exclusion of an area from critical habitat will result in extinction, it will not be excluded from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments we received, we evaluated whether certain lands in the proposed critical habitat were appropriate for exclusion from this final designation. 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 his discretion to exclude, we believe that:

(1) Their value for conservation will be preserved for the foreseeable 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.

A total of 3,094.9 km (1,923.1 mi) of streams and marine shoreline (8.5 percent of the area proposed as critical habitat) and 7,849.3 ha (19,395.8 ac) of reservoirs and lakes (3.6 percent of the area proposed as critical habitat) have been excluded from designation as critical habitat. Of the total length of stream habitat excluded, 348 km (216.3 mi) is marine shoreline. Tables 8 and 9 reflect the total stream shoreline and reservoir and lake surface areas excluded in each State, and Tables 10 and 11 presents the ownership or other plan information for these areas. Maps showing excluded habitats are available upon request by contacting the Idaho Fish and Wildlife Office; see the **ADDRESSES** section.

TABLE 6.—STREAM/SHORELINE DISTANCE EXCLUDED FROM BULL TROUT CRITICAL HABITAT BY CRITICAL HABITAT UNIT

Critical habitat unit	Kilometers	Miles
1. Olympic Peninsula	553.5	343.9
1. Olympic Peninsula (Marine)	144.6	89.9
2. Puget Sound	876.9	544.9
2. Puget Sound (Marine)	203.4	126.4
3. Lower Columbia River Basins	155.6	96.7
6. Lower Deschutes River	230.4	143.2
8. Mainstem Lower Columbia River	1.7	1.1
10. Upper Columbia River Basins	119.7	74.4
11. Yakima River	288.7	179.4
12. John Day River	28.5	17.7
13. Umatilla River	48.7	30.3
14. Walla Walla River Basin	69.0	42.9
15. Lower Snake River Basins	13.4	8.3
16. Grande Ronde River	1.0	0.6
22. Mainstem Upper Columbia River	2.5	1.6
30. Kootenai River Basin	66.2	41.1
31. Clark Fork River Basin	209.0	129.9
32. Saint Mary River Basin	82.1	51.0
Total	3,094.9	1,923.1

TABLE 7.—AREA OF RESERVOIRS OR LAKES EXCLUDED FROM BULL TROUT CRITICAL HABITAT BY CRITICAL HABITAT UNIT

Critical habitat unit	Hectares	Acres
2. Puget Sound	1,629.5	4,026.6
3. Lower Columbia River Basins	4,856.1	11,999.7
6. Lower Deschutes River	445.3	1,100.4
31. Clark Fork River Basin	32.2	79.7
32. Saint Mary River Basin	886.1	2,189.5
Total	7,849.3	19,395.8

TABLE 8.—STREAM/SHORELINE DISTANCE EXCLUDED FROM BULL TROUT CRITICAL HABITAT BY STATE

State	Kilometers	Miles
Montana	271.4	168.6
Oregon	307.6	191.1
Washington	2,163.7	1,344.5
Washington Marine	348.0	216.2
Washington/Oregon	4.2	2.6
Total	3,094.9	1,923.1

TABLE 9.—AREA OF RESERVOIRS OR LAKES EXCLUDED FROM BULL TROUT CRITICAL HABITAT BY STATE

State	Hectares	Acres
Montana	918.3	2,269.2
Oregon	445.3	1,100.4
Washington	6,485.6	16,026.3
Total	7,849.3	19,395.8

TABLE 10.—STREAM/SHORELINE DISTANCE EXCLUDED FROM BULL TROUT CRITICAL HABITAT BASED ON TRIBAL OWNERSHIP OR OTHER PLAN

Ownership	Kilometers	Miles
Lewis River Hydro Conservation Easements.	7.0	4.3
DOD – Dabob Bay Naval	23.9	14.8
HCP – Cedar River (City of Seattle)	25.8	16.0
HCP – WA Forest Practices Lands	1,608.3	999.4
HCP – Green Diamond (Simpson)	104.2	64.7
HCP – Plum Creek Central Cascades (WA)	15.8	9.8
HCP – Plum Creek Native Fish (MT)	181.6	112.8
HCP–Stimson	7.7	4.8
HCP – WDNR Lands	230.9	149.5
Tribal – Blackfeet	82.1	51.0
Tribal – Hoh	4.0	2.5
Tribal – Jamestown S'Klallam	2.0	1.2
Tribal – Lower Elwha	4.6	2.8
Tribal – Lummi	56.7	35.3
Tribal – Muckleshoot	9.3	5.8
Tribal – Nooksack	8.3	5.1
Tribal – Puyallup	33.0	20.5
Tribal – Quileute	4.0	2.5
Tribal – Quinault	153.7	95.5
Tribal – Skokomish	26.2	16.3
Tribal – Stillaguamish	1.8	1.1
Tribal – Swinomish	45.2	28.1
Tribal – Tulalip	27.8	17.3
Tribal – Umatilla	62.6	38.9
Tribal – Warm Springs	260.5	161.9
Tribal – Yakama	107.9	67.1
Total	3,094.9	1,923.1

TABLE 11.—AREA OF RESERVOIRS OR LAKES EXCLUDED FROM BULL TROUT CRITICAL HABITAT BY TRIBAL OWNERSHIP OR OTHER PLAN

Ownership	Hectares	Acres
HCP – Cedar River (City of Seattle)	796.5	1,968.2
HCP – WA Forest Practices Lands	5,689.1	14,058.1
HCP – Plum Creek Native Fish	32.2	79.7
Tribal – Blackfeet	886.1	2,189.5
Tribal – Warm Springs	445.3	1,100.4
Total	7,849.3	19,395.8

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. The Navy conducts essential open water training and testing within the marine waters of Hood Canal fiord within: (1) the Dabob Bay Range Complex (DBRC) (which includes (a) the Dabob Bay Military Operating Area, (b) DBRC Connecting Waters, and (c) DBRC Southern Extension), and (2) the marine waters of the Washington Coast within the Quinault Underwater Tracking Range (QUTR) and its proposed surf zone corridors. These areas encompass important marine nearshore habitat used by amphidromous bull trout for foraging and migration.

The DBRC and QUTR are part of the Navy's larger Keyport Range Complex (NUWC), and are primarily used for providing test and evaluation services critical to undersea warfare. NUWC Keyport testing and training activities to support military readiness requires precision underwater tracking capabilities, underwater range sites offering diverse environments, and varied water depths to meet the Navy's mission of test and evaluation of underwater systems. Because these activities are conducted in open marine waters rather than on DOD installations, they are not included in the Navy's INRMP, and thus may not be exempted from critical habitat designation. The Navy has requested exclusion from critical habitat designation of these areas in the current revision of critical habitat for the bull trout. Previously, portions of these ranges have been designated as critical habitat for the bull trout and other species, by both NOAA Fisheries and the Service. Biological assessments evaluating the operational effects on endangered species have been reviewed and approved by NOAA Fisheries and the Service. These biological assessments, and associated environmental assessments, addressed bull trout and their interactions with military range operations.

Of particular concern to the Service are the proposed surf zone access corridors in the DBRC and QUTR, which lead to the open water parts of these testing ranges, and which are areas that we proposed as critical habitat for bull trout. Accordingly, the proposed surf zone corridors were the focus of our section 4(b)(2) analysis in the DBRC Southern Extension and QUTR. The analysis for these surf zone corridors follows.

(1) Benefits of Inclusion

Habitat containing features essential to bull trout conservation occurs within or immediately adjacent to these marine water training and testing grounds. The primary benefit of designating critical

habitat in each of the areas of interest to the Navy would be that Federal agencies would need to consult with us under section 7 of the Act to ensure that any proposed action would not destroy or adversely modify critical habitat. An additional benefit of including lands in critical habitat is that designation of critical habitat 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 clearly delineating areas of high conservation value for bull trout. Because the critical habitat process includes multiple public comment periods, opportunities for public hearings, and announcements through local venues, the designation of critical habitat provides numerous occasions for public education and involvement. Through these outreach opportunities, landowners, State agencies, and local governments can become more aware of the plight of listed species and conservation actions needed to aid in species recovery. Through the critical habitat process, State agencies and local governments may become more aware of areas that could be conserved under State law, local ordinances, or specific management plans.

Additionally, bull trout critical habitat was designated in the DBRC Southern Extension area in the 2005 critical habitat rule, and the Navy has already consulted with us on their proposed actions in this area. The anadromous life history form of bull trout is now rare in Hood Canal, which is part of the access to this testing range and is important in order to address potential impacts to nearshore habitat to ensure future recovery. Shoreline areas provide subadult rearing and adult foraging habitat. Including this area in the critical habitat designation will ensure that proposed Federal actions by the Navy and other entities (such as activities permitted by the U.S. Army Corps of Engineers or Federally funded State park projects) would not result in the destruction or adverse modification of critical habitat. Since we have already consulted with the Navy on the DBRC Southern Extension, we know that designation of critical habitat has had minimal, if any, impact to their operations in that area.

The Navy has also consulted with us on one of the three proposed surf zone corridors associated with the QUTR, and it was determined that effects of their actions were not likely to adversely affect bull trout critical habitat. We would anticipate similar determinations for the other two proposed surf zone corridors, based on the temporary nature of surf zone operations. In addition, the Navy informed us that although a preferred alternative has been identified, a final decision on the selection of one of three alternative sites for the surf zone portion of the QUTR will not be confirmed until later this year. The Navy expressed concern regarding the possible need to conduct emergency cable maintenance in the preferred surf zone corridor area. If the selected area overlaps critical habitat and adverse effects may occur, the Service can conduct emergency consultation under section 7 of the Act.

By retaining these areas as critical habitat, the designation may educate the public regarding their potential conservation value, and contribute to conservation efforts by other parties. Each of the three surf zone corridor locations in the QUTR was designated as critical habitat for the southern distinct population segment of the North American green sturgeon (*Acipenser medirostris*) on October 9, 2009 (74 FR 52300) by NOAA Fisheries. Also, the DBRC Southern Extension was designated as critical habitat for the Hood Canal summer run chum salmon and Chinook salmon by NOAA Fisheries (70 FR 37160, June 28, 2005). This means that the Navy would need to consult on those species in any case, so the retention of bull trout critical habitat in the same area should have little, if any, additional impact. If we were to exclude this area for national security reasons, that would be inconsistent with the NOAA Fisheries designation of critical habitat for the green sturgeon, chum salmon, and Chinook salmon in these areas. Critical habitat designation is needed so we can evaluate potential impacts of all Federal actions in these nearshore areas, which are essential for recovery. Exclusion of the area for the Navy would preclude our ability to do so.

(2) Benefits of Exclusion

The Navy states that analysis of past and present NUWC Keyport activities have not shown impacts to water quality, water quantity, or food availability, but believe that designation of critical habitat for bull trout may unnecessarily restrict or prohibit their activities. Restrictions on the access, use, or enhancement of capabilities and capacities of these ranges would limit or curtail both testing and mission-critical Fleet Support functions performed by NUWC Keyport for undersea warfare. Designating critical habitat on these open water training and testing areas may impact their role in supporting ongoing military exercises and operations that occur at these locations. The military activities occurring at these sites are currently being conducted in a manner that minimizes impacts to bull trout habitat. In addition, nearshore areas adjacent to Navy installations and those areas designated as marine security areas or restricted zones provide some additional conservation benefits, as recreational and commercial vessels are prohibited from entering, mooring, anchoring, or fishing in these areas. The Navy already consults with us on their actions occurring in the open water training and testing areas that may have potential impacts to bull trout and its habitat under section 7 requirements.

(3) Determination of Whether Benefits of Exclusion Outweigh the Benefits of Inclusion

Dabob Bay Military Operating Area and Connecting Waters

The benefits of designating critical habitat in the Dabob Bay Military Operating Area and Connecting Waters appear to be limited. In contrast, these areas are important to Navy operations and support national security by ensuring the Navy can maintain a high level of military readiness. Accordingly, we have determined that the national security benefit of excluding areas within or adjacent to the open water training and testing areas of the Military Operating Area and Connecting Waters of the DBRC outweighs the benefit of designating these areas as critical habitat. In addition, because these marine waters are occupied by bull trout, the Navy has a statutory duty under section 7 of the Act to ensure that its activities do not jeopardize the continued existence of the bull trout. In accordance with section 4(b)(2) of the Act, we have also determined that the exclusion of these marine waters will not lead to the extinction of the bull trout.

Dabob Bay Range Complex Southern Extension and Quinault Underwater Tracking Range

We have determined the benefits of exclusion do not outweigh the benefits of inclusion of nearshore habitat within or adjacent to the DBRC Southern Extension and QUTR surf zone corridors. Shoreline areas provide important subadult rearing and adult foraging habitat, are essential habitat for the anadromous life history form of bull trout, and thus they are essential to the recovery of the bull trout. We have already consulted with the Navy on both the DBRC Southern Extension and the preferred action area in the QUTR surf zone, as a result of the 2005 critical

habitat designation for bull trout. The designation has had minimal impact to their operations in those areas. On the other hand, there is a benefit to retaining these areas in the critical habitat designation, so that the Navy will continue to consult with us on proposed actions in these areas, to ensure that such actions would not result in the destruction or adverse modification of critical habitat. The inclusion of areas encompassing the proposed surf zone corridors will ensure continued cooperation and consultation between the Navy and the Service in those areas associated with the DBRC Southern Extension and the QUTR.

In addition, there are other possible Federal actions conducted by other entities that may occur within or adjacent to the DBRC Southern Extension that could impact important bull trout habitat. Therefore, we find that the benefits of excluding the DBRC Southern Extension and QUTR surf zones do not outweigh the benefits of inclusion, and these areas are not excluded from critical habitat designation. Critical habitat designation is needed so we can evaluate potential impacts of all Federal actions in these nearshore areas, which are essential for recovery. Exclusion of these areas for the Navy would preclude our ability to do so.

Exclusions Based on Other Relevant Factors

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

Habitat Conservation Plans

We consider a current plan (HCPs as well as other types) to provide adequate management or protection for bull trout and its habitat 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 and effective, based on past practices, written guidance, or regulations; and

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

Section 10(a)(1)(B) of the Act authorizes us to issue to non-Federal entities a permit for the incidental take of endangered and threatened species. This permit allows a non-Federal landowner to proceed with an activity that is legal in all other respects, but that results in the incidental taking of a listed species (i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). The Act specifies that an application for an incidental take permit must be accompanied by a habitat conservation plan (HCP), and specifies the content of such a plan. The purpose of conservation agreements is to describe and ensure that the effects of the permitted action on covered species are adequately minimized and mitigated, and that the action does not appreciably reduce the survival and recovery of the species. In our assessment of conservation agreements associated with this final rulemaking, the analysis required for these types of exclusions involves careful consideration of the benefits of designation versus the benefits of exclusion. The benefits of designation typically arise from additional section 7 protections, as well as enhanced public awareness once specific areas are identified as critical habitat. The benefits of exclusion generally relate to relieving regulatory burdens on existing conservation partners, maintaining good working relationships with them, and encouraging the development of new partnerships.

During the comment period, we received comments from five landowners or managers with HCPs that include bull trout as covered species. These HCPs include the Washington Department of Natural Resources (WDNR), Green Diamond Resources Company, City of Seattle Cedar River Watershed, Plum Creek/Stimson Lumber Company Native Fish, Plum Creek Central Cascades, and Washington State Forest Practices HCPs. These permittees commented that they perceive the designation of critical habitat as imposing a regulatory burden. They also view the exclusion from critical habitat designation as removing that burden and strengthening the ongoing relationship with the Service. All six permittees indicated they would consider exclusion as a benefit to our ongoing relationship. Our summary analysis of the benefits of designation versus the benefits of exclusion for these six HCPs is provided below. The specific section 4(b)(2) analysis for each of the HCPs is described in detail in the "*Compilation of HCP Exclusion Analyses for the Designation of Bull Trout Critical Habitat (Including Exclusion Analysis for Certain Areas Managed Under the Lewis River Hydroelectric Projects*)," available at *http://www.fws.gov/pacific/bulltrout/.*

The Chelan County Washington Public Utility District also requested exclusion from bull trout critical habitat designation for their Mid-Columbia HCP. However, since bull trout was not a covered species in this HCP, and the actions conducted under the HCP did not address the PCEs for bull trout, we determined that the HCP did not meet the basic criteria for consideration for exclusion.

WDNR HCP

The WDNR HCP, was permitted under section 10(a)(1)(B) of the Act in 1997, and covers about 650,000 ha (1,600,000 ac) of State forest trust lands within the range of the northern spotted owl in the State of Washington. The majority of the HCP (approximately 530,000 ha (1,300,000 ac)) occurs west of the Cascade Crest and includes the Olympic Peninsula and Southwest Washington. The remainder of the HCP occurs on the east side of the Cascade Mountains within the range of the northern spotted owl. The HCP covers activities primarily associated with commercial forest management. It is an "all-species" HCP west of the Cascade Crest, and includes bull trout and other salmonids as covered species. The aquatic conservation strategy for the west side planning units has two objectives: (1) To maintain or restore salmonid freshwater habitat on WDNR managed lands; and (2) to contribute to the conservation of other aquatic and riparian obligate species. The HCP Implementation Procedures for the Riparian Forest Restoration Strategy detail site-specific methods for riparian management to address the appropriate volume and density of instream large woody debris, a high degree of stream shading, the ability to intercept harmful sediments, stream bank stability, reduction of excessive windthrow, and the ability to contribute detrital nutrients. Timber harvest is avoided that could increase the frequency or severity of slope failure or would alter the natural input of large woody debris, gravel, or fine sediment

to streams. Comprehensive road management provides for fish passage, minimizes hydrologic disruption, and reduces delivery of fine sediments, while allowing large woody debris to be transported downstream.

The WDNR HCP is providing conservation benefits to bull trout that contribute to recovery, based on its landscape conservation strategy specifically designed for multiple species. Although the primary benefits to bull trout occur from the riparian strategy, the other aspects of the landscape conservation strategy provide contributions to bull trout as well. The spotted owl and marbled murrelet strategies, in conjunction with the range of forest types across the landscape, contribute to bull trout habitat primarily through improved watershed conditions. Other provisions of the HCP also contribute to recovery of bull trout, including protecting unstable hillslopes, properly managing forest roads, managing forests to minimize rain-on-snow floods, and protecting wetlands.

The HCP protects surface and subsurface water connectivity through a variety of diverse mechanisms. Mineral springs receive specific protection to address band-tailed pigeons, but these same protections would benefit bull trout. Other springs or seeps that result in perennial or intermittent channels or wetlands may be addressed through those conservation provisions. The HCP addresses wetlands and hydrological integrity and connectivity, which includes provisions for both forested and nonforested wetlands. Wetland prescriptions throughout the HCP area are designed to protect water quality and hydrologic integrity and connectivity, including hyporheic flow (flow involving a mixing of shallow groundwater and surface water). Roads are designed to avoid disrupting surface and ground-water flows by minimizing ground-water interception and returning water to the forest floor immediately through proper construction standards, thus minimizing infrastructure impacts on basin hydrology. Road management is designed to disconnect ditches and road intercepts from the stream system to reduce delivery of sediment, but also to slow the delivery of storm-related run-off and reduce the contribution to peak flows.

Standards are also in place to ensure water quality and quantity adequate to provide for a barrier-free environment for bull trout, and roads are managed in a manner to avoid creating migratory barriers. In addition, any existing road barriers will be addressed through remediation. The HCP maintains the natural hydrology and riparian functions of large wood input, shade, bank stability, detrital inputs, and the natural functions of flood plains and unstable slopes. The HCP addresses the need for complex habitat by prescribing riparian buffers along streams and wetlands that contribute to large woody debris recruitment and maintain stream bank integrity. It addresses sediment by ensuring that the stream system is not disrupted by the road network, and that ditch and road run-off is disconnected from the stream system.

Fish-bearing streams receive site-potential (100–year index) buffers that generally average 46 to 49 m (150 to 160 ft), and non-fish-bearing streams wider than 0.6 m (2 ft) receive 30 m (100 ft) buffers. Small headwater streams (less than 0.6 m (2 ft) in width) are often addressed through unstable slopes and features identification, or alternatively through the development of a strategy focused on these stream types. Although the stream-buffering prescriptions are based on slightly different features within the Olympic Experimental State Forest, they generally resemble the west side prescriptions, which are designed to provide equivalent protection of instream habitat for bull trout, by supporting large wood and other riparian functional processes.

The HCP includes provisions to manage forest cover in the rain-on-snow subbasins to reduce the frequency of major storm flows that are capable of shifting instream habitat structure. The HCP has also been designed to substantially reduce the amount of coarse and fine sediments transported downstream that could further simplify and degrade habitat conditions. The WDNR recognized stream temperature increases can be related to and caused by interruption of hydrology, riparian removal, increased sedimentation, and simplification of habitat; the HCP addressed this concern. The riparian buffers on streams and wetlands are designed to provide natural levels of shade to avoid increasing sunlight that could result in stream warming. In addition, road and wetland prescriptions are designed to maintain natural hydrological regime so that streams are not abnormally dry during periods of the year when this could exacerbate warming problems. Stream buffers and road standards also address sediment delivery, which will in turn avoid artificial filling of pools that could lead to increased stream warming.

Reducing road-generated fine sediment is a major focus of the HCP, and considerable focus is placed on road maintenance, repair, and improved construction standards. In addition, road remediation of existing road-related problems is a major component. The WDNR has already decommissioned many stream-side roads and addressed a number of road segments with a high-level of concern regarding aquatic impacts. The HCP is designed to keep slope failures at natural levels, which serves to reduce the delivery of fine sediments, but recognizes the contribution of these processes to supplying gravel needed for aquatic substrates. Once material has been delivered to the stream, large woody debris and other channel features sort substrate by particle size. Therefore, the HCP addresses bank stability and large wood recruitment that should help store fine sediment and provide for suitable substrates for bull trout spawning. The HCP is also designed to maintain floodplains and wetlands in a manner that retains the functions of the hyporheic zone and off-channel habitats, and protect water quality and quantity, which should assist native fish in maintaining a competitive advantage over nonnative species.

Green Diamond HCP

In October 2000, Simpson Timber Company (now Green Diamond) completed an HCP (formerly referred to as the Simpson Timber HCP and currently referred to as the Green Diamond HCP), and the Service issued an incidental take permit for forestry operations on over 105,625 ha (261,000 ac) of the company's Washington timberlands located on or adjacent to the Olympic Peninsula in Mason, Thurston, and Grays Harbor Counties. The HCP covers the land owned by Green Diamond along the lower reaches of the North Fork and South Fork Skokomish Rivers, the upper South Fork Skokomish River, West Fork Satsop River, and Canyon River. The plan addresses five species listed under the Act, including bull trout, and 46 other non-listed species.

The HCP is designed to conserve riparian forests, improve water quality, prevent management-related hill-slope instability, and address hydrological maturity of small sub-basins. The HCP prescriptions for riparian and wetland areas focus on the following functions: recruitment of woody debris to streams and the forest floor, shade and control of stream-side air temperature, stream-bank stability, detrital inputs, capture and storage of sediment and organic matter on the floodplain, maintenance and augmentation of nutrient dynamics and processing, groundwater discharge, base-flow support in streams, and flood amelioration. HCP actions are also expected to maintain the thermal regime

of streams within the range of normal variation and contribute to the maintenance of complex stream channels, appropriate substrates, a natural hydrologic regime, ground-water sources and subsurface connectivity, migratory corridors, and an abundant food base.

The HCP road program is addressing legacy, current, and future roads. Prescriptions and standards address the chronic production and movement of fine sediment, and the catastrophic failure of road fills and sidecast that generate and propagate hillslope and channel failures. Unstable slope prescriptions require identification of these areas and avoidance of management activities that could trigger mass-wasting processes (slope failure). Road prescriptions are intended to avoid disrupting surface and ground-water flows, and specific road remediation is being directed at restoring wetlands. Roads are also being managed so they do not contribute to the formation of barriers, and existing road-related barriers are being corrected. Road management is designed to disconnect ditches (and ground water intercepted by roads) from the stream system to reduce delivery of sediment, and also to slow the delivery of storm-related run-off and reduce the contribution to peak flows. Ditch water and road run-off is delivered in a diffuse manner to the forest floor.

In subbasins within the rain-on-snow zone, prescriptions address the maintenance of sufficient mature forest canopy to reduce the frequency of major storm flows that are capable of shifting instream habitat structure. Road-related prescriptions also address diffusing water to reduce the potential for roads to accelerate the delivery of water and exacerbate peak flow problems.

The HCP protects surface and subsurface water connectivity through a variety of diverse mechanisms. Springs and seeps that form perennial or intermittent channels are addressed through conservation provisions, and all perennial streams are protected with riparian buffers. Intermittent streams also receive protection in a manner that optimizes their functional needs. The HCP addresses wetlands and hydrological integrity, and connectivity for both forested and nonforested wetlands. In addition, all riverine unstable-slope-associated wetlands are buffered, and protection is provided for depressional wetlands, stable-slope wetlands, and wetlands on flat terrain. Wetland prescriptions (and prescriptions for management of wetland complexes) throughout the HCP area are designed to protect water quality and hydrologic integrity and connectivity.

The Green Diamond HCP includes measures to ensure that water quality and quantity conditions in the water column maintain a barrier-free environment for bull trout. The HCP maintains the natural hydrology and riparian functions of large wood input, shade, bank stability, and detrital inputs by providing buffers along streams and wetlands. The HCP is also designed to substantially reduce the amount of coarse and fine sediments transported downstream that could further simplify and degrade habitat conditions.

