifically on this factor.

3. The Performance and Effort of the Enterprises Toward Achieving the Housing Goals in Previous Years

Section 1332(a) of the Safety and Soundness Act, as amended by section 1128(b) of HERA, requires FHFA to

[19] *See* U.S. Dept. of Housing and Urban Development, Mortgagee Letter 11–10 (Feb. 14, 2011), available at *http://portal.hud.gov/hudportal/documents/huddoc?id=11-10ml.pdf.*

[20] Bureau of Labor Statistics, *News Release: The Employment Situation—April* (May 4, 2012).

[21] *See* NeighborWorks, ''National Foreclosure Mitigation Counseling Program—Congressional Update—Activity Through January 31, 2010'' p. 41 (May 28, 2010), available at *http://www.nw.org/network/nfmcp/documents/CongressionalReportandAppendices.pdf.*

[22] *See* The Joint Center for Housing Studies of Harvard University, ''The State of the Nation's Housing, 2011,'' p. 40 (2011) (Table A–8), available at *http://www.jchs.harvard.edu/research/publications/state-nation%E2%80%99s-housing-2011.*

[23] *See generally* National Association of Hispanic Real Estate Professionals, ''State of Hispanic Homeownership'' (2011), available at *http://nahrep.org/downloads/state-of-homeownership.pdf.*

[24] *See* U.S. Census Bureau, Housing Vacancies and Homeownership (CPS/HVS) (Table 17. Homeownership Rates by Family Income: 1994 to Present), available at *http://www.census.gov/hhes/www/housing/hvs/historic/index.html.*

[25] *See* The Joint Center for Housing Studies of Harvard University, ''The State of the Nation's Housing, 2011,'' p. 5 (2011), available at *http://www.jchs.harvard.edu/research/publications/state-nation%E2%80%99s-housing-2011.*

[26] *See* Mark Zandi, Moody's Analytics, ''To Shore Up the Recovery, Help Housing'' 4 (May 25, 2011) (Special Report), available at *http://www.economy.com/mark-zandi/documents/To-Shore-Up-the-Recovery-Help-Housing.pdf.*

[27] *See* The Joint Center for Housing Studies of Harvard University, ''The State of the Nation's Housing, 2011,'' p. 3 (2011), available at *http://www.jchs.harvard.edu/research/publications/state-nation%E2%80%99s-housing-2011.*

establish three single-family owner-occupied home purchase mortgage goals for the Enterprises: A goal for low-income families; a goal for families that reside in low-income areas; and a goal for very low-income families. Section 1332(a) also requires FHFA to establish a goal for single-family refinancing mortgages for low-income families. The following section discusses performance on these single-family goals in 2010 and, to provide perspective, reviews what performance would have been on these four single-family goals had they been in effect from 2006 through 2009.

The figures shown in Tables 1–4 for 2010 are official performance results as determined by FHFA, based on loan-level information submitted by the Enterprises. The housing goals in the Safety and Soundness Act, as amended, apply to the Enterprises' acquisitions of ''conventional, conforming, single-family, purchase money mortgages financing owner-occupied housing'' for the targeted groups. The figures exclude units financed by Enterprise purchases of private label securities (PLS), since such units were not counted toward the goals in 2010.

Low-Income Families Housing Goal. The low-income families home purchase goal applies to mortgages made to ''low-income families,'' defined as families with incomes no greater than 80 percent of area median income (AMI).[28] As indicated in Table 1, Fannie Mae's performance in 2010 (25.1 percent) was comparable to what it would have been in 2009 (25.5 percent), somewhat higher than it would have been in 2008 (23.1 percent), and somewhat lower than it would have been in 2006 and 2007 (27.7 percent and 26.0 percent). Freddie Mac's performance in 2010 (26.8 percent) was higher than it would have been in any year from 2006–2009 (22.1 percent—25.4 percent).

Very Low-Income Families Housing Goal. The very low-income families home purchase goal applies to mortgages made to ''very low-income families,'' defined as families with incomes no greater than 50 percent of AMI. In essence, this operates as a subgoal of the low-income families housing goal, which applies to families with incomes no greater than 80 percent of AMI.

As indicated in Table 2, Fannie Mae's performance in 2010 (7.2 percent) was comparable to what it would have been in 2009 (7.3 percent), higher than it would have been in 2007 and 2008 (6.4 percent and 5.5 percent), and lower than it would have been in 2006 (7.7 percent). Freddie Mac's performance in 2010 (7.9 percent) was higher than it would have been in any year from 2006–2009 (5.3 percent—7.2 percent).

TABLE 1—GSE PAST PERFORMANCE ON THE LOW-INCOME HOME PURCHASE GOAL, 2006–10

[Goal benchmark for 2010 was 27 percent]

Year	Type of home purchase (HP) mortgages	Enterprise		Market share (HMDA)
		Fannie Mae	Freddie Mac	
2010	Low-Income HP Mortgages	120,430	82,443	
	Total HP Mortgages	479,200	307,555	
	Low-Inc. % of HP Mortgages	25.1%	26.8%	27.2%
2009	Low-Income HP Mortgages	148,423	105,719	
	Total HP Mortgages	582,673	415,897	
	Low-Inc. % of HP Mortgages	25.5%	25.4%	29.6%
2008	Low-Income HP Mortgages	226,290	158,896	
	Total HP Mortgages	977,852	655,156	
	Low-Inc. % of HP Mortgages	23.1%	24.3%	25.5%
2007	Low-Income HP Mortgages	383,129	284,434	
	Total HP Mortgages	1,471,242	1,008,064	
	Low-Inc. % of HP Mortgages	26.0%	24.6%	26.1%
2006	Low-Income HP Mortgages	359,609	197,900	
	Total HP Mortgages	1,295,956	895,049	
	Low-Inc. % of HP Mortgages	27.7%	22.1%	24.2%

Source: Official performance as determined by FHFA for 2010; performance if the goal had been in effect, as calculated by FHFA, for 2006–09. ''Low-income'' refers to borrowers with incomes no greater than 80 percent of Area Median Income (AMI).

Notes:

Freddie Mac's official performance for 2010 was initally reported as 27.8 percent, but it has since been revised as shown above.

To determine whether an Enterprise's performance exceeded or fell short of the goal, FHFA compares official performance figures with the benchmark level and the low-income share of conventional conforming home purchase mortgages originated in 2010, based on FHFA analysis of data submitted by primary mortgage market lenders to the Federal Financial Institutions Examination Council (FFIEC) in accordance with the Home Mortgage Disclosure Act (HMDA).

The low-income shares of the primary market are shown in the last column in the table.

TABLE 2—GSE PAST PERFORMANCE ON THE VERY LOW-INCOME HOME PURCHASE GOAL, 2006–10

[Goal benchmark for 2010 was 8 percent]

Year	Type of home purchase (HP) mortgages	Enterprise		Market share (HMDA)
		Fannie Mae	Freddie Mac	
2010	Low-Income HP Mortgages	34,673	24,276	
	Total HP Mortgages	479,200	307,555	
	Low-Inc. % of HP Mortgages	7.2%	7.9%	8.1%
2009	Low-Income HP Mortgages	42,571	29,870	
	Total HP Mortgages	582,673	415,897	
	Low-Inc. % of HP Mortgages	7.3%	7.2%	8.8%
2008	Low-Income HP Mortgages	54,263	40,009	

[28] *See* 12 U.S.C. 4502(14).

TABLE 2—GSE PAST PERFORMANCE ON THE VERY LOW-INCOME HOME PURCHASE GOAL, 2006–10—Continued

[Goal benchmark for 2010 was 8 percent]

Year	Type of home purchase (HP) mortgages	Enterprise		Market share (HMDA)
		Fannie Mae	Freddie Mac	
	Total HP Mortgages	977,852	655,156	
	Low-Inc. % of HP Mortgages	5.5%	6.1%	6.5%
2007	Low-Income HP Mortgages	93,543	60,549	
	Total HP Mortgages	1,471,242	1,008,064	
	Low-Inc. % of HP Mortgages	6.4%	6.0%	6.2%
2006	Low-Income HP Mortgages	100,148	47,008	
	Total HP Mortgages	1,295,986	895,049	
	Low-Inc. % of HP Mortgages	7.7%	5.3%	5.9%

Source: Official performance as determined by FHFA for 2010; performance if the goal had been in effect, as calculated by FHFA, for 2006–09. ''Very Low-income'' refers to borrowers with incomes no greater than 50 percent of Area Median Income (AMI).

Notes:

Freddie Mac's official performance for 2010 was initally reported as 8.4 percent, but it has since been revised as shown above.

To determine whether an Enterprise's performance exceeded or fell short of the goal, FHFA compares official performance figures with the benchmark level and the very low-income share of conventional conforming home purchase mortgages originated in 2010, based on FHFA analysis of data submitted by primary mortgage market lenders to the Federal Financial Institutions Examination Council (FFIEC) in accordance with the Home Mortgage Disclosure Act (HMDA).

The very low-income shares of the primary market are shown in the last column in the table.

Low-Income Areas Goal and Subgoal. Three categories of mortgages qualify for the low-income areas housing goal:

(1) Home purchase mortgages for families in low-income census tracts, defined as tracts with median family income no greater than 80 percent of AMI;

(2) Home purchase mortgages for families with incomes no greater than 100 percent of AMI who reside in minority census tracts, defined as tracts with minority population of at least 30 percent and a median family income less than 100 percent of AMI; and

(3) Home purchase mortgages for families with incomes no greater than 100 percent of AMI who reside in Federally-declared disaster areas (regardless of the minority share of the population in the tract or the ratio of tract median family income to AMI).

FHFA established an overall goal for this category of home purchase mortgages of 24 percent for 2010–2011. As indicated in Table 3, Fannie Mae's performance in 2010 (24.0 percent) was lower than it would have been in 2009 (26.9 percent) and in 2008 (25.5 percent). Freddie Mac's performance in 2010 (23.0 percent) was also lower than it would have been in 2009 (25.0 percent) and in 2008 (25.5 percent).

The 2010–2011 final rule also established a subgoal for the low-income and high-minority census tracts components of the goal. For 2010 and 2011, FHFA set the benchmark level for this subgoal at 13 percent.[29] As indicated in Table 3, Fannie Mae's performance on the subgoal in 2010 (12.4 percent) was lower than it would have been in 2009 (13.3 percent) and in 2008 (15.1 percent). Freddie Mac's performance on the subgoal in 2010 (10.4 percent) was lower than it would have been in 2009 (11.6 percent) and in 2008 (15.2 percent).

Refinancing Housing Goal. The refinancing housing goal is targeted to low-income families, *i.e.,* families with incomes no greater than 80 percent of AMI, and applies to mortgages that are given to pay off or prepay an existing loan secured by the same property. Thus, the goal does not apply to home equity or home purchase loans.

TABLE 3—GSE PAST PERFORMANCE ON THE LOW-INCOME AREAS HOME PURCHASE GOAL AND SUBGOAL, 2008–10

[Goal benchmark for 2010 was 24 percent; subgoal benchmark was 13 percent]

Year	Type of home purchase (HP) mortgages	Enterprise		Market share (HDMA)
		Fannie Mae	Freddie Mac	
2010	Low-Income Tract HP Mortgages	44,467	24,037	
	High-Minority Tract HP Mortgages	14,814	8,052	
	Subgoal Qualifying Mortgages	59,281	32,089	
	Total HP Mortgages	479,201	307,555	
	Subgoal Qualifying % of Mortgages	12.4%	10.4%	12.1%
	Disaster Area HP Mortgages	55,972	38,898	
	Goal-Qualifying Mortgages	115,253	70,876	
	Goal Qualifying % of Mortgages	24.1%	23.0%	24.0%
2009	Low-Income Tract HP Mortgages	59,150	37,138	
	High-Minority Tract HP Mortgages	18,349	11,259	
	Subgoal Qualifying Mortgages	77,499	48,397	
	Total HP Mortgages	582,673	415,897	
	Subgoal Qualifying % of Mortgages	13.3%	11.6%	13.2%
	Disaster Area HP Mortgages	79,255	55,565	
	Goal-Qualifying Mortgages	156,754	103,962	
	Goal Qualifying % of Mortgages	26.9%	25.0%	28.1%
2008	Low-Income Tract HP Mortgages	118,875	80,288	

[29] Affordability levels in low-income and high-minority areas, but not for disaster areas, can be adequately modeled using econometric time series forecast models.

TABLE 3—GSE PAST PERFORMANCE ON THE LOW-INCOME AREAS HOME PURCHASE GOAL AND SUBGOAL, 2008–10—Continued

[Goal benchmark for 2010 was 24 percent; subgoal benchmark was 13 percent]

Year	Type of home purchase (HP) mortgages	Enterprise		Market share (HDMA)
		Fannie Mae	Freddie Mac	
	High-Minority Tract HP Mortgages	29,245	19,160	
	Subgoal Qualifying Mortgages	148,120	99,448	
	Total HP Mortgages	977,852	655,156	
	Subgoal Qualifying % of Mortgages	15.1%	15.2%	14.3%
	Disaster Area HP Mortgages	100,822	67,776	
	Goal-Qualifying Mortgages	248,942	167,224	
	Goal Qualifying % of Mortgages	25.5%	25.5%	25.5%

Source: Official performance as determined by FHFA for 2010; performance if the goal had been in effect, as calculated by FHFA, for 2008–2009. See definition of ''Low-income Area'' in text.

Notes:

Freddie Mac's official performance for 2010 was initially reported as 10.8 percent on the subgoal and as 23.8 percent on the goal. Its official performance has since been revised as shown above.

To determine whether an Enterprise's performance exceeded or fell short of the 2010 goal and subgoal, FHFA compares official performance figures with the benchmark levels and the corresponding shares of conventional conforming home purchase mortgages originated in 2010, based on FHFA analysis of data submitted by primary mortgage market lenders to the Federal Financial Institutions Examination Council (FFIEC) in accordance with the Home Mortgage Disclosure Act (HMDA).

The subgoal and goal-qualifying shares of the primary market are shown in the last column of the table.

Qualifying permanent modifications of loans for low-income families under the Administration's Home Affordable Modification Program (HAMP) are counted toward the refinancing housing goal. The impact of such modifications on goal performance is shown in Table 4.

Table 4 shows the Enterprises' performance on this goal for 2010, as well as what performance would have been if the goal had been in effect for the preceding four years. Performance shown for all years excludes units financed by Enterprise purchases of PLS, because such units were not counted toward the goals in 2010.

As indicated in Table 4, Fannie Mae's performance in 2010 (20.9 percent) was lower that it would have been in 2006–2009 (23.0 percent–26.6 percent). Freddie Mac's performance in 2010 (22.0 percent) was slightly higher than it would have been in 2009 (21.7 percent), but lower than it would have been in 2006–2008 (23.2 percent–26.0 percent).

4. The Ability of the Enterprises To Lead the Industry in Making Mortgage Credit Available

Leading the industry in making mortgage credit available includes making mortgage credit available to primary market borrowers at differing income levels with varying credit profiles living in various markets. Leadership also relates to the Enterprises' loss mitigation efforts, implementation of loan modification and refinance programs and support for state and local housing finance agencies. The Enterprises, along with FHA and VA, now lead the market in making mortgage credit available. In 2011, the Enterprises remained the largest issuers of MBS, guaranteeing 72 percent of single-family MBS. This situation is widely viewed as undesirable for the long term. The Enterprises' losses have depleted their capital and resulted in their being sustained only by infusions of capital from the U.S. Treasury under the Senior Preferred Stock Purchase Agreements. FHFA as conservator exercises a statutory mandate to conserve and preserve the Enterprises' assets, and to place the Enterprises in a sound and stable condition. Consistent with those responsibilities, FHFA has announced a number of steps to reduce the role of the Enterprises in the mortgage market. FHFA has taken into account all of the foregoing considerations in assessing the Enterprises' ability to lead the industry.

TABLE 4—GSE PAST PERFORMANCE ON THE LOW-INCOME REFINANCE GOAL, 2006–10

[Goal benchmark for 2010 was 21 percent]

Year	Type of refinance mortgages	Enterprise		Market share (HMDA)
		Fannie Mae	Freddie Mac	
2010	Low-Income Refinance Mortgages	373,105	286,741	
	Total Refinance Mortgages	1,934,270	1,378,578	
	Low-Inc. % of Refinance Mortgages	19.3%	20.8%	20.2%
	Low-Income Refinance Loan Modifications	44,343	25,244	
	Total Refinance Loan Modifications	63,428	37,411	
	Low-Income % of Refinance Loan Modifications	69.9%	67.5%	NA
	Low-Income Refinance Total	417,448	311,985	
	Refinance Total	1,997,698	1,415,989	
	Low-Inc. % of Refinance Total	20.9%	22.0%	20.2%
2009	Low-Income Refinance Mortgages	479,631	326,912	
	Total Refinance Mortgages	2,415,169	1,708,676	
	Low-Inc. % of Refinance Mortgages	19.9%	19.1%	20.9%
	Low-Income Refinance Loan Modifications	114,390	63,708	
	Total Refinance Loan Modifications	168,437	94,062	
	Low-Inc. % of Refinance Loan Modifications	67.9%	67.7%	NA
	Low-Income Refinance Total	594,021	390,620	

TABLE 4—GSE PAST PERFORMANCE ON THE LOW-INCOME REFINANCE GOAL, 2006–10—Continued

[Goal benchmark for 2010 was 21 percent]

Year	Type of refinance mortgages	Enterprise		Market share (HMDA)
		Fannie Mae	Freddie Mac	
	Refinance Total	2,583,606	1,802,738	
	Low-Inc. % of Refinance Total	23.0%	21.7%	NA
2008	Low-Income Refinance Mortgages	335,864	215,016	
	Total Refinance Mortgages	1,455,287	927,816	
	Low-Inc. % of Refinance Mortgages	23.1%	23.2%	23.4%
2007	Low-Income Refinance Mortgages	351,739	252,889	
	Total Refinance Mortgages	1,421,342	1,005,519	
	Low-Inc. % of Refinance Mortgages	24.7%	25.2%	24.3%
2006	Low-Income Refinance Mortgages	301,995	217,882	
	Total Refinance Mortgages	1,133,684	838,104	
	Low-Inc. % of Refinance Mortgages	26.6%	26.0%	24.8%

Source: Official performance as determined by FHFA for 2010; performance if the goal had been in effect, as calculated by FHFA, for 2006–09. ''Low-income'' refers to borrowers with incomes no greater than 80 percent of Area Median Income (AMI).

Notes:

To determine whether an Enterprise's performance exceeded or fell short of the 2010 goal, FHFA compares official performance figures with the benchmark level and the low-income share of conventional conforming refinance mortgages originated in 2010, based on FHFA analysis of data submitted by primary mortgage market lenders to the Federal Financial Institutions Examination Council (FFIEC) in accordance with the Home Mortgage Disclosure Act (HMDA). The low-income shares of refinances in the primary market are shown in the last column in the table. There is no market data on loan modifications.

FHFA has considered the above data in assessing the ability of the Enterprises to lead the industry in making mortgage credit available as required by the Safety and Soundness Act. FHFA has concluded that it is not necessary to adjust the benchmark levels based specifically on this factor.

5. Other Reliable Mortgage Data

HMDA data reported by loan originators is the primary source of reliable mortgage data for establishing the single-family housing goals. In setting the housing goal benchmark levels, FHFA evaluates the Enterprises' performance with respect to leading or lagging the housing market under specific goals and compares HMDA data with mortgage purchase data provided by the Enterprises.

FHFA also uses other reliable data sources including: The American Housing Survey (AHS); U.S. Census Bureau demographics; commercial sources such as Moody's; and other industry and trade research sources, *e.g.,* MBA, Inside Mortgage Finance Publications, NAR, National Association of Home Builders (NAHB), and the Commercial Mortgage Securities Association. The FHFA Monthly Interest Rate Survey (MIRS) is used to complement forecast models for home purchase loan originations by making intra-annual adjustments prior to the public release of HMDA mortgage data.

In the development of economic forecasts, FHFA uses data and information from Wells Fargo, PNC, Fannie Mae, Freddie Mac, and The Wall Street Journal Survey. In addition, FHFA uses market and economic data from the Bureau of Labor Statistics, the Federal Reserve Board, the Department of Commerce Bureau of Economic Analysis, and FedStats.

6. Market Size

Expectations for the 2012 and 2013 single-family mortgage market are for zero or slow growth. Quantifiable factors influencing FHFA's outlook for the mortgage market include general growth in the economy, employment, inflation, and the interest rate environment. Industry observers expect subprime mortgage market activity to remain minimal through 2013. The FHA-insured mortgage market share is expected by industry observers to continue to be a major factor in the affordability levels in the conventional market as FHA loans will continue to be an attractive option for low-income homebuyers.[30] The effects of unemployment, FHA market share, and refinancing have been discussed previously (see Section 2). The effects of interest rates, house prices, the overall housing market, manufactured housing, and the market outlook are discussed below.

Market Outlook. Industry observers' economic and mortgage market forecasts are presented in Tables 5 and 6. On average, industry forecasters project the economy to continue to grow in 2012 and 2013, with real Gross Domestic Product (GDP) growing at rates of 2.3 and 2.7 percent, respectively. These industry observers also expect the unemployment rate to remain below 9.0 percent in 2012, and falling to 7.8 percent in the fourth quarter of 2013.

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[30] FHFA monitors the economic, housing and mortgage market forecasts of 12 industry and government entities. These entities are referred to as ''industry observers.'' For more information, and specifically which economic indicators each entity forecasts, see ''Market Estimation Model for the 2012–2014 Enterprise Single-Family Housing Goals'' published at FHFA's Web site, *www.fhfa.gov.*

Table 5

Economic and Mortgage Market Outlook

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Low-Income Borrower HP Share	27.2%	24.2%	24.0%	26.0%	25.3%	29.6%	27.2%	25.2%	22.4%	19.6%
Very Low-Income Borrower HP Share	6.6%	5.5%	5.9%	6.1%	6.5%	8.8%	8.1%	7.6%	7.5%	7.3%
Low-Income Area HP Share	16.7%	15.3%	15.8%	16.2%	14.1%	13.0%	12.1%	11.7%	11.9%	11.8%
Low-Income Borrower Refi. Share	28.0%	26.0%	24.7%	24.2%	23.4%	20.8%	21.5%	21.9%	21.2%	24.1%
Real GDP	3.5%	3.1%	2.7%	1.9%	-0.3%	-3.5%	3.0%	1.7%	2.3%	2.6%
Nominal GDP	6.4%	6.5%	6.0%	4.9%	1.9%	-2.5%	4.2%	3.9%	4.1%	4.4%
Real Personal Consumption	3.3%	3.4%	2.8%	2.3%	-0.6%	-1.9%	2.0%	2.2%	2.2%	2.2%
Real Residential Construction	9.8%	6.2%	-7.4%	-18.7%	-23.9%	-22.2%	-4.3%	-1.3%	9.9%	9.7%
Inflation Rate (CPI, Y/Y % Change)	3.3%	3.7%	1.9%	4.0%	1.6%	1.4%	1.3%	3.3%	3.2%	2.9%
Core Infl. Rate (CPI, Y/Y % Change)	2.1%	2.1%	2.6%	2.3%	2.0%	1.7%	0.7%	2.2%	2.9%	3.4%
Core Infl. Rate (PCE, Y/Y % Change)	2.2%	2.3%	2.3%	2.4%	2.0%	1.7%	1.0%	1.8%	1.9%	1.9%
Unemployment Rate	5.5%	5.1%	4.6%	4.6%	5.8%	9.3%	9.6%	8.9%	8.1%	7.7%
10-Year Treasury Yield	4.3%	4.3%	4.8%	4.6%	3.7%	3.3%	3.2%	2.8%	2.2%	2.8%
1-Year Treasury Yield	1.9%	3.6%	4.9%	4.5%	1.8%	0.5%	0.3%	0.2%	0.2%	0.4%
Prime Rate	4.3%	6.2%	8.0%	8.1%	5.1%	3.3%	3.3%	3.3%	3.2%	3.2%
Federal Funds Target Rate	1.35%	3.22%	4.97%	5.02%	1.93%	0.16%	0.18%	0.10%	0.13%	0.20%
Consumer Confidence	96.1	100.3	105.9	103.3	57.9	45.4	53.4	58.0	n.a.	n.a.

Note: Shaded area indicates forecasted values. Forecasts are an average forecast of Mortgage Bankers Association (MBA), Fannie Mae, Freddie Mac, National Association of Realtors, Wells Fargo, PNC Financial, the National Association of Home Builders, Standard and Poor's, the Wall Street Journal Survey, the Conference Board and the Federal Open Market Committee.

n.a. Not available at this time.

Table 6

Economic and Mortgage Market Outlook

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Housing Starts [1]	1,951	2,071	1,810	1,341	899	554	585	611	729	879
Housing Starts, 1-Unit [1]	1,605	1,718	1,472	1,035	616	443	470	433	499	605
Total Home Sales [2]	7,929	8,356	7,563	5,805	4,588	4,710	4,506	4,590	4,872	5,102
New Home Sales [1]	1,201	1,279	1,049	768	482	374	321	307	351	439
Existing Home Sales [1]	6,727	7,077	6,514	5,037	4,106	4,336	4,185	4,283	4,604	4,727
Single-Family Originations [3]	$2,919	$3,120	$2,979	$2,430	$1,500	$1,815	$1,572	$1,262	$1,175	$1,066
Refinance Mortgage Share [4]	54%	49%	48%	51%	51%	66%	65%	68%	62%	48%
FHA Home Purchase Market Share [5]	7%	4%	4%	6%	25%	36%	35%	31%	25%	24%
ARM Market Share	34%	30%	21%	11%	7%	4%	5%	5%	8%	9%
Investor Share	11%	13%	13%	12%	12%	8%	9%	8%	8%	8%
30-Year Mortgage Fixed Rate [6]	5.8%	5.9%	6.4%	6.3%	6.0%	5.0%	4.7%	4.5%	4.0%	4.6%
1-Year ARM Rate [6]	3.9%	4.5%	5.5%	5.6%	5.2%	4.7%	3.8%	3.0%	2.9%	3.2%
Change in Housing Prices (FHFA ALL) [7]	10.3%	11.2%	4.7%	-0.8%	-6.3%	-4.5%	-1.5%	-3.0%	0.3%	3.7%
Change in Housing Prices (FHFA PO) [8]	11.2%	10.1%	3.1%	-2.3%	-9.6%	-1.7%	-3.9%	-2.4%	-1.0%	1.1%
Change in Housing Prices (CS HPI) [9]	19.1%	16.1%	1.4%	-8.3%	-19.2%	-4.5%	-0.6%	-3.8%	-0.5%	0.8%
Housing Affordability Index [10]	126	114	108	117	139	172	174	186	196	190
Median Sales Price - New Homes [11]	$218	$234	$243	$244	$230	$215	$221	$224	$223	$223
Median Sales Price - Existing Homes [11]	$193	$218	$222	$217	$197	$173	$172	$165	$165	$168

Note: Shaded area indicates forecasted values. Forecasts are an average forecast of Mortgage Bankers Association (MBA), Fannie Mae, Freddie Mac, National Association of Realtors, Wells Fargo, PNC Financial, the National Association of Home Builders, Standard and Poor's, the Wall Street Journal Survey, the Conference Board and the Federal Open Market Committee.

[1] Thousands of units

[2] Thousands of units, forecasted amount does not equal the sum of the existing plus new home sales because differences in forecasts.

[3] MBA, Billions of dollars

[4] The refinance shares for 2004-2009 are calculated from Home Mortgage Disclosure Act (HMDA) data. Estimates for 2010 include refinance rates reported by MBA.

[5] The FHA market shares for 2008 are calculated from HMDA data. Preliminary estimates for 2009 are the FHA endorsements (FHA Outlook) share of home sales (Census Bureau), scaled to match the mortgage market FHA market share.

[6] Freddie Mac, Primary Mortgage Market Survey

[7] FHFA House Price Index, all transactions (Q4/Q4 % Change)

[8] FHFA House Price Index, purchase transactions only (Q4/Q4 % Change)

[9] Standard & Poor's Case-Shiller 10 City Index (Q4/Q4 % Change)

[*] Freddie Mac's Conventional Mortgage Home Price Index (Y/Y % Change)

[10] National Association of Realtors

[11] Thousands of dollars

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Interest Rates. Affordability in the mortgage market relies in part on the interest rate environment. Mortgage interest rates are impacted by many factors. Interest rates on longer term financial instruments such as mortgages typically follow the fluctuations of the 10-Year Treasury Note yield, with approximately an 180 basis point spread reflecting the differences in liquidity and credit risk. With uncertainty in the financial markets of the Eurpoean Union, the U.S. financial markets have seen increased demand as financial instruments here are seen as a ''safe haven.'' Overall, interest rates in the United States are heavily influenced by the monetary policies of the Federal Reserve Board's Federal Open Market Committee (FOMC). During the current economic environment, since mid-2008, the FOMC has maintained an accommodative monetary policy in support of its dual mandate, of fostering maximimum employment and price stability. In its April 24–25, 2012 meeting, the FOMC stated that it is committed to a low federal funds rate policy (at 0 to 0.25 percent) as it ''anticipates that economic conditions—including low rates of resource utilization and a subdued outlook for inflation over the medium run—are

likely to warrant exceptionally low levels for the federal funds rate at least through late 2014.'' [31] This accommodative monetary policy, combined with the international demand for U.S. financial instruments, has lead to historically low interest rates in the mortgage market. The longer term 30-year fixed-rate mortgage interest rate fell to 4.2 percent in October 2010, before increasing to 4.9 percent by February 2011 and was reported at 3.83 percent in Freddie Mac's May 10, 2012 Primary Mortgage Market Survey. Shorter term fixed- and adjustable-rate mortgage interest rates remain at their 2011 lows, for example of 2.75 percent for 1-year ARMs. As a major contributor to the cost of mortgage financing, lower interest rates directly affect the affordability of buying a home or refinancing a mortgage. As the economic recovery strengthens in the near future and if the European situation stabilizes it is expected that interest rates, particularly longer term interest rates, will rise. For the 2012–2013 period, as shown in Table 6, forecasts show that all interest rates are expected to rise, including the interest rate on a 30-year fixed-rate mortgage, which is expected to reach 4.2 percent by the fourth quarter of 2012 and to average 4.7 percent in 2013.

House Prices. Trends in house prices influence the housing and mortgage markets. In periods of house price appreciation, home sales and mortgage originations increase as the expected return on investment rises. In periods of price depreciation or price uncertainty, home sales and mortgage originations decrease as risk-averse homebuyers are reluctant to enter the market. House prices generally fell during 2009 through 2011, and are expected to fall slightly in 2012 before rebounding in 2013. Industry forecasts show a decrease in the S&P/Case Shiller Home Price Index of −0.5 percent in 2012 and an increase of 0.8 percent in 2013 (see Table 6).

Housing Market. An active housing market is generally good for the affordable home market. When there are more homes for sale, potential home buyers have more options, prices tend to be more competitive and the search costs to find affordable housing decrease. Historical volumes for sales of both new and existing houses are shown in Table 6, along with forecasts for 2012–2013. Total home sales reached a 10-year annual low in 2010 at 4.5 million units. Home sales increased slightly in 2011 to 4.6 million units and industry observers expect that home sales will increase to 4.9 million units in 2012 and to 5.1 million units in 2013—well below 2004–2006 levels.

During 2009 and early 2010, special homebuyers tax credits were available for first-time and repeat homebuyers. Mortgages to first-time homebuyers tend to be more likely to qualify for housing goals than those for repeat homebuyers, who tend to be older and have higher incomes. Many first-time homebuyers whose mortgages might otherwise have been available to receive goal-qualifying loans for home purchases in 2012–2014, instead bought their homes in 2009 or 2010 to take advantage of the first-time homebuyers tax credit.

Manufactured Housing Loans. Between 2008 and 2010, 58 percent of manufactured housing loans were higher priced, according to HMDA data. Because chattel-financed loans do not count towards achievement of the housing goals, it was necessary to adjust the HMDA figures with respect to market estimates to account for this part of the manufactured housing market. Accordingly, FHFA down-weighted the average 2008 to 2010 manufactured housing contribution to the goals market estimates by 80 percent for the home purchase mortgage goals and 50 percent for the refinance mortgage goal. This resulted in the market estimate for the low-income home purchase housing goal being reduced by 1.4 percent, the very low-income home purchase housing goal by 0.5 percent, the low-income areas home purchase housing goal by 0.6 percent, and the low-income borrower refinance housing goal by 0.2 percent. The projected market estimates in Table 5 reflect these adjustments.

Housing Goal Outlook. FHFA's estimates of the market performance for the two single-family owner-occupied home purchase housing goals and one subgoal, and the refinancing mortgage housing goal, are provided in Table 5. For 2012 and 2013, FHFA estimates that the low-income borrower shares of the home purchase mortgage market will be 22.4 percent and 19.6 percent, respectively. FHFA estimates that the very low-income borrower share of the home purchase mortgage market will be 7.5 percent for 2012 and 7.3 percent for 2013. FHFA estimates that the share of goal-qualifying mortgages in low-income areas in the home purchase mortgage market, excluding designated disaster areas, will be 11.9 percent in 2012 and 11.8 percent in 2013.

The refinance share of the market, as measured by the MBA, averaged 68 percent in 2011. With interest rates projected to rise during 2012–2013, industry observers expect the refinance share of total originations to decrease. Generally speaking, decreasing refinance share leads to a higher percentage of refinance originations made up of lower-income borrowers. Accordingly, with a projected refinance share of 62 percent in 2012 and 48 percent in 2013 (down from 68 percent in 2011), FHFA's market model estimates that 21.2 percent of refinance mortgages will be made to low-income borrowers in 2012 and 24.1 percent in 2013. These estimates are reflective of historical lending patterns and trends. However, as evidenced by the Federal Reserve Bank of Philadelphia's *Community Outlook Survey,* the tightening of underwriting standards will impact the access to credit of lower-income borrowers. In this survey of organizations servicing low- and moderate-income populations (those with incomes less than 80 percent of AMI), only 3 percent of the respondents saw an increase in the access to credit in the fourth quarter of 2011, and only 1.6 percent of the respondents saw an increase in the access to credit in the third quarter of 2011. When asked about what they expect for the first three months of 2012, 9 percent of the respondents stated that they expected an increase in access to credit.[32]

To arrive at the market estimates, FHFA used an econometric state space methodology to extend the trends of the market performance for each goal, based on a monthly time series database provided by the Federal Financial Institutions Examination Council (FFIEC) and the Federal Reserve Board. For the low-income areas goal, this model produced the market estimates for only the subgoal. The remainder of the market estimates for this goal relates to the designated disaster areas. FHFA will provide the 2012 and 2013 estimates of the share of home purchase mortgages that will qualify for the designated disaster areas portion of the low-income areas goal to the Enterprises in January of each year.

FHFA used all relevant information when determining the benchmark levels for the 2012 and 2013 housing goals. While the tightening of underwriting standards is not included in the market estimates calculation, it was considered in the determination of the benchmark levels. FHFA attempts to use the most current data possible when estimating market size, including information from FHFA's MIRS and combined Fannie Mae and Freddie Mac refinance goal performance data to extend HMDA

[31] Federal Open Market Committee, *Press Release,* April 25, 2012.

[32] Federal Reserve Bank of Philadelphia, *Fourth Quarter 2011 Community Outlook Survey,* February, 2012.

performance data. FHFA used estimated market series of goal-qualifying shares provided by Freddie Mac that are based on MIRS data from January 2004 to September 2011. In addition, FHFA used the combined Enterprise performance data from January 2001 to December 2011 to inform the market estimates for the refinance goal. Guidance for calculating market size using historical HMDA data is provided in the ''Market Estimation Model for the 2012–2014 Enterprise Single-Family Housing Goals'' published by FHFA on its Web site.[33]

7. Need To Maintain the Sound Financial Condition of the Enterprises

The financial performance of both Enterprises is dominated by credit-related expenses and losses stemming principally from purchases and guarantees of mortgages originated in 2006 and 2007 and from purchases of PLS. As discussed above, FHFA's duties as conservator require the conservation and preservation of the Enterprises' assets. While reliance on the Treasury's backing will continue until legislation produces a final resolution to the Enterprises' future, FHFA is monitoring the activities of the Enterprises to: (a) Limit their risk exposure by avoiding new lines of business; (b) ensure profitability in the new book of business without deterring market participation or hindering market recovery; and (c) minimize losses on the mortgages already on their books. Given the importance of the Enterprises to the housing market, any goal-setting must be closely linked to putting the Enterprises in sound and solvent condition.

B. Single-Family Housing Goal Benchmark Levels

Based on the factors described above, proposed § 1282.12 would establish the benchmark levels for the single-family housing goals for 2012, 2013 and 2014 as set forth below:

Housing goal for low-income families. The proposed benchmark level of the annual goal for each Enterprise's purchases of purchase money mortgages on owner-occupied single-family housing for low-income families is 20 percent of the total number of such mortgages purchased by that Enterprise.

Housing goal for very low-income families. The proposed benchmark level of the annual goal for each Enterprise's purchases of purchase money mortgages on owner-occupied single-family housing for very low-income families is 7 percent of the total number of such mortgages purchased by that Enterprise.

Housing goal and subgoal for families in low-income areas. The benchmark level of the annual goal for each Enterprise's purchases of purchase money mortgages on owner-occupied single-family housing for families in low-income areas is set annually by notice from FHFA. The benchmark level is based on the benchmark level for the low-income areas subgoal, plus an adjustment factor that reflects the incremental percentage share that mortgages for low- and moderate-income families in designated disaster areas had in the most recent year for which data is available. The proposed benchmark level of the annual subgoal for each Enterprise's purchases of purchase money mortgages on owner-occupied single-family housing for families in low-income census tracts and for low- and moderate-income families in minority census tracts is 11 percent of the total number of such mortgages purchased by that Enterprise.

Housing goal for refinancing mortgages. As discussed in the Economic, Housing and Demographic Conditions Section, the historic secular patterns in the refinance market show that when interest rates increase, more higher income homeowners drop out of the refinance market relative to lower income homeowners. This is attributed to the differing motivations for refinancing between the groups, where lower income borrowers are more likely to be seeking a cash-out refinance, which is less dependent on interest rates, than a rate-and-term refinance. The market model, which is based on historical patterns in the refinance market, projects that the low-income borrower share of the refinance market will increase from 21 percent in 2012 to 24 percent in 2013 (see Table 5). FHFA is taking into consideration the current economic environment, including the tightening of underwriting standards and the decrease in equity in the housing stock, in the setting of the refinance goal benchmark. Therefore, the proposed benchmark level of the annual goal for each Enterprise's purchases of refinancing mortgages on owner-occupied single-family housing for low-income families is 21 percent of the total number of such mortgages purchased by that Enterprise, the low end of the projected range.

V. Multifamily Housing Goals

A. Analysis of Factors for Multifamily Housing Goals

Section 1333(a)(4) of the Safety and Soundness Act, as amended by HERA, requires FHFA to consider the following six factors in setting multifamily special affordable housing goals:

(1) National multifamily mortgage credit needs and the ability of the Enterprise to provide additional liquidity and stability for the multifamily mortgage market;

(2) The performance and effort of the Enterprise in making mortgage credit available for multifamily housing in previous years;

(3) The size of the multifamily mortgage market for housing affordable to low-income and very low-income families, including the size of the multifamily markets for housing of a smaller or limited size;

(4) The ability of the Enterprise to lead the market in making multifamily mortgage credit available, especially for multifamily housing affordable to low-income and very low-income families;

(5) The availability of public subsidies; and

(6) The need to maintain the sound financial condition of the Enterprise.

FHFA's analysis of each of the six factors is set forth below.

1. National Multifamily Mortgage Credit Needs

In 2011, traditional participants in multifamily mortgage financing continued to increase their presence. Life insurance companies, and to a limited extent, commercial mortgage-backed securities (CMBS) issuers, increased their lending volumes in 2011 compared to 2010. Nevertheless, the Enterprises remain by far the largest sources of multifamily capital, comprising over 60 percent of originations in dollar terms.[34]

The difficulties encountered by CMBS issuers in 2011 will likely continue into 2012 as rating agencies remain hesitant to grade commercial mortgages bundled into CMBS. FHFA expects that in 2012 the Enterprises will have a lower market share than what they had in 2011, a little less than 60 percent in terms of dollars.[35] As investors become more confident in the stability of the multifamily mortgage market, the CMBS market should slowly make a return, and the Enterprises' market share should decline over the 2012–2014 period, although the overall multifamily mortgage market should slowly grow as the economy recovers. In arriving at this

[33] *See http://www.fhfa.gov/Default.aspx?Page=72.*

[34] ''GSEs Capture More Than 60 Percent of Market in 2011'', Multifamily Executive, January 19, 2012, *http://multifamilyexecutive.com/debt/gses-capture-more-than-60-percent-of-market-in-2011.aspx.*

[35] ''GSEs Capture More Than 60 Percent of Market in 2011'', Multifamily Executive, January 19, 2012. *http://multifamilyexecutive.com/debt/gses-capture-more-than-60-percent-of-market-in-2011.aspx.*

conclusion, FHFA considered, among other factors, vacancy rates, origination rates, and property prices.

Vacancy Rates and Origination Rates. Falling vacancy rates are usually associated with increased rents and investor interest in multifamily properties. According to the U.S. Census Bureau, rental vacancy rates fell from 9.7 percent in the first quarter of 2011 to 8.8 percent in the first quarter of 2012. ''Effective rents,'' which are the rents that tenants actually pay, increased by over four percent in 2011 according to Axiometrics, a provider of commercial real estate data.[36] Although vacancy rates decreased and property values and rents increased, multifamily permits were issued at an annualized rate of 217,000 units in April 2012, which is still well below historical levels, according to the U.S. Census Bureau. Low interest rates and increased demand for multifamily housing should spur an increase in new multifamily construction. Likewise, the lack of new units coming onto the market and the prevailing low interest rates should continue to encourage multifamily property owners to refinance.

Property Prices. As of the end of September 2011, multifamily property prices were up over 15 percent from their low point in the third quarter of 2009.[37] However, multifamily property prices are still well below peak levels reached in 2007. FHFA anticipates a continued rise in multifamily property prices in most markets for the 2012–2014 period. Rising multifamily property prices usually spur increased refinances, property sales, and new construction activity; these factors are reflected in the progressively higher proposed goals for 2012–2013.

2. The Performance and Effort of the Enterprises in Making Mortgage Credit Available for Multifamily Housing in Previous Years

Multifamily Low-Income Housing Goal. The multifamily low-income housing goal includes units affordable to low-income families (those with incomes no greater than 80 percent of AMI). Both Enterprises played major roles in funding multifamily units for low-income families between 2006 and 2009, as shown in Table 7. Fannie Mae financed an average of 346,000 such units over this period, peaking at 447,000 units in 2008, while Freddie Mac financed an average of 226,000 units over this period, peaking at 298,000 units in 2007. The Enterprises followed different approaches to the multifamily mortgage market, with Freddie Mac relying to a significant extent on the purchase of CMBS, while Fannie Mae depended to a greater extent on the direct purchase of multifamily loans originated by its Delegated Underwriting and Servicing (DUS) lenders.

In the final rule establishing the housing goals for 2010–2011, FHFA set the minimum goal for Fannie Mae at 177,750 low-income multifamily units, and the minimum goal for Freddie Mac at 161,250 such units, which was below the Enterprises' average levels of purchases in 2006–2009. FHFA determined that Fannie Mae financed 214,997 low-income multifamily units in 2010, 121 percent of its goal, while Freddie Mac financed 161,500 such units in 2010, 100.2 percent of its goal.

[36] ''Axiometrics' Research Indicates Strongest Monthly Sequential Rent and Occupancy Growth in Last 4 Years'', April 30, 2012. *http://www.axiometrics.com/PressRelease/.*

[37] Moody's Investor Services, Moody's/Real Commercial Property Price Indices, November 7, 2011, available at *http://web.mit.edu/cre/research/credl/rca.html.*

Table 7

GSE Past Performance on the Low-Income Multifamily Goal, 2006-10

(Goals for 2010: 177,750 units for Fannie Mae; 161,250 units for Freddie Mac)

Year	Enterprise	
	Fannie Mae	Freddie Mac
2010	214,997	161,500
2009	234,492	166,680
2008	446,797	265,699
2007	391,768	297,711
2006	311,088	173,331

Source: Official performance as determined by FHFA for 2010; performance if the goal performance if the goal had been in effect, as calculated by FHFA, for 2006-09. "Low-income" refers to units affordable to renters with incomes no greater than 80 percent of Area Median Income (AMI), based on a rental proxy.

Note: Figures do not include units financed by the purchase of commercial mortgage-backed securities (CMBS). Data on units financed including and excluding CMBS for 2001-09 are contained in the final rule establishing the housing goals for 2011, as published in the *Federal Register*, Table 7, 9/14/10, p. 55918.

Multifamily Very Low-Income Subgoal. The multifamily very low-income housing subgoal includes units affordable to very low-income families (those with incomes no greater than 50 percent of AMI). Enterprise financing of rental units for very low-income families over the 2006–2010 period is reported in Table 8. On average, from 2006 to 2009, Fannie Mae financed 83,000 such units each year, peaking at 95,000 units in 2008, and Freddie Mac financed 39,000 such units each year, peaking at 59,000 units in 2007. The 2010–2011 housing goals regulation set the minimum subgoal for Fannie Mae at 42,750 very low-income multifamily units, and for Freddie Mac at 21,000 such units, which was below the Enterprises' average levels of purchases in 2006–2009. FHFA determined that Fannie Mae financed 53,908 very low-income multifamily units in 2010, 126 percent of its subgoal, while Freddie Mac financed 29,650 such units in 2010, 141 percent of its subgoal.

Table 8

GSE Past Performance on the Very Low-Income Multifamily Subgoal, 2006-10

(Subgoals for 2010: 42,750 units for Fannie Mae; 21,000 units for Freddie Mac)

Year	Enterprise	
	Fannie Mae	Freddie Mac
2010	53,908	29,656
2009	60,466	20,302
2008	95,308	42,835
2007	88,369	59,490
2006	86,894	34,256

Source: Official performance as determined by FHFA for 2010; performance if the goal had been in effect, as calculated by FHFA, for 2006-09. "Very low-income" refers to units affordable to renters with incomes no greater than 50 percent of Area Median Income (AMI), based on a rental proxy.

Note: Figures do not include units financed by the purchase of commercial mortgage-backed securities (CMBS). Data on units financed including and excluding CMBS for 2001-09 are contained in the final rule establishing the housing goals for 2011, as published in the *Federal Register*, Table 8, 9/14/10, p. 55919.

Financing of Low-Income Units in Small Multifamily Properties. Section 1333(a)(3) of the Safety and Soundness Act, as revised by HERA, provides that the Director shall require each Enterprise to report on its purchases of mortgages on multifamily housing ''of a smaller or limited size that is affordable to low-income families.'' [38] FHFA defined such small multifamily properties as those containing 5 to 50 units, which is consistent with industry practice.

Small multifamily housing plays an important role as a source of affordable rental housing. According to the 2007 American Housing Survey, multifamily properties containing 5 to 49 units constituted 77 percent of all multifamily units and 74 percent of multifamily units constructed in the previous 4 years. Table 9 reports information on low-income units in small multifamily properties (defined as those containing 5 to 50 units) that were financed by the Enterprises in 2006–2010.

[38] 12 U.S.C. 4563(a)(3).

Table 9

GSE Funding of Low-Income Units in Small Multifamily Properties, 2006-10

("Small mulitfamily properties" are those with 5-50 units)

Year	Enterprise	
	Fannie Mae	Freddie Mac
2010	12,460	459
2009	13,417	528
2008	42,668	1,682
2007	58,931	2,147
2006	40,587	773

Source: Funding as calculated by FHFA for 2006-10.
"Low-income" refers to units affordable to renters with incomes no greater than 80 percent of Area Median Income (AMI), based on a rental proxy.

Note: Figures do not include units financed by the purchase of commercial mortgage-backed securities (CMBS). Data on units financed including and excluding CMBS for 2001-09 are contained in the final rule establishing the housing goals for 2011, as published in the *Federal Register*, Table 9, 9/14/10, p. 55920.

Both Enterprises have decreased the volume of their purchases of small multifamily mortgages in the past few years due to a lack of CMBS issuances available for sale and a decline in the overall volume of small multifamily loans available for purchase. Fannie Mae financed 58,931 low-income units in small multifamily properties in 2007, and an average of 38,901 such units per year over the 2007–2009 period, but only 12,460 such units in 2010, or about a third of its 2006–2009 average. Freddie Mac has played a much smaller role in the small multifamily market, financing 2,147 low-income units in small multifamily properties in 2007, and an average of 1,283 such units per year in 2007–2009, but only 459 such units in 2010, also about a third of its 2007–2009 average. These figures do not include any units in small multifamily properties financed by the acquisition of CMBS, which are not eligible for housing goals credit in the 2010–2011 housing goals regulation.

3. Multifamily Mortgage Market Size

With demand for multifamily housing increasing, the multifamily mortgage market should continue to grow. The number of multifamily units completed in 2011 was 130,000, according to the U.S. Census Bureau.[39] The MBA estimates that multifamily mortgage originations totaled $48.9 billion in 2010. Most of those originations occurred in the second half of 2010. As a result of the improvement in multifamily housing performance in many areas of the country, FHFA anticipates an increase in multifamily originations for the period covered in this proposed rule. For purposes of this rulemaking, the proposed multifamily goals for both 2012 and 2013 reflect the performance of the overall multifamily market in 2011. The improvement in multifamily mortgage market fundamentals indicates that the 2011 market size was around $65 billion. The proposed new multifamily goals anticipate an increase in the overall multifamily market to approximately $75 billion in 2012 and $80 billion in 2013 and 2014.

As in prior years, multifamily housing goals are set separately for each Enterprise, and are measured in units rather than dollar volume. Several factors support continuing to establish different goal levels for each Enterprise. First, loan maturities will be increasing for both Fannie Mae and Freddie Mac from 2012 to 2014, but the increase for Fannie Mae will be much greater than for Freddie Mac, thus allowing Fannie Mae more opportunity to refinance maturing loans back into its portfolio. Second, consistent with the 2010–2011 housing goals regulation, multifamily units financed through CMBS purchases will not be goals-eligible. Historically, Freddie Mac has relied more heavily on purchasing CMBS to obtain goals-eligible units than Fannie Mae, so the exclusion of CMBS purchases has a greater impact on Freddie Mac's performance.

4. Ability of the Enterprise To Lead the Market in Making Multifamily Mortgage Credit Available

The multifamily housing market began to improve in many geographic areas in 2011 (*e.g.,* decreasing vacancy rates, increasing rents and rising property values). As discussed above, FHFA expects this improvement to continue through 2014. Fannie Mae and Freddie Mac have recently composed a larger than usual portion of the multifamily mortgage market. For example, the Enterprises estimate their average share of the multifamily mortgage market, excluding FHA-insured loans, was 37 percent in the period from 2004 to 2007, which peaked at 87 percent in 2009.

[39] "New Privately-Owned Housing Units Completed", U.S. Census Bureau, May 16, 2012. *http://www.census.gov/construction/nrc/.*

By 2011, however, the Enterprises' multifamily mortgage market share declined to a little over 60 percent as traditional competitors such as life insurance companies, conduits and banks re-entered multifamily lending. The decline in Enterprise multifamily mortgage market share should continue through 2012–2014 as these traditional competitors increase their presence in the multifamily mortgage market.

5. Availability of Public Subsidies

Public subsidies for multifamily housing have been affected by the mortgage credit crisis. The value of low-income housing tax credits (LIHTCs), an important source of equity for new low-income housing, fell in 2009 but has recovered to a point where the LIHTC market is substantially healthier. Total equity raised through LIHTCs is forecasted to average $7.8 billion per year from 2013 to 2017 period, according to an Office of Management and Budget estimate.[40] This amount would be well above the estimated equity of $4.5 billion raised in 2009.[41] In 2007, before the mortgage crisis, around $9 billion in equity was raised through LIHTCs. Demand for LIHTCs should continue in strong rental markets. As LIHTC investments return to pre-2008 volumes, opportunities for the Enterprises to finance LIHTC properties and, therefore, goals-eligible units should increase.

6. Need To Maintain the Sound Financial Condition of the Enterprises

The financial condition of both Enterprises is discussed in more detail above. FHFA has considered the multifamily housing goals in light of the importance of the Enterprises to the housing market and in light of FHFA's duties as conservator to conserve and preserve the assets of the Enterprises. The proposed multifamily housing goal levels for 2012–2014 are aligned with safe and sound practices and market reality.

B. Multifamily Housing Goal Levels

The proposed rule would set different multifamily goals for each of the Enterprises, as was done in previous years. Reflecting a more robust multifamily market in the years 2012 through 2014, as well as an anticipated decline in market share of the Enterprises, the proposed rule would establish the multifamily special affordable housing goals and subgoals as follows:

Multifamily Low-Income Housing Goals. The proposed annual goal for Fannie Mae's purchases of mortgages on multifamily residential housing affordable to low-income families is at least 251,000 dwelling units for 2012, at least 245,000 dwelling units for 2013, and at least 223,000 dwelling units for 2014. The proposed annual goal for Freddie Mac's purchases of mortgages on multifamily residential housing affordable to low-income families is at least 191,000 dwelling units for 2012, at least 203,000 dwelling units for 2013, and at least 181,000 dwelling units in 2014.

Multifamily Very Low-Income Housing Subgoals. The proposed annual subgoal for Fannie Mae's purchases of mortgages on multifamily residential housing affordable to very low-income families is at least 60,000 dwelling units for 2012, at least 59,000 dwelling units for 2013, and at least 53,000 dwelling units for 2014. The proposed annual subgoal for Freddie Mac's purchases of mortgages on multifamily residential housing affordable to very low-income families is at least 32,000 dwelling units in 2012, at least 31,000 dwelling units in 2013, and at least 27,000 dwelling units in 2014.

The proposed low-income goal and very low-income subgoal for the 2012–2014 period reflect the unusually high volume and market share the Enterprises experienced in 2011. FHFA believes this level of market share will gradually decrease in 2012 and beyond. In 2011, multifamily units financed by Fannie Mae increased by 35 percent over 2010 levels, while multifamily units financed by Freddie Mac increased by almost 25 percent. This was primarily due to a 50 percent increase in multifamily originations in terms of dollars in 2011 compared to 2010. Competition from CMBS issuers and banks and thrifts should increase in 2012. We anticipate that as competition increases, the Enterprises' market share will decline, as will the number of units they finance during the 2012–2014 period. FHFA has taken a conservative approach to setting the multifamily goals for 2012 to 2014 because of the difficulty of predicting changes in the market. FHFA may adjust the levels of the multifamily goals at a later date if market conditions so require.

VI. Special Counting Requirements

A. Multifamily Subordinate Liens

Section 1282.16(b)(10) of the current housing goals regulation excludes both single-family and multifamily subordinate lien mortgages from counting towards the housing goals, although it does not prohibit the purchase of Charter-compliant subordinate lien mortgages. The **SUPPLEMENTARY INFORMATION** to the 2010–2011 housing goals final rule indicated that FHFA might solicit further public comment on whether multifamily subordinate lien mortgages should be counted for purposes of the housing goals.[42] However, FHFA has determined that it will not solicit such comments at this time. The current housing goals regulation that excludes both single-family and multifamily subordinate lien mortgages from counting towards the housing goals will remain in effect during the period covered by this proposed rule.

Multifamily subordinate liens are only available to borrowers who have an existing first lien mortgage from the Enterprises, therefore the property securing the first lien mortgage will have already been counted for housing goals purposes. Subordinate liens are available either to supplement the purchase proceeds in connection with the sale of an Enterprise funded property and assumption of the existing first lien mortgage by a buyer, or as an equity take out by an existing borrower who will either retain the proceeds or use them to fund property improvements. Equity take outs used for property improvements and upgrades may have the effect of repositioning a formerly affordable property so it can charge higher rents and be removed from the affordable stock. Because the purpose of the multifamily housing goals is to gauge the Enterprises' efforts to support the affordable housing needs of renters, FHFA has decided not to propose changes to the current housing goals regulation regarding counting of subordinate lien mortgages towards housing goals.

B. Multifamily Property Conversion

Section 1282.15(d) currently requires the Enterprises to use tenant income to determine the affordability of rental units where such information is available, and to use rent where income information is not available. Some commenters on the proposed 2010–2011 housing goals rule raised concerns that using current rental information could lead to counting a multifamily mortgage as ''affordable'' in cases where the property is expected to convert from affordable rents to market rate rents. FHFA indicated in the **SUPPLEMENTARY INFORMATION** to that rule that it expected

[40] ''2012 Q & A on the Housing Credit Program'', National Council of Sate Housing Agencies, April 18, 2012. *http://www.ncsha.org/resource/2012-qa-housing-credit-program.*

[41] LIHTC Market Gets its Mojo Back'', Tax Credit Advisor, housingonline.com, February 2011.

[42] *See* 75 FR 55892, 55924 (Sept. 14, 2010).

to address this issue in a subsequent rulemaking.[43]

For a variety of reasons, mortgages that result in the conversion of multifamily properties from affordable rents to market rate rents are not likely to receive housing goals credit. The Enterprise underwriting standards for multifamily properties use actual rents, as provided on the property rent roll at the time of underwriting, rather than post-conversion projected rents. This limits the likelihood that an Enterprise will purchase a multifamily mortgage where the financing depends on increases in the current rents. The Enterprises may still purchase such loans indirectly through purchases of CMBS. For example, in one well-publicized case in New York City, rent-regulated properties were purchased by investors intent on raising rents to market levels. Both Enterprises invested in a total of $3 billion in private label CMBS that financed the purchases and received housing goals credit for these transactions under the housing goals regulation then in effect. However, FHFA's current regulation specifies that purchases of PLS, including CMBS, are ineligible for housing goals credit. Accordingly, these transactions would not have received housing goals credit under the current regulation.[44]

Because it is unlikely that an Enterprise would receive housing goals credit for a mortgage that finances the conversion of a multifamily property from affordable rents to market rate rents, FHFA is not proposing any change to the rules for determining affordability for multifamily mortgages. However, in view of public and congressional concerns in this area, FHFA requests comment on whether the housing goals regulation should be amended to address the possibility that a multifamily mortgage financing the conversion of a property from affordable rents to market rate rents could be treated as affordable under the Enterprise housing goals. In particular, FHFA requests comment on whether § 1282.15(d) should be revised to require the Enterprises to use projected rents to determine affordability if such projected rents are available. Such a change would require the Enterprises to determine, to the best of their knowledge, that a specific property owner does not anticipate the purchase of affordable units in properties with the goal of converting those rents to market rents.

[43] *See* 75 FR 55926.

[44] It is also worth noting that subsequent litigation resulted in restrictions on the owners' ability to convert to market rents.

VII. Paperwork Reduction Act

The proposed rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act.

The General Counsel of FHFA certifies that the proposed rule, if adopted as a final rule, is not likely to have a significant economic impact on a substantial number of small entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1282

Mortgages, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the Supplementary Information, under the authority of 12 U.S.C. 4511, 4513, and 4526, FHFA proposes to amend part 1282 of title 12 of the Code of Federal Regulations as follows:

PART 1282—ENTERPRISE HOUSING GOALS AND MISSION

1. The authority citation for part 1282 is amended to read as follows:

Authority: 12 U.S.C. 4501, 4502, 4511, 4513, 4526, 4561–4566.

2. Amend § 1282.12 by revising paragraphs (c)(2), (d)(2), (f)(2) and (g)(2) to read as follows:

§ 1282.12 Single-family housing goals.

* * * * *

(c) * * *

(2) The benchmark level, which for 2012, 2013 and 2014 shall be 20 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(d) * * *

(2) The benchmark level, which for 2012, 2013 and 2014 shall be 7 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

* * * * *

(f) * * *

(2) The benchmark level, which for 2012, 2013 and 2014 shall be 11 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(g) * * *

(2) The benchmark level, which for 2012, 2013 and 2014 shall be 21 percent of the total number of refinancing mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

3. Amend § 1282.13 by revising paragraphs (b) and (c) to read as follows:

§ 1282.13 Multifamily special affordable housing goal and subgoal.

* * * * *

(b) *Multifamily low-income housing goal.*—(1) For the year 2012, the goal for each Enterprise's purchases of mortgages on multifamily residential housing affordable to low-income families shall be, for Fannie Mae, at least 251,000 dwelling units affordable to low-income families in multifamily residential housing financed by mortgages purchased by that Enterprise, and for Freddie Mac, at least 191,000 such dwelling units.

(2) For the year 2013, the goal for each Enterprise's purchases of mortgages on multifamily residential housing affordable to low-income families shall be, for Fannie Mae, at least 245,000 dwelling units affordable to low-income families in multifamily residential housing financed by mortgages purchased by that Enterprise, and for Freddie Mac, at least 203,000 such dwelling units.

(3) For the year 2014, the goal for each Enterprise's purchases of mortgages on multifamily residential housing affordable to low-income families shall be, for Fannie Mae, at least 223,000 dwelling units affordable to low-income families in multifamily residential housing financed by mortgages purchased by that Enterprise, and for Freddie Mac, at least 181,000 such dwelling units.

(c) *Multifamily very low-income housing subgoal.*—(1) For the year 2012, the subgoal for each Enterprise's purchases of mortgages on multifamily residential housing affordable to very low-income families shall be, for Fannie Mae, at least 60,000 dwelling units affordable to very low-income families

in multifamily residential housing financed by mortgages purchased by that Enterprise, and for Freddie Mac, at least 32,000 such dwelling units.

(2) For the year 2013, the subgoal for each Enterprise's purchases of mortgages on multifamily residential housing affordable to very low-income families shall be, for Fannie Mae, at least 59,000 dwelling units affordable to very low-income families in multifamily residential housing financed by mortgages purchased by that Enterprise, and for Freddie Mac, at least 31,000 such dwelling units.

(3) For the year 2014, the subgoal for each Enterprise's purchases of mortgages on multifamily residential housing affordable to very low-income families shall be, for Fannie Mae, at least 53,000 dwelling units affordable to very low-income families in multifamily residential housing financed by mortgages purchased by that Enterprise, and for Freddie Mac, at least 27,000 such dwelling units.

Dated: June 5, 2012.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2012–14105 Filed 6–8–12; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0602; Directorate Identifier 2009–SW–061–AD]

RIN 2120–AA64

Airworthiness Directives; Schweizer Aircraft Corporation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) for Schweizer Aircraft Corporation (Schweizer) Model 269D and Model 269D Configuration A helicopters. The type certificate for these models is currently held by Sikorsky Aircraft Corporation (Sikorsky). This proposal is prompted by reports of loose horizontal stabilizers and cracks in the stabilizer-support structure for the extruded tailboom. The AD would require inspecting the aft fuselage assembly in the area around the attachment point of the horizontal stabilizer, including the paint, for a crack. This AD also would require inspecting the tailboom interior support structure, and if necessary, installing an inspection panel kit in the aft fuselage assembly, and installing doublers in the stabilizer support brackets. The actions specified by the proposed AD are intended to prevent separation of the horizontal stabilizer from the helicopter and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by August 10, 2012.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

For service information identified in this proposed AD, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT 06614; telephone (800) 562–4409; email *tsslibrary@sikorsky.com;* or at *http://www.sikorsky.com.* You may review copies of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Stephen Kowalski, Aviation Safety Engineer, New York Aircraft Certification Office, Engine & Propeller Directorate, 1600 Stewart Ave. suite 410, Westbury, NY 11590; telephone (516) 228–7327; email *stephen.kowalski@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

This document proposes adopting a new AD for the Schweizer Model 269D and Model 269D Configuration A helicopters, serial numbers 0001 to 0062A, with aft fuselage assembly part number (P/N) 269D3300–1 installed. This proposal is prompted by reports of loose horizontal stabilizers and cracks in the support structure for the extruded tailboom. The actions specified by the proposed AD are intended to prevent separation of the horizontal stabilizer from the helicopter and subsequent loss of control of the helicopter.

FAA's Determination

We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Related Service Information

We have reviewed Schweizer Service Bulletin DB–018.3, dated December 13, 2007 (SB), which specifies inspecting for cracks in the fuselage assemblies and installing an inspection panel kit and stabilizer mount doublers. The Type Certificate for these helicopters transferred from Schweizer to Sikorsky on September 26, 2011.

Proposed AD Requirements

This proposed AD would require:

• Before the first flight of each day, visually inspecting the aft fuselage assembly in the area around the attachment point of the horizontal stabilizer for a crack.

• If there is a crack in the aft fuselage assembly clip, aft bulkhead, or adjacent skins, repairing the crack and either performing a repetitive inspection at intervals not to exceed 200 hours time-in-service (TIS) or replacing the aft fuselage assembly.

• If there is a crack in a longeron, tailboom tube collar or a forward stabilizer bulkhead, replacing the aft fuselage assembly.

• Within 100 hours TIS or three months, whichever occurs first:

○ Removing the horizontal stabilizer, cleaning the horizontal stabilizer mounting brackets, inspecting the mounting brackets for wear greater than 0.002-inch deep, and replacing the mounting bracket if the bracket wear exceeds 0.002-inch deep.

○ Modifying the aft fuselage assembly by installing Inspection Panel kit P/N SA–269DK–035, installing doublers on the forward side of each mounting bracket, inspecting the horizontal stabilizer forward and aft spars for wear in the mounting attachment areas, and replacing the spar if the wear exceeds 0.002-inch deep.

○ Inspecting for rivet interference between the rivet heads and skin on the top surface of the horizontal stabilizer and the tailboom stiffening web near Station 232.4 and replacing the rivets if interference exists.

○ Installing an airworthy horizontal stabilizer using 4 bolts, P/N NAS1304–4, and 4 washers, P/N AN960KD416 or NAS1149D0463K.

• Removing aft fuselage assembly P/N 269D3300–1, and replacing it with aft fuselage assembly P/N 269D3300–35, would be terminating action for the requirements of this AD.

Differences Between This Proposed AD and the Service Information

The Schweizer SB requires contacting the manufacturer if certain damage is found for repair instructions. This AD does not.

Costs of Compliance

We estimate that this proposed AD would affect 18 helicopters. The average labor rate is $85 per work hour. Based on these assessments, we estimate the following costs:

• Daily visual inspection. This would take about 10 minutes for a labor cost of $9. Assuming 365 daily inspections per year, the annual labor cost per helicopter would be about $3,285. The annual cost for the U.S. fleet would total $59,130.

• Internal inspection. This would take two work-hours for a labor cost of $170. Assuming 10 inspections a year, the annual labor cost per helicopter would be $1,700.

• Install inspection panel. This would take 16 work-hours for a labor cost of $1,360. Parts would cost $150 for a cost per helicopter of $1,510.

• Repair damaged longerons, tailboom tube collars, or forward stabilizer bulkhead as needed. This would take 24 work-hours for a labor cost of $2,040. Parts would cost $38,000 for a cost per helicopter of $40,040.

• Repair a crack in the aft fuselage assembly clip, aft bulkhead, or adjacent skins. This would take 24 work-hours for a labor cost of $2,040. Parts would cost $120 for a cost per helicopter of $2,160.

• Repair interference between the rivet heads and skin . This would take 10 work-hours for a labor cost of $850. No parts would be needed.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new Airworthiness Directive

(AD): SCHWEIZER AIRCRAFT CORPORATION HELICOPTERS: Docket No. FAA–2012–0602; Directorate Identifier 2009–SW–061–AD.

(a) Applicability

This AD applies to Schweizer Aircraft Corporation (Schweizer) Model 269D and Model 269D Configuration A helicopters, serial numbers 0001 to 0062A, with aft fuselage assembly part number (P/N) 269D3300–1 installed, certificated in any category.

Note to Applicability: The type certificate for these models is currently held by Sikorsky Aircraft Corporation.

(b) Unsafe Condition

This AD defines the unsafe condition as loose horizontal stabilizers and cracks in the stabilizer support structure for the extruded tailboom, which could result in separation of the horizontal stabilizer from the helicopter and subsequent loss of helicopter control.

(c) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(d) Required Actions

(1) Before the first flight of each day, visually inspect the aft fuselage assembly in the area around the attachment point of the horizontal stabilizer, including the paint, for a crack. If there is a crack, remove the horizontal stabilizer and perform an interior inspection in accordance with Part II: Internal Inspection, paragraphs b. and c., of Schweizer Service Bulletin DB–018.3, dated December 13, 2007 (SB).

(i) If there is a crack in the aft fuselage assembly clip, in the aft bulkhead, or in adjacent skins, repair the crack. Thereafter, at intervals not to exceed 200 hours time-in-service (TIS), remove the horizontal stabilizer and repeat the interior inspection in accordance with Part II: Internal Inspection, paragraphs b. and c., of the SB, or replace the aft fuselage assembly, P/N 269D3300–1,with an airworthy aft fuselage assembly, P/N 269D3300–35.

(ii) If there is a crack in a longeron, tailboom tube collar or a forward stabilizer bulkhead, replace the aft fuselage assembly with an airworthy aft fuselage assembly, P/N 269D3300–35.

(2) Within 100 hours TIS or three months, whichever occurs first:

(i) Remove the horizontal stabilizer, clean the horizontal stabilizer mounting brackets, and inspect the mounting brackets for wear greater than 0.002-inch deep. If the bracket wear exceeds 0.002-inch deep, replace the mounting bracket with an airworthy mounting bracket.

(ii) Modify the aft fuselage assembly by installing Inspection Panel kit P/N SA–269DK–035.

(iii) Install doublers on the forward side of each mounting bracket in accordance with Part III–2, paragraphs e. through i., of the SB.

(iv) Inspect the horizontal stabilizer forward and aft spars for wear in the mounting attachment areas. If the wear exceeds 0.002-inch deep, replace the spar with an airworthy spar.

(v) Inspect for rivet interference between the rivet heads and skin on the top surface of the horizontal stabilizer and the tailboom stiffening web near Station 232.4. If interference exists, replace with airworthy rivets.

(vi) Install an airworthy horizontal stabilizer using 4 bolts, P/N NAS1304–4, and 4 washers, P/N AN960KD416 or NAS1149D0463K.

(3) Removing aft fuselage assembly, P/N 269D3300–1, and replacing it with aft fuselage assembly, P/N 269D3300–35, is terminating action for the requirements of this AD.

(e) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 provided that before operating the helicopter to a location to perform the actions in paragraphs (d)(1) through (d)(3) of this AD, a daily, pre-flight visual inspection is accomplished in accordance with paragraph (d)(1) of this AD.

(f) Alternative Methods of Compliance (AMOC)

(1) The Manager, NYACO, FAA, may approve AMOCs for this AD. Send your proposal to: Stephen Kowalski, Aviation Safety Engineer, New York Aircraft Certification Office, Engine & Propeller Directorate, 1600 Stewart Ave., suite 410, Westbury, NY 11590; telephone (516) 228–7327; email *stephen.kowalski@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

For service information identified in this AD, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT 06614; telephone (800) 562–4409; email *tsslibrary@sikorsky.com;* or at *http://www.sikorsky.com.* You may review a copy of information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 5302, Rotorcraft tailboom.

Issued in Fort Worth, Texas, on May 25, 2012.

Lance T. Gant,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–14037 Filed 6–8–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1167; Directorate Identifier 2011–NM–058–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain Airbus Model A319 and A320 series airplanes. That NPRM proposed to require modification of the off-wing escape slide (OWS) enclosures on both sides. That NPRM was prompted by a report of a torn out aspirator due to the aspirator interfering with the extrusion lip of the OWS enclosure during the initial stage of the deployment sequence. This action revises that NPRM by adding an airplane model to the applicability. We are proposing this AD to prevent both off-wing exits from being inoperative, which, during an emergency, would impair the safe evacuation of occupants, possibly resulting in personal injuries. Since this action imposes an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this proposed AD by July 26, 2012.

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

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

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1167; Directorate Identifier 2011–NM–058–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

We proposed to amend 14 CFR part 39 with an earlier NPRM for the specified products, which was published in the **Federal Register** on November 2, 2011 (76 FR 67625). That earlier NPRM proposed to require actions intended to address the unsafe condition for certain Airbus Model A319 and A320 series airplanes.

Comments

We have considered the following comment received on the earlier NPRM (76 FR 67625, November 2, 2011).

Request To Revise the Applicability of the NPRM (76 FR 67625, November 2, 2011)

Airbus requested we revise the applicability of the NPRM (76 FR 67625, November 2, 2011) to include Model A318 series airplanes, which would match the applicability specified in EASA Airworthiness Directive (AD) 2010–0210, dated October 21, 2010 (corrected October 27, 2010). Airbus stated that the applicability of the EASA AD identifies all airplane models that have been certified with the capability to be fitted with Air Cruisers/Aerazur part number (P/N) D31865–109, –110, –209, or –210 OWS, which are the only OWS affected by the identified unsafe condition.

Airbus added that some airplanes that were delivered with Airbus Modification 30088 and are currently in service could be fitted with one of those four OWS by the time the FAA AD becomes effective, and this explains why Model A318 series airplanes were included in the applicability of the EASA AD despite the fact that no Model A318 series airplane was delivered with an affected OWS. Airbus noted that the reason Model A318 series airplanes were not included in the Airbus service information is because its effectivity is based on aircraft configuration at the time of production delivery.

We concur with the commenter's request. For the reasons provided by the commenter, we have revised paragraph (c) of this supplemental NPRM to include Model A318 series airplanes and to remove the reference to airplanes delivered with Airbus Modification 30088.

Request To Revise Paragraph (h) of the NPRM (76 FR 67625, November 2, 2011)

Airbus noted that paragraph (h) of the NPRM (76 FR 67625, November 2, 2011) is more restrictive than the equivalent paragraphs in the EASA AD.

We agree. We find that paragraph (h) of the NPRM (76 FR 67625, November 2, 2011) need not be more restrictive than that of the EASA AD with regard to the time for allowing spare parts to be installed. We have revised that paragraph to prohibit installation of spare parts ''after accomplishing the modification required by paragraph (g) of this AD.'' However, paragraph (4) of EASA AD 2010–0210, dated October 21, 2010 (corrected October 27, 2010), does not apply to the airplanes identified in the applicability of this supplemental NPRM.

FAA's Determination and Requirements of This Proposed AD

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

Certain changes described above expand the scope of the earlier NPRM (76 FR 67625, November 2, 2011). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 694 products of U.S. registry. We also estimate that it would take about 14 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $825,860, or $1,190 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with

this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

AIRBUS: Docket No. FAA–2011–1167; Directorate Identifier 2011–NM–058–AD.

(a) Comments Due Date

We must receive comments by July 26, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A318–111, –112, –121, and –122 airplanes; A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; and Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; certificated in any category; all manufacturer serial numbers; except for airplanes on which off-wing escape slides (OWS) having part numbers (P/N) D31865–111 and P/N D31865–112 are installed.

(d) Subject

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

(e) Reason

This AD was prompted by a report of a torn out aspirator due to the aspirator interfering with the extrusion lip of the OWS enclosure during the initial stage of the deployment sequence. We are issuing this AD to prevent both off-wing exits from being inoperative, which, during an emergency, would impair the safe evacuation of occupants, possibly resulting in personal injuries.

(f) Compliance

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

(g) Modification

Within 36 months after the effective date of this AD, modify both left-hand and right-hand OWS enclosures, in accordance with the instructions in Airbus Service Bulletin A320–25–1649, dated February 16, 2010.

(h) Parts Installation

After accomplishing the modification required by paragraph (g) of this AD, no person may install an OWS having P/N D31865–109, P/N D31865–110, P/N D31865–209, or P/N D31865–210 on that airplane.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs):

The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product:

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

(j) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0210, dated October 21, 2010 (corrected October 27, 2010); and Airbus Service Bulletin A320–25–1649, dated February 16, 2010; for related information.

Issued in Renton, Washington, on May 31, 2012.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–14068 Filed 6–8–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0223]

RIN 1625–AA00

Safety Zone; 2012 Ironman U.S. Championship Swim, Hudson River, Fort Lee, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the navigable waters of the Hudson River in the vicinity of Englewood Cliffs and Fort Lee, NJ for the 2012 Ironman U.S. Championship swim event. This temporary safety zone is necessary to protect the maritime public and event participants from the hazards associated with swim events. This proposed rule is intended to restrict all vessels and persons from entering into, transiting through, mooring, or anchoring within the safety zone unless authorized by the Captain of the Port (COTP) New York or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before July 11, 2012.

Requests for public meetings must be received by the Coast Guard on or before July 2, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0223 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov*.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Ensign Kimberly Farnsworth, Coast Guard; Telephone

(718) 354–4163, email *Kimberly.A.Farnsworth@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0223), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2012–0223'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0223'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not plan now to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1, which collectively authorizes the Coast Guard to define regulatory safety zones.

The COTP has determined that swim events in close proximity to marine traffic pose significant risk to public safety and property. The combination of increased numbers of recreation vessels, congested waterways, and large numbers of swimmers in the water has the potential to result in serious injuries or fatalities. In order to protect the safety of all waterway users including event participants and spectators, this proposed temporary rule would establish a temporary safety zone for the duration of the event.

Discussion of Proposed Rule

World Triathlon Corporation and New York City Triathlon is sponsoring the 2012 Ironman U.S. Championship that includes a 2.4 mile swim event in the Hudson River in the vicinity of Englewood Cliffs and Fort Lee, New Jersey. This swim event poses significant risk to participants, spectators, and the boating public because of the number of swimmers, kayakers, and recreational vessels that are expected in the area of this event.

The swim event will take place from approximately 6:50 a.m. until 9:40 a.m. on August 11, 2012. The proposed safety zone will be enforced from 6:00 a.m. until 10:00 a.m. on that day. During this time, there will be an estimated 2,500 swimmers in the water. Swimmers will enter the water via a spud barge in timed increments. The swim course is straight north to south, approximately 100 yards off of the New Jersey shoreline, west of the shipping channel, and will be designated with buoys every 100 meters.

This rule is being proposed to provide for the safety of life on navigable waters during the event and to give the marine community the opportunity to comment on the proposed zone location, size, and length of time the zone will be activated.

The final rule will not be published 30 days before the event and the effective date of this proposed rule as is generally required by 5 U.S.C. 553(d)(3). The Coast Guard will accept comments on this shortened period and address them in the final rule.

Regulatory Analyses

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

Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, as supplemented by Executive Order 13563, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This proposed safety zone will be of limited duration, at an off peak time, and vessels may transit in portions of the affected waterway except for those areas covered by the proposed regulated areas. Furthermore, vessels may be

authorized to transit this zone with the permission of the COTP New York or the designated representative.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in the restricted portion of the Hudson River during the effective period.

The safety zone will not have significant economic impact on a substantial number of small entities for the following reasons: Vessels will only be restricted from safety zone area for a short duration; vessels may transit in portions of the affected waterway except for those areas covered by the proposed regulated area; and notifications will be made to the local maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners well in advance of the event.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Ensign Kimberly Farnsworth, Coast Guard Sector New York Waterways Management Division; telephone 718–354–4163, email *Kimberly.A.Farnsworth@uscg.mil*. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is

available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of a temporary safety zone on a portion of the Hudson River and appears to be categorically excluded, under figure 2–1, paragraph (34)(g), the Commandant Instruction.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREA

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

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

2. Add § 165.T01–0223 to read as follows:

§ 165.T01–0223 Safety Zone; 2012 Ironman US Championship Swim, Hudson River, Fort Lee, NJ.

(a) *Regulated Area.* All navigable waters of the Hudson River bound by a line drawn from the shoreline of the Palisades Interstate Parkway, approximately 2.8 NM North of the George Washington Bridge, Fort Lee, New Jersey, approximate position 40°53′44.93″ N 073°56′11.79″ W, east to a point 515 yards offshore, approximate position 40°53′40.00″ N 073°55′53.00″ W, south to a position 242 yards offshore, approximate position 40°51′30.00″ N 073°57′09.00″ W, west to the south corner of Ross Dock, Fort Lee, New Jersey, approximate position 40°51′33.77″ N 073°57′16.00″ W, then back to the point of origin.

(b) *Effective Period.* This rule will be effective from 6:00 a.m. to 10:00 a.m. on August 11, 2012.

(c) *Regulations.* (1) No vessels, except for participating safety vessels, will be allowed to transit the safety zone without the permission of the COTP.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(3) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP or the designated representative via VHF channel 16 or 718–354–4353 (Coast Guard Sector New York Command Center) to obtain permission to do so.

Dated: May 17, 2012.

G.P. Hitchen,

Captain, U.S. Coast Guard, Acting Captain of the Port New York.

[FR Doc. 2012–14126 Filed 6–8–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0343; FRL–9684–2]

Approval and Promulgation of Implementation Plans; Alabama; 110(a)(1) and (2) Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) revisions, submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), as demonstrating that the State meets the requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or the Act) for the 1997 annual and 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an ''infrastructure'' SIP. Alabama certified that the Alabama SIP contains provisions that ensure the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS are implemented, enforced, and maintained in Alabama (hereafter referred to as ''infrastructure submission''). EPA is proposing to determine that Alabama's infrastructure submissions, provided to EPA on July 25, 2008, and on September 23, 2009, addressed all the required infrastructure elements for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS with the exception of section 110(a)(2)(E)(ii) which will be addressed in a separate action.

DATES: Written comments must be received on or before July 11, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0343, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.,*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2012–0343,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2012–0343. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information

about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

On July 18, 1997 (62 FR 36852), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (μg/m³) based on a 3-year average of annual mean $PM_{2.5}$ concentrations. At that time, EPA also established a 24-hour NAAQS of 65 μg/m³. *See* 40 CFR 50.7. On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 μg/m³ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a new 24-hour NAAQS of 35 μg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations. By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised NAAQS. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs to EPA no later than July 2000 for the 1997 annual $PM_{2.5}$ NAAQS, no later than October 2009 for the 2006 24-hour $PM_{2.5}$ NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA's failure to issue findings of failure to submit related to the ''infrastructure'' requirements for the 1997 annual $PM_{2.5}$ NAAQS. On March 10, 2005, EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 $PM_{2.5}$ NAAQS by October 5, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency received from each state for the 1997 $PM_{2.5}$ NAAQS as of October 3, 2008.

On October 22, 2008, EPA published a final rulemaking entitled, ''Completeness Findings for Section 110(a) State Implementation Plans Pertaining to the Fine Particulate Matter ($PM_{2.5}$) NAAQS'' making a finding that each state had submitted or failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 $PM_{2.5}$ NAAQS (*See* 73 FR 62902). For those states that did receive findings, the findings of failure to submit for all or a portion of a state's implementation plan established a 24-month deadline for EPA to promulgate a Federal Implementation Plan to address the outstanding SIP elements unless, prior to that time, the affected states submitted, and EPA approved, the required SIPs.

The findings that all or portions of a state's submission are complete established a 12-month deadline for EPA to take action upon the complete SIP elements in accordance with section 110(k). Alabama's infrastructure submissions were received by EPA on July 25, 2008, for the 1997 annual $PM_{2.5}$ NAAQS, and on September 23, 2009, for the 2006 24-hour $PM_{2.5}$ NAAQS. The submissions were determined to be complete on January 25, 2009, and March 23, 2010, respectively. Alabama was among other states that did not receive findings of failure to submit because it had provided a complete submission to EPA to address the infrastructure elements for the 1997 $PM_{2.5}$ NAAQS by October 3, 2008.

On July 6, 2011, WildEarth Guardians and Sierra Club filed an amended complaint related to EPA's failure to take action on the SIP submittal related to the ''infrastructure'' requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. On October 20, 2011, EPA entered into a consent decree with WildEarth Guardians and Sierra Club which required EPA, among other things, to complete a **Federal Register** notice of the Agency's final action either approving, disapproving, or approving in part and disapproving in part the Alabama 2006 24-hour $PM_{2.5}$ NAAQS Infrastructure SIP submittal addressing the applicable requirements of sections 110(a)(2)(A)–(H), (J)–(M), except for section 110(a)(2)(C) the nonattainment area requirements and section 110(a)(2)(D)(i) interstate transport requirements, by September 30, 2012.

Today's action is proposing to approve Alabama's infrastructure submissions for both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS for sections 110(a)(2)(A)–(H), (J)–(M)[1], except for section 110(a)(2)(C) nonattainment area requirements, section 110(a)(2)(D)(i) interstate transport requirements, and sub-element (ii) of section 110(a)(2)(E). Section 110(a)(2)(E)(ii) will be addressed in a separate action. Today's action is not approving any specific rule, but rather proposing that Alabama's already approved SIP meets certain CAA requirements.

II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools

[1] As discussed below in Section IV of this proposed rule, EPA's proposed action to approve infrastructure elements 110(a)(2)(C) and 110(a)(2)(J) respecting PSD requirements, is contingent upon EPA first taking action to approve a relevant SIP revision submitted by Alabama on May 2, 2011.

available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, some states may need to adopt language specific to the $PM_{2.5}$ NAAQS to ensure that they have adequate SIP provisions to implement the $PM_{2.5}$ NAAQS.

Section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are listed below [2] and in EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8–Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' and September 25, 2009, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 24–Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards.''

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.[3]
- 110(a)(2)(D): Interstate transport.[4]
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.[5]
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

III. Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.[6] Those Commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction (SSM) at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions; and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address separately: (i) Existing provisions for minor source new source review (NSR) programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source NSR''); and (ii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth. It is important to emphasize that EPA is taking the same position with respect to these four substantive issues in this action on the infrastructure SIPs for the 1997 and 2006 $PM_{2.5}$ NAAQS from Alabama.

EPA intended the statements in the other proposals concerning these four issues merely to be informational and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a re-approval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion,

[2] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) but does provide detail on how Alabama's SIP addresses 110(a)(2)(C).

[3] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[4] Today's proposed rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 and 2006 $PM_{2.5}$ NAAQS. Interstate transport requirements were formerly addressed by Alabama consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the D.C. Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina* v. *EPA,* 531 F.3d 896 (DC Cir. 2008). Prior to this remand, EPA took final action to approve Alabama SIP revision, which was submitted to comply with CAIR. *See* 72 FR 55659 (October 1, 2007). In so doing, Alabama CAIR SIP revision addressed the interstate transport provisions in section 110(a)(2)(D)(i) for the 1997 and 2006 $PM_{2.5}$ NAAQS. In response to the remand of CAIR, EPA has recently finalized a new rule to address the interstate transport of nitrogen oxides and sulfur oxides in the eastern United States. *See* 76 FR 48208 (August 8, 2011) (''the Transport Rule''). That rule was recently stayed by the D.C. Circuit Court of Appeals. EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

[5] This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' and the September 25, 2009, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards,'' but as mentioned above is not relevant to today's proposed rulemaking.

[6] *See* Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit re-approval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on the infrastructure SIP for Alabama.

Unfortunately, the Commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately from actions on infrastructure SIP submissions.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPs are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, NSR permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[7] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[8]

Notwithstanding that section 110(a)(2) provides that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[9] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[10] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's implementation plans. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[11]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also

[7] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[8] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's implementation plan contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. *See* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase ''contribute significantly to nonattainment'').

[9] *See Id.,* 70 FR 25162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[10] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. *See* ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[11] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and $PM_{2.5}$ NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[12] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.''[13] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.''[14] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.''[15] However, for the one exception to that general assumption (*i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS), EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each state would work with its corresponding EPA regional office to refine the scope of a state's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the state's implementation plans for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS.[16] In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, but were germane to these SIP submissions for the 2006 $PM_{2.5}$ NAAQS (e.g., the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and $PM_{2.5}$ NAAQS). Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals for other states mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions. The same holds true for this action on the infrastructure SIPs for Alabama.

EPA believes that this approach to the infrastructure SIP requirement is reasonable because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for

[12] *See* ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance'').

[13] *Id.,* at page 2.

[14] *Id.,* at attachment A, page 1.

[15] *Id.,* at page 4. In retrospect, the concerns raised by the Commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

[16] *See* ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[17] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[18] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[19]

IV. What is EPA's analysis of how Alabama addressed the elements of sections 110(a)(1) and (2) ''infrastructure'' provisions?

Alabama's infrastructure submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A): *Emission limits and other control measures:* Regulation 335–3–1–.03—*Ambient Air Quality Standards,* generally authorizes the ADEM to adopt rules for the control of air pollution in order to comply with NAAQS, including those necessary to obtain EPA approval under section 110 of the CAA. This regulation along with Regulation 335–3–1–.06—*Compliance Schedule,* set the schedule for compliance with States Air Pollution Control rules and regulations to be consistent with the requirements of the CAA. Regulation 335–3–1–.05—*Sampling and Testing Methods,* details the authority and means with which ADEM can require testing and emissions verification. EPA has made the preliminary determination that the provisions contained in these regulations and Alabama's practices are adequate to protect the $PM_{2.5}$ annual and 24-hour NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (September 20, 1999), and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having deficient SSM provisions to take steps to correct it as soon as possible.

Additionally, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) *Ambient air quality monitoring/data system:* Alabama's infrastructure submissions cite Regulation 335–3–1–.04—*Monitoring, Records, and Reporting,* which requires sources to submit emissions monitoring reports as prescribed by the Director. Pursuant to this regulation, these entities collect air monitoring data, quality assure the results, and report the data. Regulation 335–3–1–.05—*Sampling and Testing Methods,* details the authority and means with which ADEM can require testing and emissions verification. Regulation 335–3–14–.04—*Air Permits Authorizing Construction in Clean Air: Prevention of Significant Deterioration Permitting (PSD),* describes the State's use of ambient air quality monitoring data for purposes of permitting new facilities and assessing major modifications to existing facilities. Annually, EPA approves the ambient air monitoring network plan for the state agencies. On July 1, 2011, Alabama submitted their plan to EPA. On November 7, 2011, EPA approved Alabama's monitoring network plan. Alabama's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2012–0343. EPA has made the preliminary determination that Alabama's SIP and practices are adequate for the ambient air quality monitoring and data systems related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

3. 110(a)(2)(C) *Program for enforcement of control measures including review of proposed new sources:* Regulation 335–3–14–.04—*Air Permits Authorizing Construction in Clean Air Areas: Prevention of Significant Deterioration Permitting (PSD),* describes the permit requirements for new major sources or major modifications of existing sources in areas classified as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the CAA. This ensures that sources in areas attaining the NAAQS at the time of designations prevent any significant deterioration in air quality. Regulation 335–3–14–.05—*Air Permits Authorizing Construction in or Near Nonattainment Areas,* sets the permitting requirements for areas in or around nonattainment areas. Additionally, on May 2, 2011, Alabama submitted a SIP revision to its NSR/PSD and nonattainment new source review (NNSR) programs. Alabama's May 2, 2011, SIP revision incorporates NSR provisions for $PM_{2.5}$ as amended in EPA's 2008 NSR $PM_{2.5}$ Implementation Rule (hereafter referred to as the ''NSR $PM_{2.5}$ Rule'') into the Alabama SIP. In the May 2, 2011, SIP revision, Alabama includes revisions to Regulation 335–3–

[17] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21639 (April 18, 2011).

[18] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. *See* ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. *See* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[19] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). *See* 75 FR 42342, 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

14, *Air Permits,* that address the infrastructure requirements (C) and (J). EPA is taking action of Alabama's May 2, 2011, submission in a rulemaking separate from today's action. Final action on today's proposed approval of infrastructure requirements (C) and (J), however, is conditioned upon EPA first taking action to approve Alabama's May 2, 2011, submission into the SIP.

In this action, EPA is proposing to approve Alabama's infrastructure SIP for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. EPA is not proposing to approve or disapprove the State's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

EPA has made the preliminary determination that Alabama's SIP and practices are adequate for program enforcement of control measures including review of proposed new sources related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Final approval of this rule is contingent upon the Agency first taking final action to approve Alabama's May 2, 2011, $PM_{2.5}$ NSR Update.

4. 110(a)(2)(D)(ii) *Interstate and International transport provisions:* Regulation 335–3–14.04—*Air Permits Authorizing Construction in Clean Air Areas: PSD,* describes how Alabama will notify neighboring states of potential impacts from new or modified sources. In addition, Alabama does not have any pending obligation under sections 115 and 126 of the CAA. EPA has made the preliminary determination that Alabama's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

5. 110(a)(2)(E) *Adequate resources:* Section 110(a)(2)(E) requires that each implementation plan provide (i) necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the State comply with the requirements respecting State Boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provisions. As with the remainder of the infrastructure elements addressed by this notice, EPA is proposing to approve Alabama's SIP as meeting the requirements of sub-elements 110(a)(2)(E)(i) and (iii). With respect to 110(a)(2)(E)(ii) (regarding state boards), this sub-element will be addressed in a separate action. EPA's rationale respecting each sub-element is described in turn below.

In support of EPA's proposal to approve sub-elements 110(a)(2)(E)(i) and (iii), ADEM's infrastructure submissions demonstrate that it is responsible for promulgating rules and regulations for the NAAQS, emissions standards general policies, a system of permits, fee schedules for the review of plans, and other planning needs. As evidence of the adequacy of ADEM's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to Alabama on March 8, 2012, outlining 105 grant commitments and current status of these commitments for fiscal year 2011. The letter EPA submitted to Alabama can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2012–0343. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues in relation to the SIP for fiscal year 2011, therefore, Alabama's grants were finalized and closed out. EPA has made the preliminary determination that Alabama has adequate resources for implementation of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. In addition, the requirements of 110(a)(2)(E)(i) and (iii) are met when EPA performs a completeness determination for each SIP submittal. This determination ensures that each submittal provides evidence that adequate personnel, funding, and legal authority under State Law has been used to carry out the state's implementation plan and related issues. Alabama's authority is included in all prehearings and final SIP submittal packages for approval by EPA. EPA has made the preliminary determination that Alabama has adequate resources for implementation of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

Section 110(a)(2)(E)(ii) requires that the state comply with section 128 of the CAA. Section 128 requires that: (1) The majority of members of the state board or body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and (2) any potential conflicts of interest by such board or body, or the head of an executive agency with similar powers be adequately disclosed. As stated above, sub-element 110(a)(2)(E)(ii) is not to be acted upon by EPA at this time and will be addressed in a separate action.

6. 110(a)(2)(F) *Stationary source monitoring system:* The Alabama infrastructure submission describes how the major source and minor source emission inventory programs collect emission data throughout the State and ensure the quality of such data. *See* Regulations 335–3–1—*General Provisions.* Specifically, 335–3–1–.04—*Monitoring, Records, and Reporting,* 335–3–1–.07—*Maintenance and Malfunctioning of Equipment; Reporting,* and 335–3–1–.15—*Emissions Inventory Reporting Requirements,* all address portions of this requirement.

Additionally, Alabama is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Alabama made its latest update to the NEI on December 28, 2011. EPA compiles the emissions

data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that Alabama's SIP and practices are adequate for the stationary source monitoring systems related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

7. 110(a)(2)(G) *Emergency power:* The Alabama SIP contains provisions in Regulation 335–3–2—*Air Pollution Emergency,* for the identification of air pollution emergency episodes. Episode criteria and emissions reduction plans are also covered in this regulation. These criteria have previously been approved by EPA. On September 25, 2009, EPA released the guidance entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particulate ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS).'' This guidance clarified that ''to address the section 110(a)(2)(G) element, states with air quality control regions identified as either Priority I, IA, or Priority II by the 'Prevention of Air Pollution Emergency Episodes' rule at 40 CFR 51.150, must develop emergency episode contingency plans.'' EPA's September 25, 2009, guidance also states that ''until the Agency finalized changes to the emergency episode regulation to establish for $PM_{2.5}$ specific levels for classifying areas as Priority I, IA, or II for $PM_{2.5}$, and to establish a significant harm level (SHL)* * *,'' it recommends that states with a 24-Hour $PM_{2.5}$ concentration above 140 $\mu g/m^3$ (using the most recent three years of data) develop an emergency episode plan. For states where this level has not been exceeded, the state can certify that it has appropriate general emergency powers to address $PM_{2.5}$ related episodes, and that no specific emergency episode plans are needed at this time. On September 18, 2008, ADEM submitted a letter to EPA verifying that it is a Class III Priority Area and is exempt from adopting emergency episode plan for $PM_{2.5}$ NAAQS. EPA has made the preliminary determination that Alabama's SIP and practices are adequate for emergency powers related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

8. 110(a)(2)(H) *Future SIP revisions:* As previously discussed, ADEM is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS. Alabama has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the PM NAAQS. Specific to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, Alabama's submissions have included:

- May 13, 2009, Birmingham 1997 Annual $PM_{2.5}$ Attainment Demonstration;
- July 31, 2009, Jackson County, Alabama $PM_{2.5}$ Attainment Demonstration;
- June 17, 2010, Birmingham 2006 24-hour $PM_{2.5}$ Redesignation Request and Maintenance Plan;
- May 2, 2011, Birmingham 1997 Annual $PM_{2.5}$ Redesignation Request and Maintenance Plan; and,
- May 2, 2011, PSD/NSR.

EPA has made the preliminary determination that Alabama's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

9. 110(a)(2)(J) (121 consultation) *Consultation with government officials:* Alabama's Regulation 335–3–1–.03—*Ambient Air Quality Standards,* as well as its Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding Federal Land Managers), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. Specifically, Alabama adopted state-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development. Required partners covered by Alabama's consultation procedures include federal, state and local transportation and air quality agency officials. These consultation and participation procedures have been approved into the Alabama SIP as the non-regulatory provisions: ''Alabama Interagency Transportation Conformity Memorandum of Agreement'' and ''Conformity SIP for Birmingham and Jackson County.'' These provisions were approved by EPA on May 11, 2000 and March 26, 2009, respectively. *See* 65 FR 30362 and 74 FR 13118. EPA has made the preliminary determination that Alabama's SIP and practices adequately demonstrate consultation with government officials related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

10. 110(a)(2)(J) (127 public notification) *Public notification:* The State's emergency episode provisions, discussed above, provide for public notification when air pollution episodes occur. Furthermore, Alabama maintains a public Web site on which daily air quality index forecasts are posted for the Birmingham, Huntsville, Mobile, and Columbus areas. This Web site can be accessed at: *http://adem.alabama.gov/programs/air/airquality.cnt.* EPA has made the preliminary determination that Alabama's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

11. 110(a)(2)(J) (PSD) *PSD and visibility protection:* Alabama demonstrates its authority to regulate new and modified sources of PM to assist in the protection of air quality in Alabama. Regulation 335–3–14–.04—*Air Permits Authorizing Construction in Clean Air Areas: Prevention of Significant Deterioration Permitting (PSD),* describes the permit requirements for new major sources or major modifications of existing sources in areas classified as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the CAA. This ensures that sources in areas attaining the NAAQS at the time of designations prevent any significant deterioration in air quality. Regulation 335–3–14–.05—*Air Permits Authorizing Construction in or Near Nonattainment Areas,* sets the permitting requirements for areas in or around nonattainment areas. As with infrastructure element 110(a)(2)(C), infrastructure element 110(a)(2)(J) also requires compliance with applicable provisions of the PSD program described in part C of the Act. Accordingly, the anticipated EPA action on the May 2, 2011, SIP revision, is a prerequisite to today's proposed action to approve the State's infrastructure element 110(a)(2)(J). See the discussion for element 110(a)(2)(C) above for a description of the pending revision to the Alabama SIP. The May 2, 2011, SIP revision, addresses requisite requirements of infrastructure element 110(a)(2)(J) (PSD and visibility protection), therefore, today's action to propose approval of infrastructure SIP element 110(a)(2)(J) (PSD and visibility protection) is contingent upon EPA taking final action to approve the May 2, 2011, SIP revision, into the Alabama SIP. Final action regarding today's proposed approval of infrastructure SIP element 110(a)(2)(J) (PSD and visibility protection) will not occur prior to final approval of the May 2, 2011, SIP revision.

With regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the Act (which includes sections 169A and

169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, EPA finds that there is no new visibility obligation ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. This would be the case even in the event a secondary $PM_{2.5}$ NAAQS for visibility is established, because this NAAQS would not affect visibility requirements under part C. EPA has made the preliminary determination that Alabama's SIP and practices adequately demonstrate the State's ability to implement PSD programs and to provide for visibility protection related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

12. 110(a)(2)(K) *Air quality and modeling/data:* Regulation 335–3–14–.04—*Air Permits Authorizing Construction in Clean Air Areas: PSD* Permitting, provides Alabama with the authority to conduct air quality modeling and report the results of such modeling to EPA. This regulation demonstrates that Alabama has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA has made the preliminary determination that Alabama's SIP and practices adequately demonstrate the State's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

13. 110(a)(2)(L) *Permitting fees:* Alabama addresses the review of construction permits as previously discussed in 110(a)(2)(C). Permitting fees are collected through the state's title V fees program, which has been federally approved, and pursuant to State regulation 335–1–7—*Air Division Operating Permit Fees.* EPA has made the preliminary determination that Alabama's SIP and practices adequately provide for permitting fees related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

14. 110(a)(2)(M) *Consultation/participation by affected local entities:* ADEM coordinates with local governments affected by the SIP. Alabama's SIP also includes a description of the public participation process for SIP development. Alabama has consulted with local entities for the development of transportation conformity and has worked with the Federal Land Managers as a requirement of its regional haze rule. More specifically, Alabama adopted State-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development and the requirements that link transportation planning and air quality planning in nonattainment and maintenance areas. These consultation and participation procedures have been approved in the Alabama SIP as the non-regulatory provisions: ''Alabama Interagency Transportation Conformity Memorandum of Agreement'' and ''Conformity SIP for Birmingham and Jackson County.'' These provisions were approved on May 11, 2000 and March 26, 2009, respectively. *See* 65 FR 30362 and 74 FR 13118. Required partners covered by Alabama's consultation procedures include federal, state and local transportation and air quality agency officials. The state and local transportation agency officials are most directly impacted by transportation conformity requirements and are required to provide public involvement for their activities including the analysis demonstrating how they meet transportation conformity requirements. EPA has made the preliminary determination that Alabama's SIP and practices adequately demonstrate consultation with affected local entities related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

V. Proposed Action

As described above, ADEM has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, and September 25, 2009, guidance to ensure that the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS are implemented, enforced, and maintained in Alabama. EPA is proposing to approve Alabama's infrastructure submissions, provided to EPA on July 25, 2008, and on September 23, 2009, with the exception of sub-element 110(a)(2)(E)(ii) which will be addressed in a separate action. With the exception of sub-elements 110(a)(2)(E)(ii), EPA is proposing to determine that Alabama's infrastructure submission, provided to EPA on July 25, 2008, addressed all the required infrastructure elements for the 1997 annual $PM_{2.5}$ NAAQS and on September 23, 2009, addressed all the required infrastructure elements for the 2006 24-hour $PM_{2.5}$ NAAQS. As noted above, final approval of PSD-related elements with regards to section 110(a)(2)(C) and 110(a)(2)(J) of this proposed rule is contingent upon the Agency first taking final action to approve Alabama's May 2, 2011, $PM_{2.5}$ NSR Update.

VI. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: May 31, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–14160 Filed 6–8–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0370; FRL–9685–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Pittsburgh-Beaver Valley Nonattainment Area Determinations of Attainment of the 1997 Annual Fine Particulate Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make two determinations regarding the Pittsburgh-Beaver Valley fine particulate matter ($PM_{2.5}$) nonattainment area (hereafter referred to as ''the Pittsburgh Area'' or ''the Area''). First, EPA is proposing to determine that the Area has attained the 1997 annual $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS). This proposed determination of attainment is based upon complete, quality-assured and certified ambient air monitoring data for the 2008–2010 period and data available to date for 2011, showing that the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. If EPA finalizes this proposed determination of attainment, the requirements for the Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to the attainment of the standard shall be suspended for so long as the Area continues to attain the annual $PM_{2.5}$ NAAQS. EPA is also proposing to determine, based on quality-assured and certified monitoring data for the 2007–2009 monitoring period, that the Area has attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010. These actions are being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before July 11, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0370 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: Mastro.donna@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0370, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2012–0370. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814–2038, or by email at *velez-rosa.emlyn@epa.gov.*

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

I. What are the actions EPA is proposing?
II. What is the background of these actions?
III. What is EPA's analysis of the relevant air quality data?
IV. What are the effects of these actions?
V. Statutory and Executive Order Reviews

I. What are the actions EPA is proposing?

In accordance with section 179(c)(1) of the CAA, 42 U.S.C. 7509(c)(1), and 40 CFR 51.1004(c), EPA is proposing to determine that the Pittsburgh Area has attained the 1997 annual $PM_{2.5}$ NAAQS. The proposal is based upon quality-assured and certified ambient air monitoring data for the 2008–2010 monitoring periods and data available to date for 2011 that show that the Pittsburgh Area attained the 1997 annual $PM_{2.5}$ NAAQS. EPA is also proposing to determine, in accordance with EPA's $PM_{2.5}$ Implementation Rule of April 25, 2007 (72 FR 20664), that the Pittsburgh Area has attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010, based upon quality-assured and certified ambient air monitoring data for the 2007–2009 monitoring periods.

II. What is the background of these actions?

On July 18, 1997, EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter ($\mu g/m^3$) (hereafter referred to as ''the annual $PM_{2.5}$ NAAQS'' or ''the annual standard''), based on a 3-year average of annual mean $PM_{2.5}$ concentrations (62 FR 36852). At that time, EPA also established a 24-hour standard of 65 $\mu g/m^3$. *See* 40 CFR 50.7. The 1997 $PM_{2.5}$ standards were based on significant evidence and numerous health studies demonstrating that serious health effects

are associated with exposures to particulate matter.

The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the CAA. On January 5, 2005, EPA published its air quality designations and classifications for the 1997 $PM_{2.5}$ NAAQS based upon air quality monitoring data for calendar years 2001–2003 (70 FR 944). These designations became effective on April 5, 2005. The Pittsburgh Area was designated nonattainment for the annual $PM_{2.5}$ NAAQS during this designations process. The Pittsburgh Area is comprised of the counties of Beaver, Butler, Washington, and Westmoreland in their entireties, and portions of Allegheny, Armstrong, Greene, and Lawrence Counties. *See* 40 CFR 81.339 (Pennsylvania).

On October 17, 2006, EPA retained the annual $PM_{2.5}$ NAAQS at 15.0 μg/m³ based on a 3-year average of annual mean $PM_{2.5}$ concentrations and promulgated a new 24-hour standard of 35 μg/m³ (the ''2006 24-hour standard'') based on a 3-year average of the 98th percentile of 24-hour concentrations (71 FR 61144). On November 13, 2009, EPA designated the Pittsburgh Area as attainment for the 2006 24-hour standard (74 FR 58688). In that action, EPA also clarified the designations for the $PM_{2.5}$ NAAQS promulgated in 1997 stating that the Pittsburgh Area was attainment for the 1997 24-hour standard. Today's action, however, does not address either the 1997 or the 2006 24-hour standard.

In response to legal challenges of the annual standards promulgated in 2006, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded this standard to EPA for further consideration. *See American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (D.C. Cir. 2009). However, given that the 1997 and 2006 annual standards are identical, attainment of the 1997 annual standard would also indicate attainment of the remanded 2006 annual standard.

On April 25, 2007, EPA promulgated its $PM_{2.5}$ implementation rule, codified at 40 CFR part 51, subpart Z, in which EPA provided guidance for state and tribal plans to implement the 1997 $PM_{2.5}$ NAAQS (72 FR 20664). This rule, at 40 CFR 51.1004(c), specifies some of the regulatory consequences of attaining the standard, as discussed later.

III. What is EPA's analysis of the relevant air quality data?

Today's proposed rulemaking action determines that the Pittsburgh Area has met the annual $PM_{2.5}$ NAAQS, based on the most recent three years of quality-assured data, and that the Area attained the annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010. Under EPA regulations at 40 CFR 50.7, the annual primary and secondary $PM_{2.5}$ standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, appendix N, is less than or equal to 15.0 μg/m³ at all relevant monitoring sites in the subject area.

EPA has determined that the $PM_{2.5}$ monitoring network for the Pittsburgh Area is adequate. First, the number of monitors in the Area meets the minimum regulatory requirements given in 40 CFR part 58, appendix D. Second, the monitoring is in accordance with the monitoring plans that have been reviewed and approved by EPA. EPA has reviewed the quality-assured, quality-controlled, certified ambient air monitoring data recorded in the EPA's AQS database for $PM_{2.5}$ for the Pittsburgh Area from 2007–2009 and 2009–2010, consistent with the requirements contained in 40 CFR part 50. Preliminary $PM_{2.5}$ data for 2011, which is not yet quality-assured and quality-controlled, was also reviewed.

Table 1 shows the design values (i.e., the 3-year average of annual mean $PM_{2.5}$ concentrations) for the annual $PM_{2.5}$ NAAQS for the Pittsburgh Area monitors for the years 2007–2009. Table 2 shows the design values for the annual $PM_{2.5}$ NAAQS for the Pittsburgh Area monitors for the years 2008–2010. Table 3 shows the air quality preliminary data available to date for 2011. EPA's review of these data indicates that the Pittsburgh Area has met the annual $PM_{2.5}$ NAAQS and that the Area attained the annual $PM_{2.5}$ standard by its attainment date of April 5, 2010.

TABLE 1—PITTSBURGH AREA 2007–2009 ANNUAL $PM_{2.5}$ DATA

[In μg/m³]

County	Site ID	Site name	2007 Annual mean	2008 Annual mean	2009 Annual mean	2007–2009 Design value
Allegheny	42–003–0067	South Fayette	13.5	10.8	10.8	11.7
Allegheny	42–003–0093	North Park	13.0	(*)	9.6	11.3
Allegheny	42–003–0095	Moon	13.6	(*)	9.4	11.5
Allegheny	42–003–1008	Harrison	15.1	13.4	12.7	13.7
Allegheny	42–003–1301	North Braddock	16.6	14.1	12.1	14.3
Beaver	42–007–0014	Beaver Falls	15.9	13.7	13.0	14.2
Washington	42–125–0005	Charleroi	15.6	13.0	12.6	13.7
Washington	42–125–0200	Washington	14.8	12.3	11.1	12.7
Washington	42–125–5001	Florence	13.8	11.3	12.2	12.4
Westmoreland	42–129–0008	Greensburg	15.3	12.7	13.5	13.8

* Incomplete data.

TABLE 2—PITTSBURGH AREA 2008–2010 ANNUAL $PM_{2.5}$ DATA

[in μg/m³]

County	Site ID	Site name	2008 Annual mean	2009 Annual mean	2010 Annual mean	2008–2010 Design value
Allegheny	42–003–0067	South Fayette	10.8	10.8	11.7	11.1
Allegheny	42–003–0093	North Park	(*)	9.6	10.5	10.1
Allegheny	42–003–0095	Moon	(*)	9.4	11.5	10.5
Allegheny	42–003–1008	Harrison	13.4	12.7	13.0	13.0
Allegheny	42–003–1301	North Braddock	14.1	12.1	13.7	13.3

TABLE 2—PITTSBURGH AREA 2008–2010 ANNUAL $PM_{2.5}$ DATA—Continued

[in μg/m³]

County	Site ID	Site name	2008 Annual mean	2009 Annual mean	2010 Annual mean	2008–2010 Design value
Beaver	42–007–0014	Beaver Falls	13.7	13.0	13.2	13.1
Washington	42–125–0005	Charleroi	13.0	12.6	12.5	12.9
Washington	42–125–0200	Washington	12.3	11.1	12.1	11.8
Washington	42–125–5001	Florence	11.3	12.2	8.9	10.8
Westmoreland	42–129–0008	Greensburg	12.7	13.5	14.0	13.4

* Incomplete data.

TABLE 3—PITTSBURGH AREA 2011 PRELIMINARY ANNUAL $PM_{2.5}$ DATA

[in μg/m³]

County	Site ID	Site name	2011 Annual mean
Allegheny	42–003–0067	South Fayette	10.6
Allegheny	42–003–0093	North Park	*9.0
Allegheny	42–003–0095	Moon	**
Allegheny	42–003–1008	Harrison	*11.6
Allegheny	42–003–1301	North Braddock	*12.3
Beaver	42–007–0014	Beaver Falls	11.7
Washington	42–125–0005	Charleroi	*12.0
Washington	42–125–0200	Washington	10.8
Washington	42–125–5001	Florence	5.9
Westmoreland	42–129–0008	Greensburg	*13.7

* Incomplete data.
** No data available, since the monitor's removal in January 1, 2011.

While most of the monitoring data satisfy the data completeness requirement, monitoring sites ID 42–003–0093 (North Park) and ID 42–003–0095 (Moon) have missing data for the year 2008. To determine if the two monitors are in attainment with the annual $PM_{2.5}$ NAAQS during the monitoring periods 2007–2009 and 2008–2010, EPA has addressed the missing data by applying a recently developed statistical procedure. The diagnostic design values for the North Park and Moon monitors in the Pittsburgh Area were below the annual $PM_{2.5}$ NAAQS level of 15.0 ug/m³. Thus, the results indicate that had the North Park and Moon monitors operated more days, the monitors would have attained the annual $PM_{2.5}$ NAAQS during the monitoring periods 2007–2009 and 2008–2010. Additional information about the monitoring network and air quality data used in this determination can be found in the Technical Support Document (TSD) for this action which is available online at *www.regulations.gov,* Docket number EPA–R03–OAR–2012–0370.

IV. What are the effects of these actions?

If EPA's proposed determination of attainment based on the most recent three years of quality-assured data is made final, the requirements for the Pittsburgh Area to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning SIPs related to attainment of the annual $PM_{2.5}$ NAAQS would be suspended for so long as the Pittsburgh Area continues to attain the annual $PM_{2.5}$ NAAQS. *See* 40 CFR 51.1004(c). Notably, as described below, any such determination would not be equivalent to the redesignation of the Pittsburgh Area to attainment for the annual $PM_{2.5}$ NAAQS. If this proposed determination is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the Area has violated the annual $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements would no longer exist for the Pittsburgh Area, and the Area would thereafter have to address the applicable requirements. *See* 40 CFR 51.1004(c).

Finalizing this proposed action would not constitute a redesignation of the Area to attainment of the annual $PM_{2.5}$ NAAQS under section 107(d)(3) of the CAA. Further, finalizing this proposed action does not involve approving a maintenance plan for the Pittsburgh Area as required under section 175A of the CAA, nor would it find that the Area has met all other requirements for redesignation. Even if EPA finalizes the proposed action, the designation status of the Pittsburgh Area would remain nonattainment for the annual $PM_{2.5}$ NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Pittsburgh Area. In addition, if EPA's separate and independent proposed determination that the Pittsburgh Area has attained the annual $PM_{2.5}$ standard by its applicable attainment date (April 5, 2010) is finalized, EPA will have met its requirement pursuant to section 179(c)(1) of the CAA to make a determination based on the Area's air quality data as of the attainment date whether the Area attained the standard by that date.

These two actions described above are proposed determinations regarding the Pittsburgh Area's attainment only with respect to the annual $PM_{2.5}$ NAAQS. Today's actions do not address the 1997 or the 2006 24-hour $PM_{2.5}$ standards. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: May 17, 2012.

W.C. Early

Acting Regional Administrator, Region III.

[FR Doc. 2012–14094 Filed 6–8–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0378; FRL–9685–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revision to Allegheny County Regulations for Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Pennsylvania Department of Environmental Protection (PADEP). This revision pertains to the Air Pollution Control portion of the Allegheny County Health Department (ACHD) Rules and Regulations, relating to ACHD's Prevention of Significant Deterioration (PSD) program. Additionally, EPA is proposing to make a determination that the proposed SIP revision will satisfy the Clean Air Act (CAA) infrastructure requirements relating to PSD for the 1997 ozone and particulate matter less than 2.5 micrometers ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) and the 2006 $PM_{2.5}$ NAAQS. This Action is being taken under the section 110(k) of the CAA.

DATES: Written comments must be received on or before July 11, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0378 by one of the following methods.

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *Email: Cox.Kathleen@epa.gov*.

C. *Mail:* EPA–R03–OAR–2012–0378, Kathleen Cox, Associate Director, Office of Permits and Air Toxics, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2012–0378. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; and Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301

39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Paul T. Wentworth, P.E. at: (215) 814–2183, or by email at *wentworth.paul@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On July 1, 2008, PADEP submitted a revision to its SIP on behalf ACHD. The SIP submittal consists of changes to the ACHD Rules and Regulations, Article XXI, Air Pollution Control, relating to ACHD's PSD program.

I. Background

On December 14, 1983, EPA delegated authority to ACHD to implement and enforce the provisions of Title 40 Code of Federal Regulations (CFR) Part 40 CFR 52.21 on behalf of EPA (*see* 48 FR 55625, December 14, 1983).

On February 13, 2003, ACHD requested EPA to update and affirm the existing delegation of authority agreement between Allegheny County and EPA based on the representations included in Allegheny County's February 13, 2003 letter to EPA (*see* 68 FR 14617). On March 18, 2003, EPA formally notified ACHD that as of the publication date of the information notice in the **Federal Register** (March 26, 2003), pursuant to 40 CFR 52.21(u), ACHD was delegated full authority to implement all portions of the federal PSD program in 40 CFR 52.21. Future additions, revisions, or deletions to 40 CFR 52.21 which are adopted by EPA are automatically incorporated into this delegation of authority agreement. EPA noted that authority is delegated to ACHD for all sources located in Allegheny County subject to review pursuant to the federal PSD program. This includes all source categories listed in 40 CFR 52.21 for each pollutant regulated by the CAA (*see* 68 FR 14617).

II. Summary of SIP Revision

On July 1, 2008, PADEP submitted ACHD's proposed revision to their portion of the SIP. This SIP submission adds Allegheny County's Prevention of Significant Deterioration (PSD) regulations at Article XXI section 2102.07 entitled, ''Prevention of Significant Deterioration,'' by incorporating by reference, the federal PSD program at 40 CFR 52.21 in its entirety. In addition, ACHD requests that as their regulation automatically incorporates by reference all future changes to 40 CFR 52.21, that such future changes be automatically incorporated into the SIP.

The SIP revision submitted by ACHD on July 1, 2008 contained a provision in section 2102.07(d) that would relieve a person of the duty to comply with the PSD requirements as promulgated by EPA and incorporated in section 2102.07 if such person was ''legally temporarily relieved of the duty to comply.'' On May 1, 2012 PADEP submitted a letter notifying EPA that they were withdrawing that portion of the SIP revision.

III. Proposed Action

EPA is proposing to approve ACHD's PSD permitting program by proposing approval of this SIP submission with the exception of the language in section 2102.7 as described above. EPA has determined that this revision is approvable because it conforms to the CAA and implementing regulations. Additionally, EPA is proposing to determine that ACHD has met its obligations pursuant to the PSD portion of the CAA infrastructure requirements of sections 110(a)(2)(C), (D)(i)(II), and (J) for the 1997 ozone and $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS. Copies of the technical support document supporting EPA's decision to approve ACHD's PSD permitting program and EPA's determination that ACHD has met its obligations pursuant to the PSD portion of the infrastructure requirements of the CAA can be obtained from the docket as discussed in the **ADDRESSES** section above. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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

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

In addition, this proposed SIP revision, regarding Allegheny County's Prevention of Significant Deterioration (PSD) program, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: May 21, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–14138 Filed 6–8–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0080; FRL–9684–1]

Approval and Promulgation of Implementation Plans; Tennessee: Prevention of Significant Deterioration and Nonattainment New Source Review; Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to approve changes to the Tennessee State Implementation Plan (SIP), submitted by the Tennessee Department of Environment and Conservation (TDEC) through the Division of Air Pollution Control to EPA on July 29, 2011. The July 29, 2011, SIP revision modifies Tennessee's New Source Review (NSR) Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) programs. Tennessee's July 29, 2011, SIP revision proposes to incorporate, into the Tennessee SIP, NSR provisions for fine particulate matter (also known as $PM_{2.5}$) as amended in EPA's 2008 NSR $PM_{2.5}$ Implementation Rule (hereafter referred to as the ''NSR $PM_{2.5}$ Rule''). EPA is proposing approval of the July 29, 2011, SIP revision because the Agency has preliminarily determined that the revision is consistent with the Clean Air Act (CAA or Act) and EPA regulations regarding NSR permitting.

DATES: Comments must be received on or before July 11, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0080 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2012–0080, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2012–0080.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Tennessee SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Bradley's telephone number is (404) 562–9352; email address: *bradley.twunjala@epa.gov.* For information regarding NSR, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Ms. Adams' telephone number is (404) 562–9241; email address: *adams.yolanda@epa.gov.* For information regarding the $PM_{2.5}$ national ambient air quality standards (NAAQS), contact Mr. Joel Huey, Regulatory Development Section, at the same address above. Mr. Huey's telephone number is (404) 562–9104; email address: *huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION:

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II. What is the background for EPA's proposed action?
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I. What action is EPA proposing?

On July 29, 2011, TDEC submitted a SIP revision to EPA for approval into the Tennessee SIP to adopt rules equivalent to federal requirements for NSR permitting.[1] Tennessee's July 29, 2011, SIP revision includes changes to Tennessee's Air Quality Regulations, Chapter 1200–03–09—Construction and Operating Permits, Rule Number .01—Construction Permits, to adopt PSD and NNSR requirements related to the implementation of the NSR $PM_{2.5}$ Rule. The rule changes adopted required federal PSD and NNSR permitting provisions governing the implementation of the NSR program for the $PM_{2.5}$ NAAQS promulgated in the NSR $PM_{2.5}$ Rule. Also, Tennessee's July 29, 2011, SIP revision includes

[1] Tennessee's July 29, 2011, submittal also contains changes to Tennessee Chapter 1200–03–26—Administrative Fees Schedule provisions. EPA is not proposing action on this part of the submittal as these provisions are not part of the federally-approved Tennessee SIP.

clarifying changes to rule 1200–03–09—.01. Pursuant to section 110 of the CAA, EPA is proposing to approve these changes into the Tennessee SIP.

Additionally, EPA is not taking action to approve a portion of Tennessee's July 29, 2011, SIP revision regarding the applicability of the term ''particulate matter emissions'' when accounting for condensable particles in applicability determinations and in establishing emissions limitations in PSD permits. More details are provided in Sections II and III below.

II. What is the background for EPA's proposed action?

Today's proposed action to revise the Tennessee SIP relates to EPA's ''Implementation of the New Source Review Program for Particulate Matter Less than 2.5 Micrometers,'' Final Rule, 73 FR 28321 (May 16, 2008) (the ''NSR $PM_{2.5}$ Rule''). In the NSR $PM_{2.5}$ Rule, EPA finalized regulations to implement the NSR program for the $PM_{2.5}$ NAAQS. As a result of EPA's final NSR $PM_{2.5}$ Rule, states were required to provide SIP submissions no later than May 16, 2011, to address these requirements for both the PSD and NNSR programs. Tennessee's July 29, 2011, SIP revision addresses the PSD and NNSR requirements for the $PM_{2.5}$ NAAQS. More detail on the NSR $PM_{2.5}$ Rule can be found in EPA's May 16, 2008, final rule and is summarized below.

A. Fine Particulate Matter and the NAAQS

Fine particles in the atmosphere are made up of a complex mixture of components. Common constituents include sulfate; nitrate; ammonium; elemental carbon; a great variety of organic compounds; and inorganic material (including metals, dust, sea salt, and other trace elements) generally referred to as ''crustal'' material, although it may contain material from other sources. Airborne particulate matter (PM) with a nominal aerodynamic diameter of 2.5 micrometers or less (a micrometer is one-millionth of a meter, and 2.5 micrometers is less than one-seventh the average width of a human hair) are considered to be ''fine particles'' and are also known as $PM_{2.5}$. ''Primary'' particles are emitted directly into the air as a solid or liquid particle (e.g., elemental carbon from diesel engines or fire activities, or condensable organic particles from gasoline engines). ''Secondary'' particles (e.g., sulfate and nitrate) form in the atmosphere as a result of various chemical reactions.

The health effects associated with exposure to $PM_{2.5}$ include potential aggravation of respiratory and cardiovascular disease (i.e., lung disease, decreased lung function asthma attacks and certain cardiovascular issues). Epidemiological studies have indicated a correlation between elevated $PM_{2.5}$ levels and premature mortality. Groups considered especially sensitive to $PM_{2.5}$ exposure include older adults, children, and individuals with heart and lung diseases. For more details regarding health effects and $PM_{2.5}$ see EPA's Web Site at *http://www.epa.gov/oar/particlepollution/* (See heading ''Health and Welfare'').

On July 18, 1997, EPA revised the NAAQS for PM to add new standards for fine particles, using $PM_{2.5}$ as the indicator. Previously, EPA used PM_{10} (inhalable particles smaller than or equal to 10 micrometers in diameter) as the indicator for the PM NAAQS. EPA established health-based (primary) annual and 24-hour standards for $PM_{2.5}$, setting an annual standard at a level of 15.0 micrograms per cubic meter (μg/m³) and a 24-hour standard at a level of 65 μg/m³. *See* 62 FR 38652. At the time the 1997 primary standards were established, EPA also established welfare-based (secondary) standards identical to the primary standards. The secondary standards are designed to protect against major environmental effects of $PM_{2.5}$, such as visibility impairment, soiling, and materials damage. On October 17, 2006, EPA revised the primary and secondary 24-hour NAAQS for $PM_{2.5}$ to 35 μg/m³ and retained the existing annual $PM_{2.5}$ NAAQS of 15.0 μg/m³. *See* 71 FR 61236.

B. What is the NSR program?

The CAA NSR program is a preconstruction review and permitting program applicable to certain new and modified stationary sources of air pollutants regulated under the CAA. The program includes a combination of air quality planning and air pollution control technology requirements. The CAA NSR program is composed of three separate programs: PSD, NNSR, and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the NAAQS—''attainment areas''—as well as areas where there is insufficient information to determine if the area meets the NAAQS—''unclassifiable areas.'' The NNSR program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS—''nonattainment areas.'' The Minor NSR program addresses construction or modification activities that do not qualify as ''major'' and applies regardless of the designation of the area in which a source is located. Together, these programs are referred to as NSR programs. EPA regulations governing the implementation of these programs are contained in 40 CFR sections 51.160–.166; 52.21, .24; and part 51, Appendix S.

Section 109 of the CAA requires EPA to promulgate a primary NAAQS to protect public health and a secondary NAAQS to protect public welfare. Once EPA sets those standards, states must develop, adopt, and submit a SIP to EPA for approval that includes emission limitations and other control measures to attain and maintain the NAAQS. *See* CAA § 110. Each SIP is also required to include a preconstruction review program for the construction and modification of any stationary source of air pollution to assure the maintenance of the NAAQS. The July 29, 2011, SIP revision revises Tennessee's PSD and NNSR programs.

C. Implementation of NSR Requirements for $PM_{2.5}$

On May 16, 2008, EPA finalized the NSR $PM_{2.5}$ Rule to implement the $PM_{2.5}$ NAAQS, including changes to the NSR program. *See* 73 FR 28321. The NSR $PM_{2.5}$ Rule revised the federal NSR program requirements to establish the framework for implementing preconstruction permit review for the $PM_{2.5}$ NAAQS in both attainment and nonattainment areas. Specifically, the NSR $PM_{2.5}$ Rule established the following NSR requirements to implement the $PM_{2.5}$ NAAQS: (1) Require NSR permits to address directly emitted $PM_{2.5}$ and precursor pollutants; (2) establish significant emission rates for direct $PM_{2.5}$ and precursor pollutants (including sulfur dioxide (SO_2) and nitrogen oxides (NO_X)); (3) establish $PM_{2.5}$ emission offsets; (4) provide exceptions to PM_{10} grandfather policy; and (5) require states to account for gases that condense to form particles (''condensables'') in $PM_{2.5}$ and PM_{10} emission limits in PSD or nonattainment NSR permits. Additionally, the NSR $PM_{2.5}$ Rule authorized states to adopt provisions in their nonattainment NSR rules that would allow interpollutant offset trading. Tennessee's July 29, 2011, SIP revision addresses the PSD and NNSR requirements related to EPA's May 16, 2008, NSR $PM_{2.5}$ Rule. A few key issues described in greater detail below include: the PM_{10} surrogate and grandfathering policy, condensable provision and interpollutant offset trading provision.

1. PM_{10} Surrogate and Grandfathering Policy

After EPA promulgated the NAAQS for $PM_{2.5}$ in 1997, the Agency issued a guidance document entitled ''Interim Implementation of New Source Review Requirements for $PM_{2.5}$.'' John S. Seitz, EPA, October 23, 1997 (the ''Seitz memo''). The Seitz memo was designed to help states implement NSR requirements pertaining to the new $PM_{2.5}$ NAAQS in light of technical difficulties posed by $PM_{2.5}$ at that time. Specifically, the Seitz memo stated: ''PM–10 may properly be used as a surrogate for PM–2.5 in meeting NSR requirements until these difficulties are resolved.'' EPA also issued a guidance document entitled ''Implementation of New Source Review Requirements in PM–2.5 Nonattainment Areas'' (the ''2005 $PM_{2.5}$ Nonattainment NSR Guidance''), on April 5, 2005, the date that EPA's $PM_{2.5}$ nonattainment area designations became effective for the 1997 NAAQS. This memorandum provided guidance on the implementation of the nonattainment major NSR provisions in $PM_{2.5}$ nonattainment areas in the interim period between the effective date of the $PM_{2.5}$ nonattainment area designations (April 5, 2005) and EPA's promulgation of final $PM_{2.5}$ NNSR regulations. Besides re-affirming the continuation of the PM_{10} Surrogate Policy for $PM_{2.5}$ attainment areas set forth in the Seitz memo, the 2005 $PM_{2.5}$ NNSR Guidance recommended that until EPA promulgated the $PM_{2.5}$ major NSR regulations, ''States should use a PM_{10} nonattainment major NSR program as a surrogate to address the requirements of nonattainment major NSR for the $PM_{2.5}$ NAAQS.''

In the NSR $PM_{2.5}$ Rule, EPA required that major stationary sources seeking permits must begin directly satisfying the $PM_{2.5}$ requirements, as of the effective date of the rule, rather than relying on PM_{10} as a surrogate, with two exceptions. The first exception is a ''grandfathering'' provision in the federal PSD program at 40 CFR 52.21(i)(1)(xi). This grandfathering provision applied to sources that had applied for, but had not yet received, a final and effective PSD permit before the July 15, 2008, effective date of the May 2008 final rule. The second exception was that states with SIP-approved PSD programs could continue to implement the Seitz Memo's PM_{10} Surrogate Policy for up to three years (until May 2011) or until the individual revised state PSD programs for $PM_{2.5}$ are approved by EPA, whichever comes first. For additional information on the NSR $PM_{2.5}$ Rule, see 73 FR 28321.[2]

On February 11, 2010, EPA proposed to repeal the grandfathering provision for $PM_{2.5}$ contained in the federal PSD program at 40 CFR 52.21(i)(1)(xi) and to end early the PM_{10} Surrogate Policy applicable in states that have a SIP-approved PSD program. *See* 75 FR 6827. In support of this proposal, EPA explained that the $PM_{2.5}$ implementation issues that led to the adoption of the PM_{10} Surrogate Policy in 1997 have been largely resolved to a degree sufficient for sources and permitting authorities to conduct meaningful permit-related $PM_{2.5}$ analyses.

On May 18, 2011 (76 FR 28646), EPA took final action to repeal the $PM_{2.5}$ grandfathering provision at 40 CFR 52.21(i)(1)(xi). This final action ended the use of the 1997 PM_{10} Surrogate Policy for PSD permits under the federal PSD program at 40 CFR 52.21. In effect, any PSD permit applicant previously covered by the grandfathering provision (for sources that completed and submitted a permit application before July 15, 2008)[3] that did not have a final and effective PSD permit before the effective date of the repeal will not be able to rely on the 1997 PM_{10} Surrogate Policy to satisfy the PSD requirements for $PM_{2.5}$ unless the application includes a valid surrogacy demonstration. *See* 76 FR 28646. In its July 29, 2011, SIP revision, Tennessee elected not to adopt the grandfathering provision at 40 CFR 52.21(i)(1)(xi), into its PSD regulations. Therefore, Tennessee's July 29, 2011, SIP revision is consistent with federal regulations since it does not contain the repealed grandfathering provision.

2. ''Condensable'' Provision

In the NSR $PM_{2.5}$ Rule, EPA revised the definition of ''regulated NSR pollutant'' for PSD and NNSR to add a paragraph providing that ''particulate matter (PM) emissions, $PM_{2.5}$ emissions and PM_{10} emissions'' shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures and that on or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, $PM_{2.5}$ and PM_{10} in permits issued. See 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(vi) and ''Emissions Offset Interpretative Ruling'' (40 CFR Part 51, Appendix S). A similar paragraph added to the NNSR rule does not include ''particulate matter (PM) emissions.'' *See* 40 CFR 51.165(a)(1)(xxxvii)(D).

On March 12, 2012, EPA proposed a rulemaking to amend the definition of ''regulated NSR pollutant'' promulgated in the 2008 NSR $PM_{2.5}$ Rule regarding the PM condensable provision at 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(i) and EPA's Emissions Offset Interpretative Ruling. *See* 77 FR 15656. The rulemaking proposes to remove the inadvertent requirement in the NSR $PM_{2.5}$ Rule that the measurement of condensable ''particulate matter emissions'' be included as part of the measurement and regulation of ''particulate matter emissions.'' The term ''particulate matter emissions'' includes particles that are larger than $PM_{2.5}$ and PM_{10} and is an indicator measured under various New Source Performance Standards (NSPS) (40 CFR part 60).[4] Tennessee's July 29, 2011, SIP revision adopts EPA's definition for regulated NSR pollutant for condensables (at 40 CFR 51.166(b)(49)(vi)), including the term ''particulate matter emissions,'' as promulgated in the NSR $PM_{2.5}$ Rule. EPA's review of Tennessee's July 29, 2011, SIP revision with regards to the NSR $PM_{2.5}$ Rule condensable provision is provided below in Section III.

3. Interpollutant Trading Provision

The NSR $PM_{2.5}$ final Rule authorized states to adopt provisions in their NNSR rules that would allow major stationary sources and major modifications locating in areas designated nonattainment for $PM_{2.5}$ to offset emissions increases of direct $PM_{2.5}$ emissions or $PM_{2.5}$ precursors with reductions of either direct $PM_{2.5}$ emissions or $PM_{2.5}$ precursors in accordance with offset ratios contained in the approved SIP for the applicable nonattainment area. The inclusion, in whole or in part, of the interpollutant trading offset provisions for $PM_{2.5}$ is discretionary on the part of the states. In the preamble to the NSR $PM_{2.5}$ Rule, EPA included preferred or presumptive offset ratios, applicable to specific $PM_{2.5}$

[2] Additional information on this issue can also be found in an August 12, 2009, final order on a title V petition describing the use of PM_{10} as a surrogate for $PM_{2.5}$. In the Matter of *Louisville Gas & Electric Company,* Petition No. IV–2008–3, Order on Petition (August 12, 2009).

[3] Sources that applied for a PSD permit under the federal PSD program on or after July 15, 2008, are already excluded from using the 1997 PM_{10} Surrogate Policy as a means of satisfying the PSD requirements for $PM_{2.5}$. *See* 76 FR 28321.

[4] In addition to the NSPS for PM, it is noted that states regulated ''particulate matter emissions'' for many years in their SIPs for PM, and the same indicator has been used as a surrogate for determining compliance with certain standards contained in 40 CFR part 63, regarding National Emission Standards for Hazardous Air Pollutants.

precursors that states may adopt in conjunction with the new interpollutant trading offset provisions for $PM_{2.5}$, and for which the state could rely on the EPA's technical work to demonstrate the adequacy of the ratios for use in any $PM_{2.5}$ nonattainment area. Alternatively, the preamble indicated that states may adopt their own ratios, subject to the EPA's approval, that would have to be substantiated by modeling or other technical demonstrations of the net air quality benefit for ambient $PM_{2.5}$ concentrations.

The preferred ratios were subsequently the subject of a petition for reconsideration which the EPA Administrator granted in 2009. As a result of the reconsideration, on July 21, 2011, EPA issued a memorandum entitled ''Revised Policy to Address Reconsideration of Interpollutant Trading Provisions for Fine Particles ($PM_{2.5}$)'' (hereafter referred to as the ''Interpollutant Trading Memorandum''). The Interpollutant Trading Memorandum indicated that the existing preferred offset ratios are no longer considered presumptively approvable and that any precursor offset ratio submitted as part of the NSR SIP for a $PM_{2.5}$ nonattainment area must be accompanied by a technical demonstration showing the net air quality benefits of such ratio for the $PM_{2.5}$ nonattainment area in which it will be applied. Tennessee's July 29, 2011, SIP revision adopts the interpollutant policy but not the preferred trading ratios. EPA's analysis of Tennessee's July 29, 2011, SIP revision regarding interpollutant trading is provided below in Section III.

III. What is EPA's analysis of Tennessee's SIP revision?

Tennessee currently has a SIP-approved NSR program for new and modified stationary sources. TDEC's PSD preconstruction rules are found at rule 1200–3–9–.01(4) and apply to major stationary sources or modifications constructed in areas designated attainment as required under part C of title I of the CAA with respect to the NAAQS. TDEC's rule 1200–3–9–.01(5) includes permitting requirements for sources in and impacting nonattainment areas. Today, EPA is proposing to approve changes to Tennessee's rules at 1200–3–9–.01(4) and at 1200–3–9–.01(5) to update the State's existing NSR program to be consistent with federal NSR regulations, amended in the NSR $PM_{2.5}$ Rule (at 40 CFR 51.165 and 51.166).

Tennessee's July 29, 2011, SIP revision adopts the following NSR $PM_{2.5}$ Rule provisions into the Tennessee SIP at Chapter 12000–03–09: (1) Requirement for NSR permits to address directly emitted $PM_{2.5}$ and precursor pollutants; (2) significant emission rates for direct $PM_{2.5}$ and precursor pollutants (SO_2 and NO_X); (3) PSD and NNSR requirements of states to address condensable PM in establishing enforceable emission limits for PM_{10} or $PM_{2.5}$; (4) $PM_{2.5}$ emission offsets; and (5) optional interpollutant trading provision set forth at 40 CFR 51.165(a)(11).

These amendments to the Tennessee rules became state-effective June 27, 2011. Specifically, the rules included in the July 29, 2011, SIP revision establish that the State's existing NSR permitting program requirements for PSD and NNSR apply to the $PM_{2.5}$ NAAQS and its precursors; revise the definitions of ''*significant*'' at 1200–03–09–.01(4)(b)24(i) and (5)((b)1(x)(I) to establish significant emission rates for direct $PM_{2.5}$ and $PM_{2.5}$ precursors for major modifications at existing sources (as amended at 40 CFR 51.165(a)(1)(x)(A) and 51.166(b)(23)(i)); revise the term ''*regulated NSR pollutant*'' at 1200–03–09–.01(4)(b)47 and (5)(b)1(xlix) to include $PM_{2.5}$, recognize $PM_{2.5}$ precursors and include the requirement that condensable emissions be accounted for in applicability determinations and in establishing emissions limitations for PM (as amended at 40 CFR 51.165(a)(1)(xxxvii(C) and 51.166(b)(49); and adopt NNSR emission offsets (a ratio of 1:1) for direct $PM_{2.5}$ at 1200–03–09–.01(5)2(v) (as amended at 40 CFR 51.165(a)(9)). Additionally, Tennessee's SIP revision includes the interpollutant trading policy at rule 1200–03–09–.01(5)(b)2(v)(XV) (as amended at 40 CFR 51.165(a)(11)). These changes result in the Tennessee rules being equivalent to federal changes promulgated in the NSR $PM_{2.5}$ Rule.

EPA's May 18, 2011, final rulemaking repealed the PM_{10} ''grandfathering'' provision, as noted in Section II.C above. Tennessee's July 29, 2011, SIP revision does not include the grandfathering provision at 40 CFR 52.21(i)(1)(ix) promulgated in the NSR $PM_{2.5}$ Rule. Therefore, Tennessee's July 29, 2011, SIP submission is consistent with federal regulations.

Further, Tennessee's July 29, 2011, SIP revision adopts the elective interpollutant trading provision policy at 1200–03–09(5)(b)2.(v)(XV) set forth at 40 CFR 51.165(a)(11) for the purpose of offsets under the $PM_{2.5}$ NNSR program. However, the July 29, 2011, SIP revision does not adopt, into the Tennessee SIP, any trading ratios associated with the interpollutant trading policy established in the NSR $PM_{2.5}$ Rule. As set forth in EPA's July 21, 2011, Interpollutant Trading Memorandum, the preferred precursor offset ratios included in the preamble to the NSR $PM_{2.5}$ Rule are no longer considered presumptively approvable. Therefore any precursor offset ratio submitted, to EPA for approval, as part of the NSR SIP for a $PM_{2.5}$ nonattainment area must be accompanied by a technical demonstration showing the suitability of the ratios for that particular nonattainment area. Consequently, if a major stationary source or source with a major modification in Tennessee requests to obtain offsets through interpollutant trading, the State of Tennessee would first be required, consistent with the requirements of section 51.165(a)(11), to revise its SIP to adopt appropriate trading ratios. Tennessee would need to submit to EPA a technical demonstration showing how either the preferred ratios established in the NSR $PM_{2.5}$ Rule or the State's own ratios are appropriate for the state's particular $PM_{2.5}$ nonattainment as well as a revision to the NSR program adopting the ratios into the SIP. EPA would then have to approve the demonstration and ratios into the Tennessee SIP prior to any major stationary source or major modification obtaining offsets through the interpollutant trading policy.

EPA continues to support the basic policy that sources may offset increases in emissions of direct $PM_{2.5}$ or of any $PM_{2.5}$ precursor in a $PM_{2.5}$ nonattainment area with actual emissions reductions in direct $PM_{2.5}$ or $PM_{2.5}$ precursor, respectively, in accordance with offset ratios as approved in the SIP for the applicable nonattainment area. Tennessee's adoption of the interpollutant trading policy without trading ratios does not in any way allow a major stationary source or major modification in the state to obtain offsets through interpollutant trading, nor does it affect the approvability of Tennessee's July 29, 2010, SIP revision.

As mentioned above, Tennessee's July 29, 2011, SIP revision also adopts into the State's PSD regulations the requirement to address condensable PM in applicability determinations and in establishing enforceable emission limits in PSD and NNSR permits, as established in the NSR $PM_{2.5}$ Rule. As discussed in Section II.C.2, under a separate action, EPA has proposed to correct the inadvertent inclusion of ''particulate matter emissions'' in the definition of ''regulated NSR pollutant'' as an indicator for which condensable emissions must be addressed. *See* 77 FR

75656 (March 16, 2012). Further, on May 1, 2012, the State of Tennessee provided a letter to EPA with clarification of the State's intent in light of EPA's March 12, 2012, proposed rulemaking. Specifically, in that letter, the State of Tennessee requested that EPA not approve the term ''particulate matter emissions'' (at rule 1200–03–09–.01(4)(b)47(vi)) as part of the definition for ''regulated NSR pollutant'' regarding the inclusion of t condensable emissions in applicability determinations and in establishing emissions limitations for PM. Therefore given the State's request and EPA's intention to amend the definition of ''regulated NSR pollutant,'' EPA is not proposing action to approve the terminology ''particulate matter emissions'' into the Tennessee SIP (at 1200–03–09–.01(4)(b)47(vi)) for the condensable provision in the definition of ''regulated NSR pollutant.'' EPA is, however, proposing to approve into the Tennessee SIP at 1200–03–09–.01(4)(b)47(vi) the remaining condensable requirement at 40 CFR 51.166(b)(49)(vi), which requires that condensable emissions be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10}.

In addition to the adoption of the NSR $PM_{2.5}$ Rule mentioned above, TDEC's July 29, 2011, SIP revision makes an administrative change to Chapter 1200–03–09 for PSD and NNSR. On June 13, 2007, EPA took final action to revise the 2002 NSR Reform Rules [5] to remove from federal law all provisions pertaining to clean units and the pollution control projects exemption that were vacated by the United States Court of Appeals for the District of Columbia Rule. *New York* v. *United States,* 413 F.3d 3 (D.C. Cir. 2005). *See* 72 FR 32526. EPA's efforts to remove the vacated provisions included removing the following language from the hybrid test applicability provision at 40 CFR 51.166(a)(7)(iv)(f), 51.165(f)(6) and 52.21(a)(2)(iv)(f): ''For example, if a project involves both an existing emissions unit and a Clean Unit, the projected increase is determined by summing the values determined using the method specified in paragraph (a)(7)(iv)(c) of this section for the existing unit and determined using the method specified in paragraph (a)(7)(iv)(e) of this section for the Clean Unit.''

Tennessee's July 29, 2011, submission removes the above language from its hybrid test applicability provision at 1200–03–09–.01(4)(c)4(vi) and 1200–03–09–.01(5)(b)2(xvii) (PSD and NNSR regulations respectively) to be consistent with federal language amended in the June 13, 2007, final rulemaking regarding the vacated portions of the 2002 NSR Reform Rule. EPA is proposing to approve the NSR $PM_{2.5}$ requirements and administrative changes mentioned above into the Tennessee SIP because EPA has made the preliminary determination that this change is consistent with federal regulations and the CAA.

IV. Proposed Action

EPA is proposing to approve Tennessee's July 29, 2011, SIP revision, which includes rules that modify Tennessee's PSD and NNSR programs to adopt federal regulations amended in the NSR $PM_{2.5}$ Rule. EPA has made the preliminary determination that this SIP revision is approvable because it is in consistent with the CAA and EPA regulations regarding NSR permitting.

V. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: May 31, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–14106 Filed 6–8–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0285; FRL–9684–3]

Approval and Promulgation of Implementation Plans; Tennessee; 110(a)(1) and (2) Infrastructure Requirements for the 1997 Annual and 2006 24-Hour Fine Particulate National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve in part, and conditionally approve in part, the State Implementation Plans (SIPs), submitted by the State of Tennessee, through the Tennessee

[5] On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 CFR parts 51 and 52 regarding the CAA's PSD and NNSR programs. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the ''2002 NSR Reform Rules.''

Department of Environment and Conservation (TDEC) as demonstrating that the State meets the requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or the Act) for the 1997 annual and 2006 24-hour fine particulate ($PM_{2.5}$) national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an ''infrastructure'' SIP. Tennessee certified that the Tennessee SIP contains provisions that ensure the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS are implemented, enforced, and maintained in Tennessee (hereafter referred to as ''infrastructure submission''). EPA is proposing to conditionally approve a portion of sub-element 110(a)(2)(E)(ii) of Tennessee's December 14, 2007, and October 19, 2009, submissions because the current Tennessee SIP does not currently include provisions to comply with all the requirements of this sub-element, however, the State has committed to adding such provisions to the SIP within one year of EPA's final action on the infrastructure submission. With the exception of a portion of sub-element 110(a)(2)(E)(ii), EPA is proposing to determine that Tennessee's infrastructure submission, provided to EPA on December 14, 2007, addressed all the required infrastructure elements for the 1997 annual $PM_{2.5}$ NAAQS and that its October 19, 2009, submission addressed all the required infrastructure elements for the 2006 24-hour $PM_{2.5}$ NAAQS.

DATES: Written comments must be received on or before July 11, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0285, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2012–0285,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2012–0285. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

On July 18, 1997 (62 FR 36852), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations. At that time, EPA also established a 24-hour NAAQS of 65 $\mu g/m^3$. See 40 CFR 50.7. On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 $\mu g/m^3$ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a new 24-hour NAAQS of 35 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within 3 years after promulgation of a new or revised NAAQS. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs to EPA no later than July 2000 for the 1997 annual $PM_{2.5}$ NAAQS, no later than October 2009 for the 2006 24-hour $PM_{2.5}$ NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA's failure to issue findings of failure to submit related to the ''infrastructure'' requirements for the 1997 annual $PM_{2.5}$ NAAQS. On March

10, 2005, EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 $PM_{2.5}$ NAAQS by October 5, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency received from each state for the 1997 $PM_{2.5}$ NAAQS as of October 3, 2008.

On October 22, 2008, EPA published a final rulemaking entitled, ''Completeness Findings for Section 110(a) State Implementation Plans Pertaining to the Fine Particulate Matter ($PM_{2.5}$) NAAQS'' making a finding that each state had submitted or failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 $PM_{2.5}$ NAAQS (See 73 FR 62902). For those states that did receive findings, the findings of failure to submit for all or a portion of a state's implementation plan established a 24-month deadline for EPA to promulgate a Federal Implementation Plan (FIP) to address the outstanding SIP elements unless, prior to that time, the affected states submitted, and EPA approved, the required SIPs.

The findings that all or portions of a state's submission are complete established a 12-month deadline for EPA to take action upon the complete SIP elements in accordance with section 110(k). Tennessee's infrastructure submissions were received by EPA on December 14, 2007, for the 1997 annual $PM_{2.5}$ NAAQS and on October 19, 2009 for the 2006 24-hour $PM_{2.5}$ NAAQS. The submissions were determined to be complete on June 14, 2008, and April 19, 2010, respectively. Tennessee was among other states that did not receive findings of failure to submit for the 1997 annual $PM_{2.5}$ NAAQS infrastructure requirements because it had provided a complete submission to EPA to address the infrastructure elements for the 1997 $PM_{2.5}$ NAAQS by October 3, 2008.

On July 6, 2011, WildEarth Guardians and Sierra Club filed an amended complaint related to EPA's failure to take action on the SIP submittal related to the ''infrastructure'' requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. On October 20, 2011, EPA entered into a consent decree with WildEarth Guardians and Sierra Club which required EPA, among other things, to complete a **Federal Register** notice of the Agency's final action either approving, disapproving, or approving in part and disapproving in part the Tennessee 2006 24-hour $PM_{2.5}$ NAAQS Infrastructure SIP submittal addressing the applicable requirements of sections 110(a)(2)(A)–(H), (J)–(M), except for section 110(a)(2)(C) the nonattainment area requirements and section 110(a)(2)(D)(i) interstate transport requirements, by September 30, 2012.

Today's action is proposing to approve in part, and conditionally approve in part, Tennessee's infrastructure submission for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS for sections 110(a)(2)(A)–(H), (J)–(M), except for section 110(a)(2)(C) nonattainment area requirements and section 110(a)(2)(D)(i) interstate transport requirements. This action is not approving any specific rule, but rather proposing that Tennessee's already approved SIP, with the exception of the portion of section 110(a)(2)(E)(ii) for which EPA is today proposing conditional approval, meets certain CAA requirements.

II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within 3 years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, some states may need to adopt language specific to the $PM_{2.5}$ NAAQS to ensure that they have adequate SIP provisions to implement the $PM_{2.5}$ NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are listed below [1] and in EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8–Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' and September 25, 2009, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards.''

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.[2]
- 110(a)(2)(D): Interstate transport.[3]
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.[4]

[1] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) but does provide detail on how Tennessee's SIP addresses 110(a)(2)(C).

[2] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[3] Today's proposed rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 and 2006 $PM_{2.5}$ NAAQS. Interstate transport requirements were formerly addressed by Tennessee consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the DC Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina* v. *EPA*, 531 F.3d 896 (DC Cir. 2008). Prior to this remand, EPA took final action to approve Tennessee SIP revision, which was submitted to comply with CAIR. *See* 72 FR 46388 (August 20, 2007). In so doing, Tennessee CAIR SIP revision addressed the interstate transport provisions in section 110(a)(2)(D)(i) for the 1997 and 2006 $PM_{2.5}$ NAAQS. In response to the remand of CAIR, EPA has recently finalized a new rule to address the interstate transport of nitrogen oxides and sulfur oxides in the eastern United States. See 76 FR 48208 (August 8, 2011) (''the Transport Rule''). That rule was recently stayed by the DC Circuit Court of Appeals. EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

[4] This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' and the September 25, 2009,

• 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
• 110(a)(2)(K): Air quality modeling/data.
• 110(a)(2)(L): Permitting fees.
• 110(a)(2)(M): Consultation/participation by affected local entities.

III. Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.[5] Those Commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources (SSM), that may be contrary to the CAA and EPA's policies addressing such excess emissions; and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address the issues separately: (i) Existing provisions for minor source new source review (NSR) programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source NSR''); and (ii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth. It is important to emphasize that EPA is taking the same position with respect to these four substantive issues in this action on the infrastructure SIPs for the 1997 and 2006 $PM_{2.5}$ NAAQS from Tennessee.

EPA intended the statements in the other proposals concerning these four issues merely to be informational and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a re-approval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit re-approval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on the infrastructure SIP for Tennessee.

Unfortunately, the Commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately from actions on infrastructure SIP submissions.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPs are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, NSR permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory

memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards,'' but as mentioned above is not relevant to today's proposed rulemaking.

[5] *See* Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket #EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[6] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[7]

Notwithstanding that section 110(a)(2) provides that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[8] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[9] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's implementation plans. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[10]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, i.e., the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and $PM_{2.5}$ NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[11] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.''[12] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.''[13] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.''[14] However, for the one exception to that general assumption (i.e., how states

[6] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[7] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. *See* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase ''contribute significantly to nonattainment'').

[8] *See Id.,* 70 FR 25162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[9] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. See ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[11] *See* ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance'').

[12] *Id.,* at page 2.

[13] *Id.,* at attachment A, page 1.

[14] *Id.,* at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS), EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each state would work with its corresponding EPA regional office to refine the scope of a state's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the state's implementation plans for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS.[15] In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, but were germane to these SIP submissions for the 2006 $PM_{2.5}$ NAAQS (e.g., the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and $PM_{2.5}$ NAAQS). Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals for other states mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions. The same holds true for this action on the infrastructure SIPs for Tennessee.

EPA believes that this approach to the infrastructure SIP requirement is reasonable because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[16] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[17] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[18]

IV. What is EPA's analysis of how Tennessee addressed the elements of sections 110(a)(1) and (2) "infrastructure" provisions?

Tennessee's infrastructure submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A): *Emission limits and other control measures:* Tennessee's infrastructure submissions provide an overview of the provisions of the Tennessee's Air Pollution Control Requirements relevant to air quality control regulations. The regulations described below have been federally approved in the Tennessee SIP and include enforceable emission limitations and other control measures:

Chapter 1200–3–4, *Open Burning.*

Chapter 1200–3–5, *Visible Emission Regulations.*

[15] *See* "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)," from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the "2009 Guidance").

[16] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision," 74 FR 21639 (April 18, 2011).

[17] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. *See* "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. *See* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[18] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). *See* 75 FR 42342, 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

Chapter 1200–3–6, *Non-process Emission Standards.*

Chapter 1200–3–7, *Process Emissions Standards.*

Chapter 1200–3–9, *Construction and Operating Permits.*

Chapter 1200–3–21, *General Alternate Emission Standard.*

EPA has made the preliminary determination that the provisions contained in these chapters and Tennessee's practices are adequate to protect the $PM_{2.5}$ annual and 24-hour NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (September 20, 1999), and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having deficient SSM provisions to take steps to correct it as soon as possible.

Additionally, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) *Ambient air quality monitoring/data system:* Tennessee's Air Pollution Control Requirements, Chapter 1200–3–12–.02, *Procedures for Ambient Sampling and Analysis,* along with the Tennessee Network Description and Ambient Air Monitoring Network Plan provides for an ambient air quality monitoring system in the State. Annually, EPA approves the ambient air monitoring network plan for the state agencies. On July 1, 2011, Tennessee submitted its plan to EPA. On October 24, 2011, EPA approved Tennessee's monitoring network plan. Tennessee's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2012–0285. EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for the ambient air quality monitoring and data systems related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

3. 110(a)(2)(C) *Program for enforcement of control measures including review of proposed new sources:* Chapter 1200–3–9, *Construction and Operating Permits,* of Tennessee's SIP pertain to the construction or modification of any major stationary source in areas designated as attainment, nonattainment or unclassifiable. On July 29, 2011, TDEC submitted revisions to its PSD/NSR regulations for EPA approval. Tennessee's SIP revision makes changes to Chapter 1200–03–09–.01, *Construction Permits,* to adopt PSD and Nonattainment New Source Review requirements related to the implementation of the NSR $PM_{2.5}$ Rule. The rule amendment adopts required Federal PSD and NNSR permitting provisions governing the implementation of the NSR program for $PM_{2.5}$ as promulgated in the NSR $PM_{2.5}$ Rule that address the infrastructure requirements (C) and (J). See 73 FR 28321 (May 16, 2008). EPA will propose approval of Tennessee's July 29, 2011, submission in a rulemaking separate from today's action. However, the July 29, 2011, proposed SIP revision addresses requisite requirements of infrastructure element 110(a)(2)(C), therefore, today's action to propose approval of infrastructure SIP element 110(a)(2)(C) is contingent upon EPA taking final action to approve the July 29, 2011, revision into the Tennessee SIP. Final action regarding today's proposed approval of infrastructure SIP element 110(a)(2)(C) will not occur prior to final approval of the July 29, 2011, SIP revision.

In this action, EPA is proposing to approve Tennessee's infrastructure SIP for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. EPA is not proposing to approve or disapprove the State's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

EPA has made the preliminary determination that, following final approval of the Tennessee July 29, 2011, submitted revision discussed above, Tennessee's SIP and the State's practices are adequate for program enforcement of control measures including review of proposed new sources related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

4. 110(a)(2)(D)(ii) *Interstate and International transport provisions:* Chapter 1200–9–.01(5), *Growth Policy,* outlines how the State will notify neighboring states of potential impacts from new or modified sources. Tennessee does not have any pending obligation under sections 115 and 126 of the CAA. EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

5. 110(a)(2)(E) *Adequate resources:* Section 110(a)(2)(E) requires that each implementation plan provide (i) necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the State comply with the requirements respecting State Boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provisions. As with the remainder of the infrastructure elements addressed by this notice, EPA is proposing to approve Tennessee's SIP as meeting the requirements of sub-elements 110(a)(2)(E)(i) and (iii). With respect to sub-element 110(a)(2)(E)(ii) (regarding state boards), EPA is proposing to approve in part, and conditionally approve in part, this sub-element. EPA's rationale for today's proposals respecting each sub-element is described in turn below.

In support of EPA's proposal to approve sub-elements 110(a)(2)(E)(i) and (iii), TDEC, through the Tennessee Air Pollution Control Board, is responsible for promulgating rules and regulations

for the NAAQS, emissions standards general policies, a system of permits, fee schedules for the review of plans, and other planning needs. As evidence of the adequacy of TDEC's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to Tennessee on March 11, 2011, outlining 105 grant commitments and current status of these commitments for fiscal year 2010. The letter EPA submitted to Tennessee can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2012–0285. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues in relation to the SIP for fiscal year 2010, therefore, Tennessee's grants were finalized and closed out. EPA has made the preliminary determination that Tennessee has adequate resources for implementation of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

With respect to sub-element 110(a)(2)(E)(ii), EPA is proposing to approve in part, and to conditionally approve in part, Tennessee's infrastructure SIP as to this requirement. Section 110(a)(2)(E)(ii) provides that infrastructure SIPs must require compliance with section 128 of CAA requirements respecting State boards. Section 128, in turn, provides at subsection (a)(1) that each SIP shall require that any board or body which approves permits or enforcement orders shall be subject to the described public interest and income restrictions therein. Subsection 128(a)(2) requires that any board or body, or the head of an executive agency with similar power to approve permits or enforcement orders under the CAA, shall also be subject to conflict of interest disclosure requirements. In this action, EPA is proposing to conditionally approve Tennessee's infrastructure SIP for element 110(a)(2)(E)(ii) with respect to the applicable section 128(a)(1) requirements, and to approve Tennessee's infrastructure SIP for element 110(a)(2)(E)(ii) with respect the applicable section 128(a)(2) requirements.

EPA's proposed conditional approval of sub-element 110(a)(2)(E)(ii) respecting the 128(a)(1) requirements is based upon a TDEC letter to EPA, dated March 28, 2012, which outlined TDEC's commitment to adopt specific enforceable measures into its SIP within one year to address the applicable portions of section 128(a)(1). The March 28, 2012, letter from TDEC to EPA can be accessed at *www.regulations.gov* using docket ID No. EPA–R04–OAR–2012–0285.

In Tennessee's March 28, 2012, commitment letter, TDEC committed to bring its SIP into conformity with section 128(a)(1) of the CAA by submitting SIP revisions that designate at least a majority of the positions on the State's Air Pollution Control Board [19] as being subject to the ''public interest'' requirement. In addition, TDEC has committed to submitting SIP revisions establishing requirements to ensure that at least a majority of the members on the State's Air Pollution Control Board do not derive any significant portion of their income from persons subject to permits or enforcement orders. In the March 28, 2012, commitment letter, TDEC describes that its planned restrictions related to the ''significant portion of income'' requirements of section 128 will include an exclusion for the official salaries of mayors of counties and municipalities, and for faculty members at institutions of higher learning.

In accordance with section 110(k)(4) of the CAA, the commitment from Tennessee must provide that the State will adopt the specified enforceable provisions and submit a revision to EPA for approval within one year from EPA's final conditional approval action. In its March 28, 2012, letter, TDEC committed to adopt the above-specified enforceable provisions and submit them to EPA for incorporation into the SIP by no later than one year from the effective date of EPA's final conditional approval action for that requirement. Failure by the State to adopt these provisions and submit them to EPA for incorporation into the SIP within one year from the effective date of EPA's final conditional approval action would result in this proposed conditional approval being treated as a disapproval. Should that occur, EPA would provide the public with notice of such a disapproval in the **Federal Register**.[20]

As a result of Tennessee's formal commitment to correct deficiencies contained in the Tennessee SIP pertaining to section 128, EPA intends to move forward with finalizing the conditional approval of 110(a)(2)(E)(ii) with respect to the section 128(a)(1) requirements consistent with section 110(k)(4) of the Act. With respect to the remaining sub-elements of 110(a)(2)(E), EPA is proposing to approve these portions of Tennessee's infrastructure SIP. As such, EPA has made the preliminary determination that Tennessee has adequate resources for implementation of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

6. 110(a)(2)(F) *Stationary source monitoring system:* Tennessee's infrastructure submission describes how to establish requirements for compliance testing by emissions sampling and analysis, and for emissions and operation monitoring to ensure the quality of data in the State. TDEC uses these data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with emission regulations and additional EPA requirements. These requirements are provided in Chapter 1200–3–10, *Required Sampling, Recording and Reporting,* of the Tennessee Air Pollution Control Requirements.

Additionally, Tennessee is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every 3 years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System (EIS). States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Tennessee made its latest update to the NEI on December 31, 2011. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for the stationary source monitoring systems related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

7. 110(a)(2)(G) Emergency power: Chapter 1200–3–15, *Emergency Episode*

[19] The composition of Tennessee's Air Pollution Control Board is statutorily prescribed at Tennessee Code Annotated 68–201–104.

[20] EPA notes that pursuant to section 110(k)(4), a conditional approval is treated as a disapproval in the event that a State fails to comply with its commitment. Notification of this disapproval action in the **Federal Register** is not subject to public notice and comment.

Requirements, of the Tennessee SIP identifies air pollution emergency episodes and preplanned abatement strategies. These criteria have previously been approved by EPA. EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for emergency powers related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

8. 110(a)(2)(H) Future SIP revisions: As previously discussed, TDEC is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS. Tennessee has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions during the course of its NAAQS implementation. Specific to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, Tennessee has provided the following submissions, including:

- April 4, 2008, Knoxville $PM_{2.5}$ Attainment Demonstration;
- October 15, 2009, TN Portion of Chattanooga 1997 $PM_{2.5}$ Attainment Demonstration; and,
- July 29, 2011, $PM_{2.5}$ NSR/PSD.

EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

9. 110(a)(2)(J) (121 consultation) Consultation with government officials: Chapter 1200–3–9 Construction and Operating Permits, as well as the Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding Federal Land Managers), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. More specifically, Tennessee adopted state-wide consultation procedures for the implementation of transportation conformity, which includes the consideration of the development of mobile inventories for SIP development. Required partners covered by Tennessee's consultation procedures include Federal, state, and local transportation and air quality agency officials. EPA approved Tennessee's consultation procedures on May 16, 2003 (68 FR 26492). EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate consultation with government officials related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

10. 110(a)(2)(J) (127 public notification) Public notification: TDEC has public notice mechanisms in place to notify the public of PM and other pollutant forecasting, including an air quality monitoring Web site with detailed maps of the PM forecast areas and specific information about each monitor, *http://tn.gov/environment/apc/* As discussed above, Chapter 1200–3–15, *Emergency Episode Requirements,* requires that TDEC notify the public of any air pollution episode or NAAQS violation. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

11. 110(a)(2)(J) (PSD) PSD and visibility protection: Tennessee demonstrates its authority to regulate new and modified sources of PM to assist in the protection of air quality in Chapter 1200–3–9, Construction and Operating Permits. As with infrastructure element 110(a)(2)(C), infrastructure element 110(a)(2)(J) also requires compliance with applicable provisions of the PSD program described in part C of the Act. Accordingly, the pending EPA action on the July 29, 2011, SIP revision, is a prerequisite to today's proposed action to approve the State's infrastructure element 110(a)(2)(J). See the discussion for element 110(a)(2)(C) above for a description of the pending revision to the Tennessee SIP. The July 29, 2011, SIP revision, addresses requisite requirements of infrastructure element 110(a)(2)(J) (PSD and visibility protection), therefore, today's action to propose approval of infrastructure SIP element 110(a)(2)(J) (PSD and visibility protection) is contingent upon EPA first taking final action to approve the July 29, 2011, SIP revision, into the Tennessee SIP. Final action regarding today's proposed approval of infrastructure SIP element 110(a)(2)(J) (PSD and visibility protection) will not occur prior to final approval of the July 29, 2011, SIP revision.

With regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, EPA finds that there is no new visibility obligation ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. This would be the case even in the event a secondary $PM_{2.5}$ NAAQS for visibility is established, because this NAAQS would not affect visibility requirements under part C. Tennessee has submitted SIP revisions for approval to satisfy the requirements of the CAA Section 169A and the regional haze and best available retrofit technology rules contained in 40 CFR 51.308. The majority of Tennessee's regional haze program was approved on April 24, 2012 (77 FR 24392); the remaining portions are currently undergoing review. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate the State's ability to implement PSD programs and to provide for visibility protection related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

12. 110(a)(2)(K) Air quality and modeling/data: Chapter 1200–3–9–.01(4)(k), *Air Quality Models,* specify that required air modeling be conducted in accordance with 40 CFR part 51 Appendix W ''Guideline on Air Quality Models,'' as incorporated into the Tennessee SIP. Tennessee's air quality regulations demonstrate that TDEC has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate the State's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

13. 110(a)(2)(L) Permitting fees: As discussed above, Tennessee's SIP provides for the review of construction permits. Permitting fees in Tennessee are collected through the State's federally-approved title V fees program, which has been federally approved and according to State regulation Chapter 1200–03–26–.02, *Permit-Related Fees.* EPA has made the preliminary determination that Tennessee's SIP and practices adequately provide for permitting fees related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

14. 110(a)(2)(M) Consultation/participation by affected local entities: Chapter 1200–3–9–.01(4)(k), *Public Participation,* of the Tennessee SIP requires that TDEC notify the public of an application, preliminary determination, the activity or activities involved in the permit action, any emissions change associated with any permit modification, and the opportunity for comment prior to making a final permitting decision. TDEC has worked closely with local political subdivisions during the

development of its Transportation Conformity SIP and Regional Haze Implementation Plan. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate consultation with, and participation by, affected local entities related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

V. Proposed Action

As described above, with the exception of sub-element 110(a)(2)(E)(ii) respecting CAA section 128(a)(1) requirements, EPA is proposing to determine that Tennessee's infrastructure submissions, provided to EPA on December 14, 2007 and October 19, 2009, addressed the required infrastructure elements for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA is proposing to approve in part and conditionally approve in part, Tennessee's SIP submission consistent with section 110(k)(3) of the CAA.

As described above, with the exception of sub-element 110(a)(2)(E)(ii) respecting CAA section 128(a)(1) requirements, and contingent upon final action by EPA to approve TDEC's July 29, 2011, SIP submission regarding the State's PSD/NSR regulations, TDEC will have addressed the requisite elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007 and September 25, 2009, guidance to ensure that the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS are implemented, enforced, and maintained in Tennessee. With respect to 110(a)(2)(E)(ii) (referencing section 128 of the CAA), EPA is proposing to conditionally approve Tennessee's infrastructure SIP.

Based on a March 28, 2012, commitment that TDEC will adopt specific enforceable measures into its SIP and submit these revisions to EPA within one year of EPA's final rulemaking to address the applicable portions of section 128, EPA is today proposing to conditionally approve Tennessee's infrastructure submission for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS for sub-element 110(a)(2)(E)(ii) respecting the requirements of CAA section 128(a)(1). EPA is also proposing to approve Tennessee's infrastructure submissions for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS because its December 14, 2007, and October 19, 2009, submissions are consistent with section 110 of the CAA. This proposed approval with respect to element 110(a)(2)(C) is contingent upon EPA first taking final action to approve TDEC's July 29, 2011, SIP submission regarding the State's PSD/NSR regulations,

VI. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: May 31, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–14096 Filed 6–8–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 124, and 125

[EPA–HQ–OW–2008–0667, FRL–9681–4]

RIN 2040–AE95

National Pollutant Discharge Elimination System—Proposed Regulations to Establish Requirements for Cooling Water Intake Structures at Existing Facilities; Notice of Data Availability Related to Impingement Mortality Control Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Data Availability.

SUMMARY: On April 20, 2011, EPA published proposed standards for cooling water intake structures at all existing power generating facilities and existing manufacturing and industrial facilities as part of implementing section 316(b) of the Clean Water Act (CWA). As a result of that notice, EPA received extensive comments on its proposal. These comments included a substantial amount of new information accompanied by reports, studies and other documents often supplemented with the substantiating data. In some cases, the materials may not have included the underlying data supporting the documents' conclusions. Consequently, in many circumstances, EPA contacted the commenters to obtain the raw data underlying the documents for EPA's use in further assessing its proposal. This notice presents a summary of the significant new information and data EPA has received since proposal and a discussion of possible revisions to the final rule that EPA is considering that were suggested by the data and comments. EPA solicits public comment on the data and possible revisions presented in this

notice and the record supporting this notice.

DATES: Comments must be received on or before July 11, 2012.

ADDRESSES: Submit your comments, identified by Docket No. EPA–HQ–OW–2008–0667 by one of the following methods:

- *http:www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: OW–Docket@epa.gov*, Attention Docket ID No. EPA–HQ–OW–2008–0667.
- *Mail:* Water Docket, U.S. Environmental Protection Agency, Mail Code: 4203M, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Attention Docket ID No. EPA–HQ–OW–2008–0667. Please include a total of 3 copies. In addition, please mail a copy of your comments on information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.
- *Hand Delivery:* Water Docket, EPA Docket Center, EPA West Building Room 3334, 1301 Constitution Ave. NW., Washington, DC, Attention Docket ID No. EPA–HQ–OW–2008–0667. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information by calling 202–566–2426.

Instructions: Direct your comments to Docket No. EPA–HQ–OW–2008–0667. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider to be CBI or otherwise protected should not be submitted through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

FOR FURTHER INFORMATION CONTACT: For additional technical information, contact Paul Shriner at 202–566–1076; email: *shriner.paul@epa.gov*. For additional economic information, contact Erik Helm at 202–566–1049; email: *helm.erik@epa.gov* or Wendy Hoffman at 202–564–8794; email: *hoffman.wendy@epa.gov*. For additional biological information, contact Tom Born at 202–566–1001; email: *born.tom@epa.gov*.

SUPPLEMENTARY INFORMATION:

Supporting Documentation

A. Docket

EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OW–2008–0667. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include information claimed as Confidential Business Information (CBI) or other information for which the disclosure is restricted by statute. For information on how to access materials in the docket, refer to the preceding **ADDRESSES** section. To view docket materials, please call ahead to schedule an appointment. Every user is entitled to copy 266 pages per day before incurring a charge. The Docket may charge 15 cents for each page over the 266-page limit plus an administrative fee of $25.00.

B. Electronic Access

You may access this **Federal Register** document and the docket electronically, as well as submit public comments, through the Web site *http://www.regulations.gov* by searching for Docket ID No. EPA–HQ–OW–2008–0667. For additional information about the public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

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III. General Solicitation of Comment

I. Purpose of This Notice

On April 20, 2011, EPA published proposed standards for cooling water intake structures at all existing power generating facilities and existing manufacturing and industrial facilities as part of EPA's implementation of its responsibilities under section 316(b) of the Clean Water Act (CWA) (76 FR 22174). EPA received voluminous comments and data submissions during the 90-day public comment period. After many commenters requested additional time to review the proposal, on July 20, 2011, EPA extended the comment period by an additional 30 days (76 FR 43230).

Along with the comments on the proposal, EPA also received more than 50 documents containing new impingement and entrainment data. In addition, after the comment period ended, EPA followed up with those commenters whose comments referred to studies or summarized data in their comments, but had not submitted the underlying studies or raw data referenced in their comments. As a result, these commenters also provided over 30 additional documents containing new impingement and entrainment data. EPA is reviewing each of these roughly 80 documents for possible use in developing the final

impingement mortality limitations. This notice makes these data available and discusses the relevance of these data to the analyses conducted by EPA. EPA solicits comment both on the information presented in this notice and the record supporting this notice.

EPA requested comment on all aspects of the proposed existing facility rule, including specific solicitation of comments and data on 28 key issues (76 FR 22174, Section XI). EPA received more than 1,100 comment letters, several of which provided specific recommendations for changes to the proposed regulatory language. Some of the suggested revisions, if adopted, may help to address EPA's intent to greatly reduce the damage to ecosystems while accommodating site specific circumstances and providing cost effective options for compliance. Some of these suggestions relate to the impingement mortality standard, and are discussed in this notice along with accompanying new data.

EPA notes that all data and options and issues discussed in its proposal are still under consideration for the final rule. This notice is intended to apprise the public of the new information, make this information available for public review and provide an opportunity to comment on the new information that the Agency will consider in making its decisions for the final rule. However, EPA notes that the Agency is not reopening the proposed rule for comment through this notice.

A. Summary of Proposed Rule for Existing Facilities

The proposed rule would establish requirements under section 316(b) of the Clean Water Act (CWA) for all existing power generating facilities and existing manufacturing and industrial facilities that withdraw more than 2 million gallons per day (MGD) of water from waters of the U.S. and use at least 25 percent of the water they withdraw exclusively for cooling purposes. The proposed national requirements, which would be implemented through National Pollutant Discharge Elimination System (NPDES) permits, would establish national requirements applicable to the location, design, construction, and capacity of cooling water intake structures at these facilities by setting requirements that reflect the best technology available (BTA) for minimizing adverse environmental impact. The proposed rule responds to the remands of the Phase II existing facility rule and the existing facilities portion of the Phase III rule from the U.S. Courts of Appeals for the Second Circuit and Fifth Circuit. In addition, EPA responded to the decision in *Riverkeeper, Inc.* v. *EPA,* 358 F.3d 174 (2d cir. 2004) and proposed to remove from the Phase I new facility rule the restoration-based compliance alternative and the associated monitoring and demonstration requirements.

The proposed rule provided significant flexibility in complying with the proposed technology standards for impingement and entrainment. For the proposal, EPA concluded that the best technology available for reducing impingement mortality was modified travelling screens. Based on this BTA technology, EPA proposed standards for impingement that would require existing facilities to reduce impingement mortality. The owner or operator of the facility would be able to choose one of two options to comply with the impingement standard. Under the first option, a numeric fish impingement mortality limitation, the owner or operator would have to sample to measure fish mortality directly to show it will meet the specified mortality performance standards. The owner or operator could use any appropriate technology to meet the standard. Under the second option, a velocity limitation, a facility would have to demonstrate to the permitting authority that its maximum intake velocity will not exceed 0.5 feet per second under specified design conditions. Operation of its intake system in compliance with these specified design conditions would become part of the facility's permit requirements. EPA estimated that more than half of the facilities that could be impacted by the proposed rule already employ readily available technologies that are likely to put them into compliance with the proposed standard.

For entrainment, EPA proposed a site-specific determination to be made by the Director based on local concerns and on the unique circumstances of each facility. The proposed rule would establish requirements for the owner or operator of a facility with actual intake flows in excess of 125 MGD to conduct comprehensive studies, and for all facilities to develop certain information as part of the permit application. Under the procedures proposed to be established in the proposal, the permit authority would determine the appropriate technology to reduce entrainment mortality, if any, to be implemented at each facility after considering site-specific factors.

II. New Information Received Concerning Proposed Impingement Mortality (IM) Requirements

EPA received a substantial number of comments on how the final rule should address impingement mortality (IM). EPA based its proposed national impingement mortality limitations on the performance of modified traveling screens. And, as noted above, as an alternative EPA proposed that a facility could demonstrate that either the design intake velocity or the actual intake velocity at its operation was less than 0.5 feet per second. Most of the commenters, including members of the U.S. Congress, state and local elected officials, and industry stakeholders, requested additional flexibility in complying with the IM requirements.

While the proposal would not specifically require the use of modified traveling screens with a fish handling and return system to meet the IM limits, some commenters interpreted the proposed rule as requiring this. EPA's proposed IM limits are expressed as a monthly average and an annual average. A facility could meet the limitation through any technology it chose. In EPA's view, this approach is a more flexible one than establishing a design standard (i.e., requiring a specific technology) because it would allow facilities to choose a compliance technology that best meets the individual facility requirements dictated by site and other conditions. Further, such an approach allows for innovation in meeting the national impingement mortality limitations. EPA recognizes, however, that some regulated entities may find a technology-based compliance option, rather than a performance based approach, more attractive. Such an approach, particularly the specification of pre-approved technologies, may offer higher regulatory certainty, easier demonstration of compliance, and may offer a less expensive alternative due to reduced monitoring requirements associated with pre-approved technologies. Some commenters viewed the proposed IM standard as overly stringent and requested that EPA establish alternative IM requirements, including site-specific IM requirements similar to those proposed for entrainment. Other commenters provided data pertaining to the performance of technologies, including modified traveling screens used as the basis for the IM limitations.

EPA reviewed all the performance data submitted. EPA is considering these performance data in its evaluation of BTA, including likely revisions to the IM annual and monthly numeric limits, different approaches that may better streamline compliance, and additional options that would better facilitate a demonstration of performance that is equivalent to the proposed BTA. EPA

also received several comments that proposed alternative regulatory approaches or provided specific alternative regulatory language. EPA is also reviewing these comments and considering the alternative regulatory approaches suggested. The data received and corresponding issues are described in more detail in the following sections.

A. New Information Received

As discussed in section I, EPA received more than 80 additional documents containing impingement and entrainment data. In some cases, the only data available was the facility name plus raw sampling data for a number of different species of fish and/or shellfish. Other documents focus on source water characterization data. EPA identified more than 40 distinct sets of additional impingement sampling and performance data from these documents. EPA is reviewing the data in each of these documents for potential inclusion in EPA's evaluation of an IM limitation. In light of these data and accompanying comments, EPA is also reviewing the criteria it adopted for including a study in the limit calculations. EPA's proposed criteria were described in Chapter 11 of the Technical Development Document (DCN 10–0004, EPA–HQ–OW–2008–0667–1282).

In addition to the new impingement and entrainment data, some stakeholders suggested alternative regulatory frameworks for impingement mortality. Under the proposed rule, a facility would be permitted to adopt any technology it chooses so long as it will achieve the required impingement limitation. Thus, a facility could demonstrate the reductions in impingement mortality by either (1) increasing the survival of those fish and shellfish that are impinged, or (2) by reducing the fish and shellfish impingement rates in the first place. EPA had concluded, based on the information it reviewed, that the design standards pertaining to intake velocity would achieve the impingement mortality limitations, and proposed such design criteria as having met the impingement mortality limitation. Therefore, compliance with intake velocity limitation would achieve full compliance with the numeric impingement mortality limitations and no additional control technology would be required.

Several industry stakeholders stated that, despite EPA's best intentions, the proposed rule applied a one-size-fits-all approach for impingement mortality. While all of the suggested changes to the proposal seek to provide additional flexibility through a variety of approaches, most of the comments had several elements in common:

- Commenters suggested defining modified traveling screens as a pre-approved technology or otherwise streamlining the NPDES process for facilities using the candidate technology upon which BTA is based. Thus, EPA would designate certain technologies or certain conditions as complying with the impingement requirement;
- Providing a mechanism to identify other technologies that perform comparably to modified traveling screens;
- Modifying the proposal so that facilities that have already reduced the rate of impingement may obtain credit towards the IM limit;
- Developing a more tailored approach to protecting shellfish;
- Creating alternatives for facilities with very low impingement levels or mortality rates; and
- Providing additional clarity on species of concern as it pertains to demonstrating compliance with the IM limitations.

In addition, as noted above, EPA also received a number of comments suggesting that it adopt a site-specific approach to reducing impingement mortality similar to the proposed approach for addressing entrainment, rather than uniform national requirements for IM and a site-specific approach for entrainment only. Should EPA decide to adopt uniform national performance or technology based standards for IM, as in the proposal, EPA is also considering a number of flexibilities, such as the site-specific approach for measuring compliance with IM limits detailed in section III.B.4 below. EPA also received requests to meet with or hold conference calls with a number of stakeholders to discuss each of these approaches. The stakeholders with whom EPA met include the Utility Water Act Group (UWAG), the Clean Energy Group (CEG), the Cooling Water Intake Structure Coalition, the Association of Clean Water Administrators (ACWA), and Riverkeeper, as well as several individual firms and companies. Documentation of these meetings may be found in EPA's docket (11–6500). The following sections present the data and suggested approaches EPA may use in developing the final rule.

B. Alternative Approaches Under Consideration

1. Site Specific Approach for Reducing Impingement Mortality

EPA received a number of comments suggesting that it adopt a site specific approach for both IM and entrainment, rather than uniform national requirements for IM and a site-specific approach for entrainment only. At proposal, EPA considered an approach that would establish both impingement and entrainment mortality requirements on a case-by-case basis taking into account the factors at a particular facility, but did not propose such an approach based on its preliminary determination at proposal that there are low cost technologies for impingement mortality that are available, feasible, and demonstrated for facilities on a national basis (76 FR 22174, Section VI.D.4). EPA recognizes both advantages and disadvantages of uniform national requirements. Such requirements would ensure a minimum level of IM reduction at all facilities. Moreover, if the final rule provides additional flexibility such as those measures discussed in Section III.B.3, it is EPA's understanding, based on comments received and its own technical analysis, that a substantial majority of the industry would meet the IM limitations based on model technologies considered by the Agency (see Section III.B.3 for more information). However, uniform national requirements may also be challenging to implement on a national level, given the wide range of facility types and intake structure configurations covered by the rule. Commenters stated that in some cases the technologies available for a particular site may not be able to achieve the IM limitations. Commenters further stated that, in certain circumstances, the costs of impingement technologies may be unusually high due to site-specific factors. EPA is now considering whether to adopt an approach that would allow establishment of impingement controls on a site-specific basis either generally or limited to those circumstances in which the facility demonstrated that the national controls were not feasible. Under such an approach, the facility could demonstrate to the Director that site-specific factors warrant a site-specific BTA for both entrainment and IM. The comprehensive study and other planning requirements could be enhanced to include information that the permitting authority would use to determine site-specific BTA for both entrainment and IM. The decision criteria for choosing BTA would be the same for IM and for entrainment, and EPA expects that permitting authorities and facilities would view the two together in an integrated planning and decision making framework. EPA requests comment on such an approach

and further information on why uniform controls should not be adopted.

2. Closed-Cycle Recirculating Systems

EPA received a number of comments suggesting that a facility (or intake) employing a cooling tower as a closed-cycle recirculating system (CCRS) should be exempt from IM requirements. EPA did not propose that a facility that fully employs cooling towers would automatically meet the IM standards for a number of reasons. First, the largest facilities with wet cooling towers still have the potential to withdraw significant volumes of water; in some cases, 100 MGD or more in makeup water alone. Second, at proposal, EPA did not provide an additional alternative that specifically established cooling towers as a pre-approved technology for complying with the IM limits because data from EPA's industry questionnaire and site visits indicate that most intakes providing cooling water to a cooling tower already met the proposed intake velocity limitation of less than or equal to 0.5 feet per second [DCN 11–6601].[1] Further, based on the performance observed in site visits and questionnaires, EPA anticipated that a properly operated cooling tower installed as a retrofit would typically meet the proposed intake velocity limitation alternative.[2] Thus, EPA anticipated all facilities employing wet cooling towers would already meet the IM limitations. However, commenters pointed out that not all facilities employing a wet cooling tower or some other CCRS as their original technology (i.e., not a retrofit) would necessarily have been designed to meet the 0.5 feet per second intake velocity threshold.

Third, EPA has found several instances where a cooling tower has been installed but not operated to minimize the volume of water withdrawn. For example, EPA found in site visits that cooling water may be passed through a cooling tower to reduce the discharge temperature of the water, but little or no water was recycled back to the facility cooling system. In other words, the cooling tower was in place but cooling water was used in a single pass mode, with overall water use identical to a typical once-through cooling system, resulting in no reductions in impingement or entrainment. Operation in this manner is not feasible or in most cases even possible at a new facility because the intake at a new facility is only sized for supplying make-up and blowdown flows. Accordingly, in developing the existing facility definition for CCRS in the proposed rule, EPA began with the Phase I new facility rule definition of CCRS but added criteria to it in order to clarify the meaning of minimized make-up and blowdown flows. EPA proposed that a properly operated cooling tower is one that operates at a minimum cycles of concentration of 3.0 for freshwater and 1.5 for saltwater or brackish water. EPA solicited comment on this definition.

EPA does not intend for facilities to install cooling towers solely for the purpose of meeting the IM requirements. In fact, EPA expects all facilities could comply with the proposed IM requirements without relying on closed-cycle cooling. However, consistent with EPA's position that flow reduction is strongly correlated to reductions in impingement and entrainment,[3] a properly operated cooling tower would provide significant reductions in IM. An optimized cooling tower would typically reduce water usage by 94.9 percent to 97.5 percent, reflecting salt water and fresh water sources respectively. Thus, in this case, such a cooling tower would exceed the level of performance required by the proposed IM limitations.

EPA is now considering a further alternative compliance provision in the regulatory language that would allow the owner or operator of a facility to demonstrate compliance with the fish impingement mortality limitation though either defined technologies or studies that demonstrate the impingement mortality reduction performance of optimized travelling screens at a facility. This alternative could include a provision that would deem a facility in compliance with the IM limitations if the facility employed a CCRS (such as a wet cooling tower) that minimizes water withdrawals. In addition, EPA received many comments specific to the proposed definition of CCRS.

Some commenters stated that while they may have been effectively operating as closed-cycle units for many years, they have concerns with their ability to comply with the new definition. We continue to look closely at these comments. EPA may consider revising the definition of CCRS to provide existing facilities flexibility in demonstrating they already have a properly operated CCRS, such as a minimum level of flow reduction or water usage, a minimum level of cycles of concentration, and/or a narrative set of requirements demonstrating site-specific minimized make-up and blowdown flows. We request additional comment and supporting data, specifically including ways to define CCRS that accommodates those existing CCRS systems that are properly operated. EPA is also considering adopting the same definition of closed cycle cooling for the existing facilities rule that it used for the new facilities (and Phase II) rule. EPA acknowledges the argument that requirements for existing facilities should not be ''more stringent'' than the comparable requirements for new facilities. Some commenters have interpreted the proposed definition of closed cycle cooling to be ''more stringent'' than the definition used in the new facilities rule because it places additional restrictions on how a facility must be operated to be considered ''closed cycle.'' In the Phase II rule EPA included as a compliance option a demonstration that the facility ''[has] reduced or will reduce [its] flow commensurate with a closed-cycle recirculating system.'' EPA requests comment on using similar language for a compliance option in this rule.

Similarly, EPA is aware that a facility may obtain substantial flow reductions due to partial CCRS systems, variable speed pumps, seasonal operation, and other operational measures which result in reduced impingement. For example, a facility that reduces intake flow by half has reduced impingement by half; consequently, impingement mortality has been reduced by 50 percent. EPA is therefore considering adding in the final rule an opportunity for a facility to get credit for an equivalent reduction in impingement mortality when it reduces its intake flow (in comparison to a once-through cooling system). Thus, the regulatory language could provide for submission of such information as part of a performance study provided to the permit writer to demonstrate compliance with the impingement mortality limitations. Section 4 below describes how the credit for flow reductions could be used to determine compliance with the IM limitations.

3. Measurement of Intake Velocity

EPA proposed an intake velocity limitation corresponding to a facility's design intake flow (DIF) as a design

[1] EPA also notes that the Phase I new facility rule requires low intake velocity (0.5 feet per second) in addition to flow reduction commensurate with closed cycle cooling.

[2] In a retrofit scenario, the facility's pre-retrofit intake velocity would have been calculated for flow through multiple intake screens. After the retrofit, the volume of water withdrawn is significantly reduced, but is often still withdrawn through the same number of screens, leading to a significantly reduced intake velocity.

[3] See, e.g., 69 FR 41576, July 9, 2004, Section VII.C.1. A reduction in flow leads to a corresponding reduction in impingement and entrainment.

standard for demonstrating compliance with the IM limitation. EPA's record shows an intake velocity of 0.5 feet per second or lower provides similar or greater reductions in impingement, and therefore impingement mortality, than the BTA technology of modified traveling screens. Therefore EPA proposed the intake velocity limitation as a compliance alternative. EPA is aware that low intake velocity is sometimes confused with velocity cap technologies, and EPA would like to clarify that these concepts are not the same. Most velocity caps do not operate as a fish diversion technology at low velocities, and in fact are often designed for an intake velocity exceeding one foot per second. Thus a velocity cap will not typically meet the low intake velocity impingement mortality limitation. The velocity cap is located offshore and under the water's surface, and uses the intake velocity to create variations in horizontal flow which are recognizable by fish. The change in flow pattern created by the velocity cap triggers an avoidance response mechanism in fish, thereby avoiding impingement.

The proposed velocity IM limitation is based on DIF, thus the calculated velocity would reflect the maximum intake velocity as water passes through the structural components of a screen, measured perpendicular to the screen mesh. If the intake does not have a screen, EPA assumes that in most cases the maximum intake velocity is perpendicular to the opening of the intake.

The following discussion explains how velocity would be determined, and thus compliance with the intake velocity limitation demonstrated. In general, EPA anticipates the first point of contact of the intake with the source water is the likely point of compliance, and would be the location for measurement of intake velocity. For example, some intakes use a channel or canal to transport the water to the facility. In those cases, the point of measurement is typically the channel or canal entrance, and not at the screen face of the facility's forebay. Similarly, if a facility employs a velocity cap, the point of measurement is the velocity cap opening (as described above, most velocity caps would not have a velocity low enough to meet the 0.5 feet per second limitation, but some may).

In the proposal, EPA clarified that DIF need not be the original design of the facility. For example, redundant pumps, emergency service water, and fire suppression systems could be excluded from a facility's DIF. As an additional flexibility, EPA proposed to allow actual intake velocity to be used to demonstrate compliance with the maximum intake velocity requirement. In this case, the actual flow (i.e., volume) across the screen surface area would be used to calculate the maximum expected velocity through that screen. The proposed rule indicated that the maximum velocity must be achieved under all conditions, including during minimum ambient source water surface elevation and during periods of maximum head loss across the screens or other devices during normal operation of the intake structure.

EPA received several comments regarding the velocity compliance alternative. For example, some comments suggested that the requirement to meet the intake velocity ''under all conditions'' was overly conservative and may render this alternative technologically infeasible and/or economically impracticable. These comments provided data suggesting infrequent events with short durations can occur, during which time the intake velocity could increase to a rate greater than 0.5 feet per second. Examples of such events might include variations in river flows related to other uses of the water, weather related variations (e.g., reduced or increased precipitation) or flow changes related to dams. Some comments indicated these short duration events would not result in measurable harm related to increased impingement. Other comments point out that monitoring velocity at screens with low levels of screen blockages (such as the maximum of 15 percent allowable blockage presented in the proposed rule) is technically problematic with standard ⅜ inch mesh screens. It was further suggested that changes to pressure or flow as a means of measuring velocity are often indiscernible under such conditions. Industry comments also indicated that, in general, debris fouling is minimized through typical operations and maintenance procedures that must be performed to ensure that cooling water flow is not disrupted. For example, a facility would not allow conditions that could result in pump cavitations, other damage to circulating water pumps and their related systems, or anything else that could compromise cooling capabilities or affect plant reliability.

EPA also received comments suggesting that a direct velocity measurement posed technical challenges. Some of these comments suggested that EPA provide the flexibility to calculate velocity based on other direct measurements, such as water depth, pressure differential, and plant intake flow. Based on the comments and data received in response to the proposed rule, EPA is actively considering changes to the intake velocity compliance alternative, as described below.

Actual through-screen intake velocity can be measured directly. However, after further discussion with vendors, EPA is aware that some sites may have difficulty measuring through-screen velocity (DCN 11–6602). EPA is considering rule language clarifying that velocity may be calculated from a facility's actual intake flow rate (AIF), the screen open face area, and the source water surface elevation at the time of flow measurement. (If there is no screen, the opening of the intake is the open face area.) The volumetric intake flow would be representative of routine operations, and may not include periods of zero flow. As with DIF, the point of measurement would be the point of first contact with the source water (e.g., the canal entrance, velocity cap opening, or shoreline screen face).

To demonstrate compliance with the actual intake velocity criteria, EPA expects that a facility would record the average monthly velocity. This would be measured directly or calculated from the volumetric flow and source water surface elevation measured no less frequently than once per week reflecting normal operations. Such measurements would already reflect current water levels; therefore a separate evaluation of low flow conditions would be unnecessary. For example, low source water elevation over a three month period would be represented in the measured or calculated through-screen velocity and reflected in the reported monthly values. However, it was not EPA's intention to penalize a facility in the event of unusual and irregular conditions. Thus, for example, in an unusual circumstance that causes the surface elevation to be low for just one day, it may be acceptable that this condition is not represented in the reported data because it does not reflect conditions that are likely to have a lasting impact on aquatic life. EPA solicits data on all of these assumptions and solicits comment on making this clear in the final regulatory text or preamble to the final rule.

It is important to clarify that the velocity of water as it approaches the screen, or even immediately adjacent to the screen, is not equivalent to the through-screen velocity. The screen surface area decreases the area through which a given volume of water has to pass, therefore the velocity of the water increases as it passes through the screen. Because the velocity compliance option functions in two ways—

protecting fish from injury due to being impinged on the screen's surface, and allowing fish the opportunity to escape from the intake—EPA proposed that the point of compliance must be the velocity through the screen or intake structure and not at some point in front of the screen. Velocity at other points near the intake can vary based on many factors such as dead spots and hydraulic zones. However, as stated above, EPA understands that there may be technical challenges in some cases to measuring through-screen velocity. EPA will continue to consider comments from the proposal on this issue and may modify the monitoring requirements as appropriate.

For the Phase I rule, EPA compiled data from three studies on fish swim speeds and found that a velocity of 0.5 feet per second would protect 96 percent of fish tested (66 FR 65256, December 18, 2001, Section V.B.1.b.1). EPA recognizes that the flow directly in front of a screen designed for 0.5 feet per second through-screen velocity will always be lower than the velocity standard (it may be as much as half the through-screen velocity in the case of a standard ⅜ inch screen). Therefore, EPA's proposed velocity standard as measured through the screen surface already includes a margin of safety. This potentially allows more fish to sense the change in velocity and invoke an avoidance response before being impinged. Because the 0.5 feet per second limit as a through-screen measurement already includes a margin of safety, EPA's current view is that additional criteria regarding screen blockage and related monitoring may be unnecessary. EPA solicits comment on the data and possible changes to the rule language for the intake velocity design standard to reflect such modifications.

4. Impingement Mortality Limitations

EPA proposed two ways in which a facility could demonstrate compliance with the impingement mortality limitations. The owner or operator of the facility could conduct monitoring to show the specified performance standards for impingement mortality of fish and shellfish have been met through use of any appropriate best performing technology, or they could demonstrate to the permitting authority that the intake velocity meets the specified design criteria. The performance standards for impingement mortality were proposed as monthly and annual limitations in impingement mortality, measured as a percent mortality not to be exceeded. These proposed standards were applicable to all existing facilities with a DIF greater than 2 MGD. EPA specifically solicited comments on how to give credit for existing technologies, and using those site-specific adjustments to implement the national uniform IM standard in a site-specific manner. The data and comments on this approach will be further discussed in sections 4 and 5.

As explained in the proposed rule, EPA applied four general criteria when reviewing studies for acceptance in the impingement analyses: (1) The data must be specific to the technology under consideration; (2) impingement mortality must have been reported as an absolute number or a percentage of impinged fish that were killed; (3) the data must reflect technology performance that is representative of conditions that exist under actual facility operations, and; (4) reported values must be actual measurements, rather than estimates. EPA based the proposed limitations on the performance of modified traveling screens with a fish return system. Additional criteria were used to select data as the basis for impingement mortality calculations. The limitations were based on all life stages of fish collected or retained in a ⅜ inch sieve and held for a period of 24 to 48 hours to assess latent mortality. Further, EPA rejected studies that did not evaluate species typical of the location conducting the testing. At proposal, EPA found four data sets at three facilities in New York State that met these criteria; see Chapter 11 of the proposed Technical Development Document (TDD) for more information (DCN 10–0004; EPA–HQ–OW–2008–0667–1282).

As described in section I of this notice, EPA received more than 80 documents and studies, several of which include impingement studies. These additional studies represent facilities from a variety of geographic regions and waterbody types, and include a broader representation of species than those comprising the basis for the proposed rule limitations. EPA solicits comment on recalculating the impingement mortality limits using the new studies that meet EPA's criteria as just described. EPA also solicits comment on whether such a single monthly and annual limit could be sufficiently protective for all facilities and also recognize site specific variations. In response to the comments and data regarding fragile species and abundant species, EPA may consider alternative procedures to determining the limits, such as giving equal weight to each species instead of to the total organism counts, or determining different limits for different groups of organisms. Further, EPA has received several studies that include counts of shellfish. EPA is considering whether the revised limitation should include both fish and shellfish. Accordingly, EPA may eliminate the specific requirement to employ technologies comparable in performance to barrier nets in order to protect shellfish. Alternatively, EPA is considering whether the need for additional impingement controls for shellfish can be determined by the Director based on site-specific assessments and consideration of the species of concern for each facility.

In addition, EPA received information suggesting one or more of the acceptance criteria used to evaluate the studies for inclusion in EPA's calculations were too stringent. For example, EPA received comments and data concerning the holding time of 24 to 48 hours. Some studies suggest that shorter holding times may still be sufficient for purposes of determining latent mortality. Yet other information suggests comparable performance with ⅜ inch square mesh and ¼ by ⅛ inch mesh,[4] and therefore EPA solicits comment on including either technology specification in the limit calculations. EPA is reviewing these data and may revise the criteria as appropriate.

Many commenters suggested that EPA should consider modified traveling screens with a fish return as a pre-approved technology as this technology forms the BTA basis of numeric limits. Alternatively, comments suggested that EPA should streamline the permitting process and reduce monitoring for facilities employing the candidate BTA technology. Commenters went on to say if this technology is the candidate BTA technology, then the proper design, installation, operation, and maintenance should be deemed compliant with any limit based on the technology.

EPA still views properly operated, modified traveling screens as BTA. Accordingly, EPA has concluded that an alternative compliance option that would streamline the permitting process as well as provide for reduced monitoring requirements may be appropriate for facilities employing the model BTA technology. The BTA technology properly operated according to best management practices would then be deemed compliant with the IM standards. Under this approach, EPA might require the facility to provide site-

[4] Note EPA still intends to exclude data for fine mesh screens to avoid confusion over the status of ''impinged entrainables'' (76 FR 22174, Section VI.B).

specific performance data to identify the operational conditions that would ensure that the technology is being operated appropriately. EPA's current understanding suggests that two-years of data may be an appropriate amount to make this determination. Note the biological monitoring conducted as part of a performance study would not be used to demonstrate compliance with the limit, but rather would be used to help set operational parameters for the facility. The performance data could consist of a two year study focused on the operational conditions that optimize the proper design, installation, operation and maintenance of modified traveling screens with fish return systems. A facility could use relevant data already collected as part of the study, or conduct a new two-year performance study. Once these operational conditions have been identified, EPA would expect the permit writer to incorporate these operational parameters as conditions of the permit.

The data from EPA's technical survey shows at least 79 percent of existing power plants have traveling screens. EPA realizes not all facilities could retrofit existing traveling screens to modified traveling screens. In particular, the installation of a fish handling and return system is not feasible at some facilities. However, EPA expects the majority of those facilities currently employing traveling screens would modify their traveling screens to comply with the IM limitations. Therefore, EPA expects these same facilities could take advantage of the reduced monitoring requirements and the streamlined compliance associated with this alternative. Further, EPA's data show 15 percent of facilities meet the low intake velocity limitation. Combining all of the IM limitation alternatives, EPA anticipates more than 90 percent of the facilities could take advantage of design standards rather than choosing to comply with the numerical IM limitations if EPA adopted this approach. EPA expects some facilities would explore innovative and creative approaches taking site-specific characteristics of their facility into account to provide performance comparable to the BTA technology, and EPA would maintain the numerical IM limitation to provide for such flexibilities. EPA solicits comment on providing this compliance flexibility and data on these assumptions.

Under this approach, as long as the owner or operator of the facility complies with the specified operational conditions, the impingement mortality limitations would be deemed to have been met. Subsequently, the owner or operator would not have to conduct any biological monitoring to show compliance with the impingement mortality limitations. In subsequent permit terms, and in the absence of major changes to the operation of the intake structure or the biology of the source water, EPA expects the Director would waive any further requirement for a study or compliance monitoring for the facility. EPA is considering modifying the regulations to provide specifically for such a waiver. If EPA were to adopt these revisions in the final rule, EPA would make corresponding changes to the permit application requirements. EPA solicits comment on this alternative approach for compliance with IM standards. The Agency also takes comment on the appropriate level of data for assuring that the technology is operated suitably to minimize adverse environmental impact. For example, EPA solicits comment on whether some monitoring of operational parameters should be required in lieu of biological monitoring, whether EPA should specify some minimum set of operational parameters, or whether such a determination is best left to the discretion of the permitting authority.

EPA also received comments regarding the need for separate requirements to address entrapment. Some commenters indicated that the requirements in the proposed rule would not be feasible to implement at all facilities. EPA is considering these comments and requests specific information on issues related to the feasibility of preventing entrapment, including examples of where it is impractical or infeasible to return entrapped organisms to the waterbody or prevent their entrapment in the first place. EPA will consider this information as it finalizes the rule.

5. Credit for Existing or Newly Installed Technologies

EPA's objective in establishing the IM limitations is to minimize adverse environmental impacts by ensuring that fewer aquatic organisms such as fish and shellfish are killed by cooling water intake structures. The limitations are based upon the model best technology available which reduces impingement mortality of fish and shellfish. As EPA's proposal noted, this model technology does not include, nor account for, elements of impingement reduction technologies already installed at some facilities. There are many cases where facilities have installed and continue to operate technologies to reduce impingement. These technologies may have been approved by the appropriate permitting authorities, including required provision of supporting studies and assessments of the impact of the plant on the local aquatic environment. However, these technologies may not have been designed in such a way that they would meet the proposed IM requirements, particularly the monthly and annual IM numeric limits. Further, the structure and design of the proposed rule IM numeric limits make accounting for the benefits of these existing technologies very difficult. For example, EPA received new information showing diversion technology at one specific facility reduced impingement of one or more species by more than 90 percent, and consequently, fewer fish would have been killed as a result of impingement mortality. However, the limitations are strictly based upon the performance of the model technology and were derived by applying statistical methods to observed data from facilities with the model technology.

In the proposal, EPA intended that facilities would receive credit for both pre-existing and/or newly installed technologies when demonstrating compliance with the statistically derived IM limitations. After reviewing the comments, EPA is providing additional discussion of how reductions in impingement may be used to comply with the IM requirements. In meeting EPA's overall objective, a facility should be able to take credit for reducing the number of organisms killed by a CWIS regardless of the technology used. If the alternative provision were to provide credit for other technologies, the facility would need some way to demonstrate that the technologies result in no more impinged fish being killed than would have resulted from the model technology (modified traveling screens) alone. With these alternative provisions that EPA is considering, it is possible that a facility might be able to meet the limitations by means other than installing and operating the model technology. EPA examined the effect of alternative provisions in demonstrating compliance with the annual average limitation and the monthly average limitation.

In establishing the IM limitations, EPA seeks to minimize impingement mortality on an ongoing basis, each year, at a level that is achievable for a facility. Both the annual average limit and monthly average play an important role in ensuring that facilities optimize performance of their technology. Compliance with the monthly average limitation is demonstrated by comparing the average IM value from the samples collected during each

month (or other 30-day period designated by the Director). At the end of the 12-month period, the facility calculates the annual average as the arithmetic average of the monthly averages during that period. The facility would then compare its annual average to the annual average limitation to demonstrate compliance.

With the alternative provisions that the Agency is considering, a facility would provide use data from long-term (e.g., 1–2 year) performance studies and/or calculation baseline assessments to quantify the impingement and/or IM reductions relative to what would be expected from the model technology alone. Because monthly averages are used to demonstrate compliance with both monthly average limitation and annual average limitation (i.e., monthly averages are averaged to produce the annual average), facilities would incorporate estimated reductions into the monthly average IM percent calculations. To calculate an adjustment using only data for a particular month (e.g., June) would require data for a very long term, such as 4-years or more. EPA would not require, nor recommend, this level of refinement in the calculations for two reasons. First, EPA does not expect that many facilities would have such long-term data available. Second, the calculations for each month would require a different set of adjustments that would create additional, unnecessary, complications for the facility and permit authority. To simplify the adjustment procedures, a facility would estimate the monthly reduction using the total reduction divided by the number of months in the study. The facility then would use this estimated monthly value to adjust the observed numbers of impinged fish and killed fish in the IM percent calculations for each and every month. Depending on the technology used, the reductions would be to the number of impinged fish and/or number of impinged fish that do not survive the holding time (''killed fish'').

If the technology reduces impingement, the alternative provision calculations would increase the number of the observed impinged fish by the estimated number that would have been impinged without the technology. The monthly average calculation then would compare the observed number of killed fish to the larger total number of impinged fish (i.e., the sum of observed and estimated number reduced by technology). This comparison would result in a lower IM rate than the unadjusted, observed value.

The adjustments to the monthly average calculations, in turn, affect the value of the annual average calculated by the facility, because the facility's annual average is set equal to the arithmetic average of the monthly averages. In other words, the facility's annual average is solely based upon the values of the monthly averages. Thus, when the monthly averages are adjusted downward by the alternative provisions, the annual average also will be adjusted.

The following example illustrates how the alternative provisions would adjust for flow, location, and other technologies in demonstrating compliance with the IM monthly average limitations. The example uses values that simplify the calculations to better illustrate the adjustments, and are not intended to reflect values that EPA expects at any facility. To simplify the example further, the facility has only fish and does not have shellfish in its source waters. EPA also recognizes that facilities often examine the combined effect of two or more technologies (e.g., deterrents and offshore location) within a single study. In applying the alternative provision, the facility could use the outcomes associated with the combined performance of multiple technologies. However, for a more complete example, EPA has chosen a hypothetical facility that examined each change in a separate study.

The hypothetical facility is located at an offshore location, has a velocity cap, and installed variable speed drives. For the purposes of this example, assume its permit requires that it collect samples once a week and evaluate the impinged fish after 24 hours. The facility has just completed sampling at the forebay each week during June, and has identified the counts of the facility specific species of concern as follows. The four samples had 1,500, 1,000, 500, and 1,000 impinged fish, for a total of 4,000 impinged fish. During the 24-hour holding period, 400, 100, 150, and 350 fish died, for a total of 1,000 dead fish. The facility then calculated the forebay's IM as 25 percent, using the equation provided in the proposed rule preamble (76 FR 22174, Section IX.F.1) as follows:

$$\% \text{ IM} = \frac{\text{(impinged fish that are killed)}}{\text{(total number of impinged fish)}} \times 100$$

$$= (1{,}000/4{,}000) \times 100$$

$$= 25\%$$

To adjust the observed percent IM for its offshore location and velocity cap, the facility first extracts information from its previously conducted studies related to performance and calculation baseline. For the offshore location adjustment, fish density and flow data show the offshore location reduces the rate of impingement for all species of concern by 30,000 fish annually, or, on average, 2,500 each month (i.e., calculated as 30,000 fish divided by12 months). For the velocity cap, performance data show the velocity cap reduces impingement of fish and shellfish by 24,000 organisms annually, or a monthly average of 2,000 organisms. Therefore, the facility has reduced impingement of all species of concern, on average each month, by 4,500 organisms (i.e., sum of 2,500 for offshore location and 2,000 for velocity cap). The facility then applies the reduction to the denominator of the percent IM calculations as follows:

$$\% \text{ IM} = \frac{\text{(impinged fish that are killed)}}{\text{(total number of impinged fish)}} \times 100$$

$$= (1{,}000/4{,}000) \times 100$$

$$= 25\%$$

In summary, calculating percent IM at the forebay yields a 25 percent IM, and then applying the alternative provisions for other technologies shows the effective percent IM is 12. Next, to adjust for the variable speed drives, the facility has determined from engineering and design calculations that the volume of cooling water flow has been reduced by 11 percent. The volume of reduced flow multiplied by the density of fish near the intake is calculated, and the facility projects that the reduced flow excludes, on average for each month, an additional 1,100 fish from impingement. Then the facility would apply the reduction in impinged fish to the denominator, as follows:

$$\% \text{ IM} = \frac{\text{(impinged fish that are killed)} \times 100}{\text{(total number of impinged fish + reductions in fish impinged due to other technologies)}}$$

$$= ((1{,}000 / (4{,}000 + 4{,}500)) \times 100$$

$$= 12\%$$

This example is intended to illustrate how facilities would obtain credit for existing technologies. While this example includes a velocity cap, it does not imply that a velocity cap is the appropriate technology for all facilities. EPA's data shows in most cases, a properly located velocity cap alone would be sufficient to achieve the limitations. In the case where a velocity cap (or any other technology) alone would not be sufficient to meet the limitations, EPA expects that each facility would identify and install a suite of cost effective technologies to achieve the IM requirements (i.e., variable speed drives in this example). EPA solicits comment on whether this approach reasonably addresses commenters' request that EPA identify velocity caps to be a pre-approved BTA for IM by appropriately taking into account facilities' existing technologies in determining whether a facility meets the proposed IM requirements. In summary, the hypothetical facility would observe a 25 percent IM rate for June; which would then be adjusted downward to 12 percent for its offshore location and velocity cap; and then further adjusted downward to 10 percent for its flow reduction. The value that the facility would report for compliance purposes would be the 10 percent value. At the end of the 12-month monitoring period, the facility also would use the 10 percent value for that month with the other 11 adjusted monthly values to calculate the annual average IM rate. In the final rule, EPA may decide to include the equations for calculating IM and the alternative provision in the rule language to provide additional clarity. EPA solicits comment on how frequently a facility would need to calculate credit for existing technology after the initial demonstration.

Comments from some Phase II facilities indicate facilities may have already collected data and performed baseline calculations required as part of the 2004 Phase II rule. While EPA identified considerable challenges implementing calculation baseline in the 2011 proposed rule (76 FR 22174, Section III.B.1), these commenters went on to suggest that a facility should have the option to use these data and analyses in demonstrating compliance with the IM limitations. In many cases these data are sufficient to show their site specific impingement rates as well as the performance of any technologies installed at their site. Therefore, EPA is considering a provision that would allow existing facilities to use data already collected as part of a site-specific analysis of calculation baseline to demonstrate compliance with the alternative provisions. EPA solicits comment on these data and possible changes to the rule language for providing credit in reductions in impingement calculations to demonstrate compliance with the annual average and monthly average IM limitations.

EPA recognizes that it may be challenging for a facility to determine in some cases what its calculation baseline should be, particularly if it has had a technology in place for many years. Thus it may be difficult to establish precisely what the performance of a technology is relative to a situation in which the technology was not employed (a situation that may not have existed at the facility for a long time). EPA is thus also considering identifying additional technologies (which could include velocity caps) as satisfying the IM performance standards without having to conduct the type of study and calculation discussed in this example. EPA requests comment on this approach, on what technologies could be deemed compliant under this approach, and on what requirements or demonstrations would be appropriate to establish the technology as a compliance alternative. EPA also requests comment on whether the final rule should allow permitting authorities to approve additional technologies as satisfying the IM requirements, and if so, what specific demonstrations or procedures would be appropriate for permitting authorities to use in making such determinations.

6. Facilities With Low Impingement Rates

EPA received data showing some facilities have very low impingement

rates. This is usually due to intake location for the specific waterbody from which water is withdrawn for cooling, or the implementation of other technologies. For example, EPA is aware of a facility located on the inside bend of a large freshwater river which seasonally employs large mesh barrier nets. The facility impinges an average of several fish per month. In another case, the intake is located downstream of a dam, and the fish avoid the cold water coming from the dam. Recent data show the facility impinged one fish over two 24 hour periods. Under such low impingement rate conditions, technology performance is unlikely to be meaningfully evaluated. Moreover, in EPA's view, these facilities are not likely having an adverse effect on aquatic life. It is probable that in most cases requiring additional technology would not be necessary to further minimize adverse environmental impacts.

EPA has received several suggestions on how to establish requirements for such facilities with very low impingement rates. One suggested approach was to establish an exemption based on an annual limit on biomass impinged. EPA found a small number of studies have available performance data that are expressed as biomass, and the amount of data within these studies are generally limited (see proposed TDD, Chapter 11, Appendix B). Another approach that would be easier to implement is to establish an annual limit on the absolute number of fish that may be impinged. Facilities meeting this limit on the rate of impingement would be deemed in compliance with the IM limitations, and therefore would not be required to install additional technologies. In other words, the existing technology in place would be deemed BTA for that facility. Alternatively, if EPA were to consider the number of fish killed (rather than as a percent of impinged fish) as a limitation for the final rule, EPA might statistically model the data to derive the limit, or EPA may select the minimum observed value (see TDD, Chapter 11, Appendix D for further discussion of the methodology).

Comments by some state agencies indicated concern that such an approach does not fully consider the affected species. For example, while the total number of impinged fish that die might be low, they might all be species of concern, or may include a locally important species under NOAA's NMFS conservation watch status. If EPA adopts this approach, EPA might need to provide certain safeguards to ensure adequate protection of specific fish populations.

EPA is considering authorizing the permit writer to determine that a facility using a given technology complies with the IM requirements because it does not impinge greater than some absolute number of fish. Such a provision would then authorize the Director to make a site-specific determination that the facility is already employing BTA. Under this approach, a facility impinging fewer than the specified number of organisms might submit some minimum amount (e.g., two years) of impingement rate or impingement mortality data, including a demonstration that no threatened and endangered (T&E) or other protected species are identified in the vicinity of the intake. Additional factors the Director should consider might include any impacts to significant recreational or commercial fisheries, a review of locally important aquatic life such as those identified by NOAA's NMFS regarding local or state conservation status of any species of concern, value of impinged species, prevalence of nuisance or invasive species, or other local conditions. The Director could then make a determination that the very low impingement rate is BTA due to the facility's existing technology. EPA solicits comment on the data and approaches under consideration for facilities that already have very low impingement rates. EPA also solicits comment on whether EPA should identify in the final rule a specific upper limit on what could be considered a very low level of impingement mortality, or if this should be left to the discretion of the permitting authority. In addition, as noted above, EPA is soliciting comment on recommendations it received following proposal that EPA consider a regulation under which impingement requirements (like entrainment requirements) would be established on a site-specific basis. If EPA adopted the approach proposed for entrainment, the permit writer could weigh site-specific costs and benefits, among the factors being assessed, in the decision whether to require further impingement controls. EPA also requests comment on a hybrid approach under which the permittee could choose among several compliance options that might include both meeting an IM performance standard or requesting a site-specific determination of BTA for both impingement and entrainment, if the benefits of meeting the performance standard did not justify the costs on a site-specific basis. This could be structured in a manner similar to the ''cost-benefit variance'' that was included as a compliance option in the final Phase II rule. EPA requests comment on all of these approaches.

7. Species of Concern

In recognizing the variability in each facility's source water characterization, particularly with respect to the specific species and life stages of fish and shellfish, EPA proposed the IM standards should be applied to site-specific species of concern. EPA intended this provision to provide flexibility to the Director to focus the technology based requirements on those species deemed important at a given site. Some commenters indicated that many states have already determined the species of concern as inclusive of forage fish, fragile fish, and abundant representative indicator species. Therefore, commenters indicated EPA's intended flexibility might not work.

In this notice, EPA is clarifying the proposed rule approach to species of concern is intended to allow the Director to prioritize certain fish and shellfish in a site-specific manner. EPA generally intended that the highly abundant, fecund forage fish species (such as the clupeid species) would not be considered species of concern. However, the Director could determine such species are species of concern if they were considered: Important migratory or commercial species; threatened or endangered; or of insufficient abundance in the source water to support the growth and abundance of those species that prey upon them. To provide the Director with the appropriate data to make such a determination, and to avoid the unnecessary burden of requiring a facility to comply with the IM limitations for all species, EPA is considering a regulatory provision that would distinguish representative indicator species (RIS) from the site-specific species of concern. Under such an approach, a facility may be required by the Director to monitor for those species identified as RIS, but the IM limitations would only be applicable to the species of concern. The species of concern would not necessarily include all RIS. EPA solicits comment on the data and approaches under consideration here that best address the variability in species and life stages of fish and shellfish. Alternatively, EPA takes comment on the suggested addition of defined species of concern, explicitly identifying those specific species that are not subject to the IM limitations.

III. General Solicitation of Comment

EPA encourages public participation in this rulemaking and requests comments on this notice of data availability supporting the proposed rule for cooling water intake structures.

EPA invites all parties to coordinate their data collection activities with the Agency to facilitate mutually beneficial and cost-effective data submissions. Please refer to the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this preamble for technical contacts at EPA.

To ensure that EPA can properly respond to comments, the Agency prefers that commenters cite, where possible, the paragraph(s) or sections in the document or supporting documents to which each comment refers. Please submit copies of your comments and enclosures (including references) as specified in the **ADDRESSES** section at the beginning of this preamble.

Dated: May 31, 2012.

Nancy K. Stoner,

Acting Assistant Administrator, Office of Water.

[FR Doc. 2012–14153 Filed 6–11–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, 424, 476, and 489

[CMS–1588–CN]

RIN 0938–AR12

Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2013 Rates; Hospitals' Resident Caps for Graduate Medical Education Payment Purposes; Quality Reporting Requirements for Specific Providers and for Ambulatory Surgical Centers; Corrections

AGENCY: Centers for Medicare and Medicaid Services (CMS), HHS.

ACTION: Proposed rule, correction.

SUMMARY: This document corrects technical and typographical errors in the proposed rule that appeared in the May 11, 2012 **Federal Register** entitled ''Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2013 Rates; Hospitals' Resident Caps for Graduate Medical Education Payment Purposes; Quality Reporting Requirements for Specific Providers and for Ambulatory Surgical Centers.''

FOR FURTHER INFORMATION CONTACT: Tzvi Hefter, (410) 786–4487.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2012–9985 of May 11, 2012 (77 FR 27870), there were a number of technical errors that are identified and corrected in the Correction of Errors section of this correcting document.

II. Summary of Errors

A. Errors in the Preamble

On pages 27871 and 27872, we inadvertently omitted a number of acronyms from the list of acronyms.

On page 27938, in our discussion of the fiscal year (FY) 2013 applications for new technology add-on payments, we made typographical errors regarding the drug combination administered during the treatment of methotrexate (MTX)-induced renal dysfunction.

On page 28021, we inadvertently cited the incorrect timeframe for when certain long-term care hospitals (LTCHs) and LTCH satellite facilities must comply with § 412.534 and § 412.536. We also cited the incorrect timeframe for when those LTCHs and LTCH satellite facilities would be under the proposed moratorium on the 25-percent adjustment threshold policy.

On page 28036, we made several typographical errors in our discussion of commenters' beliefs regarding the hospital inpatient quality reporting program (HIQR) and five Agency for Healthcare Research and Quality (AHRQ) measures.

On page 28039, in our discussion of the HIQR proposed new claims-based measure for the FY 2015 payment determination for hip/knee complication, we inadvertently repeated a sentence.

On page 28041, in our discussion of the HIQR proposed new claims-based measure for the FY 2015 payment determination for hip/knee readmission, we made a typographical error in a section heading.

On page 28072, in our discussion of the total amount available for value-based incentive payments under the Hospital VBP Program for a fiscal year, we inadvertently included estimated reductions to the base operating DRG payment amounts for Maryland hospitals in the calculation of the total estimate for FY 2013.

On pages 28085 and 28086, in our discussion of the proposed performance standards for the Hospital Value-Based Purchasing (VBP) Program, we inadvertently omitted data from the table entitled ''Proposed Performance Standards for the FY 2015 Hospital VBP Program Clinical Process of Care and Outcome Domains, and the Medicare Spending per Beneficiary Measure.''

On pages 28107, 28108, and 28127 in our discussion of the Inpatient Psychiatric Facilities Quality Reporting Program (IPFQR), we made technical errors in our description of the IPF facility enrollment.

B. Errors in the Addendum

On page 28143, we made errors in our discussion of the proposed outlier fixed-loss cost threshold for FY 2013.

On pages 28144, 28148, 28149, 28150, 28151, 28159, and 28178, we made technical and typographical errors in our discussion of the proposed outlier adjustment factors which affected the proposed FY 2013 Puerto Rico (specific) operating standardized amount and capital Federal rates (national and Puerto Rico). Specifically, we inadvertently applied the incorrect adjustment factors to the operating and capital cost-to-charge ratios (CCRs) from the Provider-Specific File (PSF) when performing the calculation of the FY 2013 outlier fixed-loss cost threshold for the proposed rule. The correction of this error resulted in a decrease in the proposed outlier fixed-loss cost threshold of approximately $1,000. Under our established methodology for calculating the outlier fixed-loss cost threshold, which we have proposed to continue to use for FY 2013, the corrected proposed outlier fixed-loss cost threshold continues to result in operating outlier payments being projected to be 5.1 percent of total operating payments. However, a decrease in the proposed outlier threshold results in an increase of the Puerto Rico (specific) operating outlier payments and capital (national and Puerto Rico) outlier payments. This is because a lower outlier threshold allows more cases to qualify as outlier cases and results in higher outlier payments to such cases. Because outlier payments are budget neutral, a larger reduction (that is, an increase in the outlier offsets) to the Puerto Rico and capital (national and Puerto Rico) rates is necessary. Therefore, the application of the corrected Puerto Rico and capital outlier offsets (national and Puerto Rico) lowers the proposed FY 2013 Puerto Rico (specific) operating standardized amount and capital Federal rates (national and Puerto Rico).

On page 28189, in the impact analysis section for the inpatient Psychiatric Facilities Quality Reporting Program (IPFQR), we made technical errors in describing the IPF facility enrollment.

C. Summary of Errors in and Corrections to Tables Posted on the CMS Web site

On page 28158, we list Table 16, Proposed Hospital Inpatient Value-Based Purchasing (VBP) Program Adjustment Factors for FY 2013, as a table that will be available only through the Internet on the CMS Web site. The version of Table 16 that was posted via the Internet on the CMS Web site at the time the proposed rule was filed for public inspection at the Office of the Federal Register inadvertently included estimated reductions to the base operating DRG payment amounts for Maryland hospitals in the calculation of the proposed FY 2013 Hospital VBP Program adjustment factors.

We have corrected these errors and will post the corrected Table 16 on the CMS Web site at *http://www.cms.hhs.gov/AcuteInpatientPPS/01_overview.asp.*

III. Correction of Errors

In FR Doc. 2012–9985 of May 11, 2012 (77 FR 27870), make the following corrections:

A. Corrections of Errors in the Preamble

1. On pages 27871 and 27872, second and third and first and second columns, respectively (Acronyms list), are corrected by adding the following acronyms in alphabetical order:

ACoS American College of Surgeons'
AJCC American Joint Commission on Cancer
ASCO American Society of Clinical Oncology
CAUTI Catheter-Associated Urinary Tract Infection
CLABSI Central Line-Associated Bloodstream Infection
CEO Chief Executive Officer
CCN CMS Certificate Number
CFR Code of Federal Regulations
CoC Commission on Cancer
DACA Data Accuracy and Completeness Acknowledgement
ESRD End-Stage Renal Disease
FR **Federal Register**
HAI Healthcare-Associated Infection
HBIPS Hospital-Based Inpatient Psychiatric Services
HICPAC Healthcare Infection Control Practices Advisory Committee
ICU Intensive Care Unit
IPFQR Inpatient Psychiatric Facilities Quality Reporting Program
MAP Measure Application Partnership
NCCN National Comprehensive Cancer Network
NOP Notice of Participation
OQR Outpatient Quality Reporting
QAPI Quality Assessment and Performance Improvement
QIP Quality Incentive Program
Q Quarter
TJC The Joint Commission
UTI Urinary Tract Infection
VTE Venous Thromboembolism

2. On page 27938, in the third column,

a. First partial paragraph—

(1). Line 5 the term ''Thymidine'' is corrected to read ''leucovorin''.

(2). Line 9, the term ''Thymidine'' is corrected to read ''leucovorin''.

(3). Lines 13 and 14, the phrase ''19 to 94 years old.'' is corrected to read ''19 to 94 years old.[18a]''

b. Footnoted text, before footnote 18, the footnoted text is corrected by adding the following:

[18a] Green and Chamberlain, Cancer Chemotherapy and Pharmacology Volume 63, Number 4, 2009.

3. On page 28021, in the third column, first partial paragraph, lines 24 through 42, the sentences beginning with the phrase ''Therefore, under our proposed policy'' and ending with the phrase ''proposed extension of the moratorium'' are corrected to read ''Therefore, under our proposed policy, there will be a period during which some of the above-described LTCHs and LTCH satellite facilities must comply with §§ 412.534 and 412.536 before becoming subject to the moratoria again. The above-described LTCHs and LTCH satellite facilities with a cost reporting period beginning on or after July 1, 2012, and before October 1, 2012 would comply with §§ 412.534 and 412.536 for discharges occurring in that respective cost reporting period. Then, those same LTCHs and LTCH satellite facilities would be subject to the proposed moratorium for discharges occurring in their first cost reporting period beginning on or after July 1, 2013 and before October 1, 2013.''

4. On page 28036, lower half of the page, first column, first paragraph, lines 7 through 8, the phrase ''some commenters still believed that'' is corrected to read ''we recognize some commenters believe that''.

5. On page 28039, second column, third paragraph, lines 8 through 12, the sentence ''Annual hospital charges are projected to increase by 340 percent to $17.4 billion for THA and by 450 percent to $40.8 billion for TKA by 2015'' is corrected by deleting the sentence.

6. On page 28041, first column, second full paragraph, line 9, the heading that begins with the phrase ''(ii) Hip/Knee Readmission:'' is corrected by moving the phrase to line 10.

7. On page 28072, second column, first full paragraph, line 8, the figure ''$956 million'' is corrected to read ''$917 million''.

8. On pages 28085 through 28086, lower third of the page, the table entitled Proposed Performance Standards for the FY 2015 Hospital VBP Program Clinical Process of Care and Outcome Domains, and the Medicare Spending per Beneficiary Measure'' is corrected as follows:

Proposed Performance Standards for the FY 2015 Hospital VBP Program Clinical Process of Care and Outcome Domains, and the Medicare Spending per Beneficiary Measure

a. Revising the following entry:

CLINICAL PROCESS OF CARE MEASURES

Measure ID	Description	Achievement threshold	Benchmark
AMI–10	Statin Prescribed at Discharge	0.90474	1.00000

b. Adding the following entry after line 3 (Measure ID, AMI–10):

CLINICAL PROCESS OF CARE MEASURES

Measure ID	Description	Achievement threshold	Benchmark
HF–1	Discharge Instructions	0.92090	1.00000

9. On page 28107, third column, footnoted text (footnote 198), line 1, the phrase ''IPFs, 450 are'' is corrected to read ''IPFs, approximately 450 are''.

10. On page 28108, first column, second full paragraph, line 6, the figure ''1,100'' is corrected to read ''1,200''.

11. On page 28127, first column, fifth full paragraph—

a. Line 11, the figure ''1,741'' is corrected to read ''estimated 1,700''.

b. Line 12, the figure ''450'' is corrected to read ''approximately 450''.

c. Line 14, the figure ''26.02'' is corrected to read ''approximately 26''.

B. Corrections of Errors in the Addendum

1. On page 28143, third column—

a. Second full paragraph, line 6, the figure ''$27,425'' is corrected to read ''$26,337''

b. Third full paragraph, lines 2 and 3, the phrase ''$5,040 (or 22.5 percent)'' is corrected to read ''$3,952 (or 17.7 percent)''.

2. On page 28144—

a. First column, first partial paragraph, lines 12 and 13, the phrase ''welcomed comment on possible modifications to our current methodologies,'' is corrected to read ''welcome comment on possible modifications to our current methodology,''.

b. First column, second full paragraph, line 13, the figure ''5.99'' is corrected to read ''6.43''

c. Second column, before the first paragraph, the untitled table is corrected to read as follows:

	Operating standard-ized amounts	Capital federal rate
National	0.948992	0.935720
Puerto Rico	0.953062	0.920266

3. On page 28148, second column, second full paragraph, line 6, the phrase ''approximately 0.7 percent'' is corrected to read ''0.25 percent''.

4. On page 28149, third column—

a. First full paragraph, line 8, the figure ''6.00'' is corrected to read ''6.43''

b. First full paragraph, line 12, the figure ''0.9400'' is corrected to read ''0.9357''

c. First full paragraph, line 17, the phrase ''lower than the percentage for FY 2012.'' is corrected to read ''higher than the percentage for FY 2012.''.

d. First full paragraph, lines 17 through 28, the sentences ''This decrease in estimated capital outlier payments is primarily due to the proposed increase in the outlier threshold used to identify outlier cases for both inpatient operating and inpatient capital related payments, which is discussed in section II.A. of this Addendum. That is, because the outlier threshold used to identify outlier cases is higher, cases will receive lower outlier payments and fewer cases will qualify for outlier payments.'' are corrected by deleting the sentences.

e. Second full paragraph, line 6, the phrase ''0.9400 is 0.19 percent'' is corrected to read ''0.9357 is a −0.27 percent''

f. Second full paragraph, line 10, the phrase ''1.0019 (0.9400/0.9832) is corrected to read ''0.9973 (0.9357/0.9832)''

5. On page 28150, third column—

a. First partial paragraph, line 14, the figure ''$424.42'' is corrected to read ''$422.47''.

b. Third bulleted paragraph, line 2, the figure ''0.9400'' is corrected to read ''0.9357''.

c. Last paragraph—

(1) Line 14, the term ''increasing'' is corrected to read ''decreasing''.

(2) Line 15, the figure ''0.19'' is corrected to read ''0.27''.

(3) Line 26, the phrase ''approximately 0.7 percent'' is corrected to read ''0.25 percent''.

6. On page 28151—

a. Top third of the page—

(1) In the chart entitled Comparison of Factors and Adjustments: FY 2012 Capital Federal Rate and Proposed FY 2013 Capital Federal Rate, the listed entries are corrected as set forth below.

(2) Immediately following the chart, footnote 2 is corrected and footnote 5 is republished as set forth below.

	FY 2012	Proposed FY 2013	Change	Percent change
Outlier Adjustment Factor [2]	0.9382	0.9357	0.9973	−0.27
Capital Federal Rate [5]	$421.42	$422.47	1.0025	0.25

* * * * *

[2] The outlier reduction factor is not built permanently into the capital rate; that is, the factor is not applied cumulatively in determining the capital rate. Thus, for example, the net change resulting from the application of the FY 2013 outlier adjustment factor is 0.9357/0.9382, or 0.9973.

* * * * *

[5] Sum of percent change may not sum due to rounding.

b. Lower two-thirds of the page, second column—

(1) First full paragraph, last line, the figure ''$206.82'' is corrected to read ''$206.01''.

(2) Third paragraph, last line, the figure ''$27,425'' is corrected to read ''26,337''.

7. On page 28159—

a. Top half of the page, in Table 1C—Proposed Adjusted Operating Standardized Amounts for Puerto Rico, Labor/Nonlabor—FY 2013, the entries for Puerto Rico are corrected to read as follows:

TABLE 1C—PROPOSED ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR—FY 2013

	Rates if wage index is greater than 1		Rates if wage index is less than or equal to 1	
	Labor	Nonlabor	Labor	Nonlabor
Puerto Rico	$1,582.93	$966.07	$1,580.38	$968.62

b. Lower half of the page, first column, Table 1D—Proposed Capital Standard Federal Payment Rate—FY 2013, the table is corrected to read as follows:

TABLE 1D—PROPOSED CAPITAL STANDARD FEDERAL PAYMENT RATE—FY 2013

	Rate
National	$422.47
Puerto Rico	206.01

8. On page 28178—

a. Second column, middle of the page, fourth bullet the figure ''0.9400'' is corrected to read ''0.9357''

b. Third column, second full paragraph, line 6, the phrase ''approximately 0.7'' is corrected to read ''0.25''.

c. Third column, third full paragraph, the paragraph that begins with the phrase ''We also are estimating a slight decrease in'' and ends with the phrase ''Federal rate.'' is corrected to read ''We also are estimating an increase in outlier payments in FY 2013 as compared to FY 2012. This estimated increase in outlier payments is based on the FY 2011 claims from the December 2011 update of the MedPAR file, and we currently estimate that FY 2012 capital outlier payments are more than the projected 6.18 percent that we used to determine the outlier offset that we applied in determining the FY 2012 capital Federal rate''.

d. Last partial paragraph—

(1) Lines 2 and 3, the phrase ''all hospitals are expected to experience a decrease'' is corrected to read ''hospitals are expected to experience either no change or a decrease''.

(2) Line 5, the sentence ''These decreases are primarily due to proposed changes in the GAFs (primarily resulting from policies affecting the wage index)), and the estimated decrease in capital outlier payments.'' is corrected to read ''The decreases are primarily due to proposed changes in the GAFs (primarily resulting from policies affecting the wage index).''.

9. On page 28179,

a. Top third of the page,

(1) First column—

(a) First partial paragraph—

(i) Line 2, the sentence ''Capital IPPS payments per case for large urban hospitals are estimated to decrease 0.1 percent, while other urban hospitals are expected to experience a 0.4 percent decrease.'' is corrected to read ''Large urban hospitals are not expected to experience any change in capital IPPS payments per case from FY 2012 to FY 2013, while other urban hospitals are expected to experience a 0.4 percent decrease.''.

(ii) Line 7, the phrase ''not expected to experience any change'' is corrected to read ''are expected to experience a 0.2 percent decrease''.

(b) First full paragraph—

(i) Line 1, the sentence ''The comparisons by region show that most urban regions, except for the Pacific region and Puerto Rico, will experience, on average, decreases in capital IPPS payments.'' is corrected to read ''The comparisons by region show that most urban regions, except for the Pacific, West North Central, and Puerto Rico regions, will experience, on average, decreases in capital IPPS payments''.

(ii) Line 8, the figure ''1.0'' is corrected to read ''1.2''.

(iii) Line 10, the sentence ''The two exceptions to decreases in capital payments per case are the Pacific urban region and the Puerto Rico urban region, which are expected to experience a 1.1 percent and 0.5 percent increase, respectively.'' sentence is corrected to read ''The three exceptions to estimated decreases in capital payments per case are Pacific urban region, West North Central urban region, and the Puerto Rico urban region, which are expected to experience a 1.3 percent, 0.5 percent, and 0.4 percent increase, respectively.''.

(2) Second column—

(a) First full paragraph—

(i) Line 3, the figure, ''1.6'' is corrected read ''1.7''.

(ii) Line 4, the figure, ''0.7'' is corrected read ''0.4''.

(iii) Line 6, the sentence ''The East South Central and Mountain rural regions are not expected to experience any change in their capital payments per discharge from FY 2012 to FY 2013.'' is corrected by removing the sentence.

(iv) Line 11, the figure ''3.3'' is corrected to read ''2.9''.

(b) Second full paragraph, the paragraph ''Hospitals of all type of ownership (that is, voluntary hospitals, government hospitals, and proprietary hospitals) are estimated to experience a 0.2 percent decrease in capital payments per case from FY 2012 to FY 2013.'' is corrected to read ''By type of ownership (that is, voluntary hospitals, government hospitals, and proprietary hospitals), all hospitals are estimated to experience a decrease in capital payments per case from FY 2012 to FY 2013. Voluntary hospitals and proprietary hospitals are expected to experience a 0.2 percent decrease in capital payments per case from FY 2012 to FY 2013, while government-run hospitals are expected to experience a 0.1 percent decrease in capital payments per case from FY 2012 to FY 2013.''.

(3) Third column, first paragraph, lines 14 through 26, the sentences beginning with the phrase ''Urban non-reclassified hospitals are'' and ending with the phrase ''from FY 2012 to FY 2013.'' are corrected to read ''Both urban non-reclassified hospitals and rural reclassified hospitals are estimated to experience a decrease of 0.2 percent in capital payments per discharge from FY 2012 to FY 2013. Rural non-reclassified hospitals are estimated to have a 0.3 percent decrease in capital payments per case. Other reclassified hospitals (that is, hospitals reclassified under section 1886(d)(8)(B) of the Act) are expected to experience a decrease of 0.4 percent in capital payments from FY 2012 to FY 2013.''.

b. Lower two-thirds of the page, Table III—Comparison of Total Payments per Case, the table is corrected to read as follows:

TABLE III—COMPARISON OF TOTAL PAYMENTS PER CASE

[FY 2012 payments compared to FY 2013 payments]

	Number of hospitals	Average FY 2012 payments/ case	Average FY 2013 payments/ case	Change
By Geographic Location:				
All hospitals	3,405	799	797	−0.2
Large urban areas (populations over 1 million)	1,365	880	880	0.0
Other urban areas (populations of 1 million or fewer)	1,120	784	780	−0.4
Rural areas	920	552	551	−0.2
Urban hospitals	2,485	837	835	−0.2
0–99 beds	627	670	667	−0.5
100–199 beds	773	722	720	−0.3
200–299 beds	448	769	769	0.0
300–499 beds	432	848	848	0.0
500 or more beds	205	1,016	1,013	−0.3
Rural hospitals	920	552	551	−0.2
0–49 beds	317	438	437	−0.2
50–99 beds	346	505	504	−0.2
100–149 beds	152	545	543	−0.4
150–199 beds	58	619	617	−0.4
200 or more beds	47	672	672	0.0
By Region:				
Urban by Region	2,485	837	835	−0.2
New England	120	907	896	−1.2
Middle Atlantic	318	886	883	−0.4
South Atlantic	377	781	777	−0.5
East North Central	396	804	804	−0.1
East South Central	151	730	725	−0.7
West North Central	165	836	840	0.5
West South Central	370	796	792	−0.5
Mountain	157	868	865	−0.4
Pacific	380	1,016	1,029	1.3
Puerto Rico	51	384	386	0.4
Rural by Region	920	552	551	−0.2
New England	23	744	744	−0.1
Middle Atlantic	69	569	571	0.4
South Atlantic	164	541	539	−0.4
East North Central	120	576	575	−0.1
East South Central	170	507	506	−0.2
West North Central	98	585	581	−0.6
West South Central	181	491	490	−0.1
Mountain	65	580	579	−0.1
Pacific	29	723	711	−1.7
Puerto Rico	1	150	154	2.9
By Payment Classification:				
All hospitals	3,405	799	797	−0.2
Large urban areas (populations over 1 million)	1,375	879	879	0.0
Other urban areas (populations of 1 million or fewer)	1,125	783	780	−0.3
Rural areas	905	563	560	−0.4
Teaching Status:				
Non-teaching	2,376	680	678	−0.2
Fewer than 100 Residents	789	790	789	−0.1
100 or more Residents	240	1,137	1,135	−0.2
Urban DSH:				
100 or more beds	1,523	863	862	−0.1
Less than 100 beds	327	583	584	0.0
Rural DSH:				
Sole Community (SCH/EACH)	269	519	516	−0.6
Referral Center (RRC/EACH)	210	624	622	−0.4
Other Rural:	32	506	503	−0.7
100 or more beds	.....	.....	.....	.....
Less than 100 beds	286	446	446	−0.1
Urban teaching and DSH:				
Both teaching and DSH	815	933	933	−0.1
Teaching and no DSH	147	812	808	−0.4
No teaching and DSH	1,035	720	720	0.0
No teaching and no DSH	503	741	736	−0.7
Rural Hospital Types:				
Non special status hospitals	2,391	841	839	−0.2
RRC/EACH	61	733	735	0.3
SCH/EACH	34	722	723	0.1
SCH, RRC and EACH	16	769	764	−0.7

TABLE III—COMPARISON OF TOTAL PAYMENTS PER CASE—Continued

[FY 2012 payments compared to FY 2013 payments]

	Number of hospitals	Average FY 2012 payments/ case	Average FY 2013 payments/ case	Change
Hospitals Reclassified by the Medicare Geographic Classification Review Board:				
FY2013 Reclassifications:				
All Urban Reclassified	420	833	834	0.1
All Urban Non-Reclassified	2,025	840	838	−0.2
All Rural Reclassified	335	596	595	−0.2
All Rural Non-Reclassified	524	482	480	−0.3
Other Reclassified Hospitals (Section 1886(d)(8)(B))	55	550	548	−0.4
Type of Ownership:				
Voluntary	1,970	813	812	−0.2
Proprietary	866	718	717	−0.2
Government	560	817	816	−0.1
Medicare Utilization as a Percent of Inpatient Days:				
0–25	377	1,044	1,047	0.4
25–50	1,834	839	838	−0.2
50–65	968	666	664	−0.3
Over 65	168	611	610	−0.2

10. On page 28189, second column, last paragraph, lines 6 and 7, the phrase ''1,741 existing IPFs, of which 450'' is corrected to read ''approximately 1,700 existing IPFs, of which approximately 450''.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 5, 2012.

Jennifer M. Cannistra,

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

[FR Doc. 2012–14159 Filed 6–8–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 120330236–2002–01]

RIN 0648–BB48

Western Pacific Pelagic Fisheries; Revised Swordfish Trip Limits in the Hawaii Deep-Set Longline Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would revise the limits on the number of swordfish that fishermen may possess or land during any given Hawaii-based deep-set longline-fishing trip north of the Equator. This proposed rule would also revise the definition of deep-set longline fishing to be consistent with the proposed swordfish retention limits. All other measures applicable to the deep-set fishery would remain unchanged. The proposed rule intends to reduce regulatory discards and optimize the yield of swordfish.

DATES: NMFS must receive comments on the proposed rule by July 2, 2012.

ADDRESSES: You may send comments on the proposed rule, identified by NOAA–NMFS–2012–0097, to either of the following addresses:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov;* or
- *Mail:* Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

Instructions: You must send any comments to one of the above two addresses to ensure that NMFS receives, documents, and considers the comments. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and NMFS will generally post them to *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required name and organization fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

The Western Pacific Fishery Management Council (Council) prepared a regulatory amendment, including an environmental assessment and regulatory impact review, that provides background information on this proposed rule. The regulatory amendment is available from *www.regulations.gov* or the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, *www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Brett Wiedoff, Sustainable Fisheries, NMFS PIR, 808–944–2272.

SUPPLEMENTARY INFORMATION: The Council and NMFS manage Hawaii-based longline fisheries under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region (FEP). Entry into the longline fisheries is limited, with a maximum of 164 vessels allowed. Longline vessels may conduct either deep-set fishing (targeting tunas) or shallow-set fishing (targeting swordfish). Prior to leaving port for a fishing trip, a vessel must declare its intended trip type, deep-set or shallow-set, so that NMFS may assign an observer. Observers collect information about the fishery and interactions with protected species, such as sea turtles. In the shallow-set fishery, NMFS places an observer on the vessel for each trip to ensure 100 percent coverage. In the deep-set fishery, NMFS places observers on at least 20 percent of deep-set trips. Once a vessel declares that it will be in the

shallow-set or deep-set fishery and leaves port, it may not switch to the other fishery during that trip.

This rule would revise the limits on the number of swordfish that fishermen may possess or land during any given Hawaii-based deep-set longline-fishing trip north of the Equator. Currently, a deep-set vessel may keep up to 10 swordfish on any given trip. The Council and NMFS established that limit to discourage shallow-set fishing during a declared deep-set fishing trip.

In 2011, 129 vessels participated in the deep-set fishery. While targeting bigeye tuna, they occasionally catch swordfish. Vessels in the deep-set fishery made 1,306 trips, catching 2,906 swordfish, and keeping 2,502. For comparison, 20 vessels participated in the shallow-set fishery, which targets swordfish, in 2011. These vessels caught 16,405 swordfish, and kept 14,663, during 82 trips.

In 2011, the average deep-set vessel caught two swordfish per trip. Occasionally, however, a vessel may catch up to 25 swordfish during a trip. From 2004–2010, most trips caught ten or less swordfish, with the average deep-set vessel landing three swordfish per trip. Only three percent of the deep-set fleet caught more than 10 swordfish per trip, and only a few trips caught more than 25 fish. In total, NMFS estimates that the deep-set fishery landed an average of 3,637 swordfish, and discarded 2,547 swordfish per year.

Fishermen in the deep-set fishery claim that the 10-fish limit occasionally forces them to throw away swordfish caught in excess of the limit, referred to as ''regulatory discards.'' The fishermen assert that, because swordfish stocks are healthy and are not subject to overfishing or approaching an overfished condition, the regulatory discards amount to wasted opportunities to sell the excess swordfish. The lost opportunities result in lost wages to fishermen and a reduction of the fish supply to seafood consumers.

