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Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Taylor's Checkerspot Butterfly and Streaked Horned Lark; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES2013–0009; 4500030114]

RIN 1081–AZ36

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Taylor's Checkerspot Butterfly and Streaked Horned Lark

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, designate critical habitat for the Taylor's checkerspot butterfly (*Euphydryas editha taylori*) and streaked horned lark (*Eremophila alpestris strigata*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 1,941 acres (786 hectares) in Island, Clallam, and Thurston Counties in Washington, and in Benton County in Oregon, fall within the boundaries of the critical habitat designation for Taylor's checkerspot butterfly. Approximately 4,629 acres (1,873 hectares) in Grays Harbor, Pacific, and Wahkiakum Counties in Washington, and in Clatsop, Columbia, Marion, Polk, and Benton Counties in Oregon, fall within the boundaries of the critical habitat designation for streaked horned lark. The effect of this regulation is to designate critical habitat for the Taylor's checkerspot butterfly and streaked horned lark under the Act for the conservation of the species.

DATES: This rule is effective on November 4, 2013.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and at the Washington Fish and Wildlife Office. Comments and materials we received, as well as supporting documentation used in preparing this final rule, are available for public inspection, by appointment, during normal business hours, at: U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive SE., Suite 102, Lacey, WA 98503–1263. The office can be reached by telephone at 360–753–9440 or by facsimile at 360–753–9008.

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2013–0009 and at *http://www.fws.gov/wafwo/TCBSHL.html,* or, by appointment, at the Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and field office set out above, and may also be included at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ken Berg, Manager, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive, Suite 102, Lacey, WA 98503–1263; by telephone 360–753–9440; or by facsimile 360–753–9405. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why We Need to Publish a Rule. Under the Endangered Species Act (Act), any species that is determined to be an endangered or threatened species requires critical habitat to be designated, to the maximum extent prudent and determinable. Elsewhere in today's issue of the **Federal Register**, we list the Taylor's checkerspot butterfly as an endangered species and the streaked horned lark as a threatened species. Designations and revisions of critical habitat can only be completed by issuing a rule.

Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. Additionally, the Act sets forth the requirement to finalize rules within 1 year of proposal.

This rule designates critical habitat for the Taylor's checkerspot butterfly and streaked horned lark. On October 11, 2012, we published in the **Federal Register** (77 FR 61937) a proposed rule to list the Taylor's checkerspot butterfly and streaked horned lark and to designate critical habitat for these subspecies. The critical habitat areas we are designating in this final rule constitute our current best assessment of the areas that meet the definition of critical habitat for the Taylor's checkerspot butterfly and streaked horned lark. We are designating as critical habitat:

- Approximately 1,941 acres (ac) (786 hectares (ha)) in three units for the Taylor's checkerspot butterfly in Island, Clallam, and Thurston Counties in Washington; and in Benton County in Oregon.
- Approximately 4,629 ac (1,873 ha) in two units for the streaked horned lark in Grays Harbor, Pierce, Pacific, and Wahkiakum Counties in Washington; and in Clatsop, Columbia, Marion, Polk, and Benton Counties in Oregon.

We have prepared an economic analysis of the designation of critical habitat. We have prepared an analysis of the probable economic impacts of the critical habitat designations and related factors. We announced the availability of the draft economic analysis (DEA) in the **Federal Register** on April 3, 2012 (78 FR 20074), allowing the public to provide comments on our analysis. We have incorporated the comments and have completed the final economic analysis (FEA) concurrently with this final determination.

Peer review and public comment. We sought comments from independent specialists to ensure that our designation is based on scientifically sound data and analyses. We obtained opinions from two knowledgeable individuals with scientific expertise to review our technical assumptions and analysis, and to determine whether or not we had used the best available information. These peer reviewers concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve this final rule. Information we received from peer review is incorporated in this final designation. We also considered all comments and information we received from the public during the comment period.

Previous Federal Actions

All previous Federal actions are described in the listing determination for the Taylor's checkerspot butterfly and streaked horned lark, which is published elsewhere in today's **Federal Register**.

Background

For information related to the listing of the species, see the final rule listing Taylor's checkerspot butterfly as an endangered species and the streaked horned lark as a threatened species, which is published elsewhere in today's **Federal Register**.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the Taylor's checkerspot butterfly and streaked horned lark during two comment periods. The first comment period,

associated with the publication of the proposed rule (77 FR 61937; October 11, 2012), opened on October 11, 2012, and closed on December 10, 2012. We then made available the draft economic analysis (DEA) of the proposed critical habitat designation and reopened the comment period on the proposed rule for an additional 30 days from April 3, 2013, to May 3, 2013 (78 FR 20074; April 3, 2013). We also contacted appropriate Federal, State, tribal, county, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and the draft economic analysis. We held three public information workshops and a public hearing in April 2013, on the proposed rule to list the subspecies and the associated critical habitat designations.

During the two public comment periods, we received close to 100 comment letters and emails from individuals and organizations, as well as speaker testimony at the public hearing held on April 18, 2013. These comments addressed the proposed critical habitat or proposed listing (or both) for Taylor's checkerspot butterfly and streaked horned lark. We received comment letters from two peer reviewers for Taylor's checkerspot butterfly and three peer reviewers for streaked horned lark, and also received comment letters from three State agencies, one Native American tribe, and seven Federal agencies, including the Department of the Army and Department of the Air Force. We coordinated the proposed critical habitat with the federally recognized Shoalwater Bay Tribe on a government-to-government basis in accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2).

We contacted the only tribe potentially affected by the proposed designation (the Shoalwater Bay Tribe) and coordinated with them to discuss their ongoing or future management strategies for the Taylor's checkerspot butterfly and streaked horned lark.

All substantive information provided during comment periods has either been incorporated directly into this final designation or is addressed below. Comments we received are grouped into general issues specifically relating to the proposed critical habitat designation for the Taylor's checkerspot butterfly and streaked horned lark, and are addressed in the following summary and incorporated into the final rule as appropriate.

Comments From Peer Reviewers

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from four knowledgeable individuals with scientific expertise that included familiarity with the Taylor's checkerspot butterfly and its habitats, biological needs, and threats, and from three knowledgeable individuals with scientific expertise that included familiarity with the streaked horned lark and its habitats, biological needs, and threats. We received responses from two of the peer reviewers for the Taylor's checkerspot butterfly. Both peer reviewers felt that the proposed rule was a thorough description of the status of Taylor's checkerspot butterfly. Both reviewers commented that they considered the proposed rule well researched and well written, and one commenter found the rule comprehensively represented the current scientific knowledge for the taxon. The two peer reviewers made no substantive comments relevant to the critical habitat designation for the Taylor's checkerspot butterfly.

We received responses from three of the peer reviewers for the streaked horned lark. Two of the peer reviewers felt that the proposed rule was a thorough description of the status of the streaked horned lark, and that our assessment of the primary constituent elements of critical habitat was correct. Two peer reviewers made several substantive comments relevant to the proposed critical habitat designation for the streaked horned lark, which we respond to below and also in the *Comments from the Public* section in cases where we received a similar comment from the public. Our requests for peer review are limited to a request for review of the merits of the scientific information in our documents; if peer reviewers have volunteered their personal opinions on matters not directly relevant to the science of our designation, we do not respond to those comments here.

Streaked Horned Lark

(1) *Comment:* One peer reviewer stated that the proposed designation of critical habitat was lacking formal agreements for lark conservation with land owners and managers of sites proposed for critical habitat, or at sites the peer reviewer believes should have been proposed as critical habitat.

Our Response: Our requests for peer review are limited to a request for review of the scientific information in our documents. In this case the peer reviewer has offered his opinion on a non-scientific issue; however, management agreements are not a requirement for critical habitat designation. We will seek agreements with land owners and managers on lands designated as critical habitat and on other lands that are important to conservation of the streaked horned lark as we initiate a recovery program for the bird, but such agreements are not relevant to the designation of critical habitat unless we are considering whether to exclude an area from the designation pursuant to section 4(b)(2) of the Act. We did consider the additional sites the peer reviewer suggested should have been proposed as critical habitat; however, we concluded that the areas suggested did not meet our definition of critical habitat for the streaked horned lark.

(2) *Comment:* One peer reviewer commented on our lack of discussion of wintering habitat requirements for the streaked horned lark. The peer reviewer suggested that if wintering habitats are the same as habitats used for breeding, we should state that explicitly. The peer reviewer also commented on the fact that all of the proposed critical habitat sites were identified as either breeding habitats or breeding and wintering habitats, but there were no sites identified as solely wintering sites.

Our Response: Our current knowledge of habitat use by the streaked horned lark indicates that there are no sites that are used solely for wintering habitat. There are sites in Washington that have breeding populations in the spring and summer, but that are then abandoned by the streaked horned lark in the fall and winter. Other breeding sites on the Washington coast, in the Columbia River, and in the Willamette Valley are also used as wintering habitats. We have amended the description of critical habitat selection criteria to be clearer, as requested by the peer reviewer.

(3) *Comment:* Two peer reviewers and several commenters expressed concern about relying on airports for streaked horned lark recovery because although airports harbor populations of larks, the sites may act as ''population sinks'' due to the constant habitat disturbance, hazing, and threat of aircraft strikes.

Our Response: We share this concern. Streaked horned larks occur on airports because management to control hazardous wildlife and to maintain safe conditions for aviation has incidentally created suitable habitat for the subspecies; however, airports are not ideal locations for focusing recovery efforts for the streaked horned lark. First, the birds are at risk of mortality

from plane collisions, and have frequently been documented in bird strikes at airports (Cleary and Dolbeer 2005, p. 101). Secondly, Federal Aviation Administration (FAA) regulations require airports to take immediate action to alleviate wildlife hazards whenever they are detected (14 CFR 139.337). This requirement to maintain airfields free of wildlife hazards would severely limit the potential to increase streaked horned lark populations on airports. Streaked horned larks at airports are therefore subject to the combined threats of plane strikes and constant management to minimize bird populations; although airports currently support some relatively large populations of the subspecies, airports are clearly not ideal for conservation and recovery efforts aimed at further increasing abundance of the bird. Airports will continue to be important for the consistent habitats they provide for some populations of the streaked horned lark, and we will work with airports to maintain stable populations of the subspecies. Our main recovery efforts for the streaked horned lark, however, will need to focus on establishing new populations and managing for the subspecies at locations where population growth is an acceptable management goal for the site.

(4) *Comment:* One peer reviewer asked if industrial lands may be population sinks (*i.e.,* they provide attractive locations for breeding but do not contribute to population growth), given their frequent disturbance without regard to the effect on the streaked horned lark, and further inquired if we had considered the possible long-term effects of the activities exempted in the special rule. The peer reviewer suggested that perhaps we should not encourage maintenance of sink habitats.

Our Response: At this point, we do not know whether industrial lands function as sink habitats for breeding streaked horned larks; we will focus on gaining a better understanding of lark population dynamics in these habitats in the recovery program for the bird. We agree that this will be an important issue as we identify habitats that have the potential for contributing to the long-term conservation of the subspecies. We acknowledged this concern in response to another comment as well (see our response to Comment 3, above).

(5) *Comment:* One peer reviewer and one commenter stated the designation of Coffeepot Island as critical habitat for the streaked horned lark is inconsistent with the rationale for other habitats proposed for designation (i.e., it is currently an unoccupied site), and believed this provided it with special recognition not warranted relative to many other sites where the streaked horned lark has occurred in the past or could occur in the future, or even more importantly, many other sites not being proposed as critical habitat where the streaked horned lark currently does occur.

Our Response: We proposed critical habitat on a portion of Coffeepot Island based on indications that the U.S. Army Corps of Engineers (Corps) might add this area to their list of authorized dredge deposit sites (thus potentially creating suitable habitat for the streaked horned lark) and its proximity to other occupied deposit sites on the Columbia River. As such, we believed that even though it may be currently unoccupied, it could play an essential role in the conservation of the subspecies in the future. However, to date we have no indications that the Corps is actively pursuing inclusion of this island into their dredging and navigation channel maintenance program. Therefore, the site is unlikely to support streaked horned larks anytime within the foreseeable future. Based upon this information and input from peer reviewers, we have determined this unoccupied area is not essential to the conservation of the subspecies, and thus does not meet the definition of critical habitat. Coffeepot Island is not included in the final designation of critical habitat for the streaked horned lark.

(6) *Comment:* One peer reviewer and several commenters recommended that we designate critical habitat on sites that are not known to be currently occupied by streaked horned lark, but could be managed to provide suitable habitat. These sites include privately owned agricultural lands in the Willamette Valley, industrial and restoration sites in the Portland area, and islands and mainland sites along the lower Columbia River.

Our Response: Recovery of the streaked horned lark will likely require the restoration or creation of new habitat on some currently unoccupied sites. As described in the proposed rule, streaked horned larks require habitat with both a specific landscape context (flat and wide-open) and structure (low-stature vegetation with abundant bare ground). Given the appropriate landscape context, the structure is easy to create, which has fostered the hope of establishing new habitats for streaked horned larks at sites with conservation management as their main objective. There have recently been some attempts to create habitat for and to attract streaked horned larks to suitable but unoccupied habitats. An experimental approach, initially implemented by Metro (the Portland, Oregon, area regional government body) and later joined by the Center for Natural Lands Management (CNLM), a nongovernmental organization, has attempted to create habitat and attract streaked horned larks to the St. Johns Landfill in North Portland, Oregon, and to two sites at Joint Base Lewis-McChord (JBLM) in Washington; the effort at St. Johns Landfill began in 2009, and at JBLM in 2012. These efforts have combined habitat creation and the use of conspecific attraction techniques (streaked horned lark decoys and audio playback of recorded calls). The concept holds great promise, but so far has not been successful in establishing a new population of streaked horned larks at any of the three experimental sites. As we embark on recovery efforts for the streaked horned lark, we intend to continue to refine this approach and to work to create new habitats in areas with the proper landscape context, but it is clear that we do not yet know which sites will succeed in attracting and supporting new populations of streaked horned larks. Designating critical habitat at this time on sites that do not yet support use by streaked horned larks would be premature, since we cannot be sure that streaked horned larks will colonize sites that have been recommended as potential critical habitat, and the designation of unoccupied areas requires a determination that such areas are essential to the conservation of the subspecies. We may revisit the issue of critical habitat designation when we have better information about how to attract streaked horned larks to currently unoccupied sites. In addition, we will look to the guidance provided by the recovery plan that will be developed for the streaked horned lark to make future determinations regarding those unoccupied areas, if any, that may be essential for the conservation of the subspecies.

Comments From States

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' Comments we received from State agencies regarding the proposal to designate critical habitat for the Taylor's checkerspot butterfly and streaked horned lark are addressed below. We received comments from the Washington Department of Fish and Wildlife (WDFW) and Washington Department of Natural Resources (WDNR) related to biological

information, threats, critical habitat exclusions, the inadequacy of regulatory mechanisms, and recommendations for the management of habitat. We did not receive any comments regarding critical habitat for the Taylor's checkerspot butterfly or streaked horned lark from agencies in the State of Oregon.

Both agencies (WDFW and WDNR) provided a number of recommended technical corrections or edits to the proposed critical habitat designation for the Taylor's checkerspot butterfly and streaked horned lark. We have evaluated and incorporated this information into this final rule where appropriate to clarify the final critical habitat designation. In instances where the Service may have disagreed with an interpretation of the technical information that was provided, we have responded in separate communication with the agency.

(7) *Comment:* WDFW noted that the critical habitat designation for Taylor's checkerspot butterfly in the Bald Hill area did not appear to include some historical Taylor's checkerspot butterfly locations with suitable habitat. WDFW believes both Fossil Rock and Bald Hill 1176 Spur A Bald should have been included in proposed critical habitat.

Our Response: We considered the WDFW's suggestion, but concluded the contiguous area proposed for designation as critical habitat in this area for Taylor's checkerspot butterfly would provide better management opportunities for the subspecies than would designating multiple, isolated patches. The focus of conservation work in the Bald Hill area has been in the vicinity of the State's Natural Area Preserve, and not on disjunct patches that are likely inaccessible to Taylor's checkerspot butterflies unless they were introduced (translocated) specifically into these isolated habitat patches.

(8) *Comment:* WDFW encouraged the Service to not only ensure that the conservation measures provided for in the integrated natural resources management plan (INRMP) for JBLM are sufficient to preclude the need to designate critical habitat for the Taylor's checkerspot butterfly and streaked horned lark, but also that implementation of the plan can be assured. WDFW also requested we consider excluding WDFW properties addressed by their draft wildlife area habitat conservation plan (HCP).

Our Response: Section 4(a)(3)(B)(i) of the Act specifically states that the Secretary shall not designate critical habitat on Department of Defense lands if the area is subject to an INRMP that provides a benefit to the species for which critical habitat is proposed. As discussed under the section Exemptions in this final rule, the Secretary has determined, in writing as required by the Act, that JBLM's INRMP provides such a benefit for Taylor's checkerspot butterfly and streaked horned lark under the endangered species management plans (ESMPs) developed specifically for these subspecies under their INRMP; therefore JBLM lands are not included in this final designation of critical habitat. Our experience with JBLM is that, when they commit to conservation actions, they have the funding required to ensure that implementation of the action will occur.

When deciding whether to exclude an area from designation of critical habitat under section 4(b)(2) of the Act, the Service needs to assess not only the conservation measures outlined within management plans regardless of agency or organization, but also the level of assurance an agency can provide of actually funding and implementing the conservation measures identified within the plan. The same process would hold true when evaluating the WDFW wildlife area HCP. As described in the Exclusions section of this document, we have excluded the Wildlife Areas owned and managed by WDFW because of the management plans in place for these State Wildlife Areas (Scatter Creek and West Rocky Prairie Wildlife Areas) The exclusion of these Wildlife Areas was not based on WDFW's draft HCP because we have not received a complete draft HCP document to review, and furthermore, the HCP in question is not finalized. We would not be able to exclude the areas in question based on assurances for funding and implementation that may be provided through a future HCP process.

(9) *Comment:* WDFW was concerned that, with the new helicopter brigade stationed at JBLM, the airstrip on TA 14 on 13th Division Prairie is now used almost daily during streaked horned lark breeding season, with many low-elevation flights and ''touch-and-go'' exercises occurring in the highest density occupied habitat. This is also a concern for adult Taylor's checkerspot butterflies at this site. They were also concerned with impacts associated with off-road training conducted in the 13th Division Prairie.

Our Response: Activities conducted on JBLM, including air operations at 13th Division Prairie, the military airfields, and other areas, will be addressed in section 7 consultations after the subspecies are listed. The Service is currently coordinating with the Environmental and Natural Resource Division and staff from Range Control on training activities that impact the Taylor's checkerspot butterfly and streaked horned lark, and we are in negotiations on ways to further reduce impacts to these two subspecies specifically at this location. JBLM is aware that they will need to implement timing restrictions and avoid conducting training activities in certain locations or during the most sensitive time of year to minimize or avoid take of the subspecies after they are listed. This will include the areas adjacent to the Pacemaker runway and other portions of the 13th Division Prairie where the Taylor's checkerspot butterfly and streaked horned lark occur.

(10) *Comment:* WDNR was concerned that the safe use of pesticides to control nonnative, invasive insects, such as gypsy moth, may be impacted by the listing and designation of critical habitat for Taylor's checkerspot butterfly.

Our Response: We do not see pesticide use in general to pose an adverse impact to Taylor's checkerspot butterflies unless individuals are directly exposed to the pesticides. The Service does not anticipate the need for pesticide spraying on habitat occupied by Taylor's checkerspot butterflies, as the subspecies does not occupy forested areas where such pesticides are generally applied. However, if pesticide were to be sprayed in areas where pesticide drift would expose Taylor's checkerspot butterflies to the pesticide(s), then we would be concerned with their application in these situations. The Service acknowledges the use of pesticides as harmful to Taylor's checkerspot butterfly at all life stages. We specifically discourage the use of insecticides such as *Bacillus thuringiensis* var. *kurstaki* (BtK) in forested areas adjacent to Taylor's checkerspot butterfly habitat. This insecticide, which is used for harmful defoliators like gypsy moth and spruce budworm, has been implicated in the loss of three populations of Taylor's checkerspot butterfly in Pierce County, Washington, during the early 1990s, when it was applied adjacent to Taylor's checkerspot butterfly habitat.

Comments From Federal Agencies

Department of Energy, Bonneville Power Administration

(11) *Comment:* The Service should remove those portions of the Bonneville Power Administration's (BPA) rights-of-way that are composed of access roads and transmission towers and their related infrastructure from the critical habitat proposal, as the roads and structures do not exhibit the biological

features required for recovery of Taylor's checkerspot butterfly.

Our Response: We agree that some portions of the BPA rights-of-way in areas formerly occupied by Taylor's checkerspot butterfly do not contain biological features that are important for the subspecies; therefore we have made minor changes to the critical habitat boundaries to remove those areas that do not meet our definition of critical habitat. Furthermore, as explicitly described in this rule, critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule (see **DATES**). Therefore, access roads and transmission towers and their related infrastructure are not considered critical habitat. Powerline rights-of-way are excellent areas to manage and support butterflies as the structure and composition of vegetation for the Taylor's checkerspot butterfly is compatible with right-of-way management.

(12) *Comment:* BPA believes the geographic footprints of access roads and transmission structures do not contain the biological features essential for the conservation of Taylor's checkerspot butterfly, since they differ in character from the open meadow space more generally located within the rights-of-way that provide high-quality habitat for the butterfly. Therefore, they should not be designated as critical habitat.

Our Response: The critical habitat unit referred to by BPA (Unit 4–D) is currently occupied by Taylor's checkerspot butterfly and provides several of the physical or biological features essential to the conservation of the species. Open areas that provide flight corridors between patches of suitable habitat are important for Taylor's checkerspot butterflies. In addition to the relative quality of habitat, there needs to be an avenue for movement, including movement between areas that may not provide high-quality habitat features. Access roads and other areas cleared of woody vegetation can provide important flight corridors used by Taylor's checkerspot butterflies, although roads and other structures are not consistent with critical habitat and are specifically not included in critical habitat by text, as described in our response to Comment 11, above.

Department of Transportation, Federal Aviation Administration

(13) *Comment:* The Federal Aviation Administration (FAA) does not believe habitat on airports should be considered critical for the recovery of either the Taylor's checkerspot butterfly or streaked horned lark given that airport property encompasses only 2,948 ac (1,193 ha) out of 21,393 ac (8,657 ha) proposed for critical habitat designation, or approximately 14 percent of the total proposed acreage.

Our Response: The Act defines critical habitat as those specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features essential to the conservation of the species, and which may require special management considerations or protection. The test for whether an area is essential to the conservation of the species is applied to areas that are not occupied by the species at the time of listing. All airport lands proposed for critical habitat designation for the streaked horned lark are currently occupied by the subspecies and provide the essential physical or biological features, which may require special management considerations or protection. Therefore, all airport lands proposed meet the Act's definition of critical habitat for the streaked horned lark. However, our analysis under section 4(b)(2) of the Act indicates that the benefits of including airport lands in critical habitat are outweighed by the benefits of excluding these areas. Therefore, all airport lands are excluded from this final designation of critical habitat for the streaked horned lark. Please see additional discussion under Exclusions.

We did not propose any critical habitat on airport lands for the Taylor's checkerspot butterfly.

Department of the Air Force

(14) *Comment:* The Department of the Air Force believes the designation of streaked horned lark critical habitat on military airfields is counter to Air Force instructions and could increase the risk to aircrews, aircraft, and the streaked horned lark; therefore, they requested that military airfields be excluded from critical habitat designation for the lark.

Our Response: The military airfields proposed for critical habitat designation for the streaked horned lark are currently occupied by the species. Ongoing airfield maintenance activities that are conducted at both the military and non-federal airports have created suitable habitat for the streaked horned lark that provides the essential physical or biological features for the subspecies. It is our understanding that these maintenance activities would take place regardless of the presence of the streaked horned lark. We are aware that FAA regulations required for public safety are in direct conflict with increasing bird populations on airports, and as discussed in our 4(b)(2) exclusion analysis for civilian airports, we do not intend to focus on airfields as part of the recovery efforts for the streaked horned lark (see Exclusions). Section 4(a)(3)(B)(i) of the Act specifically states that the Secretary shall not designate critical habitat on Department of Defense lands if the area is subject to an INRMP that provides a benefit to the species for which critical habitat is proposed for designation. As discussed in the Exemptions section below, the Secretary has determined that the endangered species management plan for the streaked horned lark developed under JBLM's INRMP provides adequate protection for the subspecies on the military airfields. Therefore, the military airfields are not included in the final critical habitat designation.

(15) *Comment:* The Department of the Air Force and several other commenters were concerned that critical habitat designations at airports would restrict essential activities, including military training and hazardous wildlife control.

Our Response: As described above in our responses to Comments 13 and 14, we have excluded airports from the final critical habitat designation for the streaked horned lark under section 4(b)(2) of the Act and exempted all DOD lands at Joint Base Lewis-McChord (JBLM) under section 4(a)(3) of the Act, so the potential effects of critical habitat designation are moot. However, any activity by a Federal agency that may affect the streaked horned lark or any other listed species at an airport would be subject to consultation under section 7 of the Act. Under section 7(a)(2) of the Act, it is the duty of all Federal agencies to ensure that any actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of a listed species. Review under section 7 may result in some changes to an agency's proposed action, consistent with their mandates, to advance the conservation of listed species.

Department of the Army, Joint Base Lewis-McChord

(16) *Comment:* The Department of the Army believes the northern portion of the Range 72–79 unit for Taylor's checkerspot butterfly on JBLM should be excluded due to the fact that this area is of lower quality than the remainder

of the proposed unit and is used extensively for off-road vehicle maneuvers.

Our Response: As described in the Exemptions section of this document, all JBLM lands have been removed from the final designation of critical habitat for both species under section 4(a)(3) of the Act.

(17) *Comment:* The Range 50 subunit extends beyond the current and previous areas occupied by Taylor's checkerspot butterfly.

Our Response: Range 50 is a site where introduced (translocated) Taylor's checkerspot butterflies have been placed since 2009. The translocation has taken hold, the population is increasing, and individual butterflies are dispersing to new food plants east and west of Range 50; therefore we consider this area to be currently occupied by the subspecies. Where the butterfly becomes established, it will be critical to provide areas of suitable habitat for dispersing individuals, and to allow for the establishment of meta-population structure that takes place on areas sufficiently large to allow for some local populations to ''blink on'' and ''blink off'' over time. This shift is typical and follows changes to habitat as the vegetation suitability (structure and composition) shifts between periods of restoration, or in the case of JBLM, inadvertent fires that periodically disturb the habitat, returning it to the early seral condition that provides suitable habitat for the Taylor's checkerspot butterfly.

(18) *Comment:* The Department of the Army requests that the Service exempt those portions of the proposed critical habitat designations for the Taylor's checkerspot butterfly and streaked horned lark on JBLM.

Our Response: Under section 4(a)(3) of the Act, we are required to not designate any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to a current INRMP, if the Secretary determines that such plan provides a benefit to the species for which critical habitat is proposed for designation. We have reviewed and approved the JBLM's endangered species management plans (ESMP) under their INRMP for the Taylor's checkerspot butterfly and streaked horned lark, and accordingly have exempted JBLM lands from our final critical habitat designations. Please see Exemptions for more information.

Natural Resources Conservation Service

(19) *Comment:* The Natural Resources Conservation Service (NRCS) believes that continuation of the current level of grazing management by the Colvin Ranch has resulted in healthy native prairie populations and will continue to provide benefits to the native prairie populations, which exceed benefits provided by a critical habitat designation. Therefore, NRCS supports the request by the Colvin Ranch to exclude their property from critical habitat under section 4(b)(2) of the Act.

Our Response: We considered the potential exclusion of Colvin Ranch from the final designation of critical habitat. Our evaluation under section 4(b)(2) of the Act led us to the conclusion that this private land should be excluded from the final designation of critical habitat, as the benefits of exclusion outweigh the benefits of inclusion in critical habitat. Please see Exclusions for more information.

(20) *Comment:* NRCS and another commenter recommended that we withdraw the proposed designation of critical habitat for the streaked horned lark at M–DAC Farms in Oregon because the site no longer provides the primary constituent elements (PCEs) identified for critical habitat. M–DAC Farms is a privately owned property with a Wetlands Reserve Program easement, which is held by NRCS. NRCS expressed concern that M–DAC's designation as critical habitat could affect the agency's ability to accomplish the wetland restoration goals for which the conservation easement was originally purchased on the site.

Our Response: Prior to NRCS's purchase of a conservation easement at M–DAC, the site was a perennial rye grass farm. The goals for the site include restoration of 100 (40 ha) acres of seasonal wetland, over 100 (40 ha) acres of bottomland hardwood forest, and over 300 acres (120 ha) of wet prairie habitat. Though streaked horned larks used the site in large numbers when the ground was originally cleared to prepare for habitat restoration, we agree with the commenter that the vegetation at the site has since matured and no longer provides suitable habitat for the streaked horned lark, with the exception of limited areas along a road and perhaps in the seasonal mudflats adjacent to the wetlands. The site may continue to provide habitat for a few breeding pairs of streaked horned larks; however, the long-term goals for the site do not include increasing the area of suitable habitat for streaked horned larks. The site will not be a focus of active recovery for the streaked horned lark, and very little of the 601 acres (240 ha) will provide suitable habitat for the subspecies.

We have removed M–DAC Farms from the final designation of critical habitat based on information we received during the public comment period indicating that it does not meet the definition of critical habitat for the streaked horned lark. The site does not provide the requisite physical or biological features, and therefore does not meet our criteria for designation.

U.S. Forest Service, Olympic National Forest

(21) *Comment:* The U.S. Forest Service believes that areas within Olympic National Forest proposed for critical habitat designation should be excluded under section 4(b)(2) of the Act due to ongoing management for Taylor's checkerspot butterfly habitat.

Our Response: We have worked closely with the U.S. Forest Service, and Taylor's checkerspot butterfly has benefitted immensely from the conservation actions that have been implemented on the Olympic National Forest. We inadvertently indicated that we may exclude Olympic National Forest lands from the final designation of critical habitat. However, such an exclusion would run counter to the Congressional intent of the Act (stated in sections 2(c)(1) and 7(a)(1)) that Federal agencies have obligations to conserve endangered and threatened species and to carry out programs for the conservation of endangered and threatened species. In consideration of the explicit congressional direction that Federal agencies exercise their authorities to conserve listed species, we expect Federal agencies to contribute to conservation through the designation of critical habitat. Therefore, we have not excluded any Federal lands from critical habitat. Please see the section *Federal Lands* for more information.

Comments From Native American Tribes

(22) *Comment:* The Shoalwater Bay Tribe requested that habitat on their reservation be excluded from the final critical habitat designation for the streaked horned lark. The Tribe is currently working with the Service and the Corps to develop an ecological restoration plan for the Tribal tidelands. This restoration plan will focus on maintaining and protecting habitat for listed species (including the streaked horned lark and western snowy plover (*Charadrius nivosus nivosus*)) and coastal resources important to the Tribe.

Our Response: Based on our ongoing partnership with the Tribe and assurance that habitat will be protected at this site, we have excluded the Shoalwater Bay Indian Reservation from

the final critical habitat designation based on our discretionary 4(b)(2) exclusion analysis. Based on our evaluation, we found that the benefits of exclusion outweigh those of inclusion. See the Exclusions section of this document for details.

Comments From the Public

Several commenters provided minor technical corrections or edits to the proposed critical habitat designation for Taylor's checkerspot butterfly and streaked horned lark. We have evaluated and incorporated this information into this final rule where appropriate to clarify the final critical habitat designation. In instances where the Service may have disagreed with an interpretation of the technical information that was provided, we have responded under separate comments.

(23) *Comment:* One property owner in Subunit 1–D disputed the Service's authority to designate critical habitat on their lands for Taylor's checkerspot butterfly, arguing that the PCEs must be found on an area as a prerequisite to designation, and that the Act leaves no room for designation of land that may in the future contain the physical or biological features. The owner acknowledges that the property is currently unoccupied by the subspecies, but disagrees with the Service's conclusion that the available evidence indicates it was likely historically occupied by Taylor's checkerspot butterfly. The owner further claims that their property does not contain any of the specific physical or biological features that the Service has identified for Taylor's checkerspot butterfly at any stage of its development.

Our Response: The Act provides two definitions for critical habitat: one applies to areas occupied by the species at the time of listing, the other applies to areas not occupied by the species at the time of listing. In the first case, the Act specifies that critical habitat means, ''the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this 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.'' This requirement that the physical or biological features be found does not apply in this particular situation, because the property in question is not presently occupied by Taylor's checkerspot butterfly. The lands in question were initially identified in the proposed rule as meeting our criteria for critical habitat under the second part of the definition of critical habitat in the Act, which adds that critical habitat includes, ''specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary [of the Interior] that such areas are essential for the conservation of the species.'' We therefore re-evaluated the unoccupied private property in question. We evaluated its context in relation to other occupied areas supporting the Taylor's checkerspot butterfly, and other protected areas where habitat has been improved sufficiently to support translocated Taylor's checkerspot butterflies. Based upon our analysis, we have determined the unoccupied property in question is not essential to the conservation of Taylor's checkerspot butterfly; therefore it is not included in the final designation.

(24) *Comment:* One landowner stated that the designation of their property as critical habitat for Taylor's checkerspot butterfly is improper because the record does not contain evidence that shows specifically where the PCEs are located. To the contrary, they believe there is evidence that the property contains physical features that the proposed rule identifies as rendering habitat unusable for the butterfly. The commenter states that any designation of critical habitat by the Service must be limited to those areas that actually contain the physical or biological features essential to the conservation of the Taylor's checkerspot butterfly.

Our Response: The property in question was proposed as unoccupied but essential critical habitat for the Taylor's checkerspot butterfly. As noted in various responses above, the standards for designation of critical habitat differ depending on whether the area in question is occupied at the time of listing or not. If the area is occupied at the time of listing, the PCEs for the species must be found on that area (however, the Service is not required to detail all the specific locations where each PCE may exist on an area proposed for designation). If the area is not occupied at the time of listing, it may be designated as critical habitat upon a determination by the Secretary that such area is essential for the conservation of the species. The reference to the presence of the essential physical or biological features does not appear in the definition of unoccupied areas, thus the commenter is incorrect in stating that the designation of critical habitat must be limited to those areas that contain such features in cases such as this where the area in question is not occupied by the species at the time of listing. In this case, we had proposed the lands in question as critical habitat believing they were essential to the conservation of the subspecies, based on similar habitats known to support Taylor's checkerspot butterfly found at other locations and from evidence of these habitat conditions being present on similar adjacent properties; the Service is particularly limited in specifying locations of the necessary habitat features on private property, where access is often not freely granted. Upon further examination, however, and in response to the information provided by the commenter, we determined that this property (located in subunit 1–D in the proposed rule, subunit 1–A Rocky Prairie in this document) is not essential to the conservation of the subspecies, and it is not included in the final designation.

(25) *Comment:* One commenter suggested we remove the gravel pit in TA 7S, subunit 1–A, currently in use on JBLM, from the critical habitat delineated for Taylor's checkerspot butterfly. They state the gravel pit does not currently provide suitable habitat and would take enormous effort to restore to quality habitat, while the remaining extent of TA 7S prairie is relatively intact and could more easily be restored to create suitable habitat.

Our Response: It is our understanding that, in the past, Taylor's checkerspot butterfly was observed utilizing the puddles in the gravel pit. We understand the gravel pit is marginal habitat at best, but as a formerly occupied site containing some of the PCEs for the subspecies (*Plantago* and topographic diversity) and its location adjacent to TA 7S, we considered that the area could potentially be restored to support Taylor's checkerspot butterfly (although critical habitat does not specifically require restoration).

However, since the area in question is on JBLM, it has been exempted from the final designation. Under section 4(a)(3) of the Act, we are required to not designate any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to a current INRMP, if the Secretary determines that such plan provides a benefit to the species for which critical habitat is proposed for designation. We have reviewed and approved the JBLM ESMP for Taylor's checkerspot butterfly under the INRMP and accordingly have exempted any proposed critical habitat areas on JBLM from our final critical habitat designations under section 4(3)(a) of the Act. Please see the

Exemptions section of this document for more information.

(26) *Comment:* One commenter asked the Service to consider excluding subunit 1–J Bald Hills, since they believe the Taylor's checkerspot butterfly is likely extirpated at the site and the landowner has committed to implementing a wildlife management plan at that site.

Our Response: We do not disagree that the Taylor's checkerspot butterfly may have been extirpated from this site. Subunit 1–J Bald Hill was identified in the proposed rule as meeting our criteria for critical habitat under the second part of the definition of critical habitat in the Act, which states that critical habitat includes, ''specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary [of the Interior] that such areas are essential for the conservation of the species.'' We were unable to consider these lands for exclusion under section 4(b)(2) of the Act because the Service had not received a management plan for this property; therefore, we were unable to assess the value of the conservation planning efforts being proposed or implemented on this private property. Without a management plan for evaluation, we have no potential basis for exclusion; therefore this property is included in the final designation of critical habitat.

(27) *Comment:* One commenter recommended the Army Aviation Support Facility #1 (AASF1) in Salem be excluded from critical habitat because of the national security importance of the installation.

Our Response: The AASF1, while it contributes to maintaining troop readiness for the National Guard, is not a Federal entity. This facility is a private/State holding with a military lease. The Secretary weighed the benefits of including versus excluding non-Federal airports from critical habitat for the streaked horned lark, and concluded that the benefits of exclusion outweighed the benefits of inclusion; thus all non-Federal airport lands are excluded from the final designation of critical habitat (see the Exclusions section of this document). AASF1, being a non-Federal entity, is already excluded from critical habitat based on this analysis; therefore we did not consider the potential national security implications of the designation.

(28) *Comment:* Several commenters suggested that the designation of critical habitat may act as a regulatory disincentive, and may discourage private landowners and others from cooperative, voluntary conservation efforts. Some commenters suggested that the Service pursue alternative forms of conservation, such as safe harbor agreements or habitat conservation plans. WDNR and WDFW encouraged the Service to fully consider the advantages and disadvantages of designating critical habitat where cooperative, nonregulatory approaches are in place to conserve the species and its habitat.

Our Response: Section 4(a)(3)(A) of the Act requires us to designate critical habitat to the maximum extent prudent and determinable. The Act permits us to exclude areas that meet the definition of critical habitat only where we determine that the benefits of exclusion outweigh the benefits of designation. The regulatory consequence of critical habitat designation is the requirement that Federal agencies consult on actions that they may fund, authorize, or carry out to ensure that such actions do not result in the destruction or adverse modification of critical habitat. We recognize that in many cases there may not be a Federal nexus that invokes the protections afforded to designated critical habitat on non-Federal lands, and that other instruments such as safe harbor agreements or habitat conservation plans have the potential to provide conservation measures that effect positive results for the species and its habitat. The conservation and recovery of endangered and threatened species, and the ecosystems upon which they depend, is the ultimate objective of the Act, and the Service recognizes the vital importance of voluntary, nonregulatory conservation measures in achieving that objective. To that end, we fully support and encourage the development of voluntary conservation agreements such as safe harbor agreements or habitat conservation plans with non-Federal landowners. Furthermore, where cooperative agreements are in place for the conservation of the species and its habitat, the Secretary gives full consideration to the relative benefits of excluding those lands from the final critical habitat designation, provided such exclusion would not result in the extinction of the species, in accordance with section 4(b)(2) of the Act.

(29) *Comment:* One commenter suggested that the Service pursue conservation programs to provide economic incentives to private landowners to create or maintain suitable habitat for the streaked horned lark on agricultural lands, especially grass seed farms.

Our Response: We appreciate the suggestion, and we will consider this and other creative ideas for achieving the conservation of the subspecies as we develop the recovery plan for the streaked horned lark. Such conservation measures are outside of the scope of the present rulemaking, however, which is restricted to the identification of those areas that meet the definition of critical habitat for the streaked horned lark.

(30) *Comment:* One commenter stated the proposal fails to address private lands, which are likely to be key habitat for the persistence of the streaked horned lark. Positive incentives need to be proposed that will lead to recovery of the streaked horned lark.

Our Response: In our proposed rule, we recognize the importance that private agricultural lands will play in the conservation and recovery of streaked horned lark, particularly in the Willamette Valley of Oregon (April 3, 2013; 78 FR 20074). However, we additionally explain that we cannot designate critical habitat in the agricultural fields in the Willamette Valley, most of which are privately owned, because we are unable to determine which areas within the large agricultural matrix in the valley will meet the definition of critical habitat at any time. Critical habitat, once designated, is static on the landscape until such time as it may be revised through an additional rulemaking process. Agricultural habitats on private lands can provide appropriate habitat conditions for streaked horned lark, but these conditions (large, open landscape context; low-stature vegetation; bare ground) occur unpredictably and vary in location from year to year. Because of the unpredictable and ephemeral nature of streaked horned lark habitat on private agricultural lands, we have no basis for concluding that any specific areas are essential for conservation, because we have no way of knowing where or how long the appropriate conditions will persist. Therefore, we have not designated critical habitat for the streaked horned lark on private lands in the Willamette Valley.

As noted earlier, the consideration of recovery instruments such as incentive programs is outside of the scope of the present rulemaking, which is limited to the identification of those areas that meet the definition of critical habitat for the streaked horned lark.

(31) *Comment:* One commenter stated that the Service failed to designate critical habitat on private agricultural lands in the Willamette Valley, despite the fact that a majority of breeding and wintering streaked horned larks rely on those areas. The commenter disagreed

with the Service's position that it was unable to determine which areas within the large agricultural matrix in the valley will meet the definition of critical habitat at any time. The commenter pointed to the Service's designation of large areas of critical habitat for the northern spotted owl and marbled murrelet across millions of acres of forest even though only a portion of the habitat is suitable for either bird at any time. The commenter recommended that the Service take a similar approach for streaked horned larks on agricultural lands in the Willamette Valley, recognizing that only a portion of those lands will be suitable at any given time.

Our Response: The commenter's comparison to the critical habitat designations for the northern spotted owl (*Strix occidentalis caurina*) and marbled murrelet (*Brachyramphus marmoratus*) is not an apt one. The northern spotted owl and marbled murrelet rely primarily on Federal lands for their conservation, and their old-growth habitat takes decades to develop on those lands. In contrast, the habitat of the streaked horned lark can develop and disappear on farm lands in the space of a few weeks, and its appearance typically depends on human intervention, not natural processes. Designating large swaths of the Willamette Valley as critical habitat would not provide any useful information regarding the presence of the streaked horned lark or its habitat to landowners. We maintain that our concern about the ability to identify critical habitat for the streaked horned lark on private farm lands is valid, and the situation is not analogous to the critical habitat designations of other listed species found in old-growth forests.

(32) *Comment:* One commenter stated the primary constituent elements (PCEs) and characteristics for habitat suitability for the streaked horned lark are fairly specific, yet noted habitat will change over time, and perhaps be suitable for only a limited period of time due to vegetation growth. Therefore, they asked if critical habitat designations will be time-limited or adjusted periodically.

Our Response: Critical habitat is a designation that does not vary seasonally or over time, and is only subject to change through a rulemaking process to revise the designation. This relatively static nature of critical habitat is the very reason that we find we cannot identify critical habitat on the unpredictable and ephemeral habitats used by streaked horned larks in the agricultural areas of Oregon.

(33) *Comment:* One commenter recommended that documented occupancy in any season during any life stage be the basis for determining critical habitat for the streaked horned lark. They believe the Service's definition of occupancy as occurrence only during the breeding season is too narrow. Occupancy should include documented presence of the subspecies outside of the breeding season as well. Uses of non-breeding areas are important to the subspecies' survival, such as areas used for foraging and overwintering, as these sites may also become breeding sites in the future.

Our Response: We do not know of any areas that are used only for wintering (most sites that are used during the winter are also used during the breeding season); however, we have modified our definition of occupancy to include usage by streaked horned larks during any season.

(34) *Comment:* One commenter stated the economic and social factors driving conversion of Willamette Valley farmland to vineyards are likely to continue in the foreseeable future, and may accelerate as large California wineries are reportedly investing in Willamette Valley farmlands as a hedge against global climate change. As a result, the likelihood of a changing agricultural landscape should be recognized in the listing and critical habitat designation for the streaked horned lark.

Our Response: The Service does not consider the acquisition of lands by the viticulture industry to be a significant factor in the reduction of breeding and nesting habitat for the streaked horned lark. We contacted Dr. William Boggess at Oregon State University's Oregon Wine Research Institute, and he described the ideal lands for viticulture as being 300 to 800 feet (ft) (91 to 244 meters (m)) in elevation, on a slope with a southern or western aspect. These optimal viticulture soils are shallow and nutrient poor, above the flood plain or on eroded rocky soils. These ideal conditions for grapes are not similar in characteristic to the primary constituent elements for streaked horned lark habitat. As such, we do not consider viticulture a factor affecting habitat loss for the streaked horned lark.

(35) *Comment:* One commenter stated that it is important to designate critical habitat on Willamette Valley agricultural lands to ''ensure that habitat is not converted to uses that will never be suitable for streaked horned lark, such as row crops or urban development, but rather are maintained as agriculture that at least part of the time supports streaked horned lark.''

Our Response: Critical habitat designation only has a regulatory effect in instances where there is a Federal action (i.e., a Federal agency funds, authorizes, or carries out an action) that may affect designated critical habitat; this action is then reviewed through interagency consultation under section 7 of the Act between the Federal action agency and the Service. Designation of critical habitat on private lands will have no effect on a private landowner's ability to convert to another crop or to sell out completely if there is no Federal action involved. Contrary to the commenter's perception, critical habitat designation does not create a wildlife preserve or require any sort of response or management from a private landowner.

(36) *Comment:* We received multiple conflicting comments suggesting that connectivity both is and is not a necessary consideration when designating critical habitat for the streaked horned lark.

Our Response: We rely on the expertise of our Service staff biologists, as well as the peer review of our proposed rule by species experts who either support or refute our assertions. In this instance, both our staff biologists and our peer reviewers support the need for connectivity of critical habitat units to ensure the potential for genetic exchange and colonization by streaked horned larks.

(37) *Comment:* Several commenters expressed great concern about the implications to public safety from designating critical habitat for the streaked horned lark at airports, and requested that we exclude airports from the critical habitat designation due to safety concerns.