Stream temperature is being addressed in a number of ways, including establishing buffers to provide shade, implementing road-management practices that avoid sedimentation, and maintaining natural hydrologic regimes that contribute cool water to streams. Stream and wetland buffers are designed to provide natural levels of shade, and to avoid increasing sunlight, which could result in stream warming. Road and wetland prescriptions are designed to maintain natural hydrological regime to ensure streams are not abnormally dry during periods of the year when warming problems could be exacerbated. Stream buffers and road standards also address sediment delivery, which in turn will avoid artificial filling of pools, which could lead to increased stream warming.

The HCP addresses the need for natural substrates in a wide variety of ways. As described above, reducing road-generated, fine sediment is a major focus, and considerable attention is placed on road maintenance, repair, and improved construction standards. In addition, road remediation of existing road-related problems is a major component. The HCP addresses bank stability and large wood recruitment, which will help store fine sediment and provide for suitable substrates for bull trout spawning. The HCP's provisions to manage forest cover in the rain-on-snow subbasins will reduce the frequency of major storm flows that are capable of shifting instream habitat structure that contributes to sorting and development of suitable substrates, and it also is expected to substantially reduce the amount of coarse and fine sediments transported downstream. The HCP is designed to protect the natural hydrograph, address sediment and stream temperature, and maintain floodplains and wetlands in a manner that retains the functions of the hyporheic zone and off-channel habitats. HCP prescriptions that protect the natural environment will assist native fish in maintaining a competitive advantage over nonnative species.

Some examples of conservation actions conducted under the Green Diamond HCP include the placement of large woody debris in streams to increase habitat complexity, and the abandonment of 154 km (96 mi) of legacy logging roads that do not meet current construction standards. Road abandonment included restoring pre-construction hydrology, thereby decreasing the opportunity for sediment delivery to adjacent streams. Silvicultural treatments have also been applied over 486 ha (1,200 ac) of riparian forest to improve aquatic habitat in adjacent streams.

City of Seattle Cedar River Watershed HCP

In April 2000, the Cedar River Watershed HCP was completed and an incidental take permit was issued to the City of Seattle for water withdrawal and water supply activities affecting flows in the lower Cedar River and reservoir levels in Chester Morse Lake. The plan provides for forestry restoration activities including riparian thinning, road abandonment, and timber stand improvement on over 36,872 ha (91,000 ac) in the upper Cedar River Watershed in King County. The HCP is designed to provide adequate flows in the lower Cedar River for fish spawning and rearing, to manage water levels in Chester Morse Lake and Masonry Dam Reservoir to benefit instream flows in the lower river and maintain bull trout spawning access to lake tributaries, and to manage the upper Cedar River as an ecological reserve.

The HCP's watershed mitigation management and conservation strategies provide comprehensive long-term protection for the watershed ecosystem, and include commitments not to harvest timber for commercial purposes; placement of forest outside limited development areas in a reserve status; measures to protect and restore stream, riparian, and upland forest habitats; removal of a large part (approximately 40 percent) of the existing road network; protective guidelines for watershed operations designed to minimize and mitigate impacts of those operations; and specific measures to protect species of greatest concern and their habitats, including bull trout. Several research actions are directed at understanding how all life stages of bull trout use Chester Morse Lake and Masonry Pool and how adult bull trout use tributaries to the lake for spawning. The HCP covers 83 species of fish and wildlife, including bull trout and six other species listed under the Act.

The HCP covers over 36,872 ha (91,000 ac) of City of Seattle-owned land in the upper Cedar River Watershed and the City's water withdrawal activities on the lower Cedar River. Seattle owns over 99 percent of the lands in the upper Cedar River watershed, which are managed as an ecological reserve to protect water quality and preserve the remaining old growth timber. Other timber lands in the watershed are actively managed to accelerate the development of old growth characteristics, mainly though riparian and upland thinning. Roads are being decommissioned (removed) at the rate of approximately 16 km (10 mi) per year to reduce erosion rates into the lake and its tributaries and to minimize disturbance and fragmentation in the upper watershed. This activity will maintain a natural hydrological regime so that streams are not abnormally dry during periods of the year when this could exacerbate warming. Twenty culverts that block fish passage are being replaced in the upper watershed.

The HCP includes provisions to manage almost the entire watershed as an ecological reserve, maintaining forest cover where it currently exists and allowing for only ecological thinning to occur in selected locations in the watershed. This "no commercial harvest" approach ensures that all springs, seeps, surface waters, groundwater sources, and subsurface waters function in a natural state that maintains water connectivity and contributes to water quality and quantity. This prescription is also expected to protect shade levels to avoid increasing sunlight, which can result in stream warming. Because only limited ecological thinning will occur, no loss of riparian shading is expected under the HCP other than that resulting from natural causes (wind throw, fire, etc.). All fish blockages identified on HCP lands have been or will be corrected, ensuring migratory corridors with minimal physical, biological, or water quality impediments between spawning, rearing, overwintering, and foraging habitats. Removal of fish blockages will also provide for more naturally maintained stream characteristics, including bedload movement, sediment transport, and passage of moderately-sized woody debris. The ecological reserve created under the HCP maintains the natural hydrology and riparian functions of large wood input, shade, bank stability, and detrital inputs, as well as natural functions of flood plains and unstable slopes.

The HCP addresses the need for complex habitat by eliminating commercial timber harvest in the watershed; outside of selected ecological thinning in some riparian areas and upland forest, no harvest of trees is allowed under the HCP. Ecological thinning in some riparian areas has the advantage of accelerating the growth of the remaining riparian trees and increasing the amount of large woody debris in the stream. Because only limited ecological thinning will occur, no loss of riparian shading is expected under the HCP other than that resulting from natural causes (wind throw, fire, etc.). Stream temperature will be maintained through a number of measures, including no commercial harvest in the watershed, road-management practices that avoid sedimentation, and maintenance of natural hydrologic regimes that contribute cool water to streams.

Reducing the influences and scope of roads in the upper Cedar River Watershed is a major focus of the HCP, since most harmful sediments that impact aquatic habitats are due to poor road construction and maintenance. Logging roads in the watershed have impaired bull trout habitat by contributing coarse and fine sediments to the stream network, so considerable focus has been placed on road maintenance, road repair, improved road construction standards, fish barrier removal, and road abandonment. Twenty identified fish passage barriers are being replaced, or are scheduled to be replaced, which will restore fish access to additional habitat, and provide for more naturally maintained stream characteristics, including bedload movement, sediment transport, and passage of moderately-sized woody debris. Road management is designed to disconnect ditches (and ground water intercepted by roads) from the stream system to reduce delivery of sediment, and also to slow the delivery of storm-related run-off and reduce the contribution to peak flows. Road abandonment is designed to put-to-bed many roads that would otherwise contribute sediment to streams via runoff or mass failure. Approximately 378 km (236 mi) of roads, or 38 percent of the watershed road network, will be decommissioned at a rate of approximately 16 km (10 mi) of roads per year. Approximately 200 km (125 mi) of road have been decommissioned within the Cedar River Municipal Watershed since 1989 (*http://www.seattle.gov/util/About_SPU/Water_System/Habitat_Conservation_Plan/ManagingtheWatershed/RoadImprovementsDecommissioning/Metrics/SPU02_015774.asp*).

The streams in the upper Cedar River watershed are free-flowing water courses that currently provide high-quality habitat for bull trout. The goal is to protect the quality and quantity of this habitat and take steps to improve and restore other habitat. The HCP includes provisions to manage almost the entire watershed as an ecological reserve maintaining forest cover where it currently exists and allowing for only ecological thinning to occur in selected locations in the watershed. The HCP is expected to maintain floodplains and wetlands in a manner that retains the functions of the hyporheic zone and off-channel habitats. Conservation measures in the HCP should result in more naturally maintained stream hydraulics, including bedload movement, sediment transport, and passage of small and large woody debris.

Water quality and quantity are addressed through a variety of mechanisms. In addition to protecting the natural hydrograph and addressing sediment and temperature, no chemical applications in the watershed are allowed in order to maintain the quality of the public drinking water supply. Provisions of the HCP that protect the natural environment should assist native fish in maintaining a competitive advantage when that is possible. The fact that this is a closed watershed, not open to the public, and will remain so under the HCP, will help considerably to ensure nonnative species are not introduced into the site.

Plum Creek/Stimson Lumber Company Native Fish HCPs

Plum Creek Timber Company initiated an effort in 1997 to develop a conservation strategy for native salmonids (including bull trout), occurring on 647,511 ha (1.6 million ac) of Plum Creek's Timberlands in Montana, Idaho, and Washington. The stated purpose of the Plum Creek Native Fish Habitat Conservation Plan (NFHCP) was to help conserve native salmonids and their ecosystems, while allowing Plum Creek to continue to conduct commercial timber harvest within a framework of long-term regulatory certainty and flexibility. The Stimson Lumber NFHCP was created when the Stimson Lumber Company acquired certain lands previously owned by Plum Creek and assumed all of the Plum Creek NFHCP commitments. The Plum Creek NFHCP covers approximately 566,572 ha (1.4 million ac) within the range of the Columbia River basin. The Stimpson portion of what was originally the Plum Creek NFHCP covers approximately 11,487 ha (28,535 ac).

Because of similarities in their conservation measures, the HCPs are being analyzed together for purposes of our section 4(b)(2) analysis. Both HCPs are designed to maintain the thermal regime of streams within the range of normal variation, maintain a high level of water quality, and contribute to the maintenance of complex stream channels, appropriate substrates, a natural hydrologic regime, ground-water sources and subsurface connectivity, migratory corridors, and an abundant food base. The HCPs are is designed to benefit the aquatic environment by providing a gradual improvement in the cold and clean water as well as complex and connected habitat necessary for protection and restoration of bull trout.

The HCPs protect surface and subsurface water connectivity through a variety of diverse mechanisms. Springs and seeps that form perennial or intermittent channels are addressed through conservation provisions; all perennial streams are protected with riparian buffers, and intermittent streams receive protection to optimize their functional needs. The HCPs address wetlands and hydrological integrity and connectivity, including forested and nonforested wetlands. Wetland prescriptions (and prescriptions for management of wetland complexes) throughout the HCP areas protect water quality and hydrologic integrity and connectivity. Roads are designed to avoid disrupting surface and ground-water flows, and road remediation is specifically directed at wetlands. Reducing road-generated, fine sediment is a major focus of the HCPs, and considerable focus is placed on road maintenance, repair, and improved construction standards. In addition, road remediation of existing road-related problems is a major component. Road management is designed to disconnect ditches (and ground water intercepted by roads) from the stream system to reduce delivery of sediment, and to slow the delivery of storm-related run-off, thereby reducing road contributions to peak flows.

The HCPs include measures to ensure that water quality and quantity conditions in the water column do not present a barrier to bull trout, and maintain the natural hydrology and riparian functions of large wood input, shade, bank stability, detrital inputs, as well as natural functions of flood plains and unstable slopes. They address the need for complex habitat by providing buffers along streams and wetlands; these buffers are expected to contribute to large woody debris recruitment and maintain stream bank integrity. They also address sediment, which has the potential to simplify and degrade instream habitat conditions by focusing on addressing mass-wasting and erosional processes. Both HCPs include provisions to manage forest cover to reduce the frequency of major storm flows, to substantially reduce the amount of coarse and fine sediments transported downstream that could further simplify (remove necessary elements) and degrade habitat conditions.

Stream temperature is addressed through a number of avenues including buffers that provide shade, road-management practices that avoid sedimentation, riparian and grazing management, and maintenance of natural hydrologic regimes that contribute cool water to streams. The buffers on streams and wetlands are expected to provide natural levels of shade to avoid increasing sunlight, which could result in stream warming. Further, road and wetland prescriptions are expected to maintain the natural hydrological regime so that streams are not abnormally dry during periods of the year when this could exacerbate warming problems. Stream buffers and road standards also address sediment delivery, which will in turn avoid artificial filling of pools, which could lead to increased stream warming. The HCPs are designed to maintain floodplains and wetlands in a manner that retains the functions of the hyporheic zone and off-channel habitats. Water quality and quantity are addressed through a variety of mechanisms, including protecting the natural hydrograph and addressing sediment and temperature. Provisions of the HCPs that protect the natural environment should assist native fish in maintaining a competitive advantage when that is possible.

The NFHCPs impose more stringent harvest requirements in riparian areas than prescribed under State law. They also provides for a greater number of drainage features on roads, particularly near stream crossings (which reduces sediment delivery to streams), and require increased road abandonment to offset the construction of new roads. The Thompson River restoration project is evaluating alternatives for removing reed canary grass and reestablishing riparian forest to provide shade and improve water temperature. The NFHCPs include site-specific management plans to protect native fish assemblages, and include long-term adaptive management studies to address road best management practices effectiveness, large woody debris recruitment, stream temperature, and grazing. These adaptive management studies are currently underway.

Plum Creek Timber Central Cascades HCP

In June of 1996, the Service issued an incidental take permit to Plum Creek Timber Company in association with the Central Cascades HCP. This HCP addressed vertebrate species on over 68,798 ha (170,000 ac) of forest land in the Central Cascades, much of it located in what is generally known as the I-90 corridor. The HCP spans the Cascade crest, and covered lands occur in both King and Kittitas Counties. Currently, the HCP addresses fewer than 36,423 ha (90,000 ac) as a result of land exchanges and conservation sales. The HCP addresses multiple species through a combination of landscape-level forest commitments, special-site protections, and other conservation measures. Bull trout is one of the covered species and is addressed through a combination of riparian and wetland buffers; management restrictions; watershed analysis; protection of inner gorges, springs, and seeps; avoidance of unstable slopes; and road management. It includes lands within the Green River Watershed as well as lands within the upper Yakima and Naches drainages.

The HCP protects surface and subsurface water connectivity through a variety of diverse mechanisms. Springs and seeps that form perennial or intermittent channels are addressed through conservation provisions, and all perennial streams are protected with riparian buffers. Intermittent streams may also be buffered through provisions associated with inner gorge prescriptions or as a result of watershed analysis. The HCP addresses wetlands and hydrological integrity and connectivity, including both forested and nonforested wetlands, and wetland, seep, and spring prescriptions protect water quality, hydrologic integrity, and connectivity. The HCP includes measures to ensure that water quality and quantity conditions in the water column do not present a barrier to bull trout. Considerable focus is placed on road maintenance, repair, and improved construction standards, and remediation of existing road-related problems is a major component of the HCP. Roads are located to avoid disrupting surface and ground-water flows, and equipment exclusions around wetlands help protect hydrology. Road management is designed to disconnect ditches (and ground water intercepted by roads) from the stream system to reduce delivery of sediment, and to slow the delivery of storm-related run-off and reduce the contribution to peak flows.

The HCP maintains the natural hydrology and riparian functions of large wood input, shade, bank stability, detrital inputs, as well as natural functions of flood plains and unstable slopes. It addresses the need for complex habitat by providing buffers along streams and wetlands that contribute to large woody debris recruitment and maintain stream bank integrity. Adequate stream temperatures are addressed in a number of ways, including the use of buffers that provide shade, road-management practices that avoid sedimentation, and maintenance of natural hydrologic regimes that contribute cool water to streams.

The buffers on streams and wetlands are designed to provide adequate shade and to avoid increasing sunlight exposure, which could result in stream warming. Stream buffers and road standards also address sediment delivery to avoid artificial filling of pools, which could lead to increased stream warming. The HCP addresses bank stability and large wood recruitment which should help store fine sediment and provide for suitable substrates for bull trout spawning. It also includes provisions to manage forest cover in the rain-on-snow subbasins to maintain normal storm flows, and is designed to maintain floodplains and wetlands in a manner that retains the functions of the hyporheic zone and off-channel habitats. Water quality and quantity are addressed through a variety of mechanisms, including protecting the natural hydrograph and addressing sediment and temperature needs. HCP provisions that protect the natural environment should assist native fish in maintaining a competitive advantage over nonnative species.

Washington Forest Practices HCP

In 2001, the Washington Forest Practices Board adopted new permanent forest practice rules to address impacts to aquatic species, including bull trout, on all private forest lands not covered under an existing HCP, and WDNR State lands east of the Cascade Crest. These rules became effective in 2001, and cover a wide variety of forest practices, including: (1) A new, more functional, classification of rivers and streams on non-Federal and non-tribal forestland; (2) improved plans for properly designing, maintaining, and upgrading existing and new forest roads; (3) additional protections for unstable slopes; and (4) greater protections for riparian areas intended to restore or maintain properly functioning aquatic and riparian habitat conditions. The Washington State Legislature and U.S. Congress supported the collaboration with significant funding for the research, monitoring, and adaptive management needs identified in the Forests and Fish Report (WDNR 1999). In 2006, an incidental take permit was issued under section 10(a)(1)(B) of the Act based on the Washington Forest Practices Rules (Rules), which established requirements under the Washington Forest Practices HCP.

The Rules contain prescriptions designed to improve and maintain properly functioning aquatic and riparian habitat on non-Federal, non-tribal forest lands throughout the State. The Rules allow for a substitution of its prescriptions with those of another habitat conservation plan. The 3.7 million ha (9.1 million ac) regulated by the Washington Forest Practices HCP include a mixture of large industrial ownerships and small nonindustrial ownerships. These lands are most prevalent at lower elevations, while Federal forest lands are more prevalent at higher elevations. Nonindustrial forest lands are common along the urban-growth margin.

The Rules protect surface and subsurface water connectivity important for bull trout habitat through the requirements to provide no harvest buffers around sensitive sites (springs, seeps, and tributary junctions of streams without fish), and to limit harvest in other areas. These prescriptions contribute to maintaining surface and subsurface water sources and connectivity important for water quality and quantity. The requirements in the Rules to replace or upgrade all fish-blocking culverts and sub-standard roads by 2016 are designed to ensure that migratory corridors are accessible to bull trout. As of December 1, 2008, approximately 44 percent of known fish passage barriers (2,871 of 6,505) have been corrected under the HCP, opening 2,317 km (1,448 mi) of fish habitat (*http://www.dnr.wa.gov/Publications/fp_hcp_annrep09_ch09.pdf*). The riparian-buffer requirements protect the quality of these migratory corridors by maintaining stream temperatures and other stream functions important for bull trout foraging, migration, overwintering, and spawning habitat.

Through the requirements for riparian management buffers, sensitive-site protections, and road and culverts improvements, the Rules protect the other aquatic and riparian habitats and organisms that occur in these areas. Since the Rules are designed to benefit bull trout, salmon, and virtually all other native fish species associated with stream and river habitats, they will also protect the bull trout food base.

Timber harvest is limited within the bankfull width or channel migration zone of perennial waters, to maintain stream geomorphology, as well as stream-adjacent large wood, side channels, pools, and undercut banks. In addition, the riparian management strategies mentioned above will maintain intact, complex stream channels important for bull trout. The riparian buffers are designed to maintain cool stream temperatures, canopy cover, recruitment of large wood, bank stability, nutrient cycling, detritus inputs, and to provide sediment filtering. No-harvest buffers are generally applied along fish-bearing streams and, at a minimum, half of the non-fish-bearing, perennial streams. Adjacent to these buffers, timber harvest is limited within riparian areas, depending on site conditions. Sensitive sites, such as seeps and springs, are also protected with buffers. In western Washington, the riparian strategy is designed to move riparian areas towards conditions equivalent to the stand conditions of mature 140 year-old riparian forests. In eastern Washington, riparian management is intended to provide stand conditions that vary over time within a range that meets functional conditions and maintains general forest health.

The Rules address the need for natural substrates in a wide variety of ways; reduced road-generated fine sediment, road maintenance, road repair, and improved construction standards are major focus areas. Unstable slopes are identified and harvesting and road building are restricted on areas with a potential for mass-wasting. These requirements protect against management-caused debris flows that would otherwise increase sediment loading into streams. Road maintenance, repair, and improved construction standards are designed to minimize or divert road-induced sediment and artificial water flows away from streams. The Rules also include provisions to minimize the negative effects of timber harvest in rain-on-snow areas by limiting clear-cut harvest sizes. Other protections are associated with "green-up requirements" in which young stands must reach a certain size before adjacent stands of timber can be harvested.

Water quality and quantity are addressed through a variety of protective requirements. In addition to protecting the natural hydrograph, stream temperatures, and other riparian and aquatic habitat elements, the requirements for roads and culverts minimize sediment delivery to streams, thereby minimizing effects to water

quality. The Rules address forestry activities over a substantial amount of relatively contiguous ownership, and are expected to protect the relevant bull trout PCEs in all of the streams subject to their requirements.

Weighing and Balancing Exclusions Under Section 4(b)(2) of the Act

Based on the best available information, we have determined that each HCP permittee is in compliance with the terms and conditions of their respective incidental take permit issued under section 10(a)(1)(B) of the Act. Specific information on HCP implementation and the progress made with regard to bull trout conservation is available at *http://www.fws.gov/pacific/bulltrout/*. We have combined the section 4(b)(2) balancing analysis for the above HCPs, given the similarities in scope of covered activities, partnerships, and benefits. More detailed section 4(b)(2) analyses of each excluded HCP are part of the decisional record, see the "*Compilation of HCP Exclusion Analyses for the Designation of Bull Trout Critical Habitat (Including Exclusion Analysis for Certain Areas Managed Under the Lewis River Hydroelectric Projects*)", posted at *http://www.fws.gov/pacific/bulltrout/*.

(1) Benefits of Inclusion of the WDNR, Green Diamond, City of Seattle Cedar River Watershed, Plum Creek/Stimson Lumber Company Native Fish, Plum Creek Central Cascades, and Washington State Forest Practices HCPs.

Regulatory Benefits

The consultation provisions under section 7(a) (2) of the Act constitute the regulatory benefits of critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Prior to our designation of critical habitat, Federal agencies consult with us on actions that may affect a listed species and must refrain from undertaking actions that are likely to jeopardize the continued existence of the species. Thus, the analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. The difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species, and in some locations, the outcome of these analyses will be similar, because effects on habitat will often result in effects on the species. However, the regulatory standard is different: the jeopardy analysis looks at the action's impact on survival and recovery of the species, while the adverse modification analysis looks at the action's effects on the designated habitat's contribution to the species' conservation. This will, in some instances, lead to different results and different regulatory requirements.

Once an agency determines that consultation under section 7 of the Act is necessary, the process may conclude informally when we concur in writing that the proposed Federal action is not likely to adversely affect critical habitat. However, if we determine through informal consultation that adverse effects are likely to occur, then we would initiate formal consultation, which would conclude when we issue a biological opinion on whether the proposed Federal action is likely to result in destruction or adverse modification of critical habitat. A biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to critical habitat, but it would not contain any mandatory reasonable and prudent measures or terms and conditions. In addition, we suggest reasonable and prudent alternatives to the proposed Federal action only when our biological opinion results in a destruction or adverse modification conclusion.

In providing the framework for the consultation process, the previous section applies to all the following discussions of benefits of inclusion or exclusion of critical habitat. The process of designating critical habitat as described in the Act requires, in part, that the Service identify those lands on which are found the physical and biological features essential to the conservation of the species which may require special management considerations or protection. In identifying those lands, the Service must consider the recovery needs of the species. Furthermore, once critical habitat has been designated, Federal agencies must consult with the Service under section 7(a)(2) of the Act to ensure that their actions will not adversely modify designated critical habitat or jeopardize the continued existence of the species. As noted in the Ninth Circuit's Gifford Pinchot decision (referenced earlier), the Court ruled that the jeopardy and adverse modification standards are distinct, and that adverse modification evaluations require consideration of impacts to the recovery of species. Thus, through the section 7(a)(2) consultation process, critical habitat designations provide recovery benefits to species by ensuring that Federal actions will not destroy or adversely modify designated critical habitat.

For example, if a federally-funded road project or hydroelectric project were to be proposed for development on HCP lands that contained designated critical habitat, a consultation would need to be conducted to ensure the designated critical habitat was not destroyed or adversely modified to the point of appreciably diminishing its habitat features essential to bull trout recovery. Designation of critical habitat may facilitate regulatory agencies taking additional protective measures where critical habitat is designated (for example, revising operations at hydroelectric projects). For example, Washington State law requires consideration of additional rules and areas for protection upon designation of critical habitat.

The identification of habitat necessary for the conservation of the species is beneficial because it can assist in the recovery planning for a species. However, the designation of critical habitat does not require that any management or recovery actions take place on the lands included in the designation. Even in cases where consultation has been initiated under section 7(a)(2) of the Act, the end result of consultation is to avoid jeopardy to the species and adverse modification of its critical habitat, but not specifically to manage remaining lands or institute recovery actions on remaining lands. Conversely, management plans institute intentional, proactive actions over the lands they encompass to remove or reduce known threats to a species or its habitat and, therefore, implement recovery actions.

We believe that in some cases, the conservation benefits to a species and its habitat that may be achieved through the designation of critical habitat are less than those that could be achieved through the implementation of a management plan that includes specific provisions based on enhancement or recovery as the management standard. Consequently, the implementation of any HCP or management plan that considers enhancement or recovery as the management standard will often provide as much or more benefit than a section 7(a)(2) consultation under the Act using the standards required by the Ninth Circuit in the Gifford Pinchot decision. There may be some regulatory benefit that results from designating critical habitat in the areas covered by the above HCPs because of section 7 consultation requirements, or potentially protections under other State or local laws that may be triggered because of the designation. However, we

believe the management goals of the above HCPs go beyond any protections that would be provided through section 7 consultation or other State or local regulatory requirements.