In response to the fishermen's concerns, the Council recommended and NMFS proposes to revise the trip limits for vessels that have notified NMFS under § 665.803(a) that the vessel will engage in deep-set fishing north of the Equator, as follows:

- With a NMFS observer on board, there would be no limit on swordfish landed or possessed on a trip regardless of the type of hook used. Observers would monitor and document fishing activities, and would assist fishermen in mitigating interactions with protected species.
- With no NMFS observer on board, there would be a limit of 25 swordfish landed or possessed on a trip, if the vessel uses only circle hooks. The circle hooks would reduce the number and severity of interactions with sea turtles.
- With no NMFS observer on board and if the vessel uses any hooks other than circle hooks, there would be a limit of 10 swordfish landed or possessed on a trip.

The proposed revisions are intended to reduce regulatory discards for vessels in the deep-set fishery, and optimize the yield of swordfish. This would support the National Standards for fishery management in Magnuson-Stevens Fishery Conservation and Management Act.

The predominant hook types used in the deep-set fishery are tuna hooks (Japanese 3.6 sun and 3.8 sun) and small circle hooks (14/0 to 16/0). Research has generally shown that, because circle hooks result in fewer instances where turtles are deeply hooked, replacing tuna hooks with circle hooks would reduce deep ingestion of hooks by sea turtles that tend to bite baited hooks. This is one reason that the use of large (18/0) circle hooks with mackerel type bait is required in the Hawaii–based shallow-set fishery, and has resulted in significant reductions in the number and severity of sea turtle interactions in the shallow-set fishery.

Circle hooks are not required in the deep-set fishery because turtle interaction rates in the deep-set fishery are significantly lower than in the shallow-set fishery. For example, in 2011, the rate was 0.001 turtle per 1,000 hooks in the deep-set fishery compared to 0.022 turtle per 1,000 hooks in the shallow-set fishery. Because the deep-set fishery already has low interaction rates and nearly half of the fleet already use circle hooks, NMFS is not proposing to require the use of large circle hooks at this time because it would likely not appreciably reduce interaction rates.

The change in the number of swordfish retained and landed under this proposed rule would depend on how many vessels would use circle hooks and retain more than 10 swordfish. If we assume that recent swordfish catch rates do not change and that all deep-set vessels switch to using only circle hooks, then the maximum number of swordfish retained and landed may be sum of the average number of retained (3,637) and discarded (2,547) fish during the years 2004–2010, or 6,184 swordfish per year. The proposed rule may reduce high-grading (discarding lower-value swordfish in favor of higher-value fish within the 10-fish limit) and regulatory discards (discarding swordfish after reaching the swordfish trip limit) because vessels would be able to retain fish already caught and utilize the available resource. North Pacific swordfish stocks are healthy and not approaching an overfished or overfishing condition. Thus, the potential catch of 6,184 swordfish per year would not likely affect the stock status of North Pacific swordfish.

NMFS does not expect the proposed rule to result in large changes to impacts on target or non-target fish species, protected resources, the physical marine environment, or the conduct of the fishery (i.e., area fished, number of vessels engaging in deep-set fishing, the number of trips taken per year, number of hooks set per vessel during a trip, depth of hooks, or deployment techniques in setting longline gear).

This proposed rule would also revise the definition of deep-set longline fishing. Deep-setting is currently defined as longline fishing with all float lines at least 20 meters long, a minimum of 15 branch lines between any two floats (except basket-style longline gear), no light sticks, and possessing or landing no more than 10 swordfish during a given trip. The proposed revised definition would remove the provision regarding swordfish from the definition to be consistent with the proposed revised swordfish retention limits.

This proposed rule would only apply to longline fishing north of the Equator, because specific rules on the retention of swordfish apply to longline fishing south of the Equator (see 50 CFR 665.813(k)).

This proposed rule is consistent with a final rule issued by NMFS on March 19, 2012 (77 FR 15973). That final rule implemented similar limits on the possession and landing of swordfish for longline fishing off the U.S. West Coast.

NMFS must receive any public comments on this proposed rule by the close of business on July 2, 2012, and will not consider late comments.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on

a substantial number of small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule.

This proposed rule would revise the limits on the number of swordfish that may be landed or possessed during any given Hawaii-based deep-set longline fishing trip north of the Equator. Currently, a deep-set vessel may keep up to 10 swordfish on any given trip (shallow-set vessels are not subject to a swordfish limit). Under the proposed rule, if the vessel has a NMFS observer on board, there would be no limit on the number of swordfish landed or possessed per trip, regardless of the type of hook used. If the vessel does not have an observer on board, there would be a limit of 25 swordfish per trip, if the vessel uses only circle hooks. Finally, there would be a limit of 10 swordfish on a trip, if the vessel does not use circle hooks and does not have a NMFS observer on board. This proposed rule would also revise the definition of deep-set longline fishing to be consistent with the proposed swordfish retention limits. All other measures applicable to the deep-set fishery would remain unchanged. The proposed rule intends to reduce regulatory discards and optimize the yield of swordfish.

NMFS expects this rule to directly affect vessels that hold Hawaii longline limited entry permits. As of March 2012, 132 vessels held Hawaii longline limited entry permits (out of 164 total permits) and each is a potential participant in the deep-set fishery because permit holders may participate in both the shallow-set and deep-set fisheries. According to 2011 logbook information, 129 vessels participated in the deep-set fishery. These vessels made 1,306 trips, catching 2,906 swordfish, and keeping 2,502. Swordfish caught per trip averages about two per trip, but on occasion, fishermen have caught more than 10 swordfish and have had to discard excess swordfish because of the current swordfish retention limit. Between 2004 and 2010, 9.2 percent of observed deep-set trips were noted to have caught more than 10 swordfish during the trip. Swordfish landings in the deep-set fishery were worth over $1 million, or 2 percent of the total deep-set fishery revenues in 2010.

NMFS estimates the 2010 gross ex-vessel value of pelagic fish landed by Hawaii-based longline fisheries to be about $70 million, or approximately $427,000 per vessel. According to Small Business Administration (SBA) size criteria, a business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of $4.0 million for all of its affiliated operations worldwide. Based on average revenues and the SBA criteria, NMFS believes that all 164 potential deep-set vessels are small entities.

Under the proposed action, deep-set fishermen would be able to keep more swordfish than what is currently allowed, provided they either use circle hooks or have an observer onboard. Based on average value of the estimated discarded swordfish ($48,395), and the average number of active longline vessels in 2004–2010 (126), the potential increase in swordfish landings could yield an additional revenue gain of up to $384 per vessel per year.

Other action alternatives that were considered included allowing deep-set fishermen to keep up to 25 swordfish when circle hooks were used (without the additional allowance made for vessels carrying observers) and removing the swordfish limit for all deep-set longline trips. The alternative which would remove the swordfish limit for all deep-set trips, would be preferred by small entities, however, it may unintentionally encourage shallow-set targeting which may lead to unobserved and undocumented sea turtle interactions.

For the reasons above, NMFS does not expect the proposed action to have a significant economic impact on a substantial number of small entities. NMFS does not expect either a significant loss in landings or expenses incurred by deep-set fishery participants. In fact, if they carry an observer or if they opt to fish using circle hooks, these vessels may have increased swordfish limits and resulting increased opportunities to generate revenue. Revenues would not change if fishermen continue to use hooks other than circle hooks and the vessel does not have an observer on board.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

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

List of Subjects in 50 CFR Part 665

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

Dated: June 6, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 665 is proposed to be amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for part 665 continues to read as follows:

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

2. In § 665.800, revise the definition of ''*Deep-set or Deep-setting*'' to read as follows:

§ 665.800 Definitions.

* * * * *

Deep-set or Deep-setting means the deployment of longline gear in a manner consistent with all the following criteria: All float lines are at least 20 meters in length; a minimum of 15 branch lines are attached between any two floats (except basket-style longline gear which may have as few as 10 branch lines between any two floats); and no light sticks are used. As used in this definition, ''float line'' means a line used to suspend the main longline beneath a float, and ''light stick'' means any type of light emitting device, including any fluorescent ''glow bead,'' chemical, or electrically-powered light that is affixed underwater to the longline gear.

* * * * *

3. In § 665.813, revise paragraph (j) and add paragraphs (j)(1) through (j)(3) to read as follows:

§ 665.813 Western Pacific longline fishing restrictions.

* * * * *

(j) *Swordfish limits.* When fishing north of the Equator (0° lat.), owners and operators of vessels registered for use under a Hawaii longline limited access permit, on a trip for which the permit holder notified NMFS under § 665.803(a) that the vessel would deep-set, may possess or land no more than the following number of swordfish for such trip:

(1) If an observer is on board, there is no limit.

(2) If there is no observer on board, and if only circle hooks are used, the limit is 25.

(3) If there is no observer on board, and if any type of hook other than a circle hook is used, the limit is 10.

* * * * *

[FR Doc. 2012–14145 Filed 6–8–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 120416010–2119–01]

RIN 0648–BB84

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to revise the annual number of allowable incidental interactions that may occur between the Hawaii-based shallow-set pelagic longline fishery and leatherback and loggerhead sea turtles. NMFS also proposes administrative housekeeping changes to the regulations relating to the shallow-set longline fishery. The proposed rule would implement terms and conditions of the current biological opinion on this fishery, and clarify the regulations.

DATES: NMFS must receive comments on the proposed rule by July 11, 2012.

ADDRESSES: You may send comments on the proposed rule, identified by NOAA–NMFS–2012–0068, to either of the following addresses:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov;* or
- *Mail:* Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

Instructions: You must send any comments to one of the above two addresses to ensure that NMFS receives, documents, and considers the comments. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and NMFS will generally post them to *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required name and organization fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

A biological opinion issued under the Endangered Species Act (ESA) and a regulatory impact review issued under Executive Order 12866 (Regulatory Planning and Review) provide background information on this proposed rule. You may view these documents and other supporting documentation at *www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION: The Hawaii-based shallow-set pelagic longline fishery (the ''shallow-set fishery'') primarily targets swordfish on the high seas of the North Pacific Ocean. The fishery is governed by a limited access program, vessel and gear marking requirements, vessel length restrictions, Federal catch and effort logbooks, 100-percent observer coverage, large longline restricted areas around the Hawaiian Archipelago, vessel monitoring system, annual protected species workshops, and the use of sea turtle, seabird, and marine mammal handling and mitigation gear and techniques. NMFS may issue a maximum of 164 longline permits, and about 25–30 vessels are active in the shallow-set fishery in any given year.

The fishery interacts incidentally with protected species, primarily leatherback and North Pacific loggerhead sea turtles. Pelagic fisheries in the U.S. western Pacific are managed under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region. NMFS established sea turtle conservation and management measures for the shallow-set fishery in 2004 (69 FR 17329, April 2, 2004), as recommended by the Western Pacific Fishery Management Council (Council). NMFS allowed the fishery to interact with (hook or entangle) up to 16 leatherback and 17 loggerhead sea turtles. The annual interaction limits directly reduce the impacts of the fishery on sea turtles.

NMFS has modified the annual interaction limits several times in response to new information or by court order. Most recently, in 2009, three environmental groups filed a lawsuit against NMFS (Turtle Island Restoration Network, et al., v. Department of Commerce, et al., and Hawaii Longline Association, Civil No. 09–00598 DAE (D. HI)) challenging a 2008 biological opinion that changed the interaction limit for loggerhead sea turtles. Under a consent decree approving settlement in 2011, the U.S. District Court (among other directions) ordered NMFS to issue a new biological opinion for the shallow-set fishery. The District Court also ordered NMFS, pending completion of the biological opinion, to reinstate the annual interaction limit for loggerhead turtles to the 2004 limits established under the regulations published at 69 FR 17329 (April 2, 2004). NMFS revised the limit, and the current regulations reflect the Court-ordered annual interaction limits of 16 leatherbacks and 17 loggerheads (76 FR 13297, March 11, 2011). If the fishery reaches either limit, NMFS closes the fishery for the remainder of the calendar year.

As required by the January 2011 Court order, NMFS completed an evaluation of the impacts of the continued operation of the shallow-set fishery, as governed under the current suite of management measures, on marine species protected by the ESA (humpback whales, North Pacific loggerhead sea turtle distinct population segment (DPS), leatherback sea turtles, olive ridley sea turtles, and green sea turtles), and issued a biological opinion on January 30, 2012 (2012 biological opinion). In this opinion, NMFS concluded that the proposed action is not likely to jeopardize the continued existence (survival and recovery) of these five species, and is not likely to destroy or adversely modify designated critical habitat. The 2012 biological opinion, including the incidental take statement, reasonable and prudent management measures, and terms and conditions are available for review at *www.regulations.gov.*

The 2012 biological opinion is an integral component to managing the shallow-set fishery because the one-year incidental take statement forms the basis for regulations that specify the annual limit on leatherback and North Pacific loggerhead sea turtle interactions with the shallow-set fishery.

Proposed Action

Based on the best available information and analyses of impacts to protected species in the 2012 biological opinion, NMFS proposes to revise the annual limit on incidental interactions that may occur between the Hawaii-based shallow-set pelagic longline fishery and leatherback and North Pacific loggerhead sea turtles to 26 and 34 interactions, respectively. If the fishery reaches either of the interaction limits in a given year, NMFS would close the fishery for the remainder of that year. The revised limits are consistent with the anticipated and authorized interactions identified in the

2012 biological opinion, and are necessary to manage the impacts of the fishery on sea turtles.

Administrative Housekeeping Changes

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

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pelagics FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

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

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule and not repeated here.

The proposed rule would revise the annual number of incidental interactions that may occur between the Hawaii-based shallow-set pelagic longline fishery (shallow-set fishery) and leatherback and loggerhead sea turtles. The proposed rule would also make administrative housekeeping changes to the longline regulations for clarity and consistency of terminology. The intent of the proposed rule is to implement terms and conditions of the current biological opinion on this fishery, and clarify the regulations.

On January 30, 2012, NMFS issued a no-jeopardy biological opinion (2012 biological opinion) after evaluating the best available scientific and commercial information. The biological opinion's incidental take statement (ITS) anticipates that the fishery will take up to 26 leatherback and 34 North Pacific loggerhead sea turtles. These incidental interaction limits are higher than the current allowable interaction limits established pursuant to a court order at 16 leatherback and 17 loggerhead sea turtles, and NMFS proposes to revise the applicable annual interaction limits in regulations to be consistent with the 2012 biological opinion. If the shallow-set fishery reaches either limit, NMFS would close the fishery for the remainder of the year as required by current regulations.

NMFS believes that all potential shallow-set fishery participants are considered small entities. As of March 2012, 132 vessels held Hawaii longline limited entry permits and each is considered a potential participant in the shallow-set fishery. The number of vessels participating in the shallow-set fishery each year from 2006–2011 varied from 20 to the mid-30s; these vessels may participate in the deep-set fishery each year, too. In 2011, fishermen made about 82 shallow-set trips, about 32 fewer trips than in 2010. Preliminary data for 2011, based on the date fishing gear was retrieved, show that shallow-set fishermen conducted 1,468 sets, and retained 14,476 swordfish, weighing 2,046,906 pounds. They also kept 2,480 albacore, 5,681 mahimahi, and 1,999 oilfish.

By raising the sea turtle interaction limits consistent with determinations based on the best available scientific and commercial data in the 2012 biological opinion, the shallow-set fishery would be less likely to reach the annual limit on interactions during the fishing year and more likely to be able to continue fishing using shallow-set gear throughout the year. Compared with current sea turtle interaction limits, the proposed action provides greater fishing opportunities for longline fishermen participating or potentially participating in the shallow-set fishery. There could be increased likelihood of fishing with shallow-set gear throughout the year and, thereby, increasing swordfish and other landings for those fishermen who predominately fish using shallow-set gear. The proposed action would also allow fishermen who primarily fish using deep-set gear greater flexibility to opt into the shallow-set fishery for a greater part of the year. In addition, the proposed action would reduce the uncertainty regarding the potential for an earlier closure of the shallow-set fishery, and allow more operational certainty regarding where, when, and how to fish, especially in the presence of other unforeseen operational issues such as fluctuating fuel costs.

The proposed action is not expected to have a significant economic impact on a substantial number of small entities, either through a significant loss in landings or expenses incurred, as it potentially expands the opportunity for longline fishermen to participate in the shallow-set fishery through a greater part of the year.

Because this proposed action is not expected to have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

National Environmental Policy Act

In 2008, as part of the process to develop Amendment 18 to the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region, Modifications for the Hawaii-based Shallow-set Longline Swordfish Fishery, the Council developed several recommendations for management measures that, consistent with Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.),* would enable the shallow-set fishery to achieve optimum yield in the North Pacific swordfish fishery, without jeopardizing protected species, including sea turtles. These recommendations included, among other proposed actions, revising the loggerhead turtle interaction limit to 46, and maintaining the leatherback turtle interaction limit of 16 (74 FR 65460, December 10, 2019), corrected at 75 FR 1023, January 8, 2010).

Amendment 18 included a final supplemental environmental impact statement (2009 FSEIS) that analyzed, among other proposed actions, the potential environmental impact of increasing the number of allowable incidental interactions between the shallow-set fishery and leatherback and loggerhead sea turtles. Based on that analysis, NMFS determined in a Record of Decision on June 17, 2009, that Amendment 18 provided additional opportunities for Hawaii-based shallow-set longline fishermen to fish for swordfish, while not creating adverse conservation and recovery impacts on leatherback or loggerhead sea turtles.

Since completion of the 2009 FSEIS, there is new information relevant to environmental concerns and bearing on Amendment 18 and its impacts, including (1) the classification and listing of the North Pacific loggerhead sea turtle DPS as endangered, and the no-jeopardy 2012 biological opinion, (2) a scientific paper on two population viability assessment models for leatherback and loggerhead sea turtles, (3) four interactions with green sea turtles in 2011, (4) a scientific paper on the spillover effect for sea turtles

resulting from the regulatory measures for the shallow-set fishery, and (5) a no-jeopardy biological opinion by the U.S. Fish and Wildlife Service on the impacts of the shallow-set fishery on short-tailed albatross.

In light of this new information, NMFS has evaluated whether the National Environmental Policy Act (NEPA) requires supplementation of the 2009 FSEIS. NMFS has determined that this proposed rule does not represent a substantial change to the action as previously analyzed. NMFS has further determined that there are no significant new circumstances or information relevant to environmental concerns and bearing on the implementation of revised incidental interaction limits. A supplement to the 2009 FSEIS is, therefore, not required under NEPA. You may view the Record of Environmental Consideration at *www.regulations.gov* (see **ADDRESSES**).

List of Subjects in 50 CFR Part 665

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

Dated: June 5, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 665 is proposed to be amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

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

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

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

§ 665.802 Prohibitions.

* * * * *

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

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

* * * * *

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

§ 665.813 Western Pacific longline fishing restrictions.

* * * * *

(b) * * *

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

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

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

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

* * * * *

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

* * * * *

[FR Doc. 2012–14136 Filed 6–8–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 112
Monday, June 11, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Reestablishment of the U.S. Department of Agriculture (USDA) Lake Tahoe Federal Advisory Committee (LTFAC) and a Request for Applications.

SUMMARY: The Forest Service intends to reestablish the Lake Tahoe Federal Advisory Committee (Committee). The purpose of the Committee is to provide advice to the Secretary of Agriculture and to the Federal Interagency Partnership on how the Partnership can best fulfill its duties pursuant to Executive Order 13057 to protect the extraordinary natural, recreational, and ecological resources in the Lake Tahoe Region. The Forest Service seeks applications of individuals to be considered for selection as committee members.

DATES: Application packets must be received on or before July 20, 2012.

ADDRESSES: Mail application packets to LTFAC Applications, Attention: Aria Hains, Lake Tahoe Basin Management Unit, USDA Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, postmarked by July 20, 2012.

FOR FURTHER INFORMATION CONTACT: The Committee applicant packet can be downloaded from the Lake Tahoe Basin Management Unit's Web site at *http://fs.usda.gov/goto/ltbmu/LTFAC* or obtained from Arla Hains, Lake Tahoe Basin Management Unit, by calling (530) 543–2773, or send an email request to *ashain@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The Secretary of Agriculture chartered the 20-person advisory committee under the Federal Advisory Committee Act on July 13, 1998. This Committee provides a critical role in advising the Secretary of Agriculture and the Lake Tahoe Federal Interagency Partnership on coordinating federal programs to achieve the goals of the Lake Tahoe Environmental Improvement Program. The Committee charter and membership is renewed every two years. LTFAC members will represent a broad array of interests in the Lake Tahoe Basin. Two representatives will be selected as members-at-large, and one representative will be selected from each of the follow sectors: (1) Gaming, (2) environmental, (3) national environmental, (4) ski resorts, (5) North Shore Economic/Recreation, (6) South Shore Economic/Recreation, (7) resorts associations, (8) education, (9) property rights advocates, (10) science and research, (11) California local government, (12) Washoe Tribe, (13) State of California, (14) State of Nevada, (15) Tahoe Regional Planning Agency, (16) labor, (17) transportation, and (18) Nevada local government. The committee meets a minimum of four times a year alternating locations between the north and south shore areas. The Forest Service has special interest in assuring that women, minority groups, and the physically disabled are adequately represented on the LTFAC. We encourage and welcome applications for qualified female, minority, or disabled candidates.

Dated: June 5, 2012.

Cheva Heck,

Acting Forest Supervisor.

[FR Doc. 2012–14081 Filed 6–8–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Uinta-Wasatch-Cache National Forest; Evanston-Mountain View Ranger District; Utah; Smiths Fork Vegetation Restoration Project

AGENCY: Forest Service, USDA.

ACTION: Correction to notice of intent to prepare an environmental impact statement.

SUMMARY: The Uinta-Wasatch-Cache National Forest is submitting a correction to the notice of intent for the Smiths Fork Vegetation Restoration Project published on May 7, 2012 [77 FR 26733]. The notice of intent initially read: ''Only persons who submit specific written comments on the proposed action during the 30-day comment period will be eligible to file an objection. This comment period represents the only opportunity for the public to comment on this proposal prior to the objection process. The opportunity to comment will end 30 days after a legal notice announcing the request for scoping comments is published in the Salt Lake Tribune, which is the newspaper of record.''

The correction to the notice of intent is as follows: ''Only individuals and organizations who have submitted specific written comments related to the proposed action during the opportunities for public comment provided during the scoping period or the comment period on the draft EIS will be eligible to file an objection under the Healthy Forests Restoration Act. The opportunity to provide scoping comments will end 30 days after a legal notice announcing the request for scoping comments is published in the Salt Lake Tribune, which is the newspaper of record. Comments on the draft EIS itself will be solicited when the draft EIS is available. Availability of the draft EIS will be made via a notice of availability in the **Federal Register** as well as a legal notice in the Salt Lake Tribune.''

DATES: The scoping period for the Smiths Fork Vegetation Restoration Project has been extended. Comments concerning the analysis for the proposed action as described in the notice of intent [77 FR 26733] must be received or postmarked before the end of the 30-day scoping period that begins with the publication of the revised legal notice of scoping in the Salt Lake Tribune. Comments that have already been provided in response to the notice of intent do not need to be submitted again. All comments will be considered part of the project record and will be subject to the Freedom of Information Act.

ADDRESSES: Mail written comments to: Smiths Fork Vegetation Restoration Project, Attention: Rick Schuler, P.O. Box 1880, Evanston, WY 82931. In addition, comments may also be delivered by hand Monday through Friday between the hours of 8 a.m. and 4:30 p.m. at the following physical address: 1565 Highway 150, Suite A, Evanston, Wyoming. Comments may

also be submitted electronically to: *comments-intermtn-wasatch-cache-evanston-mtnview@fs.fed.us* or submitted via facsimile to 307–783–8639. Electronic comments should be submitted in a .pdf, .rtf, .docx, or other common format.

FOR FURTHER INFORMATION CONTACT: Pete Gomben, Environmental Coordinator for the Evanston-Mountain View Ranger District, at 801–236–3407. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Dated: June 5, 2012.

David C. Whittekiend,

Forest Supervisor.

[FR Doc. 2012–14057 Filed 6–8–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Survey of Income and Program Participation (SIPP) 2013 Event History Calendar—Field Test

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before August 10, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Nathaniel McKee, Census Bureau, Room HQ–7H137 Washington, DC 20233–8400, (301) 763–5244 (or via the Internet at *nathanial.b.mckee@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to conduct a field test for the 2013 SIPP Event History Calendar (SIPP–EHC) from January to March of 2013. The SIPP is a household-based survey designed as a continuous series of national panels. The SIPP represents a source of information for a wide variety of topics and allows the integration of information for separate topics to form a single, unified database allowing for the examination of the interaction between tax, transfer, and other government and private policies. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on that distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population, which the SIPP has provided on a continuing basis since 1983. The SIPP has measured levels of economic well-being and permitted measurement of changes in these levels over time.

The SIPP–EHC is molded around a central ''core'' of labor force and income questions that are supplemented with questions designed to address specific needs in complementary subject areas. The 2013 SIPP–EHC again uses an Event History Calendar (EHC) that facilitates the collection of dates of events and spells of coverage, as did the 2010, 2011, and 2012 SIPP–EHC.

The content of the 2013 SIPP–EHC will match that of the 2012 SIPP–EHC very closely. The SIPP–EHC design does not contain freestanding topical modules; however, a portion of traditional SIPP topical module content is integrated into the 2013 SIPP–EHC interview. Examples of this content include questions on medical expenses, child care, retirement and pension plan coverage, marital history, adult and child well-being, and others. The EHC should assist the respondent's ability to recall events accurately over the longer reference period and provide increased data quality and inter-topic consistency for dates reported by respondents.

The 2013 SIPP–EHC field test will revisit survey respondents who were first interviewed in the 2011 SIPP–EHC field test and then again in the 2012 SIPP–EHC field test. The 2013 SIPP–EHC will interview respondents using the previous calendar year 2012 as the reference period and is the final evaluation in the transition of the SIPP program to annual interviewing. The 2013 SIPP–EHC will be the second test of the revised interviewing method structure that will follow adults (age 15 years and older) who move from the prior wave household, as well as the second test incorporating dependent data from the prior wave in the current EHC interview. Dependent data, which is information collected from the prior wave interview brought forward to the current interview, is a crucial component added to the 2012 SIPP–EHC to reduce the possible impact of seam bias for longitudinal uses of the monthly data. The 2013 SIPP–EHC will be the first opportunity to evaluate situations where original sample people (OSP) have the chance to have moved out in the prior wave and then return. The 2013 SIPP–EHC will be the last opportunity before full production to refine instrument improvements, evaluate the ability to follow movers, implement dependent data use, and produce an initial evaluation of attrition related to the new instrument design and interview interval. Although the sample is limited to high-poverty strata in 20 states and cannot represent the characteristics of the test if implemented in a full nationally representative sample, we can effectively compare the same geographies and characteristics for the same period in the 2008 panel of the production SIPP. As with the 2012 field test, 2013 SIPP–EHC will be a critical final test for the functionality of all of the interrelated systems to locate and re-interview respondents after a year.

The Census Bureau plans to use Computer Assisted Recorded Interview (CARI) technology for some of the respondents during the 2013 SIPP–EHC. CARI is a data collection method that captures audio along with response data during computer-assisted personal and telephone interviews (CAPI & CATI). With the respondent's consent, a portion of each interview is recorded unobtrusively and both the sound file and screen images are returned with the response data to a central location for coding. The CARI technology will be used in conjunction with the 2013 SIPP–EHC and add about 1,000 burden hours to the overall total for 2013. The CARI respondents for the 2013 field test were first interviewed and recorded during the 2012 SIPP–EHC CARI field test, which was a separate sample utilizing a CARI enabled version of the 2012 SIPP–EHC instrument. In 2013, the CARI sample will be combined with the SIPP–EHC sample, which will test the capability of the SIPP–EHC instrument to perform multiple paths during the same interview period. The SIPP–EHC

CARI sample is a Wave 2 interview, while the 2012 SIPP–EHC sample will be in its third wave for 2013. The CARI recordings will not be limited to only the previously recorded cases; instead, the sample will contain both previously recorded cases and some Wave 3 cases that will be recorded in 2013. This is a critical evaluation, as evidence from external surveys suggests that simply asking the consent question could be associated with a significant increase in survey length. External researchers at the Institute for Social Research at the University of Michigan suspect that improved FR adherence to protocol is one of the sources for the longer interviews. Additionally, we need information on the association between CARI, interview length, and interview quality.

By reviewing the recorded portions of the interview, quality assurance analysts can evaluate the likelihood that the exchange between the field representative and respondent is authentic and follows critical survey protocol as defined by the sponsor and based on best practices. The 2013 SIPP–EHC field test instrument will utilize the CARI Interactive Data Access System (CARI System), an innovative, integrated, multifaceted monitoring system that features a configurable web-based interface for behavior coding, quality assurance, and coaching. This system assists in coding interviews for measuring question and interviewer performance and the interaction between interviewers and respondents.

Approximately 3,000 households are expected to be interviewed for the 2013 SIPP–EHC field test, which is comprised of approximately 2,000 cases returning for a third wave from the 2012 SIPP–EHC and approximately 1,000 cases returning for a second wave from the 2012 SIPP–EHC CARI. We estimate that each household contains 2.1 people aged 15 and above, yielding approximately 6,300 person-level interviews in this field test. Interviews take 60 minutes per adult on average, consequently the total annual burden for 2013 SIPP–EHC field test interviews will be 6,300 hours in FY 2013.

II. Method of Collection

The 2013 SIPP–EHC field test instrument will consist of one household interview that will reference the calendar year 2012. The interview is conducted in person with all household members 15 years old or over using regular proxy-respondent rules.

III. Data

OMB Control Number: 0607–0957.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 6,300 people.

Estimated Time per Response: 60 minutes per person on average.

Estimated Total Annual Burden Hours: 6,300.

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 5, 2012.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–14016 Filed 6–8–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Yufeng Wei, a/k/a Annie Wei, 165 Beech Street, Belmont, MA 02378; Order Denying Export Privileges

On January 28, 2011, in the U.S. District Court, District of Massachusetts, Yufeng Wei, a/k/a Annie Wei (''Wei'') was convicted of violating the International Emergency Economic Powers Act (50 U.S.C.1701 et seq. (2000)) (''IEEPA'') and violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2000)) (''AECA''). Specifically, Wei was convicted of illegally exporting various electronic components and other items subject to the Export Administration Regulations (the ''Regulations'') to end-users in China between 2004 and 2007, including to entities on the BIS Entity List, and for military end-uses. Wei was also convicted of illegally exporting military electronic components designated on the U.S. Munitions List to China through Hong Kong between 2004 and 2007. In addition, Wei was convicted of conspiring over a period of 10 years to violate IEEPA and AECA (18 U.S.C. 371); aiding and abetting (18 U.S.C. 2); filing false shipping documents with the Department of Commerce (18 U.S.C. 1001); and use of fraudulently obtained resident card (18 U.S.C. 1546(a)). Wei was sentenced to 36 months in prison and a $1,300 Special Assessment. Wei is also listed on the Department of State's Debarred List.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the [Export Administration Act (''EAA'')], the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); see also Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); see also 50 U.S.C. app. 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2011). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 12, 2011 (76 Fed. Reg. 50661 (August 16, 2011)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq. (2000)).

I have received notice of Wei's conviction for violating IEEPA and the AECA, and have provided notice and an opportunity for Wei to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have not received a submission from Wei. Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Wei's export privileges under the Regulations for a period of 10 years from the date of Wei's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Wei had an interest at the time of her conviction.

Accordingly, *it is hereby ordered*

I. Until January 28, 2021, Yufeng Wei, a/k/a Annie Wei, with a last known address at: 165 Beech Street, Belmont, MA 02478, and when acting for or on behalf of Wei, her representatives, assigns, agents or employees (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Wei by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until January 28, 2021.

VI. In accordance with Part 756 of the Regulations, Wei may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to the Wei. This Order shall be published in the **Federal Register**.

Issued this 4th day of June, 2012.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2012–14091 Filed 6–8–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges

In the Matter of: Chitron Electronics, Inc., 102 Clematis Avenue, Suite 7, Waltham, MA 02453, Respondent, Chitron Electronics Company Limited, a/k/a Chi-Chuang Electronics Company Limited, a/k/a Shenzhen Chitron Electronics Company Limited, 2127 Sungang Road, Huatong Building 19/F, Luohu District, Shenzhen, 518001, China and Chitron (HK) Electronics Company Limited, a/k/a C.I.C. Electronics (HK) Limited, Room 05 13/F Nanyang Plaza, No. 57 Hung To Road, Kwum Tong, Kowloon, Hong Kong, Related Persons.

A. Denial of Export Privileges of Chitron Electronics, Inc.

On January 28, 2011, in the U.S. District Court, District of Massachusetts, Chitron Electronics, Inc. (''Chitron-US'') was convicted of violating the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.* (2000)) (''IEEPA'') and Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2000)) (''AECA''). Specifically, Chitron-US was convicted of illegally exporting various electronic components and other items subject to the Export Administration Regulations (''EAR'' or ''Regulations'') [1] to end-users in China between 2004 and 2007, including to entities on the BIS Entity List, and for military end-uses. Chitron-US was also convicted of illegally exporting military electronic components designated on the U.S. Munitions List to China through Hong Kong between 2004 and 2007. In addition, Chitron-US was convicted of conspiring over a period of 10 years to violate the IEEPA and AECA (18 U.S.C. 371) and aiding and abetting (18 U.S.C. 2). Chitron-US was ordered to pay a $10,400 Special Assessment and a $15.5 million fine. Chitron-US is also listed on the Department of State's Debarred List.

Section 766.25 of the Regulations provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2011). The Regulations issued pursuant to the EAA (50 U.S.C. app. §§ 2401–2420 (2000)). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 12, 2011 (76 FR 50661, August 16, 2011), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.* (2000)).

Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the [Export Administration Act (''EAA'')], the EAR, of any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); see also Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); see also 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Chitron-US's conviction for violating IEEPA and the AECA, and have provided notice and an opportunity for Chitron-US to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have not received a submission from Chitron-US. Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Chitron-US's export privileges under the Regulations for a period of 10 years from the date of Chitron-US's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Chitron-US had an interest at the time of its conviction.

B. Denial of Export Privileges of Related Person

Pursuant to Sections 766.25(h) and 766.23 of the Regulations, the Director of BIS's Office of Exporter Services, in consultation with the Director of BIS's Office of Export Enforcement, may take action to name persons related to a Respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business in order to prevent evasion of a denial order. Chitron Electronics Company Limited (''Chitron-Shenzhen''), located in China, is the parent company of Chitron-US and was also indicted for the same crimes as Chitron-US. Chitron (HK) Electronics Company Limited (''Chitron-HK''), is a branch office of Chitron-US, located in Hong Kong. The illegal enterprise involved the use of Chitron-US, as a front company, and Chitron-HK, as a transit point, to funnel goods to its parent company, Chitron-Shenzhen for final delivery to end-users in China. Chitron-Shenzhen and Chitron-HK are related to Chitron-US by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. BIS believes that naming Chitron-Shenzhen and Chitron-HK as related persons to Chitron-US is necessary to avoid evasion of the denial order against Chitron-US.

As provided in Section 766.23 of the Regulations, I gave notice to Chitron-Shenzhen and Chitron-HK that their export privileges under the Regulations could be denied for up to 10 years due to their relationship with Chitron-US and that BIS believes naming them as persons related to Chitron-US would be necessary to prevent evasion of a denial order imposed against Chitron-US. In providing such notice, I gave Chitron-Shenzhen and Chitron-HK an opportunity to oppose their addition to the Chitron-US Denial Order as a related party. Having received no submission, I have decided, following consultations with BIS's Office of Export Enforcement, including its Director, to name Chitron-Shenzhen and Chitron-HK as Related Persons to the Chitron-US Denial Order, thereby denying their export privileges for 10 years from the date of Chitron-US's conviction.

I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which the Related Persons had an interest at the time of Chitron-US's conviction. The 10-year denial period will end on January 28, 2021.

Accordingly, it is hereby *ordered:*

I. Until January 28, 2021, Chitron Electronics, Inc. with a last known address at: 102 Clematis Avenue, Suite 7, Waltham, MA 02453, and when acting for or on behalf of Chitron-US, its successors or assigns, agents or employees (collectively referred to hereinafter as the ''Denied Person''), and the following persons related to the Denied Person as defined by Section 766.23 of the Regulations: Chitron Electronics Company Limited, a/k/a Chi-Chuang Electronics Company Limited, a/k/a Shenzhen Chitron Electronics Company Limited, with a last known address at: 2127 Sungang Road, Huatong Building 19/F, Luohu District, Shenzhen, 518001, China; and Chitron (HK) Electronics Company Limited, a/k/a C.I.C. Electronics (HK) Limited, with a last known address at: Room 05 13/F Nanyang Plaza, No. 57 Hung To Road, Kwum Tong, Kowloon, Hong Kong, and when acting for or on their behalf, their successors or assigns, agents, or employees (''the Related Persons'') (together, the Denied Person and the Related Persons are ''Persons Subject to this Order''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Persons Subject to this Order any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Persons Subject to this Order of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Persons Subject to this Order acquire or attempt to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Persons Subject to this Order of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Persons Subject to this Order in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Persons

Subject to this Order, or service any item, of whatever origin, that is owned, possessed or controlled by the Persons Subject to this Order if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. In addition to the Related Persons named above, after notice and opportunity for comment as provided in section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until January 28, 2021.

VI. In accordance with Part 756 of the Regulations, Chitron-US may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. In accordance with Part 756 of the Regulations, the Related Persons may also file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VIII. A copy of this Order shall be delivered to the Denied Person and the Related Persons. This Order shall be published in the **Federal Register.**

Issued this 4th day of June, 2012.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2012–14109 Filed 6–8–12; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges

In the Matter of:
Zhen Zhou Wu,
a/k/a Alex Wu,
Currently Incarcerated at:
Inmate Number: 40887–424
FMC Devens,
Federal Medical Center,
P.O. Box 879,
Ayer, MA 01432,
and with an Address at:
2127 Sungang Building 19/F,
Luohu District, Shenzhen, 518001,
China.

On January 26, 2011, in the U.S. District Court, District of Massachusetts, Zhen Zhou Wu, a/k/a Alex Wu (''Wu'') was convicted of violating the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.* (2000)) (''IEEPA'') and violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2000)) (''AECA''). Specifically, Wu was convicted of illegally exporting various electronic components and other items subject to the Export Administration Regulations (the ''Regulations'') to end-users in China between 2004 and 2007, including to entities on the BIS Entity List, and for military end-uses. Wu was also convicted of illegally exporting military electronic components designated on the U.S. Munitions List to China through Hong Kong between 2004 and 2007. In addition, Wu was convicted of conspiring over a period of 10 years to violate IEEPA and AECA (18 U.S.C. 371); aiding and abetting (18 U.S.C. 2); and filing false shipping documents with the Department of Commerce (18 U.S.C. 1001). Wu was sentenced to 97 months in prison, 24 months of supervised release, a $1,700 Special Assessment and a $15,000 fine. Wu is also listed on the Department of State's Debarred List.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the [Export Administration Act (''EAA'')], the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); see also Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); see also 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Wu's conviction for violating IEEPA and the AECA, and have provided notice and an opportunity for Wu to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have not received a submission from Wu. Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Wu's export privileges under the Regulations for a period of 10 years from the date of Wu's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Wu had an interest at the time of his conviction.

Accordingly, it is hereby *ordered:*

I. Until January 26, 2021, Zhen Zhou Wu, a/k/a Alex Wu, with last known addresses at: Inmate Number: 40887–424, FMC Devens, Federal Medical Center, P.O. Box 879, Ayer, MA 01432 and 2127 Sungang Road, Huatong Building 19/F, Luohu District, Shenzhen, 518001, China, and when acting for or on behalf of Wu, his representatives, assigns, agents or employees (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2011). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 12, 2011 (76 FR 50661 (August 16, 2011)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.* (2000)).

subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Wu by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until January 26, 2021.

VI. In accordance with Part 756 of the Regulations, Wu may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to the Wu. This Order shall be published in the **Federal Register**.

Issued this 4th day of June, 2012.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2012–14090 Filed 6–8–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Final Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 3, 2012, the Department of Commerce (''Department'') published in the **Federal Register** the preliminary rescission of the ninth administrative review, covering the period December 1, 2009, through November 30, 2010, of the antidumping duty order on honey from the People's Republic of China (''PRC'').[1] We gave interested parties an opportunity to comment on the *Preliminary Rescission.* After reviewing interested parties' comments, we made no changes for the final rescission of this review.

DATES: *Effective Date:* June 11, 2012.

FOR FURTHER INFORMATION CONTACT: Josh Startup or Catherine Bertrand, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5260 or (202) 482–3207, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from Petitioners [2] and Dongtai Peak Honey Industry Co., Ltd. (''Dongtai Peak''), a Chinese producer and exporter of honey, in accordance with 19 CFR 351.213(b), during the anniversary month of December, to conduct a review of honey exporters from the PRC. On January 28, 2011, the Department initiated this review with respect to all 60 requested companies.[3]

On February 7, 2011, Mongolia Altin Bee-Keeping Co., Ltd., Suzhou Shanding Honey Product Co., Ltd., and Wuhu Fenglian Co., Ltd. submitted a letter certifying they had no shipments during the POR and requesting the Department rescind this review with respect to each of them.[4] On February 24, 2011, Petitioners withdrew the request for review for all companies requested except for Dongtai Peak. On March 9, 2011, the Department published a notice of partial rescission in the **Federal Register** for all of the companies for which the request for review was withdrawn.[5] Dongtai Peak remains the only company subject to this review. On August 4, 2011, the Department published a notice extending the time period for issuing the preliminary results by 120 days to December 31, 2011.[6]

As noted above, on January 3, 2012, the Department published the *Preliminary Rescission* of this administrative review. We set the deadline for interested parties to submit case briefs and rebuttal briefs to February 8, 2012, and February 13, 2012, respectively.[7] On February 13, 2012, we extended the deadline for parties to submit rebuttal briefs to February 21, 2012. On February 8, 2012, Dongtai Peak and Petitioners both filed case briefs. On February 21, 2012, both

[1] *See Honey from the People's Republic of China: Preliminary Rescission of the Administrative Review,* 77 FR 79 (January 3, 2012) (''*Preliminary Rescission*'').

[2] The American Honey Producers Association and Sioux Honey Association, collectively ''Petitioners.''

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 5137 (January 28, 2011) (''*Initiation Notice*'').

[4] Companies have the opportunity to submit statements certifying that they did not ship the subject merchandise to the United States during the POR.

[5] *See Honey from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 12940 (March 9, 2011).

[6] *See Ninth Administrative Review of Honey From the People's Republic of China: Extension of Time Limit for the Preliminary Results,* 76 FR 47238 (August 4, 2011).

[7] *See* Memo to the File From Josh Startup Re: Honey from the People's Republic of China (''PRC''): Case Brief Schedule, dated January 9, 2012.

Dongtai Peak and Petitioners filed rebuttal briefs.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these reviews are addressed in the ''Issues and Decision Memorandum: Administrative Review of Honey from the People's Republic of China: Final Rescission of Antidumping Duty Administrative Review,'' (''Issues and Decision Memorandum'') which is dated concurrently with this notice, and which is hereby adopted by this notice. A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decisions Memorandum are identical in content.

Scope of the Order

The products covered by the order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to the order is currently classifiable under subheadings 0409.00.00, 1702.90.90, 2106.90.99, 0409.00.0010, 0409.00.0035, 0409.00.0005, 0409.00.0045, 0409.00.0056, and 0409.00.0065 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under the order is dispositive.

Final Rescission of Administrative Review

In the *Preliminary Rescission,* the Department preliminarily rescinded the administrative review of Dongtai Peak, whose POR sales the Department found to be not *bona fide.*[8] The Department received comments with respect to our preliminary decision to rescind the review. The Department continues to find the sales made by Dongtai Peak during the POR to be not *bona fide.*[9]

Therefore, we are rescinding this review of the antidumping duty order on honey from the PRC for the period of December 1, 2009, through November 30, 2010. The cash deposit rate for the Dongtai Peak will continue to be the rate established in the most recently completed segment of this proceeding.[10]

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. Because the Department has not completed an administrative review, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Tariff Act of 1930, as amended and 19 CFR 351.213(d)(4).

Dated: June 4, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I—Decision Memorandum

Company Specific Issues

Comment 1: *Bona Fide* Analysis of Dongtai Peak's Sales.

Comment 2: Validity of the Company Certification Provided by the Resale Customer.

Comment 3: Alleged Undisclosed U.S. Affiliate D.T. Peak.

[FR Doc. 2012–14142 Filed 6–8–12; 8:45 am]

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[8] *See Preliminary Rescission; see also* Memorandum to James C. Doyle, Director, Office 9; through Catherine Bertrand, Program Manager; from Josh Startup, International Trade Compliance Analyst; regarding Antidumping Duty Administrative Review of Honey from the People's Republic of China: *Bona fide* Analysis of the Sales Under Review for Dongtai Peak Honey Industry Co., Ltd. (dated December 23, 2011).

[9] *See* Issues and Decision Memorandum.

[10] *See Administrative Review of Honey from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review, In Part,* 75 FR 24880 (May 6, 2010).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 7, 2011, the Department of Commerce (the ''Department'') published the preliminary results of the administrative review of the antidumping duty order on circular welded non-alloy steel pipe (''CWP'') from the Republic of Korea (''Korea''). The review covers the period November 1, 2009, through October 31, 2010, and two producers/exporters of the subject merchandise to the United States: SeAH Steel Corporation (''SeAH'') and Hyundai HYSCO (''HYSCO''). Based on our analysis of the comments received from interested parties, we have made changes to the margin calculations. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Review.''

DATES: *Effective Date:* June 11, 2012.

FOR FURTHER INFORMATION CONTACT: Mary Kolberg or Jennifer Meek, AD/CVD Operations, Office 1, Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1785 or (202) 482–2778, respectively.

SUPPLEMENTARY INFORMATION:

Background

Following *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Preliminary Results of the Antidumping Duty Administrative Review,* 76 FR 76369, 76374 (December 7, 2011) (''*Preliminary Results*''), the Department requested additional information on the U.S. date of sale. Accordingly, we postponed the briefing schedule. We sent supplemental questionnaires to HYSCO and SeAH on January 20, and January 27, 2012, respectively, and we received timely responses on February 3, and February 22, 2012, respectively.

On February 15, 2012, the Department published in the **Federal Register** an extension of the time limit for the completion of the final results of this review until no later than June 4, 2012, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.213(h)(2). *See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Extension of the Final Results of the Antidumping Duty Administrative Review,* 77 FR 8808 (February 15, 2012).

We received case briefs from Wheatland Tube Company (''Wheatland''), United States Steel Corporation (''U.S. Steel''), HYSCO, and SeAH on March 14, 2012. On March 22, 2012, U.S. Steel, Wheatland, Allied Tube and Conduit and TMK IPSCO, SeAH, and HYSCO submitted rebuttal briefs. On January 6, 2012, Wheatland requested a hearing, but withdrew its request on April 5, 2012. Thus, no hearing was held.

Scope of the Order

The merchandise subject to the order is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in the order.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of the order except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit.[1]

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (''HTS'') subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

All issues raised are addressed in the ''Issues and Decision Memorandum for the 2009–2010 Administrative Review of Circular Welded Non-Alloy Steel Pipe from the Republic of Korea'' (''Issues and Decision Memorandum''), which is dated concurrently with and hereby adopted by this notice. A list of the issues which parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically *via* Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit (''CRU''), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Import Administration Web site at *http://ia.ita.doc.gov/frn/index.html*. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

SeAH's U.S. credit expenses have been recalculated to include the period from the date of shipment until the date of payment as opposed to the date of invoice to the date of payment in accordance with our practice. We have also recalculated the adjustment for U.S. inventory carrying costs incurred in the country of manufacture to avoid double counting the time period between the date of shipment and the invoice date.

SeAH's reported cost of manufacturing has been revised to eliminate the inventory valuation adjustment. For additional details, *see* Memorandum to Neal M. Halper, Director of Office of Accounting, ''Cost of Production and Constructed Value Calculation Adjustments for the Final Results—SeAH Steel Corporation,'' dated June 4, 2012.

Cost of Production

Consistent with the *Preliminary Results,* we disregarded home market sales by SeAH and HYSCO that failed the cost-of-production test.

Final Results of Review

We determine that a weighted-average dumping margin exists for the two respondents, SeAH and HYSCO, for the period November 1, 2009, through October 31, 2010.

Manufacturer/Exporter	Weighted-Average Dumping Margin
SeAH Steel Corporation	2.69%
Hyundai HYSCO	0.59%

[1] *See Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube From Brazil, the Republic of Korea, Mexico, and Venezuela,* 61 FR 11608 (March 21, 1996). In accordance with this determination, pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A–53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines is outside of the scope of the antidumping duty order.

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to this proceeding in accordance with 19 CFR 351.224(b).

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b)(1).

The Department calculated importer-specific *ad valorem* duty assessment rates on the basis of the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis,* we will instruct CBP to assess duties on all entries of subject merchandise by that importer. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.,* less than 0.50 percent).

The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (''*Assessment Policy Notice''*). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary party involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit rates will be effective upon publication of the final results of this administrative review for all shipments of CWP from Korea entered or withdrawn from warehouse, for consumption, on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed above will be the rates established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis,* the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results for that manufacturer or exporter; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV investigation conducted by the Department, the cash deposit rate will be 4.80 percent, the ''all others'' rate established in the LTFV investigation. *See Notice of Antidumping Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea, Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea,* 57 FR 49453 (November 2, 1992). These deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice also serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 4, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Hysco Issues and Seah Issues

Comment 1: Whether to Eliminate Zeroing Methodology in the Final Results

Wheatland Tube Company and U.S. Steel Issues

Comment 2: *Whether The Department Should Use the Purchase Order Date for HYSCO's U.S. Date of Sale*

U.S. Steel Issues

Comment 3: *Whether to Use the Invoice Date for SeAH's U.S. Date of Sale*

Comment 4: *Whether to Recalculate SeAH's U.S. Credit Expense*

Wheatland Tube Company Issues

Comment 5: *Whether to Include Bad Debt in SeAH's U.S. Indirect Selling Expenses*

Comment 6: *Whether to Increase SeAH's Reported Costs to Include An Unreconciled Amount*

Comment 7: *Whether to Disallow Any Offset to SeAH's Reported Costs for Inventory Valuation Gains*

Comment 8: *Whether to Base the Major Input Adjustment for SeAH's Hot-Rolled Steel Purchases on Comparisons of Identical Specifications*

[FR Doc. 2012–14147 Filed 6–8–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic from the People's Republic of China: Final Results of the 2009–2010 Administrative Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 20, 2011, the Department of Commerce (Department) published partial preliminary results of the 2009–2010 administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC) covering the two mandatory respondents and five separate rate respondents for the period of review (POR) of November 1, 2009, through October 31, 2010.[1] Based on the

[1] The Department published the partial final results and partial rescission of this review on February 27, 2012. Those partial final results covered the PRC-wide entity and the partial rescission covered the producers/exporters who certified no sales, exports or entries. *See Fresh Garlic From the People's Republic of China: Partial Final Results and Partial Final Rescission of the*

analysis of the comments received and factual records, the Department has made certain changes to the margin calculations for two fully participating mandatory respondents. The changes to the calculations, in turn, results in the changes to the separate rate calculated for the five additional producers/exporters which demonstrated eligibility for separate rate status. The final dumping margins are listed in the ''Final Results of Review'' section below.

DATES: *Effective Date:* June 11, 2012.

FOR FURTHER INFORMATION CONTACT: Lingjun Wang, David Lindgren and Nicholas Czajkowski, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2316, (202) 482–3870 and (202) 482–1395, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department initiated this review for 113 producers/exporters. On December 7, 2011, the Department published partial preliminary results of this administrative review which covered the two fully participating mandatory respondents, Shenzhen Xinboda Industrial Co., Ltd. (Xinboda) and Hebei Golden Bird Trading Co., Ltd. (Golden Bird), and five producers/exporters who certified or applied for separate rate status. We invited parties to comment on the partial preliminary results.[2] Since the *Preliminary Results,* the following events have occurred:

On December 20, 2011, in response to Xinboda's and Golden Bird's requests, the Department extended the deadline for parties to file post-preliminary surrogate value information. On January 6, 2012, Xinboda, Golden Bird, and Petitioners [3] each timely filed publicly available surrogate value information and comments.

On January 13, 2012, in response to Petitioners' request, the Department extended the deadline for parties to submit factual information to rebut, clarify, or correct the January 6, 2012 submissions. On January 23, 2012, Golden Bird and submitted factual information to rebut, clarify, or correct information in the January 6, 2012 surrogate value submissions On January 30, 2012, Xinboda argued that the Petitioners' January 23, 2012 submission contained new, untimely filed, surrogate value information. On February 7, 2012, Petitioners rebutted Xinboda's argument by stating that their January 23, 2012 rebuttal, including the portion disputed by Xinboda, responded to surrogate value information in Xinboda's January 6, 2012 submission. On February 10, 2012, Xinboda filed a letter arguing that it is not the Department's policy to accept alternative surrogate value information as rebuttal information. After carefully considering both parties' arguments, on March 7, 2012, the Department issued a memorandum to accept Petitioners' January 23, 2012 rebuttal submission as timely rebuttal information pursuant to 19 CFR 351.301(c)(1) and not use the information as surrogate value information.[4]

On March 26, 2012, the Department extended the time limit for completing the final results of this review from 120 days to 180 days.[5] On April 20, 2012, Petitioners, Xinboda and Jinan Farmlady Trading Co., Ltd. (Farmlady) each timely filed case briefs. On April 24, 2012, the Department rejected Golden Bird's untimely filed case brief. Subsequently, the Department determined that Xinboda's case brief contained untimely filed new factual information, and requested that Xinboda submit a redacted case brief. Xinboda timely submitted its redacted case brief on May 1, 2012. Rebuttal briefs were timely submitted by Xinboda, Golden Bird and Petitioners by May 2, 2012. Finally, on May 9, 2012, the Department determined that Xinboda's rebuttal brief contained arguments which did not respond to arguments raised in other parties' case briefs and requested that Xinboda submit a redacted case brief. Xinboda timely submitted its redacted case brief on May 11, 2012.

At the request of Xinboda, a public hearing was held on May 16, 2012 in accordance with 19 CFR 351.310.

Scope of the Order

The products covered by the order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of the order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive. In order to be excluded from the order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection to that effect.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties are addressed in the Decision Memorandum.[6] A list of these issues is attached to this notice in the Appendix. The Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The signed Decision Memorandum and electronic versions of

2009–2010 Administrative Review, 77 FR 11486 (February 27, 2012).

[2] *See Fresh Garlic From the People's Republic of China: Preliminary Results of the 2009–2010 Antidumping Duty Administrative Review,* 76 FR 76375 (December 7, 2011) (*Preliminary Results*).

[3] Petitioners are the Fresh Garlic Producers Association, its individual members being Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

[4] *See* Memorandum to Barbara E. Tillman, Subject: Fresh Garlic from the People's Republic of China: Accepting Petitioners' submission dated January 23, 2012 as timely (March 7, 2012).

[5] *See Fresh Garlic From the People's Republic of China: Extension of Time Limit for Final Results of the 2009–2010 Administrative Review,* 77 FR 17409 (March 26, 2012).

[6] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, ''Fresh Garlic from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2009–2010 Administrative Review of the Antidumping Duty Order,'' dated June 04, 2012 (Decision Memorandum).

the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

For the final results, based on analysis of the comments received and our review of the record, the Department has made certain changes to the margin calculations for each respondent. Detailed discussions of these changes can be found in the Decision Memorandum, Golden Bird's Final Calculation Memorandum, and Xinboda's Final Calculation Memorandum.[7]

Separate Rates

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be eligible for a separate rate.[8]

In the *Preliminary Results,* the Department found that Golden Bird, Farmlady, Xinboda, Henan Weite Industrial Co., Ltd., Qingdao Xintianfeng Foods Co., Ltd., Chengwu County Yuanxiang Industry & Commerce Co., Ltd., and Yantai Jinyan Trading Co., Ltd. demonstrated their eligibility for a separate rate.[9] No party has placed any evidence on the record of this review to contradict that finding. Therefore, we continue to find that these companies are eligible for a separate rate.

The separate rate shall be an amount equal to the weighted average of the calculated weighted-average dumping margins established for mandatory respondents, excluding any zero and *de minimis* margins, and any margins determined entirely on adverse facts available.[10] In this review, Xinboda and Golden Bird are the two mandatory respondents for which the Department calculated company-specific rates. Using a weighted average of these two company-specific rates to calculate a separate rate would risk disclosure of the mandatory respondents' business proprietary information. Therefore, the Department used a simple average of these two company-specific rates to calculate a separate rate, which is $0.41 per kilogram.

Final Results of Review

The Department determines that the following dumping margins exist for the period November 1, 2009, through October 31, 2010.

Producer/Exporter	Dumping margins (dollars per kilogram)
Hebei Golden Bird Trading Co., Ltd	$0.14
Shenzhen Xinboda Industrial Co., Ltd	0.68
Henan Weite Industrial Co., Ltd	0.41
Jinan Farmlady Trading Co., Ltd	0.41
Qingdao Xintianfeng Foods Co., Ltd	0.41
Chengwu County Yuanxiang Industry & Commerce Co., Ltd	0.41
Yantai Jinyan Trading Co., Ltd	$0.41

Disclosure

The Department intends to disclose to parties to the proceeding the calculations performed within five days after the date of publication of final results in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.,* per kilogram) amount on each entry of the subject merchandise during the POR. The Department intends to issue appropriate assessment instructions for such producers/exporters directly to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in these final results of review; (2) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide entity rate of $4.71 per kilogram; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to an Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

[7] *See* Memorandum to the File regarding ''Fresh Garlic from the People's Republic of China: Calculation Memorandum for the Final Results of Antidumping Duty Administrative Review—Hebei Golden Bird Trading Co., Ltd.,'' dated June 4, 2012 (Golden Bird's Final Calculation Memorandum); *see also* Memorandum to the File regarding ''Fresh Garlic from the People's Republic of China: Calculation Memorandum for the Final Results of Antidumping Duty Administrative Review—Shenzhen Xinboda Industrial Co., Ltd.,'' dated June 4, 2012 (Xinboda's Final Calculation Memorandum).

[8] *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) and 19 CFR 351.107(d).

[9] *See Preliminary Results,* 76 FR at 76380–76381.

[10] *See* section 735(c)(5)(A) of the Tariff Act of 1930, as amended (Act).

Dated: June 4, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

APPENDIX

Comment 1: Surrogate Country for the Final Results
Comment 2: Cold and Controlled Atmosphere Storage Consumption Factors
Comment 3: Whether the Department Must Account for Yield Loss and Shrinkage
Comment 4: Whether To Use Garlico Instead of Azadpur for the Raw Garlic Input Price
Comment 5: Whether Azadpur Prices Are the Best Source for Raw Garlic Input Surrogate Values
Comment 6: Whether To Continue Using Azadpur Grade SA Price Data
Comment 7: Use of Indian Import Statistics for Other Surrogate Values
Comment 8: Selection of Surrogate Financial Ratios
Comment 9: Adjustments to the Financial Ratios
Comment 10: Whether the Department Should Apply Zeroing for the Final Results
Comment 11: Selection and Corroboration of the PRC–Wide Entity Rate
Comment 12: Review Request Process in Reviews of NME Countries
Comment 13: The Department's 15-Day Liquidation Instructions Policy

[FR Doc. 2012–14152 Filed 6–8–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC058

Endangered Species; File No. 16803

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that NMFS Southwest Fisheries Science Center (SWFSC), 3333 N. Torrey Pines Ct., La Jolla, CA 92037, [Responsible Party: Lisa Ballance, Ph.D.], has applied in due form for a permit to take green (*Chelonia mydas*), loggerhead (*Caretta caretta*), and olive ridley (*Lepidochelys olivacea*) sea turtles for scientific research.

DATES: Written, telefaxed, or email comments must be received on or before July 11, 2012.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16803 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division

- by email to *NMFS.Pr1Comments@noaa.gov* (include the File No. in the subject line of the email),
- by facsimile to (301) 713–0376, or
- at the address listed above.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Colette Cairns, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The SWFSC proposes to continue long-term monitoring of the status of sea turtles in San Diego Bay, California. The purpose of the work is to determine their abundance, size ranges, growth, sex ratio, health status, diving behavior, local movements, habitat use, and migration routes. Up to 50 green, five olive ridley, and five loggerhead sea turtles would be captured annually by entanglement netting and have the following procedures performed before release: photography/video; flipper tagging and passive integrated transponder tagging; ultrasound; morphometrics; tetracycline injection; fecal, scute and tissue sampling; cloacal and oral swabbing; lavage; and up two transmitter attachments. Animals with transmitters may be tracked by vessel after release. The permit would be valid for five years from the date of issuance.

Dated: June 5, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–14175 Filed 6–8–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC065

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice; re-opening of public comment period.

SUMMARY: On May 9, 2012, the National Marine Fisheries Service (NMFS) announced the availability for public review of four Hatchery and Genetic Management Plans (HGMPs) submitted by the Oregon Department of Fish and Wildlife (ODFW) pursuant to the protective regulations promulgated for Pacific salmon and steelhead under the Endangered Species Act (ESA). The HGMPs specify the operations of four hatchery programs rearing salmon and steelhead in the Sandy River subbasin within the State of Oregon. The availability of a draft environmental assessment, evaluating the anticipated effects of NMFS' proposed approval of those HGMPs pursuant to the National Environmental Policy Act (NEPA), was included in the announcement. The announcement opened a 30-day public comment period. In this notice, NMFS is re-opening the public comment period on these four HGMPs and the associated draft EA to July 9, 2012.

DATES: Comments must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific time on July 9, 2012

ADDRESSES: Written comments on the application should be addressed to the NMFS Salmon Management Division, 1201 NE. Lloyd Boulevard, Suite 1100, Portland, OR 97232, or faxed to 503–872–2737. Comments may be submitted by email. The mailbox address for providing email comments is: *SandyHatcheries.nwr@noaa.gov*. Include in the subject line of the email comment the following identifier: Comments on Oregon's Sandy hatchery plans.

FOR FURTHER INFORMATION CONTACT: Rich Turner, at phone number: (503) 736–4737, or email: *Rich.Turner@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

Chinook salmon (*Oncorhynchus tshawytscha*): threatened, naturally produced and artificially propagated Lower Columbia River.

Chum salmon (*O. keta*): threatened, naturally produced and artificially propagated Columbia River.

Coho salmon (*O. kisutch*): threatened, naturally produced and artificially propagated Lower Columbia River.

Steelhead (*O. mykiss*): threatened, naturally produced and artificially propagated Lower Columbia River.

Pacific eulachon (*Thaleichthys pacificus*): threatened, naturally produced southern distinct population segment.

ODFW has submitted to NMFS four HGMPs describing hatchery programs that release salmon and steelhead into the Sandy River in a manner that is intended to comply with requirements of the ESA under limit 5 of the 4(d) Rule. The programs are designed to meet mitigation responsibilities related to impacts from development in the Sandy River and Columbia River basins by providing hatchery fish to support fishing opportunities while minimizing potential risks to natural-origin spring Chinook salmon, coho salmon, and winter steelhead populations, consistent with Oregon's Lower Columbia River Conservation and Recovery Plan for Oregon Populations of Salmon and Steelhead.

As specified in the July 10, 2000, ESA 4(d) rule for salmon and steelhead (65 FR 42422) and updated June 28, 2005 (70 FR 37160), NMFS may approve an HGMP if it meets criteria set forth in 50 CFR 223.203(b)(5)(i)(A) through (K). Prior to final approval of an HGMP, NMFS must publish notification announcing its availability for public review and comment. NMFS received requests from the Native Fish Society and the Pacific Rivers Council to extend the public comment period. The comment period for the proposed policy was to end on June 8, 2012. NMFS is re-opening the comment period until July 9, 2012, to allow for more opportunity for public comment (see **DATES** and **ADDRESSES**).

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, June 28, 2005) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. Limit 5 of the updated 4(d) rule (50 CFR 223.203(b)(5)) further provides that the prohibitions of paragraph (a) of the updated 4(d) rule (50 CFR 223.203(a)) do not apply to activities associated with artificial propagation programs provided that an HGMP has been approved by NMFS to be in accordance with the salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, June 28, 2005).

Dated: June 6, 2012.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–14155 Filed 6–8–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC066

November 2010 Biological Opinion on the Effects of the Alaska Groundfish Fisheries on Steller Sea Lions and Other Endangered Species; Public Meeting

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

ACTION: Notice of public meeting; request for presentations.

SUMMARY: NMFS will host a meeting to conduct a panel review by experts contracted through the Center for Independent Experts (CIE) related to NMFS's November 2010 Biological Opinion on the effects of the Alaska groundfish fisheries on Steller sea lions and other endangered species (Final Biop). The meeting will provide an opportunity for the CIE reviewers to receive presentations from NMFS, the State of Alaska, the State of Washington, the North Pacific Fishery Management Council, and the public concerning new and relevant scientific information that has become available since NMFS issued the Final Biop. NMFS requests that parties interested in presenting such information to the CIE reviewers submit a statement of interest including an abstract of the information to be presented.

DATES: The meeting will be held August 1–2, 2012, from 9 a.m.–4:30 p.m. Pacific Daylight Time. Statements of interest and abstracts must be received by 5 p.m. Alaska Daylight Time on July 2, 2012, to be considered for presentation during the meeting on August 2, 2012.

ADDRESSES: Send statements of interest in making a presentation and abstracts to Jon Kurland, Assistant Regional Administrator for Protected Resources, NMFS, by any one of the following methods:

- *Fax:* 907–586–7012.
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Email: jon.kurland@noaa.gov*
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, Alaska.

The meeting will be held at NMFS Alaska Fisheries Science Center, 7600 Sand Point Way NE., Building 4, Seattle, WA, 98115, in the Jim Traynor conference room.

The CIE contract statement of work (SOW) and terms of reference (TORs) and documents subject to the CIE review are available on the NMFS Alaska Region Web site at *www.alaskafisheries.noaa.gov/protectedresources/stellers/esa/biop/final/cie/review.htm.*

FOR FURTHER INFORMATION CONTACT: Jon Kurland, 907–586–7638.

SUPPLEMENTARY INFORMATION:

Background

NMFS contracted with the CIE to conduct a peer review of the November 2010 Biological Opinion on the Alaska groundfish fisheries (Final Biop), which NMFS prepared under Section 7 of the Endangered Species Act (ESA). The CIE is a group affiliated with the University of Miami that provides independent peer reviews of the science upon which many of NMFS's management decisions are based, including reviews of stock assessments for fish and marine mammals. The structure and operation of the CIE are designed to ensure the quality, relevance, and independence of the reviews. Independence is maintained by eliminating any role for NMFS in selecting or paying the reviewers or in approving the content of reviewers' reports. Reviewers must adhere to a strict conflict of interest policy and the SOW and TORs contained in the review contract.

The ESA requires each federal agency to insure than any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any threatened or endangered species or adversely modify or destroy designated critical habitat.

Action agencies must consult with NMFS or the U.S. Fish and Wildlife Service regarding any action that may affect listed species. For fisheries managed under the Magnuson-Stevens Fishery Conservation and Management Act, NMFS is the action agency and must complete the consultation internally, involving its Sustainable Fisheries Division (responsible for authorization of the fisheries) and Protected Resources Division (responsible for implementing the ESA).

The subject of the CIE review is the scientific information used for, and analysis contained in, the Final Biop; and new scientific information relevant to Steller sea lions and fisheries since completion of the Final Biop. The review consists of two chapters: (1) A desk review of the Final Biop including information available to NMFS through September 3, 2010, and (2) a panel review of new information that became available subsequent to the Final Biop. NMFS expects to receive a final report from the CIE review on September 7, 2012.

Terms of Reference

The following TORs provide the parameters for the CIE review. The CIE reviewers must address each of the items specified in the TORs and must not address other issues than those specifically enumerated.

Tasks specific to developing Chapter 1 (desk review of Final Biop):

1. Read the Final Biop (November 24, 2010) on the Bering Sea and Aleutian Islands and Gulf of Alaska groundfish fisheries; and state waters parallel groundfish fisheries and related background documents (provided by NMFS) and the recovery plan (see **ADDRESSES** for a link to these documents).

2. Provide a scientific peer review and comment on the Final Biop, including scientific information available to NMFS through the end of the public comment period (September 3, 2010) for the Draft Biop, evaluate the scientific information and its interpretation that developed the rationale and the subsequent findings regarding factors potentially affecting Steller sea lion population status, vital rates, critical habitat, risk of extinction, and recovery including in particular the findings regarding the effects of fisheries on Steller sea lion population status, vital rates, and critical habitat. Address the following:

a. Does the Final Biop thoroughly and accurately (i.e. using the best available scientific information) describe what is known about the status of the listed species?

b. Does the Final Biop thoroughly and accurately describe what is known about groundfish fishery practices and catch statistics under the current ongoing ''status quo'' action, as defined in the Final Biop?

c. While the agency is directed to evaluate the effects of the action on listed species and critical habitat, does the Final Biop also adequately address alternative scientific explanations to the apparent population dynamics of the western distinct population segment (WDPS) of Steller sea lion, such as (but not limited to) predation, disease, ecosystem/carrying capacity, or emigration?

d. Does the Final Biop thoroughly and accurately assess the effects (direct and indirect) of the action on the listed species and its critical habitat?

e. Evaluate the scientific weight of the evidence presented in the Final Biop. Does the evidence provide strong, moderate or weak support for the discussion, findings and conclusions made in the document?

3. Reviewers shall evaluate the quality and completeness of the scientific and commercial information used in the Final Biop analysis, and identify if the Final Biop analysis is comprehensive or if there are relevant scientific or commercial data or information that were not used in the Final Biop analysis.

4. Reviewers are specifically asked to evaluate the scientific basis for the nutritional stress findings of the Final Biop. Reviewers shall evaluate and comment on the strength of the linkages among fish biomass estimates, fishery removals, Steller sea lion reproductive rates, and recovery of the WDPS. Does the Final Biop accurately evaluate the inter-relationships between Steller sea lion population status and trends, foraging ecology, and groundfish fisheries effects across broad geographic areas (ecosystems to highly localized regions) and temporal scales (years to seasons)?

5. Reviewers will determine if there is any additional literature, assessments, or analyses that should have been considered in the Final Biop (as of the end of the public comment period for the Draft Biop, September 3, 2010).

6. In making these evaluations, reviewers shall consider and address the following questions:

a. Are the findings of the Final Biop contradicted by any scientific information available as of September 3, 2010 presented in, or omitted from, the Final Biop?

b. As part of this consideration, reviewers shall also assess the scientific record to determine whether adequate consideration has been given to the likelihood that factors other than fishing are negatively affecting the population status, critical habitat or recovery of the WDPS including predation, changes in the ecosystem or carrying capacity, emigration, exposure to contaminants, or other factors.

Tasks specific to Chapter 2 (panel review meeting):

1. Reviewers will convene as a Panel and will conduct a scientific peer review during the panel review meeting in Seattle. In addition to scientific presentations regarding the Final Biop analysis and related scientific information, the meeting will include presentations by experts from environmental organizations, the fishing industry, affected communities, and other agencies and institutions. The Panel will conduct the peer review in accordance with the TORs for Chapter 2 and consider all relevant scientific information available up to the date of the Panel meeting. Refer to Annex 3 of the CIE review contract for listing of report and background documents (see **ADDRESSES**).

2. Following the same TORs identified for Chapter 1 of the CIE review, the reviewers will reexamine the Final Biop, its scientific record and any new information available subsequent to the issuance of the Final Biop and may provide additional commentary on the findings they made in Chapter 1 based on scientific information that arises through the panel presentations. This re-visitation of Chapter 1 shall be part of Chapter 2 of the report. As part of this commentary the reviewers are tasked to reevaluate the scientific basis for the conclusions of the Final Biop, that fisheries are causing nutritional stress in Steller sea lions, which in turn is adversely impacting the survival and recovery of the WDPS of the Steller sea lion. The reviewers shall evaluate and comment on the strength of the relationship between fishery removals and recovery of the WDPS.

3. The Reasonable Prudent Alternative (RPA) presented in the Final Biop (Section 8.3.4 of the Final Biop) and as implemented through an Interim Final Rule (75 FR 77535, December 13, 2010) may present an opportunity for an adaptive management experiment to test the response of fisheries and Steller sea lions to the fisheries closures implemented by the interim final rule. Reviewers will be asked to (1) comment on the utility of this opportunity, (2) evaluate the metrics identified in the Final Biop (e.g., trends in Steller sea lion abundance, trends in biomass of Atka mackerel and other groundfish,

etc.), and (3) suggest other metrics not described in the Final Biop that could be used to evaluate the efficacy of the action in ensuring the groundfish fisheries are not likely to adversely affect the survival and recovery of WDPS of the Steller sea lion.

CIE Panel Review

The CIE panel review will focus on Chapter 2 from the TORs. Persons or groups wishing to make a presentation to the CIE reviewers must submit a statement of interest with a brief (one page or less) abstract of the type of information to be presented. Presentations must address new scientific information germane to Steller sea lions and the groundfish fisheries that was not available before September 3, 2010. Persons or groups proposing to present information that does not fall within the TORs for the CIE review will not be invited to make presentations.

Due to the limited time available for the panel review, NMFS encourages individuals or groups that may have similar perspectives on the pertinent scientific information to coordinate their proposed presentations into subject specific panels to present the information effectively and minimize redundancy. For example, a panel could be comprised of several fishing industry representatives or several representatives of non-governmental organizations, with each participant addressing a different facet of the relevant information.

NMFS will review the statements of interest, abstracts, and proposed panels and, in consultation with the CIE reviewers, will schedule the presentations so as to focus on the most relevant scientific information of interest to the reviewers. The amount of time available per presenter or panel will depend on the number of persons and groups wishing to make presentations. NMFS will contact the proposed presenters in advance of the meeting to specify the amount of time available and the approximate schedule. During the meeting presenters may provide additional written information to the CIE reviewers for consideration, but the CIE reviewers are not obligated under the contract to review documents beyond those identified in the SOW.

More information on the CIE review, including the full SOW and TORs and all written materials for review identified in the SOW, is available on the NMFS Alaska Region Web site (see **ADDRESSES**).

Arrangements for Foreign Nationals

Individuals wishing to attend the meeting who are not citizens of the United States must make prior arrangements to be permitted entrance to the Alaska Fisheries Science Center (see **ADDRESSES**). Requests for such arrangements should be directed to Jennifer Ferdinand by email at *jennifer.ferdinand@noaa.gov* by July 23, 2012.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jennifer Ferdinand, (206) 526–4076, at least 5 working days prior to the meeting date.

Dated: June 6, 2012.

Helen Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–14151 Filed 6–8–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB139

Marine Mammals; File No. 17178

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to Virginia Institute of Marine Science [Responsible Party: Elizabeth Canuel, Ph.D.], P.O. Box 1346, Route 1208 Greate Road, Gloucester Point, VA 23062 to import marine mammal parts for scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)427–8401; fax (301)713–0376;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Amy Sloan, (301)427–8401.

SUPPLEMENTARY INFORMATION: On April 02, 2012 notice was published in the **Federal Register** (77 FR 19646) that a request for a permit to import marine mammal parts for scientific research had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The permit authorizes the import of fur, blood, and fat biopsies from up to 300 crabeater seals (*Lobodon carcinophaga*), 200 Weddell seals (*Leptonychotes weddellii*), 50 Ross seals (*Ommatophoca Rossii*), and 25 leopard seals (*Hydrurga leptonyx*). No takes of live animals are authorized. The permit will expire June 01, 2017.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: June 5, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–14133 Filed 6–8–12; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Meeting of Technology Advisory Committee

AGENCY: Commodity Futures Trading Commission (''CFTC'')

ACTION: Notice.

SUMMARY: The CFTC announces that on Wednesday, June 20, 2012, the CFTC's Technology Advisory Committee (''TAC'') will hold a public meeting at the CFTC's Washington, DC headquarters, from 10:00 a.m. to 5:00 p.m. The TAC will focus on updates from the TAC Subcommittee on Automated and High Frequency Trading (HFT), HFT strategies, and liquidity aggregation across designated contract markets (DCMs) and swap execution facilities (SEFs).

DATES: The meeting will be held on June 20, 2012 from 10:0 a.m. to 5:00 p.m. Members of the public who wish to submit written statements in connection with the meeting should submit them by June 19, 2012.

ADDRESSES: The meeting will take place in the Conference Center at the CFTC's headquarters, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Written statements should be submitted to: Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, attention: Office of the Secretary. Please use the title ''Technology Advisory Committee'' in any written statement you may submit. Any statements submitted in connection with the committee meeting will be made available to the public.

FOR FURTHER INFORMATION CONTACT: Laura Gardy, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, (202) 418–5354.

SUPPLEMENTARY INFORMATION: The TAC meeting will focus on two significant issues facing the futures and swaps industries as the Commission continues to finalize rules under the Dodd Frank Act. Those issues are: (1) HFT and (2) liquidity aggregation across DCMs and SEFs. The meeting will be open to the public with seating on a first-come, first-served basis. Members of the public who wish to listen to the meeting by telephone may do so by calling a toll-free telephone line to contact to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name and affiliation. Additionally, a video recording of the meeting will be published through a link on the CFTC's Web site.

All written submissions provided to the CFTC in any form will also be published on the Web site of the CFTC.

Domestic Toll Free: 1–800–857–5042.

International Toll: Under Related Documents to be posted on *www.cftc.gov.*

Conference ID: 4121146.

Call Leader Name: Michael Jones.

Pass Code/Pin Code: 5940208.

Authority: 5 U.S.C. app. 2 § 10(a)(2)

By the Commodity Futures Trading Commission.

Dated: June 5, 2012.

Sauntia Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–14002 Filed 6–8–12; 8:45 am]

BILLING CODE P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Emergency Review

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter ''CNCS''), submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. Chapter 35). CNCS requested that OMB review and approve its emergency request by June 18, 2012, for a period of six months. A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Kimberly Spring, (202) 606–6629 or by email at *kspring@cns.gov.*

A 60-day public comment Notice was published in the **Federal Register** on March 30, 2012. This comment period ended May 29, 2012. One public comment was received to add a question to gather data on practices found to be effective in providing training and support specific to veterans who serve as national service participants. In response, CNCS had added a question to reflect this comment. CNCS has requested OMB's approval of this emergency request by June 18, 2012, prior to the usual 30-day public comment and desk review periods. Therefore, there will be not enough time for the public to provide comments through this **Federal Register** Notice before the approval date.

Type of Review: Emergency request.

Agency: Corporation for National and Community Service.

Title: Field Assessment of the Involvement of Veterans and Military Families in National Service.

OMB Number: None.

Agency Number: None.

Affected Public: Non-profit organizations and state, city/local, and tribal agencies.

Total Respondents: 100.

Frequency: One time.

Average Time per Response: 50 minutes.

Estimated Total Burden Hours: 83.3 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments

Description: The 2009 Edward M. Kennedy Serve America Act, which reauthorized CNCS, directed the agency to expand the participation of veterans and military families in national service and provide to Congress a study and report detailing the agency's strategies, efforts, and results. In response, CNCS has worked to expand the quantity and quality of national service programs that involve these populations as both national service participants and service beneficiaries. The proposed information collection is intended to provide CNCS, its programs, and the national service field with information on the models and practices of national service programs and projects that engage and serve these populations. Through the study, CNCS will also begin to build an evidence base for documenting the effectiveness and impact of national service in this area. In addition, the data collection will provide critical information to CNCS that is needed to complete the Congressional report, which will document how the strategies undertaken by CNCS have enabled greater participation by veterans and how existing CNCS programs and activities could be improved to serve veterans and military families [Sec. 196C. (42 U.S.C. 12651k)]. The Congressional report is due prior to November, 2012. In an effort to be compliant with this Congressional requirement and maintain our ability to respond accurately and responsively to Congress on our activities related to veterans and military families, we are therefore submitting the information collection request under 5 CFR 1320.13 to OMB for emergency processing and approval of information collection activities.

The submission includes the interview protocol for existing CNCS grantees. The interviews will collect information on the models and strategies that national service programs and projects have developed and implemented to engage and serve veterans and military families. The aim of the study is to begin to build evidence of impact and isolate the unique value that national service brings to meeting the needs of these populations. Participation in the information collection is voluntary and will not be used in grant funding decisions.

If you have any questions, contact Kimberly Spring at 202–606–6629 or *kspring@cns.gov.*

Dated: June 5, 2012.

Idara Nickelson,

Chief of Program Operations.

[FR Doc. 2012–14009 Filed 6–8–12; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice Inviting Informal Public Comment on Training and Technical Assistance and Disability Inclusion Programming

AGENCY: Corporation for National and Community Service (CNCS).

ACTION: Notice Inviting Public Comment.

SUMMARY: The Corporation for National and Community Service (CNCS) is inviting informal public comment from the public concerning the development and implementation of a unified training and technical assistance (TTA) strategy and disability inclusion programming for all CNCS programs. This input will be used to inform competitive processes for funding TTA as we transition from a formula-based methodology to competitive processes.

The new budget environment requires a more focused and outcome-oriented strategy for TTA and disability programming. Our desired outcomes for TTA center on performance measurement and management, member/volunteer development and impact, as well as assisting programs in meeting requirements related to fiscal and program compliance. For disability inclusion, our goal is to increase the numbers of people with disabilities serving in national service programs. Stakeholder feedback on the most effective way to address these outcomes will be helpful to CNCS as we plan and prepare for this work.

We will accept comments in writing, as described below, or in person at a listening session at the National Conference on Volunteering and Service in Chicago, June 19, 2012. We will also hold two conference calls before the end of the comment period (please see schedule below). Please see **SUPPLEMENTARY INFORMATION** for topics to consider when formulating input. CNCS will not respond individually to those providing input, but will consider comments in preparing for future competitions.

Please note that this Notice does not request comments on individual application forms used under the various programs of CNCS. CNCS periodically publishes separate requests for comment concerning such application forms.

DATES: *Comments due:* July 6, 2012.

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

(1) Electronically through the CNCS email address system sent to: *tta@cns.gov or via www.regulations.gov.*

(2) By participating in any of the conference calls or the listening session described below.

(3) By mail postmarked no later than July 6, 2012 sent to: Corporation for National and Community Service, Attn: Gina Fulbright-Powell; 1201 New York Avenue NW., Washington, DC 20525.

(4) By fax to: (202) 606–3477 Attn: Gina Fulbright-Powell.

For more information on CNCS and its programs, please visit our Web site at *http://www.nationalservice.gov*.

FOR FURTHER INFORMATION CONTACT: Gina Fulbright-Powell, Corporation for National and Community Service; *tta@cns.gov*; (202) 606–7515 or TDD (202) 606–3472. Persons with visual impairments may request this notice in an alternative format.

Description of Requested Input

CNCS is inviting informal input from the public concerning the development and implementation of a unified training and technical assistance strategy and disability inclusion programming to make the best use of federal funds to support all CNCS programs—AmeriCorps, Senior Corps, VISTA, NCCC, the Martin Luther King, Jr. Day of Service, the 9–11 Day of Service, and the Social Innovation Fund. We will accept written comments via *tta@cns.gov* or *www.regulations.gov*.

We will also accept comments at a listening session held at the National Conference on Volunteering and Service in Chicago on June 19, 2012, and will conduct two conference calls between now and the end of the comment period.

CNCS will not respond individually to those providing comments, but will consider input in planning for future competitions. Please submit written input to *tta@cns.gov* or via *www.regulations.gov* as soon as possible. Comments should be received no later than 5:00 p.m. ET July 6, 2012 in order for full consideration.

When providing in-person or written input, please consider the following questions:

Aligning TTA With CNCS Strategic Priorities

The CNCS outcomes for training and technical assistance will focus on performance measurement and management, member/volunteer development and impact, and fiscal and program compliance. How are these priorities similar or emergent across CNCS programs? What are other program-specific needs or priorities that should be considered? What might be the best way to deliver TTA to address these priorities? Are there external partners or other federal agencies with intellectual capital in any of these areas we could examine and possibly leverage?

Cost Efficiencies

Funds for training and technical assistance are appropriated under several distinct authorities. However, in what ways can CNCS maximize TTA investments by identifying a common set of needs and strategies? How can we ensure that all programs receive the right level of support? What competencies are common to all CNCS programs? What competencies are unique to a specific program? What learning strategies or infrastructure can be common to all programs? How might we use technology to reach more grantees more effectively? What applicable learning infrastructure exists at the state or intermediary level or through other federal agencies that CNCS might replicate or adopt?

Measuring TTA Impact

How can TTA produce the greatest impact? What are the most important outcomes of successful CNCS training and technical assistance? What are some low cost ways CNCS can measure and account for TTA investments?

Additional Considerations

CNCS seeks additional thoughts and feedback on the following ideas and strategies we have identified and are considering:

- *Development of core competencies and assessments* across CNCS programs (with tailoring as needed for specific audiences)
- *Enhanced Online Learning Center* (with tracking of knowledge gains by course and completion by grantee/project/member)
- *Knowledge Networks* (to stimulate online user-generated content on what works through communities of practice in the focus areas)
- *Convenings* (both face-to-face and virtually) Regional, national, or local convenings meetings, trainings, or institutes around key competencies (e.g. performance management) or convened by subject (i.e. effective practices in a particular focus area)
- *Individualized TA to support targeted programs and projects* (based on assessment of capacity and a developmental coaching approach)

Maximizing Disability Inclusion Resources

The intent of funding for Disability Inclusion is to increase the participation of individuals with disabilities in national service and for demonstration

activities to further that goal. Given that goal, what competencies are needed for CNCS programs to conduct outreach and recruit people with disabilities to participate in national service programs? What is the best approach for making reasonable accommodations on behalf of all CNCS programs? What are the strategies most likely to lead to greater inclusion of people with disabilities in national service programs? Given the restrictions for collecting information on people with disabilities (other than self-disclosure), how do we track and report the numbers of people with disabilities across CNCS programs?

Conference Calls and Public Input Meeting: CNCS has scheduled two conference calls as follows:

Conference call #1: Monday, June 25 from 4:00–5:00 p.m. ET, call-in number 888–324–4147, participant passcode: POWELL.

Conference call #2: Thursday, June 28 from 12:30–1:30 p.m. ET, call-in number 800–779–1632, participant passcode: 2116663.

CNCS would like to anticipate the number of participants on each call. If you intend to participate, please indicate your intent by sending an email with your name, title, organization, contact information, and which call you will be joining to *tta@cns.gov*. Transcripts will be available on the CNCS Web site following each call.

The public input listening session will be held on Tuesday, June 19 during the National Conference on Volunteering and Service in Chicago, Illinois at the McCormack Place West at 2301 S. Indiana Avenue from 8:30–10:00 a.m. CNCS would like to anticipate the number of participants. Please send an email indicating your intention to attend the listening session at the National Conference with your name, title, organization, and contact information. We will follow up with a confirmation. Should you not be registered as an attendee for the National Conference you will use this confirmation to secure your admittance. If you are registered for the conference, please go to the conference Web site (*www.volunteeringandservice.org*), and add session 3336 to your Itinerary.

Also, if you cannot attend the listening session at the National Conference in person, a transcript of the session will be posted on the Web site for online review.

Please check our Web site at *http://www.nationalservice.gov/tta* for further information and updates.

Dated: June 5, 2012.

Gretchen Van der Veer,

Director, Leadership Development and Training.

[FR Doc. 2012–14014 Filed 6–8–12; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2012–OS–0063]

Proposed Collection; Comment Request

AGENCY: Defense Security Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506 (c) (2) (A) of the *Paperwork Reduction Act of 1995,* the Defense Security Service (DSS) announces a proposed new public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information to be collected; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received within August 10, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rule Making Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

- *Mail:* Federal Docket Management System Office 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09 Alexandria, VA 22350–3100.

Instructions: All submissions received must include agency name, docket number, and title for this **Federal Register** document. The general policy of comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed data collection or obtain a copy of the proposal and associated collection instrument, please write to: Defense Security Service, Center for Development of Security Excellence, Attn: Adriene Brown, 938 Elkridge Landing Road; Linthicum, MD 21090, or call Defense Security Service at (410) 865–6040.

Title, Associated Form, and OMB Number: Information Collection in Support of the DSS Security Education, Training, and Professionalization Programs; OMB Control Number 0704–TBD.

Needs and Uses: Pursuant to DoD Instruction (DoDI) 3305.13 (Section 5.2.4 and 5.2.5) and DoD Directive (DoDD) 5105.42 (Section 5.b), the Director of DSS is assigned as the functional manager responsible for the execution and maintenance of DoD security training. The DSS Director, under the authority of the Under Secretary of Defense for Intelligence, is required to:

- ''utilize established training and education analysis, design, development, implementation, and evaluation processes to determine the most effective and efficient method of training delivery to include instructor-led, distance learning, blended-learning, job aids, or other means of instruction delivery to meet mission requirements'' and
- ''develop and conduct assessments and evaluations of DoD security training programs to determine the effectiveness, efficiency, and compliance within the Department of Defense.''

Needs assessment respondents will be asked to voluntarily provide information on organizational goals (e.g., desired performance), training conditions (e.g., technological environment), specific jobs and tasks, types of programs needed, and target audience.

Evaluation respondents will be asked to provide information on their type of organization, level of experience in the subject, relevancy of course to current job, satisfaction with training (e.g., registration, content, quality, delivery, facilities), increase in performance confidence and capability, availability of training, and usefulness of materials and reference documents.

Affected Public: Defense Security Service and other Federal government personnel; business or other for-profit organizations

Business or Other For-Profit Organizations

Total Annual Burden Hours: 5,886.

Number of Respondents: 26,068 (based on number of FY2011 students and their supervisors).

Responses per Respondent: 1.

Average Burden Hours per Respondent: .22579.

Defense Security Service & Other Federal Government Personnel

Total Annual Burden Hours: 15,384.

Number of Respondents: 67,032 (based on number of FY2011 students and their supervisors).

Responses per Respondent: 1.

Average Burden Hours per Respondent: .22950.

Frequency: One time and/or on occasion (e.g., when there is a request to develop training, when a student has completed a course, etc.)

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This effort will collect qualitative information through needs assessments and evaluations. Feedback will be used as guidance for developing and evaluating DSS security education, training, and professionalization programs.

Two information collection efforts are required. Responses to both collections are voluntary.

The needs assessment is conducted prior to the development of training to collect data that will, in turn, be used to prescribe an appropriate course of action in response to a compliance requirement or to a performance deficiency that has been identified. Some of the collection questions are uniform, while others are unique to the type of product or service that is being requested. We request information in several areas, including: organizational goals and desired performance, training conditions, technological environment, types of jobs and tasks, types of programs needed, and target audience.

Evaluations are completed after a course of action has been implemented to collect data used to gather information about: the unmet training needs of the population served; maintaining and/or improving the course, job aid, or security event; and/or the effectiveness of operations that provide programs and activities supporting the job performance of security professionals.

Defense Security Service, Center for Development of Security Excellence, management, instructional systems designers, and instructional, technical and support staff responsible for the design and development of security products and services, will be the users of the data collected from needs assessments and evaluations.

Dated: June 6, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–14112 Filed 6–8–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Uniform Formulary Beneficiary Advisory Panel

AGENCY: Assistant Secretary of Defense (Health Affairs), Department of Defense.

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended) and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) the Department of Defense (DoD) announces the following Federal Advisory Committee Meeting of the Uniform Formulary Beneficiary Advisory Panel (hereafter referred to as the Panel).

DATES: June 21, 2012, from 9:00 a.m.–1:00 p.m.

ADDRESSES: Naval Heritage Center Theater, 701 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: CDR Joseph Lawrence, DFO, Uniform Formulary Beneficiary Advisory Panel, 4130 Stanley Road, Suite 208, Building 1000, San Antonio, TX 78234–6012. Telephone: (210) 295–1271, Fax: (210) 295–2789. Email Address: *Baprequests@tma.osd.mil*.

SUPPLEMENTARY INFORMATION: Purpose of Meeting: The Panel will review and comment on recommendations made to the Director of TRICARE Management Activity, by the Pharmacy and Therapeutics Committee, regarding the Uniform Formulary.

Meeting Agenda

1. Sign-In.
2. Welcome and Opening Remarks.
3. Public Citizen Comments.
4. Scheduled Therapeutic Class Reviews (Comments will follow each agenda item).
   a. Newer Sedative/Hypnotic Agents.
   b. Tobacco Cessation Agents.
   c. Designated Newly Approved Drugs in Already-Reviewed Classes.
   d. Pertinent Utilization Management Issues.
5. Panel Discussions and Vote.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and will be provided only to the first 220 people signing-in. All persons must sign-in legibly.

Administrative Work Meeting: Prior to the public meeting, the Panel will conduct an Administrative Work Meeting from 7:30 a.m. to 9:00 a.m. to discuss administrative matters of the Panel. The Administrative Work Meeting will be held at the Naval Heritage Center, 701 Pennsylvania Avenue, NW., Washington, DC 20004. Pursuant to 41 CFR 102–3.160, the Administrative Work Meeting will be closed to the public.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Panel at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Panel's Designated Federal Officer (DFO). The DFO's contact information can be obtained from the General Services Administration's Federal Advisory Committee Act Database at *https://www.fido.gov/facadatabase/public.asp*.

Written statements that do not pertain to the scheduled meeting of the Panel may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than 5 business days prior to the meeting in question. The DFO will review all submitted written statements and provide copies to all the committee members.

Public Comments: In addition to written statements, the Panel will set aside 1 hour for individuals or interested groups to address the Panel. To ensure consideration of their comments, individuals and interested groups should submit written statements as outlined in this notice; but if they still want to address the Panel, then they will be afforded the opportunity to register to address the Panel. The Panel's DFO will have a ''Sign-Up Roster'' available at the Panel meeting for registration on a first-come, first-serve basis. Those wishing to address the Panel will be given no more than 5 minutes to present their comments, and at the end of the 1 hour time period, no further public comments will be accepted. Anyone who signs-up to address the Panel, but is unable to do so due to the time limitation, may submit their comments in writing; however, they must understand that their written comments may not be reviewed prior to the Panel's deliberation.

To ensure timeliness of comments for the official record, the Panel encourages that individuals and interested groups consider submitting written statements instead of addressing the Panel. Due to changing requirements beyond the control of the Uniform Formulary Beneficiary Advisory Panel or its Designated Federal Officer, the Panel was unable to process the **Federal Register** notice for the June 21, 2012 meeting as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Dated: June 6, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–14093 Filed 6–8–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Missile Defense Advisory Committee; Notice of Closed Meeting

AGENCY: Missile Defense Agency (MDA), Department of Defense.

ACTION: Notice of closed meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting of the Missile Defense Advisory Committee will take place.

DATES: Tuesday, June 12, 2012 through Wednesday, June 13, 2012, from 8:00 a.m. to 6:00 p.m. (each day). Security clearance and visit requests are required for access.

ADDRESSES: Missile Defense Integration and Operations Center, Schriever Air Force Base, Colorado Springs, Colorado, 80912.

FOR FURTHER INFORMATION CONTACT: Mr. David Bagnati, Designated Federal Officer at *MDAC@mda.mil,* phone/voice mail 571–231–8113, or mail at 5700 18th Street, Building 245, Fort Belvoir, Virginia 22060–5573.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: At this meeting, the Committee will receive classified information on the Army's role in space application for the Ballistic Missile Defense System.

Agenda: Topics tentatively scheduled for classified discussion include, but are not limited to, a classified orientation of current, programmed and under development space capabilities at the Missile Defense Integration and Operations Center; classified information on Command, Control, Communication, Computers, Intelligence, Surveillance and Reconnaissance including, but not limited to, Command and Control, Battle Management, and Communications; Precision Tracking Space System; Space Tracing and Surveillance System; and Discrimination; an update on the Ballistic Missile Defense System; feedback on its assessment of the Missile Defense Agency's Directed Energy Program; and feedback on its recommendations on the National Academy of Science Report on Ballistic Missile Defense.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155 the Missile Defense Agency has determined that the meeting shall be closed to the public. The Director, Missile Defense Agency, in consultation with the Missile Defense Agency Office of General Counsel, has determined in writing that the public interest requires that all sessions of the committee's meeting will be closed to the public because they will be concerned with classified information and matters covered by section 5 U.S.C. 552b(c)(1).

Committee's Designated Federal Officer: Mr. David Bagnati, *MDAC@mda.mil,* phone/voice mail 571–231–8113, or mail at 5700 18th Street, Building 245, Fort Belvoir, Virginia 22060–5573.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the membership of the Missile Defense Advisory Committee about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Missile Defense Advisory Committee.

All written statements shall be submitted to the Designated Federal Officer for the Missile Defense Advisory Committee, in the following formats: One hard copy with original signature and one electronic copy via email (acceptable file formats: Adobe Acrobat PDF, MS Word or MS PowerPoint), and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer is as stated in **FOR FURTHER INFORMATION CONTACT** and can also be obtained from the GSA's Federal Advisory Committee Act Database—*https://www.fido.gov/facadatabase/public.asp.*

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Missile Defense Advisory Committee until its next meeting. The Designated Federal Officer will review all timely submissions with the Missile Defense Advisory Committee Chairperson and ensure they are provided to all members of the Missile Defense Advisory Committee before the meeting that is the subject of this notice.

Due to changing requirements beyond the control of the Missile Defense Advisory Committee or its Designated Federal Officer, the Committee was unable to process the **Federal Register** notice for its June 12 through June 13, 2012 meeting as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Dated: June 6, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–14100 Filed 6–8–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2012–OS–0062]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Information Systems Agency proposes to alter a system of records in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on July 11, 2012 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* Federal Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

* Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette Weathers-Jenkins, DISA Privacy Officer, Chief Information Office, 6916 Cooper Avenue, Fort Meade, MD 20755–7901, or by phone at (301) 225–8158.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency notices for system of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 1, 2012, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I of OMB Circular No. A–130, Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 5, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

K890.01

SYSTEM NAME:

Freedom of Information Act File (FOIA), (March 10, 2008, 73 FR 12711)

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Primary location: General Counsel (GC) Headquarters, Defense Information Systems Agency (DISA), P.O. Box 549, Ft. Meade, MD 20755–0549.

Decentralized locations: DISA Field Activities World-wide. Official mailing addresses are published as an Appendix to DISA's compilation of systems of records notices.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Log File which consists of a record of all written requests; names, addresses and phone numbers of individuals who requested information under the FOIA which had been processed within DISA since January 1, 1996. Correspondence received in DISA relating to FOIA, including replies thereto.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 552a, as amended by Pub. L. 93–502, Freedom of Information Act; and DOD Directive 5400.7–R, DoD Freedom of Information Act Program.''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Department of Justice for review and in the event of judicial action.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the DISA's compilation of systems of records notices apply to this system.''

* * * * *

STORAGE:

Delete entry and replace with ''Records may be stored on paper and/or on electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''Retrieved by name of the individual and/or the name of the individual who requested the information.''

SAFEGUARDS:

Delete entry and replace with ''Buildings are secured by a series of guarded pedestrian gates and checkpoints. Access to facilities is limited to security-cleared personnel and escorted visitors only. Within the facilities themselves, access to paper and computer printouts are controlled by limited-access facilities and lockable containers. Access to electronic means is limited and controlled by computer password protection. Paper records are stored in a locked file cabinet.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''All records are retained by Office of General Counsel, Headquarters, DISA, for two years. Records pertaining to policy are permanent. Correspondence maintained for two years, then destroyed. Logs are kept until reference need expires.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''FOIA Officer, Headquarters, Defense Information Systems Agency (DISA), Code GC, P.O. Box 549, Ft. Meade, MD 20755–0549.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Defense Information Systems Agency, ATTN: Headquarters FOIA Requester Service Center, P.O. Box 549, Ft. Meade, MD 20755–0549.

Written requests should contain the individual's full name, individual's full name who is the subject of the record if different from the requester, current address and telephone number. All requests must be signed.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to Defense Information Systems Agency, ATTN: Headquarters, FOIA Requester Service Center, P.O. Box 549, Ft. Meade, MD 20755–0549.

Written requests should contain the individual's full name, individual's full name who is the subject of the record if different from the requester, current address and telephone number. All requests must be signed.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''DISA's rules for accessing records and appealing initial agency determinations are published in DISA Instruction 630–225–8; 32 CFR part 316; or may be obtained from the system manager.''

* * * * *

[FR Doc. 2012–14013 Filed 6–8–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards: Disability and Rehabilitation Research Projects and Centers Program; Traumatic Brain Injury Model Systems Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information:

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability and Rehabilitation Research Projects (DRRPs)—Traumatic Brain Injury Model Systems Centers (TBIMS).

Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–5.

DATES:

Applications Available: June 11, 2012.

Date of Pre-Application Meeting: July 2, 2012.

Deadline for Transmittal of Applications: August 10, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities; to develop methods, procedures, and rehabilitation technologies that maximize the full inclusion and integration of individuals with disabilities into society, and promote employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Disability and Rehabilitation Research Projects (DRRPS)

The purpose of DRRPs, which are funded under NIDRR's Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, training, demonstration, development, dissemination, utilization, and technical assistance. Additionally information on DRRPS can be found at: *www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Priorities: NIDRR has established two absolute priorities for this competition.

Absolute Priorities: The *General DRRP Requirements* priority, which applies to all DRRP competitions, is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the *Federal Register* on April 28, 2006 (71 FR 25472). The *Traumatic Brain Injury Model Systems Centers* priority is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

General Disability Rehabilitation Research Projects (DRRP) Requirements and Traumatic Brain Injury Model Systems Centers.

Note: The full text of these priorities is included in the pertinent notice of final priority published in the **Federal Register** and in the application package for this competition.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 86, and 97. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 350. (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (e) The notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $7,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2013 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $427,500-$447,500.

Estimated Average Size of Awards: $437,500.

Maximum Award: We will reject any application that proposes a budget exceeding $447,500 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 16.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required by 34 CFR 350.62(a) and will be negotiated at the time of the grant award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. Fax: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133A–5.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 100 pages, using the following standards:

A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: June 11, 2012.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on July 2, 2012. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact either Lynn Medley or Marlene Spencer as follows:

Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., room 5140, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7338 or by email: *Lynn.Medley@ed.gov.*

Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *Marlene.Spencer@ed.gov.*

Deadline for Transmittal of Applications: August 10, 2012.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Traumatic Brain Injury Model Systems Centers (TBIMS), CFDA number 84.133A–5, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written

statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the TBIMS Competition at www.Grants.gov. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133A).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., room 5140 PCP, Washington, DC 20202–2700. Fax: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–5), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–5), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260. The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of products (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices developed or tested with NIDRR funding) that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *www.ed.gov/about/offices/list/opepd/sas/index.html.*

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made

''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Lynn Medley or Marlene Spencer as follows:

Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., room 5140, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7338 or by email: *Lynn.Medley@ed.gov.*

Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *Marlene.Spencer@ed.gov.*

If you use a TDD or TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature of this site, you can limit your search to documents published by the Department.

Dated: June 6, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–14130 Filed 6–8–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Disability and Rehabilitation Research Projects and Centers Program; Traumatic Brain Injury Model Systems Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information:

CFDA Number: 84.133A–5.

Final priority; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Project (DRRP)—Traumatic Brain Injury Model Systems Centers.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, this notice announces a priority for Traumatic Brain Injury Model Systems (TBIMS) Centers. The Assistant Secretary may use this priority for a competition in fiscal year (FY) 2012 and later years. We take this action to focus research attention on areas of national need.

DATES: *Effective Date:* This priority is effective July 11, 2012.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

This notice of final priority is in concert with NIDRR's currently approved Long-Range Plan (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

This notice announces a final priority that NIDRR intends to use for a DRRP competition in FY 2012 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make an award for this priority. The decision to make an award will be based on the quality of applications received and available funding.

Purpose of Program:

The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities; to develop methods, procedures, and rehabilitation technologies that maximize the full inclusion and integration of individuals with disabilities into society, employment, independent living, family support, and promote economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Disability and Rehabilitation Research Projects (DRRPs)

The purpose of DRRPs, which are funded under NIDRR's Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs

carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, training, demonstration, development, dissemination, utilization, and technical assistance. Additional information on DRRPs can be found at: *http://www2.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority for this program in the **Federal Register** on March 7, 2012 (77 FR 13578). That notice contained background information and our reasons for proposing the particular priority.

Public Comment: In response to our invitation in the notice of proposed priority, four parties submitted comments on the proposed priority.

Generally, we do not address technical and other minor changes. In addition, we do not address general comments that raised concerns not directly related to the proposed priority.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority since publication of the notice of proposed priority follows.

Comment: One commenter requested that NIDRR revise paragraph (a) of the priority to identify standards or guidelines for clinical care that a grantee must follow when meeting this requirement. In addition, the commenter requested that NIDRR revise the priority to include the further development of evidence-based clinical practice guidelines as an area of research funded under this priority.

Discussion: NIDRR does not have a sufficient basis for requiring that its TBIMS Centers adopt specific guidelines. However, we agree that it is helpful to clarify in the priority that TBIMS centers may adopt practice guidelines as standards. Using standard TBIMS procedures of deliberation and voting, the TBIMs Project Directors could choose to adopt practice guidelines to guide care within the TBIMS Centers. NIDRR expects that the research conducted in the TBIMS Centers will contribute to the development of evidence-based rehabilitation practices through the advancement of knowledge at any stage of research (see NIDRR's proposed Long-Range Plan).

Changes: NIDRR has amended paragraph (a) to clarify that the TBIMS Centers may adopt practice guidelines as standards within the model systems. NIDRR also amended paragraph (c) to clarify that NIDRR expects that research projects will contribute to the development of evidence-based TBI rehabilitation.

Comment: One commenter asked several questions regarding proposed paragraph (g) of the priority, which would require grantees to spend $5,000 of their total budget towards the costs of a state-of-the-science conference. The commenter asked whether these funds must be used to organize the conference or whether they could be used to support travel to the conference. The commenter also asked for clarification regarding the grant years and budget category (training vs. research) in which these funds could be budgeted. Finally, the commenter asked about the title and scope of the state-of-the-science conference; specifically, the commenter asked whether the funds would be used to support a ''4th Interagency Conference on TBI''.

Discussion: NIDRR has decided to withdraw the proposed requirement that TBIMS Centers budget to support a state-of-the science conference. Instead, NIDRR is adding language to paragraph (g) of the priority that suggests including a state-of-the-science meeting as one possible means of collaboratively conducting knowledge translation activities that might be used to disseminate research findings from the TBIMS Centers program. TBIMS Centers have the freedom to determine the amount of funds that they might set aside for such activities, including any activities conducted in conjunction with the Model Systems Knowledge Translation Center.

Changes: NIDRR has removed the requirement in proposed paragraph (g) of the priority and redesignated the lettering of the following paragraphs of the final priority accordingly. Language has been added to paragraph (g) of the final priority to provide the option that state-of-the-science meetings could be one means of facilitating dissemination of research findings to stakeholders.

Comment: One commenter asked how NIDRR would assess applicants' capacity to participate in multi-site collaborative research as required in proposed paragraph (e) of the priority.

Discussion: Peer reviewers will use selection criteria under 34 CFR 350.54 to evaluate the quality of applications under this program, including applicants' descriptions of their capacity to engage in collaborative research. Peer review criteria under 34 CFR 350.54(k) are directly applicable to the evaluation of applicants' capacity to engage in multi-site collaborative research.

Changes: None.

Comment: Regarding paragraph (d) of the proposed priority, one commenter requested clarification on the distinction between multi-site research conducted under this priority (the TBIMS Centers Program Priority (CFDA 84.133A–5)) and the research conducted under the separately-funded TBIMS Collaborative Priority (CFDA 84.133A–4, published in the **Federal Register** on February 1, 2008 (73 FR 6132)). Specifically, the commenter asked whether NIDRR intended to disallow current TBIMS Collaborative grantees from proposing a TBIMS Centers module project under this priority.

Discussion: NIDRR does not intend to prohibit any center funded under the FY 2008–2012 TBIMS Collaborative competition (CFDA 84.133A–4) from applying under the FY 2012 competition using this priority. If a TBIMS Collaborative grantee is also awarded a FY 2012 TBIMS Center grant under this priority, it would be required to participate as a research collaborator in at least one multi-site module project under paragraph (d) of this priority. Its participation in the multi-site module project funded under this priority would need to be distinct from the multi-site research conducted under its TBIMS Collaborative grant.

Changes: NIDRR has revised paragraph (d) of the final priority to clarify that the multi-site module research activities funded under this priority must not be part of a current TBIMS Multi-Site Collaborative Project, which the Department funded under a separate priority.

Comment: One commenter requested clarification regarding proposed paragraph (i) which requires TBIMS Centers to address the needs of individuals with TBI, including individuals from one or more ''traditionally underserved populations.'' Specifically, the commenter asked the Department to clarify what populations would be considered ''traditionally underserved'' for purposes of this priority.

Discussion: Paragraph (i) of the proposed priority (redesignated as paragraph (h) in the final priority) requires each TBIMS Center to address the needs of individuals with traumatic brain injuries, including individuals from one or more traditionally underserved populations through its project. The Rehabilitation Act authorizes the research activities that are administered by NIDRR, including the research activities under the TBIMS Centers Program. While section 21 of the Rehabilitation Act, titled *Traditionally Underserved Populations,*

does not define the term ''traditionally underserved,'' it does provide an in-depth discussion of populations that experience inequitable treatment and relatively poor outcomes in the vocational rehabilitation process. Section 21 of the Rehabilitation Act specifically mentions groups of racial and ethnic minorities with disabilities, including Latinos, African Americans, Asian Americans, and American Indians with disabilities. There are a wide variety of underserved populations that applicants could focus upon in order to meet this specific requirement. NIDRR does not wish to preclude applicants from proposing specific populations that are relevant in their region, by providing a specific, yet possibly incomplete list of underserved populations. Instead, for purposes of this priority, we expect applicants to describe how they will fulfill the priority's requirement to address the needs of individuals with TBI from traditionally underserved populations, as that term is described in section 21 of the Rehabilitation Act. The peer review process will evaluate the merits of each application.

Changes: We have amended this paragraph to include a cross-reference to the Rehabilitation Act's discussion of traditionally underserved populations. Also, paragraph (i) of the proposed priority has been redesignated as paragraph (h) in this final priority as part of the redesignation referred to earlier in this notice.

Comment: None.

Discussion: In keeping with prior practice, NIDRR expects the project directors of the TBIMS Centers to participate in two project directors' meetings per year to be held in the greater Washington, DC area. These meetings are critical to the ongoing operations of this network of 16 TBIMS Centers and to the advancement of the collaborative research funded under this priority. Applicants must budget for the costs of having their project directors travel to and participate in these meetings. A TBIMS Center may allow additional center staff to attend with the TBIMS Center's project director, as long as the staff's attendance is essential for the Center to meet its objectives.

Changes: NIDRR has added paragraph (j) to the final priority. This new paragraph states that the TBIMS Center must ensure that its project director participates in two annual face-to-face TBIMS Center Project Directors' meetings in the greater Washington, DC area.

Final Priority:

Priority—Traumatic Brain Injury Model Systems Centers (TBIMS)

The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for the funding of Traumatic Brain Injury Model Systems (TBIMS) Centers under the Disability and Rehabilitation Research Projects (DRRP) program. The TBIMS Centers must provide comprehensive, multidisciplinary services to individuals with traumatic brain injury (TBI) and conduct research that contributes to the development of evidence-based rehabilitation interventions and clinical and practice guidelines.

For purposes of this priority, the term *traumatic brain injury* or *TBI* is defined as damage to brain tissue caused by an external mechanical force as evidenced by loss of consciousness or post-traumatic amnesia due to brain trauma or by objective neurological findings that can be reasonably attributed to TBI on physical examination or mental status examination. Both penetrating and non-penetrating wounds that fit these criteria are included, but, primary anoxic encephalopathy is not.

The TBIMS Centers must generate new knowledge that can be used to improve outcomes of individuals with TBI in one or more domains identified in NIDRR's currently approved Long Range Plan, published in the **Federal Register** on February 15, 2006 (71 FR 8165): Health and function, community living and participation, technology, and employment. Each TBIMS Center must contribute to this outcome by—

(a) Providing a multidisciplinary system of rehabilitation care specifically designed to meet the needs of individuals with TBI. The system must encompass a continuum of care, including emergency medical services, acute care services, acute medical rehabilitation services, and post-acute services. TBIMs Centers may choose to adopt practice guidelines to guide care within the TBIMS Centers, using established TBIMS procedures of deliberation and voting for recommendations that affect all TBIMS Centers;

(b) Continuing the assessment of long-term outcomes of individuals with TBI by enrolling at least 35 subjects per year into the TBIMS database, following established protocols for the collection of enrollment and follow-up data on subjects (found at *www.tbindsc.org*);

Note: TBIMS Centers will be funded at varying amounts up to the maximum award based on the numbers of TBIMS database participants from whom TBIMS Centers must collect follow-up data. TBIMS Centers that have previously been TBIMS grantees with large numbers of database participants will receive more funding within the specified range than TBIMS Centers with fewer participants, as determined by NIDRR after applicants are selected for funding. Applicants must include in their budgets specific estimates of their costs for follow-up data collection. Funding will be determined individually for each successful applicant, up to the maximum allowed, based upon the documented workload associated with the follow-up data collection, other costs of the grant, and the overall budget of the research project.

(c) Proposing and conducting at least one, but no more than two, site-specific research projects to test innovative approaches to treating TBI or to assess outcomes of individuals with TBI. Site-specific research projects must focus on outcomes in one or more domains identified in the Plan: Health and function, community living and participation, technology, and employment, and contribute to the development of evidence-based TBI rehabilitation practices through the advancement of science at any stage of research;

Note: Applicants who propose more than two site-specific research projects will be disqualified.

(d) Participating as a research collaborator in at least one module project. Module projects are research collaborations with one or more TBIMS Centers on topics of mutual interest and expertise. Such module projects must be carried out as part of the TBIMS Centers' activities. The module project research activities funded under this priority must not be part of a current TBIMS Multi-Site Collaborative Project, which the Department funded under a separate priority (see the notice inviting applications, published in the **Federal Register** on February 1, 2008 (73 FR 6162) and the associated notice of final priority, published in the **Federal Register** on February 1, 2008 (73 FR 6132));

Note: Applicants should not propose a specific module project in their application. While all TBIMS Centers grantees are required to participate as research collaborators in at least one module project, they are not required to develop any module project on their own. Immediately following the announcement of awards under this priority, TBIMS Centers that are interested in proposing module projects may identify module topics, identify potential collaborators from among the other TBIMS Centers, and propose research protocols for the potential modules. At the first TBIMS Centers Project Directors' meeting, Project Directors will review, discuss, and decide upon specific module projects to implement. NIDRR staff will facilitate this post-award discussion and negotiation among TBIMS

Centers grantees. Once these module projects are agreed upon by the Project Directors, each TBIMS Center must participate in at least one of them.

(e) Demonstrating, in its application, its capacity to successfully engage in multi-site collaborative research on TBI. This capacity includes access to research participants, the ability to maintain data quality, and the ability to adhere to research protocols;

(f) Spending at least 15 percent of its annual budget on participating in a module project, as described in paragraph (d) of this priority;

(g) Coordinating with the NIDRR-funded Model Systems Knowledge Translation Center (MSKTC) (*http://www.msktc.org/*) to provide scientific results and information for dissemination to stakeholders, including researchers, clinicians, consumers, and policymakers, using a variety of mechanisms that could include state-of-the-science meetings, webinars, Web sites, and other approaches;

(h) Addressing the needs of individuals with TBI, including individuals from one or more traditionally underserved populations, as discussed in section 21 of the Act, 29 U.S.C. 718;

(i) Ensuring that the input of individuals with TBI is used to shape TBIMS research; and

(j) Ensuring that its project director participate in two annual face-to-face TBIMS Center Project Directors' meetings in the greater Washington, DC area.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this final priority only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Summary of potential costs and benefits:

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This final priority will generate new knowledge through research and development.

Another benefit of this final priority is that the establishment of a new DRRP will improve the lives of individuals with disabilities. The new DRRP will

provide support and assistance for NIDRR grantees as they generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to perform regular activities of their choice in the community.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

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Dated: June 6, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–14115 Filed 6–8–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995), intends to extend for three years, an information collection request with the Office of Management and Budget (OMB). Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before 60 days after date of publication in the **Federal Register**. If you anticipate difficulty in submitting comments within that period, contact the person listed below.

ADDRESSES: Written comments may be sent to Julie Squires by fax at (202) 586–0406 or by email at *julie.squires@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Julie Squires at *julie.squires@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) OMB No. 1910–1800; (2) Information Collection Request Title: Foreign Travel Management System (FTMS); (3) Type of Review: Renewal; (4) Purpose: FTMS is the Department of Energy's (DOE) centralized web-based system which tracks, records, and secures approval of all travel conducted by DOE federal employees and contractors. The system allows DOE to have full accountability of all travel and in cases of emergency; the Department is able to quickly retrieve information as to who is traveling, where the individual is traveling, and the dates of travel. (5) Respondents: 2,230; (6) Estimated

Number of Burden Hours: 5,389.

Statutory Authority: DOE O 551.1D, ''Official Foreign Travel,'' dated April 2, 2012.

Issued in Washington, DC on May 10, 2012.

Julie Squires,

Director,

Office of Management, Office of International Travel and Exchange Visitor Programs.

[FR Doc. 2012–14119 Filed 6–8–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement

AGENCY: Office of Nonproliferation and International Security, Department of Energy, (DoE).

ACTION: Proposed subsequent arrangement.

SUMMARY: This notice is being issued under the authority of section 131a. of the Atomic Energy Act of 1954, as amended. The Department is providing notice of a proposed subsequent arrangement under the Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of Korea Concerning Civil Uses of Atomic Energy, signed November 24, 1972, as amended (''Agreement for Cooperation'').

DATES: This subsequent arrangement will take effect no sooner than June 26, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Sean Oehlbert, Office of Nonproliferation and International Security, National Nuclear Security Administration, Department of Energy. Telephone: 202–586–3806 or email: *Sean.Oehlbert@nnsa.doe.gov*.

SUPPLEMENTARY INFORMATION: This subsequent arrangement concerns a proposed Joint Determination by the Government of the United States of America and the Government of the Republic of Korea pursuant to Article VIII(C) of the Agreement for Cooperation, that the provisions of Article XI of the Agreement for Cooperation may be effectively applied for the alteration in form or content of U.S.-origin nuclear material contained in irradiated nuclear fuel elements from pressurized water reactors, CANDU reactors, and a research reactor, at the Post Irradiation Examination Facility (PIEF), the Irradiated Material Examination Facility (IMEF), the Radio Isotope Production Area (RIPA), and the DUPIC Fuel Development Facility (DFDF), along with identified analytical laboratories, at the Headquarters of the Korea Atomic Energy Research Institute (KAERI), in accordance with the plan contained in documents KAERI/AR–889/2011, ''Post-Irradiation Examination and R&D Programs Using Irradiated Fuels at KAERI,'' dated June 2011, and KAERI/AR–919/2012, ''DUPIC Fuel Fabrication Using Spent PWR Fuel at KAERI,'' dated February 2012. These facilities are found acceptable to both parties pursuant to Article VIII(C) of the Agreement for Cooperation for the sole purpose of alteration in form or content

of irradiated fuel elements for post-irradiation examination and for research, development and manufacture of DUPIC fuel powders, pellets and elements for the period ending March 19, 2014. Any activities additional to the plans or changes in the equipment in these facilities will be reviewed by both parties to ensure the general consistency with the scope and objectives of the Joint Determination.

In accordance with section 131a. of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

Dated: May 28, 2012.

For the Department of Energy.

Anne M. Harrington,

Deputy Administrator, Defense Nuclear Nonproliferation.

[FR Doc. 2012–14114 Filed 6–8–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

U.S. Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: information collection extension with change; comment request.

SUMMARY: This notice replaces the notice published April 11, 2012 at 77 FR 21756 regarding the extension of the collection of information for the Petroleum Supply Reporting System. The EIA, pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years with the Office of Management and Budget (OMB) the Petroleum Supply Reporting System. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be filed by August 10, 2012. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Ms. Sylvia Norris at U.S. Energy Information Administration, Office of Petroleum and Biofuels Statistics, U.S. Department of Energy, 1000 Independence Ave., SW., EI–25, Washington, DC 20585. To ensure receipt of the comments by the due date, submission by email (*Sylvia.Norris@eia.gov*) is recommended. Alternatively, Ms. Norris may be contacted by telephone at 202–586–6106.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Ms. Sylvia Norris at the contact information listed above. The proposed forms and instructions are available on the Internet at: *http://www.eia.gov/survey/#petroleum*

SUPPLEMENTARY INFORMATION:

This information collection request contains:

(1) *OMB No.:* 1905–0165;

(2) *Information Collection Request Title:* Petroleum Supply Reporting System. The survey forms included in this system are:

Form EIA–800 ''Weekly Refinery Report''

Form EIA–802 ''Weekly Product Pipeline Report''

Form EIA–803 ''Weekly Crude Oil Report''

Form EIA–804 ''Weekly Import Report''

Form EIA–805 ''Weekly Bulk Terminal and Blender Report''

Form EIA–809 ''Weekly Oxygenate Report''

Form EIA–22M ''Monthly Biodiesel Production Survey''

Form EIA–810 ''Monthly Refinery Report''

Form EIA–812 ''Monthly Product Pipeline Report''

Form EIA–813 ''Monthly Crude Oil Report''

Form EIA–814 ''Monthly Import Report''

Form EIA–815 ''Monthly Bulk Terminal and Blender Report''

Form EIA–816 ''Monthly Natural Gas Plant Liquids Report''

Form EIA–817 ''Monthly Tanker and Barge Movements Report''

Form EIA–819 ''Monthly Oxygenate Report''

Form EIA–820 ''Annual Refinery Report'';

(3) *Type of Request:* Three-year extension with changes;

(4) *Purpose:*

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

Weekly petroleum and biofuels supply surveys (Forms EIA–800, 802, 803, 804, 805, and 809) are used to gather data on petroleum refinery operations, blending, biofuels production, inventory levels, and imports of crude oil, petroleum products, and biofuels from a sample of operating companies. Data from weekly surveys appear in EIA reports including the *Weekly Petroleum Status Report, http://www.eia.gov/oil_gas/petroleum/data_publications/weekly_petroleum_status_report/wpsr.html Short-Term Energy Outlook, http://www.eia.gov/forecasts/steo/; This Week in Petroleum, http://www.eia.gov/forecasts/steo/; Monthly Energy Review, http://www.eia.gov/totalenergy/data/monthly/,* and others.

Monthly petroleum and biofuels supply surveys (Forms EIA–810, 812, 813, 814, 815, 816, 817, 819, and 22M) are used to gather data on petroleum refinery operations, blending, biofuels production, natural gas plant liquids production, inventory levels, imports, inter-regional movements, and storage capacity for crude oil, petroleum products, and biofuels. Crude oil production data and petroleum and biofuels export data from the U.S. Census Bureau are integrated with data from EIA petroleum supply surveys to create a comprehensive statistical view

of U.S. petroleum supplies that is unavailable from any other source.

Monthly petroleum and biofuels supply surveys support weekly surveys by providing a complete set of in-scope petroleum and biofuels supply data from which weekly survey samples are drawn. In addition, monthly surveys provide data elements that are not collected on weekly reports such as production of natural gas plant liquids and refinery processing gain. Data from monthly petroleum and biofuels supply surveys appear in EIA reports including *Petroleum Supply Monthly, http://www.eia.gov/petroleum/supply/monthly/ Petroleum Supply Annual, http://www.eia.gov/petroleum/supply/annual/volume1/; Monthly Energy Review, http://www.eia.gov/petroleum/supply/annual/volume1/ Annual Energy Review, http://www.eia.gov/totalenergy/data/annual/ Short-Term Energy Outlook, http://www.eia.gov/forecasts/steo/; Annual Energy Outlook, http://www.eia.gov/forecasts/aeo/er/, and others.* Monthly survey data provide input for reports in the EIA State Energy Data System, and provide U.S. data submitted to the International Energy Agency.

Further, Section 1508 of the Energy Policy Act of 2005 (EPACT 2005) (42 U.S.C. 7135(m)) requires the EIA to conduct a survey which collects the quantity of renewable fuels produced, blended, imported, and demanded on a monthly basis, as well as market price data on a monthly basis. The EIA–22M collects these data in order to fulfill this mandate.

Form EIA–820 ''Annual Refinery Report'' provides plant-level data on refinery capacities as well as national and regional data on fuels consumed by refineries, natural gas consumed as hydrogen feedstock, and crude oil receipts by method of transportation for operating and idle petroleum refineries (including new refineries under construction), and refineries shutdown during the previous year. The information collected appears in the *Refinery Capacity Report, http://www.eia.gov/petroleum/refinerycapacity/ Annual Energy Review, http://www.eia.gov/totalenergy/data/annual/,* and other reports available electronically from the EIA web site at *http://www.eia.gov.*

(4a) *Proposed Changes to Information Collection:*

The EIA proposes to discontinue Form EIA–801 ''Weekly Bulk Terminal Report'' and collect that same information by adding data elements to Form EIA–805 ''Weekly Bulk Terminal and Blender Report'' so that Form EIA–805 will be used to collect bulk terminal inventory data that were collected on Form EIA–801 as well as gasoline and other blending operations data. The Form EIA–805 would collect stocks of products which can be viewed below and on the draft form (see **FOR FURTHER INFORMATION CONTACT** section for instructions about how to obtain proposed survey material). Reporting on Form EIA–805 will continue to be by each terminal site. The following are proposed modifications to Form EIA–805.

- Add stocks of total natural gas plant liquids (NGPL) and liquefied refinery gases (LRG).
- Add stocks of propane and propylene (a subset of total NGPL and LRG).
- Add stocks of nonfuel propylene (a subset of propane/propylene stocks).
- Add stocks of residual fuel oil.
- Add stocks of unfinished oils.
- Add stocks of products currently listed on Form EIA–805 including

—Fuel Ethanol
—Finished Motor Gasoline, Reformulated, blended with Fuel Ethanol
—Finished Motor Gasoline, Reformulated, Other
—Finished Motor Gasoline, Conventional, blended with Fuel Ethanol, Ed55 and lower
—Finished Motor Gasoline, Conventional, blended with Fuel Ethanol, Greater than Ed55
—Finished Motor Gasoline, Conventional, Other
—Motor Gasoline Blending Components, Reformulated Blendstock for Oxygenate Blending (RBOB)
—Motor Gasoline Blending Components, Conventional Blendstock for Oxygenate Blending (CBOB)
—Motor Gasoline Blending Components, Gasoline Treated as Blendstock (GTAB)
—Motor Gasoline Blending Components, All Other
—Kerosene-Type Jet Fuel
—Distillate Fuel Oil by Sulfur Category (15 ppm sulfur and under, Greater than 15 ppm to 500 ppm sulfur (inclusive), and Greater than 500 ppm sulfur)

Eliminating Form EIA–801 and the proposed changes to Form EIA–805 will make weekly bulk terminal reporting consistent with current survey reporting on monthly surveys and will provide more useful and accurate data for weekly analysis and assessment of U.S. inventories and blending of petroleum products and biofuels.

EIA originally proposed to discontinue using Form EIA–801 for weekly bulk terminal reporting and consolidate all petroleum terminal reporting on Form EIA–805 as part of our 2009 survey form changes. The 2009 proposal was later withdrawn because of concern about increased reporting burden due to the large number of weekly responses that were expected to be needed by Form EIA–805 in order to achieve the necessary sample coverage (the estimate was for an increase from 445 to 968 weekly responses), as well as a concern about the feasibility of processing all of the responses in a timely manner. EIA has implemented an electronic data collection method called the Excel Data Extraction System (EDES) that allows us to process a larger volume of reports. Further assessment of the sample requirement, including examination of changes in the terminal industry, resulted in reduction in the estimate of the required responses to 750 per week, an increase of 215 weekly responses from the current 535 weekly responses for collecting blending data on Form EIA–805. When balanced against a reduction of 187 weekly responses from eliminating Form EIA–801, this results in an estimated net increase of only 28 weekly responses. We believe there are sufficient benefits in terms of data utility and quality to be derived from consolidation of weekly bulk terminal reporting to justify this relatively minor increase in the number of weekly responses.

EIA proposes to change the data protection policy regarding monthly atmospheric crude oil distillation capacity reported on Form EIA–810 ''Monthly Refinery Report.'' EIA proposes to no longer protect monthly atmospheric crude oil distillation reported on Form EIA–810. EIA proposes to release these data as public information in identifiable form. Atmospheric crude oil distillation capacity data collected on Form EIA–820 ''Annual Refinery Report,'' are released each year in identifiable form, by company and refinery site. These data appear in the Refinery Capacity Report available at *http://www.eia.gov/petroleum/refinerycapacity/from* the EIA web site. Protecting the atmospheric crude oil distillation capacity data that is collected monthly on Form EIA–810 is inconsistent with the public release of this same information that is reported annually on Form EIA–820. EIA is only proposing to no longer protect the identifiability of atmospheric crude oil distillation capacity reported on Form EIA–810. All other information reported on Form EIA–810 will continue to be protected to the extent that it satisfies the criteria for exemption under the

Freedom of Information Act (FOIA), 5 U.S.C. 552, the Department of Energy (DOE) regulations, 10 CFR 1004.11 implementing the FOIA, and the Trade Secrets Act, 18 U.S.C. 1905.

This change is proposed so that EIA may release reports and other analytical information products that contain statements related to atmospheric crude oil distillation capacity at specific refineries based on more current monthly data rather than relying solely upon annual data. Under the current disclosure limitation policy, we are only able to make refinery-specific statements about capacity based on data from Form EIA–820, but interest is often in more current data. The public release of monthly crude oil distillation capacity information reported on Form EIA–810 will assist State and local governments and other energy planners that use these data for energy emergency planning. EIA contends that the release of atmospheric crude oil distillation capacity reported on Form EIA–810 will not cause competitive harm because similar data are already publicly released by EIA in the Annual Refinery Capacity Report and refinery-specific capacity data are widely quoted in press reports.

EIA proposes to discontinue collection of maximum sustainable fuel ethanol production capacity and change the data protection policy on Form EIA–819. Beginning with data collected for January 2013, EIA proposes to treat all information reported on fuel ethanol nameplate production capacity on Form EIA–819 as public information and release it on EIA's Web site. EIA will change the instructions on Form EIA–819 to state that this information will be treated as public. The publicly available ethanol production capacity information would be identifiable by company and facility. The data protection policy for all other information reported on Form EIA–819 will remain the same and be protected to the extent that the information qualifies as confidential commercial information under the criteria for exemption in the Freedom of Information Act (FOIA), 5 U.S.C. 552; the Department of Energy (DOE) regulations, 10 CFR part 1004, which implement the FOIA; and the Trade Secrets Act, 18 U.S.C. 1905. The proposed policy change is based on EIA's mandate for carrying out a central, comprehensive, and unified energy data and information program responsive to users' needs for credible, reliable, and timely energy information that will improve and broaden understanding of energy in the United States.

EIA releases on its Web site, on an annual basis, the atmospheric crude oil distillation capacity and downstream charge capacity, by state, for each oil refinery in the Refinery Capacity Report. One important use of ethanol is for blending with gasoline. The publication of fuel ethanol plant production capacities by facility will provide comparable upstream information similar to refineries and will be useful to assess upstream gasoline market supply conditions. By providing capacity information at the facility level for ethanol production and other refined petroleum products, supply conditions within a region or state may be assessed in the event of a supply disruption.

Fuel ethanol production capacities were previously collected by EIA on Form EIA–819A ''Annual Oxygenate Capacity Report'' from January 1, 1993–1995 and released by company and facility in the Petroleum Supply Annual during that same time period. Form EIA–819A was discontinued in 1996. The proposal to release fuel ethanol plant production capacity collected on Form EIA–819 beginning with data for January 2013, reference period is consistent with past EIA practices and will improve the utility of the data by permitting comparisons on the growth in capacity at the state level over the past twenty years.

EIA does not anticipate the release of fuel ethanol plant nameplate production capacity data to cause competitive harm to respondents to Form EIA–819 because this type of information is currently publicly available from other exogenous sources through the Internet. The Renewable Fuels Association publishes nameplate ethanol production capacity as well as the actual operating production and under-construction capacity at the facility level available at *http://www.ethanolrfa.org/bio-refinery-locations.* EIA is proposing only to release nameplate production capacity information at the facility level and will continue to protect all other information reported on Form EIA–819 from being released in identifiable form.

EIA proposes to discontinue reporting of maximum sustainable fuel ethanol capacity. Maximum sustainable capacity was originally envisioned as a measure of surge capacity for fuel ethanol. However, the quantities reported for maximum sustainable fuel ethanol capacity were not useful for measuring surge capacity and EIA will be able to measure fuel ethanol surge capacity by using fuel ethanol production and nameplate capacity data reported on Form EIA–819.

Beginning with data collected for January 2013, EIA proposes to treat all information reported on biodiesel production capacity on Form EIA–22M as public information that may be released EIA's Web site. EIA will signify this change by amending the instructions on Form EIA–22M to state that this information will be treated as public and be made available in a form identifiable by company and facility. This change will provide for protection policies for biodiesel production capacity data that are consistent with current EIA policies related to oil refinery capacity and the data protection policy proposed for fuel ethanol production capacity. Because biodiesel is increasingly used as a blending component in U.S. distillate fuel oil (including diesel fuel and heating oil), detailed production capacity at the plant level is important for assessment of upstream distillate fuel oil supply conditions. Biodiesel production capacities by plant are currently publicly available from the National Biodiesel Board web site at *http://www.nbb.org/about-us/member-plants/nbb-member-plant-lists.* We do not anticipate competitive harm to biodiesel producers from release of biodiesel production capacity data collected on Form EIA–22M.

Finally, EIA proposes to further modify the data protection policy for monthly biodiesel production data reported on Form EIA–22M by not applying any disclosure limitation methodology to the published statistical aggregates for quantities of biodiesel production at the Petroleum Administration for Defense District (PADD) level. The existing data protection policy provides for application of disclosure limitation procedures to statistical data published from Form EIA–22M to minimize the risk of disclosure of company identifiable information in data aggregated to the national, regional, or state levels. Under the current program, aggregated production data may be withheld (i.e. aggregated data values are replaced by W) if the company data contributing to the aggregated data item is such that individual company data is effectively revealed. EIA proposes to discontinue application of disclosure limitation procedures to biodiesel production data, but these procedures would continue to be applied to other published statistical aggregates based on data collected on Form EIA–22M.

The change in data protection policy for production of biodiesel is necessary because EIA intends to incorporate biodiesel production in petroleum supply and disposition balance tables (with data for the U.S. and PADDs) published in the *Petroleum Supply Monthly* and *Petroleum Supply Annual.* Disclosure limitation procedures are not

applied to data in the *Petroleum Supply Monthly* and *Petroleum Supply Annual.* Therefore, it is possible that U.S. and PADD level totals reported in the *Petroleum Supply Monthly* and *Petroleum Supply Annual* may be dominated by data from one or two large companies thereby making it possible for a knowledgeable person to estimate information reported by a particular company. It is important to note that EIA is not proposing to explicitly report biodiesel production in company identifiable form, but only to discontinue application of disclosure limitation procedures to U.S. and PADD level biodiesel production totals calculated from data reported on Form EIA–22M. Applying statistical disclosure limitation procedures to biodiesel production data would potentially prevent EIA from accurately reporting data on distillate fuel oil supply, disposition, and demand including biodiesel especially at the PADD level. Disclosure limitation procedures will continue to be applied to the other data reported on Form EIA–22M.

Please refer to the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

(5) *Estimated Number of Survey Respondents:*

Weekly Survey Forms

EIA–800, 141 Respondents; EIA–802, 51 Respondents; EIA–803, 57 Respondents; EIA–804, 104 Respondents; EIA–805, 750 Respondents; EIA–809, 142 Respondents;

Monthly Survey Forms

EIA–22M, 150 Respondents; EIA–810, 153 Respondents; EIA–812, 80 Respondents;
EIA–813, 167 Respondents; EIA–814, 391 Respondents; EIA–815, 1,476 Respondents;
EIA–816, 451 Respondents; EIA–817, 34 Respondents; EIA–819, 203 Respondents;

Annual Survey Forms

EIA–820, 148 Respondents.

Total respondents for Petroleum Supply Reporting System: 4,498 respondents. Many respondents report on multiple surveys and are counted for each survey they report. For example, the 104 respondents on the weekly Form EIA–804 are also included as a subset of the 391 respondents reporting on the monthly Form EIA–814, so that the two surveys contribute a total of 495 respondents.

(6) *Annual Estimated Number of Total Responses:*

Weekly Survey Forms (Respondents x 52)

EIA–800, 7,332 Responses; EIA–802, 2,652 Responses; EIA–803, 2,964 Responses; EIA–804, 5,408 Responses; EIA–805, 39,000 Responses; EIA–809, 7,384 Responses;

Monthly Survey Forms (Respondents x 12)

EIA–22M, 1,800 Responses; EIA–810, 1,836 Responses; EIA–812, 960 Responses; EIA–813, 2,004 Responses; EIA–814, 4,692 Responses; EIA–815, 17,712 Responses; EIA–816, 5,412 Responses; EIA–817, 408 Responses; EIA–819, 2,436 Responses;

Annual Survey Forms (Respondents x 1)

EIA–820, 148 Responses.

Total annual responses for Petroleum Supply Reporting System: 102,148 responses annually. EIA estimates that it will receive a total of 102,148 reports annually, not that each survey form will individually be reported 102,148 times annually.

(7) *Annual Estimated Number of Burden Hours:*

EIA estimates the following burden hours per response for the Petroleum Supply Reporting System survey forms:

Weekly Survey Forms

EIA–800, 1.58 hours; EIA–802, 0.95 hours; EIA–803, 0.5 hours; EIA–804, 1.75 hours; EIA–805, 1.6 hours; EIA–809, 1 hour;

Monthly Survey Forms

EIA–22M, 3 hours; EIA–810, 6 hours; EIA–812, 4.3 hours; EIA–813, 2.5 hours; EIA–814, 2.55 hours; EIA–815, 5 hours; EIA–816, 0.95 hours; EIA–817, 2.25 hours; EIA–819, 1.75 hours;

Annual Survey Forms

EIA–820, 2.00 hours.

Based on these estimates and the estimates in (6), EIA estimates an annual total of 231,531 burden hours for the Petroleum Supply Reporting System.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* EIA estimates that there are no additional costs to respondents associated with the surveys other than the costs associated with the burden hours.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, P.L. 93–275, codified at 15 U.S.C. 772(b), and the DOE Organization Act of 1977, Public Law 95–91, codified at 42 U.S.C. 7101 *et seq.*

Issued in Washington, DC, on June 5, 2012.

Stephanie Brown,

Director, Office of Survey Development and Statistical Integration, U. S. Energy Information Administration.

[FR Doc. 2012–14116 Filed 6–8–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13160–004]

Red River Hydro LLC; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 13160–004.

c. *Date Filed:* May 24, 2012.

d. *Applicant:* Red River Hydro LLC (Red River), a wholly-owned subsidiary of Symbiotics LLC.

e. *Name of Project:* Overton Lock and Dam Hydroelectric Project.

f. *Location:* The project would be located on the Red River in Rapides Parish, Louisiana at an existing lock and dam owned and operated by the U.S. Corps of Engineers (Corps). The project would occupy 38.7 acres of federal lands managed by the Corps.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, Chief Operating Officer, Symbiotics LLC, 811 SW. Naito Parkway, Suite 120, Portland, OR 97204; Telephone (503) 235–3424.

i. *FERC Contact:* Lesley Kordella, (202) 502–6406 or *Lesley.Kordella@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. The Project *Description:* The project would be located at an existing lock and dam owned and operated by the Corps-Vicksburg District. The existing lock and dam are part of the J. Bennett Johnston Waterway, which was authorized by Congress in 1968 to stabilize river banks, straighten river bends, and maintain a 9-foot-deep, 200-foot-wide channel for boat traffic. The waterway consists of five locks and

dams and a number of cutoffs to shorten the river.

The existing Overton dam is a concrete gravity structure that is 104 feet in height and 914 feet in length. The spillway consists of five 60-foot-wide Tainter gates. The navigation lock is 84 feet wide by 685 feet long. The purpose of the lock and dam system is navigation and not storage. The upper pool above the dam is commonly referred to as ''Pool 2''. The Corps maintains the upper pool at an elevation of 64 feet. Pool 2 has a surface area of approximately 3,750 acres and a storage capacity of about 67,500 acre-feet.

The proposed Overton Lock and Dam Project would consist of: (1) A powerhouse located on the southwest bank of the river at the existing dam's right abutment; (2) a headrace; (3) a tailrace; (4) a new switchyard; (5) 3.9 miles of 138-kilovolt (kV) above-ground transmission line; (6) three turbine-generator units for a combined installed capacity of 78 megawatts; and (7) appurtenant facilities. The projected annual energy generation would be 255.7 gigawatt hours.

The project would operate in a run-of-release mode by utilizing releases from Pool 2 as they are dictated by the Corps, with no proposed change to the Corps' facility operation. In addition, no changes to the reservoir pool elevations or downstream river flows are proposed. The project would generate power using flows between 2,700 cfs (cubic feet per second) and 49,800 cfs. If flows are less than 2,700 cfs, all flow would go through the Corps' gates and the project would then be offline. When flows are greater than 49,800 cfs, the excess flow would be directed through the Corps' gates.

l. Locations of the Application: A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Procedural Schedule:

The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis	July 2012
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	September 2012
Commission issues Non-Draft EA	January 2013
Comments on EA	February 2013
Modified terms and conditions	April 2013

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: June 5, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–14051 Filed 6–8–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2201–004.
Applicants: Evergreen Wind Power III, LLC.
Description: Compliance Market-Based Rate Tariff Filing to be effective 4/4/2011.
Filed Date: 5/30/12.
Accession Number: 20120530–5052.
Comments Due: 5 p.m. ET 6/20/12.

Docket Numbers: ER12–1177–001.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing per Order dated 4/30/2012 in ER12–1177 to be effective 5/1/2012.
Filed Date: 5/30/12.
Accession Number: 20120530–5128.
Comments Due: 5 p.m. ET 6/20/12.

Docket Numbers: ER12–1178–001.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing per Order dated 4/30/2012 in ER12–1178 to be effective 5/1/2012.
Filed Date: 5/30/12.
Accession Number: 20120530–5173.
Comments Due: 5 p.m. ET 6/20/12.

Docket Numbers: ER12–1185–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: 05–30–12 Demand Curves Compliance to be effective 5/1/2012.
Filed Date: 5/30/12.
Accession Number: 20120530–5107.
Comments Due: 5 p.m. ET 6/20/12.

Docket Numbers: ER12–1862–000.
Applicants: Pacific Gas and Electric Company.
Description: Amendment to Gates Solar Station LGIA WDT SA No. 87 to be effective 5/31/2012.
Filed Date: 5/30/12.
Accession Number: 20120530–5001.
Comments Due: 5 p.m. ET 6/20/12.

Docket Numbers: ER12–1863–000.
Applicants: PJM Interconnection, L.L.C.
Description: Queue Position X2–011 ? Original Service Agreement No. 3322 to be effective 5/1/2012.
Filed Date: 5/30/12.
Accession Number: 20120530–5046.
Comments Due: 5 p.m. ET 6/20/12.

Docket Numbers: ER12–1864–000.
Applicants: Deseret Generation & Transmission Co-operative, Inc.
Description: 2012 RIA Annual Update to be effective 1/1/2012.
Filed Date: 5/30/12.
Accession Number: 20120530–5067.
Comments Due: 5 p.m. ET 6/20/12.

Docket Numbers: ER12–1865–000.
Applicants: Alta Wind VI, LLC.
Description: Notice of Succession and Updated MBR Tariff of Mustang Hills, LLC to be effective 4/30/2012.
Filed Date: 5/30/12.
Accession Number: 20120530–5078.
Comments Due: 5 p.m. ET 6/20/12.

Docket Numbers: ER12–1866–000.
Applicants: PacifiCorp.
Description: PAC Energy NITSA Rev 16 to be effective 5/1/2012.
Filed Date: 5/30/12.
Accession Number: 20120530–5114.
Comments Due: 5 p.m. ET 6/20/12.

Docket Numbers: ER12–1867–000.
Applicants: Tampa Electric Company.

Description: Section 205 Transmission Depreciation Accrual Rates Filing to be effective 1/1/2012.
Filed Date: 5/30/12.
Accession Number: 20120530–5126.
Comments Due: 5 p.m. ET 6/20/12.

Docket Numbers: ER12–1868–000.
Applicants: New York Independent System Operator, Inc.
Description: NYISO Compliance Filing—Non-Historic Fixed Price TCCs to be effective 12/31/9998.
Filed Date: 5/30/12.
Accession Number: 20120530–5142.
Comments Due: 5 p.m. ET 6/20/12.

Docket Numbers: ER12–1869–000.
Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.
Description: LGIA among NYISO, NiMo, NYSEG and Nine Mile Point-SA#1757 to be effective 5/14/2012.
Filed Date: 5/30/12.
Accession Number: 20120530–5199.
Comments Due: 5 p.m. ET 6/20/12.

Docket Numbers: ER12–1870–000.
Applicants: Public Service Company of New Mexico.
Description: 2nd Revised PNM/HLM TSA to be effective 3/1/2012.
Filed Date: 5/30/12.
Accession Number: 20120530–5201.
Comments Due: 5 p.m. ET 6/20/12.

Docket Numbers: ER12–1871–000.
Applicants: Pacific Gas and Electric Company.
Description: E&P Agreement for Potrero Hills Energy Producers to be effective 6/1/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5004.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1872–000.
Applicants: San Diego Gas & Electric Company.
Description: Request of San Diego Gas & Electric Company for One-Time Waiver of Section 40.8.1.12.1.
Filed Date: 5/30/12.
Accession Number: 20120530–5230.
Comments Due: 5 p.m. ET 6/20/12.

Take notice that the Commission received the following public utility holding company filings:
Docket Numbers: PH12–13–000.
Applicants: Alaska Power & Telephone Company.
Description: Waiver Notification pursuant to 18 CFR Section 366.4(c)(1) of Alaska Power & Telephone Company.
Filed Date: 5/30/12.
Accession Number: 20120530–5134.
Comments Due: 5 p.m. ET 6/20/12.

Take notice that the Commission received the following electric reliability filings:
Docket Numbers: RR12–11–000.
Applicants: North American Electric Reliability Corporation.
Description: North American Electric Reliability Corporation's Report of Budgeted to Actual Costs for 2011 for NERC and the Regional Entities.
Filed Date: 5/30/12.
Accession Number: 20120530–5251.
Comments Due: 5 p.m. ET 6/20/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 31, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–14023 Filed 6–8–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:
Docket Numbers: EG12–70–000.
Applicants: AltaGas Renewable Energy Colorado LLC.
Description: Notice of EWG Self-Certification of AltaGas Renewable Energy Colorado LLC.
Filed Date: 5/31/12.
Accession Number: 20120531–5108.
Comments Due: 5 p.m. ET 6/21/12.

Take notice that the Commission received the following electric rate filings:
Docket Numbers: ER12–1022–000.
Applicants: Pacific Gas and Electric Company.
Description: Refund Report of Pacific Gas and Electric Company.
Filed Date: 6/1/12.
Accession Number: 20120601–5181.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1603–001.
Applicants: PGPV, LLC.
Description: mbr tariff to be effective 4/25/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5143.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1770–001.
Applicants: DES Wholesale, LLC.
Description: Amendment to Filing ID 1 to be effective 5/11/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5302.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1834–001.
Applicants: Vermont Electric Power Company, Inc.
Description: Amendment to True Up Agreement to be effective 7/23/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5013.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1873–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Consumers-METC DTIA (5–31–12) to be effective 6/1/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5067.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1874–000.
Applicants: Black Hills Power, Inc.
Description: Black Hills Power, Inc., WestConnect Participation to be effective 6/1/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5081.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1875–000.
Applicants: AltaGas Renewable Energy Colorado LLC.
Description: MBR Application to be effective 12/31/9998.
Filed Date: 5/31/12.
Accession Number: 20120531–5148.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1876–000.
Applicants: Alabama Power Company.
Description: Blountstown NITSA Filing to be effective 5/1/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5167.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1877–000.
Applicants: Western Massachusetts Electric Company, ISO New England Inc., The Connecticut Light and Power Company.
Description: OATT Attachment F Technical Corrections to be effective 6/1/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5176.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1878–000.
Applicants: Pacific Gas and Electric Company.

Description: Port of Oakland IA and WDT SA No. 3 under PG&E FERC Electric Tariff Volume No. 4 to be effective 6/1/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5178.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1879–000.
Applicants: Wisconsin Public Service Corporation.
Description: Metering Agreement between WPSC and Marshfield to be effective 5/31/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5179.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1880–000.
Applicants: Minco Wind III, LLC.
Description: Minco Wind III, LLC Market-Based Rate Tariff Application to be effective 7/30/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5194.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1881–000.
Applicants: Entergy Arkansas, Inc.
Description: EAI MSS–3 section 30.13 Change to be effective 5/7/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5202.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1882–000.
Applicants: Entergy Gulf States Louisiana, L.L.C.
Description: EGSL MSS–3 section 30.13 Change to be effective 5/7/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5207.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1883–000.
Applicants: Entergy Louisiana, LLC.
Description: ELL MSS–3 section 30.13 Change to be effective 5/7/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5211.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1884–000.
Applicants: Entergy Mississippi, Inc.
Description: EMI MSS–3 30.13 Change to be effective 5/7/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5212.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1885–000.
Applicants: Entergy New Orleans, Inc.
Description: ENOI MSS–3 section 30.13 Change to be effective 5/7/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5213.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1886–000.
Applicants: Entergy Texas, Inc.
Description: ETI MSS–3 section 30.13 Change to be effective 5/7/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5218.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1887–000.
Applicants: NV Energy, Inc.
Description: Service Agreement No. 11–00135 Amended & Restated LGIA FRV Spectrum Solar to be effective 5/3/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5222.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1888–000.
Applicants: Entergy Arkansas, Inc.
Description: EAI MSS–3 section 30.12 change to be effective 5/7/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5229.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1889–000.
Applicants: Alabama Power Company.
Description: PowerSouth NITSA Amendment (Delete Grand Ridge & McVay DPs and add Sneads DP) to be effective 5/1/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5230.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1890–000.
Applicants: Entergy Gulf States Louisiana, L.L.C.
Description: EGSL MSS–3 section 30.12 change to be effective 5/7/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5231.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1891–000.
Applicants: Entergy Louisiana, LLC.
Description: ELL MSS–3 section 30.12 change to be effective 5/7/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5232.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1892–000.
Applicants: Entergy Mississippi, Inc.
Description: EMI MSS–3 section 30.12 change to be effective 5/7/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5233.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1893–000.
Applicants: Entergy New Orleans, Inc.
Description: ENOI MSS–3 section 30.12 change to be effective 5/7/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5234.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1894–000.
Applicants: Entergy Texas, Inc.
Description: ETI MSS–3 section 30.12 change to be effective 5/7/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5235.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1895–000.
Applicants: Entergy Services, Inc.
Description: Entergy Operating Companies' 2012 Annual OATT Rate Update filed by Entergy Services, Inc.
Filed Date: 5/31/12.
Accession Number: 20120531–5252.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1897–000.
Applicants: California Independent System Operator Corporation.
Description: 2012–05–31 CAISO's Amendment 5 to ICAOA with Nevada Power Comp. to be effective 6/18/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5297.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1898–000.
Applicants: PacifiCorp.
Description: WAPA Purchase of Capacity in Casper-Dave Johnston Line Cancellation to be effective 6/1/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5313.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1899–000.
Applicants: PacifiCorp.
Description: WAPA RS 45, RS 684 to be effective 6/1/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5321.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1900–000.
Applicants: PacifiCorp.
Description: PAC Energy Carbon Engineering & Procurement Agreement to be effective 6/1/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5323.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1901–000.
Applicants: Genon Power Midwest, LP.
Description: Reliability Must-Run Rate Schedule to be effective 6/1/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5324.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1902–000.
Applicants: Nevada Power Company.
Description: Rate Schedule No. 123 Amended & Restated Merchant Sub OM Agmt to be effective 6/1/2012.
Filed Date: 5/31/12.
Accession Number: 20120531–5344.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1903–000.
Applicants: Pacific Gas and Electric Company.
Description: Western WDT May 2012 Biannual Filing to be effective 8/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5003.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1904–000.
Applicants: Pacific Gas and Electric Company.
Description: Western IA May 2012 Biannual Filing to be effective 8/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5005.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1905–000.
Applicants: Southern California Edison Company.
Description: GIA and Distribution Service Agreement Palm Springs Sunrise Plaza Cogeneration to be effective 6/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5030.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1906–000.
Applicants: Southern California Edison Company.
Description: GIA and Distribution Service Agmt CalWind Resources, Wind Resources I Project to be effective 6/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5034.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1907–000.
Applicants: Southern California Edison Company.
Description: GIA and Distribution Service Agreement Irvine Ranch Water District to be effective 6/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5035.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1908–000.
Applicants: New England Power Pool Participants Committee.
Description: Jun 2012 Membership Filing to be effective 5/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5045.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1909–000.
Applicants: National Grid Generation LLC.
Description: National Grid Generation LLC Pension and Other Post Employment Benefits Costs for the Year Ending December 31, 2011.
Filed Date: 5/31/12.
Accession Number: 20120531–5397.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1910–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: GIA and Distribution Service Agreement with Searles Valley Minerals Inc. to be effective 6/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5202.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1911–000.
Applicants: RE McKenzie 1 LLC.
Description: RE McKenzie 1 LLC submits tariff filing per 35.12: Application for Market-Based Rate Authority to be effective 7/31/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5203.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1912–000.
Applicants: RE McKenzie 2 LLC.
Description: RE McKenzie 2 LLC submits tariff filing per 35.12: Application for Market-Based Rate Authority to be effective 7/31/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5205.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1913–000.
Applicants: RE McKenzie 3 LLC.
Description: RE McKenzie 3 LLC submits tariff filing per 35.12: Application for Market-Based Rate Authority to be effective 7/31/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5207.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1914–000.
Applicants: ISO New England Inc., New England Power Company.
Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Rev to Att K and MR1 Reg How Res Needed for Rel Treat in RSP to be effective 8/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5209.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1915–000.
Applicants: RE McKenzie 4 LLC.
Description: RE McKenzie 4 LLC submits tariff filing per 35.12: Application for Market-Based Rate Authority to be effective 7/31/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5211.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1916–000.
Applicants: RE McKenzie 5 LLC.
Description: RE McKenzie 5 LLC submits tariff filing per 35.12: Application for Market-Based Rate Authority to be effective 7/31/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5213.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1917–000.
Applicants: RE McKenzie 6 LLC.
Description: RE McKenzie 6 LLC submits tariff filing per 35.12: Application for Market-Based Rate Authority to be effective 7/31/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5215.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1918–000.
Applicants: Public Service Electric and Gas Company, PJM Interconnection, L.L.C., American Transmission Systems, Incorporation.
Description: Public Service Electric and Gas Company submits tariff filing per 35.13(a)(2)(iii: TOA–AC revisions to the PJM Tariff Schedule 1A to include ATSI & Duke rates to be effective 8/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5217.
Comments Due: 5 p.m. ET 6/22/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–44–000.
Applicants: Indianapolis Power & Light Company.
Description: Application of Indianapolis Power & Light Company under FPA Section 204 for an Order Authorizing the Issuance of Short-Term Debt Instruments.
Filed Date: 5/31/12.
Accession Number: 20120531–5387.
Comments Due: 5 p.m. ET 6/21/12.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH12–14–000.
Applicants: Sempra Energy.
Description: Sempra Energy FERC–65B Waiver Notice of Change in Facts.
Filed Date: 5/31/12.
Accession Number: 20120531–5264.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: PH12–15–000.
Applicants: Enbridge Inc.
Description: Notice of Material Change in Facts of Enbridge Inc.
Filed Date: 5/31/12.
Accession Number: 20120531–5399.
Comments Due: 5 p.m. ET 6/21/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 1, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–14024 Filed 6–8–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–787–000.
Applicants: Gulf South Pipeline Company, LP.
Description: HK 37731 to Sequent 39962 Cap Rel Neg Rate Agmt filing to be effective 6/2/2012.
Filed Date: 6/4/12.
Accession Number: 20120604–5013.
Comments Due: 5 p.m. ET 6/18/12.

Docket Numbers: RP12–788–000.
Applicants: El Paso Natural Gas Company.
Description: Order on Rehearing Compliance for Docket No. RP08–426–005 to be effective 5/1/2010.
Filed Date: 6/4/12.
Accession Number: 20120604–5095.
Comments Due: 5 p.m. ET 6/18/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 5, 2012.

Nathaniel J. Davis, Sr.

Deputy Secretary

[FR Doc. 2012–14083 Filed 6–8–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–106–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits application requesting authorization for the acquisition of Southern California Edison Company's ownership interests in Units 4 and 5 etc.
Filed Date: 5/31/12.
Accession Number: 20120601–0201.
Comments Due: 5 p.m. ET 6/21/12.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–71–000.
Applicants: Patton Wind Farm, LLC.
Description: Notice of Self-Certification of Patton Wind Farm, LLC as an Exempt Wholesale Generator.
Filed Date: 6/1/12.
Accession Number: 20120601–5279.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: EG12–72–000.
Applicants: Big Savage, LLC.
Description: Notice of Self-Certification of Big Savage, LLC as an Exempt Wholesale Generator.
Filed Date: 6/1/12.
Accession Number: 20120601–5280.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: EG12–73–000.
Applicants: Pacific Wind Lessee, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Pacific Wind Lessee, LLC under EG12–73.
Filed Date: 6/1/12.
Accession Number: 20120601–5351.
Comments Due: 5 p.m. ET 6/22/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1457–001.
Applicants: Southern California Edison Company.
Description: Amendment to GIA and DSA for San Gorgonio Farms Wind Farm Proj to be effective 3/23/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5310.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1566–001.
Applicants: Copper Mountain Solar 2, LLC.
Description: Copper Mountain Solar 2, LLC MBR Tariff Revision to be effective 6/18/2012.
Filed Date: 5/30/12.
Accession Number: 20120530–5263.
Comments Due: 5 p.m. ET 6/20/12.

Docket Numbers: ER12–1792–001.
Applicants: Community Energy, Inc.
Description: Amendment to MBR Application to be effective 7/14/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5311.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1919–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Queue No. W2–049; Original Service Agreement No. 3323 to be effective 5/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5319.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1920–000.
Applicants: Entergy Services, Inc.
Description: Entergy Services, Inc. submits the payment/receipts among the Entergy Operating Companies to implement the decision of the Commission.
Filed Date: 5/31/12.
Accession Number: 20120601–0203.
Comments Due: 5 p.m. ET 6/21/12.

Docket Numbers: ER12–1921–000.
Applicants: PJM Interconnection, L.L.C.
Description: Original Service Agreement No. 3317; Queue No. W3–110 to be effective 5/22/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5259.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1922–000.
Applicants: Southern California Edison Company.
Description: GIA and Distribution Service Agmt Palm Springs Municipal Complex Cogeneration to be effective 6/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5260.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1923–000.
Applicants: Big Savage, LLC.
Description: Market-Based Rate Application to be effective 8/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5267.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1924–000.
Applicants: EverPower Commercial Services LLC.
Description: Market-Based Rate Application to be effective 8/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5268.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1925–000.
Applicants: Patton Wind Farm, LLC.
Description: Market-Based Rate Application to be effective 8/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5270.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1926–000.
Applicants: Independence Electricity.
Description: Baseline MBR Application to be effective 6/30/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5291.

Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1927–000.
Applicants: PJM Interconnection, L.L.C.
Description: Original Service Agreement No. 3321; Queue No. W3–120 to be effective 5/9/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5292.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1928–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: G551 Amended GIA to be effective 6/2/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5294.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1929–000.
Applicants: PJM Interconnection, L.L.C.
Description: Revisions to the PJM Tariff re Marginal Losses to be effective 8/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5298.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1930–000.
Applicants: PacifiCorp.
Description: Moon Lake Revised Wheeling Agreement to be effective 8/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5300.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1931–000.
Applicants: Pacific Wind Lessee, LLC.
Description: Pacific Wind Lessee Baseline MBR Application Filing to be effective 6/25/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5302.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1932–000.
Applicants: Franklin County Wind, LLC.
Description: FCW Market-Based Rate Tariff to be effective 8/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5303.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1933–000.
Applicants: Interstate Power and Light Company.
Description: IPL Market-Based Rate Tariff to be effective 8/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5304.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1934–000.
Applicants: Wisconsin Power and Light Company.
Description: WPL Market-Based Rate Tariff to be effective 8/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5305.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1935–000.
Applicants: Southern California Edison Company.
Description: GIA and Distribution Service Agreement with Lake Shore Mojave, LLC to be effective 6/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5308.
Comments Due: 5 p.m. ET 6/22/12.

Docket Numbers: ER12–1936–000.
Applicants: Southern California Edison Company.
Description: GIA and Distribution Service Agreement with US Borax Inc. to be effective 6/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5312.
Comments Due: 5 p.m. ET 6/22/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 4, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–14055 Filed 6–8–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–781–000.
Applicants: East Tennessee Natural Gas, LLC.
Description: Negotiated Rate Agreements—Sequent to be effective 6/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5160.
Comments Due: 5 p.m. ET 6/13/12.

Docket Numbers: RP12–783–000.
Applicants: ANR Pipeline Company.
Description: Negotiated Rate—TVA to be effective 6/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5176.
Comments Due: 5 p.m. ET 6/13/12.

Docket Numbers: RP12–784–000.
Applicants: Elba Express Company, L.L.C.
Description: 2012 Annual Cashout True-Up Report of Elba Express Company, L.L.C.
Filed Date: 6/1/12.
Accession Number: 20120601–5183.
Comments Due: 5 p.m. ET 6/13/12.

Docket Numbers: RP12–785–000.
Applicants: Equitrans, L.P.
Description: FTS Variable Transportation Contract Demand Filing to be effective 7/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5188.
Comments Due: 5 p.m. ET 6/13/12.

Docket Numbers: RP12–786–000.
Applicants: CenterPoint Energy Gas Transmission Comp.
Description: CEGT LLC—June 2012 Negotiated Rate Filing to be effective 6/1/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5293.
Comments Due: 5 p.m. ET 6/13/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP12–130–002.
Applicants: Paiute Pipeline Company.
Description: Fourth Revised Volume No. 1–A to be effective 5/2/2012.
Filed Date: 6/1/12.
Accession Number: 20120601–5257.
Comments Due: 5 p.m. ET 6/13/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated June 5, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2012–14022 Filed 6–8–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the New York Independent System Operator, Inc. (NYISO):

Joint Inter-Regional Planning Task Force/Electric System Planning Working Group

June 6, 2012, 1:00 p.m.–4:00 p.m., Local Time

June 26, 2012, 10:00 a.m.–4:00 p.m., Local Time

July 10, 2012, 10:00 a.m.–4:00 p.m., Local Time

July 24, 2012, 10:00 a.m.–4:00 p.m., Local Time

August 6, 2012, 10:00 a.m.–4:00 p.m., Local Time

August 28, 2012, 10:00 a.m.–4:00 p.m., Local Time

September 24, 2012, 10:00 a.m.–4:00 p.m., Local Time

The above-referenced meetings will be held at: NYISO's offices, Rensselaer, NY.

The above-referenced meetings are open to stakeholders.

Further information may be found at *www.nyiso.com*.

The discussions at the meetings described above may address matters at issue in the following proceeding:

Docket No. ER08–1281, *New York Independent System Operator, Inc.*

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov*.

Dated: June 4, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–14020 Filed 6–8–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–71–000]

PJM Interconnection, L.L.C.; Notice of Complaint

Take notice that on June 1, 2012, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824(e), PJM Interconnection, L.L.C. (PJM) filed proposed revisions to the Amended and Restated Operating Agreement of PJM Interconnection L.L.C. (Operating Agreement) to base the calculation of marginal transmission line losses on the transmission facilities used to provide transmission service under PJM's Open Access Transmission Tariff (Tariff). PJM states that while there is a consensus among PJM stakeholders (although not unanimity) that the current method of basing marginal losses on all facilities in the PJM network model should be replaced, necessary changes have not been approved by the two-thirds supermajority required for amendments to the Operating Agreement. PJM further states that, upon review of this matter, the PJM Board of Managers determined that a change in the marginal losses calculation method is required and, as permitted by the Operating Agreement, directed PJM staff to ask the Federal Energy Regulatory Commission (Commission) to approve Operating Agreement changes under FPA section 206. PJM states that it has served a copy of its filing on all PJM members and on all state utility regulatory commissions in the PJM Region.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on June 22, 2012.

Dated: June 5, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–14053 Filed 6–8–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–83–002]

Enogex LLC; Notice of Compliance Filing

Take notice that on May 31, 2012, Enogex LLC (Enogex) filed a revised Statement of Operating Conditions to comply with an unpublished Delegated letter order issued on May 4, 2012.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically

should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Wednesday, June 13, 2012.

Dated: June 4, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–14017 Filed 6–8–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. FA11–21–000]

North American Electric Reliability Corporation; Notice of Designation of Commission Staff as Non-Decisional

With respect to an order issued by the Commission today in the above-captioned docket, with the exceptions noted below, the staff of the Office of Enforcement are designated as non-decisional in deliberations by the Commission in this docket. Accordingly, pursuant to 18 CFR 385.2202 (2011), these persons will not serve as advisors to the Commission or take part in the Commission's review of any offer of settlement. Likewise, as non-decisional staff, pursuant to 18 CFR 385.2201 (2011), they are prohibited from communicating with advisory staff concerning any deliberations in this docket.

Exceptions to this designation as non-decisional are:

Larry Gasteiger
Bryan Craig
Roger Morie
David Applebaum
Teresina Stasko
Jeremy Medovoy

Dated: June 4, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–14019 Filed 6–8–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL12–72–000]

American Municipal Power, Inc.; Notice of Petition for Limited Waiver

Take notice that on June 4, 2012, pursuant to Rule 207(a)(5) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(5), American Municipal Power, Inc. filed a Petition for a one-time waiver of section 204.3 of the Open Access Transmission Tariff of PJM Interconnection, L.L.C.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on June 25, 2012.

Dated: June 5, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–14054 Filed 6–8–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD06–6–000]

Notice of Joint Meeting of the Nuclear Regulatory Commission and the Federal Energy Regulatory Commission

The Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission (NRC) will hold a joint meeting on Friday, June 15, 2012 at the headquarters of the Federal Energy Regulatory Commission. The meeting is expected to begin at 9:30 a.m. and conclude at 11:30 a.m. Eastern Time. Commissioners from both agencies are expected to participate.

The NRC and FERC signed a Memorandum of Agreement (MOA) in September 2010 to facilitate interactions between the two agencies on matters of mutual interest pertaining to the nation's bulk power system reliability. The June 15 meeting will continue the ongoing discussion to address grid reliability and the roles of the respective agencies in addressing this issue.

This meeting/conference will be transcribed. Transcripts of the meeting/conference will be immediately available for a fee from Ace-Federal Reporters, Inc. (202–347–3700 or 1–800–336–6646). A free webcast of the meeting/conference is also available through *www.ferc.gov.* Anyone with Internet access who desires to listen to this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the webcasts and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or call 703–993–3100.

FERC meetings are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the requested accommodations.

All interested persons are invited. Pre-registration is not required and there is no fee to attend this joint meeting. Questions about the meeting should be directed to Sarah McKinley at *Sarah.McKinley@ferc.gov* or by phone at 202–502–8004.

Dated: June 4, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–14021 Filed 6–8–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR12–10–000]

Explorer Pipeline Company; Notice of Amendment to Petition for Declaratory Order

Take notice that on May 17, 2012, pursuant to Rule 215 of the Commission's Rules of Practice and Procedure, 18 CFR 385.215 (2011), Explorer Pipeline Company (Explorer) filed an amendment to its March 23, 2012 Petition to the Federal Energy Regulatory Commission for a declaratory order approving (1) priority capacity and (2) the overall rate structure for Explorer's proposed diluent pipeline extension project (Diluent Extension Project). In its Petition, Explorer described the Diluent Extension Project as involving the construction of a new pipeline segment from Peotone, Illinois to Manhattan, Illinois, where Explorer's pipeline system will interconnect with Enbridge's Southern Lights pipeline. In light of recent industry developments, Explorer states in its amendment that it seeks to make the priority capacity and overall rate structure it requests in its Petition available to shippers who commit to a different interconnection project. Accordingly, Explorer requests that the Commission grant the Petition, subject to this amendment.

Any person desiring to intervene or to protest in this proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on Thursday, June 14, 2012.

Dated: June 5, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–14052 Filed 6–8–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–467–000]

CenterPoint Energy Gas Transmission Company, LLC; Notice of Request Under Blanket Authorization

Take notice that on May 22, 2012, CenterPoint Energy Gas Transmission Company, LLC (CenterPoint), 1111 Louisiana Street, Houston, Texas, pursuant to its blanket certificate issued in Docket Nos. CP82–384–000, et. al., filed an application in accordance to sections 157.210 and 157.217(b) of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to replace compression facilities at the Ruston Storage Compressor Station located in Lincoln Paris, Louisiana, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Ruston Storage Compressor Station (Ruston) was constructed in 1969 and consists of one 4,000 horsepower (hp) Worthington MLV–14 reciprocating compressor unit which was originally installed over 40 years ago. CenterPoint has determined that Ruston needs additional operating flexibility to dedicate compression directly to storage injection and since CenterPoint can no longer purchase replacement parts for the existing compressor unit, CenterPoint proposed to replace the Worthington unit with a 4,735 hp CAT unit, comprised of a skid-mounted control enclosure, fuel gas metering skid, and appurtenant facilities. The proposed replacement will (1) increase Line F's available year-round, firm capacity east of Ruston, from 147.4 MMcf/day to 162.5 MMcf/day; (2) increase Ruston's injection deliverability from 33 MMcf/day to 34.5 MMcf/day; and (3) increase Line F's available peak day capacity east of Ruston, from 286.4 MMcf/day to 291.3 MMcf/day. The proposed replacement will not result in any changes to the certificated parameters of the Ruston Storage Field. The estimated cost of the proposed project is $13.9 million, which will be financed by available funds and/or short-term borrowings.

Any questions concerning this application may be directed to B. Michelle Willis, Manager, Regulatory and Compliance, CenterPoint Energy Gas Transmission Company, P.O. Box 21734, Shreveport, Louisiana 71151, (318) 429–3708, or email at *Mitchelle.Willis@CenterPointEnergy.com.*

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section

157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Dated: June 4, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–14018 Filed 6–8–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pacific Northwest-Pacific Southwest Intertie Project—Rate Order No. WAPA–157

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed transmission service rates.

SUMMARY: Western Area Power Administration (Western), a power marketing administration within the Department of Energy (DOE), is proposing an adjustment to the Pacific Northwest-Pacific Southwest Intertie Project (Intertie) transmission service rates. The current rates, under Rate Schedules INT–FT4 and INT–NFT3, expire September 30, 2012. The existing rates are being adjusted to provide sufficient revenue to cover all annual costs, including interest expense, and to repay capital investment obligations within the required period. Western will prepare and provide a brochure detailing information on the proposed rates. The proposed rates, under Rate Schedules INT–FT5 and INT–NFT4, are scheduled to become effective on October 1, 2012, and remain in effect through September 30, 2017. Publication of this **Federal Register** notice initiates the formal process for the proposed rate adjustment.

DATES: The consultation and comment period ends September 10, 2012. Western will present a detailed explanation of the proposed rates at a public information forum on June 28, 2012, at 1 p.m. MST in Phoenix, Arizona. Western will accept oral and written comments at a public comment forum on July 10, 2012, at 10 a.m. MST in Phoenix, Arizona. Western will also accept written comments any time during the 90 day consultation and comment period.

ADDRESSES: The public information forum and public comment forum will be held at Western's Desert Southwest Customer Service Regional Office, located at 615 South 43rd Avenue, Phoenix, AZ 85009–5313, on the dates cited above. Written comments should be sent to Darrick Moe, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, email *moe@wapa.gov.* Written comments may also be faxed to (602) 605–2490, attention: Jack Murray. Western will post information about the rate process on its Web site at *http://www.wapa.gov/dsw/pwrmkt/Intertie/RateAdjust.htm.* Western will also post official comments received via letter, fax, and email to this Web site. Written comments must be received by the end of the consultation and comment period to be considered in Western's decision process. As access to Western facilities is controlled, any U.S. citizen wishing to attend any meeting held at Western must present an official form of picture identification such as a U.S. driver's license, U.S. passport, U.S. Government ID, or U.S. Military ID at the time of the meeting. Foreign nationals should contact Western 30 days in advance of the meeting to obtain the necessary form for admittance to Western.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–2442, email *jmurray@wapa.gov.*

SUPPLEMENTARY INFORMATION: Rate Schedules INT–FT4 and INT–NFT3 for Rate Order No. WAPA–130 were approved on an interim basis by the Deputy Secretary of Energy on September 28, 2007, for a 5-year period beginning on October 1, 2007, and ending September 30, 2012.[1] The schedules received final approval from the Federal Energy Regulatory Commission (FERC) on March 18, 2008.[2] Under Rate Schedule INT–FT4, the existing rate for long-term firm and short-term firm point-to-point transmission service is $15.24 per kilowatt year (kW-year). The proposed rate for long-term firm and short-term firm point-to-point transmission service under Rate Schedule INT–FT5 is $19.68/kW-year. Under Rate Schedule INT–NFT3, the existing rate for nonfirm point-to-point transmission service is 1.74 mills per kilowatt hour (mills/kWh). The proposed rate for nonfirm point-to-point transmission service under Rate Schedule INT–NFT4 is 2.25 mills/kWh. The following table compares the existing and proposed rates for transmission service:

COMPARISON OF EXISTING AND PROPOSED RATES

Transmission service	Existing rates	Proposed rates	Percent change
Firm Point-to-Point	$15.24/kW-year	$19.68/kW-year	29.1
Nonfirm Point-to-Point	1.74 mills/kWh	2.25 mills/kWh	29.3

The proposed rates are expected to become effective October 1, 2012, and remain in effect through September 30, 2017. The proposed rates are designed to recover an annual revenue requirement that includes operation and maintenance, purchase power, purchase of transmission capacity, interest, other expenses, and capital investment repayment.

The rate increase results primarily from lower-than-projected sales of 500-kilovolt (kV) transmission service and higher-than-projected costs for purchased power that have occurred since the existing rates were established. The existing rates were based on projected sales of 500-kV transmission service increasing each year during the 5-year evaluation period. The actual demand for transmission capacity was less than expected and the projected sales did not materialize. As a result, the revenue derived from the sales of 500-kV transmission service over the 5-year

[1] 72 FR 57563 (October 10, 2007)

[2] 122 FERC ¶ 62,236 (March 18, 2008)

evaluation period has been much lower than planned. The proposed rates include a significant reduction in the sales forecast for 500-kV transmission service over the next 5-year evaluation period, which is a major factor of the rate increase.

Another factor of the rate increase is when the existing rates were developed, purchase power was handled at the power system level and the Intertie had no purchase power costs to recover. Since then, Western's Balancing Authority (BA) in the Desert Southwest Customer Service Region has initiated power purchases for reliability purposes and the associated costs are distributed to the applicable transmission systems within the BA, including the Intertie transmission system. These annual purchase power costs are subject to recovery and inclusion in the proposed rates.

Legal Authority

Since the proposed rates constitute a major rate adjustment as defined by 10 CFR part 903, Western will hold both a public information forum and public comment forum. After review of public comments, Western will take further action on the proposed rates consistent with 10 CFR part 903.

Western is establishing transmission service rates for the Intertie under the DOE Organization Act (42 U.S.C. 7152); the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power and transmission rate adjustments (10 CFR part 903) were published on September 18, 1985 (50 FR 87835).

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents that Western initiates or uses to develop the proposed rates are available for inspection and copying at the Desert Southwest Customer Service Regional Office, Western Area Power Administration, 615 South 43rd Avenue Phoenix, Arizona 85009–5313. Many of these documents and supporting information are also available on Western's Web site at *http://www.wapa.gov/dsw/pwrmkt/Intertie/RateAdjust.htm.*

Ratemaking Procedure Requirements

Environmental Compliance

Western will evaluate this action for compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4347), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and DOE NEPA Regulations (10 CFR part 1021).

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866. Accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: June 4, 2012.

Anthony H. Montoya,

Acting Administrator.

[FR Doc. 2012–14110 Filed 6–8–12; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9682–1]

Meetings of the National Drinking Water Advisory Council—Notice of Public Meetings

AGENCY: Environmental Protection Agency.

ACTION: Notice of a public webinar/conference call and a public meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA or agency) is announcing one public webinar/conference call and one in-person meeting of the National Drinking Water Advisory Council (NDWAC or Council), established under the Safe Drinking Water Act (SDWA). The Council will consider various issues associated with drinking water protection and public water systems. For the webinar/conference call, the Council will discuss a draft guidance for EPA permit writers relative to hydraulic fracturing using diesel fuels under the SDWA's Underground Injection Control (UIC) Program and also options for assisting small water systems in achieving sustainable practices. For the in-person meeting, the primary focus will be for the Council to discuss the proposed regulation of perchlorate under the SDWA. Also at this in-person meeting, the Council will discuss assistance to small water systems among other program issues.

DATES: The webinar/conference call will be held on Wednesday, June 27, 2012, from 1:00 p.m. to 4:30 p.m., Eastern Time, and the in-person meeting will be held on September 12, 2012, from 8:30 a.m. to 5:00 p.m., Central Time, and September 13 from 8:30 a.m. to 3:00 p.m., Central Time.

ADDRESSES: The webinar/conference call will be available through Internet access. Instructions for attending will be available to anyone who requests to attend (see **FOR FURTHER INFORMATION CONTACT** section for procedures for making the request). The in-person meeting on September 12 and 13, 2012, will be held at the EPA's Chicago Regional Office (EPA Region 5) at the Ralph Metcalfe Federal Building, 77 West Jackson Blvd., Chicago, IL 60604–3590 and will also be open to the public.

FOR FURTHER INFORMATION CONTACT: Members of the public who would like to register and receive pertinent information, present an oral statement or submit a written statement for the June 27 webinar/conference call should contact Roy Simon, by email, *Simon.Roy@epa.gov*, by phone, 202–564–3868, or by regular mail at U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (MC 4601M), 1200 Pennsylvania Avenue NW., Washington, DC 20460. Similarly, those members of the public who would like to register and receive information, present an oral statement, or submit a written statement for the September 13 and 14 in-person meeting should contact Roy Simon. Further details about participating in the webinar and the in-person meeting can be found in the **SUPPLEMENTARY INFORMATION** section.

SUPPLEMENTARY INFORMATION: *Details about Participating in the Webinar:* If you wish to attend the webinar, you can read the presentations only if you provide your email address when you register. If you do not have an email address and would like to attend by phone only, please provide your address so you can be notified by mail of the call-in number. The EPA will provide updated information on the September in-person meeting to registered individuals and organizations as the date of the meeting gets closer.

The Council encourages the public's input and will allocate 30 minutes in the webinar on June 27, 2012 (3:55–4:25 p.m., Eastern Time). Similarly, the Council will allocate one hour for the

public's input (1:00 p.m.– 2:00 p.m., Central Time) at the in-person meeting on September 13, 2012. Oral statements will be limited to three minutes during the webinar and five minutes at the meeting. It is preferred that only one person present the statement on behalf of a group or organization.

To ensure adequate time for public involvement, individuals or organizations interested in presenting an oral statement should notify Roy Simon no later than June 22, 2012, for the webinar, and September 6, 2012, for the in-person meeting. Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements for the Webinar received by June 22, 2012, and for the in-person meeting received by August 31, 2012, will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received on or after the dates just specified for the webinar and the in-person meeting will become part of the permanent file for each meeting, respectively, and will be forwarded to the Council members for their information.

National Drinking Water Advisory Council: The Council was created by Congress on December 16, 1974, as part of the Safe Drinking Water Act (SDWA) of 1974, Public Law 93–523, 42 U.S.C. 300j–5, and is operated in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The Council was established under the SDWA to provide practical and independent advice, consultation and recommendations to the EPA Administrator on the activities, functions, policies, and regulations required by the SDWA.

Special Accommodations: For information on access or services for individuals with disabilities, please contact Roy Simon at 202–564–3868 or by email at *Simon.Roy@epa.gov.* To request accommodation of a disability, please contact Roy Simon at least 10 days prior to the webinar or the meeting to give EPA as much time as possible to process your request.

Dated: June 1, 2012.

Pamela Barr,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 2012–13822 Filed 6–8–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Wednesday, June 13, 2012

Date: June 6, 2012.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, June 13, 2012, which is scheduled to commence at 10:30 a.m. in Room TW–C305, at 445 12th Street SW., Washington, DC.

Item Nos.	*Bureau*	*Subject*
1	Office of Engineering and Technology	*Title:* Sections 2.925 and 2.926 of the Rules Regarding Grantee Codes for Certified Radiofrequency Equipment *Summary:* The Commission will consider an Order to modify the equipment authorization rules to increase the supply of grantee codes assigned to parties applying for equipment certification.
2	Public Safety and Homeland Security	*Title:* Amendment of Part 90 of the Commission's Rules (WP Docket No. 07–100); Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band (PS Docket No. 06–229) and Service Rules for the 698–746, 747–762 and 777–792 MHz Bands (WT Docket No. 06–150) *Summary:* The Commission will consider a Fourth Report and Order and Fifth Further Notice of Proposed Rulemaking to encourage improved spectrum efficiency and greater use of the 4940–4990 MHz (4.9 GHz) band.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Meribeth McCarrick, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC Live web page at *www.fcc.gov/live.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by email at *FCC@BCPIWEB.com.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–14231 Filed 6–7–12; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT 77 FR 33458 (June 6, 2012).

DATE & TIME: Thursday, June 7, 2012 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

CHANGES IN THE MEETING The following item has been added to the agenda:

2012 Meeting Dates (Second Half).

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer; Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary of the Commission.

[FR Doc. 2012–14179 Filed 6–7–12; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before August 10, 2012.

ADDRESSES: You may submit comments, identified by FR Y–10, FR Y–10 verification, FR Y–10E, FR Y–6, or FR Y–7, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Reports

Report title: Report of Changes in Organizational Structure, Annual Report of Bank Holding Companies, and Annual Report of Foreign Banking Organizations.

Agency form number: FR Y–10, FR Y–10 verification, FR Y–6, and FR Y–7.

OMB control number: 7100–0297.

Frequency: FR Y–10: Event-generated; FR Y–10 verification: One-time; FR Y–6 and FR Y–7: Annual.

Reporters: FR Y–10: Foreign banking organizations (FBOs), top-tier bank holding companies (BHCs), state member banks that are not controlled by a BHC, Edge and agreement corporations that are not controlled by a member bank, a BHC, or a FBO; and nationally chartered banks that are not controlled by a BHC (with regard to their foreign investments only), savings and loan holding companies (SLHCs), securities holding companies (SHCs), nonbank financial companies, and designated financial market utilities (DFMUs); FR Y–6: Top-tier BHCs and nonqualifying FBOs, SLHCs, SHCs, nonbank financial companies, and DFMUs; FR Y–7: all qualifying FBOs that engage in banking in the United States, either directly or indirectly.

Estimated annual reporting hours: FR Y–10: 25,313 hours; FR Y–10 verification: 956; FR Y–6: 29,253 hours; FR Y–7: 615 hours.

Estimated average hours per response: FR Y–10: 2.25 hours; FR Y–10 verification: 1.25 hours; FR Y–6: 5.25 hours; FR Y–7: 3.75 hours.

Number of respondents: FR Y–10: 3,750; FR Y–10 verification: 765; FR Y–6: 5,572; FR Y–7: 164.

General description of report: These information collections are mandatory under the Federal Reserve Act, the Bank Holding Company Act (BHC Act), and the International Banking Act (12 U.S.C. 248 (a)(1), 321, 601, 602, 611a, 615, 625, 1843(k), 1844(c)(1)(A), 3106(a), and 3108(a)), and Regulations K and Y (12 CFR 211.13(c), 225.5(b) and 225.87), and Sections 161, 312, 618, and 809 of the Dodd-Frank Act (12 U.S.C. 5361, 5412, 1850a(c)(1), and 5468(b)(1)). Individual respondent data are not considered confidential. However, respondents may request confidential treatment for any information that they believe is subject to an exemption from disclosure under the Freedom of Information Act (FOIA), (5 U.S.C. 522(b)(4) and (b)(6)).

Abstract: The FR Y–10 is an event generated information collection submitted by FBOs; top-tier BHCs; state member banks unaffiliated with a BHC; Edge and agreement corporations that are not controlled by a state member bank, a BHC, or an FBO; and nationally chartered banks that are not controlled by a BHC (with regard to their foreign investments only), to capture changes in their regulated investments and activities. The Federal Reserve uses the data to monitor structure information on subsidiaries and regulated investments of these entities engaged in banking and nonbanking activities. The FR Y–6 is an annual information collection submitted by top-tier BHCs and nonqualifying FBOs. It collects financial data, an organization chart, verification of domestic branch data, and information about shareholders. The Federal Reserve uses the data to monitor holding company operations and determine holding company compliance with the provisions of the BHC Act and Regulation Y (12 CFR 225). The FR Y–7 is an annual information collection submitted by qualifying FBOs to update their financial and organizational information with the Federal Reserve. The Federal Reserve uses information to assess an FBO's ability to be a continuing source of strength to its U.S. operations and to determine compliance with U.S. laws and regulations.

Current Actions: The Federal Reserve proposes to revise the FR Y–10 reporting forms and instructions by (1) expanding the entities that must report to include nonbank financial companies supervised by the Federal Reserve, SLHCs, SHCs, and DFMUs as authorized under Sections 161, 312, 618, and 809 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act), 12 U.S.C. 5361, 5412, 1850a(c)(1), and 5468(b)(1), respectively, (2) adding a Savings and Loan Schedule, (3) adding Legal Authority Codes on Appendix A for SLHCs, (4) deleting several Nonbanking Company Types on the Nonbanking Schedule (since these entities would now be reported on the Savings and Loan Schedule), (5) expanding data item 3 on the Large Merchant Banking or Insurance Company Investments Section for respondents to report changes to information previously reported, and (6) incorporating several instructional clarifications. In addition, the Federal Reserve proposes to collect a one-time verification of an SLHC's organizational structure as a supplement to the FR Y–10, derived from the Federal Reserve's National Information Center database. These data would allow the Federal Reserve to establish baseline information before SLHCs become subject to the FR Y–10 event-generated reporting.

The Federal Reserve proposes to revise the FR Y–6 reporting form and instructions by expanding the entities that must report to include nonbank financial companies supervised by the Board, SLHCs, SHCs, and DFMUs as authorized under Sections 161, 312, 618, and 809 of the Dodd-Frank Act, 12 U.S.C. 5361, 5412, 1850a(c)(1), and 5468(b)(1), respectively.

The Federal Reserve proposes to consolidate the FR Y–7 glossary definitions into the FR Y–10 glossary with the exception of the definition of ''Combined Financial Statements,'' which will become a footnote on RI–5. In addition, the Federal Reserve proposes incorporating several FR Y–7 instructional clarifications.

The proposed changes to the FR Y–6 and FR Y–7 reporting form and instructions would be effective with fiscal year-ends beginning December 31, 2012. The proposed FR Y–10 verification for SLHCs would require annotation of data provided by the Federal Reserve. These data would reflect information from the Federal Reserve's National Information Center database as of October 1, 2012. Institutions would have thirty days to annotate the one-time verification. The proposed changes to the FR Y–10 reporting form and instructions would be effective December 1, 2012.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Report

Report title: Supplement to the Report of Changes in Organizational Structure.

Agency form number: FR Y–10E.

OMB control number: 7100–0297.

Frequency: Event-generated.

Reporters: FBOs, top-tier bank holding companies BHCs, state member banks that are not controlled by a BHC, Edge and agreement corporations that are not controlled by a member bank, a BHC, or a FBO; and nationally chartered banks that are not controlled by a BHC (with regard to their foreign investments only), SLHCs, SHCs, nonbank financial companies, and DFMUs.

Estimated annual reporting hours: 1,875 hours.

Estimated average hours per response: 0.50 hours.

Number of respondents: 3,750.

General description of report: This information collection is mandatory under the Federal Reserve Act, the Bank Holding Company Act (BHC Act), and the International Banking Act (12 U.S.C. 248(a)(1), 321, 601, 602, 611a, 615, and 625, 1843(k), 1844(c)(1)(A), 3106(a)) and Regulation K and Y (12 CFR 211.13(c), 225.5(b) and 225.87) and Sections 161, 312, 618, and 809 of the Dodd-Frank Act (12 U.S.C. 5361, 5412, 1850a(c)(1), and 5468(b)(1)). Individual respondent data are not considered confidential. However, respondents may request confidential treatment for any information that they believe is subject to an exemption from disclosure under the Freedom of Information Act (FOIA), (5 U.S.C. 522(b)(4) and (b)(6)).

Abstract: The FR Y–10E is a free-form supplement that may be used to collect additional structural information deemed to be critical and needed in an expedited manner.

Board of Governors of the Federal Reserve System.

June 6, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–14036 Filed 6–8–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices

of the Board of Governors. Comments must be received not later than June 26, 2012.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The Gause Family, consisting of Bryce and Sheila Gause, Lynnville, Iowa; HW and Nancy Barnhouse, Vero Beach, Florida; Lester and Kay Gause, Newton, Iowa; Charles Gause, Providence, North Carolina; Gary and Joan Ales, Lakewood Ranch, Florida; Rebecca Barnhouse, Youngstown, Ohio; Richard Buls, New Market, Maryland; Kristy Crawford, Frederick, Maryland; Curtis Gause, Pleasant Hill, Iowa; Peggy Gause, Roanoke, Virginia; Russell Gause, Pasadena, Texas; Carrie Holub, Davenport, Iowa; Connie Kopacek, Urbandale, Iowa; Cynthia Smith, Newton, Iowa; and Kimberly Soulen, Meyersville, Maryland,* all acting in concert, to retain control of First State Bank Holding Company, and thereby indirectly retain control of First State Bank, both in Lynnville, Iowa.

Board of Governors of the Federal Reserve System, June 6, 2012.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2012–14086 Filed 6–8–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 5, 2012.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *DFW Capital Holdings, Inc.,* and DFW Capital Holdings Merger Corporation, both in Dallas, Texas; to become bank holding companies by acquiring Schwertner State Bank, Schwertner, Texas.

Board of Governors of the Federal Reserve System, June 5, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–13980 Filed 6–8–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Implementation of Federal Financial Report—Upcoming Mandatory Use of the Federal Financial Report System in the eRA Commons

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice.

Purpose

Beginning October 1, 2012, CDC will implement the expenditure data portion of the Federal Financial Report (FFR) in the Electronic Research Administration (eRA) Commons. The transition to use the FFR for reporting expenditure data includes new reporting dates for annual FFRs, and reporting of cumulative data only.

Background

The Office of Management and Budget has consolidated the Financial Status Report (FSR or SF–269/SF–269A) and the Federal Cash Transaction Report (FCTR or SF–272/SF–272A) into a single form known as the Federal Financial Report (FFR or SF–425/SF–425A). Since January 1, 2010, CDC grantees have been required to report cash transaction data via the Payment Management System (PMS) using the FFR cash transaction data elements. The FSR/FFR module allows grantees to electronically submit a statement of expenditures associated with their grant to the sponsor of the grant via eRA Commons. The new eRA Commons system was piloted with 5 Federal Demonstration Partnership (FDP) institutions that assisted CDC with feedback and testing during the Third Quarter of Fiscal Year 2011.

The Electronic Research Administration (eRA) was established by the National Institutes of Health (NIH) in response to the Government Paperwork Elimination Act requiring federal agencies to pursue electronic means of production. The intent of eRA is to provide for secure receipt, review and administration of electronic grants. The eRA Commons offers a meeting place for grantees tracking research grants administration information and applications and will now be used by grantees to submit their FFRs.

DATES: The effective date is October 1, 2012.

FOR FURTHER INFORMATION CONTACT: Technical Information Management Section (TIMS), Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, NE., Atlanta, GA 30341; telephone (770) 488–2700; email @ *PGOTIM@CDC.GOV*.

Implementation

All CDC Financial Expenditure data due on/after October 1, 2012 must be submitted using the FFR via the eFSR/FFR system in the eRA Commons. All Federal Reporting in the Payment Management System is unchanged. All new submissions should be prepared and submitted as FFRs.

CDC's implementation of the FFR retains a financial reporting period that coincides with the budget period of a particular project. However, the due date for annual FFRs will be 90 days after the end of the calendar quarter in which the budget period ends. Note that this is a change in due dates of annual FFRs and may provide up to 60 additional days to report, depending upon when the budget period end date falls within a calendar quarter. For example, if the budget period ends 1/30/2012, the annual FFR is due 6/30/2012 (90 days after the end of the calendar quarter of 3/31/2012).

Due dates of final reports will remain unchanged. The due date for final FFRs will continue to be 90 days after the project period end date.

Grantees must submit closeout reports in a timely manner. Unless the Grants Management Officer (GMO) of the awarding Institute or Center approves an extension, grantees must submit a final FFR, final progress report, and

Final Invention Statement and Certification within 90 days of the end of grant period. Failure to submit timely and accurate final reports may affect future funding to the organization or awards under the direction of the same Project Director/Principal Investigator.

FFR (SF 425) instructions for CDC Grantees are now available at *http://grants.nih.gov/grants/forms.htm.* For further information, contact *GrantsInfo@nih.gov.* Additional resources concerning the eFSR/FFR system, including a User Guide and an on-line demonstration, can be found on the eRA Commons Support Page: *http://www.cdc.gov/od/pgo/funding/grants/eramain.shtm.*

Getting Started—eRA Commons Registration

The submission of FFRs to CDC will require organizations to register with eRA Commons (Commons) (*https://commons.era.nih.gov/commons/*). CDC recommends that this one time registration process be completed at least 2 weeks prior to the submittal date of a FFR submission.

Organizations may verify their current registration status by running the ''List of Commons Registered Organizations'' query found at: *http://era.nih.gov/commons/.* Organizations not yet registered can go to *https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp* for instructions. It generally takes several days to complete this registration process. This registration is independent of Grants.gov and may be done at any time.

The individual designated as the Principle Investigator (PI) on the application must also be registered in the Commons. The PI must hold a PI account *and* be affiliated with the applicant organization. This registration must be done by an organizational official or their delegate who is already registered in the Commons. To register PIs in the Commons, refer to the eRA Commons User Guide found at: *http://era.nih.gov/commons/index.cfm.*

Inquiries

General questions concerning using the eRA Commons should be directed to the eRA Commons Helpdesk at: eRA Commons Help Desk Web: *http://ithelpdesk.nih.gov/eRA/.* (Preferred method of contact).
Toll-free: 1–866–504–9552
Phone: 301–402–7469
TTY: 301–451–5939
Hours: Mon-Fri, 7 a.m. to 8 p.m. Eastern Standard Time.
Email: *commons@od.nih.gov.*

Dated: June 5, 2012.

Alan A. Kotch,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–14049 Filed 6–8–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Health and Nutrition Examination Survey (NHANES) DNA Samples

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: The National Health and Nutrition Examination Survey (NHANES) will not be receiving DNA proposals in the near future. NHANES is changing its plan for making DNA available for genetic research and its proposal guidelines. NHANES will announce when it will reopen its repository for use of DNA specimens for research protocols once it has developed its new plan of operation.

DATES: Effective date is date of publication in the **Federal Register.**

ADDRESSES: Geraldine McQuillan, Ph.D., Division of Health and Nutrition Examination Surveys, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 4204, Hyattsville, MD 20782, Phone: 301–458–4371, Fax: 301–458–4028, EMail: *NHANESgenetics@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Geraldine McQuillan, Division of Health and Nutrition Examination Surveys, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 4204, Hyattsville, MD 20782, Phone: 301–458–4371, Fax: 301–458–4028, E-Mail: *NHANESgenetics@cdc.gov.*

Juliana Cyril,

Deputy Director, Office of Science Quality, Office of the Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2012–14056 Filed 6–8–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Extension to HS Transportation Requirement.

OMB No.: 0970–0260.

Description: The Office of Head Start is proposing to renew authority to collect information regarding the Head Start transportation requirement without changes. The transportation requirement provides the requirement that each child be seated in a child restraint system while the vehicle is in motion, and the requirement that each bus have at least one bus monitor on board at all times. Waivers would be granted when the Head Start or Early Head Start grantee demonstrates that compliance with the requirement(s) for which the waiver is being sought will result in a significant disruption to the Head Start program or the Early Head Start program and that waiving the requirement(s) is in the best interest of the children involved.

Respondents: Head Start and Early Head Start program grants recipients.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per respondent	Total burden hours
Form	275	1	1	275

Estimated Total Annual Burden Hours: 275

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the

information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–14059 Filed 6–8–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2011–E–0133; FDA–2011–E–0136]

Determination of Regulatory Review Period for Purposes of Patent Extension; CYSVIEW (Previously HEXVIX)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CYSVIEW (previously HEXVIX) and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6284, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of the application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product CYSVIEW (hexaminolevulinate hydrochloride). CYSVIEW is an optical imaging agent indicated for use in the cystoscopic detection of non-muscle invasive papillary cancer of the bladder among patients suspected or known to have lesion(s) on the basis of a prior cystoscopy. Subsequent to this approval, the Patent and Trademark Office received patent term restoration applications for CYSVIEW (U.S. Patent Nos. 7,247,655 and 7,348,361) from Photocure ASA, and the Patent and Trademark Office requested FDA's assistance in determining the patents' eligibilities for patent term restoration. In a letter dated June 9, 2011, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of CYSVIEW represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CYSVIEW is 3,103 days. Of this time, 2,770 days occurred during the testing phase of the regulatory review period, while 333 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* November 30, 2001. The applicant claims October 29, 2001, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was November 30, 2001, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* June 30, 2009. FDA has verified the applicant's claim that the new drug application (NDA) for CYSVIEW (NDA 22–555) was submitted on June 30, 2009.

3. *The date the application was approved:* May 28, 2010. FDA has verified the applicant's claim that NDA 22–555 was approved on May 28, 2010.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 686 days or 564 days, respectively, of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by August 10, 2012. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review

period by December 10, 2012. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 29, 2012.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2012–14003 Filed 6–8–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–E–0399]

Determination of Regulatory Review Period for Purposes of Patent Extension; Progel Pleural Air Leak Sealant

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Progel Pleural Air Leak Sealant and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6284, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device, Progel Pleural Air Leak Sealant. Progel Pleural Air Leak Sealant is indicated for application to visceral pleura during an open thoracotomy after standard visceral pleural closure with, for example, sutures or staples, of visible air leaks (≥2 mm) incurred during open resection of lung parenchyma. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Progel Pleural Air Leak Sealant (U.S. Patent No. RE38158) from Neomend, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated June 8, 2011, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of Progel Pleural Air Leak Sealant represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Progel Pleural Air Leak Sealant is 3,854 days. Of this time, 787 days occurred during the testing phase of the regulatory review period, while 3067 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* June 29, 1999. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the FD&C Act for human tests to begin became effective June 29, 1999.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e):* August 23, 2001. FDA has verified the applicant's claim that the premarket approval application (PMA) for Progel Pleural Air Leak Sealant (PMA P010047) was initially submitted August 23, 2001.

3. *The date the application was approved:* January 14, 2010. FDA has verified the applicant's claim that PMA P010047 was approved on January 14, 2010.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by August 10, 2012. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 10, 2012. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 29, 2012.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2012–14000 Filed 6–8–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0307]

Draft Guidance for Industry: Amendment to ''Guidance for Industry: Revised Preventive Measures To Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt-Jakob Disease by Blood and Blood Products,'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Guidance for Industry: Amendment (revisions to labeling recommendations for potential risk of vCJD) to 'Guidance for Industry: Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products' '' dated June 2012. The draft guidance document proposes amendments to the labeling recommendations for plasma-derived products, including albumin and products containing plasma-derived albumin, in the guidance document entitled ''Guidance for Industry: Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products'' dated May 2010 (2010 CJD/vCJD guidance). When finalized, the revised labeling recommendations will be incorporated into the 2010 CJD/vCJD guidance, but FDA will otherwise continue with its recommendations in the 2010 CJD/vCJD guidance as currently provided.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that FDA considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 10, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Tami Belouin, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Guidance for Industry: Amendment (revisions to labeling recommendations for potential risk of vCJD) to 'Guidance for Industry: Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products' '' dated April 2012. The draft guidance document proposes amendments to labeling recommendations in the 2010 CJD/vCJD guidance for plasma-derived products, including albumin and products containing plasma-derived albumin, to reflect current knowledge of vCJD transmission through blood. When finalized, the revised labeling recommendations will be incorporated into the 2010 CJD/vCJD guidance.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: April 17, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–14034 Filed 6–8–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1984.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Nursing Scholarship Program (OMB No. 0915–0301)—[Revision]

The Nursing Scholarship Program (NSP) is a competitive Federal program, which awards scholarships to individuals for attendance at accredited schools of nursing. The Bureau of Clinician Recruitment and Service (BCRS) in HRSA administers the program. The scholarship consists of payment of tuition, fees, other reasonable educational costs, and a monthly support stipend. In return, the students agree to provide a minimum of 2 years of full-time clinical service (or an equivalent part-time commitment, as approved by the NSP) at a health care facility with a critical shortage of nurses as defined by the program.

NSP recipients must be willing to and are required to fulfill their NSP service commitment at a health care facility with a critical shortage of nurses in the United States, which includes, in addition to the States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the U.S. Virgin Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. Students who are uncertain of their commitment to provide nursing care in a health care facility with a critical shortage of nurses in the United States or these territories are advised not to participate in this program.

The NSP needs to collect data to determine an applicant's eligibility for the program, to monitor a participant's continued enrollment in a school of nursing, to monitor the participant's compliance with the NSP service obligation, and to obtain data on its program to ensure compliance with statutory mandates and prepare annual reports to Congress. The following information will be collected: (1) From the applicants and/or the schools—general applicant and nursing school data such as full name, location, tuition/fees, and enrollment status; (2) from the schools (on an annual basis)—data concerning tuition/fees and student enrollment status; and (3) from the participants and their health care facilities with a critical shortage of nurses (on a biannual basis)—data concerning the participant's employment status, work schedule, and leave usage. BCRS enters the cost information into its information data system, along with the projected amount for the monthly stipend, to determine the amount of each scholarship award.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Application	4,000	1	4,000	2	8,000
In-School Monitoring	500	1	500	2	1,000
In-Service Monitoring	600	2	1,200	1	1,200
Total	5,100		5,700		10,200

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: June 5, 2012.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–14001 Filed 6–8–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request Generic Clearance to Conduct Voluntary Customer/Partner Surveys

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Library of Medicine (NLM), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 2, 2012 (Vol. 77, No. 63, p. 19673) and allowed 60-days for public comment. A single public comment was received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Generic Clearance to Conduct Voluntary Customer/Partner Surveys; *Type of Information Collection Request:* Extension of currently approved collection [OMB No. 0925–0476, expiration date 06/30/2012] *Form Number:* NA; *Need and Use of Information Collection:* Executive Order 12962 directed agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. Additionally, since 1994, the NLM has been a ''Federal Reinvention Laboratory'' with a goal of improving its methods of delivering information to the public. An essential strategy in accomplishing reinvention goals is the ability to periodically receive input and feedback from customers about the design and quality of the services they receive. The NLM provides significant services directly to the public including health providers, researchers, universities, other federal agencies, state and local governments, and to others through a range of mechanisms, including publications, technical assistance, and Web sites. These services are primarily focused on health and medical information dissemination activities. The purpose of this submission is to obtain OMB's generic approval to continue to conduct satisfaction surveys of NLM's customers. The NLM will use the information provided by individuals and institutions to identify strengths and weaknesses in current services and to make improvements where feasible. The ability to periodically survey NLM's customers is essential to continually update and upgrade methods of providing high quality service.

Frequency of Response: Annually or biennially. *Affected Public:* Individuals or households; businesses or other for profit; state or local governments; Federal agencies; non-profit institutions; small businesses or organizations. *Type of Respondents:* Organizations, medical researchers, physicians and other health care providers, librarians, students, and the general public. The annual reporting burden is as follows:

Types of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Researchers, Physicians, Other Health Care Providers, Librarians, Students, General Public	15,000	1	.150	2,250

The annualized cost to respondents for each year of the generic clearance is estimated to be $20,670. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request For Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: David Sharlip, National Library of Medicine, Building 38A, Room B2N12, 8600 Rockville Pike, Bethesda, MD 20894, or call non-toll free number 301–402–9680 or email your request to *sharlipd@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: June 5, 2012.

David H. Sharlip,

NLM Project Clearance Liaison, National Library of Medicine, National Institutes of Health.

[FR Doc. 2012–14140 Filed 6–8–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Treatment of Viral Infection by Blocking Interleukin-21

Description of Technology: Blocking interleukin (IL-21) may be an effective method to treat or prevent various viral infections. In the course of an immune response to a virus, IL-21, produced primarily by $CD4^+$ T cells, can inhibit or stimulate (regulate), immune cell function (B cells, T cells, natural killer cells, dendritic cells). IL-21 regulation may be either protective or pathological; autoimmune disease pathology has been associated with IL-21 promoted inflammation (in: Type 1 diabetes, lupus, and multiple sclerosis). This technology describes methods of blocking IL-21 that may reduce damaging inflammatory responses during certain viral infections. Specifically, the absence of IL-21 during respiratory viral infection such as pneumonia virus infection actually prevents some of the pathogenic effects that may be promoted by IL-21. Methods for controlling IL-21 signaling may be used to treat to prevent many pathological effects of pneumonia viruses, and other viral infections.

Potential Commercial Applications: Prevention and treatment of many pathological effects of viral infections, including pneumonia.

Competitive Advantages: New method for treating viral infection pathology.

Development Stage:

- Early-stage.
- Pre-clinical.
- *In vivo* data available (animal).

Inventors: Warren J. Leonard and Rosanne Spolski (NHLBI).

Publication: Spolski R, et al. IL-21 promotes the pathologic immune response to pneumovirus infection. J Immunol. 2012 Feb 15;188(4):1924–32. [PMID 22238461].

Intellectual Property: HHS Reference No. E–017–2012/0—U.S. Provisional Application No. 61/579,801 filed 23 Dec 2011.

Licensing Contact: Tedd Fenn; 301–435–5031; *Tedd.Fenn.nih.gov.*

Collaborative Research Opportunity: The NHLBI is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize treatment of viral infection by blocking Interleukin-21 (E–017–2012). For collaboration opportunities, please contact Vincent Kolesnitchenko, Ph.D. at *kolesniv@nhlbi.nih.gov.*

Transgenic ZP2 Mouse Model Produces Eggs That Bind to Human Sperm Protein

Description of Technology: Fertilizing sperm bind to an extracellular coat surrounding mammalian eggs called zona pellucida. Depending on the species, the zona pellucida is composed of ZP1, ZP2, ZP3, and/or ZP4 proteins. Recent studies show that sperm successfully adhere to the zona pellucida surface when ZP2 is intact. In contrast, when ZP2 has been proteolytically cleaved, sperm binding is disrupted.

To further study the effect of ZP2 cleavage in sperm-egg recognition, researchers at NIDDK have developed a transgenic mouse expressing human ZP2. Prior attempts using ZP2 knockout mice were unsuccessful because the produced eggs were not fertile in vivo. Transgenic ZP2 mice produced humanized zonae pellucida, and produced fertile eggs to which human sperm successfully and specifically bound. This mouse model contradicts previous notions that production of human transgenic ZP2 would adversely change the specificity of sperm binding.

Potential Commercial Applications:

- Transgenic eggs can be used in diagnostic functional assays to assess human sperm viability for reproductive technologies.
- Diagnostic assay can be extended to determine presence of male infertility in a variety of mammals, including pets, farm livestock, and zoological mammals.

Competitive Advantages:

- This ZP2 mice model produces eggs containing transgenic mammalian zona pellucida, which can successfully and specifically be fertilized with the corresponding mammalian sperm.
- Use in human infertility studies spares the use of a human egg for binding studies.

Development Stage:

- Prototype.
- Early-stage.
- *In vitro* data available.
- *In vivo* data available (animal).

Inventors: Tracy L. Rankin, Jenell S. Coleman, Olga Epifano, Tanya Hoodbhoy, Scott Turner, Jurrien Dean (all of NIDDK).

Publications:

1. Rankin TL, *et al.* Fertility and taxon-specific sperm binding persist after replacement of mouse sperm receptors with human homologs. Dev Cell. 2003 Jul;5(1):33–43. [PMID 12852850].
2. Gahlay G, *et al.* Gamete recognition in mice depends on the cleavage status of an egg's zona pellucida protein. Science. 2010 Jul 9;329(5988):216–9. [PMID 20616279].

Intellectual Property: HHS Reference No. E–288–2011/0—Research Tool. Patent protection is not being pursued for this technology.

Related Technology: HHS Reference No. E–162–2011/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Lauren Nguyen-Antczak, Ph.D., J.D.; 301–435–4074; *Lauren.Nguyen-antczak@nih.gov.*

Englerin A: A Novel Renal Cancer Therapeutic Isolated From an African Plant

Description of Technology: Renal cell cancer of the kidney accounts for 13 thousand deaths per year, largely due to the ineffective treatment methods available. The current standard of care is limited to surgical resection of the diseased tissue and to date chemotherapy/radiation intervention has been of limited effectiveness.

Researchers at the NIH have isolated a series of novel natural compounds from the African plant *Phyllanthus engleri* that display potent anti-cancer properties, particularly in renal cancer cell lines. Englerin A displays renal cancer cell line growth inhibition *in vitro* and efficacy against renal and prostate cancer cell lines in vivo. The compound can be efficiently extracted from the plant, and recent work has described methods for the synthesis of Englerin A and novel analogs.

Further preclinical studies have yielded an optimized formulation for parenteral drug administration, the establishment of a method for measuring bioavailability, and modeling studies suggestive that Englerin A should be orally bioavailable.

Potential Commercial Applications: The new chemical entities can be potential cancer therapeutics, especially for renal cancer.

Competitive Advantages:

- Isolated compounds are specifically toxic to renal cancer cells, a disease with limited current chemotherapeutic options.
- Compounds are effective in vivo and have potential applications to other disease states.
- There is reasonable yield and recovery of the compounds from the natural product extracts.
- Recent work has identified efficient routes for synthesis of Englerin A.

Development Status:

- Pre-clinical.
- *In vitro* data available.
- *In vivo* data available (animal).

Inventors: John A. Beutler *et al.* (NCI).

Publications:

1. Ratnayake R, *et al.* Englerin A, a selective inhibitor of renal cancer cell growth, from Phyllanthus engleri. Org Lett. 2009 Jan 1;11(1):57–60. [PMID 19061394].
2. Li Z, *et al.* A brief synthesis of (-)-englerin A. J Am Chem Soc. 2011 May 4;133(17):6553–6. [PMID 21476574].
3. Akee R, *et al.* Chlorinated englerins with selective inhibition of renal cancer cell growth. J Nat Prod. 2012 Mar 23;75(3):459–63. [PMID 22280462].

Intellectual Property: HHS Reference No. E–064–2008/2—U.S. Patent Application No. 12/811,245 filed 29 Jul 2010.

Related Technology: HHS Reference No. E–042–2012/0—U.S. Provisional Application No. 61/584,526 filed 09 Jan 2012, ''Use of Englerin A for the Treatment of Diabetes, Obesity and Other Diseases.''

Licensing Contact: Surekha Vathyam, Ph.D.; 301–435–4076; vathyams@mail.nih.gov.

Collaborative Research Opportunity: The National Cancer Institute Molecular Targets Development Program is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize epoxy-guaiane cancer inhibitors. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: June 5, 2012.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2012–14038 Filed 6–8–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Biobehavioral and Behavioral Sciences Subcommittee.

Date: June 25–26, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Wardman Park Washington DC Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

Contact Person: Marita R. Hopmann, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute o Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6911, *hopmannm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 4, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–14139 Filed 6–8–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Healthy Aging and the Life Course.

Date: June 20, 2012.

Time: 9:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jeannette L. Johnson, Ph.D., Scientific Review Officer, National Institutes on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705. *JOHNSONJ9@NIA.NIH.GOV*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel; Clinical Trials Support.

Date: June 22, 2012.

Time: 2:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca J. Ferrell, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building Rm. 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7703. *ferrellrj@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Stress and Aging.

Date: July 9, 2012.

Time: 9:00 a.m. to 1:00 p.m.

Agenda To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alicja L. Markowska, Ph.D., DSC, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2c212, Bethesda, MD 20892, 301–496–9666. *markowsa@nia.nih.gov*

Name of Committee: National Institute on Aging Special Emphasis Panel; Genetics of Lifespan.

Date: July 11, 2012.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alicja L. Markowska, Ph.D., DSC, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666. *markowsa@nia.nih.gov*

Name of Committee: National Institute on Aging Special Emphasis Panel; Health, SES, and Aging.

Date: July 18, 2012.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alfonso R. Latoni, Ph.D., Deputy Chief and Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–402–7702. *Alfonso.Latoni@nih.gov*

Name of Committee: National Institute on Aging Special Emphasis Panel; HIV and Aging.

Date: July 31, 2012.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alicja L. Markowska, Ph.D., DSC, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666. *markowsa@nia.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 4, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–14118 Filed 6–8–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Obstetrics and Maternal-Fetal Biology Subcommittee.

Date: June 26, 2012.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter Zelazowski, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–7510, 301–435–6902, *peter.zelazowski@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS).

Dated: June 4, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–14117 Filed 6–8–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—A Study Section.

Date: June 21–22, 2012.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: Joanna M Pyper, Ph.D. Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–1151, *pyperj@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 4, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–14113 Filed 6–8–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurobiology of attention and memory processing in humans.

Date: June 28, 2012.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181 MSC 7846, Bethesda, MD 20892–7846, 301–435–1236, *zhaow@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Microbial Diseases.

Date: June 29, 2012.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301–996–5819, *zhengli@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 5, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–14125 Filed 6–8–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Medication Adherence among Children with CKD: Ancillary Studies.

Date: June 19, 2012.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 5, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–14123 Filed 6–8–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel;; Digestive Diseases Research Core Centers.

Date: July 23, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 5, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–14120 Filed 6–8–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Cancellation of Meeting

Notice is hereby given of the cancellation of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee, July 11, 2012, 9:00 a.m. to July 11, 2012, 4:00 p.m., National Institutes of Health, Building 31, C–Wing, 6th Floor, 31 Center Drive, Conference Room 10, Bethesda, MD 20892 which was published in the **Federal Register** on January 18, 2012, 77 FR 2557.

This meeting has been cancelled.

Dated: June 5, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–14128 Filed 6–8–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Changing Long Term Care in America.

Date: July 20, 2012.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alfonso R. Latoni, Ph.D., Deputy Chief and Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–402–7702, *Alfonso.Latoni@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 4, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–14144 Filed 6–8–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2012–0044]

Collection of Information under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for the following collection of information: 1625–NEW, Coast Guard Living Marine Resources (LMR) Enforcement Survey. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before July 11, 2012.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2012–0044] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid duplicate submissions, please use only one of the following means:

(1) *Online:* (a) To Coast Guard docket at *http://www.regulations.gov.* (b) To OIRA by email via: *OIRA-submission@omb.eop.gov* .

(2) *Mail:* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. (b) To OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Hand Delivery:* To DMF address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be

available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St SW., Stop 7101, Washington DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2012–0044], and must be received by July 11, 2012. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2012–0044], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**, but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2012–0044'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0044'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–NEW.

Privacy Act

Anyone can search the electronic form of comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (77 FR 6571, February 8, 2012) required by 44 U.S.C. 3506(c)(2). That Notice elicited one comment response. The commenter noted the importance of this information elicitation, and recommended executing similar survey efforts on a recurring basis. More specifically, the commenter recommended that:

1. *The survey instructions be clarified and remind respondents about the potential to receive a raffle prize.* The Coast Guard revised the introductory paragraph in response to this recommendation.

2. *The survey include a question asking for the proportion or percentage of time spent in each fishery.* The Coast Guard did not act on this recommendation because this information could not be used in the scope of the survey design.

3. *The survey include an additional question asking the most recent date of active fishing.* The Coast Guard has added a question the survey to determine the activity level of the respondent in their primary fishery in response to this recommendation.

4. *The survey include questions asking respondents directly about their activity in the fishery instead of asking about trends the fisherman has observed in other fishermen.* The Coast Guard did not act on this recommendation because this survey approach was chosen deliberately to reduce social-desirability bias in responses.

5. *The survey include indications of whether different forms of Coast Guard enforcement has been encountered by*

the respondent. Since the Coast Guard has not adjusted the survey to the comment outlined in #4, this recommendation does not apply as respondents are not specifically asked about their own experiences with Coast Guard enforcement.

6. *The survey clarify what animals are managed under the Marine Mammal Protection Act.* The Coast Guard chose to not change this question because (1) an exhaustive list of all marine mammals fishermen are likely to encounter would be prohibitively long, and not listing marine mammals could prevent respondents from answering the question correctly and (2) the majority of fishermen already understand what species are covered under the Marine Mammal Protection Act..

7. *The Coast Guard modify the responses to the question ''If a National Marine Sanctuary exists in the area where you fish, how doe its existence impact the abundance of the fishery's target species?''* The Coast Guard has modified this question in response to this recommendation.

8. *The Coast Guard provide a single direct link to the survey that does not require respondents to go through the* **Federal Register**. This was the original intent of the Coast Guard, the PRA package has been modified to correctly reflect this.

9. *The Coast Guard include an option for paper surveys to be delivered by mail to those who request one.* Providing a paper survey option is cost prohibitive. The Coast Guard shares the respondent's desire to maximize the population for which this survey is accessible, and therefore will consider alternate options such as providing internet access during public events to complete the survey.

10. *The survey period be extended to better accommodate fishermen whose peak fishing coincides with the survey time.* The Coast Guard agrees with this comment and will keep the survey open for an adequate period of time to facilitate survey responses from all fisheries participants.

Information Collection Request

Title: Coast Guard Living Marine Resources (LMR) Enforcement Survey.

OMB Control Number: 1625–NEW.

Type of Request: New Collection.

Respondents: U.S. marine fishing permit holders and registered saltwater recreational fishermen.

Abstract: The purpose of this survey is to assess the effectiveness of various enforcement techniques available to the U.S. Coast Guard to promote compliance with federal LMR regulations. The results of this survey will ultimately allow the Coast Guard to link level and type of Coast Guard enforcement efforts with compliance decisions made by the regulated community.

Forms: None.

Burden Estimate: The estimated burden is 3,600 hours.

Dated: June 1, 2012.

R. E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2012–14124 Filed 6–8–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–565, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form N–565, Application for Replacement Naturalization/Citizenship Document; OMB Control No. 1615–0091.

The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act (PRA) of 1995. The information collection notice was previously published in the **Federal Register** on March 27, 2012, at 77 FR 18255, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection notice.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 11, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via email at *USCISFRComment@dhs.gov* or via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2006–0052, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov.* When submitting comments by email please make sure to add OMB Control Number 1615–0091 in the subject box. All submissions received must include the agency name and e-Docket ID number.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.Regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.Regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension, without change, of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Replacement Naturalization/Citizenship Document.

(3) *Agency form number, if any, and the applicable component of the*

Department of Homeland Security sponsoring the collection: Form N–565; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* Form N–565 is used to apply for a replacement of a Declaration of Intention, Certificate of Citizenship or Replacement Certificate, or to apply for a special certificate of naturalization as a U.S. citizen to be recognized by a foreign country.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 29,298 responses at 55 minutes (0.916) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 26,836 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do*, or call the USCIS National Customer Service Center at 1–800–375–5283.

We may also be contacted at: USCIS, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: June 5, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–14028 Filed 6–8–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5638–N–01]

Public Housing Assessment System (PHAS): Capital Fund Interim Scoring Notice; Request for Comment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice advises public housing agencies (PHAs), as well as members of the public, that HUD intends to award 5 points for the occupancy sub-indicator of the Capital Fund indicator to all PHAs for the Capital Fund Indicator under the PHAS interim rule published February 23, 2011. The award of 5 points is a temporary measure to address the transition to the scoring system implemented by the PHAS interim rule, especially as relates to the indicator that assesses occupancy rate. The 5 points for the occupancy sub-indicator will be awarded for fiscal years ending March 31, 2011, June 30, 2011, September 30, 2011, and December 31, 2011. The score already assigned to the sub-indicator on occupancy rate will be designated as an advisory score, but only for a period of one year that commences with the date of publication of this notice.

DATES: *Effective Date: June 11, 2012* .

Comment due date: July 11, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule. *No Facsimile Comments.* Facsimile (Fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 1–800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Claudia J. Yarus, Real Estate Assessment Center (REAC), Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone 202–475–8830 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339. Additional information is available from the REAC Internet site at *http://www.hud.gov/offices/reac/.*

SUPPLEMENTARY INFORMATION:

I. Background

The PHAS interim rule, published on February 23, 2011, at 76 FR 10136, became effective for PHAs with fiscal years ending March 31, 2011. The PHAS interim rule includes 10 point Capital Fund Program Indicator score, and scoring for this indicator is described in the Capital Fund Scoring Notice, also published on February 23, 2011, at 76 FR 10053. Under this indicator, PHAs can receive up to 5 points for the timeliness of fund obligation and up to 5 points for the occupancy rate.

Under the Capital Fund Scoring Notice, a PHA receives the full 5 points for the sub-indicator on timeliness of obligation if the PHA: (1) On the obligation end date, or extended date(s), obligates 90 percent or more of the grant amounts for all outstanding, open grants with obligation end dates in the assessed fiscal year: and (2) does not have any grants that have been sanctioned pursuant to section 9(j) of the United States Housing Act of 1937 (42 U.S.C. 1437g(j)) during the assessed fiscal year. If the PHA does not meet the above described requirements, the PHA receives 0 points for this indicator. For the occupancy rate sub-indicator, a PHA receives 0, 2, or 5 points based on its occupancy rate as of the last day of the PHA's fiscal year. The score is 0 points

for an occupancy rate of less than 93 percent, 2 points for an occupancy rate of 93 percent but less than 96 percent, and 5 points for an occupancy rate of 96 percent or greater.

II. Action

The PHAS interim rule is the first rule to assess and score PHAs under the asset management model. Because the rule was effective for PHA fiscal years ending the month following the February 2011 publication date in the **Federal Register**, HUD recognizes that PHAs may not have been fully prepared for the changes to the assessments, performance standards, and corresponding changes in scoring, specifically as relates to the sub-indicator that assesses the occupancy rate.

Accordingly, this notice advises that for PHA's with fiscal years ending March 31, 2011, June 30, 2011, September 30, 2011 and December 31, 2011, HUD is awarding all PHAs 5 points for the occupancy rate sub-indicator under the Capital Fund Program Indicator. The score already assigned for occupancy rate sub-indicator of the Capital Fund score is advisory only as of the effective date of this notice, and will remain advisory for a period of one year from the date of publication of this notice.

HUD welcomes public comment on the scoring adjustment HUD intends to take as provided in this notice.

Following expiration of the advisory score period HUD will issue revisions of the Capital Fund indicator scores, which will result in revised PHAS scores for certain PHAs, beginning on the effective date of this notice. HUD will publish a final notice after consideration of the public comments received in response to this notice.

Dated: June 5, 2012.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2012–14143 Filed 6–8–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[USGS–GX12WC00Com0001]

Agency Information Collection Activities: Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice; request for comments for a new information collection.

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC.

DATE: You must submit comments on or before August 10, 2012.

ADDRESSES: Please submit a copy of your comments to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7199 (fax); or *smbaloch@usgs.gov* (email). Use Information Collection Number 1028–NEW, Ash Fall Report in the subject line.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Peter Cervelli at 650–329–5188 or *pcervelli@usgs.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The USGS provides warnings and notification to the public of volcanic activity in the U.S. in order to reduce the loss of life, property, and economic and societal impacts. USGS will use reports entered in real time by respondents of ash fall in their local area to correct or refine ash fall forecasts as the ash cloud moves downwind. Retrospectively these reports will enable USGS to improve their ash fall models and further research into eruptive processes.

This project will create a database module and web interface allowing the public and Alaska Volcano Observatory (AVO) staff to enter reports of ash fall in their local area in real time and retrospectively following an eruptive event. Users browsing the AVO Web site during eruptions will be directed towards a web form allowing them to fill in ash fall information and submit the information to AVO.

Compiled ash fall reports will be available in real-time to AVO staff through the AVO internal Web site. A pre-formatted summary report or table that distills information received online will show ash fall reports in chronological order with key fields including (1) date and time of ash fall, (2) location, (3) positive or negative ash fall (4) name of observer, and (5) contact information should be easily viewable on the report so that calls for clarification can be made by AVO staff quickly and Operations room staff can visualize the information quickly.

Ash fall report data will also be displayed on a dynamic map interface and show positive (yes ash) and negative (no ash) ash fall reports by location. Ash fall reports (icons) will be publically displayed for a period of 24 hours and shaded differently as they age so that the age of reports is obvious.

The ash fall report database will help AVO track eruption clouds and associated fallout downwind. These reports from the public will also give scientists a more complete record of the amount and duration and other conditions of ash fall. Getting first-hand accounts of ash fall will support model ash fall development and interpretation of satellite imagery. AVO scientists will—as time allows—be able to contact the individuals using their entered contact information for clarification and details. Knowing the locations from which ash-fall reports have been filed will improve ash fall warning messages, AVO Volcanic Activity Notifications, and make fieldwork more efficient. AVO staff will be able to condense and summarize the various ash fall reports and forward that information on to emergency management agencies and the wider public. The online form will also free up resources during exceedingly busy times during an eruption, as most individuals currently phone AVO with their reports.

II. Data

Title: USGS Ash Fall Report.

OMB Control Number: 1028–NEW.

Type of Request: This is a new request.

Affected Public: General Public.

Respondent Obligation: Voluntary.

Frequency of Collection: On occasion, after each ash fall event.

Estimated Number and Description of Respondents: Approximately 200 individuals affected by a volcanic ash fall event each year.

Estimated Number of Responses: 250.

Annual Burden Hours: 21 hours.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: We estimate the public reporting burden will average 5 minutes per response. This includes the time for reviewing instructions, and answering a web-based questionnaire.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to, a

collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

III. Request for Comments

We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: June 1, 2012.

Leslie Holland-Bartels,

USGS Regional Executive, Alaska Area.

[FR Doc. 2012–14069 Filed 6–8–12; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L19100000–BJ0000–LRCME1R03155]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on July 11, 2012.

DATES: Protests of the survey must be filed before July 11, 2012 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009, *Marvin_Montoya@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Regional Director, Rocky Mountain Region, Bureau of Indian Affairs, Billings, Montana, and was necessary to determine tribal trust lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 36 N., R. 13 W.

The plat, in three sheets, representing the dependent resurvey of portions of the west boundary, the subdivisional lines and the subdivision of sections 15 and 20, and the adjusted original meanders of Duck Lake through sections 15, 16, 19, and 20, and the subdivision of sections 15, 16, 19, and 20, Township 36 North, Range 13 West, Principal Meridian, Montana, was accepted May 31, 2012.

We will place a copy of the plat, in three sheets, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in three sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in three sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

Steve L. Toth,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2012–14080 Filed 6–8–12; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA942000 L57000000 BX0000]

Filing of Plats of Survey: California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of lands described below are scheduled to be officially filed in the Bureau of Land Management California State Office, Sacramento, California, thirty (30) calendar days from the date of this publication.

ADDRESSES: A copy of the plats may be obtained from the California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, upon required payment.

Protest: A person or party who wishes to protest a survey must file a notice that they wish to protest with the California State Director, Bureau of Land Management, 2800 Cottage Way, Sacramento, California, 95825.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Services, Bureau of Land Management, California State Office, 2800 Cottage Way, Room W–1623, Sacramento, California 95825, (916) 978–4310.

SUPPLEMENTARY INFORMATION: These surveys were executed to meet the administrative needs of various federal agencies; the Bureau of Land Management, Bureau of Indian Affairs or Bureau of Reclamation. The lands surveyed are:

Mount Diablo Meridian, California

T. 10 S., R. 18 E., dependent resurvey and metes-and-bounds survey accepted March 30, 2012.

T. 8 N., R. 7 E., metes-and-bounds survey accepted April 25, 2012.

T. 42 N., R. 13 E., dependent resurvey and subdivision of sections 3 and 4 accepted May 14, 2012.

T. 29 S., R. 27 E., dependent resurvey, subdivision and metes-and-bounds survey accepted June 1, 2012.

San Bernardino Meridian, California

T. 14 S., R. 1 E., amended plat accepted May 17, 2012.

Authority: 43 U.S.C. chapter 3.

Dated: June 4, 2012.

Lance J. Bishop,

Chief Cadastral Surveyor, California.

[FR Doc. 2012–14122 Filed 6–8–12; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L14200000–BJ0000]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on July 11, 2012.

DATES: Protests of the survey must be filed before July 11, 2012 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009, *Marvin_Montoya@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Bureau of Land Management, Billings Field Office, Billings, Montana, and was necessary to determine Federal interest lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 9 S., R. 21 E.

The plat, in one sheet, representing the dependent resurvey of a portion of the West Boundary of the Crow Indian Reservation, Diminished, Township 9 South, Range 21 East, Principal Meridian, Montana, was accepted May 31, 2012.

We will place a copy of the plat, in one sheet, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in one sheet, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in one sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

Steve L. Toth,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2012–14044 Filed 6–8–12; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L19100000–BJ0000–LRCME1R03155]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on July 11, 2012.

DATES: Protests of the survey must be filed before July 11, 2012 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Blaise Lodermeier, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5128 or (406) 896–5009, *bloderme@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Regional Director, Bureau of Indian Affairs, Rocky Mountain Region, Billings, Montana, and was necessary to determine boundaries of trust or tribal interest lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 31 N., R. 14 E.

The plat, in two sheets, representing the dependent resurvey of a portion of the west boundary of the Fort Assiniboine Military Reservation (abandoned), a portion of the south boundary, and a portion of the subdivisional lines, the subdivision of sections 22, 23, 27, 34, and 35, and the survey of Parcel A in section 22, Township 31 North, Range 14 East, Principal Meridian, Montana, was accepted May 31, 2012.

We will place a copy of the plat, in two sheets, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in two sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in two sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

Steve L. Toth,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2012–14041 Filed 6–8–12; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES003420.L13200000.EL0000; WVES–50556; WVES–50560]

Notice of Availability of the Final Land Use Analysis and Final Environmental Impact Statement for the East Lynn Lake Coal Lease by Applications WVES–50556 and WVES–50560, Wayne County, West Virginia

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with National Environmental Policy Act of 1969 (NEPA) and the Federal Land Policy and Management Act of 1976 (FLPMA), the Bureau of Land Management (BLM) has prepared a Final Land Use Analysis (LUA) and Final Environmental Impact Statement (EIS) to analyze the potential impacts of two Federal Coal Lease By Applications (LBA) WVES–50556 and WVES–50560, totaling 13,089.55 acres at the U.S. Army Corps of Engineers' (USACE) East Lynn Lake Project in Wayne County, West Virginia.

DATES: The BLM planning regulations (43 CFR 1610.5–2 and 43 CFR 3420.1–4) state that any person who meets the conditions as described in the regulations may protest the BLM's Proposed Land Use Analysis. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency (EPA) publishes its notice in the **Federal Register.**

The BLM will not issue a final decision on the proposal for a minimum of 30 days following the EPA's publication of its Notice of Availability (NOA) of this document in the **Federal Register.**

ADDRESSES: Copies of the East Lynn Lake Project Final LUA/Final EIS have been sent to affected Federal, State, and local government agencies and to interested parties. Copies of the East Lynn lake Final LUA/Final EIS are available for public inspection at the following locations:

- Bureau of Land Management, Northeastern States Field Office, 626 East Wisconsin Avenue, Suite 200, Milwaukee, Wisconsin 53202
- U.S. Army Corps of Engineers, 502 Eight St., Huntington, West Virginia 25701
- U.S. Army Corps of Engineers, East Lynn Lake Visitor Center, HC85, East Lynn, West Virginia 25512
- Wayne County Library, 325 Keyser St., Wayne, West Virginia 25570

Interested persons may also review the Final LUA/Final EIS on the following Web site: *http://www.blm.gov/es/st/en/prog/east_lynn_lake_coal.html.* All protests must be in writing and mailed to the following addresses:

Regular Mail: Director (210), Attention: Brenda Williams, P.O. Box 71383, Washington, DC 20024–1383..	Overnight Mail: Director (210), Attention: Brenda Williams, 20 M. Street SE., Room 2134LM, Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Kurt Wadzinski, BLM Project Manager, at 414–297–4408, (*kwadzins@blm.gov*), Bureau of Land Management, 626 East Wisconsin Avenue, Suite 200, Milwaukee, WI 53202. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM is considering issuing coal leases as a result of applications made by Argus Energy WV LLC (Argus) and Rockspring Development Inc. (Rockspring) to lease the Federal coal in the East Lynn Lake Project area in Wayne County, West Virginia. Argus submitted a coal LBA (WVES–50556) to BLM for 7,639.63 acres bordering a portion of the southern shore of East Lynn Lake. Rockspring also submitted a coal LBA (WVES–50560) to BLM for 5,449.92 acres that border a portion of the north shore of the lake. The two applicants are proposing to use private existing underground mines to access the adjacent Federal coal. No mining would occur directly beneath the lake itself and no surface mining would take place. East Lynn Lake is located approximately 25 miles south of Huntington, West Virginia, and is managed by the USACE for flood control, recreation, and wildlife. The Final LUA/Final EIS analyzes and discloses to the public direct, indirect, and cumulative environmental impacts of issuing Federal coal leases in the East Lynn Lake Project area.

The State of West Virginia does not use the Public Land Rectangular Survey system to legally describe land tracts within the State. The State of West Virginia uses Metes and Bounds property descriptions. Consequently, to avoid numerous pages of lengthy legal descriptions, the Federal coal reserves encompassed by the LBAs are described below by referencing the USACE mineral-tract number the reserves fall within. It should be pointed out that referencing a mineral-tract number in the listing below does not necessarily mean the entire mineral tract is under application. More detailed property descriptions are available in the case files located in the BLM Northeastern States Field Office, see **ADDRESSES** above.

Argus, LBA WVES–50556

Mineral Tract Numbers: 77M–14; 177M–12; 177M–11; 177M–1; 745M; 746M; 808; 840M; 843M; 846M; 1140M; 1140; 1301; 1313M; 1717M; 1718M; 1810M; 1811M; 1813M; 2020M; 2321M; 2430M; 2431M; and 2737.

Approximately 7,639.63 in Wayne County, West Virginia.

Rockspring, LBA WVES–50560

Mineral Tract Numbers: 174M; 177M–2p; 177M–1; 184M; 376ME–2; 375M; 376ME–1; 377M; 378M; 380M; 381M; 382M; 384M; 386M; 390ME–1; 395M; 427M; 430M; 517A; 517B; 545M; 547M; 548M; 550M; 553M; 554M; 556M; 745M; 847M; 1450M; 1451M; 1452M; 1453M; 1717M and 1718M.

Approximately 5,449.92 in Wayne County, West Virginia.

Argus proposes to mine the Federal coal in the lease application area by underground methods extending from two of their existing underground mines located on private land to the south of the application area. Rockspring would similarly access their application area from their existing underground mine located on private lands north of their application area. The existing mines for Argus and Rockspring have approved mining and reclamation plans from the West Virginia Department of Environmental Quality (DEQ) and an approved air quality permit from the Air Quality Division of the West Virginia DEQ.

It is reasonable to expect that Rockspring may wish to conduct exploratory drilling on their area of interest. It is also reasonable to expect that both companies may need to drill additional holes for mine plan purposes if leases were to be issued and mine plans approved.

The Office of Surface Mining Reclamation and Enforcement (OSM), the USACE, and the West Virginia Division of Natural Resources (DNR) are cooperating agencies in the preparation of the Final LUA/Final EIS. The BLM is authorized to lease Federal coal under the Mineral Leasing Act as defined under 43 CFR 3480.0–5(a)(25) for federally owned coal at East Lynn Lake. The OSM, in cooperation with the State of West Virginia, issues mine permits under the Surface Mining Control and Reclamation Act.

The Final LUA/Final EIS analyzes leasing of the East Lynn Lake Federal coal tracts as the Proposed Action, and it is the agency's Preferred Alternative. Under the Proposed Action, a competitive sale would be held and two leases issued for Federal coal in the tracts as applied for by Argus and Rockspring. The Final LUA/Final EIS also analyzes the rejection of the applications to lease Federal coal as the No Action Alternative. These alternatives were developed through

issue identification during the scoping process. Such issues include: direct, indirect, and cumulative environmental impacts, protection of the East Lynn Lake including surface and groundwater water quality, integrity of the dam, cultural, social science, and economic impacts associated with commercial leasing of the Federal coal.

The Notice of Intent (NOI) to prepare a LUA/EIS for Federal coal leasing administered by the BLM in Wayne County, West Virginia was published in the **Federal Register** on July 14, 2005 (70 FR 40723). As originally stated in the NOI, the LUA/EIS is to evaluate the potential impacts associated with the commercial leasing of Federal coal in the East Lynn Lake Project area. A notice announcing the availability of the Draft LUA and Draft EIS and Notice of Public Hearing was published in the **Federal Register** by the EPA on June 27, 2008. A 90-day comment period on the Draft LUA/Draft EIS commenced with publication of the EPA's notice of availability, which would have ended on September 24, 2008. On September 9, 2008, a Notice of Extension was published in the **Federal Register** to extend the comment period an additional 45 days and this period ended on November 10, 2008. The BLM's **Federal Register** notice announced the date and time of the public hearing, which was held on July 31, 2008, in Wayne, West Virginia. The purpose of the hearing was to solicit comments on the Draft LUA/Draft EIS, the fair market value, and the maximum economic recovery of the Federal coal. Seven statements were given as testimony at the public hearing; they are summarized in an appendix in the Final LUA/Final EIS. During the Draft LUA/Draft EIS comment period, the BLM received 48 comment letters, included in an appendix to the Final LUA/Final EIS with BLM's responses to the comments. Comments on the Draft LUA/Draft EIS received from the public and internal BLM review were considered and incorporated as appropriate into the document. Public comments resulted in the addition of clarification text, but did not significantly change the Final LUA/Final EIS.

Instructions for filing a protest with the Director of the BLM regarding the Final LUA/Final EIS may be found in the Dear Reader Letter of the East Lynn Lake Project Final LUA/Final EIS and at 43 CFR 1610.5–2. Emailed and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the emailed or faxed protest as an advance copy and the comment will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at (202) 912–7212, and emails to *bhudgens@blm.gov.*

All protests, including the follow-up letter (if emailing or faxing) must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above.

Before including your phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Mike Pool,

Acting Director.

[FR Doc. 2012–14180 Filed 6–8–12; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0512–10390; 2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before May 12, 2012. Pursuant to section 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by June 26, 2012. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 22, 2012.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ARKANSAS

Pulaski County

Donaghey Building, 103 E. 7th St, 703 S. Main St., Little Rock, 12000355

CONNECTICUT

Fairfield County

Kellogg, Enos, House, 210 Ponus Ave. Ext., Norwalk, 12000356

LeRoy Shirt Company Factory, 11 Chestnut St., Norwalk, 12000357

Hartford County

Congregational Church of Plainville, 130 W. Main St., Plainville, 12000358

Hotel America, 5 Constitution Ave., Hartford, 12000359

Kensington Grammar School—Jean E. Hooker High School, 462 Alling St., Berlin, 12000360

Litchfield County

Anderson, Leroy, House, 33 Grassy Hill Rd., Woodbury, 12000361

FLORIDA

Monroe County

African Cemetery at Higgs Beach, 1001 Atlantic Blvd., Key West, 12000362

Pinellas County

Bay Pines Veterans Administration Home and Hospital Historic District, (United States Second Generation Veterans Hospitals MPS) 10000 Bay Pines Blvd., Bay Pines, 12000363

Sarasota County

Rudolph, Paul, Sarasota High School Addition, (Sarasota School of Architecture MPS) 1000 School Ave., S., Sarasota, 12000365

St. Johns County

Constitution Obelisk, Plaza de la Constitution, St. Augustine, 12000364

NEW YORK

Columbia County

Baldwin, Daniel and Clarissa, House, 1018 Dugway Rd., Spencertown, 12000366

Niagara County

First Presbyterian Manse, 162 Buffalo Ave., Niagara Falls, 12000367

Washington County

Maxwell Farm, 311 Cty. Rd. 61, Jackson, 12000368

Wyoming County

First Free Will Baptist Church of Pike, 72 Main St., Pike, 12000369

SOUTH CAROLINA

Cherokee County

Mulberry Chapel Methodist Church, 582 Asbury Rd., Pacolet, 12000370

Greenville County

Montgomery, E.W., Cotton Warehouse, 806 Green Ave., Greenville, 12000371

Taylor, Earle R., House and Peach Packing Shed, 1001 Locust Hill Rd., Greer, 12000372

Spartanburg County

Evans, Frank, High School, 142 S. Dean St., Spartanburg, 12000373

VIRGINIA

Hampton Independent city

NASA Langley Research Center Historic District, Roughly bounded by Wythe Creek Rd., Commander Shepard Blvd., Brick Kiln Cr., & Langley AFB, Hampton (Independent City), 12000374

[FR Doc. 2012–14029 Filed 6–8–12; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Environmental Documents Prepared for Oil, Gas, and Mineral Operations by the Gulf of Mexico Outer Continental Shelf (OCS) Region

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals by the Gulf of Mexico OCS Region

SUMMARY: BOEM, in accordance with Federal Regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEAs), Environmental Assessments (EAs), and Findings of No Significant Impact (FONSIs). These EAs were prepared during the period January 1, 2012, through March 30, 2012, for oil, gas, and mineral-related activities that were proposed on the Gulf of Mexico, or more specifically described in the Supplementary Information Section of this notice.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 250, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF.