Our Response: Although we do not see a direct connection between the designation of critical habitat, which results in the requirement that Federal action agencies consult with us on activities that involve Federal funding, authorization, or implementation, and public safety, all airport lands have been excluded from our designation under section 4(b)(2) of the Act for other reasons. Please see additional discussion under Exclusions.

(38) *Comment:* Several commenters stated that critical habitat should not be designated for the streaked horned lark at airports, because airports are not suitable as sites for recovery of the subspecies.

Our Response: We concur with these commenters that airports should not be focal points for streaked horned lark recovery. In section 3 of the Act, ''critical habitat'' is defined, in part, as the specific areas within the geographical area occupied by the species at the time it is listed on which

are found those physical and biological features essential to the conservation of the species. ''Conservation'' is further defined in the Act as the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. These definitions clearly demonstrate that the purpose of critical habitat designation is to identify locations for recovery efforts for listed species. Airport managers have expressed great concern about the implied recovery purpose of critical habitat units; management to encourage increasing populations of birds at airports is untenable to airport managers. Airports unquestionably provide important habitat for streaked horned larks, and some of these sites have demonstrated the ability to sustain small, persistent populations of streaked horned larks; indeed, without airports there would be very few sites consistently managed to maintain the habitat conditions used by the streaked horned lark within the needed landscape context. Therefore, although airports clearly provide a benefit to the subspecies, and will likely continue to provide important habitat for small populations, recovery will require restoration and management of new sites that can sustain increasing populations of streaked horned larks in the long term, in more natural locations appropriate for conservation and that do not pose a heightened risk of mortality to the streaked horned lark from airstrikes. We have excluded civilian (non-Federal) airports from critical habitat designation for the reasons outlined in the Exclusions section of this document.

(39) *Comment:* One commenter expressed concern that our proposed designation of critical habitat for the streaked horned lark relied almost exclusively on public lands. This commenter believes that private lands in the Willamette Valley will hold the key to the streaked horned lark's survival.

Our Response: As we stated above, we do not yet know which unoccupied sites will be essential for the recovery of the streaked horned lark, and the unpredictable and highly variable occurrence of PCEs for streaked horned larks on private lands in the Willamette Valley precludes our ability to designate critical habitat in that area. The public lands included in the critical habitat designation (State Parks and the Willapa National Wildlife Refuge on the Washington coast; three units of the Willamette Valley National Wildlife Refuge Complex in Oregon (WVNWRC)) have a clear conservation mandate and are already working to conserve streaked horned lark populations on those sites. Many other sites will likely be needed to achieve recovery, but again, we do not yet know where those sites will be. As we begin to develop a recovery plan, and identify goals for population numbers and distribution of the streaked horned lark, we will identify areas to focus on for recovery. These areas will undoubtedly include many areas on private agricultural lands, for which we will seek partnerships with willing landowners to manage for streaked horned lark conservation. Finally, we note that the regulatory effect of critical habitat is limited to actions with a Federal nexus–activities that are funded, authorized, or carried out by a Federal agency. The conservation value of critical habitat is thus often the greatest on Federal lands, which always have a Federal nexus. The designation of critical habitat has no regulatory effect on private lands lacking a Federal connection. Critical habitat designation itself does not prevent development or alteration of the land, create a wildlife preserve, or require any sort of response or management from a private landowner.

(40) *Comment:* One commenter stated that Ankeny National Wildlife Refuge in the Willamette Valley is not an appropriate site for designation of critical habitat for the streaked horned lark. The commenter asserted that, ''. . . Ankeny is not recognized among knowledgeable local birders as having any significant population'' of streaked horned larks, and is unlikely to serve as an ''anchor site'' for the bird's recovery.

Our Response: Recent surveys have found up to five breeding pairs of streaked horned larks at Ankeny; therefore the site is occupied at the time of listing, and the refuge clearly provides the essential physical or biological features for the subspecies. Therefore, it meets the definition of critical habitat for the streaked horned lark. The WVNWRC included conservation measures in its comprehensive conservation plan for the streaked horned lark at each of the three refuge units, including Ankeny. We believe that Ankeny provides consistently available habitat for a small population of breeding streaked horned larks, and future management may increase the population. The WVNWRC is Federal land and has a clear conservation mandate, and so makes a good choice for critical habitat designation.

(41) *Comment:* One commenter questioned our proposed designation of critical habitat for the streaked horned lark on the three units of the Willamette Valley National Wildlife Refuge Complex. These refuges were originally established as habitat for wintering dusky Canada geese (*Branta canadensis occidentalis*), and the commenter stated that the refuges cannot successfully manage for the two bird species at once.

Our Response: Research at the three refuge units has shown that streaked horned larks breed successfully in fields that have been heavily grazed by wintering geese (Moore 2009, p. 12). The WVNWRC has a long history of managing for wintering geese, and has recently updated its comprehensive conservation plan to integrate streaked horned lark conservation into the goals for the three refuge units. We believe that the WVNWRC provides excellent habitat for streaked horned larks, and adaptive management of the sites will likely increase the numbers of streaked horned larks breeding at each of the refuge units.

(42) *Comment:* Several commenters criticized the Service's failure to designate critical habitat on many sites that have had recent detections of streaked horned larks, primarily on privately owned agricultural lands in the Willamette Valley, and a few locations in the lower Columbia River. The commenters are concerned that the current critical habitat designation will not be adequate to recover the subspecies.

Our Response: Streaked horned larks evolved to use a shifting mosaic of very early successional habitats, for which the primary requirement was the appropriate landscape context (large, relatively flat, and wide open). The streaked horned lark is unusual among species in that it does not now occur on remnants of its native habitats; indeed, most of the streaked horned lark's naturally occurring habitats no longer exist because the natural processes that historically created those early successional habitats, such as flooding and wildfire, no longer operate on the landscape. With the exception of sites on the Washington coast, where natural disturbance processes still operate to create habitat, nearly all of the sites currently used by streaked horned larks have been inadvertently created by humans and are industrial in nature. These sites are agricultural landscapes, dredge spoil deposition sites, and airports. These ''working landscapes'' are managed with little or no consideration for streaked horned lark conservation, and lark use of these sites seems to be highly opportunistic. Although streaked horned larks currently occur on these sites, given their intensive industrial uses, these

locations may have limited potential to support increased populations of streaked horned larks in the future, and may be inappropriate sites on which to establish a recovery program for the subspecies. For the streaked horned lark, we do not have obvious core sites of pristine, natural habitats on which to focus recovery efforts. In essence, the streaked horned lark persists in the Pacific Northwest, even though its natural habitats are all but gone.

The sites that streaked horned larks currently use are highly fragmented and scattered. Developing a recovery program for the streaked horned lark will require identifying areas that have the essential landscape characteristics and which can be managed for conservation and recovery of the subspecies. Few of these areas have been determined thus far. In the Willamette Valley, large landscapes managed for native prairies will be needed, although it is very likely that some ''working lands'' in agricultural production will also be identified as interested landowners step up to implement practices to protect the streaked horned lark on their lands.

Critical habitat is defined in section 3 of the Act as: (1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (a) Essential to the conservation of the species, and (b) Which may require special management considerations or protection; and (2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We are not designating critical habitat on every small and fragmented location recently known to be occupied or potentially occupied by streaked horned larks, because we do not consider all of these sites to meet the definition of critical habitat for the streaked horned lark. That is, we do not consider all of these sites to provide physical or biological features essential to the conservation of the species, because not all of these sites have the potential to make a substantial contribution to the recovery of the species. In addition, section 3(5)(C) of the Act specifically mandates that, except in those circumstances determined by the Secretary of the Interior, critical habitat shall not include the entire geographical area which can be occupied by the listed species. We are not suggesting that the sites currently used by streaked horned larks are unimportant; rather, recovery is more likely to be successful and cost-effective if we can focus our resources on larger, more permanent sites. Therefore, it is these larger, more permanent occupied sites that we consider to provide the physical or biological features that are truly essential to the conservation of the subspecies, and these are the areas that we are designating as critical habitat at this time. We do not contend that these sites will necessarily be sufficient to recover the subspecies, nor does the Act require that they do so. In the future, when we have better information on sites that will attract and support large, stable populations of streaked horned larks, and that can be managed for the long-term conservation of the subspecies, we may revisit this critical habitat designation, as appropriate.

(43) *Comment:* One commenter recommended re-drawing the boundaries of proposed streaked horned lark critical habitat at Portland International Airport to exclude paved runways, taxiways, and runway safety areas.

Our Response: All non-Federal airport lands are excluded under section 4(b)(2) of the Act from this final designation of critical habitat for the streaked horned lark; please see additional discussion under Exclusions. For the lands that we are designating as critical habitat, when determining critical habitat boundaries, we make every effort to avoid including developed areas such as lands covered by buildings, pavement (such as roads), and other structures because such lands lack the essential physical or biological features for streaked horned larks. Any such lands have been excluded by the text of this rule and are not included in critical habitat.

(44) *Comment:* One commenter stated the PCE requiring only a minimum of 16 percent open ground would not support occupation of the known nesting sites for streaked horned larks on dredge sand islands in the Columbia River and may only be relevant for other sites (such as the Puget Prairie or Willamette Valley).

Our Response: The PCE identifying 16 percent minimum open ground is a description of the habitat conditions, or physical or biological features, essential to the conservation of the streaked horned lark, not a management requirement. Based on research studies, streaked horned larks need areas with a minimum of 16 percent bare ground. Most of the currently occupied sites have much more bare ground than this, and many of the dredge deposit sites have more than 60 percent bare ground. The habitat description is based on research studies across the range of the subspecies. We do not expect land owners to manage sites for streaked horned larks to criteria that represent the minimum observed in the field.

(45) *Comment:* One commenter suggested the limited number of territories and nesting pairs observed annually at Sanderson Field indicates this area provides only marginal habitat for the streaked horned lark and should not be designated as critical habitat.

Our Response: The fact that streaked horned larks have consistently nested at Sanderson Field is an indication that the airport does provide suitable habitat. There are many occupied sites in Washington and throughout the range of the subspecies where the number of nesting territories is low (fewer than 10), and this is not considered an indication of marginal habitat. The smaller size of Sanderson Field, compared to the Olympia Airport, and the rapidly declining population of streaked horned larks in Washington are contributing factors to the number of territories at the Shelton Airport and other locations. It should be noted that Sanderson Field is the northernmost location within the current range of the subspecies where the streaked horned lark nests. As such, this particular airport serves an important role in maintaining the distribution of the subspecies. However, as described in the Exclusions section of this document, airport lands have been excluded from critical habitat for the streaked horned lark.

(46) *Comment:* One commenter was concerned that the designation of critical habitat for the streaked horned lark at certain locations within the Columbia River would attract streaked horned larks to adjacent or nearby areas not proposed for designation and could limit operational and development activities of the Port of Kalama in these areas.

Our Response: Sandy Island is currently occupied habitat, and the streaked horned lark has already been documented at the Port of Kalama's upland dredge deposit site. The designation of critical habitat on Sandy Island, or other islands in the Columbia River, will not affect existing streaked horned lark movements or limit operational and development activities on port property. The fact that the streaked horned lark has been documented on the Port of Kalama is an indication that the upland dredge deposit site is currently suitable habitat. Under the listing (see the final rule to list the Taylor's checkerspot butterfly and streaked horned lark published elsewhere in today's **Federal Register**), the port will be subject to take prohibitions under section 9 of the Act for activities conducted by the port that

adversely impact streaked horned larks, regardless of whether critical habitat is designated on Sandy Island. We recommend that the Port of Kalama work with the Service on the development of a habitat conservation plan under section 10 of the Act for activities that affect the subspecies or suitable habitat, including upland disposal and use of dredge material.

Comments on Economic Analysis

Please note that the draft economic analysis (DEA) for the proposed designation addressed multiple species proposed for listing that occupy prairie habitats of Oregon and Washington, and included an analysis of the potential economic impacts stemming from the proposed critical habitat designation for Taylor's checkerspot butterfly, streaked horned lark, and four subspecies of the Mazama pocket gopher (*Thomomys mazama* ssp.). The proposed listing and critical habitat for the Mazama pocket gophers are addressed in separate rulemakings.

(47) *Comment:* Several commenters took issue with the characterization of the baseline in the DEA concerning airport operations. For example, one commenter asserted that critical habitat may engender incremental impacts even when the streaked horned lark is present. In addition, the comment notes that favorable habitat at airports, containing the PCEs, is the result of voluntary activities by airport managers, which could be discontinued (i.e., as a result of lost Federal funding), in which case the PCEs could disappear, the sites would become unoccupied, and any subsequent consultation would result solely from critical habitat.

Our Response: The U.S. Office of Management and Budget's (OMB) guidelines for best practices concerning the conduct of economic analysis of Federal regulations direct agencies to measure the costs of a regulatory action against a baseline, which it defines as the ''best assessment of the way the world would look absent the proposed action.'' The baseline utilized in the DEA is the existing state of regulation, prior to the designation of critical habitat, which provides protection to the species under the Act, as well as under other Federal, State, and local laws and guidelines. To characterize the ''world without critical habitat,'' the DEA also endeavors to forecast these conditions into the future over the time frame of the analysis, recognizing that such projections are subject to uncertainty. This baseline projection presumes that the species will be listed (as critical habitat would not be designated absent a listing) and therefore recognizes that the streaked horned lark will be subject to a variety of Federal, State, and local protections throughout most of its ranges, due to its listed status under the Act and regardless of the designation of critical habitat.

We note that significant debate has occurred regarding whether assessing the impact of critical habitat designations using this baseline approach is appropriate, with several courts issuing divergent opinions. Courts in several parts of the country, including the U.S. Court of Appeals for the Ninth Circuit, which has jurisdiction in Washington, Oregon, and California, have ruled that the decision about whether to exclude areas from critical habitat should be based on the incremental impacts of the rule. The Ninth Circuit cases were appealed to the Supreme Court, which declined to hear them.

(48) *Comment:* Several commenters asserted that the DEA does not fully account for, or sufficiently acknowledge, potential impacts to airport development activities, revenues, and related opportunity costs.

Our Response: During the preparation of the DEA, its authors reached out to management officials at each of the seven airports affected by the proposed designations and collected available planning documents. Chapter 3 of the DEA discusses a variety of airport-related projects and maintenance activities that would result in section 7 consultation, and considers how these consultations might be affected by the presence of critical habitat. Based on the best available information and the incremental effects memorandum prepared by the Service, the DEA concludes that, for areas that are occupied by the subspecies, critical habitat designation will not result in incremental impacts beyond administrative costs incurred to consider adverse modification during consultation.

(49) *Comment:* The Port of Portland states that their economic assessment concerning this proposed designation was not included in the DEA, and notes certain other issues, including: a clarification concerning airport development activities that receive funding through the U.S. Department of Transportation (USDOT) FAA; a typographical error regarding unit labeling; and an assertion that the estimated number of consultations is inaccurate.

Our Response: The identified economic assessment was reviewed and utilized during the development of the DEA, and is cited in chapter 3 of the report. In the final economic analysis (FEA), we added clarification concerning the USDOT FAA-funded source and fixed the unit numbering error. In addition, further detail concerning the number of consultations and analytic timeframe for the Port of Portland has been added to the FEA.

(50) *Comment:* One submission expressed concern that critical habitat designation will constrain dredging activities and alter placement sites related to the Port of Kalama.

Our Response: The DEA discusses potential effects of critical habitat designation on dredging activities, including those related to the Port of Kalama and Sandy Island. As noted in chapter 3 of the DEA, dredging activities occur on 8 of the 10 islands proposed for streaked horned lark critical habitat in the Columbia River. Deposition of dredge materials can create flat, open habitat that streaked horned larks prefer, but dredging activities that occur during the nesting season have the potential to increase individual mortality and cause nest failure. Based on the review of historical and projected conservation actions for the streaked horned lark concerning dredging activities, and given that these areas are considered occupied by the subspecies, the analysis concluded that critical habitat will not result in incremental economic impacts to dredging activities, beyond the administrative costs associated with consultation with the Service.

(51) *Comment:* Two commenters expressed concern that the listing and designation of critical habitat for the Taylor's checkerspot butterfly and Mazama pocket gophers (which will be addressed in separate rules) may constrain gravel mining activities in Pierce and Thurston Counties, Washington. One comment expressed specific concern about impacts to planned gravel extraction in Subunit 1–D Rocky Prairie.

Our Response: The proposed critical habitat acreage in these areas is considered to be occupied by at least one of the prairie species noted. As noted in the DEA and related incremental effects memorandum, should the six subspecies be formally listed under final rules, their presence within critical habitat will require implementation of certain conservation efforts to avoid jeopardy concerns. In occupied critical habitat, consultation would therefore consider not only the potential for jeopardy to the continued existence of the species, but also the potential for destruction or adverse modification of critical habitat. Because the ability of these subspecies to exist is very closely tied to the quality of their

habitats, significant alterations of their occupied habitat may result in jeopardy as well as adverse modification. Therefore, we anticipate that section 7 consultation analyses will likely result in no difference between recommendations to avoid jeopardy or adverse modification in occupied areas of habitat. The analysis concludes that incremental economic impacts of critical habitat designation will be limited to additional administrative costs of additionally considering critical habitat as part of section 7 consultation to the Service, other Federal agencies, and private third parties. Note, however, that additional detail concerning potential gravel mining activities in proposed critical habitat, along with related consultation requirements, has been added to the FEA.

In addition, the specifically identified subunit, Subunit 1–D Rocky Prairie, was proposed as unoccupied critical habitat for Taylor's checkerspot butterfly. This subunit has been removed from the final designation upon a determination that this area is not essential to the conservation of the species.

(52) *Comment:* One commenter stated that, in the DEA, economic costs are overstated and that many economic benefits have not been included in the analysis. Specifically, the comment asserted that there is no basis to determine that the designation of critical habitat for the streaked horned lark will have an additional economic impact beyond the listing itself, and notes that birdwatching and related livability amenities due to outdoor opportunities are important to Portland's social vitality.

Our Response: A primary conclusion of the economic analysis is that, in areas of proposed designation occupied by the species, limited incremental impacts will occur beyond those administrative costs associated with consultation. Further, in chapter 3, the DEA does provide a qualitative discussion of potential ancillary benefits (including recreational use) attributable to the conservation of these species.

(53) *Comment:* One commenter stated that the DEA dismisses the need to describe impacts in economic terms and instead focuses on biological benefits only, citing paragraph 4 in the Executive Summary of the DEA as an example.

Our Response: This comment misconstrues the language of this paragraph. The DEA endeavors to provide a full rendering of the designation's potential economic impacts, including defining a baseline and assessing incremental effects, both direct and indirect. In the context of weighing these costs against the ''benefits'' of the designation, however, the benefits component focuses on the primary ''biological'' benefit related to species conservation, and puts less emphasis on ancillary, or secondary, benefits flowing from species conservation (e.g., improved environmental quality yielding human health or recreational use benefits).

(54) *Comment:* One commenter noted that, concerning potential ancillary benefits of the designation, airports are secure facilities with limited and controlled public access. Thus, none of the potential ancillary benefits cited in the DEA, such as recreational opportunities, is relevant to the airport environment.

Our Response: We agree that, given the security environment at airports, human use benefits are limited at airports. We note, however, that the direct biological benefit of species conservation may still be attributable to airport locations, and that certain ancillary benefits (improved environmental quality due to landscape management) may also still accrue. As previously mentioned, all non-Federal airport lands are excluded from this final designation of critical habitat for the streaked horned lark. Please see additional discussion under Exclusions.

(55) *Comment:* One commenter expressed concern that, even when care is taken in the review of projects and actions that are unlikely to harm the long-term viability of the Taylor's checkerspot butterfly, streaked horned lark, and Mazama pocket gopher, allowance of new development could leave the community subject to potential lawsuits.

Our Response: Chapter 2 of the DEA discusses the issue of indirect impacts potentially related to critical habitat, including the triggering of other State and local laws, time delays, regulatory uncertainty, and stigma. Within this context, the effect of third-party litigation can represent an indirect effect. We note, however, that forecasting the likelihood of third-party litigation and related project delays or other constraints is considered too speculative for the economic analysis. In addition, the DEA attributes most economic effects to the presence of the species and jeopardy concerns, as opposed to the designation of critical habitat.

Summary of Changes From Proposed Rule

We are designating a total of 1,941 ac (786 ha) of critical habitat for the Taylor's checkerspot butterfly and a total of 4,629 ac (1,873 ha) of critical habitat for the streaked horned lark. We received a number of site-specific comments related to critical habitat for these two subspecies; completed our analysis of areas considered for exclusion under section 4(b)(2) of the Act or for exemption under section 4(a)(3) of the Act; reviewed the application of our criteria for identifying critical habitat across the range of these two subspecies to refine our designations; and completed the final economic analysis of the designation as proposed. We fully considered all comments from the public and peer reviewers on the proposed rule and the associated economic analysis to develop this final designation of critical habitat for the Taylor's checkerspot butterfly and streaked horned lark. This final rule incorporates changes to our proposed critical habitat based on the comments that we received and have responded to in this document, and considers completed final management plans to conserve the subspecies under consideration. Although we received additional distribution data for the streaked horned lark on agricultural lands in the Willamette Valley, this information did not necessitate the designation of additional critical habitat. Because of the fragmented and ephemeral nature of those areas on private lands, we determined they do not meet our definition of critical habitat for the streaked horned lark.

We have made some technical corrections to the document, and our final designation of critical habitat reflects the following changes from the proposed rule:

(1) We added one additional adult nectar resource to the list of plants in the primary constituent elements for Taylor's checkerspot butterfly: wild strawberry (*Fragaria virginiana*).

(2) Based on our analysis of the total area necessary for the conservation of Taylor's checkerspot butterfly in Washington and Oregon, we determined that approximately 447 ac (181 ha) of the unoccupied critical habitat that we proposed are not essential for the conservation of the subspecies based on comments and information received. This finding of ''not essential'' did not result in the removal of entire subunits for the Taylor's checkerspot butterfly, as it did for the streaked horned lark (see below), but did reduce the area of several subunits for the subspecies, both in Washington and Oregon.

Our analysis of the proposed critical habitat for the streaked horned lark determined that two of proposed critical habitat subunits (in their entirety) do not meet the definition of critical habitat; therefore these subunits were removed from the final designation. The

first of these two critical habitat subunits was identified as subunit 3–J in the proposed critical habitat rule and is commonly known as Coffeepot Island. This small island of approximately 25 ac (10 ha) in the Columbia River is not occupied by the streaked horned lark, and although it presently supports some of the physical or biological features utilized by the lark, without ongoing management it will not maintain these characteristics into the foreseeable future. (Please note, in this final rule, the critical habitat units have been renumbered sequentially and the designation of critical habitat subunit 3–J is now assigned to Whites/Brown Island (see Table 2)). As we find it unlikely that Coffeepot Island will provide suitable habitat for the streaked horned lark in the future, we determined that this subunit is not essential to the conservation of the subspecies, and does not meet our definition of critical habitat.

In the second case, we determined that the subunit identified as 4–G in the proposed critical habitat rule, M–DAC Farms in Oregon, does not meet our definition of critical habitat for the streaked horned lark. Although occupied at the time of listing, the PCEs at this site are in a state of steady decline due to a conservation agreement that focuses on restoring the landscape to wetland, a vegetative structure unsuitable to maintaining habitat for the streaked horned lark. This site is therefore unlikely to contribute to the recovery of the streaked horned lark, and as it lacks the PCEs for the streaked horned lark, it does not meet our definition of critical habitat for the subspecies. M–DAC Farms (601 ac (243 ha) was therefore removed from the final designation of critical habitat for the streaked horned lark.

(3) The Service approved the DOD's endangered species management plans (ESMPs) under the INRMP for military installation JBLM for the Taylor's checkerspot butterfly and streaked horned lark. The ESMPs are species-specific, and contain site-specific conservation actions that will be implemented as a component of the larger INRMP for the installation. The Secretary has exempted lands at JBLM from critical habitat under section 4(a)(3) of the Act, based on the approval of these ESMPs. Lands exempted include approximately 2,324 ac (940 ha) for the Taylor's checkerspot butterfly and 2,813 ac (1,138 ha) for the streaked horned lark on JBLM. The area exempted represents approximately 34 percent of the area proposed as critical habitat for Taylor's checkerspot butterfly and 23 percent of the area proposed as critical habitat for the streaked horned lark. For Taylor's checkerspot butterfly, the exemption of military lands from critical habitat resulted in the removal of three critical habitat subunits within Unit 1 and sequential renumbering of the remaining subunits designated in this final rule (see Table 1). Training Area 7 South (TA7S), 91st Division Prairie, and 13th Division Prairie were numbered 1–A, 1–B, and 1–C in the proposed rule, respectively. For the streaked horned lark, the exemption of military lands combined with the exclusion under section 4(b)(2) of the Act for non-Federal airports (see below) resulted in the removal of Unit 1 in its entirety. Subunits in Unit 4 for the streaked horned lark were sequentially renumbered due to the exclusion of non-Federal airports in Oregon (see Table 2 and Exclusions section of this document).

(4) We carefully considered the benefits of inclusion and the benefits of exclusion of specific areas in proposed critical habitat under section 4(b)(2) of the Act, particularly in areas where management plans specific to the Taylor's checkerspot butterfly and streaked horned lark are in place, and where the maintenance and fostering of important conservation partnerships were a consideration. Based on the results of our analysis, we are excluding approximately 2,184 ac (885 ha) from our final critical habitat designation for Taylor's checkerspot butterfly and 4,114 ac (1,664 ha) for the streaked horned lark (see Exclusions, below). For Taylor's checkerspot butterfly, two entire subunits of proposed critical habitat in Oregon were excluded based on the Benton County Prairie Species HCP; these include Fort Hoskins Historic Park (proposed critical habitat subunit number 4–1) and Beazell Memorial Forest (proposed critical habitat subunit number 4–2). The area excluded represents approximately 32 percent of the area proposed as critical habitat for the Taylor's checkerspot butterfly and 32 percent of the area proposed as critical habitat for the streaked horned lark.

Exclusion from critical habitat should not be interpreted as a determination that these areas are unimportant, that they do not provide physical or biological features essential to the conservation of the species (for occupied areas), or are not otherwise essential for conservation (for unoccupied areas); exclusion merely reflects the Secretary's determination that the benefits of excluding those particular areas outweigh the benefits of including them in the designation.

Due to these changes in our final critical habitat designation, we have updated our subunit numbering, descriptions, and critical habitat maps, all of which can be found later in this document. This final designation of critical habitat represents a reduction of 4,934 ac (1,996 ha) from our proposed critical habitat for the Taylor's checkerspot butterfly and 7,530 ac (3,047 ha) for the streaked horned lark, for the reasons detailed above. Additional minor differences between proposed and final critical habitat for both subspecies on the order of roughly 20 ac (8 ha) beyond those detailed above are due to minor boundary adjustments and simple rounding error.

Critical Habitat

It is our intent to discuss below only those topics directly relevant to the designation of critical habitat for the Taylor's checkerspot butterfly and streaked horned lark in this section of the rule.

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features:

(a) essential to the conservation of the species, and

(b) which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies

ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Our regulations direct us to designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species. Furthermore, except in certain circumstances determined by the Secretary, critical habitat is not to include the entire geographical area which can be occupied by the listed 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.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this listed species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derived the specific physical or biological features essential for the Taylor's checkerspot butterfly and streaked horned lark from studies of each subspecies' habitat, ecology, and life history as described in detail in the Critical Habitat section of the proposed rule to designate critical habitat published in the **Federal Register** on October 11, 2012 (77 FR 61937). Additional information can also be found in the final listing rule for the Taylor's checkerspot butterfly and streaked horned lark, which is published elsewhere in today's **Federal Register**. We have determined that the physical and or biological features described in the proposed rule (October 11, 2012; 77 FR 61937) are essential to the conservation of the Taylor's checkerspot butterfly and streaked horned lark, and have further determined that these features may require special management considerations or protection.

The designation of critical habitat is an authority restricted to the boundaries of the United States; critical habitat cannot be designated in a foreign country (50 CFR 424.12(h)). Both Taylor's checkerspot butterfly and streaked horned lark range into Canada or historically occurred there. In the

final listing rule, published elsewhere in the **Federal Register** today, we discuss the population in Canada for the purpose of evaluating the viability of the species and to inform our determination of those areas within the United States that are essential for the conservation of the subspecies. We do not have the authority to designate critical habitat in Canada.

Taylor's Checkerspot Butterfly

Primary Constituent Elements for the Taylor's Checkerspot Butterfly—Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of Taylor's checkerspot butterfly in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical or biological features that provide for the subspecies' life-history processes and are essential to the conservation of the subspecies.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the subspecies' life-history processes, we determine that the primary constituent elements specific to the Taylor's checkerspot butterfly are:

(i) Patches of early seral, short-statured, perennial bunchgrass plant communities composed of native grass and forb species in a diverse topographic landscape ranging in size from less than 1 ac up to 100 ac (0.4 to 40 ha) with little or no overstory forest vegetation that have areas of bare soil for basking that contain:

(a) In Washington and Oregon, common bunchgrass species found on northwest grasslands include *Festuca roemeri* (Roemer's fescue), *Danthonia californica* (California oat grass), *Koeleria cristata* (prairie Junegrass), *Elymus glaucus* (blue wild rye), *Agrostis scabra* (rough bentgrass), and on cooler, high-elevation sites typical of coastal bluffs and balds, *Festuca rubra* (red fescue).

(b) On moist grasslands found near the coast and in the Willamette Valley, there may be *Bromus sitchensis* (Sitka brome) and *Deschampsia cespitosa* (tufted hairgrass) in the mix of prairie grasses. Less abundant forbs found on the grasslands include, but are not limited to, *Trifolium* spp. (true clovers), narrow-leaved plantain (*Plantago lanceolata*), harsh paintbrush (*Castilleja hispida*), Puget balsamroot (*Balsamorhiza deltoidea*), woolly sunshine (*Eriophyllum lanatum*), nine-leaved desert parsley (*Lomatium triternatum*), fine-leaved desert parsley (*Lomatium utriculatum*), common camas (*Camassia quamash),* showy fleabane (*Erigeron speciosus*), Canada thistle (*Cirsium arvense*), common yarrow (*Achillea millefolium*), prairie lupine (*Lupinus lepidus*), and sickle-keeled lupine (*Lupinus albicaulis*).

(ii) Primary larval host plants (narrow-leaved plantain and harsh paintbrush) and at least one of the secondary annual larval host plants (blue-eyed Mary (*Collinsia parviflora*), sea blush (*Plectritis congesta),* or dwarf owl-clover (*Triphysaria pusilla*) or one of several species of speedwell (marsh speedwell (*Veronica scutella*), American speedwell (*V. beccabunga* var. *americana*), or thymeleaf speedwell (*V. serpyllifolia*).

(iii) Adult nectar sources for feeding that include several species found as part of the native (and one nonnative) species mix on northwest grasslands, including, but not limited to: narrow-leaved plantain; harsh paintbrush; Puget balsam root; woolly sunshine; nine-leaved desert parsley; fine-leaved desert parsley or spring gold; common camas; showy fleabane; Canada thistle; common yarrow; prairie lupine; sickle-keeled lupine, and wild strawberry (*Fragaria virginiana*).

(iv) Aquatic features such as wetlands, springs, seeps, streams, ponds, lakes, and puddles that provide moisture during periods of drought, particularly late in the spring and early summer. These features can be permanent, seasonal, or ephemeral.

With this designation of critical habitat, we intend to identify the physical or biological features essential to the conservation of the subspecies, through the identification of the primary constituent elements essential to support the life-history processes of the subspecies. We are designating critical habitat within the geographical area occupied by the subspecies at the time of listing. In addition, we are designating some specific areas outside the geographical area occupied by the subspecies at the time of listing that were historically occupied, but are presently unoccupied, because we have determined that these areas are essential for the conservation of the subspecies.

Streaked Horned Lark

Primary Constituent Elements for the Streaked Horned Lark—Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the streaked horned lark in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical or biological features that provide for the subpecies' life-history processes and are essential to the conservation of the subspecies.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the subspecies' life-history processes, we determine that the primary constituent elements specific to the streaked horned lark are areas having a minimum of 16 percent bare ground that have sparse, low-stature vegetation composed primarily of grasses and forbs less than 13 in (33 cm) in height found in:

(1) Large (300-ac (120-ha)), flat (0–5 percent slope) areas within a landscape context that provides visual access to open areas such as open water or fields, or

(2) Areas smaller than described in (1), but that provide visual access to open areas such as open water or fields.

With this designation of critical habitat, we intend to identify the physical or biological features essential to the conservation of the subspecies, through the identification of the primary constituent elements sufficient to support the life-history processes of the subspecies. All of the units designated as critical habitat are currently occupied by the streaked horned lark and contain the primary constituent elements to support the life-history needs of the subspecies.

Special Management Considerations or Protections—All areas we are designating as critical habitat will require some level of management to address the current and future threats to the Taylor's checkerspot butterfly and streaked horned lark and to maintain or restore the PCEs. A detailed discussion of activities influencing the Taylor's checkerspot butterfly and streaked horned lark and their habitats can be found in the final listing rule published elsewhere in today's **Federal Register**. Threats to the physical or biological features that are essential to the conservation of these subspecies and that may warrant special management considerations or protection include, but are not limited to: (1) Loss of habitat from conversion to other uses; (2) control of nonnative, invasive species; (3) development; (4) construction and maintenance of roads and utility corridors; and (5) habitat modifications brought on by succession of vegetation from the lack of disturbance, both small and large scale. These threats also have the potential to affect the PCEs if they are conducted within or adjacent to designated units.

Taylor's Checkerspot Butterfly

The physical or biological features essential to the conservation of the Taylor's checkerspot butterfly may require special management considerations or protection to improve the viability and distribution of habitat suitable for the subspecies. These include preventing the establishment of invasive, nonnative and native woody species, and hastening restoration by actively managing sites to establish native plant species and the structure of the plant community that is suitable for the Taylor's checkerspot butterfly. Restoration and maintenance of occupied Taylor's checkerspot butterfly sites will require active management to plan, restore, enhance, and manage habitat using an approach that resets the vegetation composition and structure to an early seral stage. Management actions that produce suitable conditions for Taylor's checkerspot butterflies and reset the ecological clock to early seral conditions favored by the butterfly include prescribed fires, mechanical harvesting of trees, activities such as hand planting or mechanical planting of grasses and forbs, and the judicious use of herbicides for nonnative, invasive species control.

These early-seral conditions favor the production and maintenance of plantain, paintbrush, and other larval host plants in a short-structure vegetation community that allows utilization of the plants by the Taylor's checkerspot butterfly. Areas where the Taylor's checkerspot butterfly occupies a site should have limited soil and vegetation disturbance at times when the larvae are active, which extends from late February when post-diapause larvae are active to late June when pre-diapause larvae are on site. Other activities that could cause trampling or impacts to the larvae and that should be minimized, reduced, or restricted during larval feeding include use of the site by off-road vehicles, military training using vehicles or impacts caused by large infantry (foot soldiers), or activities that transport or spread nonnative plants, and the risk of wildfire or prescribed fire. We reemphasize here the acknowledgement that Taylor's checkerspot butterfly, while most obvious during the flight period and when larvae are active, are year-round residents and may be vulnerable to most types of direct disturbance throughout the year.

Streaked Horned Lark

The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to ensure the provision of early seral conditions and landscape context of sufficient quantity and quality for long-term conservation and recovery of the subspecies. Activities such as mowing, burning, grazing, tilling, herbicide treatment, grading, beach nourishment, or placement of dredge material can be used to maintain or restore nesting and wintering habitats. Regular disturbance is necessary to create and maintain suitable habitat, but the timing of management is important. The management actions should be conducted outside of the breeding season to avoid the destruction of nests and young, or if habitat management must be done during the breeding season, it should be done in a way that minimizes destruction of nests or harassment of individuals. Nesting success is highest in locations with restricted public use or entry such as military facilities, airports, islands, wildlife refuges, or sites that are remote or difficult to access.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available to designate critical habitat. We review available information pertaining to the habitat requirements of the species, and begin by assessing the specific geographic areas occupied by the species at the time of listing. If such areas are not sufficient to provide for the conservation of the species, in accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we then consider whether designating additional areas outside the geographic areas occupied at the time of listing may be essential to ensure the conservation of the species. We consider unoccupied areas for critical habitat when a designation limited to the present range of the species may be inadequate to ensure the conservation of the species. In this case, since we are listing simultaneously with the designation of critical habitat, all areas presently occupied by Taylor's checkerspot butterfly or streaked horned lark are presumed to constitute those areas occupied at the time of listing; those areas currently occupied by the subspecies are identified as such in each of the unit or subunit descriptions below. These descriptions similarly identify which of the units or subunits are believed to be unoccupied at the time of listing. Our determination of the areas occupied at the time of listing and our rationale for how we determined specific unoccupied areas to be essential the conservation of the subspecies are provided below.

We plotted the known locations of the Taylor's checkerspot butterfly and streaked horned lark where they occur in Washington and Oregon using 2011 National Agriculture Imagery Program (NAIP) digital imagery in ArcGIS, version 10 (Environmental Systems Research Institute, Inc.), a computer geographic information system program.

To determine if the currently occupied areas contain the primary constituent elements, we assessed the life-history components and the distribution of the subspecies through element occurrence records in State natural heritage databases and natural history information on each of the subspecies as they relate to habitat. We first considered whether the presently occupied areas were sufficient to conserve the subspecies. If not, to determine if any unoccupied sites met the criteria for critical habitat, we then considered: (1) The importance of the site to the overall status of the subspecies to prevent extinction and contribute to future recovery of the subspecies; (2) whether the area presently provides the essential physical or biological features, or could be managed and restored to contain the necessary physical or biological features to support the subspecies; and (3) whether individuals were likely to colonize the site. We also considered the potential for reintroduction of the subspecies, where anticipated to be necessary (for Taylor's checkerspot butterfly only).

As required by section 4(b)(2) of the Act, we used the best scientific data available to designate critical habitat. We reviewed available information pertaining to the habitat requirements of these subspecies. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we considered whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the subspecies. We are designating critical habitat in areas within the geographical area occupied by the subspecies at the time of listing in 2013. For Taylor's checkerspot butterfly only, we also are designating specific areas outside the geographical area occupied by the subspecies at the time of listing that were historically occupied, but may be presently unoccupied, based on the Secretary's determination that these areas are essential for the conservation of the subspecies.

When we are determining which areas should be designated 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, other unpublished materials, or experts' opinions or personal knowledge. In this case we used existing occurrence data for each subspecies and identified the habitat and ecosystems upon which they depend. These sources of information included, but were not limited to:

(1) Data used to prepare the proposed and final rules to list the subspecies;

(2) Information from biological surveys;

(3) Peer-reviewed articles, various agency reports, and databases;

(4) Information from the U.S. Department of Defense—Joint Base Lewis-McChord (JBLM) and other cooperators;

(5) Information from species experts;

(6) Data and information presented in academic research theses; and

(7) Regional Geographic Information System (GIS) data (such as species occurrence data, land use, topography, aerial imagery, soil data, and land ownership maps) for area calculations and mapping.

The critical habitat designation is defined by the maps, as modified by any accompanying regulatory text, presented at the end of this document in the Regulation Promulgation section. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R1–ES–2013–0009, on our Web site at *http://www.fws.gov/wafwo/TCBSHL.html/,* and, by appointment, at the Service's Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**, above).

In all cases, when determining critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement (such as roads), and other structures because such lands lack the essential physical or biological features for the Taylor's checkerspot butterfly and streaked horned lark. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

Taylor's Checkerspot Butterfly

Occupied Areas—For the Taylor's checkerspot butterfly, we are designating critical habitat within the geographical area occupied by the subspecies at the time of listing, as well as in unoccupied areas that we have determined to be essential for the conservation of the subspecies (described below). These presently occupied areas provide the physical or biological features essential to the conservation of the subspecies, which may require special management considerations or protection. We determined occupancy in these areas based on recent survey information. All sites occupied by Taylor's checkerspot butterfly have survey data as recently as 2011, except for the U.S. Forest Service sites on the north Olympic Peninsula where data are as recent as 2010 (Potter 2011; Linders 2011; Ross 2011; Holtrop 2010; Severns and Grossboll 2011). In addition, there have been some recent experimental translocations of Taylor's checkerspot butterflies to sites where it had been extirpated within its historical range. If translocated populations have been documented as successfully reproducing, we considered those sites to be presently occupied by the subspecies. Areas designated as critical habitat for Taylor's checkerspot butterfly are representative of the known historical geographic distribution for the subspecies, outside of Canada.

We are designating three units of critical habitat based on sufficient elements of physical or biological features being present to support life-history processes for the Taylor's checkerspot butterfly. These 3 units are further divided into 11 subunits. Some subunits within the units contain all of the identified elements of physical and biological features and support multiple life-history processes; some subunits contain at least one or more elements of the physical and biological features necessary to support the Taylor's checkerspot butterfly's particular use of that habitat. Because we determined that the areas presently occupied by Taylor's checkerspot butterfly are not sufficient to provide for the conservation of the subspecies, we have additionally identified some subunits that are presently unoccupied, but that the Secretary has determined to be essential to the conservation of the subspecies. Therefore, we are also designating these unoccupied areas as critical habitat for the Taylor's checkerspot butterfly, as explained below.

Unoccupied Areas—We are designating six subunits as critical habitat for the Taylor's checkerspot butterfly that are not presently occupied by the subspecies, but that the Secretary has determined essential for the conservation of the subspecies. There has been a rapid decline in the spatial distribution of prairies (grassland habitat) throughout the range of the Taylor's checkerspot butterfly; as a result, the present distribution of Taylor's checkerspot butterfly is disjunct and isolated throughout the subspecies' historical range. If the Taylor's checkerspot butterfly is to recover, there must be sufficient suitable habitat available for population expansion and growth that is potentially connected in such a way as to allow for dispersal, and these sites must receive routine and sustained management to maintain the early seral conditions essential to the conservation of the subspecies. We therefore evaluated areas outside the presently occupied patches to identify unoccupied habitat areas essential for the conservation of the subspecies. We are designating as critical habitat some areas adjacent to known occurrences of the Taylor's checkerspot butterfly but that may currently be unoccupied to provide for population expansion and growth, which is essential for the conservation of the subspecies.

We have identified these unoccupied areas as essential for the conservation of the Taylor's checkerspot butterfly because they are located strategically between, and in some cases, adjacent to, occupied areas from which the butterfly may disperse; these areas contain one or more of the PCEs for the Taylor's checkerspot butterfly (although the presence of one or more PCEs is not a statutory requirement for unoccupied critical habitat), and are all receiving or are slated to receive restoration treatments that will increase the amount of suitable habitat available.

Streaked Horned Lark

Occupied Areas—We are designating two units of critical habitat for the streaked horned lark based on sufficient elements of physical or biological features being present to support life-history processes during the breeding or

winter seasons. These 2 units are further divided into 16 subunits. All of the units designated as critical habitat are presently occupied by the streaked horned lark. Some subunits within the units contain all of the identified elements of physical or biological features and support multiple life-history processes; some subunits contain at least one or more elements of the physical or biological features necessary to support the streaked horned lark's particular use of that habitat.

Unoccupied Areas—There are no unoccupied subunits designated as critical habitat for the streaked horned lark.

Final Critical Habitat Designation

We are designating four units total as critical habitat for the Taylor's checkerspot butterfly and streaked horned lark. The critical habitat areas described below constitute our best assessment at this time of areas that meet the definition of critical habitat for these subspecies. Those four units are:

(1) The South Sound Unit (Unit 1), which has critical habitat subunits for only the Taylor's checkerspot butterfly.

(2) The Strait of Juan de Fuca Unit (Unit 2), which has critical habitat subunits for only the Taylor's checkerspot butterfly.

(3) The Washington Coast and Columbia River Unit (Unit 3), which has critical habitat subunits for only the streaked horned lark.

(4) The Willamette Valley Unit (Unit 4), which has critical habitat subunits for both the Taylor's checkerspot butterfly and streaked horned lark.

Taylor's Checkerspot Butterfly—Units 1, 2, and 4

We are designating three units as critical habitat for the Taylor's checkerspot butterfly. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the subspecies. The three units we designate as critical habitat are: Unit 1, South Sound—1,143 ac (462 ha) in Washington State (545 ac (220 ha) of County ownership, 420 ac (170 ha) of private ownership, and 178 ac (72 ha) of lands owned by a Port, local municipality, or nonprofit conservation organization); Unit 2, Strait of Juan de Fuca—779 ac (315 ha) in Washington State (160 ac (65 ha) of Federal ownership, 188 ac (76 ha) of State ownership, 201 ac (81) of private ownership, and 229 ac (93 ha) of land owned by a Port, local municipality, or nonprofit organization); and Unit 4–D, Willamette Valley—20 ac (8 ha) of privately owned lands in Oregon. The approximate area of each critical habitat unit and its relevant subunits, as well as land ownership within each unit, is shown in Table 1.

TABLE 1—CRITICAL HABITAT UNITS DESIGNATED FOR TAYLOR'S CHECKERSPOT BUTTERFLY. NOTE: AREA SIZES MAY NOT SUM DUE TO ROUNDING. AREA ESTIMATES REFLECT ALL LAND WITHIN CRITICAL HABITAT UNIT BOUNDARIES

Unit 1: South Sound		Federal	State	County	Private	Other *	Currently occupied
	Subunit Name	Ac(Ha)	Ac-(Ha)	Ac(Ha)	Ac(Ha)	Ac(Ha)	Y/N
1–A	Rocky Prairie	0	0	0	0	43 (17)	N
1–B	Tenalquot Prairie	0	0	0	0	135 (55)	N
1–C	Glacial Heritage	0	0	545 (220)	0	0	Y
1–D	Rock Prairie	0	0	0	244 (99)	0	N
1–E	Bald Hill	0	0	0	176 (71)	0	N
	Unit 1 Totals	0 (0)	0 (0)	545 (220)	420 (170)	178 (72)	
Unit 2: Strait of Juan De Fuca:							
2–A	Deception Pass State Park	0	149 (60)	0	0	0	N
2–B	Central Whidbey	0	39 (16)	0	0	190 (77)	N
2–C	Elwha	0	0	0	51 (20)	39 (16)	Y
2–D	Sequim	0	0	0	151 (61)	0	Y
2–E	Dungeness	160 (65)	0	0	0	0	Y
	Unit 2 Totals	160 (65)	188 (76)	0	201 (81)	229 (93)	
Unit 4: Willamette Valley:							
4–D	Fitton Green-Cardwell Hill	0	0	0	20 (8)	0 (0)	Y
	Unit 4 Totals	0	0	0	20 (8)	0 (0)	
	Grand Total—all Units	160 (65)	188 (76)	545 (220)	642 (259)	407 (166)	
	GRAND TOTAL ALL UNITS, ALL OWNERSHIP.			1,941 (786)			

* Other = Ports, local municipalities, and nonprofit conservation organizations.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Taylor's checkerspot butterfly, below.