Educational Benefits

One benefit of including lands in critical habitat is that the designation of critical habitat 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 bull trout. Because the rulemaking process associated with critical habitat designation includes several opportunities for public comment, it also provides for public education. Through these outreach opportunities, land owners, State agencies, and local governments can become more aware of the status of and threats to listed species, and the conservation actions needed for recovery. Designation of critical habitat would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances, such as the Washington State Growth Management Act or Washington State Shoreline Management Act, which encourage the protection of "critical areas" including fish and wildlife habitat conservation areas.

(2) Benefits of Exclusion of the WDNR, Green Diamond, City of Seattle Cedar River Watershed, Plum Creek/Stimson Lumber Company Native Fish, Plum Creek Central Cascades, and Washington State Forest Practices HCPs.

Maintaining and Establishing Conservation Partnerships

Non-Federal landowners are motivated to work with the Service collaboratively to develop voluntary HCPs because of the regulatory certainty provided by an incidental take permit under section 10(a)(1)(B) of the Act, including assurances under the No Surprises Policy (63 FR 8859; February 23, 1998). The No Surprises Policy sets forth a clear commitment to incidental take permittees that, to the extent consistent with the Act and other Federal laws, the government will honor its agreements under an approved HCP where the permittee is implementing the HCP's terms and conditions in good faith. Although the HCP process can be complex and time-consuming, the perceived benefit to landowners in undertaking this extensive process is the resulting regulatory certainty, which translates into real savings for private landowners in terms of opportunity costs, as well as direct savings and avoided costs. A failure to exclude HCP lands where the species under consideration for critical habitat is a covered species could be viewed as the Service retreating from its previous position on the adequacy of the conservation measures in the HCP, undermining the Service's credibility in future interactions with potential partners. Designation of critical habitat within the boundaries of already approved HCPs may also be viewed as a disincentive by other entities currently developing HCPs or contemplating them in the future, because it implies potential additional regulation after agreement on conservation measures needed for the species has been made. In discussions with the Service, HCP permittees have indicated they view critical habitat designation as an unnecessary additional intrusion on their property, and an erosion of the regulatory certainty provided by their incidental take permit and the No Surprises Policy. The No Surprises Policy sets forth a clear commitment by the Service, that to the extent consistent with the requirements of the Act and other Federal laws, the government will honor its agreements under an approved HCP for which the permittee is in good faith implementing the HCP's terms and conditions. Because the Service would be required to reinitiate section 7 consultation with itself if critical habitat is designated on our action of issuing a section 10(a)(1)(B) permit, the permittees are concerned that the Service could use this as an excuse to request new conservation measures for the bull trout, even though we have existing agreements already in place.

Although parties whose actions may take listed species may still desire incidental take permits to avoid liability under section 9 of the Act, failure to exclude HCP lands from critical habitat could reduce the conservation value of the HCP program in several ways. First, parties may be less willing to participate in large, regional HCPs, preferring instead to address any possible take on a project-by-project basis. Second, in any given HCP, applicants may reduce the amount of protection to which they are willing to agree, in effect holding some additional protective measures "in reserve" for use in any future discussions to address critical habitat. Third, without the incentive of exclusion from critical habitat, some potential applicants, particularly (1) those whose actions may, but are not certain, to take listed species, and (2) those against whom enforcement for any take that does occur may be difficult, may decide not to seek an incidental take permit at all. The failure to exclude qualified HCP lands from critical habitat designations could decrease the program's efficacy and have profound effects on our ability to establish and maintain important conservation partnerships with stakeholders.

Excluding qualified HCP lands from critical habitat provides permittees with the greatest possible certainty, thereby helping foster the cooperation necessary to allow the HCP program to achieve the greatest possible conservation benefit. Thus, excluding the lands covered by the above HCPs improves the Service's ability to enter into new partnerships. Permittees who trust and benefit from the HCP process discuss the benefits with others who may become future HCP participants, such as States, counties, local jurisdictions, conservation organizations, and private landowners. New HCPs will result in implementation of conservation actions that we would be unable to accomplish otherwise.

Avoidance of Administrative Costs

To the extent designation would provide any additional protection of bull trout habitat, the costs associated with that protection would be avoided by exclusion. Excluding waterbodies covered under these large-scale HCPs from the critical habitat designation relieves landowners, communities, and counties from any additional regulatory burden and costs associated with the preparation of section 7 documents related to critical habitat. While the costs of providing these additional documents to the Service is minor, there may be resulting delays that generate perceived or very real costs to private landowners in the form of opportunity costs, as well as direct costs.

Conservation Planning Efficiencies

Large-scale HCPs can address habitat conservation on a very broad scale, addressing entire ecosystems and a wide variety of the species in them, whether listed or not. In our experience, large-scale HCPs provide more comprehensive, and therefore more effective, protection to listed species as well as to species that might otherwise require listing in the future. Large-scale HCPs in effect become regional conservation plans consistent with the recovery objectives for listed species that are covered within the plan area.

The above HCPs provide substantial measures to protect or improve the current state of the ecosystem as a whole, which may contribute to the

conservation of a number of species, including bull trout. These HCPs also include streams and habitats outside of the critical habitat designation that contribute to bull trout recovery, including habitats potentially suitable for future occupancy by bull trout and other species.

Meeting Science Needs for Recovery Purposes

HCPs can provide other important conservation benefits, including the development of important biological information needed to guide conservation efforts and assist in species conservation outside the HCP planning area. Each of the above HCPs have some component of adaptive management to address uncertainties in achieving their agreed-upon conservation objectives for aquatic habitats, including uncertainties that may be associated with climate change. The adaptive management strategy helps to ensure management will continue to be consistent with agreed-upon bull trout conservation objectives. In addition, in the cases of the City of Seattle Cedar River Watershed HCP and the Washington State Forest Practices HCP, there are specific research elements directed towards bull trout and its habitat. Although the designation will not affect this research, it is highly unlikely this research would have been achieved through a critical habitat designation.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion for the WDNR, Green Diamond, City of Seattle Cedar River Watershed, Plum Creek/Stimson Lumber Company Native Fish, Plum Creek Central Cascades, and Washington State Forest Practices HCPs

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, the Service and, subsequently, the Secretary, have concluded that the benefits of excluding streams and waterbodies associated with the WDNR, Green Diamond, City of Seattle Cedar River Watershed, Plum Creek/Stimson Lumber Company Native Fish, Plum Creek Central Cascades, and Washington State Forest Practices HCPs as critical habitat for the bull trout outweigh the benefits of including these streams and waterbodies as critical habitat. This conclusion is based on the following:

It is probable that any Federal action that would be likely to destroy or adversely modify critical habitat within an area covered by the above HCPs would also jeopardize the continued existence of the species, because of the specific way in which jeopardy and adverse modification are analyzed for bull trout. Since the primary threat to bull trout is habitat loss or degradation, the jeopardy analysis under section 7 of the Act for a project with a Federal nexus will most likely evaluate the effects of the action on the conservation or functionality of the habitat for the bull trout. Because of this, we believe that in many cases the analysis of the project to address designated critical habitat will be comparable. As such, we do not anticipate, for many circumstances, that the outcome of the consultation to address critical habitat will result in any significant additional project modifications or measures. Thus, potentially detrimental actions would be avoided as a result of a jeopardy analysis resulting from the bull trout's status as threatened under the Act, and not solely or specifically because of critical habitat designation. The benefit of informing the public of the importance of these areas to bull trout conservation would for the most part be redundant with the outreach conducted during the NEPA process for the subject HCPs. Therefore, we assign relatively little weight to the benefits of designating these HCP areas as critical habitat.

In contrast, the benefits of encouraging continued and future participation in HCPs, and fostering cooperative conservation through HCP participation are crucial to the long-term effectiveness of the endangered species program. Therefore, for the above HCPs, we assign greater weight to these benefits of exclusion. To the extent there are regulatory benefits of including these areas, there would also be associated costs that could be avoided through exclusion. However, since we expect the regulatory benefits to be low, we are giving greater weight to the avoidance of those associated costs.

Based on the above analysis, we have determined that the benefits of designating critical habitat in streams and other waterbodies covered by these HCPs are relatively small, compared to the benefits of exclusion. The benefits of exclusion therefore outweigh the benefits of inclusion. Because we anticipate little if any conservation benefit to the bull trout will be foregone as a result of excluding these lands, the exclusion of these HCPs will not result in the extinction of the bull trout. The Secretary therefore exercises his discretion under section 4(b)(2) of the Act to exclude these areas from the designation. The specific section 4(b)(2) analysis for each of the above HCPs is described in further detail in the "*Compilation of HCP Exclusion Analyses for the Designation of Bull Trout Critical Habitat (Including Exclusion Analysis for Certain Areas Managed Under the Lewis River Hydroelectric Projects*)." This document is available at *http://www.fws.gov/pacific/bulltrout/.*

Other Managed Areas Considered for Exclusion

We have also determined that specific waterbodies associated with the Lewis River Hydroelectric Projects also warrant exclusion based on our section 4(b)(2) analysis below. These include several waterbodies protected or managed under the Settlement Agreement for the Federal Energy Regulatory Commission (FERC) relicensing of the Yale, Merwin, Swift No. 1 and Swift No. 2 hydroelectric projects, which was signed on November 30, 2004. This final rule provides a summary of the information considered with regard to this section 4(b)(2) analysis. A more detailed analysis is provided in the "*Compilation of HCP Exclusion Analyses for the Designation of Bull Trout Critical Habitat (Including Exclusion Analysis for Certain Areas Managed Under the Lewis River Hydroelectric Projects*)" document, which is available on the bull trout website at *http://www.fws.gov/pacific/bulltrout.*

Lewis River Hydroelectric Projects Conservation Easements and Swift Bypass Reach

There are four projects and three dams that impound over 48.3 km (30 mi) of river habitat on the Lewis River in Washington, located in portions of Clark, Cowlitz, and Skamania Counties. Bull trout are present in all of the reservoirs; the upper two reservoirs have the most significant populations and also support spawning populations. A settlement agreement (Agreement) for the relicensing of the Yale, Merwin, Swift No. 1, and Swift No. 2 hydroelectric projects was signed on November 30, 2004, and FERC issued a license (License) on June 26, 2008. The Agreement and License incorporate conservation measures to minimize or compensate for the effects of the projects on listed species, including bull trout. Conservation measures for bull trout include: (1) Two perpetual conservation covenants, one on lands controlled by PacifiCorp utilities, in the Cougar/Panamaker Creek area, and another on PacifiCorp's and Cowlitz County Public Utility District's (PUD) lands along the Swift Creek arm of Swift Creek Reservoir; (2) upstream and downstream fish passage improvements at all reservoirs; (3) increased flows and

salmon spawning enhancements in the bypass reach; (4) limiting factors analysis for bull trout to determine additional enhancement measures; (5) public information program to protect bull trout; and (6) monitoring and evaluation efforts for bull trout conservation measures. This agreement will also restore anadromous salmon to the upper Lewis River system, including the bypass reach, restoring a significant part of the historic forage base for bull trout.

The Agreement protects surface and subsurface water connectivity through a variety of diverse mechanisms. Springs and seeps that result in perennial or intermittent channels and all perennial streams are protected with riparian buffers. The terrestrial wildlife management plan places special emphasis on stream side riparian zones. The goal is to exceed the standards in the Washington State Forest Practices. The Agreement addresses all wetlands and hydrological integrity and connectivity within the project boundaries and provides for protection of any wetlands that are acquired. Wetland protections (and water level management) are designed to follow the Washington Department of Fish and Wildlife Guidelines. Road prescriptions are designed to avoid disrupting surface and ground-water flows, and there are several specific road remediation efforts directed at existing wetlands within the project boundaries. The Agreement contains measures to improve bull trout access to aquatic habitat, but will not provide a barrier-free environment without human intervention in the near term. The enhanced flows under the license in the Swift bypass reach allow bull trout to access important FMO habitat, and may play an important future role in the collection and transport of adult bull trout to areas upstream of Swift Dam. In addition, roads covered by the Settlement Agreement will be managed in a manner that does not contribute to the formation of barriers, while remediation will address existing barriers.

The Agreement maintains the natural hydrology and riparian functions of large woody input, shade, bank stability, and detritus inputs, as well as natural functions of flood plains and unstable slopes on the streams that are tributary to the reservoirs. The reservoirs themselves do not include riparian origin material to any significant degree, but the development of a self-sustaining kokanee population in the two upper reservoirs has probably increased the available prey base for bull trout. The reintroduction of anadromous salmonids into the basin above Merwin Dam will provide a much larger and broader food base for bull trout, and is expected to increase the aquatic productivity in the tributary streams by reestablishing natural, marine-derived nutrient components. In the Swift bypass reach, the recent construction of spawning channels for reintroduced salmon will also increase the potential forage base for bull trout.

The Agreement and conservation easements address the need for complex habitat by providing buffers and protecting Cougar Creek. Annual surveys are conducted to ensure there are no negative impacts to habitat, and to provide for habitat restoration if negative impacts are found. The Agreement also addresses sediment introduction, which has the potential to simplify and degrade instream habitat conditions by closing and removing culverts, and addresses road surface erosion in the Cougar and Panamaker Creek drainages. Stream temperature is addressed through a number of avenues including a 300-meter (1,000-foot) no-touch buffer along Cougar Creek and a 130-meter (400-foot) no-touch buffer along Panamaker Creek. Higher standard buffers along other streams and wetlands are designed to provide natural levels of shade to avoid increasing sunlight, which could result in stream warming within the project boundaries. Instream temperature regulation is feasible with hydroelectric projects through the use of turbine intakes with features that allow for water intake below the thermocline. The Merwin project has a deep intake, and as a result, the Lewis River downstream of the project typically runs much cooler than it would as an unregulated stream. Yale and Swift are also fairly deep intakes, although the water discharging from the tailrace of the Yale project may be warmer than the receiving water, and may be a challenge with regard to capturing bull trout to assist with their upstream and downstream movement. This problem has not been fully analyzed, and will be one factor addressed during testing of alternative bull trout passage facilities at the Yale and Swift projects.

In addition, the bypass reach between Swift No.1 and the head of Yale Reservoir will gain a permanent instream flow of up to 100 cubic feet per second as part of the Agreement. This should decrease the temperature of the bypass water during the summer months, but may increase the temperature during the fall and early winter over the background temperature.

The Agreement addresses the need for natural substrates by reducing road-generated, fine sediment on project-owned roads. Additionally, it provides for gravel augmentation to mitigate for the blockage of natural bedload movement by the project dams and reservoirs, and addresses bank stability and large wood recruitment, which should help store fine sediment and provide for suitable substrates for bull trout spawning by providing a fund for enhancement and protection measure.

In the Swift bypass reach, flows have been significantly increased under the licensee's 401 Certification issued by the Washington State Department of Ecology to enhance bull trout use in this FMO habitat. Provisions of the Agreement that protect the natural environment should assist bull trout in maintaining a competitive advantage over nonnative species. The reintroduction of the historic assemblage of salmon may create competition for spawning space between bull trout and coho salmon; however, in natural environments, the two species have been observed spawning in the same areas, but generally tend to use habitat with slightly different parameters such as water temperature, gradient, substrate, and cover.

(1) Benefits of Inclusion

Designation of critical habitat for bull trout on lands managed under Lewis River Hydroelectric Projects Conservation Easements would provide protection from the destruction or adverse modification of designated critical habitat under section 7 of the Act. However, without designation, a certain amount of habitat protection would be provided through the jeopardy standard. Based on our review of previous section 7(a)(2) consultations for bull trout using this standard, there is little to indicate that critical habitat designation would generate additional habitat protections beyond those already provided. Under section 7(b)(3) of the Act, the Secretary suggests reasonable and prudent alternatives to proposed Federal actions only in cases where the action would destroy or adversely modify critical habitat. Determinations of destruction or adverse modification of critical habitat would be rare, since they are made within the context of an entire critical habitat designation.

Designating critical habitat can educate the public and management agencies about the distribution of areas containing the physical or biological features essential to the conservation of a species. In areas lacking a bull trout-specific management plan, designation can guide projects to avoid impacts to listed species and can help focus

recovery efforts. However, we believe little additional informational benefit will be gained by including Swift and Cougar Creeks and the Swift bypass reach in designated critical habitat for bull trout. PacifiCorp is implementing conservation recommendations that were provided in our 2002 biological opinion, which includes posting interpretive signs to educate anglers on identifying and conserving native char, and techniques for catch and release to minimize incidental hooking mortality of bull trout. Although educational benefits associated with critical habitat designation can be an important component for the conservation of bull trout, we believe it is redundant with what is already being achieved through the implementation of measures under PacifiCorp's conservation easement.

(2) Benefits of Exclusion

The complex process of negotiating relicensing for the Lewis River hydroelectric projects has been ongoing for nine years. We have established valuable working relationships with PacifiCorp, Cowlitz County Public Utilities District (PUD), and the other participants during these negotiations. By excluding lands included in the two conservation easements from designated critical habitat, we will be better able to: (1) Maintain and enhance our ability to work with PacifiCorp, Cowlitz County PUD, other relicensing applicants, and FERC; and, (2) provide encouragement to other jurisdictions, private landowners, and other entities to continue to see the benefit of working cooperatively with us. Negotiating conservation measures under conditions of mutual trust can result in greater conservation benefits to the species than would result from designating Swift and Cougar Creeks, and the bypass reach, as critical habitat.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

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 waterbodies adjacent to lands managed under Lewis River Hydroelectric Projects Conservation Easements outweigh the benefits of including them as critical habitat. This conclusion is based on the following consideration. It is possible, although unlikely, that a Federal action could be proposed that would be likely to destroy or adversely modify critical habitat within the area subject to the Lewis River Conservation Easement and bypass reach. However, if such a project were to be proposed, any action that would be likely to destroy or adversely modify critical habitat would likely also jeopardize the continued existence of the species, because of the specific way in which jeopardy and adverse modification are analyzed for bull trout. Since the primary threat to bull trout is habitat loss or degradation, the jeopardy analysis under section 7 of the Act for a project with a Federal nexus will most likely evaluate the effects of the action on the conservation or functionality of the habitat for the bull trout. Because of this, we believe that in many cases the analysis of the project to address designated critical habitat will be comparable. As such, we do not anticipate, for many circumstances, that the outcome of the consultation to address critical habitat will result in any significant additional project modifications or measures. Accordingly, potentially detrimental actions would be avoided as a result of the jeopardy analysis. In addition, for the reasons discussed above, we believe the educational benefit of informing the public of the importance of this area to bull trout conservation would be limited because of previous and ongoing efforts. Therefore, we assign relatively little weight to the benefits of designating this area as critical habitat.

In contrast, the benefits of encouraging participation in conservation partnerships and fostering cooperative conservation are crucial to the long-term effectiveness of the endangered species program. Therefore, we assign greater weight to these benefits of exclusion. To the extent that there are regulatory benefits of designating the area as critical habitat, there would be some associated costs that could be avoided by excluding the area from designation. However, as we expect the regulatory benefits to be low, we likewise give weight to avoidance of those associated costs.

Based on our analysis, we have determined that the benefits of inclusion of the areas covered by these conservation easements are outweighed by the benefits of exclusion. Because we anticipate that little if any conservation benefit to the bull trout will be foregone as a result of excluding these lands, and the exclusion will not result in the extinction of the bull trout, the Secretary exercises his discretion under section 4(b)(2) to exclude these areas from the designation.

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. Habitat on tribal lands was determined to be essential to the conservation of bull trout due to its location within the matrix of habitat available for bull trout. Because the bull trout is largely a migratory species with complex migration patterns, connectivity among and within its habitats is essential for long-term persistence and recovery of the species. Many stream reaches or nearshore habitat on or adjacent to tribal lands were determined to be an important component of migratory habitat necessary to maintain connectivity between spawning and rearing habitats and FMO habitats. In other cases, it was determined that streams or stream reaches themselves represent an important component of spawning and rearing habitat for bull trout local populations or are important in maintaining overall connectivity within local populations or both.

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 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. 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 all Tribes potentially affected by the proposed designations and met with a number of these Tribes to discuss their ongoing or future management strategies for bull trout. We subsequently received letters describing ongoing tribal management, conservation plans, and conservation efforts.

We received written responses from the Kalispell, Nez-Perce, Coeur d'Alene, Burns-Paiute, and Shoshone-Paiute Tribes supporting the critical habitat revision and the designation of tribal lands. Based on these responses, the Secretary determined not to exercise his discretion to exclude these tribal lands from the designation. In addition, the Confederated Tribe of the Colville indicated that they did not believe that any of the designated critical habitat affected tribal lands, nor do they believe they have water suitable for bull trout on their tribal lands. We received a comment from the Nisqually Tribe requesting the exclusion of their lands; however, we determined that critical habitat was not proposed on their lands, and therefore consideration of exclusion was not necessary.

Although we did not hear from the Confederated Salish and Kootenai Tribes during the comment period for the proposed rule, we are aware of the Confederated Salish and Kootenai Tribes' resource management plan, which addresses bull trout conservation in the Jocko River watershed. Given previous meetings with the Tribes, and their support of designated critical habitat within the Jocko River watershed, we have retained critical habitat on the Confederated Salish and Kootenai tribal lands (Service 2002, pers.comm.). In total, 5 Tribes requested that their lands be designated as critical habitat, which was accommodated; 6 potentially affected Tribes were either found to not have lands associated with designated habitat or did not respond to our inquiries; and 17 Tribes requested exclusion of their lands based on management plans that conserve bull trout.

We considered exclusions under section 4(b)(2) of the Act for those tribal lands where a commitment exists to conserve bull trout or a conservation program that provides aquatic resource protection and restoration through collaborative efforts on the reservation and other trust lands, and where the Tribes indicated that inclusion would impair their relationship with the Service. Tribes meeting these criteria included the Confederated Tribes of Warm Springs (CTWS), Blackfeet Nation, Confederated Tribes of the Umatilla Indian Reservation (CTUIR), and the Confederated Tribes and Bands of the Yakama Nation. Because of the relative similarities of the conservation management of these Tribes, the weighing and balancing analysis required under section 4(b)(2) of the Act was consolidated, as summarized in the following paragraphs.

We also considered exclusions under section 4(b)(2) of the Act for the treaty Tribes of Western Washington, and Tribes that are members of the Northwest Indian Fisheries Commission that have co-management responsibility over salmon resources with Washington State. These Tribes have also had a significant role in the development of habitat conservation plans, local watershed plans, and other habitat plans, and have implemented numerous habitat restoration and research projects designed to protect or improve habitat for listed species. These Tribes include the Swinomish Tribe, Quinault Indian Nation, Muckleshoot Tribe, Jamestown S'Klallam Tribe, Hoh Tribe, Lower Elwha-Klallam, Quileute Tribe, Lummi Nation, Nooksack Tribe, Puyallup Tribe, Stillaguamish Tribe, Tulalip Tribes, and Skokomish Tribe. Because of the relative similarities of the conservation management of these Tribes, the weighing and balancing analysis required under section 4(b)(2) of the Act was also consolidated, as summarized in the following paragraphs.

Confederated Tribes of Warm Springs Reservation of Oregon (CTWS)

The CTWS has a long history of carrying out proactive conservation actions and maintaining stewardship and conservation of the species and habitats on its lands, and it is also an active co-manager of species and habitats over extensive areas outside of the Warm Springs Reservation. These proactive voluntary conservation efforts are necessary to prevent bull trout extirpation and promote the recovery of the bull trout on CTWS lands. This is especially important in areas where the bull trout has been extirpated and its recovery requires access and permission for reintroduction efforts. For example, bull trout have been extirpated from some rivers within the Coastal Recovery Unit, and repopulation is not likely without the CTWS's cooperation.

The CTWS's management plans and ordinances provide guidelines for land uses and actions that affect the CTWS resources and serve as the basis for tribal management decisions. Bull trout benefit from these voluntary management actions by CTWS. The CTWS has an existing broad regulatory framework that protects bull trout habitat through many different mechanisms. These include their integrated resource management plan and its implementing ordinances on forestlands, water quality, and aquatic resources and their streamside management plan.

We believe that the CTWS' resource management strategy is largely compatible with bull trout conservation. The CTWS has cooperated with Federal and State agencies, and private organizations, to implement voluntary proactive conservation activities on their lands that have resulted in tangible conservation benefits for bull trout. These actions include removal of the headworks dam on Shitke Creek to facilitate movement of bull trout, changes to fishing regulations (the establishment of size and bag limits and no fishing areas) to be more protective of bull trout, reduced road densities, and the fencing of kilometers (miles) of bull trout spawning and rearing habitat. In addition, the CTWS monitors over 30 km (20 mi) of bull trout spawning habitat annually and completes habitat restoration projects throughout both their tribal and individual lands located within the boundaries of the Warm Springs Indian Reservation, off-reservation lands owned in fee, and off-reservation lands held in trust by the Tribe.

The CTWS has a record of action and commitment that will continue regarding the conservation of bull trout and the habitats upon which they depend. We expect this cooperation and bull trout conservation to continue.

Confederated Tribes of the Umatilla Indian Reservation (CTUIR)

The CTUIR has a long history of carrying out proactive conservation actions on their lands, including work towards restoring flows in the Umatilla River. These proactive voluntary conservation efforts are necessary to prevent bull trout extirpation and promote recovery of bull trout on the CTUIR lands. This is especially important in the Umatilla River basin where bull trout are at very low numbers and recovery depends on the CTUIR's cooperation. The CTUIR approved a Forest Management Plan in March 2010, that regulates forestry activities on allotted trust, tribal trust, and tribal fee forest lands on the reservation and identifies protective measures for listed species. A management plan has also been developed by the CTUIR for the Rainwater Wildlife Area. Both plans provide a conservation benefit to bull trout and provide assurances that they

will be implemented and that the conservation effort will be effective.