SUPPLEMENTARY INFORMATION: BOEM prepares SEAs and FONSIs for proposals that relate to exploration, development, production, and transport of oil, gas, and mineral resources on the Federal OCS. These SEAs examine the potential environmental effects of activities described in the proposals and present BOEM conclusions regarding the significance of those effects. The EAs are used as a basis for determining whether or not approval of the proposals constitutes a major Federal action that significantly affects the quality of the human environment in accordance with NEPA Section 102(2)(C). A FONSI is prepared in those instances where BOEM finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Activity/operator	Location	Date
GX Technology, Geological & Geophysical Survey, SEA L11–022.	Located in the Central Planning Area of the Gulf of Mexico	1/5/2012
Noble Energy, Inc., Exploration Plan, SEA R–5295.	Located southeast of Venice, Louisiana, 67 miles from the nearest Louisiana shoreline, in Plaquemines Parish, Louisiana.	1/9/2012
Anadarko Petroleum Corporation, Exploration Plan, SEA N–9579.	Located southwest of Port Fourchon, Louisiana, 118 miles from the nearest Louisiana shoreline.	1/10/2012
Shell Offshore Inc., Exploration Plan, SEA S–7523.	Located south of Mobile, Alabama, 75 miles from the nearest Louisiana shoreline	1/11/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 11–333.	South Timbalier, Block 34, Lease OCS–G 04842, located 9 miles from the nearest Louisiana shoreline.	1/12/2012
WesternGeco LLC, Geological & Geophysical Survey, SEA T11–002.	Located East of Texas, in the Western Planning Area of the Gulf of Mexico	1/13/2012
WesternGeco LLC, Geological & Geophysical Survey, SEA T11–003.	Located in the Central Planning Area of the Gulf of Mexico	1/13/2012
Walter Oil & Gas Corporation, Exploration Plan, SEA R–5430.	Located in the Western Planning Area, 35 miles from the nearest Louisiana shoreline, south of Calcasieu Parish, Louisiana.	1/13/2012
Maritech Resources, Inc., Structure Removal, SEA ES/SR 11–318, 11–319 & 11–320.	South Marsh Island, Block 48, Lease OCS–G 00786, located 45 miles from the nearest Louisiana shoreline.	1/13/2012
ATP Oil & Gas Corporation, Development Operations Coordination Document, SEA S-7437.	Mississippi Canyon, Block 711, Lease OCS–G 14016, located in the Central Planning Area, 49 miles from the nearest Louisiana shoreline.	1/18/2012
Shell Offshore Inc., Geological and Geophysical Survey, SEA L11–020.	Located in the Central Planning Area of the Gulf of Mexico	1/20/2012
Chevron U.S.A. Inc., Geological and Geophysical Survey, SEA L11–021.	Located in the Central Planning Area of the Gulf of Mexico	1/23/2012
Shell Offshore Inc., Exploration Plan, SEA R–5401.	Alaminos Canyon, Block 857, located 140 miles from the nearest Texas shoreline	1/24/2012
LLOG Exploration Offshore, L.L.C., Exploration Plan, SEA R–5416.	Mississippi Canyon, Block 431, located 55 miles from the nearest Louisiana shoreline.	1/24/2012
Shell Offshore Inc., Geological & Geophysical Survey, SEA L11–023.	Located in the Central Planning Area of the Gulf of Mexico	1/26/2012
Anadarko Petroleum Corporation, Exploration Plan, SEA S–7527.	Mississippi Canyon, Block 875, located 89 miles from the nearest Louisiana shoreline.	1/26/2012

Activity/operator	Location	Date
Pisces Energy LLC, Structure Removal, SEA ES/SR 11–217 & 11–218.	South Timbalier, Block 162, Lease OCS–G 01249, located 33 miles from the nearest Louisiana shoreline.	1/26/2012
Pisces Energy LLC, Structure Removal, SEA ES/SR 11–216.	Viosca Knoll, Block 76, Lease OCS–G 09737, located 21 miles from the nearest Alabama shoreline.	1/27/2012
Palm Energy Offshore, L.L.C., Structure Removal, SEA ES/SR 11–239.	West Cameron, Block 538, Lease OCS–G 02552, located 93 miles from the nearest Louisiana shoreline.	1/27/2012
Hess Corporation, Development Operations Coordination Document, SEA N–9565.	Mississippi Canyon, Block 725 & 726, Lease OCS–G 22898 & 24101, located 56 miles from the nearest Louisiana shoreline, southeast of Port Fourchon, Lafourche Parish, Louisiana.	1/31/2012
Anadarko Petroleum Corporation, Exploration Plan, SEA R–5445.	Green Canyon, Block 903, located 130 miles from the Louisiana shoreline, south of Terrebonne Parish, Louisiana.	2/2/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 12–049.	South Pass, Block 38, Lease OCS–G 21695, located 11 miles from the nearest Louisiana shoreline.	2/2/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 12–057.	South Timbalier, Block 71, Lease OCS–G 14519, located 19 miles from the nearest Louisiana shoreline.	2/2/2012
Palm Energy Offshore, L.L.C., Structure Removal, SEA ES/SR 11–240.	West Cameron, Block 538, Lease OCS–G 02552, located 99 miles from the nearest Louisiana shoreline.	2/3/2012
W & T Offshore, Inc., Structure Removal, SEA ES/SR 05–046A.	West Cameron, Block 554, Lease OCS–G 07629, located 80 miles from the nearest Louisiana shoreline.	2/3/2012
Shell Offshore Inc., Exploration Plan, SEA N–9600.	Mississippi Canyon, Block 525, located 79 miles from the nearest Louisiana shoreline, south of Venice, Louisiana, in Plaquemines Parish, Louisiana.	2/6/2012
Anadarko Petroleum Corporation, Exploration Plan, SEA N–9589.	Lloyd Ridge, Block 177, located 113 miles from the nearest Louisiana shoreline, south of Mobile, Alabama.	2/9/2012
Tesla Offshore, LLC, Geological & Geophysical Survey, SEA L11–024.	Located in the Central Planning Area of the Gulf of Mexico	2/10/2012
Fugro Multi Client Services, Inc., Geological & Geophysical Survey, SEA M12–001.	Located in the Eastern Planning Area of the Gulf of Mexico	2/10/2012
Statoil USA E&P Inc., Exploration Plan, SEA R–5444.	Green Canyon, Block 404, located 118 miles from the nearest Louisiana shoreline	2/13/2012
Cobalt International Energy, L.P., Exploration Plan, SEA R–5414.	Green Canyon, Block 814, located 130 miles from the nearest Louisiana shoreline, south of Terrebonne Parish, Louisiana.	2/13/2012
Dynamic Offshore Resources, LLC, Structure Removal, SEA ES/SR 11–222.	Ship Shoal, Block 253, Lease OCS–G 01031, located 47 miles from the nearest Louisiana shoreline.	2/13/2012
Fairways Offshore Exploration, Inc., Structure Removal, SEA ES/SR 11–325.	High Island, Block 154, Lease OCS–G 23611, located 22 miles from the nearest Texas shoreline.	2/14/2012
Anadarko Petroleum Corporation, Exploration Plan, SEA S–7513.	Walker Ridge, Block 51, located 152 miles from the nearest Louisiana shoreline, south of Terrebonne Parish, Louisiana.	2/14/2012
Apache Corporation, Structure Removal, SEA ES/SR 12–021.	Eugene Island, Block 105, Lease OCS–00797, located 22 miles from the nearest Louisiana shoreline.	2/16/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 11–306.	South Marsh Island, Block 15, Lease OCS–G 09534, located 43 miles from the nearest Louisiana shoreline.	2/16/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 11–334.	South Timbalier, Block 30, Lease OCS–G 13928, located 13 miles from the nearest Louisiana shoreline.	2/16/2012
Noble Energy, Inc., Exploration Plan, SEA N-9599.	Mississippi Canyon, Block 697, Lease OCS–G 28021, located 68 miles from the nearest Louisiana shoreline.	2/17/2012
Noble Energy, Inc., Exploration Plan, SEA S–7521.	Green Canyon, Blocks 723 & 679, Leases OCS-G 21813 & 21811, located 122 miles from the nearest Louisiana shoreline.	2/23/2012
Chevron U.S.A. Inc., Development Operations Coordination Document, SEA N-9580.	Walker Ridge, Block 718, located 195 miles from the nearest Louisiana shoreline, southwest of Port Fourchon, Louisiana.	2/23/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 11–315.	East Cameron, Block 184, Lease OCS–G 21579, located 57 miles from the nearest Louisiana shoreline.	2/24/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 11–314.	East Cameron, Block 185, Lease OCS–G 22585, located 60 miles from the nearest Louisiana shoreline.	2/24/2012
Apache Corporation, Structure Removal, SEA ES/SR 12–022, 12–023 & 12–024.	South Pelto, Block 10, Lease OCS–G 02925, located 5 miles from the nearest Louisiana shoreline.	2/24/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 11–303.	South Timbalier, Block 145, Lease OCS–G 26098, located 33 miles from the nearest Louisiana shoreline.	2/24/2012
Wild Well Control, Inc., Structure Removal, SEA ES/SR 11–220A.	West Delta, Block 69, Lease OCS 00181, located 23 miles from the nearest Louisiana shoreline.	2/24/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 12–098.	Ship Shoal, Block 97, Lease OCS–G 24922, located 13 miles from the nearest Louisiana shoreline.	3/2/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 12–099.	South Timbalier, Block 11, Lease OCS–G 13925, located 100 miles from the nearest Louisiana shoreline.	3/2/2012
Mariner Energy Resources, Inc., Structure Removal, SEA ES/SR 12–037.	Vermilion, Block 35, Lease OCS–G 00548, located 7 miles from the nearest Louisiana shoreline.	3/2/2012
Mariner Energy Resources, Inc., Structure Removal, SEA ES/SR 12–038.	Vermilion, Block 35, Lease OCS–G 00548, located 7 miles from the nearest Louisiana shoreline.	3/2/2012
Mariner Energy Resources, Inc., Structure Removal, SEA ES/SR 12–003.	South Marsh Island, Block 11, Lease OCS–G 01182, located 37 miles from the nearest Louisiana shoreline.	3/7/2012
Fugro Multi Client Services, Inc., Geological & Geophysical Survey, SEA L11–017.	Located in the Central Planning Area of the Gulf of Mexico	3/8/2012

Activity/operator	Location	Date
Chevron U.S.A. Inc., Exploration Plan, SEA S–7531.	Keathley Canyon, Blocks 828, 829 & 872, located 211 miles from the nearest Louisiana shoreline.	3/9/2012
Mariner Energy Resources, Inc., Structure Structure Removal, SEA ES/SR 12–040.	Vermilion, Block 35, Lease OCS–G 00548, located 7 miles from the nearest Louisiana shoreline.	3/14/2012
Mariner Energy Resources, Inc., Structure Removal, SEA ES/SR 12–039.	Vermilion, Block 35, Lease OCS–G 00549, located 7 miles from the nearest Louisiana shoreline.	3/14/2012
BP Exploration & Production Inc., Exploration Plan, SEA R–5440.	Green Canyon, Block 744, located 122 miles from the nearest Louisiana shoreline	3/21/2012
Cobalt International Energy, L.P., Exploration Plan, SEA R–5396.	Keathley Canyon, Blocks 163 & 207, Leases OCS–G 32606 & 32610, located 179 miles from the nearest Louisiana shoreline.	3/21/2012
GOM Shelf LLC, Structure Removal, SEA ES/SR 10–040A.	Grand Isle, Block 48, Lease OCS 00134, located 15 miles from the nearest Louisiana shoreline.	3/23/2012
Energy Resources Technology GOM, Inc., Structure Removal, SEA ES/SR 11–305.	South Timbalier, Block 63, Lease OCS–G 00599, located 15 miles from the nearest Louisiana shoreline.	3/23/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 11–311.	South Timbalier, Block 63, Lease OCS–G 00599, located 18 miles from the nearest Louisiana shoreline.	3/23/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 11–312.	South Timbalier, Block 63, Lease OCS–G 00599, located 18 miles from the nearest Louisiana shoreline.	3/23/2012
BHP Billiton Petroleum (GOM) Inc., Exploration Plan, SEA N–9607.	Green Canyon, Blocks 676 & 632, Leases OCS-G 32525 & 25177, located 122 miles to the nearest Louisiana shoreline.	3/27/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 11–304.	South Timbalier, Block 63, Lease OCS–G 00599, located 18 miles from the nearest Louisiana shoreline.	3/27/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 11–307.	South Timbalier, Block 63, Lease OCS–G 00599, located 18 miles from the nearest Louisiana shoreline.	3/27/2012
Shell Offshore Inc., Development Operations Coordination Document, SEA R–5331.	Mississippi Canyon, Block 809, located 53 miles from the nearest Louisiana shoreline, south of Boothville, Louisiana.	3/28/2012
Prime Offshore L.L.C., Structure Removal, SEA ES/SR 12–087.	South Padre Island, Block 1111, Lease OCS–G 24300, located 11 miles from the nearest Texas shoreline.	3/28/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 11–308.	South Timbalier, Block 63, Lease OCS–G 00599, located 18 miles from the nearest Louisiana shoreline.	3/28/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 11–309.	South Timbalier, Block 63, Lease OCS–G 00599, located 18 miles from the nearest Louisiana shoreline.	3/28/2012
Chevron U.S.A. Inc., Structure Removal, SEA ES/SR 12–051, 12–052, 12–053 & 12-054.	Eugene Island, Block 74, Lease OCS–G 02099, located 18 miles from the nearest Louisiana shoreline.	3/29/2012
LLOG Exploration Offshore, L.L.C., Structure Removal, SEA ES/SR 12–125.	High Island, Block 156, Lease OCS–G 27507, located 24 miles from the nearest Texas shoreline.	3/29/2012
Hilcorp Energy GOM, LLC, Structure Removal, SEA ES/SR 11–169 & 11–170.	West Cameron, Block 643, Lease OCS–G 02241, located 128 miles from the nearest Louisiana shoreline.	3/29/2012
FairfieldNodal, Geological & Geophysical Survey, SEA L12–003.	Located in the Central Planning Area of the Gulf of Mexico	3/30/2012
EMGS Americas Inc., Geological and Geophysical Survey, SEA M09–013.	Located in the Eastern Planning Area of the Gulf of Mexico	3/30/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 11–310.	South Timbalier, Block 63, Lease OCS 00599, located 18 miles from the nearest Louisiana shoreline.	3/30/2012
JX Nippon Oil Exploration (U.S.A.) Limited, Structure Removal, SEA ES/SR 12–097.	West Cameron, Block 551, Lease OCS–G 02555, located 99 miles from the nearest Louisiana shoreline.	3/30/2012

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about SEAs, EAs and FONSIs prepared by the Gulf of Mexico OCS Region are encouraged to contact BOEM at the address or telephone listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: May 11, 2012.

John Rodi,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 2012–14092 Filed 6–8–12; 8:45 am]

BILLING CODE 4310–VH–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–756]

Certain Reduced Ignition Proclivity Cigarette Paper Wrappers and Products Containing Same Termination of Investigation With Final Determination of No Violation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate the above-captioned investigation with a final determination of no violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337'').

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 27, 2011, based on a complaint filed by Schweitzer-Mauduit International, Inc. (''Schweitzer'') of Alpharetta, Georgia. 76 FR 4935 (January 27, 2011). The complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the sale for importation, importation, or sale after importation of certain reduced ignition proclivity cigarette paper wrappers and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 5,878,753 (''the '753 patent'') and 6,725,867 (''the '867 patent''). The Commission's notice of investigation named Astra Tobacco Corporation of Chapel Hill, North Carolina; delfortgroup AG of Traun, Austria; LIPtec GmbH of Neidenfels, Germany; and Julius Glatz GmbH of Neidenfels, Germany as respondents.

On April 15, 2011, the Commission issued notice of its determination not to review an ID (Order No. 5) granting Schweitzer's motion to amend the complaint and notice of investigation to add seven more respondents: Dr. Franz Feurstein GmbH of Traun, Austria; Papierfabrik Wattens GmbH & Co. KG of Wattens, Austria; Dosal Tobacco Corp. of Miami, Florida; Farmer's Tobacco Co. of Cynthia, Kentucky; KneX Worldwide, LLC of Charlotte, North Carolina; S&M Brands, Inc. of Keysville, Virginia; Tantus Tobacco LLC of Russell Springs, Kentucky.

On December 1, 2011, the Commission determined not to review an ID (Order No. 30) of the administrative law judge terminating Respondents delfortgroup AG, Dr. Franz Feurstein GmbH, Papierfabrik Wattens GmbH & Co. KG, Astra Tobacco Corp., Dosal Tobacco Corp., Farmer's Tobacco Co., S&M Brands, Inc., and Tantus Tobacco LLC (collectively, the ''Delfort Respondents'') from the investigation. Respondents Julius Glatz GmbH, LIPtec GmbH, and KneX Worldwide LLC (collectively, ''Glatz'') remain in the investigation.

An evidentiary hearing was held from October 31, 2011, to November 8, 2011. On February 1, 2012, the presiding administrative law judge issued a final initial determination finding no violation of section 337 in the above-identified investigation. Specifically, the ALJ found that there was no violation with respect to either the '753 patent or the '867 patent by Glatz. The ALJ also issued a recommended determination on remedy, the public interest, and bonding.

Schweitzer filed a petition for review of the final ID. Glatz filed a contingent petition for review. Each of the parties filed a response to the petition and contingent petition for review.

On April 2, 2012, the Commission issued notice of its determination to review the final ID in part, and to solicit briefing on certain issues including on remedy, the public interest, and bonding. With respect to the '753 patent, the Commission determined to review the construction of the term ''gradually'' in the asserted claims and the issues of direct and indirect infringement, obviousness, definiteness, utility, and the technical prong of the domestic industry requirement in the ID. With respect to the '867 patent, the Commission determined to review the construction of the term ''film forming composition'' in the asserted claims and the issues of direct and indirect infringement, priority date, statutory bar under 35 U.S.C. 102(b), anticipation, obviousness, written description, enablement, and the technical prong of the domestic industry requirement in the ID.

Having reviewed the final ID, the submissions on review, and the record, the Commission has determined to terminate the investigation with a final determination of no violation of section 337.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and under sections 210.42–.46, .51(a) of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.46, .51(a)).

By order of the Commission.

Issued: June 5, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–14063 Filed 6–8–12; 8:45 am]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (a portion of which will be open to the public) in Washington, DC, on July 9 and July 10, 2012.

DATES: Monday, July 9, 2012, from 9:00 a.m. to 5:00 p.m., and Tuesday, July 10, 2012, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202–622–8225.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, on Monday, July 9, 2012, from 9:00 a.m. to 5:00 p.m., and Tuesday, July 10, 2012, from 8:30 a.m. to 5:00 p.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the May 2012 Basic (EA–1) and Pension (EA–2B) Joint Board Examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the November 2012 Pension (EA–2A) Examination will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions that may appear on the Joint Board's examinations and the review of the May 2012 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1:00 p.m. on July 10 and will continue for as long as necessary to complete the discussion, but not beyond 3:00 p.m. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements must notify the Executive Director in writing prior to the meeting in order to aid in scheduling the time available and must

submit the written text, or at a minimum, an outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. All other persons planning to attend the public session must also notify the Executive Director in writing to obtain building entry. Notifications of intent to make an oral statement or to attend must be faxed, no later than July 2, 2012, to 202–622–8300, Attn: Executive Director. Any interested person also may file a written statement for consideration by the Joint Board and the Committee by sending it to: Executive Director, Joint Board for the Enrollment of Actuaries; SE:RPO, Room 7550; Internal Revenue Service; 1111 Constitution Avenue NW., Washington, DC 20224.

Dated: June 5, 2012.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2012–14004 Filed 6–8–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 06–12]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Wednesday, June 20, 2012: 1:00 p.m.—Oral hearings on Objection to Commission's Proposed Decisions in Claim No. LIB–II–175; 2:00 p.m.—LIB–II–064.

3:00 p.m.—Issuance of Proposed Decisions in claims against Libya;

Thursday, June 21, 2012: 10:00 a.m.—LIB–II–092; 11:00 a.m.–LIB–II–093; 12:00 noon—LIB–II–097.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Judith H. Lock, Executive Officer, Foreign Claims Settlement Commission, 600 E Street NW., Suite 6002, Washington, DC 20579. Telephone: (202) 616–6975.

Jaleh F. Barrett,

Chief Counsel.

[FR Doc. 2012–14249 Filed 6–7–12; 4:15 pm]

BILLING CODE 4410–BA–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; General Inquiries to State Agency Contacts

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, ''General Inquiries to State Agency Contacts,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before July 11, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–BLS, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The BLS awards funds to State Agencies in order to assist them in operating Labor Market Information and/or Occupational Safety and Health Statistics Federal/State cooperative statistical programs. To ensure a timely flow of data and to be able to evaluate and improve the programs it is necessary to conduct ongoing communications between the BLS and State partners dealing with, for example, deliverables, program enhancements, and administrative issues.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1220–0168. The current OMB approval is scheduled to expire on August 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on February 27, 2012 (77 FR 11593).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1220–0168. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–BLS.

Title of Collection: General Inquiries to State Agency Contacts.

OMB Control Number: 1220–0168.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 54.

Total Estimated Number of Responses: 23,890.

Total Estimated Annual Burden Hours: 15,927.

Total Estimated Annual Other Costs Burden: $0.

Dated: June 5, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–14058 Filed 6–8–12; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Prohibited Transaction Exemption 90–1, Insurance Company Pooled Separate Accounts

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Prohibited Transaction Exemption 90–1; Insurance Company Pooled Separate Accounts,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before July 11, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: Prohibited Transaction Exemption (PTE) 90–1, Insurance Company Pooled Separate Accounts, provides an exemption from certain provisions of the Employee Retirement Income Security Act of 1974 (ERISA) relating to transactions involving insurance company pooled separate accounts in which employee benefit plans participate. Without the exemption, ERISA sections 406 and 407(a) and Internal Revenue Code section 4975(c)(1) might prohibit a party in interest to a plan from furnishing goods or services to an insurance company pooled separate account in which the plan has an interest or prohibit engaging in other transactions. Under the exemption, persons who are parties in interest to a plan that invests in a pooled separate account, such as a service provider, may engage in otherwise prohibited transactions with the separate account if the plan's participation in the separate account does not exceed specified limits and other conditions are met. These other conditions include a requirement that the party in interest not be the insurance company, or an affiliate thereof, that holds the plan assets in its pooled separate account or other separate account. The terms of the transaction to which the exemption is applied must be at least as favorable to the pooled separate account as those that would be obtained in a separate arms-length transaction with an unrelated party, and the insurance company must maintain records of any transaction to which the exemption applies for a period of six years. This ICR covers the recordkeeping requirement. This ICR seeks extension of the authority for the information collection without revising it.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1210–0083. The current OMB approval is scheduled to expire on August 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on April 5, 2012 (77 FR 20650).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1210–0083. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: Insurance Company Pooled Separate Accounts.

OMB Control Number: 1210–0083.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 64.

Total Estimated Number of Responses: 640.

Total Estimated Annual Burden Hours: 107.

Total Estimated Annual Other Costs Burden: $0.

Dated: June 5, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–14085 Filed 6–8–12; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

National Industrial Security Program Policy Advisory Committee (NISPPAC)

AGENCY: National Archives and Records Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulation 41 CFR 101–6, announcement is made for the following committee meeting. To discuss National Industrial Security Program policy matters.

DATES: This meeting will be held on Wednesday, July 11, 2012 from 10:00 a.m. to 12:00 p.m.

ADDRESSES: National Archives and Records Administration, 700 Pennsylvania Avenue NW., Archivist's Reception Room, Room 105, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: David O. Best, Senior Program Analyst, ISOO, National Archives Building, 700 Pennsylvania Avenue NW., Washington, DC 20408, telephone number (202) 357–5123, or at *david.best@nara.gov.* Contact ISOO at *ISOO@nara.gov* and the NISPPAC at *NISPPAC@nara.gov.*

SUPPLEMENTARY INFORMATION: This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than Friday, July 6, 2012. ISOO will provide additional instructions for gaining access to the location of the meeting.

Dated: June 4, 2012.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 2012–14007 Filed 6–8–12; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings: June 2012

TIME AND DATES:

All meetings are held at 2:30 p.m.
Tuesday, June 12;
Wednesday, June 13;
Thursday, June 14;
Tuesday, June 19;
Wednesday, June 20;
Thursday, June 21;
Tuesday, June 26;
Wednesday, June 27;
Thursday, June 28.

PLACE: Board Agenda Room, No. 11820, 1099 14th St., NW., Washington DC 20570.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider ''the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition * * * of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto.'' See also 5 U.S.C. 552b(c)(10).

DATED: June 7, 2012.

CONTACT PERSON FOR MORE INFORMATION: Lester A. Heltzer, Executive Secretary, (202) 273–1067

Lester A. Heltzer,

Executive Secretary.

[FR Doc. 2012–14236 Filed 6–7–12; 4:15 pm]

BILLING CODE 7545–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0022]

Branch Technical Position on Concentration Averaging and Encapsulation

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft Branch Technical Position; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is soliciting public comments on a revised draft Revision 1 of its Branch Technical Position on Concentration Averaging and Encapsulation (CA BTP). An earlier draft was completed in August 2011 and made available to the public in September 2011 (ADAMS Accession No. ML112061191). The NRC staff held a workshop in Albuquerque, New Mexico, on October 20, 2011, to receive public comments. This revised draft addresses the stakeholder comments received at the workshop, and others received after the workshop. After receiving and addressing public comments on this revised draft, the staff will finalize the CA BTP to replace the 1995 version now in effect.

DATES: Submit comments by October 8, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2011–0022. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0022. Address questions about NRC dockets to Carol Gallagher; telephone: (301) 492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: James Kennedy, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6668; email: *James.Kennedy@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2011–0022 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0022.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document

is provided the first time that a document is referenced.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2011–0022 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov,* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

Revising the CA BTP was ranked as a high priority in the NRC staff's Commission paper, SECY–07–0180, ''Strategic Assessment of Low-Level Radioactive Waste Regulatory Program,'' ADAMS Accession No. ML071350291. The existing version of the CA BTP, published in 1995, (ADAMS Accession No. ML033630732) is not fully risk-informed and performance-based, and does not always describe the bases for its concentration averaging positions. It also needs to be revised to incorporate new provisions related to blending of low-level waste (LLW), as directed by the Commission in its Staff Requirements Memorandum for SECY–10–0043, ''Blending of Low-Level Radioactive Waste,'' (ADAMS Accession No. ML102861764).

The NRC's regulations at Title 10 of the *Code of Federal Regulations* (10 CFR) Part 61, ''Licensing Requirements for Land Disposal of Radioactive Waste,'' establishes a waste classification system based on the concentration of specific radionuclides contained in the waste. The regulations in 10 CFR 61.55(a)(8) state that ''[t]he concentration of a radionuclide [in waste] may be averaged over the volume of the waste, or weight of the waste if the units [on the values tabulated in the concentration tables] are expressed as nanocuries per gram.'' The purpose of the waste classification system is to contribute to protection of individuals that inadvertently intrude into a waste disposal facility, a requirement in the NRC's disposal regulations at 10 CFR 61.42. Waste is classified according to the hazard it presents to an inadvertent intruder, and risk to the intruder is managed by having increased disposal facility control measures, such as depth of disposal, as the hazard increases. The concentration averaging provisions of the 1995 CA BTP were specifically developed to ensure that individual items (e.g., disused sealed sources or other radiological ''hot spots'') with significantly greater radioactivity than the average activity in a package are safely disposed. Constraints on radiological hot spots are needed to ensure intruder protection, and the CA BTP identifies these constraints.

The NRC staff initially developed a technical position on radioactive waste classification in May 1983 (ADAMS Accession No. ML033630755). That technical position paper described overall procedures acceptable to NRC staff which could be used by licensees to determine the presence and concentrations of the radionuclides listed in 10 CFR 61.55, and thereby classify waste for near-surface disposal. In 1995, the NRC staff published the CA BTP, expanding on Section C.3, ''Concentration Volumes and Masses,'' (i.e., concentration averaging) of the 1983 Technical Position. The 1995 CA BTP recommended constraints on averaging of homogeneous waste types [1] (e.g., ion exchange resins, soil, ash), mixtures of discrete items (such as irradiated reactor hardware) and sealed sources for the purposes of ensuring intruder protection against hot spots, as well as constraining the amount of averaging that licensees could perform that would lower the classification of wastes.

There have been a number of changes in the LLW program since the 1995 CA BTP was published; these changes were drivers for the current revision. First, the Commission reviewed the CA BTP's position on blending of LLW. The 1995 version constrained the concentration of input waste streams to mixtures of mixable wastes (i.e., waste that is not composed of discrete items) to within a factor of 10 of the average concentration of the final mixture. Also, the 1995 version does not constrain mixing of these wastes if operational efficiency or worker exposures were affected by the blending. The Commission directed the staff to implement a risk-informed, performance-based approach for LLW blending that made the hazard (i.e., the radioactivity concentration) of the final mixture, the primary consideration for averaging constraints. Second, the NRC adopted a risk-informed, performance-based regulatory approach for its programs in the late 1990's, after the 1995 CA BTP was published. This new revision of the CA BTP more fully reflects that regulatory approach, not just for the blending positions, but for all of the other topics it addresses as well. Finally, the 1995 CA BTP significantly constrained disposal of encapsulated sealed sources below the Class B and C limits in the 10 CFR 61.55 waste classification tables. The threat of a radiological dispersal device using sealed radioactive sources caused the staff to re-examine the 1995 assumptions underlying the radioactivity constraints on sealed source disposal, and to better balance the risk associated with inadvertent intrusion with national security and safety issues associated with sealed sources that have no disposal pathway. Licensees must store sealed sources for potentially long periods of time if there is no disposal option, and the sources are subject to loss or abandonment. The CA BTP's revised positions will allow for disposal of more sealed sources than the 1995 CA BTP which will enhance national security by ensuring that the safest and most secure method to manage them is available to licensees.

III. Stakeholder Comments on the August 2011 Draft CA BTP

The draft Revision 1 of the CA BTP that is being made available for public comment is a revision to an August 2011 draft that was provided to the NRC's Advisory Committee on Reactor Safeguards (ACRS) for review and comment. The NRC staff briefed the ACRS on October 4 and December 1, 2011, and the ACRS provided their views to the Commission in a December 13, 2011, letter (ADAMS Accession No. ML11354A407). The NRC staff also held a public meeting to solicit comments on the August 2011 draft in Albuquerque, New Mexico, on October 20, 2011. The meeting summary is in ADAMS Accession No. ML113330167. At that meeting, stakeholders requested that

[1] Waste in which the concentrations of radionuclides of concern are likely to approach uniformity in the context of reasonably foreseeable intruder scenarios.

NRC staff revise the existing version to address their comments before publishing it for public comment again. The staff agreed to that request.

In addition, the staff met with the Low-Level Radioactive Waste Forum's (LLW Forum) Disused Source Working Group on February 9, 2012, in Dallas, Texas, to explain the bases for the revised CA BTP and to answer questions. The Agreement States that regulate the four active LLW disposal sites (Texas, South Carolina, Utah, and Washington) and that are members of the Disused Source Working Group provided formal comments on the August 2011 draft.[2] The LLW Forum also provided written comments (ADAMS Accession No. ML120530573).

All of these comments, from the ACRS; stakeholders at the October 20, 2011, workshop; and the members of the Disused Source Working Group—have been considered in the revised draft that is being made available in this document. Appendices D, E, and H of draft Revision 1 contain the staff's analysis and responses to comments from stakeholders at the October 20, 2011, workshop; from members of the LLW Forum's Disused Source Working Group; and from the ACRS, respectively. Several other stakeholders also provided additional comments in February and April 2012 (ADAMS Accession Nos. ML120520558, ML120890046, and ML121220126), and these were considered to the extent possible in developing this revised draft. The staff did not document responses to their comments because of schedule constraints. For any of these comments that the staff has not fully responded to, the staff will address them in preparing the final version of the CA BTP. A redline-strikeout comparison between the May 2012 draft and the August 2011 draft is contained in ADAMS Accession No. ML12137A262.

The staff is interested in stakeholder views on all responses to issues that were raised in the above comments, but is particularly interested in stakeholder views on the following topics:

Selection of inadvertent intruder exposure scenarios: In the original and revised CA BTP, the staff postulated generic exposure scenarios to evaluate the doses to an inadvertent intruder exposed to radiological hot spots in mixable wastes and in individual items to establish concentration averaging constraints. Because it is not possible to predict human behavior with complete accuracy over the time frames associated with the hazard from LLW, the staff has used what it believes to be reasonable, yet conservative scenarios, such as well drilling into waste. The ACRS and others have commented on the selection of scenarios. The staff is interested in receiving public input on the specific scenarios used for this revised draft, as well as factors to be considered in selection of generic radiation exposure scenarios for an inadvertent intruder. Information on the selection of scenarios is provided in the CA BTP in Appendix B; Appendix D (responses to comments 1(c) and 6(a); and the staff's February 3, 2012, response (ADAMS Accession No. ML120090314)[3] to the ACRS letter (ADAMS Accession No. ML11354A407).[4] An important impact of scenario selection is the constraint on the activity of sealed sources for disposal under the CA BTP. The revised CA BTP uses a new scenario that would allow for disposal of higher activity sources to be disposed of in commercial LLW disposal sites that would result in these sources no longer posing a threat to national security. Some stakeholders, including ACRS, have argued for the use of scenarios that would result in fewer constraints on sources, and higher activities for disposal than what the staff has proposed.

Other ACRS recommendations and issues: The ACRS and staff were in agreement on a number of positions in the revised CA BTP, such as blending of LLW, and the new Alternative Approaches section. However, the ACRS had a number of recommendations that could potentially significantly change the CA BTP, including allowing for reliance on perpetual care funds for institutional controls to prevent or mitigate the impacts of inadvertent intrusion and using probability of intrusion in developing averaging positions. The staff is interested in stakeholder views on the pros and cons of the ACRS recommendations, given their potentially significant impacts on current practices. The ACRS letter to the Commission (ADAMS Accession No. ML11354A407) is contained in Appendix G of the revised CA BTP.

Classification of cartridge filters as a homogeneous waste: Cartridge filters are used to remove radioactive solids from various systems in a nuclear power plant. Filters are typically composed of thin metal or plastic frames with a corrugated or wound paper or synthetic filter media enclosed within the frame. Although the frames and filter media are contained in fairly robust metal housings, the housing is perforated so that radioactivity from the filters could be dislodged during handling by an inadvertent intruder. In addition, although filters may contain high levels of non-gamma emitting radionuclides, they typically contain low amounts of long-lived gamma radionuclides that would pose a hazard to an intruder handling a discrete item. The current CA BTP classifies cartridge filters as discrete wastes, so that each filter must be individually characterized for the concentrations and amounts of radionuclides that may affect waste classification. Several stakeholders have argued that the characteristics of cartridge filters previously described are significantly different from discrete items such as sealed sources or activated metal and justify their treatment as homogeneous wastes. Homogeneous wastes are subject to less stringent averaging constraints. The revised CA BTP continues to classify filters as discrete wastes, but provides an option for licensees to document justifications for treatment of them as homogeneous wastes. Section 4.3.4, ''Cartridge Filters as Homogeneous Waste,'' and the staff's response to comment 3(a) in Appendix D describes the revised position on cartridge filters and its basis. The staff is specifically seeking stakeholder views on this revision to the previous draft.

Homogeneity Test for Mixable Wastes: The staff received significant comments on the proposed testing for homogeneity of blended waste in the August 2011 draft Revision 1 of CA BTP. The staff has addressed these comments and made significant revisions. See Section 4.2.2 of the revised CA BTP, ''Homogeneity of Mixable Waste,'' as well as Section 4.9, ''Alternative Approaches.'' See also responses to comments 1(c) and 1(g) in Appendix D.

Specification of Waste to Binder Ratio and Not Container Size for Encapsulation of LLW: The 1995 CA BTP provided for encapsulation of discrete, higher-activity items in a non-radioactive medium such as concrete, and averaging the activity in the discrete item over a 55 gallon drum volume. The amount of non-radioactive material over which averaging could take place was constrained to 55 gallons, so that extreme averaging measures would not be employed. Several stakeholders

[2] Texas Commission on Environmental Quality, ADAMS Accession No. ML120530077; South Carolina Department of Health and Environmental Control, ADAMS Accession No. ML120520496; Utah Department of Environmental Conservation, ADAMS Accession No. ML120520498; Washington Office of Radiation Protection, ADAMS Accession No. ML120520505)

[3] The February 3, 2012, staff response is contained in Appendix H of the CA BTP.

[4] The December 13, 2011, ACRS letter is contained in Appendix G of the CA BTP.

requested that the *waste-to-binder ratio* be specified so that larger volumes could be employed. The constraints would be based on the average activity of the encapsulated package, and the ratio of the volume of the radioactive item to the volume of the encapsulating media. Such an approach would still constrain the use of non-radioactive materials in averaging. This approach had been approved by the NRC in a topical report for encapsulating and averaging cartridge filters. The staff has addressed this comment in revisions to Section 4.5, ''Encapsulation of Sealed Sources and Other Solid Low-Level Radioactive Wastes,'' and in response to comment 7(a) in Appendix D.

Dated at Rockville, Maryland, this 30th day of May, 2012.

For the Nuclear Regulatory Commission.

Andrew Persinko,

Acting Director, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2012–14084 Filed 6–8–12; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Annuitant's Report of Earned Income, RI 30–2

AGENCY: Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0034, Annuitant's Report of Earned Income. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until August 10, 2012. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to U.S. Office of Personnel Management, Alberta Butler, Union Square 370, 1900 E Street NW., Washington, DC 20415–3500 or sent via electronic mail to *Alberta.Butler@opm.gov*.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, U.S. Office of Personnel Management, 1900 E Street NW., Room 4332, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: RI 30–2 is used annually to determine if disability retirees under age 60 have earned income which will result in the termination of their annuity benefits.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Annuitant's Report of Earned Income.

OMB Number: 3206–0034.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 21,000.

Estimated Time per Respondent: 35 minutes.

Total Burden Hours: 12,250.

John Berry,

Director, U.S. Office of Personnel Management.

[FR Doc. 2012–14134 Filed 6–8–12; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 154; SEC File No. 270–438; OMB Control No. 3235–0495.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The federal securities laws generally prohibit an issuer, underwriter, or dealer from delivering a security for sale unless a prospectus meeting certain requirements accompanies or precedes the security. Rule 154 (17 CFR 230.154) under the Securities Act of 1933 (15 U.S.C. 77a) (the ''Securities Act'') permits, under certain circumstances, delivery of a single prospectus to investors who purchase securities from the same issuer and share the same address (''householding'') to satisfy the applicable prospectus delivery requirements.[1] The purpose of rule 154 is to reduce the amount of duplicative prospectuses delivered to investors sharing the same address.

Under rule 154, a prospectus is considered delivered to all investors at a shared address, for purposes of the federal securities laws, if the person relying on the rule delivers the prospectus to the shared address and the investors consent to the delivery of a single prospectus. The rule applies to prospectuses and prospectus supplements. Currently, the rule permits householding of all prospectuses by an issuer, underwriter, or dealer relying on the rule if, in addition to the other conditions set forth in the rule, the issuer, underwriter, or dealer has obtained from each investor written or implied consent to householding.[2] The rule requires

[1] The Securities Act requires the delivery of prospectuses to investors who buy securities from an issuer or from underwriters or dealers who participate in a registered distribution of securities. *See* Securities Act sections 2(a)(10), 4(1), 4(3), 5(b) [15 U.S.C. 77b(a)(10), 77d(1), 77d(3), 77e(b); *see also* rule 174 under the Securities Act (17 CFR 230.174) (regarding the prospectus delivery obligation of dealers); rule 15c2–8 under the Securities Exchange Act of 1934 (17 CFR 240.15c2–8) (prospectus delivery obligations of brokers and dealers).

[2] Rule 154 permits the householding of prospectuses that are delivered electronically to investors only if delivery is made to a shared electronic address and the investors give written consent to householding. Implied consent is not permitted in such a situation. *See* rule 154(b)(4).

issuers, underwriters, or dealers that wish to household prospectuses with implied consent to send a notice to each investor stating that the investors in the household will receive one prospectus in the future unless the investors provide contrary instructions. In addition, at least once a year, issuers, underwriters, or dealers relying on rule 154 for the householding of prospectuses relating to open-end management investment companies that are registered under the Investment Company Act of 1940 (''mutual funds'') must explain to investors who have provided written or implied consent how they can revoke their consent. Preparing and sending the notice and the annual explanation of the right to revoke are collections of information.

The rule allows issuers, underwriters, or dealers to household prospectuses if certain conditions are met. Among the conditions with which a person relying on the rule must comply are providing notice to each investor that only one prospectus will be sent to the household and, in the case of issuers that are mutual funds, providing to each investor who consents to householding an annual explanation of the right to revoke consent to the delivery of a single prospectus to multiple investors sharing an address. The purpose of the notice and annual explanation requirements of the rule is to ensure that investors who wish to receive individual copies of prospectuses are able to do so.

Although rule 154 is not limited to mutual funds, the Commission believes that it is used mainly by mutual funds and by broker-dealers that deliver prospectuses for mutual funds. The Commission is unable to estimate the number of issuers other than mutual funds that rely on the rule.

The Commission estimates that, as of December 2008, there are approximately 1,960 mutual funds, approximately 150 of which engage in direct marketing and therefore deliver their own prospectuses. The Commission estimates that each direct-marketed mutual fund will spend an average of 20 hours per year complying with the notice requirement of the rule, for a total of 3,000 hours. The Commission estimates that each direct-marketed fund will also spend 1 hour complying with the explanation of the right to revoke requirement of the rule, for a total of 150 hours. The Commission estimates that there are approximately 320 broker-dealers that carry customer accounts and, therefore, may be required to deliver mutual fund prospectuses. The Commission estimates that each affected broker-dealer will spend, on average, approximately 20 hours complying with the notice requirement of the rule, for a total of 6,400 hours. Each broker-dealer will also spend 1 hour complying with the annual explanation of the right to revoke requirement, for a total of 320 hours. Therefore, the total number of respondents for rule 154 is 470 (150 mutual funds plus 320 broker-dealers), and the estimated total hour burden is 9,870 hours (3,150 hours for mutual funds plus 6,720 hours for broker-dealers).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 5, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14026 Filed 6–8–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17f–1(b); OMB Control No. 3235–0032; SEC File No. 270–28.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17f–1(b) (17 CFR 240.17f–1(b) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17f–1(b) under the Exchange Act requires approximately 25,000 entities in the securities industry to register in the Lost and Stolen Securities Program (''Program''). Registration fulfills a statutory requirement that entities report and inquire about missing, lost, counterfeit, or stolen securities. Registration also allows entities in the securities industry to gain access to a confidential database that stores information for the Program.

The Commission staff estimates that 1,000 new entities will register in the Program each year. The staff estimates that the average number of hours necessary to comply with Rule 17f–1(b) is one-half hour. Accordingly, the staff estimates that total annual burden for all participants is 500 hours (1,000 × one-half hour).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way,

Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 5, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14027 Filed 6–8–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549.

Extension:

Rule 17f–2(a); SEC File No. 270–34; OMB Control No. 3235–0034.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17f–2(a) (17 CFR 240.17f–2(a), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit the existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval. Rule 17f–2(a) (Fingerprinting Requirements for Securities Professionals) requires that securities professionals be fingerprinted. This requirement serves to identify security-risk personnel, to allow an employer to make fully informed employment decisions, and to deter possible wrongdoers from seeking employment in the securities industry. Partners, directors, officers, and employees of exchanges, brokers, dealers, transfer agents, and clearing agencies are included.

The Commission staff estimates that approximately 10,000 respondents will submit fingerprint cards each year. It also estimates that each respondent will submit 55 fingerprint cards per year. The staff estimates that the average number of hours necessary to comply with Rule 17f–2(a) is one-half hour. Thus, the total estimated annual burden is 275,000 hours for all respondents (550,000 times one-half hour). The average internal labor cost of compliance per hour is approximately $50. Therefore, the total estimated annual internal labor cost of compliance for all respondents is $13,750,000 (275,000 times $50).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 5, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14030 Filed 6–8–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67119; File No. SR–DTC–2012–04]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Enable Issuers To Send Corporate Action Announcements in Machine Readable Format

June 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 25, 2012, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which items have been prepared primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act and Rule 19b–4(f)(4) thereunder so that the proposed rule change was effective upon filing with the Commission.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The purpose of this proposed rule change is to update DTC's corporate action service in order to enable issuers to send to DTC dividend announcements on sponsored American Depositary Receipts (''ADRs'') using eXtensible Business Reporting Language (''XBRL'') through DTC's Worldwide Announcement Validation Enrichment System platform (''WAVE'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

DTC routinely receives corporate action information from issuers and issuers' transfer agents and currently makes such information available to DTC participants.[4] In an effort to improve the accuracy in the announcing and processing of corporate action events, DTC plans to phase in the acceptance of corporate action announcements in XBRL. XBRL technology provides issuers with the ability to ''tag'' specific data elements describing the event in the announcements and documentations they distribute. Those tagged documents can then be electronically transmitted to DTC, and DTC can load the pertinent

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii) and 17 CFR 240.19b–4(f)(4).

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] Some of the more common corporate actions are dividend payments, interest payments, voluntary tender offers, and redemption of municipal and corporate bonds.

data elements directly into DTC's WAVES platform for announcement to DTC participants.

Beginning in the third quarter of 2012, DTC will start accepting XBRL formatted documents through WAVES for dividend announcements on sponsored ADRs. Following the introduction of the acceptance of XBRL formatted dividend announcements for sponsored ADRs, DTC expects to extend the acceptance of XBRL formatted corporate action announcement documents to unsponsored ADR programs, ordinary securities, and additional corporate action event types. The acceptance of XBRL technology for corporate action announcements should help minimize the possibility of data entry errors and should improve the timeliness of providing information to DTC participants. It should also help further straight-through-processing efforts.

(2) Statutory Basis

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC because the proposed changes should make the process for notifying DTC participants of corporate actions timelier and more efficient and should help minimize errors, which should in turn should facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act) [5] and Rule 19b–4(f)(4) [6] thereunder because it is effecting a change in an existing service of DTC that does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty days of the filing of such rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2012–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submission should refer to File Number SR–DTC–2012–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2011/dtc/2012–04.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2012–04 and should be submitted on or before July 2, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14032 Filed 6–8–12; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(4).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67135; File No. SR–CBOE–2012–055]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated: Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Approval of Trading Permit Holders

June 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 5, 2012, Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') proposes to temporarily suspend the requirements of CBOE Rules 3.7, 3.9 and related CBOE and CBOE Stock Exchange, LLC (''CBSX'') rules concerning the approval of new Trading Permit Holders in order to approve Apex Clearing, Inc., f/k/a Ridge Clearing and Outsourcing Solutions, Inc. (''Apex Clearing'') as a CBOE and CBSX Trading Permit Holder, subject to Apex Clearing

[1] 15 U.S.C. 78s(b)(1).

complying with CBOE and CBSX rules for a new Trading Permit Holder within 30 calendar days of the date that Apex Clearing is provisionally approved as a CBOE and/or CBSX Trading Permit Holder. The Exchange is also proposing to accept Apex Clearing's assumption of all of the existing clearing agreements and arrangements currently in effect between Penson Financial Services Inc. (''PFSI'') and various other CBOE and CBSX Trading Permit Holders by execution of a global agreement thereto. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes this rule filing to temporarily suspend the requirements of CBOE Rules 3.7, 3.9 and related CBOE and CBSX rules regarding the approval of Trading Permit Holders in order to immediately approve Apex Clearing as a CBOE and CBSX Trading Permit Holder.[2] The Exchange proposes this temporary suspension on an emergency basis to ensure that Apex Clearing can continue the clearing operations of PFSI without unnecessary disruption, which could have a significant collateral impact to a number of other Trading Permit Holders. The proposed temporary suspension is contingent upon Apex Clearing having complied with all CBOE and CBSX rules applicable to the approval of new Trading Permit Holders within 30 calendar days of the date Apex is provisionally approved as a CBOE and CBSX Trading Permit Holder pursuant to this filing.

On May 31, 2012, Apex Clearing Investment LLC (''Apex Holdings''), Broadridge Financial Solutions, Inc. (''Broadridge''), PFSI and Penson Worldwide, Inc. (''PWI'') (together, the ''Parties'') consummated a transaction resulting in a change in ownership of Apex Clearing.[3] Broadridge, Apex Holdings, PWI and PFSI each made capital investments in Apex Holdings (''Apex Holdings''), the holding company parent of Apex Clearing. PFSI also assigned all of its U.S. clearing contracts and all customer and introducing broker proprietary accounts along with key personnel to Apex Clearing (the ''Transferring Accounts'').[4]

As a result of the transaction, Apex Clearing, which is not a CBOE or CBSX Trading Permit Holder, will provide the clearing and execution services currently provided to the Transferring Accounts by PFSI. On May 31, 2012, Apex Clearing submitted applications for approval as a CBOE and CBSX Trading Permit Holder respectively. However, because of the expedited nature of the transaction, Apex Clearing was unable to fully comply with CBOE Rules 3.7, 3.9 and related CBOE and CBSX rules regarding the approval of new Trading Permit Holders. Because of the need for seamless continuity with respect to the Transferring Accounts, Apex Clearing has requested that the Exchange temporarily suspend its rules related to the approval of new CBOE and CBSX Trading Permit Holders in order to enable Apex Clearing's approval as a CBOE and CBSX Trading Permit Holder on an expedited basis. Pursuant to its request, Apex Clearing will fully comply with the Exchange's requirements for new Trading Permit Holders within 30 calendar days after the provisional approval.

CBOE Rule 3.7 sets forth requirements to submit certain documents required of Trading Permit Holder applicants, including, among other things, (i) a copy of the articles or certificate of incorporation, the by-laws of the organization and any amendments to those documents; (ii) any other documents relating to the registration, governance, capital structure, or ownership of the organization that are requested by the exchange; and (iii) a copy of its Form BD. CBOE Rule 3.9 sets forth the application procedures and information regarding the approval or disapproval of a Trading Permit Holder applicant. CBOE Rule 3.9 requires, among other things, (i) submission of an application in a form and manner prescribed by the Exchange; (ii) any required application fees; and (iii) any additional information requested by the Exchange in connection with the Exchange's review of the application.

In addition, the Exchange reviews whether the applicant meets federal and CBOE capital requirements and whether it has adopted controls and procedures to comply with Exchange rules.

Due to the amount of information an applicant is required to provide and have completed prior to being approved as a CBOE and CBSX Trading Permit Holder, the Trading Permit Holder approval process generally takes several weeks to complete. The length of time varies based on the timing of the applicant's response to requests for information and documentation.

As proposed, Apex Clearing will continue the clearing and certain other operations of PFSI as of June 6, 2012. In order to avoid interruption of the services PFSI currently provides to other Exchange Trading Permit Holders, CBOE believes that Apex Clearing should be approved immediately as a CBOE and CBSX Trading Permit Holder. The Exchange notes that Apex Clearing is already a registered broker dealer and FINRA member.

The Exchange therefore proposes providing Apex Clearing with a temporary suspension of CBOE Rules 3.7, 3.9 and any additional rules related to the approval to operate a CBOE or CBSX Trading Permit Holder and approval of a proposed Trading Permit Holder's associated persons (as applicable), and immediately approve Apex Clearing as a CBOE and CBSX Trading Permit Holder. As proposed this temporary suspension is contingent upon:

- Apex providing the Exchange with sufficient information to confirm that Apex will meet its capital requirements as a CBOE and CBSX Trading Permit Holder; and
- Within 30 calendar days of Apex Clearing's provisional approval as CBOE and CBSX Trading Permit Holders under this proposed filing, Apex Clearing and its associated persons will have complied with the Exchange's requirements for new Trading Permit Holders as set forth in CBOE Rules 3.7, 3.9 and any additional rules related to the approval to operate a CBOE or CBSX

[2] Chapters 50–55 of CBOE's rules set forth the rules applicable to CBSX. Appendix A to the rules applicable to CBSX incorporates, by reference, numerous CBOE rules that are applicable to CBSX, including several rules in Chapter 3 of the CBOE rules related to the application process.

[3] Prior to the Transaction, Apex Clearing's name was Ridge Clearing & Outsourcing Solutions, Inc. Prior to the transaction, Ridge Clearing & Outsourcing Solutions, Inc. contributed its outsourcing operations and all associated personnel and systems to its affiliated entity, Broadridge Securities Processing Solutions, LLC (''BSPS'') where it will continue to provide operations support and outsourcing services to a number of broker-dealers, including Apex Clearing.

[4] *See* Penson Worldwide, Inc. Form 8–K dated May 31, 2012.

Trading Permit Holder and approval of a proposed Trading Permit Holder's associated persons (as applicable).

As proposed, if Apex Clearing does not comply with all applicable CBOE and CBSX application requirements within 30 calendar days of the date of the provisional approval, its status as an approved CBOE and CBSX Trading Permit Holder (as applicable) will no longer be effective.

In addition, the Exchange proposes to permit Apex Clearing to assume all existing clearing agreements and arrangements currently in effect with other Trading Permit Holders by execution of global agreements thereto. Notice of such assumption will be provided to impacted Trading Permit Holders through issuance of an Information Circular prior to the effective date thereof.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) [5] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5) [6] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that permitting the expeditious approval of Apex Clearing as a CBOE and CBSX Trading Permit Holder will avoid interruption of the services PFSI currently provides to other CBOE and CBSX Trading Permit Holders. Based on information and representations provided by Apex Clearing, a temporary suspension of certain CBOE and CBSX rules related to the approval of a Trading Permit Holder is needed based on the expedited nature of the transaction to enable seamless continuity with respect to the transferring accounts. Consequently, CBOE believes that temporary suspension of these requirements so that Apex Clearing can be approved immediately as a CBOE and CBSX Trading Permit Holder will help to foster cooperation and coordination with persons engaged in facilitating transactions in securities and is consistent with the Act.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) [11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission notes that the Exchange is proposing that certain of its rules relating to membership requirements be temporarily suspended so that Apex Clearing can be provisionally approved as a CBOE and CBSX Trading Permit Holder. The proposed relief does not exempt Apex Clearing from Exchange rule requirements governing a CBOE and CBSX Trading Permit Holders. Apex Clearing would have a 30 calendar day grace period within which to apply for and be approved under relevant Exchange rules. Moreover, the Commission believes that waiver of the 30-day operative delay is appropriate to ensure a smooth transition of PFSI operations to Apex Clearing. In particular, given the rapidity with which events have developed, waiver of the 30-day operative delay is necessary to avoid significant disruption to PFSI's existing customers and the market generally. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving this five-day pre-filing requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2012–055 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–055. This file

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–055 and should be submitted on or before July 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14075 Filed 6–8–12; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67121; File No. SR–Phlx–2012–73]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Strategies

June 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that, on May 25, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to clarify the information that is required by the Exchange when executing dividend,[3] merger,[4] short stock interest[5] and reversals[6] and conversion[7] strategies.

While the changes proposed herein are effective upon filing, the Exchange has designated these changes to be operative on June 1, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[3] A dividend strategy is a transaction done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend.

[4] A merger strategy is a transaction done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock.

[5] A short stock interest strategy is a transaction done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.

[6] Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration.

[7] Conversions are established by combining a long position in the underlying security with a long put and a short call position that shares the same strike and expiration.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify the Exchange's requirements for members transacting strategies on the Exchange. The Exchange originally required members to submit a written rebate request form along with supporting documentation when transacting strategies to receive a rebate. On June 28, 2007, the Exchange eliminated its manual rebate process and replaced it with an automated process.[8] The Exchange modified its trade tickets to allow for members to designate on the trade ticket whether the trade involved a dividend, merger, or short stock interest strategy.[9] The Exchange later stated that in order to capture the necessary information electronically, it would require members to designate on the trade ticket whether the trade involved a dividend, merger, short stock interest or reversal and conversion strategy (''Strategy Trade''). Today, members are required to enter the proper code on the trading ticket[10] and into the system, or directly into the Floor Broker Management System[11] (''FBMS'').[12]

At this time, the Exchange proposes to amend the process by which members may input a Strategy Trade by adopting a process to allow members to request Exchange staff on the trading floor to input a code into the system.[13] The Exchange realizes that there are situations where a floor broker may

[8] *See* Securities Exchange Act Release No. 55972 (June 28, 2007), 72 FR 37069 (July 6, 2007) (SR–Phlx–2007–47) (notice of filing and immediate effectiveness of proposed rule change relating to automating the rebate request process for dividend, merger and short stock interest strategies).

[9] *Id.*

[10] The Exchange has designated ''Z1'' for dividend strategies, ''Z2'' for merger strategies, ''Z3'' for short stock interest strategies and ''Z4'' for reversal and conversion strategies.

[11] FBMS is designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. FBMS also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. *See* Exchange Rule 1080, Commentary .06.

[12] *See* Securities Exchange Act Release No. 65228 (August 30, 2011), 76 FR 55453 (September 7, 2011) (SR–Phlx–2011–119) (notice of filing and immediate effectiveness of proposed rule change relating to reversal and conversion strategies).

[13] The system refers to PHLX XL®, the Exchange's automated trading system.

inadvertently forget to properly mark a trade as a Strategy Trade when that order is entered into FBMS.[14] The Exchange believes that providing members the ability to request Exchange staff to mark a Strategy Trade on the day the strategy is executed would provide members with a means to ensure the Strategy Trade is properly marked for purposes of pricing. The Exchange would require that members executing Strategy Trades either: (1) Enter a code on the trading ticket and into the system; (2) enter a code directly into FBMS; or (3) request that the information be inputted into the system by Exchange staff on the trading floor, on the day the order was executed, to take advantage of certain pricing caps for which they may qualify. The Exchange intends to issue an Options Trader Alert to members concerning the process to request Exchange staff to mark Strategy Trades.

While the changes proposed herein are effective upon filing, the Exchange has designated these changes to be operative on June 1, 2012.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act[15] in general, and furthers the objectives of Section 6(b)(4) of the Act[16] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that the proposed amendment clarifying the various methods in which a member may mark Strategy Trades is reasonable because the Exchange would provide members with a means to ensure that they are able to mark a Strategy Trade in an effort to take advantage of certain caps available to them.[17]

The Exchange believes that the proposed amendment clarifying the various methods in which a member may mark Strategy Trades is equitable and not unfairly discriminatory because all members would be afforded the same opportunity to mark Strategy Trades by one of the methods described herein and take advantage of certain pricing caps for which they may qualify. The Exchange's policy with respect to marking Strategy Trades would be uniformly applied to members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[18] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–73 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–73. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2012–73 and should be submitted on or before July 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14079 Filed 6–8–12; 8:45 am]

BILLING CODE 8011–01–P

[14] A floor broker has the ability to enter an order directly into FBMS. If, for example, a Marker Maker executed an order with a floor broker on the trading floor, the floor broker would enter the executed order into FBMS.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4).

[17] Market Makers, Professionals, Firms and Broker-Dealers equity option transaction fees are capped at $1,000 for dividend, merger and short stock interest strategies executed on the same trading day in the same options class when such members are trading in their own proprietary accounts. The Exchange also currently has a cap for reversal and conversion strategies wherein Market Maker, Professional, Firm and Broker-Dealer options transaction fees in Multiply Listed Options are capped at $500 per day for reversal and conversion strategies executed on the same trading day in the same options class when such members are trading in their own proprietary accounts.

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67138; File No. SR–CHX–2012–10]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Temporarily Suspend the Requirements of CHX Article 3, Rule 3 and Related CHX Rules in Order to Approve Apex Clearing Corporation as a CHX Participant and Trading Permit Holder

June 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 5, 2012, the Chicago Stock Exchange, Incorporated (''Exchange'' or ''CHX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to temporarily suspend the requirements of CHX Article 3, Rule 3 and related CHX rules concerning the approval of new Participants and Trading Permit holders (''TPHs'') in order to approve Apex Clearing Corporation, f/k/a Ridge Clearing and Outsourcing Solutions, Inc. (''Apex Clearing''), as a CHX Participant and TPH. The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*), at the Exchange's Office of the Secretary and in the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this rule filing, CHX proposes to temporarily suspend the requirements of CHX Article 3, Rule 3 and related rules as it pertains to the application approval process of a CHX Participant[5] and TPH[6] in order to immediately approve Apex Clearing.[7] The Exchange proposes this temporary suspension on an emergency basis to ensure that Apex Clearing can continue the clearing and execution operations of Penson Financial Services Inc. (''PFSI'') without unnecessary disruption and to limit any significant collateral impact to a number of other CHX Participants. The proposed temporary suspension is contingent upon Apex Clearing having complied with all Exchange rules related to new Participant and TPH applicants within 30 calendar days of the date Apex Clearing is provisionally approved as a Participant and TPH pursuant to this filing.

On May 31, 2012, Apex Clearing Holdings, LLC (''Apex Holdings''), Apex Clearing Solutions, Broadridge Financial Solutions, Inc. (''Broadridge''), PFSI and Penson Worldwide, Inc. (''PWI'') (together, the ''Parties'') consummated a transaction resulting in a change in ownership of Apex Clearing.[8] Broadridge, Apex Holdings, PWI and PFSI each made capital investments in Apex Holdings, the holding company parent of Apex Clearing. PFSI also assigned all of its U.S. clearing contracts and all customer and introducing broker proprietary accounts along with key personnel to Apex Clearing (the ''Transferring Accounts'').[9]

As a result of the transaction, Apex Clearing, which is not a CHX Participant and TPH, will provide the clearing and execution services currently provided to the Transferring Accounts by PFSI. On May 31, 2012, Apex Clearing submitted an application for approval as a CHX Participant and TPH. However, because of the expedited nature of the transaction, Apex Clearing was unable to fully comply with CHX Article 3, Rule 3 and related new Participant/TPH rules. Because of the need for seamless continuity with respect to the Transferring Accounts, Apex Clearing has requested that the Exchange temporarily suspend its new Participant/TPH rules in order to enable Apex Clearing's approval as a Participant Firm and TPH on an expedited basis. Pursuant to its request, Apex Clearing will fully comply with the Exchange's new Participant/TPH requirements within 30 calendar days after provisional approval.

CHX Article 3, Rule 3 requires that an application for a new Participant and TPH be made in writing and filed with the Exchange. As part of the process, applications must be made in accordance with Article 3, Rule 3, and the applicant must provide, among other things, the following:

- *Written Application for Registration*
- *Cover Letter:* Indicating how and what the TPH will be used for, signed by a principal officer, general partner, or managing member of the firm.
- *For Partnerships:* Executed or certified copy of Partnership Agreement and all amendments thereto.
- *For Corporations:* Copy of Articles of Incorporation, and all amendments thereto, certified by the corporation's secretary; copy of By-Laws, and all amendments thereto, certified by the corporation's secretary; and certified copy of resolution authorizing registration of the corporation as a Participant.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] A ''Participant'' means any Participant Firm that holds a valid CHX Trading Permit and any person associated with a Participant Firm who is registered with the Exchange under Articles 16 and 17 as a Market Maker Trader or Institutional Broker Representative, respectively. A Participant shall be considered a ''member'' of the Exchange for purposes of the Exchange Act. If a Participant is not a natural person, the Participant may also be referred to as a ''Participant Firm,'' but unless the context requires otherwise, the term Participant shall refer to an individual Participant and/or a Participant Firm (*See* CHX Article 1, Rule 1(s)).

[6] A ''Trading Permit'' means a permit issued by the Exchange, granting the holder a revocable license to execute approved securities transactions through the Exchange's Trading Facilities, or to have those transactions executed on its behalf (*See* CHX Article 1, Rule 1(aa)).

[7] Pursuant to CHX rules, each clearing firm must be a Participant of the Exchange (*See* CHX Article 21, Rule 1(b)).

[8] Prior to the Transaction, Apex Clearing's name was Ridge Clearing & Outsourcing Solutions, Inc. Prior to the transaction, Ridge Clearing & Outsourcing Solutions, Inc. contributed its outsourcing operations and all associated personnel and systems to its affiliated entity, Broadridge Securities Processing Solutions, LLC (''BSPS'') where it will continue to provide operations support and outsourcing services to a number of broker-dealers, including Apex Clearing.

[9] *See* Penson Worldwide, Inc. Form 8–K dated May 31, 2012.

• *For Limited Liability Companies:* Operation Agreement and Articles of Organization or Certificate of Formation.

• *For all Applicants:* Current executed Statement of Financial Condition and attached balance sheet pursuant to SEC Exchange Act Rule 15b1–2; Copies of FOCUS Part II or Part IIA Reports for the most recent 6 month period; Copy of most recent *Confidential* Annual CPA Audit prepared by firm's independent accountant; Executed copy of 15b1–2 Information Sheet, Designation of Recipient For Service of Notice, Executed and notarized copy of Form BD (SEC registration statement), and amendments; names of subordinated lenders, if any; complete Forms U–4 for all general partners, members of principal officers of designated members (only page 2 of form U–4 for members designated to other SRO's).

• *If CHX is not the DEA for the Applicant:* A copy of letter from the Applicant to their DEA, granting the DEA permission to provide information to the CHX, pursuant to their application for a trading permit.

• *If Applicant is a FINRA Member:* A copy of the FINRA Membership Agreement.

In addition, the Exchange reviews whether the applicant meets federal and CHX capital requirements and whether it has adopted controls and procedures to comply with Exchange rules.

Due to the amount of information an applicant is generally required to provide and have completed prior to being approved as a Participant and TPH, the application approval process generally takes a few weeks to complete. The length of time varies based on the timing of the applicant's response to requests for information and documentation.

As proposed, Apex Clearing will continue the clearing and execution operations of PFSI as of the open of trading on June 6, 2012. In order to avoid interruption of these services PFSI currently provides, CHX believes that Apex Clearing should be approved immediately as a CHX Participant and TPH. The Exchange therefore proposes providing Apex Clearing with a temporary suspension of CHX Article 3, Rule 3 and other relevant rules as they relate to approval to operate as a CHX Participant and TPH and immediately approve Apex Clearing as a Participant and TPH. As proposed this temporary suspension is contingent upon:

• Apex Clearing providing the Exchange with sufficient information to confirm that Apex Clearing will meet its capital requirements as a CHX Participant and TPH; and

• Within 30 calendar days of Apex Clearing's approval as a Participant and TPH under this proposed filing, Apex Clearing and its approved persons will have complied with the Exchange's new Participant/TPH application rules and policies.

As proposed, if Apex Clearing does not comply with all applicable CHX Participant/TPH requirements within the aforementioned 30-day timeframe, its status as an approved CHX Participant and TPH will no longer be effective.

In addition, the Exchange proposes to permit Apex Clearing to assume all existing clearing agreements and arrangements currently in effect with other CHX Participants by execution of global agreements thereto. Notice of such assumption will be provided to the impacted Participants through the issuance of CHX Information Memorandums prior to the effective date thereof.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) [10] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5) [11] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that permitting the expeditious approval of Apex Clearing as a CHX Participant and TPH will, among other things, avoid interruption of the services PFSI currently provides to other Exchange Participants. Based on information and representations provided by Apex Clearing, a temporary suspension of certain CHX Participant/TPH application rules is necessary based on the expedited nature of the transaction to ensure a seamless continuity with respect to the transferring accounts. Consequently, CHX believes a temporary suspension of its Participant/TPH application rule requirements so that Apex Clearing can be approved immediately as CHX Participant and TPH will help foster cooperation and coordination with persons engaged in facilitating transactions in securities and is consistent with the Act.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6)(iii) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission notes that the Exchange is proposing that certain of its rules relating to membership requirements be temporarily suspended so that Apex Clearing can be provisionally approved

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving this five-day pre-filing requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

as a CHX Participant and TPH. The proposed relief does not exempt Apex Clearing from Exchange rule requirements governing Participants and TPHs. Apex Clearing would have a 30 calendar day grace period within which to apply for and be approved under relevant Exchange rules. Moreover, the Commission believes that waiver of the 30-day operative delay is appropriate to ensure a smooth transition of PFSI operations to Apex Clearing. In particular, given the rapidity with which events have developed, waiver of the 30-day operative delay is necessary to avoid significant disruption to PFSI's existing customers and the market generally. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CHX–2012–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2012–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2012–10 and should be submitted on or before July 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14078 Filed 6–8–12; 8:45 am]

BILLING CODE 8011–01–P

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67137; File No. SR–EDGA–2012–21]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Temporarily Suspend the Requirements of EDGA Rule 2.6

June 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 5, 2012, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to temporarily suspend the requirements of EDGA Rule 2.6 and related EDGA Rules concerning the approval of new Members in order to admit Apex Clearing Corporation (''Apex Clearing''), f/k/a Ridge Clearing and Outsourcing Solutions, Inc. (''Ridge''), as a Member of EDGA, subject to Apex Clearing complying with the Exchange's Membership qualification rules within 30 calendar days of the effective date of this filing. The Exchange is also proposing to accept Apex Clearing's assumption of all of the existing clearing agreements and arrangements currently in effect between Penson Financial Services, Inc. (''PFSI'') and other EDGA Members by execution of a global agreement thereto. The text of the proposed rule change is available on the Exchange's Web site at *www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to temporarily suspend the requirements of EDGA Rule 2.6 and related rules governing the qualification and admission of Members in order to immediately approve Apex Clearing as an EDGA Member. The Exchange proposes this temporary suspension on an expedited basis to ensure that Apex Clearing can continue the clearing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

operations of PFSI without unnecessary disruption, which could have a significant collateral impact on a number of other Members. The proposed temporary suspension is contingent upon Apex Clearing having complied with all of the Exchange's Membership qualification requirements within 30 calendar days of the effective date of this filing.

On May 31, 2012, Apex Clearing Holdings, LLC (''Apex Holdings''), Apex Clearing Solutions, LLC, Broadridge Financial Solutions, Inc. (''Broadridge''), PFSI and Penson Worldwide, Inc. (''PWI'') (together, the ''Parties'') consummated a transaction resulting in a change in ownership of Apex Clearing.[3] Broadridge, Apex Holdings, PWI and PFSI each made capital investments in Apex Holdings, the holding company parent of Apex Clearing. PFSI also assigned all of its U.S. clearing contracts and all customer and introducing broker proprietary accounts along with key personnel to Apex Clearing (the ''Transferring Accounts'').[4]

As a result of the Transaction, Apex Clearing, which is not currently an EDGA Member, will provide the clearing services and execution services currently provided to the Transferring Accounts by PFSI. On May 31, 2012, Apex Clearing submitted an application to be admitted as an EDGA Member. However because of the expedited nature of the transaction, Apex Clearing was unable to fully comply in a timely manner with EDGA Rule 2.6 and related Membership rules. Because of the need for seamless continuity with respect to the Transferring Accounts, Apex Clearing has requested that the Exchange temporarily suspend its Membership qualification rules in order to enable Apex Clearing's approval as a Member on an expedited basis. Pursuant to its request, Apex Clearing has represented that it will fully comply with the Exchange's Membership qualification requirements within 30 calendar days of the effective date of this filing.

EDGA Rule 2.6 establishes the requirements for applications for Membership with the Exchange and requires prospective Members to submit such information as the Exchange may require.

Among other things, to be approved as an EDGA Member, an applicant must:

- Provide the Exchange with an agreement to abide by, comply with, and adhere to the provisions of the Exchange's Certificate of Incorporation, its By-Laws, the Exchange's Rules, the policies, interpretations and guidelines of the Exchange, and all orders and decisions of the Exchange's Board and penalties imposed by the Board, and any duly authorized committee;[5]
- Agree to pay such dues, assessments, and other charges in the manner and amount as shall from time to time be fixed by the Exchange;[6]
- Agree to maintain and make available to the Exchange, its authorized employees and its Board or any duly authorized committee such books and records as may be required to be maintained by the Commission or the Exchange's Rules;[7]
- Agree to supply other reasonable information with respect to the applicant as the Exchange may require in its Membership application (e.g., certificate of incorporation, by-laws, and other corporate documents);[8] and
- Register all Authorized Traders with the Exchange[9] in compliance with the Exchange's registration requirements as outlined in EDGA Rule 2.3(b) through (d).

In addition, the Exchange reviews whether the applicant meets applicable regulatory capital requirements and whether it has adopted controls and procedures to comply with Exchange Rules.

Due to the amount of information an applicant is required to provide and have completed prior to being admitted as a Member, the Member approval process generally takes several weeks to complete. The length of time varies based on the timing of the applicant's responses to requests for information and documentation.

As proposed, Apex Clearing will continue the clearing and certain other operations of PSFI as of June 6, 2012. In order to avoid interruption of the services PSFI currently provides to other Exchange Members, EDGA believes that Apex Clearing should be approved immediately as an EDGA Member. The Exchange notes that Apex Clearing is already a registered broker-dealer and FINRA member, which are prerequisites for becoming an EDGA Member.[10]

The Exchange therefore proposes to temporarily suspend EDGA Rule 2.6 and related Membership rules (Rules 2.3 and 2.5), and immediately approve Apex Clearing and its associated persons as a Member. As proposed, this temporary suspension is contingent upon:

- Apex Clearing providing the Exchange with sufficient information to confirm that Apex Clearing will satisfy its capital requirements as an EDGA Member; and
- Within 30 calendar days of the effective date of this rule filing, Apex Clearing and its associated persons shall have complied with the Exchange's Member qualification requirements as set forth in EDGA Rules 2.3, 2.5, and 2.6.

As proposed, if Apex Clearing does not comply with all applicable EDGA Member qualification requirements within 30 calendar days of the effective date of this filing, its status as an approved EDGA Member will no longer be effective.

In addition, the Exchange proposes to permit Apex Clearing to assume all existing clearing agreements and arrangements currently in effect with other EDGA Members by execution of global agreements thereto. Apex Clearing has represented that it will provide notice of such assumption to impacted Members prior to the effective date thereof.

2. *Statutory Basis*

The Exchange believes the proposed rule change is consistent with Section 6(b)[11] of the Act and furthers the objectives of Section 6(b)(5)[12] in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and to protect investors and the public interest. The Exchange believes that permitting the expeditious approval of Apex Clearing as an EDGA Member will avoid interruption of the services PSFI currently provides to other Exchange Members. Based on information and representations provided by Apex Clearing, a temporary suspension of certain EDGA membership rules is needed based on the expedited nature of the transaction to enable seamless continuity with respect to the Transferring Accounts. Consequently, EDGA believes that temporary

[3] Prior to the Transaction, Apex Clearing's name was Ridge Clearing & Outsourcing Solutions, Inc. Prior to the transaction, Ridge Clearing & Outsourcing Solutions, Inc. contributed its outsourcing operations and all associated personnel and systems to its affiliated entity, Broadridge Securities Processing Solutions, LLC (''BSPS'') where it will continue to provide operations support and outsourcing services to a number of broker-dealers, including Apex Clearing.

[4] *See* Penson Worldwide, Inc. Form 8–K dated May 31, 2012.

[5] EDGA Rule 2.6(a)(1).

[6] EDGA Rule 2.6(a)(2).

[7] EDGA Rule 2.6(a)(5).

[8] EDGA Rule 2.6(a)(6).

[9] EDGA Rule 2.3(b).

[10] *See* EDGA Rule 2.5(a).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

suspension of its Member qualification requirements so that Apex Clearing can be approved immediately as an EDGA Member will help to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[13] and Rule 19b-4(f)(6) thereunder.[14] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b-4(f)(6)(iii) thereunder.[16]

A proposed rule change filed under Rule 19b-4(f)(6)[17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission notes that the Exchange is proposing that certain of its rules relating to membership requirements be temporarily suspended so that Apex Clearing can be provisionally approved as an EDGA Member. The proposed relief does not exempt Apex Clearing from Exchange rule requirements governing Members. Apex Clearing would have a 30 calendar day grace period within which to apply for and be approved under relevant Exchange rules. Moreover, the Commission believes that waiver of the 30-day operative delay is appropriate to ensure a smooth transition of PFSI operations to Apex Clearing. In particular, given the rapidity with which events have developed, waiver of the 30-day operative delay is necessary to avoid significant disruption to PFSI's existing customers and the market generally. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2012–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2012–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2012–21 and should be submitted on or before July 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14077 Filed 6–8–12; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b-4(f)(6).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving this five-day pre-filing requirement.

[17] 17 CFR 240.19b-4(f)(6).

[18] 17 CFR 240.19b-4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67136; File No. SR–EDGX–2012–20]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Temporarily Suspend the Requirements of EDGX Rule 2.6

June 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 5, 2012, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to temporarily suspend the requirements of EDGX Rule 2.6 and related EDGX Rules concerning the approval of new Members in order to admit Apex Clearing Corporation (''Apex Clearing''), f/k/a Ridge Clearing and Outsourcing Solutions, Inc. (''Ridge''), as a Member of EDGX, subject to Apex Clearing complying with the Exchange's Membership qualification rules within 30 calendar days of the effective date of this filing. The Exchange is also proposing to accept Apex Clearing's assumption of all of the existing clearing agreements and arrangements currently in effect between Penson Financial Services, Inc. (''PFSI'') and other EDGX Members by execution of a global agreement thereto. The text of the proposed rule change is available on the Exchange's Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to temporarily suspend the requirements of EDGX Rule 2.6 and related rules governing the qualification and admission of Members in order to immediately approve Apex Clearing as an EDGX Member. The Exchange proposes this temporary suspension on an expedited basis to ensure that Apex Clearing can continue the clearing operations of PFSI without unnecessary disruption, which could have a significant collateral impact on a number of other Members. The proposed temporary suspension is contingent upon Apex Clearing having complied with all of the Exchange's Membership qualification requirements within 30 calendar days of the effective date of this filing.

On May 31, 2012, Apex Clearing Holdings, LLC (''Apex Holdings''), Apex Clearing Solutions, LLC, Broadridge Financial Solutions, Inc. (''Broadridge''), PFSI and Penson Worldwide, Inc. (''PWI'') (together, the ''Parties'') consummated a transaction resulting in a change in ownership of Apex Clearing.[3] Broadridge, Apex Holdings, PWI and PFSI each made capital investments in Apex Holdings, the holding company parent of Apex Clearing. PFSI also assigned all of its U.S. clearing contracts and all customer and introducing broker proprietary accounts along with key personnel to Apex Clearing (the ''Transferring Accounts'').[4]

As a result of the Transaction, Apex Clearing, which is not currently an EDGX Member, will provide the clearing services and execution services currently provided to the Transferring Accounts by PFSI. On May 31, 2012, Apex Clearing submitted an application to be admitted as an EDGX Member. However because of the expedited nature of the transaction, Apex Clearing was unable to fully comply in a timely manner with EDGX Rule 2.6 and related Membership rules. Because of the need for seamless continuity with respect to the Transferring Accounts, Apex Clearing has requested that the Exchange temporarily suspend its Membership qualification rules in order to enable Apex Clearing's approval as a Member on an expedited basis. Pursuant to its request, Apex Clearing has represented that it will fully comply with the Exchange's Membership qualification requirements within 30 calendar days of the effective date of this filing.

EDGX Rule 2.6 establishes the requirements for applications for Membership with the Exchange and requires prospective Members to submit such information as the Exchange may require.

Among other things, to be approved as an EDGX Member, an applicant must:

- Provide the Exchange with an agreement to abide by, comply with, and adhere to the provisions of the Exchange's Certificate of Incorporation, its By-Laws, the Exchange's Rules, the policies, interpretations and guidelines of the Exchange, and all orders and decisions of the Exchange's Board and penalties imposed by the Board, and any duly authorized committee;[5]
- Agree to pay such dues, assessments, and other charges in the manner and amount as shall from time to time be fixed by the Exchange;[6]
- Agree to maintain and make available to the Exchange, its authorized employees and its Board or any duly authorized committee such books and records as may be required to be maintained by the Commission or the Exchange's Rules;[7]
- Agree to supply other reasonable information with respect to the applicant as the Exchange may require in its Membership application (e.g., certificate of incorporation, by-laws, and other corporate documents);[8] and
- Register all Authorized Traders with the Exchange[9] in compliance with the Exchange's registration requirements as outlined in EDGX Rule 2.3(b) through (d).

In addition, the Exchange reviews whether the applicant meets applicable regulatory capital requirements and whether it has adopted controls and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Prior to the Transaction, Apex Clearing's name was Ridge Clearing & Outsourcing Solutions, Inc. Prior to the transaction, Ridge Clearing & Outsourcing Solutions, Inc. contributed its outsourcing operations and all associated personnel and systems to its affiliated entity, Broadridge Securities Processing Solutions, LLC (''BSPS'') where it will continue to provide operations support and outsourcing services to a number of broker-dealers, including Apex Clearing.

[4] *See* Penson Worldwide, Inc. Form 8–K dated May 31, 2012.

[5] EDGX Rule 2.6(a)(1).

[6] EDGX Rule 2.6(a)(2).

[7] EDGX Rule 2.6(a)(5).

[8] EDGX Rule 2.6(a)(6).

[9] EDGX Rule 2.3(b).

procedures to comply with Exchange Rules.

Due to the amount of information an applicant is required to provide and have completed prior to being admitted as a Member, the Member approval process generally takes several weeks to complete. The length of time varies based on the timing of the applicant's responses to requests for information and documentation.

As proposed, Apex Clearing will continue the clearing and certain other operations of PSFI as of June 6, 2012. In order to avoid interruption of the services PSFI currently provides to other Exchange Members, EDGX believes that Apex Clearing should be approved immediately as an EDGX Member. The Exchange notes that Apex Clearing is already a registered broker-dealer and FINRA member, which are prerequisites for becoming an EDGX Member.[10]

The Exchange therefore proposes to temporarily suspend EDGX Rule 2.6 and related Membership rules (Rules 2.3 and 2.5), and immediately approve Apex Clearing and its associated persons as a Member. As proposed, this temporary suspension is contingent upon:

- Apex Clearing providing the Exchange with sufficient information to confirm that Apex Clearing will satisfy its capital requirements as an EDGX Member; and
- Within 30 calendar days of the effective date of this rule filing, Apex Clearing and its associated persons shall have complied with the Exchange's Member qualification requirements as set forth in EDGX Rules 2.3, 2.5, and 2.6.

As proposed, if Apex Clearing does not comply with all applicable EDGX Member qualification requirements within 30 calendar days of the effective date of this filing, its status as an approved EDGX Member will no longer be effective.

In addition, the Exchange proposes to permit Apex Clearing to assume all existing clearing agreements and arrangements currently in effect with other EDGX Members by execution of global agreements thereto. Apex Clearing has represented that it will provide notice of such assumption to impacted Members prior to the effective date thereof.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[11] of the Act and furthers the objectives of Section 6(b)(5)[12] in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and to protect investors and the public interest. The Exchange believes that permitting the expeditious approval of Apex Clearing as an EDGX Member will avoid interruption of the services PSFI currently provides to other Exchange Members. Based on information and representations provided by Apex Clearing, a temporary suspension of certain EDGX membership rules is needed based on the expedited nature of the transaction to enable seamless continuity with respect to the Transferring Accounts. Consequently, EDGX believes that temporary suspension of its Member qualification requirements so that Apex Clearing can be approved immediately as an EDGX Member will help to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6)(iii) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6)[17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission notes that the Exchange is proposing that certain of its rules relating to membership requirements be temporarily suspended so that Apex Clearing can be provisionally approved as EDGX Member. The proposed relief does not exempt Apex Clearing from Exchange rule requirements governing Members. Apex Clearing would have a 30-calendar-day grace period within which to apply for and be approved under relevant Exchange rules. Moreover, the Commission believes that waiver of the 30-day operative delay is appropriate to ensure a smooth transition of PFSI operations to Apex Clearing. In particular, given the rapidity with which events have developed, waiver of the 30-day operative delay is necessary to avoid significant disruption to PFSI's existing customers and the market generally. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

[10] *See* EDGX Rule 2.5(a).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving this five-day pre-filing requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–EDGX–2012–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2012–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2012–20 and should be submitted on or before July 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14076 Filed 6–8–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67134; File No. SR–C2–2012–018]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated: Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Approval of Trading Permit Holders

June 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 5, 2012, C2 Options Exchange, Incorporated (''C2'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by C2. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] the Exchange proposes to temporarily suspend the requirements of C2 Rule 3.1 and related C2 rules concerning the approval of new Permit Holders in order to approve Apex Clearing, Inc., f/k/a Ridge Clearing and Outsourcing Solutions, Inc. (''Apex Clearing'') as a C2 Permit Holder, subject to Apex Clearing complying with Exchange rules for a new Permit Holder within 30 calendar days of the date that Apex Clearing is provisionally approved as a C2 Permit Holder. The Exchange is also proposing to accept Apex Clearing's assumption of all of the existing clearing agreements and arrangements currently in effect between Penson Financial Services Inc. (''PFSI'') and various other C2 Permit Holders by execution of a global agreement thereto. The text of the proposed rule change is available on the Exchange's Web site (*http://www.C2exchange.com*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, C2 included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. C2 has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes this rule filing to temporarily suspend the requirements of C2 Rule 3.1 and related rules regarding the approval of Permit Holders in order to immediately approve Apex Clearing as a C2 Permit Holder. The Exchange proposes this temporary suspension on an emergency basis to ensure that Apex Clearing can continue the clearing operations of PFSI without unnecessary disruption, which could have a significant collateral impact to a number of other Permit Holders. The proposed temporary suspension is contingent upon Apex having complied with all new Permit Holder Exchange rules within 30 calendar days of the date Apex is provisionally approved as a C2 Permit Holder pursuant to this filing.

On May 31, 2012, Apex Clearing Holdings, LLC (''Apex Holdings''), Apex Clearing Solutions, LLC, Broadridge Financial Solutions, Inc. (''Broadridge''), PFSI and Penson Worldwide, Inc. (''PWI'') (together, the ''Parties'') consummated a transaction resulting in a change in ownership of Apex Clearing.[2] Broadridge, Apex Holdings, PWI and PFSI each made capital investments in Apex Holdings, the holding company parent of Apex Clearing. PFSI also assigned all of its U.S. clearing contracts and all customer and introducing broker proprietary

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Prior to the Transaction, Apex Clearing's name was Ridge Clearing & Outsourcing Solutions, Inc. Prior to the transaction, Ridge Clearing & Outsourcing Solutions, Inc. contributed its outsourcing operations and all associated personnel and systems to its affiliated entity, Broadridge Securities Processing Solutions, LLC (''BSPS'') where it will continue to provide operations support and outsourcing services to a number of broker-dealers, including Apex Clearing.

accounts along with key personnel to Apex Clearing (the ''Transferring Accounts'').[3]

As a result of the transaction, Apex Clearing, which is not a C2 Permit Holder, will provide the clearing and execution services currently provided to the Transferring Accounts by PFSI. On May 31, 2012, Apex Clearing submitted an application for approval as a C2 Permit Holder. However, because of the expedited nature of the transaction, Apex Clearing was unable to fully comply with C2 Rule 3.1 and related new Permit Holder rules. Because of the need for seamless continuity with respect to the Transferring Accounts, Apex Clearing has requested that the Exchange temporarily suspend its rules applicable to new Permit Holders in order to enable Apex Clearing's approval as a Permit Holder on an expedited basis. Pursuant to its request, Apex Clearing will fully comply with the Exchange's new Permit Holder requirements within 30 calendar days after the provisional approval.

C2 Rule 3.1 sets forth the application process for becoming a C2 Permit Holder, including the requirements for Trading Permit Holders at the Chicago Board Options Exchange, Incorporated (''CBOE''). A CBOE Trading Permit Holder in good standing is eligible to receive one Trading Permit. CBOE Trading Permit Holder applicants are not required to complete and submit an Exchange application but are instead required to complete and submit only Exchange forms concerning electing to trade on the Exchange, submitting to Exchange jurisdiction and operational matters need to be completed and tendered.

C2 Rule 3.1 requires non-CBOE Trading Permit Holders to submit, among other things, (i) an application in accordance with such procedures as shall be established by the Exchange and (ii) any additional information requested by the Exchange in connection with the Exchange's review of the application. The Exchange may approve an application submitted pursuant to C2 Rule 3.1 only if any investigation has been completed, and any applicable orientation and/or exam requirements established by the Exchange have been satisfied.

In addition, the Exchange reviews whether the applicant meets federal and C2 capital requirements and whether it has adopted controls and procedures to comply with Exchange rules.

Due to the amount of information an applicant is required to provide and have completed prior to being approved as a Permit Holder, the Permit Holder approval process generally takes several weeks to complete. The length of time varies based on the timing of the applicant's response to requests for information and documentation.

As proposed, Apex Clearing will continue the clearing and certain other operations of PFSI as of June 6, 2012. In order to avoid interruption of the services PFSI currently provides to other Exchange Permit Holders, C2 believes that Apex Clearing should be approved immediately as a C2 Permit Holder. The Exchange notes that Apex Clearing is already a registered broker dealer and FINRA member.

The Exchange therefore proposes providing Apex Clearing with a temporary suspension of C2 Rule 3.1 and any additional rules as they relate to approval to operate a C2 Permit Holder and approval of a proposed Permit Holder's associated persons (as applicable), and immediately approve Apex as a Permit Holder. As proposed this temporary suspension is contingent upon:

- Apex providing the Exchange with sufficient information to confirm that Apex will meet its capital requirements as a C2 Permit Holder; and
- Within 30 calendar days of Apex Clearing's provisional approval as a C2 Permit Holder under this proposed filing, Apex Clearing and its approved persons will have complied with the Exchange's requirements for new Permit Holders as set forth in C2 Rule 3.1 and any additional rules related to the approval to operate a C2 Permit Holder and approval of a proposed Permit Holder's associated persons (as applicable).

As proposed, if Apex Clearing does not comply with all applicable C2 Permit Holder application requirements within 30 calendar days of the date of the provisional approval, its status as an approved C2 Permit Holder will no longer be effective.

In addition, the Exchange proposes to permit Apex Clearing to assume all existing clearing agreements and arrangements currently in effect with other C2 Permit Holders by execution of global agreements thereto. Notice of such assumption will be provided to impacted Trading Permit Holders through issuance of an Information Circular prior to the effective date thereof.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[4] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5)[5] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that permitting the expeditious approval of Apex Clearing as a C2 Permit Holder will avoid interruption of the services PFSI currently provides to other Exchange Permit Holders. Based on information and representations provided by Apex Clearing, a temporary suspension of certain C2 rules related to the approval of a Permit Holder is needed based on the expedited nature of the transaction to enable seamless continuity with respect to the transferring accounts. Consequently, C2 believes that temporary suspension of these requirements so that Apex can be approved immediately as a C2 Permit Holder will help to foster cooperation and coordination with persons engaged in facilitating transactions in securities and is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if

[3] *See* Penson Worldwide, Inc. Form 8–K dated May 31, 2012.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6)(iii) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) [10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission notes that the Exchange is proposing that certain of its rules relating to membership requirements be temporarily suspended so that Apex Clearing can be provisionally approved as a C2 Trading Permit Holder. The proposed relief does not exempt Apex Clearing from Exchange rule requirements governing C2 Trading Permit Holders. Apex Clearing would have a 30 calendar day grace period within which to apply for and be approved under relevant Exchange rules. Moreover, the Commission believes that waiver of the 30-day operative delay is appropriate to ensure a smooth transition of PFSI operations to Apex Clearing. In particular, given the rapidity with which events have developed, waiver of the 30-day operative delay is necessary to avoid significant disruption to PFSI's existing customers and the market generally. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–C2–2012–018 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2012–018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2012–018 and should be submitted on or before July 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14074 Filed 6–8–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving this five-day pre-filing requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67133; File No. SR–BYX–2012–010]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Proposed Membership of Apex Clearing

June 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 5, 2012, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to temporarily suspend the requirements of Exchange Rule 2.6 and related Exchange rules concerning the approval of new Members [3] of the Exchange in order to approve Apex Clearing Corporation, f/k/a Ridge Clearing and Outsourcing Solutions, Inc. (''Apex Clearing'') as an Exchange Member, subject to Apex Clearing complying with Exchange Rules for a new Member within 30 calendar days of the date that Apex Clearing is provisionally approved as an Exchange Member. The Exchange is also proposing to accept Apex Clearing's assumption of all of the existing clearing agreements and arrangements currently in effect between Penson Financial Services Inc. (''PFSI'') and various other

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''Member'' is defined in Rule 2.5(n) as any registered broker or dealer that has been admitted to membership in the Exchange.

Exchange Members by execution of a global agreement thereto.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes this rule filing to temporarily suspend the requirements of Exchange Rule 2.6 and related rules regarding the approval of Members in order to immediately approve Apex Clearing as an Exchange Member. The Exchange proposes this temporary suspension on an emergency basis to ensure that Apex Clearing can continue the clearing operations of PFSI without unnecessary disruption, which could have a significant collateral impact to a number of other Members. The proposed temporary suspension is contingent upon Apex Clearing having complied with all new Member Exchange Rules within 30 calendar days of the date Apex Clearing is provisionally approved as an Exchange Member pursuant to this filing.

On May 31, 2012, Apex Clearing Holdings, LLC (''Apex Holdings''), Apex Clearing Solutions, LLC, Broadridge Financial Solutions, Inc. (''Broadridge''), PFSI and Penson Worldwide, Inc. (''PWI'') (together, the ''Parties'') consummated a transaction resulting in a change in ownership of Apex Clearing.[4] Broadridge, Apex Holdings, PWI and PFSI each made capital investments in Apex Holdings, the holding company parent of Apex Clearing. PFSI also assigned all of its U.S. clearing contracts and all customer and introducing broker proprietary accounts along with key personnel to Apex Clearing (the ''Transferring Accounts'').[5]

As a result of the transaction, Apex Clearing, which is not an Exchange Member, will provide the clearing and execution services currently provided to the Transferring Accounts by PFSI. On May 31, 2012, Apex Clearing submitted an application for approval as an Exchange Member. However because of the expedited nature of the transaction, Apex Clearing was unable to fully comply with Exchange Rule 2.6 and related new Member rules. Because of the need for seamless continuity with respect to the Transferring Accounts, Apex Clearing has requested that the Exchange temporarily suspend its new Member rules in order to enable Apex Clearing's approval as a Member on an expedited basis. Pursuant to its request, Apex Clearing will fully comply with the Exchange's new Member requirements within 30 calendar days after provisional approval.

Exchange Rule 2.6 requires any person who proposes to become a Member of the Exchange to submit such specified agreements and supplementary information as may be required by the Exchange. Among other things, to be approved as an Exchange Member, the applicant must:

- Provide the Exchange with a written application with the name and address of the applicant as well as an agreement to abide by, comply with, and adhere to the provisions of the Exchange's Rules (Exchange Rule 2.6);
- Submit to the Exchange partnership or corporate documents as may be applicable including applicable corporate formation documents of the applicant (Exchange Rule 2.6);
- Submit to the Exchange a list and descriptive identification of those persons associated with the applicant who are its executive officers, directors, principal shareholders, and general partners (Exchange Rule 2.6); and
- Register associated persons with the Exchange that satisfy the Exchange's registration requirements (Exchange Rule 2.4, Interpretation and Policy .01, .03).

In addition, the Exchange reviews whether the applicant meets applicable net capital requirements and conducts other due diligence regarding an applicant. Due to the amount of information an applicant is required to provide and have completed prior to being approved as an Exchange Member, the membership approval process sometimes takes several months to complete. The length of time varies based on the timing of the applicant's response to requests for information and documentation.

As proposed, Apex Clearing will continue the clearing and certain other operations of PFSI as of June 6, 2012. In order to avoid interruption of the services PFSI currently provides to other Exchange Members, the Exchange believes that Apex Clearing should be approved immediately as an Exchange Member. The Exchange notes that Apex Clearing is already a registered broker dealer and FINRA member, which satisfies existing prerequisites for becoming an Exchange Member.[6]

The Exchange therefore proposes providing Apex Clearing with a temporary suspension of Exchange Rule 2.6 and related membership rules as they relate to approval to operate an Exchange Member, and immediately approving Apex Clearing as a Member. As proposed this temporary suspension is contingent upon Apex Clearing and its associated persons' compliance with the Exchange's new Member requirements as set forth in Chapter II of the Exchange's Rules within 30 calendar days of Apex Clearing's approval as a Member under this proposed filing. As proposed, if Apex Clearing does not comply with all applicable Exchange Member application requirements within 30 calendar days of the effective date of this filing, its status as an Exchange Member will no longer be effective.

In addition, the Exchange proposes to permit Apex Clearing to assume all existing clearing agreements and arrangements currently in effect with other Exchange Members by execution of global agreements thereto. Notice of such assumption will be provided to impacted Members prior to the effective date thereof.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system

[4] Prior to the Transaction, Apex Clearing's name was Ridge Clearing & Outsourcing Solutions, Inc. Prior to the transaction, Ridge Clearing & Outsourcing Solutions, Inc. contributed its outsourcing operations and all associated personnel and systems to its affiliated entity, Broadridge Securities Processing Solutions, LLC (''BSPS'') where it will continue to provide operations support and outsourcing services to a number of broker-dealers, including Apex Clearing.

[5] *See* Penson Worldwide, Inc. Form 8–K dated May 31, 2012.

[6] Exchange Rule 2.3 requires registration as a broker-dealer and membership with at least one other registered national securities exchange or association.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

and, in general, to protect investors and the public interest. The Exchange believes that permitting the expeditious approval of Apex Clearing as an Exchange Member will avoid interruption of the services PFSI currently provides to other Exchange Members. Based on information and representations provided by Apex Clearing, a temporary suspension of certain Exchange membership rules is needed based on the expedited nature of the transaction to enable seamless continuity with respect to the transferring accounts. Consequently, the Exchange believes that temporary suspension of its member organization requirements so that Apex Clearing can be approved immediately as an Exchange Member will help to foster cooperation and coordination with persons engaged in facilitating transactions in securities and is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission notes that the Exchange is proposing that certain of its rules relating to membership requirements be temporarily suspended so that Apex Clearing can be provisionally approved as an Exchange Member. The proposed relief does not exempt Apex Clearing from Exchange rule requirements governing Members. Apex Clearing would have a 30 calendar day grace period within which to apply for and be approved under relevant Exchange rules. Moreover, the Commission believes that waiver of the 30-day operative delay is appropriate to ensure a smooth transition of PFSI operations to Apex Clearing. In particular, given the rapidity with which events have developed, waiver of the 30-day operative delay is necessary to avoid significant disruption to PFSI's existing customers and the market generally. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BYX–2012–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2012–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2012–010 and should be submitted on or before July 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14073 Filed 6–8–12; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving this five-day pre-filing requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67132; File No. SR–BATS–2012–022]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Proposed Membership of Apex Clearing

June 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 5, 2012, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to temporarily suspend the requirements of Exchange Rule 2.6 and related Exchange rules concerning the approval of new Members[3] of the Exchange in order to approve Apex Clearing Corporation, f/k/a Ridge Clearing and Outsourcing Solutions, Inc. (''Apex Clearing'') as an Exchange Member, subject to Apex Clearing complying with Exchange Rules for a new Member within 30 calendar days of the date that Apex Clearing is provisionally approved as an Exchange Member. The Exchange is also proposing to accept Apex Clearing's assumption of all of the existing clearing agreements and arrangements currently in effect between Penson Financial Services Inc. (''PFSI'') and various other Exchange Members by execution of a global agreement thereto.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes this rule filing to temporarily suspend the requirements of Exchange Rule 2.6 and related rules regarding the approval of Members in order to immediately approve Apex Clearing as an Exchange Member. The Exchange proposes this temporary suspension on an emergency basis to ensure that Apex Clearing can continue the clearing operations of PFSI without unnecessary disruption, which could have a significant collateral impact to a number of other Members. The proposed temporary suspension is contingent upon Apex Clearing having complied with all new Member Exchange Rules within 30 calendar days of the date Apex Clearing is provisionally approved as an Exchange Member pursuant to this filing.

On May 31, 2012, Apex Clearing Holdings, LLC (''Apex Holdings''), Apex Clearing Solutions, LLC, Broadridge Financial Solutions, Inc. (''Broadridge''), PFSI and Penson Worldwide, Inc. (''PWI'') (together, the ''Parties'') consummated a transaction resulting in a change in ownership of Apex Clearing.[4] Broadridge, Apex Holdings, PWI and PFSI each made capital investments in Apex Holdings, the holding company parent of Apex Clearing. PFSI also assigned all of its U.S. clearing contracts and all customer and introducing broker proprietary accounts along with key personnel to Apex Clearing (the ''Transferring Accounts'').[5]

As a result of the transaction, Apex Clearing, which is not an Exchange Member, will provide the clearing and execution services currently provided to the Transferring Accounts by PFSI. On May 31, 2012, Apex Clearing submitted an application for approval as an Exchange Member. However because of the expedited nature of the transaction, Apex Clearing was unable to fully comply with Exchange Rule 2.6 and related new Member rules. Because of the need for seamless continuity with respect to the Transferring Accounts, Apex Clearing has requested that the Exchange temporarily suspend its new Member rules in order to enable Apex Clearing's approval as a Member on an expedited basis. Pursuant to its request, Apex Clearing will fully comply with the Exchange's new Member requirements within 30 calendar days after provisional approval.

Exchange Rule 2.6 requires any person who proposes to become a Member of the Exchange to submit such specified agreements and supplementary information as may be required by the Exchange. Among other things, to be approved as an Exchange Member, the applicant must:

- Provide the Exchange with a written application with the name and address of the applicant as well an agreement to abide by, comply with, and adhere to the provisions of the Exchange's Rules (Exchange Rule 2.6);
- Submit to the Exchange partnership or corporate documents as may be applicable including applicable corporate formation documents of the applicant (Exchange Rule 2.6);
- Submit to the Exchange a list and descriptive identification of those persons associated with the applicant who are its executive officers, directors, principal shareholders, and general partners (Exchange Rule 2.6); and
- Register associated persons with the Exchange that satisfy the Exchange's registration requirements (Exchange Rule 2.4, Interpretation and Policy .01, .03).

In addition, the Exchange reviews whether the applicant meets applicable net capital requirements and conducts other due diligence regarding an applicant. Due to the amount of information an applicant is required to provide and have completed prior to being approved as an Exchange Member, the membership approval process sometimes takes several months to complete. The length of time varies based on the timing of the applicant's response to requests for information and documentation.

As proposed, Apex Clearing will continue the clearing and certain other operations of PFSI as of June 6, 2012. In order to avoid interruption of the services PFSI currently provides to other Exchange Members, the Exchange believes that Apex Clearing should be approved immediately as an Exchange Member. The Exchange notes that Apex Clearing is already a registered broker

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''Member'' is defined in Rule 2.5(n) as any registered broker or dealer that has been admitted to membership in the Exchange.

[4] Prior to the Transaction, Apex Clearing's name was Ridge Clearing & Outsourcing Solutions, Inc. Prior to the transaction, Ridge Clearing & Outsourcing Solutions, Inc. contributed its outsourcing operations and all associated personnel and systems to its affiliated entity, Broadridge Securities Processing Solutions, LLC (''BSPS'') where it will continue to provide operations support and outsourcing services to a number of broker-dealers, including Apex Clearing.

[5] *See* Penson Worldwide, Inc. Form 8–K dated May 31, 2012.

dealer and FINRA member, which satisfies existing prerequisites for becoming an Exchange Member.[6]

The Exchange therefore proposes providing Apex Clearing with a temporary suspension of Exchange Rule 2.6 and related membership rules as they relate to approval to operate an Exchange Member, and immediately approving Apex Clearing as a Member. As proposed this temporary suspension is contingent upon Apex Clearing and its associated persons' compliance with the Exchange's new Member requirements as set forth in Chapter II of the Exchange's Rules within 30 calendar days of Apex Clearing's approval as a Member under this proposed filing. As proposed, if Apex Clearing does not comply with all applicable Exchange Member application requirements within 30 calendar days of the effective date of this filing, its status as an Exchange Member will no longer be effective.

In addition, the Exchange proposes to permit Apex Clearing to assume all existing clearing agreements and arrangements currently in effect with other Exchange Members by execution of global agreements thereto. Notice of such assumption will be provided to impacted Members prior to the effective date thereof.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that permitting the expeditious approval of Apex Clearing as an Exchange Member will avoid interruption of the services PFSI currently provides to other Exchange Members. Based on information and representations provided by Apex Clearing, a temporary suspension of certain Exchange membership rules is needed based on the expedited nature of the transaction to enable seamless continuity with respect to the transferring accounts. Consequently, the Exchange believes that temporary suspension of its member organization requirements so that Apex Clearing can be approved immediately as an Exchange Member will help to foster cooperation and coordination with persons engaged in facilitating transactions in securities and is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission notes that the Exchange is proposing that certain of its rules relating to membership requirements be temporarily suspended so that Apex Clearing can be provisionally approved as an Exchange Member. The proposed relief does not exempt Apex Clearing from Exchange rule requirements governing Members. Apex Clearing would have a 30 calendar day grace period within which to apply for and be approved under relevant Exchange rules. Moreover, the Commission believes that waiver of the 30-day operative delay is appropriate to ensure a smooth transition of PFSI operations to Apex Clearing. In particular, given the rapidity with which events have developed, waiver of the 30-day operative delay is necessary to avoid significant disruption to PFSI's existing customers and the market generally. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BATS–2012–022 on the subject line.

[6] Exchange Rule 2.3 requires registration as a broker-dealer and membership with at least one other registered national securities exchange or association.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving this five-day pre-filing requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2012–022. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2012–022 and should be submitted on or before July 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14072 Filed 6–8–12; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67131; File No. SR–ISE–2012–51]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To Temporarily Suspend the Requirements of ISE Rule 306 and Related ISE Rules Concerning the Approval of New Members of the Exchange

June 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 5, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to temporarily suspend the requirements of ISE Rule 306 and related ISE rules concerning approval of new member organizations in order to approve Apex Clearing Corporation, f/k/a Ridge Clearing and Outsourcing Solutions, Inc. (''Apex Clearing'') as an ISE member organization, subject to Apex Clearing complying with Exchange rules for a new member organization within 30 calendar days of the date that Apex Clearing is provisionally approved as an ISE member organization. The Exchange is also proposing to accept Apex Clearing's assumption of all of the existing clearing agreements and arrangements currently in effect between Penson Financial Services Inc. (''PFSI'') and various other ISE member organizations by execution of a global agreement thereto.

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes this rule filing to temporarily suspend the requirements of ISE Rule 306 and related rules regarding the approval of Members of the Exchange in order to immediately approve Apex Clearing as an ISE Member. The Exchange proposes this temporary suspension on an emergency basis to ensure that Apex Clearing can continue the clearing operations of PFSI without unnecessary disruption, which could have a significant collateral impact to a number of other Members. The proposed temporary suspension is contingent upon Apex having complied with all new Member Exchange rules within 30 calendar days of the date Apex is provisionally approved as an ISE Member pursuant to this filing.

On May 31, 2012, Apex Clearing Holdings, LLC (''Apex Holdings''), Apex Clearing Solutions, LLC, Broadridge Financial Solutions, Inc. (''Broadridge''), PFSI and Penson Worldwide, Inc. (''PWI'') (together, the ''Parties'') consummated a transaction resulting in a change in ownership of Apex Clearing.[3] Broadridge, Apex Holdings, PWI and PFSI each made capital investments in Apex Holdings, the holding company parent of Apex Clearing. PFSI also assigned all of its U.S. clearing contracts and all customer and introducing broker proprietary accounts along with key personnel to

[3] Prior to the Transaction, Apex Clearing's name was Ridge Clearing & Outsourcing Solutions, Inc. Prior to the transaction, Ridge Clearing & Outsourcing Solutions, Inc. contributed its outsourcing operations and all associated personnel and systems to its affiliated entity, Broadridge Securities Processing Solutions, LLC (''BSPS'') where it will continue to provide operations support and outsourcing services to a number of broker-dealers, including Apex Clearing.

Apex Clearing (the ''Transferring Accounts'').[4]

As a result of the transaction, Apex Clearing, which is not an ISE member organization, will provide the clearing services currently provided to the Transferring Accounts by PFSI. On May 31, 2012, Apex Clearing submitted an application for approval as an ISE Member. However, because of the expedited nature of the transaction, Apex Clearing was unable to fully comply with ISE Rule 306 and related new Member rules. Because of the need for seamless continuity with respect to the Transferring Accounts, Apex Clearing has requested that the Exchange temporarily suspend its new membership rules in order to enable Apex Clearing's approval as a Member on an expedited basis. Pursuant to its request, Apex Clearing will fully comply with the Exchange's new member requirements within 30 calendar days of provisional approval.

ISE Rule 306 requires any person who proposes to apply to become a Member of the Exchange to file an application with the Exchange submit such information as may be required by the application and related ISE rules. When a corporate acquisition concerns an asset transfer only, and not an acquisition of the corporate entity, ISE membership status cannot be transferred to the acquiring entity. The entity that proposes to continue acquired business operations of an ISE Member must be separately approved as an ISE Member.

Among other things, to be approved as an ISE Member, the applicant must:

- File with the Exchange an application and all documents requested therein pursuant to ISE Rule 306.
- Ensure that all persons associated with the applicant who meet the requirements of persons associated with Members under ISE Rule 304, consent to ISE jurisdiction as a Member or associated person.
- Submit to the Exchange partnership or corporate documents as may be applicable including certificate of incorporation, by-laws, and other corporate documents pursuant to ISE Rule 305.

In addition, the Exchange reviews whether the applicant meets federal and ISE capital requirements and whether it has adopted controls and procedures to comply with Exchange rules.

Due to the amount of information an applicant is required to provide and have completed prior to being approved as a Member, the Member approval process generally takes several weeks to complete. The length of time varies based on the timing of the applicant's response to requests for information and documentation.

As proposed, Apex Clearing will continue the clearing and certain other operations of PFSI as of June 6, 2012. In order to avoid interruption of the services PFSI currently provides to other Exchange Members, the ISE believes that Apex Clearing should be approved immediately as an ISE Member. The Exchange notes that Apex Clearing is already a registered broker dealer, a FINRA member and an OCC clearing member, which is a prerequisite for becoming an ISE member organization that is approved to clear transactions executed on the Exchange.

The Exchange therefore proposes providing Apex Clearing with a temporary suspension of ISE Rule 306 and related membership rules as they relate to approval to operate an ISE Member and approval of a proposed Member's associated persons, and immediately approve Apex Clearing as a Member. As proposed this temporary suspension is contingent upon:

- Apex Clearing providing the Exchange with sufficient information to confirm that Apex Clearing will meet its capital requirements as an ISE Member; and
- Within 30 calendar days of Apex Clearing's approval as an ISE Member under this proposed filing, Apex Clearing and its approved persons will have complied with the Exchange's new member organization requirements as set forth in ISE Rules 304–306.

As proposed, if Apex Clearing does not comply with all applicable ISE member organization application requirements within 30 calendar days of the effective date of this filing, its status as an approved ISE Member will no longer be effective.

In addition, the Exchange proposes to permit Apex Clearing to assume all existing clearing agreements and arrangements currently in effect with other ISE Members by execution of global agreements thereto. Notice of such assumption will be provided to impacted Members via email.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[5] of the Act, in general, and furthers the objectives of Section 6(b)(5)[6] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that permitting the expeditious approval of Apex Clearing as an ISE Member will avoid interruption of the services PFSI currently provides to other Exchange Members. Based on information and representations provided by Apex Clearing, a temporary suspension of certain ISE membership rules is needed based on the expedited nature of the transaction to enable seamless continuity with respect to the transferring accounts. Consequently, the ISE believes that temporary suspension of its Member requirements so that Apex Clearing can be approved immediately as an ISE Member will help to foster cooperation and coordination with persons engaged in facilitating transactions in securities and is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)

[4] *See* Penson Worldwide, Inc. Form 8–K dated May 31, 2012.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

of the Act [9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) [11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission notes that the Exchange is proposing that certain of its rules relating to membership requirements be temporarily suspended so that Apex Clearing can be provisionally approved as an ISE Member. The proposed relief does not exempt Apex Clearing from Exchange rule requirements governing Members. Apex Clearing would have a 30 calendar day grace period within which to apply for and be approved under relevant Exchange rules. Moreover, the Commission believes that waiver of the 30-day operative delay is appropriate to ensure a smooth transition of PFSI operations to Apex Clearing. In particular, given the rapidity with which events have developed, waiver of the 30-day operative delay is necessary to avoid significant disruption to PFSI's existing customers and the market generally. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving this five-day pre-filing requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2012–51 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–51. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–51 and should be submitted on or before July 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14071 Filed 6–8–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67130; File No. SR–BOX–2012–006]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Temporarily Suspend Certain Exchange Rules Concerning Approval of a New Options Participant

June 5, 2012.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 5, 2012, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BOX Options Exchange LLC (the ''Exchange'') is proposing to temporarily suspend the requirements of Exchange Rule 2050 and related Exchange rules concerning the approval of new Options Participants in order to approve Apex Clearing Corporation, f/k/a Ridge Clearing and Outsourcing Solutions, Inc. (''Apex Clearing'') as an Options Participant on BOX Market LLC, an options trading facility of the Exchange (''BOX''), subject to Apex Clearing complying with Exchange rules for a new Options Participant within 30 calendar days of the date that Apex Clearing is provisionally approved as an Options Participant. The Exchange is

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

also proposing to accept Apex Clearing's assumption of all of the existing clearing agreements and arrangements currently in effect between Penson Financial Services Inc. (''PFSI'') and various other Options Participants by execution of a global agreement thereto. A copy of this filing is available on the Exchange's Web site at *www.boxexchange.com,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes this rule filing to temporarily suspend the requirements of Exchange Rule 2050 and related rules regarding the approval of BOX Options Participants in order to immediately approve Apex Clearing as a BOX Options Participant. The Exchange proposes this temporary suspension on an emergency basis to ensure that Apex Clearing can continue the clearing operations of PFSI without unnecessary disruption, which could have a significant collateral impact to a number of other Options Participants. The proposed temporary suspension is contingent upon Apex having complied with all Exchange Rules for a new BOX Options Participant within 30 calendar days of the date Apex Clearing is provisionally approved as a BOX Options Participant pursuant to this filing.

On May 31, 2012, Apex Clearing Holdings, LLC (''Apex Holdings''), Apex Clearing Solutions, LLC, Broadridge Financial Solutions, Inc. (''Broadridge''), PFSI and Penson Worldwide, Inc. (''PWI'') (together, the ''Parties'') consummated a transaction resulting in a change in ownership of Apex Clearing.[5] Broadridge, Apex Holdings, PWI and PFSI each made capital investments in Apex Holdings, the holding company parent of Apex Clearing. PFSI also assigned all of its U.S. clearing contracts and all customer and introducing broker proprietary accounts along with key personnel to Apex Clearing (the ''Transferring Accounts'').[6]

As a result of the transaction, Apex Clearing, which is not a BOX Options Participant, will provide the clearing and execution services currently provided to the Transferring Accounts by PFSI. On May 31, 2012, Apex Clearing submitted an application for approval as a BOX Options Participant. However, because of the expedited nature of the transaction, Apex Clearing was unable to fully comply with Exchange Rule 2050 and related rules applicable to new BOX Options Participants. Because of the need for seamless continuity with respect to the Transferring Accounts, Apex Clearing has requested that the Exchange temporarily suspend its new Options Participant rules in order to enable Apex Clearing's approval as a BOX Options Participant on an expedited basis. Pursuant to its request, Apex Clearing will fully comply with the Exchange's new Options Participant requirements within 30 calendar days after the provisional approval.

Exchange Rule 2050 requires any applications for status as an Options Participant to be made to the Exchange and to contain such information as may be required by the Exchange rules. When a corporate acquisition concerns an asset transfer only, and not an acquisition of the corporate entity, BOX Options Participant status cannot be transferred to the acquiring entity. The entity that proposes to continue acquired business operations of a BOX Options Participant must be separately approved as a BOX Options Participant.

Among other things, to be approved as a BOX Options Participant, the applicant must provide:

- An agreement for the applicant to be regulated by the Exchange and recognize that the Exchange is obligated to undertake to enforce compliance with the provisions of the Exchange Rules, its By-Laws, its interpretations and policies and with the provisions of the Act and regulations thereunder (Exchange Rule 2010).
- A written application with the name and address of the applicant as well as an organizational chart and a description of the applicant's proposed activities on BOX.
- A list and descriptive identification of those persons associated with the applicant who are its executive officers, directors, principal shareholders, and general partners (Exchange Rule 2050(g)).
- An agreement to maintain and make available to the Exchange such books and records as may be required to be maintained by the Commission or the Exchange Rules (Exchange Rule 2050(a)).
- Such other reasonable information with respect to the applicant as the Exchange may require.

In addition, the Exchange reviews whether the applicant meets federal and Exchange capital requirements and whether it has adopted controls and procedures to comply with Exchange rules.

Due to the amount of information an applicant is required to provide and have completed prior to being approved as an Options Participant, the approval process generally takes several weeks to complete. The length of time varies based on the timing of the applicant's response to requests for information and documentation.

As proposed, Apex Clearing will continue the clearing and certain other operations of PFSI as of June 6, 2012. In order to avoid interruption of the services PFSI currently provides to other BOX Options Participants, the Exchange believes that Apex Clearing should be approved immediately as a BOX Options Participant. The Exchange notes that Apex Clearing is already a registered broker dealer and FINRA member, which are two characteristics that make Apex Clearing eligible for becoming a BOX Options Participant. *See* Exchange Rule 2020(a).

The Exchange therefore proposes providing Apex Clearing with a temporary suspension of Exchange Rule 2050 and other rules related to approval of status as a BOX Options Participant and approval of a proposed Options Participant's associated persons, and immediately approving Apex Clearing as a BOX Options Participant. As proposed, this temporary suspension is contingent upon:

- Apex Clearing providing the Exchange with sufficient information to confirm that Apex Clearing will meet its capital requirements as a BOX Options Participant; and

[5] Prior to the Transaction, Apex Clearing's name was Ridge Clearing & Outsourcing Solutions, Inc. Prior to the transaction, Ridge Clearing & Outsourcing Solutions, Inc. contributed its outsourcing operations and all associated personnel and systems to its affiliated entity, Broadridge Securities Processing Solutions, LLC (''BSPS'') where it will continue to provide operations support and outsourcing services to a number of broker-dealers, including Apex Clearing.

[6] *See* Penson Worldwide, Inc. Form 8–K dated May 31, 2012.

• Within 30 calendar days of Apex Clearing's approval as a BOX Options Participant under this proposed filing, Apex Clearing and its associated persons will have complied with the Exchange's new Options Participant requirements as set forth in BOX Rules 2000 Series.

As proposed, if Apex Clearing does not comply with all applicable BOX Options Participant application requirements within 30 calendar days of the effective date of this filing, its status as an approved BOX Options Participant will no longer be effective.

In addition, the Exchange proposes to permit Apex Clearing to assume all existing clearing agreements and arrangements currently in effect with other BOX Options Participants by execution of global agreements thereto. Notice of such assumption will be provided to impacted Options Participants through issuance of a Regulatory Circular prior to the effective date thereof.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) [7] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5) [8] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that permitting the expeditious approval of Apex Clearing as a BOX Options Participant will avoid interruption of the services PFSI currently provides to other BOX Options Participants. Based on information and representations provided by Apex Clearing, a temporary suspension of certain Exchange rules is needed based on the expedited nature of the transaction to enable seamless continuity with respect to the transferring accounts. Consequently, the Exchange believes that temporary suspension of its requirements for the applications and approval of new BOX Options Participants so that Apex Clearing can be approved immediately as a BOX Options Participant will help to foster cooperation and coordination with persons engaged in facilitating transactions in securities and is consistent with the Act.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission notes that the Exchange is proposing that certain of its rules relating to membership requirements be temporarily suspended so that Apex Clearing can be provisionally approved as a BOX Options Participant. The proposed relief does not exempt Apex Clearing from Exchange rule requirements governing Options Participants. Apex Clearing would have a 30 calendar day grace period within which to apply for and be approved under relevant Exchange rules. Moreover, the Commission believes that waiver of the 30-day operative delay is appropriate to ensure a smooth transition of PFSI operations to Apex Clearing. In particular, given the rapidity with which events have developed, waiver of the 30-day operative delay is necessary to avoid significant disruption to PFSI's existing customers and the market generally. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2012–006 *on the subject line.*

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2012–006. This file

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving this five-day pre-filing requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2012–006 and should be submitted on or before July 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14070 Filed 6–8–12; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67120; File No. SR–C2–2012–017]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

June 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 2012, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule with regards to connectivity fees. C2 recently moved its trading systems over to the Equinix NY4 facility (''NY4''). In addition to 1 Gigabit Ethernet (''1 Gbps'') network access, NY4 has capacity to accommodate 10 Gigabit Ethernet (''10 Gbps'') network access. The Exchange would like to make such a connection available to C2 market participants. However, the equipment and infrastructure necessary to provide the 10 Gbps connection is more expensive than that necessary to provide a 1 Gbps connection. As such, the Exchange proposes to adopt a $1,000 per month fee for access to a 10 Gbps Network Access Port ($2,000 for Sponsored Users), and to clarify on the Fees Schedule that the connection currently being provided for $500 per month ($1,000 for Sponsored Users) is for a 1 Gbps connection to a Network Access Port. C2 market participants will be able to elect to connect to C2's trading system via either a 1 Gbps or 10 Gbps Network Access port. Regardless of which is chosen, the Network Access Port fee will be assessed for each port that provides direct access to C2's trading system. The Exchange currently charges a different rate for regular access and Sponsored User access, and merely proposes to increase the rates in equal proportion.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[3] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[4] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest, and with Section 6(b)(4) of the Act,[5] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

Assessing a higher fee for 10 Gbps connectivity than for 1 Gbps connectivity is reasonable because 10 Gbps connectivity is more robust than 1 Gbps connectivity, and is equitable and not unfairly discriminatory because 10 Gbps connectivity requires more costly equipment and maintenance, and the Exchange must recoup the costs related to providing 10 Gbps connectivity. Further, C2 market participants may still elect for the less-expensive 1 Gbps connectivity. Finally, the amount of the fee for 10 Gbps connectivity is less than the amount of the fees for 10 Gbps connectivity assessed by other exchanges.[6]

Assessing higher fees for Sponsored Users is equitable and not unfairly discriminatory because Sponsored Users are able to access the Exchange and use the equipment provided without purchasing a trading permit. As such, Trading Permit Holders who have purchased a trading permit will have a

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b)(4).

[6] *See* New York Stock Exchange Price List, page 13, which lists monthly prices of $12,000–61,500 for different types of 10 Gbps connectivity (along with initial charges of $10,000–50,000) *and* International Securities Exchange Schedule of Fees, page 9, which lists a low-latency Ethernet network access fee of $7,000 per month.

higher level of commitment to transacting business on the Exchange and using Exchange facilities than Sponsored Users. Finally, these increases maintain the same proportionate amounts that are paid by regular users relative to Sponsored Users.

Clarifying that the current $500 monthly fee for a Network Access Port ($1,000 for Sponsored Users) is for a 1 Gbps connection removes impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, protects investors and the public interest by eliminating any confusion about which connection will be assessed which fee (now that the Exchange will be offering both the 1 Gbps and 10 Gbps connection options).

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [7] of the Act and paragraph (f) of Rule 19b–4 [8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–C2–2012–017 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2012–017. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2012–017, and should be submitted on or before July 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14033 Filed 6–8–12; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67129; File No. SR–NYSEMKT–2012–06]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Temporarily Suspending the Requirements of Exchange Rule 311—Equities and Related Exchange Equities Rules Concerning the Approval of New Member Organizations and Exchange Rule 353 and Related Exchange Rules Concerning the Approval of New ATP Holders in Order To Approve Apex Clearing Corporation, f/k/a Ridge Clearing and Outsourcing Solutions, Inc. as an Exchange Equities Member Organization and ATP Holder, Subject to Apex Clearing Complying With Exchange Rules for a New Member Organization and ATP Holder Within 30 Calendar Days of the Date That Apex Clearing Is Provisionally Approved as an Exchange Equities Member Organization and ATP Holder

June 5, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 5, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to temporarily suspend the requirements of (1) Exchange Rule 311—Equities and related Exchange Equities rules concerning the approval of new member organizations and (2) Exchange Rule 353 and related Exchange rules concerning the approval of new ATP Holders in order to approve Apex Clearing Corporation, f/k/a Ridge Clearing and Outsourcing Solutions, Inc. (''Apex Clearing'') as an Exchange Equities member organization and ATP Holder, subject to Apex Clearing complying with Exchange rules for a new member organization and ATP Holder within 30 calendar days of the date that Apex

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Clearing is provisionally approved as an Exchange Equities member organization and ATP Holder. The Exchange is also proposing to accept Apex Clearing's assumption of all of the existing clearing agreements and arrangements currently in effect between Penson Financial Services Inc. (''PFSI'') and various other Exchange Equities member organizations and ATP Holders by execution of a global agreement thereto. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes this rule filing to temporarily suspend the requirements of (1) Exchange Rule 311—Equities and related rules regarding the approval of member organizations and (2) Exchange Rule 353 and related rules regarding the approval of ATP Holders in order to immediately approve Apex Clearing as an Exchange Equities member organization and ATP Holder. The Exchange proposes this temporary suspension on an emergency basis to ensure that Apex Clearing can continue the clearing operations of PFSI without unnecessary disruption, which could have a significant collateral impact to a number of other Exchange Equities member organizations and ATP Holders. The proposed temporary suspension is contingent upon Apex Clearing having complied with all new member organization and ATP Holder Exchange rules within 30 calendar days of the date Apex Clearing is provisionally approved as an Exchange Equities member organization and ATP Holder pursuant to this filing.

On May 31, 2012, Apex Clearing Holdings, LLC (''Apex Holdings''), Apex Clearing Solutions, LLC, Broadridge Financial Solutions, Inc. (''Broadridge''), PFSI and Penson Worldwide, Inc. (''PWI'') (together, the ''Parties'') consummated a transaction resulting in a change in ownership of Apex Clearing.[4] Broadridge, Apex Holdings, PWI and PFSI each made capital investments in Apex Holdings, the holding company parent of Apex Clearing. PFSI also assigned all of its U.S. clearing contracts and all customer and introducing broker proprietary accounts along with key personnel to Apex Clearing (the ''Transferring Accounts'').[5]

As a result of the transaction, Apex Clearing, which is not an Exchange Equities member organization or an ATP Holder, will provide the clearing and execution services currently provided to the Transferring Accounts by PFSI. On May 31, 2012, Apex Clearing submitted an application for approval as an Exchange Equities member organization and as an ATP Holder. However because of the expedited nature of the transaction, Apex Clearing was unable to fully comply with Exchange Rule 311—Equities and related new member organization rules and Exchange Rule 353 and related new ATP Holder rules. Because of the need for seamless continuity with respect to the Transferring Accounts, Apex Clearing has requested that the Exchange temporarily suspend its new membership organization and ATP Holder rules in order to enable Apex Clearing's approval as a member organization on an expedited basis. Pursuant to its request, Apex Clearing will fully comply with the Exchange's new member organization and ATP Holder requirements within 30 calendar days after provisional approval.

Exchange Rules 311—Equities and 353 require any person who proposes to form a member organization or an ATP Holder to notify the Exchange in writing and submit such information as may be required by Exchange rules. When a corporate acquisition concerns an asset transfer only, and not an acquisition of the corporate entity, Exchange Equities member organization or ATP Holder status cannot be transferred to the acquiring entity. The entity that proposes to continue the acquired business operations of a member organization must be separately approved as an Exchange Equities member organization or ATP Holder.

Equities

Among other things, to be approved as an Exchange Equities member organization, the applicant must:

- Provide the Exchange with a written application with the name and address of the applicant as well as a list of all proposed parties required to be approved or identified pursuant to Exchange Rules 304—Equities and 311—Equities (Rule 311.11—Equities).
- Ensure that all persons associated with the applicant who meet the requirements of approved persons under Exchange Rule 304—Equities, consent to Exchange Equities jurisdiction as a member or approved person (Exchange Rules 304—Equities and 311(b)—Equities).
- Submit to the Exchange partnership or corporate documents as may be applicable including certificate of incorporation, by-laws, and other corporate documents (Exchange Rule 313.10—Equities and .20—Equities).
- Provide the Exchange with an opinion of counsel that, among other things, the corporation is duly organized and its existing stock is validly issued and outstanding, and that the restrictions and provisions required by the Exchange on the transfer, issuance, conversion and redemption of its stock have been made legally effective (Exchange Rule 313.20—Equities).

In addition, the Exchange reviews whether the applicant meets federal and Exchange capital requirements and whether it has adopted controls and procedures to comply with Exchange rules.

Options

Among other things, to be approved as an ATP Holder, the applicant must:

- Provide the Exchange with a written application with the name and address of the applicant as well as a list of all proposed parties required to be approved or identified pursuant to Exchange Rules 353 and 356.
- Ensure that all persons associated with the applicant who meet the requirements of allied members and approved persons be approved (Exchange Rules 353, 355 and 356).
- Submit to the Exchange partnership or corporate documents as may be applicable including certificate of incorporation, by-laws, and other corporate documents (Exchange Rules 353 and 356).

[4] Prior to the Transaction, Apex Clearing's name was Ridge Clearing & Outsourcing Solutions, Inc. Prior to the transaction, Ridge Clearing & Outsourcing Solutions, Inc. contributed its outsourcing operations and all associated personnel and systems to its affiliated entity, Broadridge Securities Processing Solutions, LLC (''BSPS'') where it will continue to provide operations support and outsourcing services to a number of broker-dealers, including Apex Clearing.

[5] *See* Penson Worldwide, Inc. Form 8–K dated May 31, 2012.

In addition, the Exchange reviews whether the applicant meets federal and Exchange capital requirements and whether it has adopted controls and procedures to comply with Exchange rules.

Due to the amount of information an applicant is required to provide and have completed prior to being approved as a member organization or ATP Holder, the member organization and ATP Holder approval process generally takes several months to complete. The length of time varies based on the timing of the applicant's response to requests for information and documentation.

As proposed, Apex Clearing will continue the clearing and certain other operations of PFSI as of June 6, 2012. In order to avoid interruption of the services PFSI currently provides to other Exchange Equities member organizations and ATP Holders, the Exchange believes that Apex Clearing should be approved immediately as an Exchange Equities member organization and ATP Holder. The Exchange notes that Apex Clearing is already a registered broker dealer and FINRA member, which are prerequisites for becoming an Exchange Equities member organization. See Exchange Rule 2(b)—Equities.

The Exchange therefore proposes providing Apex Clearing with a temporary suspension of Exchange Rule 311—Equities and related membership rules as they relate to approval to operate an Exchange Equities member organization and approval of a proposed member organization's approved persons, and immediately approve Apex Clearing as a member organization. Similarly, the Exchange proposes providing Apex Clearing with a temporary suspension of Exchange Rule 353 and related ATP Holder rules as they relate to approval to operate as an ATP Holder and approval of a proposed ATP Holder's approved persons, and immediately approve Apex Clearing as an ATP Holder. As proposed this temporary suspension is contingent upon:

- Apex Clearing providing the Exchange with sufficient information to confirm that Apex Clearing will meet its capital requirements as an Exchange Equities member organization and ATP Holder; and
- Within 30 calendar days of Apex Clearing's approval as an Exchange Equities member organization and ATP Holder under this proposed filing, Apex Clearing and its approved persons will have complied with the Exchange's new member organization and ATP Holder requirements as set forth in Exchange Rules 304—Equities, 311—Equities through 313—Equities, 353, 355 and 356.

As proposed, if Apex Clearing does not comply with all applicable Exchange Equities member organization application requirements and ATP Holder requirements within 30 calendar days of the effective date of this filing, its status as an approved Exchange Equities member organization and ATP Holder will no longer be effective.

In addition, the Exchange proposes to accept Apex Clearing to assume all existing clearing agreements and arrangements currently in effect with other Exchange Equities member organizations and ATP Holders by execution of global agreements thereto.[6] Notice of such assumption will be provided to impacted member organizations through issuance of Trader and/or Information Notices prior to the effective date thereof.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that permitting the expeditious approval of Apex Clearing as an Exchange Equities member organization and an ATP Holder will avoid interruption of the services PFSI currently provides to other Exchange member organizations and ATP Holders. Based on information and representations provided by Apex Clearing, a temporary suspension of certain Exchange membership rules is needed based on the expedited nature of the transaction to enable seamless continuity with respect to the transferring accounts. Consequently, the Exchange believes that temporary suspension of its member organization and ATP Holder requirements so that Apex Clearing can be approved immediately as an Exchange Equities member organization and an ATP Holder will help to foster cooperation and coordination with persons engaged in facilitating transactions in securities and is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission notes that the Exchange is proposing that certain of its rules relating to membership requirements be

[6] *See* Exchange 954NY.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving this five-day pre-filing requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

temporarily suspended so that Apex Clearing can be provisionally approved as an Exchange Equities member organization and ATP Holder. The proposed relief does not exempt Apex Clearing from Exchange rule requirements governing Exchange Equities member organizations and ATP Holders. Apex Clearing would have a 30 calendar day grace period within which to apply for and be approved under relevant Exchange rules. Moreover, the Commission believes that waiver of the 30-day operative delay is appropriate to ensure a smooth transition of PFSI operations to Apex Clearing. In particular, given the rapidity with which events have developed, waiver of the 30-day operative delay is necessary to avoid significant disruption to PFSI's existing customers and the market generally. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2012–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2012–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2012–06 and should be submitted on or before July 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14067 Filed 6–8–12; 8:45 am]

BILLING CODE 8011–01–P

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67128; File No. SR–NYSEArca–2012–58]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Temporarily Suspending the Requirements of NYSE Arca Equities Rule 2.3, NYSE Arca Options Rule 2.4 and All Related NYSE Arca Equities and NYSE Arca Options Rules Concerning the Approval of New ETP Holders and OTP Holders in Order To Approve Apex Clearing Corporation, f/k/a Ridge Clearing and Outsourcing Solutions, Inc. as an NYSE Arca ETP Holder and OTP Holder, Subject to Apex Clearing Complying With Exchange Rules for a New Member Organization Within 30 Calendar Days of the Date That Apex Clearing Is Provisionally Approved for Membership

June 5, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 5, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to temporarily suspend the requirements of NYSE Arca Equities Rule 2.3, NYSE Arca Options Rule 2.4 and all related NYSE Arca Equities and NYSE Arca Options rules concerning the approval of new ETP Holders and OTP Holders in order to approve Apex Clearing Corporation, f/k/a Ridge Clearing and Outsourcing Solutions, Inc. (''Apex Clearing'') as an NYSE Arca ETP Holder and OTP Holder, subject to Apex Clearing complying with Exchange rules for a new member organization within 30 calendar days of the date that Apex Clearing is provisionally approved for membership. The Exchange is also proposing to accept Apex Clearing's assumption of all of the existing clearing agreements and arrangements currently

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

in effect between Penson Financial Services Inc. (''PFSI'') and various other NYSE Arca ETP Holders and OTP Holders by execution of a global agreement thereto. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes this rule filing to temporarily suspend the requirements of NYSE Arca Equities Rule 2.3, NYSE Arca Options Rule 2.4 and all related rules regarding the approval of ETP Holders and OTP Holders in order to immediately approve Apex Clearing as an NYSE Arca ETP Holder and OTP Holder. The Exchange proposes this temporary suspension on an emergency basis to ensure that Apex Clearing can continue the clearing operations of PFSI without unnecessary disruption, which could have a significant collateral impact to a number of other ETP Holders and OTP Holders. The proposed temporary suspension is contingent upon Apex Clearing having complied with all new ETP Holder and OTP Holder Exchange rules within 30 calendar days of the date Apex Clearing is provisionally approved for membership pursuant to this filing.

On May 31, 2012, Apex Clearing Holdings, LLC (''Apex Holdings''), Apex Clearing Solutions, LLC, Broadridge Financial Solutions, Inc. (''Broadridge''), PFSI and Penson Worldwide, Inc. (''PWI'') (together, the ''Parties'') consummated a transaction resulting in a change in ownership of Apex Clearing.[4] Broadridge, Apex Holdings, PWI and PFSI each made capital investments in Apex Holdings, the holding company parent of Apex Clearing. PFSI also assigned all of its U.S. clearing contracts and all customer and introducing broker proprietary accounts along with key personnel to Apex Clearing (the ''Transferring Accounts'').[5]

As a result of the transaction, Apex Clearing, which is not an NYSE Arca ETP Holder or OTP Holder, will provide the clearing and execution services currently provided to the Transferring Accounts by PFSI. On May 31, 2012, Apex Clearing submitted an application for approval as an NYSE Arca ETP Holder and OTP Holder. However because of the expedited nature of the transaction, Apex Clearing was unable to fully comply with NYSE Arca Equities Rule 2.3, NYSE Arca Options Rule 2.4 and all related new member organization rules. Because of the need for seamless continuity with respect to the Transferring Accounts, Apex Clearing has requested that the Exchange temporarily suspend its new membership organization rules in order to enable Apex Clearing's approval as an ETP Holder and OTP Holder on an expedited basis. Pursuant to its request, Apex Clearing will fully comply with the Exchange's new ETP Holder and OTP Holder requirements within 30 calendar days after provisional approval.

NYSE Arca Equities Rule 2.3 and NYSE Arca Options Rule 2.4 require any person who proposes to form an ETP Holder or OTP Holder to notify the Exchange in writing and submit such information as may be required by NYSE Arca rules. When a corporate acquisition concerns an asset transfer only, and not an acquisition of the corporate entity, NYSE Arca ETP Holder or OTP Holder status cannot be transferred to the acquiring entity. The entity that proposes to continue the acquired business operations of a member organization must be separately approved as an NYSE Arca ETP Holder or OTP Holder.

NYSE Arca Equities

Among other things, to be approved as an NYSE ETP Holder, the applicant must:

- Provide the Exchange with a written application with the name and address of the applicant as well as a list of all proposed parties required to be approved or identified pursuant to NYSE Arca Equities Rules 2.3 and 2.13.
- Ensure that all persons associated with the applicant who meet the requirements of Allied Persons and Approved Persons under NYSE Arca Equities Rule 1, are approved (NYSE Arca Equities Rules 2.3 and 2.13).
- Submit to the Exchange partnership or corporate documents as may be applicable including certificate of incorporation, by-laws, and other corporate documents (NYSE Arca Equity Rules 2.3 and 2.16).

In addition, the Exchange reviews whether the applicant meets federal and NYSE Arca capital requirements and whether it has adopted controls and procedures to comply with Exchange rules.

NYSE Arca Options

Among other things, to be approved as an NYSE OTP Holder, the applicant must:

- Provide the Exchange with a written application with the name and address of the applicant as well as a list of all proposed parties required to be approved or identified pursuant to NYSE Arca Options Rules 2.2, 2.4 and 2.14.
- Ensure that all persons associated with the applicant who meet the requirements of Allied Persons and Approved Persons under NYSE Arca Options Rule 1.1, are approved (NYSE Arca Options Rules 2.4 and 2.14).
- Submit to the Exchange partnership or corporate documents as may be applicable including certificate of incorporation, by-laws, and other corporate documents (NYSE Arca Options Rules 2.4 and 2.17).

In addition, the Exchange reviews whether the applicant meets federal and NYSE Arca capital requirements and whether it has adopted controls and procedures to comply with Exchange rules.

Due to the amount of information an applicant is required to provide and have completed prior to being approved as an ETP Holder and OTP Holder, the ETP Holder and OTP Holder approval process generally takes several months to complete. The length of time varies based on the timing of the applicant's response to requests for information and documentation.

As proposed, Apex Clearing will continue the clearing and certain other operations of PFSI as of June 6, 2012. In order to avoid interruption of the services PFSI currently provides to

[4] Prior to the Transaction, Apex Clearing's name was Ridge Clearing & Outsourcing Solutions, Inc. Prior to the transaction, Ridge Clearing & Outsourcing Solutions, Inc. contributed its outsourcing operations and all associated personnel and systems to its affiliated entity, Broadridge Securities Processing Solutions, LLC (''BSPS'') where it will continue to provide operations support and outsourcing services to a number of broker-dealers, including Apex Clearing.

[5] *See* Penson Worldwide, Inc. Form 8–K dated May 31, 2012.

other Exchange ETP Holders and OTP Holders, the NYSE believes that Apex Clearing should be approved immediately as an NYSE Arca ETP Holder and OTP Holder. The Exchange notes that Apex Clearing is already a registered broker-dealer and FINRA member.

The Exchange therefore proposes providing Apex Clearing with a temporary suspension of NYSE Arca Rule 2.3, NYSE Arca Options Rule 2.4 and related membership rules as they relate to approval to operate an NYSE Arca ETP Holder and OTP Holder and approval of Allied Persons and Approved Persons, and immediately approve Apex Clearing as an ETP Holder and OTP Holder. As proposed this temporary suspension is contingent upon:

- Apex Clearing providing the Exchange with sufficient information to confirm that Apex Clearing will meet its capital requirements as an NYSE Arca ETP Holder and OTP Holder; and
- Within 30 calendar days of Apex Clearing's approval as an NYSE Arca ETP Holder and OTP Holder under this proposed filing, Apex Clearing and its Allied Persons and Approved Persons will have complied with the Exchange's new ETP Holder and OTP Holder requirements as set forth in NYSE Arca Equities Rules 2.3 and 2.13 and NYSE Arca Options Rules 2.4 and 2.14.

As proposed, if Apex Clearing does not comply with all applicable NYSE Arca ETP Holder and OTP Holder application requirements within 30 calendar days of the effective date of this filing, its status as an approved NYSE ETP Holder or OTP Holder will no longer be effective.

In addition, the Exchange proposes to accept Apex Clearing to assume all existing clearing agreements and arrangements currently in effect with other NYSE ETP Holders and OTP Holders by execution of global agreements thereto.[6] Notice of such assumption will be provided to impacted ETP Holders and OTP Holders through issuance of a Trader and/or Information Notices prior to the effective date thereof.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that permitting the expeditious approval of Apex Clearing as an NYSE Arca ETP Holder and OTP Holder will avoid interruption of the services PFSI currently provides to other Exchange ETP Holders and OTP Holders. Based on information and representations provided by Apex Clearing, a temporary suspension of certain NYSE Arca membership rules is needed based on the expedited nature of the transaction to enable seamless continuity with respect to the transferring accounts. Consequently, NYSE Arca believes that temporary suspension of its ETP Holder and OTP Holder requirements so that Apex Clearing can be approved immediately as an NYSE Arca ETP Holder and OTP Holder will help to foster cooperation and coordination with persons engaged in facilitating transactions in securities and is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission notes that the Exchange is proposing that certain of its rules relating to membership requirements be temporarily suspended so that Apex Clearing can be provisionally approved as an NYSE Arca ETP Holder and OTP Holder. The proposed relief does not exempt Apex Clearing from Exchange rule requirements governing NYSE Arca ETP Holders and OTP Holders. Apex Clearing would have a 30 calendar day grace period within which to apply for and be approved under relevant Exchange rules. Moreover, the Commission believes that waiver of the 30-day operative delay is appropriate to ensure a smooth transition of PFSI operations to Apex Clearing. In particular, given the rapidity with which events have developed, waiver of the 30-day operative delay is necessary to avoid significant disruption to PFSI's existing customers and the market generally. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

[6] NYSE Arca Equities Rule 7.14(b) and NYSE Arca Options Rule 6.66(a).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving this five-day pre-filing requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2012–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–58. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–58 and should be submitted on or before July 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14066 Filed 6–8–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67127; File No. SR–NSX–2012–08]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Temporarily Suspend the Requirements of NSX Rule 2.5 and Related NSX ETP Holder Application Rules and Procedures in Order To Approve Apex Clearing Corporation, f/k/a Ridge Clearing and Outsourcing Solutions, Inc. (''Apex Clearing'') as an NSX ETP Holder

June 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 5, 2012, National Stock Exchange, Inc. filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. (''NSX®'' or ''Exchange'') is proposing to amend its rules to temporarily suspend the requirements of NSX Rule 2.5 and related NSX ETP Holder application rules and procedures in order to approve Apex Clearing Corporation, f/k/a Ridge Clearing and Outsourcing Solutions, Inc. (''Apex Clearing'') as an NSX ETP Holder, subject to Apex Clearing complying with Exchange ETP Holder application rules and procedures within 30 calendar days of the date that Apex Clearing is provisionally approved as an ETP Holder. The Exchange is also proposing to accept Apex Clearing's assumption of all of the existing clearing agreements and arrangements currently in effect between Penson Financial Services Inc. (''PFSI'') and various other ETP Holders by execution of a global agreement thereto.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes this rule filing to temporarily suspend the requirements of NSX Rule 2.5 and related procedures regarding the application process for ETP Holders in order to immediately approve Apex Clearing as an NSX ETP Holder. The Exchange proposes this temporary suspension on an emergency basis to ensure that Apex Clearing can continue the clearing operations of PFSI without unnecessary disruption, which could have a significant collateral impact to a number of other ETP Holders. The proposed temporary suspension is contingent upon Apex Clearing having complied with all Exchange ETP Holder application rules and procedures within 30 calendar days of the date Apex Clearing is provisionally approved as an NSX ETP Holder pursuant to this filing.

On May 31, 2012, Apex Clearing Holdings, LLC (''Apex Holdings''), Apex Clearing Solutions, LLC, Broadridge Financial Solutions, Inc. (''Broadridge''), PFSI and Penson Worldwide, Inc. (''PWI'') (together, the ''Parties'') consummated a transaction resulting in a change in ownership of Apex Clearing.[3] Broadridge, Apex Holdings,

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[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Prior to the Transaction, Apex Clearing's name was Ridge Clearing & Outsourcing Solutions, Inc. Prior to the transaction, Ridge Clearing & Outsourcing Solutions, Inc. contributed its outsourcing operations and all associated personnel and systems to its affiliated entity, Broadridge Securities Processing Solutions, LLC (''BSPS'') where it will continue to provide operations

PWI and PFSI each made capital investments in Apex Holdings, the holding company parent of Apex Clearing. PFSI also assigned all of its U.S. clearing contracts and all customer and introducing broker proprietary accounts along with key personnel to Apex Clearing (the ''Transferring Accounts'').[4]

As a result of the transaction, Apex Clearing, which is not an NSX ETP Holder, will provide the clearing and execution services currently provided to the Transferring Accounts by PFSI. On May 31, 2012, Apex Clearing submitted an executed application for approval as an NSX ETP Holder and an NSX User Agreement. However because of the expedited nature of the transaction, Apex Clearing was unable to fully comply with NSX Rule 2.5(a)(5) and related new ETP Holder application procedures. Because of the need for seamless continuity with respect to the Transferring Accounts, Apex Clearing has requested that the Exchange temporarily suspend its new ETP Holder application rules and procedures to the extent necessary in order to enable Apex Clearing's approval as an ETP Holder on an expedited basis. Pursuant to its request, Apex Clearing will fully comply with the Exchange's new ETP Holder application rules and procedures within 30 calendar days after provisional approval.

NSX Rule 2.5 requires that applications for an Exchange Trading Permit (''ETP'') shall be made to the Exchange and shall contain certain specified documentation. Among other things, to be approved as an NSX ETP Holder, the documentation must contain an agreement regarding certain matters as specified in NSX Rule 2.5(a)(1) through (4), which are generally contained in the Exchange's form User Agreement required to be executed by an applicant, together with such other reasonable information with respect to the applicant as the Exchange may require. In addition, pursuant to NSX Rule 2.4, the Exchange reviews whether the applicant meets federal and NSX capital requirements and verifies that certain other application criteria are satisfied.

Due to the amount of information an applicant is required to provide and have completed prior to being approved as an ETP Holder, the ETP Holder approval process generally takes several weeks to complete. The length of time varies based on the timing of the applicant's response to requests for information and documentation.

As proposed, Apex Clearing will continue the clearing and certain other operations of PFSI as of June 6, 2012. In order to avoid interruption of the services PFSI currently provides to other Exchange ETP Holders, the Exchange believes that Apex Clearing should be approved immediately as an NSX ETP Holder. The Exchange notes that Apex Clearing is already a registered broker dealer and FINRA member, which are prerequisites for becoming an NSX ETP Holder. See NSX Rule 2(a)(1).

The Exchange therefore proposes providing Apex Clearing with a temporary suspension of NSX Rule 2.5 and related ETP Holder application rules and procedures as they relate to approval to operate an NSX ETP Holder and approval of a proposed ETP Holder's approved persons, and immediately provisionally approve Apex Clearing as an ETP Holder. As proposed this temporary suspension is contingent upon:

- Apex Clearing providing the Exchange with sufficient information to confirm that Apex Clearing will meet its capital requirements as an NSX ETP Holder; and
- Within 30 calendar days of Apex Clearing's approval as an NSX ETP Holder under this proposed filing, Apex Clearing and its approved persons will have complied with the Exchange's ETP Holder application requirements as set forth in NSX rules and related application documents.

As proposed, if Apex Clearing does not comply with all applicable NSX ETP Holder application requirements within 30 calendar days of the effective date of this filing, its status as an approved NSX ETP Holder will no longer be effective.

In addition, the Exchange proposes to permit Apex Clearing to assume all existing clearing agreements and arrangements currently in effect with other NSX ETP Holders. Notice of such assumption, and a solicitation of consent with respect thereto, will be provided to impacted ETP Holders through applicable notices prior to the effective date thereof.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[5] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5)[6] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that permitting the expeditious approval of Apex Clearing as an NSX ETP Holder will avoid interruption of the services PFSI currently provides to other Exchange ETP Holders. Based on information and representations provided by Apex Clearing, a temporary suspension of certain NSX membership rules and procedures is needed based on the expedited nature of the transaction to enable seamless continuity with respect to the transferring accounts. Consequently, the Exchange believes that temporary suspension of its ETP Holder application requirements so that Apex Clearing can be approved immediately as an NSX ETP Holder will help to foster cooperation and coordination with persons engaged in facilitating transactions in securities and is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)

support and outsourcing services to a number of broker-dealers, including Apex Clearing.

[4] *See* Penson Worldwide, Inc. Form 8–K dated May 31, 2012.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

of the Act [9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) [11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission notes that the Exchange is proposing that certain of its rules relating to membership requirements be temporarily suspended so that Apex Clearing can be provisionally approved as an NSX ETP Holder. The proposed relief does not exempt Apex Clearing from Exchange rule requirements governing NSX ETP Holders. Apex Clearing would have a 30 calendar day grace period within which to apply for and be approved under relevant Exchange rules. Moreover, the Commission believes that waiver of the 30-day operative delay is appropriate to ensure a smooth transition of PFSI operations to Apex Clearing. In particular, given the rapidity with which events have developed, waiver of the 30-day operative delay is necessary to avoid significant disruption to PFSI's existing customers and the market generally. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NSX–2012–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2012–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2012–08 and should be submitted on or before July 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14065 Filed 6–8–12; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving this five-day pre-filing requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67126; File No. SR–NYSE–2012–16]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Temporarily Suspending the Requirements of NYSE Rule 311 and Related NYSE Rules Concerning the Approval of New Member Organizations in Order To Approve Apex Clearing Corporation, f/k/a Ridge Clearing and Outsourcing Solutions, Inc. as an NYSE Member Organization, Subject to Apex Clearing Complying With Exchange Rules for a New Member Organization Within 30 Calendar Days of the Date That Apex Clearing Is Provisionally Approved as an NYSE Member Organization

June 5, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that June 5, 2012, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to temporarily suspend the requirements of NYSE Rule 311 and related NYSE rules concerning the approval of new member organizations in order to approve Apex Clearing Corporation, f/k/a Ridge Clearing and Outsourcing Solutions, Inc. (''Apex Clearing'') as an NYSE member organization, subject to Apex Clearing complying with Exchange rules for a new member organization within 30 calendar days of the date that Apex

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Clearing is provisionally approved as an NYSE member organization. The Exchange is also proposing to accept Apex Clearing's assumption of all of the existing clearing agreements and arrangements currently in effect between Penson Financial Services Inc. (''PFSI'') and various other NYSE member organizations by execution of a global agreement thereto. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes this rule filing to temporarily suspend the requirements of NYSE Rule 311 and related rules regarding the approval of member organizations in order to immediately approve Apex Clearing as an NYSE member organization. The Exchange proposes this temporary suspension on an emergency basis to ensure that Apex Clearing can continue the clearing operations of PFSI without unnecessary disruption, which could have a significant collateral impact to a number of other member organizations. The proposed temporary suspension is contingent upon Apex Clearing having complied with all new member organization Exchange rules within 30 calendar days of the date Apex Clearing is provisionally approved as an NYSE member organization pursuant to this filing.

On May 31, 2012, Apex Clearing Holdings, LLC (''Apex Holdings''), Apex Clearing Solutions, LLC, Broadridge Financial Solutions, Inc. (''Broadridge''), PFSI and Penson Worldwide, Inc. (''PWI'') (together, the ''Parties'') consummated a transaction resulting in a change in ownership of Apex Clearing.[4] Broadridge, Apex Holdings, PWI and PFSI each made capital investments in Apex Holdings, the holding company parent of Apex Clearing. PFSI also assigned all of its U.S. clearing contracts and all customer and introducing broker proprietary accounts along with key personnel to Apex Clearing (the ''Transferring Accounts'').[5]

As a result of the transaction, Apex Clearing, which is not an NYSE member organization, will provide the clearing and execution services currently provided to the Transferring Accounts by PFSI. On May 31, 2012, Apex Clearing submitted an application for approval as an NYSE member organization. However because of the expedited nature of the transaction, Apex Clearing was unable to fully comply with NYSE Rule 311 and related new member organization rules. Because of the need for seamless continuity with respect to the Transferring Accounts, Apex Clearing has requested that the Exchange temporarily suspend its new membership organization rules in order to enable Apex Clearing's approval as a member organization on an expedited basis. Pursuant to its request, Apex Clearing will fully comply with the Exchange's new member organization requirements within 30 calendar days after provisional approval.

NYSE Rule 311 requires any person who proposes to form a member organization to notify the Exchange in writing and submit such information as may be required by NYSE rules. When a corporate acquisition concerns an asset transfer only, and not an acquisition of the corporate entity, NYSE member organization status cannot be transferred to the acquiring entity. The entity that proposes to continue acquired business operations of a member organization must be separately approved as an NYSE member organization.

Among other things, to be approved as an NYSE member organization, the applicant must:

- Provide the Exchange with a written application with the name and address of the applicant as well as a list of all proposed parties required to be approved or identified pursuant to NYSE Rules 304 and 311 (NYSE Rule 311.11).
- Ensure that all persons associated with the applicant who meet the requirements of approved persons under NYSE Rule 304, consent to NYSE jurisdiction as a member or approved person (NYSE Rules 304 and 311(b)).
- Submit to the Exchange partnership or corporate documents as may be applicable including certificate of incorporation, by-laws, and other corporate documents (NYSE Rule 313.10 and .20).
- Provide the Exchange with an opinion of counsel that, among other things, the corporation is duly organized and its existing stock is validly issued and outstanding, and that the restrictions and provisions required by the Exchange on the transfer, issuance, conversion and redemption of its stock have been made legally effective (NYSE Rule 313.20).

In addition, the Exchange reviews whether the applicant meets federal and NYSE capital requirements and whether it has adopted controls and procedures to comply with Exchange rules.

Due to the amount of information an applicant is required to provide and have completed prior to being approved as a member organization, the member organization approval process generally takes several months to complete. The length of time varies based on the timing of the applicant's response to requests for information and documentation.

As proposed, Apex Clearing will continue the clearing and certain other operations of PFSI as of June 6, 2012. In order to avoid interruption of the services PFSI currently provides to other Exchange member organizations, the NYSE believes that Apex Clearing should be approved immediately as an NYSE member organization. The Exchange notes that Apex Clearing is already a registered broker dealer and FINRA member, which are prerequisites for becoming an NYSE member organization. See NYSE Rule 2(b).

The Exchange therefore proposes providing Apex Clearing with a temporary suspension of NYSE Rule 311 and related membership rules as they relate to approval to operate an NYSE member organization and approval of a proposed member organization's approved persons, and immediately approve Apex Clearing as a member organization. As proposed this temporary suspension is contingent upon:

- Apex Clearing providing the Exchange with sufficient information to confirm that Apex Clearing will meet its

[4] Prior to the Transaction, Apex Clearing's name was Ridge Clearing & Outsourcing Solutions, Inc. Prior to the transaction, Ridge Clearing & Outsourcing Solutions, Inc. contributed its outsourcing operations and all associated personnel and systems to its affiliated entity, Broadridge Securities Processing Solutions, LLC (''BSPS'') where it will continue to provide operations support and outsourcing services to a number of broker-dealers, including Apex Clearing.

[5] *See* Penson Worldwide, Inc. Form 8–K dated May 31, 2012.

capital requirements as an NYSE member organization; and

• Within 30 calendar days of Apex Clearing's approval as an NYSE member organization under this proposed filing, Apex Clearing and its approved persons will have complied with the Exchange's new member organization requirements as set forth in NYSE Rules 304 and 311–313.

As proposed, if Apex Clearing does not comply with all applicable NYSE member organization application requirements within 30 calendar days of the effective date of this filing, its status as an approved NYSE member organization will no longer be effective.

In addition, the Exchange proposes to accept Apex Clearing to assume all existing clearing agreements and arrangements currently in effect with other NYSE member organizations by execution of global agreements thereto. Notice of such assumption will be provided to impacted member organizations through issuance of Trader and/or Information Notices prior to the effective date thereof.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) [6] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5) [7] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that permitting the expeditious approval of Apex Clearing as an NYSE member organization will avoid interruption of the services PFSI currently provides to other Exchange member organizations. Based on information and representations provided by Apex Clearing, a temporary suspension of certain NYSE membership rules is needed based on the expedited nature of the transaction to enable seamless continuity with respect to the transferring accounts. Consequently, the NYSE believes that temporary suspension of its member organization requirements so that Apex Clearing can be approved immediately as an NYSE member organization will help to foster cooperation and coordination with persons engaged in facilitating transactions in securities and is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competion.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission notes that the Exchange is proposing that certain of its rules relating to membership requirements be temporarily suspended so that Apex Clearing can be provisionally approved as an NYSE member organization. The proposed relief does not exempt Apex Clearing from Exchange rule requirements governing member organizations. Apex Clearing would have a 30 calendar day grace period within which to apply for and be approved under relevant Exchange rules. Moreover, the Commission believes that waiver of the 30-day operative delay is appropriate to ensure a smooth transition of PFSI operations to Apex Clearing. In particular, given the rapidity with which events have developed, waiver of the 30-day operative delay is necessary to avoid significant disruption to PFSI's existing customers and the market generally. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2012–16 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2012–16. This file

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving this five-day pre-filing requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2012–16 and should be submitted on or before July 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14064 Filed 6–8–12; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67122; File No. SR–NASDAQ–2012–067]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update the NASDAQ Options Market Message Traffic Mitigation Rule

June 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that, on May 29, 2012, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is filing with the Commission a proposal for the NASDAQ Options Market (''NOM'' or ''Exchange'') to update its quote mitigation rule. Specifically, NASDAQ proposes to amend Chapter VI, Section 17, Message Traffic Mitigation, by deleting paragraph (c) and renumbering paragraphs (d) and (e).

The text of the proposed rule change is available from NASDAQ's Web site at *http://nasdaq.cchwallstreet.com/Filings*, at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to update NOM rules to eliminate a message traffic mitigation provision that NASDAQ no longer intends to implement. Currently, Chapter VI, Section 17 provides that for the purpose of message traffic mitigation, based on NOM's traffic with respect to target traffic levels and in accordance with NOM's overall objective of reducing both peak and overall traffic, certain strategies may be implemented, which are listed in paragraphs (a)–(d). Of course, because NOM is a newer options market, launching in 2008 with a certain suite of products and participants, NOM did not immediately face message traffic concerns requiring mitigation under this rule. Accordingly, NOM has not employed all of these features to date. Specifically, paragraph (c) has never been employed.

At this time, NASDAQ proposes to eliminate one aspect of its traffic mitigation rule that provides that NOM will prioritize price update messages and send out price updates before sending size update messages; the rule further provides that this functionality will be applied to all options series listed on NOM and in conjunction with the previously described replace on queue functionality [3] will ensure that NOM quote update messages are the most current and relevant available.[4] NASDAQ believes that the concept in paragraph (c) of ''prioritizing'' messages is not necessary because the replace on queue functionality in paragraph (b) accomplishes the same goal of mitigation.

Specifically, NASDAQ proposes to remove paragraph (c), because if the replace on queue functionality in paragraph (b) is operating, paragraph (c) cannot operate to prioritize price update messages over size update messages. The latest update message would have already been sent due to the replacement on queue functionality, which replaces the updated size message for the original message. For example, if the following three quotes in an options series are outbound as follows:

First message—$1.00 bid for 10 contracts

Second message—$1.01 bid for 5 contracts

Third message—$1.01 bid for 6 contracts

In this situation, the operation of paragraph (b) would result in only the third message being sent, as it replaced both the first and second messages. In contrast, the operation of paragraph (c) would result in the second message being sent, because it is a price update; the third message would also be sent, because the prioritizing concept in paragraph (c) only prevents size changes from being sent if they are followed by a price change. Thus, two messages rather than one are sent if paragraph (c) is operating.

Similarly, if the fourth message was $1.05 bid for 6 contracts, the operation of paragraph (b) would still result in

[3] The replace on queue functionality is a process by which an outbound quote message that has not been sent, but is about to be sent, will not be sent if a more current quote message for the same series is available for sending. *See* Chapter VI, Section 17(b).

[4] *See* Chapter VI, Section 17(c).

only the last (fourth) message being sent, as it replaced the first, second and third messages. The operation of paragraph (c) would again result in more messages being sent, because the second, third and fourth messages would be sent.

Because paragraph (b) operated to only send the last message, there is no point to then applying paragraph (c). Paragraph (b) has already caused only the most recent message to be sent, leaving no messages to prioritize. In fact, NASDAQ believes that not only does paragraph (b) result in fewer messages being sent, it results in the most relevant message being sent—the most recent. Accordingly, NASDAQ believes that deleting paragraph (c) will not result in any additional message traffic and that NOM's message mitigation program is sufficient without paragraph (c). Furthermore, paragraph (b) covers what paragraph (c) would mitigate, such that paragraph (c) is duplicative and, thus, in deleting it, the ultimate effect of the message traffic mitigation rule remains the same. No more messages will be sent by deleting paragraph (c). In fact, the same number of messages will be sent even if paragraph (c) is deleted.

NASDAQ believes that the operation of the other provisions in the rule should provide sufficient methods of message traffic mitigation should the need arise going forward. Specifically, delisting pursuant to paragraph (a), the replace on queue functionality in paragraph (b), and the size update restriction in paragraph (d) are different types of mitigation focused on different types of message traffic, which form a strong traffic mitigation program. When paragraph (c) is deleted, NOM's mitigation program will be equally solid, because paragraph (b) will accomplish more traffic mitigation than what paragraph (c) can accomplish, as explained above. Moreover, no additional quotes will go out with paragraph (c) deleted; the same number of messages will be sent.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [5] in general, and furthers the objectives of Section 6(b)(5) of the Act [6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest, because the Exchange is not required to make this particular mitigation strategy available and has instead, other types of mitigation strategies available in Chapter VI, Section 17, as described above. These other mitigation strategies, together, protect investors and the public interest, and promote just and equitable principles of trade by addressing any message traffic issues that may arise while deleting a duplicative provision that has no effect on message traffic mitigation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) [8] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–067 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–067. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–067 and should be submitted on or before July 2, 2012.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement. 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14060 Filed 6–8–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Aegis Assessments, Inc., APC Group, Inc., Aurelio Resource Corp., BioAuthorize Holdings, Inc., and Fonix Corporation; Order of Suspension of Trading

June 7, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Aegis Assessments, Inc. because it has not filed any periodic reports since the period ended January 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of APC Group, Inc. because it has not filed any periodic reports since the period ended August 31, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Aurelio Resource Corp. because it has not filed any periodic reports since the period ended September 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BioAuthorize Holdings, Inc. because it has not filed any periodic reports since the period ended September 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Fonix Corporation because it has not filed any periodic reports since the period ended September 30, 2009.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on June 7, 2012 through 11:59 p.m. EDT on June 20, 2012.

[9] 17 CFR 200.30–3(a)(12).

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2012–14235 Filed 6–7–12; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 7919]

Culturally Significant Objects Imported for Exhibition Determinations: ''Century of the Child: Growing by Design 1900–2000''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Century of the Child: Growing by Design 1900–2000'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Museum of Modern Art, New York, NY, from on or about July 29, 2012, until on or about November 5, 2012; and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: June 05, 2012,

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–14129 Filed 6–8–12; 8:45 am]

BILLING CODE 4710–05–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: April 1, 2012, through April 30, 2012.

ADDRESSES: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; email: *rcairo@srbc.net*. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above:

Approvals By Rule Issued Under 18 CFR § 806.22(f)

1. SWEPI, LP, Pad ID: Shedd 514, ABR–201204001, Rutland Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: April 11, 2012.
2. Chief Oil & Gas LLC, Pad ID: Leh Drilling Pad #1, ABR–201204002, Burlington Township, Bradford County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: April 11, 2012.
3. Chief Oil & Gas LLC, Pad ID: Yanavitch Drilling Pad #1, ABR–201204003, Stevens Township, Bradford County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: April 11, 2012.
4. Chief Oil & Gas LLC, Pad ID: D & J Farms Drilling Pad #1, ABR–201204004, Sheshequin Township, Bradford County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: April 11, 2012.
5. EXCO Resources (PA), Inc., Pad ID: Murray Unit Pad, ABR–201204005, Penn Township, Lycoming County, Pa.; Consumptive Use of Up to 8.000 mgd; Approval Date: April 11, 2012.
6. Chesapeake Appalachia, LLC, Pad ID: Maurice, ABR–201204006, Herrick Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: April 18, 2012.
7. SWEPI, LP, Pad ID: Owlett 843R, ABR–201204007, Middlebury

Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: April 23, 2012.

8. SWEPI, LP, Pad ID: Hepler 235, ABR–201204008, Sullivan Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: April 23, 2012.

9. Chesapeake Appalachia, LLC, Pad ID: Manning, ABR–201204009, Cherry Township, Sullivan County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: April 23, 2012.

10. EQT Production Co., Pad ID: Phoenix N (ANT6), ABR–201204010, Duncan Township, Tioga County, Pa.; Consumptive Use of Up to 3.000 mgd; Approval Date: April 27, 2012.

11. Chesapeake Appalachia, LLC, Pad ID: Simplex, ABR–201204011, Standing Stone Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: April 27, 2012.

12. Southwestern Energy Production Company, Pad ID: Claytor Pad, ABR–201204012, New Milford and Great Bend Townships, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: April 27, 2012.

13. Southwestern Energy Production Company, Pad ID: Charles Pad, ABR–201204013, Jackson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: April 27, 2012.

14. Chesapeake Appalachia, LLC, Pad ID: Freed, ABR–201204014, Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: April 30, 2012.

15. Chesapeake Appalachia, LLC, Pad ID: Reilly, ABR–201204015, Colley Township, Sullivan County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: April 30, 2012.

16. Southwestern Energy Production Company, Pad ID: Conigliaro Pad, ABR–201204016, New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: April 30, 2012.

17. Southwestern Energy Production Company, Pad ID: Estabrooks Pad, ABR–201204017, Harford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: April 30, 2012.

18. Southwestern Energy Production Company, Pad ID: Conklin South Pad, ABR–201204018, New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: April 30, 2012.

19. Southwestern Energy Production Company, Pad ID: Glover Pad, ABR–201204019, Thompson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: April 30, 2012.

20. Southwestern Energy Production Company, Pad ID: Gaylord Pad, ABR–201204020, Jackson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: April 30, 2012.

21. Southwestern Energy Production Company, Pad ID: Page Pad, ABR–201204021, Jackson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: April 30, 2012.

22. Southwestern Energy Production Company, Pad ID: Seamans Pad, ABR–201204022, Harford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: April 30, 2012.

23. Southwestern Energy Production Company, Pad ID: Walker Pad, ABR–201204023, Jackson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: April 30, 2012.

24. Southwestern Energy Production Company, Pad ID: Warner Pad, ABR–201204024 New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: April 30, 2012.

25. Southwestern Energy Production Company, Pad ID: Preston-Perkins Pad, ABR–201204025, Stevens Township, Bradford County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: April 30, 2012.

Authority: Pub. L. 91–575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: May 30, 2012.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2012–13999 Filed 6–8–12; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on the Newberg Dundee Bypass Project Project: Yamhill and Washington County, OR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitations on Claims for Judicial Review of Actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA, NMFS, and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, Newberg Dundee Bypass Project, in Yamhill and Washington Counties, Oregon. This action grants approval for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before December 10, 2012. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Michelle Eraut, Program Development Team Leader, Federal Highway Administration, 530 Center Street NE., Suite 420, Salem, Oregon 97301, Telephone: (503) 316–2559. The Newberg Dundee Bypass Project Final Environmental Impact Statement, Record of Decision (ROD) and other project records are available upon written request from the Federal Highway Administration at the address shown above. Comments or questions concerning this proposed action and the Newberg Dundee Bypass Project should be directed to the FHWA at the address provided above.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency action subject to 23 U.S.C. 139 (l)(1) by issuing approval for the following highway project in the State of Oregon: Newberg Dundee Bypass Project. The project will build an 11-mile, four-travel lane, access-controlled expressway (Bypass) with four interchanges and related local circulation changes to reduce congestion on Oregon 99W through Newberg and Dundee in Yamhill and Washington Counties, Oregon. The project area is located along the south sides of Newberg and Dundee, from the Oregon 99W/Oregon 18 junction near Dayton (approximately Oregon 18 milepost 51.6) to past Rex Hill, east of Newberg (approximately Oregon 99W milepost 19.6). The project followed a tiered NEPA process. On August 26, 2005, FHWA issued a ROD on the Tier 1 FEIS that approved the Bypass Corridor (Corridor), the number and location of interchanges, and a general Bypass configuration. The Tier 2 DEIS, published in June 5, 2010, evaluated a No Build Alternative and Build Alternative based on the approved Corridor, including several design and local circulation options. A Preferred Alternative was identified, considering the Tier 2 DEIS analysis and public and agency comments received on the Tier 2 DEIS. The actions by the Federal agencies and the laws under which such actions were taken are described in the Final Environmental Impact Statement

published on April 27, 2012, in the ROD approved on June 5, 2012, and in other documents in the FHWA project records. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C 4321–4347]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]; Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users [SAFETEA–LU—23 U.S.C. 139].
2. Air: Clean Air Act [42 U.S.C. 7401–7671(q)].
3. Land: Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].
4. Wildlife: Endangered Species Act [16 U.S.C. 1531, *et seq.*]; Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801, *et seq.*]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667 (d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712]; Bald and Golden Eagle Protection Act [16 U.S.C. 668–668(c)].
5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f)]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].
6. Social and Economic: Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000(d) *et seq.*]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].
7. Hazardous Materials and Waste: Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675; Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992(k).
8. Wetlands and Water Resources: Clean Water Act [33 U.S.C. 1251–1377]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Wetlands Mitigation [23 U.S.C. 103(b)(6)(M) and 133 (b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].
9. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1)

Issued On: June 5, 2012.

Michelle Eraut,

Program Development Team Leader Salem, Oregon.

[FR Doc. 2012–14045 Filed 6–8–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2012–0079]

Pipeline Safety: Mechanical Fitting Failure Reports

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice; Issuance of Advisory Bulletin.

SUMMARY: This notice provides clarification to owners and operators of gas distribution pipeline facilities when completing the Mechanical Fitting Failure Report Form, PHMSA F 7100.1–2. Initial reviews of reports submitted for calendar year 2011 failures have identified a need for PHMSA to issue this notice to provide operators with additional guidance for reporting the apparent cause. PHMSA has also enhanced the online submittal process and plans to implement further improvements.

ADDRESSES: This document can be viewed on the PHMSA home page at: *http://www.phmsa.dot.gov* and in docket number PHMSA–2012–0079 at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Chris McLaren, Distribution Integrity Management Program Coordinator at 281–216–4455, or by email at *chris.mclaren@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 192.1009 of the pipeline safety regulations (49 CFR parts 190–199) requires each owner or operator of a gas distribution pipeline facility to file a written report for any mechanical fitting failure that results in a hazardous leak. A hazardous leak is defined in § 192.1001 as a leak that represents an existing or probable hazard to persons or property and requires immediate repair or continuous action until the conditions are no longer hazardous. Each report must be filed by March 15 of the following year on a Mechanical Fitting Failure Report Form (PHMSA F 7100.1–2).

A report is required for all failures regardless of the material composition, type, manufacturer, or size of the fitting. The reporting requirements apply to all failures that result in a hazardous leak due to the use of a fitting and may include failures in the body of the mechanical fitting, failures in the joints between the fitting and the pipe, indications of leakage from the seals associated with the fitting, and partial or complete separation of the pipe from the fitting. Operators are to report all mechanical fitting failures regardless of the cause. It is important to note that PHMSA does not seek information related to failures of cast iron bell and spigot joints unless the leak resulted from a failure of a mechanical fitting used to repair or reinforce a joint.

Question 15, ''Apparent Cause of Leak'', under Part C of PHMSA F 7100.1–2 specifies various apparent causes of leaks. These causes include ''Corrosion,'' ''Natural Forces,'' ''Excavation Damage,'' ''Other Outside Force Damage,'' ''Material or Welds/Fusions,'' ''Equipment,'' ''Incorrect Operation,'' and ''Other.'' These apparent cause options contain two potential options for a failure that apparently results from incorrect installation of the mechanical fitting. One option is ''Material or Welds/Fusions'' with a subcategory of ''Construction/Installation Defect.'' The other option is ''Incorrect Operation.'' PHMSA prefers that failures resulting from an installation defect be reported

using ''Incorrect Operation'' as the apparent cause. It is PHMSA's intent to capture failure data under the ''Material or Welds/Fusions'' leak cause category that is specific to manufacture, fabrication, material, and design defects.

In addition, operators have contacted PHMSA with a suggestion to expedite the finalization and electronic submission of reports. Many operators have developed unique identifiers for their mechanical fitting failures. These operators have suggested that the form be revised to allow the addition of this unique identifier to each report. This will allow for ease of identification and prevention of duplicate filing. PHMSA has revised the form to collect this information.

Over eight thousand Mechanical Fitting Failure Reports were received during calendar year 2011. Several operators have requested the ability to submit multiple reports simultaneously. PHMSA has begun work on a function within the online system to allow the simultaneous submission of multiple reports.

II. Advisory Bulletin (ADB–2012–07)

To: All Gas Distribution Operators.

Subject: Completion of Mechanical Fitting Failure Report Form, Leak Causes.

Advisory: As specified in § 192.1009, operators of all gas distribution pipeline facilities are required to report the failure of any mechanical fitting that results in a hazardous leak on a Mechanical Fitting Failure Report Form (PHMSA F 7100.1–2). The report is required for all failures regardless of the material composition, type, manufacturer, or size of the fitting. Operators are to report all mechanical fitting failures regardless of the cause. Reporting requirements also apply to failures resulting from the use of a fitting and may include failures in the body of mechanical fitting, failures in the joints between the fitting and the pipe, indications of leakage from the seals associated with the fitting, and partial or complete separation of the pipe away from the fitting. However, PHMSA does not seek information related to failures of cast iron bell and spigot joints unless the leak resulted from a failure of a mechanical fitting used to repair or reinforce a joint.

The apparent cause options under Part C, Question 15 (Apparent Cause of Leak) on PHMSA F 7100.1–2 contain two potential options for a failure that apparently results from incorrect installation of the mechanical fitting. One option is ''Material or Welds/Fusions'' with a subcategory of ''Construction/Installation Defect.'' The other option is ''Incorrect Operation.'' PHMSA prefers that failures resulting from an installation defect be reported using ''Incorrect Operation'' as the apparent cause. It is PHMSA's intent to capture failure data under the ''Material or Welds/Fusions'' leak cause category that is specific to manufacture, fabrication, material, and design defects.

When creating a report in PHMSA's online system, operators may now include a unique identifier for each report to help operators distinguish reports.

Several operators have requested the ability to submit multiple reports simultaneously. PHMSA has begun work on a function within the online system to allow the simultaneous submission of multiple reports.

Issued in Washington, DC on June 4, 2012.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2012–14089 Filed 6–8–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2012–0112]

Pipeline Safety: Requests for Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: Pursuant to the Federal pipeline safety laws, PHMSA is publishing this notice of special permit requests we have received from Norgasco, Inc., and BreitBurn Energy Company LP, two natural gas pipeline operators, seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. This notice seeks public comments on the requests, including comments on any safety or environmental impacts. At the conclusion of the 30-day comment period, PHMSA will evaluate the requests and determine whether to grant or deny a special permit.

DATES: Submit any comments regarding these special permit requests by July 11, 2012.

ADDRESSES: Comments should reference the docket numbers for the specific special permit request and may be submitted in the following ways:

- *E-Gov Web Site: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* DOT Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

Note: Comments are posted without changes or edits to *http://www.Regulations.gov,* including any personal information provided. There is a privacy statement published on *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

General: Kay McIver by telephone at (202) 366–0113; or, email at *kay.mciver@dot.gov.*

Technical: Jeffery Gilliam by telephone at (202) 366–0568; or, email at *Jeffery.Gilliam@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA has received requests for special permits from two natural gas pipeline operators, Norgasco, Inc., (''NI''), and BreitBurn Energy Company LP (''BreitBurn'') seeking relief from compliance with certain pipeline safety regulations.[1] The requests include a technical analysis provided by the operators. The requests are filed in the Federal Docket Management System (FDMS) and have been assigned docket numbers, (Norgasco—PHMSA–2011–0344 and BreitBurn—PHMSA–2011–0343) in the FDMS. We invite interested persons to participate by reviewing these special permit requests at *http://www.Regulations.gov,* and by submitting written comments, data or other views. Please include any comments on potential environmental

[1] Effective December 31, 2011, BreitBurn Energy Company LP, changed its name to Pacific Coast Energy Company, LP.

impacts that may result if these special permits are granted.

Before acting on these special permit requests, PHMSA will evaluate all comments received on or before the closing date. Comments will be evaluated after this date if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment we receive in making our decision to grant or deny the requests.

PHMSA has received the following special permit requests:

Docket No.	Requester	Regulation(s) affected	Nature of special permit
PHMSA–2011–0344	Norgasco, Inc	49 CFR 192.121	The special permit request from Norgasco, Inc. (''NI'') seeks permission to use Fiberspar pipe up to the hydrostatic design basis as listed by ASTM D 2517, to construct and operate a three mile long natural gas pipeline located in the Deadhorse area of Prudhoe Bay, Alaska. The pipeline is intended to transport natural gas from the oil and gas producers on the Alaskan North Slope to the existing Deadhorse natural gas distribution utility, Norgasco, Inc. The main portion is 2.76 miles long. All portions of the pipeline are located within the Alaskan North Slope Prudhoe Bay area. The entire pipeline is in a largely unpopulated area (Class 1) area. The pipeline will be constructed of a thermoset composite pipe that is manufactured by Fiberspar LinePipe, LLC. The pipeline is expected to be constructed during the 2012/2013 Winter construction season.
PHMSA–2011–0343	BreitBurn Energy Company LP.	49 CFR 192.53(c), 192.121, 192.123, 192.619(a).	The special permit request from BreitBurn Energy Company LP (''BreitBurn''), seeks permission to use composite, reinforced thermoplastic (''RTP'') for the replacement of a segment of steel pipeline located in the city of Los Angeles, California. BreitBurn plans to insert a 6-inch OD Smart Pipe system into the current 12-inch OD segment of the existing steel gas gathering line. The line is in need of replacement due to the age of the pipeline and the recently discovered presence of internal corrosion. In August 2011, a leak developed from a threaded connection of pipe. On further examination of a cut out section, internal corrosion was found. The normal operating pressure for this line is 220 psig and the MAOP is 245 psig. This line is a Type B line as specified in 49 CFR § 192.8. The entire area through which this pipeline travels, and indeed the general area of the City of Los Angeles, is a densely populated and utilized, Class 4 location as defined in 49 CFR § 192.5.

Authority: 49 U.S.C. 60118 (c)(1) and 49 CFR 1.53.

Issued in Washington, DC on June 7, 2012.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2012–14088 Filed 6–8–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[RP 2012–1]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing Revenue Procedure, RP 2012–1, Rulings and Determination Letters—(Amplifies RP2003–1 & 2003–3) 26 CFR 601–201.

DATES: Written comments should be received on or before August 10, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Rulings and Determination Letters.

OMB Number: 1545–1522.

Revenue Procedure: RP 2012–1.

Abstract: This revenue procedure explains how the Service provides advice to taxpayers on issues under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). It explains the forms of advice and the manner in which advice is requested by taxpayers and provided by the Service. The agency needs this information in order to use resources more efficiently and to provide more guidance to individual corporate taxpayers and their shareholders.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,825.

Estimated Time per Respondent: 80 hours.

Estimated Total Annual Burden Hours: 305,540.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 22, 2012.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–14006 Filed 6–8–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8900

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8900, Qualified Railroad Track Maintenance Credit.

DATES: Written comments should be received on or before August 10, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Qualified Railroad Track Maintenance Credit.

OMB Number: 1545–1983.

Form Number: 8900.

Abstract: Form 8900 Qualified Railroad Track Maintenance Credit, was developed to carry out the provisions of new Code section 45G. This new section was added by section 245 of the American Jobs Creation Act of 2004 (Pub. L. 108–357). The new form provides a means for the eligible taxpayer to compute the amount of credit.

Current Actions: There are no changes in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a current OMB approval.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 333.

Estimated Time per Respondent: 5 hours, 58 minutes.

Estimated Total Annual Burden Hours: 1,985.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 31, 2012.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–14010 Filed 6–8–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 14411

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 14411, Systemic Advocacy Issue Submission form.

DATES: Written comments should be received on or before August 10, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions

should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Systemic Advocacy Issue Submission.

OMB Number: 1545–1832.

Form Number: 14411.

Abstract: Systemic Advocacy Issue Submission Form, is an optional use form for taxpayers (individual and business), tax professionals, trade and business associations, etc. to submit systemic problems. These problems may pertain to experiences with the Internal Revenue Service's processes procedures or make legislative recommendations.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, farms, Federal, State, Local or Tribal governments.

Estimated Number of Respondents: 420.

Estimated Number of Response: 48 minutes.

Estimated Total Annual Burden Hours: 336.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 30, 2012.

Yvette Lawrence,

IRS Reports Clearance Office.

[FR Doc. 2012–14011 Filed 6–8–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Agency Information Collection Activity; Proposed Collection

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before August 10, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or regulations should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *RJosephDurbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Basis Reduction Due to Discharge of Indebtedness.

OMB Number: 1545–1539.

Regulation Project Number: REG–208172–91 (TD 8787—final).

Abstract: This regulation provides ordering rules for the reduction of bases of property under Internal Revenue Code sections 108 and 1017. The regulation affects taxpayers that exclude discharge of indebtedness from gross income under Code section 108. The collection of information is required for a taxpayer to elect to reduce the adjusted bases of depreciable property under section 108(b)(5), to elect to treat section 1221(l) real property as either depreciable property or depreciable real property, and to account for a partnership interest as either depreciable property or depreciable real property.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Responses: 10,000.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 10,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 29, 2012.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–14008 Filed 6–8–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Schedule C–EZ (Form 1040)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Schedule C–EZ (Form 1040), Net Profit From Business.

DATES: Written comments should be received on or before August 10, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Net Profit From Business.

OMB Number: 1545–1973.

Form Number: Schedule C–EZ (Form 1040).

Abstract: Schedule C–EZ (Form 1040) is used by individuals to report their Business Income. The data is used to verify that the items reported on the form are correct and also for general statistical use.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 587,151.

Estimated Time per Respondent: 1 hour 45 minutes.

Estimated Total Annual Burden Hours: 1,027,515.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 31, 2012.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–14012 Filed 6–8–12; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 77 Monday,

No. 112 June 11, 2012

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing 38 Species on Molokai, Lanai, and Maui as Endangered and Designating Critical Habitat on Molokai, Lanai, Maui, and Kahoolawe for 135 Species; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2011–0098; MO 92210–0–0009]

RIN 1018–AX14

Endangered and Threatened Wildlife and Plants; Listing 38 Species on Molokai, Lanai, and Maui as Endangered and Designating Critical Habitat on Molokai, Lanai, Maui, and Kahoolawe for 135 Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list 38 species on the Hawaiian Islands of Molokai, Lanai, and Maui as endangered under the Endangered Species Act of 1973, as amended (Act). We are also reaffirming the listing of two endemic Hawaiian plants currently listed as endangered. We propose to designate critical habitat for 39 of these 40 plant and animal species. Critical habitat is not determinable for the plant *Cyanea mauiensis.* In this document, we also propose to designate critical habitat for 11 previously listed plant and animal species that do not have designated critical habitat, and propose to revise critical habitat for 85 plant species that are already listed as endangered or threatened. The proposed critical habitat designation totals 271,062 acres (ac) (109,695 hectares (ha)) on the islands of Molokai, Lanai, Maui, and Kahoolawe (collectively called Maui Nui), and includes both occupied and unoccupied habitat. Approximately 47 percent of the area being proposed as critical habitat is already designated as critical habitat for the 85 plant species or other species. We also propose to delist the plant *Gahnia lanaiensis,* due to new information that this species is synonymous with *G. lacera,* a widespread species from New Zealand. In addition, we propose name changes or corrections for 11 endangered plants and 2 endangered birds, and taxonomic revisions for 2 endangered plant species.

DATES: We will consider comments received on or postmarked on or before August 10, 2012. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** section below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on this date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by July 26, 2012.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for FWS–R1–ES–2011–0098, which is the docket number for this proposed rule.
- *U.S. mail or hand delivery:* Public Comments Processing, Attn: FWS–R1–ES–2011–0098; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Loyal Mehrhoff, Field Supervisor, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Box 50088, Honolulu, HI 96850; by telephone at 808–792–9400; or by facsimile at 808–792–9581. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. This is a proposed rule to list 38 species (35 plants and 3 tree snails) from the island cluster of Maui Nui (Molokai, Lanai, Maui, and Kahoolawe) in the State of Hawaii as endangered, and concurrently designate 271,062 acres as critical habitat. In this proposed rule, we are also proposing to revise critical habitat for 85 plants and proposing to designate critical habitat for 11 listed plants and animals that do not have designated critical habitat on these islands. Under the Endangered Species Act, we must issue a rule to list a species as endangered or threatened and, concurrently, designate critical habitat at the time a species is listed as threatened or endangered. We may, as appropriate, revise critical habitat designations. If adopted as proposed, this rule would establish an integrated, comprehensive, ecosystem-based critical habitat designation, which would allow the Service to better prioritize, direct, and focus conservation and recovery actions.

As part of a settlement agreement, we agreed to submit to the **Federal Register** a proposed rule for Maui Nui candidate species in fiscal year 2012. This action complies with the agreement.

This rule proposes the following:

- List 38 plants and animals as endangered species.
- Reaffirm the listing for two listed plants with taxonomic changes.
- Designate critical habitat for 37 of the 38 proposed species and for the two listed plants with taxonomic changes.
- Revise designated critical habitat for 85 listed plants.
- Designate critical habitat for 11 listed plants and animals that do not have designated critical habitat on these islands.

One or more of the 38 proposed species are threatened by:

- Habitat loss and degradation due to agriculture and urban development, nonnative feral ungulates (e.g., pigs, goats, axis deer) and plants, wildfire, hurricanes, flooding, and drought.
- Predation or herbivory by nonnative feral ungulates, rats, snails, and slugs.
- Inadequate existing regulatory mechanisms that prevent the introduction and spread of nonnative plants and animals.
- Small number of individuals and populations, and lack of reproduction in the wild.

This rule proposes critical habitat for 50 species and proposes critical habitat revisions for 85 listed plants:

- A total of 271,062 acres is proposed as critical habitat. Approximately 47 percent, or 127,407 acres, of the area being proposed as critical habitat is already designated as critical habitat for previously listed plant and animal species. Therefore, 53 percent, or 143,655 acres, of the proposed area is newly proposed critical habitat.
- The proposed critical habitat units are ecosystem-based and encompass areas essential for the conservation of multiple species.
- The proposed designation includes both occupied and unoccupied critical habitat, although those areas are not differentiated in the proposed rule or on the maps.
- We are considering excluding approximately 40,973 acres of privately owned lands on Maui and Molokai. These privately owned lands include The Nature Conservancy preserves, lands owned by East Maui Irrigation Company, Haleakala Ranch, Maui Land and Pineapple Company, and Ulupalakua Ranch.
- We are proposing critical habitat on lands owned by the U.S. Coast Guard, U.S. National Park Service, State of Hawaii, County of Maui, and private interests.

The basis for our action. Under the Endangered Species Act, we must issue a rule to list a species as endangered or threatened and, concurrently, designate critical habitat. We may, as appropriate, revise critical habitat designations. We are required to list species solely on the

basis of the best available scientific and commercial data available. A critical habitat designation must be based on the best available scientific data after taking into consideration economic and other impacts. We can exclude an area from critical habitat if the benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species.

We are preparing an economic analysis. To ensure that we consider the economic impacts of the proposed critical habitat designation, we are preparing an economic analysis that will:

- Rely on information from previous economic analyses that were prepared to evaluate the economic impact of critical habitat designation in the areas of Molokai, Lanai, Maui, and Kahoolawe that are currently designated as critical habitat (47 percent of the proposed designation).
- Update that information to consider economic impacts in the areas newly proposed as critical habitat in this rule (53 percent of the proposed designation).
- Address any other potential economic impacts that may have not been sufficiently considered.

We will publish an announcement and seek public comments on the draft economic analysis when it is completed.

We will seek peer review. We are seeking comments from independent specialists to ensure that our listing determinations and critical habitat designations are based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment on our specific assumptions and conclusions regarding the 40 species proposed or reevaluated for listing, and the proposed designation of critical habitat.

Public Comments

We intend that any final action resulting from this proposal will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we solicit comments or suggestions on this proposed rule from the public, other concerned governmental agencies, the scientific community, industry, or other interested parties. We are proposing to list a total of 38 species (35 plants and 3 tree snails) as endangered; reevaluate the listing of 2 plant species; designate critical habitat for 39 of the 40 species we are proposing to list, or are reevaluating for listing, as endangered; designate critical habitat for 11 currently listed species that do not have designated critical habitat (9 plants and 2 birds); and revise the critical habitat designation for 85 plant species on the islands of Molokai, Lanai, Maui, and Kahoolawe. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning threats (or the lack thereof) to the 40 species proposed or reevaluated for listing, and regulations that may be addressing those threats.

(2) Additional information concerning the range, distribution, and population sizes of each of the 40 species proposed or reevaluated for listing, including the locations of any additional populations of these species.

(3) Any information on the biological or ecological requirements of the 40 species proposed or reevaluated for listing.

(4) The reasons why we should or should not designate areas for any of the species in this proposal as ''critical habitat'' under section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether there are threats to these species from human activity, the degree to which can be expected to increase due to the designation, and whether the benefit of designation would outweigh threats to these species caused by the designation, such that the designation of critical habitat is prudent.

(5) Whether a revision of critical habitat is warranted for the 85 plant species that are already listed as endangered or threatened under the Act and that currently have designated critical habitat.

(6) Specific information on:

- The amount and distribution of critical habitat for the species included in this proposed rule;
- What areas currently occupied, and that contain the necessary physical or biological features essential for the conservation of the species, we should include in the designation and why;
- Whether special management considerations or protections may be required for the physical or biological features essential to the conservation of the species in this proposed rule; and
- What areas not currently occupied are essential to the conservation of the species and why.

(7) Land use designations and current or planned activities in the areas occupied or unoccupied by the species and proposed as critical habitat, and the possible impacts of these activities on these species, or of critical habitat on these designations or activities.

(8) Any foreseeable economic, national security, or other relevant impacts of designating any area as critical habitat. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas that may experience these impacts.

(9) Whether the benefits of excluding any particular area from critical habitat outweigh the benefits of including that area as critical habitat under section 4(b)(2) of the Act, after considering the potential impacts and benefits of the proposed critical habitat designation. Under section 4(b)(2), the Secretary may exclude an area from critical habitat if he or she determines that the benefits of such exclusion outweigh the benefits of including that particular area as critical habitat, unless failure to designate that specific area as critical habitat will result in the extinction of the species. We request specific information on:

- The benefits of including specific areas in the final designation and supporting rationale;
- The benefits of excluding specific areas from the final designation and supporting rationale; and
- Whether any specific exclusions may result in the extinction of the species and why.

(10) Whether the proposed critical habitat on private lands and under consideration for exclusion under section 4(b)(2) of the Act should or should not be excluded and why.

(11) Information on the projected and reasonably likely impact of climate change on the species included in this proposed rule.

(12) Information on any special management needs or protections that may be needed in the critical habitat areas we are proposing.

(13) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(14) Specific information on ways to improve the clarity of this rule as it pertains to completion of consultations under section 7 of the Act.

(15) Comments on our proposal to revise taxonomic classification with name changes or family changes for 11 plant species and 2 bird species identified in this proposed rule.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If you

provide personal identifying information in your comment, such as your street address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection at *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of the proposed rule by mail from the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**) or by visiting the Federal eRulemaking Portal at *http://www.regulations.gov*.

Background

Maui Nui Species Addressed in This Proposed Rule

The table below (Table 1) provides the common name, scientific name, listing status, and critical habitat status for the species that are the subjects of this proposed rule.

TABLE 1—THE MAUI NUI SPECIES ADDRESSED IN THIS PROPOSED RULE

[Note that many of the species share the same common name. "E" denotes endangered status under the Act; "C" denotes a species currently on the candidate list]

Scientific name	Common name(s)	Listing status	Critical habitat status
Species Proposed for Listing as Endangered			
Plants:			
Bidens campylotheca ssp. *pentamera*.	kookoolau	Proposed—Endangered (C)	Proposed.
Bidens campylotheca ssp. *waihoiensis*.	kookoolau	Proposed—Endangered (C)	Proposed.
Bidens conjuncta	kookoolau	Proposed—Endangered (C)	Proposed.
Calamagrostis hillebrandii	[NCN]	Proposed—Endangered (C)	Proposed.
Canavalia pubescens	awikiwiki	Proposed—Endangered (C)	Proposed.
Cyanea asplenifolia	haha	Proposed—Endangered (C)	Proposed.
Cyanea duvalliorum	haha	Proposed—Endangered	Proposed.
Cyanea horrida	haha nui	Proposed—Endangered	Proposed.
Cyanea kunthiana	haha	Proposed—Endangered (C)	Proposed.
Cyanea magnicalyx	haha	Proposed—Endangered	Proposed.
Cyanea maritae	haha	Proposed—Endangered	Proposed.
Cyanea mauiensis	haha	Proposed—Endangered	Not determinable.
Cyanea munroi	haha	Proposed—Endangered	Proposed.
Cyanea obtusa	haha	Proposed—Endangered (C)	Proposed.
Cyanea profuga	haha	Proposed—Endangered	Proposed.
Cyanea solanacea	popolo	Proposed—Endangered	Proposed.
Cyrtandra ferripilosa	haiwale	Proposed—Endangered	Proposed.
Cyrtandra filipes	haiwale	Proposed—Endangered (C)	Proposed.
Cyrtandra oxybapha	haiwale	Proposed—Endangered (C)	Proposed.
Festuca molokaiensis	[NCN]	Proposed—Endangered	Proposed.
Geranium hanaense	nohoanu	Proposed—Endangered (C)	Proposed.
Geranium hillebrandii	nohoanu	Proposed—Endangered (C)	Proposed.
Mucuna sloanei var. *persericea*.	sea bean	Proposed—Endangered	Proposed.
Myrsine vaccinioides	kolea	Proposed—Endangered (C)	Proposed.
Peperomia subpetiolata	alaala wai nui	Proposed—Endangered (C)	Proposed.
Phyllostegia bracteata	[NCN]	Proposed—Endangered (C)	Proposed.
Phyllostegia haliakalae	[NCN]	Proposed—Endangered	Proposed.
Phyllostegia pilosa	[NCN]	Proposed—Endangered	Proposed.
Pittosporum halophilum	hoawa	Proposed—Endangered	Proposed.
Pleomele fernaldii	hala pepe	Proposed—Endangered (C)	Proposed.
Schiedea jacobii	[NCN]	Proposed—Endangered	Proposed.
Schiedea laui	[NCN]	Proposed—Endangered	Proposed.
Schiedea salicaria	[NCN]	Proposed—Endangered (C)	Proposed.
Stenogyne kauaulaensis	[NCN]	Proposed—Endangered	Proposed.
Wikstroemia villosa	akia	Proposed—Endangered	Proposed.
Animals:			
Newcombia cumingi	Newcomb's tree snail	Proposed—Endangered (C)	Proposed.
Partulina semicarinata	Lanai tree snail	Proposed—Endangered (C)	Proposed.
Partulina variabilis	Lanai tree snail	Proposed—Endangered (C)	Proposed.
Species Reevaluated for Listing			
Cyanea grimesiana ssp. *grimesiana*.	haha	Reevaluation of Listing—Endangered.	Proposed revision.
Santalum freycinetianum var. *lainaiense* (taxonomic revision proposed, to *S. h.* var. *lanaiense*).	iliahi	Reevaluation of Listing—Endangered.	Proposed.

Scientific name	Common name(s)	Listing status	Status of existing critical habitat
Listed Species Without Critical Habitat Designations			
Plants:			
Abutilon eremitopetalum	[NCN]	Listed 1991—E	None—Proposed.
Acaena exigua	liliwai	Listed 1992—E	None—Proposed.*
Cyanea macrostegia ssp. *gibsonii* (taxonomic revision proposed, to *C. gibsonii*).	haha	Listed 1991—E	None—Proposed.
Hedyotis schlechtendahliana var. *remyi* (taxonomic revision proposed, to *Kadua cordata* ssp. *remyi*).	kopa	Listed 1999—E	None—Proposed.
Kokia cookei	Cooke's kokio	Listed 1979—E	None—Proposed.*
Labordia tinifolia var. *lanaiensis*.	kamakahala	Listed 1999—E	None—Proposed.
Melicope munroi	alani	Listed 1999—E	None—Proposed.
Phyllostegia hispida	[NCN]	Listed 2009—E	None—Proposed.†
Viola lanaiensis	[NCN]	Listed 1991—E	None—Proposed.
Animals:			
Palmeria dolei	Akohekohe, crested honeycreeper	Listed 1967—E	None—Proposed.‡
Pseudonestor xanthophrys	Kiwikiu, Maui parrotbill	Listed 1967—E	None—Proposed.‡

Scientific name	Common name(s)	Year of critical habitat designation—current proposed action
Listed Species for Which Revisions to Existing Critical Habitat Are Proposed		
Adenophorus periens	pendent kihi fern	2003—Proposed Revision of Critical Habitat
Alectryon macrococcus	mahoe	2003—Proposed Revision of Critical Habitat
Argyroxiphium sandwicense ssp. *macrocephalum*.	ahinahina (= Haleakala silversword)	2003—Proposed Revision of Critical Habitat
Asplenium fragile var. *insulare* (taxonomic revision proposed, to *A. peruvianum* var. *insulare*).	[NCN]	2003—Proposed Revision of Critical Habitat
Bidens micrantha ssp. *kalealaha*	kookoolau	2003—Proposed Revision of Critical Habitat
Bidens wiebkei	kookoolau	2003—Proposed Revision of Critical Habitat
Bonamia menziesii	[NCN]	2003—Proposed Revision of Critical Habitat
Brighamia rockii	pua ala	2003—Proposed Revision of Critical Habitat
Canavalia molokaiensis	awikiwiki	2003—Proposed Revision of Critical Habitat
Cenchrus agrimonioides	kamanomano (= sandbur, agrimony)	2003—Proposed Revision of Critical Habitat
Centaurium sebaeoides (taxonomic revision proposed, to *Schenkia sebaeoides*).	awiwi	2003—Proposed Revision of Critical Habitat
Clermontia lindseyana	oha wai	2003—Proposed Revision of Critical Habitat
Clermontia oblongifolia ssp. *brevipes*	oha wai	2003—Proposed Revision of Critical Habitat
Clermontia oblongifolia ssp. *mauiensis*	oha wai	2003—Proposed Revision of Critical Habitat
Clermontia peleana	oha wai	2003—Proposed Revision of Critical Habitat
Clermontia samuelii	oha wai	2003—Proposed Revision of Critical Habitat
Colubrina oppositifolia	kauila	2003—Proposed Revision of Critical Habitat
Ctenitis squamigera	pauoa	2003—Proposed Revision of Critical Habitat
Cyanea copelandii ssp. *haleakalaensis*	haha	2003—Proposed Revision of Critical Habitat
Cyanea dunbarii (spelling correction proposed, to *C. dunbariae*).	haha	2003—Proposed Revision of Critical Habitat
Cyanea glabra	haha	2003—Proposed Revision of Critical Habitat
Cyanea hamatiflora ssp. *hamatiflora*	haha	2003—Proposed Revision of Critical Habitat
Cyanea lobata	haha	2003—Proposed Revision of Critical Habitat
Cyanea mannii	haha	2003—Proposed Revision of Critical Habitat
Cyanea mceldowneyi	haha	2003—Proposed Revision of Critical Habitat
Cyanea procera	haha	2003—Proposed Revision of Critical Habitat
Cyperus trachysanthos	puukaa	2003—Proposed Revision of Critical Habitat
Cyrtandra munroi	haiwale	2003—Proposed Revision of Critical Habitat
Diellia erecta (taxonomic revision proposed, to *Asplenium dielerectum*).	Asplenium-leaved diellia	2003—Proposed Revision of Critical Habitat
Diplazium molokaiense	[NCN]	2003—Proposed Revision of Critical Habitat
Dubautia plantaginea ssp. *humilis*	naenae	2003—Proposed Revision of Critical Habitat
Eugenia koolauensis	nioi	2003—Proposed Revision of Critical Habitat
Flueggea neowawraea	mehamehame	2003—Proposed Revision of Critical Habitat
Geranium arboreum	Hawaiian red-flowered geranium	2003—Proposed Revision of Critical Habitat
Geranium multiflorum	nohoanu	2003—Proposed Revision of Critical Habitat
Gouania hillebrandii	[NCN]	1984—Proposed Revision of Critical Habitat
Gouania vitifolia	[NCN]	2003—Proposed Revision of Critical Habitat

Scientific name	Common name(s)	Year of critical habitat designation—current proposed action
Hedyotis coriacea (taxonomic revision proposed, to *Kadua coriacea* **).	kioele	2003—Proposed Revision of Critical Habitat
Hedyotis mannii (taxonomic revision proposed, to *Kadua laxiflora*).	pilo	2003—Proposed Revision of Critical Habitat
Hesperomannia arborescens	[NCN]	2003—Proposed Revision of Critical Habitat
Hesperomannia arbuscula	[NCN]	2003—Proposed Revision of Critical Habitat
Hibiscus arnottianus ssp. *immaculatus*	kokio keokeo	2003—Proposed Revision of Critical Habitat
Hibiscus brackenridgei	mao hau hele	2003—Proposed Revision of Critical Habitat
Huperzia mannii	wawaeiole	2003—Proposed Revision of Critical Habitat
Ischaemum byrone	Hilo ischaemum	2003—Proposed Revision of Critical Habitat
Isodendrion pyrifolium	wahine noho kula	2003—Proposed Revision of Critical Habitat
Kanaloa kahoolawensis	kohe malama malama o kanaloa	2003—Proposed Revision of Critical Habitat
Labordia triflora	kamakahala	2003—Proposed Revision of Critical Habitat
Lipochaeta kamolensis (taxonomic revision proposed, to *Melanthera kamolensis*).	nehe	2003—Proposed Revision of Critical Habitat
Lysimachia lydgatei	[NCN]	2003—Proposed Revision of Critical Habitat
Lysimachia maxima	[NCN]	2003—Proposed Revision of Critical Habitat
Mariscus fauriei (taxonomic revision proposed, to *Cyperus fauriei*).	[NCN]	2003—Proposed Revision of Critical Habitat
Mariscus pennatiformis (taxonomic revision proposed, to *Cyperus pennatiformis* **).	[NCN]	2003—Proposed Revision of Critical Habitat
Marsilea villosa	ihi ihi	2003—Proposed Revision of Critical Habitat
Melicope adscendens	alani	2003—Proposed Revision of Critical Habitat
Melicope balloui	alani	2003—Proposed Revision of Critical Habitat
Melicope knudsenii	alani	2003—Proposed Revision of Critical Habitat
Melicope mucronulata	alani	2003—Proposed Revision of Critical Habitat
Melicope ovalis	alani	2003—Proposed Revision of Critical Habitat
Melicope reflexa	alani	2003—Proposed Revision of Critical Habitat
Neraudia sericea	[NCN]	2003—Proposed Revision of Critical Habitat
Nototrichium humile	kului	2003—Proposed Revision of Critical Habitat
Peucedanum sandwicense	makou	2003—Proposed Revision of Critical Habitat
Phyllostegia mannii	[NCN]	2003—Proposed Revision of Critical Habitat
Plantago princeps	laukahi kuahiwi	2003—Proposed Revision of Critical Habitat
Platanthera holochila	[NCN]	2003—Proposed Revision of Critical Habitat
Portulaca sclerocarpa	poe	2003—Proposed Revision of Critical Habitat
Pteris lidgatei	[NCN]	2003—Proposed Revision of Critical Habitat
Remya mauiensis	Maui remya	2003—Proposed Revision of Critical Habitat
Sanicula purpurea	[NCN]	2003—Proposed Revision of Critical Habitat
Schiedea haleakalensis	[NCN]	2003—Proposed Revision of Critical Habitat
Schiedea lydgatei	[NCN]	2003—Proposed Revision of Critical Habitat
Schiedea sarmentosa	[NCN]	2003—Proposed Revision of Critical Habitat
Sesbania tomentosa	ohai	2003—Proposed Revision of Critical Habitat
Silene alexandri	[NCN]	2003—Proposed Revision of Critical Habitat
Silene lanceolata	[NCN]	2003.
Solanum incompletum	popolo ku mai	2003—Proposed Revision of Critical Habitat
Spermolepis hawaiiensis	[NCN]	2003—Proposed Revision of Critical Habitat
Stenogyne bifida	[NCN]	2003—Proposed Revision of Critical Habitat
Tetramolopium capillare	pamakani	2003—Proposed Revision of Critical Habitat
Tetramolopium lepidotum ssp. *lepidotum*	[NCN]	2003—Proposed Revision of Critical Habitat
Tetramolopium remyi	[NCN]	2003—Proposed Revision of Critical Habitat
Tetramolopium rockii	[NCN]	2003—Proposed Revision of Critical Habitat
Vigna o-wahuensis	[NCN]	2003—Proposed Revision of Critical Habitat
Zanthoxylum hawaiiense	ae	2003—Proposed Revision of Critical Habitat

[NCN] = no common name.
* Critical habitat was found to be not prudent at the time of listing, and therefore was not designated at that time.
† Critical habitat was found to be prudent but not determinable at the time of listing.
‡ The requirement that the designation of critical habitat be considered was enacted in 1978.
** Taxonomic revision proposed in our August 2, 2011 proposed rule Listing 23 Species on Oahu as Endangered and Designating Critical Habitat for 124 Species (76 FR 46362).

Previous Federal Actions

Twenty of the 40 species proposed or reevaluated for listing are candidate species (75 FR 69222; November 10, 2010). Candidate species are those taxa for which the Service has sufficient information on their biological status and threats to propose them for listing under the Act, but for which the development of a listing regulation has been precluded to date by other higher priority listing activities. The current candidate species addressed in this proposed listing rule include the 17 plants *Bidens campylotheca* ssp. *pentamera, B. campylotheca* ssp. *waihoiensis, B. conjuncta, Calamagrostis hillebrandii, Canavalia pubescens, Cyanea asplenifolia, C. kunthiana, C. obtusa, Cyrtandra filipes, C. oxybapha, Geranium hanaense, G. hillebrandii, Myrsine vaccinioides, Peperomia subpetiolata, Phyllostegia bracteata, Pleomele fernaldii,* and

Schiedea salicaria; and the 3 tree snails *Newcombia cumingi, Partulina semicarinata* and *P. variabilis*. The candidate status of all of these species was most recently assessed and reaffirmed in the November 10, 2010, Review of Native Species That Are Candidates for Listing as Endangered or Threatened (CNOR) (75 FR 69222).

On May 4, 2004, the Center for Biological Diversity petitioned the Secretary of the Interior to list 225 species of plants and animals, including the 20 candidate species listed above, as endangered or threatened under the Act. Since then, we have published our annual findings on the May 4, 2004, petition (including our findings on the 20 candidate species listed above) in the CNORs dated May 11, 2005 (70 FR 24870), September 12, 2006 (71 FR 53756), December 6, 2007 (72 FR 69034), December 10, 2008 (73 FR 75176), November 9, 2009 (74 FR 57804), and November 10, 2010 (75 FR 69222). This proposed rule constitutes a further response to the 2004 petition.

On November 9, 1984, we published a final rule designating 112 ac (45 ha) on Maui as critical habitat for *Gouania hillebrandii* (49 FR 44753). On January 9, 2003, we published a final rule designating approximately 789 ac (320 ha) as critical habitat for 3 plant species on Lanai (68 FR 1220), and on March 18, 2003, we published a final rule designating approximately 24,333 ac (9,843 ha) as critical habitat for 41 plant species on Molokai (68 FR 12982). On May 14, 2003, we published a final rule designating approximately 93,200 ac (37,717 ha) on the island of Maui and 2,915 ac (1,180 ha) on the island of Kahoolawe as critical habitat for 60 plant species on Maui and Kahoolawe (68 FR 25934). We are proposing to revise the 1984 and 2003 critical habitat designations on the islands of Molokai, Lanai, Maui, and Kahoolawe in this rule. In addition, we are proposing critical habitat for the listed plants *Abutilon eremitopetalum* (56 FR 47686, September 20, 1991), *Acaena exigua* (57 FR 20772, May 15, 1992), *Cyanea gibsonii* (currently listed as *Cyanea macrostegia* ssp. *gibsonii* (56 FR 47686, September 20, 1991)), *Kadua cordata* ssp. *remyi* (currently listed as *Hedyotis schlechtendahliana* var. *remyi* (64 FR 48307, September 3, 1999)), *Kokia cookei* (44 FR 62470, October 30, 1979), *Labordia tinifolia* var. *lanaiensis* (64 FR 48307, September 3, 1999), *Melicope munroi* (64 FR 48307, September 3, 1999), *Phyllostegia hispida* (74 FR 11319, March 17, 2009), *Viola lanaiensis* (56 FR 47686, September 20, 1991)), and the birds akohekohe or crested honeycreeper and kiwikiu or Maui parrotbill (32 FR 4001; March 11, 1967)) for which critical habitat has not been previously designated.

In addition to the 20 candidate species, we are proposing to list 15 plant species that have been identified as the ''rarest of the rare'' Hawaiian plant species and in need of immediate conservation under the multi-agency (Federal, State, and private) Plant Extinction Prevention Program (PEPP). The goal of PEPP is to prevent the extinction of plant species that currently have fewer than 50 individuals remaining in the wild on the islands of Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii (Hawaii Division of Forestry and Wildlife (DOFAW) 2010). The 15 species of plants identified by PEPP from the islands of Molokai, Lanai, or Maui include: *Cyanea horrida, C. magnicalyx, C. maritae, C. mauiensis, C. munroi, C. profuga, C. solanacea, Festuca molokaiensis, Phyllostegia haliakalae, P. pilosa, Pittosporum halophilum, Schiedea jacobii, S. laui, Stenogyne kauaulaensis,* and *Wikstroemia villosa*. We believe these 15 plant species warrant listing under the Act for the reasons discussed in the ''Summary of Factors Affecting the Species'' section (below). Because these 15 plant species occur within 5 of the ecosystems identified in this proposed rule, and share common threats with the other 25 species in these ecosystems proposed or reevaluated for listing under the Act, we have included them in this proposed rule to provide them with protection under the Act in an expeditious manner.

We are also proposing to list three other plant species (*Cyanea duvalliorum, Cyrtandra ferripilosa,* and *Mucuna sloanei* var. *persericea*) reported from Maui. We believe these three Maui plant species warrant listing under the Act for the reasons discussed in the ''Summary of Factors Affecting the Species'' section (below). Because these three plant species occur within three of the ecosystems identified in this proposed rule, and share common threats with the other 37 species proposed or reevaluated for listing in these ecosystems under the Act, we have included them in this proposed rule to provide them with protection under the Act in an expeditious manner.

Finally, we are reevaluating the listing of *Cyanea grimesiana* ssp. *grimesiana* and *Santalum haleakalae* var. *lanaiense,* both of which have undergone taxonomic changes since they were originally listed in 1996 and 1986, respectively.

Proposed Taxonomic Changes and Spelling Corrections Since Listing for 2 Bird Species and 11 Plant Species From Maui Nui

Below is a brief discussion on each of the proposed taxonomic or spelling changes, in alphabetical order by genus, starting with the 2 bird species, followed by 11 plant species. In brief, we propose to accept the recently adopted Hawaiian common name, kiwikiu, for the Maui parrotbill. We also propose to add the Hawaiian common name, akohekohe, to the listing for the crested honeycreeper. Additionally, based on recent botanical work, we propose to accept various taxonomic changes and spelling corrections for 11 endangered plant species listed between 1991 and 1999 (Table 1A).

TABLE 1A—PROPOSED TAXONOMIC CHANGES AND SPELLING CORRECTIONS FOR 2 LISTED ENDANGERED HAWAIIAN BIRDS AND 11 LISTED ENDANGERED HAWAIIAN PLANTS

Listing	Family	Name as currently listed	Proposed new name	Type of change	Change in range of listed entity?
Birds:					
32 FR 4001	Fringillidae	Maui parrotbill (*Pseudonestor xanthophrys*)	Kiwikiu, Maui parrotbill (*Pseudonestor xanthophrys*)	Add Hawaiian common name.	No.
32 FR 4001	Fringillidae	Crested honeycreeper (*Palmeria dolei*)	Akohekohe, crested honeycreeper (*Palmeria dolei*)	Add Hawaiian common name.	No.
Plants:					
59 FR 49025	Aspleniaceae	*Asplenium fragile* var. *insulare*.	*Asplenium peruvianum* var. *insulare*.	New genus	No.

TABLE 1A—PROPOSED TAXONOMIC CHANGES AND SPELLING CORRECTIONS FOR 2 LISTED ENDANGERED HAWAIIAN BIRDS AND 11 LISTED ENDANGERED HAWAIIAN PLANTS—Continued

Listing	Family	Name as currently listed	Proposed new name	Type of change	Change in range of listed entity?
56 FR 55770	Gentianaceae	*Centaurium sebaeoides*	*Schenkia sebaeoides*	New genus	No.
61 FR 53130	Campanulaceae	*Cyanea dunbarii*	*Cyanea dunbariae*	Spelling correction	No.
56 FR 47686	Campanulaceae	*Cyanea macrostegia* ssp. *gibsonii.*	*Cyanea gibsonii*	From subspecies to full species.	No.
59 FR 56333	Aspleniaceae	*Diellia erecta*	*Asplenium dielerectum*	New scientific name	No.
64 FR 48307	Rubiaceae	*Hedyotis schlechtendahliana* var. *remyi*	*Kadua cordata* ssp. *remyi.*	New scientific name	No.
57 FR 46325	Rubiaceae	*Hedyotis mannii*	*Kadua laxiflora*	New scientific name	No.
57 FR 20772	Asteraceae	*Lipochaeta kamolensis*	*Melanthera kamolensis*	New genus	No.
59 FR 10305	Cyperaceae	*Mariscus fauriei*	*Cyperus fauriei*	New genus	No.
57 FR 20772	Lycopodiaceae	*Phlegmariurus mannii*	*Huperzia mannii*	Consolidate entries	No.
51 FR 3182	Santalaceae	*Santalum freycinetianum* var. *lanaiense.*	*Santalum haleakalae* var. *lanaiense.*	New genus	Yes.*

* See "Proposed TaxoNo.mic Changes Since Listing for Two Maui Nui Plant Species."

We listed the bird *Pseudonestor xanthophrys* as an endangered species in 1967 (32 FR 4001; March 11, 1967). The common name for this endemic Hawaiian bird in 50 CFR 17.11 is Maui parrotbill. Recently, the Hawaiian Lexicon Committee proposed the Hawaiian name kiwikiu (meaning bent or curved as in the blade of a sickle, referring to the bird's strongly bent beak), and, while it has yet to be adopted by the American Ornithologists' Union, this name has been adopted by conservationists and Hawaiian language experts (Maui Forest Bird Recovery Project (MFBRP) 2010). We therefore propose to accept the following common names for this endangered bird: Maui parrotbill (Kiwikiu).

We listed the bird *Palmeria dolei* as an endangered species in 1967 (32 FR 4001; March 11, 1967). Currently, the common name listed for this endemic Hawaiian bird in 50 CFR 17.11 is crested honeycreeper. Although this bird's Hawaiian common name, akohekohe, was originally listed in 50 CFR 17.11 as well, at some point in time it was inadvertently deleted from the list of Endangered and Threatened Wildlife. We propose to reinsert the Hawaiian common name for this endangered bird, such that the common names will read: crested honeycreeper (Akohekohe).

We listed *Asplenium fragile* var. *insulare* as an endangered species in 1994 (59 FR 49025; September 26, 1994) following the taxonomic treatment of Morton (1947, pp. 116–117). However, we are currently following the more recent, widely used, and accepted *Hawaii's Ferns and Fern Allies* by Palmer (2003, pp. 70–71). Palmer placed *A. fragile* var. *insulare* in synonymy with *A. peruvianum* var. *insulare.* The recognized scientific name for this species is *A. peruvianum* var. *insulare.* The range of the species at the time of listing and now has not changed. Therefore, we propose to recognize the listed species as *Asplenium peruvianum* var. *insulare.*

At the time we listed *Centaurium sebaeoides* as an endangered species (56 FR 55770; October 29, 1991), we followed the taxonomic treatment in Wagner *et al.'s* (1990a, p. 725) widely used and accepted *Manual of the Flowering Plants of Hawaii.* However, in 2004, Mansion published a new classification of *Centaurium,* resurrecting the previously published combination *Schenkia sebaeoides* and placing *Centaurium sebaeoides* in synonymy with *S. sebaeoides* (Mansion 2004, pp. 724–726). The recognized scientific name for this species is *S. sebaeoides.* The range of the species at the time of listing and now has not changed. We therefore propose to recognize the listed species as *Schenkia sebaeoides.*

Cyanea dunbarii was misspelled in the final listing rule in 1996 (61 FR 53130; October 10, 1996), based on the misspelling of the specific epithet in the 1990 version of the *Manual of the Flowering Plants of Hawaii* (Lammers in Wagner *et al.* 1990, p. 448). The misspelling was corrected to *Cyanea dunbariae* in the 1999 version of the *Manual* (Lammers 1999, p. 448), and is recognized in the 2003 *Supplement* to the *Manual* (Wagner and Herbst 2003, p. 15) and in the Smithsonian Institution's *Flora of the Hawaiian Islands Database* (Wagner *et al.* 2005a). The recognized scientific name for this species is *Cyanea dunbariae.* The range of the species at the time of listing and now has not changed. Therefore, we propose to accept the spelling of the listed species as *Cyanea dunbariae.*

At the time we listed *Cyanea macrostegia* ssp. *gibsonii* as an endangered species (56 FR 47686; September 20, 1991), we followed Lammer's taxonomic treatment in Wagner *et al.'s* (1990, p. 456) widely used and accepted *Manual of the Flowering Plants of Hawaii.* Determinations made by Lammers on herbarium specimens at Hawaii's Bishop Museum Herbarium show he recognizes this species as *Cyanea gibsonii* (Imada 2011, in litt.) In addition, *C. gibsonii* is recognized and accepted in the Smithsonian Institution's *Flora of the Hawaiian Islands Database* (Wagner *et al.* 2005a). The range of the species at the time of listing and now has not changed. We propose to accept the listed species name as *Cyanea gibsonii.*

We listed *Diellia erecta* as an endangered species in 1994 (59 FR 56333; November 10, 1994), following Wagner (1952, pp. 10–13, 142–158), and Wagner and Wagner (1992, pp. 30–33). The name for this species has undergone several revisions, and it is currently recognized as *Asplenium dielerectum* (Viane and Reichstein 1991, p. 159; Schneider *et al.* 2005, p. 458; Smith *et al.* 2006, p. 715; Schuettpelz and Pryer 2007, p. 1,044). The range of the species at the time of listing and now has not changed. We propose to accept the listed species name as *Asplenium dielerectum.*

We listed *Hedyotis mannii* and *Hedyotis schlechtendahliana* var. *remyi* as endangered in 1992 and 1999, respectively (57 FR 46325, October 8, 1992; 64 FR 48307, September 3, 1999), following the taxonomic treatments in Wagner *et al.'s* (1999a, pp. 1,150–1,152) widely used and accepted *Manual of the*

Flowering Plants of Hawaii. In 2005, Terrell *et al.* (2005, pp. 818–819) resurrected the genus *Kadua* for all 21 native Hawaiian members of *Hedyotis,* as treated in Wagner *et al.* (1999a, pp. 1,133–1,156) and Wagner and Lorence (1998, p. 315–317), as well as 7 other Polynesian species, based on an analysis of fruit and corolla characters combined with seed shape and surface features determined by scanning electron microscopy. In their treatment, Terrell *et al.* (2005, pp. 818–819) synonymized *Hedyotis mannii* with *Kadua laxiflora* and *Hedyotis schlechtendahliana* var. *remyi* with *Kadua cordata* ssp. *remyi,* and these synonyms are accepted by Wagner *et al.* in the Smithsonian Institution's *Flora of the Hawaiian Islands Database* (2005a). The ranges of the two species at the time of listing and now have not changed; therefore we propose to accept the listed species names as *Kadua laxiflora* and *Kadua cordata* ssp. *remyi.*

We listed *Lipochaeta kamolensis* as an endangered species in 1992 (57 FR 20772; May 15, 1992) following the taxonomic treatment in Wagner *et al.*'s (1990a, p. 337) widely used and accepted *Manual of the Flowering Plants of Hawaii.* Wagner and Robinson (2001, pp. 539–561) transferred *L. kamolensis,* along with 13 other species of Hawaiian *Lipochaeta,* to *Melanthera* based on achene morphology and chromosome number, while retaining 6 of the Hawaiian species in *Lipochaeta. Lipochaeta kamolensis* is recognized as a synonym of *Melanthera kamolensis* by Wagner and Robinson (2001) and in the Smithsonian Institution's *Flora of the Hawaiian Islands Database* (Wagner *et al.* 2005a). The accepted scientific name for this species is *Melanthera kamolensis.* The range of the species at the time of listing and now has not changed; therefore we propose to accept the listed species name as *Melanthera kamolensis.*

At the time we listed *Mariscus fauriei* as an endangered species (59 FR 10305; March 4, 1994), we followed the taxonomic treatment by Koyama in Wagner *et al.*'s (1990, p. 1,417) widely used and accepted *Manual of the Flowering Plants of Hawaii.* Since then, Strong and Wagner (1997, p. 39) and, more recently, Wagner and Herbst (2003, pp. 52–53) moved all Hawaiian species of *Mariscus* to *Cyperus.* The accepted scientific name for this species is *Cyperus fauriei.* The range of the species at the time of listing and now has not changed. We therefore propose to accept the listed species name as *Cyperus fauriei.*

In 1992, we listed *Huperzia mannii* (57 FR 20772; May 15, 1992) and that listing was retained through 1996. However, in 1997, the List of Endangered and Threatened Plants at 50 CFR 17.12 indicated the species name as *Phlegmariurus mannii,* and in 2003, critical habitat was designated under the species name *Phlegmariurus mannii* (68 FR 25934; May 14, 2003). The List of Endangered and Threatened Plants at 50 CFR 17.12 currently has two entries: One for *Huperzia mannii,* which is out-of-date because it does not contain the critical habitat information for this plant, and one for *Phlegmariurus mannii,* which displays the current critical habitat information. We are currently following the widely used and accepted *Hawaii's Fern and Fern Allies* by Palmer (2003, p. 256), who recognizes this species as *Huperzia mannii,* following Ollgaard's *Index of the Lycopodiaceae* (1987, 135 pp.). The range of the species at the time of listing and now has not changed. Therefore, we propose to remove the entry for *Phlegmariurus mannii* and recognize the listed species as *Huperzia mannii.*

Proposed Taxonomic Changes Since Listing for Two Maui Nui Plant Species

At the time we listed *Cyanea grimesiana* ssp. *grimesiana* as endangered (61 FR 53108; October 10, 1996) we followed the taxonomic treatment of Lammers in Wagner *et al.* (1990, pp. 451–452). The distribution of *C. grimesiana* ssp. *grimesiana* as recognized at that time included the islands of Oahu, Molokai, Lanai, and Maui. Subsequently, Lammers (1998, pp. 31–32) recognized morphological differences in the broadly circumscribed *Cyanea grimesiana* group and published new combinations for the plants reported from Maui (*C. mauiensis*) and Lanai (*C. munroi*). Plants reported from Molokai were identified as either *C. munroi* or *C. grimesiana* ssp. *grimesiana.* In 2004, Lammers (pp. 85–87) recognized further differences in the plants reported from Maui and described a new species, *C. magnicalyx,* known only from west Maui. The range of *C. grimesiana* ssp. *grimesiana* now includes only Oahu and Molokai (Lammers 1998, pp. 31–32; Lammers 2004, pp. 84–85). Because the range of the listed entity has changed, in this proposed rule we evaluate the effects of the five factors described in section 4(a)(1) of the Act on *C. grimesiana* ssp. *grimesiana* as currently recognized to determine whether the species still warrants its status as endangered under the Act (see Summary of Factors Affecting the 40 Species Proposed or Reevaluated for Listing, below).

We listed *Santalum freycinetianum* var. *lanaiense* as endangered (51 FR 3182; January 24, 1986) in 1986. At that time the species was known only from the island of Lanai. Our recovery plan for this species, published in 1995, expanded the range to include west Maui, as well as Lanai, based on new information (USFWS 1995a, pp. 35–36). In her revision of the Hawaiian species of *Santalum,* Harbaugh *et al.* (2010, pp. 834–835) moved the plants previously recognized as *S. freycinetianum* var. *lanaiense* to *S. haleakalae* var. *lanaiense.* The range of *S. haleakalae* var. *lanaiense* now includes Molokai, Lanai, and east and west Maui (HBMP 2010; Harbaugh *et al.* 2010, pp. 834–835). Because the range of the listed entity has changed, in this proposed rule we evaluate the effects of the five factors described in section 4(a)(1) of the Act on *S. haleakalae* var. *lanaiense* as currently recognized to determine whether the species still warrants its status as endangered under the Act (see Summary of Factors Affecting the 40 Species Proposed or Reevaluated for Listing, below).

Proposed Delisting of Gahnia lanaiensis

Gahnia lanaiensis was listed as endangered in 1991 (56 FR 47686; September 20, 1991). At that time, this species was known from 15 or 16 large ''clumped'' plants growing on the summit of Lanaihale, on the island of Lanai. The distribution of these plants was considered to be the entire known range of the species. *Gahnia lanaiensis* was threatened due to the small number of individuals remaining and resulting negative consequences of very small populations which increased the potential for extinction of the species due to stochastic events; the potential for destruction of plants due their proximity to a popular hiking and jeep trail; and habitat degradation and destruction by feral ungulates and nonnative plants (56 FR 47686; September 20, 1991).

In a recently published paper, Koyama *et al.* (2010, pp. 29–30) found that based on spikelet and achene characters, *G. lanaiensis* is a complete match for *G. lacera,* a species endemic to New Zealand. Koyama further states that *G. lacera* likely arrived on Lanai, either intentionally or unintentionally, through the restoration efforts of George Munro, the Resident Manager of Lanai Ranch from 1911 to 1930 (Koyama 2010, p. 30). Born and raised in New Zealand, Munro is known to have used seeds of New Zealand's native plants for reforestation efforts on Lanai (Koyama 2010, p. 30).

Because *G. lanaiensis* is not believed to be a uniquely valid species; is synonymous with *G. lacera,* a species

endemic to New Zealand where it is known to be common (Piha New Zealand Plant Conservation Network 2010, in litt.); and is not in danger of extinction or likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, we propose to delist *G. lanaiensis* due to error in the original listing.

An Ecosystem-Based Approach

On the islands of Molokai, Lanai, and Maui, as on most of the Hawaiian Islands, native species that occur in the same habitat types (ecosystems) depend on many of the same biological features and the successful functioning of that ecosystem to survive. We have therefore organized the species addressed in this proposed rule by common ecosystem. Although the listing determination for each species is analyzed separately, we have organized the individual analysis for each species within the context of the broader ecosystem in which it occurs to avoid redundancy. In addition, native species that share ecosystems often face a suite of common factors that may threaten them, and ameliorating or eliminating these threats for each individual species often requires the exact same management actions in the exact same areas. Effective management of these threats often requires implementation of conservation actions at the ecosystem scale to enhance or restore critical ecological processes and provide for long-term viability of those species in their native environment. Thus, by taking this approach, we hope to not only organize this proposed rule efficiently, but also to more effectively focus conservation management efforts on the common threats that occur across these ecosystems. Those efforts would facilitate restoration of ecosystem functionality for the recovery of each species, and provide conservation benefits for associated native species, thereby potentially precluding the need to list other species under the Act that occur in these shared ecosystems. In addition, this approach is in concordance with one of the primary stated purposes of the Act, as stated in section 2(b): ''To provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.''

We propose to list *Bidens campylotheca* ssp. *pentamera, B. campylotheca* ssp. *waihoiensis, B. conjuncta, Calamagrostis hillebrandii, Cyanea asplenifolia, C. duvalliorum, C. horrida, C. kunthiana, C. magnicalyx, C. maritae, C. mauiensis, C. munroi, C. obtusa, C. profuga, C. solanacea, Cyrtandra ferripilosa, C. filipes, C. oxybapha, Festuca molokaiensis, Geranium hanaense, G. hillebrandii, Mucuna sloanei* var. *persericea, Myrsine vaccinioides, Peperomia subpetiolata, Phyllostegia bracteata, P. haliakalae, P. pilosa, Pittosporum halophilum, Pleomele fernaldii, Schiedea jacobii, S. laui, S. salicaria, Stenogyne kauaulaensis,* and *Wikstroemia villosa;* and *Newcombia cumingi, Partulina semicarinata* and *P. variabilis,* from the islands of Molokai, Lanai, and Maui as endangered species. We also propose to list *Canavalia pubescens,* known from the islands of Niihau, Kauai, Lanai, and Maui. In addition, we are reevaluating the listing of two plant species: *Santalum haleakalae* var. *lanaiense* from the islands of Molokai, Lanai, and Maui, and *Cyanea grimesiana* ssp. *grimesiana,* known from Oahu and Molokai, as endangered species. These 40 species (37 plants and 3 tree snails) are found in 10 ecosystem types: coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane wet, montane mesic, subalpine, dry cliff, and wet cliff (Tables 2A, 2B, and 2C).

TABLE 2A—MOLOKAI: SPECIES PROPOSED OR REEVALUATED FOR LISTING AND THE ECOSYSTEMS UPON WHICH THEY DEPEND

Ecosystem	Species
Coastal	Plants: *Pittosporum halophilum.*
Lowland Mesic	Plants: *Cyanea profuga, Cyanea solanacea, Cyrtandra filipes, Festuca molokaiensis, Phyllostegia haliakalae, Phyllostegia pilosa, Santalum haleakalae* var. *lanaiense.*
Lowland Wet	Plants: *Cyanea grimesiana* ssp. *grimesiana, Cyanea solanacea, Cyrtandra filipes.*
Montane Mesic	Plants: *Cyanea solanacea, Santalum haleakalae* var. *lanaiense.*
Montane Wet	Plants: *Cyanea profuga, Cyanea solanacea, Phyllostegia pilosa, Schiedea laui.*
Wet Cliff	Plants: *Cyanea grimesiana* ssp. *grimesiana, Cyanea munroi.*

TABLE 2B—LANAI: SPECIES PROPOSED OR REEVALUATED FOR LISTING AND THE ECOSYSTEMS UPON WHICH THEY DEPEND

Ecosystem	Species
Coastal	Plants: *Canavalia pubescens.*
Lowland Dry	Plants: *Pleomele fernaldii.*
Lowland Mesic	Plants: *Pleomele fernaldii, Santalum haleakalae* var. *lanaiense.*
Lowland Wet	Plants: *Pleomele fernaldii, Santalum haleakalae* var. *lanaiense,* Animals: *Partulina semicarinata, Partulina variabilis.*
Montane Wet	Plants: *Santalum haleakalae* var. *lanaiense* Animals: *Partulina semicarinata, Partulina variabilis.*
Dry Cliff	Plants: *Phyllostegia haliakalae, Pleomele fernaldii.*
Wet Cliff	Plants: *Cyanea munroi, Phyllostegia haliakalae, Pleomele fernaldii, Santalum haleakalae* var. *lanaiense* Animals: *Partulina semicarinata, Partulina variabilis.*

TABLE 2C—MAUI: SPECIES PROPOSED OR REEVALUATED FOR LISTING AND THE ECOSYSTEMS UPON WHICH THEY DEPEND

Ecosystem	Species
Lowland Dry	Plants: *Bidens campylotheca* ssp. *pentamera, Canavalia pubescens, Cyanea obtusa, Santalum haleakalae* var. *lanaiense, Schiedea salicaria*.
Lowland Mesic	Plants: *Bidens campylotheca* ssp. *pentamera, Cyanea asplenifolia, C. mauiensis*, Santalum haleakalae* var. *lanaiense*.
Lowland Wet	Plants: *Bidens campylotheca* ssp. *waihoiensis, Bidens conjuncta, Cyanea asplenifolia, Cyanea duvalliorum, Cyanea kunthiana, Cyanea magnicalyx, Cyanea maritae, Cyrtandra filipes, Mucuna sloanei* var. *persericea, Phyllostegia bracteata, Santalum haleakalae* var. *lanaiense, Wikstroemia villosa*. Animals: *Newcombia cumingi*.
Montane Dry	Plants: *Santalum haleakalae* var. *lanaiense*.
Montane Mesic	Plants: *Bidens campylotheca* ssp. *pentamera, Cyanea horrida, Cyanea kunthiana, Cyanea magnicalyx, Cyanea obtusa, Cyrtandra ferripilosa, Cyrtandra oxybapha, Geranium hillebrandii, Phyllostegia bracteata, Santalum haleakalae* var. *lanaiense, Stenogyne kauaulaensis, Wikstroemia villosa*.
Montane Wet	Plants: *Bidens campylotheca* ssp. *pentamera, Bidens campylotheca* ssp. *waihoiensis, Bidens conjuncta, Calamagrostis hillebrandii, Cyanea duvalliorum, Cyanea horrida, Cyanea kunthiana, Cyanea maritae, Cyrtandra ferripilosa, Cyrtandra oxybapha, Geranium hanaense, Geranium hillebrandii, Myrsine vaccinioides, Peperomia subpetiolata, Phyllostegia bracteata, Phyllostegia pilosa, Schiedea jacobii, Wikstroemia villosa*.
Subalpine	Plants: *Phyllostegia bracteata*.
Dry Cliff	Plants: *Bidens campylotheca* ssp. *pentamera, Cyanea mauiensis.**
Wet Cliff	Plants: *Bidens campylotheca* ssp. *pentamera, Bidens campylotheca* ssp. *waihoiensis, Bidens conjuncta, Cyanea horrida, Cyanea magnicalyx, Cyrtandra filipes, Phyllostegia bracteata, Phyllostegia haliakalae, Santalum haleakalae* var. *lanaiense*.

* Not seen since the 1800s.

For each species, we identified and evaluated those factors that threaten the species and that may be common to all of the species at the ecosystem level. For example, the degradation of habitat by nonnative ungulates is considered a threat to 37 of the 40 species proposed or reevaluated for listing here, and is likely a threat to many, if not most or even all of the native species within a given ecosystem. We consider such a threat factor to be an ''ecosystem-level threat,'' as each individual species within that ecosystem faces a threat that is essentially identical in terms of the nature of the impact, its severity, its imminence, and its scope. Beyond ecosystem-level threats, we further identified and evaluated threat factors that may be unique to certain species, but do not apply to all species under consideration within the same ecosystem. For example, the threat of predation by nonnative snails is unique to the three tree snails in this proposed rule, and is not applicable to any of the other species proposed for listing. We have identified such threat factors, which apply only to certain species within the ecosystems addressed here, as ''species-specific threats.''

An Ecosystem-Based Approach to Determining Primary Constituent Elements of Critical Habitat

Under section 4(a)(3)(A) of the Act, we are required to designate critical habitat to the maximum extent prudent and determinable concurrently with the publication of a final determination that a species is endangered or threatened. In this proposed rule, we are proposing to designate critical habitat for 39 of 40 species on the islands of Molokai, Lanai, and Maui proposed here for listing as endangered. We are also proposing to designate critical habitat for 11 species that are already listed as endangered but for which critical habitat has not been previously proposed or designated. In addition, we are proposing to revise existing critical habitat for 85 listed plant species on the islands of Molokai, Lanai, Maui, and Kahoolawe. When critical habitat was designated for these Maui Nui plant species in 1984 (49 FR 44573; November 9, 1984) and 2003 (68 FR 1220, January 9, 2003; 68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003), the areas designated were identified based primarily on where the species were known to occur at that time. We are proposing to revise critical habitat for these species because since then, we have learned that many native Hawaiian plants and animals currently persist only in areas of marginal habitat where the threats to the species are reduced under current conditions, but that these species can thrive when reintroduced into their historical habitats when threats are effectively managed there. For this reason, we believe it is important to designate habitat that may currently be unoccupied in cases where we have determined that habitat to be essential for the recovery of the species. In addition, because the prior designations focused only on discrete areas occupied by the species at the time of listing, the designations resulted in an overlapping and confusing patchwork of critical habitat areas for the many plant species that could be difficult for the public to interpret. As explained above, we believe that managing for the conservation of these multiple species on an ecosystem level will be a more efficient and effective use of resources to achieve the recovery of these species, as well as potentially preclude the need to list additional native species in the future. We believe this ecosystem-based approach will ultimately provide for greater public understanding of the conservation and recovery needs for each of the species addressed in this proposed rule.

In this proposed rule, we propose critical habitat for 135 species in 100 multiple-species critical habitat units. Although critical habitat is identified for each species individually, we have found that the conservation of each depends, at least in part, on the successful functioning of the physical or biological features of the commonly shared ecosystem. Each critical habitat unit identified in this proposed rule contains the physical or biological features essential to the conservation of those individual species that occupy that particular unit, or areas essential for the conservation of those species identified that do not presently occupy that particular unit. Where the unit is not occupied by a particular species, we believe it is still essential for the conservation of that species because the designation allows for the expansion of its range and reintroduction of individuals into areas where it occurred

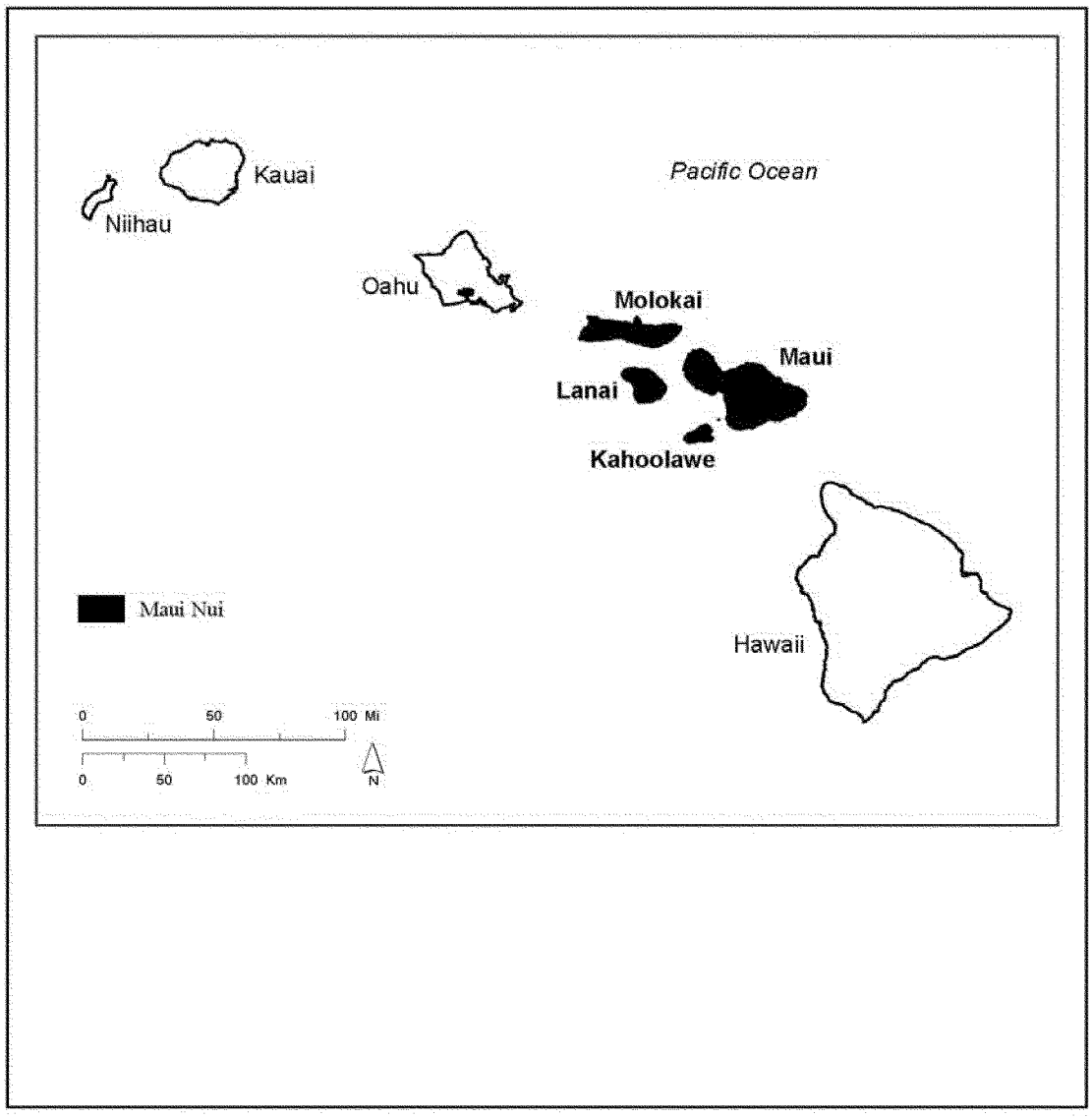
historically, and provides area for recovery in the case of stochastic events that otherwise hold the potential to eliminate the species from the one or more locations it is presently found. Under current conditions, many of these species are so rare in the wild that they are at high risk of extirpation or even extinction from various stochastic events, such as hurricanes or landslides. Therefore, building up resilience and redundancy in these species through the establishment of multiple, robust populations, is a key component of recovery.

Each of the areas proposed for designation represents critical habitat for multiple species, based upon their shared habitat requirements (i.e., physical or biological features) essential for their conservation. The identification of critical habitat also takes into account any species-specific conservation needs as appropriate. For example, the presence of a seasonally wet area within the coastal ecosystem is essential for the conservation of the plant *Marsilea villosa,* but is not a requirement shared by all of the other species within that same ecosystem; this would be an example of a species-specific requirement. However, a functioning ecosystem is also essential to *Marsilea villosa* because it provides the broader ''ecosystem-level'' physical or biological features that are required to support its specific life history requirements.

The Islands of Maui Nui

The islands of Maui Nui include Molokai, Lanai, Maui, and Kahoolawe (Figure 1). During the last Ice Age, about 21,000 years ago, when sea levels were approximately 459 feet (ft) (140 meters (m)) below their present level, these four islands were connected by a broad lowland plain and unified as a single island (Nullet *et al.* 1998, p. 64; Ziegler 2002, p. 22). This land bridge allowed the movement and interaction of each island's flora and fauna and contributed to the present close relationships of their biota (Nullet *et al.* 1998, p. 64).

Figure 1. Map of the Hawaiian Islands that collectively comprise Maui Nui.



The island of Molokai is the fifth largest of the eight main Hawaiian Islands. It was formed from three shield volcanoes and is about 260 square miles (sq mi) (673 square kilometers (sq km)) in area (Juvik and Juvik 1998, pp. 11, 13). The volcanoes that make up most of the land mass of Molokai include the west and east Molokai mountains, and a volcano that formed Kalaupapa peninsula. The taller and larger east Molokai mountain rises 4,970 ft (1,514 m) above sea level and comprises roughly 50 percent of the island's area (Juvik and Juvik 1998, p. 11). Topographically, the windward (north) side of east Molokai differs from the leeward (south) side. Precipitous cliffs line the windward coast and deep valleys dissect the coastal area. The annual rainfall on the windward side of Molokai is 75 to more than 150 inches (in) (200 to more than 375 centimeters (cm)) (Giambelluca and Schroeder 1998, p. 50).

The island of Lanai is the sixth largest of the eight main Hawaiian Islands, located southeast of Molokai and northwest of Hawaii Island. It is located in the lee or rain shadow of the taller west Maui mountains. Lanai was formed from a single shield volcano and built by eruptions at its summit and along three rift zones (Clague 1998, p. 42). The island is about 140 sq mi (364 sq km) in area and its highest point, Lanaihale, has an elevation of 3,366 ft (1,027 m) (Clague 1998, p. 42; Juvik and Juvik 1998, p. 13; Walker 1999, p. 21). Annual rainfall on the summit is 30 to 40 in (76 to 102 cm), but is considerably less, 10 to 20 in (25 to 50 cm), over much of the rest of the island (Giambelluca and Schroeder 1998, p. 56).

The island of Maui is the second largest of the eight main Hawaiian Islands, located southeast of Molokai and northwest of Hawaii Island (Juvik and Juvik 1998, p. 14). It was formed from two shield volcanoes and resulted in the west Maui mountains which are about 1.3 million years old and Haleakala on east Maui which is about 750,000 years old (Juvik and Juvik 1998, p. 14). West and east Maui are connected by the central Maui isthmus, and the island's total land area is 729 sq mi (1,888 sq km) (Juvik and Juvik 1998, p. 14; Walker 1999, p. 21). The west Maui mountains have been eroded by streams that created deep valleys and ridges. The highest point on west Maui is Puu Kukui at 5,788 ft (1,764 m) in elevation, and with an average rainfall of 400 in (1,020 cm) per year it is the second wettest spot in Hawaii (Juvik and Juvik 1998, p. 14; Wagner *et al.* 1999b, p. 41). East Maui's Haleakala volcano remains volcanically active, with its last eruption occurring only 200 years ago (Juvik and Juvik 1998, p. 14). Haleakala rises 10,023 ft (3,055 m) in elevation but lacks the diverse vegetation typical of the older and more eroded west Maui mountains. Rainfall on the slopes of Haleakala is about 35 in (89 cm) per year, with its windward (northeastern) slope receiving the most precipitation. However, Haleakala's crater is a dry cinder desert because it is above the level at which precipitation develops and is sheltered from moisture-laden winds usually associated with orographic (mountain) rainfall (Giambelluca and Schroeder 1998, p. 55).

The island of Kahoolawe is the smallest of the eight main Hawaiian Islands, located southeast of Molokai and northwest of Hawaii Island. The island is about 45 sq mi (116 sq km) in area, and was formed from a single shield volcano (Clague 1998, p. 42; Juvik and Juvik 1998, pp. 7, 16). The maximum elevation on Kahoolawe is 1,477 ft (450 m) at the summit of Puu Moaulanui (Juvik and Juvik 1998, pp. 15–16). Kahoolawe is in the rain shadow of Haleakala and is arid, receiving no more than 25 in (65 cm) of rainfall annually (Juvik and Juvik 1998, p. 16; Mitchell *et al.* 2005, pp. 6–66).

The vegetation of the islands of Maui Nui has undergone extreme alterations because of past and present land use and other activities. Land with rich soils was altered by the early Hawaiians and, more recently, converted to agricultural use in the production of sugar and pineapple (Gagne and Cuddihy 1999, p. 45) or pasture. For example, on Haleakala, on the island of Maui, the upland slopes have been converted to diversified agriculture and cattle ranches (Juvik and Juvik 1998, p. 16). Archaeological surveys suggest that the early Hawaiians did not live in the highest areas of Haleakala but instead inhabited the area temporarily for religious ceremonies, the creation of adzes (tools used for smoothing or carving wood), and bird hunting (Burney 1997, p. 448). Intentional and inadvertent introduction of alien plant and animal species has also contributed to the reduction in range of native vegetation on the islands of Maui Nui (throughout this rule, the terms ''alien,'' ''feral,'' ''nonnative,'' and ''introduced'' all refer to species that are not naturally native to the Hawaiian Islands). Currently, most of the native vegetation on the islands persists on upper elevation slopes, valleys and ridges; steep slopes; precipitous cliffs; valley headwalls; and other regions where unsuitable topography has prevented urbanization and agricultural development, or where inaccessibility has limited encroachment by nonnative plant and animal species.