Unit 1: South Sound—Taylor's Checkerspot Butterfly

The South Sound Unit consists of 1,143 acres (462 ha) of land designated for the Taylor's checkerspot butterflies in five subunits. This unit is found entirely in Thurston County, Washington.

Subunit Descriptions

1–A Rocky Prairie—(Thurston County, Washington). The Rocky Prairie critical habitat subunit is composed of two disjunct habitat patches comprising a total of 43 ac (17 ha). The first patch is a linear strip of prairie under private ownership. It is approximately 15 ac (6 ha) in size and bounded on the north by residential homes, on the east by the Burlington Northern railroad line, the south by forest (approximately 443 ft (135 m) north of where the Burlington Northern rail line intersects Old Hwy 99), and on the west by the Washington Department of Natural Resources Rocky Prairie Natural Area Preserve (NAP). The second prairie patch of this subunit is 29 ac (12 ha) of property owned by a conservation organization known as

Wolf Haven International. It is located southeast of the Burlington Northern habitat patch. Wolf Haven is bounded on the north by Offut Lake Road, and bounded by a service road in all but the extreme northeastern corner of the property. The landscape on the east, west, and south boundaries of the prairie at Wolf Haven is delineated by mixed Garry oak and conifer forest (east), or conifer forest (west and south). Both habitat patches within this subunit are unoccupied at the time of listing.

This subunit is within a matrix of historically occupied patches from which Taylor's checkerspot butterfly has been completely extirpated. We have determined this subunit is essential for the conservation of the Taylor's checkerspot butterfly because it has the potential for restoration of the physical or biological features sufficient to enable the reintroduction of Taylor's checkerspot butterfly. In addition, although currently unoccupied, this area presently provides many of the essential features to support long-term conservation and recovery of the Taylor's checkerspot butterfly. The subunit is composed of grasslands and includes oak woodland margins, and some transitional, colonization (first growth) Douglas-fir forest within the greater prairie landscape. Several PCEs, including landscape heterogeneity and diverse and abundant larval and adult plants resources, are present.

1–B Tenalquot Prairie—(Thurston County, Washington). The Tenalquot Prairie subunit is a privately owned conservation area of approximately 135 ac (55 ha) in size and part of the larger, historically contiguous Tenalquot Prairie, the majority of which occurs on JBLM. The northern boundary of this subunit is a fenceline boundary, which separates South Weir prairie on JBLM from the adjacent private land. The western boundary of this subunit is a large pasture clearly delineated by a fence line, and it is bordered on the southeast by Military Road. This subunit is unoccupied at the time of listing.

We have determined this subunit is essential for the conservation of the Taylor's checkerspot butterfly because it would provide for the reintroduction and reestablishment of Taylor's checkerspot butterfly. Although currently unoccupied, this area presently provides many of the physical or biological features necessary to support the long-term conservation and recovery of Taylor's checkerspot butterfly and has the potential to serve as metapopulation center within a larger prairie landscape context (~2,000 ac (810 ha) in the south region of Thurston County. The physical or biological features present at this site include landscape heterogeneity, bare ground for basking, and diverse and abundant larval and adult plant resources. This subunit is periodically managed using prescribed burning as well as with mechanical methods to remove Scot's broom (*Cytisus scoparius*) and to sustain early seral conditions.

1–C Glacial Heritage—(Thurston County, Washington). Glacial Heritage is a large, County-owned property managed with conservation, research, and education as its primary objectives. The property consists of more than 1,200 acres, with approximately 545 ac (220 ha) designated as critical habitat. The northwestern boundary is an abandoned railroad line, and to the direct north are rural residential properties; the eastern boundary of the preserve is the Black River, and the southern boundary is owned by two private landowners: one is a large industrial tree farm where conifer seedlings are grown, and the other is dominated by pasture grown for haying. The southern border is clearly defined by the land use change along the fenceline. This subunit is occupied at the time of listing, and provides the essential physical or biological features for the Taylor's checkerspot butterfly, including diverse topography, abundant and diverse larval and adult nectar plant resources, a water course, and areas of bare ground for basking due to ongoing, active management.

Threats to the physical or biological features that are essential to the conservation of this species and may warrant special management considerations or protections include, but are not limited to, the inadvertent short-term negative impacts of restoration activities, such as burning, mowing, and the use of herbicides; control of native and nonnative invasive woody species such as Scot's broom and Douglas fir (*Pseudotsuga menziesii*), as well as control of invasive Mediterranean grasses; habitat modifications brought on by succession of vegetation from the lack of disturbance, at a small and large scale; disease affecting larval host plants; and the effects of climate change. Special management considerations may be required to provide protection to larval and adult food resources by reducing human disturbance during the flight season, and when eggs and early instar larvae are present.

1–D Rock Prairie—(Thurston County, Washington). We are designating approximately 244 ac (99 ha) of critical habitat on the northern portion of Rock Prairie, a large, privately owned property in south Thurston County. The subunit has diverse landscape features with mounded prairie, old field pasture, oak woodland, and conifer forest. The northern boundary is delineated by dense conifer forests, the southern border is State Highway 99 (referred to as old 99), the western boundary is clearly delineated by rural residential lots, and the eastern border is the urban growth boundary for the town of Tenino, Washington. This subunit is unoccupied at the time of listing.

This historically occupied subunit is essential for the conservation of the Taylor's checkerspot butterfly as it presently provides many of the features necessary to support long-term conservation and recovery of the Taylor's checkerspot butterfly. These include diverse topography with swales and terraces, abundant and diverse larval and adult food resources, and a location close to a water course formed by Scatter Creek.

1–E Bald Hill—(Thurston County, Washington). The Bald Hill subunit is a collection of balds (shallow-soil areas without typical conifer vegetation) and former clearcut areas that have not regenerated and now maintain features of open habitat that produce larval and adult food resources that can be utilized by the Taylor's checkerspot butterfly. All independent, isolated habitat patches are surrounded by conifer forests on all sides. Some patches are bordered by WDNR roads, and others are bordered by private roads used for fire control and to access the forested property. The Bald Hill subunit comprises a total of 176 ac (71 ha) (rounded up). The western habitat patch of this subunit is approximately 110 ac (45 ha), and the eastern patch is approximately 65 ac (26 ha); both are unoccupied at the time of listing.

The Taylor's checkerspot butterfly was recently extirpated from this historically occupied subunit. We have determined it is essential for the conservation of the Taylor's checkerspot butterfly because it has the potential to provide for the reintroduction and reestablishment of Taylor's checkerspot butterfly and to support recovery of the subspecies. This area presently contains many of the features to support long-term conservation and recovery of the Taylor's checkerspot butterfly, including a diverse topography of balds, steep slopes, canyons, oak glades, a rich diversity of larval and adult food resources, and patches of bare soil for basking and resting. This particular critical habitat subunit is unique in that it provides the only bald habitat for Taylor's checkerspot butterfly at low elevation within Thurston County.

Unit 2: Strait of Juan de Fuca—Taylor's Checkerspot Butterfly

The Strait of Juan de Fuca Unit is composed of 779 acres (315 ha) made up of balds, former clearcuts, coastal bluffs, coastal back dunes, and prairie in five subunits located in Clallam County and Island County, Washington.

Subunit descriptions

2–A Deception Pass State Park—(Island County, Washington). Deception Pass State Park is owned and managed by Washington State Parks. The subunit contains approximately 149 ac (60 ha) of designated critical habitat found along low-lying beaches (coastal dunes) and on balds along high, south-facing slopes within the park. These areas include the shoreline along Bowman Bay, Bowman Hill and Beach, Reservation Head, Pass Island, Goose Rock, and West Beach, all within the park. Deception Pass State Park is divided by Highway State 20, and bordered by the portion of Puget Sound that forms Deception Pass to the north, and to the south by private rural residential properties. This park was historically occupied by Taylor's checkerspot butterfly, but at this time the subunit is unoccupied.

We have determined this subunit is essential for the conservation of the subspecies because it has the potential for reintroduction and reestablishment of the Taylor's checkerspot butterfly to support recovery. In addition, although currently unoccupied, this area presently provides many of the features to support a reintroduced population of Taylor's checkerspot butterfly, including diverse topography with balds and beaches, abundant larval and adult food resources, areas of bare soil for basking of larvae and adults, and water sources made up of saltwater along the western shoreline and a freshwater wetland.

2–B Central Whidbey—(Island County, Washington). This subunit is located on Whidbey Island in Washington, and comprises a total of 229 ac (92 ha), and includes Ebey's Landing (~87 ac (35 ha)), the Naas-Admiralty Inlet Conservation Area (~8 ac (3 ha)), and the former Smith Prairie (~134 ac (54 ha)). The Central Whidbey subunit is made up of two distinct patches: one is located along the central-west coast on coastal bluffs of the island (Ebey), and the second (Smith Prairie) is located on relatively flat prairie located centrally-north on the island. The coastal area is bordered by Puget Sound to the west, and rural residential property and farmland to the east. The Smith Prairie is surrounded by rural residential properties on all sides; Parker Road runs along the western border of the property, and Morse Road is found along the south boundary. This subunit was historically occupied but is currently unoccupied.

We have determined this subunit is essential for the conservation of the subspecies because it has the potential for reintroduction and reestablishment of Taylor's checkerspot butterfly to support recovery. In addition, although currently unoccupied, this area presently provides many of the features to support a reintroduced population of Taylor's checkerspot butterfly, including diverse topography with coastal bluffs and beaches, abundant larval and adult food resources, areas of bare soil, and water sources made up of a freshwater wetland, and saltwater along the western shoreline.

2–C Elwha—(Clallam County, Washington). The Elwha critical habitat subunit is composed of private lands in Clallam County made up of balds, and former clear cut areas within a landscape of conifer forests. The subunit polygons adjoin occupied patches owned and managed by the WDNR, one is owned and managed by a nongovernmental conservation organization, the Center for Natural Lands Management, and the other small parcel is owned by a private timber company. These two patches are found primarily on the south slope of Dan Kelly Ridge, and they are separated by essential habitat owned by WDNR that has been excluded due to an HCP providing for species-specific habitat management.

The habitat patches at both locations are bounded by conifer forests. The balds at each of these locations are presently occupied by the Taylor's checkerspot butterfly, which has been observed flying up and down the steep slopes and onto private lands. Both of these locations contain essential physical or biological features, including topographic heterogeneity, abundant and diverse larval and adult food resources, and bare soil for basking and resting. Puddles on the road provide a water source during the adult flight season.

Threats to the physical or biological features that are essential to the conservation of this species and may warrant special management considerations or protections include, but are not limited to, development; the inadvertent short-term negative impacts of restoration activities, such as control of native and nonnative, invasive, woody species such as Scot's broom, snowberry (*Symphoricarpos albus*), and Douglas fir; the use of herbicides; habitat modifications brought on by succession of vegetation from lack of disturbance, at a small and large scale; disease affecting larval host plants; and the effects of climate change. The physical or biological features essential to the conservation of the species may require special management considerations or protection to sustain the open conditions that are needed to manage for and sustain the larval and adult food resources. Special management considerations may be required to provide protection to larval and adult food resources by reducing human disturbance during the flight season, and when eggs and early instar larvae are present.

2–D Sequim—(Clallam County, Washington). Sequim is a private property estate and farm of low-lying stabilized dune habitat of approximately 151 ac (61 ha). The subunit includes stabilized dunes and beach habitat adjacent to the Strait of Juan de Fuca; it is approximately 20 ft (6 m) above sea level. The landowner has been working cooperatively with the WDFW to manage their property for multiple uses, including the conservation of Taylor's checkerspot butterfly. The subunit is occupied at the time of listing.

The Sequim subunit contains several essential physical or biological features, including landscape heterogeneity with fore and back dune areas and terraces; rich and abundant larval and adult food resources; a marsh; and bare soil for basking and resting.

Threats to the physical or biological features that are essential to the conservation of this species and may warrant special management considerations or protections include, but are not limited to, development; the inadvertent short-term negative impacts of restoration activities; habitat modifications brought on by succession of vegetation from lack of disturbance, at a small and large scale; disease affecting larval host plants; and the effects of climate change. The physical or biological features essential to the conservation of the species may require special management considerations or protection to sustain the open conditions that are needed to manage for and sustain the larval and adult food resources. Special management considerations may be required to provide protection to larval and adult food resources by reducing human disturbance during the flight season, and when eggs and early instar larvae are present.

2–E Dungeness—(Clallam County, Washington). The Dungeness subunit is found entirely on U.S. Forest Service (USFS) land on the northeast Olympic Peninsula. This subunit comprises a

total of 160 ac (65 ha) and is composed of bald habitat, and former clearcuts that function similarly to balds. The three occupied areas within this subunit and are known as Bear Mountain (low elevation), 3 O'Clock Ridge (middle elevation) (which is composed of two habitat patches), and the upper Dungeness (highest elevation). These locations on USFS lands are the highest elevations known to be occupied by Taylor's checkerspot butterflies. The Bear Mountain location is entirely surrounded by conifer forests and originated as a small harvest unit that functions similar to a bald. 3 O'Clock ridge is bounded by the upper Dungeness Road on the northwest boundary, Cougar Creek to the northeast, Bungalow creek to the southwest, and conifer forests to the southeast of the occupied unit. Upper Dungeness is bounded by an unnamed creek to the northeast and Mueller Creek to the southwest, and by conifer forests to the southeast of the occupied unit. All habitat patches within this subunit are presently occupied by the Taylor's checkerspot butterfly.

The subunit contains several essential physical or biological features, including landscape heterogeneity, abundant larval and adult food resources, nearby streams, and plentiful areas of bare ground for basking and resting. Early restoration work conducted by USFS has included tree harvesting and removal, which has resulted in the expansion of larval and adult food resources in this habitat.

Threats to the physical or biological features that are essential to the conservation of this species and may warrant special management considerations or protections include, but are not limited to, the inadvertent short-term negative impacts of restoration activities and control of native and nonnative, woody species; the use of herbicides that my impact larval and adult nectar resources; habitat modification brought on by succession of vegetation from lack of disturbance, at a small and large scale; disease affecting larval host plants; and the effects of climate change. The physical or biological features essential to the conservation of the species may require special management considerations or protection to sustain the open conditions that are needed to manage for and sustain the larval and adult food resources. Special management considerations may be required to provide protection to larval and adult food resources by reducing human disturbance during the flight season, and when eggs and early instar larvae are present.

Unit 4: Willamette Valley—Taylor's Checkerspot Butterfly

Unit 4, located in the Willamette Valley, is the only critical habitat unit that includes critical habitat for both the streaked horned lark and Taylor's checkerspot butterfly. Unit 4 includes four subunits in the State of Oregon; three for the streaked horned lark (4–A, 4–B, and 4–C; described below), and a single subunit (4–D) for the Taylor's checkerspot butterfly in Benton County.

Unit 4–D Fitton Green-Cardwell Hill—(Benton County, Oregon). Fitton Green-Cardwell Hill is located in the eastern foothills of the Coastal Range on the western edge of the Willamette Valley. The habitat is composed of multiple small natural openings of approximately 3 ac (1 ha) in size within a conifer-oak forest landscape. These habitat patches collectively comprise the 20 ac (8 ha) that constitute Subunit 4–D. The northern patch of this subunit is a BPA right-of-way that passes through a large occupied patch of county-owned habitat that provides conservation benefit to the Taylor's checkerspot butterfly through the Benton County Prairie Species HCP. This subunit is currently occupied by the Taylor's checkerspot butterfly.

This subunit contains several of the essential physical or biological features for the Taylor's checkerspot butterfly, including native perennial bunchgrass plant communities with abundant larval and adult food resources, landscape heterogeneity, and bare soil for basking and resting.

Threats to the physical or biological features that are essential to the conservation of this species and may warrant special management considerations or protections include, but are not limited to, the inadvertent short-term negative impacts of restoration activities such as control of native and nonnative, invasive, woody species and invasive Mediterranean grasses through mechanical means and with herbicide; habitat modification due to succession of vegetation in the absence of disturbance, at a small and large scale; impacts of disease on larval food plants; and climate change. The physical or biological features essential to the conservation of Taylor's checkerspot butterfly may require special management considerations or protection to sustain short-statured vegetation structure and to reduce human disturbance during the flight season or when eggs and early instar larvae are present. The physical or biological features of this site may be particularly vulnerable to the effects of recreational use, such as trampling of vegetation.

Streaked Horned Lark—Units 3 and 4

We are designating as critical habitat areas that we have determined are occupied at the time of listing and contain sufficient elements of physical or biological features to support life-history processes essential to the conservation of the streaked horned lark. We are designating two units as critical habitat for the streaked horned lark. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the subspecies. The two units we designate as critical habitat are: Unit 3—Washington Coast and Columbia River (with 13 subunits), and Unit 4—Willamette Valley (with 3 subunits). The Washington Coast and Columbia River Unit (Unit 3) totals 2,900 ac (1,173 ha) and includes 564 ac (228 ha) of Federal ownership, 2,209 ac (894 ha) of State-owned lands, and 126 ac (51 ha) of private lands. The Willamette Valley Unit (Unit 4) totals 1,729 ac (700 ha) and is entirely composed of Federal lands. We are designating a total of 4,629 ac (1,873 ha) of critical habitat for the streaked horned lark rangewide.

The streaked horned lark has been documented nesting on all of the subunits within the last few years, and all subunits are therefore considered occupied at the time of listing. All of the subunits currently have one or more of the physical or biological features essential to the conservation of the streaked horned lark, and which may require special management considerations or protection.

The critical habitat areas described below constitute our best assessment of areas that meet the definition of critical habitat for the streaked horned lark. The approximate area and landownership of each critical habitat unit and associated subunit is shown in Table 2.

TABLE 2—*Critical Habitat Units for Streaked Horned Lark.* NOTE: AREA SIZES MAY NOT SUM DUE TO ROUNDING. AREA ESTIMATES REFLECT ALL LAND WITHIN CRITICAL HABITAT UNIT BOUNDARIES

Unit 3: Washington Coast and Columbia River Islands		Federal	State	Private	Tribal	Other*	Currently occupied
	Subunit name	Ac (Ha)	Ac (Ha)	Ac (Ha)	Ac (Ha)	Ac (Ha)	Y/N
3–A	Damon Point	0	456 (185)	24 (10)	0	0	Y
3–B	Midway Beach	0	611 (247)	0	0	0	Y
3–C	Shoalwater Spit	0	377 (152)	102 (41)	0	0	Y
3–D	Leadbetter Point	564 (228)	101 (41)	0	0	0	Y
3–E	Rice Island	0	224 (91)	0	0	0	Y
3–F	Miller Sands	0	123 (50)	0	0	0	Y
3–G	Pillar Rock/Jim Crow	0	44 (18)	0	0	0	Y
3–H	Welch Island	0	43 (18)	0	0	0	Y
3–I	Tenasillahe Island	0	23 (9)	0	0	0	Y
3–J	Whites/Brown	0	98 (39)	0	0	0	Y
3–K	Wallace Island	0	13 (5)	0	0	0	Y
3–L	Crims Island	0	60 (24)	0	0	0	Y
3–M	Sandy Island	0	37 (15)	0	0	0	Y
	Unit 3 Totals	564 (228)	2,209 (894)	126 (51)	0	0	
Unit 4: Willamette Valley:							
4–A	Baskett Slough NWR	1,006 (407)	0	0	0	0	Y
4–B	Ankeny NWR	264 (107)	0	0	0	0	Y
4–C	William L Finley NWR	459 (186)	0	0	0	0	Y
	Unit 4 Totals	1,729 (700)	0	0	0	0	Y
	Grand Total—all Units	2,293 (928)	2,209 (894)	126 (51)	0	0	.....
	GRAND TOTAL OF ALL UNITS, ALL OWNERSHIP.	.....	.....	4,629 (1,873)	.....	.....	.....

* Other = Ports, local municipalities, and nonprofit conservation organizations.

Unit 3: Washington Coast and Columbia River—Streaked Horned Lark

On the Washington coastal sites, the streaked horned lark occurs on sandy beaches and breeds in the sparsely vegetated, low dune habitats of the upper beach. We are designating four subunits (Subunits 3–A, 3–B, 3–C, and 3–D) and a total of 2,235 ac (904 ha) as critical habitat on the Washington coast. The coastal sites are owned and managed by Federal, State, and private entities. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to reduce human disturbance during the nesting season, and the continued encroachment of invasive, nonnative plants requires special management to restore or retain the open habitat preferred by the streaked horned lark. Subunits 3–A, 3–B, 3–C, and 3–D overlap areas that are designated as critical habitat for the western snowy plover. The snowy plover nesting areas are posted and monitored during the spring and summer to keep recreational beach users away from the nesting areas; these management actions also benefit the streaked horned lark.

In the lower Columbia River, we are designating nine island subunits (Subunits 3–E through 3–M) for a total of 665 ac (269 ha). The island subunits are owned by the States of Oregon and Washington. On the Columbia River island sites, only a small portion of each island is designated as critical habitat for the streaked horned lark; most of the areas mapped are used by the Corps for dredge material deposition in its channel maintenance program. Within any deposition site, only a portion is likely to be used by the streaked horned lark in any year, as the area of habitat shifts within the deposition site over time as new materials are deposited and as older deposition sites become too heavily vegetated for use by streaked horned larks. All of the island subunits are small, but are adjacent to open water, which provides the open landscape context needed by streaked horned larks.

The main threats to the essential features in the critical habitat subunits designated on the Columbia River islands are invasive vegetation and direct impacts associated with deposition of dredge material onto streaked horned lark nests during the nesting season. In all subunits, the physical or biological features essential to the conservation of each subspecies may require special management considerations or protection to manage, protect, and maintain the PCEs supported by the subunits. For those threats that are common to all subunits, special management considerations or protections may be required to address direct or indirect habitat loss due to the location and timing of dredge material placement to areas that have become unsuitable for streaked horned lark nesting and wintering habitat.

Subunit 3–A: Damon Point—(Grays Harbor County, Washington). This critical habitat subunit is about 481 ac (194 ha) in size; of this, 456 ac (185 ha) are owned by the State, and 24 ac (10 ha) are under private ownership. It extends from the Ocean Shores wastewater treatment plant on the western edge through the Oyhut wildlife management unit and Damon Point spit (also called Protection Island). The vast majority of this area (~95 percent) is managed by the State of Washington (WDFW, WDNR, and Washington State Parks). This subunit is currently occupied and provides the physical or biological features essential to the conservation of the subspecies. The site has both the open landscape context and sparse, low-growing vegetation that make up the physical or biological features essential to the conservation of the subspecies. Streaked horned larks currently nest and winter on Damon Point and have also been documented nesting along the beach just west of the treatment plant. The physical or

biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to reduce human disturbance during the nesting season and encroachment by invasive, nonnative plants that render the habitat too dense for use by streaked horned larks.

Subunit 3–B: Midway Beach—(Pacific County, Washington). This subunit is about 611 ac (247 ha) in size. The northern edge of the subunit starts at Grayland Beach State Park and extends south to the Warrenton Cannery road. The landward extent is defined by the vegetation and ownership line in the mid-dune area. This site is owned by the State of Washington (Washington State Parks and Recreation Department). This subunit is currently occupied and provides the physical or biological features essential to the conservation of the subspecies. Both open landscape context and the sparse, low-growing vegetation that make up the physical or biological features essential to the conservation of the subspecies are present at the site, and Midway Beach is used by streaked horned larks for both nesting and wintering. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to reduce human disturbance during the nesting season and encroachment by invasive, nonnative plants that render the habitat too dense for use by streaked horned larks.

Subunit 3–C: Shoalwater/Graveyard Spit—(Pacific County, Washington). This subunit is about 479 ac (194 ha); of this, 377 ac (152 ha) are owned by the State, and 102 ac (41 ha) are under private ownership. The central portion of the subunit (182 ac; 74 ha) is within the Shoalwater Bay Indian Reservation and has been excluded under section 4(b)(2) (see Exclusions), dividing the subunit into northwest and southeast sections. Streaked horned larks have been documented off and on at this site during the breeding season since 2000. Although the site has been unoccupied for the past couple of years, singing male streaked horned larks were documented at this site during surveys in June 2012; therefore, we consider this site to be currently occupied. As with the other areas along the Washington coast, streaked horned larks use this site for both nesting and wintering. The subunit is a dynamic area and has a constantly changing sand spit that supports the essential features for nesting and wintering habitat. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to reduce human disturbance during the nesting season and encroachment by invasive, nonnative plants that render the habitat too dense for use by streaked horned larks.

Subunit 3–D: Leadbetter Point—(Pacific County, Washington). This subunit contains about 665 ac (269 ha) at the northern tip of the Long Beach Peninsula. This subunit is on the Willapa National Wildlife Refuge and the Seashore Conservation Area (managed by Washington State). This site is occupied and provides the physical or biological features essential to the conservation of the subspecies. Most of the streaked horned larks at this site nest within the habitat restoration area and in ponded swales landward of the restoration area that go dry in the summer (Ritchie 2012, pers. comm.). The site has the open landscape context and sparse, low-growing vegetation that make up the physical or biological features essential to the conservation of the subspecies. The Willapa National Wildlife Refuge completed its comprehensive conservation plan in August 2011, and manages habitat at the tip of Leadbetter Spit for the western snowy plover, streaked horned lark, and other native coastal species. These management activities are compatible with streaked horned lark conservation. As with the other coastal sites, Leadbetter is used by streaked horned larks year-round. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Subunit 3–E: Rice Island—(Clatsop County, Oregon, and Wahkiakum County, Washington). This subunit is about 224 ac (91 ha) in size. The island is located at river mile (RM) 21, approximately 7 mi (11 km) upstream of the Astoria-Megler Bridge near the mouth of the Columbia River. Although the island is within the planning boundary of the Julia Butler Hansen National Wildlife Refuge, Rice Island is owned by the Oregon Department of State Lands. A very small portion of the subunit is in Wahkiakum County and on Washington State lands. The Corps uses this site for dredge material disposal as part of its maintenance of the Columbia River shipping channel. This subunit is occupied and provides the features essential to the conservation of the subspecies. Streaked horned larks currently nest and winter on Rice Island. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Subunit 3–F: Miller Sands Spit—(Clatsop County, Oregon). Miller Sands Spit is across the shipping channel from Rice Island at RM 24. The subunit is a sand spit 2 mi (1.2 km) long and about 123 ac (50 ha) in size on the northern shore of the island. The subunit is currently occupied and provides the physical or biological features essential to the conservation of the subspecies for nesting and wintering habitat. The island is owned by the Oregon Department of State Lands, but is also within the planning unit boundary for the Julia Butler Hansen National Wildlife Refuge. The Corps uses this site for dredge material disposal as part of its maintenance of the Columbia River shipping channel. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Subunit 3–G: Pillar Rock/Jim Crow Sands—(Clatsop County, Oregon). This island is located at about RM 27 on the Columbia River. The subunit is about 44 ac (18 ha) in size. Pillar Rock is currently occupied and provides the physical or biological features essential to the conservation of the subspecies. Streaked horned larks nest and winter at the site. The island is owned by the Oregon Department of State Lands and is within the planning unit boundary for the Julia Butler Hansen National Wildlife Refuge. The Corps uses this site for dredge material disposal as part of its maintenance of the Columbia River shipping channel. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Subunit 3–H: Welch Island—(Clatsop County, Oregon). This island is at RM 34 and is owned by the Oregon Department of State Lands. The critical habitat subunit is about 43 ac (18 ha) on the northeastern shore of the island. This site is currently occupied and provides the physical or biological features essential to the conservation of

the subspecies. The Corps uses this site for dredge material disposal as part of its maintenance of the Columbia River shipping channel. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Subunit 3–I: Tenasillahe Island—(Columbia County, Oregon). This island is at RM 38; the subunit is on a small unnamed spit at the southern tip of Tenasillahee Island. The subunit is about 23 ac (9 ha) in size. This site is currently occupied and provides the physical or biological features essential to the conservation of the subspecies. The site is owned by the Oregon Department of State Lands. The Corps uses this site for dredge material disposal as part of its maintenance of the Columbia River shipping channel. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Subunit 3–J: Whites/Brown Island—(Wahkiakum County, Washington). Whites/Brown Island is connected to the southern end of Puget Island at RM 46 and is owned by WDFW. The subunit is a small spit at the southern end of Whites/Brown Island and is about 98 ac (39 ha) in size. The site is used by the Corps for dredge material disposal as part of its maintenance of the Columbia River shipping channel. This site is currently occupied and provides the physical or biological features essential to the conservation of the subspecies. Whites/Brown Island supports one of the largest populations of streaked horned larks in the lower Columbia River islands. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Subunit 3–K: Wallace Island—(Columbia County, Oregon). Wallace Island is located across the channel from Whites/Brown Island at RM 47. Streaked horned larks were detected at the site in 2012, which is about 13 ac (5 ha) in size; therefore we consider the subunit presently occupied. The area is owned by the Oregon Department of State Lands. This site is not a dredge material disposal site. This subunit currently contains the physical or biological features essential to the conservation of the species, but may require special management to maintain the low vegetative structure required by streaked horned larks.

Subunit 3–L: Crims Island—(Columbia County, Oregon). This island is located upstream of Wallace Island at RM 57. The subunit is about 60 ac (24 ha) in size. The subunit is currently occupied and provides the physical or biological features essential to the conservation of the subspecies. The area is owned by the Oregon Department of State Lands, but is also within the planning unit boundary for the Julia Butler Hansen National Wildlife Refuge. Crims Island is an approved Corps dredge material disposal site. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Subunit 3–M: Sandy Island—(Columbia County, Oregon). This island, at RM 76, is the island farthest upstream that is known to be used by streaked horned lark for nesting. The subunit is about 37 ac (15 ha) in size on the southern end of Sandy Island and is owned by the Oregon Department of State Lands. This subunit is currently occupied and provides the physical or biological features essential to the conservation of the subspecies. The Corps uses this site for dredge material disposal as part of its maintenance of the Columbia River shipping channel. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Unit 4: Willamette Valley—Streaked Horned Lark

Unit 4 (Willamette Valley) includes critical habitat subunits for both the Taylor's checkerspot butterfly and streaked horned lark, all in the State of Oregon. We are designating three subunits for the streaked horned lark in the Willamette Valley, all on the Willamette Valley National Wildlife Refuge Complex. The total acreage is 1,729 ac (700 ha). All of the subunits are occupied at the time of listing and contain the physical or biological features essential to the conservation of the subspecies that may require special management considerations or protection. These subunits are managed mainly to provide forage for wintering dusky Canada geese, and this management is compatible with maintaining the essential features for the streaked horned lark. The refuge complex has incorporated management for streaked horned lark into its recently completed comprehensive conservation plan, and streaked horned lark habitat conservation is being implemented in the refuge units.

Subunit 4–A: Baskett Slough National Wildlife Refuge—(Polk County, Oregon). There are two parts to this critical habitat subunit, the area of which totals 1,006 ac (407 ha). Subunit 4–A North is 181 ac (73 ha) and is in the North Morgan Reservoir area of the refuge. Subunit 4–A South is 825 ac (334 ha) and is the South Baskett Slough Agricultural area of the refuge; State Route 22 forms the southeast boundary of the south subunit. Both of the subunits are agricultural fields that are heavily grazed by dusky Canada geese in the winter. This subunit is currently occupied and contains the physical or biological features essential to the conservation of the subspecies. Baskett Slough National Wildlife Refuge has large areas of agricultural lands and restored native prairies, which provide the landscape context and vegetation structure required by streaked horned larks. The refuge manages primarily for wintering dusky Canada geese, which also provides suitable management for streaked horned larks. This subunit is consistently used by streaked horned larks in the breeding season. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Subunit 4–B: Ankeny National Wildlife Refuge—(Marion County, Oregon). This site is in the middle of the Ankeny Refuge, in the Field 6 Complex; the northeast boundary of the subunit is formed by the Sydney Ditch. The critical habitat subunit is 264 ac (107 ha). The site is composed of agricultural fields that are heavily grazed by dusky Canada geese in the winter. The subunit is currently occupied and has consistent use by streaked horned larks in the breeding season. This subunit contains all of the physical or biological features essential to the conservation of the subspecies. Ankeny National Wildlife Refuge has both agricultural lands and restored native prairies, which provide the landscape context and vegetation

structure required by streaked horned larks. The refuge manages primarily for wintering dusky Canada geese, which also provides suitable management for streaked horned larks. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Subunit 4–C: William L. Finley National Wildlife Refuge—(Benton County, Oregon). This critical habitat subunit is on Fields 11 and 12 in the South Finley Agricultural Lands area of the refuge; Bruce Road bisects the subunit, and McFarland Road forms the southern boundary of the site. The subunit is 459 ac (186 ha) in size. This subunit is currently occupied and contains the physical or biological features essential to the conservation of the subspecies. The site is composed of agricultural fields that are heavily grazed by dusky Canada geese in the winter, and it has consistent use by streaked horned larks in the breeding season; streaked horned larks also winter at the refuge. Finley National Wildlife Refuge has large areas of agricultural lands and restored native prairies, which provide the landscape context and vegetation structure required by streaked horned larks. The refuge manages primarily for wintering dusky Canada geese, which also provides suitable management for streaked horned larks. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

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. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for the Taylor's checkerspot butterfly or the streaked horned lark. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such

habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Taylor's checkerspot butterfly or streaked horned lark. These activities include, but are not limited to:

(1) Actions that restore, alter, or degrade habitat features through development, agricultural activities, burning, mowing, herbicide use or other means in suitable habitat for the Taylor's checkerspot butterfly or the streaked horned lark.

(2) Actions that would alter the physical or biological features of critical habitat including modification of the composition and structure of vegetation in suitable habitat for the Taylor's checkerspot butterfly or the streaked horned lark. Such activities could include, but are not limited to, construction, grading or other development, mowing, conversion of habitat, or use of herbicides to remove vegetation (recreational use, off-road vehicles on Federal, State, private, or Tribal lands). These activities may affect the physical or biological features of critical habitat for the Taylor's checkerspot butterfly and streaked horned lark, by removing sources of food, shelter, nesting or oviposition sites, or otherwise impacting habitat essential for completion of life history.

(3) Actions that would reduce the open landscape context required by the streaked horned lark, such as construction of buildings or planting tall trees adjacent to a suitable site.

(4) Deposition of dredge materials on occupied streaked horned lark habitats during the breeding season.

(5) Installation of shoreline stabilization structures or modification of beaches and open shorelines where occupied by the streaked horned lark or where critical habitat occurs for the streaked horned lark.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the critical habitat designation for the Taylor's checkerspot butterfly and streaked horned lark to determine if they meet the criteria for exemption from critical habitat under section 4(a)(3) of the Act. The following areas are Department of Defense lands with completed, Service-approved INRMPs within the critical habitat designation.

Approved INRMPs

U.S. Army Joint Base Lewis-McChord—JBLM, formerly known as Fort Lewis, is an 86,500-ac (35,000-ha) U.S. Army military reservation in western Washington, south of Tacoma and east of the Puget Sound. JBLM contains some of the largest remaining intact prairies in the south Puget Sound basin, with approximately 20,352 ac (8,236 ha) of prairies, one of the rarest ecosystems in the United States, which also supports both the Taylor's checkerspot butterfly and streaked horned lark. Since 2003, JBLM has managed the prairies located on the base according to their Prairie Management Plan, which was collaboratively prepared by Robert Altman of the American Bird Conservancy (ABC), the Environmental and Natural Resources Division of JBLM's Wildlife Branch, and The Nature Conservancy (TNC) of Washington. The prairies found on JBLM are currently managed by JBLM's Fish and Wildlife Program and the primary mission for the JBLM prairies is to provide an open environment for military training. JBLM has a history of applying an ecosystem management strategy to their prairies to provide for multiple conservation goals, which have included promoting native biological diversity, maintaining and restoring unique plant communities, and providing habitat for several rare prairie species. There are 2,324 ac (941 ha) of lands within the boundary of JBLM that were identified in the proposed critical habitat designation for the Taylor's checkerspot butterfly; these lands included all of subunits 1–A, 1–B, 1–C, and 1–E in the proposed rule (77 FR 61937; October 11, 2012). JBLM has the largest naturally occurring population of the Taylor's checkerspot butterfly anywhere in its range. This significant Federal landholding provides the largest contiguous block of prairie in Washington as well.

JBLM has an INRMP in place that was approved in 2006, which JBLM is in the process of updating. In 2012, JBLM amended their existing INRMP with specific regard to the Taylor's checkerspot butterfly by completing an ESMP that includes guidelines for protecting, maintaining, and enhancing habitat essential to support the Taylor's checkerspot butterfly on JBLM. The Service has found, in writing, that the ESMP under the JBLM INRMP provides a conservation benefit to the Taylor's checkerspot butterfly.

JBLM's ESMPs identify management objectives for the conservation of Taylor's checkerspot butterfly and streaked horned lark. For the Taylor's checkerspot butterfly, the ESMP specifically includes nine proposed ''priority habitat'' focus areas on JBLM for management of the Taylor's checkerspot butterfly and its associated habitat. The management objective is to improve the populations of Taylor's checkerspot butterflies both on and off JBLM. JBLM's Fish and Wildlife Program proposes several management objectives to attain this goal: (1) They will coordinate with the Service and WDFW on increasing the number of populations and expand their distribution on and off the base; (2) the JBLM Fish and Wildlife Program will

monitor occupied Taylor's checkerspot butterfly populations to detect habitat degradation, weather, and climate factors that influence populations dynamics; and (3) they will evaluate the efficacy of their ESMP, and adapt their management if required. JBLM has also committed to restore and sustain priority habitat areas through a number of management efforts. This will be accomplished by controlling invasive, nonnative plant species and encroaching conifers, and as land is cleared they will replant with the larval host and adult nectar plants for Taylor's checkerspot butterfly. Restoration actions to enhance and maintain suitable habitat conditions includes ecological prescribed burning, mowing, application of herbicides where needed, girdling of encroaching conifers, manual removal, and biological control using integrated pest management. Another objective is to purchase lands off JBLM for the express purpose of managing the locations for Taylor's checkerspot butterfly habitat and translocation. To date, over 4,000 ac (1,620 ha) have been acquired using Area Compatible Use Buffer (ACUB) program funding.

There are 2,813 ac (1,138 ha) of lands within the boundary of JBLM that were identified in the proposed critical habitat designation for the streaked horned lark; these lands included all of subunits 1–B, 1–C, 1–D, and 1–E in the proposed rule (77 FR 61937; October 11, 2012). The ESMP for the streaked horned lark identifies management objectives that are applied in specific locations on JBLM where this subspecies nests, including McChord Airfield, Gray Army Airfield, 13th Division Prairie (Training Area 14), and the eastern portion of the 91st Division Prairie. The management objectives that are applied for the protection of streaked horned larks include: (1) Scheduled mowing regimes to minimize impacts to streaked horned lark at the military airfields during the nesting season. The mowing restrictions are done in coordination with the FAA to meet airport safety requirements for vegetation management; (2) limiting off-road vehicle use in areas where streaked horned larks are nesting; (3) annual surveys for streaked horned larks in coordination with the CNLM and the WDFW at all of the known occupied sites. Protection buffers will be applied around the nesting areas at 13th Division Prairie and all training activities will be seasonally restricted in these areas; and (4) evaluating the efficacy of their ESMP, and adapt their management if required. As described above, JBLM maintains and restores the prairie areas on base, including areas used by the streaked horned lark. The Service has found, in writing, that the ESMP under the JBLM INRMP provides a conservation benefit to the streaked horned lark.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified Department of Defense lands are subject to the JBLM INRMP and that conservation efforts identified in the ESMPs under the INRMP will provide a conservation benefit to the Taylor's checkerspot butterfly and streaked horned lark. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 2,324 ac (941 ha) of habitat for the Taylor's checkerspot butterfly and 2,813 ac (1,138 ha) for the streaked horned lark in this final critical habitat designation because of this exemption. The lands exempted under section 4(a)(3) are identified in Tables 3 and 4.

TABLE 3—AREAS EXEMPTED FROM THE DESIGNATION OF CRITICAL HABITAT FOR THE TAYLOR'S CHECKERSPOT BUTTERFLY UNDER SECTION 4(a)(3) OF THE ACT BY CRITICAL HABITAT UNIT

Unit	Specific area	Areas meeting the definition of critical habitat in acres (hectares)	Areas exempted in acres (hectares)
1	TA7S	78 (32)	78 (32)
1	91st Division Prairie	1,377 (557)	1,377 (557)
1	13th Division Prairie	647 (262)	647 (262)
1	Tenalquot Prairie	222 (90)	222 (90)
Total		2,324 (941)	2,324 (941)

TABLE 4—AREAS EXEMPTED FROM THE DESIGNATION OF CRITICAL HABITAT FOR THE STREAKED HORNED LARK UNDER SECTION 4(a)(3) OF THE ACT BY CRITICAL HABITAT UNIT

Unit	Specific area	Areas meeting the definition of critical habitat in acres (hectares)	Areas exempted in acres (hectares)
1	McChord Airforce Base	759 (307)	759 (307)
1	Gray Army Airfield	347 (140)	347 (140)
1	91st Division Prairie	888 (359)	888 (359)
1	13th Division Prairie	819 (331)	819 (331)
Total		2,813 (1,138)	2,813 (1,138)

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if s/he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless s/he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding

which factor(s) to use and how much weight to give to any factor.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise her discretion to exclude the area only if such exclusion would not result in the extinction of the species.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

In the case of the Taylor's checkerspot butterfly and streaked horned lark, the benefits of critical habitat include public awareness of the presence of Taylor's checkerspot butterflies and streaked horned larks and the importance of habitat protection, and, in cases where a Federal nexus exists, increased habitat protection for these species due to the protection from adverse modification or destruction of critical habitat.

When we evaluate the existence of a conservation or management 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 will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments received and information in our files, we evaluated whether certain lands in the proposed critical habitat were appropriate for exclusion from this final designation pursuant to section 4(b)(2) of the Act. We considered the areas discussed below for exclusion under section 4(b)(2) of the Act, and present our detailed analysis below. For those areas in which the Secretary has exercised her discretion to exclude, we conclude that:

(1) Their value for conservation will be preserved in the near future by existing protective actions; or

(2) The benefits of excluding the particular area outweigh the benefits of their inclusion, based on the ''other relevant factor'' provisions of section 4(b)(2) of the Act.

Taylor's Checkerspot Butterfly

Table 5 shows the areas we are excluding from critical habitat for the Taylor's checkerspot butterfly.

TABLE 5—AREAS EXCLUDED FROM THE DESIGNATION OF CRITICAL HABITAT FOR THE TAYLOR'S CHECKERSPOT BUTTERFLY UNDER SECTION 4(b)(2) OF THE ACT BY CRITICAL HABITAT UNIT

Unit	Specific area	Areas meeting the definition of critical habitat in acres (hectares)	Areas excluded in acres (hectares)
1	Rocky Prairie NAP	38 (16)	38 (16)
1	Mima Mounds NAP	406 (164)	406 (164)
1	Scatter Creek	731 (296)	731 (296)
1	Rock Prairie	621 (251)	378 (153)
1	Bald Hill	422 (171)	247 (100)
1	West Rocky Prairie	134 (54)	134 (54)
2	Elwha	235 (95)	143 (58)
4	Fort Hoskins	6 (3)	6 (3)
4	Beazell Memorial Forest	61 (25)	61 (25)
4	Fitton Green—Cardwell Hill	59 (24)	40 (16)
Total		2,713 (1,098)	2,184 (885)

Streaked Horned Lark

Table 6 shows the areas we are excluding from critical habitat for the streaked horned lark.

TABLE 6—AREAS EXCLUDED FROM THE DESIGNATION OF CRITICAL HABITAT FOR THE STREAKED HORNED LARK UNDER SECTION 4(b)(2) OF THE ACT BY CRITICAL HABITAT UNIT

Unit	Specific area	Areas meeting the definition of critical habitat in acres (hectares)	Areas excluded in acres (hectares)
1	Sanderson Field	376 (152)	376 (152)
1	Olympia Airport	575 (233)	575 (233)
3	Shoalwater Spit	661 (267)	182 (74)
3	Portland International Airport	431 (174)	431 (174)
4	McMinnville Municipal Airport	600 (243)	600 (243)
4	Salem Municipal Airport	534 (216)	534 (216)
4	Corvallis Municipal Airport	1,103 (446)	1,103 (446)
4	Eugene Airport	313 (126)	313 (126)
Total		4,593 (1,857)	4,114 (1,664)

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared an economic analysis of the proposed critical habitat designation and related factors (April 3, 2013; 78 FR 20074). This economic analysis addressed a total of six prairie taxa proposed for listing under the Act. In addition to the Taylor's checkerspot butterfly and streaked horned lark, the economic analysis included four subspecies of the Mazama pocket gopher (*Thomomys mazama* ssp.). The Mazama pocket gophers are being addressed in separate rulemakings.

The intent of the final economic analysis (FEA) (IEc 2013) is to quantify the economic impacts of all potential conservation efforts for the six prairie taxa, including the Taylor's checkerspot butterfly and streaked horned lark; some of these costs will likely be incurred regardless of whether we designate critical habitat (we consider such costs to be ''baseline'' costs). The economic impact of the final critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. The FEA considers those costs that may occur in the 20 years following the designation of critical habitat, which was determined to be the appropriate period for analysis because limited planning information was available for most activities to reasonably forecast activity levels for projects beyond a 20-year timeframe. The FEA quantifies the economic impacts of Taylor's checkerspot butterfly, streaked horned lark, and Mazama pocket gopher conservation efforts associated with the following categories of activity: military activities; recreation and habitat management; airports and agricultural activities; transportation; electricity distribution and forestry activities; and dredging and other activities, including private gravel mining operations and development.