The CTUIR has an existing broad regulatory framework that protects bull trout habitat through many different mechanisms. These include the March 2010 Forest Management Plan and statutes under the CTUIR's Fish and Wildlife Code, Land Development Code and Water Code.

Finally, the CTUIR has a long-track record of engaging in resource management, partnerships with resource agencies, and specific actions benefiting bull trout and other fish species. They are actively involved in many fish passage, instream, riparian, upland, and flow restoration projects in the Umatilla and Walla Walla river basins. In addition, the CTUIR conducts monitoring, evaluation, and research on stream habitats and aquatic species. Their efforts include being a core partnership member in the development of the Umatilla and Willow and Walla Walla subbasin plans, restoring 27 km (17 mi) of habitat in Meacham creek for spawning and rearing habitat, and being an implementing partner for the Columbia River Anadromous Fish Restoration Plan of the Umatilla, Nez Perce, Warm Springs, and Yakama Tribes. This plan emphasizes strategies and principles that rely on natural production and healthy river systems, subbasin-level return goals for salmon, and the watershed restoration actions that must be undertaken to achieve them.

Tribal lands are currently being managed on a voluntary basis in cooperation with the Service and others to conserve bull trout and achieve important conservation goals. CTUIR cooperation is especially necessary because recovery of bull trout in the Umatilla and Touchet river basins depends on the cooperation of the CTUIR. The Tribe has a record of action and commitment that will continue regarding the conservation of bull trout and the habitats upon which they depend. The CTUIR, through their forest Management Plan and their Tribal Codes, and by affirmative bull trout and watershed protection and restoration projects, has a comprehensive scheme in place protecting and enhancing fish habitat. We expect this cooperation and bull trout conservation to continue. We believe that the bull trout benefits from the CTUIR's voluntary management actions.

The Confederated Tribes and Bands of the Yakama Nation (Yakama Nation)

The current Yakama Nation Tribal Forest Management Plan (FMP) describes best management practices (BMPs) including measures for road building and riparian management intended to minimize sediment delivery, preserve riparian shading, and maintain cool stream temperatures. The FMP provides similar conservation benefit to salmonids (including bull trout) through these BMPs as the Washington State Forest Practice Rules, which are implemented as part of a Statewide HCP (discussed earlier). Compliance with FMP measures is enforced through technical review of proposed timber sales or other activity by a Tribal Inter-Disciplinary Team.

Tribal Fisheries Program staff are currently working with Tribal Wildlife staff to produce a supplement to the FMP that provides specific additional BMPs for protection of spotted owls, bull trout, and other listed or sensitive species. Tribal staff have committed to ongoing coordination with the Service in the development of the final supplements and their inclusion into final recovery planning. The supplemental BMPs will enhance the effectiveness of protection and conservation efforts for bull trout, in a manner similar to a species management plan.

Lastly, the Yakama Nation is implementing fish habitat protection and restoration actions in the Klickitat and Yakima (including Ahtanum Creek basins), and on other nonreservation lands in the Wenatchee, Entiat, and Methow basins. These actions, while not specific to bull trout, will have beneficial effects for bull trout. Although restoration actions generally do not affect bull trout habitat in spawning and rearing areas, they could improve the migration corridor in the mainstems of these rivers for sub-adult rearing and adult migration.

The Yakama Nation does not support an exclusion of reservation boundary waters that are not wholly within the management jurisdiction and authority of the Yakama Nation. Specifically, the Tribe believes that maintaining the bull trout critical habitat designation in lower Ahtanum Creek and the Yakima River where it borders the reservation would increase the likelihood that water and land use practices on the far bank or upstream of the reservation would be compatible with bull trout protection. Consistent with the Tribe's preferences, and because these areas are not wholly within the management jurisdiction and authority of the Yakama Nation, these areas have not been excluded.

The Yakama Nation, CTUIR, CTWS and the Columbia River Inter-Tribal Fish Commission

In 2005, the Northwest Power and Conservation Council (Council) completed one of the largest, locally-led watershed planning efforts of its kind in the United States, an effort that resulted in separate plans for 58 tributary watersheds or mainstem segments of the Columbia River. These subbasin plans were developed collaboratively by State and Federal fish and wildlife agencies, Indian Tribes (through the Columbia River Inter-Tribal Fish Commission), local planning groups, fish recovery boards, and Canadian entities where the plans address transboundary rivers. The planning effort was guided by the Council and funded by the Bonneville Power Administration. The Columbia River Inter-Tribal Fish Commission (CRITFC) is the fishery coordinating agency of four Columbia River treaty Tribes: the Nez Perce Tribe, the Confederated Tribes of the Warm Springs Reservation, the Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes and Bands of the Yakama Indian Nation. The four Columbia River treaty Tribes that make up CRIFTC are co-managers of the Columbia River basin fishery, in the States of Oregon, Washington, and Idaho, and have responsibilities for conservation and management of habitat, and harvest and hatchery decisions. As a result of their involvement, the Tribes play a significant role in sub-basin planning and implementation.

Sub-basin plans identify priority restoration and protection strategies for habitat and fish and wildlife populations in U.S. portion of the Columbia River system. Many of the subbasin plans identify bull trout as a focal species with specific conservation measures. The plans guide the future implementation of the Council's Columbia River Basin Fish and Wildlife Program, which directs more than $140 million per year of Bonneville Power Administration (BPA) electricity revenues to protect, mitigate, and enhance fish and wildlife affected by hydropower dams. Sub-basin plans provide this guidance by providing the context in which proposed projects are reviewed for funding through the Council's program.

Sub-basin plans also integrate strategies and actions funded by others, thus ensuring that each plan serves the Council's purposes under the Northwest Power Act and also accounts for Endangered Species Act and Clean Water Act requirements, and other laws

governing natural resource management, as fully as possible. These plans can be found at the following website: *http://www.nwcouncil.org/fw/subbasinplanning/Default.htm.*

Blackfeet Nation

The Blackfeet Nation has worked closely and cooperatively with the Service on bull trout issues with the goal of developing and implementing the Blackfeet Nation Bull Trout Management Plan. A draft plan was completed in November 2007, and was recently finalized and adopted by the Blackfeet Tribal Business Council by Resolution No. 111-2010.

Through this Bull Trout Management Plan, the Blackfeet Nation has demonstrated a commitment to conservation, protection, and enhancement of the fishery resource on the Blackfeet Reservation. In addition, the Blackfeet Nation has supported and participated in Service studies to gather data for assessing effects of the Milk River Irrigation System on bull trout within the Saint Mary River drainage. The Nation changed angling regulations on their Reservation to maximize bull trout protection soon after the species was listed. The Nation gradually eliminated permits for a tribal gill net fishery in Saint Mary Lake that was affecting bull trout. The Blackfeet Nation has also supported the bull trout recovery planning process. In order to further implement recovery planning on tribal lands, they were recently awarded a Tribal Wildlife Grant and hired their first Tribal fisheries biologist.

In addition to its cooperation with the Service, the Blackfeet Nation has actively taken other steps to protect bull trout habitat including enacting an Aquatic Lands Protection Ordinance in 1993, which is intended to protect Reservation streambeds and riparian habitat. The policy of the Blackfeet Nation as stated in Section 2 of the Aquatic Lands Protection Ordinance is that all waters and aquatic lands on the Reservation are to be protected and preserved, and that the degradation of Reservation waters and aquatic lands be prevented or minimized through the reasonable regulation of such resources. Permits are required for any construction activities within any aquatic lands or areas affecting aquatic or riparian lands, and such construction is strictly regulated through such permits. The Blackfeet Nation has also established water quality standards for all Reservation streams, including the relevant bull trout streams, under authority of the Clean Water Act (CWA). The Blackfeet Nation's application for status or treatment as a State under section 518 of the CWA, which is a prerequisite to implementation of the water quality standards, is currently pending before the Environmental Protection Agency.

Blackfeet lands are being managed in cooperation with the Service and others to conserve bull trout and achieve important conservation goals. The Tribe has a record of action and commitment that will continue through their Management Plan and their Tribal Codes and Ordinances, and by affirmative bull trout and watershed protection and restoration projects. The Blackfeet Nation has demonstrated a commitment to conservation, protection, and enhancement of the bull trout resource on the Blackfeet Reservation and the habitats upon which they depend. We expect this cooperation and bull trout conservation to continue. We believe that the bull trout benefits from the Blackfeet Nation's management actions.

(1) Benefits of Inclusion

Habitat essential to bull trout conservation exists within the previously identified tribal lands. 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 the bull trout. While we believe this educational outcome is important for bull trout conservation, we believe it has already been achieved to some extent through the existing management, education, and public outreach efforts carried out by the Tribes. A final 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.

We believe that a critical habitat designation for the bull trout on previously identified tribal lands would provide a relatively low level of additional benefit. Any regulatory conservation benefits would accrue through the benefit associated with additional section 7 consultation associated with critical habitat. Based on a review of past consultations and consideration of the likely future activities in this specific area, minimal Federal activity is expected to occur on previously identified tribal lands that would trigger section 7 consultations.

(2) Benefits of Exclusion

Proactive voluntary conservation efforts are necessary to prevent bull trout extirpation and promote the recovery of the bull trout on lands of the CTWS, Blackfeet Nation, CTUIR, and the Yakama Nation. This is especially important in areas where the bull trout has been extirpated and its recovery requires access and permission for reintroduction efforts. For example, bull trout have been extirpated from some rivers in the Coastal Recovery Unit, and repopulation is not likely without the CTWS' cooperation. The aforementioned Tribes have a long history of carrying out proactive conservation actions on their lands. Their management plans provide guidelines for land uses that affect tribal resources and serve as the basis for tribal management decisions. We believe that the bull trout will benefit from the Tribes' voluntary management actions due to their long-standing and broad application to tribal management decisions. Additional benefits of excluding Indian lands from designation include: (1) The maintenance of effective, long-term working relationships to promote the conservation of bull trout while streamlining the consultation process; (2) the allowance for continued, meaningful collaboration and cooperation in scientific work to learn more about the life history, habitat

requirements, and conservation needs of the species; (3) to the extent designation would provide any additional protection and conservation of bull trout and its habitat that might otherwise not accrue to bull trout that depend on tribal streams, the costs associated with that protection would be avoided; and (4) exclusion would reduce administrative costs of section 7 consultation (as discussed previously, these costs are unlikely to lead to additional actual protection for bull trout habitat). We believe that fish, wildlife, and other natural resources on tribal lands may be better managed under tribal authorities, policies, and programs than through Federal regulation where tribal management addresses the conservation needs of listed species. Based on this philosophy, we believe that, in many cases, designation of tribal lands as critical habitat may provide little additional benefit to bull trout. In addition, such designation may be viewed by Tribes as unwarranted and an unwanted intrusion into tribal self-governance, thus compromising the government-to government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of endangered and threatened species populations depend.

The Tribes have cooperated with us to implement proactive conservation measures. They have cooperated with Federal and State agencies, and private organizations, to implement voluntary conservation activities on their lands and in their respective river basins, which have resulted in tangible conservation benefits. Where consistent with the discretion provided by the Act, we believe it is necessary to implement policies that provide positive incentives to voluntarily conserve natural resources and that remove or reduce disincentives to conservation. Thus, we believe it is essential for the recovery of bull trout to build on continued conservation activities with these Tribes, to provide positive incentives implementing voluntary conservation activities, and to respect tribal concerns about incurring incidental regulatory or economic impacts.

We believe that excluding these tribal lands from critical habitat will help maintain and improve our relationship by recognizing their positive contribution to bull trout conservation. It will also reduce the cost and logistical burden of regulatory oversight. We believe this recognition will provide other landowners with a positive incentive to undertake voluntary conservation activities on their lands, especially where there is no regulatory requirement to implement such actions. Few additional benefits would be provided by including these tribal lands in this critical habitat designation beyond what will be achieved through the implementation of their existing conservation plans.

(3) Benefits of Exclusion Outweigh Benefits of Inclusion

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 above Tribes. If such a project were proposed, due to the specific way in which jeopardy and adverse modification are analyzed for bull trout, discussed in detail earlier in this document, it would likely also jeopardize the continued existence of the species. 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 bull trout conservation would be low.

We do not believe that inclusion of tribal lands and waters will significantly improve habitat protections for bull trout beyond what is already provided for in the Tribes' own protective policies and practices, discussed below.

In response to the proposed rule (75 FR 2270; January 14, 2010), the Tribes have provided information detailing how they are already working to address the habitat needs of bull trout on their lands as well as in the larger ecosystem through conservation plans and that they are fully aware of the conservation value of their lands. There are several benefits to excluding tribal lands. The longstanding 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.

The Tribes have stated in letters and meetings that designation of Indian lands as critical habitat will undermine long-term working relationships and reduce the capacity of Tribes to participate at current levels in the many and varied forums across four States addressing ecosystem management and conservation of fisheries resources. The benefits of excluding Indian lands from designation include the combination of: (1) The maintenance of effective, long-term working relationships to promote species conservation on an ecosystem-wide basis; (2) continued meaningful collaboration and cooperation in scientific work to learn more about the conservation needs of the species on an ecosystem-wide basis; and (3) recognition and continuation of the conservation benefits to bull trout from the Tribes' existing conservation programs.

Tribal lands are currently being managed on a voluntary basis in cooperation with the Service and others to conserve bull trout and achieve important conservation goals. We believe the bull trout benefits from the Tribes' 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 bull trout, 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 these areas require the continued cooperation and support of the Tribes. Exclusion of tribal lands from the critical habitat designation will help us maintain and improve our partnership with these Tribes by formally recognizing their positive contributions to bull trout recovery, and by streamlining or reducing unnecessary regulatory oversight.

Given the cooperative relationship between these Tribes 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 plans and through their outreach efforts.

Because of the ongoing relationship between the Service and the Tribes 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 identified above, 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 Tribes' voluntary conservation efforts will provide tangible conservation benefits that will reduce the likelihood of extinction and increase the likelihood for bull trout 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.

Therefore, we have determined that the benefits of inclusion for the Tribes mentioned above are small, while the benefits of exclusion are more significant. Consequently, we conclude the benefits of exclusion outweigh the benefits of inclusion. We have reviewed the overall effect of the exclusion of the CTWS, Blackfeet Nation, CTUIR, and Yakama tribal lands for bull trout and their essential habitat. We have determined that the benefits of excluding these areas outweigh the benefits of including them in this critical habitat designation. Designation of critical habitat in these areas would most likely have a negative effect on the recovery and conservation of bull trout. Because we anticipate that little if any conservation benefit to the bull trout will be foregone as a result of the removal of these tribal streams from critical habitat designation, these exclusions will not lead to the species' extinction. Therefore, on the basis of our weighing and balancing above, the Secretary is exercising his discretion under section 4(b)(2) of the Act to exclude tribal lands (identified in Table 10) from critical habitat designation for bull trout. This decision is also consistent with the June 5, 1997, Secretarial Order "In accordance with the President's *Federal - Tribal Trust Responsibilities, and the Endangered Species Act*" (Secretarial Order 3206), and the November 6, 2000, Executive Order "*Consultation and Coordination With Indian Tribal Governments*" (Executive Order 13175).

The areas under management by the above Tribes that we are excluding from critical habitat are those waterbodies within reservation boundaries, and waterbodies that are adjacent to: (1) Lands held in trust by the United States for the benefit of any Indian Tribe; (2) lands held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation; (3) fee lands, either within or outside the reservation boundaries, owned by the tribal government; and (4) fee lands within the reservation boundaries owned by individual Indians. We have determined that these exclusions, together with the other exclusions described in this rule, will not result in extinction of the species.

Affected Treaty Tribes in Western Washington

The Treaty Tribes in Western Washington have a long-standing commitment to the protection and restoration of the fisheries resources throughout the Tribe's usual and accustomed fishing areas. Tribes affected by the bull trout critical habitat designation include: the Swinomish Tribe, Quinault Indian Nation, Muckleshoot Tribe, Jamestown S'Klallam Tribe, Hoh Tribe, Lower Elwha-Klallam, Quileute Tribe, Lummi Nation, Nooksack Tribe, Puyallup Tribe, Stillaguamish Tribe, Tulalip Tribes, and Skokomish Tribe Reservations and tribal lands within the Puget Sound–Coastal population.

The ruling in *U.S.* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974)), (the Boldt Decision) re-affirmed the rights reserved by the Tribes in the original treaties and established the Tribes as co-managers of the salmon resource with the State. Subsequent Federal court rulings have upheld tribal shellfish harvest rights and the tribal environmental right to protection and restoration of salmon habitat. The identified Tribes have been involved co-managers of salmonid fisheries prior to the Boldt decision and were recognized as self-regulatory by Washington State in 1998. They have aggressively pursued aquatic habitat restoration grants throughout their watersheds and independent streams and have been a key player in developing restoration, management and recovery plans for all salmonid species, including the bull trout. The State relies on tribal information and effort to keep salmonid information up to date. Most of the Tribes have a strong marine program, as well. They are active in several State and Federal committees regarding salmonid protection and management, as well as water quality.

The western Washington Indian Tribes have treaty-reserved fishing rights in the marine waters within Puget Sound and off the Washington Coast. Tribal governments share co-management authority and responsibility for marine resources in their usual and accustomed fishing areas with the State of Washington or the Federal government, depending on the specific resource and area identified. Conservation goals and standards for fishery resources management are established through government-to-government consultations between the co-managers and with the other State or Federal agencies as appropriate. The salmon and steelhead fisheries are managed cooperatively in a unique government-to-government relationship between the State of Washington and the Tribes. While their co-management activities do not currently involve bull trout directly, actions undertaken on behalf of this partnership do in fact benefit bull trout. As such, this co-management process provides specific protection to tribal trust resources and bull trout.

The State and Tribes in 1992 produced the Salmon Stock Inventory (SaSI), a critical document for wild fish recovery. The SaSI definitively identified the status of each wild stock, including bull trout, in categories ranging from extinct to healthy, and provided a system to monitor their status. As habitat recovery efforts by the State, Tribes and citizen groups shift into implementation, the SaSI, currently being updated, will help ensure restoration efforts are working. The State and Tribes also worked collaboratively with NOAA Fisheries and the Service to develop the Puget Sound Shared Strategy. The Puget Sound Shared Strategy focuses on the Puget Sound basin, including its marine waters and individual watersheds. It also focuses on groups of Puget Sound

fish that have genetic, ecological, and life histories that distinguish them from other groups within their species. Puget Sound Tribes are co-managers of Puget Sound Basin fisheries in Washington, and share responsibilities for habitat, harvest, and hatchery decisions with Washington Department of Fish and Wildlife, and with NOAA Fisheries for listed species.

Puget Sound Tribes played a significant role in the development of the Puget Sound Salmon Recovery Plan for listed salmonids, including bull trout. The development of this plan was guided by the regional recovery strategy, called the Shared Strategy for Puget Sound. Individual Tribes played a critical role in the development of the individual watershed chapters of the recovery plan, and continue to play a critical role within local watershed planning groups in the implementation of these individual watershed plans. These plans assist in targeting salmonid habitats in greatest need of restoration or protection within the individual watersheds. These plans can be found at the following website: *http://www.sharedsalmonstrategy.org/plan/index.htm*.

The initial goal-setting process of the Shared Strategy focused on Puget Sound species listed under the Act: Puget Sound Chinook salmon, Hood Canal summer chum, and bull trout. The Shared Strategy not only works to promote the recovery of these species, it will also promote and protect the continued health of thriving stocks to avoid further listings under the Act. As these examples demonstrate, co-management is an ongoing, evolving process. Its guiding principle is that much more can be done to strengthen, preserve, and restore salmonid and steelhead resources by working together in a cooperative manner.

The Treaty Tribes of Western Washington have a long history of working with their partners to carryout proactive conservation and to maintain stewardship and conserve species. In addition, the following discussion identifies specific types of actions and conservation management that many of the Western Washington Treaty Tribes have undertaken.

Swinomish Tribe

The Swinomish Tribe has a management plan that addresses surface water resources of the Swinomish Reservation, including marine tidelands, an artificial marine channel, estuarine wetlands, small streams, and freshwater wetlands. The management plan is based on existing knowledge and ongoing studies, active conservation practices, ordinances, and current management plans. It will be updated with new information obtained from ongoing surveys, habitat assessments, and other planning processes. The plan consists of regulation and implementation of updated tribal laws to protect habitat, control development, reduce pollution within the boundaries of the Reservation, restore habitat, and remove fish passage barriers to contribute proactively to species recovery.

Quinalt Nation

The Quinault Indian Nation and the Bureau of Indian Affairs (BIA) developed a forest management plan (FMP) for the entire Quinault Indian Reservation. The FMP covers all forestland (about 70,000 ha (173,000 ac)) under tribal and BIA timber management, including individual Indian-owned trust and tribally owned land. Included in the area of the FMP are the lower Quinault River, the tributaries of the lower Quinault River, the lower Queets River, the Salmon River (including the Middle and South Fork Salmon Rivers), portions of the Raft River, and portions of the Moclips River. The FMP is a 10–year plan covering the period from October 2002 through September 2012. The FMP is being implemented by the Quinault Department of Natural Resources and the BIA Taholah Field Office. Although some adverse effects to the bull trout are expected during implementation of the plan, it is expected to provide for long-term bull trout conservation needs.

Skokomish Tribe

The Skokomish Tribe has provided aquatic resource protection and restoration through a number of collaborative efforts on their reservation and other trust lands. The Tribe has been working regularly with landowners, local governments, and others to implement and fund voluntary efforts that provide conservation benefits to salmonids, including bull trout. These cooperative efforts include a variety of investigative assessments, restoration and enhancement projects, property acquisitions, and floodplain and river reach analysis.

Muckleshoot Tribe

The Muckleshoot Tribe has demonstrated a commitment to conservation, protection, and enhancement of fish resources both on and off the Muckleshoot Reservation. For example, the Tribe has designated all areas of the White River within its reservation, from "bluff to bluff," as a conservation zone. The Tribe has also been a leading participant in gathering data for Lake Washington and preparing a Lake Washington Recovery Plan.

Jamestown S'Klallam Tribe

The Jamestown S'Klallam Tribe has a record and reputation as a participant and leader in the planning and implementation of salmonid habitat protection and restoration efforts. The Tribe is dedicated to coordinating with NOAA Fisheries, the Service, and the State of Washington in the spirit of co-management, and is also involved in active consultation and in multiple programs to protect listed salmonid species.

Hoh Tribe

The Hoh Tribe has a forest management plan that demonstrates a commitment to protect bull trout habitat on or adjacent to its reservation. This plan designates major portions of the floodplain and riparian zones adjacent to streams on the current reservation landscape for conservancy, and is filed with the BIA.

(1) Benefits of Inclusion

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 since 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 the bull trout.

(2) Benefits of Exclusion

The benefits of excluding Indian lands from designation include: (1) The maintenance of effective, long-term working relationships to promote the conservation of bull trout while streamlining the consultation process; (2) the allowance for continued meaningful collaboration and cooperation in scientific work to learn more about the life history, habitat requirements, and conservation needs of the species; (3) to the extent designation would provide any additional protection and conservation of bull trout and its habitat that might otherwise not accrue to bull trout that depend on tribal streams, the costs associated with that protection would be avoided; and (4) exclusion would reduce administrative costs of section 7 consultation (as discussed previously, these costs are unlikely to lead to additional actual protection for bull trout habitat). We believe that fish, wildlife, and other natural resources on tribal lands may be better managed under tribal authorities, policies, and programs than through Federal regulation where tribal management addresses the conservation needs of listed species. Based on this philosophy, we believe that, in many cases, designation of tribal lands as critical habitat may provide little additional benefit to threatened and endangered species. In addition, such designation may be viewed by Tribes as unwarranted and an unwanted intrusion into tribal self-governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of endangered and threatened species populations depend.

We believe that excluding these tribal lands from critical habitat will help maintain and improve our partnership relationship by recognizing the Tribes' positive contribution to bull trout conservation. It will also reduce the cost and logistical burden of regulatory oversight. We believe this recognition will provide other landowners with a positive incentive to undertake voluntary conservation activities on their lands, especially where there is no regulatory requirement to implement such actions. Tribal cooperation and support is required to prevent extirpations and extinction and promote the recovery of the bull trout due to the need to implement proactive conservation actions. Future conservation efforts will require the cooperation of these Tribes. Exclusion of their lands from this critical habitat designation will help us maintain and improve our partnership with them by formally recognizing the positive contributions these Tribes have made to bull trout recovery, and by streamlining or reducing unnecessary regulatory oversight. The Tribes have cooperated with us to implement proactive conservation measures. They have cooperated with Federal and State agencies, and private organizations, to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits. Where consistent with the discretion provided by the Act, we believe it is necessary to implement policies that provide positive incentives to voluntarily conserve natural resources and that remove or reduce disincentives to conservation. Thus, we believe it is essential for the recovery of bull trout to build on continued conservation activities with these Tribes, to provide positive incentives implementing voluntary conservation activities, and to respect tribal concerns about incurring incidental regulatory or economic impacts.

(3) Benefits of Exclusion Outweigh benefits of Inclusion

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 a Federal action could be proposed that was likely to destroy or adversely modify critical habitat within areas subject to tribal management. If such a project were to be proposed, any action that would be likely to destroy or adversely modify critical habitat would likely also jeopardize the continued existence of the species because of the specific way in which jeopardy and adverse modification are analyzed for bull trout. In addition, for the reasons discussed above, we believe the educational benefit of informing the public of the importance of this area to bull trout conservation would be limited because of previous and ongoing efforts. Therefore, we assign relatively little weight to the benefits of designating this area as critical habitat.

Because of the very small size of most of the Treaty Tribes of Western Washington reservation lands, we do not believe that inclusion of tribal lands and waters will significantly improve habitat protections for bull trout beyond what is already provided for in the Tribes' own protective policies and practices, discussed below.