Maui Nui Ecosystems

There are 11 different ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, subalpine, alpine, dry cliff, and wet cliff) recognized on the islands of Maui Nui. The 40 species proposed for listing occur in 10 of these ecosystems (all except the alpine), which collectively support the 135 species for which critical habitat is proposed. All 11 Maui Nui ecosystems are described in the following section; see Table 4 (in ''Physical or Biological Features,'' below) for a list of the species that occur in each ecosystem type.

Coastal

The coastal ecosystem is found on all of the main Hawaiian Islands, with the highest native species diversity in the least populated coastal areas of Kauai, Oahu, Molokai, Maui, Kahoolawe, Hawaii Island, and their associated islets. On Molokai, Lanai, Maui, and Kahoolawe, the coastal ecosystem includes mixed herblands, shrublands, and grasslands, from sea level to 980 ft (300 m) in elevation, generally within a narrow zone above the influence of waves to within 330 ft (100 m) inland, sometimes extending further inland if strong prevailing onshore winds drive sea spray and sand dunes into the lowland zone (The Nature Conservancy (TNC) 2006a). The coastal ecosystem is typically dry, with annual rainfall of less than 20 in (50 cm); however, windward rainfall may be high enough (up to 40 in (100 cm)) to support mesic-associated and sometimes wet-associated vegetation (Gagne and Cuddihy 1999, pp. 54–66). Biological diversity is low to moderate in this ecosystem, but may include some specialized plants and animals such as nesting seabirds and the endangered plant *Sesbania tomentosa* (ohai) (TNC 2006a). The plants *Canavalia pubescens* and *Pittosporum halophilum,* which are proposed for listing as endangered in this rule, are reported in this ecosystem on Molokai and Lanai (Hawaii Biodiversity and Mapping Program (HBMP) 2008; TNC 2007).

Lowland Dry

The lowland dry ecosystem includes shrublands and forests generally below 3,300 ft (1,000 m) elevation that receive less than 50 in (130 cm) annual rainfall, or are in otherwise prevailingly dry substrate conditions that range from weathered reddish silty loams to stony clay soils, rocky ledges with very

shallow soil, or relatively recent little-weathered lava (Gagne and Cuddihy 1999, p. 67). Areas consisting of predominantly native species in the lowland dry ecosystem are now rare; this ecosystem is found on the islands of Kauai, Oahu, Molokai, Lanai, Maui, Kahoolawe and Hawaii, and is best represented on the leeward sides of the islands (Gagne and Cuddihy 1999, p. 67). On the islands of Maui Nui, this ecosystem is typically found on the leeward side of the mountains (Gagne and Cuddihy 1999, p. 67; TNC 2006b). Native biological diversity is low to moderate in this ecosystem, and includes specialized animals and plants such as the Hawaiian owl or pueo (*Asio flammeus sandwichensis*) and *Santalum ellipticum* (iliahialoe or coast sandalwood) (Wagner *et al.* 1999c, pp. 1,220–1,221; TNC 2006b). The plants *Bidens campylotheca* ssp. *pentamera, Canavalia pubescens, Cyanea obtusa, Santalum haleakalae* var. *lanaiense, Pleomele fernaldii,* and *Schiedea salicaria,* which are proposed or reevaluated for listing as endangered in this rule, are reported from this ecosystem on Lanai and Maui (HBMP 2008; TNC 2007).

Lowland Mesic

The lowland mesic ecosystem includes a variety of grasslands, shrublands, and forests, generally below 3,300 ft (1,000 m) elevation, that receive between 50 and 75 in (130 and 190 cm) annual rainfall (TNC 2006c). In the Hawaiian Islands, this ecosystem is found on Kauai, Molokai, Lanai, Maui, and Hawaii, on both windward and leeward sides of the islands. On the islands of Maui Nui, this ecosystem is typically found on the leeward slopes of Molokai, Lanai, and Maui (Gagne and Cuddihy 1999, p. 75; TNC 2006c). Native biological diversity is high in this system (TNC 2006c). The plants *Bidens campylotheca* ssp. *pentamera, Cyanea asplenifolia, C. profuga, C. solanacea, Cyrtandra filipes, Festuca molokaiensis, Phyllostegia haliakalae, P. pilosa, Pleomele fernaldii,* and *Santalum haleakalae* var. *lanaiense,* which are proposed or reevaluated for listing as endangered in this rule, are reported in this ecosystem on this islands of Molokai, Lanai, and Maui (HBMP 2008; TNC 2007). In addition, *Cyanea mauiensis,* a species proposed for listing, may have occurred in this ecosystem on Maui but this species has not been observed for over 100 years. The species-specific habitat needs of *Cyanea mauiensis* are not known.

Lowland Wet

The lowland wet ecosystem is generally found below 3,300 ft (1,000 m) elevation on the windward sides of the main Hawaiian Islands, except Niihau and Kahoolawe (Gagne and Cuddihy 1999, p. 85; TNC 2006d). These areas include a variety of wet grasslands, shrublands, and forests that receive greater than 75 in (190 cm) annual precipitation, or are in otherwise wet substrate conditions (TNC 2006d). On the islands of Maui Nui, this system is best developed in wet valleys and slopes on Molokai, Lanai, and Maui (TNC 2006d). Native biological diversity is high in this system (TNC 2006d). The plants *Bidens campylotheca* ssp. *waihoiensis, B. conjuncta, Cyanea asplenifolia, C. duvalliorum, C. grimesiana* ssp. *grimesiana, C. kunthiana, C. magnicalyx, C. maritae, C. solanacea, Cyrtandra filipes, Mucuna sloanei* var. *persericea, Phyllostegia bracteata, Santalum haleakalae* var. *lanaiense, Pleomele fernaldii,* and *Wikstroemia villosa;* and the tree snails *Newcombia cumingi, Partulina semicarinata,* and *P. variabilis,* which are proposed or reevaluated for listing as endangered in this rule, are reported in this ecosystem on Molokai, Lanai, and Maui (HBMP 2008; TNC 2007).

Montane Wet

The montane wet ecosystem is composed of natural communities (grasslands, shrublands, forests, and bogs) found at elevations between 3,300 and 6,500 ft (1,000 and 2,000 m), in areas where annual precipitation is greater than 75 in (190 cm) (TNC 2006e). This system is found on all of the main Hawaiian Islands except Niihau and Kahoolawe, and only the islands of Molokai, Maui, and Hawaii have areas above 4,020 ft (1,225 m) (TNC 2006e). On the islands of Maui Nui this ecosystem is found on Molokai, Lanai, and Maui (TNC 2007). Native biological diversity is moderate to high (TNC 2006e). The plants *Bidens campylotheca* ssp. *pentamera, B. campylotheca* ssp. *waihoiensis, B. conjuncta, Calamagrostis hillebrandii, Cyanea duvalliorum, C. horrida, C. kunthiana, C. maritae, C. profuga, C. solanacea, Cyrtandra ferripilosa, C. oxybapha, Geranium hanaense, G. hillebrandii, Myrsine vaccinioides, Peperomia subpetiolata, Phyllostegia bracteata, P. pilosa, Santalum haleakalae* var. *lanaiense, Schiedea jacobii, S. laui, and Wikstroemia villosa;* and the tree snails *Partulina semicarinata* and *P. variabilis,* which are proposed or reevaluated for listing as endangered in this rule, are reported in this ecosystem on the islands of Molokai, Lanai, and Maui (HBMP 2008; TNC 2007).

Montane Mesic

The montane mesic ecosystem is composed of natural communities (forests and shrublands) found at elevations between 3,300 and 6,500 ft (1,000 and 2,000 m), in areas where annual precipitation is between 50 and 75 in (130 and 190 cm), or are in otherwise mesic substrate conditions (TNC 2006f). This system is found on Kauai, Molokai, Maui, and Hawaii Island (Gagne and Cuddihy 1999, pp. 97–99; TNC 2007). Native biological diversity is moderate, and this habitat is important for Hawaiian forest birds (Gagne and Cuddihy 1999, pp. 98–99; TNC 2006f). The plants *Bidens campylotheca* ssp. *pentamera, Cyanea horrida, C. kunthiana, C. magnicalyx, C. obtusa, C. solanacea, Cyrtandra ferripilosa, C. oxybapha, Geranium hillebrandii, Phyllostegia bracteata, Santalum haleakalae* var. *lanaiense, Stenogyne kauaulaensis,* and *Wikstroemia villosa,* which are proposed or reevaluated for listing as endangered in this rule, are reported in this ecosystem on Molokai and Maui (TNC 2007; HBMP 2008).

Montane Dry

The montane dry ecosystem is composed of natural communities (shrublands, grasslands, forests) found at elevations between 3,300 and 6,500 ft (1,000 and 2,000 m), in areas where annual precipitation is less than 50 in (130 cm), or are in otherwise dry substrate conditions (TNC 2006g). This system is found on the islands of Maui and Hawaii (Gagne and Cuddihy 1999, pp. 93–97). The only plant species reevaluated for listing found in this ecosystem is *Santalum haleakalae* var. *lanaiense* (TNC 2007; HBMP 2008).

Subalpine

The subalpine ecosystem is composed of natural communities (shrublands, grasslands, forests) found at elevations between 6,500 ft and 9,800 ft (2,000 and 3,000 m), in areas where annual precipitation is seasonal, between 15 and 40 in (38 and 100 cm), or are in otherwise dry substrate conditions (TNC 2006h). Fog drip is an important moisture supplement (Gagne and Cuddihy 1999, pp. 107–110). This system is found on the islands of Maui and Hawaii (Gagne and Cuddihy 1999, pp. 107–110). Native biological diversity is not high, but specialized invertebrates and plants (*Sophora chrysophylla* (mamane), *Myoporum sandwicense* (naio), and *Deschampsia nubigena* (hairgrass)) are reported in this

ecosystem (TNC 2006h). The plant *Phyllostegia bracteata,* which is proposed as endangered in this rule, is reported in this ecosystem (TNC 2007; HBMP 2008).

Alpine

The alpine ecosystem is composed of natural communities (shrublands, alpine lake, aeolian (wind-shaped) desert) found at elevations above 9,800 ft (3000 m), in areas where annual precipitation is infrequent, with frost and snow, and intense solar radiation (TNC 2006i). Fog drip is an important moisture supplement (Gagne and Cuddihy 1999, pp. 107–110). This system is found on the islands of Maui and Hawaii (Gagne and Cuddihy 1999, pp. 107–110). Native biological diversity is not high, but highly specialized plants, such as the threatened *Argyroxiphium sandwicense* ssp. *macrocephalum* (ahinahina), occur in this ecosystem on Maui (TNC 2006i). None of the species proposed or reevaluated for listing in this rule are reported from this ecosystem (TNC 2007; HBMP 2008).

Dry Cliff

The dry cliff ecosystem is composed of vegetation communities occupying steep slopes (greater than 65 degrees) in areas that receive less than 75 in (190 cm) of rainfall annually, or are in otherwise dry substrate conditions (TNC 2006j). This ecosystem is found on all of the main Hawaiian Islands except Niihau, and is best represented along the leeward slopes of Lanai and Maui (TNC 2006j). A variety of shrublands occur within this ecosystem (TNC 2006j). Native biological diversity is low to moderate (TNC 2006j). The plants *Bidens campylotheca* ssp. *pentamera, Phyllostegia haliakalae,* and *Pleomele fernaldii,* which are proposed as endangered in this rule, are reported in this ecosystem on Lanai and Maui (HBMP 2008; TNC 2007).

Wet Cliff

The wet cliff ecosystem is generally composed of shrublands on near-vertical slopes (greater than 65 degrees) in areas that receive more than 75 in (190 cm) of annual precipitation, or in otherwise wet substrate conditions (TNC 2006k). This system is found on the islands of Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii. On the islands of Maui Nui, this system is typically found along the windward sides of Molokai, Lanai, and Maui (TNC 2006k). Native biological diversity is low to moderate (TNC 2006k). The plants *Bidens campylotheca* ssp. *pentamera, B. campylotheca* ssp. *waihoiensis, B. conjuncta, Cyanea grimesiana* ssp. *grimesiana, C.horrida, C. magnicalyx, C. munroi, Cyrtandra filipes, Phyllostegia bracteata, P. haliakalae, Santalum haleakalae* var. *lanaiense, and Pleomele fernaldii;* and the tree snails *Partulina semicarinata* and *P. variabilis,* which are proposed or reevaluated for listing as endangered in this rule, are reported in this ecosystem on the islands of Molokai, Lanai, and Maui (HBMP 2008; TNC 2007).

Description of the 40 Species Proposed or Reevaluated for Listing

Below is a brief description of each of the 40 species proposed or reevaluated for listing, presented in alphabetical order by genus. Plants are presented first, followed by animals.

Plants

In order to avoid confusion regarding the number of locations of each species (a location does not necessarily represent a viable population, as in some cases there may only be one or a very few representatives of the species present) we use the word ''occurrence'' instead of ''population.'' Each occurrence is composed only of wild (i.e., not propagated and outplanted) individuals.

Bidens campylotheca ssp. *pentamera* (kookoolau), a perennial herb in the sunflower family (Asteraceae), occurs only on the island of Maui (Ganders and Nagata 1999, pp. 271, 273). Historically, *B. campylotheca* spp. *pentamera* was found on Maui's eastern volcano (i.e., Haleakala). Currently, this subspecies is found on east Maui in the montane mesic, montane wet, dry cliff, and wet cliff ecosystems of Waikamoi Preserve and Kipahulu Valley (in Haleakala National Park) (TNC 2007; HBMP 2008; Welton 2008, in litt.; National Tropical Botanical Garden (NTBGa) 2009, pp. 1–2; Fay 2010, in litt.). It is uncertain if plants observed in the Hana Forest Reserve at Waihoi Valley are *Bidens campylotheca* ssp. *pentamera* (Osterneck 2010, in litt.). On west Maui, *B. campylotheca* ssp. *pentamera* is found on and near cliff walls in the lowland dry and lowland mesic ecosystems of Papalaua Gulch (West Maui Forest Reserve) and Kauaula Valley (NTBG 2009a, pp. 1–2; Perlman 2009a, in litt.). The 6 occurrences on east and west Maui total approximately 200 individuals.

Bidens campylotheca ssp. *waihoiensis* (kookoolau), a perennial herb in the sunflower family (Asteraceae), occurs only on the island of Maui (Ganders and Nagata 1999, pp. 271, 273). Historically, *B. campylotheca* ssp. *waihoiensis* was found on Maui's eastern volcano in Waihoi Valley and Kaumakani ridge (HBMP 2008). Currently, this subspecies is found in the lowland wet, montane wet, and wet cliff ecosystems in Kipahulu Valley (Haleakala National Park) and possibly in Waihoi Valley (Hana Forest Reserve) on east Maui (TNC 2007; HBMP 2008; Welton 2008, in litt.). Approximately 200 plants are scattered over an area of about 2.5 miles (4 km) in Kipahulu Valley (Welton 2010a, in litt.). In 1974, hundreds of individuals were observed in Waihoi Valley along Waiohonu stream (NTBG 2009b, p. 4).

Bidens conjuncta (kookoolau), a perennial herb in the sunflower family (Asteraceae), occurs only on the island of Maui (Ganders and Nagata 1999, pp. 273–274). Historically, this species was known only from the mountains of west Maui in the Honokohau drainage basin (Sherff 1923, p. 162). Currently, *B. conjuncta* is found scattered throughout the upper elevation drainages of the west Maui mountains in the lowland wet, montane wet, and wet cliff ecosystems, in 9 occurrences totaling an estimated 7,000 individuals (TNC 2007; HBMP 2008; Oppenheimer 2008a, in litt.; Perlman 2010, in litt.).

Calamagrostis hillebrandii (NCN), a perennial in the grass family (Poaceae), occurs only on the island of Maui (O'Connor 1999, p. 1,509). Historically, this species was known from Puu Kukui in the west Maui mountains (Wagner *et al.* 2005a—*Flora of the Hawaiian Islands database*). Currently, this species is found in bogs in the montane wet ecosystem in the west Maui mountains, from Honokohau to Kahoolewa ridge, including East Bog and Eke Crater, in three occurrences totaling a few hundred individuals (TNC 2007; HBMP 2008; Oppenheimer 2010a, in litt.).

Canavalia pubescens (awikiwiki), a perennial climber in the pea family (Fabaceae), is currently found only on the island of Maui, although it was also historically known from Niihau, Kauai, and Lanai (Wagner and Herbst 1999, p. 654). On Niihau, this species was known from one population in Haao Valley that was last observed in 1949 (HBMP 2008). On Kauai, this species was known from six populations ranging from Awaawapuhi to Wainiha, where it was last observed in 1977 (HBMP 2008). On Lanai, this species was known from Kaena Point to Huawai Bay. Eight individuals were reported in the coastal ecosystem west of Hulupoe, but they have not been seen since 1998 (Oppenheimer 2007a, in litt.; HBMP 2008). At present, the only known occurrence is on east Maui, from Puu o Kali south to Pohakea, in the lowland

dry ecosystem (Starr 2006, in litt.; Altenburg 2007, pp. 12–13; Oppenheimer 2006a, in litt.; 2007a, in litt.). All plants of this species that formerly were found in the Ahihi-Kinau Natural Area Reserve on Maui were destroyed by feral goats (*Capra hircus*) by the end of 2010 (Fell-McDonald 2010, in litt.). In April of 2010, *C. pubescens* totaled as many as 500 individuals; however, with the recent loss of the plants at Ahihi-Kinau Natural Area Reserve, *C. pubescens* may currently total fewer than 200 individuals at a single location.

Cyanea asplenifolia (HAHA), a shrub in the bellflower family (Campanulaceae), is found only on the island of Maui. This species was known historically from Waihee Valley and Kaanapali on west Maui, and Halehaku ridge on east Maui (Lammers 1999, p. 445; HBMP 2008). On west Maui, in the lowland wet ecosystem, there are 3 occurrences totaling 14 individuals in the Puu Kukui Preserve and two occurrences totaling 5 individuals in the West Maui Natural Area Reserve. On east Maui, *C. asplenifolia* is found in 1 occurrence each in the lowland mesic ecosystem in Haleakala National Park (53 individuals) and Kipahulu FR (140 individuals), and 1 occurrence in the lowland wet ecosystem in the Makawao FR (5 individuals) (TNC 2007; HBMP 2008; Oppenheimer 2008b, in litt, 2010b, in litt.; PEPP 2008, p. 48; Welton and Haus 2008, p. 12; NTBG 2009c, pp. 3–5; Welton 2010a, in litt.). Currently, *C. asplenifolia* is known from 8 occurrences totaling fewer than 200 individuals.

Cyanea duvalliorum (HAHA), a tree in the bellflower family (Campanulaceae), is found only in the east Maui mountains (Lammers 2004, p. 89). This species was described in 2004, after the discovery of individuals of a previously unknown species of *Cyanea* at Waiohiwi Gulch (Lammers 2004, p. 91). Studies of earlier collections of sterile material extend the historical range of this species on the windward slopes of Haleakala in the lowland wet and montane wet ecosystems, east of Waiohiwi Stream, from Honomanu Stream to Wailua Iki Streams, and to Kipahulu Valley (Lammers 2004, p. 89). In 2007, one individual was observed in the lowland wet ecosystem of the Makawao FR (NTBG 2009d, p. 2). In 2008, 71 individuals were found in 2 new locations in the Makawao FR, along with many juveniles and seedlings (NTBG 2009d, p. 2). Currently there are 2 occurrences with an approximate total of 71 individuals in the montane wet ecosystem near Makawao FR, with an additional 135 individuals outplanted in Waikamoi Preserve (TNC 2007; NTBG 2009d, p. 2; Oppenheimer 2010a, in litt.).

Cyanea grimesiana ssp. *grimesiana* (HAHA), a shrub in the bellflower family (Campanulaceae), is known only from Oahu and Molokai (Lammers 2004 p. 84; Lammers 1999, pp. 449, 451; 68 FR 35950, June 17, 2003). On Molokai, this species was last observed in 1991 in the wet cliff ecosystem at Wailau Valley (PEPP 2010, p. 45). Currently, on Oahu there are five to six individuals in four occurrences in the Waianae and Koolau Mountains (U.S. Army 2006; HBMP 2008).

Cyanea horrida (haha nui), a member of the bellflower family (Campanulaceae), is a palm-like tree found only on the island of Maui. This species was known historically from the slopes of Haleakala (Lammers 1999, p. 453; HBMP 2008). Currently, *C. horrida* is known from 12 occurrences totaling 44 individuals in the montane mesic, montane wet, and wet cliff ecosystems in Waikamoi Preserve, Hanawai Natural Area Reserve, and Haleakala National Park on east Maui (TNC 2007; HBMP 2008; PEPP 2009, p. 52; PEPP 2010, p. 46–47; Oppenheimer 2010c, in litt.; TNCH 2010a, p. 1).

Cyanea kunthiana (HAHA), a shrub in the bellflower family (Campanulaceae), is found only on Maui, and was historically known from both the east and west Maui mountains (Lammers 1999, p. 453; HBMP 2008). *Cyanea kunthiana* was known to occur in the montane mesic ecosystem in the east Maui mountains in upper Kipahulu Valley, in Haleakala National Park and Kipahulu FR (HBMP 2008). Currently, in the east Maui mountains, *C. kunthiana* occurs in the lowland wet and montane wet ecosystems in Waikamoi Preserve, Hanawi Natural Area Reserve, East Bog, Kaapahu, and Kipahulu Valley. In the west Maui mountains, *C. kunthiana* occurs in the lowland wet and montane wet ecosystems at Eke Crater, Kahoolewa ridge, and at the junction of the Honokowai, Hahakea, and Honokohau gulches (TNC 2007; HBMP 2008; NTBG 2009e, pp. 1–3; Perlman 2010, in litt.; Oppenheimer 2010a, in litt.). The 15 occurrences total 165 individuals, although botanists speculate that this species may total as many as 400 individuals with further surveys of potential habitat on east and west Maui (TNC 2007; HBMP 2008; Fay 2010, in litt.; Oppenheimer 2010a, in litt.; Osternak 2010, in litt.).

Cyanea magnicalyx (HAHA), a perennial shrub in the bellflower family (Campanulaceae), is known from west Maui (Lammers 1999, pp. 449, 451; Lammers 2004, p. 84). Currently, there are seven individuals in three occurrences on west Maui: Two individuals in Kaluanui, a subgulch of Honokohau Valley, in the lowland wet ecosystem; four individuals in Iao Valley in the wet cliff ecosystem; and one individual in a small drainage south of the Kauaula rim, in the montane mesic ecosystem (Lammers 2004, p. 87; Perlman 2009b in litt.; Wood 2009, in litt.).

Cyanea maritae (HAHA), a shrub in the bellflower family (Campanulaceae), is found only on Maui (Lammers 2004, p. 92). Sterile specimens were collected from the northwestern slopes of Haleakala in the Waiohiwi watershed and east to Kipahulu in the early 1900s. Between 2000 and 2002, fewer than 20 individuals were found in the Waiohiwi area (Lammers 2004, pp. 92, 93). Currently, there are 4 occurrences, totaling between 23 to 50 individuals in Kipahulu, Kaapahu, west Kahakapao, and in the Koolau FR in the lowland wet and montane wet ecosystems on east Maui (TNC 2007; Oppenheimer 2010b, in litt.; Welton 2010b, in litt.).

Cyanea mauiensis (HAHA), a perennial shrub in the bellflower family (Campanulaceae), was last observed on Maui about 100 years ago (Lammers 2004, pp. 84–85; TNC 2007). Although there are no documented occurrences of this species known today, botanists believe this species may still be extant as all potentially suitable lowland mesic and dry cliff habitat has not been been surveyed.

Cyanea munroi (HAHA), a short-lived shrub in the bellflower family (Campanulaceae), is known from Molokai and Lanai (Lammers 1999, pp. 449, 451; Lammers 2004, pp. 84–87). Currently, there are no known individuals on Molokai (last observed in 2001), and only two individuals on Lanai at a single location, in the wet cliff ecosystem (TNC 2007; HBMP 2008; Oppenheimer 2010d, in litt.; Perlman 2008a, in litt.; Wood 2009a, in litt.).

Cyanea obtusa (HAHA), a shrub in the bellflower family (Campanulaceae), is found only on Maui (Lammers 1999, p. 458). Historically, this species was found in both the east and west Maui mountains (Hillebrand 1888, p. 254; HBMP 2008). Not reported since 1919 (Lammers 1999, p. 458), *C. obtusa* was rediscovered in the early 1980s at one site each on east and west Maui. However, by 1989, plants in both locations had disappeared (Hobdy *et al.* 1991, p. 3; Medeiros 1996, in litt.). In 1997, 4 individuals were observed in Manawainui Gulch in Kahikinui, and another occurrence of 5 to 10

individuals was found in Kahakapao Gulch, both in the montane mesic ecosystem on east Maui (Wood and Perlman 1997, p. 11; Lau 2001, in litt.). However, the individuals found at Kahakapao Gulch are now considered to be *Cyanea elliptica* or hybrids between *C. obtusa* and *C. elliptica* (PEPP 2007, p. 40). In 2001, several individuals were seen in Hanaula and Pohakea gulches on west Maui; however, only hybrids are currently known in this area (NTBG 2009f, p. 3). It is unknown if individuals of *C. obtusa* remain at Kahikinui, as access to the area to ascertain the status of these plants is difficult and has not been attempted since 2001 (PEPP 2008, p. 55; PEPP 2009, p. 58). Two individuals were observed on a cliff along Wailaulau Stream in the montane mesic ecosystem on east Maui in 2009 (Duvall 2010, in litt.). Currently, this species is known from one occurrence of only a few individuals in the montane mesic ecosystem on east Maui. Historically, this species also occurred in the lowland dry ecosystem at Manawainui on west Maui and at Ulupalakua on east Maui (HBMP 2008).

Cyanea profuga (HAHA), a shrub in the bellflower family (Campanulaceae), occurs only on Molokai (Lammers 1999, pp. 461–462; Wood and Perlman 2002, p. 4). Historically, this species was found in Mapulehu Valley and along Pelekunu Trail, and has not been seen in those locations since the early 1900s (Wood and Perlman 2002, p. 4). In 2002, six individuals were discovered along a stream in Wawaia Gulch (Wood and Perlman 2002, p. 4). In 2007, seven individuals were known from Wawaia Gulch, and an additional six individuals were found in Kumueli (Wood 2005, p. 17; USFWS 2007a; PEPP 2010, p. 55). In 2009, only four individuals remained at Wawaia Gulch; however, nine were found in Kumueli Gulch (Bakutis 2010, in litt.; Oppenheimer 2010e, in litt.; Perlman 2010, in litt.; PEPP 2010, p. 55). Currently, there are 4 occurrences totaling up to 34 individuals in the lowland mesic and montane wet ecosystems on Molokai (TNC 2007; Bakutis 2010, in litt.; Perlman 2010, in litt.).

Cyanea solanacea (popolo, haha nui), a shrub in the bellflower family (Campanulaceae), is found only on Molokai. According to Lammers (1999, p. 464) and Wagner (*et al.* 2005a—*Flora of the Hawaiian Islands database*) the range of *C. solanacea* includes Molokai and may also include west Maui. In his treatment of the species of the Hawaiian endemic genus *Cyanea,* Lammers (1999, p. 464) included a few sterile specimens of *Cyanea* from Puu Kukui, west Maui and the type specimen (now destroyed) for *C. scabra* var. *sinuata* from west Maui in *C. solanacea.* However, Oppenheimer recently reported (Oppenheimer 2010a, in litt.) that the plants on west Maui were misidentified as *C. solanacea* and are actually *C. macrostegia.* Based on Oppenheimer's recent field observations, the range of *C. solanacea* is limited to Molokai. Historically, *Cyanea solanacea* ranged from central Molokai at Kalae, eastward to Pukoo in the lowland mesic, lowland wet, and montane mesic ecosystems (HBMP 2008). Currently, there are four small occurrences at Hanalilolilo, near Pepeopae Bog, Kaunakakai Gulch, and Kawela Gulch, in the montane wet ecosystem. These occurrences total 26 individuals (Bakutis 2010, in litt.; Oppenheimer 2010a, in litt.; TNCH 2011, pp. 21, 57).

Cyrtandra ferripilosa (haiwale), a shrub in the African violet family (Gesneriaceae), occurs only on Maui (St. John 1987, pp. 497–498; Wagner and Herbst 2003, p. 29). This species was discovered in 1980 in the east Maui mountains at Kuiki in Kipahulu Valley (St. John 1987, pp. 497–498; Wagner *et al.* 2005a—*Flora of the Hawaiian Islands database*). Currently, there are a few individuals each in two occurrences at Kuiki and on the Manawainui plane in the montane mesic and montane wet ecosystems (Oppenheimer 2010f, in litt.; Welton 2010a, in litt.).

Cyrtandra filipes (haiwale), a shrub in the African violet family (Gesneriaceae), is found on Maui (Wagner *et al.* 1999d, pp. 753–754; Oppenheimer 2006b, in litt.). According to Wagner *et al.* (1999d, p. 754), the range of *C. filipes* includes Maui and Molokai. Historical collections from Kapunakea (1800) and Olowalu (1971) on Maui indicate it once had a wider range on this island. In 2004, it was believed there were over 2,000 plants at Honokohau and Waihee in the west Maui mountains; however, recent studies have shown that these plants do not match the description for *C. filipes* (Oppenheimer 2006b, in litt.). Currently, there are between 134 and 155 individuals in 4 occurrences in the lowland wet and wet cliff ecosystems at Kapalaoa, Honokowai, Honolua, and Waihee Valley on west Maui, and approximately 7 individuals at Mapulehu in the lowland mesic ecosystem on Molokai, with an historical occurrence in the lowland wet ecosystem (Oppenheimer 2010c, in litt.).

Cyrtandra oxybapha (haiwale), a shrub in the African violet family (Gesneriaceae), is found on Maui (Wagner *et al.* 1999d, p. 771). This species was discovered in the upper Pohakea Gulch in Hanaula in the west Maui mountains in 1986 (Wagner *et al.* 1989, p. 100; TNC 2007). Currently, there are 2 known occurrences with a total of 137 to 250 individuals. *Cyrtandra oxybapha* occurs in the montane wet ecosystem on west Maui, from Hanaula to Pohakea Gulch. This occurrence totals between 87 and 97 known individuals, with perhaps as many as 150 or more (Oppenheimer 2008c, in litt.). The current status of the 50 to 100 individuals in the montane mesic ecosystem in Manawainui Gulch on east Maui is unknown, as these plants have not been surveyed since 1997 (Oppenheimer 2010a, in litt.).

Festuca molokaiensis (NCN), a member of the grass family (Poaceae), is found on Molokai (Catalan *et al.* 2009, p. 54). This species is only known from the type locality at Kupaia Gulch, in the lowland mesic ecosystem (Catalan *et al.* 2009, p. 55). Last seen in 2009, the current number of individuals is unknown; however, field surveys for *F. molokaiensis* at Kupaia Gulch are planned for 2011 (Oppenheimer 2010g, in litt.). Oppenheimer (2011, pers. comm.) suggests that the drought over the past couple of years on Molokai may have suppressed the growth of *Festuca molokaiensis* and prevented its observation by botanists in the field. He also suggested that this species may be an annual whose growth will be stimulated by normal rainfall patterns.

Geranium hanaense (nohoanu), a shrub in the geranium family (Geraniaceae), is found on Maui (Wagner *et al.* 1999e, pp. 730–732). This species was first collected in 1973, from two adjacent montane bogs on the northeast rift of Haleakala, east Maui (Medeiros and St. John 1988, pp. 214–220). At that time, there were an estimated 500 to 700 individuals (Medeiros and St. John 1988, pp. 214–220). Currently, *G. hanaense* occurs in ''Big Bog'' and ''Mid Camp Bog'' in the montane wet ecosystem on the northeast rift of Haleakala, with the same number of estimated individuals (Welton 2008, in litt.; Welton 2010a, in litt.; Welton 2010b, in litt.).

Geranium hillebrandii (nohoanu), a shrub in the geranium family (Geraniaceae), is found on Maui (Aedo and Munoz Garmendia 1997; p. 725; Wagner *et al.* 1999e, pp. 732–733; Wagner and Herbst 2003, p. 28). Little is known of the historical locations of *G. hillebrandii,* other than the type collection made in the 1800s at Eke Crater, in the west Maui mountains (Hillebrand 1888, p. 56). Currently, 4 occurrences total over 10,000 individuals, with the largest 2 occurrences in the west Maui bogs, from Puu Kukui to East Bog and Kahoolewa ridge. A third occurrence is at Eke

Crater and the surrounding area, and the fourth occurrence is at Lihau (HBMP 2008; Oppenheimer 2010h, in litt.). These occurrences are found in the montane wet and montane mesic ecosystems on west Maui (TNC 2007).

Mucuna sloanei var. *persericea* (sea bean), a vine in the pea family (Fabaceae), is found on Maui (Wilmot-Dear 1990, pp. 27–29; Wagner *et al.* 2005a—*Flora of the Hawaiian Islands database*). In her revision of *Mucuna* in the Pacific Islands, Wilmot-Dear recognized this variety from Maui based on leaf indumentum (covering of fine hairs or bristles) (Wilmot-Dear 1990, p. 29). At the time of Wilmot-Dear's publication, *M. sloanei* var. *persericea* ranged from Makawao to Wailua Iki, on the windward slopes of the east Maui mountains (Wagner *et al.* 2005a—*Flora of the Hawaiian Islands database*). Currently, there are possibly a few hundred individuals in five occurrences: Ulalena Hill, north of Kawaipapa Gulch, lower Nahiku, Koki Beach, and Piinau Road, all in the lowland wet ecosystem on east Maui (Duvall 2010, in litt.; Hobdy 2010, in litt.).

Myrsine vaccinioides (kolea), a shrub in the myrsine family (Myrsinaceae), is found on Maui (Wagner *et al.* 1999f, p. 946; HBMP 2008). This species was historically known from shrubby bogs near Violet Lake on west Maui (Wagner *et al.* 1999f, p. 946). In 2005, three occurrences of a few hundred individuals were reported at Eke, Puu Kukui and near Violet Lake (Oppenheimer 2006c, in litt.). Currently, there are estimated to be several hundred, but fewer than 1,000, individuals scattered in the summit area of the west Maui mountains at Eke Crater, Puu Kukui, Honokowai-Honolua, and Kahoolewa, in the montane wet ecosystem (Oppenheimer 2010i, in litt.).

Peperomia subpetiolata (alaala wai nui), a perennial herb in the pepper family (Piperaceae), is found on Maui (Wagner *et al.* 1999g, p. 1035; HBMP 2008). Historically, *P. subpetiolata* was known only from the lower Waikamoi (Kula pipeline) area on the windward side of Haleakala on east Maui (Wagner *et al.* 1999g, p. 1,035; HBMP 2008). In 2001, it was estimated that 40 individuals occurred just west of the Makawao-Koolau FR boundary, in the montane wet ecosystem. *Peperomia cookiana* and *P. hirtipetiola* also occur in this area, and are known to hybridize with *P. subpetiolata* (NTBG 2009g, p. 2; Oppenheimer 2010j, in litt.). In 2007, 20 to 30 hybrid plants were observed at Maile Trail, and at three areas near the Waikamoi Flume road (NTBG 2009g, p. 2). Based on the 2007 and 2010 surveys, all known plants are now considered to be hybrids mostly between *P. subpetiolata* and *P. cookiana,* with a smaller number of hybrids between *P. subpetiolata* and *P. hirtipetiola* (NTBG 2009g, p. 2; Lau 2011, in litt.). *Peperomia subpetiolata* is recognized as a valid species and botanists continue to search for plants in its previously known locations as well as in new locations with potentially suitable habitat (NTBG 2009g, p. 2; PEPP 2010, p. 96; Lau 2011, pers. comm.).

Phyllostegia bracteata (NCN), a perennial herb in the mint family (Lamiaceae), is found on Maui (Wagner *et al.* 1999h, pp. 814–815). Historically, this species was known from the east Maui mountains at Ukulele, Puu Nianiau, Waikamoi Gulch, Koolau Gap, Kipahulu, Nahiku-Kuhiwa trail, Waihoi Valley, and Manawainui; and from the west Maui mountains at Puu Kukui and Hanakaoo (HBMP 2008). This species appears to be short-lived, ephemeral, and disturbance-dependent, in the lowland wet, montane mesic, montane wet, subalpine, and wet cliff ecosystems (NTBG 2009h, p. 1). There have been several reported sightings of *P. bracteata* between 1981 and 2001, at Waihoi Crater Bog, Waikamoi Preserve, Waikamoi flume, and Kipahulu on east Maui, and at Pohakea Gulch on west Maui; however, none of these individuals were extant as of 2009 (PEPP 2009, pp. 89–90). In 2009, one individual was found at Kipahulu, near Delta Camp, on east Maui, but was not relocated on a follow-up survey during that same year (NTBG 2009h, p. 3). Botanists continue to search for *P. bracteata* in previously reported locations, as well as in other areas with potentially suitable habitat (NTBG 2009h, p. 3; PEPP 2009, pp. 89–90).

Phyllostegia haliakalae (NCN), a vine in the mint family (Lamiaceae), is known from Molokai, Lanai, and east Maui (Wagner 1999, p. 269). The type specimen was collected by Wawra in 1869 or 1870, in a dry ravine at the foot of Haleakala. An individual was found in flower on the eastern slope of Haleakala, in the wet cliff ecosystem, in 2009; however, this plant has died (TNC 2007; Oppenheimer 2010b, in litt.). Collections were made before the plant died, and propagules outplanted in the Puu Mahoe Arboretum (three plants) and Olinda Rare Plant Facility (four plants) (Oppenheimer 2011b, in litt.). Botanists continue to search in areas with potentially suitable habitat for this plant (Oppenheimer 2010b, in litt.). *Phyllostegia haliakalae* was last reported from the lowland mesic ecosystem on Molokai in 1928, and from the dry cliff and wet cliff ecosystems on Lanai in the early 1900s (TNC 2007; HBMP 2008). Currently no individuals are known in the wild on Maui, Molokai, or Lanai.

Phyllostegia pilosa (NCN), a vine in the mint family (Lamiaceae), is known from east Maui (Wagner 1999, p. 274). There are two occurrences totaling seven individuals west of Puu o Kakae on east Maui, in the montane wet ecosystem (TNC 2007; HBMP 2008). The individuals identified as *P. pilosa* on Molokai, at Kamoku Flats (montane wet ecosystem) and at Mooloa (lowland mesic ecosystem), have not been observed since the early 1900s (TNC 2007; HBMP 2008).

Pittosporum halophilum (hoawa), a shrub or small tree in the pittosporum family (Pittosporaceae), is found on Molokai (Wood 2005, pp. 2, 41). This species was reported from Huelo islet, Mokapu Island, Okala Island, and Kukaiwaa peninsula. On Huelo islet, there were two individuals in 1994, and in 2001, only one individual remained (Wood *et al.* 2001, p. 12; Wood *et al.* 2002, pp. 18–19). The current status of this species on Huelo islet is unknown. On Mokapu Island, there were 15 individuals in the coastal ecosystem in 2001, and in 2005, 10 individuals remained. On Okala Island, there were two individuals in 2005, and one individual on the sea cliff at Kukaiwaa peninsula (Wainene) (Wood 2005, pp. 2, 41). As of 2010, there were three occurrences totaling five individuals: Three individuals on Mokapu Island, one individual on Okala Island, and one individual on Kukaiwaa peninsula (Bakutis 2010, in litt.; Hobdy 2010, in litt.; Perlman 2010, in litt.). At least 17 individuals have been outplanted at 3 sites on the coastline of the nearby Kalaupapa peninsula (Garnett 2010a, in litt.).

Pleomele fernaldii (hala pepe), a tree in the asparagus family (Asparagaceae), is found only on the island of Lanai (Wagner *et al.* 1999i, p. 1,352; Wagner and Herbst 2003, p. 67). Historically known throughout Lanai, this species is currently found in the lowland dry, lowland mesic, lowland wet, dry cliff, and wet cliff ecosystems, from Hulopaa and Kanoa gulches southeast to Waiakeakua and Puhielelu (St. John 1947, pp. 39–42 cited in St. John 1985, pp. 171, 177–179; HBMP 2006; HBMP 2008; PEPP 2008, p. 75; Oppenheimer 2010d, in litt.). Currently, there are several hundred to perhaps as many as 1,000 individuals. The number of individuals has decreased by about one-half in the past 10 years (there were more than 2,000 individuals in 1999), with very little recruitment observed recently (Oppenheimer 2008d, in litt.).

Santalum haleakalae var. *lanaiense* (iliahi, Lanai sandalwood) is a tree in the sandalwood family (Santalaceae). Currently, *S. haleakalae* var. *lanaiense* is known from Molokai, Lanai, and Maui, in 26 occurrences totaling fewer than 2,000 individuals (Wagner *et al.* 1999c, pp. 1,221–1,222; HBMP 2008; Harbaugh *et al.* 2010, pp. 834–835). On Molokai, there are more than 12 individuals in 4 occurrences from Kikiakala to Kamoku Flats and Puu Kokekole, with the largest concentration at Kumueli Gulch, in the montane mesic and lowland mesic ecosystems (Harbaugh *et al.* 2010, pp. 834–835). On Lanai, there are approximately 10 occurrences totaling 30 to 40 individuals: Kanepuu, in the lowland mesic ecosystem (5 individuals); the headwaters of Waiopae Gulch in the lowland wet ecosystem (3 individuals); the windward side of Hauola on the upper side of Waiopae Gulch in the lowland mesic ecosystem (1 individual); the drainage to the north of Puhielelu Ridge and exclosure, in the headwaters of Lopa Gulch in the lowland mesic ecosystem (3 individuals); 6 occurrences near Lanaihale in the montane wet ecosystem (21 individuals); and the mountains east of Lanai City in the lowland wet ecosystem (a few individuals) (HBMP 2008; Harbaugh *et al.* 2010, pp. 834–835; HBMP 2010; Wood 2010a, in litt.). On west Maui, there are eight single individual occurrences: Hanaulaiki Gulch in the lowland dry ecosystem; Kauaula and Puehuehunui Gulches in the lowland mesic, montane mesic, and wet cliff ecosystems; Kahanahaiki Gulch and Honokowai Gulch in the lowland wet ecosystem; Wakihuli in the wet cliff ecosystem; and Manawainui Gulch in the montane mesic and lowland dry ecosystems (HBMP 2008; Harbaugh *et al.* 2010, pp. 834–835; Wood 2010a, in litt.). On east Maui, there are 4 occurrences (10 individuals) in Auwahi, in the montane mesic, montane dry, and lowland dry ecosystems (TNC 2007; HBMP 2008; Harbaugh *et al.* 2010, pp. 834–835).

Schiedea jacobii (NCN), a perennial herb or subshrub in the pink family (Caryophyllaceae), occurs only on Maui (Wagner *et al.* 1999j, p. 284). Discovered in 1992, the single occurrence consisted of nine individuals along wet cliffs between Hanawi Stream and Kuhiwa drainage (in Hanawi Natural Area Reserve), in the montane wet ecosystem on east Maui (Wagner *et al.* 1999j, p. 286). By 1995, only four plants could be relocated in this location. It appeared that the other five known individuals had been destroyed by a landslide (Wagner *et al.* 1999j, p. 286). In 2004, one seedling was observed in the same location, and in 2010, no individuals were relocated (Perlman 2010, in litt.). The State of Hawaii plans to outplant propagated individuals in a fenced area in Hanawi Natural Area Reserve in 2011 (Oppenheimer 2010a, in litt.; Perlman 2010, in litt.).

Schiedea laui (NCN), a perennial herb or subshrub in the pink family (Caryophyllaceae), is found only on Molokai (Wagner *et al.* 2005b, pp. 90–92). In 1998, when this species was first observed, there were 19 individuals located in a cave along a narrow stream corridor at the base of a waterfall in the Kamakou Preserve, in the montane wet ecosystem (Wagner *et al.* 2005b, pp. 90–92). By 2000, only nine individuals with a few immature plants and seedlings were relocated, and in 2006, 13 plants were seen (Wagner *et al.* 2005b, pp. 90–92; PEPP 2007, p. 57). Currently, there are 24 to 34 individuals in the same location in Kamakou Preserve (Bakutis 2010, in litt.).

Schiedea salicaria (NCN), a shrub in the pink family (Caryophyllaceae), occurs on Maui (Wagner *et al.* 1999j, pp. 519–520). It is historically known from a small area on west Maui, from Lahaina to Waikapu. Currently, this species is found in three occurrences: Kaunoahua gulch (500 to 1,000 individuals), Puu Hona (about 50 individuals), and Waikapu Stream (3 to 5 individuals), in the lowland dry ecosystem on west Maui (TNC 2007; Oppenheimer 2010k, in litt.; Oppenheimer 2010l, in litt.). Hybrids and hybrid swarms (hybrids that can interbreed with other hybrids and parent species) between *S. salicaria* and *S. menziesii* are known on the western side of west Maui (Wagner *et al.* 2005b, p. 138).

Stenogyne kauaulaensis (NCN), a vine in the mint family (Lamiaceae), occurs on Maui. This recently described (2008) plant is found only along the southeastern rim of Kauaula Valley, in the montane mesic ecosystem on west Maui (TNC 2007; Wood and Oppenheimer 2008, pp. 544–545). At the time *S. kauaualuaensis* was described, the authors reported a total of 15 individuals at one occurrence. However, one of the authors reports that due to the clonal (genetic duplicate) growth habit of this species, botanists believe it is currently represented by only three genetically distinct individuals (Oppenheimer 2010k, in litt.).

Wikstroemia villosa (akia), a shrub or tree in the akia family (Thymelaeaceae), is found on Maui (Peterson 1999, pp. 1,290–1,291). Historically known from the lowland wet, montane wet, and montane mesic ecosystems on east and west Maui, this species is currently known from a recent discovery (2007) of one individual on the windward side of Haleakala (on east Maui), in the montane wet ecosystem (Peterson 1999, p. 1,291; TNC 2007; HBMP 2008). As of 2010, there was one individual and one seedling at the same location (Oppenheimer 2010m, in litt.). In addition, three individuals have been outplanted in Waikamoi Preserve (Oppenheimer 2010m, in litt.).

Animals

Newcomb's tree snail (*Newcombia cumingi*), a member of the family Achatinellidae and the endemic Hawaiian subfamily Achatinellinae (Newcomb 1853, p. 25), is known only from the island of Maui (Cowie *et al.* 1995, p. 62). All members of this species have sinistral (left-coiling), oblong, spindle-shaped shells of five to seven whorls that are coarsely sculptured (Cooke and Kondo 1960, pp. 9, 33). Newcomb's tree snail reaches an adult length of approximately 0.8 in (21 mm) and its shell is mottled in shades of brown that blend with the bark of its native host plant, *Metrosideros polymorpha* (ohia) (Pilsbry and Cooke 1912–1914, p. 10; Thacker and Hadfield 1998, p. 4). The exact life span and fecundity of Newcomb's tree snails is unknown, but they attain adult size within 4 to 5 years (Thacker and Hadfield 1998, p. 2). Newcomb's tree snail is believed to exhibit the low reproductive rate of other Hawaiian tree snails belonging to the same family (Thacker and Hadfield 1998, p. 2). It feeds on fungi and algae that grow on the leaves and trunks of its host plant (Pilsbry and Cooke 1912–1914, p. 103). Historically, this species was distributed from the west Maui mountains (near Lahaina and Wailuku) to the slopes of Haleakala (Makawao) on east Maui (Pilsbry and Cooke 1912–1914, p. 10). In 1994, a small population of Newcomb's tree snail was found on a single ridge on the northeastern slope of the west Maui mountains, in the lowland wet ecosystem (Thacker and Hadfield 1998, p. 3; TNC 2007). Eighty-six snails were documented in the same location in 1998; however, in 2006, only nine individuals were located (Thacker and Hadfield 1998, p. 2; Hadfield 2007, p. 8).

Partulina semicarinata (Lanai tree snail, pupu kani oe), a member of the family Achatinellidae and the endemic Hawaiian subfamily Achatinellinae, is known only from the island of Lanai (Pilsbry and Cooke 1912–1914, p. 86). The shell may coil to the right (dextral) or left (sinistral), but appears to be

constant within a population. The oblong to ovate shells of the adult are 0.6 to 0.8 in (16 to 20 mm) long, have 5 to 7 whorls, and range in color from rusty brown to white, with some individuals having bands around the shells. The shell has a distinctive keel that runs along the last whorl, and is more distinctive in juveniles (Pilsbry and Cooke 1912–1914, pp. 86–88). Adults may attain an age exceeding 15 to 20 years, and reproductive output is low, with an adult snail giving birth to 4 to 6 live young per year (Hadfield and Miller 1989, pp. 10–12). *Partulina semicarinata* is arboreal and nocturnal, and grazes on fungi and algae growing on leaf surfaces (Pilsbry and Cooke 1912–1914, p. 103). This snail species is found on the following native host plants: *Metrosideros polymorpha, Broussaisia arguta* (kanawao), *Psychotria* spp. (kopiko), *Coprosma* spp. (pilo), *Melicope* spp. (alani), and dead *Cibotium glaucum* (tree fern, hapuu). Occasionally the snail is found on nonnative plants such as *Psidium guajava* (guava), *Cordyline australis* (New Zealand tea tree), and *Phormium tenax* (New Zealand flax) (Hadfield 1994, p. 2). Historically, *P. semicarinata* was found in wet and mesic *Metrosideros polymorpha* forests on Lanai. There are no historical population estimates for this snail, but qualitative accounts of Hawaiian tree snails indicates they were widespread and abundant, possibly numbering in the tens of thousands between the 1800s and early 1900s (Hadfield 1986, p. 69). In 1993, 105 individuals of *P. semicarinata* were found during surveys conducted in its historical range. Subsequent surveys in 1994, 2000, 2001, and 2005 documented 55, 12, 4, and 29 individuals, respectively, in the lowland wet, montane wet, and wet cliff ecosystems in central Lanai (Hadfield 2005, pp. 3–5; TNC 2007).

Partulina variabilis (Lanai tree snail, pupu kani oe), a member of the family Achatinellidae and the endemic Hawaiian subfamily Achatinellinae, is known only from the island of Lanai (Pilsbry and Cooke 1912–1914, p. 86). The shell may coil to the right (dextral) or left (sinistral), and both types can be found within a single population. The oblong to ovate shells of the adult are 0.5 to 0.6 in (14 to 16 mm) long, have 5 to 7 whorls, and have a white base color with no bands or a variable number of spiral bands around the shells (Pilsbry and Cooke 1912–1914, pp. 67, 83–86). Adults may attain an age exceeding 15 to 20 years, and reproductive output is low, with an adult snail giving birth to 4 to 6 live young per year (Hadfield and Miller 1989, pp. 10–12). *Partulina variabilis* is arboreal and nocturnal, and grazes on fungi and algae growing on leaf surfaces (Pilsbry and Cooke 1912–1914, p. 103). This snail is found on the following native host plants: *Metrosideros polymorpha, Broussaisia arguta, Psychotria* spp., *Coprosma* spp., *Melicope* spp., and dead *Cibotium glaucum*. Occasionally *Partulina variabilis* is found on nonnative plants such as *Psidium guajava* and *Cordyline australis* (Hadfield 1994, p. 2). Historically, *Partulina variabilis* was found in wet and mesic *Metrosideros polymorpha* forests on Lanai. There are no historical population estimates for this snail, but qualitative accounts of Hawaiian tree snails indicate they were widespread and abundant, possibly numbering in the tens of thousands between the 1800s and early 1900s (Hadfield 1986, p. 69). In 1993, 111 individuals of *Partulina variabilis* were found during surveys conducted in its historical range. Subsequent surveys in 1994, 2000, 2001, and 2005 documented 175, 14, 6, and 90 individuals, respectively, in the lowland wet, montane wet, and wet cliff ecosystems in central Lanai (Hadfield 2005, pp. 3–5; TNC 2007).

Summary of Factors Affecting the 40 Species Proposed or Reevaluated for Listing

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

In considering what factors might constitute threats to a species; we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to that factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and, during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the Act. However, the identification of factors that could impact a species negatively may not be sufficient to warrant listing the species under the Act. The information must include evidence sufficient to show that these factors are operative threats that act on the species to the point that the species meets the definition of endangered or threatened under the Act.

If we determine that the level of threat posed to a species by one or more of the five listing factors is such that the species meets the definition of either endangered or threatened under section 3 of the Act, that species may then be proposed for listing. The Act defines an endangered species as ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The threats to each of the individual 40 species proposed for listing here are summarized in Table 3, and discussed in detail below.

Assumptions

We acknowledge that the specific nature of the threats to the individual species being proposed for listing are not completely understood. Scientific research directed toward each of the species proposed for listing is limited because of their rarity and the challenging logistics associated with conducting field work in Hawaii (e.g., areas are typically remote, difficult to access and work in, and expensive to survey in a comprehensive manner). However, there is information available on many of the threats that act on Hawaiian ecosystems, and, for some ecosystems, these threats are well studied and understood. Each of the native species that occurs in Hawaiian ecosystems suffers from exposure to those threats to differing degrees. For the purposes of our listing determination, our assumption is that the threats that act at the ecosystem level also act on each of the species that occurs in those ecosystems (although in some cases we have additionally identified species-specific threats, such as predation by nonnative invertebrates). Similarly, for the purposes of our critical habitat determinations, the physical or biological features that support an adequately functioning ecosystem are

the physical or biological features required by the species that occur in those ecosystems (see ''Critical Habitat'' section, below).

The following constitutes a list of ecosystem-level threats that affect the species proposed or reevaluated for listing in all 11 ecosystems on the islands of Maui Nui:

(1) Foraging and trampling of native plants by ungulates, including feral pigs (*Sus scrofa*), goats, cattle (*Bos taurus*), axis deer (*Axis axis*), or mouflon sheep (*Ovis gmelini musimon*), which can result in severe erosion of watersheds because these mammals inhabit terrain that is often steep and remote (Cuddihy and Stone 1990, p. 63). Foraging and trampling events destabilize soils that support native plant communities, bury or damage native plants, and have adverse water quality effects due to runoff over exposed soils.

(2) Disturbance of soils by feral pigs from rooting, which can create fertile seedbeds for alien plants (Cuddihy and Stone 1990, p. 65).

(3) Increased nutrient availability as a result of pigs rooting in nitrogen-poor soils, which facilitates establishment of alien weeds. Alien weeds are more adapted to nutrient rich soils than native plants (Cuddihy and Stone 1990, p. 63), and rooting activity creates open areas in forests allowing alien species to completely replace native stands.

(4) Ungulate destruction of seeds and seedlings of native plant species (Cuddihy and Stone 1990, p. 63), which facilitates the conversion of disturbed areas from native to nonnative vegetative communities.

(5) Rodent damage to plant propagules, seedlings, or native trees, which changes forest composition and structure (Cuddihy and Stone 1990, p. 67).

(6) Feeding or defoliation of native plants from alien insects, which can reduce geographic ranges of some species because of damage (Cuddihy and Stone 1990, p. 71).

(7) Alien insect predation on native insects, which affects pollination of native plant species (Cuddihy and Stone 1990, p. 71).

(8) Significant changes in nutrient cycling processes because of large numbers of alien invertebrates such as earthworms, ants, slugs, isopods, millipedes, and snails, resulting in changes to the composition and structure of plant communities (Cuddihy and Stone 1990, p. 73).

Each of the above threats is discussed in more detail below, and summarized in Table 3. The most-often cited effects of nonnative plants on native plant species are competition and displacement; competition may be for water, light, or nutrients, or it may involve allelopathy (chemical inhibition of other plants). Alien plants may displace native species of plants by preventing their reproduction, usually by shading and taking up available sites for seedling establishment. Alien plant invasions may also alter entire ecosystems by forming monotypic stands, changing fire characteristics of native communities, altering soil-water regimes, changing nutrient cycling, or encouraging other nonnative organisms (Smith 1989, pp. 61–69; Vitousek *et al.* 1987).

TABLE 3—SUMMARY OF PRIMARY THREATS IDENTIFIED FOR EACH OF THE 40 MAUI NUI SPECIES

Species	Ecosystem	Factor A						Factor B	Factor C				Factor D	Factor E
		Agriculture and urban development	Ungulates	Non native plants	Fire	Stochastic events	Climate change	Over-utilization	Disease	Predation/ Herbivory by ungulates	Predation/ Herbivory by other NN vertebrates	Predation/ Herbivory by NN invertebrates	Inadequate existing regulatory mechanisms	Other species-specific threats
Plants														
Bidens campylotheca ssp. *pentamera*	LD, LM, MM, MW, DC, WC		P, G, D	X	X	H	X	.....	.....	P, G, D	R		X	HY
Bidens campylotheca ssp. *waihoiensis*	LW, MW, WC		P, G, D	X	.....	F, H	X	.....	.....	P, G, D	R	S	X	HY
Bidens conjuncta	LW, MW, WC		P, G	X	.....	H	X	.....	.....	P, G	R	S	X	
Calamagrostis hillebrandii	MW		P	X	.....	H	X	.....	.....	P			X	
Canavalia pubescens	CO, LD	X	P, G, D, C	X	X	H	X	.....	.....	P, G, D, C			X	
Cyanea asplenifolia	LM, LW		P, G, D, C	X	.....	L, H	X	.....	.....	P, G, D, C	R	S	X	
Cyanea duvalliorum	LW, MW		P	X	.....	F, H	X	.....	.....	P	R	S	X	
Cyanea grimesiana ssp. *grimesiana*	LW, WC		P, G, D	X	X	L, H	X	.....	.....	P, G, D	R	S	X	LN
Cyanea horrida	MM, MW, WC		P	X	.....	DR, F, L, TF, H	X	.....	.....	P	R	S	X	LN
Cyanea kunthiana	LW, MM, MW		P	X	.....	H	X	.....	.....	P	R	S	X	
Cyanea magnicalyx	LW, MM, WC		P	X	X	L, TF, H	X	.....	.....	P	R	S	X	LN
Cyanea maritae	LW, MW		P	X	.....	L, TF, H	X	.....	.....	P	R	S	X	LN, T
Cyanea mauiensis	LM, DC		P	X	X	L, TF, H	X	.....	.....	P	R	S	X	LN
Cyanea munroi	WC		G, D	X	.....	TF, H	X	.....	.....	G, D	R	S	X	LN
Cyanea obtusa	LD, MM		P, G, D, C	X	X	H	X	.....	.....	P, G, D, C	R	S	X	HY, LN
Cyanea profuga	LM, MW		P, G	X	.....	F, L, RF, TF, H	X	.....	.....	P, G	R	S	X	LN
Cyanea solanacea	LM, LW, MM, MW		P, G	X	.....	L, H	X	.....	.....	P, G	R	S	X	LN
Cyrtandra ferripilosa	MM, MW		P, G	.....	.....	H	X	.....	.....	P, G			X	LN
Cyrtandra filipes	LM, LW, WC		P, G, D	X	.....	L, H	X	.....	.....	P, G, D		S	X	
Cyrtandra oxybapha	MM, MW		P, G, C	X	.....	H	X	.....	.....	P, G, C			X	
Festuca molokaiensis	LM		G	X	X	DR, H	X	.....	.....	G			X	LN
Geranium hanaense	MW		P	X	.....	H	X	.....	.....	P			X	
Geranium hillebrandii	MM, MW		P	X	.....	H	X	.....	.....	P		S	X	
Mucuna sloanei var. *persericea*	LW		P, C	X	.....	H	X	.....	.....	P, C	R		X	
Myrsine vaccinioides	MW		P	X	.....	H	X	.....	.....	P	R	S	X	
Peperomia subpetiolata	MW		P	X	.....	H	X	.....	.....	P	R	S	X	HY, LN
Phyllostegia bracteata	LW, MM, MW, SB, WC		P, C	X	X	H	X	.....	.....	P, C		S	X	LN
Phyllostegia haliakalae	LM, DC, WC		C	X	X	H	X	.....	.....	C		S	X	LN
Phyllostegia pilosa	LM, MW		P, G	X	.....	H	X	.....	.....	P, G		S	X	LN
Pittosporum halophilum	CO		P	X	X	H	X	.....	.....	P	R		X	LN
Pleomele fernaldii	LD, LM, LW, DC, WC		D, M	X	X	H	X	.....	.....	D, M	R		X	NR
Santalum haleakalae var. *lanaiensis*	LD, LM, LW, MD, MM, MW, WC		P, G, D, M	X	X	H	X	.....	.....	P, G, D, M	R	S	X	
Schiedea jacobii	MW		G, D, C	.....	.....	DR, L, TF, H	X	.....	.....	G, D, C		S	X	LN
Schiedea laui	MW			X	.....	F, L, H	X	.....	.....		R	S	X	LN
Schiedea salicaria	LD		G, D, C	X	X	H	X	.....	.....	D, C, G			X	HY
Stenogyne kauaulaensis	MM			X	X	DR, L, RF, H	X	.....	.....			S	X	LN
Wikstroemia villosa	LW, MM, MW		P	X	.....	L, H	X	.....	.....	P	R	S	X	LN, T
Snails														
Newcombia cumingi (Newcomb's tree snail).	LW			X	.....	DR, H	X	Pt	Pt		R, JC	Flatworm Pt Snails	X	LN
Partulina semicarinata (Lanai tree snail)	LW, MW, WC		D, M	.....	.....	DR, H	X	Pt	Pt		R, JC	Flatworm Pt Snails	X	LN
Partulina variabilis (Lanai tree snail)	LW, MW, WC		D, M	.....	.....	DR, H	X	Pt	Pt		R, JC	Flatworm Pt Snails	X	LN

Factor A = Habitat Modification; Factor B = Overutilization; Factor C = Disease or Predation; Factor D = Inadequacy of Regulatory Mechanisms; Factor E = Other Species-Specific Threats.
CO = Coastal; LD = Lowland Dry; LM = Lowland Mesic; LW = Lowland Wet; MD = Montane Dry; MM = Montane Mesic; MW = Montane Wet; SB = Subalpine; DC = Dry Cliff; WC = Wet Cliff.
P = Pigs; G = Goats; D = Axis Deer; M = Mouflon; C = Cattle; R = Rats; S = Slugs; JC = Jackson's chameleon.
F = Flooding; DR = Drought; H = Hurricane; L = Landslide; T = Trampling; RF = Rockfalls; TF = Treefalls.
LN = Limited Numbers; HY = Hybridization; NN = Nonnative; NR = No Regeneration; Pt = Potential.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The Hawaiian Islands are located over 2,000 mi (3,200 km) from the nearest continent. This isolation has allowed the few plants and animals that arrived in the Hawaiian Islands to evolve into many highly varied and endemic species (species that occur nowhere else in the world). The only native terrestrial mammals in the Hawaiian Islands are two bat taxa, the extant Hawaiian hoary bat (*Lasiurus cinereus semotus*) and an extinct, unnamed insectivorous bat (Ziegler 2002, p. 245). The native plants of the Hawaiian Islands, therefore, evolved in the absence of mammalian predators, browsers, or grazers. As a result, many of the native species have lost unneeded defenses against threats such as mammalian predation and competition with aggressive, weedy plant species that are typical of continental environments (Loope 1992, p. 11; Gagne and Cuddihy 1999, p. 45; Wagner *et al.* 1999l, pp. 3–6). For example, Carlquist (in Carlquist and Cole 1974, p. 29) notes ''Hawaiian plants are notably free from many characteristics thought to be deterrents to herbivores (toxins, oils, resins, stinging hairs, coarse texture).'' Native Hawaiian plants are therefore highly vulnerable to the impacts of introduced mammals and alien plants. In addition, species restricted and adapted to highly specialized locations (e.g., *Argyroxiphium sandwicense* ssp. *macrocephalum*) are particularly vulnerable to changes (from nonnative species, hurricanes, fire, and climate change) in their habitat (Carlquist and Cole 1974, pp. 28–29; Loope 1992, pp. 3–6; Stone 1989, pp. 88–95).

Habitat Destruction and Modification by Agriculture and Urban Development

The consequences of past land use practices such as agricultural or urban development have resulted in little or no native vegetation below 2,000 ft (600 m) throughout the Hawaiian Islands (TNC 2007), largely impacting the coastal, lowland dry, lowland mesic, and lowland wet ecosystems. Although agriculture has been declining in importance, large tracts of former agricultural lands are being converted into residential areas or left fallow (TNC 2007). In addition, Hawaii's population increased almost 7 percent in the past 10 years, further increasing demands on limited land and water resources in the islands (Hawaii Department of Business, Economic Development and Tourism 2010).

Development and urbanization of coastal and lowland dry ecosystems on Maui are a serious threat to one species proposed for listing in this rule, *Canavalia pubescens,* which is dependent on these ecosystems and is currently found only in east Maui. Two individuals at Palauea-Keahou were destroyed by development prior to 2001 (Oppenheimer 2000, in litt.). Future development plans for this area include a golf course and associated infrastructure (Altenberg 2007, p. 2–5). Currently, fewer than 20 known individuals of *C. pubescens* persist in this area (Altenberg 2010, in litt.).

Habitat Destruction and Modification by Introduced Ungulates

Introduced mammals have greatly impacted the native vegetation, as well as the native fauna, of the Hawaiian Islands. Impacts to the native species and ecosystems of Hawaii accelerated following the arrival of Captain James Cook in 1778. The Cook expedition and subsequent explorers intentionally introduced a European race of pigs or boars and other livestock, such as goats, to serve as food sources for seagoing explorers (Tomich 1986, pp. 120–121; Loope 1998, p. 752). The mild climate of the islands, combined with the lack of competitors or predators, led to the successful establishment of large populations of these introduced mammals, to the detriment of native Hawaiian species and ecosystems. The presence of introduced alien mammals is considered one of the primary factors underlying the alteration and degradation of native plant communities and habitats on Molokai, Lanai, and Maui. Ten ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, subalpine, dry cliff, and wet cliff) on Molokai, Lanai, and Maui and their associated species are currently threatened by the destruction or degradation of habitat due to nonnative ungulates (hoofed mammals), including pigs, goats, axis deer, mouflon, and cattle. Thirty-five of the 37 plant species and both species of *Partulina* tree snails (*Partulina semicarinata* and *P. variabilis*) proposed or reevaluated for listing in this rule are threatened by habitat degradation or destruction by ungulates (Table 3).

Pigs have been described as the most pervasive and disruptive nonnative influence on the unique native forests of the Hawaiian Islands, and are widely recognized as one of the greatest current threats to forest ecosystems in Hawaii (Aplet *et al.* 1991, p. 56; Anderson and Stone 1993, p. 195). European pigs, introduced to Hawaii by Captain James Cook in 1778, hybridized with domesticated Polynesian pigs, became feral, and invaded forested areas, especially wet and mesic forests and dry areas at high elevations. The Hawaii Territorial Board of Agriculture and Forestry started a feral pig eradication project in the early 1900s that continued through 1958, removing 170,000 pigs from forests Statewide (Diong 1982, p. 63). Feral pigs are currently present on Niihau, Kauai, Oahu, Molokai, Maui, and Hawaii.

These feral animals are extremely destructive and have both direct and indirect impacts on native plant communities. While rooting in the earth in search of invertebrates and plant material, pigs directly impact native plants by disturbing and destroying vegetative cover, and trampling plants and seedlings. It has been estimated that at a conservative rooting rate of 2 square (sq)-yards (yd) per minute, with only 4 hours of foraging a day, a single pig could disturb over 1,600 sq-yd of groundcover per week (Anderson *et al.* 2007, p. 2).

Pigs may also reduce or eliminate plant regeneration by damaging or eating seeds and seedlings (further discussion of predation by nonnative ungulates is provided under Factor C, below). Pigs are a major vector for the establishment and spread of competing invasive nonnative plant species by dispersing plant seeds on their hooves and fur, and in their feces (Diong 1982, pp. 169–170), which also serves to fertilize disturbed soil (Matson 1990, p. 245; Siemann *et al.* 2009, p. 547). Pigs feed on the fruits of many nonnative plants, such as *Passiflora tarminiana* (banana poka) and *Psidium cattleianum* (strawberry guava), spreading the seeds of these invasive species through their feces as they travel in search of food. Pigs also feed on native plants, such as Hawaiian tree ferns that they root up to eat the core of the trunk. These cored trunks then fill with rainwater and serve as breeding sites for introduced mosquitos that spread nonnative avian malaria, with devastating consequences for Hawaii's native forest birds (Baker 1975, p. 79). In addition, rooting pigs contribute to erosion by clearing vegetation and creating large areas of disturbed soil, especially on slopes (Smith 1985, pp. 190, 192, 196, 200, 204, 230–231; Stone 1985, pp. 254–255, 262–264; Medeiros *et al.* 1986, pp. 27–28; Scott *et al.* 1986, pp. 360–361; Tomich 1986, pp. 120–126; Cuddihy and Stone 1990, pp. 64–65; Aplet *et al.* 1991, p. 56; Loope *et al.* 1991, pp. 1–21; Gagne and Cuddihy 1999, p. 52). Ten of the Maui Nui ecosystems (coastal, lowland dry, lowland mesic, lowland

wet, montane dry, montane mesic, montane wet, subalpine, dry cliff, and wet cliff) and their associated species are currently threatened by the destruction or degradation of habitat due to pigs.

Goats native to the Middle East and India were also successfully introduced to the Hawaiian Islands in the late 1700s. Actions to control feral goat populations began in the 1920s (Tomich 1986, pp. 152–153); however, they still occupy a wide variety of habitats on Molokai and Maui and to a lesser degree on Lanai, where they consume native vegetation, trample roots and seedlings, accelerate erosion, and promote the invasion of alien plants (van Riper and van Riper 1982, pp. 34–35; Stone 1985, p. 261; Kessler 2010, pers. comm.). Goats are able to access, and forage in, extremely rugged terrain, and they have a high reproductive capacity (Clarke and Cuddihy 1980, pp. C–19, C–20; Culliney 1988, p. 336; Cuddihy and Stone 1990, p. 64). Because of these factors, goats are believed to have completely eliminated some plant species from islands (Atkinson and Atkinson 2000, p. 21). Goats can be highly destructive to native vegetation, and contribute to erosion by eating young trees and young shoots of plants before they can become established, creating trails that damage native vegetative cover, promoting erosion by destabilizing substrate and creating gullies that convey water, and dislodging stones from ledges that can cause rockfalls and landslides and damage vegetation below (Cuddihy and Stone 1990, pp. 63–64). Nine of the described ecosystems on Molokai, Lanai, and Maui (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff) and their associated species are currently threatened by the destruction or degradation of habitat due to goats.

Axis deer were first introduced to Molokai in 1868, Lanai in 1920, and Maui in 1959 (Hobdy 1993, p. 207; Erdman 1996, pers. comm. cited in Waring 1996, in litt., p. 2; Hess 2008, p. 2). On Molokai, axis deer have likely spread throughout the island at all elevations (from the coast to the summit area at 4,961 ft (1,512 m)) (Kessler 2011, pers. comm.). The most current population estimate of axis deer on Molokai is between 4,000 and 5,000 individuals (Anderson 2003, p. 130). It is likely this is an underestimate of the total number of individuals as it was published almost a decade ago, and little management for deer control has been implemented. On Lanai, as of 2007, axis deer were reported to number approximately 6,000 to 8,000 individuals (The Aloha Insider 2008, in litt.; WCities 2010, in litt.). On Maui, five adults were released east of Kihei in 1959 (Hobdy 1993, p. 207; Hess 2008, p. 2). By 1968, the population was estimated to be 85 to 90 animals, and by 1995, there were over 500 individuals on Ulupalakua Ranch alone (Erdman 1996, pers. comm. cited in Waring 1996, in litt., p. 2). As of 2001, there was concern that their numbers on Maui could expand to between 15,000 to 20,000 or more individuals within a few years (Anderson 2001, in litt.; Nishibayashi 2001, in litt.). According to Medeiros (2010a, pers. comm.) axis deer can be found in all but the uppermost ecosystems (subalpine and alpine) and montane bogs on Maui. Medeiros (2010a, pers. comm.) also observed that axis deer are increasing at such high rates on Maui that native forests are changing in unprecedented ways. According to Medeiros (2010a, pers. comm.), native plants will only survive in habitat that is fenced or otherwise protected from the grazing and trampling effects of axis deer. Kessler (2010, pers. comm.) and Hess (2010, pers. comm.) report axis deer up to 9,000 ft (2,743 m) in elevation on Maui, and Kessler suggests that no ecosystem is safe from the negative impacts of these animals. Montane bogs are also susceptible to impacts from axis deer. As the native vegetation dies off from the combined effects of grazing and trampling by axis deer, the soil dries out, and invasive nonnative plants gain a foothold. Eventually, the bog habitat and its associated native plants and animals are replaced by a grassland, shrubland, or forest habitat dominated by nonnative plants.

Axis deer are primarily grazers, but also browse numerous palatable plant species including those grown as commercial crops (Waring 1996, p. 3; Simpson 2001, in litt.). They prefer the lower, more openly vegetated areas for browsing and grazing; however, during episodes of drought (e.g., from 1998–2001 on Maui (Medeiros 2010a, pers. comm.)), axis deer move into urban and forested areas in search of food (Waring 1996, in litt., p. 5; Nishibayashi 2001, in litt.). Like goats, axis deer can be highly destructive to native vegetation and contribute to erosion by eating young trees and young shoots of plants before they can become established, creating trails that can damage native vegetative cover, promoting erosion by destabilizing substrate and creating gullies that convey water, and by dislodging stones from ledges that can cause rockfalls and landslides and damage vegetation below (Cuddihy and Stone 1990, pp. 63–64). Nine of the described Maui Nui ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff) and their associated species are currently threatened by the destruction or degradation of habitat due to axis deer.

The mouflon sheep (*Ovis gmelini musimon*), native to Asia Minor, was introduced to the islands of Lanai and Hawaii in the 1950s as a managed game species, and has become widely established on these islands (Tomich 1986, pp. 163–168; Cuddihy and Stone 1990, p. 66; Hess 2008, p. 1). Mouflon have high reproduction rates; for example, the original population of 11 individuals on the island of Hawaii has increased to more than 2,500 in 36 years, even though hunted as a game animal (Hess 2008, p. 3). Mouflon only form large groups when breeding, thus limiting control techniques and hunting efficiency (Hess 2008, p. 3). Mouflon sheep are both grazers and browsers, and have decimated vast areas of native forest and shrubland through browsing and bark stripping (Stone 1985, p. 271; Cuddihy and Stone 1990, pp. 63, 66; Hess 2008, p. 3). In range studies done on the effects of mouflon grazing and browsing on the island of Hawaii, plant species found to be most affected were *Argyroxiphium sandwicense* ssp. *sandwicense* (Mauna Kea silversword), an endangered species; *Acacia koa; Geranium* spp. (hinahina); *Sophora chrysophylla; Vaccinium* spp. (ohelo); and native grasses (Giffin 1981, pp. 22–23; Scowcroft and Conrad 1992, pp. 628–662; Hess 2008, p. 3). Mouflon also create trails and pathways through thick vegetation, leading to increased runoff and erosion through soil compaction. In some areas, the interaction of browsing and soil compaction leads to a change from native rainforest to grassy scrublands (Hess 2008, p. 3). Seven of the described ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane wet, dry cliff, and wet cliff) on Lanai and their associated species are currently threatened by the destruction or degradation of habitat due to mouflon sheep.

Cattle (*Bos taurus*), the wild progenitors of which were native to Europe, northern Africa, and southwestern Asia, were introduced to the Hawaiian Islands in 1793. Large feral herds (as many as 12,000 on the island of Hawaii) developed as a result of restrictions on killing cattle decreed by King Kamehameha I (Cuddihy and Stone 1990, p. 40). While small cattle ranches were developed on Kauai, Oahu, Molokai, west Maui, and

Kahoolawe, very large ranches of tens of thousands of acres were created on east Maui and Hawaii Island (Stone 1985, pp. 256, 260; Broadbent 2010, in litt.). Logging of native *Acacia koa* was combined with establishment of cattle ranches, quickly converting native forest to grassland (Tomich 1986, p. 140; Cuddihy and Stone 1990, p. 47). Feral cattle can presently be found on the islands of Maui and Hawaii, where ranching is still a major commercial activity. According to Kessler (2011, pers. comm.), there are approximately 300 individuals roaming east Maui up to the alpine ecosystem (i.e., 1,000 to 9,900 ft (305 to 3,000 m) elevation) with occasional observations on west Maui. Cattle eat native vegetation, trample roots and seedlings, cause erosion, create disturbed areas into which alien plants invade, and spread seeds of alien plants in their feces and on their bodies. The forest in areas grazed by cattle degrades to grassland pasture, and plant cover is reduced for many years following removal of cattle from an area. In addition, several alien grasses and legumes purposely introduced for cattle forage have become noxious weeds (Tomich 1986, pp. 140–150; Cuddihy and Stone 1990, p. 29). Five of the described ecosystems (lowland dry, lowland mesic, lowland wet, montane mesic, and montane wet) on Maui and their associated species are currently threatened by the destruction or degradation of habitat due to cattle.

In summary, the 40 species proposed or reevaluated for listing and that are dependent upon the 10 ecosystems identified in this proposed rule (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, subalpine, dry cliff, and wet cliff) are exposed to both direct and indirect negative impacts of feral ungulates (pigs, goats, axis deer, mouflon, and cattle). These negative impacts result in the destruction and degradation of habitat for the native species on Molokai, Lanai, and Maui. The effects of these nonnative animals include the destruction of vegetative cover; trampling of plants and seedlings; direct consumption of native vegetation; soil disturbance; dispersal of alien plant seeds on hooves and coats, and through the spread of seeds in feces; and creation of open disturbed areas conducive to further invasion by nonnative pest plant species. All of these impacts lead to the subsequent conversion of a plant community dominated by native species to one dominated by nonnative species (see ''Habitat Destruction and Modification by Nonnative Plants,'' below). In addition, because these mammals inhabit terrain that is often steep and remote (Cuddihy and Stone 1990, p. 59), foraging and trampling contributes to severe erosion of watersheds and degradation of streams. As early as 1900, there was increasing concern expressed about the integrity of island watersheds, due to effects of ungulates and other factors, leading to the establishment of a professional forestry program emphasizing soil and water conservation (Nelson 1989, p. 3).

Habitat Destruction and Modification by Nonnative Plants

Native vegetation on all of the main Hawaiian Islands has undergone extreme alteration because of past and present land management practices, including ranching, the deliberate introduction of nonnative plants and animals, and agricultural development (Cuddihy and Stone 1990, pp. 27, 58). The original native flora of Hawaii (species that were present before humans arrived) consisted of about 1,000 taxa, 89 percent of which were endemic (species that occur only in the Hawaiian Islands). Over 800 plant taxa have been introduced from elsewhere, and nearly 100 of these have become pests (e.g., injurious plants) in Hawaii (Smith 1985, p. 180; Cuddihy and Stone 1990, p. 73; Gagne and Cuddihy 1999, p. 45). Of these 100 nonnative pest plant species, close to 70 species have altered the habitat of 36 of the 40 species proposed or reevaluated for listing (only *Cyrtandra ferripilosa, Schiedea jacobii, Partulina semicarinata,* and *P. variabilis* are not directly impacted by nonnative plants; see Table 3). Some of the nonnative plants were brought to Hawaii by various groups of people, including the Polynesians, for food or cultural reasons. Plantation owners (and the territorial government of Hawaii), alarmed at the reduction of water resources for their crops caused by the destruction of native forest cover by grazing feral and domestic animals, introduced nonnative trees for reforestation. Ranchers intentionally introduced pasture grasses and other nonnative plants for agriculture, and sometimes inadvertently introduced weeds as well. Other plants were brought to Hawaii for their potential horticultural value (Scott *et al.* 1986, pp. 361–363; Cuddihy and Stone 1990, p. 73).

Nonnative plants adversely impact native habitat in Hawaii, including the 10 Maui Nui ecosystems that support the 40 species proposed or reevaluated for listing, and directly adversely impact 36 of these 40 species, by: (1) Modifying the availability of light; (2) altering soil-water regimes; (3) modifying nutrient cycling; (4) altering the fire regime affecting native plant communities (e.g., successive fires that burn farther and farther into native habitat, destroying native plants and removing habitat for native species by altering microclimatic conditions to favor alien species); and (5) ultimately, converting native-dominated plant communities to nonnative plant communities (Smith 1985, pp. 180–181; Cuddihy and Stone 1990, p. 74; D'Antonio and Vitousek 1992, p. 73; Vitousek *et al.* 1997, p. 6). Below, we have organized a list of nonnative plants by their ecosystems followed by a discussion of the specific negative effects of those nonnative plants on the species proposed or reevaluated for listing here.

Nonnative Plants in the Coastal Ecosystem

Nonnative plant species that threaten *Pittosporum halophilum* and *Canavalia pubescens,* the two species proposed for listing in this rule that inhabit the coastal ecosystem on Molokai and Lanai, include the understory and subcanopy species *Cenchrus ciliaris* (buffelgrass), *Kalanchoe pinnata* (air plant), *Lantana camara* (lantana), *Leucaena leucocephala* (koa haole), and *Pluchea carolinensis* (sourbush) (HBMP 2008). Nonnative canopy species that threaten the two species proposed for listing include *Acacia farnesiana* (klu) and *Prosopis pallida* (kiawe) (HBMP 2008). These nonnative plant species pose serious and ongoing threats to the two species proposed for listing that depend on this ecosystem (see ''Specific Nonnative Plant Species Impacts,'' below).

Nonnative Plants in the Lowland Dry Ecosystem

Nonnative plant species that threaten the six species (*Bidens campylotheca* ssp. *pentamera, Canavalia pubescens, Cyanea obtusa, Pleomele fernaldii, Santalum haleakalae* var. *lanaiense,* and *Schiedea salicaria*) proposed or reevaluated for listing in this rule that inhabit the lowland dry ecosystem on Lanai and Maui include the understory and subcanopy species *Ageratina adenophora* (Maui pamakani), *Leucaena leucocephala,* and *Neonotonia wightii* (glycine) (HBMP 2008). Nonnative canopy species that threaten the six species proposed or reevaluated for listing include *Acacia farnesiana, Prosopis pallida,* and *Schinus terebinthifolius* (christmasberry) (HBMP 2008). In addition, the six species proposed or reevaluated for listing are threatened by the nonnative grasses *Andropogon virginicus* (broomsedge),

Cenchrus ciliaris, and *Melinis repens* (natal redtop) (HBMP 2008). See ''Specific Nonnative Plant Species Impacts'' (below) for specific threats each of these nonnative plant species pose to the six species proposed or reevaluated for listing that depend on this ecosystem.

Nonnative Plants in the Lowland Mesic Ecosystem

Nonnative plant species that threaten the 11 species (*Bidens campylotheca* ssp. *pentamera, Cyanea asplenifolia, Cyanea profuga, Cyanea solanacea, Cyrtandra filipes, Festuca molokaiensis, Phyllostegia haliakalae, Phyllostegia pilosa, Pleomele fernaldii, Santalum haleakalae* var. *lanaiense,* and *Schiedea salicaria*) proposed or reevaluated for listing in this rule that inhabit the lowland mesic ecosystem on Molokai, Lanai, and Maui include the understory and subcanopy species *Clidemia hirta* (Koster's curse), *Erigeron karvinskianus* (daisy fleabane), *Lantana camara, Leptospermum scoparium* (tea tree), *Rubus rosifolius* (thimbleberry), and *Cyathea cooperi* (Australian tree fern) (HBMP 2008). Nonnative canopy species that threaten the 11 species proposed or reevaluated for listing include *Coffea arabica* (Arabian coffee), *Psidium cattleianum, Schinus terebinthifolius,* and *Szygium cumini* (java plum) (HBMP 2008). An additional species that threatens the 11 species proposed or reevaluated for listing is the nonnative grass *Paspalum conjugatum* (Hilo grass) (HBMP 2008). These nonnative plant species pose serious and ongoing threats (see ''Specific Nonnative Plant Species Impacts,'' below) to all 11 of the species proposed or reevaluated for listing that depend on this ecosystem.

Nonnative Plants in the Lowland Wet Ecosystem

Nonnative plant species that threaten the 15 plant species (*Bidens campylotheca waihoiensis, B. conjuncta, Cyanea asplenifolia, C. duvalliorum, C. grimesiana* ssp. *grimesiana, C. kunthiana, C. magnicalyx, C. maritae, C. solanacea, Cyrtandra filipes, Mucuna sloanei* var. *persericea, Phyllostegia bracteata, Pleomele fernaldii, Santalum haleakalae* var. *lanaiense,* and *Wikstroemia villosa*), and the tree snail species *Newcombia cumingi* proposed or reevaluated for listing in this rule that inhabit the lowland wet ecosystem on Molokai, Lanai, and Maui include the understory and subcanopy species *Ageratina adenophora, Ageratina riparia* (Hamakua pamakani), *Blechnum appendiculatum, Buddleia asiatica* (dog tail), *Chrysophyllum oliviforme* (satinleaf), *Cinchona pubescens* (quinine), *Cinnamomum burmannii* (padang cassia), *Clidemia hirta, Coffea arabica, Cordyline fruticosa, Cortaderia jubata* (pampas grass), *Juncus planifolius, Leptospermum scoparium, Melastoma* sp., *Rubus rosifolius,* and *Tibouchina herbacea* (glorybush) (Maui Land and Pineapple Co. (MLP) 2005, p. 11; HBMP 2008; TNCH 2009a, pp. 1–14; East Maui Watershed Partnership (EMWP) 2009, pp. 29–30). Nonnative canopy species that threaten the 16 species proposed or reevaluated for listing include *Aleurites moluccana* (kukui), *Eucalyptus* spp. (gum tree), *Fraxinus uhdei* (tropical ash), *Miconia calvescens* (miconia), *Psidium cattleianum,* and *Psidium guajava* (HBMP 2008). Nonnative grasses that threaten this ecosystem are *Axonopus fissifolius* (carpetgrass), *Oplismenus hirtellus* (basketgrass), and *Paspalum conjugatum* (HBMP 2008). These nonnative plant species pose serious and ongoing threats to 16 of the species proposed or reevaluated for listing that depend on this ecosystem (see ''Specific Nonnative Plant Species Impacts,'' below).

Nonnative Plants in the Montane Dry Ecosystem

Nonnative plant species that threaten the species *Santalum haleakalae* var. *lanaiense* in the montane dry ecosystem on Maui include the understory and subcanopy species *Clidemia hirta, Leptospermum scoparium, Tibouchina herbacea,* and *Rubus argutus* (Harbaugh *et al.* 2010, p. 827). Nonnative canopy species that threaten *Santalum haleakalae* var. *lanaiense* include *Fraxinus uhdei, Grevillea robusta* (haikukeokeo, silver oak), *Morella faya* (firetree), *Psidium cattleianum,* and *Schinus terebinthifolius* (Harbaugh *et al.* 2010, p. 827). Nonnative mat-forming grasses such as *Melinis minutiflora* threaten *Santalum haleakalae* var. *lanaiense* in the montane dry ecosystem (Harbaugh *et al.* 2010, p. 827). These nonnative plant species pose serious and ongoing threats to the plant *S. haleakalae* var. *lanaiense,* which is reevaluated for listing and inhabits the montane dry ecosystem (see ''Specific Nonnative Plant Species Impacts,'' below).

Nonnative Plants in the Montane Mesic Ecosystem

Nonnative plant species that threaten the 12 species (*Bidens campylotheca* ssp. *pentamera, Cyanea horrida, C. kunthiana, C. magnicalyx, C. obtusa, C. solanacea, Cyrtandra oxybapha, Geranium hillebrandii, Phyllostegia bracteata, Santalum haleakalae* var. *lanaiense, Stenogyne kauaulaensis,* and *Wikstroemia villosa*) proposed or reevaluated for listing in this rule that inhabit the montane mesic ecosystem on Molokai and Maui include the understory and subcanopy species *Ageratina adenophora, Buddleia asiatica, Cestrum diurnum, Cortaderia jubata, Lantana camara, Rubus argutus* (prickly Florida blackberry), and *Rubus rosifolius* (Leeward Haleakala Watershed Restoration Partnership (LHWRP) 2006, p. 25; HBMP 2008; TNCH 2009a, pp. 1–14). Canopy species that threaten the 12 species proposed or reevaluated for listing include *Eucalyptus* spp., *Fraxinus uhdei, Morella faya, Pinus* spp., *Psidium cattleianum,* and *Schinus terebinthifolius* (HBMP 2008). Nonnative grasses that threaten this ecosystem are *Andropogon virginicus* (broomsedge), *Holcus lanatus, Melinis minutiflora,* and *Paspalum conjugatum* (HBMP 2008). These nonnative plant species pose serious and ongoing threats (see ''Specific Nonnative Plant Species Impacts,'' below) to 12 of the species proposed or reevaluated for listing that depend on this ecosystem.

Nonnative Plants in the Montane Wet Ecosystem

Nonnative plant species that threaten the 20 plant species (*Bidens campylotheca* ssp. *pentamera, B. campylotheca* ssp. *waihoiensis, B. conjuncta, Calamagrostis hillebrandii, Cyanea duvalliorum, C. horrida, C. kunthiana, C. maritae, C. profuga, C. solanacea, Cyrtandra oxybapha, Geranium hanaense, G. hillebrandii, Myrsine vaccinioides, Peperomia subpetiolata, Phyllostegia bracteata, P. pilosa, Santalum haleakalae* var. *lanaiense, Schiedea laui,* and *Wikstroemia villosa*) proposed or reevaluated for listing in this rule that inhabit the montane wet ecosystem on Molokai and Maui include the understory and subcanopy species *Ageratina adenophora, Ageratina riparia, Ageratum conyzoides* (maile honohono), *Buddleia asiatica, Cestrum nocturnum* (night cestrum), *Christella dentata, Chrysophyllum oliviforme, Cinchona pubescens, Cinnamomum burmannii, Clidemia hirta, Conyza bonariensis* (hairy horseweed), *Cortaderia jubata, Cuphea carthagenensis* (tarweed), *Drymaria cordata* (chickweed), *Erechtites valeranifolia* (fireweed), *Erigeron karvinskianus, Hedychium gardnerianum* (kahili ginger), *Hypochoeris radicata* (hairy cat's ear), *Juncus* spp., *Lantana camara, Rubus* spp., *Cyathea cooperi,*

Tibouchina herbacea, Ulex europaeus (gorse), and *Youngia japonica* (oriental hawksbeard) (MLP 2005, p. 11; HBMP 2008; TNCH 2009a, pp. 1–14; EMoWP 2010, pp. 5–6). Nonnative canopy species that threaten the 20 species proposed or reevaluated for listing include *Eucalyptus* spp., *Fraxinus uhdei, Morella faya, Psidium cattleianum,* and *Schinus terebinthifolius* (HBMP 2008). Nonnative grasses that threaten this ecosystem are *Axonopus fissifolius, Holcus lanatus* (common velvetgrass), *Melinis minutiflora* (molasses grass), *Paspalum conjugatum, Sacciolepis indica* (glenwood grass), and *Setaria palmifolia* (palmgrass) (HBMP 2008). These nonnative plant species pose serious and ongoing threats to the 20 species proposed or reevaluated for listing that depend on this ecosystem (see ''Specific Nonnative Plant Species Impacts,'' below).

Nonnative Plants in the Subalpine Ecosystem

Nonnative plant species that threaten *Phyllostegia bracteata,* the only species proposed for listing in this rule that inhabits the subalpine ecosystem (Maui), include the understory and subcanopy species *Cotoneaster pannosus* (silver-leaf cotoneaster), *Epilobium billardierianum* (willow herb), *Passiflora tarmaniana,* and *Rubus* spp. (Oppenheimer 2010n, in litt.). Nonnative canopy species that threaten *P. bracteata* include *Cryptomeria japonica* (tsugi pine) and *Pinus* spp. Nonnative grasses that are a threat to this ecosystem include *Anthoxanthum odoratum* (sweet vernalgrass) and *Dactylis glomerata* (cocksfoot) (HBMP 2008). These nonnative plant species pose serious and ongoing threats (see ''Specific Nonnative Plant Species Impacts,'' below) to the plant *P. bracteata,* which is proposed for listing and inhabits this ecosystem.

Nonnative Plants in the Dry Cliff Ecosystem

Nonnative plant species that threaten the three species (*Bidens campylotheca* ssp. *pentamera, Phyllostegia haliakalae,* and *Pleomele fernaldii*) proposed for listing in this rule that inhabit the dry cliff ecosystem on Lanai and Maui include the understory and subcanopy species *Ageratina adenophora, Hypochoeris radicata, Lapsana communis* (nipplewort), *Lythrum maritimum* (loosestrife), *Prunella vulgaris,* and *Rubus* spp. (HBMP 2008). Nonnative grasses that threaten this ecosystem include *Andropogon virginicus, Anthoxantum odoratum, Dactylis glomerata, and Holcus lanatus* (HBMP 2008). These nonnative plant species pose serious and ongoing threats to all three of the species proposed for listing that depend on this ecosystem (see ''Specific Nonnative Plant Species Impacts,'' below).

Nonnative Plants in the Wet Cliff Ecosystem

Nonnative plant threats to the 12 plant species (*Bidens campylotheca* ssp. *pentamera, B. campylotheca* ssp. *waihoiensis, B. conjuncta, Cyanea grimesiana* ssp. *grimesiana, C. horrida, C. magnicalyx, C. munroi, Cyrtandra filipes, Phyllostegia bracteata, P. haliakalae, Pleomele fernaldii,* and *Santalum haleakalae* var. *lanaiense*) proposed or reevaluated for listing in this rule that inhabit the wet cliff ecosystem on Molokai, Lanai, and Maui include the understory and subcanopy species *Ageratina adenophora, Buddleia asiatica, Juncus planifolius, Rubus rosifolius,* and *Tibouchina herbacea* (HBMP 2008). The 12 species proposed or reevaluated for listing are also threatened by the nonnative canopy species *Ardisia elliptica* (shoebutton ardisia) and the nonnative grass *Oplismenus hirtellus* (HBMP 2008). These nonnative plant species pose serious and ongoing threats to 12 of the species proposed or reevaluated for listing that depend on this ecosystem (see ''Specific Nonnative Plant Species Impacts,'' below).

Specific Nonnative Plant Species Impacts

Nonnative plants pose serious and ongoing threats to 36 of the 40 species proposed or reevaluated for listing in this proposed rule throughout their ranges by destroying and modifying habitat. They can adversely impact microhabitat by modifying the availability of light and nutrient cycling processes, and altering soil-water regimes. They can also alter fire regimes affecting native plant habitat, leading to incursions of fire-tolerant nonnative plant species into native habitat. Nonnative plants outcompete native plants by growing faster, and some may release chemicals that inhibit the growth of other plants. These competitive advantages allow nonnative plants to convert native-dominated plant communities to nonnative plant communities (Cuddihy and Stone 1990, p. 74; Vitousek 1992, pp. 33–35). The following list provides a brief description of the nonnative plants that pose a threat to 36 of the 40 species proposed or reevaluated for listing here. The Hawaii-Pacific Weed Risk Assessment is cited in many of the brief descriptions of the nonnative plants below. This assessment was created as a research collaboration between the University of Hawaii and the U.S. Forest Service for use in Hawaii and other high Pacific islands (i.e., volcanic in origin, as opposed to low-lying atolls), and is an adaptation of the Australian/New Zealand Weed Risk Assessment protocol developed in the 1990s (Denslow and Daehler 2004, p. 1). The Australian/New Zealand protocol was developed to screen plants proposed for introduction into those countries, while the Hawaii-Pacific Weed Risk Assessment was developed to evaluate species already used in landscaping, gardening, and forestry, and is used to predict whether or not a nonnative plant species is likely to become invasive. Not all nonnative plant species present in Hawaii have been assessed, and information on species invasiveness is lacking or absent from some of the descriptions below. In general, all nonnative plant species displace native Hawaiian plants; here we describe other specific negative impacts of individual alien plant species when known.

- *Acacia farnesiana* (klu) is a shrub up to 13 ft (4 m) tall, native to the Neotropics, and formerly cultivated in Hawaii for an attempted perfume industry. It is now naturalized (i.e., initially introduced by artificial means from another area, and now established and reproducing in the wild) and common on all of the main islands except Niihau (Geesink *et al.* 1999, p. 641). *Acacia farnesiana* is thorny and forms dense thickets, and regenerates quickly after fire. The seeds are dispersed by ungulates that eat the pods (Pacific Island Ecosystems at Risk (PIER) 2011a). According to the Hawaii Weed Risk Assessment for *A. farnesiana,* this species has a high risk of invasiveness or a high risk of becoming a serious pest (PIER 2011a).
- *Ageratina adenophora* (Maui pamakani) is native to tropical America, and has naturalized in dry to wet forest on the islands of Oahu, Molokai, Lanai, and Maui (Wagner *et al.* 1999m, pp. 254–255). *Ageratina adenophora* is a shrub 3 to 5 ft (1 to 1.5 m) tall with trailing branches that root on contact with soil. It forms dense mats, which prevent regeneration of native plants (Anderson *et al.* 1992, p. 315). It is considered a serious weed in agriculture, especially in rangeland, because it often replaces more desirable vegetation or native species, and is fatally toxic to horses and most livestock. The eupatorium gall fly, *Procecidochares utilis,* was introduced to Hawaii in 1944, for control of Maui pamakani, and has been successful in suppression of some of the infestations

of this invasive nonnative plant (Bess and Haramoto 1959, p. 248).

• *Ageratina riparia* (Hamakua pamakani) is a subshrub that spreads from a creeping rootstock (Wagner *et al.* 1999m, p. 255). This species forms dense mats, preventing regeneration of native plants (Davis *et al.* 1992, p. 427).

• *Ageratum conyzoides* (maile honohono) is a perennial herb, native to Central and South America, and now widespread in Hawaii (Wagner *et al.* 1999m, pp. 254–255). This ephemeral herb is found in disturbed areas, tolerates shade, and can displace native plants. It produces many thousands of seeds, which spread by wind and water, with over half the seeds germinating shortly after they are shed (PIER 2007).

• *Aleurites moluccana* (kukui) is a spreading, tall tree native to the Malesian region, and considered a Polynesian introduction to Hawaii. It is now a significant component of the mesic valley vegetation from sea level to 2,300 ft (700 m) on all the main islands (Wagner *et al.* 1999n, p. 598). According to the Hawaii Weed Risk Assessment for *A. moluccana,* this species has a high risk of invasiveness or a high risk of becoming a serious pest (PIER 2008a). The species tolerates a wide range of soil conditions and forms dense thickets, which increases its competitive abilities over native plants.

• *Andropogon virginicus* (broomsedge) is a perennial bunchgrass native to northeastern America, now naturalized on Kauai, Oahu, Molokai, Maui and Hawaii, along roadsides and in disturbed dry to mesic forest and shrubland (O'Connor 1999, p. 1,497). Seeds are easily distributed by wind, clothing, vehicles, and feral animals (Smith 1989, pp. 60–69). *Andropogon virginicus* may release allelopathic substances that dramatically decrease native plant reestablishment (Rice 1972, pp. i, 752–755). This species has become dominant in areas subjected to natural or human-induced fires (Mueller-Dombois 1972, pp. 1–2). *Andropogon virginicus* is on the Hawaii State noxious weed list (Hawaii Administrative Rules (H.A.R.) Title 4, Subtitle 6, Chapter 68).

• *Anthoxanthum odoratum* (sweet vernalgrass) is a perennial bunchgrass native to Eurasia, now naturalized on Kauai, Molokai, Maui, and Hawaii, in pastures, disturbed areas in wet forest, and sometimes subalpine shrubland (O'Connor 1999, p. 1,498). This species forms extensive ground cover, and invades disturbed areas, preventing the reestablishment of native plant species (PIER 2008b).

• *Ardisia elliptica* (shoebutton ardisia) is a branched shrub native to Sri Lanka that is now naturalized in Hawaii (Wagner *et al.* 1999f, pp. 932–933). This species is shade-tolerant and can rapidly form dense, monotypic stands, preventing establishment of other species (Global Invasive Species Database (GISD) 2005). Its fruit are attractive to birds, which then spread the seeds over the landscape. According to the Hawaii Weed Risk Assessment for *A. elliptica,* this species has a high risk of invasiveness or a high risk of becoming a serious pest (PIER 2008c).

• *Axonopus fissifolius* (carpetgrass) is a pasture grass that forms dense mats with tall foliage. This species does well in soils with low nitrogen levels, and can outcompete other grasses in wet forests and bogs. The species is not subject to any major diseases or insect pests, and recovers quickly from fire. The seeds are readily spread by water, vehicles, and grazing animals (O'Connor 1999, pp. 1,500–1,502; Cook *et al.* 2005, p. 4).

• *Blechnum appendiculatum* (NCN) is a fern with fronds to 23 in (60 cm) long that forms large colonies, outcompeting many native fern species (Palmer 2003, p. 81).

• *Buddleia asiatica* (dog tail) is a shrub or small tree that can tolerate a wide range of habitats, forms dense thickets, and is rapidly spreading into wet forest and lava and cinder substrate areas in Hawaii, displacing native vegetation (Wagner *et al.* 1999o, p. 415; PIER 2008d).

• *Cenchrus ciliaris* (buffelgrass) is native to Africa and tropical Asia and is naturalized in Hawaii (O'Connor 1999, p. 1,512). It is a fire-adapted grass that provides fuel for fires and recovers quickly, increasing its cover with each succeeding fire (PIER 2008e), thereby displacing native plants and altering natural fire regimes.

• *Cestrum diurnum* (day cestrum) is an approximately 6.6-ft (2-m) tall shrub native to the West Indies, cultivated for its fragrant flowers, and is now naturalized on Kauai, Oahu, and Molokai (Symon 1999, p. 1,254). This species invades dry and wet areas and forms dense thickets. Seeds are dispersed by birds; however the seeds are poisonous to humans and other mammals (Florida Exotic Pest Plant Council (FEPC) 2011).

• *Cestrum nocturnum* (night cestrum), a shrub or small tree native to the Antilles and Central America, was cultivated in Hawaii prior to 1871 (Symon 1999, pp. 1,254–1,255). It forms dense, impenetrable thickets in wet forest and open areas. According to the Hawaii Weed Risk assessment, this species has a high risk of invasiveness or a high risk of becoming a serious pest (PIER 2010a).

• *Christella dentata* (NCN) is a medium-sized fern widely distributed in the tropics and subtropics of the Old World, now widespread as a weed in the Americas. In Hawaii, this species is most common in disturbed mesic habitats, but also occurs in varied habitats including undisturbed sites on all major islands. *Christella dentata* hybridizes with the endemic species *C. cyatheoides,* forming extensive clones of the sterile hybrid (Palmer 2003, pp. 88–90).

• *Chrysophyllum oliviforme* (satinleaf) is a small tree native to the United States (Florida), West Indies, and Central America, and is naturalized in Hawaii (Pennington 1999, p. 1,231; PIER 2006). Birds easily disperse the fleshy fruit, and the species can become a dominant component in forest habitat (Pennington 1999, p. 1,231; MLP 2002, pp. A1–A4). According to the Hawaii Weed Risk Assessment for *C. oliviforme,* this species has a high risk of invasiveness or a high risk of becoming a serious pest (PIER 2006).

• *Cinchona pubescens* (quinine) is a tree that is 13 to 33 ft (4 to 10 m) tall with a dense canopy. It is native to Central and South America, and is widely cultivated for quinine. A small plantation was started on Maui in 1868, and this species was planted by State foresters on Oahu, Maui, and Hawaii between 1928 and 1947 (Wagner *et al.* 1999a, p. 1,120). It reproduces with wind-dispersed seeds and also vegetatively via multiple suckers up to several meters away from the adult tree and aggressively replaces and shades out native vegetation (GISD 2011).

• *Cinnamomum burmannii* (padang cassia), a tree native to Indonesia, is cultivated and now naturalized on Oahu, Maui, Lanai, and Hawaii (van der Werff 1999, p. 846). Seeds are bird-dispersed (Starr *et al.* 2003). On Maui, this species is included in the weed control program at Puu Kukui Preserve, as it can become a dominant component in forest habitat (MLP 2002, p. 20).

• *Clidemia hirta* (Koster's curse), a noxious shrub in the Melastoma family, forms a dense understory, shades out native plants, and prevents their regeneration (Wagner *et al.* 1985, p. 41; Smith 1989, p. 64). All plants in the Melastoma family are on the Hawaii State noxious weed list (H.A.R. Title 4, Subtitle 6, Chapter 68).

• *Coffea arabica* (Arabian coffee) is a shrub or tree up to 16.5 ft (5 m) tall, native to Ethiopia, and widely cultivated in Hawaii as a commercial crop. It was naturalized in Hawaii by the mid-1800s in mesic to wet disturbed

sites, usually in valleys or along streambeds (Wagner *et al.* 1999a, pp. 1,120–1,121). This species is shade tolerant, and can form dense stands in the forest understory, displacing and shading out native plants. The seeds are dispersed by birds and rats (PIER 2008f).

• *Conyza bonariensis* (hairy horseweed) is an annual herb common in various urban and nonurban areas in Hawaii, generally in relatively dry habitats, sometimes in disturbed mesic to wet forest, on Kure Atoll, Midway Atoll, Laysan, French Frigate Shoals, and all of the main islands (Wagner *et al.* 1999m, p. 288), where it displaces native plants.

• *Cordyline fruticosa* (ki, ti), a shrub that is 6.6 to 11.5 ft (2 to 3.5 m) tall, is considered a Polynesian introduction to Hawaii. It was extensively cultivated and occurs widely in mesic valleys and forests (Wagner *et al.* 1999i, pp. 1,348–1,350). It can become a dominant element of the understory (Department of Land and Natural Resources (DLNR) 1989).

• *Cortaderia jubata* (pampas grass), a large, clump-forming, perennial herb, was first discovered in 1987, on east Maui, where it has escaped cultivation and is becoming invasive on the slopes of Haleakala. This species is a serious pest in California, and is on the Hawaii State noxious weed list (Staples and Herbst 2005, p. 744). *Cortaderia jubata* produces abundant seed and spreads readily (Staples and Herbst 2005, p. 744).

• *Cotoneaster pannosus* (silver-leaf cotoneaster) is a shrub native to China that is occasionally cultivated (Volcano, Hawaii Island and Kula, Maui) in Hawaii (Wagner *et al.* 1999p, p. 1,100). Previously thought to be contained within the vicinity of cultivated plants, this species has become a threat to native forest (Oppenheimer 2010n, in litt.). The attractive, bird-dispersed fruits of this species, aggressive root systems, and tendency of all cotoneasters to shade and smother sun-loving, native plants contribute to the invasiveness of this species (PIER 2010b).

• *Cryptomeria japonica* (Japanese cedar, Tsugi) is a pyramidal, evergreen tree native to China and Japan, which is 50 to 60 ft (15 to 18 m) tall and has dense foliage (North Carolina State University 2006; University of Connecticut 2006). *Cryptomeria japonica* has life-history traits of an invasive species, including small seed mass, short juvenile period, and short intervals between large seed crops (Richardson and Rejmanek 2004, p. 321).

• *Cuphea carthagenensis* (tarweed) is an annual or short-lived perennial herb naturalized in mesic to wet disturbed sites on Kauai, Oahu, Molokai, Maui, and Hawaii (Wagner *et al.* 1999q, p. 866). This species was also recently documented on Lanai (PIER 2010c). *Cuphea carthagenensis* forms dense, shrubby mats that displace or prevent the establishment of native forest species (Hawaii National Park 1959, p. 7; Wagner *et al.* 1999q, p. 866).

• *Cyathea cooperi* (Australian tree fern) is a tree fern native to Australia that was brought to Hawaii for use in landscaping (Medeiros *et al.* 1992, p. 27). It can achieve high densities in native Hawaiian forests, grows up to 1 ft (0.3 m) in height per year (Jones and Clemesha 1976, p. 56), and can displace native species. Understory disturbance by feral pigs facilitates the establishment of this species (Medeiros *et al.* 1992, p. 30), and it has been known to spread over 7 mi (12 km) through windblown dispersal of spores from plant nurseries (Medeiros *et al.* 1992, p. 29).

• *Dactylis glomerata* (cocksfoot) is a tufted, perennial grass native to Europe that is widely cultivated and naturalized in Hawaii, now abundant in pastures and along trails and roadsides on Kauai, Oahu, Molokai, Maui, and Hawaii (O'Connor 1999, pp. 1,520–1,521). This species becomes established in disturbed sites and forms dense swards that suppress native grasses and herbaceous species (PIER 2010d).

• *Drymaria cordata* (chickweed) is a straggling herb naturalized in shaded, moist sites including native montane wet habitat on Kauai, Oahu, Molokai, Maui, and Hawaii (Wagner *et al.* 1999j, p. 505). While seldom a weed of cultivated areas, it is known to invade plantation crops such as tea and coffee, as well as pastures, lawns, gardens, riverbanks, ditches, and even sandbars in rivers (PIER 2010e). *Drymaria cordata* can displace or prevent the establishment of native understory and subcanopy plants.

• *Epilobium billardierianum* (willow herb) is a perennial herb naturalized in open sites in wet forest to disturbed grassland, especially on open lava, in pastures, and along roadsides on Kauai, Oahu, Maui, and Hawaii (Wagner *et al.* 1999r, p. 995). *Epilobium billardierianum* dominates subalpine areas on Maui (Anderson *et al.* 1992, p. 328).

• *Erechtites valerianifolia* (fireweed) is a tall (up to 8 ft (2.5 m)), widely distributed, annual herb that produces thousands of wind-dispersed seeds, and outcompetes native plants (Wagner *et al.* 1999m, p. 314).

• *Erigeron karvinskianus* (daisy fleabane) reproduces and spreads rapidly by stem layering and regrowth of broken roots to form dense mats. This species crowds out and displaces ground level plants (Weeds of Blue Mountains Bushland 2008).

• *Eucalyptus* spp. (gum tree) are tall trees or shrubs, and almost all of the more than 600 species are native to Australia. In the past, over 90 species and thousands of individuals were planted by Hawaii State foresters on all the main Hawaiian Islands except Niihau and Kahoolawe in an attempt to protect watersheds (Cuddihy and Stone 1990, p. 51; Chippendale 1999, p. 949). Approximately 30 species are reported to be spreading beyond the forestry plantings. Three of these species represent the greatest threat to native habitat in Hawaii, including *E. grandis* (flooded gum), *E. paniculata* (gray ironbark), and *E. saligna* (Sydney blue gum), and were the principal species used for reforestation (Chippendale 1999, p. 958). *Eucalyptus* trees are quick-growing, can reach 180 ft (55 m) in height, reproduce from wind-dispersed seeds, and outcompete and replace native forest species (PIER 2011b). According to the Hawaii Weed Risk Assessment for *Eucalyptus,* these species have a high risk of invasiveness or a high risk of becoming a serious pest (PIER 2011b).

• *Fraxinus uhdei* (tropical ash) is a tree up to 79 ft (24 m) tall, which is native to central and southern Mexico. In Hawaii, over 300,000 trees were planted by State foresters on all the main islands from 1924 to 1960 (Wagner *et al.* 1999s, p. 991). *Fraxinus uhdei* reproduces by wind-dispersed seed. This species is considered a serious threat to the mesic native *Acacia-Metrosideros* (koa-ohia) forests at Waikamoi, on east Maui (TNC 2006l, p. A5). It spreads rapidly along watercourses and forms dense, monotypic stands (Holt 1992, pp. 525–535).

• *Grevillea robusta* (silk oak) is a large evergreen tree, 26 to 98 ft (8 to 20 m) tall, native to Australia. Over two million trees were planted in Hawaii between 1919 and 1959 in an effort to reduce erosion and to provide timber. *Grevillea robusta* is aggressive, is drought-tolerant, and forms dense, monotypic stands (Santos *et al.* 1992, p. 342). The leaves produce an allelopathic substance that inhibits the establishment of all species, including itself (Smith 1985, p. 191).

• *Hedychium gardnerianum* (kahili ginger) is native to India (Nagata 1999, p. 1,623). This showy ginger was introduced for ornamental purposes,

and was first collected in 1954, at Hawaii Volcanoes National Park (Wester 1992, pp. 99–154). Kahili ginger grows over 3.3 ft (1 m) tall in open light environments; however it will readily grow in full shade beneath a forest canopy (Smith 1985, pp. 191–192). It forms vast, dense colonies, displacing other plant species, and reproduces by rhizomes where already established. The conspicuous, fleshy, red seeds are dispersed by fruit-eating birds as well as humans. Ginger reduces the amount of nitrogen in the *Metrosideros* forest canopy in Hawaii (Asner and Vitousek 2005, in litt.). It may also block stream edges, altering water flow (GISD 2007).

• *Holcus lanatus* (common velvetgrass), native to Europe, is naturalized in Hawaii and occurs on poor, moist soils (O'Connor 1999, p. 1,151). Velvetgrass is an aggressive weed, growing rapidly from basal shoots or prolific seed, and therefore can become dominant if not controlled (Smith 1985, p. 192). Velvetgrass gradually forces other plants out, reducing species diversity. Allelopathy may also play a role in the dominance of velvetgrass over other grasses (Remison and Snaydon in Pitcher and Russo 2005, p. 2).

• *Hypochoeris radicata* (hairy cat's ear) is a perennial herb up to 2 ft (0.6 m) tall, native to Eurasia. In Hawaii, it is naturalized in wet and dry disturbed sites on all the main islands (Wagner *et al.* 1999m, p. 327). It has a deep, succulent taproot favored by feral pigs, which dig up large areas searching for the roots (Smith 1985, p. 192). Seeds are produced in large numbers and dispersed by wind. It regenerates rapidly from the crown of the taproot after fire (Smith 1985, p. 192).

• *Juncus effusus* (Japanese mat rush) is a perennial herb widely distributed in temperate regions and naturalized in Hawaii in ponds, streams, and open boggy sites. It was brought to Hawaii as a source of matting material, but grew too slowly to be of commercial value (Coffey 1999, p. 1,453). This plant spreads by seeds and rhizomes, and forms dense mats that crowd out native plants (United States Department of Agriculture—Agricultural Research Division—National Genetic Resources Program (USDA–ARS–NGRP) 2011).

• *Juncus ensifolius* (dagger-leaved rush), a perennial herb native to the western United States, is naturalized in Hawaii and occurs in standing water of marshy areas (Coffey 1999, p. 1,453). This weedy colonizer can tolerate environmental stress and outcompete native species (Pojar and MacKinnon 1994).

• *Juncus planifolius* (bog rush) is a perennial herb that is naturalized on Kauai, Oahu, Molokai, Maui, and Hawaii, in moist, open, disturbed depressions on margins of forests and in bogs (Coffey 1999, pp. 1,453–1,454). This species forms dense mats and has the potential to displace native plants by preventing establishment of native seedlings (Medeiros *et al.* 1991, pp. 22–23).

• *Kalanchoe pinnata* (air plant), a perennial herb, is widely established in many tropical and subtropical areas. In Hawaii, it was naturalized prior to 1871, and is abundant in low-elevation, disturbed areas on all the main islands except Niihau and Kahoolawe (Wagner *et al.* 1999t, p. 568). The air plant can reproduce vegetatively at indents along the leaf, usually after the leaf has broken off the plant and is lying on the ground, where a new plant can take root (Motooka *et al.* 2003a). *Kalanchoe pinnata* can form dense stands that prevent reproduction of native species (Motooka *et al.* 2003a; Randall 2007—*Global Compendium of Weeds Database*).

• *Lantana camara* (lantana), a malodorous, branched shrub up to 10 ft (3 m) tall, was brought to Hawaii as an ornamental plant. Lantana is aggressive and thorny, and forms thickets, crowding out and preventing the establishment of native plants (Davis *et al.* 1992, p. 412; Wagner *et al.* 1999u, p. 1,320).

• *Lapsana communis* (nipplewort) is an annual herb naturalized in relatively wet, disturbed areas such as disturbed wet forest, between elevations of 3,117 to 10,597 ft (950 to 3,230 m), on Maui and Hawaii (Wagner *et al.* 1999m, p. 331). *Lapsana communis* is identified as an invasive species in Hawaii (USDA–NRCS 2011a).

• *Leptospermum scoparium* (tea tree) is a shrub or small tree native to New Zealand and Australia, now widely naturalized in Hawaii. It forms thickets and has allelopathic properties that prevent the growth of native plants (Smith 1985, p. 193).

• *Leucaena leucocephala* (koa haole), a shrub native to the neotropics, is now found on all of the main Hawaiian Islands. It is a nitrogen-fixer and an aggressive competitor that often forms the dominant element of the vegetation in low-elevation, dry, disturbed areas (Geesink *et al.* 1999, pp. 679–680).

• *Lythrum maritimum* (loosestrife) is a many-branched shrub occurring in mesic, open, disturbed habitats, especially in pastures, on windward coastal cliffs, in margins of wet forest, and on lava, from sea level up to 8,040-ft (0 to 2,450-m) elevation on all of the main Hawaiian Islands except Niihau and Kahoolawe (Wagner *et al.* 1999q, pp. 867–868). *Lythrum maritimum* is identified as an invasive species in Hawaii (USDA–NRCS 2011b).

• *Melastoma* spp. Plants in the genus *Melastoma* are ornamental shrubs native to southeast Asia; all members of the genus are on the Hawaii State noxious weed list (H.A.R. Title 4, Subtitle 6, Chapter 68). Melastoma species have high germination rates, rapid growth, early maturity, ability of fragments to root, possible asexual reproduction, and efficient seed dispersal (especially by birds that are attracted by copious production of berries) (Smith 1985, p. 194; University of Florida Herbarium 2006). These characteristics enable the plants to be aggressive competitors in Hawaiian ecosystems.

• *Melinis minutiflora* (molasses grass) is a perennial grass up to 3 ft (1 m) tall that forms dense mats and crowds out other plants. These mats also provide fuel for more intense fires that destroy native plants (Cuddihy and Stone 1990, p. 89; O'Connor 1999, p. 1,562).

• *Melinis repens* (natal redtop), a perennial grass native to Africa, is now widely naturalized in the tropics and in Hawaii. It invades disturbed, dry areas from coastal regions to subalpine forest (O'Connor 1999, p. 1,588). Dense stands of natal redtop can contribute to recurrent fires (Desert Museum 2011).

• *Miconia calvescens* (miconia), a tree native to the neotropics, first appeared on Oahu and the island of Hawaii as an introduced garden plant, and has escaped from cultivation (Almeda 1999, p. 903). Miconia is now also found on Kauai and Maui (Wagner and Herbst 2003, p. 34). Miconia is remarkable for its 2- to 3-ft (70-cm) long, dark purple leaves. It reproduces in dense shade, eventually shading out all other plants to form a monoculture. A single mature plant produces millions of seeds per year, which are spread by birds, ungulates, and humans (Motooka *et al.* 2003b). According to the Hawaii Weed Risk Assessment for *M. calvescens,* this species has a high risk of invasiveness or a high risk of becoming a serious pest (PIER 2010f). This species, as well all plants in the Melastoma family, are on the Hawaii State noxious weed list (H.A.R. Title 4, Subtitle 6, Chapter 68).

• *Morella faya* (firetree) is an evergreen shrub or small tree that forms monotypic stands, has the ability to fix nitrogen, and alters the successional ecosystems in areas it invades, displacing native vegetation through competition. It is also a prolific fruit producer (average of 400,000 fruits per individual shrub or tree per year), and the fruit are spread by frugivorous (fruit-

eating) birds and feral pigs (Vitousek 1990, pp. 8–9; Wagner *et al.* 1999v, p. 931; PIER 2008g). This species is on the Hawaii State noxious weed list (H.A.R. Title 4, Subtitle 6, Chapter 68).

• *Neonotonia wightii* (glycine), a twining herb native to Central and South America, is widely naturalized in Hawaii. Glycine forms dense clumps, and can cover and smother other plants (Geesink *et al.* 1999, p. 674; PIER 2010g).

• *Oplismenus hirtellus* (basketgrass) is a perennial grass that forms a dense groundcover, is sometimes climbing, and roots at the nodes, enabling its rapid spread. It also has sticky seeds that attach to visiting animals and birds that then carry them to new areas where they are deposited, resulting in the spread of this species (O'Connor 1999, p. 1,565; Johnson 2005). This species displaces native plants of forest floors and trailsides (Motooka *et al.* 2003c).

• *Paspalum conjugatum* (Hilo grass) is a perennial grass that is found in wet habitats, and forms a dense ground cover. Its small hairy seeds are easily transported on humans and animals, or are carried by the wind through native forests, where it establishes and displaces native vegetation (University of Hawaii Botany Department 1998; Cuddihy and Stone 1990, p. 83; Motooka *et al.* 2003d; PIER 2008h).

• *Passiflora tarminiana* (banana poka), a vine native to South America, is widely cultivated for its fruit (Escobar 1999, pp. 1,007–1,014). First introduced to Hawaii in the 1920s, it is now a serious pest in mesic forest, where it overgrows and smothers the forest canopy. Seeds are readily dispersed by humans, birds, and feral pigs (La Rosa 1992, pp. 281–282). Fallen fruit encourage rooting and trampling by pigs (Diong 1982, pp. 157–158). Field releases of biocontrol agents to control the spread of this species have not been successful to date.

• *Pinus* spp. (pine trees) are tall, evergreen trees or shrubs native to all continents and some oceanic islands, but are not native to any of the Hawaiian Islands. *Pinus caribaea, P. elliottii, P. patula, P. pinaster, P. radiata,* and *P. taeda* are found on Molokai, Lanai, and Maui (Little and Skolmen 1989, pp. 56–60; Oppenheimer 2003, pp. 18–19; PIER 2011c). *Pinus* species were primarily planted by Hawaii State foresters for reforestation and erosion control (Little and Skolmen 1989, pp. 56–60; Oppenheimer 2003, pp. 18–19; PIER 2010h). *Pinus* species are known to establish readily, create dense stands that shade out native plants and prevent regeneration, outcompete native plants for soil water and nutrients, change soil chemistry, promote growth of weed seeds dropped by perching birds, and are highly flammable (Oppenheimer 2010o, in litt.; PIER 2010h). On east Maui, *Pinus* species are a threat at higher elevations because they are invading pastures and native subalpine shrublands (Oppenheimer 2002, pp. 19–23; Oppenheimer 2010o, in litt.).

• *Pluchea carolinensis* (sourbush) is native to Mexico, the West Indies, and South America (Wagner *et al.* 1999m, p. 351). These 3- to 6-ft (1- to 2-m) tall, fast-growing shrubs form thickets in dry habitats and can tolerate saline conditions. They are widespread in Hawaii from coastal areas up to almost 3,000 ft (900 m). The seeds are wind-dispersed (Francis 2004, in litt.). The species is adapted to a wide variety of soils and sites, and it tolerates excessively well to poorly-drained soil conditions, the full range of soil textures, acid and alkaline reactions, salt and salt spray, and compaction. It quickly invades burned areas, but being early successional, is soon replaced by other species. These adaptive capabilities increase the species' competitive abilities over native plants.

• *Prosopis pallida* (kiawe), a tree up to 66 ft (20 m) tall, was introduced to Hawaii in 1828, and its seeds were used as fodder for ranch animals. This species is now a dominant component of the vegetation in low-elevation, dry, disturbed sites, and it is well adapted to dry habitats. It overshadows other vegetation and has deep tap roots that significantly reduce available water for native dry-land plants. This plant fixes nitrogen and can outcompete native species (Geesink *et al.* 1999, pp. 692–693; PIER 2011c).

• *Prunella vulgaris* (self-heal) is a perennial herb in the mint family. This species is naturalized in mesic, disturbed areas, especially pastures and along streambeds in wet forest from 2,690 to 7,415 ft (820 to 2,260 m) in elevation on the islands of Molokai, Maui, and Hawaii (Wagner *et al.* 1999h, pp. 828–829). *Prunella vulgaris* is reported as an invasive species in Hawaii (USDA–NRCS 2011c).

• *Psidium cattleianum* (strawberry guava) is a tall shrub or tree that forms dense stands in which few other plants can grow, displacing native vegetation through competition. The fruit is eaten by feral pigs and birds that disperse the seeds throughout the forest (Smith 1985, p. 200; Wagner *et al.* 1985, p. 24).

• *Psidium guajava* (guava) is a tall shrub or tree that forms dense stands in disturbed forest and excludes native species. The seeds are spread by feral pigs and alien birds, and this species can also regenerate from underground parts by suckering (Wagner *et al.* 1999w, p. 972).

• *Rubus argutus* (prickly Florida blackberry) is a prickly bramble with long, arching stems, and reproduces both vegetatively and by seed. It readily sprouts from underground runners, and is quickly spread by frugivorous birds (Tunison 1991, p. 2; Wagner *et al.* 1999p, p. 1,107; U.S. Army 2006, pp. 2–1–21–2–1–22). This species, which displaces native vegetation through competition, is on the Hawaii State noxious weed list (H.A.R. Title 4, subtitle 6, Chapter 68).

• *Rubus rosifolius* (thimbleberry) is an erect to trailing shrub that forms dense thickets and outcompetes native plant species. It easily reproduces from roots left in the ground, and seeds are spread by birds and feral animals (GISD 2008; PIER 2008i).

• *Sacciolepis indica* (glenwood grass) is an annual grass that invades disturbed and open areas in wet habitats, and prevents the establishment of native plants. Its seeds are dispersed by sticking to animal fur (PIER 2011d; Motooka *et al.* 2003e).

• *Schinus terebinthifolius* (christmasberry) forms dense thickets in all habitats, and its red berries are attractive to and dispersed by birds (Smith 1989, p. 63). *Schinus* seedlings grow very slowly and can survive in dense shade, exhibiting vigorous growth when the canopy is opened after a disturbance (Brazilian Pepper Task Force 1997). Because of these attributes, *S. terebinthifolius* is able to displace native vegetation through competition.

• *Setaria palmifolia* (palmgrass), native to tropical Asia, was first collected on Hawaii Island in 1903 (O'Connor 1999, p. 1,592). A large-leafed, perennial herb, this species reaches approximately 6.5 ft (2 m) in height at maturity, and shades out native vegetation. Palmgrass is resistant to fire and recovers quickly after being burned (Cuddihy and Stone 1990, p. 83).

• *Syzygium cumini* (java plum) is a tree native to India, Ceylon, and the Malesian region, and is widely cultivated and naturalized throughout the tropics. In Hawaii, it is naturalized in mesic valleys and disturbed forests (Wagner *et al.* 1999w, p. 975). This species forms dense cover, excluding all other species, and prevents the reestablishment of native lowland forest plants. The large black fruit is dispersed by frugivorous birds and feral pigs (PIER 2008j).

• *Tibouchina herbacea* (glorybush), an herb or shrub up to 3 ft (1 m) tall, is native to southern Brazil, Uruguay,

and Paraguay. In Hawaii, it is naturalized and abundant in disturbed mesic to wet forest on the islands of Molokai, Lanai, Maui, and Hawaii (Almeda 1999, p. 915). It forms dense thickets, crowding out all other plant species, and inhibits regeneration of native plants (Motooka *et al.* 2003f). All members of this genus are on the Hawaii State noxious weed list (H.A.R. Title 4, Subtitle 6, Chapter 68).

• *Ulex europaeus* (gorse), a woody legume up to 12 ft (4 m) tall and covered with spines, is native to western Europe (Geesink 1999, pp. 715–716). It is cultivated as a hedge and fodder plant, and was inadvertently introduced to Hawaii before 1910, with the establishment of the wool industry (Tulang 1992, pp. 577–583; Geesink 1999, pp. 715–716). Gorse spreads numerous seeds by explosive opening of the pods (Mallinson 2011). It can rapidly form extensive dense and impenetrable infestations, and competes with native plants, preventing their establishment. Dense patches can also present a fire hazard (Mallinson 2011). Over 20,000 ac (8,094 ha) are infested by gorse on the island of Hawaii, and over 15,000 ac (6,070 ha) are infested on Maui (Tulang 1992, pp. 577–583).

• *Youngia japonica* (oriental hawksbeard), an annual herb 3 ft (1 m) tall and native to southeastern Asia, is now a pantropical weed (Wagner *et al.* 1999m, p. 377). In Hawaii, it occurs in moist, disturbed sites, and can invade nearly intact native wet forest where it displaces native species (Wagner *et al.* 1999m, p. 377).

Habitat Destruction and Modification by Fire

Fire is an increasing, human-exacerbated threat to native species and native ecosystems in Hawaii. The historical fire regime in Hawaii was characterized by infrequent, low severity fires, as few natural ignition sources existed (Cuddihy and Stone 1990, p. 91; Smith and Tunison 1992, pp. 395–397). It is believed that prior to human colonization, fuel was sparse and inflammable in wet plant communities and seasonally flammable in mesic and dry plant communities. The primary ignition sources were volcanism and lightning (Baker *et al.* 2009, p. 43). Natural fuel beds were often discontinuous, and rainfall in many areas on most islands was, and is, moderate to high. Fires inadvertently or intentionally ignited by the original Polynesians in Hawaii probably contributed to the initial decline of native vegetation in the drier plains and foothills. These early settlers practiced slash-and-burn agriculture that created open lowland areas suitable for the later colonization of nonnative, fire-adapted grasses (Kirch 1982, pp. 5–6, 8; Cuddihy and Stone 1990, pp. 30–31). Beginning in the late 18th century, Europeans and Americans introduced plants and animals that further degraded native Hawaiian ecosystems. Pasturage and ranching, in particular, created high fire-prone areas of nonnative grasses and shrubs (D'Antonio and Vitousek 1992, p. 67). Although fires were historically infrequent in mountainous regions, extensive fires have recently occurred in lowland dry and lowland mesic areas, leading to grass-fire cycles that convert forest to grasslands (D'Antonio and Vitousek 1992, p. 77).

Because several Hawaiian plants show some tolerance of fire, Vogl proposed that naturally occurring fires may have been important in the development of the original Hawaiian flora (Vogl 1969 in Cuddihy and Stone 1990, p. 91; Smith and Tunison 1992, p. 394). However, Mueller-Dombois (1981 in Cuddihy and Stone 1990, p. 91) points out that most natural vegetation types of Hawaii would not carry fire before the introduction of alien grasses, and Smith and Tunison (1992, p. 396) state that native plant fuels typically have low flammability. Because of the greater frequency, intensity, and duration of fires that have resulted from the introduction of nonnative plants (especially grasses), fires are now destructive to native Hawaiian ecosystems (Brown and Smith 2000, p. 172), and a single grass-fueled fire can kill most native trees and shrubs in the burned area (D'Antonio and Vitousek 1992, p. 74).

Fire represents a threat to many of the native plant species found in the coastal, lowland dry, lowland mesic, montane dry, montane mesic, and dry cliff ecosystems addressed in this proposed rule. The plant species proposed or reevaluated for listing here are threatened by fire are *Bidens campylotheca* ssp. *pentamera, Canavalia pubescens, C. magnicalyx, C. mauiensis, C. obtusa, Festuca molokaiensis, Phyllostegia bracteata, P. haliakalae, Pittosporum halophilum, Pleomele fernaldii, Santalum haleakalae* var. *lanaiense, Schiedea salicaria,* and *Stenogyne kauaulaensis* (see Table 3). Fire can destroy dormant seeds of these species as well as plants themselves, even in steep or inaccessible areas. Successive fires that burn farther and farther into native habitat destroy native plants and remove habitat for native species by altering microclimate conditions favorable to alien plants. Alien plant species most likely to be spread as a consequence of fire are those that produce a high fuel load, are adapted to survive and regenerate after fire, and establish rapidly in newly burned areas. Grasses (particularly those that produce mats of dry material or retain a mass of standing dead leaves) that invade native forests and shrublands provide fuels that allow fire to burn areas that would not otherwise easily burn (Fujioka and Fujii 1980, in Cuddihy and Stone 1990, p. 93; D'Antonio and Vitousek 1992, pp. 70, 73–74; Tunison *et al.* 2002, p. 122). Native woody plants may recover from fire to some degree, but fire shifts the competitive balance toward alien species (National Park Service 1989, in Cuddihy and Stone 1990, p. 93). On a post-burn survey at Puuwaawaa on the island of Hawaii, an area of native *Diospyros* forest with undergrowth of the nonnative grass *Pennisetum setaceum,* Takeuchi noted that ''no regeneration of native canopy is occurring within the Puuwaawaa burn area'' (Takeuchi 1991, p. 2). Takeuchi (1991, pp. 4, 6) also stated that ''burn events served to accelerate a decline process already in place, compressing into days a sequence which would ordinarily take decades,'' and concluded that in addition to increasing the number of fires, the nonnative *Pennisetum* acted to suppress the establishment of native plants after a fire.

For decades, fires have impacted rare or endangered species and areas previously designated or proposed for critical habitat designation in this rule (Gima 1998, in litt.; Pacific Disaster Center 2011; Hamilton 2009, in litt.; Honolulu Advertiser, 2010). The islands of Molokai, Lanai, Maui, and Kahoolawe have experienced 1,291 brush fires between the years 1972 and 1999 that burned a total of 64,248 ac (26,000 ha) (Pacific Disaster Center 2011; County of Maui 2009, Chapter 3, p. 3). Between 2000 and 2003, the annual number of wildfires on Molokai, Lanai, and Maui jumped from 118 to 271, many of which each consumed more than 5,000 ac (2,023 ha) (Pacific Disaster Center 2011).

During the summer of 1998, a raging fire that began in Kaunakakai consumed over 15,000 ac (6,070 ha) on Molokai, including a portion of the Molokai Forest Reserve, consuming roughly 10 percent of the entire island (Gima 1998, in litt.). Molokai experienced three 10,000 ac (4,047 ha) wildfires between the years 2003 and 2004 (Pacific Disaster Center 2011). In late August through early September 2009, a massive wildfire burned for days and consumed approximately 8,000 ac (3,237 ha), including 600 ac (243 ha) of the remote Makakupaia section of the

Molokai Forest Reserve, a small portion of TNC's Kamakou Preserve, and encroached upon Onini Gulch, Kalamaula and Kawela (Hamilton 2009, in litt.). Three species reported from Molokai's coastal and lowland mesic ecosystems (*Festuca molokaiensis, Phyllostegia haliakalae,* and *Pittosporum halophilum*) are threatened by fire because individuals of these species or their habitat are located in or near areas that were burned in previous fires.

The island of Lanai has experienced several wildfires in the last decade. In 2006, a wildfire burned 600 ac (243 ha) between Manele Road and the Palawai basin (2.5 mi (4 km) south of Lanai City) (The Maui News 2006, in litt.). In 2007, a brush fire occurred in the Mahana area, burning an estimated 30 ac (12 ha), and in 2008, another 1,000 ac (405 ha) were burned by wildfire in the Palawai basin (The Maui News 2007, in litt.; KITV Honolulu 2008, in litt.). All known individuals of *Pleomele fernaldii* lie just southeast of the area burned during the Mahana fire and east of the Palawai basin fires. Many of these individuals could be decimated by one large fire.

Between the years 2007 and 2010, wildfires burned more than 8,650 ac (3,501 ha) on west Maui (Shimogawa 2010, in litt.; Honolulu Advertiser 2010, in litt.). In 2007, a fire that started along Honoapiilani Highway on the south coast of west Maui burned a total of 1,350 ac (546 ha), encroached into the West Maui Natural Area Reserve (Panaewa section), and threatened the proposed plants *Phyllostegia bracteata* and *Schiedea salicaria* (HDLNR 1989, pp. 53–63; KITV 2007, in litt.). In May 2010, another fire occurred farther south along the same highway, moved up the ridges of Olowalu, and eventually encompassed 1,100 ac (445 ha). Later the same year, a fire that started at Maalaea initially destroyed 200 ac (81 ha), and because of strong winds and drought conditions, continued to burn for 8 days, moved up Kealaloloa and nearby ridges, and encompassed a total of 6,200 ac (2,509 ha). This fire is on record as the largest brush fire that has occurred on Maui. Nine species reported from Maui's lowland dry, lowland mesic, montane dry, montane mesic, and dry cliff ecosystems (*Bidens campylotheca* ssp. *pentamera, Canavalia pubescens, C. magnicalyx, C. mauiensis, C. obtusa, Phyllostegia bracteata, Santalum haleakalae* var. *lanaiense, Schiedea salicaria,* and *Stenogyne kauaulaensis*) are threatened by fire because individuals of these species or their habitat are located in or near areas that were burned in previous fires or in areas at risk for fire due to the presence of highly flammable nonnative grasses and pine trees.

Habitat Destruction and Modification by Hurricanes

Hurricanes adversely impact native Hawaiian terrestrial habitat, including each of the 10 Maui Nui ecosystems addressed here and their associated species identified in this proposed rule. They do this by destroying native vegetation, opening the canopy and thus modifying the availability of light, and creating disturbed areas conducive to invasion by nonnative pest species (see ''Specific Nonnative Plant Species Impacts,'' above) (Asner and Goldstein 1997, p. 148; Harrington *et al.* 1997, pp. 539–540). Because many Hawaiian plant and animal species, including the 40 species proposed or reevaluated for listing here, persist in low numbers and in restricted ranges, natural disasters, such as hurricanes, can be particularly devastating (Mitchell *et al.* 2005, pp. 3–4).

Hurricanes affecting Hawaii were only rarely reported from ships in the area from the 1800s until 1949. Between 1950 and 1997, 22 hurricanes passed near or over the Hawaiian Islands, 5 of which caused serious damage (Businger 1998, pp. 1–2). In November 1982, Hurricane Iwa struck the Hawaiian Islands, with wind gusts exceeding 100 miles per hour (mph) (161 kilometers per hour (kph)), causing extensive damage, especially on the islands of Niihau, Kauai, and Oahu (Businger 1998, pp. 2, 6). Many forest trees were destroyed (Perlman 1992, pp. 1–9), which opened the canopy and facilitated the invasion of nonnative plants (Kitayama and Mueller-Dombois 1995, p. 671). Competition with nonnative plants is a threat to each of the 10 ecosystems that support the 40 species proposed or reevaluated for listing here, and to 35 of the 37 plant species addressed in this proposed rule, as described in the ''Specific Nonnative Plant Species Impacts'' section above. Biologists have reported that hurricanes are a threat to the three tree snails proposed for listing (*Newcombia cumingi, Partulina semicarinata,* and *P. variabilis*). High winds and intense rains from hurricanes can dislodge snails from the leaves and branches of their host plants and deposit them on the forest floor where they may be crushed by falling vegetation or exposed to predation by nonnative rats and snails (see ''Disease or Predation,'' below) (Hadfield 2011, pers. comm.). Although there is historical evidence of only one hurricane that approached from the east and impacted the islands of Maui and Hawaii (Businger 1998, p. 3), damage by future hurricanes could further decrease the remaining native plant-dominated habitat areas that support the 40 species proposed or reevaluated for listing in 10 of the described ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, subalpine, dry cliff, and wet cliff) (Bellingham *et al.* 2005, p. 681).

Habitat Destruction and Modification Due to Landslides, Rockfalls, Treefalls, Flooding, and Drought

Landslides, rockfalls, treefalls, and flooding destabilize substrates, damage and destroy individual plants, and alter hydrological patterns, which result in changes to native plant and animal communities. In the open sea near Hawaii, rainfall averages 25 to 30 in (635 to 762 mm) per year, yet the islands may receive up to 15 times this amount in some places, caused by orographic features (physical geography of mountains) (Wagner *et al.* 1999b; adapted from Price (1983) and Carlquist (1980)), pp. 38 and 39). During storms, rain may fall at 3 in (76 mm) per hour or more, and sometimes may reach nearly 40 in (1,000 mm) in 24 hours, causing destructive flash-flooding in streams and narrow gulches (Wagner *et al.* 1999b; adapted from Price (1983) and Carlquist (1980)), pp. 38–39). Due to the steep topography of much of the areas on Molokai, Lanai, and Maui where these 40 species remain, erosion and disturbance caused by introduced ungulates exacerbate the potential for landslides, rockfalls, or flooding, which in turn threaten native plants. For those species that occur in small numbers in highly restricted geographic areas, such events have the potential to eradicate all individuals of a population, or even all populations of a species, resulting in extinction.

Landslides, rockfalls, and treefalls likely adversely impact 14 of the species addressed in this proposed rule, including *Cyanea asplenifolia, C. grimesiana* ssp. *grimesiana, C. horrida, C. magnicalyx, C. maritae, C. mauiensis, C. munroi, C. profuga, C. solanacea, Cyrtandra filipes, Schiedea jacobii, S. laui, Stenogyne kauaulaensis,* and *Wikstroemia villosa,* as documented in observations by field botanists and surveyors (HBMP 2008). Monitoring data from PEPP and the HBMP suggest that these 14 species are threatened by landslides or falling rocks, as they are found in landscape settings susceptible to these events (e.g., steep slopes and cliffs). Field survey data presented by Oppenheimer documented the direct damage from landslides to individuals

of *Cyanea solanacea* located along a stream bank and steep slope beneath a cliff (PEPP 2007, p. 41). Since *Cyanea solanacea* is known from a total of 26 individuals in steep-walled stream valleys, one or several landslides could lead to near extirpation or even extinction of the species by direct destruction of the individual plants, mechanical damage to individual plants that could lead to their death, destabilization of the cliff habitat leading to additional landslides, and alteration of hydrological patterns (e.g., affecting the availability of soil moisture). Perlman (2009b, in litt.) noted the threat of rolling or falling rocks to one population of *Cyanea magnicalyx.*

Monitoring data presented by HBMP and the PEPP program suggest that flooding is a likely threat to five plant species included in this proposed listing, *Bidens campylotheca* ssp. *waihoiensis, Cyanea duvalliorum, C. horrida, C. profuga,* and *Schiedea laui.* Field survey data presented by PEPP (2008, pp. 107–108) and by Bakutis (2010, in litt.) suggest that catastrophic flooding or landslides are possible at one population of *Schiedea laui* located in a cave along a narrow stream corridor at the base of a waterfall in the Kamakou Preserve.

Four plant species, *Cyanea horrida, Festuca molokaiensis, Schiedea jacobii,* and *Stenogyne kaualaensis,* and the three tree snails proposed for listing in this proposed rule may also be affected by habitat loss or degradation associated with droughts, which are not uncommon in the Hawaiian Islands. Between 1860 and 2006, there have been 30 periods of Statewide drought that have also affected the islands of Molokai, Lanai, and Maui (Giambelluca *et al.* 1991, pp. 3–4; Hawaii Commission on Water Resource Management 2009a and 2009b). In 2006, Maui County was designated a primary disaster area because of a severe drought from April to September 2006 (Pacific Disaster Center, 2010). It is suggested that *Festuca molokaiensis,* a purported annual plant, has not been observed at its known location in recent years due to drought conditions on Molokai (Oppenheimer 2011, pers. comm.). Drought also leads to an increase in the number of forest and brush fires (Giambelluca *et al.* 1991, p. v), causing a reduction of native plant cover and habitat (D'Antonio and Vitousek 1992, pp. 77–79) and a reduction in availability of host plants for the three tree snails. Recent episodes of drought have also driven axis deer farther into urban and forested areas for food, increasing their negative impacts to native vegetation from herbivory and trampling (see ''Disease and Predation,'' below) (Waring 1996, in litt., p. 5; Nishibayashi 2001, in litt.).

Habitat Destruction and Modification by Climate Change

Climate change will be a particular challenge for the conservation of biodiversity because the introduction and interaction of additional stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah *et al.* 2005, p. 4). The magnitude and intensity of the impacts of global climate change and increasing temperatures on native Hawaiian ecosystems are unknown. Currently, there are no climate change studies that specifically address impacts to the Maui Nui ecosystems discussed here or the 40 species proposed or reevaluated for listing that are associated with these ecosystems. Based on the best available information, climate change impacts could lead to the loss of native species that comprise the communities in which the 40 species occur (Pounds *et al.* 1999, pp. 611–612; Still *et al.* 1999, p. 610; Benning *et al.* 2002, pp. 14,246–14,248; Allen *et al.* 2010, pp. 660–662; Sturrock *et al.* 2011, p. 144; Towsend *et al.* 2011, p. 15; Warren 2011, pp. 221–226). In addition, weather regime changes (droughts, floods) will likely result from increased annual average temperatures related to more frequent El Niño episodes in Hawaii (Giambelluca *et al.* 1991, p. v). Future changes in precipitation and the forecast of those changes are highly uncertain because they depend, in part, on how the El Niño-La Niña weather cycle (a disruption of the ocean atmospheric system in the tropical Pacific having important global consequences for weather and climate) might change (State of Hawaii 1998, pp. 2–10). The 40 species proposed or reevaluated for listing may be especially vulnerable to extinction due to anticipated environmental changes that may result from global climate change, due to their small population size and highly restricted ranges. Environmental changes that may affect these species are expected to include habitat loss or alteration and changes in disturbance regimes (e.g., storms and hurricanes).

Climate Change and Ambient Temperature

The average ambient air temperature (at sea level) is projected to increase by about 4.1 degrees Fahrenheit (°F) (2.3 °Centigrade (C)) with a range of 2.7 °F to 6.7 °F (1.5 °C to 3.7 °C) by 2100 worldwide (Intergovernmental Panel on Climate Change (IPCC) 2007). These changes would increase the monthly average temperature of the Hawaiian Islands from the current value of 74 °F (23.3 °C) to between 77 °F to 86 °F (25 °C to 30 °C). Historically, temperature has been rising over the last 100 years with the greatest increase after 1975 (Alexander *et al.* 2006, pp. 1–22; Giambelluca *et al.* 2008, p. 1). The rate of increase at low elevation (0.16 °F; 0.09 °C) per decade is below the observed global temperature rise of 0.32 °F (0.18 °C) per decade (IPCC 2007). However, at high elevations, the rate of increase (0.48 °F (0.27 °C) per decade) greatly exceeds the global rate (IPCC 2007).

Overall, the daily temperature range in Hawaii is decreasing, resulting in a warmer environment, especially at higher elevations and at night. In the main Hawaiian Islands, predicted changes associated with increases in temperature include a shift in vegetation zones upslope, shift in animal species' ranges, changes in mean precipitation with unpredictable effects on local environments, increased occurrence of drought cycles, and increases in the intensity and number of hurricanes (Loope and Giambelluca 1998, pp. 514–515; U.S. Global Change Research Program (US–GCRP) 2009). In addition, weather regime changes (e.g., droughts, floods) will likely result from increased annual average temperatures related to more frequent El Niño episodes in Hawaii (Giambelluca *et al.* 1991, p. v). However, despite considerable progress made by expert scientists toward understanding the impacts of climate change on many of the processes that contribute to El Niño variability, it is not possible to say whether or not El Niño activity will be affected by climate change (Collins *et al.* 2010, p. 391).

The warming atmosphere is creating a plethora of anticipated and unanticipated environmental changes such as melting ice caps, decline in annual snow mass, sea-level rise, ocean acidification, increase in storm frequency and intensity (e.g., hurricanes, cyclones, and tornadoes), and altered precipitation patterns that contribute to regional increases in floods, heat waves, drought, and wildfires that also displace species and alter or destroy natural ecosystems (Pounds *et al.* 1999, pp. 611–612; IPCC 2007; Marshall *et al.* 2008, p. 273; U.S. Climate Change Science Program 2008; Flannigan *et al.* 2009, p. 483; US–GCRP 2009; Allen *et al.* 2010, pp. 660–662; Warren 2011, pp. 221–226). These

environmental changes are predicted to alter species migration patterns, lifecycles, and ecosystem processes such as nutrient cycles, water availability, and decomposition (IPCC 2007; Pounds *et al.* 1999, pp. 611–612; Sturrock *et al.* 2011, p. 144; Townsend *et al.* 2011, p. 15; Warren 2011, pp. 221–226). The species extinction rate is predicted to increase congruent with ambient temperature increase (US–GCRP 2009).

Climate Change and Precipitation

As global surface temperature rises, the evaporation of water vapor increases, resulting in higher concentrations of water vapor in the atmosphere, further resulting in altered global precipitation patterns (U.S. National Science and Technology Council (US–NSTC) 2008; US–GCRP 2009). While annual global precipitation has increased over the last 100 years, the combined effect of increases in evaporation and evapotranspiration is causing land surface drying in some regions leading to a greater incidence and severity of drought (US–NSTC 2008; US–GCRP 2009). Over the the past 100 years, the Hawaiian Islands have experienced an annual decline in precipitation of just over 9 percent (US–NSTC 2008). Other data on precipitation in Hawaii, which includes sea level precipitation and the added orographic effects, show a steady and significant decline of about 15 percent over the last 15 to 20 years (Chu and Chen 2005, p. 4,881–4,900; Diaz *et al.* 2005, pp. 1–3). Exact future changes in precipitation in Hawaii and the forecast of those changes are uncertain because they depend, in part, on how the El Niño-La Niña weather cycle might change (State of Hawaii 1998, pp. 2–10).

In the oceans around Hawaii, the average annual rainfall at sea level is about 25 in (63.5 cm). The orographic features of the islands increase this annual average to about 70 in (177.8 cm) but can exceed 240 in (609.6 cm) in the wettest mountain areas. Rainfall is distributed unevenly across each high island, and rainfall gradients are extreme (approximately 25 in (63.5 cm) per mile), creating both very dry and very wet areas. Global climate modeling predicts that, by 2100, net precipitation at sea level near the Hawaiian Islands will decrease in winter by about 4 to 6 percent, with no significant change during summer (IPCC 2007). Downscaling of global climate models indicates that wet-season (winter) precipitation will decrease by 5 percent to 10 percent, while dry-season (summer) precipitation will increase by about 5 percent (Timm and Diaz 2009, pp. 4,261–4,280). These data are also supported by a steady decline in stream flow beginning in the early 1940s (Oki 2004, p. 1). Altered seasonal moisture regimes can have negative impacts on plant growth cycles and overall negative impacts on natural ecosystems (US–GCRP 2009). Long periods of decline in annual precipitation result in a reduction in moisture availability, an increase in drought frequency and intensity, and a self-perpetuating cycle of nonnative plants, fire, and erosion (US–GCRP 2009; Warren 2011, pp. 221–226) (see ''Habitat Destruction and Modification by Fire,'' above). These impacts may negatively affect the 40 species proposed or reevaluted for listing here and the 10 ecosystems that support them.

Climate Change, and Tropical Cyclone Frequency and Intensity

A tropical cyclone is the generic term for a medium to large scale low-pressure system over tropical or subtropical waters with organized convection (i.e., thunderstorm activity) and definite cyclonic surface wind circulation (counterclockwise direction in the Northern Hemisphere) (Holland 1993, pp. 1–8). In the Northeast Pacific Ocean, east of the International Date Line, once a tropical cyclone reaches an intensity with winds of at least 74 mi per hour (33 m per second) it is considered a hurricane (Neumann 1993, pp. 1–2). Climate modeling has projected changes in tropical cyclone frequency and intensity due to global warming over the next 100 to 200 years (Vecchi and Soden 2007, pp. 1,068–1,069, Figures 2 and 3; Emanuel *et al.* 2008, p. 360, Figure 8; Yu *et al.* 2010, p. 1,371, Figure 14). The frequency of hurricanes generated by tropical cyclones is projected to decrease in the central Pacific (e.g., the main and Northwestern Hawaiian Islands) while storm intensity (strength) is projected to increase by a few percent over this period (Vecchi and Soden 2007, pp. 1,068–1,069, Figures 2 and 3; Emanuel *et al.* 2008, p. 360, Figure 8; Yu *et al.* 2010, p. 1,371, Figure 14). There are no climate model predictions for a change in the duration of Pacific tropical cyclone storm season (which generally runs from May through November).

In general, tropical cyclones with the intensities of hurricanes have been a rare occurrence in the Hawaiian Islands. From the 1800s until 1949, hurricanes were only rarely reported from ships in the area. Between 1950 and 1997, 22 hurricanes passed near or over the Hawaiian Islands, 5 of which caused serious damage (Businger 1998, in litt., pp. 1–2). Hurricanes may cause destruction of native vegetation and open the native canopy, allowing for invasion by nonnative plant species which compete for space, water, and nutrients, and alter basic water and nutrient cycling processes leading to decreased growth and reproduction for all 37 plant species proposed or reevaluated for listing in this proposed rule (see Table 3) (Perlman 1992, in litt., pp. 1–9; Kitayama and Mueller-Dombois 1995, p. 671). Hurricanes also constitute a threat to the three proposed tree snails (*Newcombia cumingi, Partulina semicarinata* and *P. variabilis*) as a result of their high winds that may dislodge snails from their host trees, thereby increasing the likelihood of mortality caused by falling vegetation and ground-based predators, such as nonnative rats (*Rattus* spp.) and snails (see ''Disease or Predation,'' below). Although there is historical evidence of only one hurricane that approached from the east and impacted the islands of Maui and Hawaii (Businger 1998, p.3), damage by future hurricanes could further decrease the remaining native plant-dominated habitat areas that support the 40 species proposed or reevaluated for listing in 10 of the described ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, subalpine, dry cliff, and wet cliff) (Bellingham *et al.* 2005, p. 681).

Climate Change, and Sea Level Rise and Coastal Inundation

On a global scale, sea level is rising as a result of thermal expansion of warming ocean water; the melting of ice sheets, glaciers, and ice caps; and the addition of water from terrestrial systems (Climate Institute 2011). Sea level rose at an average rate of 0.1 in (1.8 mm) per year between 1961 and 2003 (IPCC 2007, p. 5), and the predicted increase by the end of this century, without accounting for ice sheet flow, ranges from 0.6 ft to 2.0 ft (0.18 m to 0.6 m) (IPCC 2007, p. 13). When ice sheet and glacial melt are incorporated into models, the average estimated increase in sea level by the year 2100 is approximately 3 to 4 ft (0.9 to 1.2 m), with some estimates as high as 6.6 ft (2.0 m) to 7.8 ft (2.4 m) (Rahmstorf 2007, pp. 368–370; Pfeffer *et al.* 2008, p. 1,340; Fletcher 2009, p. 7; US–GCRP 2009, p. 18). There is no specific information available on how sea level rise and coastal inundation will impact the coastal ecosystems on Maui and Molokai where two of the proposed species, *Canavalia pubescens* and *Pittosporum halophilum,* are currently found.

Increased interannual variability of ambient temperature, precipitation, hurricanes, and sea level rise and inundation would provide additional stresses on the 10 ecosystems and each of the associated 40 species proposed or reevaluated for listing in this proposed rule because they are highly vulnerable to disturbance and related invasion of nonnative species. The probability of a species going extinct as a result of such factors increases when its range is restricted, habitat decreases, and population numbers decline (IPCC 2007, p. 8). The 40 species have limited environmental tolerances, ranges, restricted habitat requirements, small population sizes, and low numbers of individuals. Therefore, we would expect these species to be particularly vulnerable to projected environmental impacts that may result from changes in climate and subsequent impacts to their habitats (e.g., Loope and Giambelluca 1998, pp. 504–505; Pounds *et al.* 1999, pp. 611–612; Still *et al.* 1999, p. 610; Benning *et al.* 2002, pp. 14,246–14,248, Giambelluca and Luke 2007, pp. 13–18). Based on the above information, we conclude that changes in environmental conditions that result from climate change are likely to negatively impact these 40 species, and we do not anticipate a reduction in this potential threat in the near future.

Summary of Habitat Destruction and Modification

The threats to the habitats of each of the 40 species proposed or reevaluated for listing in this proposed rule are occurring throughout the entire range of each of the species. These threats include land conversion by agriculture and urbanization, nonnative ungulates and plants, fire, natural disasters, and climate change, and the interaction of these threats.

Development and urbanization of coastal and lowland dry habitat on Maui represents a serious and ongoing threat to approximately 20 individuals of *Canavalia pubescens* remaining at Palauea-Keahou.

The effects from ungulates are serious and ongoing because ungulates currently occur in the 10 ecosystems that support the 40 species proposed or reevaluated for listing in this rule. Ungulates directly threaten 35 of the 37 plant species, and 2 of the 3 snail species (*Partulina semicarinata* and *P. variabilis*) proposed or reevaluated for listing in this rule (see Table 3), because they cause: (1) Trampling and grazing that directly impact the plant communities, which include the plant species proposed or reevaluated for listing, and impact host plants used by *Partulina semicarinata* and *P. variabilis* for foraging, shelter, and reproduction; (2) increased soil disturbance, leading to mechanical damage to individuals of the plant species proposed or reevaluated for listing, and plants used by the two tree snails for foraging, shelter, and reproduction; and (3) creation of open, disturbed areas conducive to weedy plant invasion and establishment of alien plants from dispersed fruits and seeds, which results over time in the conversion of a community dominated by native vegetation to one dominated by nonnative vegetation (leading to all of the negative impacts associated with nonnative plants, listed below). These threats are expected to continue or increase without ungulate control or eradication.

Nonnative plants represent a serious and ongoing threat to 36 of the 40 species proposed or reevaluated for listing (35 plant species and the tree snail *Newcombia cumingi;* see Table 3) through habitat destruction and modification because they: (1) Adversely impact microhabitat by modifying the availability of light; (2) alter soil-water regimes; (3) modify nutrient cycling processes; (4) alter fire characteristics of native plant habitat, leading to incursions of fire-tolerant nonnative plant species into native habitat; and (5) outcompete, and possibly directly inhibit the growth of, native plant species. Each of these threats can convert native-dominated plant communities to nonnative plant communities (Cuddihy and Stone 1990, p. 74; Vitousek 1992, pp. 33–35). This conversion has negative impacts on, and threatens, 35 of the 37 plant species addressed here, as well as the native plant species upon which *Newcombia cumingi* depends for essential life-history needs.

The threat from fire to 13 of the 40 species proposed or reevaluated for listing in this proposed rule that depend on coastal, lowland dry, lowland mesic, montane dry, montane mesic, and dry cliff ecosystems (*Bidens campylotheca* ssp. *pentamera, Canavalia pubescens, Cyanea magnicalyx, C. mauiensis, C. obtusa, Festuca molokaiensis, Phyllostegia bracteata, P. haliakalae, Pittosporum halophilum, Pleomele fernaldii, Santalum haleakalae* var. *lanaiensis, Schiedea salicaria,* and *Stenogyne kauaulaensis;* see Table 3) is serious and ongoing because fire damages and destroys native vegetation, including dormant seeds, seedlings, and juvenile and adult plants. Many nonnative invasive plants, particularly fire-tolerant grasses, outcompete native plants and inhibit their regeneration (D'Antonio and Vitousek 1992, pp. 70, 73–74; Tunison *et al.* 2002, p. 122). Successive fires that burn farther and farther into native habitat destroy native plants and remove habitat for native species by altering microclimatic conditions and creating conditions favorable to alien plants. The threat from fire is unpredictable but increasing in frequency in ecosystems that have been invaded by nonnative, fire-prone grasses.

Natural disasters such as hurricanes adversely impact native Hawaiian terrestrial habitat including the 10 ecosystems addressed here and all 37 plant species proposed or reevaluated for listing in this rule because they open the forest canopy, modify available light, and create disturbed areas that are conducive to invasion by nonnative pest plants (Asner and Goldstein 1997, p. 148; Harrington *et al.* 1997, pp. 346–347). In addition, hurricanes threaten the three tree snail species in this proposed rule because strong winds and intense rainfall can dislodge individual snails from their host plants and deposit them on the ground where they may be crushed by falling debris or eaten by nonnative rats and snails. The impacts of hurricanes and other stochastic natural events can be particularly devastating to the 40 species proposed or reevaluated for listing because, as a result of other threats, they now persist in low numbers or occur in restricted ranges and are therefore less resilient to such disturbances, rendering them highly vulnerable to extirpation. Furthermore, a particularly destructive hurricane holds the potential of driving a localized endemic species to extinction in a single event. Hurricanes pose an ongoing and ever-present threat because they can happen at any time, although their occurrence is not predictable.

Landslides, rockfalls, treefalls, and flooding adversely impact 16 of the species proposed or reevaluated for listing (*Bidens campylotheca* ssp. *waihoiensis, Cyanea asplenifolia, C. duvalliorum, C. grimesiana* ssp. *grimesiana, C. horrida, C. magnicalyx, C. maritae, C. mauiensis, C. munroi, C. profuga, C. solanacea, Cyrtandra filipes, Schiedea jacobii, S. laui, Stenogyne kauaulaensis,* and *Wikstroemia villosa;* see Table 3) by destabilizing substrates, damaging and destroying individual plants, and altering hydrological patterns, which result in habitat destruction or modification and changes to native plant and animal communities. Drought threatens four plant species—*Cyanea horrida, Festuca molokaiensis, Schiedea jacobii,* and *Stenogyne kauaulaesis*—and all three tree snails—*Newcombia cumingi, Partulina*

semicarinata, and *P. variabilis*—by the loss or degradation of habitat due to death of individual native plants and host tree species, as well as an increase in forest and brush fires. These threats are serious and have the potential to occur at any time, although their occurrence is not predictable.

Changes in environmental conditions that may result from global climate change include increasing temperatures, decreasing precipitation, increasing storm intensities, and sea level rise and coastal inundation. The consequent impacts on the 40 species proposed or reevaluated for listing here are related to changes in microclimatic conditions in their habitats. These changes may lead to the loss of native species due to direct physiological stress, the loss or alteration of habitat, or changes in disturbance regimes (e.g., droughts, fire, storms, and hurricanes). Because the specific and cumulative effects of climate change on the 40 species are presently unknown, we are not able to determine the magnitude of this possible threat with confidence.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Plants

We are not aware of any threats to the 37 plant species addressed in this proposed rule that would be attributed to overutilization for commercial, recreational, scientific, or educational purposes.

Tree Snails

Tree snails can be found around the world in tropical and subtropical regions and have been valued as collectibles for centuries. Evidence of tree snail trading among prehistoric Polynesians was discovered by a genetic characterization of the enigmatic multi-archipelagic distribution of the Tahitian endemic *Partula hyalina* and related taxa (Lee *et al.* 2007, pp. 2,907, 2,910). In their study, Lee *et al.* (2007, pp. 2,908–2,910) found evidence that *Partula hyalina* had been traded as far away as Mangaia in the Southern Cook Islands, a distance of over 500 mi (805 km). The endemic Hawaiian tree snails within the family Achatinellidae (subfamily Achatinellinae) were extensively collected for scientific as well as recreational purposes by Europeans in the 18th to early 20th centuries (Hadfield 1986, p. 322). During the 1800s, collectors observed 500 to 2,000 snails per tree, and sometimes collected over 4,000 snails in just several hours (Hadfield 1986, p. 322). We may infer that the repeated collections of hundreds to thousands of individuals at a time by early collectors resulted in decreased population sizes and reduction of reproduction potential due to the removal of potential breeding adults. The Achatinellinae do not reach reproductive age until nearly 10 years old, after which they produce only 4 to 6 offspring per year (Hadfield 2011, pers. comm.). The allure of tree snails persists to this day, and there is a market for rare tree snails that may serve as an incentive to collect them. A search of the Internet (e.g., eBay.com, google.com) reveals Web sites that offer Hawaiian tree snail shells for sale, including other species of the endemic Hawaiian tree snail genus *Partulina.* Based on the history of collection of endemic Hawaiian tree snails, the market for Hawaiian tree snail shells, and the vulnerability of the small populations of *Newcombia cumingi, Partulina semicarinata,* and *P. variabilis* to the negative impacts of any collection, we consider the potential overcollection of these three Hawaiian tree snails to pose a serious and ongoing threat, because it can occur at any time, although its occurrence is not predictable.

Summary of Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We have no evidence to suggest that overutilization for commercial, recreational, scientific, or educational purposes poses a threat to any the 37 plant species proposed or reevaluated for listing. We consider the three species of tree snails vulnerable to the impacts of overutilization due to collection for trade or market. Based on the history of collection of endemic Hawaiian tree snails, the market for Hawaiian tree snail shells, and the inherent vulnerability of the small populations of *Newcombia cumingi, Partulina semicarinata,* and *P. variabilis* to the removal of breeding adults, we consider collection to pose a serious and ongoing threat to these species.

C. Disease or Predation

Disease

We are not aware of any threats to the 37 plant species addressed in this proposed rule that would be attributable to disease. Disease is a potential threat to the three tree snails proposed in this rule, *Newcombia cumingi, Partulina semicarinata,* and *P. variabilis;* evidence for this is based on attempts to raise these species in captivity. Due to the extremely low numbers and threat of extinction of Hawaiian tree snails in the wild, captive breeding of over 20 species has been implemented over the past decade. Hadfield (2010, pers. comm.) notes that individuals of *Newcombia cumingi* do not survive long in captivity, and individuals of *Partulina* spp. sometimes die off for unknown reasons (Hadfield 2011, pers. comm.). According to Hadfield (2011, pers. comm.), the London Zoo found evidence of protozoan presence in a non-Hawaiian species of *Partulina,* which is indicative of disease. Hadfield (2011, pers. comm.) also suggests there is a negative correlation between reproductive potential in Hawaiian tree snails and time in captivity, likely due to inbreeding depression or environmental conditions, including disease.

Because we have no evidence that disease may be impacting natural populations of the three tree snail species, we cannot conclude that this threat may have contributed to the current population status of *Newcombia cumingi, Partulina semicarinata,* and *P. variabilis* such that listing of any of the three species would be warranted based on this factor. However, we note that disease is a potential threat to captive bred Hawaiian tree snails and may be of particular concern for *Newcombia cumingi,* which is not successfully surviving or reproducing in captivity, potentially due to disease, and is only known from nine individuals in one location in the wild. Recovery of this species will likely depend on successful captive propagation and eventual translocation to protected sites in the wild.

Predation and Herbivory

Hawaii's plants and animals evolved in nearly complete isolation from continental influences. Successful colonization of these remote volcanic islands was infrequent, and many organisms never succeeded in establishing populations. As an example, Hawaii lacks any native ants or conifers, has very few families of birds, and has only a single extant native land mammal, a bat (Loope 1998, p. 748). In the absence of any grazing or browsing mammals, plants that became established did not need mechanical or chemical defenses against mammalian herbivory such as thorns, prickles, and production of toxins. As the evolutionary pressure to either produce or maintain such defenses was lacking, Hawaiian plants either lost or never developed these adaptations (Carlquist 1980, p. 173). Likewise native Hawaiian birds and insects experienced no evolutionary pressure to develop anti-predator mechanisms against mammals or invertebrates that were not

historically present on the island. The native flora and fauna of the islands are thus particularly vulnerable to the impacts of introduced nonnative species, as discussed below.

Introduced Ungulates

In addition to the habitat impacts discussed above (see ''Habitat Destruction and Modification by Introduced Ungulates'' under Factor A), introduced ungulates threaten the following 35 plant species in this proposal by grazing and browsing individual plants (this information is also presented in Table 3): *Bidens campylotheca* ssp. *pentamera* (pigs, goats, and axis deer), *B. campylotheca* ssp. *waihoiensis* (pigs, goats, and axis deer), *B. conjuncta* (pigs and goats), *Calamagrostis hillebrandii* (pigs), *Canavalia pubescens* (pigs, goats, cattle, and axis deer), *Cyanea asplenifolia* (pigs, goats, cattle, and axis deer), *C. duvalliorum* (pigs), *C. grimesiana* ssp. *grimesiana* (pigs, goats, and axis deer), *C. horrida* (pigs), *C. kunthiana* (pigs), *C. magnicalyx* (pigs), *C. maritae* (pigs), *C. mauiensis* (pigs), *C. munroi* (goats and axis deer), *C. obtusa* (pigs, goats, cattle, and axis deer), *C. profuga* (pigs and goats), *C. solanacea* (pigs and goats), *Cyrtandra ferripilosa* (pigs and goats), *C. filipes* (pigs, goats, and axis deer), *C. oxybapha* (pigs, goats, and cattle), *Festuca molokaiensis* (goats), *Geranium hanaense* (pigs), *G. hillebrandii* (pigs), *Mucuna sloanei* var. *persericea* (pigs and cattle), *Myrsine vaccinioides* (pigs), *Peperomia subpetiolata* (pigs), *Phyllostegia bracteata* (pigs and cattle), *P. haliakalae* (cattle), *P. pilosa* (pigs and goats), *Pittosporum halophilum* (pigs), *Pleomele fernaldii* (axis deer and mouflon), *Santalum haleakalae* var. *lanaiense* (pigs, goats, axis deer, and mouflon), *Schiedea jacobii* (goats, cattle, and axis deer), *S. salicaria* (goats, cattle, and axis deer), and *Wikstroemia villosa* (pigs).

We have direct evidence of ungulate damage to some of these species, but for many, due to their remote locations or lack of study, ungulate damage is presumed based on the known presence of these introduced ungulates in the areas where these species occur and the results of studies conducted in Hawaii and elsewhere (Diong 1982, p. 160). For example, in a study conducted by Diong (1982, p. 160) on Maui, feral pigs were observed browsing on young shoots, leaves, and fronds of a wide variety of plants, of which over 75 percent were endemic species. A stomach content analysis in this study showed that 60 percent of the pigs' food source consisted of the endemic *Cibotium* (hapuu, tree fern). Pigs were observed to fell plants and remove the bark from native plant species within the genera *Cibotium, Clermontia, Coprosma, Hedyotis, Psychotria,* and *Scaevola,* resulting in larger trees being killed over a few months of repeated feeding (Diong 1982, p. 144). Beach (1997, pp. 3–4) found that feral pigs in Texas spread disease and parasites, and their rooting and wallowing behavior led to spoilage of watering holes and loss of soil through leaching and erosion. Rooting activities also decreased the survivability of some plant species through disruption at root level of mature plants and seedlings (Beach 1997, pp. 3–4; Anderson *et al.* 2007, pp. 2–3). In Hawaii, pigs dig up forest ground cover consisting of delicate and rare species of orchids, ferns, mints, lobeliads, and other taxa, including roots, tubers, and rhizomes (Stone and Anderson 1988, p. 137). In addition, there are direct observations of pig herbivory on four of the plant species proposed for listing in this rule, including *Cyanea magnicalyx* (PEPP 2010, p. 49), *C. maritae* (PEPP 2010, p. 50), *Peperomia subpetiolata* (PEPP 2010, p. 97), and *Phyllostegia pilosa* (PEPP 2009, p. 93). As pigs occur in 10 ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, subalpine, dry cliff, and wet cliff) on Molokai and Maui, the results of the studies described above suggest that pigs can also alter these ecosystems and directly damage or destroy native plants.

Feral goats thrive on a variety of food plants, and are instrumental in the decline of native vegetation in many areas (Cuddihy and Stone 1990, p. 64). Feral goats trample roots and seedlings, cause erosion, and promote the invasion of alien plants. They are able to forage in extremely rugged terrain and have a high reproductive capacity (Clarke and Cuddihy 1980, p. C–20; van Riper and van Riper 1982, pp. 34–35; Tomich 1986, pp. 153–156; Cuddihy and Stone 1990, p. 64). Goats were observed to browse on native plant species in the following genera: *Argyroxiphium, Canavalia, Plantago, Schiedea,* and *Stenogyne* (Cuddihy and Stone 1990, p. 64). A study on the island of Hawaii demonstrated that *Acacia koa* seedlings are unable to survive due to browsing and grazing by goats (Spatz and Mueller-Dombois 1973, p. 874). If goats are maintained at constantly high numbers, mature trees will eventually die, and with them the root systems that support suckers and vegetative reproduction. One study demonstrated a positive height-growth response of *Acacia koa* suckers to the 3-year exclusion of goats (1968–1971) inside a fenced area, whereas suckers were similarly abundant, but very small, outside of the fenced area (Spatz and Mueller-Dombois 1973, p. 873). Another study at Puuwaawaa on the island of Hawaii demonstrated that prior to management actions in 1985, regeneration of endemic shrubs and trees in the goat-grazed area was almost totally lacking, contributing to the invasion of the forest understory by exotic grasses and weeds. After the removal of grazing animals in 1985, *A. koa* and *Metrosideros* spp. seedlings were observed germinating by the thousands (HDLNR 2002, p. 52). Based on a comparison of fenced and unfenced areas, it is clear that goats can devastate native ecosystems (Loope *et al.* 1988, p. 277). As goats occur in nine of the described ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff), on Molokai, Lanai, and Maui, the results of the studies described above suggest that goats can also alter these ecosystems and directly damage or destroy native plants.

Axis deer were introduced to Molokai in 1868, Lanai in 1920, and Maui in 1959. Most of the available information on axis deer in the Hawaiian Islands concerns observations and reports from the island of Maui. On Maui, axis deer were introduced as a game animal, but their numbers have steadily increased, especially in recent years on Haleakala (Luna 2003, p. 44). During the 4-year El Niño drought from 1998 through 2001, Maui experienced an 80 to 90 percent decline in shrub and vine species caused by deer browsing and girdling of young saplings. High mortality of rare and native plant species was observed (Medeiros 2010, pers. comm.). Axis deer consume progressively less palatable plants until no edible vegetation is left (Hess 2008, p. 3). Axis deer are highly adaptable to changing conditions, and are characterized as ''plastic'' (meaning flexible in their behavior) by Ables (1977, cited in Anderson in litt. 1999, p. 5). They exhibit a high degree of opportunism regarding their choice of forage (Dinerstein 1987, cited in Anderson 1999, p. 5) and can be found in all but the highest elevation ecosystems (subalpine and alpine) and montane bogs, according to Medeiros (2010, pers. comm.).

Axis deer on Maui follow a cycle of grazing and browsing in open lowland grasslands during the rainy season (November–March) and then migrate to the lava flows of montane mesic forests during the dry summer months to graze

and browse native plants (Medeiros 2010, pers. comm.). Axis deer favor the native plants *Abutilon menziesii* (an endangered species), *Erythrina sandwicensis* (wiliwili), and *Sida fallax* (ilima) (Medeiros 2010, pers. comm.). During the driest months of summer (July-August), axis deer can be found along Maui's coastal roads as they search for food. Hunting pressure appears to drive the deer into native forests, particularly the lower rainforests up to 4,000 to 5,000 ft (1,220 and 1,525 m) in elevation (Medeiros 2010, pers. comm.), and according to Kessler and Hess (2010, pers. comms.) axis deer can be found up to 9,000 ft (2,743 m) elevation.

Other native Hawaiian plant species have been reported as grazed and browsed by axis deer. For example, on Lanai, grazing by axis deer has been reported as a major threat to the endangered *Gardenia brighamii* (nau) (Mehrhoff 1993, p. 11), and on Molokai, browsing by axis deer has been reported on *Erythrina sandwicensis* and *Nototrichium sandwicense* (kului) (Medeiros *et al.* 1996, pp. 11, 19). Swedberg and Walker (1978, cited in Anderson 2003, pp. 124–125) reported that in the upper forests of Lanai, the native plants *Osteomeles anthyllidifolia* (uulei) and *Leptecophylla tameiameiae* (pukiawe) comprised more than 30 percent of axis deer rumen volume. Other native plant species consumed by axis deer include *Abutilon menziesii* and *Geranium multiflorum* (nohoanu) (both endangered species); the species *Bidens campylotheca* ssp. *pentamera* and *B. campylotheca* ssp. *waihoiensis,* which are proposed for listing in this rule; and *Achyranthes splendens* (NCN), *Chamaesyce lorifolia* (akoko), *Diospyros sandwicensis* (lama), *Lipochaeta rockii* var. *dissecta* (nehe), *Osmanthus sandwicensis* (ulupua), *Panicum torridum* (kakonakona), and *Santalum ellipticum* (laau ala) (Anderson 2002, poster; Perlman 2009c, in litt., pp. 4–5). As axis deer occur in nine of the described ecosystems on Molokai, Lanai, and Maui (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff), the results from the studies above, in addition to the direct observations from field biologists, suggest that axis deer can also alter these ecosystems and directly damage or destroy native plants.

Mouflon sheep graze native vegetation, trample undergrowth, spread weeds, and cause erosion. On the island of Hawaii, mouflon browsing led to the decline in the largest population of the endangered *Argyroxiphium kauense* (kau silversword, Mauna Loa silversword, or ahinahina) located on the former Kahuku Ranch, reducing it from a ''magnificent population of several thousand'' (Degener *et al.* 1976, pp. 173–174) to fewer than 2,000 individuals (unpublished data in Powell 1992, in litt., p. 312) over a period of 10 years (1974–1984). The native tree *Sophora chrysophylla* is also a preferred browse species for mouflon. According to Scowcroft and Sakai (1983, p. 495), mouflon eat the shoots, leaves, flowers, and bark of this species. Bark stripping on the thin bark of a young tree is potentially lethal. Mouflon are also reported to strip bark from *Acacia koa* trees (Hess 2008, p. 3) and to seek out the threatened plant *Silene hawaiiensis* (Benitez *et al.* 2008, p. 57). In the Kahuku section of Hawaii Volcanoes National Park, mouflon sheep jumped the park boundary fence and reduced one population of *S. hawaiiensis* to half its original size over a 3-year period (Belfield and Pratt 2002, p. 8). Other native species browsed by mouflon include *Geranium cuneatum* ssp. *cuneatum* (hinahina, silver geranium), *G. cuneatum* ssp. *hypoleucum* (hinahina, silver geranium), and *Sanicula sandwicensis* (NCN) (Benitez *et al.* 2008, pp. 59, 61). On Lanai, mouflon sheep were once cited as one of the greatest threats to the endangered *Gardenia brighamii* (Mehrhoff 1993, p. 11), although fencing has now proven to be an effective mechanism against mouflon herbivory on this plant (Mehrhoff 1993, pp. 22–23). While mouflon sheep were introduced to the islands of Lanai and Hawaii as a managed game species, a private game ranch on Maui has added mouflon to its stock and it is likely that over time some individuals may escape (Hess 2010, pers. comm.; Kessler 2010, pers. comm.). As mouflon occur in seven of the described ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane wet, dry cliff, and wet cliff) on Lanai, the data from the studies above, in addition to direct observation of field biologists, suggest that mouflon can also alter these ecosystems and directly damage or destroy native plants.

Cattle, either feral or domestic, are considered one of the most important factors in the destruction of Hawaiian forests (Baldwin and Fagerlund 1943, pp. 118–122). Captain George Vancouver of the British Royal Navy is attributed with introducing cattle to the Hawaiian Islands in 1793 (Fischer 2007, p. 350) by way of a gift to King Kamehameha I on the island of Hawaii. Over time, cattle became established on all of the main Hawaiian Islands, and historically feral cattle were found on the islands of Kauai, Oahu, Molokai, Maui, Kahoolawe, and Hawaii. Currently, feral cattle are found only on Maui and Hawaii, typically in accessible forests and certain coastal and lowland leeward habitats (Tomich 1986, pp. 140–144). In Hawaii Volcanoes National Park on the island of Hawaii, Cuddihy reported that there were twice as many native plant species as nonnatives found in areas that had been fenced to exclude feral cattle, whereas on the adjacent, nonfenced cattle ranch, there were twice as many nonnative plant species as natives (Cuddihy 1984, pp. 16, 34). Skolmen and Fujii (1980, pp. 301–310) found that *Acacia koa* seedlings were able to reestablish in a moist *Acacia koa-Metrosideros polymorpha* forest on Hawaii Island after the area was fenced to exclude feral cattle (Skolmen and Fujii 1980, pp. 301–310). Cattle eat native vegetation, trample roots and seedlings, cause erosion, create disturbed areas conducive to invasion by nonnative plants, and spread seeds of nonnative plants in their feces and on their bodies. As feral cattle occur in five of the described ecosystems (lowland dry, lowland mesic, lowland wet, montane mesic, and montane wet) on Maui, the results from the above studies, in addition to the direct observations from field biologists, suggest that feral cattle can alter these ecosystems and directly damage or destroy native plants.

The blackbuck antelope (*Antelope cervicapra*) is an endangered antelope from India brought to a private game reserve on Molokai about 10 years ago from an Indian zoo (Kessler 2010, pers. comm.). According to Kessler (2010, pers. comm.), at some time in the last 10 years, a few individuals escaped from the game reserve and established a wild population of an unknown number of individuals on the lower, dry plains of western Molokai. Blackbuck primarily use grassland habitat for grazing. In India, foraging consumption and nutrient digestibility are high in the moist winter months and low in the dry summer months (Jhala 1997, pp. 1,348; 1,351). Although most plant species are grazed intensely when they are green, some are grazed only after they are dry (Jhala 1997, pp. 1,348; 1,351). While the habitat effects from the blackbuck antelope are unknown at this time, we consider these ungulates a potential threat to native plant species, including the 10 plant species found on Molokai (Kessler 2010, pers. comm.), because blackbuck antelope have foraging and grazing habits similar to feral goats, cattle, axis deer and mouflon.

Other Introduced Vertebrates

Rats

There are three species of introduced rats in the Hawaiian Islands. Studies of Polynesian rat (*Rattus exulans*) DNA suggest they first appeared in the Hawaiian Islands along with emigrants from the Marquesas about 400 A.D., with a second interaction around 1100 A.D (Ziegler 2002, p. 315). The black rat (*R. rattus*) and the Norway rat (*R. norvegicus*) most likely arrived in the Hawaiian Islands more recently, as stowaways on ships sometime in the late 19th century (Atkinson and Atkinson 2000, p. 25). The Polynesian rat and the black rat are primarily found in the wild, in dry to wet habitats, while the Norway rat is typically found in manmade habitats such as urban areas or agricultural fields (Tomich 1986, p. 41). The black rat is widely distributed among the main Hawaiian Islands and can be found in a broad range of ecosystems up to 9,744 ft (2,970 m), but it is most common at low-to mid-elevations (Tomich 1986, pp. 38–40). While Sugihara (1997, p. 194) found both the black and Polynesian rats up to 6,972-ft (2,125-m) elevation on Maui, the Norway rat was not seen at the higher elevations in his study. Rats occur in 9 of the described ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff), and predation by rats threatens 23 of the 37 plant species, and all 3 species of tree snails, proposed or reevaluated for listing (see Table 3).

Rat Impacts on Plants

Rats impact native plants by eating fleshy fruits, seeds, flowers, stems, leaves, roots, and other plant parts (Atkinson and Atkinson 2000, p. 23), and can seriously affect regeneration. Research on rats in forests in New Zealand has also demonstrated that, over time, differential regeneration as a consequence of rat predation may alter the species composition of forested areas (Cuddihy and Stone 1990, pp. 68–69). Rats have caused declines or even the total elimination of island plant species (Campbell and Atkinson 1999, cited in Atkinson and Atkinson 2000, p. 24). In the Hawaiian Islands, rats may consume as much as 90 percent of the seeds produced by some trees, or in some cases prevent the regeneration of forest species completely (Cuddihy and Stone 1990, pp. 68–69). All three species of rat (black, Norway, and Polynesian) have been reported to seriously threaten many endangered and threatened Hawaiian plants (Stone 1985, p. 264; Cuddihy and Stone 1990, pp. 67–69). Plants with fleshy fruits are particularly susceptible to rat predation, including some of the species proposed or reevaluated for listing here. For example, the fruits of plants in the bellflower family (e.g., *Cyanea* spp.) appear to be a target of rat predation (Cuddihy and Stone 1990, pp. 67–69). In addition to all 12 species of *Cyanea* (*Cyanea asplenifolia, C. duvalliorum, C. grimesiana* ssp. *grimesiana, C. horrida, C. kunthiana, C. magnicalyx, C. maritae, C. mauiensis, C. munroi, C. obtusa, C. profuga,* and *C. solanacea*), 11 other species of plants proposed or reevaluated for listing here are threatened by rat predation, including *Bidens campylotheca* ssp. *pentamera, B. campylotheca* ssp. *waihoiensis, B. conjucta* (Bily *et al.* 2003, pp. 1–16), *Mucuna sloanei* var. *persericea, Myrsine vaccinioides, Peperomia subpetiolata, Pittosporum halophilum, Pleomele fernaldii, Santalum haleakalae* var. *lanaiense, Schiedea laui,* and *Wikstroemia villosa* (HBMP 2008; Harbaugh *et al.* 2010, p. 835). As rats occur in nine of the described ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff) on Molokai, Lanai, and Maui, the results from the above studies, in addition to direct observations from field biologists, suggest that rats can directly damage or destroy native plants.

Rat Impacts on Tree Snails

Rats (*Rattus* spp.) have been suggested as the invasive animal responsible for likely the greatest number of animal extinctions on islands throughout the world, including extinctions of various snail species (Towns *et al.* 2006, p. 88). In the Hawaiian Islands, rats are known to prey upon endemic arboreal snails (Hadfield *et al.* 1993, p. 621). In the Waianae Mountains of Oahu, Meyer and Shiels (2009, p. 344) found shells of the endemic Oahu tree snail (*Achatinella mustelina*) with characteristic rat damage (e.g., damage to the shell opening and cone tip), but noted that rat crushing of shells may limit the ability to adequately quantify the threat. On Lanai, Hobdy (1993, p. 208) found numerous shells of *Partulina variabilis,* one of the tree snails proposed for listing, on the ground with damage characteristic of rat predation. Likewise in a 2005 survey on Lanai, Hadfield (2005, pp. 3–4) found shells of *Partulina semicarinata* on the ground with characteristic rat damage; *P. semicarinata* is also proposed for listing. Surveys in 2009 led Hadfield and colleagues to conclude that populations of *Partulina redfieldi* (a tree snail endemic to lowland and montane forests on Molokai) had declined by 85 percent since 1995 due to rat predation (Hadfield and Saufler 2009, p. 1). On Maui, rat predation on the tree snail species *Newcombia cumingi,* which is proposed for listing, has led to a decrease in the number of individuals (Hadfield 2006 in litt., p. 3; 2007, p. 9; 2011, pers. comm.). As rats are found in nine of the described ecosystems on Lanai and Maui (the islands on which *Newcombia cumingi, Partulina semicarinata,* and *P. variabilis* occur), including the three ecosystems (lowland wet, montane wet, and wet cliff) in which the three tree snails proposed for listing are found, the results of the above studies, in addition to direct observations from field biologists, suggest that rats directly damage or destroy Hawaiian tree snails and are a serious and ongoing threat to the three tree snail species proposed for listing here.

Jackson's Chameleon

Several dozen Jackson's chameleons (*Chamaeleo jacksonii*), native to Kenya and Tanzania, were introduced to Hawaii in the early 1970s through the pet trade (Holland *et al.* 2010, p. 1,438). Inter-island transport of Jackson's chameleons for the pet trade was unrestricted until 1997, when they were classified as ''injurious wildlife,'' and export as well as inter-island transport was prohibited (State of Hawaii 1996, H.A.R. 13–124–3; Holland *et al.* 2010, p. 1,439). Currently, there are established populations on all of the main Hawaiian Islands, with the greatest number of individuals on the islands of Hawaii, Maui, and Oahu (Holland *et al.* 2010, p. 1,438). Jackson's chameleons prey on native insects and tree snails, including the endangered Oahu tree snail (*Achatinella mustelina*) (Holland *et al.* 2010, p. 1,438; Hadfield 2011, pers. comm.). Jackson's chameleons may be expanding their range in the wild from low-elevation to higher elevation pristine native forest, which may result in catastrophic impacts to native ecosystems and the species supported by those ecosystems, including the lowland wet ecosystems on Maui and Lanai that support the tree snails *Newcombia cumingi, Partulina semicarinata,* and *P. variabilis,* and the montane wet and wet cliff ecosystems on Lanai that support *P. semicarinata* and *P. variabilis.* Because Jackson's chameleons are likely found in, or expanding their range into, all of the ecosystems in which the three tree snails proposed for listing are found, and are known to prey on tree snails, predation by Jackson's chameleon is a

potentially serious threat to the tree snails *Newcombia cumingi, Partulina semicarinata,* and *P. variabilis.*

Invertebrates

Nonnative Slugs

Predation by nonnative snails and slugs adversely impacts 26 of the 37 plant species (*Bidens campylotheca* ssp. *waihoiensis, B. conjuncta, Cyanea asplenifolia, C. duvalliorum, C. grimesiana* ssp. *grimesiana, C. horrida, C. kunthiana, C. magnicalyx, C. maritae, C. mauiensis, C. munroi, C. obtusa, C. profuga, C. solanacea, Cyrtandra filipes, Geranium hillebrandii, Myrsine vaccinioides, Peperomia subpetiolata, Phyllostegia bracteata, P. haliakalae, P. pilosa, Santalum haleakalae* var. *lanaiense, Schiedea jacobii, S. laui, Stenogyne kauaulaensis,* and *Wikstroemia villosa;* see Table 3) proposed or reevaluated for listing here through mechanical damage, destruction of plant parts, and mortality (Mitchell *et al.* 2005; Joe 2006, p. 10; HBMP 2008; PEPP 2008, pp. 48–49, 52–53, 57, 70; PEPP 2010, pp. 1–121). On Oahu, slugs have been reported to destroy *Cyanea calycina* and *Cyrtandra kaulantha* in the wild, and have been observed eating leaves and fruit of wild and cultivated individuals of *Cyanea* (Mehrhoff 1995, in litt.; U.S. Army Garrison 2005, pp. 3–34, 3–51). In addition, slugs have damaged individuals of other *Cyanea* and *Cyrtandra* species in the wild (Wood 2001, in litt.; Sailer and Kier 2002, in litt., p. 3; PEPP 2007, p. 38; PEPP 2008, pp. 23, 49, 52–53, 57).

Little is known about predation of certain rare plants by slugs; however, information in the U.S. Army's 2005 ''Status Report for the Makua Implementation Plan'' indicates that slugs can be a threat to all species of *Cyanea* (U.S. Army Garrison 2005, p. 3–51). Research investigating slug herbivory and control methods shows that slug impacts on seedlings of *Cyanea* spp. results in up to 80 percent seedling mortality (U.S. Army Garrison 2005, p. 3–51). Slug damage has also been reported on other Hawaiian plants including *Argyroxiphium grayanum* (greensword), *Alsinidenron* sp., *Hibiscus* sp., *Schiedea kaalae* (maolioli), *Solanum sandwicense* (popolo aiakeakua), and *Urera* sp. (Gagne 1983, p. 190–191; Sailer, pers. comm. cited in Joe 2006, pp. 28–34).

Joe and Daehler (2008, p. 252) found that native Hawaiian plants are more vulnerable to slug damage than nonnative plants. In particular, they found that the individuals of the endangered plants *Cyanea superba* and *Schiedea obovata* had 50 percent higher mortality when exposed to slugs when compared to individuals of the same species that were protected within slug exclosures. As slugs are found in eight of the described ecosystems (lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff) on Molokai, Lanai, and Maui, the data from the above studies, in addition to direct observations from field biologists, suggest that slugs can directly damage or destroy native plants.

Nonnative Snails

Several species of nonnative snails have been inadvertently introduced to Hawaii. However, in 1955, the rosy wolf snail (*Euglandina rosea*) was purposely introduced to Hawaii from Florida in an attempt to control another nonnative, the giant African snail (*Achatina fulica*). The giant African snail is commonly found in Honolulu gardens and is one of the largest snails in the world, in addition to being recognized as one of the world's most damaging pests to crop plants (Peterson 1957, pp. 643–658; Stone and Anderson 1988, p. 134). The rosy wolf snail is now found on all of the main Hawaiian Islands and has expanded its range on those islands to include cooler, mid-elevation forests where many endemic tree snails are found. This nonnative snail is likely responsible for the decline and extinction of many of Hawaii's native tree snails (Stone and Anderson 1988, p. 134; Hadfield *et al.* 1993, p. 621; Hadfield 2010a, in litt.). In 1979, the rosy wolf snail decimated a population of the endangered Oahu tree snail (*Achatinella mustelina*), as well as all other tree snails at the same study site (Hadfield and Mountain 1980, p. 357). According to Hadfield (2007, pp. 6–9), the rosy wolf snail is currently the greatest threat to the only known population of *Newcombia cumingi,* proposed for listing here. In addition, the nonnative garlic snail (*Oxychilus alliarius*), a predator on the smaller achatinellid snails, may be a potential threat to *Newcombia cumingi* (Hadfield 2010a, in litt.). Hadfield (2007, pp. 6–9) reported finding many shells of the garlic snail within the habitat of *N. cumingi* on Maui. As the rosy wolf snail can be found in three of the described ecosystems (lowland wet, montane wet, and wet cliff) on Lanai and Maui (the islands on which *N. cumingi, Partulina semicarinata,* and *P. variabilis* occur), the results from the studies above, in addition to observations by field biologists, suggest that the rosy wolf snail has the potential to severely impact the three tree snails proposed for listing in this rule.

Nonnative Flatworms

The extinction of native land snails on several Pacific Islands has been attributed to the terrestrial flatworm *Platydemus manokwari* (Sugiura 2010, p. 1,499). This flatworm has decimated populations of native tree snails on Guam (Hopper and Smith 1992, pp. 78, 82–83). In the Hawaiian Islands, *Platydemus manokwari* has been found on the islands of Oahu and Hawaii, and is likely on all of the main islands (Miller 2011, pers. comm.). Although *P. manokwari* has not been reported from the same locations as the three tree snails proposed for listing, it is a potential threat to these species because it likely co-occurs on the islands of Molokai, Lanai, and Maui, and it is a known predator on tree snails.

Summary of Disease or Predation

We are unaware of any information that indicates that disease is a threat to the 37 plant species. Disease is a potential threat to the three species of tree snails proposed for listing, as recovery of these species likely will include captive propagation and disease is suspected to be a cause of currently unsuccessful captive propagation of *Newcombia cumingi, Partulina semicarinata,* and *P. variabilis.* However, at this time, we have no evidence to suggest that disease is acting on the wild populations such that it may be considered a contributing factor that has led to their endangerment; therefore we cannot conclude that any of these three tree snails species is endangered because of disease.

We consider predation by nonnative animal species (pigs, goats, axis deer, mouflon sheep, cattle, rats, Jackson's chameleon, slugs, snails, and flatworms) to pose an ongoing threat to all 40 species proposed or reevaluated for listing throughout their ranges for the following reasons:

(1) Observations and reports have documented that pigs, goats, axis deer, mouflon sheep, and cattle browse and trample 35 of the 37 plant species (see Table 3), in addition to other studies demonstrating the negative impacts of ungulate browsing and trampling on native plant species of the islands (Spatz and Mueller-Dombois 1973, p. 874; Diong 1982, p. 160; Cuddihy and Stone 1990, p. 67).

(2) Nonnative rats and slugs cause mechanical damage to plants and destruction of plant parts (branches, fruits, and seeds), and are considered a threat to 30 of the 37 plant species proposed or reevaluated for listing (see

Table 3). All 40 species proposed or reevaluated for listing are impacted by either introduced ungulates, as noted in item 1, above, or nonnative rats and slugs, or both.

(3) Rat damage has been observed on shells of dead individuals of the tree snails *Partulina variabilis* and *P. semicarinata* on Lanai, as well as on other native tree snails on Oahu and Molokai, indicating rats are a likely cause of mortality of these species. Predation by rats has been linked with the dramatic declines of some populations of native tree snails (Hobdy 1993, p. 208; Hadfield and Saufler 2009, p. 1; Meyer and Shields 2009, p. 344). Rat predation has been documented on the tree snail species *Newcombia cumingi* (Hadfield 2006 in litt., p. 3; Hadfield 2007, p. 9; Hadfield 2010a, in litt.). Because rats are found in all of the ecosystems in which the three tree snails proposed for listing are found, and rats are known to prey on tree snails, we consider predation by rats to be a serious and ongoing threat to *Newcombia cumingi, Partulina semicarinata,* and *P. variabilis.*

(4) Jackson's chameleon, which preys on native insects and tree snails, has established populations in the wild on all the main Hawaiian Islands. Jackson's chameleon is likely found in, or is in the process of expanding its range to include, all of the ecosystems which support the three tree snails proposed for listing. Predation by this nonnative reptile is a potentially serious threat to *Newcombia cumingi, Partulina semicarinata,* and *P. variabilis.*

(5) Hawaiian tree snails are vulnerable to predation by the nonnative rosy wolf snail, which is found on all the main Hawaiian Islands and whose range likely overlaps that of the three tree snail species proposed for listing. We therefore consider *Newcombia cumingi, Partulina semicarinata,* and *P. variabilis* to be threatened by predation by the nonnative rosy wolf snail. In addition, the nonnative garlic snail may be a potential threat to the proposed *N. cumingi* because it is a known predator on smaller tree snails in the same family as *N. cumingi* and shells of the garlic snail have been found in *N. cumingi* habitat (Stone and Anderson 1988, p. 134; Hadfield *et al.* 1993, p. 621; Hadfield 2010a, in litt.).

(6) The nonnative flatworm, *Platydemus manokwari,* is a potential threat to all three species of tree snails proposed for listing (Hadfield 2010b, in litt.; Sugiura 2010, pp. 1,499–1,501) because this flatworm has decimated native tree snail populations on other Pacific Islands and likely occurs on all the main Hawaiian Islands, including the islands of Lanai and Maui, where the three tree snails are found.

These threats are serious and ongoing, act in concert with other threats to the species, and are expected to continue or increase in magnitude and intensity into the future without effective management actions to control or eradicate them. In addition, negative impacts to native Hawaiian plants on Molokai from grazing and browsing by the blackbuck antelope are likely should this nonnative ungulate increase in numbers and range on the island. The combined threat of ungulate, rat, and invertebrate predation on native Hawaiian flora and fauna suggests the need for immediate implementation of recovery and conservation methodologies.

D. The Inadequacy of Existing Regulatory Mechanisms

Inadequate Habitat Protection

Currently, there are no existing Federal, State, or local laws, treaties, or regulations that specifically conserve or protect the 40 species proposed or reevaluated for listing in this rule, or adequately address the threats described in this proposed rule. Although the State of Hawaii's Plant Extinction Prevention Program supports conservation of the plant species by securing seeds or cuttings from the rarest and most critically endangered native species for propagation, the program is non-regulatory and has not yet been able to directly address broad-scale threats to plants by invasive species.

Nonnative ungulates pose a major ongoing threat to 35 of the 37 plant species through destruction and degradation of terrestrial habitat, and through direct predation of 35 of the plant species (see Table 3). The State of Hawaii provides game mammal (feral pigs and goats, axis deer, and mouflon sheep) hunting opportunities on 15 State-designated public hunting areas on the islands of Molokai, Lanai, and Maui (State of Hawaii 1999, H.A.R. 13–123; HDLNR 2009, pp. 20–21). The State's management objectives for game animals range from maximizing public hunting opportunities (e.g., ''sustained yield'') in some areas to removal by State staff, or their designees, in other areas (State of Hawaii, H.A.R. 13–123). Thirty-four of the 37 plant species have populations in areas where terrestrial habitat may be manipulated for game enhancement and game populations are maintained at prescribed levels using public hunting (HBMP 2008; State of Hawaii, H.A.R. 13–123). Public hunting areas are not fenced, and game mammals have unrestricted access to most areas across the landscape, regardless of underlying land-use designation. While fences are sometimes built to protect areas from game mammals, the current number and locations of fences are not adequate to prevent habitat degradation and destruction for 37 of the 40 species, and the direct predation of 35 of the 37 plant species on Molokai, Lanai, and Maui (see Table 3).

The capacity of Federal and State agencies and their nongovernmental partners in Hawaii to mitigate the effects of introduced pests, such as ungulates and weeds, is limited due to the large number of taxa currently causing damage (Coordinating Group on Alien Pest Species (CGAPS) 2009). Many invasive weeds established on Molokai, Lanai, and Maui have currently limited but expanding ranges and are of concern. Resources available to reduce the spread of these species and counter their negative ecological effects are limited. Control of established pests is largely focused on a few invasive species that cause significant economic or environmental damage to public and private lands. Comprehensive control of an array of invasive pests and management to reduce disturbance regimes that favor certain invasive species remains limited in scope. If current levels of funding and regulatory support for invasive species control are maintained on Molokai, Lanai, and Maui, the Service expects existing programs to continue to exclude or, on a very limited basis, control invasive species only in high-priority areas. Threats from established pests (e.g., nonnative ungulates, weeds, and invertebrates) are ongoing and expected to continue into the future.

Inadequate Protection From Introduction of Nonnative Species

Currently, four agencies are responsible for inspection of goods arriving in Hawaii (CGAPS 2009). The Hawaii Department of Agriculture (HDOA) inspects domestic cargo and vessels and focuses on pests of concern to Hawaii, especially insects or plant diseases not yet known to be present in the State. The U.S. Department of Homeland Security-Customs and Border Protection (CBP) is responsible for inspecting commercial, private, and military vessels and aircraft and related cargo and passengers arriving from foreign locations. CBP focuses on a wide range of quarantine issues involving non-propagative plant materials (processed and unprocessed); wooden packing materials, timber, and products; internationally regulated commercial species under the Convention in

International Trade in Endangered Species (CITES); federally listed noxious seeds and plants; soil; and pests of concern to the greater United States, such as pests of mainland U.S. forests and agriculture. The U.S. Department of Agriculture-Animal and Plant Health Inspection Service-Plant Protection and Quarantine (USDA–APHIS–PPQ) inspects propagative plant material, provides identification services for arriving plants and pests, conducts pest risk assessments, trains CBP personnel, conducts permitting and preclearance inspections for products originating in foreign countries, and maintains a pest database that, again, has a focus on pests of wide concern across the United States (HDOA 2009). The Service inspects arriving wildlife products, enforces the injurious wildlife provisions of the Lacey Act (18 U.S.C. 42; 16 U.S.C. 3371 *et seq.*), and prosecutes CITES violations.

The State of Hawaii's unique biosecurity needs are not recognized by Federal import regulations. Under the USDA–APHIS–PPQ's commodity risk assessments for plant pests, regulations are based on species considered threats to the mainland United States and do not address many species that could be pests in Hawaii (Hawaii Legislative Reference Bureau (HLRB 2002; USDA–APHIS–PPQ 2010; CGAPS 2009). Interstate commerce provides the pathway for invasive species and commodities infested with non-federal quarantine pests to enter Hawaii. Pests of quarantine concern for Hawaii may be intercepted at Hawaiian ports by Federal agents but are not always acted on by them because these pests are not regulated under Federal mandates. Hence, Federal protection against pest species of concern to Hawaii has historically been inadequate. It is possible for the USDA to grant Hawaii protective exemptions under the ''Special Local Needs Rule,'' when clear and comprehensive arguments for both agricultural and conservation issues are provided; however, this exemption procedure operates on a case-by-case basis and is extremely time-consuming to satisfy. Therefore, that avenue may only provide minimal protection against the large diversity of foreign pests that threaten Hawaii.

Adequate staffing, facilities, and equipment for Federal and State pest inspectors and identifiers in Hawaii devoted to invasive species interdiction are critical biosecurity gaps (HLRB 2002; USDA–APHIS–PPQ 2010; CGAPS 2009). State laws have recently been passed that allow the HDOA to collect fees for quarantine inspection of freight entering Hawaii (e.g., Act 36 (2011) H.R.S. 150A–5.3). Legislation enacted in 2011 (H.B. 1568) requires commercial harbors and airports in Hawaii to provide biosecurity and to facilitate cargo inspections. The introduction of new pests to the State of Hawaii is a significant risk to federally listed species.

Nonnative Animal Species

Vertebrate Species

The State of Hawaii's laws prohibit the importation of all animals unless they are specifically placed on a list of allowable species (HLRB 2002; CGAPS 2010). The importation and interstate transport of invasive vertebrates is federally regulated by the Service under the Lacey Act as ''injurious wildlife'' (Fowler *et al.* 2007, pp. 353 – 359); the current list of vertebrates considered as ''injurious wildlife'' is provided at 50 CFR 16. The law in its current form has limited effectiveness in preventing invasive vertebrate introductions into the State of Hawaii.

Invertebrate Species

Predation by nonnative invertebrate pests (flatworms, slugs, snails) adversely impacts 26 of the plant species and the 3 tree snails proposed or reevaluated for listing in this rule (see Table 3). It is likely that the introduction of most nonnative invertebrate pests to the State has been and continues to be accidental and incidental to other intentional and permitted activities. Although Hawaii State government and Federal agencies have regulations and some controls in place (see above), the introduction and movement of nonnative invertebrate pest species between islands and from one watershed to the next continues. For example, an average of 20 new alien invertebrate species were introduced to Hawaii per year since 1970, an increase of 25 percent over the previous totals between 1930 and 1970 (TNCH 1992, p. 8). Existing regulatory mechansisms therefore appear inadequate to ameliorate the threat of introductions of nonnative invertebrates, and we have no evidence to suggest that any change to this situation is anticipated in the future.

Nonative Plant Species

Nonnative plants destroy and modify habitat throughout the ranges of 36 of the 40 species being addressed in this proposed rule (see Table 3, above). As such, they represent a serious and ongoing threat to each of these species. In addition, nonnative plants have been shown to outcompete native plants and convert native-dominated plant communities to nonnative plant communities (See ''Habitat Destruction and Modification by Nonnative Plants,'' above).

The State of Hawaii allows the importation of most plant taxa, with limited exceptions, if shipped from domestic ports (HLRB 2002; USDA–APHIS–PPQ 2010; CGAPS 2009). Hawaii's plant import rules (H.A.R. 4–70) regulate the importation of 13 plant taxa of economic interest; regulated crops include pineapple, sugarcane, palms, and pines. Certain horticultural crops (e.g., orchids) may require import permits and have pre-entry requirements that include treatment or quarantine or both either prior to or following entry into the State. The State noxious weed list (H.A.R. 4–68) and USDA–APHIS–PPQ's Restricted Plants List restrict the import of a limited number of noxious weeds. If not specifically prohibited, current Federal regulations allow plants to be imported from international ports with some restrictions. The Federal Noxious Weed List (see 7 CFR 360.200) includes few of the many globally known invasive plants, and plants in general do not require a weed risk assessment prior to importation from international ports. The USDA–APHIS–PPQ is in the process of finalizing rules to include a weed risk assessment for newly imported plants. Although the State has general guidelines for the importation of plants, and regulations are in place regarding the plant crops mentioned above, the intentional or inadvertent introduction of nonnative plants outside the regulatory process and movement of species between islands and from one watershed to the next continues, and represent a threat to native flora for the reasons described above. In addition, government funding is inadequate to provide for sufficient inspection services and monitoring.

In 1995, CGAPS, a partnership comprised primarily of managers from every major Federal, State, County, and private agency and organization involved in invasive species work in Hawaii, was formed in an effort to improve communication, increase collaboration, and promote public awareness (CGAPS 2009). This group facilitated the formation of the Hawaii Invasive Species Council (HISC), which was created by gubernatorial executive order in 2002, to coordinate local initiatives for the prevention and control of invasive species by providing policy level direction and planning for the State departments responsible for invasive species issues. In 2003, the Governor signed into law Act 85, which conveys statutory authority to the HISC to continue to coordinate approaches among the various State and Federal

agencies, and international and local initiatives for the prevention and control of invasive species (HDLNR 2003, p. 3–15; HISC 2009; H.R.S. 194–2(a)). Some of the recent priorities for the HISC include interagency efforts to control nonnative species such as the plants *Miconia calvescens* (miconia) and *Cortaderia* spp. (pampas grass), coqui frogs (*Eleutherodactylus coqui*), and ants (HISC 2009). In early 2009, HISC projected that, due to a tighter economy in Hawaii and anticipated budget cuts in State funding support of up to 50 percent, there will be a serious setback in conservation achievements, and the loss of experienced, highly trained staff (HISC 2009).

On the basis of the above information, existing regulatory mechanisms do not adequately protect the 40 species being addressed in this proposed rule from the threat of new introductions of nonnative species, and the continued expansion of nonnative species populations on and between islands and watersheds. Nonnative species may prey upon, modify or destroy habitat, or directly compete with one or more of the 40 species for food, space, and other necessary resources. Because current Federal, State, and local laws, treaties, and regulations are inadequate to prevent the introduction and spread of nonnative species from outside the State of Hawaii, as well as between islands and watersheds, the impacts from these introduced threats are ongoing and are expected to continue into the future.

Summary of Inadequacy of Existing Regulatory Mechanisms

We consider the threat of inadequate regulatory mechanisms to be ongoing and we expect it to continue into the future, for the following reasons:

(1) The State's current management of nonnative game mammals is inadequate to prevent the degradation and destruction of habitat of 35 of the 37 plant species (Factor A) and predation of 35 of the 37 plant species (Factor C).

(2) Existing State and Federal regulatory mechanisms are not effectively preventing the introduction and spread of nonnative species from outside the State of Hawaii and between islands and watersheds within the State of Hawaii. Habitat-altering nonnative plant species (Factor A) and predation by nonnative animal species (Factor C) pose a major ongoing threat to all 40 species proposed or reevaluated for listing in this proposed rule.

Information indicates that the existing regulatory mechanisms are inadequate to prevent the spread of nonnative species and to provide for the maintenance of habitat for the 40 species proposed or reevaluated for listing under the Act. The inadequacy of existing regulatory mechanisms is considered a serious threat, both now and into future, to all 40 species proposed or reevaluated for listing.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

Other factors threatening some or all of the 40 species include small numbers of populations and small population sizes, hybridization, lack of regeneration, and human trampling as a result of hiking and other activities. Each threat is discussed in detail below, along with identification of which species are affected by these threats.

Small Number of Individuals and Populations

Species that are endemic to single islands are inherently more vulnerable to extinction than are widespread species, because of the increased risk of genetic bottlenecks, random demographic fluctuations, climate change effects, and localized catastrophes such as hurricanes, landslides, rockfalls, drought, and disease outbreaks (Pimm *et al.* 1988, p. 757; Mangel and Tier 1994, p. 607). These problems are further magnified when populations are few and restricted to a very small geographic area, and when the number of individuals in each population is very small. Populations with these characteristics face an increased likelihood of stochastic extinction due to changes in demography, the environment, genetics, or other factors (Gilpin and Soulé 1986, pp. 24–34). Small, isolated populations often exhibit reduced levels of genetic variability, which diminishes the species' capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence (e.g., Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361). Very small, isolated populations are also more susceptible to reduced reproductive vigor due to ineffective pollination (plants), inbreeding depression (plants and snails), and hybridization (plants). The problems associated with small population size and vulnerability to random demographic fluctuations or natural catastrophes are further magnified by synergistic interactions with other threats, such as those discussed above (see Factors A and C, above).

Plants

The following 20 plant species in this proposal are threatened by limited numbers (that is, they total fewer than 50 individuals): *Cyanea grimesiana* ssp. *grimesiana, C. horrida, C. magnicalyx, C. maritae, C. mauiensis, C. munroi, C. obtusa, C. profuga, C. solanacea, Cyrtandra ferripilosa, Festuca molokaiensis, Peperomia subpetiolata, Phyllostegia bracteata, P. haliakalae, P. pilosa, Pittosporum halophilum, Schiedea jacobii, S. laui, Stenogyne kauaulaensis,* and *Wikstroemia villosa.* We consider these species highly vulnerable to extinction due to threats associated with small population size because:

- *Cyanea grimesiana* ssp. *grimesiana* has not been observed since 1991 on Molokai (PEPP 2010, p. 45).
- The only known wild occurrences of *Cyanea horrida, C. magnicalyx, C. maritae,* and *C. munroi* are threatened either by flooding, landslides, or tree falls, or a combination of these, because of their locations in lowland wet, montane wet, and wet cliff ecosystems (TNC 2007; TNCH 2010a; HBMP 2008; PEPP 2009, pp. 23–24, 49–58).
- The last confirmed observation of *Cyanea mauiensis* in the wild was over 100 years ago. Botanists believe individuals of this species still remain, as potentially suitable habitat has not been searched. There are no tissues, propagules, or seeds in storage or propagation (Lammers 2004, pp. 84–85; TNC 2007).
- *Cyanea obtusa* is highly threatened by feral pigs, goats, axis deer, and cattle, and the only two known individuals of this species are not protected from direct predation or from fire (Lau 2001, in litt.; PEPP 2007, p. 40; HBMP 2008; PEPP 2008, p. 55; Duvall 2010, in litt.).
- *Cyanea profuga* and *C. solanacea* are known from fewer than five scattered occurrences that are threatened by habitat destruction or direct predation by nonnative pigs and goats, as well as by landslides, rock and tree falls, or flooding, or a combination of these, in the montane wet ecosystem (HBMP 2008; PEPP 2009, pp. 23–24, 49–58; Bakutis 2010, in litt.; Perlman 2010, in litt.; Oppenheimer 2010a, in litt.; TNCH 2011, pp. 21, 57).
- *Cyrtandra ferripilosa* is known from two disparate occurrences totaling only a few individuals that are not protected from direct predation by nonnative pigs and goats (Oppenheimer 2010f, in litt.; Welton 2010b, in litt.).
- *Festuca molokaiensis,* known only from its original collection location on Molokai, has not been relocated for 2 years. Threats to this species include habitat destruction or direct predation by nonnative goats, nonnative plants, and fire (Oppenheimer 2011a, pers. comm.).
- Historically known from lower Waikamoi on east Maui, the

identification of wild individuals of *Peperomia subpetiolata* has not been confirmed since 2001, although hybrids between this species and other species of *Peperomia* are reported in this area (HBMP 2008; NTBG 2009g, p. 2; Oppenheimer 2010a, in litt.; PEPP 2010, p. 96).

• Only one individual of *Phyllostegia bracteata* was known as recently as 2009, but even this single individual was not relocated later in the same year. Botanists continue to search potentially suitable habitat near the last known location for this ephemeral species (NTBG 2009h, p. 3; PEPP 2009, pp. 89–90; Oppenheimer 2010c, in litt.).

• The last known wild individual of *Phyllostegia haliakalae* on Maui had died by 2010, although there are outplantings of this species near the location of this individual. Botanists continue to search potentially suitable habitat on Maui for this species. *Phyllostegia haliakalae* has not been relocated on Molokai or Lanai for close to 100 years (TNC 2007; HBMP 2008; Oppenheimer 2010c, in litt.; Oppenheimer 2011b, in litt.).

• The seven known individuals of *Phyllostegia pilosa* are not protected from direct predation by feral pigs and goats on Maui. This species has not been observed on Molokai for over 100 years (TNC 2007; HBMP 2008).

• *Pittosporum halophilum* is known from three disparate locations, each with one to three individuals, on Molokai and its offshore islets. These individuals are not protected from predation by feral pigs or rats, or from the threat of fire (Wood 2005, pp. 2, 41; Bakutis 2010, in litt.; Hobdy 2010, in litt.; Perlman 2010, in litt.).

• The only known wild individuals of *Schiedea jacobii* were likely destroyed by landslides because of their location in the montane wet ecosystem. The State plans to outplant propagated individuals in Hanawi Natural Area Reserve in 2011 (Wagner *et al.* 1999j, p. 286; HBMP 2008; Oppenheimer 2010a, in litt., Perlman 2010, in litt.).

• The 24 to 34 individuals of *Schiedea laui* are threatened by flooding and landslides due to their location in a grotto (HBMP 2008; Bakutis 2010, in litt.).

• *Stenogyne kauaulaensis* is only known from three individuals located on steep slopes. These plants are imminently threatened by landslides and rockfalls, in addition to drought and fire in the montane mesic ecosystem on west Maui (Wood and Oppenheimer 2008, pp. 544–545; Oppenheimer 2010a, in litt.).

• *Wikstroemia villosa* is known only from a single occurrence, with two individuals (Peterson 1999, p. 1,291; TNC 2007; HBMP 2008; Oppenheimer 2010a, in litt.).

Tree Snails

Like most native island biota, the endemic Hawaiian tree snails are particularly sensitive to disturbances due to low population numbers and small geographic ranges (Hadfield *et al.* 1993, p. 610). We consider the three tree snail species vulnerable to extinction due to threats associated with low numbers of individuals and populations because:

• *Newcombia cumingi* is known only from a single wild population of nine individuals and has not been successfully maintained in captivity (Hadfield 2007, pp. 2, 8; Hadfield 2008, p. 10).

• The only known wild populations of *Newcombia cumingi, Partulina semicarinata,* and *P. variabilis* are imminently threatened by predation by nonnative rats, Jackson's chameleons, and snails (Solem 1990, p. 35; Hadfield 1986, p. 325; Hadfield *et al.* 1993, p. 611; Hadfield 2007, p. 9; Hadfield 2009, p. 11; Hadfield and Saufler 2009, p. 1595; Holland *et al.* 2010, p. 1,437).

• The number of individuals of *Partulina semicarinata* and *P. variabilis* has declined by approximately 50 percent between 1993 and 2005 at known locations (Hadfield 2005, p. 305).

Hybridization

Natural hybridization is a frequent phenomenon in plants and can lead to the formation of new species (Orians 2000, p. 1,949), or sometimes to the decline of species through genetic assimilation or ''introgression'' (Ellstrand 1992, pp. 77, 81; Levin *et al.* 1996, pp. 10–16; Rhymer and Simberloff 1996, p. 85). Hybridization, however, is especially problematic for rare species that come into contact with species that are abundant or more common (Rhymer and Simberloff 1996, p. 83). We consider hybridization to threaten five species in this proposed rule because it may lead to extinction of one or both of the original genotypically distinct species. Hybrids have been reported between *Bidens campylotheca* ssp. *pentamera* and *B. campylotheca* ssp. *waihoiensis,* two subspecies proposed for listing that occur in close proximity on east Maui. On east Maui, the species *Cyanea obtusa* is known from two individuals, but only hybrids between *C. obtusa* and the more abundant *C. elliptica* are known on west Maui. The current status of the species *Peperomia subpetiolata* is unknown because only hybrids between *P. subpetiolata* and *P. cookiana,* and perhaps *P. hertapetiola,* are known from its historically reported locations on east Maui. The species *Schiedea salicaria* hybridizes with the uncommon *S. menziesii* in the west Maui mountains. According to Wagner *et al.* (2005b, p. 138), one or more of the three known occurrences of *S. salicaria* may represent a ''hybrid swarm'' between the two species (hybrids can interbreed among themselves and also with the parent species).

Regeneration

Lack of, or low levels of, regeneration (reproduction and recruitment) in the wild has been observed and is a threat to *Pleomele fernaldii* (Oppenheimer 2010a, in litt.). Although there are currently approximately several hundred to 1,000 individuals, very little recruitment has been observed at the known locations over the past 10 years (Oppenheimer 2008d, in litt.). The reasons for this are not clearly understood.

Human Trampling and Hiking

Human impacts, including trampling by hikers, have been documented as a threat to *Cyanea maritae* and *Wikstroemia villosa* (Oppenheimer 2010o, in litt.; PEPP 2010, p. 51; Welton 2010b, in litt.). Individuals climbing and hiking off established trails could trample individual plants and contribute to soil compaction and erosion, preventing growth and establishment of seedlings (Oppenheimer 2010a, in litt.) because this has been observed with other native species (Wood 2001, in litt.; MLP 2005, p. 23).

Summary of Other Natural or Manmade Factors Affecting Their Continued Existence

We consider the threat from limited number of populations and few (less than 50) individuals to be a serious and ongoing threat to the 20 plant species proposed for listing (*Cyanea grimesiana* ssp. *grimesiana, C. horrida, C. magnicalyx, C. maritae, C. mauiensis, C. munroi, C. obtusa, C. profuga, C. solanacea, Cyrtandra ferripilosa, Festuca molokaiensis, Peperomia subpetiolata, Phyllostegia bracteata, P. haliakalae, P. pilosa, Pittosporum halophilum, Schiedea jacobii, S. laui, Stenogyne kauaulaensis,* and *Wikstroemia villosa*) because (1) these species may experience reduced reproductive vigor due to ineffective pollination or inbreeding depression; (2) they may experience reduced levels of genetic variability, leading to diminished capacity to adapt and respond to environmental changes,

thereby lessening the probability of long-term persistence; and (3) a single catastrophic event may result in extirpation of remaining populations and extinction of the species. This threat applies to the entire range of each species.

The threat to the three tree snails *Newcombia cumingi, Partulina semicarinata,* and *P. variabilis* from limited numbers of populations and individuals is ongoing and is expected to continue into the future because (1) these species may experience reduced reproductive vigor due to inbreeding depression; (2) they may experience reduced levels of genetic variability leading to diminished capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence; (3) a single catastrophic event (e.g., hurricane, drought) may result in extirpation of remaining populations and extinction of these species; and (4) species with few known locations, such as *N. cumingi, P. semicarinata,* and *P. variabilis,* are less resilient to threats that might otherwise have a relatively minor impact on widely distributed species. For example, the reduced availability of host trees or an increase in predation of the tree snail adults that might be absorbed in a widely distributed species could result in a significant decrease in survivorship or reproduction of a species with limited distribution. The limited distribution of these three species thus magnifies the severity of the impact of the other threats discussed in this proposed rule.

The threat to *Bidens campylotheca* ssp. *pentamera, B. campylotheca* ssp. *waihoiensis, Cyanea obtusa, Peperomia subpetiolata,* and *Schiedea salicaria* from hybridization is ongoing and expected to continue into the future because hybrids are reported between these species and other, more abundant species, and no efforts are being implemented in the wild to prevent potential hybridizations. We consider the threat to *Pleomele fernaldii* from lack of regeneration to be ongoing and to continue into the future because the reasons for the lack of recruitment in the wild are unknown and uncontrolled, and any competition from nonnative plants or habitat modification by ungulates or fire, or predation by ungulates or rats, could lead to the extirpation of this species. Ongoing human activities (e.g., trampling and hiking) are a threat to *Cyanea maritae* and *Wikstroemia villosa* and are expected to continue into the future because field biologists have reported trampling of vegetation near populations of *Cyanea maritae* and the two remaining wild individuals of *Wikstroemia villosa,* and the effects of these activities could lead to injury and death of individual plants, potentially resulting in extirpation from the wild.

Proposed Determination for 40 Species

We have carefully assessed the best scientific and commercial information available regarding threats to each of the 40 species proposed or reevaluated for listing. We find that all of these species face threats which are ongoing and expected to continue into the future throughout their ranges from the present destruction and modification of their habitats from nonnative feral ungulates and nonnative plants (Factor A). Thirteen of the plant species (*Bidens campylotheca* ssp. *pentamera, Canavalia pubescens, C. magnicalyx, C. mauiensis, C. obtusa, Festuca molokaiensis, Phyllostegia bracteata, P. haliakalae, Pittosporum halophilum, Pleomele fernaldii, Santalum haleakale* var. *lanaiense, Schiedea salicaria,* and *Stenogyne kauaulaensis*) are threatened by habitat destruction and modification from fire, and 16 plant species (*Bidens campylotheca* ssp. *waihoiensis, Cyanea asplenifolia, C. duvalliorum, C. grimesiana* ssp. *grimesiana, C. horrida, C. magnicalyx, C. maritae, C. mauiensis, C. munroi, C. profuga, C. solanacea, Cyrtandra filipes, Schiedea jacobii, S. laui, Stenogyne kauaulaensis,* and *Wikstroemia villosa*) are threatened by the destruction and modification of their habitats from landslides, rockfalls, treefalls, or flooding. Habitat loss or degradation due to drought threatens *Cyanea horrida, Festuca molokaiensis, Schiedea jacobii,* and *Stenogyne kauaulaensis* as well as the tree snails *Newcombia cumingi, Partulina semicarinata,* and *P. variabilis.* In addition, we are concerned about the effects of projected climate change on all species, particularly rising temperatures, but recognize there is limited information on the exact nature of impacts that these species may experience (Factor A).

Overcollection for commercial and recreational purposes poses a serious potential threat to all three tree snail species (Factor B). Predation and herbivory on all 37 plant species by feral pigs, goats, cattle, axis deer, mouflon, rats, and slugs poses a serious and ongoing threat, as does predation of all three tree snail species (*N. cumingi, P. semicarinata,* and *P. variabilis*) by rats, nonnative snails, and potentially Jackson's chameleon (Factor C). The inadequacy of existing regulatory mechanisms (i.e., inadequate protection of habitat and inadequate protection from the introduction of nonnative species) poses a serious and ongoing threat to all 40 species (Factor D). There are serious and ongoing threats to 20 plant species (*Cyanea grimesiana* ssp. *grimesiana, C. horrida, C. magnicalyx, C. maritae, C. mauiensis, C. munroi, C. obtusa, C. profuga, C. solanacea, Cyrtandra ferripilosa, Festuca molokaiensis, Peperomia subpetiolata, Phyllostegia bracteata, P. haliakalae, P. pilosa, Pittosporum halophilum, Schiedea jacobii, S. laui, Stenogyne kauaulaensis,* and *Wikstroemia villosa*) and the three tree snails due to factors associated with small numbers of populations and individuals; to *Bidens campylotheca* ssp. *pentamera, B. campylotheca* ssp. *waihoiensis, Cyanea obtusa, Peperomia subpetiolata,* and *Schiedea salicaria* from hybridization; to *Pleomele fernaldii* from the lack of regeneration in the wild; and to *Cyanea maritae* and *Wikstroemia villosa* from hiking and trampling (Factor E) (see Table 3). These threats are exacerbated by these species' inherent vulnerability to extinction from stochastic events at any time because of their endemism, small numbers of individuals and populations, and restricted habitats.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' We find that each of these endemic species is presently in danger of extinction throughout its entire range, based on the immediacy, severity, and scope of the threats described above. Therefore, on the basis of the best available scientific and commercial information, we propose to list, or in the case of *Cyanea grimesiana* ssp. *grimesiana* and *Santalum haleakalae* var. *lanaiense* to retain the listing of, the following 40 species as endangered in accordance with section 3(6) of the Act: the plants *Bidens campylotheca* ssp. *pentamera, Bidens campylotheca* ssp. *waihoiensis, Bidens conjuncta, Calamagrostis hillebrandii, Canavalia pubescens, Cyanea asplenifolia, Cyanea duvalliorum, Cyanea grimesiana* ssp. *grimesiana, Cyanea horrida, Cyanea kunthiana, Cyanea magnicalyx, Cyanea maritae, Cyanea mauiensis, Cyanea munroi, Cyanea obtusa, Cyanea profuga, Cyanea solanacea, Cyrtandra ferripilosa, Cyrtandra filipes, Cyrtandra oxybapha, Festuca molokaiensis, Geranium hanaense, Geranium hillebrandii, Mucuna sloanei* var. *persericea, Myrsine vaccinioides, Peperomia subpetiolata, Phyllostegia*

bracteata, Phyllostegia haliakalae, Phyllostegia pilosa, Pittosporum halophilum, Pleomele fernaldii, Santalum haleakalae var. *lanaiense, Schiedea jacobii, Schiedea laui, Schiedea salicaria, Stenogyne kauaulaensis,* and *Wikstroemia villosa;* and the tree snails *Newcombia cumingi, Partulina semicarinata,* and *Partulina variabilis.*

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Each of the 40 Maui Nui species proposed or reevaluated for listing in this rule is highly restricted in its range, and the threats occur throughout its range. Therefore, we assessed the status of each species throughout its entire range. In each case, the threats to the survival of these species occur throughout the species' range and are not restricted to any particular portion of that range. Accordingly, our assessment and proposed determination applies to each species throughout its entire range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation by Federal, State, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection measures required of Federal agencies and the prohibitions against certain activities involving listed animals and plants are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that help to determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprised of species experts, Federal and State agencies, non-government organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outlines, draft recovery plans, and the final recovery plans will be available from our Web site (*http://www.fws.gov/endangered*), or from our Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, non-governmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private and State lands.

If these species are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and non-governmental organizations. In addition, under section 6 of the Act, the State of Hawaii would be eligible for Federal funds to implement management actions that promote the protection and recovery of the 40 species. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although these species are only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for these species. Additionally, we invite you to submit any new information on these species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(1) of the Act mandates that all Federal agencies shall utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of endangered and threatened species listed under section 4 of the Act. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat. If a Federal action may affect the continued existence of a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

For the 40 plants and animals proposed or reevaluated for listing as endangered species in this rule, Federal agency actions that may require consultation as described in the preceding paragraph include, but are not limited to, actions within the jurisdiction of the Natural Resources Conservation Service (NRCS), the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and branches of the Department of Defense (DOD). Examples of these types of actions include activities funded or authorized under the Farm Bill Program, Environmental Quality Incentives Program, Ground and Surface Water Conservation Program, Clean Water Act (33 U.S.C. 1251 *et seq.*), Partners for Fish and Wildlife Program, and DOD construction activities related to training or other military missions.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife and plants. The prohibitions, codified at 50 CFR 17.21 and 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export,

ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered or threatened wildlife and plant species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.62 for endangered species. With regard to endangered wildlife, a permit must be issued for the following purposes: for scientific purposes, to enhance the propagation and survival of the species, and for incidental take in connection with otherwise lawful activities. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, Pacific Region, Ecological Services, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, OR 97232–4181 (telephone 503–231–6131; facsimile 503–231–6243).

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Introduction of nonnative species that compete with or prey upon the 40 species proposed or reevaluated for listing, such as the introduction of competing, nonnative plants or animals to the State of Hawaii; and

(3) The unauthorized release of biological control agents that attack any life stage of these 40 species.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Pacific Region, Ecological Services, Endangered Species Permits, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, OR 97232–4181 (telephone 503–231–6131; facsimile 503–231–6243).

Federal listing of the 38 species proposed for listing in this rule (we are not including the 2 already listed species that are being reevaluted for listing) would automatically invoke State listing under Hawaii's Endangered Species law (H.R.S. 195D 1–32) and supplement the protection available under other State laws. These protections prohibit take of these species and encourage conservation by State government agencies. Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (H.R.S. 195D–5). Funds for these activities could be made available under section 6 of the Act (Cooperation with the States). Thus, the Federal protection afforded to these species by listing them as endangered species would be reinforced and supplemented by protection under State law.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(I) Essential to the conservation of the species and

(II) Which may require special management considerations or protection; and

(ii) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management, such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot otherwise be relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public access to private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by the landowner. Where a landowner seeks or requests Federal agency funding or authorization that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but in the event of a destruction or adverse modification finding, the Federal action agency's and the applicant's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time of listing must contain the physical or biological features essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species. Under the Act and regulations at 50 CFR 424.12(e), we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the

conservation of the species and that designation limited to those areas occupied at the time of listing would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be proposed as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine to be necessary for the recovery of the species, as additional scientific information may become available in the future. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

The information currently available on the effects of global climate change and increasing temperatures does not make sufficiently precise estimates of the location and magnitude of the effects to allow us to incorporate this information into our current designation of critical habitat, nor are we currently aware of any climage change information specific to the habitat of any of the species being addressed in this proposed rule that would indicate what areas may become important to the species in the future. Therefore, we are unable to determine what additional areas, if any, may be appropriate to include in the proposed critical habitat for these species; however, we specifically request information from the public on the currently predicted effects of climate change on the species addressed in this proposed rule and their habitat. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas we may eventually determine are necessary for the recovery of the species, based on scientific data now available to the Service. For these reasons, a critical habitat designation does not signify that habitat outside of the designated area is unimportant or may not be required for the recovery of the species.

Areas that are important to the conservation of the species, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. Areas that support populations are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may require consultation under section 7 of the Act and may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), section 7 consultations, or other species conservation planning efforts if any new information available to these planning efforts calls for a different outcome.

Prudency Determination for 44 Maui Nui Species

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Our regulations at 50 CFR 424.12(a)(1) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

Species Proposed or Reevaluated for Listing

As we have discussed under the threats analysis for Factor B, above, there is currently no documentation that the 37 plants proposed or reevaluated for listing are threatened by taking or other human activity. Overcollection is a potential serious threat to the three tree snails proposed for listing (*Newcombia cumingi, Partulina semicarinata,* and *P. variabilis*) (see *Overcollection for Commercial, Recreational, Scientific or Educational Purposes,* above). Europeans and others collected Hawaiian tree snails starting in the 1800s and into the early 20th century. Even today, there are Internet Web sites that sell Hawaiian tree snail shells, including other species of the Hawaiian *Partulina.* It is unknown if the shells offered for sale are from historical collections or recent collections from the wild. However, we do not believe our proposed critical habitat will increase the threat of overcollection of *N. cumingi, P. semicarinata,* and *P. variabilis* because our approach to critical habitat designation is based on the physical or biological features shared by multiple species within an ecosystem and does not identify the locations of individuals of the three tree snails within the shared ecosystem. In addition, the proposed critical habitat unit maps are published at a scale that does not pinpoint the locations of the three snail species to the extent that individuals of these three tree snail species can be located on the private lands on which they occur.

Listed Species

We listed the akohekohe or crested honeycreeper and the kiwikiu or Maui parrotbill as endangered species in 1967 (32 FR 4001, March 11, 1967), under the Endangered Species Preservation Act of 1966 (precursor to the Endangered Species Act of 1973). Critical habitat was not determined at that time because it was not required under the Act until 1978. Neither the akohekohe nor the kiwikiu are threatened by taking or other human activity (32 FR 4001, March 11, 1967; USFWS 2006, pp. 2–81 to 2–82, 2–142).

At the time we listed the plant *Kokia cookei* (Cooke's kokia) as endangered, we found that designation of critical habitat was not prudent because this species had been extirpated from its natural range on Molokai and was known only from a single specimen in cultivation and tissue culture maintained in a laboratory (44 FR

62470; October 30, 1979). *Kokia cookei* is not threatened by vandalism, collecting, or other human activities, and we believe there is a benefit to a critical habitat designation for this species (see discussion below).

We listed the plant *Acaena exigua* (liliwai), known from Kauai and Maui, as endangered in 1992 (57 FR 20772; May 15, 1992). At that time, the species had not been seen since 1973. In 1997, botanists rediscovered *A. exigua* in the Puu Kukui Preserve on west Maui, but it has not been seen at this location since 2000 (68 FR 25934; May 14, 2003). We determined that critical habitat was not prudent for *Acaena exigua* at the time of listing (1992) and again at the time we reevaluated prudency determinations for 95 listed plants on Kauai (2003) (57 FR 20772, May 15, 1992; 68 FR 9116, February 27, 2003). *Acaena exigua* is not threatened by vandalism, collecting, or other human activities, and we believe there is a benefit to a critical habitat designation for this species (see discussion below). Although the reasons for the disappearance of this species on west Maui are not known, botanists believe it may be rediscovered in the same area where it was last seen in 2000, with sustained searching.

We reviewed the information available for the 37 plants and three tree snails proposed or reevaluated for listing; the two endangered birds, akohekohe and kiwikiu; and the endangered plants *Kokia cookei* and *Acaena exigua,* pertaining to the biological needs of these 44 species and characteristics of their last known habitats. In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. The potential benefits to the 40 proposed or reevaluated species; the two endangered birds, akohekohe and kiwikiu; and the endangered plants *K. cookei* and *A. exigua* include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. Recovery of both *K. cookei* and *A. exigua,* neither of which currently occurs in the wild, will include *in-situ* conservation and protection of wild individuals, enhancement of existing populations with outplantings, and establishment of new populations through outplanting of propagated individuals into potentially suitable habitat within their historical ranges (USFWS 1997, p. 11; USFWS 1998a, pp. 22–23; Orr 2007, in litt., p. 8; Seidman 2007, in litt.).

The primary regulatory effect of critical habitat is the section 7(a)(2) requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. We find that the designation of critical habitat for each of the 40 species proposed or reevaluated for listing in this rule; the endangered birds the akohekohe and kiwikiu; and the endangered plants *Kokia cookei* and *Acaena exigua* will benefit them by serving to focus conservation efforts on the restoration and maintenance of ecosystem functions that are essential for attaining their recovery and long-term viability. In addition, the designation of critical habitat serves to inform management and conservation decisions by identifying any additional physical or biological features of the ecosystem that may be essential for the conservation of certain species, such as the availability of bogs for *Calamagrostis hillebrandii, Geranium hanaense,* and *G. hillebrandii.* Therefore, as we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we find that designation of critical habitat is prudent for the following 44 species, as critical habitat would be beneficial and there is no evidence that the designation of critical habitat would result in an increased threat from taking or other human activity for these species:

(1) Plants—*Acaena exigua, Bidens campylotheca* ssp. *pentamera, Bidens campylotheca* ssp. *waihoiensis, Bidens conjuncta, Calamagrostis hillebrandii, Canavalia pubescens, Cyanea asplenifolia, Cyanea duvalliorum, Cyanea grimesiana* ssp. *grimesiana, Cyanea horrida, Cyanea kunthiana, Cyanea magnicalyx, Cyanea maritae, Cyanea mauiensis, Cyanea munroi, Cyanea obtusa, Cyanea profuga, Cyanea solanacea, Cyrtandra ferripilosa, Cyrtandra filipes, Cyrtandra oxybapha, Festuca molokaiensis, Geranium hanaense, Geranium hillebrandii, Kokia cookei, Mucuna sloanei* var. *persericea, Myrsine vaccinioides, Peperomia subpetiolata, Phyllostegia bracteata, Phyllostegia haliakalae, Phyllostegia pilosa, Pittosporum halophilum, Pleomele fernaldii, Santalum haleakalae* var. *lanaiense, Schiedea jacobii, Schiedea laui, Schiedea salicaria, Stenogyne kauaulaensis,* and *Wikstroemia villosa;*

(2) Animals—birds: akohekhoe and kiwikiu; snails: *Newcombia cumingi, Partulina semicarinata,* and *Partulina variabilis.*

Critical Habitat Determinability for the Species Cyanea mauiensis, *Proposed for Listing, and for the Listed Species* Phyllostegia hispida

As stated above, section 4(a)(3) of the Act requires the designation of critical habitat concurrently with the species' listing ''to the maximum extent prudent and determinable.'' Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

When critical habitat is not determinable, the Act provides for an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas occupied by the species at the time of listing to designate as critical habitat, we consider those physical and biological features essential to the conservation of the species that may require special management considerations or protection. The primary constituent elements of critical habitat include, but are not limited to:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

We are currently unable to identify the physical and biological features that are considered essential to the conservation of the plant *Cyanea mauiensis,* which is proposed for listing, on Maui because necessary information to understanding the life-history needs of the species is not available at this time. Key features of the life history of this plant species, such as flowering cycles, pollination vectors, specific environmental requirements,

and limiting factors, remain unknown. Nothing is known of the preferred habitat of, or native species associated with, this species on the island of Maui. *Cyanea mauiensis* was last observed on Maui over 100 years ago, and its habitat has been modified and altered by nonnative ungulates and plants, fire, and stochastic events (e.g., hurricanes, landslides). In addition, predation by nonnative rats, and herbivory by nonnative ungulates and invertebrates, likely led to the extirpation of this species from Maui. Because a century has elapsed since *C. mauiensis* was last observed, the optimal conditions that provide the biological or ecological requisites of this species are not known. As described above, we can surmise that habitat degradation from a variety of factors and predation by a number of nonnative species has contributed to the decline of this species on Maui; however, we do not know the physical or biological features that are essential for *C. mauiensis.* As we are unable to identify the physical and biological features essential to the conservation of this species, we are unable to identify areas on Maui that contain these features.

Although we have determined that the designation of critical habitat is prudent for the plant *Cyanea mauiensis,* the biological needs of this species are not sufficiently well known to permit identification of the physical or biological features that may be essential for the conservation of the species, or those areas that provide the physical or biological features essential to the conservation of the species. Therefore, we find that critical habitat for *C. mauiensis* is not determinable at this time. We intend to continue gathering information regarding the essential life-history requirements of this plant species to facilitate the identification of those physical or biological features that are essential to the conservation of *C. mauiensis.*

We listed the plant *Phyllostegia hispida* (NCN), known only from the island of Molokai, as an endangered species on March 17, 2009 (74 FR 11319). At the time of listing, we determined that critical habitat was prudent but not determinable for this species, but acknowledged that for the future designation of critical habitat we would evaluate the needs of *P. hispida* within the ecological context of the broader ecosystem in which it occurs. We are now proposing critical habitat for *P. hispida,* based on the identification of the physical and biological features that contribute to the successful functioning of the ecosystem upon which it depends.

Proposed Critical Habitat Designation for 50 Species and Proposed Revision of Critical Habitat Designation for 85 Species On Molokai, Lanai, Maui, and Kahoolawe

In this section, we discuss the proposed designation of critical habitat for 50 species (39 of the 40 species discussed above in our listing proposal and reevaluation, for which we concluded that critical habitat was both prudent and determinable; 2 listed bird species (akohekohe or crested honeycreeper and kiwikiu or Maui parrotbill); and 9 listed plants *Abutilon eremitopetalum, Acaena exigua, Cyanea gibsonii, Kadua cordata* ssp. *remyi, Kokia cookei, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Phyllostegia hispida,* and *Viola lanaiensis*). This section also discusses the currently designated critical habitat for 85 species of plants on the islands of Molokai, Lanai, Maui, and Kahoolawe, based on new information. This information represents the best current scientific and commercial information available.

Revision of Critical Habitat for 85 Plants on Molokai, Lanai, Maui, and Kahoolawe

Under section 4(a)(3)(A)(ii) of the Act we may, as appropriate, revise a critical habitat designation. In 1984, we designated critical habitat for a single species of plant, *Gouania hillebrandii,* on 114 ac (46 ha) in 4 units (49 FR 44753) based on its known location at the time. In 2003, we designated critical habitat for 3 Lanai plants on 789 ac (320 ha) in 6 units (68 FR 1220, January 9, 2003); for 41 Molokai plants on 24,333 ac (9,843 ha) in 88 units (68 FR 12982, March 18, 2003); and for 60 plants on Maui and Kahoolawe on 93,200 ac (37,717 ha) in 139 units (68 FR 25934, May 14, 2003). All designations were based on the known locations of the species at the time. Based on new scientific data available since 2003, we are proposing to revise critical habitat for 85 plant species on the islands of Molokai, Lanai, Maui, and Kahoolawe (this number differs from the original number of species with critical habitat designations, due to some taxonomic revisions made subsequent to the original designations). Approximately 47 percent of the area we are proposing as critical habitat in this rule overlaps with the areas designated in the 1984 and 2003 final critical habitat rules. In some areas, the footprint of the proposed revision is larger than the 1984 and 2003 designations, to accommodate the expansion of species' ranges within the particular ecosystem in which they occur (e.g., expansion into currently unoccupied habitat). The proposed revision correlates each species' physical or biological requirements with the characteristics of the ecosystems on which they depend (e.g., elevation, rainfall, species associations, etc.), and also includes areas unoccupied by the species but determined to be essential for the conservation of the species. The proposed revision would enable managers to focus conservation management efforts on common threats that occur across shared ecosystems and facilitate the restoration of the ecosystem function and species-specific habitat needs for the recovery of each of the 85 species. An added benefit includes the publication of more comprehensive critical habitat unit maps that should be more useful to the public and conservation managers.

Background for 94 Listed Maui Nui Plants

It is our intent to discuss only those topics directly relevant to the proposed designation of new and revised critical habitat on the islands of Molokai, Lanai, Maui, and Kahoolawe. For additional information on the 85 plant species with currently designated critical habitat, refer to the final critical habitat rules for *Gouania hillebrandii,* and the Lanai, Molokai, and Maui and Kahoolawe plants published in the **Federal Register** on November 9, 1984 (49 FR 44753), January 9, 2003 (68 FR 1220), March 18, 2003 (68 FR 12982), and May 14, 2003 (68 FR 25934). For additional information on the 9 plant species listed as endangered but that do not yet have designated critical habitat, please refer to the listing rules for those species published in the **Federal Register** as follows: *Abutilon eremitopetalum* (56 FR 47686, September 20, 1991), *Acaena exigua* (57 FR 20772, May 15, 1992), *Cyanea gibsonii* (originally listed as *Cyanea macrostegia* ssp. *gibsonii* (56 FR 47686, September 20, 1991)), *Kadua cordata* ssp. *remyi* (originally listed as *Hedyotis schlechtendahliana* var. *remyi* (64 FR 48307, September 3, 1999)), *Kokia cookei* (44 FR 62470, October 30, 1979), *Labordia tinifolia* var. *lanaiensis* (64 FR 48307, September 3, 1999), *Melicope munroi* (64 FR 48307, September 3, 1999), *Phyllostegia hispida* (74 FR 11319, March 17, 2009), and *Viola lanaiensis* (56 FR 47686, September 20, 1991). Information on the current status of the two bird species that are listed as endangered but do not yet have designated critical habitat, the akohekohe and kiwikiu, is presented following the information on the current status of 94 listed Maui Nui plants (85

listed plant species for which we are proposing a revision of the current critical habitat designation, and 9 listed plant species without extant critical habitat for which critical habitat is now proposed).

Current Status of 94 Listed Maui Nui Plants

Abutilon eremitopetalum (no common name (NCN)), a shrub in the mallow family (Malvaceae), is endemic to Lanai (Bates 1999, pp. 871–872). At the time we designated critical habitat in 2003, *A. eremitopetalum* was known from a single occurrence of seven individuals on Lanai (68 FR 1220, January 9, 2003). Currently, there are 23 individuals in 1 occurrence at Kahea Gulch in the lowland dry ecosystem (TNC 2007; HBMP 2008; PEPP 2008, p. 45).

Acaena exigua (liliwai), a perennial herb in the rose family (Rosaceae), is known from west Maui and Kauai (Wagner *et al.* 1999p, pp. 1,102–1,103). *Acaena exigua* was rediscovered in 1997 at Puu Kukui on west Maui, when one individual was found growing in a bog in the montane wet ecosystem, but this individual died in 2000 (TNC 2007; Oppenheimer *et al.* 2002, p. 1). This area on west Maui was searched as recently as 2008 by Ken Wood and Sam Aruch; however, no plants were found (Aruch 2010, in litt.). Botanists continue to survey the potentially suitable habitat in the area where this species was last observed.