As noted above, the FEA identifies and analyzes the potential economic impacts associated with critical habitat designations proposed for six prairie taxa: Taylor's checkerspot butterfly and streaked horned lark, as well as four subspecies of Mazama pocket gopher (the Roy Prairie, Olympia, Tenino, and Yelm pocket gophers). The Mazama pocket gopher subspecies are addressed in separate rulemakings. All estimates in the FEA are for all six taxa; therefore, estimates for individual taxa are less than the totals estimated in the FEA and summarized here.

The total present value impact anticipated to result from the designation of all areas proposed as critical habitat for the Taylor's checkerspot butterfly, streaked horned lark, and the four subspecies of Mazama pocket gophers is $800,000 over the next 20 years, assuming a 7 percent discount rate, or $70,000 on an annualized basis. The greatest incremental impacts of critical habitat apply to airports and agricultural activities at $600,000 over the next 20 years, followed by recreation and habitat management at $100,000, military activities at $55,000, transportation at $34,000, and electricity distribution and forestry activities at $9,300 (present values over 20 years assuming a 7 percent discount rate). For the most part, the incremental impacts of the critical habitat designation are limited to the additional administrative costs of consultations within occupied areas. In addition, some incremental project modifications may occur on unoccupied subunits for the Taylor's checkerspot butterfly on JBLM; these costs are expected to be relatively small. Of the total costs, the analysis estimates that approximately 51 percent will be incurred by the Service, 31 percent by Federal action agencies, and 18 percent by third parties. The impacts estimated in the FEA apply to the proposed critical habitat in its entirety, and do not reflect final exclusions or exemptions.

We have not excluded any areas from the final designation of critical habitat based on economic impacts. A copy of the FEA with supporting documents may be obtained by contacting the Service's Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**) or by downloading from *http://www.regulations.gov* at docket number FWS–R1–ES–2013–0009.

Exclusions Based on National Security Impacts

In preparing this final rule, we have exempted from the designation of critical habitat those DOD lands with completed INRMPS that have been determined to provide a benefit to the Taylor's checkerspot butterfly and streaked horned lark. We have subsequently determined that the remaining lands within the designation of critical habitat for the Taylor's checkerspot butterfly and streaked horned lark are not owned or managed by the Department of Defense; therefore we anticipate no impact on national security. Consequently, the Secretary is not exercising her discretion to exclude any areas from this final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any HCPs or other species specific management plans for the area that would benefit the Taylor's checkerspot butterfly or streaked horned lark, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships

We consider a current land management or conservation plan (HCPs as well as other types) to provide adequate management or protection if it meets the following criteria:

(1) The plan is complete and provides the same or better level of protection from adverse modification or destruction than that provided through a consultation under section 7 of the Act;

(2) There is a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and

(3) The plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

We find that the Rocky Prairie, Mima Mounds, and Bald Hill Natural Area Preserves (NAPs), as well as WDNR-owned parcels on Dan Kelly Ridge and in Eden Valley (all of which are covered under the WDNR State Trust Lands HCP); the WDFW Scatter Creek Wildlife Area Management Plan (which also covers the adjacent private land); the WDFW West Rocky Prairie Wildlife Area Management Plan; the Merrill and Ring Voluntary Habitat Conservation Plan; the NRCS Colvin Ranch Grassland Reserve Program Management Plan; and the Benton County Prairie Species HCP, all fulfill the above criteria. We are excluding these non-Federal lands covered by these plans because the plans adequately provide for the long-term conservation of the Taylor's checkerspot butterfly and the Secretary has determined that the benefits of excluding such areas outweigh the benefits of including them in critical habitat.

As a result of considering other relevant impacts, we have additionally excluded non-Federal airports from final critical habitat for the streaked horned lark, based upon the Secretary's determination that the benefit of excluding such areas outweighs the benefit of including them in critical habitat, as described below.

Washington Department of Natural Resources State Trust Lands HCP

The WDNR State Trust Lands HCP covers approximately 1.7 million (730,000 ha) of State lands in Washington. The permit associated with this HCP, issued January 30, 1997, was announced in the **Federal Register** on April 5, 1996 (61 FR 15297), has a term of 70 to 100 years, and covers activities primarily associated with commercial forest management, but also includes limited nontimber activities such as some recreational activities. The HCP covers all species, including the Taylor's checkerspot butterfly and other listed and unlisted species. We are excluding Washington State lands totaling approximately 823 ac (334 ha) that are covered and managed by the WDNR under their State Trust Lands HCP from Units 1 and 2 of this critical habitat designation under section 4(b)(2) of the Act.

The HCP addresses multiple species through a combination of strategies. The HCP includes a series of NAPs and Natural Resource Conservation Areas (NRCAs), including Rocky Prairie NAP, Mima Mounds NAP, and Bald Hill NAP. These preserves are managed consistent with the Natural Areas Preserve Act, forever protecting the highest quality examples of native ecosystems and rare plant and animal species, in addition to other natural features of State, regional or national significance. These preserves are used for education, scientific research, and to maintain Washington's native biological diversity. This network of preserves includes nearly 31,000 ac (12,550 ha) throughout the State, which range in size from 8 ac (3.2 ha) to 3,500 ac (1,416 ha). Management plans are developed for each NAP, which guide the actions necessary to protect each area's natural features, including research, monitoring, restoration, and other active management. In addition, there are approximately 132 ac (23 ha) in the Elwha drainage at Dan Kelly Ridge and Eden Valley that are also owned by WDNR and managed for Taylor's checkerspot butterfly under a separate plan. WDNR actively manages these three NAPs and the two additional sites (Dan Kelly and Eden Valley) to maintain high-quality prairie and bald habitats. All of these locations contain many of the essential physical or biological features to support the Taylor's checkerspot butterfly. Although these sites are not currently occupied by the Taylor's checkerspot butterfly, they have the potential to serve as the site of future translocations to re-establish the subspecies.

The NAP properties at Rocky Prairie, Mima Mounds, and Bald Hill, and the sites at Dan Kelly Ridge and Eden Valley (these last two are managed under a single plan), each have species-specific management plans that provide for the conservation of the Taylor's checkerspot butterfly, and these sites have been managed for the conservation of prairie species, including Taylor's checkerspot butterfly specifically. This ongoing practice of habitat management and conservation has fostered a diverse variety of larval and adult nectar resources for Taylor's checkerspot butterfly that complement the wide range of topographic variation within and between sites. The management planning for each of these areas has established a decades-long track record of activity focused on enhancing prairie composition and structure at each location: Rocky Prairie NAP Management Plan (WDNR 1989b), Mima Mounds NAP Management Plan (WDNR

1989a), Bald Hill NAP Management Plan (WDNR 1988), and WDNR Olympic Taylor's Checkerspot Butterfly Management Plan (Horton, 2010). The conservation measures applied at the three NAPs have more recently been refocused through the development of site-specific restoration plans for each location to benefit the Taylor's checkerspot butterfly and other rare prairie butterflies. These restoration plans (Wilderman and Davenport 2011a, 2011b, 2011c) provide for the needs of Taylor's checkerspot butterfly by protecting and managing all the WDNR NAPs in Thurston County, and implementing species-specific conservation measures designed to avoid and minimize impacts to the Taylor's checkerspot butterfly. The management guidelines were developed for areas that are currently occupied as well as areas that have suitable habitat but that are not known to be currently occupied by the Taylor's checkerspot butterfly. Because of the high success rate of recent Taylor's checkerspot butterfly translocations, the planning group that oversees the schedule for translocation would give weighted consideration to each of these high-quality prairie locations for future introductions of the Taylor's checkerspot butterfly.

Although both Dan Kelly Ridge and Eden Valley lack established, long-term, site-specific restoration plans, they are subject to an adaptive management restoration strategy implemented by WDFW rare species experts who are focused on the maintenance and expansion of appropriate habitat at and around the occupied areas. These restoration efforts at Dan Kelly Ridge and Eden Valley have been supported through a number of funding streams, including monies from the Service and DOD. Additionally, WDNR provides work crews to conduct tree and shrub removal which reflects an ongoing and increasing investment on the part of the land owner. Support provided in crew hours totaled $5,000 in years past and has more than doubled that amount in 2013, indicating a significant investment in and commitment to the ongoing stewardship of these occupied properties.

Benefits of Inclusion—Rocky Prairie, Mima Mounds, and Bald Hill Natural Area Preserves, and the Dan Kelly Ridge and Eden Valley sites under the WDNR State Trust Lands HCP—The primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not adversely modify designated critical habitat. Absent critical habitat designation in occupied areas, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence. All three of the NAPs are currently unoccupied by the Taylor's checkerspot butterfly; therefore, a jeopardy analysis would not be triggered by a Federal agency action for Rocky Prairie, Mima Mounds, or Bald Hill NAPs. If the NAPs were designated as critical habitat, such an action would trigger consultation solely under the adverse modification standard of section 7. The WDNR-owned Dan Kelly Ridge and Eden Valley sites are both occupied and have been undergoing restoration through a federally-funded program (Wildlife and Sport Fish Restoration Program), thus any proposed actions for habitat restoration would trigger section 7 consultation for both the subspecies and the designated critical habitat. The benefits of inclusion in critical habitat at these sites would be minimized since they are occupied by Taylor's checkerspot butterfly, as any potential consultation under section 7 of the Act will evaluate the effects of the action on the conservation or functionality of the habitat for the subspecies regardless of whether critical habitat is designated for these lands. The analytical requirements to support a jeopardy determination on excluded land are similar, but not identical, to the requirements in an analysis for an adverse modification determination on included land. The additional benefit of consultation under the adverse modification standard at these occupied sites would therefore be reduced.

The inclusion of these areas as critical habitat could therefore provide some additional Federal regulatory benefits for the species consistent with the conservation standard based on the Ninth Circuit Court's decision in *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004). As noted above, a potential benefit of inclusion would be the requirement of a Federal agency to ensure that their actions on these non-Federal lands would not likely result in the destruction or adverse modification of critical habitat. Any Federal nexus on these lands would likely result from actions to restore or maintain favorable habitat conditions, carried out under the HCP or granting of Federal funds for beneficial management of prairie-associated species, such as Taylor's checkerspot butterfly. The incremental benefit to the Taylor's checkerspot butterfly from the small amount of resultant section 7 consultation required by this habitat management funding is likely minimal, especially considering that the action being consulted on is itself intended to benefit prairie-associated species.

The Service has coordinated with WDNR on conservation actions to be implemented for the Taylor's checkerspot butterfly at the three NAPs located in Thurston County, Washington, as well as the two sites at Dan Kelly Ridge and Eden Valley in Clallam County, Washington. An NAP is a land designation used by the State of Washington to protect the best examples of rare and vanishing flora, fauna, plant and animal communities, geological, and natural historical value, consistent with the Washington Natural Areas Preserves Act of 1972 (RCW 79.70). The two other sites (Dan Kelly Ridge and Eden Valley) are managed separately under their own plan, but are not designated as NAPs. Management of the NAPs in Thurston County is guided in large part by the South Puget Sound Prairie Landscape Working Group. The Service is a charter member of this partnership group, which was established in 1994, to promote and improve the management and planning of conservation actions on south Puget Sound prairies and associated habitats. The Working Group includes WDNR, JBLM, NRCS, WDFW, CNLM, the Washington Department of Transportation (WSDOT), as well as other Federal, State, county, city, nongovernmental, and private group entities, each with knowledge and expertise in prairie ecosystem management. The Working Group coordinates regularly, meeting twice-yearly to share information and discuss priorities, and making significant improvements on the ground in prairies and oak woodlands. At one of our south Puget Sound locations, volunteers implement restoration and recovery actions for prairie species every Tuesday throughout the year. This is a well-established group that is expected to continue its coordination efforts into the foreseeable future, regardless of the designation of critical habitat. Management of the Dan Kelly Ridge and Eden Valley sites receive oversight from the Taylor's Checkerspot Butterfly Working Group, a multi-agency working group that has been in existence since 2004. Participants in the working group include JBLM, NRCS, USFS, WDNR, WDFW, WSDOT, University of Washington researchers, CNLM, and other Federal, State, county, city, nongovernmental, private entities and

individuals, each with knowledge and expertise on the Taylor's checkerspot butterfly, its conservation, habitat, and restoration needs. Designation of these areas as critical habitat would therefore likely yield no additional benefit to the outputs of the working groups, their members, or their ease of coordination. The active, long-term restoration efforts already in place at these sites thus reduce the potential benefit of critical habitat.

Another potential benefit of including lands in a critical habitat designation is that it serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by identifying areas of high conservation value for the Taylor's checkerspot butterfly. The designation of critical habitat informs State agencies and local governments about areas that could be conserved under State laws or local ordinances. Any additional information about the needs of the Taylor's checkerspot butterfly or its habitat that reaches a wider audience can be of benefit to future conservation efforts. During the spring of 2013 alone, the Service hosted two prairie workshops, one public hearing, and two local Thurston County events attended by nearly 1,000 people to publicize and educate local community members of the subspecies' declining distribution, and the threat to the native flora and fauna found on western Washington prairies. An important conservation measure that is gained through these outreach networks is the ability to educate the public about the historical role and current importance of prairies to our local community and economy. Included among the outreach measures is the distribution of educational material, and encouraging landowners to conduct prairie restoration activities on their properties. At least two presentations resulting from research conducted at the Dan Kelly Ridge and Eden Valley sites have been given and additional work for these two sites is expected to be concluded in the near future that may further elevate public awareness in Clallam County about the conservation needs of the Taylor's checkerspot butterfly on the north Olympic Peninsula. Additional events are expected to occur in the future, and designation of the NAPs or the WDNR-owned Dan Kelly Ridge and Eden Valley sites as critical habitat is not expected to increase the number of such meetings or improve their outcomes; the additional educational value of critical habitat is therefore minimized.

The incremental benefit of inclusion is reduced because of the long-standing management planning and implementation efforts for each site, as discussed above. In addition, the NAP restoration plans provide greater protection to Taylor's checkerspot butterfly habitat than would the designation of critical habitat, since the planning effort is intended to actively improve the structure and composition of the habitat (critical habitat does not carry any requirement for habitat restoration or improvement). Although both Dan Kelly Ridge and Eden Valley lack established, long-term, site-specific restoration plans, they are subject to an adaptive management restoration strategy implemented by WDFW rare species experts focused on the maintenance and expansion of appropriate habitat at and around the occupied areas. These restoration efforts at Dan Kelly Ridge and Eden Valley have been supported through a number of funding streams, including monies from the Service. Therefore, designation of critical habitat on these areas would not provide any additional management focus that is not already occurring at these locations under Washington State management authority, through plans developed through our recovery program, or through the DOD ACUB funding authority, which has provided funding support for many of our local protected prairies, including the NAPs, Dan Kelly Ridge, and Eden Valley sites.

Benefits of Exclusion—Rocky Prairie, Mima Mounds, Bald Hill Natural Area Preserves, and the Dan Kelly Ridge and Eden Valley sites under the WDNR State Trust Lands HCP—The benefits of excluding these areas from critical habitat are relatively greater. A benefit of excluding lands within this HCP from critical habitat designation is that it would encourage the State and other parties to continue to work toward Taylor's checkerspot butterfly conservation. Since issuance of this HCP, a number of land transactions and land exchanges within the HCP area have occurred. These transactions have included creation of additional NRCAs and NAPs (land designations with high degree of protection), and have also included large land exchanges and purchases that have changed the footprint of the HCP. These land-based adjustments have facilitated better management on many important parcels and across larger landscapes than would otherwise have been possible. If lands within HCP plan areas are designated as critical habitat, it would likely have a negative effect on the willingness of various groups and funding sources to accomplish these land-ownership adjustments because of a reluctance to acquire lands designated as critical habitat as well as a reduced willingness on the part of WDNR to accommodate the Service's goals. This HCP is located in key landscapes across the State, and the NAPs at Rocky Prairie, Mima Mounds, and Bald Hill, as well as the two sites at Dan Kelly Ridge and Eden Valley—which are covered by the HCP—contribute meaningfully to the recovery of the Taylor's checkerspot butterfly.

If lands within the WDNR HCP plan area are designated as critical habitat, it would also likely have a negative effect on our ability to establish new partnerships to develop HCPs, particularly large, regional HCPs that involve numerous participants or address landscape-level conservation of species and habitats. This HCP has served as a model for several completed and ongoing HCP efforts, including the Washington State Forest Practices HCP. By excluding these lands, we preserve our current private and local conservation partnerships and encourage additional conservation actions in the future because other parties see our exclusion as a sign that the Service will not impose duplicative regulatory burdens on landowners who have developed an HCP.

HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs ensure the long-term protection and management of a covered species and its habitat. In addition, funding for such management is ensured through the Implementation Agreement. Such assurances are typically not provided by section 7 consultations, which, in contrast to HCPs, often do not commit the project proponent to long-term, special management practices or protections. Thus, a section 7 consultation typically does not afford the lands it covers similar extensive benefits as an HCP. The development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide the conservation efforts and assist in species conservation, and the creation of innovative solutions to conserve species while meeting the needs of the applicant. In this case, substantial information has been developed from the research, monitoring, and surveys conducted by WDNR. Therefore, exclusion is a benefit because it maintains and fosters the development of biological information and innovative solutions.

Exclusion of these areas will additionally help us maintain an important and successful partnership with other Washington State conservation partners (via the South Puget Sound Prairie Landscape Working Group and the Taylor's Checkerspot Butterfly Working Group) who made a commitment more than a decade ago to include the Taylor's checkerspot butterfly in their management and restoration plans, as well as encouraging others to join in this and other conservation partnerships.

Benefits of Exclusion Outweigh Benefits of Inclusion—Rocky Prairie, Mima Mounds, Bald Hill Natural Area Preserves, and the Dan Kelly Ridge and Eden Valley sites under the WDNR State Trust Lands HCP—The Secretary has determined that the benefits of excluding the WDNR-managed Rocky Prairie, Mima Mounds, and Bald Hill NAPs found in Thurston County, and the Dan Kelly Ridge and Eden Valley sites in Clallam County, from the designation of critical habitat for Taylor's checkerspot butterfly outweigh the benefits of including these areas in critical habitat. Any Federal nexus on these lands would likely result from actions to restore or maintain favorable habitat conditions, undertaken under the HCP or granting of Federal funds for beneficial management of prairie-associated species, such as Taylor's checkerspot butterfly. If one were to occur, it would most likely be with the Service or DOD, and their actions will be geared toward the conservation benefits of restoring and enhancing habitat specifically for the Taylor's checkerspot butterfly, or other rare butterflies. This type of management would benefit Taylor's checkerspot butterfly if focused on the maintenance of open, short-statured vegetative conditions that Taylor's checkerspot butterfly typically occupies. The incremental benefit to the Taylor's checkerspot butterfly from the small amount of resultant section 7 consultation required by this habitat management funding is likely minimal, especially considering that the action being consulted on is itself intended to benefit prairie-associated species.

The South Puget Sound Prairie Landscape Working Group partnership, which contributes to management planning on the NAPs, and the Taylor's Checkerspot Butterfly Working Group, which provides guidance for the sites at Dan Kelly Ridge and Eden Valley, would not be additionally benefitted due to inclusion of these areas in critical habitat, as these working groups are well-established, cohesive, and productive groups that have yielded and will continue to yield positive conservation outcomes for the Taylor's checkerspot butterfly on south Puget Sound prairies and the north Olympic Peninsula, including these sites, regardless of the designation of critical habitat. The conservation strategies of each NAP restoration plan and the ongoing adaptive habitat restoration strategies for are designed to protect and enhance habitat for the Taylor's checkerspot butterfly. These strategies include species-specific management actions to support Taylor's checkerspot butterflies, avoidance and minimization measures, and monitoring requirements to ensure proper implementation, which further minimizes the benefits of including these areas in a designation of critical habitat.

The WDNR State Trust Lands HCP provides for significant conservation and management within geographical areas that contain the physical or biological features essential to the conservation of Taylor's checkerspot butterfly, and helps achieve recovery of this subspecies through the conservation measures of the HCP. Exclusion of these lands from critical habitat will help foster the partnership we have developed with WDNR, through the development and continuing implementation of the HCP and the area management plans. It will also help us maintain and foster an important and successful partnership with our Washington State conservation partners in the South Puget Sound Prairie Landscape Working Group as well as with the species-specific Taylor's Checkerspot Butterfly Working Group, which shares significant overlap with the South Puget Sound Prairie Landscape Working Group and, by doing so, bridges between ecosystem management strategies and species-specific conservation actions. Both WDNR and the working groups have encouraged others to join in conservation partnerships as well, and exclusion of these lands will encourage the future development of such beneficial conservation partnerships. For these reasons, we have determined that the benefits of exclusion outweigh the benefits of inclusion in this case.

Exclusion Will Not Result in the Extinction of the Species—Rocky Prairie, Mima Mounds, Bald Hill Natural Area Preserves, and the Dan Kelly Ridge and Eden Valley sites under the WDNR State Trust Lands HCP—We have determined that exclusion of approximately 38 ac (16 ha) for the Rocky Prairie NAP (Unit 1–Rocky Prairie), 406 ac (164 ha) for the Mima Mounds NAP (Unit 1–Mima Mounds/Glacial Heritage), 247 ac (100 ha) for the Bald Hill NAP (Unit 1–Bald Hills), 109 ac (44 ha) for the Dan Kelly Ridge site (Unit 2–Elwha), and 23 ac (9 ha) for the Eden Valley site (Unit 2–Elwha), all of which are covered under the WDNR State Trust Lands HCP, will not result in the extinction of Taylor's checkerspot butterfly. Actions covered by the HCP will not result in extinction of Taylor's checkerspot butterfly because: (1) the NAPs are not currently occupied by the subspecies, and; (2) and the occupied sites (Dan Kelly Ridge and Eden Valley) both have special dispensation from site designation as a source of merchantable timber, which allows for the removal of otherwise merchantable trees in favor of enhancing Taylor's checkerspot butterfly habitat. In all of these areas the State Trust Lands HCP provides for the future needs of the Taylor's checkerspot butterfly by restoring, maintaining, and creating habitat within these areas, and supporting management of Taylor's checkerspot butterfly habitat and that of other rare species through HCP compliance. Additionally, each of the areas operates under a specific management plan to guide long-term site management, and more recently developed restoration plans to direct the habitat enhancement activities at each location. For these reasons, we find that exclusion of these lands covered by the WNDR State Trust Lands HCP will not result in extinction of the Taylor's checkerspot butterfly. Based on the above discussion, the Secretary is exercising her discretion under section 4(b)(2) of the Act to exclude from this final critical habitat designation portions of the proposed critical habitat units or subunits that are within the WDNR State Trust Lands HCP-covered lands as identified above, totaling about 823 ac (334 ha).

Scatter Creek Wildlife Area and Adjacent Private Land, and the West Rocky Prairie Wildlife Area

We are excluding 767 ac (310 ha) of Washington State lands designated as Wildlife Areas, and 98 ac (40 ha) of private land inholding from this critical habitat designation under section 4(b)(2) of the Act. These Wildlife Areas are known as the Scatter Creek Wildlife Area (633 ac (256 ha)) (Unit 1–Scatter Creek) and West Rocky Prairie Wildlife Area (134 ac (54 ha)) (Unit 1–West Rocky Prairie), both owned and managed by WDFW. The private inholding is associated with the Scatter Creek Wildlife Area (Unit 1–Scatter Creek) and is managed by WDFW identically to the Wildlife Area itself. Wildlife Areas provide a variety of habitat for endangered and threatened species, including the Taylor's

checkerspot butterfly, and are managed for that purpose, among others. Each Wildlife Area operates under a Wildlife Area Management Plan specific to the unique management needs of that area. Species-specific management plans have been written for a subset of the Wildlife Areas, including Scatter Creek and West Rocky Prairie. WDFW's land acquisition strategy for Wildlife Areas requires their purchases provide the highest benefit to fish, wildlife, and the public. In addition, WDFW is currently developing an HCP for lands in Wildlife Areas with the help of the Service, which will incorporate a landscape-level approach to managing at-risk species, including Taylor's checkerspot butterfly.

WDFW developed a management plan for the Scatter Creek Wildlife Area and adjacent private land in 2010 that specifically details the habitat needs of Taylor's checkerspot butterfly and continues to refine habitat conservation measures through collaboration with local conservation partners from the Service, WDNR, the University of Washington, and CNLM (Hays 2010). WDFW also has a draft management plan to guide prairie management at the West Rocky Prairie Wildlife Area (WDFW 2011), which will be this area's guiding document until finalized. Prior to the management plan being developed, the site was managed for an array of species and recreational activities, including restoration actions designed to improve the prairie conditions for the Taylor's checkerspot butterfly, mardon skipper butterfly (*Polites mardon*), and Mazama pocket gopher. The Scatter Creek Wildlife Area and adjacent private lands are currently occupied by the Taylor's checkerspot butterfly; the West Rocky Prairie Wildlife Area is not known to be occupied by the subspecies.

Benefits of Inclusion—Scatter Creek Wildlife Area and Adjacent Private Land; West Rocky Prairie Wildlife Area—The primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not adversely modify designated critical habitat. Absent critical habitat designation in occupied areas, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence.

The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. The regulatory standard is different, as the jeopardy analysis investigates the action's impact on the survival and recovery of the species, while the adverse modification analysis focuses on the action's effects on the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations have the potential to provide greater benefit to the recovery of a species than would listing alone.

The inclusion of these covered lands as critical habitat could provide some additional Federal regulatory benefits for the species consistent with the conservation standard based on the Ninth Circuit Court's decision in *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004). As noted above, a potential benefit of inclusion would be the requirement of a Federal agency to ensure that their actions on these non-Federal lands would not likely result in the destruction or adverse modification of critical habitat. However, this additional analysis to determine whether a Federal action is likely to result in destruction or adverse modification of critical habitat is not likely to be significant because these covered lands are not under Federal ownership, making the application of section 7 less likely. As often as not, any actions required to restore or maintain favorable habitat conditions are not associated with a Federal action, and thus would not trigger any protections afforded by the designation of critical habitat. The granting of Federal funds for beneficial management of prairie-associated species such as Taylor's checkerspot butterfly would provide the only foreseeable Federal nexus for these non-Federal lands. WDFW has received funding specifically to improve habitat features such as vegetation composition, and structure to support rare and threatened butterflies, including the Taylor's checkerspot butterfly, mardon skipper butterfly, and valley silverspot butterfly *(Speyeria zerene bremnerii).* This funding will support activities through 2017. Funding is also provided to WDFW from the DOD ACUB program, which is a high priority program for DOD. Leadership at DOD has confirmed that the program will continue into the future (Jeff Foster, pers. comm. 2013). The small amount of resultant section 7 consultation required by this habitat management funding is not likely to provide much added benefit to the species, as one of the primary threats to the Taylor's checkerspot butterfly is the loss and degradation of its habitat, therefore habitat considerations will already play into the jeopardy determination for the subspecies in the currently occupied area at Scatter Creek, and the additional consideration of adverse modification of critical habitat is unlikely to result in a different outcome. In addition, for both Scatter Creek and West Rocky Prairie, the action most likely to be consulted on is itself intended to benefit prairie-associated species, therefore the outcome of consultation is unlikely to provide a significant additional benefit to the species as a result of critical habitat designation.

The Service has coordinated with WDFW on conservation actions to be implemented for the Taylor's checkerspot butterfly at the Scatter Creek Wildlife Area and West Rocky Prairie Wildlife Area in south Thurston County, Washington. As with the NAPs in Thurston County, management of the prairie Wildlife Areas in Thurston County is guided in large part by the South Puget Sound Prairie Landscape Working Group, which was established in 1994, to promote and improve the management and planning of conservation actions on south Puget Sound prairies and associated habitats. This is a well-established group that is expected to continue its coordination efforts into the foreseeable future. Designation of these Wildlife Areas as critical habitat would yield no additional benefit to the outputs of the Working Group, its members, or their ease of coordination, as the active, long-term efforts of this group are expected to continue regardless of the designation of critical habitat. The incremental benefit from designating critical habitat for Taylor's checkerspot butterfly in these areas is further minimized because of the long-standing management planning efforts that have been implemented and planned for the two Wildlife Areas and the associated private land inholding, which is managed using the same management methods as the Wildlife Areas. These properties have implemented management for the conservation of prairie habitat and prairie associated species. Each Wildlife Area focuses their management to promote the production of larval host and adult nectar food resources for the Taylor's checkerspot butterfly, and these areas contain several of the essential physical or biological features to support the subspecies. Management planning for each of the Wildlife Areas has

established a track record of activity focused on enhancing prairie composition and structure. The conservation measures regularly implemented at the Wildlife Areas have recently been refocused through the development of site specific restoration plans for each location to benefit the Taylor's checkerspot butterfly and other rare prairie butterflies (Hays 2013). The restoration being implemented and the guidance from the management plan provides greater protection to Taylor's checkerspot butterfly habitat than the designation of critical habitat, since the planning effort is intended to actively improve the structure and composition of the habitat (the designation of critical habitat does not require any active management). Therefore, the existing management at this site will provide greater benefit than the regulatory designation of critical habitat, which only requires the avoidance of adverse modification and does not require the creation, improvement, or restoration of habitat.

Another potential benefit of including Wildlife Area lands in a critical habitat designation is that it serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by identifying areas of high conservation value for the Taylor's checkerspot butterfly. The designation of critical habitat informs State agencies and local governments about areas that could be conserved under State laws or local ordinances. Any additional information about the needs of the Taylor's checkerspot butterfly or its habitat that reaches a wider audience can be of benefit to future conservation efforts. During the spring of 2013 alone, the Service hosted two prairie workshops, one public hearing, and two local Thurston County events attended by nearly 1,000 people to publicize and educate local community members of the species' declining distribution, and the threat to the native flora and fauna found on western Washington prairies. An important conservation measure that is gained through these outreach networks is the ability to educate the public about the historical role and current importance of prairies to our local community and economy. Included among the outreach measures is the distribution of educational material, and encouraging landowners to conduct prairie restoration activities on their properties. Additional events are expected to occur in the future, and designation of the Wildlife Areas as critical habitat is not expected to increase the number of such meetings or improve their outcomes. Therefore, the incremental benefit of critical habitat in terms of education value is negligible.

The incremental benefit of inclusion is minimized because of the long-standing management planning efforts for each Wildlife Area, and the associated private inholding, as discussed above. In addition, the restoration plans provide greater protection to Taylor's checkerspot butterfly habitat than the designation of critical habitat, since the planning effort is intended to actively improve the structure and composition of the habitat. Therefore, designation of critical habitat on these areas would not provide any additional management focus that is not already occurring at these locations under Washington State management authority, through plans developed through the Service's recovery program, or through the DOD ACUB funding authority which has provided funding support for many of our local protected prairies, including these Wildlife Areas.

Benefits of Exclusion—Scatter Creek Wildlife Area and Adjacent Private Land; West Rocky Prairie Wildlife Area—The benefits of excluding these two Wildlife Areas and the associated private inholding from designated critical habitat are substantial. We have worked to sustain a close partnership with WDFW through regular coordination and the development of the Wildlife Area management plans. The management plans contain provisions that will improve the conservation status of the Taylor's checkerspot butterfly. Measures contained in the management plans are consistent with recommendations from the Service for the conservation of the Taylor's checkerspot butterfly, and will afford benefits to the subspecies and its habitat.

Excluding these Wildlife Areas and associated private inholding from critical habitat designation will provide significant benefits in terms of sustaining and enhancing the excellent partnership between the Service, WDFW, and the private landowner, as well as other partners who participate in prairie management decision-making, with positive consequences for conservation. The willingness of WDFW and the private landowner to undertake conservation efforts for the benefit of the Taylor's checkerspot butterfly and to work with the Service to develop new management plans for the species will continue to reinforce those conservation efforts and our partnership, which will support the recovery process for Taylor's checkerspot butterfly. We consider this voluntary partnership in conservation vital to our understanding of the status of Taylor's checkerspot butterfly on WDFW lands and throughout western Washington, and necessary for us to implement recovery actions such as habitat protection, restoration, and beneficial management actions for the subspecies. Furthermore, exclusion from critical habitat could have the benefit of encouraging other landowners to engage in similar conservation partnerships and efforts, with positive outcomes for the conservation of listed species.

The designation of critical habitat could have an unintended negative effect on our relationship with non-Federal landowners due to the perceived imposition of redundant government regulation. If lands within the area managed by WDFW for the benefit of the Taylor's checkerspot butterfly are designated as critical habitat, it could have a dampening effect on our continued ability to seek new partnerships with future participants including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement various conservation actions (such as safe harbor agreements (SHAs), HCPs, and other conservation plans, particularly large, regional conservation plans that involve numerous participants or address landscape-level conservation of species and habitats) that we would be unable to accomplish otherwise. Our WDFW conservation partners made a commitment more than a decade ago to include the Taylor's checkerspot butterfly in their Wildlife Area implementation plan, and they have engaged with and encouraged others to join in conservation partnerships, such as the South Puget Sound Prairie Landscape Working Group. In addition, the private landowner serves as a model of voluntary conservation and may aid in fostering future voluntary conservation efforts by other private parties in other locations for the benefit of listed species; this is a significant benefit, since the majority of listed species occur on private lands. We consider the positive effect of excluding proven conservation partners from critical habitat to be a significant benefit of exclusion.

Benefits of Exclusion Outweigh Benefits of Inclusion—Scatter Creek Wildlife Area and Adjacent Private Land; West Rocky Prairie Wildlife Area—We have determined that the benefits of excluding these prairie Wildlife Areas (Scatter Creek and adjacent private land, and West Rocky

Prairie) from the designation of critical habitat for the Taylor's checkerspot butterfly outweigh the benefits of including these areas in critical habitat. The regulatory and informational benefits of inclusion will be minimal. As noted above, a potential benefit of inclusion would be the requirement of a Federal agency to ensure that their actions on these non-Federal lands would not likely result in the destruction or adverse modification of critical habitat. However, this additional analysis to determine whether a Federal action is likely to result in destruction or adverse modification of critical habitat is not likely to be significant because these covered lands are not under Federal ownership, making the application of section 7 less likely. Any additional benefits of inclusion on the section 7 process are therefore relatively unlikely because a Federal nexus on these lands would rarely occur. If a Federal nexus were to occur, it would most likely be with the Service or DOD, and the proposed actions would be geared toward the conservation benefits of restoring and enhancing habitat specifically for the Taylor's checkerspot butterfly, or other rare butterflies. This type of proactive management, if focused on the maintenance of open, short-statured vegetative conditions that the Taylor's checkerspot butterfly typically occupies, will outweigh any benefit from the regulatory designation of critical habitat, which only requires the avoidance of adverse modification and does not require the creation, improvement, or restoration of habitat.

The South Puget Sound Prairie Landscape Working Group partnership, which assists with guiding management on the Wildlife Areas, would not be additionally benefitted due to inclusion of the Wildlife Areas in critical habitat, as this is a well-established, cohesive, and productive group that has and will continue to yield positive conservation outcomes for Taylor's checkerspot butterfly on south Sound prairies, including these Wildlife Areas, regardless of critical habitat. The conservation strategies of each Wildlife Area management plan are crafted to protect and enhance habitat for the Taylor's checkerspot butterfly. These plans includes species-specific management actions to support Taylor's checkerspot butterfly, avoidance and minimization measures, and monitoring requirements to ensure proper implementation, which further minimizes the benefits of including these areas in a designation of critical habitat.

A significant benefit of excluding these lands is that it will help us maintain and foster an important and successful partnership with our Washington State conservation partners who made a decision to include the Taylor's checkerspot butterfly in their Wildlife Area implementation plan in 2007, when it was a State endangered species (and a Federal candidate species). They have encouraged others to join in conservation partnerships as well. Recognizing the important contributions of our conservation partners through exclusion from critical habitat helps to preserve these partnerships, and helps foster future partnerships for the benefit of listed species, the majority of which do not occur on Federal lands; we consider this to be a substantial benefit of exclusion. For these reasons, we have determined that the benefits of exclusion outweigh the benefits of inclusion in this case.

Exclusion Will Not Result in the Extinction of the Species—Scatter Creek Wildlife Area and Adjacent Private Land; West Rocky Prairie Wildlife Area—We have determined that exclusion of approximately 633 ac (256 ha) in the Scatter Creek Wildlife Area owned by WDFW, 98 ac (40 ha) of private land that is managed by WDFW in the same way as Scatter Creek Wildlife Area, and 134 ac (54 ha) of the West Rocky Prairie Wildlife Area, lands covered by management plans vetted by several conservation partners working in south Puget Sound, will not result in the extinction of Taylor's checkerspot butterfly. Actions covered by the Wildlife Area management plans will not result in extinction of Taylor's checkerspot butterfly because the plans provide for the needs of the species by protecting, restoring, and enhancing all the known occupied and potentially suitable Taylor's checkerspot butterfly habitat under the jurisdiction of the State; committing to the enhancement and recruitment of additional habitat through management on each Wildlife Area to support meta-population structure within the Wildlife Areas; and implementing species-specific conservation measures designed to avoid and minimize impacts to the Taylor's checkerspot butterfly. Further, for projects having a Federal nexus and potentially affecting the Taylor's checkerspot butterfly in occupied areas, the jeopardy standard of section 7 of the Act, coupled with protection provided by the voluntary Taylor's checkerspot butterfly conservation plans that are available to landowners if they so choose, would provide a level of assurance that this subspecies will not go extinct as a result of excluding these lands from the critical habitat designation. Additionally, each of the Wildlife Areas has a specific management plan to guide long-term management to direct the habitat enhancement activities at each location. The subspecies is also protected from take under section 9 of the Act on all properties where the subspecies is found. Federal agencies would be required to minimize the effects of incidental take, and would be encouraged to avoid incidental take through the section 7 consultation process. For these reasons, we find that exclusion of these lands covered by these specific Wildlife Area management plans will not result in extinction of the Taylor's checkerspot butterfly. Based on the above discussion, the Secretary is exercising her discretion under section 4(b)(2) of the Act to exclude from this final critical habitat designation portions of the proposed critical habitat units or subunits that are owned or managed by WDFW, totaling about 865 ac (350 ha).

Merrill and Ring Company Voluntary Habitat Conservation Plan

Private lands totaling 10 ac (4 ha) in Unit 2 (Elwha) and covered under the Merrill and Ring Company voluntary habitat conservation plan are excluded from this critical habitat designation under section 4(b)(2) of the Act. Merrill and Ring Company is a private forest landowner whose property abuts occupied Taylor's checkerspot butterfly habitat. Merrill and Ring Company has collaboratively developed a voluntary habitat conservation plan for the Taylor's checkerspot butterfly (Schaaf and Davis 2010) in partnership with WDFW, which was approved and signed by WDFW and Merrill and Ring Company on February 10, 2010, and was recently extended from an expiration date of December 31, 2014, to December 31, 2020 (Schaff and Carlson 2013). The portion of WDFW's Taylor's checkerspot butterfly management site on Merrill and Ring Company property is approximately 7 ac (3 ha) in size and is situated on the south side of the ridge which separates Eden Valley from Indian Creek Valley. Despite the small actual acreage of the management area for Taylor's checkerspot owned by Merrill and Ring, the voluntary habitat conservation plan covers 100 ac (40 ha) of their property and acknowledges the potential for Taylor's checkerspot butterfly habitat to change in extent and quality over time. The management plan commits to actions focused on protecting available habitat from various types of traffic and ground disturbance, and the corporation has no plan to implement any logging within the

occupied Taylor's checkerspot butterfly management area at any time. Merrill and Ring's voluntary habitat conservation plan defers all logging actions through 2020, and at that time, tree harvesting will only be implemented in the adjacent commercial forests, where a thinning operation may be considered. The voluntary habitat conservation plan provides assurances for the restriction of pesticides (which will not be applied aerially within 1 mile (1.6 kilometers) of the site) and herbicides (which will be applied through ground-based methods only and provides greater selectivity in the application process). Merrill and Ring Company has cooperated with WDFW to allow ongoing surveys of Taylor's checkerspot butterflies, which will serve as the foundation for the monitoring of populations and habitat conditions.

Benefits of Inclusion—Merrill and Ring Company Voluntary Habitat Conservation Plan—The primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not adversely modify designated critical habitat. Absent critical habitat designation in occupied areas, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence.

The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. The regulatory standard is different, as the jeopardy analysis investigates the action's impact on the survival and recovery of the species, while the adverse modification analysis focuses on the action's effects on the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations have the potential to provide greater benefit to the recovery of a species than would listing alone.

The inclusion of these private lands as critical habitat could provide some additional Federal regulatory benefits for the species consistent with the conservation standard addressed in the Ninth Circuit Court's decision in *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004). As noted above, a potential benefit of inclusion would be the requirement of a Federal agency to ensure that their actions on these non-Federal lands would not likely result in the destruction or adverse modification of critical habitat. However, this additional analysis to determine whether a Federal action is likely to result in destruction or adverse modification of critical habitat is not likely to be significant because these covered lands are not under Federal ownership, making the application of section 7 less likely. The granting of Federal funds for beneficial management of Taylor's checkerspot butterfly habitat would provide the only possibility for a Federal nexus covering these lands. Although this forest landowner may apply for a Forest Practices permit from the State of Washington to harvest timber, it is unlikely to trigger a section 7 consultation, as they would not require Federal funding or authorization for this operation. Merrill and Ring's proposed management actions that may be slated for this location are expected to involve tree removal, which would not likely expose Taylor's checkerspot butterfly to actions that would cause harm or take of the species. The action of removing trees has the potential to improve conditions that would be favorable to Taylor's checkerspot butterflies by reducing shade, increasing open areas, and stimulating the establishment and growth of host plant seeds stored in the soil (e.g., *Castilleja hispida, Plantago lanceolata*), thereby providing a benefit to the Taylor's checkerspot butterfly.

Another benefit of including lands in a critical habitat designation is that it serves to educate landowners, State and local governments, private landowners, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by all parties by identifying areas of high conservation value for the Taylor's checkerspot butterfly. The designation of critical habitat informs State agencies and local governments about areas that could be conserved under State laws or local ordinances. Any additional information about the needs of the Taylor's checkerspot butterfly or its habitat that reaches a wider audience can be of benefit to future conservation efforts and the designation of critical habitat increases our ability to educate private landowners and the public during outreach events concerning the historical role and current importance of grassland balds. We notified the general public about outreach events and hearings through a **Federal Register** notice on April 3, 2013 (78 FR 20074). Our outreach measures included the distribution of educational material, and encouragement of landowners to conduct Taylor's checkerspot habitat restoration activities on their own properties. Additional events are expected to occur in the future, and designation of this property as critical habitat is not expected to increase the number of such meetings or improve their outcomes, therefore the potential educational value of critical habitat is minimized.

The incremental benefit from designating critical habitat for Taylor's checkerspot butterfly is further reduced due to the long-standing management planning efforts for the adjacent WDNR land and the recently acquired conservation property managed by CNLM. These properties have been managed for the conservation of bald-associated species and each property provides larval host plants and adult nectar resources for Taylor's checkerspot butterflies. For this reason, they contain many of the PCEs to support the butterfly. The management planning for each of these properties has established a track record of positive conservation actions focused on enhancing grassland bald composition and structure at each location. All of these lands have benefited from the conservation measures implemented by WDFW (Hays 2011 p. 53), the planning efforts for WDNR managed lands, and the voluntary habitat conservation plan for Merrill and Ring Company. These conservation plans provide greater protection to Taylor's checkerspot butterfly habitat than the designation of critical habitat since the planning effort is intended to improve the structure and composition of the habitat, and as often as not this work may not be associated with a Federal action.

The voluntary habitat conservation plan from Merrill and Ring provides for the needs of Taylor's checkerspot butterfly by protecting and managing the grassland balds and implements species-specific conservation measures designed to avoid and minimize impacts to Taylor's checkerspot butterfly.

The voluntary habitat conservation plan developed by Merrill and Ring Company specifies that no roads would be constructed within 400 feet (ft) (122 meters (m)) of currently occupied balds and access to the property is restricted by a gate. Merrill and Ring Company has committed to no timber harvest on the lands covered by the voluntary habitat conservation plan through the year 2020, at which time they may consider a thinning operation. There are plans to conduct a regeneration harvest of the

forested stands in 2033, and Merrill and Ring Company agrees to buffer their managed lands from Taylor's checkerspot butterfly habitat after consultation with WDFW and the Service.

Because of the recent success of Taylor's checkerspot butterfly translocations, the planning group who oversees the schedule for translocations would give priority consideration to this location for future introductions of Taylor's checkerspot butterfly onto high quality bald habitat. Therefore, designation of critical habitat would not provide any additional management planning effort that is not already occurring at these locations under WDFW management authority, voluntary conservation planning efforts, or restoration actions developed through our recovery program, or through DOD ACUB funding authority, which provided the funding support for CNLM to purchase the adjacent property located at Dan Kelly Ridge.

Benefits of Exclusion—Merrill and Ring Company Voluntary Habitat Conservation Plan—The benefits of excluding this private property from designated critical habitat are substantial. We have worked to sustain a close partnership with WDFW and the landowner through regular coordination and the development of the Merrill and Ring Company voluntary habitat conservation plan. The voluntary habitat conservation plan contains provisions that will improve the conservation status of the Taylor's checkerspot butterfly. Measures contained in the plan are consistent with recommendations from the Service for the conservation of the Taylor's checkerspot butterfly, and will afford benefits to the subspecies and its habitat.

Excluding this private property from critical habitat designation will provide significant benefit in terms of sustaining and enhancing the ongoing partnership between the Service, WDFW, and the private landowner, with positive consequences for conservation. The willingness of the private landowner to undertake conservation efforts for the benefit of the Taylor's checkerspot butterfly and to work with WDFW and the Service to develop and employ species conservation actions will continue to reinforce those conservation efforts and our partnership, which contribute toward achieving recovery of the Taylor's checkerspot butterfly. We consider this voluntary partnership in conservation vital to our understanding of the status of the Taylor's checkerspot butterfly on agricultural lands in western Washington, and necessary for us to implement recovery actions such as habitat protection and restoration, and beneficial management actions for this subspecies.

The designation of critical habitat could have an unintended negative effect on our relationship with non-Federal landowners due to the perceived imposition of redundant government regulation. If these private lands, which have been managed under preexisting conservation plans for the benefit of Taylor's checkerspot butterfly, are designated as critical habitat, it could have a dampening effect on our continued ability to seek new partnerships with future participants including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement various conservation actions (such as SHAs, HCPs, and other conservation plans, particularly large, regional conservation plans that involve numerous participants and address landscape-level conservation of species and habitats) that we would be unable to accomplish otherwise. This private landowner made a commitment to conserve Taylor's checkerspot butterflies and their habitat in their voluntary habitat conservation plan. This private landowner serves as a model of voluntary conservation and may aid in fostering future voluntary conservation efforts by other parties in other locations for the benefit of listed species. We consider the positive effect of excluding proven conservation partners from critical habitat to be a significant benefit of exclusion.