In response to the proposed rule (75 FR 2270; January 14, 2010), the Tribes have demonstrated how they are already working to address the habitat needs of the species on these lands as well as in the larger ecosystem through conservation plans, and that they are fully aware of the conservation value of their lands. There are several benefits to excluding tribal lands. The longstanding 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. In addition to the distinctive trust relationship, for the area that overlaps salmon and steelhead in the Northwest, there is a unique partnership between the Federal government and Indian Tribes regarding salmon management. The Treaty Tribes of Western Washington are regarded as ''co-managers'' of the salmon resource, along with Federal and State managers. This co-management relationship evolved as a result of numerous court decisions clarifying the Tribes' treaty right to take fish in their usual and accustomed places. While their co-management activities do not currently involve bull trout directly, actions undertaken on behalf of this partnership do in fact benefit bull trout. As such, this co-management process provides specific protection to tribal trust resources and bull trout.

Tribes have played a significant role in the development of habitat conservation plans, local watershed plans, or other habitat plans and have conducted numerous habitat restoration and research projects designed to protect or improve habitat for listed species. Additionally, the Tribes have stated in letters and at meetings that designation of Indian lands as critical habitat will undermine long-term,

working relationships and reduce the capacity of Tribes to participate at current levels in the many and varied forums across four States addressing ecosystem management and conservation of fisheries resources. The benefits of excluding Indian lands from designation include the combination of: (1) The furtherance of established national policies, our Federal trust obligations, and our deference to the Tribes in management of natural resources on their lands; (2) the maintenance of effective, long-term working relationships to promote species conservation on an ecosystem-wide basis; (3) the allowance for continued meaningful collaboration and cooperation in scientific work to learn more about the conservation needs of the species on an ecosystem-wide basis; (4) recognition and continuation of, the conservation benefits to bull trout from the Tribes' existing conservation programs; and (5) respect for tribal sovereignty over management of natural resources on Indian lands through established tribal natural resource programs.

We believe that the current co-manager process, along with the individual Tribe's efforts to conserve and manage bull trout habitat, is beneficial for the conservation of the bull trout and its critical habitat. Because these processes provide for coordinated, ongoing, focused action through a variety of forums, we find the benefits of this process to be greater than the benefits of applying the Act's section 7 consultation for critical habitat to Federal activities on Indian lands. We also believe that maintenance of our current relationship consistent with existing policies is an important benefit to continuation of our tribal trust responsibilities and relationship. Based upon our consultation with the Tribes identified above, 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 Tribes' voluntary conservation efforts will provide tangible conservation benefits that will reduce the likelihood of extinction and increase the likelihood for bull trout 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.

Therefore, we have determined that the benefits of inclusion for the Tribes mentioned above are small, while the benefits of exclusion are more significant. Consequently, we conclude the benefits of exclusion outweigh the benefits of inclusion. We have reviewed the overall effect of the exclusion of the above-mentioned tribal lands for bull trout and their essential habitat. We have determined that the benefits of excluding these areas outweigh the benefits of including them in this critical habitat designation. Designation of critical habitat in these areas would most likely have a negative effect on the recovery and conservation of bull trout. Because we anticipate little if any conservation benefit to the bull trout will be foregone as a result of the removal of these tribal streams from critical habitat designation, these exclusions will not lead to the species' extinction. Therefore, on the basis of our weighing and balancing above, the Secretary is exercising his discretion under section 4(b)(2) of the Act to exclude tribal lands (identified in Table 12) from critical habitat designation for bull trout. This decision is also consistent with the June 5, 1997, Secretarial Order "*American Indian Tribal Rights, Federal - Tribal Trust Responsibilities and the Endangered Species Act*"(Secretarial Order 3206), and the November 6, 2000, Executive Order "*Consultation and Coordination With Indian Tribal Governments*", (Executive Order 13175).

The areas under management by the above Tribes that we are excluding from critical habitat are those waterbodies within reservation boundaries, and waterbodies that are adjacent to: (1) Lands held in trust by the United States for the benefit of any Indian Tribe; (2) lands held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation; (3) fee lands, either within or outside the reservation boundaries, owned by the tribal government; and (4) fee lands within the reservation boundaries owned by individual Indians. We have determined that these exclusions, together with the other exclusions described in this rule, will not result in extinction of the species.

TABLE 12.—TRIBAL NATION, CRITICAL HABITAT UNIT, AND STREAM/WATERBODY AFFECTED BY SECTION 4(B)(2) OF THE ACT EXCLUSION

Tribal Nation	Critical Habitat Unit	Stream/waterbody name
Confederated Tribes of Warm Springs	Deschutes River Basin, Lower Mainstem Columbia and John Day River Basin	Deschutes River, Shitike Creek, Jefferson Creek, Warm Springs River, Whitewater River, Metolius River (and small tributaries), John Day River, portion of Lake Billy Chinook, Upper Mainstem John Day River, Middle Fork John Day River, Columbia River
Blackfeet Nation	Saint Mary River Basin	Saint Mary River
Yakama Nation	Yakama and Lower Columbia River Basins	Yakima River, Ahtanum Creek, South Fork Ahtanum Creek, West Fork Klikitat River, Little Muddy Creek, Crawford Creek, Clearwater Creek, Trappers Creek, Fish Lake Stream, Unnamed tributary that meets Fish Lake Stream, and Two Lakes Stream
Hoh Tribe	Olympic Peninsula	Hoh River and Pacific Coast nearshore
Jamestown S'Klallam Tribe	Olympic Peninsula	Dungeness River

TABLE 12.—TRIBAL NATION, CRITICAL HABITAT UNIT, AND STREAM/WATERBODY AFFECTED BY SECTION 4(B)(2) OF THE ACT EXCLUSION—Continued

Tribal Nation	Critical Habitat Unit	Stream/waterbody name
Lower Elwha Klallam Tribe	Olympic Peninsula	Elwha River and Strait of Juan De Fuca nearshore
Quileute Tribe	Olympic Peninsula	Pacific Coast nearshore
Skokomish Tribe	Olympic Peninsula	Skokomish River, Nalley Slough, Skobob Creek, and Hood Canal nearshore
Lummi Nation	Puget Sound	Nooksack River and Puget Sound nearshore
Muckleshoot Tribe	Puget Sound	White River
Nooksack Tribe	Puget Sound	Nooksack River, Fishtrap Creek, Anderson Creek, and Smith Creek
Puyallup Tribe	Puget Sound	Puyallup River and Puget Sound nearshore
Stillaguamish Tribe	Puget Sound	Stillaguamish River and Pilchuck Creek
Swinomish Tribe	Puget Sound	Swinomish Channel and Puget Sound nearshore
Tulalip Tribes	Puget Sound	Puget Sound nearshore
Quinault Tribe	Olympic Peninsula	Quinault River, lower Quinault River tributaries, Lower Queets River, the Salmon River (including the Middle and South Fork Salmon Rivers), portions of the Raft River, and portions of the Moclips River.
Confederated Tribes of the Umatilla	Umatilla River, Walla Walla Basin, Columbia Mainstem	Umatilla River Basin, Walla Walla Basin, Columbia Mainstem

Identification of Specific Geographic Areas Excluded Under Section 4(b)(2) of the Act

Publishing the geospatial coordinates for each portion of a particular waterbody excluded under section 4(b)(2) of the Act would be cost-prohibitive, given the wide range of the species and the number of waterbodies affected. However, each area excluded is described by narrative in the *Application of Section 4(b)(2) of the Act* section. We have also correlated each applicable exclusion with its relevant critical habitat unit map in this final rule. Information to aid in identifying the geographic extent of each waterbody excluded under section 4(b)(2) of the Act is available at *http://www.fws.gov/pacific/bulltrout/.*

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 a draft economic analysis (DEA), which we made available for public review concurrent with the proposed rule on January 14, 2010 (75 FR 2270). We accepted comments on the DEA until March 15, 2010. We then reopened the comments period on the proposal from March 23, 2010, to April 5, 2010 (75 FR 13715, March 23, 2010). Following the close of the comment period, a final analysis of the potential economic effects of the designation was developed taking into consideration the public comments and any new information.

The intent of the final economic analysis (FEA) is to quantify the economic impacts of all potential conservation efforts for the bull trout. Some of these costs will likely be incurred regardless of whether we designate critical habitat (baseline). 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 analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur with the 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. Decisionmakers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the FEA looks retrospectively at costs that have been incurred since 1998, when we listed the bull trout as threatened under the Act, and 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 forecast activity levels for projects beyond a 20–year timeframe. The FEA quantifies economic impacts of bull trout conservation efforts associated with the following categories of activity: water management, activities that impact water quality, dredging activities and other impacts (e.g., bridge replacement, management plans, and natural gas pipelines). We have considered whether this designation would result in a disproportionate or significant economic effect to any potentially affected entities. Based on our FEA, we have determined that the incremental economic effects associated with the revised designation of critical habitat for the bull trout will not have a significant effect, and therefore, we are not excluding any areas based on economic impacts. A copy of the FEA with supporting documents may be obtained by contacting the Idaho Fish and Wildlife Field Office (see **ADDRESSES**) or for downloading from the Internet at *http://www.regulations.gov.*

Required Determinations

Regulatory Planning and Review—Executive Order 12866

Executive Order 12866 requires Federal agencies to submit proposed and final significant rules to the Office of Management and Budget (OMB) prior to publication in the FR. The Executive Order defines a rule as significant if it meets one of the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whetherthe rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

If the rule meets criteria (1) above it is called an "economically significant" rule and additional requirements apply. It has been determined that this rule is "significant" but not "economically significant." It was submitted to OMB for review prior to promulgation.

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 the bull trout 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 to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the revised critical habitat designation for bull trout would significantly affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (e.g., dams, agriculture and agricultural diversions, grazing, development, forest management, roads, and mining). We apply the substantial number test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define substantial number or significant economic impact. Consequently, to assess whether a substantial number of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Under the Act, designation of critical habitat only affects activities 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 the bull trout. 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 *Adverse Modification Standard* section).

In our final economic analysis of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from implementation of conservation actions related to the designation of critical habitat for the bull trout. This analysis estimated prospective economic impacts due to the implementation of bull trout conservation efforts in eight categories (dams, agriculture and agricultural diversions, grazing, development, forest management, roads, mining, and "other"). The following is a summary of information contained in the final economic analysis.

To estimate the number of businesses, the economic analysis presumes business locations are distributed geographically in the same pattern that the human population is distributed (i.e., more densely populated areas will contain proportionally more business than less populated areas). To derive an estimate of the number of small entities falling within the designation, data on factors such as the size and annual sales of businesses in the area as collected by Dun & Bradstreet were reviewed. These data are available on a county-wide basis. Because counties may include

areas that are not part of the critical habitat designation, the number of small entities within the county was scaled by the percentage of the county's population living within the critical habitat boundaries. Of the potentially affected entities, 97 percent are classified as likely to be "small."

The number of potentially affected small entities was considered under two different scenarios to provide for uncertainty regarding the number of small entities affected. Under Scenario 1, the estimated number of small entities within areas affected by the designation (N=23,800) assumes that incremental impacts are distributed evenly across all entities in each affected industry. Under this scenario, a small entity may bear costs up to $4,050, representing between <0.01 and 0.03 percent of average revenues, depending on the industry. Scenario 2 assumed costs of each anticipated future consultation are borne by a distinct small business within areas affected by the designation (N=728). Under this scenario, each small entity may bear costs of between $455 and $17,000, representing between 0.01 and 0.56 percent of average annual revenues, depending on the industry. Total annualized impacts to small entities are estimated to be $3.6 million, or approximately 51 percent of the total incremental impacts anticipated as a result of this rule.

In summary, we have considered whether the designation would result in a significant economic impact on a substantial number of small entities. Based on the above reasoning and currently available information, we concluded that this rule will not have a significant economic impact on a substantial number of small business entities. Therefore, we are certifying that the designation of critical habitat for the bull trout will not have a significant economic impact on a substantial number of small entities.

Energy Supply, Distribution, or Use—Executive Order 13211

Under Executive Order 13211 (E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use), Federal agencies must 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 are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with the bull trout 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 [T]ribal 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 of the Act. 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, because it will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a significant regulatory action under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating revised critical habitat for the bull trout in a takings implications assessment. 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 the bull trout does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from,

and coordinated development of this critical habitat designation with, appropriate State resource agencies in Oregon. We received comments from the State of Oregon and the Oregon Department of Fish and Wildlife, which have been addressed in the **Summary of Comments and Recommendations** section of the rule. The designation of critical habitat in areas currently occupied by the bull trout 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 PCEs 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).

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the regulation 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. This final rule uses standard property descriptions and identifies the physical or biological features essential to the conservation of the subspecies within the designated areas to assist the public in understanding the habitat needs of the bull trout.

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 as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (Douglas County v. Babbitt, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, 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. There are tribal lands that were occupied by the species at the time of listing, and remain occupied by the species, that contain the features essential for the conservation of bull trout. However, as discussed in the Tribal Lands–Exclusions Under Section 4(b)(2) of the Act section, we have determined that maintaining our important conservation partnership with the Tribes toward the continued implementation of their tribal management and conservation plans provides greater conservation benefit than would the designation of critical habitat on waters within or adjacent to tribal lands. Table 12 identifies the waters within or adjacent to tribal lands that were excluded from critical habitat designation under section 4(b)(2) of the Act.

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Idaho Fish and Wildlife Office (see **ADDRESSES**).

Authors

The primary authors of this rulemaking are the staff members of the Idaho Fish and Wildlife Office.

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; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.95(e) by revising critical habitat for "Bull Trout (*Salvelinus confluentus*)" to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) Fishes.

* * * * *

Bull Trout (*Salvelinus confluentus*)

(1) *Locations of critical habitat.* Critical habitat units are depicted in the following States and counties on the maps and as described below:

State	Counties
(i) Idaho	Adams, Benewah, Blaine, Boise, Bonner, Boundary, Butte, Camas, Custer, Elmore, Gem, Idaho, Kootenai, Lemhi, Lewis, Nez Perce, Owyhee, Shoshone, Valley, Washington
(ii) Montana	Deer Lodge, Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Mineral, Missoula, Powell, Ravalli, Sanders
(iii) Nevada	Elko

State	Counties
(iv) Oregon	Baker, Clatsop, Columbia, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lane, Linn, Malheur, Morrow, Multnomah, Sherman, Umatilla, Union, Wallowa, Wasco, Wheeler
(v) Washington	Asotin, Benton, Chelan, Clallam, Clark, Columbia, Cowlitz, Garfield, Grant, Grays Harbor, Island, Jefferson, King, Kittitas, Klickitat, Mason, Okanogan, Pend Oreille, Pierce, Skagit, Skamania, Snohomish, Stevens, Thurston, Wahkiakum, Walla Walla, Whatcom, Whitman, Yakima

(2) *Topographic features included in the critical habitat designation.* Critical habitat includes the stream channels within the designated stream reaches; designated lakes and reservoirs; and inshore portions of marine nearshore areas, including tidally influenced freshwater heads of estuaries indicated on the maps beginning with paragraph (e)(7) of this entry.

(i) Critical habitat includes the stream channels within the designated stream reaches and a lateral extent as defined by the bankfull elevation on one bank to the bankfull elevation on the opposite bank. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain and is reached at a discharge that generally has a recurrence interval of 1 to 2 years on the annual flood series. If bankfull elevation is not evident on either bank, the ordinary high-water line must be used to determine the lateral extent of critical habitat. The lateral extent of designated lakes is defined by the perimeter of the waterbody as mapped on standard 1:24,000 scale topographic maps.

(ii) Critical habitat includes the inshore extent of critical habitat for marine nearshore areas (the mean higher high-water (MHHW) line), including the uppermost reach of the saltwater wedge within tidally influenced freshwater heads of estuaries. The MHHW line refers to the average of all the higher high-water heights of the two daily tidal levels. Adjacent shoreline riparian areas, bluffs, and uplands are not designated as critical habitat. However, it should be recognized that the quality of marine habitat along shorelines is intrinsically related to the character of these adjacent features, and human activities that occur outside of the MHHW line can have major effects on the physical and biological features of the marine environment. The offshore extent of critical habitat for marine nearshore areas is based on the extent of the photic zone, which is the layer of water in which organisms are exposed to light. Critical habitat extends offshore to the depth of 10 meters (m) (33 feet (ft)) relative to the mean low low-water (MLLW) line (average of all the lower low-water heights of the two daily tidal levels). This equates to the average depth of the photic zone and is consistent with the offshore extent of the nearshore habitat identified by the national Oceanic and Atmospheric Administration in the National Tidal Datum 1983 through 2001. This area between the MHHW line and minus 10 m MLLW line is considered the habitat most consistently used by bull trout in marine waters based on known use, forage fish availability, and ongoing migration studies and captures geological and ecological processes important to maintaining these habitats. This area contains essential foraging habitat and migration corridors such as estuaries, bays, inlets, shallow subtidal areas, and intertidal flats.

(3) *The primary constituent elements (PCEs) of critical habitat.* Within the critical habitat, the PCEs for bull trout are those habitat components that are essential for the primary biological needs of foraging, reproducing, rearing of young, dispersal, genetic exchange, or sheltering. The PCEs are as follows:

(i) Springs, seeps, groundwater sources, and subsurface water connectivity (hyporheic flows) to contribute to water quality and quantity and provide thermal refugia.

(ii) Migration habitats with minimal physical, biological, or water quality impediments between spawning, rearing, overwintering, and freshwater and marine foraging habitats, including but not limited to permanent, partial, intermittent, or seasonal barriers.

(iii) An abundant food base, including terrestrial organisms of riparian origin, aquatic macroinvertebrates, and forage fish.

(iv) Complex river, stream, lake, reservoir, and marine shoreline aquatic environments, and processes that establish and maintain these aquatic environments, with features such as large wood, side channels, pools, undercut banks and unembedded substrates, to provide a variety of depths, gradients, velocities, and structure.

(v) Water temperatures ranging from 2 to 15 degrees Celsius (°C) (36 to 59 degrees Fahrenheit (°F)), with adequate thermal refugia available for temperatures that exceed the upper end of this range. Specific temperatures within this range will depend on bull trout life-history stage and form; geography; elevation; diurnal and seasonal variation; shading, such as that provided by riparian habitat; streamflow; and local groundwater influence.

(vi) In spawning and rearing areas, substrate of sufficient amount, size, and composition to ensure success of egg and embryo overwinter survival, fry emergence, and young-of-the-year and juvenile survival. A minimal amount of fine sediment, generally ranging in size from silt to coarse sand, embedded in larger substrates, is characteristic of these conditions. The size and amounts of fine sediment suitable to bull trout will likely vary from system to system.

(vii) A natural hydrograph, including peak, high, low, and base flows within historic and seasonal ranges or, if flows are controlled, minimal flow departure from a natural hydrograph.

(viii) Sufficient water quality and quantity such that normal reproduction, growth, and survival are not inhibited.

(ix) Sufficiently low levels of occurrence of nonnative predatory (e.g., lake trout, walleye, northern pike, smallmouth bass); interbreeding (e.g., brook trout); or competing (e.g., brown trout) species that, if present, are adequately temporally and spatially isolated from bull trout.

(4) Critical habitat does not include manmade structures (including, but not limited to, buildings, aqueducts, docks, seawalls, pipelines, roads, runways, or other structures or paved areas) and the land or waterway on which they are located that exist within the legal boundaries on the effective date of this rule.

(5) *Exclusions.* Each excluded area is identified in the relevant Critical Habitat Unit text below, as identified in paragraphs (e)(8) through (e)(41) of this entry. Critical habitat does not include:

(i) Waters adjacent to non-Federal lands covered by the following legally operative incidental take permits for habitat conservation plans (HCPs) issued under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act), in which bull trout is a covered species on or before the publication of this final rule: Cedar River Watershed HCP, Green Diamond HCP, Washington Department of Natural

Resources HCP, Washington Forest Practices HCP, Plum Creek Central Cascades HCP, Plum Creek Native Fish HCP, and Stimpson Native Fish HCP;

(ii) Waters within or adjacent to lands subject to certain tribal management plans; or

(iii) Waters where impacts to national security have been identified.

(6) *Critical habitat map units.* Data layers defining map units were created using U.S. Geological Survey (USGS) Hydrologic Unit Code map (HUCs) at a scale of 1:250,000 down to the 4th level cataloging unit. In some cases, 5th and 6th level HUCs were also used and some finer scale watersheds developed using USGS 10-meter Digital Elevation Model and 1:24,000 scale hydrography layers. The marine boundaries for the Puget Sound and Olympic Peninsula critical habitat unit were based on Washington Department of Natural Resources 1:24,000 scale county boundaries and HUCs.

(7) *Note:* Index map for critical habitat units for the bull trout follows:

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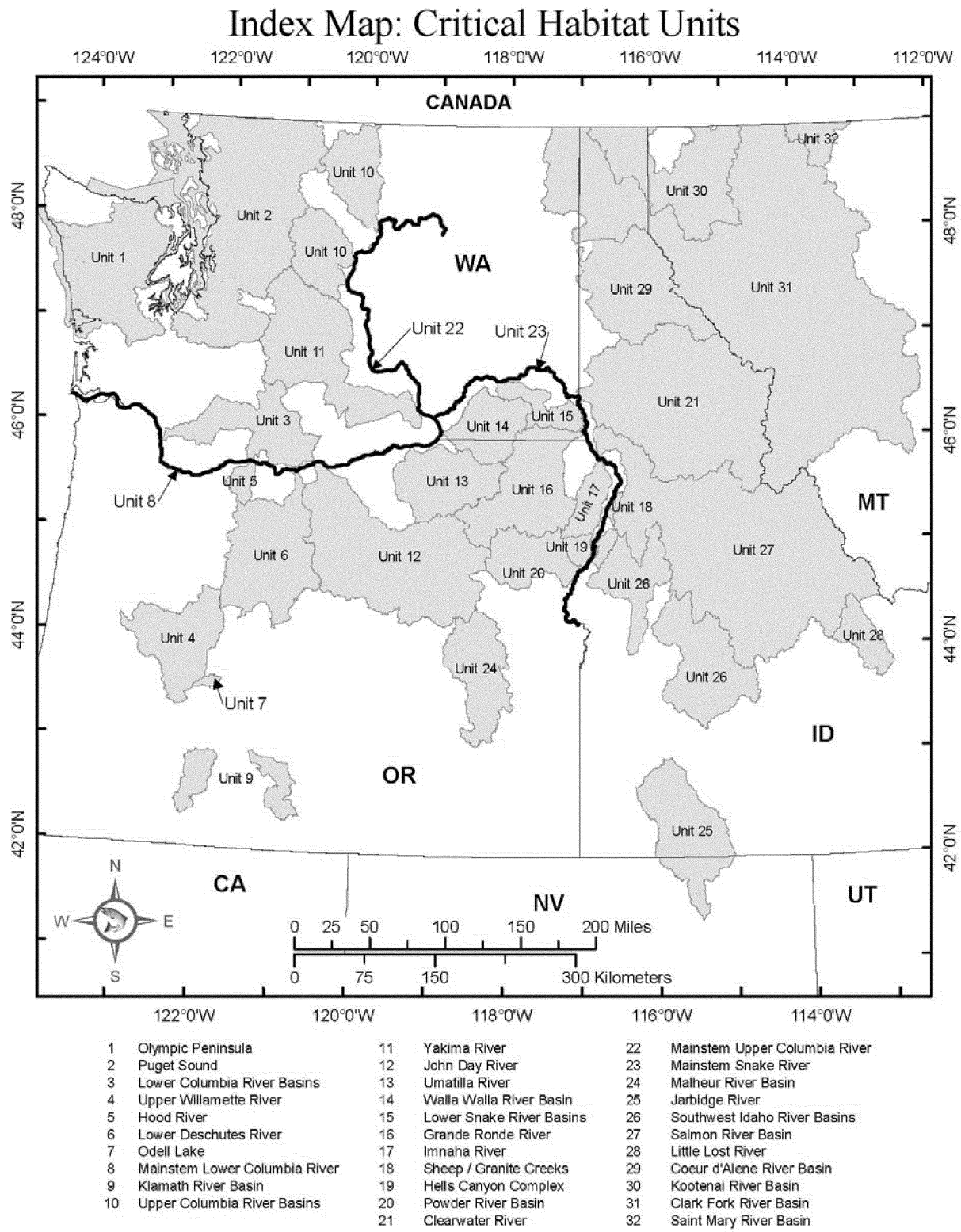

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(8) Unit 1: Olympic Peninsula

(i) This unit consists of 748.7 km (465.2 mi) of streams, 529.2 km (328.8 mi) of marine shoreline, and 3,064 ha (7,572 ac) of lakes and reservoirs. The unit is located in northwestern Washington.