Adenophorus periens (pendant kihi fern), a fern in the Grammitis family (Grammitidaceae), is epiphytic on the native tree *Acacia koa. Adenophorus periens* is known from Kauai, Oahu, Lanai, Maui, and the island of Hawaii (Palmer 2003, p. 39). At the time we designated critical habitat in 2003, *A. periens* was known from Kauai, Molokai, Oahu, and the island of Hawaii (68 FR 9116, February 27, 2003; 68 FR 12982, March 18, 2003; 68 FR 35950, June 17, 2003; 68 FR 39624, July 2, 2003). *Adenophorus periens* was last seen on Molokai in 1995, in the montane wet ecosystem, at the edge of Pepeopae bog (Perlman 2008b, in litt.). It was last collected in the late 1800s to early 1900s from the montane wet ecosystem on east Maui and Lanai (TNC 2007; HBMP 2008).

Alectryon macrococcus (mahoe), a tree in the soapberry family (Sapindaceae), is known from two varieties: *Alectryon macrococcus* var. *auwahiensis* (east Maui) and *A. macrococcus* var. *macrococcus* (Kauai, Oahu, Molokai, and Maui) (Wagner *et al.* 1999x, p. 1,225). At the time we designated critical habitat in 2003, *A. macrococcus* var. *auwahiensis* was known from three occurrences on east Maui (68 FR 25934, May 14, 2003). Currently, *A. macrococcus* var. *auwahiensis* is found in one occurrence of seven individuals in Auwahi, in the lowland dry ecosystem (TNC 2007; HBMP 2008; NTBG Provenance Report 1993; PEPP 2009, p. 33). This variety was historically found in the lowland dry, montane dry, and montane mesic ecosystems (TNC 2007; HBMP 2008). At the time we designated critical habitat in 2003, *A. macrococcus* var. *macrococcus* was found on Kauai, Molokai, west Maui, and Oahu (68 FR 9116, February 27, 2003; 68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003; 68 FR 35950, June 17, 2003). Currently, on Molokai, this variety is found in three known occurrences: one individual at Kahawai, eight individuals from Kaunakakai to Kawela, and one individual in Makolelau, in the lowland mesic and montane mesic ecosystems. On west Maui, *A. macrococcus* var. *macrococcus* is found in 6 occurrences totaling 11 individuals (1 individual each at Honokowai Stream, Wahikuli, Kahoma Ditch Trail, Olowalu, and Iao Valley, and 6 individuals at Honokowai) in the lowland wet and wet cliff ecosystems. On east Maui, there are an unknown number of individuals at Kahakapao in the montane mesic ecosystem (TNC 2007; HBMP 2008; Oppenheimer 2010p, in litt.).

Argyroxiphium sandwicense ssp. *macrocephalum* (ahinahina (= Haleakala silversword)), a perennial rosette shrub in the sunflower family (Asteraceae), is known from the alpine cinder deserts on east Maui (Carr 1999a, p. 261). At the time we designated critical habitat in 2003, there were 7 known occurrences totaling between 39,000 and 44,000 individuals (68 FR 25934, May 14, 2003). Currently, *A. sandwicense* ssp. *macrocephalum* is found in 7 occurrences totaling approximately 50,000 individuals, in the alpine and subalpine ecosystems at the summit and crater of Haleakala (TNC 2007; Perlman 2008c, in litt., p. 1; USFWS 2010). One individual is found in Hanawi Natural Area Reserve in the montane mesic ecosystem (TNC 2007; HBMP 2008; Perlman 2008c, p. 1).

Asplenium dielerectum (asplenium-leaved diellia) (currently listed as *Diellia erecta,* but for which we are proposing a taxonomic change to *Asplenium dielerectum*), a perennial fern in the spleenwort family (Aspleniaceae), is historically known from Kauai, Oahu, Molokai, Lanai, Maui, and the island of Hawaii (Palmer 2003, pp. 117–119). At the time we designated critical habitat in 2003, this species was known from Kauai, Molokai, Maui, Oahu, and the island of Hawaii (68 FR 9116, February 27, 2003; 68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003; 68 FR 35950, June 17, 2003; 68 FR 39624, July 2, 2003). Currently, *A. dielerectum* is known from an unknown number of individuals in two occurrences on Molokai and two occurrences totaling five individuals on Maui. On Molokai, an unknown number of plants were last seen in Onini and Makolelau gulches in the 1990s, in the lowland mesic ecosystem (Lau 2010, in litt.). Historically, this species was also found in the montane mesic and lowland wet ecosystems (HBMP 2008). Botanists believe that additional individuals of this species may be found during further searches of potentially suitable habitat on Molokai (Lau 2010, in litt.). Four individuals occur on west Maui at Hanaulaiki in the lowland dry ecosystem, and on east Maui, one individual occurs at Polipoli in the montane mesic ecosystem (Oppenheimer 2010q, in litt.). Historically, *A. dielerectum* was also found in the lowland mesic and lowland wet ecosystems on west Maui, and in the lowland dry and dry cliff ecosystems on Lanai (HBMP 2008).

Asplenium peruvianum var. *insulare* (NCN), which is currently listed as *Asplenium fragile* var. *insulare,* but for which we are proposing a taxonomic revision to *splenium peruviamun* var. *insulare* in this document, is a terrestrial fern in the spleenwort (Aspleniaceae) family, from Maui and the island of Hawaii (Palmer 2003, pp. 70–71). At the time we designated critical habitat in 2003, this variety was found on east Maui in 2 occurrences and on the island of Hawaii in 36 occurrences (68 FR 25934, May 14, 2003; 68 FR 39624, July 2, 2003). Currently, on east Maui, *A. peruvianum* var. *insulare* is known from 5 occurences at Waikamoi Stream, at Puu Luau, east of Hosmer Grove, north of Kalapawili Ridge, and in Hanawi Natural Area Reserve. These occurrences total as many as 100 individuals, in the montane wet, montane mesic, and subalpine ecosystems (TNC 2007; HBMP 2008; Oppenheimer 2010r, in litt.).

Bidens micrantha ssp. *kalealaha* (kookoolau), a perennial herb in the sunflower family (Asteraceae), is known from Lanai and Maui (Ganders and Nagata 1999, pp. 278–279). At the time we designated critical habitat in 2003, this subspecies was known from one occurrence on Lanai and four occurrences on east Maui (68 FR 1220, January 9, 2003; 68 FR 25934, May 14, 2003). Currently, *B. micrantha* ssp. *kalealaha* is known from 4 occurrences

totaling over 200 individuals on Lanai and Maui. On Lanai, this subspecies is known from 1 occurrence of 12 to 14 individuals north of Waiapaa Gulch in the lowland mesic ecosystem (TNC 2007; HBMP 2008; Puttock 2003, p. 1). On east Maui, there are 2 occurrences: approximately 200 individuals south of Puu Keokea, and a few individuals above Polipoli State Park. Both occurrences are in the subalpine ecosystem (TNC 2007; Oppenheimer 2010s, in litt.). On west Maui, there are four to six individuals at Honokowai in the lowland wet ecosystem (TNC 2007; HBMP 2008). This subspecies was historically known from the lowland dry and dry cliff ecosystems on Lanai, and from the montane mesic and lowland dry ecosystems on east Maui (TNC 2007; HBMP 2008).

Bidens wiebkei (kookoolau), a perennial herb in the sunflower family (Asteraceae), is endemic to Molokai (Ganders and Nagata 1999, pp. 282–283). At the time we designated critical habitat in 2003, this species was known from five occurrences on Molokai (68 FR 12982, March 18, 2003). Currently, *B. wiebkei* is known from 6 occurrences totaling as many as 500 individuals. In the coastal ecosystem, several hundred plants occur on the windward sea cliffs from Papalaua Valley to Puahaunui Point, and 200 or more individuals are found on rolling hills and sea cliffs at Lamaloa Gulch. Approximately 40 individuals occur west of Waialua near Kahawaiiki Gulch in the lowland wet ecosystem, and about 10 individuals occur at Kumueli in the montane wet ecosystem. In the montane mesic ecosystem, there are 2 occurrences: 10 to 20 individuals below Puu Kolekole, and 1 individual at Kawela Gulch (Wood and Perlman 2002, pp. 1–2; TNC 2007; HBMP 2008; Oppenheimer 2009a, in litt.; Perlman 2006a, pp. 1–2; Wood 2009b, pp. 1–2).

Bonamia menziesii (NCN) is a perennial liana in the morning glory family (Convolvulaceae). *Bonamia menziesii* is known from Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii Island (Austin 1999, p. 550; HBMP 2008). At the time we designated critical habitat in 2003, *B. menziesii* was known from 3 occurrences on Lanai, 9 occurrences on Kauai, 6 occurrences on Maui, 18 occurrences on Oahu, and 2 occurrences on Hawaii Island (68 FR 1220, January 9, 2003; 68 FR 9116, February 27, 2003; 68 FR 25934, May 14, 2003; 68 FR 35950, June 17, 2003; 68 FR 39624, July 2, 2003). However, no critical habitat was designated for this species on Lanai or Molokai in 2003 (68 FR 1220, January 9, 2003; 68 FR 12982, March 18, 2003). Currently, *B. menziesii* is known from 6 occurrences on Lanai and Maui, totaling over 10 individuals. On Lanai, *B. menziesii* is found at Kanepuu (one individual observed dead in 2008, two other individuals not observed since 2001) and at Puhielelu Ridge (two individuals were observed in 1996) in the lowland mesic ecosystem (TNC 2007; HBMP 2008; Oppenheimer 2010t, in litt.). This species is found on west Maui at Honokowai (two individuals) in the wet cliff ecosystem, and on east Maui at Puu o Kali (one individual), Kaloi (one individual), and Kanaio Natural Area Reserve (four individuals), in the lowland dry ecosystem (TNC 2007; HBMP 2008; Bily 2010, in litt.). This species was last seen in the dry cliff ecosystem on west Maui in 1920 (TNC 2007; HBMP 2008). *Bonamia menziesii* has not been observed on Molokai (in the lowland dry and lowland mesic ecosystems) since the early 1900s (HBMP 2008).

Brighamia rockii (pua ala), a stem succulent in the bellflower family (Campanulaceae), is known from east Molokai and Lanai, and may have occurred on Maui (Lammers 1999, p. 423). At the time we designated critical habitat in on Maui and Molokai in 2003, this species was known from five occurrences on Molokai (68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003). Currently, *B. rockii* is found on Molokai at Lepau Point (one individual); at Waiehu, east of Wailele Falls (four individuals), and on Huelo islet (one individual), in the coastal and wet cliff ecosystems (TNC 2007; HBMP 2008; NTBG 2009i; Oppenheimer 2010u, in litt.). This species was last observed on Lanai in 1911, in the dry cliff ecosystem (HBMP 2008). According to Lammers (1999, p. 423), *B. rockii* was likely found in the coastal ecosystem on Maui.

Canavalia molokaiensis (awikiwiki), a perennial climbing herb in the pea family (Fabaceae), is endemic to east Molokai (Wagner and Herbst 1999, p. 653). At the time we designated critical habitat in 2003, this species was known from seven occurrences on Molokai (68 FR 12982, March 18, 2003). Currently, *C. molokaiensis* is found in 9 occurrences totaling approximately 170 individuals in the following locations: Kawailena drainage in Pelekunu Valley (1 individual); Kua Gulch (approximately 100 individuals); near the junction at Kupiaia Gulch (10 to 20 individuals); Waiehu (5 to 10 individuals); west Kawela Gulch (6 individuals); Kukaiwaa (approximately 15 individuals); Mokomoko Gulch (a few individuals); Wailua (10 individuals); and Waialeia Stream (a few individuals) (HBMP 2008; Perlman 2008d, pp. 1–2; Tangalin 2010, in litt.). These plants are found in the coastal, lowland mesic, lowland wet, and wet cliff ecosystems (TNC 2007).

Cenchrus agrimonioides (kamanomano (also known as sandbur or agrimony)), a perennial in the grass family (Poaceae), is known from Lanai, Maui, Oahu, and Hawaii (O'Connor 1999, pp. 1,511–1,512). At the time we designated critical habitat in 2003, *C. agrimonioides* was known from one occurrence on east Maui, one occurrence on west Maui, and seven occurrences on Oahu (HBMP 2008; 68 FR 25934, May 14, 2003; 68 FR 35950, June 17, 2003). Currently, on Maui, *C. agrimonioides* is known from four occurrences totaling five individuals in the lowland dry ecosystem. On west Maui, this variety occurs in Hanaulaiki and Papalaua gulches (one individual at each location). On east Maui, *C. agrimonioides* occurs in Kanaio (2 individuals), and within a fenced exclosure in the Kanio Natural Area Reserve (one individual) (TNC 2007; HBMP 2008; PEPP 2008, pp. 47–48; PEPP 2009, p. 39). This plant was last observed on Lanai in 1915, in the lowland mesic ecosystem (TNC 2007; HBMP 2008).

Clermontia lindseyana (oha wai), a perennial shrub or tree in the bellflower family (Campanulaceae), is known from Maui and Hawaii Island (Lammers 1999, p. 431). At the time we designated critical habitat in 2003, *C. lindseyana* was known from 2 occurrences on Maui and from 15 occurrences on Hawaii Island (68 FR 25934, May 14, 2003; 68 FR 39624, July 2, 2003). Currently, there is 1 known occurrence totaling approximately 30 individuals on east Maui at Wailaulau in the montane mesic ecosystem (TNC 2007; HBMP 2008; PEPP 2009, pp. 40–41; Perlman 2007a, in litt.; Wood 2009c, in litt.; Oppenheimer 2010a, in litt.; Oppenheimer 2010b, in litt.; Oppenheimer 2010v, in litt.; Oppenheimer 2010w, in litt.).

Clermontia oblongifolia ssp. *brevipes* (oha wai), a perennial shrub or tree in the bellflower family (Campanulaceae), is endemic to east Molokai (Lammers 1999, pp. 432–433). At the time we designated critical habitat in 2003, this species was known from one occurrence in Kamakou Preserve (68 FR 12982, March 18, 2003; Perlman 2009d, in litt.). Currently, *C. oblongifolia* ssp. *brevipes* is found in 1 known occurrence totaling 11 individuals on Uapa Ridge in the montane wet ecosystem (TNC 2007; HBMP 2008; Bakutis 2009a, in litt.; Perlman 2009d, in litt.). Historically, this subspecies also occurred in the lowland mesic, lowland wet, and wet

cliff ecosystems (TNC 2007; HBMP 2008).

Clermontia oblongifolia ssp. *mauiensis* (oha wai), a perennial shrub or tree in the bellflower family (Campanulaceae), is known from Lanai and Maui (Lammers 1999, pp. 432–433). At the time we designated critical habitat in 2003, this species was known from one occurrence of two individuals on west Maui, and from historical occurrences on Lanai and east Maui (68 FR 1220, January 9, 2003; 68 FR 25934, May 14, 2003; HBMP 2008; Perlman 2009e, in litt.). However, no critical habitat was designated for this species on Maui in 2003 (68 FR 25934, May 14, 2003). Currently, *C. oblongifolia* ssp. *mauiensis* is found in one known occurrence totaling four individuals along the pipeline of the lower Waikamoi Ditch Trail at Haipuena Gulch in the montane wet ecosystem on east Maui (TNC 2007; HBMP 2008; Perlman 2009e, in litt.). Historically, this species was also found in the lowland mesic and lowland wet ecosystem on Lanai, and the lowland wet ecosystem on Maui (TNC 2007; HBMP 2008). An examination of the type specimen and other collections indicates that *C. oblongifolia* ssp. *mauiensis* may be a hybrid; however, further examination of specimens from Lanai and Maui are necessary (Albert 2001, in litt.; Oppenheimer 2010s, in litt.)

Clermontia peleana (oha wai) is a perennial epiphytic (on *Acacia koa, Cheirodendron trigynum* (olapa), *Cibotium* spp., and *Metrosideros polymorpha*) shrub or tree in the bellflower family (Campanulaceae). There are two subspecies: *C. peleana* ssp. *peleana* (Hawaii Island) and *C. peleana* ssp. *singuliflora* (east Maui and Hawaii Island) (Lammers 1999, p. 435). At the time we designated critical habitat on Maui in 2003, *C. peleana* had not been seen on either island since the early 1900s (68 FR 25934, May 14, 2003; 68 FR 39624, July 2, 2003). Critical habitat was designated on the island of Hawaii in 2003 (68 FR 39624, July 2, 2003). Currently, there are no known individuals of *C. peleana* spp. *singuliflora* on Maui; however, this subspecies was recently rediscovered on Hawaii Island (TNC 2010). *Clermontia peleana* ssp. *singuliflora* was last seen in 1920, on east Maui in the lowland wet ecosystem (TNC 2007; HBMP 2008).

Clermontia samuelii (oha wai), a perennial shrub in the bellflower family (Campanulaceae), is known from Maui (Lammers 1999, p. 436). There are two subspecies: *C. samuelii* ssp. *hanaensis,* which generally is found at lower elevations, and *C. samuelii* ssp. *samuelii* (Lammers *et al.* 1995, p. 344). At the time we designated critical habitat in 2003, *C. samuelii* was known from seven occurrences on east Maui (68 FR 25934, May 14, 2003). Currently, *C. samuelii* ssp. *hanaensis* is found in bog margins in the lowland wet and montane wet ecosystems at Kopiliula, east of Hanawi Stream, and at Kawaipapa, with historical occurrences at Kuhiwa Valley, Palikea Stream, and Waihoi Valley (TNC 2007; HBMP 2008; Oppenheimer 2010b, in litt.; Welton 2010a, in litt.). *Clermontia samuelii* ssp. *samuelii* is found in 2 known occurrences, one along the ridge above Kipahulu rim (about 20 individuals), and another along the south rim of Kipahulu (Manawainui planeze) (about 4 individuals), in the montane wet ecosystem (TNC 2007; HBMP 2008; Welton 2010a, in litt.). There is a report of one individual (subspecies unknown) at Papanalahou Point on west Maui (HBMP 2008).

Colubrina oppositifolia (kauila), a perennial tree in the buckthorn family (Rhamnaceae), is known from Maui, Oahu, and Hawaii (Wagner *et al.* 1999y, p. 1,094). At the time we designated critical habitat in 2003, this species was known from two occurrences on west Maui, five occurrences on Oahu, and five occurrences on Hawaii Island (68 FR 25934, May 14, 2003; 68 FR 35950, June 17, 2003; 68 FR 39624, July 2, 2003). Currently, on west Maui, there are two individuals near Honokowai Gulch in the lowland mesic ecosystem. Historically, this species was also reported from the lowland dry ecosystem on east Maui (TNC 2007; HBMP 2008; Oppenheimer 2009b, in litt.; Perlman 2008e, in litt.).

Ctenitis squamigera (pauoa), a terrestrial fern in the spleenwort family (Aspleniaceae), is known from Kauai, Oahu, Molokai, Lanai, Maui, and the island of Hawaii (Palmer 2003, pp. 100–102). At the time we designated critical habitat on Kauai, Molokai, Maui, and Oahu in 2003, *C. squamigera* was known from 2 occurrences on Lanai, 1 occurrence on Molokai, 12 occurrences on Maui, and 8 occurrences on Oahu (68 FR 1220, January 9, 2003; 68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003; 68 FR 35950, June 17, 2003). No critical habitat was designated for this species on Lanai or Hawaii in 2003 (68 FR 1220, January 9, 2003; 68 FR 39624, July 2, 2003). Currently, *C. squamigera* is found in 12 known occurrences totaling over 120 individuals on Lanai, Molokai, and west Maui (Oppenheimer 2010i, in litt.). On Lanai, an unknown number of individuals occur on the leeward (south) side of the island at Waiapaa in the wet cliff ecosystem. There are historical records from the dry cliff and wet cliff ecosystems at upper Kehewai Gulch, Haalelepaakai, and Kaiholena (HBMP 2008). On Molokai, 20 individuals occur at Wawaia in the lowland mesic ecosystem. On west Maui, there are 9 occurrences totaling 80 to 84 individuals in the lowland dry, lowland mesic, lowland wet, montane mesic, and wet cliff ecosystems. *Ctenitis squamigera* is found in Honokowai Valley (20 individuals), Puu Kaeo (2 to 4 individuals), Kahana Iki (1 individual), Kahana (14 individuals), Kanaha Valley (10 individuals), Kahoma (1 individual), Puehuehunui (1 to 2 individuals), Ukumehame Valley below the Hanaula Reservoir (1 to 2 individuals), and Iao Valley (approximately 30 individuals). On east Maui, there are 28 individuals at Pohakea in the lowland dry ecosystem and a historical record from the lowland mesic ecosystem. This species was apparently found in the Kipahulu FR (Kaapahu) area on east Maui, but no further details have been provided (Wood and Perlman 2002, p. 7; East Maui Watershed Partnership 2006, p. 17; TNC 2007; HBMP 2008; Oppenheimer 2010r, in litt.).

Cyanea copelandii ssp. *haleakalaensis* (HAHA), a vine-like shrub in the bellflower family (Campanulaceae), is known from Maui (Lammers 1999, pp. 445–446). At the time we designated critical habitat in 2003, this subspecies was known from five occurrences on Maui (68 FR 25934, May 14, 2003). Currently, *C. copelandii* ssp. *haleakalaensis* is found in 7 widely distributed occurrences totaling over 600 individuals on east Maui. One occurrence of over 20 scattered individuals is found in east Makaiwa in the lowland wet ecosystem; 4 occurrences totaling approximately 100 individuals are found along streams in Keanae in the lowland wet and montane wet ecosystems; 2 occurrences totaling approximately 500 individuals are found along Palikea Stream and in Kipahulu Valley, in the montane wet, wet cliff, and lowland wet ecosystems; and a few individuals are found at Kaapahu in the montane wet and lowland mesic ecosystems (Haleakala National Park 2004, pp. 5–6; 2005, pp. 5–6; 2007, pp. 2,4; TNC 2007; HBMP 2008; Bily *et al.* 2008, p. 37; Welton and Haus 2008, pp. 12–13; Oppenheimer 2010b, in litt.; 2010x, in litt.; Perlman 2007b, in litt.; Welton 2010a, in litt.; Wood 2009d, in litt.).

Cyanea dunbariae (HAHA), which is currently listed as *Cyanea dunbarii* and for which we are proposing a spelling correction to *Cyanee dunbariae,* is a shrub in the bellflower family

(Campanulaceae), and is endemic to Molokai (Lammers 1999, p. 448). At the time we designated critical habitat in 2003, this species was known from one occurrence at Mokomoko Gulch (68 FR 12982, March 18, 2003). Currently, there are 10 individuals in Mokomoko Gulch in the lowland mesic ecosystem (TNC 2007; HBMP 2008; PEPP 2008, p. 48; Oppenheimer 2010u, in litt.; NTBG 2011a). Historically, this species was also found in Molokai's lowland wet and montane mesic ecosystems (TNC 2007; HBMP 2008).

Cyanea gibsonii (HAHA), which is currently listed as *Cyanea macrostegia* ssp. *gibsonii* and for which we are proposing a taxonomic revision to *Cyanea gibsonii,* is a perennial tree in the bellflower family (Campanulaceae), and is known from Lanai (Lammers 1999, p. 457). In 2003, this species was known from two occurrences (68 FR 1220, January 9, 2003). However, no critical habitat was designated for this species on Lanai in 2003 (68 FR 1220, January 9, 2003). Currently, there are about 10 to 20 individuals at the head of Hauola Gulch, in the montane wet ecosystem (TNC 2007; HBMP 2008; PEPP 2009, p. 53; Oppenheimer 2010t, in litt.). Historically, this species was also found north of Lanaihale and at Puu Alii in the wet cliff and montane wet ecosystems (PEPP 2009, p. 53).

Cyanea glabra (HAHA), a perennial shrub in the bellflower family (Campanulaceae), is endemic to Maui (Lammers 1999, pp. 449, 451). At the time we designated critical habitat in 2003, this species was known from one occurrence on west Maui (68 FR 25934, May 14, 2003). However, on west Maui, individuals identified as *C. glabra* in the lowland wet and wet cliff ecosystems may be an undescribed species related to *C. acuminata* (Lorence 2010, in litt.; Oppenheimer 2010y, in litt.). On east Maui, wild individuals of *C. glabra* in the montane wet and montane mesic ecosystems may more closely resemble *C. maritae,* one of the species proposed for listing in this rule (Oppenheimer 2010y, in litt.). Further taxonomic study of these occurrences is needed (TNC 2007; HBMP 2008; Perlman 2009f, in litt.). In the meantime, we will continue to identify these individuals as *C. glabra.*

Cyanea hamatiflora ssp. *hamatiflora* (HAHA), a perennial palm-like tree in the bellflower family (Campanulaceae), is known from east Maui (Lammers 1999, p. 452). At the time we designated critical habitat in 2003, there were nine occurrences (68 FR 25934, May 14, 2003). Currently, there are at least 9 occurrences totaling between 458 and 558 individuals in the lowland wet and montane wet ecosystems, at Haipuaena Stream, east of east Wailuaiki Stream, above Kuhiwa Valley, in Kipahulu Valley, and at Kaapahu (TNC 2007; HBMP 2008; PEPP 2008, pp. 50–51; Welton and Haus 2008, p. 26; Oppenheimer 2010b, in litt.; Welton 2010a, in litt.). Historically, this subspecies also occurred in the montane mesic ecosystem (TNC 2007; HBMP 2008).

Cyanea lobata (HAHA), a shrub in the bellflower family (Campanulaceae), is known from two subspecies, *C. lobata* ssp. *baldwinii* (Lanai) and *C. lobata* ssp. *lobata* (west Maui) (Lammers 1999, pp. 451, 454). At the time we designated critical habitat on Maui in 2003, there were no known occurrences of *C. lobata* ssp. *baldwinii* on Lanai and five occurrences of *C. lobata* ssp. *lobata* on west Maui (68 FR 1220, January 9, 2003; 68 FR 25934, May 14, 2003). However, no critical habitat was designated for this species on Lanai in 2003 (68 FR 1220, January 9, 2003). In 2006, *C. lobata* ssp. *baldwinii* was rediscovered around the Hauola headwaters on Lanai, in the montane wet ecosystem (Wood 2006a, p. 15; TNC 2007; Wood 2009e, in litt.). Currently, there are three to four individuals at this location (Perlman 2007c, in litt.; Oppenheimer 2009c, in litt.; PEPP 2009, p. 53). On west Maui, there are five occurrences of *C. lobata* ssp. *lobata* totaling eight individuals at Honokohau, Honokowai, and Mahinahina, in the lowland wet and wet cliff ecosystems (TNC 2007; HBMP 2008; Oppenheimer 2010i, in litt.).

Cyanea mannii (HAHA), a perennial shrub in the bellflower family (Campanulaceae), is endemic to east Molokai (Lammers 1999, p. 456). At the time we designated critical habitat in 2003, there were eight occurrences at Puu Kolekole and Kawela Gulch (68 FR 12982, March 18, 2003). Currently, there are fewer than 200 individuals in 11 occurrences extending across the summit area from Mokomoko Gulch to Kua Gulch, in the lowland mesic, montane mesic, and montane wet ecosystems (Wood and Perlman 2002, p. 2; TNC 2007; HBMP 2008; Perlman 2002a, in litt.; Wood 2009f, in litt.; Oppenheimer 2010u, in litt.).

Cyanea mceldowneyi (HAHA), a perennial shrub in the bellflower family (Campanulaceae), is found on east Maui (Lammers 1999, p. 457). At the time we designated critical habitat in 2003, this species was known from 11 occurrences (68 FR 25934, May 14, 2003). Currently, *C. mceldowneyi* is known from at least 10 occurrences totaling over 100 individuals in the lowland wet, montane wet, and montane mesic ecosystems (PEPP 2007, p. 39; TNC 2007; HBMP 2008; PEPP 2008, pp. 53–54; PEPP 2009, pp. 53, 57; Oppenheimer 2010b, in litt.).

Cyanea procera (HAHA), a perennial tree in the bellflower family (Campanulaceae), is known from Molokai (Lammers 1999, p. 460). At the time we designated critical habitat in 2003, this species was known from five occurrences (68 FR 12982, March 18, 2003). Currently, there are one to two individuals near Puuokaeha in west Kawela Gulch in the montane mesic ecosystem (TNC 2007; PEPP 2008, pp. 55–56; Oppenheimer 2010u, in litt.; NTBG 2011b). Historically, this species was also found in the lowland mesic and montane wet ecosystems (TNC 2007; HBMP 2008).

Cyperus fauriei (NCN), which is currently listed as *Mariscus fauriei* and for which we are proposing a taxonomic revision to *Cyperus fauriei,* is a perennial in the sedge family (Cyperaceae), and is known from Molokai, Lanai, and the island of Hawaii (Koyama 1999, p. 1,417). At the time we designated critical habitat in 2003, *C. fauriei* was known from 1 occurrence of 20 to 30 individuals on Molokai and 2 occurrences on the island of Hawaii (68 FR 12982, March 18, 2003; 68 FR 39624, July 2, 2003). Currently, on Molokai, an unknown number of individuals are found in the area west of Makolelau, at Kamakou Preserve above Onini Road, at Makakupaia, at Waihanau drainage, and at Kamalo, in the lowland mesic and montane mesic ecosystems (TNC 2007; HBMP 2008; Oppenheimer 2010u, in litt.). *Cyperus fauriei* was last observed on Lanai in the early 1900s, in the lowland dry ecosystem (TNC 2007; HBMP 2008).

Cyperus pennatiformis (NCN), which is currently listed as *Mariscus pennatiformis* and for which we proposed a taxonomic revision on August 2, 2011 (76 FR 46362), is a perennial in the sedge family (Cyperaceae), and is known from Laysan Island, Kauai, Oahu, east Maui, and the island of Hawaii (Koyama 1999, pp. 1,421–1,423). There are two varieties: *C. pennatiformis* var. *bryanii* (Laysan) and *C. pennatiformis* var. *pennatiformis* (main Hawaiian Islands). At the time we designated critical habitat on Laysan, Kauai, Maui, and Oahu in 2003, this species was known from only one occurrence (totaling an unknown number of individuals) on Laysan Island (*C. pennatiformis* var. *bryanii*), and one occurrence (totaling 30 individuals) on east Maui (*C. pennatiformis* var. *pennatiformis*) (68 FR 9116, February 27, 2003; 68 FR 25934, May 14, 2003; 68 FR 28054, May 22, 2003; 68 FR

35950, June 17, 2003). Both occurrences were in the coastal ecosystem (68 FR 25934, May 14, 2003; 68 FR 28054, May 22, 2003). The known occurrence of *C. pennatiformis* var. *pennatiformis* in the coastal ecosystem on east Maui has not been relocated (Wagner *et al.* 2005; HBMP 2008).

Cyperus trachysanthos (puukaa), a grass-like perennial in the sedge family (Cyperaceae), is known from the islands of Niihau, Kauai, Oahu, Molokai, and Lanai (Koyama 1999, pp. 1,399–1,400). At the time we designated critical habitat in 2003, *C. trachysanthos* was found on Kauai and Oahu (68 FR 9116, February 27, 2003; 68 FR 35950, June 17, 2003). This species has not been observed on the islands of Lanai and Molokai, in the lowland dry ecosystems since 1912 and 1919, respectively (TNC 2007; HBMP 2008).

Cyrtandra munroi (haiwale), a perennial shrub in the African violet family (Gesneriaceae), is known from Lanai and west Maui (Wagner *et al.* 1999d, p. 770; 68 FR 25934, May 14, 2003). At the time we designated critical habitat on Maui in 2003, *C. munroi* was known from two occurrences on Lanai and five occurrences on west Maui (68 FR 1220, January 9, 2003; 68 FR 25934, May 14, 2003). However, no critical habitat was designated for this species on Lanai (68 FR 1220, January 9, 2003). Currently, on Lanai, *C. munroi* is found 3 occurrences totaling 23 individuals at Puu Alii (20 individuals), Waialala Gulch (1 individual), and Lanaihale (2 individuals), in the montane wet and wet cliff ecosystems (TNC 2007; HBMP 2008; Oppenheimer 2010u, in litt.). On west Maui, *C. munroi* is found in 6 occurrences totaling 45 individuals at Makamakaole Gulch (1 individual), Honokohau Gulch (1 individual), Kahana Valley (1 individual), Hahakea Gulch (1 individual), Kapunakea Preserve (12 individuals), and Amalu Stream (29 individuals), in the lowland wet and wet cliff ecosystems (TNC 2007; HBMP 2008; Oppenheimer 2010i, in litt.).

Diplazium molokaiense (NCN), a terrestrial fern in the spleenwort family (Aspleniaceae), is known from all of the major Hawaiian Islands except Hawaii Island (Palmer 2003, p. 125). At the time we designated critical habitat on Kauai, Molokai, Maui, and Oahu in 2003, *D. molokaiense* was known only from east Maui (68 FR 9116, February 27, 2003; 68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003; 68 FR 35950, June 17, 2003). Currently, *D. molokaiense* is known from three occurrences on Maui. On west Maui, there are five individuals at Puehuehunui in the montane mesic ecosystem. On east Maui, there are 2 occurrences, one at Honomanu (about 15 individuals) in the montane wet ecosystem, and one in the Kula FR (about 50 individuals) in the montane mesic ecosystem (Wood 2006b, pp. 32–34; TNC 2007; Wood 2007, p. 14; HBMP 2008; PEPP 2009, p. 71). *Diplazium molokaiense* occurred historically in the dry cliff ecosystem on east Maui, and the lowland wet and dry cliff ecosystems on west Maui (TNC 2007; HBMP 2008). It was also found in the lowland mesic and dry cliff ecosystems on Lanai, and in the lowland mesic ecosystem on Molokai (TNC 2007; HBMP 2008).

Dubautia plantaginea ssp. *humilis* (naenae), a perennial shrub or small tree in the sunflower family (Asteraceae), is known from west Maui (Carr 1999b, pp. 304–305). At the time we designated critical habitat in 2003, *D. plantaginea* ssp. *humilis* was known from 2 occurrences totaling 60 to 65 individuals on west Maui (68 FR 25934, May 14, 2003). Currently, *D. plantaginea* ssp. *humilis* is known from 1 occurrence of 35 individuals in Iao Valley, in the wet cliff ecosystem (TNC 2007; HBMP 2008; PEPP 2009, p. 72; Oppenheimer 2010i, in litt.).

Eugenia koolauensis (nioi), a perennial shrub or small tree in the myrtle family (Myrtaceae), is known from Oahu and Molokai (Wagner *et al.* 1999w, p. 960). At the time we designated critical habitat on Molokai and Oahu in 2003, this species was only known from 12 occurrences on Oahu (68 FR 12982, March 18, 2003; 68 FR 35950, June 17, 2003). Currently, *E. koolauensis* is extant only on Oahu. This species was last seen on Molokai in 1920, in the lowland dry ecosystem (TNC 2007; HBMP 2008).

Flueggea neowawraea (mehamehame) is a perennial tree in the family Euphorbiaceae. This species is known from Kauai, Oahu, Molokai, Maui, and the island of Hawaii (Hayden 1999, pp. 620–621). At the time we designated critical habitat on those islands in 2003, there were 100 occurrences on Kauai, 4 occurrences on Maui, 23 occurrences on Oahu, and 2 occurrences on the island of Hawaii (68 FR 9116, February 27, 2003; 68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003; 68 FR 35950, June 17, 2003; 68 FR 39624, July 2, 2003). *Flueggea neowawraea* was last observed at Waihii on Molokai in 1931 (HBMP 2008). Currently, two individuals of *F. neowawraea* are found on east Maui's southern flank of Haleakala at Auwahi, in the lowland dry ecosystem (PEPP 2009, p. 73; Oppenheimer 2010b, in litt.). *Flueggea neowawraea* was last observed on Molokai in 1931 at Waianui, in the lowland mesic ecosystem (HBMP 2008).

Geranium arboreum (Hawaiian red-flowered geranium), a perennial shrub in the geranium family (Geraniaceae), is known from east Maui (Wagner *et al.* 1999e, p. 729). At the time we designated critical habitat in 2003, there were 12 occurrences totaling 158 individuals (68 FR 25934, May 14, 2003). Currently, there are 5 occurrences totaling fewer than 30 individuals in east Maui's montane mesic and subalpine ecosystems. Historically, *G. arboreum* was also found in the montane dry ecosystem (TNC 2007; HBMP 2008; Oppenheimer 2009d, in litt.; Perlman 2009g, in litt.; Wood 2009g, in litt.; Oppenheimer 2010b, in litt.; Welton 2010a, in litt.).

Geranium multiflorum (nohoanu), a perennial shrub in the geranium family (Geraniaceae), is known from east Maui (Wagner *et al.* 1999e, pp. 733–734). At the time we designated critical habitat in 2003, there were 13 occurrences. Due to the inaccessibility of the plants, and the difficulty in determining the number of individuals (because of the plant's multi-branched form), the total number of individuals of this species was not known; however, it was assumed to not exceed 3,000 (68 FR 25934, May 14, 2003). Currently, *G. multiflorum* is found in nine occurrences on east Maui, from Koolau Gap to Kalapawili Ridge, in the subalpine, montane mesic, and montane wet ecosystems. It is estimated there may be as many as 500 to 1,000 individuals (Bily *et al.* 2003, pp. 4–5; TNC 2007; HBMP 2008; Perlman 2009h, in litt.; Wood 2009h, in litt.; Oppenheimer 2010b, in litt.).

Gouania hillebrandii (NCN), a perennial shrub in the buckthorn family (Rhamnaceae), is known from Molokai, Lanai, Maui, and Kahoolawe (Wagner *et al.* 1999z, p. 1,095). At the time we designated critical habitat in 1984 on Maui, there was one occurrence (49 FR 44753, November 9, 1984). Currently, on Molokai, there is 1 occurrence of about 50 individuals at Puu Kolekole in the lowland mesic ecosystem (USFWS 1990, pp. 4–10; TNC 2007; PEPP 2008, p. 61; Perlman 2008f, in litt.; Wood 2009i, in litt.). On west Maui, there are fewer than 1,000 individuals in the lowland dry ecosystem (TNC 2007; HBMP 2008; Oppenheimer 2010i, in litt.). This species was last observed on Lanai and Kahoolawe in the 1800s (HBMP 2008).

Gouania vitifolia (NCN), a perennial climbing shrub or woody vine in the buckthorn family (Rhamnaceae), is known from Oahu, Maui, and the island of Hawaii (Wagner *et al.* 1999z, p. 1,097). At the time we designated

critical habitat on Maui, Oahu, and Hawaii in 2003, *G. vitifolia* was only known from two occurrences on Oahu and one occurrence on the island of Hawaii (68 FR 25934, May 14, 2003; 68 FR 35950, June 17, 2003; 68 FR 39624, July 2, 2003). Currently, botanists are searching potentially suitable habitat in the wet cliff ecosystem on west Maui where *G. vitifolia* was last seen in the 1800s (TNC 2007; HBMP 2008; Oppenheimer 2010z, in litt.).

Hesperomannia arborescens (NCN), a perennial shrubby tree in the sunflower family (Asteraceae), is known from Oahu, Molokai, Lanai, and Maui (Wagner *et al.* 1999m, p. 325). At the time we designated critical habitat on Molokai and Oahu in 2003, *H. arborescens* was known from 1 occurrence on Molokai, 4 occurrences on west Maui, and 36 occurrences on Oahu (68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003; 68 FR 35950, June 17, 2003). However, no critical habitat was designated for this species on Maui in 2003 (68 FR 25934, May 14, 2003). Currently, there are five or six occurrences on Molokai and Maui totaling 122 to 125 individuals. On Molokai, there are 30 individuals between Wailau and Pelekunu in the wet cliff ecosystem. Historically, this species was also reported from the montane wet ecosystem (HBMP 2008). On west Maui, 4 or 5 occurrences totaling 92 to 95 individuals are found in the lowland wet and wet cliff ecosystems, in Honokohau (30 individuals), Waihee (approximately 60 individuals), Kapilau Ridge (1 individual), and Lanilili (1 individual). There is some question regarding the identification of three individuals in Iao Valley (HBMP 2008; Oppenheimer 2010i, in litt.). This species has not been observed since 1940 on Lanai, in the wet cliff ecosystem (TNC 2007; HBMP 2008). The results of a recent research study indicate that the plants on Oahu may be genetically distinct from plants on Molokai and Lanai (Ching-Harbin 2003, p. 81).

Hesperomannia arbuscula (NCN), a tree or shrub in the sunflower family (Asteraceae), is known from Oahu and west Maui (Wagner *et al.* 1999m, p. 325). At the time we designated critical habitat in 2003, eight occurrences were found on west Maui, and six occurrences were known from Oahu (68 FR 25934, May 14, 2003; 68 FR 35950, June 17, 2003). Currently, on west Maui, there are three individuals in Iao Valley, in the lowland wet ecosystem (TNC 2007; HBMP 2008; Oppenheimer 2010aa, in litt.). This species was last observed in the 1990s in the wet cliff, dry cliff, and lowland dry ecosystems on west Maui (TNC 2007; HBMP 2008).

Hibiscus arnottianus ssp. *immaculatus* (kokio keokeo), a tree in the mallow family (Malvaceae), is endemic to east Molokai (Bates 1999, pp. 882–883). At the time we designated critical habitat in 2003, this subspecies was known from three occurrences on east Molokai (68 FR 12982, March 18, 2003). Currently, *H. arnottianus* ssp. *immaculatus* is found in 5 occurrences, totaling fewer than 100 individuals, from Waiehu to Papalaua in the coastal and wet cliff ecosystems (TNC 2007; HBMP 2008; NTBG 2009j; Perlman 2002b, in litt.; Wood 2009j, in litt.; Oppenheimer 2010u, in litt.).

Hibiscus brackenridgei (mao hau hele) is a perennial shrub or small tree in the mallow family (Malvaceae). This species is known from the islands of Kauai, Oahu, Molokai, Lanai, Maui, Hawaii, and possibly Kahoolawe. There are three subspecies: *H. brackenridgei* ssp. *brackenridgei* (Lanai, Maui, and Hawaii), *H. brackenridgei* ssp. *mokuleianus* (Kauai and Oahu), and *H. brackenridgei* ssp. *molokaiana* (Molokai and Oahu) (Wilson 1993, p. 278; Bates 1999, pp. 885–886). At the time we designated critical habitat on Molokai, Maui, Oahu, and Hawaii in 2003, *H. brackenridgei* ssp. *brackenridgei* was known from 2 occurrences on Lanai, 5 occurrences on Maui, and 4 occurrences on Hawaii, and *H. brackenridgei* ssp. *mokuleianus* was known from 5 occurrences totaling fewer than 206 individuals on Oahu. *Hibiscus brackenridgei* ssp. *molokaiana* was reported from one occurrence on Oahu and had not been seen on Molokai since 1920 (68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003; 68 FR 35950, June 17, 2003; 68 FR 39624, July 2, 2003). No critical habitat was designated for this species on Lanai in 2003 (68 FR 1220, January 9, 2003). Currently, *H. brackenridgei* ssp. *brackenridgei* is extant on the islands of Lanai, Maui, and Hawaii. On Lanai, there are two individuals within fenced exclosures on Keomuku Road, and one individual within a fenced exclosure at Kaena; both exclosures are in the lowland dry ecosystem. Historically, this subspecies was also known from Lanai's coastal ecosystem (TNC 2007; Oppenheimer 2010t, in litt.). On west Maui, there are a few individuals in Kaonohue Gulch in the lowland dry ecosystem. On east Maui, there is 1 occurrence of about 10 individuals in a small gulch downslope from the historical location at Keokea, in the lowland dry ecosystem (TNC 2007; PEPP 2008, pp. 64–65; PEPP 2009, pp. 76–78; Oppenheimer 2010t, in litt.; 2010u, in litt.; 2010bb, in litt). Historically, on Molokai, *Hibiscus brackenridgei* ssp. *molokaiana* was found in the coastal ecosystem at Kihaapilani (TNC 2007; HBMP 2008).

Huperzia mannii (wawaeiole), is a fern ally in the hanging fir-moss family (Lycopodiaceae) that is typically epiphytic on native plants such as *Metrosideros polymorpha* or *Acacia koa.* This species is known from Kauai, Maui, and the island of Hawaii (Palmer 2003, p. 256). At the time we designated critical habitat on Kauai and Maui in 2003, this species was known from Maui and the island of Hawaii (68 FR 25934, May 14, 2003). No critical habitat was designated for this species on Hawaii in 2003 (68 FR 39624, July 2, 2003). Currently, on Maui there are 6 occurrences totaling 97 to 100 individuals. On west Maui, 14 to 17 individuals of *H. mannii* occur in the Lihau section of the West Maui Natural Area Reserve, in the montane mesic ecosystem. This species also occurred historically in the lowland wet and montane wet ecosystems (HBMP 2008). On east Maui, 2 individuals are reported north of Waikamoi Preserve at Puuokakae and Opana Gulch, in the montane wet ecosystem; 10 individuals occur at Kipahulu in the lowland wet ecosystem; approximately 40 individuals occur at Cable Ridge in the lowland mesic ecosystem; approximately 30 individuals occur at Kaapahu in the lowland mesic ecosystem; and 1 individual was observed at Manawainui (Kipahulu FR) in the montane mesic ecosystem (Haleakala National Park 2004, pp. 5–7; Haleakala National Park 2006, p. 3; TNC 2007; HBMP 2008; Perlman 2009i, in litt., 2009j, in litt.; Wood 2009k, in litt.; Welton and Haus 2008, pp. 12–13; Welton 2010a, in litt.).

Ischaemum byrone (Hilo ischaemum), a perennial in the grass family (Poaceae), is known from Kauai, Oahu, Molokai, east Maui and the island of Hawaii (O'Connor 1999, pp. 1,556–1,557). At the time we designated critical habitat in 2003, *I. byrone* was known from two occurrences on Kauai, two occurrences on Molokai, six occurrences on Maui, and six occurrences on Hawaii Island (68 FR 9116, February 27, 2003; 68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003; 68 FR 39624, July 2, 2003). Currently, *I. byrone* is known from six or more occurrences on Molokai and Maui, totaling as many as several thousand individuals. On Molokai, *I. byrone* is relatively common in the coastal ecosystem from Wailau to Waiehu, and there are an estimated 200 individuals (TNC 2007; HBMP 2008; Oppenheimer 2009e, in litt.). On east

Maui, there are an unknown number of individuals at Pauwalu Point; 20 individuals in scattered patches at Mokuhuki islet; many individuals at Keawaiki Bay; and an unknown number of individuals on the shoreline at Kalahu Point, and at Waiohonu Stream outlet and Muolea Point, all in the coastal ecosystem. These occurrences may total several thousands of individuals, depending on rainfall (TNC 2007; HBMP 2008; Oppenheimer 2010b, in litt.).

Isodendrion pyrifolium (wahine noho kula), a perennial shrub in the violet family (Violaceae), is known from Niihau, Oahu, Molokai, Lanai, Maui, and Hawaii (Wagner *et al.* 1999aa, p. 1,331). At the time we designated critical habitat on Molokai, Maui, and Oahu in 2003, *I. pyrifolium* was known from a single occurrence on the island of Hawaii (68 FR 12982, March 18, 2003; 68 FR 35950, June 17, 2003; 68 FR 39624, July 2, 2003). Currently, there are no extant occurrences on Lanai, Molokai, or Maui. Historically, *I. pyrifolium* was found on Molokai in the lowland mesic ecosystem, and on west Maui in the lowland wet, dry cliff, and wet cliff ecosystems. We have no habitat information for the historical occurrences on Lanai (TNC 2007; HBMP 2008; PEPP 2008, p.103).

Kadua cordata ssp. *remyi* (kopa), which is currently listed as *Hedyotis schlechtendahliana* var. *remyi* and for which we are proposing a taxonomic revision in this rule to *Kadua cordata* ssp. *remyi,* is a perennial subshrub in the coffee family (Rubiaceae), and is known from Lanai (Wagner *et al.* 1999a, pp. 1,150–1,152). In 2003, this subspecies was known from eight individuals; however, no critical habitat was designated for this subspecies on Lanai (68 FR 1220, January 9, 2003). Currently, two wild and three out-planted individuals are reported from Kaiholena-Hulopoe ridge, in the lowland wet ecosystem. Historically, this species also occurred in the lowland mesic ecosystem (TNC 2007; HBMP 2008; PEPP 2009, pp. 5, 82; Oppenheimer 2010cc, in litt.).

Kadua coriacea (kioele), which is currently listed as *Hedyotis coriacea* but for which we proposed a taxonomic revision to *Kadua coriacea* on August 2, 2011, at 76 FR 46362, is a perennial shrub in the coffee family (Rubiaceae), and is known from Oahu, Maui, and the island of Hawaii (Wagner *et al.* 1999a, p. 1,141). At the time we designated critical habitat on Maui and Oahu in 2003, this species was known from one individual in the lowland dry ecosystem at Lihau, on west Maui, and four occurrences on the island of Hawaii (68 FR 25934, May 14, 2003; 68 FR 35950, June 17, 2003). However, no critical habitat was designated for this species on Hawaii in 2003 (68 FR 39264, July 2, 2003). In 2008, the only known individual on Maui was burned during a wildfire and died (PEPP 2008, p. 67).

Kadua laxiflora (pilo), which is currently listed as *Hedyotis mannii* and for which we are proposing a taxonomic revision to *Kadua laxiflora* in this rule, is a perennial subshrub in the coffee family (Rubiaceae), and is known from Molokai, Lanai, and west Maui (Wagner *et al.* 1999a, p. 1,148). At the time we designated critical habitat on Maui in 2003, this species was known from a total of five occurrences on Lanai (two occurrences), Molokai (one occurrence), and west Maui (two occurrences) (68 FR 1220, January 9, 2003; 68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003). However, no critical habitat was designated for this species on Lanai or Molokai in 2003 (68 FR 1220, January 9, 2003; 68 FR 12982, March 18, 2003). Currently, on Lanai, there are two individuals at Hauola Gulch in the montane wet ecosystem. There are historical reports from the lowland mesic, lowland wet, and wet cliff ecosystems on this island. On west Maui, there are four individuals at Kauaula Valley, in the wet cliff ecosystem. Historically, this species was also reported from the lowland wet and dry cliff ecosystems (TNC 2007; HBMP 2008; Oppenheimer 2009f, in litt.; PEPP 2009, pp. 3, 14, 24, 82–83; Perlman 2008g, in litt.;) There are no extant individuals on Molokai, although there are historical reports from the lowland mesic and montane mesic ecosystems (TNC 2007; HBMP 2008).

Kanaloa kahoolawensis (kohe malama malama o kanaloa), a perennial shrub in the pea family (Fabaceae), occurs only on Kahoolawe (Lorence and Wood 1994, p. 137). Soil cores suggest *K. kahoolawensis* was quite widespread in lowland dry areas throughout the main Hawaiian Islands during the early Pleistocene (Burney *et al.* 2001, p. 632; Athens 2002, p. 74). At the time we designated critical habitat in 2003, *K. kahoolawensis* was known from two individuals on the Aleale sea stack on the south central coast of Kahoolawe (68 FR 25934, May 14, 2003). Currently, *K. kahoolawensis* is known from the same location with one surviving individual, in the coastal ecosystem (TNC 2007; HBMP 2008; NTBG 2008).

Kokia cookei (Cooke's kokio), a small tree in the mallow family (Malvaceae), is known from Molokai, historically in the lowland dry ecosystem (Bates 1999, p. 890; TNC 2007; HBMP 2008). At the time *K. cookei* was listed in 1979, there were no individuals remaining in the wild, and one individual in an arboretum on Oahu, and no critical habitat was designated for this species on Molokai (44 FR 62470, October 30, 1979; 68 FR 12982, March 18, 2003). Currently, one individual is in cultivation at Waimea Arboretum, and there are propagules at the Volcano Rare Plant Facility, Lyon Arboretum, Amy Greenwell Ethnobotanical Garden, Leeward Community College, Hoolawa Farms, and Maui Nui Botanical Garden (Seidman 2007, in litt.; Orr 2007, in litt.).

Labordia tinifolia var. *lanaiensis* (kamakahala), a perennial shrub or small tree in the logania family (Loganiaceae), is known from Lanai (Wagner *et al.* 1999z, pp. 861–862). In 2003, this variety was known from one occurrence totaling three to eight individuals along the summit of Lanaihale; however, no critical habitat was designated for this species on Lanai (68 FR 1220, January 9, 2003). Currently, *L. tinifolia* var. *lanaiensis* is found in one occurrence of at least five individuals in the head waters of Awehi Gulch on the southeastern end of the summit ridge of Lanaihale, in the wet cliff ecosystem. This variety was historically also found in the lowland mesic, lowland wet, and montane wet ecosystems (TNC 2007; HBMP 2008; Oppenheimer 2010t, in litt.; Oppenheimer 2010d, in litt.).

Labordia triflora (kamakahala), a perennial shrub or small tree in the logania family (Loganiaceae), is known from east Molokai (Wagner *et al.* 1999z, p. 423). At the time we designated critical habitat in 2003, this species was known from 10 individuals (68 FR 12982, March 18, 2003). Currently, 4 occurrences totaling 20 individuals are reported from Kua, Wawaia, Kumueli, and Manawai Gulch, in the lowland mesic ecosystem (TNC 2007; PEPP 2007, p. 48; HBMP 2008; PEPP 2008, p. 85).

Lysimachia lydgatei (NCN), a shrub in the primrose family (Primulaceae), is known from west Maui (Wagner *et al.* 1999bb, p. 1,082). At the time we designated critical habitat in 2003, there were four occurrences (68 FR 25934, May 14, 2003). Currently, there are 2 occurrences totaling approximately 30 individuals. Both occurrences are found at Puehuehunui, in the montane mesic and wet cliff ecosystems (TNC 2007; HBMP 2008; Oppenheimer 2010dd, in litt.; Perlman 1997, in litt.; Wood 2009l, in litt.). This species is also historically known from the lowland dry ecosystem on west Maui (TNC 2007; HBMP 2008).

Lysimachia maxima (NCN), a perennial shrub in the primrose family (Primulaceae), is known from Molokai

(Wagner *et al.* 1999bb, p. 1,083). At the time we designated critical habitat in 2003, this species was known from one occurrence (68 FR 12982, March 18, 2003). Currently, *L. maxima* is known from 2 occurrences totaling 28 individuals on east Molokai. There are 20 individuals near Ohialele along the Pelekunu rim, and 8 individuals in 2 distinct patches in east Kawela Gulch, in the lowland wet and montane wet ecosystems (PEPP 2007, p. 48; TNC 2007; HBMP 2008; PEPP 2008, p. 85).

Marsilea villosa (ihi ihi), a perennial fern in the marsilea family (Marsileaceae), is known from Niihau, Oahu, and Molokai (Palmer 2003, pp. 180–182). At the time we designated critical habitat on Oahu in 2003, this species was found in four occurrences on Molokai, and in five occurrences on Oahu (68 FR 12982, March 18, 2003; 68 FR 35950, June 17, 2003). No critical habitat was designated for this species on Molokai in 2003 (68 FR 12982, March 18, 2003). Currently, *M. villosa* is known from eight occurrences on Molokai, totaling possibly thousands of individuals in areas that flood periodically, such as small depressions and flood plains with clay soils. There is one small occurrence at Kamakaipo, north of Laau Point, and seven occurrences between Kaa and Ilio Point, covering areas from 20 sq ft (6 sq m) to over 2 ac (0.8 ha), all in the coastal ecosystem (TNC 2007; HBMP 2008; Bakutis 2009b, in litt.; Chau 2010, in litt.; Garnett 2010b in litt.; Oppenheimer 2010u, in litt.; Perlman 2006b, in litt.; Wood 2009m, in litt.).

Melanthera kamolensis (nehe), which is currently listed as *Lipochaeta kamolensis* and for which we are proposing a taxonomic revision to *Melanthera kamolensis* in this rule, is a perennial herb in the sunflower family (Asteraceae), and is known from east Maui (Wagner *et al.* 1990a, p. 337). At the time we designated critical habitat in 2003, this species was known from one occurrence (68 FR 25934, May 14, 2003). Currently, a single occurrence of *M. kamolensis* is found in Kamole Gulch, totaling between 30 and 40 individuals, in the lowland dry ecosystem. A second occurrence just west of Kamole appears to be a hybrid swarm of *M. kamolensis* and *M. rockii,* with approximately 100 individuals (TNC 2007; HBMP 2008; Medieros 2010, in litt.).

Melicope adscendens (alani), a perennial sprawling shrub in the rue family (Rutaceae), is known from Maui (Stone *et al.* 1999, p. 1,183). At the time we designated critical habitat in 2003, there were 16 occurrences (68 FR 25934, May 14, 2003). Currently, *M. adscendens* is known from 2 occurrences totaling 33 individuals within the Auwahi I and Auwahi II fenced exclosures, in the lowland dry and montane mesic ecosystems on east Maui (TNC 2007; HBMP 2008; PEPP 2009, p. 85; Buckman 2010, in litt.).

Melicope balloui (alani), perennial tree or shrub in the rue family (Rutaceae), is known from east Maui (Stone *et al.* 1999, pp. 1,183–1,184). At the time we designated critical habitat in 2003, there were 3 occurrences totaling 50 individuals (68 FR 25934, May 14, 2003). Currently, there are approximately 50 individuals near Palikea Stream in Kipahulu Valley, in the lowland wet ecosystem, and a few individuals at Puuokakae in the montane wet ecosystem (TNC 2007; HBMP 2008; Wood 2009n, in litt.).

Melicope knudsenii (alani), a perennial tree in the rue family (Rutaceae), is known from Kauai and Maui (Stone *et al.* 1999, pp. 1,192–1,193). At the time we designated critical habitat in 2003, there were 10 occurrences on Kauai and 4 occurrences on Maui (68 FR 9116, February 27, 2003; 68 FR 25934, May 14, 2003). Currently, on east Maui, there are two individuals at Auwahi, in the montane dry ecosystem (TNC 2007; HBMP 2008; Oppenheimer 2010b, in litt.).

Melicope mucronulata (alani), a perennial tree in the rue family (Rutaceae), is known from Molokai and east Maui (Stone *et al.* 1999, p. 1,196). At the time we designated critical habitat on Molokai and Maui in 2003, there were two occurrences on Molokai and two occurrences on east Maui (68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003). Currently, there are two occurrences on Molokai, one individual at Kupaia Gulch, and three individuals at Onini Gulch, in the lowland mesic ecosystem (TNC 2007; HBMP 2008; PEPP 2008, p. 69; PEPP 2009, p. 86). This species was historically also found in the montane mesic ecosystem on Molokai (TNC 2007; HBMP 2008). The occurrence status of *M. mucronulata* in the lowland dry and montane dry ecosystems on east Maui is unknown.

Melicope munroi (alani), a perennial shrub in the rue family (Rutaceae), is known from Lanai and Molokai (Stone *et al.* 1999, p. 1,196). In 2003, there were two occurrences on Lanai; however, no critical habitat was designated for this species on Lanai or Molokai (68 FR 1220, January 9, 2003; 68 FR 12982, March 18, 2003). Currently, on Lanai, *M. munroi* is known from at least 2 occurrences of fewer than 40 individuals on the Lanaihale summit and the ridge of Waialala Gulch, in the montane wet and wet cliff ecosystems (TNC 2007; HBMP 2008; Oppenheimer 2010t, in litt.). This species has not been seen on Molokai since 1910, where it was last observed in the lowland mesic ecosystem (68 FR 12982, March 18, 2003).

Melicope ovalis (alani), a perennial tree in the rue family (Rutaceae), is known from east Maui (Stone *et al.* 1999, p. 1,198). At the time we designated critical habitat in 2003, there were two occurrences (68 FR 25934, May 14, 2003). Currently, there are approximately 50 individuals in 4 occurrences in the lowland wet ecosystem in Keanae Valley, and in the montane wet and wet cliff ecosystems at Kipahulu Valley and Palikea Stream (TNC 2007; Bily *et al.* 2008 p. 45; HBMP 2008; Oppenheimer 2010b, in litt.; Welton 2010a, in litt.; Wood 2009o, in litt.).

Melicope reflexa (alani), a sprawling shrub in the rue family (Rutaceae), is endemic to east Molokai (Stone *et al.* 1999, p. 1,203). At the time we designated critical habitat in 2003, there were three occurrences (68 FR 12982, March 18, 2003). Currently, there are two occurrences totaling at least six individuals. There are at least 5 individuals at Puuohelo and one individual at Puniuohua in the lowland wet ecosystem (TNC 2007; HBMP 2008; Oppenheimer 2010ee, in litt.). Historically, this species was also found in the lowland mesic and montane wet ecosystems (TNC 2007; HBMP 2008; Oppenheimer 2010u, in litt.; Wood 2010b, in litt.).

Neraudia sericea (NCN), a perennial shrub in the nettle family (Urticaceae), is known from Molokai, Lanai, Maui, and Kahoolawe (Wagner *et al.* 1999cc, p. 1,304). At the time we designated critical habitat in 2003, *N. sericea* was known from Molokai and Maui (68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003). Currently, this species is found only on east Maui at Kahikinui, where there are fewer than five individuals in the montane mesic ecosystem. This species has not been observed in the lowland dry ecosystem on east Maui since the early 1900s. Historically, *N. sericea* was found in the lowland dry and dry cliff ecosystems on Lanai, the lowland mesic and montane mesic ecosystems on Molokai, the lowland dry and dry cliff ecosystems on west Maui, and the lowland dry ecosystem on Kahoolawe (TNC 2007; HBMP 2008; Medieros 2010, in litt.).

Nototrichium humile (kului), a trailing shrub in the amaranth family (Amaranthaceae), is known from Oahu and east Maui (Wagner *et al.* 1999dd, pp. 193–194). At the time we designated critical habitat on Maui and Oahu in

2003, *N. humile* was only known from 25 occurrences on Oahu (68 FR 25934, May 14, 2003; 68 FR 35950, June 17, 2003). This species has not been seen on Maui since 1976, when one individual was reported from the lowland dry ecosystem (TNC 2007; HBMP 2008).

Peucedanum sandwicense (makou), a perennial herb in the parsley family (Apiaceae), is known from Kauai, Oahu, Molokai, Maui, and Keopuka islet off the coast of east Maui (Constance and Affolter 1999, p. 208). At the time we designated critical habitat in 2003, *P. sandwicense* was known from 15 occurrences on Kauai, 5 occurrences on Molokai, 3 occurrences on Maui, and 4 occurrences on Oahu (68 FR 9116, February 27, 2003; 68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003; 68 FR 35950, June 17, 2003). Currently, *P. sandwicense* is known from 6 occurrences totaling over 45 individuals on Molokai and east Maui. On Molokai, there are 3 occurrences totaling 32 to 37 individuals, at Mokapu islet (25 individuals), Lepau Point (2 individuals), and near the top of the Kalaupapa Trail (5 to 10 individuals), all in the coastal ecosystem. There is a report of an individual found near the lowland wet ecosystem, but this plant has not been relocated since 1989 (TNC 2007; HBMP 2008; NTBG 2010a, in litt.; 2010b, in litt.). On east Maui, *P. sandwicense* occurs on Keopuku islet (15 individuals), Pauwalu Point (an unknown number of individuals), and Honolulu Nui (an unknown number of individuals), in the coastal ecosystem. Historically, this species was found on west Maui in the lowland wet ecosystem (TNC 2007; HBMP 2008; NTBG 2010a, in litt., 2010b, in litt.).

Phyllostegia hispida (NCN), a perennial vine in the mint family (Lamiaceae), is known from Molokai (Wagner *et al.* 1999h, pp. 817–818). Until an individual was rediscovered in 1996, *P. hispida* was thought to be extinct in the wild. This individual died in 1998, and *P. hispida* was thought to be extirpated, until another plant was found in 2005. Propagules were taken and propagated; however, the wild individual died. This sequence of events occurred again in 2006 and 2007 (74 FR 11319, March 17, 2009). At the time we listed *P. hispida* in 2009, no critical habitat was designated for this species on Molokai (74 FR 11319, March 17, 2009). Currently *P. hispida* is known from 4 occurrences totaling 25 individuals in the montane wet and wet cliff ecosystems on Molokai (TNC 2007; PEPP 2009, pp. 7, 15, 90–93). Historically, this species also occurred in the lowland wet ecosystem (TNC 2007; HBMP 2008).

Phyllostegia mannii (NCN), a vine in the mint family (Lamiaceae), is known from Molokai and Maui (Wagner *et al.* 1999h, pp. 820–821). At the time we designated critical habitat on Molokai and Maui in 2003, this species was only known from one individual on east Molokai. It had not been observed on Maui for over 70 years (68 FR 25934, May 14, 2003). Currently, on Molokai, there are three individuals in Hanalilolilo, in the montane wet ecosystem. Historically, *P. mannii* occurred in Molokai's lowland mesic and lowland wet ecosystems, and the montane wet and montane mesic ecosystems on east Maui (TNC 2007; HBMP 2008; Perlman 2009k, in litt.; Oppenheimer 2010u, in litt.; Wood 2010c, in litt.).

Plantago princeps (laukahi kuahiwi), a short-lived shrub or herb in the plantain family (Plantaginaceae), is known from the islands of Kauai, Oahu, Molokai, Maui, and Hawaii (Wagner *et al.* 1999ee, pp. 1,054–1,055). Wagner *et al.* recognize four varieties of *P. princeps: P. princeps* var. *anomala* (Kauai and Oahu), *P. princeps* var. *laxiflora* (Molokai, Maui, and Hawaii), *P. princeps* var. *longibracteata* (Kauai and Oahu), and *P. princeps* var. *princeps* (Oahu) (Wagner *et al.* 1999ee, pp. 1,054–1,055). At the time we designated critical habitat on Kauai, Molokai, Maui, and Oahu in 2003, there was one known occurrence of *P. princeps* var. *laxiflora* on Molokai and eight occurrences on Maui (68 FR 9116, February 27, 2003; 68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003; 68 FR 35050, June 17, 2003). Currently, *P. princeps* var. *laxiflora* is known from 6 occurrences totaling approximately 70 individuals on Maui (Oppenheimer 2010a, in litt.). On east Maui, there are 3 occurrences totaling 41 to 46 individuals in the dry cliff and wet cliff ecosystems, at Waikau (1 individual), Kaupo Gap (about 30 individuals), and Palikea (10 to 15 individuals). On west Maui, there are 3 occurrences totaling 15 individuals in the wet cliff ecosystem, on the rim of Kauaula Valley, at the headwaters of Nakalaloa Stream, and in Iao Valley (TNC 2007; HBMP 2008; Oppenheimer 2009g, in litt.). On Molokai, this species was found in the lowland wet and montane mesic ecosystems as recently as 1987 (TNC 2007; HBMP 2008; Oppenheimer 2010u, in litt.).

Platanthera holochila (NCN), a perennial herb in the orchid family (Orchidaceae), is known from Kauai, Oahu, Molokai, and Maui (Wagner *et al.* 1999ff, p. 1,474). At the time we designated critical habitat on Kauai, Maui, and Oahu in 2003, there were two known occurrences on Kauai, one occurrence on Molokai, and six occurrences on Maui (68 FR 9116, February 27, 2003; 68 FR 25934, May 14, 2003). No critical habitat was designated for this species on Molokai in 2003 (68 FR 12982, March 18, 2003). Currently, there are 4 known occurrences totaling 44 individuals on Molokai and west Maui. On Molokai, there is 1 occurrence at Hanalilolilo totaling 24 individuals in the montane wet ecosystem. There are 3 occurrences on west Maui, at Waihee Valley in the wet cliff ecosystem (12 individuals), Waihee Valley in the wet cliff ecosystem (6 individuals), and Pohakea Gulch in the montane wet ecosystem (2 individuals). Historically, this species was also found in the montane wet ecosystem on east Maui (TNC 2007; HBMP 2008; Oppenheimer 2010u, in litt.).

Portulaca sclerocarpa (poe), a perennial herb in the purslane family (Portulacaceae), is known from a single collection from Poopoo islet off the south coast of Lanai, and the island of Hawaii (Wagner *et al.* 1999gg, p. 1,074). At the time we designated critical habitat in 2003, there was 1 known occurrence on Poopoo islet and 24 occurrences on Hawaii Island (68 FR 1220, January 9, 2003; 68 FR 39624, July 2, 2003). Currently, on Lanai, this species is only known from an unknown number of individuals in the coastal ecosystem on Poopoo islet (TNC 2007; HBMP 2008).

Pteris lidgatei (NCN), a terrestrial fern in the maidenhair fern family (Adiantaceae), is known from Oahu, Molokai, and Maui (Palmer 2003, p. 229). At the time we designated critical habitat on Molokai, Maui, and Oahu in 2003, this species was known from two occurrences on Maui and nine occurrences on Oahu (68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003; 68 FR 35950, June 17, 2003). Currently, *P. lidgatei* is known from four occurrences totaling over nine individuals on Molokai and Maui. On Molokai, there are six to eight individuals in upper Kumueli Gulch in the montane wet ecosystem. Historically, this species was also found in Molokai's wet cliff ecosystem. On west Maui, *P. lidgatei* is known from a single individual at Kauaula Valley in the wet cliff ecosystem, an unknown number of individuals in both the upper Kauaula Valley in the lowland wet ecosystem and upper Kahakuloa Stream in the wet cliff ecosystem (PEPP 2007, pp. 54–55; TNC 2007; HBMP 2008; PEPP 2009, p. 103; Oppenheimer 2010i, in litt.; 2010u, in litt.).

Remya mauiensis (Maui remya), a perennial shrub in the sunflower family (Asteraceae), is known from west Maui (Wagner *et al.* 1999m, p. 353). At the time we designated critical habitat in 2003, there were five known occurrences totaling 21 individuals (68 FR 25934, May 14, 2003). Currently, *R. mauiensis* is found in 6 occurrences totaling approximately 500 individuals at Kauaula (lowland mesic ecosystem), Puehuehunui (lowland mesic and montane mesic ecosystems), Ukumehame (wet cliff ecosystem), Papalaua (montane mesic ecosystem), Pohakea (lowland dry ecosystem), and Manawainui (lowland dry ecosystem) (TNC 2007; HBMP 2008; Oppenheimer 2010ff, in litt.). Historically, this species also occurred in Maui's lowland wet ecosystem (TNC 2007; HBMP 2008).

Sanicula purpurea (NCN), a perennial herb in the parsley family (Apiaceae), is known from bogs and surrounding wet forest on Oahu and west Maui (Constance and Affolter 1999, p. 210). At the time we designated critical habitat in 2003, this species was known from seven occurrences on west Maui and five occurrences on Oahu (68 FR 25934, May 14, 2003; 68 FR 35950, June 17, 2003). Currently, on west Maui, as many as 50 individuals are found in 4 known occurrences in bogs in the montane wet ecosystem (TNC 2007; HBMP 2008; Oppenheimer 2010gg, in litt.; Perlman 2007d, in litt.; Wood 2010d, in litt.).

Schenkia sebaeoides (awiwi), which is currently listed as *Centaurium sebaeoides* and for which we are proposing a taxonomic revision to *Schenkia sebaeoides* in this rule, is an annual herb in the gentian family (Gentianaceae) known from the islands of Kauai, Oahu, Molokai, Lanai, and west Maui (Wagner *et al.* 1990b, p. 725; 68 FR 1220, January 9, 2003). At the time we designated critical habitat on Kauai, Molokai, Maui, and Oahu in 2003, the species was reported from one occurrence on Lanai, three occurrences on Kauai, two occurrences on Molokai, three occurrences on Maui, and two occurrences on Oahu (68 FR 1220, January 9, 2003; 68 FR 9116, February 27, 2003; 68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003; 68 FR 35950, June 17, 2003). No critical habitat was designated for this species on Lanai in 2003 (68 FR 1220, January 9, 2003). Currently, on Lanai, Molokai, and Maui, there are at least eight occurrences, with the highest number of individuals on Molokai. The annual number of individuals on each island varies widely depending upon rainfall (HBMP 2008; Oppenheimer 2009i, in litt.). On Lanai, there is 1 occurrence totaling between 20 and 30 individuals, in the lowland dry ecosystem (TNC 2007; HBMP 2008). On Molokai, there are 2 or more occurrences containing thousands of individuals in the coastal ecosystem (TNC 2007; HBMP 2008). On west Maui, there are 5 occurrences, totaling several thousand individuals, along the north coast from Haewa Point to Puu Kahulanapa, in the coastal ecosystem (Oppenheimer 2010i, in litt.).

Schiedea haleakalensis (NCN), perennial shrub in the pink family (Caryophyllaceae), is known from east Maui (Wagner *et al.* 1999j, pp. 512–514). At the time we designated critical habitat in 2003, this species was known from two occurrences in Haleakala National Park (68 FR 25934, May 14, 2003). Currently, *S. haleakalensis* is found in 2 occurrences totaling fewer than 50 individuals, at Leleiwi Pali and along the cliffs of Kaupo Gap in the subalpine and dry cliff ecosystems, within Haleakala National Park (Welton 2010a, in litt.).

Schiedea lydgatei (NCN), a perennial subshrub in the pink family (Caryophyllaceae), is known from east Molokai (Wagner *et al.* 1999j, p. 516). At the time we designated critical habitat in 2003, this species was known from four occurrences totaling more than 1,000 individuals (68 FR 12982, March 18, 2003). Currently, there are over 200 individuals between Kawela and Makolelau gulches, in the lowland mesic ecosystem (TNC 2007; HBMP 2008; PEPP 2009, p. 109; Oppenheimer 2010u, in litt.).

Schiedea sarmentosa (NCN), a perennial herb in the pink family (Caryophyllaceae), is endemic to Molokai (Wagner *et al.* 2005b, pp. 116–119). At the time we designated critical habitat in 2003, this species was known from five occurrences with an estimated total of over 1,000 individuals (68 FR 12982, March 18, 2003). Currently, *S. sarmentosa* is known from three occurrences from Onini Gulch to Makolelau, with as many as several thousand individuals, in the lowland mesic ecosystem (TNC 2007; HBMP 2008; Oppenheimer 2010hh, in litt.; Perlman 2009l, in litt.; Perlman 2010, in litt.; Wood 2010e, in litt.).

Sesbania tomentosa (ohai), a perennial shrub or small tree in the pea family (Fabaceae), is known from Nihoa and Necker islands in the Northwestern Hawaiian Islands (NWHI) and all of the main Hawaiian Islands (Geesink *et al.* 1999, pp. 704–705). At the time we designated critical habitat in 2003, *S. tomentosa* was known from 1 occurrence on Kauai, 9 occurrences on Molokai, 7 occurrences on Maui, several thousand individuals on Nihoa Island, ''in great abundance'' on Necker Island, 3 occurrences on Oahu, and 31 occurrences on Hawaii Island (68 FR 9116, February 27, 2003; 68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003; 68 FR 28054, May 22, 2003; 68 FR 35950, June 17, 2003; 68 FR 39624, July 2, 2003). Currently, *S. tomentosa* is known from Kauai, Molokai, Maui, Kahoolawe, Nihoa and Necker, Oahu, and Hawaii. The number of individuals at any one location varies widely, depending on rainfall (TNC 2007; NTBG 2009k). The estimated number of individuals in the NWHI (Nihoa and Necker) is approximately 5,500 individuals, and in the main Hawaiian Islands 1,600 to 2,000 individuals, totaling as many as 7,500 individuals in 20 occurrences. Currently, on Molokai, Maui, and Kahoolawe, there are approximately 10 known occurrences, totaling between 1,000 and 2,000 individuals. On Molokai, there is one occurrence on the northwest shore from Moomomi to Nenehanaupo, totaling about 35 individuals, and about 1,000 or more individuals on the south coast scattered from Kamiloloa to the Kawela plain, in the coastal and lowland dry ecosystems. Historically, this species also occurred in Molokai's lowland mesic ecosystem (TNC 2007; Cole 2008, in litt.; NTBG 2009k). On west Maui, there are 3 occurrences totaling 80 individuals from Nakalele Point to Mokolea Point, in the coastal ecosystem. Historically, this species also occurred in the lowland dry ecosystem on west Maui (TNC 2007; NTBG 2009k; Oppenheimer 2009h, in litt.). On east Maui, there is one occurrence of 10 individuals in the lowland dry ecosystem (TNC 2007; Cole 2008, in litt.; Oppenheimer 2009h, in litt.; Oppenheimer 2010i, in litt.). On Kahoolawe, about 300 individuals occur in the coastal ecosystem on Puu Koae islet. *Sesbania tomentosa* has not been seen in the coastal and lowland dry ecosystems on Lanai for over 50 years (TNC 2007; HBMP 2008).

Silene alexandri (NCN), a perennial subshrub in the pink family (Caryophyllaceae), is known from Molokai (Wagner *et al.* 1999j, p. 522). At the time we designated critical habitat in 2003, *S. alexandri* was extirpated in the wild, but individuals remained in cultivation (68 FR 12982, March 18, 2003). Currently, *S. alexandri* is known from 1 occurrence of 25 individuals east of Kawela Gulch, in the lowland mesic ecosystem (TNC 2007; HBMP 2008; PEPP 2009, p. 111; Oppenheimer 2010u, in litt.).

Silene lanceolata (NCN), a perennial subshrub in the pink family (Caryophyllaceae), is known from

Kauai, Oahu, Molokai, Lanai, and the island of Hawaii (Wagner *et al.* 1999j, p. 523). At the time we designated critical habitat on Molokai and Oahu in 2003, *S. lanceolata* was known from Molokai, Oahu, and the island of Hawaii (68 FR 12982, March 18, 2003; 68 FR 35950, June 17, 2003; 68 FR 39624, July 2, 2003). However, no critical habitat was designated for this species on Lanai, Kauai, or Hawaii in 2003 (68 FR 1220, January 9, 2003; 68 FR 9116, February 27, 2003; 68 FR 39624, July 2, 2003). Currently, on Molokai, there are 2 occurrences totaling approximately 200 individuals at Kapuaokoolau and along cliffs between Kawela and Makolelau, in the lowland mesic ecosystem (TNC 2007; HBMP 2008; Oppenheimer 2010u, in litt.). This species has not been observed in the lowland dry ecosystem on Lanai since the 1930s (TNC 2007; HBMP 2008).

Solanum incompletum (popolo ku mai), a perennial shrub in the nightshade family (Solanaceae), is reported from Kauai, Molokai, Lanai, Maui, and the island of Hawaii (Symon 1999, pp. 1,270–1,271). At the time we designated critical habitat in 2003, this species was only known from one occurrence on the island of Hawaii (68 FR 39624, July 2, 2003). Currently, there are no known occurrences on Lanai, Molokai, or Maui (HBMP 2008; PEPP 2009, p. 112). Historically, this species occurred in the lowland dry, lowland mesic, and dry cliff ecosystems on Lanai, and in the lowland dry, lowland mesic, and subalpine ecosystems on east Maui. It is unclear when and where this plant was collected on Molokai (TNC 2007; HBMP 2008).

Spermolepis hawaiiensis (NCN), an annual herb in the parsley family (Apiaceae), is known from Kauai, Oahu, Molokai, Lanai, and the island of Hawaii (Constance and Affolter 1999, p. 212). At the time we designated critical habitat on Kauai, Molokai, Maui, and Oahu in 2003, *S. hawaiiensis* was known from 3 occurrences on Lanai, 2 occurrences on Kauai, 1 occurrence on Molokai, 5 occurrences on Maui, 6 occurrences on Oahu, and 30 occurrences on Hawaii Island (68 FR 1220, January 9, 2003; 68 FR 9116, February 27, 2003; 68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003; 68 FR 35950, June 17, 2003). No critical habitat was designated for this species on Hawaii in 2003 (68 FR 39624, July 2, 2003). Currently, on Lanai, Molokai, and Maui, there are 9 occurrences totaling a few thousand individuals. On Lanai, there are 3 occurrences at Makiki Ridge, Kahewai Gulch to Puhialelu Ridge, and Kapoho Gulch, totaling between 500 and 600 individuals in the lowland dry and lowland mesic ecosystems. On Molokai, there are thousands of individuals at Makolelau and Kapuaokoolau, in the lowland mesic and montane mesic ecosystems (Perlman 2007e, in litt.; TNC 2007; HBMP 2008; HBMP 2010; Oppenheimer 2010u, in litt.). On east Maui, there is one occurrence at Kanaio, with possibly 1,000 individuals, in the lowland dry ecosystem. On west Maui, there are at least 3 occurrences that may total over 1,000 individuals at Puu Hipa, Olowalu, and Ukumehame in the lowland dry ecosystem. A recent (2010) fire at Olowalu burned at least 50 individuals (TNC 2007; HBMP 2008; Oppenheimer 2010b, in litt. 2010i, in litt.).

Stenogyne bifida (NCN), a climbing perennial herb in the mint family (Lamiaceae), is known from Molokai (Weller and Sakai 1999, p. 835). At the time we designated critical habitat in 2003, there were five known occurrences (68 FR 12982, March 18, 2003). Currently, *S. bifida* is known from one individual on the east fork of Kawela Gulch, in the montane wet ecosystem (TNC 2007; HBMP 2008; PEPP 2009, p. 113; Tangalin 2009, in litt.). The status of the plants in the montane mesic ecosystem, farther west, is unknown (Oppenheimer 2009i, in litt.). Historically, this species was also found in Molokai's lowland mesic, lowland wet, montane mesic, and wet cliff ecosystems (TNC 2007; HBMP 2008).

Tetramolopium capillare (pamakani), a perennial sprawling shrub in the sunflower family (Asteraceae), is known from west Maui (Lowrey 1999, p. 363). At the time we designated critical habitat in 2003, this species was known from five occurrences (68 FR 25934, May 14, 2003). Although *Tetramolopium capillare* was last observed in the wet cliff (Kauaula) and dry cliff (Ukumehame) ecosystems in 2001, and in the lowland dry ecosystem (Ukumehame) in 1995, these plants are no longer extant (TNC 2007; HBMP 2008; Oppenheimer 2010i, in litt.). Currently, there are no known occurrences on west Maui (PEPP 2009, p. 113).

Tetramolopium lepidotum ssp. *lepidotum* (NCN), a perennial shrub in the sunflower family (Asteraceae), is known from Oahu and Lanai (Lowrey 1999, p. 376). At the time we designated critical habitat in 2003, this subspecies was only known from five occurrences on Oahu (68 FR 35950, June 17, 2003). Currently, *T. lepidotum* ssp. *lepidotum* is only found on Oahu. This subspecies was last observed in the lowland dry ecosystem on Lanai in the early 1900s (TNC 2007; HBMP 2008; PEPP 2009, pp. 113–114).

Tetramolopium remyi (NCN), a perennial shrub in the sunflower family (Asteraceae), is known from Lanai and west Maui (Lowrey 1999, pp. 367–368). At the time we designated critical habitat in 2003, there was one occurrence on Lanai totaling approximately 150 individuals, and there were an unknown number of individuals in the Kuia area on west Maui (68 FR 1220, January 9, 2003; 68 FR 25934, May 14, 2003). Currently, there is one known individual on Lanai at Awehi, in the lowland dry ecosystem (TNC 2007; HBMP 2008; Oppenheimer 2010ii, in litt.; Perlman 2008h, in litt.). There are an unknown number of individuals in the Kuia area on west Maui in the lowland dry ecosystem (TNC 2007; HBMP 2008).

Tetramolopium rockii (NCN), a perennial shrub in the sunflower family (Asteraceae), is endemic to the island of Molokai (Lowrey 1999, p. 368). There are two varieties: *T. rockii* var. *calcisabulorum* and *T. rockii* var. *rockii* (Lowrey 1999, p. 368). At the time we designated critical habitat in 2003, *T. rockii* was known from four occurrences totaling thousands of individuals (68 FR 12982, March 18, 2003). *Tetramolopium rockii* var. *calcisabulorum* was reported from Kaiehu Point to Kapalauoa, intergrading with var. *rockii.* *Tetramolopium rockii* var. *rockii* occurred from Kalawao to Kahinaakalani, Kaiehu point to Kapalauoa, and Moomomi to Kahinaakalani. Currently, numbers fluctuate considerably from year to year but remain in the thousands, and occurrences are found along the northwest shore of Molokai, from Kaa Gulch to Kahinaakalani, and on Kalaupapa peninsula from Alau to Makalii, in the coastal ecosystem (Canfield 1990, p. 20; TNC 2007; HBMP 2008; NTBG 2009l; Perlman 2006c, in litt.; Wood 2010f, in litt.).

Vigna o-wahuensis (NCN), a twining perennial herb in the pea family (Fabaceae), is known from all of the main Hawaiian Islands except Kauai (Geesink *et al.* 1999, pp. 720–721). At the time we designated critical habitat on Maui, Oahu, and Hawaii in 2003, *V. o-wahuensis* was known from 6 occurrences totaling approximately 30 individuals on Lanai, Molokai, Maui, and Kahoolawe, and the island of Hawaii (68 FR 1220, January 9, 2003; 68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003; 68 FR 39624, July 2, 2003). However, no critical habitat was designated for this species on Lanai or Molokai in 2003 (68 FR 1220, January 9, 2003; 68 FR 12982, March 18, 2003).

Currently, there are 22 individuals in 3 occurrences on Molokai, Maui, and Kahoolawe. On Molokai, 2 occurrences totaling 12 individuals are known from Makakupaia and Makolelau, in the lowland mesic ecosystem. On east Maui, there are approximately 10 individuals at Kanaio Beach in the coastal ecosystem. On Kahoolawe, there is one individual in the lowland dry ecosystem. Historically, *V. o-wahuensis* was found in the lowland dry and lowland mesic ecosystems on Lanai, and in the coastal ecosystem on Kahoolawe (TNC 2007; HBMP 2008; Perlman 2005, in litt.; Wood 2010g, in litt.).

Viola lanaiensis (NCN), a perennial subshrub in the violet family (Violaceae), is known from Lanai (Wagner *et al.* 1999aa, pp. 1,334–1,336). In 2003, there were two known occurrences totaling fewer than 80 individuals; however, no critical habitat was designated for this species on Lanai (68 FR 1220, January 9, 2003). Currently, 6 to11 individuals are found within a fenced exclosure in Awehi Gulch, in the wet cliff ecosystem. Historically, this species was also reported in the montane wet and dry cliff ecosystems (TNC 2007; HBMP 2008; PEPP 2008, p. 84; PEPP 2009, p. 117).

Zanthoxylum hawaiiense (ae), a perennial tree in the rue family (Rutaceae), is known from Kauai, Molokai, Lanai, Maui, and the island of Hawaii (Stone *et al.* 1999, pp. 1,214–1,215). At the time we designated critical habitat on Kauai, Molokai, and Maui in 2003, *Z. hawaiiense* was known from 3 occurrences on Kauai, 5 individuals on Molokai, 9 occurrences on Maui, and 186 occurrences on the island of Hawaii (68 FR 9116, February 27, 2003; 68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003; 68 FR 39624, July 2, 2003). No critical habitat was designated for this species on Hawaii in 2003 (68 FR 39624, July 2, 2003). Currently, on Molokai and Maui, this species is known from 5 or 6 occurrences totaling 14 individuals. On Molokai, there are two mature individuals in the lowland wet ecosystem, one individual above Kamalo in the montane wet ecosystem, and one individual in Makolelau Gulch in the lowland mesic ecosystem. On west Maui, there are seven individuals at Puehuehunui in the montane mesic and lowland mesic ecosystems. On east Maui, at Auwahi, there are three individuals in the montane dry and lowland dry ecosystems. Historically, this species also occurred in Maui's subalpine and montane mesic ecosystems (Evans *et al.* 2003, pp. 41, 47; TNC 2007; HBMP 2008; Perlman 2001, in litt.; NTBG 2005; Wood 2007, in litt.; PEPP 2009, pp. 22, 27, 119). *Zanthoxylum hawaiiense* was last seen on Lanai in the lowland wet ecosystem in 1947 (TNC 2007; HBMP 2008).

Status of Two Hawaiian Forest Birds Since Listing

Kiwikiu

The Maui parrotbill, or kiwikiu (*Pseudonestor xanthophrys*), is a small Hawaiian honeycreeper found only on the island of Maui, currently in the mid- to upper-elevation montane mesic and montane wet ecosystems (USFWS 2006, p. 2–79; TNC 2007). The Hawaiian honeycreepers are in the subfamily Drepanidinae of the finch family, Fringillidae (AOU 1998, p. 673). The kiwikiu is most common in wet forests dominated by *Metrosideros polymorpha* trees and a few mesic areas dominated by *M. polymorpha* and *Acacia koa* trees with an intact, dense, diverse native understory and subcanopy of ferns, sedges, epiphytes, shrubs and small to medium trees (USFWS 2006, p. 2–79). In 1980, the number of kiwikiu was estimated by the Hawaii Forest Bird Survey (HFBS) at 500 ± 230 (95 percent confidence interval) birds with an average density of 10 birds per 0.39 sq mi (1 sq km) (Scott *et al.* 1986, p. 115). Currently, the kiwikiu is found only on Haleakala on east Maui, in 12,355 ac (50 sq km) at elevations between 4,000 and 7,700 ft (1,200 to 2,350 m) (USFWS 2006, p. 2–79). The kiwikiu is insectivorous and often feeds in a deliberate manner, using its massive hooked bill to dig, tear, crack, crush, and chisel the bark and softer woods on a variety of native shrubs and small- to medium-sized trees, especially *Rubus hawaiensis* (akala), *Broussaisia arguta* (kanawao), and *M. polymorpha* (USFWS 2006, p. 2–77). Kiwikiu also pluck and bite open fruits, especially *B. arguta* fruits, in search of insects, but do not eat the fruit itself (USFWS 2006, pp. 2–77–2–78). The open cup nest, composed mainly of lichens (*Usnea* sp.) and *Leptecophylla tameiameiae* (pukiawe) twigs, is built by the female an average of 40 ft (12 m) above the ground in a forked branch just under the outer canopy foliage (USFWS 2006, p. 2–78). Based on collections of subfossil bones, the current geographic range is much restricted compared to the known prehistorical range, which included mesic leeward forests and low elevations between 660 and 1,000 ft (200 to 300 m) on east Maui as well as Molokai (James and Olson 1991, p. 80; Olson and James 1991, pp. 14–15; TNC 2007). Surveys from 1995 to 1997 at Hanawi, a study site located in the core of the species' range, showed that the kiwikiu occurred there at approximately the same density (40 birds per 0.39 sq mi (1 sq km)) as in 1980 (Simon *et al.* 2002, p. 477). However, subsequent surveys across the species' range have not conclusively shown that its densities are stable (Camp *et al.* 2009, p. 39).

Akohekohe

The crested honeycreeper, or akohekohe (*Palmeria dolei*), is a small forest bird found only on the island of Maui, currently in the mid- to upper-elevation montane mesic and montane wet ecosystems (USFWS 2006, p. 2–139; TNC 2007). Like the kiwikiu, the akohekohe is also a Hawaiian honeycreeper in the subfamily Drepanidinae of the finch family, Fringillidae (AOU 1998, p. 678). The akohekohe is most common in the wet forest habitat described above for the kiwikiu, except that the lower limit of the akohekohe's elevational range is higher (roughly 5,576 ft (1,700 m)), than the lower limit of the kiwikiu's elevational range (USFWS 2006, p. 2–139). In 1980, the number of akohekohe was estimated by the HFBS at 3,800 ± 700 (95 percent confidence interval) individuals (Scott *et al.* 1986, p. 168). Currently the akohekohe is found only on Haleakala, east Maui, in 14,080 ac (58 sq km) at elevations between 5,000 and 6,900 ft (1,500 to 2,100 m) (USFWS 2006, p. 2–140). The akohekohe is primarily nectarivorous, but also feeds on caterpillars, spiders, and dipterans (flies) (USFWS 2006, p. 2–138). Nectar is primarily sought from flowers of *Metrosideros polymorpha* trees but also from several subcanopy tree and shrub species (USFWS 2006, p. 2–139). The open cup nest is built by the female an average 46 ft (14 m) above the ground in the terminal ends of branches below the canopy foliage of *M. polymorpha* trees (USFWS 2006, p. 2–139). Based on collections of subfossil bones, the current geographic range is much restricted compared to the known prehistorical range, which included dry leeward areas of east and west Maui, and Molokai (Berlin and VanGelder 1999, p. 3). The HFBS and subsequent surveys of the akohekohe range yielded densities of 81 ± 10 birds per 0.39 sq mi (1 sq km) in 1980, 98 ± 11 birds per 0.39 sq mi (1 sq km) from 1992 to 1996, and 116 ± 14 birds per 0.39 sq mi (1 sq km) between 1997 and 2001 (Camp *et al.* 2009, p. 81; Gorresen *et al.* 2009, pp. 123–124). Densities in the core of the species' range within the Hanawi Natural Area Reserve were 183 ± 59 birds per 0.39 sq mi (1 sq km) in 1988,

and 290 ± 10 birds per 0.39 sq mi (1 sq km) from 1995 to 1997 (Berlin and VanGelder 1999, p. 11). These results indicate that the species' rangewide and core densities have both increased and the current population may be larger than previously estimated (Gorresen *et al.* 2009, p. 124).

Methods

As required by section 4(b) of the Act, we used the best scientific data available in determining those areas that contain the physical or biological features essential to the conservation of the 135 species, and for which designation of critical habitat is considered prudent, by identifying the occurrence data for each species and determining the ecosystems upon which they depend. This information was developed by using:

- The known locations of the 135 species, including site-specific species information from the HBMP database (HBMP 2008), the TNC database (TNC 2007), and our own rare plant database;
- Species information from the plant database housed at NTBG;
- Maps of habitat essential to the recovery of Hawaiian plants, as determined by the Hawaii and Pacific Plant Recovery Coordinating Committee (HPPRCC 1998, 32 pp. + appendices);
- Recovery area as determined in the revised Recovery Plan for Hawaiian Forest Birds (USFWS 2006);
- Maps of important habitat for the recovery of plants protected under the Act (USFWS 1999, pp. F8–F11);
- The Nature Conservancy's Ecoregional Assessment of the Hawaiian High Islands (2006) and ecosystem maps (TNC 2007);
- Color mosaic 1:19,000 scale digital aerial photographs for the Hawaiian Islands (April to May 2005);
- Island-wide Geographic Information System (GIS) coverage (e.g., Gap Analysis Program (GAP) vegetation data of 2005);
- 1:24,000 scale digital raster graphics of U.S. Geological Survey (USGS) topographic quadrangles;
- Geospatial data sets associated with parcel data from Maui County (includes Molokai, Lanai, Maui, and Kahoolawe) (2008);
- Final critical habitat designations for *Gouania hillebrandii* and for listed plant species on the islands of Lanai, Molokai, Maui, and Kahoolawe (49 FR 44753, November 9, 1984; 68 FR 1220, January 9, 2003; 68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003);
- Recent biological surveys and reports; and
- Discussions with qualified individuals familiar with these species and ecosystems.

Based upon all of this data, we determined that one or more of the 11 ecosystems described in this rule are currently occupied or were occupied at the time of listing by one or more of the 135 species addressed in this rule and contain the physical or biological features essential to the conservation of the species, or are currently not occupied by one or more of the 135 species but are areas and essential for the conservation of the species (coastal (TNC 2006a), lowland dry (TNC 2006b), lowland mesic (TNC 2006c), lowland wet (TNC 2006d), montane wet (TNC 2006e), montane mesic (TNC 2006f), montane dry (TNC 2006g), subalpine (TNC 2006h), alpine (TNC 2006i), dry cliff (TNC 2006j), and wet cliff (TNC 2006k).

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and the regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to propose as critical habitat, we consider the physical and biological features essential to the conservation of the species and which may require special management considerations or protection. These physical or biological features provide the essential life-history requirements of the species, and include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing (or development) of offspring, germination, or seed dispersal; and

(5) Habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

For plant species, ecosystems that provide appropriate seasonal wetland and dry land habitats, host species, pollinators, soil types, and associated plant communities are taken into consideration when determining the physical or biological features essential for a species.

Under section 4(a)(3)(A)(ii) of the Act we may, as appropriate, revise a critical habitat designation. For the reasons described above, we are proposing to revise critical habitat for 85 plants from Molokai, Lanai, Maui, and Kahoolawe, based on new information received since the original designations and the need to designate unoccupied habitat to conserve the species. In addition, the recovery plans (Recovery Plan for *Gouania hillebrandii* (Rhamnaceae), July 1990; Lanai Plant Cluster Recovery Plan, September 1995; Recovery Plan for *Marsilea villosa,* April 1996; Recovery Plan for Molokai Plant Cluster, September 1996; Recovery Plan for the Maui Plant Cluster, July 1997; Molokai II: Addendum to the Recovery Plan for the Molokai Plant Cluster, May 1998; Recovery Plan for the Multi-Island Plants, July 1999; and Addendum to the Recovery Plan for Multi-Island Plants, September 2002) identify several actions needed to recover these species, including: (1) Protecting habitat and controlling threats; (2) expanding existing wild populations; (3) conducting essential research; (4) developing and maintaining monitoring plans; (5) reestablishing wild populations within the historic range; and (6) validating and revising recovery criteria. We have derived the specific physical and biological features required for each of the plant species from studies of the species' habitat, ecology, and life history. In addition, we have reevaluted the physical or biological feature for each of the 85 species based on ecosystem definitions using species information from the 1984 and 2003 critical habitat designations, and new scientific information that has become available since that time.

In 1984 and 2003, the physical or biological features for each plant species were defined on the basis of the habitat features of the areas actually occupied by the plants, which included plant community, associated native plant species, locale information (e.g., steep rocky cliffs, talus slopes, gulches, stream banks), and elevation (49 FR 44753 November 9, 1984; 68 FR 1220, January 9, 2003; 68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003). In this proposed rule, we are proposing critical habitat in areas occupied by the species at the time of listing as well as areas currently unoccupied by the species but determined to be essential for their conservation (i.e., areas necessary to bring the species to the point at which the measures provided under the Act are no longer necessary). The physical or biological features have now been more precisely identified for these 85 plant species, and now include elevation, precipitation, substrate, canopy, subcanopy, and understory characteristics. Since 2003, we have found that many areas where these species are currently or recently reported from are marginal habitat and that the species occurs there due to

remoteness or inaccessibility to feral ungulates. Therefore, the 1984 and 2003 critical habitat designations may not have included all of the unoccupied areas that are essential for the conservation of the species.

When designating critical habitat in occupied areas, we focus on the essential physical or biological features that may be essential to the conservation of the species and which may require special management considerations or protections. In unoccupied habitat, we focus on whether the area is essential to the conservation of the species. We have determined that the physical or biological features identified in the original critical habitat designations for these 85 plant species can be improved, based on new information that has become available. The currently proposed physical or biological features for occupied areas, in conjunction with the unoccupied areas needed to expand and reestablish wild populations within their historical range, provide a more accurate picture of the geographic areas needed for the recovery of each species. We believe this information will be helpful to Federal agencies and our other partners, as we collectively work to recover these imperiled species.

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the 135 species for which we are proposing critical habitat; this includes both new proposed designations and proposed revised designations. We identify these features in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider the primary constituent elements (PCEs) to be the elements of physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species. The PCEs identified in this proposed rule take into consideration the ecosystems in which each species occurs and reflect a distribution that we believe is essential to achieving the species' recovery needs within those ecosystems.

In this proposal, PCEs for each of the 135 species are defined based on those physical or biological features essential to support the successful functioning of the ecosystem upon which each species depends, and which may require special management considerations or protection. As the conservation of each species is dependent upon a functioning ecosystem to provide its fundamental life requirements, such as a certain soil type, minimum level of rainfall, or suitable native host plant, we consider the physical or biological features present in the ecosystems described in this rule to provide the necessary PCEs for each species in this proposal. The ecosystem's features collectively provide the suite of environmental conditions within each ecosystem essential to meeting the requirements of each species, including the appropriate microclimatic conditions for germination and growth of the plants (e.g., light availability, soil nutrients, hydrologic regime, temperature); maintenance of upland habitat to provide for the proper ecological functioning of forest elements for the three tree snails and the two forest birds; and, in all cases, space within the appropriate habitats for population growth and expansion, as well as to maintain the historical geographical and ecological distribution of each species. In many cases, due to our limited knowledge of the specific life-history requirements for the species that are little-studied and occur in remote and inaccessible areas, the more general description of the physical or biological features that provide for the successful function of the ecosystem that is essential to the conservation of the species represents the best, and in many cases, the only, scientific information available. Accordingly, for purposes of this proposed rule, the physical or biological features of a properly functioning ecosystem are, at least in part, the physical or biological features essential to the conservation of the 135 species at issue here that occur in those ecosystems.

Table 4 identifies the physical or biological features of a functioning ecosystem for each of the ecosystem types identified in this proposed rule, and each species identified in this rule requires the physical or biological features for each ecosystem in which that species occurs, as noted in Table 4. These physical or biological features provide the PCEs for the individual species in each ecosystem. The physical or biological features are defined here by elevation, annual levels of precipitation, substrate type and slope, and the characteristic native plant genera that are found in the canopy, subcanopy, and understory levels of the vegetative community where applicable. If further information is available indicating additional, specific life-history requirements for some species, PCEs relating to these requirements are described separately and are termed ''unique PCEs for species,'' which are also identified in Table 5. The PCEs for each species are therefore composed of the physical or biological features found in its functioning ecosystem(s) in combination with additional unique requirements, if any, as shown in Table 5. Note that the PCEs identified in Table 5 for each species are directly related to the physical or biological features presented in detail in Table 4; thus, both Tables 4 and 5 must be read together to fully describe all of the PCEs for each species.

TABLE 4—PHYSICAL OR BIOLOGICAL FEATURES IN EACH ECOSYSTEM

[Read In association With Table 5]

Ecosystem	Elevation	Annual precipitation	Substrate	One or more of these associated native plant genera		
				Canopy	Subcanopy	Understory
Coastal [1]	<980 ft (< 300 m)	<20 in (<50 cm)	Well-drained, calcareous, talus slopes; weathered clay soils; ephemeral pools; mudflats.	*Hibiscus, Myoporum, Santalum, Scaevola.*	*Gossypium, Sida, Vitex.*	*Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*
Lowland Dry [2]	<3,300 ft (<1,000 m).	<50 in (<130 cm)	Weathered silty loams to stony clay, rocky ledges, little-weathered lava.	*Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*	*Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*	*Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

TABLE 4—PHYSICAL OR BIOLOGICAL FEATURES IN EACH ECOSYSTEM—Continued

[Read In association With Table 5]

Ecosystem	Elevation	Annual precipitation	Substrate	One or more of these associated native plant genera		
				Canopy	Subcanopy	Understory
Lowland Mesic [3]	<3,300 ft (<1,000 m).	50–75 in (130–190 cm).	Shallow soils, little to no herbaceous layer.	*Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*	*Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*	*Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*
Lowland Wet [4] ...	<3,300 ft (<1,000 m).	>75 in (>190 cm)	Clays; ashbeds; deep, well-drained soils; lowland bogs.	*Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*	*Cibotium, Claoxylon, Kadua, Melicope.*	*Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*
Montane Wet [5] ..	3,300–6,500 ft (1,000 –2,000 m).	>75 in (>190 cm)	Well-developed soils, montane bogs.	*Acacia, Charpentiera, Cheirodendron, Metrosideros.*	*Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*	Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*
Montane Mesic [6]	3,300–6,500 ft (1,000–2,000 m).	50–75 in (130–190 cm).	Deep ash deposits, thin silty loams.	*Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*	*Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*	Ferns, *Carex, Peperomia.*
Montane Dry [7] ...	3,300–6,500 ft (1,000–2,000 m).	<50 in (<130 cm)	Dry cinder or ash soils, loamy volcanic sands, blocky lava, rock outcroppings.	*Acacia, Metrosideros, Myoporum, Santalum, Sophora.*	*Chamaesyce, Coprosma, Dodonaea, Dubautia, Leptecophylla, Osteomeles, Wikstroemia.*	*Bidens, Eragrostis, Melanthera, Vaccinium.*
Subalpine [8]	6,500–9,800 ft (2,000–3,000 m).	15–40 in (38–100 cm).	Dry ash, sandy loam, rocky undeveloped soils, weathered lava.	*Chamaesyce, Chenopodium, Metrosideros, Myoporum, Santalum, Sophora.*	*Coprosma, Dodonaea, Dubautia, Geranium, Leptecophylla, Vaccinium, Wikstroemia.*	Ferns, *Bidens, Carex, Deschampsia, Eragrostis, Gahnia, Luzula, Panicum, Pseudognaphalium, Sicyos, Tetramolopium.*
Alpine [9]	> 9,800 ft (> 3,000 m).	30–50 in (75–125 cm).	Barren gravel, debris, cinders.	none	*Argyroxiphium, Dubautia, Silene, Tetramolopium.*	None.
Dry Cliff [10]	unrestricted	<75 in (<190 cm)	>65 degree slope, rocky talus.	none	*Antidesma, Chamaesyce, Diospyros, Dodonaea.*	*Bidens, Eragrostis, Melanthera, Schiedea.*
Wet Cliff [11]	unrestricted	>75 in (>190 cm)	>65 degree slope, shallow soils, weathered lava.	none	*Broussaisia, Cheirodendron, Leptecophylla, Metrosideros.*	Bryophytes, Ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

[1] The physical or biological features for the species in the Coastal ecosystem apply to the following units: Maui—Coastal—Units 1–11; Kahoolawe—Coastal—Units 1–3; Lanai—Coastal—Units 1–3; Molokai—Coastal—Units 1–7.

[2] The physical or biological features for the species in the Lowland Dry ecosystem apply to the following units: Maui—Lowland Dry—Units 1–6; Kahoolawe—Lowland Dry—Units 1–2; Lanai—Lowland Dry—Units 1–2; Molokai—Lowland Dry—Units 1–2.

[3] The physical or biological features for the species in the Lowland Mesic ecosystem apply to the following units: Maui—Lowland Mesic—Units 1–3; Lanai—Lowland Mesic—Unit 1; Molokai—Lowland Mesic—Unit 1.

[4] The physical or biological features for the species in the Lowland Wet ecosystem apply to the following units: Maui—Lowland Wet—Units 1–8; Lanai—Lowland Wet—Units 1–2; Molokai—Lowland Wet—Units 1–3.

[5] The physical or biological features for the species in the Montane Wet ecosystem apply to the following units: Maui—Montane Wet—Units 1–8; Lanai—Montane Wet—Unit 1; Molokai—Montane Wet—Units 1–3.

[6] The physical or biological features for the species in the Montane Mesic ecosystem apply to the following units: Maui—Montane Mesic—Units 1–6; Molokai—Montane Mesic—Unit 1.

[7] The physical or biological features for the species in the Montane Dry ecosystem apply to the following units: Maui—Montane Dry—Unit 1.
[8] The physical or biological features for the species in the Subalpine ecosystem apply to the following units: Maui—Subalpine—Units 1–2.
[9] The physical or biological features for the species in the Alpine ecosystem apply to the following units: Maui—Alpine—Unit 1.
[10] The physical or biological features for the species in the Dry Cliff ecosystem apply to the following units: Maui—Dry Cliff—Units 1–7; Lanai—Dry Cliff—Units 1–3.
[11] §The physical or biological features for the species in the Wet Cliff ecosystem apply to the following units: Maui—Wet Cliff—Units 1–8; Lanai—Wet Cliff—Units 1–2; Molokai—Wet Cliff—Units 1–3.

TABLE 5—PRIMARY CONSTITUENT ELEMENTS FOR THE MAUI NUI SPECIES ARE A COMBINATION OF THE PHYSICAL OR BIOLOGICAL FEATURES (SEE TABLE 4) IN THE APPLICABLE ECOSYSTEM(S) AS WELL AS UNIQUE PCES FOR SPECIES, IF ANY ARE IDENTIFIED

	Ecosystem											Species-specific physical or biological features
	Coastal	Lowland dry	Lowland mesic	Lowland wet	Montane wet	Montane mesic	Montane dry	Subalpine	Alpine	Dry cliff	Wet cliff	
Plants												
Abutilon eremitopetalum		LA.										
Acaena exigua					WMA							bogs.
Adenophorus periens					EMA, LA, MO.							epiphytic.
Alectryon macrococcus var. *auwahiensis*		EMA				EMA	EMA.					
Alectryon macrococcus var. *macrococcus*			MO	WMA		EMA, MO					WMA.	
Argyroxiphium sandwicense ssp. *macrocephalum.*						EMA		EMA	EMA			alpine cinder deserts.
Asplenium dielerectum		WMA, LA	WMA, MO	WMA, MO		EMA, MO				LA.		
Asplenium peruvianum var. *insulare*					EMA	EMA		EMA.				
Bidens campylotheca ssp. *pentamera*		WMA	WMA		EMA	EMA				EMA	EMA, WMA.	
Bidens campylotheca ssp. *waihoiensis*				EMA	EMA						EMA	stream banks.
Bidens conjuncta				WMA	WMA						WMA.	
Bidens micrantha ssp. *kalealaha*		EMA, LA	LA	WMA		EMA		EMA		LA.		
Bidens wiebkei	MO			MO	MO	MO.						
Bonamia menziesii		EMA, MO	LA, MO							WMA	WMA.	
Brighamia rockii	EMA, WMA, MO.									LA	MO.	
Calamagrostis hillebrandii					WMA							Bogs.
Canavalia molokaiensis	MO		MO	MO							MO.	
Canavalia pubescens	LA	EMA.										
Cenchrus agrimonioides		EMA, WMA.	LA.									
Clermontia lindseyana						EMA.						
Clermontia oblongifolia ssp. *brevipes*			MO	MO	MO						MO.	
Clermontia oblongifolia ssp. *mauiensis*			LA	EMA, WMA, LA.	EMA.							
Clermontia peleana				EMA								epiphytic.
Clermontia samuelii				EMA	EMA							bog margins.
Colubrina oppositifolia		EMA	WMA.									
Ctenitis squamigera		EMA, WMA.	EMA, WMA, MO.	WMA		WMA				LA	WMA, LA.	
Cyanea asplenifolia			EMA	EMA, WMA.								
Cyanea copelandii ssp. *haleakalalensis*			EMA	EMA	EMA						EMA.	
Cyanea dunbariae			MO	MO		MO.						
Cyanea duvalliorum				EMA	EMA.							
Cyanea gibsonii					LA						LA.	
Cyanea glabra				WMA	EMA	EMA					WMA.	
Cyanea grimesiana ssp. *grimesiana*				MO							MO.	
Cyanea hamatiflora ssp. *hamatiflora*				EMA	EMA	EMA.						
Cyanea horrida					EMA	EMA					EMA.	
Cyanea kunthiana				EMA, WMA.	EMA, WMA.	EMA.						
Cyanea lobata ssp. *baldwinii*					LA.							
Cyanea lobata ssp. *lobata*				WMA							WMA.	
Cyanea magnicalyx				WMA		WMA					WMA.	
Cyanea mannii			MO		MO	MO.						
Cyanea maritae				EMA	EMA.							
Cyanea mceldowneyi				EMA	EMA	EMA.						
Cyanea munroi											MO, LA.	
Cyanea obtusa		WMA				EMA.						
Cyanea procera			MO		MO	MO.						

Cyanea profuga			MO		MO.							
Cyanea solanacea			MO	MO	MO	MO.						
Cyperus fauriei		LA	MO			MO.						
Cyperus pennatiformis	EMA.											
Cyperus trachysanthos		MO LA										seasonally wet soil and pond margins.
Cyrtandra ferripilosa					EMA	EMA.						
Cyrtandra filipes			MO	WMA, MO							WMA.	
Cyrtandra munroi				WMA	LA						WMA, LA.	
Cyrtandra oxybapha					WMA	EMA.						
Diplazium molokaiense			MO, LA	WMA	EMA	EMA, WMA.				EMA, WMA, LA.		
Dubautia plantaginea ssp. *humilis*											WMA.	
Eugenia koolauensis		MO.										
Festuca molokaiensis			MO.									
Flueggea neowawraea		EMA	MO.									
Geranium arboreum						EMA	EMA	EMA.				
Geranium hanaense					EMA							Bogs.
Geranium hillebrandii					WMA	WMA						Bogs.
Geranium multiflorum					EMA	EMA		EMA.				
Gouania hillebrandii		WMA, KAH	MO.									
Gouania vitifolia											WMA.	
Hesperomannia arborescens				WMA	MO						WMA, MO, LA.	
Hesperomannia arbuscula		WMA		WMA						WMA	WMA.	
Hibiscus arnottianus ssp. *immaculatus*	MO										MO.	
Hibiscus brackenridgei	LA, MO	EMA, WMA, LA, KAH.										
Huperzia mannii			EMA	EMA, WMA.	EMA, WMA.	EMA, WMA.						epiphytic.
Ischaemum byrone	EMA, MO.											
Isodendrion pyrifolium			MO	WMA						WMA	WMA.	
Kadua cordata ssp. *remyi*			LA	LA.								
Kadua coriacea		WMA.										
Kadua laxiflora			MO, LA	WMA, LA	LA	MO				WMA	WMA, LA.	
Kanaloa kahoolawensis	KAH	KAH.										
Kokia cookei		MO.										
Labordia tinifolia var. *lanaiensis*			LA	LA	LA						LA.	
Labordia triflora			MO.									
Lysimachia lydgatei		WMA				WMA					WMA.	
Lysimachia maxima				MO	MO.							
Marsilea villosa	MO											seasonal wetland.
Melanthera kamolensis		EMA.										
Melicope adscendens		EMA				EMA.						
Melicope balloui				EMA	EMA.							
Melicope knudsenii							EMA.					
Melicope mucronulata		EMA	MO			MO	EMA.					
Melicope munroi			MO		LA						LA.	
Melicope ovalis				EMA	EMA						EMA.	
Melicope reflexa			MO	MO	MO.							
Mucuna sloanei var. *persericea*				EMA.								
Myrsine vaccinioides					WMA							Bogs.
Neraudia sericea		EMA, WMA, KAH, LA.	MO			EMA, MO				WMA, LA.		
Nototrichium humile		EMA.										
Peperomia subpetiolata					EMA.							
Peucedanum sandwicense	EMA, MO			WMA, MO.								
Phyllostegia bracteata				WMA	EMA, WMA.	EMA		EMA			EMA.	
Phyllostegia haliakalae			MO							LA	EMA, LA.	
Phyllostegia hispida				MO	MO						MO.	

TABLE 5—PRIMARY CONSTITUENT ELEMENTS FOR THE MAUI NUI SPECIES ARE A COMBINATION OF THE PHYSICAL OR BIOLOGICAL FEATURES (SEE TABLE 4) IN THE APPLICABLE ECOSYSTEM(S) AS WELL AS UNIQUE PCES FOR SPECIES, IF ANY ARE IDENTIFIED—Continued

	Ecosystem											Species-specific physical or biological features
	Coastal	Lowland dry	Lowland mesic	Lowland wet	Montane wet	Montane mesic	Montane dry	Subalpine	Alpine	Dry cliff	Wet cliff	
Phyllostegia mannii			MO	MO	EMA, MO	EMA.						
Phyllostegia pilosa			MO		EMA, MO.							
Pittosporum halophilum	MO.											
Plantago princeps				MO		MO				EMA	EMA, WMA.	
Platanthera holochila					EMA, WMA, MO.						WMA.	
Pleomele fernaldii		LA	LA	LA						LA	LA.	
Portulaca sclerocarpa	LA.											
Pteris lidgatei				WMA	MO						WMAMO.	
Remya mauiensis		WMA	WMA	WMA		WMA					WMA.	
Sanicula purpurea					WMA							Bogs.
Santalum haleakalae var. *lanaiense*		EMA, WMA.	WMA, LA, MO.	WMA, LA	LA	EMA, WMA, MO.	EMA				WMA, LA.	
Schenkia sebaeoides	WMA, MO	LA.										
Schiedea haleakalensis								EMA		EMA.		
Schiedea jacobii					EMA.							
Schiedea laui					MO.							
Schiedea lydgatei			MO.									
Schiedea salicaria		WMA.										
Schiedea sarmentosa			MO.									
Sesbania tomentosa	WMA, KAH, LA, MO.	EMA, WMA, KAH, LA, MO.	MO.									
Silene alexandri			MO.									
Silene lanceolata		LA	MO.									
Solanum incompletum		EMA, LA	EMA, LA					EMA		LA.		
Spermolepis hawaiiensis		EMA, WMA, LA.	LA, MO			MO.						
Stenogyne bifida			MO	MO	MO	MO					MO.	
Stenogyne kauaulaensis						WMA.						
Tetramolopium capillare		WMA								WMA	WMA.	
Tetramolopium lepidotum ssp. *lepidotum*		LA.										
Tetramolopium remyi		WMA, LA.										
Tetramolopium rockii	MO.											
Vigna o-wahuensis	EMA, KAH	LA, KAH	LA, MO.									
Viola lanaiensis					LA					LA	LA.	
Wikstroemia villosa				EMA, WMA.	EMA	EMA.						
Zanthoxylum hawaiiense		EMA	WMA, MO	LA, MO	MO	EMA, WMA.	EMA	EMA.				
Birds												
Akohekohe			WMA, MO	EMA, WMA, MO.	EMA, WMA, MO.	EMA, WMA, MO.		EMA		EMA, WMA.	EMA, WMA, MO.	
Kiwikiu			WMA, MO	EMA, WMA, MO.	EMA, WMA, MO.	EMA, WMA, MO.		EMA		EMA, WMA.	EMA, WMA, MO.	
Snails												
Newcombia cumingi (Newcomb's tree snail).				WMA.								
Partulina semicarinata (Lanai tree snail)				LA	LA						LA.	

Partulina variabilis (Lanai tree snail)	.....	.....	.....	.....	LA	LA	.....	.....	.....	.....	.....	LA.

EMA = east Maui
WMA = west Maui
LA = Lanai
MO = Molokai
KAH = Kahoolawe

Some of the species addressed in this proposed rule occur in more than one ecosystem. The PCEs for these species are described separately for each ecosystem in which they occur. The reasoning behind this approach is that each species requires a different suite of environmental conditions depending upon the ecosystem in which it occurs. For example, *Bidens campylotheca* ssp. *pentamera* will occur in association with different native plant species, depending on whether it is found within the lowland dry, lowland mesic, montane wet, montane mesic, dry cliff, or wet cliff ecosystems. Each of the physical or biological features described in each ecosystem in which the species occurs are essential to the conservation of the species, to retain its geographical and ecological distribution across the different ecosystem types in which it may occur. Each physical or biological feature is also essential to retaining the genetic representation that allows this species to successfully adapt to different environmental conditions in various native ecosystems. Although some of these species occur in multiple native ecosystems, their declining abundance in the face of ongoing threats, such as increasing numbers of nonnative plant competitors, indicates that they are not such broad habitat generalists as to be able to persist in highly altered habitats. Based on an analysis of the best available scientific information, functioning native ecosystems provide the fundamental biological requirements for the narrow-range endemics addressed in this proposed rule.

Some examples may help to clarify our approach to describing the PCEs for each individual species. If we want to determine the PCEs for the plant *Abutilon eremitopetalum,* we look at Table 5 and see that the PCEs for *A. eremitopetalum* are provided by the physical or biological features in the lowland dry ecosystem. Table 4 indicates that the physical or biological features in the lowland dry ecosystem include elevations of less than 3,300 ft (1,000 m); annual precipitation of less than 50 in (130 cm); weathered silty loams to stony clay, rocky ledges, and little-weathered lava; and potential habitat for one or more genera of the subcanopy and understory plants *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola,* and *Wikstroemia,* and one or more of the genera of the canopy species *Diospyros, Myoporum, Pleomele, Santalum,* and *Sapindus.* As we do not specifically know the unique PCEs for *A. eremitopetalum* and this plant is found only in the lowland dry ecosystem, we believe that the physical or biological features for the lowland dry ecosystem best approximate the PCEs for *A. eremitopetalum.* Thus we use the physical and biological features provided in the ecosystem in which *A. eremitopetalum* is found as the PCEs for *A. eremitopetalum.*

As another example, Table 4 indicates the physical or biological features for the plant *Geranium hillebrandii* include the ecosystem-level physical or biological features for the montane wet and montane mesic ecosystems, depending on the locations, and also that this species has a species-specific PCE: bogs. The PCEs for *G. hillebrandii* are thus composed of the physical or biological features for each of the two ecosystems it occupies, as described in Table 4 for the montane wet and montane mesic ecosystems, as well as bogs. Table 5 is read in a similar fashion in conjunction with Table 4 to describe the PCEs for each of the 135 species for which we are proposing to designate critical habitat in this proposed rule.

Criteria Used to Identify Critical Habitat Boundaries

We considered several factors in the selection and proposal of specific boundaries for critical habitat for these 135 species. We propose to designate critical habitat on lands that contain the physical or biological features essential to conserving multiple species, based on their shared dependence on the functioning ecosystems they have in common. Because the 11 ecosystem types addressed in this proposed rule do not form a single contiguous area, they are divided into geographic units: 100 plant critical habitat units, 88 forest bird critical habitat units, and 11 tree snail critical habitat units on the islands of Molokai, Lanai, Maui, and Kahoolawe. The 88 forest bird and 10 of the 11 tree snail critical habitat units completely overlap the 100 plant critical habitat units. The critical habitat unit designated for Newcomb's snail on west Maui only partially overlaps Maui—Lowland Wet—2.

The proposed critical habitat is a combination of areas currently occupied by the species in that ecosystem, as well as areas that may be currently unoccupied. Due to the extremely remote and inaccessible nature of the area, surveys are relatively infrequent and may be limited in scope; therefore, it is difficult to say with certainty whether individual representatives of a rare species may or may not be present. However, the best available scientific information suggests that these species either currently occupy these areas or have occupied these areas in the past. A properly functioning ecosystem provides the life-history requirements of the species that make up that ecosystem, and the physical or biological features found in such an ecosystem are the PCEs essential for the conservation of the species that occur there. In other words, the occupied areas provide the physical or biological features essential to the conservation of the species occurring in the ecosystems we analyzed, by providing for the successful functioning of the ecosystem on which the species depend. However, due to the small population sizes, few numbers of individuals, and reduced geographic range of each of the 135 species for which critical habitat is here proposed, we have determined that a designation limited to the known present range of each species would be inadequate to achieve the conservation of those species. The areas believed to be unoccupied, and that may have been unoccupied at the time of listing, have been determined to be essential for the conservation and recovery of the species because they provide the physical or biological features necessary for the expansion of existing wild populations and reestablishment of wild populations within the historical range of the species. For 17 of the plant species (*Acaena exigua, Clermontia peleana, Cyanea glabra, C. grimesiana* ssp. *grimesiana, Cyperus trachysanthos, Eugenia koolauensis, Gouania vitifolia, Isodendrion pyrifolium, Kadua coriacea, Kokia cookei, Nototrichium humile, Phyllostegia bracteata, P. haliakalae, Schiedea jacobii, Solanum incompletum, Tetramolopium capillare,* and *T. lepidotum* ssp. *lepidotum*), we are proposing to designate unoccupied areas only, as these species are not believed to be extant on Molokai, Lanai, Maui, or Kahoolawe. Designating unoccupied critical habitat for these species would promote conservation actions to restore their historical, geographical and ecological representation, which is essential for their recovery. Critical habitat boundaries for all species were delineated to include the functioning ecosystems on which they depend.

In some cases, we have identified areas of critical habitat for species in multiple ecosystem areas. With the exception of *Acaena exigua, Clermontia peleana, Cyanea glabra, C. grimesiana* ssp. *grimesiana, Cyperus trachysanthos, Eugenia koolauensis, Gouania vitifolia, Isodendrion pyrifolium, Kadua coriacea, Kokia cookei, Nototrichium humile, Phyllostegia bracteata, P. haliakalae, Schiedea jacobii, Solanum incompletum, Tetramolopium capillare,*

and *T. lepidotum* ssp. *Lepidotum,* which are believed to be no longer extant on Molokai, Lanai, Maui, or Kahoolawe, all of the critical habitat units in these ecosystems contain some areas that are currently unoccupied, and that may have been unoccupied at the time of listing, but have been determined to be essential for the conservation of the species. Because of the small numbers of individuals or low population sizes of each of the 135 species, each requires suitable habitat and space for the expansion of existing populations to achieve a level that could approach recovery. For example, although the plant *Huperzia mannii* is found in multiple critical habitat units across four ecosystem types, its entire distribution is comprised of a total of fewer than 100 individuals. The unoccupied areas of each unit are essential for the expansion of this species to achieve viable population numbers and maintain its historical geographical and ecological distribution.

On Maui, there are two distinct geographic areas (east and west Maui) separated by an isthmus. Sixty-three of the plant species and the tree snail *Newcombia cumingi,* for which we are proposing critical habitat, are historically known from only east or west Maui. Thirty-seven plant species (*Adenophorus periens, Alectryon macrococcus* var. *auwahiensis, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium peruvianum* var. *insulare, Bidens campylotheca* ssp. *waihoiensis, Clermontia lindseyana, C. peleana, C. samuellii, Cyanea copelandii* ssp. *haleakalaensis, C. duvalliorum, C. hamatiflora* ssp. *hamatiflora, C. horrida, C. kunthiana, C. maritae, C. mceldowneyi, Cyperus pennatiformis, Cyrtandra ferripilosa, Flueggea neowawraea, Geranium arboreum, G. multiflorum, Ischaemum byrone, Melanthera kamolensis, Melicope adscendens, M. balloui, M. knudsenii, M. mucronulata, M. ovalis, Mucuna sloanei* var. *persericea, Nototrichium humile, Peperomia subpetiolata, Phyllostegia haliakalae, P. mannii, P. pilosa, Schiedea haleakalensis, S. jacobii, Solanum incompletum,* and *Vigna o-wahuensis*) are known only from the east Maui mountains and 26 plant species (*Acaena exigua, Bidens conjuncta, Calamagrostis hillebrandii, Centaurium sebaeoides, Cyanea lobata* ssp. *lobata, C. magnicalyx, Cyrtandra filipes, C. munroi, Dubautia plantaginea* ssp. *humilis, Geranium hillebrandii, Gouania hillebrandii, G. vitifolia, Hesperomannia arborescens, H. arbuscula, Isodendrion pyrifolium, Kadua coriacea, K. laxiflora, Lysimachia lydgatei, Myrsine vaccinioides, Pteris lydgatei, Remyi mauiensis, Sanicula purpurea, Schiedea salicaria, Stenogyne kauaulaensis, Tetramolopium capillare,* and *T. remyi*), and the tree snail *Newcombia cumingi,* are known only from the west Maui mountains. For these species, we propose critical habitat in ecosystems only in the geographic area of historical occurrence.

Current and historical species location information was used to develop initial critical habitat boundaries in each of the 11 ecosystems that would individually and collectively provide for the conservation of the 135 species addressed in this proposed rule. The initial boundaries were superimposed over digital topographic maps of the islands of Molokai, Lanai, Maui, and Kahoolawe and further evaluated. In general, land areas that were identified as highly degraded were removed from the proposed critical habitat units, and natural or manmade features (e.g., ridge lines, valleys, streams, coastlines, roads, obvious land features, etc.) were used to delineate the proposed critical habitat boundaries.

The critical habitat areas described below constitute our best assessment of the physical or biological features essential for the recovery and conservation of the 135 species, and the unoccupied areas needed for the expansion of reduced populations. The approximate size of each of the 100 plant critical habitat units, the 88 forest bird critical habitat units, and the 11 tree snail critical habitat units, and the status of their land ownership, are identified in Tables 6A through 6H. The ecosystems in which critical habitat for each of the plant, forest bird, and tree snail species is proposed are identified in Tables 7A through 7C, along with areas under consideration for exclusion from critical habitat designation under section 4(b)(2) of the Act (see Exclusions, below). All forest bird and tree snail proposed critical habitat units overlap areas also proposed for designation as plant critical habitat.

When determining critical habitat boundaries within this proposed rule, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack the physical or biological features essential for the conservation of the 135 species. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, Federal actions involving these areas would not trigger section 7 consultation with respect to critical habitat unless the specific action would affect the adjacent critical habitat or its primary constituent elements.

TABLE 6A—CRITICAL HABITAT PROPOSED FOR 60 PLANT SPECIES ON THE ISLAND OF MOLOKAI

[Totals may not sum due to rounding]

Proposed critical habitat area	Size of unit in acres	Size of unit in hectares	Landownership (acres)			
			State	Federal	County	Private
Molokai—Coastal						
—Unit 1	250	101	0	54	0	195
—Unit 2	3,544	1,434	1,032	0	0	2,511
—Unit 3	862	349	859	3	0	<1
—Unit 4	10	4	10	0	0	0
—Unit 5	1	0.5	1	0	0	0
—Unit 6	1,913	774	202	0	0	1,711
—Unit 7	306	124	3	0	0	303
Total Coastal	6,886	2,786	2,106	57	0	4,720
Molokai—Lowland Dry						
—Unit 1	70	28	0	0	0	70

TABLE 6A—CRITICAL HABITAT PROPOSED FOR 60 PLANT SPECIES ON THE ISLAND OF MOLOKAI—Continued

[Totals may not sum due to rounding]

Proposed critical habitat area	Size of unit in acres	Size of unit in hectares	Landownership (acres)			
			State	Federal	County	Private
—Unit 2	3,201	1,295	945	0	0	2,255
Total Lowland Dry	3,271	1,323	945	0	0	2,325
Molokai—Lowland Mesic						
—Unit 1	10,330	4,180	3,538	0	0	6,792
Total Lowland Mesic	10,330	4,180	3,538	0	0	6,792
Molokai—Lowland Wet						
—Unit 1	3,628	1,468	2,195	0	0	1,433
—Unit 2	1,952	790	1,356	0	0	597
—Unit 3	8,074	3,267	1,128	0	0	6,945
Total Lowland Wet	13,654	5,525	4,679	0	0	8,975
Molokai—Montane Wet						
—Unit 1	4,818	1,950	1,518	0	0	3,300
—Unit 2	910	368	871	0	0	39
—Unit 3	803	325	77	0	0	726
Total Montane Wet	6,531	2,643	2,466	0	0	4,065
Molokai—Montane Mesic						
—Unit 1	1,629	659	257	0	0	1,373
Total Montane Mesic	1,629	659	257	0	0	1,373
Molokai—Wet Cliff						
—Unit 1	1,888	764	1,399	0	0	489
—Unit 2	1,280	518	462	0	0	818
—Unit 3	1,362	551	1,137	0	0	225
Total Wet Cliff	4,530	1,833	2,998	0	0	1,532
Total All Units	46,831	18,949	16,922	57	0	29,782

TABLE 6B—CRITICAL HABITAT PROPOSED FOR 38 PLANT SPECIES ON THE ISLAND OF LANAI

[Totals may not sum due to rounding]

Proposed critical habitat area	Size of unit in acres	Size of unit in hectares	Landownership (acres)			
			State	Federal	County	Private
Lanai—Coastal:						
—Unit 1	373	151	0	0	0	373
—Unit 2	2	1	2	0	0	0
—Unit 3	509	206	0	0	0	509
Total Coastal	886	359	2	0	0	883
Lanai—Lowland Dry:						
—Unit 1	9,766	3,952	0	0	0	9,766
—Unit 2	939	380	0	0	0	939
Total Lowland Dry	10,705	4,332	0	0	0	10,705
Lanai—Lowland Mesic:						
—Unit 1	11,172	4,521	0	0	3	11,170
Total Lowland Mesic	11,172	4,521	0	0	3	11,170
Lanai—Lowland Wet:						
—Unit 1	374	152	0	0	0	374
—Unit 2	232	94	0	0	0	232
Total Lowland Wet	606	245	0	0	0	606
Lanai—Montane Wet:						

TABLE 6B—CRITICAL HABITAT PROPOSED FOR 38 PLANT SPECIES ON THE ISLAND OF LANAI—Continued

[Totals may not sum due to rounding]

Proposed critical habitat area	Size of unit in acres	Size of unit in hectares	Landownership (acres)			
			State	Federal	County	Private
—Unit 1	248	101	0	0	0	248
Total Montane Wet	248	101	0	0	0	248
Lanai—Dry Cliff:						
—Unit 1	83	34	0	0	0	83
—Unit 2	354	143	0	0	0	354
—Unit 3	398	161	0	0	0	398
Total Dry Cliff	835	338	0	0	0	835
Lanai—Wet Cliff:						
—Unit 1	731	296	0	0	0	731
—Unit 2	230	93	0	0	0	230
Total Wet Cliff	961	389	0	0	0	961
Total All Units	25,413	10,285	0	0	2	25,408

TABLE 6C—CRITICAL HABITAT PROPOSED FOR 91 PLANT SPECIES ON THE ISLAND OF MAUI

[Totals may not sum due to rounding]

Proposed critical habitat area	Size of unit in acres	Size of unit in hectares	Landownership (acres)			
			State	Federal	County	Private
Maui—Coastal:						
—Unit 1	2	1	2	0	0	0
—Unit 2	68	28	42	0	0	26
—Unit 3	54	22	13	0	0	40
—Unit 4	243	98	107	0	0	136
—Unit 5	27	11	27	0	0	0
—Unit 6	357	144	357	0	0	0
—Unit 7	187	76	40	0	0	147
—Unit 8	597	242	597	0	0	<1
—Unit 9	393	159	184	0	5	205
—Unit 10	434	176	215	0	0	219
—Unit 11	6	3	6	0	0	0
Total Coastal	2,368	960	1,590	0	5	773
Maui—Lowland Dry:						
—Unit 1	22,196	8,983	12,999	0	0	9,197
—Unit 2	2,612	1,057	1,851	0	0	762
—Unit 3	1,089	441	0	0	<1	1,089
—Unit 4	1,283	519	1,283	0	0	0
—Unit 5	5,448	2,205	3,685	0	0	1,763
—Unit 6	579	234	4	0	0	575
Total Lowland Dry	33,207	13,439	19,822	0	1	13,386
Maui—Lowland Mesic:						
—Unit 1	1,930	781	1,172	502	0	256
—Unit 2	3,424	1,386	1,315	0	0	2,109
—Unit 3	477	193	477	0	0	0
Total Lowland Mesic	5,831	2,360	2,964	502	0	2,365
Maui—Lowland Wet:						
—Unit 1	26,703	10,807	10,822	2,038	0	13,844
—Unit 2	5,066	2,050	65	0	0	5,001
—Unit 3	1,427	577	1,247	0	0	180
—Unit 4	1,165	472	864	0	301	0
—Unit 5	2,112	855	30	0	0	2,082
—Unit 6	639	259	136	0	0	503
—Unit 7	898	364	898	0	0	0
—Unit 8	230	93	230	0	0	0

TABLE 6C—CRITICAL HABITAT PROPOSED FOR 91 PLANT SPECIES ON THE ISLAND OF MAUI—Continued

[Totals may not sum due to rounding]

Proposed critical habitat area	Size of unit in acres	Size of unit in hectares	Landownership (acres)			
			State	Federal	County	Private
Total Lowland Wet	38,240	15,477	14,292	2,038	301	21,610
Maui—Montane Wet:						
—Unit 1	7,815	3,162	1,067	0	0	6,747
—Unit 2	16,687	6,753	4,075	875	0	11,737
—Unit 3	2,228	902	0	2,228	0	0
—Unit 4	1,833	742	180	1,653	0	0
—Unit 5	387	156	222	165	0	0
—Unit 6	3,964	1,604	1,113	0	471	2,380
—Unit 7	608	246	80	0	0	528
—Unit 8	46	19	0	0	0	46
Total Montane Wet	33,568	13,584	6,737	4,921	471	21,438
Maui—Montane Mesic:						
—Unit 1	20,972	8,487	7,277	2,897	18	10,781
—Unit 2	366	148	124	0	0	242
—Unit 3	218	88	174	0	0	44
—Unit 4	72	29	72	0	0	0
—Unit 5	304	123	170	0	0	134
—Unit 6	94	38	0	0	0	94
Total Montane Mesic	22,026	8,913	7,817	2,897	18	11,295
Maui—Montane Dry:						
—Unit 1	4,988	2,019	2,962	323	0	1,703
Total Montane Dry	4,988	2,019	2,962	323	0	1,703
Maui—Subalpine:						
—Unit 1	19,401	7,851	10,866	2,770	0	5,764
—Unit 2	10,931	4,424	0	9,836	0	1,095
Total Subalpine	30,332	12,275	10,866	12,606	0	6,859
Maui—Alpine:						
—Unit 1	2,107	853	761	918	0	428
Total Alpine	2,107	853	761	918	0	428
Maui—Dry Cliff:						
—Unit 1	1,018	412	0	755	0	264
—Unit 2	688	279	0	688	0	0
—Unit 3	293	119	0	200	0	93
—Unit 4	315	127	0	315	0	0
—Unit 5	1,536	622	1,298	0	0	238
—Unit 6	279	113	279	0	0	0
—Unit 7	808	327	0	0	0	808
Total Dry Cliff	4,937	1,999	1,577	1,958	0	1,403
Maui—Wet Cliff:						
—Unit 1	460	186	0	0	0	460
—Unit 2	1,407	569	475	912	0	20
—Unit 3	438	177	5	433	0	0
—Unit 4	184	75	184	0	0	0
—Unit 5	2,048	829	35	0	0	2,013
—Unit 6	9,103	3,684	1,858	0	2,917	4,328
—Unit 7	781	316	557	0	0	224
—Unit 8	337	137	337	0	0	0
Total Wet Cliff	14,758	5,973	3,451	1,345	2,917	7,045
Total All Units	192,362	77,852	72,839	27,508	3,713	88,305

TABLE 6D—CRITICAL HABITAT PROPOSED FOR SIX PLANT SPECIES ON THE ISLAND OF KAHOOLAWE

[Totals may not sum due to rounding]

Proposed critical habitat area	Size of unit in acres	Size of unit in hectares	Landownership (acres)			
			State	Federal	County	Private
Kahoolawe—coastal:						
—Unit 1	1,515	613	1,515	0	0	0
—Unit 2	12	5	12	0	0	0
—Unit 3	339	137	339	0	0	0
Total Coastal	1,866	755	1,866	0	0	0
Kahoolawe—Lowland Dry:						
—Unit 1	1,380	559	1,380	0	0	0
—Unit 2	3,205	1,297	3,205	0	0	0
Total Lowland Dry	4,585	1,856	4,585	0	0	0
Total All Units	6,451	2,611	6,451	0	0	0

TABLE 6E—CRITICAL HABITAT PROPOSED FOR TWO FOREST BIRD SPECIES (AKOHEKOHE AND KIWIKIU) ON THE ISLAND OF MAUI

[Totals may not sum due to rounding]

Proposed critical habitat area	Size of unit in acres	Size of unit in hectares	Landownership (acres)			
			State	Federal	County	Private
Lowland Mesic:						
Maui—Unit 1	477	193	477	0	0	0
Total Lowland Mesic	477	193	477	0	0	0
Lowland Wet:						
Maui—Unit 2	26,703	10,807	10,822	2,038	0	13,844
Maui—Unit 3	5,066	2,050	65	0	0	5,001
Maui—Unit 4	1,427	577	1,247	0	0	180
Maui—Unit 5	1,165	472	864	0	301	0
Maui—Unit 6	2,112	855	30	0	0	2,082
Maui—Unit 7	639	259	136	0	0	503
Maui—Unit 8	898	364	898	0	0	0
Maui—Unit 9	230	93	230	0	0	0
Total Lowland Wet	38,240	15,477	14,292	2,038	301	21,610
Montane Wet:						
Maui—Unit 10	7,815	3,162	1,067	0	0	6,747
Maui—Unit 11	16,687	6,753	4,075	875	0	11,737
Maui—Unit 12	2,228	902	0	2,228	0	0
Maui—Unit 13	1,833	742	180	1,653	0	0
Maui—Unit 14	387	156	222	165	0	0
Maui—Unit 15	3,964	1,604	1,113	0	471	2,380
Maui—Unit 16	608	246	80	0	0	528
Maui—Unit 17	46	19	0	0	0	46
Total Montane Wet	33,568	13,584	6,737	4,921	471	21,438
Montane Mesic:						
Maui—Unit 18	20,972	8,487	7,277	2,897	18	10,781
Maui—Unit 19	366	148	124	0	0	242
Maui—Unit 20	218	88	174	0	0	44
Maui—Unit 21	72	29	72	0	0	0
Maui—Unit 22	304	123	170	0	0	134
Maui—Unit 23	94	38	0	0	0	94
Total Montane Mesic	22,026	8,913	7,817	2,897	18	11,295
Subalpine:						
Maui—Unit 24	19,401	7,851	10,866	2,770	0	5,764
Maui—Unit 25	10,931	4,424	0	9,836	0	1,095
Total Subalpine	30,332	12,275	10,866	12,606	0	6,859
Dry Cliff:						

TABLE 6E—CRITICAL HABITAT PROPOSED FOR TWO FOREST BIRD SPECIES (AKOHEKOHE AND KIWIKIU) ON THE ISLAND OF MAUI—Continued

[Totals may not sum due to rounding]

Proposed critical habitat area	Size of unit in acres	Size of unit in hectares	Landownership (acres)			
			State	Federal	County	Private
Maui—Unit 26	1,018	412	0	755	0	264
Maui—Unit 27	293	119	0	200	0	93
Maui—Unit 28	315	127	0	315	0	0
Maui—Unit 29	1,536	622	1,298	0	0	238
Total Dry Cliff	3,162	1,280	1,298	1,270	0	595
Wet Cliff:						
Maui—Unit 30	460	186	0	0	0	460
Maui—Unit 31	1,407	569	475	912	0	20
Maui—Unit 32	438	177	5	433	0	0
Maui—Unit 33	184	75	184	0	0	0
Maui—Unit 34	2,048	829	35	0	0	2,013
Maui—Unit 35	9,103	3,684	1,858	0	2,917	4,328
Maui—Unit 36	781	316	557	0	0	224
Total Wet Cliff	14,421	5,836	3,114	1,345	2,917	7,045
Total All Units	142,226	57,558	44,601	25,077	3,707	68,842

TABLE 6F—CRITICAL HABITAT PROPOSED FOR TWO FOREST BIRD SPECIES (AKOHEKOHE AND KIWIKIU) ON THE ISLAND OF MOLOKAI

[Totals may not sum due to rounding]

Proposed critical habitat area	Size of unit in acres	Size of unit in hectares	Landownership (acres)			
			State	Federal	County	Private
Lowland Mesic						
Molokai—Unit 37	10,330	4,180	3,538	0	0	6,792
Total Lowland Mesic	10,330	4,180	3,538	0	0	6,792
Lowland Wet						
Molokai—Unit 38	3,628	1,468	2,195	0	0	1,433
Molokai—Unit 39	1,952	790	1,356	0	0	597
Total Lowland Wet	5,580	2,258	3,551	0	0	2,030
Montane Wet						
Molokai—Unit 40	4,818	1,950	1,518	0	0	3,300
Molokai—Unit 41	910	368	871	0	0	39
Total Montane Wet	5,728	2,318	2,389	0	0	3,339
Montane Mesic						
Molokai—Unit 42	1,629	659	257	0	0	1,373
Total Montane Mesic	1,629	659	257	0	0	1,373
Wet Cliff						
Molokai—Unit 43	1,888	764	1,399	0	0	489
Molokai—Unit 44	1,280	518	462	0	0	818
Total Wet Cliff	3,168	1,282	1,861	0	0	1,307
Total All Units	26,435	10,697	11,596	0	0	14,841

TABLE 6G—CRITICAL HABITAT PROPOSED FOR TWO LANAI TREE SNAIL SPECIES (PARTULINA SEMICARINATA AND P. VARIABILIS) ON THE ISLAND OF LANAI

[Totals may not sum due to rounding]

Proposed critical habitat area	Size of unit in acres	Size of unit in hectares	Landownership (acres)			
			State	Federal	County	Private
Lowland Wet						
Lanai—Unit 1	374	152	0	0	0	374
Lanai—Unit 2	232	94	0	0	0	232
Total Lowland Wet	606	246	0	0	0	606
Montane Wet						
Lanai—Unit 3	248	101	0	0	0	248
Total Montane Wet	248	101	0	0	0	248
Wet Cliff						
Lanai—Unit 4	731	296	0	0	0	731
Lanai—Unit 5	230	93	0	0	0	230
Total Wet Cliff	961	389	0	0	0	961
Total All Units	1,815	736	0	0	0	1,815

TABLE 6H—CRITICAL HABITAT PROPOSED FOR NEWCOMBIA CUMINGI ON THE ISLAND OF MAUI

[Totals may not sum due to rounding]

Proposed critical habitat area	Size of unit in acres	Size of unit in hectares	Landownership (acres)			
			State	Federal	County	Private
Lowland Wet						
Maui—Unit 1	599	242	56	0	0	542
Total Lowland Wet	599	242	56	0	0	542
Total All Units	599	242	56	0	0	542

TABLE 7A—PLANT SPECIES FOR WHICH CRITICAL HABITAT IS PROPOSED FOR DESIGNATION IN EACH ECOSYSTEM, AND AREAS UNDER CONSIDERATION FOR EXCLUSION UNDER SECTION 4(B)(2) OF THE ACT

Species	Ecosystem											Considered for exclusion from critical habitat ac (ha)	Total critical habitat proposed (inclusive of areas considered for exclusion) ac (ha)
	Coastal	Lowland dry	Lowland mesic	Lowland wet	Montane wet	Montane mesic	Montane dry	Subalpine	Alpine	Dry cliff	Wet cliff		
Plants:													
Abutilon eremitopetalum		LA										0 (0)	10,705 (4,332)
Acaena exigua *					WMA							1,364 (552)	4,618 (1,869)
Adenophorus periens					EMA, LA, MO.							9,463 (3,828)	35,729 (14,459)
Alectryon macrococcus var. *auwahiensis.*		EMA				EMA	EMA					14,575 (5,899)	51,857 (20,987)
Alectryon macrococcus var. *macrococcus.*			MO	WMA		EMA, MO					WMA	16,054 (6,498)	56,737 (22,962)
Argyroxiphium sandwicense ssp. *macrocephalum.*						EMA		EMA	EMA			10,151 (4,108)	53,411 (21,615)
Asplenium dielerectum		WMA, LA	WMA, MO	WMA, MO		EMA, MO				LA		14,641 (5,926)	80,873 (32,728)
Asplenium peruvianum var. *insulare.*					EMA	EMA		EMA				18,180 (7,356)	80,254 (32,477)
Bidens campylotheca ssp. *pentamera.*		WMA	WMA		EMA	EMA				EMA	EMA, WMA.	18,551 (7,507)	78,205 (31,648)
Bidens campylotheca ssp. *waihoiensis.*				EMA	EMA						EMA	9,016 (3,648)	58,142 (23,529)
Bidens conjuncta				WMA	WMA						WMA	9,264 (3,750)	28,424 (11,505)
Bidens micrantha ssp. *kalealaha.*		EMA, LA	LA	WMA		EMA		EMA		LA		22,690 (9,183)	111,450 (45,104)
Bidens wiebkei	MO			MO	MO	MO						3,156 (1,277)	28,700 (111,613)
Bonamia menziesii		EMA, MO	LA, MO							WMA	WMA	9,482 (3,838)	66,562 (26,533)
Brighamia rockii	MO, EMA, WMA.									LA	MO	1,141 (462)	14,619 (5,917)
Calamagrostis hillebrandii					WMA							1,364 (552)	4,618 (1,869)
Canavalia molokaiensis	MO		MO	MO							MO	1,324 (536)	35,400 (14,324)
Canavalia pubescens	LA	EMA										6,874 (2,782)	26,783 (10,840)
Cenchrus agrimonioides		EMA, WMA.	LA									6,874 (2,782)	44,379 (17,960)
Clermontia lindseyana						EMA						6,953 (2,814)	20,972 (8,487)
Clermontia oblongifolia ssp. *brevipes.*			MO	MO	MO						MO	1,819 (736)	3,515 (142.348)
Clermontia oblongifolia ssp. *mauiensis.*			LA	EMA, WMA, LA.	EMA							14,526 (5,878)	78,968 (31,958)
Clermontia peleana *				EMA								802 (325)	26,703 (10,807)
Clermontia samuelii				EMA	EMA							8,846 (3,579)	55,653 (22,522)
Colubrina oppositifolia		EMA	WMA									7,681 (3,109)	29,798 (12,060)

Ctenitis squamigera		EMA, WMA.	EMA, WMA, MO.	WMA		WMA				LA	WMA, LA	15,969 (6,464)	76,025 (30,768)
Cyanea asplenifolia			EMA	EMA, WMA.								6,482 (2,624)	40,170 (16,258)
Cyanea copelandii ssp. *haleakalaensis.*			EMA	EMA	EMA						EMA	9,016 (3,648)	60,072 (24,310)
Cyanea dunbariae			MO	MO		MO						1,201 (486)	25,613 (10,364)
Cyanea duvalliorum				EMA	EMA							8,846 (3,579)	55,653 (22,522)
Cyanea gibsonii					LA						LA	0 (0)	1,209 (490)
Cyanea glabra *				WMA	EMA	EMA					WMA	22,897 (9,266)	61,459 (24,872)
Cyanea grimesiana ssp. *grimesiana* *.				MO							MO	12 (5)	18,184 (7,358)
Cyanea hamatiflora ssp. *hamatiflora.*				EMA	EMA	EMA						15,799 (6,393)	76,625 (31,009)
Cyanea horrida					EMA	EMA					EMA	15,167 (6,137)	52,411 (21,209)
Cyanea kunthiana				EMA, WMA.	EMA, WMA.	EMA						22,843 (9,244)	92,780 (37,548)
Cyanea lobata ssp. *baldwinii*					LA							0 (0)	248 (101)
Cyanea lobata ssp. *lobata*				WMA							WMA	7,900 (3,198)	23,806 (9,636)
Cyanea magnicalyx				WMA		WMA					WMA	7,900 (3,198)	24,861 (10,062)
Cyanea mannii			MO		MO	MO						1,819 (736)	18,490 (7,482)
Cyanea maritae				EMA	EMA							8,846 (3,579)	55,653 (22,522)
Cyanea mceldowneyi				EMA	EMA	EMA						15,799 (6,393)	76,625 (31,009)
Cyanea munroi											MO, LA	12 (5)	5,491 (2,222)
Cyanea obtusa		WMA				EMA						6,953 (2,814)	28,282 (11,445)
Cyanea procera			MO		MO	MO						1,819 (736)	18,490 (7,482)
Cyanea profuga			MO		MO							1,807 731)	16,861 (6,823)
Cyanea solanacea			MO	MO	MO	MO						1,819 (736)	32,144 (13,007)
Cyperus fauriei		LA	MO			MO						400 (162)	22,664 (9,171)
Cyperus pennatiformis	EMA											0 (0)	1,535 (622)
Cyperus trachysanthos *		LA, MO										0 (0)	13,976 (5,655)
Cyrtandra ferripilosa					EMA	EMA						14,997 (6,068)	49,922 (20,202)
Cyrtandra filipes			MO	WMA, MO							WMA	8,288 (3,355)	47,790 (19,341)
Cyrtandra munroi				WMA	LA						WMA, LA	7,900 (3,198)	25,015 (10,126)
Cyrtandra oxybapha					WMA	EMA						8,317 (3,366)	25,590 (10,356)
Diplazium molokaiense			LA, MO	WMA	EMA	EMA, WMA.				EMA, WMA, LA.		21,422 (8,668)	99,609 (40,310)
Dubautia plantaginea ssp. *humilis.*											WMA	2,220 (899)	12,269 (4,966)
Eugenia koolauensis *		MO										0 (0)	3,271 (1,323)
Festuca molokaiensis			MO									388 (157)	10,330 (4,180)

TABLE 7A—PLANT SPECIES FOR WHICH CRITICAL HABITAT IS PROPOSED FOR DESIGNATION IN EACH ECOSYSTEM, AND AREAS UNDER CONSIDERATION FOR EXCLUSION UNDER SECTION 4(B)(2) OF THE ACT—Continued

Species	Ecosystem											Considered for exclusion from critical habitat ac (ha)	Total critical habitat proposed (inclusive of areas considered for exclusion) ac (ha)
	Coastal	Lowland dry	Lowland mesic	Lowland wet	Montane wet	Montane mesic	Montane dry	Subalpine	Alpine	Dry cliff	Wet cliff		
Flueggea neowawraea		EMA	MO									7,262 (2,939)	36,227 (14,661)
Geranium arboreum						EMA	EMA	EMA				10,884 (4,405)	56,292 (22,781)
Geranium hanaense					EMA							8,044 (3,255)	28,950 (11,715)
Geranium hillebrandii					WMA	WMA						1,364 (552)	5,673 (2,295)
Geranium multiflorum					EMA	EMA		EMA				18,180 (7,356)	80,254 (32,477)
Gouania hillebrandii		WMA, KAH	MO									388 (157)	22,225 (8,994)
Gouania vitifolia *											WMA	2,220 (899)	12,269 (4,966)
Hesperomannia arborescens				WMA	MO						WMA, LA, MO.	9,331 (3,777)	35,828 (14,501)
Hesperomannia arbuscula		WMA		WMA						WMA	WMA	7,900 (3,198)	33,739 (13,656)
Hibiscus arnottianus ssp. *immaculatus.*	MO										MO	936 (379)	11,416 (4,619)
Hibiscus brackenridgei	LA, MO	EMA, WMA, LA, MO, KAH.										7,798 (3,156)	59,540 (24,095)
Huperzia mannii			EMA	EMA, WMA.	EMA, WMA.	EMA, WMA.						22,843 (9,244)	95,765 (38,755)
Ischaemum byrone	EMA, MO											924 (374)	8,421 (3,408)
Isodendrion pyrifolium *			MO	WMA						WMA	WMA	8,288 (3,355)	36,759 (14,878)
Kadua cordata ssp. *remyi*			LA	LA								0 (0)	11,778 (4,766)
Kadua coriacea *		WMA										0 (0)	7,310 (2,958)
Kadua laxiflora			LA, MO	WMA, LA	LA	MO				WMA	WMA, LA	9,101 (3,684)	51,375 (20,793)
Kanaloa kahoolawensis	KAH	KAH										0 (0)	6,451 (2,611)
Kokia cookei *		MO										0 (0)	3,271 (1,323)
Labordia tinifolia var. *lanaiensis.*			LA	LA	LA						LA	0 (0)	12,987 (5,256)
Labordia triflora			MO									388 (157)	10,330 (4,180)
Lysimachia lydgatei		WMA				WMA					WMA	2,220 (899)	20,634 (8,350)
Lysimachia maxima				MO	MO							1,419 (574)	20,185 (8,168)
Marsilea villosa	MO											924 (374)	6,886 (2,786)
Melanthera kamolensis		EMA										6,874 (2,782)	25,897 (10,487)
Melicope adscendens		EMA				EMA						13,827 (5,596)	46,869 (18,968)

Melicope balloui				EMA	EMA							8,846 (3,579)	55,653 (22,522)
Melicope knudsenii							EMA					748 (303)	4,988 (2,019)
Melicope mucronulata		EMA	MO			MO	EMA					8,823 (3,571)	42,844 (17,339)
Melicope munroi			MO		LA						LA	388 (157)	11,539 (4,670)
Melicope ovalis				EMA	EMA						EMA	9,016 (3,648)	58,142 (23,529)
Melicope reflexa			MO	MO	MO							1,807 (731)	30,515 (12,348)
Mucuna sloanei var. *persericea.*				EMA								802 (325)	26,703 (10,807)
Myrsine vaccinioides					WMA							1,364 (552)	4,618 (1,869)
Neraudia sericea		EMA, WMA, LA, KAH.	MO			EMA, MO				WMA, LA		15,028 (6,082)	84,886 (34,353)
Nototrichium humile *		EMA										6,874 (2,782)	25,897 (10,481)
Peperomia subpetiolata					EMA							8,044 (3,255)	28,950 (11,715)
Peucedanum sandwicense	EMA, MO			WMA, MO								6,604 (2,673)	33,612 (13,603)
Phyllostegia bracteata *				WMA	EMA, WMA.	EMA		EMA			EMA	25,394 (10,276)	98,898 (40,023)
Phyllostegia haliakalae *			MO							LA	EMA, LA	558 (226)	14,615 (5,914)
Phyllostegia hispida				MO	MO						MO	1,431 (579)	21,391 (8,656)
Phyllostegia mannii			MO	MO	EMA, MO	EMA						16,804 (6,799)	80,437 (32,550)
Phyllostegia pilosa			MO		EMA, MO							9,851 (3,985)	45,811 (18,538)
Pittosporum halophilum	MO											924 (374)	6,886 (2,786)
Plantago princeps				MO		MO				EMA	EMA, WMA.	3,560 (1,442)	32,355 (13,093)
Platanthera holochila					EMA, WMA, MO.						WMA	13,047 (5,279)	52,368 (21,193)
Pleomele fernaldii		LA	LA	LA						LA	LA	0 (0)	24,279 (9,825)
Portulaca sclerocarpa	LA											0 (0)	886 (359)
Pteris lidgatei				WMA	MO						WMA, MO	9,331 (3,777)	34,867 (14,112)
Remya mauiensis		WMA	WMA	WMA		WMA					WMA	8,707 (3,524)	36,072 (14,599)
Sanicula purpurea					WMA							1,364 (552)	4,618 (1,869)
Santalum haleakalae var. *lanaiense.*		EMA, WMA.	WMA, LA, MO.	WMA, LA	LA	EMA, WMA, MO.	EMA				WMA, LA	24,483 (9,909)	112,875 (45,681)
Schenkia sebaeoides	WMA, MO	LA										1,129 (457)	18,424 (7,456)
Schiedea haleakalensis								EMA		EMA		3,540 (1,434)	32,646 (13,211)
Schiedea jacobii *					EMA							8,044 (3,254)	28,950 (11,715)
Schiedea laui					MO							1,419 (574)	6,531 (2,643)
Schiedea lydgatei			MO									388 (157)	10,330 (4,180)
Schiedea salicaria		WMA										0 (0)	7,310 (2,958)

TABLE 7A—PLANT SPECIES FOR WHICH CRITICAL HABITAT IS PROPOSED FOR DESIGNATION IN EACH ECOSYSTEM, AND AREAS UNDER CONSIDERATION FOR EXCLUSION UNDER SECTION 4(B)(2) OF THE ACT—Continued

Species	Ecosystem											Considered for exclusion from critical habitat ac (ha)	Total critical habitat proposed (inclusive of areas considered for exclusion) ac (ha)
	Coastal	Lowland dry	Lowland mesic	Lowland wet	Montane wet	Montane mesic	Montane dry	Subalpine	Alpine	Dry cliff	Wet cliff		
Schiedea sarmentosa	.....	.....	MO	.....	.....	.....	.....	.....	.....	.....	.....	388 (157)	10,330 (4,180)
Sesbania tomentosa	WMA, MO, LA, KAH.	EMA, WMA, LA, MO, KAH.	MO	.....	.....	.....	.....	.....	.....	.....	.....	8,391 (3,396)	72,569 (29,368)
Silene alexandri	.....	.....	MO	.....	.....	.....	.....	.....	.....	.....	.....	388 (157)	10,330 (4,180)
Silene lanceolata	.....	LA	MO	.....	.....	.....	.....	.....	.....	.....	.....	388 (157)	21,035 (8,512)
Solanum incompletum *	.....	EMA, LA	EMA, LA	.....	.....	.....	.....	EMA	.....	LA	.....	10,057 (4,070)	80,871 (32,728)
Spermolepis hawaiiensis	.....	EMA, WMA, LA.	LA, MO	.....	.....	MO	.....	.....	.....	.....	.....	8,075 (3,268)	67,043 (25,131)
Stenogyne bifida	.....	.....	MO	MO	MO	MO	.....	.....	.....	.....	MO	2,632 (1,065)	36,674 (14,840)
Stenogyne kauaulaensis	.....	.....	.....	.....	.....	WMA	.....	.....	.....	.....	.....	0 (0)	1,055 (426)
Tetramolopium capillare *	.....	WMA	.....	.....	.....	.....	.....	.....	.....	WMA	WMA	2,220 (899)	22,202 (8,986)
Tetramolopium lepidotum ssp. *lepidotum* *.	.....	LA	.....	.....	.....	.....	.....	.....	.....	.....	.....	0 (0)	10,705 (4,332)
Tetramolopium remyi	.....	WMA, LA	.....	.....	.....	.....	.....	.....	.....	.....	.....	0 (0)	18,015 (7,290)
Tetramolopium rockii	MO	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	924 (374)	6,886 (2,786)
Vigna o-wahuensis	EMA, KAH	LA, KAH	MO, LA	.....	.....	.....	.....	.....	.....	.....	.....	388 (157)	40,193 (16,266)
Viola lanaiensis	.....	.....	.....	.....	LA	.....	.....	.....	.....	LA	LA	0 (0)	2,044 (828)
Wikstroemia villosa	.....	.....	.....	EMA, WMA.	EMA	EMA	.....	.....	.....	.....	.....	21,479 (8,692)	59,528 (24,090)
Zanthoxylum hawaiiense	.....	EMA	WMA, MO	LA, MO	MO	EMA, WMA.	EMA	EMA	.....	.....	.....	20,372 (8,244)	118,266 (47,860)
Areas Considered for Exclusion by Ecosystem, ac (ha).	1,129 (457)	6,874 (2,782).	1,195 (484)	6,482 (2,623).	10,827 (4,380).	7,766 (3,143).	748 (303)	3,183 (1,288).	15 (6)	357 (144)	2,402 (973)	.....	.....
Total Area Proposed CH (including areas considered for exclusion).	12,006 (4,860).	51,768 (20,950).	27,333 (11,061).	52,500 (21,247).	40,347 (16,328).	23,656 (9,572).	4,988 (2,019).	30,332 (12,275).	2,107 (853)	5,772 (2,336).	20,249 (8,195).	.....	.....

EMA = critical habitat within indicated ecosystem in the east Maui mountains.
WMA = critical habitat within indicated ecosystem in the west Maui mountains.
LA = critical habitat within indicated ecosystem on Lanai.
MO = critical habitat within indicated ecosystem on Molokai.
KAH = critical habitat within indicated ecosystem on Kahoolawe.
The area known to be occupied by species for which the unit is designated also provides area essential to the conservation of all of the species that occur in that particular ecosystem, even if the area is currently unoccupied by those species. Those areas provide the space and appropriate environmental conditions for activities such as seed dispersal and reproduction that will serve to expand the existing populations.
* This species may no longer occur in the wild on Molokai, Lanai, Maui, or Kahoolawe.

TABLE 7B—FOREST BIRD SPECIES FOR WHICH CRITICAL HABITAT IS DESIGNATED IN EACH ECOSYSTEM, AND AREAS CONSIDERED FOR EXCLUSION UNDER SECTION 4(B)(2)

Species	Ecosystem											Considered for exclusion from critical habitat ac (ha)	Total critical habitat proposed ac (ha)
	Coastal	Lowland dry	Lowland mesic	Lowland wet	Montane wet	Montane mesic	Montane dry	Sub-alpine	Alpine	Dry cliff	Wet cliff		
Forest Bird:													
Akohekohe	.....	.....	WMA, MO	EMA, WMA, MO.	EMA, WMA, MO.	EMA, WMA, MO.	.....	EMA	.....	EMA, WMA.	EMA, WMA, MO.	31,405 (12,710)	168,663 (67,632)
Kiwikiu	.....	.....	WMA, MO	EMA, WMA, MO.	EMA, WMA, MO.	EMA, WMA, MO.	.....	EMA	.....	EMA, WMA.	EMA, WMA, MO.	31,405 (12,710)	168,663 (67,632)
Area Considered for Exclusion ac (ha).	.....	.....	388 (157)	6,482 (2,624).	10,827 (4,380).	7,766 (3,143).	.....	3,813 (1,288).	.....	357 (145)	2,402 (973)	.....	.....
Total Area Proposed Critical Habitat (including area considered for exclusion) ac (ha).	.....	.....	10,807 (4,373).	43,820 (17,735).	39,297 (15,902).	23,656 (9,572).	.....	30,332 (12,275).	.....	3,162 (1,279).	17,589 (7,118).	.....	.....

EMA = critical habitat within indicated ecosystem in the east Maui mountains.
WMA = critical habitat within indicated ecosystem in the west Maui mountains.
MO = critical habitat within indicated ecosystem on Molokai.
The area known to be occupied by species for which the unit is designated also provides area essential to the conservation of all of the species that occur in that particular ecosystem, even if the area is currently unoccupied by those species. Those areas provide the space and appropriate environmental conditions for activities such as food gathering and reproduction that will serve to expand the existing populations.

TABLE 7C—TREE SNAIL SPECIES FOR WHICH CRITICAL HABITAT IS DESIGNATED IN EACH ECOSYSTEM AND AREAS CONSIDERED FOR EXCLUSION UNDER 4(B)(2) FOREST BIRD SPECIES FOR WHICH CRITICAL HABITAT IS DESIGNATED IN EACH ECOSYSTEM, AND AREAS CONSIDERED FOR EXCLUSION UNDER SECTION 4(B)(2)

Species	Ecosystem											Considered for exclusion from critical habitat ac (ha)	Total critical habitat proposed ac (ha)
	Coastal	Lowland dry	Lowland mesic	Lowland wet	Montane wet	Montane mesic	Montane dry	Sub-alpine	Alpine	Dry cliff	Wet cliff		
Tree Snail:													
Newcombia cumingi	.....	.....	.....	WMA	.....	.....	.....	.....	.....	.....	.....	0 (0)	599 (242)
Area Considered for Exclusion ac (ha).	.....	.....	.....	0 (0)	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total Proposed CH ac (ha)	.....	.....	.....	599 (242)	.....	.....	.....	.....	.....	.....	.....	.....	.....
Partulina semicarinata	.....	.....	.....	LA	LA	.....	.....	.....	.....	.....	LA	0 (0)	1,815 (736)
Partulina variabilis	.....	.....	.....	LA	LA	.....	.....	.....	.....	.....	LA	0 (0)	1,815 (736)
Area Considered for Exclusion ac (ha).	.....	.....	.....	0 (0)	0 (0)	.....	.....	.....	.....	.....	0 (0)	.....	.....
Total Area Proposed CH (including area considered for exclusion) ac (ha).	.....	.....	.....	606 (246)	248 (101)	.....	.....	.....	.....	.....	961 (389)	.....	.....

WMA = critical habitat within indicated ecosystem in the west Maui mountains.
LA = critical habitat within indicated ecosystem on Lanai.
The area known to be occupied by species for which the unit is designated also provides area essential to the conservation of all of the species that occur in that particular ecosystem, even if the area is currently unoccupied by those species. Those areas provide the space and appropriate environmental conditions for activities such as food gathering and reproduction that will serve to expand the existing populations.

Special Management Considerations or Protections

The term critical habitat is defined in section 3(5)(A) of the Act, in part, as geographic areas on which are found these physical or biological features essential to the conservation of the species and ''which may require special management considerations or protection.''

In identifying critical habitat in occupied areas, we determine whether those areas that contain the features essential to the conservation of the species require any special management actions. Although the determination that special management may be required is not a prerequisite to designating critical habitat in unoccupied areas, special management is needed throughout all of the proposed critical habitat units. The following discussion of special management needs is therefore applicable to each of the 135 Maui Nui species for which we are herein proposing to designate critical habitat.

The 135 species for which we are proposing to designate critical habitat include 118 species that are currently found in the wild on Molokai, Lanai, Maui, and Kahoolawe, 10 plant species which were historically found on one or more of these islands, but are currently found only on other Hawaiian Islands (*Clermontia peleana, Cyanea grimesiana* ssp. *grimesiana, Cyperus trachysanthos, Eugenia koolauensis, Gouania vitifolia, Isodendrion pyrifolium, Kadua coriacea, Nototrichium humile, Solanum incompletum,* and *Tetramolopium lepidotum* ssp. *lepidotum*), 6 plant species that may not be currently extant in the wild (*Acaena exigua, Cyanea glabra, Phyllostegia bracteata, P. haliakalae, Schiedea jacobii,* and *Tetramolopium capillare*), and 1 plant species, *Kokia cookei,* which exists only in cultivation. For each of the 118 species currently found in the wild on Molokai, Lanai, Maui, and Kahoolawe, we have determined that the features essential to their conservation are those required for the successful functioning of the ecosystem(s) in which they occur (see Tables 4 and 5, above). As described earlier, in some cases, additional species-specific primary constituent elements were also identified (see Table 5, above). Special management considerations or protections are necessary throughout the critical habitat areas proposed here to avoid further degradation or destruction of the habitat that provides those features essential to their conservation. The primary threats to the physical or biological features essential to the conservation of all of these species include habitat destruction and modification by nonnative ungulates, competition with nonnative species, hurricanes, landslides, rockfalls, flooding, fire, drought, and climate change. The three tree snails are additionally threatened by predation by the rosy wolf snail. The reduction of these threats will require the implementation of special management actions within each of the critical habitat areas identified in this proposed rule.

All proposed critical habitat requires active management to address the ongoing degradation and loss of native habitat caused by nonnative ungulates (pigs, goats, mouflon sheep, axis deer, and cattle). Nonnative ungulates also impact the habitat through predation and trampling. Without this special management, habitat containing the features that are essential for the conservation of these species will continue to be degraded and destroyed.

All proposed critical habitat requires active management to address the ongoing degradation and loss of native habitat caused by nonnative plants. Special management is also required to prevent the introduction of new nonnative plant species into native habitats. Particular attention is required in nonnative plant control efforts to avoid creating additional disturbances that may facilitate the further introduction and establishment of invasive plant seeds. Precautions are also required to avoid the inadvertent trampling of listed plant species in the course of management activities.

The active control of nonnative plant species will help to address the threat posed by fire to 39 of the proposed ecosystem critical habitat units in particular: Maui—Coastal—Units 4 through 7; Maui—Lowland Dry—Units 1 through 6; Maui—Lowland Mesic—Units 1 and 2; Maui—Montane Mesic—Units 1, 2, and 5; Maui—Dry Cliff—Units 1, 5, and 7; Kahoolawe—Coastal—Units 1 through 3; Kahoolawe—Lowland Dry—Units 1 and 2; Lanai—Coastal—Units 1 and 3; Lanai—Lowland Dry—Units 1 and 2; Lanai—Lowland Mesic—Unit 1; Lanai—Dry Cliff—Units 1 through 3; Molokai—Coastal—Units 1, 2, 3, 6, and 7; Molokai—Lowland Dry—Units 1 and 2; and Molokai—Lowland Mesic—Unit 1. This threat is largely a result of the presence of nonnative plant species such as the grasses *Andropogon virginicus* and *Melinis minutiflora* that increase the fuel load and quickly regenerate after a fire. These nonnative grass species can outcompete native plants that are not adapted to fire, creating a grass-fire cycle that alters ecosystem functions (D'Antonio and Vitousek 1992, pp. 64—66; Brooks *et al.* 2004, p. 680).

Nine of the ecosystem critical habitat units (Maui—Lowland Wet—Units 1 and 4; Maui—Montane Wet—Units 1 through 3; Maui—Montane Mesic—Unit 2; Maui—Wet Cliff—Units 6 and 7; and Molokai—Montane Wet—Unit 1) may require special management to reduce the threat of landslides, rockfalls, and flooding. These threaten to further degrade habitat conditions in these units and have the potential to eliminate some occurrences of 50 plant species (e.g., *Adenophorus periens, Alectryon macrococcus, Asplenium peruvianum* var. *insulare, Bidens campylotheca* ssp. *pentamera, B. campylotheca* ssp. *waihoiensis, B. conjuncta, B. wiebkei, Bonamia menziesii, Clermontia oblongifolia* ssp. *brevipes, C. oblongifolia* ssp. *mauiensis, C. samuelii, Ctenitis squamigera, Cyanea asplenifolia, C. copelandii* ssp. *haleakalaensis, C. duvalliorum, C. hamatiflora* ssp. *hamatiflora, C. horrida, C. kunthiana, C. magnicalyx, C. mannii, C. maritae, C. mceldowneyi, C. profuga, C. solanaea, Cyrtandra filipes, C. munroi, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Geranium hanaense, G. multiflorum, Hesperomannia arborescens, Huperzia mannii, Kadua laxiflora, Lysimachia lydgatei, L. maxima, Melicope balloui, M. ovalis, Phyllostegia hispida, P. mannii, P. pilosa, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Santalum haleakalae* var. *lanaiense, Schiedea laui, Stenogyne bifida, S. kauaulaensis, Wikstroemia villosa,* and *Zanthoxylum hawaiiense*) found on steep slopes and cliffs, or in narrow gulches.

In summary, we find that each of the areas we are proposing as critical habitat contains features essential for the conservation of the species that may require special management considerations or protection to ensure the conservation of the 135 species for which we are proposing critical habitat. These special management considerations and protections are required to preserve and maintain the essential features provided to these species by the ecosystems upon which they depend. The specific areas proposed for critical habitat that are outside the geographical area occupied by these species have been determined to be essential for their conservation.

Proposed Critical Habitat Designation

We are proposing 271,062 ac (109,695 ha) as critical habitat in 11 ecosystem types for 135 species. The proposed

critical habitat is comprised of 100 critical habitat units for the plants, 44 critical habitat units for each of the 2 forest birds, 5 critical habitat units for each of the Lanai tree snails, and one critical habitat unit for the Maui tree snail *Newcombia cumingi* (see Tables 6A–6H, above, for details). The proposed critical habitat includes land under State, County of Maui, Federal (Haleakala National Park; Kalaupapa National Historical Park (NHP), Department of Homeland Security—Coast Guard), and private ownership. The critical habitat units we describe below constitute our current best assessment of those areas that meet the definition of critical habitat for the 135 species of plants and animals.

Descriptions of Proposed Critical Habitat Units

Critical habitat designations for the 130 plant species, the 2 forest birds, and the 3 tree snails would be published in separate sections of the Code of Federal Regulations (CFR); critical habitat would be published in 50 CFR 17.99(c), (d), (e)(1), (e)(2), (f), (m), and (n) for plants on Molokai, Maui and Kahoolawe, and Lanai; in 50 CFR 17.95(b) for the two forest birds; and in 50 CFR 17.95(f) for the three tree snail species. However, the proposed critical habitat for plants, birds, and tree snails overlap each other in many areas of Molokai, Maui, and Lanai. For example, ''Lanai—Lowland Wet—Unit 1'' and the Lanai tree snail unit ''*Partulina variabilis*—Unit 1—Lowland Wet'' correspond to the same geographic area. Therefore, because the unit boundaries are the same, we are describing them only once to avoid redundancy and reduce publication costs for this proposed rule, as indicated by ''(and)'' following the unit name.

As provided under section 4(b)(2) of the Act, all or portions of each of these areas may be considered for exclusion from critical habitat when this rule is finalized. Exclusions are considered based on the relative benefits of including or excluding an area from critical habitat, and includes the consideration of information provided during the public comment period on potential economic or other impacts of this proposed critical habitat designation. Exclusions from critical habitat may be made at the discretion of the Secretary (as described below, under ''Exclusions''). The consideration of potential economic impacts or other relevant impacts of critical habitat applies solely to the designation of critical habitat, and is not a factor in our assessment of whether a species warrants listing as endangered or threatened under the Act.

Maui—Coastal—Unit 1 consists of 2 ac (1 ha) on Keopuka Rock on the northern coast of east Maui. This unit is State-owned, and is classified as a State Seabird Sanctuary. It is occupied by the plants *Ischaemum byrone* and *Peucedanum sandwicense,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the coastal ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Coastal—Unit 1 is not known to be occupied by *Brighamia rockii, Cyperus pennatiformis,* or *Vigna o-wahuensis,* we have determined this area to be essential for the conservation and recovery of these coastal species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Coastal—Unit 2 consists of 42 ac (17 ha) of State land, and 26 ac (11 ha) of privately owned land, from Wahinepee Stream to Moiki Point on the northern coast of east Maui. This unit includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the coastal ecosystem (see Table 4). Although Maui—Coastal—Unit 2 is not currently occupied by *Brighamia rockii, Cyperus pennatiformis, Ischaemum byrone, Peucedanum sandwicense,* or *Vigna o-wahuensis,* we have determined this area to be essential for the conservation and recovery of these coastal species because it provides the physical or biological features necessary for the reestablishment of wild populations within the historical ranges of the species. Due to their small numbers of individuals or low population sizes, these species require suitable habitat and space for expansion or reintroduction to achieve population levels that could achieve recovery.

Maui—Coastal—Unit 3 consists of 13 ac (5 ha) of State land, and 40 ac (16 ha) of privately owned land, from Waianu to Wailua Nui Bay on the northern coast of east Maui. This unit is occupied by the plant *Ischaemum byrone* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the coastal ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of this species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Coastal—Unit 3 is not known to be occupied by *Brighamia rockii, Cyperus pennatiformis, Peucedanum sandwicense,* or *Vigna o-wahuensis,* we have determined this area to be essential for the conservation and recovery of these coastal species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Coastal—Unit 4 consists of 107 ac (43 ha) of State land, and 136 ac (55 ha) of privately owned land, from Papiha Point to Honolulu Nui Bay on the northeastern coast of east Maui. This unit is occupied by the plants *Ischaemum byrone* and *Peucedanum sandwicense,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the coastal ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Coastal—Unit 4 is not known to be occupied by *Brighamia rockii, Cyperus pennatiformis,* or *Vigna o-wahuensis,* we have determined this area to be essential for the conservation and recovery of these coastal species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Coastal—Unit 5 consists of 27 ac (11 ha) of State land from Keakulikuli Point to Pailoa Bay on the northeastern coast of east Maui. This unit is occupied by the plant *Ischaemum byrone* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory

native plant species identified as physical or biological features in the coastal ecosystem (See Table 4). This unit also contains unoccupied habitat that is essential to the conservation of this species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Coastal—Unit 5 is not known to be occupied by *Brighamia rockii, Cyperus pennatiformis, Peucedanum sandwicense,* or *Vigna o-wahuensis,* we have determined this area to be essential for the conservation and recovery of these coastal species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Coastal—Unit 6 consists of 357 ac (144 ha) of State land at Kamanamana on the southern coast of East Maui. This unit includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the coastal ecosystem (see Table 4). Although Maui—Coastal—Unit 6 is not currently occupied by *Brighamia rockii, Cyperus pennatiformis, Ischaemum byrone, Peucedanum sandwicense,* or *Vigna o-wahuensis,* we have determined this area to be essential for the conservation and recovery of these coastal species because it provides the PCEs necessary for the reestablishment of wild populations within the historical ranges of the species. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Coastal—Unit 7 consists of 40 ac (16 ha) of State land, and 147 ac (59 ha) of privately owned land at Naholoku, from Kailio Point to Mokulau, on the southern coast of east Maui. This unit includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the coastal ecosystem (see Table 4). Although Maui—Coastal—Unit 7 is not currently occupied by *Brighamia rockii, Cyperus pennatiformis, Ischaemum byrone, Peucedanum sandwicense,* or *Vigna o-wahuensis,* we have determined this area to be essential for the conservation and recovery of these coastal species because it provides the PCEs necessary for the reestablishment of wild populations within the historical ranges of the species. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Coastal—Unit 8 consists of 597 ac (241 ha) of State land and less than 1 ac (ha) of privately owned land from Kiakeana Point to Manawainui on the southern coast of east Maui. This unit includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the coastal ecosystem (see Table 4). Although Maui—Coastal—Unit 8 is not currently occupied by *Brighamia rockii, Cyperus pennatiformis, Ischaemum byrone, Peucedanum sandwicense,* or *Vigna o-wahuensis,* we have determined this area to be essential for the conservation and recovery of these coastal species because it provides the PCEs necessary for the reestablishment of wild populations within the historical ranges of the species. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Coastal—Unit 9 consists of 184 ac (74 ha) of State land, 5 ac (2 ha) of County land, and 205 ac (83 ha) of privately owned land, from Honokohau Bay to Kaikaina on the northwestern coast of west Maui. This unit is occupied by the plants *Sesbania tomentosa* and *Schenkia sebaeoides,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the coastal ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Coastal—Unit 9 is not known to be occupied by *Brighamia rockii,* we have determined this area to be essential for the conservation and recovery of this coastal species because it provides the PCEs necessary for the reestablishment of wild populations within its historical range. Due to the small numbers of individuals or low population sizes, this species requires suitable habitat and space for expansion or reintroduction to achieve population levels that could approach recovery.

Maui—Coastal—Unit 10 consists of 215 ac (87 ha) of State land and 219 ac (89 ha) of privately owned land, from Kahakuloa Head to Waihee Point on the northeastern coast of west Maui. This unit is occupied by the plants *Sesbania tomentosa* and *Schenkia sebaeoides,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the coastal ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Coastal—Unit 10 is not known to be occupied by *Brighamia rockii,* we have determined this area to be essential for the conservation and recovery of this coastal species because it provides the PCEs necessary for the reestablishment of wild populations within its historical range. Due to the small numbers of individuals or low population sizes, this species requires suitable habitat and space for expansion or reintroduction to achieve population levels that could approach recovery.

Maui—Coastal—Unit 11 consists of 6 ac (3 ha) of State land on Mokeehia Island on the northeastern coast of west Maui. This unit is occupied by the plant *Schenkia sebaeoides,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the coastal ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of this species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Coastal—Unit 11 is not currently occupied by *Brighamia rockii* or *Sesbania tomentosa,* we have determined this area to be essential for the conservation and recovery of these coastal species because it provides the PCEs necessary for the reestablishment of wild populations within the historical ranges of the species. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Lowland Dry—Unit 1 consists of 12,999 ac (5,260 ha) of State land, and 9,197 ac (3,722 ha) of privately owned land, from Kanaio to Kahualau Gulch on the southern slopes of east Maui. This unit is occupied by the plants *Alectryon macrococcus, Bonamia menziesii, Cenchrus agrimonioides, Flueggea*

neowawraea, Melanthera kamolensis, Melicope adscendens, Santalum haleakalae var. *lanaiense, Sesbania tomentosa, Spermolepis hawaiiensis,* and *Zanthoxylum hawaiiense* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland dry ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Lowland Dry—Unit 1 is not known to be occupied by *Bidens micrantha* ssp. *kalealaha, Canavalia pubescens, Colubrina oppositifolia, Ctenitis squamigera, Hibiscus brackenridgei, Melicope mucronulata, Neraudia sericea, Nototrichium humile,* or *Solanum incompletum,* we have determined this area to be essential for the conservation and recovery of these lowland dry species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Lowland Dry—Unit 2 consists of 1,851 ac (749 ha) of State land, and 762 ac (308 ha) of privately owned land, at Keokea on the southern slopes of east Maui. This unit is occupied by the plants *Bonamia menziesii, Canavalia pubescens,* and *Hibiscus brackenridgei,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland dry ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Lowland Dry—Unit 2 is not known to be occupied by *Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Cenchrus agrimonioides, Colubrina oppositifolia, Ctenitis squamigera, Flueggea neowawraea, Melanthera kamolensis, Melicope adscendens, M. mucronulata, Neraudia sericea, Nototrichium humile, Santalum haleakalae* var. *lanaiense, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis,* or *Zanthoxylum hawaiiense,* we have determined this area to be essential for the conservation and recovery of these lowland dry species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Lowland Dry—Unit 3 consists of less than 1 ac (ha) of County land, and 1,089 ac (441 ha) of privately owned land, at Paeahu-Palauea on the southern slopes of east Maui. This unit is occupied by the plants *Canavalia pubescens* and *Hibiscus brackenridgei,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland dry ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Lowland Dry—Unit 3 is not known to be occupied by *Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Cenchrus agrimonioides, Colubrina oppositifolia, Ctenitis squamigera, Flueggea neowawraea, Melanthera kamolensis, Melicope adscendens, M. mucronulata, Neraudia sericea, Nototrichium humile, Santalum haleakalae* var. *lanaiense, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis,* or *Zanthoxylum hawaiiense,* we have determined this area to be essential for the conservation and recovery of these lowland dry species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Lowland Dry—Unit 4 consists of 1,283 ac (519 ha) of State land (including the Department of Land and Natural Resources) at Ahihi-Kinau Natural Area Reserve on the southern slopes of east Maui. This unit is occupied by the plant *Canavalia pubescens,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland dry ecosystem (See Table 4). This unit also contains unoccupied habitat that is essential to the conservation of this species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Lowland Dry—Unit 4 is not known to be occupied by *Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Cenchrus agrimonioides, Colubrina oppositifolia, Ctenitis squamigera, Flueggea neowawraea, Hibiscus brackenridgei, Melanthera kamolensis, Melicope adscendens, M. mucronulata, Neraudia sericea, Nototrichium humile, Santalum haleakalae* var. *lanaiense, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis,* or *Zanthoxylum hawaiiense,* we have determined this area to be essential for the conservation and recovery of these lowland dry species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Lowland Dry—Unit 5 consists of 3,685 ac (1,491 ha) of State land, and 1,763 ac (713 ha) of privately owned land, from Panaewa to Waikapu Valley on the western and southern slopes of west Maui. This unit is occupied by the plants *Asplenium dielerectum, Bidens campylotheca* ssp. *pentamera, Cenchrus agrimonioides, Ctenitis squamigera, Gouania hillebrandii, Hibiscus brackenridgei, Remya mauiensis, Santalum haleakalae* var. *lanaiense, Sesbania tomentosa,* and *Spermolepis hawaiiensis,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland dry ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Lowland Dry—Unit 5 is not known to be occupied by *Cyanea obtusa, Hesperomannia arbuscula, Kadua coriacea, Lysimachia lydgatei, Neraudia sericea, Schiedea salicaria, Tetramolopium capillare,* or *T. remyi,* we have determined this area to be essential for the conservation and recovery of these lowland dry species because it provides the PCEs necessary

for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Lowland Dry—Unit 6 consists of 4 ac (2 ha) of State land, and 575 ac (233 ha) of privately owned land, from Paleaahu Gulch to Puu Hona on the southern slopes of west Maui. This unit is occupied by the plants *Hibiscus brackenridgei* and *Schiedea salicaria,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland dry ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Lowland Dry—Unit 6 is not known to be occupied by *Asplenium dielerectum, Bidens campylotheca* ssp. *pentamera, Cenchrus agrimonioides, Ctenitis squamigera, Cyanea obtusa, Gouania hillebrandii, Hesperomannia arbuscula, Kadua coriacea, Lysimachia lydgatei, Neraudia sericea, Remya mauiensis, Santalum haleakalae* var. *lanaiense, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare,* or *T. remyi,* we have determined this area to be essential for the conservation and recovery of these lowland dry species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Lowland Mesic—Unit 1 consists of 1,172 ac (474 ha) of State land, 256 ac (104 ha) of privately owned land, and 502 ac (203 ha) of federally owned land (Haleakala National Park), from Manawainui Valley to Kukuiula on the eastern slopes of east Maui. This unit is occupied by the plants *Cyanea asplenifolia, C. copelandii* ssp. *haleakalaensis,* and *Huperzia mannii,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland mesic ecosystem (See Table 4). This unit also contains unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Lowland Mesic—Unit 1 is not known to be occupied by *Ctenitis squamigera* or *Solanum incompletum,* we have determined this area to be essential for the conservation and recovery of these lowland mesic species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Lowland Mesic—Unit 2 consists of 1,315 ac (532 ha) of State land, and 2,109 ac (854 ha) of privately owned land, from Honokohau to Launiupoko on the western slopes of west Maui. This unit is occupied by the plants *Bidens campylotheca* ssp. *pentamera, Colubrina oppositifolia, Ctenitis squamigera, Remya mauiensis, Santalum haleakalae* var. *lanaiense,* and *Zanthoxylum hawaiiense,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland mesic ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Lowland Mesic—Unit 2 is not known to be occupied by *Asplenium dielerectum,* we have determined this area to be essential for the conservation and recovery of this lowland mesic species because it provides the PCEs necessary for the reestablishment of wild populations within its historical range. Due to its small numbers of individuals or low population sizes, this species requires suitable habitat and space for expansion or reintroduction to achieve population levels that could approach recovery.

Maui—Lowland Mesic—Unit 3 (and)

Palmeria dolei—Unit 1—Lowland Mesic (and)

Pseudonestor xanthophrys—Unit 1—Lowland Mesic

This area consists of 477 ac (193 ha) of State land at Ukumehame on the southern slopes of west Maui. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland mesic ecosystem (see Table 4). Although Maui—Lowland Mesic—Unit 3 is not currently occupied by the plants *Asplenium dielerectum, Bidens campylotheca* ssp. *pentamera, Colubrina oppositifolia, Ctenitis squamigera, Remya mauiensis, Santalum haleakalae* var. *lanaiense,* or *Zanthoxylum hawaiiense;* or by the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these lowland mesic species because it provides the PCEs for the reestablishment of wild populations within the historical ranges of the species. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Lowland Wet—Unit 1 (and)

Palmeria dolei—Unit 2—Lowland Wet (and)

Pseudonestor xanthophrys—Unit 2—Lowland Wet

This area consists of 10,822 ac (4,379 ha) of State land, 13,844 ac (5,602 ha) of privately owned land, and 2,038 ac (825 ha) of federally owned land (Haleakala National Park), from Haiku Uka to Kipahulu Valley on the northern and eastern slopes of east Maui. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland wet ecosystem (see Table 4). They are are occupied by the plants *Bidens campylotheca* ssp. *waihoiensis, Clermontia samuelii, Cyanea asplenifolia, C. copelandii* ssp. *haleakalaensis, C. duvalliorum, C. hamatiflora* ssp. *hamatiflora, C. kunthiana, C. maritae, C. mceldowneyi, Huperzia mannii, Melicope balloui,* and *M. ovalis.* These units also contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Lowland Wet—Unit 1 is not known to be occupied by the plants *Clermontia oblongifolia* ssp. *mauiensis, C. peleana, Mucuna sloanei* var. *persericea,* or *Wikstroemia villosa;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the PCEs necessary for the reestablishment of

wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Lowland Wet—Unit 2 (and)

Palmeria dolei—Unit 3—Lowland Wet (and)

Pseudonestor xanthophrys—Unit 3—Lowland Wet (and)

This area consists of 65 ac (26 ha) of State land, and 5,001 ac (2,024 ha) of privately owned land (partially within Puu Kukui Watershed Preserve), from Kahana to Honokohua and Honolua valleys, on the northwestern slopes of west Maui. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland wet ecosystem (see Table 4). They are occupied by the plants *Ctenitis squamigera, Cyanea asplenifolia, C. lobata, C. magnicalyx, Cyrtandra filipes, C. munroi,* and *Santalum haleakalae* var. *lanaiense.* These units also contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Lowland Wet—Unit 2 is not known to be occupied by the plants *Alectryon macrococcus, Asplenium dielerectum, Bidens conjuncta, B. micrantha* ssp. *kalealaha, Clermontia oblongifolia* ssp. *mauiensis, Cyanea glabra, C. kunthiana, Diplazium molokaiense, Hesperomannia arborescens, H. arbuscula, Huperzia mannii, Isodendrion pyrifolium, Kadua laxiflora, Peucedanum sandwicense, Phyllostegia bracteata, Pteris lidgatei, Remya mauiensis,* or *Wikstroemia villosa;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Newcombia cumingi—Unit 1—Lowland Wet

This area consists of 543 ac (220 ha) of private land and 56 ac (23) of State land, between Honokahua and Honokowai valleys, on the western slopes of west Maui. This unit is occupied by the tree snail *Newcombia cumingi,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland wet ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of this species by providing the PCEs necessary for the expansion of the existing wild populations. Due to the small numbers of individuals or low population sizes, this species requires suitable habitat and space for expansion or reintroduction to achieve population levels that could approach recovery.

Maui—Lowland Wet—Unit 3 (and)

Palmeria dolei—Unit 4—Lowland Wet (and)

Pseudonestor xanthophrys—Unit 4—Lowland Wet

This area consists of 1,247 ac (505 ha) of State land, and 180 ac (73 ha) of privately owned land (partially within Puu Kukui Watershed Preserve), at Honanana Valley on the northeastern slopes of west Maui. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland wet ecosystem (see Table 4). They are occupied by the plants *Bidens conjuncta, Cyanea asplenifolia,* and *Pteris lidgatei.* These units also contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Lowland Wet—Unit 3 is not known to be occupied by the plants *Alectryon macrococcus, Asplenium dielerectum, Bidens micrantha* ssp. *kalealaha, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea glabra, C. kunthiana, C. lobata, C. magnicalyx, Cyrtandra filipes, C. munroi, Diplazium molokaiense, Hesperomannia arborescens, H. arbuscula, Huperzia mannii, Isodendrion pyrifolium, Kadua laxiflora, Peucedanum sandwicense, Phyllostegia bracteata, Remya mauiensis, Santalum haleakalae* var. *lanaiense,* or *Wikstroemia villosa;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Lowland Wet—Unit 4 (and)

Palmeria dolei—Unit 5—Lowland Wet (and)

Pseudonestor xanthophrys—Unit 5—Lowland Wet

This area consists of 864 ac (350 ha) of State land, and 301 ac (122 ha) of County land, at Kahakuloa Valley on the northeastern slopes of west Maui. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland wet ecosystem (see Table 4). They are occupied by the plants *Bidens conjuncta, Cyanea asplenifolia, Cyrtandra munroi,* and *Hesperomannia arborescens.* These units also contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Lowland Wet—Unit 4 is not known to be occupied by the plants *Alectryon macrococcus, Asplenium dielerectum, Bidens micrantha* ssp. *kalealaha, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea glabra, C. kunthiana, C. lobata, C. magnicalyx, Cyrtandra filipes, Diplazium molokaiense, Hesperomannia arbuscula, Huperzia mannii, Isodendrion pyrifolium, Kadua laxiflora, Peucedanum sandwicense, Phyllostegia bracteata, Pteris lidgatei, Remya mauiensis, Santalum haleakalae* var. *lanaiense,* or *Wikstroemia villosa;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving

population levels necessary for recovery.

Maui—Lowland Wet—Unit 5 (and)

Palmeria dolei—Unit 6—Lowland Wet (and)

Pseudonestor xanthophrys—Unit 6—Lowland Wet

This area consists of 30 ac (12 ha) of State land, and 2,082 ac (843 ha) of privately owned land, at Iao Valley on the eastern side of west Maui. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland wet ecosystem (see Table 4). They are occupied by the plants *Alectryon macrococcus, Asplenium dielerectum,* and *Hesperomannia arbuscula.* These units also contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Lowland Wet—Unit 5 is not known to be occupied by the plants *Bidens conjuncta, B. micrantha* ssp. *kalealaha, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea asplenifolia, C. glabra, C. kunthiana, C. lobata, C. magnicalyx, Cyrtandra filipes, C. munroi, Diplazium molokaiense, Hesperomannia arborescens, Huperzia mannii, Isodendrion pyrifolium, Kadua laxiflora, Peucedanum sandwicense, Phyllostegia bracteata, Pteris lidgatei, Remya mauiensis, Santalum haleakalae* var. *lanaiense,* or *Wikstroemia villosa;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Lowland Wet—Unit 6 (and)

Palmeria dolei—Unit 7—Lowland Wet (and)

Pseudonestor xanthophrys—Unit 7—Lowland Wet

This area consists of 136 ac (55 ha) of State land, and 503 ac (204 ha) of privately owned land, at upper Honokowai and Wahikuli valleys on the western slopes of west Maui. These units includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland wet ecosystem (see Table 4). They are occupied by the plants *Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Cyanea asplenifolia, C. lobata, Cyrtandra munroi,* and *Santalum haleakalae* var. *lanaiense.* These units also contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Lowland Wet—Unit 6 is not known to be occupied by the plants *Asplenium dielerectum, Bidens conjuncta, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea glabra, C. kunthiana, C. magnicalyx, Cyrtandra filipes, Diplazium molokaiense, Hesperomannia arborescens, H. arbuscula, Huperzia mannii, Isodendrion pyrifolium, Kadua laxiflora, Peucedanum sandwicense, Phyllostegia bracteata, Pteris lidgatei, Remya mauiensis,* or *Wikstroemia villosa;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Lowland Wet—Unit 7 (and)

Palmeria dolei—Unit 8—Lowland Wet (and)

Pseudonestor xanthophrys—Unit 8—Lowland Wet

This area consists of 898 ac (364 ha) of State land at Olowalu Valley, on the southern slopes of west Maui. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland wet ecosystem (see Table 4). Although Maui—Lowland Wet—Unit 7 is not currently occupied by the plants *Alectryon macrococcus, Asplenium dielerectum, Bidens conjuncta, B. micrantha* ssp. *kalealaha, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea asplenifolia, C. glabra, C. kunthiana, C. lobata, C. magnicalyx, Cyrtandra filipes, C. munroi, Diplazium molokaiense, Hesperomannia arborescens, H. arbuscula, Huperzia mannii, Isodendrion pyrifolium, Kadua laxiflora, Peucedanum sandwicense, Phyllostegia bracteata, Pteris lidgatei, Remya mauiensis, Santalum haleakalae* var. *lanaiense,* or *Wikstroemia villosa;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the PCEs necessary for the reestablishment of wild populations within the historical ranges of the species. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Lowland Wet—Unit 8 (and)

Palmeria dolei—Unit 9—Lowland Wet (and)

Pseudonestor xanthophrys—Unit 9—Lowland Wet

This area consists of 230 ac (93 ha) of State land at upper Ukumehame Gulch, on the southern slopes of west Maui. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland wet ecosystem (see Table 4). Although Maui—Lowland Wet—Unit 8 is not currently occupied by the plants *Alectryon macrococcus, Asplenium dielerectum, Bidens conjuncta, B. micrantha* ssp. *kalealaha, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea asplenifolia, C. glabra, C. kunthiana, C. lobata, C. magnicalyx, Cyrtandra filipes, C. munroi, Diplazium molokaiense, Hesperomannia arborescens, H. arbuscula, Huperzia mannii, Isodendrion pyrifolium, Kadua laxiflora, Peucedanum sandwicense, Phyllostegia bracteata, Pteris lidgatei, Remya mauiensis, Santalum haleakalae* var. *lanaiense,* or *Wikstroemia villosa;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the PCEs necessary for the reestablishment of wild populations within the historical ranges of the species. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion

or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Montane Wet—Unit 1 (and)

Palmeria dolei—Unit 10—Montane Wet (and)

Pseudonestor xanthophrys—Unit 10—Montane Wet

This area consists of 1,067 ac (432 ha) of State land and 6,747 ac (2,730 ha) of privately owned land, at Haiku Uka on the northern slopes of east Maui. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the montane wet ecosystem (see Table 4). They are occupied by the plants *Asplenium peruvianum* var. *insulare, Clermontia oblongifolia* ssp. *mauiensis, Cyanea copelandii* ssp. *haleakalaensis, C. duvalliorum, C. horrida, C. kunthiana, C. maritae, C. mceldowneyi, Diplazium molokaiense, Huperzia mannii, Melicope balloui,* and *Phyllostegia pilosa;* and by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*). These units also contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Montane Wet—Unit 1 is not known to be occupied by the plants *Adenophorus periens, Bidens campylotheca* ssp. *pentamera, B. campylotheca* ssp. *waihoiensis, Clermontia samuellii, Cyanea glabra, C. hamatiflora* ssp. *hamatiflora, Cyrtandra ferripilosa, Geranium hanaense, G. multiflorum, Melicope ovalis, Peperomia subpetiolata, Phyllostegia bracteata, P. mannii, Platanthera holochila, Schiedea jacobii,* or *Wikstroemia villosa,* we have determined this area to be essential for the conservation and recovery of these montane wet species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Montane Wet—Unit 2 (and)

Palmeria dolei—Unit 11—Montane Wet (and)

Pseudonestor xanthophrys—Unit 11—Montane Wet

This area consists of 4,075 ac (1,649 ha) of State land, 11,737 ac (4,750 ha) of privately owned land, and 875 ac (354 ha) of federally owned land (Haleakala National Park), from Haiku Uka to Puukaukanu and upper Waihoi Valley, on the northern and northeastern slopes of east Maui. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the montane wet ecosystem (see Table 4). They are occupied by the plants *Asplenium peruvianum* var. *insulare, Bidens campylotheca* ssp. *pentamera, B. campylotheca* ssp. *waihoiensis, Clermontia samuellii, Cyanea copelandii* ssp. *haleakalaensis, C. duvalliorum, C. hamatiflora* ssp. *hamatiflora, C. horrida, C. kunthiana, C. mceldowneyi, Geranium hanaense, G. multiflorum,* and *Wikstroemia villosa;* and by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*). These units also contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Montane Wet—Unit 2 is not known to be occupied by the plants *Adenophorus periens, Clermontia oblongifolia* ssp. *mauiensis, Cyanea glabra, C. maritae, Cyrtandra ferripilosa, Diplazium molokaiense, Huperzia mannii, Melicope balloui, M. ovalis, Peperomia subpetiolata, Phyllostegia bracteata, P. mannii, P. pilosa, Platanthera holochila,* and *Schiedea jacobii,* we have determined this area to be essential for the conservation and recovery of these montane wet species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Montane Wet—Unit 3 (and)

Palmeria dolei—Unit 12—Montane Wet (and)

Pseudonestor xanthophrys—Unit 12—Montane Wet

This area consists of 2,228 ac (902 ha) of federally owned land (Haleakala National Park) in Kipahulu Valley, on the northeastern slopes of east Maui. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the montane wet ecosystem (see Table 4). They are occupied by the plants *Bidens campylotheca* ssp. *pentamera, B. campylotheca* ssp. *waihoiensis, Cyanea copelandii* ssp. *haleakalaensis, C. hamatiflora* ssp. *hamatiflora, C. maritae,* and *Melicope ovalis;* and by the forest bird, kiwikiu (*Pseudonestor xanthophrys*). These units also contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Montane Wet—Unit 3 is not known to be occupied by the plants *Adenophorus periens, Asplenium peruvianum* var. *insulare, Clermontia oblongifolia* ssp. *mauiensis, C. samuellii, Cyanea duvalliorum, C. glabra, C. horrida, C. kunthiana, C. mceldowneyi, Cyrtandra ferripilosa, Diplazium molokaiense, Geranium hanaense, G. multiflorum, Huperzia mannii, Melicope balloui, Peperomia subpetiolata, Phyllostegia bracteata, P. mannii, P. pilosa, Platanthera holochila, Schiedea jacobii,* or *Wikstroemia villosa;* or by the forest bird akohekohe (*Palmeria dolei*), we have determined this area to be essential for the conservation and recovery of these montane wet species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Montane Wet—Unit 4 (and)

Palmeria dolei—Unit 13—Montane Wet (and)

Pseudonestor xanthophrys—Unit 13—Montane Wet

This area consists of 180 ac (73 ha) of State land and 1,653 ac (669 ha) of federally owned land (Haleakala National Park), in Kaapahu Valley on the northeastern slopes of east Maui. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the montane wet ecosystem (see Table 4). They are occupied by the plants *Clermontia samuellii, Cyanea copelandii* ssp. *haleakalaensis, C.*

hamatiflora ssp. *hamatiflora, C. horrida, C. kunthiana, C. maritae, Cyrtandra ferripilosa,* and *Huperzia mannii.* These units also contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Montane Wet—Unit 4 is not known to be occupied by the plants *Adenophorus periens, Asplenium peruvianum* var. *insulare, Bidens campylotheca* ssp. *pentamera, B. campylotheca* ssp. *waihoiensis, Clermontia oblongifolia* ssp. *mauiensis, Cyanea duvalliorum, C. glabra, C. mceldowneyi, Diplazium molokaiense, Geranium hanaense, G. multiflorum, Melicope balloui, M. ovalis, Peperomia subpetiolata, Phyllostegia bracteata, P. mannii, P. pilosa, Platanthera holochila, Schiedea jacobii,* or *Wikstroemia villosa;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these montane wet species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Montane Wet—Unit 5 (and)

Palmeria dolei—Unit 14—Montane Wet (and)

Pseudonestor xanthophrys—Unit 14—Montane Wet

This area consists of 222 ac (90 ha) of State land, and 165 ac (67 ha) of federally owned land (Haleakala National Park), east of Kipahulu Valley on the eastern slopes of east Maui. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the montane wet ecosystem (see Table 4). Although Maui—Montane Wet—Unit 5 is not currently occupied by the plants *Adenophorus periens, Asplenium peruvianum* var. *insulare, Bidens campylotheca* ssp. *pentamera, B. campylotheca* ssp. *waihoiensis, Clermontia oblongifolia* ssp. *mauiensis, C. samuellii, Cyanea copelandii* ssp. *haleakalaensis, C. duvalliorum, C. glabra, C. hamatiflora* ssp. *hamatiflora, C. horrida, C. kunthiana, C. maritae, C. mceldowneyi, Cyrtandra ferripilosa, Diplazium molokaiense, Geranium hanaense, G. multiflorum, Huperzia mannii, Melicope balloui, M. ovalis, Peperomia subpetiolata, Phyllostegia bracteata, P. mannii, P. pilosa, Platanthera holochila, Schiedea jacobii,* or *Wikstroemia villosa;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these montane wet species because it provides the PCEs necessary for the reestablishment of wild populations within the historical ranges of the species. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Montane Wet—Unit 6 (and)

Palmeria dolei—Unit 15—Montane Wet (and)

Pseudonestor xanthophrys—Unit 15—Montane Wet

This area consists of 1,113 ac (451 ha) of State land, 471 ac (191 ha) of County land, and 2,380 ac (963 ha) of privately owned land, at the summit and surrounding areas on west Maui. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the montane wet ecosystem (see Table 4). They are occupied by the plants *Bidens conjuncta, Calamagrostis hillebrandii, Cyanea kunthiana, Geranium hillebrandii, Myrsine vaccinioides,* and *Sanicula purpurea.* These units also contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Montane Wet—Unit 6 is not known to be occupied by the plants *Acaena exigua, Cyrtandra oxybapha, Huperzia mannii, Phyllostegia bracteata,* or *Platanthera holochila;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these montane wet species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Montane Wet—Unit 7 (and)

Palmeria dolei—Unit 16—Montane Wet (and)

Pseudonestor xanthophrys—Unit 16—Montane Wet

This area consists of 80 ac (32 ha) of State land, and 528 ac (214 ha) of privately owned land, at Hanaula and Pohakea Gulch on the southeastern slopes of west Maui. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the montane wet ecosystem (see Table 4). They are occupied by the plants *Cyrtandra oxybapha* and *Platanthera holochila,* and contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Montane Wet—Unit 7 is not known to be occupied by the plants *Acaena exigua, Bidens conjuncta, Calamagrostis hillebrandii, Cyanea kunthiana, Geranium hillebrandii, Huperzia mannii, Myrsine vaccinioides, Phyllostegia bracteata,* or *Sanicula purpurea;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these montane wet species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Montane Wet—Unit 8 (and)

Palmeria dolei—Unit 17—Montane Wet (and)

Pseudonestor xanthophrys—Unit 17—Montane Wet

This area consists of 46 ac (19 ha) of privately owned land at the summit of Kapilau Ridge on the eastern slopes of west Maui. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the montane wet ecosystem (see Table 4). Although Maui—Montane Wet—Unit 8 is not currently occupied by the plants *Acaena exigua, Bidens conjuncta, Calamagrostis hillebrandii, Cyanea kunthiana, Cyrtandra oxybapha,*

Geranium hillebrandii, Huperzia mannii, Myrsine vaccinioides, Phyllostegia bracteata, Platanthera holochila, or *Sanicula purpurea;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these montane wet species because it provides the PCEs necessary for the reestablishment of wild populations within the historical ranges of the species. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Montane Mesic—Unit 1 (and)

Palmeria dolei—Unit 18—Montane Mesic (and)

Pseudonestor xanthophrys—Unit 18—Montane Mesic

This area consists of 7,277 ac (2,945 ha) of State land, 18 ac (7 ha) of County land, 10,781 ac (4,363 ha) of privately owned land, and 2,897 ac (1,172 ha) of federally owned land (Haleakala National Park), almost completely circumscribing the summit of Haleakala on east Maui. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the montane mesic ecosystem (see Table 4). They are occupied by the plants *Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium dielerectum, A. peruvianum* var. *insulare, Bidens campylotheca* ssp. *pentamera, Clermontia lindseyana, Cyanea horrida, C. mceldowneyi, C. obtusa, Cyrtandra ferripilosa, C. oxybapha, Diplazium molokaiense, Geranium arboreum, G. multiflorum, Huperzia mannii, Melicope adscendens, Neraudia sericea,* and *Santalum haleakalae* var. *lanaiense;* and by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*). These units also contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Montane Mesic—Unit 1 is not known to be occupied by the plants *Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Cyanea glabra, C. hamatiflora* ssp. *hamatiflora, C. kunthiana, Phyllostegia bracteata, P. mannii, Wikstroemia villosa,* or *Zanthoxylum hawaiiense,* we have determined this area to be essential for the conservation and recovery of these montane mesic species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Montane Mesic—Unit 2 (and)

Palmeria dolei—Unit 19—Montane Mesic (and)

Pseudonestor xanthophrys—Unit 19—Montane Mesic

This area consists of 124 ac (50 ha) of State land, and 242 ac (98 ha) of privately owned land, at Helu and the upper reaches of Puehuehunui on the southern slopes of west Maui. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the montane mesic ecosystem (see Table 4). They are occupied by the plants *Ctenitis squamigera, Cyanea magnicalyx, Diplazium molokaiense, Lysimachia lydgatei, Santalum haleakalae* var. *lanaiense, Stenogyne kauaulaensis,* and *Zanthoxylum hawaiiense.* These units also contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Montane Mesic—Unit 2 is not known to be occupied by the plants *Geranium hillebrandii, Huperzia mannii,* or *Remya mauiensis;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these montane mesic species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Montane Mesic—Unit 3 (and)

Palmeria dolei—Unit 20—Montane Mesic (and)

Pseudonestor xanthophrys—Unit 20—Montane Mesic

This area consists of 174 ac (70 ha) of State land, and 44 ac (18 ha) of privately owned land, at Lihau on the southwestern slopes of west Maui. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the montane mesic ecosystem (see Table 4). They are occupied by the plants *Geranium hillebrandii, Huperzia mannii,* and *Lysimachia lydgatei,* and contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Montane Mesic—Unit 3 is not known to be occupied by the plants *Ctenitis squamigera, Cyanea magnicalyx, Diplazium molokaiense, Remya mauiensis, Santalum haleakalae* var. *lanaiense, Stenogyne kauaulaensis,* or *Zanthoxylum hawaiiense;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these montane mesic species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Montane Mesic—Unit 4 (and)

Palmeria dolei—Unit 21—Montane Mesic (and)

Pseudonestor xanthophrys—Unit 21—Montane Mesic

This area consists of 72 ac (29 ha) of State land at Halepohaku and upper Ukumehame Gulch on the southern slopes of west Maui. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the montane mesic ecosystem (see Table 4). They are occupied by the plant *Lysimachia lydgatei,* and contain unoccupied habitat that is essential to the conservation of this species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Montane Mesic—Unit 4 is not known to be occupied by the plants *Ctenitis squamigera, Cyanea magnicalyx, Diplazium molokaiense, Geranium hillebrandii, Huperzia mannii, Remya mauiensis, Santalum haleakalae* var. *lanaiense, Stenogyne kauaulaensis,* or *Zanthoxylum hawaiiense;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor*

xanthophrys), we have determined this area to be essential for the conservation and recovery of these montane mesic species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Montane Mesic—Unit 5 (and)

Palmeria dolei—Unit 22—Montane Mesic (and)

Pseudonestor xanthophrys—Unit 22—Montane Mesic

This area consists of 170 ac (69 ha) of State land, and 134 ac (54 ha) of privately owned land, at the upper reaches of Papalaua and Pohakea gulches on the southeastern slopes of west Maui. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the montane mesic ecosystem (see Table 4). They are occupied by the plants *Remya mauiensis* and *Santalum haleakalae* var. *lanaiense,* and contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Montane Mesic—Unit 5 is not known to be occupied by the plants *Ctenitis squamigera, Cyanea magnicalyx, Diplazium molokaiense, Geranium hillebrandii, Huperzia mannii, Lysimachia lydgatei, Stenogyne kauaulaensis,* or *Zanthoxylum hawaiiense;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these montane mesic species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Montane Mesic—Unit 6 (and)

Palmeria dolei—Unit 23—Montane Mesic (and)

Pseudonestor xanthophrys—Unit 23—Montane Mesic

This area consists of 94 ac (38 ha) of privately owned land at Kapilau Ridge on the eastern slopes of west Maui. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the montane mesic ecosystem (see Table 4). Although Maui—Montane Mesic—Unit 6 is not currently occupied by the plants *Ctenitis squamigera, Cyanea magnicalyx, Diplazium molokaiense, Geranium hillebrandii, Huperzia mannii, Lysimachia lydgatei, Remya mauiensis, Santalum haleakalae* var. *lanaiense, Stenogyne kauaulaensis,* or *Zanthoxylum hawaiiense;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these montane mesic species because it provides the PCEs necessary for the reestablishment of wild populations within the historical ranges of the species. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Montane Dry—Unit 1 consists of 2,962 ac (1,199 ha) of State land, 1,703 ac (689 ha) of privately owned land, and 323 ac (131 ha) of federally owned land (Haleakala National Park), from Kanaio to Naholoku and Kaupo Gap along the southern slopes of east Maui. This unit includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the montane dry ecosystem (see Table 4). It is occupied by the plants *Melicope knudsenii, Santalum haleakalae* var. *lanaiense,* and *Zanthoxylum hawaiiense,* and contains unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Montane Dry—Unit 1 is not known to be occupied by the plants *Alectryon macrococcus, Geranium arboreum,* or *Melicope mucronulata,* we have determined this area to be essential for the conservation and recovery of these montane dry species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Subalpine—Unit 1 (and)

Palmeria dolei—Unit 24—Subalpine (and)

Pseudonestor xanthophrys—Unit 24—Subalpine

This area consists of 10,866 ac (4,397 ha) of State land, 5,764 ac (2,333 ha) of privately owned land, and 2,770 ac (1,121 ha) of federally owned land (Haleakala National Park), from Kanaio north to Puu Nianiau and east to Kaupo Gap on east Maui. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the subalpine ecosystem (see Table 4). They are occupied by the plants *Asplenium peruvianum* var. *insulare, Bidens micrantha* ssp. *kalealaha,* and *Geranium arboreum;* and by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*). These units also contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Subalpine—Unit 1 is not known to be occupied by the plants *Argyroxiphium sandwicense* ssp. *macrocephalum, Geranium multiflorum, Phyllostegia bracteata, Schiedea haleakalensis, Solanum incompletum,* or *Zanthoxylum hawaiiense,* we have determined this area to be essential for the conservation and recovery of these subalpine species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Subalpine—Unit 2 (and)

Palmeria dolei—Unit 25—Subalpine (and)

Pseudonestor xanthophrys—Unit 25—Subalpine

This area consists of 1,095 ac (443 ha) of privately owned land, and 9,836 ac (3,981 ha) of federally owned land (Haleakala National Park), from the

summit north to Koolau Gap and east to Kalapawili Ridge on east Maui. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the subalpine ecosystem (see Table 4). They are occupied by the plants *Argyroxiphium sandwicense* ssp. *macrocephalum, Geranium multiflorum,* and *Schiedea haleakalensis;* and by the forest bird, the akohekohe (*Palmeria dolei*). These units also contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Subalpine—Unit 2 is not known to be occupied by the plants *Asplenium peruvianum* var. *insulare, Bidens micrantha* ssp. *kalealaha, Geranium arboreum, Phyllostegia bracteata, Solanum incompletum,* or *Zanthoxylum hawaiiense;* or by the forest bird, the kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these subalpine species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Alpine—Unit 1 consists of 761 ac (308 ha) of State land, 428 ac (173 ha) of privately owned land, and 918 ac (371 ha) of federally owned land (Haleakala National Park), at the summit of Haleakala on east Maui. This unit includes the mixed herbland and shrubland, the moisture regime, and the subcanopy native plant species identified as physical or biological features in the alpine ecosystem (see Table 4). It is occupied by the plant *Argyroxiphium sandwicense* ssp. *macrocephalum,* and contains unoccupied areas we have determined to be essential for the conservation and recovery of this alpine species because it provides the PCEs necessary for the reestablishment of wild populations within its historical range. Due to its small numbers of individuals and low population sizes, this species requires suitable habitat and space for expansion or reintroduction to achieve population levels that could approach recovery.

Maui—Dry Cliff—Unit 1 (and)

Palmeria dolei—Unit 26—Dry Cliff (and)

Pseudonestor xanthophrys—Unit 26—Dry Cliff

This area consists of 264 ac (107 ha) of privately owned land and 755 ac (305 ha) of federally owned land (Haleakala National Park), from Pakaoao to Koolau Gap on east Maui. These units include the mixed herbland and shrubland, the moisture regime, and the subcanopy and understory native plant species identified as physical or biological features in the dry cliff ecosystem (see Table 4). They are occupied by the plant *Bidens campylotheca* ssp. *pentamera,* and contain unoccupied habitat that is essential to the conservation of this species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Dry Cliff—Unit 1 is not known to be occupied by the plants *Diplazium molokaiense, Plantago princeps,* or *Schiedea haleakalensis;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these dry cliff species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Dry Cliff—Unit 2 consists of 688 ac (279 ha) of federally owned land (Haleakala National Park) from Haupaakea Peak to Kaupo Gap on east Maui. This unit includes the mixed herbland and shrubland, the moisture regime, and the subcanopy and understory native plant species identified as physical or biological features in the dry cliff ecosystem (see Table 4). It is occupied by the plants *Plantago princeps* and *Schiedea haleakalensis,* and contains unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Dry Cliff—Unit 2 is not known to be occupied by the plants *Bidens campylotheca* ssp. *pentamera* or *Diplazium molokaiense,* we have determined this area to be essential for the conservation and recovery of these dry cliff species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Dry Cliff—Unit 3 (and)

Palmeria dolei—Unit 27—Dry Cliff (and)

Pseudonestor xanthophrys—Unit 27—Dry Cliff

This area consists of 93 ac (38 ha) of privately owned land and 200 ac (81 ha) of federally owned land (Haleakala National Park) on the eastern wall of Koolau Gap on east Maui. These units include the mixed herbland and shrubland, the moisture regime, and the subcanopy and understory native plant species identified as physical or biological features in the dry cliff ecosystem (see Table 4). Although Maui—Dry Cliff—Unit 3 is not currently occupied by the plants *Bidens campylotheca* ssp. *pentamera, Diplazium molokaiense, Plantago princeps,* or *Schiedea haleakalensis;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these dry cliff species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Dry Cliff—Unit 4 (and)

Palmeria dolei—Unit 28—Dry Cliff (and)

Pseudonestor xanthophrys—Unit 28—Dry Cliff

This area consists of 315 ac (127 ha) federally owned land (Haleakala National Park), along Kalapawili Ridge on east Maui. These units include the mixed herbland and shrubland, the moisture regime, and the subcanopy and understory native plant species identified as physical or biological features in the dry cliff ecosystem (see Table 4). Although Maui—Dry Cliff—Unit 4 is not currently occupied by the plants *Bidens campylotheca* ssp. *pentamera, Diplazium molokaiense, Plantago princeps,* or *Schiedea haleakalensis;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these

dry cliff species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Dry Cliff—Unit 5 (and)

Palmeria dolei—Unit 29—Dry Cliff (and)

Pseudonestor xanthophrys—Unit 29—Dry Cliff

This area consists of 1,298 ac (525 ha) of State land, and 238 ac (96 ha) of privately owned land, from Helu and across Olowalu to Ukumehame Gulch, on west Maui. These units include the mixed herbland and shrubland, the moisture regime, and the subcanopy and understory native plant species identified as physical or biological features in the dry cliff ecosystem (see Table 4). Although Maui—Dry Cliff—Unit 5 is not currently occupied by the plants *Bonamia menziesii, Diplazium molokaiense, Hesperomannia arbuscula, Isodendrion pyrifolium, Kadua laxiflora, Neraudia sericea,* or *Tetramolopium capillare;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these dry cliff species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Dry Cliff—Unit 6 consists of 279 ac (113 ha) of State land along the east wall of Ukumehame Gulch on west Maui. This unit includes the mixed herbland and shrubland, the moisture regime, and the subcanopy and understory native plant species identified as physical or biological features in the dry cliff ecosystem (see Table 4). Although Maui—Dry Cliff—Unit 6 is not currently occupied by the plants *Bonamia menziesii, Diplazium molokaiense, Hesperomannia arbuscula, Isodendrion pyrifolium, Kadua laxiflora, Neraudia sericea,* or *Tetramolopium capillare,* we have determined this area to be essential for the conservation and recovery of these dry cliff species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Dry Cliff—Unit 7 consists of 808 ac (327 ha) of privately owned land at Waikapu Valley on west Maui. This unit includes the mixed herbland and shrubland, the moisture regime, and the subcanopy and understory native plant species identified as physical or biological features in the dry cliff ecosystem (see Table 4). Although Maui—Dry Cliff—Unit 7 is not currently occupied by the plants *Bonamia menziesii, Diplazium molokaiense, Hesperomannia arbuscula, Isodendrion pyrifolium, Kadua laxiflora, Neraudia sericea,* or *Tetramolopium capillare,* we have determined this area to be essential for the conservation and recovery of these dry cliff species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Wet Cliff—Unit 1 (and)

Palmeria dolei—Unit 30—Wet Cliff (and)

Pseudonestor xanthophrys—Unit 30—Wet Cliff

This area consists of 460 ac (186 ha) of privately owned land from upper Haiku Uka to Keanae Valley on the northern slopes of east Maui. These units include the mixed herbland and shrubland, the moisture regime, and the subcanopy and understory native plant species identified as physical or biological features in the wet cliff ecosystem (see Table 4). They are occupied by the plants *Bidens campylotheca* ssp. *pentamera* and *Cyanea horrida,* and by the forest bird, the kiwikiu (*Pseudonestor xanthophrys*). These units also contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Wet Cliff—Unit 1 is not known to be occupied by the plants *Bidens campylotheca* ssp. *waihoiensis, Cyanea copelandii* ssp. *haleakalaensis, Melicope ovalis, Phyllostegia bracteata, P. haliakalae,* or *Plantago princeps;* or by the forest bird, the akohekohe (*Palmeria dolei*), we have determined this area to be essential for the conservation and recovery of these wet cliff species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Wet Cliff—Unit 2 (and)

Palmeria dolei—Unit 31—Wet Cliff (and)

Pseudonestor xanthophrys—Unit 31—Wet Cliff

This area consists of 475 ac (192 ha) of State land, 20 ac (8 ha) of privately owned land, and 912 ac (369 ha) of federally owned land (Haleakala National Park), from Kalapawili Ridge along Kipahulu Valley and north to Puuhoolio, on the northeastern slopes of east Maui. These units include the mixed herbland and shrubland, the moisture regime, and the subcanopy and understory native plant species identified as physical or biological features in the wet cliff ecosystem (see Table 4). They are occupied by the plants *Bidens campylotheca* ssp. *pentamera, B. campylotheca* ssp. *waihoiensis, Cyanea copelandii* ssp. *haleakalaensis, Melicope ovalis,* and *Plantago princeps.* These units also contains unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Wet Cliff—Unit 2 is not known to be occupied by the plants *Cyanea horrida, Phyllostegia bracteata,* or *P. haliakalae;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these wet cliff species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Wet Cliff—Unit 3 (and)

Palmeria dolei—Unit 32—Wet Cliff (and)

Pseudonestor xanthophrys—Unit 32—Wet Cliff

This area consists of 5 ac (2 ha) of State land and 433 ac (175 ha) federally owned land (Haleakala National Park) along the south rim of Kipahulu Valley on east Maui. These units include the

mixed herbland and shrubland, the moisture regime, and the subcanopy and understory native plant species identified as physical or biological features in the wet cliff ecosystem (see Table 4). Although Maui—Wet Cliff—Unit 3 is not currently occupied by the plants *Bidens campylotheca* ssp. *pentamera, B. campylotheca* ssp. *waihoiensis, Cyanea copelandii* ssp. *haleakalaensis, C. horrida, Melicope ovalis, Phyllostegia bracteata, P. haliakalae,* or *Plantago princeps;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these wet cliff species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Wet Cliff—Unit 4 (and)

Palmeria dolei—Unit 33—Wet Cliff (and)

Pseudonestor xanthophrys—Unit 33—Wet Cliff

This area consists of 184 ac (75 ha) of State land along the north wall of Waihoi Valley, on the northeastern slopes of east Maui. These units include the mixed herbland and shrubland, the moisture regime, and the subcanopy and understory native plant species identified as physical or biological features in the wet cliff ecosystem (see Table 4). They are occupied by the plant *Bidens campylotheca* ssp. *waihoiensis,* and contain unoccupied habitat that is essential to the conservation of this species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Wet Cliff—Unit 4 is not known to be occupied by the plants *Bidens campylotheca* ssp. *pentamera, Cyanea copelandii* ssp. *haleakalaensis, C. horrida, Melicope ovalis, Phyllostegia bracteata, P. haliakalae,* or *Plantago princeps;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these wet cliff species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Wet Cliff—Unit 5 (and)

Palmeria dolei—Unit 34—Wet Cliff (and)

Pseudonestor xanthophrys—Unit 34—Wet Cliff

This area consists of 35 ac (14 ha) of State land and 2,013 ac (814 ha) of privately owned land, along Honokohau Stream on the north side of west Maui. These units include the mixed herbland and shrubland, the moisture regime, and the subcanopy and understory native plant species identified as physical or biological features in the wet cliff ecosystem (see Table 4). They are occupied by the plants *Bidens conjuncta, Cyanea lobata, Cyrtandra munroi,* and *Hesperomannia arborescens,* and contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Wet Cliff—Unit 5 is not known to be occupied by the plants *Alectryon macrococcus, Bidens campylotheca* ssp. *pentamera, Bonamia menziesii, Ctenitis squamigera, Cyanea glabra, C. magnicalyx, Cyrtandra filipes, Dubautia plantaginea* ssp. *humilis, Gouania vitifolia, Hesperomannia arbuscula, Isodendrion pyrifolium, Kadua laxiflora, Lysimachia lydgatei, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Santalum haleakalae* var. *lanaiense,* or *Tetramolopium capillare;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these wet cliff species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Wet Cliff—Unit 6 (and)

Palmeria dolei—Unit 35—Wet Cliff (and)

Pseudonestor xanthophrys—Unit 35—Wet Cliff

This area consists of 1,858 ac (752 ha) of State land, 2,917 ac (1,181 ha) of County land, and 4,328 ac (1,752 ha) of privately owned land, at the summit ridges of west Maui. These units include the mixed herbland and shrubland, the moisture regime, and the subcanopy and understory native plant species identified as physical or biological features in the wet cliff ecosystem (see Table 4). They are occupied by the plants *Alectryon macrococcus, Bidens conjuncta, Ctenitis squamigera, Cyanea magnicalyx, Cyrtandra filipes, C. munroi, Dubautia plantaginea* ssp. *humilis, Hesperomannia arborescens, Kadua laxiflora, Lysimachia lydgatei, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis,* and *Santalum haleakalae* var. *lanaiense.* These units also contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Wet Cliff—Unit 6 is not known to be occupied by the plants *Bidens campylotheca* ssp. *pentamera, Bonamia menziesii, Cyanea glabra, Cyanea lobata, Gouania vitifolia, Hesperomannia arbuscula, Isodendrion pyrifolium,* or *Tetramolopium capillare;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these wet cliff species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Wet Cliff—Unit 7 (and)

Palmeria dolei—Unit 36—Wet Cliff (and)

Pseudonestor xanthophrys—Unit 36—Wet Cliff

This area consists of 557 ac (225 ha) of State land and 224 ac (91 ha) of privately owned land, along Kapaloa and Amalu streams on the northwestern side of west Maui. These units include the mixed herbland and shrubland, the moisture regime, and the subcanopy and understory native plant species identified as physical or biological features in the wet cliff ecosystem (see Table 4). They are occupied by the plants *Alectryon macrococcus, Bonamia menziesii, Ctenitis squamigera, Cyrtandra filipes, C. munroi,* and *Platanthera holochila,* and contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Wet Cliff—Unit 7 is not known to be occupied by the plants *Bidens*

campylotheca ssp. *pentamera, B. conjuncta, Cyanea glabra, C. lobata, C. magnicalyx, Dubautia plantaginea* ssp. *humilis, Gouania vitifolia, Hesperomannia arborescens, H. arbuscula, Isodendrion pyrifolium, Kadua laxiflora, Lysimachia lydgatei, Plantago princeps, Pteris lidgatei, Remya mauiensis, Santalum haleakalae* var. *lanaiense,* or *Tetramolopium capillare;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these wet cliff species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Maui—Wet Cliff—Unit 8 consists of 337 ac (137 ha) of State land along Kahakuloa Stream on the north side of west Maui. This unit includes the mixed herbland and shrubland, the moisture regime, and the subcanopy and understory native plant species identified as physical or biological features in the wet cliff ecosystem (see Table 4). It is occupied by the plant *Cyrtandra filipes,* and contains unoccupied habitat that is essential to the conservation of this species by providing the PCEs necessary for the expansion of the existing wild populations. Although Maui—Wet Cliff—Unit 8 is not known to be occupied by the plants *Alectryon macrococcus, Bidens campylotheca* ssp. *pentamera, B. conjuncta, Bonamia menziesii, Ctenitis squamigera, Cyanea glabra, C. lobata, C. magnicalyx, Cyrtandra munroi, Dubautia plantaginea* ssp. *humilis, Gouania vitifolia, Hesperomannia arborescens, H. arbuscula, Isodendrion pyrifolium, Kadua laxiflora, Lysimachia lydgatei, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Santalum haleakalae* var. *lanaiense,* or *Tetramolopium capillare,* we have determined this area to be essential for the conservation and recovery of these wet cliff species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Kahoolawe—Coastal—Unit 1 consists of 1,515 ac (613 ha) of State land from Kaneloa to Lae o Kaule, including Aleale, along the southern and eastern coast of Kahoolawe. It is occupied by the plant *Kanaloa kahoolawensis* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the coastal ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of this species by providing the PCEs necessary for the expansion of the existing wild populations. Although Kahoolawe—Coastal—Unit 1 is not known to be occupied by the plants *Sesbania tomentosa* or *Vigna o-wahuensis,* we have determined this area to be essential for the conservation and recovery of these coastal species because it provides the physical or biological features necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Kahoolawe—Coastal—Unit 2 consists of 12 ac (5 ha) of State land on Puukoae, an islet off the southern coast of Kahoolawe. It is occupied by the plant *Sesbania tomentosa* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the coastal ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of this species by providing the PCEs necessary for the expansion of the existing wild populations. Although Kahoolawe—Coastal—Unit 2 is not known to be occupied by *Kanaloa kahoolawensis* or *Vigna o-wahuensis,* we have determined this area to be essential for the conservation and recovery of these coastal species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Kahoolawe—Coastal—Unit 3 consists of 339 ac (137 ha) of State land from Laepaki to Puhianenue along the western coast of Kahoolawe. This unit includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the coastal ecosystem (see Table 4). Although Kahoolawe—Coastal—Unit 3 is not known to be occupied by *Kanaloa kahoolawensis, Sesbania tomentosa,* or *Vigna o-wahuensis,* we have determined this area to be essential for the conservation and recovery of these coastal species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Kahoolawe—Lowland Dry—Unit 1 consists of 1,380 ac (559 ha) of State land, north of Waihonu Gulch on west Kahoolawe. This unit includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland dry ecosystem (see Table 4). Although Kahoolawe—Lowland Dry—Unit 1 is not known to be occupied by *Gouania hillebrandii, Hibiscus brackenridgei, Kanaloa kahoolawensis, Neraudia sericea, Sesbania tomentosa,* or *Vigna o-wahuensis,* we have determined this area to be essential for the conservation and recovery of these lowland dry species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Kahoolawe—Lowland Dry—Unit 2 consists of 3,205 ac (1,297 ha) of State land from Lua o Kealialuna to Puu o Moaulaiki and Luamakika on the eastern side of Kahoolawe. This unit includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland dry ecosystem (see Table 4). Although Kahoolawe—Lowland Dry—Unit 2 is not known to be occupied by *Gouania hillebrandii, Hibiscus brackenridgei, Kanaloa kahoolawensis, Neraudia sericea, Sesbania tomentosa,* or *Vigna o-wahuensis,* we have determined this area to be essential for the conservation and recovery of these lowland dry species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat

and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Lanai—Coastal—Unit 1 consists of 373 ac (151 ha) of privately owned land, from Huawai Bay to Kapihaa Bay on the southern coast of Lanai. This unit includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the coastal ecosystem (see Table 4). Although Lanai—Coastal—Unit 1 is not known to be occupied by *Canavalia pubescens, Hibiscus brackenridgei, Portulaca sclerocarpa,* or *Sesbania tomentosa,* we have determined this area to be essential for the conservation and recovery of these coastal species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Lanai—Coastal—Unit 2 consists of 2 ac (1 ha) on Poopoo islet off of the southern coast of Lanai, and is classified as a State Seabird Sanctuary. This unit includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the coastal ecosystem (see Table 4). Although Lanai—Coastal—Unit 2 is not known to be occupied by *Canavalia pubescens, Hibiscus brackenridgei, Portulaca sclerocarpa,* or *Sesbania tomentosa,* we have determined this area to be essential for the conservation and recovery of these coastal species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Lanai—Coastal—Unit 3 consists of 509 ac (206 ha) of privately owned land, from Laehi to Nahoko on the northeastern coast of Lanai. This unit includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the coastal ecosystem (see Table 4). Although Lanai—Coastal—Unit 3 is not known to be occupied by *Canavalia pubescens, Hibiscus brackenridgei, Portulaca sclerocarpa,* or *Sesbania tomentosa,* we have determined this area to be essential for the conservation and recovery of these coastal species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Lanai—Lowland Dry—Unit 1 consists of 9,766 ac (3,952 ha) of privately owned land, from Maunalei Gulch to Puumahanalua, along the northeastern and southeastern slopes of Lanai. This unit includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland dry ecosystem (see Table 4). It is occupied by the plants *Abutilon eremitopetalum, Schenkia sebaeoides,* and *Spermolepis hawaiiensis,* and contains unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Lanai—Lowland Dry—Unit 1 is not known to be occupied by the plants *Asplenium dielerectum, Bidens micrantha* ssp. *kalealaha, Cyperus fauriei, C. trachysanthos, Hibiscus brackenridgei, Neraudia sericea, Pleomele fernaldii, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Tetramolopium lepidotum* ssp. *lepidotum, T. remyi,* or *Vigna o-wahuensis,* we have determined this area to be essential for the conservation and recovery of these lowland dry species because it provides the physical or biological features necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Lanai—Lowland Dry—Unit 2 consists of 939 ac (380 ha) of privately owned land, south of Paliamano Gulch on the western slopes of Lanai. This unit includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland dry ecosystem (see Table 4). Although Lanai—Lowland Dry—Unit 2 is not known to be occupied by the plants *Abutilon eremitopetalum, Asplenium dielerectum, Bidens micrantha* ssp. *kalealaha, Cyperus fauriei, C. trachysanthos, Hibiscus brackenridgei, Neraudia sericea, Pleomele fernaldii, Schenkia sebaeoides, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium lepidotum* ssp. *lepidotum, T. remyi,* or *Vigna o-wahuensis,* we have determined this area to be essential for the conservation and recovery of these lowland dry species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Lanai—Lowland Mesic—Unit 1 consists of 3 ac (1 ha) of County land and 11,170 ac (4,520 ha) of privately owned land, from Kanepuu south to Awehi and north to Kauiki, along the central ridges of Lanai. This unit includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland mesic ecosystem (see Table 4). It is occupied by the plants *Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Pleomele fernaldii, Santalum haleakalae* var. *lanaiense,* and *Spermolepis hawaiiensis,* and contains unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Lanai—Lowland Mesic—Unit 1 is not known to be occupied by the plants *Cenchrus agrimonioides, Clermontia oblongifolia* ssp. *mauiensis, Diplazium molokaiense, Kadua cordata* ssp. *remyi, K. laxiflora, Labordia tinifolia* var. *lanaiensis, Solanum incompletum,* or *Vigna o-wahuensis,* we have determined this area to be essential for the conservation and recovery of these lowland mesic species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Lanai—Lowland Wet—Unit 1

Partulina semicarinata—Unit 1—Lowland Wet

Partulina variabilis—Unit 1—Lowland Wet

This area consists of 374 ac (152 ha) of privately owned land, from upper Hulopoe and Kaiholena gulches to Puuaalii in central Lanai. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland wet ecosystem (see Table 4). They are occupied by the plants *Kadua cordata* ssp. *remyi, Pleomele fernaldii,* and *Santalum haleakalae* var. *lanaiense;* and by the Lanai tree snails *Partulina semicarinata* and *P. variabilis,* and contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Lanai—Lowland Wet—Unit 1 is not known to be occupied by the plants *Clermontia oblongifolia* ssp. *mauiensis, Kadua laxiflora, Labordia tinifolia* var. *lanaiensis,* or *Zanthoxylum hawaiiense,* we have determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Lanai—Lowland Wet—Unit 2

Partulina semicarinata—Unit 2—Lowland Wet

Partulina variabilis—Unit 2—Lowland Wet

This area consists of 232 ac (94 ha) of privately owned land, just below the cliffs of Lanaihale, in central Lanai. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland wet ecosystem (see Table 4). They are occupied by the plants *Pleomele fernaldii* and *Santalum haleakalae* var. *lanaiense,* and contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Lanai—Lowland Wet—Unit 2 is not known to be occupied by the plants *Clermontia oblongifolia* ssp. *mauiensis, Kadua cordata* ssp. *remyi, K. laxiflora, Labordia tinifolia* var. *lanaiensis,* or *Zanthoxylum hawaiiense;* or by the Lanai tree snails *Partulina semicarinata* and *P. variabilis,* we have determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Lanai—Montane Wet—Unit 1

Partulina semicarinata—Unit 3—Montane Wet

Partulina variabilis—Unit 3—Montane Wet

This area consists of 248 ac (101 ha) of privately owned land, from Puuallii across the summit to Lanaihale and Waiakeakua, in central Lanai. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the montane wet ecosystem (see Table 4). They are occupied by the plants *Cyanea gibsonii, C. lobata, Cyrtandra munroi, Kadua laxiflora, Melicope munroi, Santalum haleakalae* var. *lanaiense,* and *Viola lanaiensis;* and by the Lanai tree snails *Partulina semicarinata* and *P. variabilis.* These units also contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Lanai—Montane Wet—Unit 1 is not known to be occupied by the plants *Adenophorus periens* or *Labordia tinifolia* var. *lanaiensis,* we have determined this area to be essential for the conservation and recovery of these montane wet species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Lanai—Dry Cliff—Unit 1 consists of 83 ac (34 ha) of privately owned land at Kaiholena Gulch in central Lanai. This unit includes the mixed herbland and shrubland, the moisture regime, and the subcanopy and understory native plant species identified as physical or biological features in the dry cliff ecosystem (see Table 4). Although Lanai—Dry Cliff—Unit 1 is not known to be occupied by the plants *Asplenium dielerectum, Bidens micrantha* ssp. *kalealaha, Brighamia rockii, Ctenitis squamigera, Diplazium molokaiense, Neraudia sericea, Phyllostegia haliakalae, Pleomele fernaldii, Solanum incompletum,* or *Viola lanaiensis,* we have determined this area to be essential for the conservation and recovery of these dry cliff species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Lanai—Dry Cliff—Unit 2 consists of 354 ac (143 ha) of privately owned land, at upper Maunalei Gulch in central Lanai. This unit includes the mixed herbland and shrubland, the moisture regime, and the subcanopy and understory native plant species identified as physical or biological features in the dry cliff ecosystem (see Table 4). It is occupied by the plant *Pleomele fernaldii,* and contains unoccupied habitat that is essential to the conservation of this species by providing the PCEs necessary for the expansion of the existing wild populations. Although Lanai—Dry Cliff—Unit 2 is not known to be occupied by the plants *Asplenium dielerectum, Bidens micrantha* ssp. *kalealaha, Brighamia rockii, Ctenitis squamigera, Diplazium molokaiense, Neraudia sericea, Phyllostegia haliakalae, Solanum incompletum,* or *Viola lanaiensis,* we have determined this area to be essential for the conservation and recovery of these dry cliff species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Lanai—Dry Cliff—Unit 3 consists of 398 ac (161 ha) of privately owned land at upper Hauola Gulch in central Lanai. This unit includes the mixed herbland and shrubland, the moisture regime, and the subcanopy and understory native plant species identified as physical or biological features in the dry cliff ecosystem (see Table 4). Although Lanai—Dry Cliff—Unit 3 is not known to be occupied by the plants *Asplenium*

dielerectum, Bidens micrantha ssp. *kalealaha, Brighamia rockii, Ctenitis squamigera, Diplazium molokaiense, Neraudia sericea, Phyllostegia haliakalae, Pleomele fernaldii, Solanum incompletum,* or *Viola lanaiensis,* we have determined this area to be essential for the conservation and recovery of these dry cliff species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Lanai—Wet Cliff—Unit 1

Partulina semicarinata—Unit 4—Wet Cliff

Partulina variabilis—Unit 4—Wet Cliff

This area consists of 731 ac (296 ha) of privately owned land, from Waialaia and Kunoa gulches to Puukole, in central Lanai. These units include the mixed herbland and shrubland, the moisture regime, and the subcanopy and understory native plant species identified as physical or biological features in the wet cliff ecosystem (see Table 4). They are occupied by the plants *Ctenitis squamigera, Cyrtandra munroi, Melicope munroi, Pleomele fernaldii,* and *Santalum haleakalae* var. *lanaiense;* and by the Lanai tree snails *Partulina semicarinata* and *P. variabilis.* These units also contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Lanai—Wet Cliff—Unit 1 is not known to be occupied by the plants *Cyanea gibsonii, C. munroi, Hesperomannia arborescens, Kadua laxiflora, Labordia tinifolia* var. *lanaiensis, Phyllostegia haliakalae,* or *Viola lanaiensis,* we have determined this area to be essential for the conservation and recovery of these wet cliff species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Lanai—Wet Cliff—Unit 2

Partulina semicarinata—Unit 5—Wet Cliff

Partulina variabilis—Unit 5—Wet Cliff

This area consists of 230 ac (93 ha) of privately owned land, from Kehewai Ridge to Haalelepaakai and Waiakeakua, in central Lanai. These units include the mixed herbland and shrubland, the moisture regime, and the subcanopy and understory native plant species identified as physical or biological features in the wet cliff ecosystem (see Table 4). They are occupied by the plants *Cyanea munroi, Labordia tinifolia* var. *lanaiensis, Pleomele fernaldii,* and *Santalum haleakalae* var. *lanaiense,* and contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Lanai—Wet Cliff—Unit 2 is not known to be occupied by the plants *Ctenitis squamigera, Cyanea gibsonii, Cyrtandra munroi, Hesperomannia arborescens, Kadua laxiflora, Melicope munroi, Phyllostegia haliakalae,* or *Viola lanaiensis;* or by the Lanai tree snails *Partulina semicarinata* and *P. variabilis,* we have determined this area to be essential for the conservation and recovery of these wet cliff species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Molokai—Coastal—Unit 1 consists of 195 ac (79 ha) of privately owned land, and 54 ac (22 ha) of federally owned land (U.S. Coast Guard) at Laau Point, from Kahaiawa to Keawakalani, along the western coast of Molokai. This unit is occupied by the plant *Marsilea villosa,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the coastal ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of this species by providing the PCEs necessary for the expansion of the existing wild populations. Although Molokai—Coastal—Unit 1 is not known to be occupied by *Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Hibiscus arnottianus* ssp. *immaculatus, H. brackenridgei, Ischaemum byrone, Peucedanum sandwicense, Pittosporum halophilum, Schenkia sebaeoides, Sesbania tomentosa,* or *Tetramolopium rockii,* we have determined this area to be essential for the conservation and recovery of these coastal species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Molokai—Coastal—Unit 2 consists of 1,032 ac (418 ha) of State land, and 2,511 ac (1,016 ha) of privately owned land (partly within The Nature Conservancy's Moomomi Preserve), from Ilio Point to Nenehanaupo, along the northwestern coast of Molokai. This unit is occupied by the plants *Marsilea villosa, Schenkia sebaeoides, Sesbania tomentosa,* and *Tetramolopium rockii,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the coastal ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Molokai—Coastal—Unit 2 is not known to be occupied by *Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Hibiscus arnottianus* ssp. *immaculatus, H. brackenridgei, Ischaemum byrone, Peucedanum sandwicense,* or *Pittosporum halophilum,* we have determined this area to be essential for the conservation and recovery of these coastal species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Molokai—Coastal—Unit 3 consists of 859 ac (348 ha) of State land, less than 1 acre (ha) of privately owned land, and 3 ac (1 ha) of federally owned land (Kalaupapa National Historical Park), from Kahiu Point to Wainene, along the north-central coast of Molokai. This unit is occupied by the plants *Canavalia molokaiensis, Pittosporum halophilum, Schenkia sebaeoides,* and *Tetramolopium rockii,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant

species identified as physical or biological features in the coastal ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Molokai—Coastal—Unit 3 is not known to be occupied by *Bidens wiebkei, Brighamia rockii, Hibiscus arnottianus* ssp. *immaculatus, H. brackenridgei, Ischaemum byrone, Marsilea villosa, Peucedanum sandwicense,* or *Sesbania tomentosa,* we have determined this area to be essential for the conservation and recovery of these coastal species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Molokai—Coastal—Unit 4 consists of 10 ac (4 ha) on Mokapu Island on the northern coast of Molokai. This area is State-owned, and is classified as a State Seabird Sanctuary. This unit is occupied by the plants *Peucedanum sandwicense* and *Pittosporum halophilum,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the coastal ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Molokai—Coastal—Unit 4 is not known to be occupied by *Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Hibiscus arnottianus* ssp. *immaculatus, H. brackenridgei, Ischaemum byrone, Marsilea villosa, Sesbania tomentosa, Schenkia sebaeoides,* or *Tetramolopium rockii,* we have determined this area to be essential for the conservation and recovery of these coastal species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Molokai—Coastal—Unit 5 consists of 1 ac (0.5 ha) on Huelo islet on the northern coast of Molokai. This area is State-owned, and is classified as a State Seabird Sanctuary. This unit is occupied by the plants *Brighamia rockii* and *Pittosporum halophilum,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the coastal ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Molokai—Coastal—Unit 5 is not known to be occupied by *Bidens wiebkei, Canavalia molokaiensis, Hibiscus arnottianus* ssp. *immaculatus, H. brackenridgei, Ischaemum byrone, Marsilea villosa, Peucedanum sandwicense, Schenkia sebaeoides, Sesbania tomentosa,* or *Tetramolopium rockii,* we have determined this area to be essential for the conservation and recovery of these coastal species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Molokai—Coastal—Unit 6 consists of 202 ac (82 ha) of State land, and 1,711 ac (692 ha) of privately owned land, from Kaholaiki Bay to Halawa Bay, on the northeastern coast of Molokai. This unit is occupied by the plants *Bidens wiebkei, Canavalia molokaiensis, Hibiscus arnottianus* ssp. *immaculatus, Ischaemum byrone,* and *Peucedanum sandwicense,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the coastal ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Molokai—Coastal—Unit 6 is not known to be occupied by *Brighamia rockii, Hibiscus brackenridgei, Marsilea villosa, Pittosporum halophilum, Schenkia sebaeoides, Sesbania tomentosa,* or *Tetramolopium rockii,* we have determined this area to be essential for the conservation and recovery of these coastal species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Molokai—Coastal—Unit 7 consists of 3 ac (1 ha) of State land and 303 ac (123 ha) of privately owned land at Alanuipuhipaka Ridge and Honokoi Gulch, on the northeastern coast of Molokai. This unit includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the coastal ecosystem (see Table 4). Although Molokai—Coastal—Unit 7 is not known to be occupied by *Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Hibiscus arnottianus* ssp. *immaculatus, H. brackenridgei, Ischaemum byrone, Marsilea villosa, Peucedanum sandwicense, Pittosporum halophilum, Schenkia sebaeoides, Sesbania tomentosa,* or *Tetramolopium rockii,* we have determined this area to be essential for the conservation and recovery of these coastal species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Molokai—Lowland Dry—Unit 1 consists of 70 ac (28 ha) of privately owned land, in west-central Molokai. This unit includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland dry ecosystem (see Table 4). Although Molokai—Lowland Dry—Unit 1 is not known to be occupied by *Bonamia menziesii, Cyperus trachysanthos, Eugenia koolauensis, Hibiscus brackenridgei, Kokia cookei,* or *Sesbania tomentosa,* we have determined this area to be essential for the conservation and recovery of these lowland dry species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Molokai—Lowland Dry—Unit 2 consists of 945 ac (383 ha) of State land, and 2,255 ac (913 ha) of privately owned land, from Kamiloloa to Makolelau, on the southern slopes of Molokai. This unit includes the mixed

herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland dry ecosystem (see Table 4). Although Molokai—Lowland Dry—Unit 2 is not known to be occupied by *Bonamia menziesii, Cyperus trachysanthos, Hibiscus brackenridgei, Kokia cookei,* or *Sesbania tomentosa,* we have determined this area to be essential for the conservation and recovery of these lowland dry species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Molokai—Lowland Mesic—Unit 1 (and)

Palmeria dolei—Unit 37—Lowland Mesic (and)

Pseudonestor xanthophrys—Unit 37—Lowland Mesic

This area consists of 3,538 ac (1,432 ha) of State land, and 6,792 ac (2,749 ha) of privately owned land, from Waianui Gulch to Mapulehu, in central Molokai. These units are occupied by the plants *Alectryon macrococcus, Asplenium dielerectum, Canavalia molokaiensis, Ctenitis squamigera, Cyanea dunbariae, C. mannii, C. profuga, Cyperus fauriei, Cyrtandra filipes, Festuca molokaiensis, Gouania hillebrandii, Labordia triflora, Melicope mucronulata, Neraudia sericea, Santalum haleakalae* var. *lanaiense, Schiedea lydgatei, S. sarmentosa, Silene alexandri, S. lanceolata, Spermolepis hawaiiensis, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense,* and include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland mesic ecosystem (see Table 4). These units also contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Molokai—Lowland Mesic—Unit 1 is not known to be occupied by *Bonamia menziesii, Clermontia oblongifolia* ssp. *brevipes, Cyanea procera, C. solanacea, Diplazium molokaiense, Flueggea neowawraea, Isodendrion pyrifolium, Kadua laxiflora, Melicope munroi, M. reflexa, Phyllostegia haliakalae, P. mannii, P. pilosa, Sesbania tomentosa,* or *Stenogyne bifida;* or the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these lowland mesic species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Molokai—Lowland Wet—Unit 1 (and)

Palmeria dolei—Unit 38—Lowland Wet (and)

Pseudonestor xanthophrys—Unit 38—Lowland Wet

This area consists of 2,195 ac (888 ha) of State land, and 1,433 ac (580 ha) of privately owned land (partly within The Nature Conservancy's Pelekunu Preserve), from Pelekunu Valley to Wailau Valley, in north-central Molokai. These units are occupied by the plants *Canavalia molokaiensis* and *Cyrtandra filipes,* and include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland wet ecosystem (see Table 4). These units also contain unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations. Although Molokai—Lowland Wet—Unit 1 is not known to be occupied by *Asplenium dielerectum, Bidens wiebkei, Clermontia oblongifolia* ssp. *brevipes, Cyanea dunbariae, C. grimesiana* ssp. *grimesiana, C. solanacea, Lysimachia maxima, Melicope reflexa, Peucedanum sandwicense, Phyllostegia hispida, P. mannii, Plantago princeps, Stenogyne bifida,* or *Zanthoxylum hawaiiense;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Molokai—Lowland Wet—Unit 2 (and)

Palmeria dolei—Unit 39—Lowland Wet (and)

Pseudonestor xanthophrys—Unit 39—Lowland Wet

This area consists of 1,356 ac (549 ha) of State land and 597 ac (241 ha) of privately owned land, from Kahanui to Pelekunu Valley, in north-central Molokai. These units are occupied by the plant *Lysimachia maxima,* and include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland wet ecosystem (see Table 4). These units also contain unoccupied habitat that is essential to the conservation of this species by providing the PCEs necessary for the expansion of the existing wild populations. Although Molokai—Lowland Wet—Unit 2 is not known to be occupied by *Asplenium dielerectum, Bidens wiebkei, Canavalia molokaiensis, Clermontia oblongifolia* ssp. *brevipes, Cyanea dunbariae, C. grimesiana* ssp. *grimesiana, C. solanacea, Cyrtandra filipes, Melicope reflexa, Peucedanum sandwicense, Phyllostegia hispida, P. mannii, Plantago princeps, Stenogyne bifida,* or *Zanthoxylum hawaiiense;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Molokai—Lowland Wet—Unit 3 consists of 1,128 ac (457 ha) of State land, and 6,945 ac (2,811 ha) of privately owned land, from Waiahookalo and Kahiwa gulches south to Mapulehu, on eastern Molokai. This unit is occupied by the plants *Bidens wiebkei, Cyrtandra filipes,* and *Melicope reflexa,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland wet ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild

populations. Although Molokai—Lowland Wet—Unit 3 is not known to be occupied by *Asplenium dielerectum, Canavalia molokaiensis, Clermontia oblongifolia* ssp. *brevipes, Cyanea dunbariae, C. grimesiana* ssp. *grimesiana, C. solanacea, Lysimachia maxima, Peucedanum sandwicense, Phyllostegia hispida, P. mannii, Plantago princeps, Stenogyne bifida,* or *Zanthoxylum hawaiiense,* we have determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Molokai—Montane Wet—Unit 1 (and)

Palmeria dolei—Unit 40—Montane Wet (and)

Pseudonestor xanthophrys—Unit 40—Montane Wet

This area consists of 1,518 ac (615 ha) of State land, and 3,300 ac (1,336 ha) of privately owned land, from the headwaters of Waialelia Stream and above Pelekunu Valley, eastward along the summit area to Mapulehu, in north-central Molokai. These units are occupied by the plants *Adenophorus periens, Bidens wiebkei, Clermontia oblongifolia* ssp. *brevipes, Cyanea mannii, C. profuga, C. solanacea, Lysimachia maxima, Phyllostegia hispida, P. mannii, Platanthera holochila, Pteris lidgatei, Schiedea laui,* and *Stenogyne bifida,* and include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the montane wet ecosystem (see Table 4). These units also contain unoccupied habitat that is essential to the conservation of this species by providing the PCEs necessary for the expansion of the existing wild populations. Although Molokai—Montane Wet—Unit 1 is not known to be occupied by *Cyanea procera, Hesperomannia arborescens, Melicope reflexa, Phyllostegia pilosa,* or *Zanthoxylum hawaiiense;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these montane wet species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Molokai—Montane Wet—Unit 2 (and)

Palmeria dolei—Unit 41—Montane Wet (and)

Pseudonestor xanthophrys—Unit 41—Montane Wet

This area consists of 871 ac (353 ha) of State land, and 39 ac (16 ha) of privately owned land, from Honukaupu to Olokui (between Pelekunu and Wailau valleys), in north-central Molokai. These units include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the montane wet ecosystem (see Table 4). Although Molokai—Montane Wet—Unit 2 is not known to be occupied by *Adenophorus periens, Bidens wiebkei, Clermontia oblongifolia* ssp. *brevipes, Cyanea mannii, C. procera, C. profuga, C. solanacea, Hesperomannia arborescens, Lysimachia maxima, Melicope reflexa, Phyllostegia hispida, P. mannii, P. pilosa, Platanthera holochila, Pteris lidgatei, Schiedea laui, Stenogyne bifida,* or *Zanthoxylum hawaiiense;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these montane wet species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Molokai—Montane Wet—Unit 3 consists of 77 ac (31 ha) of State land, and 726 ac (294 ha) of privately owned land, above the east rim of Wailau Valley on eastern Molokai. This unit is occupied by the plant *Melicope reflexa,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the montane wet ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of this species by providing the PCEs necessary for the expansion of the existing wild populations. Although Molokai—Montane Wet—Unit 3 is not known to be occupied by *Adenophorus periens, Bidens wiebkei, Clermontia oblongifolia* ssp. *brevipes, Cyanea mannii, C. procera, C. profuga, C. solanacea, Hesperomannia arborescens, Lysimachia maxima, Phyllostegia hispida, P. mannii, P. pilosa, Platanthera holochila, Pteris lidgatei, Schiedea laui, Stenogyne bifida,* or *Zanthoxylum hawaiiense,* we have determined this area to be essential for the conservation and recovery of these montane wet species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Molokai—Montane Mesic—Unit 1 (and)

Palmeria dolei—Unit 42—Montane Mesic (and)

Pseudonestor xanthophrys—Unit 42—Montane Mesic

This area consists of 257 ac (104 ha) of State land, and 1,373 ac (555 ha) of privately owned land (partly within The Nature Conservancy's Kamakou Preserve), from Kamiloloa to Makolelau in central Molokai. These units are occupied by the plants *Alectryon macrococcus, Bidens wiebkei, Cyanea mannii, C. procera, Cyperus fauriei, Santalum haleakalae* var. *lanaiense,* and *Spermolepis hawaiiensis,* and include the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the montane mesic ecosystem (see Table 4). Although Molokai—Montane Mesic—Unit 1 is not known to be occupied by *Asplenium dielerectum, Cyanea dunbariae, C. solanacea, Kadua laxiflora, Melicope mucronulata, Neraudia sericea, Plantago princeps,* or *Stenogyne bifida;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these montane mesic species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Molokai—Wet Cliff—Unit 1 (and)

Palmeria dolei—Unit 43—Wet Cliff (and)

Pseudonestor xanthophrys—Unit 43—Wet Cliff

This area consists of 1,399 ac (566 ha) of State land, and 489 ac (198 ha) of privately owned land, and encircles the plateau between Pelekunu and Wailau valleys, in north-central Molokai. These units are occupied by the plants *Brighamia rockii, Canavalia molokaiensis, Clermontia oblongifolia* ssp. *brevipes, Hesperomannia arborescens,* and *Hibiscus arnottianus* ssp. *immaculatus,* and include the mixed herbland and shrubland, the moisture regime, and the subcanopy and understory native plant species identified as physical or biological features in the wet cliff ecosystem (see Table 4). Although Molokai—Wet Cliff—Unit 1 is not known to be occupied by *Cyanea grimesiana* ssp. *grimesiana, C. munroi, Phyllostegia hispida, Pteris lidgatei,* or *Stenogyne bifida;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these wet cliff species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Molokai—Wet Cliff—Unit 2 (and)

Palmeria dolei—Unit 44—Wet Cliff (and)

Pseudonestor xanthophrys—Unit 44—Wet Cliff

This area consists of 462 ac (187 ha) of State land, and 818 ac (331 ha) of privately owned land (partly within The Nature Conservancy's Pelekunu Preserve), along the rim of Pelekunu Valley from Kipapa Ridge to Mapulehu, in central Molokai. These units are occupied by the plant *Phyllostegia hispida,* and include the mixed herbland and shrubland, the moisture regime, and the subcanopy and understory native plant species identified as physical or biological features in the wet cliff ecosystem (see Table 4). These units also contain unoccupied habitat that is essential to the conservation of this species by providing the PCEs necessary for the expansion of the existing wild populations. Although Molokai—Wet Cliff—Unit 2 is not known to be occupied by *Brighamia rockii, Canavalia molokaiensis, Clermontia oblongifolia* ssp. *brevipes, Cyanea grimesiana* ssp. *grimesiana, C. munroi, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Pteris lidgatei,* or *Stenogyne bifida;* or by the forest birds, the akohekohe (*Palmeria dolei*) and kiwikiu (*Pseudonestor xanthophrys*), we have determined this area to be essential for the conservation and recovery of these wet cliff species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Molokai—Wet Cliff—Unit 3 consists of 1,137 ac (460 ha) of State land, and 225 ac (91 ha) of privately owned land, along the rim of Wailau Valley from Mapulehu to Kahiwa Gulch, in eastern Molokai. This unit includes the mixed herbland and shrubland, the moisture regime, and the subcanopy and understory native plant species identified as physical or biological features in the wet cliff ecosystem (see Table 4). Although Molokai—Wet Cliff—Unit 3 is not known to be occupied by *Brighamia rockii, Canavalia molokaiensis, Clermontia oblongifolia* ssp. *brevipes, Cyanea grimesiana* ssp. *grimesiana, C. munroi, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Phyllostegia hispida, Pteris lidgatei,* or *Stenogyne bifida,* we have determined this area to be essential for the conservation and recovery of these wet cliff species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act, as amended, requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the Fifth and Ninth Circuit Court of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (See *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service,* 245 F.3d 434, 442F (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain those physical or biological features that relate to the current ability of the area to support the species) to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

If we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action;
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction;
- Are economically and technologically feasible; and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a

reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate formal consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if they have retained discretionary involvement or control and the action may affect subsequently listed species or designated critical habitat.