Benefits of Exclusion Outweigh Benefits of Inclusion—Merrill and Ring Company Voluntary Habitat Conservation Plan—In summary, we determine that the benefits of excluding the private land parcel owned and managed by Merrill and Ring Company, situated adjacent to lands conserved for Taylor's checkerspot managed by the WDNR and the CNLM, outweigh the benefits of including this property in critical habitat. As described above, the regulatory and informational benefits of inclusion will be minimal, as these lands are already being managed for the conservation of Taylor's checkerspot butterfly under a voluntary habitat conservation plan. Any additional benefits of inclusion in critical habitat based on the section 7 process are unlikely because a Federal nexus on these lands is not expected to occur.

In addition, the conservation strategies of Merrill and Ring Company voluntary habitat conservation plan for the Taylor's checkerspot butterfly are designed to protect, restore, and enhance habitat for the subspecies. This plan includes species-specific management actions to support the Taylor's checkerspot butterfly, avoidance and minimization measures, and annual monitoring requirements to ensure proper implementation, which further minimizes the benefits that would be provided as a result of a critical habitat designation.

The benefit of excluding this private land parcel is that it will help us maintain an important and successful conservation partnership with private and non-governmental partners, as well as with our State conservation partners, WDFW, and WDNR, all of whom have made a commitment to manage for this subspecies and work cooperatively and collaboratively with the Service. We further believe that by recognizing the voluntary habitat conservation plan negotiated by WDFW and Merrill and Ring Company, this voluntary plan can serve as a model for other landowners in developing conservation partnerships for the benefit of endangered or threatened species, whether that partnership is with the Service, the State, or another entity. As the majority of listed species occur on private lands, we consider these partnerships with private landowners to be a significant benefit for conservation. For these reasons, we have determined that the benefits of exclusion outweigh the benefits of inclusion in this case.

Exclusion Will Not Result in the Extinction of the Species—Merrill and Ring Company Voluntary Habitat Conservation Plan—We have determined that exclusion of approximately 10 ac (4 ha) of private timber lands covered by a voluntary habitat conservation plan by Merrill and Ring Company will not result in the extinction of the Taylor's checkerspot butterfly. Although Taylor's checkerspot butterfly is known to occupy an adjacent property, it is not known to occur at present on the Merrill and Ring lands in question. Actions covered by the voluntary habitat conservation plan will not result in extinction of the Taylor's checkerspot butterfly because the voluntary habitat conservation plan provides for the needs of the butterfly primarily by avoiding any actions that may perpetuate take of the species or its habitat by deferring any actions in the vicinity of Taylor's checkerspot butterfly habitat for the next decade. Any action taken at that time would be in the form of forest thinning (e.g., tree removal on the margins of the bald habitat), which could contribute to the restoration and enhancement of the currently known occupied and potentially suitable Taylor's checkerspot

butterfly habitat under the jurisdiction of the State. There is little likelihood of this timber company project having a Federal nexus and therefore having an adverse effect to Taylor's checkerspot butterfly in occupied areas, which would trigger the jeopardy standard of section 7 of the Act. Additionally, the voluntary habitat conservation plan for Taylor's checkerspot butterfly entered into by the company would provide a level of assurance that this subspecies will not go extinct as a result of excluding these lands from the critical habitat designation. The subspecies is protected from take under section 9 of the Act on all properties where the subspecies is found. For these reasons, we find that exclusion of these private lands covered by the voluntary habitat conservation plan for the Taylor's checkerspot butterfly will not result in extinction of the Taylor's checkerspot butterfly. Based on the above discussion, the Secretary is exercising her discretion under section 4(b)(2) of the Act to exclude from this final critical habitat designation portions of the proposed critical habitat unit or subunit that are owned and managed by the private timber company, Merrill and Ring.

Colvin Ranch Grassland Reserve Program Management Plan

Private lands totaling 378 ac (153 ha) that are covered under an NRCS Grassland Reserve Program Management Plan are excluded from Unit 1–Rock Prairie in this critical habitat designation under section 4(b)(2) of the Act. The Service has coordinated directly with NRCS regarding conservation actions that are being implemented on the portion of Rock Prairie that lies south of Old Hwy 99 (hereafter known as Colvin Ranch). Colvin Ranch has been managed for approximately 10 years under a long-term Grassland Reserve Program Management Plan (GRP plan), and 530 ac (215 ha) of the property is conserved in perpetuity by a conservation easement held by NRCS, of which a portion (378 ac (153 ha)) is excluded from critical habitat. Under the GRP plan, the landowners manage their land using a livestock grazing guideline for western Washington prairies developed in partnership with NRCS. The GRP plan uses intensive livestock grazing as the primary tool to minimize the invasion of prairies by Douglas fir and other woody native and nonnative shrub species. Additionally, pasture grasses that are often in competition for resources with the native prairie species are consumed by the livestock, which makes room for native prairie species in the process of restoring prairie composition, structure and function. All of these practices provide a positive conservation benefit for the Taylor's checkerspot butterfly and its habitat. The Service has been coordinating with the landowners regarding the potential use of Colvin Ranch for the reintroduction of the Taylor's checkerspot butterfly to Rock Prairie.

Benefits of Inclusion–Colvin Ranch Grassland Reserve Program Management Plan—The primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not adversely modify designated critical habitat. Absent critical habitat designation in occupied areas, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence. Colvin Ranch is not currently occupied by the Taylor's checkerspot butterfly; therefore a Federal action would not trigger a jeopardy analysis, but would only trigger an analysis of adverse modification should critical habitat be designated. The benefits derived from including critical habitat for this property would most likely be derived from the potential Federal nexus resulting from the granting of Federal funds intended to manage the lands to benefit prairie associated species, such as the Taylor's checkerspot butterfly. However, we anticipate that section 7 consultation related to habitat management funding is not likely to provide much added benefit to the species, since the action being consulted on is itself intended to benefit prairie-associated species, including the Taylor's checkerspot butterfly.

Another benefit of including lands in a critical habitat designation is that it serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by identifying areas of high conservation value for Taylor's checkerspot butterfly. Designation of critical habitat informs State agencies and local governments about areas that could be conserved under State laws or local ordinances. Any additional information about the needs of the Taylor's checkerspot butterfly or its habitat that reaches a wider audience can be of benefit to future conservation efforts.

During the spring of 2013 alone, the Service hosted four prairie focused workshops and one public hearing specifically related to the proposed listing and designation of critical habitat. We also participated in two local prairie education events in Thurston County attended by nearly 1,000 people to publicize and educate local community members of the declining distributions and threats to the native flora and fauna found on the west-side prairies. One of these events was hosted and held at Colvin Ranch. An important conservation measure gained through these outreach networks is our ability to educate the public about the historical role and current importance of prairies to our local community and economy. Included among the outreach measures is the distribution of educational material and the benefit derived from encouraging landowners to conduct prairie restoration activities on their own properties. Additional events are expected to occur in the future, and designation of Colvin Ranch as critical habitat is not expected to increase the number of such meetings or improve their outcomes. As Colvin Ranch is already serving as a center of educational information regarding the conservation of prairie habitats and their associated species, including Taylor's checkerspot butterfly, any potential additional benefit stemming from the designation of critical habitat on this property is negligible.

The incremental benefit from designating critical habitat for the Taylor's checkerspot butterfly is further minimized due to the long-standing management planning efforts implemented on Colvin Ranch. The property owner has implemented management for the conservation of prairie habitat that provides larval host and adult nectar foods for the Taylor's checkerspot butterfly, and the land itself contains many of the essential physical or biological features to support the butterfly. The implementation of the GRP plan for Colvin Ranch has established a track record of activity focused on enhancing prairie plant composition and structure. The conservation measures applied at Colvin Ranch have more recently been refocused through the development of site-specific implementation plans for each location to benefit Taylor's checkerspot butterflies and other rare prairie butterflies. The implementation of Colvin Ranch GRP plan provides greater protection to Taylor's checkerspot butterfly habitat than the designation of critical habitat since the

management is intended to improve the habitat structure and composition of the several native prairie dominated paddocks on Colvin Ranch (critical habitat designation does not require active management). In many cases, this work is accomplished without Federal funding, which highlights the landowner's willingness to continue the partnership.

Colvin Ranch has been an active working ranch in Thurston County since 1865. Originally over 3,000 ac (1,214 ha) in size, it is now approximately 1,000 ac (405 ha) and located in southern Thurston County. Grazing systems have been modified dramatically during this time period. Colvin Ranch required an improvement to the infrastructure in order to accomplish the goal of improving native prairie composition on the ranch through intensive grazing, a practice of grazing greater numbers of cows on specific pastures (paddocks) for shorter time periods. Miles of fencing were erected to partition the fields into intensively managed paddocks, and in each paddock a water source was made available. The intensive management regime requires that livestock be moved often according to vegetation height or soil condition changes specified in the GRP management plan. The Colvin Ranch has been partitioned into 35 paddocks, with nearly 300 ac (120 ha) managed for the production of native prairie plant composition. Colvin Ranch is presently being managed for the benefit of the Taylor's checkerspot butterfly and its habitat; we have no information to suggest that the designation of critical habitat on this property would generate any added benefit to the already positive management efforts being implemented.

Benefits of Exclusion—Colvin Ranch Grassland Reserve Program Management Plan—The benefits of excluding this private property from designated critical habitat are substantial. We have developed a close partnership with the landowner and NRCS through regular coordination and outreach activities, using Colvin Ranch as an example of land uses that are compatible with prairie conservation. The GRP plan provisions that will improve the conservation status of the Taylor's checkerspot butterfly include novel grazing practices which have resulted in the dramatic increase and maintenance of diverse larval and adult food resources for the subspecies. Measures contained in the GRP plan are consistent with recommendations from the Service for the conservation of the Taylor's checkerspot butterfly, and will afford benefits to the subspecies and its habitat.

Excluding this private property from critical habitat designation will provide a significant benefit in terms of sustaining and enhancing the excellent partnership between the Service, NRCS, and the private landowner, as well as other partners who participate in prairie management decision-making, with positive consequences for conservation. The willingness of the private landowner to undertake conservation efforts for the benefit of the Taylor's checkerspot butterfly and work with NRCS and the Service to develop and employ conservation actions, will continue to reinforce those conservation efforts and our partnership, which contribute toward achieving recovery of the Taylor's checkerspot butterfly. We consider this voluntary partnership in conservation vital to the development of our understanding of the status of Taylor's checkerspot butterfly on agricultural lands in western Washington, and necessary for us to implement recovery actions such as habitat protection, restoration, and beneficial management actions for this subspecies.

The designation of critical habitat could have an unintended negative effect on our relationship with non-Federal landowners due to the perceived imposition of government redundant regulation. Designation of critical habitat on private lands that are managed for the benefit of prairie species, including the Taylor's checkerspot butterfly, could have a dampening effect on our continued ability to seek new partnerships with future participants including States, counties, local jurisdictions, conservation organizations, and private landowners. Together, these parties can implement various cooperative conservation actions (such as SHAs, HCPs, and other conservation plans, particularly large, regional conservation plans that involve numerous participants and/or address landscape-level conservation of species and habitats) that we would be unable to accomplish otherwise. This private landowner made a commitment almost a decade ago to develop and implement this GRP management plan, which has restored much of Rock Prairie to habitat favorable to the reintroduction of the Taylor's checkerspot butterfly, and they have engaged with and encouraged other parties, both public and private, to join in conservation partnerships. Further, we have been coordinating with this landowner about the potential for using Rock Prairie as a reintroduction site for the Taylor's checkerspot butterfly. We believe Colvin Ranch would be less likely to participate in the reintroduction of the Taylor's checkerspot butterfly to Rock Prairie or to encourage others to participate in similar grazing intensive ranching practices that restore Taylor's checkerspot butterfly habitat if critical habitat were to be designated on this property. This private landowner serves as a model of voluntary conservation and may aid in fostering future voluntary conservation efforts by other parties in other locations for the benefit of listed species. Most endangered or threatened species do not occur on Federal lands. As the recovery of these species will therefore depend on the willingness of non-Federal landowners to partner with us to engage in conservation efforts, we consider the positive effect of excluding proven conservation partners from critical habitat to be a significant benefit of exclusion.

Benefits of Exclusion Outweigh Benefits of Inclusion—Colvin Ranch Grassland Reserve Program Management Plan—In summary, we determine that the benefits of excluding the NRCS GRP managed prairies at Colvin Ranch from the designation of critical habitat for the Taylor's checkerspot butterfly outweigh the benefits of including these areas in critical habitat. The regulatory and informational benefits of inclusion will be minimal. Furthermore, any potential additional benefits of inclusion on the section 7 process are relatively unlikely because a Federal nexus on these lands would rarely occur. If one were to occur, it would most likely be with the Service or NRCS, and their actions will be geared toward the conservation benefits of restoring and enhancing habitat specifically for the Taylor's checkerspot butterfly, or other rare butterflies. This type of management is focused on the maintenance of open, short statured vegetative conditions that Taylor's checkerspot butterflies typically occupy. Since any action likely to be the subject of consultation under the adverse modification standard on this unoccupied area would be focused on providing positive habitat benefits for the Taylor's checkerspot butterfly, we find it unlikely that critical habitat would result in any significant additional benefit to the subspecies. Furthermore, the benefits of including this area in critical habitat are reduced since significant management actions are already underway to restore the prairie habitat in this area for the benefit of rare butterflies, including Taylor's checkerspot butterfly. In this instance, the GRP plan for Colvin Ranch contains

provisions for protecting and restoring prairie habitat for the Taylor's checkerspot butterfly on Rock Prairie that exceed the conservation benefits that would be afforded through section 7 consultation.

A significant benefit of excluding these lands is that it will help us maintain and foster an important and successful partnership with this private landowner partner and NRCS. They have consistently supported stewardship of prairie habitat beneficial to the conservation of the Taylor's checkerspot butterfly and have consistently encouraged others to join in conservation partnerships as well. The exclusion of Colvin Ranch will serve as a positive conservation model, and encourage other private landowners to partner with the Service for the purpose of conserving listed species. For these reasons, we have determined that the benefits of exclusion outweigh the benefits of inclusion in this case.

Exclusion Will Not Result in the Extinction of the Species—Colvin Ranch Grassland Reserve Program Management Plan—We have determined that exclusion of approximately 378 ac (153 ha) for the portion of Rock Prairie managed under the GRP management plan implemented at Colvin Ranch will not result in extinction of the Taylor's checkerspot butterfly. Presently, Rock Prairie is unoccupied by the Taylor's checkerspot butterfly, but it was previously known to fly in great abundance on Rock Prairie. Actions covered by the GRP management plan will not result in the extinction of the Taylor's checkerspot butterfly because: (i) The butterfly is not present on Colvin Ranch at this time; (ii) the management implemented on Colvin Ranch has continually improved the prairie habitat during the 9 years it has been practiced; and (iii) management of the prairie paddocks will continue and be modified over time as new information is gained through systematically monitoring the results of their intensive grazing system.

Benton County Prairie Species HCP, Oregon

Approximately 106 ac (43 ha) of lands owned by Benton County (Oregon) and proposed as critical habitat for the Taylor's checkerspot butterfly are covered under the Benton County Prairie Species HCP and are excluded from Unit 4 of this critical habitat designation under section 4(b)(2) of the Act. The Benton County Prairie Species HCP has a 50-year term and addresses lands owned or managed by Benton County and any private lands in the County that contain wet or upland prairie habitat in Benton County. This HCP includes provisions for long-term planning, avoiding and minimizing impacts to habitat for the species that are covered under the HCP, and mitigating for habitat losses when it is unavoidable. The Benton County Prairie Species HCP covers a total of roughly 11,700 ac (4,734 ha) of lands and rights-of-way within Benton County with prairie habitat, of which Benton County owns approximately 1,182 ac (478 ha). On January 14, 2011, a section 10(a)(1)(B) permit was issued to the County under the Act. The seven species covered under this HCP exclusively occupy prairie and prairie-like habitats and include the Taylor's checkerspot butterfly, Fender's blue butterfly (*Icaricia icarioides fenderi*), Bradshaw's lomatium (*Lomatium bradshawii*), Kincaid's lupine (*Lupinus oreganus*), peacock larkspur (*Delphinium pavonaceum*), Nelson's checkermallow (*Sidalcea nelsoniana*), and Willamette daisy (*Erigeron decumbens*).

Covered activities include ground-disturbing construction activities associated with home building, farming, and forestry practices; management of public lands and lands owned or managed by conservation organizations; and activities providing essential public services in the County (e.g., transportation and water system management, and utilities construction and maintenance). Cooperators under the HCP include: the City of Corvallis, Oregon Department of Transportation, Oregon State University, Greenbelt Land Trust, Pioneer Telephone Cooperative, and NorthWest Natural Gas.

The overall biological goal of this HCP is to achieve sustainable populations of covered species, while maintaining local populations and fostering habitat connectivity. The County and cooperators will support sustainable population numbers through conservation measures designed to enhance existing populations of covered species, support their habitat, and increase the distribution and connectivity of their populations in Benton County.

The Benton County Prairie Species HCP has management goals and objectives for sites that currently support Taylor's checkerspot butterflies (Fitton Green and Beazell Memorial Forest), and Fort Hoskins, which has suitable habitat but has not had a documented occurrence of Taylor's checkerspot butterfly for several years. The Benton County Prairie Species HCP will undertake prairie habitat restoration and enhancement in the above locations.

Benefits of Inclusion–Benton County Prairie Species HCP—We find that there is minimal benefit from designating critical habitat for the Taylor's checkerspot butterfly within the area covered by the Benton County Prairie Species HCP because, as explained above, these covered lands are already managed for the conservation of the subspecies over the term of the HCP. The Benton County Prairie Species HCP includes a species-specific management plan for the Taylor's checkerspot butterfly; avoidance and minimization measures; and monitoring requirements to ensure proper implementation. The Benton County Prairie Species HCP provides for the needs of the Taylor's checkerspot butterfly by protecting and managing all current and former known habitat areas on County owned lands and implementing conservation measures designed to avoid and minimize impacts to individual Taylor's checkerspot butterflies. Management guidelines were developed for areas currently occupied by the subspecies as well as areas that have suitable habitat conditions but that are not known to be currently occupied. The conservation measures provided by the HCP will provide greater protection to Taylor's checkerspot butterfly habitat than the designation of critical habitat since they are intended to improve habitat conditions (critical habitat only requires the avoidance of adverse modification; it does not require actions to improve habitat). Therefore, the HCP contains provisions for protecting and maintaining Taylor's checkerspot butterfly habitat that exceed the conservation benefits that would be afforded through section 7 consultation.

The inclusion of these covered lands as critical habitat could provide some additional Federal regulatory benefits for the species consistent with the conservation standard based on the Ninth Circuit Court's decision in *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004). Because one of the primary threats to Taylor's checkerspot butterfly is habitat loss and degradation, the consultation process under section 7 of the Act for projects in occupied areas (Beazell Forest and Fitton Green) with a Federal nexus will, in evaluating effects to Taylor's checkerspot butterfly under the jeopardy standard, evaluate the effects of the action on the conservation or functionality of the habitat for the subspecies regardless of whether critical habitat is designated on these lands. The analytical requirements to support a jeopardy determination on excluded land are similar, but not identical, to the

requirements in an analysis for an adverse modification determination on included land. In unoccupied areas (Fort Hoskins), a potential benefit of inclusion would be the requirement of a Federal agency to ensure that their actions on these non-Federal lands would not likely result in the destruction or adverse modification of critical habitat. The Bonneville Power Administration (BPA) does have a transmission line corridor right-of-way across the northern portion of Fitton Green that falls within the boundaries of County-owned lands covered under the Benton County Prairie Species HCP. BPA conducts limited activities within the right-of-way that are intended to maintain the integrity of the powerlines to deliver electrical power. Routine maintenance activities are mostly related to removing trees that may come in contact with the powerlines. Tree removal is likely to assist in maintaining the open, short-statured vegetation communities that Taylor's checkerspot butterflies require, and most often use. Section 7 consultation related to BPA right-of-way maintenance is not likely to provide much benefit in reducing impacts to critical habitat since the nature of routine maintenance activities that would be consulted on should be beneficial to the long-term maintenance of suitable habitat for the Taylor's checkerspot butterfly. In addition, as noted above, as this area is occupied by the subspecies, the effects of any Federal action will already be analyzed under the jeopardy standard in section 7 consultation, including effects to the conservation value of the habitat. In general, any Federal agency authorizing, funding, or carrying out an action on these HCP-covered lands would have to consider the conservation restrictions on these lands and incorporate measures necessary to ensure the conservation of these resources, thereby reducing any incremental benefit critical habitat may have.

Another benefit of including lands in a critical habitat designation is that it serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by identifying areas of high conservation value for the Taylor's checkerspot butterfly. Designation of critical habitat informs State agencies and local governments about areas that could be conserved under State laws or local ordinances. Any additional information about the needs of the Taylor's checkerspot butterfly or its habitat that reaches a wider audience can be of benefit to future conservation efforts. However, the Benton County Prairie Species HCP has already gone through public review and included public meetings about the prairie conservation strategy. An important conservation measure that is implemented under the HCP is public outreach. Included among the outreach measures is the distribution of educational materials, holding prairie conservation workshops, and encouraging landowners to conduct prairie restoration activities on their own properties. Additional educational and informational benefits that might arise from critical habitat designation have already largely occurred through public meetings and review of the draft HCP and are going to continue to occur through implementation of the conservation measures of the final HCP. The potential educational value of critical habitat in this instance is therefore further reduced.

Benefits of Exclusion–Benton County Prairie Species HCP—Compared to the minimal benefits of inclusion of this area in critical habitat, the benefits of excluding from designated critical habitat the approximately 106 ac (43 ha) of lands currently managed under the HCP are considerable.

HCP conservation measures that provide a benefit to the Taylor's checkerspot butterfly and its habitat have been implemented since its approval in 2011. Excluding the lands managed under the Benton County Prairie Species HCP from critical habitat designation will sustain and enhance the working relationship between the Service and the County.

Excluding lands within HCPs from critical habitat designation can also facilitate our ability to seek new partnerships with future HCP participants including States, counties, local jurisdictions, non-governmental conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. If lands within the HCP plan areas are designated as critical habitat, it would likely have a negative effect on our ability to establish new partnerships to develop HCPs, particularly larger HCPs that involve numerous participants and address the necessary landscape-level conservation of species and habitats. By excluding these lands, we preserve and enhance our current partnerships and encourage additional conservation actions in the future for the Taylor's checkerspot butterfly and other listed species.

Benefits of Exclusion Outweigh the Benefits of Inclusion–Benton County Prairie Species HCP—In summary, we determine that the benefits of excluding areas covered by the Benton County Prairie Species HCP from the designation of critical habitat for the Taylor's checkerspot butterfly outweigh the benefits of including this area in critical habitat. The regulatory and informational benefits of inclusion will be minimal. In areas occupied by the Taylor's checkerspot butterfly, any potential consultation under section 7 of the Act will evaluate the effects of the action on the conservation or functionality of the habitat for the species regardless of whether critical habitat is designated for these lands. The analytical requirements to support a jeopardy determination on excluded land are similar, but not identical, to the requirements in an analysis for an adverse modification determination on included land. The most likely Federal nexus would be with BPA, and their actions are generally limited to maintaining the right-of-way to be free of encroaching trees that may eventually come in contact with the powerlines. This type of right-of-way maintenance should also maintain the open, short statured vegetative conditions that the Taylor's checkerspot butterfly typically occupies, and so benefits the subspecies. The additional benefit of consultation under the adverse modification standard is therefore minimal.

In addition, the conservation strategies of the Benton County Prairie Species HCP are designed to protect and enhance habitat for the Taylor's checkerspot butterfly. The HCP includes a species-specific management plan for the Taylor's checkerspot butterfly, avoidance and minimization measures, and monitoring requirements to ensure proper implementation, which further minimizes the benefits that would be provided as a result of a critical habitat designation.

The benefit of excluding these lands is that it will help us maintain an important and successful conservation partnership with a county government that voluntarily included the Taylor's checkerspot butterfly in its HCP when it was a Federal candidate species, and exclusion of these areas may encourage others to join in conservation partnerships as well. For these reasons, we have determined that the benefits of exclusion outweigh the benefits of inclusion in this case.

Exclusion Will Not Result in Extinction of the Species–Benton County Prairie Species HCP—We have determined that exclusion of approximately 106 ac (43 ha) of lands covered under the Benton County

Prairie Species HCP will not result in extinction of the Taylor's checkerspot butterfly because the HCP provides for the needs of the butterfly by: protecting, restoring, and enhancing all the known occupied and potentially suitable Taylor's checkerspot butterfly habitat under the jurisdiction of the County; committing to the enhancement and recruitment of additional habitat over the term of the HCP; and, implementing species-specific conservation measures designed to avoid and minimize impacts to the Taylor's checkerspot butterfly. Further, for projects having a Federal nexus and affecting Taylor's checkerspot butterfly in occupied areas, the jeopardy standard of section 7 of the Act, coupled with protection provided by the Benton County Prairie Species HCP, would provide a level of assurance that this species will not go extinct as a result of excluding these lands from the critical habitat designation. The species is also protected from take under section 9 of the Act on all properties where the species is found. Federal agencies would be required to minimize the effects of incidental take, and would be encouraged to avoid incidental take through the section 7 consultation process. For these reasons, we find that exclusion of these lands covered by the Benton County Prairie Species HCP will not result in extinction of the Taylor's checkerspot butterfly. Based on the above discussion, the Secretary is exercising her discretion under section 4(b)(2) of the Act to exclude from this final critical habitat designation portions of the proposed critical habitat units or subunits that are within the Benton County Prairie Species HCP covered lands totaling about 106 ac (43 ha).

Non-Federal Airports

The streaked horned lark occurs on airports because management to control hazardous wildlife has incidentally created suitable habitat for the subspecies. Airports create the large, open landscape context preferred by streaked horned larks, and mowing and other management practices to maintain short-statured vegetation for aviation safety similarly inadvertently provides the type of vegetation utilized by the subspecies. However, airports are not ideal locations for focusing recovery efforts for the streaked horned lark. First, larks are at risk of mortality from aircraft collisions, and have been documented as a hazardous species at airports (Cleary and Dolbeer 2005, p. 101). Secondly, Federal Aviation Administration (FAA) regulations require airports to take immediate action to alleviate wildlife hazards whenever they are detected (14 CFR 139.337). This requirement to maintain airfields free of wildlife hazards would severely limit the potential to increase streaked horned lark populations on airports. Given the combined threats of aircraft strikes and constant management to minimize bird populations, airports do not provide ideal conditions for the long-term conservation of the streaked horned lark.

We received comments from the FAA, airports, and airport operators associations expressing concern that designating critical habitat for the streaked horned lark on airports implies that airports are desired locations to provide for conservation and recovery of the streaked horned lark, which is in conflict with their requirements to provide safe conditions for aviation. Several commenters recommended that airports should be excluded from critical habitat in favor of sites with the potential for long-term conservation management. This is also consistent with comments received from one of the proposed rule's peer reviewers: ''… bird conservation is not and should not be a desired component of airport management'' (Altman 2013, p. 6). We agree. Although airports currently support some of the largest populations of streaked horned larks, we consider airports to provide transitory suitable habitat for the subspecies, and we have no intention of encouraging an increase in populations of streaked horned larks on airports as part of our long-term recovery strategy. Although the development of a recovery plan will come subsequent to the listing of the streaked horned lark, it is our intention that the conservation and recovery of the subspecies will rely on the restoration and maintenance of more suitable natural habitats or habitats with more compatible land uses for the streaked horned lark.

Benefits of Inclusion–Non-Federal Airports—We find there are minimal benefits to including non-Federal airport lands in critical habitat for the streaked horned lark. As discussed above, the designation of critical habitat invokes the provisions of section 7. Since the non-Federal airport lands in question are all occupied by the streaked horned lark, if a Federal nexus were to occur, section 7 consultation would be triggered by the presence of the listed subspecies and the Federal agency would consider the effects of its actions on the subspecies through a jeopardy analysis. Because one of the primary threats to the streaked horned lark is habitat loss and degradation, the consultation process under section 7 of the Act for projects with a Federal nexus will, in evaluating effects to the streaked horned lark, evaluate the effects of the action on the conservation or functionality of the habitat for the subspecies regardless of whether critical habitat is designated for these lands. The analytical requirements to support a jeopardy determination on excluded lands are similar, but not identical, to the requirements in an analysis for an adverse modification determination on lands designated as critical habitat. However, the additional conservation value that could be attained through the adverse modification analysis for critical habitat under section 7 would likely not be significant, and would be triggered only in the event of a Federal action.

Another benefit of including lands in a critical habitat designation is that it serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by identifying areas of high conservation value for the streaked horned lark. The designation of critical habitat at airports would highlight the stable habitats that have been unintentionally created on non-Federal airport lands, and which are known to be used by streaked horned larks as breeding and wintering habitats. However, airport managers are already aware of the presence of the streaked horned lark, and some airports have already incorporated management for the streaked horned lark into their operating plans (for example, Olympia Regional Airport; see *Benefits of Exclusion–Non-Federal Airports,* below); this existing knowledge reduces the benefits of including these non-Federal airport lands in the critical habitat designation. Since airport managers are already aware of the presence of the streaked horned lark on their lands, and in some cases existing management already benefits the streaked horned lark and would not be altered by the designation of critical habitat, we believe the potential educational benefit of critical on non-Federal airports will be extremely limited.

The Service has no intention of promoting increased populations of streaked horned larks on airports as part of the long-term recovery and conservation strategy for the subspecies. Although non-Federal airports inadvertently provide suitable habitat for streaked horned larks, we consider airport habitats to be of relatively low conservation value over the long term. Our conservation strategy for the

streaked horned lark will focus on the restoration and management of natural habitats for the subspecies, free of the risks and disturbance associated with air traffic; the designation of critical habitat on airports would thus run counter to our overall conservation strategy for the streaked horned lark. Therefore, while we find some benefits of including non-Federal airport lands in the designation of critical habitat for the streaked horned lark, we find these benefits are reduced due to the known presence of streaked horned larks on their lands and existing management already benefiting the streaked horned lark. As described above, we believe the potential educational benefit of critical habitat on non-Federal airports will therefore be extremely limited. In addition, the benefits of including non-Federal airport lands are further reduced because all of these lands are presently occupied by the streaked horned lark, therefore should a project having a Federal nexus take place, section 7 consultation would occur under the jeopardy standard—including the consideration of potential effects to habitat for the streaked horned lark—regardless of the designation of critical habitat. Finally, the benefits to the streaked horned lark of designating non-Federal airport lands as critical habitat are relatively minimal because, for reasons described above, we do not intend to focus conservation and recovery efforts on these lands over the long term.

Benefits of Exclusion–Non-Federal Airports— Compared to the minimal benefits of including non-Federal airport lands in critical habitat, the benefits of excluding non-Federal airport lands from designated critical habitat are more substantial.

As mentioned above, managers of non-Federal airport lands occupied by streaked horned larks are generally aware of the presence of the subspecies, and in some cases airport managers have already developed management plans that provide benefits to the streaked horned lark. The exclusion of non-Federal airport lands from the designation of critical habitat would allow us to foster a positive conservation partnership with airport entities in the future, and encourage the development of beneficial management plans such as that developed for the Olympia Regional Airport in Washington. These conservation partnerships have the potential to produce tangible conservation results for the streaked horned lark as evidenced by the development of management plans that consider the needs of streaked horned larks and other prairie-dependent species. For example, the Olympia Regional Airport Master Plan (Airport Master Plan) and Sensitive Species and Priority Habitats Inventory and Management Plan that the Olympia Regional Airport is implementing will provide long-term protection for the streaked horned lark, and serves as a model that the Service will use in the development of partnership agreements with other airports after the subspecies is listed. Fostering these positive conservation partnerships is a significant benefit of exclusion from critical habitat. Below we present specific details of the conservation partnership with the Olympia Regional Airport as a model that we will use in discussions with other non-Federal airports in partnering for the conservation of the streaked horned lark.

The conservation partnership developed between the Service, WDFW, and the Olympia Regional Airport over many years has resulted in positive actions to address and minimize impacts or potential conflicts to prairie-dependent species, including the streaked horned lark, from activities conducted on airport property. As evidence of the positive benefits that have accrued from this partnership, and that could be gained from the pursuit of other similar partnerships, the Port of Olympia has agreed to protect the streaked horned lark at the Olympia Regional Airport and to inventory, manage and maintain habitat for the streaked horned lark and other prairie-dependent species on the airport. The Airport Master Plan outlines State, county, and city regulations and ordinances related to critical areas, as well as FAA safety regulations and compliance responsibilities, and strategies for the protection of State-listed and sensitive species while meeting the needs of the airport as an Essential Public Facility (Port Of Olympia 2013, pp. 7–12). The June 2013 Update to the Airport Master Plan includes commitments to follow recommendations provided by WDFW for the protection of State-listed and sensitive species present on the airport, including: (1) Minimizing the amount of impervious surfaces; (2) maintaining and/or creating suitable habitat (sparsely vegetated areas with annual and native grasses, less than 10 percent woody shrubs, and high percent of bare ground); (3) avoiding activities such as mowing, special events, and off-road driving and recreational activities in or near the areas used by streaked horned larks during the nesting season (March 15 to August 15); (4) working cooperatively with the State on annual streaked horned lark surveys; and (5) avoiding development or construction of permanent buildings within approximately 330 ft (100 m) of streaked horned lark nesting areas (Port of Olympia 2013, pp. 15–17). The sensitive species management plan that the Olympia Regional Airport is implementing will provide long-term protection for the streaked horned lark and can serve as an example that other airports could use or follow in the development of partnership agreements with the Service after the subspecies is listed. Designating critical habitat on airports could negatively impact our ability to pursue and develop such beneficial conservation partnerships with other airports and would not provide any additional conservation benefits to the subspecies; therefore we have determined that fostering these positive conservation partnerships is a significant benefit of exclusion from critical habitat.

An additional benefit of exclusion is signaling that we intend to direct the focus of recovery efforts for the streaked horned lark on other, more natural prairie or grassland habitats or habitats with more compatible uses with greater long-term conservation value, and avoiding the misperception that the Service wishes to concentrate on airports as sites essential for the recovery of the streaked horned lark. Section 3(5)(A) of the Act defines ''critical habitat'' as the specific areas within the geographical area occupied by the species at the time it is listed on which are found those physical or biological features essential to the conservation of the species. ''Conservation'' is further defined in section 3(3) of the Act as the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. These definitions clearly demonstrate that the purpose of critical habitat designation is to serve as locations of recovery efforts for listed species. However, as noted above, streaked horned larks face a risk of mortality from airstrikes as a result of occupying airport lands. Although airports currently support some relatively large populations of the subspecies, airports are clearly not ideal for conservation and recovery efforts aimed at further increasing the abundance of streaked horned larks. Recovery efforts would be more effectively concentrated on areas capable of supporting long-term viable populations of streaked horned larks

with the potential for increases in population size. Although airports clearly provide an interim benefit to the subspecies (and will likely continue to provide habitat for small populations), recovery will require restoration and management of new sites that can sustain increasing populations of streaked horned larks in the long term, in locations that do not pose a heightened risk of mortality to streaked horned larks. The Service does not intend to focus on increasing populations of the streaked horned lark on airport lands as part of the subspecies' long-term recovery strategy. The exclusion of non-Federal airport lands would thus align with our long-term conservation strategy that we are likely to develop for the streaked horned lark, and more appropriately signal our intention to direct recovery efforts to the restoration and maintenance of more natural habitats for the subspecies; we consider this to be a significant benefit of exclusion as well.

Benefits of Exclusion outweigh the Benefits of Inclusion–Non-Federal Airports—The benefits of including non-Federal airport lands in the designation are small. Because one of the primary threats to the streaked horned lark is habitat loss and degradation, the consultation process under section 7 of the Act for projects with a Federal nexus will, in evaluating effects to the streaked horned lark, evaluate the effects of the action on the conservation or functionality of the habitat for the subspecies regardless of whether critical habitat is designated for these lands. The analytical requirements to support a jeopardy determination on excluded land are similar, but not identical, to the requirements in an analysis for an adverse modification determination on lands designated as critical habitat. Although not specifically intended to provide for the conservation of the streaked horned lark, management for aviation safety at airports already inadvertently results in actions that create and maintain streaked horned lark habitat, benefits that exceed the conservation benefits afforded through section 7 consultation. Since designation as critical habitat would not change these already positive management efforts, the benefits of including these lands in critical habitat are small, and are reduced by other considerations, as described below.

The educational benefit of critical habitat is minimal in this case; since all non-Federal airport lands in question are occupied by streaked horned larks, any potential educational benefit of critical habitat is reduced by the fact that airport managers are already aware of the presence of the subspecies and its habitat needs. In fact, in some cases, airport managers have already incorporated conservation provisions for streaked horned larks and other prairie species into their management plans. Importantly, it is not the Service's intention to focus on airport lands as essential sites for recovery; although airports provide important interim habitat, they also carry an associated risk of mortality to the birds through airstrikes, and regulations requiring the minimization of wildlife hazards at airports are not compatible with efforts to increase populations of birds in these areas. The Service intends to focus long-term recovery efforts for the streaked horned lark on other, more natural areas of prairie or grassland habitat or habitat with more compatible land uses of higher conservation value. The designation of non-Federal airport lands as critical habitat would be at odds with our long-term recovery strategy that we are likely to develop for the streaked horned lark, thereby further reducing any benefit from including these lands in critical habitat.

On the other hand, the benefits of exclusion are relatively substantial. Excluding airports would allow the Service to develop conservation partnerships with airport managers, and potentially result in the implementation of management plans at airports designed to benefit the conservation of the streaked horned lark. As we have seen through the example set at the Olympia Regional Airport, airport management plans have the potential to provide for significant conservation and management of streaked horned larks, to help maintain populations of this subspecies in the interim pending restoration of more natural habitats with compatible uses to achieve recovery of this subspecies. Exclusion of these lands from critical habitat will help foster partnerships we have developed with airport entities such as the Port of Olympia, which has developed an impressive management plan for the benefit of the streaked horned lark and other prairie species. Furthermore, this partnership may aid in fostering future cooperative relationships with other airport entities in other locations for the benefit of streaked horned larks.

Another significant benefit of exclusion is signaling our intention to focus recovery efforts more appropriately on the restoration and management of other, more natural habitats with compatible uses for increasing populations of the streaked horned lark over the long term. Streaked horned larks are at risk of mortality from airstrikes at airports. Although airports may serve as interim habitat for the streaked horned lark, the inclusion of airports in critical habitat would be contrary to our long-term conservation strategy for the subspecies. As we do not wish to create the impression that we consider airport lands as sites essential for the recovery and conservation of streaked horned larks, exclusion of these lands would benefit the subspecies by directing recovery efforts to other natural areas with greater long-term conservation value.

Based on our evaluation of the benefits of inclusion versus the benefits of exclusion, we determine that the benefits of excluding non-Federal airport lands from the designation of critical habitat for the streaked horned lark outweigh the benefits of including these areas in critical habitat. The Secretary is therefore exercising her discretion under section 4(b)(2) of the Act to exclude the following airports from critical habitat for the streaked horned lark:

(1) Sanderson Field in Unit 1—376 ac (152 ha).

(2) Olympia Airport in Unit 1— 575 ac (233 ha).

(3) Portland International Airport and Broughton Beach in Unit 3—431 ac (174 ha).

(4) McMinnville Municipal Airport in Unit 4—600 ac (243 ha).

(5) Salem Municipal Airport in Unit 4—534 ac (216 ha).

(6) Corvallis Municipal Airport in Unit 4—1,103 ac (446 ha).

(7) Eugene Airport in Unit 4—313 ac (126 ha).

A small portion of land proposed for critical habitat is adjacent to Portland International Airport at Broughton Beach on the Columbia River; this parcel is owned by Metro (the regional government). The concerns discussed above also apply to this portion of the Portland International Airport; therefore, we are also excluding Broughton Beach from critical habitat designation. The total acreage of the exclusions described above is approximately 3,932 ac (1,590 ha).

Occupied lands excluded under section 4(b)(2) of the Act are still considered essential to the conservation of the species. Such areas were proposed as critical habitat because they provide the essential physical or biological features to support the life history of the streaked horned lark. Exclusion should never be interpreted as meaning that such areas are unimportant to the conservation of the species. Exclusion is based upon a determination by the Secretary that the benefit of excluding these essential

areas outweighs the benefit of including them in critical habitat.

Exclusion Will Not Result in the Extinction of the Species—Non-Federal Airports—Exclusion will not result in extinction of the streaked horned lark because each of the airports proposed as critical habitat is occupied by the subspecies; therefore Federal agency actions that require section 7 consultation will be required to meet the jeopardy standard for any actions that may affect the streaked horned lark at those sites. This consultation requirement will safeguard the streaked horned lark from extinction, regardless of the area's designation as critical habitat.

Tribal Lands—Exclusions Under Section 4(b)(2) of the Act

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we coordinate with federally-recognized tribes on a government-to-government basis. Further, Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (1997) states that (1) critical habitat shall not be designated in areas that may impact tribal trust resources, may impact tribally-owned fee lands, or are used to exercise tribal rights unless it is determined essential to conserve a listed species; and (2) in designating critical habitat, the Service shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands.

We proposed 182 ac (74 ha) of critical habitat in an area currently occupied by the streaked horned lark and that provides one or more of the essential physical or biological features for the subspecies on lands reserved for the Shoalwater Bay Tribe (included in Unit 3—Shoalwater Spit); these lands are directly adjacent to other occupied streaked horned lark habitat along the Washington Coast. Because the streaked horned lark moves between coastal sites and sites on the Columbia River Islands, based on site condition and season, connectivity among and within these habitats is essential for long-term persistence and recovery of streaked horned larks. Beach and intertidal habitat on and adjacent to the Shoalwater Bay Indian Reservation were determined to be important to maintain nesting, foraging, and wintering habitat, and to maintain connectivity between occupied breeding sites on the Washington Coast. The longstanding and distinctive relationship between Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal government.

This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Native American tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. Accordingly, we are obligated to consult with tribes based on their unique relationship with the Federal government. In addition, we evaluate tribes' past and ongoing efforts for species conservation and the benefits of including or excluding tribal lands in the designation under section 4(b)(2) of the Act.

We contacted the Shoalwater Bay Tribe and discussed their ongoing and future management strategies for the streaked horned lark. During the revision of critical habitat for the Pacific Coast population of the western snowy plover, we received a letter from the Tribe describing ongoing tribal management, conservation efforts, and coordination with the Corps, WDFW, and the Service to protect habitat for snowy plover and other coastal species important to the Tribe, including the streaked horned lark. The Tribe coordinates closely with the Service, Corps, and WDFW on western snowy plover and streaked horned lark surveys in conjunction with their coastal restoration project. In April, 2013, the Shoalwater Bay Tribe submitted a comment letter stating that they wish to be excluded from critical habitat designation for the streaked horned lark (or any other species). The Tribe is working with their legal counsel and State and Federal agencies (Corps, WDFW, Service) in partnership on the development of an Ecological Restoration Plan for the coastal beaches and tidelands on the reservation.

We determined that approximately 182 ac (74 ha) of lands owned by, or under the jurisdiction of, the Tribe contained biological features essential to the conservation of the streaked horned lark, and therefore meet the definition of critical habitat under the Act. These tribal lands are located in the subunit identified as Shoalwater Spit of Unit 3 (the Washington Coast and Columbia River Islands). In making our final decision with regard to the designation of critical habitat for the streaked horned lark on these tribal lands, we considered several factors, including Secretarial Order 3206, Executive Order 13175, the President's memorandum on ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951; April 29, 1994), conservation measures in place on these lands that may benefit the streaked horned lark, economic impacts to tribes, our relationship with the Tribe, and impacts to current and future partnerships with the Shoalwater Bay Tribe and other tribes we coordinate with on endangered and threatened species issues. Under section 4(b)(2) of the Act, the Secretary is exercising her discretion to exclude approximately 182 ac (74 ha) of land composed entirely of reservation lands. We further exclude from this final critical habitat designation lands that develop by accretion, which we anticipate may become reservation lands in the near future. As described in our analysis below, this conclusion was reached after considering the relevant impacts of specifying this area as critical habitat.

Shoalwater Bay Tribe

The Shoalwater Bay Tribe (Tribe) is a Federally-recognized Native American tribe with a relatively small (approximately one square mile) reservation in Pacific County, Washington. Lands within the Shoalwater Bay Indian Reservation boundary include upland forested terrestrial habitats, a small residential and commercial area, and coastal marine habitats. Critical habitat for the streaked horned lark was proposed in the portion of the reservation with coastal beaches. Through our ongoing coordination with the Tribe, we have established a partnership that has benefitted natural resource management on tribal lands. For our section 4(b)(2) balancing analysis we considered our partnership with the Tribe in our analysis of the benefits of including and excluding those lands under the sovereign control of the Tribe that met the definition of critical habitat.

Benefits of Inclusion—Shoalwater Bay Tribe—The principal benefit of any designated critical habitat is that Federal activities will require section 7 consultations to ensure that adequate protection is provided to avoid adverse modification or destruction of critical habitat. This would provide an additional benefit beyond that provided under the jeopardy standard. In evaluating project effects on critical habitat, the Service must be satisfied that the PCEs and, therefore, the

essential features of the critical habitat likely will not be altered or destroyed by proposed activities to the extent that the conservation of the affected species would be appreciably reduced. If critical habitat were designated in areas of unoccupied habitat or currently occupied areas subsequently become unoccupied, different outcomes or requirements are also likely because effects to unoccupied areas of critical habitat are not likely to trigger the need for a jeopardy analysis.

In *Sierra Club* v. *Fish and Wildlife Service,* 245 F.3d 434 (5th Cir. 2001), the Fifth Circuit Court of Appeals stated that the identification of habitat essential to the conservation of the species can provide informational benefits to the public, State and local governments, scientific organizations, and Federal agencies. The court also noted that critical habitat designation may focus and heighten public awareness of the plight of listed species and their habitats. Designation of critical habitat may contribute to conservation efforts by other parties by delineating areas of high conservation value for streaked horned lark. While we believe this educational outcome is important for streaked horned lark conservation, we believe it has already been achieved to some extent through the existing management, education, and public outreach efforts carried out by the Tribe. Designation of critical habitat on the aforementioned tribal lands would simply affirm the recognized conservation value of these lands, which is already widely accepted by conservationists, public agencies, and most of the public.