(ii) Individual waterbodies in the unit are bounded by the following coordinates:

Waterbody Name	Stream Begin Point or Lake Center Latitude	Stream Begin Point or Lake Center Longitude	Stream End Point Latitude	Stream End Point Longitude
Alta Creek	47.685	-123.737	47.698	-123.756
Big Creek	47.566	-123.681	47.518	-123.774
Bob Creek	47.696	-123.853	47.689	-123.856
Boulder Creek	47.979	-123.613	47.983	-123.601
Brown Creek	47.455	-123.260	47.411	-123.319
Buckinghorse Creek	47.739	-123.485	47.746	-123.483
Cameron Creek	47.916	-123.243	47.912	-123.255
Canyon Creek	47.954	-123.247	48.025	-123.137
Cat Creek	47.946	-123.644	47.973	-123.593
Cedar Creek	47.440	-123.405	47.443	-123.403
Cedar Creek	47.717	-124.336	47.712	-124.416
Chehalis River	46.819	-123.253	46.966	-123.547
Church Creek	47.460	-123.457	47.461	-123.451
Clearwater River	47.628	-124.276	47.628	-124.276
Clide Creek	47.888	-123.799	47.871	-123.798
Cook Creek	47.358	-123.997	47.368	-124.032
Copalis River	47.137	-124.159	47.138	-124.154
Cougar Creek	47.862	-123.860	47.867	-123.854
Delabarre Creek	47.726	-123.529	47.735	-123.527
Dungeness River	47.941	-123.093	48.152	-123.128
East Twin Creek	47.841	-123.988	47.833	-123.991
Elk Creek	47.510	-123.345	47.515	-123.331
Elwha River	47.771	-123.582	48.147	-123.566
Ennis Creek	48.053	-123.412	48.117	-123.405
Fire Creek	47.601	-123.523	47.598	-123.526
Fitzhenry Creek	47.964	-123.589	47.967	-123.589
Godkin Creek	47.752	-123.452	47.760	-123.465
Gold Creek	47.941	-123.083	47.941	-123.093
Goldie River	47.760	-123.522	47.840	-123.470
Goodman Creek	47.834	-124.339	47.825	-124.513
Graves Creek	47.569	-123.563	47.574	-123.572
Gray Wolf River	47.916	-123.243	47.977	-123.112
Grays Harbor Marine	46.926	-124.180	46.906	-124.139
Griff Creek	48.016	-123.593	48.023	-123.595
Haggerty Creek	47.952	-123.575	47.956	-123.576
Harlow Creek	47.700	-123.877	47.685	-123.889
Hayes River	47.803	-123.430	47.808	-123.454
Hee Haw Creek	47.701	-123.663	47.737	-123.691
Hee Hee Creek	47.709	-123.734	47.712	-123.739
Hoh Creek	47.883	-123.751	47.877	-123.754
Hoh River	47.737	-124.366	47.880	-123.729
Hood Canal Marine	47.434	-122.842	47.684	-122.802
Hughes Creek	48.026	-123.599	48.025	-123.595
Humptulips River	47.048	-124.046	47.231	-123.977
Hurd Creek	48.124	-123.144	48.118	-123.143
Hurricane Creek	47.976	-123.587	47.975	-123.594
Idaho Creek	47.947	-123.538	47.945	-123.544
Ignar Creek	47.637	-123.430	47.639	-123.433
Irely Creek	47.565	-123.677	47.565	-123.680
Irely Lake	47.565	-123.674		
Joe Creek	47.217	-124.154	47.206	-124.204
Kalaloch Creek	47.637	-124.361	47.607	-124.375
Lake Cushman	47.470	-123.255		
Lebar Creek	47.427	-123.320	47.417	-123.330
Leitha Creek	47.762	-123.452	47.769	-123.460
Lillian River	47.944	-123.500	47.931	-123.528
Little River	48.061	-123.519	48.063	-123.578
Long Creek	47.926	-123.558	47.951	-123.561
Lost River	47.859	-123.458	47.862	-123.468
Madison Creek	48.044	-123.580	48.042	-123.591
Matheny Creek	47.543	-123.837	47.576	-124.115
Matriotti Creek	48.133	-123.161	48.136	-123.141
McCartney Creek	47.879	-123.466	47.878	-123.471
McTaggert Creek	47.409	-123.240	47.363	-123.235
Moclips River	47.260	-124.124	47.248	-124.220
Morse Creek	48.063	-123.347	48.117	-123.351
Mosquito Creek	47.786	-124.383	47.798	-124.482
Mount Tom Creek	47.819	-123.821	47.868	-123.888
Nalley Slough	47.334	-123.132	47.328	-123.131
Nolan Creek	47.743	-124.202	47.751	-124.344

Waterbody Name	Stream Begin Point or Lake Center Latitude	Stream Begin Point or Lake Center Longitude	Stream End Point Latitude	Stream End Point Longitude
Noname Creek	47.629	-123.456	47.626	-123.452
North Fork Quinault River	47.582	-123.645	47.638	-123.646
North Fork Skokomish River	47.355	-123.235	47.506	-123.318
OGS Creek	47.879	-123.768	47.878	-123.769
O'Neil Creek	47.610	-123.464	47.616	-123.472
Owl Creek	47.780	-124.039	47.805	-124.079
Pacific Coast Marine	48.003	-124.680	46.926	-124.180
Paradise Creek	47.699	-123.801	47.694	-123.813
Pine Creek	47.442	-123.430	47.446	-123.417
Prescott Creek	47.904	-123.487	47.903	-123.491
Purdy Creek	47.302	-123.182	47.307	-123.161
Pyrites Creek	47.644	-123.436	47.639	-123.433
Queets River	47.541	-124.335	47.735	-123.696
Quinault Lake	47.475	-123.869		
Quinault River	47.391	-124.045	47.533	-123.744
Raft River	47.449	-124.220	47.458	-124.326
Richert Spring	47.321	-123.219	47.320	-123.225
Rustler Creek	47.629	-123.569	47.617	-123.617
Salmon River	47.524	-124.041	47.556	-124.220
Sams River	47.604	-123.853	47.624	-124.013
Satsop River	47.015	-123.510	47.023	-123.509
Sege Creek	47.988	-123.597	47.987	-123.604
Siebert Creek	48.049	-123.293	48.121	-123.290
Skobob Creek	47.327	-123.175	47.328	-123.132
Skokomish River	47.315	-123.238	47.315	-123.229
Slate Creek	47.529	-123.320	47.521	-123.336
Slate Creek	47.749	-123.498	47.744	-123.491
Slide Creek	47.883	-123.736	47.875	-123.748
Snider Creek	47.846	-123.971	47.842	-123.968
South Fork Hoh River	47.764	-123.786	47.777	-123.908
South Fork Skokomish River	47.315	-123.247	47.425	-123.354
Steamboat Creek	47.688	-124.350	47.678	-124.404
Stony Creek	47.871	-123.464	47.871	-123.469
Strait of Juan de Fuca Marine	48.103	-122.885	48.217	-124.102
Taft Creek	47.866	-123.967	47.858	-123.942
Tshletshy Creek	47.606	-123.741	47.666	-123.925
Twin Creek	47.832	-123.995	47.831	-123.988
Unnamed trib. (#0100)	47.340	-123.246	47.335	-123.242
Unnamed trib. (#0509)	47.844	-123.939	47.830	-123.982
Unnamed trib. (#0527)	47.874	-123.821	47.868	-123.817
Unnamed trib. (#0542)	47.887	-123.719	47.883	-123.719
Valley Creek	48.123	-123.438	48.107	-123.452
Vance Creek	47.327	-123.299	47.327	-123.299
Vance Creek Remenant Channel	47.315	-123.257	47.315	-123.238
West Fork Satsop River	47.360	-123.566	47.035	-123.526
Windfall Creek	47.914	-123.492	47.912	-123.495
Winfield Creek	47.783	-124.144	47.810	-124.233
Wishkah River	47.257	-123.715	47.257	-123.715
Wolf Creek	47.974	-123.586	47.974	-123.593
Wynoochee River	47.160	-123.650	47.360	-123.637

(iii) Waterbodies associated with the following tribal lands, habitat conservation plans (HCPs), or U.S. Navy training areas totaling 553.9 km (343.9 mi) of streams and 144.6 km (89.9 mi) of marine shoreline have been excluded from critical habitat designation under section 4(b)(2) of the Act in this unit:

(A) Waterbodies within or adjacent to the open water training and testing areas of the Dabob Bay Military Operating Area and areas within the Connecting Waters of the Dabob Bay Range Complex, including marine habitats associated with the Hood Canal Critical Habitat Subunit (CHSU);

(B) Waterbodies within the geographic area covered by the Washington State Forest Practices Habitat Conservation Plan (HCP), including portions of the Chehalis River/Grays Harbor, Dungeness River, Elwha River, Hoh River, Queets River, Quinualt River, Skokomish River Pacific Coast, Strait of Juan De Fuca, and Hood Canal Marine CHSUs;

(C) Waterbodies within the geographic area covered by the Green Diamond HCP, including portions of the Chehalis River/Grays Harbor and Skokomish CHSUs;

(D) Waterbodies within the geographic area covered by the Washington Department of Natural Resources HCP, including portions of Chehalis River/Grays Harbor, Dungeness River, Elwha River, Hoh River, Queets River, Skokomish River, Pacific Coast, Strait of Juan De Fuca, and Hood Canal Marine CHSUs; and

(E) Waterbodies within the areas under management by the Hoh Tribe, including portions of Hoh River and Pacific Coast CHSUs; Jamestown

S'Klallam Tribe, including portions of Dungeness River CHSU; Lower Elwha Tribe, including portions of Elwha River and Strait of Juan de Fuca CHSUs; Quileute Tribe, including portions of Pacific Coast CHSU; Quinault Tribe, including portions of Quinault River, Queets River, and Pacific Coast CHSUs; and Skokomish Tribe, including portions of Skokomish River and Hood Canal Marine CHSUs, within reservation boundaries, and waterbodies that are adjacent to:

(*1*) Lands held in trust by the United States for their benefit;

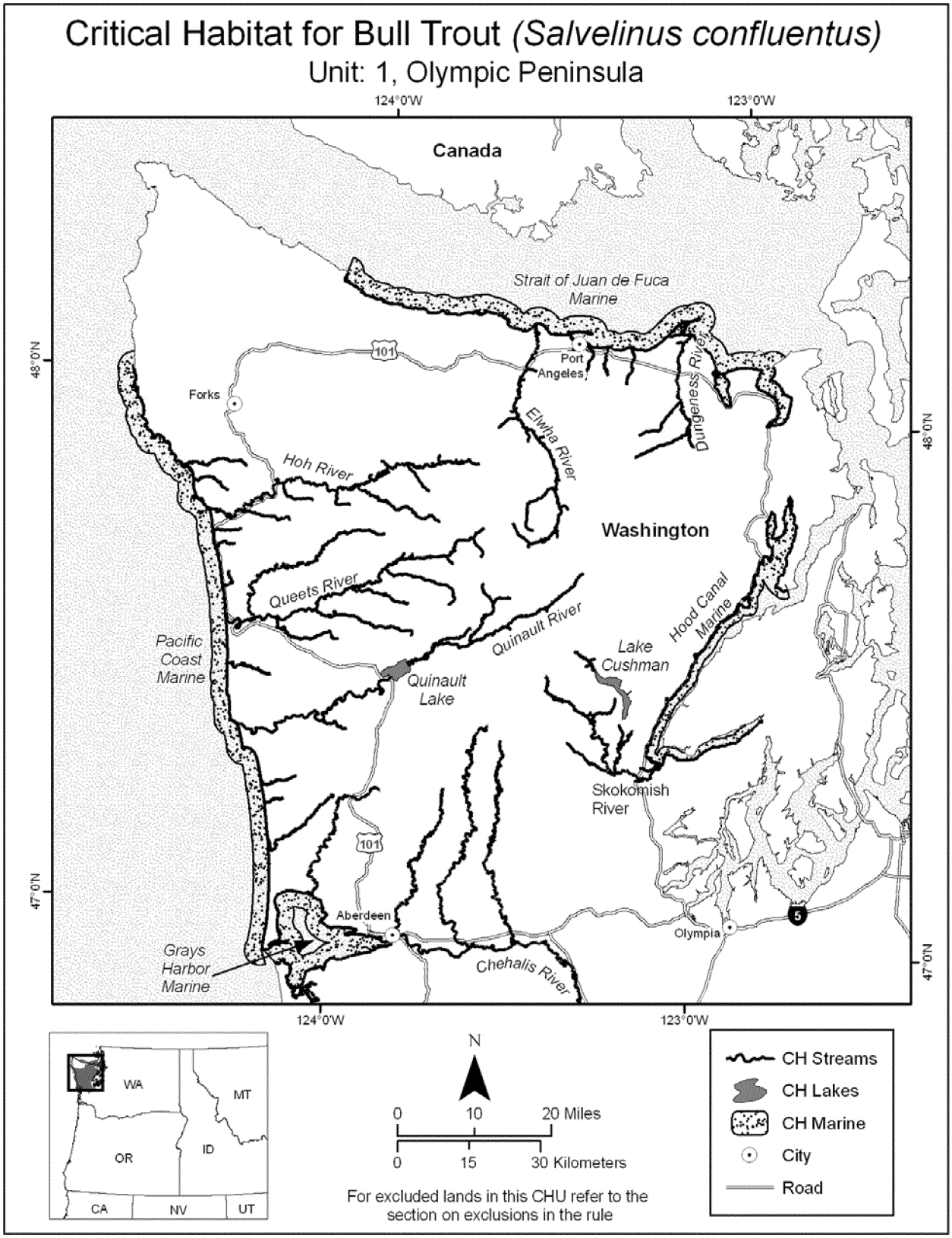
(*2*) Lands held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation;

(*3*) Fee lands, either within or outside the reservation boundaries, owned by the tribal government; and

(*4*) Fee lands within the reservation boundaries owned by individual Indians.

(iv) Map of Unit 1, Olympic Peninsula follows:

BILLING CODE 4310–55–S



BILLING CODE 4310–55–C

(9) Unit 2: Puget Sound

(i) This unit consists of 1,840.2 km (1,143.5 mi) of streams, 684.0 km (425.0 mi) of marine shoreline, and 16,260.9 ha (40,181.5 ac) of lakes and reservoirs. The unit is located in northwestern Washington.

(ii) Individual waterbodies in the unit are bounded by the following coordinates:

Waterbody Name	Stream Begin Point or Lake Center Latitude	Stream Begin Point or Lake Center Longitude	Stream End Point Latitude	Stream End Point Longitude
Alder Creek	48.549	-121.955	48.519	-121.956
Aldrich Creek (#0423)	48.916	-122.042	48.921	-122.051
Alma Creek	48.590	-121.356	48.600	-121.363
Anderson Creek	48.797	-122.325	48.869	-122.318
Arrow Creek	48.407	-121.390	48.423	-121.396
Bacon Creek	48.681	-121.464	48.585	-121.395
Baker Lake	48.708	-121.642		
Baker River	48.548	-121.741	48.741	-121.563
Bald Eagle Creek	48.796	-121.449	48.800	-121.465
Bear Creek	48.966	-121.383	48.965	-121.388
Bear Creek	48.898	-122.105	48.893	-122.145
Bear Creek (#0353)	48.788	-122.123	48.783	-122.140
Bear Lake Outlet (#0317)	48.610	-121.912	48.607	-121.912
Beaver Creek	48.086	-121.516	48.077	-121.527
Beckler River	47.865	-121.311	47.715	-121.340
Bedal Creek	48.047	-121.351	48.080	-121.395
Bell Creek	48.684	-121.899	48.681	-121.900
Bender Creek	48.063	-121.591	48.071	-121.590
Bertrand Creek	48.999	-122.521	48.912	-122.535
Big Beaver Creek	48.841	-121.211	48.775	-121.066
Big Creek	48.343	-121.440	48.345	-121.451
Big Four Creek	48.071	-121.524	48.070	-121.512
Bitter Creek	47.841	-121.503	47.840	-121.508
Black Creek	48.247	-121.414	48.259	-121.402
Black Oak Creek	48.185	-121.454	48.177	-121.450
Blackjack Creek	48.051	-121.626	48.062	-121.631
Boardman Creek	48.040	-121.675	48.070	-121.681
Boulder Creek	48.512	-121.364	48.518	-121.364
Boulder Creek	47.354	-121.707	47.371	-121.688
Boulder Creek	48.937	-122.021	48.925	-122.037
Boulder River	48.245	-121.828	48.282	-121.787
Boyd Creek	48.903	-121.863	48.897	-121.866
Brooks Creek	48.289	-121.908	48.277	-121.911
Brush Creek	48.909	-121.423	48.913	-121.424
Buck Creek	48.353	-121.268	48.265	-121.340
Buck Creek	48.047	-121.472	48.045	-121.481
Buck Creek	47.023	-121.557	47.029	-121.555
Cabin Creek	47.363	-121.695	47.367	-121.684
Camp Creek	48.150	-121.280	48.159	-121.292
Canyon Creek	48.775	-120.778	48.707	-120.918
Canyon Creek	48.220	-121.081	48.211	-121.088
Canyon Creek	48.158	-121.817	48.097	-121.970
Canyon Creek	48.932	-121.951	48.906	-121.989
Canyon Creek (Canyon Lake Creek)	48.840	-122.111	48.832	-122.144
Carbon River	46.960	-121.793	47.130	-122.233
Cascade Creek	48.903	-121.839	48.904	-121.839
Cascade River	48.463	-121.164	48.524	-121.430
Cavanaugh Creek	48.645	-122.110	48.647	-122.121
Cedar River	47.313	-121.521	47.409	-121.723
Chainup Creek	48.905	-121.843	48.908	-121.840
Chenuis Creek	46.994	-121.842	46.992	-121.843
Chester Morse Lake	47.389	-121.694		
Chilliwack River	48.878	-121.487	49.000	-121.411
Chocwick Creek	48.055	-121.384	48.074	-121.400
Cinnamon Creek	48.867	-120.887	48.891	-120.916
Clearwater Creek	48.805	-121.989	48.771	-122.047
Clearwater River	47.079	-121.782	47.146	-121.834
Coal Creek	48.096	-121.535	48.085	-121.541
Coal Creek	48.892	-122.164	48.881	-122.153
Coal Creek (Upper)	48.838	-121.903	48.838	-121.906
Cook Slough	48.198	-122.218	48.198	-122.234
Corkindale Creek	48.518	-121.483	48.505	-121.486
Cornell Creek	48.886	-121.960	48.899	-121.969
Cripple Creek	47.048	-121.693	47.040	-121.701
Crystal Creek	48.183	-121.361	48.181	-121.364
Crystal Creek	48.791	-121.510	48.787	-121.503
Crystal Creek	46.925	-121.540	46.928	-121.538
Cumberland Creek	48.505	-121.985	48.518	-121.994
Dan Creek	48.265	-121.540	48.298	-121.551
Davis Creek	48.879	-121.931	48.882	-121.931

Waterbody Name	Stream Begin Point or Lake Center Latitude	Stream Begin Point or Lake Center Longitude	Stream End Point Latitude	Stream End Point Longitude
Day Creek	48.444	-122.007	48.519	-122.067
Deadhorse Creek	48.900	-121.836	48.904	-121.838
Deep Creek	48.868	-121.911	48.869	-121.908
Deer Creek	48.718	-121.116	48.721	-121.105
Deer Creek	48.096	-121.558	48.084	-121.556
Deer Creek	48.365	-121.795	48.268	-121.933
Deer Creek	46.836	-121.965	46.873	-121.974
Deer Creek	48.602	-122.093	48.610	-122.095
Deerhorn Creek	48.906	-121.857	48.903	-121.858
Depot Creek	48.986	-121.293	48.997	-121.324
Devils Creek	48.819	-121.002	48.824	-121.032
Diablo Lake	48.708	-121.105		
Diobsud Creek	48.576	-121.433	48.559	-121.412
Discovery Creek	46.900	-121.571	46.896	-121.580
Ditch Creek	48.903	-121.851	48.902	-121.849
Doe Creek	47.011	-121.547	47.028	-121.553
Downey Creek	48.330	-121.149	48.258	-121.225
Dusty Creek	48.139	-121.040	48.177	-121.019
Duwamish River	47.474	-122.252	47.514	-122.304
Duwamish Waterway	47.514	-122.304	47.585	-122.360
East Duwamish Waterway	47.590	-122.344	47.567	-122.347
East Fork Bacon Creek	48.713	-121.417	48.661	-121.434
East Fork Foss River	47.649	-121.277	47.653	-121.294
Eastern Shoreline Guemes Island	48.529	-122.573	48.589	-122.646
Eastern Shoreline Puget Sound (North)	48.511	-122.606	48.561	-122.493
Eastern Shoreline Puget Sound (South)	47.970	-122.232	48.449	-122.551
Eastern Shoreline Whidbey Island	47.905	-122.388	48.369	-122.666
Eastern Shorline Lummi Island	48.717	-122.719	48.640	-122.609
Easy Creek	48.881	-121.456	48.889	-121.459
Ebey Slough	47.941	-122.170	48.042	-122.215
Edfro Creek	48.663	-122.117	48.661	-122.127
Elbow Creek / Lake Doreen Outlet (#0331)	48.707	-121.915	48.685	-121.911
Elliott Creek	48.027	-121.367	48.057	-121.416
Elwell Creek	47.809	-121.849	47.838	-121.853
Excelsior Creek	47.870	-121.487	47.864	-121.492
Falls Creek	48.137	-121.432	48.148	-121.437
Falls Creek	46.992	-121.874	46.999	-121.889
Falls Creek	48.824	-121.906	48.834	-121.902
Finney Creek	48.465	-121.688	48.524	-121.847
Fire Creek	48.154	-121.232	48.153	-121.245
Fisher Creek	48.563	-120.912	48.603	-121.050
Fishtrap Creek	48.999	-122.411	48.912	-122.523
Fobes Creek	48.622	-122.119	48.622	-122.112
Foss River	47.653	-121.294	47.705	-121.307
Fossil Creek	48.904	-121.850	48.908	-121.850
Fourteenmile Creek	48.126	-121.229	48.140	-121.222
Freezeout Creek	48.950	-120.932	48.956	-120.970
French Creek	48.255	-121.783	48.282	-121.757
Fryingpan Creek	46.873	-121.623	46.895	-121.592
Galbraith Creek	48.755	-122.021	48.759	-122.019
Gallop Creek	48.882	-121.947	48.894	-121.944
Gedney Island	48.005	-122.305	48.005	-122.305
Gilligan Creek	48.473	-122.126	48.488	-122.140
Glacier Creek	48.131	-121.168	48.130	-121.204
Glacier Creek	47.987	-121.369	47.986	-121.393
Glacier Creek	48.812	-121.890	48.892	-121.939
Goat Creek	48.334	-121.161	48.328	-121.157
Goat Island	48.360	-122.531	48.360	-122.531
Goblin Creek	47.923	-121.312	47.919	-121.309
Goodell Creek	48.711	-121.291	48.726	-121.305
Gordon Creek	48.088	-121.657	48.071	-121.673
Gorge Lake	48.706	-121.175		
Grandy Creek	48.562	-121.811	48.518	-121.881
Granite Creek	48.648	-120.857	48.707	-120.918
Green Creek	48.732	-121.936	48.738	-121.938
Green River	47.275	-122.108	47.474	-122.252
Greenwater River	47.093	-121.458	47.158	-121.660
Hat Slough	48.197	-122.362	48.208	-122.323
Hazzard Creek	47.081	-121.690	47.078	-121.681
Hedrick Creek	48.890	-121.981	48.899	-121.971

Waterbody Name	Stream Begin Point or Lake Center Latitude	Stream Begin Point or Lake Center Longitude	Stream End Point Latitude	Stream End Point Longitude
Higgins Creek	48.318	-121.755	48.362	-121.807
Hope Island	48.399	-122.561	48.399	-122.561
Horse Creek	48.322	-121.258	48.313	-121.286
Howard Creek	48.619	-121.966	48.609	-121.966
Huckleberry Creek	46.989	-121.624	47.079	-121.586
Hutchinson Creek	48.732	-122.103	48.707	-122.179
Ika Island	48.363	-122.499	48.363	-122.499
Illabot Creek	48.389	-121.319	48.496	-121.531
Index Creek	47.760	-121.497	47.766	-121.481
Indian Creek	48.935	-121.395	48.947	-121.398
Ipsut Creek	46.972	-121.831	46.979	-121.833
Jackman Creek	48.529	-121.697	48.523	-121.722
Jim Creek	48.223	-121.950	48.185	-122.078
Jones Creek	48.542	-122.051	48.524	-122.053
Jordan Creek	48.515	-121.419	48.522	-121.422
June Creek	46.995	-121.905	46.995	-121.917
Kapowsin Creek	46.991	-122.195	47.032	-122.205
Kendall Creek	48.922	-122.145	48.887	-122.149
Kindy Creek	48.432	-121.208	48.463	-121.208
Klickitat Creek	46.906	-121.551	46.908	-121.550
Lake Creek	48.769	-121.550	48.762	-121.546
Lake Shannon	48.587	-121.723		
Lake Union	47.642	-122.331		
Lake Washington	47.619	-122.245		
Lewis Creek	47.820	-121.509	47.824	-121.525
Lightning Creek	48.907	-120.983	48.933	-120.986
Lime Creek	48.218	-121.278	48.252	-121.293
Lindsay Creek	47.347	-121.660	47.351	-121.661
Little Beaver Creek	48.878	-121.323	48.914	-121.075
Little Chilliwack River	48.962	-121.478	48.992	-121.409
Little Creek	48.876	-121.937	48.884	-121.934
Little Deer Creek	48.439	-121.950	48.387	-121.870
Little Fork Little Chilliwack River	48.954	-121.442	48.980	-121.428
Lodi Creek	46.948	-121.699	46.960	-121.706
Long Creek	48.080	-121.686	48.074	-121.691
Loomis Creek	48.670	-121.827	48.661	-121.814
Mallardy Creek	48.055	-121.656	48.070	-121.655
Maple Creek	48.926	-122.077	48.912	-122.079
Marble Creek	48.542	-121.252	48.531	-121.282
Martin Creek	48.092	-121.403	48.101	-121.396
Masonry Pool	47.410	-121.737		
McAllister Creek	48.587	-121.156	48.623	-121.057
McCoy Creek	47.831	-121.827	47.848	-121.825
McDonald Creek (#0435)	48.911	-122.019	48.921	-122.016
McGinnis Creek	48.613	-121.961	48.610	-121.960
McMillan Creek	48.810	-121.212	48.815	-121.193
Merry Brook Creek	48.087	-121.388	48.089	-121.392
Middle Fork Nooksack River	48.725	-121.899	48.834	-122.155
Milk Creek	48.178	-121.152	48.221	-121.163
Mill Creek	48.496	-121.870	48.512	-121.888
Miller River	47.675	-121.389	47.719	-121.394
Miners Creek	48.190	-121.023	48.187	-121.031
Money Creek	47.707	-121.443	47.729	-121.426
Monument Creek (#0324)	48.647	-121.828	48.652	-121.835
Moose Creek	48.255	-121.710	48.277	-121.700
Mowich River	46.911	-121.996	46.925	-121.950
Newhalem Creek	48.663	-121.253	48.671	-121.255
Niesson Creek	46.884	-122.031	46.912	-122.046
Nisqually River	46.834	-122.324	47.101	-122.692
Nookachamps Creek	48.348	-122.203	48.471	-122.297
Nooksack River	48.778	-122.583	48.939	-122.420
Nooksack River (Slater Slough)	48.784	-122.588	48.789	-122.604
North Fork Canyon Creek	48.774	-120.798	48.768	-120.793
North Fork Canyon Creek	48.165	-121.818	48.158	-121.817
North Fork Cedar River	47.316	-121.507	47.313	-121.521
North Fork Nooksack River	48.835	-122.154	48.920	-122.055
North Fork Sauk River	48.096	-121.370	48.097	-121.389
North Fork Skagit River	48.387	-122.367	48.364	-122.473
North Fork Skykomish River	47.823	-121.530	47.887	-121.448
North Fork Stillaguamish River	48.279	-121.817	48.283	-121.770