Federal activities that may adversely affect the species included in this proposed rule or their designated critical habitat require section 7 consultation under the Act. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*), or a permit from us under section 10 of the Act), or activities involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the Jeopardy and Adverse Modification Standards

Application of the Jeopardy Standard

The jeopardy analysis usually expresses the survival and recovery needs of a listed species in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, the jeopardy analysis focuses on the status of a species, the factors responsible for that condition, and what is necessary for the species to survive and recover. An emphasis is also placed on characterizing the condition of the species in the area affected by the proposed Federal action. That context is then used to determine the significance of adverse and beneficial effects of the proposed Federal action and any cumulative effects for purposes of making the jeopardy determination. The jeopardy analysis also considers any conservation measures that may be proposed by a Federal action agency to minimize or compensate for adverse effects to the species or to promote its recovery.

Application of the Adverse Modification Standard

The analytical framework described in the Director's December 9, 2004, memorandum is used to complete section 7(a)(2) analysis for Federal actions affecting critical habitat. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the essential features to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the essential features, or the essential habitat qualities of unoccupied habitat, to an extent that appreciably reduces the conservation value of critical habitat for the 135 species identified in this proposed rule.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that, when carried out, funded, or authorized by a Federal agency, may destroy or adversely modify critical habitat for the 135 species, and therefore may be affected by this proposed designation, include, but are not limited to:

(1) Activities that might appreciably degrade or destroy the physical or biological features for the species including, but not limited to, the following: Overgrazing; maintaining or increasing feral ungulate levels; clearing or cutting native live trees and shrubs (e.g., woodcutting, bulldozing, construction, road building, mining, herbicide application); and taking actions that pose a risk of fire.

(2) Activities that may alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural, wetland, aquatic, or vegetative communities. Such activities include new water diversion or impoundment, excess groundwater pumping, and manipulation of vegetation through activities such as the ones mentioned in (1), above.

(3) Recreational activities that may appreciably degrade vegetation.

(4) Mining sand or other minerals.

(5) Introducing or encouraging the spread of nonnative plant species.

(6) Importing nonnative species for research, agriculture, and aquaculture, and releasing biological control agents.

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyze INRMPs developed by military installations located within the areas that were being considered for critical habitat designation during the

development of this proposed rule to determine if these installations may warrant consideration for exemption under section 4(a)(3) of the Act. There are no Department of Defense (DOD) lands within this proposed critical habitat designation. Therefore, no lands have been exempted from this proposed critical habitat designation under section 4(a)(3) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate or make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impacts of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. The Secretary may exclude an area from critical habitat based on economic impacts, impacts to national security, or any other relevant impacts.

In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If, based on this analysis, the Secretary makes this determination, he can exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus, the educational benefits of mapping habitat essential for recovery of the listed species, and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat. Benefits could include public awareness of the presence of listed species and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection due to the protection from adverse modification or destruction of critical habitat.

When considering the benefits of exclusion, we consider factors such as whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or the implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide. In the case of the 135 Maui Nui species, there may be little additional regulatory effect resulting from the designation in areas occupied by 1 or more of the 135 species; however, the benefits of designating critical habitat include educational benefits resulting from identification of the features essential to the conservation these species and the delineation of areas important for their recovery. Further, there may be additional benefits realized by providing landowners, stakeholders, and project proponents greater certainty about which specific areas are important for the Maui Nui species. Thus, critical habitat designation increases public awareness of the presence the Maui Nui species and the importance of habitat protection and, in cases where a Federal nexus exists, increases habitat protection for these species due to the protection from adverse modification or destruction of critical habitat.

In evaluating the existence of a conservation plan when considering the benefits of exclusion, we consider a variety of factors including, but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan are likely to be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After evaluating the benefits of inclusion and the benefits of exclusion, the two sides are carefully weighed to determine whether the benefits of exclusion outweigh those of inclusion. If they do, we then determine whether exclusion of the particular area would result in the extinction of the species. If exclusion of an area from critical habitat will result in extinction, it will not be excluded from the designation.

The Secretary can consider the existence of conservation agreements, other land management plans and voluntary partnerships with Federal, private, State, and tribal entities when making decisions under section 4(b)(2) of the Act. In weighing the benefits of inclusion versus exclusion, we may consider factors such as: (1) Whether the plan provides specific information on how it protects the species and the physical or biological features, and whether the plan is at a geographic scope commensurate with the species; (2) whether the plan is complete and will be effective at conserving and protecting the physical or biological features; (3) whether a reasonable expectation exists that conservation management strategies and actions will be implemented, that those responsible for implementing the plan are capable of achieving the objectives, that an implementation schedule exists, and that adequate funding exists; (4) whether the plan provides assurances that the conservation strategies and measures will be effective (i.e., identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan); (5) whether the plan has a monitoring program or adaptive management to ensure that the conservation measures are effective; (6) the degree to which the record supports a conclusion that a critical habitat designation would impair the benefits of the plan; (7) the extent of public participation; (8) demonstrated track record of implementation success; (9) level of public benefits derived from encouraging collaborative efforts and encouraging private and local conservation efforts; and (10) the effect designation would have on partnerships. We will also consider whether these efforts would be affected by critical habitat and, if so, whether this would outweigh the advantages of critical habitat.

Based on the information provided by entities seeking exclusion, as well as any additional public comments we receive, we will evaluate whether certain lands in proposed critical habitat may be appropriate for exclusion from the final designation. If our analysis results in a determination that the benefits of excluding particular areas from the final designation outweigh the benefits of designating those areas as critical habitat, then the Secretary may exercise his discretion to exclude the particular areas from the final designation.

Under section 4(b)(2) of the Act, we must consider all relevant impacts, including economic impacts. In addition to economic impacts, we consider a number of factors in a section 4(b)(2) analysis. For example, we consider whether there are lands owned by the DOD where a national security impact might exist. We also consider whether Federal or private landowners

or other public agencies have developed management plans or HCPs for the area or whether there are conservation partnerships that would be encouraged or discouraged by designation of, or exclusion from, critical habitat in an area. We also consider any social impacts that might occur because of the designation. To ensure that our final determination is based on the best available information, we are inviting comments on any foreseeable economic, national security, or other potential impacts resulting from this proposed designation of critical habitat from governmental, business, or private interests and, in particular, any potential impacts on small businesses.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the probable economic impacts of the proposed critical habitat designation and related factors.

We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at the Federal eRulemaking Portal: *http://www.regulations.gov*, or by contacting the Pacific Islands Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT**). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and as an outcome of our analysis of this information, we may exclude areas from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the DOD where a national security impact might exist. There are no DOD lands within this proposed critical habitat designation, and we are unaware of any potential impacts to national security on any lands within the proposed critical habitat designation. Therefore, we do not propose to exert our discretion to exclude any areas from the final designation based on impacts on national security, but will fully consider all comments in this regard in the final critical habitat designation.

Exclusions Based on Other Relevant Factors

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts to national security. We consider a number of factors, including whether the landowners have developed any conservation plans or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. We also consider any social impacts that might occur because of the designation.

Most federally listed species in the United States will not recover without cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (Lubowski *et al.* 2006, p. 35), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002, p. 720). In the State of Hawaii, 84 percent of landownership is non-Federal (U.S. General Services Administration, in Western States Tourism Policy Council, 2009). Stein *et al.* (2008, p. 340) found that only about 12 percent of listed species were found almost exclusively on Federal lands (90 to 100 percent of their known occurrences restricted to Federal lands) and that 50 percent of listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to landownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998, p. 1,407; Crouse *et al.* 2002, p. 720; James 2002, p. 271). Building partnerships and promoting voluntary cooperation of landowners is essential to understanding the status of species on non-Federal lands and necessary to implement recovery actions, such as the reintroduction of listed species, habitat restoration, and habitat protection.

Many non-Federal landowners derive satisfaction from contributing to endangered species recovery. Conservation agreements with non-Federal landowners, safe harbor agreements, other conservation agreements, easements, and State and local regulations enhance species conservation by extending species protections beyond those available through section 7 consultations. We encourage non-Federal landowners to enter into conservation agreements based on a view that we can achieve greater species conservation on non-Federal lands through such partnerships than we can through regulatory methods (USFWS and NOAA 1996c (61 FR 63854, December 2, 1996)).

Many private landowners, however, are wary of the possible consequences of attracting endangered species to their property. Mounting evidence suggests that some regulatory actions by the government, while well intentioned and required by law, can (under certain circumstances) have unintended negative consequences for the conservation of species on private lands (Wilcove *et al.* 1996, pp. 5–6; Bean 2002, pp. 2–3; James 2002, pp. 270–271; Koch 2002, pp. 2–3). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where endangered or threatened species are found. Consequently, harboring endangered species is viewed by many landowners as a liability. This perception results in anti-conservation incentives because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999, pp. 1,264–1,265; Brook *et al.* 2003, pp. 1,644–1,648).

According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999, p. 1,263; Bean 2002, p. 2). The magnitude of this negative outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, and control of invasive species) are necessary for species conservation (Bean 2002, pp. 3–4). We believe the judicious exclusion of specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone.

The purpose of designating critical habitat is to contribute to the conservation of endangered and threatened species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7(a)(2) of the Act, can sometimes be a disincentive to conservation on non-Federal lands. Thus, the benefits of excluding areas that are covered by partnerships or voluntary conservation efforts can, in specific circumstances, be high.

For the reasons discussed under the ''Application of Section 4(b)(2) of the Act'' section of this rule, if the Secretary decides to exercise his discretion under

section 4(b)(2) of the Act, we have identified certain areas that we are considering excluding from the final critical habitat designation for 135 plant and animal species. However, we solicit comments on the inclusion or exclusion of such particular areas (See ''Public Comments'' section). During the development of the final designation, we will consider economic impacts, public comments, and other new information before deciding if inclusion or exclusion of these areas is warranted. As a result, additional particular areas, in addition to those identified below for potential exclusion in this proposed rule, may be excluded from the final critical habitat designation under section 4(b)(2) of the Act.

Conservation Partnerships on Non-Federal Lands

The Nature Conservancy's Kapunakea Preserve and Waikamoi Preserve on Maui, and Kamakou Preserve and Moomomi Preserve on Molokai:

We are considering excluding 10,038 ac (4,061 ha) of habitat within TNC's Kapunakea Preserve on west Maui and Waikamoi Preserve on east Maui, and Kamakou Preserve and Moomomi Preserve on Molokai (Figures 2 and 3).

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Figure 2

The Nature Conservancy of Hawaii–Maui

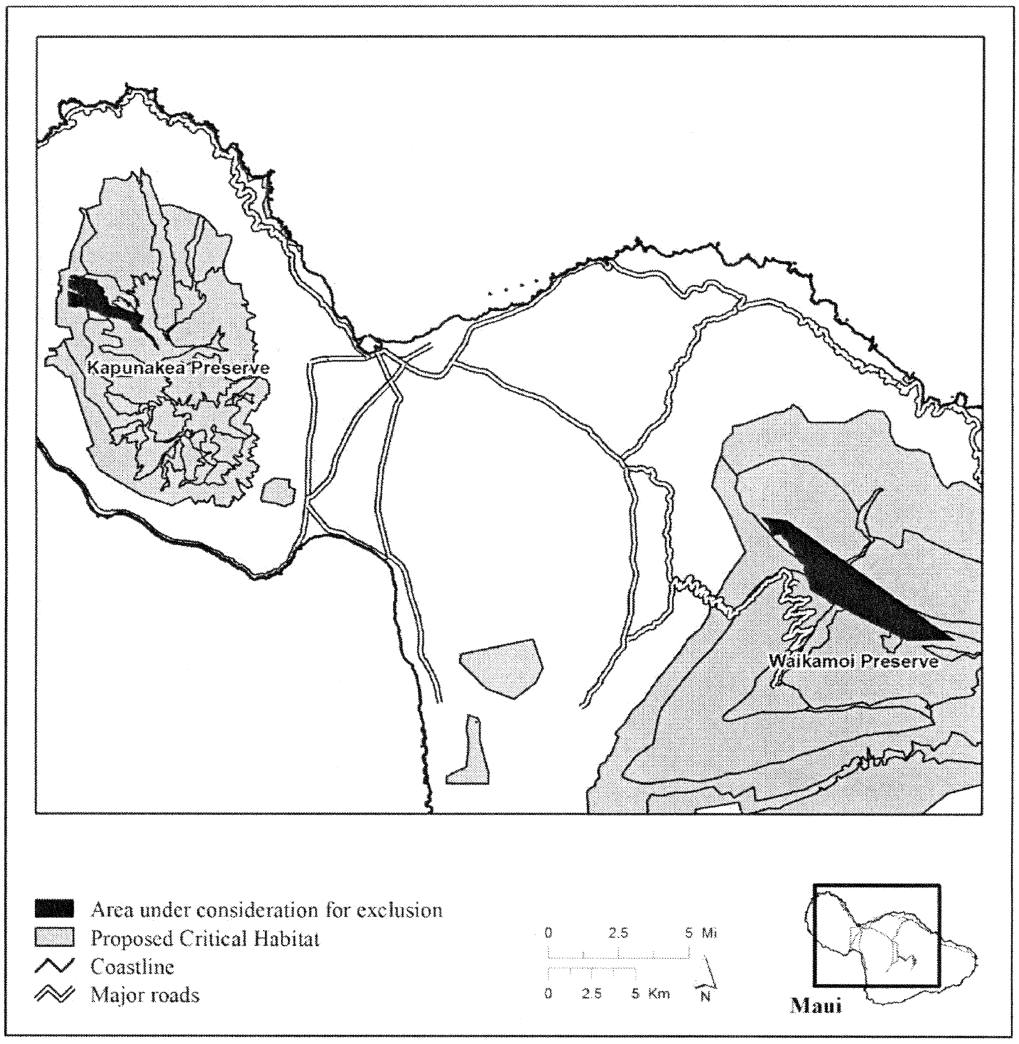
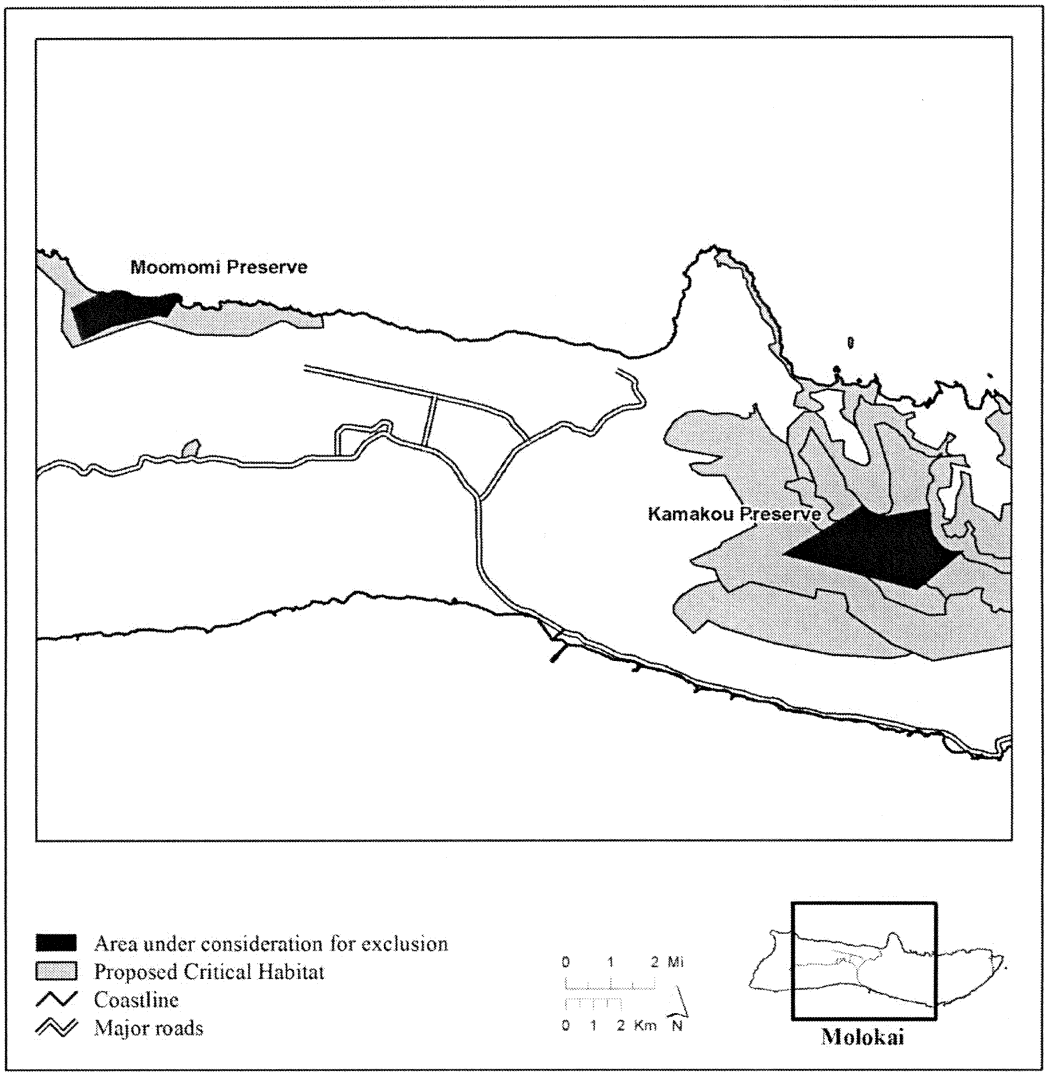


Figure 3

The Nature Conservancy of Hawaii–Molokai



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Maui

Kapunakea Preserve encompasses 1,339 ac (542 ha) on west Maui. This preserve was established through a perpetual conservation easement with Pioneer Mill Company, Ltd. (succeeded by Kaanapali Land Management Corp.), in 1992, to protect the natural, ecological, and wildlife features of one of the highest quality native areas in Hawaii (TNCH 2008, p. 5). Ten plant species included in this rule (*Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea lobata, Cyrtandra filipes, C. munroi, Platanthera holochila,* and *Santalum haleakalae* var. *lanaiense*) are reported from the preserve. Kapunakea Preserve falls within four proposed critical habitat units for plants (Maui—Lowland Mesic—2, Maui—Lowland Wet—6, Maui—Montane Wet—6, and Maui—Wet Cliff—7), and six proposed units for the akohekohe and kiwikiu (*Palmeria dolei*—Unit 7—Lowland Wet, *Pseudonestor xanthophrys*—Unit 7—Lowland Wet, *Palmeria dolei*—Unit 15—Montane Wet, *Pseudonestor xanthophrys*—Unit 15—Montane Wet, *Palmeria dolei*—Unit 36—Wet Cliff, *Pseudonestor xanthophrys*—Unit 36—Wet Cliff). These units are occupied by the plants *Alectryon macrococcus, Bidens campylotheca* ssp. *pentamera, B. conjuncta, B. micrantha* ssp. *kalealaha, Bonamia menziesii, Calamagrostis hillebrandii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea asplenifolia, C. kunthiana, C. lobata, Cyrtandra filipes, C. munroi, Geranium hillebrandii, Myrsine vaccinioides, Platanthera holochila, Remya mauiensis, Sanicula purpurea, Santalum haleakalae* var. *lanaiense,* and *Zanthoxylum hawaiiense.* This area contains unoccupied habitat that is essential to the conservation of 21 plant species, *Acaena exigua, Asplenium*

dielerectum, Clermontia oblongifolia ssp. *mauiensis, Cyanea glabra, C. magnicalyx, Cyrtandra oxybapha, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Gouania vitifolia, Hesperomannia arborescens, H. arbuscula, Huperzia mannii, Isodendrion pyrifolium, Kadua laxiflora, Lysimachia lydgatei, Peucedanum sandwicense, Phyllostegia bracteata, Plantago princeps, Pteris lidgatei, Tetramolopium capillare,* and *Wikstroemia villosa,* and the akohekohe and kiwikiu.

Waikamoi Preserve encompasses 5,140 ac (2,080 ha) along the northern border of Haleakala National Park on east Maui. The preserve was established in 1983, through a perpetual conservation easement with Haleakala Ranch Company, to protect one of the largest intact native rain forests in Hawaii (TNCH 2006a, p. 3). Eight plant species included in this rule (*Asplenium peruvianum* var. *insulare, Bidens campylotheca* ssp. *pentamera, Cyanea horrida, C. kunthiana, Diplazium molokaiense, Geranium arboreum, G. multiflorum,* and *Phyllostegia pilosa*), and the akohekohe and kiwikiu, are reported from the preserve. Waikamoi Preserve falls within 8 proposed critical habitat units for plants (Maui—Montane Wet—1, Maui—Montane Wet—2, Maui—Montane Mesic—1, Maui—Subalpine—1, Maui—Subalpine—2, Maui—Dry Cliff—1, Maui—Dry Cliff—3, and Maui—Wet Cliff—1), and 16 proposed units for the akohekohe and kiwikiu (*Palmeria dolei*—Unit 10—Montane Wet, *Pseudonestor xanthophrys*—Unit 10—Montane Wet, *Palmeria dolei*—Unit 11—Montane Wet, *Pseudonestor xanthophrys*—Unit 11—Montane Wet, *Palmeria dolei*—Unit 18—Montane Mesic, *Pseudonestor xanthophrys*—Unit 18—Montane Mesic, *Palmeria dolei*—Unit 24—Subalpine, *Pseudonestor xanthophrys*—Unit 24—Subalpine, *Palmeria dolei*—Unit 25—Subalpine, *Pseudonestor xanthophrys*—Unit 25—Subalpine, *Palmeria dolei*—Unit 26—Dry Cliff, *Pseudonestor xanthophrys*—Unit 26—Dry Cliff, *Palmeria dolei*—Unit 27—Dry Cliff, *Pseudonestor xanthophrys*—Unit 27—Dry Cliff, *Palmeria dolei*—Unit 30—Wet Cliff, and *Pseudonestor xanthophrys*—Unit 30—Wet Cliff). These units are occupied by the plants *Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium dielerectum, A. peruvianum* var. *insulare, Bidens campylotheca* ssp. *pentamera, B. campylotheca* ssp. *waihoiensis, B. micrantha* ssp. *kalealaha, Clermontia lindseyana, C. oblongifolia* ssp. *mauiensis, C. samuelii, Cyanea copelandii* ssp. *haleakalensis, C. duvalliorum, C. hamatiflora* ssp. *hamatiflora, C. horrida, C. kunthiana, C. maritae, C. mceldowneyi, C. obtusa, Cyrtandra ferripilosa, C. oxybapha, Diplazium molokaiense, Geranium arboreum, G. hanaense, G. multiflorum, Huperzia mannii, Melicope adscendens, M. balloui, Neraudia sericea, Phyllostegia pilosa, Plantago princeps, Santalum haleakalae* var. *lanaiense, Schiedea haleakalensis,* and *Wikstroemia villosa,* and the akohekohe and kiwikiu. This area contains unoccupied habitat that is essential to the conservation of 12 other plant species (*Adenophorus periens, Alectryon macrococcus, C. glabra, Melicope ovalis, Peperomia subpetiolata, Phyllostegia bracteata, P. haliakalae, P. mannii, Platanthera holochila, Schiedea jacobii, Solanum incompletum,* and *Zanthoxylum hawaiiense*).

Molokai

Kamakou Preserve is located in the east Molokai mountains and encompasses 2,632 ac (1,065 ha). This preserve was established in 1982, through a perpetual conservation easement with Molokai Ranch, to protect endemic forest bird habitat and is the primary ground and surface water source area on the island (TNCH 2006b, p. 2). Nineteen plant species included in this rule (*Adenophorus periens, Asplenium dielerectum, Bidens wiebkei, Canavalia molokaiensis, Clermontia oblongifolia* ssp. *brevipes, Cyanea mannii, C. procera, C. solanacea, Cyperus faurei, Lysimachia maxima, Melicope mucronulata, Phyllostegia hispida, P. mannii, Platanthera holochila, Santalum haleakalae* var. *lanaiense, Schiedea laui, Stenogyne bifida, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*) are reported from the preserve. Kamakou Preserve falls within four proposed critical habitat units for plants (Molokai—Lowland Mesic—1, Molokai—Montane Wet—1, Molokai—Montane Mesic—1, and Molokai—Wet Cliff—2) and eight proposed units for the akohekohe and kiwikiu (*Palmeria dolei*—Unit 37—Lowland Mesic, *Pseudonestor xanthophrys*—Unit 37—Lowland Mesic, *Palmeria dolei*—Unit 40—Montane Wet, *Pseudonestor xanthophrys*—Unit 40—Montane Wet, *Palmeria dolei*—Unit 42—Montane Mesic, *Pseudonestor xanthophrys*—Unit 42—Montane Mesic, *Palmeria dolei*—Unit 44—Wet Cliff, and *Pseudonestor xanthophrys*—Unit 44—Wet Cliff). These units are occupied by the plants *Adenophorus periens, Alectryon macrococcus, Asplenium dielerectum, Bidens wiebkei, Canavalia molokaiensis, Clermontia oblongifolia* ssp. *brevipes, Ctenitis squamigera, Cyanea dunbariae, C. mannii, C. procera, C. profuga, C. solanacea, Cyperus faurei, Cyrtandra filipes, Festuca molokaiensis, Gouania hillebrandii, Labordia triflora, Lysimachia maxima, Melicope mucronulata, Neraudia sericea, Phyllostegia hispida, P. mannii, Platanthera holochila, Pteris lidgatei, Santalum haleakalae* var. *lanaiense, Schiedea laui, S. lydgatei, S. sarmentosa, Silene alexandri, S. lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense.* This area contains unoccupied habitat that is essential for the conservation of 16 other plant species (*Bonamia menziesii, Brighamia rockii, Cyanea grimesiana* ssp. *grimesiana, C. munroi, Diplazium molokaiense, Eugenia koolauensis, Flueggea neowawraea, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Isodendrion pyrifolium, Kadua laxiflora, Melicope reflexa, Phyllostegia haliakalae, P. pilosa, Plantago princeps,* and *Sesbania tomentosa*), and to the akohekohe and kiwikiu.

Moomomi Preserve encompasses 924 ac (374 ha) along the northwest shore of Molokai that are owned by TNC. This preserve was established in 1988, to protect the most intact coastal ecosystem in Hawaii, with nesting seabirds, nesting green sea turtles, and a variety of native coastal plants (TNCH 2005, pp. 2–3). One plant species included in this rule, *Tetramolopium rockii,* is reported from the Preserve. Moomomi Preserve falls within one proposed critical habitat unit, Molokai—Coastal—2. This unit is occupied by *Marsilea villosa, Schenkia sebaeoides, Sesbania tomentosa,* and *Tetramolopium rockii.* This area contains unoccupied habitat that is essential to the conservation of eight other plant species (*Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Hibiscus arnottianus* ssp. *immaculatus, H. brackenridgei, Ischaemum byrone, Peucedanum sandwicense,* and *Pittosporum halophilum*).

All four preserves were established by grants of perpetual conservation easements from the private landowners to TNC, or are owned by TNC, and are included in the State's Natural Area Partnership (NAP) programs which provides matching funds for the management of private lands that have been permanently dedicated to conservation (TNCH 2005, pp. 2–3; TNCH 2006a, p. 3; TNCH 2006b, p. 2; TNCH 2008, p. 50). These partnerships

with the State began in 1983 (with Haleakala Ranch) for Waikamoi, and were followed in 1992 (with Kaanapali Land Management Corporation) for Kapunakea, in 1995 (with Molokai Ranch) for Kamakou, and in 1995 for Moomomi (TNC-owned). Under the NAP program, the State of Hawaii provides matching funds on a two-for-one basis for management of private lands dedicated to conservation. In order to qualify for this program, the land must be dedicated in perpetuity through transfer of fee title or a conservation easement to the State or a cooperating entity. The land must be managed by the cooperating entity or a qualified landowner according to a detailed management plan approved by the Board of Land and Natural Resources. Once approved, the 6-year partnership agreement between the State and the managing entity is automatically renewed each year so that there are always 6 years remaining in the term, although the management plan is updated and funding amounts are reauthorized by the board at least every 6 years. By April 1 of any year, the managing partner may notify the State that it does not intend to renew the agreement; however, in such case, the partnership agreement remains in effect for the balance of the existing 6-year term, and the conservation easement remains in full effect in perpetuity. The conservation easement may be revoked by the landowner only if State funding is terminated without the concurrence of the landowner and cooperating entity. Prior to terminating funding, the State must conduct one or more public hearings. The NAP program is funded through real estate conveyance taxes placed in a Natural Area Reserve Fund. Participants in the NAP program must provide annual reports to the DLNR and the DLNR makes annual inspections of the work in the reserve areas (see State of Hawaii 1999, H.R.S. 195–D; State of Hawaii 1996, H.A.R. 13–210).

Management programs within the preserves are documented in long-range management plans and yearly operational plans. These plans detail management measures that protect, restore, and enhance rare plants and animals and their habitats within the preserves and in adjacent areas. These management measures address factors then threaten the 135 species in this rule for which critical habitat is proposed, including control of nonnative species of ungulates, rodents, and weeds. In addition, habitat restoration and monitoring are also included in these plans.

The primary management goals for each of the four TNC preserves are to: (1) Prevent degradation of native forest and shrubland by reducing feral ungulate damage; (2) improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of nonnative plants; (3) conduct small mammal control and reduce their negative impacts where possible; (4) monitor and track the biological and physical resources in the preserve and evaluate changes in these resources over time, and encourage biological and environmental research; (5) prevent extinction of rare species in the preserve; (6) build public understanding and support for the preservation of natural areas, and enlist volunteer assistance for preserve management; and (7) protect the resources from fires in and around the preserve (applicable to preserves in high fire-risk areas) (TNCH 2005, 148 pp. + appendices; TNCH 2006a, 23 pp. + appendices; TNCH 2006b, 21 pp. + appendices; TNCH 2008, 30 pp.).

The goal of TNCs ungulate program (see (1), above) is to bring feral ungulate populations to zero within the preserves as rapidly as possible, and to prevent domestic livestock from entering a preserve. Specific management actions to address feral ungulate impacts include the construction of fences, including strategic fences (fences placed in proximity to natural barriers such as cliffs); annual monitoring of ungulate presence in transects; monthly boundary fence inspections; and trained staff and volunteer hunting. As axis deer also pose a threat to the preserves, TNC is a member of the Maui Axis Deer Group (MADG), and TNC meets regularly with MADG to seek management solutions. Ungulate management actions also include working with community hunters in conjunction with watershed partnerships for each island. By monitoring ungulate activity within each of the preserves, the staff is able to assess the success of the hunting program. If increased hunting pressure does not reduce feral ungulate activity in a preserve, preserve staff work with the hunting group to identify and implement alternative methods (TNCH 2005, pp. 7–8; TNCH 2006a, pp. 7–10; TNCH 2006b, pp. 8–9; TNCH 2008, pp. 9–10).

The nonnative plant control program (see (2), above) for each of the four TNC preserves focuses on controlling habitat-modifying nonnative plants (weeds) in intact native communities and preventing the introduction of additional nonnative plants. Based on the degree of threat to native ecosystems, weed priority lists have been compiled for each of the preserves, and control and monitoring of the highest priority species are ongoing. Weeds are controlled manually, chemically, or through a combination of both. Preventive measures (prevention protocol) are required by all who enter each of the preserves. This protocol includes such things as brushing footgear before entering the preserve to remove seeds of nonnative plants. Weeds are monitored along transects annually. Weed priority maps are maintained semi-annually. Staff participate as members of the Melastome Action Committee and the Maui and Molokai Invasive Species committees (MISC and MoMISC), and cooperate with the State Division of Conservation and Resources Enforcement (DOCARE) in marijuana control, as needed (TNCH 2005, pp. 8–9; TNCH 2006a, pp. 11–13; TNCH 2006b, pp. 10–12; TNCH 2008, pp. 11–13).

The Nature Conservancy controls or prevents entry of nonnative mammals such as rats, cats (*Felis catus*), mongoose (*Herpestes auropunctatus*), and dogs (*Canis familiaris*), on their preserves (see (3), above). These mammals have negative impacts on reproduction and persistence of native plants and animals. Independent studies and research regarding the effects of small nonnative mammals on native ecosystems on all four preserves is encouraged by TNC. Small mammal trapping is conducted in Moomomi Preserve to protect ground nesting native seabirds from predation (TNCH 2005, p. 6). While the most effective control methods for rats on TNC preserves are still under investigation, an intensive rat baiting program is in place at Kamakou Preserve to control rats, which prey upon native snails and plants (TNCH 2006a, pp. 2, 6; TNCH 2009b, p. 21). The Nature Conservancy's predator control program is directed by adaptive management (TNCH 2010a, pp. 3–5).

Natural resource monitoring and research address the need to track the biological and physical resources of the preserves and evaluate changes in these resources to guide management programs, and contribute to prevention of extinction of rare species (see (4) and (5), above). Vegetation is monitored throughout each preserve to document long-term ecological changes, and rare plant species are monitored to assess population status. The Nature Conservancy provides logistical and other support to PEPP, including implementing threat abatement measures on their preserves (TNCH 2010a, p. 13). Bird surveys are

conducted every 5 years to document the relative abundance of all bird species in the the preserves (TNCH 2010b, p. 16). Portions of the four preserves are adjacent to other areas managed to protect natural resources. Agreements with those land managers are used to coordinate management efforts, and to share staff, equipment, and expertise to maximize management efficiency. The Nature Conservancy takes an active part in planning and coordinating conservation actions with, and is a member of, the East Maui Watershed Partnership (EMWP), the West Maui Mountains Watershed Partnership (WMMWP), and the East Molokai Watershed Partnership (EMOWP) (TNCH 2006a, p. 3; TNCH 2008, p. 21; TNCH 2010a, p. 2).

The Nature Conservancy's goal to increase conservation and advocacy for native ecosystems in Hawaii is implemented through their public outreach program (see (6), above). The Nature Conservancy provides sites and volunteer work for youth groups such as Ho'ikaika and AmeriCorps, and summer internships for youth and young adults (Alu Like, State Summer Youth Employment Program, Molokai Environmental Preservation Organization, and the Natural Resources Academy), providing students with hands-on experience in natural resource conservation. Other community groups, such as the Molokai Advisory Council, Molokai Hunting Working Group, and Kamalo Conservation Advisors, are encouraged to participate in the decision-making process for TNC's natural resources programs. The Nature Conservancy staff present slide shows and talks as requested by community and school groups, and lead guided hikes in their preserves for public schools and targeted community members. The Nature Conservancy produces a quarterly newsletter distributed on Molokai to inform the local community regarding conservation activities and opportunities (TNCH 2006b, pp. 18–19; TNCH 2008, p. 20).

Fire management is an important goal for two Molokai preserves (Kamakou Preserve on Molokai and Kapunakea Preserve on west Maui (TNCH 2006b, p. 15; TNCH 2008, p. 22) (see (7), above). Wildfire management plans are updated annually. Staff is provided with fire suppression training, roads are maintained for access and as fire breaks, and equipment is supplied as needed to allow immediate response to fire threats (TNCH 2005, p. 13).

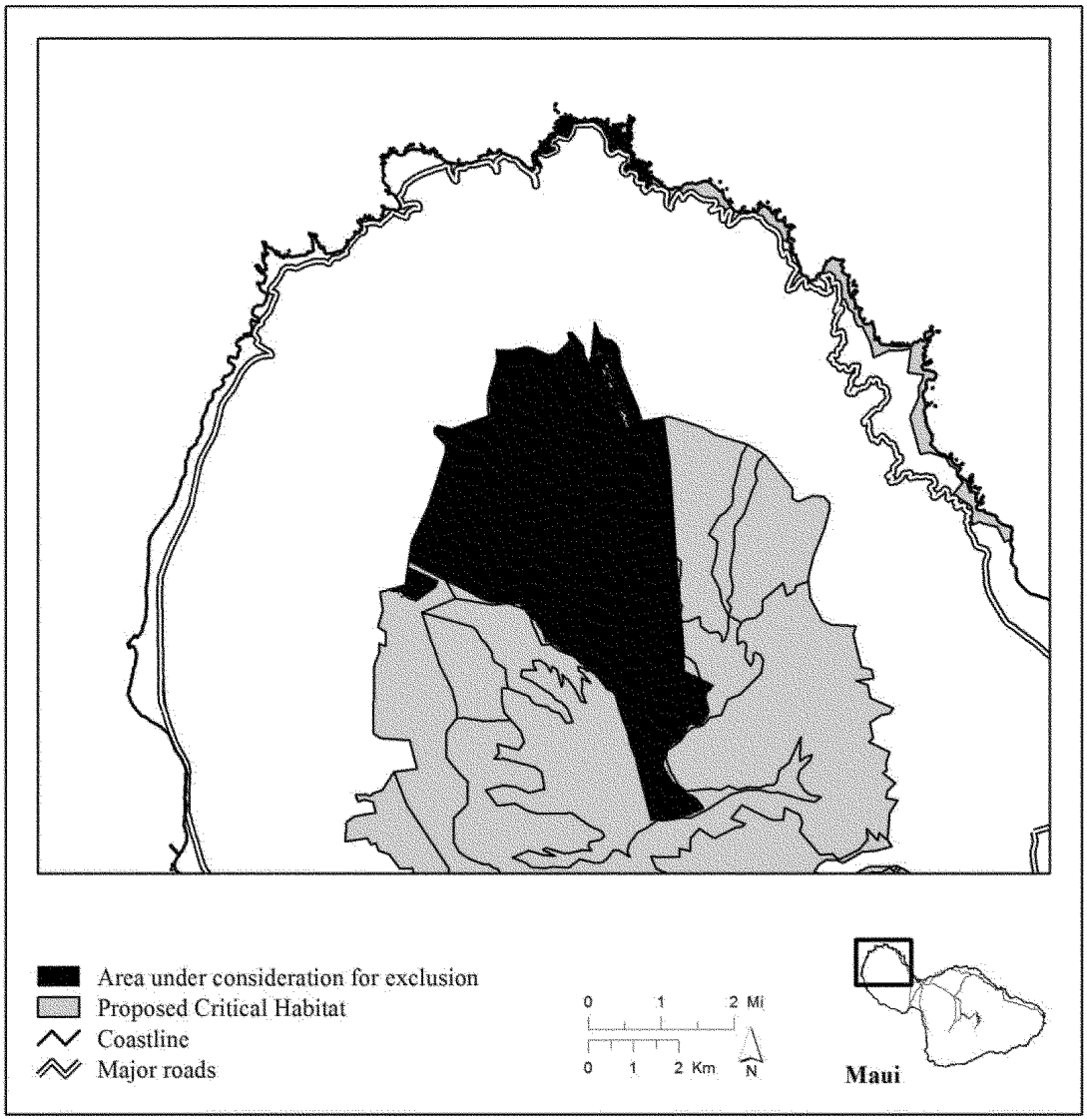
The four TNC preserves, and the continuing protection and management of the native plants, animals, and their habitats provided by TNC and cooperating landowners and partners within the preserves, provide a conservation benefit to the 106 species for which critical habitat is proposed on TNC lands. Designation of critical habitat on these lands could be a disincentive to this land manager, who has demonstrated a willingness to manage these lands in a manner compatible with the conservation of listed and non-listed species; therefore, we are considering excluding these four TNC preserves from the designation of critical habitat. We are requesting comments and information regarding these areas and will determine whether these lands may warrant exclusion from critical habitat for the 106 species for which critical habitat is proposed on TNC lands, in our final rule.

Maui Land and Pineapple Company

The Service is considering excluding 8,931 ac (3,614 ha) of habitat associated with Maui Land and Pineapple Company's (ML & P) lands, including Puu Kukui WP (Figure 4).

Figure 4

Maui Land & Pineapple Company



Fourteen plant species (*Bidens conjuncta, Ctenitis squamigera, Cyanea asplenifolia, C. kunthiana, C. lobata, C. magnicalyx, Cyrtandra filipes, C. munroi, Hesperomania arborescens, H. arbuscula, Myrsine vaccinioides, Sanicula purpurea, Santalum haleakalae* var. *lanaiense,* and *Sesbania tomentosa*) occur in this area. The area under consideration falls within seven proposed critical habitat units for plants (Maui—Coastal—9, Maui—Lowland Mesic—2, Maui—Lowland Wet—2, Maui—Lowland Wet—3, Maui—Montane Wet—6, Maui—Wet Cliff—5, and Maui—Wet Cliff—7), and eight proposed critical habitat units for birds (*Palmeria dolei*—Unit 3—Lowland Wet, *Pseudonestor xanthophrys*—Unit 3—Lowland Wet, *Palmeria dolei*—Unit 4—Lowland Wet, *Pseudonestor xanthophrys*—Unit 4—Lowland Wet, *Palmeria dolei*—Unit 15—Montane Wet, *Pseudonestor xanthophrys*—Unit 15—Montane Wet, *Palmeria dolei*—Unit 34—Wet Cliff, and *Pseudonestor xanthophrys*—Unit 34—Wet Cliff). These units are occupied by the plants *Alectryon macrococcus, Bidens campylotheca* ssp. *pentamera, B. conjuncta, Bonamia menziesii, Calamagrostis hillebrandii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea asplenifolia, C. kunthiana, C. lobata, C. magnicalyx, Cyrtandra filipes, C. munroi, Geranium hillebrandii, Hesperomannia arborescens, Myrsine vaccinioides, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Santalum haleakalae* var. *lanaiense, Sesbania tomentosa, Schenkia sebaeoides,* and *Zanthoxylum hawaiiense.* This area contains habitat that is unoccupied but essential to the conservation of 20 other plant species (*Acaena exigua, Asplenium dielerectum, Brighamia rockii, Bidens micrantha* ssp. *kalealaha, Clermontia oblongifolia* ssp. *mauiensis, Cyanea glabra, Cyrtandra oxybapha, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Gouania vitifolia, Hesperomannia arbuscula, Huperzia mannii, Isodendrion*

pyrifolium, Kadua laxiflora, Lysimachia lydgatei, Peucedanum sandwicense, Phyllostegia bracteata, Plantago princeps, Tetramolopium capillare, and *Wikstroemia villosa*), and to the akohekohe and kiwikiu.

We are proposing critical habitat in a portion of Puu Kukui WP (599 ac (242 ha)) where the remaining nine wild individuals of the tree snail *Newcombia cumingi* occur (*Newcombia cumingi*—Unit 1—Lowland Wet). While this area overlaps proposed critical habitat plant unit Maui—Lowland Wet—2 that is being considered for exclusion from critical habitat for plant species, we are not considering excluding these 599 ac (242 ha) from critical habitat for *N. cumingi* because there is no beneficial management in place or implemented for the conservation of these snails. However, we encourage the private landowner to work collaboratively with the Service to develop appropriate management plans, actions, or protections for this species. We are available and prepared to work with the private landowner for the protection and conservation of *N. cumingi* on Puu Kukui WP, and will consider all management or protective measures for this species in our final critical habitat rule, provided these measures are in place within a timreframe consistent with the rulemaking schedule for this regulatory action.

Puu Kukui WP is the largest privately owned watershed preserve in the State. The ML & P Company has proactively managed the preserve since 1988, and joined the State of Hawaii's NAP program in July 1992. The NAP program contract has been continually renewed since that time, and the contract for fiscal years 2012–2018 is scheduled to be renewed in 2011 (ML & P 2010, p. 5; Yuen 2011, in litt.). The primary management goals as outlined in the current Puu Kukui WP management plan for the NAP program, fiscal years 2012–2018 are to: (1) Eliminate ungulate activity in all Puu Kukui WP management units; (2) reduce the range of habitat-modifying weeds and prevent introduction of nonnative plants; (3) track biological and physical resources in the watershed and evaluate changes in these resources over time, including the identification of new threats to the watershed, and provide logistical support to approved research projects that will improve management understanding of the watershed's resources; (4) prevent the extinction of rare species in the watershed; (5) expose the community to projects focusing on preserving and enhancing native plant and animal communities; (6) assist the long-term management of the native ecosystems of west Maui by the WMMWP; and (7) provide adequate manpower and equipment to meet the goals and objectives of the plan. Over 20 years of feral ungulate management has shown that the use of snares and fences has been an effective means of ungulate control, with 60 percent of the preserve not seeing pig activity for 5 or more years. Accessible fences and those with direct ungulate pressure are maintained quarterly. The nonnative plant control program focuses on areas with rare native species, and the maintenance of the most pristine areas, keeping them as weed-free as possible with manual and mechanical control. ML & P Company also supports rare plant monitoring and propagule collection by the PEPP. Natural resource monitoring and research address the need to track biological and physical resources in order to guide management programs. Vegetation is monitored through permanent photo points; nonnative species are monitored along permanent transects; and rare, endemic, and indigenous species are also monitored. The ML & P Company has received funding in eight separate agreements (over $400,000) with the Service to survey for rare plants on their lands and to build feral ungulate control fences for the protection of listed plants. Additionally, logistical and other support for native bird and invertebrate studies by independent researchers and interagency cooperative agreements is provided. However, one area of concern is the lack of management efforts for the proposed endangered *N. cumingi* (ML & P 2009, p. 7). Currently, there is no ongoing predator control in the area where the snail is found.

The ML & P Company is a member of the WMMWP, established in 1998. Management priorities for the partnership include feral animal control, weed control, human activities management, public education and awareness, water and watershed monitoring, and management coordination improvements. The partnership benefits forest conservation by: (1) Enabling land managers to construct fences and remove feral ungulates across land ownership boundaries; (2) allowing for more comprehensive conservation planning; (3) expanding the partners' ability to protect forest lands quickly and efficiently; (4) making more efficient use of resources and staff; (5) allowing for greater unity in attaining public funding; and (6) providing greater access to other funding opportunities. The WMMWP provides annual progress reports regarding the success of management actions and benefits provided to species and watershed habitat.

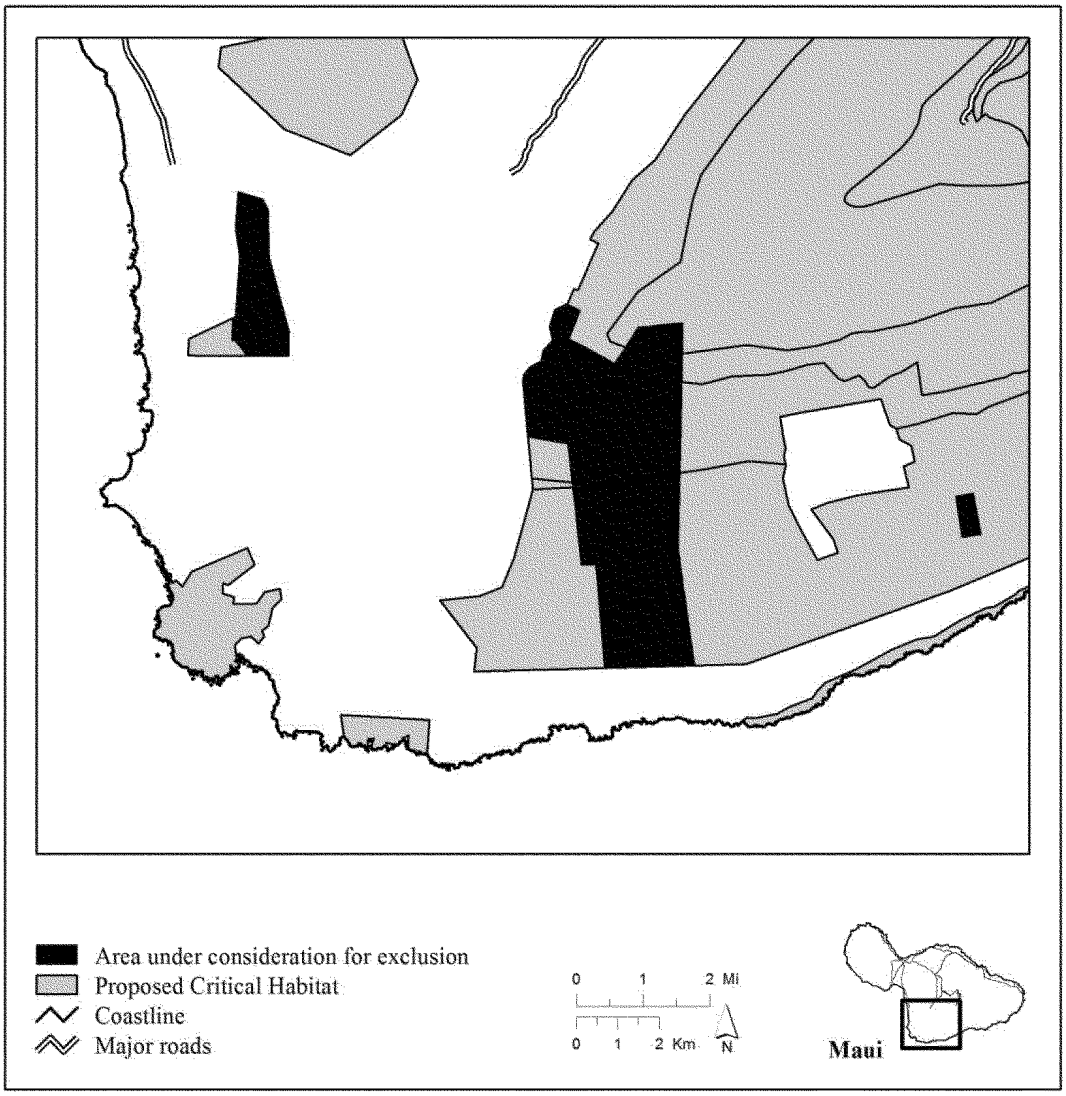
The protection and management of the native plants and their habitats in the Puu Kukui WP that is provided by ML & P Company, the WMMWP, and cooperating landowners and partners providea conservation benefit for 44 endangered and proposed endangered plant species and the endangered akohekohe and kiwikiu, and their associated ecosystems. Designation of critical habitat on these managed lands could be a disincentive to the landowner who has demonstrated a willingness to manage these lands in a manner compatible with the conservation of listed and non-listed species; therefore, we are considering excluding 8,931 ac (3,614 ha) of land owned and managed by ML & P Company from the designation of critical habitat. We are requesting comments and information regarding these areas and will determine whether these lands may warrant exclusion from critical habitat for the 44 plants and 2 animal species (akohekohe and kiwikiu) for which critical habitat is proposed on ML & P Company lands, in our final rule.

Ulupalakua Ranch

The Service is considering excluding 6,537 ac (2,645 ha) of habitat associated with Ulupalakua Ranch lands, on the southwest slope of east Maui (Figure 5).

Figure 5

Ulupalakua Ranch



Eight plant species included in this rule (*Alectryon macrococcus, Cenchrus agrimonioides, Flueggea neowawraea, Hibiscus brackenridgei, Melicope adscendens, M. knudsenii, Santalum haleakalae* var. *lanaiensis,* and *Zanthoxylum hawaiiense*) are reported from this area. The area under consideration falls within six proposed critical habitat units for plants (Maui—Coastal—6, Maui—Lowland Dry—1, Maui—Lowland Dry—3, Maui—Montane Mesic—1, Maui—Montane Dry—1, and Maui—Subalpine—1), and four proposed units for the akohekohe and kiwikiu (*Palmeria dolei*—Unit 18—Montane Mesic, *Pseudonestor xanthophrys*—Unit 18—Montane Mesic, *Palmeria dolei*—Unit 24—Subalpine, and *Pseudonestor xanthophrys*—Unit 24—Subalpine). These units are occupied by the plants *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium dielerectum, A. peruvianum* var. *insulare, Bidens campylotheca* ssp. *pentamera, B. micrantha* ssp. *kalealaha, Bonamia menziesii, Canavalia pubescens, Cenchrus agrimonioides, Clermontia lindseyana, Cyanea horrida, C. mceldowneyi, C. obtusa, Cyrtandra ferripilosa, C. oxybapha, Diplazium molokaiense, Flueggea neowawraea, Geranium arboreum, G. multiflorum, Hibiscus brackenridgei, Huperzia mannii, Melanthera kamolensis, Melicope adscendens, M. knudsenii, Neraudia sericea, Santalum haleakalae* var. *lanaiense, Sesbania tomentosa, Spermolepis hawaiiensis,* and *Zanthoxylum hawaiiense.* This area contains unoccupied habitat that is essential to the conservation of 17 other endangered or proposed endangered plant species (*Brighamia rockii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea glabra, C. hamatiflora* ssp. *hamatiflora, C. kunthiana, Cyperus pennatiformis, Ischaemum byrone, Melicope mucronulata, Nototrichium humile, Peucedanum sandwicense, Phyllostegia bracteata, P. mannii, Schiedea haleakalensis, Solanum incompletum, Vigna o-wahuensis,* and *Wikstroemia villosa*), and to the akohekohe and kiwikiu.

Ulupalakua Ranch is involved in several important voluntary conservation agreements with the

Service and is currently carrying out activities on their lands for the conservation of rare and endangered species and their habitats. In 1997 and 1998, respectively, Ulupalakua Ranch entered into the Partners for Fish and Wildlife Auwahi and Puu Makua agreements to protect and restore dryland forest, including construction of ungulate exclosure fences, a greenhouse to propagate rare plants for outplanting, an access road, and propagation and outplanting of native plants. Preservation of habitat in Auwahi and Puu Makua benefits the 48 listed and proposed plant and animal species discussed above. Over the last 14 years, the Service has provided funding for 3 projects in the Auwahi area (Auwahi I, II, and III). Labor, material, and technical assistance is provided by Ulupalakua Ranch, U.S. Geological Survery-Biological Resources Discipline (USGS–BRD), and volunteers. The Auwahi I project area encompasses 10 ac (4 ha) on the southwest slope of Haleakala. Ulupalakua Ranch and its partners built an ungulate exclosure fence; outplanted native plants, including the listed endangered plants *Alectryon macrococcus* var. *auwahiensis* and *Zanthoxylum hawaiiense;* and removed all nonnative plants and feral ungulates within the fenced exclosure. The Auwahi II project area encompasses 23 ac (9 ha) adjacent to Auwahi I, and the Auwahi III project area encompasses an additional 181 ac (73 ha) (USFWS 2009, in litt.). Ulupalakua Ranch and its partners built additional ungulate exclosure fences, propagated and outplanted native plants, and removed nonnative plants and feral ungulates within the fenced exclosures (USFWS 2009, in litt.). Within 5 years of fence construction and nonnative species management activities, these three areas have been transformed from nonnative grasslands to a native species-dominated, self-sustaining, dryland forest.

Community volunteer participation is a key element to the success of these projects, and monthly volunteer trips often exceed 50 participants from a pool of 700 interested Maui residents, including school groups, Hawaiian native dance groups, canoe clubs, and other special interest groups.

In 1998, Ulupalakua Ranch entered a 10-year partnership with Ducks Unlimited (a private conservation organization) and the Natural Resources Conservation Service's (NRCS) Wetland Reserve Program (WRP) to create four wetland complexes (completed in 2001) suitable for two endangered birds, the Hawaiian goose or nene (*Branta sandvicensis*) and Hawaiian duck or koloa (*Anas wyvilliana*) (NRCS 2001, pp. 1–2). While the endangered nene and koloa are not addressed in this proposed rule, the establishment of wetland complexes for these endangered birds demonstrates the willingness of Ulupalakua Ranch to protect and conserve native plants and animals on their lands.

Between 1999 and 2007, the Service and the DOFAW NARs Fund provided funding for habitat restoration at Puu Makua. Ulupalakua Ranch and its partners, which include USGS–BRD, the Leeward Haleakala Watershed Restoration Partnership, and volunteers, built a 100-ac (40-ha) ungulate exclosure, removed feral ungulates and controlled nonnative plants within the fenced exclosure, and outplanted native plants. This project provides public outreach through on going volunteer participation to control nonnative plants and outplant native plants.

Impacts to habitat resulting from the installation and operation of eight wind turbines by Auwahi Wind at Ulupalakua Ranch (within an area considered as part of proposed Maui—Lowland Dry—Unit 1) were addressed in a Habitat Conservation Plan. Auwahi Wind will offset the development of 0.3 ac (0.1 ha) of native habitat and 28 ac (11 ha) of degraded habitat with 6 ac (2.4 ha) of habitat restoration at Ulupalakua Ranch's Auwahi project area. The Service issued a section 10 permit for the Auwahi Wind project in January, 2012.

The Honuaula Partners with Ulupalakua Ranch, are offsetting impacts to species from development of an area that is part of proposed Maui—Lowland Dry—Unit 3 in a 400 ac (162 ha) area of Ulupalakua Ranch land above Kanaio NAR.

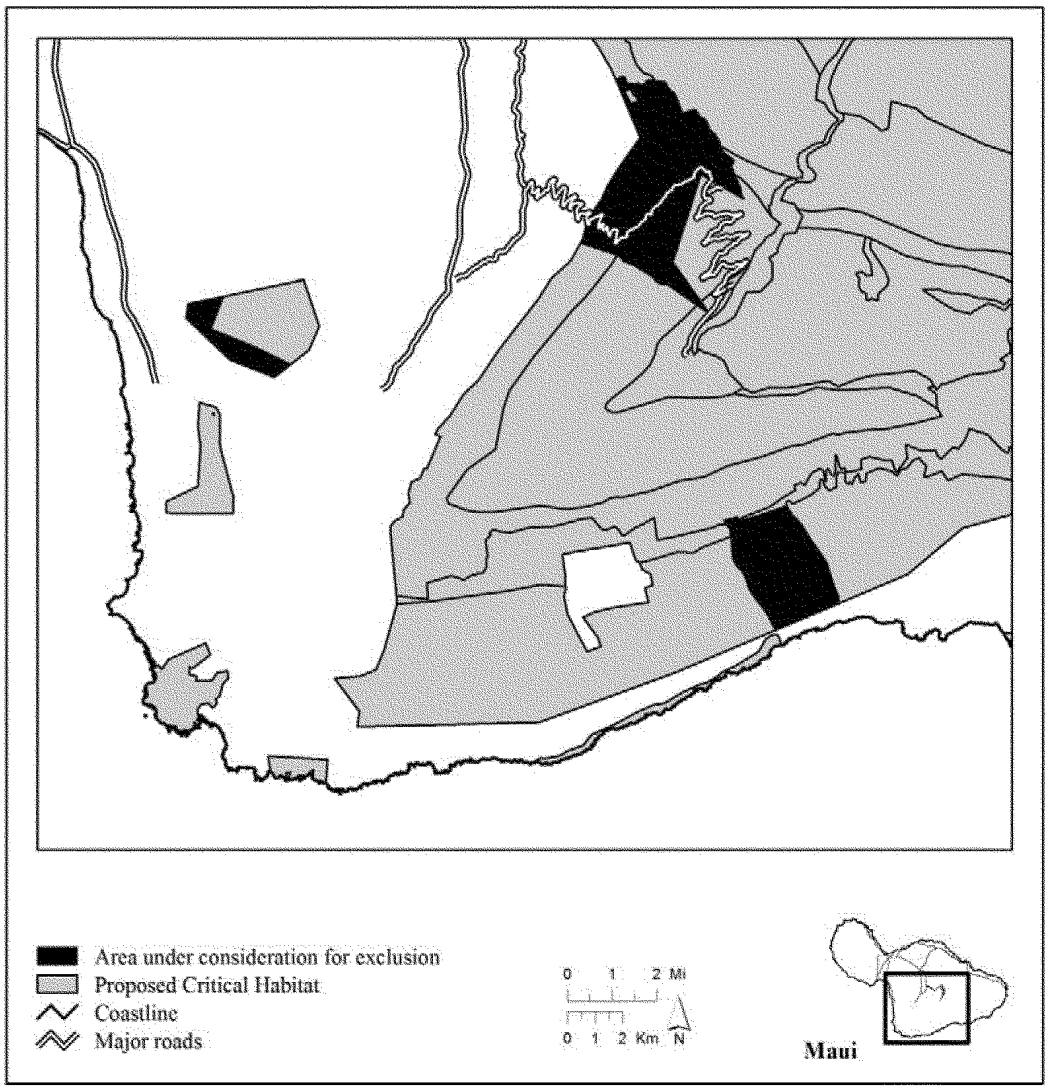
The ongoing management strategies at Auwahi and Puu Makua are consistent with recovery objectives outlined in the recovery plans for the 46 plant species and the akohekohe and kiwikiu (USFWS 1995a; USFWS 1995b; USFWS 1996a; USFWS 1996b; USFWS 1997; USFWS 1998a; USFWS 1998b; USFWS 1998c; USFWS 1999; USFWS 2002; USFWS 2006; 61 FR 53130). Designation of critical habitat on the 6,538 ac (2,644 ha) of Ulupalakua Ranch lands could be a disincentive to the landowner, who has demonstrated a willingness to manage these lands in a manner compatible with the conservation of listed and non-listed species; therefore, we are considering excluding 6,538 ac (2,644 ha) of land owned and managed by Ulupalakua Ranch from the designation of critical habitat. We are requesting comments and information regarding these areas and will determine whether these lands may warrant exclusion from critical habitat for the 48 plants and animals for which critical habitat is proposed on Ulupalakua Ranch lands, in our final rule.

Haleakala Ranch Company

In addition to the Haleakala Ranch Company lands managed by TNC as Waikamoi Preserve under a perpetual conservation easement (see discussion above), the Service is considering excluding 8,746 ac (3,539 ha) of habitat associated with Haleakala Ranch Company lands on east Maui (Figure 6).

Figure 6

Haleakala Ranch



Four plant species included in this rule (*Argyroxiphium sandwicense* ssp. *macrocephalum, Canavalia pubescens, Geranium arboreum,* and *Hibiscus brackenridgei*) and the akohekohe and kiwikiu are reported from this area. The area under consideration falls within seven proposed critical habitat units for plants (Maui—Lowland Dry—1, Maui—Lowland Dry—2, Maui—Montane Wet—1, Maui—Montane Mesic—1, Maui—Montane Dry—1, Maui—Subalpine—1, and Maui—Alpine—1), and six proposed units for the akohekohe and kiwikiu (*Palmeria dolei*—Unit 10—Montane Wet, *Pseudonestor xanthophrys*—Unit 10—Montane Wet, *Palmeria dolei*—Unit 18—Montane Mesic, *Pseudonestor xanthophrys*—Unit 18—Montane Mesic, *Palmeria dolei*—Unit 24—Subalpine, and *Pseudonestor xanthophrys*—Unit 24—Subalpine). These units are occupied by the plants *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium dielerectum, A. peruvianum* var. *insulare, Bidens campylotheca* ssp. *pentamera, B. micrantha* ssp. *kalealaha, Bonamia menziesii, Canavalia pubescens, Cenchrus agrimonioides, Clermontia lindseyana, C. oblongifolia* ssp. *mauiensis, Cyanea copelandii* ssp. *haleakalensis, C. duvalliorum, C. horrida, C. kunthiana, C. maritae, C. mceldowneyi, C. obtusa, Cyrtandra ferripilosa, C. oxybapha, Diplazium molokaiense, Flueggea neowawraea, Geranium arboreum, G. multiflorum, Hibiscus brackenridgei, Huperzia mannii, Melanthera kamolensis, Melicope adscendens, M. balloui, M. knudsenii, Neraudia sericea, Phyllostegia pilosa, Santalum haleakalae* var. *lanaiense, Sesbania tomentosa, Spermolepis hawaiiensis,* and *Zanthoxylum hawaiiense,* and by the akohekohe and kiwikiu. This area contains unoccupied habitat that is essential to *Adenophorus periens, Bidens campylotheca* ssp. *waihoiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea glabra, C. hamatiflora* ssp. *hamatiflora, Geranium hanaense, Melicope mucronulata, M. ovalis, Nototrichium humile, Peperomia subpetiolata, Phyllostegia bracteata, P. mannii, Platanthera holochila, Schiedea haleakalensis, S. jacobii, Solanum incompletum,* and *Wikstroemia villosa.*

Haleakala Ranch Company is involved in several important voluntary conservation agreements with the Service and is currently carrying out activities on their lands for the conservation of rare and endangered species and their habitats. Haleakala Ranch Company is a member of the EMWP, which was formed in 1991, as a model for large-scale forest protection in Hawaii. The members agree to pool resources and implement a watershed management program to protect 100,000 ac (40,469 ha) of forest across east Maui (EMWP 2009). The management program includes: (1) Control of feral pigs by public hunting in the privately owned lower watershed areas; (2) control of the invasive plant miconia; and (3) construction of ungulate exclosure fences to protect 12,000 ac (4,856 ha) of lowland and montane wet forest (Tri-Isle Resource Conservation and Development Council, Inc. 2011). In partnership with DOFAW, Haleakala Ranch controls feral ungulates (e.g., axis deer and goats) on their lands in lowland dry habitat at Waiopae, on the south coast of east Maui. In addition to feral ungulate control, Haleakala Ranch and DOFAW control invasive plants that threaten wild populations of two endangered plants, *Alectryon macrococcus* and *Melanthera kamolensis*.

In 1999, Haleakala Ranch entered into an agreement with the Partners for Fish and Wildlife, USGS–BRD, and DHHL, for habitat protection at Puu o Kali, on the west slope of Haleakala. This agreement funded management actions to conserve and protect native dryland forest, including construction of a fence to exclude nonnative axis deer and feral goats, nonnative plant control, and propagation and outplanting of native plants. The project area was accessed through cooperation of the landowner, Haleakala Ranch. Currently, 236 ac (96 ha) are protected within the fenced area, and all axis deer and goats were removed from the fenced area.

In 2001, the Service and NRCS provided funding for management actions to conserve and protect the endangered plant *Geranium arboreum* and subalpine habitat on Puu Pahu on the northwestern slopes of Haleakala (USFWS 2007b). These management actions include construction of ungulate exclosure fences and removel of ungulates within the fenced area. The first increment of the fence is completed and encloses approximately 670 ac (271 ha) (Higashino 2011, in litt.). Upon project completion, the fenced area will adjoin the fenced area of Haleakala National Park at 7,500 ft (2,290 m), and will exclude ungulates and allow for their removal from an area larger than 670 ac (271 ha) (USFWS 2007b).

In 2009, Haleakala Ranch entered into a safe harbor agreement (SHA) with the Hawaii DLNR and the Service, to establish a population of the endangered nene on their lands at Waiopae. While the endangered nene is not a species addressed in this proposed rule, the establishment of a SHA for this endangered bird demonstrates the willingness of Haleakala Ranch to protect and conserve native plants and animals on their lands.

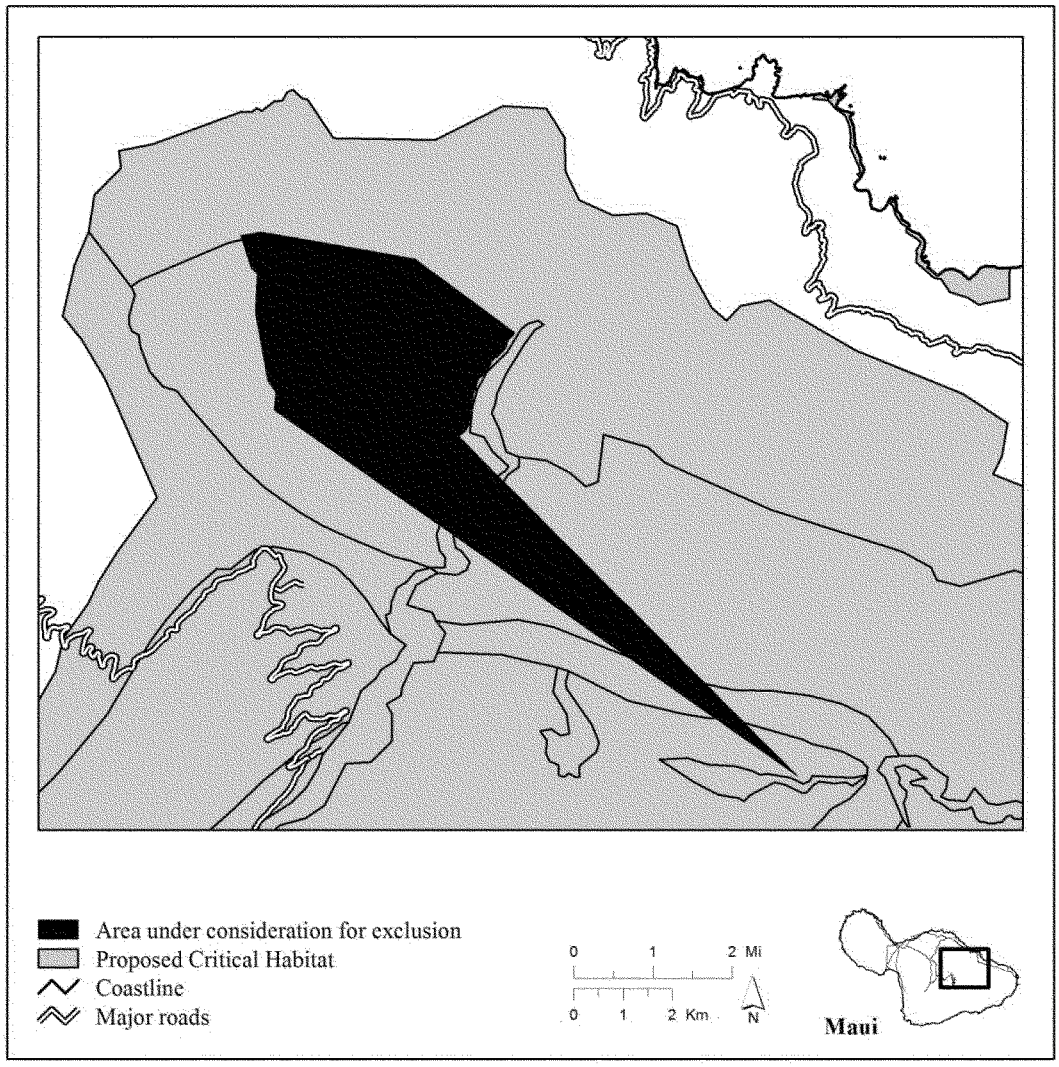
The protection and management of habitat at Puu o Kali, Puu Pahu, and Waiopae are consistent with the recovery objectives outline in the recovery plans for the 55 plant species and the akohekohe and kiwikiu (USFWS 1995a; USFWS 1995b; USFWS 1996a; USFWS 1996b; USFWS 1997; USFWS 1998a; USFWS 1998b; USFWS 1999; USFWS 2002; USFWS 2006; 61 FR 53130). Designation of critical habitat on the 9,796 ac (4,072 ha) of Haleakala Ranch Company lands could be a disincentive to the landowner, who has demonstrated a willingness to manage these lands in a manner compatible with the conservation of listed and non-listed species; therefore, we are considering excluding 8,746 ac (3,539 ha) of land owned and managed by Haleakala Ranch Company from the designation of critical habitat. We are requesting comments and information regarding these areas and will determine whether these lands may warrant exclusion from critical habitat for the 57 plant and animal species for which critical habitat is propose on Haleakala Ranch Company lands, in our final rule.

East Maui Irrigation Company, Ltd.

The Service is considering excluding 6,721 ac (2,720 ha) of habitat associated with East Maui Irrigation Company's (EMI) lands in Haiku Uka (below Waikamoi Preserve, from Opana Gulch to Pohakupalaha) on east Maui (Figure 7).

Figure 7

East Maui Irrigation Company, Ltd.



Ten plant species included in this rule (*Asplenium peruvianum* var. *insulare, Cyanea copelandii* ssp. *haleakalensis, C. gibsonii, C. hamatiflora* ssp. *hamatiflora, C. horrida, C. kunthiana, C. mceldowneyi, Diplazium molokaiense, Geranium multiflorum,* and *Santalum haleakalae* var. *lanaiense*), and the akohekohe and kiwikiu are reported from this area.

The area under consideration falls within 6 proposed critical habitat units for plants (Maui—Lowland Wet—1, Maui—Montane Wet—1, Maui—Montane Wet—2, Maui—Montane Mesic—1, Maui—Subalpine—2, and Maui—Wet Cliff—1), and 12 proposed critical habitat units for the akohekohe and kiwikiu (*Palmeria dolei*—Unit 2—Lowland Wet, *Pseudonestor xanthophrys*—Unit 2–Lowland Wet, *Palmeria dolei*—Unit 10—Montane Wet, *Pseudonestor xanthophrys*—Unit 10—Montane Wet, *Palmeria dolei*—Unit 11—Montane Wet, *Pseudonestor xanthophrys*—Unit 11—Montane Wet, *Palmeria dolei*—Unit 18—Montane Mesic, *Pseudonestor xanthophrys*—Unit 18—Montane Mesic, *Palmeria dolei*—Unit 25—Subalpine, *Pseudonestor xanthophrys*—Unit 25—Subalpine, *Palmeria dolei*—Unit 30—Wet Cliff, and *Pseudonestor xanthophrys*—Unit 30—Wet Cliff). These units are occupied by the plants *Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium dielerectum, A. peruvianum* var. *insulare, Bidens campylotheca* ssp. *pentamera, B. campylotheca* ssp. *waihoiensis, Clermontia lindseyana, C. oblongifolia* ssp. *mauiensis, C. samuelii, Cyanea asplenifolia, C. copelandii* ssp. *haleakalensis, C. duvalliorum, C. hamatiflora* ssp. *hamatiflora, C. horrida, C. kunthiana, C. maritae, C. mceldowneyi, C. obtusa, Cyrtandra ferripilosa, C. oxybapha, Diplazium molokaiense, Geranium arboreum, G. hanaense, G. multiflorum, Huperzia mannii, Melicope adscendens, M. balloui, M. ovalis, Neraudia sericea, Phyllostegia pilosa, Schiedea haleakalensis,* and *Wikstroemia villosa.* This area contains unoccupied habitat that is essential to the conservation of 15 other plant species (*Adenophorus periens, Alectryon macrococcus, Bidens*

micrantha ssp. *kalealaha, Clermontia peleana, Cyanea glabra, Mucuna sloanei* var. *persericea, Peperomia subpetiolata, Phyllostegia bracteata, P. haliakalae, P. mannii, Plantago princeps, Platanthera holochila, Schiedea jacobii, Solanum incompletum,* and *Zanthoxylum hawaiiense*).

East Maui Irrigation Company, Ltd., a subsidiary of Alexander and Baldwin, owns and operates a ditch system that diverts more than 60 billion gallons per year of surface water from east Maui to central Maui for agricultural, domestic, and other uses. In 1991, EMI, along with the major landowners and land managers (TNC, Maui County, DLNR, and private ranches) of the windward slope of east Maui (encompassing approximately 100,000 ac (40,500 ha)), formed the East Maui Watershed Partnership (EMWP). The EMWP prepared a management plan in 1993, to protect the biological and water resources within the partnership lands (EMWP 2009, App. B). The plan identified five priority management activities: (1) Watershed resource monitoring, (2) feral animal control, (3) invasive weed control, (4) management infrastructure, and (5) public education and awareness programs.

In 1993, EMI and DLNR entered into a right-of-entry agreement to permit the use of EMI roads by public hunters in the area of Haiku Uka, with the intention of increasing hunting activities to control feral pigs, goats, and axis deer in the Koolau FR. In 1996, constituents of the EMWP prepared an ungulate exclusion fencing strategy to preserve and protect 12,000 ac (4,856 ha) of land (called the core area) on the east Maui slope between Hanawi Natural Area Reserve and Koolau Gap, including the Haiku Uka area, and TNC's Waikamoi Preserve (EMWP 2009, p. 3). Approximately 7,000 ac (2,833 ha) of the core area consists of State forest reserve and EMI lands, and approximately 5,000 ac (2,024 ha) are within TNC's Waikamoi Preserve. In 2005 and 2006, the Service and others provided funding for the construction of an ungulate exclusion fence at 3,600 ft (1,100 m) elevation and for improving hunter access to EMWP lands. The fence extends from Hanawi Natural Area Reserve west to Kaupo Gap, and protects approximately 7,000 ac (2,833 ha) of native forest, including forest in Haiku Uka. The Waikamoi Preserve and Haleakala National Park fences provide the upper boundary of the fenced area (TNC 2006l). The fence was completed in 2006, and the enclosed area of 7,000 ac (2,833 ha) is divided into five units (Honomanu, Koolau Gap, Waluanui, Wailuaiki, and Kopiliua), which are managed through the cooperation of landowners, including EMI, and other partners (EMWP 2009, pp. 3–17).

The 1993 EMWP management plan was revised in 2006 and included recommendations for improving threat assessment and feral pig control, and developing more cost-effective methods for natural resource assessments. In 2008 and 2009, the Service provided funding for feral pig reduction and fence monitoring on EMI lands in Haiku Uka (USFWS 2008; USFWS 2009, in litt.).

The 2006 EMWP management plan was revised in 2009, to provide long-term protection of the east Maui watershed resources such as ground and surface water, native plants and animals and their habitat, hunting opportunities, commercial harvests, cultural resources, and ecotourism. The 2009 EMWP management plan provides detailed management objectives for protection of the east Maui watershed resources, and recommends that the effectiveness of ongoing management actions be evaluated and modified, as needed, after 5 years (EMWP 2009, pp. 3–17, + appendices). The 2009 EMWP management plan describes specific management actions for the protection of the EMWP lands, including Haiku Uka. These management actions include ungulate (i.e., feral pigs) control through hunting, fencing, fence maintenance, and research on effective feral animal control actions; weed control by controlling existing weeds, preventing the introduction of new weeds, and supporting research on weed control; development of a management program for rare and endangered species that includes surveys, species monitoring, propagation and outplanting of rare plants and release of rare birds, as well as implementing threat abatement actions; monitoring changes in vegetation (both native and nonnative), native forest birds, stream animals, stream flow, and rainfall; monitoring changes in cultural resources and maintaining and expanding public support for the east Maui watershed; and maintaining existing and developing new funding sources (EMWP 2009, pp. 13–17).

As of 2009, the majority of feral ungulates (i.e., feral pigs) were removed from the five management units (described above). In addition, there are few to no feral pigs in Haiku Uka due to their control by hunting and the construction of exclusion fences (Jokiel 2009, pers. comm.). While native forest dominates Haiku Uka, weed control is ongoing, particularly within disturbance corridors where new weed species are likely to be introduced (e.g., camps, trails, and helicopter landing zones).

The protection and management of the native plants and their habitats in Haiku Uka that is provided by EMI and the EMWP and cooperating landowners and partners provides a conservation benefit for 46 endangered and proposed endangered plant species and the endangered akohekohe and kiwikiu, and their associated ecosystems. Designation of critical habitat on these managed lands could be a disincentive to the landowner, who has demonstrated a willingness to manage these lands in a manner compatible with the conservation of listed and non-listed species; therefore, we are considering excluding 6,721 ac (2,720 ha) of land owned and managed by EMI from the designation of critical habitat. We are requesting comments and information regarding these areas and will determine whether these lands may warrant exclusion from critical habitat for the 46 plant and 2 animal species (akohekohe and kiwikiu) for which critical habitat is proposed on EMI lands, in our final rule.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our proposed listings and critical habitat designations are based on scientifically sound data, assumptions, and analyses. We have posted our proposed peer review plan on our Web site at *http://www.fws/pacific/informationquality*. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed listings and designation of critical habitat.

We will consider all comments and information we receive during the comment period on this proposed rule during our preparation of a final determination. Accordingly, our final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made within 45 days of the publication of this proposal (see **DATES**). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and place of those hearings, in the **Federal Register** and local newspapers at least 15 days before the first hearing.

Persons needing reasonable accommodations to attend and

participate in a public hearing should contact the Pacific Islands Fish and Wildlife Office at 808–792–9400 as soon as possible. To allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding this proposal is available in alternative formats upon request.

Required Determinations

Regulatory Planning and Review—Executive Order 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if a designation of critical habitat could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Under the Act, designation of critical habitat only affects activities carried out, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. However, in some States, there are State laws that limit activities in designated critical habitat even where there is no Federal nexus. If there is a Federal nexus, Federal agencies will be required to consult with us under section 7 of the Act on activities they fund, permit, or carry out that may affect critical habitat. If we conclude, in a biological opinion, that a proposed action is likely to destroy or adversely modify critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid destroying or adversely modifying critical habitat.

A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Within the proposed critical habitat designation, the types of actions or authorized activities that we have identified as potential concerns and that may be subject to consultation under section 7 if there is a Federal nexus are: (1) Activities that might degrade or destroy the primary constituent elements for the species, including, but not limited to (a) grazing, (b) maintaining or increasing feral ungulate levels, (c) clearing or cutting native live trees and shrubs, (d) bulldozing, (e) construction, (f) road building, (g) mining, (h) herbicide application, (i) taking actions that pose a risk of fire; (2) activities that may alter watershed characteristics in ways that would reduce groundwater recharge or alter natural, wetland, aquatic, or vegetative communities (e.g., new water diversion or impoundment activities, groundwater pumping, and manipulation of vegetation through activities such as the ones mentioned above); (3) recreational activities that may degrade vegetation; (4) mining sand or other minerals; (5) introducing or encouraging the spread

of nonnative plant species; (6) importing nonnative species for research, agriculture, and aquaculture; and (7) releasing biological control agents.

Three of the proposed critical habitat units (Maui—Lowland Dry—Unit 3, Maui—Lowland Dry—Unit 5, and Maui—Montane Mesic—Unit 5 (which is also *Palmeria dolei*—Unit 22—Montane Mesic and *Pseudonestor xanthophrys*—Unit 22—Montane Mesic) contain commercial operations or proposed commercial operations. Maui—Lowland Dry—Unit 3 totals approximately 1,089 ac (441 ha) and is located at Paeahu-Palauea on the southern slope of Haleakala on east Maui. Less than 1 ac (0.4 ha) of this unit is owned by Maui County, and 1,089 ac (445 ha) are privately owned. One of the private landowners (Honuaula Partners LLC) plans to develop approximately 130 ac (53 ha) of this unit for a resort and golf-course over a 13-year build-out period and expects to begin within the next few years (PBR Hawaii 2010, pp. 5–6). Honuaula Partners LLC is working with the State's DOFAW and the Service to develop a multi-species habitat conservation plan (HCP), primarily to minimize and mitigate the effects of incidental take of the endangered Blackburn's sphinx moth (*Manduca blackburni*) and Hawaiian hoary bat or ope ape a (*Lasiurus cinereus semotus*), two species that are not addressed in this proposed rule, and to address impacts to the plant *Canavalia pubescens,* which is proposed for listing as endangered in this document. The Service will conduct an internal consultation under section 7 of the Act when considering Honuaula Partners LLC's HCP and application for an incidental take permit for the Blackburn's sphinx moth and ope ape a. In the consultation, the Service considers potential impacts to listed and proposed species, as well as potential impacts to designated and proposed critical habitat. At this time, we are unaware of any other ongoing or proposed project with a Federal nexus (e.g., Federal funds or Federal permits) in this proposed unit.

Maui—Lowland Dry—Unit 5 totals 5,448 ac (2,205 ha) and extends from Panaewa to Waikapu Valley on the western and southern slopes of west Maui. There are 3,685 ac (1,491 ha) of State land and 1,763 ac (713 ha) of private land in this proposed unit. Maui—Montane Mesic—Unit 5 totals 304 ac (123 ha) and is located in the upper reaches of Papalaua and Pohakea gulches on the southeastern slopes of west Maui. Maui—Montane Mesic—Unit 5 is adjacent to and above (to the north of) Maui—Lowland Dry—Unit 5, and consists of 170 ac (69 ha) of State and 134 ac (54 ha) of privately owned lands. Kaheawa Wind Power LLC constructed 20 General Electric 1.5 megawatt wind turbine generators (WTGs) and associated structures, and realigned the existing four-wheel drive road on approximately 200 ac (81 ha) of State-leased land at Kaheawa Pastures, Ukumehame, Maui (called Kaheawa Project I). These WTGs are located in a single articulated row at an elevation extending from 2,000 to 3,000 ft (610 to 915 m) across proposed Maui—Lowland Dry—Unit 5 and Maui—Montane Mesic—Unit 5 (which is also *Palmeria dolei*—Unit 22—Montane Mesic and *Pseudonestor xanthophrys*—Unit 22—Montane Mesic). Kaheawa Wind Power LLC worked with the State's DOFAW and the Service to develop a multi-species HCP, primarily to minimize and mitigate the effects of incidental take of three federally listed birds (the endangered nene, endangered Hawaiian dark-rumped petrel or ua u (*Pterodroma phaeopygia sandwichensis*), and the threatened Newell Townsend's shearwater or ao (*Puffinus auricularis newelli*)), and the endangered ope ape a. The Service conducted an internal consultation under section 7 of the Act on impacts of the proposed Kaheawa Project I on the four federally listed species and previously designated plant critical habitat prior to issuing the incidental take permit. Kaheawa Wind Power LLC plans to construct and operate 14 new 1.5 MW WTGs and associated structures on 143 ac (58 ha) of State-leased land (called Kaheawa Project II), approximately 2,000 ft (approximately 610 m) southeast of the southern end of Kaheawa Project I (outside of proposed critical habitat in Maui—Lowland—Dry Unit 5). Kaheawa Project II also includes plans to construct and operate a new maintenance building on 2 ac (0.8 ha) of State-leased land within proposed Maui—Lowland Dry—Unit 5. Kaheawa Wind Power LLC is working with the State's DOFAW and the Service to develop a multi-species HCP for Kaheawa Project II, primarily to minimize and mitigate the effects of incidental take of the federally listed nene, ua u, ao, and ope ape a. The Service conducted an internal consultation under section 7 of the Act on impacts of the proposed Kaheawa Project II on these four listed species, and issued a permit for construction and operation of the wind towers in January, 2012.

None of the other 97 plant, 86 forest bird, and 11 tree snail proposed critical habitat units contains any significant residential, commercial, industrial, or golf-course projects; crop farming; or intensive livestock operations. Few projects are planned for locations in these other proposed critical habitat units. This situation reflects the fact that:

(1) Most of the land is unsuitable for development, farming, or other economic activities due to the rugged mountain terrain, lack of access, and remote locations; and

(2) Existing land-use controls severely limit development and most other economic activities in the mountainous interiors of the islands of Molokai, Lanai, Maui, and Kahoolawe.

Existing and planned projects, land uses, and activities that could affect the proposed critical habitat but have no Federal involvement would not require section 7 consultation with the Service, so they are not restricted by the requirements of the Act. Further, although some existing and continuing activities involve the operation and maintenance of existing manmade features and structures (e.g., wind turbines and associated structures) in certain areas, these areas do not contain the physical or biological features for the species, and would not be impacted by the designation. Finally, for the anticipated projects and activities that will have Federal involvement, many are conservation efforts that will not negatively impact the species or their habitat, so they will not be subjected to a protracted informal section 7 consultation. We anticipate that a developer or other project proponent could modify a project or take measures to protect the 135 Maui Nui species. The kinds of actions that may be included if future reasonable and prudent alternatives become necessary include conservation set-asides, management of competing nonnative species, restoration of degraded habitat, and regular monitoring. These measures are not likely to result in a significant economic impact to project proponents, as nearly all of the lands proposed for critical habitat designation are unsuitable for development, as well as for most commercial projects, land uses, and activities. This is due to their remote location, lack of access, and rugged terrain.

In addition, Federal agencies may also need to reinitiate a previous consultation if discretionary involvement or control over the Federal action has been retained or is authorized by law and the activities may affect critical habitat. On November 9, 1984, we designated critical habitat for the endangered plant *Gouania hillebrandii* on Maui (49 FR 44753), and in 2003 and

2008, we designated critical habitat for 3 plants on Lanai (68 FR 1220; January 9, 2003); 41 plants on Molokai (68 FR 12982; March 18, 2003); 60 plants on Maui and Kahoolawe (68 FR 25934; May 14, 2003); Blackburn's sphinx moth on Molokai, Maui, and Kahoolawe, and the island of Hawaii (68 FR 34710; June 10, 2003); and, most recently, for 12 picture-wing flies on Kauai, Oahu, Molokai, Maui, and Hawaii (73 FR 73794; December 4, 2008). We discuss our formal and informal consultations conducted prior to 2003 on the islands of Lanai, Molokai, Maui, and Kahoolawe in our final rules to designate critical habitat on these islands (68 FR 1220, January 9, 2003; 68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003). Since the 2003 critical habitat designations on Lanai, Molokai, Maui, and Kahoolawe, and most recently in December 2008 on Molokai and Maui, we have conducted 17 formal consultations and 81 informal consultations on these islands (Table 8), in addition to consultations on Federal grants to State wildlife programs that do not affect small entities. Of these 98 formal and informal consultations, 10 formal consultations and 32 informal consultations were primarily consultations regarding Federal permits to Service employees to implement conservation actions for listed species. The remainder, 7 formal consultations and 49 informal consultations, involved (in order of frequency) the Department of Agriculture (USDA–NRCS, USDA–Emergency Conservation Program (ECP), USDA–Animal and Plant Health Inspection Service (APHIS), USDA–Farm Services Agency (FSA), and USDA–Emergency Watershed Program (EWP), U.S.Army Corps of Engineers, Federal Communications Commission (FCC), Environmental Protection Agency, National Science Foundation, Department of Housing and Urban Development, NPS, Sprint Nextel, U.S. Navy, U.S. Air Force, University of Hawaii-Institute for Astronomy, U.S. Coast Guard, Hawaii Army National Guard, USGS–BRD, and Maui Electric Company (MECO).

TABLE 8—SUMMARY OF CONSULTATIONS ON MOLOKAI, LANAI, MAUI AND KAHOOLAWE BETWEEN 2003 AND 2010

Island	Total No. of informal consultations	Total No. of informal consultations concerning critical habitat	Total No. of formal consultations	Total No. of formal consultations concerning critical habitat
Molokai	17	3	2	0
Lanai	3	0	1	0
Maui	58	7	10	1
Kahoolawe	3	2	1	1
Multi-Island (includes one or more islands)	0	0	3	0
Total for all islands	81	12	17	2

Two of the formal consultations concerned designated critical habitat, and we concurred with each agency's determination that the project, as proposed, was not likely to destroy or adversely modify critical habitat. One of the formal consultations was conducted on behalf of the U.S. Navy regarding controlled burns at Waikahalulu and Kamohio on the island of Kahoolawe. The U.S. Navy proposed to reduce and remove vegetation cover (by fire) in plant and Blackburn's sphinx moth critical habitat so that Navy contractors could safely locate unexploded ordinance (UXO) for removal and disposal. Although the controlled burn was carried out in an area that is also proposed for critical habitat in this rule, it was a single, one-time action that is not ongoing. The U.S. Navy ceased UXO removal operations on Kahoolawe in 2004. The other formal consultation is discussed above (see Kaheawa Project I). The Service may need to reinitiate internal consultation on future actions proposed (Kaheawa Project II) in Maui—Lowland Dry—Unit 5 and Maui—Montane Mesic—Unit 5, if those actions may affect subsequently newly designated critical habitat.

The majority of the 49 informal consultations that did not involve Service actions was related to project effects on seabird flyways, listed species and their associated habitats, and human interactions with endangered nene. About one third of the informal consultations was conducted with the USDA for proposed funding for habitat restoration projects under NRCS programs such as the Wetland Reserve Program, Wildlife Habitat Incentives Program, and Environmental Quality Incentives Program, and the remaining consultations were agricultural projects under the FSA's Emergency Conservation Program.

Twelve of the 81 informal consultations concerned designated critical habitat, and in all cases we concurred with each agency's determination that the project, as proposed, had no effect or was not likely to adversely modify critical habitat. These projects were evenly divided between conservation actions that would benefit listed species, construction, and agricultural operations. For the 69 informal consultations that did not concern designated critical habitat, we concurred with each agency's determination that the project, as proposed, was not likely to adversely affect listed species.

In this rule, we are proposing to designate critical habitat on a total 271,062 ac (109,695 ha) of land. Forty-seven percent (127,807 ac (51,722 ha)) of this proposed critical habitat designation is already designated critical habitat for one or more species, and 53 percent (143,272 ac (57,980 ha)) of the proposed designation is on land newly proposed as critical habitat. Some of the Federal actions that were subject to previous section 7 consultation are on the lands we are proposing as critical habitat in this rule. Therefore, there may be a requirement to reinitiate consultation for some ongoing Federal projects.

In the 2003 and 2008 economic analyses of the previous designation of critical habitat for the 102 species of plants on the islands of Lanai, Molokai, Maui, and Kahoolawe; Blackburn's sphinx moth; and 12 picture-wing flies, we evaluated the potential economic effects on small business entities resulting from the protection of these species and their habitats related to the proposed designation of critical habitat and determined that it would not have a significant economic impact on a substantial number of small entities. The RFA/SBREFA defines ''small governmental jurisdiction'' as the government of a city, county, town, school district, or special district with a population of less than 50,000. By this

definition, Maui County is not a small governmental jurisdiction because its population was estimated at 145,157 residents in 2009. Certain State agencies may be affected by the proposed critical habitat designation—such as the Department of Land and Natural Resources and the State Department of Transportation. However, for the purposes of the RFA, State governments are considered independent sovereigns, not small governments. The overlap between the previous critical habitat designations for the 102 plant species, Blackburn's sphinx moth, and 2 of the 12 picture-wing flies and this proposed critical habitat designation is further evidence that this proposal is not likely to have a significant economic impact on a substantial number of small entities.

We have made an initial RFA finding that the proposed designation of critical habitat for the 135 species will not have a significant effect on a substantial number of small entities, for the reasons described above. However, we will defer making a final RFA finding in order to allow the public an opportunity to comment on potential economic consequences of this critical habitat proposal.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) We do not believe that this rule would significantly or uniquely affect small governments. The lands we are proposing for critical habitat designation are owned by the County of Maui, the State of Hawaii, private citizens, and the Federal government. None of these entities fit the definition of ''small governmental jurisdiction.'' Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and we will review and revise this assessment as warranted.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for each of the 135 species in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for each of these species does not pose significant takings implications for lands within or affected by the proposed designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Hawaii. The critical habitat designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species would be more clearly defined, and the essential features themselves are specifically identified. While making this definition and identification does alter where and what federally sponsored activities may occur, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the physical and biological features within the designated areas to assist the public in understanding the habitat needs of each of the species being considered in this proposed rule.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require

approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of Interior's manual at 512 DM2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act,'' we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We have determined that there are no tribal lands occupied at the time of listing that contain the features essential for the conservation, and no tribal lands that are essential for the conservation, of the 135 species. Therefore, we have not proposed designation of critical habitat for any of the 135 species on tribal lands.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for 135 species is not a significant regulatory action under E.O. 12866, and we do not expect it to significantly affect energy supplies, distribution, or use. When determining critical habitat boundaries within this proposed rule, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack the physical or biological features essential for the conservation of the 135 species. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. A wind energy generation facility operated by Kaheawa Wind Power LLC spans a portion of Maui—Lowland Dry—Unit 5 and Maui—Montane Mesic—Unit 5. This man made facility does not provide the physical or biological features essential to the conservation of the species and, therefore, is not included in the proposed designation. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and we will review and revise this assessment as warranted.

References Cited

A complete list of references cited in this rule is available on the Internet at *http://www.regulations.gov* and upon request from the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**, above).

Authors

The primary authors of this document are the staff members of the Pacific Islands Fish and Wildlife Office.

List of Subjects in 50 CFR part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, as follows:

a. By revising the entries for ''Honeycreeper, crested'' and ''Parrotbill, Maui (honeycreeper)'' under BIRDS to read as set forth below; and

b. By adding entries for ''Snail, Lanai tree'' (*Partulina semicarinata*), ''Snail, Lanai tree'' (*Partulina variabilis*), and ''Snail, Newcomb's tree'' (*Newcombia cumingi*), in alphabetical order under SNAILS, to read as set forth below.

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
BIRDS							
*	*	*	*	*	*		*
Honeycreeper, crested (Akohekohe).	*Palmeria dolei*	U.S.A. (HI)	Entire	E	1	17.95(b)	NA
*	*	*	*	*	*		*
Parrotbill, Maui (Kiwikiu).	*Pseudonestor xanthophrys.*	U.S.A. (HI)	Entire	E	1	17.95(b)	NA
*	*	*	*	*	*		*
SNAILS							
*	*	*	*	*	*		*
Snail, Lanai tree	*Partulina semicarinata.*	U.S.A. (HI)	NA	E		17.95(f)	NA
*	*	*	*	*	*		*
Snail, Lanai tree	*Partulina variabilis*	U.S.A. (HI)	NA	E		17.95(f)	NA
*	*	*	*	*	*		*
Snail, Newcomb's tree	*Newcombia cumingi*	U.S.A. (HI)	NA	E		17.95(f)	NA
*	*	*	*	*	*		*

3. Amend § 17.12(h), the List of Endangered and Threatened Plants, as follows:

a. By removing the entries for *Centaurium sebaeoides, Cyanea dunbarii, Cyanea macrostegia* ssp. *gibsonii, Gahnia lanaiensis, Hedyotis schlechtendahliana* var. *remyi, Hedyotis mannii, Lipochaeta kamolensis,* and *Mariscus fauriei* under FLOWERING PLANTS;

b. By revising the entries for *Abutilon eremitopetalum, Acaena exigua, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Clermontia oblongifolia* ssp. *mauiensis, Clermontia peleana, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyperus trachysanthos, Cyrtandra munroi, Gouania hillebrandii, Hesperomannia arborescens, Hibiscus brackenridgei, Kokia cookei, Labordia tinifolia* var. *lanaiensis, Melicope mucronulata, Melicope munroi, Neraudia sericea, Phyllostegia hispida, Platanthera holochila, Portulaca sclerocarpa, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium lepidotum* ssp. *lepidotum, Tetramalopium remyi, Vigna o-wahuensis, Viola lanaiensis,* and *Zanthoxylum hawaiiense* under FLOWERING PLANTS, to read as set forth below;

c. By adding entries for *Bidens campylotheca* ssp. *pentamera, Bidens campylotheca* ssp. *waihoiensis, Bidens conjuncta, Calamagrostis hillebrandii, Canavalia pubescens, Cyanea asplenifolia, Cyanea dunbariae, Cyanea duvalliorum, Cyanea gibsonii, Cyanea horrida, Cyanea kunthiana, Cyanea magnicalyx, Cyanea maritae, Cyanea mauiensis, Cyanea munroi, Cyanea obtusa, Cyanea profuga, Cyanea solanacea, Cyperus fauriei, Cyrtandra ferripilosa, Cyrtandra filipes, Cyrtandra oxybapha, Festuca molokaiensis, Geranium hanaense, Geranium hillebrandii, Kadua cordata* ssp. *remyi, Kadua laxiflora, Melanthera kamolensis, Mucuna sloanei* var. *persericea, Myrsine vaccinioides, Peperomia subpetiolata, Phyllostegia bracteata, Phyllostegia haliakalae, Phyllostegia pilosa, Pittosporum halophilum, Pleomele fernaldii, Santalum haleakalae* var. *lanaiense, Schenkia sebaeoides, Schiedea jacobii, Schiedea laui, Schiedea salicaria, Stenogyne kauaulaensis,* and *Wikstroemia villosa* in alphabetical order under FLOWERING PLANTS, to read as set forth below;

d. By removing the entries for *Asplenium fragile* var. *insulare, Diellia erecta,* and *Phlegmariurus mannii* under FERNS AND ALLIES;

e. By revising the entries for *Adenophorus periens, Ctenitis squamigera, Diplazium molokaiense, Huperzia manii,* and *Marsilea villosa,* under FERNS AND ALLIES to read as set forth below; and

f. By adding entries for *Asplenium dielerectum* and *Asplenium peruvianum* var. *insulare,* in alphabetical order under FERNS AND ALLIES, to read as set forth below.

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
FLOWERING PLANTS							

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Abutilon eremitopetalum.	None	U.S.A. (HI)	Malvaceae	E	435	17.99(m)	NA
*	*	*	*	*	*		*
Acaena exigua	Liliwai	U.S.A. (HI)	Rosaceae	E	467	17.99(e)(1)	NA
*	*	*	*	*	*		*
Bidens campylotheca ssp. *pentamera.*	Kookoolau	U.S.A. (HI)	Asteraceae	E		17.99(e)(1)	NA
*	*	*	*	*	*		*
Bidens campylotheca ssp. *waihoiensis.*	Kookoolau	U.S.A. (HI)	Asteraceae	E		17.99(e)(1)	NA
*	*	*	*	*	*		*
Bidens conjuncta	Kookoolau	U.S.A. (HI)	Asteraceae	E		17.99(e)(1)	NA
*	*	*	*	*	*		*
Bidens micrantha ssp. *kalealaha.*	Kookoolau	U.S.A. (HI)	Asteraceae	E	467	17.99(e)(1), (m)	NA
*	*	*	*	*	*		*
Bonamia menziesii	None	U.S.A. (HI)	Convolvulaceae	E	559	17.99(a)(1), (c), (e)(1), (i), (k), (m)	NA
*	*	*	*	*	*		*
Brighamia rockii	Pua ala	U.S.A. (HI)	Campanulaceae	E	480	17.99(c), (e)(1), (m)	NA
*	*	*	*	*	*		*
Calamagrostis hillebrandii.	None	U.S.A. (HI)	Poaceae	E		17.99(e)(1)	NA
*	*	*	*	*	*		*
Canavalia pubescens	Awikiwiki	U.S.A. (HI)	Fabaceae	E		17.99(e)(1), (m)	NA
*	*	*	*	*	*		*
Cenchrus agrimonioides.	Kamanomano, (=Sandbur, agrimony).	U.S.A. (HI)	Poaceae	E	592	17.99(e)(1), (i), (m)	NA
*	*	*	*	*	*		*
Clermontia oblongifolia ssp. *mauiensis.*	Oha wai	U.S.A. (HI)	Campanulaceae	E	467	17.99(e)(1), (m)	NA
*	*	*	*	*	*		*
Clermontia peleana	Oha wai	U.S.A. (HI)	Campanulaceae	E	532	17.99(e)(1), (k)	NA
*	*	*	*	*	*		*
Cyanea asplenifolia	Haha	U.S.A. (HI)	Campanulaceae	E		17.99(e)(1)	NA
*	*	*	*	*	*		*
Cyanea dunbariae	Haha	U.S.A. (HI)	Campanulaceae	E	594	17.99(c)	NA
*	*	*	*	*	*		*
Cyanea duvalliorum	Haha	U.S.A. (HI)	Campanulaceae	E		17.99(e)(1)	NA
*	*	*	*	*	*		*
Cyanea gibsonii	Haha	U.S.A. (HI)	Campanulaceae	E	435	17.99(m)	NA
*	*	*	*	*	*		*
Cyanea grimesiana ssp. *grimesiana.*	Haha	U.S.A. (HI)	Campanulaceae	E	592	17.99(c), (i)	NA
*	*	*	*	*	*		*
Cyanea horrida	Haha nui	U.S.A. (HI)	Campanulaceae	E		17.99(e)(1)	NA
*	*	*	*	*	*		*
Cyanea kunthiana	Haha	U.S.A. (HI)	Campanulaceae	E		17.99(e)(1)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	
Cyanea lobata	Haha	U.S.A. (HI)	Campanulaceae	E	467	17.99(e)(1), (m)	NA
*	*	*	*	*	*	*	
Cyanea magnicalyx	Haha	U.S.A. (HI)	Campanulaceae	E		17.99(e)(1)	NA
*	*	*	*	*	*	*	
Cyanea maritae	Haha	U.S.A. (HI)	Campanulaceae	E		17.99(e)(1)	NA
*	*	*	*	*	*	*	
Cyanea mauiensis	Haha	U.S.A. (HI)	Campanulaceae	E		NA	NA
*	*	*	*	*	*	*	
Cyanea munroi	Haha	U.S.A. (HI)	Campanulaceae	E		17.99(c), (m)	NA
*	*	*	*	*	*	*	
Cyanea obtusa	Haha	U.S.A. (HI)	Campanulaceae	E		17.99(e)(1)	NA
*	*	*	*	*	*	*	
Cyanea profuga	Haha	U.S.A. (HI)	Campanulaceae	E		17.99(c)	NA
*	*	*	*	*	*	*	
Cyanea solanacea	Popolo	U.S.A. (HI)	Campanulaceae	E		17.99(c)	NA
*	*	*	*	*	*	*	
Cyperus fauriei	None	U.S.A. (HI)	Cyperaceae	E	532	17.99(c), (m), (k)	NA
*	*	*	*	*	*	*	
Cyperus trachysanthos.	Puukaa	U.S.A. (HI)	Cyperaceae	E	592	17.99(a)(1), (c), (i), (m)	NA
*	*	*	*	*	*	*	
Cyrtandra ferripilosa	Haiwale	U.S.A. (HI)	Gesneriaceae	E		17.99(e)(1)	NA
*	*	*	*	*	*	*	
Cyrtandra filipes	Haiwale	U.S.A. (HI)	Gesneriaceae	E		17.99(c), (e)(1)	NA
*	*	*	*	*	*	*	
Cyrtandra munroi	Haiwale	U.S.A. (HI)	Gesneriaceae	E	467	17.99(e)(1), (m)	NA
*	*	*	*	*	*	*	
Cyrtandra oxybapha	Haiwale	U.S.A. (HI)	Gesneriaceae	E		17.99(e)(1)	NA
*	*	*	*	*	*	*	
Festuca molokaiensis	None	U.S.A. (HI)	Poaceae	E		17.99(c)	NA
*	*	*	*	*	*	*	
Geranium hanaense	Nohoanu	U.S.A. (HI)	Geraniaceae	E		17.99(e)(1)	NA
*	*	*	*	*	*	*	
Geranium hillebrandii	Nohoanu	U.S.A. (HI)	Geraniaceae	E		17.99(e)(1)	NA
*	*	*	*	*	*	*	
Gouania hillebrandii	None	U.S.A. (HI)	Rhamnaceae	E	165	17.99(c), (e)(1), (e)(2)	NA
*	*	*	*	*	*	*	
Hesperomannia arborescens.	None	U.S.A. (HI)	Asteraceae	E	536	17.99(c), (e)(1), (i), (m)	NA
*	*	*	*	*	*	*	
Hibiscus brackenridgei	Mao hau hele	U.S.A. (HI)	Malvaceae	E	559	17.99(c), (e)(1), (e)(2), (i), (k), (m)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	
Kadua cordata ssp. *remyi*.	Kopa	U.S.A. (HI)	Rubiaceae	E	666	17.99(m)	NA
*	*	*	*	*	*	*	
Kadua laxiflora	Pilo	U.S.A. (HI)	Rubiaceae	E	480	17.99(c), (e)(1), (m)	NA
*	*	*	*	*	*	*	
Kokia cookei	Cooke's kokio	U.S.A. (HI)	Malvaceae	E	74	17.99(c)	NA
*	*	*	*	*	*	*	
Labordia tinifolia var. *lanaiensis*.	Kamakahala	U.S.A. (HI)	Loganiaceae	E	666	17.99(m)	NA
*	*	*	*	*	*	*	
Melanthera kamolensis.	Nehe	U.S.A. (HI)	Asteraceae	E	467	17.99(e)(1)	NA
*	*	*	*	*	*	*	
Melicope mucronulata	Alani	U.S.A. (HI)	Rutaceae	E	467	17.99(c), (e)(1)	NA
*	*	*	*	*	*	*	
Melicope munroi	Alani	U.S.A. (HI)	Rutaceae	E	666	17.99(c), (m)	NA
*	*	*	*	*	*	*	
Mucuna sloanei var. *persericea*.	Sea bean	U.S.A. (HI)	Fabaceae	E		17.99(e)(1)	NA
*	*	*	*	*	*	*	
Myrsine vaccinioides	Kolea	U.S.A. (HI)	Myrsinaceae	E		17.99(e)(1)	NA
*	*	*	*	*	*	*	
Neraudia sericea	None	U.S.A. (HI)	Urticaceae	E	559	17.99(c), (e)(1), (e)(2), (m)	NA
*	*	*	*	*	*	*	
Peperomia subpetiolata.	Alaala wai nui	U.S.A. (HI)	Piperaceae	E		17.99(e)(1)	NA
*	*	*	*	*	*	*	
Phyllostegia bracteata	None	U.S.A. (HI)	Lamiaceae	E		17.99(e)(1)	NA
*	*	*	*	*	*	*	
Phyllostegia haliakalae	None	U.S.A. (HI)	Lamiaceae	E		17.99(c), (e)(1), (m)	NA
*	*	*	*	*	*	*	
Phyllostegia hispida	None	U.S.A. (HI)	Lamiaceae	E	762	17.99(c)	NA
*	*	*	*	*	*	*	
Phyllostegia pilosa	None	U.S.A. (HI)	Lamiaceae	E		17.99(c), (e)(1)	NA
*	*	*	*	*	*	*	
Pittosporum halophilum.	Hoawa	U.S.A. (HI)	Pittosporaceae	E		17.99(c)	NA
*	*	*	*	*	*	*	
Platanthera holochila	None	U.S.A. (HI)	Orchidaceae	E	592	17.99(a)(1), (c), (e)(1), (i)	NA
*	*	*	*	*	*	*	
Pleomele fernaldii	Hala pepe	U.S.A. (HI)	Asparagaceae	E		17.99(m)	NA
*	*	*	*	*	*	*	
Portulaca sclerocarpa	Poe	U.S.A. (HI)	Portulacaceae	E	532	17.99(k), (m)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Santalum haleakalae var. *lanaiense*.	Lanai sandalwood or iliahi.	U.S.A. (HI)	Santalaceae	E	215	17.99(c), (e)(1), (m)	NA
*	*	*	*	*	*		*
Schenkia sebaeoides	Awiwi	U.S.A. (HI)	Gentianaceae	E	448	17.99(a)(1), (c), (e)(1), (i), (m)	NA
*	*	*	*	*	*		*
Schiedea jacobii	None	U.S.A. (HI)	Caryophyllaceae	E		17.99(e)(1)	NA
*	*	*	*	*	*		*
Schiedea laui	None	U.S.A. (HI)	Caryophyllaceae	E		17.99(c)	NA
*	*	*	*	*	*		*
Schiedea salicaria	None	U.S.A. (HI)	Caryophyllaceae	E		17.99(e)(1)	NA
*	*	*	*	*	*		*
Sesbania tomentosa	Ohai	U.S.A. (HI)	Fabaceae	E	559	17.99(a)(1), (c), (e)(1), (e)(2), (g), (i), (k), (m)	NA
*	*	*	*	*	*		*
Silene lanceolata	None	U.S.A. (HI)	Caryophyllaceae	E	480	17.99(c), (i), (m)	NA
*	*	*	*	*	*		*
Solanum incompletum	Popolo ku mai	U.S.A. (HI)	Solanaceae	E	559	17.99(e)(1), (k), (m)	NA
*	*	*	*	*	*		*
Spermolepis hawaiiensis.	None	U.S.A. (HI)	Apiaceae	E	559	17.99(a)(1), (c), (e)(1), (i), (m)	NA
*	*	*	*	*	*		*
Stenogyne kauaulaensis.	None	U.S.A. (HI)	Lamiaceae	E		17.99(e)(1)	NA
*	*	*	*	*	*		*
Tetramolopium lepidotum ssp. *lepidotum*.	None	U.S.A. (HI)	Asteraceae	E	448	17.99(i), (m)	NA
*	*	*	*	*	*		*
Tetramolopium remyi	None	U.S.A. (HI)	Asteraceae	E	435	17.99(e)(1), (m)	NA
*	*	*	*	*	*		*
Vigna o-wahuensis	None	U.S.A. (HI)	Fabaceae	E	559	17.99(c), (e)(1), (e)(2), (i), (k), (m)	NA
*	*	*	*	*	*		*
Viola lanaiensis	None	U.S.A. (HI)	Violaceae	E	435	17.99(m)	NA
*	*	*	*	*	*		*
Wikstroemia villosa	Akia	U.S.A. (HI)	Thymelaeaceae	E		17.99(e)(1)	NA
*	*	*	*	*	*		*
Zanthoxylum hawaiiense.	Ae	U.S.A. (HI)	Rutaceae	E	532	17.99(a)(1), (c), (e)(1), (m)	NA
*	*	*	*	*	*		*
FERNS AND ALLIES.							

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Adenophorus periens	Pendant kihi fern	U.S.A. (HI)	Grammitidaceae	E	559	17.99(a)(1), (c), (e)(1), (i), (k), (m)	NA
*	*	*	*	*	*		*
Asplenium dielerectum	Asplenium-leaved diellia.	U.S.A. (HI)	Aspleniaceae	E	559	17.99(a)(1), (c), (e)(1), (i), (k), (m)	NA
*	*	*	*	*	*		*
Asplenium peruvianum var. *insulare.*	None	U.S.A. (HI)	Aspleniaceae	E	553	17.99(e)(1), (k)	NA
*	*	*	*	*	*		*
Ctenitis squamigera	Pauoa	U.S.A. (HI)	Aspleniaceae	E	553	17.99(a)(1), (c), (e)(1), (i), (m)	NA
*	*	*	*	*	*		*
Diplazium molokaiense.	None	U.S.A. (HI)	Aspleniaceae	E	553	17.99(a)(1), (c), (e)(1), (i), (m)	NA
*	*	*	*	*	*		*
Huperzia mannii	Wawaeiole	U.S.A. (HI)	Lycopodiaceae	E	467	17.99(e)(1)	NA
*	*	*	*	*	*		*
Marsilea villosa	Ihi ihi	U.S.A. (HI)	Marsileaceae	E	474	17.99 (c), (i)	NA
*	*	*	*	*	*		*

* * * * *

4. Amend § 17.95 as follows:

a. In paragraph (b), by adding entries for ''Crested Honeycreeper (Akohekohe) (*Palmeria dolei*)'' and ''Maui Parrotbill (Kiwikiu) (*Pseudonestor xanthophrys*)'' in the same alphabetical order as these species occur in the table at § 17.11(h); and

b. In paragraph (f), by adding entries for ''Lanai tree snail (*Partulina semicarinata*),'' ''Lanai tree snail (*Partulina variabilis*),'' and ''Newcomb's tree snail (*Newcombia cumingi*),'' to the end of the paragraph, to read as set forth below.

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Crested Honeycreeper (Akohekohe) (*Palmeria dolei*)

(1) Critical habitat units are depicted for Maui County, Hawaii, on the maps below.

(2) *Primary constituent elements.*

(i) In unit 1, the primary constituent elements of critical habitat for the Akohekohe are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units 2, 3, 4, 5, 6, 7, 8, and 9, the primary constituent elements of critical habitat for the Akohekohe are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iii) In units 10, 11, 12, 13, 14, 15, 16, and 17, the primary constituent elements of critical habitat for the Akohekohe are:

(A) Elevation: Between 3,300 and 6,500 ft (1,000 and 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iv) In units 18, 19, 20, 21, 22, and 23, the primary constituent elements of critical habitat for the Akohekohe are:

(A) Elevation: Between 3,500 and 6,500 ft (1,000 and 2,000 m).

(B) Annual precipitation: Between 50 and 75 in (130 and 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

(v) In units 24 and 25, the primary constituent elements of critical habitat for the Akohekohe are:

(A) Elevation: Between 6,500 and 9,800 ft (2,000 and 3,000 m).

(B) Annual precipitation: Between 15 and 40 in (38 and 100 cm).

(C) Substrate: Dry ash; sandy loam; rocky, undeveloped soils; weathered lava.

(D) Canopy: *Chamaesyce, Chenopodium, Metrosideros, Myoporum, Santalum, Sophora.*

(E) Subcanopy: *Coprosma, Dodonaea, Dubautia, Geranium, Leptecophylla, Vaccinium, Wikstroemia.*

(F) Understory: Ferns, *Bidens, Carex, Deschampsia, Eragrostis, Gahnia, Luzula, Panicum, Pseudognaphalium, Sicyos, Tetramolopium.*

(vi) In units 26, 27, 28, and 29, the primary constituent elements of critical habitat for the Akohekohe are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Less than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, rocky talus.

(D) Canopy: None.

(E) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*

(F) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

(vii) In units 30, 31, 32, 33, 34, 35, and 36, the primary constituent elements of critical habitat for the Akohekohe are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptecophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

(viii) In unit 37, the primary constituent elements of critical habitat for the Akohekohe are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ix) In units 38 and 39, the primary constituent elements of critical habitat for the Akohekohe are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(x) In units 40 and 41, the primary constituent elements of critical habitat for the Akohekohe are:

(A) Elevation: Between 3,300 and 6,500 ft (1,000 and 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(xi) In unit 42, the primary constituent elements of critical habitat for the Akohekohe are:

(A) Elevation: Between 3,300 and 6,500 ft (1,000 and 2,000 m).

(B) Annual precipitation: Between 50 and 75 in (130 and 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

(xii) In units 43 and 44, the primary constituent elements of critical habitat for the Akohekohe are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptecophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

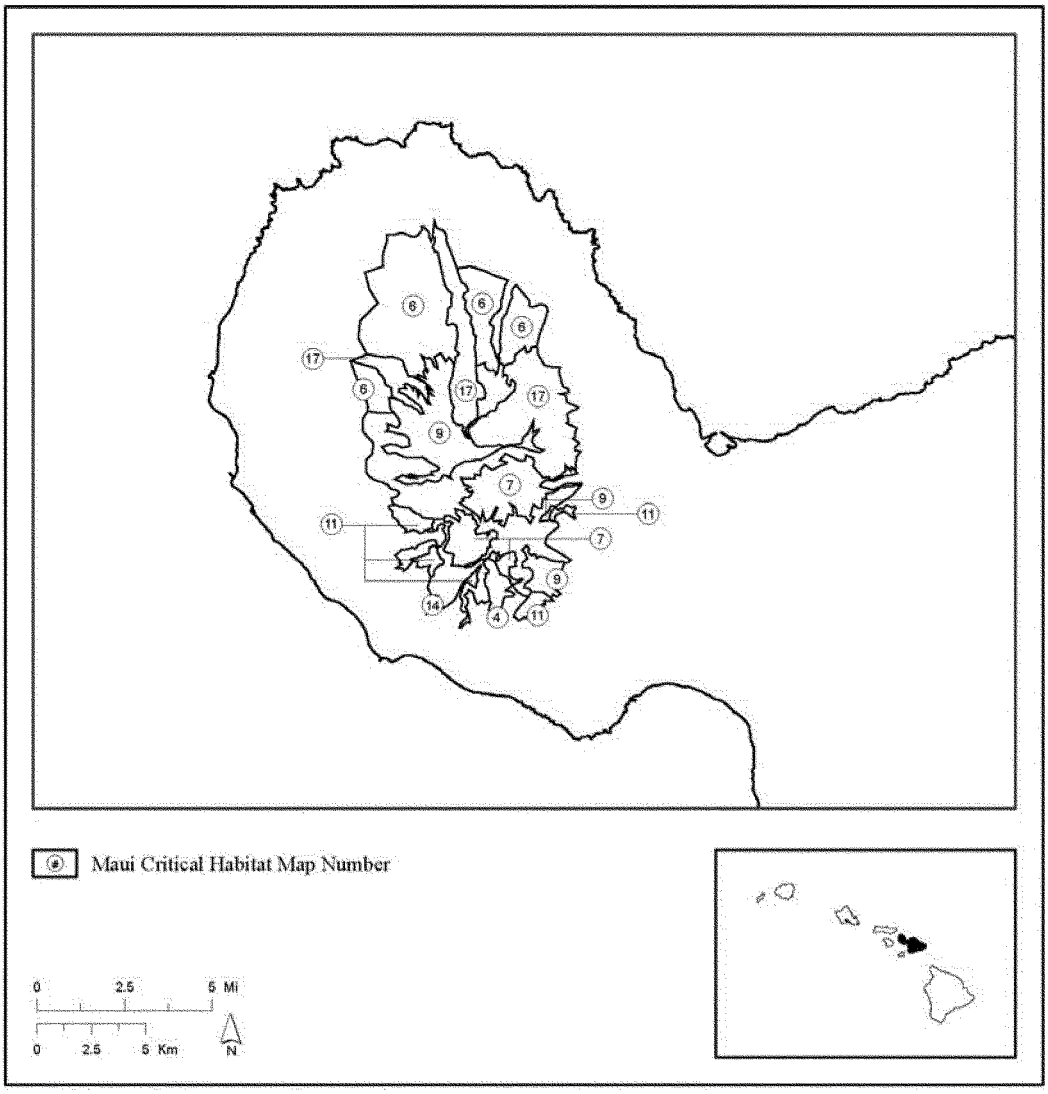
(3) Existing manmade features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas, do not contain one or more of the physical or biological features. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species or physical or biological features in adjacent critical habitat.

(4) *Critical habitat maps.* Maps were created in GIS, with coordinates in UTM Zone 4, units in meters using North American datum of 1983 (NAD 83).

(5) Index maps of critical habitat units for the Akohekohe follow:

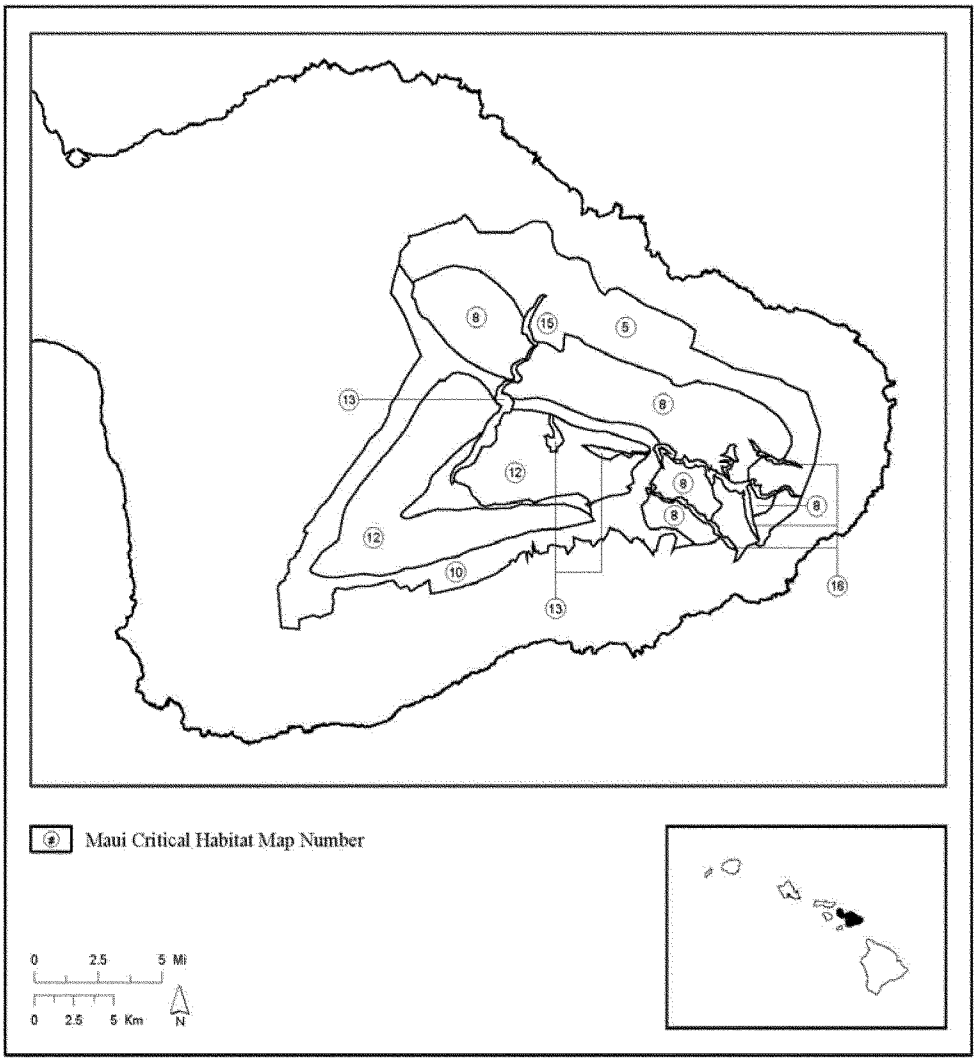
Map 1

Palmeria dolei—Index Map 1—West Maui



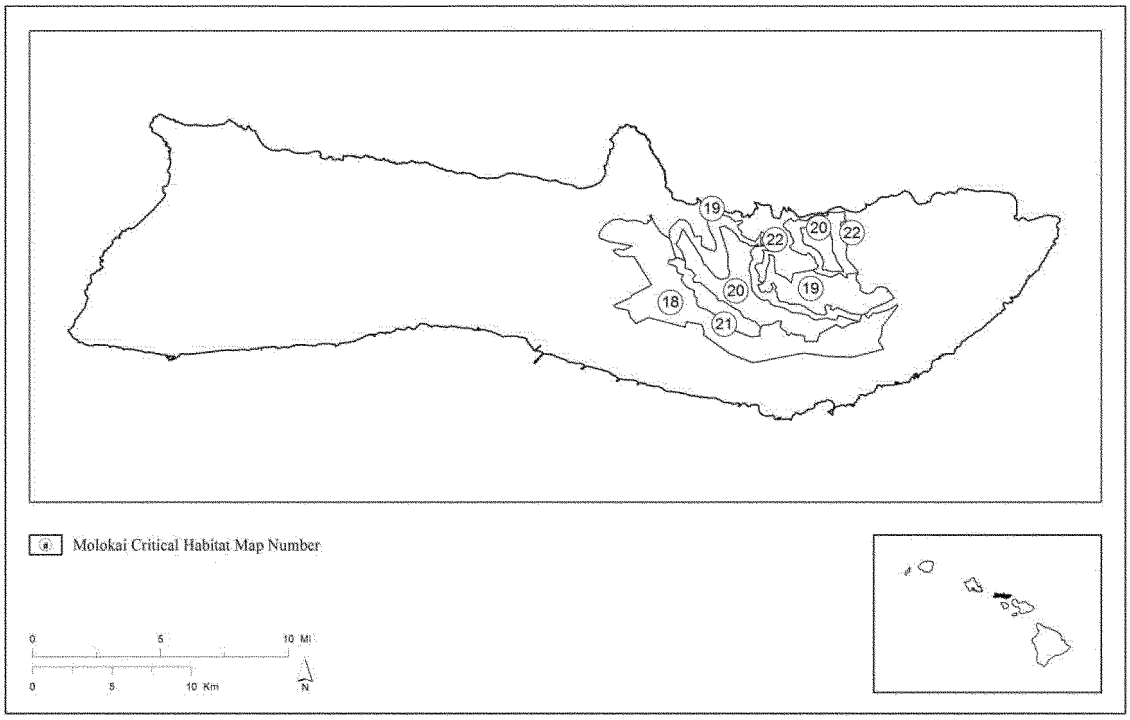
Map 2

Palmeria dolei—Index Map 2—East Maui



Map 3

Palmeria dolei—Index Map 3—Molokai



(6) *Palmeria dolei*—Lowland Mesic—Unit 1, Maui County, Hawaii (477 ac; 193 ha).

(i) [Reserved for textual description of Unit 1.]. This unit is critical habitat for the Akohekohe, *Palmeria dolei*.

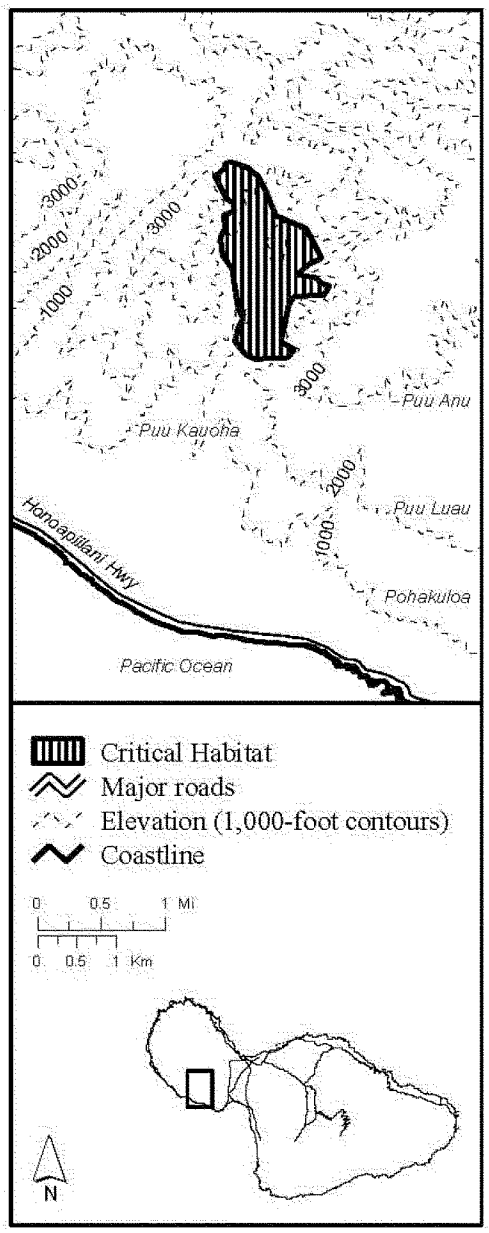
(ii) NOTE: Map of *Palmeria dolei*—Lowland Mesic—Unit 1 follows:

Map 4

Palmeria dolei

Lowland Mesic

Unit 1



(7) *Palmeria dolei*—Unit 2—Lowland Wet, Maui County, Hawaii (26,703 ac, 10,807 ha).

(i) [Reserved for textual description of Unit 2.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

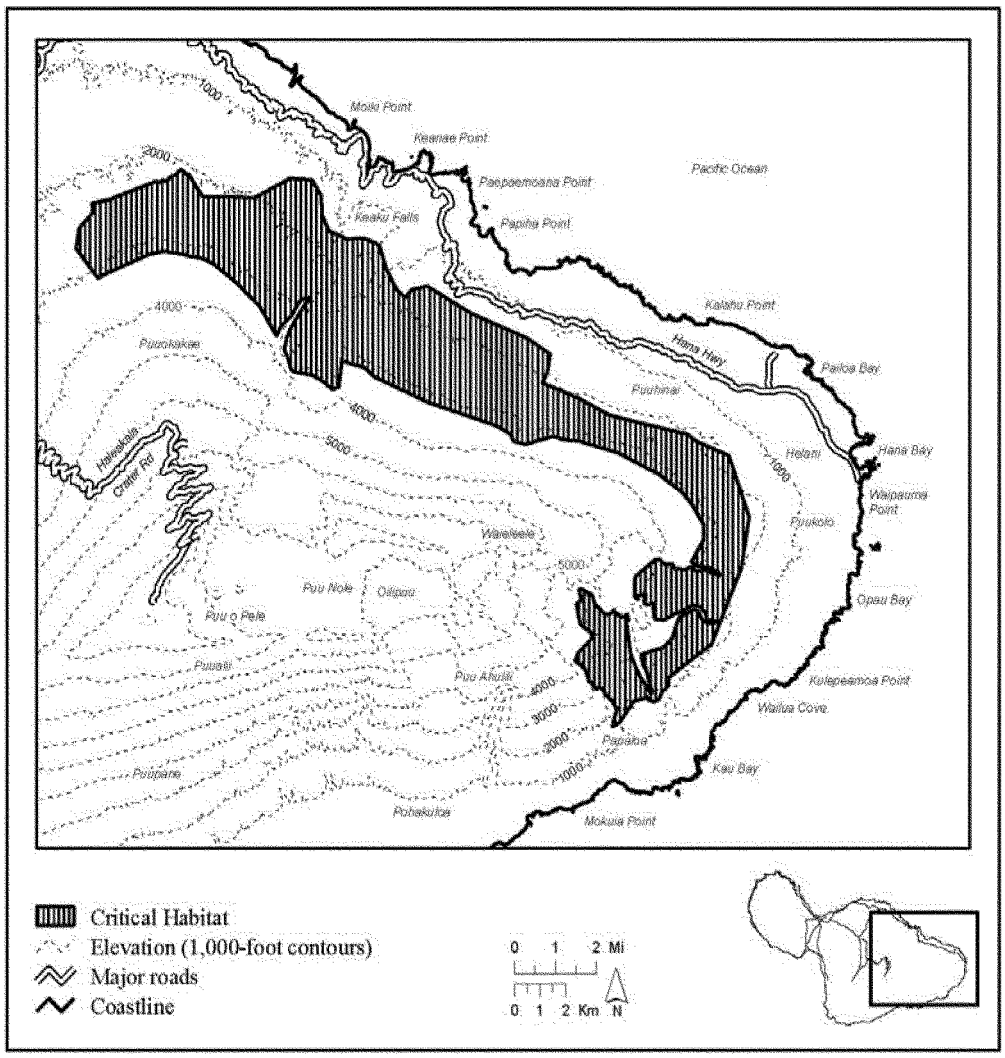
(ii) NOTE: Map of *Palmeria dolei*—Unit 2—Lowland Wet follows:

Map 5

Palmeria dolei

Lowland Wet

Unit 2



(8) *Palmeria dolei*—Unit 3—Lowland Wet, Maui County, Hawaii (5,066 ac, 2,050 ha); *Palmeria dolei*—Unit 4—Lowland Wet, Maui County, Hawaii (1,427 ac, 577 ha); *Palmeria dolei*—Unit 5—Lowland Wet, Maui County, Hawaii (1,165 ac, 472 ha); and *Palmeria dolei*—Unit 7—Lowland Wet, Maui County, Hawaii (639 ac, 259 ha).

(i) [Reserved for textual description of Unit 3.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(ii) [Reserved for textual description of Unit 4.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(iii) [Reserved for textual description of Unit 5.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(iv) [Reserved for textual description of Unit 7.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

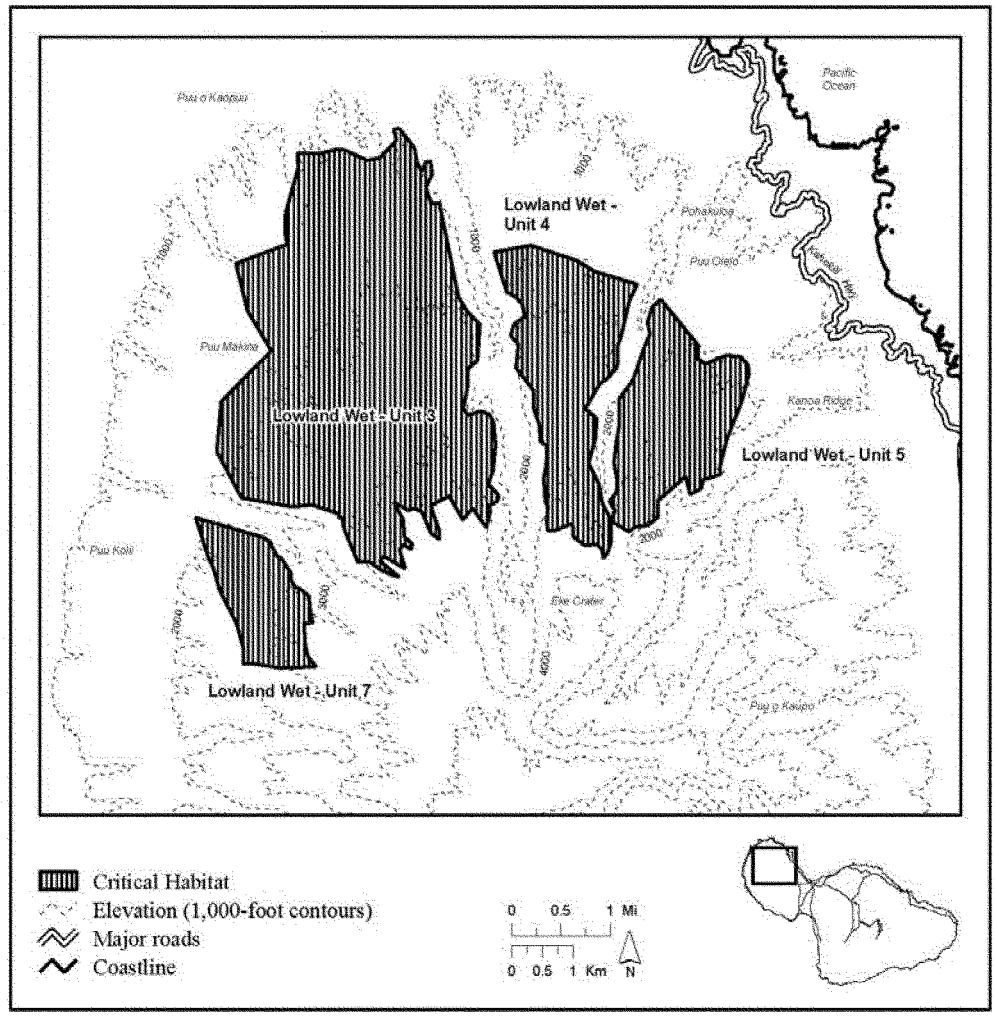
(v) NOTE: Map of *Palmeria dolei*—Unit 3—Lowland Wet, *Palmeria dolei*—Unit 4—Lowland Wet 4, *Palmeria dolei*—Unit 5—Lowland Wet, and *Palmeria dolei*—Unit 7—Lowland Wet follows:

Map 6

Palmeria dolei

Lowland Wet

Unit 3, Unit 4, Unit 5 and Unit 7



(9) *Palmeria dolei*—Unit 6—Lowland Wet, Maui County, Hawaii (2,112 ac, 855 ha); *Palmeria dolei*—Unit 8—Lowland Wet, Maui County, Hawaii (898 ac, 364 ha); and *Palmeria dolei*—Unit 9—Lowland Wet, Maui County, Hawaii (230 ac, 93 ha).

(i) [Reserved for textual description of Unit 6.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(ii) [Reserved for textual description of Unit 8.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(iii) [Reserved for textual description of Unit 9.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

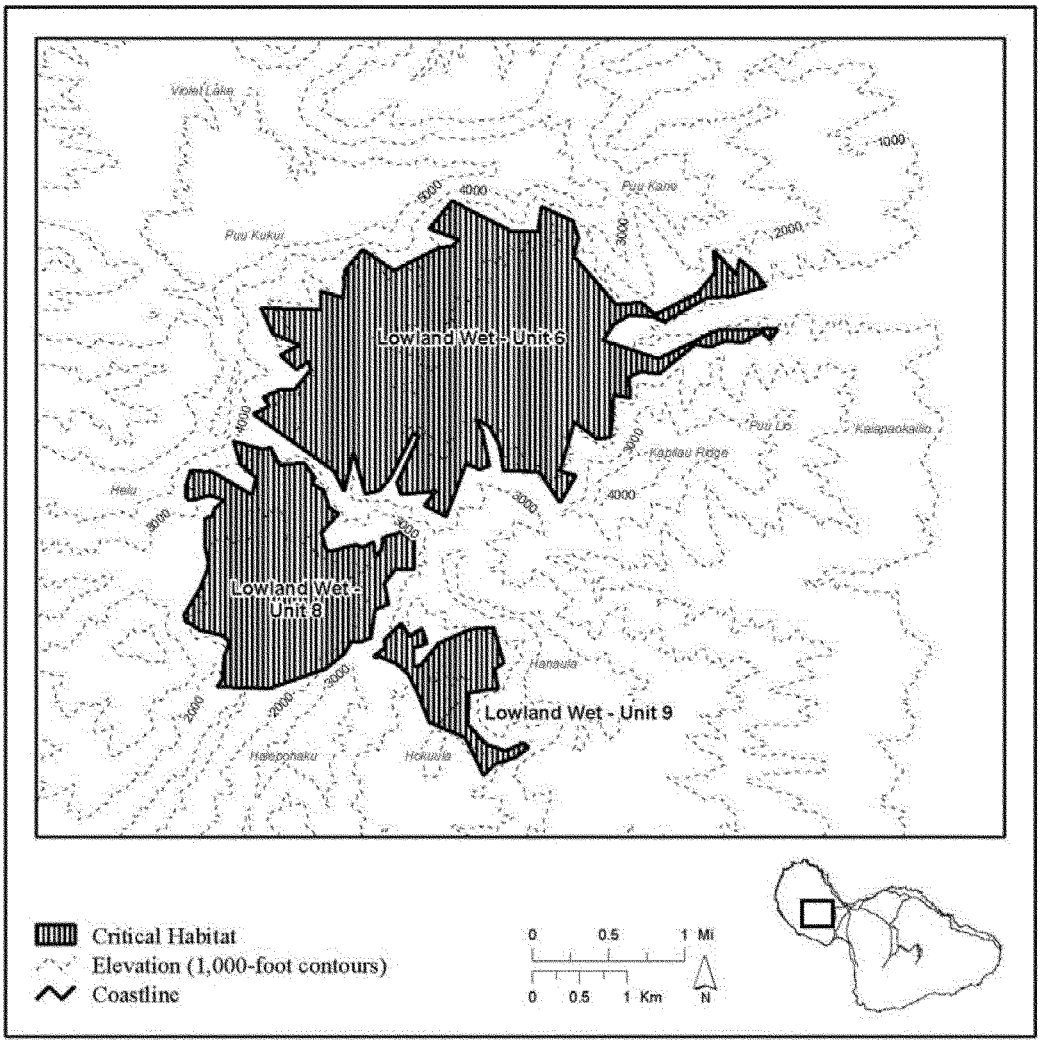
(iv) NOTE: Map of *Palmeria dolei*—Unit 6—Lowland Wet, *Palmeria dolei*—Unit 8—Lowland Wet, and *Palmeria dolei*—Unit 9—Lowland Wet follows:

Map 7

Palmeria dolei

Lowland Wet

Unit 6, Unit 8 and Unit 9



(10) *Palmeria dolei*—Unit 10—Montane Wet, Maui County, Hawaii (7,815 ac, 3,162 ha); *Palmeria dolei*—Unit 11—Montane Wet, Maui County, Hawaii (16,687 ac, 6,753 ha); *Palmeria dolei*—Unit 12—Montane Wet, Maui County, Hawaii (2,228 ac, 902 ha); *Palmeria dolei*—Unit 13—Montane Wet, Maui County, Hawaii (1,833 ac, 742 ha); and *Palmeria dolei*—Unit 14—Montane Wet, Maui County, Hawaii (387 ac, 156 ha).

(i) [Reserved for textual description of Unit 10.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(ii) [Reserved for textual description of Unit 11.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(iii) [Reserved for textual description of Unit 12.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(iv) [Reserved for textual description of Unit 13.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(v) [Reserved for textual description of Unit 14.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

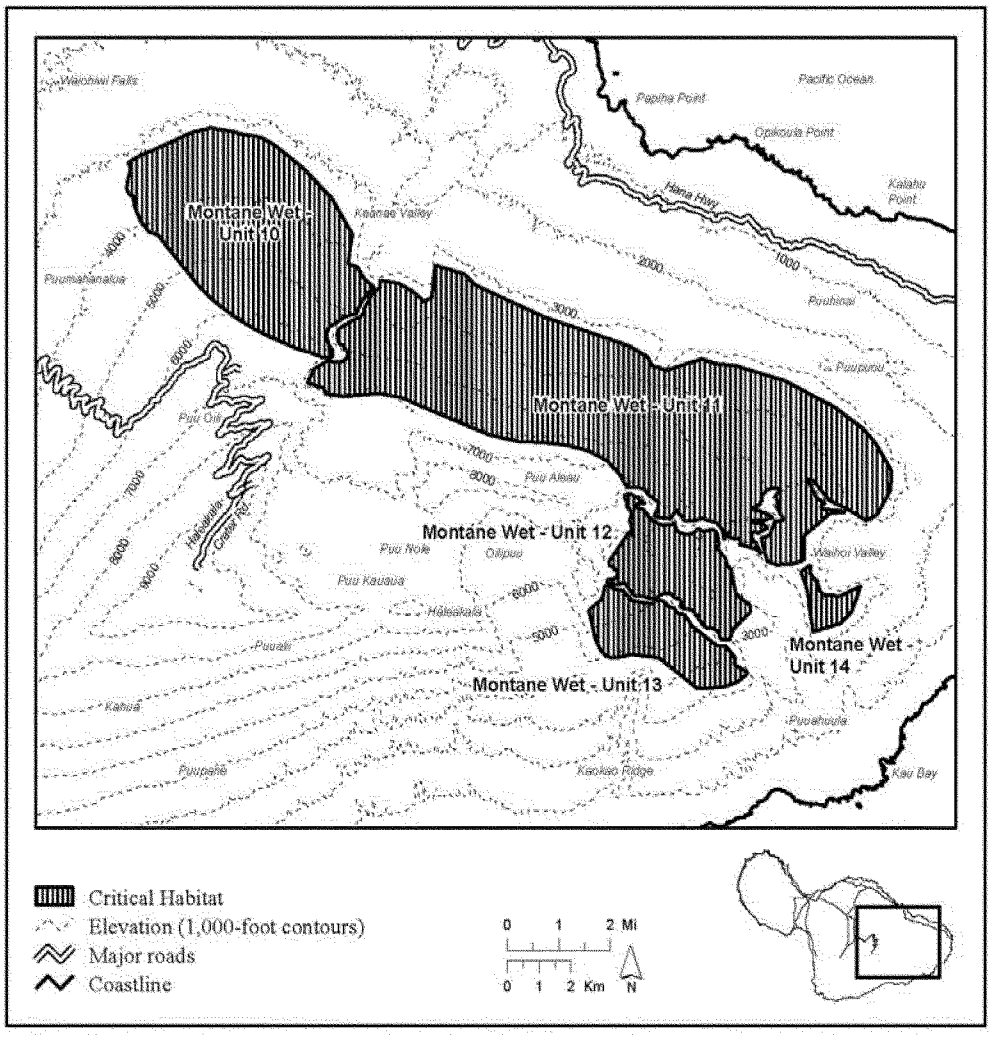
(vi) NOTE: Map of *Palmeria dolei*—Unit 10—Montane Wet, *Palmeria dolei*—Unit 11—Montane Wet, *Palmeria dolei*—Unit 12—Montane Wet, *Palmeria dolei*—Unit 13—Montane Wet, and *Palmeria dolei*—Unit 14—Montane Wet follows:

Map 8

Palmeria dolei

Montane Wet

Unit 10, Unit 11, Unit 12, Unit 13 and Unit 14



(11) *Palmeria dolei*—Unit 15—Montane Wet, Maui County, Hawaii (3,964 ac, 1,604 ha); *Palmeria dolei*—Unit 16—Montane Wet, Maui County, Hawaii (608 ac, 246 ha); and *Palmeria dolei*—Unit 17—Montane Wet, Maui County, Hawaii (46 ac, 19 ha).

(i) [Reserved for textual description of Unit 15.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(ii) [Reserved for textual description of Unit 16.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(iii) [Reserved for textual description of Unit 17.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

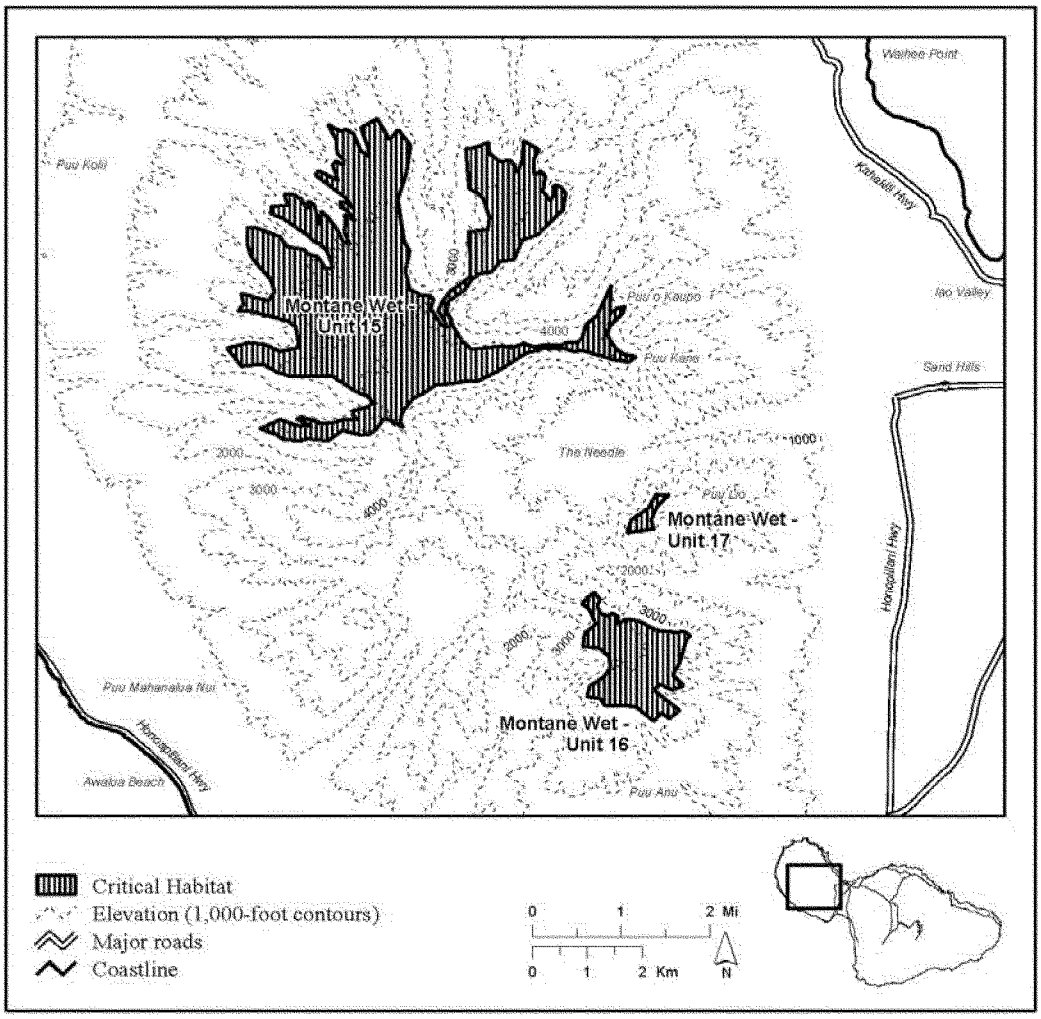
(iv) NOTE: Map of *Palmeria dolei*—Unit 15—Montane Wet, *Palmeria dolei*—Unit 16—Montane Wet, and *Palmeria dolei*—Unit 17—Montane Wet follows:

Map 9

Palmeria dolei

Montane Wet

Unit 15, Unit 16 and Unit 17



(12) *Palmeria dolei*—Unit 18—Montane Mesic, Maui County, Hawaii (20,972 ac, 8,487 ha).

(i) [Reserved for textual description of Unit 18.] This unit is critical habitat for the Akohekohe, *Palmeria dolei*.

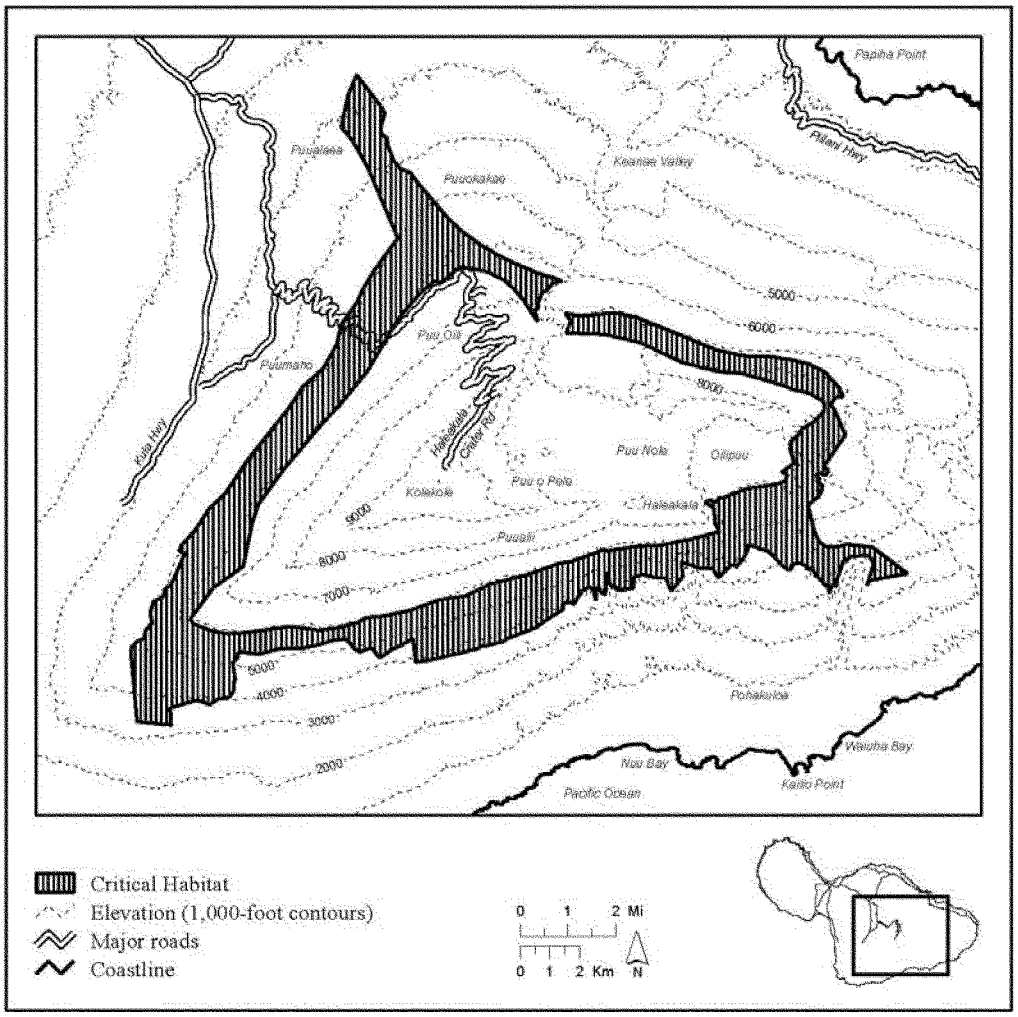
(ii) NOTE: Map of *Palmeria dolei*—Unit 18—Montane Mesic follows:

Map 10

Palmeria dolei

Montane Mesic

Unit 18



(13) *Palmeria dolei*—Unit 19—Montane Mesic, Maui County, Hawaii (366 ac, 148 ha); *Palmeria dolei*—Unit 20—Montane Mesic, Maui County, Hawaii (218 ac, 88 ha); *Palmeria dolei*—Unit 21—Montane Mesic, Maui County, Hawaii (72 ac, 29 ha); *Palmeria dolei*—Unit 22—Montane Mesic, Maui County, Hawaii (304 ac, 123 ha); and *Palmeria dolei*—Unit 23—Montane Mesic, Maui County, Hawaii (94 ac, 38 ha).

(i) [Reserved for textual description of Unit 19.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(ii) [Reserved for textual description of Unit 20.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(iii) [Reserved for textual description of Unit 21.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(iv) [Reserved for textual description of Unit 22.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(v) [Reserved for textual description of Unit 23.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

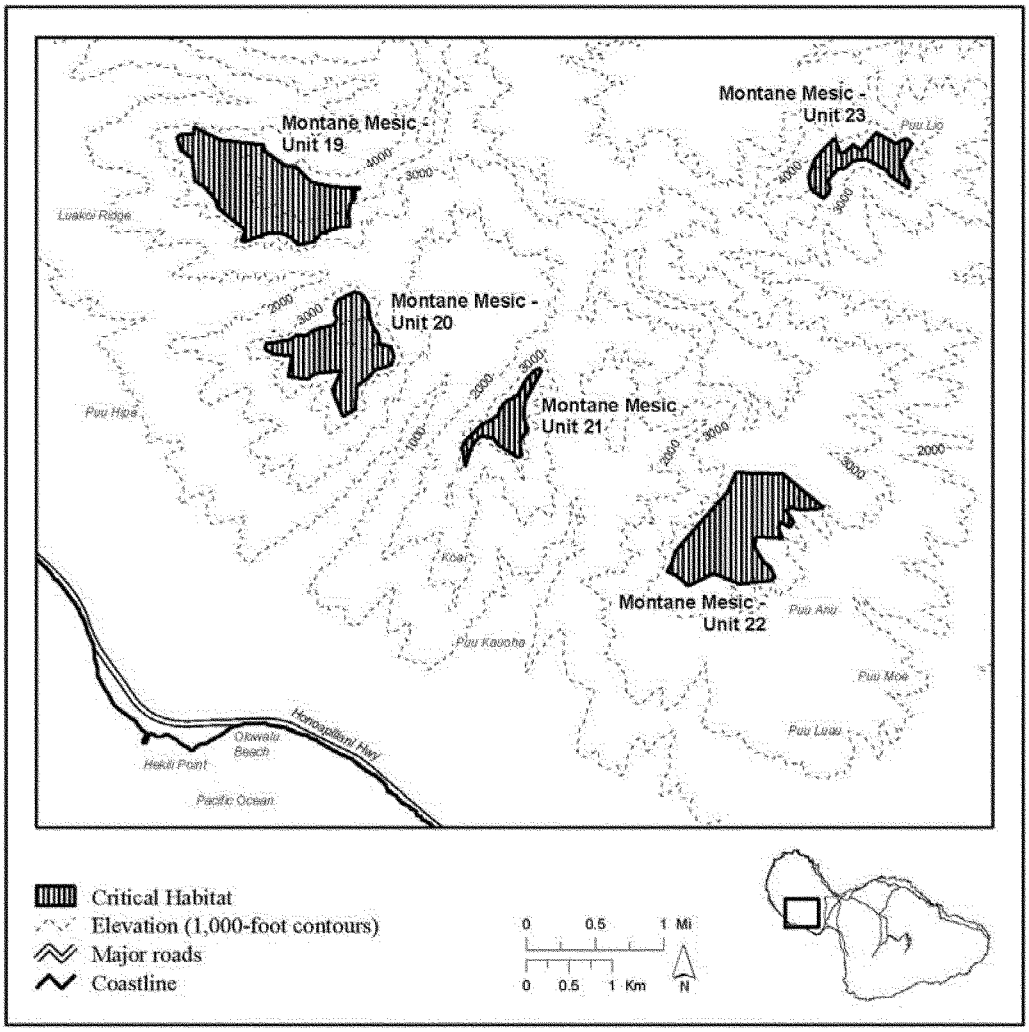
(vi) NOTE: Map of *Palmeria dolei*—Unit 19—Montane Mesic, *Palmeria dolei*—Unit 20—Montane Mesic, *Palmeria dolei*—Unit 21—Montane Mesic, *Palmeria dolei*—Unit 22—Montane Mesic, and *Palmeria dolei*—Unit 23—Montane Mesic follows:

Map 11

Palmeria dolei

Montane Mesic

Unit 19, Unit 20, Unit 21, Unit 22 and Unit 23



(14) *Palmeria dolei*—Unit 24—Subalpine, Maui County, Hawaii (19,401 ac, 7,851 ha), and *Palmeria dolei*—Unit 25—Subalpine, Maui County, Hawaii (10,931 ac, 4,424 ha).

(i) [Reserved for textual description of Unit 24.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(ii) [Reserved for textual description of Unit 25.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

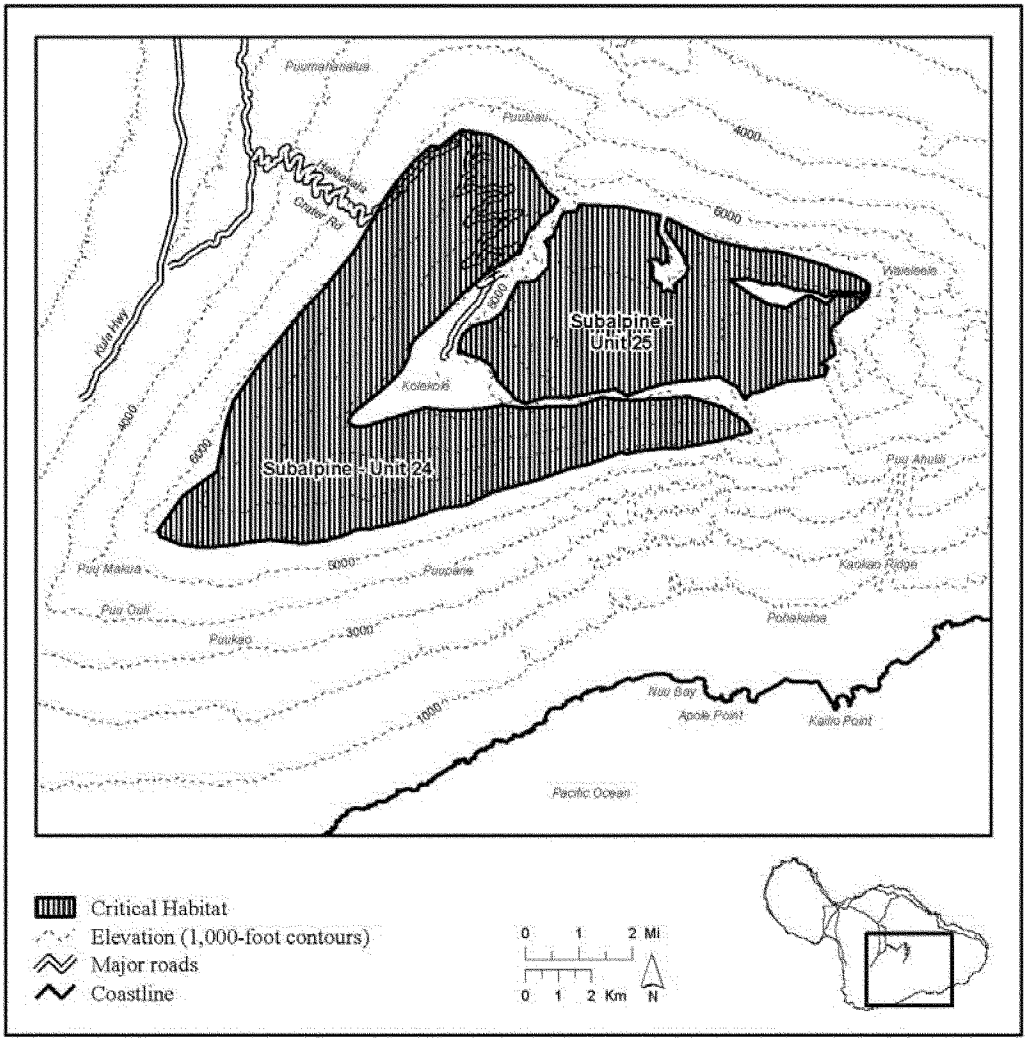
(iii) NOTE: Map of *Palmeria dolei*—Unit 24—Subalpine and *Palmeria dolei*—Unit 25—Subalpine follows:

Map 12

Palmeria dolei

Subalpine

Unit 24 and Unit 25



(15) *Palmeria dolei*—Unit 26—Dry Cliff, Maui County, Hawaii (1,018 ac, 412 ha); *Palmeria dolei*—Unit 27—Dry Cliff, Maui County, Hawaii (293 ac, 119 ha); and *Palmeria dolei*—Unit 28—Dry Cliff, Maui County, Hawaii (315 ac, 127 ha).

(i) [Reserved for textual description of Unit 26.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(ii) [Reserved for textual description of Unit 27.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(iii) [Reserved for textual description of Unit 28.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

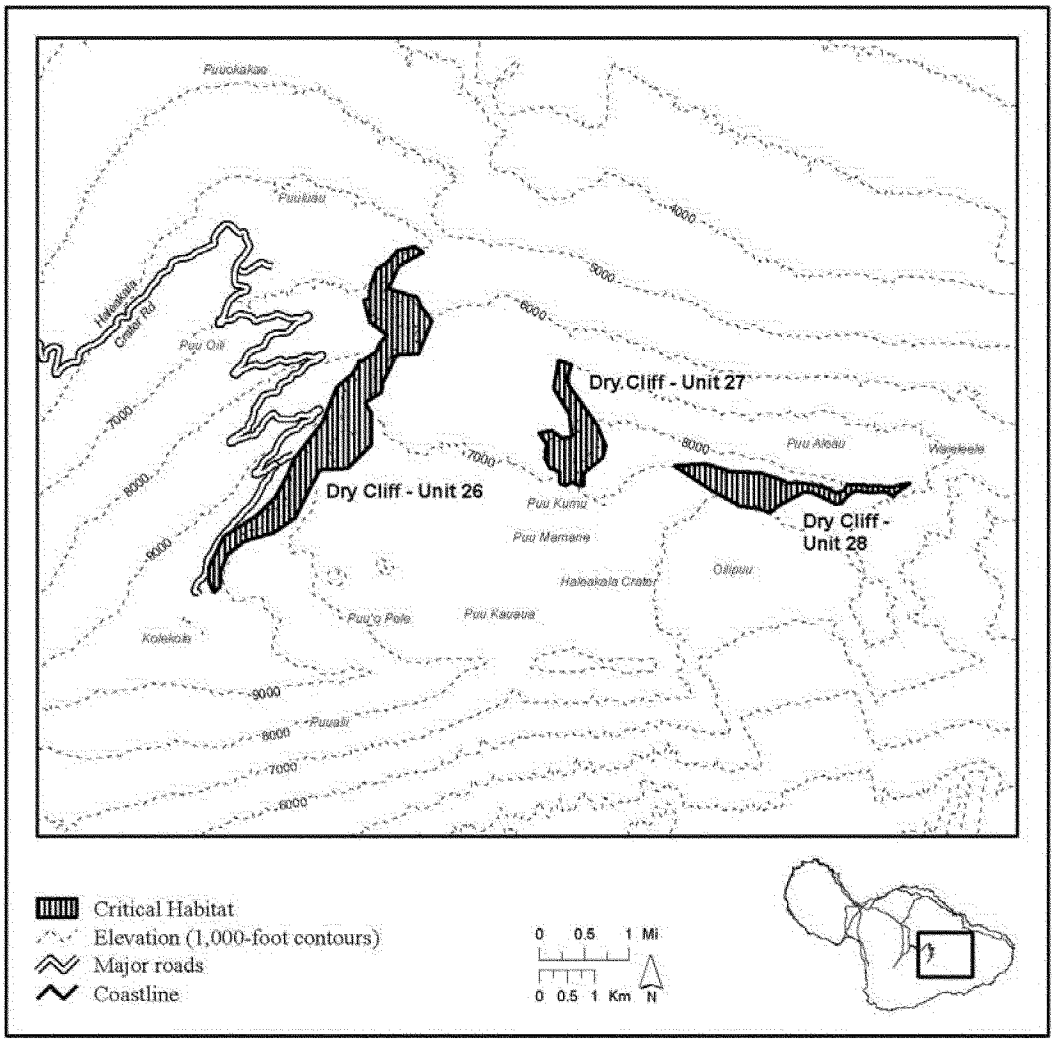
(iv) NOTE: Map of *Palmeria dolei*—Unit 26—Dry Cliff, *Palmeria dolei*—Unit 27—Dry Cliff, and *Palmeria dolei*—Unit 28—Dry Cliff follows:

Map 13

Palmeria dolei

Dry Cliff

Unit 26, Unit 27 and Unit 28



(16) *Palmeria dolei*—Unit 29—Dry Cliff, Maui County, Hawaii (1,536 ac, 622 ha).

(i) [Reserved for textual description of Unit 29.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

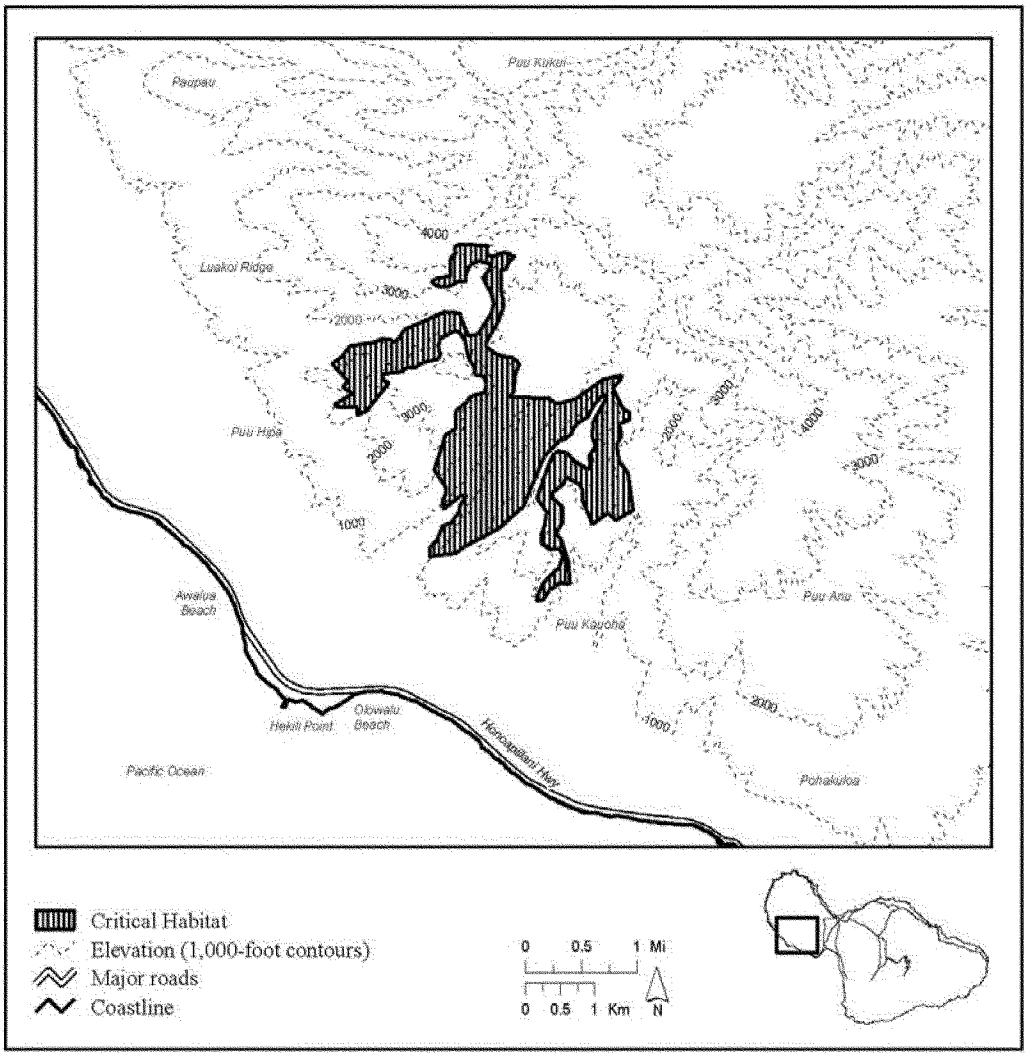
(ii) NOTE: Map of *Palmeria dolei*—Unit 29—Dry Cliff follows:

Map 14

Palmeria dolei

Dry Cliff

Unit 29



(17) *Palmeria dolei*—Unit 30—Wet Cliff, Maui County, Hawaii (460 ac, 186 ha).

(i) [Reserved for textual description of Unit 30.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

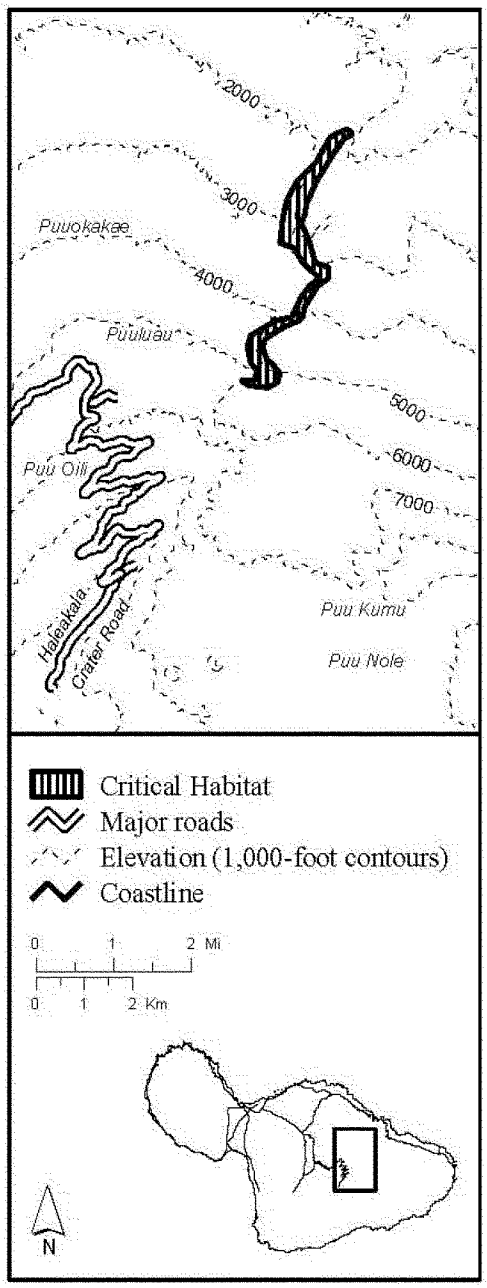
(ii) NOTE: Map of *Palmeria dolei*—Unit 30—Wet Cliff follows:

Map 15

Palmeria dolei

Wet Cliff

Unit 30



(18) *Palmeria dolei*—Unit 31—Wet Cliff, Maui County, Hawaii (1,407 ac, 569 ha); *Palmeria dolei*—Unit 32—Wet Cliff, Maui County, Hawaii (438 ac, 177 ha); and *Palmeria dolei*—Unit 33—Wet Cliff, Maui County, Hawaii (184 ac, 75 ha).

(i) [Reserved for textual description of Unit 31.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(ii) [Reserved for textual description of Unit 32.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(iii) [Reserved for textual description of Unit 33.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

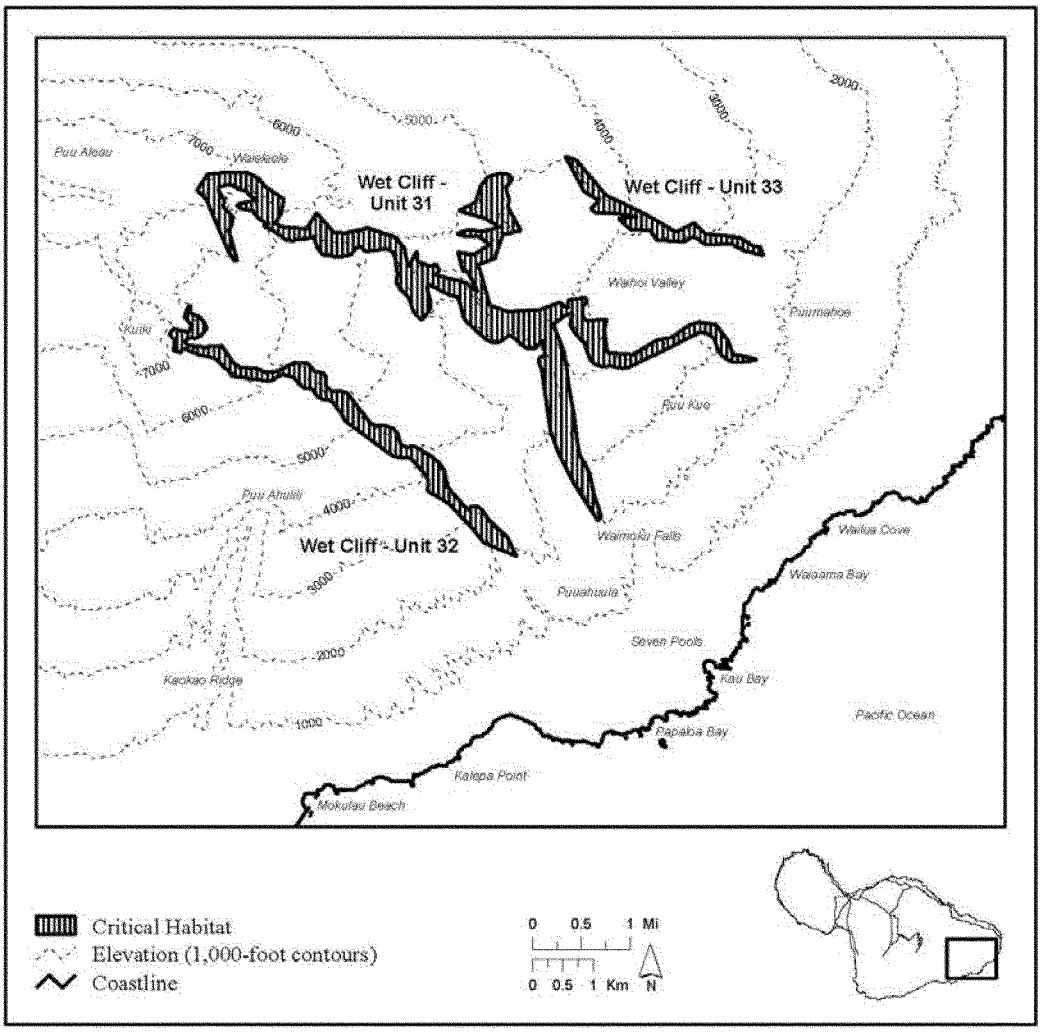
(iv) NOTE: Map of *Palmeria dolei*—Unit 31—Wet Cliff, *Palmeria dolei*—Unit 32—Wet Cliff, and *Palmeria dolei*—Unit 33—Wet Cliff follows:

Map 16

Palmeria dolei

Wet Cliff

Unit 31, Unit 32 and Unit 33



(19) *Palmeria dolei*—Unit 34—Wet Cliff, Maui County, Hawaii (2,048 ac, 829 ha); *Palmeria dolei*—Unit 35—Wet Cliff, Maui County, Hawaii (9,103 ac, 3,684 ha); and *Palmeria dolei*—Unit 36—Wet Cliff Maui County, Hawaii (781 ac, 316 ha).

(i) [Reserved for textual description of Unit 34.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(ii) [Reserved for textual description of Unit 35.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(iii) [Reserved for textual description of Unit 36.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

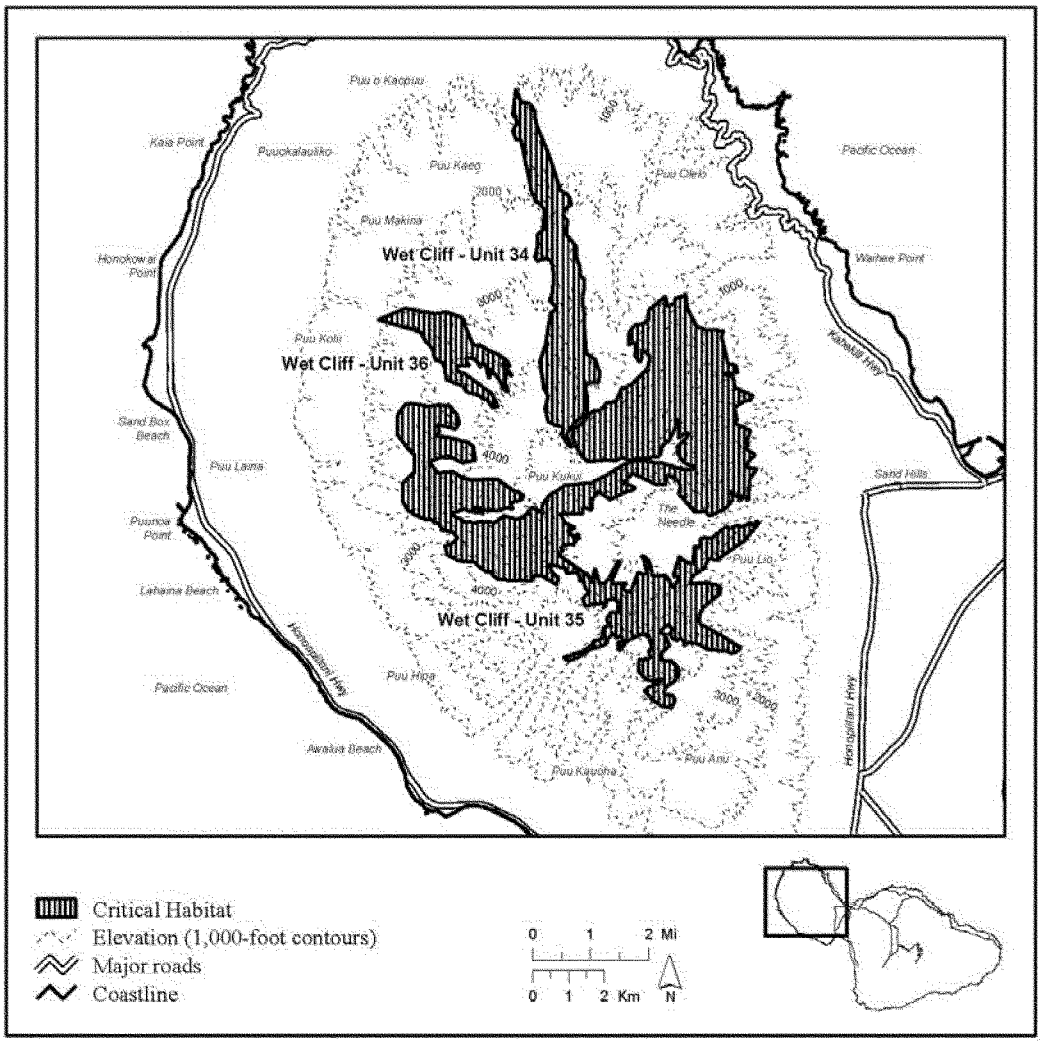
(iv) NOTE: Map of *Palmeria dolei*—Unit 34—Wet Cliff, *Palmeria dolei*—Unit 35—Wet Cliff, and *Palmeria dolei*—Unit 36—Wet Cliff follows:

Map 17

Palmeria dolei

Wet Cliff

Unit 34, Unit 35 and Unit 36



(20) *Palmeria dolei*—Unit 37—Lowland Mesic, Maui County, Hawaii (10,330 ac, 4,180 ha).

(i) [Reserved for textual description of Unit 37.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

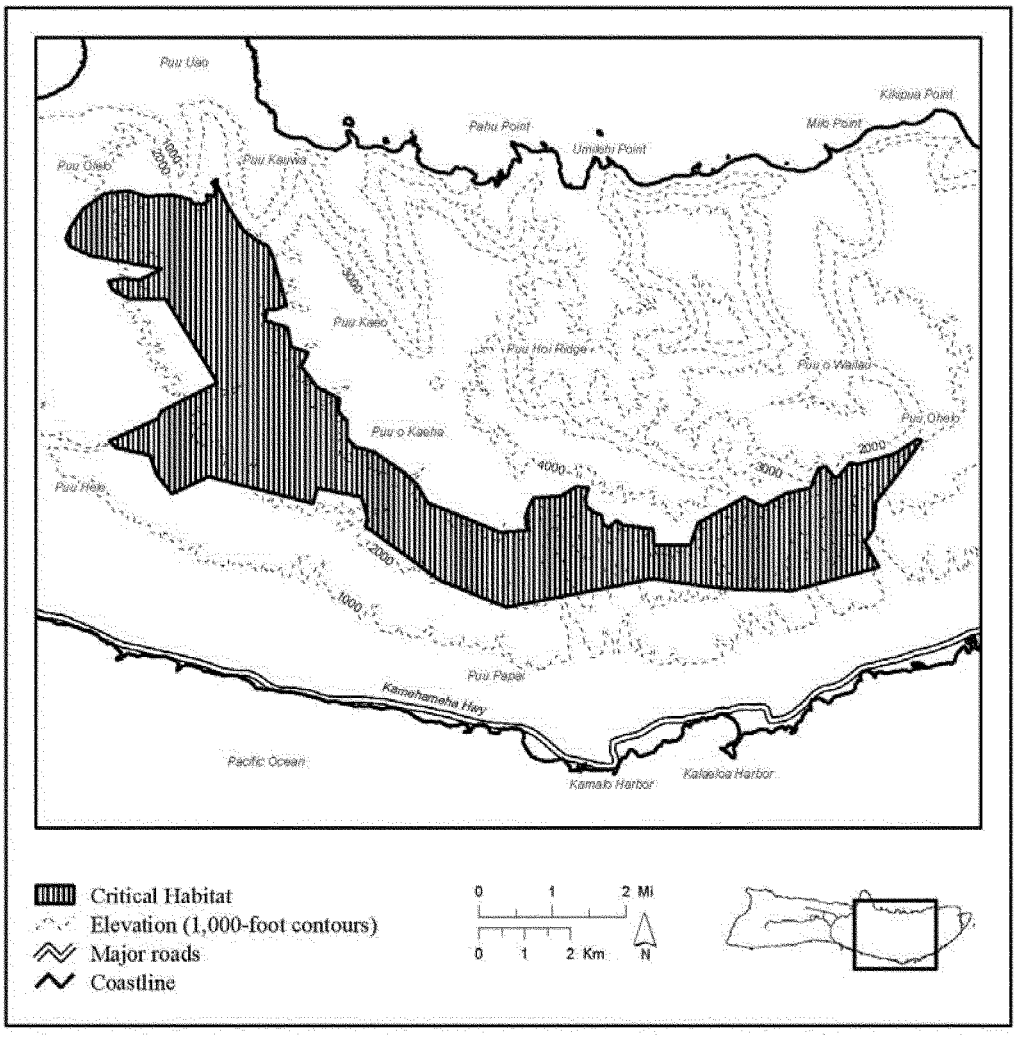
(ii) NOTE: Map of *Palmeria dolei*—Unit 37—Lowland Mesic follows:

Map 18

Palmeria dolei

Lowland Mesic

Unit 37



(21) *Palmeria dolei*—Unit 38—Lowland Wet, Maui County, Hawaii (3,628 ac, 1,468 ha), and *Palmeria dolei*—Unit 39—Lowland Wet, Maui County, Hawaii (1,952 ac, 790 ha).

(i) [Reserved for textual description of Unit 38.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(ii) [Reserved for textual description of Unit 39.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

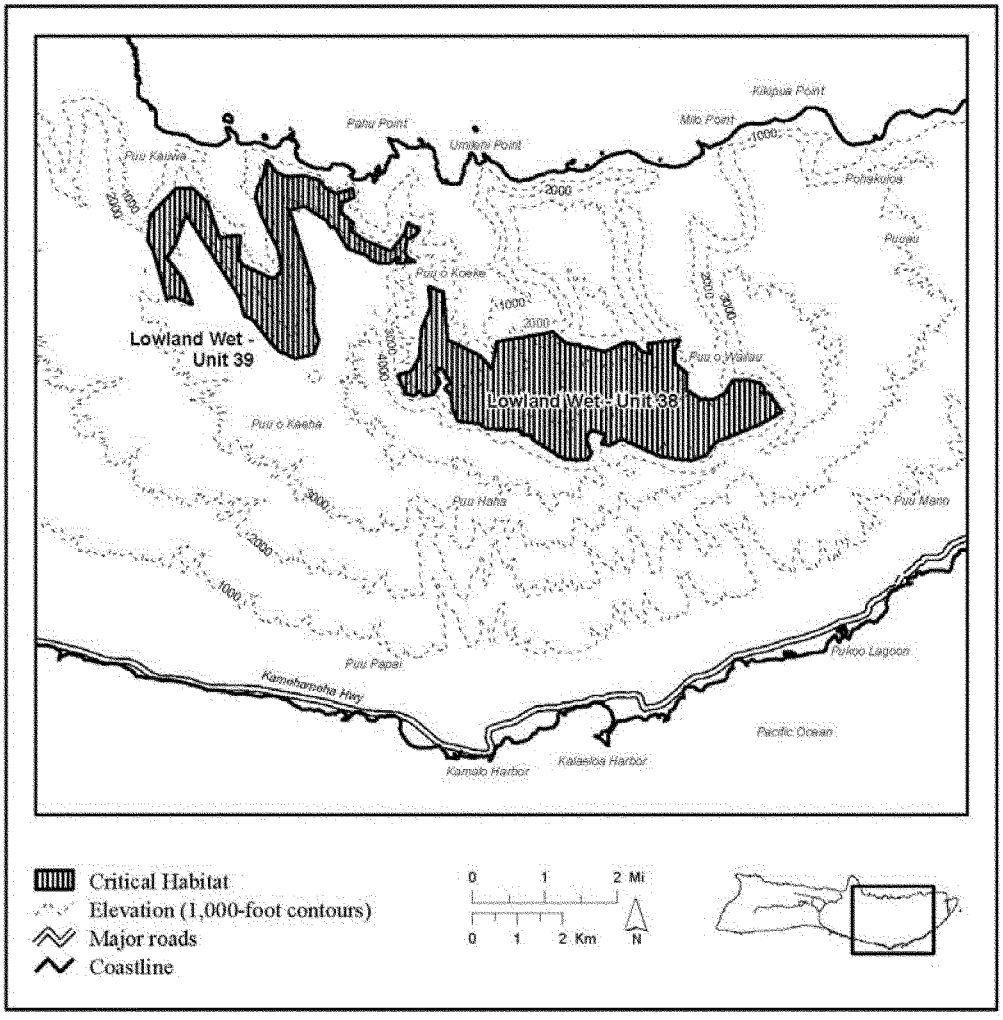
(iii) NOTE: Map of *Palmeria dolei*—Unit 38—Lowland Wet and *Palmeria dolei*—Unit 39—Lowland Wet follows:

Map 19

Palmeria dolei

Lowland Wet

Unit 38 and Unit 39



(22) *Palmeria dolei*—Unit 40—Montane Wet, Maui County, Hawaii (4,818 ac, 1,950 ha), and *Palmeria dolei*—Unit 41—Montane Wet, Maui County, Hawaii (910 ac, 368 ha).

(i) [Reserved for textual description of Unit 40.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(ii) [Reserved for textual description of Unit 41.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

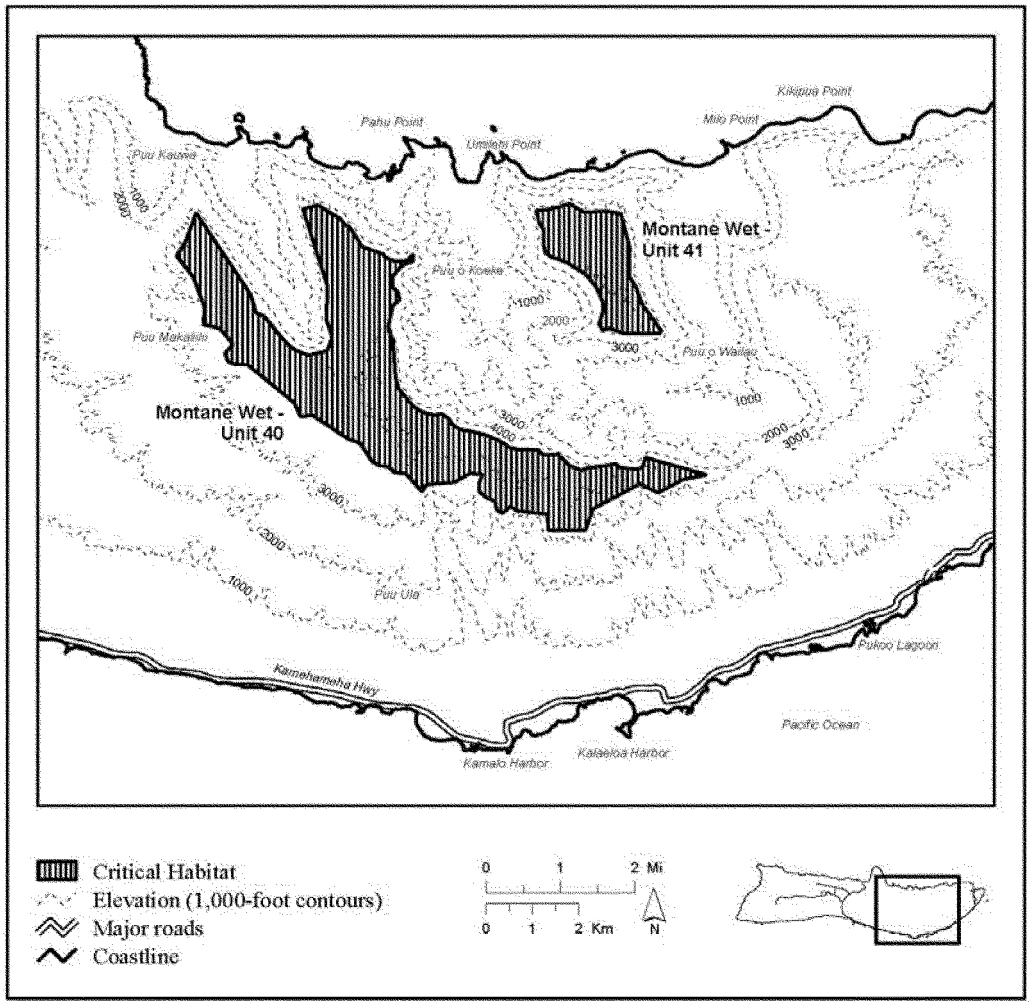
(iii) NOTE: Map of *Palmeria dolei*—Unit 40—Montane Wet and *Palmeria dolei*—Unit 41—Montane Wet follows:

Map 20

Palmeria dolei

Montane Wet

Unit 40 and Unit 41



(23) *Palmeria dolei*—Unit 42—Montane Mesic, Maui County, Hawaii (1,629 ac, 659 ha).

(i) [Reserved for textual description of Unit 42.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

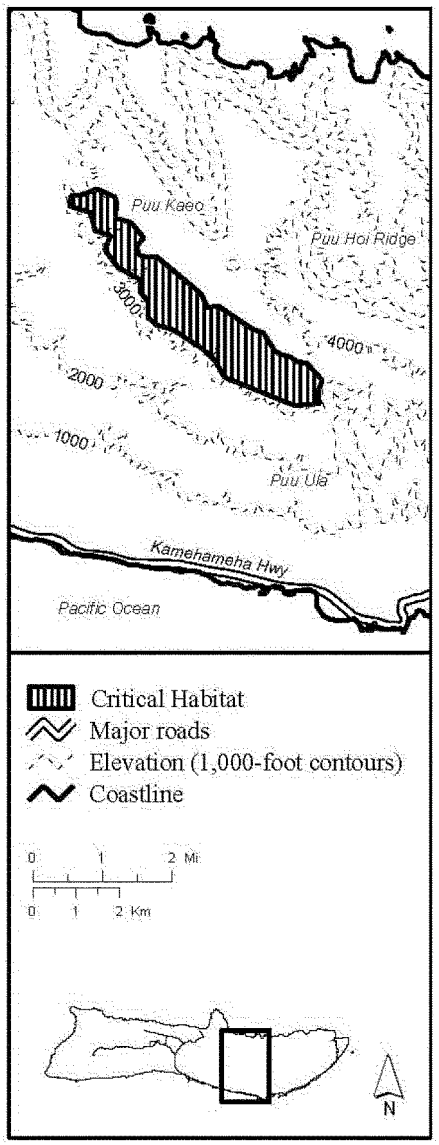
(ii) NOTE: Map of *Palmeria dolei*—Unit 42—Montane Mesic follows:

Map 21

Palmeria dolei

Montane Mesic

Unit 42



(24) *Palmeria dolei*—Unit 43—Wet Cliff, Maui County, Hawaii (1,888 ac, 764 ha), and *Palmeria dolei*—Unit 44—Wet Cliff, Maui County, Hawaii (1,280 ac, 518 ha).

(i) [Reserved for textual description of Unit 43.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

(ii) [Reserved for textual description of Unit 44.] This unit is critical habitat for the Akohekohe, *Palmeria dolei.*

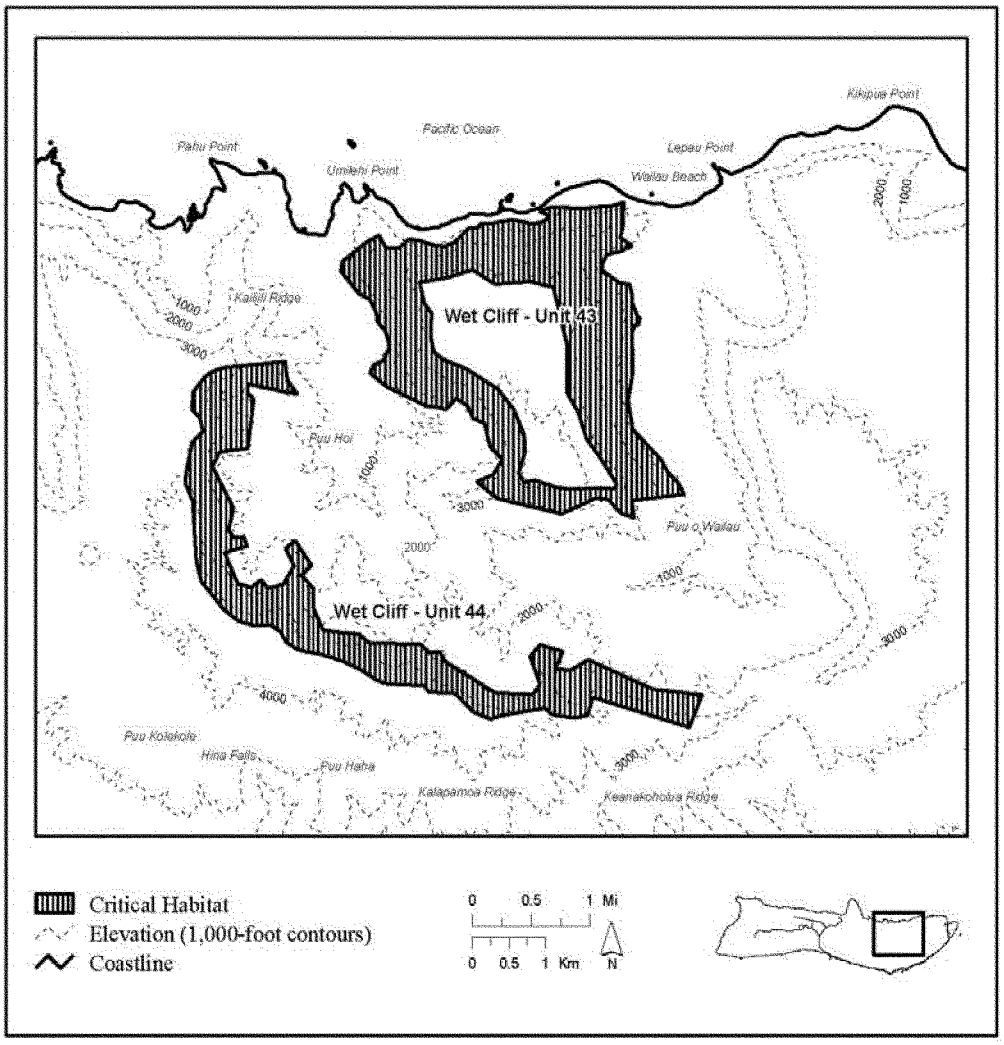
(iii) NOTE: Map of *Palmeria dolei*—Unit 43—Wet Cliff and *Palmeria dolei*—Unit 44—Wet Cliff follows:

Map 22

Palmeria dolei

Wet Cliff

Unit 43 and Unit 44



* * * * *

Maui Parrotbill (Kiwikiu) (*Pseudonestor xanthophrys*)

(1) Critical habitat units are depicted for Maui County, Hawaii, on the maps below.

(2) *Primary constituent elements.*

(i) In unit 1, the primary constituent elements of critical habitat for the Kiwikiu are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units 2, 3, 4, 5, 6, 7, 8, and 9, the primary constituent elements of critical habitat for the Kiwikiu are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iii) In units 10, 11, 12, 13, 14, 15, 16, and 17, the primary constituent elements of critical habitat for the Kiwikiu are:

(A) Elevation: Between 3,300 and 6,500 ft (1,000 and 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iv) In units 18, 19, 20, 21, 22, and 23, the primary constituent elements of critical habitat for the Kiwikiu are:

(A) Elevation: Between 3,300 and 6,500 ft (1,000 and 2,000 m).

(B) Annual precipitation: Between 50 and 75 in (130 and 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

(v) In units 24 and 25, the primary constituent elements of critical habitat for the Kiwikiu are:

(A) Elevation: Between 6,500 and 9,800 ft (2,000 and 3,000 m).

(B) Annual precipitation: Between 15 and 40 in (38 and 100 cm).

(C) Substrate: Dry ash; sandy loam; rocky, undeveloped soils; weathered lava.

(D) Canopy: *Chamaesyce, Chenopodium, Metrosideros, Myoporum, Santalum, Sophora.*

(E) Subcanopy: *Coprosma, Dodonaea, Dubautia, Geranium, Leptecophylla, Vaccinium, Wikstroemia.*

(F) Understory: Ferns, *Bidens, Carex, Deschampsia, Eragrostis, Gahnia, Luzula, Panicum, Pseudognaphalium, Sicyos, Tetramolopium.*

(vi) In units 26, 27, 28, and 29, the primary constituent elements of critical habitat for the Kiwikiu are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Less than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, rocky talus.

(D) Canopy: None.

(E) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*

(F) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

(vii) In units 30, 31, 32, 33, 34, 35, and 36, the primary constituent elements of critical habitat for the Kiwikiu are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptecophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

(viii) In unit 37, the primary constituent elements of critical habitat for the Kiwikiu are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ix) In units 38 and 39, the primary constituent elements of critical habitat for the Kiwikiu are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(x) In units 40 and 41, the primary constituent elements of critical habitat for the Kiwikiu are:

(A) Elevation: Between 3,300 and 6,500 ft (1,000 and 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(xi) In unit 42, the primary constituent elements of critical habitat for the Kiwikiu are:

(A) Elevation: Between 3,000 and 6,000 ft (p. 268 says 3,300 and 6,500) (1,000 and 2,000 m).

(B) Annual precipitation: Between 50 and 75 in (130 and 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

(xii) In units 43 and 44, the primary constituent elements of critical habitat for the Kiwikiu are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptecophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

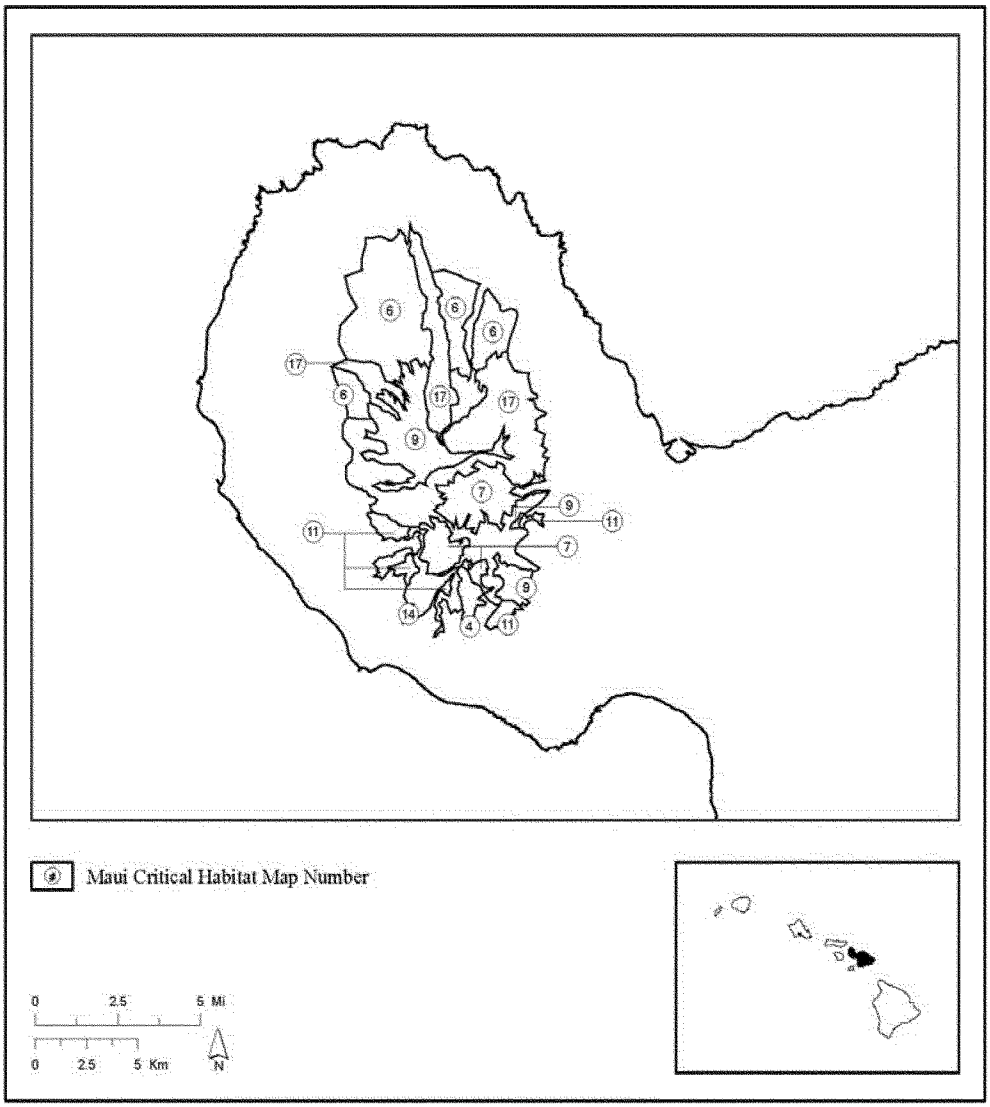
(3) Existing manmade features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas, do not contain one or more of the physical or biological features. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species or physical or biological features in adjacent critical habitat.

(4) *Critical habitat maps.* Maps were created in GIS, with coordinates in UTM Zone 4, units in meters using North American datum of 1983 (NAD 83).

(5) Index maps of critical habitat units for the Kiwikiu follow:

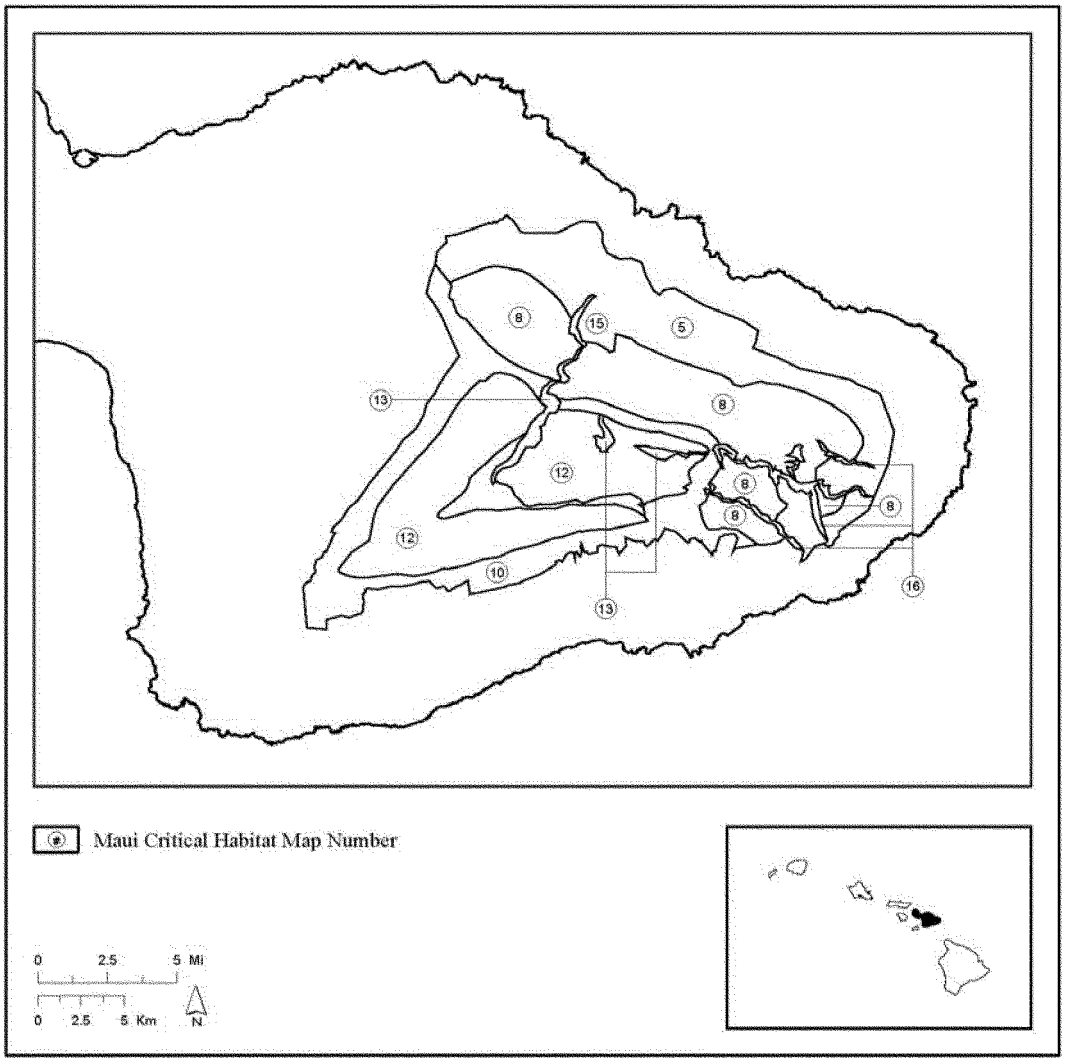
Map 1

***Pseudonestor xanthophrys*—Index Map 1—West Maui**



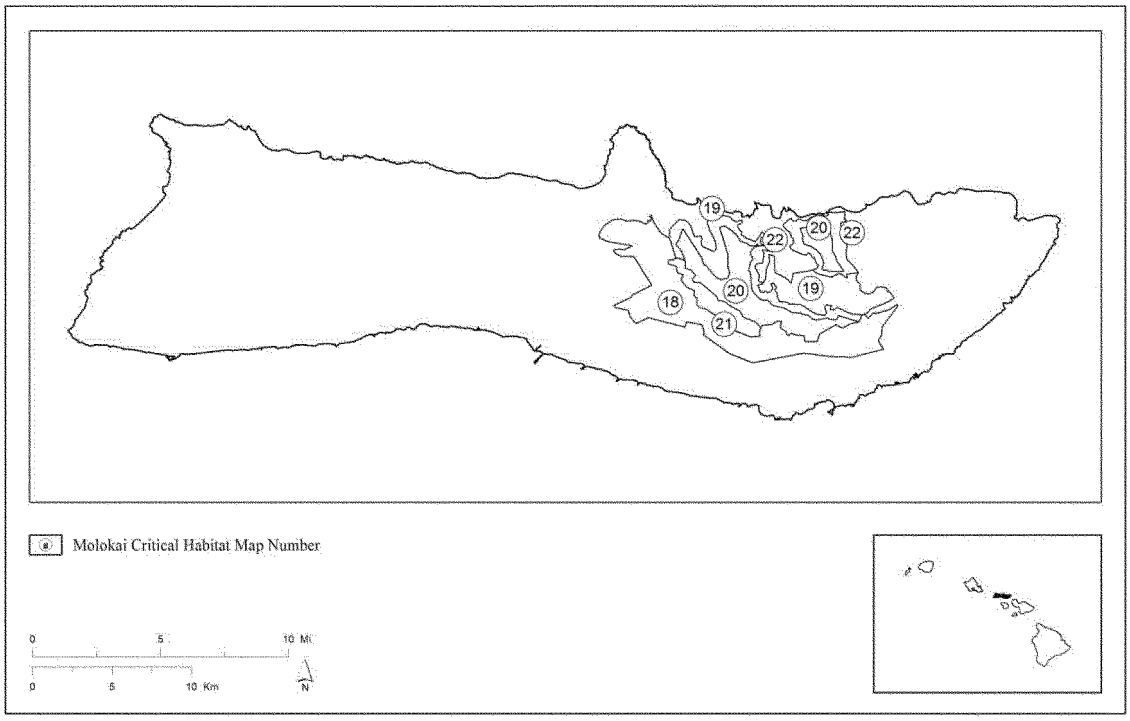
Map 2

Pseudonestor xanthophrys—Index Map 2—East Maui



Map 3

Pseudonestor xanthophrys—Index Map 3—Molokai



(6) *Pseudonestor xanthophrys*—Unit 1—Lowland Mesic, Maui County, Hawaii (477 ac; 193 ha).

(i) [Reserved for textual description of Unit 1.]. This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

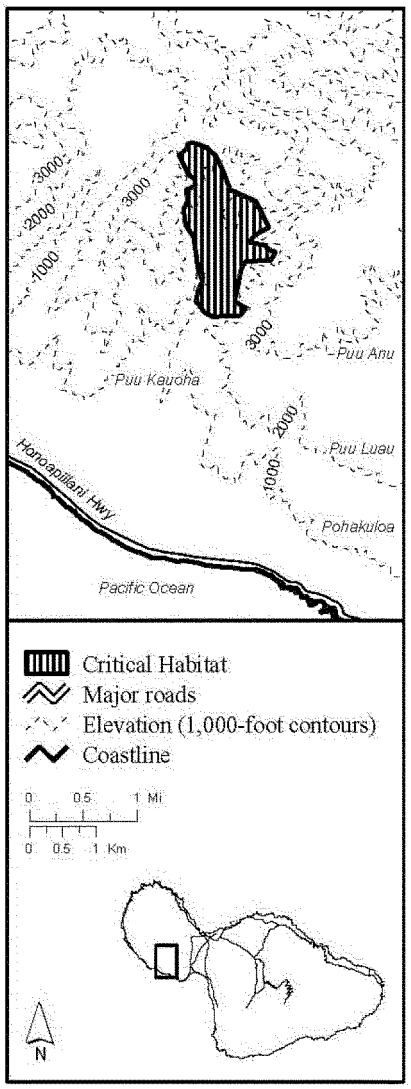
(ii) NOTE: Map of *Pseudonestor xanthophrys*—Unit 1—Lowland Mesic follows:

Map 4

Pseudonestor xanthophrys

Lowland Mesic

Unit 1



(7) *Pseudonestor xanthophrys*—Unit 2—Lowland Wet, Maui County, Hawaii (26,703 ac, 10,807 ha).

(i) [Reserved for textual description of Unit 2.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

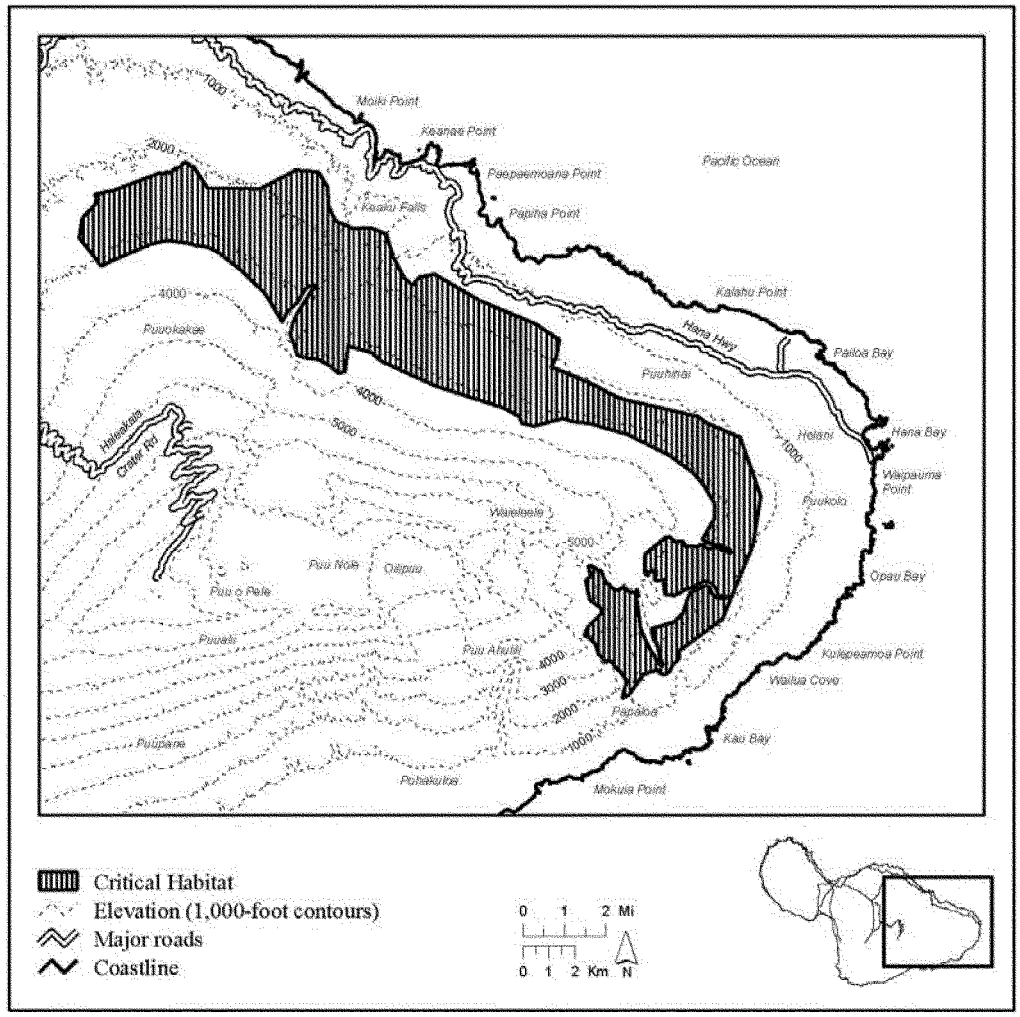
(ii) NOTE: Map of *Pseudonestor xanthophrys*—Unit 2—Lowland Wet follows:

Map 5

Pseudonestor xanthophrys

Lowland Wet

Unit 2



(8) *Pseudonestor xanthophrys*—Unit 3—Lowland Wet, Maui County, Hawaii (5,066 ac, 2,050 ha); *Pseudonestor xanthophrys*—Unit 4—Lowland Wet, Maui County, Hawaii (1,427 ac, 577 ha); *Pseudonestor xanthophrys*—Unit 5—Lowland Wet, Maui County, Hawaii (1,165 ac, 472 ha); and *Pseudonestor xanthophrys*—Unit 7—Lowland Wet, Maui County, Hawaii (639 ac, 259 ha).

(i) [Reserved for textual description of Unit 3.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(ii) [Reserved for textual description of Unit 4.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(iii) [Reserved for textual description of Unit 5.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(iv) [Reserved for textual description of Unit 7.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

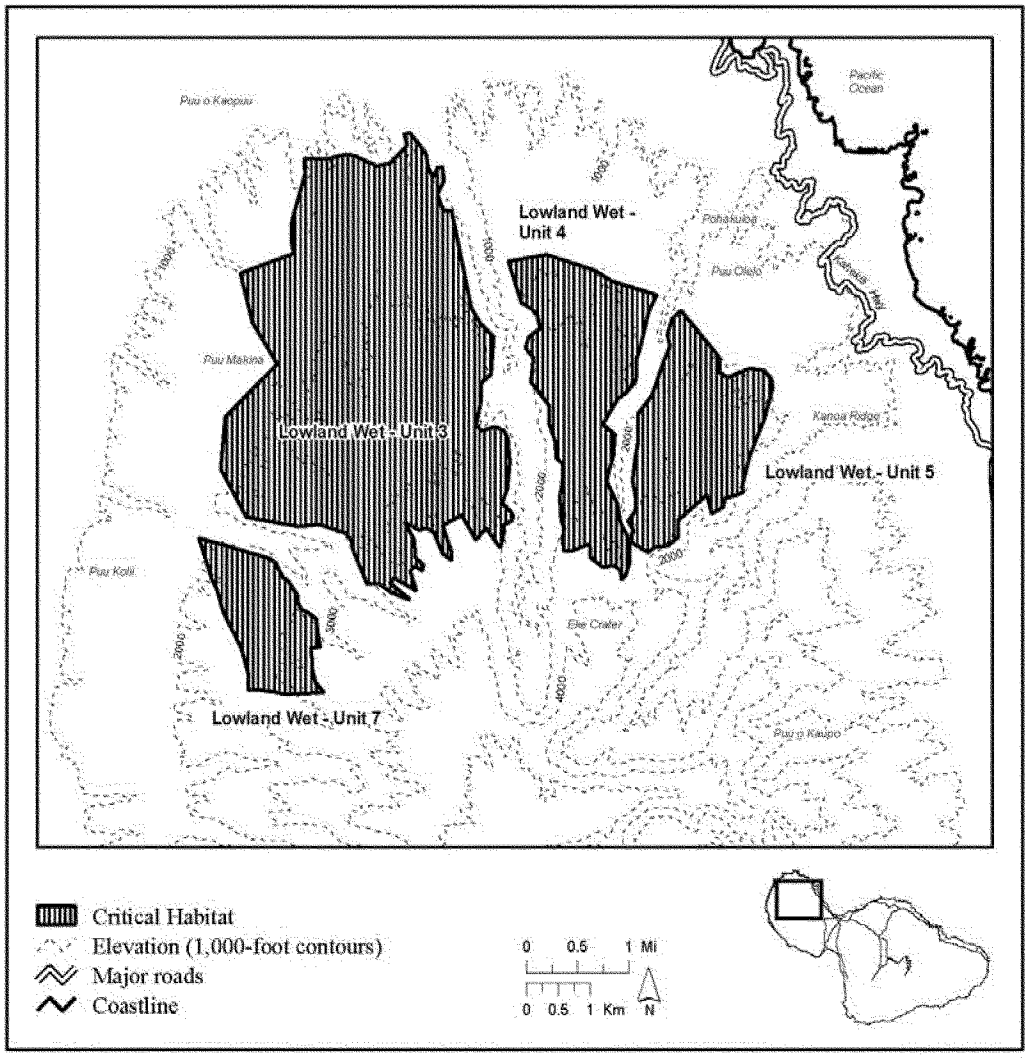
(v) NOTE: Map of *Pseudonestor xanthophrys*—Unit 3—Lowland Wet, *Pseudonestor xanthophrys*—Unit 4—Lowland Wet, *Pseudonestor xanthophrys*—Unit 5—Lowland Wet, and *Pseudonestor xanthophrys*—Unit 7—Lowland Wet follows:

Map 6

Pseudonestor xanthophrys

Lowland Wet

Unit 3, Unit 4, Unit 5 and Unit 7



(9) *Pseudonestor xanthophrys*—Unit 6—Lowland Wet, Maui County, Hawaii (2,112 ac, 855 ha); *Pseudonestor xanthophrys*—Unit 8—Lowland Wet, Maui County, Hawaii (898 ac, 364 ha); and *Pseudonestor xanthophrys*—Unit 9—Lowland Wet, Maui County, Hawaii (230 ac, 93 ha).

(i) [Reserved for textual description of Unit 6.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(ii) [Reserved for textual description of Unit 8.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(iii) [Reserved for textual description of Unit 9.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

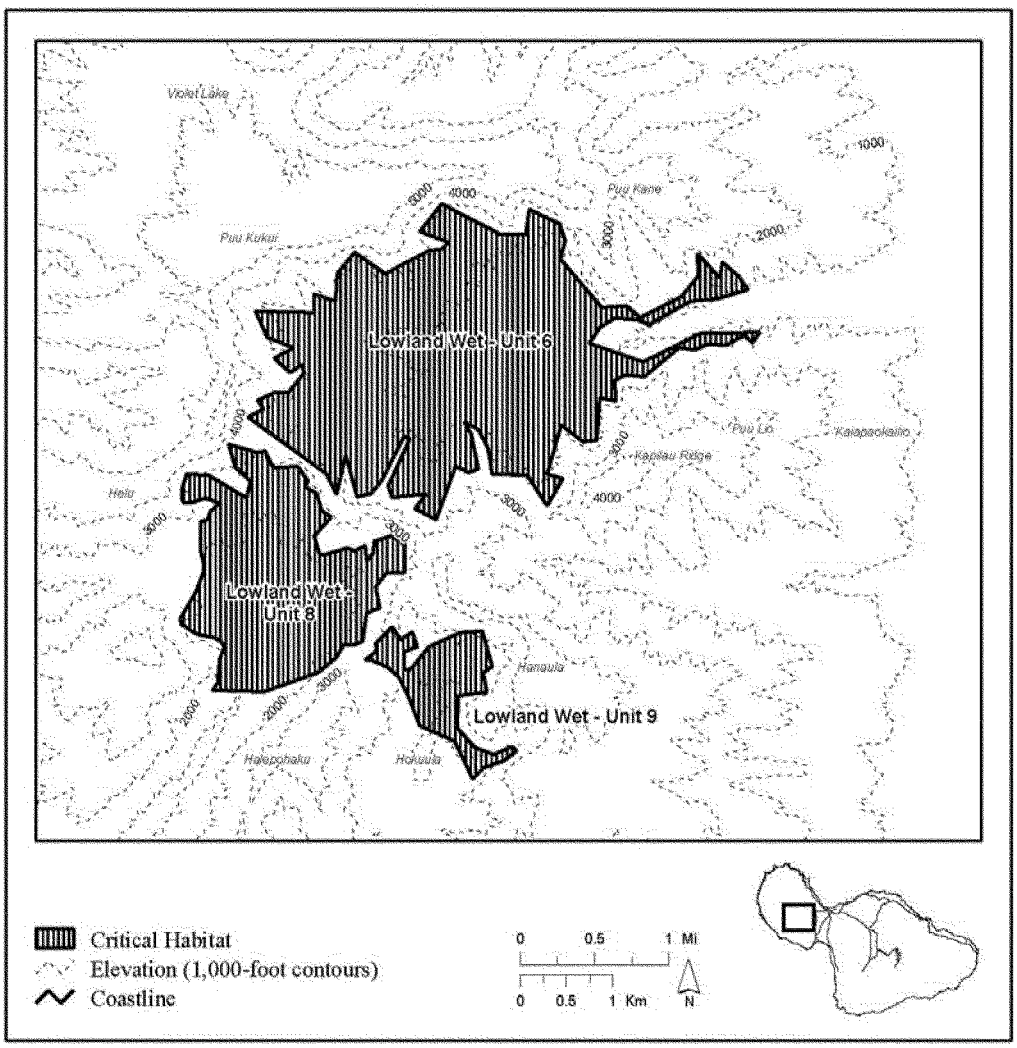
(iv) NOTE: Map of *Pseudonestor xanthophrys*—Unit 6—Lowland Wet, *Pseudonestor xanthophrys*—Unit 8—Lowland Wet, and *Pseudonestor xanthophrys*—Unit 9—Lowland Wet follows:

Map 7

Pseudonestor xanthophrys

Lowland Wet

Unit 6, Unit 8 and Unit 9



(10) *Pseudonestor xanthophrys*—Unit 10—Montane Wet, Maui County, Hawaii (7,815 ac, 3,162 ha); *Pseudonestor xanthophrys*—Unit 11—Montane Wet, Maui County, Hawaii (16,687 ac, 6,753 ha); *Pseudonestor xanthophrys*—Unit 12—Montane Wet, Maui County, Hawaii (2,228 ac, 902 ha); *Pseudonestor xanthophrys*—Unit 13—Montane Wet, Maui County, Hawaii (1,833 ac, 742 ha); and *Pseudonestor xanthophrys*—Unit 14—Montane Wet, Maui County, Hawaii (387 ac, 156 ha).

(i) [Reserved for textual description of Unit 10.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(ii) [Reserved for textual description of Unit 11.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(iii) [Reserved for textual description of Unit 12.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(iv) [Reserved for textual description of Unit 13.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(v) [Reserved for textual description of Unit 14.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

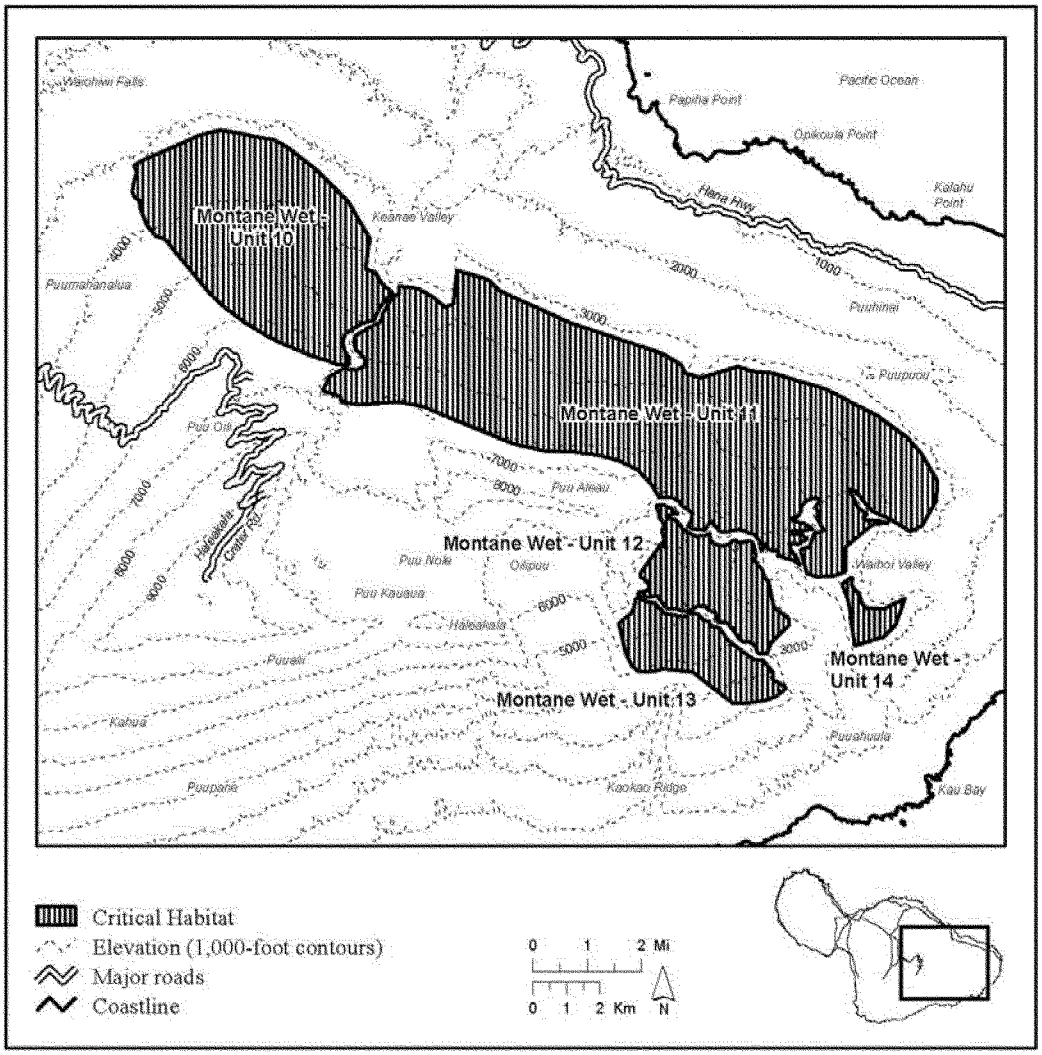
(vi) NOTE: Map of *Pseudonestor xanthophrys*—Unit 10—Montane Wet, *Pseudonestor xanthophrys*—Unit 11—Montane Wet, *Pseudonestor xanthophrys*—Unit 12—Montane Wet, *Pseudonestor xanthophrys*—Unit 13—Montane Wet, and *Pseudonestor xanthophrys*—Unit 14—Montane Wet follows:

Map 8

Pseudonestor xanthophrys

Montane Wet

Unit 10, Unit 11, Unit 12, Unit 13 and Unit 14



(11) *Pseudonestor xanthophrys*—Unit 15—Montane Wet, Maui County, Hawaii (3,964 ac, 1,604 ha); *Pseudonestor xanthophrys*—Unit 16—Montane Wet, Maui County, Hawaii (608 ac, 246 ha); and *Pseudonestor xanthophrys*—Unit 17—Montane Wet, Maui County, Hawaii (46 ac, 19 ha).