The principal benefit of including an area in a critical habitat designation is the requirement for Federal agencies to ensure that actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects of a proposed project on critical habitat is separate and different from that of the effects of a proposed project on the species itself. The jeopardy analysis evaluates the action's impact to survival and recovery of the species, while the destruction or adverse modification analysis evaluates the action's effects to the designated habitat's contribution to conservation. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than listing alone would do. However, for some species, and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. The tribal lands considered for exclusion are occupied by the streaked horned lark and will be subject to the consultation requirements of the Act in the future. Although a jeopardy and adverse modification analysis must satisfy two different standards, because any modifications to proposed actions resulting from a section 7 consultation to minimize or avoid impacts to the streaked horned lark will be habitat-based, it is not possible to differentiate any measures implemented solely to minimize impacts to the critical habitat from those implemented to minimize impacts to the streaked horned lark. Therefore, in the case of the streaked horned lark, we believe the benefits of critical habitat designation are very similar to the benefits of listing, and in some respects would be indistinguishable from the benefits of listing.

Public education is often cited as another possible benefit of including lands in critical habitat as it may help focus conservation efforts on areas of high value for certain species. Partnership efforts with the Shoalwater Bay Tribe to conserve the streaked horned lark and other coastal species of concern have resulted in heightened awareness about the subspecies. However, we believe there is little, if any, educational benefit attributable to critical habitat beyond those achieved from listing of the streaked horned lark under the Act, and the Tribe's efforts. The Shoalwater Bay Tribe coordinates regularly with the WDFW on annual surveys for the streaked horned lark and has partnered with the Service (Willapa National Wildlife Refuge and Ecological Services) to control nonnative or invasive species and restore habitat for the streaked horned lark and other coastal species on the reservation. Service coordination includes attending meetings with tribal resource staff to discuss ongoing projects, management plans, and other issues that arise. We believe our continuing coordination with the Shoalwater Bay Tribe will further promote awareness of the subspecies and its conservation needs, and will facilitate refinements to the existing Fish and Wildlife Codes and Title 23 of the Tribe's Environmental Ordinances that protect natural resources on the reservation.

We believe existing tribal regulations, including the 2001 Tribal Environmental Codes that protect the saltmarsh and sand spit as natural areas, will ensure that any land use actions, including those funded, authorized, or carried out by Federal agencies, are not likely to result in the destruction or adverse modification of all lands considered for exclusion. The Tribe coordinates with the Service on all actions that have the potential to affect habitat for listed species on the reservation, including the streaked horned lark. In 2003, the Service completed a Planning Aid Letter, and in 2006, we wrote a Fish and Wildlife Coordination Act Report for the Corps (Shoalwater Bay Tribe is the project sponsor) on the Shoalwater Coastal Erosion Project, which entails beach nourishment along the sand spit used by the streaked horned lark. We completed a section 7 consultation for this project in 2012, which covered effects to both the streaked horned lark and western snowy plover. Due to construction delays, the project was not completed and is still ongoing. We are currently completing formal conferencing for potential effects to the streaked horned lark and proposed critical habitat related to this project. The Service coordinated with the Tribe and the Corps on the project design and will provided technical input and recommendations on the planting plan and long-term vegetation management on the dune. The Tribe is actively working with the State and Federal agencies in implementation of the project to avoid impacts to the streaked horned lark and its nesting habitat. The project is designed to restore the barrier spit that has been actively eroding over the decades. The spit provides protection from coastal storms and high winter waves for the Shoalwater Bay Indian Reservation.

Surveys for both the western snowy plover and streaked horned lark have been conducted by WDFW and the Tribe on the reservation and adjacent lands since 2000. Surveys became more intensive in 2004 and later years (to present) when both the western snowy plover and streaked horned lark were documented nesting on tribal lands on Shoalwater spit. Although they may not nest there every year, male streaked horned larks were heard singing or have been seen on Shoalwater Spit during the nesting seasons of 2004, 2008, 2009, 2012, and 2013. The Tribe has played an active role in surveying for and protecting habitat for the streaked

horned lark. In emails and comments sent to the Service on August 31, 2011, and April 3, 2013, the Tribe confirmed that they will continue to use their existing regulatory structure to provide habitat protection for coastal species (including the streaked horned lark) and ''keep trespassers off those areas considered most important to the species.'' The Corps worked closely with the WDFW and the Service in the development and implementation of a species protection plan for the western snowy plover and streaked horned lark habitat as part of the erosion control project. The Tribe, WDFW, and Service are coordinating with the Corps on the development of an Ecological Restoration Plan for the Shoalwater Bay Tribe which will include a planting and long-term vegetation management plan for the dune and restoration of the adjacent tidelands.

Any potential impacts to the streaked horned lark from future proposed activities on tribal trust reservation lands will be addressed through a section 7 consultation using the jeopardy standard, and such activities would also be subject to the take prohibitions under section 9 of the Act. As a result, we believe the regulatory benefits of critical habitat designation on tribal trust reservation land would largely be redundant with the combined benefits of listing and existing tribal regulations.

The designation of critical habitat for the streaked horned lark may strengthen or reinforce some Federal laws, such as the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) or the Clean Water Act (33 U.S.C. 1251 *et seq.*). These laws analyze the potential for projects to significantly affect the environment. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental law; however, the listing process and consultations (which includes conferencing on effects to critical habitat for the streaked horned lark off reservation lands) that have already occurred and/or are ongoing will provide this benefit. Therefore, in this case we view this benefit as redundant with the benefit the species will receive from listing under the Act.

In summary, we believe that designating critical habitat on the Shoalwater Bay Indian Reservation will provide only minimal additional benefits for the streaked horned lark. Projects on these lands with a Federal nexus (e.g., funded, authorized, or carried out by Federal agencies, such as the U.S. Army Corps of Engineers) will require section 7 consultation with the Service (regardless of critical habitat designation) where the habitat is occupied or the species may otherwise be affected. Furthermore, a high level of protection is already provided on Shoalwater Bay Indian Reservation lands that meet the definition of critical habitat by existing conservation, regulations, and management. Ongoing coordination between the Service and the Tribe has already raised the level of awareness about the subspecies, and we believe our continued coordination with the Tribe will facilitate development of species-specific management actions for these lands to address the conservation of the streaked horned lark.

Benefits of Exclusion—Shoalwater Bay Tribe—Under Secretarial Order 3206, American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Act, we recognize that we must carry out our responsibilities under the Act in a manner that harmonizes the Federal trust responsibility to tribes and tribal sovereignty while striving to ensure that tribes do not bear a disproportionate burden for the conservation of listed species, so as to avoid or minimize the potential for conflict and confrontation. In accordance with the Presidential memoranda of April 29, 1994, and November 9, 2009, we believe that, to the maximum extent possible, tribes are the appropriate governmental entities to manage their lands and tribal trust resources, and that we are responsible for strengthening government-to-government relationships with tribes. Federal regulation through critical habitat designation will adversely affect the tribal working relationships we now have and which we are strengthening throughout the United States. Maintaining positive working relationships with tribes is key to implementing natural resource programs of mutual interest, including habitat conservation planning efforts. In light of the above-mentioned orders and for a variety of other reasons described in their comment letters and communications, critical habitat designation is typically viewed by tribes as an unwarranted and unwanted intrusion into tribal self-governance.

In the case of proposed critical habitat for the streaked horned lark (77 FR 61937; October 11, 2012), the Shoalwater Bay Tribe has requested to ''remain excluded from any critical habitat designation.'' In their comments sent to the Service on April 3, 2013, the Tribe stated that it is their goal to ''not only protect existing habitat for native (coastal) species but to also increase and improve habitat'' and to ''develop strategies for addressing threatened species and their habitat'' on tribal lands. In their comments submitted during revisions of critical habitat for the western snowy plover, the Tribe ''continues to demonstrate its desire to protect threatened and/or endangered species through its management and stewardship capabilities'' without ''externally defined designated critical habitat designations.'' The Tribe stated that they wish to make ''their own determinations regarding the Reservation and tribal trust resources'' and we note that the Tribe has been able to provide for the streaked horned lark and steps are being taken to continue that effort in the most effective way possible. The Tribe has been working closely with the Willapa National Wildlife Refuge for several years on collection, propagation, and reintroduction of the native pink sand verbena (*Abronia umbellata*) and is propagating this species at their greenhouse on the reservation. This native plant has been extirpated in Washington and was recently rediscovered on the refuge. Efforts to reintroduce this species along coastal beaches that are currently occupied by the streaked horned lark (including the refuge and tribal lands) have been successful and are ongoing projects. The commitment by the Tribe to restore habitat for this native plant and efforts to control invasive species such as smooth cordgrass (*Spartina alterniflora*) supports their commitment to protect habitat for streaked horned lark and strengthens the ongoing partnership with the Service. In their comments to the Service on the proposed rule, the Tribe indicated they would use their existing regulations to protect streaked horned lark and its habitat. These communications clearly indicate that designation of tribal trust reservation lands as critical habitat for the streaked horned lark would impact future conservation partnership opportunities with the Tribe. Therefore, a critical habitat designation could potentially damage our relationship with the Shoalwater Bay Tribe.

We believe significant benefits would be realized by excluding lands managed by the Shoalwater Bay Indian Tribe from critical habitat. These benefits include:

(1) Continuing and strengthening of our effective relationship with the tribe to promote conservation of the streaked horned lark and its habitat; and

(2) Allowing continued meaningful collaboration and cooperation in working toward recovering this subspecies, including conservation actions that might not otherwise occur.

Because the Tribe is the entity that enforces protective regulations on tribal trust reservation land, and we have a working relationship with them, we believe exclusion of these lands will yield a significant partnership benefit. We will continue to work cooperatively with the Tribe on efforts to conserve the streaked horned lark. Therefore, excluding these lands from critical habitat provides the significant benefit of maintaining and strengthening our existing conservation partnerships and the potential of fostering new tribal partnerships.

Benefits of Exclusion Outweigh Benefits of Inclusion—Shoalwater Bay Indian Tribe—Based on the above considerations and consistent with the direction provided in section 4(b)(2) of the Act, the Service has determined that the benefits of excluding the above tribal lands outweigh the benefits of including them as critical habitat. This conclusion is based on the following factors. It is possible, although unlikely, that Federal actions will be proposed that would be likely to destroy or adversely modify the habitat proposed as critical within the area governed by the Tribe. If such a project were proposed, due to the specific way in which jeopardy and adverse modification are analyzed for the streaked horned lark, discussed in detail earlier in this document, it would likely also jeopardize the continued existence of the subspecies. Few additional benefits are provided by including these tribal lands in this critical habitat designation beyond what will be achieved through the implementation of the existing tribal management or conservation plans. In addition, we expect that the benefit of informing the public of the importance of this area to streaked horned lark conservation would be low.

We do not believe that inclusion of tribal lands will significantly improve habitat protections for the streaked horned lark beyond what is already provided for in the Tribe's own protective policies and practices, discussed below.

The Tribe is working closely with the Corps and the Federal and State resource agencies on the development of an Ecological Restoration Plan for the Shoalwater Bay Tribe and have provided information detailing how they are addressing the habitat needs of the streaked horned lark on their lands and they are fully aware of the conservation value of their lands for many coastal species of concern. There are several benefits to excluding tribal lands. The long-standing and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. Under these authorities, Indian lands are recognized as unique and have been retained by Indian Tribes or have been set aside for tribal use. These lands are managed by Indian Tribes in accordance with tribal goals and objectives within the framework of applicable treaties and laws.

Tribal lands are currently being managed on a voluntary basis in cooperation with the Service and others to conserve the streaked horned lark and achieve important conservation goals. We believe the streaked horned lark benefits from the Tribe's voluntary management actions due to their long-standing and broad application to tribal management decisions. Tribal cooperation and support is required to continue cooperative scientific efforts, to promote the recovery of the streaked horned lark, and to implement proactive conservation actions. This need for the tribal cooperation is especially acute because, in some cases, populations exist only on areas of tribal management or only on tribal lands. Future conservation efforts in this area require the continued cooperation and support of the Tribe. Exclusion of tribal lands from the critical habitat designation will help us maintain and improve our partnership with the Tribe by formally recognizing their positive contributions to streaked horned lark recovery, and by streamlining or reducing unnecessary regulatory oversight.

Given the cooperative relationship between the Shoalwater Bay Tribe and the Service, and all of the conservation benefits taken together, we believe the additional regulatory and educational benefits of including the tribal lands as critical habitat are relatively small. The designation of critical habitat can serve to educate the public regarding the potential conservation value of an area, but this goal is already being accomplished through the identification of these areas in the tribal management planning, development of tribal Fish and Wildlife Codes, and through their outreach efforts.

Because of the ongoing relationship between the Service and the Shoalwater Bay Tribe through a variety of forums, we find the benefits of these coordination efforts to be greater than the benefits of applying the Act's section 7 consultations for critical habitat to Federal activities on tribal lands. Based upon our consultations with the Tribes, we believe that designation of Indian lands as critical habitat would adversely impact our working relationship and the benefits resulting from this relationship.

In contrast, although the benefits of encouraging participation in tribal management plans, and, more broadly, helping to foster cooperative conservation are indirect, enthusiastic tribal participation and an atmosphere of cooperation are crucial to the long-term effectiveness of the endangered species program. Also, we have concluded that the Tribe's voluntary conservation efforts will provide tangible conservation benefits that will reduce the likelihood of extinction and increase the likelihood for streaked horned lark recovery. Therefore, we assign great weight to these benefits of exclusion. To the extent that there are regulatory benefits of including tribal lands in critical habitat, there would be associated costs that could be avoided by excluding the area from designation. As we expect the regulatory benefits to be low, we likewise give weight to avoidance of those associated costs, as well as the additional transaction costs related to section 7 compliance.

We reviewed and evaluated the benefits of inclusion and the benefits of exclusion of Shoalwater Bay Tribe tribal trust reservation lands as critical habitat for the streaked horned lark. We believe past, present, and future coordination with the Shoalwater Bay Tribe has provided and will continue to provide streaked horned lark habitat conservation needs on tribal lands, such that there would be no additional benefit from designation of critical habitat. Further, because any potential impacts to the streaked horned lark from future projects will be addressed through a section 7 consultation with us under the jeopardy standard, we believe critical habitat designation on the Shoalwater Bay Indian Reservation would largely be redundant with the combined benefits of listing and existing tribal regulations and management. Therefore, the benefits of designating critical habitat on tribal trust reservation lands are not significant.

On the other hand, the benefits of excluding the Shoalwater Bay Indian Reservation from critical habitat are significant. Exclusion of these lands from critical habitat will help preserve and strengthen the conservation

partnership we have developed with the Tribe and will foster future partnerships and development of management plans; whereas inclusion will negatively impact our relationships with the Tribe and other tribes. We are committed to working with the Shoalwater Bay Tribe to further the conservation of the streaked horned lark and other endangered and threatened species on the reservation. The Tribe will continue to use their existing regulatory structure to protect the streaked horned lark and its habitat. The Tribe continues to provide for indirect conservation of streaked horned lark habitat by implementing conservation measures for other coastal species (such as, the pink sand verbena) that have the same habitat requirements. Therefore, in consideration of the relevant impact to our partnership and our government-to-government relationship with the Shoalwater Bay Indian Tribe, and the ongoing conservation management practices of the Tribe and our current and future conservation partnerships with them, we determined the significant benefits of exclusion outweigh the benefits of inclusion in the critical habitat designation.

In summary, we find that excluding the Shoalwater Bay Tribe tribal trust reservation lands from this revised final critical habitat will preserve our partnership and may foster future habitat management and species conservation plans with the Tribe now and in the future. These partnership benefits are significant and outweigh the minimal additional regulatory benefits of including these lands in final critical habitat for the streaked horned lark.

Exclusion Will Not Result in Extinction of the Species—Shoalwater Bay Tribe—We determined that the exclusion of 182 ac (74 ha) of tribal trust reservation lands from the designation of streaked horned lark critical habitat will not result in extinction of the subspecies. The jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process due to streaked horned lark occupancy and protection provided by under Title 23 of the Tribal Environmental Ordinances and their Ecosystem Restoration Plan provide assurances that this subspecies will not go extinct as a result of excluding these lands from the critical habitat designation. Therefore, based on the above discussion the Secretary is exercising her discretion to exclude approximately 182 ac (74 ha) of tribal trust reservation lands managed by the Shoalwater Bay Tribe from this final critical habitat designation.

Required Determinations

Regulatory Planning and Review (Executive Orders 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 (5 U.S.C 801 *et seq.*), 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 an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for Taylor's checkerspot butterfly and streaked horned lark will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts on 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 the rule 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., airports, agriculture, recreation, and habitat management). 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.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect Taylor's checkerspot butterfly and streaked horned lark. Federal agencies

also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see *Application of the ''Adverse Modification'' Standard*).

In our final economic analysis (FEA) of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listings of Taylor's checkerspot butterfly, streaked horned lark, and four subspecies of Mazama pocket gopher and the designation of critical habitat. The analysis is based on the estimated impacts associated with the rulemaking as described in Appendix A of the FEA (IEc 2013, pp. A–1–A–11) and evaluates the potential for economic impacts related to: Military activities; recreation and habitat management; airport operations and agricultural activities; transportation, electricity distribution and forestry activities; and dredging, gravel mining, development, and other activities. The FEA determined that critical habitat designation will not result in impacts to small entities for the following activities (IEc 2013, p. A–4):

(1) Military activities. As the affected base, JBLM is a Federal entity and it is, by definition, not small, and thus no impacts to small entities are expected.

(2) Transportation. The impacts are limited to Washington State Department of Transportation. As State agencies are, by definition, not small, no impacts to small entities are expected related to transportation.

(3) Electricity Distribution and Forestry Activities. The only electricity distribution activity within the proposed critical habitat is carried out by the Bonneville Power Administration (BPA), which is a Federal entity and, therefore, is not considered small. As such, there are no anticipated impacts to small entities related to BPA's electricity distribution activities. No incremental costs are anticipated for forestry activities and thus no impact to small entities related to forestry is anticipated.

(4) Dredging. Dredging is conducted by the U.S. Army Corps of Engineers, which is a Federal entity and is, by definition, not small, and thus no impacts to small entities are expected.

Estimated incremental impacts that may be borne by small entities are limited to the administrative costs of section 7 consultation related to airport operations and agriculture as well as by recreation and habitat restoration. Potential impacts on these sectors are evaluated here:

Airport Operations and Agriculture. Chapter 3 of the FEA discuss the potential for the critical habitat designations to affect airports and agricultural activities. Overall, 214 consultations would be expected in relation to operations at 7 airports over the next 20 years. Information on whether airports are large or small entities was available for some airports and not for others. For the purposes of the analysis, we made the conservative assumption that all airports within the proposed critical habitat are small entities. These seven entities represent 3 percent of the total small Other Airport Operations (NAICS code 488119) entities within the proposed critical habitat. The cost per entity, per consultation, to participate in forecast consultation is approximately $875 to $8,750 in any given year. The full cost to a third party of a single consultation is $875. If we assume that a single entity participates in multiple consultations in a single year, the administrative costs of such activity are likely to be less than 1 percent of annual revenues (IEc 2013, p. A–5).

We forecast two projects related to agriculture, one at Rock Prairie and one on M–DAC farms, which may involve small entities. Assuming that all agriculture and grazing impacts are borne by these two small entities, this amounts to less than one affected entity per year. The per entity impact, ranging from approximately $875 to $1,750, represents less than 2 percent of annual revenues (IEc 2013, p. A–5).

Recreation and Habitat Management. A diverse group of Federal and State agencies, county-level governments, and private nonprofit organizations may be subject to the administrative burden of consultations associated with recreation and habitat management. However, of these, the Federal, State, and county-level governments are not considered small entities. Therefore, there are three projects within the proposed critical habitat that may involve private nonprofit organizations that qualify as small entities—Wolf Haven International, Whidbey/Camano Land Trust, and the Pacific Rim Institute for Environmental Stewardship. Assuming that all recreation and habitat restoration impacts are borne by these small private entities, this amounts to less than one affected entity per year. The per entity impact, ranging from approximately $875 to $2,625 in any given year, represents less than 1 percent of annual revenues (IEc 2013, p. A–6).

Recreators at JBLM may incur unquantified losses in economic surplus in the form of reduced or restricted recreational use of JBLM lands proposed as critical habitat. However, because the recreators leasing JBLM lands are individuals, not entities, we do not address these impacts in this analysis.

In summary, we considered whether this designation will result in a significant economic effect on a substantial number of small entities (IEc 2013, p. A–7). Based on the above reasoning and currently available information, we conclude that this rule will not result in a significant economic impact on a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for the Taylor's checkerspot butterfly and streaked horned lark will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration.

The economic analysis finds that none of these criteria is relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with Taylor's checkerspot butterfly and streaked horned lark conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.''

These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments. 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. Therefore, this rule does not place an enforceable duty upon State, local, or Tribal governments, or on the private sector.

Consequently, we do not believe that the critical habitat designation will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Taylor's checkerspot butterfly and streaked horned lark in separate takings implications assessments. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or 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. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for Taylor's checkerspot butterfly and streaked horned lark does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this rule does not have significant Federalism effects. A federalism impact summary 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 critical habitat designation with appropriate State resource agencies in Washington and Oregon. We received comments from WDFW and solicited, but did not receive, comments from ODFW. We addressed the comments from WDFW in the Summary of Comments and Recommendations section of this rule, and we have incorporated informal comments and feedback from ODFW into this rule. The designation of critical habitat in areas currently occupied by Taylor's checkerspot butterfly and streaked horned lark imposes no additional restrictions to those put in place by the subspecies' listings and, therefore, has little incremental impact on State and local governments and their activities. The designation of critical habitat in areas currently unoccupied by Taylor's checkerspot butterfly may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) will be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial

system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of Taylor's checkerspot butterfly and streaked horned lark. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

In the proposed rule to designate critical habitat published in the **Federal Register** on October 11, 2012 (77 FR 61938), we proposed to designate about 661 ac (267 ha) of critical habitat for the streaked horned lark in subunit 3–C Shoalwater/Graveyard Spit, of which about 182 ac (74 ha) was identified as within the Shoalwater Bay Indian Reservation. These lands are occupied by the streaked horned lark and meet our definition of critical habitat for the subspecies. We indicated that we were considering exclusion of the Shoalwater Bay tribal lands from the designation, due to the high degree of protection already provided by the Tribe. We coordinated with the Tribe to better understand their conservation management plans for this area, and specifically for the streaked horned lark. After further review and additional information provided by the Shoalwater Bay Tribe, the Secretary determined that the benefits of excluding these tribal lands outweigh the benefits of including them in critical habitat for the streaked horned lark, and further concluded that such exclusion will not result in the extinction of the subspecies. As a result, the Secretary is exercising her discretion to exclude the 182 ac (74 ac) of Shoalwater Bay Tribal lands from the final designation under section 4(b)(2) of the Act (for details, see the *Exclusions* section of this document, above).

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Service's Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rulemaking are the staff members of the Washington and Oregon Fish and Wildlife Offices.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.95 by:
■ (a) In paragraph (b), adding an entry for ''Streaked horned lark (*Eremophila alpestris strigata)''* in the same order that this species appears in the table in § 17.11(h); and
■ (b) In paragraph (i), by adding an entry for ''Taylor's checkerspot butterfly (*Euphydryas editha taylori*)'' in the same order that this species appears in the table in § 17.11(h).

The additions read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Streaked horned lark (*Eremophila alpestris strigata*)

(1) Critical habitat units are depicted for Grays Harbor, Pacific, and Wahkiakum Counties in Washington, and Clatsop, Columbia, Marion, Polk, and Benton Counties in Oregon, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the streaked horned lark consist of areas having a minimum of 16 percent bare ground that have sparse, low-stature vegetation composed primarily of grasses and forbs less than 13 inches (33 centimeters) in height found in:

(i) Large (300-acre (120-hectare)), flat (0–5 percent slope) areas within a landscape context that provides visual access to open areas such as open water or fields; or

(ii) Areas smaller than described in paragraph (2)(i) of this entry, but that provide visual access to open areas such as open water or fields.

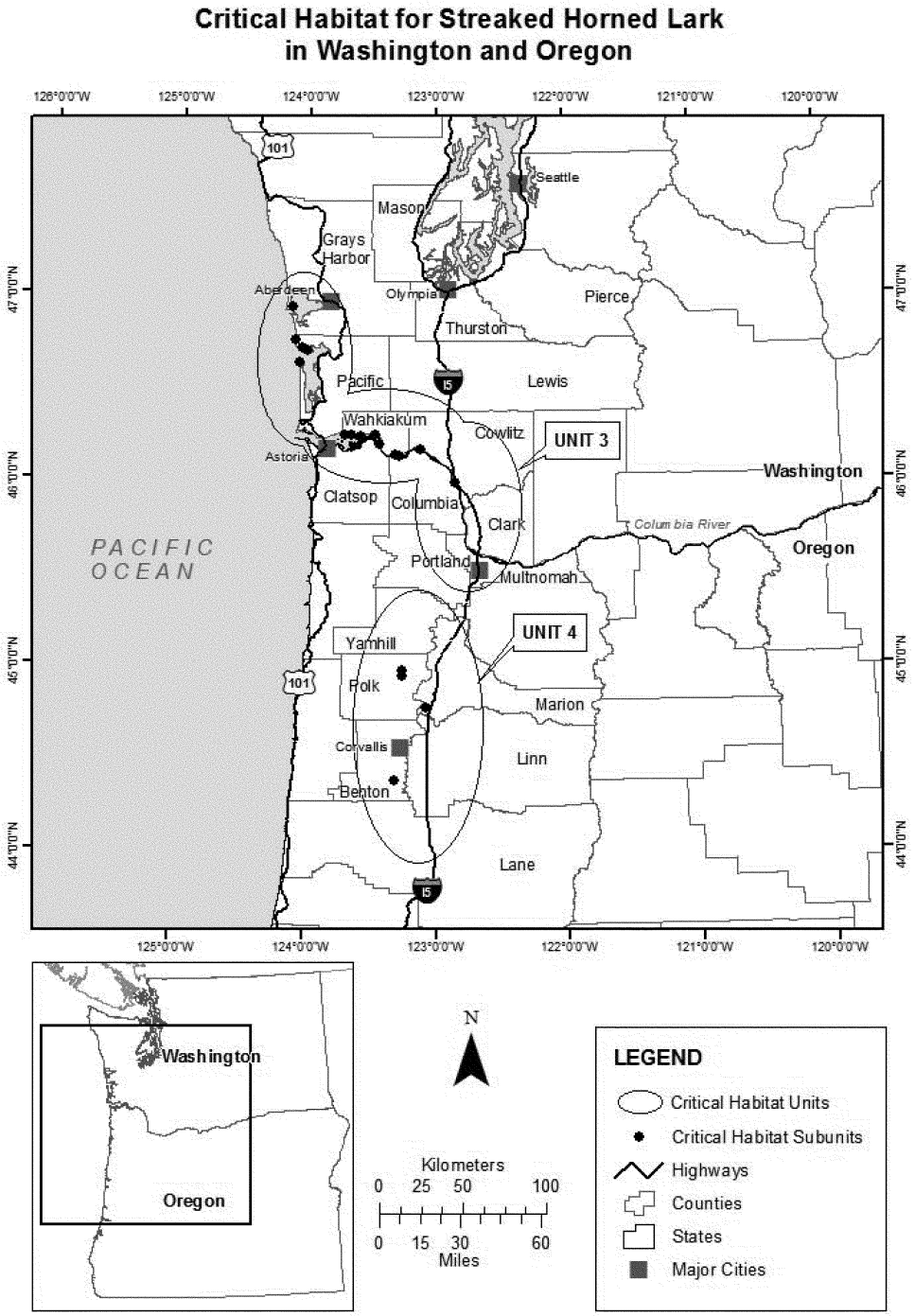
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on November 4, 2013.

(4) *Critical habitat map units.* Data layers defining map units were created on 2010 aerial photography from U.S. Department of Agriculture, National Agriculture Imagery Program base maps

using ArcMap (Environmental Systems Research Institute, Inc.), a computer geographic information system (GIS) program. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's Internet site (*http://www.fws.gov/wafwo*), at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2013–0009, and by appointment at the Service's Washington Fish and Wildlife Office. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

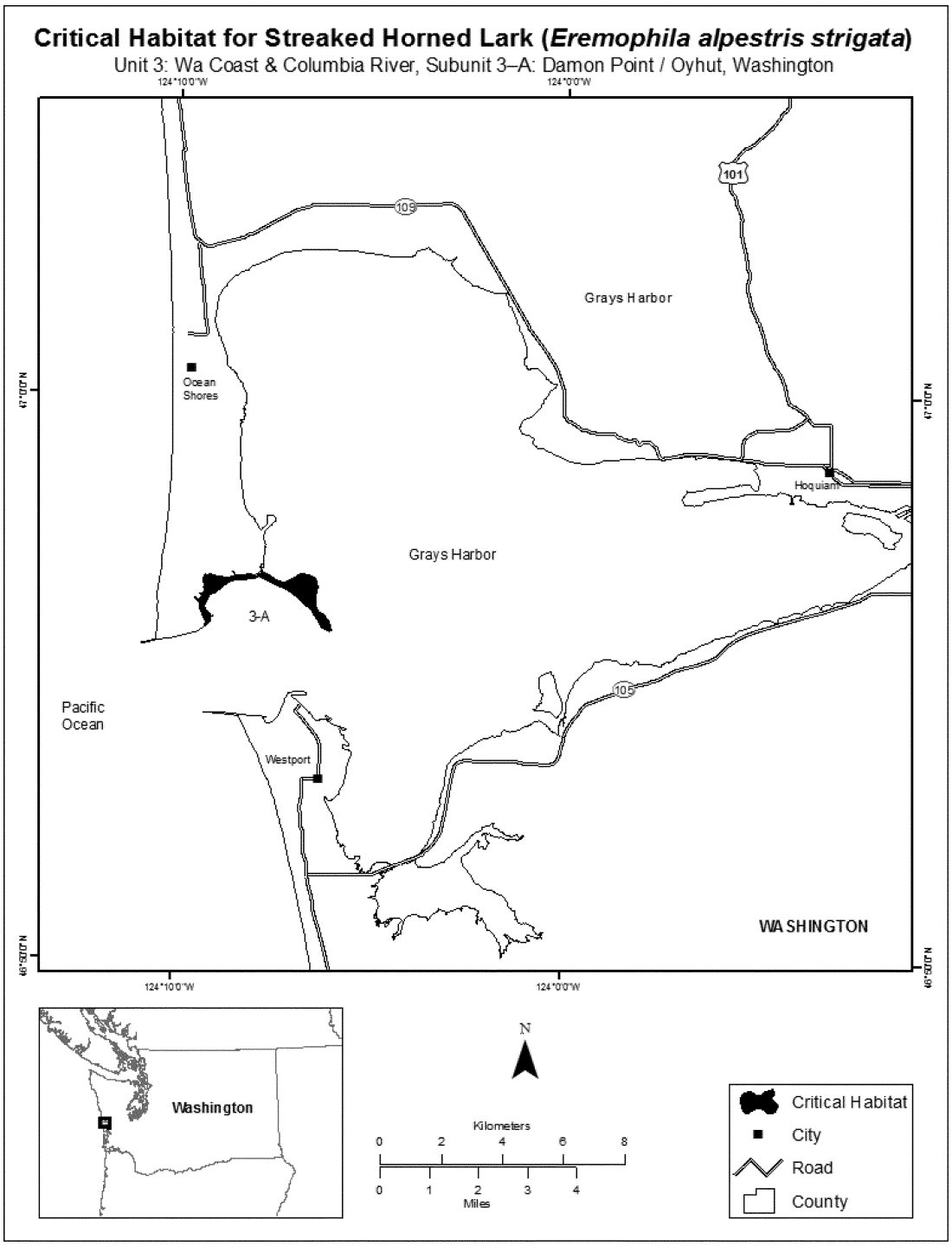
(5) Index map of critical habitat units for the streaked horned lark follows:

BILLING CODE 4310–55–P

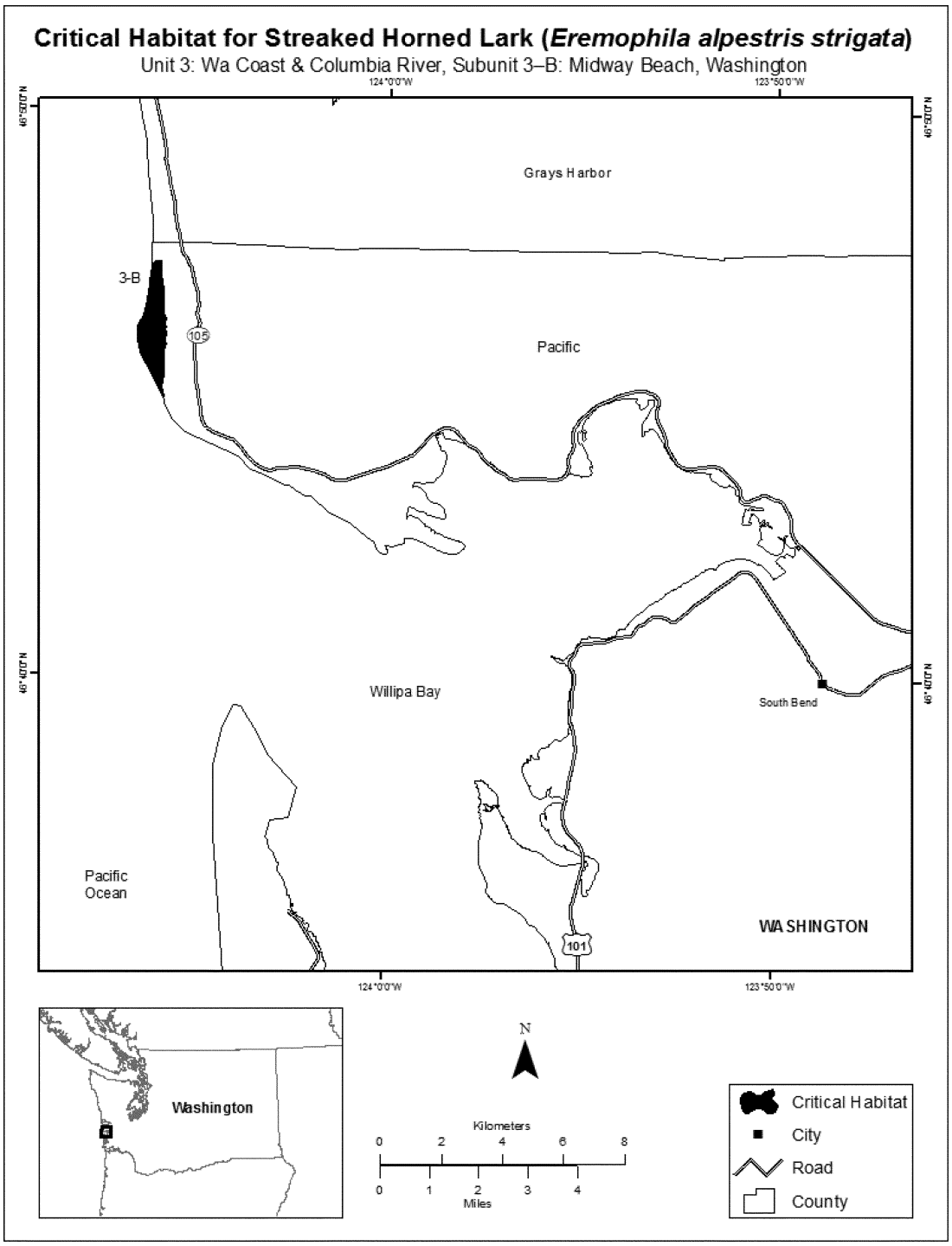


(6) Unit 3—Washington Coast and Columbia River Islands, Washington and Oregon.

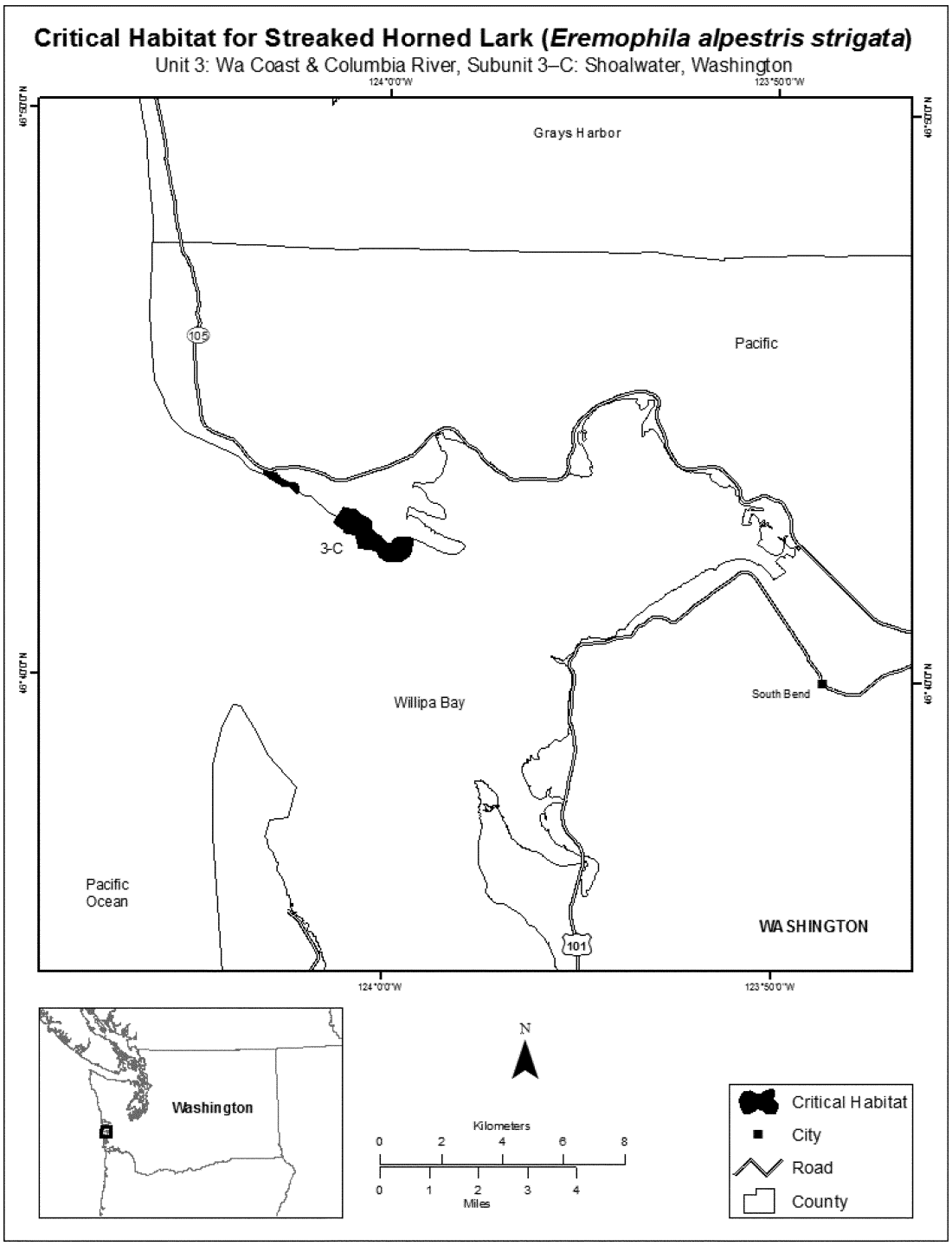
(i) Subunit 3–A: Damon Point/Oyhut, Washington. Map of Subunit 3–A follows:



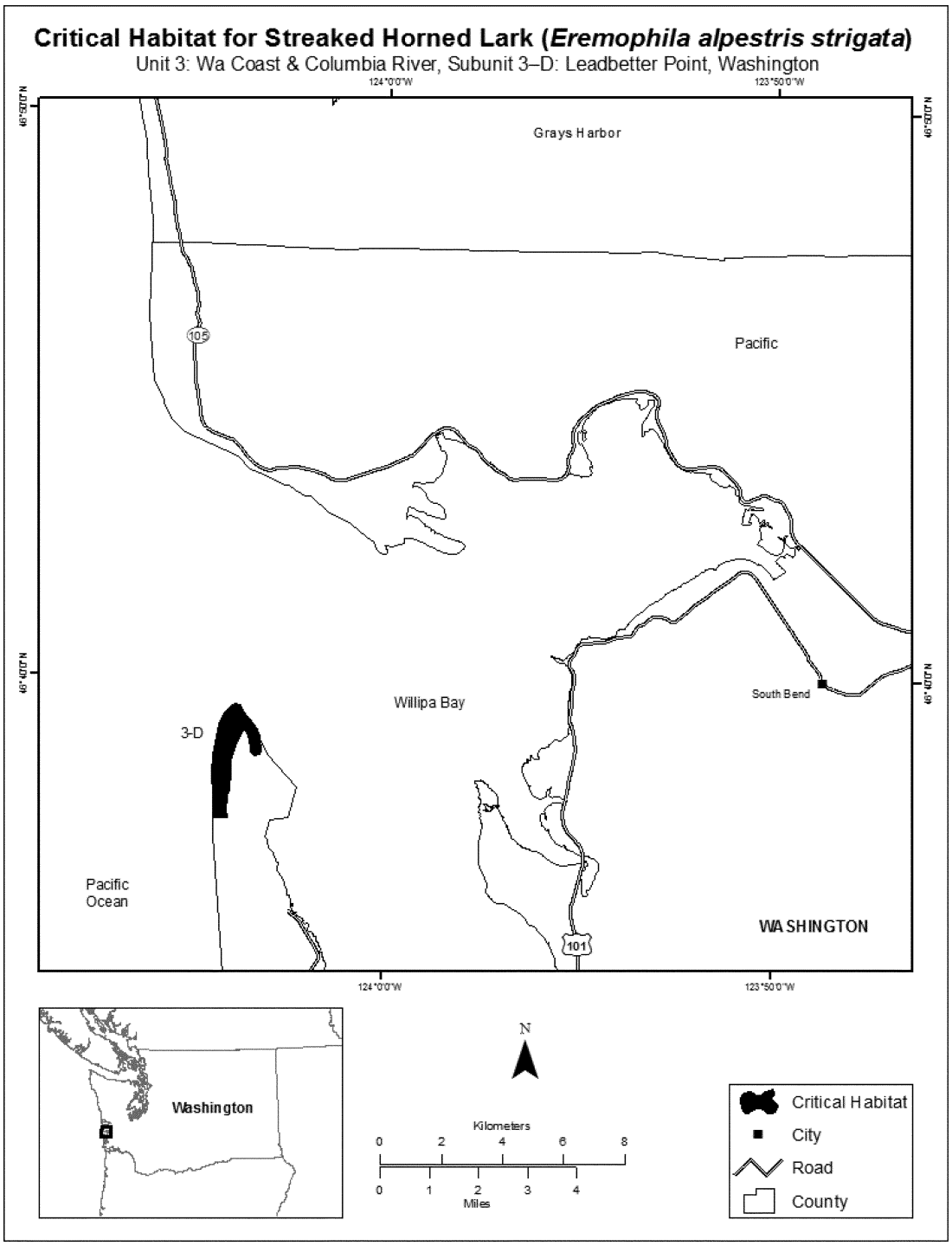
(ii) Subunit 3–B: Midway Beach, Washington. Map of Subunit 3–B follows:



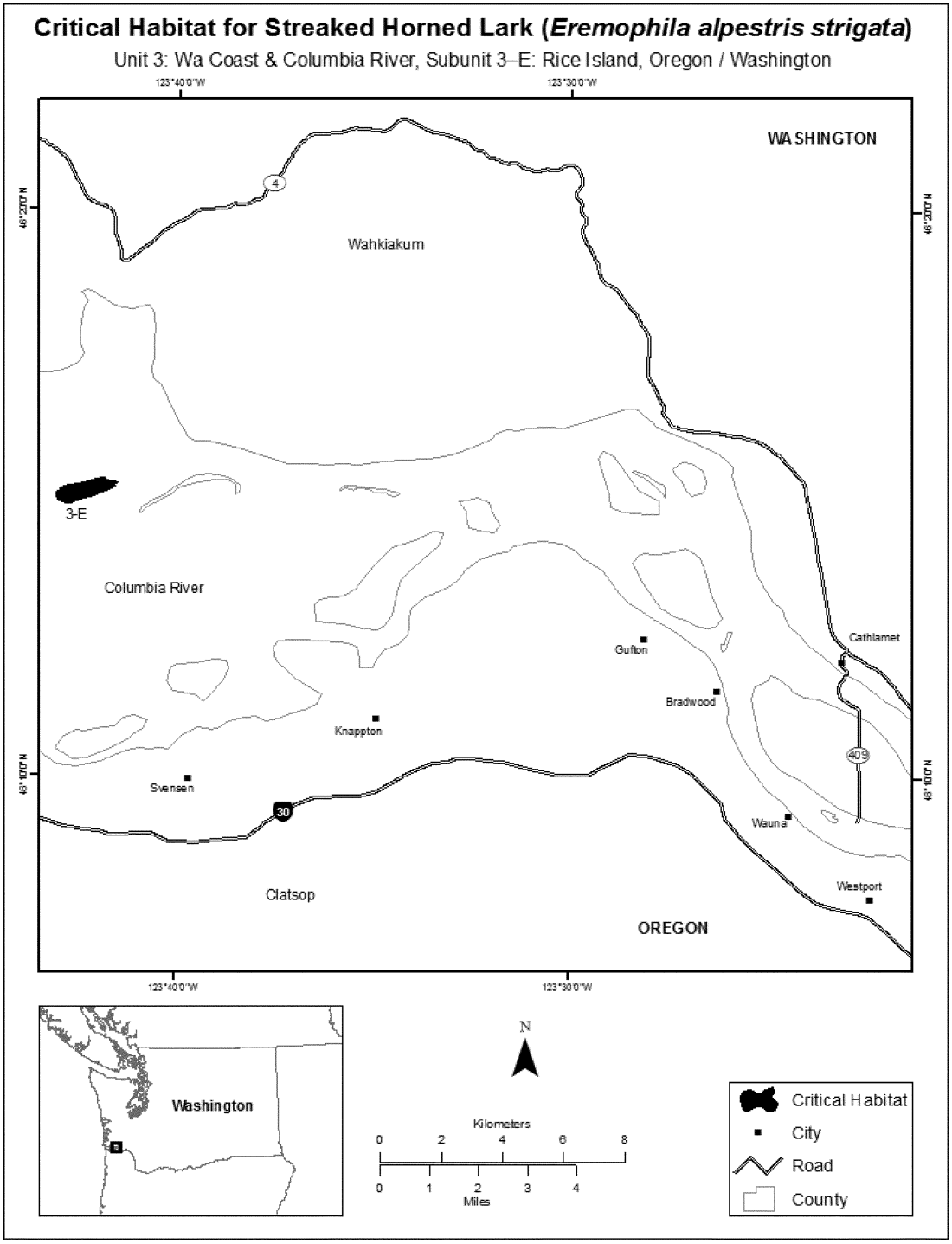
(iii) Subunit 3–C: Shoalwater, Washington. Map of Subunit 3–C follows:



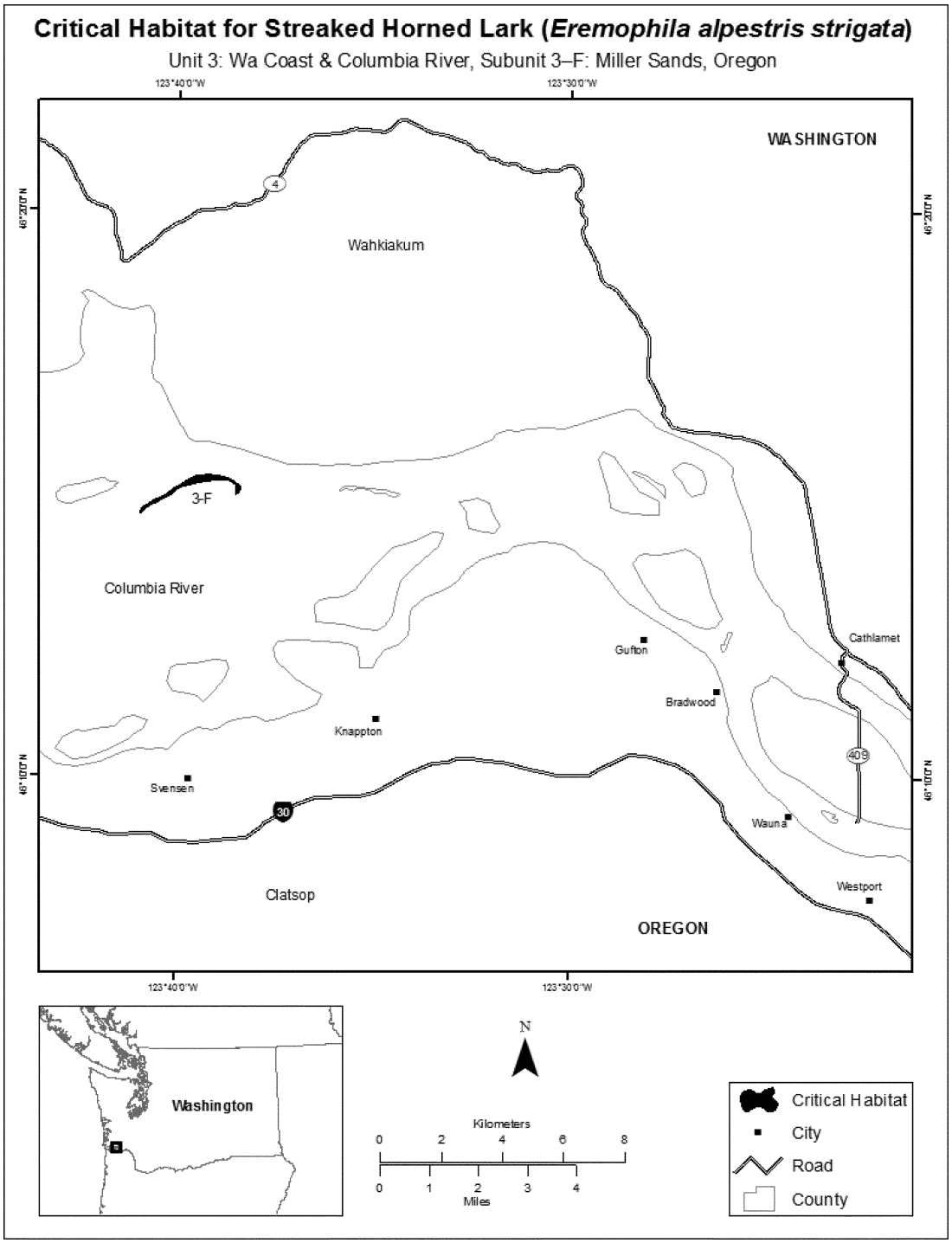
(iv) Subunit 3–D: Leadbetter Point, Washington. Map of Subunit 3–D follows:



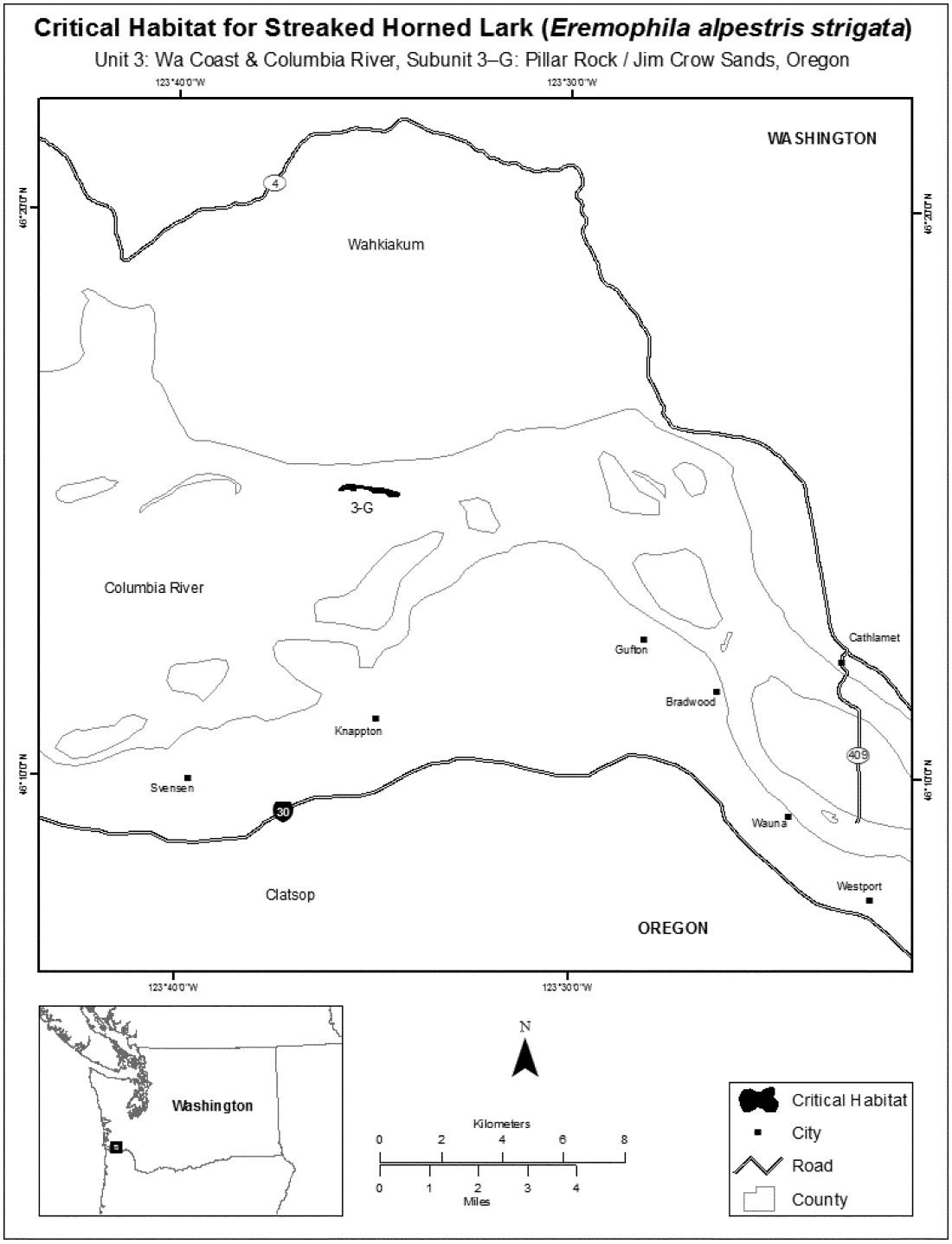
(v) Subunit 3–E: Rice Island, Oregon/Washington. Map of Subunit 3–E follows:



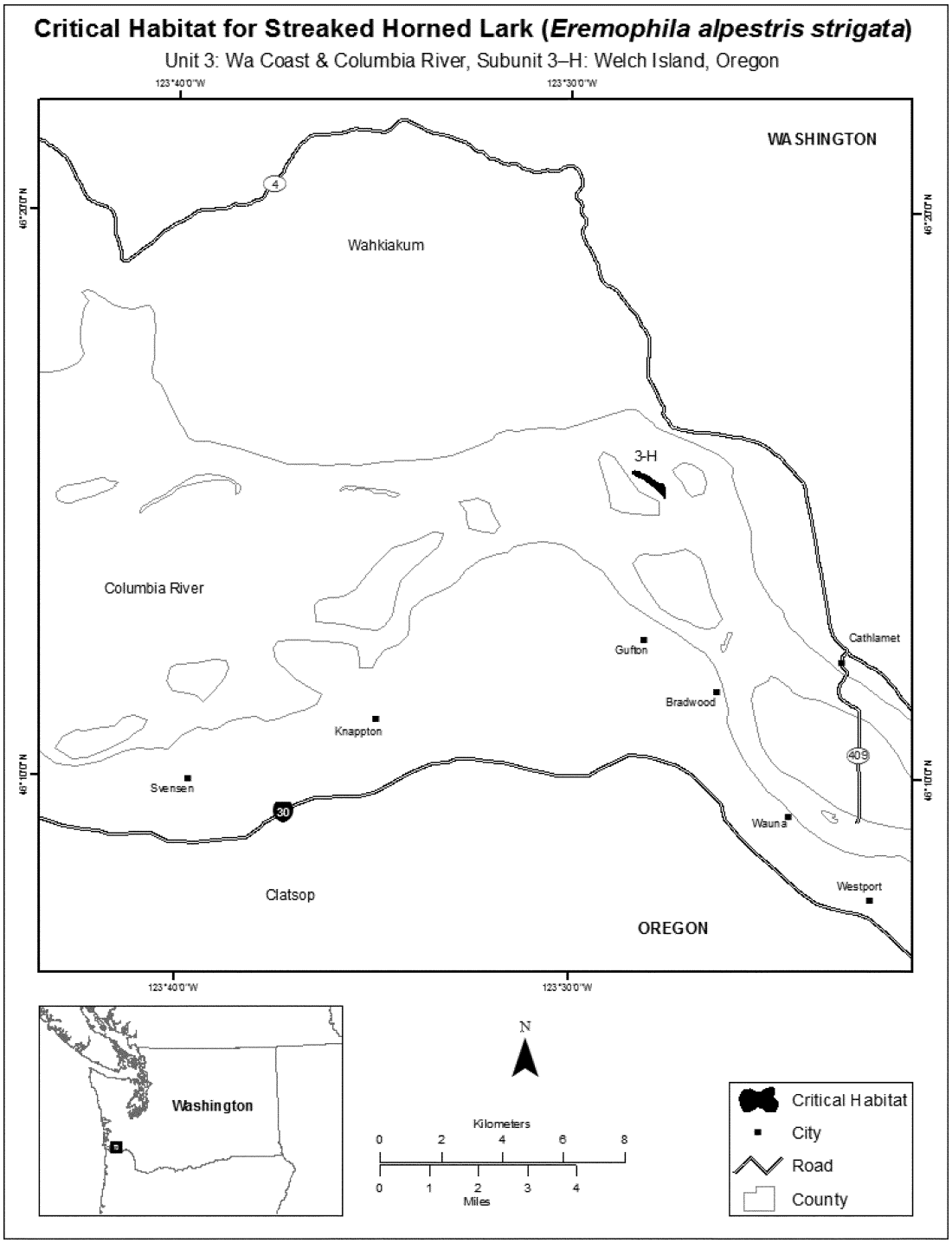
(vi) Subunit 3–F: Miller Sands, Oregon. Map of Subunit 3–F follows:



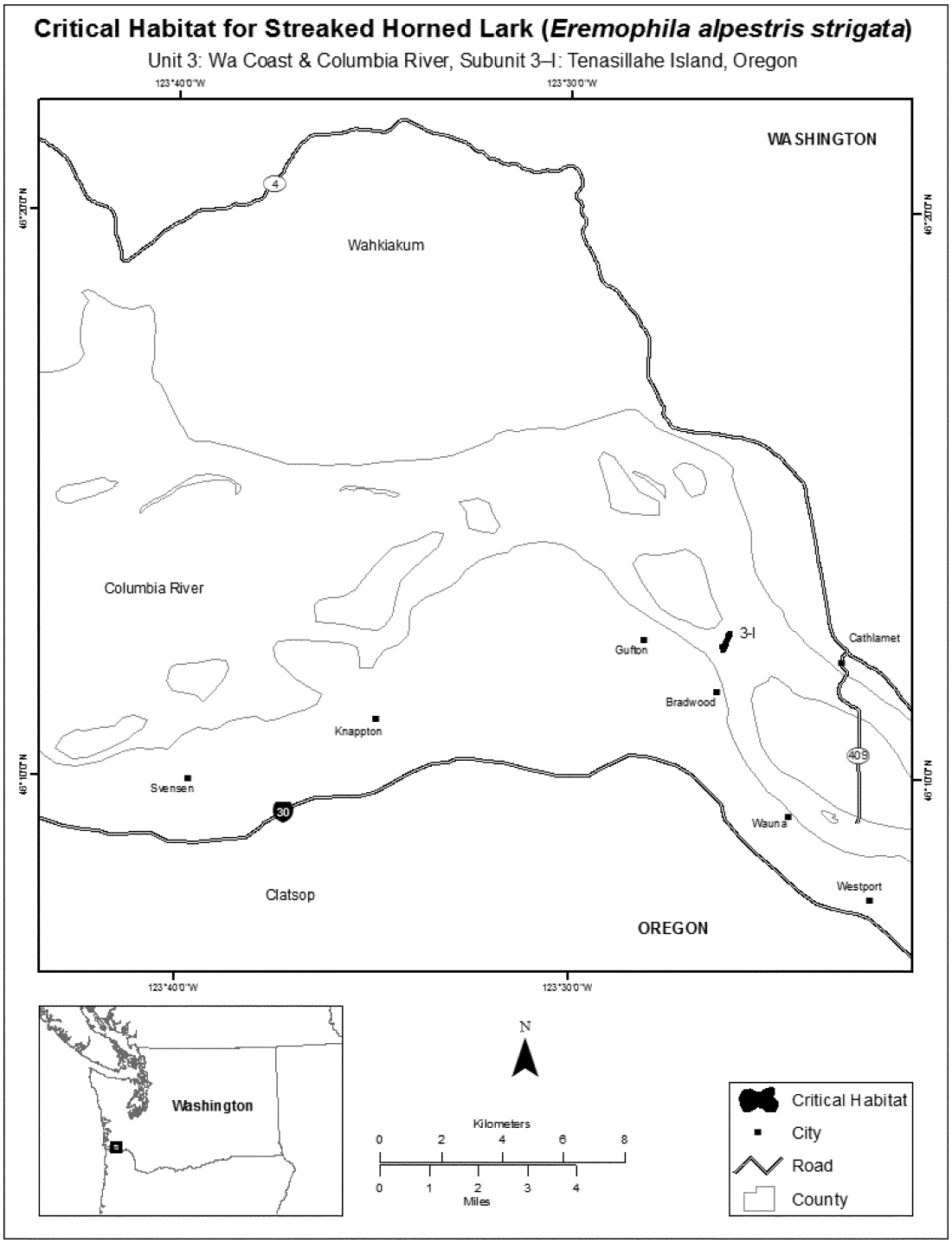
(vii) Subunit 3–G: Pillar Rock/Jim Crow Sands, Oregon. Map of Subunit 3–G follows:



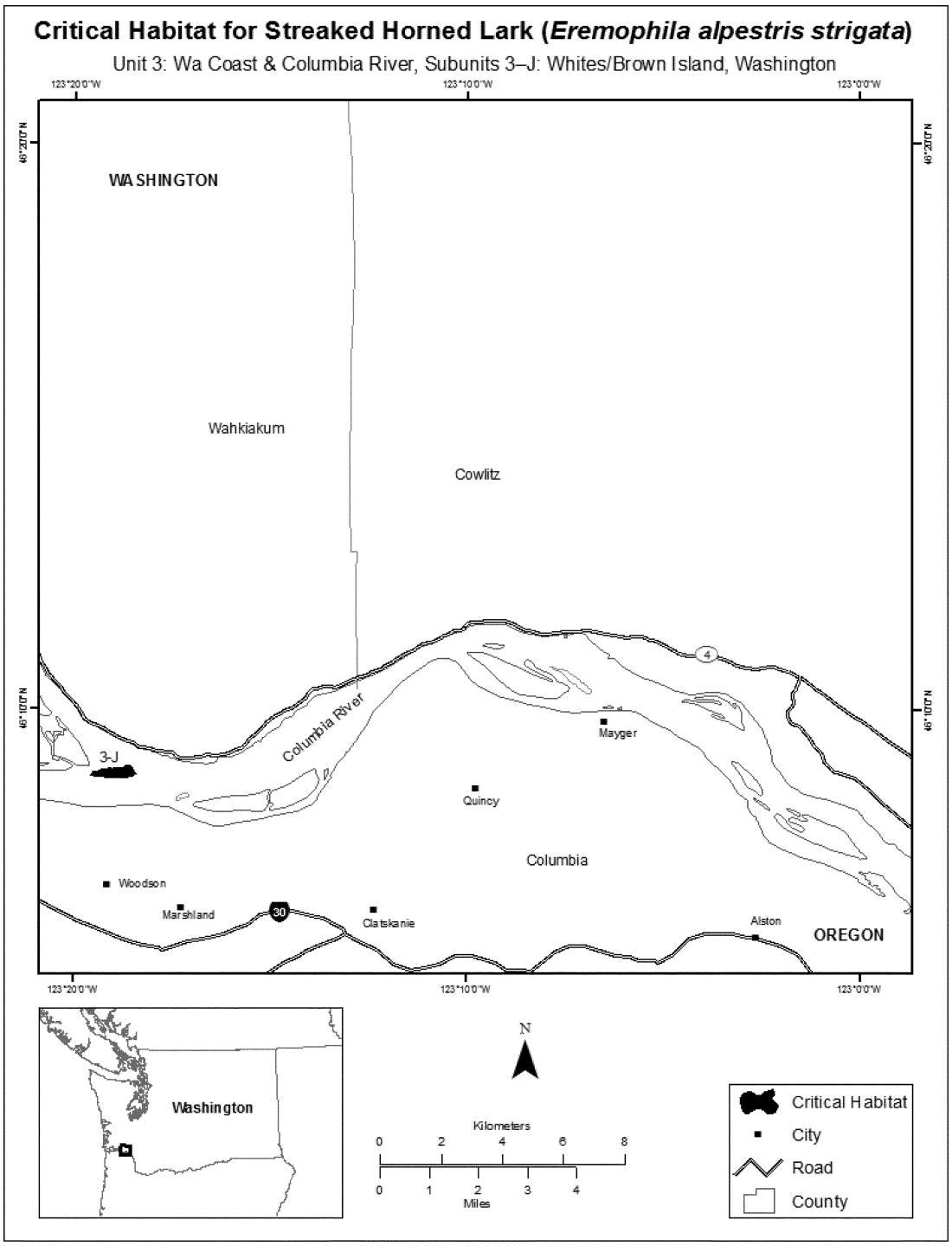
(viii) Subunit 3–H: Welch Island, Oregon. Map of Subunit 3–H follows:



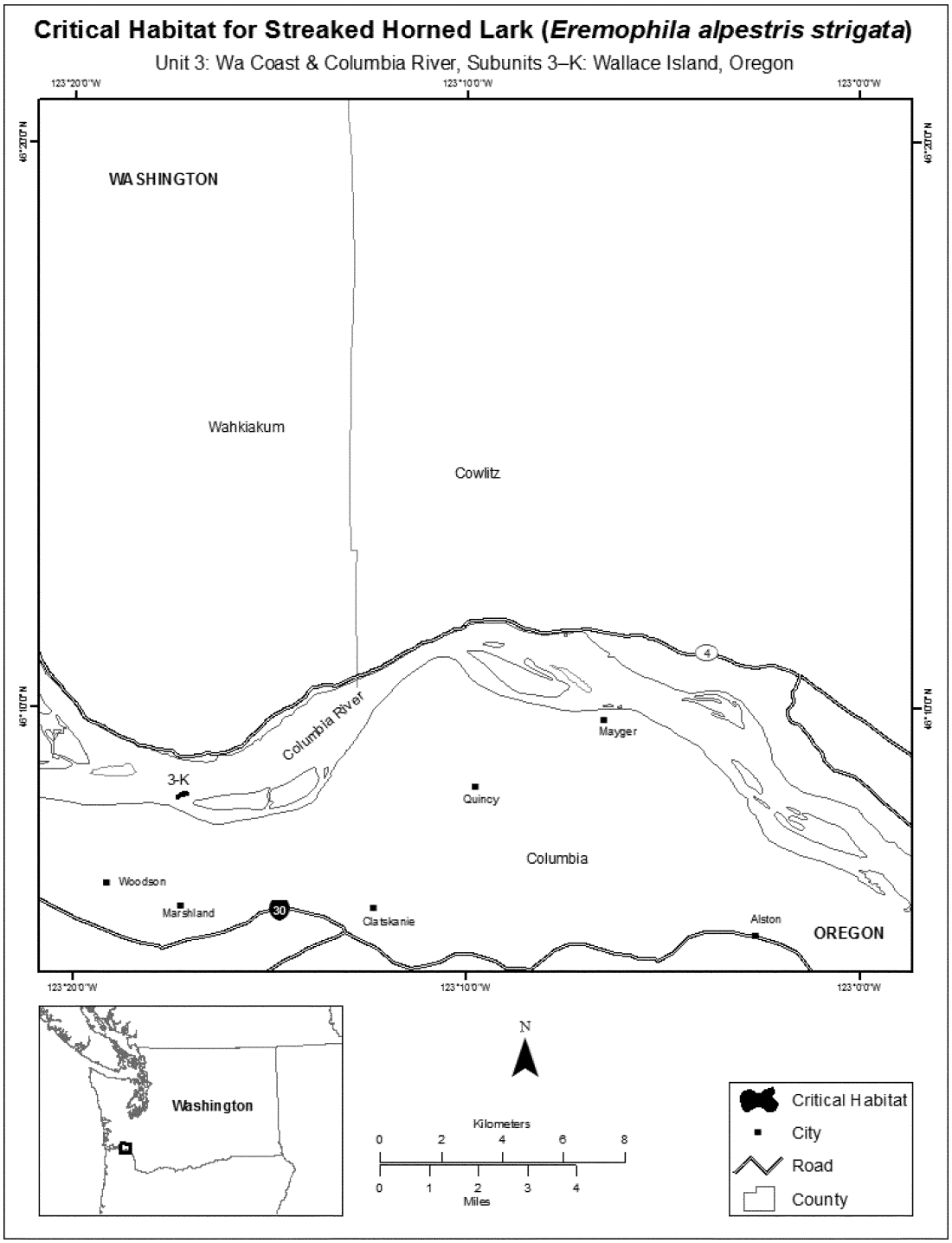
(ix) Subunit 3–I: Tenasillahe Island, Oregon. Map of Subunit 3–I follows:



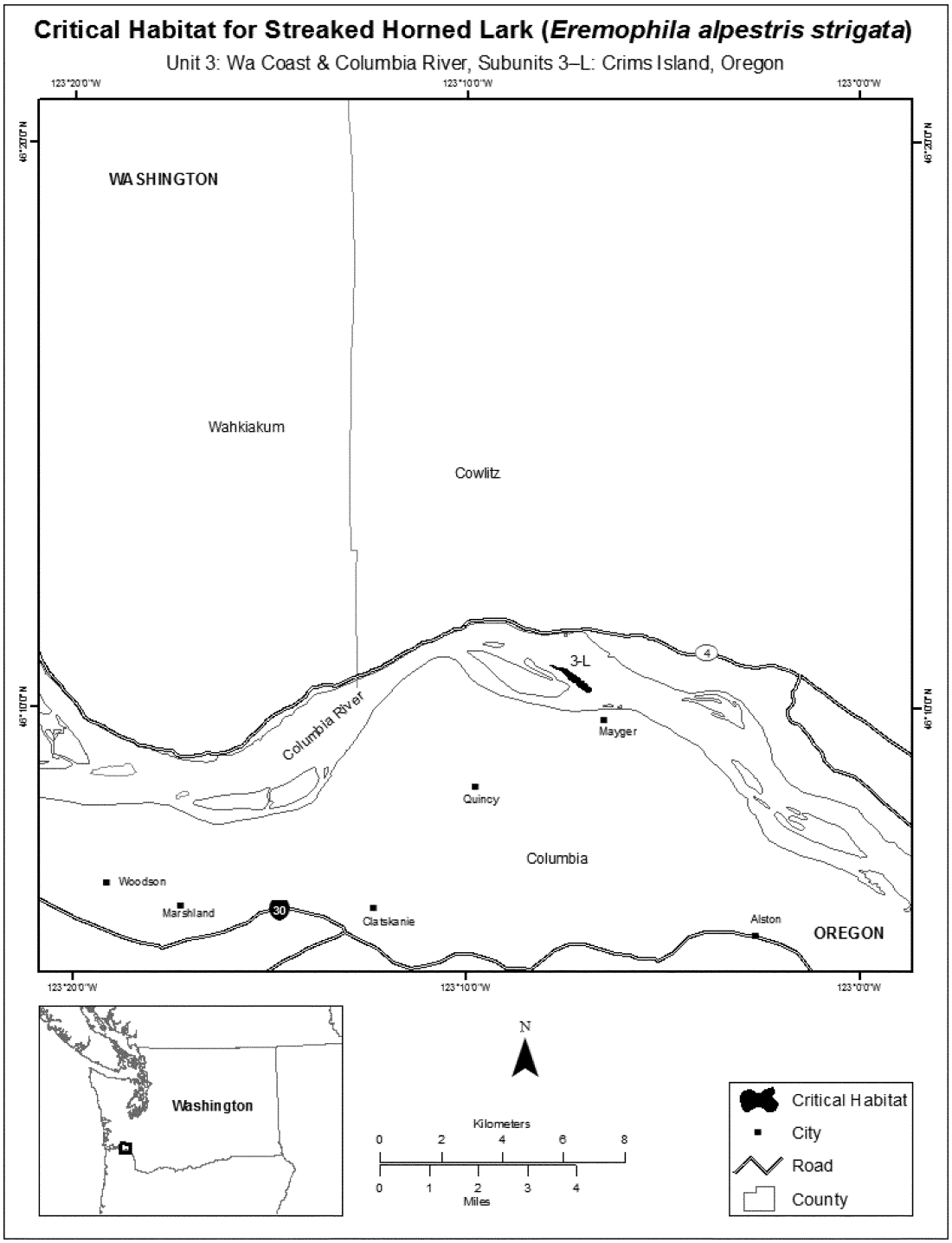
(x) Subunit 3–J: Whites/Brown Island, Washington. Map of Subunit 3–J follows:



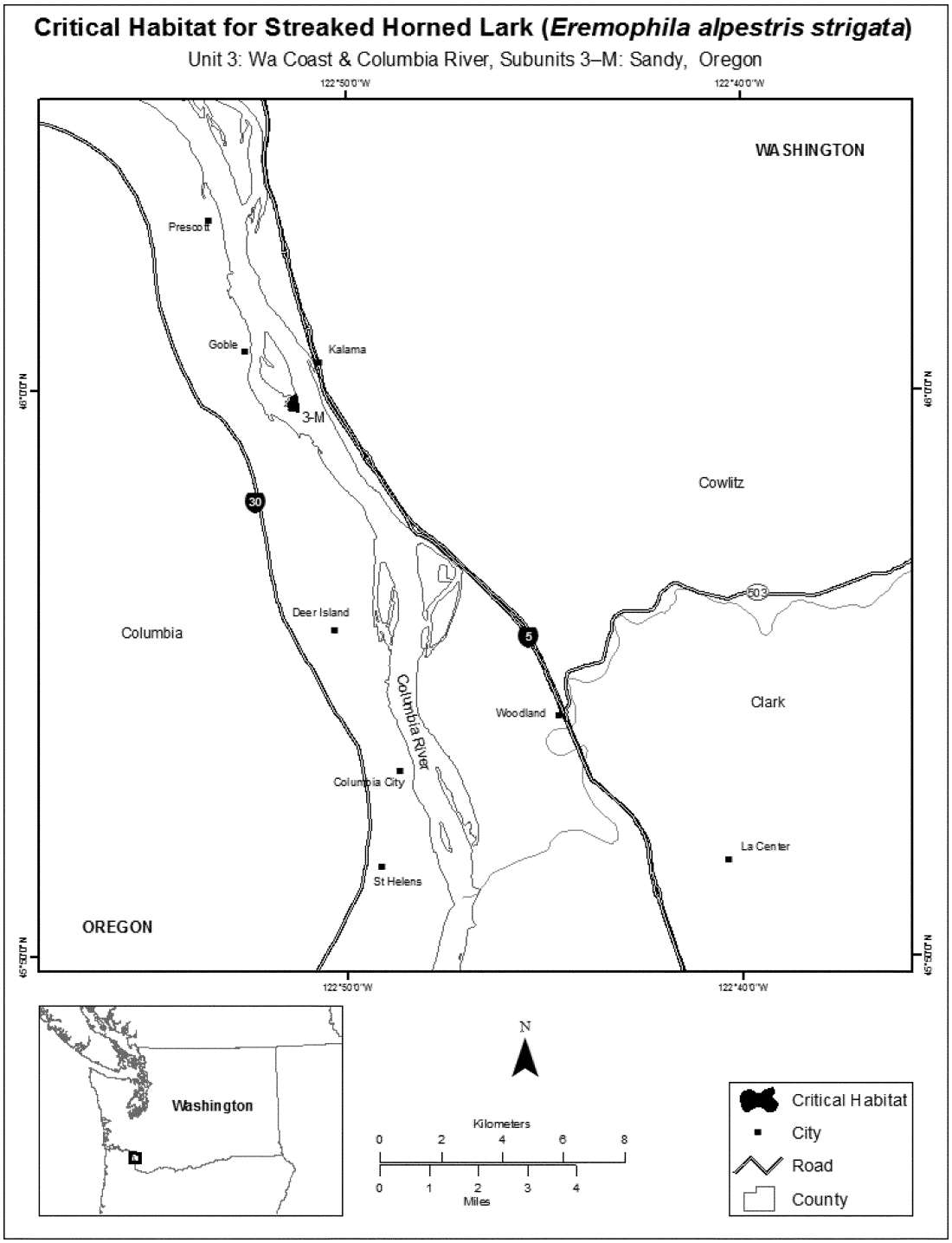
(xi) Subunit 3–K: Wallace Island, Oregon. Map of Subunit 3–K follows:



(xii) Subunit 3–L: Crims Island, Oregon. Map of Subunit 3–L follows:

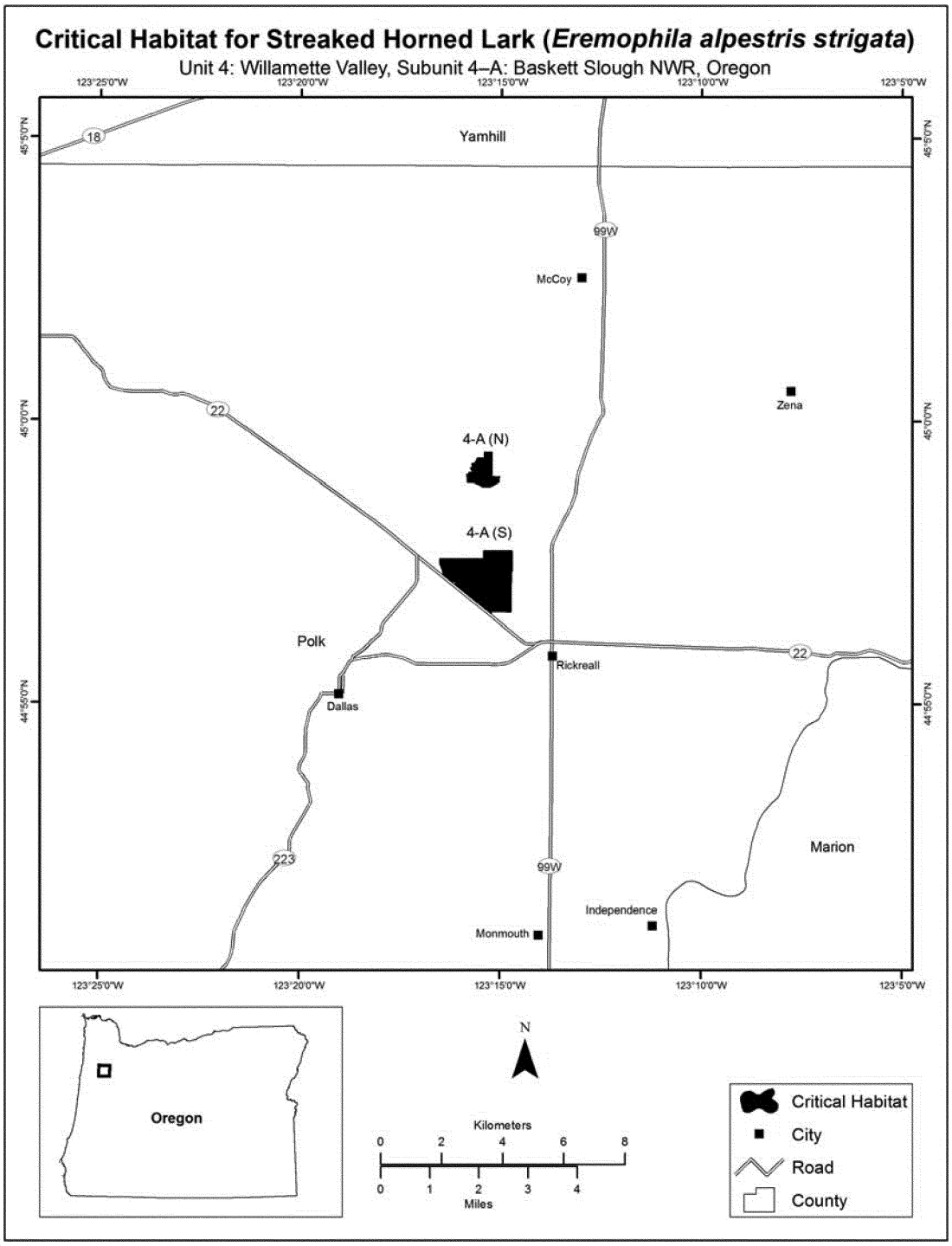


(xiii) Subunit 3–M: Sandy Island, Oregon. Map of Subunit 3–M follows:

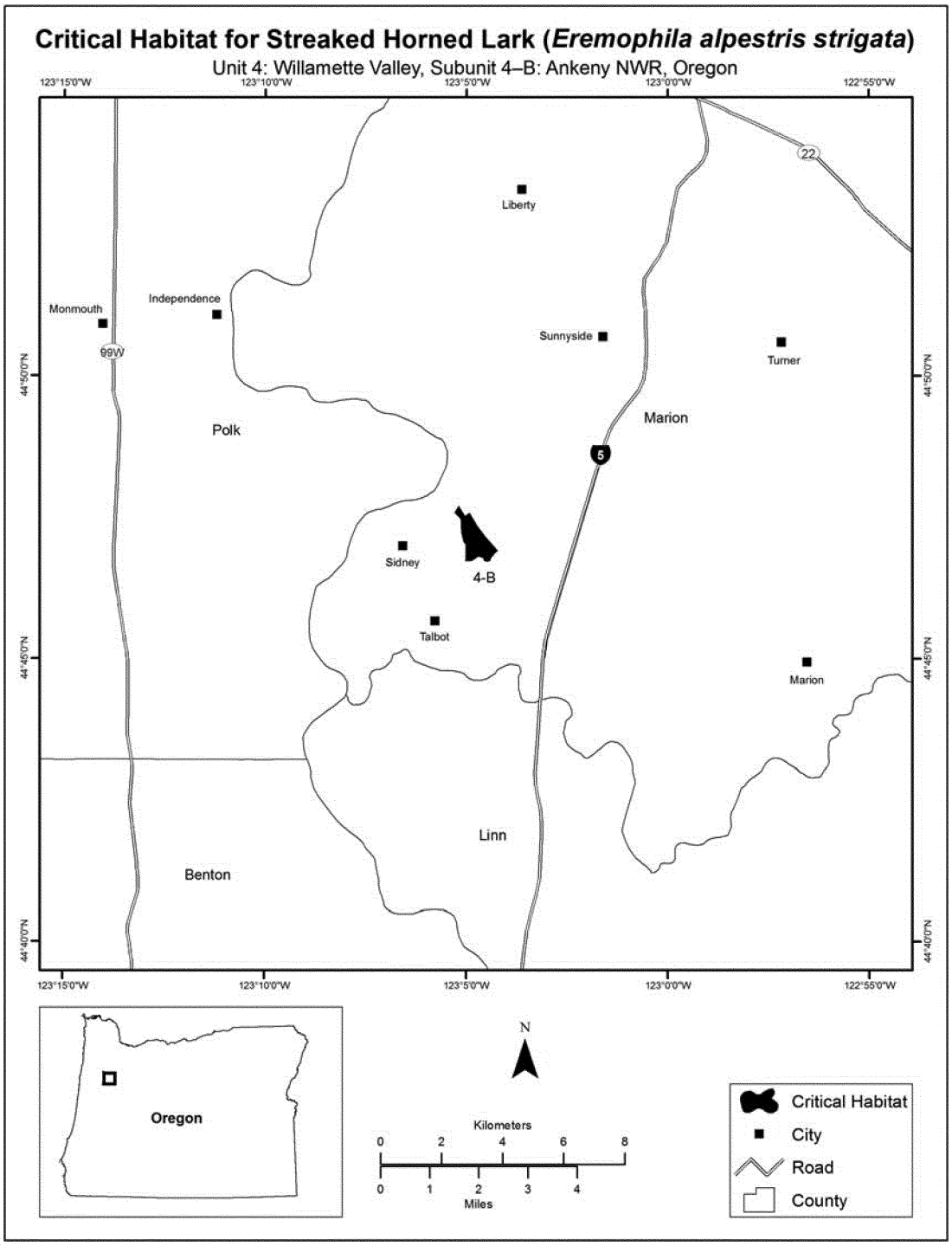


(7) Unit 4—Willamette Valley, Oregon.

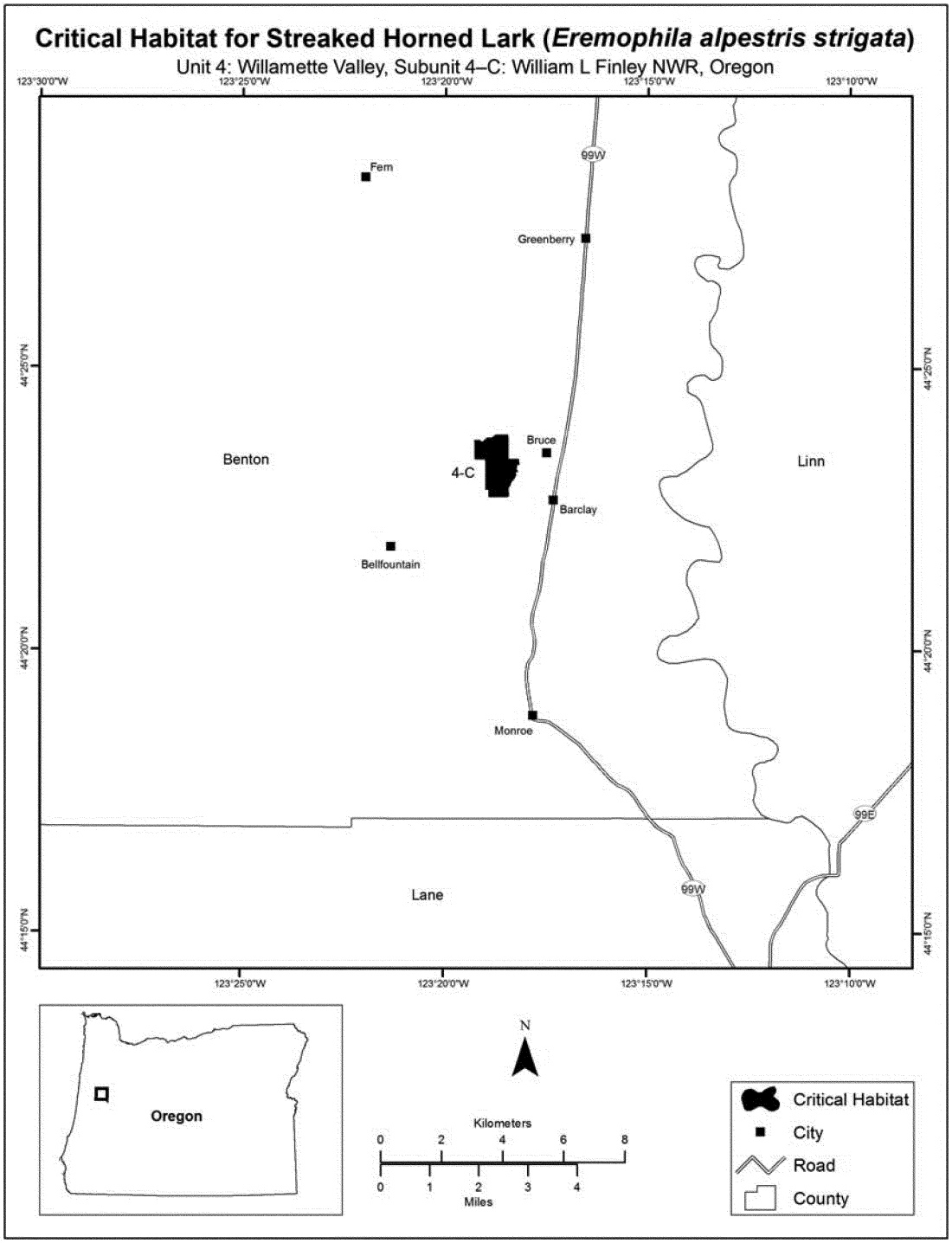
(i) Subunit 4–A: Baskett Slough NWR, Oregon. Map of Subunit 4–A follows:



(ii) Subunit 4–B: Ankeny NWR, Oregon. Map of Subunit 4–B follows:



(iii) Subunit 4–C: William L. Finley NWR, Oregon. Map of Subunit 4–C follows:



* * * * *

(i) *Insects.*

* * * * *

Taylor's Checkerspot Butterfly (*Euphydryas editha taylori*)

(1) Critical habitat units are depicted for Island, Clallam, and Thurston Counties in Washington, and in Benton County in Oregon, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the Taylor's checkerspot butterfly consist of four components:

(i) Patches of early seral, short-statured, perennial bunchgrass plant

communities composed of native grass and forb species in a diverse topographic landscape ranging in size from less than 1 ac up to 100 ac (0.4 to 40 ha) with little or no overstory forest vegetation that have areas of bare soil for basking that contain:

(A) In Washington and Oregon, common bunchgrass species found on northwest grasslands include *Festuca roemeri* (Roemer's fescue), *Danthonia californica* (California oat grass), *Koeleria cristata* (prairie Junegrass), *Elymus glaucus* (blue wild rye), *Agrostis scabra* (rough bentgrass), and on cooler, high-elevation sites typical of coastal bluffs and balds, *Festuca rubra* (red fescue).

(B) On moist grasslands found near the coast and in the Willamette Valley, there may be *Bromus sitchensis* (Sitka brome) and *Deschampsia cespitosa* (tufted hairgrass) in the mix of prairie grasses. Less abundant forbs found on the grasslands include, but are not limited to, *Trifolium* spp. (true clovers), narrow-leaved plantain (*Plantago lanceolata*), harsh paintbrush (*Castilleja hispida*), Puget balsamroot (*Balsamorhiza deltoidea*), woolly sunshine (*Eriophyllum lanatum*), nine-leaved desert parsley (*Lomatium triternatum*), fine-leaved desert parsley (*Lomatium utriculatum*), common camas (*Camassia quamash),* showy fleabane (*Erigeron speciosus*), Canada thistle (*Cirsium arvense*), common yarrow (*Achillea millefolium*), prairie lupine (*Lupinus lepidus*), and sickle-keeled lupine (*Lupinus albicaulis*).

(ii) Primary larval host plants (narrow-leaved plantain and harsh paintbrush) and at least one of the secondary annual larval host plants (blue-eyed Mary (*Collinsia parviflora*), sea blush (*Plectritis congesta),* or dwarf owl-clover (*Triphysaria pusilla*) or one of several species of speedwell (marsh speedwell (*Veronica scutella*), American speedwell (*V. beccabunga* var. *americana*), or thymeleaf speedwell (*V. serpyllifolia*).

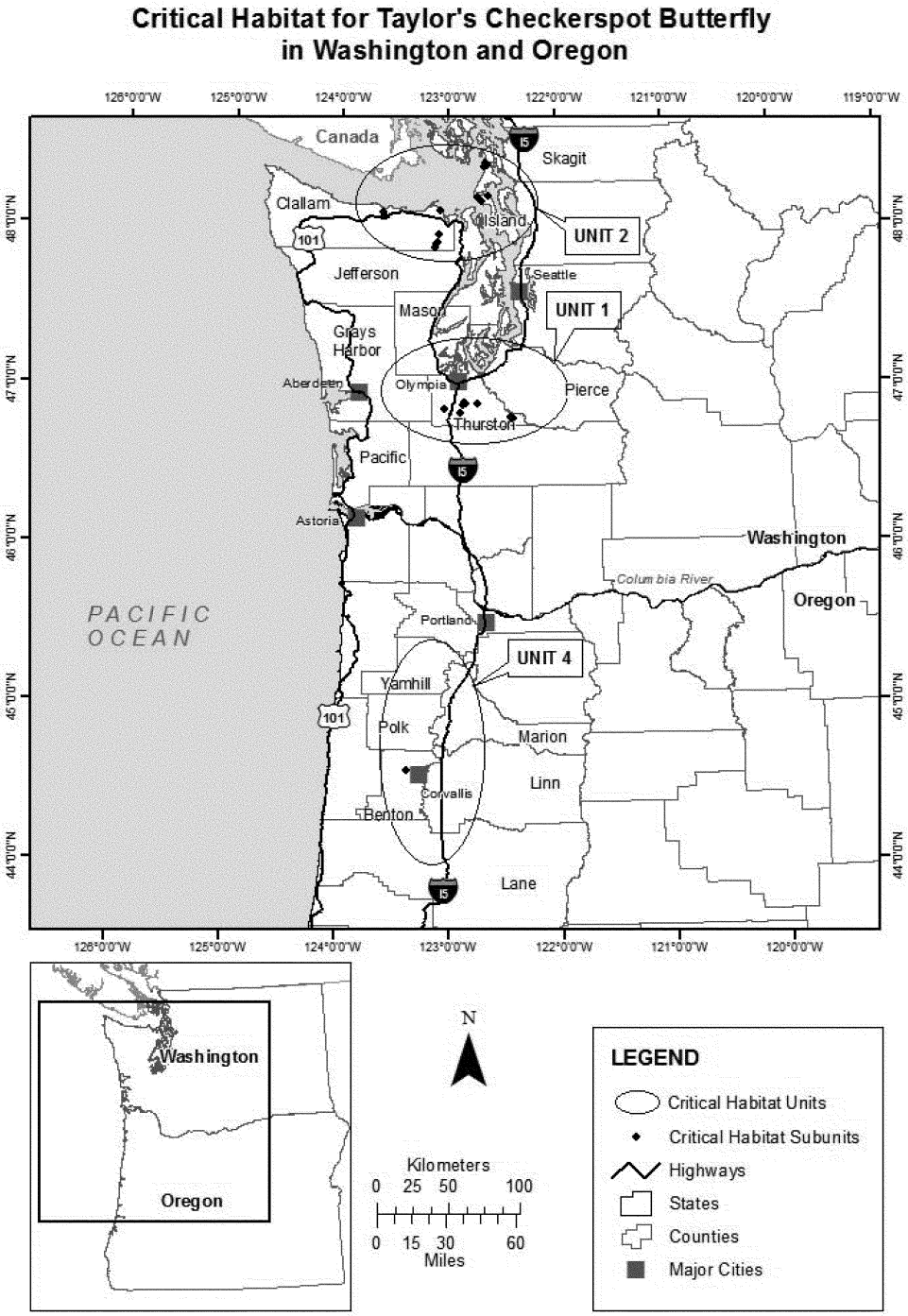
(iii) Adult nectar sources for feeding that include several species found as part of the native (and one nonnative) species mix on northwest grasslands, including: narrow-leaved plantain; harsh paintbrush; Puget balsam root; woolly sunshine; nine-leaved desert parsley; fine-leaved desert parsley or spring gold; common camas; showy fleabane; Canada thistle; common yarrow; prairie lupine; sickle-keeled lupine; and wild strawberry (*Fragaria virginiana*).

(iv) Aquatic features such as wetlands, springs, seeps, streams, ponds, lakes, and puddles that provide moisture during periods of drought, particularly late in the spring and early summer. These features can be permanent, seasonal, or ephemeral.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, railroad tracks, and other paved areas) and the land on which they are located existing within the legal boundaries on November 4, 2013.

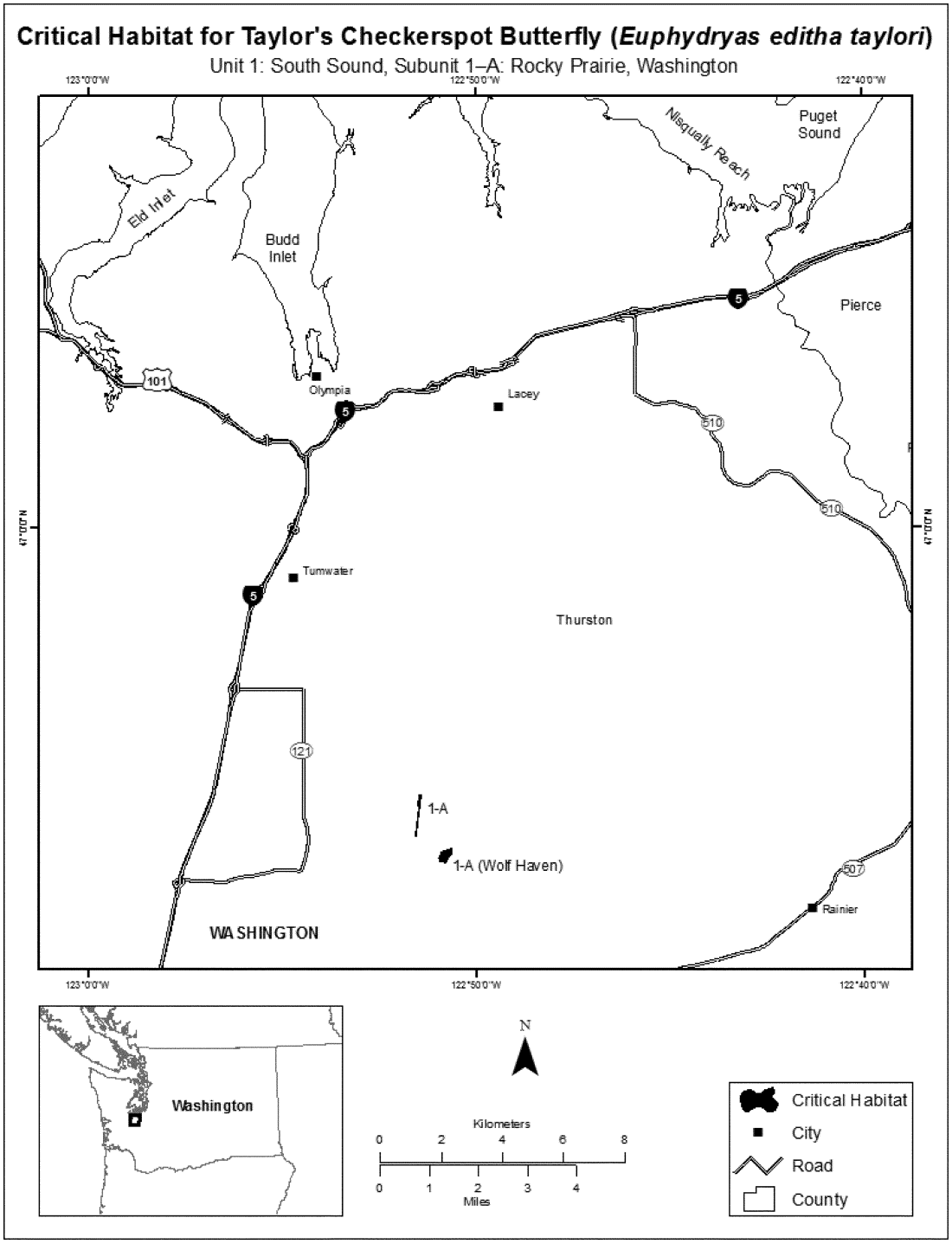
(4) *Critical habitat map units.* Data layers defining the map unit were created on 2010 aerial photography from U.S. Department of Agriculture, National Agriculture Imagery Program base maps using ArcMap (Environmental Systems Research Institute, Inc.), a computer geographic information system (GIS) program. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's Internet site (*http://www.fws.gov/wafwo/*), at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2013–0009), and by appointment at the Service's Washington Fish and Wildlife Office. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map of critical habitat units for the Taylor's checkerspot butterfly follows:

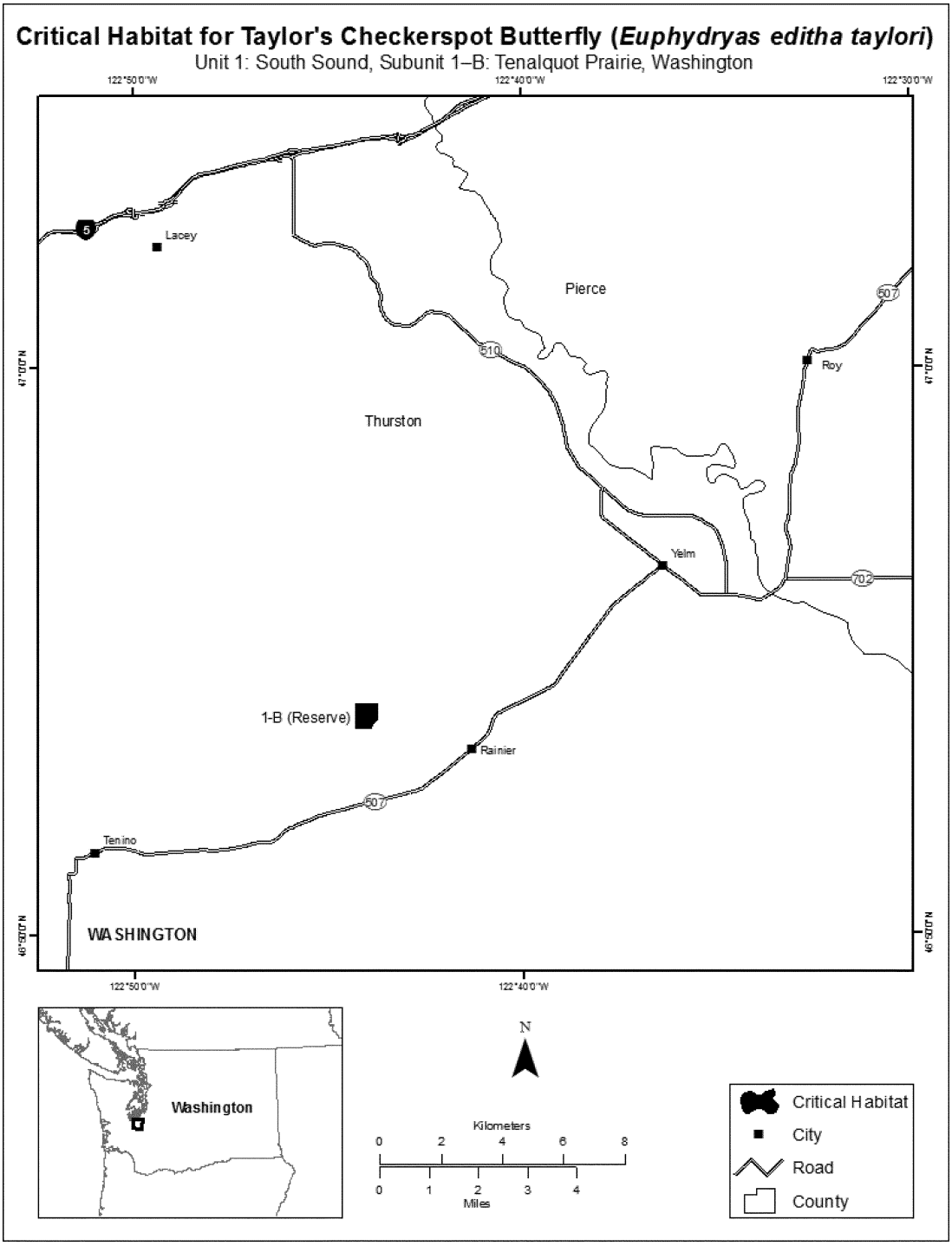


(6) Unit 1: South Sound, Washington.

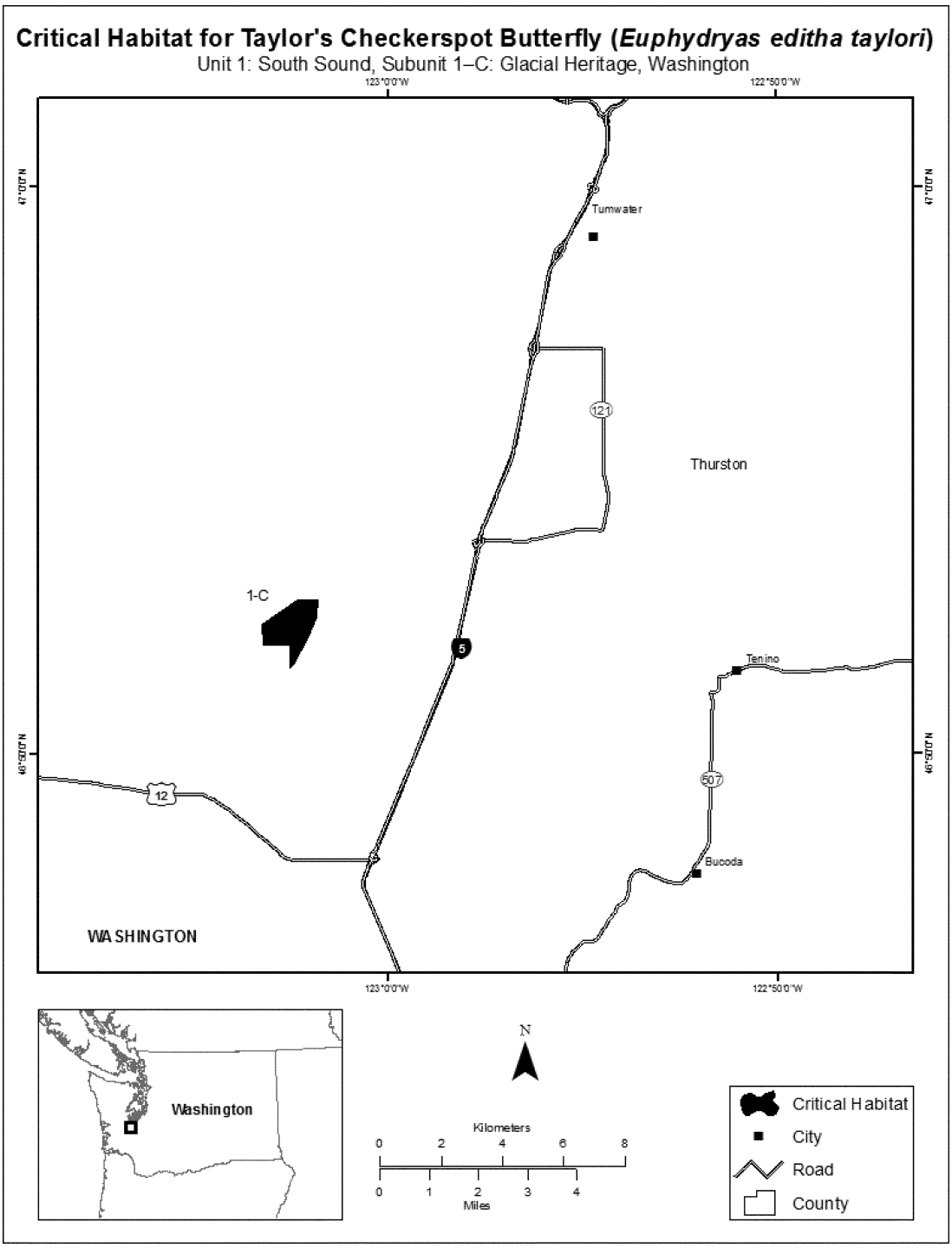
(i) Subunit 1–A: Rocky Prairie, Washington. Map of Subunit 1–A follows:



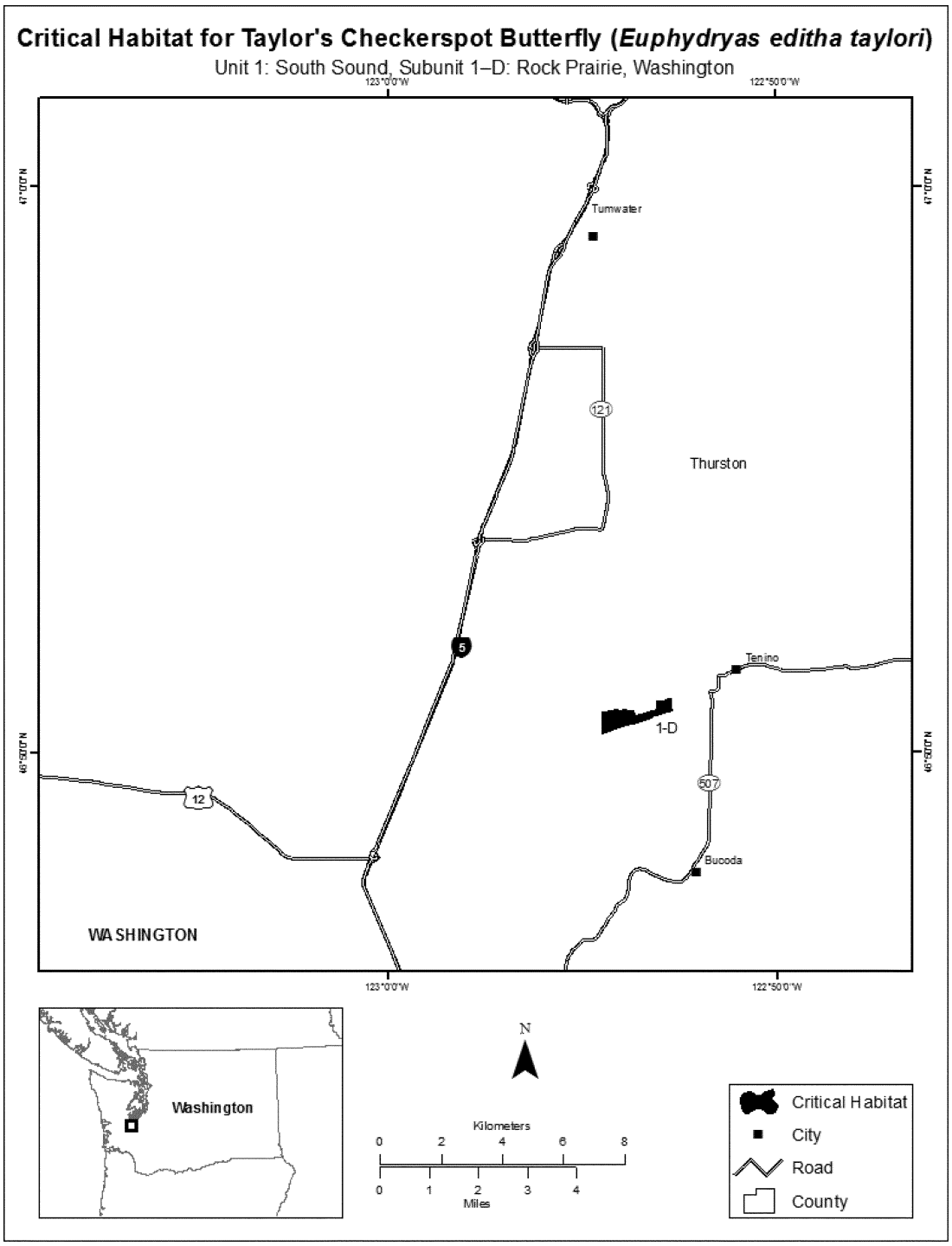
(ii) Subunit 1–B: Tenalquot Prairie, Washington. Map of Subunit 1–B follows:



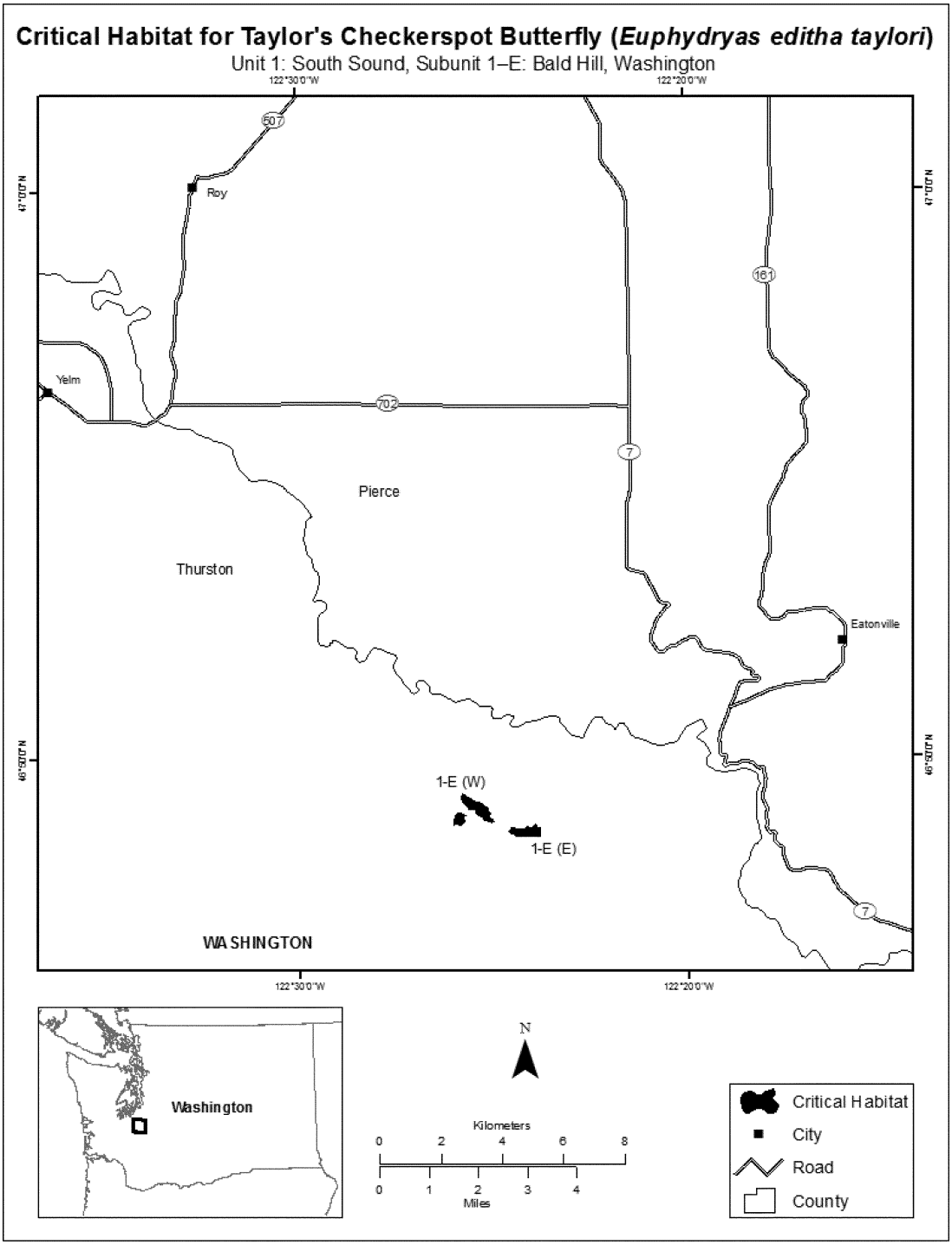
(iii) Subunit 1–C: Glacial Heritage, Washington. Map of Subunit 1–C follows:



(iv) Subunit 1–D: Rock Prairie, Washington. Map of Subunit 1–D follows:

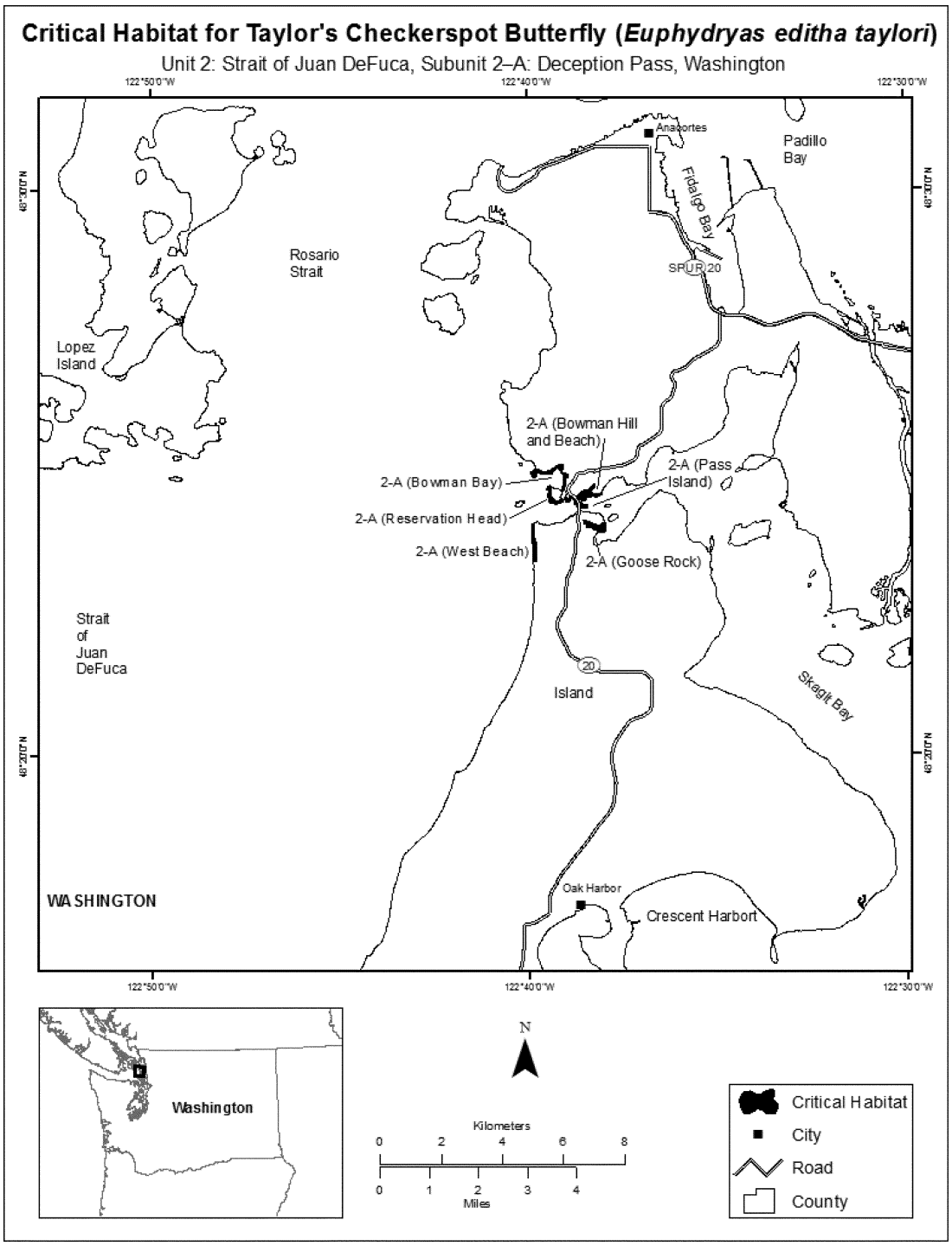


(v) Subunit 1–E: Bald Hill, Washington. Map of Subunit 1–E follows:

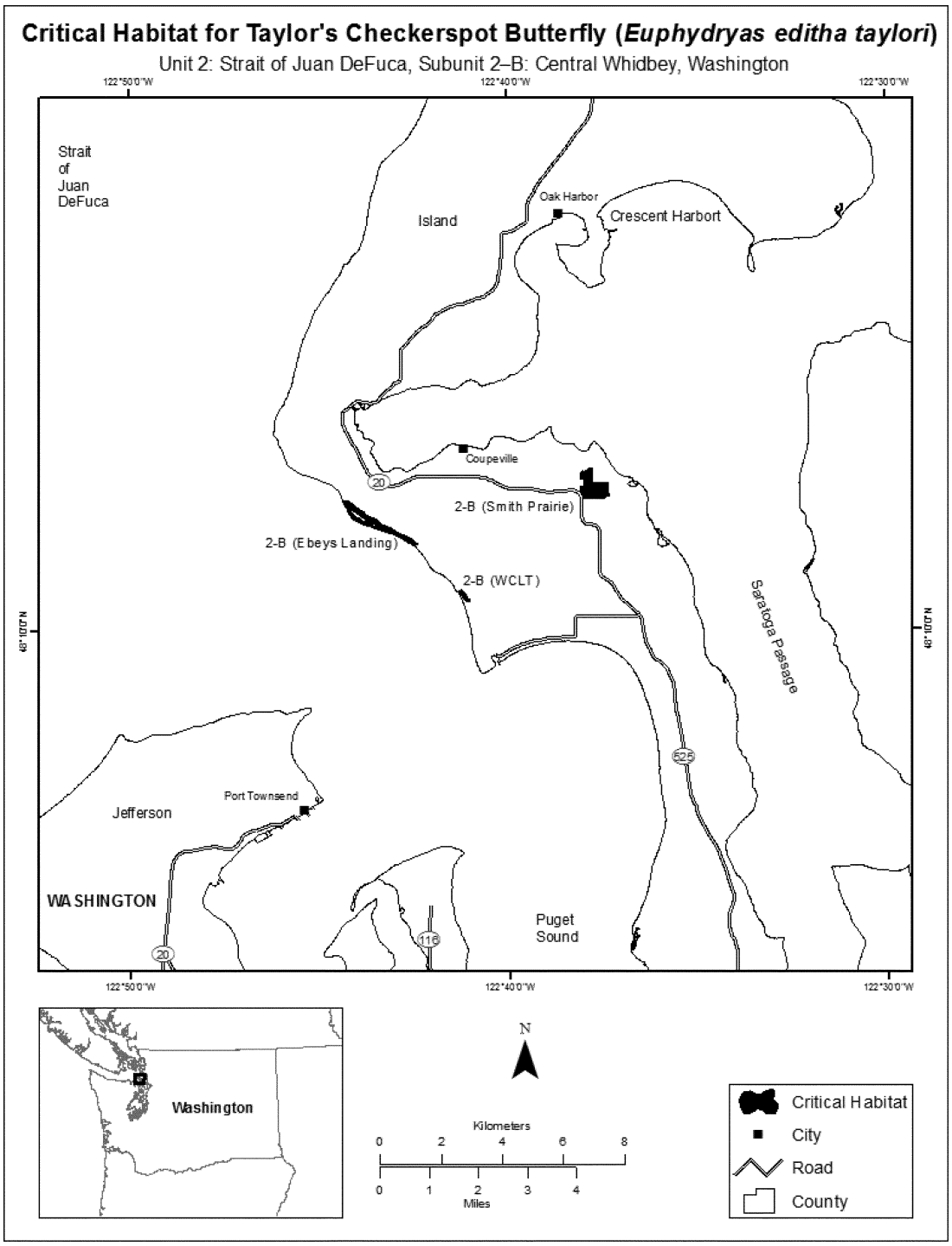


(7) Unit 2: Strait of Juan de Fuca, Washington.

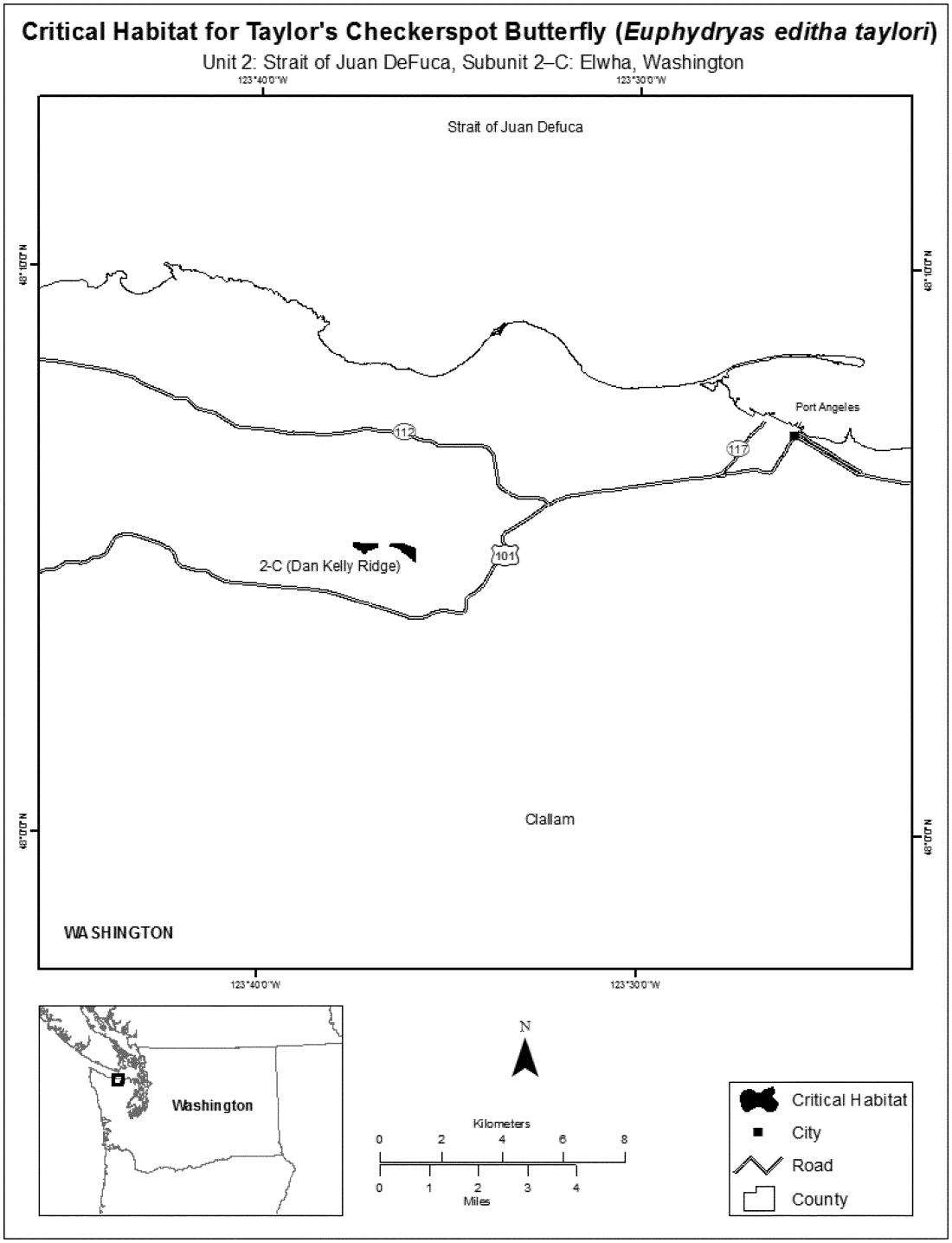
(i) Subunit 2–A: Deception Pass, Washington. Map of Subunit 2–A follows:



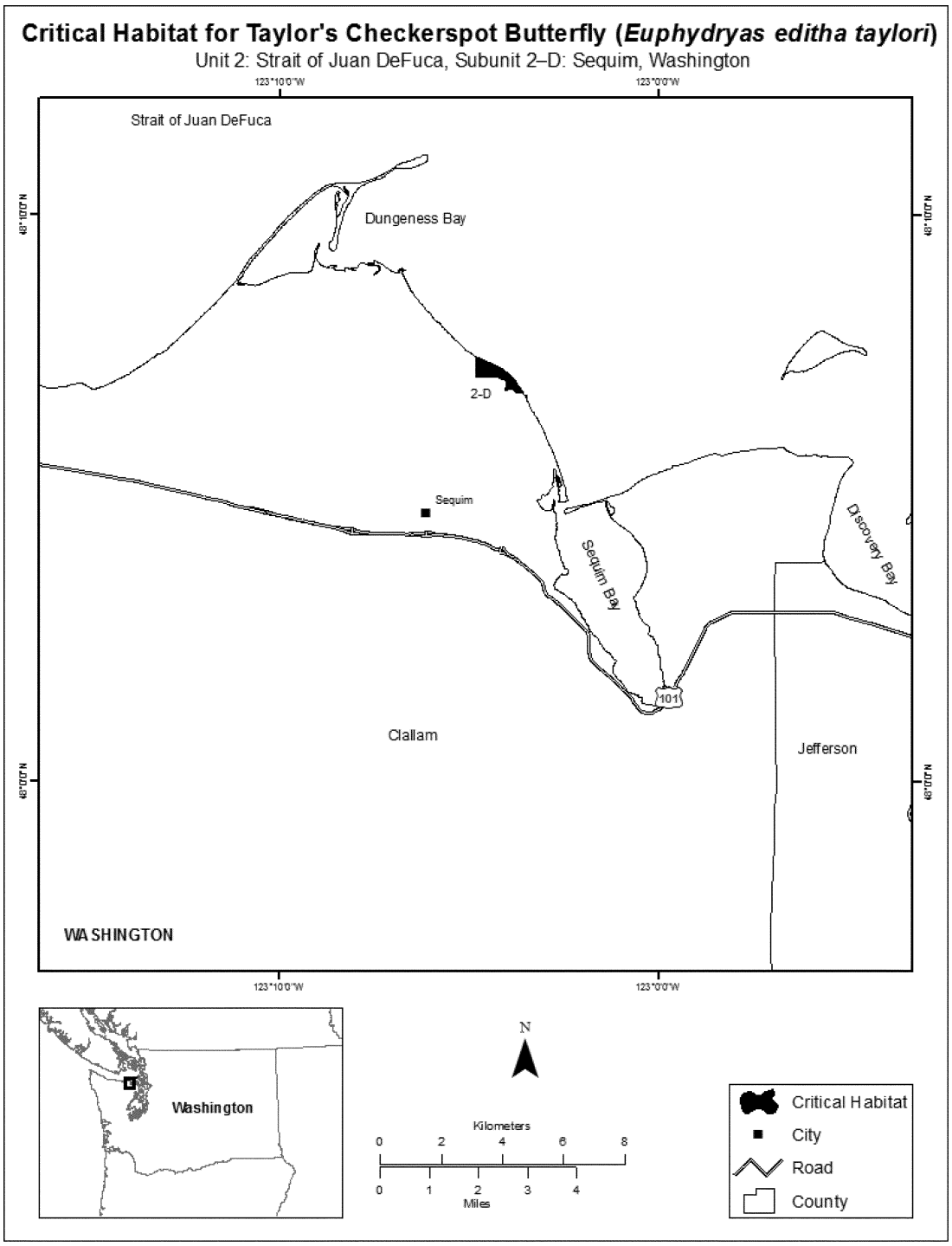
(ii) Subunit 2–B: Central Whidbey, Washington. Map of Subunit 2–B follows:



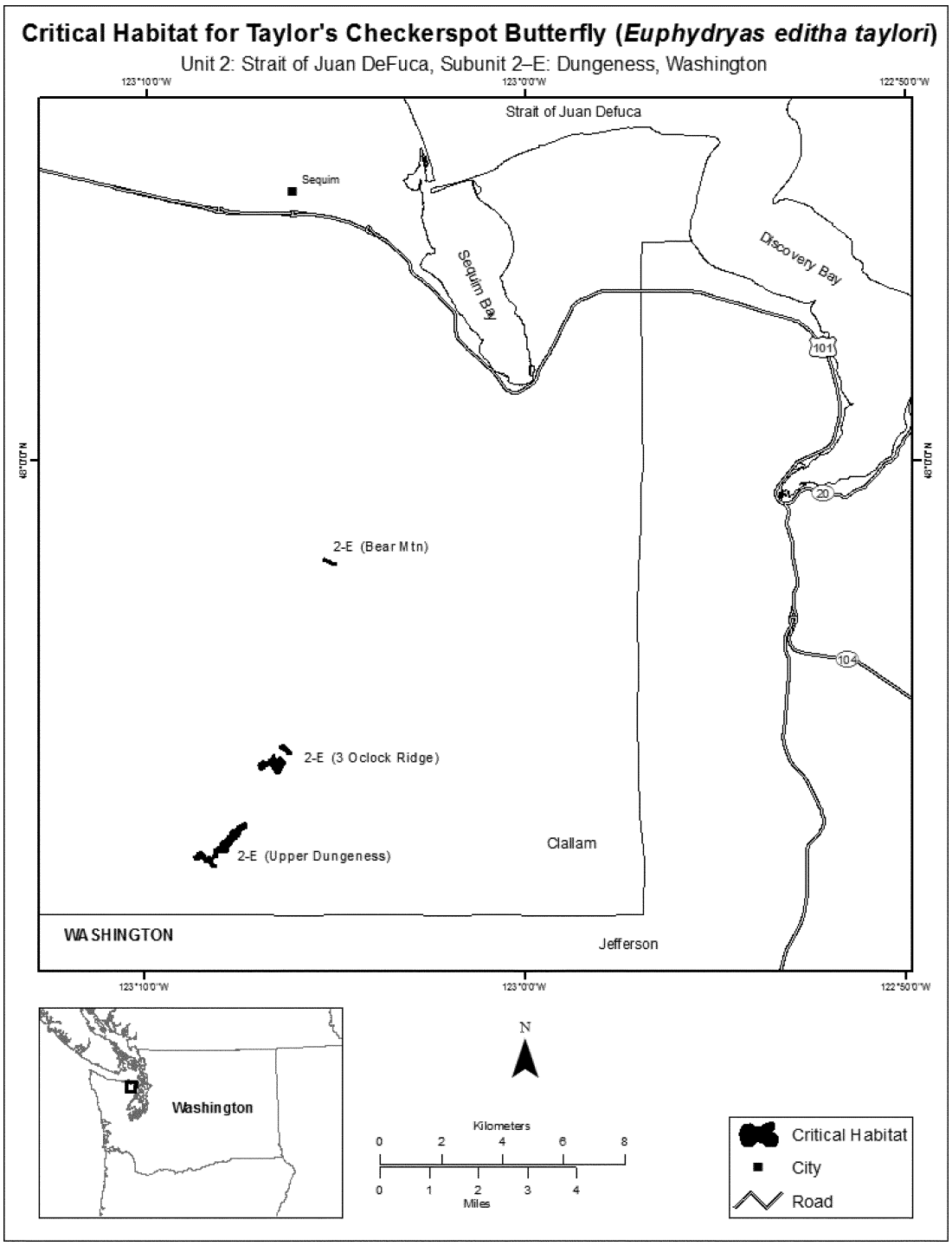
(iii) Subunit 2–C: Elwha, Washington.
Map of Subunit 2–C follows:



(iv) Subunit 2–D: Sequim, Washington. Map of Subunit 2–D follows:



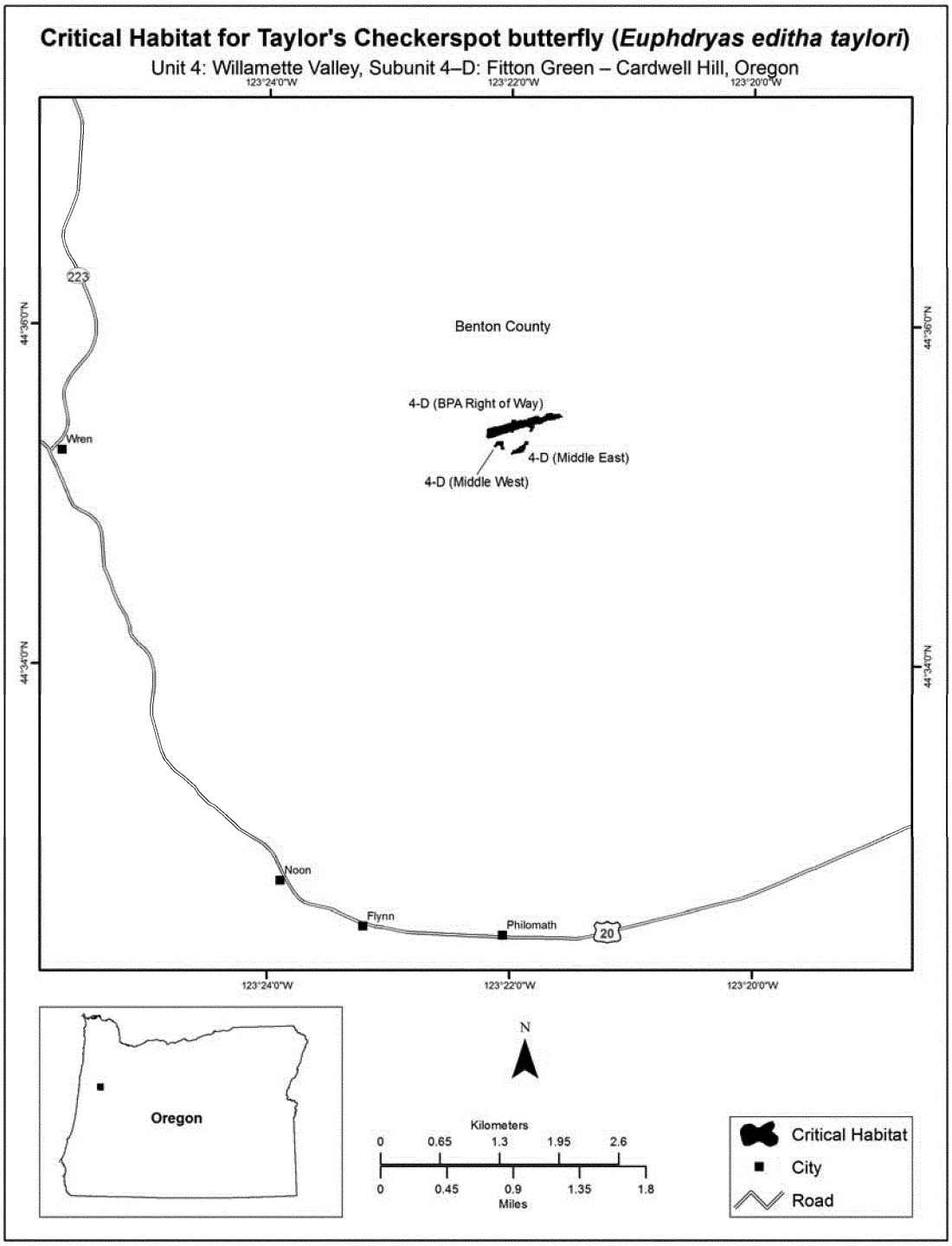
(v) Subunit 2–E: Dungeness, Washington. Map of Subunit 2–E follows:



(8) Unit 4: Willamette Valley, Oregon.

(i) Subunit 4–D: Fitton Green–Cardwell Hill, Oregon.

(ii) Map of Subunit 4–D follows:



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Dated: September 19, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–23552 Filed 10–2–13; 8:45 am]

BILLING CODE 4310–55–C