Waterbody Name	Stream Begin Point or Lake Center Latitude	Stream Begin Point or Lake Center Longitude	Stream End Point Latitude	Stream End Point Longitude
North Fork Tolt River	47.718	-121.779	47.696	-121.821
North Mowich River	46.916	-121.878	46.915	-121.895
North Puyallup River	46.845	-121.878	46.864	-121.951
O'Toole Creek	48.498	-121.915	48.514	-121.917
Otter Creek	48.424	-121.374	48.420	-121.374
Owl Creek	48.161	-121.288	48.163	-121.301
Palmer Creek	48.043	-121.469	48.045	-121.483
Panther Creek	48.631	-120.978	48.708	-120.976
Parallel Creek	46.911	-121.549	46.909	-121.560
Park Creek	48.740	-121.682	48.727	-121.659
Pass Creek	48.815	-121.463	48.811	-121.458
Peat Bog Creek (#0352)	48.780	-122.118	48.790	-122.122
Perry Creek	48.075	-121.488	48.063	-121.515
Pierce Creek	48.766	-121.073	48.772	-121.066
Pilchuck Creek	48.303	-122.158	48.208	-122.226
Pilchuck River	47.995	-121.746	47.904	-122.091
Plumbago Creek	48.606	-122.101	48.612	-122.097
Poch Creek	46.987	-121.955	46.991	-121.954
Portage Island	48.694	-122.614	48.694	-122.614
Porter Creek	48.795	-122.115	48.799	-122.127
Powerhouse Creek	48.908	-121.815	48.911	-121.818
Pressentin Creek	48.504	-121.844	48.518	-121.852
Proctor Creek	47.821	-121.648	47.835	-121.646
Pugh Creek	48.165	-121.333	48.172	-121.339
Pumice Creek	48.141	-121.150	48.148	-121.236
Puyallup River	46.864	-121.951	47.268	-122.426
Racehorse Creek	48.884	-122.130	48.888	-122.146
Rack Creek	47.388	-121.731	47.392	-121.722
Ranger Creek	46.988	-121.849	46.995	-121.854
Rankin Creek	48.733	-121.908	48.733	-121.920
Rapid River	47.821	-121.233	47.803	-121.293
Rex River	47.347	-121.645	47.371	-121.688
Ridley Creek	48.720	-121.865	48.725	-121.899
Rocky Creek	48.510	-121.502	48.500	-121.495
Rocky Creek	48.819	-121.996	48.809	-121.997
Roland Creek	48.770	-120.998	48.769	-121.024
Rollins Creek	48.293	-121.852	48.281	-121.836
Ross Lake	48.869	-121.054		
Ruby Creek	48.718	-121.001	48.707	-120.918
Salmon Creek	47.911	-121.482	47.888	-121.453
Samish River	48.548	-122.457	48.548	-122.457
Sauk River	48.095	-121.390	48.482	-121.605
Saxson Creek	48.689	-122.156	48.689	-122.163
Schweitzer Creek	48.065	-121.688	48.074	-121.699
Segelsen Creek	48.299	-121.707	48.280	-121.715
Seventysix Gulch	47.974	-121.384	47.986	-121.393
Seymour Creek	48.755	-122.009	48.758	-122.010
Shaw Creek	46.901	-121.568	46.893	-121.580
Ship Canal (Chittendon Locks)	47.660	-122.379		
Shotgun Creek	47.380	-121.708	47.384	-121.706
Sibley Creek	48.511	-121.255	48.511	-121.262
Silesia Creek	48.910	-121.485	48.999	-121.613
Silver Creek	48.981	-121.190	48.970	-121.104
Silver Creek	47.938	-121.439	47.897	-121.436
Silver Creek	47.000	-121.530	46.997	-121.524
Silver Gulch	48.075	-121.564	48.078	-121.570
Silver Springs	46.994	-121.533	46.997	-121.533
Sister Creek	48.746	-121.974	48.755	-121.988
Skagit River	48.471	-121.608	48.712	-121.138
Skookum Creek	48.686	-122.106	48.670	-122.142
Skykomish River	47.813	-121.579	47.855	-121.954
Slate Creek	48.752	-120.786	48.756	-120.796
Small Creek	48.158	-120.978	48.162	-121.006
Smith Creek	48.841	-122.262	48.859	-122.309
Snohomish River	47.830	-122.046	48.016	-122.151
Snoqualmie River	47.541	-121.837	47.830	-122.046
Snowslide Gulch	47.858	-121.509	47.858	-121.503
Son of Gallop	48.889	-121.943	48.884	-121.940
Sonny Boy Creek	48.427	-121.172	48.462	-121.197
South Fork Canyon Creek	48.154	-121.785	48.158	-121.817

Waterbody Name	Stream Begin Point or Lake Center Latitude	Stream Begin Point or Lake Center Longitude	Stream End Point Latitude	Stream End Point Longitude
South Fork Cascade River	48.391	-121.109	48.463	-121.164
South Fork Cedar River	47.305	-121.513	47.313	-121.521
South Fork Nooksack River	48.616	-122.103	48.809	-122.203
South Fork Salmon Creek	47.903	-121.486	47.906	-121.476
South Fork Sauk River	47.986	-121.393	48.097	-121.389
South Fork Skagit River	48.296	-122.364	48.367	-122.358
South Fork Skagit River (Brandstedt Slough)	48.311	-122.357	48.311	-122.357
South Fork Skagit River (Crooked Slough)	48.306	-122.369	48.307	-122.373
South Fork Skagit River (Deepwater Slough)	48.327	-122.355	48.306	-122.383
South Fork Skagit River (Freshwater Slough)	48.338	-122.349	48.321	-122.377
South Fork Skagit River (Old River)	48.308	-122.365	48.308	-122.365
South Fork Skagit River (Steamboat Slough)	48.324	-122.348	48.296	-122.364
South Fork Skagit River (Tom Moore Slough)	48.296	-122.364	48.324	-122.348
South Fork Skagit River (Unnamed off Deepwater Slough)	48.317	-122.369	48.307	-122.389
South Fork Skykomish River	47.705	-121.307	47.813	-121.579
South Fork Stillaguamish River	48.030	-121.483	48.204	-122.127
South Fork Tolt River	47.693	-121.694	47.696	-121.821
South Mowich River	46.877	-121.855	46.915	-121.895
South Pass	48.225	-122.386	48.238	-122.378
South Prairie Creek	47.093	-121.952	47.098	-122.156
South Puyallup River	46.808	-121.892	46.864	-121.951
South Slough	48.193	-122.256	48.194	-122.254
Southeastern Shoreline Vashon Island	47.331	-122.493	47.348	-122.451
Squire Creek	48.194	-121.638	48.279	-121.685
St.Andrews Creek	46.834	-121.918	46.837	-121.921
Steamboat Slough	47.984	-122.169	48.033	-122.204
Stetattle Creek	48.727	-121.155	48.717	-121.150
Stillaguamish River	48.193	-122.167	48.238	-122.378
Straight Creek	48.254	-121.398	48.272	-121.398
Suiattle River	48.162	-121.006	48.306	-121.428
Sulphide Creek	48.789	-121.553	48.777	-121.533
Sulphur Creek	48.279	-121.086	48.247	-121.193
Sulphur Creek	48.659	-121.711	48.648	-121.699
Sultan River	47.870	-121.829	47.872	-121.826
Sunrise Creek	46.967	-121.540	46.971	-121.540
Swift Creek	48.747	-121.659	48.734	-121.659
Swift Creek	46.873	-121.954	46.870	-121.964
Swinomish Channel	48.440	-122.499	48.441	-122.504
Tenas Creek	48.335	-121.422	48.324	-121.440
Thompson Creek	48.891	-121.880	48.879	-121.915
Three Fools Creek	48.897	-120.849	48.890	-120.974
Three Lakes Outlet (#0319)	48.626	-121.888	48.625	-121.884
Thunder Creek	48.563	-121.027	48.678	-121.078
Tolmie Creek	46.984	-121.944	46.990	-121.944
Tolt River	47.696	-121.821	47.640	-121.927
Troublesome Creek	47.925	-121.363	47.897	-121.404
Trout Creek	47.833	-121.434	47.864	-121.488
Tye River	47.717	-121.229	47.705	-121.307
Union Slough	47.984	-122.167	48.034	-122.191
Unnamed trib. (#0194)	47.073	-121.693	47.072	-121.683
Unnamed trib. (#0217)	46.992	-121.705	46.992	-121.708
Unnamed trib. (#0219)	46.990	-121.706	46.987	-121.704
Unnamed trib. (#0226)	46.962	-121.711	46.961	-121.713
Unnamed trib. (#0234)	46.961	-121.711	46.965	-121.714
Unnamed trib. (#0241)	48.293	-121.785	48.284	-121.781
Unnamed trib. (#0242)	48.294	-121.772	48.286	-121.772
Unnamed trib. (#0243)	48.295	-121.759	48.286	-121.772
Unnamed trib. (#0265)	48.746	-122.094	48.743	-122.109
Unnamed trib. (#0284)	48.650	-122.116	48.649	-122.121
Unnamed trib. (#0290)	48.633	-122.121	48.635	-122.117
Unnamed trib. (#0291)	48.630	-122.121	48.636	-122.116
Unnamed trib. (#0315)	48.606	-121.953	48.608	-121.954
Unnamed trib. (#0316)	48.608	-121.930	48.605	-121.930
Unnamed trib. (#0320)	48.620	-121.861	48.625	-121.882
Unnamed trib. (#0321)	48.632	-121.872	48.629	-121.880
Unnamed trib. (#0323)	48.656	-121.862	48.655	-121.862
Unnamed trib. (#0332)	48.684	-121.921	48.690	-121.927
Unnamed trib. (#0336)	46.976	-121.547	46.976	-121.542
Unnamed trib. (#0347)	48.821	-122.121	48.828	-122.141
Unnamed trib. (#0349)	48.812	-122.125	48.815	-122.129

Waterbody Name	Stream Begin Point or Lake Center Latitude	Stream Begin Point or Lake Center Longitude	Stream End Point Latitude	Stream End Point Longitude
Unnamed trib. (#0364)	46.904	-121.567	46.904	-121.561
Unnamed trib. (#0364)	48.131	-121.909	48.123	-121.903
Unnamed trib. (#0365)	48.133	-121.884	48.124	-121.889
Unnamed trib. (#0367)	48.763	-122.040	48.765	-122.036
Unnamed trib. (#0371)	48.755	-122.017	48.757	-122.016
Unnamed trib. (#0374)	48.761	-121.986	48.756	-121.994
Unnamed trib. (#0425)	48.934	-122.036	48.927	-122.031
Unnamed trib. (#0439)	47.325	-121.535	47.325	-121.532
Unnamed trib. (#0476)	48.845	-121.896	48.844	-121.902
Unnamed trib. (#0565)	46.960	-121.793	46.959	-121.792
Unnamed trib. (#1119)	48.185	-121.433	48.181	-121.430
Unnamed trib. (LB1) upstream of Crystal Ck	46.925	-121.544	46.923	-121.546
Unnamed trib. (LB2) upstream of Crystal Ck	46.923	-121.543	46.921	-121.546
Unnamed trib. (RB) upstream of Crystal Creek	46.920	-121.543	46.918	-121.542
Unnamed trib. downstream Boulder Ck	48.929	-122.040	48.926	-122.046
Unnamed trib. downstream Wanlick Ck	48.641	-121.878	48.640	-121.883
Unnamed trib. upstream Chenius Ck	46.992	-121.843	46.990	-121.839
Unnamed trib. upstream of (#0214)	46.997	-121.700	46.991	-121.704
Unnamed trib. upstream Wallace Ck	48.742	-121.947	48.739	-121.936
Van Horn Creek	46.977	-121.718	46.976	-121.719
Viola Creek	47.043	-121.712	47.052	-121.695
Vista Creek	48.180	-121.057	48.194	-121.047
Wallace Creek	48.748	-121.943	48.745	-121.951
Wallace River	47.874	-121.649	47.859	-121.795
Wanlick Creek	48.644	-121.877	48.663	-121.799
Warm Creek	48.761	-121.972	48.755	-121.979
Weden Creek	47.986	-121.444	48.003	-121.439
Wells Creek	48.890	-121.791	48.905	-121.809
West Cady Creek	47.898	-121.307	47.899	-121.319
West Cornell Creek	48.878	-121.969	48.888	-121.961
West Fork Foss River	47.627	-121.311	47.653	-121.294
West Fork White River	46.941	-121.708	47.125	-121.619
West Pass	48.238	-122.378	48.246	-122.394
West Slide Creek (#0422)	48.912	-122.063	48.917	-122.067
White Chuck River	48.070	-121.151	48.181	-121.424
White Creek	48.403	-121.538	48.397	-121.553
White River	46.893	-121.601	47.274	-122.217
Wildcat Creek	48.895	-122.006	48.909	-122.001
Wiseman Creek	48.516	-122.130	48.506	-122.135
Wright Creek	46.878	-121.615	46.877	-121.615
Wrong Creek	47.024	-121.710	47.049	-121.694

(iii) Waterbodies associated with the following tribal lands or habitat conservation plans (HCPs) totaling 876.9 km (544.9 mi) of streams, 203.4 km (126.4 mi) of marine shoreline, and 1,629.5 ha (4,026.6 ac) of lakes and reservoirs have been excluded from critical habitat designation under section 4(b)(2) of the Act in this unit:

(A) Waterbodies within the geographic area covered by the Washington State Forest Practices Habitat Conservation Plan (HCP) , including portions of Lower Green River, Lower Nisqually, Lower Skagit River, Nooksack River, Puyallup River, Samish River, Snohomish & Skykomish Rivers, Stillaguamish River, and Puget Sound Marine CHSUs;

(B) Waterbodies within the geographic area covered by the Washington Department of Natural Resources HCP, including portions of Lower Green River, Lower Skagit River, Nooksack River, Puyallup River, Samish River, Snohomish and Skykomish Rivers, Stillaguamish River, and Puget Sound Marine CHSUs; and

(C) Waterbodies within the areas under management by the Muckleshoot Tribe, including portions of the Puyallup River CHSU; Swinomish Tribe, including portions of the Puget Sound Marine CHSU; Lummi Nation, including portions of Nooksack River and Puget Sound Marine CHSUs; Nooksack Tribe, including portions of Nooksack River CHSU; Tulalip Tribes, including portions of Puget Sound Marine CHSU; Puyallup Tribe, including portions of Puyallup River and Puget Sound Marine CHSUs; and Stillaguamish Tribe, including portions of Stillaguamish River CHSU, within reservation boundaries, and waterbodies that are adjacent to:

(*1*) Lands held in trust by the United States for their benefit;

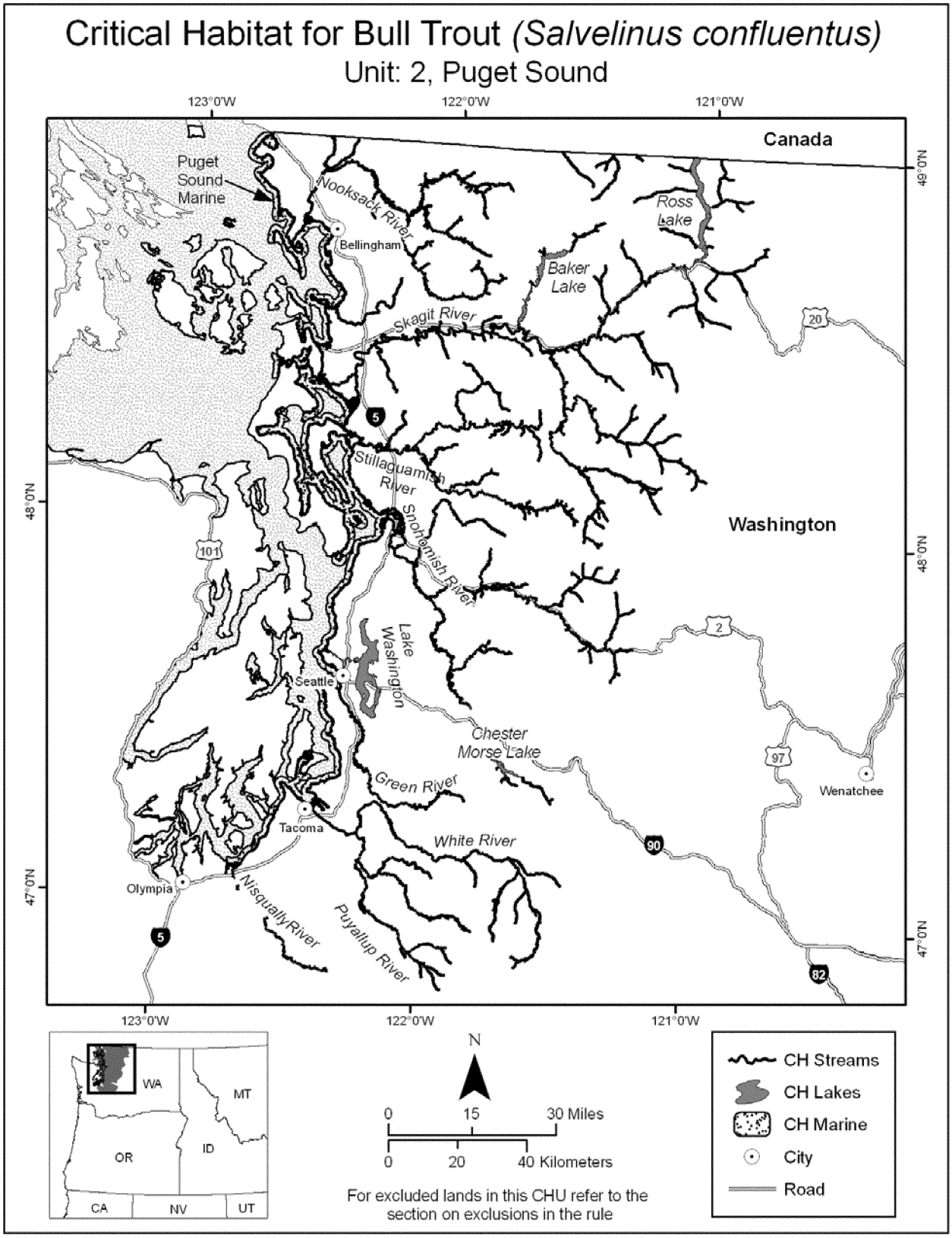
(*2*) Lands held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation;

(*3*) Fee lands, either within or outside the reservation boundaries, owned by the tribal government; and

(*4*) Fee lands within the reservation boundaries owned by individual Indians.

(iv) Map of Unit 2, Puget Sound follows:

BILLING CODE 4310–55–S



BILLING CODE 4310–55–C

(10) Unit 3: Lower Columbia River Basins

(i) This unit consists of 119.3 km (74.2 mi) of streams. The unit is located in southwestern Washington.

(ii) Individual waterbodies in the unit are bounded by the following coordinates:

Waterbody Name	Stream Begin Point or Lake Center Latitude	Stream Begin Point or Lake Center Longitude	Stream End Point Latitude	Stream End Point Longitude
Buck Creek	45.865	-121.579	45.781	-121.515
Clearwater Creek	46.278	-121.331	46.276	-121.328
Cougar Creek	46.071	-122.268	46.055	-122.293
Drift Creek	46.023	-122.090	46.008	-122.078
Fish Lake Stream	46.341	-121.370	46.275	-121.313
Klickitat River	46.255	-121.240	45.691	-121.295
Lake Merwin	45.977	-122.466		
Lewis River	45.957	-122.556	46.066	-122.020
Little Muddy Creek	46.278	-121.353	46.276	-121.328
Muddy River	46.069	-122.007	46.168	-122.034
Phelps Creek	45.892	-121.566	45.881	-121.518
Pine Creek	46.142	-122.096	46.071	-122.017
Rush Creek	46.055	-121.916	46.075	-121.938
Swift Creek	46.084	-122.200	46.086	-122.204
Swift Reservoir	46.056	-122.114		
Trappers Creek	46.289	-121.363	46.276	-121.336
Two Lakes Stream	46.340	-121.385	46.341	-121.370
Unnamed trib. - off Fish Lake Stream	46.323	-121.438	46.331	-121.360
Unnamed trib. ('P10')	46.123	-122.088	46.120	-122.077
Unnamed trib. ('P7')	46.099	-122.069	46.092	-122.059
Unnamed trib. ('P8')	46.104	-122.064	46.140	-122.082
West Fork Klickitat River	46.276	-121.328	46.242	-121.247
White Salmon River	45.897	-121.504	45.722	-121.523
Yale Lake	46.012	-122.312		

(iii) Waterbodies associated with the following tribal lands and habitat conservation plans (HCPs) totaling 155.6 km (96.7 mi) of streams and 4,856.1 ha (11,999.7 ac) of lakes and reservoirs have been excluded from critical habitat designation under section 4(b)(2) of the Act in this unit:

(A) Waterbodies within the geographic area covered by the Washington State Forest Practices Habitat Conservation Plan (HCP) , including portions of Klickitat River, Lewis River, and White Salmon River CHSUs;

(B) Waterbodies within the geographic area covered by the Washington Department of Natural Resources HCP, including portions of Klickitat River, Lewis River, and White Salmon River CHSUs; and

(C) Waterbodies within the geographic area covered by the PacifiCorp Lewis River Hydropower Project Conservation Easement, including portions of Lewis River CHSU.

(D) Waterbodies within the areas under management by the Yakama Nation including the Klickitat River CHSU, within reservation boundaries, and waterbodies that are adjacent to:

(*1*) Lands held in trust by the United States for their benefit;

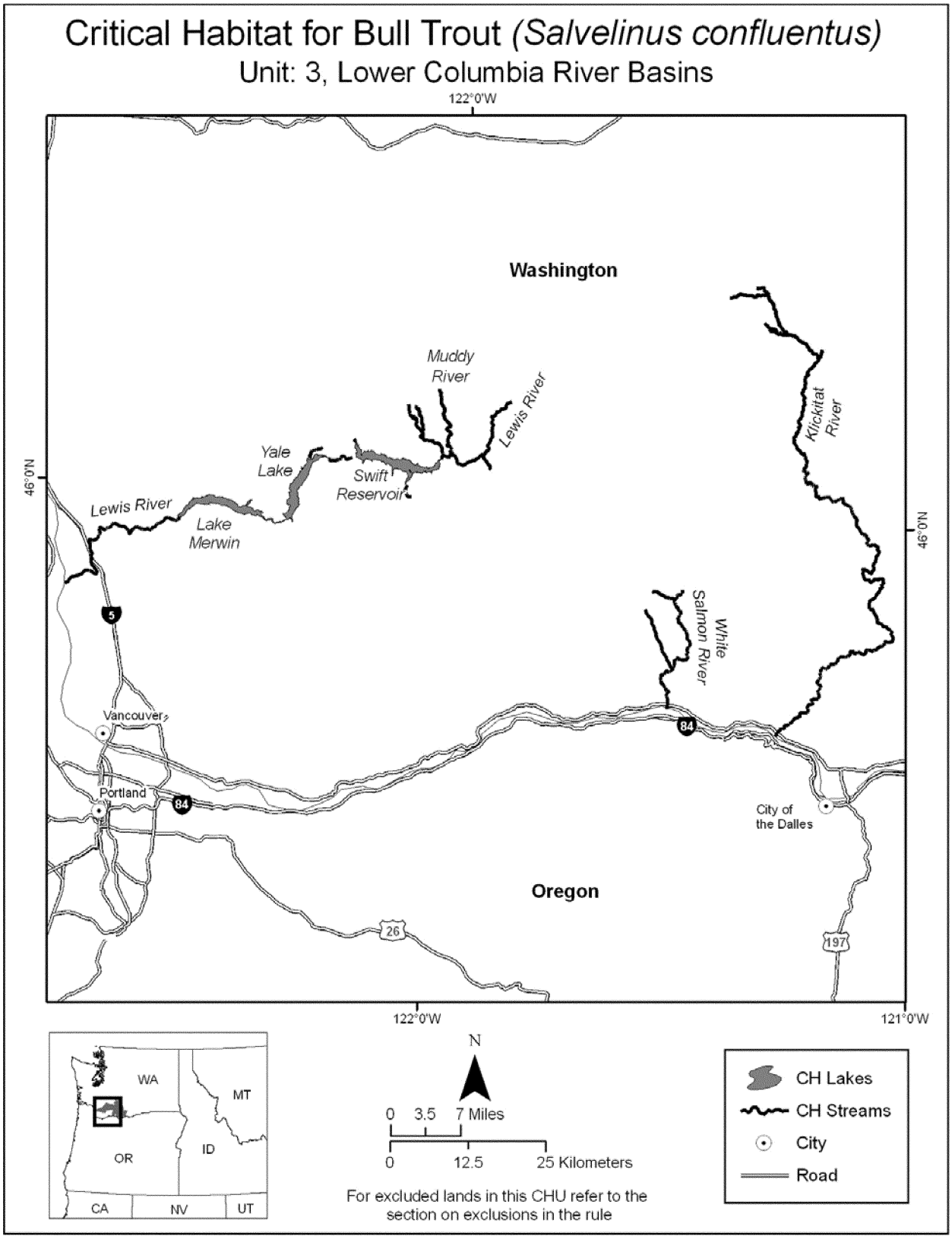
(*2*) Lands held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation;

(*3*) Fee lands, either within or outside the reservation boundaries, owned by the tribal government; and

(*4*) Fee lands within the reservation boundaries owned by individual Indians.