(i) [Reserved for textual description of Unit 15.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(ii) [Reserved for textual description of Unit 16.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(iii) [Reserved for textual description of Unit 17.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

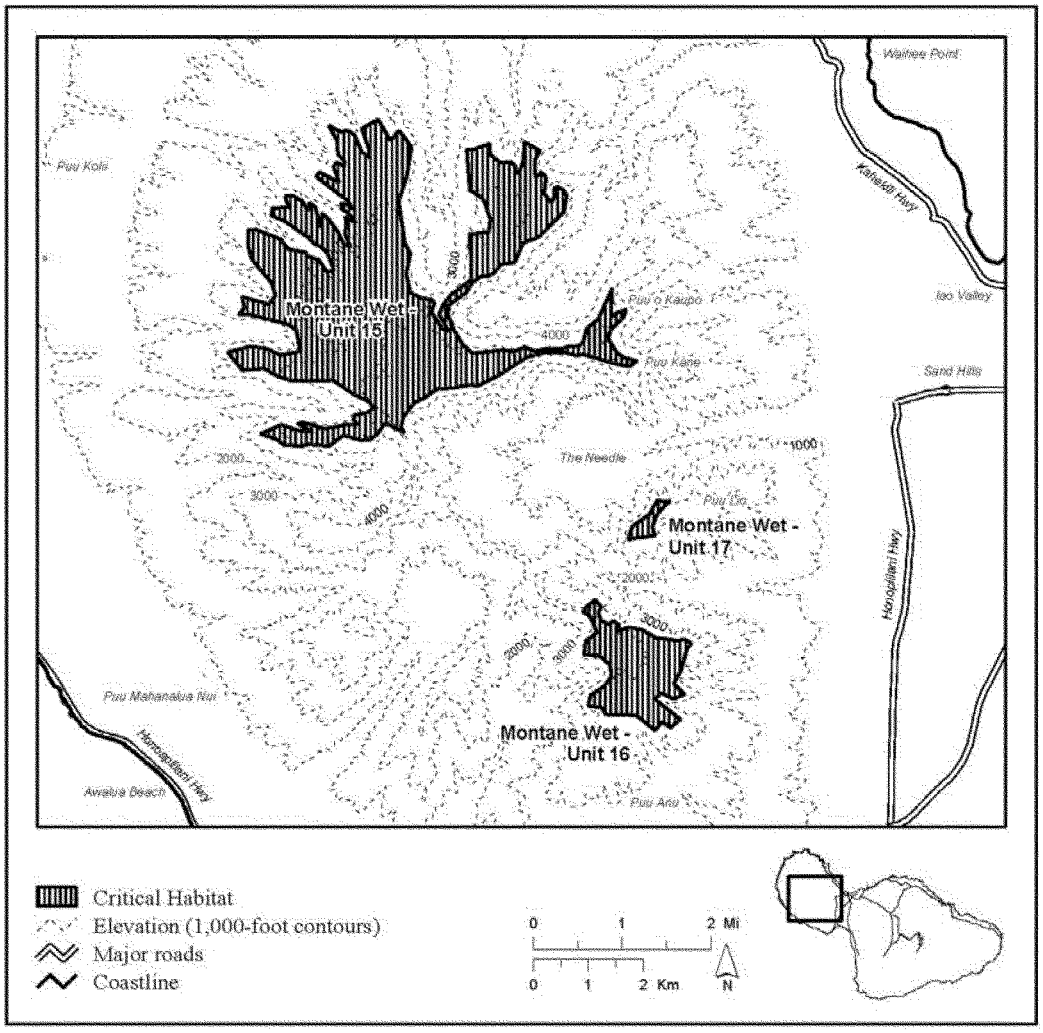
(iv) NOTE: Map of *Pseudonestor xanthophrys*—Unit 15—Montane Wet, *Pseudonestor xanthophrys*—Unit 16—Montane Wet, and *Pseudonestor xanthophrys*—Unit 17—Montane Wet follows:

Map 9

Pseudonestor xanthophrys

Montane Wet

Unit 15, Unit 16 and Unit 17



(12) *Pseudonestor xanthophrys*—Unit 18—Montane Mesic, Maui County, Hawaii (20,972 ac, 8,487 ha).

(i) [Reserved for textual description of Unit 18.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

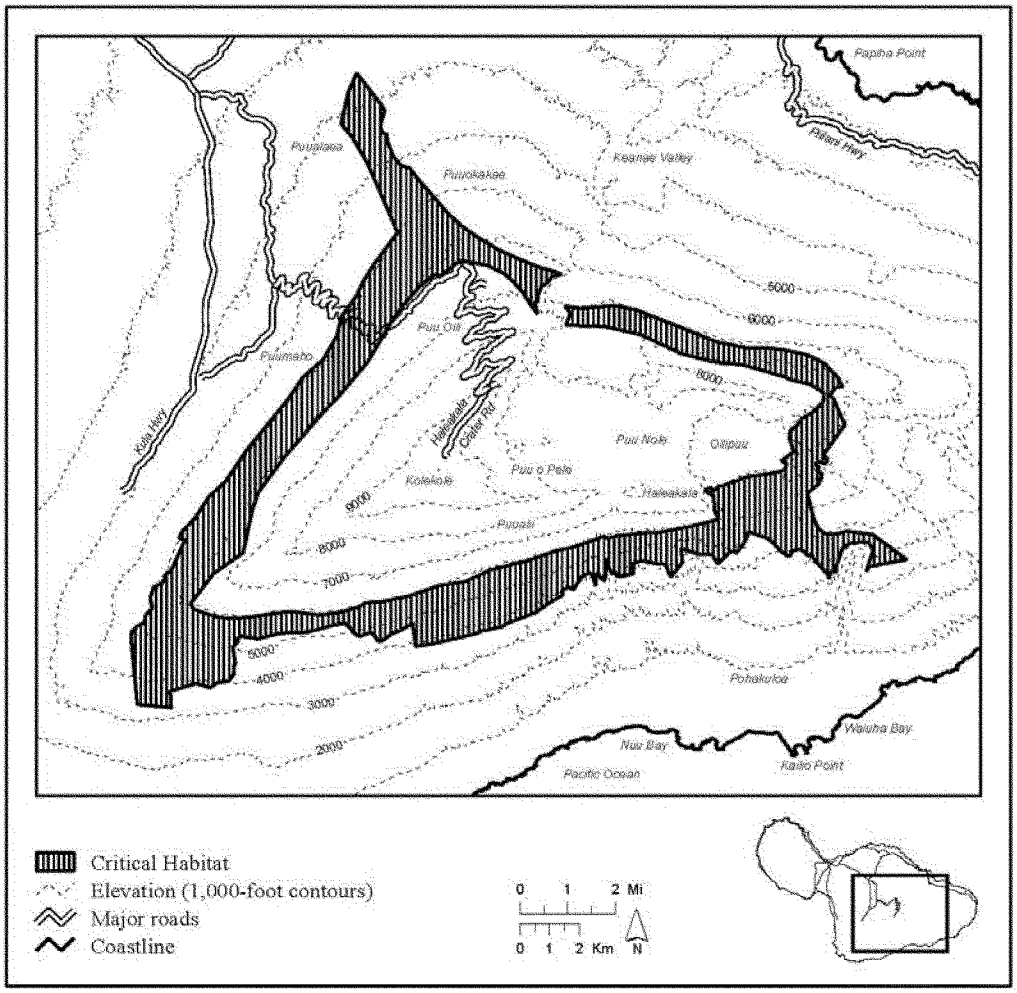
(ii) NOTE: Map of *Pseudonestor xanthophrys*—Unit 18—Montane Mesic follows:

Map 10

Pseudonestor xanthophrys

Montane Mesic

Unit 18



(13) *Pseudonestor xanthophrys*—Unit 19—Montane Mesic, Maui County, Hawaii (366 ac, 148 ha); *Pseudonestor xanthophrys*—Unit 20—Montane Mesic, Maui County, Hawaii (218 ac, 88 ha); *Pseudonestor xanthophrys*—Unit 21—Montane Mesic, Maui County, Hawaii (72 ac, 29 ha); *Pseudonestor xanthophrys*—Unit 22—Montane Mesic, Maui County, Hawaii (304 ac, 123 ha); and *Pseudonestor xanthophrys*—Unit 23—Montane Mesic, Maui County, Hawaii (94 ac, 38 ha).

(i) [Reserved for textual description of Unit 19.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(ii) [Reserved for textual description of Unit 20.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(iii) [Reserved for textual description of Unit 21.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(iv) [Reserved for textual description of Unit 22.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(v) [Reserved for textual description of Unit 23.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

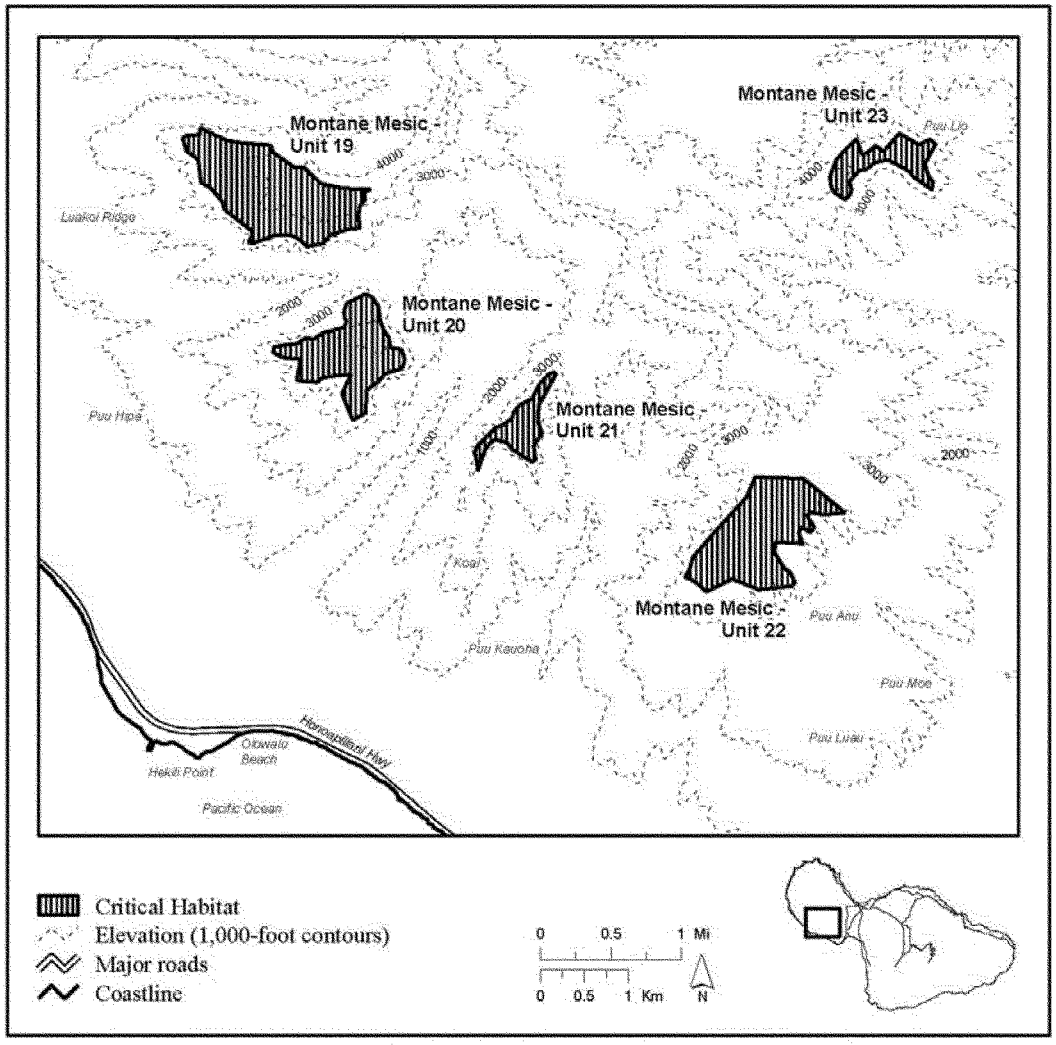
(vi) NOTE: Map of *Pseudonestor xanthophrys*—Unit 19—Montane Mesic, *Pseudonestor xanthophrys*—Unit 20—Montane Mesic, *Pseudonestor xanthophrys*—Unit 21—Montane Mesic, *Pseudonestor xanthophrys*—Unit 22—Montane Mesic, and *Pseudonestor xanthophrys*—Unit 23—Montane Mesic follows:

Map 11

Pseudonestor xanthophrys

Montane Mesic

Unit 19, Unit 20, Unit 21, Unit 22 and Unit 23



(14) *Pseudonestor xanthophrys*—Unit 24—Subalpine, Maui County, Hawaii (19,401 ac, 7,851 ha), and *Pseudonestor xanthophrys*—Unit 25—Subalpine, Maui County, Hawaii (10,931 ac, 4,424 ha).

(i) [Reserved for textual description of Unit 24.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(ii) [Reserved for textual description of Unit 25.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

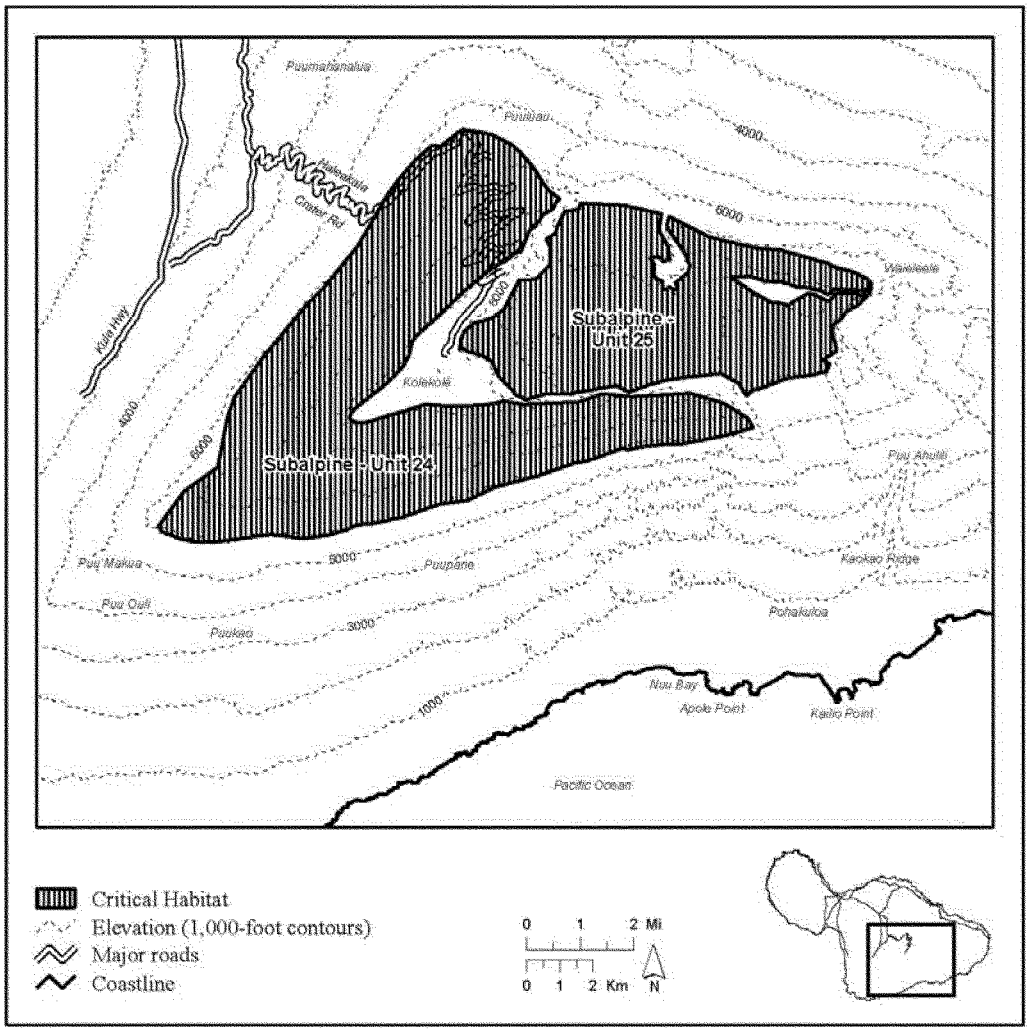
(iii) NOTE: Map of *Pseudonestor xanthophrys*—Unit 24—Subalpine and *Pseudonestor xanthophrys*—Unit 25—Subalpine follows:

Map 12

Pseudonestor xanthophrys

Subalpine

Unit 24 and Unit 24



(15) *Pseudonestor xanthophrys*—Unit 26—Dry Cliff, Maui County, Hawaii (1,018 ac, 412 ha); *Pseudonestor xanthophrys*—Unit 27—Dry Cliff, Maui County, Hawaii (293 ac, 119 ha); and *Pseudonestor xanthophrys*—Unit 28—Dry Cliff, Maui County, Hawaii (315 ac, 127 ha).

(i) [Reserved for textual description of Unit 26.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(ii) [Reserved for textual description of Unit 27.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(iii) [Reserved for textual description of Unit 28.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

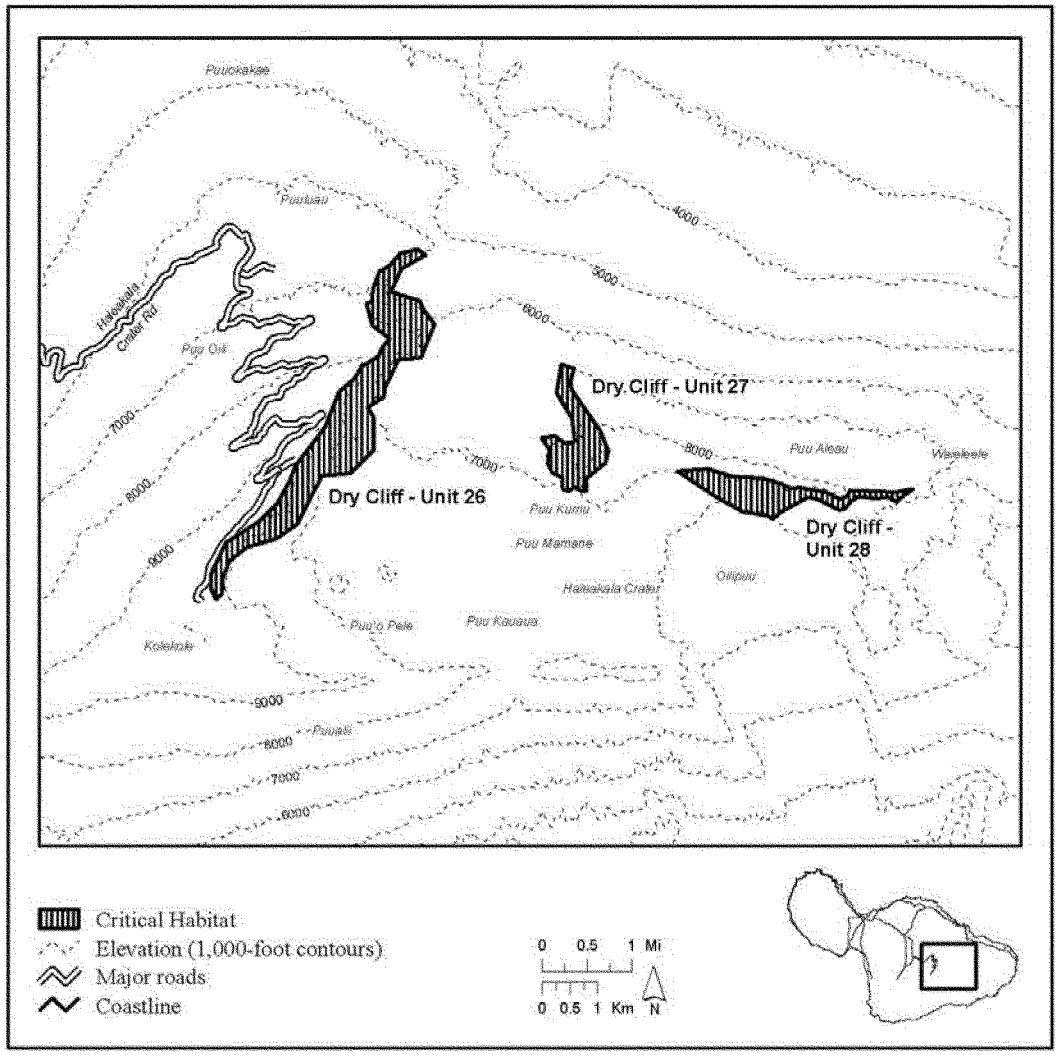
(iv) NOTE: Map of *Pseudonestor xanthophrys*—Unit 26—Dry Cliff, *Pseudonestor xanthophrys*—Unit 27—Dry Cliff, and *Pseudonestor xanthophrys*—Unit 28—Dry Cliff follows:

Map 13

Pseudonestor xanthophrys

Dry Cliff

Unit 26, Unit 27 and Unit 28



(16) *Pseudonestor xanthophrys*—Unit 29—Dry Cliff, Maui County, Hawaii (1,536 ac, 622 ha).

(i) [Reserved for textual description of Unit 29.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

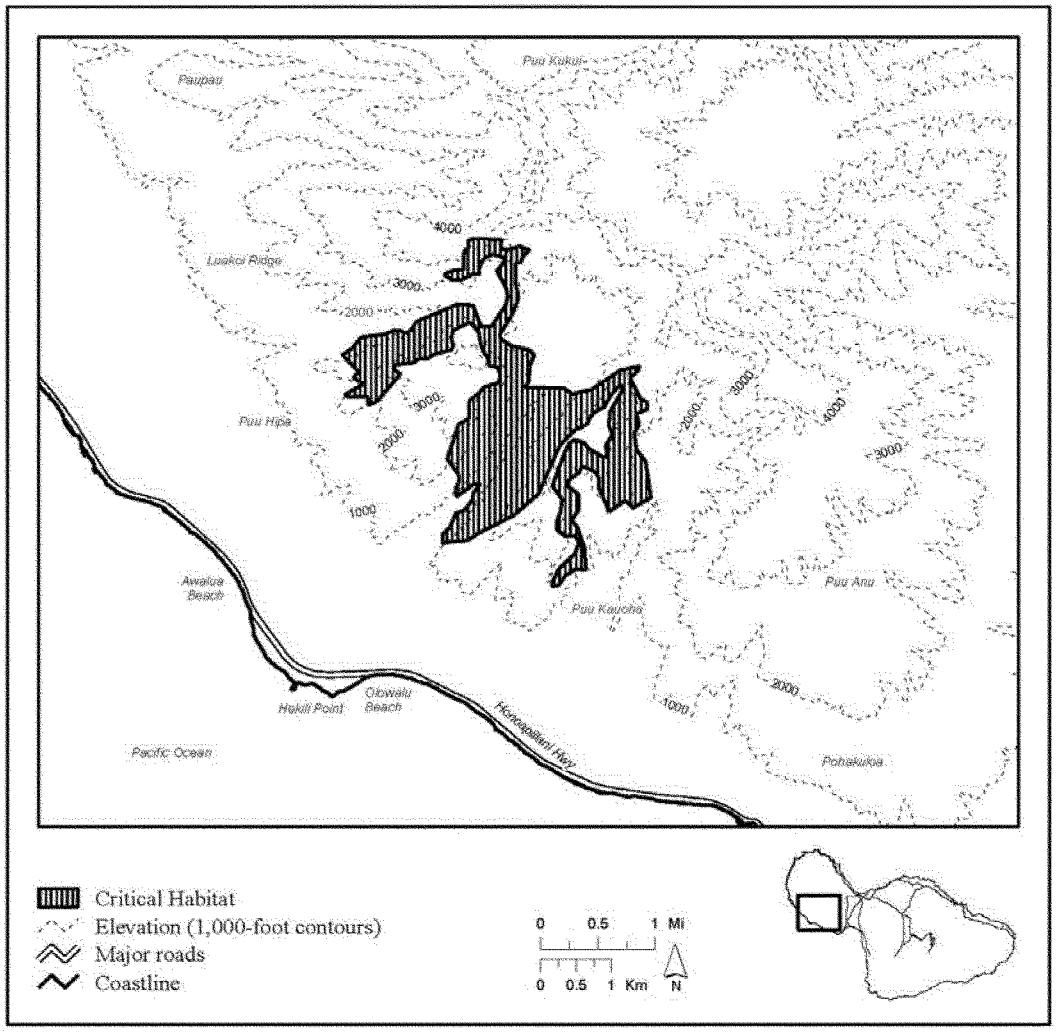
(ii) NOTE: Map of *Pseudonestor xanthophrys*—Unit 29—Dry Cliff follows:

Map 14

Pseudonestor xanthophrys

Dry Cliff

Unit 29



(17) *Pseudonestor xanthophrys*—Unit 30—Wet Cliff, Maui County, Hawaii (460 ac, 186 ha).

(i) [Reserved for textual description of Unit 30.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

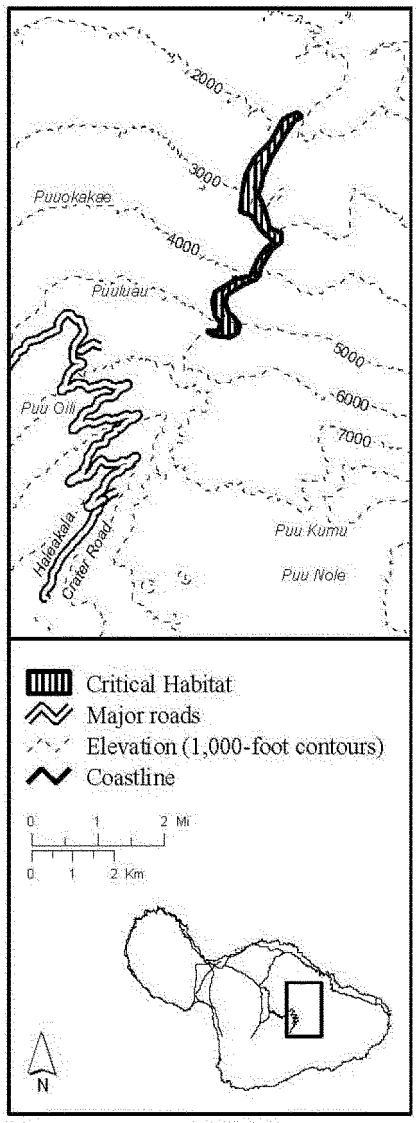
(ii) NOTE: Map of *Pseudonestor xanthophrys*—Unit 30—Wet Cliff follows:

Map 15

Pseudonestor xanthophrys

Wet Cliff

Unit 30



(18) *Pseudonestor xanthophrys*—Unit 31—Wet Cliff, Maui County, Hawaii (1,407 ac, 569 ha); *Pseudonestor xanthophrys*—Unit 32—Wet Cliff, Maui County, Hawaii (438 ac, 177 ha); and *Pseudonestor xanthophrys*—Unit 33—Wet Cliff, Maui County, Hawaii (184 ac, 75 ha).

(i) [Reserved for textual description of Unit 31.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(ii) [Reserved for textual description of Unit 32.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(iii) [Reserved for textual description of Unit 33.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

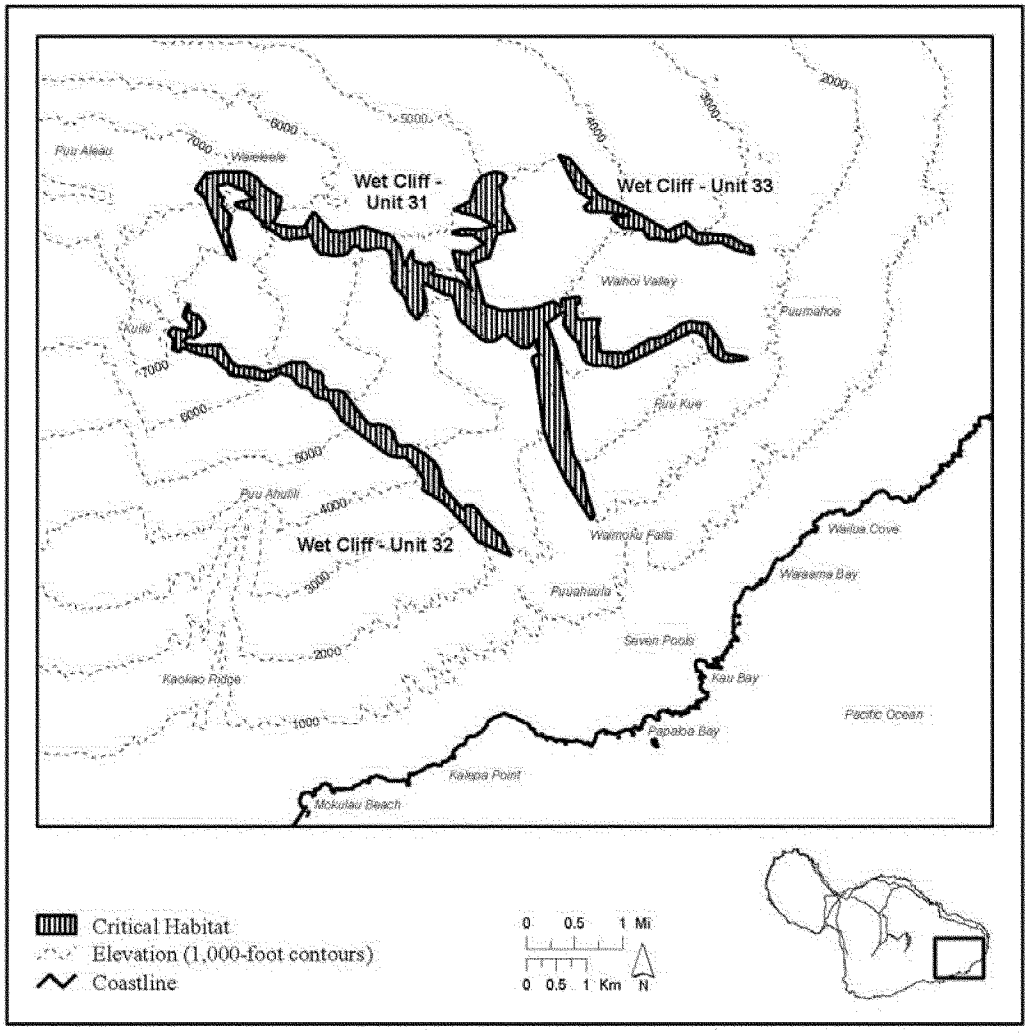
(iv) NOTE: Map of *Pseudonestor xanthophrys*—Unit 31—Wet Cliff, *Pseudonestor xanthophrys*—Unit 31—Wet Cliff, and *Pseudonestor xanthophrys*—Unit 31—Wet Cliff follows:

Map 16

Pseudonestor xanthophrys

Wet Cliff

Unit 31, Unit 32 and Unit 33



(19) *Pseudonestor xanthophrys*—Unit 34—Wet Cliff, Maui County, Hawaii (2,048 ac, 829 ha); *Pseudonestor xanthophrys*—Unit 35—Wet Cliff, Maui County, Hawaii (9,103 ac, 3,684 ha); and *Pseudonestor xanthophrys*—Unit 36—Wet Cliff, Maui County, Hawaii (781 ac, 316 ha).

(i) [Reserved for textual description of Unit 34.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(ii) [Reserved for textual description of Unit 35.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(iii) [Reserved for textual description of Unit 36.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

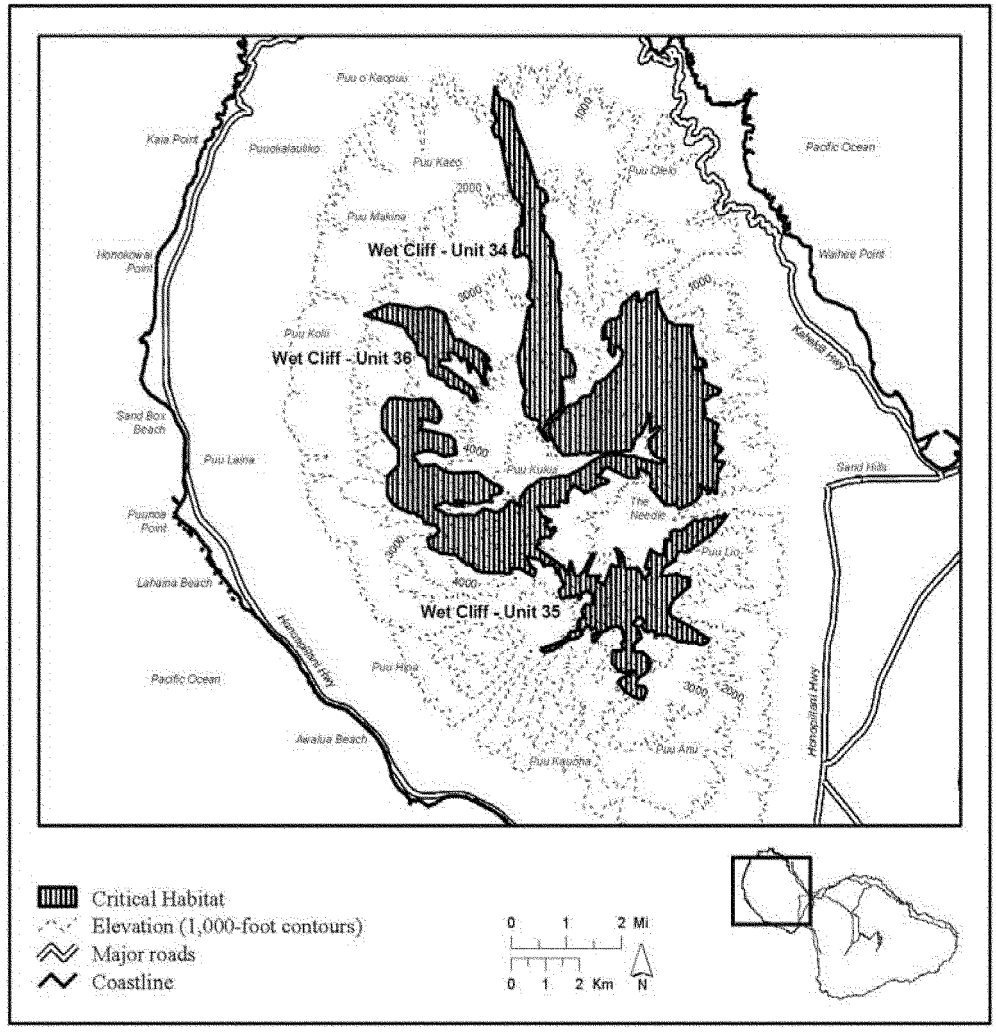
(iv) NOTE: Map of *Pseudonestor xanthophrys*—Unit 34—Wet Cliff, *Pseudonestor xanthophrys*—Unit 35—Wet Cliff, and *Pseudonestor xanthophrys*—Unit 36—Wet Cliff follows:

Map 17

Pseudonestor xanthophrys

Wet Cliff

Unit 34, Unit 35 and Unit 36



(20) *Pseudonestor xanthophrys*—Unit 37—Lowland Mesic, Maui County, Hawaii (10,330 ac, 4,180 ha).

(i) [Reserved for textual description of Unit 37.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

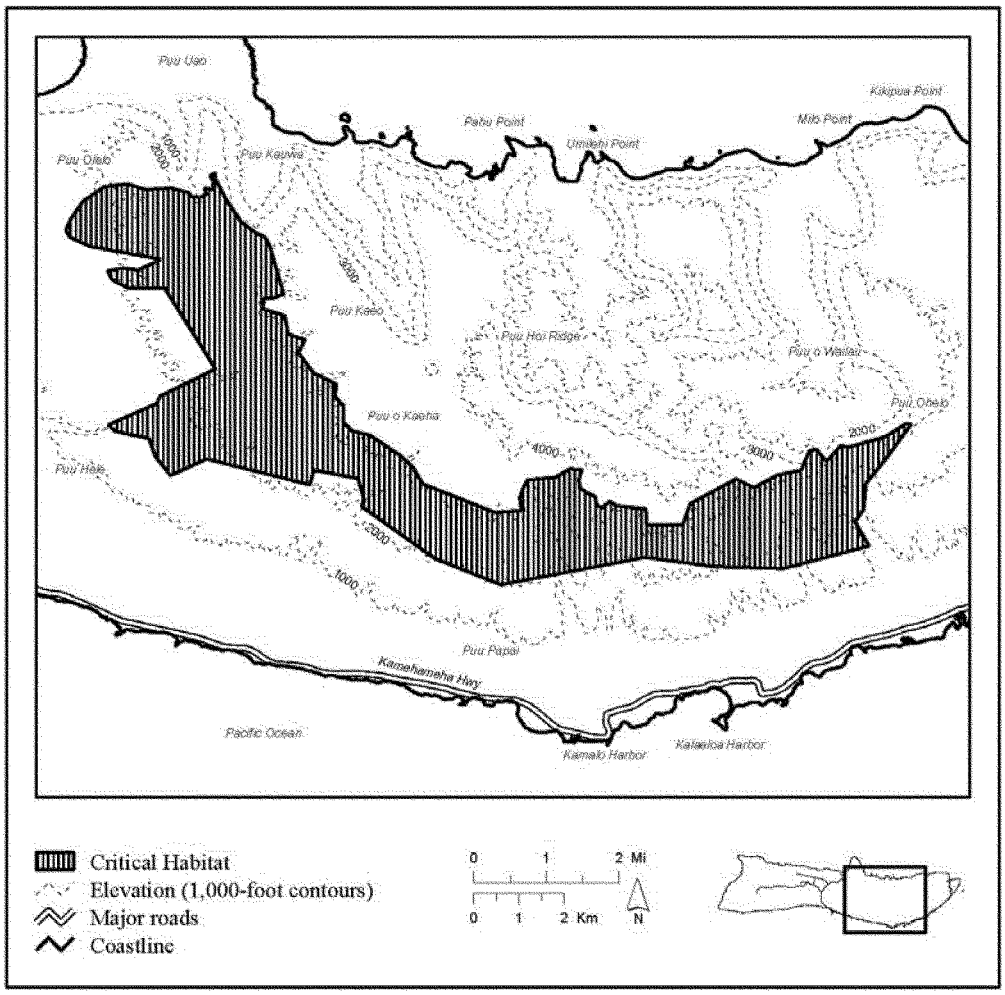
(ii) NOTE: Map of *Pseudonestor xanthophrys*—Unit 37—Lowland Mesic follows:

Map 18

Pseudonestor xanthophrys

Lowland Mesic

Unit 37



(21) *Pseudonestor xanthophrys*—Unit 38—Lowland Wet, Maui County, Hawaii (3,628 ac, 1,468 ha), and *Pseudonestor xanthophrys*—Unit 39—Lowland Wet, Maui County, Hawaii (1,952 ac, 790 ha).

(i) [Reserved for textual description of Unit 38.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(ii) [Reserved for textual description of Unit 39.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

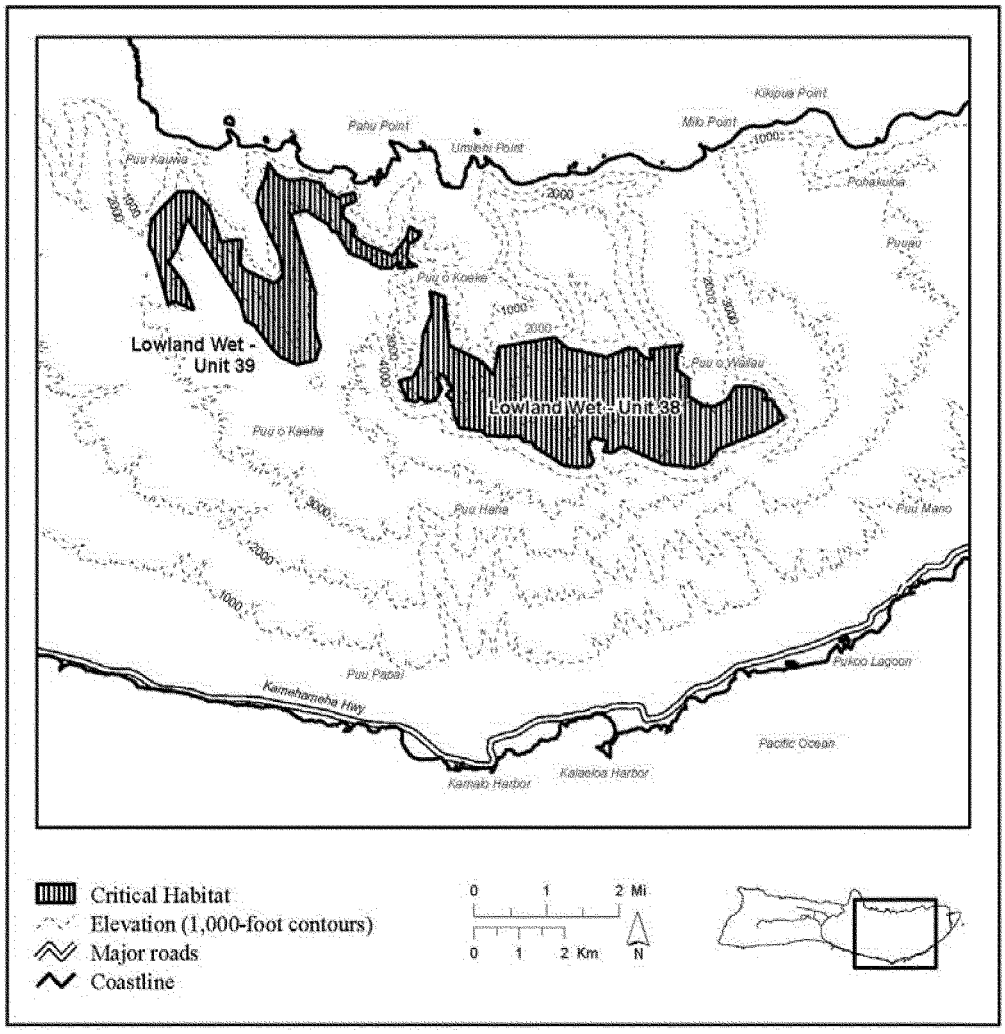
(iii) NOTE: Map of *Pseudonestor xanthophrys*—Unit 38—Lowland Wet and *Pseudonestor xanthophrys*—Unit 39—Lowland Wet follows:

Map 19

Pseudonestor xanthophrys

Lowland Wet

Unit 38 and Unit 39



(22) *Pseudonestor xanthophrys*—Unit 40—Montane Wet, Maui County, Hawaii (4,818 ac, 1,950 ha), and *Pseudonestor xanthophrys*—Unit 41—Montane Wet, Maui County, Hawaii (910 ac, 368 ha).

(i) [Reserved for textual description of Unit 40.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(ii) [Reserved for textual description of Unit 41.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

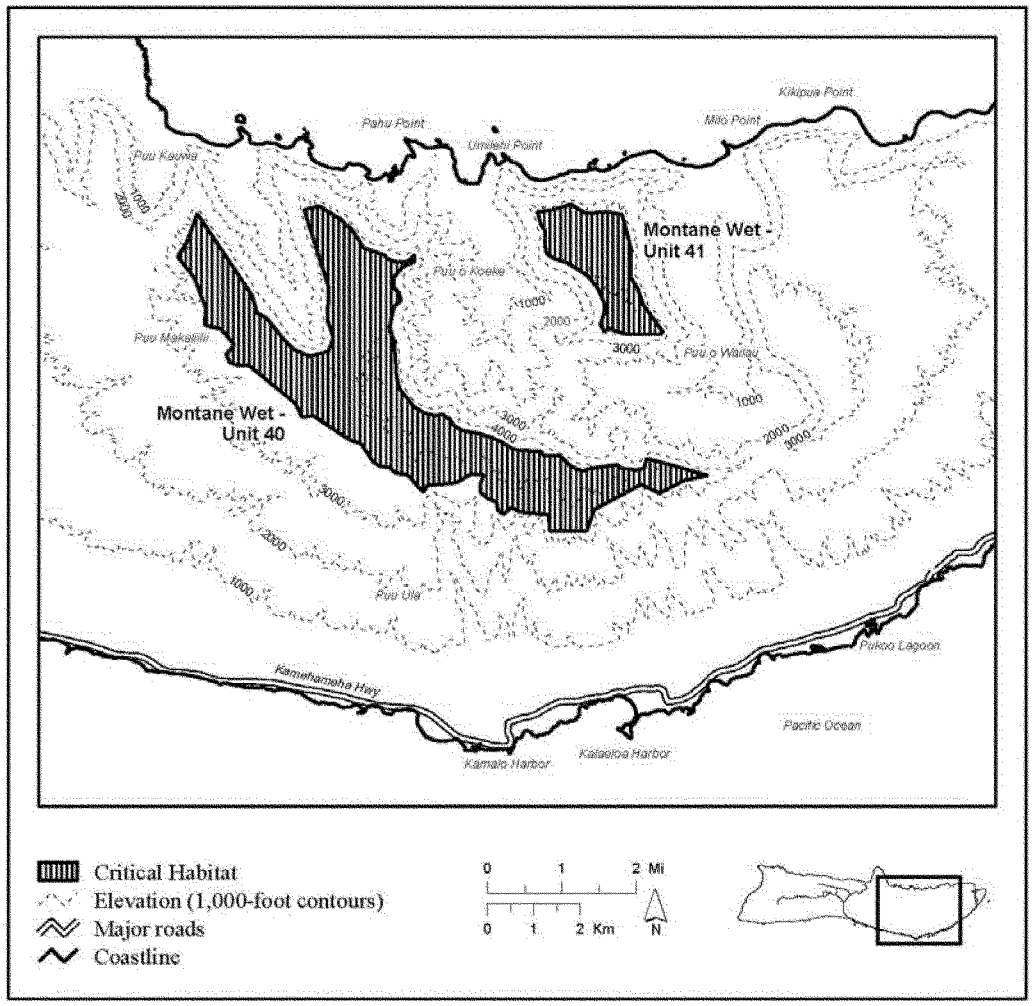
(iii) NOTE: Map of *Pseudonestor xanthophrys*—Unit 40—Montane Wet and *Pseudonestor xanthophrys*—Unit 41—Montane Wet follows:

Map 20

Pseudonestor xanthophrys

Montane Wet

Unit 40 and Unit 41



(23) *Pseudonestor xanthophrys*—Unit 42—Montane Mesic, Maui County, Hawaii (1,629 ac, 659 ha).

(i) [Reserved for textual description of Unit 42.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

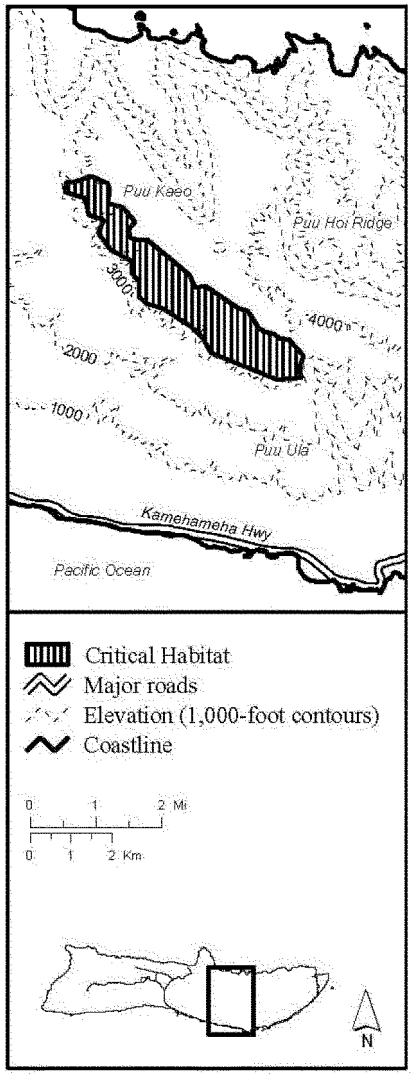
(ii) NOTE: Map of *Pseudonestor xanthophrys*—Unit 42—Montane Mesic follows:

Map 21

Pseudonestor xanthophrys

Montane Mesic

Unit 42



(24) *Pseudonestor xanthophrys*—Unit 43—Wet Cliff, Maui County, Hawaii (1,888 ac, 764 ha), and *Pseudonestor xanthophrys*—Unit 44—Wet Cliff, Maui County, Hawaii (1,280 ac, 518 ha).

(i) [Reserved for textual description of Unit 43.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

(ii) [Reserved for textual description of Unit 44.] This unit is critical habitat for the Kiwikiu, *Pseudonestor xanthophrys.*

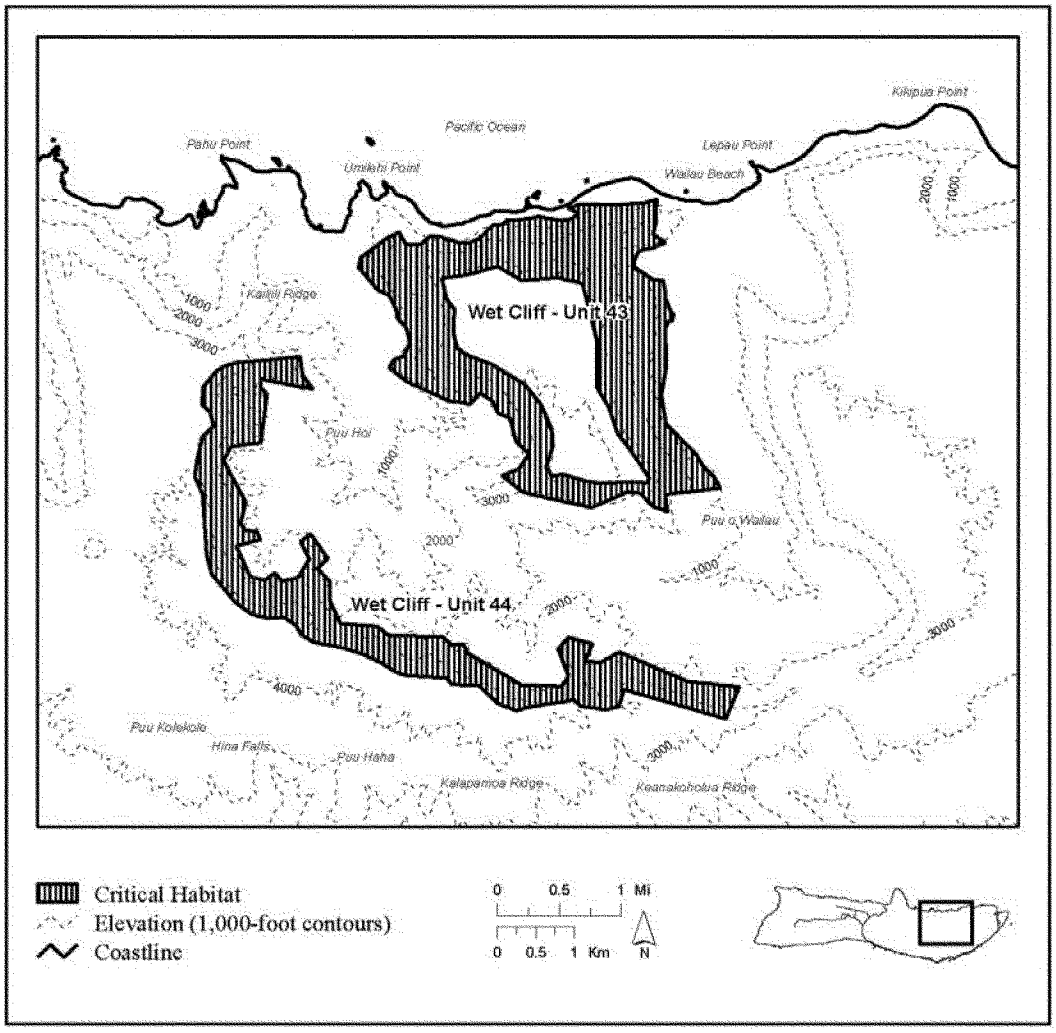
(iii) NOTE: Map of *Pseudonestor xanthophrys*—Unit 43—Wet Cliff and *Pseudonestor xanthophrys*—Unit 44—Wet Cliff follows:

Map 22

Pseudonestor xanthophrys

Wet Cliff

Unit 43 and Unit 44



* * * * *

(f) *Clams and Snails.*

* * * * *

Lanai tree snail (*Partulina semicarinata*)

(1) Critical habitat units are depicted for Maui County, Hawaii, on the maps below.

(2) *Primary constituent elements.*

(i) In units 1 and 2, the primary constituent elements of critical habitat for the Lanai tree snail are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In unit 3, the primary constituent elements of critical habitat for the Lanai tree snail are:

(A) Elevation: Between 3,300 and 6,500 ft (1,000 and 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iii) In units 4 and 5, the primary constituent elements of critical habitat for the Lanai tree snail are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptecophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

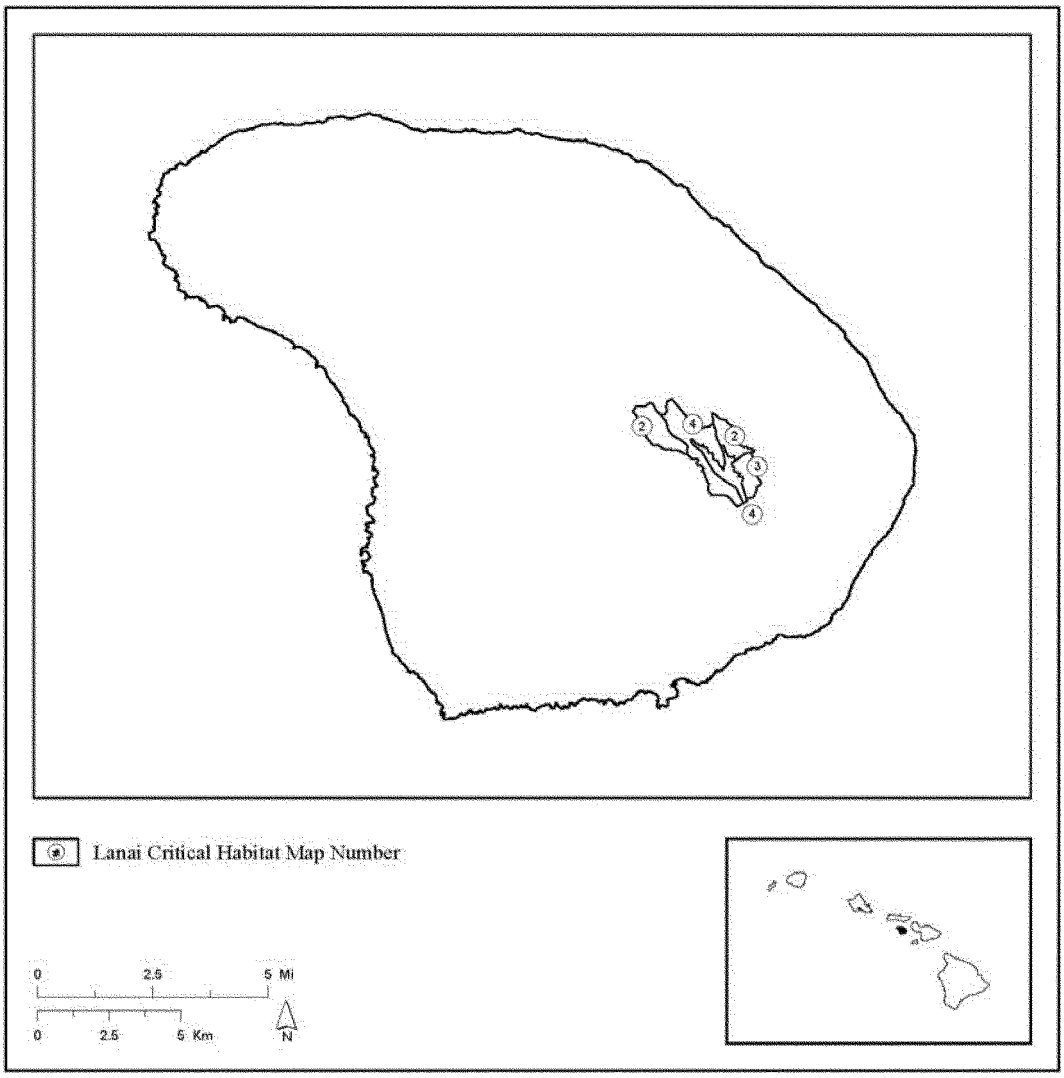
(3) Existing manmade features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas, do not contain one or more of the physical or biological features. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species or physical or biological features in adjacent critical habitat.

(4) *Critical habitat maps.* Maps were created in GIS, with coordinates in UTM Zone 4, units in meters using North American datum of 1983 (NAD 83).

(5) Index map of critical habitat units for the Lanai tree snail (*Partulina semicarinata*) follows:

Map 1

***Partulina semicarinata*—Index Map**



(6) *Partulina semicarinata*—Unit 1—Lowland Wet, Maui County, Hawaii (374 ac, 152 ha), and *Partulina semicarinata*—Unit 2—Lowland Wet, Maui County, Hawaii (232 ac, 94 ha).

(i) [Reserved for textual description of Unit 1.]. This unit is critical habitat for the Lanai tree snail, *Partulina semicarinata.*

(ii) [Reserved for textual description of Unit 2.]. This unit is critical habitat for the Lanai tree snail, *Partulina semicarinata.*

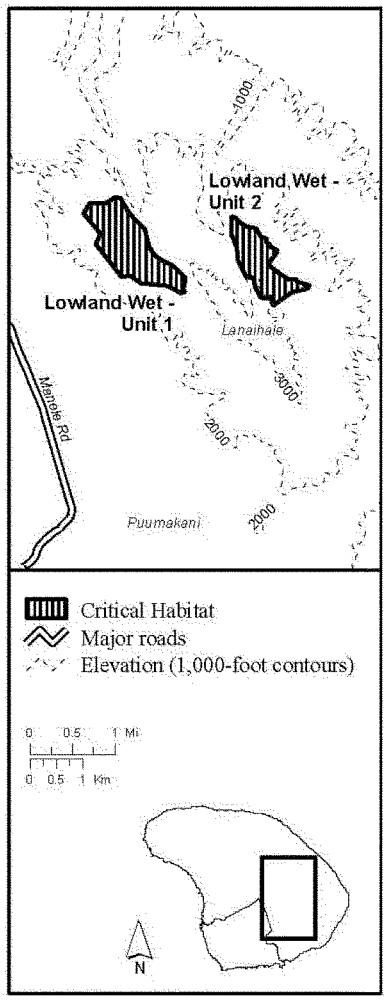
(iii) NOTE: Map of *Partulina semicarinata*—Unit 1—Lowland Wet and *Partulina semicarinata*—Unit 2—Lowland Wet follows:

Map 2

Partulina semicarinata

Lowland Wet

Unit 1 and Unit 2



(7) *Partulina semicarinata*—Unit 3—Montane Wet, Maui County, Hawaii (248 ac, 101 ha).

(i) [Reserved for textual description of Unit 3.]. This unit is critical habitat for the Lanai tree snail, *Partulina semicarinata.*

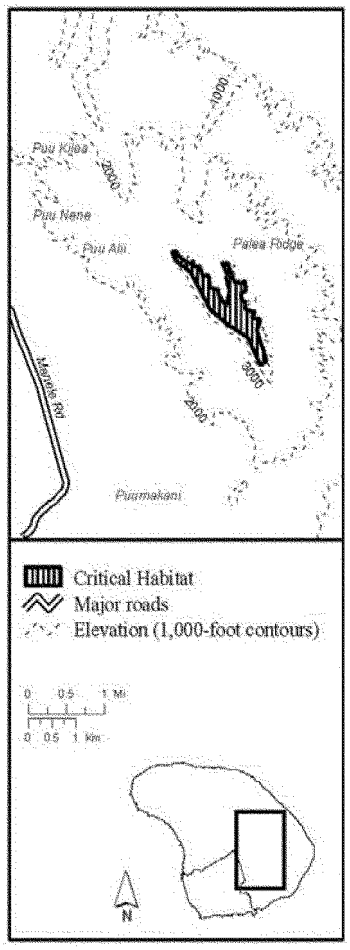
(ii) NOTE: Map of *Partulina semicarinata*—Unit 3—Montane Wet follows:

Map 3

Partulina semicarinata

Montane Wet

Unit 3



(8) *Partulina semicarinata*—Unit 4—Wet Cliff, Maui County, Hawaii (731 ac, 296 ha), and *Partulina semicarinata*—Unit 5—Wet Cliff, Maui County, Hawaii (230 ac, 93 ha).

(i) [Reserved for textual description of Unit 4.]. This unit is critical habitat for the Lanai tree snail, *Partulina semicarinata.*

(ii) [Reserved for textual description of Unit 5.]. This unit is critical habitat for the Lanai tree snail, *Partulina semicarinata.*

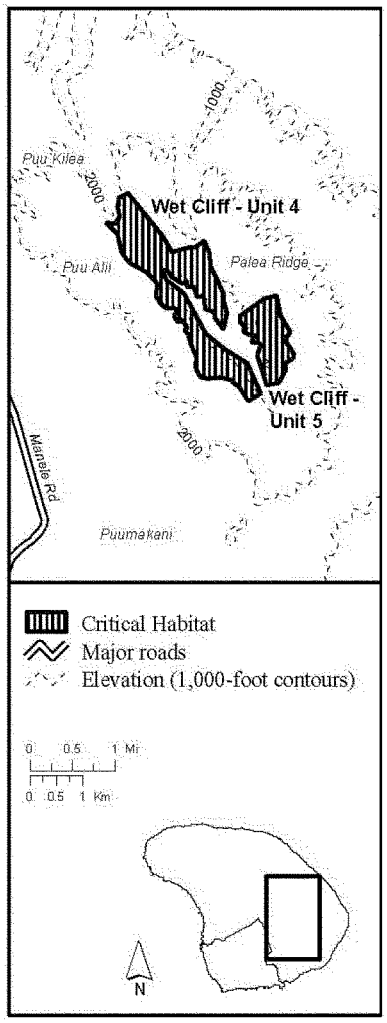
(iii) NOTE: Map of *Partulina semicarinata*—Unit 4—Wet Cliff and *Partulina semicarinata*—Unit 5—Wet Cliff follows:

Map 4

Partulina semicarinata

Wet Cliff

Unit 4 and Unit 5



Lanai tree snail (*Partulina variabilis*)

(1) Critical habitat units are depicted for Maui County, Hawaii, on the maps below.

(2) *Primary constituent elements.*

(i) In units 1 and 2, the primary constituent elements of critical habitat for the Lanai tree snail are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In unit 3, the primary constituent elements of critical habitat for the Lanai tree snail are:

(A) Elevation: Between 3,300 and 6,500 ft (1,000 and 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iii) In units 4 and 5, the primary constituent elements of critical habitat for the Lanai tree snail are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptecophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

(3) Existing manmade features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas, do not contain one or more of the physical or biological features. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species or physical or biological features in adjacent critical habitat.

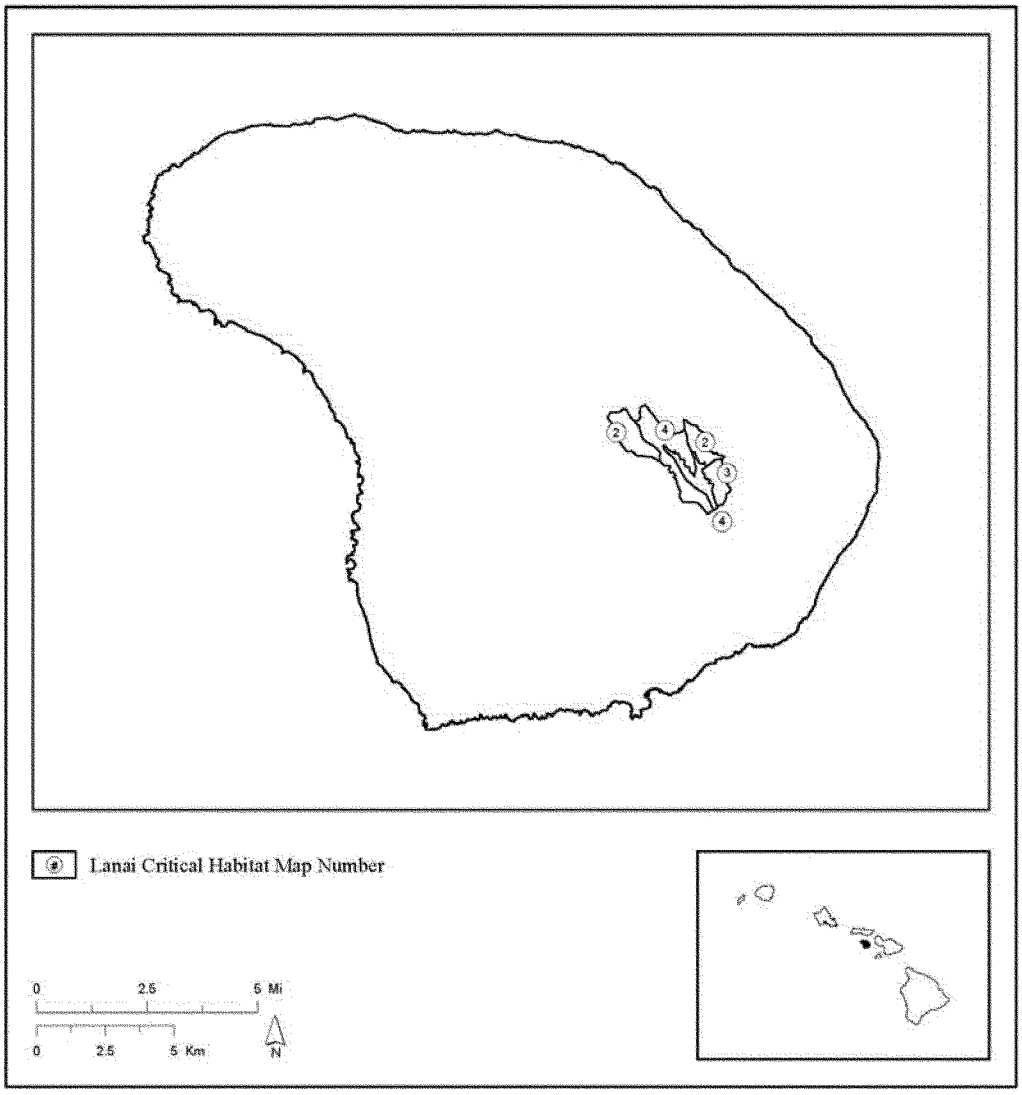
(4) *Critical habitat maps.* Maps were created in GIS, with coordinates in UTM Zone 4, units in meters using North American datum of 1983 (NAD 83).

(5) Index map of critical habitat units for the Lanai tree snail (*Partulina variabilis*) follows:

Map 1

Partulina variabilis

Index Map



(6) *Partulina variabilis*—Unit 1—Lowland Wet, Maui County, Hawaii (374 ac, 152 ha), and *Partulina variabilis*—Unit 2—Lowland Wet, Maui County, Hawaii (232 ac, 94 ha).

(i) [Reserved for textual description of Unit 1.]. This unit is critical habitat for the Lanai tree snail, *Partulina variabilis*.

(ii) [Reserved for textual description of Unit 2.]. This unit is critical habitat for the Lanai tree snail, *Partulina variabilis*.

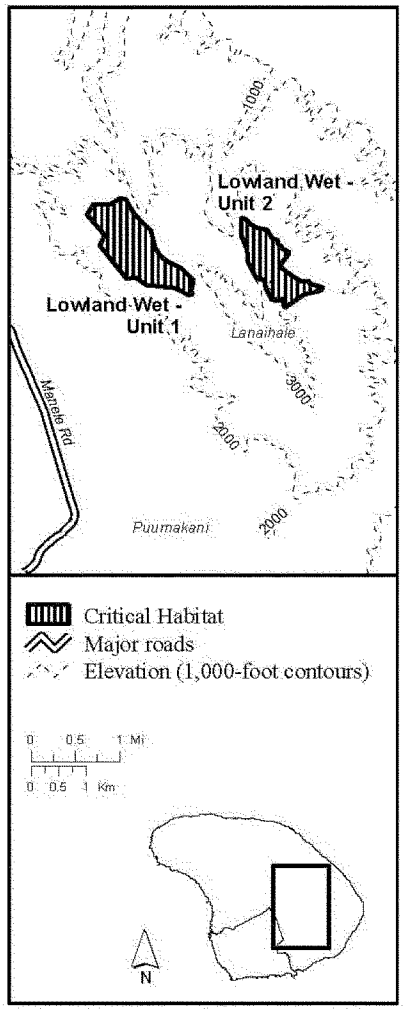
(iii) NOTE: Map of *Partulina variabilis*—Unit 1—Lowland Wet and *Partulina variabilis*—Unit 2—Lowland Wet follows:

Map 2

Partulina variabilis

Lowland Wet

Unit 1 and Unit 2



(7) *Partulina variabilis*—Unit 3—Montane Wet, Maui County, Hawaii (248 ac, 101 ha).

(i) [Reserved for textual description of Unit 3.]. This unit is critical habitat for the Lanai tree snail, *Partulina variabilis*.

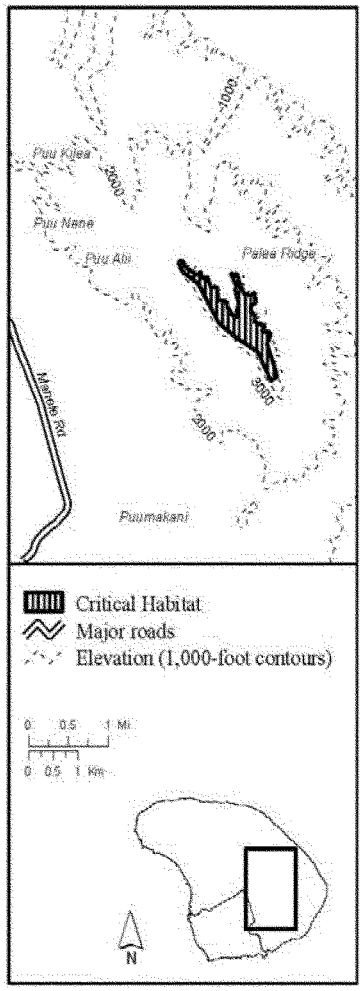
(ii) NOTE: Map of *Partulina variabilis*—Unit 3—Montane Wet follows:

Map 3

Partulina variabilis

Montane Wet

Unit 3



(8) *Partulina variabilis*—Unit 4—Wet Cliff, Maui County, Hawaii (731 ac, 296 ha), and *Partulina variabilis*—Unit 5—Wet Cliff, Maui County, Hawaii (230 ac, 93 ha).

(i) [Reserved for textual description of Unit 4.]. This unit is critical habitat for the Lanai tree snail, *Partulina variabilis*.

(ii) [Reserved for textual description of Unit 5.]. This unit is critical habitat for the Lanai tree snail, *Partulina variabilis*.

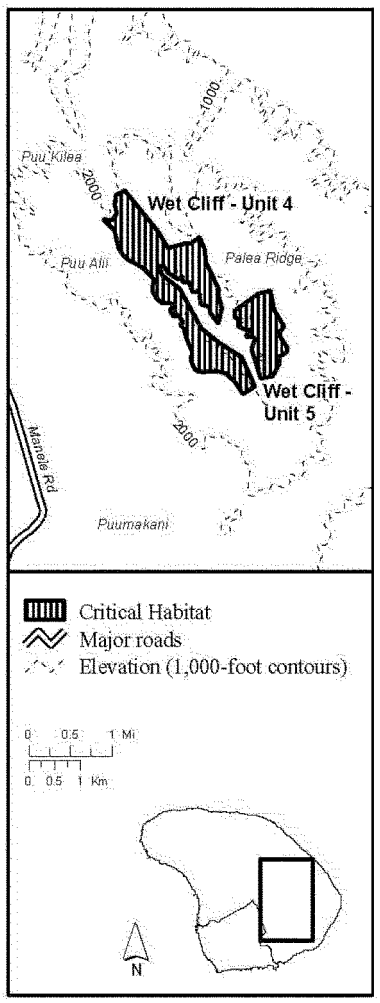
(iii) NOTE: Map of *Partulina variabilis*—Unit 4—Wet Cliff and *Partulina variabilis*—Unit 5—Wet Cliff follows:

Map 4

Partulina variabilis

Wet Cliff

Unit 4 and Unit 5



Newcomb's tree snail (*Newcombia cumingi*)

(1) The critical habitat unit is depicted for Maui County, Hawaii, on the map below.

(2) *Primary constituent elements.* In unit 1, the primary constituent elements of critical habitat for the Newcomb's tree snail are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Greater than 75 in (190 cm).

(iii) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(iv) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(v) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(vi) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(3) Existing manmade features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas, do not contain one or more of the physical or biological features. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species or physical or biological features in adjacent critical habitat.

(4) *Critical habitat map.* Map was created in GIS, with coordinates in UTM Zone 4, units in meters using North American datum of 1983 (NAD 83).

(5) *Newcombia cumingi*—Unit 1—Lowland Wet, Maui County, Hawaii (599 ac, 243 ha).

(i) [Reserved for textual description of Unit 1.]. This unit is critical habitat for the Newcomb's tree snail, *Newcombia cumingi.*

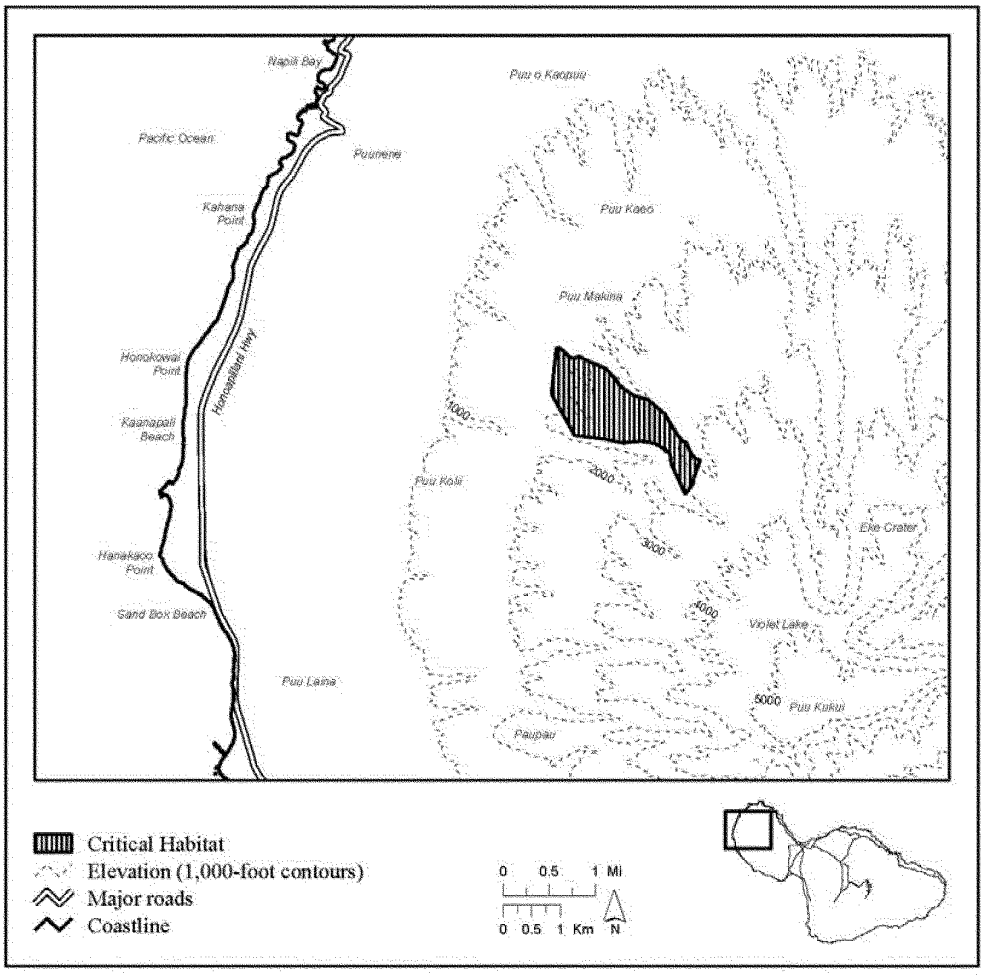
(ii) NOTE: Map of *Newcombia cumingi*—Unit 1—Lowland Wet follows:

Map 1

Newcombia cumingi

Lowland Wet

Unit 1



* * * * *

§ 17.96 [Amended]

5. Amend § 17.96 as follows:

a. In paragraph (a) by removing the entry for ''Family Rhamnaceae: *Gouania hillebrandii;*'' and

b. By removing and reserving paragraph (b).

6. Amend § 17.99 as follows:

a. Revise the section heading to read as set forth below.

b. Amend paragraph (a)(1) by removing the words listed in the

''Remove'' column below and adding in their place the words listed in the ''Add'' column below:

Paragraph designation	Remove	Add
(a)(1)(cxxxiv), the introductory text	Kauai 11—*Centaurium sebaeoides*—a	Kauai 11—*Schenkia sebaeoides*—a.
(a)(1)(clxxi), the introductory text	Kauai 11—*Diellia erecta*—a	Kauai 11—*Asplenium dielerectum*—a.

c. Amend paragraph (a)(1) by removing the maps in paragraphs (a)(1)(cxxxiv)(B) and (a)(1)(clxxi)(B), and adding in their place the maps set forth below.

d. Amend paragraph (a)(1)(cdix), the Table of Protected Species Within Each Critical Habitat Unit for Kauai by removing the words listed in the ''Remove'' column below and adding in their place the words listed in the ''Add'' column below:

Column heading	Remove	Add
Unit name	Kauai 11—*Centaurium sebaeoides*—a	Kauai 11—*Schenkia sebaeoides*—a.
Species occupied	*Centaurium sebaeoides*	*Schenkia sebaeoides*.
Unit name	Kauai 11—*Diellia erecta*—a	Kauai 11—*Asplenium dielerectum*—a.
Species unoccupied	*Diellia erecta*	*Asplenium dielerectum*.

e. Amend paragraph (b)(1) by removing the words listed in the ''Remove'' column below in all places that they appear and adding in their place the words listed in the ''Add'' column below:

Remove	Add
Family Gentianaceae: *Centaurium sebaeoides* (awiwi).	Family Gentianaceae: *Schenkia sebaeoides* (awiwi).
Kauai 11—*Centaurium sebaeoides*—a	Kauai 11—*Schenkia sebaeoides*—a.
Centaurium sebaeoides	*Schenkia sebaeoides*.

f. Amend paragraph (b)(2) by removing the words listed in the ''Remove'' column below in all places that they appear and adding in their place the words listed in the ''Add'' column below:

Remove	Add
Family Aspleniaceae: *Diellia erecta* (no common name)	Family Aspleniaceae: *Asplenium dielerectum* (asplenium-leaved diellia).
Kauai 11—*Diellia erecta*—a	Kauai 11—*Asplenium dielerectum*—a.
Diellia erecta	*Asplenium dielerectum*.

g. Revise paragraphs (c), (d), (e), and (f), to read as set forth below.

h. Amend paragraph (i) by removing the words listed in the ''Remove'' column below and adding in their place the words listed in the ''Add'' column below:

Paragraph designation	Remove	Add
(i)(2), the introductory text	Oahu 1—*Centaurium sebaeoides*—a.	Oahu 1—*Schenkia sebaeoides*—a.
(i)(269), the introductory text	Oahu 27—*Centaurium sebaeoides*—b	Oahu 27—*Schenkia sebaeoides*—a.
(i)(293), the introductory text	Oahu 35—*Diellia erecta*—a	Oahu 35—*Asplenium dielerectum*—a.

i. Amend paragraph (i) by removing the maps in paragraphs (i)(2)(ii), (i)(269)(ii), and (i)(293)(ii), and adding in their place the maps set forth below.

j. Amend paragraph (i)(305), the Table of Protected Species Within Each Critical Habitat Unit for Oahu, by removing the words listed in the ''Remove'' column below in all places that they appear and adding in their place the words listed in the ''Add'' column below:

Column heading	Remove	Add
Unit name	Oahu 1—*Centaurium sebaeoides*—a	Oahu 1—*Schenkia sebaeoides*—a.
Unit name	Oahu 27—*Centaurium sebaeoides*—b	Oahu 27—*Schenkia sebaeoides*—a.
Species unoccupied	*Centaurium sebaeoides*	*Schenkia sebaeoides*.
Unit name	Oahu 35—*Diellia erecta*—a	Oahu 35—*Asplenium dielerectum*—a.
Species occupied	*Diellia erecta*	*Asplenium dielerectum*.

k. Amend paragraph (j)(1) by removing the words listed in the ''Remove'' column below in all places that they appear and adding in their place the words listed in the ''Add'' column below:

Remove	Add
Family Gentianaceae: *Centaurium sebaeoides* (awiwi)	Family Gentianaceae: *Schenkia sebaeoides* (awiwi).
Oahu 1—*Centaurium sebaeoides*—a	Oahu 1—*Schenkia sebaeoides*—a.
Oahu 27—*Centaurium sebaeoides*—b	Oahu 27—*Schenkia sebaeoides*—a.
Centaurium sebaeoides	*Schenkia sebaeoides*.

l. Amend paragraph (j)(2) by removing the words listed in the ''Remove'' column below in all places that they appear and adding in their place the words listed in the ''Add'' column below:

Remove	Add
Family Aspleniaceae: *Diellia erecta* (asplenium-leaved diellia)	Family Aspleniaceae: *Asplenium dielerectum* (asplenium-leaved diellia).
Oahu 35—*Diellia erecta*—a	Oahu 35—*Asplenium dielerectum*—a.
Diellia erecta	*Asplenium dielerectum*.

m. Amend paragraph (k) by removing the words listed in the ''Remove'' column below and adding in their place the words listed in the ''Add'' column below:

Paragraph designation	Remove	Add
(k)(62), the introductory text	Hawaii 17—*Diellia erecta*—a	Hawaii 17—*Asplenium dielerectum*—a.
(k)(65), the introductory text	Hawaii 18—*Diellia erecta*—b	Hawaii 18—*Asplenium dielerectum*—b.
(k)(70), the introductory text	Hawaii 19—*Mariscus fauriei*—a	Hawaii 19—*Cyperus fauriei*—a.
(k)(77), the introductory text	Hawaii 24—*Asplenium fragile* var. *insulare*—a	Hawaii 24—*Asplenium peruvianum* var. *insulare*—a.

n. Amend paragraph (k) by removing the maps in paragraphs (k)(62)(ii), (k)(65)(ii), (k)(70)(ii), and (k)(77)(ii), and adding in their place the maps set forth below.

o. Amend paragraph (k) by revising paragraph (k)(104), the Table of Protected Species Within Each Critical Habitat Unit for the Island of Hawaii, by removing the words listed in the ''Remove'' column below in all places that they appear and adding in their place the words listed in the ''Add'' column below:

Column heading	Remove	Add
Unit name	Hawaii 24—*Asplenium fragile* var. *insulare*—a	Hawaii 24—*Asplenium peruvianum* var. *insulare*—a.
Species occupied	*Asplenium fragile* var. *insulare*	*Asplenium peruvianum* var. *insulare*.
Unit name	Hawaii 17—*Diellia erecta*—a	Hawaii 17—*Asplenium dielerectum*—a.
Unit name	Hawaii 18—*Diellia erecta*—b	Hawaii 18—*Asplenium dielerectum*—b.
Species occupied	*Diellia erecta*	*Asplenium dielerectum*.
Unit name	Hawaii 19—*Mariscus fauriei*—a	Hawaii 19—*Cyperus fauriei*—a.
Species occupied	*Mariscus fauriei*	*Cyperus fauriei*.

p. Amend paragraph (l)(1) by removing the words listed in the ''Remove'' column below in all places that they appear and adding in their place the words listed in the ''Add'' column below:

Remove	Add
Family Cyperaceae: *Mariscus fauriei* (NCN)	Family Cyperaceae: *Cyperus fauriei* (NCN).
Hawaii 19—*Mariscus fauriei*—a	Hawaii 19—*Cyperus fauriei*—a.
Mariscus fauriei	*Cyperus fauriei*.

q. Amend paragraph (l)(2) by removing the words listed in the ''Remove'' column below in all places that they appear and adding in their place the words listed in the ''Add'' column below:

Remove	Add
Family Aspleniaceae: *Asplenium fragile* var. *insulare* (NCN)	Family Aspleniaceae: *Asplenium peruvianum* var. *insulare* (NCN).
Hawaii 24—*Asplenium fragile* var. *insulare*—a,	Hawaii 24—*Asplenium peruvianum* var. *insulare*—a.
Asplenium fragile var. *insulare*	*Asplenium peruvianum* var. *insulare*.
Family Aspleniaceae: *Diellia erecta* (asplenium-leaved diellia)	Family Aspleniaceae: *Asplenium dielerectum* (asplenium-leaved diellia).
Hawaii 17—*Diellia erecta*—a	Hawaii 17—*Asplenium dielerectum*—a.
Hawaii 18—*Diellia erecta*—b	Hawaii 18—*Asplenium dielerectum*—b.

Remove	Add
Diellia erecta	*Asplenium dielerectum.*

r. Add new paragraphs (m) and (n), to read as set forth below.

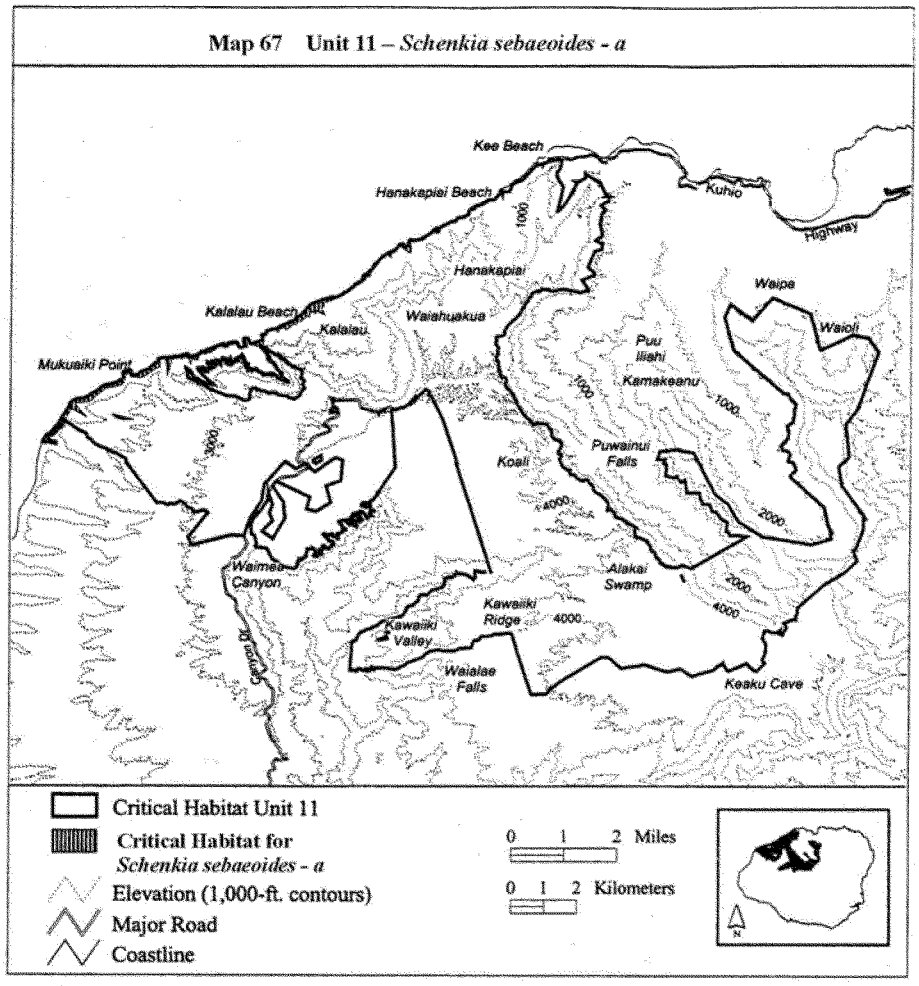
§ 17.99 Critical habitat; plants on the Hawaiian Islands, HI.

(a) * * *

(1) * * *

(cxxxiv) * * *

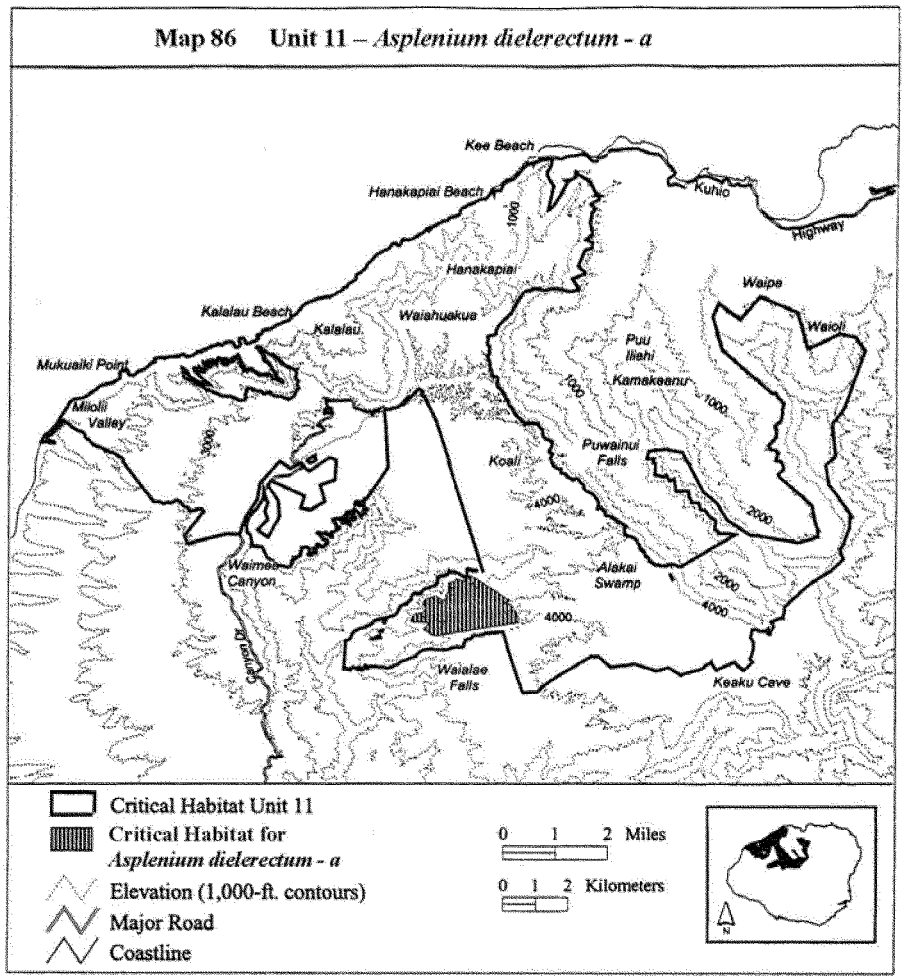
(B) **NOTE:** Map 67 follows:



* * * * *

(clxxi) * * *

(B) Note: Map 86 follows:



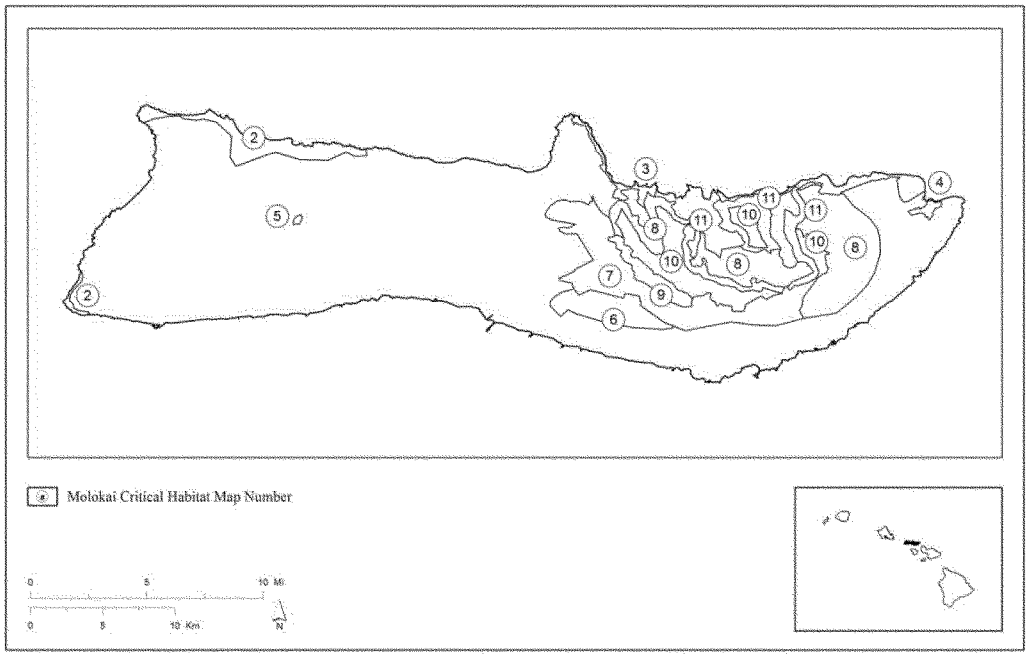
* * * * *

(c) *Maps and critical habitat unit descriptions for the island of Molokai, HI.* Critical habitat units are described below. Coordinates are in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the critical habitat units designated on the island of Molokai. Existing manmade features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas, do not contain one or more of the physical and biological features. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species or physical or biological features in adjacent critical habitat.

(1) NOTE: Map 1—Index map follows:

Map 1

Molokai Critical Habitat—Island Index Map



(2) Molokai—Coastal—Unit 1 (250 ac, 101 ha) and Molokai—Coastal—Unit 2 (3,544 ac, 1,434 ha)

(i) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Hibiscus arnottianus* ssp. *immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Marsilea villosa, Peucedanum sandwicense, Pittosporum halophilum, Schenkia sebaeoides, Sesbania tomentosa,* and *Tetramolopium rockii.*

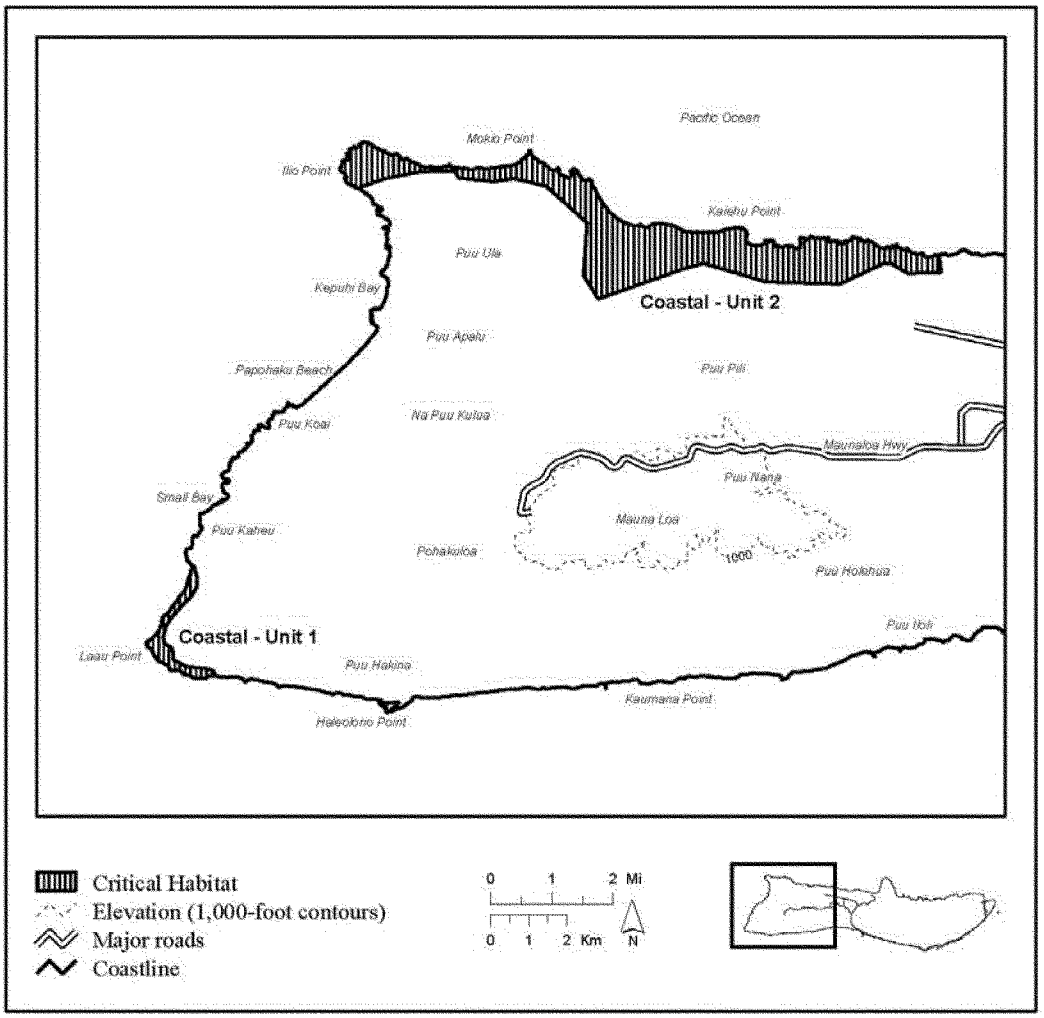
(ii) [Reserved for textual description of Unit 2.] This unit is critical habitat for *Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Hibiscus arnottianus* ssp. *immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Marsilea villosa, Peucedanum sandwicense, Pittosporum halophilum, Schenkia sebaeoides, Sesbania tomentosa,* and *Tetramolopium rockii.*

(iii) NOTE: Map of Molokai—Coastal—Unit 1 and Molokai—Coastal—Unit 2 (Map 2) follows:

Map 2

Molokai—Coastal

Unit 1 and Unit 2



(3) Molokai—Coastal—Unit 3 (862 ac, 349 ha), Molokai—Coastal—Unit 4 (10 ac, 4 ha), and Molokai—Coastal—Unit 5 (1 ac, 0.5 ha)

(i) [Reserved for textual description of Unit 3.] This unit is critical habitat for *Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Hibiscus arnottianus* ssp. *immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Marsilea villosa, Peucedanum sandwicense, Pittosporum halophilum, Schenkia sebaeoides, Sesbania tomentosa,* and *Tetramolopium rockii.*

(ii) [Reserved for textual description of Unit 4.] This unit is critical habitat for *Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Hibiscus arnottianus* ssp. *immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Marsilea villosa, Peucedanum sandwicense, Pittosporum halophilum, Schenkia sebaeoides, Sesbania tomentosa,* and *Tetramolopium rockii.*

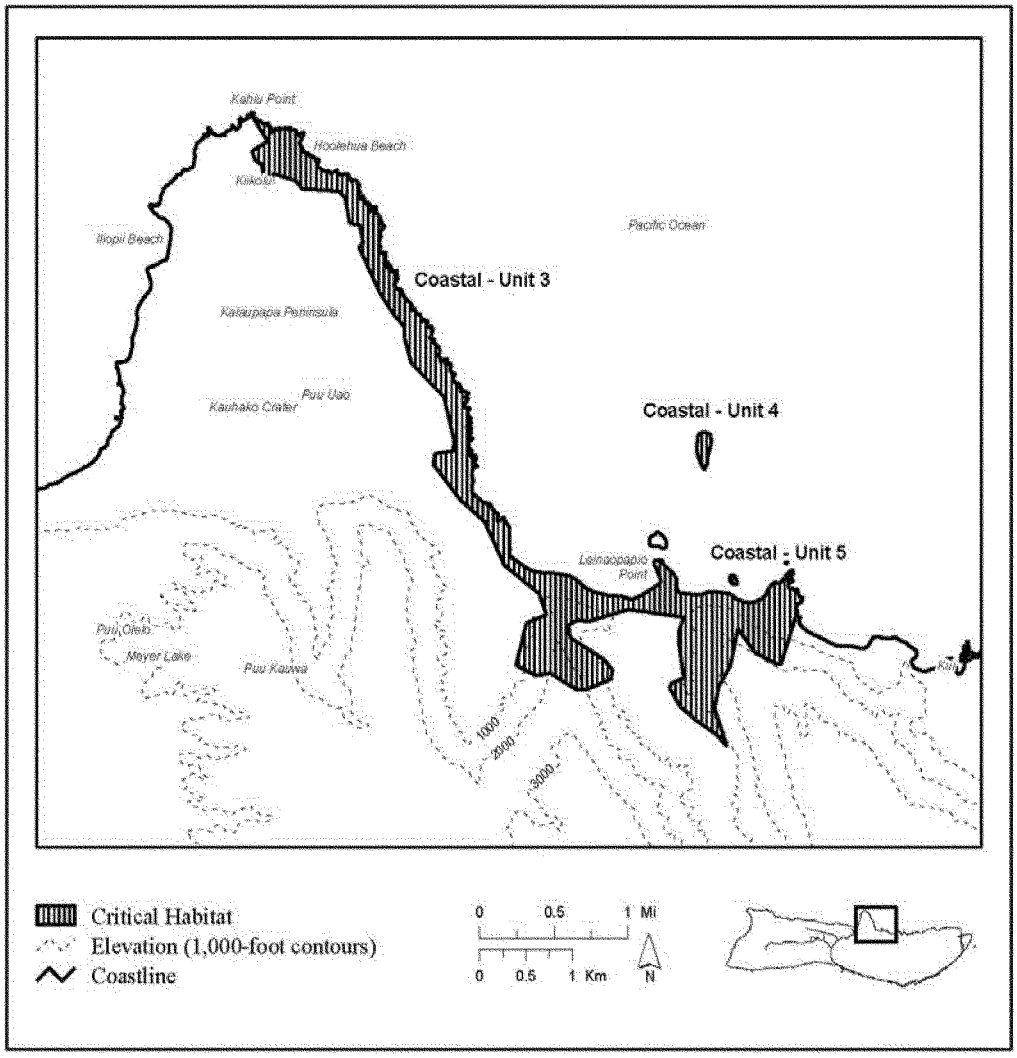
(iii) [Reserved for textual description of Unit 5.] This unit is critical habitat for *Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Hibiscus arnottianus* ssp. *immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Marsilea villosa, Peucedanum sandwicense, Pittosporum halophilum, Schenkia sebaeoides, Sesbania tomentosa,* and *Tetramolopium rockii.*

(iv) NOTE: Map of Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, and Molokai—Coastal—Unit 5 (Map 3) follows:

Map 3

Molokai—Coastal

Unit 3, Unit 4 and Unit 5



(4) Molokai—Coastal—Unit 6 (1,913 ac, 774 ha) and Molokai—Coastal—Unit 7 (306 ac, 124 ha)

(i) [Reserved for textual description of Unit 6.] This unit is critical habitat for *Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Hibiscus arnottianus* ssp. *immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Marsilea villosa, Peucedanum sandwicense, Pittosporum halophilum, Schenkia sebaeoides, Sesbania tomentosa,* and *Tetramolopium rockii.*

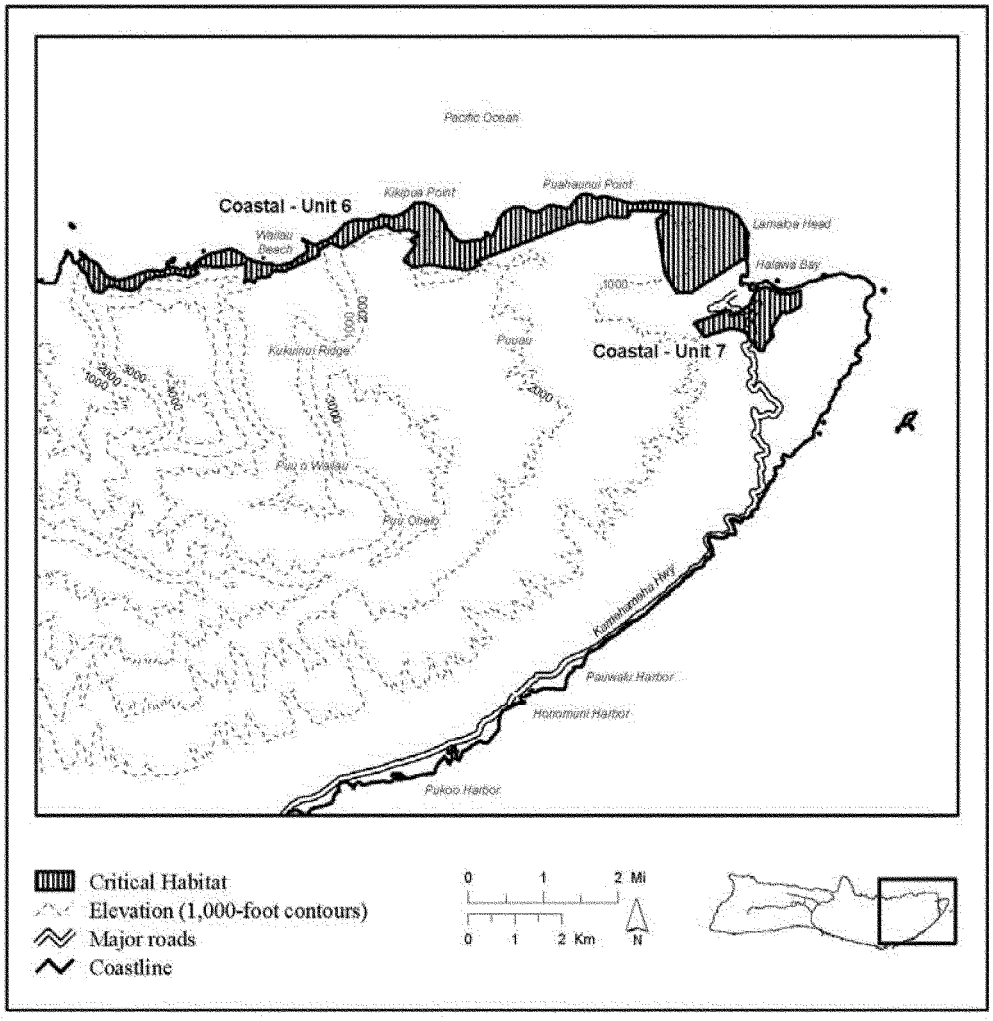
(ii) [Reserved for textual description of Unit 7.] This unit is critical habitat for *Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Hibiscus arnottianus* ssp. *immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Marsilea villosa, Peucedanum sandwicense, Pittosporum halophilum, Schenkia sebaeoides, Sesbania tomentosa,* and *Tetramolopium rockii.*

(iii) NOTE: Map of Molokai—Coastal—Unit 6 and Molokai—Coastal—Unit 7 (Map 4) follows:

Map 4

Molokai—Coastal

Unit 6 and Unit 7



(5) Molokai—Lowland Dry—Unit 1 (70 ac, 28 ha).

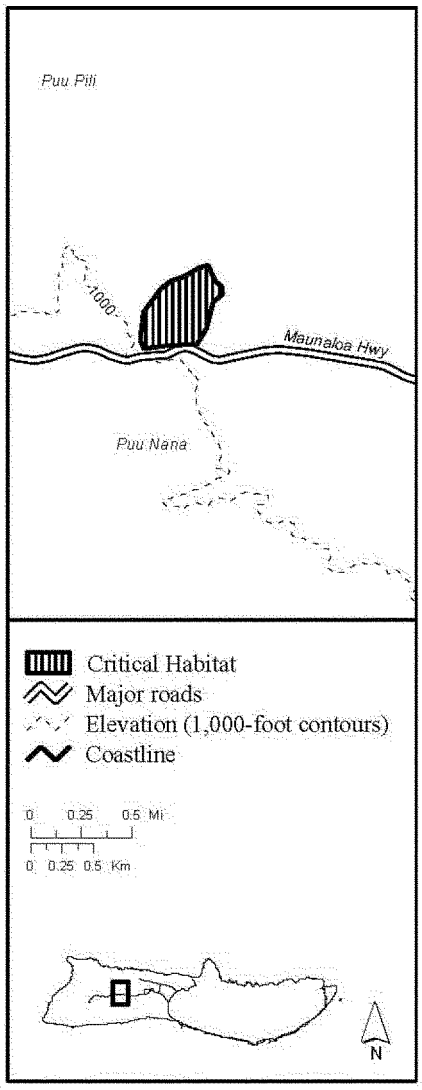
(i) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Bonamia menziesii, Cyperus trachysanthos, Eugenia koolauensis, Hibiscus brackenridgei, Kokia cookei,* and *Sesbania tomentosa.*

(ii) NOTE: Map of Molokai—Lowland Dry—Unit 1 (Map 5) follows:

Map 5

Molokai—Lowland Dry

Unit 1



(6) Molokai—Lowland Dry—Unit 2 (3,201 ac, 1,295 ha).

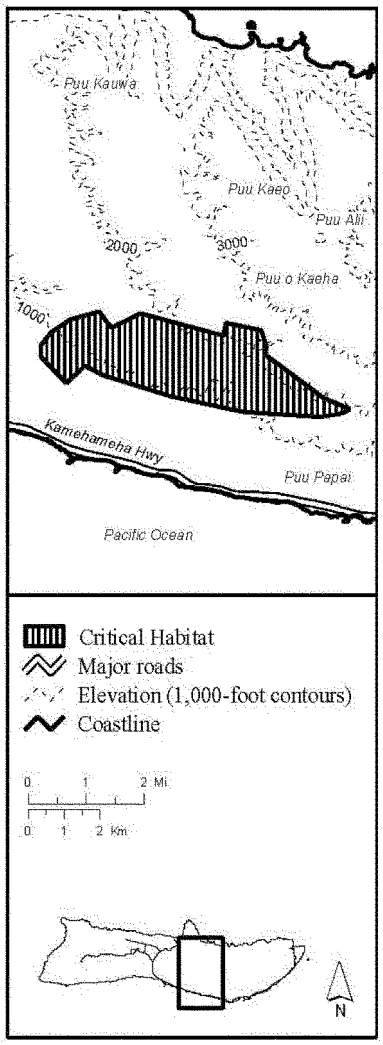
(i) [Reserved for textual description of Unit 2.] This unit is critical habitat for *Bonamia menziesii, Cyperus trachysanthos, Eugenia koolauensis, Hibiscus brackenridgei, Kokia cookei,* and *Sesbania tomentosa.*

(ii) NOTE: Map of Molokai—Lowland Dry—Unit 2 (Map 6) follows:

Map 6

Molokai—Lowland Dry

Unit 2



(7) Molokai—Lowland Mesic—Unit 1 (10,330 ac, 4,180 ha).

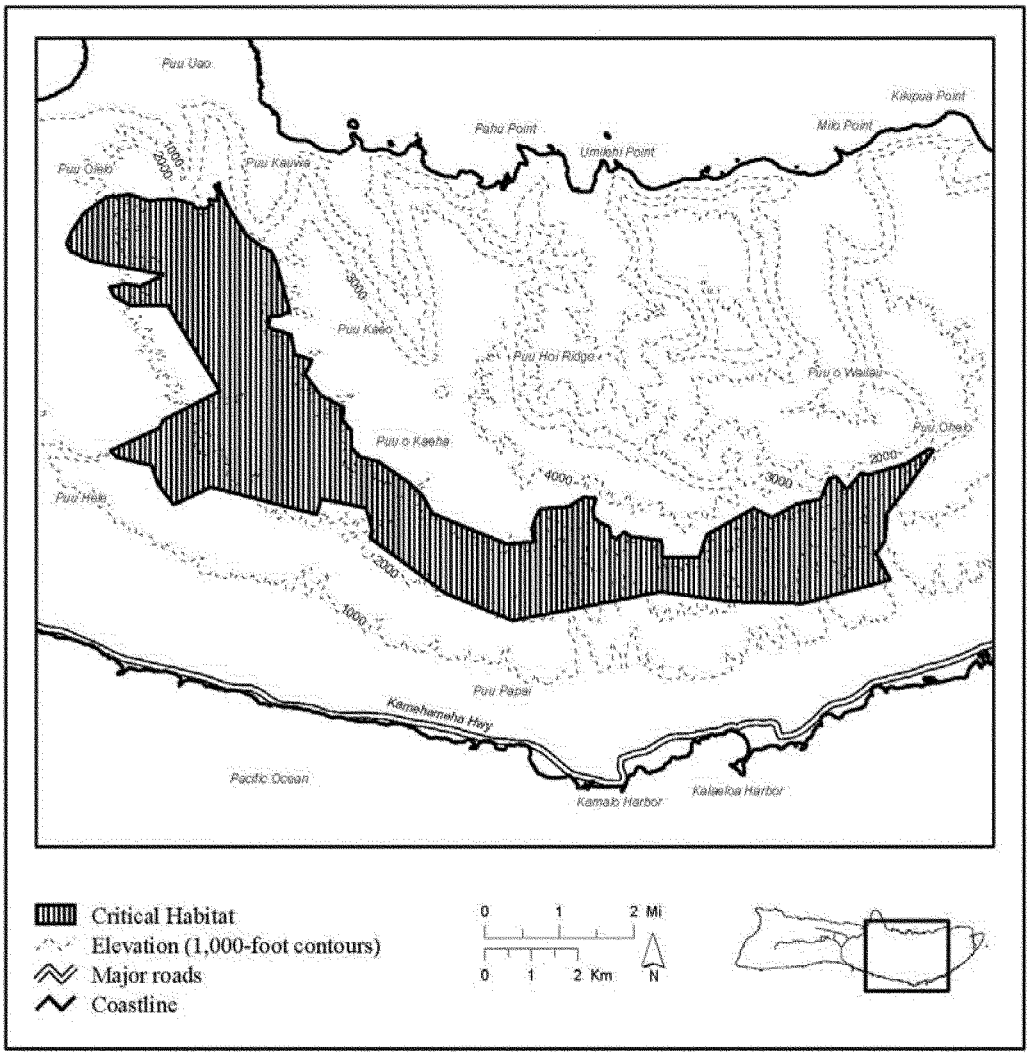
(i) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Alectryon macrococcus, Asplenium dielerectum, Bonamia menziesii, Canavalia molokaiensis, Clermontia oblongifolia* ssp. *brevipes, Ctenitis squamigera, Cyanea dunbariae, Cyanea mannii, Cyanea procera, Cyanea profuga, Cyanea solanacea, Cyperus fauriei, Cyrtandra filipes, Diplazium molokaiense, Festuca molokaiensis, Flueggea neowawraea, Gouania hillebrandii, Isodendrion pyrifolium, Kadua laxiflora, Labordia triflora, Melicope mucronulata, Melicope munroi, Melicope reflexa, Neraudia sericea, Phyllostegia haliakalae, Phyllostegia mannii, Phyllostegia pilosa, Santalum haleakalae* var. *lanaiense, Schiedea lydgatei, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense.*

(ii) NOTE: Map of Molokai—Lowland Mesic—Unit 1 (Map 7) follows:

Map 7

Molokai—Lowland Mesic

Unit 1



(8) Molokai—Lowland Wet—Unit 1 (3,628 ac, 1,468 ha), Molokai—Lowland Wet—Unit 2 (1,952 ac, 790 ha), and Molokai—Lowland Wet—Unit 3 (8,074 ac, 3,267 ha).

(i) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Asplenium dielerectum, Bidens wiebkei, Canavalia molokaiensis, Clermontia oblongifolia* ssp. *brevipes, Cyanea dunbariae, Cyanea grimesiana* ssp. *grimesiana, Cyanea solanacea, Cyrtandra filipes, Lysimachia maxima, Melicope reflexa, Peucedanum sandwicense, Phyllostegia hispida, Phyllostegia mannii, Plantago princeps, Stenogyne bifida,* and *Zanthoxylum hawaiiense.*

(ii) [Reserved for textual description of Unit 2.] This unit is critical habitat for *Asplenium dielerectum, Bidens wiebkei, Canavalia molokaiensis, Clermontia oblongifolia* ssp. *brevipes, Cyanea dunbariae, Cyanea grimesiana* ssp. *grimesiana, Cyanea solanacea, Cyrtandra filipes, Lysimachia maxima, Melicope reflexa, Peucedanum sandwicense, Phyllostegia hispida, Phyllostegia mannii, Plantago princeps, Stenogyne bifida,* and *Zanthoxylum hawaiiense.*

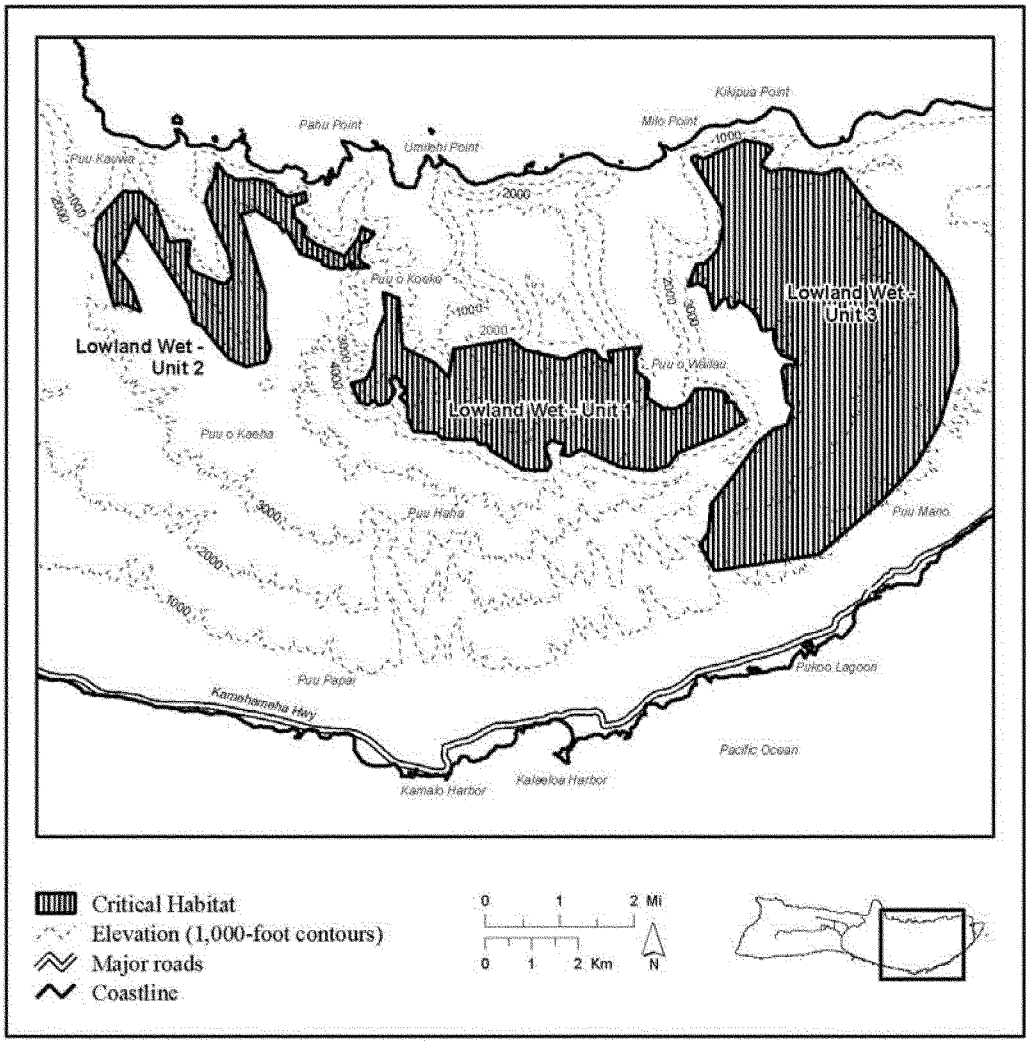
(iii) [Reserved for textual description of Unit 3.] This unit is critical habitat for *Asplenium dielerectum, Bidens wiebkei, Canavalia molokaiensis, Clermontia oblongifolia* ssp. *brevipes, Cyanea dunbariae, Cyanea grimesiana* ssp. *grimesiana, Cyanea solanacea, Cyrtandra filipes, Lysimachia maxima, Melicope reflexa, Peucedanum sandwicense, Phyllostegia hispida, Phyllostegia mannii, Plantago princeps, Stenogyne bifida,* and *Zanthoxylum hawaiiense.*

(iv) NOTE: Map of Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, and Molokai—Lowland Wet—Unit 3 (Map 8) follows:

Map 8

Molokai—Lowland Wet

Unit 1, Unit 2 and Unit 3



(9) Molokai—Montane Wet—Unit 1 (4,818 ac, 1,950 ha), Molokai—Montane Wet—Unit 2 (910 ac, 368 ha), and Molokai—Montane Wet—Unit 3 (803 ac, 325 ha).

(i) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Adenophorus periens, Bidens wiebkei, Clermontia oblongifolia* ssp. *brevipes, Cyanea mannii, Cyanea procera, Cyanea profuga, Cyanea solanacea, Hesperomannia arborescens, Lysimachia maxima, Melicope reflexa, Phyllostegia hispida, Phyllostegia mannii, Phyllostegia pilosa, Platanthera holochila, Pteris lidgatei, Schiedea laui, Stenogyne bifida,* and *Zanthoxylum hawaiiense.*

(ii) [Reserved for textual description of Unit 2.] This unit is critical habitat for *Adenophorus periens, Bidens wiebkei, Clermontia oblongifolia* ssp. *brevipes, Cyanea mannii, Cyanea procera, Cyanea profuga, Cyanea solanacea, Hesperomannia arborescens, Lysimachia maxima, Melicope reflexa, Phyllostegia hispida, Phyllostegia mannii, Phyllostegia pilosa, Platanthera holochila, Pteris lidgatei, Schiedea laui, Stenogyne bifida,* and *Zanthoxylum hawaiiense.*

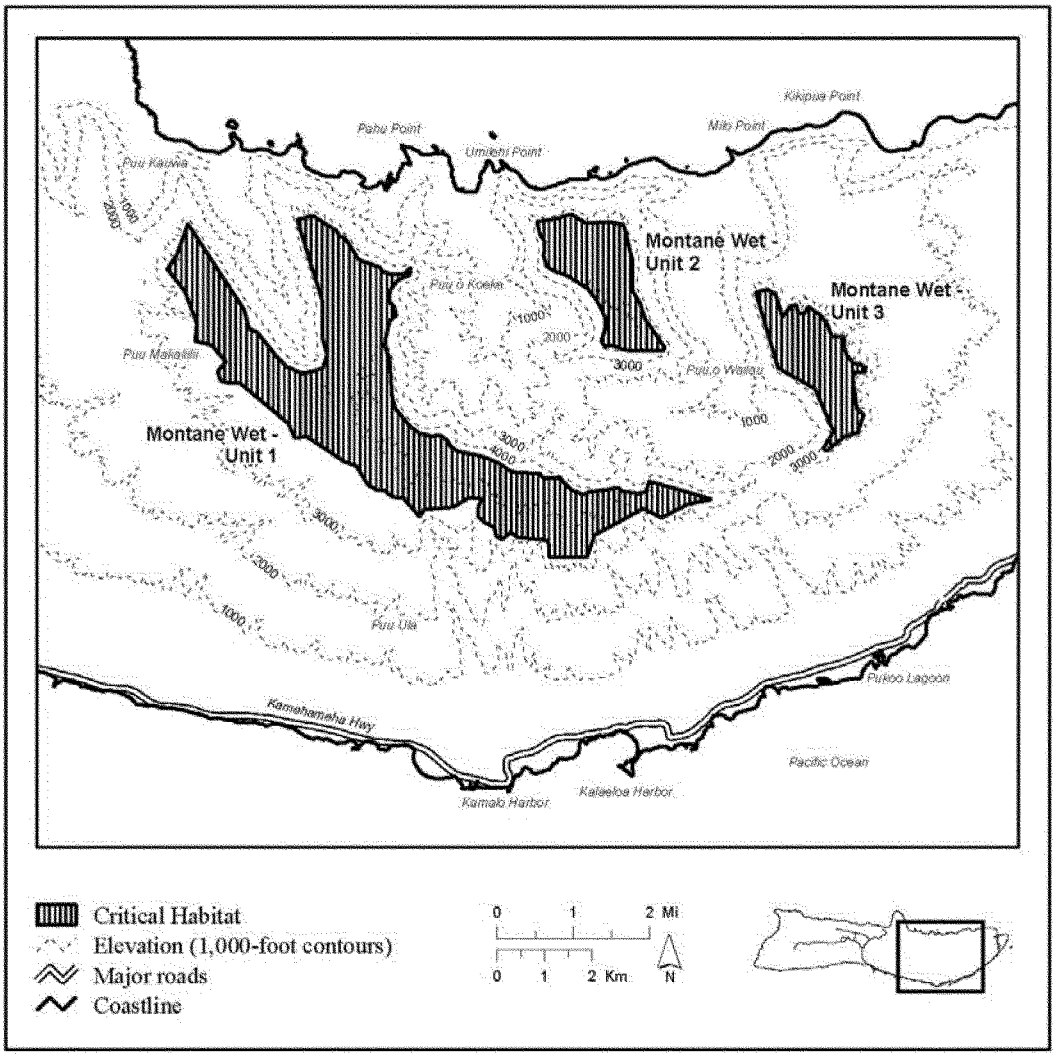
(iii) [Reserved for textual description of Unit 3.] This unit is critical habitat for *Adenophorus periens, Bidens wiebkei, Clermontia oblongifolia* ssp. *brevipes, Cyanea mannii, Cyanea procera, Cyanea profuga, Cyanea solanacea, Hesperomannia arborescens, Lysimachia maxima, Melicope reflexa, Phyllostegia hispida, Phyllostegia mannii, Phyllostegia pilosa, Platanthera holochila, Pteris lidgatei, Schiedea laui, Stenogyne bifida,* and *Zanthoxylum hawaiiense.*

(iv) NOTE: Map of Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3 (Map 9) follows:

Map 9

Molokai—Montane Wet

Unit 1, Unit 2 and Unit 3



(10) Molokai—Montane Mesic—Unit 1 (1,629 ac, 659 ha).

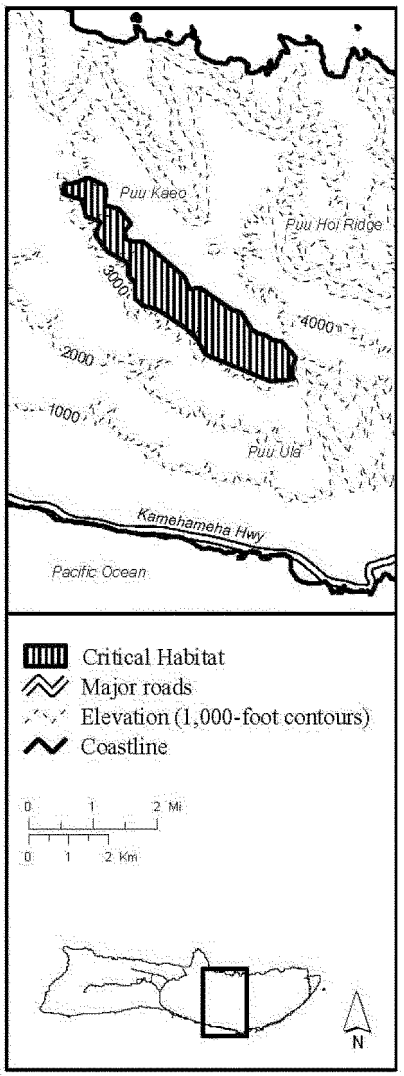
(i) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Alectryon macrococcus, Asplenium dielerectum, Bidens wiebkei, Cyanea dunbariae, Cyanea mannii, Cyanea procera, Cyanea solanacea, Cyperus fauriei, Kadua laxiflora, Melicope mucronulata, Neraudia sericea, Plantago princeps, Santalum haleakalae* var. *lanaiense, Spermolepis hawaiiensis,* and *Stenogyne bifida.*

(ii) NOTE: Map of Molokai—Montane Mesic—Unit 1 (Map 10) follows:

Map 10

Molokai—Montane Mesic

Unit 1



(11) Molokai—Wet Cliff—Unit 1 (1,888 ac, 764 ha), Molokai—Wet Cliff—Unit 2 (1,280 ac, 518 ha), and Molokai—Wet Cliff—Unit 3 (1,362 ac, 551 ha).

(i) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Brighamia rockii, Canavalia molokaiensis, Clermontia oblongifolia* ssp. *brevipes, Cyanea grimesiana* ssp. *grimesiana, Cyanea munroi, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Phyllostegia hispida, Pteris lydgatei,* and *Stenogyne bifida.*

(ii) [Reserved for textual description of Unit 2.] This unit is critical habitat for *Brighamia rockii, Canavalia molokaiensis, Clermontia oblongifolia* ssp. *brevipes, Cyanea grimesiana* ssp. *grimesiana, Cyanea munroi, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Phyllostegia hispida, Pteris lydgatei,* and *Stenogyne bifida.*

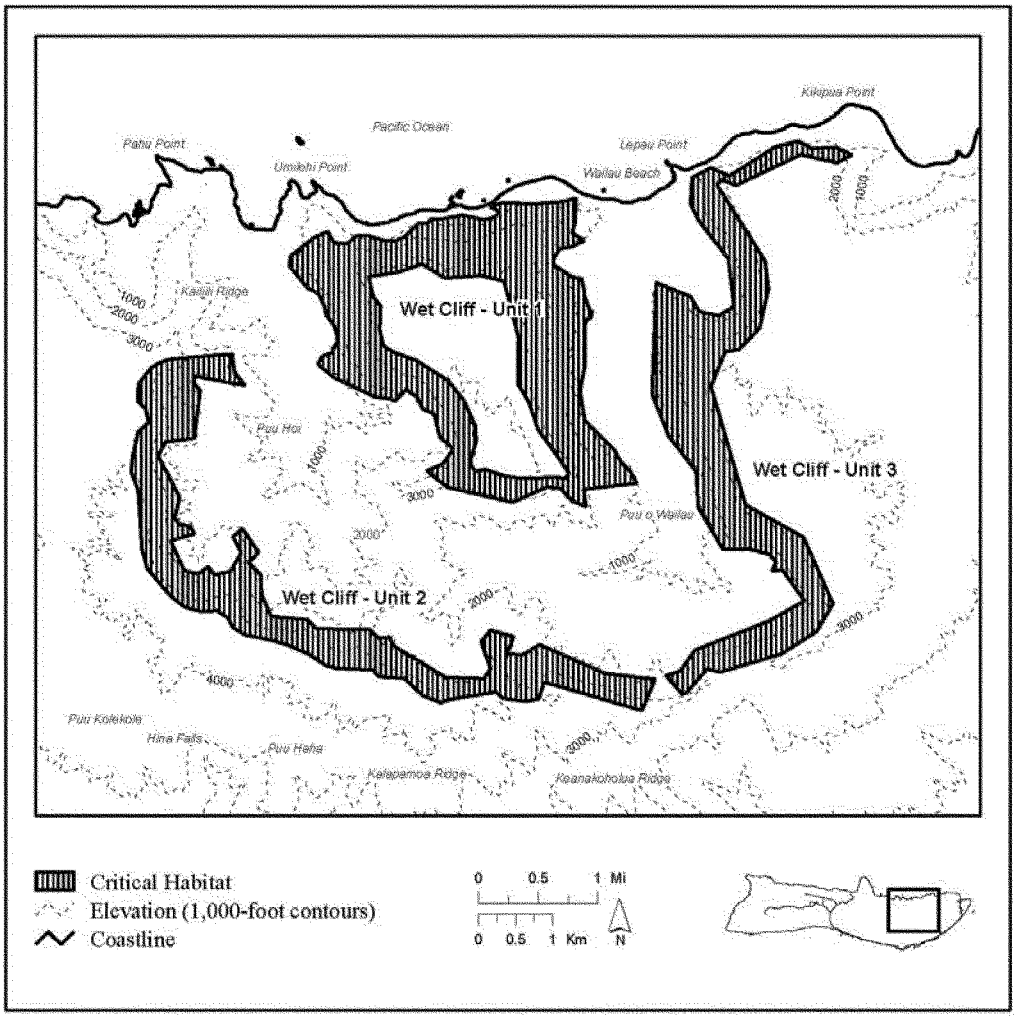
(iii) [Reserved for textual description of Unit 3.] This unit is critical habitat for *Brighamia rockii, Canavalia molokaiensis, Clermontia oblongifolia* ssp. *brevipes, Cyanea grimesiana* ssp. *grimesiana, Cyanea munroi, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Phyllostegia hispida, Pteris lydgatei,* and *Stenogyne bifida.*

(iv) NOTE: Map of Molokai—Wet Cliff—Unit 1, Molokai—Wet Cliff—Unit 2, and Molokai—Wet Cliff—Unit 3 (Map 11) follows:

Map 11

Molokai—Wet Cliff

Unit 1, Unit 2 and Unit 3



(12) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MOLOKAI

Unit name	Species occupied	Species unoccupied
Molokai—Coastal—Unit 1		*Bidens wiebkei.*
		Brighamia rockii.
		Canavalia molokaiensis.
		Hibiscus arnottianus ssp. *Immaculatus.*
		Hibiscus brackenridgei.
		Ischaemum byrone.
	Marsilea villosa	*Marsilea villosa.*
		Peucedanum sandwicense.
		Pittosporum halophilum.
		Schenkia sebaeoides.
		Sesbania tomentosa.
		Tetramolopium rockii.
Molokai—Coastal—Unit 2		*Bidens wiebkei.*
		Brighamia rockii.
		Canavalia molokaiensis.
		Hibiscus arnottianus ssp. *Immaculatus.*
		Hibiscus brackenridgei.
		Ischaemum byrone.

(12) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MOLOKAI—Continued

Unit name	Species occupied	Species unoccupied
	Marsilea villosa	*Marsilea villosa.*
		Peucedanum sandwicense.
		Pittosporum halophilum.
	Schenkia sebaeoides	*Schenkia sebaeoides.*
	Sesbania tomentosa	*Sesbania tomentosa.*
	Tetramolopium rockii	*Tetramolopium rockii.*
Molokai—Coastal—Unit 3		*Bidens wiebkei.*
		Brighamia rockii.
	Canavalia molokaiensis	*Canavalia molokaiensis.*
		Hibiscus arnottianus ssp. *Immaculatus.*
		Hibiscus brackenridgei.
		Ischaemum byrone.
		Marsilea villosa.
		Peucedanum sandwicense.
	Pittosporum halophilum	*Pittosporum halophilum.*
	Schenkia sebaeoides	*Schenkia sebaeoides.*
		Sesbania tomentosa.
	Tetramolopium rockii	*Tetramolopium rockii.*
Molokai—Coastal—Unit 4		*Bidens wiebkei.*
		Brighamia rockii.
		Canavalia molokaiensis.
		Hibiscus arnottianus ssp. *Immaculatus.*
		Hibiscus brackenridgei.
		Ischaemum byrone.
		Marsilea villosa.
	Peucedanum sandwicense	*Peucedanum sandwicense.*
	Pittosporum halophilum	*Pittosporum halophilum.*
		Schenkia sebaeoides.
		Sesbania tomentosa.
		Tetramolopium rockii.
Molokai—Coastal—Unit 5		*Bidens wiebkei.*
	Brighamia rockii	*Brighamia rockii.*
		Canavalia molokaiensis.
		Hibiscus arnottianus ssp. *Immaculatus.*
		Hibiscus brackenridgei.
		Ischaemum byrone.
		Marsilea villosa.
		Peucedanum sandwicense.
	Pittosporum halophilum	*Pittosporum halophilum.*
		Schenkia sebaeoides.
		Sesbania tomentosa.
		Tetramolopium rockii.
Molokai—Coastal—Unit 6	*Bidens wiebkei*	*Bidens wiebkei.*
		Brighamia rockii.
	Canavalia molokaiensis	*Canavalia molokaiensis.*
	Hibiscus arnottianus ssp. *immaculatus*	*Hibiscus arnottianus* ssp. *Immaculatus.*
		Hibiscus brackenridgei.
	Ischaemum byrone	*Ischaemum byrone.*
		Marsilea villosa.
	Peucedanum sandwicense	*Peucedanum sandwicense.*
		Pittosporum halophilum.
		Schenkia sebaeoides.
		Sesbania tomentosa.
		Tetramolopium rockii.
Molokai—Coastal—Unit 7		*Bidens wiebkei.*
		Brighamia rockii.
		Canavalia molokaiensis.
		Hibiscus arnottianus ssp. *Immaculatus.*
		Hibiscus brackenridgei.
		Ischaemum byrone.
		Marsilea villosa.
		Peucedanum sandwicense.
		Pittosporum halophilum.
		Schenkia sebaeoides.
		Sesbania tomentosa.
		Tetramolopium rockii.
Molokai—Lowland Dry—Unit 1		*Bonamia menziesii.*
		Cyperus trachysanthos.
		Eugenia koolauensis.
		Hibiscus brackenridgei.
		Kokia cookie.
		Sesbania tomentosa.

(12) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MOLOKAI—Continued

Unit name	Species occupied	Species unoccupied
Molokai—Lowland Dry—Unit 2		*Bonamia menziesii.*
		Cyperus trachysanthos.
		Eugenia koolauensis.
		Hibiscus brackenridgei.
		Kokia cookie.
		Sesbania tomentosa.
Molokai—Lowland Mesic—Unit 1	*Alectryon macrococcus*	*Alectryon micrococcus.*
	Asplenium dielerectum	*Asplenium dielerectum.*
		Bonamia menziesii.
	Canavalia molokaiensis	*Canavalia molokaiensis.*
		Clermontia oblongifolia ssp. *Brevipes.*
	Ctenitis squamigera	*Ctenitis squamigera.*
	Cyanea dunbariae	*Cyanea dunbariae.*
	Cyanea mannii	*Cyanea mannii.*
		Cyanea procera.
	Cyanea profuga	*Cyanea profuga.*
		Cyanea solanacea.
	Cyperus fauriei	*Cyperus fauriei.*
	Cyrtandra filipes	*Cyrtandra filipes.*
		Diplazium molokaiense.
	Festuca molokaiensis	*Festuca molokaiensis.*
		Flueggea neowawraea.
	Gouania hillebrandii	*Gouania hillebrandii.*
		Isodendrion pyrifolium.
		Kadua laxiflora.
	Labordia triflora	*Labordia triflora.*
	Melicope mucronulata	*Melicope mucronulata.*
		Melicope munroi.
		Melicope reflexa.
	Neraudia sericea	*Neraudia sericea.*
		Phyllostegia haliakalae.
		Phyllostegia mannii.
		Phyllostegia pilosa.
	Santalum haleakalae var. *lanaiense*	*Santalum haleakalae* var. *lanaiense.*
	Schiedea lydgatei	*Schiedea lydgatei.*
	Schiedea sarmentosa	*Schiedea sarmentosa.*
		Sesbania tomentosa.
	Silene alexandri	*Silene alexandri.*
	Silene lanceolata	*Silene lanceolata.*
	Spermolepis hawaiiensis	*Spermolepis hawaiiensis.*
		Stenogyne bifida.
	Vigna o-wahuensis	*Vigna o-wahuensis.*
	Zanthoxylum hawaiiense	*Zanthoxylum hawaiiense.*
Molokai—Lowland Wet—Unit 1		*Asplenium dielerectum.*
		Bidens wiebkei.
	Canavalia molokaiensis	*Canavalia molokaiensis.*
		Clermontia oblongifolia ssp. *Brevipes.*
		Cyanea dunbariae.
		Cyanea grimesiana ssp. *Grimesiana.*
		Cyanea solanacea.
	Cyrtandra filipes	*Cyrtandra filipes.*
		Lysimachia maxima.
		Melicope reflexa.
		Peucedanum sandwicense.
		Phyllostegia hispida.
		Phyllostegia mannii.
		Plantago princeps.
		Stenogyne bifida.
		Zanthoxylum hawaiiense.
Molokai—Lowland Wet—Unit 2		*Asplenium dielerectum.*
		Bidens wiebkei.
		Canavalia molokaiensis.
		Clermontia oblongifolia ssp. *Brevipes.*
		Cyanea dunbariae.
		Cyanea grimesiana ssp. *Grimesiana.*
		Cyanea solanacea.
		Cyrtandra filipes.
	Lysimachia maxima	*Lysimachia maxima.*
		Melicope reflexa.
		Peucedanum sandwicense.
		Phyllostegia hispida.
		Phyllostegia mannii.

(12) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MOLOKAI—Continued

Unit name	Species occupied	Species unoccupied
		Plantago princeps.
		Stenogyne bifida.
		Zanthoxylum hawaiiense.
Molokai—Lowland Wet—Unit 3		*Asplenium dielerectum*.
	Bidens wiebkei	*Bidens wiebkei*.
		Canavalia molokaiensis.
		Clermontia oblongifolia ssp. *Brevipes*.
		Cyanea dunbariae.
		Cyanea grimesiana ssp. *Grimesiana*.
		Cyanea solanacea.
	Cyrtandra filipes	*Cyrtandra filipes*.
		Lysimachia maxima.
	Melicope reflexa	*Melicope reflexa*.
		Peucedanum sandwicense.
		Phyllostegia hispida.
		Phyllostegia mannii.
		Plantago princeps.
		Stenogyne bifida.
		Zanthoxylum hawaiiense.
Molokai—Montane Wet—Unit 1	*Adenophorus periens*	*Adenophorus periens*.
	Bidens wiebkei	*Bidens wiebkei*.
	Clermontia oblongifolia ssp. *brevipes*	*Clermontia oblongifolia* ssp. *Brevipes*.
	Cyanea mannii	*Cyanea mannii*.
		Cyanea procera.
	Cyanea profuga	*Cyanea profuga*.
	Cyanea solanacea	*Cyanea solanacea*.
		Hesperomannia arborescens.
	Lysimachia maxima	*Lysimachia maxima*.
		Melicope reflexa.
	Phyllostegia hispida	*Phyllostegia hispida*.
	Phyllostegia mannii	*Phyllostegia mannii*.
		Phyllostegia pilosa.
	Platanthera holochila	*Platanthera holochila*.
	Pteris lidgatei	*Pteris lidgatei*.
	Schiedea laui	*Schiedea laui*.
	Stenogyne bifida	*Stenogyne bifida*.
		Zanthoxylum hawaiiense.
Molokai—Montane Wet—Unit 2		*Adenophorus periens*.
		Bidens wiebkei.
		Clermontia oblongifolia ssp. *Brevipes*.
		Cyanea mannii.
		Cyanea procera.
		Cyanea profuga.
		Cyanea solanacea.
		Hesperomannia arborescens.
		Lysimachia maxima.
		Melicope reflexa.
		Phyllostegia hispida.
		Phyllostegia mannii.
		Phyllostegia pilosa.
		Platanthera holochila.
		Pteris lidgatei.
		Schiedea laui.
		Stenogyne bifida.
		Zanthoxylum hawaiiense.
Molokai—Montane Wet—Unit 3		*Adenophorus periens*.
		Bidens wiebkei.
		Clermontia oblongifolia ssp. *Brevipes*.
		Cyanea mannii.
		Cyanea procera.
		Cyanea profuga.
		Cyanea solanacea.
		Hesperomannia arborescens.
		Lysimachia maxima.
	Melicope reflexa	*Melicope reflexa*.
		Phyllostegia hispida.
		Phyllostegia mannii.
		Phyllostegia pilosa.
		Platanthera holochila.
		Pteris lidgatei.
		Schiedea laui.
		Stenogyne bifida.

(12) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MOLOKAI—Continued

Unit name	Species occupied	Species unoccupied
		Zanthoxylum hawaiiense.
Molokai—Montane Mesic—Unit 1	*Alectryon macrococcus*	*Alectryon micrococcus.*
		Asplenium dielerectum.
	Bidens wiebkei	*Bidens wiebkei.*
		Cyanea dunbariae.
	Cyanea mannii	*Cyanea mannii.*
	Cyanea procera	*Cyanea procera.*
		Cyanea solanacea.
	Cyperus fauriei	*Cyperus fauriei.*
		Kadua laxiflora.
		Melicope mucronulata.
		Neraudia sericea.
		Plantago princeps.
	Santalum haleakalae var. *lanaiense*	*Santalum haleakalae* var. *lanaiense.*
	Spermolepis hawaiiensis	*Spermolepis hawaiiensis.*
		Stenogyne bifida.
Molokai—Wet Cliff—Unit 1	*Brighamia rockii*	*Brighamia rockii.*
	Canavalia molokaiensis	*Canavalia molokaiensis.*
	Clermontia oblongifolia ssp. *brevipes*	*Clermontia oblongifolia* ssp. *Brevipes.*
		Cyanea grimesiana ssp. *Grimesiana.*
		Cyanea munroi.
	Hesperomannia arborescens	*Hesperomannia arborescens.*
	Hibiscus arnottianus ssp. *immaculatus*	*Hibiscus arnottianus* ssp. *Immaculatus.*
		Phyllostegia hispida.
		Pteris lidgatei.
		Stenogyne bifida.
Molokai—Wet Cliff—Unit 2		*Brighamia rockii.*
		Canavalia molokaiensis.
		Clermontia oblongifolia ssp. *Brevipes.*
		Cyanea grimesiana ssp. *Grimesiana.*
		Cyanea munroi.
		Hesperomannia arborescens.
		Hibiscus arnottianus ssp. *Immaculatus.*
	Phyllostegia hispida	*Phyllostegia hispida.*
		Pteris lidgatei.
		Stenogyne bifida.
Molokai—Wet Cliff—Unit 3		*Brighamia rockii.*
		Canavalia molokaiensis.
		Clermontia oblongifolia ssp. *Brevipes.*
		Cyanea grimesiana ssp. *Grimesiana.*
		Cyanea munroi.
		Hesperomannia arborescens.
		Hibiscus arnottianus ssp. *Immaculatus.*
		Phyllostegia hispida.
		Pteris lidgatei.
		Stenogyne bifida

(d) *Plants on Molokai; Constituent elements.*

(1) *Flowering plants.*

Family Apiaceae

Peucedanum sandwicense (Makou)

Molokai—Coastal—Unit 1, Molokai—Coastal—Unit 2, Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, Molokai—Coastal—Unit 5, Molokai—Coastal—Unit 6, Molokai—Coastal—Unit 7, Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, and Molokai—Lowland Wet—Unit 3, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Peucedanum sandwicense* on Molokai.

(i) In units Molokai—Coastal—Unit 1, Molokai—Coastal—Unit 2, Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, Molokai—Coastal—Unit 5, Molokai—Coastal—Unit 6, and Molokai—Coastal—Unit 7, the physical and biological features of critical habitat are:

(A) Elevation: Less than 980 ft (300 m).

(B) Annual precipitation: Less than 20 in (50 cm).

(C) Substrate: Well-drained, calcareous, talus slopes; weathered clay soils; ephemeral pools; mudflats.

(D) Canopy: *Hibiscus, Myoporum, Santalum, Scaevola.*

(E) Subcanopy: *Gossypium, Sida, Vitex.*

(F) Understory: *Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*

(ii) In units Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, and Molokai—Lowland Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

Spermolepis hawaiiensis (NCN)

Molokai—Lowland Mesic—Unit 1 and Molokai—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Spermolepis hawaiiensis* on Molokai.

(i) In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In unit Molokai—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

Family Asteraceae

Bidens wiebkei (KOOKOOLAU)

Molokai—Coastal—Unit 1, Molokai—Coastal—Unit 2, Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, Molokai—Coastal—Unit 5, Molokai—Coastal—Unit 6, Molokai—Coastal—Unit 7, Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, Molokai—Lowland Wet—Unit 3, Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, Molokai—Montane Wet—Unit 3, and Molokai—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Bidens wiebkei* on Molokai.

(i) In units Molokai—Coastal—Unit 1, Molokai—Coastal—Unit 2, Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, Molokai—Coastal—Unit 5, Molokai—Coastal—Unit 6, and Molokai—Coastal—Unit 7, the physical and biological features of critical habitat are:

(A) Elevation: Less than 980 ft (300 m).

(B) Annual precipitation: Less than 20 in (50 cm).

(C) Substrate: Well-drained, calcareous, talus slopes; weathered clay soils; ephemeral pools; mudflats.

(D) Canopy: *Hibiscus, Myoporum, Santalum, Scaevola.*

(E) Subcanopy: *Gossypium, Sida, Vitex.*

(F) Understory: *Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*

(ii) In units Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, and Molokai—Lowland Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iii) In units Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iv) In unit Molokai—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

Hesperomannia arborescens (NCN)

Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, Molokai—Montane Wet—Unit 3, Molokai—Wet Cliff—Unit 1, Molokai—Wet Cliff—Unit 2, and Molokai—Wet Cliff—Unit 3, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Hesperomannia arborescens* on Molokai.

(i) In units Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(ii) In units Molokai—Wet Cliff—Unit 1, Molokai—Wet Cliff—Unit 2, and Molokai—Wet Cliff—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Tetramolopium rockii (NCN)

Molokai—Coastal—Unit 1, Molokai—Coastal—Unit 2, Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, Molokai—Coastal—Unit 5, Molokai—Coastal—Unit 6, and Molokai—Coastal—Unit 7, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Tetramolopium rockii* on Molokai. In units Molokai—Coastal—Unit 1, Molokai—Coastal—Unit 2, Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, Molokai—Coastal—Unit 5, Molokai—Coastal—Unit 6, and Molokai—Coastal—Unit 7, the physical and biological features of critical habitat are:

(i) Elevation: Less than 980 ft (300 m).

(ii) Annual precipitation: Less than 20 in (50 cm).

(iii) Substrate: Well-drained, calcareous, talus slopes; weathered clay soils; ephemeral pools; mudflats.

(iv) Canopy: *Hibiscus, Myoporum, Santalum, Scaevola.*

(v) Subcanopy: *Gossypium, Sida, Vitex.*

(vi) Understory: *Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*

Family Campanulaceae

Brighamia rockii (PAU ALA)

Molokai—Coastal—Unit 1, Molokai—Coastal—Unit 2, Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, Molokai—Coastal—Unit 5, Molokai—Coastal—Unit 6, Molokai—Coastal—Unit 7, Molokai—Wet Cliff—Unit 1, Molokai—Wet Cliff—Unit 2, and Molokai—Wet Cliff—Unit 3, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Brighamia rockii* on Molokai.

(i) In units Molokai—Coastal—Unit 1, Molokai—Coastal—Unit 2, Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, Molokai—Coastal—Unit 5, Molokai—Coastal—Unit 6, and Molokai—Coastal—Unit 7, the physical and biological features of critical habitat are:

(A) Elevation: Less than 980 ft (300 m).

(B) Annual precipitation: Less than 20 in (50 cm).

(C) Substrate: Well-drained, calcareous, talus slopes; weathered clay soils; ephemeral pools; mudflats.

(D) Canopy: *Hibiscus, Myoporum, Santalum, Scaevola.*

(E) Subcanopy: *Gossypium, Sida, Vitex.*

(F) Understory: *Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*

(ii) In units Molokai—Wet Cliff—Unit 1, Molokai—Wet Cliff—Unit 2, and Molokai—Wet Cliff—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Clermontia oblongifolia ssp. *brevipes* (OHA WAI)

Molokai—Lowland Mesic—Unit 1, Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, Molokai—Lowland Wet—Unit 3, Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, Molokai—Montane Wet—Unit 3, Molokai—Wet Cliff—Unit 1, Molokai—Wet Cliff—Unit 2, and Molokai—Wet Cliff—Unit 3, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Clermontia oblongifolia* ssp. *brevipes* on Molokai.

(i) In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, and Molokai—Lowland Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iii) In units Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iv) In units Molokai—Wet Cliff—Unit 1, Molokai—Wet Cliff—Unit 2, and Molokai—Wet Cliff—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Cyanea dunbariae (HAHA)

Molokai—Lowland Mesic—Unit 1, Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, Molokai—Lowland Wet—Unit 3, and Molokai—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Cyanea dunbariae* on Molokai.

(i) In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (127 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, and Molokai—Lowland Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iii) In unit Molokai—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis,*

Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

Cyanea grimesiana ssp. *grimesiana* (HAHA)

Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, Molokai—Lowland Wet—Unit 3, Molokai—Wet Cliff—Unit 1, Molokai—Wet Cliff—Unit 2, and Molokai—Wet Cliff—Unit 3, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Cyanea grimesiana* ssp. *grimesiana* on Molokai.

(i) In units Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, and Molokai—Lowland Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Molokai—Wet Cliff—Unit 1, Molokai—Wet Cliff—Unit 2, and Molokai—Wet Cliff—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Cyanea mannii (HAHA)

Molokai—Lowland Mesic—Unit 1, Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, Molokai—Montane Wet—Unit 3, and Molokai—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Cyanea mannii* on Molokai.

(i) In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iii) In unit Molokai—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

Cyanea munroi (HAHA)

Molokai—Wet Cliff—Unit 1, Molokai—Wet Cliff—Unit 2, and Molokai—Wet Cliff—Unit 3, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Cyanea munroi* on Molokai. In units Molokai—Wet Cliff—Unit 1, Molokai—Wet Cliff—Unit 2, and Molokai—Wet Cliff—Unit 3, the physical and biological features of critical habitat are:

(i) Elevation: Unrestricted.

(ii) Annual precipitation: Greater than 75 in (190 cm).

(iii) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(iv) Canopy: None.

(v) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.* (vi) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Cyanea procera (HAHA)

Molokai—Lowland Mesic—Unit 1, Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, Molokai—Montane Wet—Unit 3, and Molokai—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Cyanea procera* on Molokai.

(i) In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iii) In unit Molokai—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Fern, *Carex, Peperomia.*

Cyanea profuga (HAHA)

Molokai—Lowland Mesic—Unit 1, Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Cyanea profuga* on Molokai.

(i) In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

Cyanea solanacea (POPOLO, HAHA NUI)

Molokai—Lowland Mesic—Unit 1, Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, Molokai—Lowland Wet—Unit 3, Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, Molokai—Montane Wet—Unit 3, and Molokai—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Cyanea solanacea* on Molokai.

(i) In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, and Molokai—Lowland Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iii) In units Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iv) In unit Molokai—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

Family Caryophyllaceae

Schiedea laui (NCN)

Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Schiedea laui* on Molokai. In units Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, the physical and biological features of critical habitat are:

(i) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Greater than 75 in (190 cm).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(v) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(vi) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

Schiedea lydgatei (NCN)

Molokai—Lowland Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Schiedea lydgatei* on Molokai. In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: 50 to 75 in (130 to 190 cm).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(v) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(vi) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

Schiedea sarmentosa (NCN)

Molokai—Lowland Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Schiedea sarmentosa* on Molokai. In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: 50 to 75 in (130 to 190 cm).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(v) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(vi) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

Silene alexandri (NCN)

Molokai—Lowland Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitutes

critical habitat for *Silene alexandri* on Molokai. In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: 50 to 75 in (130 to 190 cm).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(v) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(vi) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

Silene lanceolata (NCN)

Molokai—Lowland Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Silene lanceolata* on Molokai. In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: 50 to 75 in (130 to 190 cm).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(v) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(vi) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

Family Convolvulaceae

Bonamia menziesii (NCN)

Molokai—Lowland Dry—Unit 1, Molokai—Lowland Dry—Unit 2, and Molokai—Lowland Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Bonamia menziesii* on Molokai.

(i) In units Molokai—Lowland Dry—Unit 1 and Molokai—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

(ii) In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

Family Cyperaceae

Cyperus fauriei (NCN)

Molokai—Lowland Mesic—Unit 1 and Molokai—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Cyperus fauriei* on Molokai.

(i) In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In unit Molokai—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

Cyperus trachysanthos (PUUKAA)

Molokai—Lowland Dry—Unit 1 and Molokai—Lowland Dry—Unit 2, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Cyperus trachysanthos* on Molokai. In units Molokai—Lowland Dry—Unit 1 and Molokai—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(v) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(vi) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Family Euphorbiaceae

Flueggea neowawraea (MEHAMEHAME)

Molokai—Lowland Mesic—Unit 1, identified in the legal descriptions in paragraph (e)(1) of this section, constitutes critical habitat for *Flueggea neowawraea* on Molokai. In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: 50 to 75 in (130 to 190 cm).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(v) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(vi) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

Family Fabaceae

Canavalia molokaiensis (AWIKIWIKI)

Molokai—Coastal—Unit 1, Molokai—Coastal—Unit 2, Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, Molokai—Coastal—Unit 5, Molokai—Coastal—Unit 6, Molokai—Coastal—Unit 7, Molokai—Lowland Mesic—Unit 1, Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, Molokai—Lowland Wet—Unit 3, Molokai—Wet Cliff—Unit 1, Molokai—Wet Cliff—Unit 2, and Molokai—Wet Cliff—Unit 3, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Canavalia molokaiensis* on Molokai.

(i) In units Molokai—Coastal—Unit 1, Molokai—Coastal—Unit 2, Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, Molokai—Coastal—Unit 5, Molokai—Coastal—Unit 6, and

Molokai—Coastal—Unit 7, the physical and biological features of critical habitat are:

(A) Elevation: Less than 980 ft (300 m).

(B) Annual precipitation: Less than 20 in (50 cm).

(C) Substrate: Well-drained, calcareous, talus slopes; weathered clay soils; ephemeral pools; mudflats.

(D) Canopy: *Hibiscus, Myoporum, Santalum, Scaevola.*

(E) Subcanopy: *Gossypium, Sida, Vitex.*

(F) Understory: *Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*

(ii) In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(iii) In units Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, and Molokai—Lowland Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iv) In units Molokai—Wet Cliff—Unit 1, Molokai—Wet Cliff—Unit 2, and Molokai—Wet Cliff—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Sesbania tomentosa (OHAI)

Molokai—Coastal—Unit 1, Molokai—Coastal—Unit 2, Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, Molokai—Coastal—Unit 5, Molokai—Coastal—Unit 6, Molokai—Coastal—Unit 7, Molokai—Lowland Dry—Unit 1, Molokai—Lowland Dry—Unit 2, and Molokai—Lowland Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Sesbania tomentosa* on Molokai.

(i) In units Molokai—Coastal—Unit 1, Molokai—Coastal—Unit 2, Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, Molokai—Coastal—Unit 5, Molokai—Coastal—Unit 6, and Molokai—Coastal—Unit 7, the physical and biological features of critical habitat are:

(A) Elevation: Less than 980 ft (300 m).

(B) Annual precipitation: Less than 20 in (50 cm).

(C) Substrate: Well-drained, calcareous, talus slopes; weathered clay soils; ephemeral pools; mudflats.

(D) Canopy: *Hibiscus, Myoporum, Santalum, Scaevola.*

(E) Subcanopy: *Gossypium, Sida, Vitex.*

(F) Understory: *Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*

(ii) In units Molokai—Lowland Dry—Unit 1 and Molokai—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

(iii) In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

Vigna o-wahuensis (NCN)

Molokai—Lowland Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Vigna o-wahuensis* on Molokai. In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: 50 to 75 in (130 to 190 cm).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(v) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(vi) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

Family Gentianaceae

Schenkia sebaeoides (AWIWI)

Molokai—Coastal—Unit 1, Molokai—Coastal—Unit 2, Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, Molokai—Coastal—Unit 5, Molokai—Coastal—Unit 6, and Molokai—Coastal—Unit 7, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Schenkia sebaeoides* on Molokai. In units Molokai—Coastal—Unit 1, Molokai—Coastal—Unit 2, Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, Molokai—Coastal—Unit 5, Molokai—Coastal—Unit 6, and Molokai—Coastal—Unit 7, the physical and biological features of critical habitat are:

(i) Elevation: Less than 980 ft (300 m).

(ii) Annual precipitation: Less than 20 in (50 cm).

(iii) Substrate: Well-drained, calcareous, talus slopes; weathered clay soils; ephemeral pools; mudflats.

(iv) Canopy: *Hibiscus, Myoporum, Santalum, Scaevola.*

(v) Subcanopy: *Gossypium, Sida, Vitex.*

(vi) Understory: *Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*

Family Gesneriaceae

Cyrtandra filipes (HAIWALE)

Molokai—Lowland Mesic—Unit 1, Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, and Molokai—Lowland Wet—Unit 3, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Cyrtandra filipes* on Molokai.

(i) In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, and Molokai—Lowland Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

Family Lamiaceae

Phyllostegia haliakalae (NCN)

Molokai—Lowland Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Phyllostegia haliakalae* on Molokai. In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: 50 to 75 in (130 to 190 cm).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(v) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(vi) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

Phyllostegia hispida (NCN)

Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, Molokai—Lowland Wet—Unit 3, Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, Molokai—Montane Wet—Unit 3, Molokai—Wet Cliff—Unit 1, Molokai—Wet Cliff—Unit 2, and Molokai—Wet Cliff—Unit 3, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Phyllostegia hispida* on Molokai.

(i) In units Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, and Molokai—Lowland Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iii) In units Molokai—Wet Cliff—Unit 1, Molokai—Wet Cliff—Unit 2, and Molokai—Wet Cliff—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Phyllostegia mannii (NCN)

Molokai—Lowland Mesic—Unit 1, Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, Molokai—Lowland Wet—Unit 3, Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Phyllostegia mannii* on Molokai.

(i) In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, and Molokai—Lowland Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iii) In units Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, Molokai—Montane Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

Phyllostegia pilosa (NCN)

Molokai—Lowland Mesic—Unit 1, Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Phyllostegia pilosa* on Molokai.

(i) In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

Stenogyne bifida (NCN)

Molokai—Lowland Mesic—Unit 1, Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, Molokai—Lowland Wet—Unit 3, Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, Molokai—Montane Wet—Unit 3, Molokai—Montane Mesic—Unit 1, Molokai—Wet Cliff—Unit 1, Molokai—Wet Cliff—Unit 2, and Molokai—Wet Cliff—Unit 3, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Stenogyne bifida* on Molokai.

(i) In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, and Molokai—Lowland Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iii) In units Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iv) In unit Molokai—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

(v) In units Molokai—Wet Cliff—Unit 1, Molokai—Wet Cliff—Unit 2, and Molokai—Wet Cliff—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Family Loganiaceae

Labordia triflora (KAMAKAHALA)

Molokai—Lowland Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Labordia triflora* on Molokai. In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: 50 to 75 in (130 to 190 cm).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(v) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(vi) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

Family Malvaceae

Hibiscus arnottianus ssp. immaculatus (KOKIO KEOKEO)

Molokai—Coastal—Unit 1, Molokai—Coastal—Unit 2, Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, Molokai—Coastal—Unit 5, Molokai—Coastal—Unit 6, Molokai—Coastal—Unit 7, Molokai—Wet Cliff—Unit 1, Molokai—Wet Cliff—Unit 2, and Molokai—Wet Cliff—Unit 3, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Hibiscus arnottianus* ssp. *immaculatus* on Molokai.

(i) In units Molokai—Coastal—Unit 1, Molokai—Coastal—Unit 2, Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, Molokai—Coastal—Unit 5, Molokai—Coastal—Unit 6, and Molokai—Coastal—Unit 7, the physical and biological features of critical habitat are:

(A) Elevation: Less than 980 ft (300 m).

(B) Annual precipitation: Less than 20 in (50 cm).

(C) Substrate: Well-drained, calcareous, talus slopes; weathered clay soils; ephemeral pools; mudflats.

(D) Canopy: *Hibiscus, Myoporum, Santalum, Scaevola.*

(E) Subcanopy: *Gossypium, Sida, Vitex.*

(F) Understory: *Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*

(ii) In units Molokai—Wet Cliff—Unit 1, Molokai—Wet Cliff—Unit 2, and Molokai—Wet Cliff—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).
(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.
(D) Canopy: None.
(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*
(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Hibiscus brackenridgei (MAO HAU HELE)

Molokai—Coastal—Unit 1, Molokai—Coastal—Unit 2, Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, Molokai—Coastal—Unit 5, Molokai—Coastal—Unit 6, Molokai—Coastal—Unit 7, Molokai—Lowland Dry—Unit 1, and Molokai—Lowland Dry—Unit 2, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Hibiscus brackenridgei* on Molokai.
(i) In units Molokai—Coastal—Unit 1, Molokai—Coastal—Unit 2, Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, Molokai—Coastal—Unit 5, Molokai—Coastal—Unit 6, and Molokai—Coastal—Unit 7, the physical and biological features of critical habitat are:
(A) Elevation: Less than 980 ft (300 m).
(B) Annual precipitation: Less than 20 in (50 cm).
(C) Substrate: Well-drained, calcareous, talus slopes; weathered clay soils; ephemeral pools; mudflats.
(D) Canopy: *Hibiscus, Myoporum, Santalum, Scaevola.*
(E) Subcanopy: *Gossypium, Sida, Vitex.*
(F) Understory: *Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*
(ii) In units Molokai—Lowland Dry—Unit 1 and Molokai—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:
(A) Elevation: Less than 3,300 ft (1,000 m).
(B) Annual precipitation: Less than 50 in (130 cm).
(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.
(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*
(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*
(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Kokia cookei (COOKE'S KOKIO)

Molokai—Lowland Dry—Unit 1 and Molokai—Lowland Dry—Unit 2, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Kokia cookei* on Molokai. In units Molokai—Lowland Dry—Unit 1 and Molokai—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:
(i) Elevation: Less than 3,300 ft (1,000 m).
(ii) Annual precipitation: Less than 50 in (130 cm).
(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.
(iv) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*
(v) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*
(vi) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Family Myrtaceae

Eugenia koolauensis (NIOI)

Molokai—Lowland Dry—Unit 1 and Molokai—Lowland Dry—Unit 2, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Eugenia koolauensis* on Molokai. In units Molokai—Lowland Dry—Unit 1 and Molokai—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:
(i) Elevation: Less than 3,300 ft (1,000 m).
(ii) Annual precipitation: Less than 50 in (130 cm).
(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.
(iv) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*
(v) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*
(vi) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Family Orchidaceae

Platanthera holochila (NCN)

Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Platanthera holochila* on Molokai. In units Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, the physical and biological features of critical habitat are:
(i) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).
(ii) Annual precipitation: Greater than 75 in (190 cm).
(iii) Substrate: Well-developed soils, montane bogs.
(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*
(v) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*
(vi) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

Family Pittosporaceae

Pittosporum halophilum (HOAWA)

Molokai—Coastal—Unit 1, Molokai—Coastal—Unit 2, Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, Molokai—Coastal—Unit 5, Molokai—Coastal—Unit 6, and Molokai—Coastal—Unit 7, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Pittosporum halophilum* on Molokai. In units Molokai—Coastal—Unit 1, Molokai—Coastal—Unit 2, Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, Molokai—Coastal—Unit 5, Molokai—Coastal—Unit 6, and Molokai—Coastal—Unit 7, the physical and biological features of critical habitat are:
(i) Elevation: Less than 980 ft (300 m).
(ii) Annual precipitation: Less than 20 in (50 cm).
(iii) Substrate: Well-drained, calcareous, talus slopes; weathered clay soils; ephemeral pools; mudflats.
(iv) Canopy: *Hibiscus, Myoporum, Santalum, Scaevola.*
(v) Subcanopy: *Gossypium, Sida, Vitex.*
(vi) Understory: *Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*

Family Plantaginaceae

Plantago princeps (LAUKAHI KUAHIWI)

Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, Molokai—Lowland Wet—Unit 3, and Molokai—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Plantago princeps* on Molokai.
(i) In units Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, and Molokai—Lowland Wet—Unit 3, the physical and biological features of critical habitat are:
(A) Elevation: Less than 3,300 ft (1,000 m).
(B) Annual precipitation: Greater than 75 in (190 cm).
(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.
(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*
(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*
(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In unit Molokai—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

Family Poaceae

Festuca molokaiensis (NCN)

Molokai—Lowland Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Festuca molokaiensis* on Molokai. In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: 50 to 75 in (130 to 190 cm).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(v) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(vi) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

Ischaemum byrone (HILO ISCHAEMUM)

Molokai—Coastal—Unit 1, Molokai—Coastal—Unit 2, Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, Molokai—Coastal—Unit 5, Molokai—Coastal—Unit 6, and Molokai—Coastal—Unit 7, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Ischaemum byrone* on Molokai. In units Molokai—Coastal—Unit 1, Molokai—Coastal—Unit 2, Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, Molokai—Coastal—Unit 5, Molokai—Coastal—Unit 6, and Molokai—Coastal—Unit 7, the physical and biological features of critical habitat are:

(i) Elevation: Less than 980 ft (300 m).

(ii) Annual precipitation: Less than 20 in (50 cm).

(iii) Substrate: Well-drained, calcareous, talus slopes; weathered clay soils; ephemeral pools; mudflats.

(iv) Canopy: *Hibiscus, Myoporum, Santalum, Scaevola.*

(v) Subcanopy: *Gossypium, Sida, Vitex.*

(vi) Understory: *Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*

Family Primulaceae

Lysimachia maxima (NCN)

Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, Molokai—Lowland Wet—Unit 3, Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Lysimachia maxima* on Molokai.

(i) In units Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, Molokai—Lowland Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

Family Rhamnaceae

Gouania hillebrandii (NCN)

Molokai—Lowland Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Gouania hillebrandii* on Molokai. In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: 50 to 75 in (130 to 190 cm).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(v) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(vi) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

Family Rubiaceae

Kadua laxiflora (PILO)

Molokai—Lowland Mesic—Unit 1 and Molokai—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Kadua laxiflora* on Molokai.

(i) In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In unit Molokai—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

Family Rutaceae

Melicope mucronulata (ALANI)

Molokai—Lowland Mesic—Unit 1 and Molokai—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Melicope mucronulata* on Molokai.

(i) In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In unit Molokai—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

Melicope munroi (ALANI)

Molokai—Lowland Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Melicope munroi* on Molokai. In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: 50 to 75 in (130 to 190 cm).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(v) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(vi) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

Melicope reflexa (ALANI)

Molokai—Lowland Mesic—Unit 1, Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, Molokai—Lowland Wet—Unit 3, Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Melicope reflexa* on Molokai.

(i) In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, and Molokai—Lowland Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iii) In units Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

Zanthoxylum hawaiiense (AE)

Molokai—Lowland Mesic—Unit 1, Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, Molokai—Lowland Wet—Unit 3, Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Zanthoxylum hawaiiense* on Molokai.

(i) In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, and Molokai—Lowland Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iii) In units Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

Family Santalaceae

Santalum haleakalae var. lanaiense (LANAI SANDALWOOD, ILIAHI)

Molokai—Lowland Mesic—Unit 1 and Molokai—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Santalum haleakalae* var. *lanaiense* on Molokai.

(i) In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In unit Molokai—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

Family Sapindaceae

Alectryon macrococcus (MAHOE)

Molokai—Lowland Mesic—Unit 1 and Molokai—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Alectryon macrococcus* on Molokai.

(i) In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In unit Molokai—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

Family Urticaceae

Neraudia sericea (NCN)

Molokai—Lowland Mesic—Unit 1 and Molokai—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Neraudia sericea* on Molokai.

(i) In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In unit Molokai—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

Family Violaceae

Isodendrion pyrifolium (WAHINE NOHO KULA)

Molokai—Lowland Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Isodendrion pyrifolium* on Molokai. In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: 50 to 75 in (130 to 190 cm).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(v) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(vi) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(2) *Ferns and fern allies.*

Family Adiantaceae

Pteris lidgatei (NCN)

Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, Molokai—Montane Wet—Unit 3, Molokai—Wet Cliff—Unit 1, Molokai—Wet Cliff—Unit 2, and Molokai—Wet Cliff—Unit 3, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Pteris lidgatei* on Molokai.

(i) In units Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(ii) In units Molokai—Wet Cliff—Unit 1, Molokai—Wet Cliff—Unit 2, and Molokai—Wet Cliff—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Family Aspleniaceae

Asplenium dielerectum (ASPLENIUM-LEAVED DIELLIA)

Molokai—Lowland Mesic—Unit 1, Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, Molokai—Lowland Wet—Unit 3, and Molokai—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Asplenium dielerectum* on Molokai.

(i) In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Molokai—Lowland Wet—Unit 1, Molokai—Lowland Wet—Unit 2, and Molokai—Lowland Wet—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iii) In unit Molokai—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

Ctenitis squamigera (PAUOA)

Molokai—Lowland Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Ctenitis squamigera* on Molokai. In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: 50 to 75 in (130 to 190 cm).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(v) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(vi) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

Diplazium molokaiense (NCN)

Molokai—Lowland Mesic—Unit 1, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Diplazium molokaiense* on Molokai. In unit Molokai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: 50 to 75 in (130 to 190 cm).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(v) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(vi) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

Family Grammitidaceae

Adenophorus periens (PENDANT KIHI FERN)

Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Adenophorus periens* on Molokai. In units Molokai—Montane Wet—Unit 1, Molokai—Montane Wet—Unit 2, and Molokai—Montane Wet—Unit 3, the physical and biological features of critical habitat are:

(i) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Greater than 75 in (190 cm).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(v) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(vi) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

Family Marsileaceae

Marsilea villosa (IHI IHI)

Molokai—Coastal—Unit 1, Molokai—Coastal—Unit 2, Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, Molokai—Coastal—Unit 5, Molokai—Coastal—Unit 6, and Molokai—Coastal—Unit 7, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Marsilea villosa* on Molokai. In units Molokai—Coastal—Unit 1, Molokai—Coastal—Unit 2, Molokai—Coastal—Unit 3, Molokai—Coastal—Unit 4, Molokai—Coastal—Unit 5, Molokai—Coastal—Unit 6, and Molokai—Coastal—Unit 7, the physical and biological features of critical habitat are:

(i) Elevation: Less than 980 ft (300 m).

(ii) Annual precipitation: Less than 20 in (50 cm).

(iii) Substrate: Well-drained, calcareous, talus slopes; weathered clay soils; ephemeral pools; mudflats.

(iv) Canopy: *Hibiscus, Myoporum, Santalum, Scaevola.*

(v) Subcanopy: *Gossypium, Sida, Vitex.*

(vi) Understory: *Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*

(e) *Maps and critical habitat unit descriptions for the islands of Maui and Kahoolawe, HI.*

(1) *Maui.* Critical habitat units are described below. Coordinates are in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following maps show the general locations of the critical habitat units designated on the island of Maui. Existing manmade features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas, do not contain one or more of the physical and biological features. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species or physical or biological features in adjacent critical habitat.

(i) NOTE: Map 1—East Maui Index map follows:

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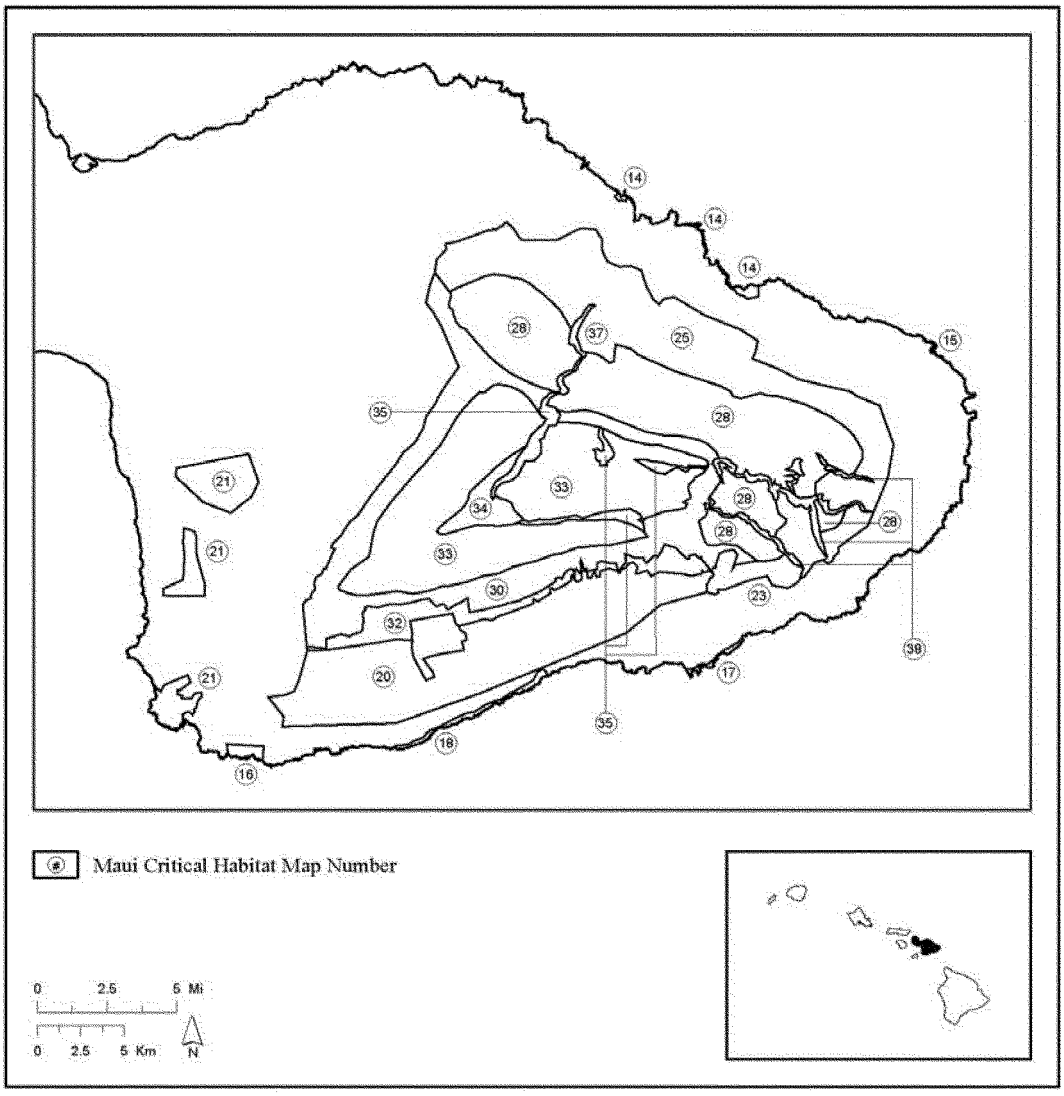
Map 1

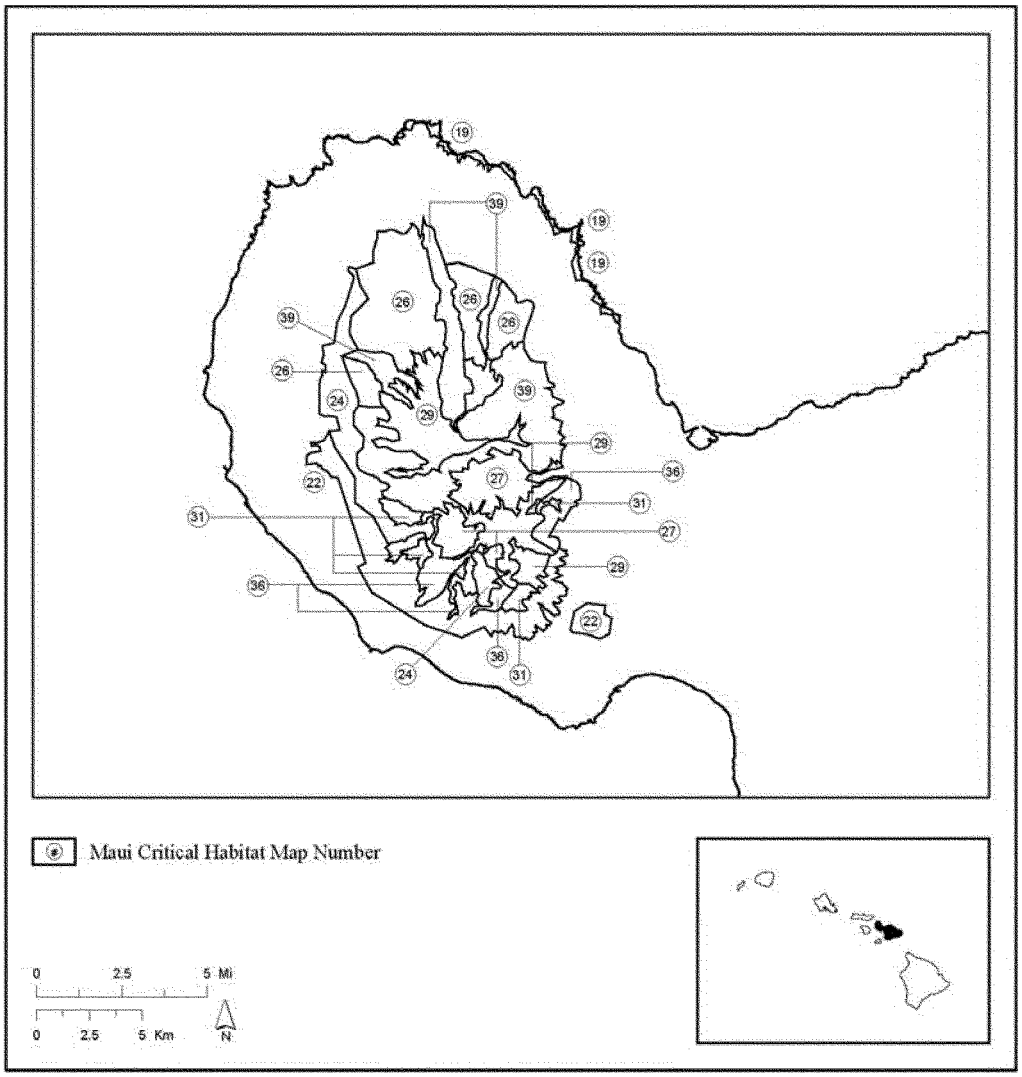
Maui Critical Habitat—East Maui Index Map



(ii) NOTE: Map 2—West Maui Index map follows:

Map 2

Maui Critical Habitat—West Maui Index Map



(iii) Maui—Coastal—Unit 1 (2 ac, 1 ha), Maui—Coastal—Unit 2 (68 ac, 28 ha), Maui—Coastal—Unit 3 (54 ac, 22 ha), and Maui—Coastal—Unit 4 (243 ac, 98 ha).

(A) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Brighamia rockii, Cyperus pennatiformis, Ischaemum byrone, Peucedanum sandwicense,* and *Vigna o-wahuensis.*

(B) [Reserved for textual description of Unit 2.] This unit is critical habitat for *Brighamia rockii, Cyperus pennatiformis, Ischaemum byrone, Peucedanum sandwicense,* and *Vigna o-wahuensis.*

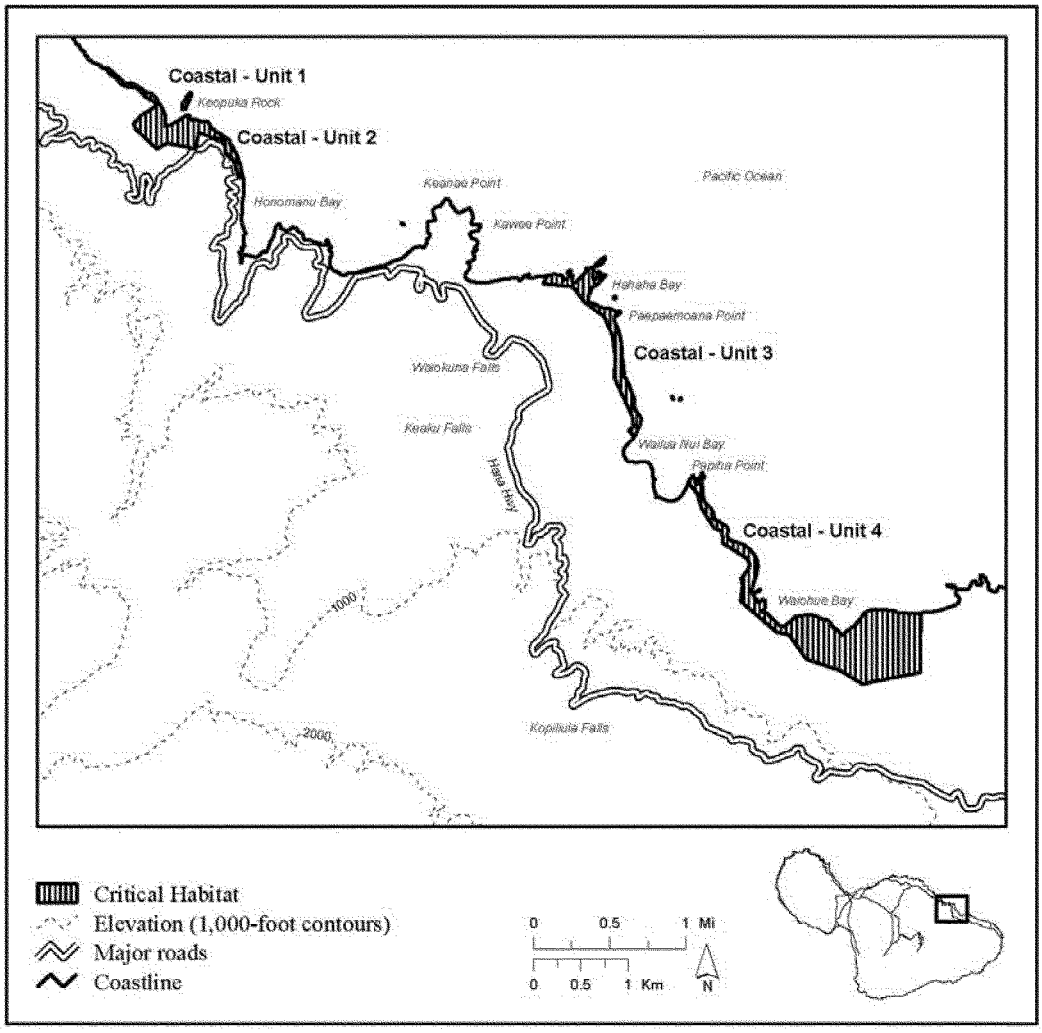
(C) [Reserved for textual description of Unit 3.] This unit is critical habitat for *Brighamia rockii, Cyperus pennatiformis* ssp. *pennatiformis, Ischaemum byrone, Peucedanum sandwicense,* and *Vigna o-wahuensis.*

(D) [Reserved for textual description of Unit 4.] This unit is critical habitat for *Brighamia rockii, Cyperus pennatiformis, Ischaemum byrone, Peucedanum sandwicense,* and *Vigna o-wahuensis.*

(E) NOTE: Map of Maui—Coastal—Unit 1, Maui—Coastal—Unit 2, Maui—Coastal—Unit 3, and Maui—Coastal—Unit 4 (Map 3) follows:

Map 3

Maui–Coastal Unit 1, Unit 2, Unit 3 and Unit 4



(iv) Maui—Coastal—Unit 5 (27 ac, 11 ha).

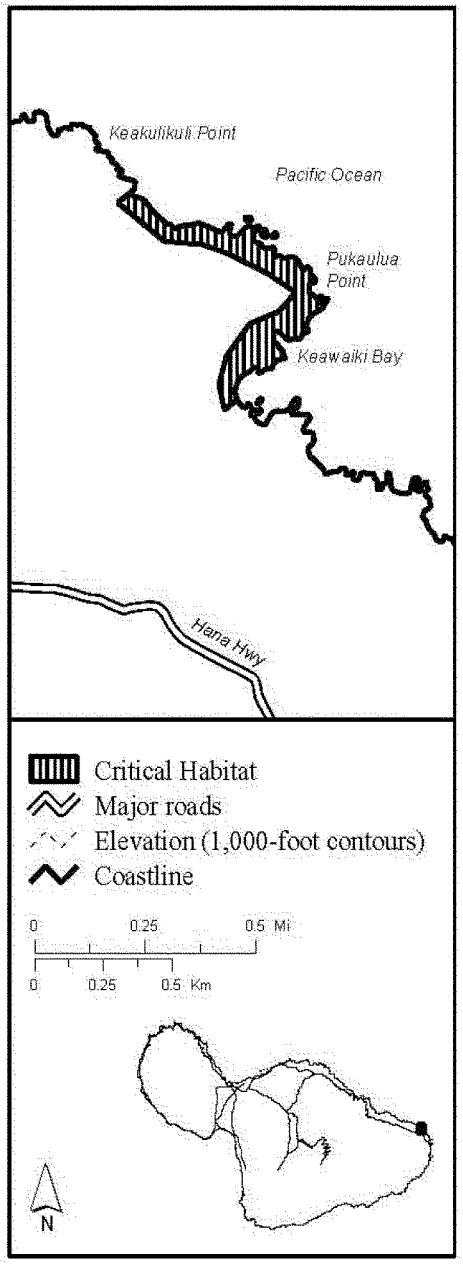
(A) [Reserved for textual description of Unit 5.] This unit is critical habitat for *Brighamia rockii, Cyperus pennatiformis, Ischaemum byrone, Peucedanum sandwicense,* and *Vigna o-wahuensis.*

(B) NOTE: Map of Maui—Coastal—Unit 5 (Map 4) follows:

Map 4

Maui–Coastal

Unit 5



(v) Maui—Coastal—Unit 6 (357 ac, 144 ha)

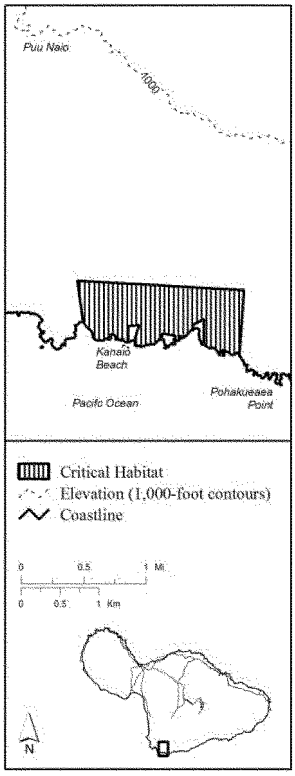
(A) [Reserved for textual description of Unit 6.] This unit is critical habitat for *Brighamia rockii, Cyperus pennatiformis* ssp. *pennatiformis, Ischaemum byrone, Peucedanum sandwicense,* and *Vigna o-wahuensis.*

(B) NOTE: Map of Maui—Coastal—Unit 6 (Map 5) follows:

Map 5

Maui–Coastal

Unit 6



(vi) Maui—Coastal—Unit 7 (187 ac, 75 ha)

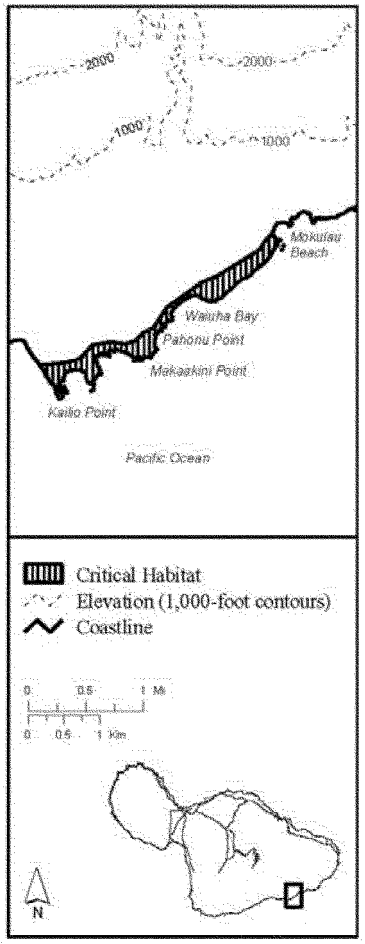
(A) [Reserved for textual description of Unit 7.] This unit is critical habitat for *Brighamia rockii, Cyperus pennatiformis, Ischaemum byrone, Peucedanum sandwicense,* and *Vigna o-wahuensis.*

(B) NOTE: Map of Maui—Coastal—Unit 7 (Map 6) follows:

Map 6

Maui–Coastal

Unit 7



(vii) Maui—Coastal—Unit 8 (597 ac, 242 ha)

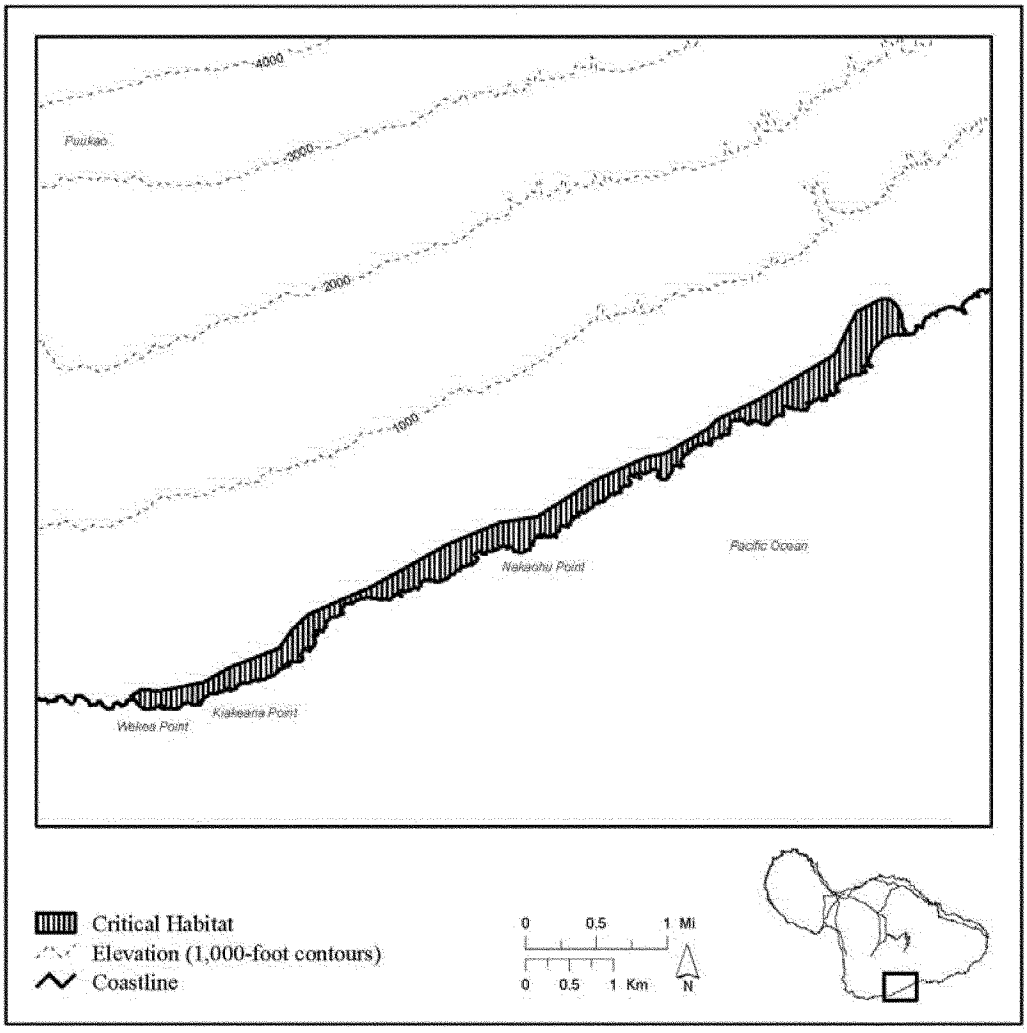
(A) [Reserved for textual description of Unit 8.] This unit is critical habitat for *Brighamia rockii, Cyperus pennatiformis, Ischaemum byrone, Peucedanum sandwicense,* and *Vigna o-wahuensis.*

(B) NOTE: Map of Maui—Coastal—Unit 8 (Map 7) follows:

Map 7

Maui–Coastal

Unit 8



(viii) Maui—Coastal—Unit 9 (393 ac, 159 ha), Maui—Coastal—Unit 10 (434 ac, 176 ha), and Maui—Coastal—Unit 11 (6 ac, 3 ha)

(A) [Reserved for textual description of Unit 9.] This unit is critical habitat for *Brighamia rockii, Schenkia sebaeoides,* and *Sesbania tomentosa.*

(B) [Reserved for textual description of Unit 10.] This unit is critical habitat for *Brighamia rockii, Schenkia sebaeoides,* and *Sesbania tomentosa.*

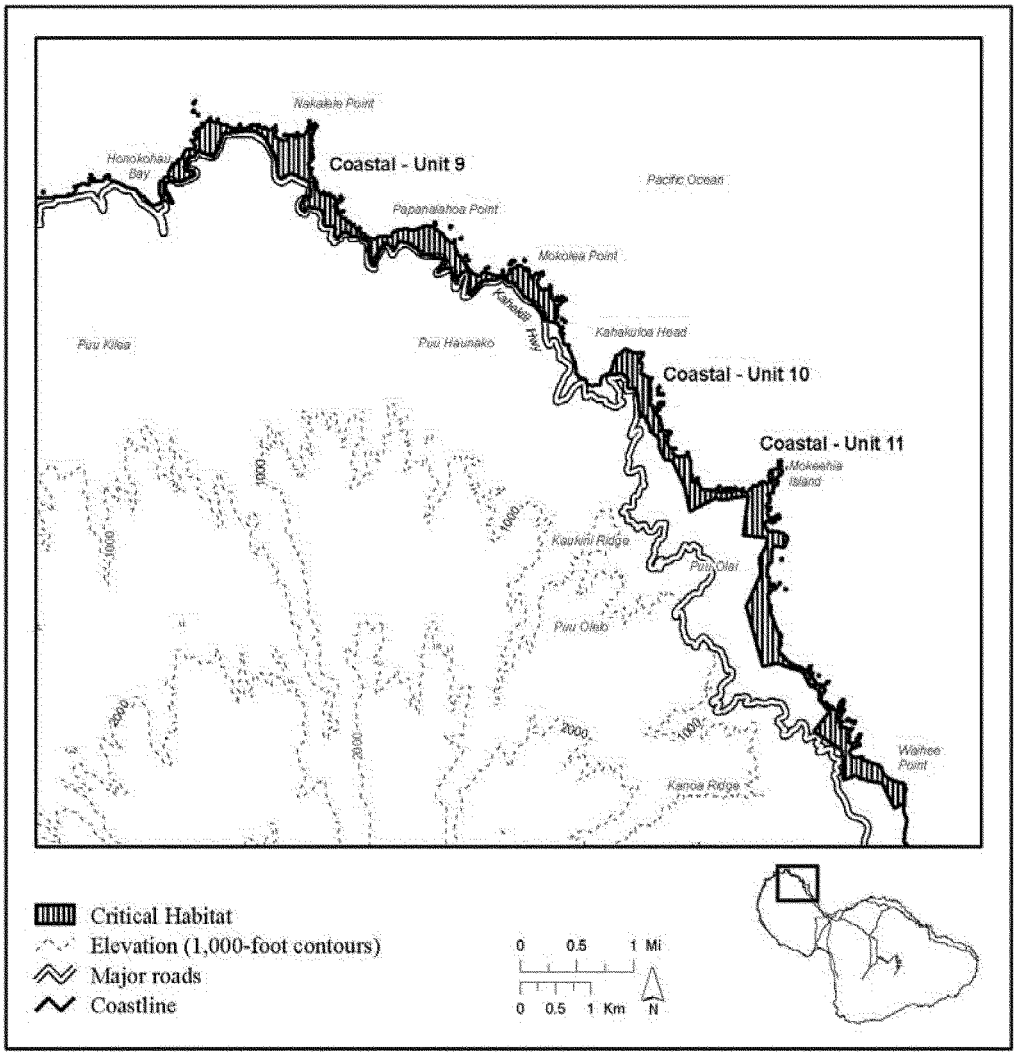
(C) [Reserved for textual description of Unit 11.] This unit is critical habitat for *Brighamia rockii, Schenkia sebaeoides,* and *Sesbania tomentosa.*

(D) NOTE: Map of Maui—Coastal–Unit 9, Maui—Coastal—Unit 10, and Maui—Coastal—Unit 11 (Map 8) follows:

Map 8

Maui–Coastal

Unit 9, Unit 10 and Unit 11



(ix) Maui—Lowland Dry—Unit 1 (22,196 ac, 8,983 ha)

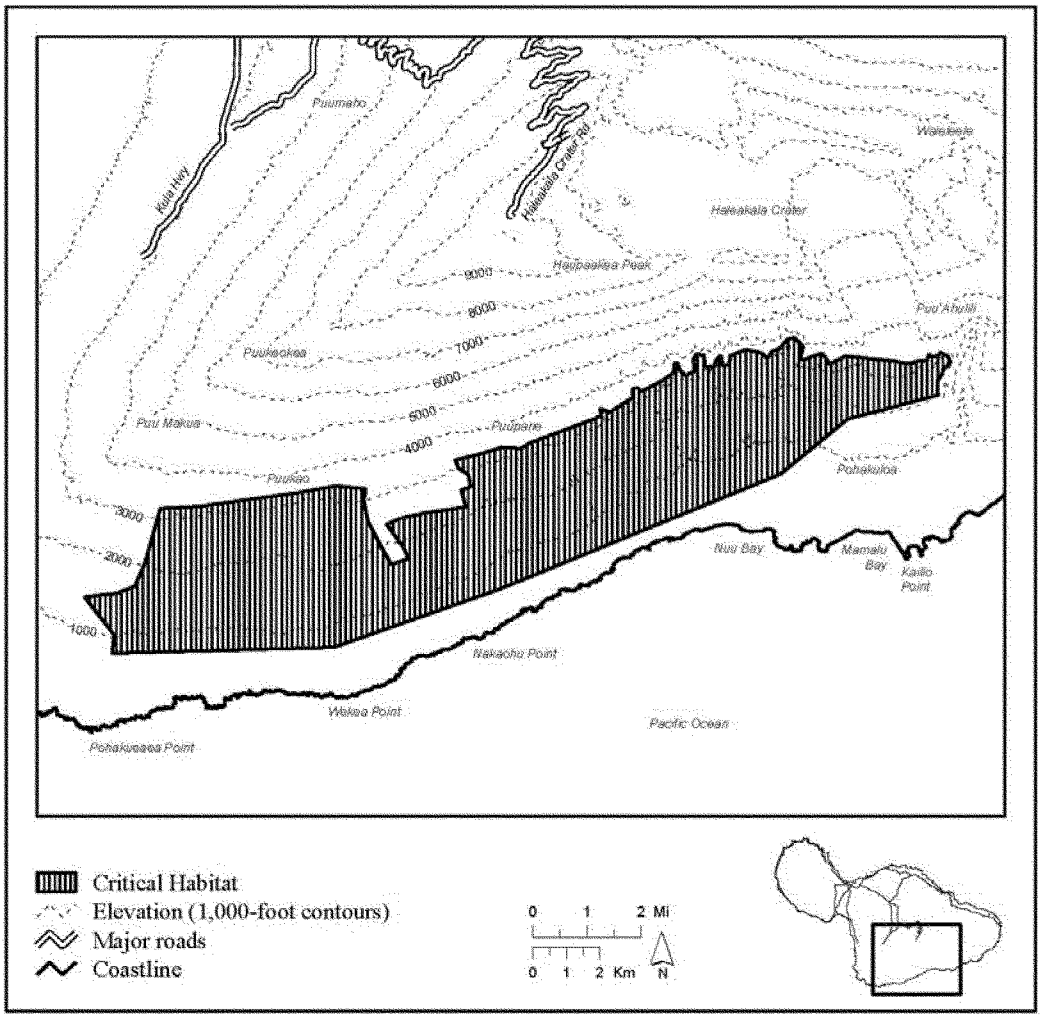
(A) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Canavalia pubescens, Cenchrus agrimonioides, Colubrina oppositifolia, Ctenitis squamigera, Flueggea neowawraea, Hibiscus brackenridgei, Melanthera kamolensis, Melicope adscendens, Melicope mucronulata, Neraudia sericea, Nototrichium humile, Santalum haleakalae* var. *lanaiense, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis,* and *Zanthoxylum hawaiiense.*

(B) NOTE: Map of Maui—Lowland Dry—Unit 1 (Map 9) follows:

Map 9

Maui–Lowland Dry

Unit 1



(x) Maui—Lowland Dry—Unit 2 (2,612 ac, 1,057 ha), Maui—Lowland Dry—Unit 3 (1,089 ac, 441 ha), and Maui—Lowland Dry—Unit 4 (1,283 ac, 519 ha)

(A) [Reserved for textual description of Unit 2.] This unit is critical habitat for *Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Canavalia pubescens, Cenchrus agrimonioides, Colubrina oppositifolia, Ctenitis squamigera, Flueggea neowawraea, Hibiscus brackenridgei, Melanthera kamolensis, Melicope adscendens, Melicope mucronulata, Neraudia sericea, Nototrichium humile, Santalum haleakalae* var. *lanaiense, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis,* and *Zanthoxylum hawaiiense.*

(B) [Reserved for textual description of Unit 3.] This unit is critical habitat for *Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Canavalia pubescens, Cenchrus agrimonioides, Colubrina oppositifolia, Ctenitis squamigera, Flueggea neowawraea, Hibiscus brackenridgei, Melanthera kamolensis, Melicope adscendens, Melicope mucronulata, Neraudia sericea, Nototrichium humile, Santalum haleakalae* var. *lanaiense, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis,* and *Zanthoxylum hawaiiense.*

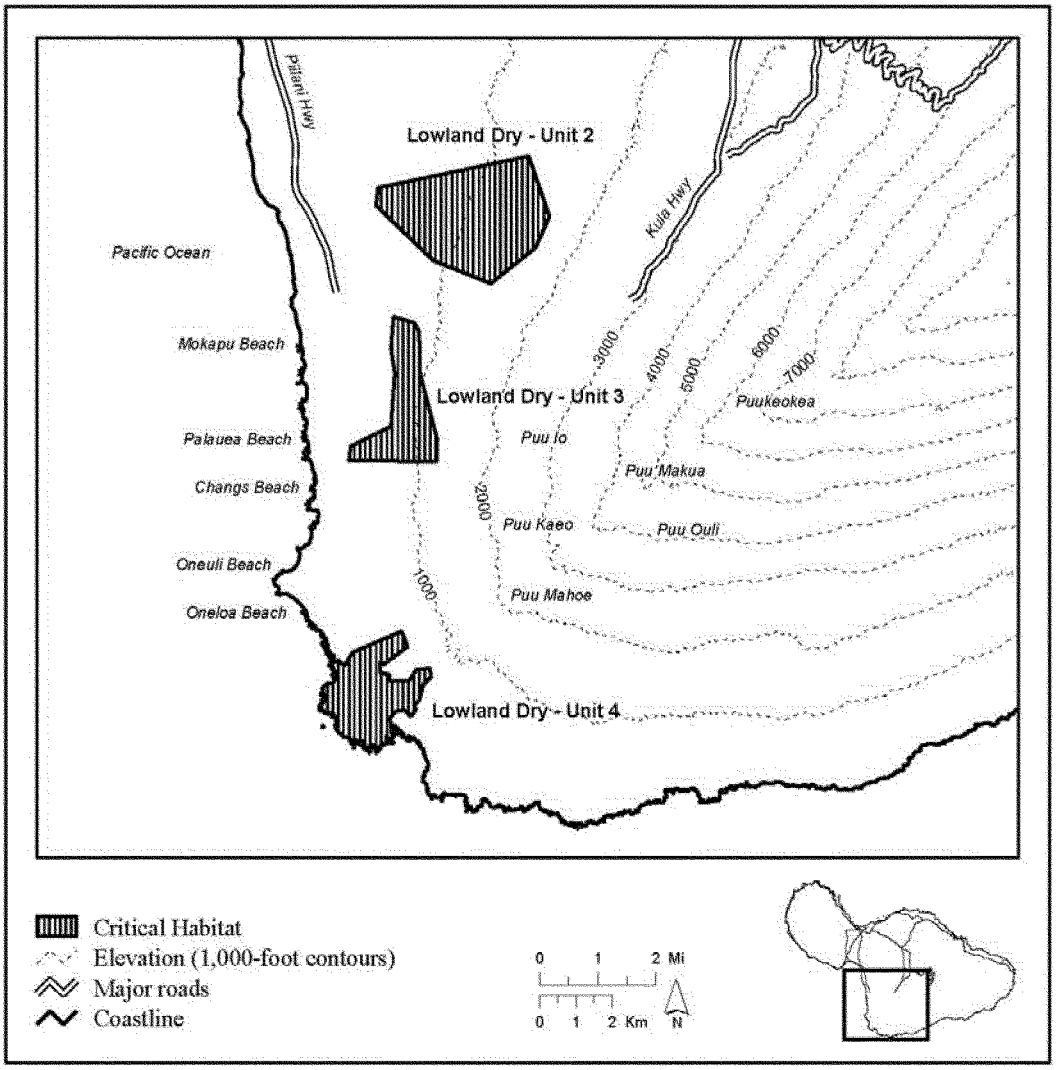
(C) [Reserved for textual description of Unit 4.] This unit is critical habitat for *Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Canavalia pubescens, Cenchrus agrimonioides, Colubrina oppositifolia, Ctenitis squamigera, Flueggea neowawraea, Hibiscus brackenridgei, Melanthera kamolensis, Melicope adscendens, Melicope mucronulata, Neraudia sericea, Nototrichium humile, Santalum haleakalae* var. *lanaiense, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis,* and *Zanthoxylum hawaiiense.*

(D) NOTE: Map of Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, and Maui—Lowland Dry—Unit 4 (Map 10) follows:

Map 10

Maui–Lowland Dry

Unit 2, Unit 3 and Unit 4



(xi) Maui—Lowland Dry—Unit 5 (5,448 ac, 2,205 ha) and Maui—Lowland Dry—Unit 6 (579 ac, 234 ha)

(A) [Reserved for textual description of Unit 5.] This unit is critical habitat for *Asplenium dielerectum, Bidens campylotheca* ssp. *pentamera, Cenchrus agrimonioides, Ctenitis squamigera, Cyanea obtusa, Gouania hillebrandii, Hesperomannia arbuscula, Hibiscus brackenridgei, Kadua coriacea, Lysimachia lydgatei, Neraudia sericea, Remya mauiensis, Santalum haleakalae* var. *lanaiense, Schiedea salicaria, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare,* and *Tetramolopium remyi.*

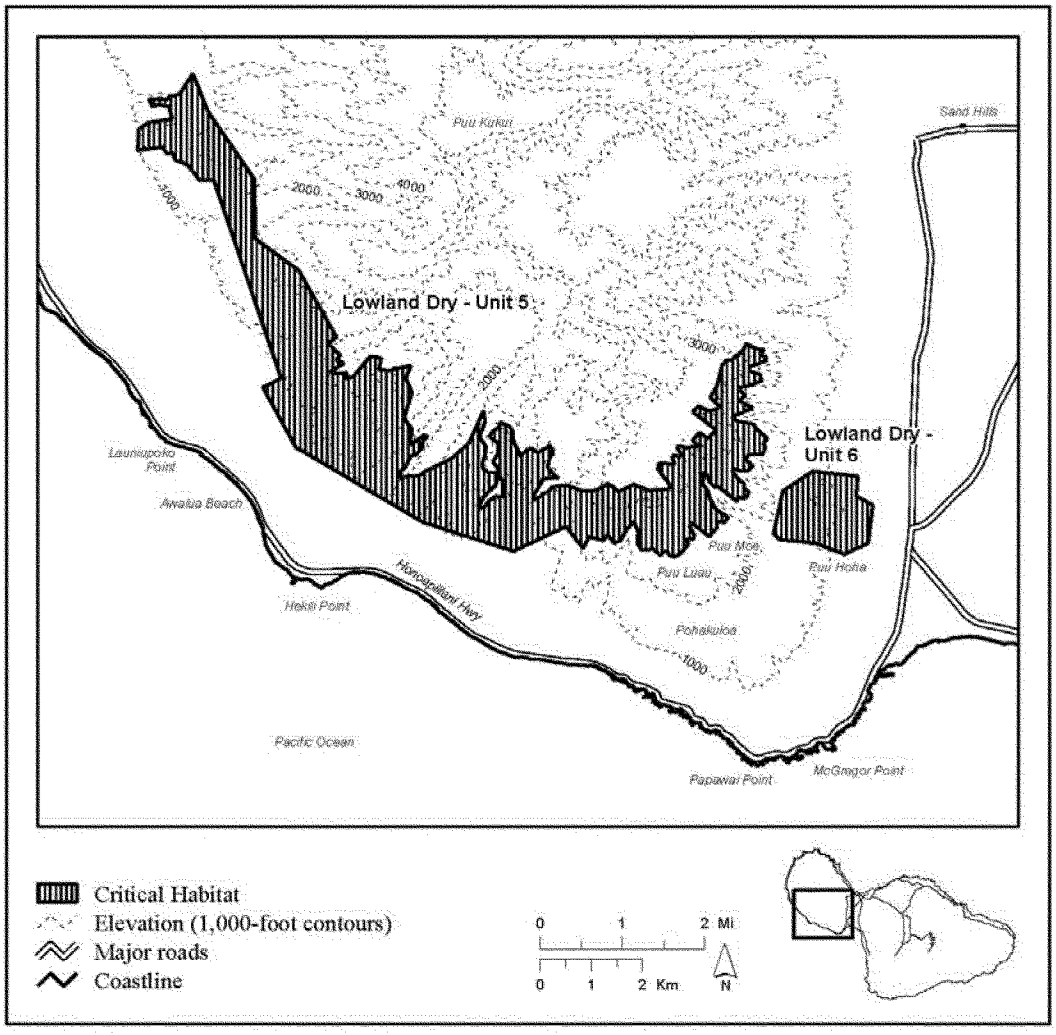
(B) [Reserved for textual description of Unit 6.] This unit is critical habitat for *Asplenium dielerectum, Bidens campylotheca* ssp. *pentamera, Cenchrus agrimonioides, Ctenitis squamigera, Cyanea obtusa, Gouania hillebrandii, Hesperomannia arbuscula, Hibiscus brackenridgei, Kadua coriacea, Lysimachia lydgatei, Neraudia sericea, Remya mauiensis, Santalum haleakalae* var. *lanaiense, Schiedea salicaria, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare,* and *Tetramolopium remyi.*

(C) NOTE: Map of Maui—Lowland Dry—Unit 5 and Maui—Lowland Dry—Unit 6 (Map 11) follows:

Map 11

Maui–Lowland Dry

Unit 5 and Unit 6



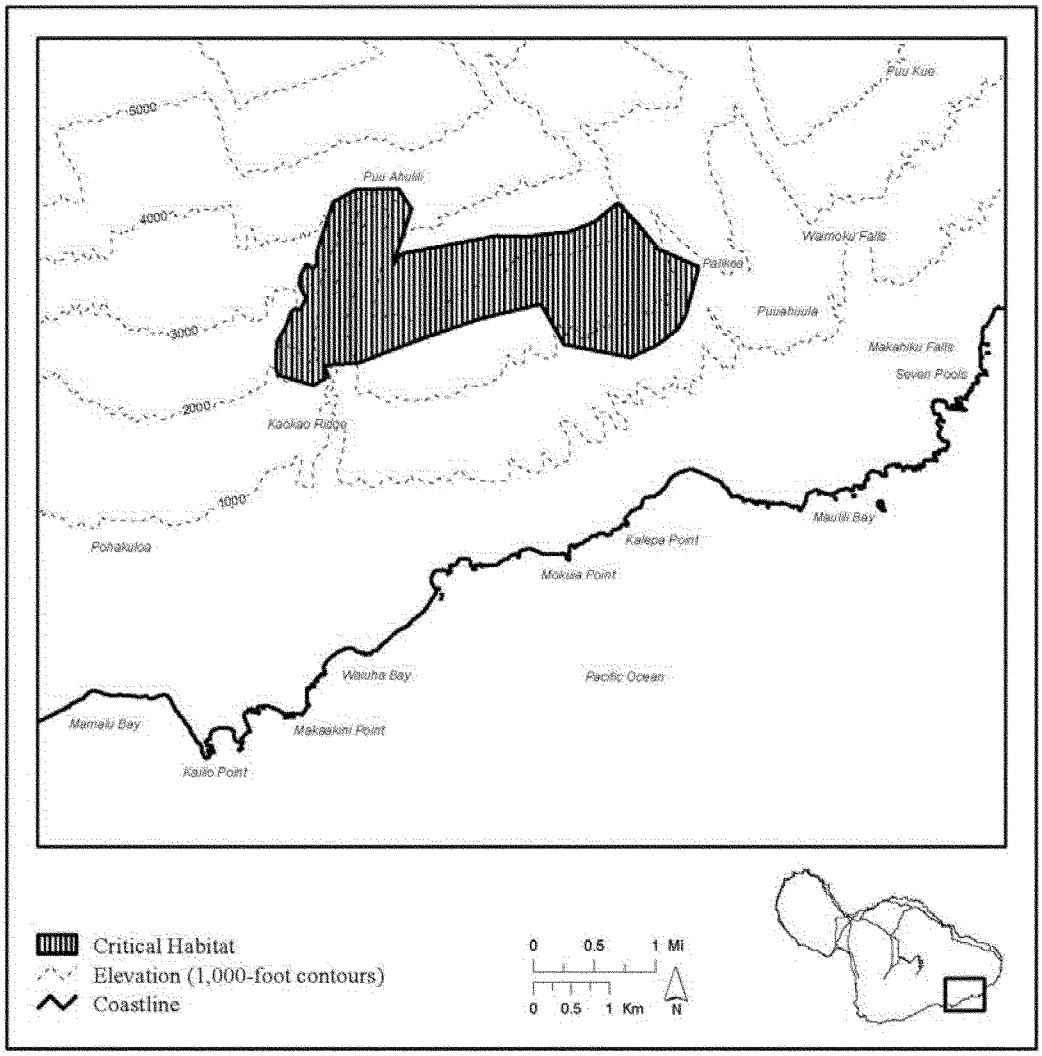
(xii) Maui—Lowland Mesic—Unit 1 (1,930 ac, 781 ha)

(A) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Ctenitis squamigera, Cyanea asplenifolia, Cyanea copelandii* ssp. *haleakalaensis, Huperzia mannii,* and *Solanum incompletum.*

(B) NOTE: Map of Lowland Mesic—Unit 1 (Map 12) follows:

Map 12

Maui–Lowland Mesic Unit 1



(xiii) Maui—Lowland Mesic—Unit 2 (3,424 ac, 1,386 ha) and Maui—Lowland Mesic—Unit 3 (477 ac, 193 ha)

(A) [Reserved for textual description of Unit 2.] This unit is critical habitat for *Asplenium dielerectum, Bidens campylotheca* ssp. *pentamera, Colubrina oppositifolia, Ctenitis squamigera, Remya mauiensis, Santalum haleakalae* var. *lanaiense,* and *Zanthoxylum hawaiiense.*

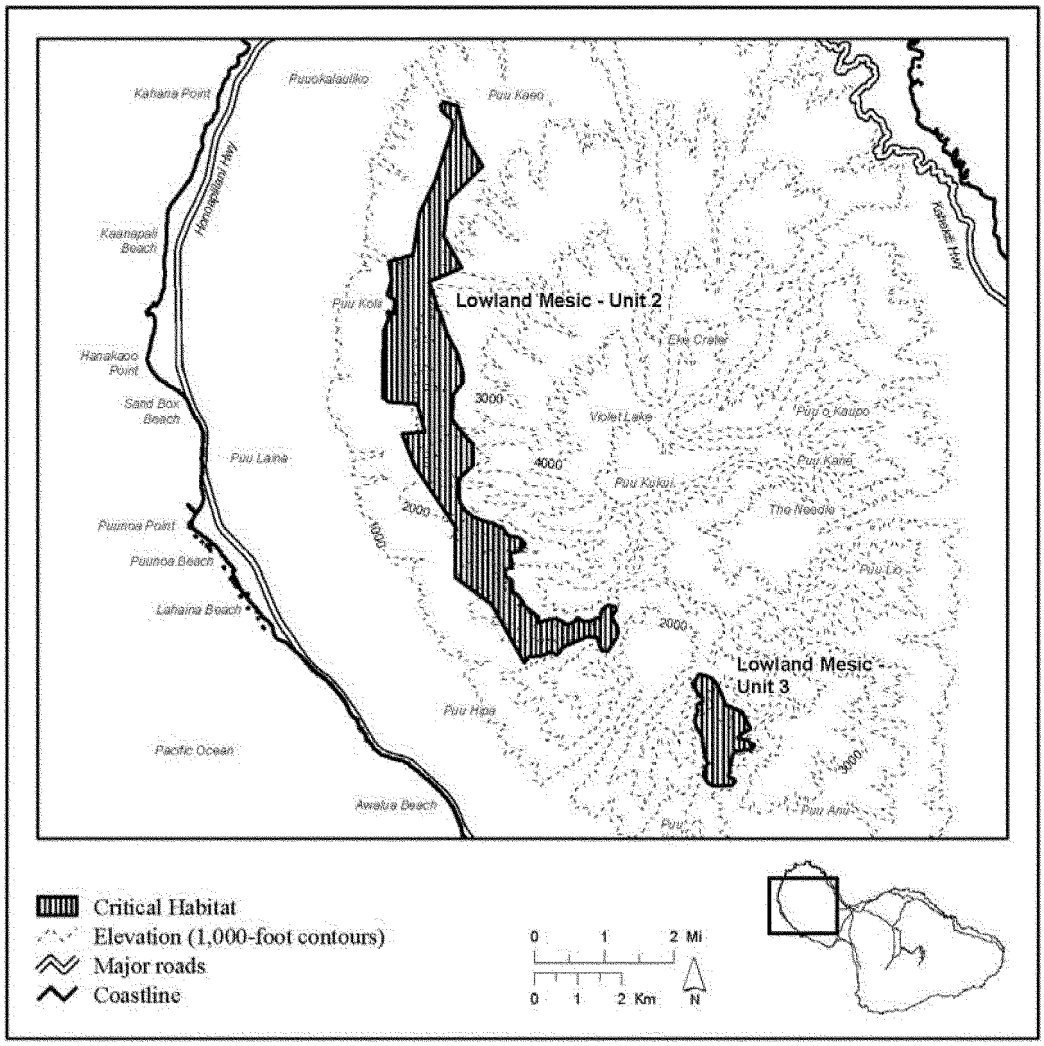
(B) [Reserved for textual description of Unit 3.] This unit is critical habitat for *Asplenium dielerectum, Bidens campylotheca* ssp. *pentamera, Colubrina oppositifolia, Ctenitis squamigera, Remya mauiensis, Santalum haleakalae* var. *lanaiense,* and *Zanthoxylum hawaiiense.*

(C) NOTE: Map of Maui—Lowland Mesic—Unit 2 and Maui—Lowland Mesic—Unit 3 (Map 13) follows:

Map 13

Maui–Lowland Mesic

Unit 2 and Unit 3



(xiv) Maui—Lowland Wet—Unit 1 (26,703 ac, 10,807 ha)

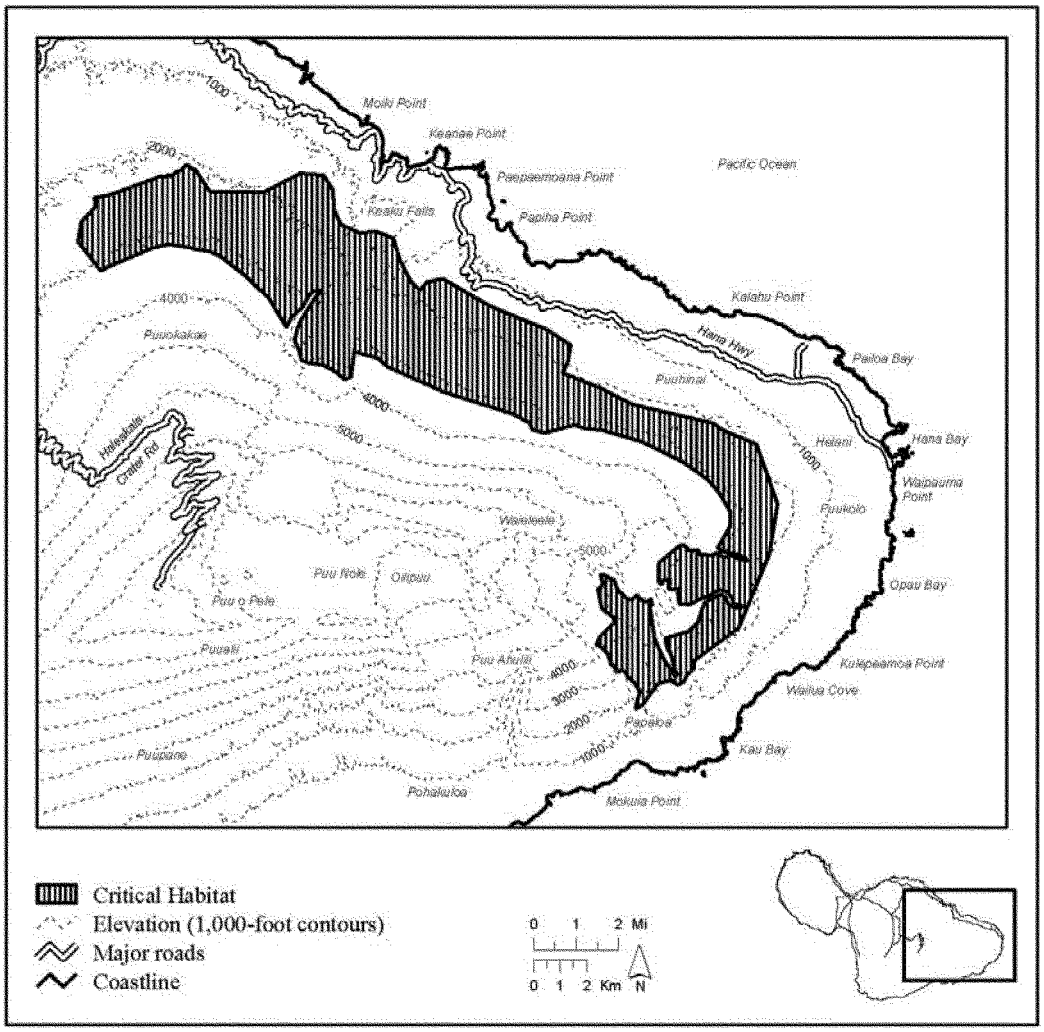
(A) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Bidens campylotheca* ssp. *waihoiensis, Clermontia oblongifolia* ssp. *mauiensis, Clermontia peleana, Clermontia samuelii, Cyanea asplenifolia, Cyanea copelandii* ssp. *haleakalaensis, Cyanea duvalliorum, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea kunthiana, Cyanea maritae, Cyanea mceldowneyi, Huperzia mannii, Melicope balloui, Melicope ovalis, Mucuna sloanei* var. *persericea,* and *Wikstroemia villosa.*

(B) NOTE: Map of Maui—Lowland Wet—Unit 1 (Map 14) follows:

Map 14

Maui–Lowland Wet

Unit 1



(xv) Maui—Lowland Wet—Unit 2 (5,066 ac, 2,050 ha), Maui—Lowland Wet—Unit 3 (1,427 ac, 577 ha), Maui—Lowland Wet—Unit 4 (1,165 ac, 472 ha), and Maui—Lowland Wet—Unit 6 (639 ac, 259 ha)

(A) [Reserved for textual description of Unit 2.] This unit is critical habitat for *Alectryon macrococcus, Asplenium dielerectum, Bidens conjuncta, Bidens micrantha* ssp. *kalealaha, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea asplenifolia, Cyanea glabra, Cyanea kunthiana, Cyanea lobata, Cyanea magnicalyx, Cyrtandra filipes, Cyrtandra munroi, Diplazium molokaiense, Hesperomannia arborescens, Hesperomannia arbuscula, Huperzia mannii, Isodendrion pyrifolium, Kadua laxiflora, Peucedanum sandwicense, Phyllostegia bracteata, Pteris lidgatei, Remya mauiensis, Santalum haleakalae* var. *lanaiense,* and *Wikstroemia villosa.*

(B) [Reserved for textual description of Unit 3.] This unit is critical habitat for *Alectryon macrococcus, Asplenium dielerectum, Bidens conjuncta, Bidens micrantha* ssp. *kalealaha, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea asplenifolia, Cyanea glabra, Cyanea kunthiana, Cyanea lobata, Cyanea magnicalyx, Cyrtandra filipes, Cyrtandra munroi, Diplazium molokaiense, Hesperomannia arborescens, Hesperomannia arbuscula, Huperzia mannii, Isodendrion pyrifolium, Kadua laxiflora, Peucedanum sandwicense, Phyllostegia bracteata, Pteris lidgatei, Remya mauiensis, Santalum haleakalae* var. *lanaiense,* and *Wikstroemia villosa.*

(C) [Reserved for textual description of Unit 4.] This unit is critical habitat for *Alectryon macrococcus, Asplenium dielerectum, Bidens conjuncta, Bidens micrantha* ssp. *kalealaha, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea asplenifolia, Cyanea glabra, Cyanea kunthiana, Cyanea lobata, Cyanea magnicalyx, Cyrtandra filipes, Cyrtandra munroi, Diplazium molokaiense, Hesperomannia arborescens, Hesperomannia arbuscula, Huperzia mannii, Isodendrion pyrifolium, Kadua laxiflora, Peucedanum sandwicense,*

Phyllostegia bracteata, Pteris lidgatei, Remya mauiensis, Santalum haleakalae var. *lanaiense,* and *Wikstroemia villosa.*

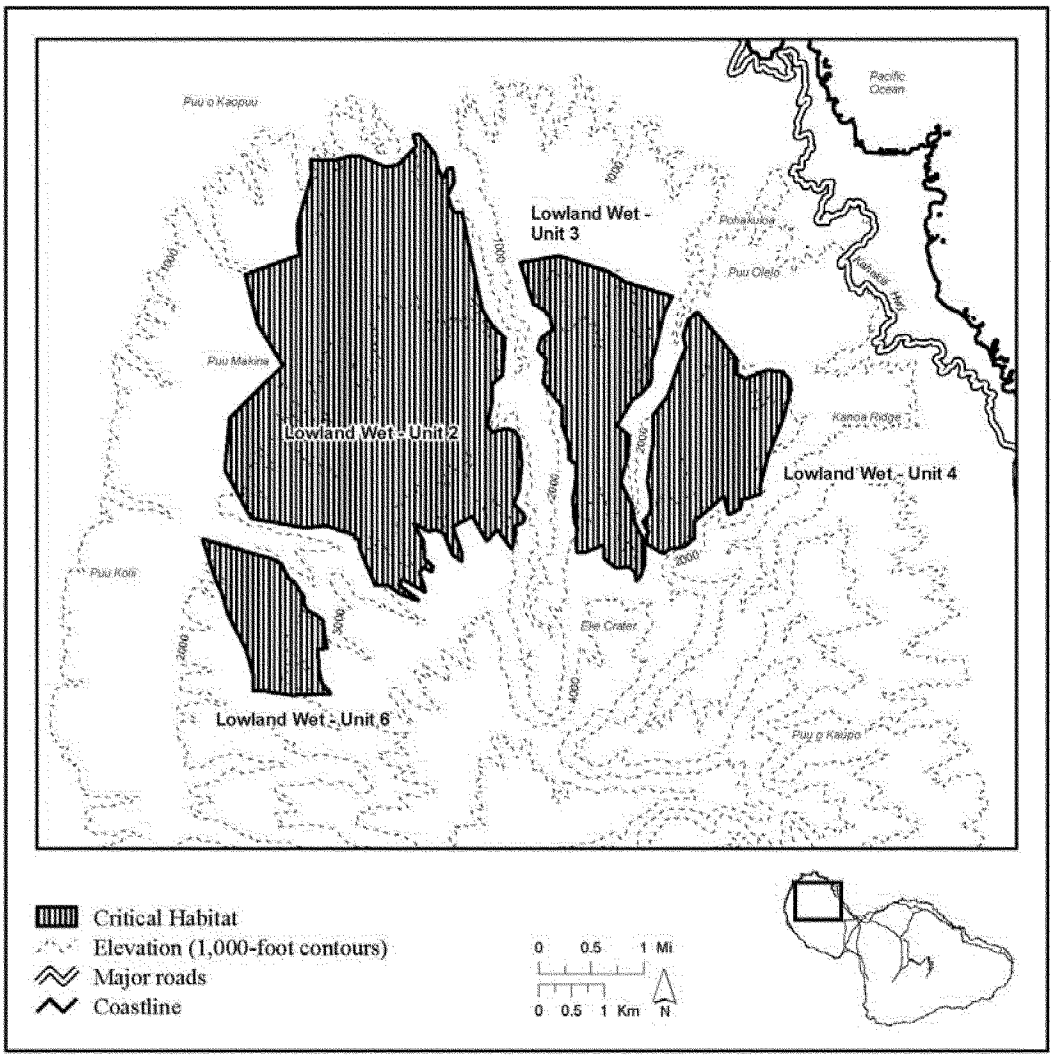
(D) [Reserved for textual description of Unit 6.] This unit is critical habitat for *Alectryon macrococcus, Asplenium dielerectum, Bidens conjuncta, Bidens micrantha* ssp. *kalealaha, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea asplenifolia, Cyanea glabra, Cyanea kunthiana, Cyanea lobata, Cyanea magnicalyx, Cyrtandra filipes, Cyrtandra munroi, Diplazium molokaiense, Hesperomannia arborescens, Hesperomannia arbuscula, Huperzia mannii, Isodendrion pyrifolium, Kadua laxiflora, Peucedanum sandwicense, Phyllostegia bracteata, Pteris lidgatei, Remya mauiensis, Santalum haleakalae* var. *lanaiense,* and *Wikstroemia villosa.*

(E) NOTE: Map of Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, and Maui—Lowland Wet—Unit 6 (Map 15) follows:

Map 15

Maui–Lowland Wet

Unit 2, Unit 3, Unit 4 and Unit 6



(xvi) Maui—Lowland Wet—Unit 5 (2,112 ac, 855 ha), Maui—Lowland Wet—Unit 7 (898 ac, 364 ha), and Maui—Lowland Wet—Unit 8 (230 ac, 93 ha)

(A) [Reserved for textual description of Unit 5.] This unit is critical habitat for *Alectryon macrococcus, Asplenium dielerectum, Bidens conjuncta, Bidens micrantha* ssp. *kalealaha, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea asplenifolia, Cyanea glabra, Cyanea kunthiana, Cyanea lobata, Cyanea magnicalyx, Cyrtandra filipes, Cyrtandra munroi, Diplazium molokaiense, Hesperomannia arborescens, Hesperomannia arbuscula, Huperzia mannii, Isodendrion pyrifolium, Kadua laxiflora, Peucedanum sandwicense, Phyllostegia bracteata, Pteris lidgatei,*

Remya mauiensis, Santalum haleakalae var. *lanaiense,* and *Wikstroemia villosa.*

(B) [Reserved for textual description of Unit 7.] This unit is critical habitat for *Alectryon macrococcus, Asplenium dielerectum, Bidens conjuncta, Bidens micrantha* ssp. *kalealaha, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea asplenifolia, Cyanea glabra, Cyanea kunthiana, Cyanea lobata, Cyanea magnicalyx, Cyrtandra filipes, Cyrtandra munroi, Diplazium molokaiense, Hesperomannia arborescens, Hesperomannia arbuscula, Huperzia mannii, Isodendrion pyrifolium, Kadua laxiflora, Peucedanum sandwicense, Phyllostegia bracteata, Pteris lidgatei, Remya mauiensis, Santalum haleakalae* var. *lanaiense,* and *Wikstroemia villosa.*

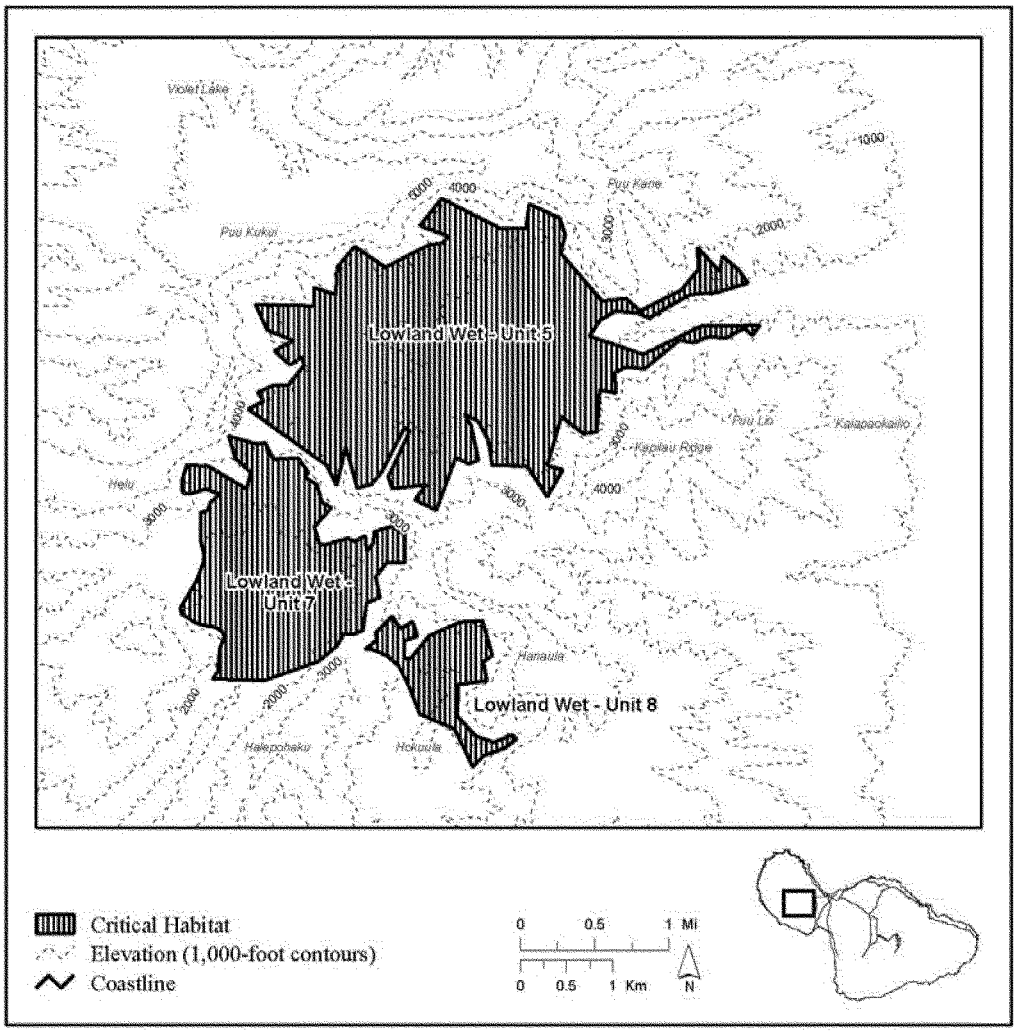
(C) [Reserved for textual description of Unit 8.] This unit is critical habitat for *Alectryon macrococcus, Asplenium dielerectum, Bidens conjuncta, Bidens micrantha* ssp. *kalealaha, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea asplenifolia, Cyanea glabra, Cyanea kunthiana, Cyanea lobata, Cyanea magnicalyx, Cyrtandra filipes, Cyrtandra munroi, Diplazium molokaiense, Hesperomannia arborescens, Hesperomannia arbuscula, Huperzia mannii, Isodendrion pyrifolium, Kadua laxiflora, Peucedanum sandwicense, Phyllostegia bracteata, Pteris lidgatei, Remya mauiensis, Santalum haleakalae* var. *lanaiense,* and *Wikstroemia villosa.*

(D) NOTE: Map of Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8 (Map 16) follows:

Map 16

Maui–Lowland Wet

Unit 5, Unit 7 and Unit 8



(xvii) Maui—Montane Wet—Unit 1 (7,815 ac, 3,162 ha), Maui—Montane Wet—Unit 2 (16,687 ac, 6,753 ha), Maui—Montane Wet—Unit 3 (2,228 ac, 902 ha), Maui—Montane Wet—Unit 4 (1,833 ac, 742 ha), and Maui—Montane Wet—Unit 5 (387 ac, 156 ha)

(A) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Adenophorus periens, Asplenium peruvianum* var. *insulare, Bidens campylotheca* ssp. *pentamera, Bidens camylotheca* ssp. *waihoiensis, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea duvalliorum, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea horrida, Cyanea kunthiana, Cyanea maritae, Cyanea mceldowneyi, Cyrtandra ferripilosa, Diplazium molokaiense, Geranium hanaense, Geranium multiflorum, Huperzia mannii, Melicope balloui, Melicope ovalis, Peperomia subpetiolata, Phyllostegia bracteata, Phyllostegia mannii, Phyllostegia pilosa, Platanthera holochila, Schiedea jacobii,* and *Wikstroemia villosa.*

(B) [Reserved for textual description of Unit 2.] This unit is critical habitat for *Adenophorus periens, Asplenium peruvianum* var. *insulare, Bidens campylotheca* ssp. *pentamera, Bidens camylotheca* ssp. *waihoiensis, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea duvalliorum, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea horrida, Cyanea kunthiana, Cyanea maritae, Cyanea mceldowneyi, Cyrtandra ferripilosa, Diplazium molokaiense, Geranium hanaense, Geranium multiflorum, Huperzia mannii, Melicope balloui, Melicope ovalis, Peperomia subpetiolata, Phyllostegia bracteata, Phyllostegia mannii, Phyllostegia pilosa, Platanthera holochila, Schiedea jacobii,* and *Wikstroemia villosa.*

(C) [Reserved for textual description of Unit 3.] This unit is critical habitat for *Adenophorus periens, Asplenium peruvianum* var. *insulare, Bidens campylotheca* ssp. *pentamera, Bidens camylotheca* ssp. *waihoiensis, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea duvalliorum, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea horrida, Cyanea kunthiana, Cyanea maritae, Cyanea mceldowneyi, Cyrtandra ferripilosa, Diplazium molokaiense, Geranium hanaense, Geranium multiflorum, Huperzia mannii, Melicope balloui, Melicope ovalis, Peperomia subpetiolata, Phyllostegia bracteata, Phyllostegia mannii, Phyllostegia pilosa, Platanthera holochila, Schiedea jacobii,* and *Wikstroemia villosa.*

(D) [Reserved for textual description of Unit 4.] This unit is critical habitat for *Adenophorus periens, Asplenium peruvianum* var. *insulare, Bidens campylotheca* ssp. *pentamera, Bidens camylotheca* ssp. *waihoiensis, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea duvalliorum, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea horrida, Cyanea kunthiana, Cyanea maritae, Cyanea mceldowneyi, Cyrtandra ferripilosa, Diplazium molokaiense, Geranium hanaense, Geranium multiflorum, Huperzia mannii, Melicope balloui, Melicope ovalis, Peperomia subpetiolata, Phyllostegia bracteata, Phyllostegia mannii, Phyllostegia pilosa, Platanthera holochila, Schiedea jacobii,* and *Wikstroemia villosa.*

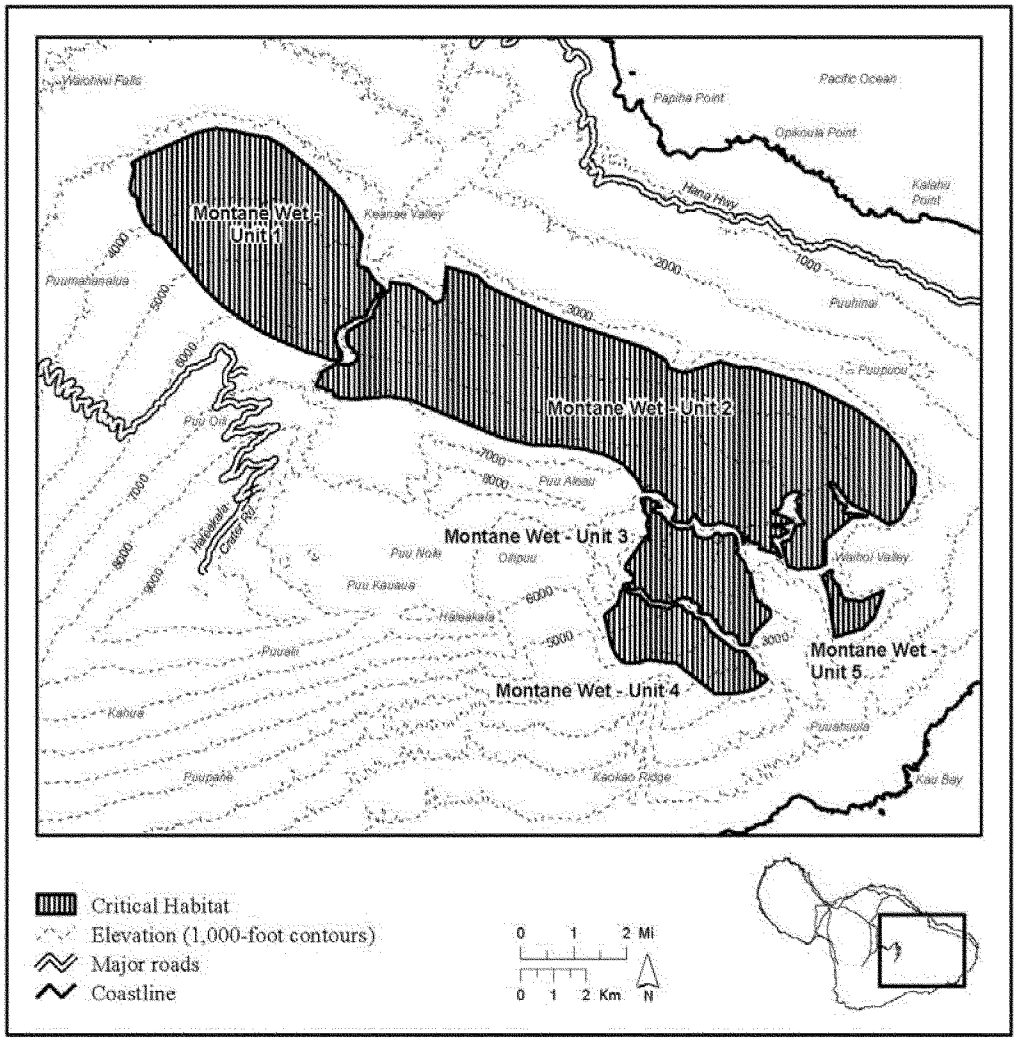
(E) [Reserved for textual description of Unit 5.] This unit is critical habitat for *Adenophorus periens, Asplenium peruvianum* var. *insulare, Bidens campylotheca* ssp. *pentamera, Bidens camylotheca* ssp. *waihoiensis, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea duvalliorum, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea horrida, Cyanea kunthiana, Cyanea maritae, Cyanea mceldowneyi, Cyrtandra ferripilosa, Diplazium molokaiense, Geranium hanaense, Geranium multiflorum, Huperzia mannii, Melicope balloui, Melicope ovalis, Peperomia subpetiolata, Phyllostegia bracteata, Phyllostegia mannii, Phyllostegia pilosa, Platanthera holochila, Schiedea jacobii,* and *Wikstroemia villosa.*

(F) NOTE: Map of Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5 (Map 17) follows:

Map 17

Maui–Montane Wet

Unit 1, Unit 2, Unit 3, Unit 4 and Unit 5



(xviii) Maui—Montane Wet—Unit 6 (3,964 ac, 1,604 ha), Maui—Montane Wet—Unit 7 (608 ac, 246 ha), and Maui—Montane Wet—Unit 8 (46 ac, 19 ha)

(A) [Reserved for textual description of Unit 6.] This unit is critical habitat for *Acaena exigua, Bidens conjuncta, Calamagrostis hillebrandii, Cyanea kunthiana, Cyrtandra oxybapha, Geranium hillebrandii, Huperzia mannii, Myrsine vaccinioides, Phyllostegia bracteata, Platanthera holochila,* and *Sanicula purpurea.*

(B) [Reserved for textual description of Unit 7.] This unit is critical habitat for *Acaena exigua, Bidens conjuncta, Calamagrostis hillebrandii, Cyanea kunthiana, Cyrtandra oxybapha, Geranium hillebrandii, Huperzia mannii, Myrsine vaccinioides, Phyllostegia bracteata, Platanthera holochila,* and *Sanicula purpurea.*

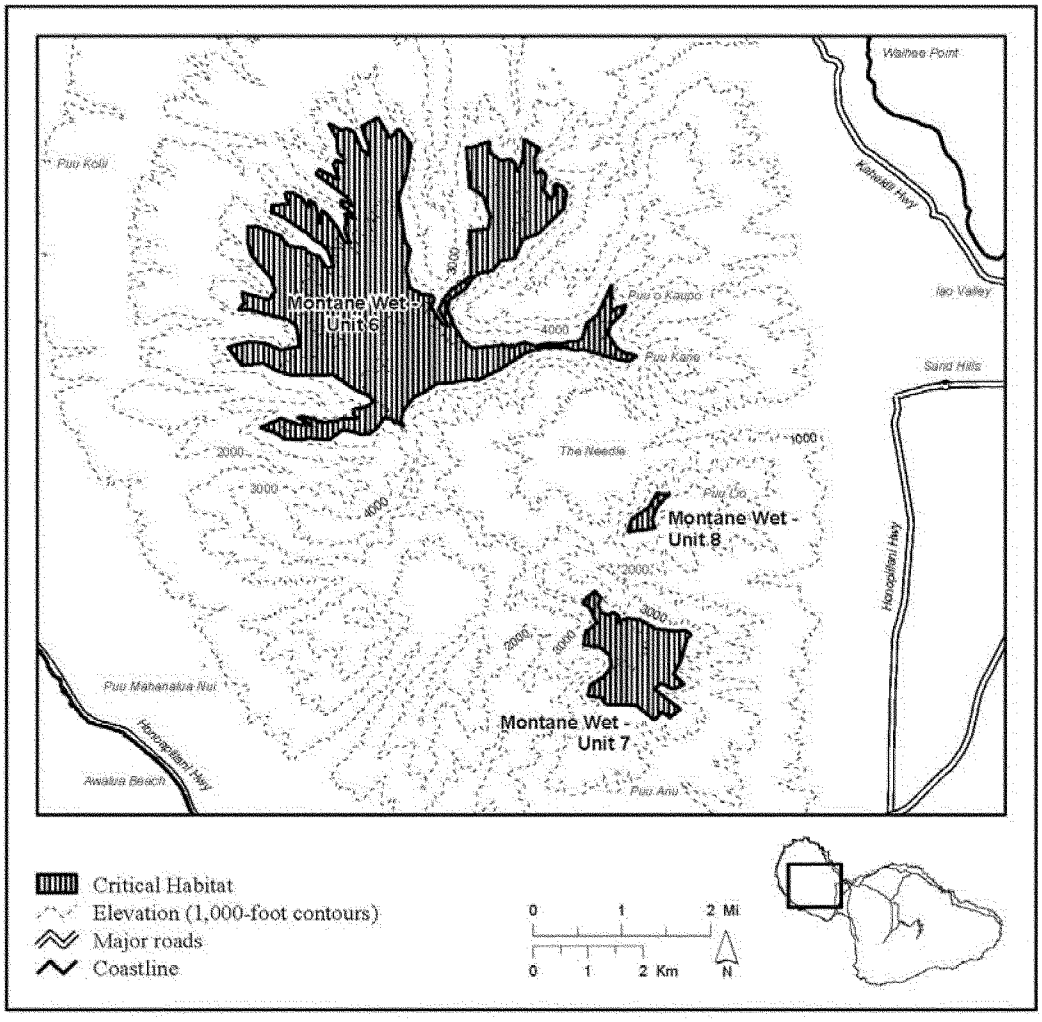
(C) [Reserved for textual description of Unit 8.] This unit is critical habitat for *Acaena exigua, Bidens conjuncta, Calamagrostis hillebrandii, Cyanea kunthiana, Cyrtandra oxybapha, Geranium hillebrandii, Huperzia mannii, Myrsine vaccinioides, Phyllostegia bracteata, Platanthera holochila,* and *Sanicula purpurea.*

(D) NOTE: Map of Maui—Montane Wet—Unit 6, Maui—Montane Wet—Unit 7, and Maui—Montane Wet—Unit 8 (Map 18) follows:

Map 18

Maui–Montane Wet

Unit 6, Unit 7 and Unit 8



(xix) Maui—Montane Mesic—Unit 1 (20,972 ac, 8,487 ha)

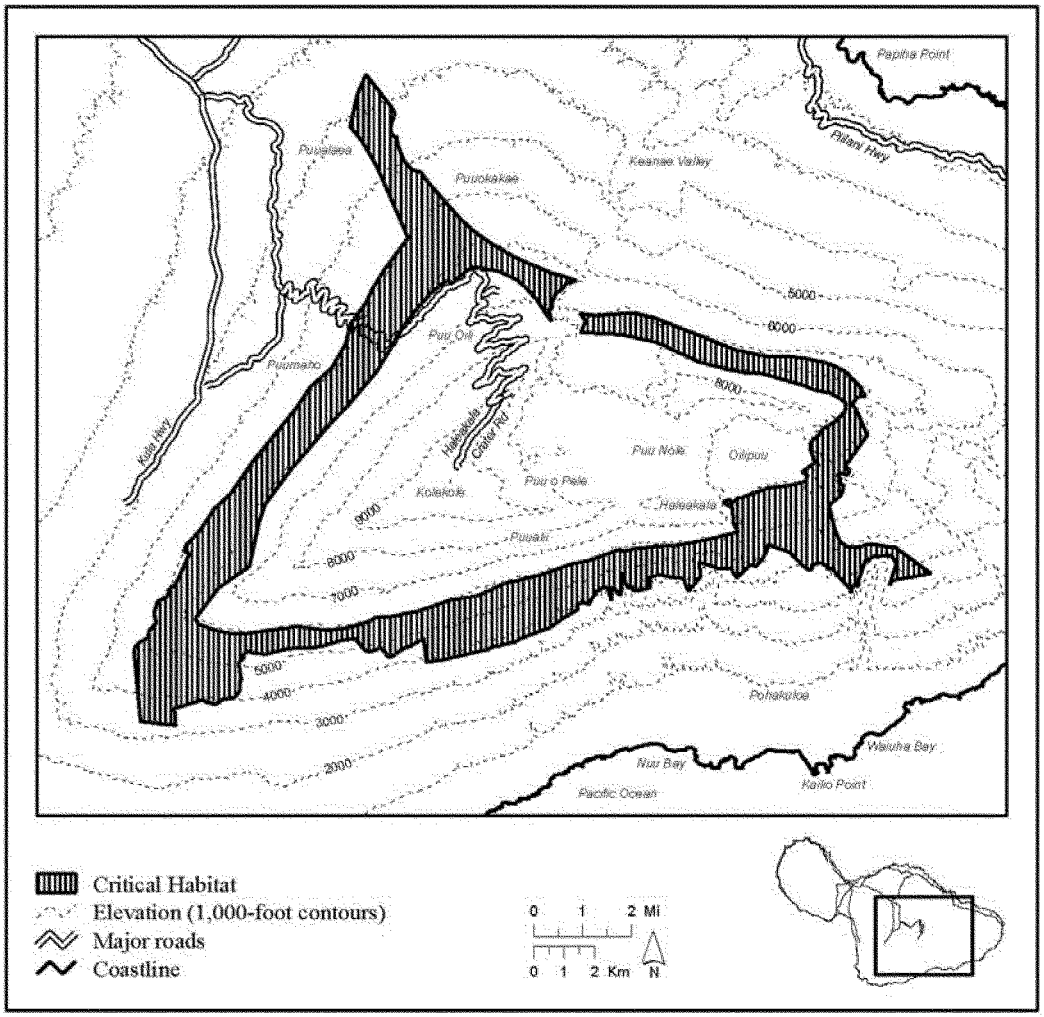
(A) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium dielerectum, Asplenium peruvianum* var. *insulare, Bidens campylotheca* ssp. *pentamera, Bidens micrantha* ssp. *kalealaha, Clermontia lindseyana, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea horrida, Cyanea kunthiana, Cyanea mceldowneyi, Cyanea obtusa, Cyrtandra ferripilosa, Cyrtandra oxybapha, Diplazium molokaiense, Geranium arboreum, Geranium multiflorum, Huperzia mannii, Melicope adscendens, Neraudia sericea, Phyllostegia bracteata, Phyllostegia mannii, Santalum haleakalae* var. *lanaiense, Wikstroemia villosa,* and *Zanthoxylum hawaiiense.*

(B) NOTE: Map of Maui—Montane Mesic—Unit 1 (Map 19) follows:

Map 19

Maui–Montane Mesic

Unit 1



(xx) Maui—Montane Mesic—Unit 2 (366 ac, 148 ha), Maui—Montane Mesic—Unit 3 (218 ac; 88 ha), Maui—Montane Mesic—Unit 4 (72 ac, 29 ha), Maui—Montane Mesic—Unit 5 (304 ac, 123 ha), and Maui—Montane Mesic—Unit 6 (94 ac, 38 ha)

(A) [Reserved for textual description of Unit 2.] This unit is critical habitat for *Ctenitis squamigera, Cyanea magnicalyx, Diplazium molokaiense, Geranium hillebrandii, Huperzia mannii, Lysimachia lydgatei, Remya mauiensis, Santalum haleakalae* var. *lanaiense, Stenogyne kauaulaensis,* and *Zanthoxylum hawaiiense.*

(B) [Reserved for textual description of Unit 3.] This unit is critical habitat for *Ctenitis squamigera, Cyanea magnicalyx, Diplazium molokaiense, Geranium hillebrandii, Huperzia mannii, Lysimachia lydgatei, Remya mauiensis, Santalum haleakalae* var. *lanaiense, Stenogyne kauaulaensis,* and *Zanthoxylum hawaiiense.*

(C) [Reserved for textual description of Unit 4.] This unit is critical habitat for *Ctenitis squamigera, Cyanea magnicalyx, Diplazium molokaiense, Geranium hillebrandii, Huperzia mannii, Lysimachia lydgatei, Remya mauiensis, Santalum haleakalae* var. *lanaiense, Stenogyne kauaulaensis,* and *Zanthoxylum hawaiiense.*

(D) [Reserved for textual description of Unit 5.] This unit is critical habitat for *Ctenitis squamigera, Cyanea magnicalyx, Diplazium molokaiense, Geranium hillebrandii, Huperzia mannii, Lysimachia lydgatei, Remya mauiensis, Santalum haleakalae* var. *lanaiense, Stenogyne kauaulaensis,* and *Zanthoxylum hawaiiense.*

(E) [Reserved for textual description of Unit 6.] This unit is critical habitat for *Ctenitis squamigera, Cyanea magnicalyx, Diplazium molokaiense, Geranium hillebrandii, Huperzia mannii, Lysimachia lydgatei, Remya mauiensis, Santalum haleakalae* var. *lanaiense, Stenogyne kauaulaensis,* and *Zanthoxylum hawaiiense.*

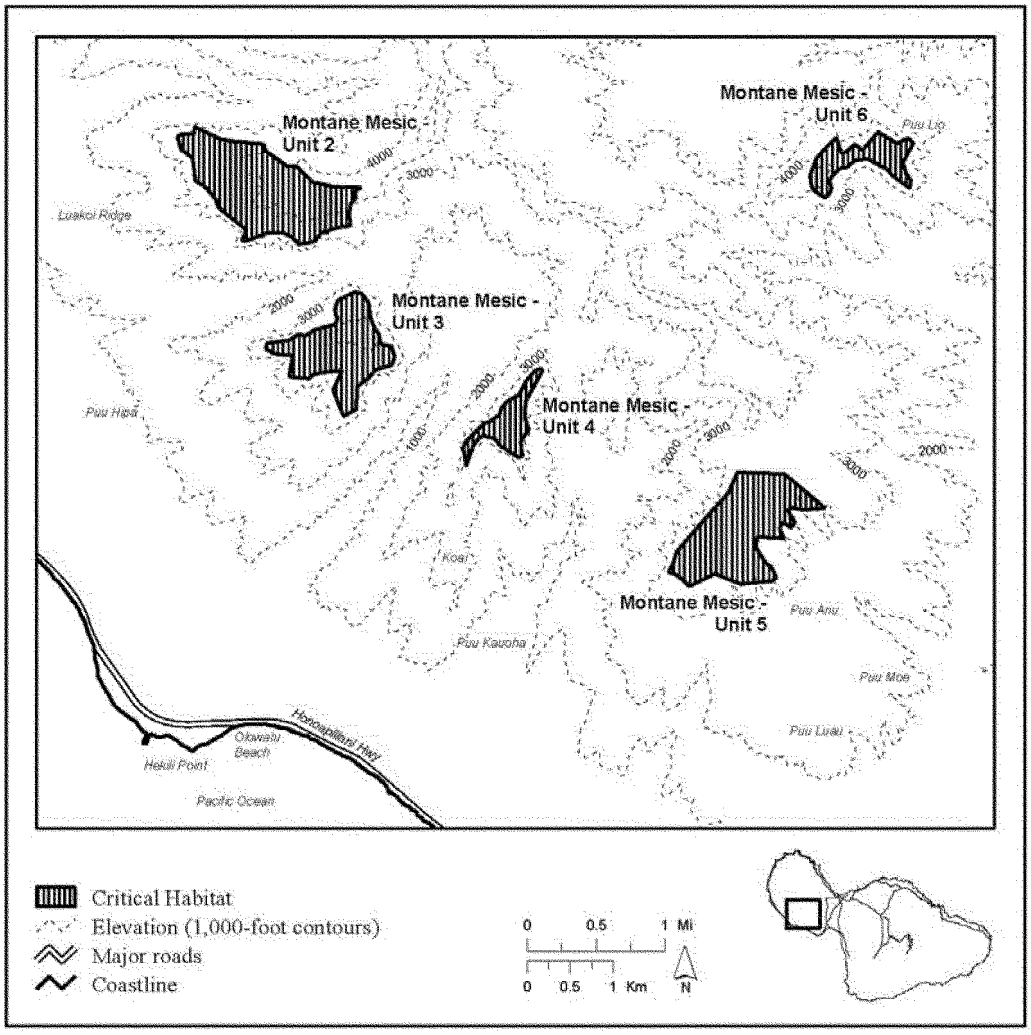
(F) NOTE: Map of Maui—Montane Mesic—Unit 2, Maui—Montane Mesic—

Unit 3, Maui—Montane Mesic—Unit 4, Maui—Montane Mesic—Unit 5, and Maui—Montane Mesic—Unit 6 (Map 20) follows:

Map 20

Maui–Montane Mesic

Unit 2, Unit 3, Unit 4, Unit 5 and Unit 6



(xxi) Maui—Montane Dry—Unit 1 (4,988 ac, 2,019 ha)

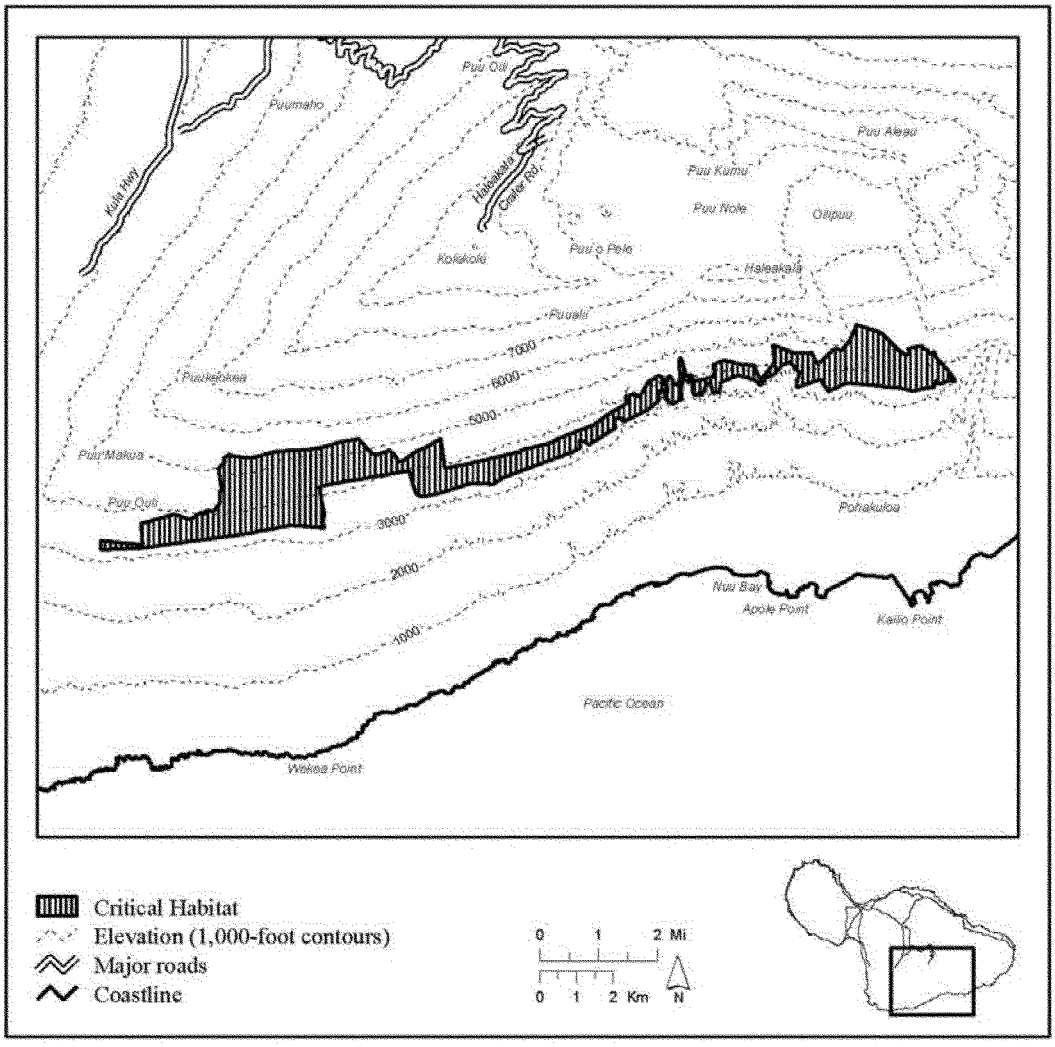
(A) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Alectryon macrococcus, Geranium arboreum, Melicope knudsenii, Melicope mucronulata, Santalum haleakalae* var. *lanaiense,* and *Zanthoxylum hawaiiense.*

(B) NOTE: Map of Maui—Montane Dry—Unit 1 (Map 21) follows:

Map 21

Maui–Montane Dry

Unit 1



(xxii) Maui—Subalpine—Unit 1 (19,401 ac, 7,851 ha) and Maui—Subalpine—Unit 2 (10,931 ac, 4,424 ha)

(A) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium peruvianum* var. *insulare, Bidens micrantha* ssp. *kalealaha, Geranium arboreum, Geranium multiflorum, Phyllostegia bracteata, Schiedea haleakalensis, Solanum incompletum,* and *Zanthoxylum hawaiiense*.

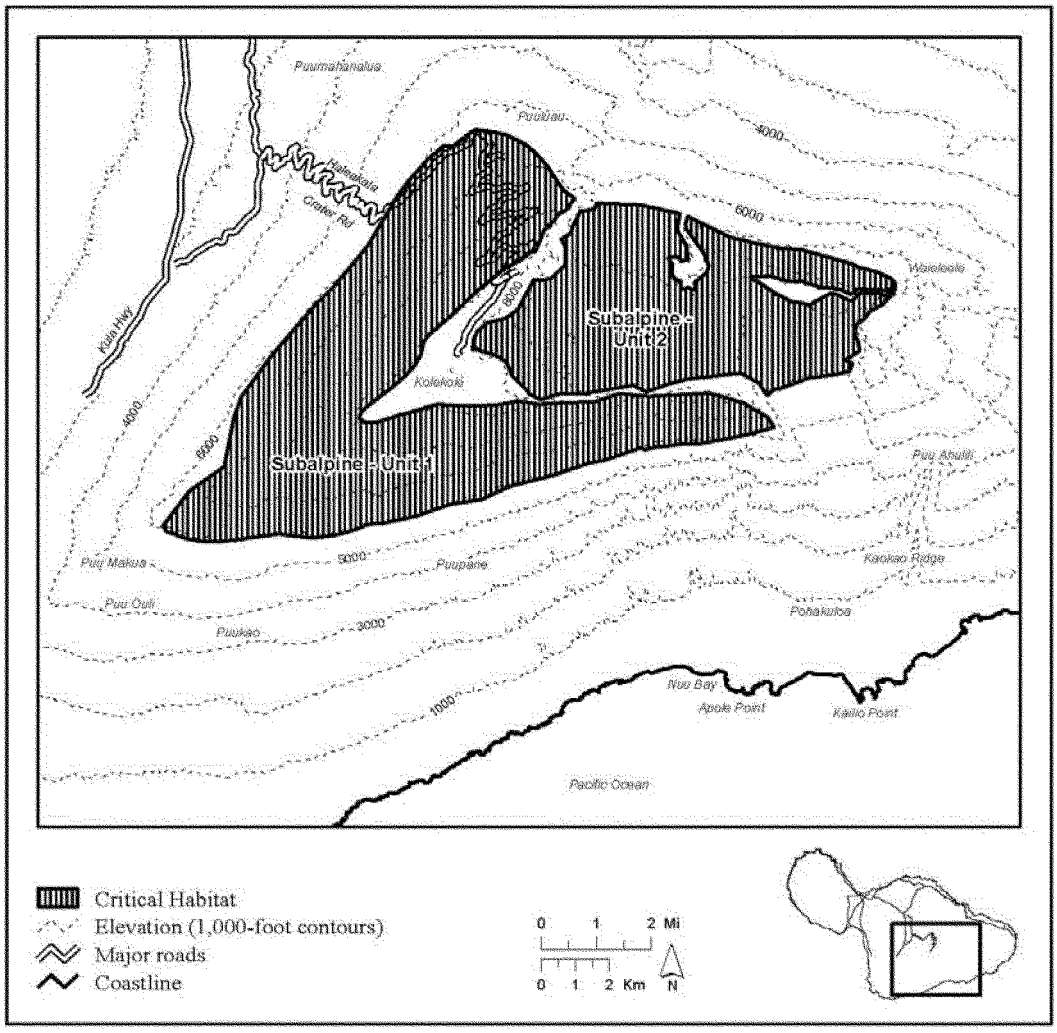
(B) [Reserved for textual description of Unit 2.] This unit is critical habitat for *Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium peruvianum* var. *insulare, Bidens micrantha* ssp. *kalealaha, Geranium arboreum, Geranium multiflorum, Phyllostegia bracteata, Schiedea haleakalensis, Solanum incompletum,* and *Zanthoxylum hawaiiense*.

(C) NOTE: Map of Maui—Subalpine—Unit 1 and Maui—Subalpine—Unit 2 (Map 22) follows:

Map 22

Maui–Subalpine

Unit 1 and Unit 2



(xxiii) Maui—Alpine—Unit 1 (2,107 ac, 853 ha)

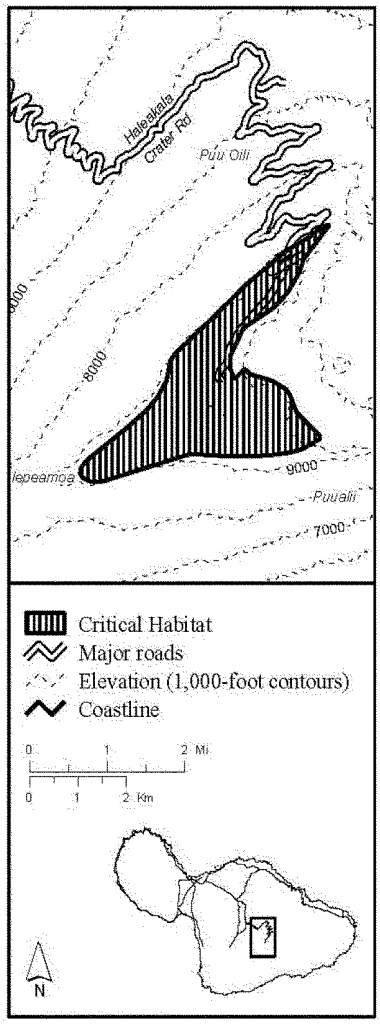
(A) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Argyroxiphium sandwicense* ssp. *macrocephalum*.

(B) NOTE: Map of Maui—Alpine—Unit 1 (Map 23) follows:

Map 23

Maui–Alpine

Unit 1



(xxiv) Maui—Dry Cliff—Unit 1 (1,018 ac, 412 ha), Maui—Dry Cliff—Unit 2 (688 ac, 279 ha), Maui—Dry Cliff—Unit 3 (293 ac, 119 ha), and Maui—Dry Cliff—Unit 4 (315 ac, 127 ha)

(A) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Bidens campylotheca* ssp. *pentamera, Diplazium molokaiense, Plantago princeps,* and *Schiedea haleakalensis.*

(B) [Reserved for textual description of Unit 2.] This unit is critical habitat for *Bidens campylotheca* ssp. *pentamera, Diplazium molokaiense, Plantago princeps,* and *Schiedea haleakalensis.*

(C) [Reserved for textual description of Unit 3.] This unit is critical habitat for *Bidens campylotheca* ssp. *pentamera, Diplazium molokaiense, Plantago princeps,* and *Schiedea haleakalensis.*

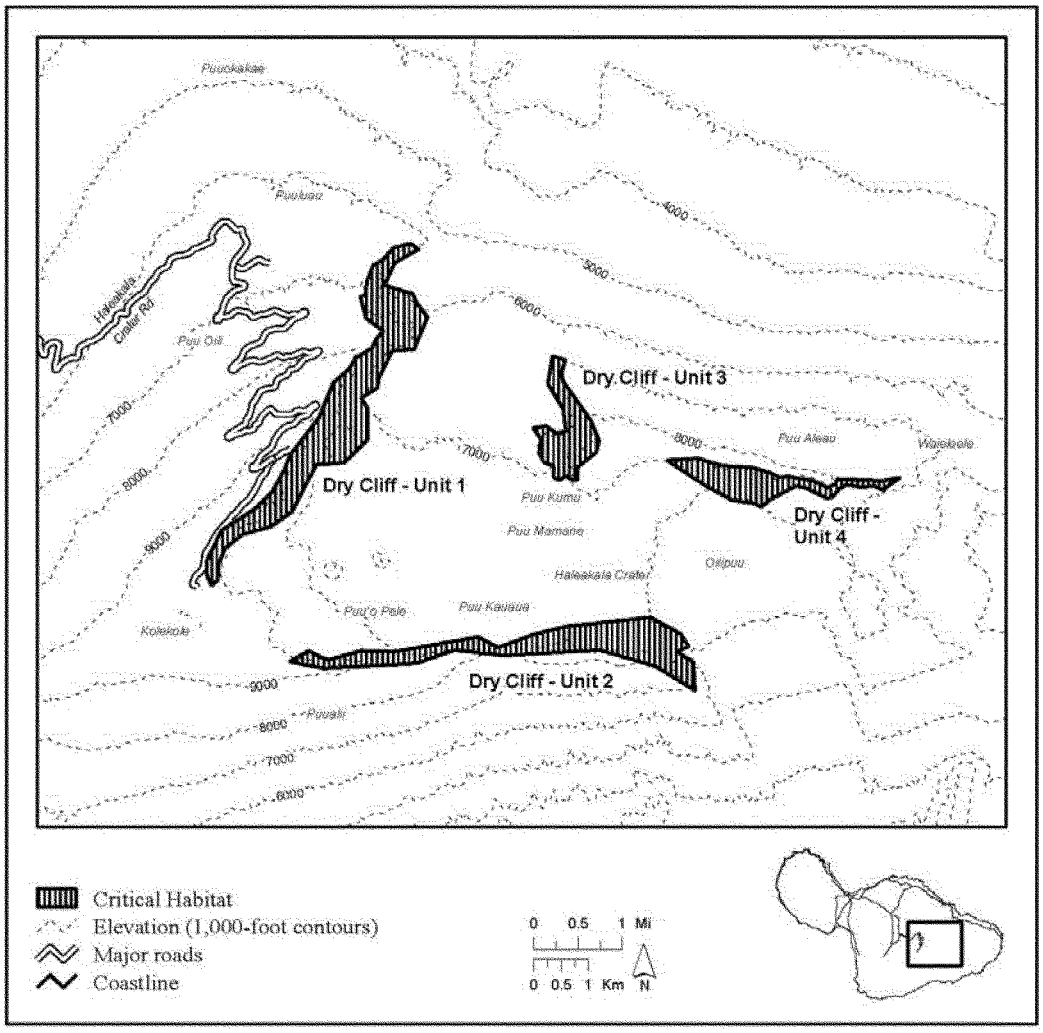
(D) [Reserved for textual description of Unit 4.] This unit is critical habitat for *Bidens campylotheca* ssp. *pentamera, Diplazium molokaiense, Plantago princeps,* and *Schiedea haleakalensis.*

(E) NOTE: Map of Maui—Dry Cliff—Unit 1, Maui—Dry Cliff—Unit 2, Maui—Dry Cliff—Unit 3, and Maui—Dry Cliff—Unit 4 (Map 24) follows:

Map 24

Maui–Dry Cliff

Unit 1, Unit 2, Unit 3 and Unit 4



(xxv) Maui—Dry Cliff—Unit 5 (1,536 ac, 622 ha), Maui—Dry Cliff—Unit 6 (279 ac, 113 ha), and Maui—Dry Cliff—Unit 7 (808 ac, 327 ha)

(A) [Reserved for textual description of Unit 5.] This unit is critical habitat for *Bonamia menziesii, Diplazium molokaiense, Hesperomannia arbuscula, Isodendrion pyrifolium, Kadua laxiflora, Neraudia sericea,* and *Tetramolopium capillare.*

(B) [Reserved for textual description of Unit 6.] This unit is critical habitat for *Bonamia menziesii, Diplazium molokaiense, Hesperomannia arbuscula, Isodendrion pyrifolium, Kadua laxiflora, Neraudia sericea,* and *Tetramolopium capillare.*

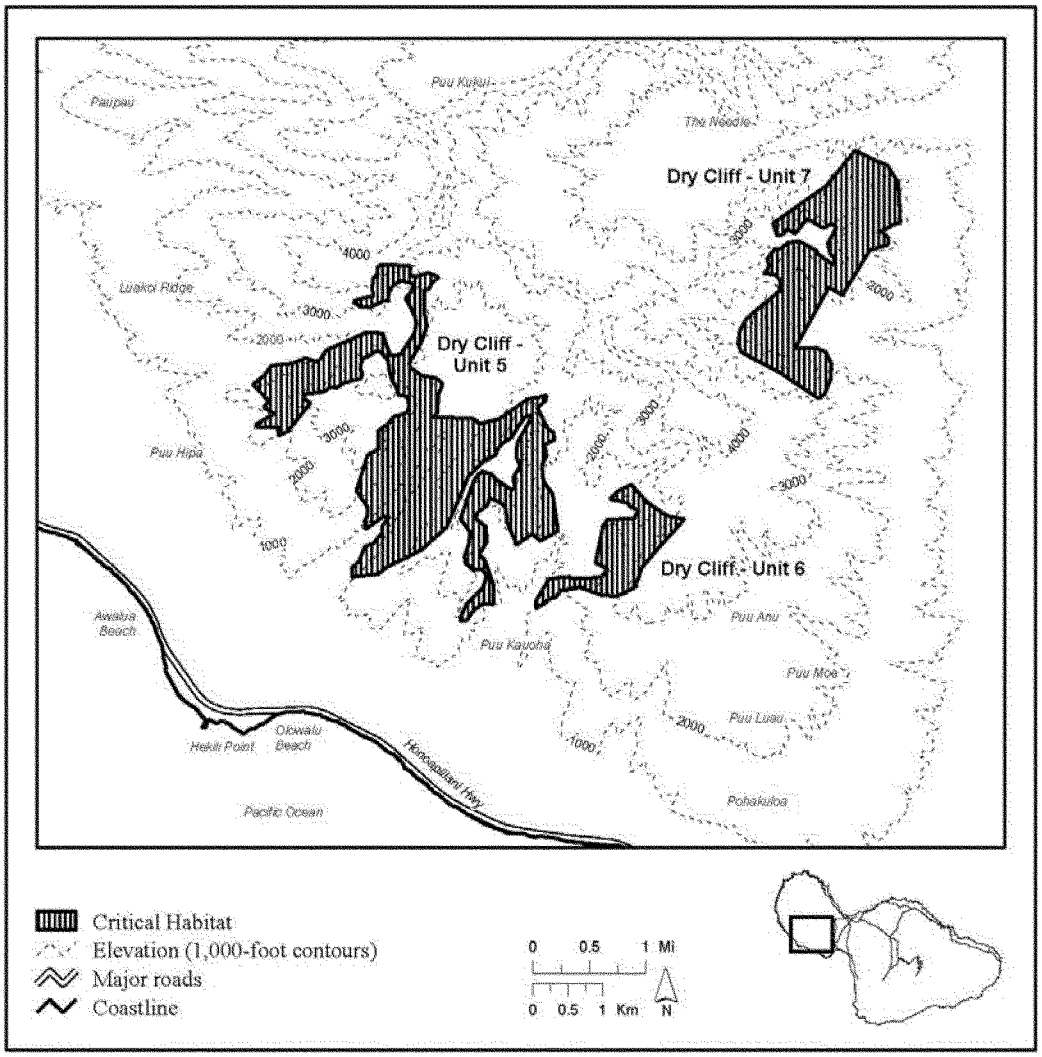
(C) [Reserved for textual description of Unit 7.] This unit is critical habitat for *Bonamia menziesii, Diplazium molokaiense, Hesperomannia arbuscula, Isodendrion pyrifolium, Kadua laxiflora, Neraudia sericea,* and *Tetramolopium capillare.*

(D) NOTE: Map of Maui—Dry Cliff—Unit 5, Maui—Dry Cliff—Unit 6, and Maui—Dry Cliff—Unit 7 (Map 25) follows:

Map 25

Maui–Dry Cliff

Unit 5, Unit 6 and Unit 7



(xxvi) Maui—Wet Cliff—Unit 1 (460 ac, 186 ha)

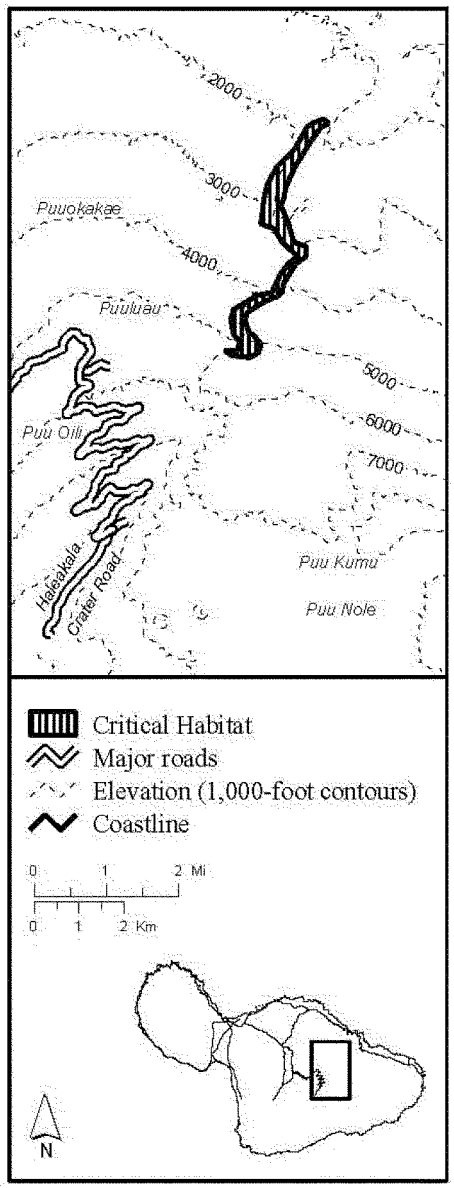
(A) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Bidens campylotheca* ssp. *pentamera, Bidens campylotheca* ssp. *waihoiensis, Cyanea copelandii* ssp. *haleakalaensis, Cyanea horrida, Melicope ovalis, Phyllostegia bracteata, Phyllostegia haliakalae,* and *Plantago princeps.*

(B) NOTE: Map of Maui—Wet Cliff—Unit 1 (Map 26) follows:

Map 26

Maui–Wet Cliff

Unit 1



(xxvii) Maui—Wet Cliff—Unit 2 (1,407 ac, 569 ha), Maui—Wet Cliff—Unit 3 (438 ac, 177 ha), and Maui—Wet Cliff—Unit 4 (184 ac, 75 ha)

(A) [Reserved for textual description of Unit 2.] This unit is critical habitat for *Bidens campylotheca* ssp. *pentamera, Bidens campylotheca* ssp. *waihoiensis, Cyanea copelandii* ssp. *haleakalaensis, Cyanea horrida, Melicope ovalis, Phyllostegia bracteata, Phyllostegia haliakalae,* and *Plantago princeps.*

(B) [Reserved for textual description of Unit 3.] This unit is critical habitat for *Bidens campylotheca* ssp. *pentamera, Bidens campylotheca* ssp. *waihoiensis, Cyanea copelandii* ssp. *haleakalaensis, Cyanea horrida, Melicope ovalis, Phyllostegia bracteata, Phyllostegia haliakalae,* and *Plantago princeps.*

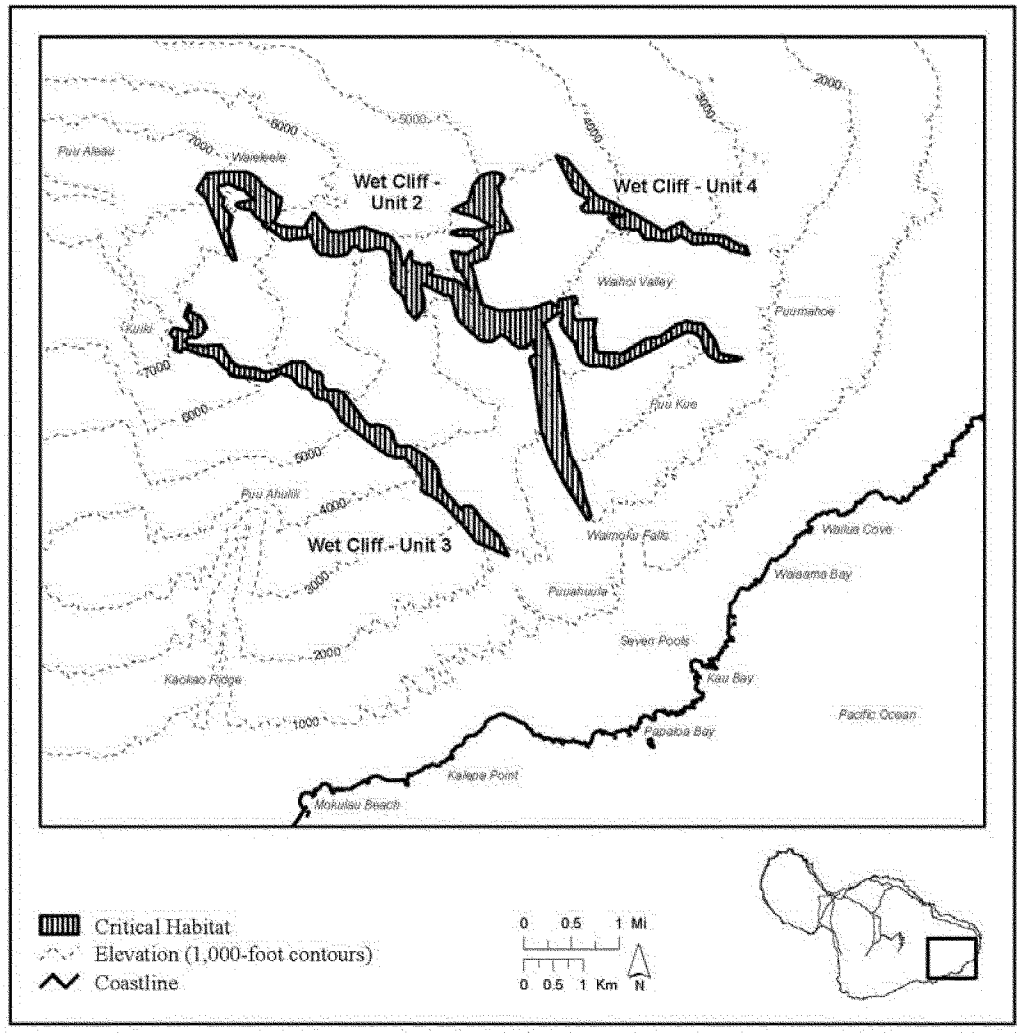
(C) [Reserved for textual description of Unit 4.] This unit is critical habitat for *Bidens campylotheca* ssp. *pentamera, Bidens campylotheca* ssp. *waihoiensis, Cyanea copelandii* ssp. *haleakalaensis, Cyanea horrida, Melicope ovalis, Phyllostegia bracteata, Phyllostegia haliakalae,* and *Plantago princeps.*

(D) NOTE: Map of Maui—Wet Cliff—Unit 2, Maui—Wet Cliff—Unit 3, and Maui—Wet Cliff—Unit 4 (Map 27) follows:

Map 27

Maui–Wet Cliff

Unit 2, Unit 3 and Unit 4



(xxviii) Maui—Wet Cliff—Unit 5 (2,048 aci 829 ha), Maui—Wet Cliff—Unit 6 (9,103 ac, 3,684 ha), Maui—Wet Cliff—Unit 7 (781 ac, 316 ha), and Maui—Wet Cliff—Unit 8 (337 ac, 137 ha)

(A) [Reserved for textual description of Unit 5.] This unit is critical habitat for *Alectryon macrococcus, Bidens campylotheca* ssp. *pentamera, Bidens conjuncta, Bonamia menziesii, Ctenitis squamigera, Cyanea glabra, Cyanea lobata, Cyanea magnicalyx, Cyrtandra filipes, Cyrtandra munroi, Dubautia plantaginea* ssp. *humilis, Gounaia vitifolia, Hesperomannia arborescens, Hesperomannia arbuscula, Isodendrion pyrifolium, Kadua laxiflora, Lysimachia lydgatei, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Santalum haleakalae* var. *lanaiense,* and *Tetramolopium capillare.*

(B) [Reserved for textual description of Unit 6.] This unit is critical habitat for *Alectryon macrococcus, Bidens campylotheca* ssp. *pentamera, Bidens conjuncta, Bonamia menziesii, Ctenitis squamigera, Cyanea glabra, Cyanea lobata, Cyanea magnicalyx, Cyrtandra filipes, Cyrtandra munroi, Dubautia plantaginea* ssp. *humilis, Gounaia vitifolia, Hesperomannia arborescens, Hesperomannia arbuscula, Isodendrion pyrifolium, Kadua laxiflora, Lysimachia lydgatei, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Santalum haleakalae* var. *lanaiense,* and *Tetramolopium capillare.*

(C) [Reserved for textual description of Unit 7.] This unit is critical habitat for *Alectryon macrococcus, Bidens campylotheca* ssp. *pentamera, Bidens conjuncta, Bonamia menziesii, Ctenitis squamigera, Cyanea glabra, Cyanea lobata, Cyanea magnicalyx, Cyrtandra filipes, Cyrtandra munroi, Dubautia plantaginea* ssp. *humilis, Gounaia vitifolia, Hesperomannia arborescens, Hesperomannia arbuscula, Isodendrion pyrifolium, Kadua laxiflora, Lysimachia lydgatei, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Santalum haleakalae* var. *lanaiense,* and *Tetramolopium capillare.*

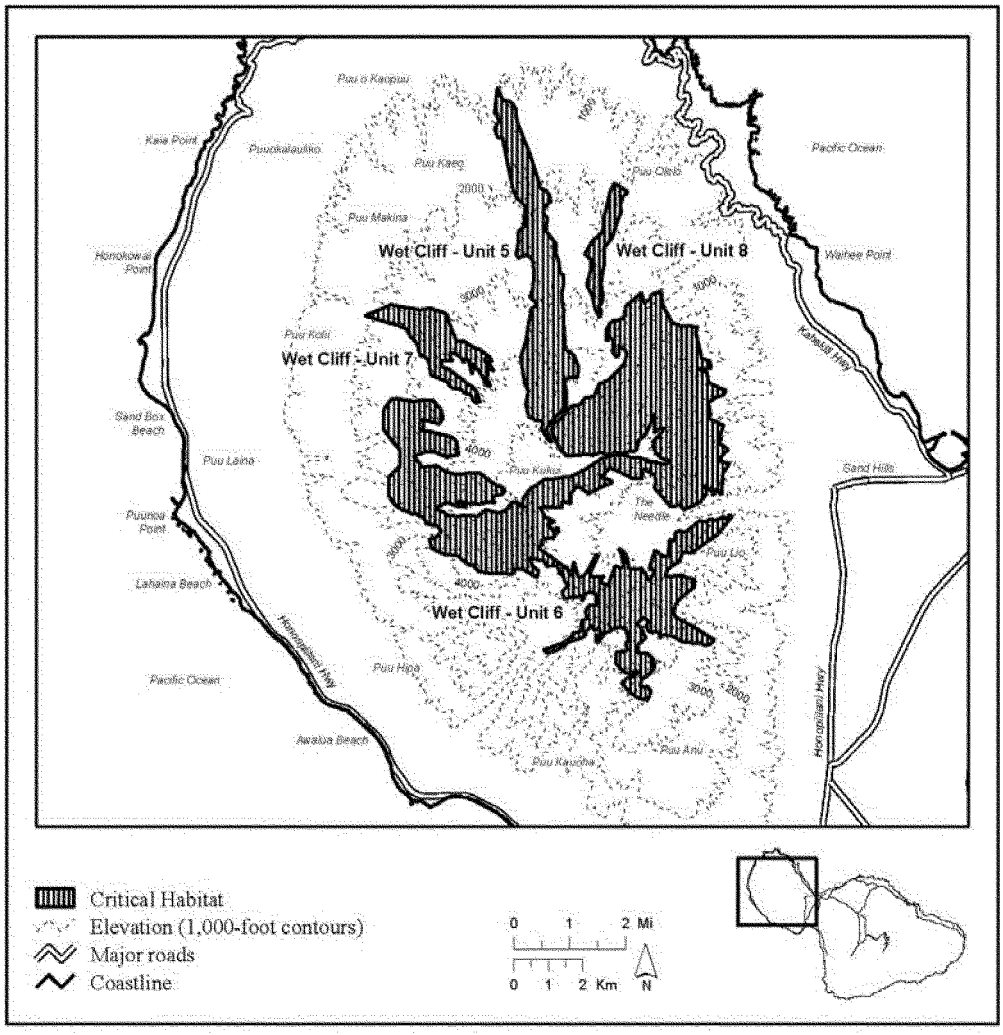
(D) [Reserved for textual description of Unit 8.] This unit is critical habitat for *Alectryon macrococcus, Bidens campylotheca* ssp. *pentamera, Bidens conjuncta, Bonamia menziesii, Ctenitis squamigera, Cyanea glabra, Cyanea lobata, Cyanea magnicalyx, Cyrtandra filipes, Cyrtandra munroi, Dubautia plantaginea* ssp. *humilis, Gounaia vitifolia, Hesperomannia arborescens, Hesperomannia arbuscula, Isodendrion pyrifolium, Kadua laxiflora, Lysimachia lydgatei, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Santalum haleakalae* var. *lanaiense,* and *Tetramolopium capillare.*

(E) NOTE: Map of Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8 (Map 28) follows:

Map 28

Maui–Wet Cliff

Unit 5, Unit 6, Unit 7 and Unit 8



(XXIX) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MAUI

Unit name	Species occupied	Species unoccupied
Maui—Coastal—Unit 1		*Brighamii rockii.*
		Cyperus pennatiformis.
	Ischaemum byrone	*Ischaemum byrone.*
	Peucedanum sandwicense	*Peucedanum sandwicense.*
		Vigna o-wahuensis.
Maui—Coastal—Unit 2		*Brighamii rockii.*
		Cyperus pennatiformis.
		Ischaemum byrone.

(XXIX) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MAUI—Continued

Unit name	Species occupied	Species unoccupied
		Peucedanum sandwicense.
		Vigna o-wahuensis.
Maui—Coastal—Unit 3		*Brighamii rockii*.
		Cyperus pennatiformis.
	Ischaemum byrone	*Ischaemum byrone*.
		Peucedanum sandwicense.
		Vigna o-wahuensis.
Maui—Coastal—Unit 4		*Brighamii rockii*.
		Cyperus pennatiformis.
	Ischaemum byrone	*Ischaemum byrone*.
	Peucedanum sandwicense	*Peucedanum sandwicense*.
		Vigna o-wahuensis.
Maui—Coastal—Unit 5		*Brighamii rockii*.
		Cyperus pennatiformis.
	Ischaemum byrone	*Ischaemum byrone*.
		Peucedanum sandwicense.
		Vigna o-wahuensis.
Maui—Coastal—Unit 6		*Brighamii rockii*.
		Cyperus pennatiformis.
		Ischaemum byrone.
		Peucedanum sandwicense.
		Vigna o-wahuensis.
Maui—Coastal—Unit 7		*Brighamii rockii*.
		Cyperus pennatiformis.
		Ischaemum byrone.
		Peucedanum sandwicense.
		Vigna o-wahuensis.
Maui—Coastal—Unit 8		*Brighamii rockii*.
		Cyperus pennatiformis.
		Ischaemum byrone.
		Peucedanum sandwicense.
		Vigna o-wahuensis.
Maui—Coastal—Unit 9		*Brighamii rockii*.
	Schenkia sebaeoides	*Schenkia sebaeoides*.
	Sesbania tementosa	*Sesbania tomentosa*.
Maui—Coastal—Unit 10		*Brighamii rockii*.
	Schenkia sebaeoides	*Schenkia sebaeoides*.
	Sesbania tomentosa	*Sesbania tomentosa*.
Maui—Coastal—Unit 11		*Brighamii rockii*.
	Schenkia sebaeoides	*Schenkia sebaeoides*.
		Sesbania tomentosa.
Maui—Lowland Dry—Unit 1	*Alectryon macrococcus*	*Alectryon macrococcus*.
		Bidens micrantha ssp. *kalealaha*.
	Bonamia menziesii	*Bonamia menziesii*.
		Canavalia pubescens.
	Cenchrus agrimonioides	*Cenchrus agrimonioides*.
		Colubrina oppositifolia.
		Ctenitis squamigera.
	Flueggea neowawraea	*Flueggea neowawraea*.
		Hibiscus brackenridgei.
	Melanthera kamolensis	*Melanthera kamolensis*.
	Melicope adscendens	*Melicope adscendens*.
		Melicope mucronulata.
		Neraudia sericea.
		Nototrichium humile.
	Santalum haleakalae var. *lanaiense*	*Santalum haleakalae* var. *lanaiense*.
	Sesbania tomentosa	*Sesbania tomentosa*.
		Solanum incompletum.
	Spermolepis hawaiiensis	*Spermolepis hawaiiensis*.
	Zanthoxylum hawaiiense	*Zanthoxylum hawaiiense*.
Maui—Lowland Dry—Unit 2		*Alectryon macrococcus*.
		Bidens micrantha ssp. *kalealaha*.
	Bonamia menziesii	*Bonamia menziesii*.
	Canavalia pubescens	*Canavalia pubescens*.
		Cenchrus agrimonioides.
		Colubrina oppositifolia.
		Ctenitis squamigera.
		Flueggea neowawraea.
	Hibiscus brackenridgei	*Hibiscus brackenridgei*.
		Melanthera kamolensis.
		Melicope adscendens.
		Melicope mucronulata.

(XXIX) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MAUI—Continued

Unit name	Species occupied	Species unoccupied
		Neraudia sericea.
		Nototrichium humile.
		Santalum haleakalae var. *lanaiense*.
		Sesbania tomentosa.
		Solanum incompletum.
		Spermolepis hawaiiensis.
		Zanthoxylum hawaiiense.
Maui—Lowland Dry—Unit 3		*Alectryon macrococcus*.
		Bidens micrantha ssp. *kalealaha*.
		Bonamia menziesii.
	Canavalia pubescens	*Canavalia pubescens*.
		Cenchrus agrimonioides.
		Colubrina oppositifolia.
		Ctenitis squamigera.
		Flueggea neowawraea.
	Hibiscus brackenridgei	*Hibiscus brackenridgei*.
		Melanthera kamolensis.
		Melicope adscendens.
		Melicope mucronulata.
		Neraudia sericea.
		Nototrichium humile.
		Santalum haleakalae var. *lanaiense*.
		Sesbania tomentosa.
		Solanum incompletum.
		Spermolepis hawaiiensis.
		Zanthoxylum hawaiiense.
Maui—Lowland Dry—Unit 4		*Alectryon macrococcus*.
		Bidens micrantha ssp. *kalealaha*.
		Bonamia menziesii.
	Canavalia pubescens	*Canavalia pubescens*.
		Cenchrus agrimonioides.
		Colubrina oppositifolia.
		Ctenitis squamigera.
		Flueggea neowawraea.
		Hibiscus brackenridgei.
		Melanthera kamolensis.
		Melicope adscendens.
		Melicope mucronulata.
		Neraudia sericea.
		Nototrichium humile.
		Santalum haleakalae var. *lanaiense*.
		Sesbania tomentosa.
		Solanum incompletum.
		Spermolepis hawaiiensis.
		Zanthoxylum hawaiiense.
Maui—Lowland Dry—Unit 5	*Asplenium dielerectum*	*Asplenium dielerectum*.
	Bidens campylotheca ssp. *pentamera*	*Bidens campylotheca* ssp. *pentamera*.
	Cenchrus agrimonioides	*Cenchrus agrimonioides*.
	Ctenitis squamigera	*Ctenitis squamigera*.
		Cyanea obtusa.
	Gouania hillebrandii	*Gouania hillebrandii*.
		Hesperomannia arbuscula.
	Hibiscus brackenridgei	*Hibiscus brackenridgei*.
		Kadua coriacea.
		Lysimachia lydgatei.
		Neraudia sericea.
	Remya mauiensis	*Remya mauiensis*.
	Santalum haleakalae var. *lanaiense*	*Santalum haleakalae* var. *lanaiense*.
		Schiedea salicaria.
	Sesbania tomentosa	*Sesbania tomentosa*.
	Spermolepis hawaiiensis	*Spermolepis hawaiiensis*.
		Tetramolopium capillare.
		Tetramolopium remyi.
Maui—Lowland Dry—Unit 6		*Asplenium dielerectum*.
		Bidens campylotheca ssp. *pentamera*.
		Cenchrus agrimonioides.
		Ctenitis squamigera.
		Cyanea obtusa.
		Gouania hillebrandii.
		Hesperomannia arbuscula.
	Hibiscus brackenridgei	*Hibiscus brackenridgei*.
		Kadua coriacea.

(XXIX) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MAUI—Continued

Unit name	Species occupied	Species unoccupied
		Lysimachia lydgatei.
		Neraudia sericea.
		Remya mauiensis.
		Santalum haleakalae var. *lanaiense*.
	Schiedea salicaria	*Schiedea salicaria*.
		Sesbania tomentosa.
		Spermolepis hawaiiensis.
		Tetramolopium capillare.
		Tetramolopium remyi.
Maui—Lowland Mesic—Unit 1		*Ctenitis squamigera*.
	Cyanea asplenifolia	*Cyanea asplenifolia*.
	Cyanea copelandii ssp. *haleakalaensis*	*Cyanea copelandii* ssp. *haleakalaensis*.
	Huperzia mannii	*Huperzia mannii*.
		Solanum incompletum.
Maui—Lowland Mesic—Unit 2		*Asplenium dielerectum*.
	Bidens campylotheca ssp. *pentamera*	*Bidens campylotheca* ssp. *pentamera*.
	Colubrina oppositifolia	*Colubrina oppositifolia*.
	Ctenitis squamigera	*Ctenitis squamigera*.
	Remya mauiensis	*Remya mauiensis*.
	Santalum haleakalae var. *lanaiense*	*Santalum haleakalae* var. *lanaiense*.
	Zanthoxylum hawaiiense	*Zanthoxylum hawaiiense*.
Maui—Lowland Mesic—Unit 3		*Asplenium dielerectum*.
		Bidens campylotheca ssp. *pentamera*.
		Colubrina oppositifolia.
		Ctenitis squamigera.
		Remya mauiensis.
		Santalum haleakalae var. *lanaiense*.
		Zanthoxylum hawaiiense.
Maui—Lowland Wet—Unit 1	*Bidens campylotheca* ssp. *waihoiensis*	*Bidens campylotheca* ssp. *waihoiensis*.
		Clermontia oblongifolia ssp. *mauiensis*.
		Clermontia peleana.
	Clermontia samuelii	*Clermontia samuelii*.
	Cyanea asplenifolia	*Cyanea asplenifolia*.
	Cyanea copelandii ssp. *haleakalaensis*	*Cyanea copelandii* ssp. *haleakalaensis*.
	Cyanea duvalliorum	*Cyanea duvalliorum*.
	Cyanea hamatiflora ssp. *hamatiflora*	*Cyanea hamatiflora* ssp. *hamatiflora*.
	Cyanea kunthiana	*Cyanea kunthiana*.
	Cyanea maritae	*Cyanea maritae*.
	Cyanea mceldowneyi	*Cyanea mceldowneyi*.
	Huperzia mannii	*Huperzia mannii*.
	Melicope balloui	*Melicope balloui*.
	Melicope ovalis	*Melicope ovalis*.
		Mucuna sloanei var. *persericea*.
		Wikstroemia villosa.
Maui—Lowland Wet—Unit 2		*Alectryon macrococcus*.
		Asplenium dielerectum.
		Bidens conjuncta.
		Bidens micrantha ssp. *kalealaha*.
		Clermontia oblongifolia ssp. *mauiensis*.
	Ctenitis squamigera	*Ctenitis squamigera*.
	Cyanea asplenifolia	*Cyanea asplenifolia*.
		Cyanea glabra.
		Cyanea kunthiana.
	Cyanea lobata	*Cyanea lobata*.
	Cyanea magnicalyx	*Cyanea magnicalyx*.
	Cyrtandra filipes	*Cyrtandra filipes*.
	Cyrtandra munroi	*Cyrtandra munroi*.
		Diplazium molokaiense.
		Hesperomannia arborescens.
		Hesperomannia arbuscula.
		Huperzia mannii.
		Isodendrion pyrifolium.
		Kadua laxiflora.
		Peucedanum sandwicense.
		Phyllostegia bracteata.
		Pteris lidgatei.
		Remya mauiensis.
	Santalum haleakalae var. *lanaiense*	*Santalum haleakalae* var. *lanaiense*.
		Wikstroemia villosa.
Maui—Lowland Wet—Unit 3		*Alectryon macrococcus*.
		Asplenium dielerectum.
	Bidens conjuncta	*Bidens conjuncta*.

(XXIX) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MAUI—Continued

Unit name	Species occupied	Species unoccupied
		Bidens micrantha ssp. *kalealaha*.
		Clermontia oblongifolia ssp. *mauiensis*.
		Ctenitis squamigera.
	Cyanea asplenifolia	*Cyanea asplenifolia*.
		Cyanea glabra.
		Cyanea kunthiana.
		Cyanea lobata.
		Cyanea magnicalyx.
		Cyrtandra filipes.
		Cyrtandra munroi.
		Diplazium molokaiense.
		Hesperomannia arborescens.
		Hesperomannia arbuscula.
		Huperzia mannii.
		Isodendrion pyrifolium.
		Kadua laxiflora.
		Peucedanum sandwicense.
		Phyllostegia bracteata.
	Pteris lidgatei	*Pteris lidgatei*.
		Remya mauiensis.
		Santalum haleakalae var. *lanaiense*.
		Wikstroemia villosa.
Maui—Lowland Wet—Unit 4		*Alectryon macrococcus*.
		Asplenium dielerectum.
	Bidens conjuncta	*Bidens conjuncta*.
		Bidens micrantha ssp. *kalealaha*.
		Clermontia oblongifolia ssp. *mauiensis*.
		Ctenitis squamigera.
	Cyanea asplenifolia	*Cyanea asplenifolia*.
		Cyanea glabra.
		Cyanea kunthiana.
		Cyanea lobata.
		Cyanea magnicalyx.
		Cyrtandra filipes.
	Cyrtandra munroi	*Cyrtandra munroi*.
		Diplazium molokaiense.
	Hesperomannia arborescens	*Hesperomannia arborescens*.
		Hesperomannia arbuscula.
		Huperzia mannii.
		Isodendrion pyrifolium.
		Kadua laxiflora.
		Peucedanum sandwicense.
		Phyllostegia bracteata.
		Pteris lidgatei.
		Remya mauiensis.
		Santalum haleakalae var. *lanaiense*.
		Wikstroemia villosa.
Maui—Lowland Wet—Unit 5	*Alectryon macrococcus*	*Alectryon macrococcus*.
	Asplenium dielerectum	*Asplenium dielerectum*.
		Bidens conjuncta.
		Bidens micrantha ssp. *kalealaha*.
		Clermontia oblongifolia ssp. *mauiensis*.
		Ctenitis squamigera.
		Cyanea asplenifolia.
		Cyanea glabra.
		Cyanea kunthiana.
		Cyanea lobata.
		Cyanea magnicalyx.
		Cyrtandra filipes.
		Cyrtandra munroi.
		Diplazium molokaiense.
		Hesperomannia arborescens.
	Hesperomannia arbuscula	*Hesperomannia arbuscula*.
		Huperzia mannii.
		Isodendrion pyrifolium.
		Kadua laxiflora.
		Peucedanum sandwicense.
		Phyllostegia bracteata.
		Pteris lidgatei.
		Remya mauiensis.
		Santalum haleakalae var. lanaiense.
		Wikstroemia villosa.

(XXIX) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MAUI—Continued

Unit name	Species occupied	Species unoccupied
Maui—Lowland Wet—Unit 6	*Alectryon macrococcus*	*Alectryon macrococcus*.
		Asplenium dielerectum.
		Bidens conjuncta.
	Bidens micrantha ssp. *kalealaha*	*Bidens micrantha* ssp. *kalealaha*.
		Clermontia oblongifolia ssp. *mauiensis*.
		Ctenitis squamigera.
	Cyanea asplenifolia	*Cyanea asplenifolia*.
		Cyanea glabra.
		Cyanea kunthiana.
	Cyanea lobata	*Cyanea lobata*.
		Cyanea magnicalyx.
		Cyrtandra filipes.
	Cyrtandra munroi	*Cyrtandra munroi*.
		Diplazium molokaiense.
		Hesperomannia arborescens.
		Hesperomannia arbuscula.
		Huperzia mannii.
		Isodendrion pyrifolium.
		Kadua laxiflora.
		Peucedanum sandwicense.
		Phyllostegia bracteata.
		Pteris lidgatei.
		Remya mauiensis.
	Santalum haleakalae var. *lanaiense*	*Santalum haleakalae* var. *lanaiense*.
		Wikstroemia villosa.
Maui—Lowland Wet—Unit 7		*Alectryon macrococcus*.
		Asplenium dielerectum.
		Bidens conjuncta.
		Bidens micrantha ssp. *kalealaha*.
		Clermontia oblongifolia ssp. *mauiensis*.
		Ctenitis squamigera.
		Cyanea asplenifolia.
		Cyanea glabra.
		Cyanea kunthiana.
		Cyanea lobata.
		Cyanea magnicalyx.
		Cyrtandra filipes.
		Cyrtandra munroi.
		Diplazium molokaiense.
		Hesperomannia arborescens.
		Hesperomannia arbuscula.
		Huperzia mannii.
		Isodendrion pyrifolium.
		Kadua laxiflora.
		Peucedanum sandwicense.
		Phyllostegia bracteata.
		Pteris lidgatei.
		Remya mauiensis.
		Santalum haleakalae var. *lanaiense*.
		Wikstroemia villosa.
Maui—Lowland Wet—Unit 8		*Alectryon macrococcus*.
		Asplenium dielerectum.
		Bidens conjuncta.
		Bidens micrantha ssp. *kalealaha*.
		Clermontia oblongifolia ssp. *mauiensis*.
		Ctenitis squamigera.
		Cyanea asplenifolia.
		Cyanea glabra.
		Cyanea kunthiana.
		Cyanea lobata.
		Cyanea magnicalyx.
		Cyrtandra filipes.
		Cyrtandra munroi.
		Diplazium molokaiense.
		Hesperomannia arborescens.
		Hesperomannia arbuscula.
		Huperzia mannii.
		Isodendrion pyrifolium.
		Kadua laxiflora.
		Peucedanum sandwicense.
		Phyllostegia bracteata.
		Pteris lidgatei.

(XXIX) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MAUI—Continued

Unit name	Species occupied	Species unoccupied
		Remya mauiensis.
		Santalum haleakalae var. *lanaiense*.
		Wikstroemia villosa.
Maui—Montane Wet—Unit 1	.....	*Adenophorus periens*.
	Asplenium peruvianum var. *insulare*	*Asplenium peruvianum* var. *insulare*.
		Bidens campylotheca ssp. *pentamera*.
		Bidens campylotheca ssp. *waihoiensis*.
	Clermontia oblongifolia ssp. *mauiensis*	*Clermontia oblongifolia* ssp. *mauiensis*.
		Clermontia samuelii.
	Cyanea copelandii ssp. *haleakalaensis*	*Cyanea copelandii* ssp. *haleakalaensis*.
	Cyanea duvalliorum	*Cyanea duvalliorum*.
		Cyanea glabra.
		Cyanea hamatiflora ssp. *hamatiflora*.
	Cyanea horrida	*Cyanea horrida*.
	Cyanea kunthiana	*Cyanea kunthiana*.
	Cyanea maritae	*Cyanea maritae*.
	Cyanea mceldowneyi	*Cyanea mceldowneyi*.
		Cyrtandra ferripilosa.
	Diplazium molokaiense	*Diplazium molokaiense*.
		Geranium hanaense.
		Geranium multiflorum.
	Huperzia mannii	*Huperzia mannii*.
	Melicope balloui	*Melicope balloui*.
		Melicope ovalis.
		Peperomia subpetiolata.
		Phyllostegia bracteata.
		Phyllostegia mannii.
	Phyllostegia pilosa	*Phyllostegia pilosa*.
		Platanthera holochila.
		Schiedea jacobii.
		Wikstroemia villosa.
Maui—Montane Wet—Unit 2	.....	*Adenophorus periens*.
	Asplenium peruvianum var. *insulare*	*Asplenium peruvianum* var. *insulare*.
	Bidens campylotheca ssp. *pentamera*	*Bidens campylotheca* ssp. *pentamera*.
	Bidens campylotheca ssp. *waihoiensis*	*Bidens campylotheca* ssp. *waihoiensis*.
		Clermontia oblongifolia ssp. *mauiensis*.
	Clermontia samuelii	*Clermontia samuelii*.
	Cyanea copelandii ssp. *haleakalaensis*	*Cyanea copelandii* ssp. *haleakalaensis*.
	Cyanea duvalliorum	*Cyanea duvalliorum*.
		Cyanea glabra.
	Cyanea hamatiflora ssp. *hamatiflora*	*Cyanea hamatiflora* ssp. *hamatiflora*.
	Cyanea horrida	*Cyanea horrida*.
	Cyanea kunthiana	*Cyanea kunthiana*.
		Cyanea maritae.
	Cyanea mceldowneyi	*Cyanea mceldowneyi*.
		Cyrtandra ferripilosa.
		Diplazium molokaiense.
	Geranium hanaense	*Geranium hanaense*.
	Geranium multiflorum	*Geranium multiflorum*.
		Huperzia mannii.
		Melicope balloui.
		Melicope ovalis.
		Peperomia subpetiolata.
		Phyllostegia bracteata.
		Phyllostegia mannii.
		Phyllostegia pilosa.
		Platanthera holochila.
		Schiedea jacobii.
	Wikstroemia villosa	*Wikstroemia villosa*.
Maui—Montane Wet—Unit 3	.....	*Adenophorus periens*.
		Asplenium peruvianum var. *insulare*.
	Bidens campylotheca ssp. *pentamera*	*Bidens campylotheca* ssp. *pentamera*.
	Bidens campylotheca ssp. *waihoiensis*	*Bidens campylotheca* ssp. *waihoiensis*.
		Clermontia oblongifolia ssp. *mauiensis*.
		Clermontia samuelii.
	Cyanea copelandii ssp. *haleakalaensis*	*Cyanea copelandii* ssp. *haleakalaensis*.
		Cyanea duvalliorum.
		Cyanea glabra.
	Cyanea hamatiflora ssp. *hamatiflora*	*Cyanea hamatiflora* ssp. *hamatiflora*.
		Cyanea horrida.
		Cyanea kunthiana.
	Cyanea maritae	*Cyanea maritae*.

(XXIX) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MAUI—Continued

Unit name	Species occupied	Species unoccupied
		Cyanea mceldowneyi.
		Cyrtandra ferripilosa.
		Diplazium molokaiense.
		Geranium hanaense.
		Geranium multiflorum.
		Huperzia mannii.
		Melicope balloui.
	Melicope ovalis	*Melicope ovalis*.
		Peperomia subpetiolata.
		Phyllostegia bracteata.
		Phyllostegia mannii.
		Phyllostegia pilosa.
		Platanthera holochila.
		Schiedea jacobii.
		Wikstroemia villosa.
Maui—Montane Wet—Unit 4		*Adenophorus periens*.
		Asplenium peruvianum var. *insulare*.
		Bidens campylotheca ssp. *pentamera*.
		Bidens campylotheca ssp. *waihoiensis*.
		Clermontia oblongifolia ssp. *mauiensis*.
	Clermontia samuelii	*Clermontia samuelii*.
	Cyanea copelandii ssp. *haleakalaensis*	*Cyanea copelandii* ssp. *haleakalaensis*.
		Cyanea duvalliorum.
		Cyanea glabra.
	Cyanea hamatiflora ssp. *hamatiflora*	*Cyanea hamatiflora* ssp. *hamatiflora*.
	Cyanea horrida	*Cyanea horrida*.
	Cyanea kunthiana	*Cyanea kunthiana*.
	Cyanea maritae	*Cyanea maritae*.
		Cyanea mceldowneyi.
	Cyrtandra ferripilosa	*Cyrtandra ferripilosa*.
		Diplazium molokaiense.
		Geranium hanaense.
		Geranium multiflorum.
	Huperzia mannii	*Huperzia mannii*.
		Melicope balloui.
		Melicope ovalis.
		Peperomia subpetiolata.
		Phyllostegia bracteata.
		Phyllostegia mannii.
		Phyllostegia pilosa.
		Platanthera holochila.
		Schiedea jacobii.
		Wikstroemia villosa.
Maui—Montane Wet—Unit 5		*Adenophorus periens*.
		Asplenium peruvianum var. *insulare*.
		Bidens campylotheca ssp. *pentamera*.
		Bidens campylotheca ssp. *waihoiensis*.
		Clermontia oblongifolia ssp. *mauiensis*.
		Clermontia samuelii.
		Cyanea copelandii ssp. *haleakalaensis*.
		Cyanea duvalliorum.
		Cyanea glabra.
		Cyanea hamatiflora ssp. *hamatiflora*.
		Cyanea horrida.
		Cyanea kunthiana.
		Cyanea maritae.
		Cyanea mceldowneyi.
		Cyrtandra ferripilosa.
		Diplazium molokaiense.
		Geranium hanaense.
		Geranium multiflorum.
		Huperzia mannii.
		Melicope balloui.
		Melicope ovalis.
		Peperomia subpetiolata.
		Phyllostegia bracteata.
		Phyllostegia mannii.
		Phyllostegia pilosa.
		Platanthera holochila.
		Schiedea jacobii.
		Wikstroemia villosa.
Maui—Montane Wet—Unit 6		*Acaena exigua*.

(XXIX) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MAUI—Continued

Unit name	Species occupied	Species unoccupied
	Bidens conjuncta	*Bidens conjuncta.*
	Calamagrostis hillebrandii	*Calamagrostis hillebrandii.*
	Cyanea kunthiana	*Cyanea kunthiana.*
		Cyrtandra oxybapha.
	Geranium hillebrandii	*Geranium hillebrandii.*
		Huperzia mannii.
	Myrsine vaccinioides	*Myrsine vaccinioides.*
		Phyllostegia bracteata.
		Platanthera holochila.
	Sanicula purpurea	*Sanicula purpurea.*
Maui—Montane Wet—Unit 7		*Acaena exigua.*
		Bidens conjuncta.
		Calamagrostis hillebrandii.
		Cyanea kunthiana.
	Cyrtandra oxybapha	*Cyrtandra oxybapha.*
		Geranium hillebrandii.
		Huperzia mannii.
		Myrsine vaccinioides.
		Phyllostegia bracteata.
	Platanthera holochila	*Platanthera holochila.*
		Sanicula purpurea.
Maui—Montane Wet—Unit 8		*Acaena exigua.*
		Bidens conjuncta.
		Calamagrostis hillebrandii.
		Cyanea kunthiana.
		Cyrtandra oxybapha.
		Geranium hillebrandii.
		Huperzia mannii.
		Myrsine vaccinioides.
		Phyllostegia bracteata.
		Platanthera holochila.
		Sanicula purpurea.
Maui—Montane Mesic—Unit 1		*Alectryon macrococcus.*
	Argyroxiphium sandwicense ssp. *macrocephalum.*	*Argyroxiphium sandwicense* ssp. *macrocephalum.*
	Asplenium dielerectum	*Asplenium dielerectum.*
	Asplenium peruvianum var. *insulare*	*Asplenium peruvianum* var. *insulare.*
	Bidens campylotheca ssp. *pentamera*	*Bidens campylotheca* ssp. *pentamera.*
		Bidens micrantha ssp. *kalealaha.*
	Clermontia lindseyana	*Clermontia lindseyana.*
		Cyanea glabra.
		Cyanea hamatiflora ssp. *hamatiflora.*
	Cyanea horrida	*Cyanea horrida.*
		Cyanea kunthiana.
	Cyanea mceldowneyi	*Cyanea mceldowneyi.*
	Cyanea obtusa	*Cyanea obtusa.*
	Cyrtandra ferripilosa	*Cyrtandra ferripilosa.*
	Cyrtandra oxybapha	*Cyrtandra oxybapha.*
	Diplazium molokaiense	*Diplazium molokaiense.*
	Geranium arboreum	*Geranium arboreum.*
	Geranium multiflorum	*Geranium multiflorum.*
	Huperzia mannii	*Huperzia mannii.*
	Melicope adscendens	*Melicope adscendens.*
	Neraudia sericea	*Neraudia sericea.*
		Phyllostegia bracteata.
		Phyllostegia mannii.
	Santalum haleakalae var. *lanaiense*	*Santalum haleakalae* var. *lanaiense.*
		Wikstroemia villosa.
		Zanthoxylum hawaiiense.
Maui—Montane Mesic—Unit 2	*Ctenitis squamigera*	*Ctenitis squamigera.*
	Cyanea magnicalyx	*Cyanea magnicalyx.*
	Diplazium molokaiense	*Diplazium molokaiense.*
		Geranium hillebrandii.
		Huperzia mannii.
	Lysimachia lydgatei	*Lysimachia lydgatei.*
		Remya mauiensis.
	Santalum haleakalae var. *lanaiense*	*Santalum haleakalae* var. *lanaiense.*
	Stenogyne kauaulaensis	*Stenogyne kauaulaensis.*
	Zanthoxylum hawaiiense	*Zanthoxylum hawaiiense.*
Maui—Montane Mesic—Unit 3		*Ctenitis squamigera.*
		Cyanea magnicalyx.
		Diplazium molokaiense.

(XXIX) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MAUI—Continued

Unit name	Species occupied	Species unoccupied
	Geranium hillebrandii	*Geranium hillebrandii*.
	Huperzia mannii	*Huperzia mannii*.
	Lysimachia lydgatei	*Lysimachia lydgatei*.
		Remya mauiensis.
		Santalum haleakalae var. *lanaiense*.
		Stenogyne kauaulaensis.
		Zanthoxylum hawaiiense.
Maui—Montane Mesic—Unit 4		*Ctenitis squamigera*.
		Cyanea magnicalyx.
		Diplazium molokaiense.
		Geranium hillebrandii.
		Huperzia mannii.
	Lysimachia lydgatei	*Lysimachia lydgatei*.
		Remya mauiensis.
		Santalum haleakalae var. *lanaiense*.
		Stenogyne kauaulaensis.
		Zanthoxylum hawaiiense.
Maui—Montane Mesic—Unit 5		*Ctenitis squamigera*.
		Cyanea magnicalyx.
		Diplazium molokaiense.
		Geranium hillebrandii.
		Huperzia mannii.
		Lysimachia lydgatei.
	Remya mauiensis	*Remya mauiensis*.
	Santalum haleakalae var. *lanaiense*	*Santalum haleakalae* var. *lanaiense*.
		Stenogyne kauaulaensis.
		Zanthoxylum hawaiiense.
Maui—Montane Mesic—Unit 6		*Ctenitis squamigera*.
		Cyanea magnicalyx.
		Diplazium molokaiense.
		Geranium hillebrandii.
		Huperzia mannii.
		Lysimachia lydgatei.
		Remya mauiensis.
		Santalum haleakalae var. *lanaiense*.
		Stenogyne kauaulaensis.
		Zanthoxylum hawaiiense.
Maui—Montane Dry—Unit 1		*Alectryon macrococcus*.
		Geranium arboreum.
	Melicope knudsenii	*Melicope knudsenii*.
		Melicope mucronulata.
	Santalum haleakalae var. *lanaiense*	*Santalum haleakalae* var. *lanaiense*.
	Zanthoxylum hawaiiense	*Zanthoxylum hawaiiense*.
Maui—Subalpine—Unit 1		*Argyroxiphium sandwicense* ssp. *macrocephalum*.
	Asplenium peruvianum var. *insulare*	*Asplenium peruvianum* var. *insulare*.
	Bidens micrantha ssp. *kalealaha*	*Bidens micrantha* ssp. *kalealaha*.
	Geranium arboreum	*Geranium arboreum*.
		Geranium multiflorum.
		Phyllostegia bracteata.
		Schiedea haleakalensis.
		Solanum incompletum.
		Zanthoxylum hawaiiense.
Maui—Subalpine—Unit 2	*Argyroxiphium sandwicense* ssp. *macrocephalum*.	*Argyroxiphium sandwicense* ssp. *macrocephalum*.
		Asplenium peruvianum var. *insulare*.
		Bidens micrantha ssp. *kalealaha*.
		Geranium arboreum.
	Geranium multiflorum	*Geranium multiflorum*.
		Phyllostegia bracteata.
	Schiedea haleakalensis	*Schiedea haleakalensis*.
		Solanum incompletum.
		Zanthoxylum hawaiiense.
Maui—Alpine—Unit 1	*Argyroxiphium sandwicense* ssp. *macrocephalum*.	*Argyroxiphium sandwicense* ssp. *macrocephalum*.
Maui—Dry Cliff—Unit 1	*Bidens campylotheca* ssp. *pentamera*	*Bidens campylotheca* ssp. *pentamera*.
		Diplazium molokaiense.
		Plantago princeps.
		Schiedea haleakalensis.
Maui—Dry Cliff—Unit 2		*Bidens campylotheca* ssp. *pentamera*.
		Diplazium molokaiense.
	Plantago princeps	*Plantago princeps*.

(XXIX) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MAUI—Continued

Unit name	Species occupied	Species unoccupied
	Schiedea haleakalensis	*Schiedea haleakalensis.*
Maui—Dry Cliff—Unit 3		*Bidens campylotheca* ssp. *pentamera.*
		Diplazium molokaiense.
		Plantago princeps.
		Schiedea haleakalensis.
Maui—Dry Cliff—Unit 4		*Bidens campylotheca* ssp. *pentamera.*
		Diplazium molokaiense.
		Plantago princeps.
		Schiedea haleakalensis.
Maui—Dry Cliff—Unit 5		*Bonamia menziesii.*
		Diplazium molokaiense.
		Hesperomannia arbuscula.
		Isodendrion pyrifolium.
		Kadua laxiflora.
		Neraudia sericea.
		Tetramolopium capillare.
Maui—Dry Cliff—Unit 6		*Bonamia menziesii.*
		Diplazium molokaiense.
		Hesperomannia arbuscula.
		Isodendrion pyrifolium.
		Kadua laxiflora.
		Neraudia sericea.
		Tetramolopium capillare.
Maui—Dry Cliff—Unit 7		*Bonamia menziesii.*
		Diplazium molokaiense.
		Hesperomannia arbuscula.
		Isodendrion pyrifolium.
		Kadua laxiflora.
		Neraudia sericea.
		Tetramolopium capillare.
Maui—Wet Cliff—Unit 1	*Bidens campylotheca* ssp. *pentamera*	*Bidens campylotheca* ssp. *pentamera.*
		Bidens campylotheca ssp. *waihoiensis.*
		Cyanea copelandii ssp. *haleakalaensis.*
	Cyanea horrida	*Cyanea horrida.*
		Melicope ovalis.
		Phyllostegia bracteata.
		Phyllostegia haliakalae.
		Plantago princeps.
Maui—Wet Cliff—Unit 2	*Bidens campylotheca* ssp. *pentamera*	*Bidens campylotheca* ssp. *pentamera.*
	Bidens campylotheca ssp. *waihoiensis*	*Bidens campylotheca* ssp. *waihoiensis.*
	Cyanea copelandii ssp. *haleakalaensis*	*Cyanea copelandii* ssp. *haleakalaensis.*
		Cyanea horrida.
	Melicope ovalis	*Melicope ovalis.*
		Phyllostegia bracteata.
		Phyllostegia haliakalae.
	Plantago princeps	*Plantago princeps.*
Maui—Wet Cliff—Unit 3		*Bidens campylotheca* ssp. *pentamera.*
		Bidens campylotheca ssp. *waihoiensis.*
		Cyanea copelandii ssp. *haleakalaensis.*
		Cyanea horrida.
		Melicope ovalis.
		Phyllostegia bracteata.
		Phyllostegia haliakalae.
		Plantago princeps.
Maui—Wet Cliff—Unit 4		*Bidens campylotheca* ssp. *pentamera.*
	Bidens campylotheca ssp. *waihoiensis*	*Bidens campylotheca* ssp. *waihoiensis.*
		Cyanea copelandii ssp. *haleakalaensis.*
		Cyanea horrida.
		Melicope ovalis.
		Phyllostegia bracteata.
		Phyllostegia haliakalae.
		Plantago princeps.
Maui—Wet Cliff—Unit 5		*Alectryon macrococcus.*
		Bidens campylotheca ssp. *pentamera.*
	Bidens conjuncta	*Bidens conjuncta.*
		Bonamia menziesii.
		Ctenitis squamigera.
		Cyanea glabra.
	Cyanea lobata	*Cyanea lobata.*
		Cyanea magnicalyx.
		Cyrtandra filipes.
	Cyrtandra munroi	*Cyrtandra munroi.*

(XXIX) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MAUI—Continued

Unit name	Species occupied	Species unoccupied
		Dubautia plantaginea ssp. *humilis*.
		Gouania vitifolia.
	Hesperomannia arborescens	*Hesperomannia arborescens*.
		Hesperomannia arbuscula.
		Isodendrion pyrifolium.
		Kadua laxiflora.
		Lysimachia lydgatei.
		Plantago princeps.
		Platanthera holochila.
		Pteris lidgatei.
		Remya mauiensis.
		Santalum haleakalae var. *lanaiense*.
		Tetramolopium capillare.
Maui—Wet Cliff—Unit 6	*Alectryon macrococcus*	*Alectryon macrococcus*.
		Bidens campylotheca ssp. *pentamera*.
	Bidens conjuncta	*Bidens conjuncta*.
		Bonamia menziesii.
	Ctenitis squamigera	*Ctenitis squamigera*.
		Cyanea glabra.
		Cyanea lobata.
	Cyanea magnicalyx	*Cyanea magnicalyx*.
	Cyrtandra filipes	*Cyrtandra filipes*.
	Cyrtandra munroi	*Cyrtandra munroi*.
	Dubautia plantaginea ssp. *humilis*	*Dubautia plantaginea* ssp. *humilis*.
		Gouania vitifolia.
	Hesperomannia arborescens	*Hesperomannia arborescens*.
		Hesperomannia arbuscula.
		Isodendrion pyrifolium.
	Kadua laxiflora	*Kadua laxiflora*.
	Lysimachia lydgatei	*Lysimachia lydgatei*.
	Plantago princeps	*Plantago princeps*.
	Platanthera holochila	*Platanthera holochila*.
	Pteris lidgatei	*Pteris lidgatei*.
	Remya mauiensis	*Remya mauiensis*.
	Santalum haleakalae var. *lanaiense*	*Santalum haleakalae* var. *lanaiense*.
		Tetramolopium capillare.
Maui—Wet Cliff—Unit 7	*Alectryon macrococcus*	*Alectryon macrococcus*.
		Bidens campylotheca ssp. *pentamera*.
		Bidens conjuncta.
	Bonamia menziesii	*Bonamia menziesii*.
	Ctenitis squamigera	*Ctenitis squamigera*.
		Cyanea glabra.
		Cyanea lobata.
		Cyanea magnicalyx.
	Cyrtandra filipes	*Cyrtandra filipes*.
	Cyrtandra munroi	*Cyrtandra munroi*.
		Dubautia plantaginea ssp. *humilis*.
		Gouania vitifolia.
		Hesperomannia arborescens.
		Hesperomannia arbuscula.
		Isodendrion pyrifolium.
		Kadua laxiflora.
		Lysimachia lydgatei.
		Plantago princeps.
	Platanthera holochila	*Platanthera holochila*.
		Pteris lidgatei.
		Remya mauiensis.
		Santalum haleakalae var. *lanaiense*.
		Tetramolopium capillare.
Maui—Wet Cliff—Unit 8		*Alectryon macrococcus*.
		Bidens campylotheca ssp. *pentamera*.
		Bidens conjuncta.
		Bonamia menziesii.
		Ctenitis squamigera.
		Cyanea glabra.
		Cyanea lobata.
		Cyanea magnicalyx.
	Cyrtandra filipes	*Cyrtandra filipes*.
		Cyrtandra munroi.
		Dubautia plantaginea ssp. *humilis*.
		Gouania vitifolia.
		Hesperomannia arborescens.

(XXIX) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MAUI—Continued

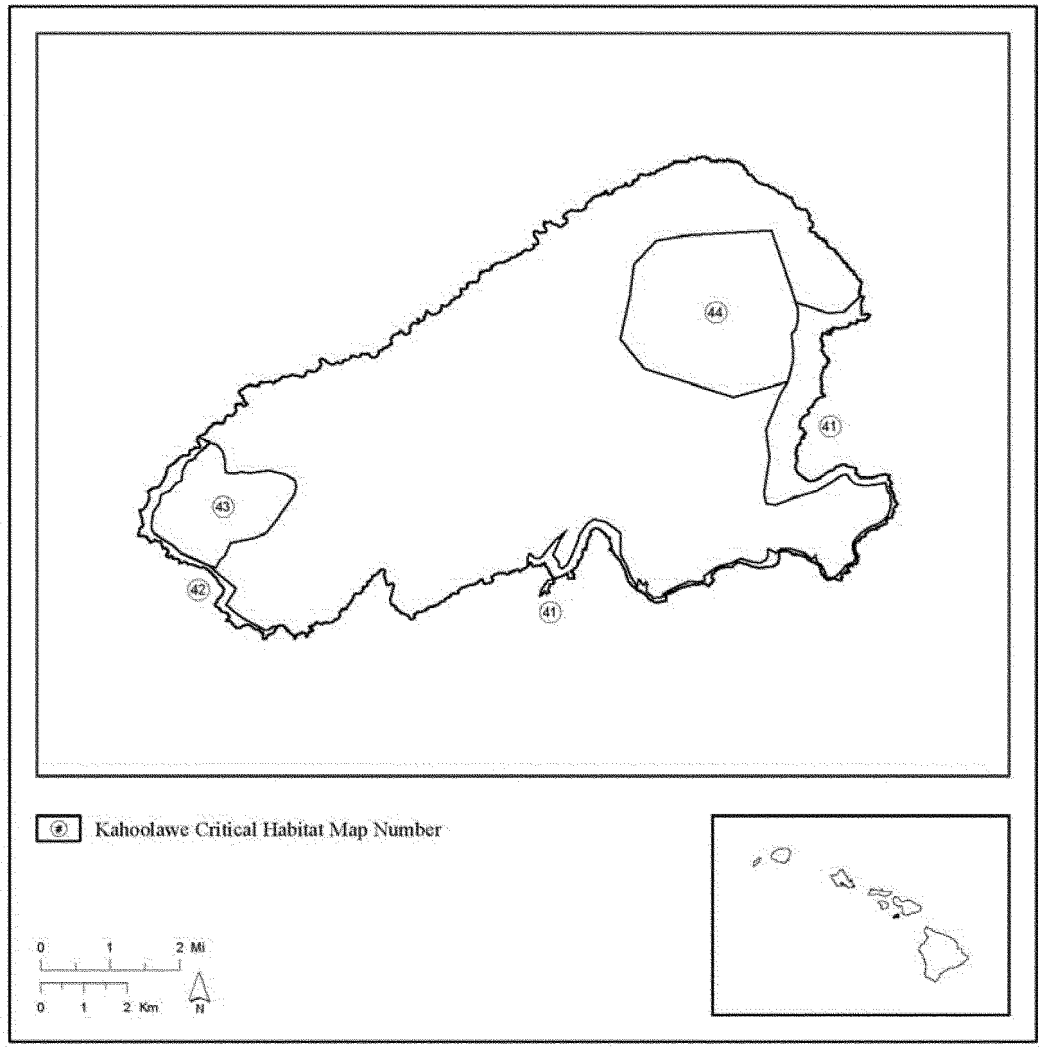
Unit name	Species occupied	Species unoccupied
		Hesperomannia arbuscula. *Isodendrion pyrifolium*. *Kadua laxiflora*. *Lysimachia lydgatei*. *Plantago princeps*. *Platanthera holochila*. *Pteris lidgatei*. *Remya mauiensis*. *Santalum haleakalae* var. *lanaiense*. *Tetramolopium capillare*.

(2) *Kahoolawe.* Critical habitat units are described below. Coordinates are in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the critical habitat units designated on the island of Kahoolawe. Existing manmade features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas, do not contain one or more of the physical and biological features. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species or physical or biological features in adjacent critical habitat.

(i) NOTE: Map 29, Kahoolawe Index Map, follows:

Map 29

Kahoolawe Critical Habitat–Island Index Map



(ii) Kahoolawe—Coastal—Unit 1 (1,515 ac, 613 ha) and Kahoolawe—Coastal—Unit 2 (12 ac, 5 ha)

(A) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Kanaloa kahoolawensis, Sesbania tomentosa,* and *Vigna o-wahuensis.*

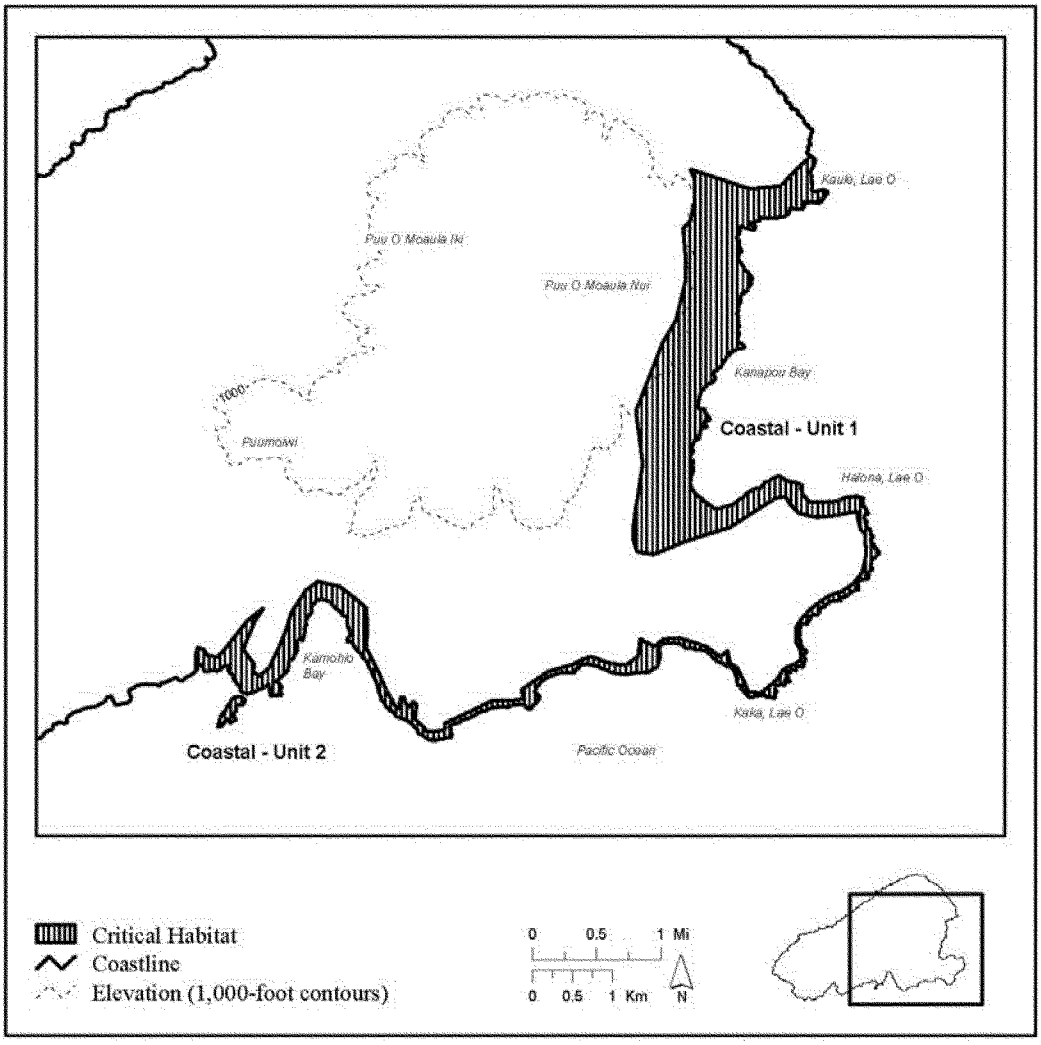
(B) [Reserved for textual description of Unit 2.] This unit is critical habitat for *Kanaloa kahoolawensis, Sesbania tomentosa,* and *Vigna o-wahuensis.*

(C) NOTE: Map of Kahoolawe—Coastal—Unit 1 and Kahoolawe—Coastal—Unit 2 (Map 30) follows:

Map 30

Kahoolawe–Coastal

Unit 1 and Unit 2



(iii) Kahoolawe—Coastal—Unit 3 (339 ac, 137 ha)

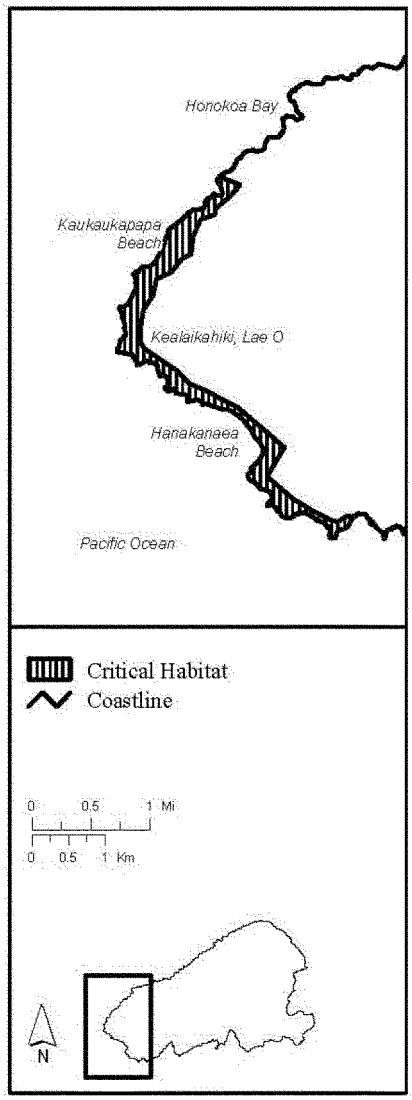
(A) [Reserved for textual description of Unit 3.] This unit is critical habitat for *Kanaloa kahoolawensis, Sesbania tomentosa,* and *Vigna o-wahuensis.*

(B) NOTE: Map of Kahoolawe—Coastal—Unit 3 (Map 31) follows:

Map 31

Kahoolawe–Coastal

Unit 3



(iv) Kahoolawe—Lowland Dry—Unit 1 (1,380 ac, 559 ha)

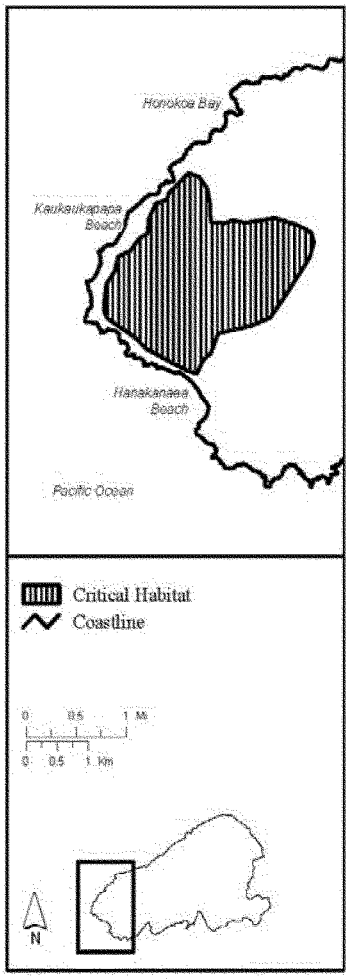
(A) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Gouania hillebrandii, Hibiscus brackenridgei, Kanaloa kahoolawensis, Neraudia sericea, Sesbania tomentosa,* and *Vigna o-wahuensis.*

(B) NOTE: Map of Kahoolawe—Lowland Dry—Unit 1 (Map 32) follows:

Map 32

Kahoolawe–Lowland Dry

Unit 1



(v) Kahoolawe—Lowland Dry—Unit 2 (3,205 ac, 1,297 ha)

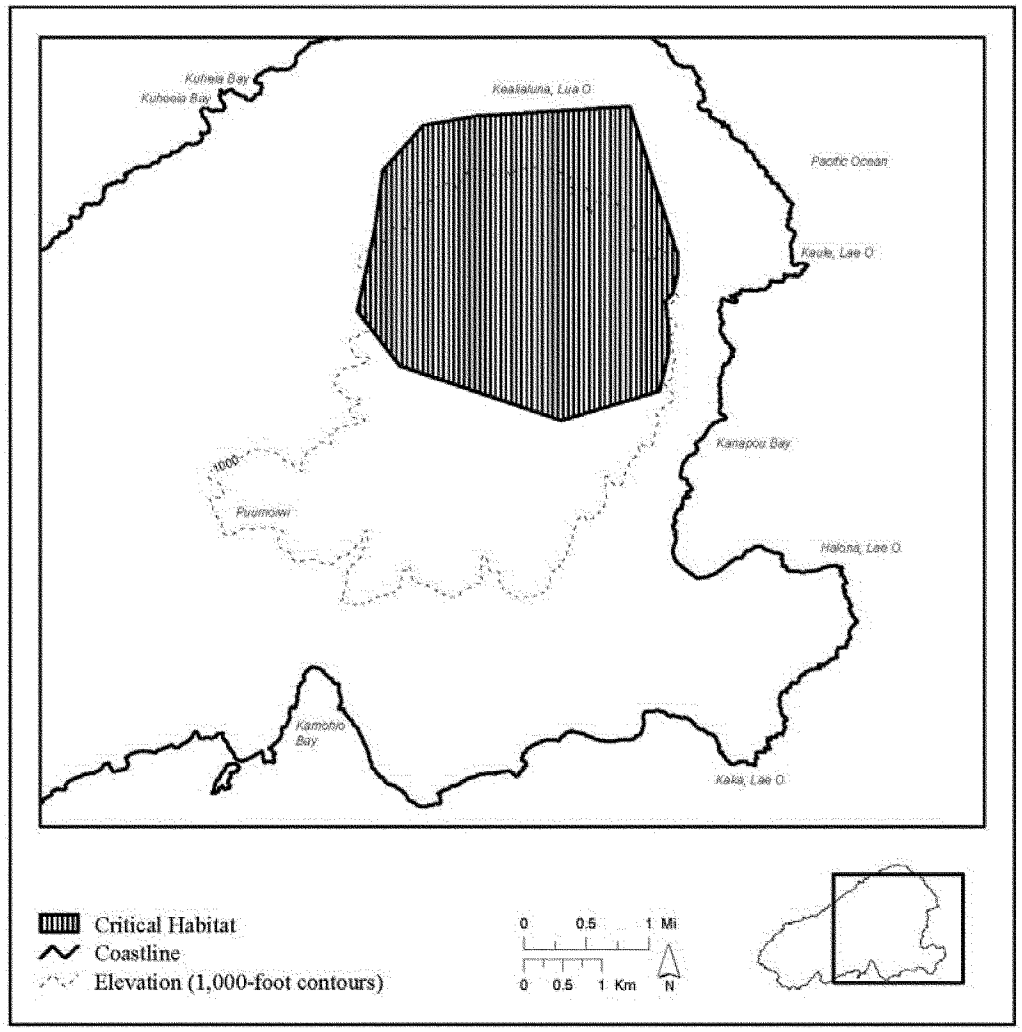
(A) [Reserved for textual description of Unit 2.] This unit is critical habitat for *Gouania hillebrandii, Hibiscus brackenridgei, Kanaloa kahoolawensis, Neraudia sericea, Sesbania tomentosa,* and *Vigna o-wahuensis.*

(B) NOTE: Map of Kahoolawe—Lowland Dry—Unit 2 (Map 33) follows:

Map 33

Kahoolawe–Lowland Dry

Unit 2



(VI) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAHOOLAWE

Unit name	Species occupied	Species unoccupied
Kahoolawe—Coastal—Unit 1	*Kanaloa kahoolawensis*	*Kanaloa kahoolawensis.* *Sesbania tomentosa.* *Vigna o-wahuensis.*
Kahoolawe—Coastal—Unit 2	*Sesbania tomentosa*	*Kanaloa kahoolawensis.* *Sesbania tomentosa.* *Vigna o-wahuensis.*
Kahoolawe—Coastal—Unit 3		*Kanaloa kahoolawensis.* *Sesbania tomentosa.* *Vigna o-wahuensis.*
Kahoolawe—Lowland Dry—Unit 1		*Gouania hillebrandii.* *Hibiscus brackenridgei.* *Kanaloa kahoolawensis.* *Neraudia sericea.* *Sesbania tomentosa.* *Vigna o-wahuensis.*
Kahoolawe—Lowland Dry—Unit 2		*Gouania hillebrandii.* *Hibiscus brackenridgei.* *Kanaloa kahoolawensis.*

(VI) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAHOOLAWE—Continued

Unit name	Species occupied	Species unoccupied
		Neraudia sericea. *Sesbania tomentosa.* *Vigna o-wahuensis.*

(f) *Plants on Maui and Kahoolawe; Constituent elements.*

(1) *Flowering plants.*

Family Amaranthaceae

Nototrichium humile (KULUI)

Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, and Maui—Lowland Dry—Unit 4, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Nototrichium humile* on Maui. In units Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, and Maui—Lowland Dry—Unit 4, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(v) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(vi) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Family Apiaceae

Peucedanum sandwicense (MAKOU)

Maui—Coastal—Unit 1, Maui—Coastal—Unit 2, Maui—Coastal—Unit 3, Maui—Coastal—Unit 4, Maui—Coastal—Unit 5, Maui—Coastal—Unit 6, Maui—Coastal—Unit 7, Maui—Coastal—Unit 8, Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Peucedanum sandwicense* on Maui.

(i) In units Maui—Coastal—Unit 1, Maui—Coastal—Unit 2, Maui—Coastal—Unit 3, Maui—Coastal—Unit 4, Maui—Coastal—Unit 5, Maui—Coastal—Unit 6, Maui—Coastal—Unit 7, and Maui—Coastal—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 980 ft (300 m).

(B) Annual precipitation: Less than 20 in (50 cm).

(C) Substrate: Well-drained, calcareous, talus slopes; weathered clay soils; ephemeral pools; mudflats.

(D) Canopy: *Hibiscus, Myoporum, Santalum, Scaevola.*

(E) Subcanopy: *Gossypium, Sida, Vitex.*

(F) Understory: *Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*

(ii) In units Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

Sanicula purpurea (NCN)

Maui—Montane Wet—Unit 6, Maui—Montane Wet—Unit 7, and Maui—Montane Wet—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Sanicula purpurea* on Maui. In units Maui—Montane Wet—Unit 6, Maui—Montane Wet—Unit 7, and Maui—Montane Wet—Unit 8, the physical and biological features of critical habitat are:

(i) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Greater than 75 in (190 cm).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(v) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(vi) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

Spermolepis hawaiiensis (NCN)

Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, Maui—Lowland Dry—Unit 4, Maui—Lowland Dry—Unit 5, and Maui—Lowland Dry—Unit 6, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Spermolepis hawaiiensis* on Maui. In units Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, Maui—Lowland Dry—Unit 4, Maui—Lowland Dry—Unit 5, and Maui—Lowland Dry—Unit 6, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(v) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(vi) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Family Asteraceae

Argyroxiphium sandwicense ssp. macrocephalum (AHINAHINA)

Maui—Montane Mesic—Unit 1, Maui—Subalpine—Unit 1, Maui—Subalpine—Unit 2, and Maui—Alpine—Unit 1, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Argyroxiphium sandwicense* ssp. *macrocephalum* on Maui.

(i) In unit Maui—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 15 to 40 in (38 to 100 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

(ii) In units Maui—Subalpine—Unit 1 and Maui—Subalpine—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: 6,500 to 9,800 ft (2,000 to 3,000 m).

(B) Annual precipitation: 15 to 40 in (38 to 100 cm).

(C) Substrate: Dry ash; sandy loam; rocky, undeveloped soils; weathered lava.

(D) Canopy: *Chamaesyce, Chenopodium, Metrosideros, Myoporum, Santalum, Sophora.*

(E) Subcanopy: *Coprosma, Dodonaea, Dubautia, Geranium, Leptecophylla, Vaccinium, Wikstroemia.*

(F) Understory: Ferns, *Bidens, Carex, Deschampsia, Eragrostis, Gahnia, Luzula, Panicum, Pseudognaphalium, Sicyos, Tetramolopium.*

(iii) In unit Maui—Alpine—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Greater than 9,800 ft (3,000 m).

(B) Annual precipitation: 30 to 50 in (75 to 125 cm).

(C) Substrate: Barren gravel, debris, cinders.

(D) Canopy: None.

(E) Subcanopy: *Argyroxiphium, Dubautia, Silene, Tetramolopium.*

(F) Understory: None.

Bidens campylotheca ssp. pentamera (KOOKOOLAU)

Maui—Lowland Dry—Unit 5, Maui—Lowland Dry—Unit 6, Maui—Lowland Mesic—Unit 2, Maui—Lowland Mesic—Unit 3, Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, Maui—Montane Wet—Unit 5, Maui—Montane Mesic—Unit 1, Maui—Dry Cliff—Unit 1, Maui—Dry Cliff—Unit 2, Maui—Dry Cliff—Unit 3, Maui—Dry Cliff—Unit 4, Maui—Wet Cliff—Unit 1, Maui—Wet Cliff—Unit 2, Maui—Wet Cliff—Unit 3, Maui—Wet Cliff—Unit 4, Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Bidens campylotheca* ssp. *pentamera* on Maui.

(i) In units Maui—Lowland Dry—Unit 5 and Maui—Lowland Dry—Unit 6, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

(ii) In units Maui—Lowland Mesic—Unit 2 and Maui—Lowland Mesic—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(iii) In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iv) In unit Maui—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

(v) In units Maui—Dry Cliff—Unit 1, Maui—Dry Cliff—Unit 2, Maui—Dry Cliff—Unit 3, and Maui—Dry Cliff—Unit 4, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Less than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, rocky talus.

(D) Canopy: None.

(E) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*

(F) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

(vi) In units Maui—Wet Cliff—Unit 1, Maui—Wet Cliff—Unit 2, Maui—Wet Cliff—Unit 3, Maui—Wet Cliff—Unit 4, Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Bidens campylotheca ssp. waihoiensis (KOOKOOLAU)

Maui—Lowland Wet—Unit 1, Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, Maui—Montane Wet—Unit 5, Maui—Wet Cliff—Unit 1, Maui—Wet Cliff—Unit 2, Maui—Wet Cliff—Unit 3, and Maui—Wet Cliff—Unit 4, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Bidens campylotheca* ssp. *waihoiensis* on Maui.

(i) In unit Maui—Lowland Wet—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, and the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iii) In units Maui—Wet Cliff—Unit 1, Maui—Wet Cliff—Unit 2, Maui—Wet Cliff—Unit 3, and Maui—Wet Cliff—Unit 4, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Bidens conjuncta (KOOKOOLAU)

Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, Maui—Montane Wet—Unit 6, Maui—Montane Wet—Unit 7, Maui—Montane Wet—Unit 8, Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Bidens conjuncta* on Maui.

(i) In units Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Maui—Montane Wet—Unit 6, Maui—Montane Wet—Unit 7, and Maui—Montane Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iii) In units Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Bidens micrantha ssp. kalealaha (KOOKOOLAU)

Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, Maui—Lowland Dry—Unit 4, Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, Maui—Montane Mesic—Unit 1, Maui—Subalpine—Unit 1, and Maui—Subalpine—Unit 2, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Bidens micrantha* ssp. *kalealaha* on Maui.

(i) In units Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, and Maui—Lowland Dry—Unit 4, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

(ii) In units Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iii) In unit Maui—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

(iv) In units Maui—Subalpine—Unit 1 and Maui—Subalpine—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: 6,500 to 9,800 ft (2,000 to 3,000 m).

(B) Annual precipitation: 15 to 40 in (38 to 100 cm).

(C) Substrate: Dry ash; sandy loam; rocky, undeveloped soils; weathered lava.

(D) Canopy: *Chamaesyce, Chenopodium, Metrosideros, Myoporum, Santalum, Sophora.*

(E) Subcanopy: *Coprosma, Dodonaea, Dubautia, Geranium, Leptecophylla, Vaccinium, Wikstroemia.*

(F) Understory: Ferns, *Bidens, Carex, Deschampsia, Eragrostis, Gahnia, Luzula, Panicum, Pseudognaphalium, Sicyos, Tetramolopium.*

Dubautia plantaginea ssp. humilis (NAENAE)

Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, identified

in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Dubautia plantaginea* ssp. *humilis* on Maui. In units Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, the physical and biological features of critical habitat are:

(i) Elevation: Unrestricted.

(ii) Annual precipitation: Greater than 75 in (190 cm).

(iii) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(iv) Canopy: None.

(v) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(vi) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Hesperomannia arborescens (NCN)

Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Hesperomannia arborescens* on Maui.

(i) In units Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Hesperomannia arbuscula (NCN)

Maui—Lowland Dry—Unit 5, Maui—Lowland Dry—Unit 6, Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, Maui—Dry Cliff—Unit 5, Maui—Dry Cliff—Unit 6, Maui—Dry Cliff—Unit 7, Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Hesperomannia arbuscula* on Maui.

(i) In units Maui—Lowland Dry—Unit 5 and Maui—Lowland Dry—Unit 6, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

(ii) In units Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iii) In units Maui—Dry Cliff—Unit 5, Maui—Dry Cliff—Unit 6, and Maui—Dry Cliff—Unit 7, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Less than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, rocky talus.

(D) Canopy: None.

(E) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*

(F) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

(iv) In units Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Melanthera kamolensis (NEHE)

Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, and Maui—Lowland Dry—Unit 4, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Melanthera kamolensis* on Maui. In units Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, and Maui—Lowland Dry—Unit 4, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(v) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(vi) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Remya mauiensis (MAUI REMYA)

Maui—Lowland Dry—Unit 5, Maui—Lowland Dry—Unit 6, Maui—Lowland Mesic—Unit 2, Maui—Lowland Mesic—Unit 3, Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, Maui—Montane Mesic—Unit 2, Maui—Montane Mesic—Unit 3, Maui—Montane Mesic—Unit 4, Maui—Montane Mesic—Unit 5, Maui—Montane Mesic—Unit 6, Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—

Wet Cliff—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Remya mauiensis* on Maui.

(i) In units Maui—Lowland Dry—Unit 5 and Maui—Lowland Dry—Unit 6, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

(ii) In units Maui—Lowland Mesic—Unit 2 and Maui—Lowland Mesic—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(iii) In units Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iv) In units Maui—Montane Mesic—Unit 2, Maui—Montane Mesic—Unit 3, Maui—Montane Mesic—Unit 4, Maui—Montane Mesic—Unit 5, and Maui—Montane Mesic—Unit 6, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

(v) In units Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Tetramolopium capillare (PAMAKANI)

Maui—Lowland Dry—Unit 5, Maui—Lowland Dry—Unit 6, Maui—Dry Cliff—Unit 5, Maui—Dry Cliff—Unit 6, Maui—Dry Cliff—Unit 7, Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Tetramolopium capillare* on Maui.

(i) In units Maui—Lowland Dry—Unit 5 and Maui—Lowland Dry—Unit 6, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

(ii) In units Maui—Dry Cliff—Unit 5, Maui—Dry Cliff—Unit 6, and Maui—Dry Cliff—Unit 7, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Less than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, rocky talus.

(D) Canopy: None.

(E) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*

(F) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

(iii) In units Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Tetramolopium remyi (NCN)

Maui—Lowland Dry—Unit 5 and Maui—Lowland Dry—Unit 6, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Tetramolopium remyi* on Maui. In units Maui—Lowland Dry—Unit 5 and Maui—Lowland Dry—Unit 6, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(v) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(vi) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Family Campanulaceae

Brighamia rockii (PUA ALA)

Maui—Coastal—Unit 1, Maui—Coastal—Unit 2, Maui—Coastal—Unit 3, Maui—Coastal—Unit 4, Maui—Coastal—Unit 5, Maui—Coastal—Unit 6, Maui—Coastal—Unit 7, Maui—Coastal—Unit 8, Maui—Coastal—Unit 9, Maui—Coastal—Unit 10, and Maui—Coastal—Unit 11, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Brighamia rockii* on Maui. In units Maui—Coastal—Unit 1, Maui—Coastal—Unit 2, Maui—Coastal—Unit 3, Maui—Coastal—Unit 4, Maui—Coastal—Unit 5, Maui—Coastal—Unit 6,

Maui—Coastal—Unit 7, Maui—Coastal—Unit 8, Maui—Coastal—Unit 9, Maui—Coastal—Unit 10, and Maui—Coastal—Unit 11, the physical and biological features of critical habitat are:

(i) Elevation: Less than 980 ft (300 m).

(ii) Annual precipitation: Less than 20 in (50 cm).

(iii) Substrate: Well-drained, calcareous, talus slopes; weathered clay soils; ephemeral pools; mudflats.

(iv) Canopy: *Hibiscus, Myoporum, Santalum, Scaevola.*

(v) Subcanopy: *Gossypium, Sida, Vitex.*

(vi) Understory: *Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*

Clermontia lindseyana (OHA WAI)

Maui—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (e)(1) of this section, constitutes critical habitat for *Clermontia lindseyana* on Maui. In unit Maui—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(i) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(ii) Annual precipitation: 50 to 75 in (130 to 190 cm).

(ii) Substrate: Deep ash deposits, thin silty loams.

(iv) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(v) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(vi) Understory: Ferns, *Carex, Peperomia.*

Clermontia oblongifolia ssp. *mauiensis* (OHA WAI)

Maui—Lowland Wet—Unit 1, Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Clermontia oblongifolia* ssp. *mauiensis* on Maui.

(i) In units Maui—Lowland Wet—Unit 1, Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

Clermontia peleana (OHA WAI)

Maui—Lowland Wet—Unit 1, identified in the legal descriptions in paragraph (e)(1) of this section, constitutes critical habitat for *Clermontia peleana* on Maui. In unit Maui—Lowland Wet—Unit 1, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Greater than 75 in (190 cm).

(iii) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(iv) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(v) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(vi) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

Clermontia samuelii (OHA WAI)

Maui—Lowland Wet—Unit 1, Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Clermontia samuelii* on Maui.

(i) In unit Maui—Lowland Wet—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

Cyanea asplenifolia (HAHA)

Maui—Lowland Mesic—Unit 1, Maui—Lowland Wet—Unit 1, Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyanea asplenifolia* on Maui.

(i) In unit Maui—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Maui—Lowland Wet—Unit 1, Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the

physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

Cyanea copelandii ssp. *haleakalaensis* (HAHA)

Maui—Lowland Mesic—Unit 1, Maui—Lowland Wet—Unit 1, Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, Maui—Montane Wet—Unit 5, Maui—Wet Cliff—Unit 1, Maui—Wet Cliff—Unit 2, Maui—Wet Cliff—Unit 3, and Maui—Wet Cliff—Unit 4, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyanea copelandii* ssp. *haleakalaensis* on Maui.

(i) In unit Maui—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In unit Maui—Lowland Wet—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iii) In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iv) In units Maui—Wet Cliff—Unit 1, Maui—Wet Cliff—Unit 2, Maui—Wet Cliff—Unit 3, and Maui—Wet Cliff—Unit 4, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Cyanea duvalliorum (HAHA)

Maui—Lowland Wet—Unit 1, Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyanea duvalliorum* on Maui.

(i) In unit Maui—Lowland Wet—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

Cyanea glabra (HAHA)

Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, Maui—Montane Wet—Unit 5, Maui—Montane Mesic—Unit 1, Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyanea glabra* on Maui.

(i) In units Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iii) In unit Maui—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

(iv) In units Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Cyanea hamatiflora ssp. *hamatiflora* (HAHA)

Maui—Lowland Wet—Unit 1, Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, Maui—Montane Wet—Unit 5, and Maui—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyanea hamatiflora* ssp. *hamatiflora* on Maui.

(i) In unit Maui—Lowland Wet—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iii) In unit Maui—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

Cyanea horrida (HAHA)

Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, Maui—Montane Wet—Unit 5, Maui—Montane Mesic—Unit 1, Maui—Wet Cliff—Unit 1, Maui—Wet Cliff—Unit 2, Maui—Wet Cliff—Unit 3, and Maui—Wet Cliff—Unit 4, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyanea horrida* on Maui.

(i) In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(ii) In unit Maui—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

(iii) In units Maui—Wet Cliff—Unit 1, Maui—Wet Cliff—Unit 2, Maui—Wet Cliff—Unit 3, and Maui—Wet Cliff—Unit 4, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Cyanea kunthiana (HAHA)

Maui—Lowland Wet—Unit 1, Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, Maui—Montane Wet—Unit 5, Maui—Montane Wet—Unit 6, Maui—Montane Wet—Unit 7, Maui—Montane Wet—Unit 8, and Maui—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyanea kunthiana* on Maui.

(i) In units Maui—Lowland Wet—Unit 1, Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2,

Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, Maui—Montane Wet—Unit 5, Maui—Montane Wet—Unit 6, Maui—Montane Wet—Unit 7, and Maui—Montane Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iii) In unit Maui—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

Cyanea lobata (HAHA)

Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyanea lobata* ssp. *lobata* on Maui.

(i) In units Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Cyanea magnicalyx (HAHA)

Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, Maui—Montane Mesic—Unit 2, Maui—Montane Mesic—Unit 3, Maui—Montane Mesic—Unit 4, Maui—Montane Mesic—Unit 5, Maui—Montane Mesic—Unit 6, Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyanea magnicalyx* on Maui.

(i) In units Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Maui—Montane Mesic—Unit 2, Maui—Montane Mesic—Unit 3, Maui—Montane Mesic—Unit 4, Maui—Montane Mesic—Unit 5, and Maui—Montane Mesic—Unit 6, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

(iii) In units Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Cyanea maritae (HAHA)

Maui—Lowland Wet—Unit 1, Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyanea maritae* on Maui.

(i) In unit Maui—Lowland Wet—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

Cyanea mceldowneyi (HAHA)

Maui—Lowland Wet—Unit 1, Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, Maui—Montane Wet—Unit 5, and Maui—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyanea mceldowneyi* on Maui.

(i) In unit Maui—Lowland Wet—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iii) In unit Maui—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

Cyanea obtusa (HAHA)

Maui—Lowland Dry—Unit 5, Maui—Lowland Dry—Unit 6, and Maui—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyanea obtusa* on Maui.

(i) In units Maui—Lowland Dry—Unit 5 and Maui—Lowland Dry—Unit 6, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

(ii) In unit Maui—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

Family Caryophyllaceae

Schiedea haleakalensis (NCN)

Maui—Subalpine—Unit 1, Maui—Subalpine—Unit 2, Maui—Dry Cliff—Unit 1, Maui—Dry Cliff—Unit 2, Maui—Dry Cliff—Unit 3, and Maui—Dry Cliff—Unit 4, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Schiedea haleakalensis* on Maui.

(i) In units Maui—Subalpine—Unit 1 and Maui—Subalpine—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: 6,500 to 9,800 ft (2,000 to 3,000 m).

(B) Annual precipitation: 15 to 40 in (38 to 100 cm).

(C) Substrate: Dry ash; sandy loam; rocky, undeveloped soils; weathered lava.

(D) Canopy: *Chamaesyce, Chenopodium, Metrosideros, Myoporum, Santalum, Sophora.*

(E) Subcanopy: *Coprosma, Dodonaea, Dubautia, Geranium, Leptecophylla, Vaccinium, Wikstroemia.*

(F) Understory: Ferns, *Bidens, Carex, Deschampsia, Eragrostis, Gahnia, Luzula, Panicum, Pseudognaphalium, Sicyos, Tetramolopium.*

(ii) In units Maui—Dry Cliff—Unit 1, Maui—Dry Cliff—Unit 2, Maui—Dry Cliff—Unit 3, and Maui—Dry Cliff—Unit 4, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Less than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, rocky talus.

(D) Canopy: None.

(E) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*

(F) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

Schiedea jacobii (NCN)

Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Schiedea jacobii* on Maui. In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, the physical and biological features of critical habitat are:

(i) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Greater than 75 in (190 cm).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(v) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(vi) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

Schiedea salicaria (NCN)

Maui—Lowland Dry—Unit 5 and Maui—Lowland Dry—Unit 6, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Schiedea salicaria* on Maui. In units Maui—Lowland Dry—Unit 5 and Maui—Lowland Dry—Unit 6, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(v) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(vi) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Family Convolvulaceae

Bonamia menziesii (NCN)

Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, Maui—Lowland Dry—Unit 4, Maui—Dry Cliff—Unit 5, Maui—Dry Cliff—Unit 6, Maui—Dry Cliff—Unit 7, Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitutes critical habitat for *Bonamia menziesii* on Maui.

(i) In units Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, and Maui—Lowland Dry—Unit 4, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

(ii) In units Maui—Dry Cliff—Unit 5, Maui—Dry Cliff—Unit 6, and Maui—Dry Cliff—Unit 7, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Less than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, rocky talus.

(D) Canopy: None.

(E) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*

(F) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

(iii) In units Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Family Cyperaceae

Cyperus pennatiformis (NCN)

Maui—Coastal—Unit 1, Maui—Coastal—Unit 2, Maui—Coastal—Unit 3, Maui—Coastal—Unit 4, Maui—Coastal—Unit 5, Maui—Coastal—Unit 6, Maui—Coastal—Unit 7, and Maui—Coastal—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyperus pennatiformis* ssp. *pennatiformis* on Maui.In units Maui—Coastal—Unit 1, Maui—Coastal—Unit 2, Maui—Coastal—Unit 3, Maui—Coastal—Unit 4, Maui—Coastal—Unit 5, Maui—Coastal—Unit 6, Maui—Coastal—Unit 7, and Maui—Coastal—Unit 8, the physical and biological features of critical habitat are:

(i) Elevation: Less than 980 ft (300 m).

(ii) Annual precipitation: Less than 20 in (50 cm).

(iii) Substrate: Well-drained, calcareous, talus slopes; weathered clay soils; ephemeral pools; mudflats.

(iv) Canopy: *Hibiscus, Myoporum, Santalum, Scaevola.*

(v) Subcanopy: *Gossypium, Sida, Vitex.*

(vi) Understory: *Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*

Family Euphorbiaceae

Flueggea neowawraea (MEHAMEHAME)

Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, and Maui—Lowland Dry—Unit 4, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Flueggea neowawraea* on Maui. In units Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, and Maui—Lowland Dry—Unit 4, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(v) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(vi) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Family Fabaceae

Canavalia pubescens (AWIKIWIKI)

Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, and Maui—Lowland Dry—Unit 4, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Canavalia pubescens* on Maui. In units Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, Maui—Lowland Dry—Unit 4, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(v) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(vi) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Kanaloa kahoolawensis (KOHE MALAMA MALAMA O KANALOA)

Kahoolawe—Coastal—Unit 1, Kahoolawe—Coastal—Unit 2, Kahoolawe—Coastal—Unit 3, Kahoolawe—Lowland Dry—Unit 1, and Kahoolawe—Lowland Dry—Unit 2, identified in the legal descriptions in paragraph (e)(2) of this section, constitute critical habitat for *Kanaloa kahoolawensis* on Kahoolawe.

(i) In units Kahoolawe—Coastal—Unit 1, Kahoolawe—Coastal—Unit 2, and Kahoolawe—Coastal—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 980 ft (300 m).

(B) Annual precipitation: Less than 20 in (50 cm).

(C) Substrate: Well-drained, calcareous, talus slopes; weathered clay soils; ephemeral pools; mudflats.

(D) Canopy: *Hibiscus, Myoporum, Santalum, Scaevola.*

(E) Subcanopy: *Gossypium, Sida, Vitex.*

(F) Understory: *Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*

(ii) In units Kahoolawe—Lowland Dry—Unit 1 and Kahoolawe—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Mucuna sloanei var. *persericea* (SEA BEAN)

Maui—Lowland Wet—Unit 1, identified in the legal descriptions in paragraph (e)(1) of this section, constitutes critical habitat for *Mucuna sloanei* var. *persericea* on Maui. In unit Maui—Lowland Wet—Unit 1, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii Annual precipitation: Greater than 75 in (190 cm).

(iii) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(iv) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(v) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(vi) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

Sesbania tomentosa (OHAI)

Maui—Coastal—Unit 9, Maui—Coastal—Unit 10, Maui—Coastal—Unit 11, Kahoolawe—Coastal—Unit 1, Kahoolawe—Coastal—Unit 2, Kahoolawe—Coastal—Unit 3, Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, Maui—Lowland Dry—Unit 4, Maui—Lowland Dry—Unit 5, Maui—Lowland Dry—Unit 6, Kahoolawe—Lowland Dry—Unit 1, and Kahoolawe—Lowland Dry—Unit 2, identified in the legal descriptions in paragraphs (e)(1) and (e)(2) of this section, constitute critical habitat for *Sesbania tomentosa* on Maui and Kahoolawe.

(i) In units Maui—Coastal—Unit 9, Maui—Coastal—Unit 10, Maui—Coastal—Unit 11, Kahoolawe—Coastal—Unit 1, Kahoolawe—Coastal—Unit 2, and Kahoolawe—Coastal—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 980 ft (300 m).

(B) Annual precipitation: Less than 20 in (50 cm).

(C) Substrate: Well-drained, calcareous, talus slopes; weathered clay soils, ephemeral pools; mudflats.

(D) Canopy: *Hibiscus, Myoporum, Santalum, Scaevola.*

(E) Subcanopy: *Gossypium, Sida, Vitex.*

(F) Understory: *Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*

(ii) In units Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, Maui—Lowland Dry—Unit 4, Maui—Lowland Dry—Unit 5, Maui—Lowland Dry—Unit 6, Kahoolawe—Lowland Dry—Unit 1, and Kahoolawe—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Vigna o-wahuensis (NCN)

Maui—Coastal—Unit 1, Maui—Coastal—Unit 2, Maui—Coastal—Unit 3, Maui—Coastal—Unit 4, Maui—Coastal—Unit 5, Maui—Coastal—Unit 6, Maui—Coastal—Unit 7, Maui—Coastal—Unit 8, Kahoolawe—Coastal—Unit 1, Kahoolawe—Coastal—Unit 2, Kahoolawe—Coastal—Unit 3, Kahoolawe—Lowland Dry—Unit 1, and Kahoolawe—Lowland Dry—Unit 2, identified in the legal descriptions in paragraphs (e)(1) and (e)(2) of this section, constitute critical habitat for *Sesbania tomentosa* on Maui and Kahoolawe.

(i) In units Maui—Coastal—Unit 1, Maui—Coastal—Unit 2, Maui—Coastal—Unit 3, Maui—Coastal—Unit 4, Maui—Coastal—Unit 5, Maui—Coastal—Unit 6, Maui—Coastal—Unit 7, Maui—Coastal—Unit 8, Kahoolawe—Coastal—Unit 1, Kahoolawe—Coastal—Unit 2, and Kahoolawe—Coastal—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 980 ft (300 m).

(B) Annual precipitation: Less than 20 in (50 cm).

(C) Substrate: Well-drained, calcareous, talus slopes; weathered clay soils; ephemeral pools; mudflats.

(D) Canopy: *Hibiscus, Myoporum, Santalum, Scaevola.*

(E) Subcanopy: *Gossypium, Sida, Vitex.*

(F) Understory: *Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*

(ii) In units Kahoolawe—Lowland Dry—Unit 1 and Kahoolawe—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Family Gentianaceae

Schenkia sebaeoides (AWIWI)

Maui—Coastal—Unit 9, Maui—Coastal—Unit 10, and Maui—Coastal—Unit 11, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Schenkia sebaeoides* on Maui. In units Maui—Coastal—Unit 9, Maui—Coastal—Unit 10, and Maui—Coastal—Unit 11, the physical and biological features of critical habitat are:

(i) Elevation: Less than 980 ft (300 m).

(ii) Annual precipitation: Less than 20 in (50 cm).

(iii) Substrate: Well-drained, calcareous, talus slopes, weathered clay soils, ephemeral pools, mudflats.

(iv) Canopy: *Hibiscus, Myoporum, Santalum, Scaevola.*

(v) Subcanopy: *Gossypium, Sida, Vitex.*

(vi) Understory: *Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*

Family Geraniaceae

Geranium arboreum (HAWAIIAN RED-FLOWERED GERANIUM)

Maui—Montane Mesic—Unit 1, Maui—Montane Dry—Unit 1, Maui—Subalpine—Unit 1, and Maui—Subalpine—Unit 2, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Geranium arboreum* on Maui.

(i) In unit Maui—Montane Mesic—Unit 1; the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 15 to 40 in (38 to 100 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

(ii) In unit Maui—Montane Dry—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Dry cinder or ash soils, loamy volcanic sands, blocky lava, rock outcroppings.

(D) Canopy: *Acacia, Metrosideros, Myoporum, Santalum, Sophora.*

(E) Subcanopy: *Chamaesyce, Coprosma, Dodonaea, Dubautia, Leptecophylla, Osteomeles, Wikstroemia.*

(F) Understory: *Bidens, Eragrostis, Melanthera, Vaccinium.*

(iii) In units Maui—Subalpine—Unit 1 and Maui—Subalpine—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: 6,500 to 9,800 ft (2,000 to 3,000 m).

(B) Annual precipitation: 15 to 40 in (38 to 100 cm).

(C) Substrate: Dry ash; sandy loam; rocky, undeveloped soils; weathered lava.

(D) Canopy: *Chamaesyce, Chenopodium, Metrosideros, Myoporum, Santalum, Sophora.*

(E) Subcanopy: *Coprosma, Dodonaea, Dubautia, Geranium, Leptecophylla, Vaccinium, Wikstroemia.*

(F) Understory: Ferns, *Bidens, Carex, Deschampsia, Eragrostis, Gahnia, Luzula, Panicum, Pseudognaphalium, Sicyos, Tetramolopium.*

Geranium hanaense (NOHOANU)

Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Geranium hanaense* on Maui. In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, the physical and biological features of critical habitat are:

(i) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Greater than 75 in (190 cm).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(v) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(vi) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

Geranium hillebrandii (NOHOANU)

Maui—Montane Wet—Unit 6, Maui—Montane Wet—Unit 7, Maui—Montane Wet—Unit 8, Maui—Montane Mesic—Unit 2, Maui—Montane Mesic—Unit 3, Maui—Montane Mesic—Unit 4, Maui—Montane Mesic—Unit 5, and Maui—Montane Mesic—Unit 6, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Geranium hillebrandii* on Maui.

(i) In units Maui—Montane Wet—Unit 6, Maui—Montane Wet—Unit 7, and Maui—Montane Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(ii) In units Maui—Montane Mesic—Unit 2, Maui—Montane Mesic—Unit 3, Maui—Montane Mesic—Unit 4, Maui—Montane Mesic—Unit 5, and Maui—Montane Mesic—Unit 6, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

Geranium multiflorum (NOHOANU)

Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, Maui—Montane Wet—Unit 5, Maui—Montane Mesic—Unit 1, Maui—Subalpine—Unit 1, and Maui—Subalpine—Unit 2, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Geranium multiflorum* on Maui.

(i) In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(ii) In unit Maui—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

(iii) In units Maui—Subalpine—Unit 1 and Maui—Subalpine—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: 6,500 to 9,800 ft (2,000 to 3,000 m).

(B) Annual precipitation: 15 to 40 in (38 to 100 cm).

(C) Substrate: Dry ash; sandy loam; rocky, undeveloped soils; weathered lava.

(D) Canopy: *Chamaesyce, Chenopodium, Metrosideros, Myoporum, Santalum, Sophora.*

(E) Subcanopy: *Coprosma, Dodonaea, Dubautia, Geranium, Leptecophylla, Vaccinium, Wikstroemia.*

(F) Understory: Ferns, *Bidens, Carex, Deschampsia, Eragrostis, Gahnia, Luzula, Panicum, Pseudognaphalium, Sicyos, Tetramolopium.*

Family Gesneriaceae

Cyrtandra ferripilosa (HAIWALE)

Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, Maui—Montane Wet—Unit 5, and Maui—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyrtandra ferripilosa* on Maui.

(i) In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, Maui—Montane Wet—Unit 5; the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(ii) In unit Maui—Montane Mesic—Unit 1; the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla Vaccinium.*

(F) Understory: *Carex,* ferns, *Peperomia.*

Cyrtandra filipes (HAIWALE)

Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyrtandra filipes* on Maui.

(i) In units Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Cyrtandra munroi (HAIWALE)

Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyrtandra munroi* on Maui.

(i) In units Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Cyrtandra oxybapha (HAIWALE)

Maui—Montane Wet—Unit 6, Maui—Montane Wet—Unit 7, Maui—Montane Wet—Unit 8, and Maui—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyrtandra oxybapha* on Maui.

(i) In units Maui—Montane Wet—Unit 6, Maui—Montane Wet—Unit 7, and Maui—Montane Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(ii) In unit Maui—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

Family Lamiaceae

Phyllostegia bracteata (NCN)

Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, Maui—Montane Wet—Unit 5, Maui—Montane Wet—Unit 6, Maui—Montane Wet—Unit 7, Maui—Montane Wet—Unit 8, Maui—Montane Mesic—Unit 1, Maui—Subalpine—Unit 1, Maui—Subalpine—Unit 2, Maui—Wet Cliff—Unit 1, Maui—Wet Cliff—Unit 2, Maui—Wet Cliff—Unit 3, and Maui—Wet Cliff—

Unit 4, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Phyllostegia bracteata* on Maui.

(i) In units Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, Maui—Montane Wet—Unit 5, Maui—Montane Wet—Unit 6, Maui—Montane Wet—Unit 7, and Maui—Montane Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iii) In unit Maui—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

(iv) In units Maui—Subalpine—Unit 1 and Maui—Subalpine—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: 6,500 to 9,800 ft (2,000 to 3,000 m).

(B) Annual precipitation: 15 to 40 in (38 to 100 cm).

(C) Substrate: Dry ash; sandy loam; rocky, undeveloped soils; weathered lava.

(D) Canopy: *Chamaesyce, Chenopodium, Metrosideros, Myoporum, Santalum, Sophora.*

(E) Subcanopy: *Coprosma, Dodonaea, Dubautia, Geranium, Leptecophylla, Vaccinium, Wikstroemia.*

(F) Understory: *Bidens, Carex, Deschampsia, Eragrostis, ferns, Gahnia, Luzula, Panicum, Pseudognaphalium, Sicyos, Tetramolopium.*

(v) In units Maui—Wet Cliff—Unit 1, Maui—Wet Cliff—Unit 2, Maui—Wet Cliff—Unit 3, and Maui—Wet Cliff—Unit 4, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Phyllostegia haliakalae (NCN)

Maui—Wet Cliff—Unit 1, Maui—Wet Cliff—Unit 2, Maui—Wet Cliff—Unit 3, and Maui—Wet Cliff—Unit 4, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Phyllostegia haliakalae* on Maui. In units Maui—Wet Cliff—Unit 1, Maui—Wet Cliff—Unit 2, Maui—Wet Cliff—Unit 3, and Maui—Wet Cliff—Unit 4, the physical and biological features of critical habitat are:

(i) Elevation: Unrestricted.

(ii) Annual precipitation: Greater than 75 in (190 cm).

(iii) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(iv) Canopy: None.

(v) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(vi) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Phyllostegia mannii (NCN)

Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, Maui—Montane Wet—Unit 5, and Maui—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Phyllostegia mannii* on Maui.

(i) In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(ii) In unit Maui—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

Phyllostegia pilosa (NCN)

Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Phyllostegia pilosa* on Maui. In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, the physical and biological features of critical habitat are:

(i) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Greater than 75 in (190 cm).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(v) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(vi) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

Stenogyne kauaulaensis (NCN)

Maui—Montane Mesic—Unit 2, Maui—Montane Mesic—Unit 3, Maui—

Montane Mesic—Unit 4, Maui—Montane Mesic—Unit 5, and Maui—Montane Mesic—Unit 6, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Stenogyne kauaulaensis* on Maui. In unit Maui—Montane Mesic—Unit 2, Maui—Montane Mesic—Unit 3, Maui—Montane Mesic—Unit 4, Maui—Montane Mesic—Unit 5, and Maui—Montane Mesic—Unit 6, the physical and biological features of critical habitat are:

(i) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(ii) Annual precipitation: 50 to 75 in (130 to 190 cm).

(iii) Substrate: Deep ash deposits, thin silty loams.

(iv) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(v) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(vi) Understory: Ferns, *Carex, Peperomia.*

Family Malvaceae

Hibiscus brackenridgei (MAO HAU HELE)

Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, Maui—Lowland Dry—Unit 4, Maui—Lowland Dry—Unit 5, Maui—Lowland Dry—Unit 6, Kahoolawe—Lowland Dry—Unit 1, Kahoolawe—Lowland Dry—Unit 1, and Kahoolawe—Lowland Dry—Unit 2, identified in the legal descriptions in paragraphs (e)(1) and (e)(2) of this section, constitute critical habitat for *Hibiscus brackenridgei* on Maui and Kahoolawe. In units Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, Maui—Lowland Dry—Unit 4, Maui—Lowland Dry—Unit 5, Maui—Lowland Dry—Unit 6, Kahoolawe—Lowland Dry—Unit 1, and Kahoolawe—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(v) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(vi) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Family Myrsinaceae

Myrsine vaccinioides (KOLEA)

Maui—Montane Wet—Unit 6, Maui—Montane Wet—Unit 7, and Maui—Montane Wet—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Myrsine vaccinioides* on Maui. In units Maui—Montane Wet—Unit 6, Maui—Montane Wet—Unit 7, and Maui—Montane Wet—Unit 8, the physical and biological features of critical habitat are:

(i) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Greater than 75 in (190 cm).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(v) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(vi) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

Family Orchidaceae

Platanthera holochila (NCN)

Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, Maui—Montane Wet—Unit 5, Maui—Montane Wet—Unit 6, Maui—Montane Wet—Unit 7, Maui—Montane Wet—Unit 8, Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8; identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Platanthera holochila* on Maui.

(i) In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, Maui—Montane Wet—Unit 5, Maui—Montane Wet—Unit 6, Maui—Montane Wet—Unit 7, and Maui—Montane Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(ii) In units Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Family Piperaceae

Peperomia subpetiolata (ALAALA WAI NUI)

Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Peperomia subpetiolata* on Maui. In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, the physical and biological features of critical habitat are:

(i) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Greater than 75 in (190 cm).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(v) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(vi) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

Family Plantaginaceae

Plantago princeps (LAUKAHI KUAHIWI)

Maui—Dry Cliff—Unit 1, Maui—Dry Cliff—Unit 2, Maui—Dry Cliff—Unit 3, Maui—Dry Cliff—Unit 4, Maui—Wet Cliff—Unit 1, Maui—Wet Cliff—Unit 2, Maui—Wet Cliff—Unit 3, Maui—Wet Cliff—Unit 4, Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Plantago princeps* on Maui.

(i) In units Maui—Dry Cliff—Unit 1, Maui—Dry Cliff—Unit 2, Maui—Dry Cliff—Unit 3, and Maui—Dry Cliff—Unit 4, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Less than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, rocky talus.

(D) Canopy: None.

(E) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*

(F) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

(ii) In units Maui—Wet Cliff—Unit 1, Maui—Wet Cliff—Unit 2, Maui—Wet Cliff—Unit 3, Maui—Wet Cliff—Unit 4, Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Family Poaceae

Calamagrostis hillebrandii (NCN)

Maui—Montane Wet—Unit 6, Maui—Montane Wet—Unit 7, and Maui—Montane Wet—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Calamagrostis hillebrandii* on Maui. In units Maui—Montane Wet—Unit 6, Maui—Montane Wet—Unit 7, and Maui—Montane Wet—Unit 8, the physical and biological features of critical habitat are:

(i) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Greater than 75 in (190 cm).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(v) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(vi) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

Cenchrus agrimonioides (KAMANOMANO (= SANDBUR, AGRIMONY))

Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, Maui—Lowland Dry—Unit 4, Maui—Lowland Dry—Unit 5, and Maui—Lowland Dry—Unit 6, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cenchrus agrimonioides* on Maui. In units Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, Maui—Lowland Dry—Unit 4, Maui—Lowland Dry—Unit 5, and Maui—Lowland Dry—Unit 6, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(v) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(vi) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Ischaemum byrone (HILO ISCHAEMUM)

Maui—Coastal—Unit 1, Maui—Coastal—Unit 2, Maui—Coastal—Unit 3, Maui—Coastal—Unit 4, Maui—Coastal—Unit 5, Maui—Coastal—Unit 6, Maui—Coastal—Unit 7, and Maui—Coastal—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Ischaemum byrone* on Maui. In units Maui—Coastal—Unit 1, Maui—Coastal—Unit 2, Maui—Coastal—Unit 3, Maui—Coastal—Unit 4, Maui—Coastal—Unit 5, Maui—Coastal—Unit 6, Maui—Coastal—Unit 7, and Maui—Coastal—Unit 8, the physical and biological features of critical habitat are:

(i) Elevation: Less than 980 ft (300 m).

(ii) Annual precipitation: Less than 20 in (50 cm).

(iii) Substrate: Well-drained, calcareous, talus slopes; weathered clay soils, ephemeral pools; mudflats.

(iv) Canopy: *Hibiscus, Myoporum, Santalum, Scaevola.*

(v) Subcanopy: *Gossypium, Sida, Vitex.*

(vi) Understory: *Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*

Family Primulaceae

Lysimachia lydgatei (NCN)

Maui—Lowland Dry—Unit 5, Maui—Lowland Dry—Unit 6, Maui—Montane Mesic—Unit 2, Maui—Montane Mesic—Unit 3, Maui—Montane Mesic—Unit 4, Maui—Montane Mesic—Unit 5, Maui—Montane Mesic—Unit 6, Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Lysimachia lydgatei* on Maui.

(i) In units Maui—Lowland Dry—Unit 5 and Maui—Lowland Dry—Unit 6, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

(ii) In units Maui—Montane Mesic—Unit 2, Maui—Montane Mesic—Unit 3, Maui—Montane Mesic—Unit 4, Maui—Montane Mesic—Unit 5, and Maui—Montane Mesic—Unit 6, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

(iii) In units Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Family Rhamnaceae

Colubrina oppositifolia (KAUILA)

Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, Maui—Lowland Dry—Unit 4, Maui—Lowland Mesic—Unit 2, and Maui—Lowland Mesic—Unit 3, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Colubrina oppositifolia* on Maui.

(i) In units Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, and Maui—Lowland Dry—Unit 4, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus*.

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia*.

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos*.

(ii) In units Maui—Lowland Mesic—Unit 2 and Maui—Lowland Mesic—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum*.

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax*.

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia*.

Gouania hillebrandii (NCN)

Maui—Lowland Dry—Unit 5, Maui—Lowland Dry—Unit 6, Kahoolawe—Lowland Dry—Unit 1, and Kahoolawe—Lowland Dry—Unit 2, identified in the legal descriptions in paragraphs (e)(1) and (e)(2) of this section, constitute critical habitat for *Gouania hillebrandii* on Maui and Kahoolawe. In units Maui—Lowland Dry—Unit 5, Maui—Lowland Dry—Unit 6, Kahoolawe—Lowland Dry—Unit 1, and Kahoolawe—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus*.

(v) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia*.

(vi) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos*.

Gouania vitifolia (NCN)

Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Gouania vitifolia* on Maui. In units Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, the physical and biological features of critical habitat are:

(i) Elevation: Unrestricted.

(ii) Annual precipitation: Greater than 75 in (190 cm).

(iii) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(iv) Canopy: None.

(v) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros*.

(vi) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia*.

Family Rosaceae

Acaena exigua (LILIWAI)

Maui—Montane Wet—Unit 6, Maui—Montane Wet—Unit 7, and Maui—Montane Wet—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Acaena exigua* on Maui. In units Maui—Montane Wet—Unit 6, Maui—Montane Wet—Unit 7, and Maui—Montane Wet—Unit 8; the physical and biological features of critical habitat are:

(i) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Greater than 75 in (190 cm).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros*.

(v) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine*.

(vi) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium*.

Family Rubiaceae

Kadua coriacea (KIOELE)

Maui—Lowland Dry—Unit 5 and Maui—Lowland Dry—Unit 6, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Kadua coriacea* on Maui. In units Maui—Lowland Dry—Unit 5 and Maui—Lowland Dry—Unit 6, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus*.

(v) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia*.

(vi) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos*.

Kadua laxiflora (PILO)

Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, Maui—Dry Cliff—Unit 5, Maui—Dry Cliff—Unit 6, Maui—Dry Cliff—Unit 7, Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Kadua laxiflora* on Maui.

(i) In units Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria*.

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope*.

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia*.

(ii) In units Maui—Dry Cliff—Unit 5, Maui—Dry Cliff—Unit 6, and Maui—Dry Cliff—Unit 7, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Less than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, rocky talus.

(D) Canopy: None.

(E) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea*.

(F) Understory: *Bidens, Eragrostis, Melanthera, Schiedea*.

(iii) In units Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros*.

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia*.

Family Rutaceae

Melicope adscendens (ALANI)

Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, Maui—Lowland Dry—Unit 4, and Maui—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Melicope adscendens* on Maui.

(i) In units Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, and Maui—Lowland Dry—Unit 4, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus*.

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia*.

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos*.

(ii) In unit Maui—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum*.

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium*.

(F) Understory: Ferns, *Carex, Peperomia*.

Melicope balloui (ALANI)

Maui—Lowland Wet—Unit 1, Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Melicope balloui* on Maui.

(i) In unit Maui—Lowland Wet—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria*.

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope*.

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia*.

(ii) In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros*.

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine*.

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium*.

Melicope knudsenii (ALANI)

Maui—Montane Dry—Unit 1, identified in the legal descriptions in paragraph (e)(1) of this section, constitutes critical habitat for *Melicope knudsenii* on Maui. In unit Maui—Montane Dry—Unit 1; the physical and biological features of critical habitat are:

(i) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(ii) Substrate: Dry cinder or ash soils, loamy volcanic sands, blocky lava, rock outcroppings.

(iv) Canopy: *Acacia, Metrosideros, Myoporum, Santalum, Sophora*.

(v) Subcanopy: *Chamaesyce, Coprosma, Dodonaea, Dubautia, Leptecophylla, Osteomeles, Wikstroemia*.

(vi) Understory: *Bidens, Eragrostis, Melanthera, Vaccinium*.

Melicope mucronulata (ALANI)

Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, Maui—Lowland Dry—Unit 4, and Maui—Montane Dry—Unit 1, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Melicope mucronulata* on Maui.

(i) In units Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, and Maui—Lowland Dry—Unit 4, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus*.

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia*.

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos*.

(ii) In unit Maui—Montane Dry—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Dry cinder or ash soils, loamy volcanic sands, blocky lava, rock outcroppings.

(D) Canopy: *Acacia, Metrosideros, Myoporum, Santalum, Sophora*.

(E) Subcanopy: *Chamaesyce, Coprosma, Dodonaea, Dubautia, Leptecophylla, Osteomeles, Wikstroemia*.

(F) Understory: *Bidens, Eragrostis, Melanthera, Vaccinium*.

Melicope ovalis (ALANI)

Maui—Lowland Wet—Unit 1, Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, Maui—Montane Wet—Unit 5, Maui—Wet Cliff—Unit 1, Maui—Wet Cliff—Unit 2, Maui—Wet Cliff—Unit 3, and Maui—Wet Cliff—Unit 4, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Melicope ovalis* on Maui.

(i) In unit Maui—Lowland Wet—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria*.

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope*.

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia*.

(ii) In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2,

Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iii) In units Maui—Wet Cliff—Unit 1, Maui—Wet Cliff—Unit 2, Maui—Wet Cliff—Unit 3, and Maui—Wet Cliff—Unit 4, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Zanthoxylum hawaiiense (AE)

Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, Maui—Lowland Dry—Unit 4, Maui—Lowland Mesic—Unit 2, Maui—Lowland Mesic—Unit 3, Maui—Montane Mesic—Unit 1, Maui—Montane Mesic—Unit 2, Maui—Montane Mesic—Unit 3, Maui—Montane Mesic—Unit 4, Maui—Montane Mesic—Unit 5, Maui—Montane Mesic—Unit 6, Maui—Montane Dry—Unit 1, Maui—Subalpine—Unit 1, and Maui—Subalpine—Unit 2, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Zanthoxylum hawaiiense* on Maui.

(i) In units Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, and Maui—Lowland Dry—Unit 4, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

(ii) In units Maui—Lowland Mesic—Unit 2 and Maui—Lowland Mesic—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(iii) In units Maui—Montane Mesic—Unit 1, Maui—Montane Mesic—Unit 2, Maui—Montane Mesic—Unit 3, Maui—Montane Mesic—Unit 4, Maui—Montane Mesic—Unit 5, and Maui—Montane Mesic—Unit 6, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

(iv) In unit Maui—Montane Dry—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Dry cinder or ash soils, loamy volcanic sands, blocky lava, rock outcroppings.

(D) Canopy: *Acacia, Metrosideros, Myoporum, Santalum, Sophora.*

(E) Subcanopy: *Chamaesyce, Coprosma, Dodonaea, Dubautia, Leptecophylla, Osteomeles, Wikstroemia.*

(F) Understory: *Bidens, Eragrostis, Melanthera, Vaccinium.*

(v) In units Maui—Subalpine—Unit 1 and Maui—Subalpine—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: 6,500 to 9,800 ft (2,000 to 3,000 m).

(B) Annual precipitation: 15 to 40 in (38 to 100 cm).

(C) Substrate: Dry ash; sandy loam; rocky, undeveloped soils; weathered lava.

(D) Canopy: *Chamaesyce, Chenopodium, Metrosideros, Myoporum, Santalum, Sophora.*

(E) Subcanopy: *Coprosma, Dodonaea, Dubautia, Geranium, Leptecophylla, Vaccinium, Wikstroemia.*

(F) Understory: Ferns, *Bidens, Carex, Deschampsia, Eragrostis, Gahnia, Luzula, Panicum, Pseudognaphalium, Sicyos, Tetramolopium.*

Family Santalaceae

Santalum haleakalae var. *lanaiense* (LANAI SANDALWOOD, ILIAHI)

Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, Maui—Lowland Dry—Unit 4, Maui—Lowland Dry—Unit 5, Maui—Lowland Dry—Unit 6, Maui—Lowland Mesic—Unit 2, Maui—Lowland Mesic—Unit 3, Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, Maui—Montane Mesic—Unit 1, Maui—Montane Mesic—Unit 2, Maui—Montane Mesic—Unit 3, Maui—Montane Mesic—Unit 4, Maui—Montane Mesic—Unit 5, Maui—Montane Mesic—Unit 6, Maui—Montane Dry—Unit 1, Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Santalum haleakalae* var. *lanaiense* on Maui.

(i) In units Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, Maui—Lowland Dry—Unit 4, Maui—Lowland Dry—Unit 5, and Maui—Lowland Dry—Unit 6, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

(ii) In units Maui—Lowland Mesic—Unit 2 and Maui—Lowland Mesic—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(iii) In units Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iv) In units Maui—Montane Mesic—Unit 1, Maui—Montane Mesic—Unit 2, Maui—Montane Mesic—Unit 3, Maui—Montane Mesic—Unit 4, Maui—Montane Mesic—Unit 5, and Maui—Montane Mesic—Unit 6, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

(v) In unit Maui—Montane Dry—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Dry cinder or ash soils, loamy volcanic sands, blocky lava, rock outcroppings.

(D) Canopy: *Acacia, Metrosideros, Myoporum, Santalum, Sophora.*

(E) Subcanopy: *Chamaesyce, Coprosma, Dodonaea, Dubautia, Leptecophylla, Osteomeles, Wikstroemia.*

(F) Understory: *Bidens, Eragrostis, Melanthera, Vaccinium.*

(vi) In units Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Family Sapindaceae

Alectryon macrococcus (MAHOE)

Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, Maui—Lowland Dry—Unit 4, Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, Maui—Montane Mesic—Unit 1, Maui—Montane Dry—Unit 1, Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Alectryon macrococcus* on Maui.

(i) In units Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, and Maui—Lowland Dry—Unit 4, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

(ii) In units Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iii) In unit Maui—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

(iv) In unit Maui—Montane Dry—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Dry cinder or ash soils, loamy volcanic sands, blocky lava, rock outcroppings.

(D) Canopy: *Acacia, Metrosideros, Myoporum, Santalum, Sophora.*

(E) Subcanopy: *Chamaesyce, Coprosma, Dodonaea, Dubautia, Leptecophylla, Osteomeles, Wikstroemia.*

(F) Understory: *Bidens, Eragrostis, Melanthera, Vaccinium.*

(v) In units Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Family Solanaceae

Solanum incompletum (POPOLO KU MAI)

Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, Maui—Lowland Dry—Unit 4, Maui—Lowland Mesic—Unit 1, Maui—Subalpine—Unit 1, and Maui—Subalpine—Unit 2, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Solanum incompletum* on Maui.

(i) In units Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, and Maui—Lowland Dry—Unit 4, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

(ii) In unit Maui—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(iii) In units Maui—Subalpine—Unit 1 and Maui—Subalpine—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: 6,500 to 9,800 ft (2,000 to 3,000 m).

(B) Annual precipitation: 15 to 40 in (38 to 100 cm).

(C) Substrate: Dry ash; sandy loam; rocky, undeveloped soils; weathered lava.

(D) Canopy: *Chamaesyce, Chenopodium, Metrosideros, Myoporum, Santalum, Sophora.*

(E) Subcanopy: *Coprosma, Dodonaea, Dubautia, Geranium, Leptecophylla, Vaccinium, Wikstroemia.*

(F) Understory: Ferns, *Bidens, Carex, Deschampsia, Eragrostis, Gahnia, Luzula, Panicum, Pseudognaphalium, Sicyos, Tetramolopium.*

Family Thymelaeaceae

Wikstroemia villosa (AKIA)

Maui—Lowland Wet—Unit 1, Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, Maui—Montane Wet—Unit 5, and Maui—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Wikstroemia villosa* on Maui.

(i) In units Maui—Lowland Wet—Unit 1, Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iii) In unit Maui—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

Family Urticaceae

Neraudia sericea (NCN)

Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, Maui—Lowland Dry—Unit 4, Maui—Lowland Dry—Unit 5, Maui—Lowland Dry—Unit 6, Kahoolawe—Lowland Dry—Unit 1, Kahoolawe—Lowland Dry—Unit 2, Maui—Montane Mesic—Unit 1, Maui—Dry Cliff—Unit 5, Maui—Dry Cliff—Unit 6, and Maui—Dry Cliff—Unit 7, identified in the legal descriptions in paragraphs (e)(1) and (e)(2) of this section, constitute critical habitat for *Neraudia sericea* on Maui and Kahoolawe.

(i) In units Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, Maui—Lowland Dry—Unit 4, Maui—Lowland Dry—Unit 5, Maui—Lowland Dry—Unit 6, Kahoolawe—Lowland Dry—Unit 1, and Kahoolawe—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

(ii) In unit Maui—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

(iii) In units Maui—Dry Cliff—Unit 5, Maui—Dry Cliff—Unit 6, and Maui—Dry Cliff—Unit 7, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Less than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, rocky talus.

(D) Canopy: None.

(E) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*

(F) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

Family Violaceae

Isodendrion pyrifolium (WAHINE NOHO KULA)

Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, Maui—Dry Cliff—Unit 5, Maui—Dry Cliff—Unit 6, Maui—Dry Cliff—Unit 7, Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Isodendrion pyrifolium* on Maui.

(i) In units Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Maui—Dry Cliff—Unit 5, Maui—Dry Cliff—Unit 6, and Maui—Dry Cliff—Unit 7, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Less than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, rocky talus.

(D) Canopy: None.

(E) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*

(F) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

(iii) In units Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

(2) *Ferns and allies.*

Family Adiantaceae

Pteris lidgatei (NCN)

Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Pteris lidgatei* on Maui.

(i) In units Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Family Aspleniaceae

Asplenium dielerectum (ASPLENIUM-LEAVED DIELLIA)

Maui—Lowland Dry—Unit 5, Maui—Lowland Dry—Unit 6, Maui—Lowland Mesic—Unit 2, Maui—Lowland Mesic—Unit 3, Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, and Maui—Montane Mesic—Unit 1, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Asplenium dielerectum* on Maui.

(i) In units Maui—Lowland Dry—Unit 5 and Maui—Lowland Dry—Unit 6, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

(ii) In units Maui—Lowland Mesic—Unit 2 and Maui—Lowland Mesic—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(iii) In units Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iv) In unit Maui—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

Asplenium peruvianum var. *insulare* (NCN)

Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, Maui—Montane Wet—Unit 5, Maui—Montane Mesic—Unit 1, Maui—Subalpine—Unit 1, and Maui—Subalpine—Unit 2, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Asplenium peruvianum* var. *insulare* on Maui.

(i) In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(ii) In unit Maui—Montane Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

(iii) In units Maui—Subalpine—Unit 1 and Maui—Subalpine—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: 6,500 to 9,800 ft (2,000 to 3,000 m).

(B) Annual precipitation: 15 to 40 in (38 to 100 cm).

(C) Substrate: Dry ash; sandy loam; rocky, undeveloped soils; weathered lava.

(D) Canopy: *Chamaesyce, Chenopodium, Metrosideros, Myoporum, Santalum, Sophora.*

(E) Subcanopy: *Coprosma, Dodonaea, Dubautia, Geranium, Leptecophylla, Vaccinium, Wikstroemia.*

(F) Understory: Ferns, *Bidens, Carex, Deschampsia, Eragrostis, Gahnia, Luzula, Panicum, Pseudognaphalium, Sicyos, Tetramolopium.*

Ctenitis squamigera (PAUOA)

Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, Maui—Lowland Dry—Unit 4, Maui—Lowland Dry—Unit 5, Maui—Lowland Dry—Unit 6, Maui—Lowland Mesic—Unit 1, Maui—Lowland Mesic—Unit 2, Maui—Lowland Mesic—Unit 3, Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, Maui—Montane Mesic—Unit 2, Maui—Montane Mesic—Unit 3, Maui—Montane Mesic—Unit 4, Maui—Montane Mesic—Unit 5, Maui—Montane Mesic—Unit 6, Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Ctenitis squamigera* on Maui.

(i) In units Maui—Lowland Dry—Unit 1, Maui—Lowland Dry—Unit 2, Maui—Lowland Dry—Unit 3, Maui—Lowland Dry—Unit 4, Maui—Lowland Dry—Unit 5, and Maui—Lowland Dry—Unit 6, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

(ii) In units Maui—Lowland Mesic—Unit 1, Maui—Lowland Mesic—Unit 2, and Maui—Lowland Mesic—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(iii) In units Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iv) In units Maui—Montane Mesic—Unit 2, Maui—Montane Mesic—Unit 3, Maui—Montane Mesic—Unit 4, Maui—Montane Mesic—Unit 5, and Maui—Montane Mesic—Unit 6, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

(v) In units Maui—Wet Cliff—Unit 5, Maui—Wet Cliff—Unit 6, Maui—Wet Cliff—Unit 7, and Maui—Wet Cliff—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Diplazium molokaiense (NCN)

Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, Maui—Montane Wet—Unit 5, Maui—Montane Mesic—Unit 1, Maui—Montane Mesic—Unit 2, Maui—Montane Mesic—Unit 3, Maui—Montane Mesic—Unit 4, Maui—Montane Mesic—Unit 5, Maui—Montane Mesic—Unit 6, Maui—Dry Cliff—Unit 1, Maui—Dry Cliff—Unit 2, Maui—Dry Cliff—Unit 3, Maui—Dry Cliff—Unit 4, Maui—Dry Cliff—Unit 5, Maui—Dry Cliff—Unit 6, and Maui—Dry Cliff—Unit 7, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Diplazium molokaiense* on Maui.

(i) In units Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iii) In units Maui—Montane Mesic—Unit 1, Maui—Montane Mesic—Unit 2, Maui—Montane Mesic—Unit 3, Maui—Montane Mesic—Unit 4, Maui—Montane Mesic—Unit 5, and Maui—Montane Mesic—Unit 6, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

(F) Understory: Ferns, *Carex, Peperomia.*

(iv) In units Maui—Dry Cliff—Unit 1, Maui—Dry Cliff—Unit 2, Maui—Dry Cliff—Unit 3, Maui—Dry Cliff—Unit 4, Maui—Dry Cliff—Unit 5, Maui—Dry Cliff—Unit 6, and Maui—Dry Cliff—Unit 7, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Less than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, rocky talus.

(D) Canopy: None.

(E) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*

(F) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

Family Grammitidaceae

Adenophorus periens (PENDANT KIHI FERN)

Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Adenophorus periens* on Maui. In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, and Maui—Montane Wet—Unit 5, the physical and biological features of critical habitat are:

(i) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Greater than 75 in (190 cm).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(v) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(vi) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

Family Lycopodiaceae

Huperzia mannii (WAWAEIOLE)

Maui—Lowland Mesic—Unit 1, Maui—Lowland Wet—Unit 1, Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, Maui—Montane Wet—Unit 5, Maui—Montane Wet—Unit 6, Maui—Montane Wet—Unit 7, Maui—Montane Wet—Unit 8, Maui—Montane Mesic—Unit 1, Maui—Montane Mesic—Unit 2, Maui—Montane Mesic—Unit 3, Maui—Montane Mesic—Unit 4, Maui—Montane Mesic—Unit 5, and Maui—Montane Mesic—Unit 6, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Huperzia mannii* on Maui.

(i) In unit Maui—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Maui—Lowland Wet—Unit 1, Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—

Unit 6, Maui—Lowland Wet—Unit 7, and Maui—Lowland Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iii) In units Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, Maui—Montane Wet—Unit 5, Maui—Montane Wet—Unit 6, Maui—Montane Wet—Unit 7, and Maui—Montane Wet—Unit 8, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iv) In units Maui—Montane Mesic—Unit 1, Maui—Montane Mesic—Unit 2, Maui—Montane Mesic—Unit 3, Maui—Montane Mesic—Unit 4, Maui—Montane Mesic—Unit 5, and Maui—Montane Mesic—Unit 6, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Deep ash deposits, thin silty loams.

(D) Canopy: *Acacia, Ilex, Metrosideros, Myrsine, Nestegis, Nothocestrum, Pisonia, Pittosporum, Psychotria, Sophora, Zanthoxylum.*

(E) Subcanopy: *Alyxia, Charpentiera, Coprosma, Dodonaea, Kadua, Labordia, Leptecophylla, Phyllostegia, Vaccinium.*

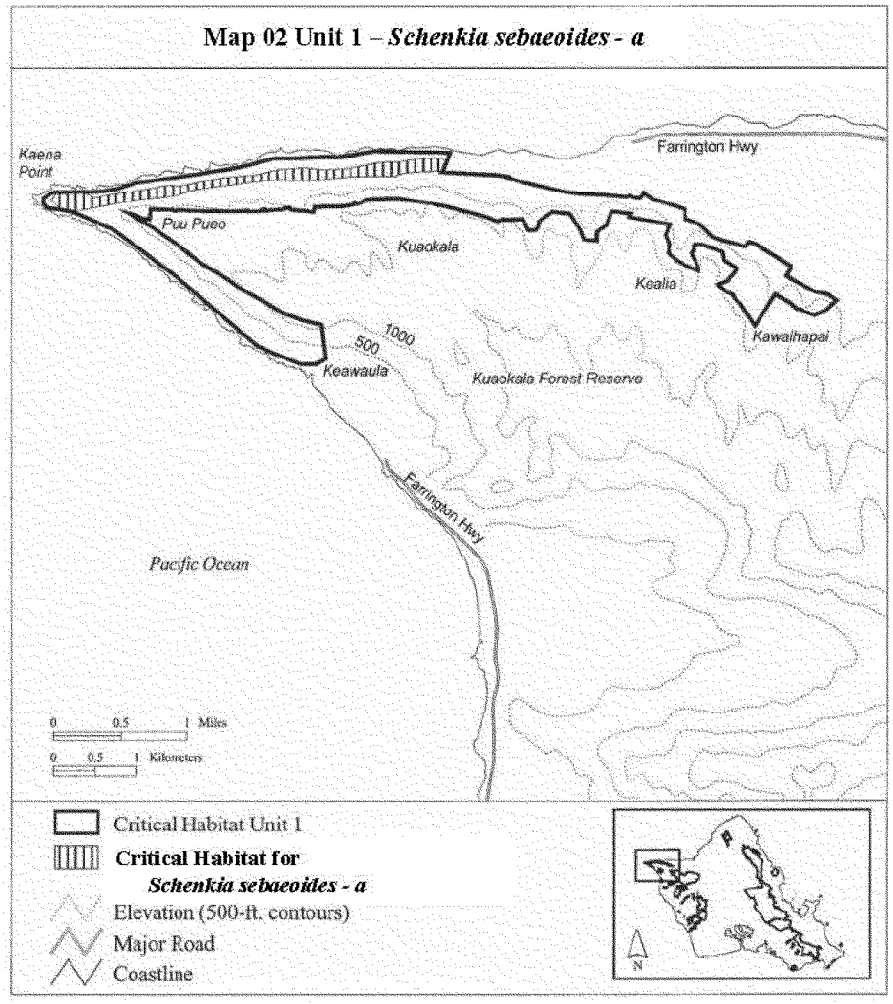
(F) Understory: Ferns, *Carex, Peperomia.*

* * * * *

(i) * * *

(2) * * *

(ii) *Note:* Map 2 follows:



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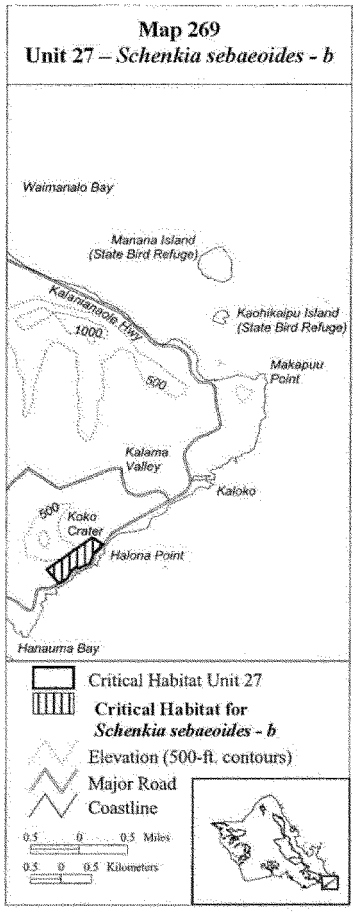
(269) * * *

(ii) *Note:* Map 269 follows:



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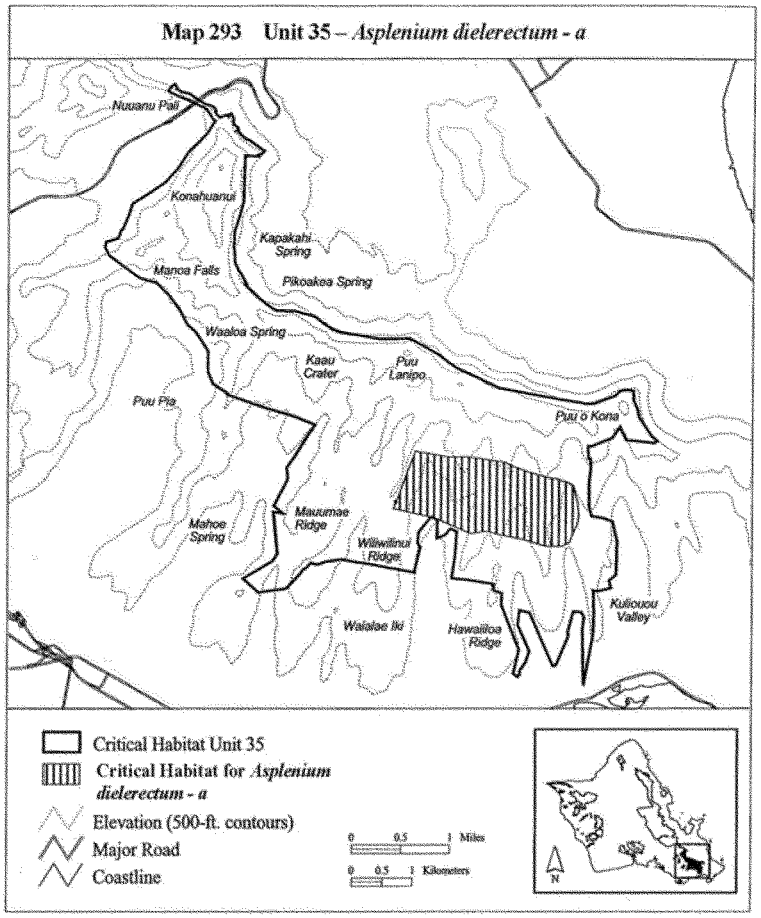
(293) * * *

(ii) *Note:* Map 293 follows:

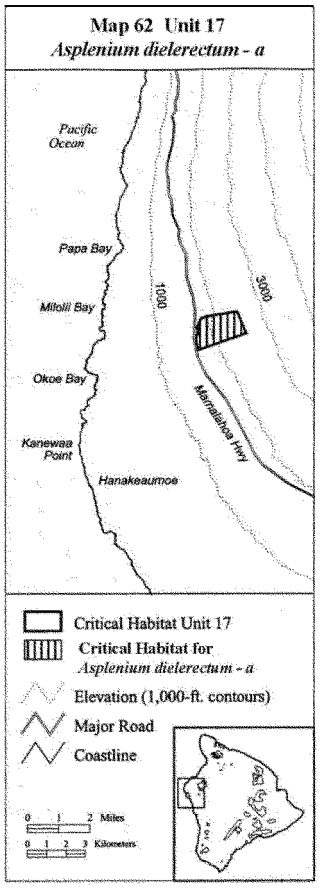

Map 293 Unit 35 – *Asplenium dielerectum - a*
Nuuanu Pali
Konahuanui
Kapakahi Spring
Manoa Falls
Pikoakea Spring
Waaloa Spring
Kaau Crater
Puu Lanipo
Puu Pia
Puu o Kona
Mauumae Ridge
Mahoe Spring
Willwillnui Ridge
Waialae Iki
Hawaiiloa Ridge
Kuliouou Valley
Critical Habitat Unit 35
Critical Habitat for *Asplenium dielerectum - a*
Elevation (500-ft. contours)
Major Road
Coastline
0 0.5 1 Miles
0 0.5 1 Kilometers
N

* * * * *

(k) * * *

(62) * * *

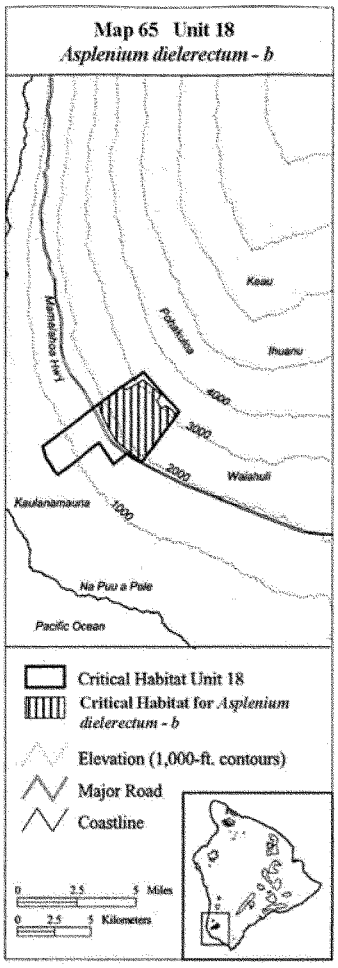
(ii) *Note:* Map 62 follows:



* * * * *

(65) * * *

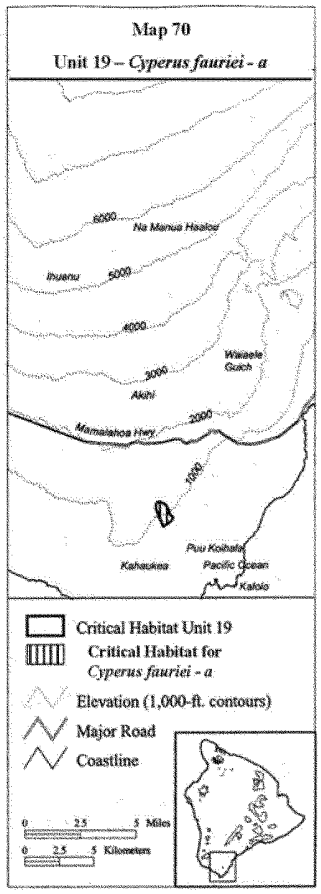
(ii) *Note:* Map 65 follows:



* * * * *

(70) * * *

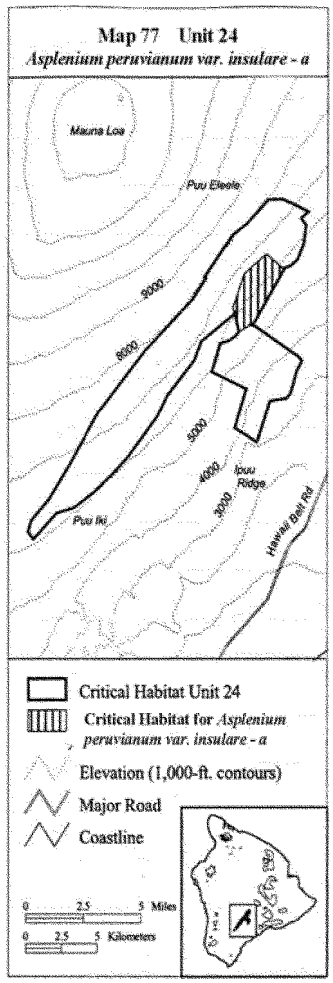
(ii) *Note:* Map 70 follows:



* * * * *

(77) * * *

(ii) *Note:* Map 77 follows:



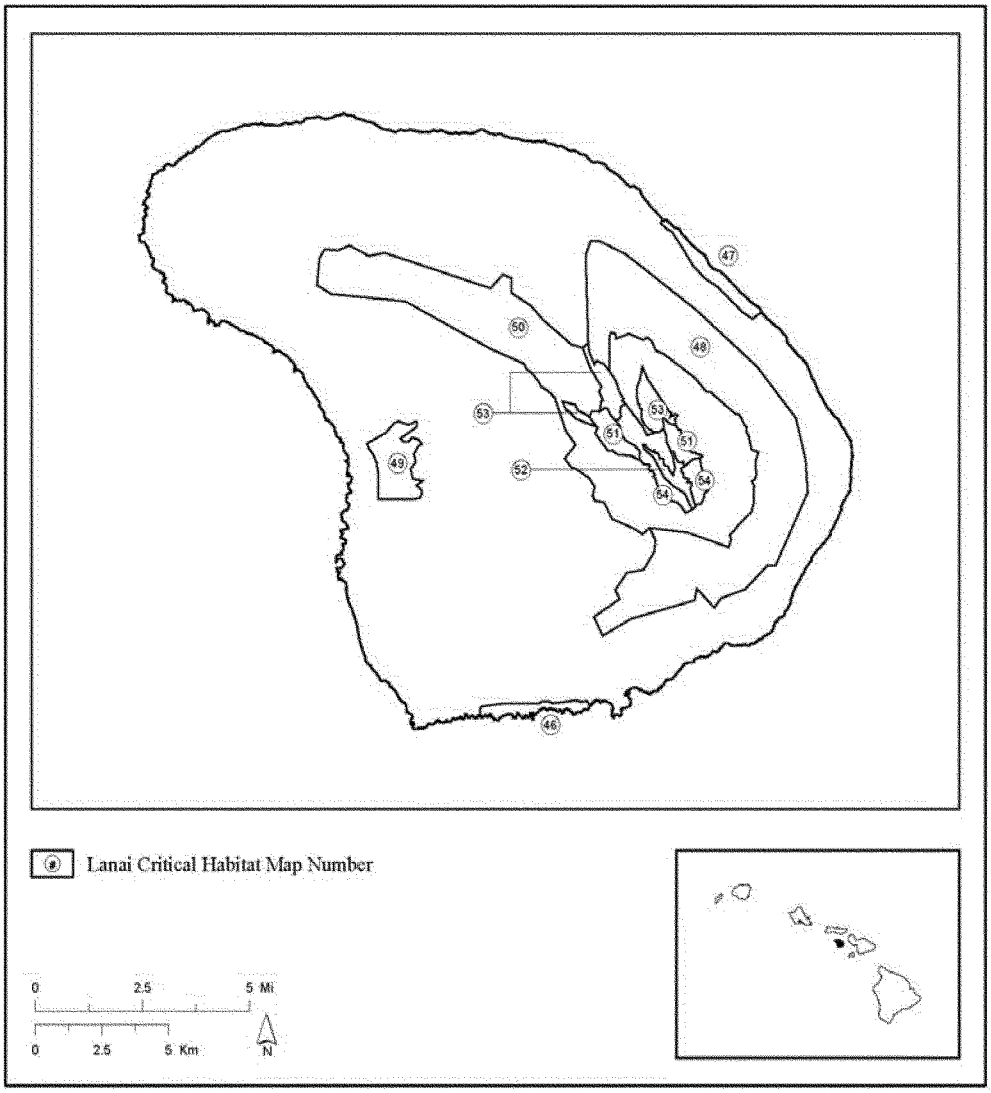
* * * * *

(m) *Maps and critical habitat unit descriptions for the island of Lanai, HI.* Critical habitat units are described below. Coordinates are in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the critical habitat units designated on the island of Lanai. Existing manmade features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas, do not contain one or more of the physical and biological features. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species or physical or biological features in adjacent critical habitat.

(1) NOTE: Map 1, Index map, follows:

Map 1

Lanai Critical Habitat–Island Index Map



(2) Lanai—Coastal—Unit 1 (373 ac, 151 ha) and Lanai—Coastal—Unit 2 (2 ac; 1 ha)

(i) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Canavalia pubescens, Hibiscus brackenridgei, Portulaca sclerocarpa,* and *Sesbania tomentosa.*

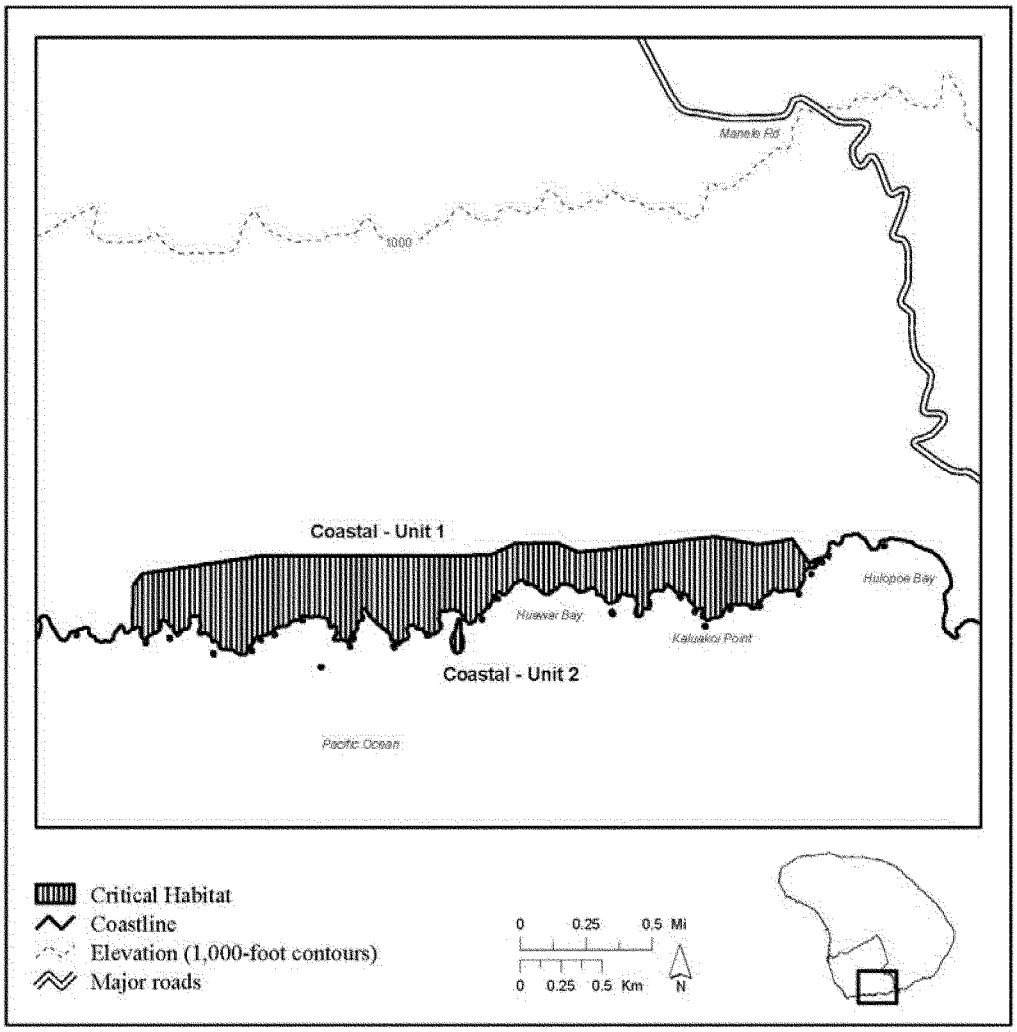
(ii) [Reserved for textual description of Unit 2.] This unit is critical habitat for *Canavalia pubescens, Hibiscus brackenridgei, Portulaca sclerocarpa,* and *Sesbania tomentosa.*

(iii) NOTE: Map of Lanai—Coastal—Unit 1 and Lanai—Coastal—Unit 2 (Map 2) follows:

Map 2

Lanai–Coastal

Unit 1 and Unit 2



(3) Lanai—Coastal—Unit 3 (509 ac, 206 ha).

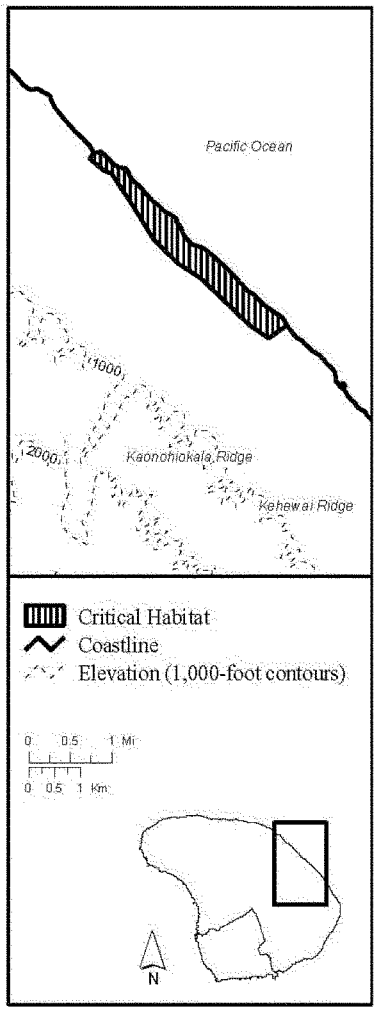
(i) [Reserved for textual description of Unit 3.] This unit is critical habitat for *Canavalia pubescens, Hibiscus brackenridgei, Portulaca sclerocarpa,* and *Sesbania tomentosa.*

(ii) NOTE: Map of Lanai—Coastal—Unit 3 (Map 3) follows:

Map 3

Lanai–Coastal

Unit 3



(4) Lanai—Lowland Dry—Unit 1 (9,766 ac, 3,952 ha)

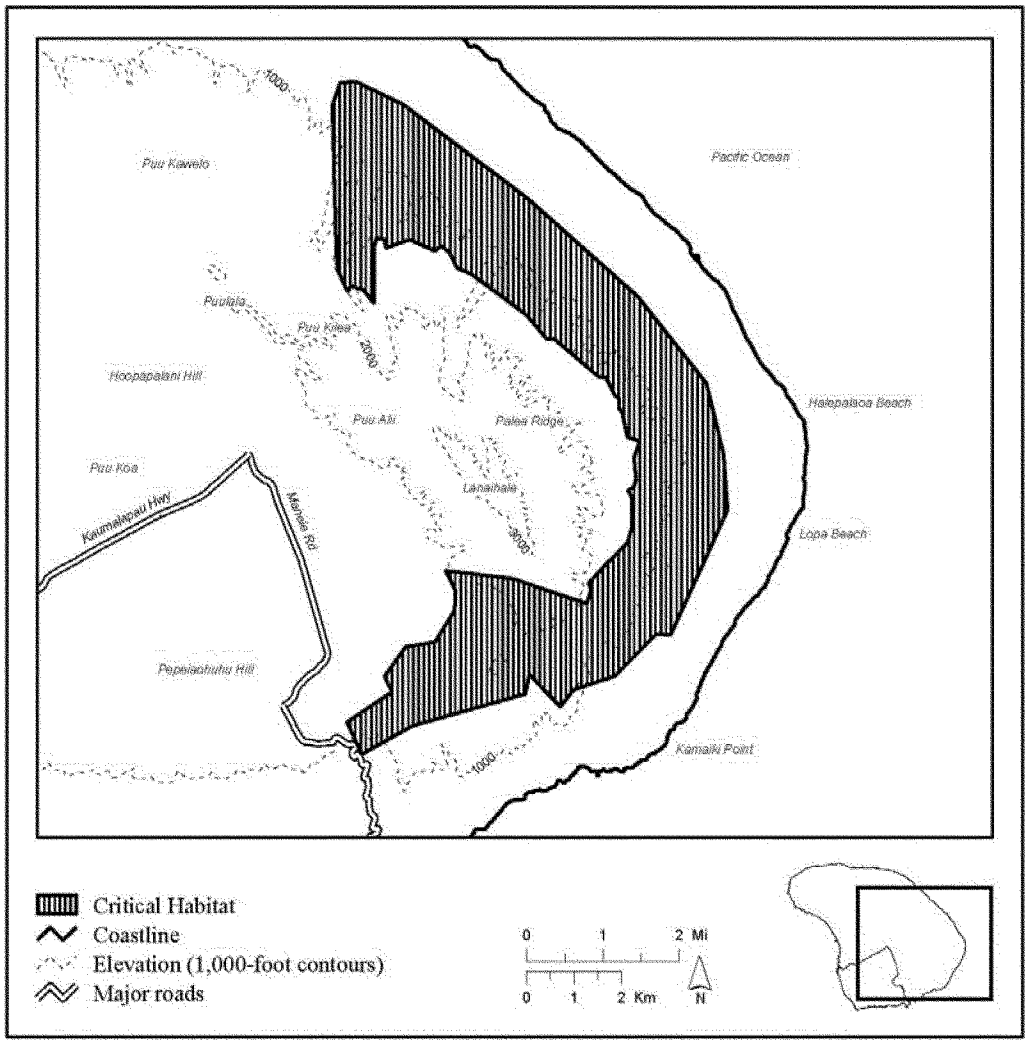
(i) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Abutilon eremitopetalum, Asplenium dielerectum, Bidens micrantha* ssp. *kalealaha, Cyperus fauriei, Cyperus trachysanthos, Hibiscus brackenridgei, Neraudia sericea, Pleomele fernaldii, Schenkia sebaeoides, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium lepidotum* ssp. *lepitodotum, Tetramolopium remyi,* and *Vigna o-wahuensis.*

(ii) NOTE: Map of Lanai—Lowland Dry—Unit 1 (Map 4) follows:

Map 4

Lanai–Lowland Dry

Unit 1



(5) Lanai—Lowland Dry—Unit 2 (939 ac, 380 ha)

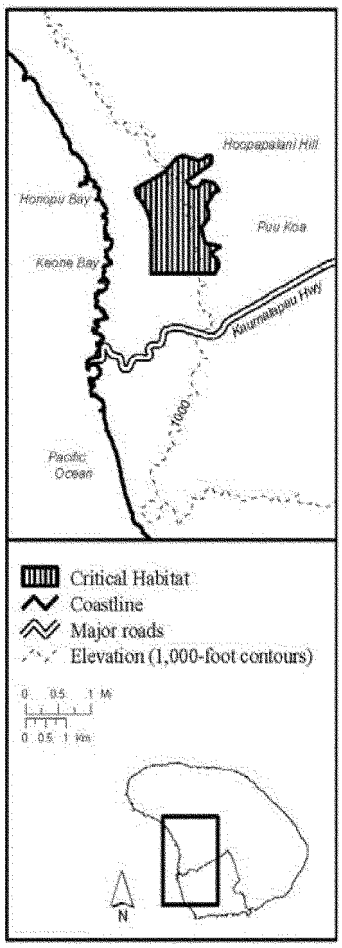
(i) [Reserved for textual description of Unit 2.] This unit is critical habitat for *Abutilon eremitopetalum, Asplenium dielerectum, Bidens micrantha* ssp. *kalealaha, Cyperus fauriei, Cyperus trachysanthos, Hibiscus brackenridgei, Neraudia sericea, Pleomele fernaldii, Schenkia sebaeoides, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium lepidotum* ssp. *lepitodotum, Tetramolopium remyi,* and *Vigna o-wahuensis.*

(ii) NOTE: Map of Lanai—Lowland Dry—Unit 2 (Map 5) follows:

Map 5

Lanai–Lowland Dry

Unit 2



(6) Lanai—Lowland Mesic—Unit 1 (11,172 ac, 4,521 ha)

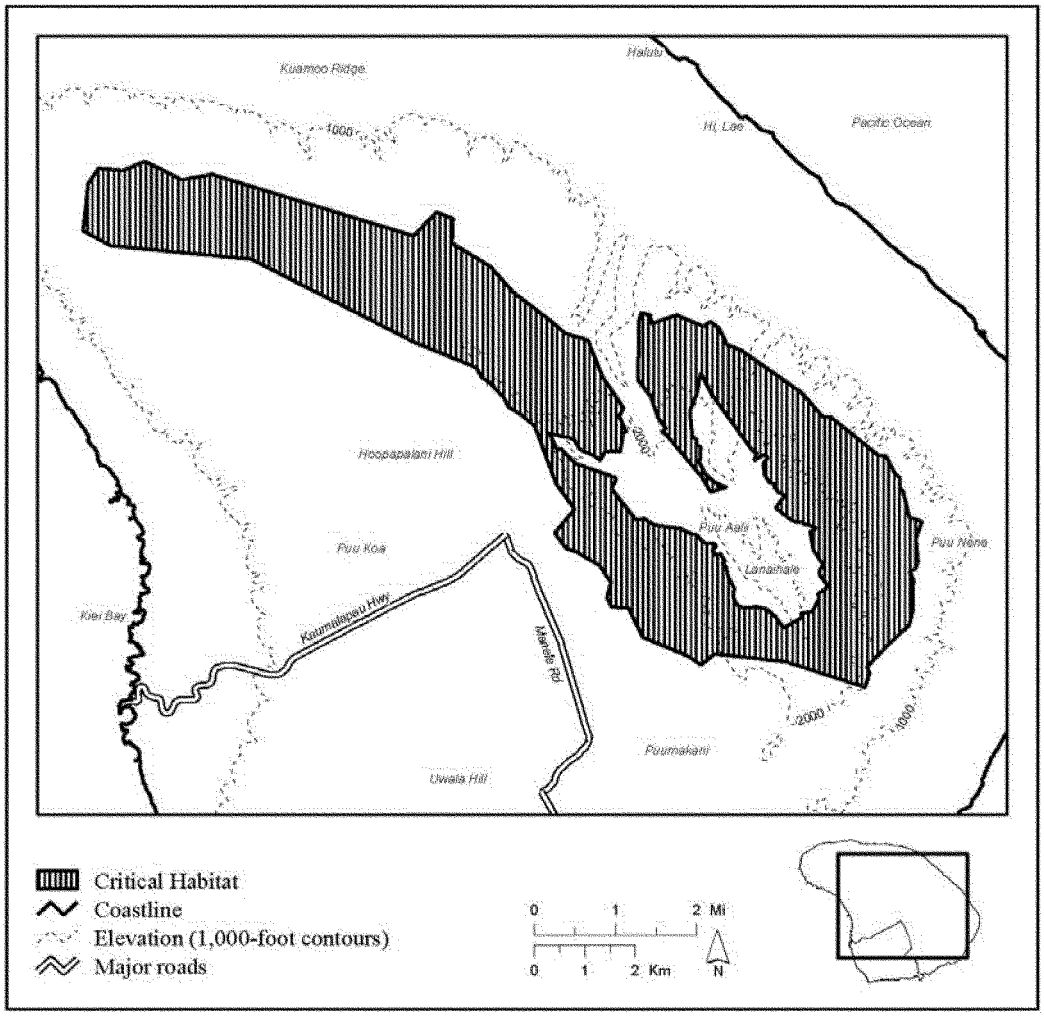
(i) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Cenchrus agrimonioides, Clermontia oblongifolia* ssp. *mauiensis, Diplazium molokaiense, Kadua cordata* ssp. *remyi, Kadua laxiflora, Labordia tinifolia* var. *lanaiensis, Pleomele fernaldii, Santalum haleakalae* var. *lanaiense, Solanum incompletum, Spermolepis hawaiiensis,* and *Vigna o-wahuensis.*

(ii) NOTE: Map of Lanai—Lowland Mesic—Unit 1 (Map 6) follows:

Map 6

Lanai–Lowland Mesic

Unit 1



(7) Lanai—Lowland Wet—Unit 1 (374 ac, 152 ha) and Lanai—Lowland Wet—Unit 2 (232 ac, 94 ha)

(i) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Clermonita oblongifolia* ssp. *mauiensis, Kadua cordata* ssp. *remyi, Kadua laxiflora, Labordia tinifolia* var. *lanaiensis, Pleomele fernaldii, Santalum haleakalae* var. *lanaiense,* and *Zanthoxylum hawaiiense.*

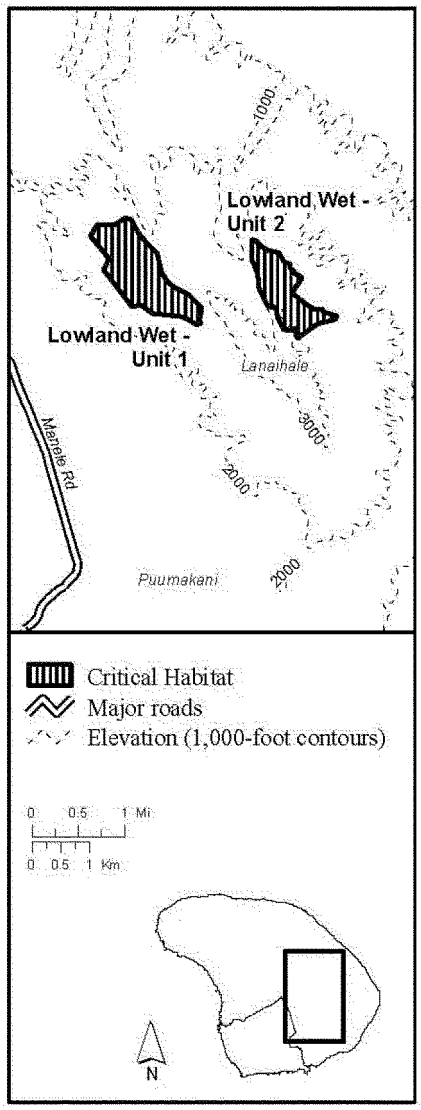
(ii) [Reserved for textual description of Unit 2.] This unit is critical habitat for *Clermonita oblongifolia* ssp. *mauiensis, Kadua cordata* ssp. *remyi, Kadua laxiflora, Labordia tinifolia* var. *lanaiensis, Pleomele fernaldii, Santalum haleakalae* var. *lanaiense,* and *Zanthoxylum hawaiiense.*

(iii) NOTE: Map of Lanai—Lowland Wet—Unit 1 and Lanai—Lowland Wet—Unit 2 (Map 7) follows:

Map 7

Lanai–Lowland Wet

Unit 1 and Unit 2



(8) Lanai—Montane Wet—Unit 1 (248 ac, 101 ha)

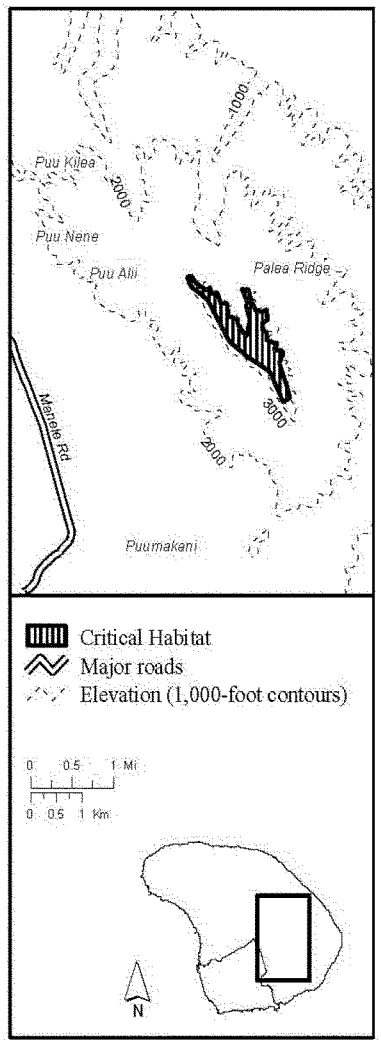
(i) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Adenophorus periens, Cyanea gibsonii, Cyanea lobata, Cyrtandra munroi, Kadua laxiflora, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Santalum haleakalae* var. *lanaiense,* and *Viola lanaiensis.*

(ii) NOTE: Map of Lanai—Montane Wet—Unit 1 (Map 8) follows:

Map 8

Lanai–Montane Wet

Unit 1



(9) Lanai—Dry Cliff—Unit 1 (83 ac, 34 ha), Lanai—Dry Cliff—Unit 2 (354 ac, 143 ha), and Lanai—Dry Cliff—Unit 3 (398 ac, 161 ha)

(i) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Asplenium dielerectum, Bidens micrantha* ssp. *kalealaha, Brighamia rockii, Ctenitis squamigera, Diplazium molokaiense, Neraudia sericea, Phyllostegia haliakalae, Pleomele fernaldii, Solanum incompletum,* and *Viola lanaiensis.*

(ii) [Reserved for textual description of Unit 2.] This unit is critical habitat for *Asplenium dielerectum, Bidens micrantha* ssp. *kalealaha, Brighamia rockii, Ctenitis squamigera, Diplazium molokaiense, Neraudia sericea, Phyllostegia haliakalae, Pleomele fernaldii, Solanum incompletum,* and *Viola lanaiensis.*

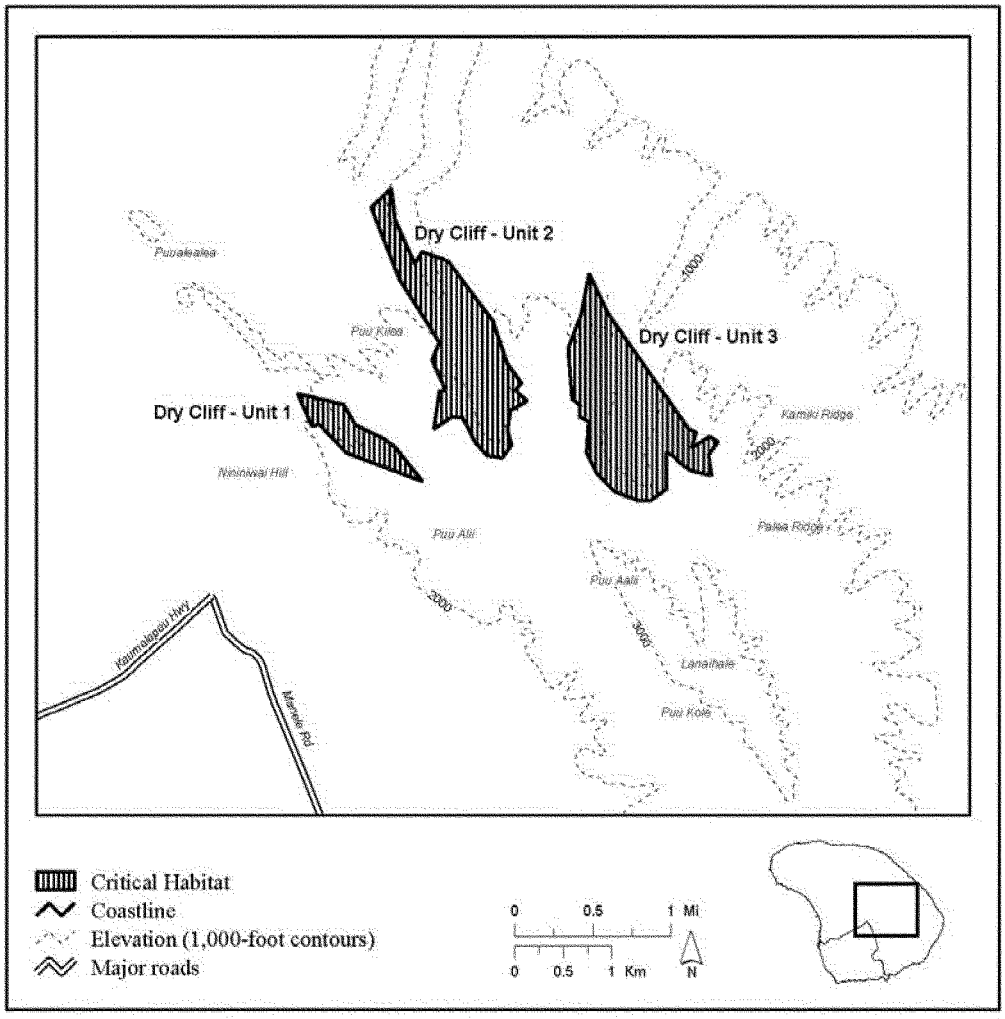
(iii) [Reserved for textual description of Unit 3.] This unit is critical habitat for *Asplenium dielerectum, Bidens micrantha* ssp. *kalealaha, Brighamia rockii, Ctenitis squamigera, Diplazium molokaiense, Neraudia sericea, Phyllostegia haliakalae, Pleomele fernaldii, Solanum incompletum,* and *Viola lanaiensis.*

(iv) NOTE: Map of Lanai—Dry Cliff—Unit 1, Lanai—Dry Cliff—Unit 2, and Lanai—Dry Cliff—Unit 3 (Map 9) follows:

Map 9

Lanai–Dry Cliff

Unit 1, Unit 2 and Unit 3



(10) Lanai—Wet Cliff—Unit 1 (731 ac, 296 ha), and Lanai—Wet Cliff—Unit 2 (230 ac, 93 ha)

(i) [Reserved for textual description of Unit 1.] This unit is critical habitat for *Ctenitis squamigera, Cyanea gibsonii, Cyanea munroi, Cyrtandra munroi, Hesperomannia arborescens, Kadua laxiflora, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Phyllostegia haliakalae, Pleomele fernaldii, Santalum haleakalae* var. *lanaiense,* and *Viola lanaiensis.*

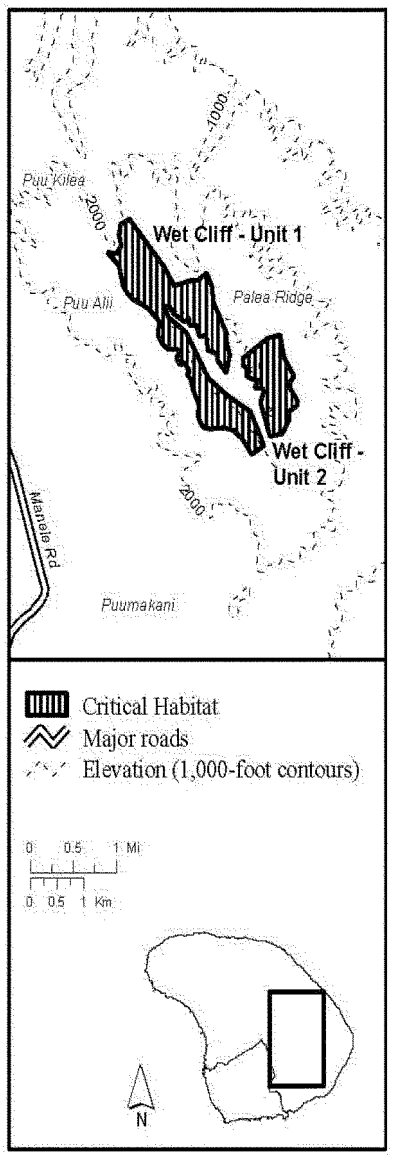
(ii) [Reserved for textual description of Unit 2.] This unit is critical habitat for *Ctenitis squamigera, Cyanea gibsonii, Cyanea munroi, Cyrtandra munroi, Hesperomannia arborescens, Kadua laxiflora, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Phyllostegia haliakalae, Pleomele fernaldii, Santalum haleakalae* var. *lanaiense,* and *Viola lanaiensis.*

(iii) NOTE: Map of Lanai—Wet Cliff—Unit 1 and Lanai—Wet Cliff—Unit 2 (Map 10) follows:

Map 10

Lanai–Wet Cliff

Unit 1 and Unit 2



(11) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR LANAI

Unit name	Species occupied	Species unoccupied
Lanai—Coastal—Unit 1		*Canavalia pubescens.* *Hibiscus brackenridgei.* *Portulaca sclerocarpa.* *Sesbania tomentosa.*
Lanai—Coastal—Unit 2		*Canavalia pubescens.* *Hibiscus brackenridgei.* *Portulaca sclerocarpa.* *Sesbania tomentosa.*
Lanai—Coastal—Unit 3		*Canavalia pubescens.* *Hibiscus brackenridgei.* *Portulaca sclerocarpa.* *Sesbania tomentosa.*
Lanai—Lowland Dry—Unit 1	*Abutilon eremitopetalum*	*Abutilon eremitopetalum.*

(11) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR LANAI—Continued

Unit name	Species occupied	Species unoccupied
		Asplenium dielerectum.
		Bidens micrantha ssp. *kalealaha*.
		Cyperus fauriei.
		Cyperus trachysanthos.
		Hibiscus brackenridgei.
		Neraudia sericea.
		Pleomele fernaldii.
	Schenkia sebaeoides	*Schenkia sebaeoides*.
		Sesbania tomentosa.
		Silene lanceolata.
		Solanum incompletum.
	Spermolepis hawaiiensis	*Spermolepis hawaiiensis*.
		Tetramolopium lepidotum ssp. *lepidotum*.
		Tetramolopium remyi.
		Vigna o-wahuensis.
Lanai—Lowland Dry—Unit 2		*Abutilon eremitopetalum*.
		Asplenium dielerectum.
		Bidens micrantha ssp. *kalealaha*.
		Cyperus fauriei.
		Cyperus trachysanthos.
		Hibiscus brackenridgei.
		Neraudia sericea.
		Pleomele fernaldii.
		Schenkia sebaeoides.
		Sesbania tomentosa.
		Silene lanceolata.
		Solanum incompletum.
		Spermolepis hawaiiensis.
		Tetramolopium lepidotum ssp. *lepidotum*.
		Tetramolopium remyi.
		Vigna o-wahuensis.
Lanai—Lowland Mesic—Unit 1	*Bidens micrantha* ssp. *kalealaha*	*Bidens micrantha* ssp. *kalealaha*.
	Bonamia menziesii	*Bonamia menziesii*.
		Cenchrus agrimonioides.
		Clermontia oblongifolia ssp. *mauiensis*.
		Diplazium molokaiense.
		Kadua cordata ssp. *remyi*.
		Kadua laxiflora.
		Labordia tinifolia var. *lanaiensis*.
	Pleomele fernaldii	*Pleomele fernaldii*.
	Santalum haleakalae var. *lanaiense*	*Santalum haleakalae* var. *lanaiense*.
		Solanum incompletum.
	Spermolepis hawaiiensis	*Spermolepis hawaiiensis*.
		Vigna o-wahuensis.
Lanai—Lowland Wet—Unit 1		*Clermontia oblongifolia* ssp. *mauiensis*.
	Kadua cordata ssp. *remyi*	*Kadua cordata* ssp. *remyi*.
		Kadua laxiflora.
		Labordia tinifolia var. *lanaiensis*.
	Pleomele fernaldii	*Pleomele fernaldii*.
	Santalum haleakalae var. *lanaiense*	*Santalum haleakalae* var. *lanaiense*.
		Zanthoxylum hawaiiense.
Lanai—Lowland Wet—Unit 2		*Clermontia oblongifolia* ssp. *mauiensis*.
		Kadua cordata ssp. *remyi*.
		Kadua laxiflora.
		Labordia tinifolia var. *lanaiensis*.
	Pleomele fernaldii	*Pleomele fernaldii*.
	Santalum haleakalae var. *lanaiense*	*Santalum haleakalae* var. *lanaiense*.
		Zanthoxylum hawaiiense.
Lanai—Montane Wet—Unit 1		*Adenophorus periens*.
	Cyanea gibsonii	*Cyanea gibsonii*.
	Cyanea lobata	*Cyanea lobata*.
	Cyrtandra munroi	*Cyrtandra munroi*.
	Kadua laxiflora	*Kadua laxiflora*.
		Labordia tinifolia var. *lanaiensis*.
	Melicope munroi	*Melicope munroi*.
	Santalum haleakalae var. *lanaiense*	*Santalum haleakalae* var. *lanaiense*.
	Viola lanaiensis	*Viola lanaiensis*.
Lanai—Dry Cliff—Unit 1		*Asplenium dielerectum*.
		Bidens micrantha ssp. *kalealaha*.
		Brighamii rockii.
		Ctenitis squamigera.
		Diplazium molokaiense.

(11) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR LANAI—Continued

Unit name	Species occupied	Species unoccupied
		Neraudia sericea.
		Phyllostegia haliakalae.
		Pleomele fernaldii.
		Solanum incompletum.
		Viola lanaiensis.
Lanai—Dry Cliff—Unit 2		*Asplenium dielerectum.*
		Bidens micrantha ssp. *kalealaha.*
		Brighamii rockii.
		Ctenitis squamigera.
		Diplazium molokaiense.
		Neraudia sericea.
		Phyllostegia haliakalae.
	Pleomele fernaldii	*Pleomele fernaldii.*
		Solanum incompletum.
		Viola lanaiensis.
Lanai—Dry Cliff—Unit 3		*Asplenium dielerectum.*
		Bidens micrantha ssp. *kalealaha.*
		Brighamii rockii.
		Ctenitis squamigera.
		Diplazium molokaiense.
		Neraudia sericea.
		Phyllostegia haliakalae.
		Pleomele fernaldii.
		Solanum incompletum.
		Viola lanaiensis.
Lanai—Wet Cliff—Unit 1	*Ctenitis squamigera*	*Ctenitis squamigera.*
		Cyanea gibsonii.
		Cyanea munroi.
	Cyrtandra munroi	*Cyrtandra munroi.*
		Hesperomannia arborescens.
		Kadua laxiflora.
		Labordia tinifolia var. *lanaiensis.*
	Melicope munroi	*Melicope munroi.*
		Phyllostegia haliakalae.
	Pleomele fernaldii	*Pleomele fernaldii.*
	Santalum haleakalae var. *lanaiense*	*Santalum haleakalae* var. *lanaiense.*
		Viola lanaiensis.
Lanai—Wet Cliff—Unit 2		*Ctenitis squamigera.*
		Cyanea gibsonii.
	Cyanea munroi	*Cyanea munroi.*
		Cyrtandra munroi.
		Hesperomannia arborescens.
		Kadua laxiflora.
	Labordia tinifolia var. *lanaiensis*	*Labordia tinifolia* var. *lanaiensis.*
		Melicope munroi.
		Phyllostegia haliakalae.
	Pleomele fernaldii	*Pleomele fernaldii.*
	Santalum haleakalae var. *lanaiense*	*Santalum haleakalae* var. *lanaiense.*
		Viola lanaiensis.

(n) *Plants on Lanai; Constituent elements.*

(1) *Flowering plants.*

Family Apiaceae

Spermolepis hawaiiensis (NCN)

Lanai—Lowland Dry—Unit 1, Lanai—Lowland Dry—Unit 2, and Lanai—Lowland Mesic—Unit 1, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Spermolepis hawaiiensis* on Lanai.

(i) In units Lanai—Lowland Dry—Unit 1 and Lanai—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

(ii) In unit Lanai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

Family Asparagaceae

Pleomele fernaldii (HALA PEPE)

Lanai—Lowland Dry—Unit 1, Lanai—Lowland Dry—Unit 2, Lanai—Lowland Mesic—Unit 1, Lanai—Lowland Wet—

Unit 1, Lanai—Lowland Wet—Unit 2, Lanai—Dry Cliff—Unit 1, Lanai—Dry Cliff—Unit 2, Lanai—Dry Cliff—Unit 3, Lanai—Wet Cliff—Unit 1, and Lanai—Wet Cliff—Unit 2, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Pleomele fernaldii* on Lanai.

(i) In units Lanai—Lowland Dry—Unit 1 and Lanai—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

(ii) In unit Lanai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(iii) In units Lanai—Lowland Wet—Unit 1 and Lanai—Lowland Wet—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iv) In units Lanai—Dry Cliff—Unit 1, Lanai—Dry Cliff—Unit 2, and Lanai—Dry Cliff—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Less than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, rocky talus.

(D) Canopy: None.

(E) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*

(F) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

(v) In units Lanai—Wet Cliff—Unit 1 and Lanai—Wet Cliff—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Family Asteraceae

Bidens Micrantha ssp. *Kalealaha* (KOOKOOLAU)

Lanai—Lowland Dry—Unit 1, Lanai—Lowland Dry—Unit 2, Lanai—Lowland Mesic—Unit 1, Lanai—Dry Cliff—Unit 1, Lanai—Dry Cliff—Unit 2, and Lanai—Dry Cliff—Unit 3, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Bidens micrantha* ssp. *kalealaha* on Lanai.

(i) In units Lanai—Lowland Dry—Unit 1 and Lanai—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

(ii) In unit Lanai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(iii) In units Lanai—Dry Cliff—Unit 1, Lanai—Dry Cliff—Unit 2, and Lanai—Dry Cliff—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Less than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, rocky talus.

(D) Canopy: None.

(E) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*

(F) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

Hesperomannia arborescens (NCN)

Lanai—Wet Cliff—Unit 1 and Lanai—Wet Cliff—Unit 2, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Hesperomannia arborescens* on Lanai. In units Lanai—Wet Cliff—Unit 1 and Lanai—Wet Cliff—Unit 2, the physical and biological features of critical habitat are:

(i) Elevation: Unrestricted.

(ii) Annual precipitation: Greater than 75 in (190 cm).

(iii) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(iv) Canopy: None.

(v) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(vi) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Tetramolopium lepidotum ssp. *lepidotum* (NCN)

Lanai—Lowland Dry—Unit 1 and Lanai—Lowland Dry—Unit 2, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Tetramolopium lepidotum* ssp. *lepidotum* on Lanai. In units Lanai—Lowland Dry—Unit 1 and Lanai—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(v) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(vi) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Tetramolopium remyi (NCN)

Lanai—Lowland Dry—Unit 1 and Lanai—Lowland Dry—Unit 2, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Tetramolopium remyi* on Lanai. In units Lanai—Lowland Dry—Unit 1 and Lanai—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(v) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(vi) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Family Campanulaceae

Brighamii rockii (PUA ALA)

Lanai—Dry Cliff—Unit 1, Lanai—Dry Cliff—Unit 2, and Lanai—Dry Cliff—Unit 3, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Brighamii rockii* on Lanai. In units Lanai—Dry Cliff—Unit 1, Lanai—Dry Cliff—Unit 2, and Lanai—Dry Cliff—Unit 3, the physical and biological features of critical habitat are:

(i) Elevation: Unrestricted.

(ii) Annual precipitation: Less than 75 in (190 cm).

(iii) Substrate: Greater than 65 degree slope, rocky talus.

(iv) Canopy: None.

(v) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*

(vi) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

Clermontia oblongifolia ssp. *mauiensis* (OHA WAI)

Lanai—Lowland Mesic—Unit 1, Lanai—Lowland Wet—Unit 1, and Lanai—Lowland Wet—Unit 2, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Clermontia oblongifolia* ssp. *mauiensis* on Lanai.

(i) In unit Lanai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Lanai—Lowland Wet—Unit 1 and Lanai—Lowland Wet—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

Cyanea gibsonii (NCN)

Lanai—Montane Wet—Unit 1, Lanai—Wet Cliff—Unit 1, and Lanai—Wet Cliff—Unit 2, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Cyanea gibsonii* on Lanai.

(i) In unit Lanai—Montane Wet—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(ii) In units Lanai—Wet Cliff—Unit 1 and Lanai—Wet Cliff—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Cyanea lobata (HAHA)

Lanai—Montane Wet—Unit 1, identified in the legal descriptions in paragraph (m) of this section, constitutes critical habitat for *Cyanea lobata* on Lanai. In unit Lanai—Montane Wet—Unit 1, the physical and biological features of critical habitat are:

(i) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Greater than 75 in (190 cm).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(v) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(vi) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

Cyanea munroi (HAHA)

Lanai—Wet Cliff—Unit 1 and Lanai—Wet Cliff—Unit 2, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Cyanea munroi* on Lanai. In units Lanai—Wet Cliff—Unit 1 and Lanai—Wet Cliff—Unit 2, the physical and biological features of critical habitat are:

(i) Elevation: Unrestricted.

(ii) Annual precipitation: Greater than 75 in (190 cm).

(iii) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(iv) Canopy: None.

(v) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(vi) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Family Caryophyllaceae

Silene lanceolata (NCN)

Lanai—Lowland Dry—Unit 1 and Lanai—Lowland Dry—Unit 2, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Silene lanceolata* on Lanai. In units Lanai—Lowland Dry—Unit 1 and Lanai—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(v) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(vi) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Family Convolvulaceae

Bonamia menziesii (NCN)

Lanai—Lowland Mesic—Unit 1, identified in the legal descriptions in paragraph (m) of this section, constitutes critical habitat for *Bonamia menziesii* on Lanai. In unit Lanai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: 50 to 75 in (130 to 190 cm).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(v) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(vi) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

Family Cyperaceae

Cyperus fauriei (NCN)

Lanai—Lowland Dry—Unit 1 and Lanai—Lowland Dry—Unit 2, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Cyperus fauriei* on Lanai. In units Lanai—Lowland Dry—Unit 1 and Lanai—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(v) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(vi) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Cyperus trachysanthos (PUUKAA)

Lanai—Lowland Dry—Unit 1 and Lanai—Lowland Dry—Unit 2, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Cyperus trachysanthos* on Lanai. In units Lanai—Lowland Dry—Unit 1 and Lanai—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(v) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(vi) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Family Fabaceae

Canavalia pubescens (AWIKIWIKI)

Lanai—Coastal—Unit 1, Lanai—Coastal—Unit 2, and Lanai—Coastal—Unit 3, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Canavalia pubescens* on Lanai. In units Lanai—Coastal—Unit 1, Lanai—Coastal—Unit 2, and Lanai—Coastal—Unit 3, the physical and biological features of critical habitat are:

(i) Elevation: Less than 980 ft (300 m).

(ii) Annual precipitation: Less than 20 in (50 cm).

(iii) Substrate: Well-drained, calcareous, talus slopes; weathered clay soils; ephemeral pools; mudflats.

(iv) Canopy: *Hibiscus, Myoporum, Santalum, Scaevola.*

(v) Subcanopy: *Gossypium, Sida, Vitex.*

(vi) Understory: *Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*

Sesbania tomentosa (OHAI)

Lanai—Coastal—Unit 1, Lanai—Coastal—Unit 2, Lanai—Coastal—Unit 3, Lanai—Lowland Dry—Unit 1, and Lanai—Lowland Dry—Unit 2, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Sesbania tomentosa* on Lanai.

(i) In units Lanai—Coastal—Unit 1, Lanai—Coastal—Unit 2, and Lanai—Coastal—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 980 ft (300 m).

(B) Annual precipitation: Less than 20 in (50 cm).

(C) Substrate: Well-drained, calcareous, talus slopes; weathered clay soils; ephemeral pools; mudflats.

(D) Canopy: *Hibiscus, Myoporum, Santalum, Scaevola.*

(E) Subcanopy: *Gossypium, Sida, Vitex.*

(F) Understory: *Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*

(ii) In units Lanai—Lowland Dry—Unit 1 and Lanai—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Vigna o-wahuensis (NCN)

Lanai—Lowland Dry—Unit 1, Lanai—Lowland Dry—Unit 2, and Lanai—Lowland Mesic—Unit 1, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Vigna o-wahuensis* on Lanai.

(i) In units Lanai—Lowland Dry—Unit 1 and Lanai—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

(ii) In unit Lanai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

Family Gentianaceae

Schenkia sebaeoides (AWIWI)

Lanai—Lowland Dry—Unit 1 and Lanai—Lowland Dry—Unit 2, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Schenkia sebaeoides* on Lanai. In units Lanai—Lowland Dry—

Unit 1 and Lanai—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(v) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(vi) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Family Gesneriaceae

Cyrtandra munroi (HAIWALE)

Lanai—Montane Wet—Unit 1, Lanai—Wet Cliff—Unit 1, and Lanai—Wet Cliff—Unit 2, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Cyrtandra munroi* on Lanai.

(i) In unit Lanai—Montane Wet—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(ii) In units Lanai—Wet Cliff—Unit 1 and Lanai—Wet Cliff—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Family Lamiaceae

Phyllostegia haliakalae (NCN)

Lanai—Dry Cliff—Unit 1, Lanai—Dry Cliff—Unit 2, Lanai—Dry Cliff—Unit 3, Lanai—Wet Cliff—Unit 1, and Lanai—Wet Cliff—Unit 2, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Phyllostegia haliakalae* on Lanai.

(i) In units Lanai—Dry Cliff—Unit 1, Lanai—Dry Cliff—Unit 2, and Lanai—Dry Cliff—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Less than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, rocky talus.

(D) Canopy: None.

(E) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*

(F) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

(ii) In units Lanai—Wet Cliff—Unit 1 and Lanai—Wet Cliff—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Family Loganiaceae

Labordia tinifolia var. *lanaiensis* (KAMAKAHALA)

Lanai—Lowland Mesic—Unit 1, Lanai—Lowland Wet—Unit 1, Lanai—Lowland Wet—Unit 2, Lanai—Montane Wet—Unit 1, Lanai—Wet Cliff—Unit 1, and Lanai—Wet Cliff—Unit 2, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Labordia tinifolia* var. *lanaiensis* on Lanai.

(i) In unit Lanai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Lanai—Lowland Wet—Unit 1 and Lanai—Lowland Wet—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iii) In unit Lanai—Montane Wet—Unit 1; the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iv) In units Lanai—Wet Cliff—Unit 1 and Lanai—Wet Cliff—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Family Malvaceae

Abutilon eremitopetalum (NCN)

Lanai—Lowland Dry—Unit 1 and Lanai—Lowland Dry—Unit 2, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Abutilon eremitopetalum* on Lanai. In units Lanai—Lowland Dry—Unit 1 and Lanai—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(v) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(vi) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Hibiscus brackenridgei (MAO HAU HELE)

Lanai—Coastal—Unit 1, Lanai—Coastal—Unit 2, Lanai—Coastal—Unit 3, Lanai—Lowland Dry—Unit 1, and Lanai—Lowland Dry—Unit 2, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Hibiscus brackenridgei* on Lanai.

(i) In units Lanai—Coastal—Unit 1, Lanai—Coastal—Unit 2, and Lanai—Coastal—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Less than 980 ft (300 m).

(B) Annual precipitation: Less than 20 in (50 cm).

(C) Substrate: Well-drained, calcareous, talus slopes; weathered clay soils; ephemeral pools; mudflats.

(D) Canopy: *Hibiscus, Myoporum, Santalum, Scaevola.*

(E) Subcanopy: *Gossypium, Sida, Vitex.*

(F) Understory: *Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*

(ii) In units Lanai—Lowland Dry—Unit 1 and Lanai—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Family Poaceae

Cenchrus agrimonioides (KAMANOMANO (= SANDBUR, AGRIMONY))

Lanai—Lowland Mesic—Unit 1, identified in the legal descriptions in paragraph (m) of this section, constitutes critical habitat for *Cenchrus agrimonioides* on Lanai. In unit Lanai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: 50 to 75 in (130 to 190 cm).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(v) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(vi) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

Family Portulacaceae:

Lanai—Coastal—Unit 1, Lanai—Coastal—Unit 2, and Lanai—Coastal—Unit 3, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Portulaca sclerocarpa* on Lanai. In units Lanai—Coastal—Unit 1, Lanai—Coastal—Unit 2, and Lanai—Coastal—Unit 3, the physical and biological features of critical habitat are:

(i) Elevation: Less than 980 ft (300 m).

(ii) Annual precipitation: Less than 20 in (50 cm).

(iii) Substrate: Well-drained, calcareous, talus slopes; weathered clay soils; ephemeral pools; mudflats.

(iv) Canopy: *Hibiscus, Myoporum, Santalum, Scaevola.*

(v) Subcanopy: *Gossypium, Sida, Vitex.*

(vi) Understory: *Eragrostis, Jacquemontia, Lyceum, Nama, Sesuvium, Sporobolus, Vigna.*

Family Rubiaceae

Kadua cordata ssp. *remyi* (KOPA)

Lanai—Lowland Mesic—Unit 1, Lanai—Lowland Wet—Unit 1, and Lanai—Lowland Wet—Unit 2, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Kadua cordata* ssp. *remyi* on Lanai.

(i) In unit Lanai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Lanai—Lowland Wet—Unit 1 and Lanai—Lowland Wet—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

Kadua laxiflora (PILO)

Lanai—Lowland Mesic—Unit 1, Lanai—Lowland Wet—Unit 1, Lanai—Lowland Wet—Unit 2, Lanai—Montane Wet—Unit 1, Lanai—Wet Cliff—Unit 1, and Lanai—Wet Cliff—Unit 2, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Kadua laxiflora* on Lanai.

(i) In unit Lanai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Lanai—Lowland Wet—Unit 1 and Lanai—Lowland Wet—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iii) In unit Lanai—Montane Wet—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(iv) In units Lanai—Wet Cliff—Unit 1 and Lanai—Wet Cliff—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.
(B) Annual precipitation: Greater than 75 in (190 cm).
(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.
(D) Canopy: None.
(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*
(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Family Rutaceae

Melicope munroi (ALANI)

Lanai—Montane Wet—Unit 1, Lanai—Wet Cliff—Unit 1, and Lanai—Wet Cliff—Unit 2, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Melicope munroi* on Lanai.
(i) In unit Lanai—Montane Wet—Unit 1, the physical and biological features of critical habitat are:
(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).
(B) Annual precipitation: Greater than 75 in (190 cm).
(C) Substrate: Well-developed soils, montane bogs.
(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*
(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*
(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*
(ii) In units Lanai—Wet Cliff—Unit 1 and Lanai—Wet Cliff—Unit 2, the physical and biological features of critical habitat are:
(A) Elevation: Unrestricted.
(B) Annual precipitation: Greater than 75 in (190 cm).
(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.
(D) Canopy: None.
(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*
(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Zanthoxylum hawaiiense (AE)

Lanai—Lowland Wet—Unit 1 and Lanai—Lowland Wet—Unit 2, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Zanthoxylum hawaiiense* on Lanai. In units Lanai—Lowland Wet—Unit 1 and Lanai—Lowland Wet—Unit 2, the physical and biological features of critical habitat are:
(i) Elevation: Less than 3,300 ft (1,000 m).
(ii) Annual precipitation: Greater than 75 in (190 cm).
(iii) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.
(iv) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*
(v) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*
(vi) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

Family Santalaceae

Santalum haleakalae var. *lanaiense* (LANAI SANDALWOOD, ILIAHI)

Lanai—Lowland Mesic—Unit 1, Lanai—Lowland Wet—Unit 1, Lanai—Lowland Wet—Unit 2, Lanai—Montane Wet—Unit 1, Lanai—Wet Cliff—Unit 1, and Lanai—Wet Cliff—Unit 2, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Santalum haleakalae* var. *lanaiense* on Lanai.
(i) In unit Lanai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:
(A) Elevation: Less than 3,300 ft (1,000 m).
(B) Annual precipitation: 50 to 75 in (130 to 190 cm).
(C) Substrate: Shallow soils, little to no herbaceous layer.
(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*
(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*
(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*
(ii) In units Lanai—Lowland Wet—Unit 1 and Lanai—Lowland Wet—Unit 2, the physical and biological features of critical habitat are:
(A) Elevation: Less than 3,300 ft (1,000 m).
(B) Annual precipitation: Greater than 75 in (190 cm).
(C) Substrate: Clays; ashbeds; deep, well-drained soils; lowland bogs.
(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*
(E) Subcanopy: *Cibotium, Claoxylon, Kadua, Melicope.*
(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*
(iii) In unit Lanai—Montane Wet—Unit 1, the physical and biological features of critical habitat are:
(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).
(B) Annual precipitation: Greater than 75 in (190 cm).
(C) Substrate: Well-developed soils, montane bogs.
(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*
(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*
(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*
(iv) In units Lanai—Wet Cliff—Unit 1 and Lanai—Wet Cliff—Unit 2, the physical and biological features of critical habitat are:
(A) Elevation: Unrestricted.
(B) Annual precipitation: Greater than 75 in (190 cm).
(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.
(D) Canopy: None.
(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*
(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Family Solanaceae

Solanum incompletum (POPOLO KU MAI)

Lanai—Lowland Dry—Unit 1, Lanai—Lowland Dry—Unit 2, Lanai—Lowland Mesic—Unit 1, Lanai—Dry Cliff—Unit 1, Lanai—Dry Cliff—Unit 2, and Lanai—Dry Cliff—Unit 3, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Solanum incompletum* on Lanai.
(i) In units Lanai—Lowland Dry—Unit 1 and Lanai—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:
(A) Elevation: Less than 3,300 ft (1,000 m).
(B) Annual precipitation: Less than 50 in (130 cm).
(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.
(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*
(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*
(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*
(ii) In unit Lanai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:
(A) Elevation: Less than 3,300 ft (1,000 m).
(B) Annual precipitation: 50 to 75 in (130 to 190 cm).
(C) Substrate: Shallow soils, little to no herbaceous layer.
(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*
(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*
(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*
(iii) In units Lanai—Dry Cliff—Unit 1, Lanai—Dry Cliff—Unit 2, and Lanai—

Dry Cliff—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Less than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, rocky talus.

(D) Canopy: None.

(E) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*

(F) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

Family Urticaceae

Neraudia sericea (NCN)

Lanai—Lowland Dry—Unit 1, Lanai—Lowland Dry—Unit 2, Lanai—Dry Cliff—Unit 1, Lanai—Dry Cliff—Unit 2, and Lanai—Dry Cliff—Unit 3, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Neraudia sericea* on Lanai.

(i) In units Lanai—Lowland Dry—Unit 1 and Lanai—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

(ii) In units Lanai—Dry Cliff—Unit 1, Lanai—Dry Cliff—Unit 2, and Lanai—Dry Cliff—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Less than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, rocky talus.

(D) Canopy: None.

(E) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*

(F) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

Family Violaceae

Viola lanaiensis (NCN)

Lanai—Montane Wet—Unit 1, Lanai—Dry Cliff—Unit 1, Lanai—Dry Cliff—Unit 2, Lanai—Dry Cliff—Unit 3, Lanai—Wet Cliff—Unit 1, and Lanai—Wet Cliff—Unit 2, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Viola lanaiensis* on Lanai.

(i) In unit Lanai—Montane Wet—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(ii) In units Lanai—Dry Cliff—Unit 1, Lanai—Dry Cliff—Unit 2, and Lanai—Dry Cliff—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Less than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, rocky talus.

(D) Canopy: None.

(E) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*

(F) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

(iii) In units Lanai–Wet Cliff–Unit 1 and Lanai–Wet Cliff–Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

(2) *Ferns and fern allies.*

Family Aspleniaceae

Asplenium dielerectum (ASPLENIUM–LEAVED DIELLIA)

Lanai—Lowland Dry—Unit 1, Lanai—Lowland Dry—Unit 2, Lanai—Dry Cliff—Unit 1, Lanai—Dry Cliff—Unit 2, and Lanai—Dry Cliff—Unit 3, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Asplenium dielerectum* on Lanai.

(i) In units Lanai—Lowland Dry—Unit 1 and Lanai—Lowland Dry—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: Less than 50 in (130 cm).

(C) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(D) Canopy: *Diospyros, Myoporum, Pleomele, Santalum, Sapindus.*

(E) Subcanopy: *Chamaesyce, Dodonaea, Leptecophylla, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(F) Understory: *Alyxia, Artemisia, Bidens, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

(ii) In units Lanai—Dry Cliff—Unit 1, Lanai—Dry Cliff—Unit 2, and Lanai—Dry Cliff—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Less than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, rocky talus.

(D) Canopy: None.

(E) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*

(F) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

Ctenitis squamigera (PAUOA)

Lanai—Dry Cliff—Unit 1, Lanai—Dry Cliff—Unit 2, Lanai—Dry Cliff—Unit 3, Lanai—Wet Cliff—Unit 1, and Lanai—Wet Cliff—Unit 2, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Ctenitis squamigera* on Lanai.

(i) In units Lanai—Dry Cliff—Unit 1, Lanai—Dry Cliff—Unit 2, and Lanai—Dry Cliff—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Less than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, rocky talus.

(D) Canopy: None.

(E) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*

(F) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

(ii) In units Lanai—Wet Cliff—Unit 1 and Lanai—Wet Cliff—Unit 2, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Greater than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(D) Canopy: None.

(E) Subcanopy: *Broussaisia, Cheirodendron, Leptocophylla, Metrosideros.*

(F) Understory: Bryophytes, ferns, *Coprosma, Dubautia, Kadua, Peperomia.*

Diplazium molokaiense (NCN)

Lanai—Lowland Mesic—Unit 1, Lanai—Dry Cliff—Unit 1, Lanai—Dry Cliff—Unit 2, and Lanai—Dry Cliff—Unit 3, identified in the legal descriptions in paragraph (m) of this section, constitute critical habitat for *Diplazium molokaiense* on Lanai.

(i) In unit Lanai—Lowland Mesic—Unit 1, the physical and biological features of critical habitat are:

(A) Elevation: Less than 3,300 ft (1,000 m).

(B) Annual precipitation: 50 to 75 in (130 to 190 cm).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Lanai—Dry Cliff—Unit 1, Lanai—Dry Cliff—Unit 2, and Lanai—Dry Cliff—Unit 3, the physical and biological features of critical habitat are:

(A) Elevation: Unrestricted.

(B) Annual precipitation: Less than 75 in (190 cm).

(C) Substrate: Greater than 65 degree slope, rocky talus.

(D) Canopy: None.

(E) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*

(F) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

Family Grammitidaceae

Adenophorus periens (PENDANT KIHI FERN)

Lanai—Montane Wet—Unit 1, identified in the legal descriptions in paragraph (m) of this section, constitutes critical habitat for *Adenophorus periens* on Lanai. In unit Lanai—Montane Wet—Unit 1; the physical and biological features of critical habitat are:

(i) Elevation: 3,300 to 6,500 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Greater than 75 in (190 cm).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(v) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(vi) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

* * * * *

Dated: May 3, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–11484 Filed 6–8–12; 8:45 am]

BILLING CODE 4310–55–P

FEDERAL REGISTER

Vol. 77 Monday,

No. 112 June 11, 2012

Part III

Environmental Protection Agency

Seventieth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments; Notice

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2012–0298; FRL–9349–9]

Seventieth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) transmitted its 70th ITC Report to the EPA Administrator on May 3, 2012. Under TSCA, the ITC is required to prepare and submit a report to the EPA Administrator every 6 months even if there are no changes to the TSCA section 4(e) *Priority Testing List.* In the 70th ITC Report, which is included with this notice, the ITC is not making any changes to the TSCA section 4(e) *Priority Testing List.*

DATES: Comments must be received on or before July 11, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0298, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2012–0298. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2012–0298. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Dr. John D. Walker, Interagency Testing Committee (7401M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–7527; fax number: (202) 564–7528; email address: *walker.johnd@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This notice is directed to the public in general. It may, however, be of particular interest to you if you manufacture (defined by statute to include import) and/or process TSCA-covered chemicals and you may be identified by the North American Industrial Classification System (NAICS) codes 325 and 32411. Because this notice is directed to the general public and other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Background

The Toxic Substances Control Act (TSCA) (15 U.S.C. 260l *et seq.*) authorizes the EPA Administrator to promulgate regulations under TSCA section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the ITC to recommend chemicals and chemical groups to the EPA Administrator for priority testing consideration. Section 4(e) of TSCA directs the ITC to revise the TSCA section 4(e) *Priority Testing List* at least every 6 months.

You may access additional information about the ITC at *http://www.epa.gov/opptintr/itc.*

A. The 70th ITC Report

The ITC is not making any changes to the TSCA section 4(e) *Priority Testing List.*

B. Status of the Priority Testing List

The *Priority Testing List* includes 2 alkylphenols; 16 chemicals with insufficient dermal absorption rate data, and 164 High Production Volume (HPV) Challenge Program orphan chemicals; a category of cadmium compounds including any unique chemical substance that contains cadmium as part of that chemical's structure; 6 non-phthalate plasticizers; 25 phosphate ester flame retardants; 2 other flame retardants; 9 chemicals to which children living near hazardous waste sites may be exposed; and a category of 69 diisocyanates and related compounds (including 14 Action Plan chemicals and 55 related compounds).

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: June 1, 2012.

Wendy C. Hamnett,

Director, Office of Pollution Prevention and Toxics.

Seventieth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency

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I. Background
II. ITC's Activities During this Reporting Period (December 2011 to May 2012)
III. The TSCA Interagency Testing Committee

Summary

The ITC is not making any changes to the Toxic Substances Control Act (TSCA) section 4(e) *Priority Testing List.*

The TSCA section 4(e) *Priority Testing List* is Table 1 of this unit.

TABLE 1—TSCA SECTION 4(e) PRIORITY TESTING LIST (MAY 2012)

ITC Report	Date	Chemical name/group	Action
31	January 1993	2 chemicals with insufficient dermal absorption rate data, methylcyclohexane and cyclopentane.	Designated.
32	May 1993	10 chemicals with insufficient dermal absorption rate data	Designated.
35	November 1994	4 chemicals with insufficient dermal absorption rate data, cyclopentadiene, formamide, 1,2,3-trichloropropane, and *m*-nitrotoluene.	Designated.
37	November 1995	Branched 4-nonylphenol (mixed isomers)	Recommended.
41	November 1997	Phenol, 4-(1,1,3,3-tetramethylbutyl)-	Recommended.
55	December 2004	161 High Production Volume (HPV) Challenge Program orphan chemicals	Recommended.
56	August 2005	3 HPV Challenge Program orphan chemicals	Recommended.
68	May 2011	Cadmium	Recommended.
69	November 2011	Cadmium compounds	Recommended.
69	November 2011	6 non-phthalate plasticizers	Recommended.
69	November 2011	25 phosphate ester flame retardants	Recommended.
69	November 2011	2 other flame retardants	Recommended.
69	November 2011	9 chemicals to which children living near hazardous waste sites may be exposed.	Recommended.
69	November 2011	69 diisocyanates and related compounds	Recommended.

I. Background

The ITC was established by section 4(e) of TSCA ''to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of rules for testing under section 4(a). * * * At least every six months * * *, the Committee shall make such revisions to the *Priority Testing List* as it determines to be necessary and transmit them to the Administrator together with the Committee's reasons for the revisions'' (Public Law 94–469, 90 Stat. 2003 *et seq.,* 15 U.S.C. 2601 *et seq.*). ITC reports are available from the ITC's Web site (*http://www.epa.gov/opptintr/itc*) within a few days of submission to the EPA Administrator and from regulations.gov (*http://www.regulations.gov*) after publication in the **Federal Register**. The ITC produces its revisions to the *Priority Testing List* with administrative and technical support from the ITC staff, ITC members, and their U.S. Government organizations, and contract support provided by EPA. ITC members and staff are listed at the end of this report.

II. ITC's Activities During this Reporting Period (December 2011 to May 2012)

During this reporting period, the ITC discussed actions taken during previous reporting periods.

III. The TSCA Interagency Testing Committee

Statutory Organizations with Representatives

Department of Commerce

National Institute of Standards and Technology, Dianne L. Poster, Alternate

Environmental Protection Agency

Robert W. Jones, Member
John E. Schaeffer, Alternate

National Institute of Environmental Health Sciences

Nigel Walker, Member
Scott Masten, Alternate

National Institute for Occupational Safety and Health

Gayle DeBord, Member
Dennis W. Lynch, Alternate

Occupational Safety and Health Administration

Janet Carter, Member
Thomas Nerad, Alternate

Liaison Organizations with Representatives

Agency for Toxic Substances and Disease Registry

Glenn D. Todd, Member

Consumer Product Safety Commission

Dominique Johnson, Member

Department of Agriculture

Clifford P. Rice, Member
Cathleen J. Hapeman, Alternate

Department of Defense

Laurie E. Roszell, Member

Department of the Interior

Barnett A. Rattner, Member

Food and Drug Administration

Kirk Arvidson, Member
Ronald F. Chanderbhan, Alternate

ITC Staff

John D. Walker, Director
Carol Savage, Administrative Assistant (NOWCC Employee)

TSCA Interagency Testing Committee (7401M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; email address: *savage.carol@epa.gov;* url: *http://www.epa.gov/opptintr/itc.*

[FR Doc. 2012–14099 Filed 6–8–12; 8:45 am]

BILLING CODE 6560–50–P

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H.R. 2415/P.L. 112–124
To designate the facility of the United States Postal Service located at 11 Dock Street in Pittston, Pennsylvania, as the "Trooper Joshua D. Miller Post Office Building". (June 5, 2012; 126 Stat. 367)

H.R. 3220/P.L. 112–125
To designate the facility of the United States Postal Service located at 170 Evergreen Square SW in Pine City, Minnesota, as the "Master Sergeant Daniel L. Fedder Post Office". (June 5, 2012; 126 Stat. 368)

H.R. 3413/P.L. 112–126
To designate the facility of the United States Postal Service located at 1449 West Avenue in Bronx, New York, as the "Private Isaac T. Cortes Post Office". (June 5, 2012; 126 Stat. 369)

H.R. 4119/P.L. 112–127
Border Tunnel Prevention Act of 2012 (June 5, 2012; 126 Stat. 370)

H.R. 4849/P.L. 112–128
Sequoia and King Canyon National Parks Backcountry Access Act (June 5, 2012; 126 Stat. 373)

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