(iv) Map of Unit 3, Lower Columbia River Basins follows:

BILLING CODE 4310–55–S



BILLING CODE 4310–55–C

(11) Unit 4: Upper Willamette River

(i) This unit consists of 312.4 km (194.1 mi) of streams and 3,601.5 ha (8,899.5 ac) of lakes and reservoirs. The unit is located in northwestern Oregon.

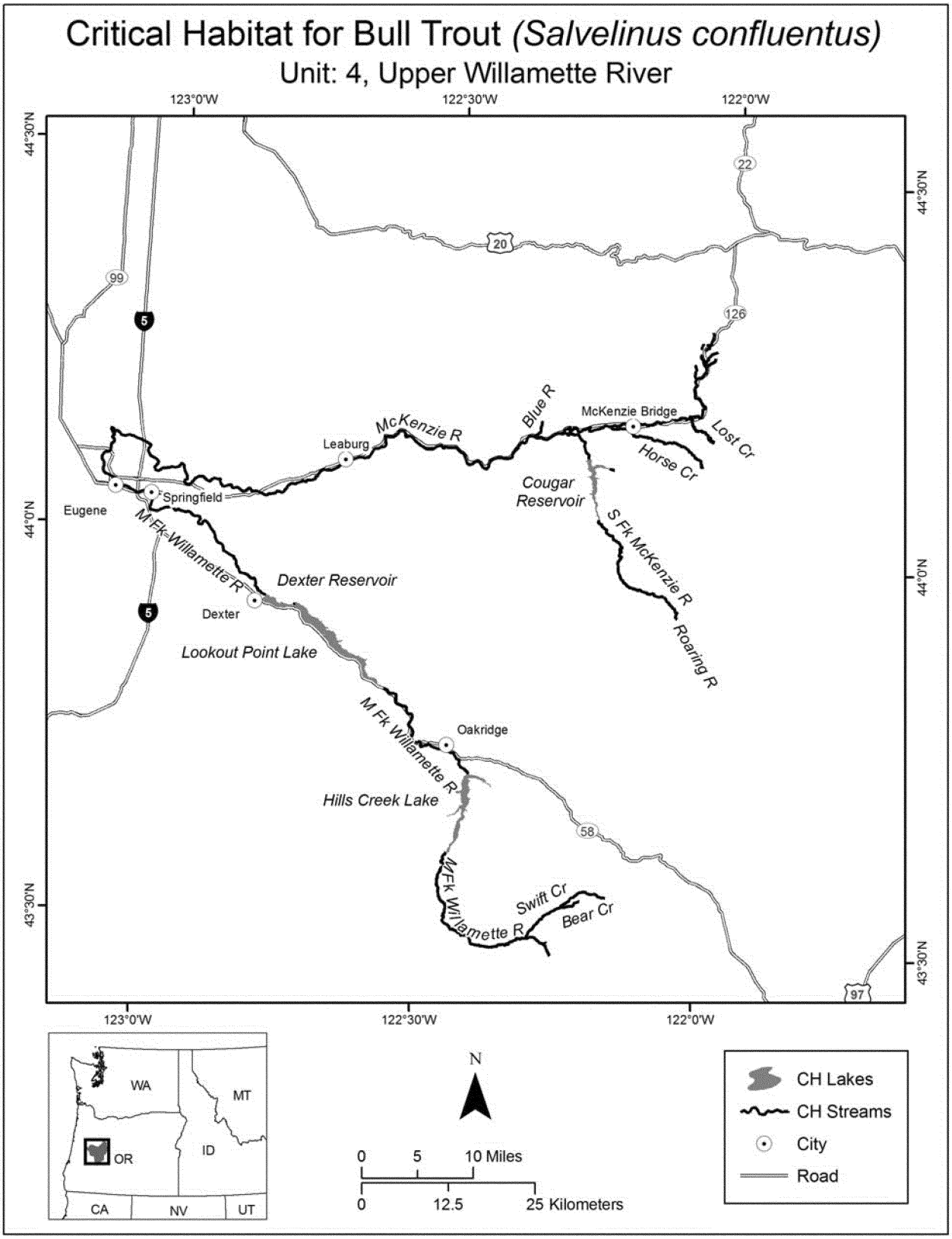
(ii) Individual waterbodies in the unit are bounded by the following coordinates:

Waterbody Name	Stream Begin Point or Lake Center Latitude	Stream Begin Point or Lake Center Longitude	Stream End Point Latitude	Stream End Point Longitude
Anderson Creek	44.258	-122.043	44.278	-122.022
Bear Creek	43.554	-122.209	43.544	-122.244
Blue River	44.172	-122.329	44.153	-122.344
Carmen-Smith Spawning Channel	44.273	-122.051	44.271	-122.052
Cougar Reservoir	44.100	-122.230		
Deer Creek	44.259	-122.063	44.241	-122.058
Dexter Reservoir	43.915	-122.789		
East Fork Horse Creek	44.170	-122.175	44.176	-122.179
East Fork South Fork McKenzie River	44.117	-122.204	44.116	-122.195
Hills Creek Lake	43.671	-122.427		
Horse Creek	44.125	-122.037	44.170	-122.175
Indigo Creek	43.497	-122.262	43.495	-122.268
Lookout Point Lake	43.872	-122.682		
Lost Creek	44.161	-122.018	44.189	-122.067
McKenzie River	44.190	-122.079	44.285	-122.042
Middle Fork Willamette River	43.481	-122.255	44.022	-123.018
Olallie Creek	44.257	-122.042	44.269	-122.025
Roaring River	43.928	-122.066	43.955	-122.092
Smith River	44.279	-122.051	44.287	-122.049
South Fork McKenzie River	43.955	-122.092	44.159	-122.296
Sweetwater Creek	44.283	-122.035	44.279	-122.046
Swift Creek	43.560	-122.163	43.502	-122.300
Trail Bridge Reservoir	44.277	-122.048		
West Fork Horse Creek	44.170	-122.175	44.172	-122.207
White Branch	44.160	-122.019	44.167	-122.030
Willamette River	44.022	-123.018	44.125	-123.107

(iii) No waterbodies are excluded from critical habitat designation in this unit.

(iv) Map of Unit 4, Upper Willamette River follows:

BILLING CODE 4310–55–S



BILLING CODE 4310–55–C

(12) Unit 5: Hood River Basin

(i) This unit consists of 128.1 km (79.6 mi) of streams and 36.9 ha (91.1 ac) of lakes and reservoirs. The unit is located in northcentral Oregon.

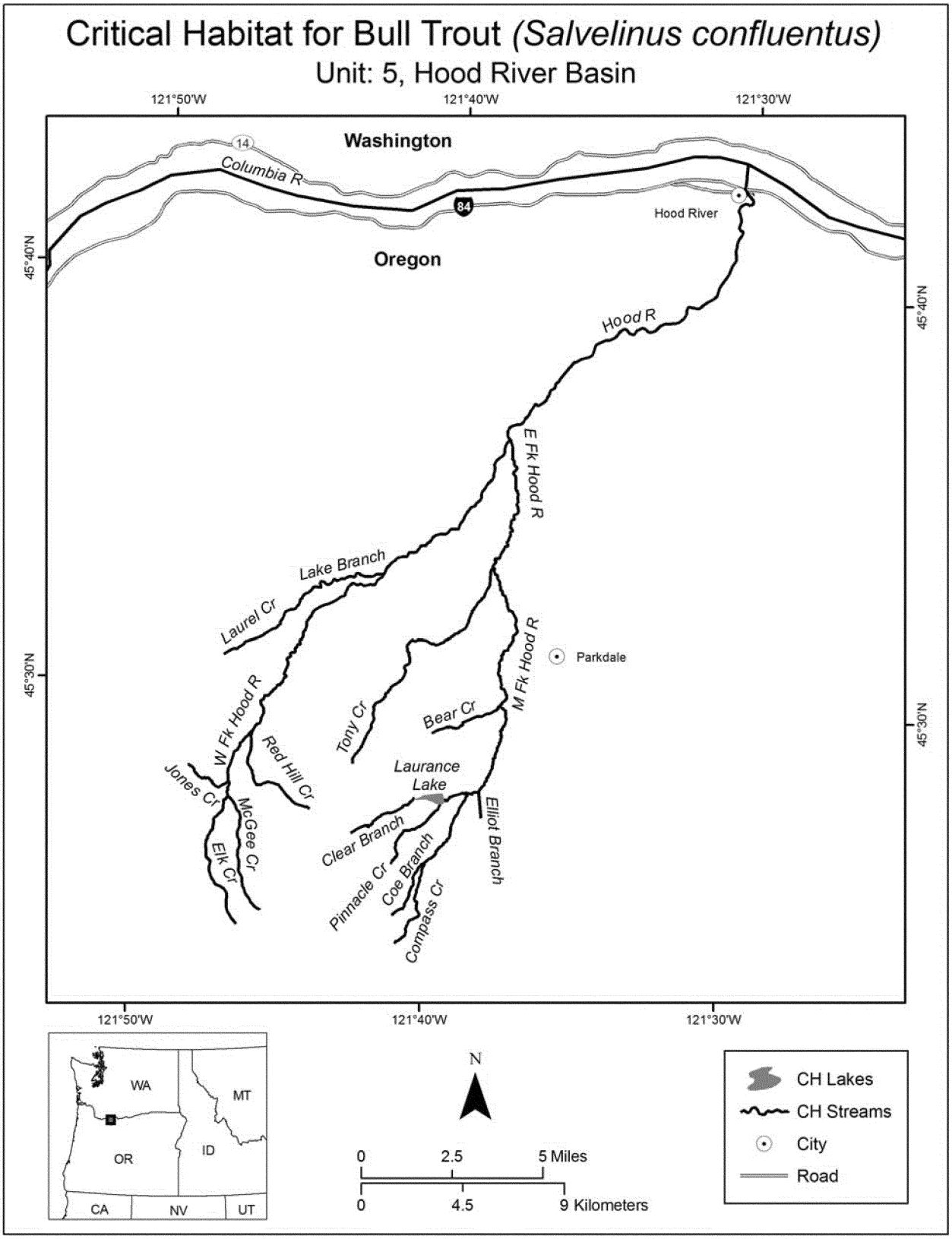
(ii) Individual waterbodies in the unit are bounded by the following coordinates:

Waterbody Name	Stream Begin Point or Lake Center Latitude	Stream Begin Point or Lake Center Longitude	Stream End Point Latitude	Stream End Point Longitude
Bear Creek	45.499	-121.630	45.486	-121.668
Clear Branch	45.444	-121.711	45.463	-121.646
Coe Branch	45.413	-121.685	45.463	-121.646
Compass Creek	45.401	-121.683	45.434	-121.668
East Fork Hood River	45.575	-121.627	45.605	-121.633
Elk Creek	45.405	-121.773	45.456	-121.782
Elliot Branch	45.464	-121.640	45.453	-121.638
Hood River	45.605	-121.633	45.720	-121.507
Jones Creek	45.462	-121.782	45.468	-121.806
Lake Branch	45.539	-121.743	45.549	-121.700
Laurance Lake	45.460	-121.665		
Laurel Creek	45.513	-121.789	45.539	-121.743
McGee Creek	45.456	-121.782	45.411	-121.760
Middle Fork Hood River	45.463	-121.646	45.575	-121.627
Pinnacle Creek	45.433	-121.687	45.458	-121.661
Red Hill Creek	45.453	-121.735	45.483	-121.770
Tony Creek	45.553	-121.639	45.472	-121.712
Unnamed - Off Clear Branch	45.448	-121.701	45.447	-121.702
West Fork Hood River	45.456	-121.782	45.605	-121.633

(iii) No waterbodies are excluded from critical habitat designation in this unit.

(iv) Map of Unit 5, Hood River Basin follows:

BILLING CODE 4310–55–S



BILLING CODE 4310–55–C

(13) Unit 6: Lower Deschutes River Basin

(i) This unit consists of 232.8 km (139.7 mi) of streams and 1,224.9 ha (3,026.8 ac) of lakes and reservoirs. The unit is located in northcentral Oregon.

(ii) Individual waterbodies in the unit are bounded by the following coordinates:

Waterbody Name	Stream Begin Point or Lake Center Latitude	Stream Begin Point or Lake Center Longitude	Stream End Point Latitude	Stream End Point Longitude
Abbot Creek	44.544	-121.671	44.570	-121.621
Blue Lake	44.413	-121.769		
Brush Creek	44.543	-121.707	44.504	-121.659
Bunch Grass Creek	44.993	-121.647	44.987	-121.644
Candle Creek	44.583	-121.678	44.576	-121.619
Canyon Creek	44.502	-121.742	44.501	-121.643
Crooked River	44.393	-121.193	44.501	-121.286
Deschutes River	44.373	-121.292	45.639	-120.915
Heising Spring	44.491	-121.652	44.493	-121.649
Jack Creek	44.472	-121.727	44.493	-121.648
Jefferson Creek	44.625	-121.691	44.577	-121.620
Lake Billy Chinook	44.568	-121.308		
Lake Billy Chinook	44.593	-121.370		
Lake Creek	44.426	-121.727	44.436	-121.703
Link Creek	44.415	-121.766	44.419	-121.756
Metolius River	44.434	-121.638	44.619	-121.469
Middle Fork Lake Creek	44.436	-121.703	44.453	-121.643
Roaring Creek	44.527	-121.709	44.508	-121.687
Shitike Creek	44.748	-121.682	44.762	-121.228
South Fork Lake Creek	44.435	-121.705	44.442	-121.662
Spring Creek	44.457	-121.644	44.451	-121.651
Street Creek	44.590	-121.506	44.599	-121.454
Suttle Lake	44.422	-121.741		
Trout Creek	44.803	-121.069	44.821	-121.089
Unnamed - Off Canyon Creek	44.527	-121.679	44.504	-121.658
Unnamed - Off Jack Creek	44.476	-121.725	44.476	-121.723
Unnamed - Off Jack Creek	44.477	-121.724	44.476	-121.723
Unnamed - Off Jack Creek	44.477	-121.724	44.477	-121.724
Unnamed - Off Jefferson Creek	44.634	-121.699	44.625	-121.691
Unnamed - Off Roaring Creek	44.522	-121.700	44.516	-121.700
Unnamed - Off Roaring Creek	44.522	-121.700	44.521	-121.700
Unnamed - Off Roaring Creek	44.516	-121.712	44.516	-121.700
Warm Springs River 1	44.941	-121.431	44.941	-121.431
Warm Springs River 2	44.969	-121.585	44.969	-121.585
Whitewater River	44.704	-121.728	44.670	-121.546
Whychus Creek	44.460	-121.336	44.417	-121.389

(iii) Waterbodies associated with the following tribal lands totaling 230.4 km (143.2 mi) of streams and 445.3 ha (1,100.4 ac) of lakes and reservoirs have been excluded from critical habitat designation under section 4(b)(2) of the Act in this unit. These are waterbodies within the areas under management by the Confederated Tribes of the Warm Springs Reservation within reservation boundaries, and waterbodies that are adjacent to:

(A) Lands held in trust by the United States for their benefit;

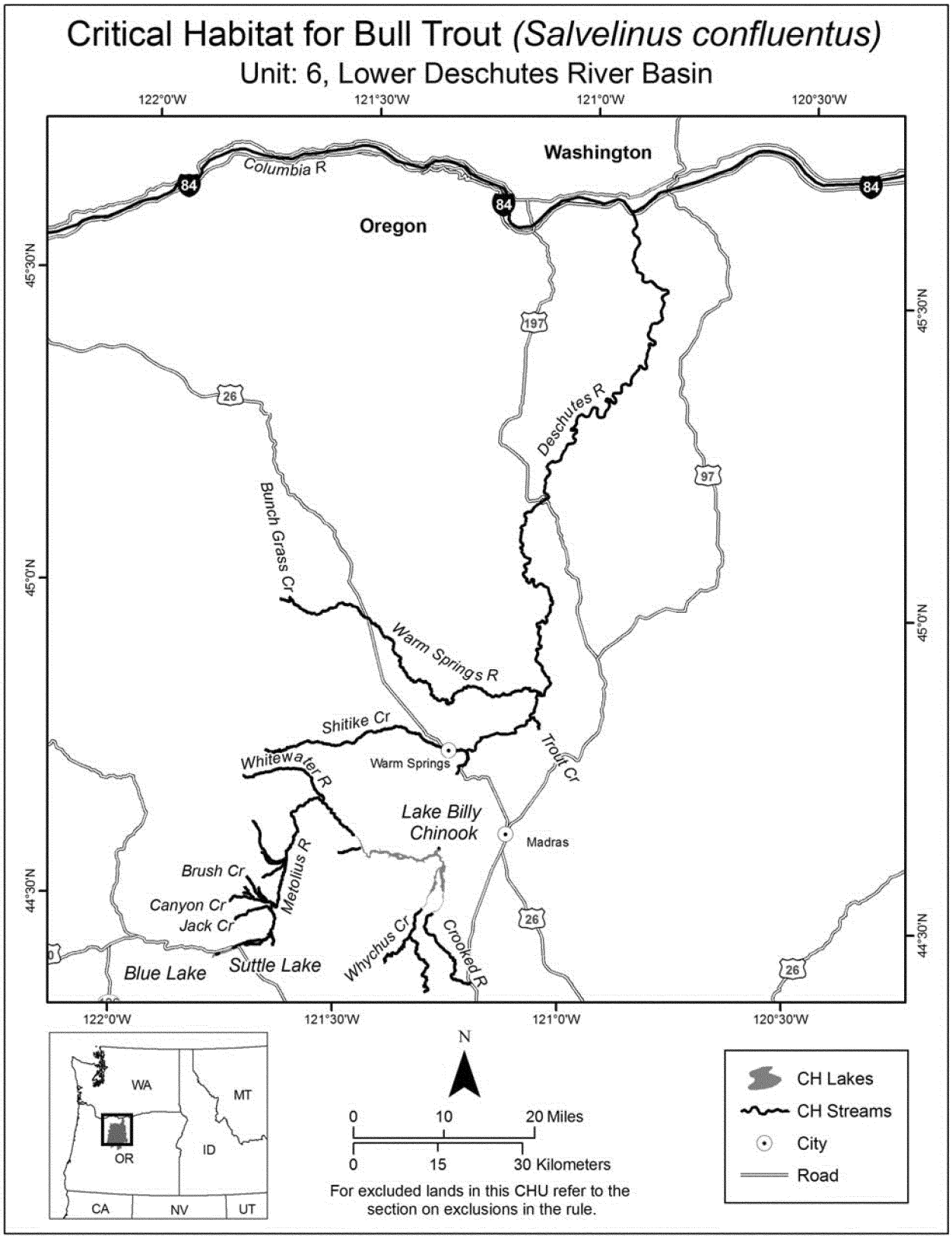
(B) Lands held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation;

(C) Fee lands, either within or outside the reservation boundaries, owned by the tribal government; and

(D) Fee lands within the reservation boundaries owned by individual Indians.

(iv) Map of Unit 6, Lower Deschutes River Basin follows:

BILLING CODE 4310–55–S



BILLING CODE 4310–55–C

(14) Unit 7: Odell Lake

(i) This unit consists of 27.4 km (17.0 mi) of streams and 1,387.1 ha (3,427.6 ac) of lakes and reservoirs. The unit is located in northcentral Oregon.

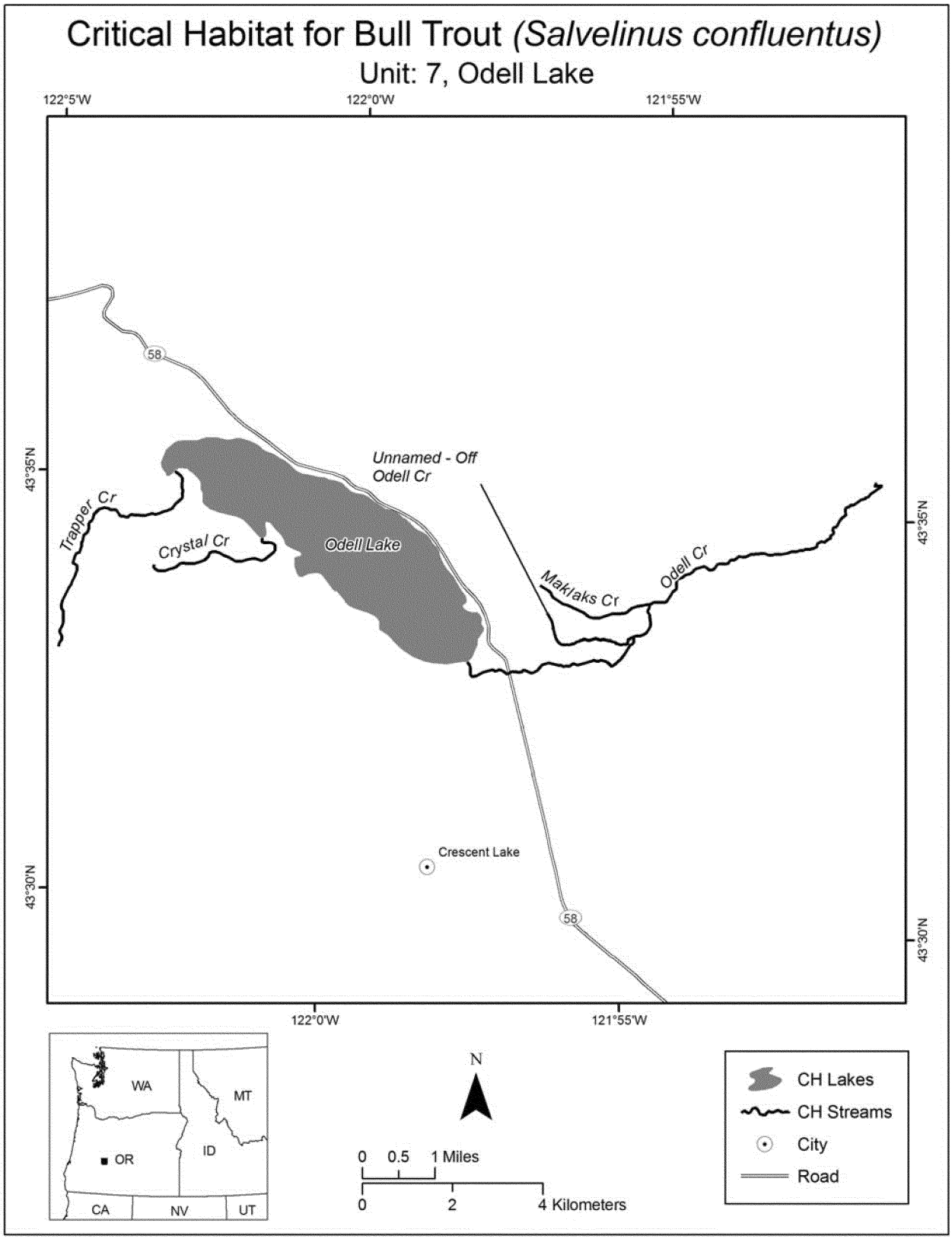
(ii) Individual waterbodies in the unit are bounded by the following coordinates:

Waterbody Name	Stream Begin Point or Lake Center Latitude	Stream Begin Point or Lake Center Longitude	Stream End Point Latitude	Stream End Point Longitude
Crystal Creek	43.566	-122.052	43.572	-122.022
Maklaks Creek	43.566	-121.945	43.564	-121.915
Odell Creek	43.550	-121.964	43.591	-121.855
Odell Lake	43.572	-122.001		
Trapper Creek	43.548	-122.076	43.585	-122.048
Unnamed - Off Odell Creek	43.557	-121.919	43.561	-121.943

(iii) No waterbodies are excluded from critical habitat designation in this unit.

(iv) Map of Unit 7, Odell Lake follows:

BILLING CODE 4310–55–S



BILLING CODE 4310–55–C

(15) Unit 8: Mainstem Lower Columbia River

(i) This unit consists of 340.4 km (211.5 mi) of streams. The unit is located along the border between Oregon and Washington.

(ii) Individual waterbodies in the unit are bounded by the following coordinates: